theories the Solanders may argue at trial, depending on proof. At this stage of the proceedings, none of these defenses or theories were argued or developed below, precluding this court from adopting them as a matter of law and circumventing the jury's role in deciding questions of fact."). But cf., Allan v. State, 91 Nev. 650, 653 (1975) (finding a 14-year-old boy not an adult for purpose of NRS 201.190, that the constitutionality had been upheld and that holding is "no less applicable where the victim, because of his tender age, is incapable of effective consent.")

The case is set for trial on January 29, 2018.

b. Motion to Suppress

The substance of the allegations come from the children in this matter and were initially obtained via two interviews, one in Florida and one in Nevada. Those interviews were done without notice or an opportunity to object by the parents of those minor children and thus violate the Warrant Clause of the Fourth Amendment, Due Process Clauses of the Fifth and Fourteenth Amendments and the right to a fair trial under the Sixth Amendment.

No criminal actions or evidence of child abuse was alleged to have taken place in the State of Florida. Florida received no reports from within the State prior to the request from Nevada CPS to interview the children. Nevada CPS has produced no report alleging any abuse prior to this date (2-28-2014). In fact all prior reports and allegations were closed as unsubstantiated. Consequently there was no reason to legally begin any type of investigation regarding the minor children, especially since they were located out of state. There are no tapes of these interviews, there was no adult or parent present during these interviews. The reports were all created after the children were seized and this is proven by the unity notes and lack of any entry of allegations prior to 3-3-2014 when the Florida CPS report was used as the basis for their investigation. Thus, there was no probable cause present to start any investigation against defendant.

///

///

c. Legal Standard

The 4th Amendment makes it clear that we are to be secure in our homes and persons against unreasonable search and seizure by the government. The 14th Amendment guarantees that parents and children will not be separated by the state without due process of law except in an emergency. See Wallis v. Spencer, 202 F.3d 1126, 1138 (9th Cir. 2000). This is not only limited to police, but applies to all persons acting in the name of the government. See Calabretta v. Floyd, 189 F.3d 808, 814 (9th Cir. 1999). This Wallis court also held that the "police annot seize children suspected of being abused or neglected unless reasonable avenues of investigation are first pursued, particularly where it is not clear that a crime has been – or will be – committed. Id. at 1138 (citations omitted) ("in the area of child abuse, as with the investigation and prosecution of all crimes, the state is constrained by the substantive and procedural guarantees of the constitution. The fact that a crime may be heinous-whether it involves children or adults-does not provide cause for the state to ignore the rights of the accused or any other parties").

Under well-established case law the courts have consistently held that a consent, warrant, court order or exigent circumstances present are needed for the removal or interview of children in an abuse case. See e.g., Calabretta v. Floyd, 189 F.3d 808, 814-818 (9th Cir. 1999). The court has repeatedly ruled that exigent circumstances are the fact that immediate danger and harm would come to the child in the time it would take to obtain a warrant See, e.g., White v. Pierce County, F.2d 812, 815 (9th Cir. 1986); Wallace v. Spencer, 202 F.3d 1126, 1138 (9th Cir. 2000); Rogers v . County of San Joaquin, 487 F.3d 1288, 1291, 1294-1298 (9th Cir. 2007); Mabe v. San Bernardino Cnty., Dept. Public Svcs., 237 F.3d 1101, 1106-1110 (9th Cir. 2001).

In Ram v. Rubin, 118 F.3d 1306, 1311 (9th Cir. 1997), the court stated:

> A state official cannot remove children from their parents unless that official has a reasonable belief that the children are in imminent danger. An indictment or serious allegations of abuse which are ***investigated and corroborated*** usually gives rise to a reasonable inference of imminent danger sufficient to justify taking children into temporary custody"
>
> Id. (emphasis added).

Ram supports the position that only upon a complete investigation and it has been indicated by corroborated evidence that abuse has occurred, that there exists sufficient cause to uphold

exigent circumstance for removal. This would hold that until a full and complete investigation of the allegations was complete and there was found corroborated evidence of abuse that the children could be taken into custody due to the possibility the abuse would continue until such time as a safety plan were implemented and the case was closed. In the immediate case neither of these was present. No indictment existed and there was no investigated and corroborated allegations.

CPS started this case with a pretextual report of a missing person, when in fact all they had to do was contact the adoptive father to learn their location. After CPS made the report, Metro contacted the Defendant who informed them they were in a boarding school in Florida and gave the contact information. Once they obtained the location from Metro, they contacted the director of the school, Stephen Blankenship, who reported the girls were there, had been since November, 2013 and were doing well (exhibit D). This should have the end of any further investigation on the children.

In this case the children were in a private boarding school located on private property. They were not in a public setting where they were under the care and custody of a public official at a public school. At issue is the search and seizure of the children from a private school. The 7th Circuit, United State Court of Appeals, said it most succinctly in *Doe v. Heck* 327 F.3d 492, 515-516 CA7 (2003):

> To the extent 48.981(3)(c)1 authorizes government officials to conduct an investigation of child abuse on private property without a warrant or probable cause, consent or exigent circumstances, the statute is unconstitutional.
>
> Id.

The Court should hold an evidentiary hearing and require the State to prove that the warrantless seizure of the children in this matter satisfied constitutional due process protections under the United States and Nevada constitutions. See State v. Ruscetta, 163 P.3d 451 (2007; State v. Rincon, 147 P.3d 233 (2006).

///

II. Conclusion

In light of the foregoing cites and authorities, defendant is asserting that the evidence in question should be suppressed as a matter of law as defendants constitutional rights were violated obtaining said evidence. In the alternative, the Court should hold an evidentiary hearing to require the State to prove this was a legal search and interview.

DATED this January 22, 2018,

BY:

/s/ Craig A. Mueller, Esq.
Craig A. Mueller, Esq.
Nev. Bar No. 4703
MUELLER, HINDS & ASSOC., CHTD.
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of January, 2018, I served a true and correct copy of the foregoing Motion, upon each of the parties by electronic service through Wiznet pursuant to the Eighth Judicial District Court rules of service as follows:

Clark County District Attorney's Office
200 Lewis Ave, 3rd Floor
Las Vegas, NV 89155
motions@clarkcountyda.com
pdmotions@clarkcountyda.com

/s/ David Barragan
An employee of
MUELLER HINDS & ASSOCIATES, CHTD

SLOW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JACQUELINE BLUTH
Chief Deputy District Attorney
Nevada Bar #010625
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DWIGHT CONRAD SOLANDER, #3074262
DANIELLE HINTON, #6005500
JANET SOLANDER, #6005501

Defendant.

CASE NO: C-14-299737-1
C-14-299737-2
C-14-299737-3

DEPT NO: **XXI**

STATE'S SUPPLEMENTAL NOTICE OF WITNESSES
[NRS 174.234(1)(a)]

TO: DWIGHT CONRAD SOLANDER, Defendant; and

TO: CRAIG MUELLER, ESQ., Counsel of Record:

TO: DANIELLE HINTON, Defendant; and

TO: CLARK COUNTY PUBLIC DEFENDER'S OFFICE, Counsel of Record:

TO: JANET SOLANDER, Defendant; and

TO: CAITLYN MCAMIS, ESQ., Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF NEVADA intends to call the following witnesses in its case in chief:

*indicates additional witness(es) and/or modification(s)

NAME	ADDRESS
A.S. (1)	c/o CCDA Victim Witness Assistance Center
A.S. (2)	c/o CCDA Victim Witness Assistance Center

A.S. (3)	c/o CCDA Victim Witness Assistance Center
ABRAHIM, FAIZA	CPS, 701 NORTH PECOS ROAD, LVN 89101
ANDERSON, GAIL	DFS/CPS, 601 SOUTH PECOS ROAD, LVN 89101
*BERNAT, KRISTEN	DFS/CPS, 601 SOUTH PECOS ROAD, LVN 89101
BERNAT, KRISTINA	CPS, 601 SOUTH PECOS ROAD, LVN 89101
BITSKO, J.	LVMPD P#6928
BLANKENSHIP, STEVEN	3111 ZEPP LANE, PACE, FL 32571
CHRISTENSEN, A.	LVMPD P#7200
DAVIDSON, CHERINA	DFS/CPS, 601 SOUTH PECOS ROAD, LVN 89101
DIAZ, AREAHIA	8025 SECRET AVENUE, LVN 89131
*EBRAHIM, FAIZA	DFS/CPS, 701 SOUTH PECOS ROAD, LVN 89101
EMERY, F.	LVMPD P#2782
FINNEGAN, JAN	c/o CCDA, 200 LEWIS AVE., LVN
GONZALEZ, YVETTE	CPS, 601 SOUTH PECOS ROAD, LVN 89101
HAMMACK, LAURA	DFS/CPS, 601 SOUTH PECOS ROAD, LVN 89101
HENRY, JACKIE	5643 N. STEWART ST., MILTON, FL 32570
JOHNSON, Z.	LVMPD P#8527
LECTWORTH, ANDREA	c/o CCDA, 200 LEWIS AVE., LVN
MALDONADO, J.	LVMPD P#6920
MCCLAIN, DEBORAH	7771 SPINDRIFT COVE STREET, LVN 89139
MGHEE, E.	LVMPD P#5158
NELSON, RICHARD	DFS/CPS, 601 SOUTH PECOS ROAD, LVN 89101
*OCLOO, NONA	DFS/CPS, 601 SOUTH PECOS ROAD, LVN 89101
ORENICK, AYA	DFS/CPS, 601 SOUTH PECOS ROAD, LVN 89101
*RICHARDSON, HEATHER	DFS/CPS, 601 SOUTH PECOS ROAD, LVN 89101
ROSAS, CRYSTAL	DFS/CPS, 601 SOUTH PECOS ROAD, LVN 89101
SHAW, LISA	DFS/CPS, 601 SOUTH PECOS ROAD, LVN 89101
STARK, AUTUMN	3629 TUSCANY RIDGE, N. LAS VEGAS, NV 89032

These witnesses are in addition to those witnesses endorsed on the Information or Indictment and any other witness for which a separate Notice of Witnesses and/or Expert Witnesses has been filed.

STEVEN B. WOLFSON
DISTRICT ATTORNEY
Nevada Bar #001565

BY /s/ Jacqueline Bluth
JACQUELINE BLUTH
Chief Deputy District Attorney
Nevada Bar #010625

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made this 22nd day of January, 2018 by Electronic Filing to:

CRAIG MUELLER, ESQ.
Email: cmueller@muellerhinds.com
(Def. D. Solander)

CLARK COUNTY PUBLIC DEFENDER
Email: pdclerk@clarkcountynv.gov
(Def. Hinton)

CAITLYN MCAMIS, ESQ.
Email: caitlyn@veldlaw.com
(Def. J. Solander)

BY: /s/ J. Georges
Secretary for the District Attorney's Office

jg/MVU

Electronically Filed
7/27/2018 11:13 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. DWIGHT SOLANDER, DANIELLE HINTON, JANET SOLANDER, Defendants.	CASE#: C-14-299737-1 C-14-299737-2 C-14-299737-3 DEPT. XXI

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

TUESDAY, JANUARY 23, 2018

RECORDER'S TRANSCRIPT OF PROCEEDINGS: CALENDAR CALL; STATE'S MOTION TO ADMIT EVIDENCE OF DEFENDANT JANET AND DWIGHT SOLANDER'S ABUSE OF FOSTER CHILDREN IN THEIR HOME

APPEARANCES:

For the State:	JACQUELINE M. BLUTH, ESQ. Chief Deputy District Attorney
For Defendant Dwight Solander:	CRAIG A. MUELLER, ESQ.
For Defendant Danielle Hinton:	JEFFREY T. RUE, ESQ. Deputy Public Defender
For Defendant Janet Solander:	CAITLYN L. MCAMIS, ESQ. KRISTINA WILDEVELD, ESQ. DAYVID J. FIGLER, ESQ.

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

Las Vegas, Nevada, Tuesday, January 23, 2018

[Case called at 9:58 a.m.]

THE COURT: State versus Dwight Solander, Danielle Hinton and Janet Solander. All right. And Mr. -- okay, we've got Mr. Mueller, Mr. Rue, Ms. Wildeveld, Ms. McAmis. We got Ms. Solander, Mr. Solander. And where is Ms. Hinton?

MR. RUE: Not here, Judge.

THE COURT: Are you asking us to waive her appearance for today?

MR. RUE: Until --

THE COURT: This --

MR. RUE: -- until Thursday.

THE COURT: I'm sorry?

MR. RUE: Yes, Judge, until Thursday.

THE COURT: Okay. Well --

MR. RUE: I was not able to notify her --

THE COURT: Okay.

MR. RUE: -- of today's date.

THE COURT: All right. So we'll leave it on as to her for Thursday since she's not here today. This was moved up at counsel's request for a calendar call today. We did get two late motions. One from the State. Well, when I say late, this case has been pending for a long time and --

MS. BLUTH: Oh.

THE COURT: -- we just have your motion to admit, which the Court has reviewed, and there was opposition made, and I've read the opposition. Seems to me like we need to have a hearing which --

MR. MUELLER: Good morning, Your Honor. Craig Mueller on behalf of Mr. Solander. I would orally join in the motion. I actually read both of the pleadings as well and thought they were meritorious.

THE COURT: You mean the opposition.

MR. MUELLER: The opposition. Sorry.

THE COURT: Okay. Yeah -- I mean, I'm just saying since we have to have a hearing I wish this had been filed earlier since this case has been pending for some time. Can we have a hearing on Friday at 9 a.m.? It seems to me the hearing's going to take a while. What's counsel's opinion on that?

I mean, I think the opposition made a good point. Like what are you going to put on; how you going to prove all of this? And so when I read your motion it seems to me there could be a lot of witnesses. There may not be a lot of witnesses, but I wasn't really sure. And so that's why I thought well this hearing could take a long time, which means I don't want to have to schedule it in the middle of the trial.

MS. BLUTH: Right. I --

THE COURT: I mean, how many -- I guess I should ask you. What witnesses are you intending to call for the evidentiary hearing?

MS. BLUTH: I was --

THE COURT: The -- right.

MS. BLUTH: Sorry. I think minimum would be three;

maximum would be five.

THE COURT: Okay.

MS. BLUTH: So I think it would take like a half -- half a day probably.

THE COURT: Okay.

MS. BLUTH: I can shoot for Friday. Obviously I don't -- you know --

THE COURT: Right.

MS. BLUTH: -- I haven't reached out to anybody. I can see Mr. Mueller shaking his head, so I don't know --

THE COURT: Well --

MS. BLUTH: -- what his schedule is, but I -- whatever -- whatever day --

THE COURT: The reason I say that is -- okay. Tuesdays and Thursdays are our normally scheduled calendars, so we're not going to have a half of day to do an evidentiary hearing Tuesday or Thursday of next week. I'm anticipating a full day for jury selection, so that would be all day Monday. We already have an evidentiary hearing scheduled for Wednesday, but I guess I could vacate that and give you Wednesday morning, which would mean an afternoon start possibly on three days.

MS. BLUTH: So what I -- what I was thinking, Your Honor, if it's okay with you. I know that Mr. Figler and Ms. Wildeveld -- we're going to be dark that Thursday and Friday, if you remember, because they're going out of the jurisdiction.

THE COURT: Okay.

MS. BLUTH: So we're -- we're picking a jury Monday, Tuesday, Wednesday; they'll be out.

THE COURT: Okay.

MS. BLUTH: So I was thinking -- not knowing your calendar Monday morning -- that following Monday if we could do that in the morning and then --

THE COURT: I don't --

MS. BLUTH: Go ahead.

THE COURT: Okay.

MS. BLUTH: Because I don't think we'd get to openings.

THE COURT: Right. So you're anticipating three days for jury selection?

MS. BLUTH: Yeah.

THE COURT: All right. What do you think, Mr. Mueller? How long do you think jury selection is going to take?

MR. MUELLER: I -- having sat through a five full-day preliminary hearing, I think jury selection will go three days and I think this trial goes three weeks.

THE COURT: I've done trials with -- I don't believe we've ever had a trial that actually went, Ms. Wildeveld, or have we?

MS. WILDEVELD: Yes, we have.

THE COURT: Okay. Well -- I'm sorry, I don't remember how long jury selection -- Mr. -- we've had a trial with Mr. -- Mr. Mueller and Mr. Rue, so I can kind of gauge how long that will be. We're pretty fast on jury -- for whatever reason, it seems to be pretty fast in here. I don't

-- what --

MS. WILDEVELD: I think we had a stalking trial that went two weeks in here.

THE COURT: Okay.

MS. WILDEVELD: Mr. Entrikin.

THE COURT: I just blocked -- oh, that's right.

MS. WILDEVELD: Yes.

THE COURT: I remember. And it's all coming back to me now. Okay.

All right. So you're asking for -- to do the evidentiary hearing Monday morning and then begin jury selection Monday afternoon?

MS. BLUTH: Oh. So -- no, I'm sorry, Judge. I meant the following Monday. So we could get the jury picked Monday, Tuesday, Wednesday. And then --

THE COURT: Okay.

MS. BLUTH: -- do that -- so we didn't really have to really, you know, do the hearing that following Monday and then go into openings Monday afternoon. I mean --

THE COURT: I see. Okay. That --

MS. BLUTH: Judge, it's whatever --

THE COURT: -- that sounds reasonable.

Any objection by the defense to doing it that way?

MR. MUELLER: Well, there's a practical problem. It depends on what comes in and doesn't come in. I may be forced to move to sever again Mr. Solander out. The act -- the bad acts are not going to

involve Mr. Solander.

MS. BLUTH: My motion involved both of them and not Ms. Hinton. I --

THE COURT: Well, there was reference to Mr. Solander in the motion, so --

Ms. Wildeveld, any objection to doing it that way.

MS. MCAMIS: Well --

MS. WILDEVELD: Go ahead, Caitlyn.

MS. MCAMIS: Well, yes. I mean, we do have an objection. This -- this motion was filed very late. It includes a whole lot of very vague allegations, and allegations and statements attributed to people that were not part of our file review on December 14th. There was some limited information that there was foster care records related to the other foster care children in the home which we weren't generally entitled to because it wasn't -- we weren't on notice. It's not something that we've litigated, and so now we have no ability to know what's coming in, or what's being proposed because of how vague and general everything is in the bad acts motion. So we are at a severe disadvantage with the discovery not being provided in advance, having us to even have an opportunity to investigate that because this involves a lot of allegations that are sensitive, that are confidential in nature, and that DFS and CPS would be involved. And that's not -- those are time consuming processes. Even in this case alone that Your Honor had to actually already review things in-camera before we were even allowed to get it. So now these are separate children and we don't have all this

information; it's not been reviewed in-camera, and we're just expected to pick a Monday right before trial.

THE COURT: Well, the only -- I don't know. To me the only thing that would be meaningful in a confidential record belonging to one of the other foster children would be something that indicated that in fact -- I mean, this is almost like a Munchausen by proxy idea to me that -- that they really did suffer these stomach -- gastrointestinal issues that that would be something the defense would want that they're really -- I mean, that to me would be the only thing --

MS. BLUTH: Right.

THE COURT: -- that the Court would -- could conceivably need to review in terms of confidential, CPS, or really medical records belonging to these children, that in fact, by some coincidence, all of the children were suffering from various ailments.

MS. BLUTH: Judge --

THE COURT: I know diabetes was one, but it seemed to be sort of a stomach focus.

MS. BLUTH: Yeah.

THE COURT: That's the gist of what I was getting from the --

MS. BLUTH: The main issue I had -- I was actually shocked to read that in the review about the -- in the -- in their motion about the discovery blows my mind because every single one of these foster children's statements were given pre-prelim. And the reason I know that is because Mr. Rue and Mr. Mueller both have copies of those children's foster -- the foster children's statements. And I gave -- I can provide the

date in which I gave a full CPS notes to Ms. McAmis and she wrote me thank you. So this idea that they don't have the discovery is honestly blowing my mind. They do have it because I gave it to them. And they are in the emails contained from the therapist, Lori Wells, to DFS. So the defense does have these. I would never just provide -- just write a motion and not provide the defense with the allegations that are in my motion. They have those things. They have had them. So there's nothing for them to review. There's nothing for me to give you in-camera.

The only thing I did tell them is that if one of the child's -- one of the foster children's medical records become important I will happily give those to them. I don't --

THE COURT: And you have those now or you don't have them?

MS. BLUTH: Just one -- I just have one of the child's and it's a stack maybe a half an inch.

THE COURT: Is this one of the children that supposedly was diabetic?

MS. BLUTH: Yes.

THE COURT: Okay, that's that one.

MS. BLUTH: And so that's the one thing at file review when they asked me can we have those, I said if those become an issue with a Court's ruling absolutely, but everything else I have given them. I can give you the exact dates that I gave them on. So this idea that I -- right before trial writing this motion and they have no idea is very frustrating to

me.

MS. MCAMIS: Well, you know, and equally frustrating that she's now bringing it at issue the medical -- or potential medical issues of the other foster care children. And we don't have any medical records to even refute or have any notice what's being alleged. Whatever has been provided has been very generic statements of children. It's just statements. It's not medical records. It's not -- these are brand new allegations. There's not a notice of what witnesses were going to be presenting or having to prepare for. We don't have a witness list. We don't have additional records --

MS. BLUTH: I provided --

MS. MCAMIS: -- and there's a lack of specificity.

THE COURT: Well, in the motion, I mean, you can -- I think you can glean from the motion who some of the witnesses would be, but I was --

MS. BLUTH: And I filed --

THE COURT: -- going to ask Ms. Bluth to tell us who she intends to calls --

MS. BLUTH: Sure. So in --

THE COURT: -- at the evidentiary --

MS. BLUTH: -- the notice of witness, I filed timely, named all these witnesses, so that would be the therapist, Lori Wells; the minor child, A.D.; perhaps her caretaker now to talk about any existing, you know, medical issues, if there are any. And then I believe I would need Nurse Schweiger, who was the school nurse that I discussed in my

motion with particularity and specificity, and then Yvette Gonzalez from DFS. So those are the individuals that would, I think, paint the picture in regards to my OBA motion.

And another thing about my OBA motion is, Your Honor, I was very specific in the exact two fields that I was trying to get into. It's not like I'm just -- I was very specific in exactly what I was trying to get -- get into and exactly what my motion was based on.

So I understand Your Honor's ruling is that we're going to have a hearing. I will go back to my office right now and make sure I have the witnesses correct and email defense counsel who it is that I'll be calling.

THE COURT: All right.

MR. FIGLER: Your Honor --

THE COURT: I wish this had been done earlier because everybody's been working on this case for quite some time. And I don't know why we're just getting this motion now so that we're having to rush and do an evidentiary hearing.

MS. BLUTH: In fairness, Judge, they just filed two motions too --

MR. FIGLER: Well, in response.

THE COURT: No, I was going to --

MS. BLUTH: -- that could've been done.

THE COURT: -- get to that. And I think when I started I said I don't know why we're getting all these motions --

MS. BLUTH: Right.

THE COURT: -- so late. Because -- turning now to the defense, their motion isn't even calendared until after we've started the trial. And to me, A -- well, just like I said to Ms. Bluth, this isn't an -- I mean, I read it already. This isn't a new issue. This is something that could've been filed a long time ago. And if you are going to file a late motion, why not at least come in and put it on in an order shortening time so we could at least -- you know, I just happened to see it, but -- anyway. I mean, this case has been pending a long time. We had a firm set months ago, as you all know, but Ms. Solander, as I recall, I think it was her back, had a medical issue, and so why weren't all of these motions filed prior to the last setting?

MS. BLUTH: Other trials, Judge. I mean, there's just not -- there's only --

THE COURT: I mean, I'm just saying, because supposedly we were going forward on that setting except then there was the issue with Ms. Solander with her back, I think it was. There was a medical -- medical --

MS. WILDEVELD: And --

THE COURT: -- situation, as I recall.

MS. WILDEVELD: And, Your Honor, Kristina Wildeveld on behalf of Janet Solander. If I can just let you know why Mr. Figler's here. As you're aware, Caitlyn McAmis has always been lead counsel on this, but it is an appointive case and so I've always been here as well. Because of -- now it may be a three week trial, and timing issues, Mr. Figler is also ready and prepared to go forward with McAmis if I'm

unable because of other cases in the office.

THE COURT: Okay. So we're starting trial Monday --

MS. BLUTH: Yes, ma'am.

THE COURT: -- for jury selection. Who is going to be here? It's Ms. McAmis as lead counsel and you, Ms. Wildeveld, and also Mr. Figler --

MS. WILDEVELD: No.

THE COURT: -- just in case; what?

MS. WILDEVELD: So --

MR. FIGLER: The --

MS. WILDEVELD: Go ahead.

MR. FIGLER: I was intending on being here, Your Honor. If Ms. Wildeveld can, it's more likely that I'll be involved in the jury selection and also the bad acts motion. So I had a chance to review that. My concern is that on this issue, if there is some medical records -- there's lots of pre-existing medical records, none of which have been provided, so if Ms. Bluth is going to provide us with the medical records of one of the foster children referenced in the bad acts motion, then certainly she should be required to present all of that because -- Your Honor used the word coincidence. Certainly the Solanders were in position as foster parents to be taking many special circumstanced children, many who had various pre-existing ailments, conditions, situations and scenarios before they came in. And there were many; okay? And so the fact that they picked four. We don't know why they picked the four. We don't know exactly what time frame they're talking

about. We have these vague statements of children. We don't know who else was present. All the other indicia of reliability around children's statements have not been provided.

THE COURT: Well, these -- but many of these statements, according to their motion, were made to people at the school -- adults at the school, the school nurse and what have you. I mean, I think the cleanest one -- seems to me the child that -- I don't remember if it was -- which Solander parent -- foster parent purported to have diabetes --

MS. BLUTH: A.D.

THE COURT: -- and in fact wasn't diabetic. I mean, that to me seems like an easy one and that's the one that they have the medical records on. Some of the other sort of gastrointestinal issues may be a little more vague. Look -- I mean, it could be they're taking special needs people. It could be some kind of psychological problem on the part of the Solan -- like a Munchausen by proxy idea, or it could be that they were feeding these kids an incredibly bizarre diet and was making them all sick. So, I mean, those are the three obvious possibilities that pop into my mind. But I think we need to have the hearing, and then argument, and see where we are.

But like I said -- I mean, the -- the diabetic issue. You're either a diabetic or you're not. And for a child it would probably be a Type 1 diabetic. And so, you know, if the school nurse is saying no, there's no diabetes, and there's no -- you know, they weren't bringing insulin. There's no evidence of that, and there's no evidence in the medical records, to me that's a pretty clean one, unlike some of the more vague

symptoms of stomach upset and things like that, that's a little but more difficult. But, you know, you're either a Type 1 diabetic or you're not. So --

MR. FIGLER: I mean the question --

THE COURT: I don't know. To me that --

MR. FIGLER: -- for us is --

THE COURT: -- one's -- that one's a lot cleaner. I'm not saying they're limited to that, but after the hearing the Court could exclude everything. The Court could say no, I think this one -- you can get into this child, but not this other child, or I could say they can get into all the children.

MR. FIGLER: Well, and I appreciate on a *Petrocelli* you also have the -- you know, the prejudicial impact --

THE COURT: The probative. And they have to prove --

MR. FIGLER: -- versus the probative value, et cetera.

THE COURT: -- it by clear and convincing.

MR. FIGLER: No, I get that.

THE COURT: I'm not even there.

MR. FIGLER: Right. But --

THE COURT: Right now we're just talking about the need to have a hearing.

MR. FIGLER: Right. No. And I don't disagree that if they're going to try -- I mean, Your Honor could dismiss it out of hand based on a pleading. I don't see that from your face, so obviously there would be an evidentiary hearing. But what I'm saying is that contextually there's

so much more. And at that this late juncture to bring in -- there's no way that the defense would've known that they would've attempted -- there was no notice given that, hey, we're going to put this bad acts motion on two weeks before trial.

And so -- you know, the context of where the children came from, the circumstances surrounding their statements, all of which is fodder for the *Petrocelli* hearing to see if they can even get to the clear and convincing standard. And the credibility and the -- you know, and really the admissibility of some of that is going to be at stake. But if we don't have all discovery -- I get they're playing this kind of game where we gave everything that we had to, but I don't believe that they did because none of this shows up when Ms. Wildeveld and Ms. McAmis do the file review and they say that this isn't --

THE COURT: Well --

MR. FIGLER: -- going to be relevant. So I get that the statements --

THE COURT: Wait. Ms. Bluth is saying -- well, first of all, you didn't do the file review.

MR. FIGLER: Right.

THE COURT: So I don't think you can really comment on what Ms. Wildeveld and Ms. McAmis saw --

MR. FIGLER: Right.

THE COURT: -- number one. Number two, Ms. Bluth has just represented that all of these things were in the final -- in the file review except for the medical records.

MS. BLUTH: The medical records were there. They asked do we need these; I said if medical becomes an issue, then I have no problem handing them over. But the medical records are different from the children's statements and the statements that they gave to therapists, teachers, nurses that they did get.

THE COURT: Right.

MR. FIGLER: And --

THE COURT: I'm sorry. I may be confused, but as to the medical records, is it only the child that was purported to have diabetes or is it other children and other medical records.

MS. BLUTH: I believe that the only medical records that we have -- and I'll go back. It's two banker boxes of files that we have, is A.D., which is the child with diabetes. But I need to go back and check. I don't want to make a representation that I don't one hundred percent know.

THE COURT: Okay.

MS. BLUTH: Obviously I can't -- I can't get medical records, you know, to kids who aren't involved in this case, and who I don't even believe are in the foster care system anymore, so that's why I thought the hearing was necessary. Because if A.D. comes up here and she's like -- I'm like do -- you know, do you take medication; are you a diabetic? I don't take any medication. I've never seen a doctor since. Well, are you sick?

THE COURT: Right.

MS. BLUTH: And if --

MR. FIGLER: Have you had any other problems that are gastrointestinal? Well, we don't know because there's no medical, and they're six years old or seven years old, how would they know?

THE COURT: Well, that's why, Mr. Figler, I already said, you know --

MR. FIGLER: For all of them.

THE COURT: -- the Court may, after the hearing, limit it just to the child on the diabetes because that's a little bit cleaner and easier. You know, you're either a diabetic or you're not. You're either on insulin or you're not. It's not like, you know, oh, the child had an upset stomach. That's a little more amorphous. And, you know, that might be more difficult to establish. I'm not saying that's going to be excluded, but that's certainly something the Court will consider what the quantum of proof is as to each purported ailment in each child.

MR. FIGLER: So can we make an oral request, or do you need a written request, for all medical records of all witnesses that they intend --

THE COURT: No.

MR. FIGLER: -- to produce?

THE COURT: Well, they -- I mean, I think your request should be the medical records that they already have, which would be A.D.

And, Ms. Bluth, do you have any objection to turning those medical records over --

MS. BLUTH: Not at all.

THE COURT: -- prior to our evidentiary hearing?

MS. BLUTH: Not at all. Whatever I have in my box right now I will scan and email them this morning.

MR. FIGLER: And then secondarily, under *Giglio* -- I mean, we also have this issue where CPS, DFS would have been necessarily involved for the foster to go forward. So all CPS, all DFS records related to all of them, including medical, would be relevant for the purposes of contextualizing whatever information they're trying to get in in other bad acts. In other words, how these children --

MS. BLUTH: I gave them those.

MR. FIGLER: And they need to give those to us. They said that they have two bankers boxes. Ms. Wildeveld and Ms. McAmis have said repeatedly to me, and they could speak for themselves, that they were only presented with one banker box at the file review. So I'm not sure where this other banker box that's full, that's referred to by Ms. Bluth, comes from, but --

MS. BLUTH: It was scanned --

MR. FIGLER: -- that needs to be provided as well.

MS. BLUTH: -- and a disc was provided. The second banker box is the medical records. I didn't want to make it too cumbersome for them, so I scanned them and gave them a CD which they picked up. I can also provide the date of that. So I'm not somebody who plays games with discovery. I know what I owe them and I gave them that.

MR. FIGLER: So is there an order then to produce all medical, DFS and CFS [sic] records for any of the --

THE COURT: Okay. Well, first of all, they don't have all of

that. You can submit a court order for in-camera review for those. Ms. Bluth has already indicated that because -- okay, the -- obviously the CPS records for a particular foster child might include many other things that are not --

MR. FIGLER: Like names.

THE COURT: -- relevant to the hearing, including things involving their natural parents, other foster parents, things like that. So I couldn't just order that that's all turned over without me reviewing first; would you agree with that?

MR. FIGLER: I have no problem --

THE COURT: Right, number one.

MR. FIGLER: -- with it being in-camera.

THE COURT: Number two, Ms. Bluth doesn't have that. She just has the records relating to A.D. which she's already agreed to provide.

MR. FIGLER: I --

THE COURT: So I can't order her to provide something she doesn't have. If you want to submit the order, I don't know that we would get that ahead of time.

MS. BLUTH: I do have the records, Your Honor, about the complaints in my motion and I did provide those.

THE COURT: Okay.

MS. BLUTH: Because those were emails and CPS notes going back and forth between the therapists and the basic skill trainers.

THE COURT: And you provided all that?

MS. BLUTH: Yes.

THE COURT: Okay.

MR. FIGLER: I don't think we have any therapist notes.

MS. BLUTH: Okay. I can provide the date that I gave them to you.

THE COURT: Okay. So she'll give that again. It might be a good idea to provide that to the Court so that when we're arguing about what was fair, and what's been provided, and whether or not the defense can adequately prepare, I'll know what you gave them --

MR. FIGLER: Right.

THE COURT: -- so I can review it myself and determine whether or not I think it's adequate or I think it's inadequate.

MS. WILDEVELD: I just have a question. At the file review we specifically said we don't need the file -- we don't need the information on these kids if these kids aren't an issue; right? She said no.

MS. BLUTH: The medical records. Yep, that's exactly true.

MS. WILDEVELD: And if they do become an issue I'll let you know. Then you went and copied them and sent them to us on a CD?

MS. BLUTH: No. The medical records were provided to them on a disc --

THE COURT: No, not the --

MS. BLUTH: -- before our file review.

THE COURT: -- medical records. Don't you mean the CPS records?

MS. BLUTH: So the -- the children -- the Solander girls --

THE COURT: Right. That's been provided.

MS. BLUTH: -- those medical records were provided on a CD before our file review.

MS. WILDEVELD: We're not talking about them.

THE COURT: She's talking about the medical records as to the other children --

MS. BLUTH: Yeah.

THE COURT: -- but those have not been provided?

MS. BLUTH: No. During --

MS. WILDEVELD: That's what we're talking about aren't we?

MS. BLUTH: During -- well, in the motion it talked about them not having anything. During the file review they said do we need any of the medical records for the foster children and I said at this point no. If it becomes an issue and the judge releases them, absolutely. But I can't just -- I can't just hand them over.

MR. FIGLER: Can we ask that her entire file be handed to Your Honor with regard to any medical, CPS or DFS, what she has, so Your Honor has it?

THE COURT: Well, she's -- that's fine. But she's also indicated that she's going to re-provide the CPS, DFS records which she says have already been provided as to these other children, number one. Ms. Bluth, correct me if I'm wrong, has stated she did not provide the medical records as to the foster children, but only has medical records as to the child A.D., which is a bankers box, and that's the child

that they said had diabetes. And she is now going to scan that and provide it; is that what you're telling us?

MS. BLUTH: As -- there's a couple things. The bankers box was for the Solander girls.

THE COURT: Okay.

MS. BLUTH: Okay. The medical records that I have, which I believe are for foster child A.D. I do not -- I need to go back and check --

THE COURT: Okay.

MS. BLUTH: -- is just a folder.

THE COURT: Okay.

MS. BLUTH: Like a half an inch. So they had seen in that in my -- in my bankers box, but they --

THE COURT: They didn't look at it.

MS. BLUTH: -- we did not provide it to them. Correct.

THE COURT: Okay.

MS. BLUTH: So I don't know exactly which children I have medical records for because they -- you know, those children, they weren't given over to me since they weren't named victims in the case. I think that -- I don't know how I got the one child. I think it might've been through Metro when they interviewed her. But I'm more than happy, if Your Honor's telling me to, to hand those over to them.

MR. FIGLER: I mean, that begs the question, if Metro got medical records for one why didn't Metro get medical records for all? Does Metro have them? If Metro has them, then Ms. Bluth has the

responsibility of giving them to us as well under *Brady* and *Giglio*.

MS. BLUTH: I just said --

THE COURT: Well, we don't know --

MS. BLUTH: -- I don't know who --

MR. FIGLER: Well, I get that --

MS. BLUTH: -- who gave them to me.

MR. FIGLER: -- Your Honor, which is why we don't want this to be an issue because we don't want the question to be lingering why does she only have medical records of one and not the other.

THE COURT: Well, maybe --

MR. FIGLER: So she's going to go back --

THE COURT: -- Mr. Figler, Ms. Bluth can tell us.

Ms. Bluth, do you know why you only have medical records as to the one child?

MS. BLUTH: No, I don't. I don't know why I have them. And I don't know -- because you have -- there's two components to this case. The family division section of it also did an entire case. So I would guess that most likely that section was from them because these issues were litigated down there. So -- I mean, I can call them and say is this file from you guys. Because then they were done with their case I got their box and, you know, mingled it with mine.

THE COURT: Here's what we're going to do going forward. Ms. Bluth is going to provide the medical records that she has that haven't been provided.

MS. BLUTH: Yes.

THE COURT: Ms. Bluth, you're going to contact Metro and see if they have any other medical records regarding any of these children.

MS. BLUTH: Yes, Your Honor.

THE COURT: And if that leads you to CPS or DFS, then you'll contact them and see if they have any medical records of the children. All right.

MR. FIGLER: And if we have a basis we'll make a motion to continue for a further investigation if we have a basis.

THE COURT: Well, no. The Court would be inclined, if there's prejudice, or inadequate discovery, or something like that, it will be addressed either by excluding the -- it will be addressed by excluding the witnesses and denying the motion. It won't be addressed by a continuance.

MR. FIGLER: Okay.

THE COURT: Because, again, this could've all been litigated way ahead of time. We're not going to continue the trial because of late filing of the motions. So that's -- if I feel like, again, there's inadequate discovery then that will be the remedy --

MS. BLUTH: Understood.

THE COURT: -- or a very brief continuance, like two days or something like that, but we're not going to reset the trial because of late motion.

Mr. Rue, do you have anything to say?

MR. RUE: No, Judge. I'm --

THE COURT: You just --

MR. RUE: Go ahead.

THE COURT: -- agree with everything everybody said already. All right.

Turning to Mr. Mueller's motion, I'm assuming, because this hasn't -- isn't even calendared yet. I think it was February 1st was the date. We don't have an opposition.

MS. BLUTH: No, we're working on it. It will be filed this week.

THE COURT: All right.

MS. BLUTH: I think -- I thought it was calendared for like February -- I mean --

THE COURT: February 1st.

MS. BLUTH: -- it's calendared for after we start, but --

THE COURT: It's calendared for after.

MS. BLUTH: Yeah.

THE COURT: I'm assuming, Ms. Bluth, you've had an opportunity to review it?

MS. BLUTH: Yes.

THE COURT: Do you concede that there may be a need for an evidentiary hearing or --

MS. BLUTH: No.

THE COURT: -- are you attacking it on other grounds, like standing?

MS. BLUTH: Yeah, I'll be attacking. I mean, there's a statute that allows the police to do that, so we'll be doing it in writing.

THE COURT: Okay. All right. So I guess then -- this is the calendar call that's been moved up, so we'll be prepared to start Monday morning with jury selection at 9 a.m.

MS. BLUTH: Yes, ma'am.

THE COURT: Everybody be here at 9 a.m.

Mr. Rue, because your client didn't know to be here today, the calendar call as to Ms. Hinton stands for Thursday.

MR. RUE: Understood, Judge.

MR. MUELLER: And can you trail --

THE COURT: You folks don't need to come back on Thursday because this is your calendar call. So 9 a.m. for jury selection Monday. Can everyone be here at 9 a.m.?

MR. MUELLER: I would ask that you trail my calendar call as to Mr. Solander until Thursday. I'd like to see this information. I've been staying out of the fire fight here, but I want to see before I announce ready what I'm actually going to have to address.

THE COURT: Okay. Well, first of all -- again, just like I told Mr. Figler, the calendar call -- I mean, you're ready to go based on what you know. Now, again, I'm not going to continue the trial. So if I feel like you -- you know, there's prejudice -- unfair prejudice, or there's a need for additional discovery, or something like that, then to me the remedy is denying the motion, not continuing the trial again. So once we have the hearing you can make your record that you need additional discovery, you can't be ready or whatever. But in terms of what of you have, are you ready to go?

MR. MUELLER: As far as I know, Judge, I decline respectfully to announce ready for trial until I see exactly what else I have to address.

THE COURT: Okay. Well, we're doing --

MR. MUELLER: I -- I know the Court's --

THE COURT: -- the jury selection prior to the hearing, so --

MR. MUELLER: -- the Court's view on the subject is abundantly clear. I understand the Court's ruling. For the record, I love going to trial. I'm ready, willing and able to go to trial, but I am not going to announce ready for trial until I know exactly what I have to face. And if there's another bad acts motion I want to take a look at it.

THE COURT: Well, you -- the bad action motion -- bad acts motion was calendared for today.

MR. MUELLER: Yes.

THE COURT: So you should've already had an opportunity to read that.

MR. MUELLER: I'm opposed to the bad acts motion.

THE COURT: Well, did you read it?

MR. MUELLER: Yes.

THE COURT: Okay. So I don't really -- I mean, I guess we're going in circles here, but I'm going to take that as you're announcing ready. Like I said, to me, the remedy for unfair prejudice, or inadequate discovery is denying the State's motion. The Court is not inclined -- this has been moved many times, or several times, or what have you. You know, this could've all been litigated ahead of time, including your

motion. And I'm not inclined to move this because the motions were filed late.

MR. MUELLER: Understood, Judge.

MS. BLUTH: Understood.

THE COURT: So -- you know, once we have the hearing you can make your arguments. If the Court's inclined to deny your arguments -- your -- your, you know, request to exclude it, you'll certainly get an adequate time to make a record. But, like I've said -- I don't know, five or six times already, that's the remedy. It's not going to be a continuation of the trial because in my opinion this has been pending way too long. This was a firm set. And these issues, frankly, should've been anticipated by the State. Although again, you know, your motion could've been filed months and months ago, so --

MS. BLUTH: Understood.

THE COURT: -- that's where we're are. So -- yes.

MR. FIGLER: You have our other pending motion. And I'll -- let me just give you a little context for our motion in limine that was also filed recently.

THE COURT: Okay. I don't know that I saw that one. When is that calendared for?

