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Shirley E. Rungius
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JUSTIN D. PORTER
aka Jug Capri Porter,
#1682627

Defendant.

Case No. C174954
Dept. No. XVI

**STATE'S OPPOSITION TO DEFENDANT'S MOTION TO REMAND THE CASE
TO JUVENILE COURT AND CONDUCT A HEARING AS TO WHETHER
HE SHOULD BE CERTIFIED AS AN ADULT**

DATE OF HEARING: 11-26-02
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney,
through DOUGLAS W. HERNDON, Chief Deputy District Attorney, and files this
Opposition to Defendant's Motion to Remand the Case to Juvenile Court and Conduct a
Hearing As to Whether He Should Be Certified As An Adult.

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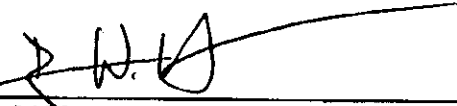
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1 This Opposition is made and based upon all the papers and pleadings on file herein,
2 the attached points and authorities in support hereof, and oral argument at the time of
3 hearing, if deemed necessary by this Honorable Court.

4 DATED this 15 day of November, 2002.

5 Respectfully submitted,

6 STEWART L. BELL
7 DISTRICT ATTORNEY
8 Nevada Bar #000477

9 BY 
10 DOUGLAS W. HERNDON
11 Chief Deputy District Attorney
12 Nevada Bar #004286

13 POINTS AND AUTHORITIES

14 STATEMENT OF THE CASE PERTINENT TO THIS OPPOSITION

15 Defendant is charged by way of Second Amended Criminal Information with the
16 crimes of Burglary While In Possession of a Deadly Weapon (Felony - NRS 205.060,
17 193.165), First Degree Kidnapping With Use of a Deadly Weapon (Felony - NRS 200.310,
18 200.320, 193.165), Sexual Assault With Use of a Deadly Weapon (Felony - NRS 200.364,
19 200.366, 193.165), Robbery With Use of a Deadly Weapon (Felony - NRS 200.380,
20 193.165), First Degree Kidnapping with Use of a Deadly Weapon With Substantial Bodily
21 Harm (Felony - NRS 200.310, 200.320, 193.165), Sexual Assault With Use of a Deadly
22 Weapon With Substantial Bodily Harm (Felony - NRS 200.364, 200.366, 193.165), Attempt
23 Murder With Use of A Deadly Weapon (Felony - NRS 200.010, 200.030, 193.330, 193.165),
24 First Degree Arson With Use of a Deadly Weapon (Felony - NRS 205.010, 193.165), First
25 Degree Kidnapping With Use of a Deadly Weapon, Victim 65 Years of age or Older (Felony
26 - NRS 200.310, 200.320, 193.165, 193.167), Sexual Assault With Use of a Deadly Weapon
27 Victim 65 Years of Age or Older (Felony - NRS 200.364, 200.366, 193.165, 193.167),
28 Robbery With Use of a Deadly Weapon, Victim 65 years of Age or Older (Felony - NRS
200.380, 193.165, 193.167), Battery With Intent to Commit a Crime, Victim 65 Years of Age

1 or Older (Felony - NRS 200.400, 193.167), Attempt Robbery With Use of a Deadly Weapon
2 (Felony - NRS 200.380, 193.165, 193.330), and Murder With Use of a Deadly Weapon
3 (OPEN MURDER), (Felony - NRS 200.010, 200.030, 193.165).

4 The Defendant is specifically charged with thirty-eight separate crimes committed
5 against eleven different victims, between February 1, 2000 through June 9, 2000.

6 **STATEMENT OF CASE FACTS**

7 All of the following Statement's of Facts refer to the Defendant as the perpetrator of
8 the crimes being described. The Defendant was linked to everyone of the following situations
9 by either DNA evidence, fingerprint evidence, footwear impression evidence, admission or
10 confession evidence, eyewitness identification and/or by a combination of a number of the
11 above types of evidence.

12 **STATEMENT OF FACTS PERTINENT TO THE CRIMES COMMITTED AGAINST**
13 **TERESA TAYLOR**

14 Defendant is charged by way of Second Amended Information with Count I- Burglary
15 While in Possession of a Deadly Weapon; Count II - First Degree Kidnapping With Use of a
16 Deadly Weapon; Counts III through VIII - Sexual Assault With Use of a Deadly Weapon, for
17 crimes that were committed against victim Teresa Taylor.

18 On February 1, 2000, at approximately 7:30 p.m., Teresa Taylor heard a knock on the
19 front door of her residence, located at 2895 E. Charleston, #2-106, Las Vegas, Nevada.
20 Teresa had spoken to her mother earlier and was expecting her mother to come to the
21 residence and pick something up from her.

22 Ms. Taylor opened the door and encountered the Defendant, whom she thought was
23 looking for her sister. Ms. Taylor told the Defendant that her sister was not there, and he
24 asked her for a drink of water. Ms. Taylor went and got the Defendant water and took it to
25 the Defendant, who was still standing outside the residence. The Defendant asked Ms.
26 Taylor if they could go in the house and she told him no. Not caring about Ms. Taylor's
27 protest, the Defendant entered her residence and sat down on her couch. Ms. Taylor grabbed
28 the Defendant's arm and attempted to pull him out of the apartment, at which time the

1 Defendant pulled a knife on her.

2 After brandishing the weapon, the Defendant ordered Ms. Taylor into her bedroom
3 and demanded that she disrobe. Fearful for her life, Ms. Taylor took her clothes off.
4 Thereafter, the Defendant instructed Ms. Taylor to lay down on the bed. Defendant pulled
5 down his pants and got on top of Ms. Taylor, placing his penis in her vagina, while still
6 holding the knife in his hand.

7 The Defendant got off of Ms. Taylor and started looking around her apartment for
8 anything valuable. The Defendant took approximately \$30 or \$40 from Ms. Taylor's purse.
9 The Defendant then went back to Ms. Taylor and put his penis in her mouth. Afterwards, the
10 Defendant peed on Ms. Taylor's floor and began looking around her apartment for valuables
11 again. The Defendant forced Ms. Taylor follow him around the apartment while he did that.
12 The Defendant took some change from a vase in Ms. Taylor's living room but left the
13 pennies behind.

14 The Defendant forced Ms. Taylor into the restroom of the apartment and told her to
15 wipe her vaginal area. The Defendant took the towel from Ms. Taylor and began wiping her
16 vagina area himself. Thereafter, the Defendant took Ms. Taylor back into the bedroom and
17 forced her to lay down on the bed, on her stomach. The Defendant then placed his penis in
18 Ms. Taylor's vagina, from behind, against her will. Afterwards, the Defendant forced Ms.
19 Taylor to put his penis in her mouth a second time. After the Defendant sexually assaulted
20 Ms. Taylor he stated, "You know you were raped, right?"

21 The Defendant permitted Ms. Taylor to put pants on and then tied her hands, behind
22 her back, with a telephone cord. The Defendant also tied Ms. Taylor's feet together and then
23 tied them to her hands. The Defendant dragged Ms. Taylor to the closet and put her inside.
24 The Defendant then put water down Ms. Taylor's pants, in an attempt to remove his DNA
25 from her vaginal area. Afterwards, the Defendant placed a knife from Ms. Taylor's kitchen
26 in the closet with her, for the purpose of freeing herself after he left the residence. Ms.
27 Taylor was eventually able to cut herself free and notify the police.

28 ///

1 **STATEMENT OF FACTS PERTINENT TO THE CRIMES COMMITTED AGAINST**
2 **LEONA CASE**

3 Defendant is charged by way of Second Amended Information with Count VII-
4 Burglary While in Possession of a Deadly Weapon; Count IX - First Degree Kidnapping
5 With Use of a Deadly Weapon; Counts X, and XII - Sexual Assault With Use of a Deadly
6 Weapon; Count XI - Attempt Murder With Use of a Deadly Weapon; Count XIII - Robbery
7 With Use of a Deadly Weapon; and Count XIV - First Degree Arson, for crimes that were
8 committed against victim Leona Case.

9 Leona Case was born August 18, 1957. On March 7, 2000, Leona resided in a studio
10 apartment located at 2900 E. Charleston, #50. Leona lived alone at that time, and her
11 apartment was located on the bottom floor.

12 At approximately half past midnight on March 7, 2000, Leona was in her living room,
13 watching a movie, when someone knocked on her door. Leona put the safety chain on her
14 door and then opened it to see who was there, and she recognized the individual as
15 somebody who had knocked on her door about three to four days prior, looking for the
16 person who previously lived in the apartment. The first time the person at Leona's door had
17 knocked on it, he asked if he could use her telephone, after telling her he was looking for the
18 prior tenant. Leona took her telephone outside on that occasion, and allowed the Defendant
19 to use it outside. The first time the person had knocked on Leona's door and asked to use her
20 telephone, he had a friend with him. Defendant introduced himself to Leona by stating, "My
21 name is Jug, and this is my buddy, Chris.

22 Leona recognized the person at the door on March 7, as being the individual who
23 identified himself as "Jug." As he did the first time he knocked on Leona's door, Defendant
24 again asked to use Leona's telephone but because it was so late at night, Leona told him no,
25 and shut the door.

26 Leona was sitting in her chair in the living room, and heard something rattling at the
27 window. Thereafter, Leona heard a couple of bangs on her door and then the Defendant
28 kicked it open, off of the frame. After the Defendant entered Leona's apartment by kicking

1 the door in, Leona picked up the telephone and attempted to call 911, however, the call did
2 not go through because the Defendant slapped Leona on the face and knocked her to the
3 ground, taking the phone away from her.

4 Defendant went into Leona's kitchen, opened the drawers, and got out a steak knife.
5 Defendant first used the knife to threaten Leona, in order to find out where her money was
6 and to move her into the bedroom. Defendant asked Leona where her money was at and she
7 told him she did not have any, however, Defendant saw Leona's purse sitting on her dresser
8 and took \$44.00 and some food stamps from it. Defendant also told Leona to give him a
9 little ten carat ring she was wearing that said "mom" on it. Leona gave the Defendant the
10 ring because he had a knife.

11 Defendant wielded the knife and demanded Leona to go into the bedroom, where he
12 had her hold a lamp that was beside the bed, while he cut the cord off of it. After cutting the
13 cord off with the knife, Defendant put some kind of knot in it, slipped it over her neck; told
14 her that he was going to tie her up, and started to strangle her with it. Leona grabbed the
15 cord and put her fingers between her neck and the cord, while the Defendant climbed up on
16 the back of the bed and wound it around both of his hands and began strangling her, pulling
17 the cord tight with both hand. Leona began losing consciousness and Defendant stated
18 several times, "Why don't you just die, Bitch." Leona fell forward and the Defendant let go
19 of the cord causing Leona to pull it away from her neck and slip it off of her head, at which
20 point the Defendant told her to disrobe.

21 Leona disrobed and shoved the cord under the corner of the bed because she did not
22 want the Defendant to find it. Defendant told Leona that he was going to fuck her and asked
23 her where her condoms were at. Leona told the Defendant that she did not have any
24 condoms, so he grabbed a plastic bag that covered her coffee filters and used it as a
25 makeshift condom, before putting his penis into Leona's vagina, against her will.

26 Defendant got off of Leona and took the plastic bag into the bathroom, where he
27 flushed it down the toilet and then washed his private area. After putting her clothes back
28 on, while the Defendant was in the bathroom, Leona found the steak knife laying on the

1 dresser and shoved it between the mattress and box springs, like she had done with the cord.
2 After Defendant was done in the bathroom, he went into the kitchen and got another knife.
3 He returned to the bedroom with the knife and told Leona to get undressed and turn around,
4 because he was going to "fuck her up the ass." Defendant used the cellophane off of Leona's
5 cigarette package as a condom, and he, again, put his penis in her vagina, against her will.

6 After completing the second act of sexual assault on Leona, Defendant, again, went to
7 the bathroom and washed himself. Leona put her underwear and t-shirt on and as she stood
8 up, off the bed, Defendant lunged at her with the knife and began to stab her in the abdomen.
9 The knife entered Leona's body so deeply that she felt the Defendant's fist hit her stomach.
10 Defendant pulled the knife out and stabbed Leona again, pushing the knife full into her as
11 before. After pulling the knife out of Leona's body the second time, Defendant attempted to
12 cut the right side of Leona's neck with it. Realizing the Defendant was trying to kill her,
13 Leona attempted to kick the defendant. Defendant avoided Leona's kick, so Leona bent her
14 head down and went for his waist, thinking maybe she could tackle him and get him down,
15 however, Defendant's arm wound up around Leona's neck and he strangled her to
16 unconsciousness.

17 When Leona regained consciousness Defendant told her to go to the bathroom and
18 wash herself. Defendant told Leona to use soap on her vaginal area.¹ After Leona came out
19 of the bathroom, Defendant had her sit on the bed and made her clean out her fingernails
20 because she had scratched him when she tried to remove his hands from her throat.

21 The next thing Leona recalled is that the Defendant had the cord again. Defendant
22 told her to put it around her neck again but Leona refused. As a result, Defendant began
23 whipping Leona with it and beat her around the head with it, till she was bleeding severely.

24 Defendant told Leona to go back into the bathroom and she complied. Defendant shut
25 the bathroom door so Leona locked it. The next thing Leona heard was a bang, and then the
26

27 ¹ Leona had to remove the cellophane from her vagina when the Defendant made her go
28 to the bathroom and wash her vaginal area, and that the Defendant told her to flush it
down the toilet, which she did.

1 smoke alarm going off. Leona knew her apartment was on fire because she heard the smoke
2 alarm and could smell smoke. There also came a point when she heard a door slam, which
3 caused her to unlock the bathroom door and try to open it.

4 Leona could not open the bathroom door because the Defendant had slid a nine-
5 drawer dresser up against it, blocking Leona in the bathroom. Leona began banging the
6 bathroom door with her shoulder trying to move the dresser over but it would not budge.

7 Leona began to think that if the Defendant could kick her front door in, she should be
8 able to kick her way out of the bathroom; so she started kicking the door right beneath the
9 door handle, and the dresser tipped over. When Leona was able to squeeze out of the
10 bathroom door, she saw that her apartment was totally on fire. Leona grabbed her sister's
11 cellular telephone and ran outside of the apartment and hid behind a stairwell, afraid the
12 Defendant might still be around. Leona tried to use the cellular telephone three times but it
13 would not connect. Leona ran down between the two buildings and saw people, she was
14 trying to get somebody to call 911 but she could not talk very well, however, the fire
15 department did arrive and Leona was taken to the hospital for treatment.

16 After his arrest, Defendant admitted his involvement in the crimes committed against
17 Leona Case.

18 **STATEMENT OF FACTS PERTINENT TO THE CRIMES COMMITTED AGAINST**
19 **RAMONA LEYVA**

20 Defendant is charged in the Second Amended Criminal Information with having
21 committed the crimes of: Count XVI - First Degree Kidnapping With Use of a Deadly
22 Weapon; Count XVII - Sexual Assault With Use of a Deadly Weapon; and Count XVIII -
23 Robbery With Use of a Deadly Weapon, against victim Ramona Leyva.

24 On March 25, 2000, Ramona Leyva resided with her husband in a studio apartment
25 located at 600 Bonanza Rd., Apt. #144, Las Vegas, Nevada. At approximately 10:00 p.m.
26 on the night of the 25th, Ramona had returned to the apartment after dropping her husband
27 off at work. Ramona was in the apartment and had gone to the bathroom and heard a loud
28 noise at the front door. Ramona looked up and saw the Defendant. Ramona quickly closed

1 the bathroom door but the Defendant broke through it and pushed her against the bathroom
2 wall, grabbing her hair and neck.

3 The Defendant indicated that Ramona should quite down by telling her to "shush".
4 The Defendant dragged Ramona by her hair and neck out to the kitchen where he grabbed a
5 knife from her kitchen drawer. The Defendant put the knife against Ramona's neck and
6 demanded money from her. The Defendant moved Ramona around the apartment and
7 continued to demand money from her.

8 After convincing the Defendant that she had no money, the Defendant began to touch
9 Ramona's breasts and buttocks with his hands, over her clothes. The Defendant also touched
10 his penis with his hand, over his pants. The Defendant began removing his clothes and Ms.
11 Leyva told him to get some protection, because she knew he was going to rape her and she
12 did not want any disease from him.

13 Ramona's husband wore rubber gloves as a dishwasher at his job. There were a pair
14 of rubber gloves on her husband's night stand and the Defendant put the thumb part of one of
15 those gloves over his penis before penetrating Ms. Leyva's vagina with his penis.

16 Mrs. Leyva was very afraid during the rape and the Defendant told her to tell him that
17 she liked what he was doing, so she did. The Defendant kept the knife in his hand while he
18 sexually assaulted Ms. Leyva. After the sexual assault, the Defendant forced Ms. Leyva to
19 take the glove off of his penis and flush it down the toilet.

20 The Defendant emptied Ms. Leyva's purse and found her car keys at which time he
21 attempted to leave and take her car. Mrs. Leyva told the Defendant that she had to go work
22 and asked him not to take her car.

23 The Defendant left the apartment briefly to throw the knife into the parking lot. The
24 Defendant then re-entered the apartment and picked up Ms. Leyva's telephone receiver to see
25 if the line worked. After hanging the telephone back up the Defendant left the residence and
26 stole Ms. Leyva's car.

27 After the Defendant fled in her car, Mrs. Leyva attempted to get some of her
28 neighbors to help her but none of them would answer their doors. Mrs. Leyva walked to a

1 fast food restaurant where she found a Spanish speaking couple to take her to her husbands
2 job. After she arrived at her husband's job he took her to report the crimes.

3 **STATEMENT OF FACTS PERTINENT TO THE CRIMES COMMITTED AGAINST**
4 **MARLENE LIVINGSTON**

5 Defendant is charged in the Second Amended Criminal Information with having
6 committed the crimes of: Count XV - Burglary While in Possession of a Deadly Weapon;
7 Count XVI - First Degree Kidnapping With Use of a Deadly Weapon, Victim 65 Years of
8 Age or Older; Count XVII- Sexual Assault With Use of a Deadly Weapon, Victim 65 Years
9 of Age or Older; and Count XVIII - Robbery With Use of a Deadly Weapon, Victim 65
10 Years of Age or Older, against victim Marlene Livingston.

11 On April 14, 2000, Marlene Livingston, (DOB 10/12/33), resided at an apartment
12 complex located at 2301 Clifford, Las Vegas, Nevada. The complex has 11 apartments, and
13 Marlene lived in Apt. #11, on the second floor.

14 On April 3, Marlene worked in the afternoon until 9:00 that night. After work,
15 Marlene went home. At the time, Marlene drove a white, 1991 Dodge Dynasty. After
16 Marlene arrived home from work that night, she checked the mail, had received her social
17 security check, and went to Boulder Station to cash it. Marlene had \$515.00, after cashing
18 her check. Marlene stayed at Boulder for approximately an hour or so, wherein she bought
19 some Chinese food and played some nickels.

20 Marlene left Boulder Station and drove home, where she put some of the left over
21 Chinese food on a plate and put it in the microwave, and then went to take her work clothes
22 off. As Marlene sat on the edge of her bed, and was looking through her purse, wearing only
23 her bra and pants, when she heard a boom and saw the Defendant break through her front
24 door, wearing a mask that did not cover his whole face. Marlene also noticed the Defendant
25 had a knife with a silver blade.

26 The Defendant demanded Marlene's money, which she took from her wallet and gave
27 to him. Thereafter, the Defendant asked Marlene if she had any gold, and she gave him her
28 pinky ring. The Defendant took the knife that he had and flicked through Marlene's purse

1 with it and saw a \$10.00 bill. He accused Marlene of lying to him about having more money,
2 which caused her to explain that she had cashed in \$10.00 worth of nickels at Boulder
3 Station and then shoved it in her purse.

4 The Defendant told Marlene not to look at him, causing her to keep her head down
5 and eyes closed. Marlene told the Defendant, "Take anything you want, I just want to see
6 my grand kids tomorrow." Thereafter, Marlene heard the Defendant go around the bed and
7 grab her telephone. The Defendant then demanded that Marlene stand up. When Marlene
8 complied the Defendant told her to bend over. When Marlene moved her pants to the side a
9 little and told the Defendant that she had a pad on, the intruder sat on the bed, pulled his
10 penis out, and told her they would do it orally and not to bite him. The Defendant told
11 Marlene that "he liked to fuck old ladies."

12 Marlene was forced to put her mouth on the Defendant's (exposed) penis and the
13 Defendant held the back of her head and pushed it up and down. During the assault, Marlene
14 kept her eyes closed. During the act the Defendant kept telling Marlene not to bite him.

