

1 **SUPREME COURT OF THE STATE OF NEVADA**

2  
3 MICHAEL LUIS COTA, )

4 Appellant, )

5 . vs. )

6 STATE OF NEVADA, )

7 Respondent. )  
8

DOCKET NOS. 77414 & 77415  
Electronically Filed  
Jun 27 2019 03:52 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

9 **APPELLANT'S APPENDIX**

10 **Volume I**

11 **First Judicial District Court**  
12 **The Honorable James J. Russell**

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1 CASE NO. 18-CR-0429/18-CR0430

2 DA 18-0675M

3 DCSO 18SO05042

FILED  
18-CR 0429  
NO. 18-CR 0430

MAY -1 PM 2:00

EAST FORK TOWNSHIP

4  
5  
6 IN THE JUSTICE COURT OF EAST FORK TOWNSHIP  
7 COUNTY OF DOUGLAS, STATE OF NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 CRIMINAL  
12 COMPLAINT

13 MICHAEL LOUIS COTA,  
14 DOB: 02/02/1999

15 ROBERT DONALD BROWN  
16 DOB: 02/08/1996

17 Defendants. /

18 Matthew Johnson, Deputy District Attorney, County of Douglas, State of Nevada, on  
19 information and belief, being first duly sworn, makes complaint and charges Michael Louis  
20 Cota with the crimes of CONSPIRACY TO COMMIT BURGLARY AND/OR LARCENY, a  
21 violation of NRS 199.480, a gross misdemeanor, CONSPIRACY TO COMMIT AN OFFENSE  
22 INVOLVING STOLEN PROPERTY, a violation of NRS 199.480, a gross misdemeanor,  
23 PRINCIPAL TO BURGLARY WITH A DEADLY WEAPON OR A FIREARM, a violation of  
24 NRS 205.060(1), (4), NRS 195.020, a category B felony, PRINCIPAL TO GRAND  
25 LARCENY OF A FIREARM, a violation of NRS 205.226, NRS 195.020 a category B felony,  
26 and PRINCIPAL TO POSSESSION OF STOLEN PROPERTY, a violation of NRS 205.275,  
27 NRS 195.020, a category C felony, and charges Robert Donald Brown with the crimes of  
28 CONSPIRACY TO COMMIT AN OFFENSE INVOLVING STOLEN PROPERTY, a  
violation of NRS 199.480, a gross misdemeanor and PRINCIPAL TO POSSESSION OF

1 STOLEN PROPERTY, a violation of NRS 205.275, NRS 195.020, a category C felony,  
2 committed in the County of Douglas, State of Nevada on or about February 13, 2018, as  
3 follows:

4 **COUNT ONE: CONSPIRACY TO COMMIT BURGLARY**  
5 **AND/OR LARCENY, a violation of NRS**  
6 **199.480, a gross misdemeanor**

7 Defendant Michael Louis Cota did willfully and unlawfully conspire with  
8 another person to commit burglary and/or larceny, by agreeing with "AG"  
9 DOB 11/06/03 to enter the residence located at 1340 Bishop Circle in  
10 Gardnerville to steal items inside and/or agreeing with "AG" DOB  
11 11/06/03 to transport "AG" to the residence located at 1340 Bishop Circle  
12 in Gardnerville so that "AG" could enter the residence to steal items inside  
13 and in furtherance of said conspiracy, did commit the acts as set forth in  
14 Counts 3 and 4 said acts being incorporated by reference as though fully set  
15 forth herein, all of which occurred in the County of Douglas, State of  
16 Nevada,

17 **COUNT TWO: CONSPIRACY TO COMMIT AN OFFENSE**  
18 **INVOLVING STOLEN PROPERTY, a**  
19 **violation of NRS 199.480, a gross misdemeanor**

20 Defendants Michael Louis Cota and/or Robert Donald Brown did willfully  
21 and unlawfully conspire with another person to commit an offense  
22 involving stolen property, as prohibited by NRS 205.275, by agreeing with  
23 each other and/or a male named Oscar, also known as "Cheespa," and/or  
24 "AG" DOB 11/06/03 that Oscar and/or Robert Donald Brown, and/or  
25 Michael Louis Cota buy, receive, possess, or withhold a stolen firearm(s),  
26 and in furtherance of said conspiracy defendant(s) did commit the acts as  
27 set forth in Counts 5 and 6 said acts being incorporated by reference as  
28 though fully set forth herein, all of which occurred in the County of  
Douglas, State of Nevada.

**COUNT THREE: PRINCIPAL TO BURGLARY WITH A**  
**DEADLY WEAPON OR A FIREARM, a**  
**violation of NRS 205.060(1), (4), NRS 195.020 a**  
**category B felony**

Defendant Michael Louis Cota did willfully and unlawfully enter, any  
house, room, apartment, warehouse, barn or other building, and/or whether  
present or absent aid, abet, counsel, encourage, hire, command, induce, or  
otherwise procure another person to enter, any house, room, apartment,

1 warehouse, barn or other building, and/or act in furtherance of a  
2 conspiracy, such that he is liable for the acts of his co-conspirator(s) to  
3 enter, any house, room, apartment, warehouse, barn or other building, with  
4 the intent to commit grand or petit larceny, or any felony therein, and said  
5 defendant had in his possession or gained possession of any firearm or  
6 deadly weapon at any time before leaving the structure or upon leaving the  
7 structure, to-wit: the defendant drove "AG" DOB 11/06/03 to the residence  
8 located at 1340 Bishop Circle in Gardnerville and/or entered the same  
9 residence to commit grand or petit larceny and had in his possession or did  
10 gain possession of a Spikes Tactical AR-15 rifle and/or Single Shot Pellet  
11 Rifle, all of which occurred in the County of Douglas, State of Nevada

12 **COUNT FOUR: PRINCIPAL TO GRAND LARCENY OF A**  
13 **FIREARM, a violation of NRS 205.226, NRS**  
14 **195.020 a category B felony**

15 Defendant Michael Louis Cota did willfully and unlawfully and  
16 intentionally, steal, take and carry away a firearm owned by another  
17 person, and/or whether present or absent aid, abet, counsel, encourage,  
18 hire, command, induce, or otherwise procure another person to steal, take  
19 and carry away a firearm owned by another person, and/or act in  
20 furtherance of a conspiracy, such that he is liable for the acts of his co-  
21 conspirator(s) to steal, take and carry away a firearm owned by another  
22 person, to-wit: the defendant and/or "AG" DOB 11/06/03 took a Spikes  
23 Tactical AR-15 rifle and/or Single Shot Pellet Rifle after defendant drove  
24 "AG" to the residence located at 1340 Bishop Circle in Gardnerville, all of  
25 which occurred in the County of Douglas, State of Nevada,

26 **COUNT FIVE: PRINCIPAL TO POSSESSION OF STOLEN**  
27 **PROPERTY, a violation of NRS 205.275, NRS**  
28 **195.020 a category C felony**

Defendant Michael Louis Cota did willfully, unlawfully, and knowingly,  
possess, buy, receive, or withhold stolen property, and/or whether present  
or absent aid, abet, counsel, encourage, hire, command, induce, or  
otherwise procure another person to possess, buy, receive, or withhold the  
stolen property and/or act in furtherance of a conspiracy, such that he is  
liable for the acts of his co-conspirator(s), to possess, buy, receive, or  
withhold the stolen property, for the their own gain or to prevent the true  
owner(s) from again possessing the property, knowing that such property  
was stolen, or under such circumstances as should have caused a  
reasonable person to know that such goods were so obtained, said property  
having a value of \$650.00 or more, to-wit: Michael Louis Cota possessed,  
received, or withheld a Spikes Tactical AR-15 rifle and/or Single Shot  
Pellet Rifle and/or two Glock .40 caliber magazines, and/or an ammunition  
can containing various caliber ammunition, and/or a black "Combat Style"

1 fixed blade knife; and/or arranged for a male named Oscar, also known as  
 2 "Cheespa," and/or "AG" DOB 11/06/03, and/or Robert Donald Brown to  
 3 possess, buy, receive, or withhold a Spikes Tactical AR-15 rifle and/or  
 4 Single Shot Pellet Rifle, all of which occurred in the County of Douglas,  
 5 State of Nevada,

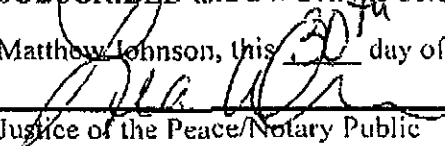
6 **COUNT SIX: PRINCIPAL TO POSSESSION OF STOLEN**  
 7 **PROPERTY, a violation of NRS 205.275, NRS**  
 8 **195.020 a category C felony**

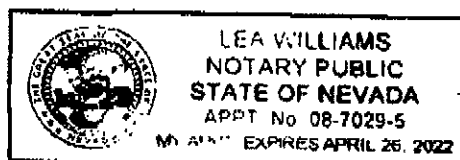
9 Defendant Robert Donald Brown did willfully, unlawfully, and knowingly,  
 10 possess, buy, receive, or withhold stolen property, and/or whether present  
 11 or absent aid, abet, counsel, encourage, hire, command, induce, or  
 12 otherwise procure another person to possess, buy, receive, or withhold the  
 13 stolen property and/or act in furtherance of a conspiracy, such that he is  
 14 liable for the acts of his co-conspirator(s), to possess, buy, receive, or  
 15 withhold the stolen property, for the their own gain or to prevent the true  
 16 owner(s) from again possessing the property, knowing that such property  
 17 was stolen, or under such circumstances as should have caused a  
 18 reasonable person to know that such goods were so obtained, said property  
 19 having a value of \$650.00 or more, to-wit: Robert Donald Brown found a  
 20 buyer for a Spikes Tactical AR-15 rifle and/or Single Shot Pellet Rifle  
 21 and/or provided the contact information for a potential buyer named Oscar,  
 22 also known as "Cheespa," and/or helped move the firearm(s) to the buyer's  
 23 vehicle, all of which occurred in the County of Douglas, State of Nevada,

24 against the peace and dignity of the State of Nevada. Complainant prays the Defendant be dealt  
 25 with according to law.

26   
 27 COMPLAINANT

28 SUBSCRIBED and SWORN to before me by  
 Matthew Johnson, this 30<sup>th</sup> day of April, 2018.

  
 Justice of the Peace/Notary Public



RECEIVED

MAY 29 2018

2018 MAY 29 PM 3:20

Douglas County  
District Court Clerk

RODIE R. WILLIAMS  
CLERK

A. NEWTON

Case No. 18-CR - 0084

Dept. No. II

DA Case No. 18-0675M

This document does not contain personal information of any person

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

THE STATE OF NEVADA,

Plaintiff,

vs.

INFORMATION

MICHAEL LUIS COTA,

Defendant.

Matthew Johnson, Deputy District Attorney, within and for the County of Douglas, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court that Michael Luis Cota has committed the crimes of CONSPIRACY TO COMMIT BURGLARY AND/OR LARCENY, a violation of NRS 199.480, a gross misdemeanor, CONSPIRACY TO COMMIT AN OFFENSE INVOLVING STOLEN PROPERTY, a violation of NRS 199.480, a gross misdemeanor, PRINCIPAL TO BURGLARY WITH A DEADLY WEAPON OR A FIREARM, a violation of NRS 205.060(1), (4), NRS 195.020, a category B felony, PRINCIPAL TO GRAND LARCENY OF A FIREARM, a violation of NRS 205.226, NRS 195.020, a category B felony, and PRINCIPAL TO POSSESSION OF STOLEN PROPERTY, a violation of NRS 205.275, NRS 195.020, a category C felony,

The defendant, on or about February 13, 2018, and before the filing of this Information, at and within the County of Douglas, State of Nevada,



**COUNT ONE: CONSPIRACY TO COMMIT BURGLARY  
AND/OR LARCENY, a violation of NRS 199.480,  
a gross misdemeanor**

did willfully and unlawfully conspire with another person to commit burglary and/or larceny, by agreeing with "AG" DOB 11/06/03 to enter the residence located at 1340 Bishop Circle in Gardnerville to steal items inside and/or agreeing with "AG" DOB 11/06/03 to transport "AG" to the residence located at 1340 Bishop Circle in Gardnerville so that "AG" could enter the residence to steal items inside, and in furtherance of said conspiracy, did commit the acts as set forth in Counts 3 and 4 said acts being incorporated by reference as though fully set forth herein,

**COUNT TWO: CONSPIRACY TO COMMIT AN OFFENSE  
INVOLVING STOLEN PROPERTY, a violation  
of NRS 199.480, a gross misdemeanor**

did willfully and unlawfully conspire with another person to commit an offense involving stolen property, as prohibited by NRS 205.275, by agreeing with Robert Donald Brown and/or a male named Oscar, also known as "Cheespa," and/or "AG" DOB 11/06/03 that Oscar and/or Robert Donald Brown, and/or Michael Louis Cota buy, receive, possess, or withhold a stolen firearm(s), and in furtherance of said conspiracy defendant did commit the acts as set forth in Count 5 said acts being incorporated by reference as though fully set forth herein,

**COUNT THREE: PRINCIPAL TO BURGLARY WITH A DEADLY  
WEAPON OR A FIREARM, a violation of NRS  
205.060(1), (4), NRS 195.020 a category B felony**

did willfully and unlawfully enter, any house, room, apartment, warehouse, barn or other building, and/or whether present or absent aid, abet, counsel, encourage, hire, command, induce, or otherwise procure another person to enter, any house, room, apartment, warehouse, barn or other building, and/or act in furtherance of a conspiracy, such that he is liable for the acts of his co-conspirator(s) to enter, any house, room, apartment, warehouse, barn or other building, with the intent to commit grand or petit larceny, or any felony therein, and said defendant had in his possession or gained possession of any firearm or deadly weapon at any time before leaving the structure or upon leaving the structure, to-wit: the defendant drove "AG" DOB 11/06/03 to the residence located at 1340 Bishop Circle in Gardnerville and/or entered the same residence to commit grand or petit larceny, and had in his possession or did gain possession of a Spikes Tactical AR-15 rifle and/or Single Shot Pellet Rifle,

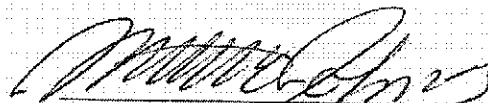
**COUNT FOUR: PRINCIPAL TO GRAND LARCENY OF A FIREARM, a violation of NRS 205.226, NRS 195.020 a category B felony**

did willfully and unlawfully and intentionally, steal, take and carry away a firearm owned by another person, and/or whether present or absent aid, abet, counsel, encourage, hire, command, induce, or otherwise procure another person to steal, take and carry away a firearm owned by another person, and/or act in furtherance of a conspiracy, such that he is liable for the acts of his co-conspirator(s) to steal, take and carry away a firearm owned by another person, to-wit: the defendant and/or "AG" DOB 11/06/03 took a Spikes Tactical AR-15 rifle and/or Single Shot Pellet Rifle after defendant drove "AG" to the residence located at 1340 Bishop Circle in Gardnerville,

**COUNT FIVE: PRINCIPAL TO POSSESSION OF STOLEN PROPERTY, a violation of NRS 205.275, NRS 195.020 a category C felony**

did willfully, unlawfully, and knowingly, possess, buy, receive, or withhold stolen property, and/or whether present or absent aid, abet, counsel, encourage, hire, command, induce, or otherwise procure another person to possess, buy, receive, or withhold the stolen property and/or act in furtherance of a conspiracy, such that he is liable for the acts of his co-conspirator(s), to possess, buy, receive, or withhold the stolen property, for the their own gain or to prevent the true owner(s) from again possessing the property, knowing that such property was stolen, or under such circumstances as should have caused a reasonable person to know that such goods were so obtained, said property having a value of \$650.00 or more, to-wit: Michael Louis Cota possessed, received, or withheld a Spikes Tactical AR-15 rifle and/or Single Shot Pellet Rifle and/or two Glock .40 caliber magazines, and/or an ammunition can containing various caliber ammunition, and/or a black "Combat Style" fixed blade knife; and/or arranged for a male named Oscar, also known as "Cheespa," and/or "AG" DOB 11/06/03, and/or Robert Donald Brown to possess, buy, receive, or withhold a Spikes Tactical AR-15 rifle and/or Single Shot Pellet Rifle,

against the peace and dignity of the State of Nevada. Complainant prays the defendant be dealt with according to law.



Matthew Johnson  
Deputy District Attorney

1 The following are the names of such witnesses as are known to me at the time of filing the  
2 within information:

3  
4 Deputy Justin Fricke Douglas County Sheriff's Office  
5 1038 Buckeye Road  
6 Minden, Nevada 89423

7 Investigator Nadine Chrzanowski Douglas County Sheriff's Office  
8 1038 Buckeye Road  
9 Minden, Nevada 89423

10 Deputy Christopher Carson Douglas County Sheriff's Office  
11 1038 Buckeye Road  
12 Minden, Nevada 89423

13 Deputy Zack Hickman Douglas County Sheriff's Office  
14 1038 Buckeye Road  
15 Minden, Nevada 89423

16 Deputy Mariah West Douglas County Sheriff's Office,  
17 1038 Buckeye Road  
18 Minden, Nevada 89423

19 Jonathan Cody Wulfgar Hanks 1340 Bishops Circle  
20 Gardnerville, Nevada 89410

21 Jason Ray Dillishaw 1420 Bumblebee Drive  
22 Gardnerville, Nevada 89460

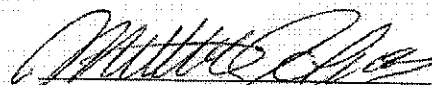
23 Alexis Ariana Haynes 1340 Bishops Circle  
24 Gardnerville, Nevada 89410

25 Aidan Jason Gordon 1358 Kingslane  
26 Gardnerville, Nevada 89410

27 Investigator Ryan Young Douglas County Sheriff's Office  
28 1038 Buckeye Road  
Minden, Nevada 89423

1 Robert Donald Brown

931 Sweetwater Drive  
Gardnerville, Nevada 89460

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5 Matthew Johnson  
6 Deputy District Attorney  
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Douglas County District Attorney  
Post Office Box 218  
Minden, Nevada 89423  
(775) 782-9800 Fax (775) 782-9807

1 Case No. 18-CR--0084

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2018 JUN -4 PM 2:32

2 Dept. No. II

JUN -4 2018

3 DA Case No. 18-0675M

A. NEWTON

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF DOUGLAS

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

**GUILTY PLEA AGREEMENT**

12 MICHAEL LUIS COTA,

13 Defendant.

14 I hereby agree to plead guilty to Count Four: PRINCIPAL TO GRAND LARCENY  
15 OF A FIREARM, a violation of a NRS 205.226, NRS 195.020, a category B felony, as more  
16 fully alleged in the Information which I have read and reviewed with my attorney.

17 My decision to plead guilty is based upon the plea agreement in this case which is as  
18 follows: In exchange for my plea of guilty to Count Four in the Information, charging  
19 PRINCIPAL TO GRAND LARCENY OF A FIREARM, a violation of a NRS 205.226, NRS  
20 195.020, a category B felony, my agreement to testify truthfully in any Preliminary Hearing or  
21 Trial set in 18-CR-0430, involving Robert Donald Brown, and my agreement to not have any  
22 contact or communication with Brittany Massera or Deanna Joan McVay during the period I  
23 am incarcerated, on parole, or on probation as a result of my conviction for this offense unless  
24 contact or communication is permitted by the district court for the purposes of establishing  
25 and/or facilitating custody/visitation with our child(ren) in common, the State has agreed to,  
26 dismiss the remaining counts in the Information, not file charges in Douglas County Sheriff's  
27 Office case number 18SO08450, in which I am alleged to have threatened violence against  
28 Skyler Reese-Bamford, Brittany Massera, and Deanna Joan McVay, and recommend that I be

1 sentenced to a minimum term of not less than 12 months in state prison and a maximum term of  
2 60 months in state prison. I understand that, at the time of sentencing, the parties are free to  
3 present arguments, facts, and/or witnesses about whether a lesser sentence, probation, and/or  
4 some other substance abuse treatment is appropriate to the extent I am eligible.

5 I understand that the State also reserves the right at sentencing to provide the court with  
6 relevant information that may not be in the court's possession; to call victims to make a victim  
7 impact statement; to question my character witnesses; to comment on the circumstances of the  
8 crime and my criminal history; and to correct factual misstatements made by me or my  
9 character witnesses.

#### 10 CONSEQUENCES OF THE PLEA

11 I understand that, by pleading guilty, I admit the facts which support all the elements of  
12 the offense to which I now plead as more fully alleged in the Information, a copy of which I  
13 have received and the contents of which I have reviewed with my attorney. I admit that the  
14 State possesses sufficient evidence which would result in my conviction.

15 I understand that, as a consequence of my plea of guilty, I may be imprisoned in the  
16 state prison for a minimum term of not less than 12 months and a maximum term of not more  
17 than 120 months. I also understand that I may be fined up to \$10,000. I understand that the  
18 law requires me to pay an administrative assessment fee.

19 I understand that, if appropriate, I will be ordered to make restitution to the victim of the  
20 offense to which I am pleading guilty and to the victim of any related offenses which are being  
21 dismissed or not prosecuted pursuant to this agreement. I will also be ordered to reimburse the  
22 State of Nevada for expenses related to my extradition, if any.

23 I understand that I am eligible for probation for the offense to which I am pleading  
24 guilty. I understand that, except as otherwise provided by statute, the question of whether I  
25 receive probation is in the discretion of the sentencing judge.

26 I understand that, except as otherwise provided by statute, if more than one sentence of  
27 imprisonment is imposed, the sentencing judge has the discretion to order the sentences to be  
28 served concurrently or consecutively. My attorney has explained the terms concurrent and

1 consecutive and I understand their meaning as it relates to sentencing.

2 I understand that this plea and resulting conviction may have adverse effects upon my  
3 residency in this country if I am not a United States citizen.

4 I understand and agree that the State, at its discretion, is entitled to either withdraw from  
5 this agreement and proceed with the prosecution of the original offenses or be free to argue for  
6 an appropriate sentence at the time of the sentencing hearing if I: (1) fail to appear at any  
7 scheduled court proceeding in this matter; (2) am arrested for a violation of law in any  
8 jurisdiction prior to my sentencing hearing; (3) violate any of my bail conditions; (4) fail to  
9 cooperate fully with the Division of Parole and Probation in the preparation of the presentence  
10 investigation report in this case if said report is ordered by the court; or (5) fail to comply with  
11 any other condition stated herein. I understand and agree that the occurrence of any of these  
12 acts constitutes a material breach of my guilty plea agreement with the State. I further agree to  
13 waive any right I may have to remand this matter to Justice Court should this agreement be set  
14 aside for any reason.

15 I understand that information regarding offenses not filed, dismissed offenses or  
16 offenses to be dismissed pursuant to this agreement may be considered by the judge at  
17 sentencing.

18 I have not been promised or guaranteed any particular sentence by anyone. I know that  
19 my sentence is to be determined by the court within the limits prescribed by statute. I  
20 understand that if my attorney, the State of Nevada, or both recommend any specific  
21 punishment to the court, the court is not obligated to accept the recommendation.

22 I understand that the Division of Parole and Probation of the Department of Public  
23 Safety may or will prepare a report for the sentencing judge before sentencing. This report will  
24 include matters relevant to the issue of sentencing, including my criminal history. I understand  
25 that this report may contain hearsay information regarding my criminal history and the facts  
26 and circumstances related to the offense. My attorney and I will each have the opportunity to  
27 comment on the information contained in the report at the time of sentencing.  
28

Douglas County District Attorney  
Post Office Box 218  
Minden, Nevada 89423  
(775) 782-9800 Fax (775) 782-9807

WAIVER OF RIGHTS

By entering my plea of guilty, I understand that I have waived the following rights and privileges:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial, the State would bear the burden of proving beyond a reasonable doubt each element of the offense charged.

3. The constitutional right to confront and cross-examine any witnesses who would testify against me.

4. The constitutional right to subpoena witnesses to testify on my behalf.

5. The constitutional right to testify in my own defense.

6. The right to appeal the conviction, with the assistance of an attorney, either appointed or retained, unless the appeal is based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings and except as otherwise provided in subsection 3 of NRS 174.035.

VOLUNTARINESS OF PLEA

I have discussed the elements of all the original offenses against me with my attorney and I understand the nature of these offenses against me.

I understand that the State would have to prove each element of the offenses against me at trial.

I have discussed with my attorney any possible defenses and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights and waiver of rights have been thoroughly explained to me by my attorney.

I believe that pleading guilty and accepting this plea bargain is in my best interest and



1 that a trial would be contrary to my best interest.

2 I am signing this agreement voluntarily, after consultation with my attorney, and I am  
3 not acting under duress or coercion or by virtue of any promises of leniency, except for those  
4 set forth in this agreement.

5 I am not now under the influence of intoxicating liquor, a controlled substance or other  
6 drug which would in any manner impair my ability to comprehend or understand this  
7 agreement or the proceedings surrounding my entry of this plea.

8 My attorney has answered all my questions regarding this guilty plea agreement and its  
9 consequences to my satisfaction, and I am satisfied with the services provided by my attorney.

10 Dated this 1 day of June, 2018.

11   
12 \_\_\_\_\_  
13 MICHAEL LUIS COTA  
14 Defendant

15 Agreed to this 30 day of May, 2018.

16   
17 \_\_\_\_\_  
18 MATTHEW JOHNSON  
19 Deputy District Attorney

20 CERTIFICATE OF COUNSEL

21 I, the undersigned, as the attorney for the defendant named herein and as an officer of  
22 the court hereby certify:

23 1. I have fully explained to the defendant the allegations contained in the charges to  
24 which guilty or guilty but mentally ill pleas are being entered.

25 2. I have advised the defendant of the penalties for each charge and the restitution that  
26 the defendant may be ordered to pay.

27 3. All pleas of guilty or guilty but mentally ill offered by the defendant pursuant to this  
28 agreement are consistent with all the facts known to me and are made with my advice to the  
defendant and are in the best interest of the defendant.

Douglas County District Attorney  
Post Office Box 218  
Minden, Nevada 89423  
(775) 782-9800 Fax (775) 782-9807

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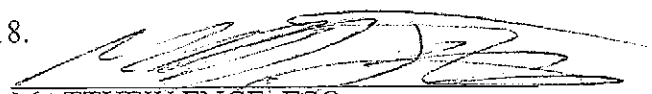
4. To the best of my knowledge and belief, the defendant:

a. Is competent and understands the charges and the consequences of pleading guilty or guilty but mentally ill as provided in this agreement.

b. Executed this agreement and will enter all guilty or guilty but mentally ill pleas pursuant hereto voluntarily.

c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time of the execution of this agreement.

Dated this 1 day of June, 2018.

  
MATTHEW ENCE, ESQ.  
Attorney for Defendant

1 CASE NO. 18-CR- 0661  
2 DA 18-1274M  
3 DCSO 18SO22094

FILED  
NO. 18-0661  
2018 JUL 11 AM 11:48  
EAST FORK JUSTICE COURT  
BY [Signature]

4  
5 IN THE JUSTICE COURT OF EAST FORK TOWNSHIP  
6 COUNTY OF DOUGLAS, STATE OF NEVADA  
7

8 THE STATE OF NEVADA,  
9

10 Plaintiff,

11 vs.

CRIMINAL  
COMPLAINT

12 MICHAEL LUIS COTA JR.,  
13 DOB: 02/02/1999

14 Defendant. /

15 Matthew Johnson, Deputy District Attorney, County of Douglas, State of Nevada, on  
16 information and belief, being first duly sworn, makes complaint and charges Michael Luis Cota  
17 Jr. with the crimes of BATTERY BY A PRISONER IN CUSTODY, a violation of NRS  
18 200.481(2)(F), a category B felony and BATTERY BY A PRISONER IN CUSTODY, a  
19 violation of NRS 200.481(2)(F), a category B felony committed as follows:

20 The defendant, Michael Luis Cota Jr., on or about July 6, 2018, and prior to the filing  
21 of this complaint, in the County of Douglas, State of Nevada,

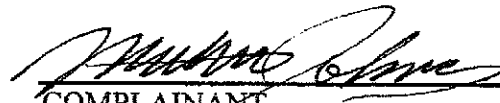
22 **COUNT ONE: BATTERY BY A PRISONER IN CUSTODY, a**  
23 **violation of NRS 200.481(2)(F), a category B**  
**felony**

24 did willfully and unlawfully, while a prisoner in the lawful custody or  
25 confinement of the Douglas County Sheriff's Office, use force or violence  
26 upon the person of another, to-wit: the defendant punched Douglas County  
27 Sheriff's Deputy Joshua Hodges in the face, all of which occurred in the  
28 County of Douglas, State of Nevada,

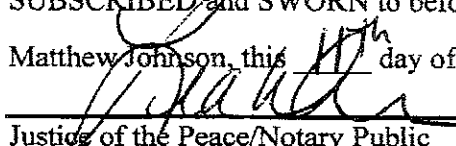
**COUNT TWO: BATTERY BY A PRISONER IN CUSTODY, a violation of NRS 200.481(2)(F), a category B felony**

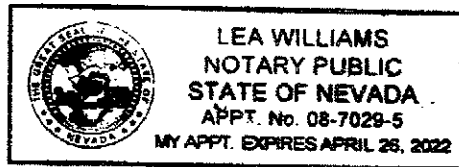
did willfully and unlawfully, while a prisoner in the lawful custody or confinement of the Douglas County Sheriff's Office, use force or violence upon the person of another, to-wit: the defendant hit Douglas County Sheriff's Deputy Michael Barden's hand knocking an electroshock weapon out of his hand, all of which occurred in the County of Douglas, State of Nevada,

against the peace and dignity of the State of Nevada. Complainant prays the Defendant be dealt with according to law.

  
COMPLAINANT

SUBSCRIBED and SWORN to before me by  
Matthew Johnson, this 11<sup>th</sup> day of July, 2018.

  
Justice of the Peace/Notary Public



RECEIVED

JUL 25 2018

DEPT. CLERK

2018 JUL 25 AM 10:50

A. NEWTON

Case No. 18-CR-0116

Dept. No. II

DA Case No. 18-1274M

This document does not contain personal information of any person

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF DOUGLAS

THE STATE OF NEVADA,

Plaintiff,

vs.

**INFORMATION**

MICHAEL LUIS COTA JR.,

Defendant.

Matthew Johnson, Deputy District Attorney, within and for the County of Douglas, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court that Michael Luis Cota Jr. has committed the crime of BATTERY BY A PRISONER IN CUSTODY, a violation of NRS 200.481(2)(f), a category B felony.

The defendant, on or about July 6, 2018, and before the filing of this Information, at and within the County of Douglas, State of Nevada,

did willfully and unlawfully, while a prisoner in the lawful custody or confinement of the Douglas County Sheriff's Office, use force or violence upon the person of another, to-wit: the defendant punched Douglas County Sheriff's Deputy Joshua Hodges in the face and hit Douglas County Sheriff's Deputy Michael Barden's hand, knocking an electroshock weapon out of his hand, all of which occurred in the Douglas County Jail in the County of Douglas, State of Nevada,

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against the peace and dignity of the State of Nevada. Complainant prays the defendant be  
dealt with according to law.



Matthew Johnson  
Deputy District Attorney

Douglas County District Attorney  
Post Office Box 218  
Minden, Nevada 89423  
(775) 782-9800 Fax (775) 782-9807

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

3  
4 Deputy Jarrod Guilford Douglas County Sheriff's Office  
5 1038 Buckeye Road  
6 Minden, Nevada 89423

7 Sergeant Amy Savage Douglas County Sheriff's Office  
8 1038 Buckeye Road  
9 Minden, Nevada 89423

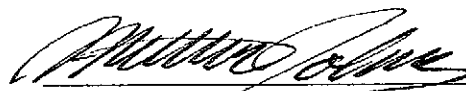
10 Deputy Mark W. Charles Douglas County Sheriff's Office  
11 1038 Buckeye Road  
12 Minden, Nevada 89423

13 Deputy Michael Barden Douglas County Sheriff's Office  
14 1038 Buckeye Road  
15 Minden, Nevada 89423

16 Deputy Joshua Hodges Douglas County Sheriff's Office  
17 1038 Buckeye Road  
18 Minden, Nevada 89423

19 Deputy Kylie Shepherd Douglas County Sheriff's Office  
20 1038 Buckeye Road  
21 Minden, Nevada 89423

22 Investigator Brandon Williamson Douglas County Sheriff's Office  
23 1038 Buckeye Road  
24 Minden, Nevada 89423

25   
26 Matthew Johnson  
27 Deputy District Attorney  
28

**PAGES 20 THROUGH 188  
OF THE APPELLANT'S APPENDIX  
FILED UNDER SEAL**

**MOTION TO BE SUBMITTED TO SUPREME  
COURT REQUESTING DOCUMENT TO BE  
TRANSMITTED UNDER SEAL**



FILED

Case No. 18-CR-0116/ 18-CR-0084

RECEIVED

2018 AUG 23 AM 9:44

Dept No. II

AUG 23 2018

RODIE R. WILLIAMS  
CLERK

Douglas County  
District Attorney

D. GORLZ  
DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF DOUGLAS

THE STATE OF NEVADA,

Petitioner,

**MOTION TO FILE SENTENCING  
MEMORANDUM AND/OR EXHIBITS  
UNDER SEAL**

vs.

MICHAEL LUIS COTA JR.,

Respondents.

The State of Nevada, by and through Matthew Johnson, Deputy District Attorney, of the Douglas County District Attorney's Office moves this Court to file the State's sentencing memorandum and/or the attached exhibits under seal. The records include personal identifying information, the names of juvenile victims of violence, medical diagnoses, and psychological evaluations performed by treatment providers which may affect the privacy interests of the persons identified in those records.

DATED this 23 day of August, 2018.

MARK B. JACKSON  
DISTRICT ATTORNEY

By: 

MATTHEW JOHNSON  
Deputy District Attorney  
P.O. Box 218  
Minden, Nevada 89423  
(775) 782-9800

1 Case No. 18-CR-0116/ 18-CR-0084

2 Dept No. II

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5  
6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF DOUGLAS  
8

9  
10 THE STATE OF NEVADA,

11 Plaintiff,

12 vs.

