

No. 83621
No. 84276

IN THE NEVADA SUPREME COURT

B. Joshua W-A, a Minor,

Appellant,

v.

State of Nevada,

Respondent.

FILED

APR 19 2022

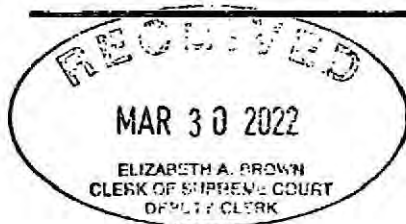
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *S. Young*
DEPUTY CLERK

Direct Appeal from an Order of the District Court
Juvenile Division for Certification of Adult Status
Eighth Judicial District Court
Honorable David Gibson Jr., District Court Judge
District Court Case No. J-21-353445-D1

APPELLANT'S APPENDIX VOLUME 1 OF 2

Redacted

JoNell Thomas
State Bar #4771
Special Public Defender
W. Jeremy Storms
State Bar #10772
Chief Deputy Special Public Defender
330 South 3rd Street
Las Vegas, NV 89155
(702) 455-6265
Attorneys for Appellant Byron W-A



22-12334

VOLUME PLEADING

PGS

1	2 nd Amended Certification Petition (1/28/22)	231-35
1	Amended Certification Petition (11/22/21)	131-33
1	Amended Memorandum of Points and Authorities in Support of Certification Petition (1/31/22)	236-46
1	Amended Petition - Delinquency (11/22/21)	128-30
1	Certification Hearing Report (12/30/21)	223-29
1	Certification Petition (9/3/21)	4-6
1	Certification of Transcripts/Notification of Completion (1/6/22)	230
1	Certification to Adult Status Order (9/21/21)	100-02
2	Certification to Adult Status Order on Additional Counts 6-8 (9/21/21)	275-81
2	Court Minutes (unfiled)	285-93
1	Court Order (12/22/21)	210-13
1	Finding of Probable Cause and Transportation Order for a Certified Adult (9/17/21)	98-99

2	Finding of Probable Cause and Transportation Order for a Certified Adult (2/8/22)	271-74
1	Memorandum of Points and Authorities in Support of Certification Petition (9/3/21)	7-33
1	Motion for the Court to Accept Jurisdiction Under NRS 62B.390(5)(C), Exceptional Circumstances to Certification, Because the Offenses Charged may Only be Prosecuted as Delinquent Acts and Therefore are not Certifiable for Criminal Proceedings (11/19/21).....	108-27
1	Notice of Appeal (10/6/21)	106-07
2	Notice of Appeal (2/15/22)	282-84
1	Notice of Hearing (11/22/21)	134-35
1	Opposition to Certification Petition (9/10/21).....	37-86
2	Opposition to Certification Petition (2/2/2022).....	247-57
1	Opposition to Subject Minor's Motion for the Court to Accept Jurisdiction Under NRS 62B.390(5)(C), Exceptional Circumstances to Certification, Because the Offenses Charged may Only be Prosecuted as Delinquent Acts and Therefore are not Certifiable for Criminal Proceedings (12/6/21).....	136-80
1	Order Setting Certification Hearing (9/7/21)	34-36
1	Petition - Delinquency (9/1/2021).....	1-3

1	Reply to State's Opposition to Motion for the Court to Accept Jurisdiction Under NRS 62B.390(5)(C), Exceptional Circumstances to Certification, Because the Offenses Charged may Only be Prosecuted as Delinquent Acts and Therefore are not Certifiable for Criminal Proceedings (12/9/21).....	181-82
1	Reporter's Transcript September 15, 2021 [SEALED] (11/9/21)	87-97
1	Reporter's Transcript September 23, 2021 [SEALED] (11/9/21)	103-05
1	Reporter's Transcript December 16, 2021 [SEALED] (1/6/22)	188-209
2	Reporter's Transcript February 3, 2022 [SEALED] (2/17/22)	258-70
1	Supplementary Report (12/23/21).....	214-22

IN THE EIGHTH DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK
JUVENILE DIVISION

Electronically Filed
9/1/2021 4:39 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

In the Matter of:

BYRON JOSHUA WORTHEY-AVILA

JUVI ID: 3560349

UNITY ID#:

Date of Birth: [REDACTED]

Years of Age: 18

CASE NO. J-21-353445-D1

DEPT. L

Courtroom 10

Petition 1

**Plea Hearing: September 16, 2021 at
10:00AM**

PETITION - DELINQUENCY

That there is now within the County of Clark, State of Nevada, the above named minor who resides with his parent(s) or guardian(s) at: [REDACTED] **APT 151, LAS VEGAS, NV 89121**

Father: BYRON WORTHEY

Stepmother: HYACINTH WORTHEY

Mother: LETICIA AVILA

That your Petitioner, a duly appointed and qualified Deputy District Attorney for the County of Clark, State of Nevada, makes the following declaration:

That Petitioner is informed and believes, and thereon alleges that the facts bringing said minor within the jurisdiction of the Juvenile Court pursuant to NRS 62B.330 are that, in Clark County, Nevada, subject minor:

COUNT 1: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)

On or between March 26, 2018 and June 30, 2021, did willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to wit: C.W., a child under the age of fourteen years, by touching her vaginal area with his hand and/or fingers, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Subject Minor, or said victim, in violation of NRS 201.230 and/or NOC 50975.

LVMPD Event #: 210500104805

COUNT 2: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)

On or between March 26, 2018 and June 30, 2021, did willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to wit: C.W., a child under the age of fourteen years, by touching her vaginal area with his hand and/or fingers, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Subject Minor, or said victim, in violation of NRS 201.230 and/or

000001

NOC 50975.

LVMPD Event #: 210500104805

COUNT 3: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)

On or between March 26, 2018 and June 30, 2021, did willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to wit: C.W., a child under the age of fourteen years, by touching her vaginal area with his hand and/or fingers, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Subject Minor, or said victim, in violation of NRS 201.230 and/or NOC 50975.

LVMPD Event #: 210500104805

COUNT 4: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)

On or between March 26, 2018 and June 30, 2021, did willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to wit: C.W., a child under the age of fourteen years, by touching her chest and/or breast with his hand and/or fingers, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Subject Minor, or said victim, in violation of NRS 201.230 and/or NOC 50975.

LVMPD Event #: 210500104805

COUNT 5: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)

On or between March 26, 2018 and June 30, 2021, did willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to wit: Z.W., a child under the age of fourteen years, by pulling down her shorts with his hand and/or fingers, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Subject Minor, or said victim, in violation of NRS 201.230 and/or NOC 50975.

LVMPD Event #: 210500104805

Subject Minor is in the custody and control of the Juvenile justice services detention facility, and has been since 08-26-2021.

WHEREFORE, Petitioner prays that this matter be set for hearing as it is in the best interest of the public and the subject minor that this proceeding be commenced and that the Court take such further action as is deemed fit and proper under the circumstances and in accordance with the law as the subject minor is in need of treatment and/or rehabilitation.

///

///

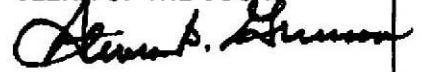
I declare that I am the Petitioner named in the foregoing Petition and know the contents thereof: that this petition is true of my own knowledge, except as to those matters stated on information and belief, and that as to those matters I believe it to be true. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 1st day of September, 2021.

STEVEN B. WOLFSON
DISTRICT ATTORNEY

BY: /s/TANNER SHARP
Deputy District Attorney
Petitioner

TLS/rs



STEVEN B. WOLFSON
DISTRICT ATTORNEY
NEVADA STATE BAR NO. 001565
TANNER SHARP
Deputy District Attorney
Nevada State Bar No. 13018
601 North Pecos Road
Las Vegas, NV 89101-2408
(702) 455-5320
Attorney for the State of Nevada

DISTRICT COURT
JUVENILE DIVISION
CLARK COUNTY, NEVADA

In the Matter of:

BYRON JOSHUA WORTHEY-AVILA

Date of Birth: [REDACTED]

A Minor 18 Years of Age.