15 After the sexual assault, the Defendant asked Marlene if she had a car, a gun, and a
16 husband that was going to come in. Marlene told the Defendant that she had a white Dynasty
17 and he demanded her keys, which she took out of her purse and gave to him. The
18 Defendant told Marlene to go into her bathroom and wash her mouth out. The Defendant
19 also stood behind her during this act, and forced water into her mouth. Thereafter, the
20 Defendant told Marlene to stay in the bathroom, where she stayed for approximately 10 to 15
21 minutes, because she was scared to come out.

22 Once Marlene left the bathroom she looked outside and saw that her car was gone.
23 Marlene was afraid the intruder might return so she put on her pajama's and then knocked on
24 the landlord's door and told him what had happened. Marlene's landlord subsequently called
25 the police.

26 **STATEMENT OF FACTS PERTINENT TO THE CRIMES COMMITTED AGAINST**
27 **CLARENCE AND FRANCIS RUMBAUGH**

28 Defendant is charged in the Second Amended Criminal Information with having

1 committed the crimes of: XXII - Burglary While in Possession of a Deadly Weapon; Count
2 XXIII - Robbery With Use of a Deadly Weapon, Victim 65 Years of Age or Older; and
3 Count - XXIV - Robbery With Use of a Deadly Weapon, Victim 65 Years of Age or Older
4 against the victims, Clarence and Francis Rumbaugh

5 At preliminary hearing of this matter, Francis Rumbaugh testified that she was 79
6 years of age and her birthdate is April 11, 1921.

7 On April 12, 2000, Francis Rumbaugh (DOB 04/11/21) and her husband, Clarence
8 Rumbaugh (DOB 09/19/16), lived at 436 North 12th Street #B, in Clark County, Las Vegas.
9 The residence had one bedroom, a living room, and bathroom.

10 During the evening of April 12, at approximately 11:25 p.m., Francis and Clarence
11 were at home eating cake and ice cream, in the living room. The front door was open,
12 however the screen door was closed and latched at the time, when Francis heard a loud noise
13 and somebody burst in. After the Defendant had burst into the residence Francis began to
14 scream for help and the Defendant told her to shut up. The Defendant then shut two windows
15 and the front door. Additionally, the Defendant picked up the knife Francis had used to cut
16 the cake with and used it to cut the telephone cord. After the Defendant cut the telephone
17 cord, with the knife still in his hand, he grabbed Francis by the left wrist area and threw her
18 onto the couch.

19 After the Defendant threw Francis onto the couch, he approached Clarence
20 Rumbaugh and wrestled with him, eventually throwing Mr. Rumbaugh to the floor and
21 demanding the money from his wallet. Mr. Rumbaugh got up off of the floor and took his
22 wallet out of his back pocket, but before he could reach into it and take the money out, the
23 Defendant reached in and took \$81.00 from the wallet.

24 The Defendant pointed a knife at Mr. and Mrs. Rumbaugh and make them go into
25 their bedroom where he rummaged through their belongings using the tip of the knife. The
26 Rumbaugh's had El Cortez cups full of change on their desk and the Defendant picked up
27 those cups to put the loose change consisting of nickels, dimes, and quarters, in his pockets.
28 Afterwards, the Defendant took another hanky from his pocket and wiped the containers off.

1 The Defendant instructed the Rumbaugh's to stay in their bedroom while he fled the
2 residence.

3 **STATEMENT OF FACTS PERTINENT TO THE CRIMES COMMITTED AGAINST**
4 **LEROY FOWLER**

5 Defendant is charged in the Second Amended Criminal Information with having
6 committed the crime of: Burglary While In Possession of a Deadly Weapon, against the
7 victim Leroy Fowler.

8 On June 6, 2000, Mr. Fowler resided at 1121 East Ogden Avenue, Apt. #9, Las Vegas,
9 Nevada, in a studio apartment. On June 6, at approximately 1:55 a.m., Mr. Fowler was
10 sleeping on his bed. Mr. Fowler awoke to his front door being kicked in.

11 Mr. Fowler encountered the Defendant who had an knife in his hand. Mr. Fowler
12 picked up a kitchen chair and began swinging it at the Defendant. Mr. Fowler was making a
13 lot of noise and the Defendant told him several times to shut up.

14 Mr. Fowler continued swinging the kitchen chair, at which time the Defendant turned
15 and ran out of the apartment.

16 **STATEMENT OF FACTS PERTINENT TO THE CRIMES COMMITTED AGAINST**
17 **JONI HALL**

18 Defendant is charged in the Second Amended Criminal Complaint with having
19 committed the crimes of: Count XVI - Burglary While in Possession of a Deadly Weapon;
20 XXVII - First Degree Kidnaping With Use of a Deadly Weapon;
21 Count XXVIII - Sexual Assault With Use of a Deadly Weapon; and XXIX - Robbery With
22 Use of a Deadly Weapon, against victim Joni Hall.

23 On June 7, 2000, Joni Hall resided in an apartment located at 624 North 13th Street,
24 Las Vegas, Nevada. Joni had been living in the apartment for a little over a month. Joni and
25 her child along with another woman and her three children all lived in the apartment.

26 On June 7, during the early morning hours between 1:30 and 2:00 a.m., Joni arrived
27 home to the apartment and went straight to bed. Joni awoke to a thud type noise and thought
28 that maybe her roommate was hitting the wall or one of the children was hitting the door.

1 Joni laid in bed for a couple a seconds before starting to shut her eyes again. Joni saw that
2 the bedroom door was opening and she also saw the Defendant standing in the doorway
3 putting something over his face and saying "Oh Yeah." The Defendant also had a knife in
4 his right hand.

5 The Defendant asked Joni if she had money and car keys. Joni told the Defendant no,
6 and the Defendant told Joni not to lie to him. At that point the Defendant told Joni to get up
7 out of bed and forced her to follow him into the living room and kitchen area of the
8 apartment. The Defendant asked Joni if anybody else was in the apartment and Joni told
9 him that her child was there and her roommate and her children were there.

10 The Defendant forced Joni to open and close cabinets in the living room and kitchen
11 area of the residence to make sure she wasn't hiding anything. The Defendant also asked
12 Joni what she had to eat and drink in the apartment.

13 The Defendant asked Joni for some kool-aid to drink and Joni gave it to him. The
14 Defendant also took Joni's roommate's cigarettes out of a cabinet. After touching the outer
15 cellophane of the cigarette package, the Defendant took the cellophane off of the package
16 and burned it in the sink, telling Joni he didn't want evidence of his fingerprints around.

17 The Defendant forced Joni to walk back into her bedroom and he began going through
18 Joni's things. The Defendant told Joni that he was going to "get some pussy from a scaredy
19 white girl." The Defendant told Joni to lay down on the end of her bed and take off her
20 pants. The Defendant then told Joni that he was just joking with her, that he wasn't like that,
21 and that he wasn't going to do that to her.

22 A neighbor from upstairs made a loud noise which caused the Defendant to become
23 nervous. The Defendant told Joni to turn off her kitchen and bathroom lights and then
24 peaked out the kitchen blinds to see if anybody was coming downstairs.

25 The Defendant found some Saran Wrap in the kitchen and forced Joni to tear off a
26 piece of it. The Defendant told Joni he was going to get some pussy from a white girl and
27 told Joni to lay down on the floor, in front of the couch, in the living room. The Defendant
28 walked towards Joni with the knife in one hand and the Saran Wrap in the other.

1 The Defendant unbuckled his belt and pulled down his pants and got down on the
2 floor with Joni. The Defendant put the knife up near Joni's head and told her if she screamed
3 or made any noise he would kill her. The Defendant put the Saran Wrap on his penis with
4 the other hand and then put his penis in Joni's vagina for approximately one minute. The
5 Defendant then got up, went into the bathroom and flushed the toilet. Joni did not see the
6 Saran Wrap again after the Defendant came out of the bathroom.

7 The Defendant told Joni that he was going to take her television and told her to bring
8 a stroller that she had in the bedroom out into the front room. The Defendant put the
9 television in the stroller and took Joni's walkman as well.

10 After the Defendant left the apartment Joni went and woke up her roommate and told
11 her to go call the police because they had been robbed and Joni had been raped.

12 **STATEMENT OF FACTS PERTINENT TO THE CRIMES COMMITTED AGAINST**
13 **GYALTSO LUNGTOK**

14 Defendant is charged in the Second Amended Criminal Information with having
15 committed the crimes of: Count XXX - Burglary While In Possession of a Deadly Weapon;
16 Count XXXI - Attempt Robbery With Use of a Deadly Weapon; and Count XXXII - Murder
17 With Use of a Deadly Weapon (Open Murder), against victim Gyaltsu Lungtok.

18 On the evening of June 8, 2000, Gyaltsu Lungtok became the victim of a homicide,
19 during a Burglary and Attempt Robbery perpetrated by the Defendant in this case.

20 The Defendant gave a statement to Detective LaRochelle, LVMPD Homicide
21 Division, about the homicide investigation regarding Mr. Lungtok and during that initial
22 conversation, Defendant indicated that he was out on the night in question with a guy named
23 Deon. Defendant stated that Deon was talking about getting "a lick", which is a street term
24 for a robbery to get money.

25 Defendant told Detective LaRochelle that Deon asked him for the gun that he was
26
27
28

1 carrying, so he gave it to Deon.² Defendant further told Detective LaRochelle that he waited
2 at a telephone bank while Deon entered the complex where Mr. Lungtok lived. Defendant
3 indicated that he heard banging or crashing noises followed by gunshots. According to the
4 Defendant, Deon then came running and they ran off together and Deon tells him that the
5 shell casings got picked up from the shooting and not to worry about it. Thereafter,
6 Detective LaRochelle told the Defendant that his story was not plausible and that he knew
7 the Defendant was more involved than what he had previously told him, at which time the
8 Defendant changed his story and told Detective LaRochelle that he entered Mr. Lungtok's
9 apartment in an attempt to get away from a police car that he saw cruising the street.
10 Defendant said that he had the gun on him and was worried about being arrested if the police
11 stopped him. Defendant told Detective LaRochelle that he thought the apartment was empty,
12 so he kicked the door open and entered the apartment. Defendant indicated it was dark inside
13 the apartment and he became startled when someone came at him from the dark, at which
14 time he fired the gun that killed Mr. Lungtok.

15 **STATEMENT OF FACTS PERTINENT TO THE CRIMES COMMITTED AGAINST**
16 **LAURA ZAZUETA, GUADALUPE LOPEZ, AND BEATRIZ ZAZUETA**

17 Defendant is charged in the Second Amended Criminal Information with having
18 committed the crimes of: Count XXXII - Burglary While In Possession of a Deadly Weapon;
19 XXXIV - Robbery With Use of a Deadly Weapon; Count XXXV - Attempt Robbery With
20 Use of a Deadly Weapon; Count XXXVI - Attempt Robbery With Use of a Deadly Weapon;
21 Count XXXVII - Attempt Murder With Use of a Deadly Weapon; and Count XXXVIII -
22 Battery With Use of a Deadly Weapon, for crimes committed against victims Laura Zazueta,
23 Guadalupe Lopez, and Beatriz Zazueta.

24 Laura Zazueta, her sister Beatriz, her brother-in-law Guadalupe, and her nephews
25 Carlitto, 2 years of age, and Andras, 4 years of age, lived at 2850 East Cedar Avenue, Apt.
26 H-229. On the night of June 8, 2000, Laura went out with her boyfriend and the he took her

27
28 ² The gun used in the Lungtok homicide has been forensically identified as the same
gun used in the Lopez/Zazueta crimes.

1 home and left the apartment at approximately 11 or 12 p.m. At the time Laura got home
2 none of her roommates were awake and she went directly to bed and went to sleep. At some
3 point Laura woke up because she heard a noise, and found the Defendant in her bedroom.

4 In both English and Spanish the Defendant told Laura to give him the money she had.
5 Laura gave the Defendant approximately \$200.00 that she had in a chest of drawers, in her
6 bedroom. After Laura gave the Defendant the money, he demanded more money and
7 became vulgar saying things like "fuck you" and "bitch." Laura became nervous and was
8 forced to her sister's room, while the Defendant followed behind her pointing the gun at her.
9 When she got to her sister's room, her sister and brother-in-law woke up, causing the
10 Defendant to demand more money from all of them and pointed the gun at all of them.
11 Laura's four year old nephew woke up as the Defendant held them at gun point demanding
12 money.

13 Laura's brother-in-law told the Defendant that he did not have any money which
14 caused the Defendant to become upset and place the gun against Guadalupe's forehead.
15 Guadalupe grabbed the gun and a struggle ensued causing the gun to fire approximately four
16 times. At that time, Laura dropped to the floor of the bedroom as her sister embraced the
17 child.

18 The Defendant and Guadalupe struggled with each other out of the bedroom and into
19 the living room and Laura watched as the intruder got away by jumping from the couch
20 through a window.

21
22 **STATEMENT OF FACTS PERTINENT TO DEFENDANT'S PRIOR 1996**
23 **JUVENILE CONVICTION FOR ARMED ROBBERY, IN CHICAGO.**

24 On September 4, 1996, Defendant, then 12 years of age, pointed a small handgun
25 (later identified as a starter pistol) at Mertice Gawne, as he attempted to take her car from
26 her.

27 Police reports indicate that on the aforementioned day, Mertice Gawne was leaving a
28 friends house and walking to her automobile when she noticed the Defendant and two other

1 boys observing her. Mertice got into her vehicle and waited until the boys were out of sight
2 before leaving the area. When Mertice got to the intersection of 110th and Hoyne, the
3 Defendant and two other boys jumped out of some bushes and surrounded her car.

4 The Defendant pointed a gun at Mertice and told her to get out of the car because he
5 was taking it from her. The Defendant opened the driver's side door and another boy
6 pounded on the hood of the car. Mertice quickly drove away from the boys and notified
7 police with her cellular telephone.

8 The Defendant and the other two boys were picked up shortly thereafter and all three
9 were positively identified by Ms. Gawne as the boys who tried to take her car.

10 On January 31, 1996, Defendant was adjudicated a delinquent and plead guilty to
11 Armed Robbery, a Class X felony in the State of Illinois. On March 6, 1996, Defendant was
12 placed on probation.

13 A copy of the police report and juvenile court disposition papers are attached hereto
14 for this Court's review as Exhibit "1".

15 **ARGUMENT**

16 **I. THE STATE WAS NOT REQUIRED TO CONDUCT A JUVENILE COURT** 17 **HEARING TO CERTIFY THE DEFENDANT AS AN ADULT.**

18
19 NRS 62.040 states:

20 1. Except if the child involved is subject to the exclusive jurisdiction of an
21 Indian tribe, and except as otherwise provided in this chapter, the court has
exclusive original jurisdiction in proceedings:

22 (a) Concerning any child living or found within the county who is in need
23 of supervision because he:

24 (1) Is a child who is subject to compulsory school attendance and is
25 a habitual truant from school;

26 (2) Habitually disobeys the reasonable and lawful demands of his
27 parents, guardian or other custodian, and is unmanageable; or

28 (3) Deserts, abandons or runs away from his home or usual place of

1 abode, and is in need of care or rehabilitation. The child must not be
2 considered a delinquent.

3 (b) Concerning any child living or found within the county who has
4 committed a delinquent act. A child commits a delinquent act if he violates
5 a county or municipal ordinance or any rule or regulation having the force
6 of law, or he commits an act designated a crime under the law of the State
7 of Nevada.

8 © Concerning any child in need of commitment to an institution for the
9 mentally retarded.

10 2. For the purposes of subsection 1, each of the following acts shall be
11 deemed not to be a delinquent act, and the court does not have
12 jurisdiction of a person who is charged with committing such an act:

13 (a) Murder or attempted murder and any other related offense arising
14 out of the same facts as the murder or attempted murder, regardless of
15 the nature of the related offense.

16 (b) Sexual assault or attempted sexual assault involving the use or
17 threatened use of force or violence against the victim and any other
18 related offense arising out of the same facts as the sexual assault or
19 attempted sexual assault, regardless of the nature of the related offense,
20 if:

21 (1) The person was 16 years of age or older when the sexual
22 assault or attempted sexual assault was committed; and

23 (2) Before the sexual assault or attempted sexual assault was
24 committed, the person previously had been adjudicated delinquent
25 for an act that would have been a felony if committed by an adult.

26 c) An offense or attempted offense involving the use or threatened use of
27 a firearm and any other related offense arising out of the same facts as
28 the offense or attempted offense involving the use or threatened use of a
firearm, regardless of the nature of the related offense, if:

(1) The person was 16 years of age or older when the offense or
attempted offense involving the use or threatened use of a firearm
was committed; and

(2) Before the offense or attempted offense involving the use or
threatened use of a firearm was committed, the person previously
had been adjudicated delinquent for an act that would have been a
felony if committed by an adult.

(d) A felony resulting in death or substantial bodily harm to the victim and
any other related offense arising out of the same facts as the felony,
regardless of the nature of the related offense, if:

1 (1) The felony was committed on the property of a public or private
2 school when pupils or employees of the school were present or may
3 have been present, at an activity sponsored by a public or private
4 school or on a school bus while the bus was engaged in its official
5 duties; and

6 (2) The person intended to create a great risk of death or substantial
7 bodily harm to more than one person by means of a weapon, device
8 or course of action that would normally be hazardous to the lives of
9 more than one person.

10 (e) Any other offense if, before the offense was committed, the person
11 previously had been convicted of a criminal offense.

12 3. If a child is charged with a minor traffic offense, the court may transfer
13 the case and record to a justice's or municipal court if the judge determines
14 that it is in the best interest of the child. If a case is so transferred:

15 (a) The restrictions set forth in subsection 7 of NRS 62.170 are
16 applicable in those proceedings; and

17 (b) The child must be accompanied at all proceedings by a parent or
18 legal guardian.

19 With the consent of the judge of the juvenile division, the case may be
20 transferred back to the juvenile court.

21 4. As used in this section, "school bus" has the meaning ascribed to it in
22 NRS 483.160.

23 (Emphasis added).

24 Quite clearly, the statutory provisions of NRS 62.040(2)(a)(b) and (c), does not give
25 the juvenile court jurisdiction over this Defendant.

26 Initially, it should be noted that the Defendant was clearly 16 years of age or older
27 when all of the charged crimes occurred and it is clear that he was previously adjudicated as
28 a delinquent for the charge of Armed Robbery on January 31, 1996, in Chicago, Illinois. See
Exhibit "1." Armed Robbery would obviously be a Felony conviction if sustained by an
adult.

Turning to the instant charges, the Defendant is charged with Murder, among other
related charges, in the killing of Gyaltsu Lungtok; Attempted Murder, among other related
charges, in the attack on Leona Case; and Attempted Murder, among other related charges, in

1 the attack on Guadalupe Lopez. As such, per NRS 62.040(2)(a), the Juvenile Court would
2 have no jurisdiction over the Defendant for the above cases.

3 Moreover, the Defendant is charged with Sexual Assault, among other related
4 charges, in the attacks on Teresa Taylor,, Ramona Leyva, Marlene Livingston and Joni Hall.
5 The aforementioned Leona Case was also sexually assaulted so her case could be included in
6 this category as well. As such, per NRS 62.040 (2) (b) (1),(2), the Juvenile Court would have
7 no jurisdiction over the Defendant for the above cases.

8 Additionally, the Defendant is charged with crimes involving the use or threatened use
9 of a firearm, among other related charges, in his attacks against Laura Zazueta and Beatrice
10 Zazueta. The use or threatened use of a firearm is an aspect of the crimes involving
11 Guadalupe Lopez and Gyaltsu Lungtok as well, so they would be included in this category,
12 too. As such, per NRS 62.040 (2) © (1),(2), the Juvenile Court would have no jurisdiction
13 over the Defendant for the above cases.

14 Finally, all of the criminal events described in this Opposition occurred within a 4
15 month time period and are inextricably intertwined in terms of the M.O. associated with the
16 offenses, the area of town in which the offenses were occurring and the motives behind the
17 offenses. As such, the State would submit that all the offenses are essentially "related
18 offenses" per NRS 62.040, that is to say, that all offenses are essentially related to the other
19 offenses in the other events. Since most all events involve Murder, Attempted Murder,
20 Sexual Assault or the Use of a Firearm as aspects of the cases, and since all events and
21 offenses are related, per NRS 62.040, the Juvenile Court would have no jurisdiction over the
22 Defendant for the above cases.

23 Contrary to the Defendant's belief that a hearing should be held in this case, based
24 upon the aforementioned statutory language, the Defendant committed the type of crimes that
25 preclude the juvenile court from having any jurisdiction over the matter for a hearing to be
26 held.

27 Additionally, the Defendant cannot claim that the juvenile court failed to conduct a
28 full investigation in this matter. The Juvenile Court never had jurisdiction or a need to do

1 anything. Based upon the charges the Defendant was facing and the fact that he had a prior
2 juvenile adjudication that would have been a felony if the crime had been committed by an
3 adult, the police officers were given the authority to transfer the Defendant from the juvenile
4 facility in Illinois to the adult facility here in Las Vegas, after the prosecutors in this case
5 established with the Juvenile Division of the District Court that that division did not have the
6 authority to take the Defendant.

