

1 IN THE SUPREME COURT OF THE STATE OF NEVADA
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3

4 HECTOR HUGO RAMIREZ-DE LA,)
5 TORRE,)
6 Appellant,)

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Elizabeth A. Brown
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7 Vs.)

No: 82891

8 THE STATE OF NEVADA,)
9 Respondent.)
10
11

12 **APPELLANT'S OPENING BRIEF**
13

14 **APPEAL FROM A JUDGMENT OF CONVICTION**
15 **FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
16 **IN AND FOR THE COUNTY OF ELKO.**
17
18

19 GARY D. WOODBURY
20 Gary Woodbury, Attorney at Law
21 Nevada Bar # 1915
22 1053 Idaho Street
23 Elko, Nevada 89801
24 (775) 738-8006
Attorney for Appellant

JUSTIN BARAINCA ESQ.
Elko County District Attorney
Nevada Bar #14163
540 Court Street, 2nd Floor
Elko, Nevada 89801
(775) 738-3101
Attorney for Respondent

25 ARRON FORD
26 Attorney General of the
27 State of Nevada
28 100 North Carson City Street
Carson City, NV 89701

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Gary D. Woodbury
GARY D. WOODBURY
ATTORNEY OF RECORD FOR
APPELLANT HECTOR HUGO RAMIREZ-
DE LA TORRE
State Bar No. 1915
1053 Idaho Street
Elko, Nevada 89801
(775) 738-8006

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The Judgment of Conviction appealed from was filed on April 21, 2021. The Notice of Appeal was filed on April 28th, 2021. This is an appeal from the interim order of the District Court denying Appellant's pre-trial Motion to Dismiss the case and the Judgment of Conviction of Department 2 of the Fourth Judicial District Court.

This Appeal is presumptively assigned to the Nevada Supreme Court pursuant to NRAP 17(b)(2) (A) because it involves convictions of 4 Category A felonies. NRAP 17 (a) (12) may also be involved.

This is a criminal case. Defendant Hector Hugo Ramirez- De La Torre is the Defendant/Appellant. Defendant's full name is Hector Hugo Ramirez De La Torre. He will be referred to as Ramirez, or Hector Ramirez, or Appellant throughout the opening brief.

On March 19, 2019 Appellant was arrested by law enforcement officers in Elko County. A Criminal Complaint (App. Vol. 1, Pg. 1) was filed on March 29, 2019 alleging 4 counts of level 3 trafficking in a controlled substance

1 (Methamphetamine), one count of illegal possession of a firearm by a prohibited
2 person, 10 counts of unlawful killing or maiming of an animal in violation of NRS
3 574.100, and 10 counts of Possession of an Animal with the Intent to have it fight
4 with another animal in violation of NRS 574.070(5)(a).
5

6 Counts one through three alleging trafficking in methamphetamine were
7 based on Appellant on three occasions, February 27, March 4, and March 7, 2019,
8 having personally provided 2 ounces of methamphetamine in exchange for \$1000
9 on each occasion to Clinton Sandstrom, a cooperating individual working with
10 Elko County law enforcement. The exchange of methamphetamine for money took
11 place on each occasion at the residence of Bob Olsen in Ryndon, Nevada.
12
13
14

15 The trafficking allegation in Count 4 was based on methamphetamine
16 having been found in the purported residence of Appellant during the execution of
17 a search warrant by law enforcement on March 19, 2019. Appellant lived in a
18 brown travel trailer located on property owned by Co-Defendant Jorge Landeros
19 Ruiz and his wife, Maria in Osino, Nevada. Appellant did not own the brown
20 trailer.
21
22

23 Count Five was based on law enforcement during the execution of the
24 search warrant finding a pistol in the brown travel trailer. Defendant was charged
25 with possession of a firearm by a prohibited person, a felony.
26

27 ///

28 ///

1 The 20 felony counts concerning mistreatment of animals was based on law
2 enforcement having found a significant number of injured roosters on the property
3 owned by Jorge Landeros Ruiz.
4