MR. FIGLER: Probably after the fact as well.

THE COURT: Well, it would be.

MR. FIGLER: Well, we knew we would be here today once the State asked for it, so we thought we'd just address it with the Court as opposed to trying to shift around OSTs.

Your Honor, when the bad acts motion was filed it became abundantly clear that the State's narrative for their theory of prosecution centers in many ways as a piece of -- what they call corroborative evidence is this paint stick that was referenced, but it does seem to be at the core and the center of it.

When I came into the case and started looking at it, now being aware of the heightened importance to this in the State's theory of prosecution, I asked Ms. Wildeveld and Ms. McAmis if any testing had been done, or lab reports so I could review that because there's a proclamation that this is covered in blood, or something along those lines, which is corroborative of some of their things in the -- both the bad acts motion and what we assume will be at the time of trial. And they said that there was no discovery with regard to any testing and that there was an uncertainty whether or not the stick itself, which is referenced repeatedly in the bad acts motions, was even preserved. And so we filed a motion in limine based on that to exclude any reference to blood on the stick. If the stick was found and photographed, which it was. It was photographed, I know that, that they could make reference to it, but not blood on the stick because that is the corroborative and that's the prejudicial thing, of course, especially if they didn't do testing and they didn't preserve. So the motion in limine right now is based just on exclusion of that evidence of the stick, especially if they didn't preserve it.

MS. BLUTH: I didn't talk about a bloody stick one time in my bad acts motion.

THE COURT: Right.

MS. BLUTH: That motion is filed late because it was just filed late. It's not because of my bad acts motion. Number two, I read his motion, or whoever filed that motion, yesterday and I will be responding in writing by the end of the week. And I'd just ask that it be decided upon the submission of my -- my opposition in writing.

THE COURT: All right. Well, we can pass the argument on this till -- I mean, obviously it's not going to affect jury selection, so --

MR. FIGLER: Just openings. And so --

THE COURT: Right. Well, we're going to have to have the bad acts hearing and we can also have the argument on this.

MR. FIGLER: That'd be great.

THE COURT: And there may or may not have to be an evidentiary hearing relating to Mr. Mueller's motion. So I don't know that there would be, but that's something we might have to do, so --

MR. FIGLER: I haven't asked Ms. Bluth yet, but can the Court make inquiry as whether or not this stick, that is repeatedly referenced, is in evidence?

THE COURT: Well, it's -- it's referenced repeatedly in the discovery because I know from --

MR. FIGLER: Correct. I just wonder --

THE COURT: -- the pretrial motion --

MR. FIGLER: -- if you could make inquiry if it is in existence.

MS. BLUTH: From off the top of my head, I don't remember them impounding that stick. I know there were pictures taken, but I don't

remember it being impounded, but I will --

THE COURT: Okay. Can you --

MS. BLUTH: -- definitely look into it.

THE COURT: -- find out --

MS. BLUTH: Of course.

THE COURT: -- if it's been impounded?

MS. BLUTH: Of course.

MR. FIGLER: That will certainly shortcut some of the arguments that Your Honor has to consider.

MS. BLUTH: Sure.

THE COURT: All right. So can everyone be here at 9 o'clock to begin jury selection on Monday?

MS. BLUTH: Yes, Your Honor.

MR. MUELLER: Yes, Judge.

MR. FIGLER: We'll be here.

MS. MCAMIS: Yes, Your Honor.

THE COURT: And, Mr. Rue, you'll be here and then --

MR. RUE: I'll be here Thursday, Judge.

THE COURT: You'll be here Thursday as well. And can I see counsel at the bench.

[Bench conference -- not recorded]

THE COURT: All right. Have there -- are there any outstanding offers?

MS. BLUTH: As it currently stands, there is an offer for Mr. Solander for two counts of child abuse and neglect with substantial

bodily harm, right to argue. Mr. Mueller and I talked about the types of things that would go along with an offer like that, but he needs to speak to his client.

I have not speak -- spoken with Mr. Rue just because he currently doesn't have contact with his client. The last offer pending to Ms. Solander was three counts of child abuse and neglect with substantial bodily harm, right to argue. That was pre-prelim, and that offer came off the table once the children testified. I --

MS. WILDEVELD: And --

MS. BLUTH: Go ahead.

MS. WILDEVELD: Sorry. We were not counsel at that time.

MS. BLUTH: Correct.

MS. WILDEVELD: And we did email Ms. Bluth yesterday asking her to confirm that there was no pending offers for Ms. Solander.

MS. BLUTH: And so if the defense would like to come to me with an offer, or something to consider, that's fine with me, but I don't negotiate with myself. That's where I left things off. It was taken off the table and so that's where things stand.

THE COURT: All right. As to Mr. Solander. Mr. Mueller, you would like additional time to discuss that offer with your client; is that correct?

MR. MUELLER: Yes, Judge. The preliminary hearing transcript alone is --

MS. BLUTH: Six hundred and eighty-eighty pages.

MR. MUELLER: All right. I saw -- yes, we --

THE COURT: I read it twice for the pretrial motions, so -- yeah.

MR. MUELLER: Thank you, Judge. No, we're still very much considering the offer --

THE COURT: For the writ.

MR. MUELLER: -- and reviewing the evidence, and --

THE COURT: Okay. So you'll know something, I'm assuming, Monday morning.

MR. MUELLER: Hopefully we'll --

THE COURT: And the offer is going to stay open until Monday morning?

MS. BLUTH: Of course.

THE COURT: All right. And then, Ms. Wildeveld, there's no pending offers to your client, so I'm assuming after conferring with your client if there's something she'd be willing to plead to you'll be in contact with Ms. Bluth.

MS. WILDEVELD: Yes, Your Honor. And then --

THE COURT: And then as to Ms. Hinton, there's been no offer made; is that right, Ms. Bluth?

MS. BLUTH: Not since prelim. But if Mr. Rue has contact with her I'd be more than happy to speak to Mr. Rue about negotiating it.

THE COURT: Okay. I'd like -- either no offer or make an offer prior to Thursday. So, I'm assuming, she's going to show up Thursday for the calendar call. Mr. Rue, can at least begin discussing that --

MR. RUE: Correct.

THE COURT: -- with her prior to the calendar call when she's here. So -- all right. I guess that's everything then.

MS. WILDEVELD: And then, in addition, Ms. Solander was in our office for a couple of hours yesterday, and coming to court this morning she complained that after sitting in our office for two hours her back has extremely -- she's in extreme pain. I told her that unless she gets a doctor's note saying that she can neither stand nor sit for 8 to 10 hours there's nothing she can do about it. So I told her to confer with her doctor about her current medical issue.

THE COURT: I mean, honestly, if Ms. Solander has an issue during trial that she needs to stand or something like that, she would, you know, be allowed to stand at counsel table, or stand off to the side or something like that. I don't really have an issue with that. You know, obviously she can't wander around. But if she stands to the side of counsel table or something like that, that's fine with me. So maybe we can accommodate that by standing and sitting throughout the course of the proceedings.

MR. FIGLER: Thank you, Your Honor. I know you have sympathy for that issue.

THE COURT: All right.

MS. BLUTH: Sounds good. Monday at 9?

THE COURT: Yep, Monday at 9.

MR. RUE: Thursday.

THE COURT: Mr. Rue will be back hopefully with his client on Thursday.

MS. BLUTH: Sounds good. Thank you, Judge.

MS. WILDEVELD: Thank you, Your Honor.

MR. RUE: Thank you, Your Honor.

[Proceedings concluded at 10:41 a.m.]

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Sandra A Pruchnic

SANDRA PRUCHNIC
Court Recorder/Transcriber

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

*****

THE STATE OF NEVADA, Plaintiff, vs. JANET SOLANDER, #6005501 Defendant.	)	CASE NO.: C-14-200737-3 DEPT. NO.: XXI

MOTION TO STRIKE NOTICE OF EXPERT WITNESS

COMES NOW the Defendant, JANET SOLANDER, by and through her attorney, DAYVID FIGLER, ESQ., and hereby files his Motion to Strike Expert Witness. This motion is made and based upon all papers and pleadings on file herein, the attached Points and Authorities in support hereof.

DATED this 26th day of January, 2018.

Respectfully Submitted by:

/s/: Dayvid Figler
DAYVID J. FIGLER, ESQ.
Nevada Bar No. 004264
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(702) 222-0007
Attorney for Defendant, JANET SOLANDER

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff;

TO: STEVEN B. WOLFSON, ESQ., Clark County District Attorney, Attorney for Plaintiff;

TO: JACQUELINE BLUTH, ESQ., Chief Deputy District Attorney, Attorney for Plaintiff;

YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing Motion for hearing before the court on 06 day of February 2018, at 9 : 30 A .m. in the District Court, Department 21, or as soon thereafter as this matter may be heard.

DATED this 26th day of January, 2018.

Respectfully Submitted by:

/s/: Dayvid Figler
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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

Ms. Solander and her husband adopted three (3) sisters on January 19, 2011, after fostering these girls for the previous six (6) months. These girls had a history of behavioral issues that includes trauma from living with their biological relatives, abandonment by their biological mother, tantrums, lying, and some retaliatory bathroom behaviors before ever meeting the Solanders. These girls had been removed by Child Protective Services due to abuse and neglect suffered at the hands of their biological father.

The State's theory at the preliminary hearing was that despite being taken to doctors on numerous occasions by the Solanders and having numerous unannounced body and spot checks by the Clark County Department of Family Services, each of the daughters had been physically and sexually abused over the relevant time frames outlined in the Information.

At the preliminary hearing, Dr. Sandra Cetl was the only medical expert who testified for the State even though she apparently only reviewed the incomplete medical records available to her which may have contradicted conclusions of other treating physicians.

At the conclusion of the preliminary hearing, and after the justice court noted the inconsistencies in the witnesses' testimonies, Ms. Solander was bound up on a total of forty-six (46) counts of sexual assault, battery with intent to commit sexual assault, and child abuse, neglect, and endangerment.

On January 4, 2018, the State filed their State's Notice of Expert Witnesses. It listed twenty-nine (29) purported expert witnesses. Mostly doctors and therapists. It also listed Dr. Sandra Cetl who testified at preliminary hearing. It should be noted that cur rent counsel did not participate in that preliminary hearing, but has been appointed by the Office of Appointed Counsel for Clark County, Nevada. That hearing took place June 10, 2014. It its sole notice of expert witnesses, the State enumerated that Dr. Cetl will testfy "as a medical doctor and is expected to provide testimony as a medical expert as to her opinions and findings including, but not limited to, her review and analysis of the medical records, reports and radiographic films, as well as the observation, diagnosis and treatment rendered to the victim in this case SCAN EXAM in general and directly related to the instant case. In addition, she will provide testimony as to her direct involvement, if any, in this case and the possible mechanisms of injury and causes of injury to the said victim."

It is undisputed that no CV was provided for Dr. Cetl, or any of the other noticed experts.

Trial is currently set for January 29, 2018, though there is an agreement between the parties to continue the start until February 5, 2018. The instant motion follows.

II. LEGAL ARGUMENT

NRS 50.275, subtitled, "Testimony by experts" provides that "If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge, skill, experience, training or education may testify to matters within the scope of such knowledge."

Of course, NRS 48.035(2) provides that "although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, waste of time or *needless presentation of cumulative evidence*. (emphasis added).

Finally, NRS 174.234(2) provides that "If the defendant will be tried for one or more offenses that are punishable as a gross misdemeanor or felony and a witness that a party intends to call during the case in chief of the State or during the case in chief of the defendant is expected to offer testimony as an expert witness, the party who intends to call that witness **shall** file and serve upon the opposing party, *not less than 21 days* before trial or at such other time as the court directs, a written notice containing: (a) A brief statement regarding the subject matter on which the expert witness is expected to testify and the substance of the testimony; **(b) A copy of the curriculum vitae of the expert witness**; and (c) A copy of all reports made by or at the direction of the expert witness.(emphasis added).

In the instant matter, no copy of ANY curriculum vitae of any expert was attached to any Notice of Expert Witnesses in violation of statute. And despite the fact that this case has been filed in the District Court since July 29, 2014, the State waited until January 4, 2018 to file their expert notice, a mere 25 days before trial was set to begin. Unfortunately for the State, the notice is deficient and cannot be cured since trial is to begin if the Court goes along with the recent stipulation of the parties on February 5, 2018 which is 10 days from the date of filing of this motion. Otherwise, the date the trial is currently set to begin is January 29, 2018 which is only 3 days away.

The Court should know that Defense counsel discovered this deficiency upon trial preparation on the date of this filing and immediately informed the State by way of email with a request for the CV's at issue as well as notice that the Defense would likely be filing a Motion to Strike Notice of Expert Witness. The State responded with an admission that no CV's were filed or provided and attached the CV of Dr. Cetl, with a promise to the others when they became available. If this is not undisputed, the Defense will bring along a copy of the email exchange at the time of hearing on this Motion.

Likewise and contemporaneous to the filing of this Motion, the Defense will be submitting an OST but was informed that the Court is unavailable for the rest of the day to sign the same. It is anticipated that the scheduled Court in this matter for Monday will allow all the parties to address their respective positions on this important issue.

The law vests the District Court with the power to determine the failure to comply with expert witness requirements allows for the exclusion of witnesses. See *Heinen v. Heinen*, 64 Nev. 527, 186 P.2d 770 (1948)(citing Professor Wigmore (Wigmore on Evidence, 3d Ed., §§ 1907, 1908) and the "well recognized exercise of the trial court's jurisdiction in limiting the number of expert witnesses.").

In the present case, the Defense only had the expert witness notice for three weeks before noticing the deficiency and immediately brings it to the Court's attention by way of this Motion. The witnesses are not properly endorsed and must be excluded. The Defendant is prejudiced since it does not now have the time to evaluate the publications and record of any of the 29 experts noticed before trial. The legislature required the inclusion of CV's for this specific reason. It will take at least twenty-one days for the Defense upon receipt of all the CV's to properly research and possibly rebut the qualifications and expertise of the witnesses. It was the State's responsibility to provide this information and they failed. It would be an abuse of discretion to allow any of these witnesses to testify given the deficiency.

III. CONCLUSION

The State cannot cure its deficiency by providing late supplementation to their notice to make it complete. To do so would amount to trial by ambush which "is not tolerated" by the Nevada Supreme Court. See *Pierce Lathing Co. v. ISEC, Inc*., 114 Nev. 291, 956 P.2d 93 (1998)(footnote 5). For all these reasons, Ms. Solander respectively moves to strike the expert notice and disallow testimony at trial.

DATED this 26th day of January, 2018.

Respectfully submitted,

/.s/ Dayvid Figler
DAYVID J. FIGLER, ESQ.
Nevada Bar No. 004264
Attorney for Defendant, JANET SOLANDER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of January, 2018, a copy of the foregoing **DEFENDANT'S MOTION TO STRIKE EXPERT WITNESS** was sent via electronic notification as well as via facsimile transmission to the parties addressed hereto as follows:

1. TO BE SERVED BY THE COURT VIA ELECTRONIC FILING: On January 26, 2018, the foregoing document was served by the court's electronic filing system, Odyssey File & Serve, via courtesy copy and hyperlink to the document at the email addresses below:

JACQUELINE BLUTH, ESQ.
E-mail: ***Jacqueline.bluth@clarkcountyda.com***

2. SERVED BY FACSIMILE TRANSMISSION: I served the following persons and/or entities by facsimile transmission as follows:

JACQUELINE BLUTH, ESQ.
CHIEF DEPUTY DISTRICT ATTORNEY
Fax #: 702-868-2406

/s./ Jessica Malone
An Employee of The Law Offices of
Kristina Wildeveld

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Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. JANET SOLANDER, and DWIGHT SOLANDER, Defendants.	CASE#: C299737-1 C299737-3 DEPT. XXI

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

MONDAY, JANUARY 29, 2018

RECORDER'S TRANSCRIPT OF HEARING:
FURTHER PROCEEDINGS: CONTINUE TRIAL DATE

APPEARANCES:

For the State:	JACQUELINE M. BLUTH, ESQ. Chief Deputy District Attorney
For the Defendants:	
JANET SOLANDER	DAYVID J. FIGLER, ESQ. CAITLYN L. MCAMIS, ESQ.
DWIGHT SOLANDER	CRAIG A. MUELLER, ESQ.

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

Las Vegas, Nevada, Monday, January 29, 2018

[Hearing began at 9:23 a.m.]

THE COURT: Alright, good morning.

MS. BLUTH: Good morning, Judge.

MS. McAMIS: Good morning.

THE COURT: Let's start with Mr. Mueller's client, Dwight Solander.

MR. MUELLER: Good morning, Your Honor.

THE COURT: Good morning. When we were here last there was discussion that the matter may resolve.

MR. MUELLER: Yes, Judge.

THE COURT: Is the matter resolved as to Mr. Solander?

MR. MUELLER: Not quite yet. We did -- we did meet and negotiate. We've got another appointment to finish at 12:30 today.

THE COURT: Okay. Is that right, Ms. Bluth?

MS. BLUTH: It is. I mean, I can't make any representations on -- in regards to whether or not we will negotiate. I can tell you that we have a meeting with Mr. Solander today at 12:30.

THE COURT: Okay, and you're still --

MR. MUELLER: There was --

THE COURT: -- optimistic that it will negotiate? Is that right, Mr. Mueller?

MR. MUELLER: Yes, Judge, it was Friday afternoon I need to get over to the bank and go do payroll. Unfortunately I have other

obligations occasionally, and one which was to go make sure everyone got paid, so I have to leave early.

THE COURT: Okay, fair enough. Alright, as everyone knows we met in chambers on Friday to discuss the trial scheduling, whatnot, at that time. It was agreed between defense counsel and Ms. Bluth that we would not start the trial this morning to allow Ms. Solander's counsel additional time to prepare, in view of the fact that Danielle Hinton is now going to be testifying pursuant to the plea negotiation in this case. And it was agreed between counsel and Court went along with it that we would start jury selection, not today but next Monday, this coming Monday at 9 a.m. Does that comport with your recollection, Ms. McAmis?

MS. McAMIS: It does, Your Honor.

THE COURT: Mr. Mueller?

MR. MUELLER: Yes, Judge, it's my understanding.

THE COURT: Ms. Bluth?

MS. BLUTH: Yes, Your Honor.

THE COURT: Alright. The other issue is the outstanding evidentiary hearing which we initially had agreed to do Monday, next Monday morning, believing that we would have accomplished jury selection this week. So, now obviously I don't want to hold that evidentiary hearing next Monday, because I want a full day for jury selection beginning on Monday. So what I would suggest is we hold the evidentiary hearing this Wednesday.

MR. MUELLER: No objection.

MS. BLUTH: I'm fine with that on -- with one thing, is the

medical professionals, which there are two. They work at the same diabetes clinic.

THE COURT: Okay.

MS. BLUTH: And so I -- I'm -- it was very difficult. The one is Nurse Carron Schweiger.

THE COURT: Okay.

MS. BLUTH: She works at Dr. Dewan's diabetes clinic. She was okay coming in Monday. Dr. Dewan the world was crashing down apparently from me asking him to come to Court. And so I told him that I would beg Your Honor and the defense counsel for the evidentiary hearing to allow him to appear via phone. He -- his testimony is literally very, very limited so I said I would bring that up and ask, because he had told me that there is absolutely no way. He's seeing 40 clients that day, da-da-da. I mean, doctors are difficult.

THE COURT: Right.

MS. BLUTH: The nurse was very kind, but now moving it up I -- they're going to freak out a little bit. So if I -- to make it easier --

THE COURT: Who else is there for the evidentiary hearing besides the nurse and the doctor?

MS. BLUTH: So I have a couple more interviews with CPS, but for right now I actually sent defense an email naming the witnesses. So if I could just pull my email, Judge, so I make the same representations to you. I know Areahia Diaz, Lori Wells, which is the children's therapist.

So Nurse Schwayger (sic) -- Schweiger -- sorry, Areahia Diaz,

Dr. Dewan. And then I was going to try to find -- figure out which individuals from CPS would be the best for the hearing. So that would be those five as of right now, yeah.

THE COURT: Okay.

MS. BLUTH: So if I can -- I can definitely get the therapist, CPS --

THE COURT: Right.

MS. BLUTH: -- the girl here Wednesday. I can, if everybody would be okay with the other two testifying via telephone, I'm sure I can make that happen. Otherwise I don't know what I'm supposed to do.

THE COURT: What is Dr. Dewan going to say?

MS. BLUTH: So I spoke to Dr. Dewan and telephonically -- I did a pretrial with him on Friday. What he told me is that Ms. Solander brought Areahia Diaz in for obesity, and discussed that she -- that Janet felt that Areahia was diabetic. Dr. Dewan did not think that she was diabetic, that he felt that --

THE COURT: So she thought because of the weight that the child was a type 2 diabetic or it's not clear?

MS. BLUTH: It wasn't clear to me in the pretrial, maybe Dr. Dewan could go into that. The end of the day is he's going to say that, I didn't think that child was diabetic. What the Defendant was telling was the exact opposite of what I would believe this child to have had. And that he sent her home with the glucometer and test strips. And his directions were to her, please test her blood sugars. If they get anywhere below 50, please let me know immediately. Then I would like

to put her in the hospital for a 48-hour checkup, where we monitor her blood levels, etcetera.

And that -- so he sent her home with that. He said if anything ever happens let me know. He never heard from her again. He saw her that one time. A couple -- I don't know if it was days, weeks later. Janet called the office asking for a special note to say, you know, Areahia should -- eating should be monitored and that his staff prepared that letter. But that he was very clear in his conversation with her when she was in the -- when she was in his office that, it's very important for children to socialize and eating by yourself, and you know, secluding a child with either a nurse or school staff could be detrimental to the child. So --

THE COURT: So did the doctor -- I'm jumping ahead here a bit.

MS. BLUTH: Yes, ma'am.

THE COURT: It sounds like the doctor thought that the child was hypoglycemic.

MS. BLUTH: Exactly.

THE COURT: And that there may be something wrong with the child's blood sugar, but just not -- just the opposite of being diabetic.

MS. BLUTH: Yeah. What his point was is he felt like what was actually happening to the child and what Janet was saying was happening to the child, were completely contradictory. And so it left him very confused because the child was saying, she's not allowing me to eat normally. For instance, there's a Valentine's Day party she won't let

me go she -- because of the sweets. And he's saying to the little girl and to Janet, no, no, no, those are the things that are okay. We need her sugars up, because you're telling me that she's passing out. And this is not -- these things are not making sense to me. So he's just going to --

THE COURT: He didn't -- I mean, I this is neither here nor there, but he didn't send her to Quest or anything to have an official blood draw? He said go home and use the -- I'm just curious.

MS. BLUTH: Yeah. So what he said, he goes in those situations what we do, is we send them home with the glucometer. He said, I was told she was a nurse and so I figured that she could, you know, figure this out. And I did not believe that the child had an issue.

THE COURT: So he never sent her. Did they do the blood stick and the -- you know how sometimes they might, the nurse might do it in the -- I'm just curious -- in the doctor's office or you don't know?

MS. BLUTH: He never brought that up in my --

THE COURT: Yeah. But -- and but, they never send the child to Quest to have an official blood test?

MS. BLUTH: No. Well because the child had been at the hospital for 48 --

THE COURT: Oh, okay.

MS. BLUTH: -- hours beforehand.

THE COURT: So they already had --

MS. BLUTH: And showing not diabetic.

THE COURT: Okay, so they already had lab tested blood results.

MS. BLUTH: Exactly.

THE COURT: Okay, that makes more sense than -- that makes better sense than just sending the kid home.

MS. BLUTH: No, she had already gone to that to that 48-hour --

THE COURT: Okay.

MS. BLUTH: -- observance period and they had not found anything. So that's why he was very confused at why this was still being pushed.

THE COURT: Okay, and then Nurse Schweiger?

MS. BLUTH: So, Nurse Schweiger is the individual who works at Darnell Elementary School where -- which is where Autumn Stark, the first set of foster children and then Areahia Diaz, the second set of foster children come, and the exact same things with Janet. These kids had eating issues, either pre-diabetic; they need to be secluded from the rest of the school. They are stealing food; they're eating food out of the garbage can. And Areahia comes and says -- comes and says I'm -- I have diabetes or something. And so the nurse calls Janet and Janet says, yes she has diabetes. And the nurse is like, okay, but where's the doctor's note, where's the glucometer, where are the tubes? And the next day Areahia shows up with stuff that doesn't -- is not for a child. It's wrong tubes, it's wrong vials and so she starts reporting this to CPS. And it's that nurse that actually breaks open --

THE COURT: Okay.

MS. BLUTH: -- this entire investigation.

THE COURT: So -- if we could get -- if you could get the nurse here it sounds like we could do most of the hearing.

MS. BLUTH: Yes.

THE COURT: And it occurs to me if she's a school nurse --

MS. BLUTH: She works under Dr. Dewan now.

THE COURT: Oh, she does.

MS. BLUTH: They work under the same clinic, yes.

THE COURT: Okay.

MS. BLUTH: They didn't know -- I don't believe they knew each other at the time. But they work at the same -- she's now a nurse practitioner. Which --

THE COURT: Okay.

MS. BLUTH: -- obviously she's not going to be --

THE COURT: So just randomly she winds up working for the same doctor.

MS. BLUTH: Yeah. Which I didn't know until Friday, I had a pretrial with her on the phone.

THE COURT: Okay.

MS. BLUTH: And then I had a pretrial with Dr. Dewan and he said, well you can't take both of us please. And I said, I'm only taking one of you. He goes, no, she's the nurse practitioner here. I had no idea.

THE COURT: Okay.

MS. BLUTH: So -- yeah. So anyways, I'm hoping that he will let her come on Wednesday -- I mean, if it's a court order she has to but

if --

THE COURT: I mean, the problem is not starting the jury selection until next Monday then we don't really have a morning --

MS. BLUTH: Right.

THE COURT: -- to do this.

MS. BLUTH: No I get it, I get it. And I'll explain that to them but --

THE COURT: Because Tuesday and Thursday mornings are already our calendars.

MS. BLUTH: Sure, yeah.

So if -- in regards to -- I think we can do the OBA hearing, you know, probably without Dr. Dewan. I mean, I could probably just do it with Nurse Shweiger so the Court can get an understanding of exactly --

THE COURT: Right.

MS. BLUTH: -- where we're going.

THE COURT: I'm wondering -- I don't like to have witnesses appear telephonically.

MS. BLUTH: Sure.

THE COURT: And it sounds to me like there's actually a lot of substance to Dr. Dewan's testimony. He's actually going to be talking about meetings, you know, a meeting with Ms. Solander and things she said. And, so if -- I'm wondering if we do allow him to appear without actually appearing here physically, whether we could do something more like some kind of video conferencing saying, or Skyping or something like that, that's a little better than just the telephonic

appearance.

MS. BLUTH: Yeah.

THE COURT: Because those are really difficult. They can never hear me, so if there's an objection they don't hear it. They don't hear the ruling they keep talking over the lawyers objecting. It's really, really difficult.

MS. BLUTH: No, I understand.

THE COURT: So if, I mean, we could Skype him in.

MS. BLUTH: Okay.

THE COURT: That might be a lot better.

MS. BLUTH: Okay.

THE COURT: At least then you can sort of evaluate his demeanor and it's, I don't know, I just don't like telephonic appearances because --

MS. BLUTH: No, I understand completely. And I'll -- as soon as we leave here I'll go and I'll speak to Dr. Dewan's office manager, Brian Bower [phonetic], and work that out. Yeah. But everybody else, I will, I'll make it happen.

THE COURT: I mean -- if the nurse can't come Wednesday morning maybe we could do like her Wednesday at 1 o'clock or something like that. And then start the other part of the hearing, you know, not at 9 o'clock but at 10 o'clock or something like that.

So Ms. McAmis, Mr. Figler, any objection to that?

MS. McAMIS: No, no objection to that, just a quick calendaring comment. If we do an afternoon hearing on Wednesday,

we just need it to be concluded before 4 o'clock.

THE COURT: Okay.

MS. McAMIS: Because we have a calendaring conflict later in the in that afternoon.

MR. FIGLER: But we could start as early as you want, and we're fine with Your Honor's take on that.

THE COURT: Okay. I'd like to start at 9.

MR. FIGLER: That'd be great.

THE COURT: I don't think we have anything on Wednesday. So if we could start at 9.

And then, Mr. Mueller, if your client -- why don't we have your client on for Wednesday morning as well. He can either accept the negotiation and enter his plea. And if he's not going to accept the negotiation, then I'm sure you want to participate at the evidentiary hearing.

MR. MUELLER: My analysis completely, Judge.

THE COURT: I'm sorry?

MR. MUELLER: My analysis completely.

THE COURT: So, alright. Is there anything else we need to place on the record?

MR. MUELLER: No.

MS. BLUTH: Let's see here -- oh yeah.

THE COURT: The only thing I would add is I went over the method of jury selection in chambers with counsel. And no one had an objection to that. Is that right, Ms. Bluth?

MS. BLUTH: Yes, Your Honor.

THE COURT: Mr. Mueller?

MR. MUELLER: No, Your Honor.

THE COURT: Ms. McAmis?

MS. MCAMIS: Correct, Your Honor.

THE COURT: Okay.

MS. BLUTH: A couple things, Judge, I asked Jill before we got started today if we could have the exhibits from the preliminary hearing brought up because the children did some drawings. So and I -- so there's something I need to do to help facilitate that I totally can.

THE COURT: No.

MS. BLUTH: Okay. And then I need to clarify something, because I actually got something incorrect in speaking with Ms. Luzaich. She always has such a better memory than I do. But there were no offers made pre-preliminary hearing, and that was my fault for saying that. Because I had thought that we had discussed an offer of 3 counts of child abuse with substantial for both -- both of the adult -- the Solanders. But when I spoke with Lisa, she stated, no, that is something that she and I had contemplated, but ultimately we decided that no negotiations should be discussed until we saw how the girls did at preliminary hearing.

The reason why I believe that her representations are more accurate is because; whenever I have a case I write the offer in the file. Just because I have so many cases it's hard for me to keep them straight. And when I went and I looked back at all of my folders I had,

pre-prelim, I had not written any offer in any of my folders. And so I'm sorry. I had thought that we had done that, but Ms. Luzaich said, no, we didn't do that. And I also spoke to Mr. Rue to see if he could go through our emails, and he said that no offer was given to Danielle pre-prelim. That he and I had discussed offers after the writ was decided. So I apologize for the confusion.

THE COURT: Okay. Well that comports with what defense counsel is saying, that their client said no offer was made. And that comports exactly with what they are saying.

MS. BLUTH: Yes.

THE COURT: And my understanding is that -- on behalf of Ms. Solander and the State, no one thinks any -- that there's a likelihood of resolving the matter.

MS. BLUTH: Right.

THE COURT: Because the State wants --

MS. McAMIS: Well there's just been no offer.

THE COURT: -- wants a substantial prison time. And the defense wants the opportunity to argue for probation. Is that a fair summation?

MS. McAMIS: Your Honor, it is a fair summation, but just for the record there's been no offer extended at any point to Ms. -- Mrs. Solander. I also wanted to just briefly, and I apologize --

THE COURT: No, no.

MS. McAMIS: She is present, she's in the courtroom.

THE COURT: Right.

MS. McAMIS: However, I did want to make a brief record of some of the medical concerns and issues --

THE COURT: Okay.

MS. McAMIS: -- that we are dealing with.

THE COURT: Okay.

MS. McAMIS: So that way the Court's aware of the purposes of scheduling this. Mrs. Solander had her inpatient hospitalization and surgery, and that's why we had to continue the first time. She's still undergoing multiple -- multiple time weekly physical therapy appointments. She has had to cancel some to be able to accommodate some of the -- the court appearances that we've been scheduling and moving up and moving back.

So she has canceled some of them. She's struggling today, that's why with the Court's permission I've asked her to go ahead and remain seated. She's also -- had to excuse herself to the restroom. She's dealing with --

[Colloquy between defense attorney and Defendant Janet Solander]

MS. McAMIS: -- She's been bleeding from her rectum, and she's dealing with a lot of just physical limitations. She's also been in contact with her doctor, who has put her on blood thinner. So the way that, that works is she can't just be very sedentary for long. And it's not as simply a matter of being able to stand or sit for long periods of time. She has to, for a minimum, stand up every two hours and then take --

THE COURT: Okay.

MS. McAMIS: -- 5 to 10 minutes and walk around, because

otherwise she's dealing with clotting issues.

THE COURT: Okay.

MS. McAMIS: So she is dealing -- unfortunately she's still dealing with significant medical issues. Although she is no longer in surgery and hospitalized, she has a lot of physical limitations as it relates to --

THE COURT: Okay.

MS. McAMIS: -- sitting in trial for long periods of time

THE COURT: Okay.

I try to take a break every 2 hours, because statistically somebody is going to need a break in 2 hours. And so I try to pretty much every 2 hours, you know, might be 2 hours and 10 minutes or it might be, you know, an hour and 50 minutes or whatever, but close to 2 hours. So that should accommodate Ms. Solander, in terms of the break. She's out of custody so obviously, you know, so long as she's kept away from the jury she can, you know, walk out the door.

I don't like to take long breaks, so in terms of her going up to another floor or something like that, it might take too long. But if we have a longer break she can ride the elevator up to another floor and walk back and forth on the other floor. Or she can wander around the courtroom or something like that on a break. So I think we can accommodate that, that way.

MS. McAMIS: Thank you, Your Honor.

I did have a couple of, I think, just calendaring issues.

THE COURT: Oh, and just one more thing on that --

MS. McAMIS: Of course.

THE COURT: If for some reason I forget -- but like I said it's my practice to take breaks every 2 hours so this shouldn't be an issue. But then just ask for break if, you know, if she needs a break just approach and we'll take a break.

MS. McAMIS: Understood, Your Honor.

THE COURT: Okay.

MS. McAMIS: I wanted some clarification on some of the calendaring issues. I understand we're doing our *Petrocelli* hearing, that evidentiary is coming up. Our office filed a motion in limine regarding the paint stick. There's still the joint motion to suppress, and both of those are scheduled for this Thursday morning. And then we also wanted to alert the Court that we submitted for filing, but I don't have it file stamped back, a motion to strike the State's experts, based on the non-attachment of any of the CVs of any of the proposed experts. And so it's our position that -- that they were not properly endorsed so they cannot be properly called.

So we submitted that for filing. By the time that I was trying to figure out if I needed to submit an OST. Unfortunately when I contacted your office late Friday afternoon, there was no possibility to file an OST. So for perhaps I could just bring it up in Court, and get clarification on when you'd like some of those motions heard.

THE COURT: Okay. On the motion to strike the experts why -- I mean, why are we filing this so late?

MR. FIGLER: We just -- so the State filed their notice of

expert witnesses finally on January 4th of this year.

THE COURT: Okay.

MR. FIGLER: Even though it had been pending for so long. Your Honor, graciously, allowed the parties to stipulate to give us a little extra time to prep. And so as we're going through the prep, Ms. McAamis and I came across the expert witness notice. We start going down it. We ask to -- one of us asks the other to grab the CVs. And then they weren't there, we went to Odyssey they weren't attached. And then I sent an email to Ms. Bluth, and she conceded that she hadn't attached them that she just -- that the doctors were very busy, and it was hard to get them. And she sent one over. She sent a second one over subsequently of Nurse Spiker -- or not Spiker -- Schweiger, and so that's all we have right now.

So we looked at the rule, we looked at case law, etcetera. Unfortunately for the State, that there are only three requirements to properly endorse a witness -- an expert witness within the 21 days. So, I mean, we had an option at that point. We could have waited until the day of trial, and then when they called the witness we object because they weren't properly endorsed. Or we should let everyone know the second that we discover it.

THE COURT: Right, right, I mean --

MR. FIGLER: It wasn't like we were hanging on to it for years; we had it for a week.

THE COURT: Right. Okay. Ms. Bluth -- I mean, who are the experts? Because sometimes, you know, these experts that don't

normally testify as expert witnesses don't always have a CV.

MS. BLUTH: Well that was kind of --

THE COURT: You know what I'm saying. Let's say it's the school nurse who is a registered nurse but isn't retained as an expert by lawyers and --

MS. BLUTH: Right.

THE COURT: -- personal injury cases or criminal cases. They normally don't even have a CV, because typically unless somebody's out there looking for a job, or providing expert testimony they may not have an up-to-date CV.

MR. FIGLER: Well, I mean --

THE COURT: Fair enough? I'm just saying.

MR. FIGLER: Yeah. I mean, if the rule contemplates that as an option they -- I think that they have to still comport with -- it just it literally says 1, 2 and 3.

THE COURT: Right.

MR. FIGLER: And if there is no 3, I think they have to tell us there's no 3. But I don't think that's the case for most of them, especially since they sent one over right away.

MS. BLUTH: Right, what --

MR. FIGLER: There were 29 --

MS. McAMIS: There were 29.

MR. FIGLER: 29 experts listed, I mean, obviously Dr. Cetl is the one that is of the biggest import in the case as far as her expert opinions on everything that relates around child abuse. And she was

the one that did the post -- representation or post allegation examinations of all 3 minor children. So -- and we know she has a CV. I'd imagine most of those people have CVs, most of the -- yeah, they're doctors. Even the Metro employees they always -- we -- you know that. They always have those long CVs. We know what seminars they went to if they were involved in any papers, etcetera.

THE COURT: Right. But Metro employees are used to testifying. I'm just saying there could be some experts who are more --

MR. FIGLER: We have the list here if you want to see it.

THE COURT: You know, like a school nurse or a registered nurse or something like that or a physician. Who doesn't normally testify, like say a trauma room physician may not have a CV because he may not routinely testify. Whereas Metro employees, part of their job is testifying, so of course they have CVs.

MR. FIGLER: Sure.

THE COURT: It just occurred to me that occasionally in these cases you get such a person --

MR. FIGLER: Well I think you would get something in compliance, right?

THE COURT: Right.

MR. FIGLER: Or the equivalent like --

THE COURT: Like a --

MR. FIGLER: -- where you went to school, if you have a degree, anything.

THE COURT: Right.

MR. FIGLER: I mean, a piece of paper would be compliant.

THE COURT: So let's let Ms. Bluth respond.

MS. BLUTH: So Mr. Figler emailed me, I can't remember if it was Thursday or Friday. And said, hey, I just noticed that the CVs -- you don't have any CVs attached. Was that an accident or do you not have them. And I said, I will get them to you as soon as I possibly can. But these doctors, they -- it's not like they just email me back and I can get a hold of them very easily. And he said well just so you know if I don't get them soon we're going to have to file a motion to strike. And that was on Friday. So I got him Dr. Cetl. I got him Nurse Schweiger.

I -- and you're right in regards to like when I spoke to the therapist, and I spoke to Dr. Dewan. Or one of the other doctors they were like, I don't --

THE COURT: Right.

MS. BLUTH: I'm not like this -- I don't --

THE COURT: Now this comes up in --

MS. BLUTH: -- I'm not a hired expert.

THE COURT: -- as I'm sure defense knows. This comes up in criminal cases all the time, because these are people who aren't normally retained experts. And so they don't need to make a CV, and they're not the kinds of doctors that are out there lecturing in seminars and things like that. They have a strictly clinical practice, where they don't need to have a CV, so.

MS. BLUTH: And I asked, so the main doctors right now that I'm working with are Dr. Sheikh, Dr. Mileti those two -- Dr. Mileti had a

baby yesterday. So she's not responding to me. I had multiple emails and phone calls out to Dr. Sheikh. But Nurse Shweiger sent me her -- I think it was more of a resume, which I sent over to defense. Dr. Cetl sent me her CV; I sent it over to defense. I requested it from Dr. Dewan, and he said his office manager would send over his resume.

But none of my experts besides Dr. Cetl are hired experts, they're just medical professionals.

THE COURT: Right.

MS. BLUTH: So, I mean, I can get where they went to school -- I'll get anything the defense wants.

THE COURT: They're treating physicians.

MS. BLUTH: Yeah, so they're not.

THE COURT: Or percipient witnesses. So, and their obligation is percipient witnesses to cooperate with the State is a little bit different than a retained expert that has to provide all of these things. So if they're testifying as percipient witnesses, the State has a little less control over what they provide than you do over your retained expert. When you tell them this is what you need to do, and this is -- and so the rules are different for percipient witness experts than retained experts who are just not, you know, they just are providing the opinions.

MS. BLUTH: But I'll still work, you know, as soon as these office managers get back to me, I'm still going to at least try to get, you know, a resume or where they went to med school.

THE COURT: Well basics like where did they do their residency? Where did they go to medical school? That kind of thing,

are they board certified? Are those the kinds of things you want to know?

MR. FIGLER: You know, I would just --

THE COURT: I mean, just even those basic kinds of things.

MR. FIGLER: There's two strains here, number 1, if they're going to offer expert opinion, they must be noticed 21 days ahead of time with the following thing attached shall. And the Supreme Court is unforgiving on that. That would be -- if it's non-compliant it's non-compliant. There's no good cause, there's no bad faith analysis. It's either they are properly endorsed or they're not properly endorsed. And the Court has a number of remedies. We --

THE COURT: But one thing I would say, is as a treating physician, they can testify as to the course and scope of their treatment of the individual. For example, the woman came to me, I didn't think the child had diabetes. I told her to do A, B, C, D and E. That's testifying as a treating physician. I mean, there's a lot of overlap. You see this in civil cases all the time.

MR. FIGLER: Right.

THE COURT: Where somebody goes to the physician and is treated, you know, treated for something long before there was a case. But in this case, I mean, really Dr. Dewan is testifying as more of a, I mean, we'll just use Dr. Dewan. If allowed to testify as really more of a percipient witness and a treater, as opposed to an expert --

MR. FIGLER: Dr. Cetl who is --

THE COURT: -- that is --

MR. FIGLER: actually in place --

THE COURT: -- well but. Right.

MR. FIGLER: -- for testamentary purposes.

THE COURT: No, no, she's the -- she's their expert.

MR. FIGLER: Right.

THE COURT: I mean, to provide opinion testimony.

MR. FIGLER: Right and --

MS. BLUTH: And a treating physician, she was actually -- she treated the children at Sunrise.

THE COURT: Right. But if you just -- I mean, there's limitations. Then they can't go beyond what happened with the treatment and those opinions, and you know, prognosis or whatever. If you go beyond that now they're an expert, and you have to comply with the statute.

MR. FIGLER: Right.

THE COURT: Do you see what I'm saying? She could say, oh I evaluated this, and I did this test, and blah, blah, blah, and this was my conclusion. But she can't go beyond that to apply generally on child abuse and things like that, without being noticed as an expert.