7 **CONCLUSION**

8 Based upon the above and foregoing Points and Authorities the State respectfully
9 requests Defendant's instant Motion to Remand the Case to Juvenile Court and Conduct a
10 Hearing as to Whether he should be Certified as an Adult be denied.

11 DATED this 15 day of November, 2002.

12 Respectfully submitted,

13 STEWART L. BELL
14 DISTRICT ATTORNEY
Nevada Bar #000477

15
16 BY 

17 DOUGLAS W. HERNDON
18 Chief Deputy District Attorney
Nevada Bar #004286

19 **CERTIFICATE OF FACSIMILE TRANSMISSION**

20 I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT'S
21 MOTION TO REMAND THE CASE TO JUVENILE COURT AND CONDUCT A
22 HEARING AS TO WHETHER HE SHOULD BE CERTIFIED AS AN ADULT, was made
23 this 18 day of November, 2002, by facsimile transmission to:

24 CURTIS S. BROWN
25 Deputy Public Defender
455-5112

26
27 BY 

28 Employee of the District Attorney's Office

EXHIBIT "1"

CHICAGO POLICE
ARREST REPORT
CPD-11.420 (Rev. 6/92)

1. OFF. NO. 1257	2. ALIAS OR NC NAME None	3. DIST. RES. 007	4. HEIGHT 5-9	5. WEIGHT 140	6. HAIR BLK	7. EYES BRN	8. COMPLEXION Med
9. RESIDENCE ADDRESS 5741 S WOOD	10. CITY, STATE CHICAGO IL	11. ZIP CODE 60621	12. HOME TELEPHONE None	13. DATE OF BIRTH None	14. DRIVER'S LICENSE NO. None	15. SOCIAL SECURITY NO. None	
16. BUSINESS NAME - ADDRESS Gresham Elem 7th	17. CITY, STATE, ZIP CODE CHICAGO IL 60621	18. BUSINESS TELEPHONE None					

19. ADDRESS OF ARREST 11000 S Prospect	20. DATE OF ARREST 04 SEPT 95	21. TIME OF ARREST 2145	22. GUEST'S TRANSFERTED 082 5218 2210
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23. WEAPONS <input type="checkbox"/> PISTOL <input type="checkbox"/> REVOLVER <input type="checkbox"/> GUN <input type="checkbox"/> KNIFE <input type="checkbox"/> OTHER (SPECIFY)	24. PROPERTY INVENTORY NO. 1537249	25. FOR NARCOTIC ARREST <input type="checkbox"/> SUSPECT CANNABIS <input type="checkbox"/> SUSPECT COCAINE <input type="checkbox"/> SUSPECT HEROIN <input type="checkbox"/> SUSPECT MARIJUANA <input type="checkbox"/> SUSPECT OTHER (SPECIFY)	26. APPROX. WT. OF MARIJUANA None	27. APPROX. WT. OF COCAINE None	28. APPROX. WT. OF HEROIN None	29. APPROX. WT. OF MARIJUANA None	30. APPROX. WT. OF COCAINE None	31. APPROX. WT. OF HEROIN None
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32. PERSON IN INVESTIGATIVE UNIT NOTIFIED HARDY 156680 A/Growth 274	33. NAME OF A.S. & TEL. REV. <input type="checkbox"/> YES <input type="checkbox"/> NO
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34. VICTIM COMPLAINT GANNON MERTIER	35. VICTIM HOSPITALIZED <input type="checkbox"/> YES <input type="checkbox"/> NO	36. VICTIM RELEASED <input type="checkbox"/> YES <input type="checkbox"/> NO
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37. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	38. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	39. REFERENCES (CH - PAR.) Screening
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40. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	41. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	42. REFERENCES (CH - PAR.) Screening
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43. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	44. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	45. REFERENCES (CH - PAR.) Screening
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46. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	47. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	48. REFERENCES (CH - PAR.) Screening
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49. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	50. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	51. REFERENCES (CH - PAR.) Screening
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52. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	53. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	54. REFERENCES (CH - PAR.) Screening
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55. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	56. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	57. REFERENCES (CH - PAR.) Screening
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58. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	59. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	60. REFERENCES (CH - PAR.) Screening
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61. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	62. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	63. REFERENCES (CH - PAR.) Screening
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64. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	65. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	66. REFERENCES (CH - PAR.) Screening
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67. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	68. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	69. REFERENCES (CH - PAR.) Screening
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70. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	71. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	72. REFERENCES (CH - PAR.) Screening
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73. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	74. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	75. REFERENCES (CH - PAR.) Screening
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76. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	77. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	78. REFERENCES (CH - PAR.) Screening
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79. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	80. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	81. REFERENCES (CH - PAR.) Screening
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82. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	83. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	84. REFERENCES (CH - PAR.) Screening
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85. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	86. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	87. REFERENCES (CH - PAR.) Screening
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88. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	89. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	90. REFERENCES (CH - PAR.) Screening
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91. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	92. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	93. REFERENCES (CH - PAR.) Screening
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94. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	95. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	96. REFERENCES (CH - PAR.) Screening
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97. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	98. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	99. REFERENCES (CH - PAR.) Screening
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100. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	101. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	102. REFERENCES (CH - PAR.) Screening
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103. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	104. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	105. REFERENCES (CH - PAR.) Screening
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106. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	107. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	108. REFERENCES (CH - PAR.) Screening
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109. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	110. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	111. REFERENCES (CH - PAR.) Screening
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112. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	113. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	114. REFERENCES (CH - PAR.) Screening
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115. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	116. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	117. REFERENCES (CH - PAR.) Screening
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118. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	119. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	120. REFERENCES (CH - PAR.) Screening
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121. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	122. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	123. REFERENCES (CH - PAR.) Screening
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124. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	125. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	126. REFERENCES (CH - PAR.) Screening
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127. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	128. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	129. REFERENCES (CH - PAR.) Screening
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130. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	131. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	132. REFERENCES (CH - PAR.) Screening
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133. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	134. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	135. REFERENCES (CH - PAR.) Screening
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136. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	137. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	138. REFERENCES (CH - PAR.) Screening
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139. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	140. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	141. REFERENCES (CH - PAR.) Screening
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142. REFERENCES (CH - PAR.) 720UCS 5/18-2 Att. Arm ROBE	143. REFERENCES (CH - PAR.) Detention Denied per Ackley Detention	144. REFERENCES (CH - PAR.) Screening
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Porter Justin taken into custody after he pointed a small handgun at the victim and told her to get out of her vehicle and give it to him. The victim drove away and called police. A short time later, the victim was taken into custody and positively identified by the victim.

Also Arrested : Radoliff 112198 CHURCH

Mother- Angela Smith 5741 S. Wood 737-9198

Father- George Porter U-N-K Picked up son

ADDITIONAL ARRESTING OFFICERS BT. 5218 DET. J Hamilton 20945 DET BAGDEN 2051

No E.T. Avail on Zone 9

Gang Affiliation : Denied

I do solemnly, sincerely, and truly declare and affirm that the facts stated herein are accurate to the best of my knowledge.

FIRST ARRESTING APPEARING OFFICER'S SIGNATURE **STAR NO.** **UNIT**

J. H. ARDAWAY **2206** **5** **7** **X** **M. Vogenthaler 19009** **022**

41. TIME OF APPROVAL OF PROBABLE CAUSE - NO. 1-44 **42. RESULTS OF FINGERPRINT CHECK WAIVED BY SGT. STAR** **DATE** **TIME** **43. APPROVAL OF CHARGES - NO. 1-44** **DATE** **TIME**

WATCH COMMANDER'S SIGNATURE **STAR NO.** **UNIT**

Prints and Photo's waived per Sgt. Willis No E.T.-avail on Zone 9

44. ARRESTING OFFICER'S SIGNATURE **STAR NO.** **UNIT** **45. DATE** **TIME** **46. PHOTOGRAPHED** **47. FINGERPRINTED** **48. TELEPHONE NO. CALLED** **TIME**

Y.O. Gurtatowski **17609** **072** **Waived** **04 SEPT 95** **2330**

49. BOOKING OFFICER **STAR NO.** **UNIT** **50. DATE** **TIME** **51. PHOTOGRAPHED** **52. FINGERPRINTED** **53. TELEPHONE NO. CALLED** **TIME**

28SEP95 0930 **Juv Ct** **YES** **NO** **54. DATE** **TIME** **55. PHOTOGRAPHED** **56. FINGERPRINTED** **57. TELEPHONE NO. CALLED** **TIME**

58. COURT DOCKET NO. **59. COURT DOCKET NO.** **60. COURT DOCKET NO.** **61. COURT DOCKET NO.** **62. COURT DOCKET NO.** **63. COURT DOCKET NO.** **64. COURT DOCKET NO.** **65. COURT DOCKET NO.** **66. COURT DOCKET NO.** **67. COURT DOCKET NO.** **68. COURT DOCKET NO.** **69. COURT DOCKET NO.** **70. COURT DOCKET NO.** **71. COURT DOCKET NO.** **72. COURT DOCKET NO.** **73. COURT DOCKET NO.** **74. COURT DOCKET NO.** **75. COURT DOCKET NO.** **76. COURT DOCKET NO.** **77. COURT DOCKET NO.** **78. COURT DOCKET NO.** **79. COURT DOCKET NO.** **80. COURT DOCKET NO.** **81. COURT DOCKET NO.** **82. COURT DOCKET NO.** **83. COURT DOCKET NO.** **84. COURT DOCKET NO.** **85. COURT DOCKET NO.** **86. COURT DOCKET NO.** **87. COURT DOCKET NO.** **88. COURT DOCKET NO.** **89. COURT DOCKET NO.** **90. COURT DOCKET NO.** **91. COURT DOCKET NO.** **92. COURT DOCKET NO.** **93. COURT DOCKET NO.** **94. COURT DOCKET NO.** **95. COURT DOCKET NO.** **96. COURT DOCKET NO.** **97. 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JUVENILE MINUTES SHEET
YOUTH DIVISION/CHICAGO POLICE

CALENDAR Juv Ct Y.D. AREA 2 R.D. NO. 2-415843

MINOR RESPONDENTS					
NAME (LAST-FIRST-M.I.)	SEX/RACE/AGE	DATE ARRESTED-TIME	CHARGES	Y.D. NO.	DETAINED/ - COUR REFERRED DATE
Porter, Justin	M/1/12	04SEP95 2145	720ILCS5/18-2	283421	<input type="checkbox"/> D <input checked="" type="checkbox"/> R 28SEP95
Ratcliff, Cameron	M/1/13	04SEP95 2145	720ILCS5/18-2	283422	<input type="checkbox"/> D <input checked="" type="checkbox"/> R 28SEP95
Gipson, Bennie	M/1/12	04SEP95 2215	720ILCS5/18-2	283423	<input type="checkbox"/> D <input checked="" type="checkbox"/> R 28 SEP 9
					<input type="checkbox"/> D <input type="checkbox"/> R

DATE OF OFFENSE-TIME 04SEP95 2130 LOCATION 2141 W. 110th st

NAME (LAST-FIRST-M.I.)	SEX/RACE/AGE	VICTIM(S)	ADDRESS	<input type="checkbox"/> HOME <input type="checkbox"/> WORK TELEPHONE
Gawne, Mertice	F/2/65	2218 W 107th pl		<input checked="" type="checkbox"/> 445-8796
				<input type="checkbox"/>
				<input type="checkbox"/>

WITNESS(ES) (W) OR ADDITIONAL VICTIM(S) (V)

<input type="checkbox"/> W				<input type="checkbox"/>
<input type="checkbox"/> V D-N-A				<input type="checkbox"/>
<input checked="" type="checkbox"/> W				<input type="checkbox"/>
<input type="checkbox"/> V				<input type="checkbox"/>

WEAPONS(S) ☐ NONE ☒ RECOVERED ☒ YES ☒ USED ☐ STOLEN PROP. INVENTORY NOS. 1537249 DESCRIPTION Black Plastic Starter Pistol (Toy gun)

GANG AFFILIATION None RIGHTS GIVEN Yes STATEMENT(S) (ORAL/WRITTEN) Oral

ARRESTING/COURT OFFICER(S)			
RANK-NAME	STAR NO.	UNIT	D.O.B.
P.O. J. Hardaway	14233	022	7
P.O. M. Vogenthaler	19001	022	7

INVESTIGATION (BE SPECIFIC SUBSTANTIATE THE CHARGE(S), INCIDENT, ARREST(S), PROPERTY TAKEN/RECOVERED, STATEMENT. PREVIOUS HISTORY WILL BE LISTED AFTER NARRATIVE. CONTINUE ON REVERSE SIDE.)

P.O. A. Noren # 10629
P.O. Janiszewski # 7007
P.O. J. Kupczak #6132
P.O. P. Madden #11924
Sgt. J. Coghlan #1411
Det. J. Hamilton # 20945
Det. Bagden # 20551

Justin Porter, Cameron Ratcliff and Bennie Gipson were arrested for Attempt Armed Robbery by the arresting officer's after they were alerted to the Attempt Robbery by the victim calling on her cellular phone from her car. Arresting officer's apprehended immediately Justin Porter and Cameron Ratcliff and They were both positively identified by the victim as the one's who tried to take her car at gun point. A small starter pistol was recovered and inventoried by the arresting officer's under Inventory #1537249, inventoried was a Toy Gun, A small black starter pistol. A short time later tactical officer's learned of the third offender's location and found him at his residence was Bennie Gipson. He was also identified by the victim in that only that one difference was that he changed his shirt. Victim related to the arresting officer that after leaving a friends house she was walking to her auto and she noticed that she was being observed by the offender's. Victim waited until the offender's were out of sight before she drove off and as she got to the intersection of 110th and Hoyne the offender's jumped out (Continued on Back)

PREPARED BY-NAME	STAR NO.	APPROVED BY-NAME	STAR NO.
Y.O. Gurtatowski	17609	Sgt. Willis #	1754

CPD-24.11018/831

2087 F-850 P 008/018

2889 745 6832

From-ALPHA/YOUTH DIV CPD

13:47 Oct-29-92

000493

continued from page 1-

from some bushes and surrounded her car. Justin Porter approached the drivers door and pointed a blue steel handgun at her as he opened the left driver's door. Victim also related that she heard someone thumping on her hood of her vehicle and that Justin Porter told her to get out, because he was taking her car. At that point the victim drove off and alerted the police and subsequently all were taken into custody, advised of their rights and transported to the 022nd district for processing.

R/YO Again spoke to the complainant and she related the same facts of the incident and also again described each of the 3 offenders and what parts they had in the incident which were the same facts as reported to the police.

R/YO then advised all three offender's of their rights simultaneously to Jason Porter, Bennie Gipson and Cameron Ratcliff. Bennie Gipson refused to give a statement at this time but both Justin Porter and Cameron Ratcliff gave the following statements.

Cameron Ratcliff stated that he did not have anything to do with the Robbery but he did say he saw Justin Porter point a gun at the victim while he tried to open her car door and heard him say that he wanted her car and to get out. R/YO asked if he was with Bennie and Justin and knew if Justin had a gun prior to them going up to the vehicle and he stated that he knew Justin had the gun, and that they were just playing.

Justin Porter then stated to R/YO that he did in fact point the gun at the victim and demand her vehicle and that they were just playing.

Bennie Gipson gave no statement as to what had occurred or his part in the incident

Prior History:

Justin Porter - None

Cameron Ratcliff- None

Bennie Gipson- 1 ADJ- 01FEB92-Shoplifting

Y.O. Gurtatowski A/2 Youth Z-415843

C. Gurtatowski #7609

95JD15824 PORTER

JUSTIN

0055 AA7372 95JD15824

C001 ROBBERY, ARMED

PORTER JUSTIN

10/02/1995 1ST COURT DATE

10/06/1995 09:00

0055

0055

PORTER JUSTIN
10/06/1995 CASE ASSIGNED FROM JUDGE
SUMNER, THOMAS R 0055

PORTER JUSTIN
10/06/1995 CASE REASGN INSTAND NEW JUDGE
SUMNER, THOMAS R 0055 0052

PORTER JUSTIN
10/06/1995 PUB DEF APPT AS ATTY FOR DEF
DEMPSEY, JULIA Q 0052

PAGE NO: _____ ACT DATE: _____ PF3=MENU PF7=BACK PF8=FWD CLEAR=EXIT
PAGE 1 OF 9 FOR CASE 95JD15824

PORTER JUSTIN
10/06/1995 WAIVE FORMAL READING OF PET
DEMPSEY, JULIA Q 0052

PORTER JUSTIN
10/06/1995 DENIAL OF CHARGES
DEMPSEY, JULIA Q 0052

PORTER JUSTIN
10/06/1995 STIPULATION TO FACTS
DEMPSEY, JULIA Q 0052

PORTER JUSTIN
10/06/1995 STIP TO JUVENILE JURISDICTION
DEMPSEY, JULIA Q 0052

PAGE NO: PAGE 2 OF ACT DATE: 9 FOR CASE 95JD15824 PFS=MENU PF7=BACK PFS=FWD CLEAR=EXIT

PORTER JUSTIN
10/06/1995 RESTRAINING ORDER ENTERED
DEMPSEY, JULIA Q 0052

PORTER JUSTIN
10/06/1995 MUTUAL DISCOVERY
DEMPSEY, JULIA Q 0052

PORTER JUSTIN
10/06/1995 ORDER AMEND COMPLAINT OR PETIT
DEMPSEY, JULIA Q 0052

PORTER JUSTIN
10/06/1995 FOR TRIAL
DEMPSEY, JULIA Q 0052

PAGE NO: PAGE 3 OF ACT DATE: 9 FOR CASE 95JD15824 PF3=MENU PF7=BACK PF8=FWD CLEAR=EXIT

PORTER JUSTIN
10/06/1995 CONTINUED TO
DEMPSEY, JULIA Q

0052

0052

01/31/1996 09:00

PORTER JUSTIN
01/31/1996 DENIAL WITHDRAWN
DEMPSEY, JULIA Q

0052

PORTER JUSTIN
01/31/1996 RESPONDENT DEMANDS TRIAL (RDT)
DEMPSEY, JULIA Q

0052

PORTER JUSTIN
01/31/1996 ADMISSION (GUILT)
DEMPSEY, JULIA Q

0052

PAGE NO: _____ ACT DATE: _____ PF3=MENU PF7=BACK PF8=FWD CLEAR=EXIT
PAGE 4 OF 9 FOR CASE 95JD15824

PORTER JUSTIN
01/31/1996 ORDER AMEND COMPLAINT OR PETIT
DEMPSEY, JULIA Q 0052

PORTER JUSTIN
01/31/1996 FINDING OF DELINQUENCY
DEMPSEY, JULIA Q 0052

PORTER JUSTIN
01/31/1996 FINDING BEST INTEREST
DEMPSEY, JULIA Q 0052

PORTER JUSTIN
01/31/1996 SOCIAL INVESTIGATION ORDERED
DEMPSEY, JULIA Q 0052

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PORTER JUSTIN
01/31/1996 CONTINUED FOR DISP
DEMPSEY, JULIA Q 0052

PORTER JUSTIN
01/31/1996 DISMISS A SPECIFIC CHG OR COUNT
DEMPSEY, JULIA Q 0052

C001

PORTER JUSTIN
01/31/1996 CONTINUED TO
DEMPSEY, JULIA Q 0052 0052 03/06/1996 09:00

PORTER JUSTIN
03/06/1996 MINOR PLACED ON PROBATION
HAYES, MARSHA D. 0052 00100000

PAGE NO: _____ ACT DATE: _____ PF3=MENU PF7=BACK PF8=FWD CLEAR=EXIT
PAGE 6 OF 9 FOR CASE 95JD15824

Oct-29-92 01:07pm From-JUV CRT YOUTH CHICAGO PD

+312 433 6654

T-564 P.008/010 P-682

PORTER JUSTIN
03/06/1996 COMMUNITY SERVICE
HAYES, MARSHA D. 0052

PORTER JUSTIN
03/06/1996 CASE ASSIGNED FROM JUDGE
HAYES, MARSHA D. 0052 0052

PORTER JUSTIN
03/06/1996 CASE REASSIGNED TO NEW JUDGE
HAYES, MARSHA D. 0052 0055

PORTER JUSTIN
03/06/1996 CONTINUED TO 03/05/1997 09:00
HAYES, MARSHA D. 0052 0055

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PORTER JUSTIN
03/11/1996 NOTICE OF MOTION FILED
0055 0055 NW 00000002
03/05/1997 09:00

PORTER JUSTIN
03/11/1996 AFFIDAVIT
0055 0055 LR 00000002

PORTER JUSTIN
03/11/1996 MOTION
0055 VACATE NW 00000002

PORTER JUSTIN
03/05/1997 PROBATION TERM SATISFACTORILY
MIRANDA, DANIEL R. 0055

PAGE NO: ACT DATE: PF3=MENU PF7=BACK PF8=FWD CLEAR=EXIT
PAGE 8 OF 9 FOR CASE 95JD15824

Oct-28-02 01:07pm From-JUV CRT YOUTH CHICAGO PD

+312 433 6654

T-564 P.010/010 F-682

PORTER JUSTIN
03/05/1997 WARDSHIP TERM
MIRANDA, DANIEL R.

