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IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL L. COTA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent,

Electronically Filed
Dec 17 2021 03:00 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 2018-CR-00084
2018-CR-00084BD

RECORD ON APPEAL

VOLUME 3

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PAGES 311-491

MICHAEL L. COTA
INMATE #1206075
ELY STATE PRISON
P.O. BOX 1989
ELY, NEVADA 89301.

IN PROPER PERSON

THE STATE OF NEVADA

DOUGLAS COUNTY DISTRICT ATTORNEY

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

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Douglas County
District Court Clerk

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CLERK

BY *mbraja* DEPUTY

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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 impalpable 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.¹ 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 ¹Contrary 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

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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 7th day of September, 2018.

26 
27
28

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

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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 SETTING HEARING

MICHAEL L. COTA,

Defendant.

The above-entitled matter is set for:

(XX) Continued Sentencing Hearing

TO COMMENCE on Monday, October 8, 2018 at the hour of 9:00 a.m.

DATED this 10th day of September, 2018.

THOMAS W. GREGORY
DISTRICT JUDGE

Copies served by hand delivery/mail on September 10th, 2018,
addressed to: Douglas County District Attorney's Office (Hand
Delivery), John Malone, Esq., 209 North Pratt Street, Carson City,
Nevada 89701 (Mail); Douglas County Jail (Hand Delivery);
Division of Parole and Probation (Hand Delivery)

Erin C. Plante

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

2 Dept. No. II

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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.

ORDER

12 MICHAEL LUIS COTA JR.,
13 Defendant.
14

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

20 The case came before the Court for sentencing on September
21 10, 2018. Defendant appeared with counsel. The State was
22 represented by the Douglas County District Attorney's Office. The
23 Court heard oral arguments on the motion and sentencing was
24 continued. This order addresses Defendant's Motion to Strike the
25 State's Sentencing Memorandum and Attached Exhibits.

26 Defendant is 19 years of age. In case number 18-CR-0116,
27 Defendant entered a guilty plea to Battery by a Prisoner in Lawful
28 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.

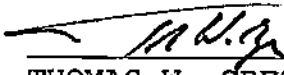
27 ///

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.

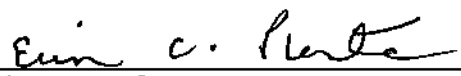
5 DATED this 13th day of September, 2018.

6
7 
8 THOMAS W. GREGORY
DISTRICT JUDGE

9
10 Copies served by hand delivery/mail on September 13th, 2018,
11 addressed to:

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

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

17
18 
Erin C. Plante

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

2 Dept. No. II

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SEP 13 2018

Douglas County
District Court Clerk

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2018 SEP 13 AM 10:21

BOBBIE R. WILLIAMS
CLERK

BY ANDERSON DEPUTY

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

24 ///

25 ///

26 ///

27 ///

28 ///

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

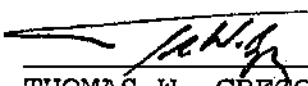
3 IT IS SO ORDERED.

4 DATED this 13th day of September, 2018.

5

6

7


THOMAS W. GREGORY
DISTRICT JUDGE

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

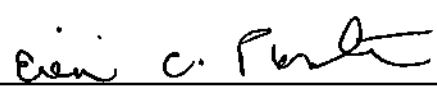
10 Douglas County District Attorney's Office (Hand Delivery)
11 P.O. Box 218
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13 John Malone, Esq. (Mail)
14 209 North Pratt Street
15 Carson City, Nevada 89701

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17


Erin C. Plante

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

Department No. II

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2018 SEP 25 PM 4:14

BOBBIE R. WILLIAMS
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BY ANOMA DEPUTY

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SEP 25 2018
Douglas County
District Court Clerk

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. COTA JR.,

Defendant.

TRANSCRIPT OF PROCEEDINGS

SENTENCING HEARING

MONDAY, SEPTEMBER 10, 2018

MINDEN, NEVADA

For the State: Matthew Johnson,
Deputy District Attorney

For the Defendant: John Malone, Public Defender

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

CAPITOL REPORTERS (775) 882-5322

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

2 -oOo-

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, I

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. Cota'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. It 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 unsealed 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(5) 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, be 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. Cota, 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. Cota
7 and his upbringing?

8 MR. MALONE: Your Honor, I don't have access to
9 Mr. Cota'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 initiating 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 took
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 these -- 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 44 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 Piasecki'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. Piasecki.