5 Bail for appellant was set at over \$1, 000,000.

6 The preliminary hearing took place in separate proceedings over 4 days. On
7 August 16, 2019 Defendant/Appellant was bound over for trial on all charges in
8 the Complaint by the Elko Justice Court.
9

10 Jorge Landeros Ruiz, the owner of the real property upon which Appellant
11 resided, was charged as a co-defendant to appellant with respect to the allegations
12 contained in Counts 9 through 28 of the Complaint (App. Vol. 1, Pg. 1) and
13 Information. (App. Vol. 1, pg. 26).
14
15

16 Mr. Landeros Ruiz was also charged separately in Counts 1 and 2 of the
17 Information with trafficking in a controlled substance based on Methamphetamine
18 and cocaine being found at various places on the 2.7-acre parcel of land he owned
19 with his wife, Maria.
20
21

22 Mr. Landeros Ruiz pled not guilty and appeared as a co-defendant at the
23 preliminary hearing and trial of Appellant. He was convicted of counts 9 through
24 28. The jury was unable to reach a unanimous verdict as to Counts 1 and 2
25 against Landeros Ruiz. Mr. Landeros Ruiz did not testify at trial.
26
27

28 A third defendant, Eduardo Ruiz, also resided on the real property owned by
Landeros Ruiz in what was described as a Travel Supreme trailer. He was

1 originally charged as a co-defendant with some of the offenses in the criminal
2 complaint that had been filed against Appellant and Jorge Landeros Ruiz.

3 Eduardo Ruiz entered a plea agreement prior to the preliminary hearing and
4 was subsequently charged and pled guilty to allegations contained in a separately
5 filed criminal information in which he was a single Defendant in the District Court.
6 He was not involved in the preliminary hearing or the jury trial of Mr. Ramirez and
7 Mr. Landeros Ruiz.
8

9 The Criminal Information Charging Appellant and Mr. Landeros Ruiz was
10 filed on August 20, 2019. (App. Vol. 1, Pg. 26). The Information was amended on
11 January 7, 2021 to correct the date of the allegation in Count One of the
12 Information regarding Appellant from February 25, 2019 to February 27, 2019.
13 (App. Vol. 1, Pg. 38).
14

15 Appellant was tried before a jury and convicted of all charges in the
16 Information on January 28, 2021.
17

18 On April 14, 2021, the District Court sentenced Appellant to 10-25 years in
19 prison on each of the four trafficking counts, all to run concurrently. He was fined
20 \$100 on each count.
21

22 He was sentenced to 24 to 60 months for possession of the firearm by a
23 prohibited person to run concurrently with Counts 1 through 4.
24

25 He was sentenced to 18 to 48 months on each of the 20 counts concerning
26 the roosters. Those counts were ordered to run consecutively to Counts 1 through
27
28

1 5, but concurrently with each other. He was placed on probation for each count
2 concerning possession of an animal with the intent to have it fight with another
3 animal.
4

5 **IV. STATEMENT OF ISSUES**

6 The issue specifically raised in this appeal is whether a state government,
7 having initiated a criminal prosecution against a Defendant, must provide a remedy
8 to the Defendant if his federal and state constitutional rights to due process of law
9 in preparation for trial and at trial have been effectively thwarted by private
10 individuals.
11
12

13 **V. STATEMENT OF FACTS**

14 Portions of Appellant's factual contentions set forth below will refer to
15 factual findings of the District Court appearing in the Court's Denial of
16 Defendant's Motion to Dismiss (App. Vol. 1, pg. 81) rather than upon the
17 testimony of specific witnesses upon which the determination of those facts were
18 based.
19
20
21

22 At the time of his arrest, Appellant was present on a 2.7-acre parcel of land
23 located on Kale Drive in Osino, Nevada owned by Jorge Landeros Ruiz and his
24 wife Maria Ulloa, (App. Vol. 2, Pg. 413, TT, page 66, line 12 testimony of
25 Sergeant Smith. See also, Order Denying Motion to Dismiss (App. Vol. 1, pg. 81,
26 page 1, line 17).
27
28