CASE NO. J-20-340348-D3

DEPT NO. L

COURTROOM NO. 17

CERTIFICATION PETITION

COMES NOW your Petitioner, the Clark County District Attorney, by and through TANNER SHARP, Deputy District Attorney, and moves this Court to enter an Order directing that a full and complete investigation be completed to assist the Court in determining whether to retain jurisdiction in this matter or certify the subject minor for proper criminal proceedings as an adult. Petitioner prays that proceedings in this matter be arrested pending the Court's jurisdictional decision.

I

Petitioner is informed and believes and therefore alleges that the subject minor named herein is 18 years of age and was 16 and 18 years of age at the time the offense(s) alleged in Petition No. 1 was committed.

///

///

///

II

Petitioner is informed and believes and therefore alleges that the offense(s) alleged to have been committed by the subject minor in Petition No. 1 would be felonious if committed by an adult, more specifically:

Petition No.

1(1)	Lewdness with a Child Under the Age of 14
1(2)	Lewdness with a Child Under the Age of 14
1(3)	Lewdness with a Child Under the Age of 14
1(4)	Lewdness with a Child Under the Age of 14
1(5)	Lewdness with a Child Under the Age of 14

III

Petitioner is informed and believes and therefore alleges that the subject minor named in this Petition has admitted or been adjudicated or been convicted of the following criminal offense(s):

	Offense	Date
None		

IV

Petitioner is informed and believes and therefore alleges that the offense(s) allegedly committed by the subject minor are not subject to presumptive certification to the adult criminal process.

V

Petitioner will supply counsel for subject minor with a true and correct copy of this Certification Petition at the time of the initial hearing scheduled in this matter.

///

///

///

///

1 WHEREFORE, Petitioner prays that these proceedings be arrested pending further
2 Order of the Court and further that the Court enter an Order directing that a full and
3 complete investigation be completed to assist the Court in determining whether to retain
4 jurisdiction in this matter or certify the subject minor for proper criminal proceedings as an
5 adult.

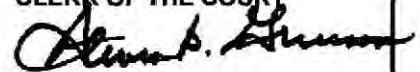
6 DATED this 2nd day of September, 2021.

7
8 STEVEN B. WOLFSON
9 DISTRICT ATTORNEY

10 

11 _____
12 TANNER SHARP
13 Deputy District Attorney
14 Nevada Bar No.13018

15 TS/mrm
16
17
18
19
20
21
22
23
24
25
26
27
28



STEVEN B. WOLFSON
DISTRICT ATTORNEY
NEVADA STATE BAR NO. 001565
TANNER SHARP
Chief Deputy District Attorney
Nevada State Bar No. 13018
601 North Pecos Road
Las Vegas, NV 89101-2408
(702) 455-5320
Attorney for the State of Nevada

DISTRICT COURT
JUVENILE DIVISION
CLARK COUNTY, NEVADA

In the Matter of:

BYRON JOSHUA WORTHEY-AVILA

Date of Birth: [REDACTED]

A Subject 18 Years of Age.

CASE NO. J-21-353445-D1

DEPT NO. L

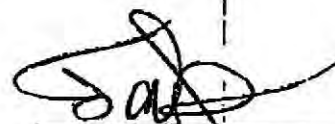
COURTROOM NO. 10

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
CERTIFICATION PETITION**

COMES NOW, the State of Nevada, by and through Steven B. Wolfson, District Attorney, through his Chief Deputy District Attorney, Tanner Sharp, and files the instant Memorandum of Points and Authorities in Support of Certification Petition.

DATED this 2nd day of September, 2021.

STEVEN B. WOLFSON
DISTRICT ATTORNEY



TANNER SHARP
Deputy District Attorney
Nevada Bar No. 13018

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
2 **CERTIFICATION PETITION**

3 **BYRON JOSHUA WORTHEY-AVILA's** (Subject) conduct demands that the
4 Juvenile Division of the Eighth Judicial District Court (Juvenile Court) waive jurisdiction
5 and transfer this case to the Criminal Division of the Eighth Judicial District Court
6 (Criminal Court) so that Subject may be certified for proper criminal proceedings as an
7 adult under the provisions of NRS 62B.390.

8 **I**

9 **THE RECORD BEFORE THE COURT ESTABLISHES PROSECUTIVE
10 MERIT AS TO THE OFFENSES CHARGED**

11 The exhibits attached to the instant Memorandum of Points and Authorities in
12 Support of Certification Petition (State's Memorandum) satisfies the minimal standard of
13 prosecutive merit and as such Juvenile Court should enter a finding that the State has met
14 the minimal burden of establishing prosecutive merit and engage in the certification
15 analysis required by NRS 62B.390.¹

16 ¹62B.390. Certification of child for criminal proceedings as adult:

17 1. Except as otherwise provided in subsection 2 and NRS 62B.400, upon a motion by the district attorney and after a full
18 investigation, the juvenile court may certify a child for proper criminal proceedings as an adult to any court that would have
19 jurisdiction to try the offense if committed by an adult, if the child:

- 20 (a) Is charged with an offense that would have been a felony if committed by an adult; and
21 (b) Was 14 years of age or older at the time the child allegedly committed the
22 offense.

23 2. Except as otherwise provided in subsection 3, upon a motion by the district attorney and after a full investigation, the juvenile
24 court shall certify a child for proper criminal proceedings as an adult to any court that would have jurisdiction to try the offense if
25 committed by an adult, if the child:

- 26 (a) Is charged with:
27 (1) A sexual assault involving the use or threatened use of force or violence against the victim; or
28 (2) An offense or attempted offense involving the use or threatened use of a firearm; and
(b) Was 16 years of age or older at the time the child allegedly committed the offense.

3. The juvenile court shall not certify a child for criminal proceedings as an adult pursuant to subsection 2 if the juvenile court
specifically finds by clear and convincing evidence that:

- (a) The child is developmentally or mentally incompetent to understand his situation and the proceedings of the court or to aid his
attorney in those proceedings; or
(b) The child has substance abuse or emotional or behavioral problems and the substance abuse or emotional or behavioral
problems may be appropriately treated through the jurisdiction of the juvenile court.

4. If a child is certified for criminal proceedings as an adult pursuant to subsection 1 or 2, the juvenile court shall also certify the
child for criminal proceedings as an adult for any other related offense arising out of the same facts as the offense for which the
child was certified, regardless of the nature of the related offense.

5. If a child has been certified for criminal proceedings as an adult pursuant to subsection 1 or 2 and the child's case has been
transferred out of the juvenile court:

- (a) The court to which the case has been transferred has original jurisdiction over the child;
(b) The child may petition for transfer of the case back to the juvenile court only upon a showing of exceptional circumstances;
and
(c) If the child's case is transferred back to the juvenile court, the juvenile court shall determine whether the exceptional
circumstances warrant accepting jurisdiction.

1 The Nevada Supreme Court has defined the concept of prosecutive merit to mean
2 that there is probable cause to believe that the Subject committed the crime charged:

3
4 "Prosecutive merit" is the term referring to the necessity for establishing the
5 merit of the prosecution's case as a condition for proceeding with the
6 transfer process. According to the Kent [v. United States], 383 U.S. 541, 86
7 S.Ct. 1045 (1966)] memorandum, prosecutive merit exists if there is
8 evidence upon which a grand jury would be expected to return an
9 indictment. To say that there is prosecutive merit is to say that there is
10 probable cause to believe that the subject minor committed the charged
11 crime.

12 Judicial economy requires that a preliminary determination be made as to
13 the prosecutive merit of the charge before going ahead with the transfer
14 process. If there is no prima facie case to support the charge, there is no
15 point in the court's involving itself further in the process. Thus the only
16 reasonable way to proceed is for the court to make an initial determination
17 of prosecutive merit.

18 In the Matter of Seven Minors, 99 Nev. 427, 437, 664 P.2d 947, 953 (1983).

19 The same quantity of evidence is necessary for a magistrate to bind a case over to
20 District Court following a Preliminary hearing. In Kinsey v. Sheriff, 87 Nev. 361, 363,
21 487 P.2d 340, 341 (1971), the Nevada Supreme Court concluded, "[t]o commit an
22 accused for trial, the State is not required to negate all inferences which might explain the
23 his conduct, but only to present enough evidence to support a reasonable inference that
24 the accused committed the offense." Further, "[a] finding of probable cause may be
25 based on slight evidence." Sheriff v. Badillo, 95 Nev. 593, 594, 600 P.2d 221, 222
26 (1979).

