

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF PRESTON S.,  
A MINOR CHILD,

Electronically Filed  
Nov 24 2014 04:17 p.m.  
No. 66410 Tracie K. Lindeman  
Clerk of Supreme Court

\_\_\_\_\_  
PRESTON SANDERSON,  
Appellant,  
vs.

THE STATE OF NEVADA,  
Respondent.  
\_\_\_\_\_

Appeal from Order after Hearing on Objection to Master's  
Recommendation for Order in JV14-00030A  
The Second Judicial District Court of the State of Nevada  
Honorable Egan Walker, District Judge, Family Division

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JOINT APPENDIX

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JEREMY T. BOSLER  
Washoe County Public Defender

RICHARD A. GAMMICK  
Washoe County District Attorney

JOHN REESE PETTY  
Chief Deputy

SHELLY K. SCOTT  
Deputy District Attorney

350 South Center Street, 5th Floor  
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Attorneys for Appellant

Attorneys for Respondent

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JV14-00030A  
JUVL: PRESTON SANDERSON (JM 3 Pages  
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Washoe County  
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DA #13-179821

WCSO WC13-007030

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JOEY GORDON HASTINGS  
CLERK OF THE COURT  
DEPUTY

CODE 3645

Richard A. Gammick

#001510

P.O. Box 11130

Reno, NV 89520

(775) 328-3200

Attorney for State of Nevada

IN THE FAMILY DIVISION

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF

Case No. JV14 00030A

PRESTON SANDERSON,

Dept. JM

A CHILD.

PETITION

Your Petitioner, the duly appointed, qualified Deputy District Attorney of the County of Washoe, State of Nevada, makes the following declaration:

That there is now within the County of Washoe, State of Nevada a minor male, PRESTON SANDERSON, who resides at 430 CARLENE COURT Sparks, NV 89436, Phone: (775) 342-4621. That said minor is of the age of 13 years and was born on 11/23/2000.

That said Petitioner is informed and believes, and upon such information and belief alleges that the following facts bring said minor within the jurisdiction of the Juvenile Court under NRS 62B.330:

///

///

1           COUNT I. MALICIOUS DESTRUCTION PRIVATE PROPERTY, a  
2 violation of NRS 206.310, a gross misdemeanor, in the manner  
3 following:

4           On or about November 25, 2013, within the County of Washoe,  
5 State of Nevada, said minor individually and/or in joint  
6 participation with NATHANIEL HEADLEY did willfully and unlawfully or  
7 maliciously destroy or injure the real or personal property of JAY  
8 KILGORE; located at 430 Carlene Court, Washoe County, Nevada, in that  
9 the said minor shot at the rear sliding glass door and a window,  
10 causing damage in the amount of or in excess of \$250.00.

11           That the father of said minor is RAYMOND ALLEN SANDERSON,  
12 the mother of said minor is TIFFANY SANDERSON, and they reside at 430  
13 CARLENE CT SPARKS, NV 89436. That the said minor is now in the  
14 custody and control of RAYMOND ALLEN SANDERSON and TIFFANY SANDERSON.

15           WHEREFORE, Petitioner prays that the Court set a time for  
16 the hearing of this petition, and that the Clerk of the above-  
17 entitled Court issue summons requiring the person or persons who have  
18 custody or control of the above-named child to appear personally and  
19 bring the child before the above-entitled Court at the time fixed by  
20 the Court..

21           I declare under penalty of perjury that I am the Petitioner  
22 named in the foregoing Petition and know the contents thereof; that  
23 this Petition is true of my own knowledge, except as to those matters

24 ///

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26 ///



1 stated on information and belief, and that as to those matters, I  
2 believe it to be true.

3 AFFIRMATION PURSUANT TO NRS 239B.030

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

6 DATED this 24<sup>th</sup> day of January, 2014.  
7

8 RICHARD A. GAMMICK  
9 District Attorney  
Washoe County, Nevada

10  
11 By Shelly K Scott  
12 SHELLEY K SCOTT  
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13 Deputy District Attorney  
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JV14-00030A  
JUVENILE PRESTON SANDERSON (JM 3 Pages  
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Washoe County 1110

A #13-179821

WCSO WC13-007030

CODE 1110

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#001510

P.O. Box 11130

Reno, NV 89520

(775) 328-3200

Attorney for State of Nevada

FILED

MAY 7 2014

JOEY HASTINGS, CLERK  
By: DEPUTY CLERK

IN THE FAMILY DIVISION

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF

Case No. JV14-00030A

PRESTON SANDERSON,

Dept. JM

A CHILD.

AMENDED PETITION

Your Petitioner, the duly appointed, qualified Deputy District Attorney of the County of Washoe, State of Nevada, makes the following declaration:

That there is now within the County of Washoe, State of Nevada a minor male, PRESTON SANDERSON, who resides at 430 CARLENE COURT Sparks, NV 89436, Phone: (775) 342-4621. That said minor is of the age of 13 years and was born on 11/23/2000. This amends the petition filed January 24, 2014.

That said Petitioner is informed and believes, and upon such information and belief alleges that the following facts bring said minor within the jurisdiction of the Juvenile Court under NRS 62B.330:

///

1           COUNT I. MALICIOUS DESTRUCTION PRIVATE PROPERTY, a  
2 violation of NRS 206.310, a misdemeanor, in the manner following:

3           On or about November 25, 2013, within the County of Washoe,  
4 State of Nevada, said minor individually and/or in joint  
5 participation with NATHANIEL HEADLEY did willfully and unlawfully or  
6 maliciously destroy or injure the real or personal property of JAY  
7 KILGORE, located at 440 Veronica Court, Washoe County, Nevada, in  
8 that the said minor shot at the rear sliding glass door and a window,  
9 causing damage in the amount of or in excess of \$25.00.

10           That the father of said minor is RAYMOND ALLEN SANDERSON,  
11 the mother of said minor is TIFFANY SANDERSON, and they reside at 430  
12 CARLENE CT SPARKS, NV 89436. That the said minor is now in the  
13 custody and control of RAYMOND ALLEN SANDERSON and TIFFANY SANDERSON.

14           WHEREFORE, Petitioner prays that the Court set a time for  
15 the hearing of this petition, and that the Clerk of the above-  
16 entitled Court issue summons requiring the person or persons who have  
17 custody or control of the above-named child to appear personally and  
18 bring the child before the above-entitled Court at the time fixed by  
19 the Court.

20           I declare under penalty of perjury that I am the Petitioner  
21 named in the foregoing Petition and know the contents thereof; that  
22 this Petition is true of my own knowledge, except as to those matters

23 ///

24 ///

25 ///

26 ///

1 stated on information and belief, and that as to those matters, I  
2 believe it to be true.

3 AFFIRMATION PURSUANT TO NRS 239B.030

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

6 DATED this 5th day of May, 2014.

7  
8 RICHARD A. GAMMICK  
9 District Attorney  
Washoe County, Nevada

10  
11 By Shelly K Scott  
12 SHELLY K SCOTT  
13 6819  
14 Deputy District Attorney  
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6 IN THE FAMILY DIVISION  
7 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF WASHOE  
9

10 In the Matter of:  
11 PRESTON SANDERSON  
12 DOB: 11/23/2000

Case No. JV14-00030A

Dept. No. JM

13 A Minor Child.  
14  
15

16 MASTER'S RECOMMENDATION AND ORDER AFTER PLEA HEARING

17 The above matter was brought before the Juvenile Division on May 14, 2014.

18 The minor was personally present and accompanied by his mother.

19 Appearances:

20 Minor's Attorney: Tobin Fuss, Esq.

21 Deputy District Attorney: Shelly Scott, Esq.

22 Juvenile Probation Officer: Steve Bryant

23 Nature of Hearing: This was a hearing based upon an Amended Petition filed on May 7,

24 2014.

25 FINDINGS

26 1. The Juvenile Court has exclusive jurisdiction over the above-named minor pursuant to  
27 Juvenile Court Act at N.R.S. 62B.300.

28 ///

2. The minor freely, knowingly and voluntarily admitted to the allegations contained in the Amended Petition stated above.

3. The minor was advised of the right to counsel. The minor was further advised of constitutional rights and thorough inquiry was made by the Court to assure that the plea was voluntary.

4. The admission to the allegations of the Amended Petition, stated above, was freely and voluntarily made; and the facts therein are true.

## RECOMMENDATIONS

At the hearing, all interested persons were given an opportunity to be heard. Good cause appearing, the Court recommends the following disposition:

1. The Court adopts and executes the Master's Recommendation and Order for Supervision and Consent Decree.

2. A Contested Restitution Hearing is set for May 19, 2014 at 9:00 a.m., to be heard in conjunction with one already scheduled regarding one of the co-defendants in this matter. A parent of the minor shall be present in court for said hearing.

DATED this 30 day of May, 2014.

JUVENILE MASTER

## ORDER

The foregoing Report and Recommendation of the Master of the Juvenile Court is accepted and approved.

IT IS SO ORDERED:

Dated this 2 day of June, 2014.

DISTRICT JUDGE

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**NOTICE: RIGHT TO OBJECT**

You are hereby notified that you have the right to object to this Recommendation and Order pursuant to NRS 62B.030 and WDCR 32(1)(d). An Objection or request for trial de novo must be served and filed with the Family Division of the Second Judicial District Court within five (5) days of the date of service of the Recommendation and Order, plus an additional three (3) days if the Recommendation and Order is served by mail, in accordance with NRCP 6(e). The number of days allowed for Objection does not include Saturdays, Sundays and holidays. The objection shall briefly state the primary issues for review. The objection shall contain a notice requiring any opposing party to appear before the appropriate court department to set the objection for hearing in conformance with Rule 44. A master's recommendation shall not become effective until the time for objection has run and the recommendation has been confirmed by the assigned judge, except as otherwise provided in WDCR 24(7), WDCR 32, and NRS 62B.030. This Recommendation and Order will not be put into effect if a timely Objection is filed, pending a final order on any such Objection.

1                   **NOTICE TO JUVENILES UNDER TITLE 5**  
2                   **YOU HAVE THE RIGHT TO SEAL YOUR RECORDS**

3                   If you are less than 21 years of age, you may petition the juvenile court for  
4 an order sealing your records if:

- 5                   • Three (3) or more years have passed since you were last adjudicated (as  
6                   either a child in need of supervision or as a delinquent), or since you were  
7                   last referred to the juvenile court, whichever of these occurred later  
8                   and
- 9                   • Over the last three years you have not been convicted of a felony or of  
10                  any misdemeanor involving moral turpitude.

11                  If you file a petition before your 21<sup>st</sup> birthday, the Court will consider your  
12 petition and, if satisfied that you are rehabilitated and that you meet the  
13 requirements set out above, the Court may seal your records.

14                  If your records were not sealed before your 21<sup>st</sup> birthday, Nevada law  
15 requires that the Court automatically seal your juvenile court records – without  
16 you having to file a petition – once you reach 21 years of age *unless* you were  
17 adjudicated delinquent for:

- 18                  • an unlawful act which, if committed by an adult, would have  
19                  constituted a sexual assault, a battery with intent to commit sexual  
20                  assault, lewdness with a child, or
- 21                  • any unlawful act which would have been a felony if committed by  
22                  an adult and involved the use or threatened use of force or  
23                  violence,

24                  If you were adjudicated delinquent for one of these acts and your records  
25 were not sealed before you turned 21, then records pertaining to those acts must  
26 not be sealed until you are at least 30 years of age. If you wish to seal records  
27 related to these acts, then on or after your 30<sup>th</sup> birthday, you must petition the  
28 juvenile court for an order sealing these records and show the Court that since  
turning 21 years of age, you have not been convicted of any offense (except for  
minor traffic offenses).



