

IN THE SUPREME COURT OF THE STATE OF NEVADA

KUPA'A KEA, aka, )  
PAUL, aka, KUPAA W. KEA, aka, )  
MIGUEL HERNANDEZ, aka, PAUL KEA, )  
aka KUPAA A A, aka, KUPA KE-A, aka, )  
KUPO KE-A, aka, KUPOA KEA, aka, )  
KUPOA KE-A, aka, KUPAA WIW-OLE-NAI KE-A, )  
aka, KUPAA KE-A, aka, KRUMS, aka, )  
KUPAA WIWIOLENA'I KE-A, aka, )  
KUPAA KE, KEA KUPA, )  
Appellant, )  
v. )  
THE STATE OF NEVADA, )  
Respondent. )

Electronically Filed  
Aug 15 2012 04:38 p.m.  
No. 61160 Tracie K. Lindeman  
Clerk of Supreme Court

Appeal from Judgement of Conviction  
Second Judicial District Court of the State of Nevada  
The Honorable Judge Scott Freeman  
APPELLANT'S APPENDIX

KATHRINE I. BERNING

195 CASAZZA DRIVE  
RENO, NEVADA 89502

ATTORNEY FOR APPELLANT

RICHARD A. GAMMICK  
Washoe County District Attorney

TERRANCE MCCARTHY  
Chief Deputy

POST OFFICE BOX 30083  
RENO, NEVADA 8950

ATTORNEY FOR RESPONDENT

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DA # 434263

RPD RP11-021113

1 CODE 1800  
2 Richard A. Gammick  
3 #001510  
4 P.O. Box 30083  
5 Reno, NV 89520-3083  
6 (775) 328-3200  
7 Attorney for Plaintiff

8  
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
10  
11 IN AND FOR THE COUNTY OF WASHOE.

12 \* \* \*

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No. CR12-0110

15 v.

Dept. No. 9

16 KUPAA KEA,

17 Defendant.

18 INFORMATION

19 RICHARD A. GAMMICK, District Attorney within and for the  
20 County of Washoe, State of Nevada, in the name and by the authority  
21 of the State of Nevada, informs the above entitled Court that KUPAA  
22 KEA, the defendant above named, has committed the crime of:

23 COUNT I. BATTERY WITH A DEADLY WEAPON CAUSING SUBSTANTIAL  
24 BODILY HARM, a violation of NRS 200.481(2)(e), a felony, in the  
25 manner following to wit:

26 That the said defendant on the 27th day of October A.D.,  
2011, or thereabout, and before the filing of this Information, at  
and within the County of Washoe, State of Nevada, did willfully and  
unlawfully use force and violence upon the person of CESAR ANTON at

1 PARADISE PARK located at 2600 Paradise Drive, Reno, Washoe County,  
2 Nevada, with a deadly weapon, to wit: a .22 caliber rifle, by  
3 shooting CESAR ANTON with said rifle, causing substantial bodily  
4 harm.

5 COUNT III. BATTERY WITH A DEADLY WEAPON CAUSING SUBSTANTIAL  
6 BODILY HARM, a violation of NRS 200.481(2)(e), a felony, . in the  
7 manner following, to wit:

8 That the said defendant on the 27th day of October A.D.,  
9 2011, or thereabout, and before the filing of this Information, at  
10 and within the County of Washoe, State of Nevada, did willfully and  
11 unlawfully use force and violence upon the person of OSCAR VALENCIA  
12 at PARADISE PARK located at 2600 Paradise Drive, Reno, Washoe County,  
13 Nevada, with a deadly weapon, to wit: a .22 caliber rifle, by  
14 shooting OSCAR VALENCIA with said rifle, causing substantial bodily  
15 harm.

16 All of which is contrary to the form of the Statute in such  
17 case made and provided, and against the peace and dignity of the  
18 State of Nevada.

19  
20 RICHARD A. GAMMICK  
21 District Attorney  
22 Washoe County, Nevada

23 By /s/ Christian G. Wilson  
24 CHRISTIAN G. WILSON  
25 Deputy District Attorney  
26

1           The following are the names and addresses of such witnesses  
2 as are known to me at the time of the filing of the within  
3 Information:

4 RENO POLICE DEPARTMENT

5 DETECTIVE CHAD CROW

6 OSCAR VALENCIA, 1610 Meadowvale Way, Sparks, Nevada

7 CESAR ANTON, 2111 Whitfield Way, Reno, Nevada

8 CHRISTIAN ANTON, 2111 Whitfield Way, Reno, Nevada

9 EDWIN BACA, 1620 Sterling Way, Reno, Nevada

10 MANUEL GATICA, 2182 Barberry Way, Reno, Nevada

11 MONICA HERRERA, 1611 Wedekind Road, #19E, Reno, Nevada

12 ASael MARISCAL, 5360 Leon Drive, Sparks, Nevada

13 LUIS VARELA

14 JACOB BAKER

15           The party executing this document hereby affirms that this  
16 document submitted for recording does not contain the social security  
17 number of any person or persons pursuant to NRS 239B.230.

18  
19 RICHARD A. GAMMICK  
20 District Attorney  
21 Washoe County, Nevada

22 By /s/ Christian G. Wilson  
23 CHRISTIAN G. WILSON  
24 Deputy District Attorney

25 PCN RPD1113504C

26 0123434263dpl

2

ORIGINAL

FILED  
Electronically  
02-08-2012:02:53:48 PM  
Joey Orduna Hastings  
Clerk of the Court  
Transaction # 2752729

1 CODE 1785  
2 Richard A. Gammick  
3 #001510  
4 P.O. 30083  
5 Reno, NV. 89520-3083  
6 (775)328-3200  
7 Attorney for Plaintiff

8  
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
10  
11 IN AND FOR THE COUNTY OF WASHOE.

12 \* \* \*

13 Plaintiff,

Case No. CR12-0110

14 v.

Dept. No. 9

15 KUPAA KEA,

16 Defendant.

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GUILTY PLEA MEMORANDUM

1. I, KUPAA KEA, understand that I am charged with the  
offense(s) of: COUNT I. BATTERY WITH A DEADLY WEAPON CAUSING  
SUBSTANTIAL BODILY HARM, a violation of NRS 200.481(2)(e), a felony,  
and COUNT II. BATTERY WITH A DEADLY WEAPON CAUSING SUBSTANTIAL  
BODILY HARM, a violation of NRS 200.481(2)(e), a felony,

2. I, KUPAA KEA desire to enter a plea of guilty to the  
offense(s) of COUNT I. BATTERY WITH A DEADLY WEAPON CAUSING  
SUBSTANTIAL BODILY HARM, a violation of NRS 200.481(2)(e), a felony,  
and COUNT II. BATTERY WITH A DEADLY WEAPON CAUSING SUBSTANTIAL BODILY  
HARM, a violation of NRS 200.481(2)(e), a felony, as more fully  
alleged in the charge(s) filed against me.

3. By entering my plea of guilty I know and understand

1 that I am waiving the following constitutional rights:

2 A. I waive my privilege against self-incrimination.

3 B. I waive my right to trial by jury, at which trial the  
4 State would have to prove my guilt of all elements of the offense  
5 beyond a reasonable doubt.

6 C. I waive my right to confront my accusers, that is, the  
7 right to confront and cross examine all witnesses who would testify  
8 at trial.

9 D. I waive my right to subpoena witnesses for trial on my  
10 behalf.

11 4. I understand the charge(s) against me and that the  
12 elements of the offense(s) which the State would have to prove beyond  
13 a reasonable doubt at trial are that on October 27, 2011, or  
14 thereabout, in the County of Washoe, State of Nevada, I did, as to  
15 COUNT I., willfully and unlawfully use force and violence upon the  
16 person of CESAR ANTON at PARADISE PARK located at 2600 Paradise  
17 Drive, Reno, Washoe County, Nevada, with a deadly weapon, to wit: a  
18 .22 caliber rifle, by shooting CESAR ANTON with said rifle, causing  
19 substantial bodily harm, and as to COUNT II., did willfully and  
20 unlawfully use force and violence upon the person of OSCAR VALENCIA  
21 at PARADISE PARK located at 2600 Paradise Drive, Reno, Washoe County,  
22 Nevada, with a deadly weapon, to wit: a .22 caliber rifle, by  
23 shooting OSCAR VALENCIA with said rifle, causing substantial bodily  
24 harm.

25 All of which is contrary to the form of the Statute in such  
26 case made and provided, and against the peace and dignity of the

1 State of Nevada.

2 5. I understand that I admit the facts which support all  
3 the elements of the offense by pleading guilty. I admit that the  
4 State possesses sufficient evidence which would result in my  
5 conviction. I have considered and discussed all possible defenses  
6 and defense strategies with my counsel. I understand that I have the  
7 right to appeal from adverse rulings on pretrial motions only if the  
8 State and the Court consent to my right to appeal in a separate  
9 written agreement. I understand that any substantive or procedural  
10 pretrial issue(s) which could have been raised at trial are waived by  
11 my plea.

12 6. I understand that the consequences of my plea of guilty  
13 to COUNT I. are that I may be imprisoned for a period of 2-15 years  
14 in the Nevada State Department of Corrections, that I am eligible for  
15 probation, and that I may also be fined up to TEN THOUSAND DOLLARS,  
16 (\$10,000.00), and as to COUNT II. that I may be imprisoned for a  
17 period of 2-15 years in the Nevada State Department of Corrections,  
18 that I am eligible for probation and that I may also be fined up to  
19 TEN THOUSAND DOLLARS, (\$10,000.00). Further, that the sentence in  
20 COUNT II. can be ordered to be served either consecutively or  
21 concurrently to the sentence I receive in COUNT I.

22 7. In exchange for my plea of guilty, the State, my  
23 counsel and I have agreed to recommend the following:  
24 The State will be free to argue for an appropriate sentence.  
25 The State will dismiss the charge of CONSPIRACY TO VIOLATE THE  
26 CONTROLLED SUBSTANCES ACT in court case Number SJC 12-12. The State



1 will not file additional criminal charges resulting from the arrest  
2 in this case.

3 8. I understand that, even though the State and I have  
4 reached this plea agreement, the State is reserving the right to  
5 present arguments, facts, and/or witnesses at sentencing in support  
6 of the plea agreement.

7 9. I also agree that I will make full restitution in this  
8 matter, as determined by the Court. Where applicable, I additionally  
9 understand and agree that I will be responsible for the repayment of  
10 any costs incurred by the State or County in securing my return to  
11 this jurisdiction.

12 10. I understand that the State, at their discretion, is  
13 entitled to either withdraw from this agreement and proceed with the  
14 prosecution of the original charges or be free to argue for an  
15 appropriate sentence at the time of sentencing if I fail to appear at  
16 any scheduled proceeding in this matter OR if prior to the date of my  
17 sentencing I am arrested in any jurisdiction for a violation of law  
18 OR if I have misrepresented my prior criminal history. I represent  
19 that I do have a prior criminal record. I understand and agree that  
20 the occurrence of any of these acts constitutes a material breach of  
21 my plea agreement with the State. I further understand and agree  
22 that by the execution of this agreement, I am waiving any right I may  
23 have to remand this matter to Justice Court should I later withdraw  
24 my plea.

25 11. I understand and agree that pursuant to the terms of  
26 the plea agreement stated herein, any counts which are to be

1 dismissed and any other cases charged or uncharged which are either  
2 to be dismissed or not pursued by the State, may be considered by the  
3 court at the time of my sentencing.

4 12. I understand that the Court is not bound by the  
5 agreement of the parties and that the matter of sentencing is to be  
6 determined solely by the Court. I have discussed the charge(s), the  
7 facts and the possible defenses with my attorney. All of the  
8 foregoing rights, waiver of rights, elements, possible penalties, and  
9 consequences, have been carefully explained to me by my attorney. My  
10 attorney has not promised me anything not mentioned in this plea  
11 memorandum, and, in particular, my attorney has not promised that I  
12 will get any specific sentence. I am satisfied with my counsel's  
13 advice and representation leading to this resolution of my case. I  
14 am aware that if I am not satisfied with my counsel I should advise  
15 the Court at this time. I believe that entering my plea is in my  
16 best interest and that going to trial is not in my best interest. My  
17 attorney has advised me that if I wish to appeal, any appeal, if  
18 applicable to my case, must be filed within thirty days of my  
19 sentence and/or judgment.