27 In Sheriff v. Middleton, 112 Nev. 956, 921 P.2d 282 (1996), the Nevada Supreme
28 Court carefully summarized this area of the law:

At trial, the state bears the burden of proving beyond a reasonable doubt the

1 corpus delicti of the crime and that the defendant committed the crime.
2 Frutiger [v. State], 111 Nev. [1385,] 1389, 907 P.2d [158,] 161 [(1995)];
3 Azbill [v. State,]; 84 Nev. [345,] 352, 440 P.2d [1014,] 1018 [(1968), cert.
4 denied, 429 U.S. 895, 97; S.Ct. 257 (1976)]. However, at the preliminary
5 hearing stage, probable cause to bind a defendant over for trial "may be
6 slight, 'even marginal' evidence because it does not involve a
7 determination of guilt or innocence of an accused." Sheriff v. Rhodes, 96
8 Nev. 184, 186, 606 P.2d 178, 180 (1980) (citations omitted); see also,
9 Sheriff v. Milton, 109 Nev. 412, 414, 851 P.2d 417, 418 (1993) (the state
10 need only present sufficient evidence "to support a reasonable inference
11 that the accused committed the offense'") (quoting, Kinsey v. Sheriff, 87
12 Nev. 361, 363, 487 P.2d 340, 341 (1971)).

13 Middleton, 112 Nev. at 961, 921 P.2d at 286.

14 The Nevada Supreme Court has stated that the Juvenile Courts of Nevada may
15 make a determination of prosecutive merit based on the written record alone. Moreover,
16 the Court went on to specifically analogize the amount of evidence necessary for
17 establishing prosecutive merit to the amount of evidence necessary for establishing
18 probable cause to detain an adult. The policy reason behind the adoption of this minimal
19 standard is that a juvenile is not entitled to two preliminary hearings.

20 [T]he first business of the juvenile court in a transfer proceeding should
21 be a resolution of the threshold requirement of prosecutive merit. The
22 necessary determination of probable cause can be made preliminarily by
23 the court on the basis of the written record. An adversary hearing is not
24 required, and the probable cause finding may be based on evidence taken
25 from the petition, sworn investigative reports, witnesses' affidavits,
26 police affidavits, or other informal but reliable evidence.

27 Due process does not require that a juvenile be given an adversary
28 hearing comparable to the preliminary hearing examination provided for
in NRS Chapter 171. The process of finding probable cause in transfer
matters is comparable to 172, the finding that must be made in
pre-adjudication detention matters.

In detention cases the "standard- probable cause to believe the suspect has
committed a crime- traditionally been decided by a magistrate in a
nonadversary proceedings on hearsay and written testimony, and the
Court has approved these informal modes of proof." Gerstein v. Pugh,
420 U.S. 103, 120 (1975). After such an informal proof a youth may be
properly and constitutionally detained; there is no reason why similar
proof cannot support a finding of the existence of the level of prosecutive
merit necessary to serve the ends of judicial economy and the individual
protections referred to above.

Transfer proceedings are essentially dispositional in nature and not
adjudicatory. No determination of guilt or innocence is made. A juvenile

1 should not be entitled to two preliminary examinations, one at the
2 juvenile level and another at the adult level. Consequently, the state may
be said to have met its initial burden of showing prosecutive merit if
proof consistent with the holdings in Gerstein can be presented.

3 In re: Three Minors, 100 Nev. 414, 418, 684 P.2d 1121, 1123-24 (1984).

4 The reality of the matter is that the State has established slight or marginal
5 evidence that Subject participated in the offense(s) at issue.

6 II

7 **THE PUBLIC SAFETY AND WELFARE REQUIRES TRANSFER**
8 **OF JURISDICTION OVER THIS MATTER TO THE CRIMINAL**
9 **COURT**

10 The public safety and welfare requires waiver of jurisdiction in this matter from
the Juvenile Court to the Criminal Court.

11 The policy justifying transfer pursuant to NRS 62B.390 amounts to a realization
12 that there is no set age at which a particular juvenile may be held accountable for his or
13 her conduct as an adult and that when a court is called upon to make a personalized
14 determination of which system should adjudicate the questions of guilt and the
15 punishment the primary concern is the safety and welfare of the public and not the best
16 interest of the minor. The Nevada Supreme Court has summarized the development of
17 Juvenile Court as an institution and the public policies driving the evolution of NRS
18 62B.390:

19
20 Juvenile courts have traditionally been preoccupied with the interests of
21 the child, and the interests of the state, as such, did not become a
declared, joint purpose of our Juvenile Court Act until 1949.

22 The Juvenile Court from its inception in Illinois in 1899 until
23 approximately the middle of this century was a child-centered institution
24 based on theories taken from the positive school of criminology and
25 especially on the deterministic principle that youthful law violators are
26 not morally or criminally responsible for their behavior but, rather, are
victims of their environment--an environment which can be ameliorated
and modified much in the way that a physician modifies the milieu
interieur of a sick patient.

27 Under such a doctrine the Juvenile Court tended to lose its identity as a
28 court and became more of a social clinic than a court of law. Lost to

1 such an institution was the moralizing and socializing influence
2 associated with the operation of criminal courts; and, more importantly,
3 lost too were society's ageless responses to criminal behavior:
4 punishment, deterrence, retribution and segregation. So it was that
5 juvenile courts in Nevada prior to 1949 were not charged with
6 administering the criminal law for the protection of society against
7 juvenile criminality but were required to treat the youthful law violator
8 "not as a criminal, but as misdirected, and misguided and needing aid,
9 encouragement and assistance." NCL S 1032.

10 This kind of kindly, paternalistic approach was eventually seen as being
11 ill-suited to the task of dealing with juvenile crime. The legislative
12 response to this realization was that toward the middle of this century a
13 number of state legislatures, including our own, made changes in the
14 purpose clause of Juvenile Court acts so that Juvenile courts were
15 required to consider the public interest as well as the child's interest. This
16 departure from traditional juvenile justice philosophy is significant. We
17 take it to indicate that the status of juvenile courts as courts is to be
18 recognized and that protection of the public against juvenile criminal
19 offenders may be effected by invocation of the means traditionally
20 employed in the judicial administration of the criminal law. Juvenile
21 courts may under such legislative direction properly consider the
22 punitive, deterrent and other accepted adjuncts of the criminal law.

23 Although juvenile courts may have difficulty at times in balancing the
24 interests of the child and the public, there is no irreconcilable opposition
25 between the two. By formally recognizing the legitimacy of punitive and
26 deterrent sanctions for criminal offenses juvenile courts will be properly
27 and somewhat belatedly expressing society's firm disapproval of juvenile
28 crime and will be clearly issuing a threat of punishment for criminal acts
to the juvenile population.

Id., 99 Nev. at 431-32, 664 P.2d at 950 (1983).

Certification is an essential safety valve designed to deal with the worst offenders
or the offenders who engage in the worst conduct:

Transfer has played an important role in juvenile court jurisprudence since
its earliest days and has acted as a safety valve through which offenders
who were within the statutory age of juvenile court jurisdiction could in
appropriate circumstances be held accountable for their criminal acts by
referral to the adult criminal justice system.

Id. at 430, 664 P.2d at 949.

1 This enlightened, modern philosophy of juvenile justice elicited a clear public
2 policy statement from the Nevada Supreme Court: "the court's duty to the public is
3 paramount. **The primary purpose of juvenile court intervention in delinquency cases**
4 **is social control**; and when one interest must predominate, it should be that of the
5 public." Id. at 433, 664 P.2d at 951 (emphasis added). In the context of a transfer
6 proceeding this statement of public policy mandated a complete abandonment of the
7 "best interest of the child" standard:

8 Once transfer is justified on the basis of public interest and safety, there is
9 no need to consider the "best interest of the child" or the youth's
10 amenability to treatment in the juvenile court system except insofar as
such considerations bear on the public interest.

11 ...
12 With community protection as the guiding principle to be considered in
13 transfer proceedings, **subjective evaluations and prognostications as to**
14 **whether a given youth is or is not likely to respond favorably to**
15 **juvenile court treatment will no longer be the court's primary focus in**
transfer proceedings; rather, the dispositive question to be addressed by the
court is whether the public interest requires that the youth be placed within
the jurisdiction of the adult criminal courts.