MR. FIGLER: Correct. I mean, I think it goes a little further with Dr. Cetl, because she is the person that they send them to when there are allegations. So it's already testamentary in nature. It's not like going to see a physician, who then comes in or there would be some exigency to treat. This is -- and if you look at all the forms that Dr. Cetl fills out, they are all intended for litigation. The check boxes are

probable child abuse, possible child abuse, and then the justifications for it. I mean, they're all intended to support a finding of probable cause and they are all intended to proceed with either the civil child abuse and neglect or for the criminal child abuse and neglect. That's what the nature is. So here's where we are with this --

THE COURT: Right. And what are you for?

MR. FIGLER: Yeah. So what we're asking for is that no witness who is listed in that 29 be allowed to offer any expert opinion, because they did not comply. Now the State could ask for a continuance, that's one of the remedies. Or the Court could grant that relief for us. We're not asking for a dismissal of the case, but there is an absolute adherence that has to be with that 21-day notice. There is no provision that allows them to supplement after the 21 days.

It's plain -- it's the plain and clear language of the statute. And if that person doesn't have a CV they could still provide the information that would be equivalent to a CV 21 days ahead of time. So now what we've done is we just got Dr. Cetl's CV.

THE COURT: On Friday.

MR. FIGLER: On Friday. The -- and we prepared a subpoena today based on a number of the items that were listed in her CV, that we're submitting to both Dr. Cetl and to the District Attorney's Office. Apparently Dr. Cetl for example, received an award as advocate of the year of some sort from the Clark County District Attorney's Office. Well we want to know what that relationship's about, and what the criteria were, and what they're look at.

And so, you know, it's going to take us the statutory period to be able to get all the information for us to properly --

THE COURT: It occurs to me maybe somebody didn't quite think through that award. But --

MR. FIGLER: Probably not. That said, none of the burden is on the defense, none of it whatsoever. And we're not --

THE COURT: Meaning one branch of the office thought it was a good idea, and maybe another branch of the office might of thought, well this is going to come up in trial but --

MR. FIGLER: Perhaps, but now we know about it and we didn't know about it. So, again the burden is on the State to comply with properly --

THE COURT: Right.

MR. FIGLER: -- endorsing witnesses, period.

THE COURT: Let me cut to the chase here. Where are you getting that the Court can't fashion a remedy which says, okay Mr. Figler, I don't see any prejudice here. Especially if the expert isn't called for another 10 days --

MS. BLUTH: Well --

THE COURT: -- or what have you. And now that gives you that additional time from the 21-day notice. So --

MS. BLUTH: She testified at the preliminary hearing. I noticed her well within the 21 days. Was her CV attached? No. But the --

THE COURT: No, that's what Mr. Figler is saying that if you

don't adhere to the strict 1, 2, 3, of the rule --

MR. FIGLER: She's not endorsed.

THE COURT: -- then she's not properly endorsed. And the only remedy is A, a continuance or B, exclusion. And I'm saying, well where are you getting that? Where are you getting that the Court can't say, well Mr. Figler, where is your prejudice. And if she's not going to be called for another 10 days, or whatever it is, then you've got to an additionally -- you've got all this week. Plus you've got the 2 to 3 days of jury selection, opening statements, other witnesses being called to testify. So it's going to be another probably 10 days before she's even called as a witness.

So what I'm asking you, Mr. Figler, --

MS. BLUTH: It's going to be longer than that.

THE COURT: -- is where are you getting that, that the sole remedy here is to either continue the trial all together or dismiss the case.

MR. FIGLER: Well I'm asking to dismiss the case.

THE COURT: Or exclude the expert, I guess, is the other --

MR. FIGLER: Right. So what I'm going on is the -- the limited case law that talks about the remedies for a non-compliant expert. Now a prejudice analysis is interesting, because there is a non-reported case that talks about the prejudice analysis, in there they found there was prejudice. Look here's where the defense is, we could literally have waited until the very last second --

THE COURT: I get that.

MR. FIGLER: -- and object. But instead we did it when we discovered it.

THE COURT: But, but I would say --

MR. FIGLER: So --

THE COURT: -- excuse me, but I would say then if you'd waited until she's walking through the door. And you object, and you know, we excuse the jury and we have this argument. The Court might be inclined to say, okay Mr. Figler, where's your prejudice? And I'm going to take a break now today. And I'm going to give you an extra 2 days to prepare. Or we're going to break this afternoon, or we're going, you know, come back tomorrow afternoon. And that gives you 24 or whatever I might say. But I might not exclude her outright, even if you'd waited.

I appreciate that you didn't wait because I don't like to have to excuse a jury for a day, when they've already taken off from work. But that would be something I would consider doing.

MR. FIGLER: I appreciate that, Your Honor. But, I mean, that puts us in this position where we try to address it --

THE COURT: Right.

MR. FIGLER: -- as quickly as we can.

So by doing that we then have now, and I don't think that they've been submitted yet, but the subpoenas have been prepared and they're set for service today. We don't know how long it's going to be before we get back this information. That the statute and the legislature determine that 21 days is the amount of time necessary for that to occur.

And that the defense has 21 days to do that. And so the prejudice to us is that, you know, without having these CVs our cross-examination is going to be severely limited.

The Supreme Court and the Legislature seem to have put in as a de facto standard of how much time is necessary, so that it's not an ambushed 21 days. They don't say 5 days, you know, they have 5 days for normal witnesses. But they have --

THE COURT: Right.

MR. FIGLER: -- 21 days for experts. And they have these very modest and easy to comply with -- requirements to endorse a witness. And the State concedes that they didn't do that here, okay. They're saying oh we --

THE COURT: No, no, they're conceding that they didn't give you the CV.

MR. FIGLER: Correct. Correct, 100 percent. And so --

THE COURT: They're not conceding -- okay first of all I don't want to step on Ms. Bluth's toes, but I don't believe Ms. Bluth is conceding she didn't endorse the witness by not providing a CV. I don't think she's --

MR. FIGLER: No, no, no.

THE COURT: -- conceding that, number one.

MR. FIGLER: Right.

THE COURT: So she's going to be free to argue that she did essentially comply with the statute. And that, I don't know, that there's no prejudice. And even so, like I said, she isn't -- it's not like, you know,

she's standing out there in a vestibule, and we're talking about this. In which case like I said I -- my inclination at that point would be to maybe send the jury home and give you some additional time, and make the jury come back. So I appreciate, because really who would we be inconveniencing in that situation? We'd be inconveniencing the jurors who, as I said, had taken off work, and had a then 1 or 2 wasted days. So I appreciate you bringing this ahead of time, number one.

Number two, Ms. Bluth, when do you anticipate calling this doctor?

MS. BLUTH: Actually I was expecting on calling her after the children, so she would be my last witness.

THE COURT: Okay. So if we -- we have all this week. We have 2 to 3 days of jury selection next week. And then so it's likely she wouldn't be called --

MS. BLUTH: She won't be testifying until the week -- end of the week of the 12th.

THE COURT: Okay.

MR. FIGLER: Well, I mean, look our prejudice is going to be an ongoing record to make for the Court depending on what response we get from our subpoenas of the information --

THE COURT: Right.

MR. FIGLER: -- that we only glean from the CV. I mean, one -- CVs are obviously very important. They're important to the Legislature, and they're important to the Supreme Court, and they're important for compliance with that rule. No better is it apparent, like had

Ms. Bluth not revealed that just now that Dr. Dewan and Nurse Schweiger have a relationship now post. We wouldn't have learned that, and where'd you learn those things is from the CVs. I mean where'd -- CVs are very basic there's nothing magic or talismanic --

THE COURT: No, I know --

MR. FIGLER: -- about CV.

THE COURT: -- I mean, you could call it a resume.

MR. FIGLER: You could call it a resume, you could call it basic. And I think substantial compliance require that you say education, if any, occupation or where do you work, if any. I mean, that to me would be probably to the Court, if there is nothing else and if it turns out there are no publications, or awards, or affiliations, or boards that, that would be compliant with the rule. But you can't say it's compliant and it's non-existence, and it's non-attempt for existence.

And there's nothing that the State could point to that shows that subsequent compliance during the 21 days cures the deficiency. And that's what Your Honor's going to be looked at with regard to the -- and I know you don't care --

THE COURT: No, it's not that I don't care. I try to make the right ruling at the trial level. And if the Supreme Court doesn't agree with me then that's how it is. So it's not that I don't care.

MR. FIGLER: So -- but they don't look --

THE COURT: But I try to make what the right ruling is, and if there could be prejudice, like I said, I try to take steps at the trial level to ameliorate that prejudice. And one of the ways we do that, like I said, is

we take a break, we give you more time whenever. So you're getting more time because we're not starting this, this week. You're getting this whole week, less the evidentiary hearing.

Plus you're getting your investigator or whatever, is getting the additional time of -- while we're trying the case. Because the witness isn't going to be called until you said the end of the week of the 12th.

MS. BLUTH: I mean, however the witnesses go, but she's my last witness.

THE COURT: Right. Which would be anywhere from the 14th through the 16th.

MR. FIGLER: I mean, so if the way --

THE COURT: Depending on how fast we're going. And I would just note, this isn't a case where you have one sole practitioner trying a case, being here in Court, and then having a pretrial the defense witnesses and do all that. There are three lawyers working on this case. So --

MS. BLUTH: Three lawyers for Ms. Solander.

THE COURT: Yeah, for Ms. Solander. Well that's who we're just talking about now --

MS. BLUTH: Okay, yeah.

THE COURT: -- because Mr. Mueller isn't complaining. Because he thinks his client's probably going to wind up resolving this case. But we have three lawyers working on behalf of Ms. Solander. So it isn't to me the situation, where a lawyer is tied up in court all day and can't work on anything else. You have three lawyers. So, you know,

while Ms. McAmis and Mr. Figler are doing jury selection, Ms. Wildeveld could be working on this.

So I'm just saying I just, I guess, you know, once you get more into the CV you may make a better showing of prejudice. And it's an open issue. Like you said, it's an ongoing objection.

MR. FIGLER: Right.

THE COURT: So I'm not saying you're precluded or forbidden from raising this again. What I'm saying is at this point, I'm not inclined to exclude the witness, and I'm not inclined to continue the trial. So, that's where we are.

MR. FIGLER: And just so the records clear, we wouldn't be asking for the continuance. We would be asking solely for the exclusion. The remedy for the State for their non-compliance with the technical requirements of the statute of enforcement --

THE COURT: It would be you.

MR. FIGLER: -- would be to request a continuance. That would be on them. If they chose not to, they don't have to. Ms. Bluth certainly can go forward with the State, without her expert witnesses if Your Honor strikes it. Maybe it's a harder case for them, maybe it's not.

With regard to the prejudice, let me just really clear and then we're going to submit an order to, Your Honor. And I'm going to ask that the following findings be made in that order at this juncture, understanding that we can renew it. Is that right now we only have the CV of Dr. Cetl and we just received the CV of Nurse Schweiger. Those are the only two CVs that have been -- so even a subsequent attempt at

compliance, which we don't feel that the statute provides for. That there still 27 witnesses --

THE COURT: Wait a minute. You just said a subsequent attempt at compliance, which I don't feel. What you meant is you don't feel the statute --

MR. FIGLER: Correct.

THE COURT: Okay.

MR. FIGLER: Correct.

THE COURT: That I -- I don't think

MR. FIGLER: That's -- I'm arguing. I'm sorry that's my --

THE COURT: No, I think you misspoke.

MR. FIGLER: I'm sorry -- it's my belief that --

THE COURT: Right. I understood.

MR. FIGLER: -- that would not comply with statute. So we're still in that position and I don't know how many of these are true expert witnesses, how many are intended to actually be called. But I do know that on January 4th of 2018, four years into the case -- three and some change into the case, the State filed their first notice of expert witness list and it has those names on it. And so we have to assume, as we do trial prep, that each and every one of those people is an expert. And each of those people are intended to be called. And so we're doing all that work for all of them, in the blind right now because of the lack of compliance.

So the thing I'd ask for from the Court for findings and fact is that the State is non-compliant with the statue. And if Your Honor wants

to find that their -- the Court listened to the arguments of counsel and found no prejudice and that no relief is warranted at this juncture, that's a fine record. But I need the Court to make the very clear and easy ruling that the State did not attach CVs in contravention of NRS 50 -- please indulge -- NRS 50.275.

It's -- it's the plain language and I will say that the Supreme Court has said that that is a --

THE COURT: Well one thing --

MR. FIGLER: -- requirement.

THE COURT: -- in order for me to do that is I'm going to have to have Ms. Bluth go through each and every expert, and tell me what the substance of that expert's testimony is.

MS. BLUTH: Can I see that, Dayvid.

THE COURT: Because if some of these physicians are treaters, and are testifying as percipient witnesses she's not necessarily required to give a CV. Because again, if you're not a retained expert, the physician may or may not comply with that requirement. And then the State is not precluded from calling that person, because the person's really testifying as a treater or as a percipient witness.

MR. FIGLER: Right.

THE COURT: For example, the trauma room doctor is a -- is a great example. Often times they comply and do it. But they don't always, because again, they're not retained by the State. Now, you know, like the SANE nurses and those people have a relationship with the State. And so they're always very compliant with giving the CVs

because that's a large part of their job. But I'm talking more, you know, hospital personnel and people like that, who don't have that relationship with the police or the DA's office. They don't always comply, and like I said, if they're here as treaters, this is what I did. They're really not, even though they're experts in that they have skill and knowledge and everything like that, their -- their scope is a little bit different.

So she needs to go through each and every of the 29 experts, and then I need to make a finding that she was required to give a CV in that case. I mean, I don't know who these experts are.

MR. FIGLER: Well I --

THE COURT: 29 sounds like a lot to me.

MS. BLUTH: Yeah, so I can --

THE COURT: So when she says 29 people, if one of them is suddenly employed by the Clark County School District or UMC or something like that. And they're just going to testify the patient came in and was evaluated for A, B, C, and D. And I don't remember this patient or I do remember but I'm relying on my medical records to say, this is what I did, then that's a treater.

MR. FIGLER: And I get that the State --

THE COURT: Right. No, I know you do.

MR. FIGLER: -- and the defense appreciates that.

THE COURT: I'm just saying. But I can't issue that order unless I make a finding as to who each and every expert is, and what the scope of their testimony was going to be. And then whether or not she needed to give the CV.

MR. FIGLER: Can I just make two points on that?

THE COURT: Sure.

MR. FIGLER: One, it's the State who put this into play. Because they listed them --

THE COURT: They listed them.

MR. FIGLER: -- as expert witnesses.

THE COURT: I know. But a lot --

MR. FIGLER: And then --

THE COURT: -- of times the State over out of an abundance of caution, lists everybody as an expert. Even though -- because they're going to provide, you know, expertise in the field of nursing.

MR. FIGLER: Sure.

THE COURT: Or in the field of medicine in some way.

MR. FIGLER: And I get that.

THE COURT: Even though they're not really an, you know, they're not the State's expert. They're just somebody who happened to be working at UMC that day, or happened to be working as a school nurse that day.

MR. FIGLER: I get that. And the second point that I wanted to make is that, you know, the State obviously in their relationship with those who you're describing as more on the expert side of expert, you know, could easily have obtained --

THE COURT: Like a SANE nurse.

MR. FIGLER: -- those CVs. Right. I mean, those CVs are manner standard, and they didn't do it. They just didn't comply with the

rule and that's fine. For whatever reason it doesn't matter, good faith, bad faith, if it was just they forgot. Or they were going to get to it or whatever. It's just non-compliance, and so we're put in that position where we want to object. See the thing is going to be that there's going to be people that the State's going to call, based on preliminary hearing testimony, based on other records that we have that are going to be using the words child abuse and child neglect.

We were going to object to that anyway. They shouldn't be able to say well this is their expert opinion.

THE COURT: Well let me throw this out here, Mr. Figler, normally I don't do written interim orders on every oral motion that's made by the defense during the course of the trial. Because that is A, not the customary practice. And B, I think that could become unduly burdensome, to have to, you know, review and sign a written order.

So let me ask you this, why should I sign a written order for this when this is your oral motion?

MR. FIGLER: Well it's oral now. It was actually filed, but I don't that it's --

THE COURT: Okay well.

MR. FIGLER: -- buy yeah. We're talking about it now.

THE COURT: But do you see what I'm saying, I mean, why does this justify an interim written order? When normally motions made during the course of trial, oral motions don't get an interim written order. Because again, it's too cumbersome to have to be, you know, reviewing and revising written orders.

MR. FIGLER: I think it's to --

THE COURT: Now if you tell me, that you want to take it up on a writ. That's the only thing I could think of for why we would justify a written order in the middle here.

MR. FIGLER: Well, you know, as much as there's been only one writ filed by the State in this particular case that had a great impact on how the case went. I would say this, the defense position with the respect to the Court is that it is cut and dry that there is non-compliance to the extent that there are experts contained within what has been labeled as an expert witness notice. And I appreciate the Court's concern, but that is a cut and dry determination.

But if the Court did not feel that, that, that would be a writable issue. I understand Your Honor's evaluation on prejudice. I don't know the Supreme Court --

THE COURT: No, no, I'm just that not necessarily everyone that's listed as an expert by the State is actually going to be testifying as an expert. I don't know, 29 experts sounds like a lot to me.

MR. FIGLER: It does to the defense.

THE COURT: So it occurs to me that some of these really may be more treating people, or percipient witnesses that will say I was working at -- here or there that day. And, you know, I tested the blood sugar or I -- the patient came in and I took a medical history from Mrs. Solander, and this is my record. In which case, they're really more testifying as a treating professional, as opposed to an expert and a percipient witness.

So that's why I say, I don't know what the 29 are really going to -- and I get it, she's the one, the State, Ms. Bluth, is the one that elected to list them as experts. But that may be out of an abundance of caution. And they may not even really -- I don't know what they're testifying to. That's all I'm saying.

MR. FIGLER: Well as a --

THE COURT: I don't know. I don't want to make a finding in a vacuum that I don't really know. I mean, I can say that of the 29 people listed on the list, it's uncontroverted. There's no dispute that CVs were not provided in the 21 days. Okay, I can say that.

MR. FIGLER: Okay.

THE COURT: I mean, that's -- that's fair. Beyond that a prejudice analysis and this, that, and the other thing, I can't really do that without knowing who the 29 people are and what they're going to be testifying about. So if you just want the Court to say that it is uncontroverted at the hearing, that Ms. Bluth provided an expert notice naming 29 individuals, and failed to provide a CVs for any of those individuals at the 21 days.

MR. FIGLER: Is that your ruling, or findings?

THE COURT: I can say that. And that the defense has failed to demonstrate prejudice. Okay. I can do that.

MR. FIGLER: Okay. Alright.

MS. BLUTH: And then --

MR. FIGLER: And then I guess what I asked for --

MR. MUELLER: I have another calendar call to get to, Judge.

THE COURT: Okay.

MR. MUELLER: I'm not trying to be rude.

THE COURT: So, Mr. Mueller, you don't really have a dog in this fight in your opinion.

MR. MUELLER: Not that I see.

THE COURT: Is that correct? You're not objecting to any of this, is that right? Because if Mr. Solander doesn't take the deal, which is his constitutional right. Want to be clear, not trying to encourage anybody to take a deal.

MR. MUELLER: I understand, Your Honor. I would --

THE COURT: But understood that you will be going forward and whatever expert witnesses the Court is going to allow.

MR. MUELLER: I will join in Mr. Figler's motion, and let it defer to his discretion.

THE COURT: Okay.

MR. FIGLER: So we had asked for --

THE COURT: Just -- I mean, it's fine if you leave but just understand that the Court is not going to take up this issue again.

MR. MUELLER: I wouldn't --

THE COURT: If for some reason it turns out your client isn't going to accept the negotiation and you're sitting here at counsel table.

MR. MUELLER: Understand, Judge. We'll see you at 9:30 or 9 o'clock Wednesday morning.

THE COURT: Right. So I, you know, not 100 percent comfortable with you leaving.

MR. MUELLER: Okay. No I'll stay.

THE COURT: But I mean, if you waive any objection then that's fine.

MR. MUELLER: No I'll stay. I've just, I've gotten judge --

THE COURT: No, no. I'm saying, I'm just saying if you waive any objection to this then that's fine you can leave. But just understand that if he doesn't take the deal. Whoever expert -- whatever experts I'm allowing are going to be testifying as to both Defendants. I don't know again how that's broken up if, you know, sounds like some of this is strictly to remain as to Mrs. Solander. Are any of these to remain as to Mr. Solander? Any of these?

MS. BLUTH: Oh yeah, yeah.

THE COURT: Okay so --

MS. BLUTH: But I need to make it a little bit --

THE COURT: I think most of them are, while we're talking about it, a lot of this goes to Mrs. Solander.

MS. BLUTH: So there were 29 individuals noticed within the 21-day period. The only individual who's a -- first of all everybody on there are -- they are treating physicians. The only one who would have an opinion outside of their treatment via child abuse is Dr. Cetl. Everybody else, you know, saw the children, and as a treating physician prescribed medicine or didn't prescribe medicine. Nobody else has any opinion in regards to, you know, are these abused. That's only Dr. Cetl who would be making those opinions.

In regards to the 29, I'm more than happy to say out loud who

I intend to call -- who at this point I intend to call. The number would only get smaller, not bigger. And say what their -- what their treatment was if the Court wants.

THE COURT: Okay. And Mr. Mueller, if you're comfortable just relying on Ms. McAmis and Mr. Figler to tell you what happened at the hearing and you don't want to weigh in on this that's fine.

MR. MUELLER: It's just -- it's not my desire to leave. It is the practical fact that I've got another calendar call in front of Judge Ellsworth and -- she's noticeably less genial on occasion.

THE COURT: My understanding is her calendars don't end at 10:15 or so, so you may --

MR. MUELLER: Which is why I came -- which is why I came here first.

THE COURT: What you may have some time. I mean, I --

MR. MUELLER: I'll wait.

MS. BLUTH: So doctor -- the first person is Dr. Alfonsa Stephen -- and I have the defense -- Defendant Solander's --

THE COURT: Do you want us to call Judge Ellsworth's department or Kenny can call the Bailiff and say you're tied up in here in a lengthy argument, and that's why you'll be late? We're happy to do that for you.

MR. MUELLER: Yes, please.

THE COURT: Kenney, would you call down to the Marshall --

THE MARSHALL: Yup.

THE COURT: -- and say Mr. Mueller's trying to leave but I

wouldn't let him.

MS. BLUTH: So I have the Defendant Solander's notice in my hand and I've circled them so they know. But Alfonsa Stephen was the training pediatrician for all three girls, the Solander girls. Dr. Sandra Cetl, we all know who that is. Dr. Asheesh Dewan is the doctor that I just spoke about. Shannon Edwards is a nurse at CPS, but she will not be discussing any opinions. She's just going to talk about the conversations she had with the Defendants.

THE COURT: Okay.

MS. BLUTH: Dr. Mileti is a pediatric gastroenterologist that saw Amaya and Ava Solander. Treating physician Dr. Nvarko is also a pediatrician of the girls. Dr. Raja is a child neurology specialist treating of the girls. And Christopher Rhee is the pediatric gastroentologist [sic] -- enterologist, sorry. And Dr. Sheikh is also a pediatric gastroenterologist.

So I plan on only calling probably one of those gastroenterologist. They're treating physicians and then --

THE COURT: And I would just note if a treating physician is going to be reviewing the records of another treating physician that they didn't previously review as part of their treatment, then now they're an expert. So just to be clear, you know, if he says --

MS. BLUTH: Right, yeah.

THE COURT: -- well I was the second gastro and I had to get all the records from this first gastro and I reviewed them prior to seeing the patient, then that's part of his treatment. If it's just, I did this and now

I'm looking at these other people's records, now you're an expert. So I just make that clear.

MS. BLUTH: Understood. And then, Michael Zbiegen is a emergence -- a pediatric emergency physician. And then Lori Wells is the clinical therapist for the Burnett Diaz [phonetic] children, but she would not be making any opinion. She would be talking about the interactions with the Defendants and her conversations with them. So really the only person who I said she did treat them, but she also had an opinion as to whether or not this was probable child abuse and neglect is Dr. Cetl.

THE COURT: Okay.

MR. FIGLER: Based on that representation it seems as though Dr. Cetl is the one who is mostly in play. Unless testimonary [sic] -- testamentary evidence during the course of trial reveals something other or there's an attempt to --

THE COURT: Right.

MR. FIGLER: -- convert the expert. But I think what Your Honor is saying is that -- and I don't want to put words in your mouth, but I guess it would be our request that you make a prophylactic -- grant a prophylactic motion in limine at a minimum. To say that, other than Dr. Cetl which is still in play, that no other endorsed witness from the State be allowed to offer any expert opinion as to child abuse, child neglect or any other area of expertise. And then we're --

THE COURT: Unless it was part of the treatment. For example, if the physician thought -- I'm -- look, I mean, they're

mandatory reporters. So if any of these doctors had thought it was probable or possible child abuse or neglect. I'm assuming they would have reported it. So if they didn't, then we've got to conclude that they didn't suspect that. Is that a fair --

MS. BLUTH: No one did except for Lori Wells and she just contacted CPS and said I have some concerns here. That's it, but she didn't -- no treating physician contacted anybody.

THE COURT: So you're not going to ask any of them for that kind of opinion. It's more to say they were brought in for this ailment and I didn't find anything, that kind of thing. Correct?

MS. BLUTH: I had this discussion with the Defendants and that's it.

MR. FIGLER: Okay, so if Your Honor's comfortable with that order then, just so the State's on notice.

MS. BLUTH: Yeah, I'm sorry so could you -- could you word it again please, Dayvid?

MR. FIGLER: On that other than Dr. Cetl, which is still subject to our challenge, that just no other witness endorsed by the State be allowed to offer expert testimony as to child abuse or other expert areas.

THE COURT: Well, except they can say as -- as a gastroenterologist, I didn't see any evidence of Crohn's disease or whatever the case may be.

MR. FIGLER: Right.

THE COURT: Or as a pediatrician --

MS. BLUTH: Right.

MR. FIGLER: But that's not going to --

THE COURT: -- I didn't see any evidence of diabetes. The symptoms were inconsistent with that. So that's part of their treatment and what they did. But what you're saying is they can't go outside of that as a non -- a non CV included expert.

MR. FIGLER: Right. They can't say, well now looking at retrospect and hearing all this other stuff and talking to the State, I conclude that this was probable -- I mean, something like that.

MS. BLUTH: Oh yeah, no.

THE COURT: You're not -- right, so we're all on the same page about that.

MR. FIGLER: Okay, so.

THE COURT: I mean, they can testify -- I'm assuming these other doctors are being brought in to testify as to what the Solander's told them about symptoms and things like that. What they're own examinations revealed, which is fair game. And what they told the Solander parents as a result of their treatment and examinations of the children. Is that what they are going to testify about?

MS. BLUTH: Exactly.

MR. FIGLER: Well, I mean, I guess why don't we just keep it very simple, very broad. That other than Dr. Cetl, which is still subject to challenge, no other witness endorsed by the State is allowed to offer any expert opinion.

MS. BLUTH: In regards to child abuse --

THE COURT: Right.

MS. BLUTH: -- or neglect.

THE COURT: I mean, they can give expert opinion within the treatment of the children. They can say, I mean, obviously if you bring in somebody who's a gastroenterologist and that person says, I'm just hypothetically, you know, the child was brought in for possible -- for digestive issues and Mrs. Solander thought the child had Crohn's disease or whatever. And I evaluated the child and I performed an examination, and I concluded that the child did not have Crohn's disease or colitis or whatever. And I recommended that maybe that the child's diet was too limited, or I recommended, you know, that they test for lactose intolerance or whatever.

That's totally within the ambit, now there's some expertise there because they're saying, I concluded that the child did not have Crohn's or colitis and I told the Solander's that. That there wasn't anything wrong or whatever the case may be. I'm assuming it's that type of testimony, although obviously different.

MS. BLUTH: Right, yeah. It's about just their treatment.

MR. FIGLER: So now --

THE COURT: Right and so they're testifying as an expert. I concluded they had this they didn't have that or whatever. But no they're not going to say -- offer other opinions that exceeds what they already did.

MR. FIGLER: Okay. I mean, obviously and I think Your Honor appreciates the concerns of the defense is that the statute for experts --

THE COURT: They can't come in now and say boy, you know, now that I hear all this other stuff. Yeah, I conclude it was child abuse. Or now that I've been thinking about it for five years, I think it was child abuse. No, they can't do that.

MR. FIGLER: Okay. I mean, --

THE COURT: First of all that would be an undisclosed opinion.

MR. FIGLER: Sure. And that would also be problematic. I mean, look we're still tacking towards -- and I don't want to give up on this issue because we're tacking towards the intent of NRS 50 and what -- what witnesses need to be specially endorsed. And so, I mean, we're going to I guess reserve the right and maybe this is something we just need to hash out. But ultimately our position is that the best remedy here is to strike all those witnesses, because there wasn't a compliance because they will be testifying to a degree of their expertise.

I appreciate the Court's -- you don't have to reiterate were you came from, I get that. But I guess we need to stand firm that we're not conceding that, that is -- we're trying to work with the Court but we're not conceding that, that is our objection.

THE COURT: Okay. So you're still objecting, the Court's overruling your objection.

MR. FIGLER: Thank you, Your Honor.

THE COURT: And that's where we are.

MR. FIGLER: Okay.

THE COURT: But I agree that they can't go beyond what

they, you know, what the -- their -- you know, what they observed. What they recommended, what they told the Solander's. What their conclusions were at the time. You know, yes, this child has this, that, or the other thing, or doesn't have this, that, or the other thing. My understanding, Ms. Bluth, is that's what these treating doctors are going to be testifying about.

MS. BLUTH: Right. Absolutely no opinions in regards to child abuse or neglect, just why they saw the child what they found and --

THE COURT: Right.

MS. BLUTH: -- the conversations.

THE COURT: And obviously she's going to have to qualify them as a medical expert in terms of whatever the, you know, like you're a gastronolopy [sic] pediatric, where were you trained, this and that. Because it is important their conclusion as to they had, you know, colitis they didn't have or whatever, whatever the diagnosis was or wasn't. So -- okay.

MR. FIGLER: But you see that's where you put us. So, I guess what I'm asking for is to mediate or to mitigate further prejudice. Although we feel that there's automatic prejudice, because we have less than 21 days. Is that based on the Court's ruling that we be provided with all the CVs of all those people who are listed immediately? Because Your Honor knows that we would potentially need to go in, and if there's a finding that we disagree with and we feel that maybe that doctor is vulnerable because of something that they have previously said in some other paper or something like that, that their conclusion is

wrong about something, that we have an absolute right and why that statute's in place for us to be able to go through their training and qualifications.

THE COURT: Okay so, Ms. Bluth, try to get their CVs. Again, there's a limit to the control the State has for these treating physicians, because they're not retained experts. So you don't have that same relationship where the State can require them to give their CVs and prepare a CV. Because again, they're not retained experts, right? They're just subpoenaed because they're --

MS. BLUTH: No. If they were retained they would call me back.

THE COURT: Right. Because they're treating physicians, so she's kind of limited to who the Solander's chose to -- and so I'm saying, you know, tell them to do it. But if these treating physicians don't comply, then we can find out why and what Ms. Bluth did. But beyond that I'm not inclined to exclude them.

MR. FIGLER: Okay.

THE COURT: Because again the reality is they're not retained experts and so their cooperation may be minimal. You know, they're required to appear pursuant to the subpoena --

MR. FIGLER: But the course that --

THE COURT: -- and provide their records but --

MR. FIGLER: But the statute doesn't contemplate retained or --

THE COURT: Well it kind of does.

MR. FIGLER: Well --

THE COURT: I mean, it kind of does distinguish between the treating percipient witness and the retained expert witness. So like I said, you know, Ms. Bluth, try to get them to provide their CVs. When they do, give them to Mr. Figler as soon as you can. But beyond that --

MR. FIGLER: Everything really should go through Ms. McAmis as lead, but also --

MS. BLUTH: Sure.

MR. FIGLER: -- to me of course.

THE COURT: Where is Ms. -- and let that brings up a point. Because Ms. Wildeveld was appointed on this and now we have Mr. Figler. And what's the plan here in terms of who's really trying this case and --

MR. FIGLER: And so Ms. Wildeveld contacted the Office of Appointed Counsel, explained her conflicts and the fact that there was unlike -- it was unlikely that Court was going to continue it again. Mr. Christensen reviewed the situation and allowed my replacement of Ms. Wildeveld for the purposes of this trial, period. So Ms. McAmis is and always has been lead counsel and the Office of Appointed Counsel is aware of that and endorses that, that I am in the stead now of Ms. Wildeveld.

THE COURT: So is Ms. Wildeveld never coming back on this or is she --

MR. FIGLER: You're not going to see Ms. Wildeveld unless this thing somehow gets moved down the road a little bit because of her

conflicts. To the extent that she can help and participate, I'm sure she will. But, I mean, she does have some immovable calendared items as it relates to the parole board and some other things she was unable --

THE COURT: Okay, so she's not going to be appearing. Because my understanding was the three of you would be trying the case. No.

MR. FIGLER: It's really the two of us. I mean, you know, Ms. Wildeveld becomes part of the resources that are available to the world. You know, we can call Mr. Pitaro. We can call, you know, all sorts of people for advice or opinions and stuff. But the people responsible now for the trial are Ms. McAmis and myself.

THE COURT: Okay. Anything else we need to do?

MS. BLUTH: In regards to the stuff on Thursday the argument, should we just -- should we move that to Wednesday? Since we'll be here or no, you want to keep it on Thursday?

THE COURT: Let's keep it on Thursday.

MS. BLUTH: Okay. Would we --

THE COURT: I mean, look if everybody is ready to argue it and we have time we can talk about it on Wednesday. But I don't want to take, you know, an hour arguing. Let's get the evidentiary hearing done.

MS. BLUTH: Sure.

THE COURT: And then if we still have time we can start arguing about these things. But like I said I don't want to spend an hour in argument like we did today and then have an issue with getting the

P.2d 942, 943-944 (1966). The writ has been most commonly used to test probable cause following a preliminary examination resulting in an order that the accused be held to answer in the district court. See, e.g., State v. Plas, 80 Nev. 251, 391 P.2d 867 (1964); Beasley v. Lamb, 79 Nev. 78, 378 P.2d 524 (1963).

During preliminary hearing proceedings, the State must elicit sufficient evidence demonstrating probable cause that a crime was committed and that the accused was likely the perpetrator. Sheriff v. Miley, 99 Nev. 377, 379; 663 P.2d 343, 344 (1983). At the preliminary hearing stage, probable cause to bind a defendant over for trial "may be based on 'slight,' even 'marginal' evidence because it does not involve a determination of guilt or innocence of an accused." Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). The State is required to present sufficient evidence "to support a reasonable inference that the accused committed the offense." Sheriff v. Milton, 109 Nev. 412, 414, 851 P.2d 417, 418 (1993), quoting Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971).

It is appropriate for a District Court to grant a petition for a writ of habeas corpus when the prosecution acts in "a willful or consciously indifferent manner with regard to a defendant's procedural rights, or where the defendant is bound over on criminal charges without probable cause." See, e.g., Dettloff v. State, 120 Nev. 588, 595; 97 P. 3d 586, 590 (2004) (quoting Sheriff v. Roylance, 110 Nev. 334, 337, 871 P.2d 359, 361 (1994).

For a conviction of sexual assault to be lawful, a defendant must have: (1) knowingly, willfully, and unlawfully, (2) without consent, subjected another person, (3) to sexual penetration. Hardaway v. State, 112 Nev. 1208, 1210, 926 P.2d 288, 289 (1996); NRS 200.366. "Sexual penetration" means cunnilingus, fellatio, or any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another, including sexual intercourse in its ordinary meaning. NRS 200.364(5).

It would not be proper for a jury to consider a question of law as to the legislative intent behind the Sexual Assault statute and to request that the jurors be admonished to

VALERIE ADAIR
DISTRICT JUDGE
DEPARTMENT TWENTY-ONE
LAS VEGAS, NV 89155

follow the law and determine whether or not the insertion of a catheter should be considered a Sexual Assault. For that reason, it is the District Court's duty to decide whether the act of inserting a catheter into a urinary opening for the purpose of voiding the bladder is within the statutory meaning and legislative intent of a Sexual Assault. No precedent exists that an insertion of a catheter into the urethra is consistent with the Nevada Legislature's intent for NRS 200.366. The Court finds that it is not within the statutory meaning or legislative intent for the insertion of a catheter to meet the elements of a Sexual Assault.

As to the remaining counts, the Court finds that slight or marginal evidence exists for Ms. Solander to stand trial.

ORDER

IT IS HEREBY ORDERED that Defendant Janet Solander's Petition for Writ of Habeas Corpus is GRANTED IN PART as to the criminal counts alleging Sexual Assault with a catheter, and DENIED as to the remaining counts.

IT IS HEREBY FURTHER ORDERED that the State shall prepare an Amended Information consistent with this Order dismissing the counts of Sexual Assault via the insertion of a catheter.

DATED this 16 day of June, 2015.

Valerie Adair

HONORABLE VALERIE ADAIR
Eighth Judicial District Court Judge

VALERIE ADAIR
DISTRICT JUDGE
DEPARTMENT TWENTY-ONE
LAS VEGAS, NV 89155

Certificate of Service

I hereby certify that on the date filed, I placed a copy of this Order in the attorney's folder in the Clerk's Office, mailed or faxed a copy to:

Craig Mueller, Eq. (Mueller Hinds & Associates)
Public Defender
Kristina Wildeveld, Esq. (Wildeveld & Associates
District Attorney

Sharry Frascarelli
Judicial Executive Assistant

VALERIE ADAIR
DISTRICT JUDGE
DEPARTMENT TWENTY-ONE
LAS VEGAS, NV 89155

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

APR 19 2016

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

ORDER OF REVERSAL AND REMAND

These are consolidated appeals from district court orders granting respondents' pretrial petitions for writ of habeas corpus. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Pretrial writs of habeas corpus may be granted if a district court determines "that an affirmative defense exists as a matter of law based solely on its review of the transcript of a preliminary hearing." *Sheriff, Clark Cty. v. Roylance*, 110 Nev. 334, 338, 871 P.2d 359, 361 (1994). If a district court's conclusions of law are based on its interpretation of a statute, this court reviews those conclusions de novo. *Zohar v. Zbiegien*, 130 Nev., Adv. Op. 74, 334 P.3d 402, 405 (2014). Here, we are asked to decide 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 reverse and remand.

I.

In March 2014, the State charged the Solanders with child abuse and endangerment and with sexually assaulting their three foster daughters. At the preliminary hearing, the three girls testified that the Solanders catheterized them as a form of punishment for urinary incontinence, with threats to mutilate their genitals with a razor blade if they resisted the catheterization and did not stop soiling themselves. The Solanders filed pretrial petitions for writ of habeas corpus alleging that, as a matter of law, inserting a catheter into a child's urethra cannot constitute sexual assault under NRS 200.366. The Solanders denied catheterizing the girls but argued that, even if they did catheterize them, they did so for a legitimate medical purpose and without sexual motivation. The district court granted the petitions, concluding that "it is not within the statutory meaning or legislative intent for the insertion of a catheter to meet the elements of Sexual Assault."

II.

Two statutes are at issue in this case: NRS 200.366 and NRS 200.364. NRS 200.366 defines "sexual assault," while NRS 200.364 defines "sexual penetration." NRS 200.366(1) defines sexual assault in terms of sexual penetration:

> A person who subjects another person to sexual penetration, or who forces another person to make a sexual penetration on himself or herself or another, or on a beast, against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct, is guilty of sexual assault.

NRS 200.364(5) defines sexual penetration, as used in NRS 200.366, to mean "cunnilingus, fellatio, *or any intrusion, however slight,* of any part of a person's body or *any object manipulated or inserted by a person into the genital or anal openings of the body of another,* including sexual intercourse in its ordinary meaning." (Emphases added.) In 2015, the Legislature amended NRS 200.364(5) to add a final sentence stating that "[t]he term [sexual penetration] does not include any such conduct for medical purposes." 2015 Nev. Stat., ch. 399, § 7, at 2235.

To the State, the language of NRS 200.366 and 200.364 is plain, clear, and unambiguous. Thus, the State argues that its allegations that the Solanders inserted a catheter into the urethra of each of the girls without their consent are sufficient to sustain charges of sexual assault. The Solanders counter that the acts "were not sexually motivated" but rather were undertaken for a "legitimate medical purpose." The State offers two responses to the Solanders' arguments. First, the definitions of sexual assault and sexual penetration do not include a requirement that the penetration be sexually motivated. Second, because sexual assault requires a showing of general intent—not strict liability as the Solanders suggest with their "per se penetration" arguments—the purpose of the penetration presents a question of fact for the jury to decide, not the court. We agree with the State.

A.

Neither the definition of "sexual assault" nor the definition of "sexual penetration" includes an element of sexual motivation or gratification. *See* NRS 200.364(5); NRS 200.366. Because NRS 200.364(5) and 200.366 are unambiguous, the plain language of the statutes control, and we give that language its ordinary meaning. *See City Council of Reno*

v. Reno Newspapers, Inc., 105 Nev. 886, 891, 784 P.2d 974, 977 (1989) ("When the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it.").

Comparing the statutory provision making sexual seduction a crime with the sexual assault statutes confirms our reading of the latter. In contrast to sexual assault, the offense of statutory sexual seduction expressly requires sexual motivation in addition to sexual penetration. *See* NRS 200.364(6) (2013) ("'Statutory sexual seduction' means: . . . (b) Any other sexual penetration committed by a person 18 years of age or older with a person under the age of 16 years old *with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of either of the persons*." (emphasis added)).[1] Because the Legislature included an element of sexual motivation in its definition of statutory sexual seduction but did not do so in its definitions of sexual assault or sexual penetration, "it should be inferred that the omission was intentional." *In re Christensen*, 122 Nev. 1309, 1323, 149 P.3d 40, 49 (2006) ("One basic tenet of statutory construction dictates that, if the legislature includes a qualification in one statute but omits the qualification in another similar statute, it should be inferred that the omission was intentional.").

