

IN THE SUPREME COURT OF THE STATE OF NEVADA

KUPAA KEA

Appellant,

v.

STATE OF NEVADA

Respondent.

Electronically Filed
Sep 20 2017 08:23 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO. 73016

Appeal from an Order Denying Petition and Supplemental Petition for Writ of
Habeas Corpus (Post-Conviction) in Case CR12-0110
The Second Judicial District Court of the State of Nevada, Washoe County
Honorable Scott Freeman, District Judge

APPELLANT'S APPENDIX – VOLUME 1

VICTORIA T. OLDENBURG, ESQ.
OLDENBURG LAW OFFICE
Nevada State Bar No. 4770
P.O. Box 17422
Reno, NV 89511
Tel. (775) 971-4245
Fax (775) 853-9460
ATTORNEY FOR APPELLANT

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DA # 434263

RPD RP11-021113

IN THE JUSTICE COURT OF RENO TOWNSHIP

IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

* * *

THE STATE OF NEVADA,

Plaintiff,

RCR 2011-064429

v.

DEPT: 4

KUPAA KEA,

Defendant.

CRIMINAL COMPLAINT

CHRISTIAN G. WILSON of the County of Washoe, State of Nevada, verifies and declares upon information and belief and under penalty of perjury, that KUPAA KEA, the defendant above-named, has committed the crimes of:

COUNT I. BATTERY WITH A DEADLY WEAPON CAUSING SUBSTANTIAL BODILY HARM TO PROMOTE THE ACTIVITIES OF A CRIMINAL GANG, a violation of NRS 200.481(2)(e) and NRS 193.168, a felony, in the manner following, to wit:

That the said defendant on or about the 27th day of October, 2011, at Reno Township, within the County of Washoe, State of Nevada, did willfully and unlawfully use force and violence upon the person of CESAR ANTON at PARADISE PARK located at 2600 Paradise Drive, Reno, Washoe County, Nevada, with a deadly weapon, to wit: a .22 caliber rifle, by shooting CESAR ANTON with said rifle, causing substantial bodily harm, which act was committed knowingly for the

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///



benefit of, at the direction of, or in affiliation with, a criminal gang, with the specific intent to promote, further or assist the activities of a criminal gang, specifically, the DEAD SIDE GANG.

COUNT II. BATTERY WITH A DEADLY WEAPON CAUSING SUBSTANTIAL BODILY HARM TO PROMOTE THE ACTIVITIES OF A CRIMINAL GANG, a violation of NRS 200.481(2)(e) and NRS 193.168, a felony, in the manner following, to wit:

That the said defendant on or about the 27th day of October, 2011, at Reno Township, within the County of Washoe, State of Nevada, did willfully and unlawfully use force and violence upon the person of OSCAR VALENCIA at PARADISE PARK located at 2600 Paradise Drive, Reno, Washoe County, Nevada, with a deadly weapon, to wit: a .22 caliber rifle, by shooting OSCAR VALENCIA with said rifle, causing substantial bodily harm, which act was committed knowingly for the benefit of, at the direction of, or in affiliation with, a criminal gang, with the specific intent to promote, further or assist the activities of a criminal gang, specifically, the DEAD SIDE GANG.

COUNT III. CONSPIRACY TO COMMIT BATTERY WITH A DEADLY WEAPON, a violation of NRS 199.480 and NRS 200.481(2)(e), a gross misdemeanor, in the manner following, to wit:

That the said defendant on or about the 27th day of October, 2011, at Reno Township, within the County of Washoe, State of Nevada, did willfully and unlawfully conspire with M. GATICA and/or M. RODRIGUEZ to use force and violence upon the persons of unknown members of the Norteno Gang in the vicinity of PARADISE PARK

located at 2600 Paradise Drive, Reno, Washoe County, Nevada, with a deadly weapon, to wit: a .22 caliber rifle, and in furtherance of said conspiracy the defendant did shoot at a group of people with said firearm.

COUNT IV. POSSESSION OF A CONTROLLED SUBSTANCE, a violation of NRS 453.336, a felony, (F800) in the manner following, to wit:

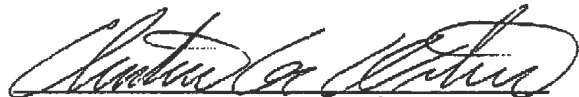
That the said defendant on or about the 27th day of October, 2011, at Reno Township, within the County of Washoe, State of Nevada, did willfully, unlawfully and knowingly have in his possession a Schedule I controlled substance, to wit: Methamphetamine in the vicinity of PARADISE PARK located at 2600 Paradise Drive, Reno, Washoe County, Nevada.

DATED this 2nd day of November, 2011



AFFIRMATION PURSUANT TO NRS 239B.030

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



PCN RPD1113504C
Custody: X
Bailed:
Warrant:

11024342634

District Court Dept: 09
District Attorney: CGWILSON
Defense Attorney:
Bail _____
Restitution:

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Deputy Clerk of the Court

Transaction # 2714912

In the Justice Court of Reno Township

County of Washoe, State of Nevada

THE STATE OF NEVADA,

Plaintiff,

vs.

Kupaa Kea

Defendant.

No. RCR 2011-064429

CR 12-0110
D9

Waiver of Preliminary Examination

I, the Defendant in the above-entitled action, being fully advised of my rights in the premises,

hereby waive my preliminary examination on the charges of Battery with a deadly weapon causing substantial bodily harm to promote the activities of criminal gang (2 counts), Conspiracy to commit battery with a deadly weapon and possession of a controlled substance in the above entitled action, and consent that I may be remanded to the Second Judicial District Court of the State of Nevada, for further proceedings therein.

DATE: 1/19/12

Defendant to waive preliminary examination and plead to amended charges of Battery with a deadly weapon causing substantial bodily harm. District Attorney to dismiss counts 3 & 4 and to dismiss charge of conspiracy to violate controlled substances act, a felony, in Case SJC 12-12. Case SJC 12-12 to be dismissed after Defendant is sentenced in this case.

Rept. 9 Feb 3RD
RJC 15 (Rev 4/90)

0004

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Joey Orduna Hastings

Clerk of the Court

Transaction # 2714912

DA # 434263

RPD RP11-021113

1 CODE 1800

Richard A. Gammick

2 #001510

P.O. Box 30083

3 Reno, NV 89520-3083

(775) 328-3200

4 Attorney for Plaintiff

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR12-0110

11 v.

Dept. No. 9

12 KUPAA KEA,

13 Defendant.

14 _____/
15 INFORMATION

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

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

23 That the said defendant on the 27th day of October A.D.,
24 2011, or thereabout, and before the filing of this Information, at
25 and within the County of Washoe, State of Nevada, did willfully and
26 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 0123434263dpbI

ORIGINAL

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Joey Orduna Hastings
Clerk of the Court
Transaction # 2752729

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

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

8 * * *

9 Plaintiff,

Case No. CR12-0110

10 v.

Dept. No. 9

11 KUPAA KEA,

12 Defendant.
13 _____/

14 GUILTY PLEA MEMORANDUM

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

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

26 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.

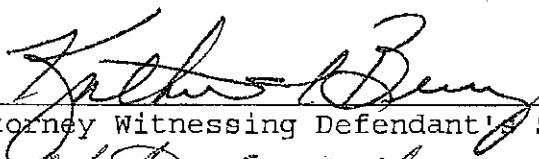
9 AFFIRMATION PURSUANT TO NRS 239B.030

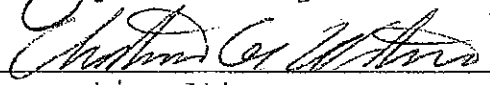
10 The undersigned does hereby affirm that the preceding
11 document does not contain the social security number of any person.

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 0123434263dpbGPM

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Joey Orduna Hastings
Clerk of the Court
Transaction # 2846144

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,)	Case No. CR12-0110
)	
vs.)	Dept. No. 9
)	
KUPAA KEA,)	
)	
Defendant.)	
)	

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.

1 MS. BERNING: Thank you.

2 THE COURT: Anything further?

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

4 THE COURT: All right.

5 (Proceedings concluded.)
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1 STATE OF NEVADA)
2)
3 COUNTY OF WASHOE)
4

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

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

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

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

18 /s/ Stephani L. Loder
19 STEPHANI L. LODER, CCR No. 862
20
21
22
23
24

Document Code
KATHRINE I. BERNING, ESQ.
Nevada State Bar No. 3678
195 Casazza Drive
Reno, Nevada 89502
(775) 329-8646 - Telephone
Attorney for Defendant

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

THE STATE OF NEVADA,

Plaintiff,

Case No. CR12-0110

vs.

Dept. No. 9

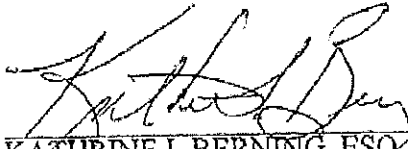
KUPA'A KEA,

Defendant.

CONFIDENTIAL EVALUATION

(See attached document)

Dated this 30th day of May, 2012.


KATHRINE I. BERNING, ESQ.
Attorney for Kupa'a Kea

PSYCHOLOGICAL EVALUATION

IDENTIFYING DATA

Name: Kupa'a Kea

Case No. CR12-0110

Date of Birth: 11/5/1993

Evaluation Date: April 13, 14, & 16, 2012

Age: 18

Report Date: May 14, 2012

REASON FOR REFERRAL: Kupa'a Kea was referred for psychological evaluation by defense counsel, Kathrine Berning, Esq. He was initially charged with: Count 1 and 2 - Battery with a deadly weapon causing substantial bodily harm to promote the activities of a criminal gang; Count 3 - Conspiracy to commit battery with a deadly weapon; and Count 4 - Possession of a controlled substance. Pursuant to plea negotiation, he pled guilty to two counts of battery with a deadly weapon, counts III and IV were dismissed, and a charge of conspiracy to violate controlled substance act (SJC 12-12) was dismissed. The instant offense occurred on October 27, 2011 at Paradise Park and involved the defendant shooting two male victims with a deadly weapon, a .22 caliber rifle, causing substantial bodily harm to both victims.

EVALUATION INSTRUMENTS & PROCEDURES

1. Clinical Interview, 5 hrs.
2. Wechsler Adult Intelligence Scale -- IV
3. Brown ADD Scales
4. Minnesota Multiphasic Personality Inventory -- 2
5. Review of Washoe County Detention Center medical records
6. Review of documents submitted by defense counsel
 - Reno Police Department Arrest Report and Declaration of Probable Cause, Supps. 1-21
 - Reno Police Department Transcript of interviews and phone calls
 - Renown Regional Medical Center victims' medical records
 - Criminal complaint, 11/20/11
 - Request for Expedited Hearing and Motion for Bail Revocation and Retake Warrant, 1/5/12
 - Order and Retake Warrant, 1/5/12
 - Waiver of Preliminary Hearing, 1/23/12
 - Information, 1/23/12
 - Court Services Report, 1/20/12
 - Motion to Grant Bail and to Set Bail at a Bondable Amount, 1/20/12
 - Guilty Plea Memorandum, 2/8/12
 - Response in Opposition to Defendant's Motion to Grant and/or Reduce Bail Amount, 3/13/12
 - Priors Report -- APD
 - Presentence Investigation Report
 - Defendant's letter to judge

MENTAL STATUS EXAMINATION: Kupa'a Kea, an 18 year old male, was generally cooperative and respectful throughout evaluation. Physical presentation was normal. Speech suggested good verbal skills. Affect or facial expression was normal. Mood was mildly depressed.

Thoughts of harming himself or others were absent. Thought process was focused. Thought content was absent delusions, hallucinations, and psychosis.

Kupa'a described that when first arrested the day after the instant offense, October 28, 2011, he underwent methamphetamine and alcohol-related withdrawal including feeling physically ill, nose bleeds, and oversleeping. When re-incarcerated in early January 2011, he felt his life was done and he harbored suicide ideations of hanging himself with a sheet. When a deputy saw him with a sheet in hand, he was sent to the infirmary. During interview with the nurse practitioner, he expressed concern about his imaginary friend coming back (he had seen and heard him when under the influence of methamphetamine). Washoe County Detention Center records revealed that on January 4, 2012, he placed on suicide watch, and prescribed Vistaril for anxiety and Risperdal for mental health issues, to potentially ward off voices. On January 7, 2012 he was noted as improved ("adjustment improved") and returned to the general population. In February 2012, his medicines were discontinued. He then learned that his girlfriend (with whom he had started a relationship in September 2011) had miscarried their child, which caused him to feel sad. In March, due to his situational stressors, he began to feel depressed, was over-sleeping, and had less appetite. On March 22, he was prescribed the antidepressant, Celexa. At the time of evaluation, he was taking Celexa. He felt that his mood was improved with the medicine although he continued worried about his pending sentencing. His sleep and appetite had returned to normal. He denied that he has experienced hallucinations during his incarceration.

CLINICAL INTERVIEW

DEFENDANT'S OFFENSE ACCOUNT: Kupa'a Kea (aka Krums) described that on October 27, 2011, he awoke at about 8:00 AM, having slept for six to seven hours. He ate breakfast and spent the morning and early afternoon with his sister, Momi Kea, and her children, with whom he was living. At 3:00 PM he drove to pick up five friends, all fellow Deadside Gang members: Sergio Aquino aka Silent; Jose Via aka Bomber; Marcos Rodriguez aka Oneer; Luis Lopez aka Tunes; and Christian Garcia aka Criminal. The group got pizza, Corona beer, and brandy, and bought five grams of methamphetamine. They went to Marcos' home to "sit, chill, get high, and drunk." During the next few hours, Kupa'a drank about six shots of brandy and about four Corona beers.

During the early evening, Kupa'a got a call from fellow DSG gang member, Manuel Gatica (aka Junior), stating, "We're going to get down." He described that someone had tried to jump Brian Alvarado (aka Teddy), who affiliated with Unfadeable Kings (UFK), a party crew, but who was not a member of DSG. Manuel told Kupa'a to meet him at McDonalds. Kupa'a knew Brian through Manuel, who used to affiliate with UFK.

From Marcos' home, Marcos grabbed a .38 revolver and Christian grabbed a .22 revolver. Kupa'a drove himself and his five fellow DSG friends to meet Manuel and others. They smoked the rest of the methamphetamine in route to McDonalds. When asked how he felt at the moment, Kupa'a stated, "I was pumped up. My adrenaline was rushing....I felt invincible, like I can't really be harmed." He explained that he had formerly been shot at on three occasions – two gang fights and one drive-by shooting – and had not been hit. Such caused him to have a sense of invincibility.

At McDonald's, Kupa'a and his group joined up with Manuel, Brian, and about six to eight others who Kupa'a did not know and who were not affiliated with DSG. Manuel told the group that they were going to fight Norteños and that the Norteños were "as deep as we are." Kupa'a felt, "They're as deep as we are, so I'm even more pumped out."

Kupa'a and his group followed Manuel and his group to Paradise Park, arriving as it was getting dark. Marcus had the .38 revolver, Christian had the .22 revolver, and Manuel took out a .22 rifle. The group of about 12 to 14 began walking through the park, looking for the Norteños. Manuel handed him the .22 rifle and said, "Here Krums." When asked what his thoughts and feelings were when handed a rifle, Kupa'a denied having specific thoughts: "I just took it. I don't know why it took it." Once he had the rifle, he felt, "Cool again."

The group heard the Norteños shouting at them, calling them out: "Like wolf calls, screaming, yelling, no words." Kupa'a thought, "This is the time of truth when this is going to go down. This is the moment to shine. This is it." He explained that it was the group's moment to shine not his moment to shine individually. He felt, "That's when my blood boiled more. I felt hot physically." He denied that the physical sensation was associated with anger, and noted that it was associated with adrenaline.

The Norteños were on the other side of a bridge, equal in number to their group. Kupa'a and Sergio walked toward them with the rest of the group behind him. When asked why he took the lead, he described he did not know. The Norteños started running towards them, sporting axes, bats, or hammers. Kupa'a felt "scared." In reaction, with the rifle at his hip, he shot four times at the ground. He then heard voices from the Norteños group calling out to him, "Krums, Krums, stop." He saw that he knew some of the other group members from school: "They were the wrong people. They weren't even Norteños." At the front of the other group were Tony Alvarado (aka Travieso), who he knew from ROP; and Grizzle (true name unknown; one of the two shooting victims), who he knew from Hug High School and with whom he had previously "kicked it." Sergio told Tony that he thought they were Norteños. Tony told Sergio he thought they were Norteños. Grizzle said, "What the f---k Krums."

After shooting and realizing the people he shot at were people he knew, everything felt surreal: "It was like a movie. It's like everything tuned out. Like I was just seeing what was in front of me. Like I couldn't see everything on the side. It was kind of like I was stuck....I didn't know what was going on after that. I was confused. Like I didn't know what was happening." When they heard sirens, the group ran.

Later that same day, after further alcohol and methamphetamine use, Kupa'a thought, "What did I do?" He felt: "I was scared even more, looking over my shoulder. I didn't know where the bullets went. I was scared if anybody died." When incarcerated he learned that he had shot two people – Grizzle and one other male.

When police reports were reviewed with him, he denied that he shot from behind a tree, although .22 rifle casings were found in that area. He did not know if someone else shot from a tree. At the time he shot, he was unaware of other shots fired. He later read that Marcos had also shot, but at the time he was unaware of that.

Attempt to Provide Substantial Assistance. In mid-December 2011, Kupa'a agreed to provide substantial assistance to law enforcement related to a homicide in exchange for a deal, but failed to provide assistance. When he agreed to substantial assistance, he had mixed feelings about such: "I wasn't at the point where I am now, where I know what I need to do to live differently. If I would have done that, provide substantial assistance, it would have dropped my ties [to the gang].... I wasn't ready to drop ties back then because... I'm not sure why.... I tried but I couldn't do it all the

way. I wanted to change in a way, but the other half of me didn't....I wanted to cooperate but I didn't want to give up my homeboys."

When out on bail, he got a job at Walmart but found night shift difficult. He then got a job at Patagonia. His girlfriend was pregnant and he was preparing his world to be ready for his unborn child (his girlfriend eventually miscarried). One day (December 28, 2011), he called Sergio Aquino (aka Silent), who he considered to be his best friend. They smoked methamphetamine. When they and others went to buy drugs, they were confronted by an individual. Sergio shot the man.