20 13. I understand that this plea and resulting conviction  
21 will likely have adverse effects upon my residency in this country if  
22 I am not a U. S. Citizen. I have discussed the effects my plea will  
23 have upon my residency with my counsel.

24 14. I offer my plea freely, voluntarily, knowingly and  
25 with full understanding of all matters set forth in the Information  
26 and in this Plea Memorandum. I have read this plea memorandum

1 completely and I understand everything contained within it.

2 15. My plea of guilty is voluntary and is not the result  
3 of any threats, coercion or promises of leniency.


4 16. I am signing this Plea Memorandum voluntarily with  
5 advice of counsel, under no duress, coercion, or promises of  
6 leniency.

7 17. I do hereby swear under penalty of perjury that all of  
8 the assertions in this written plea agreement document are true.

9 AFFIRMATION PURSUANT TO NRS 239B.030


10 The undersigned does hereby affirm that the preceding  
11 document does not contain the social security number of any person.

12 DATED this 7 day of February, 2012.

13  
14  2/8/12  
15 DEFENDANT

16 TRANSLATOR/INTERPRETER

17   
18 Attorney Witnessing Defendant's Signature

19   
20 Prosecuting Attorney

21  
22  
23  
24  
25  
26 0123434263dpgbGPM

Code No. 4185

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE  
THE HONORABLE NORMAN C. ROBISON, SENIOR JUDGE

-oOo-

STATE OF NEVADA,

Plaintiff,

vs.

KUPAA KEA,

Defendant.

Case No. CR12-0110

Dept. No. 9

**COPY**

TRANSCRIPT OF PROCEEDINGS

ARRAIGNMENT

WEDNESDAY, FEBRUARY 8, 2012

RENO, NEVADA

Reported By: STEPHANI L. LODER, CCR No. 862

APPEARANCES:

For the Plaintiff: KATHERINE H. LYON  
Deputy District Attorney  
Reno, Nevada

For the Defendant: KATHRINE I. BERNING  
Fry & Berning, LLC  
Reno, Nevada

Parole and Probation: DEBORAH BROWN

1 RENO, NEVADA, WEDNESDAY, FEBRUARY 8, 2012, 8:30 a.m.

2 -oOo-

3  
4 THE COURT: Case No. CR12-0110, State of Nevada  
5 versus Kupaa Kea.

6 MS. BERNING: Thank you, Your Honor.

7 THE COURT: This is the time set for arraignment  
8 in this case. Are you Kupaa Kea?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Is that your true and correct name?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Yes?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Be advised all further  
15 proceedings in the future be held in that name.

16 I received a copy of the Information. Have you  
17 had a chance to go over with it your client?

18 MS. BERNING: Yes, Your Honor, we have. Let me  
19 confirm. My client's name as it appears on line 12 is  
20 correctly spelled, and we will waive the reading, Your  
21 Honor.

22 My client is entering into a plea in the  
23 negotiations where he signed a plea -- a guilty plea  
24 memorandum, and I have that for the Court.

1 THE COURT: Let's see it.

2 I've been handed a guilty plea memorandum. Did  
3 you sign this document?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Did you have the advice of your  
6 lawyer when you did?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you feel that this plea  
9 negotiation is in your best interest?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Anyone threaten you or promise you  
12 anything to get you to plead guilty here today?

13 THE DEFENDANT: No, sir.

14 THE COURT: All right. Let's go over this plea  
15 negotiation. States that you desire to enter a plea of  
16 guilty to the offense of battery with a deadly weapon  
17 causing substantial bodily harm, a felony; and Count II,  
18 battery with a deadly weapon causing substantial bodily  
19 harm, a felony.

20 Is that your understanding?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: It states in this that you did, in  
23 the county of Washoe, state of Nevada, on Count I,  
24 willfully, unlawfully use force and violence upon the

1 person of Caesar Anton at Paradise Park located at 2600  
2 Paradise Drive, Reno, Washoe County, with a deadly weapon,  
3 specifically a .22 caliber rifle, by shooting Caesar Anton  
4 with a rifle, causing substantial bodily harm.

5 Count II is you did willfully and unlawfully use  
6 force and violence on the person of Oscar Valencia at  
7 Paradise Park located at 2600 Paradise Drive, Reno, Washoe  
8 County, Nevada; that is, to wit, a .22 caliber rifle, by  
9 shooting him, causing substantial bodily harm.

10 Any questions about the charge?

11 THE DEFENDANT: No, sir.

12 THE COURT: Do you understand that the  
13 consequence of your plea as to Count I is imprisonment two  
14 to 15 years in the Nevada Department of Corrections, that  
15 you are eligible for probation, and you can also be fined  
16 up to \$10,000; on Count II, imprisonment for two to 15,  
17 Nevada Department of Corrections, and a fine of 10,000?

18 Do you understand that sentence --

19 THE DEFENDANT: Yes, sir.

20 THE COURT: -- could be ordered served  
21 concurrently or consecutively? Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: In exchange for your plea of guilty,  
24 the State has agreed that they're free to argue at time of



1 sentencing for whatever sentence they feel is appropriate,  
2 and the State will dismiss the charge of conspiracy to  
3 violate the Controlled Substance Act in Case No. SJC12-12,  
4 and the State will not file any additional charges  
5 resulting from the arrest in this case.

6 Do you understand that the Court is not bound by  
7 this agreement, that you could receive the maximum  
8 sentence?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Is there restitution  
11 involved, Counsel?

12 MS. LYON: Your Honor, I assume, although I  
13 cannot be sure because I am not assigned to this case, but  
14 there may be medical bills that -- or victims of crime  
15 compensation that the defendant would be responsible for.  
16 So I would submit, yes, there will be restitution. And  
17 we'll make sure that defense obtains that information  
18 prior to sentencing.

19 THE COURT: Do you understand that whatever  
20 restitution you will be responsible for?

21 THE DEFENDANT: (Nods head).

22 THE COURT: All right. Let's go over the  
23 Information very briefly.

24 Count I, that on the 27th day of October 2011,

1 you did willfully and unlawfully use force and violence on  
2 the person of Caesar Anton at Paradise Park with a .22  
3 caliber rifle.

4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Count -- how come I've got Count III  
7 on the second page? Is that a typo?

8 MS. LYON: That is a typographical error. We  
9 would ask you to redact the third Roman numeral.

10 THE COURT: Count II, battery with a deadly  
11 weapon causing substantial harm. On the 27th day of  
12 October, in the county of Washoe, state of Nevada, you  
13 used force and violence upon the person of Oscar Valencia.

14 Do you have any questions about the charge or  
15 about the possible penalty or anything that --

16 THE DEFENDANT: No, sir.

17 THE COURT: -- we've covered so far?

18 THE DEFENDANT: No, sir.

19 THE COURT: Do you understand it's up to the  
20 Court whether these sentences run consecutively,  
21 concurrently, whether or not you get probation, entirely  
22 up to the Court?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. To these charges, are you

1 guilty or not guilty?

2 THE DEFENDANT: Guilty.

3 THE COURT: Do you understand you have a right to  
4 plead not guilty and have a jury trial within 60 days of  
5 this date? Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You have to speak up a little bit.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: At that trial, the State would have  
10 to prove these charges by competent evidence beyond a  
11 reasonable doubt. You'd be able to have your counsel  
12 cross-examine any witness who testified against you. You  
13 could have witnesses come forward and testify for you.  
14 You could take the stand and testify or you could remain  
15 silent. That couldn't be used against you.

16 Do you understand you're giving up those rights?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Have you been convicted of a felony  
19 before?

20 MS. BERNING: No, Your Honor. There's no adult  
21 criminal history. This is Mr. Kea's first adult felony  
22 violation.

23 THE COURT: Is he a citizen?

24 THE DEFENDANT: Yes, sir.

1 THE COURT: You're not a U.S. citizen?  
2 THE DEFENDANT: I am, sir.  
3 THE COURT: You are. Do you have any questions  
4 about what we've covered?  
5 THE DEFENDANT: Excuse me?  
6 THE COURT: Have you any questions about what  
7 we've covered?  
8 THE DEFENDANT: No, sir.  
9 THE COURT: Tell me what happened on that date.  
10 MS. BERNING: Your Honor --  
11 (Discussion off the record between  
12 the defendant and Ms. Berning.)  
13 THE DEFENDANT: I shot a kid at the park close to  
14 my house. And it was a mutual fight and altered into  
15 gunshots.  
16 THE COURT: Are you a gang-banger?  
17 THE DEFENDANT: Excuse me?  
18 THE COURT: Are you a member of a gang?  
19 THE DEFENDANT: No, sir.  
20 THE COURT: So how did you get involved in this?  
21 THE DEFENDANT: Wrong people, wrong crowd, sir.  
22 THE COURT: I can't hear you.  
23 THE DEFENDANT: Wrong people, wrong crowd.  
24 THE COURT: How bad were the injuries, Counsel?

1 MS. BERNING: Your Honor, one of the gentlemen,  
2 was shot in the calf and the other one was shot in the  
3 tibia.

4 THE COURT: Where?

5 MS. BERNING: The tibia, the lower leg.

6 THE COURT: Okay.

7 MS. BERNING: Both of the gentlemen.

8 THE COURT: Anything else you want to canvass,  
9 Counsel?

10 MS. LYON: No, Your Honor. I think the Court has  
11 covered all the constitutional rights as outlined in the  
12 guilty plea memorandum.

13 THE COURT: All right. You haven't been  
14 convicted of a felony. You understand that you lose any  
15 civil rights you might have?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand that if you're in  
18 trouble in the future, this could be used against you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand you have got a good  
21 chance of going to prison because of this?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you still want to plead guilty  
24 today?

1 THE DEFENDANT: Yes, sir.

2 MS. LYON: Your Honor, I'm sorry. The only thing  
3 that I would ask that the Court inquire of the defendant  
4 is whether or not he was promised anything to enter his  
5 plea of guilty, if he was promised any sort of sentence or  
6 any other --

7 THE COURT: All right.

8 MS. LYON: -- inducement.

9 THE COURT: Has anyone made any promises to get  
10 you to enter into this plea negotiation?

11 THE DEFENDANT: No, sir.

12 THE COURT: Okay. I'll accept the plea is made  
13 freely and voluntarily, with full understanding by it.

14 Date for sentencing.

15 THE CLERK: March 23rd at 8:30.

16 MS. BERNING: Your Honor, I am remiss and did not  
17 bring my calendar, so it may be that I might have to file  
18 a motion if I have a conflict to continue this case. I  
19 just want that on the record.

20 THE COURT: Well, I don't suppose he's going to  
21 go anywhere.

22 MS. BERNING: I don't think so. We'll see.  
23 Thank you. And that would be at 8:30?

24 THE CLERK: That's correct.

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MS. BERNING: Thank you.

THE COURT: Anything further?

MS. LYON: No, thank you, Your Honor.

THE COURT: All right.

(Proceedings concluded.)


1 STATE OF NEVADA )  
2 )  
3 COUNTY OF WASHOE )

4 I, STEPHANI L. LODER, Certified Shorthand  
5 Reporter of the Second Judicial District Court of the  
6 State of Nevada, in and for the County of Washoe, do  
7 hereby certify:

8 That I was present in Department No. 9 of the  
9 above-entitled Court and took stenotype notes of the  
10 proceedings entitled herein, and thereafter transcribed  
11 the same into typewriting as herein appears;

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

15 DATED: At Reno, Nevada, this 23rd day of  
16 March, 2012.

17  
18   
19 STEPHANI L. LODER, CCR No. 862  
20  
21  
22  
23  
24



Code: 4185

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE  
BEFORE THE HONORABLE SCOTT N. FREEMAN, DISTRICT JUDGE

-oOo-

STATE OF NEVADA,

Plaintiff,

vs.

KUPAA KEA,

Defendant.