1 CERTIFICATE OF MAILING

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District  
3 Court in and for the County of Washoe, and that on this 3 day of June 2014, I  
4 deposited in the county mailing system for postage and mailing with the United States Postal  
5 Service in Reno, Nevada, and/or by Electronic Filing a true copy of the attached document  
6 addressed as follows:

7 Tobin Fuss  
8 Deputy Public Defender  
9 Via Electronic Filing

10 Shelly Scott  
11 Deputy District Attorney  
12 Via Electronic Filing

13 Steve Bryant  
14 Juvenile Probation Officer  
15 Via Electronic Filing

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6 IN THE FAMILY DIVISION  
7 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF WASHOE  
9

10 In the Matter of:  
11 PRESTON SANDERSON

Case No. JV14-00030A

12 A Minor Child.  
13 \_\_\_\_\_/

Dept. No. JM

14 MASTER'S RECOMMENDATION FOR ORDER AFTER RESTITUTION HEARING

15 The above-captioned action was brought before the Juvenile Division on May 19,  
16 2014, for a contested restitution hearing. At the hearing, Preston Sanderson (the minor)  
17 was personally present and accompanied by his parent. The minor's attorney, Tobin Fuss,  
18 Esq., of the Public Defender's office, and Deputy District Attorney, Shelly Scott, Esq., were  
19 also present.

20 RELEVANT PROCEDURAL HISTORY

21 On May 14, 2014, the minor appeared before this Court and admitted to Count I of  
22 May 7, 2014, *Amended Petition* which reads as follows:

23 Malicious Destruction of Private Property, a violation of NRS  
24 206.310, a misdemeanor, in the manner following:

25 On or about November 25, 2013, within the County of Washoe,  
26 State of Nevada, said minor individually and/or in joint  
27 participation with NATHANIEL HEADLEY did willfully and  
28 unlawfully or maliciously destroy or injury the real or personal  
property of JAY KILGORE, located at 440 Veronica Court,  
Washoe County, Nevada, in that the said minor shot at the rear  
sliding glass door and a window, causing damage in the amount  
of or in excess of \$25.00.

1 At the May, 14, 2014, hearing the Court canvassed the minor regarding his rights and  
2 the effect of his plea. The Court found the minor's admission to the *Amended Petition* was  
3 voluntarily made and therefore construes all of the facts outlined in Count I of the *Amended*  
4 *Petition* as true.

5 The Court thereafter adopted the *Master's Recommendation and Order for a*  
6 *Supervision and Consent Decree* which included a provision that requires the minor to pay  
7 restitution in an amount to be determined at a later hearing. (*Supervision and Consent*  
8 *Decree*, ¶ 4(h).)

9 On May 19, 2014, this Court held a contested, evidentiary hearing regarding  
10 restitution. At the hearing the Court heard testimony from Jeffrey Fisher, general contractor  
11 and owner of Fisher Construction; and Jay Kilgore, homeowner of residence located at 440  
12 Veronica Court, Washoe County, Nevada called on behalf of the State and Robert Hardy,  
13 President of Brite Glass, called on behalf of the minors. The Court also considered what  
14 were marked and admitted into evidence as State's Exhibits "A" through "P" and Defendant's  
15 Exhibits "1" through "4".

16 BRIEF SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED

17 As a result of Mr. Headley and Mr. Sanderson's pleas, it is undisputed that on or about  
18 November 25, 2013, Nathaniel Headley and Preston Sanderson willfully and unlawfully or  
19 maliciously destroyed or injured the real or personal property of Jay Kilgore, by shooting a  
20 BB or pellet gun at the rear sliding glass door and a window of Mr. Kilgore's home located at  
21 located at 440 Veronica Court, Washoe County, Nevada. It is also undisputed that as a result  
22 of the minors' actions, Jay Kilgore suffered damage to glass panes in a sliding glass patio  
23 door and to the glass in a bedroom window. The central issue in dispute is whether  
24 restitution should be set in an amount to include damage to the frame of the sliding glass  
25 door or whether restitution should be limited to the cost of repairing the panes of glass in  
26 the window and patio door only.

27 ///

28 ///

1 Mr. Kilgore testified that he received a call at approximately 4:40 PM on November  
2 25, 2013, alerting him that his home had been damaged. Mr. Kilgore arrived at  
3 approximately 5:10 PM at which time he met with police. Mr. Kilgore was not permitted to  
4 get a better look at the damage until approximately 6:30 PM that evening.

5 The damaged patio door and window were left somewhat unsecure from the evening  
6 of the incident on November 25, 2013, until November 30, 2014, when Mr. Kilgore  
7 attempted to secure the damaged areas himself using primarily plywood and insulated  
8 material.

9 Mr. Kilgore testified that although he is familiar with many aspects of home repair  
10 and is the owner of his own electrical business, he is not a journeyman glass glazer and has  
11 no independent or specialized knowledge for repairing glass windows or doors. Mr. Kilgore  
12 also testified that at the time of the incident, he was without sufficient funds to pay  
13 hundreds of dollars, let alone thousands of dollars, to repair or otherwise address the  
14 damage. As a result, Mr. Kilgore explained that he contacted friends and associates with  
15 whom he works in the area of construction for advice on how best to secure the area while  
16 still allowing ingress and egress to himself and a roommate who also resides at his  
17 residence. Mr. Kilgore testified that friends within the contracting business, advised him to  
18 secure the area using plywood secured to the frame of the sliding patio door. Mr. Kilgore  
19 followed the advice and secured the sliding patio door using plywood screwed into the  
20 frame of the patio door. (For the bedroom window, Mr. Kilgore secured plywood to the trim  
21 around the window, not to the window frame.) Mr. Kilgore also testified that a friend who  
22 happened to work at Fast Glass worked with him to put a single pane of glass into the sliding  
23 glass patio door to help secure the door and assist with heating loss. Mr. Kilgore testified  
24 that he incurred no out of pocket cost associated with his friend's assistance. Mr. Kilgore  
25 acknowledges that he did not contact his friend at Fast Glass for an estimate to replace the  
26 glass or for advice on specific advise on how best to secured the door and instead relied  
27 upon his contractor friends' suggestion.

28 ///

1 In explaining his request for reimbursement, Mr. Kilgore testified that he wants  
2 sufficient restitution to pay a contractor to put the area "back to normal". Mr. Kilgore also  
3 testified that he wants the area "back to new". Mr. Kilgore testified that the estimates  
4 introduced as State's Exhibit "K" through "O" were received by him to assess the cost of  
5 doing the repairs as he would like including a new window and patio door (frame, glass and  
6 all hardware). Mr. Kilgore also testified that State's Exhibit "P" reflects materials purchased  
7 by him on November 30, 2013, when he took steps to secure the damaged window and door  
8 himself, these expenses were not specifically requested as part of restitution sought.

9 On cross examination, Mr. Kilgore acknowledged that although the window and patio  
10 door were an upgrade from normal contractor grade materials (a point also acknowledged  
11 by Defendant's witness, Robert Hardy), the window at the time of the damage was  
12 approximately 4 ½ years old. Mr. Kilgore testified that the sliding patio door was in good  
13 working order before it was damaged, but acknowledged that State's Exhibit "G" reflected  
14 paint on the trim that was already aged, and weathered. Finally, Mr. Kilgore testified that  
15 the window and door remain secured as set forth in Exhibits "A" through "J" and have not  
16 been replaced or repaired to date.

17 At the hearing, a friend of Mr. Kilgore's, Jeffery Fisher, also testified. Mr. Fisher is a  
18 licensed, general contractor and owner of Fisher construction. He testified that on or  
19 around November 26 or 27, 2013, he went to the property at 440 Veronica Court, Washoe  
20 County, Nevada and observed the damage to the sliding patio door and window. Mr. Fisher  
21 testified that he submitted a bid in the amount of \$6,396.00 to repair the damage which  
22 included replacing the entire door and window – including frames. Mr. Fisher testified that  
23 the bid was generated to reflect the repairs requested by Mr. Kilgore – including  
24 replacement of the window and door frames. Mr. Fisher, however, also testified that at this  
25 time the frame must be replaced because the screws put into the frame damaged the frame  
26 and cannot be patched or repaired. On cross-examination, Mr. Fisher also testified, that in  
27 his opinion, securing plywood to the frame was appropriate to allow ingress and egress and  
28 that he knew of no other manner to secure the door. Finally, Mr. Kilgore acknowledged he  
has been a friend of Mr. Kilgore's for more than 12 years and that the friendship affected the

1 bid in that Mr. Fisher provided a discounted rate for services to be rendered and that the  
2 discounted rate is represented in the bid of \$6,396.00 which he testified he would continue  
3 to honor as of the date of the hearing.

4 The minors called Robert Hardy, President of Brite Glass, to testify. Mr. Hardy  
5 testified that he reviewed photographs depicting the damage to Mr. Kilgore's sliding glass  
6 patio door and rear window as set out in State's Exhibits "A" through "P" and, in his  
7 professional opinion, the damage was limited to the glass only. Mr. Hardy further testified  
8 that if the sliding patio doors had been properly secured, the door frame would likely be free  
9 of warping or damage but for the screws placed into the sliding patio door by Mr. Kilgore.

10 Mr. Hardy testified that in his opinion, the damage suffered by Mr. Kilgore could have  
11 and should have fully repaired by simply replacing the glass panels in the patio door and  
12 window at a cost of \$1,552.30 as set forth on Defendant's Exhibit "1". Mr. Hardy,  
13 acknowledged, however that the sliding glass door would have been a custom order with the  
14 materials taking approximately four days to arrive for installation. During that period of  
15 time, Mr. Hardy contends the patio door should have been secured by boarding up the  
16 window (as was done) and securing the sliding glass door in one of two different ways so as  
17 to leave the frame of the door undamaged.

18 The first option would have involved fitting two pieces of plywood over the damaged  
19 sliding door panels and securing the two pieces of plywood to one another using molly bolts  
20 secured in the interior of the frame - where the glass would normally be - so the frame was  
21 not damaged. Mr. Hardy acknowledged, however, that this scenario would have likely  
22 rendered Mr. Kilgore's door inoperable for ingress and egress.

23 The second option for securing the sliding patio door - and the one advocated by Mr.  
24 Hardy - would have been to have a piece of plywood inserted into the panel where the glass  
25 would normally have been and blocked into place using a method referred to as "pocket  
26 glazing". Mr. Hardy, however, also acknowledged that it would have cost approximately  
27 \$400.00 to have a journeyman glazer with five or more years' experience undertake  
28 boarding up the sliding glass door in the manner described and advocated.

ANALYSIS

"Compensation of victims of criminal conduct is an important part of the public policy of the state. There is no reason to distinguish juvenile criminality from adult criminality in this respect. The victim is equally harmed by either predation." *Jeffrey C. v. Juvenile Dept. of Second Judicial Dist. Court of the State of Nevada*, 102 Nev. 521, 728 P.2d 1357 (1986).

