

In the Supreme Court of the State of Nevada

*** * ***

BRAXTON CHEYANNE GARCIA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

_____ /

APPELLANT's APPENDIX

Electronically Filed
Oct 27 2021 03:24 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
No. 82968

David K. Neidert
316 California Ave. #420
Reno, NV 89509
(775) 423-4455

Counsel for Appellant

INDEX OF APPENDIX

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DA #16-14489
RPD RP15-024658

FILED
Electronically
CR18-0273
2018-05-02 01:34:42 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6659550 : rrodrigu

CODE 1800
Christopher J. Hicks
#7747
P.O. Box 11130
Reno, NV 89520
(775) 328-3200

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

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No.: CR18-0273

v.

Dept. No.: D06

BRAXTON CHEYANNE GARCIA,

Defendant.

_____ /

INFORMATION

CHRISTOPHER J. HICKS, District Attorney within and for the
County of Washoe, State of Nevada, in the name and by the authority
of the State of Nevada, informs the above entitled Court that BRAXTON
CHEYANNE GARCIA, the defendant above named, has committed the
crime(s) of:

CHILD ABUSE WITH SUBSTANTIAL BODILY HARM, a violation of
NRS 200.508.1a2, a category B felony, (55222) in the manner
following, to wit:

That the said defendant BRAXTON CHEYANNE GARCIA, on or
about November 13th, 2015, within the County of Washoe, State of
Nevada, did willfully and unlawfully, being an adult person, cause

1 L.S., a child of the age of approximately ten months, to suffer
2 unjustifiable physical pain as a result of abuse, in that the
3 defendant forcefully struck L.S. about the head and/or struck L.S.'s
4 head onto a hard surface, and/or by means unknown caused injury to
5 L.S. that fractured his skull and resulted in intracranial injuries;
6 and

7 The defendant's aforementioned action(s) caused L.S. to
8 suffer substantial bodily harm in that the skull fracture and
9 intracranial injuries caused protracted loss or impairment of the
10 function of L.S.'s bodily member or organ, and/or caused L.S. to
11 suffer prolonged physical pain.

12
13
14 All of which is contrary to the form of the Statute in such
15 case made and provided, and against the peace and dignity of the
16 State of Nevada.

17
18 CHRISTOPHER J. HICKS
19 District Attorney
20 Washoe County, Nevada

21
22 By: /s/ Peg Samples
23 PEG SAMPLES
24 10214
25 DEPUTY DISTRICT ATTORNEY
26

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

4
5 RENO POLICE DEPARTMENT
6 JOSHUA WATSON
7 MATTHEW DURIO
8
9
10
11
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1 REQUEST FOR DISCOVERY PURSUANT TO NRS 174.245

2 The State hereby requests notice and disclosure of evidence
3 relating to the defense in the above-entitled case pursuant NRS
4 174.245, including any:

5 (a) Written or recorded statements made by a witness the
6 defendant intends to call during the case in chief of the defendant,
7 or copies thereof, within the possession, custody or control of the
8 defendant, the existence of which is known, or by the exercise of due
9 diligence may become known, to the defendant;

10 (b) Results or reports of physical or mental examinations,
11 scientific tests or scientific experiments that the defendant intends
12 to introduce in evidence during the case in chief of the defendant,
13 or copies thereof, within the possession, custody or control of the
14 defendant, the existence of which is known, or by the exercise of due
15 diligence may become known to the defendant; and

16 (c) Books, papers, documents or tangible objects that the
17 defendant intends to introduce in evidence during the case in chief
18 of the defendant, or copies thereof, within the possession, custody
19 or control of the defendant, the existence of which is known, or by
20 the exercise of due diligence may become known, to the defendant.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

1 AFFIRMATION PURSUANT TO NRS 239B.030

2 The party executing this document hereby affirms that this
3 document submitted for recording does not contain the social security
4 number of any person or persons pursuant to NRS 239B.030.

5
6
7 CHRISTOPHER J. HICKS
8 District Attorney
9 Washoe County, Nevada

10 By /s/ Peg Samples
11 PEG SAMPLES
12 10214
13 DEPUTY DISTRICT ATTORNEY

1 **Code 3700**
2
3
4
5

6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

Case No.

11 **vs.**

Dept. No.

12 **Braxton Cheyanne Garcia,**

13 **Defendant.**
14 _____/

15 **PROCEEDINGS**
16
17
18
19
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RENO CRIMINAL
CASE SUMMARY
CASE NO. RCR2018-095171

The State of Nevada
vs.
Braxton Cheyanne Garcia

§
§
§
§
§
§
§
§

Location: **Reno Criminal**
Judicial Officer: **Lynch, Patricia**
Filed on: **01/22/2018**
Agency Number: **RP15-024658**
WC18-001170
District Attorney Number: **16-14489**
Probable Cause Number: **WASO0075703C**

CASE INFORMATION

Offense	Statute	Deg	Date	Case Type:	Felony
1. Child abuse or neglect, w/substantial bodily or mental harm ACN: RP15-024658 Arrest:	NRS 200.508.1a2	B	11/13/2015	Case Status:	04/26/2018 Bound Over
	RPD - Reno Police Department			Case Flags:	In Custody

Statistical Closures

04/26/2018 Preliminary Hearing - Bindover

Warrants

Arrest Warrant - Garcia, Braxton Cheyanne (Judicial Officer: Lynch, Patricia)

03/08/2018	3:58 PM	Returned
03/08/2018	8:02 AM	Executed
01/22/2018	4:30 PM	Issued
01/22/2018	4:19 PM	Pending Clerk Review
Fine:	\$0	
Bond:	\$0	

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	RCR2018-095171
Court	Reno Criminal
Date Assigned	01/22/2018
Judicial Officer	Lynch, Patricia

PARTY INFORMATION

Plaintiff **The State of Nevada**

Lead Attorneys

Samples, Peg
775-328-3200 x3285(W)




Defendant **Garcia, Braxton Cheyanne**

Public Defender
Court Appointed
775-337-4800(W)







DATE

EVENTS & ORDERS OF THE COURT

INDEX

01/22/2018	 Criminal Complaint Filed \$100,000.00
01/22/2018	 Affidavit in Support of Warrant Filed
01/22/2018	 Warrant of Arrest Issued
03/08/2018	Arraignment (9:30 AM) (Judicial Officer: Pearson, Scott) <i>Parties Present: Defendant Garcia, Braxton Cheyanne</i>
03/08/2018	Warrant Executed

RENO CRIMINAL
CASE SUMMARY
CASE NO. RCR2018-095171

03/08/2018	 Probable Cause Affidavit Reviewed by Judge (Judicial Officer: Pearson, Scott) <i>WASO0075703C</i>								
03/08/2018	 Nevada Pre-trial Risk Assessment High								
03/08/2018	Bail Set (Judicial Officer: Pearson, Scott) <i>Bail Set at \$10,000.00 bondable. Defendant Remanded to the Custody of the Washoe County Sheriff.</i>								
03/08/2018	 Public Defender Appointed								
03/08/2018	Warrant Returned								
04/03/2018	 Ex Parte <i>Letter from Defendant- Sent to PD and DA</i>								
04/12/2018	General Case Note <i>Submitted Ex Parte to Judge Lynch on this date.</i>								
04/24/2018	 Ex Parte <i>Judge Lynch's response to Ex Parte</i>								
04/26/2018	 Preliminary Hearing (1:30 PM) (Judicial Officer: Pearson, Scott) <i>03/15/2018 Continued to 04/26/2018 - MSC Reset/Continuance - The State of Nevada; Garcia, Braxton Cheyanne</i> <table border="0" style="margin-left: 40px;"><tr><td style="padding-right: 40px;"><i>Parties Present: Plaintiff</i></td><td><i>The State of Nevada</i></td></tr><tr><td><i>Deputy District Attorney</i></td><td><i>Samples, Peg</i></td></tr><tr><td><i>Defendant</i></td><td><i>Garcia, Braxton Cheyanne</i></td></tr><tr><td><i>Public Defender</i></td><td><i>Flavin, Erica</i></td></tr></table>	<i>Parties Present: Plaintiff</i>	<i>The State of Nevada</i>	<i>Deputy District Attorney</i>	<i>Samples, Peg</i>	<i>Defendant</i>	<i>Garcia, Braxton Cheyanne</i>	<i>Public Defender</i>	<i>Flavin, Erica</i>
<i>Parties Present: Plaintiff</i>	<i>The State of Nevada</i>								
<i>Deputy District Attorney</i>	<i>Samples, Peg</i>								
<i>Defendant</i>	<i>Garcia, Braxton Cheyanne</i>								
<i>Public Defender</i>	<i>Flavin, Erica</i>								
04/26/2018	Bound Over Charges: 1								
04/26/2018	Notice of Bindover								
04/26/2018	Proceedings Certified to the Second Judicial District Court								
04/26/2018	Disposition (Judicial Officer: Lynch, Patricia) 1. Child abuse or neglect, w/substantial bodily or mental harm Bound Over								

Instrument#
9

JUDGE PATRICIA A. LYNCH
Department 1

JUDGE PETER J. SFERRAZZA
Department 2

JUDGE RYAN SULLIVAN
Department 3



JUDGE SCOTT E. PEARSON
Department 4

JUDGE DAVID W. CLIFTON
Department 5

JUDGE PIERRE A. HASCHEFF
Department 6

RENO JUSTICE COURT

DEXTER THOMAS, COURT ADMINISTRATOR
One South Sierra Street
Reno, Nevada

April 03, 2018

INTEROFFICE

EX PARTE M E M O R A N D U M

To: Public Defender and/or District Attorney

From: Reno Justice Court

Regarding: Braxton Cheyanne Garcia, RCR2018-095171, DA# 16-14489

The defendant noted above submitted the attached correspondence for Judge Patricia Lynch consideration. Because it is considered ex parte, a copy of the correspondence has been made and attached for both the Public Defender and District Attorney. After ten (10) days, the correspondence will be given to Judge Patricia Lynch for review.

Thank you

Jacqueline Valle

*Fugitive document as
Defendant has an attorney.
PAL
4/24/18*

JUDGE PATRICIA A. LYNCH
Department 1

JUDGE PETER J. SFERRAZZA
Department 2

JUDGE RYAN SULLIVAN
Department 3



JUDGE SCOTT E. PEARSON
Department 4

JUDGE DAVID W. CLIFTON
Department 5

JUDGE PIERRE A. HASCHEFF
Department 6

RENO JUSTICE COURT

DEXTER THOMAS, COURT ADMINISTRATOR
One South Sierra Street
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Thank you

Jacqueline Vulture

1. Case No # RCB 2018-095171

2. Dept No # 1

3. This document does not contain the SSN # of any person.

4.

5. IN THE JUSTICE COURT OF RENO TOWNSHIP FOR THE COUNTY OF WASHOE

6. STATE OF NEVADA

7. In The Matter of the Application

CASE NO# RCB 2018-095171

8. of Braxton Garcia FOR WRIT of

Dept No# 1

9. HABEAS CORPUS.

10. Comes Now Braxton Garcia Petitioner in prose NRS 12.015

11. The Petitioner's imprisonment and restraint of his liberty is at

12. Washoe County Jail by Chuck Allen, Sheriff of Washoe County.

13. The imprisonment and restraint of Petitioner is unlawful in that:

14. He was not afforded a Preliminary Hearing within 15 days as

15. required by NRS 171.196(2). The 60 day limitation for bringing the

16. Petitioner to trial is waived if the petition is not been decided within

17. 15 days before the day set for trial. Petitioner consents that the Court

18. may without notice or hearing continue the trial indefinitely or to a

19. date designated by the Court.

20. FACTS OF THE CASE:

21. On 3/15/18 Petitioner made his first appearance before the

22. Reno Justice Court and provided with the criminal complaint that alleged

23. a charge of NRS 12.015.

24. According to appointed counsel petitioner had a Mandatory Status Con-

25. ference on 3/15/18 at Reno Justice Court. However, counsel failed

26. to advise Petitioner that the MSC would deprive him his "statutory

27. right to a Preliminary Hearing pursuant to NRS 171.196(2)" i.e Preliminary

28. Hearing within 15 days after first appearance.

29.

FILED

18 APR -3 PM 3:02

DEXTER THOMAS
RENO JUSTICE COURT

BY: [Signature]

WASHOE

1. GROUND ONE

2. PETITIONER ALLEGES THAT HIS DUE PROCESS WAS VIOLATED
3. WHEN HE WAS DENIED HIS STATUTORY RIGHT TO A PRELIMINARY
4. HEARING AS COMMANDED BY NRS 176.196 (2)

5. ARGUMENT:

6. The statute in relevent part reads:

7. "If the defendant does not waive examination the magistrate
8. shall hear the evidence within 15 days unless for good cause shown
9. he extends such time."

10. In the case at bar, the Petitioner has not waived examination
11. or has he authorized appointed counsel to waive examination. Moreover,
12. "no good cause has been shown to extend such time. Procedural Due
13. is clearly violated causing "Prejudice to the Petitioner."

14. CONCLUSION

15. The Petitioner has been "Prejudiced" in many ways. Since it is clear
16. that the time within which the hearing must have been afforded
17. began to run _____ 2013, and since the delay was purposeful
18. and oppressive this case should be dismissed with prejudice.

19. VERIFICATION: DM

20. ¹⁵¹ DM

21. Braxton Garcia

1. Case No# RCR 2018-095171

2. Dept No# 4

3. DECLARATION OF:

4.

5. I am the Defendant in the above entitled caption. I and the
6. appointed counsel have a conflict of interest. This conflict was
7. created by appointed counsel when I was advised by counsel
8. that I would have a Mandatory Status Conference ("MSC") at the
9. Reno Justice Court on 3/15/18. I was not duly advised that
10. the MSC would forego my right to have a Preliminary Hearing within
11. 15 days.

12. If I had been so advised by appointed counsel I would had
13. not agreed to have a MSC with the State of Nevada. As a
14. direct result of the MSC my defense witnesses are no longer
15. available to give testimony in my behalf.

16. For these reasons, and others, it is a conflict of interest between
17. the Washoe Public Defender's office and me. For these reasons
18. I declare I want to represent myself in this criminal matter.

19.

20. I declare under penalty of perjury that the above is true and
21. correct.

22.

23. DATED: 3/25/18

131 

24.

Braxton Garcia

25.

26.

27.

28.

1. Case No # RCR 2018-095171

2. Dept No # 1

3.

4. IN THE JUSTICE COURT OF RENO TOWNSHIP FOR THE COUNTY

5. OF WASHOE, STATE OF NEVADA

6.

7. Braxton Cheyenne Garcia
Defendant.

8.

Case No RCR 2018-095171

9.

v.

MOTION TO SET A HEARING

10. STATE OF NEVADA,

DATE FOR WRIT OF HABEAS

11.

Plaintiff,

CORPUS.

12.

13. Now Comes Braxton Garcia in pro se who moves this Court

14. for an order to set a hearing date for the attached Writ of

15. Habeas Corpus.

16.

17.

Respectfully submitted

18.

131 

19.

Braxton Garcia

20.

21.

22.

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27.

28.

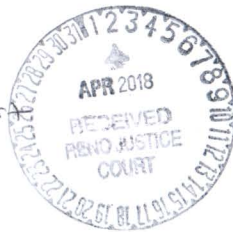
29.

Braxton garcia #1086499
N.N.C.C
PO box 7000
Curson city NV 89702

RENO NV 895
29 MAR 2018 PM 2 T



Reno Justice Court
1 South sierra st
Reno NV, 89512



8950131528 C026



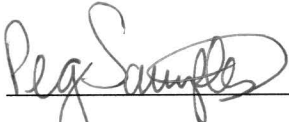
**IN THE JUSTICE'S COURT OF RENO TOWNSHIP
COUNTY OF WASHOE, STATE OF NEVADA**

Defendant: Braxton Cheyanne Garcia

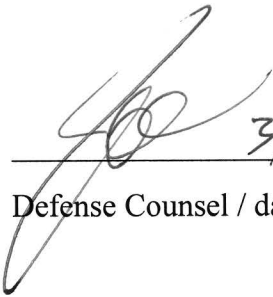
Case No.: RCR2018-095171

Department 1

Parties stipulate to set the above case for a Preliminary Hearing on 4/26/2018 at 1:30 PM.

 3/15/18

District Attorney / date

 3/15/18

Defense Counsel / date

**ARREST REPORT AND
DECLARATION OF PROBABLE CAUSE**

WASO 0075703 C

P-AM

18-4038

ARRESTING AGENCY

WCS ☒ NHP ☐
RPD ☐ PP ☐
SPD ☐ UNR ☐
OTHER _____

COURT OF JURISDICTION _____
RENO JUSTICE COURT

CASE # 18-1170

PHOTO # _____

FILED

08 Mar 2018 8:34 am

Dexter Thomas
Reno Justice Court

PRINT CLEARLY

ARRESTEE'S (Last, First, Middle)
NAME

GARCIA, BRAXTON CHEYANNE

AKA/ALIAS

NONE

RESIDENCE (Street, City, State, Zip)
ADDRESS

403 BURNS ST RENO, NV 89502

RACE
☒ White
☐ Black
☐ Unknown
☐ Indian
☐ Asian

SEX
☒ Male
☐ Female

ETHNICITY
☐ Hispanic
☒ Non-Hispanic
☐ Unknown

DOB 09-73-90

SS [REDACTED]

POB SAN ANTONIO, TX

AGE 27

HT.

5'9"

WT

210

HAIR

BRO

EYES

BRO

OCCUPATION &
BUS ADDRESS

NSP INMATE

HOME PHONE

DRIV LIC

DRIV LIC
STATE

ARRESTEE'S VEH

☐ Stored ☐ Left at Scene
☐ Not Applicable ☐ Impounded ☐ Held to Oth Per

BUS PHONE

TEXT OF KIN

SHANNON MENDOZA

SCARS, MARKS, TATTOOS

VIRGIN MARY ON RIGHT NECK

ARREST DATE 3-7-18 TIME 0922 LOCATION 911 PARK BL RENO, NV 89512

OFFENSE DATE

TIME

LOCATION

NRS/ORD #

NOC

BAIL

WARRANT # & DATE

CHARGE

F=Felony, G=Gross Misd, M=Misd F-G-M

200.508.1A

SS 222

100,000.00

REC 2018-095171

1 CHILD ABUSE WITH SBH

A

ARRESTING OFFICER(S)
AND ID #

STOESS 41960

TRANSPORTING OFFICER(S)
AND ID #

NSP

PRIVATE PERSON MAKING
THE ARREST (Citizen Arrest)

REVIEWING SUPERVISOR
AND ID #

The undersigned, MARK STOESS, a police officer, of WCSO, hereby declares under penalty of perjury, that the above-named defendant has been arrested on probable cause and is subject to detention for the above-listed offense(s). Either personally or upon information and belief this officer learned the following facts and circumstances which support the arrest and detention:

ON 3-7-18 I WAS ASSIGNED TO INTAKE AT THE WASHOE COUNTY JAIL. NEVADA DEPT OF CORRECTIONS TRANSPORTED BRAXTON GARCIA TO THE JAIL. HE WAS IDENTIFIED BY PREVIOUS WCSO MUGSHOTS. GARCIA HAD AN ACTIVE WARRANT OUT OF RENO JUSTICE COURT. THE WARRANT WAS CONFIRMED THROUGH RPD RECORDS. GARCIA WAS BOOKED ON THE WARRANT.

REL TO _____ DATE _____ BY _____
DISSEMINATION IS RESTRICTED TO CRIMINAL JUSTICE AGENCIES ONLY. SECONDARY DISSEMINATION TO NON-CRIMINAL AGENCIES IS PROHIBITED.

HEREFORE, Declarant requests that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charge is a felony or gross misdemeanor) or for trial (if charge is a misdemeanor).

age _____ of _____ DECLARANT [Signature] I.D.# 1960

VIEWED FOR PROBABLE CAUSE (PC)

FOUND ☒ PC NOT FOUND ☐ DATE _____ TIME _____

MAGISTRATE

DEFENDANT ORDERED RELEASED, DATE _____

MAGISTRATE

5144
Peg Samples
DA No. 16-14489
Agency Number
RPD RP15-024658

RCR2018-095171
Department No. 1

15-24658

**IN THE JUSTICE COURT OF RENO TOWNSHIP,
COUNTY OF WASHOE, STATE OF NEVADA**

WARRANT OF ARREST

Conf for
Kelly WESO
3/2/18 0936
(KID)

State of Nevada

TO ANY SHERIFF, CONSTABLE, MARSHALL, POLICEMAN, OR PEACE OFFICER IN
THE STATE OF NEVADA:

A COMPLAINT upon oath has this day been laid before me by Peg Samples alleging the crime (s) of
CHILD ABUSE WITH SUBSTANTIAL BODILY HARM, a violation of NRS 200.508.1a2, a felony
(NOC 55222) has been committed and accusing **BRAXTON CHEYANNE GARCIA** thereof. Now,
therefore, you are hereby commanded forthwith to arrest the above named DEFENDANT and bring that
person before me at my office 1 South Sierra Street Reno Nevada 89501, in said County of Washoe; or
in case of my absence or inability to act, before the nearest or most accessible Magistrate in the County.

Dated at my office in Reno Township, Washoe County, Nevada on January 22, 2018

Patricia A. Lynch

Patricia Lynch, Justice of the Peace
Department 1

The Defendant is admitted to bail in the amount of \$100,000.00

THIS WARRANT MAY BE SERVED DAY OR NIGHT

RECEIVED

JAN 24 2018

IN THE JUSTICE COURT OF
WASHOE COUNTY, STATE OF NEVADA
EN EL TRIBUNAL DE JUSTICIA DEL
CONDADO DE WASHOE, ESTADO DE NEVADA

THE STATE OF NEVADA,
EL ESTADO DE NEVADA,

Plaintiff/ Demandante,

Braxton Garcia vs.
Defendant/Acusado

) APPLICATION FOR APPOINTMENT
) OF PUBLIC DEFENDER

) SOLICITUD DE ASIGNACIÓN DEL DEFENSOR
) PÚBLICO

) CASE NO. RCR 2018-095171
) CAUSA No.
) PCN

I hereby apply for appointment of the Washoe County Public Defender and **declare under penalty of perjury**: (1) I am indigent and I am without financial means to hire an attorney. Mediante la presente solicito la asignación del Defensor Público del Condado de Washoe y **declaro bajo pena de perjurio**: (1) que soy indigente y (2) que no tengo los medios económicos para contratar a un abogado.

I receive government assistance yes no, specifically NSP Inmate.
Recibo ayuda del gobierno si no, específicamente

My weekly household income is _____ the total number of people in my household is _____ and my total assets are _____
Los ingresos semanales de mi familia son de _____ el número de personas que viven en mi hogar es _____ y mi capital total es de _____

[Signature]
DEFENDANT/ACUSADO

WITNESSED: 3/7 2018 MST
TESTIGO COURT STAFF or JUDGE
PERSONAL JUDICIAL O JUEZ

ORDER

The Court has reviewed this Application executed under penalty of perjury. Good cause appearing it is hereby ordered that:

☐ the Application is DENIED. The Court finds the Defendant is not indigent.

Comment:

☒ the Application is GRANTED. The Court finds that the Defendant is without means to employ an attorney or otherwise determines that representation by the Washoe County Public Defender is required. Reimbursement may be ordered by the Justice Court or District Court at a later time. The Washoe County Public Defender is appointed to represent the Defendant on the following condition(s):

DATED: _____ 20____

[Signature]
JUSTICE OF THE PEACE
8:15 am, Mar 08 2018

(\$467/1, \$633/2, \$799/3, \$965/4, \$1,132/5)

Washoe County Pretrial Services Assessment Report

Case Filing

Filed Name GARCIA, BRAXTON CHEYENNE
--

Arrest

Booked Name GARCIA, BRAXTON	Arresting Agency WASHOE COUNTY SHERIFFS OFFICE	Booking Number 18-04038	Arrest Date 03/07/2018
--------------------------------	---	----------------------------	---------------------------

Case Number	NOC	Type	Description	Counts	Court	Bail Amt/Type
RCR2018-095171	55222	F	CHILD ABUSE, W/SBMH	1	RJC	100,000 B
18-4038	99999		IN TRANSIT	1		0

Defendant Information

Sex M	Race HISPANIC	Birthdate 09/13/1990	Age 27	Height 5' 09"	Weight 155	SS Number On File
Address NSP INMATE RENO, NV Telephone (775) - Lives With				Residence County: 22 Yr 00 Mo Born SAN ANTONIO, TX, UNITED STATES		Primary Language ENGLISH Interpreter? N
Time at Current Address 01 Yr 05 Mo Relationship				ID Number	Type	Expiration Date
Marital Status SINGLE How Long				Military Service NONE Discharge		
Employment/Support Status Un-Employ Occupation				How Long 01/05 Employer Telephone		

Defendant Justice Identifier Codes/Criminal History

FBI Number	SID Number							
Arrests	Violent Fels	Felonies	Violent Misd	Misdemeanors	MMSD	Traffic	DUI	Pending

Comments

PRIOR SUCCESSFUL PRETRIAL SUPERVISION, FEBRUARY 2012.