**CERTIFICATE OF SERVICE**

13 MICHAEL LUIS COTA JR.,


14 Defendant.  
15 \_\_\_\_\_ /

16 Pursuant to NRCP 5(b), I certify that I am an employee of the District Attorney for  
17 Douglas County, Nevada, and that I deposited for delivery a true copy of Sentencing Memorandum,  
18 addressed to:

19 John E. Malone,  
20 209 North Pratt Avenue  
21 Carson City, Nevada 89701

- 22 ☐ U.S. Mail  
23 ☒ Reno/Carson Messenger  
24 ☐ Hand Delivery  
25 ☐ By placing a copy in the pick-up folder in the District Attorney's Office.

26 DATED this 23rd day of August, 2018.

27   
28 \_\_\_\_\_

RECEIVED

SEP - 6 2018

Douglas County  
District Court Clerk

FILED

2018 SEP - 6 AM 10: 56

CLERK WILLIAMS  
A. NEWTON

1 John E. Malone, Esq.  
2 State Bar No. 5706  
3 209 N. Pratt Ave.  
4 Carson City, NV 89701  
5 (775) 461-0254

IN THE NINTH JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF DOUGLAS, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL LUIS COTA,

Defendant.

CASE NO. 18-CR-0116/18-CR-0084

DEPT NO. II

MOTION TO FILE UNDER SEAL

The Defendant, MICHAEL LUIS COTA, hereby moves this Court for an Order to file Defendant's Motion to Strike The State's Sentencing Memorandum and Attached Exhibits under seal. The defense's motion to strike references the State's Sentencing Memorandum and Attached Exhibits and to file it openly would violate the provisions of NRS 62H.025.

DATED this 6<sup>th</sup> day of Sept, 2018.

By: \_\_\_\_\_

JOHN E. MALONE, ESQ.

Attorney for Defendant, Michael Luis Cota

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that service of the foregoing MOTION TO STRIKE EXHIBITS was made this date by depositing a true copy of the same for mailing in Carson City, Nevada, and/or hand delivery addressed to each of the following:

Deputy District Attorney  
PO Box 218  
Minden, NV 89423

DATED this 10th day of Sept, 2018.

  
\_\_\_\_\_  
Kelly Atkinson

RECEIVED

SEP - 6 2018

Douglas County  
District Court Clerk

FILED

2018 SEP -6 PM12:09

BOBBIE R. WILLIAMS  
CLERK

A. NEWTON DEPUTY

1 John E. Malone, Esq.  
2 State Bar No. 5706  
3 209 N. Pratt Ave.  
4 Carson City, NV 89701  
5 (775) 461-0254

IN THE NINTH JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF DOUGLAS, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,

CASE NO. 18-CR-0116/18-CR-0084

vs.

DEPT NO. II

MICHAEL LUIS COTA,

Defendant.

ORDER TO FILE UNDER SEAL

PURSUANT to the Motion to File Under Seal and good cause appearing,

IT IS HEREBY ORDERED, that the Motion to Strike the State's Sentencing Memorandum  
and Attached Exhibits be filed under seal.

DATED this 11 day of September, 2018.

  
DISTRICT COURT JUDGE

Respectfully Submitted By:  
John E. Malone, Esq.

RECEIVED

SEP - 7 2018

FILED

Case No. 18-CR-0116/18-CR-0084

Douglas County  
Law Clerk

2018 SEP - 7 AM 9:49

Dept No. II

CLERK

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M. BIAGGINI

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF DOUGLAS

THE STATE OF NEVADA,

Plaintiff,

vs.

**OPPOSITION TO MOTION TO  
STRIKE THE STATE'S  
SENTENCING MEMORANDUM  
AND ATTACHED EXHIBITS**

MICHAEL LUIS COTA JR.

Defendant.

The State of Nevada, by and through Matthew Johnson, Deputy District Attorney, of the Douglas County District Attorney's Office, opposes defendant Michael Luis Cota Jr.'s (Cota) motion to strike its sentencing memorandum and attached exhibits.

**ARGUMENT**

Cota has failed to demonstrate that this Court should strike any portion of the State's sentencing memorandum or the documents attached thereto. This Court granted the State's motion to seal the State's sentencing memorandum and the attached records. Therefore, any juvenile justice information contained in those records and governed by NRS 62H.025(1) remains confidential. This Court is not restricted from considering any reliable and relevant evidence at the time of sentencing, NRS 176.015, and its exercise of discretion at sentencing will not be reversed unless its sentencing decision is supported solely by palpable and highly suspect evidence. *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). "Few

1 limitations are imposed on a judge's right to consider evidence in imposing a sentence, and  
2 courts are generally free to consider information extraneous to the presentencing  
3 report." *Denson*, 112 Nev. at 492, 915 at 286. "Possession of the fullest information possible  
4 concerning a defendant's life and characteristics is essential to the sentencing judge's task of  
5 determining the type and extent of punishment." *Id.* "Further, a sentencing proceeding is not a  
6 second trial, and the court is privileged to consider facts and circumstances that would not be  
7 admissible at trial." *Id.*; see also NRS 47.020(3)(c) (explaining the scope of Title 4 of NRS  
8 with respect to sentencing).

9 Cota's juvenile record is relevant to his character, revealing a pattern of escalating  
10 violent behavior.<sup>1</sup> See *Johnson v. State*, 122 Nev. 1344, 1354, 148 P.3d 767, 774 (2006)  
11 (explaining that defendant's juvenile record revealing a escalating pattern of violent behavior  
12 has significant probative value showing not only his propensity for violence and gang  
13 involvement but also his amenability to rehabilitation). Police reports and other documents like  
14 those attached to the State's sentencing memorandum are not impalpable or highly suspect  
15 evidence. See *Silks v. State*, 92 Nev. 91, 94 n.2, 545 P.2d 1159, 1161 n.2 (1976) ("(W)e believe  
16 that other criminal conduct may properly be considered, even though the defendant was never  
17 charged with it or convicted of it. Its relevance . . . is apparent.").

18 This Court is not precluded from considering hearsay at sentencing as Cota contends.  
19 NRS 47.020(3)(c); *Cf.* Memorandum at 5. The attached documents are highly relevant to  
20 Cota's character and directly relate to the likelihood that he will commit future acts of violence  
21 and his suitability for probation. Nevada courts routinely consider acts and/or convictions that  
22 occurred less than nine years ago as part of their sentencing determinations. The fact that  
23 Cota's acts occurred when he was a juvenile does not prohibit this Court from considering  
24 them. The Nevada legislature had this in mind when they authorized this Court to inspect even  
25 sealed juvenile records of a person who is less than 21 years of age for the purposes of  
26 sentencing. See NRS 62H.170(3). In this case Cota's records have not been sealed and he is

27  
28 <sup>1</sup>Contrary to Cota's claim, the State did not include Cota's "complete juvenile record" as part of  
his sentencing memorandum. Memorandum at 2.

1 nineteen years old. Cota has failed to demonstrate that the sentencing memorandum and  
2 exhibits are "made up of highly suspect and untrustworthy allegations and claims." Cf.  
3 Memorandum at 2.

4 Exhibit 8 is not protected by the psychologist-patient privilege. NRS 49.209. The  
5 privilege, of course, only protects communications between the psychologist and the patient  
6 and the report only appears to contain a single sentence that discloses the actual  
7 communications between Cota and a psychologist at all, rather than some other source. See  
8 Exhibit 8 at 2, paragraph 3. That psychologist is not the author of Exhibit 8 but one who had  
9 evaluated him previously. Cota has failed to demonstrate that the communication is  
10 "confidential" within the meaning of NRS 49.207. The previous communication was part of a  
11 psychological evaluation that was done while he was under the supervision of the juvenile court  
12 and Cota fails to demonstrate that he did not intend it to be disclosed to a third person as part of  
13 his supervision. Cota also waived any privilege he could have asserted with respect to  
14 communications in the report by failing to object during the more than five years that have  
15 elapsed between when the evaluation, which included the communication(s), was provided to  
16 his juvenile probation officer, the district attorney's office, and the Juvenile Division of the  
17 Ninth Judicial District Court, and when the State attached it to its sentencing memorandum for  
18 this Court's review. In the event that this Court determines that any communication in the  
19 evaluation is privileged under NRS 49.207, and Cota can still assert his privilege, this Court  
20 can certainly strike the sentence or sentences containing those communications and still  
21 consider the rest of the evaluation.

22 A violation of NRS 62H.025 is not grounds for striking the State's memorandum or the  
23 attached exhibits. This Court has been given the authority by the Nevada Legislature to inspect  
24 any juvenile record of a person like Cota who is less than 21 years of age for the purposes of  
25 sentencing even when that record is sealed. NRS 62H.170(3). This includes records that are  
26 not in possession of the juvenile court. See NRS 62H.100 (defining records). It can certainly  
27 consider the unsealed records of Cota that were attached as exhibits to the State's sentencing  
28 memorandum.




1 The State did not violate any subsection of NRS 62H.025 including subsection 5. First,  
2 a violation of NRS 62H.025(5) only occurs when a person is "provided with juvenile justice  
3 information pursuant to [NRS 62H.025]." (Emphasis added). Exhibits 1-13 could not have  
4 been released to the State "pursuant to [NRS 62H.025]." NRS 62H.025(5). At the time the  
5 State obtained Exhibits 1-13, NRS 62H.025 only governed "written request[s]," for juvenile  
6 justice information. 2013 Nev. Stats. ch. 155, at 519 amended on July 1, 2015 by 2015 Nev.  
7 Stats. ch. 297, at 1495. No written request was made to obtain Exhibits 1-13. Only after those  
8 exhibits were obtained was the written request requirement dropped by the Nevada legislature.  
9 *Id.* Therefore, even if Exhibits 1-13 contain "juvenile justice information" within the meaning  
10 of NRS 62H.025(6)(b), they were not "provided [to the State] pursuant to [NRS 62H.025]," and  
11 subsection 5 is inapplicable to those exhibits. Second, NRS 62H.025 only governs the release  
12 of juvenile justice information by a juvenile justice agency. Most of the documents obtained  
13 by the State were not provided by a "juvenile justice agency." Exhibits 1-6, 10-12, and 14-16  
14 were released by the Douglas County Sheriff's Office, not a juvenile justice agency. Third,  
15 NRS 62H.025 did not even exist when Exhibits 1 to 7 were obtained by the State. Because  
16 Cota fails to demonstrate that any document attached to the State's sentencing memorandum  
17 was provided to the State "pursuant to [NRS 62H.025]," his allegation that the State violated  
18 any subsection of NRS 62H.025 is meritless. NRS 62H.025(5).

19 This Court should not strike any portion of the State's sentencing memorandum and the  
20 attached exhibits. Cota's motion should be denied.

21 DATED this 5 day of September, 2018.

22 MARK B. JACKSON  
23 DISTRICT ATTORNEY

24 By:   
25 MATTHEW JOHNSON  
26 Deputy District Attorney  
27 P.O. Box 218  
28 Minden, Nevada 89423  
(775) 782-9800

1 Case No. 18-CR-0116/18-CR-0084

2 Dept No. II

3 This document does not contain personal information of any person

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5  
6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF DOUGLAS

8  
9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

**CERTIFICATE OF SERVICE**

12 MICHAEL LUIS COTA JR.


13 Defendant.  
14

15 Pursuant to NRCP 5(b), I certify that I am an employee of the District Attorney's Office  
16 for Douglas County, Nevada, and that on this day I deposited for delivery a copy of the  
17 Opposition to Motion to Strike State's Sentencing Memorandum, addressed to:

18 John E. Malone,  
19 209 North Pratt Avenue  
20 Carson City, NV 89701

- 21 ☒ U.S. Mail  
22 ☐ Reno/Carson Messenger  
23 ☐ Hand Delivery  
24 ☐ Email

25 DATED this 7<sup>th</sup> day of September, 2018.

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1 Case No. 18-CR-0116/18-CR-0084

2 Dept. No. II

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SEP 13 2018

County Clerk

FILED

2018 SEP 13 AM 10:21

CLERK

NEWTON

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF DOUGLAS

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 vs.

DISCLOSURE

12 MICHAEL LUIS COTA JR.,  
13 Defendant.

14 \_\_\_\_\_/

15 Both of these criminal matters are scheduled for sentencing.  
16 The State recently filed a sentencing memorandum and exhibits  
17 referencing conduct of Defendant as a juvenile. Some of the  
18 referenced conduct occurred during the Court's prior employment  
19 with the Douglas County District Attorney's Office. The  
20 undersigned does not recollect having prosecuted Defendant for the  
21 delinquent offenses referred to in the State's exhibits. Out of  
22 an abundance of caution, the State is directed to review the  
23 State's juvenile files to determine what role, if any, the

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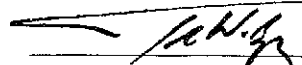
1 undersigned played in those cases and to inform Defendant's  
2 counsel of the findings.

3 IT IS SO ORDERED.

4 DATED this 13<sup>th</sup> day of September, 2018.

5

6

  
THOMAS W. GREGORY  
DISTRICT JUDGE

7

8 Copies served by hand delivery/mail on September 13<sup>th</sup>, 2018,  
9 addressed to:

10 Douglas County District Attorney's Office (Hand Delivery)  
11 P.O. Box 218  
12 Minden, Nevada 89423

13 John Malone, Esq. (Mail)  
14 209 North Pratt Street  
15 Carson City, Nevada 89701

15

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Erin C. Plante

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FILED

Case No. 18-CR-0116/18-CR-0084

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2018 SEP 13 AM 10:21

Dept. No. II

SEP 13 2018

Douglas County  
Court Clerk

A. NEWTON

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF DOUGLAS

THE STATE OF NEVADA,  
Plaintiff,

vs.

ORDER

MICHAEL LUIS COTA JR.,  
Defendant.

THIS MATTER comes before the Court on Defendant's Motion to Strike the State's Sentencing Memorandum and Attached Exhibits, filed September 6, 2018. The State filed an Opposition to Motion to Strike the State's Sentencing Memorandum and Attached Exhibits on September 7, 2018. Defendant did not file a reply.

The case came before the Court for sentencing on September 10, 2018. Defendant appeared with counsel. The State was represented by the Douglas County District Attorney's Office. The Court heard oral arguments on the motion and sentencing was continued. This order addresses Defendant's Motion to Strike the State's Sentencing Memorandum and Attached Exhibits.

Defendant is 19 years of age. In case number 18-CR-0116, Defendant entered a guilty plea to Battery by a Prisoner in Lawful Custody, a category B felony. In case number 18-CR-0084,

1 Defendant entered a guilty plea to Principal to Grand Larceny of a  
2 Firearm, a category B felony. Sentencing for both cases is  
3 scheduled for October 8, 2018.

4 The Division of Parole and Probation prepared a Presentence  
5 Investigation Report for both cases. Each report contains a  
6 section summarizing Defendant's history in the juvenile justice  
7 system. Defendant, citing NRS 62H.030(3)(b), NRS 176.145(1)(b)  
8 and "the usual order," does not object to this information being  
9 in the PSI reports and considered by the Court. Defendant does  
10 not contend that his juvenile history has been sealed.

11 On August 23, 2018, the State filed a *Sentencing Memorandum*  
12 accompanied by sixteen exhibits. Contemporaneously, the State  
13 filed a *Motion to File Sentencing Memorandum and/or Exhibits under*  
14 *Seal*. Although the State requested that both the motion and the  
15 exhibits be sealed, the State's proposed order, entered on August  
16 29, 2018, only addressed the exhibits. *Order Sealing Exhibits to*  
17 *Sentencing Memorandum*, August 29, 2018.

18 Defendant objects to the entirety of the State's *Sentencing*  
19 *Memorandum* and exhibits. Defendant argues that all of the  
20 exhibits are confidential as being "juvenile justice information"  
21 in the hands of a "juvenile justice agency," NRS 62H.025; the  
22 State improperly obtained and disseminated the documents; and the  
23 evidence is irrelevant, prejudicial, impalpable and highly  
24 suspect. Defendant also argues that the documents are juvenile  
25 court records subject to protection by NRS 62H.030. As to one  
26 exhibit, Defendant claims the protection of the psychologist-  
27 patient privilege found in NRS 49.209.

28 A sentencing court may consider any reliable and relevant

1 evidence. NRS 176.015(6). "Possession of the fullest information  
2 possible concerning a defendant's life and characteristics is  
3 essential to the sentencing judge's task of determining the type  
4 and extent of punishment." *Denson v. State*, 112 Nev. 489, 492  
5 (1996). A sentencing court "is privileged to consider facts and  
6 circumstances that would not be admissible at trial." *Id.*; see  
7 also, NRS 47.020(3)(c). A sentencing court may consider hearsay.  
8 NRS 47.020(3)(c). A sentencing court may consider evidence of  
9 other bad acts, even if uncharged. See, *Silks v. State*, 92 Nev.  
10 91, 94 (1976). "This includes a defendant's juvenile record."  
11 *Contreras-Armas v. State*, 2018 Nev. Unpub. LEXIS 424, 2018 WL  
12 2272932, May 15, 2018, Docket No. 73298; See NRAP 36(3). A  
13 defendant's juvenile record is relevant to the defendant's  
14 character and may be of significant probative value. *Johnson v.*  
15 *State*, 122 Nev. 1344, 1354 (2006). Such evidence is not unfairly  
16 prejudicial. *Id.*

17 Before turning to a discussion of the exhibits in question,  
18 the Court first addresses Defendant's assertion that juvenile  
19 justice courtrooms are "closed," "the public is not allowed in,"  
20 "the press is not allowed in," and the aegis of the system is to  
21 help the juvenile. Defendant's Motion, p. 8. Each of Defendant's  
22 assertions are incorrect. NRS 62D.010(2); NRS 62H.020; In the  
23 matter of *Seven Minors*, 99 Nev. 427, 432-33 (1983) (while the best  
24 interests of a juvenile offender are to be considered by the  
25 juvenile court, public interest and safety predominate).

26 The State's sixteen exhibits, filed under seal, are addressed  
27 below:

28 (a) Twelve of the State's sixteen exhibits represent

1 investigative police reports from the Douglas County Sheriff's  
2 Office referencing conduct of Defendant. The State represents  
3 that the reports were released by DCSO.

4 The Court has reviewed each of the twelve investigative  
5 reports. Three of the reports, represented in State's exhibits  
6 14, 15, and 16, are police reports referencing Defendant's conduct  
7 after he became an adult. Three other reports, represented in  
8 State's exhibits 1, 2 and 6, regard juvenile cases specifically  
9 referred to in the PSI reports. As to these reports, Defendant  
10 does not object to the incidents being generally referred to in  
11 the PSI reports, but objects to the Court considering the details  
12 of the prior conduct as provided in the police reports.  
13 Defendant's position in this regard is unsupported, is at odds  
14 with authorities stated herein, and goes against the notion of  
15 having a fully informed sentencing court.

16 None of the investigative reports are: (1) records of the  
17 juvenile court subject to the protection of NRS 62H.030; (2)  
18 juvenile justice information obtained from a juvenile justice  
19 agency and subject to the protection of NRS 62H.025; (3) records  
20 of criminal history subject to the protections of NRS Chapter  
21 179A, see NRS 179A.070(2)(b); or claimed by Defendant to be  
22 excepted from consideration as public records pursuant to NRS  
23 239.010(1). See, *Donrey of Nevada v. Bradshaw*, 106 Nev. 630  
24 (1990). Even if this were not the case, it would be appropriate  
25 for the Court to receive and consider the investigative reports  
26 for sentencing purposes. See NRS 62H.170(3); 62H.030(3)(b);  
27 62H.025(2)(c); and 176.145(1)(b). By having the exhibits sealed,  
28 Defendant's privacy interests, if any, are protected.



1       The Court finds that each investigative report is highly  
2 probative of Defendant's character and relevant to the sentencing  
3 determination. The reports are not unfairly prejudicial. The  
4 reports do not contain impalpable or highly suspect information.  
5 The reports put Defendant on notice of the State's intended use of  
6 prior acts giving Defendant a full opportunity to prepare for  
7 sentencing.

8       (b) Probation Officer's Review Report, filed in the juvenile  
9 court on April 13, 2012. The State does not say how it came into  
10 possession of the report.

11       As being a document filed into juvenile court, the report is  
12 not a public record. NRS 239.010(1). Nonetheless, the report may  
13 be disseminated to a court for consideration at sentencing  
14 hearing. For instance, because the report has not been sealed, it  
15 is subject to release to the Division of Parole and Probation for  
16 preparation of the PSI reports. NRS 62H.030(3)(b). Even if the  
17 report was sealed, the Court would be entitled to inspect the  
18 report for use in sentencing Defendant. NRS 62H.170(3).

19       Defendant does not contest the above. Rather, Defendant  
20 takes umbrage with the fact that it was the State, as opposed to  
21 the Division of Parole and Probation or the Court, which obtained  
22 and disseminated the report. Defendant argues that the State had  
23 no authority to disseminate the report. Assuming that to be true,  
24 Defendant has not cited any authority requiring suppression of the  
25 report from consideration at sentencing as a sanction. The law  
26 stated above makes clear that it is proper for the Court to  
27 consider the report for sentencing purposes if it is otherwise  
28 competent evidence. The Court finds that the report is relevant

1 to Defendant's character, is not unfairly prejudicial and does not  
2 contain impalpable or highly suspect information.

3 (c) Psychology Services Consultation, Assessment of Risk,  
4 Copper Hills Youth Center, June 4, 2013; Discharge Summary, Copper  
5 Hills Youth Center, August 9, 2013; and, Discharge Summary,  
6 Northwest Academy, May 20, 2015. The State does not indicate how  
7 it received the risk assessment or the discharge summaries.

8 It is clear from the Probation Officer's Review Report  
9 discussed in subsection (b) and the face of the risk assessment  
10 and the discharge summaries that Defendant was ordered by the  
11 juvenile court to Copper Hills and Northwest Academy. As such,  
12 the risk assessment and discharge summaries were for the juvenile  
13 court's benefit and would have been provided to the juvenile  
14 justice agency and the juvenile court.

15 In the hands of a juvenile justice agency, the records  
16 represent confidential juvenile justice information. NRS 62H.025.  
17 A juvenile justice agency may, without court order or even a  
18 written request, release such a report to various entities and/or  
19 individuals, including the Division of Parole and Probation and a  
20 district attorney. NRS 62H.025. A district attorney may further  
21 disseminate the information "solely for the purpose of initiating  
22 legal proceedings" or "to a court or other party" pursuant to NRS  
23 Title 5. NRS 62H.025(5)(a) and (b).

24 In the hands of the juvenile court, the risk assessment and  
25 discharge summaries represent court records, the analysis for  
26 which mirrors the analysis provided in subsection (b). The  
27 analysis is not repeated here.

28 As with the exhibit referenced in subsection (b), Defendant

1 argues that the State lacked authority to disseminate the risk  
2 assessment and discharge summaries to the Court. The Court's  
3 assessment of this argument is the same as in subsection (b) and  
4 is not repeated here.

5 The Court has also considered Defendant's claim that the risk  
6 assessment is protected by the psychologist-patient privilege.  
7 The privilege protects "confidential communications" between a  
8 psychologist and patient. NRS 49.209. A communication is not  
9 confidential if it is intended to be disclosed to a third party.  
10 NRS 49.207(1). The risk assessment is not confidential as it was  
11 intended to be released to juvenile probation and the juvenile  
12 court. In any event, by consenting to the release and/or offering  
13 no objection to the release to the juvenile court, Defendant  
14 waived any privilege. NRS 49.385.

15 The Court finds that the risk assessment and discharge  
16 summaries are relevant to Defendant's character, are not unfairly  
17 prejudicial and do not contain impalpable or highly suspect  
18 information. Of note, Defendant is in the process of obtaining a  
19 psychological evaluation for use at sentencing. At the hearing,  
20 Defendant argued that none of the State's exhibits, including the  
21 risk assessment, would be of benefit to the psychologist's  
22 evaluation of Defendant. The Court disagrees. The Court finds  
23 that all of the State's exhibits are highly relevant to  
24 Defendant's psychological evaluation, just as the exhibits are  
25 highly relevant for sentencing purposes. Defendant is authorized  
26 and encouraged to share the exhibits with his psychologist.

27 ///

28 ///

1 IT IS HEREBY ORDERED that Defendant's Motion to Strike the  
2 State's Sentencing Memorandum and Attached Exhibits is DENIED.

3 IT IS FURTHER ORDERED that this Order and the State's  
4 Sentencing Memorandum be filed under seal.

5 DATED this 13<sup>th</sup> day of September, 2018.

6

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8

9

10 Copies served by hand delivery/mail on September 13<sup>th</sup>, 2018,  
11 addressed to:

12 Douglas County District Attorney's Office (Hand Delivery)  
13 P.O. Box 218  
14 Minden, Nevada 89423

14 John Malone, Esq. (Mail)  
15 209 North Pratt Street  
16 Carson City, Nevada 89701

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Erin C. Plante  
Erin C. Plante

RECEIVED

John E. Malone, Esq.  
State Bar No. 715  
209 N. Pratt Ave.  
Carson City, NV 89701  
(775) 461-0254  
Attorney for Defendant

OCT - 4 2018

Douglas County  
Clerk

FILED

2018 OCT - 4 PM 2:12

CLERK

WILLIAMS

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

STATE OF NEVADA,

Plaintiff,

Case Number: 18-CR-0084/18-CR-0116

vs.

Dept Number: II

MICHAEL LUIS COTA,

Defendant.

**DEFENDANT'S SUBMISSION OF DOCUMENTATION  
IN MITIGATION OF SENTENCING**

COMES NOW Defendant, MICHAEL LUIS COTA, by and through his attorney of record,  
John E. Malone, Esq., who herein submits the following documents for mitigation purposes at his  
sentencing, presently set for Monday, October 8, 2018, at 9:00 a.m.:

1. Risk Assessment by Melissa Piasecki, M.D. dated October 3, 2018.

DATED this 4th day of October, 2018.

JOHN E. MALONE, ESQ.  
Attorney for Defendant,  
Michael Luis Cota

**AFFIRMATION**

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

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

DATED this \_\_\_\_ day of October, 2018.

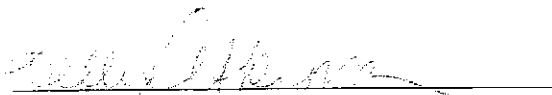
\_\_\_\_\_  
JOHN E. MALONE, ESQ.  
Attorney for Defendant,  
**Michael Luis Cota**

CERTIFICATE OF SERVICE

Pursuant to NRCp 5 (b) I hereby certify that on this date I sent via first class mail, facsimile, and/or hand delivery in Carson City, a true and correct copy of the foregoing DEFENDANT'S SUBMISSION OF DOCUMENTATION IN MITIGATION OF SENTENCING to the following:

Deputy District Attorney  
PO Box 218  
Minden, NV 89423

DATED this 25 day of October, 2018.

  
Kelly Atkinson

**MELISSA PIASECKI, M.D.**

**FORENSIC PSYCHIATRY**

561 KEYSTONE AVE. #104

RENO, NV 89503

775 722-1077 Fax 866 500-7716

piaseckimd@gmail.com

BOARD CERTIFIED IN PSYCHIATRY AND FORENSIC PSYCHIATRY

John E. Malone, Esq.  
209 Pratt Ave.  
Carson City, NV 89701

October 3, 2018

Re: Michael Luis Cota  
Case No. 18-CR-0084  
DOB: 2.2.99  
Dear Mr. Malone:

At your request, I have completed an evaluation of your client, Mr. Cota with regards to his treatment needs and risk of re-offense.

To complete this evaluation, I met with Mr. Cota on 9.28.18 and I spoke with his mother by phone on 9.29.18. I also reviewed documents: Information 5.29.18, Presentencing Investigation Reports 8.21.18 and 8.22.18, 2012 records from Copper Hills Youth Center and discovery materials from Douglas County Sheriff's Office.

**Summary:** Mr. Cota is a 19-year-old single man who pleaded guilty to Battery by a Prisoner in Custody and Principal to Grand Larceny of a Firearm.

**Medical History:** Mr. Cota has a history of a head injury when he was struck in the head with a pole at age fifteen. He stated that the pole penetrated his skull and that he had more problems with behavior control following this injury.

**Mental Health History:** Mr. Cota reported multiple mental health assessments and treatments. He was diagnosed with ADHD and speech impairments in first grade. He was prescribed medication for mental health problems starting around age thirteen, when he was first hospitalized. He received outpatient, inpatient and residential treatment for mood disorder diagnoses from ages thirteen to eighteen. In Reno, he was hospitalized at West Hills Hospital and Willow Springs Residential Treatment Center. He was transferred to a residential program in Utah in 2012 after concerns were raised regarding sexual misconduct with another child. He received outpatient care at the Children's Cabinet and Douglas Mental Health.

Mr. Cota said that when he was around thirteen years old, he began to self-harm by cutting. He clarified that he did not use a sharp instrument but instead used plastic that he rubbed to cause abrasion and scarring on his skin. The pain that was associated with self-harm made him feel calmer. Later, the pain associated with tattooing gave him similar effect. He stated "I felt better with the needle, I just felt better." He also described suicide gestures in which he had



thoughts of dying.

Mr. Cota and his mother did not recall any benefit from medications and believed most medications were too sedating.

At the time of my assessment, Mr. Cota reported intact appetite and sleep patterns. He described feelings of anger and isolation as well as a tentative belief that other inmates are talking about him.

**Substance History:** Mr. Cota reported that he first used alcohol at age eleven. He reported a pattern of binge drinking at parties with frequent blackouts from drinking. Mr. Cota reported he first used marijuana at age eight when his father first offered it to him at a party.

At age sixteen, Mr. Cota began to smoke methamphetamine. In April, 2018, his father introduced him to intravenous use by mixing the drug and putting a needle into his arm. He recently progressed to regular intravenous use, with three or four uses a day. He had periods of continuous use, with little sleep, for three to four day periods. He denied psychotic symptoms during methamphetamine use.

Mr. Cota reported no history of prescription drug abuse, hallucinogens or gambling problems. He used inhalants when he was around eleven years old.

**Developmental and Occupational History:** Mr. Cota reported that he was born in Idaho and raised in Idaho and northern Nevada. His parents did not marry and his mother left Idaho with him and his sisters in 2003. He reported witnessing domestic violence at multiple points during his childhood. His father struggled with substance use and spent time in prison. Mr. Cota said that he wanted to spend time with his father and his mother would allow his father back into the home which led to cycles of domestic violence. Mr. Cota recalled his father pushing his mother onto the rim of the bathtub leading to a serious injury and significant bleeding.

Mr. Cota attended school up to the ninth grade. He said he was in special education for emotional and behavioral problems. He left school because of residential placements. He does not have a GED. Mr. Cota worked at a number of unskilled jobs for six month periods.

Mr. Cota has an infant son but is no longer in contact with the child's mother. He was married one time. The PSI indicates that his son lives with Mr. Cota's mother.

**Legal History:** Mr. Cota has a history of one misdemeanor conviction according to the PSI. He has a history of juvenile youth camp, probation and parole throughout his teens.

**Mental Status Exam:** Prior to the assessment, I informed Mr. Cota that I was asked to complete an assessment and a report for his attorney's use in court. I described the limits of confidentiality and of my role. Mr. Cota appeared to understand these considerations and agreed to the interview.

Mr. Cota presented as a young man in standard jail attire. His appearance was notable for

facial and forearm tattoos, including a crown above his left eye.

He was pleasant and cooperative throughout. His speech was spontaneous and conversational, with normal rate and tone. Mr. Cota's thought processes were tight and logical. He denied suicidal thoughts or violent thoughts. He had vague thoughts that others were talking about him. He also described vague hallucinations but was not certain of whether or not he heard voices or his own thoughts.

He described his mood as "happy" and rated it at 7 out of 10, with 10 being the best. Mr. Cota was able to register and recall three unrelated words, and he was oriented to the day, month and year. Mr. Cota was future oriented with the desire to return to the community.

**Mr. Cota's report of events:** Mr. Cota reported that he used methamphetamine extensively in the period prior to the gun offense. He noted that he stole the guns for money to buy methamphetamine.


#### **Findings:**

1. Mr. Cota has a methamphetamine use disorder. Mr. Cota demonstrated limited insight into the negative effects of substance use on his behavior and health and his need for treatment. Chronic use of methamphetamine has neurotoxic effects. Mr. Cota's pattern of use is consistent with the patterns associated with drug-induced changes to executive functioning. As a result of chronic methamphetamine use, impulse control, judgment, problem solving and cognitive flexibility are compromised. These brain changes tend to normalize after two years of abstinence.
2. Mr. Cota has a history of mental health diagnoses and treatment. He and his mother describe impulse control, inappropriate anger and self-harm. He experienced extreme emotional dysregulation and used self-harm as a maladaptive coping strategy. Mr. Cota described some vague symptoms at the time of my assessment but did not describe symptoms consistent with a current mood or psychotic disorder.
3. Mr. Cota described significant childhood exposure to violence. He witnessed his father beating his mother and felt responsible for his father being in the home. Mr. Cota still struggles with boundaries and conflicting feelings related to his father. His recent escalation to IV drug use facilitated by his father suggests that his father remains a powerful influence on him.
4. Mr. Cota stated he needs help developing coping skills and communication skills in order to manage emotions and relationships. He expressed a desire to work with mental health professionals to gain these skills.
5. There is no evidence that Mr. Cota currently has any recent behaviors suggesting sexual misconduct. Results from prior testing with the J-SOAP were valid for the six month period following the 2013 assessment. The use of the SORAG in 2013 was not valid for a younger adolescent. Guidelines for the use of the SORAG specify that it may be used with individuals who allegedly offended at age sixteen or older.

5. Mr. Cota is in need of evidence-based treatment for emotional dysregulation and substance use. His history of trauma and loss is a factor in his substance use and his relationship with his father is a complicating factor. If sentenced to prison, Mr. Cota should receive intensive cognitive behavioral therapy to address distorted thoughts and unhealthy relationships. He should also receive treatment that allows him to gain behavioral skills for emotional regulation, coping, communication and parenting. Mr. Cota should receive educational support for a GED and a high school diploma. When he transitions to the community, he should have intensive support and monitoring to stay free of substances.

Please contact me if you have any questions about this report.

Sincerely,



Melissa Piasecki, M.D.