0055

PORTER JUSTIN
03/05/1997 PROCEEDINGS CLOSED
MIRANDA, DANIEL R.

0055

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03/05/1997 09:00

*** END OF DATA FOR 95JD15824 ***

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10/28/2002 11:26 FAX 3840146

DA CRIMINAL DIVISION

AUG-21-08 15:28 From: AREA 04 DETECTIVE-CHICAGO PD

+3127464012

Y-728 P 03/03

0004
Feb-199

271

JUVENILE INFORMATION

600

10 MORE SUMMARY INFORMATION

NAME: LAST PORTER

FIRST JUSTIN

MIDDLE

CK-JUV CRT CLK RECORDED

YD - Y 0283421

FINAL

DATE DISP OFFENSE

IO RD COURT
NUMBER DISP

21OCT94 CCR

04SEP95 REF ATT ARMED ROBBERY

31JAN96 CK ROBBERY, ARMED

06MAR96 CK ROBBERY, ARMED

22AUG96 ADJ ATTEMPT THEFT

18MAR98 ADJ THEFT

2415843

2415843 FINDING OF DELINQUENT

2415843 MINOR PLACED ON PROB

2616908

C901267

JUV 312-745-6004

BAIKIE, JENNIFER

*** TX REPORT ***

TRANSMISSION OK

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CONNECTION TEL		4555112
CONNECTION ID	CLARK CO. PUBLIC	
ST. TIME	11/18 17:07	
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PGS. SENT	36	
RESULT	OK	

1 **OPPS**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 JUSTIN D. PORTER
12 aka Jug Capri Porter,
13 #1682627

14 Defendant.

Case No. C174954
Dept. No. XVI

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO REMAND THE CASE**
16 **TO JUVENILE COURT AND CONDUCT A HEARING AS TO WHETHER**
17 **HE SHOULD BE CERTIFIED AS AN ADULT**

18 DATE OF HEARING: 11-26-02
19 TIME OF HEARING: 9:00 A.M.

20 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney,
21 through DOUGLAS W. HERNDON, Chief Deputy District Attorney, and files this
Opposition to Defendant's Motion to Remand the Case to Juvenile Court and Conduct a

000505

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cop

No. 54866

Appellant,

vi.

THE STATE OF NEVADA,

Respondent.

PHILIP J. KOHN
Clark County Public Defender
309 South Third Street
Las Vegas, Nevada 89155-2610
Attorney for Appellant

DAVID ROGER
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

CATHERINE CORTEZ MASTO
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538
Counsel for Respondent

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 19th day of April, 2010. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO

CATHERINE CORTEZ MASTO
STEVEN S. OWENS

HOWARD S. BROOKS
PHILIP JAY KOHN

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

JUSTIN JUG CAPRI PORTER
c/o High Desert State Prison
P.O. Box 650
Indian Springs, NV 89018

BY

Employee, Clark County Public
Defender's Office

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JUSTIN PORTER
Case No. 54866

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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JUSTIN D. PORTER, aka Judg Capri Porter,
#1682627

Defendant.

Case No. C174954
Dept. No. XVI

SECOND
AMENDED
INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK }ss:

STEWART L. BELL, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That JUSTIN D. PORTER, aka Judg Capri Porter, the Defendant(s) above named, having committed the crimes of BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Felony - NRS 205.060, 193.165), FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (Felony - NRS 200.310, 200.320, 193.165), SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON (Felony - NRS 200.364, 200.366, 193.165), ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380, 193.165), FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON WITH SUBSTANTIAL BODILY HARM (Felony - NRS 200.310, 200.320, 193.165), SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON WITH SUBSTANTIAL BODILY HARM (Felony - NRS 200.364,

COUNTY CLERK

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1 200.366, 193.165), ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Felony -
2 NRS 200.010, 200.030, 193.330, 193.165), FIRST DEGREE ARSON (Felony - NRS 205.010),
3 SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON, VICTIM 65 YEARS OF AGE
4 OR OLDER (Felony - NRS 200.364, 200.366, 193.165, 193.167), ROBBERY WITH USE OF
5 A DEADLY WEAPON, VICTIM 65 YEARS OF AGE OR OLDER (Felony - NRS 200.380,
6 193.165, 193.167), ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Felony -
7 NRS 200.380, 193.165, 193.330), MURDER WITH USE OF A DEADLY WEAPON (OPEN
8 MURDER), (Felony - NRS 200.010, 200.030, 193.165) and BATTERY WITH USE OF A
9 DEADLY WEAPON (Felony - NRS 200.481), on or between February 1, 2000 and June 9,
10 2000, within the County of Clark, State of Nevada, contrary to the form, force and effect of
11 statutes in such cases made and provided, and against the peace and dignity of the State of
12 Nevada,

13 COUNT I - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

14 did, on or about February 1, 2000, then and there wilfully, unlawfully, and feloniously
15 enter, while in possession of a deadly weapon, to wit: a knife, with intent to commit larceny,
16 and/or a felony, to wit: sexual assault and/or robbery and/or any other felony, that certain
17 building occupied by TERESA TYLER, located at 2895 East Charleston Boulevard, Apartment
18 No. 1016 therein, Las Vegas, Clark County, Nevada.

19 COUNT II - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

20 did, on or about February 1, 2000, wilfully, unlawfully, feloniously, and without authority
21 of law, seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away TERESA
22 TYLER, a human being, with the intent to hold or detain the said TERESA TYLER, against her
23 will, and without her consent, for the purpose of committing robbery and/or sexual assault, said
24 Defendant using a deadly weapon, to wit: a knife, during the commission of said crime.

25 COUNT III - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

26 did, on or about February 1, 2000, then and there wilfully, unlawfully, and feloniously
27 sexually assault and subject TERESA TYLER, a female person, to sexual penetration, to-wit:
28 sexual intercourse, by inserting his penis into the vagina of the said TERESA TYLER, against

1 her will, said Defendant using a deadly weapon, to wit: a knife, during the commission of said
2 crime.

3 COUNT IV - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

4 did, on or about February 1, 2000, then and there wilfully, unlawfully, and feloniously
5 sexually assault and subject TERESA TYLER, a female person, to sexual penetration, to-wit:
6 sexual intercourse, by inserting his penis into the vagina of the said TERESA TYLER, against
7 her will, said Defendant using a deadly weapon, to wit: a knife, during the commission of said
8 crime.

9 COUNT V - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

10 did, on or about February 1, 2000, then and there wilfully, unlawfully, and feloniously
11 sexually assault and subject TERESA TYLER, a female person, to sexual penetration, to-wit:
12 fellatio, by placing his penis in or on the mouth of the said TERESA TYLER, against her will,
13 said Defendant using a deadly weapon, to wit: a knife, during the commission of said crime.

14 COUNT VI - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

15 did, on or about February 1, 2000, then and there wilfully, unlawfully, and feloniously
16 sexually assault and subject TERESA TYLER, a female person, to sexual penetration, to-wit:
17 fellatio, by placing his penis in or on the mouth of the said TERESA TYLER, against her will,
18 said Defendant using a deadly weapon, to wit: a knife, during the commission of said crime.

19 COUNT VII - ROBBERY WITH USE OF A DEADLY WEAPON

20 did, on or about February 1, 2000, then and there wilfully, unlawfully, and feloniously
21 take personal property, to wit: lawful money of the United States, from the person of TERESA
22 TYLER, or in her presence, by means of force or violence or fear of injury to, and without the
23 consent and against the will of the said TERESA TYLER, said Defendant using a deadly
24 weapon, to wit: a knife, during the commission of said crime.

25 COUNT VIII - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

26 did, on or about March 7, 2000, then and there wilfully, unlawfully, and feloniously
27 enter, while in possession of a deadly weapon, to wit: scissors and/or a knife, with intent to
28 commit larceny, and/or a felony, to wit: sexual assault and/or robbery and/or any other felony,

1 that certain building occupied by LEONA CASE, located at 2900 East Charleston Boulevard,
2 Apartment No. 50 therein, Las Vegas, Clark County, Nevada.

3 COUNT IX - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON WITH
4 SUBSTANTIAL BODILY HARM

5 did, on or about March 7, 2000, wilfully, unlawfully, feloniously, and without authority
6 of law, seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away LEONA
7 CASE, a human being, with the intent to hold or detain the said LEONA CASE, against her
8 will, and without her consent, for the purpose of committing robbery and/or sexual assault, said
9 Defendant using a deadly weapon, to wit: a knife, during the commission of said crime, resulting
10 in substantial bodily harm to the said LEONA CASE.

11 COUNT X - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON WITH
12 SUBSTANTIAL BODILY HARM

13 did, on or about March 7, 2000, then and there wilfully, unlawfully, and feloniously
14 sexually assault and subject LEONA CASE, a female person, to sexual penetration, to-wit:
15 sexual intercourse, by inserting his penis into the vagina of the said LEONA CASE, against her
16 will, said Defendant using a deadly weapon, to wit: a knife, during the commission of said crime,
17 resulting in substantial bodily harm to the said LEONA CASE.

18 COUNT XI- ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

19 did, on or about March 7, 2000, then and there, without authority of law, and with
20 premeditation and deliberation, and with malice aforethought, wilfully and feloniously attempt
21 to kill LEONA CASE, a human being, by stabbing at or into the body of the said LEONA CASE
22 with a deadly weapon, to wit: a knife, and by choking the said LEONA CASE around the neck
23 with a phone cord, and/or by the Defendant thereafter locking LEONA CASE in her bathroom
24 and setting her apartment on fire, said Defendant using a deadly weapon, to wit: knife, during
25 the commission of said crime.

26 COUNT XII - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON WITH
27 SUBSTANTIAL BODILY HARM

28 did, on or about March 7, 2000, then and there wilfully, unlawfully, and feloniously

1 sexually assault and subject LEONA CASE, a female person, to sexual penetration, to-wit:
2 sexual intercourse, by inserting his penis into the vagina of the said LEONA CASE, against her
3 will, said Defendant using a deadly weapon, to wit: a knife, during the commission of said
4 crime, resulting in substantial bodily harm to the said LEONA CASE.

5 COUNT XIII - ROBBERY WITH USE OF A DEADLY WEAPON

6 did, on or about March 7, 2000, then and there wilfully, unlawfully, and feloniously take
7 personal property, to wit: lawful money of the United States and/or jewelry and/or food stamps,
8 from the person of LEONA CASE, or in her presence, by means of force or violence or fear of
9 injury to, and without the consent and against the will of the said LEONA CASE, said Defendant
10 using a deadly weapon, to wit: a knife, during the commission of said crime.

11 COUNT XIV- FIRST DEGREE ARSON

12 did, on or about March 7, 2000, then and there willfully, unlawfully, maliciously and
13 feloniously set fire to, and thereby cause to be burned, a certain apartment, located at 2900 East
14 Charleston Boulevard, Apartment No. 50 therein, Las Vegas, Clark County, Nevada, said
15 property being then and there the property of LEONA CASE, by use of open flame and
16 flammable and/or combustible materials, and/or by manner or means unknown.

17 COUNT XV -BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

18 did, on or about March 25, 2000, then and there wilfully, unlawfully, and feloniously
19 enter, while in possession of a deadly weapon, to wit: a knife, with intent to commit larceny,
20 and/or a felony, to wit: sexual assault and/or robbery and/or any other felony, that certain
21 building occupied by RAMONA LEYVA, located at 600 East Bonanza Avenue, Apartment No.
22 114 therein, Las Vegas, Clark County, Nevada.

23 COUNT XVI - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

24 did, on or about March 25, 2000, wilfully, unlawfully, feloniously, and without authority
25 of law, seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away RAMONA
26 LEYVA, a human being, with the intent to hold or detain the said RAMONA LEYVA, against
27 her will, and without her consent, for the purpose of committing robbery and/or sexual assault,
28 said Defendant using a deadly weapon, to wit: a knife, during the commission of said crime.

1 COUNT XVII - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

2 did, on or about March 25, 2000, then and there wilfully, unlawfully, and feloniously
3 sexually assault and subject RAMONA LEYVA, a female person, to sexual penetration, to-wit:
4 sexual intercourse, by inserting his penis into the vagina of the said RAMONA LEYVA, against
5 her will, said Defendant using a deadly weapon, to wit: a knife, during the commission of said
6 crime.

7 COUNT XVIII - ROBBERY WITH USE OF A DEADLY WEAPON

8 did, on or about March 25, 2000, then and there wilfully, unlawfully, and feloniously take
9 personal property, to wit: car keys and/or a 1980 Buick, bearing Nevada license no. 657 KMC,
10 from the person of RAMONA LEYVA, or in her presence, by means of force or violence or fear
11 of injury to, and without the consent and against the will of the said RAMONA LEYVA, said
12 Defendant using a deadly weapon, to wit: a knife, during the commission of said crime.

13 COUNT XIX -BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

14 did, on or about April 4, 2000, then and there wilfully, unlawfully, and feloniously enter,
15 while in possession of a deadly weapon, to wit: a knife, with intent to commit larceny, and/or
16 a felony, to wit: sexual assault and/or robbery and/or any other felony, that certain building
17 occupied by MARLENE LIVINGSTON, located at 2301 Clifford, Las Vegas, Clark County,
18 Nevada.

19 COUNT XX - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON, VICTIM 65
20 YEARS OF AGE OR OLDER

21 did, on or about April 4, 2000, then and there wilfully, unlawfully, and feloniously
22 sexually assault and subject MARLENE LIVINGSTON, a female person being 65 years of age
23 or older, to sexual penetration, to-wit: fellatio, by placing his penis in or on the mouth of the
24 said MARLENE LIVINGSTON, against her will, said Defendant using a deadly weapon, to wit:
25 a knife, during the commission of said crime.

26 COUNT XXI - ROBBERY WITH USE OF A DEADLY WEAPON, VICTIM 65 YEARS OF
27 AGE OR OLDER

28 did, on or about April 4, 2000, then and there wilfully, unlawfully, and feloniously take

1 personal property, to wit: lawful money of the United States and/or jewelry and/or car keys
2 and/or a 1991 Dodge, bearing Nevada license no. 728 ENB, from the person of MARLENE
3 LIVINGSTON, a person 65 years of age or older, or in her presence, by means of force or
4 violence or fear of injury to, and without the consent and against the will of the said MARLENE
5 LIVINGSTON, said Defendant using a deadly weapon, to wit: a knife, during the commission
6 of said crime.

7 COUNT XXII -BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

8 did, on or about April 12, 2000, then and there wilfully, unlawfully, and feloniously
9 enter, while in possession of a deadly weapon, to wit: a knife, with intent to commit larceny,
10 and/or a felony, to wit: sexual assault and/or robbery and/or any other felony, that certain
11 building occupied by CLARENCE AND FRANCIS RUMBAUGH, located at 436 North 12th
12 Street, Apartment No. B therein, Las Vegas, Clark County, Nevada.

13 COUNT XXIII - ROBBERY WITH USE OF A DEADLY WEAPON, VICTIM 65 YEARS OF
14 AGE OR OLDER

15 did, on or about April 12, 2000, then and there wilfully, unlawfully, and feloniously take
16 personal property, to wit: lawful money of the United States, from the person of CLARENCE
17 RUMBAUGH, a person 65 years of age or older, or in his presence, by means of force or
18 violence or fear of injury to, and without the consent and against the will of the said
19 CLARENCE RUMBAUGH, said Defendant using a deadly weapon, to wit: a knife, during the
20 commission of said crime.

21 COUNT XXIV - ROBBERY WITH USE OF A DEADLY WEAPON, VICTIM 65 YEARS
22 OF AGE OR OLDER

23 did, on or about April 12, 2000, then and there wilfully, unlawfully, and feloniously take
24 personal property, to wit: lawful money of the United States, from the person of FRANCIS
25 RUMBAUGH, a person 65 years of age or older, or in her presence, by means of force or
26 violence or fear of injury to, and without the consent and against the will of the said FRANCIS
27 RUMBAUGH, said Defendant using a deadly weapon, to wit: a knife, during the commission
28 of said crime.

1 COUNT XXV -BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

2 did, on or about June 6, 2000, then and there wilfully, unlawfully, and feloniously enter,
3 while in possession of a deadly weapon, to wit: a knife, with intent to commit larceny, and/or
4 a felony, to wit: sexual assault and/or robbery and/or any other felony, that certain building
5 occupied by LEROY FOWLER, located at 1121 East Ogden, Apartment No. 9 therein, Las
6 Vegas, Clark County, Nevada.

7 COUNT XXVI -BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

8 did, on or about June 7, 2000, then and there wilfully, unlawfully, and feloniously enter,
9 while in possession of a deadly weapon, to wit: a knife, with intent to commit larceny, and/or
10 a felony, to wit: sexual assault and/or robbery and/or any other felony, that certain building
11 occupied by JONI HALL, located at 624 North 13th Street, Apartment No. B therein, Las
12 Vegas, Clark County, Nevada.

13 COUNT XXVII - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

14 did, on or about June 7, 2000, wilfully, unlawfully, feloniously, and without authority of
15 law, seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away JONI HALL,
16 a human being, with the intent to hold or detain the said JONI HALL, against her will, and
17 without her consent, for the purpose of committing robbery and/or sexual assault, said Defendant
18 using a deadly weapon, to wit: a knife, during the commission of said crime.

19 COUNT XXVIII - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

20 did, on or about June 7, 2000, then and there wilfully, unlawfully, and feloniously
21 sexually assault and subject JONI HALL, a female person, to sexual penetration, to-wit: sexual
22 intercourse, by inserting his penis into the vagina of the said JONI HALL, against her will, said
23 Defendant using a deadly weapon, to wit: a knife, during the commission of said crime.

24 COUNT XXIX - ROBBERY WITH USE OF A DEADLY WEAPON

25 did, on or about June 7, 2000, then and there wilfully, unlawfully, and feloniously take
26 personal property, to wit: a Westinghouse color television and/or a Lenox portable CD player
27 and/or a baby stroller, from the person of JONI HALL, or in her presence, by means of force or
28 violence or fear of injury to, and without the consent and against the will of the said JONI

1 HALL, said Defendant using a deadly weapon, to wit: a knife, during the commission of said
2 crime.

3 COUNT XXX - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

4 did, on or about June 8, 2000, then and there wilfully, unlawfully, and feloniously enter,
5 while in possession of a deadly weapon, to wit: a gun, with intent to commit larceny, and/or a
6 felony, to wit: sexual assault and/or robbery and/or any other felony, that certain building
7 occupied by GYALTSO LUNGTOK, located at 415 South 10th Street, Apartment No. H
8 therein, Las Vegas, Clark County, Nevada.

9 COUNT XXXI - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

10 did, on or about June 8, 2000, then and there wilfully, unlawfully, and feloniously attempt
11 to take personal property, to wit: lawful money of the United States and/or jewelry and/or any
12 other property of GYALTSO LUNGTOK, from the person of GYALTSO LUNGTOK, or in his
13 presence, by means of force or violence or fear of injury to, and without the consent and against
14 the will of the said GYALTSO LUNGTOK, said Defendant using a deadly weapon, to wit: a
15 gun, during the commission of said crime.

16 COUNT XXXII - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

17 did, on or about June 8, 2000, then and there wilfully, feloniously, without authority of
18 law, and with premeditation and deliberation and malice aforethought, kill GYALTSO
19 LUNGTOK, a human being, by shooting at and into the body of the said GYALTSO
20 LUNGTOK with use of a deadly weapon, to-wit: a gun, the Defendant being responsible under
21 one or more of the following theories of criminal liability, to-wit: 1)Premeditation and
22 deliberation: by the Defendant directly committing said felony offense as the perpetrator, and/or
23 2) Felony murder: by the Defendant committing said felony offense during the perpetration or
24 attempted perpetration of the crime(s) of burglary and/or robbery.

25 COUNT XXXIII -BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

26 did, on or about June 9, 2000, then and there wilfully, unlawfully, and feloniously enter,
27 while in possession of a deadly weapon, to wit: a gun, with intent to commit larceny, and/or a
28 felony, to wit: sexual assault and/or robbery and/or any other felony, that certain building

1 occupied by LAURA ZAZUETA, GUADALUPE LOPEZ and BEATRIZ ZAZUETA, located
2 at 2830 East Cedar, Apartment No. 229 therein, Las Vegas, Clark County, Nevada.