1 Three of the trafficking counts Appellant was charged with and convicted of
2 were based on Appellant having traveled to the residence of Sheldon "Bob" Olsen
3 located in Osino, Nevada on 3 occasions, February 27th , March 4th and March 7th ,
4 2019 and having provided roughly 2 ounces of methamphetamine per trip to
5 Clinton Sandstrom who was working as a cooperating individual for the Elko
6 Combined Narcotics Unit. (App. Vol. 1, pg. 81, Order Denying Motion to Dismiss,
7 page 3 commencing at line 7. See also, App. Vol. 2, pg. 365, TT, commencing at
8 page 97, line 8. Testimony of Jacob Eisinger). Mr. Sandstrom was working for the
9 Elko Combined Narcotics Unit to obtain more favorable treatment from authorities
10 stemming from criminal charges against him, (App. Vol. 2, pg. 365, TT, Detective
11 Eisinger testimony, page 119, line 22).

16 The fourth trafficking charge against Defendant was based on a bag of pink
17 colored methamphetamine found in a brown travel trailer located on the 2.7-acre
18 parcel. (App. Vol. 1, pg. 81, Order Denying Motion to Dismiss, page 6, line 1).

20 The twenty felony counts concerning animals rose from the presence of a
21 large number of allegedly mistreated chickens on the 2.7-acre parcel. (App. Vol. 1,
22 pg. 81, Order Denying Motion to Dismiss, page 4 commencing at line 12).

24 Defendant, during questioning on March 19, 2019, informed Detective
25 Gaylor of the Elko Combined Narcotics unit that he lived in a brown travel trailer
26 located on the 2.7-acre parcel. (App. Vol. 2, pg. 432, Gaylor Testimony, TT,
27 Page 154, line 23).

1 Appellant's primary language is Spanish. A translator was appointed by the
2 Justice and District Court to assist Appellant in understanding the court
3 proceedings which were conducted in English. (App. Vol. 2, pg. 427. See Trial
4 Transcript, Page 5, line 5).

6 At the conclusion of the preliminary hearing before the Elko Justice Court,
7 on August 16, 2019 Defendant/Appellant was bound over for trial in the District
8 Court on all Counts alleged.

10 Defendant/Appellant filed several motions in the District Court, as well as a
11 Writ of Habeas Corpus. The writ was denied by the District Court. He also filed a
12 Motion to Suppress evidence on October 17, 2019 which was denied on July 30,
13 2020. None of the unidentified motions, the Writ, nor the Motion to Suppress are at
14 issue in this appeal.

16 This is an appeal from the Judgment of Conviction and from the Order of the
17 District Court denying Appellant's Motion to Dismiss by Judge Kacin of the
18 Fourth Judicial District Court, Elko County Nevada.

21 VI. ARGUMENT

22 Appellant filed a Motion to Dismiss all charges on April 28, 2020. (App.
23 Vol. 1, pg. 62). The State filed an Opposition to Appellant's Motion to Dismiss
24 on May 7, 2020. (App. Vol. 1, pg. 76). The District Court denied the Motion to
25 Dismiss on December 24, 2020 (App. Vol. 1, pg. 81).

1 Mr. Ramirez's Motion to Dismiss all of the pending charges against him
2 informed the Court that the trial strategy of the Defense was to persuade the jury
3 that the provisions of NRS 194.010 (8) applied to Appellant's alleged criminal
4 behavior.
5

6 NRS 194.010 (8) provides that persons who commit crimes "under threats or
7 menaces sufficient to show that they had reasonable cause to believe, and did
8 believe, their lives would be endangered if they refused, or that they would suffer
9 great bodily harm.", are not guilty of committing the crimes. The motion to
10 dismiss was principally directed at counts 1, 2, and 3 of the Information, but
11 applied as well to all remaining counts.
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15 Specifically, in Mr. Ramirez's Motion to Dismiss, the District Court was
16 informed that Mr. Ramirez could not testify and could not present any evidence at
17 trial that he was acting under cartel orders because he would be physically harmed
18 or killed by a cartel if he did so. The Court was informed that his testimony was
19 necessary to provide a justification under NRS 194.010 (8) for the jury to acquit
20 him (App. Vol. 1, pg. 62, Motion to Dismiss, page 2, line 5).
21
22