FILED

1 Case No. 18-CR-0084

2 Dept. No. II

RECEIVED

OCT 10 2018

Douglas County  
District Court Clerk

2018 OCT 10 AM 11:54

BOBBIE R. WILLIAMS  
CLERK

BY JWS clerk

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

JUDGMENT OF CONVICTION

12 MICHAEL LUIS COTA,

13 Defendant.

14

15 On the 9<sup>th</sup> day of July, 2018, Defendant entered a plea of  
16 guilty to the following offense contained within the Information:  
17 Count IV: PRINCIPAL TO GRAND LARCENY OF A FIREARM, a violation of  
18 NRS 205.226, NRS 195.020, a category B felony.

19 On the 8<sup>th</sup> day of October, 2018, Defendant appeared for  
20 sentencing. Finding no legal cause why judgment should not be  
21 pronounced, judgment was rendered as follows: Count IV: PRINCIPAL  
22 TO GRAND LARCENY OF A FIREARM, a violation of NRS 205.226, NRS  
23 195.020, a category B felony, imprisonment in the state prison for  
24 a maximum term of seventy-two (72) months and a minimum term of  
25 sixteen (16) months and ordered the Defendant to be joint and  
26 severally liable with Robert Donald Brown for restitution in the  
27 amount of nine hundred sixty-nine dollars and eighteen cents  
28 (\$969.18). Defendant is granted one hundred sixty-one (161) days

1 credit for time served.

2 Defendant shall pay statutory fees and assessments of \$25.00  
3 (NRS 176.062), \$3.00 (NRS 176.0623), and \$150.00 (NRS 176.0915).

4 Defendant shall appear on the first Monday following his  
5 release from incarceration at 9:00 a.m. to arrange a payment  
6 schedule for all Court ordered fees and restitution.

7 This judgment constitutes a lien in like manner as a judgment  
8 rendered in a civil action. NRS 176.275.

9 DATED this 10<sup>th</sup> day of October, 2018.

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THOMAS W. GREGORY  
DISTRICT JUDGE

1 Case No. 18-CR-0116

2 Dept. No. II

RECEIVED

OCT 10 2018

Douglas County  
District Court Clerk

FILED

2018 OCT 10 AM 11:55

BOBBIE R. WILLIAMS  
CLERK

BY *[Signature]*

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF DOUGLAS

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 vs.

JUDGMENT OF CONVICTION

12 MICHAEL LUIS COTA,  
13 Defendant.

14  
15 On the 6<sup>th</sup> day of August, 2018, Defendant entered a plea of  
16 guilty to the following offense contained within the Information:  
17 BATTERY BY A PRISONER IN CUSTODY, a violation of  
18 NRS 200.481(2)(f), a category B felony.

19 On the 8<sup>th</sup> day of October, 2018, Defendant appeared for  
20 sentencing. Finding no legal cause why judgment should not be  
21 pronounced, judgment was rendered as follows: BATTERY BY A  
22 PRISONER IN CUSTODY, a violation of NRS 200.481(2)(f), a category  
23 B felony, imprisonment in the state prison for a maximum term of  
24 seventy-two (72) months and a minimum term of twenty-four (24)  
25 months to run consecutive to the Ninth Judicial District Court  
26 Case Number 18-CR-0084. Defendant is granted zero (0) days credit  
27 for time served.

28 Defendant shall pay statutory fees and assessments of \$25.00

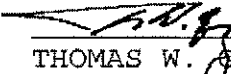
1 (NRS 176.062), and \$3.00 (NRS 176.0623).

2 This judgment constitutes a lien in like manner as a judgment  
3 rendered in a civil action. NRS 176.275.

4 DATED this 10<sup>th</sup> day of October, 2018.

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THOMAS W. GREGORY  
DISTRICT JUDGE

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NOV 9 5 2018

Douglas County  
District Court Clerk

2018 NOV -5 AM 12:30

A. NEWTON

1 JOHN E. MALONE, ESQ.  
2 Nevada Bar No. 5706  
3 209 N. Pratt Ave.  
4 Carson City, NV 89701  
5 Attorney for Petitioner

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR DOUGLAS COUNTY

9 MICHAEL LUIS COTA,  
10  
11 Petitioner,  
12  
13 vs.  
14 THE STATE OF NEVADA,  
15 Respondent.

CASE NO. 18-CR-0084  
DEPT NO. II

16 NOTICE OF APPEAL

17 NOTICE is hereby given that MICHAEL LUIS COTA, Defendant above named, by and  
18 through his attorney, JOHN E. MALONE, ESQ., hereby appeals to the Supreme Court of Nevada  
19 from the Ninth Judicial District Court's Judgment of Conviction of Mr. Cota filed on the 10<sup>th</sup> day  
20 of October, 2018.

21 This appeal is to all issues of law.

22 DATED this 5<sup>th</sup> day of November, 2018.

23 JOHN E. MALONE, ESQ.  
24 Attorney for the Petitioner,  
Michael Luis Cota



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that service of the foregoing NOTICE OF APPEAL was made this date by depositing a true copy of the same for mailing and/or hand delivery in Carson City, Nevada, addressed to each of the following:

Douglas County District Attorney's Office  
PO Box 218  
Minden, NV 89423

Michael Luis Cota, #1206075  
NNCC  
PO Box 7000  
Carson City, NV 89702

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Kelly Atkinson

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Douglas County  
District Court Clerk

FILED

2018 NOV -6 AM 10:32

BOBBIE R. WILSON  
Electronically Filed  
Nov 15 2018 02:05 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

1 JOHN E. MALONE, ESQ.  
2 Nevada Bar No. 5706  
3 209 N. Pratt Ave.  
4 Carson City, NV 89701  
5 Attorney for Petitioner

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR DOUGLAS COUNTY

9 MICHAEL LUIS COTA,

10 Petitioner,

11 vs.

12 THE STATE OF NEVADA.

13 Respondent.  
14

CASE NO. 18-CR-0116

DEPT NO. II

15 NOTICE OF APPEAL

16 NOTICE is hereby given that MICHAEL LUIS COTA, Defendant above named, by and  
17 through his attorney, JOHN E. MALONE, ESQ., hereby appeals to the Supreme Court of Nevada  
18 from the Ninth Judicial District Court's Judgment of Conviction of Mr. Cota filed on the 10<sup>th</sup> day  
19 of October, 2018.

20 This appeal is to all issues of law.

21 DATED this 5<sup>th</sup> day of November, 2018.

22  
23 JOHN E. MALONE, ESQ.  
24 Attorney for the Petitioner,  
Michael Luis Cota


CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that service of the foregoing NOTICE OF APPEAL was made this date by depositing a true copy of the same for mailing and/or hand delivery in Carson City, Nevada, addressed to each of the following:

Douglas County District Attorney's Office  
PO Box 218  
Minden, NV 89423

Michael Luis Cota, #1206075  
NNCC  
PO Box 7000  
Carson City, NV 89702

DATED this 5th day of November, 2018.

  
Kelly Atkinson

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1 Case No. 18-CR 00084

2 Dept. No. 2

3  
4 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
5 IN AND FOR THE COUNTY OF DOUGLAS  
6 BEFORE THE HONORABLE DISTRICT COURT JUDGE THOMAS GREGORY

7 ---oOo---

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 MICHAEL L. COFA,

12 Defendant.

13 \_\_\_\_\_ /

14  
15 TRANSCRIPT OF PROCEEDINGS

16 ARRAIGNMENT

17 MONDAY, JUNE 18, 2018

18 MTNDEN, NEVADA

19 APPEARANCES:

20 For the Plaintiff:

MATTHEW JOHNSON, ESQ.  
Deputy District Attorney

21 For the Defendant:

JOHN MALONE, ESQ.  
Attorney at Law

22  
23 REPORTED BY:

CHRISTY Y. JOYCE, CCR #625  
Capitol Reporters  
(775) 882-5322

1 MONDAY, JUNE 18, 2018

2 ---oOo---

3 THE COURT: The next case is the State of Nevada  
4 versus Michael Louis Cota, Case Number 18-CR-0084. Show the  
5 appearance of Matthew Johnson on behalf of the State. Good  
6 morning, Mr. Johnson.

7 MR. JOHNSON: Good morning, your Honor.

8 THE COURT: John Malone is appearing on behalf of  
9 the defendant. Good morning, Mr. Malone.

10 MR. MALONE: Good morning, your Honor.

11 THE COURT: And also appearing in lawful custody  
12 is the defendant, Michael Louis Cota. Good morning,  
13 Mr. Cota.

14 THE DEFENDANT: Good morning, sir.

15 THE COURT: This is Mr. Cota's first appearance  
16 before the Court in this case. The Court previously  
17 appointed Mr. Malone to represent Mr. Cota. Mr. Cota, I did  
18 that operating under the belief that you did not have the  
19 means to afford counsel of your choice. Is that your  
20 financial circumstance?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And are you asking the Court to  
23 appoint Mr. Malone to represent you?

24 THE DEFENDANT: Yes, sir.



1 THE COURT: So the Court confirms the prior  
2 appointment of Mr. Malone. And, Mr. Malone, thank you for  
3 being here today on somewhat short notice.

4 MR. MALONE: Thank you, your Honor.

5 THE COURT: Mr. Malone, have you received a copy  
6 of the information?

7 MR. MALONE: Yes, your Honor. And if I can maybe  
8 short circuit this very quickly.

9 THE COURT: Yes, you may.

10 MR. MALONE: I'm not sure if I was appointed on  
11 Friday or Thursday. But I did -- those two days were taken  
12 up for me. I had court appearances in Pahrump, so I was on  
13 the road and appearing down there. I have reviewed the  
14 information and the guilty plea memorandum with Mr. Cota.  
15 But I would ask for some additional time to review the  
16 discovery. I know Mr. Cota has asked me to make a motion for  
17 an OR release. We're still in the process of discussing the  
18 best way to deal with that matter. But Mr. Johnson has been  
19 kind enough to allow me to read through the discovery. If I  
20 can satisfy myself that I've gone through enough of it to --  
21 or that I have an understanding of the charges, the possible  
22 defenses, and the best course of action for Mr. Cota, we  
23 could take care of the arraignment today. But, otherwise, I  
24 might be requesting a continuance just to make sure that he's

1 had enough time to consult with counsel. I think I have an  
2 obligation, independent that of Mr. Ence, to do so if I'm  
3 going to be handling this plea.

4 THE COURT: Thank you, Mr. Malone.

5 Mr. Johnson, what is the State's position  
6 regarding continuing the arraignment?

7 MR. JOHNSON: Regarding continuing the  
8 arraignment, your Honor, we wouldn't be opposed to a short  
9 continuance to allow Mr. Malone to review the discovery. We  
10 would be opposed to any OR release.

11 THE COURT: All right. We will discuss further  
12 Mr. Cota's bail status.

13 Mr. Malone, you were just appointed on the 13th.  
14 And so the Court very much understands and appreciates why  
15 you need additional time. And so that time is going to be  
16 given. So I am going to continue this matter.

17 Before setting the next date though, I think it  
18 would be appropriate to next consider Mr. Cota's bail status  
19 so that the parties know what his custody is going to be.  
20 And then we can determine when the next court hearing should  
21 be.

22 So, Mr. Malone, go ahead, you may make any  
23 request you would like regarding your client's bail status.

24 MR. MALONE: Thank you, your Honor. Your Honor,

1 Mr. Cota has been in the area for six or seven years. It's  
2 my understanding he has two prior committal convictions as an  
3 adult. He had a petty larceny and a contributing to the  
4 delinquency of a minor case. He does have an offer of  
5 employment. He would be working as a laborer for a family  
6 friend who is a local contractor. He had made those  
7 arrangements before his incarceration and spoke about that.  
8 The contractor was reported to be -- had promised to be here  
9 today. He's not. Mr. Cota has -- You do have a place to  
10 live with your family; correct?

11 THE DEFENDANT: I do.

12 MR. MALONE: He has a minimal criminal history as  
13 an adult with no prior felony convictions. He does have some  
14 prior criminal history as a juvenile. He doesn't really have  
15 funds to be able to flee the area. He does have a plea  
16 bargain that is beneficial to him and I think would act in a  
17 way that would allow -- would really make it in his best  
18 interest to appear for court. We would have no objection to  
19 him doing random urinalysis. I'm not sure what the Court --  
20 what the pretrial release mechanism here in Douglas County  
21 is, if you have Alternative Sentencing or that kind of  
22 program.

23 THE COURT: We do, yes.

24 MR. MALONE: Then we would definitely want that

1 to happen. He has had a problem with methamphetamine in the  
2 past. I would also -- We would also stipulate that he should  
3 attend and show proof of AA or NA meetings on a daily basis  
4 if he is released.

5 THE COURT: Mr. Malone, I know that -- I'm  
6 looking at the Court's file from the justice court. When the  
7 initial warrant of arrest went out, bail was set in the  
8 amount of \$50,000. Do you know if that continues to be the  
9 bail amount?

10 MR. MALONE: I don't know, your Honor.

11 THE COURT: All right.

12 MR. MALONE: I would suggest that that -- that's  
13 based somewhat upon the fact that he faced multiple charges  
14 originally.

15 THE COURT: All right. Thank you, Mr. Malone.

16 Mr. Johnson, what is the State's position?

17 MR. JOHNSON: Your Honor, we would be opposed to  
18 OR release. We would ask that the bail remain the same as it  
19 was in justice court. Although he has signed a guilty plea  
20 agreement, all of the charges that he -- are in the  
21 information are very serious and we think warrants the  
22 original bail amount that was given. They involve weapons,  
23 theft, and selling -- and conspiracy with other people. And  
24 we would have concerns about his contact with other people

1 that are alleged in the conspiracy who are currently in the  
2 community.

3 THE COURT: Mr. Johnson, I'm looking at the bail.  
4 And, again, it says 50,000. It doesn't say whether that's  
5 cash or bondable. So I assume it's bondable.

6 MR. JOHNSON: I believe it is bondable, your  
7 Honor.

8 THE COURT: All right. Thank you. Bail in this  
9 case is going to stand as previously ordered with all the  
10 previously ordered terms and conditions. The only additional  
11 condition will be that the defendant shall make all future  
12 court dates in this case and that will include the next date  
13 that we're going to come up with at this time. So,  
14 Mr. Malone, given where bail is now set, what would you  
15 suggest as a return date for an arraignment in this case?

16 MR. MALONE: Your Honor, the Court's law and  
17 motion calendars are just on Mondays or Mondays and another  
18 day?

19 THE COURT: It's every Monday at 9:00 o'clock.  
20 And I can tell you that the Court does not -- is not going to  
21 be in session on Monday, July 2nd. Other than that, the  
22 Court would have availability to hear this matter.

23 MR. MALONE: Your Honor, for calendaring  
24 purposes, it certainly would be easier for me to have an 8:30

1 setting. And I know that you did have one today. I don't  
2 know if that's a regular practice.

3 THE COURT: It's not a regular practice. Our  
4 typical time is to start at nine. However, when our calendar  
5 gets -- We follow up our adult calendar with the juvenile  
6 calendar at 10:30 and then a child dependency calendar at 11.  
7 And so on weeks when the calendar has been packed as of late  
8 the Court has added a couple of matters at 8:30. And so  
9 that's kind of a -- not something we do all the time but we  
10 certainly can consider it. And I don't mind the request.

11 MR. MALONE: Your Honor, may I ask that we not  
12 set a date right now and I contact my administrative  
13 assistant and figure out a date that we can appear? My  
14 calendar is complicated a little bit in that I'm covering  
15 case for Noel Waters who has got some medical issues right  
16 now. And so we were able to balance out the calendar this  
17 morning. But I don't know what it's -- what my two calendars  
18 will be next week.

19 THE COURT: Fair enough.

20 MR. MALONE: Law and motion calendars up in  
21 Carson can go late sometimes. So if the Court could arrange  
22 or would not oppose me going -- having an early set down  
23 here, I could run up to Carson fairly quickly and that would  
24 take care of -- that would make appearances down here a

1 little bit easier. But right now I'm not prepared to set a  
2 date.

3 THE COURT: Okay. Fair enough. So it would have  
4 to be a Monday at 9:00 o'clock. And the Court is not going  
5 to set a date. What I would ask that you do, however,  
6 Mr. Malone, if you can, soon check with your assistant,  
7 figure out a couple of dates and communicate that with  
8 Mr. Johnson. And then once the two of you have agreed on a  
9 date, if you also agree that one of you can contact my  
10 judicial assistant to provide that date, you may do that.  
11 And we'll get it set for the next hearing.

12 MR. MALONE: Thank you. And, your Honor, I  
13 don't -- Actually I guess I'll contact Mr. Ence's office to  
14 see about transfer of the file.

15 THE COURT: So you have not received it yet?

16 MR. MALONE: I have not received the file. The  
17 documents I have were provided to me by Mr. Johnson.

18 THE COURT: So, yes, you can pursue the file  
19 transfer through Mr. Ence.

20 MR. MALONE: I'll do that right now.

21 THE COURT: I will tell you he might not -- The  
22 reason he's not available right now, he might not be here, in  
23 fact, Mrs. Pence I think is covering some things for him  
24 today. She might know a little bit more about his

1 availability. I just wanted you to know that.

2 MR. MALONE: Thank you.

3 THE COURT: If you make that request today,  
4 you're probably not going to get an answer today from  
5 Mr. Ence.

6 MR. MALONE: Thank you.

7 THE COURT: Thank you. All right, Mr. Cota,  
8 we'll see you back.

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

3  
4 I, CHRISTY Y. JOYCE, Nevada Certified Court  
5 Reporter Number 625, do hereby certify:

6 That I was present in the District Court of  
7 Minden Township, in and for the State of Nevada, on Monday,  
8 the 18th day of June, 2018, for the purposes of reporting in  
9 verbatim stenotype notes the within-entitled hearing;

10 That the foregoing transcript, consisting of  
11 pages 1 through 10, is a full, true, and correct transcript  
12 of said hearing.

13  
14 Dated at Reno, Nevada, this 25th day of June,  
15 2018.

16   
17

18 Christy Joyce/  
19 CHRISTY Y. JOYCE, CCR #625  
20  
21  
22  
23  
24

1 CAPITOL REPORTERS  
123 W. Nye Lane Suite 107  
2 Carson City, Nevada 89706  
(775)882-5322

3 NINTH JUDICIAL DISTRICT COURT  
4 IN AND FOR DOUGLAS COUNTY, STATE OF NEVADA

5 STATE OF NEVADA,  
6 Plaintiff,

Case No. 18-CR-00084

7 vs.

Dept. No. 2

8 MICHAEL L. COTA,  
9 Defendant.

10 AFFIRMATION

Pursuant to NRS 239B.030

11 The undersigned does hereby affirm that the following  
12 document **DOES NOT** contain the social security number of any  
13 person: (List document(s) attached below)

14 1) TRANSCRIPT OF PROCEEDINGS 6-18-18

15 2) \_\_\_\_\_

16 3) \_\_\_\_\_

17 -OR-

18 The undersigned does hereby affirm that the document  
19 named below **DOES** contain the social security number of a  
20 person as required by state or federal law or for the  
administration of a public program or for an application for  
a federal or state grant: (List the document(s) attached  
containing social security number information below)

21 1) \_\_\_\_\_

22 2) \_\_\_\_\_

23 3) \_\_\_\_\_

24 Signature \_\_\_\_\_ Date 6-25-18

Jabronie Warner

Case No. 18-CR-00084

12-23-17

Department No. II

11-2-17

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

THE HONORABLE THOMAS W. GREGORY

-oOo

STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL L. COVA,

Defendant.

TRANSCRIPT OF PROCEEDINGS

*Arsonist*  
~~SENTENCING~~ HEARING

MONDAY, JULY 9, 2018

MINDEN, NEVADA

For the State:

Matthew Johnson,  
Deputy District Attorney

For the Defendant:

John Malone, Esq.

Reported by:

Michel Loomis, RPR  
Nevada CCR #228, California CSR #6863

CAPITOL REPORTERS (775) 882-5322

1 MINDEN, NEVADA, MONDAY, JULY 9, 2018, A.M. SESSION

2 oOo-

3  
4 THE COURT: Next case is the State of Nevada  
5 versus Michael Cota, Case Number 18-CR-0084.

6 MR. MALONE: John Malone.

7 THE COURT: Show the appearance of Matthew  
8 Johnson on behalf of the State.

9 Good morning, Mr. Johnson.

10 MR. JOHNSON: Good morning, Your Honor.

11 THE COURT: John Malone is appearing on behalf of  
12 the Defendant.

13 Good morning, Mr. Malone.

14 MR. MALONE: Good morning, Your Honor.

15 THE COURT: And also appearing, in lawful  
16 custody, is the Defendant, Mr. Cota.

17 Good morning, Mr. Cota.

18 THE DEFENDANT: Good morning, sir.

19 THE COURT: We're here today for a continued  
20 arraignment. It's continued based upon the change in counsel  
21 and so the Court continued the matter at Mr. Malone's request  
22 and gave Mr. Malone an opportunity to meet with Mr. Cota and  
23 to review the case.

24 Mr. Malone are you prepared to go forward today

—CAPITOL REPORTERS (775) 882-5322—

1 with an arraignment?

2 MR. MALONE: I am, Your Honor. And to address  
3 the Court's earlier statement, I was able to meet with Mr.  
4 Cota for an extended period of time. Actually, twice since  
5 we've last appeared. There was another matter.

6 The signatures on the guilty plea memorandum are  
7 Mr. Ence's but I've gone over the same document with him. So  
8 he's had two attorneys go over the document. And although my  
9 signature is not on that, it's in compliance with the  
10 agreement but the negotiations were made by Mr. Ence.

11 THE COURT: Also, thank you for a that your, Mr.  
12 Malone.

13 Mr. Malone, would you also agree -- Mr. Ence  
14 actually signed the certificate of counsel. Would you make  
15 those same representations?

16 MR. MALONE: Your Honor, I'm not sure I've  
17 reviewed a certificate of counsel, so --

18 THE COURT: Take a moment to that do that. It --  
19 the certificate of counsel --

20 MR. MALONE: Oh.

21 THE COURT: -- is consistent with the NRS  
22 provisions?

23 MR. MALONE: I apologize, Your Honor. That --  
24 That's a little bit new to me but I would make the same

1 representations.

2 THE COURT: Okay. Thank you, Mr. Malone.

3 And, Mr. Malone, have you received and reviewed  
4 with your client a copy of the Information that was file  
5 stamped May 9th, 2018.

6 MR. MALONE: We have, Your Honor.

7 THE COURT: Is your client's name spelled  
8 correctly at line 12?

9 MR. MALONE: It is, Your Honor.

10 THE COURT: And do you waive a formal reading?

11 MR. MALONE: We do.

12 THE COURT: Is it your intent -- understanding  
13 that Mr. Cota will be entering a guilty plea, pursuant to the  
14 guilty plea agreement?

15 MR. MALONE: Correct, Your Honor.

16 THE COURT: Mr. Cota, do you agree with that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Mr. Cota, do you have a copy of the  
19 Information in front of you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: As I understand the guilty plea  
22 agreement, and this is directed towards counsel, the guilty  
23 plea would be, I believe, to Count IV.

24 MR. MALONE: That's my understanding.

1 THE COURT: Is that accurate, Mr. Malone?

2 MR. JOHNSON: That's correct, Your Honor.

3 THE COURT: All right. And so, Mr. Cota, we're  
4 going to look primarily here at Count IV.

5 In Count IV, you are formally charged with the  
6 criminal offense of principle to a grand larceny of a firearm,  
7 a category B felony.

8 To that offense, how do you plead?

9 THE DEFENDANT: Guilty.

10 THE COURT: Also, this is addressed to counsel,  
11 it's my understanding that if the plea is consummated today,  
12 then, ultimately, it's by way of the -- by way of the plea  
13 agreement, the remaining charges would be dismissed.

14 Is that correct, Mr. Johnson?

15 MR. JOHNSON: That's correct, Your Honor.

16 THE COURT: Mr. Malone?

17 MR. MALONE: That's correct, Your Honor.

18 THE COURT: So, I'm not going to take Mr. Cota's  
19 plea on the others charges, given the negotiations and we'll  
20 go forward with the canvass regarding the guilty plea to Count  
21 IV and we'll see where that takes us.

22 Mr. Cota, please raise your right hand, face the  
23 Clerk to be sworn.

24 (Sworn.)

1 THE COURT: You may be seated. Mr. Cola, I'm  
2 going to ask you a series of questions. The purpose of my  
3 questioning is not to talk you into entering a guilty plea  
4 today or to talk you out of that plea. That decision is  
5 entirely yours to make.

6 The purpose of my questioning is for the Court to  
7 ascertain whether you are entering your plea today freely and  
8 voluntarily and whether you understand your constitutional  
9 rights.

10 Should you have any questions at any time, please  
11 feel free to stop me and you may ask those questions of either  
12 myself or Mr. Malone.

13 Mr. Cola, how old are you?

14 THE DEFENDANT: 19.

15 THE COURT: What is your level of formal  
16 education?

17 THE DEFENDANT: I don't know, sir.

18 THE COURT: How far did you go in school?

19 THE DEFENDANT: I think 9th grade.

20 THE COURT: All right. Do you read, write and  
21 understand the English language?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And are you a citizen of the United  
24 States?



1 THE DEFENDANT: Yes, sir.

2 THE COURT: As you appear here today, are you  
3 under the influence of any controlled substances, alcohol or  
4 prescription medication that you do not have a prescription  
5 for?

6 THE DEFENDANT: No, sir.

7 THE COURT: Mr. Cota, do you understand that you  
8 do not have to enter a guilty plea?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Instead, you could enter a plea of  
11 not guilty, thereby preserving all of your constitutional  
12 rights; do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: If you were to enter a plea of not  
15 guilty, you would be entitled to have a speedy, public jury  
16 trial. That means a trial within 60 days of today's date; do  
17 you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you also understand, Mr. Cota,  
20 that if you enter a guilty plea here today, you would be  
21 waiving or giving up your right to have a trial in this case?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you waive your right to have a  
24 trial?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Cota, by pleading guilty, you  
3 would also necessarily waive or give up other important  
4 constitutional rights and those include these: If you were to  
5 enter a plea of not guilty and we were to have a trial in this  
6 case, you would be entitled to the assistance of an attorney.  
7 Meaning that Mr. Malone would be here with you to assist you  
8 throughout the trial; do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And at that trial you would have a  
11 constitutional right to remain silent, meaning that nobody  
12 could make you be a witness in the case. And if you chose to  
13 remain silent, nobody could penalize you for that decision; do  
14 you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand that by entering a  
17 guilty plea you waive or give up your right to remain silent?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you waive that right?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Cota, as an alternative to  
22 remaining silent at trial, you could choose to testify in  
23 front of the jury; do you understand that?

24 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand that by pleading  
2 guilty, you waive or give up your right to testify before the  
3 jury?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you waive that right?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Cola, at trial, you would enjoy  
8 the right of confrontation. That means that you, through Mr.  
9 Malone, would have a right to question or cross-examine any  
10 witnesses called during the course of trial; do you understand  
11 the right of confrontation?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you understand you waive that  
14 right by entering a guilty plea?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you waive the right of  
17 confrontation?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Cola, at trial, you would also  
20 have the right to compel the attendance of witnesses. That  
21 means that you, through Mr. Malone, would have an ability to  
22 subpoena witnesses, which is a Court order, to come to Court  
23 and testify; do you understand that?

24 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand that by pleading  
2 guilty you waive your right to compel the attendance of  
3 witnesses?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you waive that right?

6 THE DEFENDANT: Yes.

7 THE COURT: At trial, Mr. Cota, you would have an  
8 opportunity to present the Court and the jury with any legal  
9 defenses that you might have in this case. Do you understand  
10 that by pleading guilty you waive or give up all such  
11 defenses?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Do you waive your defenses?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Mr. Cota, by entering a guilty plea,  
16 you also greatly reduce those issues for which you can file an  
17 appeal; do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you discussed all of these  
20 rights with your attorneys in this case?

21 THE DEFENDANT: Yes.

22 THE COURT: And are you satisfied with their  
23 representation of you?

24 THE DEFENDANT: Yes.

1 THE COURT: Do you have any questions for either  
2 myself or Mr. Malone regarding your constitutional rights?

3 THE DEFENDANT: No, sir.

4 THE COURT: And, again, do you waive those  
5 rights, at this time?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: The Court is in receipt of a document  
8 entitled guilty plea agreement. Do you have a copy of that  
9 document in front of you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: At page 5 of that agreement, there is  
12 a signature line with your name, Michael Louis Cola. Is that  
13 your signature that appears on that line?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Did you place that signature there  
16 only after you had an opportunity to read the guilty plea  
17 agreement?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And did you have a chance to discuss  
20 the guilty plea agreement with Mr. Malone?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Is the guilty plea agreement accurate  
23 as far as the agreement that you've entered into with the  
24 State of Nevada?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Has anybody made any other promises  
3 or inducements to get you to enter a plea of guilty that are  
4 not contained in the guilty plea agreement?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: And Mr. Cota, do you under the terms  
7 of the guilty plea agreement?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you agree to be bound by the terms  
10 of the guilty plea agreement?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: At page 1 and page 2 of the guilty  
13 plea agreement, the Court is informed that in return for your  
14 plea of guilty to principle to grand larceny of a firearm,  
15 which is reflected in Count IV, there are other provisions  
16 that you've agreed to.

17 Specifically, you've agreed to testify truthfully  
18 at any preliminary hearing or trial set in Case Number  
19 18-CR-0430, involving Robert Donald Brown and your agreement  
20 to not have any contact or communication with Brittany Masera  
21 or Deanna Joan McVay during the period you are incarcerated,  
22 on parole or on probation as a result of your conviction for  
23 this offense, unless the contact or communication is permitted  
24 by the District Court for the purpose of establishing and/or

1 facilitating custody visitation with your children in common.

2 The State has also agreed to dismiss the  
3 remaining counts contained in the Information not filed -- and  
4 to not file charges in Douglas County Sheriff's Office Case  
5 Number 18 SO-08450, in which you are alleged to have  
6 threatened violence against Skylar Reese Hamford, Brittany  
7 Mascara and Deanna Joan McVay and the State will recommend that  
8 you be sentenced to a minimum term of not less than 12 months  
9 in state prison and a maximum term of 60 months in state  
10 prison.

11 Also, at the time of sentencing, the parties  
12 would be free to present arguments, facts and/or witnesses  
13 about whether a lesser sentence, probation and/or some other  
14 substance abuse treatment is appropriate to the extent that  
15 you are eligible.

16 Do you understand all of that, Mr. Cota?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And is that your agreement with the  
19 State of Nevada?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Cota, what is your understanding  
22 of what the maximum penalty is that you could receive in this  
23 case?

24 THE DEFENDANT: One to five. Oh, one to ten.

1 THE COURT: So, Mr. Cota, this is important. Do  
2 you understand that you could be sentenced to serve up to  
3 120 months in prison?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Ten years; do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand that, in addition  
8 to that, you could be ordered to pay a fine of up to \$10,000?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: In addition to that, you could be  
11 ordered to be pay any fines -- or administrative assessment  
12 fees and/or restitution; do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has anybody made any promise to you  
15 regarding what your sentence will be in this case?

16 THE DEFENDANT: No, sir.

17 THE COURT: You understand that what sentence you  
18 receive is entirely up to the Court?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And so, at the time of sentencing,  
21 the Court will listen to all recommendations. The Court will  
22 then sentence you. The Court could, if the Court deemed it  
23 appropriate, sentence you to serve 120 months in prison and  
24 fine you \$10,000; do you understand that?



1 THE DEFENDANT: Yes, sir.

2 THE COURT: Also, the Court would make a decision  
3 regarding whether to give you probation in this case; do you  
4 understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And so, the Court could deny any  
7 request for probation and sentence you to the term that I just  
8 stated; do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Knowing all of that, is it still your  
11 desire to plead guilty in this case?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Cota, if were you to enter a plea  
14 of not guilty and we were to set this matter for trial, at  
15 that trial you'd be presumed to be innocent and the State  
16 would have the burden of proving the elements of the offense  
17 beyond a reasonable doubt; do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Do you understand that by pleading  
20 guilty, you waive or give up the right to have the State prove  
21 its case at trial?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you waive that right?

24 THE DEFENDANT: Yes, sir.

1 THE COURT: The elements that the State would  
2 have to prove beyond a reasonable doubt, at trial, appear at  
3 page 3 of the Information, under Count IV. Do you still have  
4 that document in front of you?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Specifically, the State would have to  
7 prove that you, on or about February 13th, 2018, you did  
8 willfully unlawfully and intentionally steal, take and carry  
9 away a firearm owned by another person and/or whether present  
10 or absent did aid, abet, counsel, encourage, hire, command,  
11 induce or otherwise procure another person to steal, take or  
12 carry away a firearm owned by another person and/or you did  
13 enact in furtherance of a conspiracy, such that you are liable  
14 for the acts of your co-conspirators to steal, take and carry  
15 away a firearm owned by another person.

16 Specifically, you and/or the person with the  
17 initials A.G., with the date of birth of 11-6-03 took a  
18 Spike's Tactical AR15 rifle and/or a single shot pellet rifle,  
19 after you drove A.G. to the residence located at 1340 Bishop  
20 Circle in Gardnerville.

21 Mr. Cola, do you understand what the State would  
22 have to prove at the time of trial, in this case, as it  
23 regards Count IV?

24 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you believe that if we were to  
2 have a trial in this case that the State would have sufficient  
3 evidence to prove those elements beyond a reasonable doubt?

4 THE DEFENDANT: No, sir.

5 THE COURT: I did not hear you.

6 THE DEFENDANT: No, sir.

7 THE COURT: You do not believe so. All right.

8 MR. MALONE: No. He's asking you if you  
9 understand the State would have enough information.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: So, Mr. Cota, I'm going to re-ask the  
12 question since this is an important question. So, I just went  
13 through, with you, certain things the State would have to  
14 prove beyond a reasonable doubt at trial.

15 Do you understand what they would have to prove  
16 at trial?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you have any question about that?

19 THE DEFENDANT: No, sir.

20 THE COURT: Okay. So, my question to you is,  
21 then, knowing what they have to prove at trial, do you believe  
22 if we were to have a trial in this case that they would have  
23 sufficient evidence to prove those things beyond a reasonable  
24 doubt?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. Now, a moment ago you answered  
3 no to that. And so, I need to -- I need you to help me  
4 understand the two different answers. The first time I asked,  
5 when you said no, did you understand the question?

