

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
DWIGHT CONRAD SOLANDER,
Respondent.

No. 67710

THE STATE OF NEVADA,
Appellant,
vs.
JANET SOLANDER,
Respondent.

No. 67711

FILED

MAY 09 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
by S. Young
DEPUTY CLERK

ORDER DENYING REHEARING

On April 19, 2016, this court issued an order regarding these appeals from the district court's orders granting respondents' pretrial petitions for writ of habeas corpus. *See State v. Solander*, Docket Nos. 67710, 67711 (Order of Reversal and Remand, April 19, 2016). In that order, we considered whether, as a matter of law, the district court erred in concluding that the insertion of a catheter into the urethra of a minor under the age of 14 cannot constitute sexual assault. We 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 and whether the Solanders used the catheters for a bona fide medical purpose involved questions of fact reserved for a jury. Respondent Dwight Solander seeks rehearing of that order on the issues of intent, the rule of lenity, and absurdity. Because we hold that the our interpretation of the requisite intent was proper and our analysis of the

rule of lenity and absurdity did not overlook, misapply, or fail to consider any rule of law, we deny rehearing. See NRAP 40(c)(2)(B).

Respondent Dwight Solander argues that our “order is internally inconsistent regarding the significance of any intent” because this court held that sexual assault is a general intent crime, but stated that the Solanders may avoid criminal liability if the catheterization was for a bona fide medical purpose. This argument, however, overlooks our reservation of the possible defenses or theories proposed by the State at this early stage in the proceedings. See *State v. Solander*, Docket Nos. 67710, 67711, at 7-8 n.5 (Order of Reversal and Remand, April 19, 2016). This court did not adopt said defenses or theories, as respondent’s petition seems to suggest. See *id.* Rather, these defenses or theories must be developed below, while the jury must decide the questions of fact regarding whether the alleged medical purpose of the catheters was bona fide.

Respondent also argues that this court failed to properly analyze his absurdity argument, while unnecessarily addressing the rule of lenity. Regarding respondent’s absurdity argument, the petition for rehearing is simply rearguing the same issue presented in his briefs—nevertheless, we will address it. See NRAP 40(c)(1). While this court agrees that *bona fide* medical purposes should vitiate a charge of sexual assault, we held in our order, and stand by that decision, that the bona fide nature of a medical insertion necessitates findings of fact reserved for a jury. Thus, respondent’s absurdity claim cannot be decided as a matter of law at this stage in the proceedings because a jury has not found that insertion of the catheters was done for a bona fide medical purpose. Further, regarding respondent’s rule of lenity claim, respondent argues

that the rule of lenity was not asked to be applied and thus, this court should not have addressed it. While respondent is correct that his answering brief did not discuss the rule of lenity, respondent Janet Solander's answering brief did. As a consolidated appeal, this court analyzed all arguments raised by both respondents. Accordingly, we deny the petition for rehearing. NRAP 40(c).

It is so ORDERED.

Hardesty, J.
Hardesty

Saitta, J.
Saitta

Pickering, J.
Pickering

cc: Hon. Valerie Adair, District Judge
Attorney General/Carson City
Clark County District Attorney
Mueller Hinds & Associates
Eighth District Court Clerk