23 The State filed its response in Opposition to Defendant's Motion to Dismiss
24 on May 7, 2020 (App. Vol. 1, pg. 76).
25

26 The principal point stated in the State's Opposition to the Motion to Dismiss
27 was that Mr. Ramirez had cited no authority showing that dismissal was required
28 because extraneous circumstances "outside of the prosecution", affected

1 Defendant's ability to testify or to provide evidence (App. Vol. 1, pg. 76,
2 Opposition, page 2, line 24).

3 On December 24, 2020, the District Court denied Defendant's Motion to
4 Dismiss (App. Vol. 1, pg. 81).

5
6 There was not a specific motions hearing before the court. On December 11,
7 2020 the court held a proceeding deemed to be a motions hearing. Defendant did
8 not have any witnesses testify at the motions hearing because doing so would have
9 amounted to putting on evidence that would support his claim under NRS 194.010
10 (8), which the Defense asserted he was forbidden to do. Counsel was allowed to
11 make a statement. (App. Vol. 1, pg. 169, Motion's hearing transcript, page 12
12 commencing at line 24).

13
14 The Court held at page 7 of its Order Denying Motion to Dismiss, that
15 Defendant had "provided no cogent argument or authority for the proposition that
16 he is entitled to the dismissal of charges against him because he fears suffering
17 death or bodily harm if he presses the defense permitted by NRS 194.010(8)."
18

19 Appellant acknowledges that he did not provide a detailed description to the
20 Court of the threats made against him, where he had received them, and who made
21 them. In fact, he provided no description. Forbidding a Defendant from doing that
22 appears to be step one from the cartel's point of view.

23 Appellate counsel is prohibited by law from revealing confidential
24 communications of his client without the client's consent, Counsel was not granted
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1 permission by Mr. Ramirez to give that information to the Court, or to represent
2 that such communications from Mr. Ramirez had or had not been given to counsel.
3 The lack of permission continues in the appellate process.
4

5 An additional analysis of the District Court of the merit of the Defense
6 argument that he was prevented from testifying as claimed in his Motion to
7 Dismiss appears in its Order Denying Motion to Sever Trial filed by co-defendant
8 Landeros Ruiz on June 2, 2020 (App. Vol. 1, pg. 176, beginning at page 7, line 7).
9

10 There, the District Court stated: "Hector contends he committed the
11 criminal acts with which he is charged in the narcotics related counts because he
12 reasonably believed drug cartel members would either kill or inflict great bodily
13 harm upon him if he did not so act. Hector maintains that he can neither testify
14 nor present other evidence to support his theory of the case because cartel members
15 would either physically harm or kill him if he did".
16
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19 The District Court continued on (App. Vol.1, pg. 81, page 7, commencing at
20 line 21), with an explanation of why it changed its mind about granting severance
21 to Mr. Landeros: "In so doing , the Court has assumed that Hector may still testify
22 in support of his stated defense."
23
24

25 In short, the District Court did not accept the proposition that cartel threats
26 either had actually been made or, if made, the circumstances that would make them
27 credible and persuasive to Appellant did not exist.
28

1 The jury was instructed in Instruction 39 of the defense outlined in NRS
2 194.010(8) (App. Vol. 1, pg. 142).

3 It is Appellant's view that it was absolutely necessary for him to testify at
4 trial regarding cartel involvement governing his behavior and cartel rules requiring
5 low level employees to do exactly as they are told by a person above them in the
6 cartel hierarchy or face death or bodily injury in order to have a reasonable chance
7 to persuade a jury of his NRS 194.010(8) defense.
8

9 It is also the view of Appellant that the policies and procedures of the Elko
10 Combined Narcotics Unit created the circumstances that required him to testify or
11 produce evidence if he wanted to be acquitted.
12

13 Detective Miller acknowledged in his trial testimony that he had become
14 more knowledgeable about cartels since moving to Elko. (App. Vol. 2, pg. 382
15 Miller testimony, TT, page 24, commencing at line 8, continuing to page 26, line
16 8).
17