6 THE DEFENDANT: I didn't. I thought, like,  
7 because when I looked back and I looked over there was no  
8 evidence of me going into the house. So, I thought, like,  
9 they wouldn't have enough evidence to find me guilty.

10 THE COURT: Of going into the house?

11 THE DEFENDANT: Right.

12 THE COURT: Okay. So, what you're pleading  
13 guilty to, though, is Count IV only.

14 THE DEFENDANT: Yes.

15 THE COURT: Okay. And I just went through what  
16 they would have to prove regarding Count IV. And Count IV  
17 does not contain any element that you went into a house.

18 Is that correct, Mr. Johnson? An element of  
19 principle to grand larceny of a firearm is not --

20 MR. JOHNSON: No.

21 THE COURT: ... entry to a house.

22 MR. JOHNSON: It is not one of the elements of  
23 the offense, Your Honor.

24 THE COURT: Okay. And Mr. Malone, do you agree

1 with that?

2 MR. MALONE: I agree.

3 THE COURT: So, Mr. Cota, what I want you to do  
4 is carefully read Count IV and take a moment to do that and  
5 then let me know when you have finished.

6 THE DEFENDANT: (Complies.) I am good, sir.

7 THE COURT: Okay. So, have you had a full chance  
8 to review and read, once again, Count IV of the Information?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And the record will reflect that Mr.  
11 Cota took a moment to review it. He also had a discussion  
12 with Mr. Malone.

13 Mr. Cota, I'm not trying to be difficult here.  
14 This is an important aspect of your guilty plea. And so, I  
15 want to make sure you fully understand. And if you don't,  
16 it's okay to tell me you don't understand; okay?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: So, in Count IV, what is stated there  
19 are the things that the State would have to prove beyond a  
20 reasonable doubt if we had a trial; do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you have any questions for me or  
23 Mr. Malone about what the State would have to prove at trial  
24 regarding Count IV?

1 THE DEFENDANT: No, sir.

2 THE COURT: So, then, the next question is, is  
3 that knowing those things, okay, you just told me you  
4 understand them, knowing those things do you believe if we  
5 were to have a trial in this case that the State would have  
6 enough evidence to prove those things beyond a reasonable  
7 doubt?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Do you have any questions  
10 about that?

11 THE DEFENDANT: No, sir.

12 THE COURT: And has Mr. Malone answered any  
13 questions that you've had in that regard?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you have any confusion about what  
16 I'm asking regarding Count IV?

17 THE DEFENDANT: No, sir.

18 THE COURT: All right. Mr. Cota, I'm satisfied  
19 that you understand both what the State would have to prove  
20 and that you are telling me that you believe the State has  
21 enough evidence to prove those things beyond a reasonable  
22 doubt.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you agree with that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. So, the next question then,  
3 Mr. Cota, is did you commit the offense as stated in Court IV  
4 of the Information?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Malone, are there any other areas  
7 of inquiry that you would ask the Court to canvass Mr. Cota  
8 on?

9 MR. MALONE: No, Your Honor.

10 THE COURT: Mr. Johnson?

11 MR. JOHNSON: No, Your Honor.

12 THE COURT: Mr. Cota, have you understood  
13 everything that we've discussed here today?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you have any questions for either  
16 myself or Mr. Malone?

17 THE DEFENDANT: No, sir.

18 THE COURT: At this time, Mr. Cota, is it your  
19 intention and request that the Court enter a guilty plea or  
20 would you prefer to enter a plea of not guilty?

21 THE DEFENDANT: Guilty plea.

22 THE COURT: The Court makes a finding that Mr.  
23 Cota understands his constitutional rights. He's also  
24 voluntarily waived those rights here today. The Court finds

1 that there's a sufficient factual basis for the plea and the  
2 plea is accepted by the Court.

3 I'm going to schedule this matter for sentencing.  
4 Typically, we would set sentencing out eight weeks. That  
5 falls on a holiday. Nine weeks out would be September 10th.

6 Mr. Malone, are you available on that day or is  
7 there a different day that would you request?

8 MR. MALONE: No, I can be available on that day,  
9 Your Honor.

10 THE COURT: Mr. Johnson, does that date work okay  
11 for the State?

12 MR. JOHNSON: September 10th will work for the  
13 State, Your Honor.

14 THE COURT: Sentencing in this matter is  
15 scheduled for September 10th, 2018. Sentencing will be at  
16 nine o'clock in the morning. Mr. Cota is ordered to appear at  
17 that time and date for sentencing.

18 The Court orders a preparation of a Presentence  
19 Investigation Report and, Mr. Cota, you are ordered to  
20 cooperate with the Division as they prepare that report.

21 Mr. Malone, would you like to be heard regarding  
22 your client's custody status?

23 MR. MALONE: Your Honor, not at this time. I do  
24 intend to bring a motion of some kind for an OR release into a



1 drug treatment program but that has not been set up yet.

2 THE COURT: Thank you, Mr. Malone.

3 Mr. Johnson, would you like to be heard regarding  
4 Mr. Cota's bail or conditions of bail?

5 MR. JOHNSON: We'd ask that they remain the same,  
6 Your Honor.

7 THE COURT: Mr. Cota's bail will remain as  
8 previously ordered. As previously ordered, Mr. Cota's  
9 required to make all future Court dates in this case.

10 The only thing I've added is we now know that the  
11 next day is going to be September 10, 2018, and so I put that  
12 into the order. September 10th, 2018, at nine o'clock in the  
13 morning.

14 Mr. Malone, anything further for today's purpose?

15 MR. MALONE: No, Your Honor.

16 THE COURT: Mr. Johnson?

17 MR. JOHNSON: No, Your Honor.

18 THE COURT: That will be the Court's order.

19 (Proceedings concluded.)  
20  
21  
22  
23  
24

1 STATE OF NEVADA )  
2 COUNTY OF DOUGLAS )  
3

4 I, Michel Loomis, Certified Shorthand Reporter of  
5 the Ninth Judicial District Court of the State of Nevada, in  
6 and for the County of Douglas, do hereby certify:

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

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

14 DATED: At Carson City, Nevada, this 26th day of  
15 July, 2018.

16   
17 Michel Loomis, CCR No. 228  
18  
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20  
21  
22  
23  
24

1 Michel Loomis  
2 Capitol Reporters  
3 123 West Nyc Lane, Suite 107  
4 Carson City, NV, 89706  
5 (775) 882-5322

6 IN THE NINTH JUDICIAL DISTRICT COURT

7 IN AND FOR THE COUNTY OF DOUGLAS, STATE OF NEVADA

8 STATE OF NEVADA, }

9 Plaintiff, }

10 vs. }

Case No. 18-CR-00084

11 MICHAEL L. COTA, }


12 Defendant. }

Depl. No. 11

13  
14  
15 AFFIRMATION

16 Pursuant to NRS 239B.030

17 The undersigned does hereby affirm that the following  
18 document DOES NOT contain the social security number of  
19 any person:  
20  
21  
22

23   
24 MICHEL LOOMIS, RPR  
NV CCR #228

CAPITOL REPORTERS (775) 882-5322

1 Case No. 18-CR-00116

2 Depl. No. 2

3

4 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

5 IN AND FOR THE COUNTY OF DOUGLAS

6 BEFORE THE HONORABLE DISTRICT COURT JUDGE THOMAS GREGORY

7 ---oOo---

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 MICHAEL L. COTA, JR.,

12 Defendant.

13 \_\_\_\_\_/

14

15 TRANSCRIPT OF PROCEEDINGS

16 ARRAIGNMENT

17 MONDAY, AUGUST 6, 2018

18 MINDEN, NEVADA

19 APPEARANCES:

20 For the Plaintiff: TINA RUSSOM, ESQ.  
Deputy District Attorney

21 For the Defendant: JOHN MALONE, ESQ.  
22 Attorney at Law

23 REPORTED BY: CHRISTY Y. JOYCE, CCR #625  
24 Capitol Reporters  
(775) 882-5322

1 MONDAY, AUGUST 6, 2018

2 ---oOo---

3 THE COURT: First matter this morning is the  
4 State of Nevada versus Michael Louis Cola, Case Number  
5 18-CR-0116. Show the appearance of Tina Russom on behalf of  
6 the State. Good morning, Ms. Russom.

7 MS. RUSSOM: Good morning, your Honor.

8 THE COURT: John Malone is appearing on behalf of  
9 the defendant. Good morning.

10 MR. MALONE: Good morning, your Honor.

11 THE COURT: Also appearing in lawful custody is  
12 the defendant, Mr. Cola. Good morning, Mr. Cola.

13 THE DEFENDANT: Good morning.

14 THE COURT: We're here today for an arraignment.  
15 Mr. Malone, have you received a copy of the information?

16 MR. MALONE: I have, your Honor.

17 THE COURT: And have you had an opportunity to  
18 review it with your client?

19 MR. MALONE: I have.

20 THE COURT: Is Mr. Cola's name spelled correctly  
21 at line 12?

22 MR. MALONE: It is, your Honor.

23 THE COURT: And does he waive a formal reading?

24 MR. MALONE: He does.

1 THE COURT: And do you anticipate a guilty plea  
2 or a not guilty plea this morning?

3 MR. MALONE: A guilty plea pursuant to the guilty  
4 plea agreement that's been filed.

5 THE COURT: Is that correct, Mr. Cota?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Cota, please stand. Mr. Cota, do  
8 you have a copy of the information in front of you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: In that document you are formally  
11 charged with the criminal offense of battery by a prisoner in  
12 custody, a Category B felony. To that offense how do you  
13 plead?

14 THE DEFENDANT: Guilty.

15 THE COURT: Please raise your right hand, face  
16 the clerk to be sworn.

17 (The defendant was sworn in)

18 THE COURT: You may be seated. Mr. Cota, if you  
19 were to plea not guilty, you would have an opportunity,  
20 actually not just an opportunity, you would have a right to  
21 have a speedy, public jury trial. That means a trial within  
22 about 60 days of today's date. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that by pleading

1 guilty you waive or give up your right to have a trial?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And do you waive that right?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Mr. Malone, feel free to have a seat.

6 Thank you.

7 Mr. Cota, there are other important  
8 constitutional rights that you would enjoy if we were to have  
9 a trial in this case. If you were to plead not guilty and we  
10 were to set the matter for trial, at that trial you would be  
11 assisted by Mr. Malone. And so he would be here with you to  
12 assist you throughout the course of the trial. Do you  
13 understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And at that trial you would have a  
16 constitutional right to remain silent, meaning that nobody  
17 could compel you to be a witness in a case. Do you  
18 understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Also, Mr. Cota, if you made a  
21 decision to not testify, nobody could hold that against you  
22 or penalize you for that decision. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Cota, by pleading guilty, you

1 waive or give up your right to remain silent. Do you  
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you waive your right to remain  
5 silent?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Alternatively, Mr. Cota, at trial,  
8 instead of remaining silent, you could choose to testify in  
9 your own defense in front of the jury. Do you understand  
10 that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you understand you also waive that  
13 right by entering a guilty plea?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you waive the right to testify in  
16 front of a jury?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Also at trial, Mr. Cota, you would  
19 enjoy a right to confront witnesses. That means that you,  
20 through Mr. Malone, would have an opportunity to question or  
21 cross-examine any witnesses that were called during the  
22 course of the trial. Do you understand the right to confront  
23 witnesses?

24 THE DEFENDANT: Yes, sir.



1 THE COURT: And do you understand that you waive  
2 or give up that right by entering a guilty plea?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you waive the right to confront  
5 witnesses?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: At trial you would enjoy the right to  
8 compel the attendance of the witnesses to testify. What that  
9 means is if there were witnesses that Mr. Malone and you  
10 thought were important to your case, he would cause a  
11 subpoena to be issued compelling those folks to come in and  
12 testify at trial. Do you understand that right?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you waive the right to compel the  
15 attendance of witnesses at trial?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: At trial, Mr. Cota, you would also  
18 enjoy the ability to present the Court and the jury with any  
19 legal defenses that you have in this case. Do you understand  
20 that by pleading guilty you waive or give up all of your  
21 defenses?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you waive your defenses?

24 THE DEFENDANT: Yes, sir.

1 THE COURT: Mr. Cota, by pleading guilty, you  
2 also greatly reduce those issues from which you can file an  
3 appeal. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you discussed each of these  
6 rights with Mr. Malone?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And are you satisfied with his  
9 representation of you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: The Court is in receipt of a document  
12 entitled guilty plea agreement. Do you have a copy of that  
13 document in front of you?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: At page five of that document at  
16 about line five there's a signature line for Michael Louis  
17 Cota, Jr. Is that your signature that appears on that line?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Did you place that signature there  
20 only after you had an opportunity to read the document?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And did you have an opportunity to  
23 discuss the guilty plea agreement with Mr. Malone?

24 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand the terms of the  
2 guilty plea agreement?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Has anybody made any other promises  
5 or inducements to get you to enter your plea today that are  
6 not contained in the guilty plea?

7 THE DEFENDANT: No, sir.

8 THE COURT: Do you agree today to be bound by the  
9 terms of the guilty plea agreement?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Page one of the agreement it reflects  
12 that in return for your plea of guilty the State has agreed  
13 not to charge a second count of battery by a prisoner in  
14 custody, which is a Category B felony. Also the parties have  
15 the right to argue for any lawful sentence. And at the time  
16 of sentencing the State may present arguments, facts, and/or  
17 witnesses in support of the plea agreement. Mr. Cola, is  
18 that your agreement with the State?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand what the maximum  
21 penalty is for this offense?

22 THE DEFENDANT: One to five.

23 THE COURT: All right. It's actually up to six  
24 years in prison. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand the law also  
3 requires you to pay an administrative assessment fee?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And do you understand that you can be  
6 ordered to pay restitution?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Has anybody made any promise to you  
9 regarding what your sentence will be in this case?

10 THE DEFENDANT: No, sir.

11 THE COURT: Do you understand that what sentence  
12 you will receive is entirely up to the Court?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: The Court will also make a  
15 determination regarding whether or not you receive probation.  
16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: At the time of sentencing, Mr. Cota,  
19 the Court could if the Court deemed it appropriate, deny any  
20 request for probation and sentence you to serve six years in  
21 prison and fine you -- Actually there's no fine in this case;  
22 is that correct, Mr. Malone?

23 MR. MALONE: I don't believe so, your Honor.

24 THE COURT: Is that correct, Ms. Russom?

1 MS. RUSSOM: Yes, your Honor.

2 THE COURT: All right. So the Court could  
3 sentence you to serve six years in prison and order you to  
4 pay restitution. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Knowing that do you still desire to  
7 plead guilty?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Mr. Cota, have you had a discussion  
10 with Mr. Malone regarding the terms concurrent and  
11 consecutive?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand those terms?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you have any questions for either  
16 myself or Mr. Malone regarding those terms?

17 THE DEFENDANT: No, sir.

18 THE COURT: So at the time of sentencing in this  
19 case, Mr. Cota, the Court would make a determination whether  
20 to render sentence in this case concurrent or consecutive to  
21 any other sentence imposed. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And the reason I bring that up,  
24 Mr. Cota, is the Court is aware you are pending sentencing on

1 a different case. So you'll be sentenced on that case and  
2 then sentenced in this case. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And so, again, if the Court deemed it  
5 appropriate, the Court could give you the prison sentence  
6 that I just talked about and I could order that that be run  
7 consecutive, which means in addition to, any sentence you  
8 receive in that other case. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And knowing that do you still desire  
11 to plead guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Cota, if you were to plead not  
14 guilty and we were to have a trial in this case, at that  
15 trial you would be presumed to be innocent and the State  
16 would have the burden of proving the elements of the offense  
17 beyond a reasonable doubt. Do you understand that by  
18 pleading guilty you waive or give up your right to have the  
19 State prove its case at trial?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And do you waive that right?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: The elements of the offense that the  
24 State would have to prove at trial appear in the information.

1 Do you still have a copy of that document in front of you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Specifically, the State would have to  
4 prove beyond a reasonable doubt that you on or about July  
5 6th, 2018, here in the County of Douglas, State of Nevada,  
6 did wilfully and unlawfully while a prisoner in the lawful  
7 custody or confinement of the Douglas County Sheriff's Office  
8 use force or violence on the person of another.

9 Specifically, you punched Douglas County Sheriff's Deputy  
10 Joshua Hodges in the face and hit Douglas County Sheriff's  
11 Deputy Michael Barden's hand, knocking an electroshock weapon  
12 out of his hand. And again that that occurred here in the  
13 Douglas County Jail in Douglas County, Nevada.

14 Mr. Cota, do you understand what the State would  
15 have to prove at the time of trial in this case?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you believe that if we were to  
18 have a trial that the State would have sufficient evidence to  
19 prove those elements beyond a reasonable doubt?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Did you commit the offense as stated  
22 in the information?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Malone, any other areas of

1 inquiry?

2 MR. MALONE: Your Honor, if I can make a record.  
3 I spent some time with Mr. Cota. He has had issues where  
4 he's been on different psychotropic medications in the past,  
5 been through mental health treatment throughout his previous  
6 interactions with the criminal justice system. I have gone  
7 and explored those issues with him and we're going to present  
8 some mitigation evidence at sentencing.

9 But the record I want to make is that I have been  
10 very diligent or careful about canvassing him given that  
11 history. And it's my belief that he, number one, he does  
12 respond appropriately to me, to questions. He asks  
13 appropriate questions himself. He -- I don't have any  
14 concerns about his ability to knowingly and voluntarily enter  
15 a plea to this charge. I just want to put that on the record  
16 based upon those initial concerns based upon his past  
17 history.

18 He and I have spoken I believe on four different  
19 occasions on this case alone, not including his other matter.  
20 We've spoken obviously on that one as well. So there's been  
21 ample time that he's had time to consult with me.

22 THE COURT: Thank you, Mr. Malone.

23 MS. RUSSOM, any other areas of inquiry?

24 MS. RUSSOM: No, your Honor. Thank you.



1 THE COURT: Mr. Cota, have you understood  
2 everything that we've discussed here today?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have any questions for either  
5 myself or Mr. Malone?

6 THE DEFENDANT: No, sir.

7 THE COURT: And is it your intention at this time  
8 to maintain your guilty plea or would you prefer to enter a  
9 plea of not guilty?

10 THE DEFENDANT: Guilty.

11 THE COURT: The Court makes the finding that  
12 Mr. Cota has entered a plea of guilty freely and voluntarily.  
13 He understands his constitutional rights and has waived his  
14 rights in order to enter his plea here today. The Court  
15 finds a sufficient factual basis for the plea and the plea is  
16 accepted.

17 I'm going to schedule this matter for sentencing.  
18 Mr. Cota is due to be sentenced on the other case on  
19 September 10th. I don't know if that would give the Division  
20 sufficient time to also have sentencing in this matter.

21 Ms. Russom.

22 MS. RUSSOM: Your Honor, the State would request  
23 that the sentencing in this matter be set for the same date.  
24 The State has already provided the police reports for this

1 felony to the Department and believes that he would not need  
2 a new PSI for this offense, just simply the addition of this  
3 offense. So the State is asking for September 10th, your  
4 Honor.

5 THE COURT: Thank you.

6 Mr. Malone.

7 MR. MALONE: We would agree with that, your  
8 Honor.

9 THE COURT: All right. Very good. Sentencing in  
10 this matter is scheduled for September 10th, 2018.  
11 Sentencing will be at 9:00 o'clock in the morning. Mr. Cota  
12 is ordered to be here at that time and date. The Court  
13 orders a presentence investigation report. Mr. Cota is  
14 ordered to cooperate with the Division as they prepare the  
15 report.

16 Mr. Malone, would you like to be heard regarding  
17 Mr. Cota's bail status, custody status?

18 MR. MALONE: No, your Honor.

19 THE COURT: Ms. Russom, would you like to be  
20 heard at all regarding his custody status?

21 MS. RUSSOM: No, your Honor. Thank you.

22 THE COURT: Mr. Cota will remain in custody. The  
23 amount of bail will be as previously ordered with any  
24 conditions previously ordered by the justice court. The two

1 added conditions are the defendant shall cooperate with the  
2 Division of Parole and Probation including attending any  
3 scheduled meetings and the defendant is ordered to appear in  
4 this court on September 10th, 2018, at 9:00 o'clock in the  
5 morning and all future court dates.

6 Mr. Malone, anything further for today's purpose?

7 MR. MALONE: No, your Honor.

8 THE COURT: Ms. Russom?

9 MS. RUSSOM: No, your Honor.

10 THE COURT: Thank you. Mr. Cota, we'll see you  
11 back for sentencing.  
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1 STATE OF NEVADA )  
2 ) ss.  
3 COUNTY OF WASHOE )

4 I, CHRISTY Y. JOYCE, Nevada Certified Court  
5 Reporter Number 625, do hereby certify:

6 That I was present in the District Court of  
7 Minden Township, in and for the State of Nevada, on Monday,  
8 the 6th day of August, 2018, for the purposes of reporting in  
9 verbatim stenotype notes the within-entitled hearing;

10 That the foregoing transcript, consisting of  
11 pages 1 through 16, is a full, true, and correct transcript  
12 of said hearing.

13  
14 Dated at Reno, Nevada, this 6th day of August,  
15 2018.

16  
17 

18 Christy Joyce/  
19 CHRISTY Y. JOYCE, CCR #625  
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Carson City, Nevada 89706  
(775)882-5322

NINTH JUDICIAL DISTRICT COURT  
IN AND FOR DOUGLAS COUNTY, STATE OF NEVADA

STATE OF NEVADA,	Case No. 18-CR-00116
Plaintiff,	
vs.	Dept. No. 2
MICHAEL L. COTA, JR.,	
Defendant.	

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

The undersigned does hereby affirm that the following document **DOES NOT** contain the social security number of any person: (List document(s) attached below)

- 1)TRANSCRIPT OF PROCEEDINGS 8-6-18
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_

-OR-

The undersigned does hereby affirm that the document named below **DOES** contain the social security number of a person as required by state or federal law or for the administration of a public program or for an application for a federal or state grant: (List the document(s) attached containing social security number information below)

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_

Signature \_\_\_\_\_ Date 8-6-18

278

1 Case No. 18-CR-00084, 18-CR-00116

2 Department No. JT

3  
4  
5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6 IN AND FOR THE COUNTY OF DOUGLAS  
7 THE HONORABLE THOMAS W. GREGORY

8 -ooo-

9 STATE OF NEVADA, )  
 )  
10 Plaintiff, )  
 )  
11 vs. )  
 )  
12 MICHAEL L. COTA JR., )  
 )  
13 Defendant. )  
14 \_\_\_\_\_ )

15 TRANSCRIPT OF PROCEEDINGS

16 SENTENCING HEARING

17 MONDAY, SEPTEMBER 10, 2018

18 MINDEN, NEVADA

19  
20 For the State: Matthew Johnson,  
Deputy District Attorney  
21 For the Defendant: John Malone, Public Defender  
22

23  
24 Reported by: Michel Loomis, RPR  
Nevada CCR #228, California CSR #6863

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1 MINDEN, NEVADA, MONDAY, SEPTEMBER 10, 2018, A.M. SESSION

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3  
4 THE COURT: The Court next calls the State of  
5 Nevada versus Michael Louis Cota. That there are two cases  
6 involving Mr. Cota. They are case numbers 18-CR-00116 and  
7 18-CR-00084.

8 Show the appearance of Matthew Johnson on behalf  
9 of the State.

10 Good morning, Mr. Johnson.

11 MR. JOHNSON: Good morning, Your Honor.

12 THE COURT: John Malone is appearing on behalf of  
13 the Defendant.

14 Good morning, Mr. Malone.

15 MR. MALONE: Good morning, Your Honor.

16 THE COURT: And also appearing in lawful custody  
17 is Mr. Cota.

18 Good morning, Mr. Cota.

19 THE DEFENDANT: Good morning, sir.

20 THE COURT: We're here today for a sentencing  
21 hearing on both of these cases. The Court has received a  
22 motion from the Defense to strike the State's sentencing  
23 memorandum and its exhibits.

24 The State filed an opposition to that motion, T

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1 believe, on the 7th. And I'd like to know if that motion is  
2 ready to be heard here today.

3 Mr. Malone, were you going to be filing a reply?

4 MR. MALONE: No, Your Honor, we won't be filing a  
5 reply, but I think that there are some structural problems  
6 with hearing that motion. We have a packed courtroom,  
7 obviously.

8 In order to address the issues in the courtroom,  
9 I would think that we're -- The Defense's position is that the  
10 records that are meant to be introduced can't be disseminated,  
11 they cannot be -- they're confidential, they can't be released  
12 and we would just be multiplying the error here.

13 THE COURT: So, the motion precedes going forward  
14 with sentencing. Assuming that the motion is decided today,  
15 it sounds like you're ready to have the argument today on the  
16 motion.

17 MR. MALONE: Well, I don't know how we can have  
18 the argument in an open courtroom.

19 THE COURT: Okay. Mr. Johnson, do you have a  
20 response to that?

21 MR. JOHNSON: Your Honor, my understanding is  
22 that this Court sealed the sentencing memorandum and exhibits.  
23 As far as the arguments, I don't -- I don't know whether we  
24 have to discuss anything that is has been sealed by this Court



1 or not. So, I think it would be up to this Court.

2 I think that the opposition and the motion stand  
3 on its own. This Court can take it without argument. I'm  
4 happy to make argument in addition to what's already been  
5 provided on paper.

6 THE COURT: So, Mr. Malone, I think what you're  
7 saying, is you -- in making argument, you would be getting  
8 into some of the facts that are sealed documents; is that  
9 accurate?

10 MR. MALONE: Your Honor, I think I would be  
11 dancing on my toes.

12 THE COURT: Okay.

13 MR. MALONE: In an attempt to work around things.  
14 I -- this is a new situation for me where this kind of --

15 THE COURT: Okay.

16 MR. MALONE: -- sentencing memorandum has been  
17 attempted to be introduced.

18 THE COURT: Mr. Malone, let me ask you this, if  
19 the Court hears argument today and makes a decision on the  
20 motion, would you then be prepared to go forward with  
21 sentencing today?

22 MR. MALONE: No.

23 THE COURT: What's that?

24 MR. MALONE: No.

1 THE COURT: Why is that?

2 MR. MALONE: Your Honor, back in August, we did  
3 request a psychological evaluation be prepared by Dr.  
4 McEllistrem. We then learned, several weeks later, that he  
5 felt he had a conflict on that. And so we did file a motion  
6 for funds to have a psychological examination prepared by Dr.  
7 Piasecki.

8 It's my understanding that she's scheduled to  
9 interview Mr. Cota on the 13th and she would have a report  
10 prepared very shortly after that. I think given the exposure  
11 presented by the State's sentencing memorandum, the necessity  
12 for that evaluation is more important than ever.

13 THE COURT: All right. What I'm going to do is  
14 trail this matter. We have a courtroom full of other folks  
15 and other cases. I don't see any reason why we cannot have  
16 argument today on the motion, particularly if we stick to the  
17 legal aspects, which it primarily is.

18 It's primarily an argument on the law. Both  
19 sides have briefed it. I've had an opportunity to read the  
20 briefs. There's really no need to present additional  
21 argument, although I'll give you that opportunity to do that.  
22 But I believe we can do that in open Court but it's my  
23 preference that we get some other cases handled.

24 MR. MALONE: Thank you.

1 THE COURT: So, we'll go ahead and trail this  
2 matter, Mr. Cota, we'll call you back in a few minutes.

3 THE DEFENDANT: Okay.

4 (Proceedings recessed.)

5 THE COURT: The Court recalls the cases of the  
6 State of Nevada versus Michael Louis Cota, Case Number  
7 18-CR-116 and 18-CR-0084.

8 Show the appearance of Matthew Johnson on behalf  
9 of the State. John Malone is appearing on behalf of Mr. Cota.  
10 Mr. Cota is appearing here today in lawful custody.

11 The Court trailed the matter to the end of the  
12 calendar so that we could have argument regarding the motion  
13 that had been filed by the Defense to strike the State's  
14 sentencing memorandum and attached exhibits.

15 Mr. Malone previously indicated he did not  
16 anticipate filing a reply in the case, however, would like to  
17 make argument. I'll give the parties an opportunity to do so  
18 at this time.

19 I have fully read and considered the -- both the  
20 motion and the opposition. Appreciate the efforts made by  
21 both counsel in that regard. So, there's really no need to  
22 repeat your arguments there. If you'd like to summarize them  
23 you may. And if you would like to add any other arguments you  
24 may also do that.

1 I'll begin with Mr. Malone because it was his  
2 motion and then, Mr. Malone, you'll get a chance to give any  
3 response once Mr. Johnson goes.

4 Go ahead, Mr. Malone.

5 MR. MALONE: Thank you, Your Honor. And, Your  
6 Honor, I'd like to make a motion for the record that there are  
7 at least three civilians in the courtroom including one  
8 incarcerated Defendant.

9 THE COURT: You're asking to close the courtroom?

10 MR. MALONE: I would be.

11 THE COURT: What is the basis for the request?

12 MR. MALONE: Your Honor, because we're -- I'm  
13 going to be discussing an area a sensitive area that involves  
14 a release of juvenile records. Even Mr. Cola's -- I shouldn't  
15 have said juvenile records because that's actually  
16 confidential as well, whether or not a person has a juvenile  
17 history.

18 THE COURT: Mr. Johnson, do you have a response  
19 to the request to close the courtroom?

20 MR. JOHNSON: Your Honor, I think, as this Court  
21 indicated, you can speak about the legal issue before this  
22 Court that's the center of the motion to strike without  
23 discussing any of the attached documents that are referred to  
24 in the sentencing memorandum.

1           However, if this Court would prefer to close the  
2 courtroom, we don't have any opposition to that. I don't  
3 think it's necessary or required by the law, however, we're  
4 not opposed to that if this Court has any doubts about that.

5           THE COURT: The Court has considered the request  
6 to close the courtroom. The request is denied. This is a  
7 criminal proceeding, it will be held in open Court.

8           I understand, I believe Mr. Malone what your  
9 position is. There have been -- the motion itself -- or the  
10 sentencing memorandum itself and the documents have been  
11 sealed as has your response.

12           What is left now for the Court's consideration is  
13 purely legal argument and I believe there's no reason to close  
14 the courtroom for that purpose.

15           So, Mr. Malone, you may provide the Court with  
16 any additional argument you would like at this time.

17           MR. MALONE: Your Honor, although the sentencing  
18 memo is sealed at this point in time, the fact of the matter  
19 is that the order -- the motion to seal was filed  
20 contemporaneously with the sentencing memorandum. The order  
21 to seal wasn't signed until sometime later.

22           So, there was a period of time where those  
23 records were open -- open files. Anyone would access them.  
24 Anyone could copy them. Anyone could take those copies out of

1 the courtroom. They could leave them on a bus bench. They  
2 could post them on the internet. They could do all kinds of  
3 different things.

4 I think that that situation really illustrates  
5 why this sentencing memorandum is out of order and isn't  
6 something that this Court should accept. By accepting it, you  
7 would encourage it to occur in the future, for people that  
8 have -- whenever the State wishes to do so.

9 One of the things that I want to talk about but  
10 I'm reluctant to do in a courtroom where we do have civilian  
11 witnesses but I think I'm forced to, is there is a  
12 psychological report in there dated about five years ago. The  
13 Court has that document, I believe; correct?

14 THE COURT: Yes.

15 MR. MALONE: Okay. It's nine pages long. On the  
16 top of eight of those pages, it lists confidential  
17 consultation.

18 THE COURT: You can proceed, Mr. Malone. I'm  
19 just thumbing through it.

20 MR. MALONE: Thank you.

21 THE COURT: I'm familiar with it.

22 MR. MALONE: So, the front piece does not, in  
23 fact, say confidential consultation but in the top right  
24 corner of every other page, it does list that. The front

1 piece does say that the purpose of this evaluation is to help  
2 with treatment coordination and discharge planning. It's not  
3 a sentencing document. It's not a document that was  
4 introduced or the allegations in here did not result in any  
5 charges against Mr. Cota. They're allegations and you can't  
6 tell from this document when they occurred. They're not  
7 dated. They're reports from Nevada that were accessed by a  
8 treatment provider in Utah.

9           The allegations are not examined, they did not  
10 result in any charges. How do we know that? We know that by  
11 the standard report that the Division did. TL lists five  
12 different juvenile charges that Mr. Cota was charged with as a  
13 juvenile. Not one of them, not one of them includes the  
14 factual situations listed in this confidential psychological  
15 report or assessment of risk.

16           And guess what. We know that this is a  
17 five-year-old report. Five years ago. Five years ago, in a  
18 different state, in a treatment facility that he was sent to,  
19 by the Division, for his treatment and for his assessment and  
20 in hopes to fix things. And we don't have any other  
21 occurrences since then that would implicate this report.

22           So, what we have a suspect information before the  
23 Court. We have a departure from the regular order. The  
24 regular order is expressed on page 3 of these Presentence

1 Reports, where it does list juvenile history, which is  
2 allowable under the statute.

3 We're looking at unscaled records and generally,  
4 this is what we see. We see a list of charges prepared by the  
5 Division, who has access to those reports.

6 We don't see this. We don't see an inch of  
7 documents filed before the Court by the District Attorney, who  
8 got them who knows how. I'm assuming they got them out of  
9 their own files, which should have been protected. They  
10 should have been stored and not accessible by people in that  
11 office.

12 So, the fact that they have them is one -- one  
13 issue. One thing that Mr. Johnson does and is his argument,  
14 is say, well, 62H.102(b) doesn't apply because we didn't get  
15 them from a juvenile facility. Well, he's missing the point.  
16 The point is not how he got them, how his office got them, how  
17 anybody in his office got them, the point is what he did with  
18 them.

19 If you look at 62H.025 it says that the child's  
20 attorney can access those documents, he provided them. I'm  
21 not the child's attorney. I don't think I should have these.  
22 I'm the adult attorney. It's obvious from that -- that  
23 statutory scheme, which I'll point out to the Court, has been  
24 amended in just about every legislative session in recent



1 memory, that it doesn't allow an adult -- it doesn't  
2 specifically allow an adult attorney to have those documents.