When the law enforcement officer he was working with questioned him about the December 28 homicide, he initially denied being present and then stated he was present but that a TJ gang member had committed the shooting. Eventually, he provided "substantial assistance without a deal" -- "I snitched out my best friend." Kupa'a's bail was revoked and he was charged with conspiracy to violate controlled substance act (SJC 12-12). In reflection of giving up his friend, he stated, "I thought it was the right thing to do. What am I doing with my life? There are a lot of kids with talent like me and they don't sit in rooms like this [at the police station].... I knew if I snitched, I wouldn't be accepted anymore and the [gang] ties would be broken....I want to change." If imprisoned, he is fearful that he may be stabbed for snitching. He hopes to not be sent to the same prison as Sergio

Reflection of Offense Behavior and Plans if Granted Probation. In reflection of his offense behavior, Kupa'a Kea stated, "It is the biggest mistake I ever made in my life. I've caused pain and suffering I can't take back. No one deserves that. I had dreams. I had goals. I was going to be somebody in life but I threw it all away. I'm so sorry for what I've done to myself and them, the victims. If there was anything I can do to take it back, I would. I think about their families hurt. I think of the story they have to tell somebody about how they got shot. I think about what my life could have been if this never happened."

If granted probation, Kupa'a expressed plan to return to live with his sister, Momi, get a job, and go back to school potentially at Truckee Meadows Community College. He is 1/4 credit short of attaining a high school diploma. Although he could get a GED, his preference is to obtain his high school diploma. When he has saved enough money, he would get a place of his own.

Kupa'a expressed willingness to participate in court ordered treatment. If ordered to a residential program, he would welcome the opportunity to return to the Rite of Passage program to ready him for a vocational program or college. He realizes he needs substance abuse treatment to learn to resist cravings to return to methamphetamine.

Phone consultation with his maternal aunt, Tricia Meares, age 63, revealed that if Kupa'a were granted probation and the opportunity to transfer his probation to Hawaii, she would be willing to have him live with her and her 45-year old son in Hawaii and enroll him in whatever treatment program is deemed necessary.

RELEVANT PERSONAL BACKGROUND INFORMATION

Early Childhood, a Dysfunctional Family Environment, and Multiple Childhood Traumas. Accounts from Kupa'a Kea and his aunt, Tricia Meares, suggested that Kupa'a was raised in a highly dysfunctional family environment and was the victim of multiple childhood traumas.

Kupa'a was born November 5, 1993, in Reno, Nevada. He was raised by his mother, Jacqueline Kea, who is Hawaiian, and three older siblings – an older brother and two older sisters. From age 5/6 to 6/7, he lived with his mother and stepfather. From age 13 to 17, when not in correctional and treatment facilities, he lived with his mother and her live-in boyfriend. Childhood traumas included the following:

Death of his father. His father, who was half Hawaiian, half Hispanic, and an alcoholic, died in a DUI related motor vehicle accident when Kupa'a was five months old. In reflection of not having his biological father in his life, he stated, "I always wondered what my life would have been if I had a dad. I think I probably wouldn't have joined a gang. I wondered what kind of dad I'd have. I was jealous of others who have a dad. I wish I could go home to a dad right now."

Parental substance abuse. Both Kupa'a's biological parents were alcoholics. His mother abused alcohol throughout his childhood, drinking alcohol to excess on a daily basis. Her live-in boyfriend, who was in his life from age 13 to 17, abused alcohol and marijuana.

Emotional/verbal and physical abuse by his mother. Throughout his childhood, his mother subjected Kupa'a to emotional/verbal abuse and physical abuse. His aunt described, "Since he was born, [his mom] always told Kupa'a she hated him." More than the other siblings, she repeatedly hit him with a ruler with a nail, bat, hose, belt, fist and threw things at him causing injury, i.e., scar on his right cheek, bruises, bloody noses, and bloody lips.

Witness to domestic violence by his stepfather. When Kupa'a was 5/6 to 6/7 years old, for two years he witnessed domestic violence by his stepfather against his mother and three older siblings.

Emotional/verbal and physical abuse by his older brother and witness to domestic violence by his older brother. When Kupa'a was 7 to 12 years old, his older brother repeatedly hit their mother and insulted him, punched him, and threw things at him causing injury, i.e., bruises and bloody noses. He reasoned that his brother treated him and his mother in this way because their stepfather for two years prior had abused his older brother.

Exposure to gangs by his older brother. When Kupa'a was 9 to 10, he was exposed to the Bloods gang, with whom his older brother affiliated.

Child neglect by his mother. Kupa'a's mother engaged in various forms of child neglect including keeping him from school to avoid disclosing his bruises and exposing him to substance abuse and domestic violence in the home.

Prejudice. Kupa'a was raised in a Hawaiian family culture. When he was young, because his Glen Duncan Elementary School peers tended to be Hispanic, he thought he was Hispanic. Eventually, he learned the difference. From about age eight to 11, he was the focus of prejudicial statements. His school peers called him "pineapple boy" and his older brother and Bloods gang friends called him "white boy" (he was the only siblings not born in Hawaii) and accused him of wanting to be Mexican. He struggled with his identity and felt he did not belong at home or at school.

Poverty and unstable residency. In the sixth grade, he attended Billingshurst Middle School and became aware that he was from a lower socioeconomic class (SES). Due to his lower SES, he experienced multiple evictions, multiple changes in living arrangements, and at times slept on the floor or living room

Elementary school was Kupa'a's respite from his dysfunctional family and traumas. Receiving negative attention at home, he sought positive attention at school by being a good student and the "funny guy." He learned he was smart and that academics came easy for him. He was frequently on the dean's list and honor roll and once received an award for perfect attendance. He used his intelligence and good grades to set himself apart from his siblings and his school peers who would tease him. When his mother was intoxicated and bragged to her friends about her "baby boy going to college," he felt good. His siblings would respond with jealousy and disdain. As his behavioral problems increased, he lost his motivation to do well in school.

Child Neglect and Abandonment, Gangs, and Attempts to Separate from the Gang.

Kupa's aunt, Tricia Meares, described, "From the time he was 11 years old, Kupa'a raised himself....[His mom] worked nights...When he was 13, [his mom] took up with her boyfriend and there was no room for the kids....She abandoned [Kupa'a], washed her hands, and gave him no structure....She'd tell him, 'I hate you. I can't wait till you move out'....She never sat down with him....He got shut out of his mom's life. [She] just closed him off and did nothing to help him....He has spent more time in a police car than with his own family."

Considering Kupa'a's dysfunctional family and traumas, when in the sixth/seventh grade he joined the tagging crew Ultimate Tagging Crew (UTK) and felt he finally belonged: "Now I was part of something. I was accepted." In the seventh grade, most of his UTK peers began to "kick it" with Deadside Gang (DSG; his neighborhood gang) or Dirty Mob Killers (DMK). He began to "kick it" with the Sunset gang from Grove Street but he still maintained friendships with DSG members. Although not yet jumped into Sunset, he "put in the work," including fighting, jumping in others, and assisting in stealing. In the eighth grade, he was jumped into Sunset.

When asked why he chose Sunset rather than BSG, he explained, "They made me feel wanted. They would call me and invite me to join them." Additionally, Sunset had older gang members, ages 18 to 26. Absent a father and having an abusive older brother, he yearned for approval from older males: "Sunset had older people that didn't know me but were going to love me. And that's what felt good."

When at Sparks Middle School his eighth-grade year, all the Sureño gangs hung out together -- Sunset, Southside Locos (SSL), Criminal Mexican (CM), and Infamous Solidiers (IS). All were attached to Sunset in one way or another because Sunset was the longer established gang. He reflected, "Being attached to them, I might as well call myself a celebrity." When associating with the tagging crew and gangs, Kupa'a learned that fighting brought him attention and approval from his gang peers and older gang members: "They made me feel that's all they do. Be the center of attention all the time. Be funny, never look soft....I felt cool. I felt popular."

In 2008-2009, Kupa'a first went to China Springs and then to the Nevada Youth Training Center (NYTC), where he was surrounded by other gang members who maintained their allegiances despite the programming. He fought Nortenos and resisted all interventions to cease his gang affiliation. He thought such was the "rules on the street" and "all the old gangsters did time." He

reflected: "I wasn't into changing my life. It was kind of making me hard, say I did it. I thought it was cool. It made me harder." When he finally completed NYTC: "I still had gang thinking."

When returning home August 26, 2009, at age 15, three months before his 16th birthday, both his family and gang environment were different. At home, his siblings were gone, his mother was living with her drug-using boyfriend with whom he did not get along, and his mother had little to do with him. His mother had moved to Mira Loma, so he was far from his Sunset gang members on Grove St. Although he still considered himself Sunset, he began hanging out with the Dcadside Gang (DSG): "With DSG it wasn't fighting anymore, it was all guns." At 15, he got his first gun.

When re-arrested on October 14, 2009 and ordered to participate in Rite of Passage (ROP), Kupa'a began the program with the same resistance and gang mentality he had during his previous placements: "I was scratching and getting into fights." However, he began to focus and enjoy the classes and vocational opportunities – culinary arts, computers, journalism. He reflected "I loved it." In January 2010, he qualified for ROP's less restrictive Q House but he "puffed up" in front of a Norteño, fought, and lost this privilege. For the latter 7/14 months, he had less problems, felt he was "on track," and considered that academics may be his way out of the life he was living.

On January 3, 2011, he successfully completed ROP. For the first time ever, at 17, he attended regular high school at Hug High School and was enrolled in three AP classes. Academically, he felt hopeful, but he perceived that his AP teacher's questioned his placement in their classes. Socially, he was over-stimulated by seeing friends he had not seen in years and all the high school extra-curricular opportunities available. Within one week, as other gang-affiliated youth gravitated toward him, he was suspended.

With suspension came Kupa'a's gravitation back to his DSG gang and return to carrying a gun. When asked why he carried a gun, he described, "Everyone had one....Bragging rights, I had one. Without one, I'm not the same as others." The underground rap music the group listened to referred to carrying guns. Lyrics included: "Never leave your strap at home...I always ride with my chopper." By then the gang mentality was "shoot or be shot." Finding himself back off-track, he felt he had nothing to live for and that he would likely die in the near future. Therefore, he was "more courageous, bold."

Within two months, Kupa'a was again sent to NYTC. Initially, he was frustrated that he was back at NYTC and his philosophy was: "All I have to do is manipulate the system, keep my nose clean, stay out of trouble, and go back home." However, while in the program, he decided that he wanted to change and break from his gang friends. The PSI notes: "During this incarceration, the defendant appeared to have changed his behavior for the better; he followed rules and kept his anger under control. The defendant expressed he would do whatever it took to stop his negative behavior. His caseworker wrote, 'He knows that he needs to earn what he gets and not take it. I am still concerned that he may go back to his old ways once released.'"

Upon his release from NYTC on August 11, 2011, Kupa'a was abandoned by his mother who in July 2011 had moved to South Carolina. He was discharged into the care of his 21-year old sister, Momi. For one week he stayed away from his gang friends. He didn't call them nor contact them via Facebook. After one week, he craved methamphetamine. He sought out his DSG friends to use. He told himself that he would only drink and use drugs with them and not resume the other gang activities. He vacillated about his choices: "I half-assed it. I wanted to change but couldn't." He eventually became re-entrenched in his "DSG family," his family who had not abandoned him,

including drinking alcohol, using methamphetamine, engaging in gang fights, stealing, and carrying a .38 revolver. He reasoned, "That's how it is on the streets now. Everybody has one."

Substance Abuse/Dependence. Kupa's first used alcohol and marijuana at age 11/12, when in the fifth/sixth grade. In seventh grade, he drank alcohol and used marijuana about every other day. In the eighth grade, with his UTK and then Sunset gang friends, he used methamphetamine, ecstasy, and cocaine about once a week; 20 times inhaled spray paint, dust off, or air freshener; and a few times experimented with PCP, mushrooms, LSD, and pain pills.

When with Sunset his freshman year and with DSG his sophomore year, almost daily he drank alcohol, once a week he went on a two-day run with methamphetamine, and once a week he used ecstasy and cocaine. After ROP, during the two months he was out (January 3, 2011 to March 1, 2011), his methamphetamine use increased to two to three two-day runs a week.

Upon his release from NYTC on August 11, 2011, Kupa's remained clean for one week. He then craved methamphetamine. For two months preoffense, he heavily and daily drank beer and used methamphetamine. Typically, he drank two 32-ounce beers a daily and used two to three 8-balls a week. He reflected, "I couldn't stop the meth. I loved it. It made me so emotional. It made me tell everyone my deepest feelings." In early September, two or three times he used methamphetamine intravenously but his preference was to smoke it. During these two months, Kupa's experienced drug-related auditory and visual hallucinations involving the imaginary friend he had when he was eight years old, Ghost. At age eight, Ghost had been friendly. Under the influence of methamphetamine, Ghost was "like a demon" who sang songs and phrases to him, i.e., "Demons in my head...martyr, martyr, martyr...kill, kill, kill." He considered that the phrases reflected his belief that in the near future he was going to die. During a 1 1/2 week drug-run in September during which he barely slept, he saw Ghost daily. He saw him three or four times thereafter. He did not see him the day of the offense.

Medical and Mental Health History. Kupa's denied acute medical problems. In 2008, through Juvenile Services, he was evaluated by psychologist Richard Weiher, Ph.D., who diagnosed him with *Conduct Disorder* and *Antisocial Personality Traits*; and by Quest who diagnosed him with *Alcohol Abuse and Cannabis Abuse*.

Legal History. The PSI identified 15 juvenile referrals from April 4, 2005 to the present offense on October 27, 2011, for status offenses, probation/parole violations, substance-related offenses, other nonviolent offenses, gang-related offenses, and violent offenses [(simple battery x 2, robbery no weapon, and battery with deadly weapon x 2 (instant offense)]. Juvenile interventions have included several incarceration at the Jan Evans Juvenile Justice Center, probation (7/9/2008), China Springs (10/08 to 11/17/08), Nevada Youth Training Center with parole 8/26/09; Rites of Passage (11/30/09 to 1/3/11); recommitment to Nevada Youth Training Center with parole 8/11/11; and certification as an adult related to the instant offense. Youth parole will be unsuccessfully terminated upon sentencing for the instant offense.

Adult legal history includes the instant offense and conspiracy to violence the controlled substance act (SJC 12-12) to be dismissed per plea negotiations in the instant offense.

Employment History. For one week in September 2011, Kupa's worked as a graveyard stocker at Walmart. For three to four weeks November to December 2011, he worked as a picker and packer at Patagonia.

TEST RESULTS

Intellectual Functioning.

The *Wechsler Adult Intelligence Scale – IV*, a comprehensive test of intelligence, suggested that Kupa’a Kea is high average in intelligence, with *WAIS-IV* Full Scale IQ = 110, at the 75th percentile. Perceptual reasoning is comparably high average. Verbal comprehension, working memory (attention/concentration), and processing speed are average. Perceptual reasoning is significantly higher than verbal comprehension.

WAIS-IV Composite Score Summary

Scale	Sum of Scaled Scores	Composite Score	Percentile Rank	95% Confidence Interval	Qualitative Description
Verbal Comprehension	32	VCI 103	58	97 - 109	Average
Perceptual Reasoning	38	PRI 115	84	108 - 120	High Average
Working Memory	22	WMI 105	63	98 - 111	Average
Processing Speed	23	PSI 108	70	99 - 116	Average
Full Scale	115	FSIQ 110	75	106 - 114	High Average

Personality Functioning.

The *Minnesota Multiphasic Personality Inventory – 2*, a test of psychopathology and personality suggested that Kupa’a produced an invalid and uninterpretable profile due to a tendency to over-endorse psychological problems. Such a response style is potentially reflective of genuine feelings of extreme vulnerability associated with a current episode of acute turmoil considering his many situational stressors, a cry for help, a tendency to be self deprecatory or self-pitying, and/or attempt to impact his present legal situation.

The *Brown ADD Scales*, a measure of *ADHD* symptoms, suggested that Kupa’a endorsed problems potentially consistent with *ADHD*, specifically problems with attention (focusing, sustaining, and shifting attention to tasks) and affect/emotion (managing frustrating and modulating emotions). However, his *WAIS-IV* results did not evidence problems with working memory, processing speed, or perceptual reasoning, which are potentially reflective of inattentiveness. Consider such finding, his tendency to over-endorse problems on the *MMPI-2*, and his lack of significant psychomotor restlessness potentially indicative of hyperactivity, a diagnosis of *ADHD* was not suggested.

DIAGNOSTIC IMPRESSIONS: At the time of the offense (age 17)

- Axis I (*Clinical Disorders*): Amphetamine (Methamphetamine) Intoxication
Alcohol Intoxication
Amphetamine (Methamphetamine) Dependence
Alcohol Dependence
Conduct Disorder, Severe
History of Polysubstance Dependence (amphetamines, cannabis, cocaine, hallucinogens, inhalants, opioids, phencyclidine)
- Axis II (*Personality Disorders/MR*): No Diagnosis; Antisocial and Narcissistic Personality Features
- Axis III (*General Medical Condition*): Self-report suggested no acute medical problems
- Axis IV (*Psychosocial/ Environ. Probs*): Dysfunctional family environment and multiple childhood traumas
death of father, parental substance abuse, witness to domestic violence, emotional/verbal abuse and/or physical abuse by mother, stepfather, mother's boyfriend and brother; sibling gang affiliation; child neglect and abandonment by mother; prejudice; poverty; unstable residency
High risk, gang affiliated, and drug using peers
Involvement in the juvenile legal system
- Axis V (*Global Assessment of Functioning*): 40 – serious symptoms and major impairment in functioning

DIAGNOSTIC IMPRESSIONS: Presently (age 18)

- Axis I (*Clinical Disorders*): Amphetamine (Methamphetamine) Dependence, in Early Full Remission in a Controlled Environment (jail)
Alcohol Dependence, in Early Full Remission in a Controlled Environment (jail)
Adjustment Disorder with Depressed Mood
History of Polysubstance Dependence (amphetamines, cannabis, cocaine, hallucinogens, inhalants, opioids, phencyclidine)
- Axis II (*Personality Disorders/MR*): Antisocial and Narcissistic Personality Features
Rule Out Antisocial Personality Disorder with Narcissistic Features
- Axis III (*General Medical Condition*): Self-report suggested no acute medical problems
- Axis IV (*Psychosocial/ Environ. Probs*): Dysfunctional family environment and multiple childhood traumas
death of father, parental substance abuse, witness to domestic violence, emotional/verbal abuse and/or physical abuse by mother, stepfather, mother's boyfriend and brother; sibling gang affiliation; child neglect and abandonment by mother; prejudice; poverty; unstable residency
High risk, gang affiliated, and drug using peers
Crime, arrest, incarceration, involvement in the juvenile and adult legal system
- Axis V (*Global Assessment of Functioning*): 50 – serious symptoms

CONCLUSION. Kupa'a Kea was referred for psychological evaluation by defense counsel, Kathy Berning, Esq. Pursuant to plea negotiation, he pled guilty to two counts of that battery with a deadly weapon causing substantial bodily harm for acts on October 27, 2011 involving willful and unlawful use of force and violence upon two male victims, with a deadly weapon, a .22 caliber rifle, causing substantial bodily harm to both victims. Chronic and acute problems that may have been contributory factors to the offense are listed below:

1. Psychosocial Challenges: Dysfunctional Family Environment and Severe and Multiple Childhood Traumas. Psychosocially, Kupa'a was raised in a dysfunctional family environment with severe and multiple childhood traumas – death of father, parental substance abuse, witness to domestic violence, emotional/verbal abuse and/or physical abuse by mother, stepfather, mother's boyfriend and brother, sibling gang affiliation, child neglect and abandonment by mother, prejudice, poverty, and unstable residency. Children lack the life experience and coping mechanisms to adequately deal with such challenges and, therefore, are at risk of developing emotional problems, behavior problems, and maladaptive personality traits in response.