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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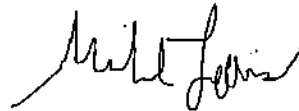
1 STATE OF NEVADA)
2 COUNTY OF DOUGLAS)
3

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.

16 
17

18 Michel Loomis, CCR No. 228
19
20
21
22
23
24

1 Michel Loomis
2 Capitol Reporters
3 123 West Nye 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.

11 MICHAEL L. COTA JR.,

12 Defendant.

) Case No. 18-CR-00084;

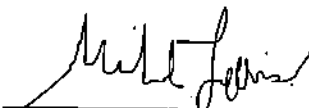
) 18-CR-00116

) Dept. No. II

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

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Douglas County
District Court Clerk

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2018 OCT -3 AM 11:32

ROBBIE R. WILLIAMS
CLERK

BY *msr*

IN THE NINTH JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF DOUGLAS, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

CASE NO. 18-CR-0661-⁰⁰⁸⁴

DEPT NO. II

MICHAEL LUIS COTA,

Defendant.

**MOTION FOR COURT APPOINTED FEES
WITH AFFIDAVIT IN SUPPORT THEREOF**

COMES NOW, John E. Malone, Esq., having been appointed as counsel to represent Defendant, MICHAEL LUIS COTA, in the above-entitled matter and moves this Honorable Court for an Order for Payment of Appointed Counsel, pursuant to NRS 7.125.

This motion is made and based upon the pleadings and papers on file herein and the affidavit attached hereto.

DATED this ^{1st} day of October, 2018.

JOHN E. MALONE, ESQ.
State Bar No. 5706
209 N. Pratt Ave.
Carson City, NV 89701
(775) 461-0254

AFFIDAVIT

STATE OF NEVADA)

Carson City)
:ss

John E. Malone, being first duly sworn, under penalty of perjury, hereby deposes and says:

1. That affiant is an attorney licensed to practice law in the State of Nevada;

2. That affiant was appointed as counsel to represent Defendant, Michael Luis Cota, in the above-entitled matter;

3. That affiant rendered the following services at the statutory rate of \$100.00 per hour for in court or out of court services:

<u>Date</u>	<u>Hours</u>	<u>Description</u>
07/14/18	0.25	Receive and review file for new case.
07/20/18	2.25	Travel to and from court; meet with client and DA Johnson.
07/24/18	3.50	Travel to and from court; meet with client and DA Johnson; appear at Justice Court arraignment.
07/30/18	2.25	Travel to and from court; meet with client re: both cases (one bill to this matter)
08/01/18	2.00	Travel to and from court; sign and file guilty plea memo.
08/06/18	1.50	Travel to and from court; appear at arraignment in District Court.
08/27/18	0.50	Telephone call with client's mother; memo file for sentencing; arrange Mental Health evaluation.
08/27/18	1.50	Review States sentencing memorandum for options to respond.
08/28/18	2.00	Travel to and from court complex; meet with client and review both PSIs (one bill to this case).
09/03/18	6.50	Research re: release of juvenile information.
09/05/18	5.00	Draft motion to strike and motion to seal.
09/06/18	2.50	Travel to and from court; file motion to seal.
09/06/18	1.50	Travel to and from court; file motion to strike in both cases (one bill to this case).
09/10/18	6.50	Travel to and from court; appear at hearing on motion to strike; meet with client.

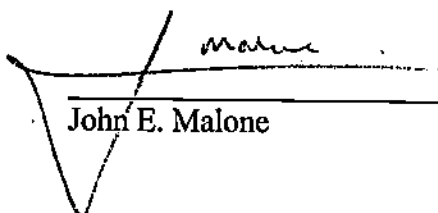
1 HOURS 37.75 hours @ \$100/hour \$3,775.00
2 MILEAGE 248 miles @ 54.5/mile \$ 135.16

3 TOTAL \$3,910.16

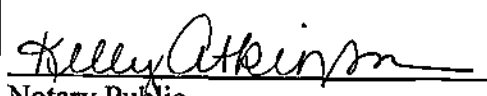
4 4. That to the best of affiant's knowledge, the items set forth above are correct and have
5 been necessarily incurred in these proceedings;

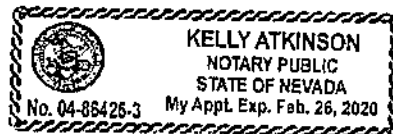
6 5. That affiant has not been paid from any other source for the time and costs summarized
7 herein.