The fact that "sexual" modifies "assault" and "penetration" in NRS 200.364(5) and NRS 200.366 does not, as the Solanders suggest, impliedly require sexual motivation; the more reasonable reading, especially given the Legislature's express articulation of a sexual

[1]In 2015, the Legislature amended the definition of "statutory sexual seduction." We quote the pre-2015 version in the text. *See* 2015 Nev. Stat., ch. 399, § 7, at 2235.

motivation requirement in NRS 200.364(6) for sexual seduction, is that the word "sexual" as used in NRS 200.364(5) and NRS 200.366 references the body parts involved, not motivation. *Cf. United States v. JDT*, 762 F.3d 984, 1001 (9th Cir. 2014) (rejecting argument that statute penalizing certain "sexual acts" required sexual motivation and holding that "sexual act" as a defined term referred to the body parts involved not the actor's motivation). Therefore, under the plain language of the statutes, "sexual assault" and "sexual penetration" do not require sexual gratification or motivation as their object for the crime of sexual assault to occur. *See also Buffalo v. State*, 111 Nev. 1139, 1144, 901 P.2d 647, 650 (1995) (rejecting as a "totally incorrect legal supposition" the suggestion "that no valid judgment of conviction [for sexual assault] could be entered . . . absent proof of sexual motivation on [the defendant's] part") (plurality).[2]

The Solanders argue that a literal reading of NRS 200.364(5) and NRS 200.366 produces an absurd result, for it "criminalize[s] every doctor, nurse, or parent who must, for example, insert a finger inside a child's rectum to dislodge a stoppage caused by constipation or to clean areas soiled by dirty diapers or insertion of a suppository." On this basis, the Solanders urge this court to apply the rule of lenity to NRS 200.364's definition of sexual penetration. But "ambiguity is the cornerstone of the rule of lenity, [and] the rule only applies when other statutory interpretation methods, including the plain language, legislative history,

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[2]This interpretation is consistent with the legislative history of NRS 200.364 and 200.366, which discussed rape and sexual assault as crimes of violence, not sex, finding that sexual assault is committed primarily for power, then for anger, and finally, in a small number of cases, for sexual gratification. Hearing on S.B. 412 Before the Senate Judiciary Comm., 59th Leg. (Nev., April 5, 1977).

reason, and public policy, have failed to resolve a penal statute's ambiguity." *State v. Lucero*, 127 Nev. 92, 99, 249 P.3d 1226, 1230 (2011) (internal citations and quotations omitted). We decline to apply the rule of lenity because the statutory definitions of "sexual assault" and "sexual penetration" are not ambiguous.

B.

The Solanders argue, and the district court agreed, that the insertion of a catheter into the urethra to void the bladder for legitimate medical purposes should not constitute sexual assault as a matter of law and sound public policy.[3] The Solanders point to the 2015 amendments to NRS 200.364, which added the proviso that "[t]he term [sexual penetration] does not include . . . conduct [involving penetration] for medical purposes." 2015 Nev. Stat., ch. 399, § 7, at 2235. This amendment brought NRS 200.364(5) and NRS 200.366 into line with statutes in at least 14 other states that have similar bona fide medical purpose exceptions in their sexual assault statutes. *See* Model Penal Code § 213.06 comment on Sexual Assault and Related Offenses (Am. Law Inst., Discussion Draft No. 2, 2015) (discussing proposed § 213.06, which

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[3]Janet also asserts that the alleged conduct does not constitute sexual assault based on her attempt to distinguish the urinary opening, or urethra, from one's genital opening. Penetration of the urethra, however, is encompassed under NRS 200.364's definition of "sexual penetration." *See* NRS 200.364(5) (stating "genital or anal opening" under definition of sexual penetration); *see Tyler v. State*, 950 S.W.2d 787, 789 (Tex. Ct. App. 1997) (upholding sexual assault charge after concluding that urethra is included in the female genitalia, which is all the statute requires); *see also People v. Quintana*, 108 Cal. Rptr. 2d 235, 238 (Ct. App. 2001) ("[A] 'genital' opening is not synonymous with a 'vaginal' opening . . . . The vagina is only one part of the female genitalia, which also include inter alia the labia majora, labia minor, and the clitoris.").

provides that otherwise criminal "sexual penetration" does not occur if "done for bona fide medical, hygienic, or law enforcement purposes," and noting that statutes in 14 states have some form of this exception).

The 2015 amendment to NRS 200.364(5), adding an express "medical purpose" exception to Nevada's sexual assault statute, does not apply to the Solanders' alleged conduct, which occurred before its effective date. *See* 2015 Nev. Stat., ch. 399, § 27, at 2245 (stating that the amendatory provisions of NRS 200.364(5) "apply to an offense that is committed on or after October 1, 2015"). Nonetheless, as the State itself suggests, sexual penetration that is proven to have been undertaken for a bona fide medical purpose, as when a doctor assists an unconscious woman in delivering a baby, may not establish the crime of sexual assault, either because consent to the penetration is implied under such circumstances, *see* NRS 200.366(1) (the penetration must be "against the will of the victim"), because the criminal law generally requires *mens rea*, *see* NRS 193.190,[4] or because the defense of necessity applies.[5]

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[4]NRS 193.190 provides: "In every crime or public offense there must exist a union, or joint operation of act and *intention*, or criminal negligence." (Emphasis added.) The State agrees with this interpretation, placing the burden of proving the requisite *mens rea* on the State, which can be negated by the defense of a legitimate medical purpose. *See People v. Burpo*, 647 N.E.2d 996, 998 (Ill. 1995) (holding that a gynecologist's "good faith will protect him from criminal sanctions," and requiring the State to "prove that the gynecologist possessed a mental state of intent, knowledge, or recklessness," which the gynecologist can rebut).

[5]The State asserts consent, lack of *mens rea*, and necessity as possible defenses or theories the Solanders may argue at trial, depending on proof. At this stage in the proceedings, none of these defenses or theories were argued and developed below, precluding this court from

continued on next page...

Indeed, such has been the holding of other state courts that have interpreted statutes that, like NRS 200.364(5) and NRS 200.366 before their 2015 amendment, did not include an express bona fide medical purpose exception. *E.g.*, *State v. Lesik*, 780 N.W.2d 210, 214 (Wis. Ct. App. 2009) ("It would be equally absurd to imagine the legislature intended to include legitimate medical, health care and hygiene procedures within the bounds of 'sexual intercourse' for the assault of a child statute. . . . Accordingly, . . . 'sexual intercourse' as used in the sexual assault of a child statute does not include 'bona fide medical, health care, and hygiene procedures.'"); *see also Roberson v. State*, 501 So. 2d 398, 400 (Miss. 1987) ("Although, on its face, the definition of sexual penetration announced in § 97-3-97 encompasses *any* penetration, the Court holds the parameters of the definition of sexual penetration are logically confined to activities which are the product of sexual behavior or libidinal gratification, not merely the product of clinical examinations or domestic, parental functions.").

We thus agree that, if the Solanders undertook the catheterization for a bona fide medical purpose, they may avoid criminal liability under NRS 200.366. The problem is, though, that the question is not just a question of law, but also one of fact. In this case, as the State asserts, "evidence adduced at [the] preliminary hearing illustrated that the catheters were used as a form of punishment, not for any medical use." Accordingly, we disagree with the Solanders that the insertion of a catheter into the urethra cannot constitute sexual assault as a matter of

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adopting them as a matter of law and circumventing the jury's role in deciding questions of fact.

law because, while a catheter has a medical purpose, it does not necessarily follow that it was used for legitimate medical purposes. The reasons why a catheter was used, and the manner in which it was used, are questions of fact for the jury, not the court, to decide. *See State v. Preston*, 30 Nev. 301, 308, 97 P. 388, 388 (1908) ("[J]udges shall not charge juries in respect to matters of fact." (internal quotation omitted)); *see also Winnerford Frank H. v. State*, 112 Nev. 520, 526, 915 P.2d 291, 294 (1996) (holding the State must prove the required *mens rea* to commit sexual assault beyond a reasonable doubt as it is a general intent crime).

III.

The district court erred when it held, as a matter of law, that the insertion of a catheter into the urethra of a minor under the age of 14 cannot, under any circumstances, constitute sexual assault. Here, the preliminary hearing testimony provides probable cause to support the charges of sexual assault, and the law does not prohibit the State from proceeding with these charges. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

_____, J.
Hardesty

_____, J.
Saitta

_____, J.
Pickering

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

NWEW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JACQUELINE BLUTH
Chief Deputy District Attorney
Nevada Bar #10625
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DWIGHT CONRAD SOLANDER, #3074262
DANIELLE HINTON, #6005500
JANET SOLANDER, #6005501

Defendant.

CASE NO: C-14-299737-1
C-14-299737-2
C-14-299737-3

DEPT NO: XXI

STATE'S NOTICE OF EXPERT WITNESSES
[NRS 174.234(2)]

TO: DWIGHT CONRAD SOLANDER, Defendant; and

TO: CRAIG MUELLER, ESQ., Counsel of Record:

TO: DANIELLE HINTON, Defendant; and

TO: CLARK COUNTY PUBLIC DEFENDER'S OFFICE, Counsel of Record:

TO: JANET SOLANDER, Defendant; and

TO: CAITLYN MCAMIS, ESQ., Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF NEVADA intends to call the following expert witnesses in its case in chief

ALPHONSA, DR. STEPHEN - Southern Hills Pediatrics, Pediatrician: will testify to the medical records, examination, test results, observations, diagnosis, opinion and treatment of the Victims in this case.

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ARAMBULA, MINA – Desert Psychological, Therapist/Counselor: Will testify as to her practice and practice methods within her field of expertise. Additionally, will testify to the examination, observations/counseling therapy, treatment and diagnosis of the victim and/or Burnett/Diaz children.

BARKLEY, PATRICK RN: Will testify to his qualifications and education in the nursing field. Will also testify as to his practice and practice methods within his field of expertise. Additionally, will testify to the examination, observations, medical records review and/or treatment and diagnosis of the victims and/or Burnett/Diaz children.

BERNSTEIN, DR. JONATHAN - Children's Specialty Center of Nevada, Pediatric Hematology and Oncology: will testify to the medical records, examination, test results, observations, diagnosis, opinion and treatment of the Victims in this case.

CETL, DR. SANDRA - Sunrise Hospital: Is a medical doctor and is expected to provide testimony as a medical expert as to her opinions and findings including, but not limited to: her review and analysis of the medical records, reports and radiographic films, as well as the observations, diagnosis and treatment rendered to victim in this case, SCAN exams in general and directly related to the instant case. In addition, she will provide testimony as to her direct involvement, if any, in this case and the possible mechanisms of injury and causes of injury to the said victim.

CLARK, RUSSELL - Emergency Room Physician: will testify to the medical records, examination, test results, observations, diagnosis, opinion and treatment of the Victims in this case.

DAY, CHRISTINA – Therapist/Counselor: Will testify as to her practice and practice methods within her field of expertise. Additionally, will testify to the examination, observations/counseling therapy, treatment and diagnosis of the victim and/or Burnett/Diaz children.

DEWAN, DR. ASHEESH – Summerlin Hospital, Pediatric Endocrinologist: will testify to the medical records, examination, test results, observations, diagnosis, opinion and treatment of the Victims in this case.

DEZENBERG, DR. CARL - Pediatric Gastroenterologist: will testify to the medical records, examination, test results, observations, diagnosis, opinion and treatment of the Victims in this case.

DOWLING, GENNIFER RILEY - Psychological Rehabilitative Services and Basic Skills Training: will testify as to her practice and practice methods within her field of expertise. Additionally, will testify to the examination, observations/counseling therapy, treatment and diagnosis of the victims and/or Burnett/Diaz children.

EDWARDS, SHANNON RN: Will testify to her qualifications and education in the nursing field. Will also testify as to her practice and practice methods within her field of expertise. Additionally, will testify to the examination, observations, medical records review and/or treatment and diagnosis of the victims and/or Burnett/Diaz children.

HAZAN, DR. ALBERTO - Emergency Room Physician: will testify to the medical records, examination, test results, observations, diagnosis, opinion and treatment of the Victims in this case.

JOHNSON, ZACHARY - LVMPD P#8527 (or designee): will testify as to his education and training in computer forensics. He will testify as to the download, inspection, report, and forensic examination of Defendants' electronics.

KAWAN, MARY BRADLEY - Emergency Pediatrics: will testify to the medical records, examination, test results, observations, diagnosis, opinion and treatment of the Victims in this case.

LEWIS, RILEY - Psychological Rehabilitative Services and Basic Skills Training: will testify as to her practice and practice methods within her field of expertise. Additionally, will testify to the examination, observations/counseling therapy, treatment and diagnosis of the victims and/or Burnett/Diaz children.

MILETI, DR. ELIZABETH - Pediatric Gastroenterology and Nutrition Associates, Pediatric Gastroenterologist: will testify to the medical records, examination, test results, observations, diagnosis, opinion and treatment of the Victims in this case.

NVARKO, DR. MICHAEL - Desert Valley Pediatrics, Pediatrician: will testify to the medical records, examination, test results, observations, diagnosis, opinion and treatment of the Victims in this case.

RAJA, DR. ROSHAN - Child Neurology Specialists, Pediatric Neurologist: will testify to the medical records, examination, test results, observations, diagnosis, opinion and treatment of the Victims in this case.

RHEE, CHRISTOPHER - Pediatric Gastroenterologist: will testify to the medical records, examination, test results, observations, diagnosis, opinion and treatment of the Victims in this case.

SCHWEIGER, CARRON RN: Will testify to her qualifications and education in the pediatric nursing field. Will also testify as to her treatment and involvement in the care of Areahia Diaz as well as the multiple medical issues Defendants stated Ms. Diaz had in comparison to the observations and medical treatment she deemed necessary.

SHEIKH, DR. AJAZ - Advanced Adolescent Pediatric Gastroenterology, Pediatric Gastroenterologist: will testify to the medical records, examination, test results, observations, diagnosis, opinion and treatment of the Victims in this case.

SMART, DIANNE – Therapist/Counselor: Will testify as to her practice and practice methods within her field of expertise. Additionally, will testify to the examination, observations/counseling therapy, treatment and diagnosis of the victim and/or Burnett/Diaz children.

TRAUTEWEIN, JOHN - Emergency Room Physician: will testify to the medical records, examination, test results, observations, diagnosis, opinion and treatment of the Victims in this case.

TRIVEDI, DR. GARGI - Monte Vista, Psychiatrist: will testify to the medical records, examination, test results, observations, diagnosis, opinion and treatment of the Victims in this case.

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VANDUZER, DR. TIMOTHY - Emergency Room Physician: will testify to the medical records, examination, test results, observations, diagnosis, opinion and treatment of the Victims in this case.

VATSALA, DR. KESAVULU - St. Rose Dominican Hospitals, Pediatrician: will testify to the medical records, examination, test results, observations, diagnosis, opinion and treatment of the Victims in this case.

WADE, DIANA – Therapist/Counselor: Will testify as to her practice and practice methods within her field of expertise. Additionally, will testify to the examination, observations/counseling therapy, treatment and diagnosis of the victim and/or Burnett/Diaz children.

WELLS, LORI – Therapist/Counselor: Will testify as to her practice and practice methods within her field of expertise. Additionally, will testify to the examination, observations/counseling therapy, treatment and diagnosis of the victim and/or Burnett/Diaz children.

ZBIEGEN, MICHAEL - St. Rose Dominican Hospitals, Pediatric Emergency Medicine: will testify to the medical records, examination, test results, observations, diagnosis, opinion and treatment of the Victims in this case.

These witnesses are in addition to those witnesses endorsed on the Information or Indictment and any other witnesses for which a separate Notice of Witnesses and/or Expert Witnesses has been filed

The substance of each expert witness' testimony and a copy of all reports made by or at the direction of the expert witness has been provided in discovery.

A copy of each expert witness' curriculum vitae, if available, is attached hereto.

STEVEN B. WOLFSON
DISTRICT ATTORNEY
Nevada Bar #001565

BY /s/JACQUELINE BLUTH
JACQUELINE BLUTH
Chief Deputy District Attorney
Nevada Bar #10625

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing, was made this 4th day of January, 2018 by Electronic Filing to:

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(Def. J. Solander)

BY: /s/ Deana Daniels
Deana Daniels
Secretary for the District Attorney's Office

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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DWIGHT CONRAD SOLANDER, #3074262
DANIELLE HINTON, #6005500
JANET SOLANDER, #6005501

Defendant.

CASE NO: C-14-299737-1
C-14-299737-2
C-14-299737-3

DEPT NO: XXI

STATE'S NOTICE OF MOTION AND MOTION TO ADMIT EVIDENCE OF DEFENDANTS JANET AND DWIGHT SOLANDER'S ABUSE OF THE FOSTER CHILDREN IN THEIR HOME

DATE OF HEARING: 1/23/18
TIME OF HEARING: 9:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JACQUELINE BLUTH, Chief Deputy District Attorney, and files this Notice of Motion and Motion to Admit Evidence of Defendants Janet and Dwight Solander's Abuse of Foster Children in Their Home.

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

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NOTICE OF HEARING

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing motion on for setting before the above entitled Court, in Department XXI thereof, on Tuesday, the 23rd day of January, 2018, at the hour of 9:30 o'clock AM, or as soon thereafter as counsel may be heard.

DATED this 8th day of January, 2018.

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/DENA RINETTI
DENA RINETTI
Chief Deputy District Attorney
Nevada Bar #9897

FACTS REGARDING THE ADOPTED CHILDREN RELEVANT TO THIS MOTION

In January of 2011, Defendant Janet Solander and her co-defendant husband Dwight Solander formally adopted A.S. (10/21/01), A.S. (1/23/03) and A.S. (7/25/04). The three (3) girls had been foster children to Defendants for under a year before they were adopted. Throughout this motion, these children will be referred to as the "adopted children."

Shortly after the adoption, the Defendants began abusing the adopted children. While they were foster children in the Defendant's home, they were usually only "popped" which the girls described as slaps to the face. However, after being adopted the abuse became frequent and intolerable. There were several specific ways in which the Solander children were abused, the following are relevant to this motion at hand:

Toileting

Defendants had severe issues with the adopted children's toileting habits. It began by limiting the amount of time in which they could use the bathroom and controlling the amount of toilet paper they could use. Defendants would permit them to have only a certain amount of squares of toilet paper depending on what they were using the bathroom for. As time

passed, Defendants' position towards the children's toileting habits became much worse. Defendants would constantly punish them if they asked to go to the bathroom. The children then became scared to ask to use the bathroom, thus they would urinate and defecate in their pants. After messing themselves they were beaten for not asking Defendants if they could use the bathroom. Thus, the children were beaten if they asked to go to the bathroom too much as well as when they didn't ask and had an accident in their pants. This type of conduct created a cyclical pattern of dysfunction which caused major toileting issues with the children. The children became so afraid to ask to go to the bathroom or to go to the bathroom that their toileting issues spiraled out of control.

Defendants also used Home Depot paint sticks to beat the children if they asked to use the bathroom too much or if they went to the bathroom in their pants. All three children still have linear scars on their lower back and buttocks from the beatings. Some beatings would be so brutal that the children's skin would split open and their blood would be seen on the stick. On multiple occasions the stick actually broke, yet they were still beaten with the broken stick. It should be noted that along with the children's scars to corroborate this testimony, the paint sticks were also found in the home.

The toileting issue became such an obsession with Defendants that they began putting the children on timers. They could only use the bathroom when the timer went off. If they didn't use the bathroom when the timer went off, they would get punished. If they *did* use it at that time they would get punished for "not opening their mouths" and telling Defendants that they had to go to the bathroom. It was a no-win situation for these children.

Furthermore, Defendants became so obsessed with the children's toileting issues that they forced them to sit on Home Depot buckets each day, for the whole day. Shortly after being adopted, the children were pulled out of school and home schooled by the Defendants. Defendants' reasons for this were that the children had too many toileting issues and serious medical issues. Once they were homeschooled, they were forced to sit on the buckets for the entire day, from the moment they woke up until they went to bed. The buckets were orange in color and Defendant Dwight Solander placed a white toilet seat on top of the bucket. To

humiliate the children even more, the Defendants placed "baby" names on the buckets, so the children felt bad about themselves. While sitting on the buckets they were allowed to wear a shirt, but they were forced to sit on the buckets with their bare bottom. If they had an accident in the bucket, they would be beaten with the sticks.

It got to the point that the children were no longer allowed to use the bathroom at night. The Defendants placed an alarm on the bathroom door and a gate on the children's bedroom door. The children were told if they passed the gate they would get electrocuted. The Defendants installed several video cameras in the home and told the children they were watching them at all times.

On a few of the occasions that the children had accidents, the Defendants made them crawl around on the ground sucking pacifiers saying "goo goo" "gaa gaa" while the other foster children laughed at them.

Mistreatment

While Defendants took great lengths to physically abuse the children, they also abused them by negligent and/or maltreatment. There were several other children in the home that were "foster" children, however, the victims were not allowed much contact with those children.

For instance, A.S. (10/21/01), A.S. (1/23/03) and A.S. (7/25/04) were forced to take cold showers. Not only were the showers cold, but Defendants would then pour buckets of ice on them while they showered. After they were done showering, Defendants would force them to dry off by using fans.

After the children got out of the shower the Defendants would take a "special light" and view the shower; if there were any signs that the children had urinated in the shower, they would be beaten with the stick. They would also check their underwear. Defendant Janet Solander would either beat them herself or she would direct her husband to do it.

The children were also not given beds; they were forced to sleep on boards with no blankets. If they had an accident that day, they would be punished by being forced to sleep in only their underwear, on boards, with a fan blowing on them.

If the children had accidents, they were also punished by withholding food and water from them. If they had an accident, Defendants would sometimes refuse to let them eat the rest of the day. The same would be done with water. Sometimes a timer was used while they ate, if they didn't eat in the allotted time period, they were punished.

On two specific occasions Defendant Janet Solander forced the children to eat or lick their feces or urine. They were also forced to place their soiled underwear in their mouth for long periods of time if they had an accident.

Toileting was an obvious and repeated issue within the home. The children were only allowed a certain number of toilet paper squares for urine or defecation. They also were not allowed to go to the bathroom in private, but instead were timed and had to be in the presence of other people, mainly together and all three were forced to check each other's underwear.

Physical Abuse

All three of the children also suffered physical abuse at the hands of Defendants. Not only were the children beaten with paint sticks by all three Defendants, they were also slapped, hit, threatened with a razor, pushed and kicked down stairs, burned, and sexually assaulted.

To give the court two specific incidents:

On one certain occasion, A.S. (10/21/01) had an accident and had urinated in her pants. Defendant Janet Solander was so angered by this accident that she grabbed A.S.'s head and repeatedly slammed it into the kitchen counter. This was witnessed by A.S.'s sister. A.S.'s eye was slammed into the counter so many times that her eye was black and blue and was swollen shut in the following days.

On another occasion, A.S. (7/25/04) was outside in the back picking up droppings from the family's dog. After A.S. was done she was called into the bathroom to wash her hands. The temperature of the water was too hot so A.S. protested putting her hands in the water. Defendant Janet Solander took a lid off of the bathroom candle, filled it with water, and then splashed it onto A.S.'s face. When A.S. began to cry in pain, the Defendant Janet Solander

picked her up and forced her head into the water. A.S. still has scars to this day behind her ear and on her shoulder from the burns she received.

Children's medical treatment

While the children were in the care of Defendants, they took them to several specialists regarding health problems that Defendants stated they had. The medical records take up multiple boxes. Defendant Janet Solander held herself out to be a nurse and used this "made-up" position to force other medical personnel into believing these children had issues. Defendants stated that the girls had issues with their gastrointestinal systems and repeatedly took them to doctors who found nothing. They also used the excuse that the children had dietary issues to keep them from eating regular foods. They would blend the children's food three times a day (this was later decreased to twice a day), and they were forced to drink their meals. They were not allowed to have types of food that other children normally eat. Defendants told them they had to be on a liquid diet because of their "medical conditions" and had been doing so since 2011. Defendants told A.S. (1/23/03) that she had a twisted colon and thus couldn't not eat solid foods. Additionally, Defendant Solander told A.S. (1/23/03) that she had been diagnosed with hypothyroid. Defendants told A.S. (10/21/01), that she had Crohn's Disease, and that A.S (7/25/04) was undergoing tests to find out what was wrong with her. The Solander children were rarely given any water or other hydration and were not allowed to drink anything past 12:00 pm. Furthermore, when they were being disciplined they weren't even allowed to eat their blended food, but were made to starve and thirst.

It should also be noted that all three children severely dropped on the growth and weight chart during their three year stay with the Solanders. Both before the children were moved into the Solander home, as well as now, the children have returned to developing normally. Not only did the Defendants state they had problems medically for their physical bodies, but at one point, admitted one of the children into Monte Vista for "mental issues." Also, the children were unnecessarily given medication while under the care of the Defendants. Now they no longer need any of the medications previously given to them.

Sexual Assault

Defendants became so obsessed about the children's toileting, that Defendant Dwight Solander purchased catheters, and Defendant Janet Solander started inserting a catheter in the children's vaginas to see if they had any urine in their bodies. If any urine came out of the catheter at all, the children were punished.

Defendants spoke about the children's toileting issues with CPS and also stated the children had repeated accidents which caused them to have repeated yeast infections and urinary tract infections.

On one specific occasion, Defendant Janet Solander even stuck the Home Depot stick up the youngest daughter's vagina.

If the children would fight in any way, Defendant Janet Solander would threaten them with a razor blade, telling them that she would cut their private out.

Once CPS became involved with the investigation they met with Defendants Janet and Dwight Solander. During their discussion, each Defendant relayed the following:

Dwight Solander

A.S. (1/23/03) was hospitalized and was in a coma during the Christmas holiday in 2012 and was diagnosed with a hypothyroid and is now on anti-seizure medications. Additionally, she also has pustular psoriasis, and a twisted colon. Defendant Dwight Solander stated that A.S. (10/21/01) had Crohn's Disease and that A.S. (7/25/04) was undergoing tests so they could figure out what was wrong with her. Mr. Solander admitted to the girls being on a purely liquid diet stating they can't eat solids or they get "stopped" up and then defecate themselves. He also stated that they give the girls two blended meals a day and stop all liquid intake at 12:00 pm so the girls do not have any issues having accidents on themselves. He also stated he only allows the girls a few squares of toilet paper because they waste it. He stated they have had a hard time teaching the girls how to wipe and clean themselves and that yeast infections and urinary tract infections were common. He admitted to checking the girls' panties because they constantly have accidents. He also stated the girls are home schooled

because they have medical issues and because they continued to tell school staff that they were hungry which would cause staff to feed them and then they would have bowel issues.

Janet Solander

Defendant Janet Solander stated that her daughters are on a liquid diet for their own benefit and not because she is trying to punish them. She said the girls suffer from a variety of medical issues including bowel and intestinal issues. Janet stated that one doctor had even consider putting A.S. (1/23/03) on a feeding tube. She stated that A.S. (10/21/01) was diagnosed with Crohn's Disease, and A.S. (7/25/04) had been diagnosed with Von Willebrand's Disease which is a blood clotting disorder. Defendant Janet Solander stated the children were taken out of school because of their medical issues as well as the fact that they were always stealing food from the school. Defendant Janet Solander also stated that all of the girls must go to the bathroom together even if they don't want to and must check each other's panties for stains to ensure that they have not had any accidents. Defendant Janet Solander also stated that she was currently writing a book about being a foster parent and that she attended Wright State University, Arizona State University, the University of Phoenix and holds degrees in nursing and health care administration.

Once the investigation continued both Detectives and CPS saw that the adopted children were not the only ones being abused and neglected. In fact most of what the adopted children were going through, was also being done to the foster children.

FACTS RELATING TO THE OTHER FOSTER CHILDREN IN THE HOME PERTINENT TO THIS MOTION

During the time period that the victims in this case were in the Defendants' home, the Defendants also cared for other foster children. There were a total of six (6) other children. One family consisted of four children. These children were A.D. (9 years of age), K.B. (4

years of age), D.B. (3 years of age), N.B. (1 year of age)[1]. There was also another group of siblings, A.S. (years of age), and I.S. (years of age). Not surprising, many of the abuse that the adopted children went through also happened to these children. While nobody understands why, the Defendants seem to have an obsession and issue with the children in their home eating habits, toileting, and what they "believe" to be medical issues. As can be seen when looking at the charges in the case at hand compared to the treatment of the other children in the home, there is a clear motive, intent, and common scheme/plan. Furthermore, there is knowledge on behalf of the Defendants that shows their "diagnosis" is not an innocent mistake.

A.D., K.B., D.B., and N.B.

On January 30, 2014 CPS received a report from Diana Wade, from Shining Star Community Services, reporting that several of the individuals who were working with the foster children in the home were concerned about their treatment. They reported that the children were sleeping on cots, wearing shoes too small, and were being told that they were seriously ill, but yet no medical documentation was being provided. The children were only allowed a certain amount of toilet paper and were have serious issues with urinating and defecating on themselves because they were so afraid to ask to use the bathroom.

Lori Wells, a therapist who works at Legacy Health and Wellness, worked with these four children who were foster children of the Defendants. She made a report to CPS because she believed that Defendant Janet Solander was suffering from Munchausen syndrome by proxy due to the ongoing medical issues she was stating that A.D. K.B, D.B., and N.B. were having, when there actually were no issues.

Lori stated that when she first began working with these children, K.B. (4 years old) was incredibly emaciated and seemed to be malnourished. Lori stated that they give all the children in the office snacks such as apples and oranges. When Defendants found this information out they became enraged. Lori attempted to talk to Defendant Janet Solander

[1] A.D. shared the same mother as her three siblings but not the same father which is why she has the last name "D" and not "B"

about the way K.B. looked but Defendant Janet Solander said it was because she rarely sleeps and wanders the house all night. Defendant Janet Solander also stated that K.B. had been eating gauze and that it was in her belly and soaking up food and nutrition, which is why K.B. cannot eat most foods. When Lori pushed on the issue K.B. ended up in Monte Vista Hospital for a week. After being released from the hospital, K.B. came back to see her and looked great, was full of energy, and looked much more nourished. Sadly, after a period of going back to Defendants she went back to looking worn out and weak with bags under her eyes.

Therapist Wells reached out to CPS on multiple occasions regarding her concerns for these children. Specifically on October 8, 2013, Ms. Wells discussed the fact that Defendants continue to say the children have toileting issues, but while they are at therapy there are no issues at all. The children complained that the Solanders are shaming them and putting them in pull ups. Additionally, K.B. reported that she is currently sleeping in a closet because she is "afraid" of monsters. She reports that she cannot come out of her room because "the alarm will go off and the door is locked." Additionally, the children are not allowed to say they are hungry or they will go to timeout. When the children would appear for therapy they would be ravenous and keep requesting more and more food. Therapist Wells wrote, "food is not to be rationed, timed, or used as a punishment to decrease the likelihood of an eating disorder."

Additionally, Defendant Janet Solander stated that she had self diagnosed N.B. (1 years old) with Autism and that she was trying to find a doctor to confirm the diagnosis. Lori explained to Defendant Janet Solander that N.B. did not have any of the signs of autism. She discussed the signs of autism and pointed out that N.B. had good eye contact and followed directions.

Therapist Wells tried to speak to the Solanders about many issues but the only things Defendants cared about were the children's peeing, pooping, and food intake. The Solanders stated that **they have three adopted children in the home that "pee and poop everywhere" and she has to keep them on the pot for "ten hours a day because of it."**

In September of 2013, CPS received a report of mistreatment of these four children by Defendants. One specific complaint dealt with them physically restraining K.B. (4 years old).

Defendant Janet Solander admitted they had to restrain K.B. to keep her from harming herself. They even went as far as admitting K.B. into Monte Vista for medical treatment. They then got angry with medical staff because they didn't follow, what the Defendant's termed "K.B.'s doctor mandated diet."

Lori also noted that when she first began working with these children they went from being very open to emotionally shut down. There were no toileting issues before they came to the Solander home. Lori tried to explain to the Solanders that the toileting issues and the Solander's discipline causes the children confusion and shame which leads to their condition of incontinence. The Solanders refused her advice. Defendant Janet Solander told her that they were going to put all three of their adopted daughters (the Solander girls) into longer term inpatient care out of state and then adopt these four children. This seemed odd to Lori because according to Defendant Janet Solander, she couldn't handle the three adopted children because they were "medically fragile" but yet she was willing to adopt the four new children who she was also claiming had similar issues.

Gennipher Dowling a PSR/BST worker from Shining Star also worked with A.D. for therapy treatment. Ms. Dowling stated that Defendant Janet Solander told her that A.D. had diabetes and that she was trying to get a doctor to confirm the diagnosis. Defendant Janet Solander repeatedly held herself out to be a nurse and diagnosed her adopted and foster children, however the first two doctors had refused the diabetes diagnosis, so Defendant Janet Solander was looking for a third.

Gennipher stated that it was her opinion that the children were afraid to talk about anything that was going on in the foster home. Once she was able to get the children outside of the home they would relax and seem to talk more freely. On one particular trip, Gennipher was taking N.B. (1 years old) home and noticed that she was trying to pull her shoes off. When Gennipher went to take N.B. out of her car seat she recognized that the shoes were so small for N.B. that her toes were curled up. When she brought this information up to Defendant Janet Solander, she stated that N.B. was under the care of a specialist and that the specialist stated that wearing these shoes would be the only way that N.B. would be able to walk and the

shoes must remain on at all times. Gennipher asked Defendant Janet Solander for the name of the specialist and she refused to name the doctor. Defendant Janet Solander stated that she also keeps up D.B. (3 years of age) up until 11:45 PM each night so that he will sleep through the night without getting up to urinate because she does not want to have to get up at night.

Gennipher contacted CPS stating that she believed that A.D. did not have diabetes and that Defendant Janet Solander was shopping around looking for a diagnosis and trying to control A.D. through diet. Defendant Janet Solander admitted that she added cornstarch to A.D.'s oatmeal to get her blood sugar up and if she does not eat it within a twenty minute time limit, she will force feed it to her.

Investigators also spoke with Shining Star PSR/BST worker, Riley Lewis. Ms. Lewis also worked with these same four children in a therapeutic setting. She stated that since working with the children their behaviors had regressed and she believed that something was going on in the home. Every time she would ask the children if everything was okay in the home, they would look down and state, "I don't know." Once the children were taken outside of the home, they would relax and feel more comfortable. Ms. Lewis noted that all of the children had been having problems with urinating and defecating since being in the home. The children had been increasingly missing appointments and Defendant Janet Solander always stated the children were sick. Right before the children were taken away from the Solanders, when Ms. Lewis would get to the home everybody, including the children, would be walking around with surgical masks on their face. Ms. Riley stated that she was fearful that Defendant Janet Solander had Munchausen syndrome by proxy.

Clark County School District nurse, Carron Schweiger reported that she also had serious concerns with student A.D. (9 years old). When the Solanders came in and filled the entry forms out the Solanders filled out a supplemental health questionnaire and every possible health issue was checked off on the card. Nurse Schweiger stated that diabetes was checked off on the card even though A.D. showed absolutely no signs of diabetes and had absolutely no supplies that a child would have who was receiving diabetes treatment. When Nurse Schweiger asked Defendant Janet Solander about it, she then sent A.D. to school with a bunch

of tubes and needles that did not fit the proper glucometer, furthermore, A.D. had absolutely no idea how to use the items. Later on in the school year, A.D. came in with a note from a care provider stating that A.D. must be fed in the nurse's office because of health issues and food theft. According to Nurse Schweiger she was aware that Defendant Janet Solander had gone to see two doctors hoping for a diabetes diagnosis but had not yet gotten one, and was trying for a third. A.D. told Nurse Schweiger that she was incredibly fearful of having to continuously go to doctors because she was afraid that one of them might find something wrong with her. Defendant Janet Solander held herself out to be a nurse, but when Nurse Schweiger checked the nursing registry, she could not find her name.

On one occasion a counselor by the name of Gennipher Dowling came to the school stating that she was there to make sure that A.D. was eating her lunch in the nurse's office because she was told that A.D. fails to eat her lunch and steals food from other children in the lunch room. Nurse Schweiger told her that there had never been any member of staff that ever observed or heard of A.D. stealing any other student's food, or being non-compliant in any manner.

One day, A.D. showed up to school without any of her normal diabetes care products so Nurse Schweiger called the Defendants' home to see what was going on. Defendant Janet Solander answered the phone and told her that it was no longer needed. When Nurse Schweiger told her that she would need a doctor's note stating that care was no longer needed, Defendant Janet Solander hung up the phone. Anytime A.D. was asked to talk about what was happening in the home she stated that she was not allowed to discuss what went on in the home.

Defendant Janet Solander was not the only foster parent the school had issues with. Defendant Dwight Solander would come to the school demanding that A.D.'s eating be monitored, stated that A.D. was non-compliant and would steal food from other children. He also stated that A.D. should not be in fourth grade because she was not intelligent enough, and also discussed her "obesity." Both of these comments were made to A.D.'s teacher in front of the entire class.

In an email that Nurse Schweiger wrote to CPS on January 23, 2013, Nurse Schweiger discussed the fact that she had met with A.D.'s teacher and the lunch aides, and all were very concerned about A.D.'s physical and mental well-being while at the Solander home. She stated, "We have met informally today – the teacher, myself, and lunch staff. We agree that we are extremely concerned for her well-being and I will go so far as to say for her emotional well-being. These foster parents will say demeaning things in front of A.D....Please be in contact with me so that I know you received my email. How are we going to proceed? I am very concerned for A.D.s well-being." Nurse Schweiger also pointed out that the Solanders had another foster child in the school last year, A.S., a child not related to A.D. in any way, and the school had the same issues with the Solanders. (Please see this behavior under A.D.'s heading)

Nurse Schweiger told CPS that she had serious concerns about how the Solanders were treating A.D. and believed Defendant Janet Solander to be suffering from Munchausen by proxy.

After receiving six formal complaints for investigation, CPS Investigator Yvette Gonzalez met with Defendant Janet Solander on February 27, 2014 and asked to see all of the children. The first child that Defendant Janet Solander brought down was N.B. (1 year old). Investigator Gonzalez noticed that N.B. was walking completely fine and was not in the "special shoes" that Defendant Janet Solander had told others were prescribed to her by a doctor. Defendant Janet Solander stated that N.B. had been diagnosed with autism and that a CT scan was done and the doctor stated that N.B. showed signs of autistic tendencies and she was prescribed medication. She also stated the doctor diagnosed N.B. with intermittent explosive disorder. Investigator Gonzalez told her that she must stop the medication immediately as it was not approved by the biological family or CPS.

When D.B. (3 years old) and K.B. (4 years old) were brought downstairs they both had multiple bruises to their face. Defendant Janet Solander said she believed they received some of them at a play place and some while at therapy.

Investigator Gonzalez stated that she was told Defendant Janet Solander had been telling school staff that A.D. had diabetes but all of the information actually gathered from the doctors indicated that she is most likely hypoglycemic. Janet stated that a cardiologist, whose name she couldn't remember, diagnosed A.D. as pre-diabetic since she has skin tags and dark spots on the back of her neck, which are indicators of the onset of diabetes. Janet was also asked about why she checks A.D.'s underwear and watches her while she showers. At this point, Defendant Janet Solander became angry and **stated that all of the children in the home have bathroom issues and they soil their bedding almost daily**. She stated that D.B. takes his feces and smears them on the wall and his bed. (Note, this is also something that she claimed the adopted children did).

Defendant Janet Solander was asked if she was in fact a nurse and she stated that she was. Investigator Gonzalez stated that they had checked local registries and her name was not coming up. When pressed on the issue, Defendant Janet Solander told her that this information was none of her business. The investigator then told Defendant Janet Solander that the children would be removed at this time. Defendant Janet Solander refused to let CPS take the children's clothes. When Defendant Janet Solander was asked where the adopted children were she stated they were in Nebraska with her parents. When CPS Investigator Yvette Gonzalez asked for the contact information to find the adopted children, Defendant Janet Solander kicked the investigator out of her house, stating that she knew this was just retaliation since she had written a book about the corruption of DFS. The investigator left the home and filed a missing person's report for the adopted children.

A.S. (7 years old)

In February of 2014, while the Solanders were being investigated, CPS began looking back into CPS records to see if there were patterns of behavior or concerns in reference to the other foster children in the home. C.P.S began recognizing similarities in some of the Defendants' issues with the various children in their home. Three of the main concerns were whether or not the children were actually "sick" as Defendants were claiming them to be, the

children's toileting issues, and whether or not the children were being allowed to eat and drink proper amounts.

CPS notes show that, per Defendant Janet Solander, foster child A.S. had a medical appointment due to hard stool and that during the night she tends to have bowl movements. Defendant Janet Solander told workers that A.S. continued to have hard stool to the point that she clogs the toilet. Defendant Janet Solander also reported that both A.S. and her sister I.S. continue to wet the bed and have bowel movements overnight. **Defendant Janet Solander told the CPS worker that A.S. who is 7 years old is wearing two pull ups at night and that they are soaked through by the morning and the child has a "tendency to put her hands down the pull ups and then put her hands in her mouth.**" According to Defendant Janet Solander, A.S. continued to have issues with her bowel movements and her stomach protruding so Defendants were giving her Miralax.

Similarly, CPS investigator Davidson also noted that Defendant Dwight Solander called expressing concerns with Darnell Elementary School regarding A.S. eating other children's lunches as well as giving found food to her sister, I.S, which caused I.S. to have stomach problems. Defendant Dwight Solander complained that the school was supposed to implement supervision during lunch and has failed to do so. Defendant Dwight Solander then stated he was going to get a doctor's note. The Solanders requested that A.S. be placed at the end of the lunch table to be monitored and that her classmates be instructed not to share food with her. A.S. was required to give her backpack to the school bus driver and drop off her lunch box at the office daily. Defendant Janet Solander stated that school staff stated (later refuted by school staff) that A.S. had been observed to eat out of a garbage can at school. Investigators immediately recognized the similarities both with the other foster children, as well as the adopted children.

It should also be noted that every time the Defendants were approached by the school district, different therapy/counseling centers, and/or CPS, they then asked to get new nurses, new therapists, and new CPS workers.

LEGAL ARGUMENT

I. THE STATE IS ENTITLED TO PRESENT EVIDENCE OF THE OTHER FOSTER CHILDREN'S ABUSE TO PROVE MOTIVE, INTENT, COMMON SCHEME OR PLAN, LACK OF MISTAKE OR ACCIDENT, AND KNOWLEDGE

The State seeks to admit the following two areas of evidence at trial:

1. Defendants' representations that other foster children in the home were "ill" and/or suffering from digestive issues. As part of this evidence, the State would seek to admit the fact that Defendants limited their food intake, went to the foster children's school and tried to put them on restricting eating schedules, took them to different doctors and facilities, administered medicine, and diagnosed the children themselves.

2. Defendants' claims that other children in the home had toileting issues. As part of this evidence the State would seek to admit the fact that Defendants limited the foster children's food intake, their bathroom usage time, toilet paper usage, inspected their underwear, forced them to sleep on cots, used alarms and gates, and punished them for their toileting issues, for instance, made them take cold showers.