2. Gang Affiliation: An Alternate Family. Considering his dysfunctional family environment, the absence of his father and a stable father figure, his mother's neglect and abandonment, and prejudicial statements by elementary school peers due to his Hawaiian culture and lower socioeconomic status, Kupa'a yearned for love, acceptance, belongingness, and family. When in the sixth/seventh grade he joined the tagging crew Ultimate Tagging Crew (UTK), he felt a sense of belonging: "Now I was part of something. I was accepted." When in the seventh/eighth grade he kicked it with and was then jumped in by the Sunset gang, he found an alternate family: "They made me feel wanted. They would call me and invite me to join them....Sunset had older people that didn't know me but were going to love me. And that's what felt good."

When reviewing childhood risk factors between the age of 10 and 12 that predispose youth to join and remain in a gang,¹ Kupa'a had several risk factors:

Neighborhood Factors: Lived in gang-affiliated neighborhoods

Family Risk Factors: One parent household plus other adults; low household income; siblings gang affiliation; poor family management

Peer Group Risk Factors: Association with friends who engage in problem behaviors

Individual Risk Factors: Early marijuana use; early violence; antisocial beliefs; early drinking; externalizing behaviors, poor refusal skills

Considering the number of risk factors identified for Kupa'a (12), he would be identified as at "high risk" of joining a gang at ages 13 to 18. He would be 13 times more likely to join a gang as compared to "no-risk" youth with no risk factors or only one risk factor.

Angel's gang affiliation was a significant contributory factor to the offense. His DSG sureño gang sought to fight a norteño gang, although it appears their adversaries may have been misidentified.

3. Conduct Disorder. At the time of the instant offense, Kupa'a Kea met the criteria for the childhood/adolescent disruptive behavior disorder, *Conduct Disorder, Severe*, which fueled his offense behavior. Symptoms of this behavior disorder include serious rule violations, deceitfulness, theft, destruction of property, and/or aggression. Adolescents with *Conduct Disorder* frequently

have interactions with the juvenile justice system and may engage in unlawful and violent behavior. A *Conduct Disorder* places a child/adolescent at risk of developing *Antisocial Personality Features* as adolescents and *Antisocial Personality Disorder* as adults.

4. Antisocial and Narcissistic Personality Features and Unformed Character. Personality, defined as one's sense of self, one's coping skills, and one's interpersonal skills, is rooted in biopsychosocial factors. Considering Kupa'a's psychosocial challenges (dysfunctional family environment and severe and multiple childhood traumas), his gang experience and risk factors, and his *Conduct Disorder*, his personality development has been challenged. However, at the time of the instant offense, his character/personality was not yet fully formulated. Even now, he is still in the process of developing his character/personality.

At age 17 and 18, Kupa'a has maladaptive personality traits, specifically, *Antisocial and Narcissistic Personality Features*, which contributed to the offense behavior. Kupa'a's *Antisocial Features* involve disregard for the rights of others, social norms, and the law; deceitfulness; irresponsibility; impulsivity; and aggressive behavior. Kupa'a's *Narcissistic Features* involve grandiosity, arrogance, and admiration-seeking. The latter developed as a compensatory reaction to his dysfunctional and abusive childhood. Such experiences compromised his sense of self. However, he was intelligent and school was his respite. In an attempt to vie for positive attention and feel better about himself, he sought opportunity to show off his intelligence and wit. In the process, he developed a compensatory inflated sense of self.

Kupa'a is at risk of developing an *Antisocial Personality Disorder with Narcissistic Features (Rule Out)*. As to whether Kupa'a will end up with this *Personality Disorder* has yet to be determined. Personality formulation is most prominent during the adolescent years but extends into the mid-twenties. Personality formulation includes exploration and experimentation. Exploration and experimentation may include risky, illegal, and dangerous activities like substance use, unsafe sex, risky driving, and antisocial behavior. For most teens who experiment in risky or illegal activities, these behaviors are fleeting and cease with maturity. Only a small portion of adolescents develop an entrenched pattern of problem behavior that persists into adulthood.² Statistics show that 17 year olds commit more crimes than any other age group and that thereafter, the crime rate declines steeply; most adolescents grow out of their antisocial tendencies as their individual identity becomes settled and their character/personality fully form.³

Adolescent Cognitive Maturity and Psychosocial Immaturity. Adolescent maturity involves both cognitive/intellectual maturity and psychosocial maturity. By age 16, adolescents of average to above average intelligence have cognitive/intellectual maturity comparable to adults.⁴ Intelligence testing suggested that Kupa'a is high average in intelligence, with intellectual functioning at the 75th percentile (WAIS-IV Full Scale IQ = 110); so, at the time of the offense and presently, he has cognitive/intellectual maturity comparable to an adult.

However, at the time of the offense, at age 17, Kupa'a was not psychosocially mature. At 17, adolescents are less capable than adult in making real-world choices for a variety of reasons: (1) Their brain, particularly the frontal lobe which allows one to prioritize thoughts, think abstractly, anticipate consequences, plan, make decisions, and control impulses, is not yet fully developed;⁵ (2) They lack experience; and (3) They are less efficient in their decision-making capacity.

Adolescent decision-making, distinct from adult decision-making is marked by the following: 1) Susceptibility to peer influence; 2) Focus upon immediate or short-term consequences rather than

long-term consequences; 3) More focus upon reward than risk when calculating risk vs. reward; and 4) Proneness toward emotional and behavioral impulsivity rather than self-regulation.²

During the alleged offense, Kupa'a was susceptible to peer influence of the gang (called by his 18-year old DSG peer and expected to back him up; handed a weapon by this same gang member). He was focused upon immediate consequences and rewards (backing up a gang member's friend; fighting a rival gang) rather than long-term consequences and risks (arrest, conviction, incarceration, injury to his two victims, and the impact upon so many people) and did not engage in adequate cost-benefit analysis. He acted with emotional and behavioral impulsivity (felt a sense of invincibility, adrenaline-rush, and fear; impulsively shot into the crowd of his presumed adversaries). He did not engage in self-regulation involving regulation of his emotions and behaviors and implementation of a well thought-out prosocial plan to better manage the conflict at hand or extricate himself from the situation.

6. Substance Intoxication and Dependence. Finally, at the time of the offense, Kupa'a Kea met the criteria for *Amphetamine (Methamphetamine) Intoxication and Dependence and Alcohol Intoxication and Dependence*. There is a strong link between substance intoxication and violence in that substances decrease emotional and behavior inhibition and increased the likelihood of an emotional or affective response and reactionary or impulsive behavior. In the case of the instant offense, substances decreased his inhibition and facilitated his emotional and reactionary or impulsive behavior.

From age 11/12 until the time of his offense, Kupa'a has used a variety of substances, also meeting the criteria for *History of Polysubstance Dependence (amphetamines, cannabis, cocaine, hallucinogens, inhalants, opioids, phencyclidine)*. At the time of the present evaluation, his substance dependence is in early remission (remission for over one month but under 12 months) in a controlled environment (jail).

Defendant's Post Offense Reflections: In reflection of his offense behavior, Kupa'a Kea stated, "It is the biggest mistake I ever made in my life. I've caused pain and suffering I can't take back. No one deserves that. I had dreams. I had goals. I was going to be somebody in life but I threw it all away. I'm so sorry for what I've done to myself and them, the victims. If there was anything I can do to take it back, I would. I think about their families hurt. I think of the story they have to tell somebody about how they got shot. I think about what my life could have been if this never happened."

Penal Proportionality for Adolescents involved in the Adult Criminal Justice System.

Proportionality holds that fair criminal punishment is measured not only by the amount of harm caused by the defendant but also by his degree of culpability. Literature suggests that adolescents are potentially less culpable than their adult counterparts due to their developmental immaturity, deficiencies in decision-making capacity, heightened vulnerability to coercive circumstances, and unformed character.² In Kupa'a's case, there is no doubt that he is responsible for his violent crime. However, due to his adolescent status at the time of crime, psychosocial immaturity, adolescent decision-making, susceptibility to gang-related peer pressure, and unformed character, from a psychological perspective he is potentially less culpable than a comparable adult offender. As to whether he then deserves to be punished less harshly than a comparable adult offender is left to the discretion of the court.

Treatment Recommendations. In making treatment recommendations for Kupa'a Kea, it is important to consider both his treatment needs and the safety of the community. If granted probation, he would need a six to twelve month residential program that addresses his substance abuse, maladaptive personality traits, and violent offending behavior and concurrently provides him the opportunity to pursue academic and/or vocational training opportunities to ready him for return to the community. He expressed interest in re-entering the Rites of Passage program, but as to whether he would be eligible as an adult who has committed a violent crime is unknown. If incarcerated, Kupa'a would benefit from involvement in as many mental health and substance abuse programming interventions and academic and vocational opportunities as he is eligible.

Martha B. Mahaffey, Ph.D.

Martha B. Mahaffey, Ph.D.
Clinical Psychologist
Diplomate in Forensic Psychology,
American Board of Psychological Specialties

¹ Hill, K.G., Lui, C., and Hawkins, J.D. (2001). Early precursors of gang membership: A study of Seattle youth. *Juvenile Justice Bulletin*, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.

² Steinberg, L., & Scott, E. S. (2003). Less guilty by reason of adolescence. *American Psychologist*, 58, 1009-1018.

³ Scott, E. S., & Steinberg, L. (2008). Adolescent development and the regulation of youth crime. *The Future of Children*, 18, 15-33.

⁴ Steinberg, L., Cauffman, E., Woolard, J., Graham, S., Banich, M. (2009). Are adolescents less mature than adults? Minors' access to abortion, the juvenile death penalty; and the alleged APA "flip-flop." *American Psychologist*, 64, 583-594.

⁵ American Bar Association (2004). Cruel and Unusual Punishment: The Juvenile Death Penalty. Adolescence, brain development, and legal culpability. *Juvenile Justice Center*. American Bar Association.

Code: 4185

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06-18-2012:05:43:55 PM
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Transaction # 3026431

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.

Case No. CR12-0110

KUPAA KEA,

Dept. No. 9

Defendant.

_____ /

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
Deputy District Attorney
1 South Sierra Street
South Tower, 4th Floor
P.O. Box 30083
Reno, Nevada 89520

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

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

10:11

11 over the presentence investigation report.

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

10:12

16 report.

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,
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.

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
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
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.

10:33

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. 10:34

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 10:34
6 community he is released in. And I'm going to point that out
7 as I go along.

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 10:35
11 attorney's office.

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 10:35
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.

20 Then we have that same year, just a month later, 10:35
21 robbery, burglary, battery, trespass. That's what he was
22 actually arrested for. PSI only listed the robbery.

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
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
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
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,
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 10:51
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.

15 I think the idea of having such a high punishment for 10:52
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.

19 THE COURT: Thank you very much.

20 Sir, please stand. The law affords you the 10:52
21 opportunity to tell me anything you want to tell me before I
22 impose sentence. Now would be your time.

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
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.

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.

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

17 THE CLERK: He imposed it.

18 (Proceedings concluded.)

19 -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 18th day of June, 2012.

17

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/s/ Cecilia Vohl
CECILIA VOHL, NV CCR #246

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

8 * * *

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
17 shown by Defendant as to why judgment should not be pronounced against him, the Court
18 rendered judgment as follows:

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

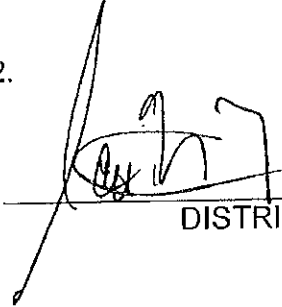
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27 ///

28 ///

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.

4 
5 _____
6 DISTRICT JUDGE
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CR12-0110
STATE VS. KUPAA KEA
District Court
Washoe County
DC-09900053759-003
(TN) (DS 27 Pages)
02/14/2014 04:49 PM
3565
CUMBER

Case No. CR12-0110

Dept. No. IX (9)

2014 FEB 14 PM 4:48

JOEY WILSON, CLERK OF THE COURT

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

KUPAA KEA
Petitioner,

v.

State of Nevada, Warden of ESP.
Respondent.

**PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)**

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you're not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: ELY State Prison

2. Name and location of court which entered the judgment of conviction under attack: Sevier Judicial District Court

3. Date of judgment of conviction: June 1st, 2012

4. Case number: CR-12-0110

5. (a) Length of sentence: Sentence 1 = 35 months (3 years) - 156 months
(13 years) consecutive to Sentence 2 = 35 months (3 years) - 156 months
(13 years)

(b) If sentence is death, state any date upon which execution is scheduled: N/A

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes No X

If "yes", list crime, case number and sentence being served at this time: N/A

7. Nature of offense involved in conviction being challenged: Count I - Battery with a Deadly Weapon causing substantial bodily harm; Count II - Battery with a Deadly Weapon causing substantial bodily harm.

8. What was your plea? (check one):

(a) Not guilty (b) Guilty X (c) Nolo contendere

9. If you entered a plea of guilty to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty was negotiated, give details:

Pled guilty to both counts.

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

(a) Jury (b) Judge without a jury

11. Did you testify at the trial? Yes No

12. Did you appeal from the judgment of conviction? Yes X No

13. If you did appeal, answer the following:

(a) Name of Court: NEVADA Supreme Court

(b) Case number or citation: 61160

(c) Result: Denied

(d) Date of result: February 13th 2013
(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not: N/A

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

16. If your answer to No. 15 was "yes", give the following information:

(a)(1) Name of court: Second Judicial District Court

(2) Nature of proceeding: Motion to modify sentence

(3) Grounds raised: Illegal juvenile certification

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result: N/A

(6) Date of result: N/A

(7) If known, citations of any written opinion or date of orders entered pursuant to such result:

N/A

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: N/A

(2) Nature of proceeding: N/A

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result: N/A

(6) Date of result: N/A

(7) If known, citations of any written opinion or date of orders entered pursuant to such a result: N/A

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes ☐ No ☒

Citation or date of decision: N/A

(2) Second petition, application or motion? Yes ☐ No ☒

Citation or date of decision: N/A

(3) Third or subsequent petitions, applications or motions? Yes ☐ No ☒

Citation or date of decision: N/A

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) (First petition writ of habeas corpus)

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: Ground 1) Decision of Direct Appeal

(b) The proceedings in which these grounds were raised: Direct Appeal
(fast track supplement)

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

Counsel did not specify all important information pertaining to this ground and lack legitimate argument.

18. If any of the grounds listed in No.'s 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

N/A

19. Are you filing this petition more than one year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

N/A Filed timely

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ☒ No ☒

If yes, state what court and case number: [scribbled out]

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal:

Defense Attorney: Katherine J. Berning
Direct Appeal: Katherine J. Berning

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes ☐ No ☒

If yes, specify where and when it is to be served, if you know: N/A

23. State concisely every ground on which you claim that you are being held unlawfully, summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

1 A(Grand One:) Ineffective Assistance of Counsel in violation of
2 Petitioner's 4th and 6th Amendment rights to the U.S.
3 Constitution where through investigation defense counsel
4 would find enough evidence AND mishandling of evidence
5 that it WAS in the best interest to go to trial.

6
7 A(supporting facts): On October 27th 2011 petitioner's
8 1989 Cadillac Bracham was illegally searched and
9 seized by Reno Police Department (R.P.D.) based off of
10 witness testimony that the Cadillac belonged to
11 Petitioner. Witnesses, Asael Mariscal and Monika
12 Herrera pointed out the Cadillac and said it
13 belonged to Kea. Detectives and officers of the
14 R.P.D. began to search the vehicle. Upon searching
15 the vehicle, officers discovered .52 grams of
16 methamphetamine and a scale with methamphetamine
17 residue on it charging Kea with Possession of a
18 Controlled Substance (felony) and Possession of Drug
19 paraphenilia (misdemeanor). If defense counsel was effective
20 AND investigated each charge's elements AND cause,
21 counsel would discover that Kea's car WAS illegally
22 searched and seized based on two merits:

23 1) bias opinion of victim group's testimony (Asael
24 Mariscal and Monika Herrera) ~~also~~ that car belongs to Kea
25 does not constitute probable Cause, to search said vehicle
26 2) 1989 Cadillac Bracham was not registered
27 with the Department of Motor Vehicles nor were
28 there updated license plates to verify who the
29 Cadillac belonged to legally.

1 Scarpa v. Dubois, 38 F.3d 1(1st Cir 1994) states:

2 "Defense counsel must understand the elements
3 of the offenses which client is charged in
4 order to provide effective assistance of
5 counsel."

6 see also McQueen v. Swenson, 498 F.2d 207(8th cir 1974)

7 ~~and~~ If counsel investigated and understood each
8 element of offense, counsel would realize that
9 a motion to suppress evidence would be a
10 necessary tactic and defense to proceed to trial.
11 Due to the illegal search and seizure of Ken's
12 Cadillac, counsel would find it was a warrantless
13 search and seizure. It wasn't until after the
14 Cadillac was seized that Detective Clark of
15 R.P.D. obtained a search warrant by the
16 Honorable Judge Pearson. Petitioner believes it
17 was in the best interest to proceed to trial and
18 that counsel erred and did not provide effective
19 assistance by not submitting a motion to
20 suppress evidence which amounted to ineffective
21 assistance of counsel and relief in Morrison v.
22 Kimmelman, 650 F.Supp. 801(D.N.J 1986).