8 Further affiant sayeth not.

9 
10 John E. Malone

11 Subscribed and Sworn to before me
12 this 1st day of October, 2018.

13
14 
Notary Public



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OCT - 4 2018

Douglas County
District Court Clerk

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2018 OCT -4 PM 2:12

BOSSIE R. WILLIAMS
CLERK

BY  DEPUTY

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

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

6 IN AND FOR THE COUNTY OF DOUGLAS

7 STATE OF NEVADA,

8 Plaintiff,

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

9 vs.

Dept Number: II

10 MICHAEL LUIS COTA,

11 Defendant.

12
13 **DEFENDANT'S SUBMISSION OF DOCUMENTATION**
14 **IN MITIGATION OF SENTENCING**

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

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

19 DATED this 4th day of October, 2018.

20
21 
22 JOHN E. MALONE, ESQ.
23 Attorney for Defendant,
24 Michael Luis Cota

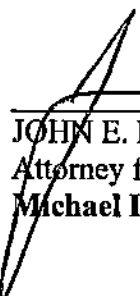
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AFFIRMATION

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 4th day of October, 2018.



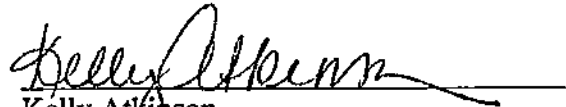
JOHN E. MALONE, ESQ.
Attorney for Defendant,
Michael Luis Cota

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 4th 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,

A handwritten signature in black ink, appearing to read 'Melissa Piasecki', with a stylized flourish at the end.

Melissa Piasecki, M.D.

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

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Douglas County
District Court Clerk

BOBBIE R. WILLIAMS
CLERK

BY: [Signature] DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF DOUGLAS, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

CASE NO. 18-CR-0661-0034

DEPT NO. II

MICHAEL LUIS COTA,

Defendant.

ORDER FOR PAYMENT OF ATTORNEY FEES

Having reviewed and considered the billing statement submitted *ex parte* by John E. Malone, appointed counsel for Defendant, Michael Luis Cota, and good cause appearing, the court hereby orders payment of \$ 3,910.16 to:

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

for services rendered for August/September 2018.

IT IS SO ORDERED:

DATED this 8th day of October, 2018.

[Signature]
District Judge

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Douglas County
District Court Clerk

BOBBIE R. WILLIAMS
CLERK

BY W. Williams DPN

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

THE STATE OF NEVADA,
Plaintiff,

vs.

JUDGMENT OF CONVICTION

MICHAEL LUIS COTA,
Defendant.

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

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

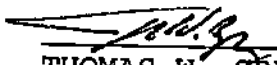
1 credit for time served.

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 10th day of October, 2018.

10
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12 THOMAS W. GREGORY
13 DISTRICT JUDGE
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CASE NO. 18-CR-00084✓
18-CR-00116

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DEPT. NO. 2

DOUGLAS COUNTY
Clerk

BOBBIE R. WILLIAMS
CLERK

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
BY: [Signature]
IN AND FOR THE COUNTY OF DOUGLAS

BEFORE THE HONORABLE DISTRICT COURT JUDGE, THOMAS GREGORY

THE STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL L. COTA, JR.,

Defendant.

TRANSCRIPT OF PROCEEDINGS

SENTENCING

MONDAY, OCTOBER 8, 2018

APPEARANCES:

For the State:

MATTHEW JOHNSON
Deputy District Attorney
Minden, Nevada

For the Defendant:

JOHN MALONE
Attorney at Law
411 Mill Street
Reno, Nevada 89502

Reported By:

Kathy Jackson CSR
Nevada CCR #402
California CCR #10465

CAPITOL REPORTERS (775) 882-5322

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MIKA COTA	
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Redirect Examination by Mr. Malone	65
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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 factual 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 Scaffalani (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 Jobrontae 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 took
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 you 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 Jobrontae 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 Cota 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 sue 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 identity 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. JOHNSON: 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 finesse 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 Jobrontae,
6 Jobrontae 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 that 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 took -- just took 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 meth
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 times 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 Scaffalani. 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. Cota'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. Cota, 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. Cota, 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. Cerniglia, 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. MALONE: 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 18CR0084. 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.