I. Case Law Supportive of This Position

The State believes it is entitled to present this type of evidence in order to prove motive, intent, knowledge, lack of mistake or accident, and/or common scheme or plan. NRS 48.045(2) provides:

> Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that she acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

However, NRS 48.045(2) is not an exhaustive list and the State may elicit other relevant bad act evidence for any relevant non-propensity reason.

In Bigpond v. State, 128 Nev. Adv. Op. 10, 270 P.3d 1244 (2012), Appellant argued that the district court abused its discretion by admitting evidence of his prior domestic violence

to explain his relationship with the victim and to provide an explanation for the victim's recantation at trial. Id. at 4. The Nevada Supreme Court held that evidence of other bad acts may be admitted under NRS 48.045(2) for relevant non propensity purposes other than those listed in the statute. The Court interpreted the second sentence of the statute to be illustrative rather than exhaustive. Id. at 5.

Across the United States, as well as in Nevada, both child sexual abuse cases and child physical abuse cases have a long history of the admission of bad act evidence, mainly, because of the factors that revolve around these types of cases.

"The admissibility of evidence of other crimes, wrongs, or acts to establish intent and an absence of mistake or accident is well established, particularly in child abuse cases," United States v. Harris, 661 F.2d 138, 142 (10th Cir. 1981), where the State must often "prove its case, if at all, with circumstantial evidence amidst a background of a pattern of abuse," United States v. Merriweather, 22 M.J. 657, 663 (A.C.M.R. 1986) (Naughton, J., concurring). "A recurring child abuse scenario is one in which an infant is brought to a hospital emergency room with multiple broken bones in various stages of healing. If, in ensuing child abuse prosecutions the multiple separately occurring injuries are not admissible, then child abuse would be almost impossible to prove. A common defense used by custodians in child abuse cases is that the child's injuries were accidently inflicted, and in many instances the only way the State can rebut this contention is by showing other acts of abuse to prove intent, malice, or that any excessive force could not be an innocent mistake." State v. Taylor, 347 Md. 363, 701 A.2d 389 (Ct. of Appeals of MD, 1997).

In Rimer v. State, 131 Nev. Adv. Rep. 36, 351 P.3d 697 (2015), Appellant was charged with second degree murder for allowing his disabled child to be left unattended in an extremely hot vehicle for an extended period of time as well as several counts of child abuse for the victim and his siblings. Appellant challenged the joining of the second-degree murder count with the child abuse counts. The Nevada Supreme Court found that "the abuse charges and the death charges were connected together because evidence from these charges demonstrated

a pattern of abuse and neglect that would have been relevant and admissible in separate trials for each of the charges." Id. at 709.

The same can be said for the case at hand. Defendants' interactions with, and treatment of, the foster children is absolutely identical to the way they abused the adopted children. From constantly taking the children to doctors, to the myriad of health and toileting issues the Defendants claimed these children had, to the restriction of food, and use of discipline, illustrates that this was an absolute pattern of abuse and neglect that clearly demonstrated the motive and intent of these individuals. Just like the Court saw in Rimer, the same can be said for the Solanders, this is a pattern of abuse and neglect that would be relevant and admissible at trial so the jury can understand the total picture.

Not only is prior abuse of the same child victim appropriate, but also, other child victims. Other jurisdictions have generally held that evidence of child abuse perpetrated against children other than the victim of the crime is admissible. In State v. Widdison, 2000 UT App 185, 4 P.3d 100 (2000), Appellant was convicted of child abuse related to her child's broken clavicle, injuries to the child's frenulum, and a severe diaper rash. At trial, the prosecution presented evidence that the victim's sister stated that Appellant had hit the victim in the nose, struck the victim with a belt, and spanked the victim. Id. at 108. "Evidence of prior child abuse, both against the victim and other children, is admissible to show identity, intent, or lack of accident or mistake." Id. citing State v. Teuscher, 250 Utah Adv. Rep. 13, 883 P.2d 922, 927-28 (holding evidence that defendant broke a child's leg, shook a child, grabbed children by their hair and arms, and put children in closets was properly admitted in a trial for the death of a different child). Moreover, "[b]ecause the prior bad act evidence at issue here related to defendant's intent or knowledge, it was admissible in the State's case in chief. By pleading not guilty, defendant placed all elements of the crime at issue, including knowledge and intent. Therefore, this evidence goes directly to proving the elements of the crime, requiring the State to rely on circumstantial evidence. Further both defendants made statements to both the police and other witnesses which put absence of mistake or accident at

issue. As such, it was necessary and appropriate for the State to introduce this evidence in its case in chief." Id. at 109.

In United States v. Woods, 484 F.2d 127 (4th Cir. 1973), Appellant was convicted of murder in the first degree and seven charges of assault with intent to murder, attempt to murder, and mistreatment of her eight (8) month old foster son who died from lack of oxygen. At trial, the government presented evidence that nine (9) children in Appellant's care suffered a minimum of twenty (20) episodes of low oxygen levels. The Court allowed the government to introduce the evidence to show the identity of the perpetrator and lack of accident or mistake. The Fourth Circuit Court of Appeals concluded that evidence concerning acts of abuse against children other than the victim was properly admitted. Id. at 134-35.

In Longfellow v. State, 803 P.2d 848 (Wyo. 1990), Appellant was convicted in the death of her three (3) month old child. Appellant challenged the trial court's ruling allowing the prosecution to admit testimony regarding the abuse of another child. Id. at 851. The Supreme Court of Wyoming held that the prior bad act evidence was admissible to prove identity of the abuser as well as intent. Id. at 853. "[E]ven a general intent crime requires a showing that the prohibited conduct was undertaken voluntarily. The instances of prior abuse were therefore relevant to show general intent." Id.

In People v. Brown, 199 Ill. App.3d 860, 557 N.E.2d 611, 621 (1990), evidence of prior acts of child abuse against a child other than the victim was admitted to show the defendant's intent or lack of accident or mistake. The Appellant was convicted of attempted murder, aggravated battery, and aggravated battery of a child. The victim, a nineteen (19) month old child, had been severely abused by the defendant over time. As a result of being thrown into the ceiling, the victim sustained severe spinal injuries that left her permanently paralyzed from the neck down and unable to breathe on her own. The trial court allowed the admission of Appellant's rather lengthy history of prior acts of child abuse against other children, including a previous conviction for involuntary manslaughter of another child, to show intent or lack of accident or mistake. The Appellate Court of Illinois held that the evidence of prior acts of child abuse, including the previous conviction for involuntary manslaughter, "was admissible to

show the defendant's intent or, put another way, the absence of accident when he nearly caused the death of the [present victim]."

In State v. Morosin, 200 Neb. 62, 262 N.W.2d 194, 196-97 (Neb. 1978), Appellant was convicted of injuring a seven (7) month old child. The child had multiple bruises over her body, a severely lacerated tongue, a burned hand, ulcerations to both of her eyes, four (4) rib fractures, and several fractures to her arms and legs. Id. at 195. At trial, the prosecution presented a social worker, who testified that she saw the Appellant's own disabled child on two (2) occasions with suspicious injuries, in order to prove motive and intent. Id. at 196. "Evidence of intent, in [child abuse] cases, is ordinarily circumstantial, and injuries to children are ordinarily claimed to be accidental and unintentional. That was the case here....The record specifically shows, however, that the court treated the challenged evidence as admissible only for the limited purpose of proving motive and intent. That action was correct." Id. at 197.

Evidence of prior abuse of the same child victim is important but not nearly as important as prior evidence committed against multiple children. For instance, when the abuse is committed upon just one child or one family of children, Defense has the ability to always point out that specific child was ill, or that specific child was around other individuals that could have committed the abuse. Now, when you have multiple children being abused and in the care of the same person, the motive, intent, and common scheme or plan becomes much clearer. Take for example, the fact that Defendants claim the Solander children were all ill, one could possibly buy that presumption and just think that since the children are genetically linked, they all could be ill. However, looking at the bigger picture when you see that every single child brought into that home had the same type of health issues and had to go through the same things as the Solanders girls makes the observer realize, this is not possible. This type of pattern of abuse is precisely what the Nevada Supreme Court was talking about in Rimer.

II. The Admission of this Evidence at Trial.

In order to admit such evidence, the State must establish that the acts are: (1) relevant to the crime charged; (2) proven by clear and convincing evidence; and (3) the probative value

is not substantially outweighed by the danger of unfair prejudice. Id. See also Tinch v. State, 113 Nev. 1170, 946 P.2d 1061 (1997). The decision to admit or exclude evidence lies within the discretion of the court. Such a decision will not be reversed absent manifest error. Kazalyn v. State, 108 Nev. 67, 825 P.2d 578 (1992); Halbower v. State, 93 Nev. 212, 562 P.2d 485 (1977).

Here, the State will discuss each of the three prongs and how they admit to the evidence the State is seeking to admit:

A. Defendants' representations that other foster children in the home were "ill" and/or suffering from digestive issues. As part of this evidence, the State would seek to admit the fact that Defendants limited their food intake, went to the foster children's school and tried to put them on restricting eating schedules, took them to different doctors and facilities, administered medicine, and diagnosed the children themselves.

Relevance

This is a critical piece of evidence. Defendants' entire premise on why they treated the adopted children as they did was because these children were sick, they had severe gastrointestinal issues, and thus they had to treat them this way because it was the only way they could keep the children from messing themselves. So, because the adopted children were "ill" the Defendants had to do all the things in which they are charged with. For example, had to remove the adopted children from school and homeschool them where they would sit on buckets for a minimum of ten hours a day, and/or stand for long periods of time in black garbage bags urinating and defecating on themselves, Defendants enforcing strict dietary restrictions where the adopted children could only eat twice a day, and that food had to be blended. The children were only allowed to drink minimal amounts of water and never after 12:00 in the afternoon.

Now, one might buy the Defendants story that these children were so ill that these precautions had to be taken, yet, when you look at the same treatment for the other foster children you realize that this is completely not true.

The same type of conduct was done to not one set of foster children but two. It was so recognizable that the school nurse alerted CPS stating that the Defendants had done this two years in a row with two different foster children from two different families. When the police interviewed the foster children and those that had contact with them, they realized that the very same abuse was happening to these children as well and NONE of these children were sick. The foster children were being singled out at school, Defendants told school staff that some of them were sick, had to be on strict diets, and that they were stealing food from other children, that they were defiant, and could not be trusted. The exact same things were said about the adopted children.

The children were not allowed to eat normal foods, were taken repeatedly to doctors, Defendant Janet Solander diagnosed them with diabetes, social disorders, and mental health issues. They did the same thing to the adopted children.

This evidence is clearly proof of motive, intent, knowledge, common scheme or plan, and absence mistake or accident.

The motive and intent is clear, Defendants had the desire to abuse and neglect children, why else would you put children through things like this? There is also a monetary motive as well, the more issues with a foster child that a foster parent can come up with the more money they receive. In fact, records show that Defendants requested more money since these children had more issues than the "average, normal" child. Interesting enough, Therapist Lori Wells even asked Defendants why they would want to adopt the new four foster children since they had so many "medical issues" when it was her understanding that the adopted children were being sent to a treatment center because they were so "medically fragile" as well. This goes to show that people working with the Defendants saw a pattern.

Furthermore, these Defendants had knowledge that there was absolutely nothing wrong with these children. Not one, but three health care professionals believed that Defendant Janet Solander suffered from Munchausen by proxy. They knew there was nothing wrong, yet they continued to put both their adopted and foster children through this daily hell.

Without knowing that Defendants' were claiming all of the other foster children had the same issues, one might actually think that that this was a mistake or an accident and that the Defendants actually did believe the adopted children were sick. Yet, when you look at the fact they were claiming that every other kid that came to them had the same made up issues, you see that this was absolutely no mistake or innocent "misdiagnosis" by Defendants.

Lastly, this was a common scheme or plan, not only for the abusive/neglect intent of it, but also, as previously mentioned, for the monetary gain. The same tactics that Defendants used to isolate the adopted children were used on the foster children. If you look at the preliminary hearing testimony of the named victims and compare what was happening to them to the facts presented as to what was happening to the foster children, you can see that Defendants were using the exact same plan for both sets of children.

Defendants' claims that other children in the home had toileting issues. As part of this evidence the State would seek to admit the fact that Defendants limited the foster children's food and water intake, their bathroom usage time, toilet paper usage, inspected their underwear, timed their food intake, and punished them for their toileting issues, for instance, made them take cold showers.

Relevance

Almost everything that Defendants did to the adopted children was because of what the Defendants' termed, their "toileting issues." Ironically, it was because of Defendants' abuse towards these children that they developed their toileting issues.

In both of Defendants' statements either to CPS or Detectives they discussed the fact that their adopted children had severe toileting issues and thus they had no other choice but to do the things they did, i.e. force them to sit on buckets, cold showers, inspect their underwear and shower, limit their food and water consumption, limit their toilet paper usage, make them sleep naked on cots with just underwear on, no sheets, with a fan blowing on them, and the insertion of catheters into their vaginas. Defendants also put a gate up, instilled security

cameras, and put an alarm on so the children could not leave the loft to use the bathroom at night.

Defendants stated that this was because not only were the adopted children sick but they were also "defiant" and very hard to control. Defendant Dwight Solander stated that they were foster kids and they had "typical issues" that any foster kid would have. They suffered from "issues of abandonment and not quite knowing where they're at or what they're doing." (Defendant Dwight Solander's VS)

When looking at the case as it revolves around the adotped children, one might actually think this was the case, but yet when you look at every other child that came into the home, they had the exact same issues. This shows the Defendant's motive and intent. For instance, Defendant Janet Solander, stated that 3 y.o., foster child, D.B. would purposefully defecate and then smear it all over the walls, and also referred to him as "defiant." Defendants forced both sets of foster children to wear pull-ups even though some were as old as seven. Defendants stated that the adopted children did the exact same thing and thus they were forced to do what they did to them.

Defendants stated that foster child A.S. and A.D. both had to be on special diets at school because they had health issues and thus would have toileting issues. This was the exact reason Defendants gave for why they had to treat the adopted children as they did.

Defendants also stated that foster child A.D. was "obese" and thus she had to be on a restricted diet. Defendants also discussed the fact that when the adopted children came to their home they were also obese and thus a stricter diet needed to be maintained.

Defendants stated that foster children A.S. and A.D. both stole food from other children and thus they couldn't be trusted at school and had to be watched. Defendants took the adopted children out of school and home schooled them because they told CPS the children were medically fragile and were also stealing food from children at school.

A.D. also discussed the fact that Defendants used a timer while she ate her food and if she didn't eat it within the time limit, she would be force fed. These same tactics were used on the adopted children.

Foster child A.D. stated that she wasn't allowed to use the restroom at night and Defendants had a security camera and a gate up with an alarm so she couldn't leave her room. This led to toileting issues. The same tactics were used on the adopted children.

Many of the foster children also discussed Defendants making them stay up until very late hours of the night or early morning hours so they wouldn't have to get up with the children and help them go to the bathroom in the middle of the night.

All of the foster children complained of being hungry. At school and at therapy the foster children were ravenous when given snacks, this same behavior was seen with the adopted children.

The abuse towards all of these children was cyclical and non-stop. The jury deserves to know the full story. They deserve to know that there was nothing wrong with the adopted children, and anything that ended up being wrong with them was because of the abuse they suffered at the hands of Defendants.

The Defendants have three defenses they have used in their statements as well as at the preliminary hearing: 1) These children were sick and thus they had to treat them this way; 2) These children were defiant and disobedient and thus they had to treat them this way; and 3) These children had lied in the past and were lying now. These are the reasons this evidence is so critical. It is factually impossible for every child that ever walked into the Defendants' home to be sick, disobedient, defiant, and liars. This was a strong pattern of abuse that showed these Defendants were purposefully abusing these children.

Clear and Convincing Evidence

The State will have no problem in proving this evidence through the foster children themselves, their past therapist, their school nurse, and their current caregivers.

Probative Value/Prejudicial Effect

The State believes this evidence to be far more probative than prejudicial. As previously stated, if the jury is only allowed to hear about the adopted children they may be misled in actually thinking that these children were ill or that they were so ill behaved that the Defendants had no choice but to do the things they did. Yet, when you look at the fact that

Defendants claimed every single child that walked into that house had the same issues and thus had to be treated the same way, the picture is clear. Furthermore, there is no evidence that will be admitted that is of a more prejudicial nature than the charged evidence. For instance it's not like this is a robbery case and the State is seeking to admit a murder. The acts that the State is seeking to admit are of the same nature as the charged acts.

The State must be allowed to prove all the elements of the offenses. Defendants should not be permitted to argue at trial that they did not intend to abuse these children or that they had to treat these children like this because these children were sick or defiant, without the State challenging such theories with Defendants' own conduct. "It is derogative of the search for truth to allow a defendant to tell his story of innocence without facing him with evidence impeaching that story. A basic premise of our adversary system of justice is that the truth is best attained by requiring a witness to explain contrary evidence if he can." United States v. Beechum, 582 F.2d 898, 908 (5th Cir. 1978).

For the reasons stated above, the State is requesting a hearing on this matter.

CONCLUSION

Based upon the foregoing reasons, the State respectfully requests this Court grant the State's Motion to Admit Evidence.

DATED this 8th day of January, 2018.

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BY /s/DENA RINETTI
DENA RINETTI
Chief Deputy District Attorney
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing, was made this 8th day of January, 2018 by Electronic Filing to:

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BY: /s/ Deana Daniels
Deana Daniels
Secretary for the District Attorney's Office

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DWIGHT CONRAD SOLANDER, #3074262
DANIELLE HINTON, #6005500
JANET SOLANDER, #6005501

Defendant.

CASE NO: C-14-299737-1
C-14-299737-2
C-14-299737-3

DEPT NO: XXI

STATE'S NOTICE OF WITNESSES
[NRS 174.234(1)(a)]

TO: DWIGHT CONRAD SOLANDER, Defendant; and

TO: CRAIG MUELLER, ESQ., Counsel of Record:

TO: DANIELLE HINTON, Defendant; and

TO: CLARK COUNTY PUBLIC DEFENDER'S OFFICE, Counsel of Record:

TO: JANET SOLANDER, Defendant; and

TO: CAITLYN MCAMIS, ESQ., Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF NEVADA intends to call the following witnesses in its case in chief:

NAME	ADDRESS
A.S. (1)	c/o CCDA Victim Witness Assistance Center
A.S. (2)	c/o CCDA Victim Witness Assistance Center
A.S. (3)	c/o CCDA Victim Witness Assistance Center

ABRAHIM, FAIZA	CPS, 701 NORTH PECOS ROAD, LVN 89101
ANDERSON, GAIL	DFS/CPS, 601 SOUTH PECOS ROAD, LVN 89101
BERNAT, KRISTINA	CPS, 601 SOUTH PECOS ROAD, LVN 89101
BITSKO, J.	LVMPD P#6928
BLANKENSHIP, STEVEN	3111 ZEPP LANE, PACE, FL 32571
CHRISTENSEN, A.	LVMPD P#7200
DAVIDSON, CHERINA	DFS/CPS, 601 SOUTH PECOS ROAD, LVN 89101
DIAZ, AREAHIA	8025 SECRET AVENUE, LVN 89131
EMERY, F.	LVMPD P#2782
FINNEGAN, JAN	c/o CCDA, 200 LEWIS AVE., LVN
GONZALEZ, YVETTE	CPS, 601 SOUTH PECOS ROAD, LVN 89101
HAMMACK, LAURA	DFS/CPS, 601 SOUTH PECOS ROAD, LVN 89101
HENRY, JACKIE	5643 N. STEWART ST., MILTON, FL 32570
JOHNSON, Z.	LVMPD P#8527
LECTWORTH, ANDREA	c/o CCDA, 200 LEWIS AVE., LVN
MALDONADO, J.	LVMPD P#6920
MCCLAIN, DEBORAH	7771 SPINDRIFT COVE STREET, LVN 89139
MGHEE, E.	LVMPD P#5158
NELSON, RICHARD	DFS/CPS, 601 SOUTH PECOS ROAD, LVN 89101
ORENICK, AYA	DFS/CPS, 601 SOUTH PECOS ROAD, LVN 89101
ROSAS, CRYSTAL	DFS/CPS, 601 SOUTH PECOS ROAD, LVN 89101
SHAW, LISA	DFS/CPS, 601 SOUTH PECOS ROAD, LVN 89101
STARK, AUTUMN	3629 TUSCANY RIDGE, N. LAS VEGAS, NV 89032

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These witnesses are in addition to those witnesses endorsed on the Information or Indictment and any other witness for which a separate Notice of Witnesses and/or Expert Witnesses has been filed.

STEVEN B. WOLFSON
DISTRICT ATTORNEY
Nevada Bar #001565

BY /s/JACQUELINE BLUTH
JACQUELINE BLUTH
Chief Deputy District Attorney
Nevada Bar #10625

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing, was made this 9th day of January, 2018 by Electronic Filing to:

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CLARK COUNTY PUBLIC DEFENDER
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BY: /s/ Deana Daniels
Deana Daniels
Secretary for the District Attorney's Office

dd/mvu

OPPS

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Attorneys for Defendant, JANET SOLANDER

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA
*****

THE STATE OF NEVADA, Plaintiff, vs. JANET SOLANDER, #6005501, Defendant.	CASE NO.: C-14-299737-3 DEPT. NO.: XXI

OPPOSITION TO STATE'S NOTICE OF MOTION AND MOTION TO ADMIT EVIDENCE OF DEFENDANTS JANET AND DWIGHT SOLANDER'S ABUSE OF THE FOSTER CHILDREN IN THEIR HOME

COMES NOW, the Defendant, JANET SOLANDER, by and through her attorneys of record, KRISTINA WILDEVELD, ESQ., and CAITLYN MCAMIS, ESQ., of The Law Offices of Kristina Wildeveld, and files this Opposition to the State's Motion to admit evidence of alleged child abuse of foster children in the Solander home.

This Opposition is made and based upon the following Memorandum of Points and Authority and any oral argument at the time set for hearing the State's Motion.

DATED this 17th day of January, 2018.

Respectfully Submitted by:
THE LAW OFFICES OF KRISTINA WILDEVELD

/s/: Caitlyn McAmis
CAITLYN MCAMIS, ESQ.
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Attorney for Defendant, JANET SOLANDER

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

Ms. Solander and her husband adopted three (3) sisters on January 19, 2011, after fostering these girls for the previous six (6) months. (RT[1] III, 6/9/14, p. 12.) These girls, A.S. (D.O.B.), have a history of behavioral issues that includes trauma from living with their biological relatives, abandonment by their biological mother, tantrums, lying, and retaliatory bathroom behaviors. (see RT III, 6/9/14, p. 51.) These girls had been removed by Child Protective Services due to abuse and neglect suffered at the hands of their biological father. (RT IV, 6/10/14, p. 41.)

The State's theory at the preliminary hearing was that despite being taken to doctors on numerous occasions by the Solanders and having numerous unannounced body and spot checks by the Clark County Department of Family Services, each of the daughters had been physically and sexually abused over the three (3) year period. The State's expert witness, Dr. Sandra Cetl, an emergency room physician, noted scarring that was consistent with abuse. (RT IV, 6/10/14, pp. 40-41.) She testified that the girls had a number of "linear" scars on their backs and buttocks, but that she was unable to determine a time period as to when the girls would have sustained any alleged injuries. (RT IV, 6/10/14, pp. 13-33; 18; 35.) It was conceded that the scar tissue on Middle Daughter's elbow was located in an area where accidental injuries, such as falling while riding a bicycle, occur. (Id. at pp. 24-25.) Youngest Daughter, who was allegedly burned with hot water by Ms. Solander, did have skin discoloration on her ear, but the extent of that "scarring" had been distorted by the State; it was difficult to ascertain the source of the nature of the injury because at the time of their examinations, the girls were receiving topical cream treatments for a fungus in their hair. (Id. at 36.) As a side effect, the topical cream caused redness and chafing in the skin, particularly at the hairline and behind the ear on Youngest Daughter. (Id.)

Dr. Cetl confirmed that the stomach pains and history of bowel problems that the girls complained of (documented in their medical histories that Dr. Cetl reviewed) were symptoms of "functional constipation," a condition caused by purposely holding stool, which has a ripple effect of more constipation. (RT IV, 6/10/14, p. 23.) Further, she acknowledged that foster children can act out

[1] Citations are to Reporter's Transcript of Preliminary Hearing, followed by volume, date, and page number(s).

against caregivers to express their frustration by using their stool (e.g., withholding it, only defecating at certain times, smearing it on walls). (Id. at pp. 56-57.)

Although Dr. Cetl was not an expert in the specialty medical field of endocrinology or related gastrointestinal diagnoses, she reviewed the incomplete medical records available to her and disputed Eldest Daughter's diagnosis of Chron's Disease. (RT IV, 6/10/14, pp. 22; 41-42; 47.) While the girls were in the Solanders' care, the girls were evaluated by a specialist, Endocrinologist Dr. Dewan, who diagnosed Eldest Daughter as having hypothyroidism, which causes a decreased growth rate. (Id. at 62.) Chron's Disease is an inflammatory autoimmune disease that causes the body to attack itself, makes processing food difficult, decreases one's growth rate, and causes intestinal pain. (Id. at pp. 22; 48-49.) Specifically, Chron's Disease was suspected for Middle Daughter and also Eldest Daughter, and GI doctors evaluated them for this condition over the course of a year. (Id. at pp. 48-49.) These doctors recommended that the girls be placed on a restrictive diet as the constipation issues and possible Chron's Disease were monitored. (Id. at p. 51.)

On approximately two (2) occasions, Middle Daughter was taken for emergency medical care for seizures. (RT IV, 6/10/14, pp. 29; 31.) Also worth noting, Eldest Daughter and Middle Daughter were previously prescribed medicine for these multiple medical issues. (RT IV, 6/10/14, pp. 19-21.) While the State attempted to attribute the girls' decreased growth rates to malnutrition and abuse in the Solander home, medical records documented other non-abuse reasons for their conditions. Negative environmental factors, such as unstable living conditions for these foster children who lived in at least five (5) different homes in five (5) years before coming to live with the Solanders, also account for a decreased growth rate. (Id. at p. 64.) Noticeably absent from Dr. Cetl's testimony was any documentation to corroborate the allegation of trauma or injury to any of the children's vaginas, whose prior claims of abuse included repeated stabbing with a needle, whipping with a belt, and insertion of catheters.

The alleged victims in this case readily admitted that they did not want to be adopted by the Solanders. They confirmed the same to staff at the behavioral school they attended in Florida, admitting they were desperate to find a way out of living with the Solanders so they could return to their biological parents. (RT III, 6/9/14, pp. 67; 77-78.) One of the daughters, Middle Daughter, admitted that she faked a seizure in protest to living with her adopted family. (RT III, 6/9/14, pp. 69-

70.) By telling these stories to the Florida staff at the Marvelous Grace Girls Academy, they succeeded in leaving the Solanders house. (RT III, 6/9/14, p. 42; 67.)

The Solanders were foster parents to their daughters, as well as several other foster children, during the relevant time period. There were no allegations of abuse with any of the other children. Knowing the girls' histories, including prior claims of abuse by their biological parents, documented behavioral issues, and documented incontinence, the Solanders adopted the girls in January 2011. (See, e.g., RT III, 6/9/14, p. 11.) The Solanders demonstrated love and affection for these girls, acknowledged by Middle Daughter; after Middle Daughter suffered her first seizure in December 2012, the Solanders and her sisters greeted her in the hospital when she woke up and were "happy" to see her. (RT III, 6/9/14, p. 49.) The Solanders attempted to work with the girls' behavioral issues with a system of positive and negative reinforcements. (RT III, 6/9/14, p. 51.) This included taking the girls on their vacations, like to Disney World. (RT III, 6/9/14, pp. 49-50.) It was only after one (1) or more of the daughters misbehaved where fun activities were taken away. (Id.)

Initially, after the girls were adopted, the girls admitted they didn't have that many restrictions because, as one (1) daughter put it, "Miss Janet could trust us then." (RT III, 6/9/14, p. 13.) The rules grew gradually. These rules included structured periods to complete school assignments, timed bathroom breaks throughout the home-schooled day, and measured toilet paper because the girls would use too much. (RT III, 6/9/14, pp. 13-16.) The complained nature of child abuse stems from these rules, including the daughters' admitted violations of these rules.

Ms. Solander homeschooled the girls five (5) days per week after they were removed from traditional public school because they were caught stealing, in addition to other behavioral issues. (RT III, 6/9/14, p. 20; 173.) At timed intervals, the girls were asked if they needed to break for the restroom. (RT III, 6/9/14, p. 59.) Many times, the girls declined going to the bathroom and would instead soil themselves, sometimes out of spite. (RT III, 6/9/14, p. 59.) "She told us that she doesn't have a problem with us saying we have to go, but to make sure – she said that what makes her upset that when we don't say anything and go on ourself." (RT III, 6/9/14, p. 14.) As this pattern continued, a demerit ("points") system was implemented. (RT III, 6/9/14, p. 51.) After a certain number of negative points were earned, a form of discipline would follow. (RT III, 6/9/14, p. 52.) This included spanking with a paint stick. (RT III, 6/9/14, p. 16.) To instill structure to the homeschooling, the girls

were instructed to "hold it" if the girls declined to use the bathroom during the normal breaks and instead wanted to disrupt their lessons. (RT III, 6/9/14, p. 14.) All three (3) girls were treated equally, no one was favored, and punishments were consistent between each of the sisters for the same misbehaviors. (RT III, 6/9/14, p. 83.)

The Solander girls alleged numerous instances of sexual assault and physical abuse. Generally categorized, they included withholding of food, withholding of bathroom privileges, spanking, kicking, and insertion of catheters and a paint stick in their vaginas. None of the other children they fostered had issues. After being evaluated by doctors, the girls were placed on a diet of blended foods and were fed quinoa, oatmeal, vegetables, rice, and beans to ease constipation. (RT III, 6/9/14, p. 117.) Middle Daughter claimed to have been fed dead mice and "cow privates." (RT III, 6/9/14, pp. 57-58.)

Additionally, the State elicited testimony at preliminary hearing that the girls lived in their own filth or were stripped down to their underwear and forced to sleep on boards with fans blowing on them all night long. (See, e.g., RT IV, 6/10/14, p. 99-104.) When put in context, after the girls continuously urinated and defecated on themselves, their pajamas were removed and washed, and the girls had to be bathed. They stood in front of fans as they dried while the next sister was bathed. Ms. Solander washed their pajamas – that they wore daily – on Saturdays. (RT III, 6/9/14, p. 85-86.) They slept in their underwear only when there were no clean pajamas to wear after the girls soiled themselves, sometimes on purpose. (RT III, 6/9/14, p. 86.) Fans, however, were not used all the time. (RT III, 6/9/14, p. 149.) At night, the children admitted they slept in the loft of the house, which was adjacent to a bathroom with an angel nightlight accessible at night. (RT IV, 6/10/14, p. 99.) Nevertheless, the girls would urinate or defecate in their beds. (RT III, 6/9/14, p. 112.)

During the day, and somehow in addition to hours of homeschooling, all three (3) girls alleged they sat in their underwear and shirts on buckets with toilet lids and that the youngest sat on a training potty for long hours. (RT III, 6/9/14, p. 62.) Even though the prescribed medicine made Amay's stomach feel better, she continued to purposely urinate and defecate in her pants when she was mad at the Solanders or tried to escape her homework. (RT III, 6/9/14, pp. 109-111.) The alleged victims testified that they had medical issues that caused them to suddenly have to void their bowels or bladders and they did not always have enough time to make it to a bathroom. Middle Daughter

explained, "I remember there was this one time…the doctor had…gave me medicine to take over the weekend, and I really had to go, and it helps your stomach…[Ms. Solander] gave me the medicine, and I didn't make it to the bathroom because…it was coming down fast…and she said, I understand because you're taking the medicine, but she was okay with that because she understood." (RT III, 6/9/14, p. 148.)

The girls complained of various forms of corporal punishment. However, "Miss Janet popped us real light, she didn't like ever slap us hard…" (RT III, 6/9/14, p. 142.) They testified that they were spanked with paint sticks and that these spankings left marks. These spankings were recognized as discipline, after the girls were caught stealing food that was not on their restricted diet or after they had been caught lying to their parents. (RT III, 6/9/14, pp. 51; 156.) Being caught in a lie would earn them each one (1) point on the demerits system. (RT III, 6/9/14, p. 51.) One (1) daughter alleged that Ms. Solander kicked her up and down the stairs and slammed her head into a counter, giving her a black eye. (RT III, 6/9/14, p. 43.) No medical records discussed at the preliminary hearing corroborated this allegation.

Finally, the girls complained of having catheters inserted by Ms. Solander in their vaginas because she did not want them urinating on themselves when she had to leave the house and left the girls with babysitters. (RT III, 6/9/14, p. 94.) There was also testimony that one (1) of the daughters, Middle Daughter, had a rash on her vagina and that when Ms. Solander applied a prescription cream to her skin, she also inserted a catheter. (RT III, 6/9/14, p. 106; 161.) The private area is a recurring theme among the girls' allegations; they ate cow privates, they were beaten with belts on their privates, and they had catheters inserted, despite evidence of the same.

Despite the horrendous nature of these allegations, all of the other specialists who examined children while they lived with the Solanders, including endocrinologist who conducted not one (1), but two (2) colonoscopies, did not report the Solanders for child abuse or record any such suspicions in the medical records that were reviewed by Dr. Cetl. (RT IV, 6/10/14, p. 73.) Again, as foster parents, the Solander home was subject to unannounced home inspections by employees of the Department of Family Services. In 2011, Middle Daughter admitted that when she spoke to Child Protective Services investigators who came out to the home, she lied that Mr. and Mrs. Solander had beaten her with a belt

in her privates. (RT III, 6/9/14, pp. 162-163.) She also admitted to fabricating a story that Ms. Solander had left bruises on her during that same time period in 2011. (RT III, 6/9/14, p. 161.)

If one (1) fact is undisputed in this case, it is this: these children are victims of the foster care system. Their victimizer and what abuse was suffered, however, is vehemently contested. One (1) of the daughters had behavior problems that escalated after the adoption. She was institutionalized at Montevista Psychiatric Hospital, where she was treated for anger issues and chronic lying. (RT III, 6/9/14, pp. 68-69.) During that hospitalization, she told a lie that a five (5) year old boy tried to kill her over a ripped bowling ball pin toy because she "just can't stand certain people," demonstrating the extensive disturbed thoughts this young girl suffered. (RT III, 6/9/14, p. 69.) After returning home and continuing to have behavioral issues, these problems continued when she attended the Marvelous Grace Girls Academy in Florida. (RT III, 6/9/14, p. 65.)

Trial is currently set for January 29, 2018. At the file review with the District Attorney's Office on December 14, 2017, Defense Counsel reviewed the evidence made available to them. In the District Attorney's file, there were limited records concerning the other foster children that resided in the Solander home. Defense Counsel inquired at that time if the State intended to introduce that at trial, and requested those records if so in order to adequately prepare for trial. The State indicated it was unknown if it would seek introduction of those records at the time of the file review, then three (3) weeks before trial, the Defense received a bad acts motion with significant allegations of child abuse that were not contained within the previously provided discovery.

This Opposition now follows.

II. ARGUMENT

"Sex crimes against children are extremely upsetting, and our Legislature placed a very severe punishment to fit the crime. As such, it is vitally important that if this penalty is imposed, it is imposed only on a defendant deserving of the punishment. This can only be assured where the defendant is given a meaningful opportunity to present his defense." Abbot v. State, 112 Nev. 715, 727, 138 P.3d 462, 470 (2006).

NRS 48.045 prohibits the admission of evidence of other crimes, wrongs, or acts of proof of a person's character. An accused should be tried for the crimes charged, not for her alleged bad character. The Nevada Supreme Court regards the admission of prior bad acts with disfavor, finding

their presentation to the jury as often "irrelevant and prejudicial." Rhymes v. State, 121 Nev. 17, 21, 107 P.3d 1278, 1281-82 (2005). The Nevada Supreme Court has reasoned:

> [T]he use of uncharged bad acts to convict a defendant is heavily disfavored in our system of criminal justice. Such evidence is likely to be prejudicial or irrelevant, and forces the accused to defend himself against vague and unsubstantiated charges…Evidence of uncharged misconduct may unduly influence the jury, and result in a conviction of the accused because the jury believes he is a bad person…The use of specific conduct to show a propensity to commit the crime charged is clearly prohibited by Nevada law,…and is commonly regarded as sufficient grounds for reversal.
>
> Roever v. State, 114 Nev. 867, 872, 963 P.2d 503, 506 (1998), citing Taylor v. State, 109 Nev. 849, 858 P.2d 843 (1993), quoting Berner v. State, 104 Nev. 695, 696-97, 765 P.2d 1144, 1145-46 (1988).

There is good reason for the Supreme Court's comment that the admission of evidence concerning prior bad acts is "commonly regarded as sufficient grounds for reversal." A review of some of the Nevada Supreme Court's decisions reveal more than twenty (20) case reversals based on the inappropriate admission of evidence concerning prior bad acts. See, e.g., Flores v. State, 116 Nev. 659, 5 P.3d 1066 (2000)(murder conviction reversed because the danger of the unfair prejudice of admitting a prior murder conviction was substantial); Walker v. State, 116 Nev. 442, 997 P.2d 803 (2000)(murder conviction reversed because district court erred in admitting prior bad act of defendant threatening the victim on prior occasions); Sutton v. State, 114 Nev. 1327, 972 P.2d 334 (1998)(Convictions for trafficking in a controlled substance, possession of controlled substance, and possession of firearm were reversed because the district court erred in admitting evidence of defendant's possession of other prescription and non-prescription drugs); Roever v. State, 114 Nev. 867, 963 P.2d 503 (1998)(murder conviction reversed for broad misuse of bad acts evidence as part of improper rebuttal, impeachment, and character evidence); Meek v. State, 112 Nev. 1288, 930 P.2d 1104 (1996)(sexual assault conviction was reversed because of the district court's failure to hold a Petrocelli hearing concerning the defendant's alleged rape of another woman four years earlier); Walker v. State, 112 Nev. 819, 921 P.2d 923 (1996)(Burglary and robbery convictions overturned because district court failed to hold a Petrocelli hearing prior to the admission of other bad acts evidence); Cipriano v. State, 111 Nev. 534, 894 P.2d 347 (1995)(overruled on other grounds)(Attempt

Sexual Assault and Open or Gross Lewdness convictions overturned in part because district court erred in admitting evidence of defendant's prior sexual advances); Armstrong v. State, 110 Nev. 1322, 885 P.2d 600 (1994)(Embezzlement conviction overturned because of failure to hold a hearing on the bad acts evidence); Taylor v. State, 109 Nev. 849, 858 P.2d 843 (1993)(Lewdness conviction overturned because district court admitted evidence of prior act of defendant having a child sit on his lap); Winiarz v. State, 107 Nev. 812, 820 P.2d 1317 (1991)(Murder conviction reversed because district court admitted bad act based on prior testimony from defendant's husband that defendant once shot at him); Crawford v. State, 107 Nev. 345, 811 P.2d 67 (1991)(Sexual Assault and related types of convictions overturned because prior bad acts of Sexual Assault charges should not have been admitted); Honkanen v. State, 105 Nev. 901, 784 P.2d 981 (1989)(Child Abuse conviction overturned after district court admitted unduly prejudicial evidence that defendant beat his son); Beck v. State, 105 Nev. 910, 784 P.2d 983 (1989)(Sexual Assault conviction overturned because district court erred in admitting prior bad act of defendant's alleged affair with a student sixteen years earlier); Rembert v. State, 104 Nev. 680, 766 P.2d 890 (1988)(Conviction for Battery With Intent to Commit Sexual Assault reversed after district court allowed extrinsic bad act evidence to be used for impeachment purposes); Kimberly v. State, 104 Nev. 336, 757 P.2d 1326 (1988)(Sexual Assault conviction reversed because of insufficient similarity of evidence of defendant's alleged prior attack on his roommate); Courtney v. State, 104 Nev. 267, 756 P.2d 1182 (1988)(Cheating at gambling conviction was overturned after jury was informed of defendant's prior charge for the same offense); Longoria v. State, 99 Nev. 754, 670 P.2d 939 (1983)(Murder conviction reversed because prosecution elicited testimony that defendant stabbed another individual in an unrelated incident); Kaplan v. State, 99 Nev. 449, 663, P.2d 1190 (1983)(Murder conviction overturned because of the admission of hearsay evidence of other bad acts); Coty v. State, 97 Nev. 243, 627 P.2d 407 (1981)(Grand Larceny conviction reversed after district court erroneously ruled prior similar bad acts would be admissible rebuttal evidence); Cirillo v. State, 96 Nev. 489, 611 P.2d 1093 (1980)(Murder conviction reversed because of admission of evidence of defendant's prior drug dealing); Moore v. State, 96 Nev. 220, 607 P.2d 105 (1980)(Robbery and Burglary convictions reversed because district court erred in admitting evidence of other crimes of defendant forging blank checks); Mayes v. State, 95 Nev. 140, 591 P.2d

250 (1979)(Grand Larceny conviction reversed because of admission of other thefts that were not sufficiently common to establish identity).

Based on a review of just these twenty (20) or so cases, the erroneous admission of prior bad acts has wasted more time, cost more money, caused more unfair trials, and resulted in so many reversals. This is why proposed evidence of bad acts should be received with extreme caution, and its similarity or danger of unfair prejudice must be properly evaluated at a pretrial hearing so that any doubt as to admission of the evidence should be resolved in favor of the accused. See, Findley v. State, 94 Nev. 212, 218, 577 P.2d 867, 870 (1978)(overruled on other grounds by Braunstein v. State, 118 Nev. 68, 40 P.3d 413 (2002).

The framework for the admission or exclusion of "prior bad acts" is fairly straightforward. The general rule is that prior bad act evidence is not admissible, but there are some limited exceptions set forth by NRS 48.045(2). Tavares v. State, 117 Nev. 725, 30 P.3d 1128 (2001)(modified regarding defendant's ability to request or waive a limiting instruction in Mclellan v. State, 124 Nev. 263, 182 P.3d 106 (2008)). NRS 48.045(2) provides: "Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

Before admitting any such evidence under one of the enumerated exceptions, there are three (3) predicates the State must establish: (1) the offered acts are relevant to the crime charged; (2) the offered acts are proven by clear and convincing evidence; and (3) the evidence supporting the offered acts of the evidence is more probative than prejudicial. Salgado v. State, 114 Nev. 1039, 1042 (1998), citing Meek v. State, 112 Nev. 1288, 1292-93, 930 P.2d 1104, 1107 (1996).