23
24 A2) On 2-7-12 (February 7th 2012) petitioner met
25 with counsel Katherine I. Berning at the
26 Washoe County Jail (WCJ) to discuss a plea offer.
27 Mrs. Berning presented the offered capped
28 recommendation of 2 to 15 running concurrent
29 with another 2 to 15 years. It wasn't until

1
2 sentencing that petitioner realized he signed
3 A "blind plea." A "blind plea" means that
4 the state is free to argue for any sentence
5 within the sentencing guidelines that they
6 feel is appropriate. Meaning regardless, the
7 state could recommend the minimum or maximum
8 sentence and recommend each sentence run
9 concurrent or consecutively. It's no surprise
10 that the state would recommend the maximum
11 if they had the opportunity to do so. (Please
12 see sentencing transcripts ^{exhibit 1} page 28 lines 4-10.)
13 Giving free rein to the prosecution is
14 similar to signing your own death certificate.
15 Whenever a defense agrees to a blind plea
16 they should almost expect to receive the maximum
17 because it is uncertain what the
18 prosecution may ask for.

19 In U.S. v. Borders 992 F.2d 563 (5th Cir. 1993)
20 "Trial counsel who induced defendant to
21 plead guilty to a plea agreement which
22 was ambiguous, amounted to Ineffective
23 Assistance of Counsel."

24 The Plea bargain system is designed to
25 save the defendant and state valuable money
26 and time. In exchange for a guilty plea, the
27 state is to recommend a certain sentence
28 that the defense and state agree upon.
29 A blind plea has almost the same result

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2 AS losing at trial.

3

4 Ac) Petitioner was initially charged with (2) two
5 criminal gang enhancements based upon witness
6 testimonies that Kea did in fact belong to
7 DSG (DEAD SIDE GANG). However, PnP (Department of
8 Parole and Probation) reports that petitioner
9 was "jumped" into SST (Sunset Tree) at age
10 14. Not once has the Regional Gang Unit
11 division ever encountered Kea and he proclaim
12 himself AS DSG. PnP also reports that
13 Kea "never claimed to be DSG only hang
14 out with them." (p.s. ^{exhibit 2} p.s.I pg #4)

15 A criminal gang enhancement is applied if
16 the crime committed was a promotion for
17 their gang. The fact is, by saying Kea was
18 a member of DSG without him ever being
19 validated prior to incident and him not
20 ever claiming to be apart of DSG at of
21 his own words should hold the gang enhancement
22 AS invalid. To fabricate the story that Kea's
23 crime was a promotion for the benefit of
24 a gang he DID not belong to is absurd.
25 If counsel investigated and hired a gang expert
26 to testify, efforts made could have possibly
27 voided the gang enhancement and attack
28 the validity of the gang enhancement.

29

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2 Ad) Counsel failed to object to evidence of a
3 ballistic test. Testimonies from eye witnesses
4 didn't fully corroborate with each testimony.
5 Most testimonies couldn't identify Kea as
6 sole shooter, and couldn't identify whether
7 or not Kea or co-defendant shot (1) one or
8 more persons. Therefore, a discrepancy occurred
9 which counsel should have an outside party
10 expert verify whether or not petitioner did
11 in fact shoot both victims; Oscar Valencia
12 and Cesar Anton, and ~~accept~~ not accept prosecution's
13 evidence as true. In Harris v. United States,
14 Ramsey v. Wood, 64 F.3d 1432 (9th Cir 1995),
15 counsel's failure to object to evidence constituted
16 Ineffective Assistance of Counsel. If counsel
17 would have requested ballistic test results
18 findings would be in the favor of
19 Petitioner, increasing likelihood of
20 continuing to trial.

21

22 Ae) The United States Constitution states to be
23 found guilty by a jury trial, evidence must show
24 beyond a reasonable doubt that you are a
25 Guilty. You also have the right to confront
26 your accusers. Not once has petitioner
27 admitted to law enforcement or investigators
28 (prior to plea hearing) that he committed the
29

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2 Alleged crimes. Co-defendant Marcos Rodriguez's
3 testimony and admittance to crime severely
4 hurt Ken in a number of ways. This case
5 was severed due to Ken's juvenile certification.

6 Counsel failed to present Co-defendant's
7 testimony and omission as inadmissible.

8 Henry v. Scully, 78 F.3d 51 (2nd cir, 1996) states:

9 "Trial Counsel's failure to object to
10 admissions of co-defendant's confession
11 as evidence against defendant constituted
12 Ineffective Assistance of Counsel."

13

14 Prosecution relied on out-of-court statements

15 to present as sincerely true. Counsel erred by

16 not allowing petitioner to assume right to

17 a preliminary hearing and cross-examine

18 all witnesses. Resulting, prosecution used

19 testimonies from un-present witnesses

20 as evidence to convict petitioner. It's evident

21 by Detective Atkinson, B's witness reports,

22 that witnesses testimony was inaccurate

23 and biased. Being that no cross-examination

24 was used to confront accusers, their

25 testimonies is considered hearsay evidence

26 and inadmissible in trial and sentencing.

27 By allowing the state to use hearsay evidence

28 counsel did not provide effective assistance.

29 Allowing hearsay evidence defeats the whole

1

2 purpose of a cross-examination and the
3 right to confront your accusers. Without
4 any hearsay testimony there's no valid
5 evidence that Petitioner did in fact shoot
6 (2) persons, and would not be found guilty
7 by a jury trial.

8

9 In Strickland v. Washington, 46 U.S. 668, 104 S.Ct.
10 2052, 2064-74, 80 L.Ed.2d 674 (1984)

11

12 "Claims of ineffectiveness of counsel in a criminal
13 case are evaluated under a two-prong test set
14 forth in Strickland (1) that his attorney's
15 representation fell below an objective standard
16 of reasonableness; and (2) due to counsel's
17 unprofessional errors that the results of
the proceedings would have been different."

18

19 (1985).

20 Petitioner believes he has met requirements set
21 forth in Strickland and if not for counsel's
22 misadvice errors and failure to investigate and
23 challenge charges he would have insisted on
24 going to trial.

25

26 Petitioner prays to this Honorable court for
Habeas Corpus relief.

27

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2 of the Plea Agreement, Plea hearing, and interview;
3 is that prosecution used a fabricated story by
4 unpresent witnesses that Petitioner did in fact
5 ambush victims but Petitioner never admitted
6 to those circumstances. Without witnesses taking
7 the stand or present to be cross-examined,
8 gives an unfair advantage to defense and
9 deems the "Ambush story" as hearsay evidence.
10 In, U.S. v. Ragliese, 805 F.2d 1117, 1123 (2d Cir. 1986)
11 grants relief by reiterating the 5th Amendment:

12 "The 5th Amendment Due Process Clause
13 requires defendant not be sentenced on
14 basis of "materially untrue" assumptions, or
15 bias "misinformation".

16 Prosecution destroyed petitioner's character by
17 misleading the judge to believe that petitioner
18 did in fact ambush victims, which hurt
19 petitioner's chance of a lesser sentence, severely.
20 As a result of the "Ambush" claim prosecution
21 recommended petitioner to serve a 6 to 15 (72 months to
22 180 months) year sentence consecutively with another
23 6 to 15. The recommendation and Ambush assumptions
24 made by prosecution, influenced ~~the~~ the
25 Honorable Judge Freeman to not side way
26 of defense. Counsel erred by not objecting
27 to hearsay evidence and allowing prosecution's
28 testimony as true and untrue which
29 constitutes Ineffective Assistance of Counsel 0092

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in Patrasso v. Nelson 121 F.3d 297 (7th cir. 1997)

Bc) Parole and Probation's investigation report (PST or POR) is necessary and a detrimental factor in the sentencing phase. Upon review of PST petitioner discovered a few mistakes attacking Kea's character which he presented to Mrs. Berning who did not object to them during sentencing. Parole and Probation's recommendation of 3 to 13 (36 months to 156 months) consecutive to another 3 to 13 is based off of (2) two unreliable reasonings:

(1) Parole and Probation adapted prosecution's theory of "Ambushing Victims" which is hearsay evidence based off (2) two reasonings;

1a) Parole and Probation is supposed to do their own investigation, which no witnesses came forward to corroborate prosecution's theory.

1b) No witnesses took the stand to insure their testimony is the truth and nothing less of it; and didn't provide defense a chance to cross-examine witnesses and strike their testimony from record.

(2) Juvenile record was the main and only real reason to judge Kea's history and character prior to adult sentence conviction.

Reason (1) is self-explanatory (p.s. pg #9-11 of writ)

Reason (2) isn't grounds to make a legitimately legal recommendation off of. Petitioner was

1
2 17 years of age at the time of incident. During
3 A psychiatric evaluation by Dr. Martha
4 Mahaffey, Mrs. Mahaffey concluded that
5 there were a number of mitigating factors
6 ~~about~~ such as family abuse history, early drug
7 use, introduced to violence early on, etc. to why
8 a juvenile would act out in violence the way
9 he has. There are also a number of
10 experts who agree with Mrs. Mahaffey's
11 conclusion that juveniles are less responsible
12 for their actions due to their age and overall
13 history. Parole and Probation did not take
14 in account whatsoever to Mrs. Mahaffey
15 most recent evaluation. Their recommendation
16 is a result of a failure to investigate fully
17 of Petitioner's current health state of mind;
18 crime and its factual elements, and a lack of
19 family history knowledge. If counsel was
20 effective she would have insisted on another
21 Parole and Probation evaluation which she
22 was present for.

23
24 U.S. v. Acklen 47 F.3d 739 (5th cir. 1995) states
25 "A criminal defendant can meet the prejudice
26 prong of Strickland in non-capital sentencing
27 cases by showing he would have received
28 a less harsh sentence absent counsel's
29 unprofessional errors or omissions. 0094
(15)

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Petitioner believes he has met ~~the~~ requirements
in Strickland. If this Honorable Court takes
in account that petitioner was 17 years of
age when he committed said crime, the evaluation
from Dr. Mahaffey, his family abuse and drug
history, all mitigating factors, and illegal use
of hearsay evidence by prosecution and parole
and probation, then court would find counsel
did not provide the best-of-their-~~capabilities~~
abilities - assistance. Petitioner was sentenced
illegally in violation of Petitioner's 14th
Amendment right "free from cruel and unusual
Punishment." Petitioner submits respectfully.
Petitioner prays to this Honorable Court
to an evidentiary hearing or a new
Sentencing Hearing.

1 c)(Grand three): Ineffective Assistance of Counsel
2 in violation of Petitioner's 6th and 14th Amendment
3 Rights to the U.S. Constitution, Counsel
4 Ineffectively advised Petitioner to sign an
5 Ambiguous ~~and~~ plea agreement and plea guilty
6 to a "blind plea," using coercion and duress.
7

8 c)(Supporting facts:) On 2-7-12 (February 7th 2012)
9 Petitioner met with defense Counsel Katherine
10 I. Berning, at the Washoe County Jail to
11 discuss a plea agreement offered by the
12 State. The State's offer included, to
13 dismiss charges Possession of Drug Paraphernalia,
14 Possession of a Controlled Substance, Conspiracy to
15 Commit a Battery with a Deadly Weapon, and
16 Conspiracy to Violate a controlled substance
17 Act, following two criminal and enhancements.
18 The State would be free to argue for any
19 sentence they feel is appropriate regarding
20 two Battery with a Deadly Weapon charges.
21 Mrs. Berning did not make sure Petitioner
22 understood the plea agreement's contents. She
23 simply explained that this plea agreement
24 meant I would be receiving a (two) 2 to
25 15 (fifteen) concurrent for both charges. She
26 also explained that due to my young age
27 it's more than likely I would receive
28 probation being that it's a probatable case.
29 I was recently diagnosed with Schizophrenia^{99%} and
(17)

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AS A result was placed on psychosis medication Risperdal. Petitioner has never before used psychosis medication until his term at the Washoe County Jail. His newly daily use of Risperdal left the Petitioner in an incompetent state of mind. Counsel used Ken's family to get him to "take the deal", which violated attorney-client privileges. Counsel knew petitioner was under new medication, yet did not question whether this new medication could negatively influence him in anyway.

In Bouchillon v. Collins 907 F.2d 589 (5th cir 1990)

"Trial counsel was ineffective for allowing Bouchillon to plead guilty when he was incompetent, the plea to be set aside."

Counsel ~~errand~~ erred by knowing petitioner's incompetent state of mind and allowing him to sign an ambiguous deal and plead Guilty, and using his family to coerce him into signing plea Agreement.

Petitioner submits respectfully and prays to this Honorable Court for an evidentiary hearing on this Grand.

1 D(Grand Four): Ineffective Assistance of Counsel,
2 in violation of defendant's 5th, 6th, and 14th
3 Amendment rights to the U.S. Constitution,
4 illegal jurisdiction and certification, if not for
5 defense counsel's failure to investigate petitioner's
6 juvenile criminal history and understand all
7 charges and merits petitioner would have been
8 in Juvenile custody.

9
10 D(Supporting Facts): On 10-28-11 (October 28th, 2011)
11 petitioner was arrested and detained at the
12 Jan Evans Whittenburg Hall Detention Center, due
13 to the fact that he was a minor. (3) three
14 days later on 10-31-11 (October 31st, 2011) he was
15 illegally certified to stand trial as an adult
16 based on a prior conviction of Strong
17 Armed Robbery case number (JV08-00375).
18 However, petitioner was never convicted of
19 Strong Armed Robbery but it was pled
20 down to a non-violent commercial burglary.
21 If counsel were effective, she would
22 have investigated and realized that
23 the certification as an adult was
24 illegally penalized and would have submitted
25 a motion to vacate jurisdiction.

26
27 D.) During the juvenile detention hearing, then
28 counsel (who is unknown) advised petitioner that
29 he would not be certified nor would he, ~~over~~
19

4

2 lack of evidence. Once the state requested
3 that petitioner be automatically certified
4 to stand trial as an adult, then counsel
5 had nothing to say other than "she wish
6 she would have known about a prior conviction."

7

8 Due to lack of investigation and lack
9 of knowledge of petitioner's criminal history,
10 Petitioner believes both counsel's erred and adult
11 jurisdiction was illegally enhanced.

12 Petitioner prays to this honorable court for
13 an evidentiary hearing regarding this ground.

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1 e)(Grand five): Ineffective Assistance of Counsel
2 in violation of Petitioner's 6th and 14th
3 Amendment rights to the U.S. Constitution,
4 Counsel did not provide best ASSISTANCE
5 during appeal (direct), nor did counsel want to
6 file appeal, and deliberately sabotaged appeal.
7

8 e)(Supporting facts): Immediately following the
9 Judgement of Conviction on 6-1-12 (June 6th 2012)
10 Petitioner contacted defense counsel Katherine
11 I. Berning to ask for her assistance in an
12 appeal. However, Mrs. Berning was not present
13 so her office said they would forward the
14 message. One week from petitioner entering
15 custody of N.D.O.C, he was contacted by
16 Mrs. Berning (which was two weeks following
17 Judgement of Conviction) and she told him
18 she doesn't see an appealable case. (p.s. exhibit 4 "letter")
19 Following the letter she also included a
20 withdrawal of counsel motion. (p.s. exhibit 4 motion to withdraw)
21 Petitioner then filed a Notice of Appeal on
22 6-18-12 (June 18th 2012) pro se, less than (2) two
23 weeks shy of (30) thirty day deadline. Mrs. Berning
24 did not include nor did she ever forward
25 any and all documents, transcripts, etc, over to
26 petitioner once she withdrew as counsel, which is
27 mandated by law in NRS. 7.055 (see also
28 Nev. Sup. Ct. Rule 166(4).) Petitioner truly believes
29 defense counsel Mrs. Berning deliberately lessened

1
2 the chance of successfully appealing for (3) three
3 reasons:

4 (1a) Mrs. Berning initially refused to file an
5 appeal

6 (1b) Did not surrender any case-related documents
7 over to petitioner pursuant to NRS 7.055

8 (1c) Did not respond to petitioner's request of her
9 assistance until (2) two weeks prior to deadline.

10 If you take in account petitioner's youthful age,
11 inexperience and lack of knowledge of law, and shortness
12 of time, it gives some detail of ~~case~~ probability
13 of unsuccessfulness without a counsel. Counsel's
14 failure to file notice of appeal constituted
15 ineffective assistance of counsel, and
16 required vacated judgement of conviction
17 and sentence and entering a new judgement.

18 in U.S. v. Beers, 76 F.3d 204 (8th cir 1996)
19 (see also Stirsen v. U.S., 102 F.Supp.2d 912 (M.D. Tenn 2000))

20
21 e) Once Notice of Appeal filed pro se by Petitioner
22 was recognized, the Honorable Courts appointed
23 defense counsel Katherine I. Berning, as appellant
24 counsel. Being the fact that Mrs. Berning initially
25 did not want to file direct appeal and believed
26 this wasn't an appealable case, petitioner felt
27 counsel did not have best interests of petitioner.
28 which validates a conflict of interest. Therefore,
29 Petitioner filed a ~~motion~~ Motion for withdrawal

1

2 of Attorney and demand of case records/documents,
3 ~~and~~ Although, no response was ever made for
4 that motion by court of counsel, Mrs. Berning
5 continued to work as Appellant counsel.

6 Mrs. Berning's performance fell below an
7 inadequate standard. She never contacted petitioner
8 to discuss or corroborate what grounds to
9 raise, she merely raised a 14th Amendment violation
10 of cruel and unusual punishment, but failed to
11 raise other grounds including all supporting
12 facts of Grand (1) one through Grand (4) as provided
13 in this writ of habeas corpus. Harris v. Kuhlman
14 601 F.Supp 987 (E.D. New York 1985) states:

15 "Counsel's failure to perfect appeal
16 which was attributed to state constituted
17 Ineffective Assistance of Counsel."

18 Not only did she not contact petitioner
19 to discuss any element of appeal but
20 to this day she also never told petitioner
21 that his direct appeal was Denied. If
22 not for petitioner's own investigation and
23 contacting Clerk of Courts he would still
24 not know it was Denied.

25

26

27 Due process of Law guarantees defendant
28 the right to effective assistance of counsel
29 on first direct appeal, stated in Evidon

1

2 v. Lucey, 469 U.S. 387, 83 L. Ed. 2d 821, 105 S.Ct 830

3 (1985) -

4 The court erred by allowing Mrs. Berning
5 to remain as appellant counsel because clearly
6 there was a conflict of interest.

