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2 IN THE SUPREME COURT OF THE STATE OF NEVADA

3 Electronically Filed  
Mar 29 2019 08:50 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

4 TENNILLE RAE WHITAKER,  
Appellant,

5 vs.

CASE NO. 77294

6 THE STATE OF NEVADA,  
Respondent.

7 APPENDIX TO RESPONDENT'S BRIEF

8 Appeal From The Fourth Judicial District Court

9 Of The State of Nevada

In And For The County Of Elko

10 THE HONORABLE ADAM PAUL LAXALT  
11 ATTORNEY GENERAL OF NEVADA  
100 N. CARSON STREET  
CARSON CITY, NV 89701

12 TYLER J. INGRAM  
Elko County District Attorney's  
13 Office  
540 Court Street, 2<sup>nd</sup> Floor  
Elko, NV 89801

KARLA K. BUTKO  
State Bar Number: 3307  
PO BOX 1249 VERDI, NV 89439  
ATTORNEY FOR APPELLANT

14 By: CHAD B. THOMPSON  
State Bar No. 10248  
15 ATTORNEYS FOR RESPONDENT

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INDEX

Page

CERTIFICATE OF SERVICE..... ii

FILED CRIMINAL COMPLAINT ..... 1-8

FILED WAIVER OF PERSONAL APPEARANCE ON THE  
ADVISE OF COUNSEL ..... 9-11

Dated this 28 day of March, 2019.

TYLER J. INGRAM  
Elko County District Attorney  
540 Court Street, 2<sup>nd</sup> Floor  
Elko, NV 89801  
(775) 738-3101

By:



CHAD B. THOMPSON  
Deputy District Attorney  
Nevada Bar Number: 10248

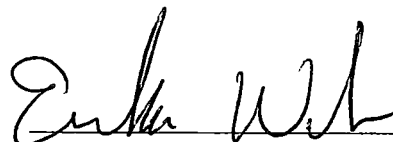
CERTIFICATE OF SERVICE

I certify that this document was filed electronically with the Nevada Supreme Court on the 29th day of March, 2019, Electronic Service of the APPENDIX TO RESPONDENT'S BRIEF shall be made in accordance with the Master Service List as follows:

Honorable Adam Paul Laxalt  
Nevada Attorney General

and

KARLA K. BUTKO  
PO BOX 1249 VERDI, NV 89439  
Attorney for Appellant

  
ERIKA WEBER  
CASEWORKER

DA#: AP-18-02845

1 CASE NO. EL-JC-CR-F-17-3893

FILED  
ELKO TOWNSHIP  
JUSTICE / MUNICIPAL COURT

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CLERK m

2  
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5 IN THE ELKO JUSTICE COURT  
6 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA  
7

8  
9 STATE OF NEVADA,

10 Plaintiff,

CRIMINAL

11 vs.

COMPLAINT

12 TENNILLE RAE WHITAKER

13  
14 Defendant.  
15

16  
17 COMES NOW, THE STATE OF NEVADA, the Plaintiff in the above-entitled  
18 cause, by and through its Counsel of Record, the Elko County District Attorney's Office,  
19 and based upon the Declaration Of Probable Cause and/or the narrative report and the  
20 Officer Declaration executed by the submitting officer in connection with said narrative  
21 report, complains and alleges that the Defendant above-named, on or about or between  
22 the 1st day of September, 2015 and the 6<sup>th</sup> day of June 2017 at or near the location of  
23 the city of Wells and/or the surrounding areas near the city of Wells, within the County  
24 of Elko, and the State of Nevada, committed the following described criminal offense(s):

25 COUNT 1

26 **SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND**  
27 **A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC**  
28 **51067)**

Respondent's Appendix001



**SCANNED**

1 That the Defendant, a person older than 21 years of age, and while employed at  
2 or volunteering at a public or private school, did engage in sexual conduct with a  
3 pupil, one B.H., who was 16 years of age or older and had not received a high  
4 school diploma, a general educational development certificate or an equivalent  
5 document and: the student was attending the public or private school at which  
6 the Defendant was employed or volunteered; or the student had contact with the  
7 Defendant in the course of the Defendant performing her duties as an employee  
8 or volunteer.