16 Id. at 433-34, 664 P.2d at 951-52 (emphasis added).

17 The focus of the transfer inquiry then is on the conduct of the minor in terms of
18 the danger that conduct represents to society and should not involve an amorphous
19 attempt at guesstimating whether a particular juvenile will be saved by Juvenile Court
20 intervention:

21 [T]he juvenile court no longer bases transfer decisions on the issue of
22 whether a juvenile facing transfer is a suitable subject for the juvenile
23 court's rehabilitation efforts, but, rather, on the youth's criminal
24 conduct and whether under the circumstances the public interest and safety
will permit the youth before the court to be treated as a child."

25 ...
26 The transfer process is based upon the sound idea that there is no arbitrary
27 age at which all youths should be held fully responsible as adults for their
28 criminal acts and that there should be a transition period during which an
offender may or may not be held criminally liable, depending upon the
nature of the offender and the offense.

1 Jeremiah B. v. State, 107 Nev. 924, 926, 823 P.2d 883, 884 (1991) (internal quotation
2 marks and citation omitted) (emphasis added).

3 Furthermore, the Nevada Supreme Court has specifically endorsed punishment as
4 a legitimate response to juvenile offenders: "[T]he integrity of the criminal law is
5 maintained by seeing to it that those who commit crimes are punished. ... [P]unitive
6 incarceration may be justified in juvenile cases for serious criminal violations
7 because the youthful offender deserves to be punished." Scott L. v. State, 104 Nev.
8 419, 422, 760 P.2d 134, 135-36 (1988) (emphasis added). Obviously the most severe
9 punishment Juvenile Court can order is transfer to the criminal justice system for
10 treatment as an adult.

11 This enlightened, modern philosophy of juvenile justice has been codified by the
12 Nevada Legislature. NRS 62B.390 is jurisdictional in nature and establishes two
13 presumptions regarding transfer decisions. Discretionary certification establishes a
14 presumption that a particular juvenile is within the jurisdiction of Juvenile Court while
15 presumptive certification establishes a presumption that a particular defendant is outside
16 the jurisdiction of Juvenile Court.

17 In this case, the State is seeking discretionary certification. Discretionary
18 certification creates a presumption of continued Juvenile Court jurisdiction where the
19 State must demonstrate by clear and convincing evidence that the public safety and
20 welfare requires waiver of jurisdiction. Seven Minors, 99 Nev. at 436-37, 667 P.2d at
21 953. The State may rebut the presumption of continued Juvenile Court jurisdiction by
22 establishing that the decisional matrix requires waiver of jurisdiction:

23
24 In transfer matters, then, we hold that the juvenile court should consider a
25 decisional matrix comprised of the following three categories: first, nature
26 and seriousness of the charged offenses; second, persistency and
27 seriousness of past adjudicated or admitted criminal offenses; and third,
28 what we will refer to as the subjective factors, namely, such personal
factors as age, maturity, character, personality and family relationships and
controls.

1 Id. at 434-35, 664 P.2d at 952.

2 In certification proceedings the "primary and most weighty consideration will be
3 give to the first two of the categories." Id. 435, 664 P.2d at 952. Essentially, the
4 subjective factors act as a "tie breaker:"

5 This third category, involving subjective evaluations of the youth, will come
6 into play principally in close cases in which neither of the other two
7 categories clearly impels transfer to adult court. In such cases, even given
8 fairly serious criminal activity, a decision not to transfer may be properly
9 and wisely made because such individual considerations as mental attitude,
10 maturity level, emotional stability, family support and positive
11 psychological and social evaluations require a finding that the public interest
12 and safety are best served by retaining the youth in the juvenile system.

11 Id.


12 The policy arguments justifying the doctrine of waiver, the specific statutory
13 elements of NRS 62B.390 and or the precedents of the Nevada Supreme Court require
14 transfer of this matter from Juvenile Court to Criminal Court. The primary purpose of
15 Juvenile Court intervention is to protect the safety and welfare of the public and in the
16 matter at hand that obligation requires transfer of Subject Minor to the Criminal Court.

17 **CONCLUSION**

18 Based on the foregoing, Juvenile Court should waive jurisdiction over Subject
19 Minor.

20 DATED this 2nd day of September, 2021.

21 STEVEN B. WOLFSON
22 DISTRICT ATTORNEY

23
24 
25 _____
26 TANNER SHARP
27 Deputy District Attorney
28 Nevada Bar No.13018

TLS/mrm

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF ARREST

Event #: LLV210500104805
I.D. #: _____

True Name: BYRON JOSHUA WORTHEY-AVILIA Date of Arrest: 08/26/2021 Time of Arrest: 1545

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

Other Charges

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with the Las Vegas Metropolitan Police Department, Clark County, Nevada, being so employed for a period of 15 years.

That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or was committing) the offense(s) of Lewdness with a Child less than 14 / Attempt Lewdness with a Child less than 14 at the location of 3537 Gloucester Gate St Las Vegas, Nevada 89122, and that the offense(s) occurred at approximately 2014 - 2020/2021, in the:

☒ County of Clark

☐ City of Las Vegas

DETAILS FOR PROBABLE CAUSE:

Summary:

On 05/23/2021 Officers from Southeast Area Command responded to [REDACTED] St. Las Vegas, Nevada 89122. The following is the initial incident crime report taken by Officer L. Tlatenchi P# 18187.

On 05/23/2021 at approximately 2245 hours, I, Officer L. Tlatenchi P#18187 while operating as marked patrol unit 1H responded to a call for service regarding possible lewdness with a minor at [REDACTED] St LVN 89122. Details of the call stated the person reporting recently learned from their 14 year old daughter that her 18 year old step brother has been possibly sexually touching her.

On arrival I made contact with the person reporting who was identified as Worthey, Byron DOB [REDACTED] Byron stated his 14 year old daughter disclosed to him that her stepbrother Worthey-Avila, Byron DOB [REDACTED] has been rubbing his penis on her thighs while she sleeps for the past 7 years and it last occurred in the beginning of 2020.

I spoke with the 14 year old who was identified as W [REDACTED], Z [REDACTED] DOB [REDACTED]. Z [REDACTED] stated she remembers her step brother Byron began rubbing his penis on her thighs when she was 7 years old. Z [REDACTED] said Byron would do it as

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are misdemeanor).

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

often as he could. Z████ would wake up with Byron on top of her with his pants down and his penis exposed. Z████ would pretend to be asleep during the acts because she was scared and didn't know what to do. Byron would rub his penis on her thighs until he ejaculated on the bed sheets and then would get back up and leave to his room. Z████ mentioned she never felt any type of penetration. According to Z████ the acts stopped when she told Byron she had a boyfriend. Byron never threatened Z████ in any manner and Z████ would not tell her parents because she was afraid. The PR Byron also mentioned his 5 year old daughter W████, A████ DOB █████ was possibly inappropriately touched as well. Officer could not interview A████ at the moment due to her age.

Step brother Byron was gone on officers arrival. Officers contacted SA detective Wilson P#9177 and also contacted CPS. CPS# 1976183

Due to the above facts and circumstances this incident crime report was created for Lewdness with a child under 14.

Byron Jr. is the suspect, but his family calls him Joshua his middle name. Byron Jr. will be referred to as Joshua in this report.

Z████ W████ Interview:

On 06/04/2021 Matt Theriault interviewed Z████ W████, O████, at the Southern Nevada Children's Advocacy Center, 701 N. Pecos Road Las Vegas, Nevada 89101. The interview was audio and video recorded. The following is a summary of the interview and not verbatim, for the complete interview refer to the transcript.

Matt introduces himself to Z████. Z████ likes to sing, dance, and watch anime. Z████ listens to Korean, Japanese, and English music. Z████ plays Call of Duty on the PC or PS4. Z████ enjoys playing volleyball at her church. Z████ watches anime on television and reading manga. Z████ wanted to learn Korean and Japanese so she began to watch anime. Z████ likes going to Lake Havasu to swim. Z████ is 14 years old and is in 8th grade. Z████ took pre-algebra, History, and English. Z████ stayed at home the whole school year.