18 According to Sergeant Smith, an ounce of methamphetamine is a lot of
19 methamphetamine, (App. Vol. 2, pg. 413, Sgt Smith testimony, TT, page 60, line
20 14). The 3 transactions between Appellant and Mr. Sandstrom involved around 6
21 ounces of methamphetamine.
22

23 According to Detective Eisinger, (App. Vol. 2, pg. 365, Testimony of
24 Detective Eisinger, TT, commencing at page 142 line 5) he assumed large amounts
25 of drugs found in Elko County would "stem from the cartels."
26
27
28

1 Detective Eisinger testified that Elko County drug enforcement
2 investigators “typically” don’t talk to people in the federal drug enforcement
3 agency (DEA) because Elko County doesn’t get a lot of support from the DEA.
4 (App. Vol. 2, pg. 365, Eisinger testimony, TT, commencing at page 138, line 15).

6 The Elko Combined Narcotics unit knows that Mexican Cartel rules require
7 people deemed by the Cartel to be employed by a Cartel to do what they are told
8 and if they do not, either their life and/or the life of their family is in jeopardy.
9 (App. Vol. 2, pg. 382, Testimony of Detective Miller, TT, at page 25, line 8).

12 The testimony of lead Detective John Gaylor was essentially identical to that
13 of Detective Miller, (App. Vol. 2, pg. 432, Gaylor testimony, TT, commencing at
14 page 209, line 15). Detective Gaylor was somewhat more equivocal about the
15 involvement of Mexican cartels in Elko county in his subsequent testimony, (App.
16 Vol. 2, pg. 432, Detective Gaylor TT, page 218, line 14).

19 According to Detective Miller, the main focus of the Elko Combined
20 Narcotics unit is what’s going on in Elko County and that information may be
21 shared with other agencies, “but it’s not an active thing.” (App. Vol. 2, pg. 365,
22 Detective Eisinger, TT, page 140, line 3).

25 Law Enforcement was aware that because of the large quantities of
26 methamphetamine involved in the transactions, the possession of firearms
27 involved, and statement from other people, that one or more unidentified Mexican
28

1 Cartels were likely involved in the transactions. (App. Vol. 1 pg. 197, PHT June 7,
2 2019, Testimony of Detective John Gaylor at page 120, commencing at line 9).

3 Law enforcement worked to find a permanent out of state relocation for its
4 'Cooperating Source, Clinton Sandstrom, (App. Vol. 1, pg. 197, Gaylor PHT
5 testimony June 7, 2019, page 119 through page 128, Line 10).

6
7 Mr. Ramirez provided 2 ounces of methamphetamine to Mr. Clinton
8 Sandstrom on three occasions in February and March, 2019. According to Mr.
9 Olsen's testimony, he would place a call to Mr. Landeros Ruiz to order the
10 methamphetamine and Mr. Ramirez would deliver it, (App. Vol. 2, pg. 394, Olsen
11 testimony, TT, page 208, line 10).

12 Within the context of the drug orders and deliveries, Mr. Olsen believed
13 Appellant was acting as an employee. (App. Vol. 2, pg. 394, Sheldon Olson, TT,
14 page 208, line 14). Mr. Olson testified that he made previous arrangements for
15 appellant to bring drugs to him through Jorge Ruiz. (App. Vol. 2, pg. 394, TT,
16 page 169, line 22).

17 The circumstantial evidence that supports Appellant having been working at
18 the behest of other people is based on the following.

19 A substantial amount of methamphetamine was involved; 2 ounces of
20 methamphetamine that sold for \$1,000 per sale. There were three sales. It is
21 evident from the testimony of Detective Matthew Miller who searched the brown
22 travel trailer, which appellant admitted was where he lived, that Mr. Ramirez did

1 not have the resources necessary to obtain and distribute the amount of
2 methamphetamine that was to be provided regularly.

