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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL L. COTA,

Appellant,

vs.

Case No. 2018-CR-00116
2018-CR-00116BD

THE STATE OF NEVADA,

Respondent,

RECORD ON APPEAL

VOLUME 3

COPIES OF ORIGINAL PLEADINGS
PAGES 314-448

MICHAEL L. COTA
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ELY STATE PRISON
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IN PROPER PERSON

THE STATE OF NEVADA

DOUGLAS COUNTY DISTRICT ATTORNEY

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CASE NO. 18-CR-00084
18-CR-00116

OCT 24 2018

2018 OCT 24 PM 4:03

DEPT. NO. 2

Douglas County
District Court Clerk

BOBBIE R. WILLIAMS
CLERK

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

BEFORE THE HONORABLE DISTRICT COURT JUDGE, THOMAS GREGORY

THE STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL L. COTA, JR.,

Defendant.

TRANSCRIPT OF PROCEEDINGS

SENTENCING

MONDAY, OCTOBER 8, 2018

APPEARANCES:

For the State:

MATTHEW JOHNSON
Deputy District Attorney
Minden, Nevada

For the Defendant:

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

Reported By:

Kathy Jackson CSR
Nevada CCR #402
California CCR #10465

CAPITOL REPORTERS (775) 882-5322

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1 MONDAY, OCTOBER 8, 2018, MINDEN, NEVADA

2 -oOo-

3 THE COURT: The Court next calls the State of
4 Nevada versus Michael Lewis Cota, Junior. There are two
5 cases pending. They are Case Numbers 18CR0116 and 18CR0084.
6 Show the appearance of Matthew Johnson on behalf of the
7 State. John Malone is appearing on behalf of the defendant.
8 Good morning. Also appearing in lawful custody on both cases
9 is the defendant, Mr. Cota.

10 Hello, Mr. Cota.

11 THE DEFENDANT: Good morning, sir.

12 THE COURT: We're here today for sentencing on
13 both of these matters.

14 Mr. Malone, have you received copies of the
15 presentence investigation reports? One is dated August 21st,
16 2018 and one is dated August 22nd, of 2018.

17 MR. MALONE: Your Honor, I have, and I've had the
18 opportunity to review both of those reports with Mr. Cota.

19 THE COURT: All right. Any factual corrections
20 to offer?

21 MR. MALONE: No, Your Honor.

22 THE COURT: Mr. Johnson, has the State received
23 copies of both the reports?

24 MR. JOHNSON: Yes, Your Honor.

1 THE COURT: Do you have any factual corrections
2 to offer?

3 MR. JOHNSON: The only correction is the
4 defendant lists that he's married to Allie Cota but I believe
5 it's Allie Scaffalani (phonetic) and I don't believe that is
6 correct but I haven't -- I don't have a search of the
7 marriage license for that person to confirm that's correct.

8 MR. MALONE: Your Honor, that is -- that
9 statement on page two of the PSI is incorrect. He does share
10 a child with Allie. They are not married.

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

12 THE DEFENDANT: Yes, sir.

13 THE COURT: I made that correction on both
14 presentence reports, both at page two. Thank you for that.

15 Mr. Malone, and, Mr. Johnson, my thought would be
16 that we proceed to sentencing on both cases and you can make
17 your arguments on both. However, I'm also happy to proceed
18 on the cases individually if you would like to do that.

19 Mr. Malone, do you have a preference? Of course,
20 he'll be sentenced individually but I just meant in terms of
21 how we proceed today.

22 MR. MALONE: Your Honor, it would be my desire to
23 proceed on both of them in tandem.

24 THE COURT: All right. Mr. Johnson, what are

1 your thoughts?

2 MR. JOHNSON: That sounds good to us, Your Honor.

3 THE COURT: Okay. Mr. Malone, are you prepared
4 to go forward with sentencing on both cases?

5 MR. MALONE: Your Honor, we are prepared. I
6 would ask that the State go first. They are going to be
7 presenting more material and of necessity a lot of my
8 sentencing argument is going to be dependent upon the
9 information and testimony that they put in.

10 THE COURT: All right. Mr. Johnson, what are
11 your thoughts about that?

12 MR. JOHNSON: Your Honor, I'm not opposed to
13 putting on the evidence first, but we would ask to argue
14 second, that's usually the practice of this Court.

15 THE COURT: All right. I think that's a fair way
16 to proceed.

17 So, Mr. Johnson, do you have witnesses you would
18 like to present today?

19 MR. JOHNSON: I do, Your Honor. If I could just
20 grab some exhibits that I have with the clerk at this time.

21 THE COURT: You may.

22 MR. MALONE: Your Honor, one other matter, the
23 defense did file a psychological evaluation performed by
24 Melissa Piasecki. It was filed on Thursday. I wanted to

1 confirm that the Court did receive that.

2 THE COURT: Mr. Malone, thank you for making that
3 record. The Court did receive and will consider as part of
4 the sentence the evaluation by Dr. Piasecki.

5 MR. MALONE: Thank you.

6 THE COURT: I do want to make sure with
7 Mr. Johnson when he's done with the clerk that the State also
8 received it.

9 Mr. Johnson, Mr. Malone had asked if the Court
10 received a copy of the psychological evaluation. I confirmed
11 that I did receive it. I've reviewed it and considered it
12 and will consider it as part of the sentencing today. Did
13 the State receive it as well?

14 MR. JOHNSON: I did, Your Honor.

15 THE COURT: And I should have asked you, do you
16 have any objection to the Court considering the evaluation?

17 MR. JOHNSON: I do not, Your Honor.

18 THE COURT: All right, very good.

19 Okay. Mr. Johnson, you may proceed.

20 MR. JOHNSON: Your Honor, the one -- I'm going to
21 be playing one video during -- I don't know if you're holding
22 it or if I just --

23 THE COURT: All right. I need to turn on the
24 system here.

1 MR. JOHNSON: I apologize, Your Honor.
2 THE COURT: That's okay. Are these exhibits that
3 are going to be offered?
4 MR. JOHNSON: Yes, Your Honor.
5 THE COURT: Let's first address that before they
6 are published to the Court. I have not seen them yet.
7 MR. JOHNSON: Sure.
8 THE COURT: Mr. Malone, are you going to be
9 having any objections? Have you seen what Mr. Johnson is
10 going to be --
11 MR. MALONE: Yes, I've been provided copies of
12 those.
13 THE COURT: Do you have any objection?
14 MR. MALONE: No.
15 THE COURT: How many exhibits are there,
16 Mr. Johnson?
17 MR. JOHNSON: Your Honor, I started the exhibits
18 continuing from the sentencing memorandum I previously
19 provided. It's going to be Exhibit 17, 18, and then there's
20 a thumb drive that has one video and five jail calls.
21 THE COURT: Okay.
22 MR. JOHNSON: And I've already had them premarked
23 by the clerk, and then the last exhibit is the restitution
24 which is Exhibit 25, so they are marked as Exhibit 17 through

1 25 are the exhibits which would be, if I'm adding correctly,
2 which would be nine total.

3 THE COURT: Do you concur with that, madam clerk?

4 Okay. So Exhibit 17 through 25 are admitted
5 without objection.

6 It takes a moment for it to --

7 MR. JOHNSON: The video will be towards the end.
8 I'm happy to call Deputy Torres.

9 THE COURT: It's what?

10 MR. JOHNSON: The video will be played towards
11 the end of Deputy Torres' testimony.

12 THE COURT: Okay.

13 MR. JOHNSON: It takes a little bit to boot up to
14 go ahead and begin, Your Honor.

15 THE COURT: I think we should be all right here
16 in just a moment.

17 Mr. Johnson, go ahead and attempt to -- I think
18 we're on-line.

19 MR. JOHNSON: I see what is on my screen, Your
20 Honor.

21 MR. MALONE: Your Honor, actually I would like to
22 interpose an objection to any evidence regarding gang
23 associations and gang information. There's no gang
24 enhancements in this case. I think that such evidence would

1 be overly prejudicial for to be viewed.

2 THE COURT: All right. Mr. Johnson, what is your
3 response?

4 MR. JOHNSON: Your Honor, as you know, sentencing
5 is -- the Supreme Court has said that sentencing, if it's
6 relevant as long as not highly suspect evidence, it is
7 admissible. The actual second offense where he has been --
8 he has pled guilty to the battery on a police officer, I'm
9 actually going to be playing video from that and at the
10 conclusion of that, he actually references his gang and he
11 makes future threats when he gets out involving gang. So it
12 is relevant not only to the offense but also to his character
13 and I think it's important for this Court to see before it
14 makes a sentencing determination about what the appropriate
15 sentence is.

16 THE COURT: The objection is noted for the
17 record. It is overruled.

18 Mr. Johnson, it does look like our system is
19 still warming up here. If you would like to proceed with
20 Deputy Torres, you may.

21 MR. JOHNSON: Yes, Your Honor. Your Honor, the
22 State calls Deputy Francisco Torres.

23 THE COURT: Deputy Torres, please step forward.
24 Raise your right hand. Face the clerk to be sworn.

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DEPUTY FRANCISCO TORRES,
called as a witness on behalf of the
State having been first duly sworn,
was examined and testified as follows:

THE COURT: Please be seated.

DIRECT EXAMINATION

BY MR. JOHNSON:

Q. Deputy Torres, can you please state your full
name, and spell your first and last name for the record.

A. Yes, Francisco Torres, F-r-a-n-c-i-s-c-o
T-o-r-r-e-s.

Q. And, deputy, how are you currently employed?

A. With the Douglas County Sheriff's Office.

Q. And are you assigned to any specific unit or do
you have any specific job as a deputy sheriff?

A. Yes, I'm currently assigned to the Tri-County
Gang Unit.

Q. And what kind of training or experience have you
had with the Tri-County Gang Unit?

A. Tri-County Gang, I've been -- we've took an
80-hour class in Los Angeles, both in-class and out in the
field part of the California Gang Investigation Association,
California Gang Task Force Association, and then I've had

1 numerous training throughout a couple years now.

2 Q. As a member of the Tri-County Gang Unit, what --
3 what specifically do you do related to that gang unit?

4 A. We identify gang members within the tri-county
5 area.

6 Q. And is there certain criteria that you look for
7 when you're trying to identify whether someone is a gang
8 member?

9 A. Yes, there are certain factors that we go off of
10 in order to validate either a gang member or an associate,
11 and --

12 Q. What are those factors that you look at?

13 A. Contact, self-association or self-admittance,
14 tattoos, dress, some of those factors there.

15 Q. You said tattoos and dress. What -- why is
16 tattoos -- well, let's start with tattoos. What do tattoos
17 have to do with gang association?

18 A. Tattoos, they will tattoo their gang on their
19 body. If individuals are putting in work, you'll see the
20 progression between them starting out as a gang member or as
21 a gang associate and become a gang member based on the amount
22 of work they put in. Sometimes it reflects on tattoos.

23 Q. And you said putting in work. What do you mean
24 by putting in work?

1 A. Putting in work, selling drugs, beating people
2 up, stealing certain items and the benefit for the gang.

3 Q. Would it be fair to say performing crimes on
4 behalf of the gang?

5 A. That is correct.

6 Q. And have you received any training on identifying
7 tattoos to determine whether they are associated with a
8 particular gang?

9 A. Yes, I have.

10 Q. And was that part of the 80 hours that you did
11 when you initially were trained on gang? Have you had
12 additional training since then?

13 A. I've had that and individual training.

14 Q. Now, you also say clothing. Why is clothing
15 important for when you're trying to identify whether someone
16 is a gang member and whether they should be validated?

17 A. Clothing is very important. For example, Bloods,
18 red, criminally red. Crips, blue. Surenos, blue. Nortenos,
19 red. That's just one key factor in order for us to be able
20 to validate an associate or a gang member.

21 Q. And why do gang members wear certain clothing?

22 A. To intimidate, to represent their gang when they
23 are out in public.

24 Q. So you said one of the criteria was clothing, one

1 of them was tattoos. Did I hear you correctly one of them is
2 self-identification?

3 A. Yes, self-admit.

4 Q. Was there any other criteria?

5 A. Association is another one.

6 Q. By association, what do you mean by that?

7 A. Association, hanging out with other validated
8 gang member or other associates.

9 Q. Now, moving on, do you recognize the person
10 sitting over here?

11 A. Yes, sir.

12 Q. And who is that individual?

13 MR. MALONE: We stipulate to the identification
14 of Mr. Cota, Your Honor.

15 THE COURT: Do you accept that stipulation?

16 MR. JOHNSON: Yes, Your Honor.

17 THE COURT: All right.

18 Q. (BY MR. JOHNSON:) And when is the first time --

19 THE COURT: Identification has been established.
20 Go ahead.

21 Q. (BY MR. JOHNSON:) When is the first time that
22 you encountered Mr. Cota?

23 A. The first time I encountered Mr. Cota I want to
24 say was back in probably May of 2017, a little before that.

1 Q. I'm going to show you an exhibit which has
2 previously been marked Exhibit 17. It's already been
3 admitted. I want you to take a look at the three pages there
4 and tell me whether you recognize those?

5 A. Yes, I do.

6 Q. And looking at page one of Exhibit 17, how do you
7 recognize that picture?

8 A. I took a picture of Mr. Cota. He was -- a patrol
9 deputy had made contact with him at -- I knew Mr. Cota. I
10 stopped by, and then I noticed that he had that tattoo on the
11 top of his left eyebrow. I documented the pictures. What
12 stood out to me is the second picture is the red crown there,
13 that is a symbol of the Bloods.

14 Q. Is this the same day that you took a picture of
15 him on the first page?

16 A. That is correct.

17 Q. And what is the significance of that tattoo?

18 A. That is when I started noticing his gang
19 involvement.

20 Q. So --

21 A. Some of the factors.

22 Q. Did you take that picture?

23 A. I did.

24 Q. And you took that picture to document what?

1 A. His gang involvement.

2 Q. And what's that -- what's the significance of
3 that crown tattoo?

4 A. Crown, the crown and the red coloring, the crown
5 is used by the Bloods.

6 Q. And then how about the third page, did you take
7 that picture?

8 A. Third page is, this page was taken in December.
9 That was when Jobrontae Warner, validated gang member out of
10 Vegas, he was arrested. Mr. Cota was hanging out with him.
11 Tattoos, more tattoos, the dress, the red shirt.

12 Q. Let's talk about that for a second. You took
13 this picture?

14 A. Yes.

15 Q. And as someone that's been trained to identify
16 things that are associated with gangs, let's go step by step.
17 What are the things you noticed to you that had changed about
18 Mr. Cota?

19 A. His tattoos, number of tattoos had increased.

20 Q. And specifically what are the new tattoos that
21 are documented in that photo?

22 A. Now he has a crown. He's got --

23 Q. Is that the -- does that crown have any
24 significance based on your training and experience with

1 gangs?

2 A. Yes, that is represented by the Bloods gang
3 members.

4 Q. And how about anything else in that picture that
5 led you to believe that he might be associated with a gang?

6 A. The red shirt and while talking to him, he also
7 admitted to being a Bloods gang member.

8 Q. You asked him whether he was a member of the
9 Blood gang?

10 A. Yes.

11 Q. And what did he tell you?

12 A. That he was.

13 Q. Now, we haven't talked about the Bloods yet.
14 What can you tell you us about the Blood gang?

15 A. They are violent. They are involved in murder,
16 drug trafficking, racketeering. They are a very violent
17 gang.

18 Q. And where do they operate?

19 A. Throughout the nation.

20 Q. Now, are they divided into any subgroups or are
21 they all just the Bloods gang?

22 A. Nationally they are known as the Bloods but
23 different sets. Each CD state has different sets.

24 Q. Did Mr. Cota tell you whether he's involved in a

1 different set of the Bloods gang?