9 COUNT 2

10 **SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND**  
11 **A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC**  
12 **51067)**

13 That the Defendant, a person older than 21 years of age, and while employed at  
14 or volunteering at a public or private school, did engage in sexual conduct with a  
15 pupil, one B.H., who was 16 years of age or older and had not received a high  
16 school diploma, a general educational development certificate or an equivalent  
17 document and: the student was attending the public or private school at which  
18 the Defendant was employed or volunteered; or the student had contact with the  
19 Defendant in the course of the Defendant performing her duties as an employee  
20 or volunteer.

21 COUNT 3

22 **SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND**  
23 **A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC**  
24 **51067)**

25 That the Defendant, a person older than 21 years of age, and while employed at  
26 or volunteering at a public or private school, did engage in sexual conduct with a  
27 pupil, one B.H., who was 16 years of age or older and had not received a high  
28 school diploma, a general educational development certificate or an equivalent

document and: the student was attending the public or private school at which the Defendant was employed or volunteered; or the student had contact with the Defendant in the course of the Defendant performing her duties as an employee or volunteer.

COUNT 4

**SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC 51067)**

That the Defendant, a person older than 21 years of age, and while employed at or volunteering at a public or private school, did engage in sexual conduct with a pupil, one B.H., who was 16 years of age or older and had not received a high school diploma, a general educational development certificate or an equivalent document and: the student was attending the public or private school at which the Defendant was employed or volunteered; or the student had contact with the Defendant in the course of the Defendant performing her duties as an employee or volunteer.

COUNT 5

**SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC 51067)**

That the Defendant, a person older than 21 years of age, and while employed at or volunteering at a public or private school, did engage in sexual conduct with a pupil, one B.H., who was 16 years of age or older and had not received a high school diploma, a general educational development certificate or an equivalent document and: the student was attending the public or private school at which the Defendant was employed or volunteered; or the student had contact with the Defendant in the course of the Defendant performing her duties as an employee or volunteer.

1 COUNT 6

2 **SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND**  
3 **A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC**  
4 **51067)**

5 That the Defendant, a person older than 21 years of age, and while employed at  
6 or volunteering at a public or private school, did engage in sexual conduct with a  
7 pupil, one B.H., who was 16 years of age or older and had not received a high  
8 school diploma, a general educational development certificate or an equivalent  
9 document and: the student was attending the public or private school at which  
10 the Defendant was employed or volunteered; or the student had contact with the  
11 Defendant in the course of the Defendant performing her duties as an employee  
12 or volunteer.

13 COUNT 7

14 **SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND**  
15 **A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC**  
16 **51067)**

17 That the Defendant, a person older than 21 years of age, and while employed at  
18 or volunteering at a public or private school, did engage in sexual conduct with a  
19 pupil, one B.H., who was 16 years of age or older and had not received a high  
20 school diploma, a general educational development certificate or an equivalent  
21 document and: the student was attending the public or private school at which  
22 the Defendant was employed or volunteered; or the student had contact with the  
23 Defendant in the course of the Defendant performing her duties as an employee  
24 or volunteer.

25 COUNT 8

26 **SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND**  
27 **A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC**  
28 **51067)**

1 That the Defendant, a person older than 21 years of age, and while employed at  
2 or volunteering at a public or private school, did engage in sexual conduct with a  
3 pupil, one O.C., who was 16 years of age or older and had not received a high  
4 school diploma, a general educational development certificate or an equivalent  
5 document and: the student was attending the public or private school at which  
6 the Defendant was employed or volunteered; or the student had contact with the  
7 Defendant in the course of the Defendant performing her duties as an employee  
8 or volunteer.

9  
10 COUNT 9

11 **SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND**  
12 **A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC**  
13 **51067)**

14 That the Defendant, a person older than 21 years of age, and while employed at  
15 or volunteering at a public or private school, did engage in sexual conduct with a  
16 pupil, one L.T., who was 16 years of age or older and had not received a high  
17 school diploma, a general educational development certificate or an equivalent  
18 document and: the student was attending the public or private school at which  
19 the Defendant was employed or volunteered; or the student had contact with the  
20 Defendant in the course of the Defendant performing her duties as an employee  
21 or volunteer.