3 COUNT XXXIV - ROBBERY WITH USE OF A DEADLY WEAPON

4 did, on or about June 9, 2000, then and there wilfully, unlawfully, and feloniously take
5 personal property, to wit: lawful money of the United States, from the person of LAURA
6 ZAZUETA, or in her presence, by means of force or violence or fear of injury to, and without
7 the consent and against the will of the said LAURA ZAZUETA, said Defendant using a deadly
8 weapon, to wit: a gun, during the commission of said crime.

9 COUNT XXXV - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

10 did, on or about June 9, 2000, then and there wilfully, unlawfully, and feloniously attempt
11 to take personal property, to wit: lawful money of the United States and/or jewelry and/or any
12 other property of LAURA ZAZUETA, GUADALUPE LOPEZ and/or BEATRIZ ZAZUETA,
13 from the person of GUADALUPE LOPEZ, or in his presence, by means of force or violence or
14 fear of injury to, and without the consent and against the will of the said GUADALUPE LOPEZ,
15 said Defendant using a deadly weapon, to wit: a gun, during the commission of said crime.

16 COUNT XXXVI - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

17 did, on or about June 9, 2000, then and there wilfully, unlawfully, and feloniously attempt
18 to take personal property, to wit: lawful money of the United States and/or jewelry and/or any
19 other property of LAURA ZAZUETA, GUADALUPE LOPEZ and/or BEATRIZ ZAZUETA,
20 from the person of BEATRIZ ZAZUETA, or in her presence, by means of force or violence or
21 fear of injury to, and without the consent and against the will of the said BEATRIZ ZAZUETA,
22 said Defendant using a deadly weapon, to wit: a gun, during the commission of said crime.

23 COUNT XXXVII- ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

24 did, on or about June 9, 2000, then and there, without authority of law, and with
25 premeditation and deliberation, and with malice aforethought, wilfully and feloniously attempt
26 to kill GUADALUPE LOPEZ, a human being, by pointing a gun at the body of the said
27 GUADALUPE LOPEZ, the Defendant thereafter putting the gun to the forehead of the said
28 GUADALUPE LOPEZ and threatening to "start blasting" if he did not receive money, the

1 Defendant thereafter firing approximately three shots at the said GUADALUPE LOPEZ, striking
2 him once in the leg, the defendant using a deadly weapon, to wit: a gun, during the commission
3 of said crime.

4 COUNT XXXVIII - BATTERY WITH USE OF A DEADLY WEAPON

5 did, on or about June 9, 2000, then and there, wilfully, unlawfully, and feloniously use
6 force and violence upon the person of another, to wit: GUADALUPE LOPEZ, with use of a
7 deadly weapon, to wit: a gun, by the Defendant shooting a gun at the said GUADALUPE
8 LOPEZ, striking him in the leg.

9 STEWART L. BELL
10 DISTRICT ATTORNEY
Nevada Bar #000477

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13 BY 
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DOUGLAS HERNDON
Chief Deputy District Attorney
Nevada Bar #004286

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LVMPD EV#0002012429/0003070141

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0005090185/0006050305/0006-60165/0006070313

26 0006090140/0006101143/0007120766

BURGWDW; FIRST KID. WDW, SAWDW, ROBBWDW, ATT. MURDER WDW,

27 FIRST ARSON WDW, FIRST KID. WDW WSBH, SAWDWWSBH,

28 FIRST KID. WDWVO65, SAWDWVO65, ROBBWDWVO65, MURDERWDW, BWDW
(TK6)

Pages 366-368

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MARCUS D. COOPER, PUBLIC DEFENDER
Nevada Bar #2290
309 So. Third St., Suite #226
Las Vegas, NV 89155
(702) 455-4685
Attorney for Defendant

2002 SEP 26 1A 9:29

Shirley B. Pangione
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
JUG CAPRI PORTER aka)
JUSTIN PORTER,)
)
Defendant.)

CASE NO. C174954
DEPT. NO. XVI
DATE: 10-¹⁴~~07~~ 02
TIME: 8:45 a.m.

**JUSTIN PORTER'S MOTION TO REMAND THE
CASE TO JUVENILE COURT AND CONDUCT A HEARING
AS TO WHETHER HE SHOULD BE CERTIFIED AS AN ADULT**

Comes Now Defendant JUSTIN PORTER, by and through
Deputy Public Defenders JOSEPH K. ABOOD and CURTIS S. BROWN, and
files this Motion to Remand the Case to Juvenile Court and
Conduct a Hearing as to Whether He Should Be Certified as an
Adult.

This Motion is based upon the attached the Memorandum
of Points and Authorities, the pleadings and papers on file
herein and any oral argument allowed at the time of hearing on
this matter.

DATED this 25 day of September, 2002.

CLARK COUNTY PUBLIC DEFENDER CLARK COUNTY PUBLIC DEFENDER

By: *Curtis Brown*
CURTIS BROWN
Nevada Bar #4546
Deputy Public Defender

By: *Joseph K. Abood*
JOSEPH K. ABOOD
Nevada Bar #4501
Deputy Public Defender

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COUNTY CLERK

1 On March 7, 2000, Leona Case reported that she had been
2 the victim of a series of crimes. A crime report was taken under
3 Event Number 000307-0141. Investigation revealed that a black
4 male knocked on her door and asked her to use the telephone. She
5 refused. A few minutes later the suspect allegedly kicked in her
6 front door, entered her apartment and began striking her in the
7 face demanding cash and valuables. He took Forty-Four Dollars
8 (\$44.00) and a ring belonging to Ms. Case. He then allegedly
9 forced her to undress by threatening her with a pair of scissors.
10 Sexually assaulted her and then attempted to strangle her with an
11 electrical cord. Ms. Case was then stabbed with a kitchen knife.
12 She was then barricaded inside of her bathroom and her apartment
13 was set on fire.

14 The Second Amended Information charges Mr. PORTER with
15 the following crimes based on the above allegations:

16 VIII. Burglary While in Possession of a
17 Deadly Weapon.

18 IX. First Degree Kidnaping With Use of a
19 Deadly Weapon With Substantial Bodily
20 Harm.

21 X. Sexual Assault With Use of a Deadly
22 Weapon With Substantial Bodily Harm.

23 XI. Attempt Murder With Use of a Deadly
24 Weapon.

25 XII. Sexual Assault With Use of a Deadly
26 With Substantial Bodily Harm.

27 XIII. Robbery With Use of a Deadly
28 Weapon.

 XIV. First Degree Arson.

 On March 25, 2000, Ms. Ramona Leyva reported a series
of crimes under Event Number 000325-2971. Investigation revealed

1 that a black male kicked in her door while she was in the
2 bathroom. He grabbed Ms. Leyva by the back of the hair and
3 dragged her into the main living area. He then retrieved a
4 kitchen knife from her kitchen and threatened to kill her.
5 Placed her on her bed and sexually assaulted her. He then took
6 her vehicle keys and departed in her vehicle.

7 The Second Amended Information charges Mr. PORTER with
8 the following crimes based on the above allegations:

9 XV. Burglary While in Possession of a
10 Deadly Weapon.

11 XVI. First Degree Kidnaping With Use of a
Deadly Weapon.

12 XVII. Sexual Assault With Use of a
13 Deadly Weapon.

14 XVIII. Robbery With Use of a Deadly
Weapon.

15 On April 4, 2000, Ms. Marlene Livingston reported a
16 series of crimes under Event Number 000404-0324. Investigation
17 revealed that a black male kicked in her apartment door and
18 entered with a knife in his hand. He took money and other
19 valuables from Ms. Livingston and forced her to perform fellatio
20 on him. He then fled in Ms. Livingston's vehicle.

21 Counts XIX through XXI charge crimes against Marlene
22 Livingston:

23 XIX. Burglary While in Possession of a
24 Deadly Weapon.

25 XX. Sexual Assault With Use of a Deadly
Weapon Victim 65 Year of Age or Older.

26 XXI. Robbery With Use of a Deadly Weapon
27 Victim 65 Years of Age or Older.

28 On April 12, 2000, Francis and Clarence Rumbaugh

1 reported crimes under Event Number 000412-2745. Investigation
2 revealed that a black male entered the Rumbaugh's apartment
3 through an unlocked screen door pushing Mr. Rumbaugh to the
4 ground. He then cut the telephone cord in the kitchen area with
5 a knife he retrieved from the Rumbaugh's kitchen. The suspect
6 then allegedly searched through the apartment and took Eighty
7 Dollars (\$80.00) from Mr. Rumbaugh.

8 Counts XXII through XIV charge crimes against Clarence
9 and/or Francis Rumbaugh:

10 XXII. Burglary While in Possession of a
11 Deadly Weapon.

12 XXIII. Robbery With Use of a Deadly
13 Weapon Victim 65 Years of Age or
Older.

14 XXIV. Robbery With Use of a Deadly
15 Weapon Victim 65 Years of Age or
Older.

16 On June 6, 2000, Mr. Leroy Fowler became the victim of
17 a home invasion. A crime report for this incident was taken
18 under Event Number 000606-0165. Investigation revealed that a
19 black male kicked in Mr. Fowler's apartment door holding a knife.
20 Mr. Fowler began screaming at the suspect causing him to run out
21 of the apartment.

22 Count XXV charges a crime against Leroy Fowler:

23 XXV. Burglary While in Possession of a
24 Deadly Weapon.

25 On June 7, 2000, Ms. Joannie Hall reported a series of
26 crimes under Event Number 000607-0313. Investigation revealed
27 that a black male kicked in her apartment door and confronted Ms.
28 Hall in her bedroom. He was holding a knife in his right hand

1 and directed her around the apartment. He then performed various
2 sex acts with her and stole a number of items from her apartment.

3 These crimes make up the basis of Counts XXVI through
4 XXIX of the Second Amended Information.

5 Counts XXVI through XXIX charge crimes against Joannie
6 Hall:

7 XXVI. Burglary While in Possession of a
8 Deadly Weapon.

9 XXVII. First Degree Kidnaping With Use of
a Deadly Weapon.

10 XXVIII. Sexual Assault With Use of a
11 Deadly Weapon.

12 XXIX. Robbery With Use of a Deadly
Weapon.

13 On June 9, 2000, Guadalupe Lopez, Laura Zazueta and
14 Beatriz Zazueta were the victims of a series of crimes charged in
15 Counts XXXIII through XXXVIII of the Second Amended Information.
16 These crimes were reported under Event Number 000609-0140. They
17 allege that a black male entered their residence through an
18 unlocked front door in the middle of the night and demanded money
19 from Laura Zazueta. She directed the suspect to her sister's
20 room, Beatriz and her boyfriend Guadalupe Lopez. Guadalupe Lopez
21 grabbed at the suspect's gun and a struggle ensued. The suspect
22 fired three shots and Lopez was slightly injured. The suspect
23 then broke free and jumped out the front window.

24 Counts XXXIII through XXXVIII charge crimes against
25 Laura Zazueta, Guadalupe Lopez and/or Beatriz Zazueta:

26 XXXIII. Burglary While in Possession of a
27 Deadly Weapon.

28 XXXIV. Robbery With Use of a Deadly
Weapon.

1 XXXV. Attempt Robbery With Use of a
2 Deadly Weapon.

3 XXXVI. Attempt Robbery With Use of a
4 Deadly Weapon.

5 XXXVII. Attempt Robbery With Use of a
6 Deadly Weapon.

7 XXXVIII. Battery With Use of a Deadly
8 Weapon.

9 On June 10, 2000, Metro responded to a homicide at 415
10 South Tenth Street. The victim, Gyaltsso Lungtok was found dead
11 in his apartment having been shot numerous times. The front door
12 of the apartment had been kicked in and a footwear impression
13 revealed that the shoe brand name was Saucony. Forensic
14 Laboratory Manager Richard Goode determined that the firearm used
15 on June 9, 2000 against Guadalupe Lopez was the same as that used
16 against Gyaltsso Lungtok.

17 Counts XXX through XXXII charge crimes against Gyaltsso
18 Lungtok:

19 XXX. Burglary While in Possession of a
20 Deadly Weapon.

21 XXXI. Attempt Robbery With Use of a
22 Deadly Weapon.

23 XXXII. Murder With Use of a Deadly
24 Weapon. (Open Murder).

25 Defendant JUSTIN PORTER was charged as an adult for all
26 these crimes he is alleged to have committed, without a full
27 hearing, despite the fact that some of these offenses don't
28 qualify as the type which would allow his certification as an
adult.

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- 1 (3) Deserts, abandons
2 or runs away from
3 his home or usual
4 place of abode,
5 and is in need of
6 c a r e o r
7 rehabilitation.
8 The child must not
9 be considered a
10 delinquent.
- 11 (b) Concerning any child living
12 or found within the county
13 who has committed a
14 delinquent act. A child
15 commits a delinquent act if
16 he violates a county or
17 municipal ordinance or any
18 rule or regulation having the
19 force of law, or he commits
20 an act designated a crime
21 under the law of the State of
22 Nevada.
- 23 (c) Concerning any child in need
24 of commitment to an
25 institution for the mentally
26 retarded.
- 27 2. For the purposes of subsection 1, each
28 of the following acts shall be deemed
not to be a delinquent act, and the
court does not have jurisdiction of a
person who is charged with committing
such an act:
- (a) Murder or attempted murder
and any other related offense
arising out of the same facts
as the murder or attempted
murder, regardless of the
nature of the related
offense.
- (b) Sexual assault or attempted
sexual assault involving the
use or threatened use of
force or violence against the
victim and any other related
offense arising out of the
same facts as the sexual
assault or attempted sexual
assault, regardless of the
nature of the related
offense, if:

- 1 (1) The person was 16
2 years of age or
3 older when the
4 sexual assault or
5 attempted sexual
6 assault was
7 committed; and
- 8 (2) Before the sexual
9 assault or
10 attempted sexual
11 assault was
12 committed, the
13 person previously
14 had been
15 adjudicated
16 delinquent for an
17 act that would
18 have been a felony
19 if committed by an
20 adult.
- 21 (c) An offense or attempted
22 offense involving the use or
23 threatened use of a firearm
24 and any other related offense
25 arising out of the same facts
26 as the offense or attempted
27 offense involving the use or
28 threatened use of a firearm,
regardless of the nature of
the related offense, if:
- (1) The person was 16
years of age or
older when the
offense or
attempted offense
involving the use
or threatened use
of a firearm was
committed; and
- (2) Before the offense
or attempted
offense involving
the use or
threatened use of
a firearm was
committed, the
person previously
had been
adjudicated
delinquent for an
act that would
have been a felony

1 if committed by an
2 adult.

3 (d) A felony resulting in death
4 or substantial bodily harm to
5 the victim and any other
6 related offense arising out
7 of the same facts as the
8 felony, regardless of the
9 nature of the related
10 offense, if:

11 (1) The felony was
12 committed on the
13 property of a
14 public or private
15 school when pupils
16 or employees of
17 the school were
18 present or may
19 have been present,
20 at an activity
21 sponsored by a
22 public or private
23 school or on a
24 school bus while
25 the bus was
26 engaged in its
27 official duties;
28 and

(2) The person
intended to create
a great risk of
death or
substantial bodily
harm to more than
one person by
means of a weapon,
device or course
of action that
would normally be
hazardous to the
lives of more than
one person.

(e) Any other offense if, before
the offense was committed,
the person previously had
been convicted of a criminal
offense . . .

Although JUSTIN PORTER was a minor at the time of his
alleged crimes, he was arrested, housed, and charged as an adult

1 in District Court. No consideration was even given to Juvenile
2 Court proceedings for any of the crimes he is charged with.

3 The State has failed to follow proper procedures
4 required by the Juvenile statutes.

5 In Kent v. U.S., 383 U.S. 541 (1966), the Court stated
6 that it was improper to transfer that minor's case from juvenile
7 court to adult court without a hearing. The Court deemed the
8 waiver from juvenile court to be a "critically important" action
9 involving "vitally important statutory rights" of a juvenile
10 which required a hearing as a condition to a valid waiver. "We
11 do not consider whether, on the merits, Kent should have been
12 transferred; but there is no place in our system of law for
13 reaching a result of such tremendous consequence in that ceremony
14 - without hearing, without effective assistance of counsel,
15 without a statement of reasons." Id. at 554.

16 This sentiment was repeated in the similar case regarding
17 the rights of juveniles charged with crimes. In re: Gault, 387
18 U.S. 1, 30 (1967), the Court added in that case "we said that the
19 admonition to function in a 'parental' relationship is not an
20 invitation to procedural arbitrariness." Id. at 30.

21 NRS 62.080 Procedure when child 14 years or older is
22 charged with felony; certification for criminal proceedings
23 required under certain circumstances:

24 1. Except as otherwise provided in
25 subsection 2 and NRS 62.081, if:

26 (a) A child is charged with an
27 offense that would be a
28 felony if committed by an
adult; and

1 (b) The child was 14 years of age
2 or older at the time he
3 allegedly committed the
4 offense,

5 the juvenile court, upon a motion
6 by the district attorney and after
7 a full investigation, may retain
8 jurisdiction or certify the child
9 for proper criminal proceedings to
10 any court that would have
11 jurisdiction to try the offense if
12 committed by an adult.

13 2. If a child:

14 (a) Is charged with:

15 (1) A sexual assault
16 involving the use
17 or threatened use
18 of force or
19 violence against
20 the victim; or

21 (2) An offense or
22 attempted offense
23 involving the use
24 or threatened use
25 of a firearm; and

26 (b) Was 14 years of age or older
27 at the time he allegedly
28 committed the offense,

the juvenile court, upon a motion
by the district attorney and after
a full investigation, shall
certify the child for proper
criminal proceedings to any court
that would have jurisdiction to
try the offense if committed by an
adult, unless the court
specifically finds by clear and
convincing evidence that the
child's actions were substantially
the result of his substance abuse
or emotional or behavioral
problems and such substance abuse
or problems may be appropriately
treated through the jurisdiction
of the juvenile court.

1 3. If a child is certified for criminal
2 proceedings as an adult pursuant to
3 subsection 1 or 2, the court shall also
4 certify the child for criminal
5 proceedings as an adult for any other
6 related offense arising out of the same
7 facts as the offense for which the
8 child was certified, regardless of the
9 nature of the related offense.

10 4. If a child has been certified for
11 criminal proceedings as an adult
12 pursuant to subsection 1 or 2 and his
13 case has been transferred out of the
14 juvenile court, original jurisdiction
15 of his person for that case rests with
16 the court to which the case has been
17 transferred, and the child may petition
18 for transfer of his case back to the
19 juvenile court only upon a showing of
20 exceptional circumstances. If the
21 child's case is transferred back to the
22 juvenile court, the judge of that court
23 shall determine whether the exceptional
24 circumstances warrant accepting
25 jurisdiction.

26 This statute calls for a "full investigation" prior to
27 certifying the child to adult District Court. This statute
28 applies to many of the counts JUSTIN PORTER is facing in adult
District Court. "Full Investigation" requirements were explained
as follows. In Kline v. State, 86 Nev. 59; 464 P.2d 461 (1970)
and Lewis v. State, 86 Nev. 889; 478 P.2d 168 (1970), the Supreme
Court of Nevada adopted the criteria established by Kent v.
United States, 383 U.S. 541 (1966), for determining a valid
waiver of jurisdiction from Juvenile Court. The judge must
carefully consider the character and disposition of the juvenile,
together with the nature of his past and present offenses, his
amenability to juvenile treatment, and each of the remaining
elements enunciated in Kent v. United States, 383 U.S. at 565 -
568, and Lewis v. State, 86 Nev. at 893; 478 P.2d at 170 - 171.

1 Accord, Martin v. State, 94 Nev. 687; 585 P.2d 1346 (1978). The
2 Juvenile Court has considerable latitude in determining whether
3 it should retain or waive jurisdiction. Kent v. United States,
4 383 U.S. at 552 - 553.

5 Children charged with murder are specifically excepted
6 from the jurisdiction of the juvenile courts. Shaw v. State, 104
7 Nev. 100; 753 P.2d 888 (1988). Alfred v. State, 111 Nev. 1409;
8 906 P.2d 714 (1995). However, certain showings must be made as
9 to all other crimes including sexual assault. It is for those
10 crimes that a full investigation should have been accomplished
11 prior to certification of a minor by Juvenile Court is error.
12 Powell v. Sheriff, Clark County, 85 Nev. 684; 462 P.2d 756
13 (1969).

14 Transfer proceedings are to be initiated by written
15 motion or petition which states explicitly the charged felony
16 offense or offenses upon which the requested transfer is based
17 and which further states the past record of criminal conduct.
18 The motion or petition may also include material relating to the
19 personal background and attributes of the subject youth which are
20 considered material to the court's decision. Thomas R. v.
21 Juvenile Division, Eighth Judicial District Court ex rel. County
22 of Clark, 99 Nev. 427; 664 P.2d 947 (1983).