Case No. CR12-0110

Dept. No. 9

TRANSCRIPT OF PROCEEDINGS

MOTION TO SET BAIL

Wednesday, April 4, 2012

RENO, NEVADA

Reported By: CECILIA VOHL, NV CCR #246, RPR, CRR, CCP

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A P P E A R A N C E S

For the Plaintiff: CHRISTIAN WILSON, ESQUIRE  
Deputy District Attorney  
1 South Sierra Street  
South Tower, 4th Floor  
P.O. Box 30083  
Reno, Nevada 89520

For the Defendant: FRY & BERNING  
BY: KATHRINE I. BERNING, ESQUIRE  
195 Casazza Drive  
Reno, Nevada 89502

For the Parole and  
Probation Department: Michael Duncan

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I N D E X

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1 RENO, NEVADA, WEDNESDAY, APRIL 4, 2012, 10:01 A.M.

2 -oOo-

3  
4 THE COURT: Thank you. Please be seated.

5 This is the time set for a bail motion. 10:01

6 Ms. Berning, good morning.

7 MS. BERNING: Good morning, Your Honor.

8 THE COURT: This is Case CR12-0110.

9 It's your motion.

10 MS. BERNING: Yes, Your Honor. Your Honor, on behalf 10:01  
11 of Mr. Kea, I would make the following argument: We don't have  
12 witnesses to present here today. He does have family here in  
13 town. And as our original bail motion stated, basically saying  
14 that a bail is unreasonable when there's no way that the  
15 defendant can get out, at this time, he's on a no-bail hold, 10:01  
16 and for Mr. Wilson to suggest a bail of a million dollars is  
17 like saying you can either have no bail or no bail.

18 What we're looking for is a bondable amount of  
19 approximately \$30,000. The defendant is charged and has pled,  
20 pursuant to plea negotiations, for charges that are fairly 10:02  
21 serious. There's no way that -- he's not denying that  
22 whatsoever. However, this is the first time that my client has  
23 been -- this is the first time that Mr. Kea has been involved  
24 with the police as an adult. These are his first felonies as

1 an adult.

2 And he does have support within the community. He  
3 would be able to get a job. He has -- he was living with his  
4 sister, Mome. He now has support of his brother, Pono, also  
5 who lives in Reno. So he has a place to live if he were  
6 released.

10:02

7 He's willing to check in with Court Services on a  
8 daily basis. He would take drug tests daily. He would check  
9 in daily. He would use a GPS so that the -- so that Court  
10 Services, at any given time, would know where he is. And he'd  
11 be willing to comply with any kind of other restriction that  
12 the Court -- or requirement that the Court would put on him.  
13 And for that reason, Your Honor, that was the reason that we  
14 brought the motion.

10:03

15 This matter is set for sentencing in the end of May.  
16 And he also has an opportunity to participate in Hug High  
17 School graduation. And for those reasons, that's the reason  
18 that we brought the motion, and we'd ask the Court to establish  
19 a reasonable bail that's bondable.

10:03

20 THE COURT: He's already pled guilty, hasn't he?

10:03

21 MS. BERNING: Yes, he has, Your Honor.

22 THE COURT: Thank you.

23 MS. BERNING: Thank you.

24 MR. WILSON: The State's position is, Your Honor, he

1 was certified as an adult. Does the Court have a copy of the  
2 presentence investigation in this case?

3 THE COURT: Yes.

4 MR. WILSON: And has the Court had an opportunity to  
5 look at that so I can refer to it? 10:04

6 THE COURT: I have.

7 MR. WILSON: Thank you, Your Honor.

8 If you look at this young man's criminal history  
9 -- and I'm going to call two witnesses here in a moment, but I  
10 wanted to preface that with, if you look at his criminal 10:04  
11 history, he's had numerous contacts with law enforcement. He's  
12 had numerous adjudications as a young man. He's been sent to  
13 China Springs, didn't do well there, got in fights there,  
14 gang-related. He's been sent to Rites of Passage. And the  
15 Court, I'm sure, is well aware of what some of his social 10:04  
16 workers said: He's manipulative and deceitful.

17 This young man is a danger to the community. He's  
18 already pled guilty to two very, very, very serious, violent  
19 felony offenses. He's facing prison. The State will be asking  
20 for prison. 10:04

21 And with that, I would like to call my first witness,  
22 Detective Crow.

23 THE COURT: Before you do, can you give me a history  
24 why it's a no-bail hold?

1 MR. WILSON: The no-bail hold, that occurred prior to  
2 coming to -- the case being waived for district court while we  
3 were still in justice court.

4 I think the witnesses can explain why I did that  
5 factually, but what happened is, he posted bail on the initial 10:05  
6 two counts of battery with a deadly weapon, where he shot the  
7 two young men in Paradise Park. He was out on bail, and while  
8 he was out on bail, he was still pending the prelim. And  
9 during that time period, he was involved in that other shooting  
10 in Sparks where a man was paralyzed. 10:05

11 Upon hearing that, I immediately made a motion for  
12 Sparks and Reno Justice Court to have his bail revoked per the  
13 statute, and it was granted.

14 THE COURT: So the justice court judge put a no-bail  
15 hold based upon a retake warrant? 10:05

16 MR. WILSON: Absolutely.

17 THE COURT: I understand.

18 MR. WILSON: And that was attached as Exhibit 3 or 4.  
19 I forget which --

20 THE COURT: I read it. I just didn't -- 10:05

21 MR. WILSON: Yes, sir.

22 THE COURT: I understand.

23 MR. WILSON: And with that said, I think the best way  
24 -- the Court is certainly familiar with this case -- is to call

1 Detective Crow.

2 MS. BERNING: Your Honor, I'd move for the Rule of  
3 Exclusion.

4 THE COURT: The Rule of Exclusion is invoked. Thank  
5 you.

6 Before you go, the Rule of Exclusion has been invoked.  
7 That means sit outside, don't discuss the case with anybody.  
8 You can talk to lawyers, but don't compare your testimony with  
9 anybody else. Okay? Thank you.

10 Please step forward and be sworn.

10:06

11

12

CHAD CROW,

13

called as a witness, having been duly sworn,

14

testified as follows:

15

10:06

16

THE COURT: Please grab a seat in that witness stand.

17

Morning.

18

THE WITNESS: Morning, Your Honor.

19

THE COURT: Please state your name and spell your last

20

name.

10:06

21

THE WITNESS: My name is Detective Chad Crow. Last is

22

spelled C-r-o-w.

23

THE COURT: You can move that over next to you as

24

opposed to leaning forward like that. It is a little flexible.

1 Go right ahead.

2

3

DIRECT EXAMINATION

4

BY MR. WILSON:

5

Q. Sir, what is your business, profession or occupation?

10:06

6

A. I'm currently one of two gang detectives assigned to  
7 the Regional Gang Unit.

8

Q. And are you familiar with Kea Kupaa -- Kupaa Kea?

9

A. Yes, I am.

10

Q. And I want to take you to the shooting in Paradise

10:06

11

Park. Did you investigate that case?

12

A. I did.

13

Q. And based upon your investigation, could you tell the

14

Court what happened in that case?

15

A. Basically, during that case, we learned that there was

10:07

16

an agreement between the two rival groups to meet up and fight

17

at Paradise Park.

18

During the course of the investigation, we learned

19

that Mr. Kea and the other co-defendant, Marco Rodriguez,

20

essentially lied in wait, waiting for the victim group to show

10:07

21

up. Upon arriving at the park, Mr. Kea fired rounds upon the

22

victim group as they exited a vehicle, striking two of them.

23

Q. Okay. And where those two people ended up going to

24

the hospital?



1 A. Yes.

2 Q. Do you remember what their injuries were?

3 A. One was shot through the leg, and I can't remember  
4 where the other guy was shot.

5 Q. Were they both hospitalized?

10:07

6 A. Yes.

7 Q. And the positions where he was shooting from, did you  
8 determine where that was?

9 A. Basically, it was behind the bushes on the edge of the  
10 parking lot, so that it appeared as if he was lying in wait for  
11 the victims. 10:08

12 Q. Ambush?

13 A. Yes.

14 Q. And was there another co-defendant involved in that  
15 shooting at that same park during that same event? 10:08

16 A. Yes.

17 Q. Was that Marco Rodriguez?

18 A. Yes.

19 Q. And were all these people that were shooting the  
20 defendant Marco Rodriguez -- are they a member of a gang? 10:08

21 A. Yes, they were members of Dead Side Gang.

22 Q. Is that a certified gang?

23 A. It is.

24 Q. Now, did you have an opportunity to speak with the

1 defendant?

2 A. I did.

3 Q. And did you ask him what gang he was in?

4 A. Yes.

5 Q. And did he tell you what gang he is in?

10:08

6 A. Eventually, he admitted to being a member of Dead Side  
7 Gang.

8 Q. Now, following the shooting, did you arrest the  
9 defendant --

10 A. Yes.

10:08

11 Q. -- in this case?

12 Did he post bail?

13 A. He did.

14 Q. Now, upon posting bail in this case, did you have  
15 contact with him after that?

10:08

16 A. I did.

17 Q. Could you tell the Court what those contacts were in  
18 relation to?

19 A. Essentially, throughout the course of the initial  
20 interview at the main police station, he began talking, asking,  
21 "Can I make you a deal?" I told him I don't really make deals  
22 at this point in the investigation, stuff like that. It's up  
23 to the DAs and defense attorneys.

10:09

24 But after he posted bail, recontacted again asking to

1 provide substantial assistance. At that point, I figured the  
2 defendant was already out on bail, through no help of my own,  
3 and I was willing to entertain his offer for substantial  
4 assistance in exchange for helping solve a homicide which he  
5 said he believed he could do. That homicide was a Sparks 10:09  
6 homicide committed in August where Abel Campos was murdered at  
7 the Landsdowne Apartments. The defendant claimed that he could  
8 get close with the primary suspect in that case and perhaps  
9 elicit a confession on him on recording.

10 So I entertained that offer, being as how the City or 10:10  
11 the Department took no liability on itself to free him from  
12 jail; he did that on his own.

13 And we met on several occasions to discuss the  
14 progress that he was making. Eventually, it turns out he did  
15 not meet with the primary suspects in that case. On the night 10:10  
16 that the Sparks shooting occurred, where the victim was shot in  
17 the neck and paralyzed, I received a phone call from him  
18 earlier that afternoon, essentially asking if I could contact  
19 his youth parole officer, extend his curfew, because the curfew  
20 tends to get in the way of his being able to make progress on 10:10  
21 this case. So I did do that.

22 I believed -- he led me to believe that night that he  
23 was going to go meet with the suspect, get close to him, see  
24 what he could learn, perhaps record it on his cell phone.

1           That's the night that he did not go hang out with the  
2 suspects in that case. He went out with members of his own  
3 gang. They went to the apartments at 1100 --

4           Q.    Would Detective Patton be a better person to talk to  
5 about the Sparks shooting and the facts underlying that?

10:11

6           A.    Yes.

7           Q.    But I would like to ask you, was he supposed to be  
8 hanging out with members of the Dead Side Gang during that  
9 time?

10          A.    No.

10:11

11          Q.    Was he supposed to be spending time with Carlos  
12 Benetiz, Sergio Aquino or Christian Garcia?

13          A.    No.

14          Q.    Was he supposed to be with a gang-bang unit, looking  
15 for trouble?

10:11

16          A.    No.

17          Q.    Now, was he supposed to be selling or possessing a  
18 firearm?

19          A.    No.

20               MR. WILSON: I have no further questions of this  
21 witness, Your Honor.

10:12

22               THE COURT: Cross?

23       ////

////

24       ////

////

CROSS-EXAMINATION

BY MS. BERNING:

Q. Detective Crow, isn't it -- wouldn't it be fair to say that everything that you know about this matter came through witnesses that were involved in the shooting case?

10:12

A. The subsequent shooting case?

Q. No, the first one. Isn't it true that you gathered your evidence via statements by various folks that were involved in the case?

A. The Paradise Park case, yes.

10:12

Q. And that you weren't there at the time; is that correct?

A. No.

Q. So you had no view of exactly where the defendant was during that time; isn't that correct?

10:12

A. Based upon my interviews, they all described bushes near the parking lot where the shots were fired from, and evidence recovered from the .22 were laying near the bushes.