22  
23 COUNT 10

24 **SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND**  
25 **A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC**  
26 **51067)**

27 That the Defendant, a person older than 21 years of age, and while employed at  
28



1 or volunteering at a public or private school, did engage in sexual conduct with a  
2 pupil, one L.T., who was 16 years of age or older and had not received a high  
3 school diploma, a general educational development certificate or an equivalent  
4 document and: the student was attending the public or private school at which  
5 the Defendant was employed or volunteered; or the student had contact with the  
6 Defendant in the course of the Defendant performing her duties as an employee  
7 or volunteer.  
8

9 COUNT 11

10 **SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND**  
11 **A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC**  
12 **51067)**

13 That the Defendant, a person older than 21 years of age, and while employed at  
14 or volunteering at a public or private school, did engage in sexual conduct with a  
15 pupil, one C.M., who was 16 years of age or older and had not received a high  
16 school diploma, a general educational development certificate or an equivalent  
17 document and: the student was attending the public or private school at which  
18 the Defendant was employed or volunteered; or the student had contact with the  
19 Defendant in the course of the Defendant performing her duties as an employee  
20 or volunteer.  
21

22 COUNT 12

23 **SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND**  
24 **A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC**  
25 **51067)**

26 That the Defendant, a person older than 21 years of age, and while employed at  
27 or volunteering at a public or private school, did engage in sexual conduct with a  
28

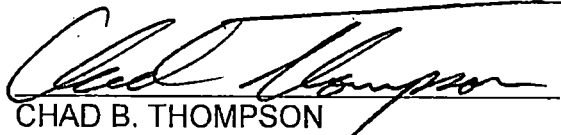
1 pupil, one C.M., who was 16 years of age or older and had not received a high  
2 school diploma, a general educational development certificate or an equivalent  
3 document and: the student was attending the public or private school at which  
4 the Defendant was employed or volunteered; or the student had contact with the  
5 Defendant in the course of the Defendant performing her duties as an employee  
6 or volunteer.

7  
8 All of which is contrary to the form of the statute in such cases made and  
9 provided, and against the peace and dignity of the State of Nevada. Said Complainant,  
10 therefore, prays that the Defendant be dealt with according to law.

11  
12 The undersigned hereby declares under penalty of perjury the foregoing  
13 Complaint is true to the best of his/her knowledge, information and belief.

14  
15 Dated: August 29, 2017.

16 TYLER J. INGRAM  
17 ELKO COUNTY DISTRICT ATTORNEY

18   
19 CHAD B. THOMPSON  
20 Deputy District Attorney  
21 State Bar No.: 10248

**The Issue Of Obtaining The Discovery**

**Available In This Matter.**

**To: The Defendant's Counsel or The Defendant Representing Himself/Herself**

The Elko County District Attorney's Office has an open file discovery policy. This means you will be provided with a complete copy of all reports, photos and compact discs received by the DA's Office from the submitting Officer and agency in connection with this case. Private Counsel and/or Defendants appearing without Counsel will be charged a reasonable copying and duplication fee. If this is a misdemeanor case the State believes and avers that by providing a copy of the discovery containing the names and addresses of the witnesses the State may call in its case-in-chief, the State is fulfilling its discovery obligations pursuant to NRS 174.234.(1)(b)(2) which provides that:

(2) The prosecuting attorney shall file and serve upon the defendant a written notice containing the name and last known address or place of employment of any witness the prosecuting attorney intends to call during the case in chief of the State whose name and last known address or place of employment have not otherwise been provided to the defendant pursuant to NRS 171.1965 or 174.235.

Extradition Scope: All 50 States

DA #F-17-01609/ REPORT #: 16EL01410/ OFFICER STAKE / AGENCY: ELKO  
COUNTY SHERIFF'S OFFICE

FILED  
ELKO TOWNSHIP  
JUSTICE / MUNICIPAL COURT

CASE: EL-JC-CR-F-17-3893

17 NOV -6 PM 2:09

DEPT:

2017 NOV -6 PM 2:12

CLERK

IN THE JUSTICE COURT OF ELKO TOWNSHIP  
COUNTY OF ELKO, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

TENNILLE WHITAKER,

Defendant.