2 A. He claimed to be a Blood.

3 Q. Did Mr. Cota tell you how he became a member of
4 the Bloods gang?

5 A. He did not but as I've gotten -- as I made
6 contact with him, his criminal activity --

7 MR. MALONE: Asked and answered, Your Honor.

8 THE COURT: Sustained.

9 Q. (BY MR. JOHNSON:) Have you spoken with other
10 deputies who spoke with him about how he became associated
11 with the --

12 MR. MALONE: Objection, calls for a hearsay
13 response.

14 THE COURT: Sustained.

15 Mr. Johnson, while we're waiting, the system is
16 on.

17 MR. JOHNSON: Okay.

18 THE COURT: And so if there's -- it might be your
19 connection to the system that's the issue.

20 MR. JOHNSON: I can try to either restart, Your
21 Honor, or flip the HDMI one more time. I won't restart it.

22 THE COURT: Mr. Johnson, if you would like, we
23 can recess.

24 MR. JOHNSON: I can contact Mr. McAllister if it

1 doesn't. He helped me set it up last time. I did exactly
2 the same things he showed me.

3 THE COURT: Let's go ahead and take a recess.

4 Deputy Torres, you can step down. We'll resume
5 in -- we'll shoot for five minutes. If more time is needed,
6 then we'll take it.

7 MR. JOHNSON: Thank you, Your Honor.

8 (Whereupon, a brief recess was taken.)

9 THE COURT: Court is back in session on Case
10 Number 18CR0084 and 18CR0116. Show the appearance of Matthew
11 Johnson on behalf of the State. John Malone on behalf of the
12 defendant. Also appearing is the defendant, Mr. Cota.

13 Deputy Torres has resumed the stand. He remains
14 under oath.

15 Mr. Johnson, you may continue.

16 Q. (BY MR. JOHNSON:) Deputy Torres, I'm showing you
17 what's been admitted and marked as Exhibit 18. Do you recall
18 me showing you that in my office earlier?

19 A. Yes, I do.

20 Q. And what is that you're holding?

21 A. It's inmate mail that Mr. Cota wrote.

22 Q. And someone that has training and experience with
23 gangs, was there anything in particular in this e-mail that
24 stood out to you that's related to gangs?

1 A. Yes, every C is crossed out or if there's an X
2 next to it.

3 Q. What's the significance of that?

4 A. It's a sign of disrespect for the Crip gang.

5 Q. How are the Crips and the Bloods related?

6 A. They are enemies.

7 Q. And so is this something that we typically see by
8 a Blood member to cross out an X -- cross out a C?

9 A. Cross out a C, yes.

10 Q. Why do they do that again?

11 A. To show disrespect for the Crip gang members.

12 Q. Does Mr. Cota associate with any known members of
13 the Bloods gang that you're aware of?

14 A. Yes.

15 Q. And who does he associate with?

16 A. Jobrontae Warner.

17 Q. And how do you know Jobrontae Warner is a gang
18 member?

19 A. Jobrontae Warner.

20 Q. And how do you know Jobrontae Warner is a member
21 of the Bloods gang?

22 A. Jobrontae Warner self-admittance, dress,
23 association in Las Vegas and the prison system.

24 MR. MALONE: Objection, calls for hearsay.

1 THE COURT: Sustained.

2 Q. (BY MR. JOHNSON:) Have you noticed --

3 MR. MALONE: Move to strike the response as well.

4 THE COURT: It's granted.

5 Q. (BY MR. JOHNSON:) Have you noticed any

6 particular tattoos on Jobrontae Warner that would lead you to

7 believe that he's a Bloods gang member?

8 A. Yes.

9 Q. What are those tattoos?

10 A. The Playboy.

11 Q. And is that associated with the Bloods in general

12 or is it associated with the sex?

13 A. That is associated with the set Playboy Bloods.

14 Q. And where are the Playboy Bloods located at?

15 A. Las Vegas.

16 Q. Deputy Torres, I'm going to show you a video.

17 And, Your Honor, this is a video from the second

18 incident for which the defendant has pled guilty from the

19 jail from a body cam, and it's been marked as Exhibit 19 and

20 marked as Exhibit 19 on the USB drive. I didn't want to

21 present five separate USB drives so each of them is

22 delineated by which exhibit corresponds to what I've already

23 given to the Court.

24 THE COURT: Thank you.

1 MR. JOHNSON: Thank you. I'm going to pause it
2 here because apparently -- I just had Mike check the sound.

3 THE WITNESS: It will kick in after the first 30
4 seconds.

5 (Whereupon, a video was played.)

6 MR. JOHNSON: Let's pause it right there.

7 Q. Do you know who the person J that he's referring
8 to?

9 A. That's Jobrontae.

10 Q. Was he incarcerated at the same time as Michael
11 Cota was here?

12 A. That's correct.

13 Q. And J is Jobrontae's nickname?

14 A. That is correct.

15 (Whereupon, a video was played.)

16 THE WITNESS: Another thing, when he was being
17 walked out, he said soowoop which is also another something
18 about Bloods.

19 (Whereupon, a video was played.)

20 MR. MALONE: Your Honor, I'm going to object to
21 that last statement that was made sue sponte with no
22 questioning by the District Attorney and the response that
23 soowoop is something about Bloods is -- has almost no
24 relevance. There's no actual legal conclusion or factual.

1 conclusion. There something about Bloods is -- should be
2 stricken. It's overly prejudicial. It doesn't have any
3 factual basis from what Deputy Torres has said.

4 THE COURT: The objection is sustained on the
5 basis that there was no questioning.

6 MR. JOHNSON: And, Your Honor, I'm going to ask
7 the rest of the questions at the end of the video. I'm just
8 going to step back. I want to make sure Your Honor can hear
9 all that he said. I'm trying to turn the volume up as loud
10 as possible.

11 (Whereupon, a video was played.)

12 Q. (BY MR. JOHNSON:) Deputy Torres, did you hear
13 what he just said right there?

14 A. I did.

15 MR. MALONE: Objection, what's the relevance of
16 Deputy Torres testifying as to what was said on the video?

17 THE COURT: Mr. Johnson?

18 MR. JOHNSON: Your Honor, I'm about to ask him
19 what the significance of him saying Bloods bro is.

20 THE COURT: Objection is overruled.

21 Q. (BY MR. JOHNSON:) Did you hear what he just said
22 there?

23 A. I did.

24 Q. And what did he say?

1 A. He made a threat towards the deputies. He says
2 he's going to break his jaw. And then he said I'm Bloods.
3 Basically saying he's going to put it on the set. I'm the
4 gang that's going to do that.

5 Q. Is this common for, based on your training and
6 experience for gang members to communicate to others what
7 gang they are involved in?

8 A. Yes.

9 Q. And why do they do that?

10 A. To identify themselves to either get assistance
11 or to call someone out.

12 (Whereupon, a video was played.)

13 MR. JOHNSON: Your Honor, it continues on. That
14 is the main part I wanted you to see. I'm happy to play the
15 entire video if counsel wants me to, but that was the part
16 that I wanted that I thought was relevant to the sentencing
17 hearing.

18 I have no further questions for Deputy Torres at
19 this time.

20 THE COURT: Thank you.

21 Mr. Malone, cross-examination?

22 CROSS-EXAMINATION

23 BY MR. MALONE:

24 Q. Deputy Torres, I'm going to go -- if I can

1 approach.

2 THE COURT: You may.

3 Q. (BY MR. MALONE:) I have what's been marked and
4 admitted as State's 17.

5 A. Yes.

6 Q. Are you familiar with that photograph?

7 A. Yes, sir.

8 Q. Okay. Just -- so there is the tattoo present
9 over Mr. Cota's left eye in this photograph, right?

10 A. That is correct.

11 Q. Are you able to read what it says?

12 A. It's a pretty bad tattoo.

13 Q. Well, I wasn't asking for artistic critiques.

14 A. Uh-huh.

15 Q. But are you able to read what it says?

16 A. Finesses.

17 Q. Finesse, do you know what finesse means?

18 A. Finesse, we can look it up in the dictionary.

19 Q. Okay. If I said that finesse means having a
20 certain touch or light touch for things, would that help
21 reflect or educate you in any way?

22 A. That could be --

23 Q. Or remind you of anything?

24 A. That could be. That could be. It could also be

1 a nickname being used. It could mean a lot of different
2 names.

3 Q. But it's a name, it's a word there, right,
4 finesse?

5 A. It states finesse, yes.

6 Q. And then when we look at this document that is
7 not dated, the tattoo has been overlaid, correct?

8 A. That is correct.

9 Q. Okay. What kind of hat is Mr. Cota wearing
10 there?

11 A. It says Cali.

12 Q. Okay. And the colors are Jamaican sort of
13 colors, right?

14 A. It's got red, yellow and green.

15 Q. Okay. And is that affiliated with any particular
16 gang? Does that red there mean that anybody wearing that hat
17 is a Blood?

18 A. That is not, there are certain factors.

19 Q. No, I'm just asking --

20 A. Just because --

21 Q. -- does this hat mean that anybody wearing that
22 hat with red in it is a Blood and your answer is no, correct?

23 A. No, sir.

24 Q. But no is the answer?

1 A. That is correct, sir.

2 Q. Thank you. Do you know when this latter
3 photograph was taken that shows this crown over the left eye
4 now?

5 A. Yes, that was taken December 28th when Jobrontae
6 Warner was arrested.

7 Q. Okay. And if somebody goes into a tattoo shop
8 and has a tattoo done, do the Bloods control whether or not a
9 certain tattoo can be given by that tattoo person?

10 A. I'll give you an example.

11 Q. Did you understand the question?

12 A. I don't.

13 Q. Actually it's possible for anybody to walk into a
14 tattoo shop and get whatever they wanted tattooed on their
15 body pretty much, correct?

16 A. That is correct.

17 Q. Okay. So sometimes that can be significant,
18 correct?

19 A. There are factors --

20 Q. Sir, did you understand the question?

21 A. Can you ask it again, please.

22 Q. Yes. Sometimes what is tattooed on a person's
23 body can be -- can have significance to a gang membership,
24 correct?

1 A. There can be --
2 Q. Yes or no. It's a yes or no question, sir.
3 A. Repeat the question.
4 Q. I can ask it again. Sometimes people just go in
5 and get a tattoo and it doesn't have gang significance,
6 correct?
7 A. That is correct.
8 Q. Okay. And sometimes people go into a tattoo shop
9 and get a tattoo and it does have some significance, correct?
10 A. That is correct.
11 Q. Do you see the -- can you show the deputy your
12 tattoo under his right eye, your right eye. Are you familiar
13 with that tattoo on Mr. Cota?
14 A. I believe that is a cross.
15 Q. Okay. Christian cross, right?
16 A. It's a cross.
17 Q. Well, I mean a Christian cross versus like an
18 Orthodox cross, correct?
19 A. Right.
20 Q. Different types of crosses. So that symbol has
21 significance in the Christian religion, correct?
22 A. I wouldn't know.
23 Q. No, okay. Do you -- have you ever seen a
24 crucifix?

1 A. Yes.

2 Q. Okay. And a crucifix is a cross, right?

3 A. Yes.

4 Q. Like the one on Mr. Cota's eye?

5 A. Yes.

6 Q. Or underneath his eye, and it's got a figure of

7 Jesus being crucified on it, correct?

8 A. Correct.

9 Q. Okay. So that symbol has meaning to a Christian

10 or someone in the Christian religion, correct?

11 A. I guess it would.

12 Q. Okay. It doesn't to you?

13 A. I'm not Christian so I can't say.

14 Q. Okay. And you're not familiar with that

15 symbology? You didn't learn that -- you didn't learn that in

16 Los Angeles during your gang training?

17 A. No.

18 Q. During that 80 hours?

19 A. I did not.

20 Q. Okay. Now, you testified earlier about gangs

21 committing criminal activity for the furtherance of the gang,

22 correct?

23 A. Correct.

24 Q. Okay. But you didn't testify to anything that

1 Mr. Cota, any offenses that he's committed that benefitted
2 the Bloods gang, correct?

3 A. Him stealing the weapon and the tattoo on his
4 left arm, that shows me he stole that gun. He received a
5 tattoo which was done by Jobrontae Warner he told me.

6 Q. Do you have personal knowledge of?

7 THE DEFENDANT: It's not the same gun.

8 MR. MALONE: Let me see.

9 THE DEFENDANT: AK47.

10 Q. (BY MR. MALONE:) Have you taken a close look at
11 that tattoo?

12 A. It is a rifle, long gun.

13 Q. The tattoo?

14 A. Yes.

15 Q. Okay. But the gun that is the basis of one of
16 Mr. Cota's crimes here, right, I believe it's 18 -- 18CR0084,
17 are you familiar with that case?

18 A. Yes.

19 Q. Okay. That's the stealing of an AR15 style
20 rifle?

21 A. That is correct.

22 Q. Okay. And it had been customized with some stock
23 and other additions, correct, by the owner, the true owner,
24 the legal owner?

1 A. I believe so.

2 MR. MALONE: Okay. And, Your Honor, I would like

3 the Court to view and the witness to view the tattoo that is

4 on Mr. Cota's left arm, forearm that it's --

5 THE WITNESS: It's an AK47.

6 Q. (BY MR. MALONE:) Okay. That is not the -- the

7 rifle that was stolen, correct?

8 A. No.

9 Q. This is a Soviet made rifle, right, started --

10 developed in the late 1940s, correct?

11 A. Sure.

12 Q. Okay. It's been a very popular rifle throughout

13 the world for the last 70 years, correct?

14 A. I can't attest to that.

15 Q. You're not familiar with AK47's?

16 A. I can't attest that it's been -- gained

17 popularity.

18 Q. Fair enough. It's an assault weapon, right?

19 A. That is correct.

20 Q. Okay. That means this is a fully automatic --

21 it's a functional fully automatic assault weapon, correct?

22 A. It's an assault rifle just like an AR15.

23 Q. Well, actually, an AR15 is not an assault rifle,

24 is it?

1 A. It's a rifle.

2 Q. Okay. An AR15 is not a fully automatic weapon,
3 correct?

4 A. I can't say.

5 Q. Well, you testified that you know about what
6 rifle was stolen, correct?

7 A. Uh-huh.

8 Q. Okay. And you're not familiar -- you're not
9 aware that an AR15 is a semiautomatic rifle?

10 A. I know that an AR15 was stolen, that's all I
11 know.

12 Q. Okay. But this is a completely different weapon,
13 correct?

14 A. That is representation of an AK47, that's
15 correct.

16 Q. It's a weapon made either in China or in the
17 Soviet -- former Soviet Union, correct, Russia?

18 A. Sure.

19 Q. Okay. And an AR15 was developed in the United
20 States?

21 A. Sure.

22 Q. By the Armalite Company?

23 A. Sure.

24 Q. Introduced in the late 1960s and provided

1 to troops in Vietnam, correct?

2 MR. JOHNSON: Your Honor, I object to this
3 witness doesn't have personal knowledge of.

4 MR. MALONE: Your Honor, it's completely relevant
5 because he's already testified that this tattoo --

6 THE COURT: I'm going to allow the question.

7 Q. (BY MR. MALONE:) This is not the -- a rendition
8 or a representation of the weapon that was stolen, is it?

9 A. No. What I stated, sir --

10 Q. Thank you.

11 A. Okay.

12 Q. Thank you. When did you first see this tattoo on
13 Mr. Cota's body?

14 A. I saw it after -- I later learned it was that he
15 got that tattoo after the crime.

16 Q. I think you can only testify to things that
17 you've seen.

18 A. Uh-huh.

19 Q. So my question is when did you first see this
20 tattoo on Mr. Cota's body?

21 A. I believe it was in March.

22 Q. Okay. March of this year?

23 A. Yes.

24 Q. Okay. When was the last time -- the time that

1 you most recently seen Mr. Cota before March?