Moreover, there are safeguards to prevent the erroneous admission of prior bad acts, as the Nevada Supreme Court has required each of the three (3) predicates to admission to be shown at a hearing outside the presence of the jury. Petrocelli v. State, 101 Nev. 46, 51-52, 692 P.2d 503, 507-08 (1985); see also, Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061 (1997). The district court is required to make a specific ruling on each of the three (3) predicates prior to the evidence's admission. Id. The hearing, along with its findings, must be included as part of the record so that any decision

concerning the admission of prior bad act evidence can later be reviewed on appeal. Armstrong v. State, 110 Nev. at 1323-1324, 885 P.2d at 601. Prosecutors seeking admission of this volatile evidence must do so in pursuit of justice as a servant of the law: "the two-fold aim of which is that the guilty shall not escape nor innocent suffer…it is as much [a prosecutor's] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring a just one." Berger v. State, 295 U.S. 78, 88 (1935).

In this case, the State has moved to admit allegations of child abuse by other children the Solanders fostered who are not named victims in this case, and references information not previously disclosed to the Defense, including interviews by purported witnesses to these allegations that were not included as part of the file review in this case. Specifically, the State seeks a hearing to admit:

A. The Solanders' representations that other foster children in the home were ill and/or suffering from digestive issues, including admitting evidence of limited food intake, attempts at implementing restricted eating schedules while at school, doctors' visits, administration of medicine, and alleged at-home diagnoses.

B. The Solanders' representations of toileting issues with the foster children, including admitting the limitation of food and water intake, bathroom usage time, toilet paper usage, underwear inspection, timed food intake, and punishment for toileting accidents.

In order for the State to convince this Court that admission of these alleged bad acts is proper, the State must satisfy each of the three (3) predicates:

1. Relevance.

Evidence of prior misconduct is not admissible if its only relevance is to show that the accused most likely committed the crimes at issue because he or she is of a criminal character. NRS 48.045(2); see also, Kazalyn v. State, 108 Nev. 67, 825 P.2d 578 (1992). The State relies on the non-binding case law from other jurisdictions for the premise that this evidence is admissible because bad acts evidence may be used in a child abuse cases to establish intent, absence of mistake, or accidence. See, United States v. Harris, 661 F.2d 138,142 (10th Cir. 1981); United States v. Merriweather, 22 M.J.657, 663 (A.C.M.R. 1986). It should be noted that the State failed to highlight any Nevada case law adopting this premise. It should also be noted that these cases refer to prior child abuse of the same children alleged to be victims, not other unrelated children for uncharged conduct.

In fact, the only Nevada case cited, Rimer v. State, 131 Nev. Adv. Rep. 36, 351 P.3d 697 (2015), the defendant's charges for murder and child abuse counts were found to be properly joined because the Court determined they demonstrated a pattern of abuse and neglect that would have been relevant and admissible in separate trials for each of the charges. The Rimer case is inapposite, however, because the charges involved conduct as to the same victim, not other uncharged children.

The State's request to introduce this evidence is an unabashed attempt to offer bad character evidence, which is illustrated by the State's repeated attempts to smear Ms. Solander throughout its Motion and paint her as a bad person based on the opinions of lay people who want to diagnose Ms. Solander and demonize her for the obvious struggles her family had with foster children with apparent medical and/or psychological issues that predated life in the Solander home. It is not relevant evidence; it is poorly disguised bad character evidence.

2. Clear and Convincing Evidence.

The State's Motion offers no factual basis supported by declarations, witness interviews, or other sources as to how the State believes it can establish these allegations by clear and convincing evidence. Such statements, "interviews," e-mails, or school records were not turned over to the Defense and were not part of the evidence included in the file review made available to the Defense. The only reference to the other foster children in the home were the children's medical records, which Defense specifically asked if the State intended to make at issue in the case. The State answered that it would review the records and notify the Defense. Apparently, that notice is in the form of entirely new allegations of uncharged conduct of confidential, sensitive discovery that was not made available to the Defense and for which the Defense had no notice of as part of its preparation for trial in this matter.

Clearly, a Petrocelli hearing is required in response to the State's one-sentence answer that it will have "no problem" satisfying this predicate. Additionally, the State's proposed bad acts evidence is ambiguous as to the time frame these alleged incidents of abuse occurred, which is relevant to whether there is clear and convincing evidence these bad acts occurred.

3. Probative Value is not Outweighed by Unfair Prejudice.

After a Petrocelli hearing is first conducted outside the presence of the jury, if this Court finds the bad acts evidence to be relevant (which the Defense is not conceding relevance) and also that

there is clear and convincing evidence of the bad acts (which seems unlikely given that no charges were ever filed for child abuse and the foster children were removed as a result of the investigation in this case, not as a result of separately identified abuse), the limited probative value is far outweighed by the danger of unfair prejudice. No jury will be able to accept this evidence and be able to honor a limiting instruction that the Solanders committed acts of child abuse to six (6) children in addition to three (3) of their own, but that evidence is solely to be used to negate an argument of mistake or accident. The jury will hear this evidence, accept the State's arguments demonizing the Solanders, and likely convict Ms. Solander because she will appear to be a bad, child abusing foster parent who must have also abused her adopted children. The jury will have no ability to separate why the evidence has been introduced, particularly because the allegations involve young children who were part of the foster care system, and the impermissible consideration of what prior abuse all of these children must have suffered. This evidence is extremely prejudicial because it gives the jury the ability to consider the evidence as true and punish the Solanders for conduct that they are not actually on trial for. The introduction of this evidence imposes such a ridiculous burden on the Solanders to disprove the allegations made in discovery apparently within the control of the State, but never previously made available to the Defense.

In summary, the list of permissible non-propensity uses for prior bad act evidence is not exhaustive; nonetheless, while evidence of other crimes, wrongs or acts may be admitted for a relevant non-propensity purposes, the use of uncharged bad act evidence to convict a defendant remains heavily disfavored, because bad acts are often irrelevant and prejudicial and force the accused to defend against vague and unsubstantiated charges. Newman v. State, 129 Nev. Adv. Op. 24, 298 P.3d 1171 (2013). Therefore, Ms. Solander respectfully requests that the State's Motion requesting to admit these uncharged bad acts be denied.

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III. CONCLUSION

WHEREFORE, the accused, JANET SOLANDER, respectfully moves this Court to deny the State's Motion to admit evidence of other alleged bad acts of child abuse of other foster children in the Solander home as unfairly prejudicial based on the Supreme Court's heavy disfavoring of a prosecutor's use of bad acts evidence.

DATED this 17th day of January, 2018.

Respectfully Submitted by:
THE LAW OFFICES OF KRISTINA WILDEVELD

/s/: Caitlyn McAmis
CAITLYN MCAMIS, ESQ.
Nevada Bar No. 012616
550 E. Charleston Blvd., Suite A
Las Vegas, NV 89104
(702) 222-0007
Attorney for Defendant, JANET SOLANDER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing OPPOSITION TO STATE'S NOTICE OF MOTION AND MOTION TO ADMIT EVIDENCE OF DEFENDANTS JANET AND DWIGHT SOLANDER'S ABUSE OF THE FOSTER CHILDREN IN THEIR HOME will be served or was served on the appropriate parties hereto in the manner(s) stated below:

1. TO BE SERVED BY THE COURT VIA ELECTRONIC FILING: The foregoing document will be served by the court's electronic filing system, Odyssey File & Serve, via courtesy copy and hyperlink to the document. On January 18, 2018, the foregoing document was submitted for electronic filing with the court and the following persons are on the courtesy copy list to receive an electronic notice of the transmission at the email addresses stated below:

JACQUELINE BLUTH, ESQ.
E-mail: ***Jacqueline.bluth@clarkcountyda.com***

ELISSA LUZAICH, ESQ.
E-mail: ***Lisa.luzaich@clarkcountyda.com***

E-mail: ***Motions@clarkcountyda.com***

Attorneys for The State of Nevada

CRAIG A. MUELLER, ESQ.
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Attorney for Co-Defendant, Dwight Solander

JEFFREY RUE, ESQ.
E-mail: ***Ruejt@clarkcountynv.gov***

Attorney for Co-Defendant, Danielle Hinton

/s/: Caitlyn McAmis
An Employee of The Law Offices of
Kristina Wildeveld, Esq.

JOIN

KRISTINA WILDEVELD, ESQ.
Nevada Bar No. 005825
CAITLYN MCAMIS, ESQ.
Nevada Bar No. 012616
THE LAW OFFICES OF KRISTINA WILDEVELD
550 E. Charleston Blvd., Suite A
Las Vegas, NV 89104
Phone (702) 222-0007
Fax (702) 222-0001
Attorneys for Defendant, JANET SOLANDER

DISTRICT COURT
CLARK COUNTY, NEVADA
****

THE STATE OF NEVADA, Plaintiff, vs. JANET SOLANDER, Defendant.	CASE NO. C-14-299737-3 DEPT. NO. XXI

JOINDER TO DEFENDANT DWIGHT SOLANDER'S MOTION TO SUPPRESS

COMES NOW Defendant, JANET SOLANDER, by and through her attorneys KRISTINA WILDEVELD, ESQ. and CAITLYN MCAMIS, ESQ., of The Law Offices of Kristina Wildelved, and hereby joins in the Motion to Suppress filed on January 22, 2018, by Defendant DWIGHT SOLANDER, and set for hearing February 1, 2018, at 9:30 A.M.

This Joinder is based upon the same Points and Authorities as set forth in the Motion to Suppress filed by Defendant, DWIGHT SOLANDER, and this joining Defendant incorporates said Motion by reference, the same as if filed by Defendant, JANET SOLANDER.

DATED this 19th day of January, 2018.

Respectfully Submitted by:

/s/: Kristina Wildeveld
KRISTINA WILDEVELD, ESQ.
Nevada Bar No. 005825
550 E. Charleston Blvd., Suite A
Las Vegas, NV 89104
(702) 222-0007
Attorney for Defendant, JANET SOLANDER

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of Defendant's foregoing JOINDER TO DEFENDANT DWIGHT SOLANDER'S MOTION TO SUPPRESS will be served or was served on the appropriate parties hereto in the manner(s) stated below:

1. TO BE SERVED BY THE COURT VIA ELECTRONIC FILING: On January 22, 2018, the foregoing document was served by the court's electronic filing system, Odyssey File & Serve, via courtesy copy and hyperlink to the document at the email addresses below:

JACQUELINE BLUTH, ESQ.
E-mail: ***Jacqueline.bluth@clarkcountyda.com***

ELISSA LUZAICH, ESQ.
E-mail: ***Lisa.luzaich@clarkcountyda.com***

CRAIG A. MUELLER, ESQ.
E-mail: ***Cmueller@muellerhinds.com***

JEFFREY RUE, ESQ.
E-mail: ***Ruejt@clarkcountynv.gov***

2. SERVED BY FACSIMILE TRANSMISSION: I served the following persons and/or entities by facsimile transmission as follows:

ELISSA LUZAICH, ESQ.
Chief Deputy District Attorney
Nevada Bar No. 005056
FAX: (702) 477-2946

CRAIG A. MUELLER, ESQ.
Mueller, Hinds & Associates
Nevada Bar No. 004703
FAX: (702) 940-1235
Attorney for Co-Defendant, Dwight Solander

JACQUELINE BLUTH, ESQ.
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FAX: (702) 868-2406
Attorneys for Plaintiff

JEFFREY RUE, ESQ.
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Nevada Bar No. 008243
FAX: (702) 455-5112
Attorney for Co-Defendant, Danielle Hinton

/s/: Caitlyn McAmis
An Employee of The Law Offices of
Kristina Wildeveld, Esq.

Craig A. Mueller, Esq.
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600 S. Eighth St.
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T – (702) 940 – 1234
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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. DWIGHT SOLANDER Defendant.	Case No.:	**C-14-299737-1**
	Dept.:	**XXI**
	MOTION TO SUPPRESS EVIDENCE; NOTICE	

COMES NOW, DWIGHT SOLANDER, defendant, by and through CRAIG A. MUELLER, ESQ. of MUELLER, HINDS & ASSOCIATES, CHTD., and hereby moves the court under the law and Fourth, Fifth, Sixth and Fourteenth Amendments of the United States constitution to suppress the following illegally obtained evidence based on the pleadings and oral argument at the time of hearing:

1) The interviews conducted by Florida CPS at Marvelous Grace Girls Academy (MGGA) by Florida CPS of the subject minor children; and

2) The interviews of the subject minor children by Nevada CPS upon their return to Nevada from the State of Florida.

DATED this 22nd day of January, 2018.

MUELLER, HINDS & ASSOCIATES, CHTD.

/s/ Craig A. Mueller, Esq.
Craig A. Mueller, Esq.
Nev. Bar No. 4703
MUELLER, HINDS & ASSOC., CHTD.
Attorney for Defendant

NOTICE OF HEARING

TO: THE STATE OF NEVADA, Plaintiff; and

TO: DEPUTY DISTRICT ATTORNEY:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the following motion on for a hearing on the 1 day of Feb., 2018, at the hour of 9:30 am, before the above-entitled Court, or as soon thereafter as counsel can be heard.

DATED this 22nd day of January, 2018.

MUELLER, HINDS & ASSOCIATES, CHTD.

BY:

/s/ Craig A. Mueller, Esq.
Craig A. Mueller, Esq.
Nev. Bar No. 4703
MUELLER, HINDS & ASSOC., CHTD.
Attorney for Defendant

I. POINTS AND AUTHORITIES

a. Procedural History

On March 25, 2014, Dwight Solander was arraigned in Justice Court with his wife/codefendant, Janet Solander, and a Criminal Complaint charging them with a number of serious allegations, the most serious being sexual assault with a minor under fourteen years of age of the 46 total counts. Bail was reset to $250,000.00 rather than the $300,000.00 the State requested and a preliminary hearing was held over the course of five days resulting in being bound over as charged on July 23, 2014.

In District Court, the court granted Defendant's Petition for Writ of Habeas Corpus as to the sexual assault with the catheter allegation on December 1, 2014, leaving the remaining counts as charged. However, the Court's wise ruling was reversed in a bizarre decision by the Nevada Supreme Court that appears to have created a consent defense for victims under the age of fourteen. Compare, Order of Reversal at 3 (filed Apr. 19, 2016) (SCN case numbers 67710 and 6771) (agreeing with the State that "the definitions of sexual assault and sexual penetration do not include a requirement that the penetration be sexually motivated," and "sexual assault requires a showing of general intent") ("neither the definition of 'sexual assault' nor the definition of 'sexual penetration' included an element of sexual motivation or gratification."), and id. at 7 ("The 2015 amendment to NRS 200.364(5), adding an express 'medical purpose' exception to Nevada's sexual assault statute, does not apply to the [defendants'] alleged conduct, which occurred before its effective date."), with id. at 7 ('sexual penetration that is proven to have been taken for a bona fide medical purpose, as when a doctor assists an unconscious woman in delivering a baby, may not establish the crime of sexual assault, either because consent to the penetration is implied under such circumstances [], because the criminal law generally requires *mens rea*, [] or because the defense of necessity applied.") (emphasis added and citations omitted), and id. at 7 n.1 (citing People v. Burpo, 647 N.E.2d 996, 998 (Ill. 1995) ("holding that a gynecologist's 'good faith will protect him from criminal sanctions,' and requiring the State to 'prove that the gynecologist possessed a mental state of intent, knowledge or recklessness,' which the gynecologist can rebut."), and id. at 7 n.2 ("The State asserts consent, lack of *mens rea*, and necessity as possible defenses or

IN THE SUPREME COURT OF THE STATE OF NEVADA

JANET SOLANDER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO. 76228

VOLUME I

APPENDIX TO APPELLANT'S OPENING BRIEF

(Appeal from Judgment of Conviction (Jury Trial))

KRISTINA WILDEVELD, ESQ.
Nevada Bar No. 005825
CAITLYN MCAMIS, ESQ.
Nevada Bar No. 012616
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Attorneys for Appellant

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District Attorney
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AARON FORD
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Nevada Attorney General
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Las Vegas, Nevada 89101
(702) 486-3420

Attorneys for Respondent

INDEX

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CLERK OF THE COURT

INFM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JACQUELINE BLUTH
Chief Deputy District Attorney
Nevada Bar #010625
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

I.A. 07/31/32014
9:30 A.M.
MUELLER
PUBLIC DEFENDER
MANN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DWIGHT CONRAD SOLANDER, #3074262
DANIELLE HINTON, #6005500
JANET SOLANDER, #6005501

Defendant.

CASE NO: **C-14-299737-3**

DEPT NO: **XXI**

I N F O R M A T I O N

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That DWIGHT CONRAD SOLANDER, DANIELLE HINTON and **JANET SOLANDER** the Defendants above named, having committed the crimes of **CHILD ABUSE, NEGLECT OR ENDANGERMENT WITH SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.508(1) - NOC 55222), CHILD ABUSE, NEGLECT OR ENDANGERMENT (Category B Felony - NRS 200.508(1) - NOC 55226), SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (Category A Felony - NRS 200.364, 200.366 - NOC 50105), ASSAULT WITH USE OF A DEADLY**

WEAPON (Category B Felony - NRS 200.471 - NOC 50201) and **BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT (Category A Felony - NRS 200.400.4 - NOC 50157)** in the manner following, to-wit: That the said Defendants, on or between the 19th day of January, 2011, and the 11th day of November, 2013, at and within the County of Clark, State of Nevada, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 - CHILD ABUSE, NEGLECT OR ENDANGERMENT WITH SUBSTANTIAL BODILY HARM

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 10/21/01), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S. to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect, by repeatedly striking the said A.S. about the buttocks, and/or body with a stick, resulting in substantial bodily harm and/or mental harm to the said A.S..

COUNT 2 - CHILD ABUSE, NEGLECT OR ENDANGERMENT WITH SUBSTANTIAL BODILY HARM

Defendant JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 10/21/01), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S. to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect, by repeatedly striking and/or slamming the said A.S.'s head and/or eye into the counter, resulting in substantial bodily harm and/or mental harm to the said A.S..

COUNT 3 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 10/21/01), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered

unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment: to wit by causing the said A.S. to sit on a bucket for extended periods of time.

COUNT 4 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 10/21/01), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment: to wit by causing the said A.S. to hold her urine and/or bowel movements for an extended period of time.

COUNT 5 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 10/21/01), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment: to wit by causing the said A.S. to sleep on boards and/or towels with no sheets or blankets with a fan blowing on her.

COUNT 6 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 10/21/01), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment, by withholding food and water from the said A.S. for extended periods of time.

//

COUNT 7 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did then and there willfully, unlawfully, and feloniously sexually assault and subject A.S. (DOB: 10/21/01), a female child under fourteen years of age, to sexual penetration, to-wit: by inserting a catheter and/or plastic tube into the said A.S.'s genital opening and/or urethra, against her will, or under conditions in which Defendants knew, or should have known, that the said A.S. was mentally or physically incapable of resisting or understanding the nature of Defendants' conduct; Defendants being responsible under one or more of the following principles of criminal liability, to-wit: (1) by defendants directly committing the crime; (2) by defendants conspiring together to commit the offense of sexual assault with a minor under fourteen years of age; and/or (3) by defendants aiding and abetting each other in the commission of the crime by Defendant DWIGHT CONRAD SOLANDER purchasing the catheters and/or plastic tubes, by Defendant JANET SOLANDER inserting the catheter and/or plastic tube into the said A.S.'s genital opening and/or urethra, defendants encouraging one another by actions and words and acting in concert throughout.

COUNT 8 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did then and there willfully, unlawfully, and feloniously sexually assault and subject A.S. (DOB: 10/21/01), a female child under fourteen years of age, to sexual penetration, to-wit: by inserting a catheter and/or plastic tube into the said A.S.'s genital opening and/or urethra, against her will, or under conditions in which Defendants knew, or should have known, that the said A.S. was mentally or physically incapable of resisting or understanding the nature of Defendants' conduct; Defendants being responsible under one or more of the following principles of criminal liability, to-wit: (1) by defendants directly committing the crime; (2) by defendants conspiring together to commit the offense of sexual assault with a minor under fourteen years of age; and/or (3) by defendants aiding and abetting each other in the commission of the crime by

Defendant DWIGHT CONRAD SOLANDER purchasing the catheters and/or plastic tubes, by Defendant JANET SOLANDER inserting the catheter and/or plastic tube into the said A.S.'s genital opening and/or urethra, defendants encouraging one another by actions and words and acting in concert throughout.

COUNT 9 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendant JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 10/21/01), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment, by pushing the said A.S. down the stairs.

COUNT 10 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendant JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 10/21/01), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment, by forcing the said A.S. to take cold showers while pouring pitchers of ice water on the said A.S. while showering.

COUNT 11 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendant JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 10/21/01), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment, by forcing the said A.S. to lick her own urine off the floor.

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COUNT 12 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendant JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 10/21/01), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment, by forcing the said A.S. to place soiled underwear in her mouth.

COUNT 13 - ASSAULT WITH USE OF A DEADLY WEAPON

Defendant JANET SOLANDER did willfully, unlawfully, feloniously and intentionally place another person in reasonable apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use physical force against another person, to wit: A.S. (DOB: 10/21/01), with use of a deadly weapon to wit: a razor blade by displaying a razor blade and threatening the said A.S.

COUNT 14 - CHILD ABUSE, NEGLECT OR ENDANGERMENT WITH SUBSTANTIAL BODILY HARM

Defendants DWIGHT CONRAD SOLANDER, DANIELLE HINTON, and JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 1/23/03), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S. to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect, by repeatedly striking the said A.S. about the buttocks, arm, and/or body with a stick, resulting in substantial bodily harm and/or mental harm to the said A.S.

COUNT 15 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 1/23/03), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as

negligent treatment or maltreatment: to wit by causing the said A.S. to sit on a bucket for extended periods of time.

COUNT 16 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 1/23/03), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment: to wit by causing the said A.S. to hold her urine and/or bowel movements for an extended period of time.

COUNT 17 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 1/23/03), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment: to wit by causing the said A.S. to sleep on boards and/or towels with no sheets or blankets with a fan blowing on her.

COUNT 18 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 1/23/03), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment, by withholding food and water from the said A.S. for extended periods of time.

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COUNT 19 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did then and there willfully, unlawfully, and feloniously sexually assault and subject A.S. (DOB: 1/23/03), a female child under fourteen years of age, to sexual penetration, to-wit: by inserting a catheter and/or plastic tube into the said A.S.'s genital opening and/or urethra, against her will, or under conditions in which Defendants knew, or should have known, that the said A.S. was mentally or physically incapable of resisting or understanding the nature of Defendants' conduct; Defendants being responsible under one or more of the following principles of criminal liability, to-wit: (1) by defendants directly committing the crime; (2) by defendants conspiring together to commit the offense of sexual assault with a minor under fourteen years of age; and/or (3) by defendants aiding and abetting each other in the commission of the crime by Defendant DWIGHT CONRAD SOLANDER purchasing the catheters and/or plastic tubes, by Defendant JANET SOLANDER inserting the catheter and/or plastic tube into the said A.S.'s genital opening and/or urethra, defendants encouraging one another by actions and words and acting in concert throughout.

COUNT 20 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendant JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 1/23/03), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment, by pushing and/or kicking the said A.S. down and/or on the stairs.

COUNT 21 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendant JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 1/23/03), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as

a result of abuse or neglect defined as negligent treatment or maltreatment, by forcing the said A.S. to take cold showers while pouring pitchers of ice water on the said A.S. while showering.

COUNT 22 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendant JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 1/23/03), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment, by forcing the said A.S. to place soiled underwear in her mouth.

COUNT 23 - ASSAULT WITH USE OF A DEADLY WEAPON

Defendant JANET SOLANDER did willfully, unlawfully, feloniously and intentionally place another person in reasonable apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use physical force against another person, to wit: A.S. (DOB: 1/23/03), with use of a deadly weapon to wit: a razor blade, by displaying a razor blade and threatening the said A.S.

COUNT 24 - CHILD ABUSE, NEGLECT OR ENDANGERMENT WITH SUBSTANTIAL BODILY HARM

Defendants DWIGHT CONRAD SOLANDER, DANIELLE HINTON, and JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 7/25/04), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S. to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect, by repeatedly striking the said A.S. about the buttocks, and/or wrist, and/or body with a stick, resulting in substantial bodily harm and/or mental harm to the said A.S.

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COUNT 25 - CHILD ABUSE, NEGLECT OR ENDANGERMENT WITH SUBSTANTIAL BODILY HARM

Defendant JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 7/25/04), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S. to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect, by holding the said A.S.'s head and/or body under hot water and/or pouring hot water on the said A.S.'s head and/or body resulting in burns to the said A.S.'s ears and/or shoulder and/or back, resulting in substantial bodily harm and/or mental harm to the said A.S.

COUNT 26 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 7/25/04), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment: to wit by causing the said A.S. to sit on a "training potty" and/or bucket for extended periods of time.

COUNT 27 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 7/25/04), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment: to wit by causing the said A.S. to hold her urine and/or bowel movements for an extended period of time.

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COUNT 28 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 7/25/04), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment: to wit by causing the said A.S. to sleep on boards and/or towels with no sheets or blankets with a fan blowing on her.

COUNT 29 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 7/25/04), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment, by withholding food and water from the said A.S. for extended periods of time.

COUNT 30 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (BEDROOM 1)

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did then and there willfully, unlawfully, and feloniously sexually assault and subject A.S. (DOB: 7/25/04), a female child under fourteen years of age, to sexual penetration, to-wit: by inserting a catheter and/or plastic tube into the said A.S.'s genital opening and/or urethra, against her will, or under conditions in which Defendants knew, or should have known, that the said A.S. was mentally or physically incapable of resisting or understanding the nature of Defendants' conduct; Defendants being responsible under one or more of the following principles of criminal liability, to-wit: (1) by defendants directly committing the crime; (2) by defendants conspiring together to commit the offense of sexual assault with a minor under fourteen years of age; and/or (3) by defendants aiding and abetting each other in the commission of the crime by

Defendant DWIGHT CONRAD SOLANDER purchasing the catheters and/or plastic tubes, by Defendant JANET SOLANDER inserting the catheter and/or plastic tube into the said A.S.'s genital opening and/or urethra, defendants encouraging one another by actions and words and acting in concert throughout.

COUNT 31 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (BATHROOM 1)

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did then and there willfully, unlawfully, and feloniously sexually assault and subject A.S. (DOB: 7/25/04), a female child under fourteen years of age, to sexual penetration, to-wit: by inserting a catheter and/or plastic tube into the said A.S.'s genital opening and/or urethra, against her will, or under conditions in which Defendants knew, or should have known, that the said A.S. was mentally or physically incapable of resisting or understanding the nature of Defendants' conduct; Defendants being responsible under one or more of the following principles of criminal liability, to-wit: (1) by defendants directly committing the crime; (2) by defendants conspiring together to commit the offense of sexual assault with a minor under fourteen years of age; and/or (3) by defendants aiding and abetting each other in the commission of the crime by Defendant DWIGHT CONRAD SOLANDER purchasing the catheters and/or plastic tubes, by Defendant JANET SOLANDER inserting the catheter and/or plastic tube into the said A.S.'s genital opening and/or urethra, defendants encouraging one another by actions and words and acting in concert throughout.

COUNT 32 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (BATHROOM 2)

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did then and there willfully, unlawfully, and feloniously sexually assault and subject A.S. (DOB: 7/25/04), a female child under fourteen years of age, to sexual penetration, to-wit: by inserting a catheter and/or plastic tube into the said A.S.'s genital opening and/or urethra, against her will, or under conditions in which Defendants knew, or should have known, that the said A.S. was mentally or physically incapable of resisting or understanding the nature of Defendants' conduct;

Defendants being responsible under one or more of the following principles of criminal liability, to-wit: (1) by defendants directly committing the crime; (2) by defendants conspiring together to commit the offense of sexual assault with a minor under fourteen years of age; and/or (3) by defendants aiding and abetting each other in the commission of the crime by Defendant DWIGHT CONRAD SOLANDER purchasing the catheters and/or plastic tubes, by Defendant JANET SOLANDER inserting the catheter and/or plastic tube into the said A.S.'s genital opening and/or urethra, defendants encouraging one another by actions and words and acting in concert throughout.

COUNT 33 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (LOFT 1)

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did then and there willfully, unlawfully, and feloniously sexually assault and subject A.S. (DOB: 7/25/04), a female child under fourteen years of age, to sexual penetration, to-wit: by inserting a catheter and/or plastic tube into the said A.S.'s genital opening and/or urethra, against her will, or under conditions in which Defendants knew, or should have known, that the said A.S. was mentally or physically incapable of resisting or understanding the nature of Defendants' conduct; Defendants being responsible under one or more of the following principles of criminal liability, to-wit: (1) by defendants directly committing the crime; (2) by defendants conspiring together to commit the offense of sexual assault with a minor under fourteen years of age; and/or (3) by defendants aiding and abetting each other in the commission of the crime by Defendant DWIGHT CONRAD SOLANDER purchasing the catheters and/or plastic tubes, by Defendant JANET SOLANDER inserting the catheter and/or plastic tube into the said A.S.'s genital opening and/or urethra, defendants encouraging one another by actions and words and acting in concert throughout.

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COUNT 34 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (LOFT 2)

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did then and there willfully, unlawfully, and feloniously sexually assault and subject A.S. (DOB: 7/25/04), a female child under fourteen years of age, to sexual penetration, to-wit: by inserting a catheter and/or plastic tube into the said A.S.'s genital opening and/or urethra, against her will, or under conditions in which Defendants knew, or should have known, that the said A.S. was mentally or physically incapable of resisting or understanding the nature of Defendants' conduct; Defendants being responsible under one or more of the following principles of criminal liability, to-wit: (1) by defendants directly committing the crime; (2) by defendants conspiring together to commit the offense of sexual assault with a minor under fourteen years of age; and/or (3) by defendants aiding and abetting each other in the commission of the crime by Defendant DWIGHT CONRAD SOLANDER purchasing the catheters and/or plastic tubes, by Defendant JANET SOLANDER inserting the catheter and/or plastic tube into the said A.S.'s genital opening and/or urethra, defendants encouraging one another by actions and words and acting in concert throughout.

COUNT 35 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (LOFT 3)

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did then and there willfully, unlawfully, and feloniously sexually assault and subject A.S. (DOB: 7/25/04), a female child under fourteen years of age, to sexual penetration, to-wit: by inserting a catheter and/or plastic tube into the said A.S.'s genital opening and/or urethra, against her will, or under conditions in which Defendants knew, or should have known, that the said A.S. was mentally or physically incapable of resisting or understanding the nature of Defendants' conduct; Defendants being responsible under one or more of the following principles of criminal liability, to-wit: (1) by defendants directly committing the crime; (2) by defendants conspiring together to commit the offense of sexual assault with a minor under fourteen years of age; and/or (3) by defendants aiding and abetting each other in the commission of the crime by

Defendant DWIGHT CONRAD SOLANDER purchasing the catheters and/or plastic tubes, by Defendant JANET SOLANDER inserting the catheter and/or plastic tube into the said A.S.'s genital opening and/or urethra, defendants encouraging one another by actions and words and acting in concert throughout.

COUNT 36 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (LOFT 4)

Defendants DWIGHT CONRAD SOLANDER and JANET SOLANDER did then and there willfully, unlawfully, and feloniously sexually assault and subject A.S. (DOB: 7/25/04), a female child under fourteen years of age, to sexual penetration, to-wit: by inserting a catheter and/or plastic tube into the said A.S.'s genital opening and/or urethra, against her will, or under conditions in which Defendants knew, or should have known, that the said A.S. was mentally or physically incapable of resisting or understanding the nature of Defendants' conduct; Defendants being responsible under one or more of the following principles of criminal liability, to-wit: (1) by defendants directly committing the crime; (2) by defendants conspiring together to commit the offense of sexual assault with a minor under fourteen years of age; and/or (3) by defendants aiding and abetting each other in the commission of the crime by Defendant DWIGHT CONRAD SOLANDER purchasing the catheters and/or plastic tubes, by Defendant JANET SOLANDER inserting the catheter and/or plastic tube into the said A.S.'s genital opening and/or urethra, defendants encouraging one another by actions and words and acting in concert throughout.

COUNT 37 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

Defendant JANET SOLANDER did then and there willfully, unlawfully, and feloniously sexually assault and subject A.S. (DOB: 7/25/04), a female child under fourteen years of age, to sexual penetration, to-wit: by inserting a stick into the said A.S.'s genital opening, against her will, or under conditions in which Defendants knew, or should have known, that the said A.S. was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

COUNT 38 - BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT

Defendant JANET SOLANDER did then and there willfully, unlawfully, and feloniously use force or violence upon the person of another, to-wit: A.S. (DOB: 7/25/04), with intent to commit sexual assault by holding the said A.S. down in an effort to insert the catheter into A.S.'s vagina.

COUNT 39 - BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT

Defendant JANET SOLANDER did then and there willfully, unlawfully, and feloniously use force or violence upon the person of another, to-wit: A.S. (DOB: 7/25/04), with intent to commit sexual assault by holding the said A.S. down in an effort to insert the catheter into A.S.'s vagina.

COUNT 40 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendant JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 7/25/04), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment, by pushing and/or kicking the said A.S. down and/or on the stairs.

COUNT 41 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendant JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 7/25/04), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment, by forcing the said A.S. to take cold showers while pouring pitchers of ice water on the said A.S. while showering.

COUNT 42 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendant JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 7/25/04), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed

in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment, by forcing the said A.S. to place soiled underwear in her mouth.

COUNT 43 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendant JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 7/25/04), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment, by forcing the said A.S.'s head into the toilet.

COUNT 44 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendant JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 7/25/04), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment, by forcing the said A.S.'s to stand in a garbage bag while she urinated and defecated on herself.

COUNT 45 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

Defendant JANET SOLANDER did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: A.S. (DOB: 7/25/04), to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, and/or cause the said A.S to be placed in a situation where she might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect defined as negligent treatment or maltreatment, by forcing the said A.S. to stand in a garbage bag while she urinated and defecated on herself.

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COUNT 46 - ASSAULT WITH USE OF A DEADLY WEAPON

Defendant JANET SOLANDER did willfully, unlawfully, feloniously and intentionally place another person in reasonable apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use physical force against another person, to wit: A.S. (DOB: 7/25/04), with use of a deadly weapon to wit: a razor blade, by displaying a razor blade and threatening the said A.S.

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ JACQUELINE BLUTH
JACQUELINE BLUTH
Chief Deputy District Attorney
Nevada Bar #010625

Names of witnesses known to the District Attorney's Office at the time of filing this Information are as follows:

ABRAHIM, FAIZA; CPS/DFS

BARKER; LVMPD#08052

BERNAT, KRISTINA; CPS/DFS

BITSKO; LVMPD#06928

CETL, DR. SANDRA; SUNRISE HOSPITAL/SNCAC

DIAZ, AREHIA; 8025 SECRET AVENUE, LVN 89131

EMERY; LVMPD#02782

GONZALES, YVETTE; CPS/DFS

HENRY, JACKIE; 3643 N STEWART STREET, MILTON, FL 32570

HINTON, DANIELLE; 9500 WAKASHAN AVENUE, LVN 89149

MCCLAIN, DEBORAH; 7771 SPINDRIFT COVE STREET, LVN 89139

MCGHEE; LVMPD#05158

SOLANDER, AMAYA; c/o CPS/DFS

SOLANDER, ANASTASIA; c/o CPS/DFS

SOLANDER, AVA; c/o CPS/DFS

SOLANDER, JANET; 9500 WAKASHAN AVENUE, LVN 89149

STARK, AUTUMN; 3629 TUSCANY RIDGE, NLV 89032

WELLS, LORI; UNK

DA#14F04585ABC/hjc/SVU
LVMPD EV#1403041293
(TK12)

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CLERK OF THE COURT

MEMO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JACQUELINE BLUTH
Chief Deputy District Attorney
Nevada Bar #010625
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
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Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DWIGHT CONRAD SOLANDER,
#3074262
JANET SOLANDER
#6005501

Defendant.

CASE NO: C-14-299737-1
C-14-299737-3

DEPT NO: **XXI**

STATE'S BENCH MEMORANDUM PURUSANT TO COURT'S REQUEST REGARDING ISSUE IN PRETRIAL WRITS OF HABEAS CORPUS

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JACQUELINE BLUTH, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Bench Memorandum Purusant to Court's Request Regarding Issue in Pretrial Writs of Habeas Corpus.

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

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POINTS AND AUTHORITIES

The crime of sexual assault with a minor under fourteen years of age occurs when a person subjects another person, under the age of 14, to sexual penetration, or forces another person to make a sexual penetration on himself or another, or on a beast, against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct. See generally, NRS 200.366.

Likewise, NRS 200.364(2) defines sexual penetration as follow: "Sexual penetration" means cunnilingus, fellatio, **or any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another**, including sexual intercourse in its ordinary meaning.

In Hutchins v. State, 110 Nev. 103, 867 P.2d 1136 (1994) the Nevada Supreme Court addressed the issue of penetration as it related to a sexual assault charge involving an act of cunnilingus where the facts illustrated that Defendant placed his tongue on but not in the victim's vagina. The Court stated:

> ". . .[t]he act of cunnilingus is considered "penetration" according to that word's statutory definition. Based upon the testimony, the jury was properly able to determine that Hutchins accomplished at least a slight penetration of the victim's vagina by placing his tongue on it. Accordingly, we conclude that even if it were only shown that Hutchins had placed his tongue on and not in the victim's vagina without her consent, this constituted sufficient evidence to sustain a conviction for sexual assault."

Id., 110 Nev. 103 at 110, 867 P.2d 1136 at 1141.

Additionally, In Mejia v. State, 122 Nev. 487, 134 P.3d 722 (2006), the Court stated as follows:

> Mejia was convicted of sexual assault for performing cunnilingus on A.W. NRS 200.366(1) defines sexual assault as engaging in an act of sexual penetration against the victim's will. NRS 200.364(2), which defines sexual penetration, specifically enumerates cunnilingus as an act of sexual penetration. Consistent with that definition of sexual penetration, we have held that "even if it were only shown that [the defendant] had placed his tongue on and not in the victim's vagina without her consent, this constituted sufficient evidence to sustain a conviction for sexual assault." Citing Hutchins v. State, 110 Nev. 103, 110, 867 P.2d 1136, 1141 (1994).

> A.W.'s testimony that Mejia performed oral sex on her against her will was sufficient for a reasonable jury to conclude, beyond a reasonable doubt, that Mejia was guilty of sexual assault against a minor under 14 years of age. (See LaPierre v. State, 108 Nev. 528, 531, 836 P.2d 56, 58 (1992) (explaining that this court has "repeatedly held that the testimony of a sexual assault victim alone is sufficient to uphold a conviction" so long as the victim testifies with "some particularity regarding the incident")).

Id., 122 Nev. 487 at 493, 134 P.3d 722 at 725

Merriam Webster dictionary defines the "vulva" as: **the external parts of the female genital organs**. "vulva." Merriam-Webster.com 2011. http://www.merriam-webster.com (30 August 2011). The vulva is the external female genitalia. It includes the "lips" or folds of skin (labia), clitoris, **and the openings to the urethra and vagina**. Katz VL. Reproductive anatomy: Gross and microscopic, clinical correlations. In: Lentz GM, Lobo RA, Gershenson DM, Katz VL. eds. Comprehensive Gynecology. 6th ed. Philadelphia, Pa: Mosby Elsevier; 2012:chap 3.

Clearly, for an individual to insert a catheter into a female child's urethra or genital opening, one must achieve sexual penetration of the vaginal lips (labia majora and labia minora), however slight, to gain access to the openings of the urethra and vagina.

In People v. Quintana, 89 Cal.App.4th 1362, 98 Cal.Rptr.2d 235 (2001), a case certified for partial publication by the Court of Appeals, First District, Division 4, California, the court addressed the issue penetration as it related to the genital opening to uphold a conviction for foreign object penetration of a minor. In affirming the conviction and holding that penetration of a genital opening with a foreign object (Defendant's finger) occurred in that case, the Court stated, in pertinent part:

> First, to hold that no "penetration" of an "opening" occurred in this case would ignore the anatomical facts to which the medical examiner testified. The evidence shows that appellant's finger penetrated at least as far as the victim's hymen. Ternahan explained in describing Jade's examination that the labia majora "are usually quite plum[p] and cover the genital area" of a five-year-old girl, that the hymenal tissues are "not easy to get to," but that medical methods had been developed to painlessly separate the "several layers of material" and "give us a good view of what is hidden." The labia majora were thus an "opening" through which appellant's finger penetrated. The labia majora are part of the female genitalia. (Stedman's Medical Dict. (26th ed.1995) pp.

> 1257, 1954 [defining "external female genital organs" and "vulva"]; 3 Schmidt, Attorney's Dict. of Medicine (2000) p. G–59 [defining "genital organs, **239 external"].) Accordingly, the opening through which appellant's finger penetrated was a "genital" opening.
>
> Second, a "genital" opening is not synonymous with a "vaginal" opening as appellant's argument assumes. The vagina is only one part of the female genitalia, which also include inter alia the labia majora, labia minora, and the clitoris. (Stedman's Medical Dict., supra, pp. 1257–1258, 1954 [defining "external female genital organs," "internal female genital organs," and "vulva"]; 3 Schmidt, Attorney's Dict. of Medicine, supra, p. G–59—G–60 [defining "genital organs, external," "genital organs, internal," and "genitalia"].) Thus, "genital" opening does not necessarily mean "vaginal" opening.
>
> Third, section 289 refers to a penetration of a "genital," not a "vaginal," opening, and, fourth, this was not always the case. As amended in 1985, section 289 included three subdivisions, (a), (b), and (c) which referred to penetration of the "genital ... opening[ ]." (Stats.1985, ch. 945, § 1, p. 2986.) In 1986, four new subdivisions, (d), (e), (f) and (g), were added which referred to the "genital ... opening[ ]," and three new subdivisions, (h), (i), and (j), were added which referred to the "vaginal ... opening [ ]." (Stats.1986, ch. 1299, § 6, pp. 4598–4599.) In 1988, the references to "vaginal ... opening[ ]" were replaced by references to the "genital ... opening[ ]," so that all of the subdivisions referred consistently to the "genital ... opening[ ]." If, as appellant argues, "genital" opening were synonymous with "vaginal" opening, the 1988 amendment would have been unnecessary. This amendment shows that the Legislature meant "genital," not "vaginal," opening in section 289.

Id., 89 Cal.App.4th 1362 at 1367, 98 Cal.Rptr.2d 235 at 238-239.