7 Petitioner prays to this honorable court
8 for a new judgement (sentencing hearing) or
9 habeas corpus relief.

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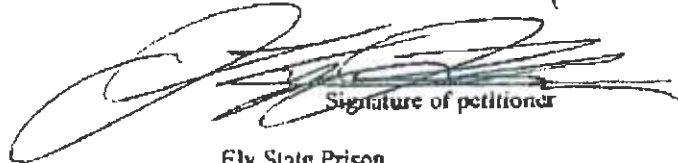
27

28

29

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

EXECUTED at Ely State Prison, on the 10 day of the month of FEBRUARY of the year 2014.



Signature of petitioner

Ely State Prison
Post Office Box 1989
Ely, Nevada 89301-1989

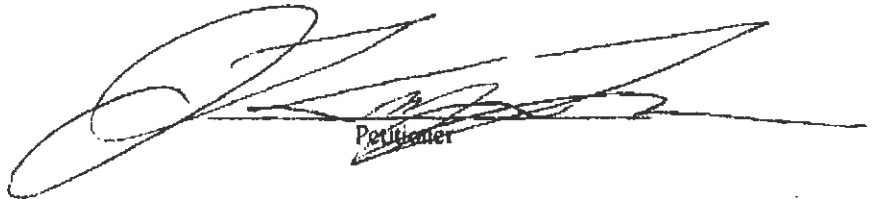
Signature of Attorney (if any)

Attorney for petitioner

Address

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.



Petitioner

Attorney for petitioner

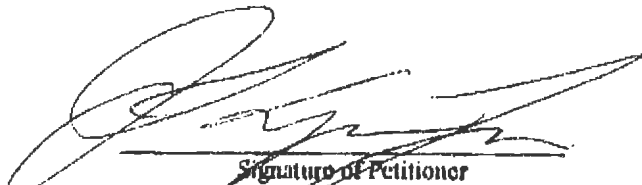
CERTIFICATE OF SERVICE BY MAIL

I, KUPAA KEA, hereby certify pursuant to N.R.C.P. 5(b), that on this 10 day of the month of February, of the year 2014 I mailed a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** addressed to:

2ND Judicial Court Dept. 9
~~Recognized prison correspondence~~
P.O. Box 30083
RENO NV 89520
Address

Attorney General
Heroes' Memorial Building
100 North Carson Street
Carson City, Nevada 89710-4717

District Attorney Office
District Attorney of County of Conviction
P.O. Box 30083
RENO NV 89520
Address


Signature of Petitioner

AFFIRMATION PURSUANT TO: N.R.S. 239B.010

I, HEREBY CERTIFY THAT I AM THE UNDERSIGNED
INDIVIDUAL AND THAT THE ATTACHED DOCUMENT
THAT IS ENTITLED: Writ of Habeas Corpus
(post conviction), DOES NOT
CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSON, UNDER THE PAINS AND PENALTIES OF
PERJURY, THIS, 10, DAY OF, February, 2014.

SIGNATURE: 

INMATE NAME PRINTED: KUPANA KEA

INMATE NUMBER: 1086980

ADDRESS: ELY STATE PRISON, P.O. BOX 1989, ELY, NV 89301



CR12-0110 DC-09800053759-004
STATE VS. KUPAA KEA (TN) (D9) 2 Pages
District Court 02/14/2014 04:48 PM
Washoe County 3585
CV4 CUMMOTIC

Exhibit 1

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

CR12-0110 DC-09900053759-005
STATE VS. KUPAA KEA (TN)(09) 2 Pages
District Court 02/14/2014 04:48 PM
Washoe County 3565
CUMMOT

Exhibit 2

PRESENTENCE INVESTIGATION REPORT

Kupaa Kea

CC#: CR12-0110

⑤ Page 4

DEFENDANT INFORMATION: (Continued)

Gang Activity/Affiliation: During arraignment in the Instant Offense, the defendant denied he was part of a gang and that his actions were gang-related. However, a review of his juvenile parole file revealed he initially joined a tagging crew in the sixth grade. During middle school, he was "jumped into his gang." According to other reports, the defendant claimed to have been disassociating with all gangs.

The Regional Gang Unit (RGU) was contacted on February 13, 2012. According to their records, the defendant is currently associated with the Dendside Gang (DSG). In October 2007, the RGU made first contact with the defendant at Sparks Middle School because he was exchanging colors with another gang member. At that time, he proclaimed Surreño membership; however, the next day, he claimed South Side Locos membership. In July 2008, the defendant claimed membership with the Criminal Mexican Infamous Soldiers. Three years later, he stated he was a member of Sun Set Trece. Finally, in December 2011, the defendant was arrested for Conspiracy to Violate the Controlled Substance Act and was also a suspect in an Attempted Homicide. During a consensual search of his residence, a BB gun and two .22 caliber bullets were located.

While being interviewed on March 2, 2012 at the Washoe County Jail, the defendant was confronted about his statements to Senior Judge Robison denying any gang involvement and/or being part of a gang shooting. According to the defendant, the Instant Offense was not gang-related and he did not mislead the judge about being part of a gang because he is trying to disassociate himself from the gang lifestyle. He also informed he has been part of the Sunset Gang since age 14 and only "hangs out" with DSG members.

IV. CRIMINAL RECORD

As of February 15, 2012, records of the Nevada Criminal Justice Information System, National Crime Information Center, Reno Justice Court, Reno Municipal Court, Sparks Justice Court, and Sparks Municipal Court reflect the following information:

CONVICTIONS- 3 **FEL:** 0 **GM:** 0 **MISD:** 3

INCARCERATIONS- 2 **PRISON:** 0 **JAIL:** 2

OUTSTANDING WARRANTS AND LEVEL OF OFFENSE (FEL, GM, MISD): None.

-WARRANT NUMBER AND JURISDICTION:

-EXTRADITABLE:

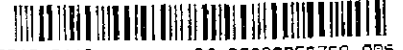
SUPERVISION HISTORY:

CURRENT- 0 **Probation Terms:** 0 **Parole Terms:** 0

PRIOR TERMS:

Probation- 0 **Revoked:** 0 **Discharged-** **Honorable:** 0 **Other:** 0

Parole- 0 **Revoked:** 0 **Discharged-** **Honorable:** 0 **Other:** 0



CR12-0110 DC-09900053759-006
STATE VS. KUPAA KEA (TN)(D9) 7 Pages
District Court 02/14/2014 04:48 PM
Washoe County 3565
CYS SJHMBSTP

Exhibit 3

ORIGINAL

FILED
Electronically
02-08-2012 02:53:48 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 2762729

CODE 1785
Richard A. Gammick
#001510
P.O. 30083
Reno, NV. 89520-3083
(775) 328-3200
Attorney for Plaintiff

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

* * *

Plaintiff,

Case No. CR12-0110

v.

Dept. No. 9

KUPAA KEA,

Defendant.

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)(a), a felony, and COUNT II. BATTERY WITH A DEADLY WEAPON CAUSING SUBSTANTIAL BODILY HARM, a violation of NRS 200.481(2)(a), 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)(a), a felony, and COUNT II. BATTERY WITH A DEADLY WEAPON CAUSING SUBSTANTIAL BODILY HARM, a violation of NRS 200.481(2)(a), 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

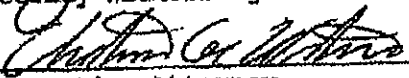
10 The undersigned does hereby affirm that the preceding
11 document does not contain the social security number of any person.

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

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26 0123434263dpbGPM

Exhibit A

FRY & BERNING LLC
ATTORNEYS AT LAW

ROBERT J. FRY, Esq.
L.L.M., Taxation



KATHRINE I. BERNING, Esq.
M.A., Counseling

MURIEL R. SKELLY, Esq.
of Counsel

June 13, 2012

Mr. Kupa'a Kea Offender ID 1086980
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, Nevada 89702

Re: Appeal of Conviction

Dear Mr. Kea:

It is my understanding that you have contacted my office and wanted to know if I would handle the appeal of your sentence for you on the criminal matter that just concluded and that I represented you on. **You have thirty (30) days from June 1, 2012, the day of your sentencing to appeal your case.**

Pursuant to Nevada Revised Statute (NRS) 177.015 with regard to appealing a final judgment in a criminal matter it is stated that;

"...the defendant in a criminal case shall not appeal a final judgment or verdict resulting from a plea of guilty, guilty but mentally ill or nolo contendere that the defendant entered into voluntarily and with a full understanding of the nature of the charge and the consequences of the plea, unless the appeal is based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings." (emphasis added).

As you may recall during your arraignment hearing in District Court, the judge asked you the following questions:

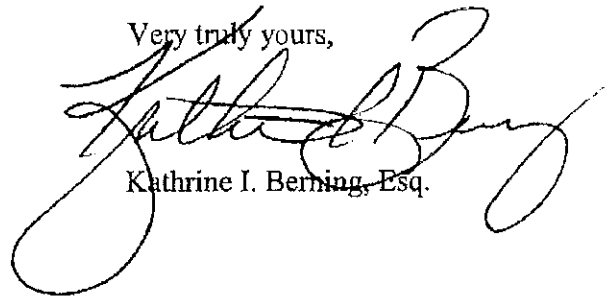
- 1) If you understood the charges against you;
- 2) If you had read the guilty plea memorandum,
(you and I discussed this document before your arraignment hearing);
- 3) If you understood the terms of the sentencing on the charges that were outlined in the guilty plea memorandum;
- 4) If you were forced into agreeing to what you were charged with, and the terms of your sentencing;
- 5) If you had willingly entered into the plea agreement.

Page Two
Mr. Kupa'a Kea
June 13, 2012

Those terms are also present in the Guilty Plea Memorandum which you voluntarily signed. I have included a copy of your Guilty Plea Memorandum as a courtesy to you.

In reviewing all of the pleadings, documents, and my notes that were generated during the course of your case, I have not been able to find an appealable issue on which to base a legal argument upon in order to have your sentence overturned or reduced.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kathrine I. Berning', written over the typed name.

Kathrine I. Berning, Esq.

enclosure
KIB/blb

Document Code #4300
KATHRINE I. BERNING, ESQ.
Nevada State Bar No. 3678
195 Casazza Drive
Reno, Nevada 89502
(775) 329-8646 - Telephone
Attorney for Defendant

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

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR12-0110

vs.

Dept. No. 9

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,

Defendant.

WITHDRAWAL OF ATTORNEY

COMES NOW, KATHRINE I. BERNING, ESQ., of FRY & BERNING, LLC, and hereby
withdraws as the attorney of record for 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, pursuant to Nevada Supreme Court Rule 46. All future pleading or correspondence should
be forwarded to the Defendant at last known address: ID 1086980, P.O. Box 7000 Carson City,
Nevada 89702.

DATED this 13th day of June, 2012.

/s/ Kathrine I. Berning
KATHRINE I. BERNING, ESQ.
Attorney for Defendant

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Number.

/s/ Kathrine I. Berning
KATHRINE I. BERNING, ESQ.
Attorney for Defendant

Pursuant to NRCP 5(b) , I certify that I am an employee of the Law Offices of Fry & Berning, LLC, and that on this date I deposited in the United States mail, at Reno, Nevada, with postage thereon prepaid, a true and correct copy of the attached WITHDRAWAL OF ATTORNEY, addressed as follows:

Mr. Christopher Wilson, Esq., DDA
P.O. Box 30083
Reno, Nevada 89520-3083

/s/ Barry Blough
BARRY BLOUGH, Paralegal to
KATHRINE I. BERNING, ESQ.

1 CODE #2300
CHRISTOPHER J. HICKS
2 #7747
P. O. Box 11130
3 Reno, Nevada 89520-0027
(775) 328-3200
4 Attorney for Respondent

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHINGTON

8 * * *

9 KUPAA KEA,

10 Petitioner,

11 v.

Case No. CR12-0110

12 THE STATE OF NEVADA,

Dept. No. 9

13 Respondent.
14 _____/

15 MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS
16 (POST-CONVICTION)

17 COMES NOW, the State of Nevada, by and through counsel, and moves this honorable
18 court to dismiss the petition for writ of habeas corpus (post-conviction). This motion is based
19 upon the records of this court and of the Supreme Court and the following points and
20 authorities.

21 POINTS AND AUTHORITIES

22 Petitioner Kea pleaded guilty to two counts of battery with a deadly weapon. The court
23 imposed sentence and Kea appealed but the judgment was affirmed. *Kea v. State*, Docket No.
24 61160, Order of Affirmance (February 13, 2013). The remittitur issued on March 25, 2013. Kea
25 filed a timely petition for writ of habeas corpus on February 14, 2014. Kea also moved for the
26 appointment of counsel but this court has ordered a response before determining if there will

1 be counsel and a supplemental petition. This motion followed.

2 Ground One begins with the assertion that petitioner's car was searched without
3 sufficient cause, and that led to drugs which led to a warrant which led to recovery of a couple
4 bullets. He claims that his lawyer was ineffective in failing to file a motion to suppress. There
5 are three problems with that. First, Kea pleaded guilty early on in the process. If there is going
6 to be no trial, there is no point in moving to suppress evidence from being admitted in that
7 trial. If the claim is that counsel should have overridden Kea's decision to accept a plea bargain
8 and compelled the defendant to litigate the matter further, possibly leading to loss of the plea
9 bargain, that is not counsel's duty. Instead, counsel has a duty to inform the client of the plea
10 bargain. *See Missouri v. Frye*, ____ U.S. ____, 132 S.Ct. 1399 (2012). If the client decides to
11 accept the deal, counsel has no authority to override that decision. *See Nevada Rules of*
12 *Professional Conduct*, Rule 1.2. Thus, the decision to accept the plea bargain means that there
13 was no point in filing a motion to suppress.

14 The second flaw is that, according to the pre-sentence report, and Exhibit 1, Page 15,
15 attached hereto, Kea reported his car as stolen. That would authorize the police to recover the
16 car and then to inventory the contents.

17 Finally, there is no allegation that defense counsel had any reason to believe that a
18 motion to suppress would be successful. According to police reports provided to counsel in
19 discovery, police officers first sealed the car but did not search it until after the issuance of the
20 search warrant by Justice of the Peace Pearson. *See Exhibit 1* at page 11. Kea may now be
21 claiming that was a lie and that he has some reason to believe the reports are false, but there is
22 no allegation that defense counsel at the time had any reason to believe that a motion to
23 suppress would be successful. The petitioner bears the burden of pleading specific facts, going
24 so far as to identify witnesses and give a summary of their testimony. *Hargrove v. State*, 100
25 Nev. 498, 686 P.2d 222 (1984). In the absence of any specific allegation of fact leading to the
26 conclusion that defense counsel had any reason to anticipate that a motion to suppress would

1 be successful, there is no need for a hearing and Ground One should be dismissed.

2 Kea also claims that his plea was not a knowing plea because he was told by his lawyer,
3 prior to the entry of plea, that the deal called for the prosecutor to recommend sentences of 2 to
4 15 years each, concurrent. The State has denied that allegation but there is no need to schedule
5 a hearing because the claim is repelled by the record. The transcript of the arraignment reveals
6 that whatever he may have believed earlier, by the time he entered the plea he was fully aware
7 of all the terms of the agreement. Upon hearing the deal set forth in open court, if he did not
8 want it, then the remedy was to plead not guilty.

9 Kea next has some sort of complaint about the gang enhancement. The enhancement
10 was not imposed. Thus, no hearing is required.

11 Part “A,d” is a series of allegations that counsel was ineffective in failing to object to
12 various bits of evidence. There was no trial and no evidence and thus no opportunity to object.

13 Part “A,e” is also a series of allegations that counsel was ineffective in failing to present
14 evidence at trial. There was no trial because Kea pleaded guilty and thus counsel never had the
15 opportunity to present any evidence relating to guilt or innocence.

16 Ground Two, Part A is a claim that counsel was ineffective in failing to object to hearsay
17 evidence in the sentencing hearing or in the pre-sentence report. The rules of evidence do not
18 bar hearsay in the report or in the sentencing hearing. *Buschauer v. State*, 106 Nev. 890, 894,
19 804 P.2d 1046, 1049 (1990); *Silks v. State*, 92 Nev. 91, 545 P.2d 1159 (1976).

20 Ground Two, Part B, is a claim that the court had an insufficient factual basis to accept
21 the guilty plea. The transcript reveals that Kea acknowledged the elements of the crimes and
22 admitted that he “shot a kid.” He claimed there was a fight that got out of hand and he fired his
23 gun. That is a sufficient factual basis.

24 Ground Two, Part C is a claim that there were deficiencies in the pre-sentence report.
25 The first is that it included hearsay. That is permissible. *Silks, supra*. Next is the claim that no
26 witnesses testified in the sentencing hearing in support of the report. No rule of law requires

1 witnesses to support the report. Finally, Kea complains that the report did not include the
2 psychological report from Dr. Mahaffey. The record reveals that the judge had that report at
3 sentencing and so the failure to attach it to the pre-sentence report means nothing.

4 Ground Two, Part D is a claim that the sentence is unlawful. That claim was rejected on
5 appeal and is now barred by the "law of the case." *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797,
6 798-99 (1975).

7 Ground Three, Part A asserts again that Kea did not understand the plea bargain. That
8 was addressed earlier as the record reveals that the court explained the plea bargain before
9 accepting the plea.

10 Ground Three, Part B starts to assert that the defendant was incompetent when he
11 entered his plea, but the claim that he did not understand is repelled by the transcript showing
12 that he did understand and that he responded appropriately to the court and clearly
13 understood the proceedings. That could sometimes be overcome by more specific allegations
14 but in this case there is only the bare claim of incompetence and that is repelled by the record.

15 Ground Four, like the motion to modify the sentence, is based on the assertion that Kea
16 was improperly certified as an adult. NRS 62B.330(3)(c) excluded the case from the juvenile
17 court if the defendant used a gun (he did) and was over 16 (he was) and had ever been
18 adjudicated delinquent for *any* act that would be a felony for an adult. According to the
19 petition, Kea had been adjudicated for the charge of burglary. Burglary is a felony. Hence, the
20 juvenile court had nothing to say about this case. When a charge is excluded from the
21 jurisdiction of the juvenile court, the juvenile court need not conduct a certification hearing.

22 Ground Five concerns the appeal. Kea rails that his attorney did not wish to appeal, but
23 the fact of the matter is that he got an appeal. Thus, the only remaining issue is whether he has
24 specifically pleaded any omitted issues on appeal that had a reasonable likelihood of success.
25 *See Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114(1996). The only things mentioned
26 in the petition are the various claims in Ground One of the petition and those are all waived by

1 the plea of guilty. Therefore, Ground Five, like the others, should be dismissed.