The Juvenile Court has the authority, and indeed the duty, to order restitution for certain unlawful acts. NRS 62E.550 – NRS 62E.560. Despite this duty, the Court maintains discretion in setting the amount of restitution and although the court may order restitution in an amount that equals the full amount of the loss incurred by the victim, regardless of the amount of insurance coverage that exists for the loss, the Court may also order restitution in an amount less than the full amount of the loss if deemed appropriate and proper for disposition of the case. NRS 62E.570.

On November 25, 2013, the minors shot and damaged Mr. Kilgore's sliding glass patio door and window. Damage rendered both the window and door inoperable and left the home unsecure. The Court finds Mr. Kilgore was appropriately concerned about the weather as well as security, and safety (including ingress and egress for himself and his roommate) as a result of the damage. Therefore efforts to secure the area from the weather while still maintaining a functional and operational door in the event of an emergency was a reasonable objective. The Court also finds Mr. Kilgore is an electrician - not a journeyman glazer - and that it is not unreasonable for him to lack trade specific knowledge as to the best practice for securing the door. Finally, Mr. Kilgore testified that he was without means to pay hundreds of dollars let alone thousands of dollars to repair the damage at the time of the incident. This testimony was unchallenged and is therefore deemed true.

Reasonable minds may differ as to the best course of action to be undertaken under a particular set of circumstances. Taking the circumstances as outlined above, Mr. Kilgore found himself with a home unsecure and open to the elements as a result of the minor's conduct. Days after the event, still without funds to properly repair the damage, he relied upon the advice of others whom he trusted to secure the door in the manner he deemed

1 most appropriate that would address issues associated with security and safety as well as  
2 concerns for weather. These steps - while in hindsight not the best practice - were  
3 reasonable at the time.

4 Assuming, arguendo, that Mr. Kilgore had contacted Brite Glass or Fast Glass and  
5 knew that securing the door through a method of pocket glazing was the best alternative for  
6 securing the door while still allowing for emergency egress and ingress, Mr. Hardy's own  
7 testimony reveals that such a procedure would have been easily undertaken only by a  
8 journeyman glazer with some years' experience. For a member of the public, like Mr.  
9 Kilgore, who is not so skilled, the cost of securing the door in the manner advocated by the  
10 minors' comes at a cost of approximately \$400.00 - a cost in excess of what Mr. Kilgore  
11 testified he could afford at the time. Therefore, although not what those knowledgeable in  
12 the industry of glass repair would construe as the best practice, in the days after the incident  
13 Mr. Kilgore secured the patio doors in a manner he could afford with limited funds at his  
14 disposal, to address reasonable concerns, based upon information he had available to him at  
15 the time.

16 This Court concludes that Mr. Kilgore's efforts to secure the door and window after  
17 these items were damaged by the minors were reasonable in light of the circumstances  
18 present at that time. However, the Court also finds Mr. Kilgore's request for restitution  
19 seeks funds to pay for items that are not required (such as a new bedroom window  
20 including frame) or that are in excess of what is required to restore his home back to the  
21 condition it was in prior to November 25, 2014. Having reviewed the evidence and  
22 testimony introduced during the May 19, 2014, hearing, the Court finds sufficient reliable  
23 and accurate evidence supporting an order for total restitution in the amount of \$5,462.98  
24 as a reasonable consequences of the minors' actions in this case. In light of the negotiated  
25 terms in Nathaniel Albert Roy Headley's case for individual, rather than joint and several  
26 liability, and after review of the minor's respective *Petitions* and plea, the Court deems  
27 restitution most appropriate set for each child, individually, in an amount equal to one half  
28 of the total restitution set forth above.



RECOMMENDATION FOR ORDER

Based upon the foregoing the Court recommends for entry of order as follows:

1. Preston Sanderson is responsible for restitution in the amount of \$2,731.49, payable to the Washoe County General Fund, through Washoe County Juvenile Services.

Preston Sanderson's restitution obligation is an individual obligation owed by Preston Sanderson and/or his parents as set forth below.

2. To the extent Preston Sanderson is not able to provide restitution as set forth herein, Preston Sanderson's parent(s) shall pay the restitution set forth above. NRS 62E.560-570

3. At this time, the Court finds no evidence of any extenuating circumstances or financial hardship warranting an order for the minor and or his parent(s) to perform community service in lieu of paying restitution as set forth above.

**IT IS SO RECOMMENDED.**

DATED this 3 day of June, 2014.

  
\_\_\_\_\_  
JUVENILE MASTER

**NOTICE: RIGHT TO OBJECT**

You are hereby notified that you have the right to object to this Recommendation and Order pursuant to NRS 62B.030 and WDCR 32(1)(d). An Objection or request for trial de novo must be served and filed with the Family Division of the Second Judicial District Court within five (5) days of the date of service of the Recommendation and Order, plus an additional three (3) days if the Recommendation and Order is served by mail, in accordance with NRCP 6(e). The number of days allowed for Objection does not include Saturdays, Sundays and holidays. The objection shall briefly state the primary issues for review. The objection shall contain a notice requiring any opposing party to appear before the appropriate court department to set the objection for hearing in conformance with Rule 44. A master's recommendation shall not become effective until the time for objection has run and the recommendation has been confirmed by the assigned judge, except as otherwise provided in WDCR 24(7), WDCR 32, and NRS 62B.030. This Recommendation and Order will not be put into effect if a timely Objection is filed, pending a final order on any such Objection.

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**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court in and for the County of Washoe, and that on this 3<sup>rd</sup> day of June 2014, I deposited in the county mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, and/or by Electronic Filing a true copy of the attached document addressed as follows:

Deputy Public Defender  
Via Electronic Filing

Deputy District Attorney  
Via Electronic Filing

Juvenile Probation Officer  
Via Interoffice Mail & Electronic Filing

  
\_\_\_\_\_  
COURT CLERK

1 CODE 2620  
Washoe County Public Defender  
2 Tobin E. Fuss, Bar #5957  
P.O. Box 11130  
3 Reno, Nevada 89520-0027  
(775) 337-4800  
4 Attorney for the Minor:

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

9 IN THE MATTER OF ) Case No.: JV14-00030A  
10 PRESTON SANDERSON, ) Dept. No.: 2  
11 A CHILD. )  
12

13 NOTICE OF OBJECTION TO MASTER'S RECOMMENDATION FOR ORDER AFTER  
14 RESTITUTION HEARING

15 COMES NOW the minor, PRESTON SANDERSON, through his  
16 counsel, TOBIN E. FUSS, of the Washoe County Public Defender's  
17 Office, and objects to the Master's Recommendation for Order  
18 after a Restitution Hearing May 19, 2014 and order filed June  
19 3, 2014 as an abuse of discretion.  
20

21 PRIMARY ISSUE FOR REVIEW

- 22 1. The master failed to indicate which estimate she  
23 ~~relied upon in determining the restitution figure and~~  
24 what items were to be paid for by the minor.  
25 2. The minor admitted to shooting and damaging the glass  
26 windows of the sliding door and bedroom. The damage

1 done to the door frame was done by the property  
2 owner. Under Erickson v. State, 107 Nev. 864 (1991),  
3 the minor should be responsible for the restitution  
4 in an amount consistent with the charge that he  
5 admitted.

6  
7 The minor requests that the court impose an amount  
8 consistent with the amount of restitution for the repair of the  
9 glass itself and not the door frame. Further, the minor  
10 requests a hearing De Novo to determine what needs to be  
11 replaced and what it will cost.

12 Notice is hereby given to the Washoe County District  
13 Attorney's Office to appear before the clerk of Department 2  
14 the Family Division of the Second Judicial District Court on  
15 June 24, 2014 at 9:00 a.m. by phone to set this matter for  
16 hearing.

17 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

21  
22 RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of June, 2014.

23 JEREMY T. BOSLER  
24 Washoe County Public Defender

25 By: /s/ Tobin E. Fuss  
26 Tobin E. Fuss  
Deputy Public Defender

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CERTIFICATE OF SERVICE

**CASE NUMBER: JV14-00030A**

I, THERESA MURCHLAND, hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date I electronically filed the foregoing with the Clerk of the Second Judicial District Court, which will send a notice of electronic filing to the following:

SHELLY SCOTT, DEPUTY DISTRICT ATTORNEY

DATED this 10<sup>th</sup> day of June, 2014.

/s/ Theresa Murchland  
THERESA MURCHLAND

1 CODE 2550  
2 Washoe County Public Defender  
3 Tobin E. Fuss, Bar #5957  
4 P.O. Box 11130  
5 Reno, Nevada 89520-0027  
6 (775) 337-4800  
7 Attorney for the Minor:

8 IN THE JUVENILE DEPARTMENT  
9 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
10 IN AND FOR THE COUNTY OF WASHOE

11 IN THE MATTER OF  
12 PRESTON SANDERSON,  
13 A CHILD.

Case No.: JV14-00030A  
Dept. No.: 2

14 NOTICE OF HEARING

15  
16  
17 PLEASE TAKE NOTICE that a Hearing regarding the Objection to Master's Order in the  
18 above referenced case has been set for July 17, 2014, at 1:15 pm, in Department 2.

19 AFFIRMATION PURSUANT TO NRS 239B.030

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

22 DATED this 24<sup>th</sup> day of June, 2014.

23  
24 JEREMY T. BOSLER  
Washoe County Public Defender

25 By: /s/ TOBIN FUSS  
26 TOBIN FUSS  
27 Deputy Public Defender  
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**CERTIFICATE OF SERVICE**

**CASE NUMBER: JV14-00030A**

I, THERESA MURCHLAND, hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date I electronically filed the foregoing with the Clerk of the Second Judicial District Court, which will send a notice of electronic filing to the following:

Shelly Scott, Deputy District Attorney

Steve Bryant, Department of Juvenile Services

DATED this 24<sup>th</sup> day of June, 2014.

/s/ Theresa Murchland  
Theresa Murchland

1 CODE 2620  
Washoe County Public Defender  
2 Tobin E. Fuss, Bar #5957  
P.O. Box 11130  
3 Reno, Nevada 89520-0027  
(775) 337-4800  
4 Attorney for the Minor:

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

9 IN THE MATTER OF ) Case No.: JV14-00030A  
10 PRESTON SANDERSON, ) Dept. No.: 2  
11 A CHILD. )  
12

13 OBJECTION TO MASTER'S RECOMMENDATION FOR ORDER AFTER  
14 RESTITUTION HEARING

15 COMES NOW the minor, PRESTON SANDERSON, through his  
16 counsel, TOBIN E. FUSS, of the Washoe County Public Defender's  
17 Office, and objects to the Master's Recommendation for Order  
18 after a Restitution Hearing May 19, 2014 and filed on June 3,  
19 2014 where the Master ordered a restitution sum of \$5,462.98  
20 without specifying which estimate the figure came from and for  
21 ordering the minor to pay for the damage to the frame of the  
22 slider done by the homeowner as an abuse of discretion under  
23 Martinez v. State, 115 Nev. 9 (1999) and Erickson v. State, 107  
24 Nev. 864 (1991) and further requests a hearing De Novo if the  
25 court determines that the minor is responsible for the damage  
26 to the sliding glass door frame.



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1 confirmed that the minor had "shot out" the windows and that he  
2 had done no damage to the window frame or the slider frame.

3 The evidence found that it was the homeowner who damaged  
4 the frame by screwing in some 30 screws in order to "secure"  
5 the slider with plywood. Despite the fact that one pane was  
6 still intact and the other side had a temporary pane put in  
7 place by the owner's friend Dave from Fast Glass. There was no  
8 need to secure the slider as it had windows covering both sides  
9 and the plywood was not necessary. The cost to repair the  
10 damage caused by the minor was testified by Mr. Hardy as  
11 totaling \$1,952.30 to properly repair the glass.