THE DEFENDANT REPORTS BEING IN THE RENO/SPARKS AREA FOR THE LAST 27 YEARS AND IN CUSTODY FOR THE PAST YEAR AND 5 MONTHS. HE STATED HE HAS BEEN UNEMPLOYED FOR THE PAST YEAR AND 5 MONTHS DUE TO BE INCARCERATED. HIS PERSONAL INFORMATION WAS NOT VERIFIED. HIS CRIMINAL HISTORY WAS REVIEWED AND RESULTED IN A NPRA SCORE OF 9. THE DEFENDANT REMAINS IN CUSTODY PENDING FURTHER REVIEW OF THE WARRANT. MST

Assessment Status

Risk Score 9	Risk Level HIGH RISK	Assessment No Data	Initials MSTANKO
-----------------	-------------------------	-----------------------	---------------------

020

Peg Samples
DA No. 16-14489
Agency Number
RPD RP15-024658

RCR2018-095171
Department No. 1

**IN THE JUSTICE COURT OF RENO TOWNSHIP,
COUNTY OF WASHOE, STATE OF NEVADA**

WARRANT OF ARREST

State of Nevada

TO ANY SHERIFF, CONSTABLE, MARSHALL, POLICEMAN, OR PEACE OFFICER IN
THE STATE OF NEVADA:

A COMPLAINT upon oath has this day been laid before me by Peg Samples alleging the crime (s) of CHILD ABUSE WITH SUBSTANTIAL BODILY HARM, a violation of NRS 200.508.1a2, a felony (NOC 55222) has been committed and accusing **BRAXTON CHEYANNE GARCIA** thereof. Now, therefore, you are hereby commanded forthwith to arrest the above named DEFENDANT and bring that person before me at my office 1 South Sierra Street Reno Nevada 89501, in said County of Washoe; or in case of my absence or inability to act, before the nearest or most accessible Magistrate in the County.

Dated at my office in Reno Township, Washoe County, Nevada on January 22, 2018

PATRICIA A. LYNCH

Patricia Lynch, Justice of the Peace
Department 1

The Defendant is admitted to bail in the amount of \$ 100,000.00.

THIS WARRANT MAY BE SERVED DAY OR NIGHT

RETURN

I, _____ hereby certify that I have received this Warrant on the _____ day
of _____, _____, and served same on Defendant _____,
placing h_____ in the custody of the Sheriff of Washoe County, Nevada, until bail in the sum of
\$_____ as set by the Court has been posted.

DATED this _____ day of _____, _____.

Arresting Officer



Christopher J. Hicks
District Attorney

P.O. Box 11130
Reno, Nevada 89520

775.328.3200
washoecounty.us/da

REQUEST FOR NCIC AND CJIS ENTRIES
EXTRADITION AND TRANSPORT AUTHORIZATION

AGENCY: RPD RP15-024658

CASE NO: RP15-024658

Attention: Warrants

DA FILE NO: 16-14489

DATE: January 22, 2018

WARRANT NO:

DEFENDANT: BRAXTON CHEYANNE GARCIA, also known as BRAXTON
CHEYANNE GARCIA

DOB: 09/13/1990

SSN: [REDACTED]

N C I C ENTRIES (Felonies): I will extradite:

- ☒ Anywhere within USA, except Hawaii and Alaska
- ☐ West of Mississippi only MN, IA, MO, AR, LA, ND, SD, NB, KS, OK, TX
- ☐ MT, WY, CO, NM, ID, UT, AZ, WA, OR, CA, NV
- ☐ Western States only CA, OR, WA, ID, WY, MT, CO, UT, AZ, NM, NV
- ☐ Adjacent States only CA, OR, ID, UT, AZ, NV
- ☐ California and Nevada only
- ☐ Other:

C J I S ENTRIES (Gross/Simple Misdemeanors): I will transport:

- ☐ Within Nevada only
- ☐ Within Region 2 (Western NV counties)
- ☐ Other:

Any special instructions to be entered on NCIC or CJIS:

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

By: Reg. Sample

DA #: 16-14489
Court Case #:
Dept:

FILED

18 JAN 22 PM 2:04

DEXTER THOMAS
RENO JUSTICE COURT
BY L. Oberman
DEPUTY

1 IN THE MATTER OF AN APPLICATION
2 FOR AN ARREST WARRANT
3 FOR: BRAXTON CHEYANNE GARCIA,
4
5 _____/

6 AFFIDAVIT IN SUPPORT OF
7 COMPLAINT AND WARRANT OF ARREST

8 STATE OF NEVADA)
9) ss.
COUNTY OF WASHOE)

10 JOSHUA WATSON does hereby swear under information and
11 belief and penalty of perjury that the assertions of this affidavit
12 are true.

13 1. That your affiant is a duly authorized and acting peace
14 officer employed by the Reno Police Department and in that capacity
15 has become familiar with the criminal investigation and reports
16 compiled in Reno Police Department case number RP15-024658; that
17 further, your affiant is informed and believes and thereupon alleges
18 the following to be a sufficient representation of facts to establish
19 probable cause to believe that BRAXTON CHEYANNE GARCIA has committed
20 the crime of Child Abuse causing Substantial Bodily Harm, which was
21 committed on or about November 13, 2015, in Washoe County, Nevada.

22 2. That the criminal investigation includes the following
23 details: On 11/13/2015 at about 0907 hours, Officer Durio responded
24 to 840 Brinkby #308, Reno, Washoe County, Nevada, in reference to an
25 injured child. Upon arrival, Shannon Mendoza and her 10 month old
26 son, L.S. were getting in the ambulance to respond to the hospital.

1 Following examination and testing at Renown Medical Center, it was
2 learned that the child suffered from a complex depressed skull
3 fracture in the occipital region with an intra-hemispheric subdural
4 hematoma.

5
6 During interviews with Officers and Detectives, it was
7 learned that Defendant Braxton Garcia was home alone with 10 month
8 old L.S., his roommate's son, on 11/13/15.

9
10 During a brief interview in the residence, Garcia told
11 Officer Durio that this morning, Garcia was awoken by the sound of
12 L.S. screaming and crying. Garcia said he immediately got out of bed
13 and rushed into L.S.'s room and picked him up from his bassinet (Pack
14 N Play style crib). Garcia said he immediately noticed that L.S. was
15 having difficulty holding his own head up, explaining that L.S.
16 appeared to be "sort of out of it." While holding him, Garcia said
17 he felt what seemed like a bump on the back of his head.

18
19 Garcia began explaining that L.S. has a habit of banging
20 his own head against the wall while sitting in his bassinet. When he
21 first entered the room, he noticed that L.S. was right next to the
22 wall. Garcia said he then called Shannon to tell her what was going
23 on at which time Shannon told him to call 911.

24
25 Shannon then rushed home and arrived at the apartment at
26 the same time that medics arrived. Garcia said that Shannon took L.S.

1 from him and began walking him towards the front door to meet REMSA,
2 at which time L.S. vomited on Shannon's shirt as well as onto the
3 floor of the apartment. They all then went outside and downstairs at
4 which time Garcia saw Officer Durio arrive on scene.
5

6 While walking in the residence with Garcia, Officer Durio
7 noticed that the bassinet was positioned in the corner of the bedroom
8 with two sides of the bassinet near the walls and that the bassinet
9 was approximately three inches away from the two adjacent walls.
10 Durio stated he observed Garcia press against the bassinet, sliding
11 it into the corner against the two walls, while indicating to him
12 that the bassinet is usually against the walls.
13

14 During an interview with Detectives at the RPD station,
15 Shannon explained she was on the bus on her way back home from
16 dropping Garcia's daughter at school when she received a phone call
17 from Garcia at about 0851 hours. Shannon stated when Garcia called
18 her he explained to her L.S. was injured. When Shannon asked Garcia
19 what had happened, she said he replied he had been in their bedroom
20 still sleeping and had awakened to a thud or loud noise from the wall
21 shared between the two bedrooms. According to Shannon, Garcia stated
22 he believed L.S. had fallen in his bassinet and had struck the wall,
23 so he went in to check on him.
24

25 Shannon stated Garcia had told her L.S. had not immediately
26 started crying after Garcia heard the loud noise, but several seconds

1 later began crying, prompting Garcia to go into the other bedroom to
2 check on him.

3
4 Shannon stated Garcia had been initially "hysterical" and
5 hard to understand when she first began speaking to him over the
6 phone. She had to ask him to calm down before she could begin
7 understanding what he was saying. While Shannon was describing her
8 phone conversation with Garcia, she stated he had told her something
9 to the effect of "I'd feel bad if he died because he's not my kid."

10
11 Shannon stated Garcia went on to tell her over the phone he
12 had picked up L.S. and immediately recognized he was not acting
13 normal, his eyes appeared to be rolling back and he had a bump on the
14 back of his head, all while L.S. continued to cry. Shannon stated
15 she then called her father and informed him of what had happened.
16 She then called 911 and was informed by dispatch someone from that
17 address had already called.

18
19 Shannon stated she arrived home prior to either police or
20 REMSA's arrival and met Garcia in the apartment in the living room.
21 Shannon stated Garcia was still holding L.S. in his arms while Garcia
22 was standing in the living room. She took L.S. from Garcia after
23 seeing medics had arrived. She stated she carried L.S. down to the
24 ambulance where he began receiving treatment and eventually was
25 transported to Renown.

1 Shannon described that when she left the home that morning,
2 the pack n play (bassinet) was in the same position she had placed it
3 the night before, moved away from the walls and dresser with the
4 pillow still in place between the dresser and the pack n play. This
5 statement is consistent with what was observed by Officer Durio.
6

7 I conducted a consensual interview with Garcia at the RPD
8 station. Garcia initially stated that he was awakened by L.S.
9 screaming and when Garcia entered the room, L.S. was sitting up in
10 his crib with his head against the wall.
11

12 Garcia described how L.S. consistently bangs his head
13 against the wall for attention. Garcia said he previously told L.S.'s
14 mother, Shannon, that they should move the crib away from the wall so
15 L.S. does not injury himself. However, on 11/13/15, Garcia stated the
16 crib was against the wall, (in conflict with what Officer Durio
17 observed as the first responder and with the statement from Shannon).
18

19 As the interview continued, Garcia became upset and at that
20 point was detained. He was read his Miranda Admonishment and he
21 consented to continue with the interview. Garcia stated he lied about
22 exactly what happened, as he did not want to seem like a "bad
23 parent."
24

25 Garcia then explained that he has a herniated disc in his
26 back and has severe back pain. A few days prior to 11/13/15, Garcia

1 had run out of his prescribed pain medication, and was self
2 medicating with large doses of ibuprofen. Garcia stated that on the
3 morning of 11/13/15, while Shannon was taking his daughter to school,
4 Garcia was sleeping in the room next to L.S.'s room.

5
6 Garcia confirmed that he did wake up to L.S. crying, and he
7 went to see what was wrong. Garcia said he picked L.S. up in both
8 arms, and was bouncing L.S. lightly to try and calm him down, which
9 Garcia demonstrated during the interview.

10
11 Garcia then stated that his back "gave-out" and he suddenly
12 pitched forward, while still holding L.S. in both arms. As this
13 happened, Garcia said the back of L.S.'s head possibly hit the
14 dresser, and then Garcia continued falling with L.S., where he landed
15 on top of him on the carpeted floor.

16
17 Braxton Garcia's accounting of L.S.'s injury was
18 inconsistent across the several statements he made to Officers and
19 Detectives, with the last story involving his back giving out.
20 According to medical records, prior to this incident Garcia has
21 documentation of a claimed back injury from a possible work injury.

22
23 Garcia ultimately stated he was asleep and awakened by the
24 cries of L.S., however, his cell phone activity shows he was actively
25 texting other parties for up to 26 minutes prior to contacting
26 Shannon via text, 34 minutes prior to calling Shannon, and 41 minutes

1 prior to calling 911. He also made prior statements to Officer Durio
2 and Shannon that he heard banging prior to any cries.
3

4 As noted in the photos of the apartment taken during the
5 investigation, the dresser to the right of L.S.'s crib, (which
6 appeared to have several items knocked off), stands at about 34
7 inches high. Braxton Garcia is about 69 inches tall, and stated he
8 picked up L.S. in both arms and was cradling and rocking with him.
9

10 During the recorded interview, Garcia demonstrated how he
11 was rocking L.S., which would place the child in the lower to mid
12 chest area of Garcia. If holding L.S. at this level, about 40 to 50
13 inches above the ground, the height difference between L.S.'s
14 position and the top of the dresser is only about 6 to 16 inches. A
15 fall of that limited height without added velocity is not consistent
16 with the severe injuries of a complex skull fracture and brain
17 bleeding such as was sustained by L.S..
18

19 While in the interview at the Reno Police Department,
20 Garcia suddenly acted as if he were in pain and claimed he had a
21 medical issue with his back. It was observed that Garcia was unable
22 to neither stand without assistance nor walk under his own power for
23 over 20 minutes. This is in extreme contrast to him standing and
24 holding L.S. as stated by Shannon when she arrived, only a few
25 minutes after he claimed to have dropped him due to his back going
26 out, as Garcia explained in his last interview.

1
2 According to interviews with the mother, Shannon, and
3 Braxton Garcia, they both indicated L.S. had no signs or symptoms
4 prior to the morning of 11/13/15. L.S.'s prior medical history shows
5 neither traumatic injury nor symptoms that would indicate a traumatic
6 head injury prior to 11/13/15, and no preexisting head trauma.
7

8 Doctor K. Macleod, a Pediatrician specializing in child
9 abuse, evaluated L.S. and reviewed his medical records. Within her
10 report following the 11/14/15 visit with L.S., Dr. Macleod noted the
11 following:

12 "The patient's injuries are extremely concerning for non-
13 accidental trauma, looking at the mechanism provided by Detective
14 Watson of an adult male falling from standing height and perhaps
15 hitting the patient back of his head against the dresser on the way
16 down. We certainly have to consider that that might be a possible
17 explanation for a skull fracture. However, the extent of this skull
18 fracture and more importantly the extent of the intracranial injury,
19 as evidenced by the subdural hemorrhage and the decreased level of
20 consciousness of this child: Could not likely be explained by the
21 fall from standing height without significant energy and velocity
22 behind it causing this type of injury in the child. In other words,
23 one would expect that it would require some sort of significant
24 movement with this child or force behind the fall other than a
25 straight fall from standing height to where the child's head hit a
26 chest height dresser on the way down in order to create this type of

1 complex skull fracture along with this type of intracranial injury
2 and this type of neurologic damage to the child that we are seeing
3 right now."
4

5 Within her report following the 11/19/15 visit with L.S.,
6 Dr. Macleod noted the following:

7 "Still not neurologically completely normal. Given the
8 extent of injury and the force required to produce this injury, non-
9 accidental trauma remains of grave concern."
10

11 On 12/29/2015, L.S. was seen by Dr. Jay Morgan at Sierra
12 Neurosurgery Group for evaluation of his head injury. Dr. Morgan
13 noted the following in his report:

14 "'L.S.' is seen back in the clinic today for followup. I
15 saw him initially at Renown after he had been traumatized. There was
16 very little doubt that he had been abused in my opinion."
17

18 After reviewing the medical reports, it appears that while
19 a fall from a standing position and striking the child's head on a
20 chest height dresser may account for some type of injury, it would
21 require a great deal more force and velocity to cause the injuries
22 sustained by L.S., indicating non-accidental trauma is the cause of
23 the injuries to L.S.'s head. This is further supported by the medical
24 opinions of Dr. Macleod and Dr. Morgan.
25
26

1 L.S. required over 2 weeks of combined hospital stays, two
2 brain/head surgeries, bone grafts, speech and other therapies, has a
3 documented loss of brain volume, has a shunt in his brain and is
4 currently required to wear a protective helmet when he is not
5 sleeping as a result of the trauma sustained on 11/13/2015.
6

7 Braxton Garcia was admittedly the only person in the home
8 at the time of the injury, and admitted to holding the child in his
9 arms during the injury, and the scene indicates one of the dressers
10 was the possible mechanism of injury.
11

12 Based on a long term evaluation of the initial details and
13 the continued medical reports regarding Victim L.S.'s long term 10-
14 month treatment for the initial traumatic head injury, it is
15 concluded that this traumatic head injury created a substantial risk
16 of death and caused serious, permanent disfigurement and/or
17 protracted loss and/or impairment of the function of L.S.'s brain and
18 prolonged physical pain, as a result of numerous surgeries, healing
19 times and therapies over the course of nearly over 10 months, which
20 meets the NRS 0.060 definition of Substantial Bodily Harm.
21

22 It is determined that on or about 11/13/15 just before 0900
23 hours, Braxton Garcia did willfully and unlawfully use great force
24 upon the child, L.S., causing severe injury in the form of a complex
25 depressed skull fracture in the occipital region with an intra-
26

1 hemispheric subdural hematoma, in violation on NRS 200.508.1(a.2),
2 Child Abuse causing Substantial Bodily Harm, a Felony.

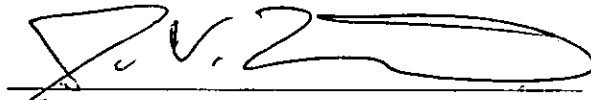
3 3. That based upon the foregoing information, your affiant
4 has probable cause to believe that the crime of NRS 200.508.1(a.2),
5 Child Abuse causing Substantial Bodily Harm, a Felony, has been
6 committed by BRAXTON CHEYANNE GARCIA

7 WHEREFORE, your affiant prays that a Warrant of arrest issue for
8 BRAXTON CHEYANNE GARCIA
also known as

9 BRAXTON CHEYANNE GARCIA .

10 AFFIRMATION PURSUANT TO NRS 239B.030

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

13 
14

15 JOSHUA WATSON

16
17 STATE OF NEVADA)

18) ss.

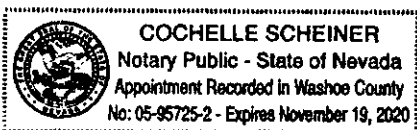
19 COUNTY OF WASHOE)

20 Subscribed and sworn to before me this 18 day of

21 JANUARY, 2018.
22

23 Cochelle Scheiner

24 NOTARY PUBLIC
25



FILED

DA #16-14489

18 JAN 22 PM 2:04

RPD RP15-024658

IN THE JUSTICE COURT OF RENO TOWNSHIP

DEAN L. THOMAS
RENO JUSTICE COURT
BY P. Cherman

IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No.: RCR2018-09571

v.

Dept. No.: 1

BRAXTON CHEYANNE GARCIA,
also known as
BRAXTON CHEYANNE GARCIA,

Defendant.

CRIMINAL COMPLAINT

PEG SAMPLES of the County of Washoe, State of Nevada,
verifies and declares upon information and belief and under penalty
of perjury, that BRAXTON CHEYANNE GARCIA also known as BRAXTON
CHEYANNE GARCIA, the defendant above-named, has committed the
crime(s) of:

COUNT I. CHILD ABUSE WITH SUBSTANTIAL BODILY HARM, a
violation of NRS 200.508.1a2, a category B felony, (55222) in the
manner following, to wit:

That the said defendant BRAXTON CHEYANNE GARCIA, on or
about November 13th, 2015, within the County of Washoe, State of
Nevada, did willfully and unlawfully, being an adult person, cause
L.S., a child of the age of approximately ten months, to suffer
unjustifiable physical pain as a result of abuse, in that the
defendant forcefully struck L.S. about the head and/or struck L.S.'s
head onto a hard surface, and/or by means unknown caused injury to

1 L.S. that fractured his skull and resulted in intracranial injuries;
2 and

3 The defendant's aforementioned action(s) caused L.S. to suffer
4 substantial bodily harm in that the skull fracture and intracranial
5 injuries caused protracted loss or impairment of the function of
6 L.S.'s bodily member or organ, and/or caused L.S. to suffer prolonged
7 physical pain.

8
9
10
11 AFFIRMATION PURSUANT TO NRS 239B.030

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

14
15 DATED this 22nd day of January, 2018.

16
17 

18 PEG SAMPLES
19 DEPUTY DISTRICT ATTORNEY

20 PCN: -GARCIA

21 Custody:
22 Bailed:
Warrant:

23 *

24 District Court Dept:
25 District Attorney: SAMPLES
26 Defense Attorney:
Bail \$100,000.00
Restitution:
J

1 **Code 4105**

2
3
4
5 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
6 **IN AND FOR THE COUNTY OF WASHOE**

7 **THE STATE OF NEVADA ,**

8 **Plaintiff,**

Case No. CR18-0273

9 **vs.**

Dept. No. 6

10 **Braxton Cheyanne Garcia,**

11 **Defendant.**

12 **SUPPLEMENTAL PROCEEDINGS**



1
2
3 **ORIGINAL**
4
5

6 IN THE JUSTICE COURT OF RENO TOWNSHIP
7 IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA
8 THE HONORABLE SCOTT PEARSON, JUSTICE OF THE PEACE
9

10 -oOo-

11 THE STATE OF NEVADA,) Case No. RCR2018-095171
12)
12 Plaintiff,) Dept. No. 1
13)
13 -vs-)
14)
14 BRAXTON CHEYANNE GARCIA,)
15 also known as)
15 BRAXTON CHEYANNE GARCIA,)
16 Defendant. /

17 JAVS ELECTRONICALLY RECORDED PROCEEDINGS
18 PRELIMINARY HEARING
19 APRIL 26, 2018
20 RENO, NEVADA

21 APPEARANCES:

22 For the Plaintiff: PEG SAMPLES
23 Deputy District Attorney
24 One South Sierra Street
25 Reno, Nevada 89501

26 For the Defendant: ERICA FLAVIN
Deputy Public Defender
350 South Center Street
5th Floor
Reno, Nevada 89501

(JAVS Electronically Recorded)
Transcribed by: DEBBIE ARNAUD

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Cross-Examination by Ms. Flavin

27

DR. KRISTEN MACLEOD

Direct Examination by Ms. Samples

31

Cross-Examination by Ms. Flavin

60

Redirect Examination by Ms. Samples

63

Recross-Examination by Ms. Flavin

65

EXHIBITS

Marked: Admitted:

(None)

1 RENO, NEVADA, THURSDAY, APRIL 26, 2018, 2:24 P.M.

2 -oOo-

3
4 THE COURT: This is RCR2018-095171, State of
5 Nevada vs. Braxton Garcia. Mr. Garcia is present in custody.

6 Mr. Garcia, you wrote a letter to the Court. It
7 went to Judge Lynch. It doesn't look like she did anything
8 with it. She made sure it was sent, I guess, to the DA and
9 the public defender but did not rule on it. I will now.

10 This is what we would term a "fugitive
11 document". If you have a legal claim with regards to the
12 speedy trial or speedy prelim, that needs to come from your
13 attorney, not from you. It will not be considered if it
14 comes from you. So it is not considered.

15 THE DEFENDANT: Yeah. But she's not going to
16 file it because she knows that my 14th Amendment was violated
17 because, a, Nevada law states that the defendant must have a
18 15 day prelim hearing after his MSC.

19 THE COURT: So --

20 THE DEFENDANT: Now she's trying --

21 THE COURT: So you're wrong on the law. And you
22 didn't even write this. It appears to be some sort of
23 jailhouse or prison house lawyer and then filled in the
24 blanks for you.

25 THE DEFENDANT: No. It was actually a law

1 librarian.

2 THE COURT: So either way, it's wrong. We'll
3 give you your preliminary examination today. Any claim that
4 you have with regards to your counsel being effective will be
5 addressed after this case is done. You can file a writ of
6 habeas corpus challenging that representation. But it is a
7 fugitive document.

8 I've looked at the procedural history of your
9 case. It is a statutory right that, quite frankly, your
10 attorney can waive on your behalf if she feels that there's a
11 strategic advantage of waiting until she gets the actual
12 police reports and other evidence before she does a
13 preliminary hearing. It's not a constitutional right that
14 requires your waiving of that right.

15 So that's all we're going to say about that.
16 We're going to move on to the first question or to the first
17 witnesses.

18 Are there any other preliminary matters that
19 either counsel would like to address?

20 MS. SAMPLES: Not from the State, your Honor.

21 MS. FLAVIN: I'd just like to invoke the rule of
22 exclusion.

23 THE COURT: All right.

24 I know you've all heard it before. The rule of
25 exclusion has been invoked. I still have to admonish you.

1 It's a rule to protect the integrity of the witnesses'
2 testimony. It means you cannot be present while another
3 witness testifies. It also means that you cannot discuss
4 your testimony while this case is pending today because we
5 want your recollection to be your recollection, not affected
6 by what somebody says from the stand or what somebody tells
7 you out in the hallway. You're free to talk to the
8 attorneys, either one, or the investigators but not to each
9 other. No getting your stories straight today.

10 Please call your first witness.

11 MS. SAMPLES: Officer Matt Durio.

12 THE COURT: Good afternoon.

13 THE WITNESS: Hi.

14 THE COURT: Would you please raise your right
15 hand?

16 (Whereupon, the witness was duly sworn.)

17 THE COURT: Thank you. Please be seated.

18 MS. SAMPLES: May I proceed, your Honor?

19 THE COURT: Please.

20 MS. SAMPLES: Thank you.

21

22 **OFFICER MATT DURIO,**
23 called as a witness on behalf of the State,
24 having been duly sworn,
25 was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SAMPLES:

Q Good afternoon, officer. How are you?

A Good. How are you?

Q I'm good. Can you please state your name and spell your last name for the record?

A Yeah. I'm Officer Matt Durio. Last name is spelled D-u-r-i-o.

Q Can you tell us how you're employed?

A With the Reno Police Department.

Q How long have you been there?

A Almost 12 years.

Q What's your current assignment?

A I'm in Patrol.

Q And have you been there your entire 12 years?

A I have.

Q I want to draw your attention back to November 13th of 2015. I know it was a while ago. But were you on patrol at that time frame?

A Yeah. Yes, I was.

Q And directing your attention further to just after 9:00 in the morning, were you dispatched to a call at 580 Brinkby Avenue, Apartment 308?

A Yes, I was.

Q Is that here in Washoe County?

1 A It is.

2 Q What was the nature of that call?

3 A It was a call of a child just under the age of one

4 years old who was -- had an altered level of consciousness,

5 reportedly as a result of hitting his head on a crib.

6 Q Okay. And so were you dispatched there alone or

7 in conjunction with other officers?

8 A On my own initially.

9 Q When you arrived at that location, who or what did

10 you encounter?

11 A Upon my arrival the REMSA paramedics were on

12 scene. I observed a female walking out towards the ambulance

13 carrying a baby along with a male who was following them and

14 of course the paramedics.

15 Q And do you see that male that was following them

16 in court today?