2 A. I believe it was December 28th.

3 Q. Okay. And how about before that?

4 A. November 2nd.

5 Q. Okay. And basically am I correct in that every
6 time you see Mr. Cota, you will approach him and talk to him
7 or stop him?

8 A. I've been in central contact with him numerous
9 times.

10 Q. Okay. That didn't quite answer the question,
11 okay. I asked you basically if you've seen Mr. Cota on the
12 street, you will stop and talk to him?

13 A. Yes.

14 Q. Okay. Pretty much every single time?

15 A. Not all of the time.

16 Q. Okay. Pretty much all of the time?

17 A. Not all of the time.

18 Q. What's the percentage, 90 percent of the time?

19 A. Sure.

20 Q. Okay. And do you photograph Mr. Cota every time
21 you stop him?

22 A. Not every time.

23 Q. Okay. Do you photograph him -- well, that's all.

24 So let me -- you said you stopped him in

1 December, December 28th?

2 A. He was present there of the arrest of Jobrontae
3 Warner.

4 Q. And the time prior to that was what?

5 A. If I recall it must have been November 2nd.

6 Q. 11-2-17. And you have prior to the November 2nd?

7 A. I can't say, sir.

8 Q. Okay. You were shown jail letters written by
9 Mr. Cota, correct?

10 A. Correct.

11 Q. Okay. And you testified that X's in the middle
12 of a C, that is disrespect shown to the Crips gang?

13 A. That is correct.

14 Q. I'm wondering here too, blue is the Crips color,
15 correct?

16 A. Yes, sir.

17 Q. Okay.

18 THE DEFENDANT: Yeah.

19 MR. MALONE: I'm not asking you, sir.

20 Q. The crown over his left eye is blue, correct?

21 A. I believe it is black.

22 Q. Would you like to come closer. Would you accept
23 that it's black, I mean blue?

24 A. I believe it's black.

1 Q. Can you --

2 MR. JOHNSON: Your Honor, I believe this Court

3 can determine the color of the tattoo on the defendant

4 without having the witness testify.

5 THE COURT: The witness has given his answer and

6 Mr. Johnson is correct.

7 MR. MALONE: I would ask the Court to take note

8 of the blue color of Mr. Cota's tattoo, correct?

9 THE COURT: I will make my assessment of the

10 color.

11 MR. MALONE: Okay. Thank you.

12 Q. Now, Deputy Torres, this crown that is over

13 Mr. Cota's left eye completely covered the finesse tattoo

14 that had been there previously, correct?

15 A. Correct.

16 Q. Now, the jail mail that you referred to earlier,

17 that's communication to Mr. Cota's girlfriend, Allie,

18 correct?

19 A. Correct.

20 Q. Okay. Did you read this?

21 A. I did not.

22 Q. You did not? If I can approach, I would have you

23 take a look at this and read it.

24 THE COURT: You may.

1 MR. MALONE: And, Your Honor, it's going to take
2 him a little while to read it. Would it be possible to take
3 a little break, comfort break?
4 THE COURT: Yes, we'll take a recess for five
5 minutes.
6 MR. MALONE: Thank you.
7 (Whereupon, a brief recess was taken.)
8 THE COURT: Court is back in session on Case
9 Numbers 18CR0084 and 18CR00 or excuse me, 0116. Show the
10 appearance of counsel for the State. Counsel for the
11 defendant. Also appearing is the defendant, Mr. Cota.
12 Deputy Torres has resumed the stand. He remains under oath.
13 Mr. Malone.
14 Q. (BY MR. MALONE:) Deputy Torres, were you able to
15 review Exhibit 17?
16 A. Yes, sir.
17 MR. MALONE: Okay. If I could approach, Your
18 Honor?
19 THE COURT: You may.
20 Q. (BY MR. MALONE:) So in looking at this letter,
21 it's clearly a communication. It appears to be a
22 communication to Allie Cota, a person described as Allie
23 Cota, correct?
24 A. That's correct.

1 Q. Okay. And do you know who she is?
2 A. I believe from what I know, she was pregnant with
3 his baby at one point.
4 Q. Okay. So they had a relationship?
5 A. Yes.
6 Q. And the letter talks a lot about that
7 relationship?
8 A. Yes.
9 Q. Okay. And in the letter Mr. Cota says that he's
10 going to be better, correct?
11 A. That's correct.
12 Q. He's thought about mistakes he's made in his
13 past?
14 A. Correct.
15 Q. Okay. And then he wants to be a good example to
16 his nephew?
17 A. That is correct.
18 Q. Okay. And he wants to be a good example to their
19 child?
20 A. (Witness nodded head.)
21 Q. He talks about giving Allie strength, right, to
22 go on?
23 A. Yes.
24 Q. Okay. So there's a lot in this letter that is

1 supportive of his relationship with -- with Allie, correct?

2 A. Correct.

3 Q. Okay. And primarily that's what it is?

4 A. Yes.

5 Q. Okay, thank you. You mentioned that Jobrontae,
6 Jobrontae Warner is an avowed or self-identified Blood --
7 Blood member, Playboy Bloods?

8 A. He's a validated gang member, yes.

9 Q. Okay. So validation means you validated him?

10 A. That's correct.

11 Q. Law enforcement validated him?

12 A. Correct.

13 Q. Okay. Are there -- who are other Playboy Blood
14 members here in Douglas County?

15 A. Here in Douglas County, he was the one.

16 Q. Okay, thank you. Nothing further.

17 Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. MALONE: Thank you, deputy.

20 THE WITNESS: Yes, sir.

21 THE COURT: Redirect, Mr. Johnson?

22 REDIRECT EXAMINATION

23 BY MR. JOHNSON:

24 Q. When you reviewed the mail, did you see any C's

1 that weren't X'd out?

2 A. Yes.

3 Q. And did you -- if you want to estimate how many
4 C's were X'd out in this document?

5 A. I can't say. There was a number that were and a
6 number that were not.

7 Q. More than ten?

8 A. Yes.

9 Q. More than 20?

10 A. Around there, yeah.

11 Q. Okay. And just to confirm, when you spoke with
12 Michael Cota, he admitted that he was a Bloods gang member to
13 you, correct?

14 A. That is correct.

15 MR. JOHNSON: No further questions, Your Honor.

16 THE COURT: Recross?

17 MR. MALONE: No, Your Honor. Thank you.

18 THE COURT: May Deputy Torres be excused?

19 MR. JOHNSON: Yes, Your Honor.

20 MR. MALONE: Yes, thank you, deputy.

21 THE WITNESS: Thank you.

22 THE COURT: Deputy Torres, thank you.

23 THE WITNESS: Thank you, sir. Thank you.

24 (Witness excused.)

1 MR. JOHNSON: I just have a couple of portions of
2 jail calls to play, and I'll be addressing the presentation
3 of evidence.

4 THE COURT: I want to make sure any other
5 exhibits up with Deputy Torres?

6 MR. JOHNSON: I believe I just handed all of the
7 exhibits that were discussed back to the clerk.

8 THE COURT: All right.

9 MR. JOHNSON: Other than Exhibit 19 which is one
10 of the ones on the thumb drive.

11 THE COURT: Okay, very good. Thank you.

12 MR. JOHNSON: And this is just going to be audio,
13 Your Honor. I turned the volume up as high as possible.

14 THE COURT: All right.

15 MR. JOHNSON: And I'm just going to be moving
16 into the portion.

17 (Whereupon, an audio was played.)

18 MR. JOHNSON: That is from May 3rd.

19 This next jail call is May 5th.

20 (Whereupon, an audio was played.)

21 MR. JOHNSON: That's Exhibit 21. The next
22 exhibit is Exhibit 22 from May 5th.

23 (Whereupon, an audio was played.)

24 MR. JOHNSON: It's the same exhibit. I'm just

1 going forward.

2 (Whereupon, a audio was played.)

3 MR. JOHNSON: This next exhibit is Exhibit 23
4 from July 9, 2018.

5 (Whereupon, an audio was played in open court.)

6 MR. JOHNSON: I'm just going to fast forward to
7 on Exhibit 23.

8 (Whereupon, an audio was played.)

9 MR. JOHNSON: Then the last exhibit is
10 Exhibit 24. This is from August 8, 2018.

11 (Whereupon, an audio was played.)

12 MR. JOHNSON: That's the last exhibit and that's
13 the only exhibit other than the sentencing memorandum that I
14 wanted to put on for the Court.

15 THE COURT: Thank you. Do you still have the
16 thumb drive?

17 MR. JOHNSON: I do, and I'm going to take it out
18 right now.

19 THE COURT: Thank you.

20 MR. JOHNSON: And I have it here, Your Honor.

21 The last exhibit is the restitution, Your Honor.
22 I don't know if you want me to present Exhibit 25 now.

23 THE COURT: Yes, let's do that now as well.

24 Mr. Johnson, what is the total amount of

1 requested restitution?

2 MR. JOHNSON: It's 969.19, Your Honor.

3 THE COURT: All right. Thank you.

4 All right. Mr. Malone, you may make your
5 recommendations and present any evidence you would like to
6 present.

7 MR. MALONE: Your Honor, I have a couple of
8 comments about Deputy Torres' testimony. I think one of the
9 things that is most interesting is one of his final comments.
10 He was talking about Blood members -- Blood gang members,
11 Playboy Blood members here in Douglas County. His response
12 to my question about what Playboy Blood members he was aware
13 of here in Washoe County. Have I said Washoe County twice?

14 THE COURT: I know what you're talking about, Mr.
15 Malone.

16 MR. MALONE: Douglas County, Douglas County, and
17 I apologize. I'm going to take a short pause here to get
18 my --

19 THE COURT: Don't mind.

20 MR. MALONE: -- brain rebooted. I think one of
21 the things that I noticed and I thought was very instructive
22 or relevant was when I was talking to him about specifically
23 Playboy Blood members here in Douglas County, his response
24 was Jobrontae Warner was the only person that he knew, the

1 only validated gang member of that gang. The Court could
2 take notice of it, it's not much of a gang. We've been
3 talking about gang membership here all of the time.

4 The Court is aware of and has reviewed, I'm sure,
5 Dr. Piasecki's evaluation of Mr. Cota. We know that for
6 years he's had drug problems. It's reflected in his juvenile
7 history. That goes to some of the comments that he made to
8 his -- the voice you heard I think in every phone call was
9 Allie, correct?

10 THE DEFENDANT: Allie.

11 MR. MALONE: Well, the conversations with his
12 sister, with his girlfriend, when he talks about having a
13 drug problem, it's true, he does have one. He -- there's
14 plenty of evidence in the juvenile record that we've objected
15 to and we will continue -- I want to interpose an objection
16 to its introduction to any reference to it. I assume the
17 Court -- the Court's previous ruling stands, correct?

18 THE COURT: I do know your objection, Mr. Malone,
19 and the prior ruling does stand.

20 MR. MALONE: So, Your Honor, since it's coming in
21 in order to do my job, I need to make reference to it as well
22 but that doesn't waive any objection that we have to its
23 introduction or consideration by the Court.

24 So when he's talking about psychological

1 conditions, I think he refers to himself as psycho. The
2 Court is aware of the medications that he was on during his
3 youth. I'll just make reference to one of the reports, one
4 of the evaluations. It gave him a medication case list that
5 was extensive. It's my understanding that he has been on
6 over 20 psychoactive medications over the years.

7 Your Honor, I apologize, I don't have that marked
8 adequately but the Court will -- can take notice of that.
9 Those references that the medication he was on both at West
10 Hills and at Copper Canyon out in Utah. So when he's talking
11 about his need for or the fact that he does have
12 psychological issues in his diagnosis, those are true things.
13 They actually exist.

14 What we have is a young man from -- we have all
15 this juvenile history going back to about when he was ten
16 years old. And, interestingly, that correlates to a time
17 when his father was incarcerated. His father is also named
18 Michael Cota, extensive criminal history, extensive use of
19 drugs. We know that his father introduced him to certain
20 drugs, marijuana and methamphetamine come to mind and were
21 reflected in Dr. Piasecki's evaluation.

22 We have really quite -- you know, one of the
23 issues I thought about when looking at Mr. Cota's case was
24 comparing him to other individuals who I've represented. I

1 have a young man up in Carson City who -- whose father died
2 at ten. At ten, this young man's life just went downhill.
3 He started getting in trouble. He started interacting with
4 bad peers. And I remarked -- it was remarkable to me the
5 parallels between Michael Cota and this young man essentially
6 the same loss of a father figure, the same type of falling
7 off the edge of the earth in terms of getting in trouble and
8 it's -- it's instructive.

9 I think that we talk about the influence of
10 parents but then when we see direct evidence of either
11 negative parenting or absent parents, we have this kind of
12 situation that does occur, and I think it's not surprising.

13 Mr. Cota's sisters are here in court. They have
14 not had the same problems. They have had different --
15 different issues in their lives but what they -- they were
16 not males deprived of a father figure and to this day
17 deprived of a positive father figure. Even though Michael
18 Cota Senior is out of custody and walking around, he as early
19 as this year was introducing Michael Junior to intravenous
20 methamphetamine use, I mean horrible, horrible situation,
21 horrible parenting and not anything we would wish on anybody.

22 When you do look at the totality of Michael's
23 juvenile history which the District Attorney has put in, a
24 lot of it shows that this is a young man that has always

1 presented himself as tough. If somebody teased him, he
2 reacted. If somebody hit him, he would hit back.

3 And it seems at a certain point in time when I
4 looked at the story and looked at everything that was going
5 on in his life that he ended up and started being the person
6 who was blamed for nearly everything even when he had not
7 thrown the first punch or done the first provocation.

8 I mean, what's been introduced as Exhibit 2 is a
9 pushing in school. He pushed a friend. This person
10 actually, he was cooperative with the police. I asked --
11 this is the report. It's one, two, three, four, five, six; I
12 believe seventh paragraph, I asked Jada, who was the person
13 who Mr. Cota pushed, if she wanted Michael to be arrested for
14 pushing her. Jada stated she did not as Michael was her
15 friend. So she was pushed. She didn't hit the ground, but
16 he was arrested and he was taken into custody.

17 There's a fight in -- I'm sorry, I'm looking,
18 2010 right in the home. Michael starts out, he doesn't want
19 to do a book report. He throws a pillow at home, ends up
20 overturning a dining table and threw chairs around. So I
21 would characterize that as it's not a good -- good thing, but
22 it's a thing that we have a parent. We have his mother
23 calling the police. Instead of disciplining him and being
24 able to take care of the problem herself, she calls the

1 police.

2 So what we have is a young man whose parenting
3 was really preempted and by the system, by the juvenile
4 justice system instead of by the parents. He throws a
5 pillow. He overturns a table. Mom calls the police and has
6 him arrested and it's time after time.

7 Now, one of the things that disturbed me about
8 this record, and I think I talked about it extensively at our
9 last hearing, was the allegation of sexual behavior. It's a
10 little bit interesting that is in a report that I believe
11 that the District Attorney probably pulled from their own
12 files. It's not certainly something that would be in a
13 Douglas County Sheriff file because it's prepared by
14 treatment providers at facilities where Michael had been put
15 by juvenile probation.

16 So the reference to the sexual behavior comes
17 from Copper Canyon. It's I believe Exhibit 8 and it talks
18 about the incident with a ten-year-old girl, Michael being 13
19 or 14 and her sitting on his lap. So what -- and, Your
20 Honor, I would ask that the courtroom maybe be cleared of any
21 jail inmates that are present. I don't think there's any
22 need for their presence, and we're talking about juvenile
23 history here. I don't think this is appropriate for them to
24 be present.