12 Finally, the minor would request that if the court  
13 determines that the damage to the frame lies with the minor,  
14 that the court conduct a hearing De Novo to determine the  
15 appropriate amount for the cost to repair the glass in the  
16 bedroom window and to replace the glass and frame in the  
17 sliding door. NRS 62B.030(c). It appears from the estimates  
18 provided by the state and Mr. Kilgore that the replacement of  
19 the slider may cause damage to the surrounding frame (see  
20 estimates for cost associated with repair of the "trim"). An  
21 estimate from a glass specialist may be able to repair the  
22 windows without causing any further damage to the house  
23 reducing the amount of restitution.

#### 24 CONCLUSION

25 Based upon the above argument and any argument presented  
26 during a hearing, the minor requests that the restitution

1 figure be set at \$1,952.30 for the cost to replace the glass  
2 and the cost of "board up". If the court determines that the  
3 minor is responsible for the frame damage, the minor would  
4 request a hearing De Novo to present estimates from expert  
5 glass and window installers to further reduce any further  
6 damage to Mr. Kilgore's residence.

7  
8 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

12  
13 RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of June, 2014.

14 JEREMY T. BOSLER  
15 Washoe County Public Defender

16 By: /s/ Tobin E. Fuss  
17 Tobin E. Fuss  
18 Deputy Public Defender  
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CERTIFICATE OF SERVICE

**CASE NUMBER: JV14-00030A**

I, THERESA MURCHLAND, hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date I electronically filed the foregoing with the Clerk of the Second Judicial District Court, which will send a notice of electronic filing to the following:

SHELLY SCOTT, DEPUTY DISTRICT ATTORNEY

DATED this 26<sup>th</sup> day of June, 2014.

/s/ Theresa Murchland  
THERESA MURCHLAND

ORIGINAL

FILED

2014 JUL -7 PM 2:54

JERRY MICHAEL HASTINGS  
CLERK OF THE COURT

BY

*[Signature]*

1 CODE 3885  
2 Richard A. Gammick  
3 Bar Number: 1510  
4 P.O. Box 30083  
5 Reno, Nevada 89520-3083  
6 (775) 328-3403  
7 Attorneys for: Washoe County District  
8 Attorneys Office

IN THE FAMILY DIVISION

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF:

PRESTON SANDERSON,

A Child.

)  
)  
) Case No. JV14-00030A

)  
) Dept. No. 2  
)

RESPONSE TO MINOR'S OBJECTION TO MASTER'S RECOMMENDATIONS

COMES NOW, the State of Nevada, by and through Deputy District Attorney Shelly K. Scott, and hereby files this Response to the minor's Objection to Master's Recommendation for Order After Restitution Hearing, filed on June 26, 2014.

This response is based upon the attached points and authorities, all papers and pleadings on file in this case and the record of the hearing held May 19, 2014.

Statement of Facts and Procedure:

On May 14, 2014, the minor admitted to the allegation of malicious destruction of property contained in the Amended Petition. The State and the minor agreed to a disposition of the case that afforded the minor the opportunity of being placed on a Supervision and Consent

1 Decree whose terms included that the minor would make restitution in an  
2 amount to be determined at a later hearing.

3 A restitution hearing was conducted on May 19, 2014, at which time  
4 the minor had the opportunity to cross examine the witnesses for the  
5 State and to present evidence on his own behalf. The Juvenile Master  
6 determined the restitution owed was \$5462.98, and held the minor and his  
7 parents individually responsible for payment of half (\$2731.49).

8 POINTS & AUTHORITIES  
9 AND  
10 ARGUMENT

11 I.

12 **The Juvenile Court is empowered to order restitution**

13 The authority to impose restitution is not an inherent power of  
14 the court, but is derived from statutes. Martinez v. State, 115 Nev. 9,  
15 10, 974 P.2d 113 (1999), citing State v. Davison, 116 Wash.2d 917, 809  
16 P.2d 1374, 1375 (1991). NRS 62E.560(2) mandates restitution where a  
17 delinquent child committed an unlawful act that damaged or destroyed  
18 property owned or possessed by another.

19 II.

20 **No extraordinary grounds are asserted that warrant a hearing de novo**

21 Washoe District Court Rule 32(1)(b) states that the hearing on an  
22 objection "shall be in the form of a review of the record with oral  
23 argument, unless otherwise expressly ordered by the court." The Rule  
24 permits a "trial" de novo in extraordinary circumstances. Here, the  
25 minor cites to no extraordinary circumstances warranting a de novo  
26 hearing.

26 ///

1 Although restitution is a sentencing determination and the minor  
2 is not entitled to a full evidentiary hearing (Martinez, supra), the  
3 minor had the opportunity to cross examine the victim, a witness who  
4 prepared an estimate for repairs, and to call his own expert to  
5 testify.

6 The minor now asserts a trial de novo is warranted because he  
7 needs to inquire as to whether the removal of the trim is necessary in  
8 replacing the sliding glass door. The State responds that the minor  
9 had ample opportunity to question the validity of the estimates. The  
10 minor did not inquire of Mr. Fischer (who had visually inspected the  
11 door and window at issue) whether or not there was a need to remove  
12 and replace the existing trim in order to replace the door or window  
13 in question. Neither did the minor inquire of his own expert, Mr.  
14 Hardy, whether or not the expert could render an opinion as to the  
15 necessity to remove and replace the trim in order to repair the  
16 sliding glass door and window. In fact, all three estimates submitted  
17 by the State were admitted without objection as were the defense  
18 estimates for replacing the glass only. There are no new or unknown  
19 issues warranting a hearing de novo.

20 **III.**

21 **The Juvenile Master was authorized to determine the amount of  
restitution and absent an abuse of discretion it should remain as set**

22 The minor's reliance on Erickson v. State, 107 Nev. 864, 821 P.2d  
23 1042 (1991) for purposes of limiting the order for restitution is  
24 misplaced. In Erickson, the court rejected the State's argument that  
25 restitution should be determined based upon the transaction in which  
26 the defendant was involved. The court stated:

1 "Interpreting restitution statutes nearly identical to ours,  
2 the majority of these courts have held that a defendant may  
3 be ordered to pay restitution only for an offense that he  
4 has admitted, upon which he has been found guilty, or upon  
5 which he has agreed to pay restitution. State v. French, 166  
6 Ariz. 247, 801 P.2d 482 (Ct.App.1990); see also State v.  
7 Voetberg, 99 Or.App. 112, 781 P.2d 387 (1989); State v.  
8 Madril, 105 N.M. 396, 733 P.2d 365 (Ct.App. 1987); State v.  
9 Berman, 50 Wash.App. 125, 747 P.2d 492 (1987); Nelson v.  
10 State, 628 P.2d 884 (Alaska 1981). We reject the State's  
11 position and adopt the majority rule. Such a rule embodies a  
12 fair reading of NRS 176.033(1) and avoids the manifest  
13 injustice of punishing defendants for charges to which they  
14 have neither admitted guilt nor been adjudicated guilty."  
15 Erickson, *supra*, at 866, 821 P.2d 1042, 1043.

16 In the case at bar, the minor admitted to an offense of property  
17 destruction for damaging the sliding glass door and window on a home  
18 at 440 Veronica Court. He agreed that restitution for this act would  
19 be determined at a subsequent hearing. Mr. Kilgore is the homeowner  
20 at that residence and the actual victim of the offense that the minor  
21 admitted.

22 Mr. Kilgore submitted estimates from three construction companies  
23 to repair the damages. (Exhibits K, L, and M) He received an estimate  
24 for the purchase of the slider from Home Depot (Exhibit N); and he  
25 sought out the wholesale price to purchase the damaged slider and  
26 window (Exhibit O). Additionally, Mr. Kilgore testified to the steps  
he took to secure his residence after the minor's actions left him  
with a shattered sliding glass door.

The Juvenile Master has fully set forth in her Recommendation for  
Order, her analysis in arriving at a figure for restitution, including  
a decision not to include funds for a new bedroom window. The  
Master's restitution award of \$5462.98 is the number one would arrive  
at if the wholesale cost of the window (\$933.02) is subtracted from



1 the lowest estimate for repair presented by the State on behalf of Mr.  
2 Kilgore (\$6396.00). Because the State agreed to an award on an  
3 individual basis for the co-defendant, the Master similarly ordered  
4 individual restitution in the amount of \$2731.49 payable by the minor  
5 and his parent.

6 **CONCLUSION**

7 Given the above, the State respectfully asserts that the Juvenile  
8 Master did not err in her determination of restitution and we hereby  
9 request that the Master's Recommendation for Order filed June.3, 2014,  
10 be affirmed.

11 AFFIRMATION PURSUANT TO NRS 239B.030

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

14  
15 DATED this 7<sup>th</sup> day of July, 2014.

16 RICHARD A GAMMICK  
17 Washoe County District Attorney

18  
19 By:

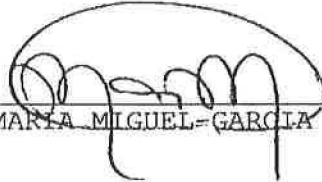
Shelly K. Scott  
SHELLY K SCOTT  
6819  
Deputy District Attorney

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCF 5(b), I certify that I am over the age of 18 years and will deposit for mailing in the U.S. Mails, with postage fully prepaid, or by inter-office mail where indicated, a true and correct copy of the foregoing in an envelope addressed to the following:

TOBIN FUSS  
Washoe County Public Defender  
Via inter-office mail

Washoe County Department of  
Juvenile Services  
Via inter-office mail

  
MARIA MIGUEL-GARCIA

1 CODE 3795  
2 Washoe County Public Defender  
3 Tobin E. Fuss, Bar #5957  
4 P.O. Box 11130  
5 Reno, Nevada 89520-0027  
6 (775) 337-4800  
7 Attorney for the Minor:

8  
9 IN THE JUVENILE DEPARTMENT  
10  
11 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
12  
13 IN AND FOR THE COUNTY OF WASHOE  
14

15 IN THE MATTER OF ) Case No.: JV14-00030A  
16 )  
17 PRESTON SANDERSON, ) Dept. No.: 2  
18 )  
19 A CHILD. )  
20 )

21  
22 REPLY TO RESPONSE TO MINOR'S OBJECTION TO MASTER'S  
23 RECOMMENDATIONS  
24

25 COMES NOW the minor, PRESTON SANDERSON, through his  
26 counsel, TOBIN E. FUSS, of the Washoe County Public Defender's  
Office, and files this reply to the state's response. This  
motion is based upon the attached Points and Authorities  
incorporated herein.

20 ARGUMENT

21 The state argues that Washoe District Court Rule 32(1)  
22 (b) allows for a trial *de novo* only in extraordinary  
23 circumstances. In Goudge v. State, 128 Nev. Adv. Op. 52, 287  
24 P.3d 301 (2012), the court held that, "The use of the word  
25 "**shall**" in the statute divests the district court of judicial  
26 discretion. See NRS 0.025(1)(d); see also Otak Nevada v. Eighth

1 Judicial Dist. Court of State, ex rel. County of Clark, 127  
2 Nev. Adv. Op. 53, 260 P.3d at 411. This court has explained  
3 that, when used in a statute, the word "**shall**" imposes a duty  
4 on a party to act and prohibits judicial discretion and,  
5 consequently, mandates the result set forth by the statute.  
6 Id.; see also Johanson v. Dist. Ct., 124 Nev. 245, 249-50, 182  
7 P.3d 94, 97 (2008) (explaining that " ' **shall** ' is **mandatory**  
8 and does not denote judicial discretion' " (quoting Washoe Med.  
9 Ctr. V. Dist. Ct., 122 Nev. 1298, 1303, 148 P.3d 790, 793  
10 (2006))). The Minor filed his Notice of Objection and  
11 requested a hearing *de novo* on June 10, 2014 within five  
12 judicial days of the filing of the master's recommendation and  
13 order filed June 3, 2014.