17 A I do.

18 Q Can you point to him and tell me an article of

19 clothing he's wearing?

20 A Yes. He's sitting over there wearing a light blue

21 shirt, polo shirt.

22 MS. SAMPLES: Will the record reflect

23 identification of the defendant?

24 THE COURT: It will so reflect.

25 MS. SAMPLES: Thank you.

1 Q And so you said that there was a woman holding the
2 baby, and she was on her way with the paramedics. Is that
3 correct?

4 A Correct.

5 Q And so when you arrive or maybe shortly after you
6 arrive, do they leave to the hospital?

7 A It was shortly after that. Yes.

8 Q Okay. And what about Mr. Garcia? Does he stay on
9 scene?

10 A He stayed on scene.

11 Q And do you speak with him on scene?

12 A I did.

13 Q At that point is he in custody?

14 A No, he was not.

15 Q Okay. So do you have a consensual interview with
16 him?

17 A Yes.

18 Q What kinds of things are you trying to determine?

19 A Initially just trying to determine what had
20 occurred, what caused the injury to the child.

21 Q Okay. And so I want to talk to you a little bit
22 about the conversation that you had with Mr. Garcia. Does he
23 identify for you that child who's under a year that you'd
24 seen leaving?

25 A Yes. He identified him as a first of Logan. I

1 don't recall the last name.

2 Q Okay. That's okay. We'll just use the first name
3 for this proceeding anyway.

4 And did he indicate to you that he had been
5 alone with Logan that morning?

6 A Yes.

7 Q Where was your understanding, from speaking with
8 Mr. Garcia, about where that woman was?

9 A Her name was Shannon. She was the mother of
10 Logan. He had indicated to me that he has a daughter named
11 Leila. And Shannon had taken the Citifare bus to drop Leila
12 off at school that morning, leaving Logan with the defendant.

13 Q And was it your understanding that it was just
14 Logan and the defendant in the home?

15 A Yes.

16 Q And that's while Shannon took Leila on the city
17 bus?

18 A Yes.

19 Q And so what did he tell you happened that morning?

20 A He said that he was asleep when he was suddenly
21 awoken by a screaming, crying baby. He indicated he rushed
22 into the child's bedroom and picked the child up, noticed
23 that the child was having difficulty holding his head up and
24 just, he said, seemed out of it.

25 Q Okay. And did he also indicate to you that he

1 felt something weird about the child?

2 A Yeah. He said he indicated that he felt a bump on
3 the back of the child's head.

4 Q Did he indicate to you how he thought the child
5 received that bump or anything of that nature?

6 A He had explained that Logan has a habit of sitting
7 in the bassinet and leaning against the netting of the
8 bassinet and striking his head against the wall.

9 Q And you said that this was a child of under one
10 year of age. Is that right?

11 A Yes.

12 Q Did you find that explanation a little bit odd?

13 A Yes, I did.

14 Q What did you do based on that conversation?

15 A Based off that plus some of the conversation with
16 the defendant when I observed the bassinet being moved, I
17 determined it was suspicious enough to contact or have
18 additional officers respond and then ultimately have
19 detectives respond.

20 Q And you said you had some conversation with the
21 defendant about the bassinet or moving the bassinet. Can you
22 tell us what you mean?

23 A Yeah. So when he was explaining to me that Logan
24 has a habit of leaning against the back of a bassinet and
25 hitting his head against the wall, as he explained that, he

1 went up to the bassinet in the bedroom and pressed against
2 the bassinet, pushing against the wall. Prior to him pushing
3 it against the wall, I noticed that the bassinet was in the
4 corner of a wall with two walls on each side of the four
5 sides of the bassinet. However, there were approximately
6 three inches in between the bassinet and both the one wall as
7 well as the second wall. So there was a gap, which to me
8 made it seem unrealistic that a child would be able to press
9 all the way through the netting of the bassinet an additional
10 three inches out and then strike the wall, especially to the
11 point of causing such an injury.

12 Q Was there anything else around the bassinet that
13 you thought the child could have hit his head on?

14 A There was a nightstand up against one of the
15 sides. However, there was a pillow that was pressed in
16 between the bassinet and the nightstand.

17 Q Okay. And so that was where the child could have
18 made contact with the nightstand?

19 A Well, he would have had to have gone through the
20 pillow. But, yeah. Short of having the pillow there, yes,
21 that could have been a possibility.

22 Q Okay.

23 A But when I first saw the bassinet, that pillow was
24 in place.

25 Q Did you do anything else while you were on scene?

1 A I took photos of the bassinet, of the bedroom as
2 well as other areas of the house.

3 Q And then once detectives or other officers arrived
4 on scene, what did you do, if anything?

5 A I cleared the scene. Detectives took over the
6 scene and took over contact with the defendant.

7 MS. SAMPLES: Your Honor, I would pass the
8 witness.

9 THE COURT: All right. Cross-examination.
10

11 CROSS-EXAMINATION

12 BY MS. FLAVIN:

13 Q Officer Durio, you stated that you had a brief
14 conversation with Mr. Garcia.

15 A Yes.

16 Q Did you record this conversation?

17 A I did not record it. No.

18 Q Did you take any field notes of the conversation?

19 A No -- I don't recall taking field notes.
20 Sometimes I do; sometimes I don't. I do not recall if I took
21 notes on this.

22 Q And would you have -- if you did take field notes,
23 would you have incorporated those notes into your report?

24 A I would have -- I could have used those notes to
25 help refresh my memory in order to write the report.

1 Oftentimes I don't do that though. I usually am pretty good
2 at just speaking with people and recalling and then
3 reflecting that in my report.

4 Q And did you record your report on the same day,
5 November 13th?

6 A Typically I would have. I honestly do not recall
7 if I wrote it that day. My common practice would have been
8 to.

9 Q And if it wasn't on November 13th, would it have
10 been the next day?

11 A It would have been the immediate next day, yes.

12 Q And in you discussing the bassinet, you stated
13 that there was a pillow up against the bassinet and the
14 dresser.

15 A Yes.

16 Q And the bassinet wasn't immediately up against the
17 wall?

18 A Correct.

19 Q But if the bassinet was pushed further back
20 against the wall, contact would have been made with the wall?

21 A Yeah. If the bassinet had been pushed into the
22 wall, yeah; it would have been up against the wall. And that
23 is what I watched your client do while I was speaking with
24 him.

25 Q And the sides are mesh?

1 A Yes.

2 Q And the child wouldn't have to push through the
3 mesh to make contact with that wall?

4 A That is correct.

5 One thing I failed to mention, an additional
6 observation I had was that typically when you have something
7 on carpeted floor it leaves an impression. I did also notice
8 an impression in the floor where the bassinet had originally
9 been located before I observed your client push it against
10 the wall. And that would have -- it indicated to me that the
11 bassinet is typically in that location with approximately
12 three inches between the bassinet and each side of the wall.

13 Q And did you say you took photos that evening or
14 morning?

15 A Yes.

16 Q And did you take photos of everything that you
17 observed in that room?

18 A Yeah. Everything. Yes.

19 Q And did you lift the bassinet to take photos of
20 the carpet under the bassinet?

21 A No, I did not.

22 Q You just took one photo or photos, I should say,
23 of the carpet as you saw it?

24 A Yes. My job was to preserve the scene as best I
25 could. Short of the defendant moving the bassinet,

1 everything else was left in place for detectives.

2 Q Are you aware of any indentations underneath where
3 the bassinet was?

4 A I did not lift the bassinet to determine that.
5 No.

6 MS. FLAVIN: Thank you.

7 THE COURT: Any redirect?

8 MS. SAMPLES: No, your Honor.

9 THE COURT: All right. Thank you very much for
10 your time.

11 THE WITNESS: Thank you.

12 MS. SAMPLES: The State would call Detective
13 Josh Watson.

14 THE COURT: Good afternoon, Detective.

15 THE WITNESS: Good afternoon, sir.

16 THE COURT: Will you please raise your right
17 hand?

18 (Whereupon, the witness was duly sworn.)

19 THE COURT: Thank you. Please be seated.

20 THE WITNESS: Thank you.

21 MS. SAMPLES: May I proceed?

22 THE COURT: Ms. Samples, please.

23 MS. SAMPLES: Thank you.

24

25

1 **DETECTIVE JOSH WATSON,**
2 called as a witness on behalf of the State,
3 having been duly sworn,
4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. SAMPLES:

7 Q Good afternoon, Detective. How are you?

8 A Good, ma'am. How are you?

9 Q I am good. Can you please state your name and
10 spell your last name for the record?

11 A Detective Josh Watson, W-a-t-s-o-n.

12 Q Thank you. And how are you employed?

13 A With the Reno Police Department.

14 Q How long have you been there?

15 A 16 years.

16 Q What is your current assignment?

17 A I'm currently the lead detective in the Computer
18 Crimes Unit.

19 Q Have you had other assignments at Reno PD?

20 A Yes.

21 Q Can you kind of tell us what those were?

22 A Six years in Patrol, two and a half years in the
23 Family Crimes Unit and about six years in the Child Abuse/Sex
24 Crimes Unit with collateral duties in the Computer Crimes
25 Unit.

 Q So drawing your attention to November 13th of

1 2015, which of those jobs were you working at that time?

2 A I was assigned to the Child Abuse/Sex Crimes Unit
3 with collateral Computer Crimes duties.

4 Q Okay. And does that unit investigate physical
5 child abuse as well?

6 A Yes.

7 Q I want to further draw your attention to just
8 after nine in the morning or maybe it was sometime after
9 that. Did you help investigate a case involving some child
10 abuse allegations at 580 Brinkby Avenue, Apartment 308?

11 A Yes.

12 Q How were you dispatched or assigned to that case?

13 A I was contacted by Sergeant Harmon and asked to
14 respond to the hospital to meet with officers and detectives
15 on scene there regarding an injury to a child.

16 Q Did you ever respond to the home on Brinkby?

17 A Yes.

18 Q And I want to talk about that a little bit if we
19 could first of all. When you were at the home, what did you
20 do there?

21 A I spoke with detectives on scene as well as viewed
22 the home and then spoke with Mr. Braxton Garcia.

23 Q Do you see Mr. Garcia in the courtroom today?

24 A I do.

25 Q Can you point to him and tell me an article of

1 clothing he's wearing?

2 A He's wearing a light blue shirt.

3 MS. SAMPLES: Will the record reflect
4 identification of the defendant?

5 THE COURT: It will so reflect.

6 BY MS. SAMPLES:

7 Q When you spoke with Mr. Garcia at the home on
8 Brinkby, was he mobile? Was he ambulatory? Kind of help me
9 understand that.

10 A Yes. He was walking around with detectives and
11 officers talking to various people. It didn't seem to be an
12 issue.

13 Q Was he in custody at that time?

14 A Negative. No.

15 Q No handcuffs or anything like that?

16 A No.

17 Q Did he ever indicate to you that he was
18 experiencing pain or having trouble walking, anything of that
19 nature?

20 A No. I think he had mentioned that he had prior
21 injury or something, but I don't recall specifically what he
22 said. He didn't complain of anything right then.

23 Q Okay. Did there come a point in time when you
24 wanted to speak with Mr. Garcia somewhere other than the
25 home?

1 A Yes.

2 Q Tell me about that.

3 A I asked him if he would consent to come down to
4 the police station for a recorded interview, which he said he
5 would. I asked him if he had transportation. He said he did
6 not. So I offered him a ride and drove him to the police
7 station.

8 Q And he was voluntarily transported to the police
9 department, things of that nature?

10 A Yes.

11 Q Once you were at the police department -- is this
12 on November 13th?

13 A Yes.

14 Q And so what did you do once you arrived at the
15 police department?

16 A I escorted him up to an interview room where he
17 sat, made sure it was unlocked and that he had free access to
18 come and go. And then I offered him coffee or water. I
19 think he asked for water.

20 Q And did you provide that to him?

21 A I think I did.

22 Q Did you inform him that he was not in custody and
23 that he was free to leave?

24 A Yes.

25 Q Once you did that explain for us how the

1 conversation went.

2 A Initially I got some background history from him.
3 And then I asked about his living situation. And then we
4 discussed previous couple days' events, if anything out of
5 the ordinary had happened. And then we discussed the morning
6 events of that day.

7 Q Okay. And what did he -- what was his story about
8 the events of that morning?

9 A That he was awoken by the child in question
10 screaming loudly. I believe he said he heard a thump and
11 then heard screaming, and that woke him up. And then he went
12 in to find the child upset and crying and picked him up.

13 Q Did he tell you if he noticed anything when he
14 picked the child up?

15 A I believe he told me that he felt a lump on his
16 head.

17 Q And did he tell you what he did as a result of
18 feeling that?

19 A I can't remember if he contacted -- said he
20 contacted the mother and then got medical assistance. I
21 can't remember exactly what he said.

22 Q Okay. And we've heard some testimony that the
23 mother of the child is a woman named Shannon. Is that your
24 recollection?

25 A Yes.

1 Q And at some point does Mr. Garcia tell you that he
2 did call Shannon?

3 A Yes.

4 Q And then at some point does he tell you that he
5 called 911?

6 A Yes.

7 Q Do you -- during this phase of your investigation,
8 do you think you might have some evidence located on his
9 cellular phone based on what he's telling you?

10 A Yes.

11 Q What do you do as a result of that?

12 A I asked him if he would sign a consent to search
13 his cell phone, which he did. And then I proceeded to
14 extract data from his phone.

15 Q Was that on the same day?

16 A Yes, I believe so.

17 Q Okay. So was there a break in the interview?
18 Explain to me what's kind of going on.

19 A Yeah. There were a couple breaks initially when I
20 brought him in. A brief break to get things settled, and
21 then I don't recall if I took a break then and went and
22 extracted the data from his phone right then. I'd have to
23 look at the dates and times on the report.

24 Q Okay. So at some point after a break in your
25 conversation, do you come back and sort of change the nature

1 of the interview?

2 A Yes.

3 Q Tell me about that.

4 A I had gotten more information regarding the nature
5 of the injuries to the child and other information from
6 detectives that led me to believe that the information
7 provided by Mr. Garcia was not in fact true.

8 Q And so you previously testified that at some point
9 you went to the hospital. While you're there, are you
10 getting information from other detectives and from medical
11 professionals?

12 A Yes.

13 Q Do you continue to get that information during
14 breaks of your interview with Mr. Garcia?

15 A Yes.

16 Q Okay. So once you sort of think that the story
17 isn't adding up, what do you do?

18 A I confronted Mr. Garcia about his proposed version
19 of the events and said I thought something different
20 happened.

21 Q What was his response?

22 A He became -- I believe at that point he stood up
23 and said he wanted to go.

24 Q And what did you do?

25 A I told him he was not free to leave and that he

1 was being detained. And then I read him his Miranda
2 admonishment.

3 Q Did he indicate that he understood those rights?
4 A He did.

5 Q Did he indicate that he still wished to speak with
6 you?

7 A Yes, he did.

8 Q And what happens after he understands his Miranda
9 rights and wishes to speak?

10 A I again -- after he had acknowledged and said,
11 "Yes", he wishes to speak, I again made it clear that he was
12 free to leave -- or that he was free to stop answering
13 questions at any time that he wanted. And then I began
14 speaking a little bit more about the injury and how what he
15 said couldn't have caused such an injury to a child, at which
16 point he gave me a different version of what he said
17 happened.

18 Q What version did he now give you?

19 A He said he was still woken up by crying and that
20 he went in and picked up the child and that his -- due to a
21 back pain or back injury, he fell with the child in his arms,
22 possibly striking the child's head on a dresser that was next
23 to the crib.

24 Q Okay. Did he actually give you some sort of
25 physical demonstration?

1 A He did.

2 Q At this point in your interview do you take
3 another break?

4 A I believe so.

5 Q And do you remember the purpose of that break?

6 A I don't specifically. But I think it was to
7 gather more information, to see if there was any more medical
8 information.

9 Q Okay. And what happens when you come back from
10 that break?

11 A I believe that's the time that he was in --
12 Mr. Garcia stated he was in pain, that his back hurt. And I
13 asked him if he wanted medical attention, at which point he
14 said -- I think he said, "Yes." I can't remember. But
15 medics were summoned.

16 Q Okay. And did he leave by way of medics?

17 A He did.

18 Q Did that sort of end your conversations with
19 Mr. Garcia that day?

20 A Yes.

21 Q Okay. Did that end the investigation in total?

22 A No.

23 Q At some point do you go back and get medical
24 records from Mr. Garcia actually being transported via
25 medics?

1 A Yes.

2 Q Do you recall where those records came from?

3 A I believe Saint Mary's.

4 Q And where was Logan at the time? What hospital
5 was Logan at?

6 A Renown.

7 Q Did you learn anything about Mr. Garcia's actual
8 treatment that day?

9 A Yes. I learned that he had been transported by
10 medics. At the department they loaded him on the gurney
11 because he couldn't walk. And then when he got there, I
12 believe -- I'd have to look at my report to quote exactly.
13 But it was about 50ish minutes that he was there and that the
14 nurse noted that he had trouble being ambulatory and walking.

15 Q Did he stay overnight for treatment or anything
16 like that?

17 A No. He left.

18 Q Okay. And that was on his own accord?

19 A I believe so.

20 Q You had previously testified that at some point
21 Mr. Garcia gave you consent to search his phone, and you
22 extracted the data from the phone. Did you learn anything
23 based on your examination of that extraction that was
24 inconsistent with Mr. Garcia's statements to you?

25 A Yes. I noted the original or the first outgoing

1 text of that morning time was, I believe, at approximately
2 8:19 a.m., which is about 40 minutes or so before the first
3 911 call was placed.

4 Q And what was that inconsistent with?

5 A The fact that he said was woken up by the
6 screaming child and that he fell and then immediately
7 requested medical assistance.

8 Q Okay. And so do you recall what time the initial
9 911 call came in?

10 A I think it was around nine a.m.

11 Q So and you said what time was the first outgoing
12 text from his phone?

13 A 8:19.

14 Q So between 8:19 and the 911 call was there more
15 than one text outgoing from his phone?

16 A Yes.

17 Q And what about incoming to his phone?

18 A I believe so.

19 Q Okay. So fair to say there was a steady text
20 stream between that first call and the 911 call?

21 A Yeah. There were several communications going on
22 in that period of time.

23 MS. SAMPLES: Okay. Your Honor, I'd pass the
24 witness.

25 THE COURT: All right. Cross-examination.

CROSS-EXAMINATION

BY MS. FLAVIN:

Q Detective Watson, how long after the initial call at the Brinkby apartment did you arrive?

A I'm not sure. I know when I was -- I think I arrived around tenish.

Q Around tenish is when you arrived?

A I think so.

Q But you're not sure when the initial call was?

A I don't recall.

Q So you don't know how long all the various parties had been in the apartment?

A I know the 911 call was around 9:00. But I'm not sure when the first responders got there.

Q So from the 911 call to when you arrived was at least approximately one hour?

A Probably around an hour, yeah.

Q And you stated that Mr. Garcia had complained of some type of pain.

A I think during conversation he had mentioned he had had back pain or some kind of pain.

Q But you didn't know what specifics about that?

A I don't think I talked to him about the nature of it.

Q So you didn't ask him any questions about that?

1 A Not that I recall.

2 Q And how long were you actually at the apartment?

3 A I believe we got to the station about one. So I
4 would say a couple hours.

5 Q And when you got back to the station, when did the
6 interview actually begin?

7 A Well, when we first arrive, so it was around
8 oneish, sometime shortly after that. I'd have to look at the
9 timestamp. I don't recall the exact time.

10 Q Do you recall approximately how long the interview
11 lasted?

12 A In total maybe -- again, timestamps are kind of
13 where I'd have to look. Maybe an hour or so.

14 Q And so it lasted approximately one hour before it
15 had to be ended essentially?

16 A I believe so.

17 Q And you said there was a point where things
18 changed and he was no longer free to leave. At what point --
19 what changed?

20 A The information I had and when I confronted him
21 based on the medical information provided to me regarding the
22 seriousness of the child's injuries. When I asked him about
23 that and, I believe, confronted him about the inconsistencies
24 of what he had originally said versus what the injuries
25 showed, that's what changed.

1 Q And so was it the medical information that you
2 received or his response to it that changed your mind?

3 A I don't know.

4 Q And so at this point from your recollection when
5 the interview did change, did you Mirandize him at that
6 point?

7 A Yes.

8 Q And his response after that was what?

9 A That he was willing to talk to me.

10 Q And you advised him at that point that he was not
11 free to leave?

12 A I don't remember the exact sequence of events. I
13 think I told him he was not free to leave and then Mirandized
14 him.

15 Q And the interview was ended because medics had to
16 be summoned?

17 A Yes.

18 Q You -- Mr. Braxton visibly was in pain?

19 A Yes.

20 Q And so you couldn't continue the interview?

21 A Correct.

22 Q And you said he was taken to Saint Mary's?

23 A Yes. I believe so.

24 Q And the nurses -- you read the nurse's report
25 where he was treated approximately 50 minutes?

1 A I think they said he was there about 50 minutes.
2 I don't know about treatment.
3 Q So he was there at least 50 minutes?
4 A I believe so.
5 Q He had trouble walking?
6 A Yes.
7 Q And this was in the nurse's report?
8 A I believe so. Yes.
9 MS. FLAVIN: Court's indulgence.
10 THE COURT: Sure.
11 (Counsel and defendant confer.)
12 MS. FLAVIN: No further questions. Thank you.
13 THE COURT: All right.
14 Any redirect?
15 MS. SAMPLES: No, your Honor.
16 THE COURT: Thank you very much for your time,
17 Detective.
18 THE WITNESS: Thank you, sir.
19 MS. SAMPLES: Thank you. The State will call
20 Dr. Kristen MacLeod.
21 THE COURT: Detective Watson can probably get
22 him if you want him to.
23 THE WITNESS: Yeah. I'll get him.
24 MS. SAMPLES: Thank you.
25 THE COURT: Good afternoon, Doctor.

1 THE WITNESS: Good afternoon.

2 THE COURT: Please raise your right hand.

3 (Whereupon, the witness was duly sworn.)

4 THE COURT: Thank you. Please be seated.

5 THE WITNESS: Thank you.

6 THE COURT: Ms. Samples.

7 MS. SAMPLES: Thank you, your Honor.

8

9 **DR. KRISTEN MACLEOD,**
10 called as a witness on behalf of the State,
11 having been duly sworn,
12 was examined and testified as follows:

13

14 DIRECT EXAMINATION

15 BY MS. SAMPLES:

16 Q Good afternoon, Doctor. How are you?

17 A Well. Thank you.

18 Q Good. Can you please state your name and spell
19 your last name for the record?

20 A Sure. It's Kristen. And the last name is
21 MacLeod, M-a-c-L-e-o-d.

22 Q And, Dr. MacLeod, how are you employed?

23 A Well, I have several different means of
24 employment. So I'm an independent contractor. And I work
25 with Dr. Robin White, who's a general pediatrician in town.
I also get called by the hospital, by the Division of Child &
Family Services, by the Human Services agency and/or

1 occasionally by other private doctors in town to consult on
2 different patients when they have concerns about them that
3 are in my area of expertise.

4 Q Let's talk about your area of expertise. What is
5 that?

6 A I'm fellowship trained in child abuse and neglect.
7 So that's a section of Pediatrics.

8 Q And how do you get certified in that area?

9 A For Child Abuse Pediatrics you first go through
10 medical school like everybody else. And then you pick a
11 basic specialty -- in my case Pediatrics -- and do three
12 years of pediatric training. And I then did an additional
13 year as a chief training that was -- that was a job that I
14 took by choice to do some extra teaching for the residents
15 and planning for the residency program at UC Davis, where I
16 was.

17 After that most of us take our boards in general
18 Pediatrics. Most of us who are in Child Abuse Pediatrics are
19 double board certified. So after the board certification in
20 Pediatrics, which usually occurs a year after you finish your
21 residency, after that I then went on to do a fellowship in
22 child abuse and neglect. And that was combined with a
23 research fellowship to try to learn how to better use the
24 scientific literature to help us in serving and treating
25 under-served patients. And my case specialized in how did

1 that apply to children who may have been abused or neglected.
2 That went on for about two and a half years after the prior
3 four years of pediatric training. At that point I was
4 fellowship trained but not board certified.

5 Board certification, the examination was not
6 finalized until 2009. So I finished fellowship training in
7 2006. And in 2009 they offered the first exam. And the
8 examination is your final step in board certification. First
9 you have to do all your fellowship training and submit all
10 that information. And it took me until 2011 to get all my
11 information submitted. So I took the -- the boards are
12 offered every two years. And I took my boards for Child
13 Abuse Pediatrics in 2011. At that point I was double board
14 certified in general Pediatrics and Child Abuse Pediatrics.

15 THE COURT: Thank you.

16 THE WITNESS: Sure.

17 BY MS. SAMPLES:

18 Q Once you obtained your double board certification,
19 do you have to undergo continuing training or continuing
20 certification processes?

21 A We do. There's a maintenance of certification
22 program through the American Academy of Pediatrics and the
23 American Board of Pediatrics. It has four areas in which you
24 have to meet qualifications continually and update
25 qualifications. One has to do with licensure and your

1 privileging and the clinical area that you serve, meaning the
2 clinical community that you serve, and in good standing there
3 as well as nationally. The other area is more commonly
4 thought of as didactic learning, so attending conferences,
5 actually reading articles and answering questions, all of
6 which would have to be approved by the American Board of
7 Pediatrics as being high enough quality in your specialty to
8 count for this number of points. So you have to do a certain
9 number of hours of that.