3 I'll concede it does allow a District Court Judge  
4 to go and access them. It does, it's not normally done.

5 I mean, if we had this in every sentencing for  
6 anybody under the age of 21 and maybe Mr. Johnson would want  
7 to go and unseal records for people over the age of 21 because  
8 it's salacious, it's destructive, it's upsetting and it's the  
9 sort of thing that are sealed for a reason.

10 One of the points of the Juvenile Justice System  
11 is to take young people, young people that are having problems  
12 perhaps, and rehabilitate them before other things happen.

13 What's interesting to me and what I said on --  
14 last week or came to mind was, I have two young clients right  
15 now. One's currently in the Juvenile Justice System. His  
16 father died when he was ten. And then, we see this bad  
17 behavior start. It was basically marijuana possession, things  
18 like that.

19 Mr. Cota's dad, interestingly, was sentenced to  
20 prison when he was ten. So, what we have are traumatic events  
21 happening to young men who throw them off, who throw them off  
22 their center, who, we believe -- by funding the Juvenile  
23 Justice System, we believe, we have faith that we can help  
24 them, that we can turn them on the right path.

1           And to do so, what we have is a system that does  
2 provide degrees of confidentiality and makes the decision that  
3 what we're going to do is put more emphasis on rehabilitation  
4 than punishment in the Juvenile System.

5           One of those aspects is, when you go in -- when  
6 your Juvenile Probation Officer, when somebody in a treat --  
7 in a juvenile facility wants to talk to a psychologist, wants  
8 to go and get what is deemed a treatment plan, a coordination  
9 discharge summary, for coordination planning, we want those  
10 people to -- we want those young people to talk to them. We  
11 want them to talk to them freely.

12           We don't want them thinking, gee, you know,  
13 what's going to happen later on? When I'm 19 years overruled  
14 and I've stolen a firearm from a house and when I've gotten  
15 into a fight in the jail with a -- with a -- with a sheriff's  
16 deputy, is this stuff going to be strewn all over the place?  
17 Is it going to be accessible by everybody for, at least, a  
18 period of time? It's not proper.

19           I don't think the Court should go down the road  
20 of allowing this sort of salacious, damaging and inappropriate  
21 material to be put forth in open Court like we're doing right  
22 now. I have to do this to go and defend Mr. Cora, which  
23 shouldn't be happening. It shouldn't be happening. And when  
24 you look at the statutes -- the applicable statutes, the first

1 line, juvenile records are confidential.

2 This isn't confidential. There's a period of  
3 time when they were accessible by anybody. And it should --  
4 my motion to strike should be granted. Thank you.

5 THE COURT: Mr. Malone, I think it -- I have  
6 found when the Court makes a decision that really the more  
7 information I have the better. The more informed the Court is  
8 the better.

9 You, yourself, in making argument right now,  
10 talked about Mr. Cota's upbringing here and with his dad.  
11 Those are things, I'm guessing, you know, you would see in  
12 those juvenile records. But it seems like what -- you don't  
13 want the Court to -- you kind of want to say, Court, you can't  
14 consider his upbringing. You can't consider -- and I take it  
15 that there might be things in there that you'll argue in favor  
16 of him at sentencing or give explanation as to his conduct.

17 Why do you want to keep that stuff from the  
18 Court? I mean, what -- that's the part of your argument I  
19 think I struggled with -- the most with. You're purposely  
20 wanting to keep information from the Court that would be  
21 relevant to sentencing. Maybe some parts of it relevant for  
22 what the State's saying, but some also for what Mr. Cota is  
23 saying.

24 In every sentencing hearing we do, we're given a

1 Presentence Report that gives me all kinds of information  
2 about a Defendant's background. Why is that? It's because  
3 the information is relevant to the Court for the purpose of  
4 sentencing.

5 So, talk to me a little bit about that. Why are  
6 you trying to restrict what the Court can learn about Mr. Cola  
7 and his upbringing?

8 MR. MALONE: Your Honor, I don't have access to  
9 Mr. Cola's complete juvenile file, nor should I. And the  
10 statute prevents it. I did have a conversation with Mr.  
11 Johnson when he filed this and when I filed my motion to  
12 strike.

13 One of the things he told me was that this isn't  
14 his complete record. This is cherry picking. I don't think  
15 that he cherry-picked things that helped my client. I think  
16 he cherry-picked the worst. So, what you're not get -- you're  
17 not getting information. You're not -- you're getting  
18 distorted information by a adverse party at a sentencing  
19 argument for a young man. He's still 19. They picked out the  
20 worst things they can in his life that they could find in  
21 whatever records they have access to.

22 I am firmly convinced that what he did was just  
23 look at his -- the juvenile records that he accessed in his  
24 file. He has said some things -- that he accessed some of

1 them from arrest records in the sheriff's office. Those  
2 shouldn't be accessible by the general public either or by  
3 anybody.

4 So, I think that you have a good point. I  
5 respect that point. I think information, if you have -- you  
6 stated the more information the better. I think the more  
7 information I have about a criminal defendant, the better able  
8 I am to make a decision regarding sentencing. You don't have  
9 that here. You have a biased record. You have a biased  
10 record.

11 THE COURT: But don't you get a full opportunity  
12 at sentencing, just like the State does, to present the  
13 information you want me to hear. Okay. So, you say I'm  
14 getting, maybe, one aspect of it. Isn't your job to present  
15 me with the other aspect?

16 MR. MALONE: I can't.

17 THE COURT: Why not?

18 MR. MALONE: The records are -- the records are  
19 not available to me. They're confidential.

20 THE COURT: Have you asked to see the records?

21 MR. MALONE: Your Honor, I don't believe that I'm  
22 allowed under the statute. I don't believe I'm allowed under  
23 the statute. What -- generally, the more information the  
24 better. That's a great general rule. But we have, really,

1 attention -- or, actually, a real wall between the criminal  
2 justice system's access to everything and the desire by the  
3 legislature and the rule -- the -- the enactment of laws that  
4 keep these records confidential. And there are great reasons  
5 to do that. They've made decisions to do that.

6 The system has changed over the years. It used  
7 to be that all Juvenile Justice Court hearings were sealed or  
8 private. That's changed. That's changed to allow victim  
9 witness testimony, et cetera.

10 But still, 62H.025 starts out with juvenile --  
11 records of Juvenile Justice are confidential. And they're, in  
12 fact, confidential from adult criminal defense attorneys. It  
13 specifically says the child's attorney may have access.

14 So, absent the rules set forth in 62H, I think  
15 that the Court's proposition might have some ability to go  
16 forward but given the fact that what the legislature has done  
17 is said that these are confidential, I don't think it -- I  
18 think that you are, in fact, precluded or precluded in open  
19 sentencing. The fact of the matter is that 62H.025 does say  
20 that a Judge can review them.

21 So, you are in a -- you're in a zone of safety.  
22 I'm not. I'm not supposed to have these documents.

23 THE COURT: Is your argument more that the  
24 documents shouldn't be known by the public that -- that, what

1 you just said, made it kind of sound like you would be okay  
2 with the Court looking -- looking at the documents, as long as  
3 it was the Court only that was looking at the documents.

4 MR. MALONE: Actually, I think it's more complex  
5 than that. I think that, from the way I read the statute, is  
6 that if you decided to go and access a juvenile file, you'd be  
7 allowed to. I don't believe the District Attorney can. His  
8 access to the juvenile records is limited for the purpose of  
9 initialing a charge.

10 So, he has limited access. This is not the  
11 initiation of a charge. This is a sentencing. This is  
12 information for sentencing. So, it's not an acceptable use of  
13 these records under 62H, clearly not.

14 THE COURT: Let me ask you this also. In -- you  
15 indicated how the Division, and they've done so here, when  
16 they're preparing the presentence report, they get  
17 dispositions from the Juvenile Court and they list those  
18 things. And so, I have that information, that he has those  
19 dispositions in the criminal case.

20 You're arguing that I shouldn't look at records  
21 from those dispositions. It might further help me understand,  
22 instead of just seeing an entry for a disposition, the State's  
23 trying to give inform -- more information about that  
24 disposition.

1 And, again, I'm having a hard time with the idea  
2 that I can be told that there is a disposition, but then I  
3 have to be precluded from looking at or hearing about -- more  
4 information about that disposition.

5 Do you have any further thoughts on that?

6 MR. MALONE: I do. The State added much more  
7 information than those five different juvenile dispositions.

8 THE COURT: So, are you okay with -- is it a  
9 different argument for the dispositions that the Division has  
10 listed in their Presentence Report than an uncharged conduct?

11 MR. MALONE: No. No, because the statute says  
12 that records of Juvenile Justice are confidential and then it  
13 lists, as you've seen, numerous -- and as we listed, one by  
14 one in our brief, we listed every single exception.

15 So, this is not included in that exception. It's  
16 also -- I don't -- I've done thousands and thousands of  
17 sentencings. I've never seen this kind of sentencing brief,  
18 never. And there's a reason why it's not allowed, it hasn't  
19 been allowed and it shouldn't be allowed.

20 I already made the point that this is  
21 cherry-picked by Mr. Johnson's own admission, he cherry-picked  
22 things and didn't put in the entire record. That's why you  
23 would have something like this. This evaluation is stunning  
24 in the way that it condemns Mr. Cota. It -- it paints him --



1 well, you've read it. I don't even want to talk about it in  
2 Court where we have people in here. This is some of the worst  
3 sort of allegation that you would see against another human  
4 being or a criminal defendant. That's why it shouldn't be in  
5 here.

6 And the fact of the matter is that is stale.  
7 It's five years old and we don't have anything -- we've never  
8 had -- he has never been charged with anything like the  
9 allegations that are listed in this report.

10 THE COURT: Well, isn't it up to the Court,  
11 though, at sentencing, to decide what weight to give it. I  
12 mean, the fact that it's stale, if that's accurate, that might  
13 be a reason for the Court not to give it much weight but that  
14 doesn't really go to admissibility.

15 The other thing is, again, you get full  
16 opportunity at sentencing and what you've said a moment ago,  
17 is you've asked for funds to hire an expert to evaluate Mr.  
18 Cota and to give me a not stale evaluation.

19 Why shouldn't the State give -- get to give me  
20 the information they have and you get to give me the  
21 information you have, so I can make a full assessment?

22 MR. MALONE: Because the statute says that they  
23 can't. It says the Juvenile Justice rec -- records of  
24 Juvenile Justice adjudications are confidential, period. It

1 doesn't say you can bring this information in at sentencing  
2 and that you can cherry-pick the record and that you can bring  
3 psychological records in.

4 I'm limited even -- even though I retained a  
5 psychological expert to do a report on Mr. Cota now, as a  
6 19-year-old, before this Court, even though I do that, can I  
7 release these? I don't think I can. Those -- those are the  
8 -- it's a Pandora's box that we open up by doing this. Not to  
9 mention the fact that it's uncontroverted that these records  
10 were disclosed to the public. They had access to it.

11 Mr. Johnson can't tell you, with candor, that he  
12 knows no one accessed them. There ought to be a sanction for  
13 that. In fact, the statute actually does list a sanction. It  
14 makes it a gross misdemeanor to release this information.

15 So, we have a comprehensive statute that I think  
16 covers everyone that sets forth a program that's supposed to  
17 be followed. It wasn't followed here and there's a reason why  
18 in over -- you know, I know Your Honor has done probably 3,000  
19 sentencings of felony matters or gross misdemeanor matters and  
20 you don't see this. There's a reason for that. It's out of  
21 the order. It doesn't -- it gives the Court information that,  
22 really, is in an unprocessed, unproven form. Okay?

23 Because what we're talking about here are  
24 allegations, not criminal convictions. And we're looking at

1 five different charges. So, we're making a departure from  
2 what has been the established order, consistent with the  
3 legislature's statute. And if Mr. Johnson can show me where  
4 he's allowed to do this under the statute, fine but he can't.  
5 He can't. There's no exception here. The only exception that  
6 might -- that does, arguably, apply is the District Court  
7 Judge's ability to access juvenile files.

8 The case law is not favorable to my position at  
9 this point in time. But every one of those cases including  
10 one of those cases, the Supreme Court was dealing with a  
11 situation in which no objection was made. No objection. This  
12 is the objection. This should stop it.

13 The Johnson case involved a capital offense where  
14 a three-Judge panel was debating the sentence for a defendant  
15 who had been convicted by a jury.

16 So, that falls straight under the current,  
17 established parameters here, where judges can look at it. But  
18 it's a different thing and their trial counsel didn't object.  
19 Well, trial counsel is objecting here. So, it's different  
20 from the existing case law.

21 THE COURT: Mr. Malone, thank you.

22 MR. MALONE: Thank you.

23 THE COURT: I fully understand your position.

24 Unrelated but kind of related is when should we

1 proceed with sentencing? Whatever I decide here today, I look  
2 it from your earlier comments that you wanted to get the  
3 evaluation of Mr. Cota accomplished before you proceed to  
4 sentencing. Do you have an idea of time frame?

5 MR. MALONE: About 30 days from now.

6 THE COURT: All right. And, of course, I'll hear  
7 from Mr. Johnson.

8 I take it that that's a motion to continue the  
9 sentencing; is that accurate?

10 MR. MALONE: Yes, Your Honor.

11 THE COURT: Okay. I just wanted Mr. Johnson to  
12 have a full ability to respond to that as well.

13 So, Mr. Johnson, if you could start by talking to  
14 me, first, about the motion to strike and then give me your  
15 thoughts on continuing the trial date so that they can finish  
16 the evaluation. Go ahead.

17 MR. JOHNSON: Sure, Your Honor. First, I just  
18 wanted to start with the most important question before this  
19 Court which is the center of the motion to strike is can this  
20 Court consider any or all of the information that's in the  
21 sentencing memorandum and the exhibits attached thereto.

22 And the law is clear that this Court, as long as  
23 it's not highly improbable and highly suspect evidence, it's  
24 relevant that this Court has the ability and expressly is

1 allowed to consider it.

2 And, in fact, I don't believe Mr. Malone was  
3 trying to say this but there was some talk about sealed  
4 records. None of the records that -- by this Court are  
5 sealed. So, none of them are sealed and even if they were, I  
6 provided the statute -- the relevant statute NRS 62H.170(3),  
7 that until he's up to 21 years old all of those -- all -- the  
8 legislature expressly provided for the ability to for this  
9 Court to consider those records at sentencing, even if they're  
10 sealed.

11 In this case, they're not sealed, which is even a  
12 lower level, but there's nothing wrong and this Court  
13 expressly allowed to consider all of those records at  
14 sentencing.

15 MR. MALONE: Your Honor, I'll agree that they're  
16 not sealed, he's not of the age of 21. They are, in fact,  
17 confidential.

18 THE COURT: Thank you, Mr. Malone.

19 MR. JOHNSON: As far as the confidentiality, as  
20 you know, I filed a motion to seal both the sentencing and the  
21 exhibits and my understanding is that this Court sealed both  
22 of those records. They remain confidential.

23 I believe Mr. Malone is under a misapprehension  
24 about both what the statute NRS 62H.025 provides and what he

1 can actually do as the attorney for Mr. Cota. And there is  
2 two ways that he can access the exact same information that we  
3 as the District Attorney's office can access.

4 First of all, under subsection E of 62.025  
5 Section 2, Section E, it does say a District Attorney --  
6 sorry, F -- an attorney representing the child. And I believe  
7 that Mr. Malone misreads the statute.

8 It's not -- it doesn't mean that once the -- once  
9 the person is no longer a child, it can only apply to the  
10 attorney that was representing him at the time. That would  
11 make little sense in light of what the statute is supposed to  
12 do, apply to, not the actual proceeding, but later on when  
13 you're looking at juvenile records.

14 And here, he is the attorney for the child, the  
15 person that, at the time, all of these records relate to and  
16 so F -- subsection F expressly provides a mechanism by which  
17 Mr. Malone can access those records from a Juvenile Justice  
18 agency. That's the first way he could do it. He could  
19 directly request them.

20 The second way he could do it would be -- the  
21 definition of a Juvenile Justice agency doesn't include the  
22 Juvenile Court, the 9th Judicial District Court nor does it  
23 include the Douglas County Sheriff's Office. Those aren't  
24 Juvenile Justice agencies and this statute only provides --

1 look at subsection two -- this is the mechanism by which a  
2 Juvenile Justice agency may release Juvenile Justice  
3 information.

4 The statute only has to do with -- with  
5 information going from the Juvenile Justice agency to someone  
6 -- someone listed here. It has nothing to do with Mr.  
7 Malone's ability to request, directly from the Juvenile Court,  
8 any record that is Juvenile Justice information. You can  
9 directly request from the Court and obtain all of the  
10 information that we received, which was given to us  
11 simultaneously with it being filed in the Juvenile Justice  
12 Court. So, all of those documents that we received, Mr.  
13 Malone has access to it and he only has to make it a request  
14 for it. So, if he hasn't done that, that's his own decision.

15 So, he has two different ways he could do it. He  
16 could, pursuant to subsection F, access all of this  
17 information or he could directly request it from either the  
18 Douglas County Sheriff's Office, in the event that those  
19 documents are attached, or from the Juvenile Court for the 9th  
20 Judicial District Court.

21 So, he has plenty of ways he can get this  
22 information. And so, he's -- he just hasn't -- has decided  
23 not to do it. And he can still request those. And there's  
24 nothing preventing him from under the law from accessing the

1 same things that we can access.

2 And so, as far as that goes, he's not at any  
3 disadvantage nor is his client at any disadvantage, except to  
4 the extent that he hasn't requested them.

5 So, that handles that. As I believe, I just  
6 heard him say several times, this Court has the ability to  
7 consider these documents. And so, whatever the mechanism was  
8 by which this Court received them, there's nothing -- no  
9 reason to strike any of it because this Court has the ability  
10 to consider all of those.

11 They are relevant, I haven't heard any argument  
12 that they're not relevant. I've heard one argument about them  
13 being stale but we have an individual whose 19 years old.  
14 He's only been an adult for less than two years.

15 The majority of the information about Mr. Cota,  
16 which will help this Court to decide what the appropriate  
17 sentence is, is before he became an adult. And that's why  
18 it's appropriate there. As I put in my memorandum, District  
19 Courts routinely consider information that is more than five  
20 years old and even more than ten years old, in making its  
21 decision and there's nothing in any of the documents that I  
22 provided to the Court that makes it so stale that it's not  
23 appropriate for this Court to consider it. And as you said,  
24 this Court decides the weight to give to any of the documents



1 that are attached to the sentencing memorandum.

2 As I put in my memorandum, and I don't want to  
3 rehash the memorandum, Your Honor, it's been the law for  
4 14 years. It's in footnote two of the Silks case that other  
5 criminal conduct may be properly considered, even though the  
6 Defendant was never charged with it or convicted of it. Its  
7 relevance is apparent. And with that, we'd rest and just  
8 submit it on the opposition.

9 THE COURT: Mr. Johnson, before I hear again from  
10 Mr. Malone, he also has, today, verbally, requested a  
11 continuance for 30 days to get a psychological evaluation.

12 Has that already been set up, Mr. Malone? Where  
13 are you at with the process?

14 MR. MALONE: Yes, Your Honor. But I think I  
15 talked about this earlier. We had requested Dr. Joe  
16 McEllistrem to do the psychological evaluation because, I  
17 believe, that's a contractual -- it's contractual arrangement  
18 with the county. Anyway, it wouldn't have -- it wouldn't have  
19 required me to request additional funds. So, we proceeded  
20 with that plan when he -- when we -- back in August.

21 And then, I think I learned two weeks ago, that  
22 Dr. Joe would not be able to do the evaluation. That he felt  
23 he had a conflict. And so, then, we explored other avenues  
24 and didn't file the motion for funds to be able to have that

1 evaluation done.

2 So, it's -- I apologize to the Court for there  
3 being a delay. It wasn't counsel's fault. It -- we tried to  
4 proceed in the most efficacious way, prior to Dr. Joe going  
5 and saying he wouldn't be able to do it.

6 THE COURT: But you thought 30 days --

7 MR. MALONE: Oh --

8 THE COURT: -- would be sufficient? Has the  
9 evaluation with the doctor already been set or --

10 MR. MALONE: Your Honor, my understanding from  
11 the doctor was she would interview him on the 13th. But I  
12 don't -- that was just an e-mail that was sort of basic. I  
13 believe I can interview him -- or I plan to be able to  
14 interview him on the 13th. And I think that was before we  
15 even got the Court's signed order or were made aware of the  
16 Court's signed order.

17 THE COURT: Okay.

18 MR. MALONE: I think you signed the order. Yeah.

19 THE COURT: Yes.

20 MR. MALONE: So, that's where we're at right now.  
21 I just want to have cushion. I don't want to come in here  
22 without the eval because there's some delay.

23 Dr. Piasecki is based at UNR, so she does have to  
24 travel and set up her schedule to go -- come in and interview.

1 THE COURT: Is 30 days sufficient?

2 MR. MALONE: I think so.

3 THE COURT: Okay.

4 MR. MALONE: I would ask also for the Court to  
5 allow me to present these documents to Dr. Piasecki if -- if  
6 you are going to allow these documents to remain as portions  
7 of the case.

8 I also -- I didn't know that the press was here.  
9 I don't know this gentleman. I'm sure the Court does. But I  
10 would ask the Court to issue a gag order, so this doesn't make  
11 it into the local papers. That certainly is something that  
12 shouldn't happen. And, certainly, at this point of the case  
13 and the process here.

14 THE COURT: Well, all that has happened here  
15 today is argument of law. Whether juvenile records can be  
16 released and/or considered by the Court. I'm comfortable that  
17 that is an argument that can be held and should be held in  
18 open Court.

19 The Court will be taking, under submission, the  
20 motion and I will generate a written order. And I understand,  
21 from your comments just now, that you need the Court to make  
22 that assessment so that you can, then, also decide whether to  
23 give the documents to Dr. Piasecki; is that correct.

24 MR. MALONE: That's correct.

1 THE COURT: And do you believe the documents  
2 would be helpful to Dr. Piasecki in generating her assessment?

3 MR. MALONE: No. I think that, actually, she  
4 probably shouldn't have them but if the Court's going to have  
5 them and use them as part of your sentencing determination,  
6 then I think I would be remiss in not having her access them.  
7 She, of course --

8 THE COURT: Why -- why would they not -- the law  
9 aside, as far as confidential and whatnot, why wouldn't those  
10 types of reports be helpful to a mental health expert?

11 MR. MALONE: Well, number one, I -- I -- there  
12 are a couple things. Would they be helpful, sure. They're  
13 not going to be unhelpful necessarily. I believe in -- and  
14 the Court's asking me to make an argument putting the law  
15 aside. So, I wasn't doing that. I think I have to be -- as  
16 an officer of the Court, I think I have to follow the  
17 applicable law, which, I think, would prevent me from  
18 releasing them to her.

19 THE COURT: Well, my question, I guess, is, if I  
20 decide that the Court can consider these documents, then your  
21 request is that your expert be allowed to review them. And  
22 so, that suggests that you find some relevance in the  
23 documents. It would be helpful to Dr. Piasecki. That's all  
24 I'm asking.

1 MR. MALONE: Not necessarily. But I do think  
2 that what Dr. Piasecki's -- one of the things that I would ask  
3 Dr. Piasecki to do is to assess the relevance of these  
4 documents at the sentencing hearing of a 19-year old, with the  
5 information that she would be presented with.

6 THE COURT: So --

7 MR. MALONE: So, it's not necessarily to say that  
8 they would be helpful for her to come up with some sort of  
9 treatment protocol, some sort of predictive analysis of what  
10 his future behavior would be or punishment but it would be to  
11 undermine the State's argument greatly.

12 THE COURT: Okay.

13 MR. MALONE: And I did. If I've now dealt with  
14 some of the Court's -- I don't know if the Court has other  
15 questions.

16 THE COURT: No.

17 MR. MALONE: But I have some other -- Your Honor,  
18 the statute in 62H.025F says, "child's attorney." We know --  
19 we can just look at legislative analysis. Every word -- that  
20 word differentiates an attorney for an adult. It doesn't say  
21 -- a blanket definition would be attorney. It doesn't say  
22 that. The Legislature chose to say "child's attorney."  
23 "Child's attorney." So, the Court should take that into  
24 account. It's pretty clear what they're doing there. The

1 attorney for a child in the juvenile proceeding is different  
2 than an attorney that's assigned to defend an adult in a  
3 criminal proceeding.

4 Also, regarding proceedings -- in juvenile  
5 proceedings, people are not convicted in the Juvenile Court.  
6 They're not convicted. So, we're not talking about criminal  
7 convictions coming in. What we're talking about is a  
8 different animal. And we have a completely different system  
9 and we have a completely different way of looking at the  
10 proceedings. So, we're not talking about juvenile convictions  
11 here. We're talk -- and we're -- we're even talking about  
12 uncharged acts.

13 I can't tell from these records, which of these  
14 five charges are contained in here. I mean, we have -- we  
15 have -- you know, we have reports in here, I think, that I put  
16 in my brief. They're -- they're mislabeled. When you look at  
17 some of the sheriff's office reports, they're listed at the  
18 top of the page and you'll see that the offense is listed as  
19 an offense that's clearly different than what was  
20 investigated.

21 We have instances of kicking. One of the charges  
22 or the allegations or the acts that is listed in the report  
23 was kicking another boy in the heels on a -- on the  
24 schoolyard. Kicking in the heels. I mean, that sounds like

1 what we used to call giving somebody a flat.

2 THE COURT: Mr. Malone, you're kind of getting  
3 into the facts.

4 MR. MALONE: I'll be -- I think -- and I agree  
5 with the Court. I'm done. I wanted to make sure that there  
6 was a distinction. The legislature has made a distinction  
7 between an attorney and a child's attorney and I think that's  
8 important, period. I also think that the Court -- Mr. Johnson  
9 did not address the situation where he had the documents filed  
10 for a period of time when they were not sealed.

11 But that's clear from the Court's -- from the  
12 date stamps, time stamps on both the sentencing memorandum and  
13 on the Court's sealing order. You have to look at the order,  
14 not the time that the motion to seal was done.

15 In my -- in anything I filed, in this issue right  
16 now, has required me to come back and forth to the Court  
17 several times. You'll see that in my billing sheets. Because  
18 I didn't file anything regarding the -- my motions until I had  
19 that order sealing.

20 So, that was necessary to protect the record and  
21 protect those confidential documents from being accessed by  
22 the general public.

23 THE COURT: All right. Thank you, Mr. Malone.

24 Mr. Johnson, back to you.

1 MR. JOHNSON: I apologize, Your Honor. I have  
2 two points and I only -- I only addressed one of those.

3 THE COURT: Yes. And if you take -- address the  
4 continuance as well.

5 MR. JOHNSON: Your Honor, my understanding is  
6 that, I guess, there was a motion filed ex parte requesting  
7 funds for an evaluator. The only thing that I -- I don't have  
8 information about and Mr. Malone's the one -- had the  
9 information about is, I believe, there's been eight weeks that  
10 have been available for an evaluation to be done of the  
11 Defendant.

12 We were prepared to go forward with sentencing  
13 today. I have my witness -- witness here, ready to testify.  
14 And I don't know whether Dr. McEllistrem was contacted on week  
15 seven or week one and why there's such a delay in finding out  
16 that, apparently, Dr. McEllistrem can't do the evaluation,  
17 that someone else couldn't have been obtained. I don't even  
18 know the exact date that the ex parte motion for funds was  
19 made and what -- what the series of events.

20 So, my only objection would be whether it -- it's  
21 appropriate for the amount of delay. We've already had the  
22 Defendant in custody for some time and we'd like to proceed  
23 with sentencing as quickly as possible.

24 But I don't have enough information to say



1 whether there's a good reason for the amount of delay that's  
2 happened before this evaluation. I'll accept that,  
3 apparently, September 13th, if I heard it right, is when this  
4 evaluation will take place. But I hate to have another  
5 30 days, come in here and say we haven't got an evaluation yet  
6 because we'd like to proceed to sentencing.

7 THE COURT: The Court finds that there is good  
8 cause to continue the sentencing. Mr. Cota entered a guilty  
9 plea back on June 9th -- or excuse me, July 9th and Mr. Malone  
10 has provided the Court with sufficient cause to continue,  
11 namely, that he attempted to get an evaluation through Dr.  
12 McEllistrem and when that did not work, he then applied for  
13 funds to attempt to employ another expert. And the Court  
14 finds that the Defense has been diligent in that regard.

15 Yes?

16 MR. MALONE: Your Honor, I'd like to point out  
17 that Mr. Cota does have two charges. I was assigned to the  
18 charge, initially, back in July and then we did have an  
19 arraignment. He was arraigned on August 6th on the battery by  
20 a prisoner charge that I think changed the case in some ways.  
21 He was facing more punishment. And I -- I'll be very honest  
22 back in -- when I received the first case, there were some  
23 issue -- if we can approach, Your Honor?

24 THE COURT: Well, I don't think you need to. I'm

1 find --

2 MR. MALONE: Okay.

3 THE COURT: -- I'm finding that you've shown good  
4 cause for the continuance. I'll also say, as another basis  
5 for the continuance, that the State filed their sentencing  
6 memorandum on August 28th and Mr. Malone then filed his motion  
7 to strike. The State filed their opposition just on  
8 September 7th. It's an interesting issue. The Court wants to  
9 spend time on deciding. And so, that too is a basis for the  
10 continuance.

11 The Court does acknowledge that that is an  
12 inconvenience for folks who came here to hear or be part of  
13 the sentencing. However, paramount to the sentencing is that  
14 the Court be prepared to go forward with sentencing. And so  
15 this matter is going to be continued.

16 Mr. Malone has requested one month. That would  
17 take us out to October 8th.

18 Mr. Johnson, you indicated you have a witness  
19 present and I'm wondering if it might be best to hear this  
20 matter on a non-law and motion day. Did you -- how long do  
21 you anticipate the witness testimony to be?

22 MR. JOHNSON: Your Honor, I imagine the witness's  
23 testimony will be about 15 to 20 minutes, as far as direct and  
24 then I have a number, like, a - snippets of several calls and

1 a body cam video, which are approximately, altogether, I want  
2 to say, maybe, 20 minutes.

3 THE COURT: Okay. And today were any victims --  
4 did any victims appear today to provide victim impact  
5 testimony?

6 MR. JOHNSON: I don't believe they showed up  
7 today. They had a scheduling conflict. I'll be sure to  
8 notify them about the new sentencing date.

9 THE COURT: All right. Well, from what it sounds  
10 like -- Mr. Malone, let me hear on your end. Are you  
11 anticipating this to be a longer than normal sentencing or is  
12 it something we could accomplish on a normal law and motion  
13 day?

14 MR. MALONE: My anticipation, at this time,  
15 Your Honor, would be that I would just proceed on Dr.  
16 Plasecki's written report and not have her testify.

17 THE COURT: Okay.

18 MR. MALONE: But that could change. And it would  
19 definitely change the calendar but I would -- I think I would  
20 be able to inform the Court of that change with plenty of  
21 time.

22 THE COURT: Okay. So, I'm going to go ahead, for  
23 now, set it on a law and motion day. Four weeks out would be  
24 October 8th. Mr. Malone, are you available on that date?

1 MR. MALONE: Your Honor, can I go in the back of  
2 the courtroom?

3 THE COURT: Yes, take your time.

4 MR. MALONE: And grab my calendar? October 8th.  
5 That looks fine, Your Honor.

6 THE COURT: Mr. Johnson, would October 8th be  
7 okay for the State?

8 MR. JOHNSON: Yes, Your Honor.

9 THE COURT: And your witness?

10 MR. JOHNSON: Yes, Your Honor. Well, yes, Your  
11 Honor.

12 THE COURT: Okay. All right. Sentencing on both  
13 of these matters is continued till October 8th at nine o'clock  
14 in the morning. The Court understands the parties will be  
15 waiting for the Court's order regarding the motion and so I  
16 will address that as soon as possible and get that out to the  
17 parties.

18 In the event that the Court -- I'm just trying to  
19 think of all issues. I want to make sure when we come back  
20 next time that there isn't further continuance.

21 Mr. Malone asks that if the Court rules in the  
22 State's favor on the pending motion that he would like the  
23 doctor, Dr. Piasecki to be given copies of the exhibits.

24 Mr. Johnson, what is the State's position in that

1 regard?

2 MR. JOHNSON: Your Honor, I think this Court can,  
3 as part of its -- its order granting funds, it can also order  
4 that any or all of the documents that this Court has already  
5 received be provided to Dr. Piasocki.

6 And therefore, any concern that Mr. Malone has  
7 about him providing them, this Court can provide the documents  
8 or order Mr. Malone to provide those documents. So, we don't  
9 have any objection to that.

10 THE COURT: Okay. And I don't mean to give any  
11 indication which way I'm going on the motion. I'm just trying  
12 to think of what -- what other issues we might have out there.

13 Mr. Malone anything else that you can think of  
14 that we should address here today?

15 MR. MALONE: No, Your Honor.

16 THE COURT: Mr. Johnson, how about you?

17 MR. JOHNSON: I just have one more thing. I just  
18 request that this Court order that, once the evaluation is  
19 completed, that a copy of the order be provided for the State,  
20 as soon possible and not on the eve of sentencing, so we can  
21 take a look at it and address it in any way we need to. So,  
22 it gives us some advance notice.

23 THE COURT: So, Mr. Malone, if it's going to be  
24 used by the Defense, I would expect you to give a copy of that

1 to the State in advance of sentencing.

2 MR. MALONE: I plan on filing it.

3 THE COURT: All right. Very good.

4 All right. Well, thank you both for the  
5 arguments and your legal briefs. Again, it's an interesting  
6 issue and the Court plans on spending some time with it.  
7 Thank you both.