Q. The -- you also alluded to the fact that Mr. Kea was -- had offered to assist you; is that correct?

10:13

A. He wanted to make a deal with me.

Q. And did you supply him -- you assisted him by going to the juvenile probation in order to get his -- the time extended for his curfew; is that correct?

1 A. Yes.

2 Q. Wasn't that because that you believed that he could,  
3 in some way, pin the -- help and assist in this other case with  
4 the murder?

5 A. Yes.

10:13

6 Q. And isn't it true that during that time that Mr. Kea  
7 would contact -- that you had contact with him?

8 A. Yes.

9 Q. And that, in fact, for the -- during the time -- the  
10 reason that you learned about the subsequent incident in Sparks  
11 was through -- was through Mr. Kea, that he had involvement; he  
12 actually told you that?

10:14

13 A. Eventually, that day, we did.

14 Q. And isn't it true that you also -- he volunteered to  
15 go with you to Sparks to be interviewed by Sparks police  
16 officers regarding that case?

10:14

17 A. Yes.

18 Q. And he cooperated with Sparks officers in that  
19 interview?

20 A. Not -- not fully cooperated. He gave several  
21 different accounts of how that shooting unfolded, who was  
22 involved, and initially, he wasn't saying it was members of his  
23 gang that was involved. I believe Detective Patton would be  
24 better to speak on that issue, though.

10:14

1 Q. But he did voluntarily go with you to Sparks; isn't  
2 that correct?

3 A. Yes, but he was initially throwing us off the course  
4 of the investigation.

5 Q. And he did come in to talk to you at Reno concerning 10:14  
6 the Sparks incident; is that correct?

7 A. Yes.

8 Q. And as far as you're aware of, the only thing that he  
9 was -- that he's been charged with regarding the second case is  
10 a violation of the possession of a controlled substances act; 10:15  
11 is that correct?

12 A. I'm not aware of his charges stemming from the second  
13 case.

14 MS. BERNING: Thank you. Nothing further.

15 THE COURT: Anything? 10:15

16 MR. WILSON: Yes, Your Honor. Follow-up.

17

18 REDIRECT EXAMINATION

19 BY MR. WILSON:

20 Q. What was found near those bushes? 10:15

21 A. Bullet casings.

22 Q. What caliber?

23 A. .22.

24 MR. WILSON: Thank you. No further questions.

1 THE COURT: Thank you. May this witness be excused?

2 MR. WILSON: Yes, Your Honor.

3 MS. BERNING: Yes, Your Honor.

4 THE COURT: Very good. Thank you very much.

5 (Witness excused.)

10:15

6 MR. WILSON: The State would call Detective Patton.

7 THE COURT: Please step forward and be sworn.

8

9 JOHN PATTON,

10 called as a witness, having been duly sworn,

11 testified as follows:

12

13 THE COURT: Please state your name and spell your last  
14 name for the record.

15 THE WITNESS: John Patton, P-a-t-t-o-n.

10:16

16

17 DIRECT EXAMINATION

18 BY MR. WILSON:

19 Q. Sir, what is your business, profession or occupation?

20 A. I'm a detective with the Sparks Police Department.

10:16

21 Q. And do they have departments within departments, like  
22 Robbery?

23 A. I -- I guess I specialize in Crimes Against Persons.

24 Q. And do you do homicide investigations and shooting



1 investigations?

2 A. I do.

3 Q. I want to take you to December 28th, 2011. Did you  
4 investigate a shooting involving a victim by the name of Jason  
5 Cartegena? 10:16

6 A. Yes.

7 Q. And did you -- during your investigation of the  
8 shooting of Jason Cartegena, did you talk with a young man by  
9 the name of Carlos Benetiz?

10 A. Yes. 10:17

11 Q. Okay. And did you ask Carlos Benetiz what happened?

12 A. I did.

13 Q. And did you find out whether Carlos Benetiz is a  
14 member of a gang?

15 A. I did. 10:17

16 Q. And what gang is he a member of?

17 A. He's with the Dead Side Gang.

18 Q. And did Carlos Benetiz tell you what happened  
19 involving that shooting of Jason Cartegena?

20 A. Yes. 10:17

21 Q. Could you tell the Court what happened.

22 A. Yes. On the 28th of December, Mr. Benetiz and three  
23 of his friends, including Mr. Kea, walked to the apartment  
24 complex at 1100 15th Street in Sparks, and they began to walk

1 around into the parking lots, because Mr. Kea had stated that  
2 he wanted to meet up with a girl that lived in the apartments  
3 to get some money from her so they could get some alcohol or  
4 something like that.

5 So, while they were waiting in the hallway next to 10:18  
6 Mr. Cartegena's apartment --

7 MS. BERNING: Your Honor, I'm going to object as to  
8 the detective's testimony that isn't anything with his personal  
9 knowledge. Anything that he reports that has been said by  
10 somebody else is really hearsay in this matter. 10:18

11 THE COURT: I appreciate that. That's overruled.  
12 It's a bail hearing.

13 You may continue.

14 MR. WILSON: Thank you.

15 THE WITNESS: And while they were waiting in the 10:18  
16 hallway of the apartment complex near the victim's residence,  
17 the victim approached the group and asked them, you know, "What  
18 are you guys doing," something to that effect, "Why don't you  
19 get out of here."

20 BY MR. WILSON:

21 Q. Is that victim Jason Cartegena?

22 A. Yes.

23 Q. Continue, please.

24 A. At that point, Mr. Kea had actually -- and a couple of

1 the other guys too, had started to voice their objections to  
2 Mr. Cartegena, saying, you know, "Mind your own business."

3 Q. What did they actually say? What did he actually tell  
4 you? What words? You can use those words in court. Was it  
5 expletives? 10:19

6 A. Yeah, it was something to that effect, that, you know,  
7 "Fuck you. Mind your own business," things of that nature.  
8 And the victim said the same things back to them as well.

9 Q. Now, the victim, was he wearing anything that would  
10 indicate that -- where he could be confused with someone of a 10:19  
11 rival gang?

12 A. It's possible. He was wearing an all-red sweatshirt  
13 and a red hat, with "San Francisco 49ers" on it.

14 Q. And is that a common identifying apparel with the  
15 Norteño gang? 10:19

16 A. It is.

17 Q. Okay. Could you continue, sir?

18 A. Okay. So, after the words were exchanged,  
19 Mr. Cartegena said, "Well, I got something for you." According  
20 to Mr. Benetiz, this is what the victim said. And he went back 10:20  
21 into his apartment. At the same time, Mr. Kea told  
22 Mr. Benetiz, you know, "I want to get down with this guy."

23 Q. What does that mean?

24 A. It's slang for "I want to fight," you know, fight like

1 fistfight or get into a fight.

2 Q. By "this guy," did he mean Jason Cartegena?

3 A. Yes.

4 Q. Continue, please.

5 A. So when Mr. Cartegena came out, Mr. Kea approached

10:20

6 Mr. Cartegena.

7 Q. What was Mr. Cartegena carrying?

8 A. He was carrying a knife.

9 Q. Okay. Continue.

10 A. And Mr. Kea had approached him with his fists up like

10:20

11 in a fighting stance.

12 Of course, when he saw the knife, Mr. Benetiz said  
13 everybody started to back up a little bit, and then Mr. Kea's  
14 friend --

15 Q. Who was that?

10:20

16 A. That was Sergio Aquino. He told us that later, but at  
17 the time, he said it was -- his friend had pulled a gun from  
18 his waistband and shot Mr. Cartegena once in the neck.

19 Q. And Sergio Aquino, is he a member of a gang?

20 A. Yes, he's a member of the Dead Side Gang.

10:21

21 Q. Okay. And Mr. Cartegena, when he was shot in the  
22 neck, did he end up going to the hospital for that?

23 A. He did.

24 Q. What were the extent of his injuries, to your

1 knowledge?

2 A. Well, his condition today is he has no feeling below  
3 his chest.

4 Q. So he's paralyzed?

5 A. Yes.

10:21

6 Q. Now, did you find out whether or not Jason Cartegena  
7 is actually a Norteño gang member?

8 A. We did.

9 Q. Is he?

10 A. No, he's not.

10:21

11 Q. He just happened to be wearing red that day?

12 A. Correct.

13 Q. So it's Carlos Benetiz -- I believe I asked that. Is  
14 Christian Garcia -- the other person that was present with the  
15 defendant, Carlos Benetiz and Sergio Aquino -- is he also a  
16 Dead Side Gang member?

10:21

17 A. He's an associate, I believe. I don't think he's an  
18 actual member, to my knowledge, but I think he's definitely an  
19 associate.

20 Q. So all four that were present that day -- all three  
21 others that were present with the defendant, his little group,  
22 were either Dead Side Gang members or an associate?

10:22

23 A. Yes.

24 MR. WILSON: No further questions of this witness.

1 THE COURT: Cross?

2

3

CROSS-EXAMINATION

4

BY MS. BERNING:

5

Q. Mr. Patton, in your testimony, you stated that Mr. Kea 10:22

6

was the one who pulled the gun; is that correct?

7

A. Yes.

8

Q. And wasn't it true -- isn't it true that Mr. Kea was

9

actually backing up from Mr. Cartegena when this -- when the

10

shot was fired? 10:22

11

A. Yes.

12

Q. And isn't it also true that Mr. Kea didn't have a

13

weapon at that time? He did not have a gun?

14

A. We weren't told he was, and he didn't tell us.

15

Q. So as far as you know, your own knowledge, he didn't 10:22

16

have a gun at that time?

17

A. As far as I know, yes.

18

MS. BERNING: Thank you. Nothing further.

19

THE COURT: May this witness be excused?

20

MR. WILSON: He will be, Your Honor. 10:23

21

THE COURT: Thank you.

22

(Witness excused.)

23

MR. WILSON: Can I ask the witness to come in --

24

THE COURT: Sure.

1 MR. WILSON: -- to hear the argument?

2 THE COURT: Any other evidence or witnesses,  
3 Mr. Wilson?

4 MR. WILSON: That's all the evidence I'm going to be  
5 presenting, Your Honor. 10:23

6 The Court has his PSI. They've got his history. The  
7 Court is well aware of the law in this case. The defendant has  
8 already -- I'm going to wait until the detective comes in.

9 The defendant has already pled guilty to two counts,  
10 battery with a deadly weapon causing substantial bodily harm. 10:23

11 As the evidence has shown, there is another case out  
12 there involving the shooting of Jason Cartegena. It is not my  
13 case. Elliott Sattler has that case and is proceeding on it.

14 I do not know where he is going with that, but I do know this:  
15 That based upon this young man's criminal history, based upon 10:23  
16 even his juvenile social workers' stating that he's

17 manipulative and he's viewed as a danger to the community,  
18 based upon the fact that he had to be certified as an adult in  
19 this case, I think the State stands good ground, and I believe  
20 that his bail should remain at no bail. He's a danger to the 10:24  
21 community if released.

22 If the Court decides that it will grant him bail, the  
23 State is requesting \$1 million, cash only, due to the high  
24 danger that he poses to this community if he is released.

1 THE COURT: Thank you. You should have got the first  
2 word, but you'll get the last.

3 MS. BERNING: Thank you, Your Honor.

4 Mr. Kea, while he was at the scene of this other  
5 encounter, he did not have a weapon. He was actually backing 10:24  
6 up at the time that the encounter became violent.

7 He did stay in contact -- the other testimony of  
8 Detective Crow, that he did stay in contact with Detective Crow  
9 during the time of his release.

10 He does have members of his community: his sister, 10:24  
11 Mome; his brother, Pono. He does have connection with the  
12 community.

13 He has made all court appearances. He did keep in  
14 contact. And, Your Honor, for those reasons, we would ask the  
15 Court to set bail at 30,000, bondable. 10:25

16 THE COURT: Thank you.

17 Mr. Wilson, he was charged in Mr. Sattler's case; is  
18 that correct?

19 MR. WILSON: He was initially charged by me for  
20 conspiracy. 10:25

21 THE COURT: But he's been criminally charged  
22 subsequent to your case, right?

23 MR. WILSON: I do not know. I believe not. The only  
24 person that is presently charged in that was the shooter, which



1 I believe was Sergio Aquino.

2 Is that correct, Sergio Aquino?

3 That was the shooter, Sergio Aquino.

4 THE COURT: So on the case that he's rebooked on,  
5 there are no criminal charges pending? 10:25

6 MR. WILSON: There is. It's to be dismissed following  
7 his sentencing in this case. That's the conspiracy to violate  
8 the Controlled Substances Act.