10 And then you also have to engage in a quality
11 assurance project. A quality assurance project means engage
12 in, again, an American Board of Pediatrics' approved project
13 that shows that you're constantly trying to improve the care
14 that you give patients. And that can be in your specialty
15 area or in general pediatrics in most cases. So that occurs
16 over about a seven-year period, those three areas. And at
17 the end of that if you've completed all of that and fulfilled
18 all those various number of hours, about 200 hours worth of
19 continuing medical education and your two quality assurance
20 projects, you're allowed to sit for the reboard certification
21 again, all day. And then if you pass that, you're considered
22 to be in good standing; and you start the cycle over again.

23 Q And are you considered to be in good standing at
24 this point?

25 A Yes, I am.

1 Q Have you always been?

2 A Yes. Yes.

3 Q And so you said that you're double board certified

4 first as a Pediatrician and then as a Child Abuse

5 Pediatrician. Is that right?

6 A Yes. Yes.

7 Q How many board-certified Child Abuse Pediatricians

8 do we have here in Washoe County?

9 A We only have one. I'm the only one.

10 Q What about in the state of Nevada?

11 A I'm the only one.

12 Q Okay. And so you said that sometimes you're

13 called out by hospitals through the department of social

14 services or the Human Services agency. I want to draw your

15 attention to this case involving a ten-month-old named Logan.

16 Were you involved in this case?

17 A Yes, I was.

18 Q How was it that you received that call?

19 A This call came from the pediatric intensive care

20 unit doctors. They called me about 24 hours, not quite 24

21 hours after Logan had been admitted to the Renown Regional

22 Medical Center to ask me if I would come in and take a look

23 at the case. And I'm frequently called when there's a

24 consideration of whether or not this is a medical condition,

25 this is an accidental injury or possibly an inflicted injury

1 or purposefully inflicted injury.

2 Q And is that part of your training in the
3 certification process to understand the difference between
4 possibly inflicted injury versus accidental injury versus
5 medical condition?

6 A Yes. It's a process we go through every time we
7 see patients.

8 Q Was it your understanding that Logan was taken to
9 the hospital on November 13 of 2015?

10 A Yes.

11 Q And so you said -- you said you saw him almost 24
12 hours later. Was that on the 14th?

13 A Yes.

14 Q And so how old was he at the time you saw him?

15 A About ten months old.

16 Q What do you do when you go to the hospital on the
17 14th?

18 A On the -- so on the 14th we were a little more
19 than 24 hours after he had first arrived in the emergency
20 room. So at that time I had some information available to me
21 already from doctors and from tests. So one of the first
22 things that I do is I go and I look at all the tests myself.
23 So in this case I'd go to Radiology, which is where the
24 X-rays and head CAT scans and magnetic resonance imagings or
25 MRIs are done. And I would look myself at any studies that

1 Logan had done. In this case two head CTs had been done at
2 that point. So two head CAT scans and a skeletal survey,
3 which is an X-ray of the bones of the body done in a very
4 specific manner to try to look for fractures in babies, in
5 children under two years old.

6 I also went ahead and spoke to the pediatric
7 intensive care unit specialist. And at that point I go up to
8 the pediatric intensive care unit or the pediatric floor,
9 depending on where the patient is. In this case it was the
10 PICU, pediatric intensive care unit. And I go ahead and, if
11 I'm really lucky, I get to speak to a parent or a caregiver
12 who's still there; and I start gathering history.

13 Q And so were you really lucky in that you got to
14 speak to a caregiver in this case?

15 A Yes. Yes. In this case I was. I was fortunate
16 enough to speak to Logan's mom, Shannon Mendoza, and ask her
17 not only the history of what might have brought Logan to the
18 hospital that day but also his past medical history, his
19 birth history, family history, all of that stuff that is so
20 crucial when you're looking at a child under two years old.

21 Q Why is it so crucial?

22 A Well, a ten-month-old can't tell us what happened.
23 In this case particularly he couldn't because what we call
24 his mental status or his level of consciousness was
25 significantly decreased. So he was -- you could wake him up

1 but -- by physically stimulating him. But as soon as you
2 stopped, he was irritable or back asleep again. So he wasn't
3 making sense. But certainly at ten months old, even if he'd
4 been able to say "mama" or wave or recognize, he wouldn't be
5 able to give his history. So it's really, really important
6 to have that from a parent or a caregiver.

7 Q And so when you look at that medical history, are
8 you also seeking to determine accidental injuries versus
9 inflicted injuries versus maybe a medical condition in the
10 child's background?

11 A Yes. And that's why it's so important to have all
12 the medical history and to get some family history, if you
13 possibly can, about any conditions that might run in the
14 family or run in children in the family. In this case I was
15 fortunate enough to find out that Logan had been healthy
16 during his birth. There were no concerns immediately after
17 birth. He'd been developing beautifully and growing
18 beautifully. His height and weight were excellent on
19 admission to the hospital.

20 I was fortunate enough to learn that he had
21 largely been without injury. There were two incidents, one
22 at about five months old where he took a roll off of a bed;
23 but it was a bed that was only about two feet off the floor.
24 And his mom had brought him --

25 MS. FLAVIN: Objection, your Honor.

1 THE WITNESS: Yeah.

2 MS. FLAVIN: I'm not sure of the relevance in
3 this particular case.

4 THE WITNESS: Okay.

5 THE COURT: Well, the doctor, I think, can tell
6 us. It seems like it's relevant to me in determining the
7 causation of these injuries, whether they're previous
8 injuries or not. So it seems like it is to me.

9 Ms. Samples, do you want to respond?

10 MS. SAMPLES: Right, your Honor. And I think
11 that was the nature of my question is, you know: Are you
12 looking at the child's previous history?

13 THE COURT: Yeah. Why is the previous history
14 important? And then she was saying why it was important.

15 So I understand the objection. But I don't
16 think it's other bad acts or anything like that. It's a head
17 injury. I think it's natural the doctors are going to see if
18 it's a pre-existing injury or any injury if it's
19 pre-existing.

20 So I think it is relevant. I'll overrule the
21 objection.

22 I'll ask you if you could please continue,
23 Doctor.

24 THE WITNESS: Sure. At five months old there
25 was a roll off of a bed that was about two feet off the

1 ground. And Mom had been concerned and brought him into the
2 emergency room. And turns out he looked great. They didn't
3 even think they needed to do CAT scans or bone survey,
4 skeletal surveys at that time. He looked wonderful, and they
5 discharged him home.

6 Then at about six months old, again, another
7 typical age for rolling, a roll off a sofa again with a
8 concern that he had a bump on his head. And Mom worried
9 about him and brought him in. And once again, he looked
10 great. They did not -- he did not meet criteria. There's
11 very specific criteria for determining if someone should get
12 a CAT scan, little kids in particular, because you don't want
13 to expose them to radiation when you don't have to. And he
14 did not meet criteria, again, for a CAT scan. He looked
15 great, a little bit constipated I think. He got sent home.

16 So those were the only two prior head injuries
17 we had. And he did beautifully. In fact, he didn't really
18 appear to have a head injury. But incidents where he may
19 have injured his head.

20 After that it's important because, including
21 family history, we want to look for whether or not there's
22 any genetic condition, a bleeding disorder or a disorder of
23 the bones or the brain that might predispose a child either
24 to having something that appears to be a head injury when
25 actually it's not a head injury -- it's a brain condition or

1 genetic condition -- or that predisposes them to have
2 injuries that are out of proportion to the force they
3 encountered in whatever accident happened to them.

4 And so for example, in Logan's case his mom told
5 me that she has a sister who bleeds easily and bruises
6 easily. And so in that case we might be concerned that Logan
7 might have a bleeding disorder. And that was one of the
8 things we wanted to investigate during his hospitalization
9 with that. It may lend him to, predispose him to bleeding
10 with minor trauma. So those are the reasons those are all
11 very important.

12 In this case the only really pertinent things
13 were the bleeding disorder and then the two rolls: One from
14 the sofa, one from the bed. Even his newborn screening,
15 which we do in all babies to make sure they don't have the
16 most common genetic diseases, ones that could be kept from
17 causing you problems if we intervene early. I checked those
18 screening labs on him, and they were all normal.

19 BY MS. SAMPLES:

20 Q Okay. So by all accounts before this visit to the
21 hospital on the 13th, was Logan a healthy ten-month-old
22 child?

23 A Yes. For sure.

24 Q Okay. And so you said that when you arrived to
25 the hospital on the 14th, part of what you did is look

1 through medical records, talk to his treating physicians,
2 things of that nature. At this point in time what are
3 Logan's diagnoses?

4 A So when I arrived at that point, he'd had the two
5 CAT scans already; and his major findings were in his head.
6 And I'll come right back to that because it will take us a
7 little while to go through it.

8 But on his global exam importantly, as I said,
9 neurologically he was not normal. He was not fully with it.
10 His mental status was decreased. We actually score that.
11 And in his case he had a Glasgow Coma Scale of 14, which is
12 significantly lower than you would want to be if you're up
13 walking around, talking and having normal mental status. He
14 could be aroused but then would immediately become somnolent
15 again and was irritable when you did arouse him. And so
16 there were great concerns about whether or not he would move
17 towards complete loss of consciousness or whether he would
18 recover. That was unclear.

19 Additionally on the physical exam, he did have
20 bruising on his right flank. He had five to six -- and the
21 only reason they say that is the sixth one was very faint.
22 Five to six circular, approximately one-centimeter bruises on
23 his right flank arranged in a semicircle. He also had a
24 bruise that was identical to those just above his right
25 hipbone. We call that your iliac crest. He also had two

1 small bruises on the inside of his right knee. So that soft
2 fleshy part inside your right knee, again, small, circular
3 bruises.

4 So the major findings that we're keeping him in
5 the hospital: The neurologic condition and then the head CT.

6 Just because the head anatomy can be a little
7 bit difficult, you want to think of it like an onion. On the
8 outside you have the skin and then -- or your scalp. And
9 then you have the skull. And then between the skull and the
10 actual brain matter there's a lot of stuff that's going on in
11 there. And that's what we're going to talk about.

12 There are several potential spaces in there.
13 Now, we call them "potential" because, if they're not filled
14 up with blood or cerebral spinal fluid, they're closed down.
15 You don't really see them. So these are the thin layers of
16 tissue that come apart and create a space when they get
17 filled with blood when they're injured or when there's a
18 stroke, a hemorrhagic stroke, something like that. In
19 Logan's case -- and then, as I said, the actual brain tissue
20 underneath.

21 In Logan's case he had a large, what we call,
22 depressed or distracted skull fracture, so a break in his
23 skull bone at the back of his head. And we call that the
24 occiput. So it was an occipital complex depressed distracted
25 skull fracture. And by that it means that the two pieces of

1 the broken bone are moved away from each other. And with
2 regards to the skull, that moving can be in and out or it can
3 be left and right. In this case it was in and out, so one
4 piece was kind of pushed down into his skull and the other
5 one pulled out. And brain matter, actual cortex, was bulging
6 up through those pieces along with something we call the
7 meninges, which is this very thin tissue layer over the
8 cortex itself, over the brain itself. So those were pushing
9 up there.

10 There was a lot of swelling in the brain right
11 at that point. So I'm not talking overall brain swelling
12 just at that point and bruising at that point. And in fact,
13 the injury was significant enough that it actually caused a
14 traumatic -- that means caused by trauma -- a traumatic clot
15 of the transverse sinus.

16 The transverse sinus is one of the big veins in
17 your head that helps you drain your cerebral spinal fluid.
18 And that's that fluid that's always going through your spine
19 and up into your brain. And it keeps going in this loop; and
20 it's responsible for collecting dirty, old cerebral spinal
21 fluid and dirty old blood and getting it out of your brain.
22 And it runs right across there.

23 And actually the fracture caused that to have
24 enough damage that it clotted. And the neurosurgeons
25 identified that, as did the radiologists, as a traumatic

1 sinus thrombosis. So it was not what caused the injury
2 there; it was a result of the injury there.

3 And in addition to that injury at the back of
4 Logan's head, as you move forward on the head at the area
5 that is just off to the right side and kind of near the crown
6 of your head moving a little more towards your forehead,
7 that's called the fronto-parietal area. There was a small
8 bleed in one of those potential spaces called the subdural
9 space. So the subdural space had filled with blood. And
10 again, that's between your skull and your brain tissue. And
11 you're going to hear that word "subdural" a lot.

12 So there was a subdural bleed located there just
13 off to the right of the midline. And underneath that
14 subdural bleed, deep into the brain cortex there were
15 actually small contusions or bruises and hemorrhagic injury.
16 So you get little punctate lesions or punctate foci, f-o-c-i,
17 that are from the force transmitting all the way through your
18 brain tissue, deeper into your brain tissue. And because
19 your brain tissue has all different kinds of cells in it,
20 it's not all the same density. And so things move at a
21 different rate. And as that force transmits through, you can
22 get shearing injuries. So one type of tissue might receive
23 the force differently from another type. And that shearing
24 causes these punctate contusions, bruises or hemorrhagic
25 little dot bleeds deep into that brain. And that's really

1 important because it's significant for the amount of force
2 that was directed at that point, at that part of the brain in
3 Logan's brain.

4 Finally, the subdural space actually wraps
5 around all of your brain and including the fissure or we call
6 it the falx, which is where the two sides of your brain
7 split. And you've got this sort of fault line down the
8 middle, so that falx, the subdural spaces in there as well.
9 And there was subdural blood in that falx heading towards the
10 back of your head, so closer to the occiput.

11 Q So I want to just talk, if we can, a little bit
12 about a few of those injuries that you just described. And
13 first you talked about the change in mental status. And you
14 talked about him being a 14 on the Glasgow Coma Scale.

15 Can you help us understand what a normal score
16 on that scale is?

17 A Well, I'm not sure that -- I'm not sure that I can
18 do that. But what I can do is I can tell you that 14 ends up
19 getting close to but is not at the level of where you would
20 want to consider putting a tube in somebody's throat because
21 you're afraid they wouldn't be able to protect their airway.
22 So you're heading that direction. And they look at verbal --
23 so can you speak? -- motor -- can you move? -- and eyes --
24 are your eyes open? Are they able to fix and follow people?
25 Are they alert?

1 And so while Logan's wasn't at the level that
2 you didn't have to put a tube down, it was headed that way.

3 Q Okay. So as a Child Abuse Pediatrician, why is it
4 -- why do you want to note when a patient has a sudden change
5 or a big change in mental status?

6 A Right. So less important than the actual Glasgow
7 Coma Scale, more important is overall big change in mental
8 status and, again, whether it's sustained. So if you have a
9 big change in mental status and then you're fine a few hours
10 later, it's very different from having a big change or a
11 decrease in mental status and then 24 or 36 hours later
12 you're still like that. And that's really important in my
13 field because, while clearly that does happen with accidental
14 injury, it extremely rarely happens with household injury.
15 That's the type of finding that's associated with either car
16 accidents or falls from multi-story windows. The types of
17 accidents that have major force and velocity and mass
18 associated with them.

19 The only other time you really see that if it's
20 injury -- so if we've ruled out that this is a medical
21 condition causing this, which in Logan's case we had. If
22 this is injury, the only other time you commonly see that is
23 in abusive head injury. It is far more commonly associated
24 with inflicted head trauma than accidental head trauma in
25 children.

1 Q Okay. So let me just make sure that I'm
2 understanding it correctly. So is it fair to say that in
3 children who are experiencing changes in mental status like
4 Logan was experiencing, typically if it's an accidental
5 trauma, you would see that in cases of car accidents or a
6 long fall. Is that right?

7 A Yeah. Multi-story fall or some other fall that
8 has something that creates significant mass and velocity, so
9 speed and weight and force behind it.

10 Q And at this point in your investigation had you
11 been given any of those stories that might explain this type
12 of change in mental status in Logan?

13 A Not adequately, no.

14 Q Okay. And so at this point had you talked to
15 Detective Watson, do you recall?

16 A I did talk to Detective Watson just as I was
17 leaving the hospital. Yes. And that's in my hospital
18 write-up.

19 Q Okay. And did he give you a potential explanation
20 of Mr. Garcia experiencing a short fall with the child in his
21 arms?

22 A Yes, he did. And that is important and
23 significant because the history I was given was that the
24 child's head struck a dresser -- I believe it was a dresser
25 -- on the way down in the fall and the back of the child's

1 head. And that is of course where that significant fracture
2 is or skull bone break. And so that is definitely
3 significant. It's significant because he would have had some
4 adult weight behind him. And it's significant because he hit
5 his head there. But it would not have fully explained the
6 findings I saw, for example those deeper contusions or
7 punctate hemorrhages that were deeper in the parietal area of
8 the brain or the subdural bleeding up towards the front of
9 the brain.

10 Q And so working in the field that you do, you must
11 see a fair number of household accidents, things like parents
12 taking a spill with the child in their arms or the child
13 falling and things of that nature. And I think you testified
14 that it's exceedingly rare for these types of injuries Logan
15 was suffering to be linked to those types of household
16 injuries. Is that right?

17 A Yes, it is. And, yes, in my work certainly,
18 especially in general pediatrics and as a parent. I mean,
19 falls happen all the time. Falls happen daily, multiple
20 times a day if you reach the age where a child is starting to
21 be rolling, in any way mobile, rolling, crawling, pulling to
22 stand and beyond. So household falls are exceedingly common.
23 Severe injury from household falls is exceedingly rare. And
24 we do know that not only from experience, although that fits
25 experience, because otherwise those beds in the pediatric ICU

1 would be overflowing all the time; and they're not from head
2 injuries overflowing all the time. But also from a lot of
3 good scientific studies.

4 And those studies have been done in multiple
5 sites by different people over time and in different ways,
6 and they've all come up with the same findings: While
7 household falls are common, severe injury or death is
8 exceedingly rare. So we can combine an observational studies
9 where we take observed falls in places like hospitals -- so
10 they had to be recorded. They were observed by people.
11 Multiple studies of those over the years. Studies where
12 we're actually sitting here in the ER and we say: Okay,
13 everybody. Everybody, every kid that comes in that has a
14 fall we're going to record that they had this fall, what the
15 height of the fall was, where it happened; and then we're
16 going to look for head injury. Those are called prospective
17 studies -- they're even stronger -- as well as large-scale
18 systematic reviews where we look at huge injury databases to
19 see what happens when children fall, what happens to them.
20 So subdural hemorrhage, apnea -- which is stopping breathing
21 -- loss of consciousness, complex skull fracture -- which is
22 the type that Logan had -- not simple skull fracture. Those
23 we see all the time, linear, just the line.

24 But in complicated skull fracture, all of those
25 are far more commonly associated with abusive injury. And

1 all of them are very rare in household short falls under five
2 feet.

3 Q Okay. So give us an overall idea of Logan's
4 clinical picture at that point.

5 A So at about thirty -- the last I saw him in the
6 hospital was at about 36 hours after admission. He still
7 could not eat. And they would not have let him eat because
8 he was still somnolent. So his mental status had not come
9 back to normal. It was still poor. He was still irritable.
10 And they had at that point ruled out any infection in his
11 brain or infection in his body that might be causing these
12 symptoms and begun to gather things like the bleeding studies
13 that I'd asked them to to make sure those conditions were not
14 influencing the finding.

15 Q How was he being treated under his stay in the
16 hospital?

17 A Logan was largely given pain control and some
18 anxiety control because it's -- when you get very anxious or
19 worked up, which happens when your mental status is
20 fluctuating. You don't know whether you're coming or going.
21 It's like when people first come out of anesthesia. If you
22 get very anxious, it actually raises the pressure in your
23 brain. And we really want to make sure the pressure in the
24 brain does not go up during this time because that increases
25 your risk of far more severe brain damage but then also the

1 fact that the sick brain will make your heart and your
2 kidneys stop working. So we like to keep the kids calm and
3 then give him pain control. And then we had to give him
4 fluids by the intravenous line because he couldn't take
5 anything by mouth. And we weren't sure, like I said, which
6 direction he was going to go.

7 Q I want to talk a little bit about you being able
8 to tell how old these injuries are. Did it matter to you
9 that Logan's change in mental status was acute?

10 A Yes.

11 Q Tell me about that.

12 A In general when you have -- I shouldn't say only
13 in general. But what we have learned from experience and
14 from studies is that when you have a severe injury to the
15 cortex of the brain and often that injury doesn't look large
16 and is not easy to see -- for example, in this case we found
17 on the latter MRI those deep contusions or foci. When you
18 have that type of an injury to the brain, there are immediate
19 neurologic signs. So the child immediately acts abnormal.
20 It's not something that happens later. And the subdural
21 hemorrhage is really only a sign that there was more
22 extensive injury. The subdural hemorrhage is not causing --
23 so the bleeding in the subdural space is not what's causing
24 Logan to act like he was acting. That is just a sign that he
25 actually suffered significant injury. If it were a different

1 type of head bleed, for example an epidural hemorrhage --
2 that's another one of those potential spaces. Those can
3 actually get big and put pressure on the brain. And that can
4 take several hours to develop.

5 But this type of injury associated with an
6 immediate change in mental status is extremely concerning for
7 very significant inflicted brain injury.

8 Q As opposed to accidental brain injury?

9 A Yes.

10 Q And could you also -- was it apparent to you when
11 you physically examined the child that there was some areas
12 of injury that you could feel as a physician?

13 A Yes. Yes. He had what we call "boggy"; but it's
14 a soft, puffy, swollen area at the back of his head. As I
15 said, where there was not only swelling, which there was
16 swelling of the soft tissues and the brain tissue; but the
17 two pieces of the bone of the skull bone that had moved apart
18 from each other.

19 Q And so you'd previously testified about some
20 one-centimeter sort of circular bruises to Logan's flanks.
21 Are the flanks the sides of the body?

22 A Yes. That's the -- just off to the side of your
23 abdomen.

24 Q And what was concerning to you about those in
25 conjunction with all of Logan's other findings?

1 A Well, Logan's a ten-month-old child. He's not a
2 14-month-old, 18-month-old, two- or three-year-old. So in
3 general we don't -- even though he is rolling and he is
4 starting to scooch and crawl, we don't expect him to have a
5 large number of bruises. We certainly don't expect him to
6 have bruises in what we call protected areas.

7 So certain areas of your body are considered
8 protected areas on kids, whereas other areas are considered
9 areas that are bony prominences or are on the limbs that we
10 see injured accidentally all the time. Your flank and even
11 the inside of your knee are both considered protected areas
12 of your body. So he should not have bruises on that part of
13 his body unless he has suffered trauma to that area of his
14 body.

15 And it's important that we note that some kids
16 have more bruises than others. But if Logan or a kid who is
17 just going to be covered with bruises because he's super
18 active or even a child with a bleeding disorder who is having
19 more bruises because of a bleeding disorder, we would expect
20 multiple bruises in the commonly injured areas that are
21 injured in daily accidental activity. And he did not have
22 bruising in those locations.

23 Q Okay. And so you previously said that Logan's
24 injuries were inconsistent with a fall when an adult was
25 holding him against a dresser. Would it also be inconsistent

1 to believe that these injuries came from Logan banging his
2 own head on a wall through the netting of a bassinet?

3 A They definitely did not come from the latter, from
4 Logan hitting his own head against a wall. As I said
5 earlier, it's not impossible for Logan to get a skull
6 fracture with an adult falling against a dresser. But the
7 explanation I was given is not adequate for the extent of the
8 head injuries that Logan had.

9 Q Okay. Meaning all of the entire injuries that
10 you've just testified about?

11 A The global picture and the severity of the
12 picture.

13 Q Okay. And so after you visited with Logan on the
14 14th, did you see him again at some point?

15 A I did. Logan was discharged from the medical
16 center on the 18th, and he was brought to see me in the
17 outpatient clinic on the 19th of November. So I saw him 24
18 hours after he was released, which is a routine for us.
19 That's common for us to do that.

20 At that point he was with a foster parent. And
21 that foster parent noted that he still had trouble eating.
22 They were having trouble feeding him. His tongue would not
23 cooperate with the feedings.

24 And on exam he looked great in terms of his
25 weight and in terms of his coloring and in terms of being

1 awake and alert. That was very reassuring. He did not have
2 any bruising on his body. But he did not have a normal
3 neurologic exam. And by that I mean that he had a tongue
4 deviation to the left.

5 So if you go to gag a child with a tongue
6 depressor normally, when they gag and when an adult gags,
7 their tongue comes straight out. In his case, his tongue
8 veered over to the left; so that indicates that there's
9 injury in the brain that's affecting the cranial nerve that
10 innervates the tongue. And that's the 12th cranial nerve.
11 He had a preference for a left-sided gaze. So again, he
12 tended to turn his eyes and his head, mainly his head,
13 towards the left on the exam. And that was obvious. And
14 then by report, although I could not get him to do this for
15 me, he had a preference for right-handed -- sorry, for his
16 left-hand. So he would reach for things with his left-hand
17 instead of his right hand.

18 On my exam, the arms were notably, or upper
19 extremities as we say, were notably low in resting tones.
20 They were very limp. He could use them when he wanted to use
21 them. But if he wasn't consciously using them, they were
22 noticeably limp compared to his lower extremities and
23 compared to a child of his age.

24 Q What does that asymmetric neurological exam
25 indicate to you?

1 A Well, it indicates that there is some focal
2 residual injury still inside the brain. And so this is brain
3 tissue, brain cells being affected. Again, it's not that
4 bleed; and it's not that fracture. It could come from
5 swelling at the site of the fracture, but that didn't make
6 sense for this particular exam.

7 In this particular exam it actually looked like
8 he had some left-sided head injury that did not show up on
9 our CT scans or MRIs. Again, that's not surprising to me
10 because there is often head injury that is deeper. It has
11 nothing to do with the bleed and fracture. Those are only
12 signals and signs that something is wrong. And we don't see
13 the actual deeper brain injury until much later in cases of
14 head trauma and specific abusive head trauma.

15 Q And did you -- do you have occasion to know what
16 happened in Logan's treatment after you saw him on the 18th?

17 A I do. I don't have every detail, but I do have
18 access to the medical records with regards to his
19 neurosurgical appointments and the neurosurgical studies.
20 And Logan went on about two and a half months later to have
21 what we call a ventriculoperitoneal shunt put in.