23 In addition to the fact that transfer proceedings are
24 to be initiated by written motion and followed by a full
25 investigation, any juvenile court transfer order must include a
26 statement of the reasons or considerations therefor. This
27 statement must be sufficient enough to permit meaningful review.
28 Kline v. State, 86 Nev. 59; 464 P.2d 460 (1970).


1 Because JUSTIN PORTER was not afforded the benefit of
2 a full hearing prior to being certified as an adult, and, because
3 some of the crimes he is charged with properly belong in Juvenile
4 Court, the defense respectfully requests that this entire matter
5 be remanded to Juvenile Court, and Mr. PORTER'S Constitutional
6 rights be protected.

7 DATED this 25 day of September, 2002.


8 Respectfully Submitted:

9 CLARK COUNTY PUBLIC DEFENDER CLARK COUNTY PUBLIC DEFENDER

10
11 By:


CURTIS BROWN
Nevada Bar #4546
Deputy Public Defender

By:


JOSEPH K. ABOOD
Nevada Bar #4501
Deputy Public Defender

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NOTICE OF HEARING

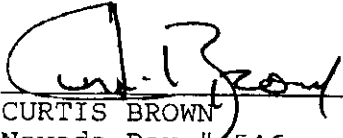
TO: CLARK COUNTY DISTRICT ATTORNEY

YOU WILL PLEASE TAKE NOTICE that the Clark County Public Defender has set the foregoing Justin Porter's Motion to Remand the Case to Juvenile Court and Conduct a Hearing as to Whether He Should Be Certified as an Adult for hearing in Department No. XVI on Monday, the ¹⁴th day of October, 2002 at the hour of 8:45 a.m.

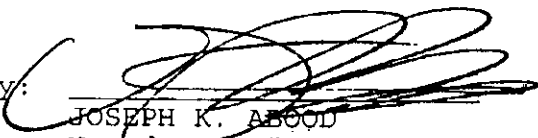
DATED this 25 day of September, 2002.

CLARK COUNTY PUBLIC DEFENDER CLARK COUNTY PUBLIC DEFENDER

By:


CURTIS BROWN
Nevada Bar #4546
Deputy Public Defender

By:


JOSEPH K. ABOOD
Nevada Bar #4501
Deputy Public Defender

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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Justin Porter's Motion to Remand the Case to Juvenile Court and Conduct a Hearing as to Whether He Should Be Certified as an Adult is hereby acknowledged this 25 day of September, 2002.

CLARK COUNTY DISTRICT ATTORNEY

By:



CLARK COUNTY

24

FILED

2002 SEP 26 / A. 9:31

Shirley B. Purgines
CLERK

0208
MARCUS D. COOPER, PUBLIC DEFENDER
Nevada Bar #2290
309 So. Third St., Suite #226
Las Vegas, NV 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
JUG CAPRI PORTER aka)
JUSTIN PORTER,)
)
Defendant.)

CASE NO. C174954
DEPT. NO. XVI
DATE: 10-¹⁴02
TIME: 8:45 a.m.

MOTION TO SUPPRESS DEFENDANT'S
CONFESSIONS AND ADMISSIONS TO METRO AND CHICAGO
DETECTIVES BASED ON VIOLATION OF HIS MIRANDA RIGHTS AND
INVOLUNTARINESS AND REQUEST FOR JACKSON v. DENNO HEARING

Comes Now Defendant JUSTIN PORTER, by and through
Deputy Public Defenders JOSEPH K. ABOOD and CURTIS BROWN, and
files this Motion to Suppress Defendant's Confessions and
Admissions to Metro and Chicago Detectives Based on Violation of
His Miranda Rights and Request for Jackson v. Denno Hearing.

This Motion is based upon the attached the Memorandum
of Points and Authorities, the Constitution of the United States
and the State of Nevada, and the statutory law of the State of
Nevada.

DATED THIS 25 day of September, 2002.

CLARK COUNTY PUBLIC DEFENDER CLARK COUNTY PUBLIC DEFENDER

By: *[Signature]*
CURTIS BROWN
Nevada Bar #4546
Deputy Public Defender

By: *[Signature]*
JOSEPH K. ABOOD
Nevada Bar #4501
Deputy Public Defender

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1 On March 7, 2000, Leona Case reported that she had been
2 the victim of a series of crimes. A crime report was taken under
3 Event Number 000307-0141. Investigation revealed that a black
4 male knocked on her door and asked her to use the telephone. She
5 refused. A few minutes later the suspect allegedly kicked in her
6 front door, entered her apartment and began striking her in the
7 face demanding cash and valuables. He took Forty-Four Dollars
8 (\$44.00) and a ring belonging to Ms. Case. He then allegedly
9 forced her to undress by threatening her with a pair of scissors.
10 Sexually assaulted her and then attempted to strangle her with an
11 electrical cord. Ms. Case was then stabbed with a kitchen knife.
12 She was then barricaded inside of her bathroom and her apartment
13 was set on fire.

14 The Second Amended Information charges Mr. PORTER with
15 the following crimes based on the above allegations:

- 16 VIII. Burglary While in Possession of a
17 Deadly Weapon.
- 18 IX. First Degree Kidnaping With Use of a
19 Deadly Weapon With Substantial Bodily
20 Harm.
- 21 X. Sexual Assault With Use of a Deadly
22 Weapon With Substantial Bodily Harm.
- 23 XI. Attempt Murder With Use of a Deadly
24 Weapon.
- 25 XII. Sexual Assault With Use of a Deadly
26 With Substantial Bodily Harm.
- 27 XIII. Robbery With Use of a Deadly
28 Weapon.
- 29 XIV. First Degree Arson.

30 On March 25, 2000, Ms. Ramona Leyva reported a series
31 of crimes under Event Number 000325-2971. Investigation revealed

1 that a black male kicked in her door while she was in the
2 bathroom. He grabbed Ms. Leyva by the back of the hair and
3 dragged her into the main living area. He then retrieved a
4 kitchen knife from her kitchen and threatened to kill her.
5 Placed her on her bed and sexually assaulted her. He then took
6 her vehicle keys and departed in her vehicle.

7 The Second Amended Information charges Mr. PORTER with
8 the following crimes based on the above allegations:

9 XV. Burglary While in Possession of a
10 Deadly Weapon.

11 XVI. First Degree Kidnaping With Use of a
12 Deadly Weapon.

13 XVII. Sexual Assault With Use of a
14 Deadly Weapon.

15 XVIII. Robbery With Use of a Deadly
16 Weapon.

17 On April 4, 2000, Ms. Marlene Livingston reported a
18 series of crimes under Event Number 000404-0324. Investigation
19 revealed that a black male kicked in her apartment door and
20 entered with a knife in his hand. He took money and other
21 valuables from Ms. Livingston and forced her to perform fellatio
22 on him. He then fled in Ms. Livingston's vehicle.

23 Counts XIX through XXI charge crimes against Marlene
24 Livingston:

25 XIX. Burglary While in Possession of a
26 Deadly Weapon.

27 XX. Sexual Assault With Use of a Deadly
28 Weapon Victim 65 Year of Age or Older.

XXI. Robbery With Use of a Deadly Weapon
Victim 65 Years of Age or Older.

1 On April 12, 2000, Francis and Clarence Rumbaugh
2 reported crimes under Event Number 000412-2745. Investigation
3 revealed that a black male entered the Rumbaugh's apartment
4 through an unlocked screen door pushing Mr. Rumbaugh to the
5 ground. He then cut the telephone cord in the kitchen area with
6 a knife he retrieved from the Rumbaugh's kitchen. The suspect
7 then allegedly searched through the apartment and took Eighty
8 Dollars (\$80.00) from Mr. Rumbaugh.

9 Counts XXII through XIV charge crimes against Clarence
10 and/or Francis Rumbaugh:

11 XXII. Burglary While in Possession of a
12 Deadly Weapon.

13 XXIII. Robbery With Use of a Deadly
14 Weapon Victim 65 Years of Age or
 Older.

15 XXIV. Robbery With Use of a Deadly
16 Weapon Victim 65 Years of Age or
 Older.

17 On June 6, 2000, Mr. Leroy Fowler became the victim of
18 a home invasion. A crime report for this incident was taken
19 under Event Number 000606-0165. Investigation revealed that a
20 black male kicked in Mr. Fowler's apartment door holding a knife.
21 Mr. Fowler began screaming at the suspect causing him to run out
22 of the apartment.

23 Count XXV charges a crime against Leroy Fowler:

24 XXV. Burglary While in Possession of a
25 Deadly Weapon.

26 On June 7, 2000, Ms. Joannie Hall reported a series of
27 crimes under Event Number 000607-0313. Investigation revealed
28 that a black male kicked in her apartment door and confronted Ms.

1 Hall in her bedroom. He was holding a knife in his right hand
2 and directed her around the apartment. He then performed various
3 sex acts with her and stole a number of items from her apartment.

4 These crimes make up the basis of Counts XXVI through
5 XXIX of the Second Amended Information.

6 Counts XXVI through XXIX charge crimes against Joannie
7 Hall:

8 XXVI. Burglary While in Possession of a
9 Deadly Weapon.

10 XXVII. First Degree Kidnaping With Use of
a Deadly Weapon.

11 XXVIII. Sexual Assault With Use of a
12 Deadly Weapon.

13 XXIX. Robbery With Use of a Deadly
Weapon.

14 On June 9, 2000, Guadalupe Lopez, Laura Zazueta and
15 Beatriz Zazueta were the victims of a series of crimes charged in
16 Counts XXXIII through XXXVIII of the Second Amended Information.
17 These crimes were reported under Event Number 000609-0140. They
18 allege that a black male entered their residence through an
19 unlocked front door in the middle of the night and demanded money
20 from Laura Zazueta. She directed the suspect to her sister's
21 room, Beatriz and her boyfriend Guadalupe Lopez. Guadalupe Lopez
22 grabbed at the suspect's gun and a struggle ensued. The suspect
23 fired three shots and Lopez was slightly injured. The suspect
24 then broke free and jumped out the front window.

25 Counts XXXIII through XXXVIII charge crimes against
26 Laura Zazueta, Guadalupe Lopez and/or Beatriz Zazueta:

27 XXXIII. Burglary While in Possession of a
28 Deadly Weapon.

- § 1 XXXIV. Robbery With Use of a Deadly
2 Weapon.
3 XXXV. Attempt Robbery With Use of a
4 Deadly Weapon.
5 XXXVI. Attempt Robbery With Use of a
6 Deadly Weapon.
7 XXXVII. Attempt Robbery With Use of a
8 Deadly Weapon.
9 XXXVIII. Battery With Use of a Deadly
10 Weapon.

11 On June 10, 2000, Metro responded to a homicide at 415
12 South Tenth Street. The victim, Gyaltsso Lungtok was found dead
13 in his apartment having been shot numerous times. The front door
14 of the apartment had been kicked in and a footwear impression
15 revealed that the shoe brand name was Saucony. Forensic
16 Laboratory Manager Richard Goode determined that the firearm used
17 on June 9, 2000 against Guadalupe Lopez was the same as that used
18 against Gyaltsso Lungtok.

19 Counts XXX through XXXII charge crimes against Gyaltsso
20 Lungtok:

- 21 XXX. Burglary While in Possession of a
22 Deadly Weapon.
23 XXXI. Attempt Robbery With Use of a
24 Deadly Weapon.
25 XXXII. Murder With Use of a Deadly
26 Weapon. (Open Murder).

27 Detective James La Rochelle completed an Application
28 and Affidavit for Search Warrant on the 11th day of August, 2000.
In that Affidavit and Application on page 5 he states, "the
sexual assault crime series in which JUSTIN PORTER was developed
as a suspect had a numerous factors in common with the robbery

§ 1 investigation and the homicide investigation. The physical
2 description in the robbery matches the crime series and JUSTIN
3 PORTER. The location of the robbery and homicide occur within
4 the downtown area command and their time of occurrence both
5 correspond with the crime series. The modus operandi of the
6 crimes have strong similarities such as forced entry specifically
7 door kicks, use of weapon, propensity of violence, dress of
8 suspect and the choice of targets."

9 Thereafter, Detective Sargent Lori Cricket, Detectives
10 Laura Anderson and Barry Jensen responded to Bruce Street and
11 Stewart where patrol had conducted a traffic stop for a supposed
12 traffic violation on Angela Smith Porter, JUSTIN'S mother, and
13 Sergio Prevos, JUSTIN'S step-father. Mr. Prevos told Detective
14 Jensen that JUSTIN PORTER left Las Vegas about a month earlier
15 for Chicago, Illinois where he was staying with his natural
16 father, George Porter.

17 On August 11, 2000, Detective Michael Castaneda was
18 contacted by Chicago police and advised that JUSTIN PORTER was in
19 their custody based on an Arrest Warrant which was earlier faxed
20 to them by Detective Castaneda. This Arrest Warrant DID NOT
21 include homicide charges, and Mr. PORTER was not arrested on that
22 charge. He was arrested solely on charges of home invasion and
23 sexual assault. (See, PHT November 1, 2000, p. 98 and PHT
24 November 2, 2000, p. 24). Detective Castaneda claims that he was
25 also advised that JUSTIN PORTER was willing to talk to detectives
26 about the crimes currently under investigation referred to as the
27 "Downtown Area Command Series." Whether or not it is actually
28 true that Mr. PORTER was willing to talk about those crimes, he

§ 1 had no idea that detectives were investigating him for murder.
2 On August 12, 2000, Detectives Jensen, Cricket and La
3 Rochelle arrived in Chicago, Illinois to interview JUSTIN PORTER
4 at the Chicago Police Department Area Section 4 Station located
5 at 3151 West Harrison. They were told by Detectives Kato and
6 Cunningham of the Chicago Police that Mr. PORTER was questioned
7 by them earlier concerning information of six of the "Area
8 Command Series" crimes faxed to them by Metro. Mr. PORTER was
9 under arrest at that time, and was not free to leave the police
10 substation. Metro Detectives testified to that fact clearly at
11 his Preliminary Hearing. Detectives Jensen and La Rochelle met
12 with JUSTIN in an interview room, and JUSTIN was handed a rights
13 per Miranda card and asked to read and sign the card. Mr. Porter
14 signed the card. This interview was conducted by Detective
15 Jensen of Metro's Sexual Assault Detail on August 12, 2000, at
16 1930 hours Chicago, Illinois time at the Chicago Police
17 Department, 3151 West Harrison. Also present for that interview
18 was Detective J. La Rochelle of Metro's Homicide Detail. On page
19 3 of that transcribed voluntary statement, Mr. PORTER was asked
20 by Detective Jensen whether he understood his rights. His
21 response was transcribed as, "Hm, kinda I do, but sometimes . .
22 . you know, yes."¹ Mr. PORTER, thereafter, implicated himself in
23 a number of crimes which were previously outlined. He was
24 interviewed again on August 13, 2000, by Detective Jensen of
25 Metro's Sexual Assault Detail at the Chicago Police Department
26

27
28 In the Audio tape, Mr. PORTER actually seems to say "Hm,
 kinda I do, but sometimes . . . I, I don't, yes" (emphasis
 added for distinction)

§ 1 and no Miranda warning was given and no inquiry was made as to
2 whether Mr. PORTER wished to talk to detectives again.

3 It is those interviews that are the basis of this
4 Motion to Suppress his confessions and admissions to Metro and
5 Chicago Detectives and request for a Jackson v. Denno Hearing.
6 Mr. PORTER'S statement should be suppressed both as a violation
7 of his Miranda rights and because his statement was not
8 voluntarily given.

9 **ARGUMENT**

10 The following events took place in relation to the
11 questioning of JUSTIN PORTER after his arrest. Detective La
12 Rochelle of Metro's Homicide Unit was notified on August 12,
13 2000, that Mr. PORTER had been arrested in Chicago based on an
14 Arrest Warrant he prepared. Interestingly, the Arrest Warrant
15 made no mention whatsoever of the homicide charge Detective La
16 Rochelle was investigating. That warrant only related to a few
17 of the "Downtown Area Command Crime Series" which were being
18 investigated by other detectives including Detective Jensen from
19 Metro's Sexual Assault Unit, and Detective Cricket from Metro's
20 Robbery Unit, who accompanied La Rochelle to Chicago. (PHT
21 November 1, 2000, p. 58, p. 98; PHT November 2, 2000, p. 24 and
22 PHT November 15, 2000, p. 23). That arrest occurred at 0045
23 hours at Defendant's father's home. The arrest involved a number
24 of officers kicking in the door of his father's home, with guns
25 drawn. After being transported to a Chicago Police Department
26 Substation at 1251 South Kildare, Mr. PORTER was apparently
27 questioned by Detectives Kato and Cunningham although at the
28 Preliminary Hearing the Las Vegas Detectives claim they were

8 1 | unaware of any questioning by Chicago police. Mr. PORTER was
2 | given the facts of six incidents by the Chicago detectives which
3 | Metro police were investigating and had faxed to the Chicago
4 | police. It is unclear whether Metro Detectives requested that
5 | these Chicago Detectives conduct an interview, however, Detective
6 | La Rochelle testified at the Preliminary Hearing that as far as
7 | he knew, the Chicago Detectives did NOT interview Mr. PORTER
8 | before the Metro Detectives arrived in Chicago, but that Officer
9 | Kato did advise the Defendant of his Miranda Rights. (PHT
10 | November 2, 2000, p. 16). Later it was discovered that Mr.
11 | PORTER was indeed given information of the six incidents being
12 | investigated by Metro prior to his interrogation by Metro.

13 | By the time Detectives Jensen, La Rochelle, and Cricket
14 | arrived in Chicago on August 12, 2000, Mr. PORTER had been in
15 | custody approximately fifteen hours. He had slept little since
16 | his arrest. Any sleep he did get was on a table and chair. He
17 | was kept alone in a room chained to a wall. He was unchained
18 | when the Chicago Police came to interrogate him. He specifically
19 | asked to speak to his father, George Porter, who was at the
20 | police station. That request went ignored. When the Chicago
21 | Detectives came to speak to Mr. PORTER, they told him that if he
22 | committed those crimes in Chicago, what he did would be
23 | considered petty and that the crimes were probably petty in Las
24 | Vegas as well. They also told him that he would probably get
25 | probation if he just admitted to the crimes. When he continued
26 | to resist their ploys, they resorted to suggesting that he could
27 | be coerced into talking. JUSTIN PORTER, who was only seventeen
28 | years of age, was told that "being from Chicago, you know that

1 people who don't cooperate go to the docks and get their ass
2 whooped." He was also threatened with use of a phone book to
3 brutalize him because it would leave no evidence of abuse. Mr.
4 PORTER was obviously frightened and began admitting to the facts
5 given to him by the Chicago cops. Through the combination of
6 threats of physical violence and the ruse that what he did was
7 petty and would get him probation if he just admitted it, Mr.
8 PORTER made admissions to Chicago Detectives Kato and Cunningham
9 which he would repeat to Las Vegas Detectives hours later.

10 Metro Detectives Jensen and La Rochelle interrogated
11 Mr. PORTER beginning at approximately 1700 hours Chicago time.
12 It is undisputed that this interrogation was also custodial in
13 nature. Detective La Rochelle testified at the Preliminary
14 Hearing that Detective Jensen Mirandized JUSTIN at approximately
15 1700 hours and then they spoke to him without a tape recorder
16 until 1930 hours local time. (PHT November 1, 2000, p. 114).
17 The Miranda warnings consisted of Detective Jensen handing JUSTIN
18 a card with his rights typed on it and asking him to read it
19 aloud. Detective La Rochelle testified at the Preliminary
20 Hearing that Detective Jensen handed JUSTIN a copy of the Miranda
21 warnings. The Defendant then signed it and dated it and stated
22 he understood his rights. (PHT November 1, 2000, p. 61). Later,
23 Detective La Rochelle acknowledged that it was actually he, not
24 JUSTIN, who dated the waiver. (PHT November 1, 2000, p. 104).

25 When Detective Jensen testified about his recollection
26 of Mirandizing JUSTIN, he stated that when he asked JUSTIN to
27 read the card aloud, he had trouble reading it. Detective Jensen
28 had to help JUSTIN who was simply trying to sound out some of the

1 words. Detective Jensen then asked him if he understood what he
2 read, and he claims that JUSTIN said yes (refer to footnote one
3 for Mr. PORTER'S actual response). The Detectives never did ask
4 Mr. PORTER if he wished to waive those rights and talk with them.
5 (PHT November 15, 2000, p. 25).