3 Neither did he have the proceeds of the sales.

4
5 Detective Miller found no scales in the brown travel trailer. (App. Vol. 1,
6 pg. 211, Testimony of Detective Miller, July 18, Preliminary Hearing Transcript,
7 Page 134 commencing at line 8). Detective Miller did not testify that he found
8 cutting material or small baggies. (App. Vol. 1. Pg. 211, Testimony of Detective
9 Miller, PHT page 91, beginning at line 22 and continuing to page 100, line 18).

10
11 Detective Miller found approximately \$258 in cash in the brown travel
12 trailer. (App. Vol. 1, pg. 211, Miller testimony, PHT July 18, 2019, page 102, line
13 24 and continuing to page 103, line 10).

14
15 Detective Miller did find a bag of pink methamphetamine fully packaged
16 weighing approximately 268 grams. (App. Vol. 1, pg. 211, Miller testimony, PHT
17 July 18th, 2019, page 92, line 6).

18
19 Had he been in a position to testify, Appellant would have had to explain
20 his possession of that amount of methamphetamine.

21
22 Detective Gaylor testified that approximately 8.8 pounds of
23 methamphetamine were found on the property during the search, (App. Vol. 2, pg.
24 432, Gaylor testimony, Trial Transcript, page 153, line 5).

25
26 Portions of the narcotics found in the places outside the travel trailers were
27 in containers identical to containers found in the main residence of Mr. Landeros
28

1 Ruiz. (App. Vol. 2, pg. 282, Testimony of Sergeant Smith, PHT July 18, 2019,
2 page 162, commencing at line 3). See. (App. Vol. 2, pg. 485, Sgt Smith's trial
3 testimony, TT, commencing at page 21 line 25).
4

5 In the Travel Supreme trailer occupied by Eduardo Ruiz, Detective Miller
6 found over \$12,000 in cash, (App. Vol. 1, pg. 211, Testimony of Detective Miller,
7 PHT July 18, 2019 at page 91, line 10). He found \$800 in cash that was part of the
8 money used to buy methamphetamine for Mr. Sandstrom, (App. Vol. 2, pg. 458,
9 Miller testimony, TT, page 27, line 4). He also found slightly over 2,000 grams of
10 methamphetamine in the Travel Supreme Trailer, (App. Vol. 1, pg. 211, Miller
11 testimony PHT July 18, 2019, commencing at page 89, line 14). Investigators did
12 not search Eduardo's Mercedes Benz because they didn't have a key, (App. Vol. 3,
13 pg. 501, Trial Testimony of Sgt Smith, page 60, line 22).
14
15
16
17

18 Defendant used a vehicle of the wife of Jorge Ruiz to travel to where the
19 drugs were to be sold to Clinton Sandstrom. (App. Vol. 1, pg. 188, Search Warrant
20 affidavit, page 7, item 14). Detective Gaylor testified that law enforcement did not
21 find a vehicle on the property that belonged to appellant. (App. Vol. 2, pg. 413,
22 Smith testimony, TT, page 55, at line 20).
23
24

25 Detective Miller did not think that Mr. Ramirez owned any of the roosters.
26 He believed he was the caretaker of them. (App. Vol. 2, pg. 272, PHT Miller
27 testimony, July 18, 2019, page 137, commencing at line 17).
28

1 **SUMMARY**

2 The facts alleged in the Motion and testified to at trial make it clear that the
3 following is true.
4

5 Mr. Ramirez, according to his Judgment of Conviction , (App. Vol. 1, pg.
6 50, page 3, line 25) was given credit for having served 758 days in the Elko
7 County jail as of his sentencing on April 14, 2021. Counting back 758 days from
8 April 14, 2021 establishes that Mr. Ramirez was arrested on March 19, 2021. That
9 was the day the search warrant was executed.
10
11

12 Those figures establish that Mr. Ramirez was incarcerated in the Elko
13 County jail throughout all of the proceedings. He had no means to absent himself
14 from the Elko County jail that made it possible for him to hide from the cartel.
15

16 Law Enforcement during the execution of the search warrant found or
17 identified over 7 ½ pounds of methamphetamine located on the 2.7 acres aside
18 from that located in Appellant's brown travel trailer and Eduardo Ruiz's Travel
19 Supreme trailer.
20
21