9 THE COURT: That was an additional filing from the  
10 battery with a deadly weapon? 10:25

11 MR. WILSON: No, sir. Based upon that shooting, when  
12 they did finally make contact with him, they found out that he  
13 was trying to buy narcotics that day.

14 THE COURT: Okay. I guess my question is, on the  
15 retake warrant case, that's what we would call "the Elliott  
16 Sattler case"; is that correct? 10:26

17 MR. WILSON: Yes, sir.

18 THE COURT: Has that been filed? Has there been  
19 criminal charges filed in that case?

20 MR. WILSON: Yes, sir. The charge was a conspiracy to  
21 violate. 10:26

22 THE COURT: Okay. Against him?

23 MR. WILSON: Yes, sir.

24 THE COURT: All right. That answers my question.

1           Here's what I'm going to do: There's only two times  
2   in our statute when an individual is not allowed bail. The  
3   first is in a capital murder case; the second is if you're on  
4   bail and you commit a new offense or you're charged with a new  
5   offense. That's what the Sparks Justice Court did in this  
6   case.

10:26

7           The sentencing date is May 23rd. He's already pled  
8   guilty to two counts of battery with a deadly weapon, so he's  
9   guilty, out of his own mouth, of those two very serious  
10   charges.

10:26

11           Based on everything I've heard and everything I've  
12   reviewed, the bail motion is denied.

13           And we'll see you at sentencing on May 23rd.

14           MS. BERNING: Thank you, Your Honor.

15           (Proceedings concluded.)

10:26

16                               -oOo-

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1 STATE OF NEVADA )  
2 ) ss.  
3 COUNTY OF WASHOE )

4 I, CECILIA VOHL, Official Reporter of the Second  
5 Judicial District Court of the State of Nevada, in and for  
6 the County of Washoe, do hereby certify:

7 That as such reporter, I was present in Department  
8 No. 9 of the above court on said date, time and hour, and I  
9 then and there took verbatim stenotype notes of the  
10 proceedings had and testimony given therein.

11 That the foregoing transcript is a full, true and  
12 correct transcription of my said stenotype notes, so taken  
13 as aforesaid. That the foregoing transcript was taken down  
14 under my direction and control, and to the best of my  
15 knowledge, skill and ability.

16 DATED: At Reno, Nevada, this 15th day of July, 2012.

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CECILIA VOHL, NV CCR #246

Code: 4185

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE  
BEFORE THE HONORABLE SCOTT N. FREEMAN, DISTRICT JUDGE

-oOo-

STATE OF NEVADA,

Plaintiff,

vs.

KUPAA KEA,

Defendant.

Case No. CR12-0110

Dept. No. 9

TRANSCRIPT OF PROCEEDINGS

SENTENCING

Friday, June 1, 2012

RENO, NEVADA

Reported By: CECILIA VOHL, NV CCR #246, RPR, CRR, CCP

A P P E A R A N C E S

For the Plaintiff: CHRISTIAN WILSON, ESQUIRE  
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For the Defendant: FRY & BERNING, LLC  
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For the Parole and  
Probation Department: Deborah Brown

-oOo-

1 RENO, NEVADA, FRIDAY, JUNE 1, 2012, 10:02 A.M.

2 -oOo-

3

4 THE COURT: I'm prepared to go on the Kupaa Kea case,  
5 unless anybody needs a short recess. 10:02

6 MS. BERNING: We would like a recess, Your Honor.

7 THE COURT: All right. Five minutes?

8 MS. BERNING: Yes, Your Honor.

9 (A brief recess was taken at the hour of 10:02 a.m.)

10 THE COURT: Thank you. Please be seated. 10:10

11 This is the time set for sentencing in CR12-0110,  
12 State versus Kupaa Kea. Did I pronounce it correctly?

13 MS. BERNING: "Koop-ah Kee-ah."

14 THE COURT: "Koop-ah Kee-ah." Thank you. Good  
15 morning. 10:11

16 THE DEFENDANT: Morning, sir.

17 THE COURT: I have in my possession a presentence  
18 report dated March 8, 2012. I've carefully reviewed that.  
19 I've carefully reviewed the Guilty Plea Memorandum, the  
20 Information, the minutes of the court. I've also carefully 10:11  
21 reviewed an evaluation that was provided to the Court  
22 yesterday's date.

23 Have you received a copy, Mr. Wilson?

24 MR. WILSON: I have, Your Honor.

1 THE COURT: Thank you.

2 MR. WILSON: Are you talking about Martha Mahaffey?

3 THE COURT: Yes, I am. Thank you.

4 Appearance from the Division?

5 THE PROBATION OFFICER: Deborah Brown.

10:11

6 THE COURT: Any factual corrections, Ms. Brown?

7 THE PROBATION OFFICER: No, sir.

8 THE COURT: Any factual corrections to the report and  
9 has your client read it and understands it?

10 MS. BERNING: Yes, Your Honor. My client has gone  
11 over the presentence investigation report.

10:11

12 There are a couple of things that I'd ask the Court to  
13 note. Within the report, Mr. Kea would ask the Court to note  
14 that as far as his education, that he was number one in a  
15 vocational class in graphic design, which was not listed in the  
16 report.

10:12

17 THE COURT: Where are you at?

18 MS. BERNING: I'm on page 3, Your Honor, under  
19 "Education."

20 THE COURT: Uh-huh.

10:12

21 MS. BERNING: Oh, I'm sorry, if we go back one page,  
22 Your Honor, it says his employment status is "unemployed at the  
23 present time." He had been working for Applied Staffing  
24 Company Solutions at \$10 an hour.

1 THE COURT: You said "Pride Staffing"?

2 MS. BERNING: "Applied."

3 THE COURT: "Applied." Thank you.

4 MS. BERNING: Applied Staffing Company Solutions.

5 As far as children, under the -- his girlfriend had a 10:12  
6 miscarriage, so there's not a listing there. It says that  
7 she's currently pregnant.

8 On page 3 now, Your Honor, on vocational skills, we  
9 would also like the Court to note that Mr. Kea has skills in  
10 auto welding and landscaping that were not mentioned in the 10:13  
11 report.

12 Also, Your Honor, on substance abuse history, within  
13 that, it lists his age as 13 when he began either smoking or  
14 snorting. Mr. Kea reports to me that he didn't start doing  
15 that until he was 15 years old. 10:13

16 THE COURT: How old is he now?

17 MS. BERNING: Mr. Kea turned 18 in November of last  
18 year.

19 THE COURT: Thank you. Any other factual corrections?

20 MS. BERNING: There are a couple of things that I 10:13  
21 wanted to note for the Court. On page 7, as to a reason not to  
22 note a factual correction, but as I present my argument, on the  
23 bottom of page 7, it said that when the defendant was approved  
24 for home passes, this is -- well, he was in the Rite of Passage



1 program -- that his mother became concerned about his negative  
2 behavior, and she sent him a list of rules to follow while he  
3 was visiting and that he looked at them and threw them in the  
4 trash. I'm going to ask the Court to particularly note that  
5 because there's a lengthy, I think -- not lengthy, but a really 10:14  
6 pointed explanation of that that, I think, Ms. Mahaffey alludes  
7 to as far as his mother's conduct toward him as far as why he  
8 would do the behavior. We're not talking about the factual  
9 correction but as a reason behind that.

10 There are no other factual corrections that we noted 10:14  
11 in the PSI.

12 THE COURT: Thank you very much. Do you have any  
13 witnesses other than argument? Do you have any witnesses or  
14 anything from an evidentiary standpoint you'd like to present  
15 to me in mitigation other than argument? 10:15

16 MS. BERNING: No, Your Honor. I'd only ask the Court  
17 to note this: That Mr. Kea has -- while his immediate family  
18 failed him, his extended family, his Aunt Trisha Meares is  
19 here --

20 THE COURT: Please stand up. 10:15

21 MS. BERNING: -- in the back of the courtroom.

22 His sister, Momi, is seated in the back of the court.

23 THE COURT: Ma'am, could you stand up so I can see  
24 you?

1 Thank you for coming.

2 MS. BERNING: And what's very distinctive about  
3 Ms. Meares is that she traveled all the way from Hawaii in  
4 order to be here to support her nephew and, also, to provide  
5 the Court with letters, which I know the Court has also 10:15  
6 received.

7 THE COURT: Thank you, ma'am. I have read your  
8 letter, and thank you for making the trip.

9 MS. BERNING: There is one other matter before I begin  
10 the rest of my argument. I've provided to Mr. Wilson copies of 10:16  
11 certificates that I was e-mailed just at the end of the day  
12 yesterday by Mr. Kea's mother, who is located in  
13 North Carolina, and I just ask these to be admitted into the  
14 record.

15 THE COURT: Any objection? 10:16

16 MR. WILSON: None, Your Honor.

17 THE COURT: All right.

18 All right. You may proceed.

19 MS. BERNING: Thank you. Your Honor, as the Court  
20 looks at the PSI and the number of offenses that my client, 10:16  
21 Mr. Kea, had amassed prior to turning 18 years old, there's no  
22 doubt that there is a number of them, and they are violent.

23 A lot of that, Your Honor, I believe, can be explained  
24 by his need for family, because, if you note in Martha

1 Mahaffey's report, what had occurred for him was his father  
2 died when he was five months old. His mother, at one point,  
3 was trying to raise the children by herself and not very  
4 successfully. His brother -- his oldest brother ended up being  
5 incarcerated in Hawaii eventually, but before that time, he was 10:17  
6 a member of the Bloods, the older brother, so he was exposed  
7 fairly early on.

8 THE COURT: I noted -- what did his brother go to  
9 prison for in Hawaii?

10 MS. BERNING: I think it was a violent crime. I'd 10:17  
11 have to ask.

12 MS. MEARES: He violated his probation.

13 THE COURT: Do you know what he was on probation for?  
14 I'm just curious.

15 MS. MEARES: Well, just like all of them, they just 10:17  
16 keep on bouncing until they hit a wall.

17 THE COURT: Ma'am, was it a violent crime?

18 MS. MEARES: Pardon?

19 THE COURT: Was it a violent crime?

20 MS. MEARES: I think it was just not showing up. 10:18

21 MS. BERNING: Your Honor, so he was exposed to that  
22 kind of life early.

23 In addition, during this time when Pa'a -- which is  
24 the name that he goes by -- was still very young, his mother

1 took up with another gentleman who was abusive to him, abusive  
2 to his family and abusive to his mother. His mother, Pa'a  
3 remembers many points in time, told him that she hated him.

4 And ultimately, when the family moved several times --  
5 moved lots and lots of different times, but at one juncture, 10:18  
6 what happened was they finally got an apartment -- a house that  
7 had enough bedrooms so that the girls could have a bedroom, and  
8 the boys could have a bedroom. And Pa'a was put with his  
9 brother, Pono, in a bedroom. But Pono was so violent and  
10 controlling in the family, controlling the mother, that Pa'a's 10:19  
11 clothes ended up in his mother's bedroom, and he ended up  
12 sleeping on the floor in the living room, with the mother doing  
13 nothing about that.

14 While Pa'a was in Rite of Passage, before he even  
15 finished his sentence, his mother, who really had 10:19  
16 psychologically abandoned him in so many ways, did the ultimate  
17 thing: She didn't want to stick around until he got out, and  
18 so she transferred guardianship of him over to his 21-year-old  
19 sister, Momi.

20 So, in a situation where the rest of us have had the 10:19  
21 benefit of a family at each and every turn along the road, in  
22 his immediate family, Pa'a has been faced with a situation  
23 where there's -- he's crying out for love, and it's not there.

24 During his early schooling, he went to Glenn Duncan.

1 And Ms. Hardaway, whose letter you also read, also mentioned  
2 how he lacked that. And what she tried to do was at least show  
3 him what a normal family was like and, many times, as a grade  
4 school teacher, got him into her home, bought clothes for him,  
5 did what she could as a school teacher for him.