14 NRS 62.030(4) (c) reads,

15 After reviewing the recommendations of a master of  
16 the juvenile court and any objection to the master's  
17 recommendations, the juvenile court shall:  
18 (a) Approve the master's recommendations, in whole or  
19 in part, and order the recommended disposition;  
20 (b) Reject the master's recommendations, in whole or  
21 in part, and order such relief as may be appropriate;  
22 or  
23 (c) Direct a hearing *de novo* before the juvenile  
24 court if, not later than 5 days after the master  
25 provides notice of the master's recommendations, a  
26 person who is entitled to such notice files with the  
juvenile court a request for a hearing *de novo* before  
the juvenile court.

23 ~~The Minor has complied with the requirements of NRS~~  
24 62B.030 and therefore is entitled to a trial *de novo* regarding  
25 the appropriate amount of restitution in this matter. The  
26 mandatory language in the statute divests this court of its

1 judicial discretion granted to it by Washoe District Court Rule  
2 32(1) (b). Therefore, the minor is entitled to a hearing *de*  
3 *novo*.

4           The state may be correct that the court used the  
5 estimate provided by Mr. Fischer in exhibit M, however, the  
6 court does not specifically note that in its order. The  
7 possible damage associated with the removal and replacement of  
8 the slider door is arguably speculative as it may or may not  
9 require the cost of repair. Finally, as pointed out in the  
10 minor's opening brief, if there was glass on both sides of the  
11 sliding door, the fixed side and the slider, the addition of  
12 the plywood was unnesessary to the "securing" of the door and  
13 was a mistake made by the homeowner whose cost should be borne  
14 by him.

#### 15                           CONCLUSION

16           Based upon the above argument, motions, and evidence  
17 presented during a hearing, the minor requests that this court  
18 set a restitution figure for the broken glass of \$1,952.30. If  
19 the court determines that the minor is responsible for the  
20 damage to the door frame done by the home owner, the minor  
21 would request hearing *de novo* as required by NRS 62B.030 (4)  
22 (c).

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AFFIRMATION PURSUANT TO NRS 239B.030

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

RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of July, 2014.

JEREMY T. BOSLER  
Washoe County Public Defender

By: /s/ Tobin E. Fuss  
Tobin E. Fuss  
Deputy Public Defender

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CERTIFICATE OF SERVICE

**CASE NUMBER: JV14-00030A**

I, THERESA MURCHLAND, hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date I electronically filed the foregoing with the Clerk of the Second Judicial District Court, which will send a notice of electronic filing to the following:

SHELLY SCOTT, DEPUTY DISTRICT ATTORNEY

DATED this 10<sup>th</sup> day of July, 2014.

/s/ Theresa Murchland  
THERESA MURCHLAND

1 CODE: 4185

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IN THE FAMILY DIVISION

6

OF THE SECOND JUDICIAL DISTRICT COURT

7

OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

8

THE HONORABLE EGAN WALKER, DISTRICT JUDGE

9

10 IN THE MATTER OF

11 PRESTON SANDERSON,

Case No. JV14-00030A

12

A Minor Child.

Dept. No. 2

13

14

15

TRANSCRIPT OF PROCEEDINGS

Hearing on Objection to Master's Findings

16

July 17, 2014

17

APPEARANCES

18

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WITNESSES ON BEHALF OF THE STATE OF NEVADA: PAGE

None

WITNESSES ON BEHALF OF THE DEFENSE:

None

EXHIBITS:

None

1 THE COURT: Thank you all, please be seated.

2 This is JV14-00030 Alpha in the matter of  
3 Preston Sanderson. Ms. Scott appears from the District  
4 Attorney's Office. Mr. Fuss is here from the Public  
5 Defender's Office.

6 And is this young Preston?

7 MR. FUSS: It is, Your Honor.

8 THE COURT: Good afternoon, Preston. My name  
9 is Egan Walker. I'm one of the District Judges here.

10 This is the time and date set for a hearing  
11 on an objection to a Master's findings and  
12 recommendations that were filed on June 26, 2014.

13 Before we get too far into the hearing, I  
14 want to talk process for a moment. First, Ms. Scott,  
15 from your perspective, I would like to know how this  
16 matter was set for a hearing.

17 MS. SCOTT: What do you mean how this matter  
18 was set for a hearing?

19 THE COURT: Well, here's why I ask. Because  
20 the process in this case is unusual to my eye, probably  
21 not to yours, but to mine. In this case, there was a  
22 notice of objection to the Master's findings and the  
23 recommendations filed on June 10th, 2014. There was a  
24 notice of hearing filed on June 24th, 2014, which gave  
25 the date and time of this hearing.

1 MS. SCOTT: Yes.

2 THE COURT: There then was an objection filed  
3 on June 26th. Both the notice of objection -- and the  
4 objection had points and authorities in them, but there  
5 is no interaction of the District Attorney's Office with  
6 that setting; is that correct?

7 MS. SCOTT: Your Honor, we didn't file the  
8 objection.

9 THE COURT: I know.

10 MS. SCOTT: And Mr. Fuss filed the notice.  
11 By local rule, it sets out the primary issues for  
12 review. I think he supplemented that objection with  
13 points and authorities that were filed on 6/26.

14 THE COURT: Well, I promise there's a reason  
15 for my questions and -- so I just want to confirm the  
16 District Attorney's Office took no part in that setting.

17 MR. FUSS: That's --

18 MS. SCOTT: We took part in the setting of  
19 this hearing.

20 THE COURT: How?

21 MS. SCOTT: Telephonically with your clerk.

22 THE COURT: Okay, when did that happen?

23 MS. SCOTT: It was on a Tuesday, and I think  
24 it was in the notice of objection. It should have been  
25 as indicated in the notice on June 24th. I don't have

1 any independent notes in my file, Your Honor.

2 THE COURT: Okay. Well --

3 MR. FUSS: Yes, June 24th at 9:30 by  
4 telephone with the District Attorney's Office and my  
5 office.

6 THE COURT: And how did you get that date?  
7 Did you just appear on that date and ask to set it?

8 MR. FUSS: I put it in my notice of objection  
9 to use that date to set it, which has been the procedure  
10 we've used in the past.

11 THE COURT: Okay.

12 MR. FUSS: I've used it before with your  
13 clerk, but I withdrew the objection before we got to the  
14 hearing before the Court.

15 THE COURT: Okay. I see it now. So notice  
16 is hereby given that you would appear on June 24th at  
17 9:00 by phone to set the matter for hearing.

18 MS. SCOTT: Correct.

19 THE COURT: Okay, thank you for that. I  
20 appreciate knowing that. Here's why I ask. As I read  
21 NRS 62B.030, subparagraph 4, it says: After reviewing  
22 the recommendation of a Master of the Juvenile Court and  
23 any objection to the Master's recommendation, the  
24 Juvenile Court shall set a hearing.

25 MS. SCOTT: And I think the only reason we've

1 done it by the written notice is because the local rule  
2 for Family Court Masters says that the party objecting  
3 must do so within five days after issuance of the  
4 written order. And that's --

5 THE COURT: I appreciate that, and here's  
6 why, because the section of the statute I just read in  
7 part that Mr. Fuss relies on, he says he gets a trial  
8 de novo.

9 MS. SCOTT: Right, and I disagree, and I  
10 think the Supreme Court disagrees.

11 THE COURT: Well, I guess we'll get there  
12 because if I read 62B.030 4(c), without reading anything  
13 else, I could read it to be interpreted the way you  
14 interpret it, Mr. Fuss. But, of course, before (c) is  
15 4, which says: After reviewing the recommendation of a  
16 Master -- meaning I review it -- and any objection --  
17 what you filed -- I set. That's what this says. And  
18 it's important because my question for you, Mr. Fuss, is  
19 your reading of 4(c) would make the paragraph in 4(a)  
20 that I've read twice now nugatory. It would make no  
21 sense.

22 MR. FUSS: Well, then it would also make the  
23 section beyond it made no sense either. It would  
24 basically indicate that -- because it says that if I --  
25 I can't object until I see what's written by the Master,

1 which I got and filed within five days, the notice of  
2 the objection.

3 THE COURT: Right.

4 MR. FUSS: And --

5 THE COURT: You have an absolute right to  
6 object. I agree with that.

7 MR. FUSS: Right.

8 THE COURT: The question becomes, though, who  
9 decides whether or not you get a trial de novo, and  
10 here's why I ask it that way. I suspect you're both  
11 aware of the case entitled *Supreme Court of Nevada in*  
12 *the Matter of A.B. v. Eighth Judicial District Court.*

13 MS. SCOTT: Yes, Your Honor.

14 THE COURT: And that case talks about the  
15 procedure for objection from a Juvenile Justice Court  
16 Master findings and recommendation. Now, it's a  
17 dependancy case, not a delinquency case, and the Supreme  
18 Court is sloppy sometimes about what they call juvenile  
19 justice cases. But the process in that case that I've  
20 always applied to objections to a Master's findings and  
21 recommendation is two-fold. On review -- and I think  
22 it's the review of paragraph 4 proper -- on review, the  
23 Judge may order de novo fact-finding or alternatively,  
24 the Judge may rely on the Master's findings.

25 And so now I'm to the heart of it with you,

1 Mr. Fuss, because it seems like if I read it the way you  
2 would have me read it, (c) only, you get a trial de novo  
3 every single time. What difference would any of the  
4 rest of this language make?

5 MR. FUSS: The history of doing this has  
6 always been done, the process that I've attempted to  
7 accomplish, I don't -- I have never had the Judge make a  
8 ruling, you know, say I'm -- the Court has never set it.  
9 It's always been on the attorneys to set it, whether it  
10 was the State or whether it was our office.

11 THE COURT: But you haven't set it as a trial  
12 de novo every time, right?

13 MR. FUSS: No, not necessarily, no. In this  
14 particular case, I -- my primary issue is that I think  
15 that he should only be responsible for paying for the  
16 broken glass, and if that -- if the Court reaches that  
17 same conclusion, then I don't need a trial de novo and  
18 wouldn't request a trial de novo. If the Court feels  
19 that it needs to be replaced, I don't think (a), that  
20 the Master's order tells me exactly what we're paying  
21 for and why we're paying for it because I am not sure  
22 what quality of door it is.

23 And the reason I'd ask for a hearing de novo  
24 would be to present evidence that (a), we don't know  
25 what type of door it is. That makes a big difference in

1 the cost of what it is to replace it. I now have  
2 questions as to whether or not it was a five-year-old  
3 replaced door, as the record indicated, or whether it  
4 was older than that. And I have evidence that I can  
5 present that would replace it -- even if the Court rules  
6 that it's an Andersen replaced door, which we don't  
7 believe it is, that it could be done at about \$1,000  
8 cheaper than what the Master found.