2 AFFIRMATION PURSUANT TO NRS 239B.030

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

5 DATED: February 23, 2015.

6 CHRISTOPHER J. HICKS
District Attorney

7
8 By /s/ TERRENCE P. McCARTHY
TERRENCE P. McCARTHY
9 Chief Appellate Deputy
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Kupaa Kea, #1086980
Ely State Prison
P.O. Box 1989
Ely, NV 89301

/s/ EARLEEN RUSSELL
EARLEEN RUSSELL

INDEX OF EXHIBIT(S)

Pages

Reno Police Department Report,
dated November 9, 2011

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FILED
Electronically
2015-02-23 01:41:46 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4829088 : mcholino

EXHIBIT 1

EXHIBIT 1

RENO POLICE DEPARTMENT



P.O. BOX 1900

455 E 2ND ST
Nature of Call
BDW

Reno Nv. 89502

775-334-2175

11-21113

Supplement No
ORIG

Reported Date
10/27/2011

Emp #
ATKINSON, BRIAN

Administrative Information

Agency RENO POLICE DEPARTMENT	OCA# 11-21113	Supplement No ORIG	Reported Date 10/27/2011	Reported Time 21:30	CAD Call No 113001327
Status REPORT TO FOLLOW	Nature of Call BATTERY W/DEADLY WEAPON				
Location 2600 PARADISE DR			City RENO	ZIP Code 89512	Rep Dist L3G4
Area RN	Beat 48	From Date 10/27/2011	From Time 21:30	Emp # W2158/ATKINSON, BRIAN	
Assignment Patrol - Swing - Team 33 - RGU			Author R9099		
Assignment Patrol - Swing - Team 32 - RGU DETETIVE			RMS Transfer Successful	Prop Trans Stat Successful	
Approving Officer R10477		Approval Date 11/08/2011		Approval Time 06:59:03	
Arrest/PC Report Yes		Other Yes	Parm2Search/Walver or Right Yes	Written Statement Yes	
# Offenses 1	Offense 200.481.2.B	Description BATTERY W/SUB BODILY	Complaint Type F		
# Offenses 2	Offense 200.481.2.B	Description BATTERY W/SUB BODILY	Complaint Type F		
# Offenses 3	Offense 200.481.2.B	Description BATTERY W/SUB BODILY	Complaint Type F		
# Offenses 4	Offense 193.168	Description GANG ENHANCEMENT	Complaint Type		
# Offenses 5	Offense 453.336	Description POSS CONTROLLED SUBS	Complaint Type F		
# Offenses 6	Offense 453.566	Description POSSESSION PARAPHERN	Complaint Type M		

Person Summary

Inv#	Inv# No	Type	Name	MNI	Race	Sex	DOB
ARR	1	I	RODRIGUEZ, MARCO *	1451186	H	M	
ARR	2	I	KEA, KUPAA	1025031	W	M	
SUB	1	I	VARELA, LUIS	1108962		M	
SUB	2	I	BAKER, JACOB	2180027	I	M	
VIC	1	I	VALENCIA, OSCAR	2174523	W	M	
VIC	2	I	ANTON, CESAR	1372182	H	M	
VIC	3	I	ANTON, CHRISTIAN	2049493	H	M	
WIT	1	I	BACA, EDWIN	1379150	H	M	
WIT	2	I	GATICA, MANUEL	1290242	W	M	
WIT	3	I	HERRERA, MONICA	1461191	H	F	
WIT	4	I	MARISCAL, ASael	2036549	H	M	
WIT	5	I	BARRAZA, FRANCISCO	1254526	W	M	

Report Officer
W2158/ATKINSON, BRIAN

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Supplement No
ORIG**RENO POLICE DEPARTMENT****Person Summary**

Invl	Invl No	Type	Name	MNI	Race	Sex	DOB
WIT	6	I	VALDOVINOS, ROBIN	2214860	H	M	[REDACTED]
WIT	7	I	ALBARADO, BRIAN	2214862	H	M	[REDACTED]
WIT	8	I	FULLERTON, SHAWNA	2214864	W	F	[REDACTED]
WIT	9	I	STEFFES, SHERI	1271805	W	F	[REDACTED]

Vehicle Summary

Invl	Type	License No	State	Lic Year	Year	Make	Model	Style	Color
SUS	1				1989	CADI		4D	GRY
VIC	2	268PLW	NV		1990	CHEV	CAV		RED
VIC	1	140URM	NV		1999	MERC	SAB		RED

Property Summary

Involvement	Description	
EVD	Article: Miscellaneous CD INTERVIEW W/ DEF. MARCOS RODRIGUEZ	
Involvement	Description	
EVD	Article: Miscellaneous CD INTERVIEW W/ VICT. GROUP OF SHOOTING	
Involvement	Description	
EVD	Article: Miscellaneous CD INTERVIEW W/ EDWIN BACA	
Involvement	Description	
EVD	Article: Miscellaneous CD INTERVIEW W/ BRIAN ALVARADO	
Involvement	Description	
EVD	Article: Miscellaneous CD INTERVIEW W/ MANUEL GATICA-FLORES	
Involvement	Description	
EVD	Article: Miscellaneous MISC INTERVIEWS W/ KUPAA KEA "KRUMS"	
Involvement	Description	
EVD		
Description		
Article: Other (none of the above) DNA DNA PROVIDED BY MANUEL GATICA-FLORES		
Involvement	Description	
EVD		
Description		
Article: Other (none of the above) DNA DNA PROVIDED BY BRIAN ALVARADO		
Involvement	Description	
EVD	Article: Other (none of the above) DNA DNA PROVIDED BY EDWIN BACA	
Involvement	Description	
EVD	Article: Miscellaneous PRNTOU KEA FACEBOOK PRINT OUT	
Involvement	Description	
EVD		
Description		
Article: Miscellaneous LINEUP PHOTO LINE UP OF KUPAA KEA SHOWN TO MANUEL GATICA		
Involvement	Description	
EVD		
Description		
Article: Miscellaneous LINEUP LINE UP OF MARCOS RODRIGUES SHOWN TO MANUEL GATICA		
Involvement	Description	
EVD		
Description		
Article: Miscellaneous PHOTO MARCOS RODRIGUEZ PHOTO SHOWN TO MONICA HERRERA		
Involvement	Description	
EVD		
Description		
Article: Miscellaneous PHOTO PHOTO OF KUPAA KEA SHOWN TO ASael MARISCAL		
Involvement	Description	
EVD		
Description		
Article: Miscellaneous LINEUP LINE UP OF MARCOS RODRIGUEZ SHOWN TO EDWIN BACA		
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Supplement No
ORIG

RENO POLICE DEPARTMENT

ARRESTEE 1: RODRIGUEZ, MARCO

Involvement ARRESTEE	Invl No 1	Type INDIVIDUAL	Name RODRIGUEZ, MARCO	MNI 1451186	Race HISPANIC
Sex MALE	DOB [REDACTED]	Age 17	Juvenile? Yes	Height 5'07"	Weight 185#
			Hair Color BLACK	Eye Color BROWN	PRN 2339810
Type HOME	Address 2380 JESSIE AV			City SPARKS	State NEVADA
ZIP Code 89431		Date 10/27/2011			
Involvement ARRESTED	Arrest Type ARRESTED	Arrest Date 10/28/2011	Arrest Time 20:30:00	Status BOOKED	Dispo JUVENILE DETENTION
Arrest Location 455 E 2ND ST			City RENO	Rep Dist K1F4	Beat 53
NOC/Charge 00148		Level F	Charge Literal BATTERY WITH A DEADL		
NOC/Charge 03462		Level F	Charge Literal ENHANCEMENT PROMOTIO		

ARRESTEE 2: KEA, KUPAA

Involvement ARRESTEE	Invl No 2	Type INDIVIDUAL	Name KEA, KUPAA	MNI 1025031	Race WHITE	Sex MALE
DOB [REDACTED]	Age 17	Juvenile? Yes	Height 5'10"	Weight 170#	Hair Color BROWN	Eye Color BROWN
					PRN 2339811	
Type HOME	Address 2055 CANNAN ST #E			City RENO	State NEVADA	
ZIP Code 89512		Date 10/27/2011				
Type SOCIAL SECURITY NUMBER	ID No [REDACTED]					
Phone Type ALL CELLULAR AND/OR MOBILE PHONES			Phone No (775) 772-2084		Date 10/27/2011	
Involvement ARRESTED	Arrest Type ARRESTED	Arrest Date 10/28/2011	Arrest Time 20:30:00	Status BOOKED	Dispo JUVENILE DETENTION	
Arrest Location 455 E 2ND ST			City RENO	Rep Dist K1F4	Beat 53	
NOC/Charge 02225		Level F	Charge Literal BATTERY W/A DEADLY W			
NOC/Charge 02225		Level F	Charge Literal BATTERY W/A DEADLY W			
NOC/Charge 00801		Level M	Charge Literal UNLAWFUL POSSESSION			
NOC/Charge 00764		Level F	Charge Literal POSSESSION OF METHAM			
NOC/Charge 03462		Level F	Charge Literal ENHANCEMENT PROMOTIO			
NOC/Charge 03462		Level F	Charge Literal ENHANCEMENT PROMOTIO			

SUBJECT 1: VARELA, LUIS

Involvement SUBJECT	Invl No 1	Type INDIVIDUAL	Name VARELA, LUIS	MNI 1108962	Sex MALE
DOB [REDACTED]	Age 18	Juvenile? No	PRN 2339812		
Type SOCIAL SECURITY NUMBER	ID No [REDACTED]				

SUBJECT 2: BAKER, JACOB

Involvement SUBJECT	Invl No 2	Type INDIVIDUAL	Name BAKER, JACOB	MNI 2180027
Race AMERICAN INDIAN/ALASKAN NATIVE	Sex MALE	DOB [REDACTED]	Age 18	Juvenile? No
Height 6'00"	Weight 180#	Hair Color BROWN		
Eye Color BROWN	PRN 2339813			
Type JACKET NUMBER	ID No 610861			
Type SOCIAL SECURITY NUMBER	ID No [REDACTED]			

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ORIG**RENO POLICE DEPARTMENT****VICTIM 1: VALENCIA, OSCAR**

Involvement VICTIM	Invl No 1	Type INDIVIDUAL	Name VALENCIA, OSCAR				MNI 2174523	Race WHITE	Sex MALE
DOB [REDACTED]	Age 18	Juvenile? No	Height 5'05"	Weight 240#	Hair Color BLACK	Eye Color BLACK	Means of Attack FIREARM	Extent of Injury GUN SHOT WOUND	Dom Violence NO
PRN 2339814									
Type HOME	Address 1610 MEADOWVALE WY					City SPARKS	State NEVADA		
ZIP Code 89431		Date 10/27/2011							
Type FBI NUMBER	ID No 795374KD0								
Type OPERATOR LICENSE	ID No [REDACTED]					OLS NEVADA			
Type JACKET NUMBER	ID No R648244								
Type STATE NV IDENTIFICATION NUMBER (SID ONLY)						ID No [REDACTED]		OLS NEVADA	

VICTIM 2: ANTON, CESAR

Involvement VICTIM	Invl No 2	Type INDIVIDUAL	Name ANTON, CESAR				MNI 1372182	Race HISPANIC	
Sex MALE	DOB [REDACTED]	Age 19	Juvenile? No	Height 5'08"	Weight 210#	Hair Color BLACK	Eye Color BROWN	Means of Attack FIREARM	Extent of Injury GUN SHOT WOUND
Dom Violence NO	PRN 2339815								
Type HOME	Address 2111 WHITFIELD WY					City RENO	State NEVADA		
ZIP Code 89512		Date 10/27/2011							

VICTIM 3: ANTON, CHRISTIAN

Involvement VICTIM	Invl No 3	Type INDIVIDUAL	Name ANTON, CHRISTIAN				MNI 2049493	Race HISPANIC	
Sex MALE	DOB [REDACTED]	Age 18	Juvenile? No	Height 5'06"	Weight 130#	Hair Color BLACK	Eye Color BROWN	Means of Attack FIREARM	Extent of Injury GUN SHOT WOUND
Dom Violence NO	PRN 2339816								
Type HOME	Address 2111 WHITFIELD WY					City RENO	State NEVADA		
ZIP Code 89512		Date 10/27/2011							

WITNESS 1: BACA, EDWIN

Involvement WITNESS	Invl No 1	Type INDIVIDUAL	Name BACA, EDWIN				MNI 1379150	Race HISPANIC	
Sex MALE	DOB [REDACTED]	Age 17	Juvenile? Yes	Height 5'06"	Weight 175#	Hair Color BLACK	Eye Color BROWN	PRN 2339817	
Type HOME	Address 1620 STERLING WY					City RENO	State NEVADA		
ZIP Code 89512		Date 10/27/2011							
Phone Type HOME	Phone No (775) 348-6636			Date 10/27/2011					

WITNESS 2: GATICA, MANUEL

Involvement WITNESS	Invl No 2	Type INDIVIDUAL	Name GATICA, MANUEL				MNI 1290242	Race WHITE	Sex MALE
DOB [REDACTED]	Age 18	Juvenile? No	Height 5'06"	Weight 138#	Hair Color BLACK	Eye Color BROWN	PRN 2339818		
Type HOME	Address 2182 BARBERRY WY					City RENO	State NEVADA		
ZIP Code 89512		Date 10/27/2011							
Type FBI NUMBER	ID No 121273LD2								

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Type OPERATOR LICENSE	ID No 0203336135	ID	OLS NEVADA
Type JACKET NUMBER	ID No 610651		
Type STATE NV IDENTIFICATION NUMBER (SID ONLY)	ID No	OLS NEVADA	
Type SOCIAL SECURITY NUMBER	ID No		
Phone Type ALL CELLULAR AND/OR MOBILE PHONES	Phone No (775) 742-1793	Date 10/27/2011	Phone Type HOME
Phone No (775) 348-7915	Date 10/27/2011		
WITNESS 3: HERRERA, MONICA			
Involvement WITNESS	Invl No 3	Type INDIVIDUAL	Name HERRERA, MONICA
Sex FEMALE	DOB	Age 17	Juvenile? Yes
Height 5'04"	Weight 116#	Hair Color BLACK	Eye Color BROWN
PRN 2339819	MNI 1461191	Race HISPANIC	
Type HOME	Address 1611 WEDEKIND RD #19E	City RENO	State NEVADA
ZIP Code 89512	Date 10/27/2011		
Type SOCIAL SECURITY NUMBER	ID No		
WITNESS 4: MARISCAL, ASael			
Involvement WITNESS	Invl No 4	Type INDIVIDUAL	Name MARISCAL, ASael
Sex MALE	DOB	Age 19	Juvenile? No
Height 5'06"	Weight 140#	Hair Color BLACK	Eye Color BLACK
PRN 2339820	MNI 2036549	Race HISPANIC	
Type HOME	Address 5360 LEON DR	City SPARKS	State NEVADA
ZIP Code 89433	Date 10/27/2011		
Relationship BOYFRIEND	Name HERRERA, MONICA		
WITNESS 5: BARRAZA, FRANCISCO			
Involvement WITNESS	Invl No 5	Type INDIVIDUAL	Name BARRAZA, FRANCISCO
DOB	Age 22	Juvenile? No	Height 5'08"
Weight 178#	Hair Color BROWN	Eye Color BROWN	PRN 2339821
Type HOME	Address 755 KUENZLI ST #238	City RENO	State NEVADA
ZIP Code 89502	Date 10/27/2011		
Type FBI NUMBER	ID No 540500VC4		
Type OPERATOR LICENSE	ID No	OLS NEVADA	
Type JACKET NUMBER	ID No 603921		
Type STATE NV IDENTIFICATION NUMBER (SID ONLY)	ID No	OLS NEVADA	
Type SOCIAL SECURITY NUMBER	ID No		
WITNESS 6: VALDOVINOS, ROBIN			
Involvement WITNESS	Invl No 6	Type INDIVIDUAL	Name VALDOVINOS, ROBIN
Sex MALE	DOB	Age 16	Juvenile? Yes
PRN 2339822	MNI 2214860	Race HISPANIC	
Type HOME	Address 310 W GEPFORD PW	City SPARKS	State NEVADA
ZIP Code 89433	Date 10/27/2011		
Phone Type HOME	Phone No (775) 229-3002	Date 10/27/2011	
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Supplement No
ORIG

RENO POLICE DEPARTMENT

WITNESS 7: ALBARADO, BRIAN

Involvement	Invl No	Type	Name	MNI	Race
WITNESS	7	INDIVIDUAL	ALBARADO, BRIAN	2214862	HISPANIC
Sex	DOB	Age	Juvenile?	PRN	
MALE		18	No	2339823	
Type	Address	City	State		
HOME	4400 EL RANCHO #H105	SUN VALLEY	NEVADA		
Date	10/27/2011				

WITNESS 8: FULLERTON, SHAWNA

Involvement	Invl No	Type	Name	MNI	Race
WITNESS	8	INDIVIDUAL	FULLERTON, SHAWNA	2214864	WHITE
Sex	DOB	Age	Juvenile?	PRN	
FEMALE		18	No	2339824	

WITNESS 9: STEFFES, SHERI

Involvement	Invl No	Type	Name	MNI	Race
WITNESS	9	INDIVIDUAL	STEFFES, SHERI	1271805	WHITE
Sex	DOB	Age	Juvenile?	Height	Weight
FEMALE		42	No	5'07"	235#
Hair Color	Eyes Color	PRN			
BROWN	BROWN	2339825			
Type	ID No	OLS			
OPERATOR LICENSE		NEVADA			
Type	ID No				
SOCIAL SECURITY NUMBER					

Vehicle

Involvement	Type	Year	Make	Style	Color	VIN
SUSPECT	AUTO	1989	Cadillac	SEDAN, 4 DOOR	GRAY	1G6DW51YXKR710123
Tow By	Auth By	Tow From				
ALL POINTS	PALMER, COLBY	2600 PARADISE DR				
Tow To	Ntly Date					
RPD	10/28/2011					
Link	Involvement	Invl No	Name	Race	Sex	DOB
OWN	ARR	2	KEA, KUPAA	W	M	11/05/1993

Vehicle: 268PLW

Involvement	Type	License No	State	Year	Make	Model	Color
VICTIM	TRUCK/VAN	268PLW	NEVADA	1990	Chevrolet	Cavalier	RED

Vehicle: 140URM

Involvement	Type	License No	State	Year	Make	Model	Color
VICTIM	AUTO	140URM	NEVADA	1999	Mercury	Sable	RED