10:20

6 When he reached junior high and high school, he was  
7 associated with Ms. Lauren Ford. I had contact with Ms. Ford,  
8 who let me know that she feels like he was one of the kids who  
9 slipped through cracks. And so here we are in this situation.

10 In talking to Pa'a, he has really evaluated what has  
11 happened. And it has been very, very difficult for him,  
12 because the gang involvement, which started very early -- he  
13 was in a crew. He was in -- he got involved in the Dead Side  
14 Gang, the Sunset before that. And he came to a point in his  
15 life where he really wanted to -- with this incident, he wanted  
16 to belong in the worst way.

10:20

10:21

17 If you read Ms. Mahaffey's report, she says that it  
18 was -- we're doing this together. This is, you know, what they  
19 were going to do. And then he finds out that he's finding  
20 people that he knows, that it's not this other gang, and he  
21 becomes very confused about the situation, which is easy to see  
22 because he's high on meth at the time.

10:21

23 And why is he doing meth? Why is he doing alcohol? I  
24 believe it's because of the pain of the situation. Around him

1 he sees his friends who have family to support them, and he  
2 walks back to nothing.

3 So what we look at is a person who really didn't have  
4 any of those opportunities. And what is interesting is, is  
5 that -- and I direct your attention now to the exhibits that I 10:22  
6 just filed in -- is that he becomes an outstanding student  
7 while he's at Rite of Passage. He gets a diamond award as a  
8 4.0 for computer science. He's recognized for academic  
9 excellence and selected to Allstate Academic Team. At Rite of  
10 Passage Charter High School, he's at 4.0, honor roll. And 10:22  
11 finally, he is awarded a certificate for being in the NIAA  
12 playoffs.

13 All of those things show that when away from his  
14 family, Pa'a does very well and he succeeds. A lot of his  
15 education is important to him. But most of all, he's looking 10:22  
16 for acceptance, and the only acceptance that was available to  
17 him in the Wedekind Road/Clearacre/Ninth Street area was the  
18 acceptance of the gang, because he didn't receive that from his  
19 own mother.

20 I want to highlight a couple of items that 10:23  
21 Ms. Mahaffey talked about. This is a really critical time for  
22 Mr. Kea. He is very young, and as she states, his character  
23 and personality are not yet totally formulated.

24 I'm looking at her report -- I'm looking at a report

1 on page 12. The references that I've already made to his prior  
2 history are listed earlier in -- on pages 4 through 5 and 6 of  
3 the report. One thing, I think, is of particular note, on page  
4 12 of the report, is that she sees Mr. Kea as one of those  
5 17-year-olds that is divided into two different groups. One is 10:24  
6 the one who is going to continue to do crime, but what she  
7 says, in looking at where he is, is that he's likely to be one  
8 of the people who decline -- the actual criminal inclination  
9 would decline. And I think that there is some recent events  
10 that happened in Mr. Kea's life that point to that. 10:24

11 One thing is, is that he was -- and I know the Court  
12 is aware of the bail hearing that we had, and Mr. Kea got out  
13 of -- was bailed out of jail, was going to cooperate with the  
14 police in order to apprehend -- work with them to apprehend  
15 another a person that they suspected of a murder. You'll see 10:24  
16 in Ms. Mahaffey's report that that was just too strong, too  
17 tough for him to do at that time, because the gang was really  
18 his family. He had already been denied by his own family and  
19 rejected, and it was so hard for him, too hard for somebody who  
20 just turned 18 in November, just 18. 10:25

21 He was going to be re-enrolled in high school in order  
22 to finger this guy. This is how young this person is. And in  
23 looking at what Pa'a did, he then got involved in a situation  
24 where he came back to be with his friends and cooperated with

1 the police. When Detective Crow talked to him, he did -- was  
2 interviewed in Sparks, and he cooperated with the police with  
3 regard to that case.

4 And that was his way -- as we've talked about the  
5 several times that I've visited while he's on Parr Boulevard, 10:25  
6 that's one of the reasons why he said, "I wanted to cut my  
7 ties. I know I can't live this life. I know this is not my  
8 family. I need to have a new life." And I think that's where  
9 Ms. Meares steps up as extended family to say she's ready to  
10 assist him. 10:26

11 Now, in looking at that, there's been a drastic change  
12 in him from the time that he entered jail until the time we've  
13 reached the sentence. It's a total of 164 days that he's spent  
14 incarcerated. That's given him a long time to think.

15 What he's asking the Court for -- and we were looking 10:26  
16 for programs initially where he could experience probation, but  
17 he's also very aware of the gravity of the crime that he  
18 committed.

19 I would just point out to the Court that he did shoot  
20 two people, but they were both shot in the legs; one in the 10:26  
21 calf, the other in the tibia. He was handed the gun. He was  
22 on meth at the time, and he wasn't taking aim at anyone's head  
23 or anyone's heart.

24 And in speaking with Martha Mahaffey, he was trying to



1     scare. It was in the moment. And I'd ask the Court to take  
2     that into the consideration, both the level of the injury and,  
3     also, what was going on for him at the time.

4             In addition to that, what I see -- we looked at  
5     different placements for him that would be in Hawaii because 10:27  
6     Mr. Kea realizes that Reno is really a poisoned place for him.  
7     The only family he has is his sister, Momi, here, but that  
8     hasn't been the support that -- she has other concerns, of  
9     course, raising her own family.

10            And what we're hoping to do is to ask this Court to 10:27  
11     look at a program called HABILATAT in Hawaii, and there's  
12     another program called Sand Island, I believe. However,  
13     neither one of those programs would take Mr. Kea because of  
14     what he was charged with.

15            I checked with Rite of Passage, and because of his age 10:28  
16     and his past history, they, too, will not accept him. In  
17     addition, the Salvation Army, I spoke with Chaplain Furlong,  
18     and again, because of the charge, they were unwilling to --  
19     because they're not a lock-down facility, are unwilling to do  
20     anything. I then contacted Delancey Street, but the problem 10:28  
21     was we needed a personal interview, and Mr. Kea is  
22     incarcerated.

23            So, looking at all that -- and Mr. Kea realizes he  
24     knows that he needs help. He knows that he has issues of

1 abandonment. He knows that he has methamphetamine addiction  
2 that he has to conquer, and he wants assistance with that. And  
3 more than anything, he wants a new life.

4 And what Parole and Probation has asked for is 35 to  
5 156 months to run consecutive. What I would propose, Your 10:29  
6 Honor, is that the Court sentence Mr. Kea to concurrent time in  
7 the amount of 24 to 72 months. He wants to take responsibility  
8 for his actions.

9 And the reason that I would ask for this, and, in this  
10 matter, dispute the presentence investigation, is his age and 10:29  
11 his psychosocial immaturity. He fits the criteria the  
12 psychological studies point to that make a juvenile less  
13 responsible for criminal conduct than an adult. That's based,  
14 really, on two things: One, Mr. Kea's level of cognitive and  
15 social development, and also, that tends to undermine a use of 10:29  
16 choices in their decision making process.

17 They also -- that Mr. Kea was looking to the moment,  
18 not at what the ultimate consequence was going to be of his  
19 actions in getting involved and supposedly supporting the gang,  
20 which really was his family for him. 10:30

21 What it means to be -- excuse me. What it means to be  
22 psychosocially immature is that a person is much more  
23 susceptible to peer influence and their attitude towards the  
24 perception of risk. And it's much more difficult for

1 self-management.

2 In looking at that, in Mr. Kea's need for a family and  
3 that became the gang, I think that this -- he fits exactly the  
4 categories described by Ms. Mahaffey. He's going to be one of  
5 those folks, those 17-year-olds, who this is his shot, and if 10:31  
6 he moves away from the gangs, which he's determined to do --  
7 and I think you'll hear him say that when you talk to him --  
8 that what he really wants is a chance to start his life over.

9 His aunt, who has come all this way based upon her  
10 faith in him, really wants to have a new life. And so, at the 10:31  
11 end of his incarceration, what he would be asking is he's going  
12 to be looking at a program that he can transition into, because  
13 he doesn't want this to be his life.

14 He was admitted to college at one point. His grades  
15 are excellent. You can see from Ms. Mahaffey's report that he 10:31  
16 is a very intelligent person, and he has an option for a whole  
17 different kind of life. And I think that the time that he has  
18 spent in incarceration prior to coming before you for  
19 sentencing and a realization of the gravity of his actions --  
20 it's been so difficult for him as a young man. This is his 10:32  
21 first time that he's been before a Court as an adult for a  
22 felony, as over 18, and I'm asking the Court to consider that  
23 as you consider his sentence, and sentence him, rather than to  
24 consecutive time, to concurrent time and not what the

1 Department has asked for, the 35 to 156 months, but, rather,  
2 consider his youth, consider where he was psychosocially at the  
3 time, and to look for a sentence of 24 to 72 months. That  
4 would give him a chance at a new start, as well as have him pay  
5 for the actions that he fully takes responsibility for now.

10:32

6 THE COURT: Thank you very much.

7 Mr. Wilson.

8 MR. WILSON: Your Honor, I'm going to start off so  
9 you'll know where I'm going.

10 THE COURT: Please.

11 MR. WILSON: First off, I'm asking for the maximum  
12 sentence under law, 72 to 180 months, as to each count,  
13 consecutive. Count II is consecutive to Count I.

14 THE COURT: 72 to 180?

15 MR. WILSON: Yes, sir. That's 6 to 15 years on each  
16 count.

10:33

17 When you look at P and P's recommendation in this  
18 case, it's a little lower than what I'm recommending, but you  
19 also take note that they didn't realize in that what he did  
20 when he was on bail in this case. And his actions speak louder  
21 than any words that I can say.

10:33

22 I'd like to point out two things. Detective Chad Crow  
23 is here.

24 THE COURT: Did you want to have him --

1 MR. WILSON: No, he's just present.

2 THE COURT: Thank you.

3 MR. WILSON: You've already heard him testify.

4 THE COURT: I was going to say, for the record, I  
5 recall from the previous hearing when we had a bail hearing 10:33  
6 that we perpetuated their testimony for the purpose of  
7 sentencing. I reviewed that, I'm familiar with that and recall  
8 it.

9 MR. WILSON: Absolutely.

10 THE COURT: Thank you.

11 MR. WILSON: Thank you, sir. I'd like to point out  
12 most of those certificates you have, where do they come from?  
13 Various Nevada juvenile detention facilities. What does that  
14 tell you? It tells you who the defendant is. This defendant  
15 can only toe the line as a man with a gun in his hand. 10:34

16 He claims he bailed out and it was in order to work  
17 with the police. That's not true. He bailed out on his own.  
18 It was after he was out that he went to the detectives, and he  
19 said, "I think I can help you." And then what did he do? He  
20 didn't do anything. He ran around with his gang, and we're 10:34  
21 going to get to that, what he did while he was on bail.

22 THE COURT: If you all want to sit down, you can.

23 MR. WILSON: I'd like to point out his criminal  
24 history. I can kind of make a road map out for the Court who

1 this young man is. And he is no angel, as Defense Counsel is  
2 pointing out. And everybody has a mother. Everybody has a  
3 family that thinks well of them, but that doesn't negate what  
4 they did, who they are. And he is a violent, violent, violent  
5 man. He's a danger to this community and a danger to any  
6 community he is released in. And I'm going to point that out  
7 as I go along.

10:34

8 His prior criminal history. Now, I actually went  
9 further than P and P did. I actually went and took a look at  
10 all of his juvenile record that I could get from our district  
11 attorney's office.

10:35

12 And P and P, which is close on just a few of the  
13 things, but they missed a few of the things he was actually  
14 arrested on as a juvenile: 2006, battery; 2006, disturbance at  
15 school; 2006, disturbance at school; 2000 -- correction, that  
16 last disturbance at school was in 2008; 2008, just two months  
17 later, battery on a school employee, possessing graffiti  
18 materials, obstructing. Now, that was listed in the PSI as a  
19 4-1-08 offense.

10:35

20 Then we have that same year, just a month later,  
21 robbery, burglary, battery, trespass. That's what he was  
22 actually arrested for. PSI only listed the robbery.