1 THE COURT: Deputy Nishikida, do you have the
2 ability to remove Ms. Payton from the courtroom?

3 THE BAILIFF: We do.

4 THE COURT: If not, it's too --

5 THE BAILIFF: But, Your Honor, it's going to
6 cause a delay because -- because the nature of what is going
7 on here, we have to maintain security up here so we have to
8 get some jail personnel come up here which is going to,
9 depending on how much -- how busy they are, the volume of
10 work down there to have somebody up here, I wouldn't assume
11 more than two or three minutes but that would delay your
12 proceedings by two or three minutes. There's not much else
13 we can do about it.

14 THE COURT: All right. So, Mr. Malone, I
15 appreciate the request. I'm not going to delay these
16 proceedings to remove an inmate who is present in the
17 courtroom.

18 Regarding the juvenile records, they have been
19 introduced and considered by the Court. They are sealed and
20 I've read and considered those and, of course, you can
21 comment on as you deem appropriate but just know that I have
22 read and considered them, so let's proceed.

23 MR. MALONE: Your Honor, I think one thing that
24 is important to note in those records are that the part of

1 the Copper Hills' evaluation which is Exhibit 8 makes
2 reference to an incident that supposedly occurred at Willow
3 Springs. Let me make sure I'm referring -- at Willow
4 Springs.

5 Exhibit 7 is the report from Willow Springs.
6 It's the report from the Douglas County Juvenile Probation
7 Department. It makes no reference to that incident
8 whatsoever, none.

9 Copper Hills is clearly saying this happened in
10 Douglas County. This happened in Nevada, and we're going to
11 have him evaluated and they do that and then they come up
12 with some fairly disturbing responses. One of the things
13 that Dr. Piasecki reviewed for you and reviewed for us when
14 looking over the records were the use of the testing
15 instruments that Copper Hills used, the soap, and the SORAG.
16 She notes that the SOAP is valid for about six months after
17 it's given. Any conclusions based on that are no good after
18 six months. And the SORAG is an adult oriented test that was
19 performed on a 14-year-old.

20 Making things even worse are the fact that we
21 don't even know where Copper Hills got that information. He
22 is sent from Willow Springs specifically according to Copper
23 Hills because of these incidents, but Willow Springs doesn't
24 talk about them at all in their referrals in the probation

1 officer report filed back in April of 2013.

2 Yet we have this report that generated later on
3 that year and it makes -- actually, I'm incorrect, the -- no,
4 I'm correct. So the Willow Springs reports are from 2012 and
5 he's sent later that year to Copper Hills, yet we don't have
6 any linkage, no nexus between his behavior at Willow Springs
7 and what goes on at Copper Hills.

8 On top of that, we know from Dr. Piasecki that
9 the testing instruments that are used are not appropriately
10 administered and are not appropriate for his age. We also
11 know that in spite of the dire consequences that Copper Hills
12 goes and says are going to happen in terms of their
13 percentage of -- of recidivism, those haven't occurred.

14 We do have somebody that's been diagnosed with
15 ADD, oppositional defiant disorder. Those are his medical
16 diagnosis. There's one other one. Oh, actually if I can --
17 and there's one other one. It's contained in the Copper
18 Hills eval. It also goes and talks about the -- his current
19 psychiatric medications, Zyprexa, Amantadine, the Midgical
20 (phonetic), Clonidine and Trazodone. What we have is some
21 pretty powerful psychiatric agents here that he's on a,
22 basically a grab bag of psychiatric medications that don't
23 seem to ever have done him any good.

24 So what we have is a young man whose parenting

1 was suspect, parenting was nonexistent and poorly done when
2 it was present, and then we have him being made a ward of the
3 state, a ward of the state and what it looks like is he's
4 overmedicated, overmedicated all of the time.

5 Your Honor, Mr. Cota's sister, Mika, is here in
6 the court. She's a subject of one of the reports. This will
7 be Exhibit 11. This is an incident where Michael takes
8 carrots from his nephew's plate. I think the youngster was
9 in a highchair and then does get into a physical fight with
10 Mika, and Mika is prepared to tell you a little bit about
11 that incident. She's here in court.

12 Ma'am, can you come up.

13 THE COURT: Do you want to call her as a witness?

14 MR. MALONE: I'll call her as a witness.

15 THE COURT: All right. Ma'am, come on up. Stop
16 there for a moment. Please raise your right hand and face
17 the clerk to be sworn.

18
19 MIKA COTA,

20 called as a witness on behalf of the
21 Defendant having been first duly sworn,
22 was examined and testified as follows:
23

24 THE COURT: Come on up to the witness stand here

1 and have a seat.

2 Mr. Malone, you may continue.

3 DIRECT EXAMINATION

4 BY MR. MALONE:

5 Q. Ma'am, please state your name, and spell both
6 your first and last name for the court reporter.

7 A. Mika Cota, M-i-k-a C-o-t-a.

8 Q. Okay. And, Mika, what is your relationship with
9 Michael Cota?

10 A. I'm his sister, his older sister.

11 Q. I don't know if you can speak up for -- there is
12 a microphone there that would help, I think.

13 A. Yeah.

14 Q. Okay. And you're his older sister; is that
15 correct?

16 A. Yes.

17 Q. Okay. Did you -- you grew up together?

18 A. Yes.

19 Q. Okay. Who was the primary parent in your
20 household?

21 A. Our mother.

22 Q. Okay. Where was your father?

23 A. He was either locked up or not around.

24 Q. Okay. What do you mean by locked up?

1 A. In prison, jail.

2 Q. Okay. Did you -- growing up, did you have much
3 contact with your father?

4 A. Not very much.

5 Q. Okay. Did you have any positive contact with
6 your father?

7 A. No.

8 Q. Okay. Is your father a drug user?

9 A. Yes.

10 Q. Okay. Is he -- does he represent to any gangs or
11 does he represent any gangs or imply that he's a member of
12 any gangs?

13 A. He claims he represents a gang.

14 Q. Okay. And what gang would that be?

15 A. Crips.

16 Q. You've been present in the courtroom today where
17 there's been talk about Michael Cota acting like a Blood,
18 correct?

19 A. Uh-huh.

20 Q. Okay. And if you can answer out loud.

21 A. Yes.

22 Q. Okay. Is it significant to you that your father
23 says he's a Crip and Michael says that he's a Blood?

24 A. I think my brother just wants to be more -- like,

1 looks up to my dad, and I don't know why he -- they both try
2 to represent a gang, I'm not sure.

3 Q. But why would he be -- you know that they
4 represent basically different gangs, correct?

5 A. Right.

6 Q. Or they talk about representing different gangs?

7 A. Right.

8 Q. And Michael doesn't -- doesn't follow his father
9 with that?

10 A. Right.

11 Q. Okay. And he does exactly the opposite?

12 A. Right.

13 Q. Any idea about that?

14 A. No, I have no idea.

15 Q. Okay. In terms of when Michael was a young
16 child, what was his physical presence? Was he on the smaller
17 side of his peers or larger?

18 A. He was about average, but people picked on him a
19 lot. He was bullied, and me and my sister, as older sisters,
20 we would try to defend him. We would defend him.

21 Q. Oh, sorry.

22 A. We just tried to defend him and like make him so
23 it's, I don't know, just trying to be a bigger sister.

24 Q. Okay.

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1 A. Like trying to be there.

2 Q. When you say he was bullied, was that teasing,

3 verbal teasing?

4 A. Yes.

5 Q. Okay. Was it physical?

6 A. It got physical sometimes.

7 Q. Okay. Did you notice a change in your brother

8 after a while, after what you observed in terms of bullying?

9 A. Yes.

10 Q. Okay. What was that?

11 A. He tried to be more like the bully. He tried to

12 portray himself as the bully so he didn't get bullied and he

13 tried -- he tried to be more tougher than the bully was.

14 Q. Act tough?

15 A. Yes.

16 Q. Does he act tougher than you think he actually

17 is?

18 A. I think so.

19 Q. Okay. Have you seen him cry?

20 A. Yes.

21 Q. Okay. Very often?

22 A. Yes.

23 Q. Okay. Is that part of his truer nature?

24 A. Yes.

1 Q. Okay. Your brother -- did you witness physical
2 violence between your parents?

3 A. Yes.

4 Q. Okay. From what age -- when was the earliest you
5 can remember that happening?

6 A. I don't know the years but it was growing up. It
7 was something when my dad was around, it was my mom and him
8 having altercations where it got physical.

9 Q. Okay. And are you aware of whether Michael saw
10 those altercations?

11 A. Yes.

12 Q. Okay. And so his model as a man was somebody who
13 was violent to women?

14 A. Yes.

15 Q. And went to prison for violent crimes?

16 A. Yes.

17 Q. And used drugs?

18 A. Yes.

19 Q. Okay. Have you witnessed Michael -- well,
20 actually, the incident that we're talking about that occurred
21 with you back in 2014, right?

22 A. Yes.

23 Q. Were you injured?

24 A. No.

1 Q. Okay. You reported that Michael hit you several
2 times on the shoulder; is that correct?

3 A. No, I thought he pushed me.

4 Q. Pushed you?

5 Your Honor, may I approach?

6 THE COURT: You may.

7 MR. MALONE: Okay. I'm going to -- Mika, I'm
8 going to show you a police report that's dated back in 2014.

9 THE COURT: Is that one of the marked exhibits,
10 Mr. Malone?

11 MR. MALONE: It's already been admitted, Your
12 Honor. It's Exhibit Number 11.

13 THE COURT: Thank you.

14 Q. (BY MR. MALONE:) Mika, I just want you to read
15 through this.

16 A. All right.

17 Q. Quickly to refresh your recollection over -- of
18 the incident?

19 A. Okay.

20 Q. All right. Have you ever seen this police
21 report?

22 A. No.

23 Q. Okay. Thank you. Did reading that report
24 refresh your recollection of the incident?

1 A. I know that he didn't hit me. I know he pushed
2 me.
3 Q. Okay. Pushed you in the shoulder area?
4 A. Yes.
5 Q. Okay. And did it leave a mark?
6 A. No.
7 Q. Okay. Were you injured?
8 A. No.
9 Q. Okay. It describes you falling against a TV,
10 correct?
11 A. Yes.
12 Q. Okay. Can you describe that to the Court?
13 A. We got into -- I tried to take the plate. He got
14 upset, and then he went and pushed me, and I stepped back
15 into the TV.
16 Q. Okay. Did the TV knock over?
17 A. No.
18 Q. Okay. Did you fall over?
19 A. No.
20 Q. Okay. And it started by him taking carrots from
21 your son?
22 A. Yes.
23 Q. Who was about what age in 2014?
24 A. Two.

1 Q. Two, okay. So took carrots from a two-year-old?
2 A. Yeah.
3 Q. Was he -- was there any elements of humor or
4 teasing about that, like joking around?
5 A. No.
6 Q. No, he just wanted the carrots?
7 A. No. He took -- just took them, and I wanted to
8 be momma bear and get them back for him.
9 Q. Okay. So you wanted to be a good mom?
10 A. Yes.
11 Q. Okay. Why did you call the police?
12 A. I guess that's what happened when we were growing
13 up.
14 Q. Okay.
15 A. So it was something that we did.
16 Q. Okay. You called the police on Michael a lot or
17 people called the police on Michael a lot?
18 A. Yeah.
19 Q. Okay. The -- also your son was there. Were you
20 concerned about him witnessing violence?
21 A. Yes.
22 Q. Okay. That -- and did that trigger something for
23 you do you think?
24 A. Yes.

1 Q. Okay. For sure or?

2 A. What, I'm sorry.

3 Q. Did -- when -- when you say it triggered
4 something in you, what were your feelings like? What were
5 you thinking?

6 A. That I needed to like, I don't know. Like, I had
7 to like be bigger so like I'm a role model for my child, and
8 I didn't want to be picked on.

9 Q. Okay. And did you -- were you concerned that he
10 was being exposed to violence?

11 A. Yes.

12 Q. Okay. And you had been exposed to violence?

13 A. Yes.

14 Q. And Michael had been exposed to violence?

15 A. Yes.

16 Q. And your sister had been exposed to violence?

17 A. Yes.

18 MR. JOHNSON: Your Honor, I want to move this
19 along but we can't have the entire thing be leading. I
20 object to leading.

21 THE COURT: All right. Sustained.

22 Q. (BY MR. MALONE:) Growing up or are you aware of
23 any problems of controlled substance that your brother has?

24 A. Yes.

1 Q. Okay. Describe those, please.

2 A. I know in maybe 2010 my dad introduced him to

3 marijuana and whenever my dad was around, he introduced

4 Michael to it again and again and then now going up to meth

5 and so it's just like a spiral out of control.

6 Q. Okay. Are you aware of any medications,

7 psychiatric medications that your brother was on during his

8 childhood?

9 A. Yes, he was always on medications.

10 Q. Okay. And were you able to see those medications

11 around the house?

12 A. Yes.

13 Q. Okay. And you talked about it with your mother?

14 A. Yes.

15 Q. Did you talk about it with Michael?

16 A. We would try and help my mom have Michael take

17 the medications every morning.

18 Q. Okay. Did his medications change over the years?

19 A. They did change but they didn't help him.

20 Q. Okay. Are you aware of any that did help him?

21 A. No.

22 Q. Okay. Has your brother behaved to you in a

23 loving manner at times?

24 A. Yes.

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1 Q. Okay. Can you describe how much of percentage of
2 your interaction with him are positive and loving?

3 A. Probably 90 percent of the time.

4 Q. Okay. But there are times that his behavior can
5 be -- can you describe the other say ten percent of the time?

6 A. Just when he feels cornered or like he's getting
7 bullied, I think it just triggers when he was younger and so
8 he gets aggressive.

9 Q. Did you see the video that was played earlier of
10 him in the jail?

11 A. Yeah.

12 Q. Okay. Did he look cornered to you?

13 A. Yes.

14 Q. Did he look bullied to you?

15 A. Yes.

16 Q. Did he look like he was in pain?

17 A. I feel like he was scared.

18 Q. Okay. And you've seen that with him before?

19 A. Yes.

20 Q. Okay. And you went to the same elementary
21 schools at times?

22 A. Yes.

23 Q. And so you saw behavior on the playground?

24 A. Yes.

1 Q. Where he was bullied?
2 A. Yes, and outside of the school.
3 Q. Do you know when Michael started getting tattoos?
4 A. Just in 2017.
5 Q. Okay. So this is about a year's worth of work
6 for him here?
7 A. Yeah.
8 Q. Okay. Are you aware of -- at times did you ever
9 see evidence that he was harming himself?
10 A. Yes.
11 Q. Okay. Describe, please, for the judge.
12 A. One day we were in the kitchen and he wanted to
13 end his life because he didn't want to be a failure, and so
14 we sat in the kitchen, and he cried to me, and he told me
15 that he didn't want to be here, and so me and him talked
16 until he didn't feel that way and we went to bed?
17 Q. Did you ever see him cutting himself?
18 A. No.
19 Q. Rubbing any of his arms or hurting himself like
20 that?
21 A. Yeah.
22 Q. And what was that like?
23 A. If he didn't inflict pain on himself, he would
24 pick the scabs until it made a scar so like he remembered it.

1 Q. Okay. Has he told you why he gets tattoos?

2 A. I personally think this was because we're older.
3 We got tattoos before he did and so when he got the chance to
4 do it he did it and he did excessively.

5 Q. Okay. Thank you.

6 A. Uh-huh.

7 CROSS-EXAMINATION

8 BY MR. JOHNSON:

9 Q. Have you witnessed him using methamphetamine?

10 A. No.

11 Q. So you've never see him use it before. And have
12 you ever stolen anything before?

13 A. No.

14 Q. Have you ever --

15 MR. MALONE: Relevance, Your Honor.

16 THE COURT: What's the relevance?

17 MR. JOHNSON: Your Honor, it's relevant because
18 the argument is that his lack of his family upbringing is the
19 reason that he committed these crimes. I'm asking someone
20 that has a similar family upbringing if they committed
21 similar crimes.