9 THE COURT: Well, I've got to cross this  
10 threshold in my own mind because -- so that it's in the  
11 record. I don't believe this requires a trial de novo,  
12 and I don't think the Legislature or the Supreme Court  
13 intended that a District Judge would be boxed into a  
14 trial de novo on demand.

15 MR. FUSS: I wouldn't disagree with you on  
16 that. I think -- like I said, we've slowly, throughout  
17 the years, started following the statutes, frankly. And  
18 we now have new players here; yourself and Master  
19 Grossman. And so, you know, I will submit on the issue  
20 of whether --

21 I think based on what we've done in the past,  
22 I think I've done what is necessary for a trial de novo,  
23 but nobody's ever done the section before it before.  
24 And so it never got a response from the Court when I  
25 filed my notice as to what the Court's determination



1 was, so whether I could supplement anything for the  
2 Court's consideration, whether I could present any new  
3 -- some new evidence, no new evidence, any of that  
4 nature. So you've got me sort of, you know -- I agree  
5 that it shouldn't always be a trial de novo; otherwise,  
6 you'd be -- you'd probably need two or three more of you  
7 to handle it.

8 THE COURT: Yeah, and it wouldn't make any  
9 sense if we did that to have Court Masters then because  
10 we would be subject always to having to do it twice,  
11 which would be hard on the children it involved, hard on  
12 the witnesses involved. I assume today that the  
13 witnesses who were called previously are not here.

14 MS. SCOTT: That is correct.

15 THE COURT: So if we were to have a trial  
16 de novo today, it couldn't occur today anyway.

17 MS. SCOTT: The State's witnesses were not --  
18 are not present. I know that Mr. Hardy is present for  
19 the Defense --

20 MR. FUSS: Mine is.

21 MS. SCOTT: -- but not having received a word  
22 from this Court whether or not you are ordering a trial  
23 de novo, our witnesses are not present.

24 THE COURT: Well, let me offer some guidance  
25 and clarification that's in the record that may be

1 helpful. First, I respect and will preserve, and I know  
2 Master Grossman will preserve, the right to object to  
3 any findings and recommendations. Chapter -- Title 5  
4 puts a much shorter leash on Defense counsel to make  
5 those objections than otherwise exists. Usually it's  
6 ten, but pursuant to Chapter 62, it's five.

7           And I'll tell you, just as an aside, if you  
8 filed an objection on the sixth, seventh, eighth or  
9 ninth day, I probably would still hear the objection,  
10 just going forward, because I don't think it makes sense  
11 to -- my understanding what the Legislature wanted to do  
12 is recognizing that the Master is making decisions that  
13 include the detention of a child and the maintenance of  
14 a child in custody. They wanted a shorter timeframe for  
15 it and an ability to do it. I get that, and I want to  
16 give effect to that, but I also don't want to truncate  
17 the ability to object.

18           Moreover, I don't know -- I mean, candidly,  
19 I've not read the statute as closely as I've read it in  
20 preparation of this case, and it, like many statutes in  
21 Title 5, is inconsistent internally and with process in  
22 other cases. And so for purposes of resolving the issue  
23 in this case, if either side wanted to percolate it to  
24 the Nevada Supreme Court, it wouldn't -- I would  
25 understand.

1 I believe that the decision about whether or  
2 not a trial de novo should occur rests at the discretion  
3 of the District Judge. And I've reviewed the evidence  
4 in this case, I've reviewed the testimony in this case,  
5 and all the records in the file, and do not find that  
6 additional factual evidence would assist me in deciding.  
7 The second step of the Supreme Court holding in the case  
8 entitled *In the Matter of A.B.*, which is: The Court  
9 determines the applicable facts and requires an -- the  
10 exercise of independent judgment to determine, based on  
11 the facts and the law, the case's proper resolution.

12 This is the part of that holding that I've  
13 said I disagree with, but I intend to follow because  
14 really I'm supposed -- what it says to me is I'm  
15 supposed to second-guess Master Grossman, say, you know,  
16 would I do what she did given the same facts? So the  
17 facts are those which have been developed, and I have  
18 the exhibits available to me.

19 It's your objection, Mr. Fuss, so I'll let  
20 you begin now that I've crossed that procedural  
21 boundary.

22 MR. FUSS: Well, and the Court -- I can't  
23 offer any new evidence? I can't have Mr. Hardy offer  
24 any evidence today?

25 THE COURT: No, I would be relying on the

1 record below.

2 MR. FUSS: Okay. What is clear from the  
3 record below is that these two boys shot out the windows  
4 -- well, put a hole in what is called I think bedroom 3  
5 on the north side of Mr. Killgore's residence, and shot  
6 out -- and it was unclear initially as to what happened,  
7 based on what pictures we had initially from law  
8 enforcement and that we got subsequent from the District  
9 Attorney's Office from Mr. Killgore, that if I believe  
10 I've got this correct -- and may I approach to get the  
11 pictures --

12 THE COURT: You may.

13 MR. FUSS: -- because it may help us.

14 THE COURT: I was just picking the pictures  
15 out.

16 MR. FUSS: All right. So if you're looking  
17 at State's Exhibit G, there is a thick side, which I  
18 think if you're looking at the exhibit, is the left side  
19 --

20 THE COURT: Uh-huh.

21 MR. FUSS: -- and then you have the sliding  
22 glass door on the right side. The testimony was that  
23 Mr. Killgore had a friend come out and quote, help him  
24 out and put glass, temporary glass into those -- into  
25 that sliding door.

1 THE COURT: Right, and that's consistent with  
2 the view seen from the inside in Exhibit A.

3 MR. FUSS: Right. And what then -- so that  
4 means that the door was then quote, secured with glass.  
5 That wasn't double-pane glass, it wasn't Low-E glass  
6 necessarily, but it was secure. And so the homeowner  
7 took a step further --

8 THE COURT: Well, I apologize for  
9 interrupting. Let me stop you there. You say secured  
10 with glass, but actually what G shows is plywood  
11 panelling securing the glass that remains, not new  
12 glass.

13 MR. FUSS: That's G. Let me go back then to,  
14 as the Court pointed out, Exhibit A.

15 THE COURT: Uh-huh.

16 MR. FUSS: And it was unclear as to whether,  
17 if you see the big hole on the slider, whether that's  
18 through-and-through both -- through both panels of glass  
19 or just one.

20 THE COURT: Right.

21 MR. FUSS: And if you look at G, it appears  
22 that there's glass on both sides.

23 THE COURT: No, it doesn't. See the crack  
24 here. See, I understood the testimony to be that the  
25 homeowner put the wood in place and no new glass.

1           MR. FUSS: And I -- if you listen carefully,  
2 and it was hard to determine, because I had to review  
3 it, I believe he says that he put in a couple of pieces  
4 on the 28th -- and it's around, I'm going to say,  
5 between 55 and 58 minutes into the testimony -- that  
6 there was glass on both sides. And it was actually the  
7 homeowner who acknowledged he didn't know how to do  
8 window repair, that he relied on other people that put  
9 the plywood in. And it's his putting in the plywood  
10 with the 30 screws that makes the door worthless at this  
11 point. Nothing that the kids did caused damage to the  
12 door. And that was testified by the homeowner, by  
13 Mr. Fischer, who was the contractor that came out to  
14 take a look at it, and I believe Mr. Hardy also who  
15 testified.

16           And so, you know, I liken it to if I owned a  
17 diesel truck and somebody stole my truck, and it ran out  
18 of gas, and I mistakenly took regular gas and poured it  
19 in there and then they asked for what I did. I think  
20 it's similar. I know it's difficult and seems harsh to  
21 the homeowner because he's a victim of a crime. And,  
22 you know, I absolutely have great empathy for what  
23 happened in this case to him and his frustration by the  
24 fact that it wasn't taken care of sooner, but it was  
25 what he did without his knowledge and expertise is what

1 caused the door to be done incorrectly.

2 And he had somebody, a friend of his from a  
3 glass company, come out where he could have either  
4 gotten the glass fixed at the time and/or had them put  
5 in -- put in the plywood. I would assume -- that person  
6 never testified. But the guess is if he was capable of  
7 putting in glass, he would have known how to put in  
8 plywood, which was testified by Mr. Hardy. As you pull  
9 the trim, you put the plywood in where the glass goes.  
10 You put the trim back in. It secures it. You got to  
11 order the actual pieces. He had -- Mr. Hardy had  
12 testified it would take about four to five days to get  
13 the glass cut to come in and fix it.

14 And for that, I think they're only entitled  
15 to the amount of damages for the glass, which would be  
16 the 1900 figure that I provided to the Court. Let me  
17 double-check and make sure I got --

18 THE COURT: So I'm at 9:50 -- let me see if I  
19 can get there. I'm trying to get to about 9:55 on the  
20 tape if I can. But while I'm searching for that, to the  
21 extent that I can successfully multitask, Mr. Fuss, I  
22 believe I understand your argument and am tracking on  
23 your argument in this way. Your argument is homeowner  
24 ruined the frame by the temporary fix to secure his  
25 residence.

1 MR. FUSS: Correct.

2 THE COURT: And your client shouldn't have to  
3 pay for it.

4 MR. FUSS: Correct.

5 THE COURT: My response is isn't it  
6 reasonably foreseeable in a mere negligence context that  
7 if you damage something, someone will improperly seek to  
8 repair it, and aren't you responsible for that? The  
9 analogy I would draw, that I'm trying to draw is this,  
10 in the product liability arena, foreseeable misuse of  
11 products is the liability of the builder. And you shoot  
12 somebody's windows out in winter, especially  
13 ingress/egress window, isn't it reasonably foreseeable  
14 the homeowner is going to make a quick fix to secure his  
15 or her property from the elements and for security  
16 purposes, and aren't you responsible for that?

17 MR. FUSS: Well, I would say no and go back  
18 to my analogy with the stolen car. I mean, if you do  
19 damage -- let's say I lose my car windshield, and I go  
20 and get a piece of clear Plexiglass and then drill it  
21 around the frame of my car --

22 THE COURT: Because that's what you can  
23 afford to do, as he testified.

24 MR. FUSS: I'm not sure that I would -- I  
25 would expect to be compensated if I did something that



1 was not consistent with the proper way of care. I mean,  
2 it's --

3 THE COURT: Well, then you put the risk of  
4 the misconduct, though, on the victim, and that's my  
5 point. I realize --

6 MR. FUSS: That's the part that I understand  
7 my -- my argument is -- you know, I feel like I'm  
8 walking on -- a plank on a ship, you know. I understand  
9 that I don't have clean hands in the matter, but he  
10 acknowledged he didn't know. He had the glass guy there  
11 to fix it. It appears that they put in glass on both  
12 sides at that time so that it wasn't even necessary --  
13 it may have been necessary to increase the insulation,  
14 which could have been done like he did with the pad he  
15 put in between, but I don't -- you know, the -- like I  
16 said, the damage to the door is from screws, 30 screws.

17 THE COURT: Well, I think here's the rug for  
18 me, and you're -- you're not on any -- as an advocate,  
19 you're not on any plank with me, and I appreciate your  
20 candor about the fact that your client comes with  
21 unclean hands in an equitable sense.

22 But a fundament of the -- the argument on  
23 behalf of your client, as I understand it, is the owner  
24 should have spent 400 bucks right away instead of taking  
25 the cheap fix, and it seems to me the answer is, but

1 that means your client, by his misconduct, gets to  
2 choose when I spend my last 400 bucks or 400 bucks I  
3 don't have. And that can't be the law.