Matt goes over the room with Z████. Matt then goes over the rules with Z████. Z████ agrees to follow the rules and

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

to tell the truth. Z[REDACTED] then told Matt about her day from when she first woke up until she came to the interview. Z[REDACTED] then told Matt about everyone she lives with. Matt goes over the likes and dislikes of the people she lives with. Z[REDACTED] came to talk to Matt because Zyrelle's older brother, Joshua Worthey-Avllia, tried to

Do it with me." The first incident occurred when she was 7 years old. It occurred in the residence she lives in now. Z[REDACTED] was sleeping and Joshua was on top of her and would not get off. Z[REDACTED] describes the room to Matt. This occurred sometime in the morning. Z[REDACTED] is not sure what she was wearing. Z[REDACTED] was on her stomach with her shorts and underwear off. Joshua's shorts were off. Joshua was moving up and down on Z[REDACTED]. Z[REDACTED] felt Joshua's, "Dick," on her body (Lewdness with a Child less than 14 Count - 1). "Dick" is Joshua's private part used to pee. Z[REDACTED] felt Joshua's penis on her bare skin. Joshua got up when there was white stuff all over Z[REDACTED]. Z[REDACTED] got up and went to the bathroom to clean herself.

The last time something occurred was in the beginning of 2020. Z[REDACTED] was not in school at the time. Joshua took off Zyrelle's shorts. Zyrelle was on her back in her bedroom. Z[REDACTED] pushed Joshua in the chest to get him off of her (Attempt Lewdness with a Child less than 14 - Count 1). Z[REDACTED] got up and locked herself in a different room. Everyone was sleeping and Joshua told Z[REDACTED] to get on the floor. Z[REDACTED] told Joshua to do it himself. Joshua pulled down Z[REDACTED]'s shorts. Z[REDACTED] pulled her shorts up and went back to bed.

Z[REDACTED] was in her younger brother's bedroom. Z[REDACTED] was on the bottom bunk bed. Joshua pushed Z[REDACTED] down on the bed. Z[REDACTED] was 9 or 10 years old. Z[REDACTED] was on her back and Joshua pulled down Z[REDACTED]'s shorts. Joshua had his shorts off, and he put his penis in between Z[REDACTED]'s thighs. Z[REDACTED] knew Joshua was done when white stuff came out (Lewdness with a Child less than 14 Count - 2).

All the other times Joshua did this to Z[REDACTED] he dd the same thing. Z[REDACTED] is not sure how many times his occurred but it was often.

Z[REDACTED] was laying on the couch and Joshua put on Z[REDACTED]'s favorite anime. Joshua laid down behind Z[REDACTED] on the couch. Joshua pulled down Z[REDACTED]'s shorts. Joshua pulled down his shorts a little bit. Joshua put his penis in between

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

Zy [redacted]'s thighs. Joshua stopped when there was white stuff that came out and was all over Zy [redacted] (Lewdness with a Child less than 14 – Count 3).

Matt goes over body safety with Zy [redacted] and she disclosed that Joshua gabs Zy [redacted]'s breasts. Joshua will grab Zy [redacted]'s breasts throughout the day. It occurs somedays not all the time. Joshua grabs Zy [redacted]'s breasts over her clothes with his hands.

Joshua's penis is weird shaped, it looks like a rod.

Zy [redacted] told Matt that Joshua touched, Tony (girl in Zy [redacted]'s church (O [redacted])) and Adrielle, Zy [redacted]'s sister. Zy [redacted] told her parents, Uncle (PJ Ramero), and her friend Adrielle R [redacted]. Zy [redacted] told Adrielle a couple months ago about Joshua. Zy [redacted] is scared of Joshua.

Zy [redacted] was re-interviewed by Matt Theriault on 06/30/2021, reference LVMPD event LLV210600083712. This event Zy [redacted] discloses information about her uncle, Charles Ariston. All transcripts and summations can be found under this event number, LLV210600083712.

A [redacted] W [redacted] Interview:

On 06/04/2021 Matt Theriault interviewed A [redacted] W [redacted], [redacted], at the Southern Nevada Children's Advocacy Center, 701 N. Pecos Road Las Vegas, Nevada 89101. The interview was audio and video recorded. The following is a summary of the interview and not verbatim, for the complete interview refer to the transcript.

Matt introduces himself to A [redacted]. Adrielle likes to play with her toys or go outside. A [redacted] likes to play with her cousins or baby cousins. A [redacted] plays cards with her cousins. A [redacted] plays Minecraft on the PS4. A [redacted] plays survival mode on Minecraft. A [redacted] likes to watch action movies with superhero's in them. A [redacted] likes to play with her friends outside. A [redacted] enjoys eating spaghetti made by her grandparents. A [redacted] is 6 years old and just finished 1st grade. A [redacted] likes Math class in school the best. A [redacted] likes Art and P.E.

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#

CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

Matt goes over the room with A[REDACTED]. Matt then goes over and practices the rules with A[REDACTED]. A[REDACTED] understands the rules and agrees to follow the rules. A[REDACTED] told Matt about her day prior to coming in for the interview. Matt then goes over everyone A[REDACTED] lives with. A[REDACTED] told Matt what she likes and dislikes about her family.

A[REDACTED] is unsure why she is talking with Matt. A[REDACTED] would tell her mom or dad if something happened that she did not like. Z[REDACTED] told their preacher about what her brother, Joshua, did. A[REDACTED] is scared of strangers. A[REDACTED]'s mom and dad have talked to her about parts of her body. A[REDACTED] uses her "peck peck" to pee. No one should touch her buttocks. No one has done anything to A[REDACTED]'s buttocks.

Joshua did something to A[REDACTED]'s "peck peck." A[REDACTED] does not want to tell Matt about what Joshua did to her vagina. Matt asked A[REDACTED] what Joshua used to touch her vagina and A[REDACTED] does not answer Matt. The incident occurred at her grandmother's residence, in Joshua's room. A[REDACTED] was on the bed. A[REDACTED]'s dress was on but some clothes were off. Matt again asked A[REDACTED] what Joshua did and she does not answer Matt. Joshua used a part of his body. Matt asked A[REDACTED] what Joshua uses his body part for, but A[REDACTED] does not answer Matt.

A[REDACTED] is not sure if Joshua has touched anyone else. Joshua asked A[REDACTED] to keep a secret. Joshua told A[REDACTED] to be quiet.

Byron Worthey Interview:

On 06/04/2021 I, Detective Wilson P# 9177, conducted a digitally recorded statement with Byron Worthey, [REDACTED], at the Southern Nevada Children's Advocacy Center, 701 N. Pecos Road Las Vegas, Nevada 89101. The following is a summary of the interview and not verbatim, for the complete interview refer to the transcript.

Byron told me his daughters disclosed what occurred to them during a Saturday during church activities. Byron got the information from his wife. Byron's wife told him what occurred, and Byron left the residence for a while because he was extremely upset. Byron needed to get the police involved because he was not sure how to deal with the situation. Byron talked about the options with his wife, and they decided to call 311 and have the police come and take a report. Byron had a medical issue and ended up in the hospital. Byron left the hospital on Sunday and went home to deal with the

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

situation. Byron changed the code, locks, and made sure the cameras were operating to keep Joshua out of the residence.

Byron's wife told him that his daughter's Z [REDACTED] and A [REDACTED] disclosed to his co-preacher Patrick Ramero ([REDACTED] 6838). Byron did not get many details from his wife because he did not want to know them. Byron spoke with Joshua's girlfriend but then she blocked him. Byron also spoke with Joshua's half-brother, Nathan, who denied knowing anything. Byron believes his wife or her family is hiding Joshua. Byron did not have Joshua's social media handles when I spoke with him. Byron stated Joshua left his cell phone in the residence and that he would find it and let me search it. Byron did not have any contact information to A [REDACTED], a girl that lives in the neighborhood that is a disclosure witness that Z [REDACTED] disclosed to. Byron was unaware that "T [REDACTED]," a girl that goes to Byron's church is another possible victim of Joshua. T [REDACTED]'s mother's name is Nina ([REDACTED] -2084).

Joshua made two attempts to commit suicide. Joshua spent 9 months in a mental facility:

Hyacinth Worthey Interview:

On 06/18/2021 I, Detective Wilson P# 9177, conducted a digitally recorded statement with Hyacinth Worthey, [REDACTED], at [REDACTED] St. Las Vegas, Nevada 89122. The following is a summary of the interview and not verbatim, for the complete interview refer to the transcript.