6 After this Mirandizing, JUSTIN made a number of
7 admissions according to these detectives, off tape. These
8 admissions off tape were made during approximately two and half
9 hours of interrogation, which our detectives call a "pre-
10 interview." Detective La Rochelle testified that the reason he
11 didn't put the tape recorder on shortly after JUSTIN began
12 admitting to some of the robberies and sexual assaults is because
13 he wanted JUSTIN to talk about the homicide first, before a taped
14 statement was taken. The detective added that he was concerned
15 that if he put the tape recorder on, JUSTIN may actually state he
16 wanted to speak to a lawyer, and the questioning would have to
17 stop. (PHT November 1, 2000, p. 112). This is interesting since
18 JUSTIN was not under arrest for the homicide and it suggests that
19 those detectives were vitally concerned that JUSTIN not invoke
20 any of his Miranda Rights. This is an obvious case of the
21 detectives manipulating a young, uneducated, impressionable boy
22 into not asking for a lawyer.

23 When the detectives were satisfied that JUSTIN had made
24 all the admissions and confessions they needed in their two and
25 half hours, unrecorded "pre-interview," they decided to take a
26 recorded statement. The first recorded statement given by JUSTIN
27 was August 12, 2000 at 1930 hours Chicago time. That is
28 approximately nine and a half hours after being arrested. He had

1 very little sleep, was physically threatened and intimidated by
2 the Chicago Police earlier, was told that what he supposedly did
3 was minor and probably lead to probation, and was denied his
4 request to speak to his father. The recorded statement begins
5 with Detective Jensen stating:

6 Q: Justin, before we spoke to you today, I
7 gave you a Rights of Miranda Card, do
you remember that?

8 A: Yes, sir.

9 Q: And do you remember signing that?

10 A: Yes, sir.

11 Q: Ok. And do you understand your rights?

12 A: Hm, kinda I do, but sometimes I . . .
13 you know, yes. (Refer to footnote
one).

14 Q: Did you read the card aloud?

15 A: Yes to you.

16 The detectives then go into all the admissions JUSTIN
17 made in the "pre-interview." This statement ended up being
18 seventy-seven pages in length.

19 Detective La Rochelle agreed at the Preliminary Hearing
20 that JUSTIN was not told anything more about his rights other
21 than what he tried to read two and half hours earlier. He was
22 never asked if he waived his rights prior to the statement, and
23 he was never informed he could have a parent present prior to
24 questioning. (PHT November 1, 2000, pp. 114 - 115). In fact,
25 Mr. PORTER was never again told his Miranda Rights before any
26 other statement he gave. (PHT November 1, 2000, p. 133).
27 Interestingly enough, Detective La Rochelle knew JUSTIN was only
28 seventeen (PHT November 1, 2000, p. 116) but didn't tell him he

1 had a right to a parent's presence during questioning because he
2 believes JUSTIN has no such right during a homicide
3 investigation. (PHT November 2, 2000, p. 23). The detective
4 also admitted he had no idea what a "Gault" warning was. Also,
5 the detective admitted that JUSTIN wasn't even under arrest for
6 homicide at the time. He was only arrested for home invasions
7 and sexual assaults.

8 On whether or not JUSTIN understood the Miranda Card he
9 was attempting, with little success, to read, Detective Jensen
10 testified that he had to help JUSTIN with some of the words which
11 he was sounding out. He acknowledged that JUSTIN was reading the
12 card very slowly. The detective then laughably suggests that
13 JUSTIN was reading it very slowly because he was trying to
14 understand it. In addition, Detective Jensen acknowledges that
15 JUSTIN didn't understand some of the words, but no one bothered
16 telling him what the words meant (PHT November 15, 2000, pp. 27 -
17 28 and pp. 82 - 83) and didn't ask JUSTIN if he affirmatively
18 waived his rights before questioning. (PHT November 15, 2000, p.
19 96).

20 **LAW**

21 NRS 47.090 reads:

22 Preliminary hearings on
23 confessions and evidence.
24 Preliminary hearings on the
25 admissibility of confessions or
26 statements by the accused or
27 evidence allegedly unlawfully
28 obtained shall be conducted
 outside the hearing of the jury.
 The accused does not by testifying
 at the hearing subject himself to
 cross-examination as to other
 issues in the case. Testimony
 given by him at the hearing is not

admissible against him on the issue of guilt at the trial.

When a prosecutor wants to use an accused's statement against him in Court, there must first be a hearing outside the presence of the jury to determine voluntariness and compliance with Miranda requirements if applicable. This is called a Jackson v. Denno Hearing, 378 U.S. 368; 84 S.Ct. 1774 (1964). At this hearing, the judge hears what the suspect told the police and the circumstances under which the suspect made the statements. Your Honor must then decide:

1. Whether the statements were "voluntary" using the totality of the circumstances and
2. Whether the statements were given after proper Miranda warnings or whether these warnings are applicable to the case. Wilkins v. State, 96 Nev. 267; 609 P.2d 309 (1980) places the burden to ask for such a voluntariness hearing on the defendant. Nevada has adopted the "Massachusetts Rule" as stated in Grimaldi v. State, 90 Nev. 89; 518 P.2d 615 (1974).

If the statement was involuntary, it ceased to exist legally and can't be used for any purpose. See, Mimey v. Arizona, 437 U.S. 385; 98 S.Ct. 2408 (1978). If it was voluntary but Miranda was violated, it can be used only for impeachment if the Defendant testifies and contradicts the statement. Harris v. New York, 401 U.S. 222; 91 S.Ct. 643 (1971) and Oregon v. Hass, 420 U.S. 714; 95 S.Ct. 1215 (1975). If the statement was voluntary and the result of proper Miranda warnings, it can be used for all purposes in Court. Even should the Court permit the Defendant's statements to be heard by the jury, the jury still

1 has an opportunity to decide the voluntariness of the confession.
2 This is the "Massachusetts Rule" which was adopted by Carlson v.
3 State, 84 Nev. 534; 445 P.2d 157 (1968). See also, Dawson v.
4 State, 108 Nev. 112; 825 P.2d 593 (1992). The burden to show
5 voluntariness is on the State by a preponderance of the evidence.
6 Brimmings v. State, 93 Nev. 434; 567 P.2d 54 (1977); Falcon v.
7 State, 110 Nev. 530; 874 P.2d 772 (1994) and Colorado v.
8 Connelly, 479 U.S. 157; 107 S.Ct. 515 (1986).

9 I. DEFENDANT'S CONFESSIONS AND
10 ADMISSIONS SHOULD BE
11 SUPPRESSED BECAUSE THEY WERE
12 GIVEN IN VIOLATION OF HIS
13 MIRANDA RIGHTS

14 A person's right not to incriminate himself is
15 protected by the Fifth Amendment to the United States
16 Constitution and Article 1, Section 8 of the Nevada Constitution.
17 Holyfield v. Townsell, 101 Nev. 793; 711 P.2d 845 (1985). "[T]he
18 accused **must** be adequately and effectively apprized of his rights
19 and the exercise of those rights must be fully honored." Miranda
20 v. Arizona, 384 U.S. 436, 467; 16 L.Ed.2d 694, 719 (1966).
21 (Emphasis added). The Supreme Court went on to say: "[W]e hold
22 that when an individual is taken into custody or otherwise
23 deprived of his freedom by the authorities in any significant way
24 and is subjected to questioning, the privilege against self-
25 incrimination is jeopardized. Procedural safeguards must be
26 employed to protect the privilege, and unless other fully
27 effective means are adopted to notify the person of his right of
28 silence and to assure that the exercise of the right will be
scrupulously honored, the following measures are required. He
must be warned prior to any questioning that he has the right to

1 remain silent, that anything he says can be used against him in
2 a court of law, that he has the right to the presence of an
3 attorney, and that if he cannot afford an attorney one will be
4 appointed for him prior to any questioning if he so desires.
5 Opportunity to exercise these rights must be afforded to him
6 throughout the interrogation. After such warnings have been
7 given, and such opportunity afforded him, the individual may
8 knowingly and intelligently waive these rights and agree to
9 answer questions or make a statement. But unless and until such
10 warnings and waiver are demonstrated by the prosecution at trial,
11 no evidence obtained as a result of interrogation can be used
12 against him." Miranda v. Arizona, 384 U.S. 436, 478 - 479
13 (1966).

14 In Davis v. United States, 129 L.Ed.2d 362; 114 S.Ct.
15 2350 (1994), the Supreme Court reaffirmed its holding in Miranda
16 that the primary protection afforded suspects subject to
17 custodial interrogation is the Miranda warnings themselves. It
18 obviously follows reason that when you have a defendant who can't
19 even adequately read the warnings, some effort must be made by
20 law enforcement to ensure that individual is waiving them only
21 after fully understanding what they are, i.e., an intelligent
22 waiver.

23 The Supreme Court examined an
24 individual's Fifth and Fourteenth
25 Amendment right to be free from
26 compelled self-incrimination in
27 the context of custodial
28 interrogation, and concluded that
certain procedural safeguards were
necessary to dissipate the
compulsion inherent in custodial
interrogation and, in so doing,
guard against abridgment of [a]

1 suspect's Fifth Amendment rights .
2 . . . These safeguards include
3 certain rights that an accused
4 must be informed of, and must
5 waive, before interrogation can
6 commence: He must be warned prior
7 to any questioning that he has the
8 right to remain silent, that
9 anything he says can be used
10 against him in a court of law,
11 that he has the right to the
12 presence of an attorney, and that
13 if he cannot afford an attorney
14 one will be appointed for him
15 prior to any questioning if he so
16 desires. Opportunity to exercise
17 these rights must be afforded to
18 him throughout the interrogation .
19 . . . Only if there is a voluntary,
20 knowing, and intelligent waiver of
21 the rights expressed in the
22 warnings can police question a
23 suspect without counsel being
24 present and introduce at trial any
25 statements made during the
26 interrogation. Alston v. Redman,
27 34 F.3d 1237, 1242 (3rd Cir.
28 1994).

16 Because any waiver must be "voluntary, knowing, and
17 intelligent," a "totality of the circumstances" test was
18 developed.

19 Thus, the determination whether
20 statements obtained during
21 custodial interrogation are
22 admissible against the accused is
23 to be made upon an inquiry into
24 the totality of the circumstances
25 surrounding the interrogation, to
26 ascertain whether the accused in
27 fact knowingly and voluntarily
28 decided to forgo his rights to
remain silent and to have the
assistance of counsel . . . The
totality approach permits -
indeed, it mandates - inquiry into
all the circumstances surrounding
the interrogation. This includes
evaluation of the [Defendant's]
age, experience, education,
background, and intelligence, and

1 to whether he has the capacity to
2 understand the warnings given him,
3 the nature of his Fifth Amendment
4 rights, and the consequences of
waiving those rights. Fare v.
Michael C., 442 U.S. 707, 724 -
725 (1979).

5 United States v. Male Juvenile, 121 F.3d 34 (2nd Cir. N.Y. 1997).

6 The law is thus clear that the government bears the
7 burden of showing this Court that JUSTIN PORTER waived his
8 constitutional rights and did so voluntarily, knowingly and
9 intelligently.

10 To complicate matters even further, JUSTIN PORTER was
11 a juvenile at the time the crimes were committed, and at the time
12 he was questioned. Detectives made note of that fact prior to
13 the August 12, 2000 interrogation. Because of the special Parens
14 Patriae relationship of the Court to the juvenile offender, the
15 child should be cautioned that his statement can be used against
16 him in adult court. Quirkoni v. State, 96 Nev. 766; 616 P.2d
17 1111 (1980). Marvin, a Minor v. State, 95 Nev. 836; 603 P.2d
18 1056 (1979). In this case, the Supreme Court enunciated special
19 safeguards as follows:

20 Before being interview. A child
21 should be advised of his rights
22 and cautioned that any answers may
23 be used in a special court as well
24 as before the Juvenile Court.
25 Special efforts should be made,
26 especially in the case of young
27 children, to interview the
28 juvenile only in the presence of a
parent or guardian . . . this
should always be the policy when a
child is being questioned or a
formal statement concerning his
participation is being taken.
Clearly, the more serious the
offense and the younger the
accused, the greater the

1 precaution which should be taken
2 in the interrogation process.

3 These special safeguards are important in the
4 "voluntariness" analysis discussed in the next section of this
5 Motion.

6 The record is clear that not only did Detectives Jensen
7 and La Rochelle not affirmatively ask Defendant whether he waived
8 his rights prior to questioning, but, they made no efforts
9 whatsoever to make sure he even understood those rights. In
10 fact, the record suggests that JUSTIN did not understand his
11 rights, and could barely read the Miranda card. Please recall
12 that when asked, in a tape recorded statement, whether he
13 understood the rights he tried to read two and a half hours
14 earlier, JUSTIN responded:

15 Hm, kinda I do, but
16 sometimes I . . . I
17 don't, yes.

18 "In order for a confession obtained during a custodial
19 interrogation to be admissible, any waiver of one's Miranda
20 rights must be voluntary, knowing, and intelligent. . . A valid
21 waiver depends upon the totality of the circumstances, including
22 the background, experience, and conduct of the defendant."
23 Burket v. Angelone, 208 F.3d 172, 199 (4th Cir. 2000).

24 "A defendant's waiver of his Miranda rights is only
25 effective if the waiver is knowingly, intelligently and
26 voluntarily made . . . [A]s with a challenge to the
27 voluntariness of a confession, when the defendant challenges the
28 validity of his waiver of his Miranda rights, the government

1 bears the burden of proving the validity of the waiver by a
2 preponderance of the evidence." United States v. Garcia Abrego,
3 141 F.3d 142, 171 (5th Cir. 1998).

4 "The government is required to prove waiver by a
5 preponderance of the evidence, and the clearly erroneous standard
6 applies to the assessment of factual issues relating to the
7 waiver . . . To prove a valid waiver, the government must show
8 (1) that the relinquishment of the defendant's rights was
9 voluntary, and (2) that the defendant had a full awareness of
10 the right being waived and of the consequences of waiving that
11 right . . . Only if the totality of the circumstances reveals
12 both an uncoerced choice and the requisite level of comprehension
13 may a court properly conclude that the Miranda rights have been
14 waived." United States v. Male Juvenile, 121 F.3d 34, 39 - 40
15 (2d Cir. 1997).

16 Part of the "totality of the circumstances" analysis,
17 which must be done on a case by case basis, directs the courts to
18 consider the intelligence and understanding of the particular
19 defendant involved. At the requested Jackson v. Denno Hearing
20 the defense intends to show that JUSTIN PORTER is well below
21 average intelligence, and detectives should have known they
22 needed to take special care to ensure he understood the valuable
23 rights they claim he waived voluntarily, intelligently, and
24 knowingly.

25 "A valid waiver cannot be established by showing only
26 that the accused responded to further police-initiated custodial
27 interrogation even after being newly advised of his rights."
28 Alvarez v. Gomez, 185 F.3d 995, 998 (9th Cir.).

1 "[T]he facts surrounding [Defendant]'s interrogation
2 clearly indicate that he did not understand the nature of the
3 rights he was waiving. Moreover, the customs agents took no
4 steps to ensure that [Defendant]'s waiver was knowing and
5 intelligent. Therefore, we conclude that the district court
6 clearly erred in finding that despite [Defendant]'s low IQ and
7 poor English-verbal comprehension, he nonetheless functioned at
8 a level sufficient to have understood and waived the
9 constitutional rights orally read to him in English . . . Thus,
10 in the circumstances of this case, the district court erred in
11 not suppressing [Defendant]'s inculpatory statements." United
12 States v. Garibay, 143 F.3d 534, 539 (9th Cir. 1998).

13 Moreover, the Miranda waiver's validity must be
14 determined in each case through an examination of the particular
15 facts and circumstances surrounding that case, including the
16 background, experience and conduct of the accused. Edwards v.
17 Arizona, 451 U.S. 477; 68 L.Ed.2d 378; 101 S.Ct. 1880 (1981).
18 See also, Rowbottom v. State, 105 Nev. 472; 779 P.2d 934 (1989).

19 In Harte v. State, 116 Nev.Adv.Op. No. 112; 13 P.3d 420
20 (2000), Harte argued that the district court erred in finding
21 that he validity waived his Miranda rights. He points to an
22 interview with detectives where he mentions wanting to talk to a
23 lawyer. The Court characterizes his statements in that regard as
24 "initial confusion." However, the record from the Evidentiary
25 Hearing showed that he was twenty years old at the time of the
26 interview, was relatively educated and intelligent, and was able
27 to communicate well. There is no indication that he was coerced
28 into making incriminating statements. See generally, Elvik v.

1 State, 114 Nev. 883, 891 - 893; 965 P.2d 281, 286 - 288 (1998).
2 Before Harte agreed to talk to deputies, he was verbally advised
3 of his Miranda rights and specifically indicated orally and in
4 writing, by signing an advisement form, that he understood his
5 rights.

6 The Harte court reiterated: The State bears the burden
7 of showing by a preponderance of the evidence that the defendant
8 knowingly and intelligently waived his Fifth Amendment rights
9 after receiving Miranda warnings. Falcon v. State, 110 Nev. 530,
10 534; 874 P.2d 772, 775 (1994). The validity of the waiver must
11 be determined in each case based on the particular facts and
12 circumstances presented including the background, experience and
13 conduct of the accused. Anderson v. State, 109 Nev. 1129, 1133;
14 865 P.2d 318, 320 (1993) [citing Edwards v. Arizona, 451 U.S.
15 477; 68 L.Ed.2d 378; 101 S.Ct. 1880 (1981)].

16 In Floyd v. State, 118 Nev.Adv.Op. No. 17; 42 O.3d 249
17 (2002), the Court stated the following:

18 Though informed of his Miranda
19 rights, unless the defendant
20 knowingly and voluntarily waived
21 them, statements made during
22 custodial interrogation are
23 inadmissible. The State must
24 prove by a preponderance of the
25 evidence that the waiver was
26 knowing and intelligent. To
27 determine the validity of the
28 waiver, this court examines "the
facts and circumstances of the
case such as the background,
conduct and experience of the
defendant." Relevant
considerations in determining
voluntariness of a confession
include the youth of the
defendant, his lack of education
or low intelligence, the lack of
advise of constitutional rights,

1 the length of detention, repeated
2 and prolonged questioning, and
3 physical punishment such as
4 deprivation of food or sleep. The
5 admissibility of a confession is
6 primarily a factual question; this
7 court should not disturb the
8 district court's determination if
9 it is supported by substantial
10 evidence.

11 Not only should these detectives have taken basic
12 measures to make sure JUSTIN understood what he "read" on the
13 Miranda Rights Card, especially in view of his equivocal answers
14 to whether or not he even understood what he read. The
15 detectives also had an obligation to advise JUSTIN that they
16 intended to use his statement against him to secure a conviction.
17 Prior to the initiation of questioning, police must fully apprise
18 the suspect of their intention to use any statement to secure a
19 conviction. Moran v. Burbine, 475 U.S. 412, 420; 89 L.Ed.2d 410;
20 106 S.Ct. 1135 (1986). Moran requires that a voluntary waiver of
21 rights be "made with full awareness of both the nature of the
22 right being abandoned and the consequences of the decision to
23 abandon it." Id. at 421.

24 Finally, in Tomarchio v. State, 99 Nev. 572; 665 P.2d
25 804 (1983), the Court stated:

26 The "totality of the
27 circumstances" test may be
28 relevant to a discussion of
whether a defendant's confession
is voluntary under due process
standards. The "totality of the
circumstances" test, however, is
not applicable in analyzing
whether a defendant has
relinquished his Fifth Amendment
rights against self-incrimination.
Instead, in that the purported
waiver of a constitutional right

1 is ineffective unless knowingly
2 and intelligently made, the
3 alleged waiver of Miranda rights
4 must be judged under a "knowing
5 and intelligent waiver" standard.
6 The application of this higher
7 standard of review may result in
8 the exclusion of some confessions
9 which might have been voluntary
10 under the lesser, "totality of the
11 circumstances" test.

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II. THE CONFESSIONS AND
ADMISSIONS MADE BY JUSTIN
PORTER MUST BE SUPPRESSED
BECAUSE THEY WERE NOT
VOLUNTARILY GIVEN

11 Before the United States Supreme Court decided Miranda
12 in 1966, "voluntariness" was the Courts only concern in relation
13 to custodial interrogation. The Courts wanted to be sure a
14 confession was not forced from a suspect. Oregon v. Elstad, 470
15 U.S. 298 (1985). Today, "voluntariness" remains as a second
16 issue after compliance with Miranda. Now, if the State intends
17 to use an accused's statement against him, there must first be a
18 hearing outside the presence of the jury to determine
19 voluntariness and compliance with Miranda if applicable. This is
20 the Jackson v. Denno Hearing we have requested, [Please see, 378
21 U.S. 368 (1964)], and is mandated by NRS 47.090. The test for
22 voluntariness is the "totality of circumstances." Mincey v.
23 Arizona, 437 U.S. 385 (1978). Tomarchio v. State, 99 Nev. 572
24 (1983). Passama v. State, 103 Nev. 212 (1987). Alward v. State,
25 112 Nev. 141 (1996).