22 The District Court denied Appellants Motion to Dismiss because he
23 ...”provided no cogent argument or authority for the proposition that he is entitled
24 to the dismissal of the charges against him because he fears suffering death or
25 bodily harm if he presses the defense permitted by NRS 194.010 (8). (App. Vol. 1,
26 pg. 81, Page 7 of dismissal).
27
28

1 1. Defendant lived in a small brown travel trailer not owned by him that
2 was located on real property not owned by him. Mr. Eduardo Ruiz apparently
3 owned the Travel Supreme Trailer, (App. Vol. 2, pg. 259, PHT July 18, 2019, page
4 124, line 23. Testimony of Detective Miller based on Gaylor's statement).

5
6 2. That defendant did not own an automobile and used an automobile
7 owned by Jorge Ruiz, actually his wife, to deliver the drugs that were sold to Mr.
8 Sandstrom. (App. Vol. 2, pg. 413, TT, page 55, line 17, Sgt Scott Smith
9 Testimony).

10
11
12 3. That Defendant was not shown to have had any employment off the
13 Osino property.

14
15 4. That no money from the 3 drug transactions involving Appellant and
16 Sandstrom was found on the person or in the residence of Defendant.

17
18 5. That nothing associated with ownership or grooming of chickens or
19 roosters was found on the person or in the residence associated with Defendant
20 were found at the time of the execution of a search warrant on March 19, 2019
21 (App. Vol. 1, pg. 188).

22
23 **LEGAL ARGUMENT**

24
25 Appellant suggests that contrary to the District Court's holding in Denying
26 his Motion to dismiss, that he did in fact set out legal support for his claim. A
27 criminal Defendant is entitled to due process of law. The court held at page 7 that
28 appellants decision was exclusive to him with respect to whether he decided to

1 testify or not and that Due Process does not “include insuring his safety to the
2 degree he feels is necessary for him to put on a particular defense.”

3
4 There are a variety of cases that arguably stand for the proposition that
5 outside forces not connected to law enforcement or any part of government can
6 deprive a person of Due Process.

7
8 In Rideau v. Louisiana, 373 U.S. 723, 724 (1963), the defendant
9 “confessed” under police interrogation to the charges for which he was
10 convicted. After the police department disclosed a 20-minute video of the
11 interrogation, a local television station broadcast the defendant’s confession three
12 times before the trial started.

13
14
15 Without examining the record for evidence of actual prejudice, the Supreme
16 Court reversed the conviction, concluding the trial was a “hollow formality,”
17 and the real trial had occurred when a substantial portion of the community’s
18 population saw the defendant admit guilt on television.

19
20 In Estes v. Texas, 381 U.S. 532 (1965), the Supreme Court presumed
21 prejudice after concluding that the trial had been conducted without the
22 “dignity essential to the ‘integrity of the trial’ process,” due primarily to the
23 intrusions of the press—reporters had been permitted to sit within the bar of the
24 court, the courtroom had been overrun with television equipment, and broadcasters
25 had frequently interrupted the trial proceedings.

1 In Sheppard v. Maxwell, 384 U.S. 333, 343–44 (1966), the trial court
2 allowed the press all over the courtroom and made it essentially impossible for the
3 defendant and counsel to communicate confidentially. The movement of the
4 reporters also made it difficult for jurors to hear what witnesses and counsel
5 were saying. That case is significant because it presented a situation where the
6 First Amendment rights accorded to news organizations by the court clashed with
7 the Defendant's due process rights. Defendant's constitutional right to due process
8 prevailed.

12 See also Justice Holmes's dissent in Frank v. Mangum 237 U.S. 309, 335
13 (1915) and the decision in Moore v Dempsey, 261 U.S. 86 (1923) written by
14 Justice Holmes. Justice Holmes wrote in Moore:

16 " In Frank v. Mangum, 237 U.S. 309, 335, it was recognized of course that
17 if in fact a trial is dominated by a mob so that there is an actual interference
18 the State, supplying no corrective process, carries into execution a judgment
19 of death or imprisonment based upon a verdict thus produced by mob
20 domination, the State deprives the accused of his life or liberty without due
21 process of law."