4 MR. FUSS: That argument aside, the issue I  
5 also have with the Master's order is I don't know what  
6 brand of door we're replacing. Are we replacing an  
7 Andersen door? We're asked -- I think it includes cost  
8 to fix stuff that may or may not require fixing. And  
9 then, again, if I were to be able to call Mr. Hardy, who  
10 specializes in removing -- putting in these doors and  
11 replacing them, he doesn't think that there would be a  
12 need (a) for any painting on the outside, and (b), that  
13 the only possible issue would be the trim on the inside  
14 and only related to the wood trim on the inside that is  
15 quote, knotty.

16 THE COURT: Well, why didn't you ask that,  
17 though, at the hearing?

18 MR. FUSS: I blew it. You know, I should  
19 have. I looked at the issue as to what they're  
20 responsible for, and I did not ask him the question of  
21 what he would charge to replace the door and what he  
22 would charge to replace the glass and what damage would  
23 be done.

24 THE COURT: Okay. I'm trying to get -- you  
25 said you thought it was about at -- I assume 9:55? Did

1 I understand that correctly?

2 MR. FUSS: Let's see here.

3 THE COURT: I'm trying to get to there on  
4 JAVS, and it's kludgy to move around in the JAVS system.

5 MR. FUSS: Yeah, I find it difficult to deal  
6 with. I'm always wondering at some point when we have a  
7 hearing de novo, and we're trying to do -- whether we  
8 get transcripts in order to allow the witness to review  
9 their testimony prior to cross-examination.

10 THE COURT: Because I'll start playing it  
11 once I get close, and then we can be sure. Because I  
12 confess, as I listened and saw the picture, it didn't  
13 make sense to me that this was in any way new glass. I  
14 thought the pieces being referred to --

15 MR. FUSS: I did too --

16 THE COURT: -- were wood.

17 MR. FUSS: -- when I heard the live  
18 testimony.

19 THE COURT: Because this picture clearly  
20 shows a broken piece of glass. It doesn't show a new  
21 piece of glass. By this picture, I'm referring to G.

22 MR. FUSS: He said -- talked about Dave  
23 coming about the -- that it happened -- talked to Dave  
24 the 26th, came out the 28th, installed on both sides.  
25 And I had put -- I've got Mr. Hardy testifying at 58:46.

1 So I'm assuming it's somewhere between 55:00 and 58:46,  
2 at least when I pulled it up on my machine.

3 Do you want me to hand you my disc?

4 THE COURT: No, it's all right. I've got it  
5 here. I'm at 09:53:28. I'm just trying to move forward  
6 through the record. If I start playing now at about  
7 9:55, if I can get it to play --

8 (Whereupon, the Court played the recording)

9 THE COURT: Can you all hear that?

10 MR. FUSS: Yes.

11 THE COURT: Is this about the area you're  
12 talking about?

13 MR. FUSS: Yes. It will -- yeah, I think if  
14 you go forward from there.

15 (Whereupon, recording continued to play)

16 MR. FUSS: I believe there's -- it's coming.

17 THE COURT: Okay.

18 MR. FUSS: And maybe a question from the  
19 Court.

20 (Whereupon, recording continued to play)

21 THE COURT: Okay. So it seems to me that the  
22 argument still boils down to are temporary fixes  
23 undertaken by a homeowner, which magnify the cost of  
24 restitution, compensable? And your argument would be no  
25 because you -- your argument is that that was

1 unreasonable action by the homeowner.

2 MR. FUSS: Negligent, yes, negligent action  
3 by the homeowner. I think if the insurance company were  
4 looking at it, I'm not sure they would pay for the frame  
5 if he had done it that way. I think they would, you  
6 know, they would have an argument about whether or not  
7 they would have to be responsible for -- let's say that  
8 a branch broke in, you know, and broke the glass. And  
9 the case law says you're responsible for the things that  
10 you pled guilty to, which was breaking the glass in this  
11 case and not damaging the frame, and -- as far as that  
12 issue goes. And then the issue of what we're paying  
13 for, I don't know if I still need to talk about that or  
14 not.

15 THE COURT: I think I understand your point.  
16 Ms. Scott.

17 MS. SCOTT: And I think it boils down to is  
18 what is the loss that the homeowner has? Is it the  
19 glass, or is it compensable damages relating to the  
20 conduct. And I think there is some instruction in a  
21 case versus -- *Romero v. State of Nevada*, which talks  
22 about repair or restoration. I have the cite for the  
23 Court. I did not include it in my prior --

24 THE COURT: Please.

25 MS. SCOTT: It is 116 Nev. 334. The

1 alternative cite is 996 P.2d 894. It's a 2000 -- March  
2 of 2000 case, which talks about repair or restoration,  
3 and it seems to indicate that where property is  
4 partially destroyed, the loss resulting from the offense  
5 includes a phrase of value of the property affected or  
6 loss resulting from the offense. That's how the statute  
7 reads in determining restitution.

8           The Court in *Romero* takes a look at what does  
9 it mean by that phrase, value of the property affected  
10 or the loss. When it's a total loss for property  
11 destruction, fair market value has, according to *Romero*,  
12 been the appropriate determination. Where there is  
13 partial loss, where there's repair and cost related to  
14 repair or restoring the property, the loss, it says,  
15 must be tied to the nature -- excuse me, the loss must  
16 be directly tied to the damage to the property, i.e.,  
17 the offense, the destruction of property. Ancillary  
18 costs, such as increased security in this case, are not  
19 compensable.

20           In a footnote, the case goes on to say, in  
21 some cases, the loss may extend beyond repair costs.  
22 For example, it may be impossible to repair the property  
23 so that it matches the undamaged portions of the  
24 property, like a paint job on an automobile. In such  
25 instances, restoration of the property to its previous

1 condition may require, in that case, painting the whole  
2 automobile.

3 I would argue that that language would take  
4 into account where property, in order to be restored, is  
5 more than just the replacing of the glass. In this  
6 case, damage to the frame, which the homeowner, arguably  
7 and submitted, caused himself in reliance upon  
8 contractors who advised him how to seal the property.

9 Even the Defense expert said absent  
10 journeymen's expertise in -- as of a glass glazier, a  
11 layman would not know or have the ability to board up  
12 the property that would allow ingress and egress in the  
13 slider by any other manner. The Defense expert said  
14 either by use of a molly bolt, which would prevent  
15 ingress and egress of the slider, because it sticks out  
16 past the --

17 THE COURT: Surface of the board.

18 MS. SCOTT: Thank you. Or by installing, as  
19 Mr. Fuss indicates, a panel of plywood within the glass  
20 frame. The Defense expert said that would be done by a  
21 journeyman with at least five years experience in glass  
22 repair and at a cost of a minimum of \$400, and it's a  
23 special order glass so the repair could not be done  
24 immediately.

25 It's the State's position that given the

1 lay individual who relied on experts he believed in the  
2 field sealed up his property to best secure it from the  
3 elements, to best secure it from intruders, and to allow  
4 ingress and egress in case of fire, and that, by its  
5 nature, did cause damage to the frame, which would not  
6 have occurred but for the minor shooting the glass out  
7 and causing the problem in the first place.

8 THE COURT: Mr. Fuss.

9 MR. FUSS: Well, I think the case *Romero*  
10 actually helped -- you know, makes it probably a more  
11 articulate argument than I did about the issue of where  
12 we stop the damage done by the Defendant in a criminal  
13 case. And I guess -- and it was testified by him, there  
14 was glass put out on both sides of that -- of that door.

15 And the other issue is we don't know, based  
16 on what the Master put in her report, what kind -- are  
17 we paying for -- because he didn't indicate that it was  
18 an Andersen door that we're replacing. So does that  
19 make the cost \$6,300 or \$5,200 or what the price is?  
20 And that's really the reason I wanted a hearing de novo  
21 to offer a cheaper resolution to fixing it in maybe as  
22 good or if not better than what Mr. Fischer had offered  
23 in his. Because I'm assuming that's where it would be  
24 taken from, but I can't even really assume that since we  
25 have so many estimates as to what the cost is.



1           Because if you look at the quote I believe  
2 for the Andersen, which is I believe Envision, they have  
3 a total balance of \$2,983.25. So that would be for the  
4 sliding door. I think it also actually includes a  
5 window frame, which I don't think was necessary, based  
6 on the testimony. Because that's still just a matter --  
7 that's just a BB hole, so to speak, and can be replaced  
8 by -- still be repaired today by just replacing the  
9 glass. So what is the labor and cost associated with  
10 the assumption that there's going to be damage by one of  
11 the installers as to (a), whether they need to paint the  
12 outside frame, whether they need to replace the inside  
13 frame.

14           May I approach?

15           THE COURT: You may.

16           MR. FUSS: Again, I believe it's A and G  
17 whether -- in Exhibit G, I think that's what Ms. Smith  
18 was talking about --

19           THE COURT: Right.

20           MR. FUSS: -- painting that. What's that  
21 cost; what's that value today? And then the wood frame  
22 around -- in the interior, and what I was talking about,  
23 is you can see the knotty piece of wood that my expert  
24 would testify would be the difficult part. That might  
25 be difficult to remove without snapping because we don't

1 know if it's glued or drilled in there and whether that  
2 would be able to be removed or the door could be  
3 installed or replaced without causing damage to that or  
4 any further damage to the frame and cause the  
5 restoration to be the figure that the Court arrived at.

6 Again, I still think that it was the  
7 homeowner's -- I still can't understand why, and that's  
8 I guess not relevant, is what -- when he had the glass  
9 guy there, when he didn't repair it, okay. But didn't  
10 ask him how to protect his house without damaging the  
11 door further. And it was his negligence that takes us  
12 from about a \$1,900 fix, including the plywood and the  
13 insulation to provide the protection that he paid for,  
14 to a \$5,200 repair.

15 THE COURT: Well, it's unfortunate that at  
16 the juncture where evidence could have been developed,  
17 arguably it wasn't. You know, Mr. Fuss is one of the  
18 better examiners I know around, and nobody's perfect,  
19 but for me, the case boils down to this. It's an  
20 established fact that young Mr. Preston Sanderson and  
21 his co-defendant committed delinquent acts, and those  
22 delinquent acts harmed somebody's property and somebody.

23 You know, the criminal law appropriately  
24 doesn't provide for pain and suffering damages or to  
25 quantify the inconvenience to a homeowner of having an

1 unsecured home or changing their work schedule or the  
2 fear associated with that or anything else, and that's  
3 -- I have no quarrel with that.

4           But I am a big fan of the messaging to young  
5 folks like this. You make a mess, you have to clean it  
6 up. And sometimes the cost of cleaning it up is not  
7 what you expected. It's clear that Master Grossman  
8 arrived at the aggregate restitution figure in this case  
9 by taking the estimate presented of sixty-three  
10 ninety-six and reducing it by the wholesale cost of the  
11 window, or 933.02. She then divided the resulting  
12 figure in half to determine the restitution amount  
13 payable by the minor and parent in this case.

14           That's clearly available from the facts.  
15 That it could have been done cheaper or might not -- or  
16 might -- the estimate might include services that could  
17 be precluded or avoided or otherwise is really of no  
18 moment. In other words, the State does haven't to prove  
19 beyond a reasonable doubt that this is the cheapest,  
20 best, least complete way, least but being complete way  
21 to repair the homeowner's residence. I know of no  
22 requirement for that. And it doesn't seem fair to say  
23 that the risk of not mitigating the delinquent's actions  
24 should fall on the victim and not the actor, in this  
25 case, Preston.