22 THE COURT: The objection is sustained. Let's go
23 to a different area.

24 MR. JOHNSON: No further questions, Your Honor.

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1 THE COURT: All right. Thank you.

2 May this witness step down?

3 MR. MALONE: One further question.

4 REDIRECT EXAMINATION

5 BY MR. MALONE:

6 Q. Did you ever suffer from some of the bad
7 upbringing that your brother experienced as well?

8 A. Well, I had a child at 14 so I guess I wanted to
9 be --

10 Q. Yes, that's a yes?

11 A. Yes.

12 Q. Okay. So for you that --

13 A. That was my --

14 Q. And are you -- do you believe that your
15 upbringing was rough?

16 A. Yes.

17 Q. Okay. Do you believe that you would have done
18 some different things in your life if that upbringing hadn't
19 occurred in the way it did?

20 A. Yes.

21 Q. Okay. Was there anything positive about your
22 parents fighting all of the time?

23 A. No.

24 Q. Was there anything positive about your father

1 going to prison?

2 A. No.

3 Q. Was there anything positive about -- your mother
4 has done drugs in the past; is that correct?

5 A. No.

6 Q. No, okay. Is there anything positive about your
7 father doing drugs?

8 A. No.

9 Q. Okay. Thank you.

10 THE COURT: Mr. Johnson?

11 MR. JOHNSON: No further questions.

12 THE COURT: All right. You may step down. Thank
13 you.

14 (Witness excused.)

15 THE COURT: Mr. Malone, do you have other
16 witnesses?

17 MR. MALONE: No, Your Honor, but I still have a
18 little bit of argument.

19 THE COURT: You may continue.

20 MR. MALONE: Your Honor, I think you can see that
21 what my theme here is that we have a young man whose parental
22 supervision, parental upbringing was at best absent and at
23 worse abusive and negative and horrible.

24 We then have a period of time where intervention

1 by the State is made and things don't really get any better.
2 Drug after drug is prescribed. Incarceration after
3 incarceration is levied on him, and I just see a young person
4 whose head spinning. Nothing seems to go okay.

5 At school, when he is hit by somebody and there
6 is an incident in elementary school where the other person
7 strikes the first blow and then Michael -- Michael is
8 punished when he fights back, that happens time and time
9 again and nothing seems to work.

10 There are two ways to take that data, that
11 evidence, that data and look at it. One is this is a person
12 that we need to incarcerate for the safety of the community.
13 It's not a bad argument, but you've seen the one incident of
14 violence. You've seen the one incident where he's in the
15 jail. His foot is stepped on by the deputy, taken to the
16 medical unit and then he strikes back.

17 We know that he stole a gun. We also know that
18 he offered to cooperate. He cooperated with law enforcement.
19 It led to the arrest and prosecution of various people. He
20 made an agreement with the State to -- Your Honor, I normally
21 would want this all sealed and in a -- not to be -- not to
22 have witnesses privy to it, but I think it's important to
23 note that he did make an agreement with the State to testify
24 and the prosecution of one of his co-defendants. He was

1 willing to be a witness. He eventually didn't need to be
2 called, that was in the initial case. That was in 0084.

3 We also have a person I think who is wanting to
4 make changes. You heard about the documentation in the
5 letter that he wrote to his girlfriend and the mother of his
6 child where he's talking about being a better person. He's
7 talking about being a good example to other people, positive
8 affirmations of what he wants his life to be and where he
9 wants his life to go.

10 Now, one of these charges doesn't allow him to
11 enter into the regimental discipline program. Obviously, the
12 battery by a prisoner doesn't allow that. What we would
13 suggest is, number one, that he be sent to prison, that he be
14 sent to prison, that he be sent down to the High Desert
15 Facility and enter into the boot camp program. You do have
16 the ability to do that. You can sentence him on 0084 to that
17 program. You can suspend the sentencing in 0116. That --
18 what that is going to do is give you more information about
19 the character of this young man and whether he has the
20 capacity to change.

21 We spoke earlier. I know that the Court said
22 that didn't, I agree, that the better -- the more information
23 that you had to make a judgment the better off things would
24 be. I think this is an instance where you, the Court, have a

1 wonderful opportunity to gain more information about
2 Mr. Cota. You know, I'm not going -- I'm not going to say
3 that he's not going to go down there and fail. He can be
4 back in a week. He can be back in a week or he can be back
5 standing taller, standing prouder and being better.

6 He's been off any medications and off any drugs
7 now for months. I don't think he wants to go down there and
8 run and work out and be subject to discipline for the next
9 six months, but I think it's something that might do him
10 good. I think it also would give the Court more information
11 about his character and where his role in our society is
12 going to be.

13 The easy choice is to send him to prison, but
14 he's eventually going to get out. Will he be better when he
15 gets out if he does a few years, four or five years at most
16 probably in our prison system, I don't think so. That hasn't
17 seemed to work in the past. My hope for Michael Cota is that
18 he has a wake-up call and he puts himself back together into
19 a process where he can contribute to society instead of being
20 a drag on it. I think you do have that option.

21 I don't see any reason that would prevent him
22 entering the regimental discipline program. They may not
23 accept him. They may send him back up here without him
24 participating, but he may surprise us. He may surprise

1 himself, and he may surprise his family, and he may end up
2 doing good things. He might be that example to his son, to
3 his nephew that he wants to be. We can only hope. That
4 would be my primary argument to Your Honor.

5 Regarding probation, I think if you were thinking
6 about granting him probation, which is another possibility
7 here, entering into an inpatient treatment program would be
8 important. I'm just going to -- I'm just going to present
9 the Court with what I think is probably the best resolution
10 of the case at this point in time. It gives you the option
11 of say in six or seven months seeing that he's done well,
12 maybe considering more likely to grant probation to him or
13 maybe put together a sentence that would allow him the
14 opportunity not to do a lengthy prison term.

15 So what it does is give the Court more
16 information. It gives him the opportunity to grow and to
17 prove himself and it does it in a very restrictive prison
18 environment, and we would ask the Court to follow that or to
19 consider that. Thank you.

20 THE COURT: Thank you, Mr. Malone.

21 Mr. Cota, both of these cases the law affords you
22 an opportunity to personally address the Court and offer any
23 evidence in mitigation. Would you like to address the Court
24 at this time?

1 MR. MALONE: Do you want to talk to the Court?

2 THE COURT: Please, stand, Mr. Cota.

3 THE DEFENDANT: I wrote the Court a letter, well
4 you. My name is Michael Cota. I come here -- come before
5 you today as a humble young man. I have made a lot of bad
6 decisions in my life. I made a lot of mistakes, but I
7 realize my past does not have to define me, and I won't allow
8 it. I take full responsibility of my actions. I lay awake
9 many nights thinking and wishing I could go back and change
10 my actions.

11 I'm not only sorry because the consequence I'm
12 facing but also -- I also have remorse because I let my
13 stupid decisions ruin a good friendship. I'm not a bad
14 person. I'm just a young man that has made a lot of stupid
15 decisions. I would like to ask you to please consider
16 granting me probation or the felon -- what?

17 MR. MALONE: Regimental treatment.

18 THE DEFENDANT: Yeah, the regimental discipline
19 program, also become a positive role model to my nephew
20 Elijah and my sister's pregnant so I would like to be a role
21 model for my nephew or niece when he or she comes.

22 I have a lot of things pushing me and motivating
23 me to do right. When I get out, most of all I would -- I
24 want to change for myself so I can be the person that I want

1 to be for the loved ones and that they deserve. Thank you
2 for listening to my request.

3 THE COURT: Thank you, Mr. Cota.

4 Mr. Johnson, what does the State recommend?

5 MR. JOHNSON: Your Honor, the State is going to
6 be recommending the following sentence and I would like to
7 discuss the reasons why I think it's the appropriate
8 sentence. It's laid out in the sentencing memorandum. We're
9 recommending for the first crime, grand larceny, a sentence
10 of 12 to 30 months and for the second, battery by a prisoner,
11 a sentence of 28 to 72 months, and we're asking that those
12 run consecutive.

13 In addition to that, part of the guilty plea
14 agreement that was signed by the defendant, we're going to be
15 requesting that the defendant not have any contact or
16 communication with Brittany Mastera (phonetic) or Deanna
17 Jones McVay during the period he's incarcerated on parole or
18 on probation as a result of the grand larceny of a firearm.
19 I provided a police report in there about the threats he
20 made. Deanna McVay is the mother of his child that the
21 threats he made to her and while she was pregnant, the child
22 who was in utero. And part of our guilty plea agreement was
23 that we request the Court make the order of no contact order
24 during the period of that termination. He made similar

1 threats to Brittany Mastera as part of an agreement.

2 In addition to that, we would be asking the
3 defendant to pay restitution in the amount of \$969.19. And
4 that he be placed -- that's our sentence, Your Honor, but I
5 think it's important to look at the totality of what has
6 happened here.

7 The defendant broke into the home of a member of
8 his community. He stole an AR15 rifle. He stole another
9 rifle. He stole a knife and ammunition and within a matter
10 of hours later that day he already sold it to another gang
11 member that his friend found, and that weapon is out there
12 somewhere to be used by anyone for who knows what without any
13 remorse at all or expressed remorse.

14 He was arrested for that offense. And while he
15 was incarcerated, he had already come up with this plan how
16 he's not going to accept responsibility for what he did and
17 how he was going to get out of it. And you heard the jail
18 calls about what he said. He said go ahead and talk to my
19 mom. Tell them I have a mental issue and I'm addicted to
20 methamphetamine, that was on May 3rd. He's already come up
21 with his plan about how he's going to convince the Court
22 about how he's deserving of probation or diversion or some
23 other program.

24 Two days later he said, he laughed with his --

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1 with Allie Scaffalani. He said I'm going to say I'm a
2 fucking drug addict. I need fucking rehab and they laughed
3 about the fact that I'm just going to say I'm a drug addict
4 and get out of this thing, no big deal.

5 Then the next day or actually hours later, he's
6 talking again with her and he says this is the plan, I'm
7 going to act hella psycho and shit so I don't have to go to
8 prison because I want a diversion program. I don't need to
9 go to prison. I just have to say these things and the Court
10 is going to go ahead and put me in a diversion program or in
11 this case some sort of regimental discipline program. I'm
12 just going to get out of that.

13 And then he says he's going to tell the same
14 thing to his attorney, and that was the very beginning,
15 that's already what his plan was. Now, you have been
16 presented with what his statement was, what he told the
17 psychologist who evaluated him and there in his statement, he
18 says he's addicted to methamphetamine and marijuana, but we
19 don't have any evidence other than that he's carrying out his
20 plan to say I'm a big drug addict. I have these mental
21 health problems to get out of this prison sentence that is
22 awaiting me.

23 We heard from his sister. She said she never
24 actually witnessed him using methamphetamine. So this was

1 his plan, but he didn't stop there. He didn't have remorse
2 while he was in jail deciding what to do and get out. No, he
3 decided what he was going to do was he was going to get mad
4 and he was going to punch one of the deputies.

5 Now what happened there in jail, he was moved to
6 another cell and he didn't like that they were forcing him to
7 move to the other cell. So he got into a fight stance inside
8 that jail. He tried to actually get out of the cell to
9 attack the deputies. They closed the door at that time. He
10 got into a fight. He threw his property down and he was
11 ready to fight.

12 And just like what happens with any other person
13 in jail, they went in to secure him and place him into a
14 secured chair, gave him multiple commands to get on the
15 ground and comply with the orders, comply with the orders in
16 a jail facility, and he didn't comply with those orders, and
17 they had to forcibly take him to the ground and in the midst
18 of that he punched one deputy in the face and he knocked the
19 arm of another deputy, hitting the taser out of his hand. He
20 made that jail facility not secure, and he didn't stop there.

21 He went back outside and he continued to threaten
22 those deputies. You heard him say to one deputy I'm going to
23 break your jaw when I get out of here. That's a future act
24 of violence. He's already saying what he's going to do, and

1 he told another deputy I'm going to break your jaw too. So
2 we have somebody who has already provided in a sentencing
3 memorandum, I'm not going to go through it, with a history of
4 violence, over 40 acts of violence I provided in that
5 sentencing memorandum showing that this is what he does.
6 He's a violent person and in his history you'll read that.

7 We have an active example of what he pled guilty
8 to, a future act of -- a present act of violence where he
9 punched one deputy, hit the other deputy's arm in a secured
10 jail facility, and then we have threats of future acts of
11 violence.

12 And he's not just threatening those acts of
13 violence as he is here, he's also as you heard testimony,
14 he's repping his gang. You heard him on the video say
15 Bloods, bro. I'm going to break your jaw. He's repping his
16 gang, and he's already self-admitted to Deputy Torres. The
17 PSI says he's self-admitted that he's a member of the Bloods
18 gang, and he's already threatening future acts of violence
19 while repping his gang.

20 We have a threat to our community not just from
21 what he's already done, not just we can look at his past
22 history of violence, we can look at what he's already said
23 he's going to do when he gets out of jail. He's going to
24 threaten deputies and commit other crimes what I submit to

1 you unless -- unless we have some punishment that is more
2 severe than what he's already had.

3 He's had every chance imaginable to get his life
4 straight. I listed all of the facilities that he's been in
5 Northern Nevada, and I'm not going to rehash those, every
6 single one he's failed at. He's been medicated, and he's
7 failed to change his behavior. And that's just part of it,
8 Your Honor, is the violence, his gang association. We heard
9 that he's hanging out with a validated member of the Playboy
10 Bloods. He has his own admission that he's a member of the
11 Bloods, and we don't need to encourage any other people to
12 join that gang here in Douglas County. I submit that is a
13 significant sentence, the absence of that would do that.

14 Then I want to talk about his remorse or in other
15 words, his lack of remorse. This is what he said on
16 July 9th, a day or day and a half after he punched a deputy
17 in the face and you heard it, but I'm just going to rehash
18 it. He says this, like Saturday morning, I'm like, do you
19 need to know, I punched this bitch ass in the face. I got
20 tased. There's nothing more to investigate, and then he
21 laughs.

22 So I saw his ass yesterday, bro. He was in the
23 bubble, and his ass looked like my eye. That shit was
24 fucking hilarious. It was funny. That's what he thinks two

1 days after he punches a deputy in Douglas County that he
2 thinks it's really funny that his eye is black and blue, just
3 like his eye. That's not someone who has remorse. That's
4 someone that thinks it's funny to commit acts of violence
5 against law enforcement in this community, and I don't think
6 we should allow that without a significant punishment of
7 prison.

8 And then we have him saying I can show some
9 emotion. This is on August 8th, 2018 when he's talking to
10 McKenna, and he says this, the judge is going to grant me
11 probation, I know that, but this is what I got to do.
12 McKenna told me I have to have emotions. I don't have any
13 emotions about this. He said he has no emotions about what
14 he did, not the grand larceny, not the punching of the deputy
15 in our jail. He says but I'll go ahead and cry in court.
16 I'll do whatever I need to do to get back out on the streets.
17 I'll claim I'm a drug addict. I'll claim I'm hella psycho.
18 I'll claim that I have emotions, and I'm going to cry in
19 court.

20 We haven't had any crying in court, but we have
21 someone that is trying to manipulate the system to get back
22 out on the streets to commit more acts of violence, and I
23 don't think that that is the appropriate sentence. I think
24 in light of his past history, his propensity for violence,

1 his actual acts of violence that the appropriate sentence is
2 what I just laid out to the Court, and we ask that be
3 imposed.