8 MR. MALONE: Thank you, Your Honor.

9 (Proceedings concluded.)  
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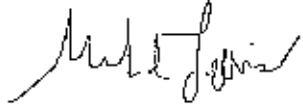
1 STATE OF NEVADA           )  
2 COUNTY OF DOUGLAS       )

3  
4 I, Michel Loomis, Certified Shorthand Reporter of  
5 the Ninth Judicial District Court of the State of Nevada, in  
6 and for the County of Douglas, do hereby certify:

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

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

14 DATED: At Carson City, Nevada, this 22nd day of  
15 September, 2018.

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18 Michel Loomis, CCR No. 228  
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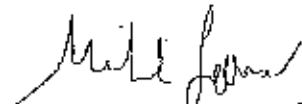
6 IN THE NINTH JUDICIAL DISTRICT COURT  
7  
8 IN AND FOR THE COUNTY OF DOUGLAS, STATE OF NEVADA

9 STATE OF NEVADA, )  
10 )  
11 Plaintiff, )  
12 )  
13 vs. ) Case No. 18-CR-00084;  
14 ) 18-CR-00116  
15 MICHAEL L. COTA JR., )  
16 ) Dept. No. II  
17 Defendant. )  
18 \_\_\_\_\_ )  
19 )  
20 )  
21 )  
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23 )  
24 )

25 AFFIRMATION

26 Pursuant to NRS 239B.030

27 The undersigned does hereby affirm that the following  
28 document DOES NOT contain the social security number of  
29 any person:  
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36   
37 MICHEL LOOMIS, RPR  
38 NV CCR #228

39 CAPITOL REPORTERS (775) 882-5322



1 CASE NO. 18-CR-00084  
18-CR-00116  
2 DEPT. NO. 2

3 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
4 IN AND FOR THE COUNTY OF DOUGLAS  
5 BEFORE THE HONORABLE DISTRICT COURT JUDGE, THOMAS GREGORY  
6

7 THE STATE OF NEVADA,  
8 Plaintiff,  
9 vs.

10 MICHAEL L. COVA, JR.,  
11 Defendant.  
12 \_\_\_\_\_/

13  
14 TRANSCRIPT OF PROCEEDINGS

15 SENTENCING

16 MONDAY, OCTOBER 8, 2018  
17

18 APPEARANCES:

19 For the State: MATTHEW JOHNSON  
Deputy District Attorney  
20 Minden, Nevada

21 For the Defendant: JOHN MALONE  
Attorney at Law  
22 411 Mill Street  
Reno, Nevada 89502

23 Reported By: Kathy Jackson CSR  
24 Nevada CCR #402  
California CCR #10465

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1 MONDAY, OCTOBER 8, 2018, MINDEN, NEVADA

2 -oOo-

3 THE COURT: The Court next calls the State of  
4 Nevada versus Michael Lewis Cota, Junior. There are two  
5 cases pending. They are Case Numbers 18CR0116 and 18CR0084.  
6 Show the appearance of Matthew Johnson on behalf of the  
7 State. John Malone is appearing on behalf of the defendant.  
8 Good morning. Also appearing in lawful custody on both cases  
9 is the defendant, Mr. Cota.

10 Hello, Mr. Cota.

11 THE DEFENDANT: Good morning, sir.

12 THE COURT: We're here today for sentencing on  
13 both of these matters.

14 Mr. Malone, have you received copies of the  
15 presentence investigation reports? One is dated August 21st,  
16 2018 and one is dated August 22nd, of 2018.

17 MR. MALONE: Your Honor, I have, and I've had the  
18 opportunity to review both of those reports with Mr. Cota.

19 THE COURT: All right. Any [actual] corrections  
20 to offer?

21 MR. MALONE: No, Your Honor.

22 THE COURT: Mr. Johnson, has the State received  
23 copies of both the reports?

24 MR. JOHNSON: Yes, Your Honor.

1 THE COURT: Do you have any factual corrections  
2 to offer?

3 MR. JOHNSON: The only correction is the  
4 defendant lists that he's married to Allie Cota but I believe  
5 it's Allie Scaffaloni (phonetic) and I don't believe that is  
6 correct but I haven't -- I don't have a search of the  
7 marriage license for that person to confirm that's correct.

8 MR. MALONE: Your Honor, that is -- that  
9 statement on page two of the PSI is incorrect. He does share  
10 a child with Allie. They are not married.

11 THE COURT: Is that correct, Mr. Cota?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: I made that correction on both  
14 presentence reports, both at page two. Thank you for that.

15 Mr. Malone, and, Mr. Johnson, my thought would be  
16 that we proceed to sentencing on both cases and you can make  
17 your arguments on both. However, I'm also happy to proceed  
18 on the cases individually if you would like to do that.

19 Mr. Malone, do you have a preference? Of course,  
20 he'll be sentenced individually but I just meant in terms of  
21 how we proceed today.

22 MR. MALONE: Your Honor, it would be my desire to  
23 proceed on both of them in tandem.

24 THE COURT: All right. Mr. Johnson, what are

1 your thoughts?

2 MR. JOHNSON: That sounds good to us, Your Honor.

3 THE COURT: Okay. Mr. Malone, are you prepared  
4 to go forward with sentencing on both cases?

5 MR. MALONE: Your Honor, we are prepared. I  
6 would ask that the State go first. They are going to be  
7 presenting more material and of necessity a lot of my  
8 sentencing argument is going to be dependent upon the  
9 information and testimony that they put in.

10 THE COURT: All right. Mr. Johnson, what are  
11 your thoughts about that?

12 MR. JOHNSON: Your Honor, I'm not opposed to  
13 putting on the evidence first, but we would ask to argue  
14 second, that's usually the practice of this Court.

15 THE COURT: All right. I think that's a fair way  
16 to proceed.

17 So, Mr. Johnson, do you have witnesses you would  
18 like to present today?

19 MR. JOHNSON: I do, Your Honor. If I could just  
20 grab some exhibits that I have with the clerk at this time.

21 THE COURT: You may.

22 MR. MALONE: Your Honor, one other matter, the  
23 defense did file a psychological evaluation performed by  
24 Melissa Piasecki. It was filed on Thursday. I wanted to

1 confirm that the Court did receive that.

2 THE COURT: Mr. Malone, thank you for making that  
3 record. The Court did receive and will consider as part of  
4 the sentence the evaluation by Dr. Piasecki.

5 MR. MALONE: Thank you.

6 THE COURT: I do want to make sure with  
7 Mr. Johnson when he's done with the clerk that the State also  
8 received it.

9 Mr. Johnson, Mr. Malone had asked if the Court  
10 received a copy of the psychological evaluation. I confirmed  
11 that I did receive it. I've reviewed it and considered it  
12 and will consider it as part of the sentencing today. Did  
13 the State receive it as well?

14 MR. JOHNSON: I did, Your Honor.

15 THE COURT: And I should have asked you, do you  
16 have any objection to the Court considering the evaluation?

17 MR. JOHNSON: I do not, Your Honor.

18 THE COURT: All right, very good.

19 Okay. Mr. Johnson, you may proceed.

20 MR. JOHNSON: Your Honor, the one -- I'm going to  
21 be playing one video during -- I don't know if you're holding  
22 it or if I just --

23 THE COURT: All right. I need to turn on the  
24 system here.

1 MR. JOHNSON: I apologize, Your Honor.

2 THE COURT: That's okay. Are these exhibits that  
3 are going to be offered?

4 MR. JOHNSON: Yes, Your Honor.

5 THE COURT: Let's first address that before they  
6 are published to the Court. I have not seen them yet.

7 MR. JOHNSON: Sure.

8 THE COURT: Mr. Malone, are you going to be  
9 having any objections? Have you seen what Mr. Johnson is  
10 going to be --

11 MR. MALONE: Yes, I've been provided copies of  
12 those.

13 THE COURT: Do you have any objection?

14 MR. MALONE: No.

15 THE COURT: How many exhibits are there,  
16 Mr. Johnson?

17 MR. JOHNSON: Your Honor, I started the exhibits  
18 continuing from the sentencing memorandum I previously  
19 provided. It's going to be Exhibit 17, 18, and then there's  
20 a thumb drive that has one video and five jail calls.

21 THE COURT: Okay.

22 MR. JOHNSON: And I've already had them premarked  
23 by the clerk, and then the last exhibit is the restitution  
24 which is Exhibit 25, so they are marked as Exhibit 17 through

1 25 are the exhibits which would be, if I'm adding correctly,  
2 which would be nine total.

3 THE COURT: Do you concur with that, madam clerk?

4 Okay. So Exhibit 17 through 25 are admitted  
5 without objection.

6 It takes a moment for it to --

7 MR. JOHNSON: The video will be towards the end.  
8 I'm happy to call Deputy Torres.

9 THE COURT: It's what?

10 MR. JOHNSON: The video will be played towards  
11 the end of Deputy Torres' testimony.

12 THE COURT: Okay.

13 MR. JOHNSON: It takes a little bit to boot up to  
14 go ahead and begin, Your Honor.

15 THE COURT: I think we should be all right here  
16 in just a moment.

17 Mr. Johnson, go ahead and attempt to -- I think  
18 we're on-line.

19 MR. JOHNSON: I see what is on my screen, Your  
20 Honor.

21 MR. MALONE: Your Honor, actually I would like to  
22 interpose an objection to any evidence regarding gang  
23 associations and gang information. There's no gang  
24 enhancements in this case. I think that such evidence would



1 be overly prejudicial for to be viewed.

2 THE COURT: All right. Mr. Johnson, what is your  
3 response?

4 MR. JOHNSON: Your Honor, as you know, sentencing  
5 is -- the Supreme Court has said that sentencing, if it's  
6 relevant as long as not highly suspect evidence, it is  
7 admissible. The actual second offense where he has been --  
8 he has pled guilty to the battery on a police officer, I'm  
9 actually going to be playing video from that and at the  
10 conclusion of that, he actually references his gang and he  
11 makes future threats when he gets out involving gang. So it  
12 is relevant not only to the offense but also to his character  
13 and I think it's important for this Court to see before it  
14 makes a sentencing determination about what the appropriate  
15 sentence is.

16 THE COURT: The objection is noted for the  
17 record. It is overruled.

18 Mr. Johnson, it does look like our system is  
19 still warming up here. If you would like to proceed with  
20 Deputy Torres, you may.

21 MR. JOHNSON: Yes, Your Honor. Your Honor, the  
22 State calls Deputy Francisco Torres.

23 THE COURT: Deputy Torres, please step forward.  
24 Raise your right hand. Face the clerk to be sworn.

1                   DEPUTY FRANCISCO TORRES,  
2                   called as a witness on behalf of the  
3                   State having been first duly sworn,  
4                   was examined and testified as follows:  
5

6                   THE COURT: Please be seated.

7                   DIRECT EXAMINATION

8                   BY MR. JOHNSON:

9                   Q. Deputy Torres, can you please state your full  
10                  name, and spell your first and last name for the record.

11                  A. Yes, Francisco Torres, F-r-a-n-c-i-s-c-o  
12                  T-o-r-r-e-s.

13                  Q. And, deputy, how are you currently employed?

14                  A. With the Douglas County Sheriff's Office.

15                  Q. And are you assigned to any specific unit or do  
16                  you have any specific job as a deputy sheriff?

17                  A. Yes, I'm currently assigned to the Tri-County  
18                  Gang Unit.

19                  Q. And what kind of training or experience have you  
20                  had with the Tri-County Gang Unit?

21                  A. Tri-County Gang, I've been -- we've took an  
22                  80-hour class in Los Angeles, both in class and out in the  
23                  field part of the California Gang Investigation Association,  
24                  California Gang Task Force Association, and then I've had

1 numerous training throughout a couple years now.

2 Q. As a member of the Tri-County Gang Unit, what --  
3 what specifically do you do related to that gang unit?

4 A. We identify gang members within the tri-county  
5 area.

6 Q. And is there certain criteria that you look for  
7 when you're trying to identify whether someone is a gang  
8 member?

9 A. Yes, there are certain factors that we go off of  
10 in order to validate either a gang member or an associate,  
11 and --

12 Q. What are those factors that you look at?

13 A. Contact, self-association or self-admittance,  
14 tattoos, dress, some of those factors there.

15 Q. You said tattoos and dress. What -- why is  
16 tattoos -- well, let's start with tattoos. What do tattoos  
17 have to do with gang association?

18 A. Tattoos, they will tattoo their gang on their  
19 body. If individuals are putting in work, you'll see the  
20 progression between them starting out as a gang member or as  
21 a gang associate and become a gang member based on the amount  
22 of work they put in. Sometimes it reflects on tattoos.

23 Q. And you said putting in work. What do you mean  
24 by putting in work?

1           A.   Putting in work, selling drugs, beating people  
2 up, stealing certain items and the benefit for the gang.

3           Q.   Would it be fair to say performing crimes on  
4 behalf of the gang?

5           A.   That is correct.

6           Q.   And have you received any training on identifying  
7 tattoos to determine whether they are associated with a  
8 particular gang?

9           A.   Yes, I have.

10          Q.   And was that part of the 80 hours that you did  
11 when you initially were trained on gang? Have you had  
12 additional training since then?

13          A.   I've had that and individual training.

14          Q.   Now, you also say clothing. Why is clothing  
15 important for when you're trying to identify whether someone  
16 is a gang member and whether they should be validated?

17          A.   Clothing is very important. For example, Bloods,  
18 red, criminally red. Crips, blue. Sureños, blue. Nortenos,  
19 red. That's just one key factor in order for us to be able  
20 to validate an associate or a gang member.

21          Q.   And why do gang members wear certain clothing?

22          A.   To intimidate, to represent their gang when they  
23 are out in public.

24          Q.   So you said one of the criteria was clothing, one

1 of them was tattoos. Did I hear you correctly one of them is  
2 self-identification?

3 A. Yes, self-admit.

4 Q. Was there any other criteria?

5 A. Association is another one.

6 Q. By association, what do you mean by that?

7 A. Association, hanging out with other validated  
8 gang member or other associates.

9 Q. Now, moving on, do you recognize the person  
10 sitting over here?

11 A. Yes, sir.

12 Q. And who is that individual?

13 MR. MALONE: We stipulate to the identification  
14 of Mr. Cota, Your Honor.

15 THE COURT: Do you accept that stipulation?

16 MR. JOHNSON: Yes, Your Honor.

17 THE COURT: All right.

18 Q. (BY MR. JOHNSON:) And when is the first time --

19 THE COURT: Identification has been established.  
20 Go ahead.

21 Q. (BY MR. JOHNSON:) When is the first time that  
22 you encountered Mr. Cota?

23 A. The first time I encountered Mr. Cota I want to  
24 say was back in probably May of 2017, a little before that.

1 Q. I'm going to show you an exhibit which has  
2 previously been marked Exhibit 17. It's already been  
3 admitted. I want you to take a look at the three pages there  
4 and tell me whether you recognize those?

5 A. Yes, I do.

6 Q. And looking at page one of Exhibit 17, how do you  
7 recognize that picture?

8 A. I took a picture of Mr. Cota. He was -- a patrol  
9 deputy had made contact with him at -- I knew Mr. Cota. I  
10 stopped by, and then I noticed that he had that tattoo on the  
11 top of his left eyebrow. I documented the pictures. What  
12 stood out to me is the second picture is the red crown there,  
13 that is a symbol of the Bloods.

14 Q. Is this the same day that you took a picture of  
15 him on the first page?

16 A. That is correct.

17 Q. And what is the significance of that tattoo?

18 A. That is when I started noticing his gang  
19 involvement.

20 Q. So --

21 A. Some of the factors.

22 Q. Did you take that picture?

23 A. I did.

24 Q. And you took that picture to document what?

1 A. His gang involvement.

2 Q. And what's that -- what's the significance of  
3 that crown tattoo?

4 A. Crown, the crown and the red coloring, the crown  
5 is used by the Bloods.

6 Q. And then how about the third page, did you take  
7 that picture?

8 A. Third page is, this page was taken in December.  
9 That was when Jobrontac Warner, validated gang member out of  
10 Vegas, he was arrested. Mr. Cota was hanging out with him.  
11 Tattoos, more tattoos, the dress, the red shirt.

12 Q. Let's talk about that for a second. You look  
13 this picture?

14 A. Yes.

15 Q. And as someone that's been trained to identify  
16 things that are associated with gangs, let's go step by step.  
17 What are the things you noticed to you that had changed about  
18 Mr. Cota?

19 A. His tattoos, number of tattoos had increased.

20 Q. And specifically what are the new tattoos that  
21 are documented in that photo?

22 A. Now he has a crown. He's got --

23 Q. Is that the -- does that crown have any  
24 significance based on your training and experience with

1 gangs?

2 A. Yes, that is represented by the Bloods gang  
3 members.

4 Q. And how about anything else in that picture that  
5 led you to believe that he might be associated with a gang?

6 A. The red shirt and while talking to him, he also  
7 admitted to being a Bloods gang member.

8 Q. You asked him whether he was a member of the  
9 Blood gang?

10 A. Yes.

11 Q. And what did he tell you?

12 A. That he was.

13 Q. Now, we haven't talked about the Bloods yet.  
14 What can you tell us about the Blood gang?

15 A. They are violent. They are involved in murder,  
16 drug trafficking, racketeering. They are a very violent  
17 gang.

18 Q. And where do they operate?

19 A. Throughout the nation.

20 Q. Now, are they divided into any subgroups or are  
21 they all just the Bloods gang?

22 A. Nationally they are known as the Bloods but  
23 different sets. Each CD state has different sets.

24 Q. Did Mr. Cota tell you whether he's involved in a



1 different set of the Bloods gang?

2 A. He claimed to be a Blood.

3 Q. Did Mr. Cota tell you how he became a member of  
4 the Bloods gang?

5 A. He did not but as I've gotten -- as I made  
6 contact with him, his criminal activity --

7 MR. MALONE: Asked and answered, Your Honor.

8 THE COURT: Sustained.

9 Q. (BY MR. JOHNSON:) Have you spoken with other  
10 deputies who spoke with him about how he became associated  
11 with the --

12 MR. MALONE: Objection, calls for a hearsay  
13 response.

14 THE COURT: Sustained.

15 Mr. Johnson, while we're waiting, the system is  
16 on.

17 MR. JOHNSON: Okay.

18 THE COURT: And so if there's -- it might be your  
19 connection to the system that's the issue.

20 MR. JOHNSON: I can try to either restart, Your  
21 Honor, or flip the HDMI one more time. I won't restart it.

22 THE COURT: Mr. Johnson, if you would like, we  
23 can recess.

24 MR. JOHNSON: I can contact Mr. McAllister if it

1 doesn't. He helped me set it up last time. I did exactly  
2 the same things he showed me.

3 THE COURT: Let's go ahead and take a recess.

4 Deputy Torres, you can step down. We'll resume  
5 in -- we'll shoot for five minutes. If more time is needed,  
6 then we'll take it.

7 MR. JOHNSON: Thank you, Your Honor.

8 (Whereupon, a brief recess was taken.)

9 THE COURT: Court is back in session on Case  
10 Number 18CR0084 and 18CR0116. Show the appearance of Matthew  
11 Johnson on behalf of the State. John Malone on behalf of the  
12 defendant. Also appearing is the defendant, Mr. Cota.

13 Deputy Torres has resumed the stand. He remains  
14 under oath.

15 Mr. Johnson, you may continue.

16 Q. (BY MR. JOHNSON:) Deputy Torres, I'm showing you  
17 what's been admitted and marked as Exhibit 18. Do you recall  
18 me showing you that in my office earlier?

19 A. Yes, I do.

20 Q. And what is that you're holding?

21 A. It's inmate mail that Mr. Cota wrote.

22 Q. And someone that has training and experience with  
23 gangs, was there anything in particular in this e-mail that  
24 stood out to you that's related to gangs?

1           A.    Yes, every C is crossed out or if there's an X  
2 next to it.

3           Q.    What's the significance of that?

4           A.    It's a sign of disrespect for the Crip gang.

5           Q.    How are the Crips and the Bloods related?

6           A.    They are enemies.

7           Q.    And so is this something that we typically see by  
8 a Blood member to cross out an X -- cross out a C?

9           A.    Cross out a C, yes.

10          Q.    Why do they do that again?

11          A.    To show disrespect for the Crip gang members.

12          Q.    Does Mr. Cota associate with any known members of  
13 the Bloods gang that you're aware of?

14          A.    Yes.

15          Q.    And who does he associate with?

16          A.    Jobrontae Warner.

17          Q.    And how do you know Jobrontae Warner is a gang  
18 member?

19          A.    Jobrontae Warner.

20          Q.    And how do you know Jobrontae Warner is a member  
21 of the Bloods gang?

22          A.    Jobrontae Warner self-admittance, dress,  
23 association in Las Vegas and the prison system.

24               MR. MALONE: Objection, calls for hearsay.

1 THE COURT: Sustained.

2 Q. (BY MR. JOHNSON:) Have you noticed --

3 MR. MALONE: Move to strike the response as well.

4 THE COURT: It's granted.

5 Q. (BY MR. JOHNSON:) Have you noticed any  
6 particular tattoos on Jobroniac Warner that would lead you to  
7 believe that he's a Bloods gang member?

8 A. Yes.

9 Q. What are those tattoos?

10 A. The Playboy.

11 Q. And is that associated with the Bloods in general  
12 or is it associated with the sex?

13 A. That is associated with the set Playboy Bloods.

14 Q. And where are the Playboy Bloods located at?

15 A. Las Vegas.

16 Q. Deputy Torres, I'm going to show you a video.

17 And, Your Honor, this is a video from the second  
18 incident for which the defendant has pled guilty from the  
19 jail from a body cam, and it's been marked as Exhibit 19 and  
20 marked as Exhibit 19 on the USB drive. I didn't want to  
21 present five separate USB drives so each of them is  
22 delineated by which exhibit corresponds to what I've already  
23 given to the Court.

24 THE COURT: Thank you.

1 MR. JOHNSON: Thank you. I'm going to pause it  
2 here because apparently -- I just had Mike check the sound.

3 THE WITNESS: It will kick in after the first 30  
4 seconds.

5 (Whereupon, a video was played.)

6 MR. JOHNSON: Let's pause it right there.

7 Q. Do you know who the person J that he's referring  
8 to?

9 A. That's Jobrontae.

10 Q. Was he incarcerated at the same time as Michael  
11 Coia was here?

12 A. That's correct.

13 Q. And J is Jobrontae's nickname?

14 A. That is correct.

15 (Whereupon, a video was played.)

16 THE WITNESS: Another thing, when he was being  
17 walked out, he said soowoop which is also another something  
18 about Bloods.

19 (Whereupon, a video was played.)

20 MR. MALONE: Your Honor, I'm going to object to  
21 that last statement that was made suo sponte with no  
22 questioning by the District Attorney and the response that  
23 soowoop is something about Bloods is -- has almost no  
24 relevance. There's no actual legal conclusion or factual

1 conclusion. There something about Bloods is -- should be  
2 stricken. It's overly prejudicial. It doesn't have any  
3 factual basis from what Deputy Torres has said.

4 THE COURT: The objection is sustained on the  
5 basis that there was no questioning.

6 MR. JOHNSON: And, Your Honor, I'm going to ask  
7 the rest of the questions at the end of the video. I'm just  
8 going to step back. I want to make sure Your Honor can hear  
9 all that he said. I'm trying to turn the volume up as loud  
10 as possible.

11 (Whereupon, a video was played.)

12 Q. (BY MR. JOHNSON:) Deputy Torres, did you hear  
13 what he just said right there?

14 A. I did.

15 MR. MALONE: Objection, what's the relevance of  
16 Deputy Torres testifying as to what was said on the video?

17 THE COURT: Mr. Johnson?

18 MR. JOHNSON: Your Honor, I'm about to ask him  
19 what the significance of him saying Bloods bro is.

20 THE COURT: Objection is overruled.

21 Q. (BY MR. JOHNSON:) Did you hear what he just said  
22 there?

23 A. I did.

24 Q. And what did he say?

1           A.    He made a threat towards the deputies. He says  
2 he's going to break his jaw. And then he said I'm Bloods.  
3 Basically saying he's going to put it on the set. I'm the  
4 gang that's going to do that.

5           Q.    Is this common for, based on your training and  
6 experience for gang members to communicate to others what  
7 gang they are involved in?

8           A.    Yes.

9           Q.    And why do they do that?

10          A.    To identify themselves to either get assistance  
11 or to call someone out.

12                   (Whereupon, a video was played.)

13          MR. JOHNSON: Your Honor, it continues on. That  
14 is the main part I wanted you to see. I'm happy to play the  
15 entire video if counsel wants me to, but that was the part  
16 that I wanted that I thought was relevant to the sentencing  
17 hearing.

18                   I have no further questions for Deputy Torres at  
19 this time.

20           THE COURT: Thank you.

21           Mr. Malone, cross-examination?

22                   CROSS-EXAMINATION

23          BY MR. MALONE:

24          Q.    Deputy Torres, I'm going to go -- if I can

1 approach.

2 THE COURT: You may.

3 Q. (BY MR. MALONE:) I have what's been marked and  
4 admitted as State's 17.

5 A. Yes.

6 Q. Are you familiar with that photograph?

7 A. Yes, sir.

8 Q. Okay. Just -- so there is the tattoo present  
9 over Mr. Cota's left eye in this photograph, right?

10 A. That is correct.

11 Q. Are you able to read what it says?

12 A. It's a pretty bad tattoo.

13 Q. Well, I wasn't asking for artistic critiques.

14 A. Uh-huh.

15 Q. But are you able to read what it says?

16 A. Finesses.

17 Q. Finesse, do you know what finesse means?

18 A. Finesse, we can look it up in the dictionary.

19 Q. Okay. If I said that finesse means having a  
20 certain touch or light touch for things, would that help  
21 reflect or educate you in any way?

22 A. That could be --

23 Q. Or remind you of anything?

24 A. That could be. That could be. It could also be



1 a nickname being used. It could mean a lot of different  
2 names.

3 Q. But it's a name, it's a word there, right,  
4 finesse?

5 A. It states finesse, yes.

6 Q. And then when we look at this document that is  
7 not dated, the tattoo has been overlaid, correct?

8 A. That is correct.

9 Q. Okay. What kind of hat is Mr. Cota wearing  
10 there?

11 A. It says Cali.

12 Q. Okay. And the colors are Jamaican sort of  
13 colors, right?

14 A. It's got red, yellow and green.

15 Q. Okay. And is that affiliated with any particular  
16 gang? Does that red there mean that anybody wearing that hat  
17 is a Blood?

18 A. That is not, there are certain factors.

19 Q. No, I'm just asking --

20 A. Just because --

21 Q. -- does this hat mean that anybody wearing that  
22 hat with red in it is a Blood and your answer is no, correct?

23 A. No, sir.

24 Q. But no is the answer?

1 A. That is correct, sir.

2 Q. Thank you. Do you know when this latter  
3 photograph was taken that shows this crown over the left eye  
4 now?

5 A. Yes, that was taken December 28th when Jobrontae  
6 Warner was arrested.

7 Q. Okay. And if somebody goes into a tattoo shop  
8 and has a tattoo done, do the Bloods control whether or not a  
9 certain tattoo can be given by that tattoo person?

10 A. I'll give you an example.

11 Q. Did you understand the question?

12 A. I don't.

13 Q. Actually it's possible for anybody to walk into a  
14 tattoo shop and get whatever they wanted tattooed on their  
15 body pretty much, correct?

16 A. That is correct.

17 Q. Okay. So sometimes that can be significant,  
18 correct?

19 A. There are factors --

20 Q. Sir, did you understand the question?

21 A. Can you ask it again, please.

22 Q. Yes. Sometimes what is tattooed on a person's  
23 body can be -- can have significance to a gang membership,  
24 correct?

1 A. There can be --

2 Q. Yes or no. It's a yes or no question, sir.

3 A. Repeat the question.

4 Q. I can ask it again. Sometimes people just go in  
5 and get a tattoo and it doesn't have gang significance,  
6 correct?

7 A. That is correct.

8 Q. Okay. And sometimes people go into a tattoo shop  
9 and get a tattoo and it does have some significance, correct?

10 A. That is correct.

11 Q. Do you see the -- can you show the deputy your  
12 tattoo under his right eye, your right eye. Are you familiar  
13 with that tattoo on Mr. Cota?

14 A. I believe that is a cross.

15 Q. Okay. Christian cross, right?

16 A. It's a cross.

17 Q. Well, I mean a Christian cross versus like an  
18 Orthodox cross, correct?

19 A. Right.

20 Q. Different types of crosses. So that symbol has  
21 significance in the Christian religion, correct?

22 A. I wouldn't know.

23 Q. No, okay. Do you -- have you ever seen a  
24 crucifix?

1 A. Yes.

2 Q. Okay. And a crucifix is a cross, right?

3 A. Yes.

4 Q. Like the one on Mr. Cota's eye?

5 A. Yes.

6 Q. Or underneath his eye, and it's got a figure of  
7 Jesus being crucified on it, correct?

8 A. Correct.

9 Q. Okay. So that symbol has meaning to a Christian  
10 or someone in the Christian religion, correct?

11 A. I guess it would.

12 Q. Okay. It doesn't to you?

13 A. I'm not Christian so I can't say.

14 Q. Okay. And you're not familiar with that  
15 symbology? You didn't learn that -- you didn't learn that in  
16 Los Angeles during your gang training?

17 A. No.

18 Q. During that 80 hours?

19 A. I did not.

20 Q. Okay. Now, you testified earlier about gangs  
21 committing criminal activity for the furtherance of the gang,  
22 correct?

23 A. Correct.

24 Q. Okay. But you didn't testify to anything that

1 Mr. Cota, any offenses that he's committed that benefitted  
2 the Bloods gang, correct?

3 A. Him stealing the weapon and the tattoo on his  
4 left arm, that shows me he stole that gun. He received a  
5 tattoo which was done by Jobrontae Warner he told me.

6 Q. Do you have personal knowledge of?

7 THE DEFENDANT: It's not the same gun.

8 MR. MALONE: Let me see.

9 THE DEFENDANT: AK47.

10 Q. (BY MR. MALONE:) Have you taken a close look at  
11 that tattoo?

12 A. It is a rifle, long gun.

13 Q. The tattoo?

14 A. Yes.

15 Q. Okay. But the gun that is the basis of one of  
16 Mr. Cota's crimes here, right, I believe it's 18 -- 18CR0084,  
17 are you familiar with that case?

18 A. Yes.

19 Q. Okay. That's the stealing of an AR15 style  
20 rifle?

21 A. That is correct.

22 Q. Okay. And it had been customized with some stock  
23 and other additions, correct, by the owner, the true owner,  
24 the legal owner?

1 A. I believe so.

2 MR. MALONE: Okay. And, Your Honor, I would like  
3 the Court to view and the witness to view the tattoo that is  
4 on Mr. Cota's left arm, forearm that it's --

5 THE WITNESS: It's an AK47.

6 Q. (BY MR. MALONE:) Okay. That is not the -- the  
7 rifle that was stolen, correct?

8 A. No.

9 Q. This is a Soviet made rifle, right, started --  
10 developed in the late 1940s, correct?

11 A. Sure.

12 Q. Okay. It's been a very popular rifle throughout  
13 the world for the last 70 years, correct?

14 A. I can't attest to that.

15 Q. You're not familiar with AK47's?

16 A. I can't attest that it's been -- gained  
17 popularity.

18 Q. Fair enough. It's an assault weapon, right?

19 A. That is correct.

20 Q. Okay. That means this is a fully automatic --  
21 it's a functional fully automatic assault weapon, correct?

22 A. It's an assault rifle just like an AR15.

23 Q. Well, actually, an AR15 is not an assault rifle,  
24 is it?

1 A. It's a rifle.

2 Q. Okay. An AR15 is not a fully automatic weapon,  
3 correct?

4 A. I can't say.

5 Q. Well, you testified that you know about what  
6 rifle was stolen, correct?

7 A. Uh-huh.

8 Q. Okay. And you're not familiar -- you're not  
9 aware that an AR15 is a semiautomatic rifle?

10 A. I know that an AR15 was stolen, that's all I  
11 know.

12 Q. Okay. But this is a completely different weapon,  
13 correct?

14 A. That is representation of an AK47, that's  
15 correct.

16 Q. It's a weapon made either in China or in the  
17 Soviet -- former Soviet Union, correct, Russia?

18 A. Sure.

19 Q. Okay. And an AR15 was developed in the United  
20 States?

21 A. Sure.

22 Q. By the Armalite Company?

23 A. Sure.

24 Q. Okay. Introduced in the late 1960s and provided

1 to troops in Vietnam, correct?

2 MR. JOINSON: Your Honor, I object to this  
3 witness doesn't have personal knowledge of.

4 MR. MALONE: Your Honor, it's completely relevant  
5 because he's already testified that this tattoo --

6 THE COURT: I'm going to allow the question.

7 Q. (BY MR. MALONE:) This is not the -- a rendition  
8 or a representation of the weapon that was stolen, is it?

9 A. No. What I stated, sir --

10 Q. Thank you.

11 A. Okay.

12 Q. Thank you. When did you first see this tattoo on  
13 Mr. Cota's body?

14 A. I saw it after -- I later learned it was that he  
15 got that tattoo after the crime.

16 Q. I think you can only testify to things that  
17 you've seen.

18 A. Uh-huh.

19 Q. So my question is when did you first see this  
20 tattoo on Mr. Cota's body?

21 A. I believe it was in March.

22 Q. Okay. March of this year?

23 A. Yes.

24 Q. Okay. When was the last time -- the time that



1 you most recently seen Mr. Cota before March?

2 A. I believe it was December 28th.

3 Q. Okay. And how about before that?

4 A. November 2nd.

5 Q. Okay. And basically am I correct in that every  
6 time you see Mr. Cota, you will approach him and talk to him  
7 or stop him?

8 A. I've been in central contact with him numerous  
9 times.

10 Q. Okay. That didn't quite answer the question,  
11 okay. I asked you basically if you've seen Mr. Cota on the  
12 street, you will stop and talk to him?

13 A. Yes.

14 Q. Okay. Pretty much every single time?

15 A. Not all of the time.

16 Q. Okay. Pretty much all of the time?

17 A. Not all of the time.

18 Q. What's the percentage, 90 percent of the time?

19 A. Sure.

20 Q. Okay. And do you photograph Mr. Cota every time  
21 you stop him?

22 A. Not every time.

23 Q. Okay. Do you photograph him -- well, that's all.

24 So let me -- you said you stopped him in

1 December, December 28th?

2 A. He was present there of the arrest of Jobrontae  
3 Warner.

4 Q. And the time prior to that was what?

5 A. If I recall it must have been November 2nd.

6 Q. 11-2-17. And you have prior to the November 2nd?

7 A. I can't say, sir.

8 Q. Okay. You were shown jail letters written by  
9 Mr. Cota, correct?

10 A. Correct.

11 Q. Okay. And you testified that X's in the middle  
12 of a C, that is disrespect shown to the Crips gang?

13 A. That is correct.

14 Q. I'm wondering here too, blue is the Crips color,  
15 correct?

16 A. Yes, sir.

17 Q. Okay.

18 THE DEFENDANT: Yeah.

19 MR. MALONE: I'm not asking you, sir.

20 Q. The crown over his left eye is blue, correct?

21 A. I believe it is black.

22 Q. Would you like to come closer. Would you accept  
23 that it's black, I mean blue?

24 A. I believe it's black.

1 Q. Can you --

2 MR. JOHNSON: Your Honor, I believe this Court  
3 can determine the color of the tattoo on the defendant  
4 without having the witness testify.