Property

Item	Agency	OCA#	Original Incident	Original Supplement	Involvement
1	RENO POLICE DEPARTMENT	11-21113	11-21113	ORIG	EVIDENCE
Invl Date	In Custody?	Security	Bar Code	Item No	# Pieces
10/27/2011	Yes	No	90020548	1	1
Description	Type				Cat
INTERVIEW W/ DEF. MARCOS RODRIGUEZ	A				Miscellaneous
Entered Date	Entered Time	RMS Transfer	Control	Article	
10/31/2011	16:48	Successful	R9099 1031111742	CD	
Item	Agency	OCA#	Original Incident	Original Supplement	Involvement
2	RENO POLICE DEPARTMENT	11-21113	11-21113	ORIG	EVIDENCE
Invl Date	In Custody?	Security	Bar Code	Item No	# Pieces
10/27/2011	Yes	No	90020548	2	1
Description	Type				Cat
INTERVIEW W/ VICT. GROUP OF SHOOTING	A				Miscellaneous
Entered Date	Entered Time	RMS Transfer	Control	Article	
10/31/2011	16:48	Successful	R9099 1031111742	CD	
Item	Agency	OCA#	Original Incident	Original Supplement	Involvement
3	RENO POLICE DEPARTMENT	11-21113	11-21113	ORIG	EVIDENCE
Invl Date	In Custody?	Security	Bar Code	Item No	# Pieces
10/27/2011	Yes	No	90020548	3	1
Description	Type				Cat
INTERVIEW W/ EDWIN BACA	A				Miscellaneous
Entered Date	Entered Time	RMS Transfer	Control	Article	
10/31/2011	16:49	Successful	R9099 1031111742	CD	

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Supplement No
ORIG

RENO POLICE DEPARTMENT

Item	Agency	OCA#	Original Incident	Original Supplement	Involvement
4	RENO POLICE DEPARTMENT	11-21113	11-21113	ORIG	EVIDENCE
Invl Date	In Custody?	Security	Bar Code	Item No	# Pieces
10/27/2011	Yes	No	90020548	4	1
Description					Typ
INTERVIEW W/ BRIAN ALVARADO					A
Entered Date					Control
10/31/2011					R9099 1031111742
Item	Agency	OCA#	Original Incident	Original Supplement	Involvement
5	RENO POLICE DEPARTMENT	11-21113	11-21113	ORIG	EVIDENCE
Invl Date	In Custody?	Security	Bar Code	Item No	# Pieces
10/27/2011	Yes	No	90020548	5	1
Description					Typ
INTERVIEW W/ MANUEL GATICA-FLORES					A
Entered Date					Control
10/31/2011					R9099 1031111742
Item	Agency	OCA#	Original Incident	Original Supplement	Involvement
6	RENO POLICE DEPARTMENT	11-21113	11-21113	ORIG	EVIDENCE
Invl Date	In Custody?	Security	Bar Code	Item No	# Pieces
10/27/2011	Yes	No	90020548	6	2
Description					Typ
INTERVIEWS W/ KUPAA KEA "KRUMS"					A
Entered Date					Control
10/31/2011					R9099 1031111742
Item	Agency	OCA#	Original Incident	Original Supplement	Involvement
7	RENO POLICE DEPARTMENT	11-21113	11-21113	ORIG	EVIDENCE
Invl Date	In Custody?	Security	Bar Code	Item No	# Pieces
10/27/2011	Yes	No	90020548	7	2
Description					Typ
DNA PROVIDED BY MANUEL GATICA-FLORES					A
Entered Date					Control
10/31/2011					R9099 1031111742
Item	Agency	OCA#	Original Incident	Original Supplement	Involvement
8	RENO POLICE DEPARTMENT	11-21113	11-21113	ORIG	EVIDENCE
Invl Date	In Custody?	Security	Bar Code	Item No	# Pieces
10/27/2011	Yes	No	90020548	8	2
Description					Typ
DNA PROVIDED BY BRIAN ALVARADO					A
Entered Date					Control
10/31/2011					R9099 1031111742
Item	Agency	OCA#	Original Incident	Original Supplement	Involvement
9	RENO POLICE DEPARTMENT	11-21113	11-21113	ORIG	EVIDENCE
Invl Date	In Custody?	Security	Bar Code	Item No	# Pieces
10/27/2011	Yes	No	90020548	9	2
Description					Typ
DNA PROVIDED BY EDWIN BACA					A
Entered Date					Control
10/31/2011					R9099 1031111742
Item	Agency	OCA#	Original Incident	Original Supplement	Involvement
10	RENO POLICE DEPARTMENT	11-21113	11-21113	ORIG	EVIDENCE
Invl Date	In Custody?	Security	Bar Code	Item No	# Pieces
10/27/2011	Yes	No	90020548	10	3
Description					Typ
KEA FACEBOOK PRINT OUT					A
Entered Date					Control
10/31/2011					R9099 1031111742

11-21113

Supplement No
ORIG**RENO POLICE DEPARTMENT**

Item	Agency	OCA#	Original Incident	Original Supplement	Involvement
11	RENO POLICE DEPARTMENT	11-21113	11-21113	ORIG	EVIDENCE
Invt Date	In Custody?	Security	Bar Code	Item No	# Pieces
10/27/2011	Yes	No	90020548	11	6
Description	PHOTO LINE UP OF KUPAA KEA SHOWN TO MANUEL GATICA				Article
	Typ	Cat	LINEUP		
Entered Date	Entered Time	RMS Transfer	Control		
10/31/2011	16:55	Successful	R9099 1031111742		
Item	Agency	OCA#	Original Incident	Original Supplement	Involvement
12	RENO POLICE DEPARTMENT	11-21113	11-21113	ORIG	EVIDENCE
Invt Date	In Custody?	Security	Bar Code	Item No	# Pieces
10/27/2011	Yes	No	90020548	12	6
Description	LINE UP OF MARCOS RODRIGUES SHOWN TO MANUEL GATICA				Article
	Typ	Cat	LINEUP		
Entered Date	Entered Time	RMS Transfer	Control		
10/31/2011	16:57	Successful	R9099 1031111742		
Item	Agency	OCA#	Original Incident	Original Supplement	Involvement
13	RENO POLICE DEPARTMENT	11-21113	11-21113	ORIG	EVIDENCE
Invt Date	In Custody?	Security	Bar Code	Item No	# Pieces
10/27/2011	Yes	No	90020548	13	1
Description	MARCOS RODRIGUEZ PHOTO SHOWN TO MONICA HERRERA				Article
	Typ	Cat	PHOTO		
Entered Date	Entered Time	RMS Transfer	Control		
10/31/2011	17:01	Successful	R9099 1031111742		
Item	Agency	OCA#	Original Incident	Original Supplement	Involvement
14	RENO POLICE DEPARTMENT	11-21113	11-21113	ORIG	EVIDENCE
Invt Date	In Custody?	Security	Bar Code	Item No	# Pieces
10/27/2011	Yes	No	90020548	14	1
Description	PHOTO OF KUPAA KEA SHOWN TO ASAEEL MARISCAL				Article
	Typ	Cat	PHOTO		
Entered Date	Entered Time	RMS Transfer	Control		
10/31/2011	17:02	Successful	R9099 1031111742		
Item	Agency	OCA#	Original Incident	Original Supplement	Involvement
15	RENO POLICE DEPARTMENT	11-21113	11-21113	ORIG	EVIDENCE
Invt Date	In Custody?	Security	Bar Code	Item No	# Pieces
10/27/2011	Yes	No	90020548	15	6
Description	LINE UP OF MARCOS RODRIGUEZ SHOWN TO EDWIN BACA				Article
	Typ	Cat	LINEUP		
Entered Date	Entered Time	RMS Transfer	Control		
10/31/2011	17:04	Successful	R9099 1031111742		
Modus Operandi					
Gang Name	OTHER GANG - IMU USE ONLY		Physical Evidence		
Weapon Used	FIREARM		CD DISK/CLOTHING/DOCUMENTS/DRUGS/OTHER		
Victim's Race	HISPANIC	Victim's Sex	MALE	Victim's Age	ADULT

Narrative

RPD Case 11-21113

Crime: BDW (3 counts)

Arrested: Kupaa KEA 11/5/93

Marcos RODRIGUEZ 11/26/93

Victims: Oscar VALENCIA, Cesar and Christian ANTON

Summary of Report

Two rival groups agreed to meet up and fight at Paradise Park. Several members of each group were once friends but now wanted to fight each other. In addition members from both the suspect and victim group called extra friends to come back them up at the fight should they need extra assistance. Edwin BACA who was with the suspect group misidentified the rival group to have Norteno Gang members in it. BACA called his cousin Manuel GATICA "JR" a "Dead Side Gang" member and informed him that BACA and his friends would need back up as they would be out numbered by Norteno's who they referred to "Chaps". GATICA then called the Defendants who were also "DSG" members. GATICA drove members of the suspect group to the scene where they met with Defendants Marcos RODRIGUEZ "Suspect" and Kupaa KEA "Krum". GATICA provided firearms to KEA and RODRIGUEZ. KEA took the rifle which GATICA provided to him and took a shooting position from behind a tree

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near the location where the victim group parked. RODRIGUEZ waited with the rest of the suspect group near the entrance to the park. Immediately after the victim group arrived on scene KEA opened fire on them from behind the tree as they exited their cars. RODRIGUEZ then advanced on members of the victim group after KEA had already fired upon them from his hidden position. RODRIGUEZ engaged in an argument with Victim Christian ANTON and ultimately fired one shot at him in the upper body striking Christian in the back and exiting out of his chest.

On 10/27/11 at around 2130 hours Detective CLARK and I responded to 1155 Mill St (Renown Medical Center) on a report of three victims who arrived with gun shot wounds. It should be noted that just prior to the victims arriving at Renown there was a call for service at Paradise Park of a fight with at least one shot being fired.

Upon arrival I met with victim Oscar VALENCIA (Herein referred to as Oscar) while Detective CLARK met with victim Cesar ANTON (Herein referred to as Cesar). Oscar had a single gun shot wound to the left leg near his shin which fractured his bone and required surgery. Cesar had a single gun shot wound to his left calve which exited the interior side of his left leg. Cesar was discharged later that morning with out requiring surgery.

While we were meeting with Oscar and Cesar, Officer LASKIN and his trainee Officer GREENLEE were in trauma room number one with victim Christian ANTON (Herein referred to as Christian). They advised me that Christian had a single gun shot wound to his lower back which exited on the right side of his chest. It was learned that Christian had lost his pulse and life saving efforts were enacted to prevent him from dying.

I spoke very briefly with Oscar who advised me that he was shot at Paradise Park. I told Oscar that I remembered him as "Grizzo" from "Silver Lake Boys" which is a validated criminal youth gang. Oscar said he does not "Bang" any more. In talking with Oscar I learned that he was shot by members of "Dead Side Gang". Oscar said he did not get a look at the person who shot and said he would not be able to identify them. Oscar was quickly wheeled off for a CT scan and was I was not able to continue speaking with him.

Detective CLARK continued speaking with Cesar until he was also wheeled off for a CT scan. For more information see Detective CLARKS supplemental report.

I then met with friends of the victims who were in the ER waiting room, all of whom were later transported to the main station for formal interviews. In talking with them I learned that the victim group agreed to meet up and fight at Paradise Park with several persons associated with "Dead Side Gang". I learned that shortly after the victim group arrived at the park they were immediately shot at from rivals who were hiding in near by bushes. I also learned that the victims were transported from the scene to the hospital in two separate vehicles described as a red Chevy Cavalier bearing NV license 268PLW and a red Mercury Sable bearing NV license 140URM. Asael MARISCAL was the driver of the Chevy Cavalier and Edgar BARRAZA was the driver of the Mercury Sable. Both Asael and Edgar consented to searches and processing of their vehicles by FIS. There were no weapons or firearms located in either of the two victim vehicles.

I responded to the station to conduct a series of formal interviews. I interviewed Monica HERRERA, Francisco BARRAZA, Robin VALDOVINOS, and Asael MARISCAL. Detectives LAMPERT and HANNIFAN interviewed several other witnesses. For more information refer to their supplemental reports. Detective CLARK responded to the crime scene with FIS and later obtained a search warrant for one of the suspect vehicles which remained on scene after the shooting. See Detective CLARK'S supplemental report for further.

The following are brief summaries of each interview and are not verbatim transcripts. For the entirety of the interviews please refer to full length recordings which were booked in to evidence under this case number.

Interview with Monica HERRERA (Victim Group):

Monica said she was riding in Asael MARISCAL'S with Robin VALDOVINOS, and an unidentified male known as Tony. Monica said they were being followed by Edgar BARRAZA'S vehicle which contained the rest of their group. Monica said they approached the round about at Clear Acre/ Wedekind when they saw a subject who wanted to fight Robin after school earlier today. Monica identified the subject as Brian ALBARADO whose nick name was "Teddy". Monica said Brian was also with Jacob BAKER who wanted to fight a different friend of theirs. Monica said Brian pulled a knife on her friends and that Jacob diffused the situation and took "Teddy" away.

RENO POLICE DEPARTMENT**Narrative**

Monica said they left the round about to pick up Francisco BARRAZA from 2111 Whitfield and said they all went to the costume store. Monica said Robin received several phone calls at the costume store from Brian's friend Luis VARELA asking Robin to meet up and fight Brian. Monica said several others wanted to meet up and fight members from the other group but she was not sure who each person wanted to fight. Monica said they arrived on the east side of Paradise Park and parked next to each other.

Monica said shortly after getting out of the car she heard gun shots which was when Cesar and Oscar were struck in the leg. Monica said Christian approached Edwin BACA (Herein referred to as Edwin) who was walking across a green bridge from the west side of the pond. Monica said Edwin was with two others males one of which was Marcos RODRIGUEZ (Herein referred to as Marcos). MONICA approached the rival group with Christian who was upset that they just shot his brother. Monica said as they got closer to the rival group Edwin moved a side making room for Marcos to get in front of him, which was when Marcos pointed a revolver straight at Christian and shot him in the chest. Monica said Marcos pointed a gun at her shortly after shooting Christian. Monica said she was in fear for her life when Marcos pointed the gun at her. Monica said Marcos put the gun away and ran off west bound back across the bridge with his friends. I asked Monica what the gun looked like and she said it was black and had a long barrel.

I asked Monica how she knew Marcos. Monica said she has known Marcos since Kindergarten. Monica said that Marcos was her first "Crush" in elementary school. Monica then identified a confirmation photo of Marcos RODRIGUEZ born 11/26/93 as the person who shot Christian and pointed the gun at her.

Interview with Francisco BARRAZA (Victim Group):

BARRAZA said that Asael picked him up from 2111 Whitfield and they went to the costume store. Francisco said he heard Robin, Christian and Monica talk a little about the earlier incident with Brian at the round about at Clear Acre/ Wedekind but he did not pay close attention. Francisco said while they were at the store he was aware that they were receiving calls to meet up and fight some one. Francisco said he did not concern himself with the pre planned fight as he was older and has moved on in life. Francisco did however ride in Asael's car to Paradise Park. Francisco said he got out of the car to pee while the rest of the group walked to where the fight was supposed to occur. Francisco said he was peeing when he heard several gun shots. Francisco ran across the street towards some apartments near 1200 El Rancho. Once he got across the street Francisco noticed his half brothers Christian and Cesar ANTON were not with the group. Francisco ran back to the park just as Christian was shot in the parking lot near the "Green Bridge". I asked Francisco if he saw the shooters and he said no. Francisco could only describe the shooters as wearing dark colored "Hoodies". Francisco said there were 3-4 people with the guy who shot Christian. Francisco did say that he thought Christian was turning away and was shot in the back.

Interview with Robin VALDOVINOS (Victim Group):

ROBIN told me that this started because Brian ALBARADO "Teddy" wanted to fight him after school earlier today. Robin said he used to be friends with Brian but Brian has grown jealous of him because Robin gets more girls. Robin said that he was supposed to fight Brian at the "Sonic" restaurant near Hug High after school today but the fight never happened. I asked Robin why the fight did not happen and he said that his friend Daniel GARCIA would not allow him to go over there because Brian had all of his friends with him. Robin told me that Brian belongs to a crew call "UFK" (Unfadeable Kings). I asked Robin who belongs to "UFK" and he said "All those guys". Robin told me that Edwin BACA, Luis VALERO, Jacob BAKER, and Brian all claim to be "UFK" and whose names were mentioned as being at this shooting.

Robin told me that Brian has been "Talking shit on Facebook" challenging him to fight. Robin who was scarred of Brian decided tonight that he would just fight him and get it over with. Robin said they showed up at the park and he went off to pee next to Francisco which was when the shots were first fired. Robin did not talk about running across the street once the shots were fired. I asked Robin if he thought there were one or two shooters. Robin said he only thought there was one shooter. Robin did not see Oscar and Cesar get shot in the legs but he did see Christian get shot. I asked Robin who shot and he said Marcos. I asked him how he knew that and he said just from listening to Monica talk in the car and at the hospital. I asked Robin if he knew Marcos before this and he

RENO POLICE DEPARTMENT**Narrative**

said no. Robin told me that the first shots came from the bushes on the west side of Paradise Pond where the suspects were hiding and waiting for them.

In talking with Robin I learned that one of Christian's friends known as only as "Tony" and an unidentified black male rode their bikes to the park to watch the fight. Robin told me that one of them pulled a BB gun out after they were shot at by the real guns. Robin thought it was funny that they even bothered pulling the BB gun as it would not protect them against a real gun. I asked Robin if that BB gun was ever produced before the real shots were fired and he said no it was only after the suspect group started shooting. Christians two friends that were on bikes rode away from the scene after the shooting and were not interviewed.

I re-interviewed both Monica and Francisco to clarify the BB gun statements. Monica told me that two Hispanic males she only knew as Tony and Michael showed up on bikes with an unidentified black male. Monica said they were all three friends with Christian. Monica never saw a BB gun and only heard about it from Robin. I re-interviewed Francisco who said he thought he heard a BB gun when he was urinating which was when the first of the real gun shots were fired by the suspect group. Francisco also thought there was only one shooter because he only heard one gun firing. It should be noted that Francisco was a distance away from the victims when Cesar and Oscar were first shot. It should also be noted that during later interviews with both Defendant's neither one mentioned shooting because they were shot at or presented with a threat resembling a gun.

I then responded to the crime scene with both Asael MARISCAL and Monica HERRERA who seemed to be the best witnesses. I attempted to have them walk me through the crime scene so that I may better understand what had occurred.