Hyacinth talked to their minister Patrick Ramiro, that there was something bothering Z [REDACTED]. Z [REDACTED] told Hyacinth she woke up with Joshua on top of her. Z [REDACTED] is not sure if there was penetration because she was half asleep. Joshua would push for Z [REDACTED] to have sex. Hyacinth asked Z [REDACTED] how many times Joshua did something like this, and Z [REDACTED] could not count the number of times something occurred between her and Joshua. Hyacinth asked if there was any penetration and Z [REDACTED] told Hyacinth, "No."

Patrick Ramiro then talked with Hyacinth again and told her there was more to the story. Z [REDACTED] did not want to tell Hyacinth about Charles Ariston, JR, Hyacinth's brother. Charles made Z [REDACTED] go to the upstairs den, in the residence and gave his cell phone to C [REDACTED]. Charles made Z [REDACTED] give him a blow job.

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

Hyacinth asked C [redacted] if anything happened between her and Joshua. Joshua would try several times to get on top of C [redacted], but she would fight him back and he never penetrated C [redacted]. Joshua would physically hit C [redacted] because she did not comply with what he was trying to do.

C [redacted] told her parent the first time Joshua tried something was when they lived at Sienna Suites, 6555 Boulder Highway Las Vegas, Nevada 8912. The family lived at that address approximately 5 years ago.

C [redacted] W [redacted] Interview:

On 06/30/2021, Matt Theriault interviewed C [redacted] W [redacted], C [redacted], at the Southern Nevada Children's Advocacy Center, 701 N. Pecos Road Las Vegas, Nevada 89101. The interview was audio and video recorded. The following is a summary of the interview and not verbatim, for the complete interview refer to the transcript.

Matt introduces himself to C [redacted]. C [redacted] likes to draw, poem books, and anime. C [redacted] likes K-pop and heavy metal music. C [redacted] uses her phone and the program Pandora to listen to music. C [redacted] also enjoys playing games on her phone. C [redacted] favorite drawing was of her favorite anime characters. C [redacted] is 13 years old and was in 6th grade.

Matt told C [redacted] about the room they are in. Matt goes over the rules with C [redacted]. C [redacted] understood the rules and agreed to follow the rules. C [redacted] then told Matt about her day from when she woke up until she came in for the interview. Matt asked C [redacted] who she lives with. C [redacted] then told Matt about all the people she lives with and likes and dislikes about her family.

Matt asked C [redacted] about a time she did not feel safe. C [redacted] said Joshua, brother, touched C [redacted] inappropriately. C [redacted] said Joshua first touched her when she was 10 years old up until she was 13. Joshua would touch C [redacted] on her body inappropriately.

C [redacted] was in her family's apartment, Sienna Suites, 6555 Boulder Highway Las Vegas, NV 89122. It was a 2-bedroom apartment and it occurred in the bedroom shared by all the siblings. C [redacted] was wearing her pajamas. Joshua tried to pull down C [redacted]'s shorts. C [redacted] got up and locked herself in the bathroom. Joshua thought C [redacted] was sleeping and Joshua

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

would pull on C's shorts. Joshua would also touch C's chest (Lewdness with a Child Less than 14 – Count 4). It would occur at night in the bedroom she shared with all her siblings.

While at their grandmother's residence, current address, this incident occurred prior to the Sienna Suites incident. C thinks she was in the 3rd grade. C and Joshua were in the living room. C became uncomfortable and locked herself upstairs in the bedroom. Joshua touched C's waist with his hands. Joshua's hands were moving on C's hips making her uncomfortable. Joshua then touched C's private spot (Lewdness with a Child less than 14 – Count 5. C's private spot is used to pee. Joshua touched C's private spot under her clothes, skin to skin contact. C was uncomfortable. Joshua's hand was moving on C's private spot. The incident stopped when their mother called for Joshua.

C stated there were several other incidents where Joshua would try and touch and pull-down C's underwear. C would get up and lock herself in a bathroom or bedroom. C is not sure how many times Joshua touched her, but it occurred several times.

Joshua would hit C because he was always angry.

Patrick Ramiro Interview:

ON 07/01/2021, I, Detective Wilson P# 9177, conducted a telephone interview with Patrick Ramiro, [REDACTED]. Ramiro agrees and understands to continue knowing with the interview being recorded. Ramiro is a pastor at the church where Z, C, and A W attend. The following is a summary of the interview and not verbatim, for the complete interview refer to the transcript.

On a Saturday after bible study Ramiro asked Z how things were going with her boyfriend, Israel. Ramiro asked if Z was still talking to Israel, and Z told Ramiro she was not talking to Israel but had to pretend like she was. Ramiro asked what Z meant by this and Z stated if she does not act like she is still talking to Israel, then Joshua, her brother, would get mad at Z. Again, Ramiro was puzzled by this comment, so asked Z to explain. Z stated Joshua would not leave her alone. When Z told Joshua she was with Israel, Joshua would leave Z alone. When Z was not with Israel, Joshua would touch Z's breasts and buttocks. Joshua also tries to

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

rape Z█████

Ramiro asked Z█████ to elaborate and when Z█████ was 7 years old until December of 2020, Joshua would get on top of Z█████ and have sex with her. If Z█████ pushed Joshua off of her then Joshua would hit or kick Z█████, forcing her to comply with the sex. There was an incident when Joshua punched Z█████ in the nose.

Z█████ was playing the piano while Ramiro was instructing her. Z█████ told Ramiro she wished she did not say anything. Ramiro then asked Z█████ what would be happening if you did not say something, and Z█████ acknowledged that Joshua would be trying to rape Z█████ every day.

Z█████ is not sure if Joshua penetrated Z█████ but has tried multiple time to have sex with Z█████

Z█████ disclosed to Ramiro there was a second suspect, her uncle Charles Ariston (JR). Ramiro again questioned Z█████ about Charles. There were a couple of times when Charles made Z█████ suck his penis. This occurred when Z█████ was 9 or 10 years old and occurred in Charles' bedroom. After her disclosure to Ramiro Z█████ told her mother what occurred between her and Charles and Joshua.

After Z█████ told Ramiro about the incidents, Ramiro went and asked C█████ if Joshua had every done anything to her. C█████ told Ramiro, Joshua never touched her, and she did not want to talk about anything. Ramiro asked C█████ again, at a later time, if Joshua had ever done anything inappropriate with her. Ramiro confronted C█████ telling her she was not telling the truth. C█████ told Ramiro she did not want to be involved in what was going on with Z█████.

Ramiro got up to leave and C█████ told Ramiro to wait and cry. Ever since C█████ was a child, Joshua would try and have sex with C█████ and slap her. Joshua has tried to have sex with C█████ more times than her sisters combined. C█████ would be alone in a room and Joshua would come in and attempt to put his penis into C█████'s vagina. C█████ has slapped Joshua back and run out of the room. C█████ has not said anything before this because she is scared of Joshua. C█████ stated there was an incident when Joshua pulled a knife out on C█████ while they were in the kitchen and told her he was going to kill her. C█████ did not want to tell her parents, so Ramiro told them.

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

After Ramiro's conversation with C [REDACTED], he called A [REDACTED] over and asked her if there were any other incidents that occurred with Joshua besides the first one. A [REDACTED] promised to tell Ramiro the truth. A [REDACTED] told Ramiro her parents told her not to talk about the incident that occurred between her and Joshua before. Ramiro asked A [REDACTED] if Joshua touched her after the first incident, and A [REDACTED] responded, "Yes." Ramiro then asked Adrielle what he did, and A [REDACTED] told Ramiro, Joshua goes on top of A [REDACTED] and touches me right here. A [REDACTED] pointed to her vagina. The last incident occurred when A [REDACTED] was 6 years old. Joshua tried to touch A [REDACTED] all the time. A [REDACTED] is scared because the police were going to her residence to get Joshua.

Ramiro does not know specific details about the incident between A [REDACTED] and Joshua because he was in California when the incident occurred.

Byron Joshua taken into Custody:

On August 26, 2021, I was advised Joshua was possible at a 7eleven located near Indios and Boulder Highway. I along with Detective K. Kirkegard, P# 12919 arrived at 7eleven and observed a male matching the photograph provided by Joshua's father. Detectives approached the male and he verbally identified himself as Bryon Joshua. He was taken into custody by detectives and transported to LVMPD Headquarters for further questions.