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STATE OF NEVADA,)
) ss.
CARSON CITY.)

I, KATHY JACKSON, Nevada Certified Court Reporter
Number 402, do hereby certify:

That I was present in the District Court in Minden, in
and for the State of Nevada, on Monday, October 8, 2018, for
the purpose of reporting in verbatim stenotype notes the
within-entitled Sentencing Hearing;

That the foregoing transcript, consisting of pages 1
through 97, is a full, true and correct transcription of said
Sentencing Hearing.

Dated at Carson City, Nevada, this 18th day
of October, 2018.



/s/ Kathy Jackson
KATHY JACKSON, CCR
Nevada CCR #402

1 CAPITOL REPORTERS
123 W. Nye Lane, Suite 107
2 Carson City, Nevada 89706
775-882-5322
3

4 THE NINTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF DOUGLAS
5

6 STATE OF NEVADA, Case No. 18-CR-00084
Plaintiff, 18-CR-00116
7 v. Dept. No. 2
8 MICHAEL L. COTA, JR.,
Defendant.
9

10 AFFIRMATION
Pursuant to NRS 239B.030

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

13 1) Sentencing -- 10/8/18

14 -or-

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

18 1) _____

19 2) _____

20 (Your signature) Kathy Jackson *Kathy Jackson* 10/18/18
21
22
23
24

1 JOHN E. MALONE, ESQ.
2 State Bar No. 5706
209 N. Pratt Ave.
3 Carson City, NV 89701
Telephone (775) 461-0254
4 Attorney for **Petitioner**

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NOV 06 2018

Douglas County
District Court Clerk

FILED

2018 NOV -6 AM 10:30

BOBBIE R. WILLIAMS
CLERK
BY ANUM DEPUTY

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

9 MICHAEL LUIS COTA,
10
Petitioner,

CASE NO. 18-CR-0084

DEPT NO. II

11 vs.

12 THE STATE OF NEVADA,
13
Respondent.

15 **REQUEST FOR TRANSCRIPT OF PROCEEDINGS**

16 TO: NINTH JUDICIAL DISTRICT COURT CLERK
CAPITOL RECORDERS

18 MICHAEL LUIS COTA, Defendant named above, requests preparation of a transcript of
19 proceedings before the District Court, as follows:

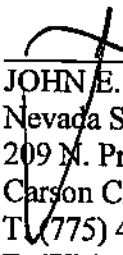
20 Specific individual dates of proceedings for which transcripts are being requested: October
21 8, 2018 (Sentencing Hearing).

22 Specific portions of the transcript being requested: N/A.

23 Number of copies required: 3.
24

1 I hereby certify that on the 5th day of November, 2018, I ordered the transcript(s) listed
2 above from the court reporter named above, and will submit the invoice from the court reporter to
3 the court once received as this is a court appointed matter.

4 DATED this 5th day of Nov., 2018.

6
7 
8 JOHN E. MALONE, ESQ.
9 Nevada State Bar No. 5706
10 209 N. Pratt Ave.
11 Carson City, NV 89701
12 T: (775) 461-0254
13 F: (775) 461-0237
14
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1 CERTIFICATE OF MAILING

2 Pursuant to NRCP 5(b), I hereby certify that service of the foregoing REQUEST FOR
3 TRANSCRIPT OF PROCEEDINGS was made this date by depositing a true copy of the same for
4 mailing in Carson City, Nevada, addressed to each of the following:

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

7 Capitol Reporters
8 123 W. Nye Ln., Ste 107
Carson City, NV 89706

9 MICHAEL LUIS COTA, #1206075
10 NNCC
PO Box 7000
11 Carson City, NV 89702

12 DATED this 5th day of November, 2018.

13
14 Kelly Atkinson
15 Kelly Atkinson
16
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NOV 06 2018

Douglas County
District Court Clerk

FILED

2018 NOV -6 AM 10:30

BOBBIE R. WILLIAMS
CLERK

BY ANOR DEPUTY

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

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR DOUGLAS COUNTY
8
9

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

CASE NO. 18-CR-0084

DEPT NO. II

15 NOTICE OF APPEAL
16

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 10th day
20 of October, 2018.