Upon arriving at the scene on the east side of Paradise Park they showed me where they had parked both of the victim vehicles which were about 100 yards north of the main entrance off of El Rancho. It should be noted that the "Green Bridge" which the suspect group approached from was nearly in line with the El Rancho entrance (This was important in the later interview with Defendant Marcos Rodriguez to take away in self defense claims). Both Asael and Monica walked me through the crime scene. Asael pointed out some trees which lined the east side of Paradise Pond about 50 yards north of the "Green Bridge". Asael said this was where the suspects first started shooting from (In a subsequent interview Marcos RODRIGUEZ described this as the area where Kupaa KEA fired from). Monica and Asael walked me through the parking lot and stopped near a blood stain on the pavement between the El Rancho entrance and where the victim group parked. They both pointed that as the spot where Christian was shot.

We walked back to my police vehicle when they noticed a grey 1989 Cadillac which I parked next to. When they saw the car Asael said "That's Krums car". At that point Asael and Monica started talking about who it was they believed shot Christian. As they spoke I learned that Asael initially thought "Krums" (Kupaa KEA) shot Christian, it was while they were en route to the hospital that Monica told him she thought it was Marcos RODRIGUEZ who shot Christian. Asael never mentioned to Detective LAMPERT who interviewed him that he believed "Krums" was involved. The grey 1989 Cadillac which belonged to "Krums" (Kupaa KEA) was sealed and towed to the police station as evidence pending service of a search warrant.

I returned to the station with Asael and Monica to re-interview them on tape. During that interview Asael who had known "Krums" (Kupaa KEA) for years identified him as the person who shot Christian. It was not until later in the investigation when KEA was identified as the correct shooter by Edwin BACA, Manuel GATICA and Marcos RODRIGUEZ as the person who shot Christian and Oscar with the .22 rifle. In addition Monica HERRERA was correct in her initial identification of Marcos RODRIGUEZ as the person who shot Christian.

Detective CLARK obtained a search warrant granted Judge PEARSON for the 1989 Cadillac belonging to "Krums" (Kupaa KEA). While serving the warrant Detective CLARK located a .22 caliber bullet similar to those found on scene. Detective CLARK also located .52 gram presumptive positive methamphetamine, an E&J Brandy bottle inscribed with "DSG" graffiti and a digital scale with crystalline residue. KEA was ultimately booked for his involvement in this shooting and additionally charged with possession of methamphetamine, and possession of paraphernalia. For more information refer to Detective CLARK'S supplemental report for details regarding service of the search warrant on KEA'S vehicle.

Interview with Edwin BACA (Suspect Group):

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RENO POLICE DEPARTMENT**Narrative**

On 10/28/11 at around 0400 hours RGU officers located Edwin BACA at his residence. Edwin was identified by members of the victim group as being with the suspect group at the time of this shooting. In addition Edwin was described as challenging the group initially and making room for Marcos to move up front and fire at Christian. Edwin declined a voluntary interview at the station. He was arrested for his involvement in this case and brought to the station for a formal interview. Prior to conducting the interview I read Edwin his Miranda warning and he agreed to speak with me.

Edwin told me that he was at the McDonalds on Oddie with Brian ALBARADO, Luis VARELA, Jacob BAKER and a friend named Eddie. Edwin said they left the McDonalds and began walking home. Edwin said Jacob and Brian went their separate ways while Edwin called his cousin Manuel GATICA (Herein referred to as Manuel) to give the rest of them a ride back to Edwin's house. Edwin said shortly after he got home he received a phone call from Brian saying that Asael and his friends "Hit him up" and that he was outnumbered. Brian said he wanted to meet up and fight Asael's friends to "Squash the beef".

Edwin said Manuel picked up Brian and Jacob and drove them to Paradise Park where both side agreed to meet and fight. Along the way Manuel called his friends who were also "DSG" to let them know they were going to fight some "Chaps". I asked Edwin who all was with him when they went to the park. Edwin said that he was with Luis VARELA, Brian ALBARADO, Jacob BAKER and another unidentified male known as Eddie. Edwin said they parked on the east side of the park and met up with some of Manuel's friends to include the Defendants Marcos RODRIGUEZ and Kupaa KEA who were already at the park. Edwin said that Manuel handed a riffle to one of them (Later learned to be Kupaa KEA.)

Edwin said they waited for the victim group to show up. Edwin said the group showed up and then he heard gun shots. Edwin described the person who was handed the riffle as shooting from the sandy area behind some trees on the east side of Paradise Pond which corroborated evidence found on scene. I asked Edwin if he could identify the person who shot the rifle and he said he couldn't. I asked Edwin to identify the person who shot Christian as I knew he was standing next to them. Edwin said Marcos was the person who shot Christian. I asked Edwin to describe how that shooting happened. Edwin said that members of the victim group approached them one of which was armed with a hammer. Edwin said the guy with the hammer was going to swing it at them so Marcos shot. I asked Edwin if Marcos shot before or after the person with the rifle shot. Edwin told me the person with the rifle shot first. I asked Edwin if he and Marcos continued advancing on the victim group once the first set of shots were fired and he said yes (The examination of the crime scene showed the Edwin and Marcos who waited near the green bridge walked north toward the victim group and engaged them, This also takes away a self defense claim for Marcos shooting Christian as he advanced on the Christian after KEA had shot at them already). Edwin eventually identified Marcos RODRIGUEZ born 11/26/93 as the person who shot Christian with a revolver. Edwin was transported home in exchange for his cooperation with the investigation.

Interview with Brian ALBARADO (Suspect Group):

RGU officers located Brian ALBARADO at his residence and he agreed to come to the station voluntarily for a taped interview. Brian confirmed previous interviews and said that he was "Hit up" by Asael and his friends at the round about at Clear Acre/Wedekind. Brian said he and Jacob went to Edwin's house after this incident and arranged to fight Asael and his friends at Paradise Park. Brian said he rode in the back of Manuel's truck with Eddie, Jacob and Luis as they drove to Paradise Park. Brian said he got out of the truck and walked across the "Green Bridge" to the west side of the pond. Brian said it was once he was on the other side that he heard the gun shots being fired. Brian said he initially thought his group was being shot at. Brian said he ran to the 7-11 at Silverada /Paradise Dr after he heard the gun shots. Brian said he did not see who shot. Brian did say that he heard some one say "Fuck Chaps" at the time the shots were fired. Brian also said that Manuel and his friends were all claiming to belong to a gang called "DSG".

Interview with Manuel GATICA "Jr" (Suspect Group):

At around 1300 hours Officer Herrera located Manuel GATICA walking in the area of Sutro and Wedekind. GATICA agreed to a voluntary interview at the main station. GATICA admitted to being a member of "DSG" and corroborated the information about what led up to the fight. GATICA admitted to driving Brian, Luis, Eddie, Edwin and Jacob to the fight in his moms white 1995 Chevy pick up and parking next to "Krum's" grey Cadillac. GATICA

RENO POLICE DEPARTMENT**Narrative**

admitted to handing his rifle to KEA and witnessing "Krum's" (Kuppa KEA) shoot Cesar and Oscar from the same area where the .22 casings were recovered. GATICA also admitted to witnessing Marcos shoot Christian with a revolver. GATICA identified both KEA and Marcos out of photo line ups. GATICA also heard KEA yell "Fuck Chaps" when he fired at the victim group.

Interview with Defendant Marcos RODRIGUEZ:

On 10/28/11 at around 1715 hours RGU officers located Defendant Marcos RODRIGUEZ at his residence at 2380 Jesse Ln. Marcos agreed to come voluntarily to the main station for a formal interview. At the beginning of the interview I thanked Marcos for coming in voluntarily and agreeing to speak with me. I asked Marcos to give me a timeline of what he had done the day before. The initial timeline Marcos gave me would have placed him at home at the time of this incident.

Marcos eventually admitted to going to the park to fight some "Chaps" (Norteno's) when he heard 5-6 shots but denied any involvement. Marcos admitted to getting a phone call from Manuel asking if he would "Have his back in a fight" as they were going "Get down with some Chaps". Marcos said he rode his bike to the park to meet up with Manuel who showed up in his white pick up.

Marcos eventually admitted to being a member of Dead Side Gang and admitted to being the person who shot Christian. I asked Marcos why he shot and he said he shot because Christian had a hammer. I asked Marcos if he ever felt he should have ran away after the first set of shots were fired and he said yes. I asked Marcos why he did not run away and I asked him why he approached the victim group after his friend already started shooting at them and he said "I had to have my homies backs". Marcos also admitted that "Krum's" (Kuppa KEA) was the person who shot the other two victims with the rifle. Marcos was eventually arrested and transported to Jan Evans where he was charged with Battery with a Deadly Weapon and gang enhancement since he went to the park to fight what he believed to be rivals.

Interview with Kuppa KEA "Krum's"

On 10/28/11 at around 1800 hours RGU officers located Kuppa KEA at his residence at 2055 Cannon #E. KEA agreed to come to the station voluntarily to speak with me. It should be noted that KEA tried to report his grey Cadillac stolen earlier that morning but was not home when patrol officers arrived. KEA was under the impression that he was coming to speak with me about his car being stolen. I met with KEA to conduct a taped interview.

I told KEA I wanted to talk about his car getting stolen. KEA said he last saw his car in front of his apartments. I asked KEA why he did not wait around for the police to show up this morning and he said he did not think he needed to be there. KEA eventually asked me if we found his car. I told him that we did and that we towed it. KEA asked why I wanted to talk to him at the station rather than take a report at his house for the stolen car. I told him I thought it was suspicious that he did not wait around for the police after trying to report the car stolen. I told KEA I wanted to make sure there was nothing more to the story. KEA said there was nothing else surrounding his car being stolen.

I asked KEA if he could tell me what he did yesterday. KEA said he left home around 2:00 PM with his girlfriend Janet MARISCAL. KEA said that they went to Little Ceaser's Pizza, then to the Game Stop in Sparks. KEA said after leaving Game Stop he went to get gas at the Rainbow Mart on Merchant when he got "Hit up" by members of "Dead Side Gang" (His own gang). KEA said he was at the gas station at around 5:00 PM. I asked KEA what he did after that and he said he went to Janet's house at 5617 Sidehill in Sun Valley. KEA said he stayed at Janet's for a little while before returning to his residence at 2055 Cannon #E with Janet at around 6:00-7:00 PM. KEA said he stayed home the rest of the evening with Janet. KEA said he woke up the following morning to find that his car was stolen. KEA provided a stated in he related the above information.

While I was interviewing KEA, RGU officers were simultaneously meeting with Janet MARISCAL who provided a written statement detailing her timeline the day of this shooting. Janet said that she was with KEA the day before and that during the time of the shooting they were at her friend Chloe's house. Janet said they were at Chloe's house from approximately 8:30-11:30 PM (This was when KEA said he was at his house with Janet). Janet statement differed drastically from KEA'S which led me to believe neither of them was truthful about the prior day's events.

RENO POLICE DEPARTMENT**Narrative**

While talking with KEA during the first part of the interview I learned that he wanted to fight Janet's brother Luis who is a rival Norteno gang member. KEA told me that he wants to "Break his face". I asked KEA why he would fight his girlfriend's brother and he told me it was because Luis was a Norteno and they have "Beef". It should also be noted that Janet's cousin Asael was with the victim group during this incident and that KEA believed Asael was also a Norteno.

After taking KEA'S false police report of his car being stolen I went back inside to interview him about this shooting. I asked him if the statement he just provided was the truth and he said "Yea". I then told him I knew he was at the park and he left his car on scene after the shooting. I told KEA I knew he shot the riffle and he replied "I didn't shoot nobody". I told KEA that I would probably be arresting him for two counts of battery with a deadly weapon. I exited the interview room for a short while to allow KEA to think about the situation.

I went back in to the interview room to speak with KEA. I told him that I was going to arrest him but I would like to continue talking with him. I asked KEA if he wanted to continue talking to me and he said "Yea, I'm having a baby", "I can't be doin years". I told KEA I would have to read him his rights before we continued talking and asked him if he knew his rights. KEA replied "Miranda rights, right?" KEA then started reciting his first couple of Miranda rights. I interrupted him and gave him all of his rights in order to include the juvenile admonishment. I asked KEA if he understood his rights and he said "Yea".

I began asking KEA questions which he was not answering. KEA then asked "Can I call my sister, she has a lawyer" (KEA'S sister Momi is his legal guardian). I asked KEA if he wanted a lawyer. Kea said he just wanted to call his sister so that she could talk to her lawyer. KEA then asked if I could just bring her down there. I told him I would go get her. As I was walking out of the room KEA asked if he could ask me a question. I said "What's the question" KEA asked "How much time am I looking at?" I told him I didn't know and we began talking again and KEA eventually asked if we could bring Janet down also. As I was walking out of the interview room to ask RGU officers to bring Momi and Janet to the station KEA asked if I could sit with him and keep talking as we waited for Janet and Momi to arrive.

I went back in to the interview room to sit with KEA (as he requested) while we waited for Janet and Momi to arrive. KEA asked me "There's no way I can go home today?" I told him no, then I told him he was identified by several people and I told him that we found meth and paraphernalia in his car. I told KEA I knew he did not shoot Christian and that I knew he only shot the two who were struck in the leg. KEA asked me "Can you make me a deal?" I told him I don't make deals and that is something discussed amongst lawyers. I told KEA that I knew he shot the riffle and struck Oscar and Cesar in the leg, I then told him that I only wanted to know why he shot them. I told KEA that people would be looking at this case and wanting to know his mindset at the time of the shooting. I asked KEA if he was sorry for what he did. KEA said "Before this shit happened I was with that full throttle", but now I just want to graduate and wish I could walk across the stage with my class. I continued telling him what I did know about the shooting and he interrupted me asking "Can I make a deal?" KEA asked "We'll can I get some legal advice?" I told KEA that I don't give legal advice and told him that his family was coming down to see him and he can call the lawyer as he requested.

We continued talking and he once again asked me if he could make a deal. I told him again that I could not cut deals with him and that was something that the DA would discuss with his lawyer. I told KEA that he could talk to his lawyer and get back to me and decide if he wanted to tell the truth about what happened. I then told KEA that I was not trying to "Fuck his life up" and that I just "Wanted to know why this happened". KEA told me "I fucked my own life up". I was getting ready to step out of the room when he asked "Can I talk to you after I talk to my lawyer?" I told him that was fine. KEA then asked "If my lawyer doesn't answer can you still come to Jan Evans and talk to me?" I told him I could but I wanted to know if he wanted a lawyer before answering any questions about this crime. KEA said he just wanted to ask his lawyers opinion before he keeps talking to me. I told him that I was not sure what he was getting at so I was going to stop asking him questions related to the case until he talked to the lawyer. We stayed in the room and continued talking about other things until Janet arrived.

KEA kept asking questions about the case which I answered such as "What happened to the other guys?" I told him I talked to the other guys and there at home. He asked "So is it just me Marcos going to jail?" I told that I believed they were the only two who shot. KEA said he just wanted to talk to his sisters' lawyer and then he said

RENO POLICE DEPARTMENT**Narrative**

"After I talk to the lawyer I promise you'll have the full story of what happened, more than likely".

KEA asked if I could please not charge him for filing a false police report about his car being stolen and I told him I wouldn't. KEA also asked me if the room we were in was being recorded. I told him it was and he asked if I could stop the recording and I told him I could not stop it. KEA asked how we would handle the conversation between he and his lawyer and I told him I would move him to the next room which was not recorded when it was time for him to make the phone call. I exited the room again as I learned Janet and Momi had arrived.

KEA first wanted to speak with Janet alone in the interview room. I put Janet in the room with him and they began whispering to one another however the whispering was partly captured on audio recording. While they were whispering they compared stories on what each of them said for their time line the day before and they learned of each others discrepancies. KEA told Janet she "Fucked up" by providing her timeline. KEA also told Janet "We said we would not snitch but they broke and snitched" They were talking about whether he should be honest with me and he told her "I won't say shit and do a couple of years".

I then put KEA'S sister Momi in the room with him and allowed them to visit. When it was time for KEA to talk to the lawyer he knocked on the door informing me that it was time to transfer him to the unrecorded room. I let KEA go in the other room and talk with the lawyer. KEA knocked on the door to let me know he was done using the phone. I put KEA back in the original room with the rest of his family. While I walked him back to the original room he told me that his lawyer advised him not to talk to me. KEA then apologized for wasting my time. I told him it was not a waste and I expected his lawyer would tell him not to talk to us.

KEA was transported to Jan Evans Detention Center where he was booked for two counts of battery with a deadly weapon causing substantial bodily harm with the additional charge of gang enhancement, possession of methamphetamine and possession of drug paraphernalia. On 10/31/11 Juvenile District Attorney Jo Lee Wickes notified me that KEA needed to be transferred to Washoe County Jail and booked in on this case as he has been adjudicated as an adult in the juvenile system. Officer Schwartz responded to Jan Evans and picked up KEA and the appropriate court order showing him to be adjudicated as an adult. Officer Schwartz transported KEA across the street to Washoe County Jail where he was booked on the listed charges.

No further information, end of original report.



1 CODE #1130
CHRISTOPHER J. HICKS
2 #7747
P. O. Box 11130
3 Reno, Nevada 89520-0027
(775) 328-3200
4 Attorney for Respondent

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 KUPAA KEA,

10 Petitioner,

11 v.

Case No. CR12-0110

12 THE STATE OF NEVADA,

Dept. No. 9

13 Respondent.
14 _____/

15 ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS
16 (POST-CONVICTION)

17 COMES NOW, Respondent, by and through counsel, to answer the petition, filed on
18 February 14, 2014, as follows:

19 1. That Respondent admits any and all allegations contained in paragraphs 1-15 and 19-22
20 of the petition.

21 2. That Respondent denies any and all allegations contained in paragraphs 16-18 and 23
22 of the petition.

23 3. That your affiant is informed and does believe that all relevant pleadings and transcripts
24 necessary to resolve the petition are currently available.

25 4. That Respondent is informed and does believe that aside from an unsuccessful appeal,

26 ///

1 Petitioner has not applied for any other relief from this conviction.

2 AFFIRMATION PURSUANT TO NRS 239B.030

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

5 DATED: February 23, 2015.

6 CHRISTOPHER J. HICKS
District Attorney

7
8 By /s/ TERRENCE P. McCARTHY
TERRENCE P. McCARTHY
9 Chief Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on February 23, 2015, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Kupaa Kea, #1086980
Ely State Prison
P.O. Box 1989
Ely, NV 89301

/s/ EARLEEN RUSSELL
EARLEEN RUSSELL