Joshua's Interview:

I conducted an interview with Joshua and read him his Miranda Rights. Joshua stated he understood his rights. Joshua disclosed the reason the incident occurred with Zyrille was because he was a Victim of sexual assault as well. Joshua disclosed there were several incidents that occurred with his uncle Charles Ariston. When I asked Joshua to tell me about the incidents that occurred with Z [REDACTED], Joshua asked for a lawyer.

Declarant must sign all page(s)
with an original signature:

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT
400 S. Martin Luther King Blvd.
Las Vegas, NV 89106



Arrest / Detective Report

Case Report No.: LLV210500104805

Administrative

Location [REDACTED] ST LAS VEGAS, NV 89122
Occurred On (Date / Time) Saturday 2/1/2020 5:00:00 AM
Reporting Officer L18187T - Tlatenchi, Luis
Entered By L18187T - Tlatenchi, Luis
Supervisor 14101 - Necas, Christopher
Jurisdiction Clark County
Route To: Connecting Reports Body Camera Video
Voluntary Statement
Victim Information Guide
Or Between (Date / Time) 5/22/2021
Reported On 5/22/2021
Entered On 6/18/2021 8:37:42 PM
Follow Up Pro Squad SE 14
Follow Up Disposition Active
Related Cases

Assisting Officers:
J181706 - Santacruz, John Officer

Offenses

Lewdness W/Child Under14, (1st)(F)-NRS 201.230.2
Completed Yes Hate/Bias None (No Bias)
Entry Premises Entered
Weapons Personal Weapons (Hands, Feet, Teeth, etc.)
Criminal Activities None/Unknown
Type Security Location Type Residence/Home
Domestic Violence Tools No

Victims

Name: W [REDACTED], Z [REDACTED]
Victim Type Individual Written Statement Yes
Victim of 50975 - Lewdness W/Child Under14, (1st)(F)-NRS 201.230.2
Can ID Suspect Domestic Battery No
SSN [REDACTED] DOB [REDACTED] Age 12 Sex Female Race Asian, Indian, Samoan, Pacific Islander Ethnicity Not Hispanic or Latino
Height [REDACTED] Weight [REDACTED] Hair Color [REDACTED] Eye Color [REDACTED]
Employer/School [REDACTED] Work Schedule [REDACTED]
Occupation/Grade [REDACTED] DL State [REDACTED] DL Country [REDACTED]
Resident Resident Tourist Departure Date [REDACTED]
Injury None Observed Injury Weapons Personal Weapons (Hands, Feet, Teeth, etc.)
Addresses
Residence [REDACTED] Las Vegas, NV 89122 CC United Arab Emirates
Phones [REDACTED]
Email [REDACTED]
Offender Relationships
S - Worthey-Avila, Byron Joshua Victim Was Stepsibling (Stepbrother or Stepsister)
Domestic Violence Information
Relationship to Suspect Primary Aggressor Determined
Intimate Relationship Drug/Alcohol Involvement
Voluntary Statement DV Information Provided
Injury Severity Medical Attention
Photos Taken

Notes:

Name: W [REDACTED], A [REDACTED]

Victim Type Individual Written Statement No
Victim of 50975 - Lewdness W/Child Under14, (1st)(F)-NRS 201.230.2
Can ID Suspect Domestic Battery No
SSN [REDACTED] DOB [REDACTED] Age 4 Sex Female Race Asian, Ethnicity Not Hispanic or Latino
6/19/2021 3:37 PM LLV210500104805

Indian,
Samoan,
Pacific
Islander

Hispanic
or Latino

Height Weight Hair Color Eye Color
Employer/School
Occupation/Grade
DLN
Resident Resident
Injury None Observed
Work Schedule
DL Country
Tourist Departure Date
Injury Weapons Personal Weapons (Hands, Feet, Teeth, etc.)

Addresses
Residence Las Vegas, NV CC United States

Phones

Email

Offender Relationships
S - Worthey-Avila, Byron Joshua Victim Was Stepsibling
(Stepbrother or Stepsister)

Domestic Violence Information
Relationship to Suspect
Intimate Relationship
Voluntary Statement
Injury Severity
Photos Taken
Primary Aggressor Determined
Drug/Alcohol Involvement
DV Information Provided
Medical Attention

Notes:

Name: w. C.

Victim Type Individual Written Statement No
Victim of 50975 - Lewdness W/Child Under14, (1st)(F)-NRS 201.230.2
SSN DOB Age 11 Sex Female Can ID Suspect
Domestic Battery No
Race Asian, Indian, Samoan, Pacific Islander Ethnicity Not Hispanic or Latino

Height Weight Hair Color Eye Color
Employer/School
Occupation/Grade
DLN
Resident Resident
Injury None Observed
Work Schedule
DL Country
Tourist Departure Date
Injury Weapons None

Addresses
Residence St LVN, 89122 Clark United States

Phones

Email

Offender Relationships
S - Worthey-Avila, Byron Joshua Victim Was Sibling (Brother or Sister)

Domestic Violence Information
Relationship to Suspect
Intimate Relationship
Voluntary Statement
Injury Severity
Photos Taken
Primary Aggressor Determined
Drug/Alcohol Involvement
DV Information Provided
Medical Attention

Notes:

Suspect

Name: Worthey-Avila, Byron Joshua

Written Stmt. No Alerts Non-English Language

**Aliases
Moniker**

Scope ID
Race White
Sex Male
Employer/School
Hair Length
Complexion
Appearance
Speech manner
DLN
Resident Resident
Habitual Offender Status
Primary Means of Attack/Weapon
Employer/School

DOB
Ethnicity Not Hispanic or Latino
Height 5' 10"
Weight 145
Age 17
Build
Hair Color Brown
Occupation/Grade
Handedness
Eye Color Brown
Eyes
Teeth

Hair Style
Facial hair
Injury/Condition
Speech Characteristics
DL State
Tourist Departure
DL Country
Place of Birth
MO Factors
Weapon Features
Occupation/Grade

Scars, Marks and Tattoos

Addresses
Residence [REDACTED] LVN, 89122 United States

Phones

Domestic Violence Information

TPO In Effect
Injury Severity
Photos Taken
Drug/Alcohol Involvement
Medical Attention
Suspect Demeanor

Voluntary Statement
DV Info provided

Notes:

Arrestees

Witnesses

Other Entities

Name: Legal Guardian WORTHEY, BYRON

Written Statement No
Can ID Suspect Yes

SSN [REDACTED]
Sex Male
Employer/School
Tourist Resident
DLN [REDACTED]

DOB [REDACTED]
Height 5' 10"
Weight 250
Occupation/Grade
Departure Date
DL State Nevada
DL Country United States

Race White
Hair Color Brown
Ethnicity Not Hispanic or Latino
Eye Color Blue

Addresses

Residence [REDACTED] LVN, 89122 Clark United States

Phones

Cellular [REDACTED] 1512

Missing Person / Runaway

Physical Appearance
Skin Complexion
Hair Length
Speech Characteristics
Injury or Condition
Medical Info
Headwear Color
Disappearance Type
Responsible Adult
Last seen by
Last seen wearing
Footprints Available
Photo Attached

Physical Build
Eye Description
Hair Style
Speech Manner
Distinctive Jewelry
Probable Destination
Missing Before
Relationship to MP
Last seen where
X-rays Available
Corrected Vision

Headwear Color
Teeth Description
Facial Hair
Dominate Hand
Blood Type
How long at present address
POB
Last seen Date/Time
Fingerprints Available
Dental Available
Circumcised

Scars, Marks, Tattoos:

Dead Body Report Information

Coroner/Physician
Coroner Case #
Case of Death
Public Administrator
Facility Name
Photos Taken
Coroner/Physician Name
Coroner Seal #
Date/Time Pronounced
Hospital/Mortuary
Attendant Name

Synopsis

Investigation

Scene

Body

Evidence at Scene

Notes:

Father of all children

Name: Legal Guardian Worthey, Hyacinth

Written Statement No

Can ID Suspect Yes

SSN [REDACTED] DOB [REDACTED] Age 32 Race Asian, Indian, Samoan, Pacific Islander Ethnicity Not Hispanic or Latino
Sex Female Height 5' 0" Weight 150 Hair Color Black Eye Color Brown
Employer/School Occupation/Grade
Tourist Resident Departure Date
DLN DL State DL Country