1           So I find no error of law or abuse of  
2 discretion, and I confirm the Master's findings and  
3 recommendations in their entirety, and they will now  
4 become an order of the Court. I'm glad the objection  
5 was lodged because it gave me an opportunity, and all of  
6 us an opportunity to talk about process, which I invite  
7 us to continue to do after court meetings and otherwise  
8 because I want the objection process to be smooth and  
9 expeditious for all of the stakeholders. I don't want  
10 it to be problematic for the children involved, for  
11 their parents, or for any of the alleged victims  
12 involved.

13           Any questions for purposes of clarification?  
14 First, Ms. Scott, because I'll ask you to draft an order  
15 confirming what I've held here today.

16           MS. SCOTT: Your Honor, I do not have any  
17 questions.

18           THE COURT: Thank you. Mr. Fuss.

19           MR. FUSS: I do regarding the procedure. So  
20 that I can let my folks know, so when we file a notice  
21 of objection, we have a short window. I've always  
22 wondered what the real timeframe is because I get served  
23 instantaneously, and if I happen to be in the office, I  
24 get it. I know that -- I assume the clock is starting  
25 the next day.

1 THE COURT: Uh-huh.

2 MR. FUSS: Am I safe in saying that?

3 THE COURT: Well --

4 MR. FUSS: Or is it -- do I get the three  
5 days mailing, even though I'm getting an eFLEX? Because  
6 technically, the objection lies with the parent and with  
7 the minor, and if I haven't -- if I don't -- there's  
8 certain cases where I think, hey, I think there's a  
9 mistake made, and hey, when it comes, we're going to  
10 object to it, and this is one of those cases, okay.

11 And so others that I may not realize that  
12 there's an issue to be raised, then, you know, how does  
13 the time -- because I got noticed of the objection, I  
14 don't know if I have -- they need to still be served.  
15 So I want to know what the timeframe is. And then we  
16 file the notice -- when do you want -- when would this  
17 Court expect supplement to the objection notice?  
18 Because I try to -- because it's such a short notice,  
19 that I don't -- you don't have an opportunity to process  
20 what you've gotten back.

21 THE COURT: Well, I contemplate this. First,  
22 I intend to interpret any timelines as broadly as  
23 possible in favorable -- in favor of the minor and their  
24 parents. So, for example, in your -- in this case, you  
25 get notice immediately, the e-filing, assuming you're in

1 your office and you're there. You still get, for  
2 purposes of counting time, three days for mailing.  
3 Because the notice has to go to the minor and their  
4 parents, and they aren't e-filers.

5 Now, theoretically, notice to you is notice  
6 to the minor, but it's certainly not notice to his  
7 parents. And so three days -- the way I count time, any  
8 time it's ten or less days is five judicial days, plus  
9 three calendar days for mailing. So that's how you  
10 would calculate the time. You know, if you get it on  
11 Friday, it's not counting Saturday and Sunday. Monday,  
12 Tuesday, Wednesday, Thursday, Friday, plus Saturday,  
13 Sunday, Monday for mailing is the way I would calculate  
14 time. And that's why I said if -- even if it's on the  
15 seventh or eighth or ninth day, I'm going to find a way,  
16 if I can, to expand that period of time for purposes of  
17 ejection.

18 The bigger question that I don't know how to  
19 give the best guidance on is the way this statute reads,  
20 it contemplates that there will be a review, a  
21 meaningful review of both the recommendation and any  
22 objection, which would seem to be the points and  
23 authorities, not just the notice, but the points and  
24 authorities, and then a decision by the Judge, what's  
25 the hearing we're going to have.

1           MR. FUSS: So we should then set it -- do the  
2 notice, set it, file our briefs with the request for  
3 submission under 3 or 4 -- 4?

4           THE COURT: Uh-huh, I think so.

5           MR. FUSS: And let the Court make a decision  
6 whether we're getting a de novo, whether -- and then the  
7 Court may ask for oral arguments, may not, etcetera?

8           THE COURT: Right.

9           MR. FUSS: Okay.

10          THE COURT: And I think that's how  
11 Judge Schumacher has done -- the issue of oral arguments  
12 or not is how Judge Schumacher has handled objections in  
13 that side of the juvenile justice arena, but we really  
14 do need to revisit this at the after-court meeting so  
15 that there is some consistency because you can tell I  
16 was confused how this got set. Objections in the child  
17 support arena, which is where I dealt with the most --  
18 most commonly are set completely differently by  
19 tradition, and there's no specific statute.

20          MR. FUSS: Right, and that's what I relied on  
21 was tradition.

22          THE COURT: Yes.

23          MR. FUSS: And I figured since I had filed my  
24 notice within the five days, that the plain language  
25 that I'm entitled to a hearing de novo.

1 THE COURT: Yes.

2 MR. FUSS: And then I see -- she cites these  
3 court rules. Then I provide Goudge, which --

4 THE COURT: Well, the Court rules take the  
5 least precedence to me, you know, the local court rules  
6 because they're out-of-date, and again, inconsistent,  
7 and it's just remarkable to me how out of step Title 5  
8 continues to be with a lot of other processes. It just  
9 really does.

10 So I want to work with your office and all of  
11 the offices of folks who represent the kids because I  
12 want to preserve the ability to object, but it can't be  
13 anyone's intention, and I know you've said it's not  
14 yours anyway, that every objection would result in a  
15 trial de novo. That would be impossible for us to  
16 accomplish. But I also have to find a way to  
17 communicate to you all, what is this hearing going to  
18 be? Do you need to have your witnesses here potentially  
19 or not because it might be a trial de novo.

20 MR. FUSS: Right, I brought mine --

21 THE COURT: Right.

22 MR. FUSS: -- so that I didn't get dinged.

23 THE COURT: Yes, for not having him, yes.

24 Preston, do you have any questions?

25 MR. SANDERSON: No, Your Honor.



1           THE COURT: All right. We've had the  
2 argument we've had, and the legal issues are going to go  
3 the way they're going to go, right? I want you to hear  
4 me say -- thank you for that, Mr. Fuss.

5           I want you to hear me say, Preston, the  
6 measure of you about this circumstance is now going to  
7 be what you do about it, right, to help resolve the  
8 restitution and change your conduct so something like  
9 this doesn't happen again, okay? And I look forward to  
10 seeing that.

11          MR. FUSS: He is on that process, Your Honor.  
12 The only issue that's going to keep him is the issues  
13 with being able to pay the restitution. There's some  
14 financial issues with the family.

15          THE COURT: We'll have to work through it as  
16 it develops, all right.

17          Thank you, Mr. Fuss. Thank you, Ms. Scott.  
18 Thank you, young man. I'm going to go ahead and remain  
19 in place because I think I'm late for that call.

20                 (Whereupon, proceeding concluded)  
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STATE OF NEVADA       )  
                              ) ss.  
COUNTY OF CARSON     )

I, Julie Rowan, Transcriptionist, have transcribed the proceedings held in the Family Division of the Second Judicial District Court of the State of Nevada in and for the County of Washoe before the Honorable Egan Walker, District Judge, on July 17, 2014.

The foregoing is a true and correct transcript, to the best of my ability, from the electronic sound recording of the proceedings held in the above-entitled matter.

DATED: Dated this 29th day of September, 2014.

  
Julie Rowan

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IN THE FAMILY DIVISION

7

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8

IN AND FOR THE COUNTY OF WASHOE

9

IN THE MATTER OF:

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PRESTON SANDERSON,

11

A Child.

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)  
)  
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)  
)  
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Case No. JV14-00030A

Dept. No. 2

13

ORDER AFTER HEARING ON OBJECTION FILED JUNE 26, 2014

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This matter came on for hearing on July 17, 2014, upon the  
minor's objection filed June 26, 2014. The Court has reviewed the  
pleadings, papers and other documents filed or presented in reference  
to the above-named objection, has heard arguments of counsel, and has  
considered the record of the case. The Court hereby finds and orders  
as follows:

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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1. NRS 62B.030 does not require a trial do novo upon the  
demand of a party. Rather the decision of whether or not a trial de  
novo should occur rests at the discretion of the District Judge. This  
Court has reviewed the evidence presented, the testimony taken, and  
the record of the case and does not find that additional facts would  
assist the Court. The facts are those that have been developed below.

1           2.     The Court answers in the affirmative the question of  
2 whether or not a temporary fix undertaken by the homeowner that  
3 magnifies the loss is compensable. It is an established fact that the  
4 minor committed delinquent acts that caused harm to the victim's  
5 property. That the repair could have been done cheaper is of no  
6 moment. The risks of mitigating the losses caused by the delinquent  
7 actor fall upon the delinquent actor not the victim.

8           3.     The restitution figure of \$2731.49 is neither arbitrary nor  
9 speculative. It is clear from the record that the aggregate  
10 restitution figure of \$2731.49 was arrived at by taking the estimate  
11 of \$6396.00 (Exhibit M) and subtracting therefrom the cost of the  
12 window \$933.02 (Exhibit O) and splitting that figure equally between  
13 the two co-defendants.

14           4.     Pursuant to the decision of In the Matter of A.B., 291 P.3d  
15 122, 128 Nev.Adv.Op.70 (2012), this Court has exercised its  
16 independent review of the facts and finds the Master's findings and  
17 recommendations are supported by credible evidence, and there is no  
18 error of law or abuse of discretion.

19                                 ORDER

20           1.     The request for a hearing de novo is denied.

21           2.     The recommendations of the Juvenile Court Master issued on  
22 June 3, 2014, are affirmed.

23                     IT IS SO ORDERED this 31 day of July 2014.

24  
25                                   
26                                 \_\_\_\_\_  
DISTRICT JUDGE

1 CODE NO. \$2515  
2 WASHOE COUNTY PUBLIC DEFENDER  
3 JOHN REESE PETTY, State Bar Number 10  
4 350 South Center Street, 5th Floor  
5 P.O. Box 11130  
6 Reno, Nevada 89520-0027  
7 (775) 337-4827  
8 jpetty@washoecounty.us

9 IN THE FAMILY DIVISION  
10  
11 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
12  
13 IN AND FOR THE COUNTY OF WASHOE

14 In the Matter of

Case No. JV14-00030A

15 PRESTON SANDERSON,

Dept. No. 2

16 A Minor Child.  
17 \_\_\_\_\_ /

18 NOTICE OF APPEAL

19 NOTICE IS HEREBY GIVEN that Preston Sanderson, the minor child above  
20 named, hereby appeals to the Supreme Court of Nevada from the Order After  
21 Hearing on Objection filed June 26, 2014, entered in this action on July 31, 2014.

22 The undersigned hereby affirms, pursuant to NRS 239B.030, that this  
23 document does not contain the social security number of any person.

24 DATED this 27th day of August, 2014.

25 JEREMY T. BOSLER  
26 WASHOE COUNTY PUBLIC DEFENDER

By: /s/ John Reese Petty  
JOHN REESE PETTY, Chief Deputy

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## CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 24th day of November, 2014.

Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Terrence P. McCarthy, Chief Appellate Deputy  
Washoe County District Attorney

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

Shelly K. Scott, Deputy District Attorney  
( [skscott@da.washoecounty.us](mailto:skscott@da.washoecounty.us) )

John Reese Petty  
Washoe County Public Defender's Office