22 So a shunt is basically a tube that's a drain.
23 And it runs between your head and your abdomen, and it dumps
24 excess fluid from your brain into your abdomen. That's
25 something that needs to be done when, after a brain injury,

1 your body is not able to circulate and drain that cerebral
2 spinal fluid adequately. It can also happen in medical
3 conditions that kids are born with, but in this case it's
4 what we see after trauma in more severe traumatic cases.

5 His repeat magnetic resonance imaging over the
6 next year and a half showed that, in fact, the brain tissue
7 at the back of his head both on the left and the right did
8 not continue to grow. There were areas where the brain
9 tissue actually lost volume. And what happens as a natural
10 consequence is that fluid fills that space. So fluid fills
11 that space in the skull. And again, that's where the
12 ventriculoperitoneal shunt can sometimes be helpful. So
13 Logan experienced right-sided and left-sided loss of cerebral
14 cortex that will be permanent for him.

15 Q Does Logan still have that shunt in his brain?

16 A He had the shunt in his brain up until January.
17 I'm sorry, up until October of 2017. At that point I believe
18 it was removed. And I'm not privy to the surgical record,
19 only to the visit he had afterwards to the clinic that he
20 doesn't have the shunt in anymore. But he had a surgery
21 visit to UCSF, and then afterwards he didn't have the shunt.
22 So my belief is it was removed then.

23 And the reason he was admitted then is he had an
24 infection with Methicillin-resistant Staphylococcus, so MRSA.
25 And it would make sense, if he's doing well, to try to get

1 that shunt out if he is colonized or infected with MRSA.
2 Because otherwise those bacteria tend to cling right on any,
3 what we call, foreign bodies, so an object from outside the
4 body that's sitting in the body makes it hard to get it out
5 of the child. So if he was doing pretty well, it would make
6 sense to pull it out then.

7 Q Okay. So you said that the reason for the shunt
8 was a loss of Logan's cerebral cortex. And I believe you
9 said on the left side and the right side. Is that correct?

10 A Yeah. Actually it was on the left and the right
11 that there was cerebral volume loss. They used two different
12 terms for it in the medical records, just to make us
13 confused. They call it right-sided encephalomalacia. And
14 that's spelled e-n-c-e-p-h-a-l-o-m-a-l-a-c-i-a. And then the
15 next time they talk about the left-sided cerebral volume
16 loss, which is once again brain tissue that's failing to
17 grow. That's what both of those are.

18 Q And what does it mean to Logan's long-term
19 prognosis that he has this, -- let me just call it this
20 "loss", loss of volume. Can you tell us about that?

21 A Yes. Well, he will have trouble with the fluid,
22 like we spoke about. So excess fluid will continue to build
23 up in his brain. Hopefully eventually his body will handle
24 it itself. But most importantly -- and this, again, has been
25 documented in studies looking at survivors of inflicted

1 childhood head trauma. He will never have the same potential
2 that he had before. It doesn't mean he's necessarily going
3 to be devastated from a developmental standpoint or a
4 neurologic standpoint, but he will never reach the same
5 potential that he would have reached had he not suffered this
6 injury.

7 Children are miraculous in what they can do with
8 what they have. So he may, to the observer at this point in
9 his life, be doing perfectly well; but he has lost the chance
10 to meet the potential he had.

11 Q Will he ever regenerate those areas of his brain?

12 A No. He may -- what he'll probably do is he'll
13 make neurologic connections in the other areas of his brain
14 to try to take over what those would have done.

15 MS. SAMPLES: Your Honor, I have no further
16 questions.

17 THE COURT: All right.

18 Cross-examination.

19

20 CROSS-EXAMINATION

21 BY MS. FLAVIN:

22 Q Doctor, you in this case never spoke with
23 Mr. Garcia, right?

24 A No. That's correct.

25 Q And you learned your information as far as the

1 accident from an officer?

2 A Actually the history I took was directly from
3 Logan's mom. And she had received a call. She told me she
4 had received a call from Mr. Garcia. And then I also got
5 additional information from the officer. But the whole first
6 history is from Mom.

7 Q And you learned that there was -- that Logan -- it
8 was said that Logan hit the back of his head on a dresser?

9 A Correct.

10 Q And did you also learn that after hitting his head
11 on the dresser there was also a fall to the ground?

12 A I learned that Mr. Garcia fell to the ground
13 carrying Logan. That was the history given to me.

14 Q And so with the strike on the dresser as well as
15 the fall to the ground, that force doesn't change your
16 diagnosis?

17 A As I said earlier, it is possible that some of the
18 injury is explained by that. I would not discount that. But
19 it is not probable that the totality of the picture is caused
20 by that fall, even when we note that he might have hit his
21 head and then continued to fall to the floor.

22 Q And so with the strike to the dresser and then the
23 fall to the floor, would the fall to the floor have -- what
24 falls to the floor? What injuries would that have caused?

25 A Are you asking me in Logan's particular case?

1 Q Yes.

2 A Well, I wasn't there. And unfortunately the
3 injuries can't be specifically enough tied, say, to him
4 hitting the floor versus hitting the dresser for us to give
5 that information. All we can do is take a look at this type
6 of fall, what the force would be in this type of fall and
7 then look at the millions of other falls we have similar and
8 what might we expect to have happen.

9 Q And I guess to ask somewhat of a better question:
10 Would hitting the ground after hitting the dresser, would
11 hitting the ground have caused further injuries? So one set
12 of injuries occurred after the strike to the dresser, and
13 then could additional injuries have occurred after the fall
14 to the ground?

15 A Would it be correct to ask whether you're asking
16 me: Would a complex incident like that actually compound the
17 injuries in this child?

18 Q That's correct.

19 A Because that I might be able to answer.

20 Q Yes, please.

21 A Okay. Any compound fall does increase your risk
22 of injury. Still in this case it is out of -- Logan's
23 injuries are out of proportion to what we see with the hit on
24 the dresser and the fall to the floor. But as I said,
25 certainly any complex fall with multiple sets of trauma

1 involved in that incident would increase your risk of complex
2 injuries.

3 MS. FLAVIN: Thank you.

4 Nothing further.

5 THE COURT: Any redirect?

6 MS. SAMPLES: Just a couple, Judge.

7

8 REDIRECT EXAMINATION

9 BY MS. SAMPLES:

10 Q In speaking with Ms. Mendoza and in speaking with
11 the detective involved, officers involved as well as the
12 medical professionals, did you learn that Mr. Garcia had
13 given several versions of how Logan sustained his injuries?

14 A I did not know that at the time of writing my
15 report or at the time of seeing Logan. I know that now; but
16 I did not know that at the time of seeing him either in the
17 hospital or at follow-up, just Ms. Mendoza's history and
18 Detective Watson's history. And I didn't know there were
19 others.

20 Q Okay. But it's fair to say that Ms. Mendoza's
21 history and Detective Watson's history were different?

22 A Yes.

23 Q And was that concerning to you as a Child Abuse
24 Pediatrician?

25 A Yes. It's concerning to me, again, because in

1 numerous scientific studies that we've done when we have a
2 history that changes and in particular when that history of
3 the injury is given from an individual that only -- I'm
4 sorry. For an incident where there was only one individual
5 observing the incident it is far more commonly associated
6 with inflicted injury than accidental injury. One observer
7 and a changing history are statistically more correlated with
8 inflicted injury than with accidental injury.

9 Q Were you ever given an explanation of a complex
10 fall with multiple sets of trauma?

11 A Well, the Detective Watson's history, as I recall
12 it, was that as Mr. Garcia fell, Logan's back of his head hit
13 the dresser and then Mr. Garcia continued to the floor. I
14 was never given any information of whether Logan hit the
15 floor, how Logan might have hit the floor. That's not
16 information I was given.

17 Q Okay. And again, considering all of the
18 information that you obtained in this case, what was your
19 ultimate conclusion?

20 A That the injuries seen in Logan, the totality of
21 the picture including the bruising on his flank and the fact
22 that his neurologic exam and mental status did not return to
23 normal immediately and then now finally knowing that in fact
24 there's cerebral volume loss, my conclusion is that this is
25 consistent with and highly suspicious for inflicted head

1 trauma and not consistent with the fall from standing height
2 to the floor even though the head may have hit the dresser.

3 MS. SAMPLES: I have no further questions.

4 MS. FLAVIN: And, your Honor, just --

5 THE COURT: Recross?

6 MS. FLAVIN: Thank you. Briefly.

7

8 RECCROSS-EXAMINATION

9 BY MS. FLAVIN:

10 Q And so, Doctor, you said that it is associated
11 with inflicted head trauma. Such as what?

12 A Do you mean what type of inflicted head trauma?

13 Q Yes.

14 A Okay. So it's -- "inflicted head trauma" is used
15 -- and I apologize for this -- interchangeably with "abusive
16 head trauma". It would be nice if we only used one term, so
17 I apologize.

18 But with abusive head trauma -- and in that we
19 mean it can be anything that involves impact or inertial
20 movement. And by "inertial movement" we mean acceleration
21 and deceleration, so any kind of speed where there's a rapid
22 change in direction. And that can be hitting the floor,
23 hitting the wall or shaking. So any of those things can
24 happen.

25 In this case we would have thought there has to

1 be some sort of impact because he has a depressed skull
2 fracture.

3 Q And when you say hitting the floor, hitting the
4 wall, do you mean dropping? Or how hitting the floor, how
5 hitting the wall?

6 A So dropping, usually being accidental, doesn't
7 seem to produce these injuries. But what you want to think
8 about is that there's velocity behind the fall or the drop.
9 So something has to give speed and weight so that you end up
10 with a large amount of force that then is stopped; and there
11 is essentially rebound force in the other direction, even
12 though you may not physically see something moving both
13 directions in space.

14 Q So would this be throwing a child up against a
15 wall?

16 A Sure. That could happen.

17 Q What else?

18 A Throwing a child off a balcony, shaking a child,
19 shaking a child and then throwing them against a wall, a sofa
20 or a bed. We've seen them in car accidents accidentally, as
21 well as if you have something like a car seat behind you and
22 you get shoved off a balcony. That can happen because of the
23 weight and the velocity.

24 So those are examples where we see that
25 frequently in the house. There's only a certain number of

1 things in the house. I mean, you could throw them against a
2 dresser. You could kick them. I mean, I -- I hate to go
3 through all the possible ways you could hurt a child, but
4 there are lots of them.

5 MS. FLAVIN: Thank you.

6 THE WITNESS: Sure.

7 MS. FLAVIN: Nothing further.

8 THE COURT: Thank you, Doctor.

9 THE WITNESS: Okay. Thank you very much.

10 THE COURT: Any other evidence from the State?

11 MS. SAMPLES: No, your Honor.

12 THE COURT: Any witnesses or evidence from the
13 defense?

14 MS. FLAVIN: Court's indulgence, your Honor.

15 (Counsel and defendant confer.)

16 MS. FLAVIN: Your Honor, I have spoken with
17 Mr. Garcia as far as his right to testify at today's hearing.
18 He does not wish to do so. And with that, your Honor, the
19 defense rests.

20 THE COURT: All right.

21 Any argument, Ms. Samples?

22 MS. SAMPLES: I'll reserve for rebuttal, your
23 Honor.

24 THE COURT: Ms. Flavin?

25 MS. FLAVIN: I'll submit, your Honor.

1 THE COURT: All right. Before I make my final
2 determination, I was just looking over the paperwork. And an
3 error occurred at some point. This was a warrant of arrest.
4 The bail was set by the judge when they issued the warrant.
5 Bail in this case was set at a hundred thousand dollars. The
6 law is that that cannot be changed without reasonable notice
7 to the prosecutor, and that's a bail hearing. There was no
8 bail hearing in this case. There is no document -- I'm the
9 one that signed probable cause once he was arrested on the
10 warrant, but I never signed a bail document. Either what we
11 would call a "green sheet" or the one created by court
12 services with the NPRA, I never signed one of those. I
13 appointed him a public defender. I found probable cause for
14 his arrest. His bail was set at a hundred thousand dollars
15 pursuant to the warrant on the probable cause sheet that I
16 signed.

17 But the Court indicates in the record that it
18 was then changed to 10,000, and that's wrong. It could not
19 have happened without the bail hearing. It would have
20 violated the law, and it's not something that did happen.
21 And there's no document to support it. There's only a
22 notation. So I have only one conclusion, that that was an
23 error. I'm returning the bail to what it was legally and
24 lawfully which is a hundred thousand dollars.

25 I find that there is probable cause that the

1 crimes committed in the Criminal Complaint were committed and
2 the defendant committed them. I'll bind him over to district
3 court to answer to these charges.

4 Thank you.

5 MS. SAMPLES: Thank you, your Honor.

6 THE BAILIFF: Rise please.

7 (Proceedings concluded at 3:46 p.m.)

8 -oOo-

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

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I, DEBBIE ARNAUD, do hereby certify that I
transcribed the JAVS electronically recorded proceedings of
the above-entitled court case;

That the foregoing transcription is a full, true
and correct transcription from the JAVS electronically
recorded proceedings as recorded in the above-entitled court
case at said time and place and has been produced to the best
of my knowledge, skill and ability from said JAVS electronic
audio recording.

DATED: At Reno, Nevada, this 1st day of May, 2018.


Debbie Arnaud
DEBBIE ARNAUD

CR18-0273
DC-0900087684-014
STATE VS BRAXTON CHEYANNE GA 8 Pages
District Court 01/08/2019 09:09 AM
Washoe County 3586

Braxton C. Garcia
N.N. CC P.O box 7000
Carson City, NV 89702

FILED

2019 JAN -8 AM 9:09

JACQUELINE BRYANT
CLERK OF THE COURT

IN THE Second JUDICIAL DISTRICT COURT

DEPUTY

IN AND FOR THE COUNTY OF Washoe

Braxton C. Garcia)
Petitioner/Plaintiff,)
v.)
State of Nevada)
Respondent/Defendant)

Case No. Cr18-0273

Dept. No. 6

PETITION FOR WRIT OF MANDAMUS

Comes now, Petitioner, Braxton C. Garcia, pro per, moves this
Honorable Court to consider this petition for Writ of Mandamus. This petition is made pursuant to Nev. R.
State. 34.160 inclusive to 34.310, and the following points and authorities, papers, pleadings and document
on file herein.

II. LEGAL ARGUMENT

1 Petitions for Extraordinary Writs are addressed to the sound discretion of the Supreme Court of
2 Nevada and may issue when there is no plain, speedy, and adequate remedy at law. See, State v. Second
3 Judicial District Court ex. Rel. County of Washoe, 116 Nev. 953, 11 P.3d 1209 (2000).

4 A writ of mandamus is issued to compel performance of an act which the law especially enjoins as a
5 duty resulting from an office, trust or station. See, Lewis v. Stewart, 96 Nev. 846, 619 P.2d 1212 (1980).

6 A writ of mandamus may issue to control arbitrary or capricious exercise of discretion. See, Barnes v.
7 Eighth Judicial District Court of the State of Nevada, in and for Clark County, 103 Nev. 679,
8 748 P.2d 483 (1987).

9 This Court has also held that the action being sought to be compelled must be one already required
10 By law. See, Mineral County v. State Department of Conservation and Natural Resources, 117 Nev. 235
11 , 20 P.3d 800 (2001).

12 Mandamus is the appropriate vehicle for challenging contested orders entered by the District Court.
13 See, Angell v. Eighth judicial District Court In and For the County of Clark, 18 Nev. 923,
14 839 P.2d 1329, (1992).

STATEMENT OF FACTS

in march of 2018, i braxton c. Jarcia was brought to washoe county jail from the nevada department of corrections on a new felony charge that occurred in 2015. NOV. after a week of being in the jail, i went to my first initial mandatory status conference. my public defender at the time erica flavio was not present it was another attorney (name forgotten should be in file) he informed me that he did not have my discovery nor was there any deals from the district attorney he then asked me if i wanted to come back for another M.S.C. or proceed on to a preliminary hearing i advised him that i wanted a speedy Prelim which consist of 8 days after this M.S.C. he said okay see you next week the following week i was brought back to the nevada department of corrections i then discovered that my Prelim was scheduled later in april, i then filed a writ of habeas corpus for my "rights to due process"

Statement of Facts Pg 2

it was filled in the Justice
Court house. i was notified
1 that is filled when i showed
2 up to the Justice court house
3 for my Preliminary hearing
4 by my recent Public Defender
5 Erica Flavin. she then advised
6 me not to Proceed with the
7 hearing i told her i want
8 to Proceed. she then told me
9 she had my habeas corpus
10 and that her boss had told
11 her that i waived my rights
12 i said no show me were i
13 waived my rights, she then
14 said "we will Figure it out
15 in the court room. a few minutes
16 later i Proceeded in the court
17 room, before the hearing started
18 Judge Pearson stated that he had
19 my habeas corpus and that he
20 want Jenna accept some jail
21 house later written motion, he
22 then said that my attorney
23 can waive any right that she
wants

everything that was said in the courtroom should be in the transcripts. From that day you will see were Judge Pearson treated me improperly when i came back to the Facility i then Proceeded to File a writ of a mandamus. i was notified that it was Filed through the courts in the correct manners. when i appeared back in courts in June 26th 2018 to see the honorable Judge Lynn K. Simmons she advised me that she had my Filed "writ of mandamus" and she stated if i was in the right this could possibly result in a dismissal of the case, she then removed my counsel erica Flavin. because it was transparent that my right was violated and that i was being represented improperly the Judge advised me to File another

pg 4

writ of mandamus under
her court is my first one
I denied. This my second
writ of mandamus. I'm
humbly asking the court
to consider what has happened
during these times thank you
for your time in this matter

respectfully
Braxton Garcia

CONCLUSION

Wherefore, all of the above stated reasons, Petitioner/Plaintiff respectfully requests this Honorable Court to Order Dismissal of charges with Prejudice to _____ within a reasonable amount of time as required by N.R.S. 34.830.

DATED this 18 day of December, 2018

Respectfully submitted,

Braxton Garcia

Petitioner/Plaintiff

CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P. 5(b) that I am the Petitioner/Plaintiff in the foregoing Petition for Writ of Mandamus, and that on this 18 day of December, 2018, I did serve a true and correct copy of the above mentioned document, by giving it to a prison official at the Nevada department of corrections

To deposit in the U. S. Mail, sealed in an envelope, postage pre-paid, and addressed as follows:

_____	_____
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_____	_____
_____	_____
_____	_____

DATED this 18 day of December, 2018

Braxton C. Garcia

Petitioner/Plaintiff

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Writ of Mandamus

(Title of Document)

Filed in District Court Case No. CR18-0273



Does not contain the social security number of any person.

-OR-



Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-OR-

B. For the administration of a public program or



(Signature)

12-18-18

(Date)

Code 3870
David K. Neidert, Esq.
316 California Ave. #420
Reno, NV 89509
(775) 423-4455
Attorney for Defendant

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

* * *

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No.: CR18-0273

BRAXTON CHEYANNE GARCIA,

Dept. No. 6

Defendant.

REQUEST FOR COURT TO INDICATE ON THE RECORD WHETHER IT IS
INCLINED TO FOLLOW THE PARTIES' PLEA AGREEMENT

The Defendant, BRAXTON CHEYANNE GARCIA ("Mr. Garcia"), by and through counsel, DAVID K. NEIDERT, respectfully requests that this Court indicate, prior to a change of plea, whether it is inclined to follow the negotiations of the parties with respect to the disposition of this case.

In 2006, the Nevada Supreme Court established a bright-line rule with respect to plea negotiations. *Cripps v. State*, 137 P.3d 1187, 122 Nev. 764 (2006). In *Cripps*, the Court held that district court judges may not participate in plea negotiations between the State and criminal defendants. 137 P.3d at 1191, 122 Nev. at 770. However, *Cripps* created one very narrow exception: the district court is allowed to indicate on the record whether it is inclined to follow

1 the negotiations. 137 P.3d at 1191, 122 Nev. at 770-71. However, if the district court expresses
2 an inclination to follow the parties' sentencing recommendation, the defendant must be allowed
3 to withdraw her plea "if the judge later reconsiders and concludes that a harsher sentence is
4 warranted." 137 P.3d at 1191-92, 122 Nev. at 771.
5

6 In this case, the parties have entered into the following negotiations: Mr. Garcia will
7 plead guilty to Child Abuse Causing Substantial Bodily Harm. In return, both sides will jointly
8 recommend that he be sentenced to 60 to 150 months in prison (5 to 12½ years). Additionally,
9 the parties agree that Mr. Garcia is entitled to credit for time served from March 7, 2018 up to
10 and including the date he is sentenced in this case. Otherwise, both sides are free to argue.
11

12 Because of his conviction and sentence from his prior case in this Court, Mr. Garcia has
13 expressed concern that this Court might not follow the negotiations and sentence him more
14 harshly. As a result, Mr. Garcia respectfully requests that this Court do as *Cripps* allows and
15 indicate, on the record, whether or not it is inclined to follow the joint recommendation prior to
16 the entry of the proposed change of plea.
17

18 Respectfully submitted this 21st day of January, 2021.
19

20 /s/ David K. Neidert
21 DAVID K. NEIDERT
22 Attorney at Law
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Christopher Hicks
Washoe County District Attorney
Peg Samples
Chief Deputy District attorney
1 South Center Street
P.O. Box 30083
Reno, NV 89520

/s/ David K. Neidert

DAVID K. NEIDERT
Attorney at Law

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned hereby affirmed that the foregoing document does not contain the Social Security number of any person.

Dated this 21st day of January, 2021.

/s/ David K. Neidert

DAVID K. NEIDERT
Attorney at Law

1 4185

2
3 IN THE SECOND JUDICIAL DISTRICT COURT

4 STATE OF NEVADA, COUNTY OF WASHOE

5 THE HONORABLE LYNNE K. SIMONS, DISTRICT JUDGE

6
7 STATE OF NEVADA,

Dept. No. 6

8 Plaintiff,

Case CR18-0273

9 vs.

10 BRAXTON CHEYANNE GARCIA,

11 Defendant.

12 _____/
Pages 1 to 23, inclusive.

13 TRANSCRIPT OF PROCEEDINGS

14 CHANGE OF PLEA

15 Thursday, January 28, 2021

16 A P P E A R A N C E S:

17 FOR THE PLAINTIFF:

PEG SAMPLES
DEPUTY DISTRICT ATTORNEY
1 So. Sierra St., So. Tower
Reno, NV 89502

19 FOR THE DEFENDANT:

DAVID NEIDERT, ESQ.
643 S Maine Street
Fallon, NV 89406

21
22
23 REPORTED VIA ZOOM BY: Christina Amundson, CCR #641
Litigation Services, 323.3411

1 RENO, NEVADA - THURSDAY, JANUARY 28, 2021

2 THE COURT: Let's get started. Good
3 morning, everyone. This is the time set for
4 Department 6's in-custody calendar for
5 January 28th, 2021, at 9:00 a.m. The record will
6 reflect that this court session is taking place on
7 this date and time and is held remotely via
8 audio-visual transmission to the closure of the
9 courthouse at 75 Court Street in Reno, Washoe
10 County, as a result of the COVID-19 pandemic and
11 resulting administrative orders.

12 The court and all of its participants are
13 appearing through simultaneous audio-visual
14 transmission. I'm physically located in Reno,
15 Washoe County, Nevada, which will be deemed the site
16 of today's court session. As I call upon you,
17 please state your name and county and state from
18 which you're appearing. Good morning, Ms. Clerk.

19 THE CLERK: Good morning, your Honor.
20 Maureen Conway appearing from Washoe County, Nevada.

21 THE COURT: And good morning, Ms. Reporter.

22 THE REPORTER: Good morning, your Honor.
23 Tina Amundson, Washoe County, Nevada.

24 THE COURT: Good morning, Deputy Gibson.

1 DEPUTY GIBSON: Good morning. Deputy
2 Gibson located at 911 Parr Boulevard, Reno, Washoe
3 County, Nevada.

4 THE COURT: And you have the persons that
5 are in custody that are on my docket there.

6 Is that correct?

7 DEPUTY GIBSON: All but one, your Honor.

8 THE COURT: Thank you. And remind me who
9 that is. Mr. Jackson?

10 DEPUTY GIBSON: Yes, ma'am.

11 THE COURT: All right. Thank you. And the
12 record will reflect that all of the persons on their
13 docket with the exception of Mr. Jackson are present
14 at 911 Parr Boulevard. Do I have any other people
15 that will be appearing on all matters today?

16 Okay. The record will also reflect that
17 this court session and hearing is open to the public
18 for viewing and listening through the link on the
19 Washoe County District Court website online hearings
20 by department and also by accessing Zoom dot-com and
21 typing in the webinar number. If at any time you
22 cannot see or hear all of the other participants,
23 please signal the court in some fashion.

24 As I call upon counsel, please state your

1 appearance and acknowledge that you've received
2 notice this hearing is taking place pursuant to the
3 Nevada rules governing appearance by audio-visual
4 transmission equipment Part 9. Please advise if you
5 have any objection to proceeding in this fashion
6 today. And also for defense counsel, please make
7 sure that you've had sufficient time to speak with
8 your client prior to proceeding today.

9 If this audio-visual hearing is interrupted
10 by Zoom-bombing or any other technical means, I'll
11 immediately end the meeting or my clerk will and
12 I'll just ask you to sign back on.

13 I'm asking the court reporter to please
14 include my comments that have been made thus far in
15 each transcript for each hearing in this court
16 session.

17 Case No. CR18-0273, the State v. Braxton
18 Cheyenne Garcia. This is the time set for a change
19 of plea. Appearances. Ms. Samples.

20 MS. SAMPLES: Peg Samples on behalf of the
21 State. I'm appearing this morning from Washoe
22 County, Nevada. I have received the notices
23 regarding today's hearing and I have no objection to
24 appearing in this fashion.