26 "When a defendant claims that a confession was coerced,
27 the government bears the burden of proving by a preponderance of
28 the evidence that the confession was in fact voluntary." United

1 States v. Mahan, 190 F.3d 416, 422 (6th Cir. 1999).

2 A confession is admissible only if
3 it is made freely and voluntarily,
4 without compulsion or inducement. Franklin v. State, [***3] 96 Nev.
5 417; 610 P.2d 732, 734 - 735
6 (1980); see also, Crew v. State,
7 100 Nev. 38; 675 P.2d 986 (1984).
8 A criminal defendant is deprived
9 of due process of law if his
10 conviction is based, in whole or
11 in part, upon an involuntary
12 confession and even if there is
13 ample evidence aside from the
14 confession to support the
15 conviction. Jackson v. Denno, 378
16 U.S. 368, 376 (1964). In order to
17 be voluntary, a confession must be
18 the product of a [*24] "rational
19 intellect and a free will."
20 Blackburn v. Alabama, 361 U.S.
21 199, 208 (1960). A confession is
22 involuntary [**323] whether
23 coerced by physical intimidation
24 or psychological pressure.
25 Townsend v. Sain, 372 U.S. 293,
26 307 (1963). Passama v. State, 103
27 Nev. 212; 735 P.2d 321 (1987).

16 The United States Supreme Court has found that some
17 interrogation techniques, especially those designed to take
18 advantage of the unique circumstances surrounding a particular
19 suspect, are so offensive to a civilized system of justice that
20 they are prohibited under the Due Process Clause of the
21 Fourteenth Amendment. Miller v. Fenton, 474 U.S. 104, 106 S.Ct.
22 445, 449 (1985); Colorado v. Connelly, 479 U.S. 157; 107 S.Ct.
23 515 (1986). The due process requirement that a confession must
24 be voluntary to be admissible is independent of the Fifth
25 Amendment concerns set out in Miranda. In Miller v. Fenton, 474
26 U.S. 104; 106 S.Ct. At 449, the court stated:

1 . . . [T]he admissibility of a
2 confession turns as much on
3 whether the techniques for
4 extracting the statements, as
5 applied to *this* suspect, are
6 compatible with a system that
7 presumes innocence and assures
8 that a conviction will not be
9 secured by inquisitorial means as
10 on whether the defendant's will
11 was in fact overborne.

12 The Nevada Supreme Court has also ruled in the past
13 that promises investigators make during interrogation are
14 important to the issue of voluntariness. If promises made,
15 implicit or explicit, trick a confessant into confessing, his
16 confession is involuntary. Franklin v. State, *supra*, 96 Nev. at
17 421.

18 Passama, *supra*, makes it clear that promises made to
19 the defendant are critical in the voluntariness analysis. "If
20 these promises, implicit and explicit, tricked [the defendant]
21 into confessing [the defendant's] confession was involuntary."
22 *Id.* at 215; 735 P.2d at 323. In Bowbottom v. State, 105 Nev.
23 472, 487; 779 P.2d 934, 941 (1989). The Court noted that "each
24 [confession] situation should be evaluated according to its
25 particular facts and circumstances."

26 Emotional overreaching, like physical coercion, is very
27 important to an analysis of voluntariness. Usually the Court
28 must consider the effect of the totality of the circumstances as
the will of the Defendant. Some types of police investigation
techniques however can be considered "coercive per se" so that an
"totality of the circumstances" analysis is unnecessary.

In State v. Kelekolio, 74 Haw. 479; 849 P.2d 58, 71 -

1 74 (Haw. 1993), the Hawaii Supreme Court considered the relevant
2 caselaw and scholarly authority and formulated a rule by which to
3 measure the legitimacy of the use of deception by the police in
4 eliciting confessions or inculpatory statements from suspects and
5 arrestees. The Kelekolio court adopted the following rule:

6 Employment by the police of
7 deliberate falsehoods intrinsic to
8 the facts of the alleged offense
9 in question will be treated as one
10 of the totality of circumstances
11 surrounding the confession or
12 statement to be considered in
13 assessing its voluntariness; on
14 the other hand, deliberate
15 falsehoods extrinsic to the facts
16 of the alleged offense, which are
17 of a type reasonably likely to
18 procure an untrue statement or to
19 influence the accused to make a
20 confession regardless of guilt,
21 will be regarded as coercive per
22 se, thus obviating the need for a
23 "totality of circumstances"
24 analysis of voluntariness.

25 849 P.2d at 73.

26 Examples of extrinsic falsehoods of a type reasonably
27 likely to procure an untrue statement or to influence an accused
28 to make a confession regardless of guilt would include the
29 following: assurances of divine salvation upon confession,
30 promises of mental health treatment in exchange for confession,
31 assurances of more favorable treatment rather than incarceration
32 in exchange for confession, misrepresenting the consequences of
33 a particular conviction, representation that welfare benefits
34 would be withdrawn or children taken away unless there is a
35 confession or suggestion of harm or benefit to someone. See,
36 Lynnum v. Illinois, 372 U.S. 528; 9 L.Ed.2d 922; 83 S.Ct. 917
37 (1963); Kelekolio, 849 P.2d at 73 - 74.

1 Colorado v. Connelly, supra, 479 U.S. at 164.
2 Reaffirmed the principle that a confession may be suppressed in
3 circumstances in which a police officer knows of a suspects
4 mental illness or deficiencies at the time of the interrogation
5 and effectively exploits these weaknesses to obtain a confession.

6 The detectives in this case employed the so-called
7 "false friend" technique whereby they feigned a trusting
8 friendship with JUSTIN and caused him to believe that confessing
9 was in his best interest.

10 See, Wayne R. LaFave & Jerold H. Israel, Criminal
11 Procedure § 6.2 (2d Ed. 1992). This technique is commonly used
12 in police interrogations because "resistance to the disclosure of
13 information is considerably increased . . . if something is not
14 done to establish a friendly and trusting attitude on the part of
15 the subject." Welsh S. White, Police Trickery in Inducing
16 Confessions, 127 U.Pa.L.Rev. 581, 614 (1979) {quoting Robert F.
17 Royal & Stephen R. Schutt, The Gentle Art of Interviewing [***21]
18 and Interrogation: A Professional Manual and Guide. (1976)}.

19 In this atmosphere . . . the suspect is fooled into
20 trusting that the interrogator's behavior will conform to the
21 norms of friendship: the interrogator will loyally help the
22 suspect out of the jam, advise the suspect to confess only if
23 confession will be beneficial [to the suspect] and so on.

24 Margaret L. Paris, Faults, Fallacies, and the Future of
25 Our Criminal Justice System: Trust, Lies, and Interrogation, 3
26 Va. J. Soc. Pol'y & L. 3, 21 - 22 (1995).

27 The use of this technique is not accidental. These
28 detectives knew full well that the strategy they employed was

1 best suited to get Mr. PORTER to trust them and admit all his
2 wrongdoings. To the extent that they took advantage of his
3 mental state and misrepresented their intentions towards him, his
4 confession is involuntary. The aim of the due process
5 requirement was never to exclude false evidence, but to prevent
6 fundamental unfairness in the use of evidence, whether it's true
7 or false. The Miller v. Fenton court, supra, 474 U.S. at 109,
8 made this clear in holding that by virtue of the Due Process
9 Clause "certain interrogation techniques, either in isolation or
10 as applied to the unique characteristics of a particular suspect,
11 are so offensive to a civilized system of justice that they must
12 be condemned." See also, Morgan v. Bunbire, 475 U.S. 412 (1986).
13 As interrogators have turned to more subtle forms of
14 psychological persuasion, courts have found the mental condition
15 of the defendant a more significant factor in the voluntariness
16 calculus. Spano v. New York, 360 U.S. 315 (1959).

17 One of the many factors which may negative a
18 defendant's free will and render a confession involuntary is the
19 use of psychological ploys to foment hope. In State v. Parsons,
20 108 W.Va. 705; 152 S.E. 745 (1930), a juvenile was told during
21 his interrogation that if he cooperated and confessed, he might
22 be placed in a reform school. The West Virginia Supreme Court
23 held that confession was inadmissible because it fomented hope in
24 the mind of the accused. In State v. Persinger, 169 W.Va. 121;
25 286 S.E.2d 261 (1982), the Supreme Court of West Virginia again
26 found a sufficient bar to the use of a confession for any purpose
27 because the defendant had been told that his cooperation would
28 get him a good recommendation to his probation officer. Courts

1 all across the country are sensitive to taking advantage of
2 defendant's fomenting hope.

3 The Chicago Detectives elicited an involuntary
4 confession from JUSTIN PORTER by:

- 5 1. Stating that what he did in
6 Nevada was petty, and if he
7 admitted to the facts they
provided him, he would be
treated leniently in Nevada.
- 8 2. Suggesting that if he did not
9 admit to the facts, that he
would be taken to the "docks"
10 and physically harmed.
- 11 3. Suggesting that a phone book
could be used to harm him,
12 and no marks would be
apparent.
- 13 4. Refusing to honor his request
to speak with his father
14 while he was being
questioned.
- 15 5. Refusing to allow George
16 Porter, JUSTIN'S Father, to
speak with his son when he,
17 George, requested to do so.

18 JUSTIN also asked Las Vegas Detectives to allow him to
19 speak with his father. They replied that he could talk to his
20 father after "we are done here."

21 "[T]his Court has recognized that coercion can be
22 mental as well as physical . . . A number of cases have
23 demonstrated, if demonstration were needed, that the efficiency
24 of the rack and the thumbscrew can be matched, given the proper
25 subject, by more sophisticated modes of persuasion. A prolonged
26 interrogation of an accused who is ignorant of his rights and who
27 has been cut off from the moral support of friends and relatives
28 is not infrequently an effective technique of terror. Thus the

1 range of inquiry in this type of case must be broad, and this
2 Court has insisted that the judgment in each instance be based
3 upon consideration of [t]he totality of the circumstances."
4 Blackburn v. Alabama, 361 U.S. 199, 206 (1960).

5 "Our cases have made clear that a finding of coercion
6 need not depend upon actual violence by a government agent; a
7 credible threat is sufficient. As we have said, coercion can be
8 mental as well as physical, and . . . the blood of the accused is
9 not the only hallmark of an unconstitutional inquisition."
10 Arizona v. Fulminante, 499 U.S. 279, 287 (1991).

11 These tactics are effective on a person in JUSTIN'S
12 position because he was a juvenile when arrested. He was scared
13 and isolated from his family. He is a moderate to low
14 intelligence, and unable to resist the interview techniques
15 employed. He had no real understanding of his rights, and no one
16 took the time to explain them to him. The seriousness of the
17 charges facing JUSTIN were also minimized, and the suggestions of
18 leniency were deceptive and improper.

19 A defendant's relative lack of education has often been
20 mentioned by the courts, especially when such lack of education
21 was combined with mental deficiency or illness, in concluding
22 that a confession was involuntary. The courts generally agree
23 that, while mere lack of education, subnormal intelligence, or
24 mental illness does not necessarily make a confession
25 involuntary, such education and intelligence, or lack thereof,
26 are important facts to be considered. Lederer, 74 Mil.L.Rev. 67,
27 86.

28 Thus, in support of conclusions of involuntariness,

1 courts have cited evidence that the defendant was a slow learner
2 with a low mentality who left school after the second grade, with
3 an IQ ranging from 55 to 80. State v. Cook, 47 N.J. 402; 221
4 A.2d 212. The fact that the defendant had only a junior high
5 education and a history of emotional instability. Spano v. New
6 York, 360 U.S. 315; 3 L.Ed.2d 1265; 79 S.Ct. 1202. The fact that
7 the 21-year-old defendant was mentally deficient and had only a
8 seventh grade education, with his last year having been spent in
9 a school for slow learners. United States v. Blocker, (D.C.
10 Dist.Col.) 354 F.Supp. 1195. And the fact that the defendant had
11 a history of mental illness.

12 When combined with other facts, promises of lenience
13 can be sufficiently coercive to render a confession involuntary.
14 See, U.S. v. Rogers, 906 F.2d 189, 191 (5th Cir. 1990)
15 (confession involuntary partly due to assurance that defendant
16 would not be arrest if cooperated); U.S. ex rel. Church v. De
17 Robertis 771, F.2d 1015, 1020 (7th Cir. 1985) (dictum)
18 (confession may be involuntary if defendant's will overborne by
19 State attorney's misleading promise concerning less severe
20 charge); U.S. v. Tingle, 658 F.2d 1332, 1336 - 1337 (9th Cir.
21 1981) (confession involuntary partly due to officer's promise to
22 bring cooperation to prosecutor's attention).

23 "A confession is considered voluntary if the State
24 demonstrates that it was not secured through psychological or
25 physical intimidation but rather was the product of a rational
26 intellect and free will . . . Like other misrepresentations, an
27 empty prosecutorial promise could prevent a suspect from making
28 a rational choice by distorting the alternatives among which the

1 person under interrogation is being asked to choose . . . On the
2 other hand, the State is not prohibited from inducing a confession
3 with an honest promise of leniency . . . Moreover, in
4 considering whether an empty prosecutorial promise deprived the
5 suspect of his ability to make a rational choice, we take into
6 account the characteristics of the suspect as well as the nature
7 of the interrogation." Sprosty v. Buchler, 79 F.3d 635, 646 (7th
8 Cir. 1996).

9 The State may also attempt to suggest to this Court
10 that no harm is done in such cases as long as the Defendant's
11 admissions are truthful and supported by the evidence. That is,
12 of course, not true. Connelly, 479 U.S. at 168; Lego v. Twomey,
13 404 U.S. 477, 489 (1972). The accuracy of the confession should
14 not be considered at a voluntariness hearing. Twomey, 404 U.S.
15 at 483 - 485; see, Doby v. South Carolina Dept. Of Corrections,
16 741 F.2d 76, 78 (4th Cir. 1984) (trial court erred in considering
17 truthfulness of confession in determining voluntariness).

18 "It is now axiomatic that a defendant in a criminal
19 case is deprived of due process of law if his conviction is
20 founded, in whole or in part, upon an involuntary confession,
21 without regard for the truth or falsity of the confession . . .
22 Equally clear is the defendant's constitutional right at some
23 stage in the proceedings to object to the use of the confession
24 and to have a fair hearing and a reliable determination of the
25 issue of voluntariness, a determination uninfluenced by the truth
26 of falsity of the confession." Jackson v. Denno, 378 U.S. 368,
27 376 - 377 (1964).

28 One of the other factors which must be considered in

1 the "totality of circumstances" affecting the voluntariness of
2 JUSTIN'S confessions and admissions is his young age. In Elvik
3 v. State, 114 Nev. 883; 965 P.2d 281 (1998). The Nevada Supreme
4 Court stated that the absence of a parent during a minor's
5 interrogation should be considered in reviewing the totality of
6 the circumstances bearing on the voluntariness of his statement.
7 See, People v. Lara, 67 Cal.2d 365; 62 Cal.Rptr. 586; 432 P.2d
8 202 (Cal. 1967) (age and presence of parent are factors in
9 determining voluntariness). The Court went on to note that:

10 Clearly, neither police
11 officers nor juvenile authorities
12 should be allowed to mislead a
13 youth in order to obtain a
14 confession. A juvenile should be
15 advised of his rights and informed
16 of the possibility of an adult
17 trial. But where the nature of
18 the charges and the identity of
19 the interrogator reflect the
20 existence of an unquestionably
adversary police atmosphere and
the suspect is reasonably mature
and sophisticated with regard to
the nature of the process,
resulting statements will be
admissible in a criminal trial
provided that the record otherwise
supports a finding of
voluntariness.

21 The fact that Elvik did not
22 have his mother or an attorney
23 present, coupled with Elvik's
24 youth and the officers' persistent
25 refusal to accept Elvik's claimed
26 failure to remember the shooting,
27 cast some doubt on the
voluntariness of Elvik's
statements. However, Elvik's
intelligence and experience with
the criminal system also bear on
the voluntariness of his
statements.

28 Marvin v. State, 95 Nev. 836; 603 P.2d 1056 (1979),

1 also gave further guidance as to the interview of minors
2 suspected of crimes. Before being interviewed, a child should be
3 advised of his rights and cautioned that any answers may be used
4 in a criminal court as well as before the juvenile court.
5 Special efforts should be made, especially in the case of young
6 children, to interview the juvenile only in the presence of a
7 parent or guardian. Harling v. United States, 111 U.S.App.D.C.
8 174, 176 - 177; 295 F.2d 161, 163 - 164 (1961). Although a
9 juvenile does have the capacity to make a voluntary confession
10 without the presence or assent of a parent or guardian, and a
11 confession is not psychologically coerced or involuntary simply
12 because no adult assented to it. Stokley v. State of Maryland,
13 301 F.Supp. 653, 660 (D.Md. 1969). People v. Lara, 67 Cal.2d
14 365; 62 Cal.Rptr. 586, 596; 432 P.2d 202, 212 (1967). In re:
15 J.F.T., 320 A.2d 322, 324 (D.C.App. 1974), it is preferred that
16 a responsible custodian be present. Absent extraordinary
17 circumstances, this should always be the policy when a child is
18 being questioned or a formal statement concerning his
19 participation is being taken. Clearly, the more serious the
20 offense and the younger the accused, the greater precaution which
21 should be taken in the interrogation process.

22 "The totality approach . . . includes evaluation of the
23 juveniles age, experience, education, background and intelligence
24 and (inquiry) into whether he has the capacity to understand the
25 warnings given him, the nature of the Fifth Amendment rights, and
26 the consequences of waiving those rights." Fare v. Michael C.,
27 442 U.S. 707 (1979).

28 Further, ". . . authoritative opinion has cast formidable

1 | doubt upon the reliability and trustworthiness of 'confessions'
2 | by children." In re: Gault, 387 U.. 1, 52; 87 S.Ct. 1428, 1456;
3 | 18 L.Ed.2d 527 (1967) [citing Haley v. State of Ohio, 332 U.S.
4 | 596; 68 S.Ct. 302; 92 L.Ed. 224 (1948)]. "We appreciate that
5 | special problems may arise with respect to waiver of the
6 | privilege (against self-incrimination) by . . . children . . .
7 | If counsel was not present for some permissible reason when an
8 | admission was obtained, the greatest care must be taken to assure
9 | that the admission was voluntary, in the sense not only that it
10 | was not coerced or suggested, but also that it was not the
11 | product of ignorance or rights or of adolescent fantasy, fright
12 | or despair." Gault, supra, 387 U.S. at 55; 87 S.Ct. at 1458
13 | (parentheses added).

14 | Finally, the Federal Law Enforcement Authorities are
15 | specifically required to notify parents of their child's Miranda
16 | Rights prior to any interrogation of a child. If parents ask for
17 | an opportunity to advise and counsel their child, the request
18 | cannot unreasonably be denied. United States v. Doe, 219 F.3d
19 | 1009, 1017 (9th Cir. 2000). In U.S. v. Wendy G., 255 F.3d 761
20 | C.A. 9 (Cal) (2001), the requirement that parents must be
21 | informed that an opportunity for them to communicate with their
22 | child prior to police questioning was added; or a confession
23 | should be suppressed.

24 | . . .

25 | . . .

26 | . . .

27 | . . .

28 | . . .

CONCLUSION


The defense requests a Jackson v. Denno Hearing be scheduled prior to trial, so that these important Miranda and voluntariness issues can be addressed.

DATED this 25 day of September, 2002.


Respectfully submitted:

CLARK COUNTY PUBLIC DEFENDER CLARK COUNTY PUBLIC DEFENDER

By:


CURTIS BROWN
Nevada Bar #4546
Deputy Public Defender

By:


JOSEPH K. ABOOD
Nevada Bar #1501
Deputy Public Defender

1 NOTICE OF HEARING

2 TO: CLARK COUNTY DISTRICT ATTORNEY

3 YOU WILL PLEASE TAKE NOTICE that the Clark County
4 Public Defender has set the foregoing Motion to Suppress
5 Defendant's Confessions and Admissions to Metro Detectives and
6 Request for Jackson v. Denno Hearing for hearing in Department
7 No. XVI on Monday, the ¹⁴th day of October, 2002 at the hour of
8 8:45 a.m.

9 DATED this 25 day of September, 2002.

10 CLARK COUNTY PUBLIC DEFENDER CLARK COUNTY PUBLIC DEFENDER

11
12 By: Curtis Brown
13 CURTIS BROWN
14 Nevada Bar #4546
Deputy Public Defender

15
16 By: Joseph K. Abood
17 JOSEPH K. ABOOD
18 Nevada Bar #4501
19 Deputy Public Defender

20 RECEIPT OF COPY

21 RECEIPT OF COPY of the above and foregoing Motion to
22 Suppress Defendant's Confessions and Admissions to Metro
23 Detectives and Request for Jackson v. Denno Hearing is hereby
24 acknowledged this 25 day of September, 2002.

25 CLARK COUNTY DISTRICT ATTORNEY

26 By: Kerry Miller
27
28