10:35

23 Then we have 2008, two months later, battery,  
24 obstructing and resisting. Then we have, three months after

1 that, failure to obey a court order. And then we have, a year  
2 later, intimidating a public officer to go along with a  
3 juvenile probation violation.

4 Now, I'm just listing the violence. I'm not going  
5 into all the graffiti and the larcenies and all the other 10:36  
6 things he had in his history. That's just where he started  
7 from. That's him going to school.

8 But where -- what kind of young man was he? Now,  
9 Defense Counsel claims this is the first time he's ever been in  
10 adult court. We had him certified as an adult when he was 17. 10:36  
11 Of course, it's the first time.

12 Nevertheless, how many times has he been in front of a  
13 judge of one nature or another in this county who has tried to  
14 rehabilitate this young man? 2006, contempt, ordered to  
15 complete the work program; November 2006, ordered to complete a 10:36  
16 work program; December 2006, ordered to complete basic skills  
17 program; February 2007, ordered to complete another work  
18 program; July 2008, finally declared delinquent, ordered to  
19 complete substance abuse treatment.

20 Well, that didn't last very long, because in August he 10:37  
21 was committed to China Springs. That was his first detention  
22 facility. Then we have December of 2008, committed to Nevada  
23 Youth Training Center. After he was paroled, you'll notice in  
24 the PSI, that's when he threatened to kill a Washoe County

1 deputy.

2 Then we have, November 2008, ordered to complete the  
3 Rite of Passage; March 2011, once again committed to Nevada  
4 Youth Training Center. And then when he got out -- and that  
5 was on August 10th, 2011 -- what do we have, two months between 10:37  
6 that time and he commits this crime. It took him two months.  
7 Now, he was certified as an adult, as the Court knows, on  
8 August 31st, 2011, last fall.

9 Now, the State contends that the defendant is  
10 manipulative. If you read the PSI, it's clear in that, but I 10:37  
11 would like to point out more so how manipulative this young man  
12 is. He'll say and do anything to avoid the consequences of his  
13 actions.

14 Gang association. He told Detective Chad Crow when he  
15 was being interviewed that he was a member of the Dead Side 10:38  
16 Gang. That was a spin-off of the Sureños Gang.

17 Now, when we were in arraignment in court, he told  
18 Judge Robison when he asked -- when Judge Robison asked him if  
19 he was a member of a gang, he denied any and all involvement in  
20 any gang and claimed it was not a gang shooting. And then 10:38  
21 P and P -- when they interview him, what does he say to  
22 P and P? He denied this is a gang shooting or being a member  
23 of the Dead Side Gang. Yet, we know he told Martha Mahaffey  
24 something completely different. And in that, he's talking



1 about all these gang memberships. This young man is very, very  
2 manipulative.

3 Let's talk about the next thing. He claims he did not  
4 ambush his victims. That's what he's been claiming, and he  
5 didn't ambush them by shooting from behind a tree as they were 10:39  
6 approaching and entering the park. We know that's not true.  
7 Number one, .22-caliber bullets found near the tree; two, Edwin  
8 Baca -- he's a member of the defendant's own gang -- he told  
9 Detective Crow that the defendant was -- and I'm quoting it  
10 from the police report -- "shooting from a sandy area behind 10:39  
11 some trees."

12 Then we have Ariel Mariscal. Now, she was on the  
13 scene. She saw what happened. She was a witness. She's the  
14 one that walked the detectives through the crime scene. What  
15 did she do? She pointed out the very trees on the east side of 10:39  
16 the pond as the location where the shooting originated from.  
17 That's about 50 meters from the bridge where you enter that  
18 park.

19 And then, according to the friends of the victims at  
20 the hospital -- and the police interviewed them -- when they 10:39  
21 arrived at the park, they were immediately shot at from rivals  
22 who were -- and I'm quoting it -- "hiding in nearby bushes."

23 This was an ambush, plain and simple. No matter how  
24 he tries to couch it, how he tries to color it, he ambushed

1 those people.

2 Let's talk about the injuries. In this event, we have  
3 Caesar Anton. We know that he had a gunshot wound to his lower  
4 left leg. Now, luckily, that was just a muscular injury.

5 Then we have Oscar Valencia. He's the young man that 10:40  
6 he shot in the left tibia.

7 THE COURT: Do we have any victims here, by the way?

8 MR. WILSON: No, sir. I was looking for them earlier.

9 THE COURT: Any victim statements?

10 MR. WILSON: None other than what they explained to 10:40  
11 P and P and explained in the PSI.

12 THE COURT: I read that. Go ahead.

13 MR. WILSON: But -- so Oscar Valencia, he was shot in  
14 the left leg, as well -- in the tibia. And as the Court knows,  
15 P and P got it right; I had the medical records for them to 10:40  
16 view -- it actually shattered, broke his tibia, and that bullet  
17 is still in there. And when they interviewed and talked to  
18 him, he's still in a wheelchair.

19 Now, Christian Anton, he was the young man that  
20 -- this young man's friend, Mr. Rodriguez, Marcos Rodriguez, 10:40  
21 because when he was shooting from behind the bush -- and I'm  
22 going to get to the facts of the case in a little more detail  
23 in a minute -- after he ambushed them from about 50 meters  
24 away, his young, little friend, Marcos Rodriguez, and Edwin

1 Baca walked up, and Christian Anton, who is the brother of  
2 Caesar Anton, the man they just shot -- he shot Caesar Anton.  
3 Though his brother, Christian Anton, comes to -- tried to --  
4 comes to the rescue -- or trying to come to the rescue, find  
5 out what's going on. And then Marcos Rodriguez and Edwin Baca 10:41  
6 then approach him, and Marcos Rodriguez shoots Christian Anton  
7 in the back, and the bullet exits his chest.

8 To say this wasn't a violent offense or try to  
9 downplay it just is minimization in its worse extreme.

10 So what happened here? And I'm just talking about 10:41  
11 October 2010. We're going to talk about Sparks here in a  
12 minute, what he did when he jumped bail. On October 27, what  
13 did he do? Him and his friends decided they wanted to fight a  
14 rival group. They all go to the park. They got there in  
15 advance. He's got his .22-caliber rifle. Marcos Rodriguez has 10:42  
16 got a handgun. He stands behind that sandy area near some  
17 trees and bushes where the rounds were found, and he ambushes  
18 the other rival group.

19 Now, the rival group wasn't even gang members. He had  
20 been told they were Norteños, because he was associated with 10:42  
21 the Sureños. He's with the Dead Side Gang. He thought they  
22 were Norteños. They weren't. They were a bunch of high school  
23 kids being stupid and going to a park to fight.

24 They arrived on scene, and as soon as they enter the

1 park, he opens fire from the bushes. He hits the two of them I  
2 just described. And after he opens fire, Christian Anton  
3 comes, trying to find out what's going on because his little  
4 brother had been shot. And then his buddy, Marcos Rodriguez,  
5 approaches him. They get into an argument, and he shoots 10:42  
6 -- Marcos Rodriguez shoots Christian Anton in the back. Now,  
7 that's what happened. After the shooting, he runs from the  
8 scene. He gets arrested the next day, October 28, 2011.

9 Now, interesting enough, a few days after that,  
10 Detective Crow gets called by the defendant and wants to speak 10:43  
11 to him. And when he's out there -- Detective Crow has been  
12 paying attention, talking to people. He knows what's going on.  
13 And as they're having a conversation, Detective Crow fully  
14 confronts him that the defendant was going to fight this case  
15 by having someone else falsely confess to being the shooter, 10:43  
16 the person behind the trees.

17 Now the wind's out of his sails at this point.  
18 Nevertheless, he still bails out of custody. He posts \$31,641,  
19 I believe through a bondsman. So when he bails out, after he's  
20 out of custody, he then goes back to the detectives: "Oh, I 10:43  
21 can help you, officers, I can help you, I can help you."

22 The officer says, "Well, you know, we'll see."

23 What does he do when he's out? Two months later,  
24 December 28th, 2011, just two months after the shooting, we

1 have that shooting in Sparks. And the Court knows well what  
2 happened there. We had the testimony of that. When he's at  
3 the apartment complex and the victim there, Jason Cartegena,  
4 was wearing a 49ers jersey. He wasn't a gang member. He just  
5 happened to be wearing a 49ers Jersey during football season. 10:44  
6 They have a beef. He chests up with him. He's the one that  
7 instigates it and takes it to the next level. And his little  
8 friend, Sergio Aquino, comes and shoots him. And this Jason  
9 Cartegena -- it was in the base of the neck -- he's paralyzed  
10 now. 10:44

11 That's who you have sitting here. That's the  
12 dangerous, violent young man you have here.

13 What's this man's philosophy? Well, what did he tell  
14 Martha Mahaffey? "All I have to do is manipulate the system."  
15 That was one of my favorite lines from that. And then you 10:44  
16 listen to what his juvenile probation officer relayed:  
17 According to his juvenile probation officer -- correction,  
18 parole officer, "The defendant is manipulative and is a danger  
19 to the community."

20 Now, this Court well knows that. It was clear in its 10:44  
21 ruling at the bail hearing, and I have full faith that the  
22 Court understands that and will render the appropriate sentence  
23 in this case. He is a danger to the community.

24 Let's talk about Martha Mahaffey's report very

1 briefly. She made some findings that I found very crucial to  
2 the Court's determination, what we should do with him. Now,  
3 the defense, they want us to give him the minimum sentence,  
4 basically reward him, give him the minimum sentence, ignore  
5 what he did when he was on bail, ignore his actions of shooting 10:45  
6 two people, ambushing them from the bushes.

7 But let's look at what Martha Mahaffey found:  
8 "Defendant's antisocial features: One, disregard for the  
9 rights of others. Two, disregard for social norms. Three,  
10 disregard for the law." We know that. From his juvenile 10:45  
11 history alone, we know that. "Four, deceitfulness. Five,  
12 impulsivity. Six, aggressive behavior." And we certainly know  
13 that based upon his conduct all the way through the juvenile  
14 courts, the many years they tried to work with him and what  
15 we've seen in this case and when he was on bail. 10:46

16 "Number 2, defendant's narcissistic features: One,  
17 grandiosity; two, arrogance, admiration-seeking."

18 Your Honor, parole has not worked. Probation has not  
19 worked. Bail pending a crime, pending this case, this very  
20 case we're in here, when he's out on bail, knowing that this is 10:46  
21 looming, that wasn't enough to dissuade this man.

22 The only thing we can do to protect this community,  
23 the only guarantee we can give them is give this community 12  
24 to 30 years' protection from him, because if we don't, somebody

1 else is going to get hurt, because that's who he is. He's a  
2 danger to the community. And if he's given any sentence other  
3 than the maximum sentence, somebody is going to get hurt.

4 Now, I wish I could argue for more, but the maximum is  
5 what it is. It's 72 to 180 months for each count, consecutive, 10:47  
6 but he's earned it, and that's what you get when you shoot  
7 people, and that's the insurance policy we can give this  
8 community. We can say for 12 years -- he'll be 30 when he gets  
9 out. He's not going to be 60 or 70; he'll be 30 years old. It  
10 will give him time to grow up and give this community a rest. 10:47

11 With that, I submit it, Your Honor.

12 THE COURT: Thank you.

13 You may respond, Ms. Berning.

14 MS. BERNING: Thank you. Your Honor, when Mr. Wilson  
15 states that there's not really any punishment or that Mr. Kea 10:47  
16 isn't accepting any punishment, I think the very fact that  
17 we're here saying that he's looking at prison time, that he  
18 accepts that responsibility to the Court and for his actions.

19 Also, you've read the report with what Ms. Mahaffey  
20 states: He was shooting toward the ground. I want to clear up 10:47  
21 the item that Mr. Wilson talked about with Judge Robison and  
22 that he denied that occurred during his -- during an experience  
23 before him where he denied that he was a member of the gang.

24 At that point, what Mr. Kea was trying to do was -- in

1 his viewpoint, he was incarcerated. He made the decision in  
2 his mind that he was done with that kind of lifestyle, and  
3 that's how he interpreted what the judge had said, and that was  
4 what he meant when he said that he's not involved, because  
5 that's -- he wanted to make a clear break.