21 This appeal is to all issues of law.

22 DATED this 5th day of November, 2018.

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

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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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NOV 06 2018

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

Douglas County
District Court Clerk

2018 NOV -6 AM 10:30

BOBBIE R. WILLIAMS
CLERK

BY ALVIN DEPUTY

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

6 IN AND FOR CARSON CITY

8 MICHAEL LUIS COTA,

9 Petitioner,

10 vs.

11 THE STATE OF NEVADA,

12 Respondent.

CASE NO. 18-CR-0084

DEPT NO. II

14 CASE APPEAL STATEMENT

- 15 1. Name of Appellant filing this case appeal statement: MICHAEL LUIS COTA.
- 16 2. Identify the judge issuing the order appealed from: HON. THOMAS W. GREGORY.
- 17 3. Identify each appellant and the name and address of counsel for each appellant:
- 18 MICHAEL LUIS COTA, Appellant, JOHN E. MALONE, ESQ., Counsel, 209 N. Pratt
- 19 Ave., Carson City, NV 89701.
- 20 4. Identify each respondent and the name and address of appellate counsel, if known, for
- 21 each respondent: STATE OF NEVADA, Respondent, Douglas County District
- 22 Attorney, 1038 Buckeye Road, Post Office Box 218, Minden, Nevada 89423.

23 ///

24 ///

- 1 5. Indicate whether any attorney identified above in response to question 3 or 4 is not
2 licensed to practice law in Nevada and, if so, whether the District Court granted that
3 attorney permission to appear under SCR 42: Both attorneys identified in questions 3
4 and 4 are licensed to practice in Nevada.
- 5 6. Indicate whether Appellant was represented by appointed or retained counsel in the
6 District Court: Counsel was appointed.
- 7 7. Indicate whether Appellant is represented by appointed or retained counsel on appeal:
8 Counsel is appointed.
- 9 8. Indicate whether Appellant was granted leave to proceed in forma pauperis, and the
10 date of entry of the District Court Order granting such leave: Not applicable.
- 11 9. Indicate the date the proceedings commenced in the District Court: Sentencing hearing,
12 held on October 8, 2018.
- 13 10. Provide a brief description of the nature of the action and result in the District Court,
14 including the type of Order being appealed and the relief granted by the District Court:
15 This is a direct appeal from a Judgment of Conviction. Appellant pled guilty to one
16 count of Principal to Grand Larceny of a Firearm, a category B felony. Appellant was
17 sentenced to a maximum term of seventy-two (72) months and a minimum of term of
18 sixteen (16) months and ordered to be joint and severally liable for restitution in the
19 amount of nine hundred sixty-nine dollars and eighteen cents (\$969.18).
- 20 At sentencing, the District Court, over defense objection, allowed a sentencing memo
21 containing confidential juvenile justice information, and testimony regarding gang
22 membership, to be introduced and considered at Mr. Cota's sentencing.

23 ///

24 ///

1 11. Indicate whether the case has previously been the subject of an appeal to or original
2 writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
3 number of the prior proceeding: Not applicable.

4 12. Indicate whether this appeal involves child custody or visitation: Not applicable.

5 13. If this civil case, indicate whether this appeal involves the possibility of settlement: Not
6 applicable.

7 DATED this 5th day of November, 2018.

8
9 JOHN E. MALONE, ESQ.
10 NV State Bar No. 5706
11 209 N. Pratt Ave.
12 Carson City, NV 89701
13 T: (775) 461-0254
14 Attorney for the **Petitioner,**
15 **Michael Luis Cota**

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that service of the foregoing CASE APPEAL STATEMENT 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

IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

MICHAEL LUIS COTA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

RECEIVED

NOV 19 2018

Douglas County
District Court Clerk

RECEIPT FOR DOCUMENTS

FILED
2018 NOV 19 AM 10:10
Supreme Court No. 77415
District Court Case No. 18-CR-0084
BOBBIE W. WILLIAMS
CLERK
BY ANIM DEPUTY

TO: John E. Malone
Douglas County District Attorney/Minden \ Mark B. Jackson, District Attorney
Bobbie W. Williams, Douglas County Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

11/15/2018 Appeal Filing Fee waived. Criminal. (SC)
11/15/2018 Filed Notice of Appeal. Appeal docketed in the Supreme Court this day. (Docketing statement and Notice of Briefing Schedule mailed to counsel for appellant.) (SC)

DATE: November 15, 2018

Elizabeth A. Brown, Clerk of Court
lh