

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 THE STATE OF NEVADA,) CASE NO. 67711

3 Appellant,)

4 vs.)

5 JANET SOLANDER,)

6 Respondent.)

Electronically Filed
May 10 2016 09:10 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

7
8 **PETITION FOR REHEARING**

9 COMES NOW the Appellant, JANET SOLANDER, by and through her
10 attorneys of record, KRISTINA WILDEVELD, ESQ., and CAITLYN MCAMIS,
11 ESQ., of The Law Offices of Kristina Wildeveld, and petitions this Honorable
12 Court to rehear the matter based on the Court's overlooking and/or
13 misapprehending points of fact, material questions of law, and/or controlling
14 authority pursuant to NRAP 40.

15 DATED this 9th day of May, 2016.

16 Respectfully Submitted by:
17 THE LAW OFFICES OF KRISTINA WILDEVELD

18 /s/: Caitlyn McAmis
19 CAITLYN MCAMIS, ESQ.

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This Court consolidated this appeal on January 14, 2016, with Docket No. 67710, as they involved the same questions of law for husband and wife co-defendants. This Court issued its Order of Reversal and Remand on April 19, 2016. Respondent Dwight Solander filed a Petition for Rehearing on April 22, 2016. This Court entered its Order Denying Rehearing on the issues raised by Respondent Dwight Solander on May 9, 2016.

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ARGUMENT

Rehearing may be granted “when the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or...overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.” NRAP 40(c). In its Order of Reversal and Remand, this panel concluded that the district court erred because “sexual assault” and “sexual penetration” as defined in NRS 200.366 and NRS 200.364(5) do not require a showing of sexual motivation. Respondent requests rehearing on this because the legislature’s purposeful use of the word “sexual” as an adverb immediately preceding penetration was purposeful and unambiguous; NRS 200.366 penalizes sexual penetration that is motivated by a sexual intent. Respondent submits that this Court misapprehended a material question of law when it interpreted NRS 200.366 to use the word “sexual” merely as an adjective, inferring that the legislature intended to reference only a body part. The plain language of the statute is clear and unambiguous in that the legislature selected the placement of the word “sexual” as an immediate qualifier of “penetration.” Therefore, under the plain language of the statutes, sexual penetration *does* expressly require a sexual intent on the part of the actor. *See, City Council of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 891, 784 P.2d 974, 977

1 (1989)(“When the language of a statute is plain and unambiguous, a court should
2 give that language its ordinary meaning *and not go beyond it.*”)(emphasis added).

3 By construing “sexual” in an adjective form when it is instead a qualifier in
4 its adverb form preceding penetration, this Court goes beyond the ordinary
5 meaning of NRS 200.366 as intended by the legislature. This Court’s Order of
6 Reversal and Remand misapplies the law and improperly adopts the State of
7 Nevada’s “per se penetration” standard, which separates penetration from its
8 preceding qualifier, contrary to the legislative intent.

9 In support of its Order of Reversal and Remand, this panel relied on non-
10 binding case authority out of the Ninth Circuit Court of Appeals: *United States v.*
11 *JDT*, 762 F.3d 984, 1001 (9th Cir. 2014). This panel relied on that Circuit’s
12 interpretation of an Arizona State statute that penalized “penetration, however
13 slight, of the anal or genital opening of another...with an intent to abuse, humiliate,
14 harass, degrade, or arouse or gratify the sexual desire of any person...” *Id.* at 1001.
15 A review of that case reveals that the case is distinguishable from the case at bar
16 because the penetration in that case was sexual, to wit: penis to mouth contact.
17 The facts of that case fit squarely in the Arizona statute. In this case, however, the
18 insertion of a catheter into the opening of a urethra, and not the vaginal, anal, or
19 other sex organ/body part does not fall into the statutory language of NRS 200.366
20 and NRS 200.364.

1 To read the plain language of the statute and infer that the legislature only
2 put “sexual” immediately before “penetration” ignores the legislative intent, when
3 the word “sexual” was a purposeful qualifier for intent, not just anatomical context.

4 Therefore, Respondent Janet Solander respectfully submits that this
5 Honorable Panel erred when it misapplied the material question of law in
6 interpreting the statutory intent required of a defendant who is accused of “sexual
7 penetration” under a sexual assault charge.

8 **CONCLUSION**

9 WHEREFORE, based on the foregoing reasons, Appellant, JANET
10 SOLANDER, respectfully requests that this Honorable Court grant her request for
11 rehearing on the matter.

12 DATED this 9th day of May, 2016.

13 Respectfully Submitted by:
14 THE LAW OFFICES OF KRISTINA WILDEVELD

15 /s/: Caitlyn McAmis
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1 **CERTIFICATE OF COMPLIANCE**

2 1. I hereby certify that this petition for rehearing/reconsideration
3 complies with the formatting requirements of NRA40(b)(4) and NRAP 32(a)(4),
4 the typeface requirements of NRAP 32(a)(5) and the type style requirements
5 of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced
6 typeface using Microsoft Word 2007 in 14-point Times New Roman font.

7 2. I further certify that this brief complies with the page- or type-volume
8 limitations of NRAP 32(a)(7) because it is proportionately spaced, has a typeface
9 of 14 points or more, and contains 1,254 words.

10 3. Finally, I hereby certify that I have read this petition for rehearing,
11 and to the best of my knowledge, information and belief, it is not frivolous or
12 interposed for any improper purpose. I further certify that this brief complies with
13 all applicable Nevada Rules of Appellate Procedure, and in particular NRAP 28(e),
14 which requires every assertion in the brief regarding matters in the record to be
15 supported by a reference to the page of the transcript or appendix where the matter
16 relied on is to be found. I understand that I may be subject to sanctions in the
17 event that the accompanying brief is not in conformity with the requirements of
18 NRAP.

19 DATED this 9th day of May, 2016.

20 /s/: Caitlyn McAmis
CAITLYN MCAMIS, ESQ.

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