5 THE COURT: The witness has given his answer and  
6 Mr. Johnson is correct.

7 MR. MALONE: I would ask the Court to take note  
8 of the blue color of Mr. Cota's tattoo, correct?

9 THE COURT: I will make my assessment of the  
10 color.

11 MR. MALONE: Okay. Thank you.

12 Q. Now, Deputy Torres, this crown that is over  
13 Mr. Cota's left eye completely covered the finosse tattoo  
14 that had been there previously, correct?

15 A. Correct.

16 Q. Now, the jail mail that you referred to earlier,  
17 that's communication to Mr. Cota's girlfriend, Allie,  
18 correct?

19 A. Correct.

20 Q. Okay. Did you read this?

21 A. I did not.

22 Q. You did not? If I can approach, I would have you  
23 take a look at this and read it.

24 THE COURT: You may.

1 MR. MALONE: And, Your Honor, it's going to take  
2 him a little while to read it. Would it be possible to take  
3 a little break, comfort break?

4 THE COURT: Yes, we'll take a recess for five  
5 minutes.

6 MR. MALONE: Thank you.

7 (Whereupon, a brief recess was taken.)

8 THE COURT: Court is back in session on Case  
9 Numbers 18CR0084 and 18CR00 or excuse me, 0116. Show the  
10 appearance of counsel for the State. Counsel for the  
11 defendant. Also appearing is the defendant, Mr. Cota.  
12 Deputy Torres has resumed the stand. He remains under oath.

13 Mr. Malone.

14 Q. (BY MR. MALONE:) Deputy Torres, were you able to  
15 review Exhibit 17?

16 A. Yes, sir.

17 MR. MALONE: Okay. If I could approach, Your  
18 Honor?

19 THE COURT: You may.

20 Q. (BY MR. MALONE:) So in looking at this letter,  
21 it's clearly a communication. It appears to be a  
22 communication to Allie Cota, a person described as Allie  
23 Cota, correct?

24 A. That's correct.

1 Q. Okay. And do you know who she is?

2 A. I believe from what I know, she was pregnant with  
3 his baby at one point.

4 Q. Okay. So they had a relationship?

5 A. Yes.

6 Q. And the letter talks a lot about that  
7 relationship?

8 A. Yes.

9 Q. Okay. And in the letter Mr. Cota says that he's  
10 going to be better, correct?

11 A. That's correct.

12 Q. He's thought about mistakes he's made in his  
13 past?

14 A. Correct.

15 Q. Okay. And then he wants to be a good example to  
16 his nephew?

17 A. That is correct.

18 Q. Okay. And he wants to be a good example to their  
19 child?

20 A. (Witness nodded head.)

21 Q. He talks about giving Allie strength, right, to  
22 go on?

23 A. Yes.

24 Q. Okay. So there's a lot in this letter that is

1 supportive of his relationship with -- with Allie, correct?

2 A. Correct.

3 Q. Okay. And primarily that's what it is?

4 A. Yes.

5 Q. Okay, thank you. You mentioned that Jobrontac,

6 Jobrontac Warner is an avowed or self-identified Blood --

7 Blood member, Playboy Bloods?

8 A. He's a validated gang member, yes.

9 Q. Okay. So validation means you validated him?

10 A. That's correct.

11 Q. Law enforcement validated him?

12 A. Correct.

13 Q. Okay. Are there -- who are other Playboy Blood

14 members here in Douglas County?

15 A. Here in Douglas County, he was the one.

16 Q. Okay, thank you. Nothing further.

17 Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. MALONE: Thank you, deputy.

20 THE WITNESS: Yes, sir.

21 THE COURT: Redirect, Mr. Johnson?

22 REDIRECT EXAMINATION

23 BY MR. JOHNSON:

24 Q. When you reviewed the mail, did you see any C's

1       What weren't X'd out?

2               A.    Yes.

3               Q.    And did you -- if you want to estimate how many  
4       C's were X'd out in this document?

5               A.    I can't say. There was a number that were and a  
6       number that were not.

7               Q.    More than ten?

8               A.    Yes.

9               Q.    More than 20?

10              A.    Around there, yeah.

11              Q.    Okay. And just to confirm, when you spoke with  
12       Michael Cota, he admitted that he was a Bloods gang member to  
13       you, correct?

14              A.    That is correct.

15              MR. JOHNSON: No further questions, Your Honor.

16              THE COURT: Recross?

17              MR. MALONE: No, Your Honor. Thank you.

18              THE COURT: May Deputy Torres be excused?

19              MR. JOHNSON: Yes, Your Honor.

20              MR. MALONE: Yes, thank you, deputy.

21              THE WITNESS: Thank you.

22              THE COURT: Deputy Torres, thank you.

23              THE WITNESS: Thank you, sir. Thank you.

24              (Witness excused.)

1 MR. JOHNSON: I just have a couple of portions of  
2 jail calls to play, and I'll be addressing the presentation  
3 of evidence.

4 THE COURT: I want to make sure any other  
5 exhibits up with Deputy Torres?

6 MR. JOHNSON: I believe I just handed all of the  
7 exhibits that were discussed back to the clerk.

8 THE COURT: All right.

9 MR. JOHNSON: Other than Exhibit 19 which is one  
10 of the ones on the thumb drive.

11 THE COURT: Okay, very good. Thank you.

12 MR. JOHNSON: And this is just going to be audio,  
13 Your Honor. I turned the volume up as high as possible.

14 THE COURT: All right.

15 MR. JOHNSON: And I'm just going to be moving  
16 into the portion.

17 (Whereupon, an audio was played.)

18 MR. JOHNSON: That is from May 3rd.

19 This next jail call is May 5th.

20 (Whereupon, an audio was played.)

21 MR. JOHNSON: That's Exhibit 21. The next  
22 exhibit is Exhibit 22 from May 5th.

23 (Whereupon, an audio was played.)

24 MR. JOHNSON: It's the same exhibit. I'm just



1 going forward.

2 (Whereupon, a audio was played.)

3 MR. JOHNSON: This next exhibit is Exhibit 23  
4 from July 9, 2018.

5 (Whereupon, an audio was played in open court.)

6 MR. JOHNSON: I'm just going to fast forward to  
7 on Exhibit 23.

8 (Whereupon, an audio was played.)

9 MR. JOHNSON: Then the last exhibit is  
10 Exhibit 24. This is from August 8, 2018.

11 (Whereupon, an audio was played.)

12 MR. JOHNSON: That's the last exhibit and that's  
13 the only exhibit other than the sentencing memorandum that I  
14 wanted to put on for the Court.

15 THE COURT: Thank you. Do you still have the  
16 thumb drive?

17 MR. JOHNSON: I do, and I'm going to take it out  
18 right now.

19 THE COURT: Thank you.

20 MR. JOHNSON: And I have it here, Your Honor.

21 The last exhibit is the restitution, Your Honor.  
22 I don't know if you want me to present Exhibit 25 now.

23 THE COURT: Yes, let's do that now as well.

24 Mr. Johnson, what is the total amount of

1 requested restitution?

2 MR. JOHNSON: It's 969.19, Your Honor.

3 THE COURT: All right. Thank you.

4 All right. Mr. Malone, you may make your  
5 recommendations and present any evidence you would like to  
6 present.

7 MR. MALONE: Your Honor, I have a couple of  
8 comments about Deputy Torres' testimony. I think one of the  
9 things that is most interesting is one of his final comments.  
10 He was talking about Blood members -- Blood gang members,  
11 Playboy Blood members here in Douglas County. His response  
12 to my question about what Playboy Blood members he was aware  
13 of here in Washoe County. Have I said Washoe County twice?

14 THE COURT: I know what you're talking about, Mr.  
15 Malone.

16 MR. MALONE: Douglas County, Douglas County, and  
17 I apologize. I'm going to take a short pause here to get  
18 my --

19 THE COURT: Don't mind.

20 MR. MALONE: -- brain rebooted. I think one of  
21 the things that I noticed and I thought was very instructive  
22 or relevant was when I was talking to him about specifically  
23 Playboy Blood members here in Douglas County, his response  
24 was Jobrontae Warner was the only person that he knew, the

1 only validated gang member of that gang. The Court could  
2 take notice of it, it's not much of a gang. We've been  
3 talking about gang membership here all of the time.

4 The Court is aware of and has reviewed, I'm sure,  
5 Dr. Piasecki's evaluation of Mr. Cota. We know that for  
6 years he's had drug problems. It's reflected in his juvenile  
7 history. That goes to some of the comments that he made to  
8 his -- the voice you heard I think in every phone call was  
9 Allie, correct?

10 THE DEFENDANT: Allie.

11 MR. MALONE: Well, the conversations with his  
12 sister, with his girlfriend, when he talks about having a  
13 drug problem, it's true, he does have one. He -- there's  
14 plenty of evidence in the juvenile record that we've objected  
15 to and we will continue -- I want to interpose an objection  
16 to its introduction to any reference to it. I assume the  
17 Court -- the Court's previous ruling stands, correct?

18 THE COURT: I do know your objection, Mr. Malone,  
19 and the prior ruling does stand.

20 MR. MALONE: So, Your Honor, since it's coming in  
21 in order to do my job, I need to make reference to it as well  
22 but that doesn't waive any objection that we have to its  
23 introduction or consideration by the Court.

24 So when he's talking about psychological

1 conditions, I think he refers to himself as psycho. The  
2 Court is aware of the medications that he was on during his  
3 youth. I'll just make reference to one of the reports, one  
4 of the evaluations. It gave him a medication case list that  
5 was extensive. It's my understanding that he has been on  
6 over 20 psychoactive medications over the years.

7 Your Honor, I apologize, I don't have that marked  
8 adequately but the Court will -- can take notice of that.  
9 Those references that the medication he was on both at West  
10 Hills and at Copper Canyon out in Utah. So when he's talking  
11 about his need for or the fact that he does have  
12 psychological issues in his diagnosis, those are true things.  
13 They actually exist.

14 What we have is a young man from -- we have all  
15 this juvenile history going back to about when he was ten  
16 years old. And, interestingly, that correlates to a time  
17 when his father was incarcerated. His father is also named  
18 Michael Cota, extensive criminal history, extensive use of  
19 drugs. We know that his father introduced him to certain  
20 drugs, marijuana and methamphetamine come to mind and were  
21 reflected in Dr. Piasecki's evaluation.

22 We have really quite -- you know, one of the  
23 issues I thought about when looking at Mr. Cota's case was  
24 comparing him to other individuals who I've represented. I

1 have a young man up in Carson City who -- whose father died  
2 at ten. At ten, this young man's life just went downhill.  
3 He started getting in trouble. He started interacting with  
4 bad peers. And I remarked -- it was remarkable to me the  
5 parallels between Michael Cota and this young man essentially  
6 the same loss of a father figure, the same type of falling  
7 off the edge of the earth in terms of getting in trouble and  
8 it's -- it's instructive.

9 I think that we talk about the influence of  
10 parents but then when we see direct evidence of either  
11 negative parenting or absent parents, we have this kind of  
12 situation that does occur, and I think it's not surprising.

13 Mr. Cota's sisters are here in court. They have  
14 not had the same problems. They have had different --  
15 different issues in their lives but what they -- they were  
16 not males deprived of a father figure and to this day  
17 deprived of a positive father figure. Even though Michael  
18 Cota Senior is out of custody and walking around, he as early  
19 as this year was introducing Michael Junior to intravenous  
20 methamphetamine use, I mean horrible, horrible situation,  
21 horrible parenting and not anything we would wish on anybody.

22 When you do look at the totality of Michael's  
23 juvenile history which the District Attorney has put in, a  
24 lot of it shows that this is a young man that has always

1 presented himself as tough. If somebody teased him, he  
2 reacted. If somebody hit him, he would hit back.

3 And it seems at a certain point in time when I  
4 looked at the story and looked at everything that was going  
5 on in his life that he ended up and started being the person  
6 who was blamed for nearly everything even when he had not  
7 thrown the first punch or done the first provocation.

8 I mean, what's been introduced as Exhibit 2 is a  
9 pushing in school. He pushed a friend. This person  
10 actually, he was cooperative with the police. I asked --  
11 this is the report. It's one, two, three, four, five, six, I  
12 believe seventh paragraph, I asked Jada, who was the person  
13 who Mr. Cota pushed, if she wanted Michael to be arrested for  
14 pushing her. Jada stated she did not as Michael was her  
15 friend. So she was pushed. She didn't hit the ground, but  
16 he was arrested and he was taken into custody.

17 There's a fight in -- I'm sorry, I'm looking,  
18 2010 right in the home. Michael starts out, he doesn't want  
19 to do a book report. He throws a pillow at home, ends up  
20 overturning a dining table and threw chairs around. So I  
21 would characterize that as it's not a good -- good thing, but  
22 it's a thing that we have a parent. We have his mother  
23 calling the police. Instead of disciplining him and being  
24 able to take care of the problem herself, she calls the

1 police.

2 So what we have is a young man whose parenting  
3 was really preempted and by the system, by the juvenile  
4 justice system instead of by the parents. He throws a  
5 pillow. He overturns a table. Mom calls the police and has  
6 him arrested and it's time after time.

7 Now, one of the things that disturbed me about  
8 this record, and I think I talked about it extensively at our  
9 last hearing, was the allegation of sexual behavior. It's a  
10 little bit interesting that is in a report that I believe  
11 that the District Attorney probably pulled from their own  
12 files. It's not certainly something that would be in a  
13 Douglas County Sheriff file because it's prepared by  
14 treatment providers at facilities where Michael had been put  
15 by juvenile probation.

16 So the reference to the sexual behavior comes  
17 from Copper Canyon. It's I believe Exhibit 8 and it talks  
18 about the incident with a ten-year-old girl, Michael being 13  
19 or 14 and her sitting on his lap. So what -- and, Your  
20 Honor, I would ask that the courtroom maybe be cleared of any  
21 jail inmates that are present. I don't think there's any  
22 need for their presence, and we're talking about juvenile  
23 history here. I don't think this is appropriate for them to  
24 be present.

1 THE COURT: Deputy Nishikida, do you have the  
2 ability to remove Ms. Payton from the courtroom?

3 THE BAILIFF: We do.

4 THE COURT: If not, it's too --

5 THE BAILIFF: But, Your Honor, it's going to  
6 cause a delay because -- because the nature of what is going  
7 on here, we have to maintain security up here so we have to  
8 get some jail personnel come up here which is going to,  
9 depending on how much -- how busy they are, the volume of  
10 work down there to have somebody up here, I wouldn't assume  
11 more than two or three minutes but that would delay your  
12 proceedings by two or three minutes. There's not much else  
13 we can do about it.

14 THE COURT: All right. So, Mr. Malone, I  
15 appreciate the request. I'm not going to delay these  
16 proceedings to remove an inmate who is present in the  
17 courtroom.

18 Regarding the juvenile records, they have been  
19 introduced and considered by the Court. They are sealed and  
20 I've read and considered those and, of course, you can  
21 comment on as you deem appropriate but just know that I have  
22 read and considered them, so let's proceed.

23 MR. MALONE: Your Honor, I think one thing that  
24 is important to note in those records are that the part of



1 the Copper Hills' evaluation which is Exhibit 8 makes  
2 reference to an incident that supposedly occurred at Willow  
3 Springs. Let me make sure I'm referring -- at Willow  
4 Springs.

5 Exhibit 7 is the report from Willow Springs.  
6 It's the report from the Douglas County Juvenile Probation  
7 Department. It makes no reference to that incident  
8 whatsoever, none.

9 Copper Hills is clearly saying this happened in  
10 Douglas County. This happened in Nevada, and we're going to  
11 have him evaluated and they do that and then they come up  
12 with some fairly disturbing responses. One of the things  
13 that Dr. Piasecki reviewed for you and reviewed for us when  
14 looking over the records were the use of the testing  
15 instruments that Copper Hills used, the soap, and the SORAG.  
16 She notes that the SOAP is valid for about six months after  
17 it's given. Any conclusions based on that are no good after  
18 six months. And the SORAG is an adult oriented test that was  
19 performed on a 14-year-old.

20 Making things even worse are the fact that we  
21 don't even know where Copper Hills got that information. He  
22 is sent from Willow Springs specifically according to Copper  
23 Hills because of these incidents, but Willow Springs doesn't  
24 talk about them at all in their referrals in the probation

1 officer report filed back in April of 2013.

2 Yet we have this report that generated later on  
3 that year and it makes -- actually, I'm incorrect, the -- no,  
4 I'm correct. So the Willow Springs reports are from 2012 and  
5 he's sent later that year to Copper Hills, yet we don't have  
6 any linkage, no nexus between his behavior at Willow Springs  
7 and what goes on at Copper Hills.

8 On top of that, we know from Dr. Piasecki that  
9 the testing instruments that are used are not appropriately  
10 administered and are not appropriate for his age. We also  
11 know that in spite of the dire consequences that Copper Hills  
12 goes and says are going to happen in terms of their  
13 percentage of -- of recidivism, those haven't occurred.

14 We do have somebody that's been diagnosed with  
15 ADD, oppositional defiant disorder. Those are his medical  
16 diagnosis. There's one other one. Oh, actually if I can --  
17 and there's one other one. It's contained in the Copper  
18 Hills eval. It also goes and talks about the -- his current  
19 psychiatric medications, Zyprexa, Amantadine, the Midgical  
20 (phonetic), Clonidine and Trazodone. What we have is some  
21 pretty powerful psychiatric agents here that he's on a,  
22 basically a grab bag of psychiatric medications that don't  
23 seem to ever have done him any good.

24 So what we have is a young man whose parenting

1 was suspect, parenting was nonexistent and poorly done when  
2 it was present, and then we have him being made a ward of the  
3 state, a ward of the state and what it looks like is he's  
4 overmedicated, overmedicated all of the time.

5 Your Honor, Mr. Cota's sister, Mika, is here in  
6 the court. She's a subject of one of the reports. This will  
7 be Exhibit 11. This is an incident where Michael takes  
8 carrots from his nephew's plate. I think the youngster was  
9 in a highchair and then does get into a physical fight with  
10 Mika, and Mika is prepared to tell you a little bit about  
11 that incident. She's here in court.

12 Ma'am, can you come up.

13 THE COURT: Do you want to call her as a witness?

14 MR. MALONE: I'll call her as a witness.

15 THE COURT: All right. Ma'am, come on up. Stop  
16 there for a moment. Please raise your right hand and face  
17 the clerk to be sworn.

18  
19 MIKA COTA,

20 called as a witness on behalf of the  
21 Defendant having been first duly sworn,  
22 was examined and testified as follows:

23  
24 THE COURT: Come on up to the witness stand here

1 and have a seat.

2 Mr. Malone, you may continue.

3 DIRECT EXAMINATION

4 BY MR. MALONE:

5 Q. Ma'am, please state your name, and spell both  
6 your first and last name for the court reporter.

7 A. Mika Cota, M-i-k-a C-o-t-a.

8 Q. Okay. And, Mika, what is your relationship with  
9 Michael Cota?

10 A. I'm his sister, his older sister.

11 Q. I don't know if you can speak up for -- there is  
12 a microphone there that would help, I think.

13 A. Yeah.

14 Q. Okay. And you're his older sister; is that  
15 correct?

16 A. Yes.

17 Q. Okay. Did you -- you grew up together?

18 A. Yes.

19 Q. Okay. Who was the primary parent in your  
20 household?

21 A. Our mother.

22 Q. Okay. Where was your father?

23 A. He was either locked up or not around.

24 Q. Okay. What do you mean by locked up?

1 A. In prison, jail.

2 Q. Okay. Did you -- growing up, did you have much  
3 contact with your father?

4 A. Not very much.

5 Q. Okay. Did you have any positive contact with  
6 your father?

7 A. No.

8 Q. Okay. Is your father a drug user?

9 A. Yes.

10 Q. Okay. Is he -- does he represent to any gangs or  
11 does he represent any gangs or imply that he's a member of  
12 any gangs?

13 A. He claims he represents a gang.

14 Q. Okay. And what gang would that be?

15 A. Crips.

16 Q. You've been present in the courtroom today where  
17 there's been talk about Michael Cota acting like a Blood,  
18 correct?

19 A. Uh-huh.

20 Q. Okay. And if you can answer out loud.

21 A. Yes.

22 Q. Okay. Is it significant to you that your father  
23 says he's a Crip and Michael says that he's a Blood?

24 A. I think my brother just wants to be more -- like,

1 looks up to my dad, and I don't know why he -- they both try  
2 to represent a gang, I'm not sure.

3 Q. But why would he be -- you know that they  
4 represent basically different gangs, correct?

5 A. Right.

6 Q. Or they talk about representing different gangs?

7 A. Right.

8 Q. And Michael doesn't -- doesn't follow his father  
9 with that?

10 A. Right.

11 Q. Okay. And he does exactly the opposite?

12 A. Right.

13 Q. Any idea about that?

14 A. No, I have no idea.

15 Q. Okay. In terms of when Michael was a young  
16 child, what was his physical presence? Was he on the smaller  
17 side of his peers or larger?

18 A. He was about average, but people picked on him a  
19 lot. He was bullied, and me and my sister, as older sisters,  
20 we would try to defend him. We would defend him.

21 Q. Oh, sorry.

22 A. We just tried to defend him and like make him so  
23 it's, I don't know, just trying to be a bigger sister.

24 Q. Okay.

1 A. Like trying to be there.

2 Q. When you say he was bullied, was that teasing,  
3 verbal teasing?

4 A. Yes.

5 Q. Okay. Was it physical?

6 A. It got physical sometimes.

7 Q. Okay. Did you notice a change in your brother  
8 after a while, after what you observed in terms of bullying?

9 A. Yes.

10 Q. Okay. What was that?

11 A. He tried to be more like the bully. He tried to  
12 portray himself as the bully so he didn't get bullied and he  
13 tried -- he tried to be more tougher than the bully was.

14 Q. Act tough?

15 A. Yes.

16 Q. Does he act tougher than you think he actually  
17 is?

18 A. I think so.

19 Q. Okay. Have you seen him cry?

20 A. Yes.

21 Q. Okay. Very often?

22 A. Yes.

23 Q. Okay. Is that part of his truer nature?

24 A. Yes.

1 Q. Okay. Your brother -- did you witness physical  
2 violence between your parents?

3 A. Yes.

4 Q. Okay. From what age -- when was the earliest you  
5 can remember that happening?

6 A. I don't know the years but it was growing up. It  
7 was something when my dad was around, it was my mom and him  
8 having altercations where it got physical.

9 Q. Okay. And are you aware of whether Michael saw  
10 those altercations?

11 A. Yes.

12 Q. Okay. And so his model as a man was somebody who  
13 was violent to women?

14 A. Yes.

15 Q. And went to prison for violent crimes?

16 A. Yes.

17 Q. And used drugs?

18 A. Yes.

19 Q. Okay. Have you witnessed Michael -- well,  
20 actually, the incident that we're talking about that occurred  
21 with you back in 2014, right?

22 A. Yes.

23 Q. Were you injured?

24 A. No.



1 Q. Okay. You reported that Michael hit you several  
2 times on the shoulder; is that correct?

3 A. No, I thought he pushed me.

4 Q. Pushed you?

5 Your Honor, may I approach?

6 THE COURT: You may.

7 MR. MALONE: Okay. I'm going to -- Mika, I'm  
8 going to show you a police report that's dated back in 2014.

9 THE COURT: Is that one of the marked exhibits,  
10 Mr. Malone?

11 MR. MALONE: It's already been admitted, Your  
12 Honor. It's Exhibit Number 11.

13 THE COURT: Thank you.

14 Q. (BY MR. MALONE:) Mika, I just want you to read  
15 through this.

16 A. All right.

17 Q. Quickly to refresh your recollection over -- of  
18 the incident?

19 A. Okay.

20 Q. All right. Have you ever seen this police  
21 report?

22 A. No.

23 Q. Okay. Thank you. Did reading that report  
24 refresh your recollection of the incident?

1 A. I know that he didn't hit me. I know he pushed  
2 me.

3 Q. Okay. Pushed you in the shoulder area?

4 A. Yes.

5 Q. Okay. And did it leave a mark?

6 A. No.

7 Q. Okay. Were you injured?

8 A. No.

9 Q. Okay. It describes you falling against a TV,  
10 correct?

11 A. Yes.

12 Q. Okay. Can you describe that to the Court?

13 A. We got into -- I tried to take the plate. He got  
14 upset, and then he went and pushed me, and I stepped back  
15 into the TV.

16 Q. Okay. Did the TV knock over?

17 A. No.

18 Q. Okay. Did you fall over?

19 A. No.

20 Q. Okay. And it started by him taking carrots from  
21 your son?

22 A. Yes.

23 Q. Who was about what age in 2014?

24 A. Two.

1 Q. Two, okay. So took carrots from a two-year-old?

2 A. Yeah.

3 Q. Was he -- was there any elements of humor or  
4 teasing about that, like joking around?

5 A. No.

6 Q. No, he just wanted the carrots?

7 A. No. He look -- just look them, and I wanted to  
8 be momma bear and get them back for him.

9 Q. Okay. So you wanted to be a good mom?

10 A. Yes.

11 Q. Okay. Why did you call the police?

12 A. I guess that's what happened when we were growing  
13 up.

14 Q. Okay.

15 A. So it was something that we did.

16 Q. Okay. You called the police on Michael a lot or  
17 people called the police on Michael a lot?

18 A. Yeah.

19 Q. Okay. The -- also your son was there. Were you  
20 concerned about him witnessing violence?

21 A. Yes.

22 Q. Okay. That -- and did that trigger something for  
23 you do you think?

24 A. Yes.

1 Q. Okay. For sure or?

2 A. What, I'm sorry.

3 Q. Did -- when -- when you say it triggered  
4 something in you, what were your feelings like? What were  
5 you thinking?

6 A. That I needed to like, I don't know. Like, I had  
7 to like be bigger so like I'm a role model for my child, and  
8 I didn't want to be picked on.

9 Q. Okay. And did you -- were you concerned that he  
10 was being exposed to violence?

11 A. Yes.

12 Q. Okay. And you had been exposed to violence?

13 A. Yes.

14 Q. And Michael had been exposed to violence?

15 A. Yes.

16 Q. And your sister had been exposed to violence?

17 A. Yes.

18 MR. JOHNSON: Your Honor, I want to move this  
19 along but we can't have the entire thing be leading. I  
20 object to leading.

21 THE COURT: All right. Sustained.

22 Q. (BY MR. MALONE:) Growing up or are you aware of  
23 any problems of controlled substance that your brother has?

24 A. Yes.

1 Q. Okay. Describe those, please.

2 A. I know in maybe 2010 my dad introduced him to  
3 marijuana and whenever my dad was around, he introduced  
4 Michael to it again and again and then now going up to me  
5 and so it's just like a spiral out of control.

6 Q. Okay. Are you aware of any medications,  
7 psychiatric medications that your brother was on during his  
8 childhood?

9 A. Yes, he was always on medications.

10 Q. Okay. And were you able to see those medications  
11 around the house?

12 A. Yes.

13 Q. Okay. And you talked about it with your mother?

14 A. Yes.

15 Q. Did you talk about it with Michael?

16 A. We would try and help my mom have Michael take  
17 the medications every morning.

18 Q. Okay. Did his medications change over the years?

19 A. They did change but they didn't help him.

20 Q. Okay. Are you aware of any that did help him?

21 A. No.

22 Q. Okay. Has your brother behaved to you in a  
23 loving manner at times?

24 A. Yes.

1 Q. Okay. Can you describe how much of percentage of  
2 your interaction with him are positive and loving?

3 A. Probably 90 percent of the time.

4 Q. Okay. But there are times that his behavior can  
5 be -- can you describe the other say ten percent of the time?

6 A. Just when he feels cornered or like he's getting  
7 bullied, I think it just triggers when he was younger and so  
8 he gets aggressive.

9 Q. Did you see the video that was played earlier of  
10 him in the jail?

11 A. Yeah.

12 Q. Okay. Did he look cornered to you?

13 A. Yes.

14 Q. Did he look bullied to you?

15 A. Yes.

16 Q. Did he look like he was in pain?

17 A. I feel like he was scared.

18 Q. Okay. And you've seen that with him before?

19 A. Yes.

20 Q. Okay. And you went to the same elementary  
21 schools at times?

22 A. Yes.

23 Q. And so you saw behavior on the playground?

24 A. Yes.

1 Q. Where he was bullied?

2 A. Yes, and outside of the school.

3 Q. Do you know when Michael started getting tattoos?

4 A. Just in 2017.

5 Q. Okay. So this is about a year's worth of work  
6 for him here?

7 A. Yeah.

8 Q. Okay. Are you aware of -- at Limes did you ever  
9 see evidence that he was harming himself?

10 A. Yes.

11 Q. Okay. Describe, please, for the judge.

12 A. One day we were in the kitchen and he wanted to  
13 end his life because he didn't want to be a failure, and so  
14 we sat in the kitchen, and he cried to me, and he told me  
15 that he didn't want to be here, and so me and him talked  
16 until he didn't feel that way and we went to bed?

17 Q. Did you ever see him cutting himself?

18 A. No.

19 Q. Rubbing any of his arms or hurting himself like  
20 that?

21 A. Yeah.

22 Q. And what was that like?

23 A. If he didn't inflict pain on himself, he would  
24 pick the scabs until it made a scar so like he remembered it.

1 Q. Okay. Has he told you why he gets tattoos?

2 A. I personally think this was because we're older.  
3 We got tattoos before he did and so when he got the chance to  
4 do it he did it and he did excessively.

5 Q. Okay. Thank you.

6 A. Uh-huh.

7 CROSS-EXAMINATION

8 BY MR. JOHNSON:

9 Q. Have you witnessed him using methamphetamine?

10 A. No.

11 Q. So you've never see him use it before. And have  
12 you ever stolen anything before?

13 A. No.

14 Q. Have you ever --

15 MR. MALONE: Relevance, Your Honor.

16 THE COURT: What's the relevance?

17 MR. JOHNSON: Your Honor, it's relevant because  
18 the argument is that his lack of his family upbringing is the  
19 reason that he committed these crimes. I'm asking someone  
20 that has a similar family upbringing if they committed  
21 similar crimes.

22 THE COURT: The objection is sustained. Let's go  
23 to a different area.

24 MR. JOHNSON: No further questions, Your Honor.



1 THE COURT: All right. Thank you.

2 May this witness step down?

3 MR. MALONE: One further question.

4 REDIRECT EXAMINATION

5 BY MR. MALONE:

6 Q. Did you ever suffer from some of the bad  
7 upbringing that your brother experienced as well?

8 A. Well, I had a child at 14 so I guess I wanted to  
9 be --

10 Q. Yes, that's a yes?

11 A. Yes.

12 Q. Okay. So for you that --

13 A. That was my --

14 Q. And are you -- do you believe that your  
15 upbringing was rough?

16 A. Yes.

17 Q. Okay. Do you believe that you would have done  
18 some different things in your life if that upbringing hadn't  
19 occurred in the way it did?

20 A. Yes.

21 Q. Okay. Was there anything positive about your  
22 parents fighting all of the time?

23 A. No.

24 Q. Was there anything positive about your father

1 going to prison?

2 A. No.

3 Q. Was there anything positive about -- your mother  
4 has done drugs in the past; is that correct?

5 A. No.

6 Q. No, okay. Is there anything positive about your  
7 father doing drugs?

8 A. No.

9 Q. Okay. Thank you.

10 THE COURT: Mr. Johnson?

11 MR. JOHNSON: No further questions.

12 THE COURT: All right. You may step down. Thank  
13 you.

14 (Witness excused.)

15 THE COURT: Mr. Malone, do you have other  
16 witnesses?

17 MR. MALONE: No, Your Honor, but I still have a  
18 little bit of argument.

19 THE COURT: You may continue.

20 MR. MALONE: Your Honor, I think you can see that  
21 what my theme here is that we have a young man whose parental  
22 supervision, parental upbringing was at best absent and at  
23 worse abusive and negative and horrible.

24 We then have a period of time where intervention

1 by the State is made and things don't really get any better.  
2 Drug after drug is prescribed. Incarceration after  
3 incarceration is levied on him, and I just see a young person  
4 whose head spinning. Nothing seems to go okay.

5 At school, when he is hit by somebody and there  
6 is an incident in elementary school where the other person  
7 strikes the first blow and then Michael -- Michael is  
8 punished when he fights back, that happens time and time  
9 again and nothing seems to work.

10 There are two ways to take that data, that  
11 evidence, that data and look at it. One is this is a person  
12 that we need to incarcerate for the safety of the community.  
13 It's not a bad argument, but you've seen the one incident of  
14 violence. You've seen the one incident where he's in the  
15 jail. His foot is stepped on by the deputy, taken to the  
16 medical unit and then he strikes back.

17 We know that he stole a gun. We also know that  
18 he offered to cooperate. He cooperated with law enforcement.  
19 It led to the arrest and prosecution of various people. He  
20 made an agreement with the State to -- Your Honor, I normally  
21 would want this all sealed and in a -- not to be -- not to  
22 have witnesses privy to it, but I think it's important to  
23 note that he did make an agreement with the State to testify  
24 and the prosecution of one of his co-defendants. He was

1 willing to be a witness. He eventually didn't need to be  
2 called, that was in the initial case. That was in 0084.

3 We also have a person I think who is wanting to  
4 make changes. You heard about the documentation in the  
5 letter that he wrote to his girlfriend and the mother of his  
6 child where he's talking about being a better person. He's  
7 talking about being a good example to other people, positive  
8 affirmations of what he wants his life to be and where he  
9 wants his life to go.