4 THE COURT: Thank you.

5 Mr. Malone?

6 MR. MALONE: Quick response, Your Honor. To
7 characterize that conversation as being one where Michael is
8 saying that he is going to go and make up or fabricate
9 psychiatric problems or drug use belie the fact that he has
10 documented a long long documented history of psychiatric
11 problems that were treated by extensive use of drugs and by
12 his incarceration or his placement in treatment facilities
13 over the years. I don't think that there's any counter to
14 the issues of his exposure to drugs, his use of drugs.

15 And when we talk about gang activity, our gang
16 expert, Deputy Torres, says guess how many members of the
17 Bloods, the Playboy Bloods are here in Douglas County, one,
18 Jobrontae Warner, so we don't have many.

19 We have a young man who fabricates things but
20 they are not fabrications of his problems. They are
21 fabrications of his toughness of his manliness and his
22 ability, really the reaction to somebody who has been a
23 victim and is trying not to be.

24 The Court saw the -- the jail video. The Court

1 saw an asp or extendable baton being pushed up underneath his
2 nose while he's in a restraint chair, and what we do hear are
3 words and threats back from Mr. Cota. But I would say under
4 the circumstances where he's in pain, where he's being
5 humiliated, where he is being punched, you saw the initial
6 punches.

7 The police report say that one of the, not the
8 deputy, the sheriff's report say that one of the deputies
9 describes it very clinically as administering two full body
10 blows to his crotch area. The deputy did that, so it's not
11 surprising that Mr. Cota's behavior under those circumstances
12 even though it wasn't initially very good either and he was
13 provocative, the things he says in anger in pain are just
14 that, they are things said in anger and pain, and they have
15 minimal use in terms of determining what kind of person he
16 is.

17 Regarding acts of violence, we have him throwing
18 pillows. We have him pushing people. We have him kicking
19 their feet in school. Those are all things he did as a
20 child. In terms of his adult behavior, we have this fight in
21 the jail, that's it in terms of violence.

22 THE COURT: Thank you, Mr. Malone.

23 Mr. Johnson, are either of the victims present?

24 MR. JOHNSON: I don't believe any of the victims

1 are here, Your Honor. And if I could at the risk of one more
2 minute, I just wanted to make one statement I forgot to make.

3 THE COURT: Go ahead.

4 MR. JOHNSON: Your Honor, I just wanted to point
5 out, I know that the --

6 THE COURT: Mr. Cota, and, Mr. Malone, you can
7 have a seat. Thank you.

8 MR. JOHNSON: I know that the defendant's
9 admission in documentation in mitigation said the SORAG is
10 not valid. The person that drafted the SORAG says on, I
11 don't have the page number but it's in the exhibit, it says
12 however the SORAG has been developed and shown to be valid
13 even when a few of the variables are unknown and when the
14 offender might be somewhat younger than the norm group. So I
15 just wanted to point that out for the record that at least
16 this person believes is appropriate for someone younger than
17 the norm group.

18 THE COURT: Thank you.

19 I first would like to talk about credit for time
20 served. In the first case, 084, parole and probation
21 indicated that credit for time served would be 133 days and
22 that was as of September 10th. I believe there's been an
23 additional 28 days, and I'm coming up with a total of 161
24 days.

1 Does the division agree with that?
2 MS. CERNIGLIA: I agree, Your Honor.
3 THE COURT: Mr. Malone, do you agree with that?
4 MR. MALONE: Yes, Your Honor.
5 THE COURT: Mr. Johnson?
6 MR. JOHNSON: Yes, Your Honor.
7 THE COURT: Also I would like to know from the
8 division, Ms. Cerniglia, if you know -- I believe it was
9 after the presentence investigation report was lodged,
10 although I could be mistaken about the timing, but I believe
11 it was after it was lodged, the State filed a sentencing
12 memorandum that the Court has received and considered under
13 seal, and I'm wondering if the division at all had that when
14 they came up with the sentencing recommendations that are
15 provided in the presentence report?
16 MS. CERNIGLIA: I don't believe so, Your Honor,
17 no.
18 THE COURT: Okay, thank you.
19 Would either side like to comment on that?
20 Mr. Johnson, anything you would like to say about
21 that?
22 MR. JOHNSON: No, Your Honor, I think you can
23 consider both.
24 THE COURT: All right. Mr. Malone, any comments

1 you would like to make?

2 MR. MALONE: Please, Your Honor.

3 Ms. Cerniglia, you did follow the regular parole
4 and probation protocol in accessing Mr. Cota's records?

5 MS. CERNIGLIA: Yes.

6 MR. MALONE: Because he's under 21 years of age,
7 correct?

8 MS. CERNIGLIA: Yes. The only time -- are you
9 speaking about juvenile?

10 MR. MALONE: Yes, his juvenile record.

11 MS. CERNIGLIA: The only time we are allowed to
12 put in juvenile after the age of 21 is for violence or sexual
13 assault or something like that.

14 MR. MALONE: But my question here was you had
15 access to juvenile records, and you've listed in your report
16 and those were -- that list is pursuant to the statute that
17 you operate under, correct?

18 MS. CERNIGLIA: Yes, Heather Hardy wrote this
19 report and I believe she did, yes.

20 MR. MALONE: Okay. And we can see on page three
21 of -- that's listed on page three of 0084 and that's the same
22 page?

23 MS. CERNIGLIA: Yeah, yes.

24 MR. MALONE: Okay. And so you did have access to

1 his juvenile history that is listed, two counts of battery,
2 one assault, probation violation and discharging a firearm,
3 correct?

4 MS. CERNIGLIA: I believe that's correct.

5 MR. MALONE: Okay. And you have experience in
6 preparing presentence investigation reports?

7 MS. CERNIGLIA: Yes, since 2000.

8 MR. MALONE: So, I mean, you're still learning
9 but you do have some experience.

10 MS. CERNIGLIA: There's always something to
11 learn.

12 MR. MALONE: And you're familiar with the methods
13 of accessing the juvenile history, correct?

14 MS. CERNIGLIA: Yes.

15 MR. MALONE: Thank you.

16 THE COURT: All right. Mr. Malone, you can have
17 a seat for a moment.

18 What I haven't seen yet and what I would like to
19 see before I make my decision is the letter that was
20 introduced. It might have been Exhibit 18; and I would like
21 to verify that have all exhibits now been given to the clerk?

22 THE CLERK: Yes.

23 MR. JOHNSON: Yes, Your Honor, it should be
24 Exhibit 17 through 25.

1 THE COURT: All right. I'm just going to take a
2 moment to look at 18 because I hadn't seen that prior.

3 All right. Mr. Cota, please, stand.

4 I appreciate all of the information and arguments
5 that have been supplied to the Court. I believe it's
6 important that a sentencing Court be well informed, and I
7 believe the parties have done that. The Court finds that all
8 of the evidence presented is relevant to the Court's
9 determination today and the Court finds that none of the
10 evidence is highly suspect.

11 Mr. Cota, all of the information about your
12 juvenile history is important to the Court as a matter of
13 assessing your overall person and how you present to the
14 Court. However, a lot more goes into deciding a sentence
15 than just looking at your history, that is one component, and
16 the Court has looked closely at both of these cases and the
17 facts and circumstances surrounding those cases. The Court
18 has also taken into consideration all of the comments and
19 arguments made by your counsel and all of the evidence that's
20 been presented here today.

21 The reason I ask the division whether they had
22 the sentencing memorandum when they devised their
23 recommendation is the Court is always mindful about
24 attempting not to put too much emphasis on one piece of

1 information and instead of looking at the totality of the
2 circumstances. It was interesting to the Court that the
3 division's recommendation is what it is which is a
4 recommendation for prison without having the State's full
5 sentencing memorandum. Now, that doesn't at all cause me to
6 go one way or another, but I thought it was interesting of
7 their assessment.

8 And, Ms. Cerniglia, I would just like to confirm
9 with you, that's correct, you did not have the State's
10 sentencing memorandum when the division prepared the
11 presentence reports?

12 MS. CERNIGLIA: I don't believe -- Heather Hardy
13 wrote this report, and I looked through the files after you
14 asked that question to see if I saw anything in there and I
15 did not.

16 THE COURT: Okay.

17 MS. CERNIGLIA: So I don't think so.

18 THE COURT: It doesn't factor into my
19 decision-making here, Mr. Cota. I just found it interesting
20 that they came up with the recommendation they did even if
21 the Court -- even if they didn't consider the information
22 that Mr. Malone has objected to. And so, of course, when I
23 consider everything, I'm looking at the totality, again, of
24 the circumstances and I start with the two cases that you're

1 here on.

2 In the first case, it is a crime of theft and
3 it's a crime of theft of a firearm and a firearm that is an
4 AR15, all of which presents a serious set of circumstances to
5 the Court. The factual circumstances behind the theft
6 include burglary and burglary of a firearm. Again, all of
7 these facts and circumstances are things that the Court find
8 to be significantly serious.

9 The second case involves a crime of violence and
10 it is committed at a time when you are already in custody on
11 the first case and the crime of violence is directed towards
12 law enforcement, and there are also with that threats of
13 violence in the future to law enforcement, and so those are
14 things, again, the Court considers very seriously.

15 I think Mr. Malone's comments regarding your
16 juvenile conduct and things like throwing pills and kicking
17 feet is well taken but that's not what we're taking about
18 here. We are talking about an adult, you, who is in custody
19 doing these things to law enforcement and taking acts of
20 violence and threatening future violence. Again, the Court
21 takes these things very seriously.

22 The gang information is important. It's one of
23 the factors that the Court considers and it's a relevant
24 factor to consider particularly when thinking about general

1 deterrence, and so those things, again, I find are important
2 to my consideration and a part of the consideration.

3 But what I really -- when I look at the two cases
4 you come before me on, yes, you are young and I've taken that
5 into consideration. And in the first case, it's your first
6 case in -- actually, it's not your very first case in the
7 criminal system. It's your first felony case in the criminal
8 system and I take that into consideration but as I've
9 indicated, serious offenses here, and that's before we even
10 get into thinking about gang involvement and even before we
11 get into looking at your history.

12 So I've considered, Mr. Cota, whether you would
13 be a good candidate for probation, and the Court finds that
14 you are not a good candidate for supervision. You have made
15 some really really poor decisions here and they are decisions
16 that from the Court's perspective are deserving of a prison
17 sentence.

18 Mr. Cota, I hope, you have -- you are 19 years
19 old. You have the ability still to make better decisions.
20 There is going to come a day when you are out of custody and
21 you are going to have a long life after that, and you're
22 going to have some decisions to make then whether you want to
23 continue the life you've begun here and live that life in
24 prison or whether you can be the person that I believe you

1 can be, but you've got to make the decisions, Mr. Cota, and
2 again, you have not made good decisions here.

3 Turning to sentencing in Case Number 18CR0084,
4 Mr. Cota, the Court now adjudicates you guilty of Count Four
5 which is principal to grand larceny of a firearm which I'm
6 now prepared to sentence you.

7 Mr. Johnson, it's my understanding from the plea
8 negotiations that upon sentencing, the State would be moving
9 to dismiss the other counts; is that correct?

10 MR. JOHNSON: That is correct, Your Honor.

11 THE COURT: All right. As to Count Four, the
12 Court is going to follow the recommendations of the division
13 of parole and probation. Mr. Cota, you are ordered to pay an
14 administrative assessment fee of \$25, a DNA fee \$150, a
15 genetic marker fee of \$3. The Court is not going to order
16 attorney's fees, however, because I am going to order
17 restitution, and the Court does expect you to pay that
18 restitution. In fact, it will be the order of the Court that
19 you appear before the Court the first Monday following
20 sentencing or excuse me, the first Monday following your
21 release from custody to set up a payment plan to pay back the
22 restitution in this case and any outstanding fees and
23 assessments. The restitution is ordered in the amount of
24 \$969.16.

1 You are ordered to serve 72 months in the Nevada
2 Department of Corrections with minimum parole eligibility
3 beginning when 16 months have been served. You are granted
4 credit for time served of 161 days. There was a component of
5 the plea agreement that talked about a no contact provision,
6 and I would like the parties -- counsels' input regarding
7 whether the Court can order that in a situation where the
8 Court is ordering prison time. So, in other words, Mr. Cota
9 is not being -- he's not on probation. He's not being
10 supervised. He's being sent to prison. So really it's just
11 a question I have for counsel whether you believe that that
12 is something the Court has authority to do.

13 Mr. Johnson, what are your thoughts in that
14 regard?

15 MR. JOHNSON: Your Honor, it was part of the
16 agreement to dismiss the other counts that he had agreed. I
17 think it can definitely be -- be imposed in -- when he's
18 paroled as a condition of the parole that he not have
19 contact. I don't know whether during -- whether you can
20 control what the prison does in terms of contact over the
21 phone, so I'm not sure what your jurisdiction is over that.
22 However, it is -- I suppose I should say that our dismissing
23 it is contingent on him following through on the agreement,
24 but we ask that in the event that he is paroled that that be

1 a condition in light of his threats.

2 THE COURT: All right. Mr. Malone, what are your
3 thoughts?

4 MR. MALONE: Your Honor, I have no opinion.

5 THE COURT: What's that?

6 MR. MALONE: I don't have an opinion. I haven't
7 researched that.

8 THE COURT: Okay. Thank you. I tend to agree
9 with what Mr. Johnson said. I don't know that in a situation
10 where I'm sending somebody to prison that I can tell that the
11 prison what the rules are going to be or that I can tell
12 Mr. Cota what the rules are going to be. I'm sending him to
13 prison, and it will be the prison's decision how to handle
14 that.

15 I do, however, and I will state for the record, I
16 encourage the division of parole and probation upon
17 Mr. Cota's release to honor what I believe is the agreement
18 of the parties. That was the plea agreement and so I
19 certainly encourage that but it's encouragement only, not a
20 Court order.

21 Ms. Cerniglia, do you have input?

22 MS. CERNIGLIA: I was just going to say at the
23 time when he would go before the board and when -- when
24 granted parole, they normally read the PSI. They have a copy

1 of it and they normally do honor that.

2 THE COURT: Okay.

3 MS. CERNIGLIA: While taking that into
4 consideration.

5 I did have one other question. Is the
6 restitution joint and several with Robert Donald Brown?

7 THE COURT: Yes, it is. Thank you for that
8 clarification.

9 MS. CERNIGLIA: And on this case only?

10 THE COURT: Yes. Thank you, Ms. Cerniglia.

11 MS. CERNIGLIA: Thank you.

12 THE COURT: The Court now finds it appropriate to
13 dismiss the other counts of the information unless there's
14 any objection, Mr. Johnson?

15 MR. JOHNSON: No, Your Honor.

16 THE COURT: All right. So the other counts of
17 the information which I believe are Counts One, Two, Three
18 and Five are dismissed; is that correct, Mr. Johnson?

19 MR. JOHNSON: Yes, Your Honor.

20 THE COURT: Mr. Malone, do you agree with that?

21 MR. MALONE: Yes, Your Honor.

22 THE COURT: All right. Turning to the other
23 case, Case Number 18CR0116, the Court has -- my comments for
24 the other case really are similar. Although, parties have

1 argued the case jointly here today. It's the Court's job to
2 consider each case individually and I have done so here even
3 though my comments in both cases are similar.

4 I've already indicated here that this is a crime
5 of violence and Mr. Malone stated that would keep you -- make
6 it improper for you, actually that you would not be qualified
7 for the regimental discipline program and I considered that,
8 Mr. Malone, when talking about the first case which is not a
9 crime of violence, so I did factor that in in my assessment.
10 But with this new case where it is a crime of violence, the
11 Court has considered in both cases whether to give you
12 regimental discipline and that request is denied based upon
13 primarily the new case being a crime of violence which speaks
14 to the Court loudly about whether you would be a good
15 candidate for that program even on the other case which is
16 not a crime of violence.