1 THE COURT: And good morning, Mr. Neidert.

2 MR. NEIDERT: Dave Neidert appearing from
3 Washoe County. I received all notices and I have no
4 objection to proceeding in this fashion.

5 THE COURT: All right. Thank you. And
6 good morning, Mr. Garcia.

7 THE DEFENDANT: Good morning.

8 THE COURT: We were notified that Mr.
9 Garcia wishes to change his plea today. Can you
10 please apprise the court, Mr. Neidert, of the
11 negotiations.

12 MR. NEIDERT: The negotiations are that Mr.
13 Garcia, in return for his plea today, the two sides
14 will jointly recommend a sentence of 60 to 150
15 months in prison with credit time served for
16 March 7th, 2018, up to and including the days he's
17 sentenced in this case; otherwise, both parties are
18 free to argue.

19 And I would note, your Honor, for the
20 record that I filed a CRPS request with this court
21 to take the Court's temperature to see if they're
22 inclined to go along with this negotiation.

23 THE COURT: So, the credit time served
24 would be how much?

1 MR. NEIDERT: It's going to be
2 approximately three years because -- I mean, I don't
3 know the exact date but I'm assuming a March
4 sentencing and March 7th, 2021, would be three
5 years exactly.

6 THE COURT: Ms. Samples, can you provide a
7 bit more information regarding the reasonableness of
8 the negotiations and why the court should follow
9 them.

10 MS. SAMPLES: I cannot comment other than
11 to say that the State will stand by the
12 negotiations. I do believe they are appropriate in
13 this case.

14 THE COURT: Okay. Mr. Neidert, did you
15 wish to add anything in addition to what was in your
16 papers in which you requested that the court
17 indicate whether or not it would follow the
18 negotiations?

19 MR. NEIDERT: The only thing I wanted to
20 add is this is very important to my client. As the
21 Court may or may not remember, he was -- this court
22 sentenced him in a previous case. In that case the
23 Court gave him the maximum sentence for the crime he
24 was convicted in that offense. This sentence is,

1 obviously, not the maximum sentence for the offense.

2 Additionally, your Honor, because in time,
3 your Honor, I want -- this event occurred prior to
4 the events for which this court had previously
5 sentenced Mr. Garcia. So, his concern is that,
6 first of all, the Court could theoretically order it
7 run consecutive to that previous sentence and with
8 less credit and also conceivably give him a longer
9 sentence. Those were major concerns expressed to me
10 by my client, which precipitated the CRPS motion I
11 filed with the State.

12 THE COURT: All right. Thank you.

13 Mr. Garcia, I did review the CRPS motion
14 and the entire matter. I don't come to the court
15 with any sort of bias for or against you at all. I
16 consider each case very carefully. Obviously,
17 criminal history weighs into it. But I recognize
18 the different timing here.

19 Obviously, I have significant concerns
20 regarding the resulting injuries and, however, after
21 thorough consideration, I will indicate to counsel I
22 know that they both negotiate very mindfully and
23 take into consideration everything, and I'm going to
24 follow the negotiations.

1 MR. NEIDERT: Thank you, your Honor.

2 THE COURT: All right. We previously
3 established when Mr. Garcia entered his not guilty
4 we established his true name, so I'll just have him
5 sworn in at this time.

6 (Defendant sworn.)

7 THE COURT: All right. Mr. Garcia, I'm
8 assuming because you filed the CRPS motion -- but I
9 want to talk with you independently -- that you
10 agree with the negotiations of the case.

11 Is that correct?

12 THE DEFENDANT: Yes.

13 THE COURT: And is English the language you
14 read, write, and understand the best?

15 THE DEFENDANT: Yes.

16 THE COURT: Mr. Garcia, will you remind me
17 how old you are.

18 THE DEFENDANT: Thirty.

19 THE COURT: How far did you get in school?

20 THE DEFENDANT: Graduated GED in prison.

21 THE COURT: All right. And so is it fair
22 to say with that background that the guilty plea
23 memorandum was easy for you to read?

24 THE DEFENDANT: Yeah.

1 THE COURT: Did you have an opportunity to
2 fully discuss it with your attorney?

3 THE DEFENDANT: Yes.

4 THE COURT: And as you stand here today do
5 you completely understand all its terms and
6 conditions?

7 THE DEFENDANT: Yes.

8 THE COURT: And do you agree with them?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you have a copy of the
11 guilty plea memorandum there?

12 THE DEFENDANT: I do.

13 THE COURT: And at line 12 is that your
14 name?

15 THE DEFENDANT: Yep.

16 THE COURT: All right. If you agree with
17 it completely and understand it completely, you may
18 sign it, if you wish, on the last page.

19 THE DEFENDANT: (Defendant complies.)

20 THE COURT: You can give the pen back to
21 the bailiff.

22 Mr. Garcia has voluntarily signed the
23 guilty plea memorandum.

24 Do you understand by signing it and by

1 pleading guilty, you're giving up important
2 constitutional rights, sir?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand you're
5 waiving your right to a jury trial?

6 THE DEFENDANT: Yes.

7 THE COURT: And, in fact, you understand
8 that the trial that's presently set for March 8th,
9 2021, will be vacated as will the motion to confirm?

10 THE DEFENDANT: Yes.

11 THE COURT: All right. Do you understand
12 that you're waiving your right to require the state
13 to prove the charges against you beyond a reasonable
14 doubt?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you further understand
17 you're waiving your right against
18 self-incrimination?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you also understand by
21 admitting these charges you're, in fact,
22 incriminating yourself?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand you're giving

1 up your right to cross-examine all of the state's
2 witnesses?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you also understand you're
5 giving up your right to subpoena witnesses in and
6 compel their attendance in court at the time of
7 trial?

8 THE DEFENDANT: Yes. Ms. Samples, would
9 you please advise Mr. Garcia what the state would be
10 prepared to prove beyond a reasonable doubt if this
11 case were to go to trial.

12 MS. SAMPLES: Yes, your Honor.

13 Had this case proceeded to trial, the state
14 would have proven beyond a reasonable doubt that the
15 defendant committed the crime of child abuse with
16 substantial bodily harm, in that he did on or about
17 November 13th, 2015, within the County of Washoe,
18 State of Nevada, willfully and unlawfully being an
19 adult person cause "LS," a child of the age of
20 approximately ten months, to suffer unjustifiable
21 physical pain as a result of abuse in that the
22 defendant forcefully struck "LS" about the head --

23 THE COURT: Mr. Garcia?

24 THE DEFENDANT: Accidentally. She always

1 forgets to put "accidentally" in her. We've gone over
2 this over and over again this matter.

3 THE COURT: Just a minute, Mr. Garcia. The
4 state is indicating what the state believes it can
5 prove at trial, and then I'll canvass you. Okay?

6 THE DEFENDANT: Yeah.

7 THE COURT: Go ahead, Ms. Samples.

8 MS. SAMPLES: -- in that the defendant
9 forcefully struck LS about the head and/or struck
10 LS's head onto a hard surface and/or by means
11 unknown caused injury to LS that fractured his skull
12 and resulted in intracranial injuries and the
13 defendant's aforementioned actions caused LS to
14 suffer substantial bodily harm in that the skull
15 fracture and intracranial injuries caused protracted
16 loss or impairment of the function of LS's bodily
17 member or organ and/or caused LS to suffer prolonged
18 physical pain.

19 THE COURT: Thank you.

20 Mr. Neidert, did you wish to address Mr.
21 Garcia's comment?

22 MR. NEIDERT: Your Honor, I'm not sure what
23 I can say. I've certainly discussed this case
24 multiple times with Mr. Garcia. And I -- like I

1 said, in conversations with me he's maintained it
2 was an accident, but I would prefer the Court just
3 to canvass him and see what we can go -- if we can
4 get to the plea today.

5 THE COURT: Well, I think it's important to
6 talk with Mr. Garcia about it.

7 Mr. Garcia, when the state was indicating
8 what they believed they could prove at trial, you
9 interjected that it was by accident, correct?

10 THE DEFENDANT: Right. Well, the witness
11 in my case, which was the mother -- she was actually
12 there when it happened -- knows it was an accident
13 due to my back injuries and stuff.

14 So, the only reason that I had made a
15 guilty plea today was the fact that for trial I'm
16 not guaranteed a win at trial, even though if my
17 attorney's good or whatever the case may be. The
18 case is weak as it is. The case is almost over five
19 years old. They waited three years to charge me
20 while I was in prison on my other sentence.

21 I then had expired my other sentence from
22 Warm Springs and come here. It's not like I got out
23 and committed a crime. I've never been out. I've
24 been incarcerated for almost five years now and

1 stuff. That's why -- and when I was going to trial,
2 my preparation for trial also was the fact that the
3 mother was going to be there to testify on my
4 behalf. And still she is still testifying on my
5 behalf, so that's why I say it was an accident.

6 I stand firm with that. And like Mr.
7 Neidert said, he's been my attorney for a year now.
8 I've been fighting this case for three years. If I
9 honestly just wanted to take a deal, I would have
10 taken the first deal Ms. Samples had offered me,
11 which was the 6 to 15 years consecutive back in
12 2018. But, obviously, I've been back and forth
13 fighting this for about three years now, two
14 attorneys. My rights have been waived, obviously,
15 which I'm going to file a motion for post-conviction
16 relief due when I get to the prison on that, so
17 yeah.

18 THE COURT: Let's just slow down for a
19 moment, Mr. Garcia. Let's slow down. There's a lot
20 of pieces that go into entering into a plea
21 agreement.

22 THE DEFENDANT: Yeah.

23 THE COURT: And I understand that you have
24 thoughtfully weighed all the factors in this case.

1 You have done some filings with the court. You have
2 been intimately involved with preparation of this
3 case. You have a difference of opinion of whether
4 it was accident or intentional. Is that correct?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And that we're not here today
7 to discuss post-conviction relief. We're here today
8 for me to take your plea and find there's a factual
9 basis for it. And you're correct, every case it's
10 left to the jury to decide and no one has a
11 guaranteed win, right, either the state or you?

12 THE DEFENDANT: Right.

13 THE COURT: When you're preparing and
14 thinking about it, you obviously talk with your
15 counsel about potential witnesses. You talk about
16 the strengths and weaknesses of your case. And
17 there is just some times that, even though a person
18 believes that they may not have done everything that
19 the state is, they weigh it and they conclude that
20 it's in their best interest to accept the deal.

21 Is it fair to say that that's what you did?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And so, as I told you,
24 Ms. Samples told us what she believes that she could

1 prove, and do you understand the elements that the
2 State was prepared to prove against you should this
3 matter go to trial?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: And customarily I ask next if
6 you committed the crime with the intent as described
7 in the charges stated. And I think that piece of it
8 is where you are denying the intent, correct?
9 You're maintaining it was accidental.

10 THE DEFENDANT: Yes.

11 THE COURT: But as you stand here today, do
12 you understand you've told me that there's a risk at
13 trial and do you understand that the State has
14 indicated it could prove all those elements and it
15 could prove intent?

16 THE DEFENDANT: Yeah, I understand that.

17 THE COURT: Okay. And so I do find that
18 there's a factual basis for the plea. I do find
19 that you, in particular, have -- this has been
20 ongoing for various reasons and you have very
21 thoughtfully considered all of the avenues of
22 whether you should go to trial or not and that you
23 have decided that you wish to enter a plea.

24 I'm going to accept the plea.

1 You understand that the maximum penalty in
2 this case for the crime to which you're pleading is
3 that you may be imprisoned for a period of 2 to 20
4 years in the Nevada State Department of Corrections.

5 Do you understand that?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: And that you're not eligible
8 for probation unless a psychiatric or psychological
9 evaluation is completed which certifies you do not
10 represent a high risk to reoffend.

11 Do you understand that?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: And you also understand that in
14 working with your attorney, you filed a motion today
15 that asked the court if I would follow the
16 negotiations, so in lieu of the maximum that you
17 would receive, the 5 to 12 and a half years in the
18 Nevada Department of Corrections, right?

19 THE DEFENDANT: Yes.

20 THE COURT: And that an additional part of
21 that negotiation is that you would receive credit
22 for time served back to March 7th, 2018, correct?

23 THE DEFENDANT: Yes.

24 THE COURT: And so you understand that,

1 although sentencing is completely the province of
2 the court, that I have given you an indication
3 pursuant to applicable law what I'm going to do.

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. So, with all those
6 rights in mind you waived and all the information
7 the court has provided to you, do you still wish to
8 plead guilty?

9 THE DEFENDANT: Yes.

10 THE COURT: Have you had sufficient time --
11 you identified earlier that you've had a couple
12 attorneys on this. We've given you the time to have
13 a new attorney.

14 Have you had an opportunity to talk about
15 everything you needed to with your attorney?

16 THE DEFENDANT: Yes, I have.

17 THE COURT: Okay. And are you satisfied
18 with the representation that's been provided to you
19 by Mr. Neidert?

20 THE DEFENDANT: Yes.

21 THE COURT: Has anyone promised you
22 anything or threatened you in any way in order to
23 get you to plead guilty?

24 THE DEFENDANT: No.

1 THE COURT: You know the CRPS motion is
2 completely separate from any promises, correct?

3 THE DEFENDANT: How do you say? Explain
4 that. So, me signing --

5 THE COURT: Well, what I need to do in a
6 canvass, Mr. Garcia, is just make sure that you
7 weren't forced into taking something or promised
8 something by someone. And I just wanted to make
9 sure that you understood that I've indicated on the
10 record my willingness to follow the negotiations,
11 which I believe were very mindfully done. And I was
12 asking if there was any other promises that were
13 made or anything that was causing you to enter into
14 this involuntarily.

15 THE DEFENDANT: No.

16 THE COURT: Okay. So, as you stand here
17 today, you're pleading guilty freely and
18 voluntarily, correct? You want to do this, correct?

19 THE DEFENDANT: Yes.

20 THE COURT: Are you under the influence of
21 any alcohol or drugs or do you have any condition or
22 circumstance that might preclude you from fully
23 understanding me today?

24 THE DEFENDANT: No.

1 THE COURT: Do you have any questions for
2 me? We've had a chance to talk about a couple
3 things. I want to make sure that all your questions
4 are answered.

5 THE DEFENDANT: No. Because this ain't the
6 proper place to talk about it. I can talk to you
7 about it at sentencing.

8 THE COURT: And you're absolutely right.
9 You're going to have an opportunity to -- you have a
10 right of elocution and you'll be able to talk to me
11 at a portion during the sentencing.

12 And you're also going to get an opportunity
13 to submit a written statement to the PSI and you're
14 going to talk about the presentence investigation
15 report with Mr. Neidert and you'll be able to raise
16 any questions and any factual disputes under Nevada
17 law. Do you understand that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Okay. So, what is your plea,
20 Mr. Garcia?

21 THE DEFENDANT: Guilty.

22 THE COURT: All right. The court finds
23 that Mr. Garcia understands the nature of the
24 offense charged, the consequences of his plea, that

1 he's made a knowing, voluntary, and intelligent
2 waiver of his constitutional rights. And I've
3 considered all the circumstances that we have
4 discussed and the record in this entire matter and
5 the court will accept his guilty plea and will set a
6 date for sentencing.

7 THE CLERK: That will be March 18th at
8 9:00 a.m.

9 THE COURT: As I indicated, you'll have an
10 opportunity to write your information and fill out a
11 questionnaire. That information goes into your
12 presentence investigation report. So, if you don't
13 do it, you don't do it timely, it'll be a failure to
14 appear PSI.

15 So, you'll get some paperwork there. I
16 believe Officer Gibson has some for you. And is
17 there anything else from the Division of Parole and
18 Probation?

19 MR. PEREZ: No, your Honor. I wanted to
20 clarify. I didn't hear the sentencing date.

21 THE COURT: It's march 18th, 2021, at
22 9:00 a.m. Your trial, as I indicated previously, is
23 vacated and the motion to confirm is vacated. I
24 don't know. I'm assuming we would probably meet by

1 Zoom still then, but if not, your attorney will be
2 in contact with you if there's any change in that
3 date and time. Okay, sir?

4 MR. NEIDERT: Can they send me the signed
5 guilty plea memorandum so I can file it with the
6 court?

7 THE COURT: I don't know the answer to
8 that. My clerk can assist you with that.

9 MR. NEIDERT: If she could supply that to
10 the jail so that they could send it to me. That way
11 -- I have a signed guilty plea memorandum separate
12 from the one signed today that's identical to it,
13 but certainly the one signed today is probably
14 preferable.

15 THE COURT: Well, that all happens
16 magically as far as I'm concerned. We'll make sure
17 it's done. Thank you. (End of proceedings.)
18
19
20
21
22
23
24

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

3 I, CHRISTINA MARIE AMUNDSON, official reporter
4 of the Second Judicial District Court of the State
5 of Nevada, in and for the County of Washoe, do
6 hereby certify:

7 That as such reporter, I was present in
8 Department No. 6 of the above court on January 28,
9 2021, at the hour of 9:00 a.m. of said day, and I
10 then and there took verbatim stenotype notes of the
11 proceedings had and testimony given therein in the
12 case of State of Nevada, Plaintiff, v. BRAXTON
13 CHEYANNE GARCIA, Defendant, Case No. CR18-0273.

14 That the foregoing transcript is a true and
15 correct transcript of my said stenotype notes so
16 taken as aforesaid, and is a true and correct
17 statement of the proceedings had and testimony given
18 in the above-entitled action to the best of my
19 knowledge, skill and ability.

20 DATED: At Reno, Nevada, on 9th day of May 2021.

21 /S/ Christina Marie Amundson, CCR #641
22 _____

23 Christina Marie Amundson, CCR #641
24

1 CODE 1785
2 Christopher J. Hicks
3 #7747
4 One South Sierra Street
5 Reno, NV 89501
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8 Attorney for Plaintiff

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

12 * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No. CR18-0273

15 v.

Dept. No. D06

16 BRAXTON CHEYANNE GARCIA,

17 Defendant.

18 _____ /
19 GUILTY PLEA MEMORANDUM

20 1. I, BRAXTON CHEYANNE GARCIA, understand that I am
21 charged with the offense of: Child Abuse with Substantial Bodily
22 Harm, a violation of NRS 200.508.1a2.

23 2. I desire to enter a plea of guilty to the offense of
24 Child Abuse with Substantial Bodily Harm, a violation of NRS
25 200.508.1a2, as more fully alleged in the charge filed against me.

26 3. By entering my plea of guilty I know and understand
that I am waiving the following constitutional rights:

A. I waive my privilege against self-incrimination.

B. I waive my right to trial by jury, at which trial the
State would have to prove my guilt of all elements of the offense(s)

1 beyond a reasonable doubt.

2 C. I waive my right to confront my accusers, that is, the
3 right to confront and cross examine all witnesses who would testify
4 at trial.

5 D. I waive my right to subpoena witnesses for trial on my
6 behalf.

7 4. I understand the charge against me and that the
8 elements of the offense which the State would have to prove beyond a
9 reasonable doubt at trial are that on November 13th, 2015, or
10 thereabout, in the County of Washoe, State of Nevada, I did,
11 willfully and unlawfully, being an adult person, cause L.S., a child
12 of the age of approximately ten months, to suffer unjustifiable
13 physical pain as a result of abuse, in that I forcefully struck L.S.
14 about the head and/or struck L.S.'s head onto a hard surface, and/or
15 by means unknown caused injury to L.S. that fractured his skull and
16 resulted in intracranial injuries; and

17 the aforementioned action(s) caused L.S. to suffer
18 substantial bodily harm in that the skull fracture and intracranial
19 injuries caused protracted loss or impairment of the function of
20 L.S.'s bodily member or organ, and/or caused L.S. to suffer prolonged
21 physical pain.

22 ///

23 ///

24 ///

25 ///

26 ///

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

11 6. I understand that the consequences of my plea of guilty
12 are that I may be imprisoned for a period of 2 to 20 years in the
13 Nevada State Department of Corrections. I am not eligible for
14 probation unless a psychiatric or psychological evaluation is
15 completed pursuant to NRS 176A.110 which certifies that I do not
16 represent a high risk to reoffend based upon a currently accepted
17 standard of assessment.

18 7. In exchange for my plea of guilty, the State, my
19 counsel and I have agreed to recommend the following: Both parties
20 will jointly stipulate to a sentence of 5-12.5 years in the Nevada
21 Department of Corrections. The State agrees defendant will receive
22 credit since the date he was booked on this case, March 7, 2018. The
23 parties are otherwise free to argue.

24 ///

25 ///

26 ///

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

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

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

22 11. I understand and agree that pursuant to the terms of
23 the plea agreement stated herein, any counts which are to be
24 dismissed and any other cases charged or uncharged which are either
25 to be dismissed or not pursued by the State, may be considered by the
26 court at the time of my sentencing.

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

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

21 14. I offer my plea freely, voluntarily, knowingly and
22 with full understanding of all matters set forth in the Information
23 and in this Plea Memorandum. I have read this plea memorandum
24 completely and I understand everything contained within it.

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

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

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

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED this 10 day of July, 2011

Defendant

Translator/Interpreter

Attorney Witnessing Defendant's Signature

Prosecuting Attorney

1 CODE: 4185
LORI URMSTON, CCR #51
2 Litigation Services
151 Country Estates Circle
3 Reno, Nevada 89511
(775) 323-3411
4 Court Reporter

5
6 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 HONORABLE LYNNE K. SIMON, DISTRICT JUDGE
9

10 STATE OF NEVADA,

11 Plaintiff,

Case No. CR18-0273

12 vs.

Dept. No. 6

13 BRAXTON CHEYANNE GARCIA,

14 Defendant.
-----/

15
16 TRANSCRIPT OF PROCEEDINGS

17 SENTENCING

18 Thursday, March 18, 2021

19 Reno, Nevada
20
21
22
23

24 Reported by:

LORI URMSTON, CCR #51

APPEARANCES:

FOR THE PLAINTIFF: PEG SAMPLES
Deputy District Attorney
1 South Sierra Street
South Tower, 4th Floor
Reno, Nevada 89520

FOR THE DEFENDANT: DAVID K. NEIDERT
Attorney at Law
316 California Avenue
Reno, Nevada 89509

FOR THE DIVISION OF
PAROLE & PROBATION: ERIN LUKL

1 RENO, NEVADA; THURSDAY, MARCH 18, 2021; 9:00 A.M.

2 --oOo--

3 THE COURT: Good morning, everyone. This is the
4 time set for Department 6's in-custody calendar for
5 March 18th, 2021. The record will reflect that this
6 court session is taking place on this date and time and
7 is held remotely via audiovisual means due to the
8 closure of the courthouse at 75 Court Street in Reno,
9 Washoe County, Nevada, as a result of the COVID-19
10 pandemic and resulting administrative orders.

11 The Court and all the participants are appearing
12 through simultaneous audiovisual transmission via Zoom
13 webinar. I'm physically located in Reno, Washoe
14 County, Nevada, which will be deemed the site of
15 today's court session. As I call upon you, please
16 state your name and county and state from which you are
17 appearing.

18 Good morning, Ms. Clerk.

19 THE CLERK: Good morning, Your Honor. Maureen
20 Conway appearing from Washoe County, Nevada.

21 THE COURT: And good morning, Ms. Reporter.

22 THE COURT REPORTER: Lori Urmston, Washoe County,
23 Nevada.

24 THE COURT: And, Mr. Bailiff, good morning to you.

1 DEPUTY GIBSON: Good morning, Your Honor. Deputy
2 Gibson located at 911 Parr Boulevard, Washoe County,
3 Reno, Nevada. And I do have all of the in-custodies
4 that are on the docket this morning.

5 THE COURT: All right. Thank you.

6 Ms. Lukl, are you on all the matters this morning?

7 MS. LUKL: Your Honor, I'm on all of them except
8 for one. And I'm in Washoe County, Nevada.

9 THE COURT: Okay. Thank you.

10 The record will also reflect that this court
11 session and hearing is open to the public for viewing
12 and listening through the link on the Washoe County
13 website, on-line hearings by department, or by
14 accessing Zoom.com and typing in the webinar number.
15 If at any time you cannot see or hear all of the other
16 participants, please notify the Court in some fashion.

17 As I call upon counsel, please state your
18 appearance and where you're appearing from. Please
19 acknowledge that you've received notice that this
20 hearing is taking place pursuant to the Nevada rules
21 governing appearance by audiovisual transmission
22 equipment, Part IX. Please advise if you have any
23 objection to proceeding in this manner.

24 And for defense counsel, please assure the Court

1 that you've had -- whether or not you've had time to
2 speak with your client prior to proceeding today.

3 If this audiovisual hearing is interrupted by Zoom
4 bombing or any technical difficulties and I can't
5 manage them, I will immediately end the meeting and
6 just ask everyone to sign back on and I'll move you in
7 one at a time.

8 The court reporter is requested to include my
9 comments thus far in each transcript for each hearing
10 in this court session today.

11 All right. So I think there's some requests for
12 how we proceed. Ms. Clerk, would you please advise the
13 Court is there some requests for changing the order,
14 the tentative order?

15 THE CLERK: Your Honor, counsel would like to
16 address you in the Braxton Cheyanne Garcia matter.
17 They're not in agreement as to when to call this
18 matter. And then if you can call Ms. Garcia's case
19 next, Mr. Goodnight is still speaking with some clients
20 at the jail.

21 THE COURT: All right. And so on Mr. Braxton
22 Garcia's case, who would like this to not go first?
23 Why don't you indicate that to me.

24 MR. NEIDERT: Your Honor, David Neidert appearing

1 from Carson City, Nevada. I've received all notices
2 and I generally have no objection to proceeding, but
3 some things happened. I visited with my client at the
4 jail two days ago. I understand the prosecutor would
5 like to go first. I would prefer that we go last.

6 THE COURT: All right. Ms. Samples, the reason for
7 requesting first.

8 MS. SAMPLES: Good morning, Your Honor. Peg
9 Samples on behalf of the State. I am in Washoe County,
10 Nevada. I have received all notices and I do not have
11 an objection to appearing in this manner.