25 This Court in Lay v. State, 110 Nev, 1189, 1196-1197 (1994) acknowledged
26 that the behavior of criminal gangs is indiscriminate and many times involves
27 punishment for only minute transgressions. This Court has been aware of the
28

1 existence of prison gangs, at least the Aryan Warriors, since 1984, Mercado v State
2 , 688 P.2d 305 (1984).

3 The State of Nevada has not created a protection program for defendants or
4 witnesses who fear for their lives. Neither the prosecution nor the District Court
5 tried to provide any protection whatever to Appellant.
6

7 Law enforcement was not ordered to and did not attempt to arrange
8 anything with the federal government, even though an organization known as the
9 United States Federal Witness Protection Program exists and is designed to protect
10 witnesses before, during and after trial, 18 U.S. Code § 3521.
11

12 Defendant was essentially doomed to go to prison because he was charged
13 with 4 non-probational felonies where the cartels have significant power over other
14 inmates in prison.
15

16 Protection against governmental arbitrariness is the core of due process,
17 Hurtado v. California, 110 U.S. 516, 527, 4 S.Ct. 111, 116-117, 28 L.Ed. 232,
18 including substantive due process, Daniels v. Williams, 474 U.S. 327, 331, 106
19 S.Ct. 662, 665, 88 L.Ed.2d 662.
20

21 VII. CONCLUSION

22 For the reasons set forth above, Appellant requests this Court to reverse the
23 decision of the District Court denying Appellant's Motion to Dismiss the charges
24 against him.
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1 Respectfully submitted this 15 day of NOVEMBER, 2021.

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5 GARY D. WOODBURY
6 ATTORNEY OF RECORD FOR
7 APPELLANT HECTOR HUGO DE LA
8 TORRE

9 State Bar No. 1915
10 1053 Idaho Street
11 Elko, Nevada 89801
12 (775) 738-8006

13 **CERTIFICATE OF COMPLIANCE**

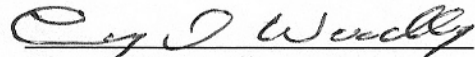
14 1. I hereby certify that this brief complies with the formatting requirements of
15 NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style
16 requirements of NRAP 32(a)(6) because this brief has been prepared in a
17 proportionally spaced typeface using Word in 14-point Times New Roman font.

18 2. I further certify that this brief complies with the page or type-volume
19 limitation of NRAP 32(a)(7) because, excluding the parts of the brief exempted by
20 NRAP32(a)(7)(C), **it does not exceed 30 pages.**

21 3. Finally, I hereby certify that I have read this appellate brief, and to the best
22 of my knowledge, information, and belief, it is not frivolous or interposed for any
23 improper purpose. I further certify that this brief complies with all applicable
24 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires
25 every assertion in the brief regarding matter in the record to be supported by a
26
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1 reference to the page and column number, if any, of the transcript or appendix
2 where the matter relied on is to be found. I understand that I may be subject to
3 sanctions in the event that the accompanying brief is not in conformity with the
4 requirements of the Nevada Rules of Appellate Procedure.
5

6
7
8 DATED this 15 day of NOVEMBER, 2021.
9

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11 
12 Gary D. Woodbury
13 Nevada Bar # 1915
14 Law offices of Gary D. Woodbury
15 1053 Idaho Street,
16 Elko, Nevada 89801
17 (775)-738-8006
18 Attorney for Appellant
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF COUNSEL

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

DATED THIS 15 day of November, 2021.

GARY D. WOODBURY



GARY D. WOODBURY

1053 Idaho St.

Elko, NV 89801

State Bar No. 1915

Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that this document was filed electronically with the Nevada Supreme Court on the 15 day of November, 2021. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

Elko County District Attorney

Gary D. Woodbury

Nevada Attorney General

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid to the following address(es):

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Southern Desert Correctional Center

PO Box 208

Indian Springs, NV 89070-0208


KIMBERLY DAWSON