17 So in Case Number 18CR0116, the Court adjudicates
18 Mr. Cota guilty of the crime of battery by a prison in lawful
19 custody which is a category B felony for which the Court is
20 now prepared to impose sentence.

21 Mr. Malone, do you agree that Mr. Cota does not
22 get any credit for time served in this case?

23 MR. MALONE: Your Honor, I believe it -- it
24 depends on whether or not you're going to run consecutive or

1 concurrent.

2 THE COURT: Okay.

3 MR. MALONE: I don't know yet.

4 THE COURT: Okay. Mr. Johnson, the division
5 recommends zero days credit for time served. Do you agree
6 with that?

7 MR. JOHNSON: Yes, Your Honor. It's my
8 understanding he committed it in jail. He was already
9 incarcerated for the other one.

10 THE COURT: All right, very good.

11 The defendant is sentenced to pay the
12 administrative assessment fee of \$25. The Court is not going
13 to impose a DNA fee because the DNA fee was imposed in
14 18CR0084. The Court does impose a genetic marker fee of \$3.
15 And once again the Court is not going to impose attorney's
16 fees.

17 The Court is going to follow the division's
18 recommendation as to this case as well. Mr. Cota is
19 sentenced to serve 72 months in the Nevada Department of
20 Corrections with minimum parole eligibility beginning when
21 24 months have been served. That sentence is to be run
22 consecutive to Case Number 18CR0084. The Court finds the
23 consecutive sentence to be appropriate. This is a separate
24 offense committed on a different day, and it's a different

1 type of an offense with another victim, and so the Court
2 finds it appropriate to impose a consecutive sentence in this
3 case.

4 Mr. Malone, if you -- it's my intention to grant
5 zero days credit for time served on this case, but I would
6 certainly listen to any argument from you.

7 MR. MALONE: Your Honor, I think that's the
8 correct rule where you're applying the correct rule.

9 THE COURT: Okay. Mr. Johnson, do you have any
10 comment you would like to make on credit for time served?

11 MR. JOHNSON: No, Your Honor.

12 THE COURT: As the Court sentence on both of
13 these cases, Mr. Malone, do you have anything further for
14 today's purpose?

15 MR. MALONE: No, Your Honor. The -- yes, and
16 this is perhaps a little bit silly, but I do have -- Mr. Cota
17 does have legal paperwork that he wishes me to take
18 possession of, and I'm not sure when he will be transported
19 from the Douglas County Jail. If I could have some guidance
20 on when they usually pick people up.

21 THE COURT: Typically the jail does not publicize
22 that and it's for obvious reasons. So what I would recommend
23 to you is if you have some information, documents that you
24 would like to go along with Mr. Cota, I understand that's

1 what your question is.

2 MR. MALONE: Whether or not I'm going to have a
3 day or two.

4 THE COURT: Okay. What I would suggest you do is
5 immediately after today, and this is actually the last matter
6 on the adult calendar, you can either ask the jail or one of
7 the bailiffs here for some input on that. They probably are
8 going to tell you to give it to him soon if it's something
9 that you want to ensure is going to go with him.

10 MR. MALONE: Okay.

11 THE COURT: Do either of the bailiffs have any
12 additional information they would like to provide, Deputy
13 Nishikida.

14 THE BAILIFF: Well, typically, Your Honor, that
15 it depends on how long the clerk's office takes to do an
16 order of judgment of conviction and order them produced to
17 the sheriff's office to transport to the prison. So, you
18 know, that depends on their schedule and stuff like that. I
19 would necessarily say that, yes, he has anything that he
20 wants to send or give to him, he needs to do it probably by
21 the end of business today.

22 THE COURT: And, Mr. Malone, if it helps at all,
23 usually a judgment of conviction will be signed by the end of
24 today, sometimes within the next day.

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MR. MALONE: Okay.

THE COURT: There are times you have couple of days but that gives you an idea. We do attempt to get the judgments out as soon as possible.

MR. MALONE: Thank you. I appreciate that.

THE COURT: Court stands in recess.

1 STATE OF NEVADA,)
2 CARSON CITY.) ss.
3)

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

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

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

13
14 Dated at Carson City, Nevada, this 18th day
15 of October, 2018.
16

17
18 Kathy Jackson
19 /s/ KATHY JACKSON, CCR
20 Nevada CCR #402
21
22
23
24

1 CAPITOL REPORTERS
2 123 W. Nye Lane, Suite 107
3 Carson City, Nevada 89706
4 775-882-5322

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

7 STATE OF NEVADA,
8 Plaintiff,
9 v.
10 MICHAEL L. COTA, JR.,
11 Defendant.

Case No. 18-CR-00084
18-CR-00116
Dept. No. 2

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

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

17 1) Sentencing -- 10/8/18

18 -or-

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

1) _____
2) _____

(Your signature) Kathy Jackson *Kathy Jackson* 10/18/18

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

RECEIVED
NOV 06 2018
Douglas County
District Court Clerk

FILED
2018 NOV -6 AM 10:32
BOBBIE R. WILLIAMS
CLERK
BY *[Signature]* DEPUTY

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

9 MICHAEL LUIS COTA,

10 Petitioner,

CASE NO. 18-CR-0116

DEPT NO. II

11 vs.

12 THE STATE OF NEVADA,

13 Respondent.

14
15 **REQUEST FOR TRANSCRIPT OF PROCEEDINGS**

16 TO: NINTH JUDICIAL DISTRICT COURT CLERK
17 CAPITOL RECORDERS

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

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

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

23 Number of copies required: 3.
24

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

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

5
6
7 JOHN E. MALONE, ESQ.
Nevada State Bar No. 5706
209 N. Pratt Ave.
8 Carson City, NV 89701
9 T: (775) 461-0254
F: (775) 461-0237
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CERTIFICATE OF MAILING


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

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

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

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

DATED this 5th day of November, 2018.



Kelly Atkinson

RECEIVED

NOV 06 2018

Douglas County
District Court Clerk

FILED

2018 NOV -6 AM 10:32

BOBBIE R. WILLIAMS
CLERK

BY *ANW* DEPUTY

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

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

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

CASE NO. 18-CR-0116

DEPT NO. II

16 NOTICE OF APPEAL

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

21 This appeal is to all issues of law.

22 DATED this 5th day of November, 2018.

23 *[Signature]*
JOHN E. MALONE, ESQ.
Attorney for the Petitioner,
Michael Luis Cota

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CERTIFICATE OF SERVICE

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

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

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

DATED this 5th day of November, 2018.



Kelly Atkinson

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NOV 06 2018

Douglas County
District Court Clerk

FILED

2018 NOV -6 AM 10:32

BOBBIE R. WILLIAMS
CLERK

BY ANNA DEPUTY

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

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7
8 IN AND FOR CARSON CITY

9 MICHAEL LUIS COTA,

10 Petitioner,

11 vs.

12 THE STATE OF NEVADA,

13 Respondent.

CASE NO. 18-CR-0116

DEPT NO. II

14 CASE APPEAL STATEMENT

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

23 ///

24 ///

- 1 5. Indicate whether any attorney identified above in response to question 3 or 4 is not
2 licensed to practice law in Nevada and, if so, whether the District Court granted that
3 attorney permission to appear under SCR 42: Both attorneys identified in questions 3
4 and 4 are licensed to practice in Nevada.
- 5 6. Indicate whether Appellant was represented by appointed or retained counsel in the
6 District Court: Counsel was appointed.
- 7 7. Indicate whether Appellant is represented by appointed or retained counsel on appeal:
8 Counsel is appointed.
- 9 8. Indicate whether Appellant was granted leave to proceed in forma pauperis, and the
10 date of entry of the District Court Order granting such leave: Not applicable.
- 11 9. Indicate the date the proceedings commenced in the District Court: Sentencing hearing,
12 held on October 8, 2018.
- 13 10. Provide a brief description of the nature of the action and result in the District Court,
14 including the type of Order being appealed and the relief granted by the District Court:
15 This is a direct appeal from a Judgment of Conviction. Appellant pled guilty to one
16 count of Battery by a Prisoner in Custody, a category B felony. Appellant was
17 sentenced to a maximum term of seventy-two (72) months and a minimum of term of
18 twenty-four (24) months to run consecutive to the Ninth Judicial District Court Case
19 Number 18-CR-0084.
- 20 At sentencing, the District Court, over defense objection, allowed a sentencing memo
21 containing confidential juvenile justice information, and testimony regarding gang
22 membership, to be introduced and considered at Mr. Cota's sentencing.

23 ///

24 ///

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

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

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

7 DATED this 5th day of November, 2018.

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

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

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

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

DATED this 5th day of November, 2018.



Kelly Atkinson

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

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

RECEIVED

NOV 19 2018

Douglas County
District Court Clerk

Supreme Court No. 77414
District Court Case No. 18-CR-0116

CLERK
DEPUTY

RECEIPT FOR DOCUMENTS

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

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

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

DATE: November 15, 2018

Elizabeth A. Brown, Clerk of Court
lh

OCT - 4 2019

**Douglas County
District Court Clerk**

2019 OCT -4 AM 11: 38

BOBBIE R. WILLIAMS
CLERK -

BY W. L. J. J. DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT

DOUGLAS COUNTY, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL LUIS COTA,

Defendant.

Case No. 18-CR-0084

Case No. 18-CR-0116 -

ORDER FOR PAYMENT

Having reviewed and considered the billing statement submitted ex parte by John E. Malone, appointed counsel for defendant Michael Luis Cota, and good cause appearing, payment of \$5,000.00 is hereby ordered made to:

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

IT IS SO ORDERED.

DATED: October 4, 2019

By:

District Judge

RECEIVED

DEC 16 2019

Douglas County
District Court Clerk

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

2019 DEC 16 AM 10:39

MICHAEL LUIS COTA,
Appellant,
vs.

THE STATE OF NEVADA,
Respondent.

ESTHER R. WILLIAMS
CLERK

SY: ANITA DEPUTY

Supreme Court No. 77414
District Court Case No. 18-CR-0116

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

Supreme Court No. 77415
District Court Case No. 18-CR-0084

NOTICE OF TRANSFER TO COURT OF APPEALS

Pursuant to NRAP 17(b), the Supreme Court has decided to transfer this matter to the Court of Appeals. Accordingly, any filings in this matter from this date forward shall be entitled "In the Court of Appeals of the State of Nevada." NRAP 17(e).

DATE: December 12, 2019

Elizabeth A. Brown, Clerk of Court

By: Sandy Young
Deputy Clerk

Notification List

Electronic

Douglas County District Attorney/Minden \ Mark B. Jackson, District Attorney
Douglas County District Attorney/Minden \ Matthew S. Johnson
John E. Malone

Paper

Hon. Thomas W. Gregory, District Judge
Bobbie W. Williams, Douglas County Clerk

19-50483

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RECEIVED

MAR 19 2020

Douglas County
District Court Clerk

**IN THE COURT OF APPEALS OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

FILED
2020 MAR 19 PM 12:06

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

BOBBIE R. WILLIAMS
CLERK

Court of Appeals No. 77414-COA
District Court Case No. 18-CR-0116

BY ANNE M. DEPUTY

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

Court of Appeals No. 77415-COA
District Court Case No. 18-CR-0084

NOTICE OF JUDGE DISQUALIFICATION

TO: Hon. Thomas W. Gregory, District Judge
John E. Malone
Douglas County District Attorney/Minden \ Mark B. Jackson, District Attorney,
Matthew S. Johnson
Bobbie W. Williams, Douglas County Clerk

You are hereby notified that The Honorable Michael P. Gibbons, Chief Judge, has voluntarily recused him/herself from participation in this matter.

DATE: March 18, 2020

Elizabeth A. Brown, Clerk of Court

By: Lindsey Lupenui
Chief Deputy Clerk

Notification List

Electronic

John E. Malone

Douglas County District Attorney/Minden \ Mark B. Jackson, District Attorney
Douglas County District Attorney/Minden \ Matthew S. Johnson

Paper

Hon. Thomas W. Gregory, District Judge
Bobbie W. Williams, Douglas County Clerk

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MAR 20 2020

Douglas County
District Court Clerk

FILED

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

2020 MAR 20 AM 10:26

MICHAEL LUIS COTA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

BOBBIE R. WILLIAMS
CLERK

BY ANOM DEPUTY

No. 77414-COA

MICHAEL LUIS COTA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 77415-COA

FILED

MAR 19 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY [Signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are Michael Luis Cota's consolidated appeals from two judgments of conviction. Cota was convicted pursuant to guilty pleas of battery by a prisoner in custody in district court case number 18-CR-0116 (Docket No. 77414-COA) and principal to grand larceny of a firearm in district court case number 18-CR-0084 (Docket No. 77415-COA). Ninth Judicial District Court, Douglas County; Thomas W. Gregory, Judge.

Cota claims the district court abused its discretion by admitting and considering his juvenile record at sentencing for both of his cases. He argues the State violated the law governing the confidentiality of juvenile records by obtaining his juvenile record without a juvenile court order. And

426

20-10714

he asserts his juvenile record consists of impalpable and highly suspect information.

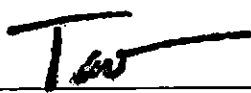
We review a district court's sentencing decision for abuse of discretion. *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). The district court may "consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant." *Martinez v. State*, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998); *see also* NRS 176.015(6). This includes a defendant's juvenile record, *see Thomas v. State*, 88 Nev. 382, 385, 498 P.2d 1314, 1316 (1972), *see also* NRS 62H.030(3)(b); NRS 62H.170(3), and even hearsay, *see* NRS 47.020(3)(c). However, we "will reverse a sentence if it is supported *solely* by impalpable and highly suspect evidence." *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996).


Prior to sentencing, the district court made specific findings that the State's exhibits could lawfully be disseminated to a court for sentencing purposes, they were relevant to the court's sentencing determination, they were not unfairly prejudicial, and they did not contain impalpable or highly suspect information. And during sentencing, the district court did not just consider Cota's juvenile record, it considered the facts and circumstances surrounding his offenses, the comments and arguments of defense counsel, and all of the evidence that was presented during the hearing.

We conclude the district court properly considered Cota's juvenile record at sentencing, Cota's juvenile record was relevant and did not constitute impalpable and highly suspect information, and the district

court did not rely solely on Cota's juvenile record in reaching its sentencing decision. Accordingly, the district court did not abuse its discretion at sentencing, and we

ORDER the judgments of conviction AFFIRMED.¹


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Thomas W. Gregory, District Judge
John E. Malone
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk

¹The Honorable Michael Gibbons did not participate in the decision in this matter.

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APR 29 2020

Douglas County
District Court Clerk

FILED

2020 APR 29 AM 9:37

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

BOBBIE R. WILLIAMS
CLERK

BY ANCM DEPUTY

MICHAEL COTA

Petitioner/Plaintiff,

v. STATE OF NEVADA

[Signature]

Respondent/Defendant.

Case No. 18-CR-0084
18-CR-0116 ✓

Dept. No. II

Docket No. _____

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Respondent/Defendant, TINA RUSSOM

_____, County District Attorney, and JOHN MALONE
_____, Esq.

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that on the 22 day of APRIL,
_____, 2020, at the hour of 9:00 O'clock A.M., or as soon thereafter as
the parties may be heard, the undersigned will bring on for hearing the attached **MOTION FOR
WITHDRAWAL OF ATTORNEY OF RECORD**, before the above-entitled Court, at the
DOUGLAS COUNTY Courthouse, in GARDNERVILLE, Nevada, in
Department No. II, thereof.

DATED this 22 day of APRIL, 2020.

Respectfully submitted,

MICHAEL COTA

Petitioner/Plaintiff

Ely State Prison

P.O. Box 1989

Ely, Nevada 89301-1989

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

MICHAEL COTA

Petitioner/Plaintiff,

vi.

STATE OF NEVADA

Respondent/Defendant.

