

IN THE SUPREME COURT OF THE STATE OF NEVADA

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THE STATE OF NEVADA,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF CLARK,  
AND THE HONORABLE JENNIFER  
TOGLIATTI, DISTRICT JUDGE,

Respondents,

and

JEFFREY LYNN BAKER,

Real Party in Interest.

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NO.

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**RESPONDENT'S ANSWER TO PETITION FOR  
WRIT OF PROHIBITION OR IN THE ALTERNATIVE,  
MANDAMUS**

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

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THE STATE OF NEVADA,	)	NO. 71621
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
THE EIGHTH JUDICIAL DISTRICT	)	
COURT OF THE STATE OF NEVADA,	)	
IN AND FOR THE COUNTY OF CLARK,	)	
AND THE HONORABLE JENNIFER	)	
TOGLIATTI, DISTRICT JUDGE,	)	
	)	
Respondents,	)	
and	)	
JEFFREY LYNN BAKER,	)	
Real Party in Interest.	)	
	)	
	)	

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**RESPONDENT'S ANSWER TO PETITION FOR**  
**WRIT OF PROHIBITION OR IN THE ALTERNATIVE,**  
**MANDAMUS**

COMES NOW Deputy Public Defender MIKE FELICIANO,  
on behalf of the Respondent (Real Party In Interest) JEFFREY LYNN  
BAKER, and hereby answers the State's Petition for Writ of Prohibition Or  
In the Alternative, Mandamus filed in the above-captioned proceeding.

This answer to the Petition for Writ of Prohibition Or, In the Alternative, Mandamus is based on the following memorandum of points and authorities and all papers and pleadings on file herein.

Dated this 5th day of April, 2017.

Respectfully submitted,

PHILIP J. KOHN,  
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Mike Feliciano  
MIKE FELICIANO, #9312  
Attorney for Real Party In Interest

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **FACTS**

In the interest of judicial economy, Baker adopts and incorporates by reference the procedural history set forth in the State's Petition for Writ of Mandamus (PWM) p. 2-4.

### **ARGUMENT**

#### **C.J.'S TESTIMONY AT PRELIMINARY HEARING SHOULD NOT BE ADMITTED BECAUSE IT WOULD VIOLATE BAKER'S SIXTH AMENDMENT RIGHT TO CONFRONT WITNESSES AGAINST HIM**

Witness statements are barred under the Confrontation Clause if a defendant is not given the opportunity for cross-examination. Crawford v. Washington, 541 U.S. 36 (2004). In this case, there was never an opportunity for cross-examination. In this case, the preliminary hearing started, but came to a conclusion after the case was negotiated. There was never an opportunity to cross-examine the witness.

The State argues that Baker had an opportunity to cross-examine the witness but elected not to. A review of the record shows that this argument is without merit. Specifically, Baker waived this preliminary hearing, and the court accepted the waiver. It would have made absolutely no sense to

cross-examine the witness when the case was resolved. However, the State repeatedly makes the assertion that Baker had the opportunity to cross-examine C.J. This is simply not the case. C.J.'s preliminary hearing testimony should not be allowed at trial.

The facts of Chavez are similar, but not identical. 125 Nev 328; 337 P. 3d. 476 (2009). The defendant in Chavez was charged with multiple counts of child sex abuse. At the preliminary hearing in the case Chavez, through counsel, Chavez conducted an in-depth cross-examination. Chavez conducted cross-examination and recross-examination. Chavez' cross-examination was twice the length of the State's direct examination. Counsel asked 240 questions. During cross-examination, Chavez' specifically asked the complaining witness about the details of allegations, when and where the allegations took place, details about Chavez' body and if there were witness to the abuse. Id. at 330; 480.

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In this case, Baker never had to chance to cross-examine. The preliminary hearing was waived and the proceedings ended. Baker never had an opportunity to cross-examine the complaining witness. To allow the complaining witness' testimony into evidence would be error.

Respectfully submitted,

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

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## CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 5<sup>th</sup> day of April, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM LAXALT  
STEVEN S. OWENS

MIKE FELICIANO  
HOWARD S. BROOKS

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

JEFFREY LYNN BAKER  
c/o Clark County Detention Center  
330 South Casino Center Blvd.  
Las Vegas, NV 89101

BY /s/ Carrie M. Connolly  
Employee, Clark County Public  
Defender's Office