12 Your Honor, I requested to go first because I am
13 actually in -- I'm right now in a Zoom CLE that will
14 last all morning, and so I was hoping to get back to
15 that. I've been in it since 7 o'clock this morning and
16 actually all week. I didn't know that Mr. Neidert was
17 having issues, so I apologize for kind of jumping the
18 gun.

19 THE COURT: Why don't we do this. I'm going to put
20 it at the end. And what we can do -- if you can just
21 communicate with my court clerk. She can email you
22 right when we're going to start. Will that work for
23 you?

24 MS. SAMPLES: That's fine, Your Honor. And

1 actually Ms. Ormaas has made the same offer. So I will
2 just go to that Zoom class and I'll be back when --

3 THE COURT: All right. So multitasking this
4 morning.

5 MR. NEIDERT: And I was not apprised of -- heard
6 that, but I have my reasons, Your Honor. Thank you.

7 THE COURT: And, Mr. Neidert, while we're waiting
8 for you can you work on your audio, because it's a
9 little hard to hear.

10 MR. NEIDERT: I will try that as well.

11 THE COURT: Okay. Thank you.

12 (A recess was taken.)

13 THE COURT: Okay. All right. So I think we're
14 back to Mr. Garcia, Case No. CR18-0273, the State
15 versus Braxton Cheyanne Garcia. This is the time set
16 for sentencing in this matter. And, Ms. Samples, you
17 can do your appearance.

18 MS. SAMPLES: Thank you, Your Honor. Good morning
19 once again. Peg Samples on behalf of the State. I am
20 appearing from Washoe County and I have received all
21 notices. I have no objection to appearing in this
22 manner.

23 THE COURT: And, Mr. Neidert, good morning.

24 MR. NEIDERT: David Neidert appearing from Carson

1 City, Nevada. I've received all notices and I have no
2 objection to proceeding in this manner.

3 THE COURT: Okay. And good morning, Mr. Garcia.

4 THE DEFENDANT: Good morning.

5 THE COURT: I just want to make sure there's no one
6 else in the room -- correct? -- or they're at least six
7 feet away since you have your mask down.

8 THE DEFENDANT: Yeah. I was putting it down to
9 speak.

10 THE COURT: Well, it's okay. What I'm going to do
11 is I'll tell you if I can't understand you or I'll
12 repeat information back for the court reporter, but I
13 just want to make sure everyone is socially distanced
14 there.

15 Okay. I did have an opportunity to review the PSI
16 that was filed in on 2/25/2021. Excuse me. It was
17 dated -- it's filed in on March 4th, 2021. It did
18 include a recommended restitution of \$5,865.90. And
19 then the calculation for credit for time served that I
20 have is 1,108 days. And so I would like to hear from
21 Ms. Lukl a confirmation on the restitution amount, the
22 time served and if you have any other changes or
23 corrections you would like to apprise the Court of.

24 MS. LUKL: Thank you, Your Honor. Both statements

1 are correct.

2 THE COURT: Okay. Mr. Neidert, have you had an
3 opportunity to review the Presentence Investigation
4 Report with Mr. Garcia and do you have any changes,
5 corrections or additions?

6 MR. NEIDERT: Your Honor, that's an issue. Tuesday
7 afternoon I went to the Washoe County Jail with my
8 investigator, Mr. Peele, to speak with Mr. Garcia and
9 other clients. Frankly, I anticipated it being a
10 relatively short meeting because I've met on numerous
11 occasions with Mr. Garcia first at the Warm Springs
12 Correctional Center and then at the Washoe County Jail
13 throughout the year and a half I've been his attorney.

14 When Mr. Garcia came in our conversation very, very
15 quickly deteriorated and he indicated at that time
16 great dissatisfaction with the handling of his case,
17 with my handling of the case, that he wants to withdraw
18 his plea and various other statements.

19 It ended up before we could finish going over the
20 PSI I raised my voice -- and I apologized and I sent
21 Mr. Garcia an email apologizing for that -- which
22 caused the authorities to come in and he left without
23 his PSI. But I believe my client at this point is at a
24 point where he's telling me, at least the last

1 communication I had from him because he sent me an
2 email after our visit, that he doesn't want me as his
3 attorney and he wants to try to withdraw his plea.

4 THE COURT: And for the record, Mr. Neidert, you
5 were appointed; correct?

6 MR. NEIDERT: I was appointed in August of 2019.

7 THE COURT: And that appointment was after
8 appointment of other attorneys that Mr. Garcia had a
9 difference of opinion with; is that correct?

10 MR. NEIDERT: That's correct. I believe he
11 originally had somebody from the public defender's
12 office and then he had Mr. Edwards and then myself.
13 Scott Edwards that is.

14 THE COURT: Okay. So a couple things here.
15 Mr. Garcia, is it your position that you wish to
16 proceed with a Young hearing regarding the
17 representation by Mr. Neidert?

18 THE DEFENDANT: I would like to, but I'm just going
19 to stick with plan A and just make my statement today
20 for the Court for the proceedings that I need to do
21 after my sentencing. I don't want to waste any more of
22 the Court's time or Ms. Samples' time.

23 THE COURT: And, Mr. Garcia, I appreciate that, but
24 I'm not going to set you up for post-conviction relief.

1 So what we're going to do is we're going to vet this
2 all the way to sentencing, because you can't -- I'm
3 going -- I'm going to allow you to be -- we can do a
4 couple things.

5 One, we can set it for a Young hearing.
6 Alternatively, I think the law would allow me to
7 appoint someone else to give you some advice regarding
8 withdrawal of plea.

9 Does counsel agree that I can appoint --
10 essentially it would be counsel to advise Mr. Garcia on
11 whether or not he should pursue a Young hearing and
12 whether or not ultimately he should pursue withdrawal
13 of plea.

14 MR. NEIDERT: I would agree with that, Your Honor.

15 THE COURT: Ms. Samples.

16 MS. SAMPLES: I do agree with both of those things.
17 And I agree that we should not go forward to sentencing
18 today without Mr. Neidert having explained the PSI to
19 Mr. Garcia.

20 THE COURT: And that piece of it I do have the
21 ability -- I could quickly set up a Zoom meeting
22 separate and apart from this webinar which is what I
23 was contemplating doing, but it seems to me that
24 there's just multiple issues here.

1 I do have concern, Mr. Garcia, regarding what
2 appears to be a possible pattern of becoming
3 dissatisfied with counsel when they tell you something
4 you don't want to hear, but I'm not going to draw any
5 conclusions on that. I'm going to make sure that your
6 constitutional rights are protected. But at the same
7 time, I don't believe we need to start from square one,
8 because Krista Meier could appoint counsel just to
9 advise on these issues. Correct?

10 THE DEFENDANT: May I interject?

11 THE COURT: Just a moment, Mr. Garcia.

12 Mr. Neidert.

13 MR. NEIDERT: I believe she could, Your Honor, yes.

14 THE COURT: Okay. All right. So, Mr. Garcia, you
15 wanted to address the Court?

16 THE DEFENDANT: Yes, ma'am. Thank you. The reason
17 why me and Mr. Neidert had --

18 THE COURT: So I'm going to stop you right there.
19 And here's why I'm going to stop you, Mr. Garcia. It's
20 not to foreclose you from saying anything, it's just
21 that when you go into any information regarding your
22 counsel, you have the right to do so without a district
23 attorney here. So I don't want you to say anything
24 that would jeopardize your rights.

1 So what I think we'll do is I'm not going to move
2 right into a Young hearing right now. Because of the
3 history of this case, I'm going to enter an order,
4 Mr. Garcia, directing appointment by another person
5 from the court-appointed group. I'm not removing
6 Mr. Neidert yet. I'm going to require that they meet
7 with you within ten days. And they're going to go over
8 all these issues. You will be free to speak with that
9 person. Okay. But I don't want you to say anything
10 that you shouldn't discuss in front of the district
11 attorney.

12 THE DEFENDANT: Okay.

13 THE COURT: Do you understand why I stopped you?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay. All right. So I will enter an
16 appropriate order. What we will do is I am going to
17 set this for a further hearing. My contemplation was
18 since I'm requiring someone to meet with him within ten
19 days and take a review of this matter that we set this
20 out for either three or four weeks. Is there any
21 preference?

22 MS. SAMPLES: No, Your Honor.

23 THE COURT: I think in an abundance of caution
24 we'll set it out four weeks. It will be -- I am going

1 to set it for a status hearing, possible Young hearing
2 and sentencing. So one of those will go off depending
3 on which avenue we go. So I'm just going to make sure
4 that it's set for anything we may consider.

5 Okay, Mr. Garcia, does that meet with your issues
6 today?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Okay.

9 THE DEFENDANT: May I get the transcript of this
10 hearing? Is that applicable, that I can get the
11 transcript mailed to me at the Washoe County Jail just
12 so I can kind of keep a track record of what's going
13 on? Due to my rights and under the court reporter act
14 I would just like all -- anything that's recorded and
15 monitored to --

16 THE COURT: Okay. So we have an overriding
17 administrative order of what type of proceedings are
18 actually reported. I would have to enter a separate
19 order having this filed which I don't have a problem
20 doing, but you're not going to get it tomorrow.

21 THE DEFENDANT: That's fine.

22 THE COURT: Okay. So I'm going to take a look at
23 that administrative order. I do not believe -- a
24 sentencing hearing would be transcribed, but because

1 we're not proceeding with a sentencing it may be
2 different, but I understand the issues and I will
3 follow up on that and issue an appropriate minute
4 order. Okay?

5 THE DEFENDANT: Thank you.

6 THE COURT: All right. Anything else anyone wants
7 to present?

8 THE CLERK: Your Honor, four weeks out will be
9 April 15th at 9 a.m.

10 THE COURT: Will that work, Mr. Garcia?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: All right. Thank you. Thank you,
13 counsel. I will -- we will reconvene on 4/15/2021 at
14 9 a.m. My anticipation is that I would have the
15 appearances of Ms. Samples, Mr. Neidert and the counsel
16 that is appointed just for these limited issues.

17 MR. NEIDERT: And I know that the court will notify
18 her, but I will also notify Ms. Meier about this.

19 THE COURT: Okay. All right. Thank you,
20 Mr. Neidert.

21 MR. NEIDERT: Thank you, Your Honor.

22 MS. SAMPLES: Thank you, Your Honor.

23 THE COURT: We'll be in recess.

24 (The proceedings were continued to
April 15, 2021, at 9:00 a.m.)

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

4 I, LORI URMSTON, Certified Court Reporter, in and
5 for the State of Nevada, do hereby certify:

6 That the foregoing proceedings were taken by me
7 at the time and place therein set forth; that the
8 proceedings were recorded stenographically by me and
9 thereafter transcribed via computer under my
10 supervision; that the foregoing is a full, true and
11 correct transcription of the proceedings to the best
12 of my knowledge, skill and ability.

13 I further certify that I am not a relative nor an
14 employee of any attorney or any of the parties, nor am
15 I financially or otherwise interested in this action.

16 I declare under penalty of perjury under the laws
17 of the State of Nevada that the foregoing statements
18 are true and correct.

19 DATED: At Reno, Nevada, this 8th day of
20 July, 2021.

21
22 LORI URMSTON, CCR #51

23 _____
24 LORI URMSTON, CCR #51

1 4185

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4
5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 THE HONORABLE LYNNE K. SIMONS, DISTRICT JUDGE

8 --o0o--

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR18-0273

11 vs.

Dept. No. 6

12 BRAXTON CHEYANNE GARCIA,

13 Defendant.
14 _____/

15 TRANSCRIPT OF PROCEEDINGS

16 YOUNG HEARING/SENTENCING

17 Thursday, April 22, 2021
18
19
20
21
22
23

24 Reported by:

EVELYN J. STUBBS, CCR #356

A P P E A R A N C E S

For the State:

PEGGY M. SAMPLES, ESQ.
Deputy District Attorney
One South Sierra Street
Reno, Nevada

For the Defendant:

DAVID K. NEIDERT, ESQ.
Attorney at Law
316 California Avenue, Suite 420
Reno, Nevada

SEAN A. NEAHUSAN, ESQ.
Attorney at Law
300 Arlington Avenue, Suite B
Reno, Nevada

For the Division:

MARISSA STAVNESS

The Defendant:

BRAXTON CHEYANNE GARCIA

1 RENO, NEVADA; MONDAY, APRIL 22, 2021; 11:10 A.M.

2 --o0o--

3
4 THE COURT: Okay. Case No. CR18-0273, the State of
5 Nevada versus Braxton Cheyanne Garcia.

6 This is the time set for a hearing after appointment of
7 counsel to discuss specifically a limited scope to advise
8 Mr. Garcia regarding his representation and future course of
9 action, including whether to explore a motion to withdraw guilty
10 plea.

11 The record will reflect that this court session is
12 taking place on April 22nd, 2021, and is held remotely via
13 audiovisual means due to the closure of the courthouse to
14 hearings at 75 Court Street in Reno, Washoe County, Nevada, as a
15 result of the COVID-19 pandemic and resulting administrative
16 orders.

17 The Court and all of the participants are appearing
18 through simultaneous audiovisual transmission via Zoom meeting.
19 I am physically located in Reno, Washoe County, Nevada, which
20 will be deemed the site of today's court session.

21 As I call upon you, please state your name and county
22 and state from which you're appearing.

23 Good morning, Ms. Clerk.

24 THE CLERK: Good morning, Your Honor. Maureen Conway

1 appearing from Washoe County, Nevada.

2 THE COURT: And good morning, Ms. Reporter.

3 THE REPORTER: Lynn Stubbs, Washoe County, Nevada.

4 THE COURT: And, Mr. Garcia, are you there with the
5 bailiff?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And where is the bailiff?

8 THE DEFENDANT: He's coming right now.

9 THE BAILIFF: Good morning.

10 THE COURT: All right. Thank you.

11 And Mr. Garcia is present at 911 Parr Boulevard with
12 the bailiff. The record will also reflect this court session and
13 hearing is open to the public for viewing and listening through
14 the link on the Washoe County District Court website online
15 hearings by department or by accessing zoom.com and typing in the
16 meeting number.

17 If at any time you can't see or hear all of the other
18 participants, please notify the Court in some fashion.

19 As I call upon counsel, please state your appearance
20 and where you're appearing from. Please acknowledge that you've
21 received notice this hearing is taking place good morning
22 audiovisual transmission equipment Part 9. Please advise if you
23 have any objection to proceeding in this manner today. And if
24 you are defense counsel, please advise whether or not you have

1 had sufficient time to speak to your client prior to this
2 proceeding.

3 Good morning, Ms. Samples.

4 MS. SAMPLES: Good morning, Your Honor Peg Samples for
5 the State. I'm appearing from Washoe County, Nevada. I have
6 received the notices about today's hearing, and I have no
7 objection to appearing in this manner.

8 THE COURT: All right. And Mr. Neidert.

9 MR. NEIDERT: David Neidert. I'm appearing from Carson
10 City, Nevada. For purposes of this hearing, I have not consulted
11 with my client at all, but I have no objection to proceeding.

12 THE COURT: All right. Thank you.

13 And, Mr. Neahusan.

14 MR. NEAHUSAN: Sean Neahusan. I'm appearing from
15 Washoe County, Nevada. I have received all the appropriate
16 notices, and I have no objection to proceeding in this manner.
17 And I have a few discussions with Mr. Garcia in regard to the
18 special purposes of my appointment.

19 THE COURT: In fact, at the beginning of this hearing
20 you were placed in a breakout room with Mr. Garcia, correct?

21 MR. NEAHUSAN: That's correct, Your Honor. I had left
22 him with some things to think about, and we met and discussed
23 those.

24 THE COURT: Okay. All right. If this audiovisual

1 hearing is interrupted by human or technical means that I cannot
2 fix, I will end the meeting and I'll have you sign back on, and
3 we'll move you in one at a time.

4 The Court finds that the statements of the participants
5 are audible and visible to the other participants and the court
6 staff, and the statements made by participants were, in fact,
7 made by that participant pursuant to NRGAAAD Part 9 (A) (B).

8 All right. So the matter that we're here on is
9 twofold. One is a Young hearing, which the Court is prepared to
10 conduct. As part of that Young hearing was a disagreement
11 between -- as relayed by Mr. Garcia between he and his counsel,
12 Mr. Neidert.

13 For the record in this case, Mr. Garcia has been
14 represented by Ms. Branzell, Mr. Goodnight, Ms. Flavin, Marc
15 Picker, the APD, Mr. Edwards, Mr. Neidert, and now Mr. Neahusan
16 on a limited basis.

17 I am prepared to go forward with the Young hearing at
18 this time. Shall we proceed? And I would like a record made by
19 Mr. Neahusan and Mr. Neidert on who should be present in that
20 Young hearing.

21 MR. NEAHUSAN: Your Honor, I actually think that my
22 client would like to withdraw the Young hearing and go forward
23 with sentencing today based on what we've discussed.

24 THE COURT: All right. So what we're going to do is,

1 just to make sure of that, I am going to put Ms. Samples, P&P,
2 Ms. Amador, and -- into a breakout room at this time, so I can
3 just confirm with Mr. Garcia his desire.

4 MS. SAMPLES: Judge, may I say one thing briefly?

5 THE COURT: Please.

6 MS. SAMPLES: When we were here I believe two times ago
7 Mr. Neidert made a record that he had not had a chance to fully
8 go over the Presentence Investigation Report with Mr. Garcia, and
9 that was a concern of Your Honor as well. So I have no objection
10 going forward today with sentencing as long as a record is made
11 that someone, some counsel has gone over the Presentence
12 Investigation Report fully with Mr. Garcia and had a chance to
13 lodge any objection thereto.

14 THE COURT: Okay. Thank you.

15 MR. NEAHUSAN: I'll make the record right now, Your
16 Honor, I did provide that to Mr. Garcia. We discussed it
17 briefly. We discussed the content of it. I asked if there were
18 any corrections. I'll let Mr. Garcia talk about if there were
19 any corrections in there.

20 THE COURT: All right. So just for a moment, because I
21 would like to have an ex-parte discussion to just ensure that
22 Mr. Garcia does not wish to go forward with the Young hearing.

23 So now it appears that the observer that was here may
24 have just signed off.

1 All right. The Court has designated a breakout room
2 and has placed both P&P, the P&P representative, as well as the
3 D.A. in that room. It is confidential. They cannot hear what we
4 are saying in this room. I can see if they exit the break room
5 and move in here.

6 All right. So, Mr. Garcia, previously it was expressed
7 to me that you wished to have a Young hearing. Are you familiar
8 with what a Young hearing is, sir?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: What is your understanding of what it is?

11 To remove counsel from said case, conflict of interest.

12 THE COURT: Do you understand that in conducting a
13 Young hearing, the Court customarily is required, pursuant to
14 Young versus State, 120 Nev. 963, a 2004 case, that the Court
15 would inquire into the extent of the conflict between you and
16 your counsel? The second factor is the -- is on review is
17 whether or not this Court actually inquired into your complaint.
18 And the third matter on review of a Young hearing is the
19 timeliness of the motion and the extent of any inconvenience or
20 delay.

21 So I'm going to give you any time you need, if you wish
22 to. It's my understanding post, my order that allowed you to
23 speak to new counsel about the difference of opinion between you
24 and Mr. Neidert, that you've had an opportunity to do that. Is

1 that right, sir?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And how do you wish to proceed today?

4 THE DEFENDANT: I would like to resume normal action
5 and go on, proceed with sentencing today.

6 THE COURT: And so as part of that sentencing,
7 Mr. Neahusan would not be your counsel as part of sentencing,
8 Mr. Neidert would be. Do you understand that?

9 THE DEFENDANT: That's fine.

10 THE COURT: However, the Court can direct that
11 Mr. Neahusan have an opportunity to be present during this
12 hearing, because he has had conversations with you. And is that
13 what you desire today for purposes of sentencing?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay. So the Court is finding that you've
16 withdrawn your request for a Young hearing. Part and parcel of
17 that is you are withdrawing your request to withdraw your plea,
18 correct?

19 THE DEFENDANT: Yes.

20 THE COURT: And previously this Court canvassed you
21 with regard to entry of plea. And you do not wish to change any
22 of your answers to that canvass; is that right?

23 THE DEFENDANT: No. That's right.

24 THE COURT: All right. So anything else, Mr. Neahusan

1 or Mr. Neidert, that you'd wish to place on the record?

2 MR. NEAHUSAN: No, Your Honor.

3 MR. NEIDERT: The only thing, and it was brief, when
4 Mr. Garcia and I had our whatever we want to call it at the jail,
5 I did not have a chance to go over the PSI with him. I
6 understand that Mr. Neahusan has. So I know there's always a
7 point where you ask for factual corrections, Your Honor. All I
8 would be able to state for the record on that point, when we're
9 back on the record in full court, is that to me it appears there
10 aren't any, but certainly Mr. Garcia may have some factual
11 corrections he wishes to note for the record.

12 THE COURT: So here's my intent, counsel, is to let
13 everyone back into the main meeting, and then I am going to give
14 Mr. Garcia and Mr. Neidert and, in this unusual circumstance, if
15 Mr. Garcia also asks for Mr. Neahusan to be there, I'm going to
16 put you in a breakout room right now to go over the PSI
17 completely.

18 MR. NEIDERT: That's fine. It is probably best if
19 Mr. Neahusan is present today.

20 THE COURT: Okay. So I am going to --

21 THE DEFENDANT: Sorry to interrupt. I already read
22 over the PSI. I understand --

23 THE COURT: I know. I understand, Mr. Garcia.

24 THE DEFENDANT: Okay.

1 THE COURT: But I allocated time for this. I'm giving
2 you all the time you need. I'm going to make sure that we are
3 all on the same page here.

4 THE DEFENDANT: Okay.

5 THE COURT: So I'm closing the rooms and then I'm going
6 to move you into another room.

7 All right.

8 I had Ms. Samples and Ms. Stavness in a separate
9 breakout room. It would be the equivalent as if we were
10 appearing in Department 6 in person that they would be in the
11 hallway. It is confidential and they could not hear anything we
12 were discussing.

13 At this time the Court has had an opportunity to have
14 an ex-parte hearing with, Mr. Garcia, Mr. Neahusan, and
15 Mr. Neidert. The Court has canvassed Mr. Garcia and he has
16 withdrawn his request for a Young hearing, and he has also
17 withdrawn his request that he be allowed to withdraw his entry of
18 a guilty plea in this case. Therefore, the parties are
19 requesting to go forward with sentencing.

20 What I will be doing at this time is I am going to
21 place Mr. Neidert, Mr. Neahusan, and Mr. Garcia in a breakout
22 room, and they will have as much as time as they need to go over
23 the PSI. I will be discussing it at the end of when they come
24 back on.

1 I do need to assign Mr. Neidert. So, first -- let's
2 see. Okay. So I am going to have them go into that breakout
3 room. P&P, if you go in -- if you go into your room, just
4 decline and come back to the main session. Once I have them in
5 the breakout room, we'll be in recess until my clerk notifies me
6 that counsel and Mr. Garcia have returned to the main courtroom.

7 And Mr. Neidert, Mr. Neahusan, and the Washoe County
8 Jail will need to -- there they go. They're joining.

9 All right. And we'll be in recess until I hear from
10 you, Ms. Conway.

11 THE CLERK: Okay. Thank you.

12 (Recess taken.)

13 THE COURT: All right. We are back on the record in
14 CR18-0273, the State versus Braxton Cheyanne Garcia.

15 We took a break, a recess, and allowed counsel and
16 Mr. Garcia to have a private conference regarding the Presentence
17 Investigation Report. And we're now back on the record.

18 Counsel and Mr. Garcia, do you wish to proceed?

19 MR. NEIDERT: Yes, Your Honor.

20 MR. NEAHUSAN: Yes, Your Honor.

21 THE COURT: All right. And, Ms. Samples, are you
22 prepared to proceed?

23 MS. SAMPLES: Yes, Your Honor.

24 THE COURT: All right. Pursuant to the defendant's

1 request, the Court will proceed with sentencing as it has given
2 Mr. Garcia ample time to again review the PSI. The PSI is dated
3 February 25th, 2021. It was filed on March 4th, 2021. The
4 Presentence Investigation Report indicates a credit for time
5 service of 1,108 days through March 18th, 2021.

6 May I hear from the Division with regard to an updated
7 credit for time served.

8 THE DIVISION: Yes, Your Honor. An update for credit
9 time served is 1,144 days.

10 THE COURT: All right. Are there any other changes,
11 corrections or additions that the Division would like to apprise
12 the Court of?

13 THE DIVISION: No, Your Honor.

14 THE COURT: Okay. And, counsel -- well, and from the
15 Division, you do have restitution indicated in the amount of
16 \$5,865.90, correct?

17 THE DIVISION: Yes, Your Honor, that's correct.

18 THE COURT: And you received documentation in support
19 of that; is that right?

20 THE DIVISION: I will check in eFlex right now. I
21 don't have the file on hand, but I will check that right now.

22 THE COURT: All right. Thank you.

23 And, Counsel Neidert -- and I welcome Counsel Neahusan
24 to interject at any time in this proceeding -- do you stipulate

1 to the 1,144 days' credit for time served?

2 MR. NEIDERT: Yes, Your Honor.

3 THE COURT: And are there any changes, corrections or
4 additions that you would like to apprise the Court of with regard
5 to the PSI?

6 MR. NEIDERT: Your Honor, there's nothing major. The
7 only thing that my client apprised me, and it's very, very minor,
8 is that with respect to the children there are three mothers for
9 his children. We're told there are not two mothers, as the PSI
10 indicates.

11 THE COURT: All right. So if we turn to page 2 of the
12 PSI, down in the bottom it says, "Children." The defendant has
13 three daughters, age 11, 9 and, 4, and a son age 6; correct?