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

Dept. No. II

Docket No. _____

**MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD OR IN THE
ALTERNATIVE, REQUEST FOR RECORDS/COURT CASE DOCUMENTS**

COMES NOW, Petitioner/Plaintiff, MICHAEL COTA, pro per,
and respectfully moves this Honorable Court for it's Order withdrawing JOHN MAIONE
_____, Esq., as the Attorney of Record in the above-entitled matter.

This Motion is made and based upon Nev. Rev. Stat. 7.055, and Nev. Sup. Ct. Rules 166(4), 173,
176, and 203, and Rules 11 and 20 of the Rules of the District Courts of the State of Nevada.

POINTS AND AUTHORITIES

Nev. Rev. Stat. 7.055, provides that:

An attorney who has been discharged by his client shall, upon demand...immediately deliver to the client all papers, documents, pleadings and items of tangible personal property which belong to or were prepared for that client.

See also Nev. Sup. Ct. Rule 166(4):

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as ...surrendering papers and property to which the client is entitled..."

Petitioner/Plaintiff would respectfully point out to this Court and the attorney of record that there

is controlling law on this issue. This citation of authority is precautionary only. In the cases of In Re Yount, 93 Ariz. 322, 380 P.2d 780 (1963), and State v. Alvey, 215 Kan. 460, 524 P.2d 747 (1974), both cases dealt with a factual situation involving a withdrawn attorney refusing to deliver to a former client his documents after being requested to do so by the client. The Court in Yount, supra, ordered the attorney disbarred, while in Alvey, supra, the Court had the attorney censured.

In most situations it is obviously not necessary to notify the parties when the attorney withdraws from a case, but when the client wishes to remove his attorney and represent himself in person, it is required by these Statutes and Rules that the client request the Court of action to issue a certificate releasing the attorney of record. Under such statutes it is necessary for the party to present his request for the change in order for the court in making an order withdrawing the attorney of record, and to make formal demand to the Attorney for the return of all papers and property.

Therefore, let this Court be so notified that this is the desire of the Petitioner/Plaintiff herein that the aforementioned attorney of record be withdrawn and the same shall be for any other attorney(s) which could possibly be subscribed and documented as attorney(s) of record in this case, so that further actions in the above-entitled cause can be conducted by the Petitioner/Plaintiff in proper person.

Further, Petitioner/Plaintiff hereby makes formal demand upon JOHN MAIONE
_____, Esq., for the return of his entire file, including, but not limited to all papers, documents, pleadings and items of tangible personal property which belong to or were prepared on my behalf to me at the address set forth in this pleading.

Further, it is requested of this Court that it issue an Order directing the named attorney of record that he turn over to the Petitioner/Plaintiff the entire case file, without costs, including, but not limited to, the trial transcripts or guilty plea transcript, all briefs on appeal, and all other papers and police reports relating to this matter, so that Petitioner/Plaintiff may prosecute an appeal/post-conviction with a minimum amount of delay.

CONCLUSION

WHEREFORE, all of the above stated reasons, Petitioner/Plaintiff respectfully requests this Honorable Court to grant his Motion for Withdrawal of Attorney of Record in accordance with this Court's fair and just consideration of the facts of the case.

DATED this 22 day of APRIL, ²⁰²⁰~~200~~.

Respectfully submitted,

MICHAEL L. COTA

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 Notice of Motion and Motion for Withdrawal of Attorney of Record or in the Alternative, Request for Records/Court Case Documents on this 22 day of APRIL, ²⁰²⁰~~200~~, I did serve a true and correct copy of the above mentioned document, by giving it to a prison official at the Ely State Prison to deposit in the U.S. Mail, sealed in an envelope, postage pre-paid, and addressed as follows:

DOUGLAS COUNTY DISTRICT
~~ATTORNEY'S OFFICE~~ CLERK OF THE COURTS
P.O. Box 218
MINDEN, NJ 08923

DATED this 22 day of APRIL, ²⁰²⁰~~200~~.


Petitioner/Plaintiff

AFFIRMATION PURSUANT TO NRS 239B.030

I, MICHAEL LUIS COTA, NDOC# 1706075,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED MOTION FOR WITHDRAWAL OF
ATTORNEY / REQUEST FOR RECORDS / COURT CASE DOCUMENTS,

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 22 DAY OF APRIL, 2020.

SIGNATURE: 

INMATE PRINTED NAME: MICHAEL LUIS COTA

INMATE NDOC# 1706075

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

RECEIVED

MAY 21 2020

FILED

1 Case No. 2018-CR-00116

2 Dept. No. II

Douglas County
District Court Clerk

2020 MAY 21 AM 9:17

BOBBIE R. WILLIAMS
CLERK

BY *M. Williams*

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

9 THE STATE OF NEVADA

10 Plaintiff,

11 vs.

12 MICHAEL LUIS COTA

13 Defendant.
14

ORDER DISCHARGING COUNSEL AND
ORDERING COUNSEL TO PROVIDE
DEFENDANT WITH CASE FILE

15 IT IS HEREBY ORDERED that John Malone, Esq. is discharged as
16 counsel for Defendant, Michael Luis Cota.

17 IT IS FURTHER ORDERED that John Malone, Esq. provide
18 Defendant, Michael Luis Cota, with the entire case file no later
19 than June 3, 2020.

20 DATED this 21st day of May, 2020.
21
22

23 *Thomas W. Gregory*
THOMAS W. GREGORY
24 DISTRICT JUDGE
25
26
27

1 Copies served by mail/email on May 21st, 2020, addressed to:

2 Michael Luis Cota (Mail)

3 Inmate NDOC # 1206075

4 Ely State Prison

5 P.O. Box 1989

6 Ely, Nevada 89301-1989

7 Douglas County District Attorney's Office (email)

8 P.O. Box 218

9 Minden, Nevada 89423

10 John Malone, Esq.

11 209 N. Pratt Avenue

12 Carson City, Nevada 89701

Erin C. Plante
Erin C. Plante

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Michael Cota #1206075

FILED

2021 APR 23 AM 11:02

BOBBIE R. WILLIAMS
CLERK

BY W. W. W. DEPUTY

RECEIVED

APR 23 2021

Douglas County
District Court Clerk

IN THE 9th JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF Douglas

Michael Cota #1206075)
Petitioner)
v.)
John E. Malone, Esq.)
8th Respondent)

CASE # 18-CR-0116 ✓
18-CR-0084
DEPT. # 9

MOTION TO COMPEL

COMES NOW, Petitioner Michael Cota #1206075, in and through
his proper person hereby moves this Honorable Court for an Order compelling:
John E. Malone, Esq. (Ex-Counsel for Petitioner)

This motion is made and based upon all papers and pleadings on file with the Clerk of
the Court, which are hereby incorporated by this reference, the Points and Authorities
herein, and attached Affidavit of Petitioner.

*Dated: this 20 day of APRIL, 2021.

Submitted by: M. Cota II
Michael Cota #1206075
Petitioner / In Proper Person

POINTS AND AUTHORITIES

*On the 20 day of April, 2021, the Court had granted the Petitioner's, "Motion to Terminate Counsel...".

However, John E. Malone has failed to comply with the Order from this Honorable Court. This Court has the power and duty to enforce its lawful judgment pursuant to N.R.S. 1.210 which states in pertinent part ;

"Every court shall have power :

- 1. To preserve and enforce order in its immediate presence.*
- 2. To enforce order in the proceedings before a person or persons empowered to conduct a judicial investigation under its authority.*
- 3. To compel obedience to its lawful judgments, orders and process, and to the lawful orders of its judge out of court in an action or proceeding pending therein.*
- 4. To control ,in furtherance of justice, the conduct of its ministerial officers." (emphasis added)*

Failure to comply with a court's order constitutes contempt under N.R.S. 199.340 which states in pertinent part that:

*"**Every** person who shall commit a contempt of court of any one of the following kind shall be guilty of a misdemeanor:*

...4. Willful disobedience to the lawful process or mandate of the court;..." (emphasis added)

In closing, by John E. Malone not adhering to the order of this court to surrender "all" files has displayed contempt. Petitioner cites three cases,

In Re Yount, 93 Ariz. 322, 380 P.2d 780 (1963), State v. Alvey, 215 Kan. 460, 524 P.2d 747 (1974) and In Re Sullivan, 212 Kan. 233 510 P.2d 1199 (1973) that all deal with attorneys that refused to abide by the rulings of their respective courts and were either disbarred or censored. Petitioner prays this honorable Court compel John E. Malone, Esq. to comply with the order and find John E. Malone, Esq. guilty of contempt for not obeying the lawful order of this Court.

* DATED: this 20 day of APRIL, 2021

* Submitted by: M Cota II
Michael Cota #1206075
Petitioner / In Proper Person

///

///

///

Affirmation

"I, Michael Cota #1206075, author of 'Motion to Compel,' hereby attest under the penalties of perjury that the foregoing is true and correct and not for any improper purpose except to obtain 'all' his criminal discovery, transcripts, exhibits, and his case file."

NRS 208.165 & 171.121

* M Cota II
Affiant: Michael Cota #1206075

Hereby sworn this 20 day of APRIL, 2021 under penalties of perjury.

AFFIRMATION PURSUANT TO NRS 239B.030

I, Michael Cota, NDOC# 1206075

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED "Motion to Compel"

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

*DATED THIS 20 DAY OF APRIL, 2021.

*SIGNATURE: M Cota II

INMATE PRINTED NAME: Michael Cota

INMATE NDOC # 1206075

INMATE ADDRESS: ELY STATE PRISON
P. O. BOX 1989 - 5A41-ESP
ELY, NV 89301

CERTIFICATE OF SERVICE

I, Michael Cota, hereby certify pursuant to
NRCP 5(b) that on this 20 day of April, 2021, I did serve a
true and correct copy of the foregoing, "Motion to Compel"

by giving it to a prison guard at Ely State Prison to deposit in the U.S. Mail,
sealed in an envelope, postage pre-paid, addressed to the following:

John E. Malone, Esq
* 1662 US HWY 395N, STE 202
MINDEN, NV 89423

Signed,

* M Cota II
Michael Cota #1206075

Ely State Prison
P.O. Box 1989-5A44-ESP
Ely, Nevada 89301

RECEIVED

FILED

Case No. 2018-CR-00084/00116

MAY 19 2021

Dept. No. II

Douglas County
District Court Clerk

2021 MAY 19 AM 10:40

BOBBIE R. WILLIAMS
CLERK

BY W. Williams DEPUTY

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

THE STATE OF NEVADA,
Plaintiff,

vs.

ORDER TO SHOW CAUSE

MICHAEL LUIS COTA,
Defendant.

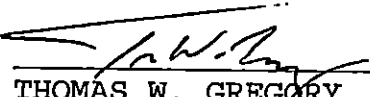
THIS MATTER comes before the Court on Defendant's Motion to Compel filed on April 23, 2021. The motion alleges that Defendant's former counsel has failed to abide by the Court's May 21, 2020 Order Discharging Counsel and Ordering Counsel to Provide Defendant with Case File. The motion reflects service on former counsel. Former counsel has not filed an opposition. The failure to file an opposition may be taken as an admission that the motion is meritorious and consent to granting the same. DCR 13.

Good cause appearing, Defendant's former counsel, John Malone, Esq., shall appear before the Court on June 7, 2021 at 9:00 a.m. to show cause as to why he should not be held in contempt of Court for failing to abide by the Court's May 21, 2020 Order Discharging Counsel and Ordering Counsel to Provide Defendant with Case File. If, prior to the hearing, Mr. Malone

1 files and serves a notice of compliance with the order, together
2 with a supporting affidavit and exhibits, the Court will consider
3 vacating the hearing.

4 IT IS SO ORDERED.

5 DATED this 19th day of May, 2021.

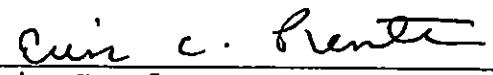
6
7 
8 THOMAS W. GREGORY
9 DISTRICT JUDGE
10
11
12
13

14 Copies served by mail/ hand delivery on May 19th, 2021, addressed
15 to:

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

19 John Malone, Esq. (Hand Delivery)
20 1162 US Highway 395 N, Ste 202
Minden, Nevada 89423

21 Michael Cota (Mail)
22 Inmate Number #1206075
23 Ely State Prison
24 P.O. Box 1989-5A41-ESP
Ely, Nevada 89301

25 
26 Erin C. Plante
27
28

1 Case No. 2018-CR-00084/00116

RECEIVED

FILED

2 Dept. No. II

MAY 26 2021

2021 MAY 26 PM 3:36

Douglas County
District Court Clerk

BORRNE R. WILLIAMS
CLERK

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

8
9
10 THE STATE OF NEVADA,

11 Plaintiff,

AFFIDAVIT OF ATTORNEY JOHN E. MALONE
12 IN SUPPORT OF THE RESPONSE TO ORDER
13 TO SHOW CAUSE
14

15 vs.

16 MICHAEL LUIS COTA,

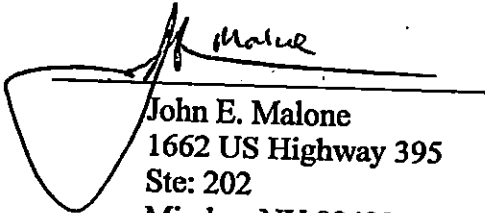
17 Defendant
18
19

20 I, the undersigned, Attorney John Malone, former counsel for Michael Luis Cota, hereby
21 affirms under the penalty of perjury the following:
22

- 23 1. I was formerly the counsel for Michael L. Cota.
24
25 2. I was relieved as counsel by court order and directed to provide Mr. Cota with a copy of
26 his file. See exhibit 1, Receipt for file copies and postage.
27
28 3. I removed Mr. Cota's file from its binders and removed all index markers.

- 1 4. I then made copies of all documents in my possession and mailed them to Ely State
2 Prison, Mr. Cota's last known address.
3 5. Later, during a telephone call with Mr. Cota from Ely State Prison, I was able to confirm
4 that he had received his file.
5

6 DATED: 5-26-21
7


John E. Malone
1662 US Highway 395
Ste: 202
Minden, NV 89423
775-392-3342
Attorney for Defendant

8
9
10
11
12
13 Copies served by mail / hand delivered on May 26, 2021, addressed to:
14
15

16 Douglas County District Attorney's Office
17 P.O. Box 218
18 Minden, Nevada 89423
19

(Hand Delivery)

20 Michael Cota
21 Inmate Number # 1206075
22 Ely State Prison
23 P.O. Box 1989-5A41-ESP
24 Ely, Nevada 89301
25
26
27
28

(Mail)

Exhibit "1"

Exhibit "1"



June 05, 2020 11:58
Receipt #: 0777424055
VISA #: XXXXXXXXXXXX1634
2020/06/05 11:25

Page: 1

Qty	Description	Amount
536	ES B&W S/S White 8.5 x11	69.68
SubTotal		69.68
Taxes		5.30
Total		74.98

The Cardholder agrees to pay the Issuer of the charge card in accordance with the agreement between the Issuer and the Cardholder.

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June 05, 2020 15:52 Page: 1
Receipt #: 3903718254
VISA #: XXXXXXXXXXXX1634
2020/06/05 15:34

Qty	Description	Amount
249	ES B&W S/S White 8.5 x11	32.37
SubTotal		32.37
Taxes		2.68
Total		35.05

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June 05, 2020 11:58 Page: 1
Receipt #: 0777424056
VISA #: XXXXXXXXXXXX1634
2020/06/05 11:40

Qty	Description	Amount
457	ES B&W S/S White 8.5 x11	59.41
SubTotal		59.41
Taxes		4.51
Total		63.92

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at fedex.com/wellsten or 1-800-398-0242
Offer Code: _____ Offer expires 12/31/2020

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