Additionally, although not controlling in this jurisdiction, but cited for its persuasive language as it relates to the question at bar, i.e., penetration of the genital opening; in State v. Albert, 252 Conn 795, 750 A.2d 1037 (2000), the Supreme Court of Connecticut was tasked with determining what the legislature intended by its use of term genital opening in relationship to the statute defining sexual intercourse as vaginal intercourse and stating the penetration however slight, is sufficient to complete vaginal intercourse and that penetration may be committed by object manipulated by actor into the genital of the victim's body. In doing so the Court reasoned as follows:

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> We must then determine what the legislature intended by its use of the term "genital ... opening." General Statutes (Rev. to 1991) § 53a–65 (2). We begin by noting that, although the statute does not expressly define the term genital opening, our "construction must accord with common sense and commonly approved usage of the language." (Internal quotation marks omitted.) State v. Jason B., 248 Conn. 543, 550, 729 A.2d 760, cert. denied, 528 U.S. 967, 120 S.Ct. 406, 145 L.Ed.2d 316 (1999). We also note that, when "a statute or regulation does not sufficiently define a term, it is appropriate to look to the common understanding of the term as expressed in a dictionary." (Internal quotation marks omitted.) State v. Payne, 240 Conn. 766, 771, 695 A.2d 525 (1997).
>
> Under common usage of the language, the term genital opening means an opening associated with the genitals. The word "genitals" means "genitalia"; Webster's Third New International Dictionary; which means "the organs of the reproductive system; [especially]: the external genital organs." (Emphasis altered.) Id. Similarly, Taber's Cyclopedic Medical Dictionary defines genitals and genitalia as "[o]rgans of generation; reproductive organs," and states that the female "external genitalia collectively are termed the vulva or pudendum and include the ... labia majora and that the internal genitalia are "the two ovaries, fallopian tubes, uterus, and vagina." (Emphasis added.) Taber's Cyclopedic Medical Dictionary (16th Ed.1989). Thus, as the term "genitals" refers especially to the external genital organs, which include the labia majora, it would be unreasonable to conclude that when the legislature used the term genital opening, it meant to exclude the external genital organs and refer only to the internal genital organs such as the vagina.
>
> "Opening" is defined in common usage as "something that is open...." Webster's Third New International Dictionary. "Open," in turn, is defined as "spread out: unfolded: having the parts or surfaces laid back in an expanded position: not drawn together, folded, or contracted...." (Emphasis added.) Id. We previously noted that the labia majora are defined as "the outer fatty folds bounding the vulva." (Emphasis added.) Id.
>
> From these definitions, it can be deduced that: (1) the term "genitals" commonly refers to the external reproductive organs, which include, on a female, the labia majora; (2) the term "opening" means something that is unfolded or spread out; and (3) the labia majora are folds. Thus, we conclude that the opening between the folds, i.e., labia majora, is the genital opening and that the labia majora form the boundaries of the genital opening. Moreover, because we have construed the term vaginal intercourse, as that term is used in § 53a–65 (2), to include digital penetration, however slight, of the genital opening; we conclude that digital penetration, however slight, of the labia majora is sufficient penetration to constitute vaginal intercourse under § 53a–65 (2).

Id., 252 Conn. 795 at 807-809, 750 A.2d 1037 at 1045-1047.

The Court concluded as follow:

> Although we have rejected most of the defendant's arguments in the preceding analysis, we wish to address briefly the defendant's claim that a mere touching of the surface of the labia majora is not sufficient to constitute penetration under §§ 53a–65 (2) and 53a–70 (a)(2). As we previously indicated, we disagree with the defendant's suggestion that a defendant must put his finger or fingers "beyond the labia majora" for his conduct to fall within the definition of sexual intercourse in § 53a–65 (2). Even if we assume that the defendant's interpretation of § 53a–65 (2) is correct, however, there was evidence presented in this case from which a reasonable jury could have concluded that the defendant put his finger beyond the victim's labia majora. For example, the victim testified that the defendant touched "[i]nside" her crotch. In addition, Conter testified that the victim had indicated to him that the touching hurt her, Merced testified that the scrapes on the victim's labia majora bled when she examined the victim two days after the incident and Berrien testified that the history the victim had given and the scrapes observed by Merced were consistent with a finger penetrating the victim's genital opening. Therefore, we reject the defendant's claim that "there was no evidence presented that the defendant did anything other than touch the surface of [the victim's] labia majora." On the contrary, a reasonable jury could have inferred, based on the foregoing evidence, that the defendant's finger entered the victim with some force and passed beyond the actual location of the scrapes on the victim's labia majora.

Id., 252 Conn. 795 at 813-814, 750 A.2d 1037 at 1048-1049.

Finally, although Nevada has yet to create a specific piece of legislation that encompasses object rape of child, other jurisdictions have done so, to include the State of Utah.

Specifically, Utah Code Annotated (U.C.A.) 1953 §76-5-402.3 defines object rape of a child and states:

> (1) A person commits **object rape** of a **child** when the person causes the penetration or touching, however slight, of the genital or anal opening of a **child** who is under the age of 14 by any foreign **object**, substance, instrument, or device, not including a part of the human body, with intent to cause substantial emotional or bodily pain to the **child** or with the intent to arouse or gratify the sexual desire of any person.
>
> (2) **Object rape** of a **child** is a first degree felony punishable by a term of imprisonment of:
>
> (a) except as provided in Subsection (2)(b) not less than 25 years and which may be for life; or
>
> (b) life without parole, if the trier of fact finds that:

> (i) during the course of the commission of the **object rape** of a **child** the defendant caused serious bodily injury to another; or
>
> (ii) at the time of the commission of the object rape of a child the defendant was previously convicted of a grievous sexual offense.
>
> (3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age at the time of the offense.
>
> (4) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

In this case, the State presented sufficient evidence that sexual penetration occurred when the catheter and/or plastic tube was inserted into the genital opening and/or urethra of the child victim A.S. (DOB: 07/25/04). As this Court is aware sexual assault is a general intent crime and sexual arousal is not an element. Often times, during the sexual assault of child, the Defendants do not insert their finger into the vaginal hole, but will merely rub the clitoris of the child. The conduct of rubbing the child's clitoris is considered sexual penetration because the clitoris is located beyond the labia majora. This same argument can be made for the urethra. Once the Defendants inserted the catheter past the lips, the sexual assault was complete. Furthermore, the determination of whether or not sexual penetration occurred, beyond a reasonable doubt, in any given case is ultimately a question for the jury. At this stage in the process, the State has presented more than enough evidence to bind the Defendants over on the charges.

DATED this 15th day of October, 2014.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ JACQUELINE BLUTH
JACQUELINE BLUTH
Chief Deputy District Attorney
Nevada Bar #010625

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 15th day of OCTOBER 2014, to:

CAITLYN MCAMIS, ESQ.
caitlyn@veldlaw.com

BY /s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

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CLERK OF THE COURT

PETN
KRISTINA WILDEVELD, ESQ.
Nevada Bar No. 005825
CAITLYN MCAMIS, ESQ.
Nevada Bar No. 012616
THE LAW OFFICES OF KRISTINA WILDEVELD
615 S. 6th St.
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Fax (702) 222-0001
Attorneys for Petitioner, JANET SOLANDER

DISTRICT COURT
CLARK COUNTY, NEVADA
*****

JANET SOLANDER, Petitioner, vs. DOUG GILLESPIE, Sheriff, Defendant.	CASE NO. C-14-299737-3 DEPT. NO. XXI Date of Hearing: November ~~6~~ 20, 2014 Time of Hearing: 9:30 A.M.

PETITION FOR WRIT OF HABEAS CORPUS

TO: THE HONORABLE EIGHTH JUDICIAL DISTRICT COURT, Clark County, Nevada;

TO: DOUG GILLESPIE, Clark County Sheriff, Respondent; and

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Respondent;

The Petition of JANET SOLANDER, by and through her counsel of record, KRISTINA WILDEVELD, ESQ. and CAITLYN MCAMIS, ESQ., of The Law Offices of Kristina Wildeveld, respectfully shows:

1. Counsel for Petitioner are duly qualified, practicing and licensed attorneys appointed to represent the Petitioner/Defendant, JANET SOLANDER.

2. That Counsel for Petitioner makes application herein on behalf of Petitioner for a Writ of Habeas Corpus, that the place where Petitioner is restrained of her liberty is the Clark County Detention Center, that the officer by whom she is constructively restrained is the Clark County Sheriff, Doug Gillespie.

3. That the imprisonment and restraint of said above-captioned Petitioner is unlawful in that insufficient evidence was presented during Petitioner's preliminary hearing of May 22, 2014, May 23, 2014, June 9, 2014, June 10, 2014, June 12, 2014, and June 19, 2014, (only one (1) of which transcript has been filed to date) to support prosecution of forty-six (46) charges of sexual assault, battery with intent to commit sexual assault, child abuse, neglect and endangerment resulting in substantial bodily harm.

4. That Counsel for Petitioner waives the sixty (60) day limitation for bringing said Petitioner to trial.

5. That Petitioner was arraigned in District Court on September 4, 2014. To date, only one (1) day's preliminary hearing transcript was filed on August 5, 2014.

6. That the undersigned was appointed and received the file from previous counsel that did not include the grand jury transcripts.

7. On or about October 21, 2014, this office learned that Mr. Mueller's file had all of the unfiled transcripts and we received the same from him on or about October 22, 2014. This Petition follows.

8. That Counsel for Petitioner consents that if the Petition is not decided within fifteen (15) days before the date set for trail, the Court may, without notice or hearing, continue the trial indefinitely to a date designated by the Court.

9. That Counsel for Petitioner consents that if any party appeals the Court's ruling and the appeal is not determined before the date set for trial, the trial date is automatically vacated and the trial postponed unless the Court otherwise orders.

10. That Petitioner personally authorized counsel to commence this action.

11. That no other Petition for Writ of Habeas Corpus has heretofore been filed on behalf of Petitioner on this particular issue.

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WHEREFORE, Petitioner prays that this Honorable Court issue an order denying all charges against JANET SOLANDER, as the testimony presented at preliminary hearing was insufficient to bind her over on all forty-six (46) counts.

DATED this 5th day of November, 2014.

Respectfully Submitted by:

/s/: Kristina Wildeveld

KRISTINA WILDEVELD, ESQ.
Nevada Bar No. 005825
CAITLYN MCAMIS, ESQ.
Nevada Bar No. 012616
615 S. 6th St.
Las Vegas, Nevada 89101
Attorneys for Petitioner, JANET SOLANDER

NOTICE OF MOTION

TO: DOUGLAS GILLESPIE, Sheriff, Respondent;

TO: STEVEN WOLFSON, ESQ., Clark County District Attorney, Attorney for Respondent;

TO: JACQUELINE BLUTH, ESQ., Chief Deputy District Attorney, Attorney for Respondent;

TO: LISA LUZAICH, ESQ., Chief Deputy District Attorney, Attorney for Respondent;

TO: CRAIG A. MUELLER, ESQ., Attorney for Defendant D. Solander; and

TO: JEFFREY RUE, ESQ., Deputy Public Defender, Attorney for Defendant D. Hinton;

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the above and foregoing **PETITION FOR WRIT OF HABEAS CORPUS** will be heard before Department 21 of the above-entitled Court on the 20 day of November, 2014, at 9:00 a.m., or as soon thereafter as counsel may be heard.

DATED this 5th day of November, 2014.

Respectfully Submitted by:

/s/: Kristina Wildeveld
KRISTINA WILDEVELD, ESQ.
Nevada Bar No. 005825
CAITLYN MCAMIS, ESQ.
Nevada Bar No. 012616
615 S. 6th St.
Las Vegas, Nevada 89101
Attorneys for Petitioner, JANET SOLANDER

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

The Petitioner, JANET SOLANDER (hereinafter "Ms. Solander" or "Petitioner"), was charged by way of an Information with forty-six (46) counts of various allegations of child abuse, neglect, and endangerment, sexual assault, and battery with intent to commit sexual assault based upon alleged events occurring between January 2011 and March 2014, involving her adopted daughters[1]. (See Information.) Said charges are the subject of this Petition for Writ of Habeas Corpus.

II. STATEMENT OF FACTS

Ms. Solander and her husband adopted three (3) sisters on January 19, 2011, after fostering these girls for the previous six (6) months. (RT[2] III, 6/9/14, p. 12.) These girls, A.S. (D.O.B.), have a history of behavioral issues that includes trauma from living with their biological relatives, abandonment by their biological mother, tantrums, lying, and retaliatory bathroom behaviors. (see RT III, 6/9/14, p. 51.) These girls had been removed by Child Protective Services due to abuse and neglect suffered at the hands of their biological father. (RT IV, 6/10/14, p. 41.)

The State's theory at the preliminary hearing was that despite being taken to doctors on numerous occasions by the Solanders and having numerous unannounced body and spot checks by the Clark County Department of Family Services, each of the daughters had been physically and sexually abused over the three (3) year period. The State's expert witness, Dr. Sandra Cetl, an emergency room physician, noted scarring that was consistent with abuse. (RT IV, 6/10/14, pp. 40-41.) She testified that the girls had a number of "linear" scars on their backs and buttocks, but that she was unable to determine a time period as to when the girls would have sustained any alleged injuries. (RT IV, 6/10/14, pp. 13-33; 18; 35.) It was conceded that the

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[1] As the alleged victims in this case are minor children, their full names are not used. They do, however, share the exact same initials, "A.S." For ease of reading, they will be referred to as Eldest, Middle, and Youngest Daughter/Sister.

[2] Citations are to Reporter's Transcript of Preliminary Hearing, followed by volume, date, and page number(s).

scar tissue on Middle Daughter's elbow was located in an area where accidental injuries, such as falling while riding a bicycle, occur. (Id. at pp. 24-25.) Youngest Daughter, who was allegedly burned with hot water by Ms. Solander, did have skin discoloration on her ear, but the extent of that "scarring" had been distorted by the State; it was difficult to ascertain the source of the nature of the injury because at the time of their examinations, the girls were receiving topical cream treatments for a fungus in their hair. (Id. at 36.) As a side effect, the topical cream caused redness and chafing in the skin, particularly at the hairline and behind the ear on Youngest Daughter. (Id.)

Dr. Cetl confirmed that the stomach pains and history of bowel problems that the girls complained of (documented in their medical histories that Dr. Cetl reviewed) were symptoms of "functional constipation," a condition caused by purposely holding stool, which has a ripple effect of more constipation. (RT IV, 6/10/14, p. 23.) Further, she acknowledged that foster children can act out against caregivers to express their frustration by using their stool (e.g., withholding it, only defecating at certain times, smearing it on walls). (Id. at pp. 56-57.)

Although Dr. Cetl was not an expert in the specialty medical field of endocrinology or related gastrointestinal diagnoses, she reviewed the incomplete medical records available to her and disputed Eldest Daughter's diagnosis of Chron's Disease. (RT IV, 6/10/14, pp. 22; 41-42; 47.) While the girls were in the Solanders' care, the girls were evaluated by a specialist, Endocrinologist Dr. Dewan, who diagnosed Eldest Daughter as having hypothyroidism, which causes a decreased growth rate. (Id. at 62.) Chron's Disease is an inflammatory autoimmune disease that causes the body to attack itself, makes processing food difficult, decreases one's growth rate, and causes intestinal pain. (Id. at pp. 22; 48-49.) Specifically, Chron's Disease was suspected for Middle Daughter and also Eldest Daughter, and GI doctors evaluated them for this condition over the course of a year. (Id. at pp. 48-49.) These doctors recommended that the girls be placed on a restrictive diet as the constipation issues and possible Chron's Disease were monitored. (Id. at p. 51.)

On approximately two (2) occasions, Middle Daughter was taken for emergency medical care for seizures. (RT IV, 6/10/14, pp. 29; 31.) Also worth noting, Eldest Daughter and Middle

Daughter were previously prescribed medicine for these multiple medical issues. (RT IV, 6/10/14, pp. 19-21.) While the State attempted to attribute the girls' decreased growth rates to malnutrition and abuse in the Solander home, medical records documented other non-abuse reasons for their conditions. Negative environmental factors, such as unstable living conditions for these foster children who lived in at least five (5) different homes in five (5) years before coming to live with the Solanders, also account for a decreased growth rate. (Id. at p. 64.) Noticeably absent from Dr. Cetl's testimony was any documentation to corroborate the allegation of trauma or injury to any of the children's vaginas, whose prior claims of abuse included repeated stabbing with a needle, whipping with a belt, and insertion of catheters.

The alleged victims in this case readily admitted that they did not want to be adopted by the Solanders. They confirmed the same to staff at the behavioral school they attended in Florida, admitting they were desperate to find a way out of living with the Solanders so they could return to their biological parents. (RT III, 6/9/14, pp. 67; 77-78.) One of the daughters, Middle Daughter, admitted that she faked a seizure in protest to living with her adopted family. (RT III, 6/9/14, pp. 69-70.) By telling these stories to the Florida staff at the Marvelous Grace Girls Academy, they succeeded in leaving the Solanders house. (RT III, 6/9/14, p. 42; 67.)

The Solanders were foster parents to their daughters, as well as several other foster children, during the relevant time period. There were no allegations of abuse with any of the other children. Knowing the girls' histories, including prior claims of abuse by their biological parents, documented behavioral issues, and documented incontinence, the Solanders adopted the girls in January 2011. (See, e.g., RT III, 6/9/14, p. 11.) The Solanders demonstrated love and affection for these girls, acknowledged by Middle Daughter; after Middle Daughter suffered her first seizure in December 2012, the Solanders and her sisters greeted her in the hospital when she woke up and were "happy" to see her. (RT III, 6/9/14, p. 49.) The Solanders attempted to work with the girls' behavioral issues with a system of positive and negative reinforcements. (RT III, 6/9/14, p. 51.) This included taking the girls on their vacations, like to Disney World. (RT III, 6/9/14, pp. 49-50.) It was only after one (1) or more of the daughters misbehaved where fun activities were taken away. (Id.)

Initially, after the girls were adopted, the girls admitted they didn't have that many restrictions because, as one (1) daughter put it, "Miss Janet could trust us then." (RT III, 6/9/14, p. 13.) The rules grew gradually. These rules included structured periods to complete school assignments, timed bathroom breaks throughout the home-schooled day, and measured toilet paper because the girls would use too much. (RT III, 6/9/14, pp. 13-16.) The complained nature of child abuse stems from these rules, including the daughters' admitted violations of these rules.

Ms. Solander homeschooled the girls five (5) days per week after they were removed from traditional public school because they were caught stealing, in addition to other behavioral issues. (RT III, 6/9/14, p. 20; 173.) At timed intervals, the girls were asked if they needed to break for the restroom. (RT III, 6/9/14, p. 59.) Many times, the girls declined going to the bathroom and would instead soil themselves, sometimes out of spite. (RT III, 6/9/14, p. 59.) "She told us that she doesn't have a problem with us saying we have to go, but to make sure – she said that what makes her upset that when we don't say anything and go on ourself." (RT III, 6/9/14, p. 14.) As this pattern continued, a demerit ("points") system was implemented. (RT III, 6/9/14, p. 51.) After a certain number of negative points were earned, a form of discipline would follow. (RT III, 6/9/14, p. 52.) This included spanking with a paint stick. (RT III, 6/9/14, p. 16.) To instill structure to the homeschooling, the girls were instructed to "hold it" if the girls declined to use the bathroom during the normal breaks and instead wanted to disrupt their lessons. (RT III, 6/9/14, p. 14.) All three (3) girls were treated equally, no one was favored, and punishments were consistent between each of the sisters for the same misbehaviors. (RT III, 6/9/14, p. 83.)

The Solander girls alleged numerous instances of sexual assault and physical abuse. Generally categorized, they included withholding of food, withholding of bathroom privileges, spanking, kicking, and insertion of catheters and a paint stick in their vaginas. None of the other children they fostered had issues. After being evaluated by doctors, the girls were placed on a diet of blended foods and were fed quinoa, oatmeal, vegetables, rice, and beans to ease constipation. (RT III, 6/9/14, p. 117.) Middle Daughter claimed to have been fed dead mice and "cow privates." (RT III, 6/9/14, pp. 57-58.)

Additionally, the State elicited testimony at preliminary hearing that the girls lived in their own filth or were stripped down to their underwear and forced to sleep on boards with fans blowing on them all night long. (See, e.g., RT IV, 6/10/14, p. 99-104.) When put in context, after the girls continuously urinated and defecated on themselves, their pajamas were removed and washed, and the girls had to be bathed. They stood in front of fans as they dried while the next sister was bathed. Ms. Solander washed their pajamas – that they wore daily – on Saturdays. (RT III, 6/9/14, p. 85-86.) They slept in their underwear only when there were no clean pajamas to wear after the girls soiled themselves, sometimes on purpose. (RT III, 6/9/14, p. 86.) Fans, however, were not used all the time. (RT III, 6/9/14, p. 149.) At night, the children admitted they slept in the loft of the house, which was adjacent to a bathroom with an angel nightlight accessible at night. (RT IV, 6/10/14, p. 99.) Nevertheless, the girls would urinate or defecate in their beds. (RT III, 6/9/14, p. 112.)

During the day, and somehow in addition to hours of homeschooling, all three (3) girls alleged they sat in their underwear and shirts on buckets with toilet lids and that the youngest sat on a training potty for long hours. (RT III, 6/9/14, p. 62.) Even though the prescribed medicine made Amay's stomach feel better, she continued to purposely urinate and defecate in her pants when she was mad at the Solanders or tried to escape her homework. (RT III, 6/9/14, pp. 109-111.) The alleged victims testified that they had medical issues that caused them to suddenly have to void their bowels or bladders and they did not always have enough time to make it to a bathroom. Middle Daughter explained, "I remember there was this one time…the doctor had…gave me medicine to take over the weekend, and I really had to go, and it helps your stomach…[Ms. Solander] gave me the medicine, and I didn't make it to the bathroom because…it was coming down fast…and she said, I understand because you're taking the medicine, but she was okay with that because she understood." (RT III, 6/9/14, p. 148.)

The girls complained of various forms of corporal punishment. However, "Miss Janet popped us real light, she didn't like ever slap us hard…" (RT III, 6/9/14, p. 142.) They testified that they were spanked with paint sticks and that these spankings left marks. These spankings were recognized as discipline, after the girls were caught stealing food that was not on their

restricted diet or after they had been caught lying to their parents. (RT III, 6/9/14, pp. 51; 156.) Being caught in a lie would earn them each one (1) point on the demerits system. (RT III, 6/9/14, p. 51.) One (1) daughter alleged that Ms. Solander kicked her up and down the stairs and slammed her head into a counter, giving her a black eye. (RT III, 6/9/14, p. 43.) No medical records discussed at the preliminary hearing corroborated this allegation.

Finally, the girls complained of having catheters inserted by Ms. Solander in their vaginas because she did not want them urinating on themselves when she had to leave the house and left the girls with babysitters. (RT III, 6/9/14, p. 94.) There was also testimony that one (1) of the daughters, Middle Daughter, had a rash on her vagina and that when Ms. Solander applied a prescription cream to her skin, she also inserted a catheter. (RT III, 6/9/14, p. 106; 161.) The private area is a recurring theme among the girls' allegations; they ate cow privates, they were beaten with belts on their privates, and they had catheters inserted, despite evidence of the same.

Despite the horrendous nature of these allegations, all of the other specialists who examined children while they lived with the Solanders, including endocrinologist who conducted not one (1), but two (2) colonoscopies, did not report the Solanders for child abuse or record any such suspicions in the medical records that were reviewed by Dr. Cetl. (RT IV, 6/10/14, p. 73.) Again, as foster parents, the Solander home was subject to unannounced home inspections by employees of the Department of Family Services. In 2011, Middle Daughter admitted that when she spoke to Child Protective Services investigators who came out to the home, she lied that Mr. and Mrs. Solander had beaten her with a belt in her privates. (RT III, 6/9/14, pp. 162-163.) She also admitted to fabricating a story that Ms. Solander had left bruises on her during that same time period in 2011. (RT III, 6/9/14, p. 161.)

If one (1) fact is undisputed in this case, it is this: these children are victims of the foster care system. Their victimizer and what abuse was suffered, however, is vehemently contested. One (1) of the daughters had behavior problems that escalated after the adoption. She was institutionalized at Montevista Psychiatric Hospital, where she was treated for anger issues and chronic lying. (RT III, 6/9/14, pp. 68-69.) During that hospitalization, she told a lie that a five (5) year old boy tried to kill her over a ripped bowling ball pin toy because she "just can't stand

certain people," demonstrating the extensive disturbed thoughts this young girl suffered. (RT III, 6/9/14, p. 69.) After returning home and continuing to have behavioral issues, these problems continued when she attended the Marvelous Grace Girls Academy in Florida. (RT III, 6/9/14, p. 65.)

At the conclusion of the preliminary hearing, and after noting the inconsistencies in the witnesses' testimonies, Ms. Solander was bound up on a total of forty-six (46) counts of sexual assault, battery with intent to commit sexual assault, and child abuse, neglect, and endangerment.

III. ARGUMENT

A writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless action. Its preeminent role is recognized in that, "The Privilege of the Writ of Habeas Corpus shall not be suspended." Harris v. Nelson, 394 U.S. 286, 290-91, 89 S.Ct 1082 (1969). Since 1912, the Nevada Supreme Court has recognized that the Writ of Habeas Corpus is the plain, speedy and adequate remedy by which to determine the legal sufficiency of the evidence supporting a grand jury indictment or preliminary hearing bind over. See, e.g., Eureka County Bank Habeas Corpus Cases, 35 Nev. 80, 126 P. 655 (1912); Ex parte Stearns, 68 Nev. 155, 227 P.2d 971 (1951); Ex Parte Colton, 72 Nev. 83, 295 P.2d 383 (1956). The Nevada Supreme Court has held, "It is fundamentally unfair to require one to stand trial unless he is committed upon a criminal charge with reasonable or probable cause. No one would suggest that an accused person should be tried for a public offense if there exists no reasonable or probable cause for trial." Shelby v. Sixth Judicial Dist. Court In and For Pershing County, 82 Nev. 204, 207-208, 414 P.2d 942, 943-944 (1966). The writ has been most commonly used to test probable cause following a preliminary examination resulting in an order that the accused be held to answer in the district court. See, e.g., State v. Plas, 80 Nev. 251, 391 P.2d 867 (1964); Beasley v. Lamb, 79 Nev. 78, 378 P.2d 524 (1963).

During preliminary hearing proceedings, the State must elicit sufficient evidence demonstrating probable cause that a crime was committed and that the accused was likely the perpetrator. Sheriff v. Miley, 99 Nev. 377, 379; 663 P.2d 343, 344 (1983). If the magistrate determines that the evidence establishes probable cause that the defendant committed an offense,

the magistrate binds the defendant over to the district court and may admit the defendant to bail. NRS 171.206. On the other hand, if the evidence does not establish probable cause, the magistrate must discharge the defendant. Id. At the preliminary hearing stage, probable cause to bind a defendant over for trial "may be based on 'slight,' even 'marginal' evidence because it does not involve a determination of guilt or innocence of an accused." Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). The State is required to present sufficient evidence "to support a reasonable inference that the accused committed the offense." Sheriff v. Milton, 109 Nev. 412, 414, 851 P.2d 417, 418 (1993), quoting Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971).

It is appropriate for a District Court to grant a petition for a writ of habeas corpus when the prosecution acts in "a willful or consciously indifferent manner with regard to a defendant's procedural rights, or where the defendant is bound over on criminal charges without probable cause." See, e.g., Dettloff v. State, 120 Nev. 588, 595; 97 P. 3d 586, 590 (2004) (quoting Sheriff v. Roylance, 110 Nev. 334, 337, 871 P.2d 359, 361 (1994). In reviewing a district court's order granting a pretrial petition for writ of habeas corpus for lack of probable cause, the Nevada Supreme Court determines "whether all of the evidence received establishes probable cause to believe that an offense has been committed and that the defendant committed it." Sheriff v. Hodes, 96 Nev. 184, 186, 606 P. 2d 178, 180 (1980). The trial court is the most appropriate forum in which to determine factually whether or not probable cause exists. Sheriff v. Provenza, 97 Nev. 346, 347, 630 P. 2d 265 (1981). Absent a showing of substantial error on the part of the district court in reaching such determinations, the Nevada Supreme Court will not overturn the granting of pretrial habeas petitions for lack of probable cause. Id.

A. TIMELINESS OF THE INSTANT WRIT.

The undersigned was not appointed until well after the multiple-day preliminary hearing had concluded and, thus, did not have the benefit of having been present to participate in the justice court proceedings below. At the time of confirmation of counsel, defense counsel specifically reserved the right to file a Petition for Writ of Habeas Corpus within twenty-one (21) days of the filing of the preliminary hearing transcripts in this matter. Although we received

discovery from previous counsel, it did not include the grand jury transcripts. Despite a diligent and continuous Odyssey search, to date, only one (1) of the multiple volumes of transcripts has been filed. Defense counsel did not have the entirety of the draft copies of the preliminary hearing transcripts until approximately the last ten (10) days, when counsel obtained the same from counsel for one (1) of the co-defendants, all of whom have inherently antagonistic defenses.

For these reasons, Petitioner submits that the instant Petition is timely.

B. THE STATE OF NEVADA FAILED TO ESTABLISH PROBABLE CAUSE TO BELIEVE THAT MS. SOLANDER COMMITTED ANY SEXUAL ASSAULT OF MINORS UNDER FOURTEEN YEARS OF AGE.

For a conviction of sexual assault to be lawful, a defendant must have: (1) knowingly, willfully, and unlawfully, (2) without consent, subjected another person, (3) to sexual penetration. Hardaway v. State, 112 Nev. 1208, 1210, 926 P.2d 288, 289 (1996); NRS 200.366. "Sexual penetration" means cunnilingus, fellatio, or any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another, including sexual intercourse in its ordinary meaning. NRS 200.364(5).

At preliminary hearing, the State improperly succeeded in arguing what amounts to a "per se" penetration standard, completely ignoring the statutory sexual component to these offenses charged. At the conclusion of testimony, Judge Sullivan made the finding that, "there was no evidence at all of any sexual motivation." (RT Argument, 7/23/14, p. 64.) As this Court knows, statutory construction should always avoid an absurd result. State v. White, 330 P.3d 482 (2014). Moreover,

> [w]hen interpreting a statute, legislative intent is the controlling factor. To determine legislative intent of a statute, [a] court will first look at its plain language. But when the statutory language lends itself to two or more reasonable interpretations, the statute is ambiguous, and [a court] may then look beyond the statute in determining legislative intent. When interpreting an ambiguous statute, the Court should look to the legislative history and construe the statute in a manner that is consistent with reason and public policy.

State v. White, 330 P.3d at 482 (internal quotations and citations omitted).

Assuming any truth to the allegations of penetration of any of the daughters' vaginas by way of a catheter, and after weighing the inconsistencies and admitted motivations to lie, the sexual assaults charged must be dismissed because the language in the statute cannot be read to be so overbroad that ***any*** penetration of the vagina would be a sexual assault. There was no evidence of sexual gratification, nor any even implied. Indeed, the justice of the peace found no evidence that the alleged contact had a sexual motivation. The State's literal reading of a statute would criminalize even legitimate medical examinations of children, such as SANE examinations by medical professionals. While no statutory exception exists to "sexual penetration," there would seem to be obvious exceptions to this statute, such as contact by medical professionals or in instances of accidental contact. In the preliminary hearing testimony, there was an available potential alternative for alleged catheter insertions, namely the documented incontinence of the Solander daughters.

Additionally, Petitioner submits that the rule of lenity, "requires courts to limit the reach of criminal statutes to the clear import of their text and construe any ambiguity against the government." United States v. Millis, 621 F.3d 914, 916-17 (9th Cir. 2010), citing United States v. Romm, 455 F.3d 990, 1001 (9th Cir. 2006); see also United States v. Miranda–Lopez, 532 F.3d 1034, 1040 (9th Cir. 2008). The rule of lenity applies "only where 'after seizing every thing from which aid can be derived, the Court is left with an ambiguous statute.' " United States v. Nader, 542 F.3d 713, 721 (9th Cir. 2008) (quoting Smith v. United States, 508 U.S. 223, 239, 113 S.Ct. 2050, 124 L.Ed.2d 138 (1993)). In such a case, fundamental principles of due process mandate that "no individual be forced to speculate, at peril of indictment, whether his conduct is prohibited." Nader, 542 F.3d at 721 (citation and internal quotation marks omitted).

In this case, the rule of lenity applies. Such a rule favors a statutory interpretation of sexual assault against a "per se penetration" interpretation, and favors an interpretation that does not make the potential insertion of catheters for medical purposes unlawful. To hold otherwise would criminalize every doctor, nurse, or parent who must, for example, insert a finger inside a child's rectum to dislodge a stoppage caused by constipation or to clean areas soiled by dirty

diapers or insertion of a suppository. There was no probable cause to believe that any of the sexual assaults were committed against the Solanders' adopted daughters based on a theory of per se penetration, absent sexual motivation, and in light of a potential legitimate medical purpose for the catheters. The legislative intent behind this statute could not be inferred to support a per se penetration standard, and the bind over would seem to support an interpretation of this statute to a legal absurdity. The law of statutory construction does not support such a result, and neither does the law of lenity because Ms. Solander would not have been even aware or could foresee that this type of conduct would be prohibited by law.

Therefore, the State of Nevada failed to prove by slight or marginal legally admissible evidence that Ms. Solander committed any offense of sexual assault of a minor under fourteen (14). Thus, those counts must be dismissed against her and, similarly, the counts involving Battery with Intent to Commit Sexual Assault must likewise be dismissed as the predicate of sexual assault was not met.

C. THE STATE OF NEVADA FAILED TO ESTABLISH PROBABLE CAUSE TO BELIEVE THAT MS. SOLANDER COMMITTED CHILD ABUSE, NEGLECT, OR ENDANGMENT RESULTING IN SUBSTANTIAL BODILY HARM.

NRS 200.508 criminalizes conduct constituting child abuse, neglect, or endangerment that results in substantial bodily harm. "Substantial bodily harm" is bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ, or prolonged physical pain. NRS 0.060.

At preliminary hearing, the State failed to prove by slight or marginal evidence that the marks on the girls' buttocks and backs were caused by conduct attributable to Ms. Solander. There was an insufficient nexus of events of discipline, to wit: spanking with a paint stick, to be the source of undated scars on the bodies of previously abused and neglected foster children. There was evidence of abuse and neglect of the children occurring prior to the time that the children were in the Solander home. Additionally, the State's expert conceded that she had made an incomplete review of the medical records available to her. She was aware that the Solander

daughters had been taken numerous times between January 2011 and approximately November 2013 where they were seen and evaluated by medical professionals. This included some rather invasive examinations of the children's bodies for legitimate medical purposes, including two (2) colonoscopies. In those records, no notations of suspicion for child abuse were made.

Therefore, as no slight or marginal evidence exists to support a finding that child abuse occurred by Ms. Solander that resulted in permanent disfigurement (scarring), the charges of child abuse resulting in substantial bodily harm must be dismissed.

IV. CONCLUSION

As set forth above, the State failed to demonstrate probable cause by slight or marginal evidence that the Petitioner committed the enumerated crimes. In order for the District Court to proceed in this case, probable cause must be present as to establish: (1) that a crime was committed and (2) that the defendant committed it. As set forth above, the State failed to demonstrate to the Justice of the Peace that slight or marginal evidence existed that Petitioner committed any of the charged offenses.

WHEREFORE, Petitioner, JANET SOLANDER, respectfully requests that this Honorable Court grant her Petition for Writ of Habeas Corpus and dismiss the Information against her with prejudice.

DATED this 5th day of November, 2014.

Respectfully Submitted by:

/s/: Kristina Wildeveld
KRISTINA WILDEVELD, ESQ.
Nevada Bar No. 005825
CAITLYN MCAMIS, ESQ.
Nevada Bar No. 012616
615 S. 6th St.
Las Vegas, Nevada 89101
Attorneys for Petitioner, JANET SOLANDER

VERIFICATION

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

CAITLYN MCAMIS, ESQ., being first duly sworn, deposes and states as follows:

1. That I am an attorney duly licensed to practice law in the State of Nevada and am employed as an associate attorney with The Law Offices of Kristina Wildeveld, whose office has been appointed to represent the Petitioner/Defendant, JANET SOLANDER, in the matter of The State of Nevada v. Janet Solander, District Court Case No. C-14-299737-3, formerly Justice Court Case No. 14F04585C.

2. That JANET SOLANDER (hereinafter "Ms. Solander" or "Petitioner") has authorized and directed Counsel to file the foregoing Petition for Writ of Habeas Corpus.

3. That Counsel has read the foregoing Petition for Writ of Habeas Corpus and knows the contents therein and as to those matters they are true and correct, and as to those matters based on information and belief, the undersigned is informed and believes them to be true.

4. That Ms. Solander has no adequate remedy at law available to her as to the current matter and that the only means to address this problem is through this Writ.

5. That Counsel signs this Verification on behalf of the Petitioner under her direction and authorization.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 5th day of November, 2014.

/s/: Caitlyn McAmis
CAITLYN MCAMIS, ESQ.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** will be served or was served on the appropriate parties hereto in the manner(s) stated below:

1. SERVED BY UNITED STATES MAIL: On November 5, 2014, I served the following persons and/or entities at the last known addresses by placing a true and correct copy thereof in a sealed envelope in the United States Postal Service, First-Class, prepaid postage affixed thereto, and addressed as follows:

RESPONDENT

SHERIFF DOUG GILLESPIE
Clark County Detention Center
330 S. Casino Center Blvd.
Las Vegas, NV 89101

2. TO BE SERVED BY THE COURT VIA ELECTRONIC FILING: The foregoing document will be served by the court's electronic filing system, Odyssey File & Serve, via courtesy copy and hyperlink to the document. On November 5, 2014, the foregoing document was submitted for electronic filing with the court and the following persons are on the courtesy copy list to receive an electronic notice of the transmission at the email addresses stated below:

JACQUELINE BLUTH, ESQ.
E-mail: ***Jacqueline.bluth@clarkcountyda.com***

ELISSA LUZAICH, ESQ.
E-mail: ***Lisa.luzaich@clarkcountyda.com***

CRAIG A. MUELLER, ESQ.
E-mail: ***Cmueller@muellerhinds.com***

JEFFREY RUE, ESQ.
E-mail: ***Ruejt@clarkcountynv.gov***

3. SERVED BY FACSIMILE TRANSMISSION: I served the following persons and/or entities by facsimile transmission as follows. Listing the judge here constitutes a

declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

ELISSA LUZAICH, ESQ.
Chief Deputy District Attorney
Nevada Bar No. 005056
FAX: (702) 477-2946

CRAIG A. MUELLER, ESQ.
Mueller, Hinds & Associates
Nevada Bar No. 004703
FAX: (702) 940-1235
Attorney for Co-Defendant, Dwight Solander

JACQUELINE BLUTH, ESQ.
Chief Deputy District Attorney
Nevada Bar No. 010625
FAX: (702) 868-2406
Attorneys for Plaintiff

JEFFREY RUE, ESQ.
Deputy Public Defender
Nevada Bar No. 008243
FAX: (702) 455-5112
Attorney for Co-Defendant, Danielle Hinton

DISTRICT COURT JUDGE
Honorable Valerie Adair
District Court Judge, Dept. 21
Regional Justice Center
200 Lewis Avenue, 11th Floor
Las Vegas, NV 89155

/s/: Miguel L. Flores
An Employee of The Law Offices of
Kristina Wildeveld, Esq.

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CLERK OF THE COURT

OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JANET SOLANDER,
#6005501

Defendant.

CASE NO: **C-14-299737-3**

DEPT NO: **XXI**

STATE'S OPPOSITION AND MOTION TO DISMISS DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

DATE OF HEARING: NOVEMBER 20, 2014
TIME OF HEARING: 9:30 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through LISA LUZAICH, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition and Motion to Dismiss Defendant's Petition for Writ of Habeas Corpus.

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

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POINTS AND AUTHORITIES

STATEMENT OF FACTS

Following a preliminary hearing that was held over the course of numerous days, Janet Solander, the defendant herein, was ordered to stand trial on multiple counts of child abuse, neglect or endangerment with substantial bodily harm, child abuse, neglect or endangerment, sexual assault with a minor under fourteen years of age, assault with use of a deadly weapon and battery with intent to commit sexual assault. Because the preliminary hearing testimony took five (5) days (May 22, 2014, May 23, 2014, June 10, 2014 and June 12, 2014) and was so extensive, the parties and the Court wanted to have transcripts of the testimony to argue the bindover.

The Justice Court specifically ordered that transcripts of the proceedings be prepared and distributed to all parties **prior to** arguing the bindover in this matter. The order was filed with the Court on June 30, 2014. Volumes I through IV of the preliminary hearing transcripts were filed with the Court on July 8, 2014, well in advance of the bindover argument date of July 23, 2014. The fifth and final volume of testimony[1] was filed on August 5, 2014 in District Court.

On September 4, 2014, Defendant was arraigned and pled not guilty. She was represented by current counsel. On November 5, 2014, Defendant filed a petition for writ of habeas corpus, sixty-two (62) days after being arraigned. For reasons described below, this petition is untimely and cannot be considered.

ARGUMENT

I. DEFENDANT'S PETITION IS UNTIMELY AND CANNOT BE CONSIDERED

Pursuant to NRS 34.700:

> 1. Except as provided in subsection 3, a pretrial petition for a writ of habeas corpus based on alleged lack of probable cause or otherwise challenging the court's right or jurisdiction to proceed to the trial of a criminal charge may not be considered unless:
>
> > (a) The petition and all supporting documents are filed within 21 days after the first appearance of the accused in the district court.

[1] The only witness who testified on June 12, 2014 was Det. Embry.

The instant Petition does not comply with the statute as the the statutory time limit for filing a pretrial habeas petition has long since passed.

The 21-day limit is jurisdictional. If such a petition is not filed within the statutory period, the District Court is without jurisdiction to even rule upon the petition. Sheriff v. Jensen, 95 Nev. 595, .600 P.2d 222 (1979).

Defendant asserts in her "Timeliness" section of the petition that counsel "specifically reserved the right to file a Petition for Writ of Habeas Corpus within twenty-one days of the filing of the preliminary hearing transcripts in this matter." It appears Defendant is attempting to rely on NRS 34.700(3), without actually citing it. However, NRS 34.700(3) does not support Defendant's position.

NRS 34.700(3) provides, in pertinent part, "The court may extend, for good cause, the time to file a petition. Good cause shall be deemed to exist **if the transcript of the preliminary hearing or of the proceedings before the grand jury is not available within 14 days after the accused's initial appearance**." As seen above, the transcripts of the preliminary hearing were generated and provided to counsel prior to the arguments regarding the bindover in Justice Court.