10 Now, one of these charges doesn't allow him to  
11 enter into the regimental discipline program. Obviously, the  
12 battery by a prisoner doesn't allow that. What we would  
13 suggest is, number one, that he be sent to prison, that he be  
14 sent to prison, that he be sent down to the High Desert  
15 Facility and enter into the boot camp program. You do have  
16 the ability to do that. You can sentence him on 0084 to that  
17 program. You can suspend the sentencing in 0116. That --  
18 what that is going to do is give you more information about  
19 the character of this young man and whether he has the  
20 capacity to change.

21 We spoke earlier. I know that the Court said  
22 that didn't, I agree, that the better -- the more information  
23 that you had to make a judgment the better off things would  
24 be. I think this is an instance where you, the Court, have a

1 wonderful opportunity to gain more information about  
2 Mr. Cota. You know, I'm not going -- I'm not going to say  
3 that he's not going to go down there and fail. He can be  
4 back in a week. He can be back in a week or he can be back  
5 standing taller, standing prouder and being better.

6 He's been off any medications and off any drugs  
7 now for months. I don't think he wants to go down there and  
8 run and work out and be subject to discipline for the next  
9 six months, but I think it's something that might do him  
10 good. I think it also would give the Court more information  
11 about his character and where his role in our society is  
12 going to be.

13 The easy choice is to send him to prison, but  
14 he's eventually going to get out. Will he be better when he  
15 gets out if he does a few years, four or five years at most  
16 probably in our prison system, I don't think so. That hasn't  
17 seemed to work in the past. My hope for Michael Cota is that  
18 he has a wake-up call and he puts himself back together into  
19 a process where he can contribute to society instead of being  
20 a drag on it. I think you do have that option.

21 I don't see any reason that would prevent him  
22 entering the regimental discipline program. They may not  
23 accept him. They may send him back up here without him  
24 participating, but he may surprise us. He may surprise

1 himself, and he may surprise his family, and he may end up  
2 doing good things. He might be that example to his son, to  
3 his nephew that he wants to be. We can only hope. That  
4 would be my primary argument to Your Honor.

5           Regarding probation, I think if you were thinking  
6 about granting him probation, which is another possibility  
7 here, entering into an inpatient treatment program would be  
8 important. I'm just going to -- I'm just going to present  
9 the Court with what I think is probably the best resolution  
10 of the case at this point in time. It gives you the option  
11 of say in six or seven months seeing that he's done well,  
12 maybe considering more likely to grant probation to him or  
13 maybe put together a sentence that would allow him the  
14 opportunity not to do a lengthy prison term.

15           So what it does is give the Court more  
16 information. It gives him the opportunity to grow and to  
17 prove himself and it does it in a very restrictive prison  
18 environment, and we would ask the Court to follow that or to  
19 consider that. Thank you.

20           THE COURT: Thank you, Mr. Malone.

21           Mr. Cota, both of these cases the law affords you  
22 an opportunity to personally address the Court and offer any  
23 evidence in mitigation. Would you like to address the Court  
24 at this time?

1 MR. MALONE: Do you want to talk to the Court?

2 THE COURT: Please, stand, Mr. Cota.

3 THE DEFENDANT: I wrote the Court a letter, well  
4 you. My name is Michael Cota. I come here -- come before  
5 you today as a humble young man. I have made a lot of bad  
6 decisions in my life. I made a lot of mistakes, but I  
7 realize my past does not have to define me, and I won't allow  
8 it. I take full responsibility of my actions. I lay awake  
9 many nights thinking and wishing I could go back and change  
10 my actions.

11 I'm not only sorry because the consequence I'm  
12 facing but also -- I also have remorse because I let my  
13 stupid decisions ruin a good friendship. I'm not a bad  
14 person. I'm just a young man that has made a lot of stupid  
15 decisions. I would like to ask you to please consider  
16 granting me probation or the felon -- what?

17 MR. MALONE: Regimental Treatment.

18 THE DEFENDANT: Yeah, the regimental discipline  
19 program, also become a positive role model to my nephew  
20 Elijah and my sister's pregnant so I would like to be a role  
21 model for my nephew or niece when he or she comes.

22 I have a lot of things pushing me and motivating  
23 me to do right. When I get out, most of all I would -- I  
24 want to change for myself so I can be the person that I want.

1 to be for the loved ones and that they deserve. Thank you  
2 for listening to my request.

3 THE COURT: Thank you, Mr. Cota.

4 Mr. Johnson, what does the State recommend?

5 MR. JOHNSON: Your Honor, the State is going to  
6 be recommending the following sentence and I would like to  
7 discuss the reasons why I think it's the appropriate  
8 sentence. It's laid out in the sentencing memorandum. We're  
9 recommending for the first crime, grand larceny, a sentence  
10 of 12 to 30 months and for the second, battery by a prisoner,  
11 a sentence of 28 to 72 months, and we're asking that those  
12 run consecutive.

13 In addition to that, part of the guilty plea  
14 agreement that was signed by the defendant, we're going to be  
15 requesting that the defendant not have any contact or  
16 communication with Brittany Mastera (phonetic) or Deanna  
17 Jones McVay during the period he's incarcerated on parole or  
18 on probation as a result of the grand larceny of a firearm.  
19 I provided a police report in there about the threats he  
20 made. Deanna McVay is the mother of his child that the  
21 threats he made to her and while she was pregnant, the child  
22 who was in utero. And part of our guilty plea agreement was  
23 that we request the Court make the order of no contact order  
24 during the period of that termination. He made similar



1 threats to Brittany Mastera as part of an agreement.

2 In addition to that, we would be asking the  
3 defendant to pay restitution in the amount of \$969.19. And  
4 that he be placed -- that's our sentence, Your Honor, but I  
5 think it's important to look at the totality of what has  
6 happened here.

7 The defendant broke into the home of a member of  
8 his community. He stole an AR15 rifle. He stole another  
9 rifle. He stole a knife and ammunition and within a matter  
10 of hours later that day he already sold it to another gang  
11 member that his friend found, and that weapon is out there  
12 somewhere to be used by anyone for who knows what without any  
13 remorse at all or expressed remorse.

14 He was arrested for that offense. And while he  
15 was incarcerated, he had already come up with this plan how  
16 he's not going to accept responsibility for what he did and  
17 how he was going to get out of it. And you heard the jail  
18 calls about what he said. He said go ahead and talk to my  
19 mom. Tell them I have a mental issue and I'm addicted to  
20 methamphetamine, that was on May 3rd. He's already come up  
21 with his plan about how he's going to convince the Court  
22 about how he's deserving of probation or diversion or some  
23 other program.

24 Two days later he said, he laughed with his --

1 with Allie Scaffaloni. He said I'm going to say I'm a  
2 fucking drug addict. I need fucking rehab and they laughed  
3 about the fact that I'm just going to say I'm a drug addict  
4 and get out of this thing, no big deal.

5 Then the next day or actually hours later, he's  
6 talking again with her and he says this is the plan, I'm  
7 going to act hella psycho and shit so I don't have to go to  
8 prison because I want a diversion program. I don't need to  
9 go to prison. I just have to say these things and the Court  
10 is going to go ahead and put me in a diversion program or in  
11 this case some sort of regimental discipline program. I'm  
12 just going to get out of that.

13 And then he says he's going to tell the same  
14 thing to his attorney, and that was the very beginning,  
15 that's already what his plan was. Now, you have been  
16 presented with what his statement was, what he told the  
17 psychologist who evaluated him and there in his statement, he  
18 says he's addicted to methamphetamine and marijuana, but we  
19 don't have any evidence other than that he's carrying out his  
20 plan to say I'm a big drug addict. I have these mental  
21 health problems to get out of this prison sentence that is  
22 awaiting me.

23 We heard from his sister. She said she never  
24 actually witnessed him using methamphetamine. So this was

1 his plan, but he didn't stop there. He didn't have remorse  
2 while he was in jail deciding what to do and get out. No, he  
3 decided what he was going to do was he was going to get mad  
4 and he was going to punch one of the deputies.

5 Now what happened there in jail, he was moved to  
6 another cell and he didn't like that they were forcing him to  
7 move to the other cell. So he got into a fight stance inside  
8 that jail. He tried to actually get out of the cell to  
9 attack the deputies. They closed the door at that time. He  
10 got into a fight. He threw his property down and he was  
11 ready to fight.

12 And just like what happens with any other person  
13 in jail, they went in to secure him and place him into a  
14 secured chair, gave him multiple commands to get on the  
15 ground and comply with the orders, comply with the orders in  
16 a jail facility, and he didn't comply with those orders, and  
17 they had to forcibly take him to the ground and in the midst  
18 of that he punched one deputy in the face and he knocked the  
19 arm of another deputy, hitting the taser out of his hand. He  
20 made that jail facility not secure, and he didn't stop there.

21 He went back outside and he continued to threaten  
22 those deputies. You heard him say to one deputy I'm going to  
23 break your jaw when I get out of here. That's a future act  
24 of violence. He's already saying what he's going to do, and

1 he told another deputy I'm going to break your jaw too. So  
2 we have somebody who has already provided in a sentencing  
3 memorandum, I'm not going to go through it, with a history of  
4 violence, over 40 acts of violence I provided in that  
5 sentencing memorandum showing that this is what he does.  
6 He's a violent person and in his history you'll read that.

7 We have an active example of what he pled guilty  
8 to, a future act of -- a present act of violence where he  
9 punched one deputy, hit the other deputy's arm in a secured  
10 jail facility, and then we have threats of future acts of  
11 violence.

12 And he's not just threatening those acts of  
13 violence as he is here, he's also as you heard testimony,  
14 he's repping his gang. You heard him on the video say  
15 Bloods, bro. I'm going to break your jaw. He's repping his  
16 gang, and he's already self-admitted to Deputy Torres. The  
17 PSI says he's self-admitted that he's a member of the Bloods  
18 gang, and he's already threatening future acts of violence  
19 while repping his gang.

20 We have a threat to our community not just from  
21 what he's already done, not just we can look at his past  
22 history of violence, we can look at what he's already said  
23 he's going to do when he gets out of jail. He's going to  
24 threaten deputies and commit other crimes what I submit to

1 you unless -- unless we have some punishment that is more  
2 severe than what he's already had.

3 He's had every chance imaginable to get his life  
4 straight. I listed all of the facilities that he's been in  
5 Northern Nevada, and I'm not going to rehash those, every  
6 single one he's failed at. He's been medicated, and he's  
7 failed to change his behavior. And that's just part of it,  
8 Your Honor, is the violence, his gang association. We heard  
9 that he's hanging out with a validated member of the Playboy  
10 Bloods. He has his own admission that he's a member of the  
11 Bloods, and we don't need to encourage any other people to  
12 join that gang here in Douglas County. I submit that is a  
13 significant sentence, the absence of that would do that.

14 Then I want to talk about his remorse or in other  
15 words, his lack of remorse. This is what he said on  
16 July 9th, a day or day and a half after he punched a deputy  
17 in the face and you heard it, but I'm just going to rehash  
18 it. He says this, like Saturday morning, I'm like, do you  
19 need to know, I punched this bitch ass in the face. I got  
20 tased. There's nothing more to investigate, and then he  
21 laughs.

22 So I saw his ass yesterday, bro. He was in the  
23 bubble, and his ass looked like my eye. That shit was  
24 fucking hilarious. It was funny. That's what he thinks two

1 days after he punches a deputy in Douglas County that he  
2 thinks it's really funny that his eye is black and blue, just  
3 like his eye. That's not someone who has remorse. That's  
4 someone that thinks it's funny to commit acts of violence  
5 against law enforcement in this community, and I don't think  
6 we should allow that without a significant punishment of  
7 prison.

8 And then we have him saying I can show some  
9 emotion. This is on August 8th, 2018 when he's talking to  
10 McKenna, and he says this, the judge is going to grant me  
11 probation, I know that, but this is what I got to do.  
12 McKenna told me I have to have emotions. I don't have any  
13 emotions about this. He said he has no emotions about what  
14 he did, not the grand larceny, not the punching of the deputy  
15 in our jail. He says but I'll go ahead and cry in court.  
16 I'll do whatever I need to do to get back out on the streets.  
17 I'll claim I'm a drug addict. I'll claim I'm hella psycho.  
18 I'll claim that I have emotions, and I'm going to cry in  
19 court.

20 We haven't had any crying in court, but we have  
21 someone that is trying to manipulate the system to get back  
22 out on the streets to commit more acts of violence, and I  
23 don't think that that is the appropriate sentence. I think  
24 in light of his past history, his propensity for violence,

1 his actual acts of violence that the appropriate sentence is  
2 what I just laid out to the Court, and we ask that be  
3 imposed.

4 THE COURT: Thank you.

5 Mr. Malone?

6 MR. MALONE: Quick response, Your Honor. To  
7 characterize that conversation as being one where Michael is  
8 saying that he is going to go and make up or fabricate  
9 psychiatric problems or drug use belie the fact that he has  
10 documented a long long documented history of psychiatric  
11 problems that were treated by extensive use of drugs and by  
12 his incarceration or his placement in treatment facilities  
13 over the years. I don't think that there's any counter to  
14 the issues of his exposure to drugs, his use of drugs.

15 And when we talk about gang activity, our gang  
16 expert, Deputy Torres, says guess how many members of the  
17 Bloods, the Playboy Bloods are here in Douglas County, one,  
18 Jobrontae Warner, so we don't have many.

19 We have a young man who fabricates things but  
20 they are not fabrications of his problems. They are  
21 fabrications of his toughness of his manliness and his  
22 ability, really the reaction to somebody who has been a  
23 victim and is trying not to be.

24 The Court saw the -- the jail video. The Court

1 saw an asp or extendable baton being pushed up underneath his  
2 nose while he's in a restraint chair, and what we do hear are  
3 words and threats back from Mr. Cota. But I would say under  
4 the circumstances where he's in pain, where he's being  
5 humiliated, where he is being punched, you saw the initial  
6 punches.

7 The police report say that one of the, not the  
8 deputy, the sheriff's report say that one of the deputies  
9 describes it very clinically as administering two full body  
10 blows to his crotch area. The deputy did that, so it's not  
11 surprising that Mr. Cota's behavior under those circumstances  
12 even though it wasn't initially very good either and he was  
13 provocative, the things he says in anger in pain are just  
14 that, they are things said in anger and pain, and they have  
15 minimal use in terms of determining what kind of person he  
16 is.

17 Regarding acts of violence, we have him throwing  
18 pillows. We have him pushing people. We have him kicking  
19 their feet in school. Those are all things he did as a  
20 child. In terms of his adult behavior, we have this fight in  
21 the jail, that's it in terms of violence.

22 THE COURT: Thank you, Mr. Malone.

23 Mr. Johnson, are either of the victims present?

24 MR. JOHNSON: I don't believe any of the victims



1 are here, Your Honor. And if I could at the risk of one more  
2 minute, I just wanted to make one statement I forgot to make.

3 THE COURT: Go ahead.

4 MR. JOHNSON: Your Honor, I just wanted to point  
5 out, I know that the --

6 THE COURT: Mr. Cota, and, Mr. Malone, you can  
7 have a seat. Thank you.

8 MR. JOHNSON: I know that the defendant's  
9 admission in documentation in mitigation said the SORAG is  
10 not valid. The person that drafted the SORAG says on, I  
11 don't have the page number but it's in the exhibit, it says  
12 however the SORAG has been developed and shown to be valid  
13 even when a few of the variables are unknown and when the  
14 offender might be somewhat younger than the norm group. So I  
15 just wanted to point that out for the record that at least  
16 this person believes is appropriate for someone younger than  
17 the norm group.

18 THE COURT: Thank you.

19 I first would like to talk about credit for time  
20 served. In the first case, 084, parole and probation  
21 indicated that credit for time served would be 133 days and  
22 that was as of September 10th. I believe there's been an  
23 additional 28 days, and I'm coming up with a total of 161  
24 days.

1 Does the division agree with that?  
2 MS. CERNIGLIA: I agree, Your Honor.  
3 THE COURT: Mr. Malone, do you agree with that?  
4 MR. MALONE: Yes, Your Honor.  
5 THE COURT: Mr. Johnson?  
6 MR. JOHNSON: Yes, Your Honor.  
7 THE COURT: Also I would like to know from the  
8 division, Ms. Cerniglia, if you know -- I believe it was  
9 after the presentence investigation report was lodged,  
10 although I could be mistaken about the timing, but I believe  
11 it was after it was lodged, the State filed a sentencing  
12 memorandum that the Court has received and considered under  
13 seal, and I'm wondering if the division at all had that when  
14 they came up with the sentencing recommendations that are  
15 provided in the presentence report?  
16 MS. CERNIGLIA: I don't believe so, Your Honor,  
17 no.  
18 THE COURT: Okay, thank you.  
19 Would either side like to comment on that?  
20 Mr. Johnson, anything you would like to say about  
21 that?  
22 MR. JOHNSON: No, Your Honor, I think you can  
23 consider both.  
24 THE COURT: All right. Mr. Malone, any comments

1 you would like to make?

2 MR. MALONE: Please, Your Honor.

3 Ms. Cerniglia, you did follow the regular parole  
4 and probation protocol in accessing Mr. Cola's records?

5 MS. CERNIGLIA: Yes.

6 MR. MALONE: Because he's under 21 years of age,  
7 correct?

8 MS. CERNIGLIA: Yes. The only time -- are you  
9 speaking about juvenile?

10 MR. MALONE: Yes, his juvenile record.

11 MS. CERNIGLIA: The only time we are allowed to  
12 put in juvenile after the age of 21 is for violence or sexual  
13 assault or something like that.

14 MR. MALONE: But my question here was you had  
15 access to juvenile records, and you've listed in your report  
16 and those were -- that list is pursuant to the statute that  
17 you operate under, correct?

18 MS. CERNIGLIA: Yes, Heather Hardy wrote this  
19 report and I believe she did, yes.

20 MR. MALONE: Okay. And we can see on page three  
21 of -- that's listed on page three of 0084 and that's the same  
22 page?

23 MS. CERNIGLIA: Yeah, yes.

24 MR. MALONE: Okay. And so you did have access to

1 his juvenile history that is listed, two counts of battery,  
2 one assault, probation violation and discharging a firearm,  
3 correct?

4 MS. CERNIGLIA: I believe that's correct.

5 MR. MALONE: Okay. And you have experience in  
6 preparing presentence investigation reports?

7 MS. CERNIGLIA: Yes, since 2000.

8 MR. MALONE: So, I mean, you're still learning  
9 but you do have some experience.

10 MS. CERNIGLIA: There's always something to  
11 learn.

12 MR. MALONE: And you're familiar with the methods  
13 of accessing the juvenile history, correct?

14 MS. CERNIGLIA: Yes.

15 MR. MALONE: Thank you.

16 THE COURT: All right. Mr. Malone, you can have  
17 a seat for a moment.

18 What I haven't seen yet and what I would like to  
19 see before I make my decision is the letter that was  
20 introduced. It might have been Exhibit 18, and I would like  
21 to verify that have all exhibits now been given to the clerk?

22 THE CLERK: Yes.

23 MR. JOHNSON: Yes, Your Honor, it should be  
24 Exhibit 17 through 25.

1 THE COURT: All right. I'm just going to take a  
2 moment to look at 18 because I hadn't seen that prior.

3 All right. Mr. Cota, please, stand.

4 I appreciate all of the information and arguments  
5 that have been supplied to the Court. I believe it's  
6 important that a sentencing Court be well informed, and I  
7 believe the parties have done that. The Court finds that all  
8 of the evidence presented is relevant to the Court's  
9 determination today and the Court finds that none of the  
10 evidence is highly suspect.

11 Mr. Cota, all of the information about your  
12 juvenile history is important to the Court as a matter of  
13 assessing your overall person and how you present to the  
14 Court. However, a lot more goes into deciding a sentence  
15 than just looking at your history, that is one component, and  
16 the Court has looked closely at both of these cases and the  
17 facts and circumstances surrounding those cases. The Court  
18 has also taken into consideration all of the comments and  
19 arguments made by your counsel and all of the evidence that's  
20 been presented here today.

21 The reason I ask the division whether they had  
22 the sentencing memorandum when they devised their  
23 recommendation is the Court is always mindful about  
24 attempting not to put too much emphasis on one piece of

1 information and instead of looking at the totality of the  
2 circumstances. It was interesting to the Court that the  
3 division's recommendation is what it is which is a  
4 recommendation for prison without having the State's full  
5 sentencing memorandum. Now, that doesn't at all cause me to  
6 go one way or another, but I thought it was interesting of  
7 their assessment.

8 And, Ms. Cerniglia, I would just like to confirm  
9 with you, that's correct, you did not have the State's  
10 sentencing memorandum when the division prepared the  
11 presentence reports?

12 MS. CERNIGLIA: I don't believe -- Heather Hardy  
13 wrote this report, and I looked through the files after you  
14 asked that question to see if I saw anything in there and I  
15 did not.

16 THE COURT: Okay.

17 MS. CERNIGLIA: So I don't think so.

18 THE COURT: It doesn't factor into my  
19 decision-making here, Mr. Cota. I just found it interesting  
20 that they came up with the recommendation they did even if  
21 the Court -- even if they didn't consider the information  
22 that Mr. Malone has objected to. And so, of course, when I  
23 consider everything, I'm looking at the totality, again, of  
24 the circumstances and I start with the two cases that you're

1 here on.

2 In the first case, it is a crime of theft and  
3 it's a crime of theft of a firearm and a firearm that is an  
4 AR15, all of which presents a serious set of circumstances to  
5 the Court. The factual circumstances behind the theft  
6 include burglary and burglary of a firearm. Again, all of  
7 these facts and circumstances are things that the Court find  
8 to be significantly serious.

9 The second case involves a crime of violence and  
10 it is committed at a time when you are already in custody on  
11 the first case and the crime of violence is directed towards  
12 law enforcement, and there are also with that threats of  
13 violence in the future to law enforcement, and so those are  
14 things, again, the Court considers very seriously.

15 I think Mr. Malone's comments regarding your  
16 juvenile conduct and things like throwing pills and kicking  
17 feet is well taken but that's not what we're taking about  
18 here. We are talking about an adult, you, who is in custody  
19 doing these things to law enforcement and taking acts of  
20 violence and threatening future violence. Again, the Court  
21 takes these things very seriously.

22 The gang information is important. It's one of  
23 the factors that the Court considers and it's a relevant  
24 factor to consider particularly when thinking about general

1 deterrence, and so those things, again, I find are important  
2 to my consideration and a part of the consideration.

3 But what I really -- when I look at the two cases  
4 you come before me on, yes, you are young and I've taken that  
5 into consideration. And in the first case, it's your first  
6 case in -- actually, it's not your very first case in the  
7 criminal system. It's your first felony case in the criminal  
8 system and I take that into consideration but as I've  
9 indicated, serious offenses here, and that's before we even  
10 get into thinking about gang involvement and even before we  
11 get into looking at your history.

12 So I've considered, Mr. Cola, whether you would  
13 be a good candidate for probation, and the Court finds that  
14 you are not a good candidate for supervision. You have made  
15 some really really poor decisions here and they are decisions  
16 that from the Court's perspective are deserving of a prison  
17 sentence.

18 Mr. Cola, I hope, you have -- you are 19 years  
19 old. You have the ability still to make better decisions.  
20 There is going to come a day when you are out of custody and  
21 you are going to have a long life after that, and you're  
22 going to have some decisions to make then whether you want to  
23 continue the life you've begun here and live that life in  
24 prison or whether you can be the person that I believe you



1 can be, but you've got to make the decisions, Mr. Cota, and  
2 again, you have not made good decisions here.

3 Turning to sentencing in Case Number 18CR0084,  
4 Mr. Cota, the Court now adjudicates you guilty of Count Four  
5 which is principal to grand larceny of a firearm which I'm  
6 now prepared to sentence you.

7 Mr. Johnson, it's my understanding from the plea  
8 negotiations that upon sentencing, the State would be moving  
9 to dismiss the other counts; is that correct?

10 MR. JOHNSON: That is correct, Your Honor.

11 THE COURT: All right. As to Count Four, the  
12 Court is going to follow the recommendations of the division  
13 of parole and probation. Mr. Cota, you are ordered to pay an  
14 administrative assessment fee of \$25, a DNA fee \$150, a  
15 genetic marker fee of \$3. The Court is not going to order  
16 attorney's fees, however, because I am going to order  
17 restitution, and the Court does expect you to pay that  
18 restitution. In fact, it will be the order of the Court that  
19 you appear before the Court the first Monday following  
20 sentencing or excuse me, the first Monday following your  
21 release from custody to set up a payment plan to pay back the  
22 restitution in this case and any outstanding fees and  
23 assessments. The restitution is ordered in the amount of  
24 \$969.16.

1           You are ordered to serve 72 months in the Nevada  
2 Department of Corrections with minimum parole eligibility  
3 beginning when 16 months have been served. You are granted  
4 credit for time served of 161 days. There was a component of  
5 the plea agreement that talked about a no contact provision,  
6 and I would like the parties -- counsels' input regarding  
7 whether the Court can order that in a situation where the  
8 Court is ordering prison time. So, in other words, Mr. Cota  
9 is not being -- he's not on probation. He's not being  
10 supervised. He's being sent to prison. So really it's just  
11 a question I have for counsel whether you believe that that  
12 is something the Court has authority to do.

13           Mr. Johnson, what are your thoughts in that  
14 regard?

15           MR. JOHNSON: Your Honor, it was part of the  
16 agreement to dismiss the other counts that he had agreed. I  
17 think it can definitely be -- be imposed in -- when he's  
18 paroled as a condition of the parole that he not have  
19 contact. I don't know whether during -- whether you can  
20 control what the prison does in terms of contact over the  
21 phone, so I'm not sure what your jurisdiction is over that.  
22 However, it is -- I suppose I should say that our dismissing  
23 it is contingent on him following through on the agreement,  
24 but we ask that in the event that he is paroled that that be

1 a condition in light of his threats.

2 THE COURT: All right. Mr. Malone, what are your  
3 thoughts?

4 MR. MALONE: Your Honor, I have no opinion.

5 THE COURT: What's that?

6 MR. MALONE: I don't have an opinion. I haven't  
7 researched that.

8 THE COURT: Okay. Thank you. I tend to agree  
9 with what Mr. Johnson said. I don't know that in a situation  
10 where I'm sending somebody to prison that I can tell that the  
11 prison what the rules are going to be or that I can tell  
12 Mr. Cota what the rules are going to be. I'm sending him to  
13 prison, and it will be the prison's decision how to handle  
14 that.

15 I do, however, and I will state for the record, I  
16 encourage the division of parole and probation upon  
17 Mr. Cota's release to honor what I believe is the agreement  
18 of the parties. That was the plea agreement and so I  
19 certainly encourage that but it's encouragement only, not a  
20 Court order.

21 Ms. Corniglia, do you have input?

22 MS. CERNIGLIA: I was just going to say at the  
23 time when he would go before the board and when -- when  
24 granted parole, they normally read the PSI. They have a copy

1 of it and they normally do honor that.

2 THE COURT: Okay.

3 MS. CERNIGLIA: While taking that into  
4 consideration.

5 I did have one other question. Is the  
6 restitution joint and several with Robert Donald Brown?

7 THE COURT: Yes, it is. Thank you for that  
8 clarification.

9 MS. CERNIGLIA: And on this case only?

10 THE COURT: Yes. Thank you, Ms. Cerniglia.

11 MS. CERNIGLIA: Thank you.

12 THE COURT: The Court now finds it appropriate to  
13 dismiss the other counts of the information unless there's  
14 any objection, Mr. Johnson?

15 MR. JOHNSON: No, Your Honor.

16 THE COURT: All right. So the other counts of  
17 the information which I believe are Counts One, Two, Three  
18 and Five are dismissed; is that correct, Mr. Johnson?

19 MR. JOHNSON: Yes, Your Honor.

20 THE COURT: Mr. Malone, do you agree with that?

21 MR. MALONE: Yes, Your Honor.

22 THE COURT: All right. Turning to the other  
23 case, Case Number 18CR0116, the Court has -- my comments for  
24 the other case really are similar. Although, parties have

1 argued the case jointly here today. It's the Court's job to  
2 consider each case individually and I have done so here even  
3 though my comments in both cases are similar.

4 I've already indicated here that this is a crime  
5 of violence and Mr. Malone stated that would keep you -- make  
6 it improper for you, actually that you would not be qualified  
7 for the regimental discipline program and I considered that,  
8 Mr. Malone, when talking about the first case which is not a  
9 crime of violence, so I did factor that in in my assessment.  
10 But with this new case where it is a crime of violence, the  
11 Court has considered in both cases whether to give you  
12 regimental discipline and that request is denied based upon  
13 primarily the new case being a crime of violence which speaks  
14 to the Court loudly about whether you would be a good  
15 candidate for that program even on the other case which is  
16 not a crime of violence.

17 So in Case Number 18CR0116, the Court adjudicates  
18 Mr. Cota guilty of the crime of battery by a prison in lawful  
19 custody which is a category B felony for which the Court is  
20 now prepared to impose sentence.

21 Mr. Malone, do you agree that Mr. Cota does not  
22 get any credit for time served in this case?

23 MR. MALONE: Your Honor, I believe it -- it  
24 depends on whether or not you're going to run consecutive or

1 concurrent.

2 THE COURT: Okay.

3 MR. MAIONE: I don't know yet.

4 THE COURT: Okay. Mr. Johnson, the division  
5 recommends zero days credit for time served. Do you agree  
6 with that?

7 MR. JOHNSON: Yes, Your Honor. It's my  
8 understanding he committed it in jail. He was already  
9 incarcerated for the other one.

10 THE COURT: All right, very good.

11 The defendant is sentenced to pay the  
12 administrative assessment fee of \$25. The Court is not going  
13 to impose a DNA fee because the DNA fee was imposed in  
14 18CR0084. The Court does impose a genetic marker fee of \$3.  
15 And once again the Court is not going to impose attorney's  
16 fees.

17 The Court is going to follow the division's  
18 recommendation as to this case as well. Mr. Cota is  
19 sentenced to serve 72 months in the Nevada Department of  
20 Corrections with minimum parole eligibility beginning when  
21 24 months have been served. That sentence is to be run  
22 consecutive to Case Number 19CR0084. The Court finds the  
23 consecutive sentence to be appropriate. This is a separate  
24 offense committed on a different day, and it's a different.

1 type of an offense with another victim, and so the Court  
2 finds it appropriate to impose a consecutive sentence in this  
3 case.

4 Mr. Malone, if you -- it's my intention to grant  
5 zero days credit for time served on this case, but I would  
6 certainly listen to any argument from you.

7 MR. MALONE: Your Honor, I think that's the  
8 correct rule where you're applying the correct rule.

9 THE COURT: Okay. Mr. Johnson, do you have any  
10 comment you would like to make on credit for time served?

11 MR. JOHNSON: No, Your Honor.

12 THE COURT: As the Court sentence on both of  
13 these cases, Mr. Malone, do you have anything further for  
14 today's purpose?

15 MR. MALONE: No, Your Honor. The -- yes, and  
16 this is perhaps a little bit silly, but I do have -- Mr. Cota  
17 does have legal paperwork that he wishes me to take  
18 possession of, and I'm not sure when he will be transported  
19 from the Douglas County Jail. If I could have some guidance  
20 on when they usually pick people up.

21 THE COURT: Typically the jail does not publicize  
22 that and it's for obvious reasons. So what I would recommend  
23 to you is if you have some information, documents that you  
24 would like to go along with Mr. Cota, I understand that's

1 what your question is.

2 MR. MALONE: Whether or not I'm going to have a  
3 day or two.

4 THE COURT: Okay. What I would suggest you do is  
5 immediately after today, and this is actually the last matter  
6 on the adult calendar, you can either ask the jail or one of  
7 the bailiffs here for some input on that. They probably are  
8 going to tell you to give it to him soon if it's something  
9 that you want to ensure is going to go with him.

10 MR. MALONE: Okay.

11 THE COURT: Do either of the bailiffs have any  
12 additional information they would like to provide, Deputy  
13 Nishikida.

14 THE BAILIFF: Well, typically, Your Honor, that  
15 it depends on how long the clerk's office takes to do an  
16 order of judgment of conviction and order them produced to  
17 the sheriff's office to transport to the prison. So, you  
18 know, that depends on their schedule and stuff like that. I  
19 would necessarily say that, yes, he has anything that he  
20 wants to send or give to him, he needs to do it probably by  
21 the end of business today.

22 THE COURT: And, Mr. Malone, if it helps at all,  
23 usually a judgment of conviction will be signed by the end of  
24 today, sometimes within the next day.



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MR. MALONE: Okay.

THE COURT: There are times you have couple of days but that gives you an idea. We do attempt to get the judgments out as soon as possible.

MR. MALONE: Thank you. I appreciate that.

THE COURT: Court stands in recess.

1 STATE OF NEVADA,       )  
                                  ) ss.  
2 CARSON CITY.         )

3  
4 I, KATHY JACKSON, Nevada Certified Court Reporter  
5 Number 402, do hereby certify:

6 That I was present in the District Court in Minden, in  
7 and for the State of Nevada, on Monday, October 8, 2018, for  
8 the purpose of reporting in verbatim stenotype notes the  
9 within-entitled Sentencing Hearing;

10 That the foregoing transcript, consisting of pages 1  
11 through 97, is a full, true and correct transcription of said  
12 Sentencing Hearing.

13  
14 Dated at Carson City, Nevada, this 18th day  
15 of October, 2018.

16  
17  
18 /s/ Kathy Jackson  
19 KATHY JACKSON, GCR  
Nevada CCR #402  
20  
21  
22  
23  
24

CAPITOL REPORTERS  
123 W. Nye Lane, Suite 107  
Carson City, Nevada 89706  
775-882-5322

THE NINTH JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF DOUGLAS

STATE OF NEVADA,	Case No. 18-CR-00084
Plaintiff,	18-CR-00116
v.	Dept. No. 2
MICHAEL L. COTA, JR.,	
Defendant.	

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

The Undersigned does hereby affirm that the following document **DOES NOT** contain the social security number of any person: (List of document(s) attached below)

1) Sentencing -- 10/8/18

-or-

The undersigned does hereby affirm that the document named below **DOES** contain the social security number of a person as required by state or federal law or for the administration of a public program or for an application for a federal or state grant: (List of document(s) attached containing social security number information below)

1) \_\_\_\_\_

2) \_\_\_\_\_

(Your signature) Kathy Jackson Kathy Jackson (Date) 10/18/18