10:48

6 And as the Court knows, that when an individual within  
7 a prison setting says that, there's all sorts of things that  
8 can happen to them within the prison setting, and for that  
9 reason, I want that cleared up, that that was his intent, was  
10 to break the bond, and that came at a very high cost.

10:48

11 I think that what Mr. Wilson points out only goes to  
12 show what the defense has pointed out concerning his  
13 psychosocial immaturity. Of course, he's going to say  
14 different things. He's scared. He's a young man. He doesn't  
15 know what's going on. This is -- the situation went way past  
16 anything that he thought was going to happen.

10:49

17 Also, I don't want -- and I would ask the Court to  
18 note that Mr. Aquino was the shooter in that other case. In  
19 fact, Mr. Kea was unarmed and actually moved back away from the  
20 situation. He wasn't leading anything. He was moving away,  
21 backing away from the situation, and that is memorialized  
22 within the bail hearing that we had. He wasn't the main  
23 player. It was Mr. Aquino. He was the one who had the gun.  
24 He was the one who fired.

10:49



1 Mr. Kea knows that he was there. He admits that he  
2 was there. He talked to police about that, but he wasn't the  
3 shooter.

4 THE COURT: I have a question.

5 MS. BERNING: Surely. 10:50

6 THE COURT: Why was he there?

7 MS. BERNING: Your Honor, I believe that it -- that  
8 would be a question for the Court to ask --

9 THE COURT: I'm asking you.

10 MS. BERNING: Oh. I believe that he was there because 10:50  
11 he didn't have -- he knew was supposed to stay away, but I --  
12 from a gang situation, but I think that was the only family  
13 that he knew, so he hooked up with his friends again. He knows  
14 it's wrong now. But that was all he had, so that's where he  
15 hooked up again. 10:50

16 THE COURT: Thank you.

17 MS. BERNING: And he would tell you that.

18 THE COURT: Thank you. Please continue. Is there  
19 anything else you want to tell me?

20 MS. BERNING: Yes, Your Honor. I believe that for 10:50  
21 Pa'a, to send him to prison for 12 to 30 years does an  
22 injustice. What he's done -- we're not talking that he -- he  
23 did shoot, and somebody was wounded, but apparently, it wasn't  
24 serious enough for the victims even to be here today. They

1 wouldn't even respond to P and P.

2 Now, I know that Mr. Wilson's argument is that we have  
3 to protect the whole community, but we also have to give people  
4 an opportunity to change, and I don't know what giving Mr. Kea  
5 more time in prison is going to do.

10:51

6 I think the Court, given his age, given the fact that,  
7 for a youth who doesn't -- who really, according to  
8 psychological studies, is less guilty because of their  
9 adolescence, that the point will be made for the Court and for  
10 the community with the time suggested by the defense, that  
11 12 -- that 12 to 72 months is going to be adequate in order to  
12 -- concurrent, is adequate to -- to make -- for the Court to  
13 make the point for Mr. Kea to set his life aright and for  
14 society to be protected.

10:51

15 I think the idea of having such a high punishment for  
16 such a young person, given the nature of this crime, I think,  
17 is misplaced, and I would ask the Court to consider the  
18 sentence suggested by the defense.

10:52

19 THE COURT: Thank you very much.

20 Sir, please stand. The law affords you the  
21 opportunity to tell me anything you want to tell me before I  
22 impose sentence. Now would be your time.

10:52

23 THE DEFENDANT: Sir, the first thing I would like to  
24 say to my victims is I'm sorry. I can't take that back, what I

1 did. And I caused somebody pain and hurt. Their family  
2 suffered for it too. And I see that each day. I live through  
3 a reminder, like, to myself every day of what I have become. I  
4 had college scholarships. I want to do something right with my  
5 life.

10:52

6 I left the gangs. They brought out the worst in me.  
7 But I don't blame it on them. It was all my decisions, you  
8 know. I'm old enough to understand and know what I'm doing is  
9 right from wrong.

10 And Mr. Wilson is right, you know, I feel like I'm a  
11 bad person, myself, and I do deserve to go to prison, and  
12 that's the truth of it. As much as it hurts, I do deserve to  
13 go to prison. But I wish and I pray that you give me another  
14 chance and show mercy on me. Please don't give me the max.

10:53

15 THE COURT: All right. Anything else?

10:53

16 MS. BERNING: No, sir.

17 THE COURT: All right. I think that when you make a  
18 decision to use methamphetamine, do shots of brandy, take a gun  
19 and shoot it, you are a danger to the community. I believe  
20 that you -- I look at your prior record to give me an idea of  
21 what will happen in the future.

10:53

22 Your lawyer has done a phenomenal job in this case.  
23 She has brought to the Court every possible thing she could to  
24 try to minimize your horrendous prior record. I mean, she got

1 you evaluated by someone everyone respects. She has called  
2 numerous places to find placement for you, and they all said  
3 no. And you know why they said no, is because you can't use a  
4 gun in our community. You can't shoot people in our community.  
5 It is not tolerated.

10:54

6 This is not a probation case. The question is, how  
7 much time am I going to give you in prison? Do you understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Because you hurt two people and you made  
10 the decision to use methamphetamine. Whether you're 18, 17,  
11 the bullet doesn't have an age. Do you understand that?

10:54

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. So that being said, the one  
14 thing that you have going for yourself is your age. It's the  
15 one thing. And you have a history of the fact that you have  
16 the ability and -- you have an ability to do well in certain  
17 environments. So I don't think this is a "throw away the key"  
18 type of case despite the very, very appropriate argument made  
19 by Mr. Wilson. And I can't blame him word one. And as I'm  
20 listening to him, I'm thinking, that makes sense, that makes  
21 sense, yeah, he's right, he's right, that's the message, that's  
22 the message.

10:54

10:55

23 And they didn't certify you as an adult for no reason.  
24 They certified you as an adult so some day you'd be before me

1 as an adult. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: And that's the sentence you're going to  
4 get, is an adult sentence. And when you go to prison -- and I  
5 appreciate that your understanding this is a prison case. When 10:55  
6 you go to prison, I want you to think about the things that we  
7 talked about today and the fact that you want to turn your life  
8 around and do the things you're supposed to do.

9 But there are consequences to using a gun in our  
10 community, and I am no liberal when it comes to violence in our 10:55  
11 community. It is my duty to protect our community, and you  
12 have quite a track record. So it's going to be up to you,  
13 whether you want to really -- those are just words and  
14 manipulative stuff to get out of gangs. It's going to be up to  
15 you, but there is a price to be paid for your behavior. 10:56

16 I don't think it's the maximum, but I do believe that  
17 Probation probably got it right in this case. The Probation  
18 Department analyzed this case. They put together everything  
19 they thought was appropriate. They outlined in detail your  
20 prior record, and they made an evaluation, and I believe it's 10:56  
21 right.

22 In addition to the administrative assessment of \$25  
23 and the DNA fee of \$150 and the attorney's fees in the amount  
24 of \$500 --

1 MS. BERNING: Your Honor, I would ask the Court to  
2 waive the attorney's fees.

3 THE COURT: Attorney's fee is waived.

4 -- you are sentenced to 156 months in the Nevada  
5 Department of Corrections, with minimum parole eligibility on 10:56  
6 Count I after 35 months. You are sentenced to 156 months in  
7 the Nevada Department of Corrections, with parole eligibility  
8 after 35 months. There are two counts. Those will run  
9 consecutively.

10 That is the Court's order. 10:56

11 Credit for time served?

12 THE PROBATION OFFICER: 164 days.

13 THE COURT: Thank you. Anything else?

14 MS. BERNING: Nothing further.

15 THE COURT: We'll be in recess. 10:57

16 MR. WILSON: Oh, the DNA fee, Your Honor?

17 THE CLERK: He imposed it.

18 (Proceedings concluded.)

19 -oOo-

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21

22

23

24

1 STATE OF NEVADA )  
2 ) ss.  
3 COUNTY OF WASHOE )


4 I, CECILIA VOHL, Official Reporter of the Second  
5 Judicial District Court of the State of Nevada, in and for  
6 the County of Washoe, do hereby certify:

7 That as such reporter, I was present in Department  
8 No. 9 of the above court on said date, time and hour, and I  
9 then and there took verbatim stenotype notes of the  
10 proceedings had and testimony given therein.

11 That the foregoing transcript is a full, true and  
12 correct transcription of my said stenotype notes, so taken  
13 as aforesaid. That the foregoing transcript was taken down  
14 under my direction and control, and to the best of my  
15 knowledge, skill and ability.

16 DATED: At Reno, Nevada, this 15th day of July, 2012.

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CECILIA VOHL, NV CCR #246

FILED

Electronically

06-05-2012:09:30:54 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 2996695

1 CODE 1850

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7

IN AND FOR THE COUNTY OF WASHOE

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\* \* \*

9

THE STATE OF NEVADA,

10

Plaintiff,

Case No. CR12-0110

11

vs.

Dept. No. 9

12

KUPAA KEA,

13

Defendant.

14

15

JUDGMENT

16

The Defendant having entered a plea of Guilty, and no sufficient cause being shown by Defendant as to why judgment should not be pronounced against him, the Court rendered judgment as follows:

19

That Kupaa Kea is guilty of the crime of Battery With a Deadly Weapon Causing Substantial Bodily Harm, a violation of NRS 200.481(2)(e), a felony, as charged in Counts I and II of the Information, and that he be punished by imprisonment in the Nevada Department of Corrections for the minimum term of thirty-five (35) months to a maximum term of one hundred fifty-six (156) months, as to each of Counts I and II, to run consecutively to each other. The Defendant is further ordered to pay the statutory Twenty-Five Dollar (\$25.00) administrative assessment fee and a One Hundred Fifty Dollar

26 ///

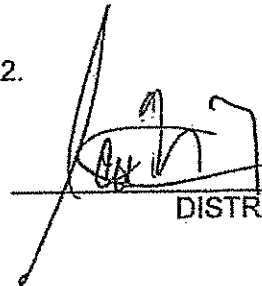
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1 (\$150.00) DNA testing fee. The Defendant is given credit for one hundred sixty-four (164)  
2 days time served.

3 DATED this 1st day of June, 2012.

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7 DISTRICT JUDGE  
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CR12-0110  
STATE VS KUPAA KEA  
District Court  
Washoe County  
NAC  
DC-950805387-802  
FILED  
06/26/2012 08:43 AM  
2515  
NOTARIE

Case No: CR12-0110

Dept No: 9

FILED

2012 JUN 26 AM 8:36

JOEY JADUNA HASTINGS  
CLERK OF THE COURT  
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-

KUPAA KEA

Defendant

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that KUPAA KEA, hereby appeals  
the judgement of conviction entered in this Honorable court on or about the 1<sup>st</sup> day of  
June, 2012.

Dated this 18<sup>th</sup> day of June, 2012.

[Signature]  
Defendant Signature

KUPAA KEA  
(Print Name) In Proper Person

CERTIFICATE OF SERVICE BY MAIL

Pursuant to N.R.C.P. Rule 5 (b), I hereby certify that I am the petitioner/Defendant named herein and that on this 18<sup>th</sup> day of JUNE 2012 I deposited in the United States Mails in Carson City, Nevada a true a correct copy of the foregoing addressed to:

Mr. Christian Wilson, Esq. DDA  
Washoe County District Attorney  
P.O. Box 30083  
Reno NV, 89520

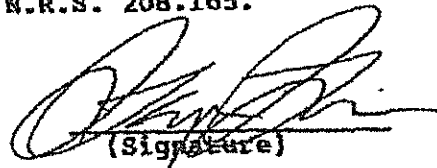
Washoe County Clerk  
Second Judicial District Court Dept 9  
75 Court Street  
Reno. NV 89520

  
KUPAA KENT

PURSUANT TO N.R.S. 208.165, I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF NEVADA THAT THE FOREGOING IS TRUE AND CORRECT. See N.R.S. 208.165.

Signed at DNCC  
(Location)

6/18/12  
(Date)

  
(Signature)

1086980  
(Inmate number)

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

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

Notice of Appeal

(Title of Document)

filed in case number: CR12-0110

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 6/18/12

[Signature]  
(Signature)

Kupaa Kea  
(Print Name)

Public Defender  
(Attorney for)