Defendant claims that current counsel did not receive the transcripts until recently. Defendant actually states in her petition, "Although we received discovery from previous counsel, it did not include the grand jury transcripts." See Petition at pp. 12-13. The State is confident the discovery provided by prior counsel's office would not include grand jury transcripts as there was no grand jury presentment. However, the State is just as confident that current defense counsel did receive the preliminary hearing transcripts as it received a document from prior counsel, who represented Defendant through the preliminary hearing, delineating what discovery was provided to current counsel. Attached hereto is an Acknowledgment, signed by a representative of attorney Kristina Wildeveld, wherein it specifically states "Reporter's trasnscripts: preliminary hearing(s) for : May 22, May 23, June 10, June 12, 2014" were among the items provided to current counsel. (See Exhibit "1").

//

Furthermore, Defendant was aware that both co-defendants filed their petitions on September 16, 2014. As it cannot be done without a preliminary hearing transcript, clearly transcripts were "available." NRS 34.700.

Defendant's petition is unequivocally untimely. This Court has no jurisdiction to hear it. Thus, it must be dismissed.

CONCLUSION

For the foregoing reasons, the State urges this Court to grant its Motion to Dismiss Defendant's untimely Petition for Writ of Habeas Corpus.

DATED this 19th day of November, 2014.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ LISA LUZAICH
LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 19th day of NOVEMBER 2014, to:

CAITLYN MCAMIS, ESQ.
caitlyn@veldlaw.com

BY /s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

EXHIBIT "1"

Law Office of
Joel M. Mann

601 South Seventh Street
Las Vegas, Nevada 89101

(702) 474-MANN (6266) • Fax (702) 789-1045 • www.LegalMann.com

ACKNOWLEDGMENT

STATE V. SOLANDER, JANET

C-14-299737-3

I acknowledge on this 10th day of September, 2014 receipt of JANET SOLANDER'S entire original file, provided by the Law Office Joel M. Mann consisting of the following:

- Complaint, amended complaint
- All pleading, motions, oppositions, replies
- Reporter's transcripts:
  - Preliminary Hearing(s) for : May 22, May23, June 9, June 10, and June 12, 2014
- Medical color photos
- Voluntary statements
- Color photos of home/ children
- Client's personal notes to JM
- 15 discovery disk
- Copy of Janet's book

This includes the **ENTIRE** file in our office, which was picked up by a representative of attorney, Kristina Wilderveld's.

Allison Noot
PRINT NAME

Allison Noot
SIGNATURE

RET
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #5056
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
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State of Nevada

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of Application,

of

JANET SOLANDER,
#6005501

for a Writ of Habeas Corpus.

CASE NO: C-14-299737-3

DEPT NO: XXI

STATE'S RETURN TO WRIT OF HABEAS CORPUS

DATE OF HEARING: December 18, 2014
TIME OF HEARING: 9:30A.M.

COMES NOW, DOUGLAS C. GILLESPIE, Sheriff of Clark County, Nevada, Respondent, through his counsel, STEVEN B. WOLFSON, Clark County District Attorney, through LISA LUZAICH, Chief Deputy District Attorney, in obedience to a writ of habeas corpus issued out of and under the seal of the above-entitled Court on the 20th day of November, 2014, and made returnable on the 18th day of December, 2014, at the hour of 9:30 o'clock A.M., before the above-entitled Court, and states as follows:

1. Respondent admits the allegations of Paragraph(s) 1 and 2 of the Petitioner's Petition for Writ of Habeas Corpus.

2. Respondent denies the allegations of Paragraph(s) 3, 5 and 6 of the Petitioner's Petition for Writ of Habeas Corpus.

3. Respondent objects to Paragraph 9.

4. Paragraphs 4, 7, 8 and 10 do not require admission or denial.

5. The Petitioner is in the constructive custody of DOUG GILLESPIE, Clark County Sheriff, Respondent herein, pursuant to a Criminal Information on file with this Court.

Wherefore, Respondent prays that the Writ of Habeas Corpus be discharged and the Petition be dismissed.

DATED this 17th day of December, 2014.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar # 001565

BY /s/ LISA LUZAICH
LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #5056

POINTS AND AUTHORITIES

STATEMENT OF FACTS

Janet Solander, the defendant herein, is charged in an Information with multiple counts of child abuse, neglect, or endangerment with substantial bodily harm; child abuse, neglect, or endangerment and sexual assault with a minor under fourteen years of age. The victims are A.S. (whose date of birth is 10/21/01), A.S. (whose date of birth is 1/23/03) and A.S. (whose date of birth is 7/25/04). Initially, the children were foster children of Defendant and co-defendant Dwight Solander, then the Solanders adopted them. The crimes were committed on or between January 19, 2011, and November 11, 2013, after the children were adopted.

On November 5, 2014, Defendant filed a Petition for Writ of Habeas Corpus. The State's Return follows.

A.S. (10/21/01) is twelve years old. She is the oldest of the Solander sisters. A.S. (10/21/01) knows the DEFENDANTS in this case because she and her siblings were originally foster children within the Solander home. In January of 2011, the three siblings were formally

adopted by DEFENDANTS Janet and Dwight Solander. (VOL 1 - PHT pp. 14-15).

Before A.S. (10/21/01) and her siblings were fostered by the DEFENDANTS, they were with a couple by the name of Miss Debbie and Mr. Mack. During the time period the children lived with Miss Debbie and Mr. Mack, A.S. (10/21/01) had no issues with going to the bathroom, nor did she have any "tummy" issues. (VOL 1 - PHT pp. 16-17).

On January 19, 2011, DEFENDANTS Janet and Dwight Solander formally adopted A.S. (10/21/01) and her two sisters. Once they were adopted, certain rules were put in place regarding the bathroom. First, the children would have to ask one of the named DEFENDANTS to use the bathroom and the children were not allowed to use the restroom whenever they needed to. (VOL 1 - PHT p. 19). The DEFENDANTS then began using timers to time when the children were allowed to go to the bathroom. (Id. At 19, 28). The children were forced to hold their pee and poop until the timer went off. (VOL 1 - PHT p. 28). Then, when A.S. (10/21/01) was given a chance to go to the bathroom, she was too scared to take the opportunity, because if she stated she had to go then she would get in trouble for not opening her mouth and telling them she had to go previously. (VOL 1 - PHT pp. 112-113). Thus, there was no way to escape getting into trouble over toileting.

There were also rules regarding use of the bathroom at nighttime. At first, the children were allowed to knock on DEFENDANTS Janet and Dwight's door and ask to go to the bathroom, however, they would get in trouble with DEFENDANT Janet Solander for asking. Then the DEFENDANTS put gates and alarms on the door so the children could not get access to the bathroom. (VOL 1 - PHT p. 20)

A.S. (10/21/01) became too scared to ask so she started holding "it," then after a while she started having accidents in her pants and that is when she would get beaten. (VOL 1 - PHT p. 21).

When A.S. (10/21/01) was beaten, she was hit by DEFENDANTS Janet or Dwight Solander. They would spank her bare bottom with a wooden Home Depot stick/ruler. DEFENDANT Dwight Solander wrote "Board of Education" on the stick. (VOL 1 - PHT p. 22). Before the beating, she would be told to take her clothes off and "get in the position" which

meant get in a position like one was about to do a pushup. Then either DEFENDANT Janet or Dwight would hit her with the stick. (VOL 1 - PHT p. 24). When the stick hit her bottom, it would break her skin and she would bleed. On certain occasions, she would be hit and the stick would actually break; yet, the beatings would still continue. (VOL 1 - PHT p. 25). A.S. (10/21/01) still has scars on her bottom to this day.

The children were also forced to sit on Home Depot buckets with a toilet seat placed on top of the bucket. (VOL 1 - PHT p. 29). DEFENDANT Dwight Solander bought these buckets at Home Depot. He also placed the toilet lids on top of them. A.S. (10/21/01) and her siblings had to sit on the buckets from the moment they woke up until it was time to go to bed. (PHT p. 32).

DEFENDANT Janet Solander took A.S. (10/21/01) to the doctor because DEFENDANT Janet Solander believed A.S. (10/21/01) was having "stomach issues." After that, DEFENDANT Janet starting blending ALL of the children's food. The children were fed this "blended meal" three times a day. If they had an accident sometimes their food would be reduced to twice a day, then once a day, and sometimes they would not be given anything to eat at all. The same was done with water as well, once the children started having their accidents, they were only given water if they were taking medicine. It was both, DEFENDANT Janet and DEFENDANT Dwight that would withhold food and water from the children.[1] (VOL 1 - PHT pp. 33-34).

Besides being beaten, if A.S. (10/21/01) had an accident in her pants, DEFENDANT Janet Solander would make Janet stick her soiled underwear in her mouth. (VOL 1 - PHT p. 35). DEFENDANT Janet Solander also made her lick urine off of the floor after an accident. (VOL 1 - PHT p. 146).

After the children had accidents, they would either be taken outside and sprayed down with a hose, or they would be given a cold shower. (VOL 1 - PHT p. 36). Along with being placed in the cold shower, DEFENDANT Janet Solander would also pour buckets of ice on the children while they were showering. (VOL 1 - PHT p. 37). After the children were done

[1] Later in the preliminary hearing A.S. (10/21/01) testified that DEFENDANT Dwight Solander did not withhold food and water from her or her siblings.

showering DEFENDANT Janet or DEFENDANT Dwight would then take a special light to the shower. If it showed that they had urinated in the shower they would get hit with the stick. (VOL 1 - PHT pp. 37, 38). DEFENDANTS Janet and Dwight would also force them to dry off by placing a fan on them, or they were told to shake the water off, they would not be given towels. (VOL 1 - PHT p. 38).

When A.S. (10/21/01) and her siblings would sleep at night, they were given boards to sleep on, unless the nannies were there, then they would give them a cot. Most of the time the children were made to sleep with no pajamas on, just their underwear, while a fan blew on them. (VOL 1 - PHT p. 39).

At a certain point the DEFENDANTS made the decision to home school the children. When the children would get answers to their homework wrong, DEFENDANT Janet would either hit them with the stick or punish them in other ways. On one particular occasion A.S. (10/21/01) had gotten an answer wrong so DEFENDANT Janet Solander took A.S.'s (10/21/01) head and slammed her face repeatedly into the counter. Her eye became purple and swelled shut. (VOL 1 - PHT pp. 43-44).

One day, DEFENDANTS Janet and Dwight asked A.S. (10/21/01) if she needed to use the bathroom, to which she answered no. DEFENDANT Janet Solander then told her to go upstairs so she could get a catheter put in. Once she got up to the bathroom, she lay down on a towel, she was told to wipe herself with some "wipe thing" and then DEFENDANT Janet stuck the catheter up her vagina. (VOL 1 - PHT p. 45, 46). Urine came out into the catheter and then she got into trouble with the DEFENDANTS because she had told them that she didn't need to go to the bathroom. (VOL 1 - PHT p. 47). This happened more than one time. There were times when DEFENDANT Dwight was outside the bathroom door when it was happening and there were times when he was downstairs. (VOL 1 - PHT p. 48).

If A.S. (10/21/01) ever fought DEFENDANT Janet while she was trying to put the catheter in her, DEFENDANT Janet would threaten her with a razor blade. The razor blade was gray, silverish, and small. (VOL 1 - PHT p. 49). This scared A.S. (10/21/01).

///

A.S. (1/23/03) is eleven years old and she is the middle child of the three sisters.[2] She too noticed the rules started changing after the sisters were adopted by the DEFENDANTS. The children were put on timers and could not go to the bathroom unless the timer was up; this tactic was used by both DEFENDANTS Janet and Dwight. (PHT. VOL III, P. 14). There came a point in time when A.S. (1/23/03) and her siblings were not allowed to use the bathroom during the night. The DEFENDANTS Janet and Dwight placed an alarm on the bathroom door and a gate prevented them from going near the bathroom. (PHT. VOL III, P. 15).

Sometimes, A.S. (1/23/03) could not "hold it" anymore and she would have an accident in her pants. When that occurred, either DEFENDANT Janet or DEFENDANT Dwight would spank A.S. (1/23/03) with the paint stick. It was long and brown and it said Home Depot on it. (PHT. VOL III, P. 16, 17). Either DEFENDANT Janet would hit the children or she would threaten them by saying, "You're going to get it when Dad comes home." Then when DEFENDANT Dwight would come home, he would spank them. Usually they were spanked on the bottom; however, if they kept moving- he would hit them on their backs, arms, or ankles. (PHT. VOL III, P. 16, 17). When the stick would break, the DEFENDANTS would just go get another stick because there were several in the garage. A.S. (1/23/03) still has marks today from the stick whippings on her bottom and her arm. (PHT. VOL III, P. 18).

A.S. (1/23/03) and her siblings were originally enrolled in public school. One morning the children were so hungry that they stole a cinnamon roll from the school. The school notified DEFENDANT Janet Solander, and from that point forward, they were home schooled. (PHT. VOL III, P. 20). Once the girls became home schooled, they had to sit at the counter in the kitchen on buckets. The buckets were orange in color and said Home Depot on them. Id. The buckets were purchased by DEFENDANT Dwight Solander, he placed toilet seats on the buckets as well. (PHT. VOL III, P. 21). Somebody wrote names on the buckets in an attempt to make fun of them. Id. When they would sit on the buckets, they would have to sit there with their underwear off but they could keep their shirt on. The children sat on the buckets all day

[2] Much of the testimony of all three siblings is similar. Unfortunately to show all counts were bound over correctly, the State must reiterate and repeat the information each victim gave.

until they went to bed. (PHT. VOL III, P. 22).

In regards to eating, sometimes the children were given "regular" food, which consisted of rice and beans and some "gray stuff." At other times, the girls were given blended food. (PHT. VOL III, P. 24). The children were allowed no snacks in between the regular or blended food. DEFENDANT Janet would give A.S. (1/23/03) a little bit of water with her medicine. (PHT. VOL III, P. 25). Sometimes when the children had accidents, DEFENDANT Janet would not give them food that day or even the next day. (PHT. VOL III, P. 26). If DEFENDANT Dwight was watching the girls, he would call DEFENDANT Janet and if she told him that they couldn't eat or drink - then he wouldn't give them anything. (PHT. VOL III, P. 27).

When A.S. (1/23/03) had accidents, DEFENDANT Janet would force her to put her soiled underwear in her mouth. She also saw DEFENDANT Janet make her sisters do this as well. (PHT. VOL III, P. 28). Additionally, DEFENDANT Janet and DEFENDANT Dwight would make girls act like babies in front of the other foster children. They would make the Solander sisters stand in front of the foster kids with pacifiers in their mouth. In other times, they would have the Solander girls crawl on the floor saying "goo goo" and "gaa gaa." The DEFENDANTS and the other foster children would laugh and make fun of them. If any saliva came out of their mouths, they would get slapped. (PHT. VOL III, P. 28, 29).

When A.S. (1/23/03) and her siblings took showers sometimes they were given luke warm showers and sometimes cold. It would depend on the type of mood DEFENDANT Janet was in. Sometimes she would give them cold showers; sometimes she would decide to dump buckets of ice on them while taking the cold showers. She also saw DEFENDANT Janet give her sisters the same kinds of showers. (PHT. VOL III, P. 28). When the girls were done with the shower, DEFENDANT Janet would either give them a towel, make them shake off or stand in front of a fan.

After the children were done showering, one of the DEFENDANTS would get a purple light and check the shower to see if there was any pee. If DEFENDANT Janet saw any pee she would scream, "What's this? Did you pee in the tub? I'm not stupid I can see the spots." They

would also check their underwear with the light. If the DEFENDANTS found anything, the children would get spanked with the sticks, the DEFENDANTS' hands, or DEFENDANT Janet's slipper. (PHT. VOL III, P. 33).

A.S. (1/23/03) and her sisters would sleep on boards. (PHT. VOL III, P. 33) She believes that they slept in their underwear but maybe sometimes they were allowed their pajamas. Then while they were sleeping, DEFENDANT Janet would put fans on high and let them blow on them. If DEFENDANT Janet was out of town and DEFENDANT Dwight was taking care of them he would have to call DEFENDANT Janet and do whatever she told him in regards to how the children slept. There were no sheets on the bed but sometimes they would get a blanket. (PHT. VOL III, pp. 34-35).

DEFENDANT Janet would ask them if they had to go to the bathroom before the DEFENDANT left the house. Even though the children would tell her no, she would still check them with a catheter. If pee came out of the bag, she would spank them. (PHT. VOL III, P. 38). She would check them by taking them into the bathroom and telling them to lay a towel on the floor, then they would lay down and she would put the catheter in their "front part." (PHT. VOL III, P. 39). If pee came out, she was in trouble. If A.S. (1/23/03) fought DEFENDANT Janet then she would get spanked. DEFENDANT Janet would also threaten them with a razor blade. (PHT. VOL III, P. 40). When DEFENDANT Janet threatened A.S. (1/23/03) with the razor blade, it made her feel afraid. (PHT. VOL III, P. 41). A.S. (1/23/03) isn't sure, but she believes she heard DEFENDANT Dwight Solander ordering the catheters on the phone. (PHT. VOL III, P. 45).

A.S. (1/23/03) remembers one day when they were doing their homework, she noticed that A.S. (10/21/01) was shaking. She asked her if she had to go to the bathroom and A.S. (10/21/01) said yes. A.S. (1/23/03) told her sister that she needed to say something, but her sister told her that she was too scared. So, A.S. (1/23/03) told her sister that she would be in more trouble if she didn't say anything but her sister said that she was too afraid. Her sister then urinated on herself. When DEFENDANT Janet saw that A.S. (10/21/01) had urinated, she kicked her up and down the stairs. Then she took her head and slammed it into the counter

leaving her with a blackish purple eye. (PHT. VOL III, P. 43).

A.S. (1/23/03) also remembers a time when their youngest sibling had pooped in her pants. DEFENDANT Janet then kicked the youngest sibling up the stairs. Once the child reached the bathroom, Janet emptied the child's poop into the toilet and forced the child to stick her head into the toilet with the poop in it. (PHT. VOL III, P. 44).

The youngest of the Solander adopted children is A.S. (7/25/04). She is 9 years old. She first moved in with the DEFENDANTS as a foster child. Then in January of 2011 she and her sisters were adopted.

After being adopted, there were rules about going to the bathroom. They were not allowed to go unless they asked. (PHT. VOL III, P. 186). Sometimes DEFENDANT Janet would get mad at them after they asked and she would start spanking and kicking them. (PHT. VOL III, P. 186). If they asked DEFENDANT Dwight if they could go, he would let them. When they would get in trouble about the bathroom, the DEFENDANTS would spank them with a stick, which was wooden and had orange words on it. (PHT. VOL III, P. 187). If the stick broke while the DEFENDANTS were hitting her and her sisters, they would just go get another stick because they had a whole pack of them. (PHT. VOL III, P. 190). Her bottom would bleed when they spanked her; she knows this because when she pulled down her pants all she could see was blood. (PHT. VOL III, P. 190). There were other times when she had an accident that DEFENDANT Janet made her put her soiled underwear in her mouth. (PHT. VOL III, P. 199).

If DEFENDANT Dwight was watching them, sometimes he would let them go, but he had to follow the rules. If DEFENDANT Janet told DEFENDANT Dwight that they had to wait - then they had to wait. (PHT. VOL III, P. 192).

When they slept at night, there was an alarm on the bathroom door and there was also a gate to keep them from going to the bathroom. (PHT. VOL III, P. 193). DEFENDANT Janet told them that if they passed the gate, it would electrocute them.

When they were working on their school work they would sit at an island in the kitchen and they would sit on buckets. They were from Home Depot and they had a toilet seat on them.

(PHT. VOL III, P. 195). DEFENDANT Dwight placed the toilet seat on them. They had to sit on the buckets all day until they went to bed.

A.S. (7/25/04) and her siblings were not allowed to eat whatever they wanted. Initially they were given vegetables, red beans, and rice. In the morning they were given either oatmeal or cereal; however, DEFENDANT Janet started blending their food. DEFENDANT Janet told them that she was blending mice up and feeding it to them, but she didn't really believe her. (PHT. VOL III, P. 196). Initially they were allowed to eat three times a day, then sometimes only once. If they had an accident, they could go as long as two days without any food or water. (PHT. VOL III, P. 197).

If A.S. (7/25/04) and her siblings had an accident or they didn't finish their homework, DEFENDANT Janet would take them to the shower, put a bucket full of ice on them, and then she would have them stand in front of a fan to dry off. (PHT. VOL III, P. 200).

After the siblings were done with the shower, DEFENDANTS Janet and Dwight would check the shower with a special light that was purple to see if they had gone pee in the shower, they would also do this with their underwear. (PHT. VOL III, P. 201). Then they would get punished if anything was found.

They slept on boards in the loft. They were blue and had their names on them. DEFENDANT Dwight Solander used a sharpie to write their names on the board. (PHT. VOL III, P. 202). They were never given any sheets but sometimes they were given a pillow. (PHT. VOL III, P. 203). Sometimes they were allowed to wear a t-shirt to sleep in but most of the time they were just allowed to wear their underwear. While they slept, a fan blew on them. (PHT. VOL III, P. 203). When DEFENDANT Dwight was watching them, he would usually let them sleep on pull out beds; however, when DEFENDANT Janet was with them, Dwight would see that she was making the girls sleep on the boards. (PHT. VOL III, P. 204).

One day A.S. (7/25/04) was cleaning up the "dogs' bathroom" in the yard. When she came inside, DEFENDANT Janet told her to wash her hands. When she went to do so, the water was really hot so she jerked her hands out. This angered DEFENDANT Janet and so she forced her hands back in. DEFENDANT Janet then took the top of a candle lid, filled it with

water, and splashed it in her face. When she continued to cry, DEFENDANT Janet picked her up and tried to put her whole body in the sink. A.S. (7/25/04) still has scars on her back and ear. (PHT. VOL III, P. 205).

Sometimes DEFENDANT Janet would get mad at her for an accident so she would stick her head in the toilet or make her put her underwear in her mouth. (PHT. VOL III, P. 208).

There were two occasions when DEFENDANT Janet Solander became angry because A.S. (7/25/04) had had an accident in her pants. DEFENDANT Janet punished her by making her stand naked in a garbage bag for hours on end forcing her to stand in her own urine and poop. (PHT. VOL IV, PP. 139-140, 171, 172).

DEFENDANT Janet would use a catheter on her. This happened more than once and it happened in her sister's old bedroom, the upstairs bathroom, and the loft. When DEFENDANT Janet would do this she would take her to the bathroom, have her lay down on a towel, and then put the catheter in her private. (PHT. VOL III, P. 212). If pee came out, she would be in trouble. If DEFENDANT Janet was really mad, she would stick the catheter in and wiggle it around. DEFENDANT Dwight was the person who bought the catheters. One time when DEFENDANT Janet was using the catheter on her, DEFENDANT Dwight was standing at the door. Besides the catheter, DEFENDANT Janet also stuck the paint stuck up her vagina. (PHT. VOL III, P. 216). If she tried to fight DEFENDANT Janet when she was using the catheter, DEFENDANT Janet would threaten her with a razor blade and tell her that she was going to cut her front part out. (PHT. VOL III, P. 218).

DEFENDANT Janet put the catheter in her vagina in the bathroom more than one time, about four times in the loft, and put the stick in her vagina in her sister's old bedroom. (PHT. VOL IV, PP. 167, 168, 216, 217).

If she fought DEFENDANT Janet, she would hold her down with one hand as she was using the needle with the other. She held her down one time in the bathroom and one time in the loft. (PHT. VOL III, PP. 167-168).

The children were eventually seen by Dr. Sandra Cetl who is a pediatric emergency physician but also a Child Abuse and Neglect specialist. Dr. Cetl's testimony is delineated

below:

- **P. 14 (VOL IV) – Testimony of Dr. Cetl. She found numerous scars all over the body of A.S. 10/21/01, the ones that were particularly concerning were on her bottom and back.**
- **P. 16, 17 (VOL IV) – Testimony of Dr. Cetl. The pictures that are being shown are of A.S. 10/21/01 back and legs, there is obvious scars, and healed scar tissue.**
- **P. 26 (VOL IV) – Testimony of Dr. Cetl. Showing pictures of A.S (1/23/03) arm where there is a linear scar that is healing. There is also scar tissue on her left and right buttocks. There is also linear scars on her upper thigh, as well as her lower back.**
- **P. 35 (VOL IV) – Testimony of Dr. Cetl. There are linear scars on the right side of A.S. (7/25/04) back towards the middle, as well as two smaller linear scars coming off of them perpendicular to her backside area. There is also a linear scar on the right flank area but lower down.**
- **P. 38 (VOL IV) – Testimony of Dr. Cetl. There is scar tissue towards the bottom, almost towards the crease of the buttocks. There are also scars on the right and left buttocks. There is a scar a little bit higher which is linear on the left side.**
- **P. 40 (VOL IV) – Testimony of Dr. Cetl. The fact that the scars were somewhat linear in nature and that all three girls had the same marks is concerning of non accidental injury.**

Lastly, Detective Emery is in the Child Abuse and Neglect Division of the Las Vegas Metropolitan Police Department. Detective Emery is in charge of the investigation of this case. During her investigation she conducted a search warrant on the work computer of DEFENDANT Dwight Solander. Pursuant to that search she found several purchases for catheters. Also on the computer, were emails regarding alarms to put on doors, one specifically was called "the bedwetter." Additionally, there were several emails going back and forth

between DEFENDANT Janet and DEFENDANT Dwight discussing the children having accidents, pictures were attached, and comments stating the children were going to get punished. (VOL V – PHT p. 49).

ARGUMENT

I

DEFENDANT'S PETITION IS UNTIMELY

The State recognizes that the Court has ruled on this issue. The State merely incorporates its timeliness argument by reference for appellate purposes.

II

STANDARD OF PROOF AT PRELIMINARY HEARING

As this Court is well aware, "[t]he finding of probable cause may be based on slight, even 'marginal,' evidence because it does not involve a determination of the guilt or innocence of an accused." Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178 (1980); *see also* Sheriff v. Shade, 109 Nev. 826, 828, 858 P.2d 840 (1993); Sheriff v. Simpson, 109 Nev. 430, 435, 851 P.2d 428 (1993); Sheriff v. Crockett, 102 Nev. 359, 361, 724 P.2d 203 (1986). Thus, "the evidence need not be sufficient to support a conviction." Sheriff v. Kinsey, 87 Nev. 361, 363, 487 P.2d 340 (1971). "To commit an accused for trial, the State is not required to negate all inferences which might explain his conduct, but only to present enough evidence to support a reasonable inference that the accused committed the offense" Id. at 363; *see also* Shade, 109 Nev. at 828; Crockett., 102 Nev. at 361.

Furthermore, convictions based on circumstantial evidence have been upheld in Nevada. *See* Gibson v. State, 96 Nev. 48, 50 (1980); Merryman v. State, 95 Nev. 648, 649 (1979); Dutton v. State, 94 Nev. 567, 568 (1978); Edwards v. State, 90 Nev. 255, 258 (1974); Goldsmith v. Sheriff, 85 Nev. 295, 304 (1969). Therefore, as initially asserted, circumstantial evidence is sufficient to support a finding of probable cause. Howard v. Sheriff, 93 Nev. 30 (1977).

The United States Supreme Court has stated the following regarding circumstantial evidence:

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> Circumstantial evidence in this request is intrinsically no different from testimonial evidence. Admittedly, circumstantial evidence may in some cases point to a wholly incorrect result. Yet this is equally true of testimonial evidence. In both instances, the jury is asked to weigh the chances that the evidence correctly points to guilt against the possibility of inaccuracy or ambiguous inference. In both, the jury must use its experience with people and events in weighing the possibilities. If the jury is convinced beyond a reasonable doubt, we can require no more.

Holland v. United States, 348 U.S. 121, 75 S. Ct. 127, 137-38 (1954); *also see* United States v. Hooks, 780 F.2d 1526, 1530 (10th Cir. 1986).

III

THE STATE PRESENTED SUFFICIENT EVIDENCE

FOR THE CRIMES OF SEXUAL ASSAULT

Per NRS 200.366:

> A person who subjects another person to sexual penetration, or who forces another person to make a sexual penetration on himself or herself or another, or on a beast, against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct, is guilty of sexual assault.

NRS 200.364 defines penetration as:

> "Sexual penetration" means cunnilingus, fellatio, or **any intrusion, however slight, of** any part of a person's body or **any object manipulated or inserted by a person into the genital or anal openings of the body of another**, including sexual intercourse in its ordinary meaning. (emphasis added).

Defendant incorrectly argues that there must be a sexual component to this charge above and beyond the body parts involved. However, a plain look at the statute says otherwise. "Sexual penetration" is defined as, among other things, "**any** object manipulated or inserted … into the genital opening … of another." Id. (emphasis added). It does not say any dildo or vibrator or even any sexual object. The statute says merely "**any** object." The statute further does not state any object inserted "for sexual pleasure" or "for sexual purpose" or anything sexual in nature. The statute merely states any object inserted into the genital opening of another.

Furthermore, sexual assault is a general intent crime. Honeycutt v. State, 118 Nev. 660, 669 (2002), *overruled on other grounds* Carter v. State, 121 Nev. 759 (2005); Winnerford Frank H. v. State, 112 Nev. 520, 526 (1996). It is not a specific intent crime like lewdness with a child under the age of 14. State v. Catanio, 120 Nev. 1030 (2004). To be convicted of lewdness with a child under the age of 14, the State must prove a person had the specific intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child. NRS 201.230.

Defendant attempts to justify her position arguing legislative intent. However, the fact that the legislature included the sexual intent language in the lewdness statute demonstrates that if they wanted there to be the same "sexual component" to the sexual assault statute, it would have been included it there as well. And while the sexual assault and lewdness statutes have been the subject of legislation in almost every legislature in the past decade, that language remains glaringly absent from the sexual assault statute.

The crime of sexual assault encompassing penetration by an object is something that has been prosecuted for hundreds of years. The State takes issue with the Defendant characterization of these charges as "absurd." What **are** absurd are the Defendants' actions in this case.

Defense has repeatedly tried, to no avail, to make this case look like the Defendants were acting out of "medical necessity" and thus, these children needed catheters stuck up their vaginas. Yet, they did not. The truth is these defendants created this horrific atmosphere where the children were so scared to go to the bathroom that they held it and then urinated and defecated on themselves. The children were punished if they did ask and punished if they didn't ask, so they could not win. This created a vicious cycle that mentally and emotionally destroyed them. There was absolutely no need and no medical reason for Defendant Dwight Solander to purchase the catheters, nor was there any reason for Defendant Janet Solander to use them on the girls. The only "need" the Defendants had to use the catheters was so they could find yet another way to punish the girls. Commonly, the Defendants would ask the children if they had to use the restroom before the Defendants left the home. When the children said no, the

Defendants refused to believe them, so they had them go upstairs and get the catheter inserted. When urine came out, they would be beaten.

This is a far cry from the example in the Defendant's petition, such as an actual physician. Defendant forgets the sexual assault statute includes the element that penetration be "against the victim's will." A physician would not be charged while inserting a catheter as, under their scenario, catheter insertion by a physician is not generally against the will, takes place in a medical facility and is medically necessary.

The State would point out that a physician was once charged, tried and convicted of sexual assault due to penetration during a medical exam. McNair v. State, 108 Nev. 53 (1992). The defendant was a gynecologist who inserted his finger and/or penis in patients' vagina and/or butt during medical examinations. The Supreme Court found stated, "The language of our statute is sufficiently broad and explicit to encompass conduct involving an act of sexual penetration occurring as a result of fraud and deceit in the course of a medical examination and without the consent of the patient."

It's disingenuous for Defense to claim that this was a scenario like the one Defendant describes. These children had catheters repeatedly stuck up their vaginas FOR NO VALID REASON at all. In fact when the siblings fought it, they were threatened with a razor blade. Had this been "medically necessary" or for the children's own good, the Defendants in this case would not be charged with 46 counts. These behaviors and actions are criminal, and it should be up to the jury to find whether or not the crimes charged constitute sexual assault under the statute.

Finally, the rule of lenity has no application here. Defendant's scenarios are completely non analogous to grown adults wanting to terrorize children by scaring them into "holding" their urine, asking them if they have to go pee, and when they refuse - forcing a catheter, or in one situation, a stick, up their vagina. Following the Defense's logic, Defendants could always stick some sort of object into a child's vagina and then make up some "medical reason" for why they needed to do it. In this case, there is no valid reason as to why these children would need catheters forced into their vagina. If there was an issue, why weren't they taken to the hospital?

Why weren't they given prescriptions for the catheters? Why were they used as a form of punishment? These answers are for a jury to decide. The State cannot imagine a more perfect scenario to fit the statutory definition of sexual assault by insertion of an object.

IV

THE STATE PRESENTED SUFFICIENT EVIDENCE TO HOLD THE DEFENDANT TO ANSWER TO CHILD ABUSE RESULTING IN SUBSTANTIAL BODILY HARM

Defendant claims the State did not present evidence that the marks on the girls' buttocks were caused by conduct attributable to the Defendant as there was evidence presented of prior abuse. Keeping in mind this is a preliminary hearing and not a trial, there was certainly sufficient evidence presented.

All three children discussed the fact that they were beaten repeatedly by the Defendant throughout the entire time they lived with the Defendant. When the Defendant would beat them she would use the paint stick, sometimes to the point that it would break, and the children would often bleed. There was also testimony that co-defendants Dwight Solander and Danielle Hinton beat the children. Dr. Cetl discussed the multiple scars on the children in different locations. It would be physically impossible to prove which Defendant caused which scar when the children were beaten so often. It will be up to a jury to decide if this Defendant's use of the stick caused substantial bodily harm. The evidence as it stands now was more than enough to prove the substantial bodily harm aspect.

CONCLUSION

For the foregoing reasons, Defendant's Petition for Writ of Habeas Corpus must be DENIED.

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of State's Return to Writ of Habeas Corpus, was made this 17th day of December, 2014, by facsimile transmission to:

KRISTINA WILDEVELD, ESQ.
FAX #222-0001

BY: /s/ J. MOTL
Employee of the District Attorney's Office

LL/jm/SVU

NOASC
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

DWIGHT CONRAD SOLANDER,
#3074262
JANET SOLANDER,
#6005501

Defendant.

Case No. **14C299737-3**
14C299737-1
Dept. No. XXI

NOTICE OF APPEAL

TO: JANET SOLANDER, Defendant; and

TO: KRISTINA WILDEVELD, ESQ. Attorney for Defendant and

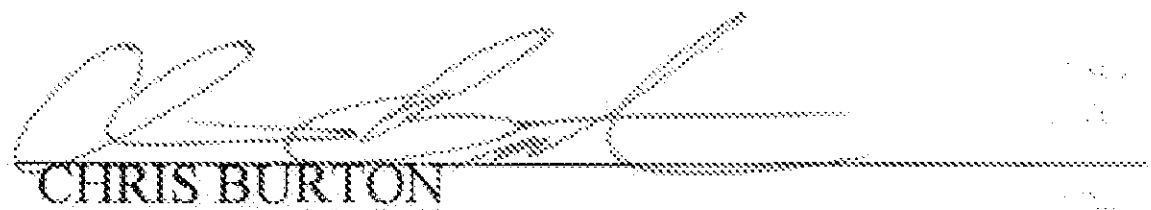
TO: VALERIE ADAIR, District Judge, Eighth Judicial District Court, Dept. No. XXI

NOTICE IS HEREBY GIVEN that the State of Nevada, plaintiff in the above-entitled matter, appeals to the Supreme Court of the State of Nevada from the granting in part of Defendants' Petition for Writ of Habeas Corpus relating to Counts 7, 8, 19, and 30-36 of the Information charging Sexual Assault with a Minor Under Fourteen Years of Age as indicated by the Court's issuance of a Minute Order on 12/19/14.[1]

[1] The State notes that the District Court's Minute Order dated 12/19/14 is the only "Decision" the Court has issued on Defendants' Petition for Writ of Habeas Corpus. No "Written Notice of Entry of the Order" has been filed to date. As such, the State is filing an appeal pursuant to NRS 34.575 and NRAP 4(b)(2)

Dated this 30th day of March, 2015.

STEVE WOLFSON
Clark County District Attorney

BY 
CHRIS BURTON
Deputy District Attorney
Nevada Bar #012940

Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing NOTICE OF APPEAL was made March 30th, 2015 by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

KRISTINA WILDEVELD, ESQ.
615 South 6th Street
Las Vegas, Nevada 89101

JUDGE VALERIE ADAIR
Eighth Judicial District Court, Dept. XXI
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101

BY _____
Employee, District Attorney's Office

CB//ed

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA. Plaintiff, v. JANET SOLANDER, Defendants.	CASE NO. C-14-299737-3 DEPT. NO. XXI

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter having come on for hearing on November 6, 2014 and December 18, 2014, and after considering all of the pleadings submitted, the transcripts of the preliminary hearing, and oral arguments, the Court ORDERS that Defendant Janet Solander's Petition for Writ of Habeas Corpus is GRANTED IN PART as to the criminal counts alleging Sexual Assault with a catheter, and DENIED IN PART as to the remaining counts for the following reasons:

VALERIE ADAIR
DISTRICT JUDGE
DEPARTMENT TWENTY-ONE
LAS VEGAS, NV 89155

FINDINGS OF FACT

The accused, JANET SOLANDER (hereinafter "Ms. Solander"), was charged by way of an Information with forty-six (46) counts of various allegations of child abuse, neglect, and endangerment, with and without substantial bodily harm, sexual assault, battery with intent to commit sexual assault, and assault with a deadly weapon, based upon alleged events occurring between January 2011 and March 2014, involving her three (3) adopted daughters. She, along with her husband DWIGHT SOLANDER and biological adult daughter DANIELLE HINTON, the co-defendants, were charged with committing various acts of physical child abuse, neglect, and endangerment, and sexual assault.

A Criminal Complaint was filed against Ms. Solander on or about March 25, 2014. An Amended Criminal Complaint was filed on May 22, 2014. A Second Amended Criminal Complaint was filed on or about July 23, 2014.

At the conclusion of the preliminary hearing, the justice of the peace bound Ms. Solander over to stand trial for five (5) counts of Child Abuse, Neglect, or Endangerment with Substantial Bodily Harm, twenty-five (25) counts of Child Abuse, Neglect, or Endangerment, eleven (11) counts of Sexual Assault With a Minor Under Fourteen Years, two (2) counts of Battery with Intent to Commit Sexual Assault, and three (3) counts of Assault With Use of a Deadly Weapon, for a total of forty-six (46) counts.

The underlying facts of the case are that Ms. Solander and her husband adopted three (3) sisters on January 19, 2011, after fostering these girls for the previous six (6) months. These girls had a history of abuse and neglect by their biological father and various behavioral issues. All of the girls were placed on a restrictive diet for constipation issues and possible Crohn's Disease, ostensibly on the advice of a physician.

The alleged victims in this case testified that they did not want to be adopted by the Solanders. Ms. Solander homeschooled the girls five (5) days per week after they were removed from traditional public school allegedly because of behavioral issues. At timed intervals, the girls were asked if they needed to break for the restroom. Many times, the girls

VALERIE ADAIR
DISTRICT JUDGE
DEPARTMENT TWENTY-ONE
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declined to go to the bathroom and would instead soil themselves. They testified that sometimes they soiled themselves on purpose. As this pattern continued, a demerit ("points") system was implemented. After a certain number of negative points were earned, a form of discipline would follow, such as spanking with a paint stick. During the day, the girls were forced to sit in their underwear and undershirts on buckets with toilet lids. The youngest was forced to sit on a "training potty" for long hours.

The Solander girls alleged numerous instances of sexual assault and physical abuse. Generally categorized, they included withholding of food, withholding of bathroom privileges, spanking, kicking, forcing the girls to sit on makeshift toilet buckets, nsertion of catheters, and the insertion of a paint stick into the vagina.

The girls testified that Ms. Solander, who purports to be a nurse, inserted catheters because she did not want them urinating on themselves when she had to leave the house and left the girls with babysitters. One (1) daughter testified that Ms. Solander inserted a paint stick into her vagina as discipline. Although Mr. Solander did not actually insert the catheters, he was aware of this practice. The insertion of the catheters formed the basis of the majority of the sexual assault charges against Ms. Solander.

Following the preliminary hearing, Ms. Solander's privately retained attorney withdrew and Kristina Wildeveld was appointed at the Initial Arraignment in District Court on September 4, 2014. At the time of confirmation of counsel, defense counsel specifically reserved the right to file a Petition for Writ of Habeas Corpus within twenty-one (21) days of the filing of the preliminary hearing transcripts in this matter. Due to the clerk's filing of the preliminary hearing transcripts in Odyssey with the bind over documents in a co-defendant's case, the Defendant's Petition for Writ of Habeas Corpus was filed beyond the twenty-one (21) days, but was ultimately deemed timely by the District Court. Although counsel received discovery from previous counsel, it did not include the preliminary hearing transcript.

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Ms. Solander's Petition for Writ of Habeas Corpus argued that slight or marginal evidence was not presented at the preliminary hearing and that the charges should be dismissed.

After hearing several days of argument and after considering all of the written pleadings in this matter, and the preliminary hearing transcript, the District Court found that there was slight or marginal evidence that Ms. Solander inserted the catheters and that Mr. Solander was aware that this was occurring but that there was an absence of preliminary hearing testimony by any of the alleged victims regarding how a catheter was inserted, or the extent, if any, of genital probing. There was also an absence of expert testimony regarding how a catheter is inserted. Based on the testimony of these victims, the insertion of any catheter was an attempt to determine whether the children were being truthful about not having any urinary content.

CONCLUSIONS OF LAW

A writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless action. Its preeminent role is recognized in that, "The Privilege of the Writ of Habeas Corpus shall not be suspended." Harris v. Nelson, 394 U.S. 286, 290-91, 89 S.Ct 1082 (1969). Since 1912, the Nevada Supreme Court has recognized that the Writ of Habeas Corpus is the plain, speedy and adequate remedy by which to determine the legal sufficiency of the evidence supporting a grand jury indictment or preliminary hearing bind over. See, e.g., Eureka County Bank Habeas Corpus Cases, 35 Nev. 80, 126 P. 655 (1912); Ex parte Stearns, 68 Nev. 155, 227 P.2d 971 (1951); Ex Parte Colton, 72 Nev. 83, 295 P.2d 383 (1956). The Nevada Supreme Court has held, "It is fundamentally unfair to require one to stand trial unless he is committed upon a criminal charge with reasonable or probable cause. No one would suggest that an accused person should be tried for a public offense if there exists no reasonable or probable cause for trial." Shelby v. Sixth Judicial Dist. Court In and For Pershing County, 82 Nev. 204, 207-208, 414

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