WAIVER OF PRELIMINARY HEARING  
ON THE ADVISE OF COUNSEL

(Plea Agreement To Be Filed In  
District Court)

I, Defendant TENNILLE WHITAKER, hereby waive (give up) my right to a preliminary hearing in the above-captioned case.

**Defendant's Rights**

I acknowledge that I have the following rights with respect to the holding of a preliminary hearing in the Elko Justice Court in this case.

**INITIALS**

ju

I have a right to a preliminary hearing within fifteen days of my first appearance in court following the filing of the criminal complaint in this case, unless that time is extended for good cause.

ju

At a preliminary hearing, I have the right to require the State of Nevada to present at least "slight or marginal" evidence that there is probable cause to believe I committed a felony or gross misdemeanor crime or crimes before I can be held for further proceedings in the Fourth Judicial District Court of the State of Nevada in this case.

ju

At a preliminary hearing, I have the right to: [1] be represented by a lawyer; [2] confront and cross-examine (see and question) the witnesses



called by the State; [3] introduce evidence and call witnesses to testify on my behalf; and [4] testify in my defense if I choose to do so, but with the understanding that I am not required to do so.

### Waiver of Defendant's Rights

By initialing and signing this document below, I acknowledge and declare that:

INITIALS

SW

I have read this document, and/or had this document read to me by my lawyer or interpreter in the language I understand best, and I understand this document.

SW

I was sober and in full control of my mind at the time I: [1] read this document and/or had this document read to me by my lawyer or interpreter; [2] initialed this document; and [3] signed this document.

SW

I have talked with my lawyer about this document, my lawyer has fully answered any and all questions that I have about this document and my rights as described in this document, and I am satisfied with the services provided by my lawyer.

SW

I voluntarily choose to waive (give up) my rights as described in this document, except the right to be represented by a lawyer, and request that the Elko Justice Court order me to be held for further proceedings in the Fourth Judicial District Court of the State of Nevada with respect to the charges presently pending against me in this case.

Executed on this 6<sup>th</sup> day of November, 2017.

Tennille Whitaker

[Signature of Defendant]

Tennille Whitaker

[Printed Name of Defendant]

## Certificate of Counsel

The undersigned, as the lawyer for the defendant named herein, and as an officer of the Court, hereby certifies as follows.

1. I have fully explained to the defendant the allegations contained in the criminal complaint on file in this case, together with any amendments thereto.
2. I have fully advised the defendant of the penalties for each and every charge she is currently facing in this case.
3. I have fully explained to the defendant her rights with respect to the holding of a preliminary hearing in the Elko Justice Court in this case, and the effect of waiving her right to a preliminary hearing.
4. The defendant is waiving her right to a preliminary hearing in the Elko Justice Court on my advice, which I believe is in the best interest of the defendant based on all of the facts known to me.
5. If this waiver is not unconditional, I have explained to the defendant the provisions of NRS 171.208, which reads:

If a preliminary examination has not been had and the defendant has not unconditionally waived the examination, the district court may for good cause shown at any time before a plea has been entered or an indictment found remand the defendant for preliminary examination to the appropriate justice of the peace or other magistrate, and the justice or other magistrate shall then proceed with the preliminary examination as provided in this chapter.

6. To the best of my knowledge and belief, the defendant:
  - [a] is competent and understands her rights with respect to the holding of a preliminary hearing in the Elko Justice Court, the criminal complaint on file in this case, together with any amendments thereto, and the consequences of waiving the preliminary hearing as provided in this Waiver.
  - [b] executed this Waiver, and intends thereby to waive her preliminary hearing knowingly, intelligently and voluntarily, although against my advice.
  - [c] was sober and in full control of her mind at the time she executed this Waiver.

DATED this 6<sup>th</sup> day of November, 2017.

Byrne  
[Signature of Attorney]

7598  
[Nevada State Bar Number]