14 MR. NEIDERT: Yes, Your Honor.

15 THE COURT: And then the defendant's 11-year-old
16 daughter resides with her mother in Reno; is that correct?

17 MR. NEAHUSAN: Correct.

18 THE COURT: Is that correct, Mr. Garcia?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And the other three children live with
21 their mother, which is a different person from the 11-year-old's
22 mother, correct?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: So two mothers, four kids, correct?

1 THE DEFENDANT: Well, I have another child. She's
2 three right now. I haven't met, because I've been incarcerated.

3 THE COURT: Okay. And so you have five kids; is that
4 right?

5 THE DEFENDANT: Correct.

6 THE COURT: So your daughter is --

7 THE DEFENDANT: My youngest is three.

8 THE COURT: Okay. And your daughter lives with her
9 mother?

10 THE DEFENDANT: Yeah.

11 THE COURT: Okay. Are there any other changes,
12 corrections or additions you would like to apprise the Court of?

13 MR. NEIDERT: No, Your Honor.

14 THE COURT: Now, with regard to restitution, what is
15 the agreement with regard to restitution, if any agreement?

16 MR. NEIDERT: There was no agreement with respect to
17 restitution in this case, Your Honor. Certainly it appears that
18 the restitution the PSI reflects at the time the victim in the
19 case was in foster care and doesn't have medical bills.

20 Frankly, the medical bills would be obviously
21 substantially larger than \$5,865.90, so I'm not going to quarrel
22 with the restitution amount.

23 THE COURT: So, Mr. Garcia, are you stipulating to pay
24 that restitution?

1 THE DEFENDANT: If you're asking will I pay it, yes, I
2 will pay it.

3 THE COURT: Well, I'm asking if you agree to it.

4 THE DEFENDANT: Oh, yeah.

5 THE COURT: Do you wish to challenge it in any regard?
6 No?

7 THE DEFENDANT: No, no.

8 THE COURT: All right. In addition, I just want to
9 clarify whether or not an evaluation was done pursuant to NRS
10 176A.110 in this case. That would be an evaluation that in order
11 to have an opportunity for probation, an evaluation would have to
12 be done in accordance with that statute indicating that
13 Mr. Garcia does not represent or does not have a likelihood to
14 reoffend.

15 Was any -- I want to get to the exact language. A
16 psychological evaluation, which would have to include that he is
17 not a high risk to reoffend based on the standards indicated in
18 the statute.

19 The P&P report at page 3 indicates that an evaluation
20 had not been done; is that correct?

21 MR. NEIDERT: That's correct, Your Honor. Given the
22 negotiation, I elected not to have one done.

23 THE COURT: Okay. And, Mr. Garcia, you're waiving any
24 sort of evaluation to be conducted in that regard. Am I right?

1 THE DEFENDANT: Honestly, I didn't even know that it is
2 possible for an evaluation, that I would even be a candidate for
3 probation. My attorney never advised me of that.

4 THE COURT: That's why we're talking about it now. So
5 pursuant to the statute, what has to occur is an evaluation. And
6 then the evaluation is very thorough. And there's a requirement
7 under the statutes that it meets certain criteria. And if that
8 evaluation indicates that you do not represent a high risk to
9 reoffend, only then is probation a possibility.

10 Now, if you want to have that evaluation done, I'm
11 going to give you the time to do it.

12 THE DEFENDANT: No. We'll just go ahead. It's fine.

13 THE COURT: So you're waiving any opportunity to have
14 the evaluation done, correct?

15 THE DEFENDANT: Yeah.

16 THE COURT: And it's not a guarantee of whether or not
17 the evaluation would reach the conclusion that is required, but
18 it certainly is an opportunity you could avail yourself of. And
19 I'm hearing that you do not wish to do that, correct, sir?

20 THE DEFENDANT: Correct.

21 THE COURT: Were there any other documents you wish to
22 have before the Court for consideration before we proceed with
23 argument, Mr. Neidert?

24 MR. NEIDERT: No, Your Honor.

1 THE COURT: Mr. Neahusan.

2 MR. NEAHUSAN: No, Your Honor.

3 THE COURT: Mr. Garcia?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: All right. Mr. Neidert, you may proceed.

6 MR. NEIDERT: Your Honor, I'm going -- because of the
7 joint recommendation, I'm going to be very, very brief.

8 We certainly laid out our positions in our Cripps
9 motion, and at this point pursuant to the negotiations, we're
10 going to ask the Court impose a sentence of 60 months to
11 150 months in the Nevada Department of Corrections.

12 And beyond that, if my client wishes to speak, beyond
13 that, I'll submit it, with credit for the days we have talked
14 about obviously.

15 THE COURT: With the credit for 1,144 days?

16 MR. NEIDERT: Yes, Your Honor.

17 THE COURT: Ms. Samples.

18 MS. SAMPLES: Judge, I would like to hear from
19 Mr. Garcia, before I finish my argument.

20 THE COURT: All right. So, Mr. Garcia, the law gives
21 you the opportunity to tell me anything I should consider before
22 imposing sentence. Would you like to address the Court,
23 Mr. Garcia?

24 THE DEFENDANT: Absolutely.

1 THE COURT: You may.

2 THE DEFENDANT: Thank you. Can I take off my mask,
3 please? There's no one around me.

4 THE COURT: Is there anyone within six feet of you?

5 THE DEFENDANT: No.

6 THE COURT: All right. You may.

7 THE DEFENDANT: Thank you, Your Honor. I appreciate
8 that.

9 Okay. Well, I take it that you read my PSI statement
10 when I sent it, so I'm going to be very brief about this.

11 Do I feel remorseful? Absolutely, 100 percent. This
12 case is almost six years old. I've been incarcerated for five
13 years on the 28 to 72 that you originally sent me to prison for.

14 I do feel bad for the accident that happened. I was
15 undergoing back surgery at that time. And, like I said from day
16 one, it's been an accident. But nothing I can do or say can
17 change that. Do I feel bad? Absolutely.

18 But I would like you to look at the stuff that happened
19 during this case. I've been in your courtroom numerous times to
20 remove attorneys, to file motions because of certain things. And
21 I've been treated, it seems, unjustly through this whole case,
22 due to either the case itself or because of my appearance or
23 whatever. And if you're asking yourself why, it is because, it's
24 like, it was hard for me to plead guilty to this, first off,

1 because in my heart I know I'm not guilty. I have the mother
2 sitting there having my back the whole time, until recently,
3 until we had a breakup.

4 What I would like to say and shed the light is that
5 Ms. Samples waited three years to charge me with this crime.
6 This crime happened in -- allegedly happened in 2015. She waited
7 until 2018 to charge me with this. If she actually indicates
8 numerous times through all our court proceedings that I'm just
9 this heinous person and violent person, why would she wait three
10 years? That's my first question.

11 She also noted to both my attorneys, Joseph Goodnight
12 and David Neidert, that she doesn't like me. She's gone out of
13 her way and acted unprofessional to make those statements. Can I
14 prove this? No, I can't prove it. But you must ask yourself why
15 would two highly professional men tell that to me. For the fun
16 of it? No, I don't think so. She's made that clear, that she
17 doesn't like me. That's a vindictive conviction. There's no
18 justice in this at all.

19 Where is the justice at? If there were justice, she
20 would have filed the charges on me in 2015.

21 THE COURT: I'm sorry. I didn't hear that very last
22 word that you said. She have filed charges on?

23 THE DEFENDANT: In 2015.

24 THE COURT: Okay. Thank you.

1 THE DEFENDANT: And during this time I've lost a lot.
2 My pops is dying. He's 75 years old. He's dying right now. You
3 know, and I lost a relationship with my kids. I lost my kids for
4 the last five years' growth, their pictures and phone calls. And
5 it's crazy, like, I'm mentally broken.

6 So congratulations, Ms. Samples. I'm going to say that
7 to you. I don't know if I can. But I'm mentally broken and
8 stuff, and I can't do it no more.

9 So, that being said, I know you agreed to the 5 to 12,
10 and for that I highly thank you, and thank you for blessing me
11 with that for the agreement and everything. I've been in your
12 court numerous times, and I've seen you bless numerous people
13 with programs or probation. I'm not asking for probation or a
14 program. What I'm actually for is the 4 to 10 with 3 years'
15 credit time served due to the fact that everything that's
16 happened during this case. I mean come on, man. Like, it's --
17 I'm not saying -- what happened was wrong. What happened was an
18 accident. It was completely -- it was not right, and it
19 happened. But we can't change that. It was five -- it was
20 almost six years ago.

21 And I would like you to take into consideration of how
22 my D.A. has treated me during this. She's, again, on record, she
23 has made it known to both my attorneys that she does not like me.
24 Is that justice, Your Honor? It's not. It's a vindictive

1 conviction. If that's what our justice system has come down to,
2 then it's crazy, because like, that's not right. Whether it's
3 because I have tattoos, whether it's because of the case, I don't
4 know what it is. She only know that.

5 So, Your Honor, I'm asking you -- you know I've been
6 incarcerated since 2016. You sent me to prison. During that
7 time I got my GED, I was taking business courses. I'm on my way
8 to high school diploma. I've done everything I could. I kept my
9 hands out of trouble.

10 I don't know what to say. All I'm asking for is you to
11 take into consideration. The State can still have her
12 conviction. I still go to prison next week -- or two weeks on a
13 4 to 10. Give me a chance. I'll have a year, maybe two left. I
14 want to go home to my pops. He's dying. He needs me right now.

15 What's a year less? With the three years' credit time
16 served, I'm asking for 4 to 10. She can still have her
17 conviction. It's all said and done.

18 Thank you for your time.

19 THE COURT: So, Mr. Garcia, I want to clarify a couple
20 of items. The way in which a district attorney has handled the
21 case or the way that you perceive it, isn't something that's
22 before the Court. And I understand that you're expressing your
23 frustration with the process.

24 We're here after numerous hearings, and we are hear on

1 the underlying charge. From the Court's point of view I don't
2 have any feeling, positive or negative, due to appearance. I'm
3 sort of astonished that you would raise that. You're a defendant
4 in my court, and I'm going to treat you fairly.

5 THE DEFENDANT: No, I wasn't saying you. I was just
6 saying the D.A. in general.

7 THE COURT: Okay. And I understand that this is --
8 it's clear to me that this has been a frustrating process for
9 you, and at every turn I've tried to give you an opportunity to
10 speak with counsel, an opportunity to express yourself. So I
11 just want to make sure that you've said everything that you want
12 to say right now with your right of allocution.

13 THE DEFENDANT: Yep.

14 THE COURT: Okay. All right.

15 Ms. Samples.

16 MS. SAMPLES: Thank you, Your Honor. I will also join
17 Mr. Neidert in our joint recommendation for the 5 to 12 and a
18 half years in the Department of Corrections.

19 I want to clarify a couple things as to what the
20 defendant said. I neither like nor dislike Mr. Garcia. I don't
21 know him. I have absolutely no objection to the way that anyone
22 physically appears. What I obviously do not like is -- are the
23 facts of this case, right? This is a 10-month-old child, who can
24 neither talk nor walk, and he is in the defendant's sole care and

1 custody when he ends up with a skull fracture that is so bad that
2 his brains are bulging out of his skull.

3 THE DEFENDANT: Not true.

4 THE COURT: So, Mr. Garcia, I gave you the opportunity
5 to speak. I understand from your position that you've always
6 maintained this was an accident. However, I also know that you
7 made a decision to knowingly and voluntarily and intelligently
8 enter a guilty plea in this case. All right. And so I gave you
9 your opportunity to speak, and now it's Ms. Samples.

10 And I understand from the outset that you disagree with
11 the characterization. I understand that you've maintained it's
12 an accident, but I also understand that you made an intelligent
13 entry of a guilty plea.

14 Ms. Samples, you may continue.

15 MS. SAMPLES: Thank you, Your Honor.

16 All of the medical records throughout the child's
17 lengthy treatment in this case, both the California and Nevada
18 indicate that he has blood clots throughout his brain; that he
19 suffered from a subdural hematoma; that he has browsing on
20 multiple planes and multiple areas of his body. He was in such a
21 medical fragile condition that we didn't even have the resources
22 to treat him in the Reno area. He actually had to be transported
23 to Stanford Medical Center where he underwent several surgeries
24 and actually had to have a shunt placed in his brain, just so

1 that his life would be saved.

2 He did suffer permanent brain loss, loss of matter,
3 brain matter on both sides of his brain that will likely lead to
4 permanent disabilities for the rest of his life. And that's
5 consistent in the conversations that I've had with his caretakers
6 now and with his medical team. They say that he lacks
7 coordination on one side of his body. One side of his body
8 tracks slowly and reacts slowly, and it doesn't work in
9 conjunction with the other side of his body.

10 The child just started kindergarten, and it's unknown
11 if he will have learning disabilities, but that's certainly
12 something that the medical team has forecast for his future.

13 So again, I have nothing for or against Mr. Garcia, but
14 I have taken an oath as a district attorney to uphold the laws of
15 the State of Nevada, and that's certainly what I intended to do
16 from the outset of this case.

17 Just a little bit about the history. The investigation
18 was ongoing, and that's why Mr. -- so Mr. Garcia was not arrested
19 at the pendency of the investigation because after he gave his
20 statements to Detective Watson at the Reno Police Department, he
21 claimed to be having a medical emergency. And he was actually
22 transported, I believe it was to Renown Hospital. The detective
23 decided not to arrest him at that time so that he could look at
24 all the medical reports and continue to get updates on the child

1 who was being still treated both here and at Stanford Medical
2 Center.

3 Now it turned out that Mr. Garcia checked himself out
4 of Renown Hospital after about 50 minutes. And then while the
5 investigation in this case was still pending, that's when he
6 committed the acts of child abuse that led to the other case for
7 which Your Honor sentenced him to the 28 to 72 months.

8 And so I did not have the case until all of the medical
9 reports came back and we had a clear picture of what the child's
10 medical condition was.

11 That had nothing to do with malicious prosecution.
12 Again, I didn't have the case until the investigation was totally
13 wrapped up.

14 So I think combined with the fact that the defendant
15 has previously been convicted of child abuse, the facts of this
16 case, and then looking and at his previous conviction which was
17 also for burglary, I think that the joint recommendation in this
18 case is appropriate, Your Honor, and I would ask you to follow
19 it.

20 THE COURT: All right. Thank you.

21 Is there anyone present on behalf of the victim who
22 would like to be heard?

23 MS. SAMPLES: I have not been notified of anything,
24 Your Honor.

1 THE COURT: All right. And I'm just going to check the
2 participants to make sure. It does not appear that there's
3 anyone else in this matter.

4 Counsel, is there any legal reason why judgment should
5 not now be imposed? Mr. Neidert?

6 MR. NEIDERT: I apologize, Your Honor. I was trying to
7 unmute myself.

8 There's no legal cause that we can't proceed with
9 sentence.

10 THE COURT: All right. And, Mr. Neahusan?

11 MR. NEAHUSAN: None, Your Honor.

12 THE COURT: All right. Mr. Garcia, anything else you
13 wish to say?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: So, Mr. Garcia, it's unusual that a
16 defendant would advocate in a manner that's different from the
17 Guilty Plea Memorandum. And there could be some argument that
18 it's not adhering to the terms of the Guilty Plea Memorandum.

19 In this case, I'm taking to heart what you have said.
20 I'm considering it, and I don't find it to be any sort of
21 violation of the Guilty Plea Memorandum, but instead, artful
22 advocacy on your own behalf. I know that throughout this entire
23 proceeding, you have at every turn been very astute in your
24 evaluation of -- I don't know if the right word is astute, but

1 you have been vigilant, is probably a better word used, of the
2 proceedings where we are, what your position is. And it is what
3 it is. I think that you have in no way shown any complacency or
4 lack of attention to this case. You've taken the case very
5 seriously, the proceedings very seriously. I understand that
6 you've maintained that it was an accident. I also understand
7 that you very intelligently decided to enter into -- and
8 voluntarily, for whatever reasons that you evaluated that you
9 should enter into the plea negotiation.

10 I also understand that -- you've expressed to me
11 because you have been in custody for a significant amount of
12 time, you've given me some information with regard to your desire
13 to be released from prison due to your own family situations.
14 And while the Court certainly understands how difficult it is
15 when a parent is ill, that's not a factor that I can sentence on,
16 but it does show me a part of you that even with the serious and
17 egregious nature of the charges here, that there is a point in
18 your heart that you do have empathy for your family. And I
19 understand that. And I understand what it is like to be --
20 you've expressed how difficult it is to be not with your family.

21 I have had an opportunity to talk with you throughout
22 this proceeding, and I understand or position. I also understand
23 your perception of your family and your love for your family.
24 What is difficult here is the charge, and that there is an infant

1 that will, at your hands, suffer for his entire life. And your
2 future is in your hands now; your performance in NDOC, your
3 opportunities that you avail yourself of going forward, and
4 whether or not you want to change.

5 You've come to me with two felonies. You come to me
6 with a significant history. You come to me with active arrest
7 warrants that you need to resolve and with prior counts of child
8 related abuse or negligent charges. And also with an
9 institutional record that shows that you made choices during your
10 incarceration that might not have been choices that would result
11 in an earlier release.

12 I understand that you suffer from chronic back pain. I
13 understand that you have your own medical issues, but I really
14 look at this as what is it right under all of the factors
15 mitigating, your a father of five. And factors in favor of
16 sentencing. And as I told you at the entry of the plea I'm not
17 obligated to follow the negotiations in this case. I have a
18 parameter within the statute. And what I did note is the
19 negotiations were for 5 to 12 and a half years. I heard from the
20 district attorney today five to 12. So the district attorney
21 argued I believe less than what the plea negotiations were as
22 well.

23 All of that being said, it's the order and judgment of
24 the Court, Mr. Garcia, that you are sentenced to a term in

1 accordance with the Guilty Plea Memorandum of 60 to, on the top
2 end, 120 months. In addition fees will be imposed in the amount
3 of \$25 administrative assessment, \$3 DNA administrative
4 assessment, \$500 attorney's fee.

5 In addition, there's no requirement for a DNA sample
6 fee, as one was previously taken. You have -- in addition,
7 you've agreed to the restitution, which is \$5,865.90 payable in
8 accordance with the victim identification in the PSI. And you
9 have credit, sir, for time served of 1,144 days.

10 Anything further for the record from the Division?

11 MS. STAVNESS: No, Your Honor.

12 THE COURT: Anything further from counsel for the
13 record?

14 MS. SAMPLES: No, Your Honor.

15 MR. NEIDERT: No, Your Honor.

16 MR. NEAHUSAN: Your Honor, could you repeat the months,
17 the top end and the bottom end.

18 THE COURT: I said 60 to 120. Now that's 10 years on
19 the top end. I believe that your agreement -- let's go back and
20 look at the agreement.

21 That is what Ms. Samples argued, was 60 to 120.
22 Correct, Ms. Samples?

23 MS. SAMPLES: No, Your Honor. I said 5 to 12 and a
24 half years.

1 THE COURT: Okay. So, let's go through this and make
2 sure it's correct, because I heard you say 120. And that could
3 have been a miss -- so, 12.5 years.

4 MR. NEAHUSAN: Your Honor, the only reason I ask is 120
5 is not actually a legal sentence.

6 THE COURT: I know. That's what I was concerned about.
7 Thank you. And I could have taken a note.

8 Let's make sure we get this squared away for you,
9 Mr. Garcia, okay, because I understand if you want to seek any
10 relief past this, we need to make sure that I have it clear for
11 you.

12 So on the bottom end it's 60 months.

13 Counsel, what's your calculation of 12 and a half
14 years?

15 MR. NEIDERT: 150.

16 THE COURT: Does everyone agree 150 months?

17 MS. SAMPLES: Yes, Your Honor.

18 THE COURT: And I am going to give him 60 -- I'm going
19 to give him the 12 flat on the top end. Is that still a legal
20 sentence based on the percentages, Ms. Samples?

21 MS. SAMPLES: Can you repeat one more time how many
22 months on the top end.

23 THE COURT: 144. I think the agreement -- the
24 agreement is for 150. I said 120. And 12 times 12 -- and

1 usually actually very good at math, but 12 times 12 is 144. So I
2 really appreciate counsel advising. I want to make sure -- my
3 intention is to give him 12 flat on the top of 144 --

4 MR. NEAHUSAN: Your Honor, that is a legal sentence.
5 That is 4.16. So that's 41.6.

6 THE COURT: And it is legal, correct, Mr. Neahusan?

7 MR. NEAHUSAN: That's correct, Your Honor.

8 THE COURT: That's what my calculations were. So what
9 that means, Mr. Garcia, is the statutes require that the lower
10 end of the sentence be a certain -- cannot be more than a certain
11 percentage. The benefit that I have given you is 12 years on the
12 top end rather than 12 and a half years as an appropriate
13 sentence in this case. On the bottom end it will be the
14 60 months. I apologize for any -- I wrote the 120, and I should
15 have wrote 12.0. So, I squared it away. You have a benefit of
16 144 rather than 150 on the top end. On the bottom end it is 60,
17 which is five years. You have credit for time served, which is
18 significant, sir, of 1,144 days.

19 Anyone else wish to add to the record?

20 And thank you, Mr. Neahusan.

21 MR. NEIDERT: No, Your Honor.

22 THE COURT: All right. We'll be in recess.

23 Good luck to you, sir.

24 (Proceedings Concluded)

—o0o—

STATE OF NEVADA)
COUNTY OF WASHOE) ss.

I, EVELYN J. STUBBS, official reporter of the
Second Judicial District Court of the State of Nevada, in and for
the County of Washoe, do hereby certify:

That as such reporter I was present in Department No. 6 of the above court on MONDAY, APRIL 22, 2021, at the hour of 11:10 a.m. of said day, and I then and there took stenotype notes of the proceedings had and testimony given therein upon the YOUNG HEARING/SENTENCING of the case of THE STATE OF NEVADA, Plaintiff, vs. BRAXTON CHEYANNE GARCIA, Defendant, Case No. CR18-0273.

That the foregoing transcript, consisting of pages numbered 1 to 32, inclusive, is a full, true and correct transcript of my said stenotype notes, so taken as aforesaid, and is a full, true and correct statement of the proceedings had and testimony given therein upon the above-entitled action to the best of my knowledge, skill and ability.

DATED: At Reno, Nevada, this 13th day of July, 2021.

/s/ Evelyn Stubbs
EVELYN J. STUBBS, CCR #356

1 **CODE 1850**

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **STATE OF NEVADA,**

10 **Plaintiff,**

11 **v.**

Case No. CR18-0273

12 **BRAXTON CHEYANNE GARCIA,**

Dept. No. 6

13 **Defendant.**
14 _____/

15 **JUDGMENT OF CONVICTION**

16 Defendant, BRAXTON CHEYANNE GARCIA ("Defendant) entered a plea of Guilty
17 to the charge in this matter. No legal reason or cause precludes entry of judgment against
18 him. Therefore, the Court renders judgment as follows:
19

20 1. Defendant is guilty of the crime of Child Abuse with Substantial Bodily Harm,
21 a violation of NRS 200.508(1)(a)(2), a category B felony, as charged in the Information.

22 2. Sentence is imposed as follows:

23 a) Imprisonment in the Nevada Department of Corrections is imposed for
24 a maximum term of one hundred forty-four (144) months with a minimum parole eligibility
25 of sixty (60) months, with credit for time served of one thousand one hundred forty-four
26 (1144) days.

27 b) Payment shall be made to the Clerk of the Second Judicial District
28 Court as follows:

(1) Twenty-Five Dollars (\$25.00) administrative assessment fee;

1 (2) Three Dollar (\$3.00) administrative assessment to obtain a
2 biological specimen and conduct a genetic marker analysis;

3 (3) Five Hundred Dollars (\$500.00) for legal representation.

4 c) Restitution shall be paid in the amount of Five Thousand Eight
5 Hundred Sixty-Five Dollars and Ninety Cents (\$5865.90) to victim Department of Family
6 Services, through the Division of Parole and Probation.

7 3. Pursuant to Article 1, Section 8 of the Nevada Constitution, all monetary
8 payments, money and property collected from the Defendant shall be first applied to pay
9 the amount ordered as restitution to victim Department of Family Services, Nev. Const. art.
10 1, §8.

11 4. Any restitution, fine, fee, and administrative assessment imposed by this
12 Judgment of Conviction constitutes a lien, as defined in Nevada Revised Statutes NRS
13 176.275. Should the Defendant fail to pay any restitution, fine, fee or assessment
14 imposed, collection efforts may be undertaken against him.

15
16 DATED the 23rd day of April, 2021.
17 NUNC PRO TUNC to April 22, 2021.

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DISTRICT JUDGE

Code: 2515
David K. Neidert, Esq.
Nevada State Bar No. 4342
316 California Ave. #420
RENO, NV 89509
(775) 423-4455
Attorney for Defendant

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

* * *

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No.: CR18-0273

Dept. No. 6

BRAXTON CHEYANNE GARCIA,

Defendant.

NOTICE OF APPEAL

The Defendant, BRAXTON CHEYANNE GARCIA, by and through counsel, DAVID K. NEIDERT, appeals his conviction in the above-entitled case to the Nevada Supreme Court.

Respectfully submitted this 21ST day of May, 2021.

/s/ David K. Neidert
DAVID K. NEIDERT
Attorney at Law
Counsel for Braxton Cheyanne Garcia

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CERTIFICATE OF SERVICE

In accordance with Rule 5(b) of the Nevada Rules of Civil Procedure, the undersigned hereby certifies that on the 21st day of May, 2021, a true and correct copy of the foregoing served by the Washoe County electronic filing system on:

Christopher Hicks, District Attorney

Peg Samples, Deputy District Attorney

/s/ David K. Neidert
DAVID K. NEIDERT
Attorney at Law

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned hereby affirmed that the foregoing document does not contain the Social Security number of any person.

Dated this 21st day of May, 2021.

/s/ David K. Neidert
DAVID K. NEIDERT
Attorney at Law