Addresses

Residence

Phones

Cellular

[REDACTED] LAS VEGAS, NV 89122 Clark United States
[REDACTED] 8401

Missing Person / Runaway

Physical Appearance

Skin Complexion

Hair Length

Speech Characteristics

Injury or Condition

Medical Info

Headwear Color

Disappearance Type

Responsible Adult

Last seen by

Last seen wearing

Footprints Available

Photo Attached

Physical Build

Eye Description

Hair Style

Speech Manner

Distinctive Jewelry

Headwear Color

Teeth Description

Facial Hair

Dominate Hand

Blood Type

Probable Destination

How long at present address

POB

Last seen Date/Time

Fingerprints Available

Dental Available

Circumcised

Missing Before
Relationship to MP
Last seen where

X-rays Available
Corrected Vision

Scars, Marks, Tattoos:

Dead Body Report Information

Coroner/Physician

Coroner Case #

Case of Death

Public Administrator

Facility Name

Photos Taken

Coroner/Physician Name

Coroner Seal #

Date/Time Pronounced

Hospital/Mortuary

Attendant Name

Synopsis

Investigation

Scene

Body

Evidence at Scene

Notes:

Mother of Victim

Properties

Solvability

Modus Operandi

MO General			
Occupied?	Yes	Surrounding Area	Middle of Block
General Premise	Single Family Residence	Specific Premise	Room
MO Against Property			
Entry Point	Exit Point		Entry Location
Entry/Attempt Method	Entry Tool		Vehicle Entry
Safe Entry	Suspect Actions		Additional Factors
Victim Location	Electronic Locks		Video Surveillance
Maid	Inspectress		
MO Against People			
Victim-Suspect Relationship		Pre-Incident Contact	
Victim Condition	Under 18	Suspect Solicited/Offered	
Suspect Pretended to Be		Suspect Actions	
Sexual Acts	Ejaculated	Vehicle Involvement	
	Fondled/Sexual Abuse		

Narrative

On 05/23/2021 at approximately 2245 hours, I, Officer L. Tietenchi P#18187 while operating as marked patrol unit 1H responded to a call for service regarding possible lewdness with a minor at [REDACTED] LVN 89122. Details of the call stated the person reporting recently learned from their 14 year old daughter that her 18 year old step brother has been possibly sexually touching her.

On arrival I made contact with the person reporting who was identified as Worthey, Byron DOB [REDACTED]. Byron stated his 14 year old daughter disclosed to him that her stepbrother Worthey-Avila, Byron DOB [REDACTED] has been rubbing his penis on her thighs while she sleeps for the past 7 years and it last occurred in the beginning of 2020.

I spoke with the 14 year old who was identified as W. [REDACTED], Z. [REDACTED] DOB [REDACTED]. Z. [REDACTED] stated she remembers her step brother Byron began rubbing his penis on her thighs when she was 7 years old. Z. [REDACTED] said Byron would do it as often as he could. Z. [REDACTED] would wake up with Byron on top of her with his pants down and his penis exposed. Z. [REDACTED] would pretend to be asleep during the acts because she was scared and didn't know what to do. Byron would rub his penis on her thighs until he ejaculated on the bed sheets and then would get back up and leave to his room. Z. [REDACTED] mentioned she never felt any type of penetration. According to Z. [REDACTED] the acts stopped when she told Byron she had a boyfriend. Byron never threatened Z. [REDACTED] in any manner and Z. [REDACTED] would not tell her parents because she was afraid.

The PR Byron also mentioned his 5 year old daughter W. [REDACTED], A. [REDACTED] DOB [REDACTED] 15 was possibly inappropriately touched as well. Officer could not interview A. [REDACTED] at the moment due to her age.

Step brother Byron was gone on officers arrival. Officers contacted SA detective Wilson P#9177 and also contacted CPS. CPS# 1976183

Due to the above facts and circumstances this incident crime report was created for Lewdness with a child under 14.

.....05/27/2021 Det. Wilson P#
9177.....

Contact information updated with father's information.

.....06/18/2021 Det. Wilson P#
9177.....

Contact information with mother added. Victim C. [REDACTED] W. [REDACTED] has been added under the Victim tab. C. [REDACTED] is disclosing Suspect touched her inappropriately.

Patrol Follow-Up

Z. [REDACTED] completed a voluntary statement and a VIG was issued.

REQUEST FOR PROSECUTION 1(A)

PAGE 1

AGENCY CASE NO: **LLV210500104805**

SUBMITTING AGENCY

AGENCY: LVMPD	PHONE: 828-3763	AGENCY NOTES:
DETAIL: Sex Crimes	FAX #: _____	
OFFICER: Detective Wilson	P#: 9177	

DEFENDANT INFORMATION

▲ A	NAME: Worthey-Avila, Byron	ID NO: _____	ARR _____
	AKA: _____		PAD _____
	<input type="checkbox"/> AFFIDAVIT FOR WARRANT <input checked="" type="checkbox"/> DECLARATION OF ARREST <input type="checkbox"/> REQUEST SUMMONS <input type="checkbox"/> SCOPE <input type="checkbox"/> FBI <input type="checkbox"/> CH		RET _____

▲	NAME: _____	ID NO: _____	ARR _____
	AKA: _____		PAD _____
	<input type="checkbox"/> AFFIDAVIT FOR WARRANT <input type="checkbox"/> DECLARATION OF ARREST <input type="checkbox"/> REQUEST SUMMONS <input type="checkbox"/> SCOPE <input type="checkbox"/> FBI <input type="checkbox"/> CH		RET _____

DA OFFICE USE ONLY

CASE NO.		TRACK		ATTY		DATE	
----------	--	-------	--	------	--	------	--

CHARGE INFORMATION

SEQ NO.	▲	CHARGES	NRS	EVENT NO.	DATE / TIME	LOCATION / ZIP	VICTIM
A	1	LEWDNESS WITH A CHILD LESS THAN 14 <input checked="" type="checkbox"/> F <input type="checkbox"/> GM <input type="checkbox"/> M	201.230.2	210500104805	2014	[REDACTED] ST. LAS VEGAS, NEVADA 89122	Wc [REDACTED], Z [REDACTED]
ATTY NOTES:							
A	2	LEWDNESS WITH A CHILD LESS THAN 14 (2 COUNTS) <input checked="" type="checkbox"/> F <input type="checkbox"/> GM <input type="checkbox"/> M	201.230.2	210500104805	2016-2018	[REDACTED] ST. LAS VEGAS, NV 89122	Wc [REDACTED], Z [REDACTED]
ATTY NOTES:							
A	3	ATTEMPT LEWDNESS BY PERSON UNDER 18 WITH CHILD LESS THAN 14 <input checked="" type="checkbox"/> F <input type="checkbox"/> GM <input type="checkbox"/> M	201.230.1	210500104805	2020	[REDACTED] ST. LAS VEGAS, NEVADA 89122	Wc [REDACTED], Z [REDACTED]
ATTY NOTES:							
A	4	LEWDNESS WITH CHILD LESS THAN 14 <input checked="" type="checkbox"/> F <input type="checkbox"/> GM <input type="checkbox"/> M	201.230.2	210500104805	2016	[REDACTED] ST. LAS VEGAS, NEVADA 89122	Wc [REDACTED], Z [REDACTED]
ATTY NOTES:							

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
WITNESS LIST**

AGENCY CASE NO: LLV210500104805

CODES	ID / P# / ADDRESS	PHONE #s
Wit Codes O	NAME <u>Detective Wilson</u> ID/P No. <u>9177</u>	Residence
	SSN _____ DOB _____	828-3763 Employment
	RES _____	_____
	EMPL <u>LVMPD - Sex Crimes</u> <small>Business Name / Title</small>	<u>G9177W@LVMPD.COM</u> <small>Email Address</small>
	<u>400 S. MLK Blvd.</u> LV NV <u>89106</u> <small>Street 1 City State ZIP</small>	FAX _____
Wit Codes V	NAME <u>Zy [redacted] Wd [redacted]</u> ID/P No. _____	Residence
	SSN _____ DOB [redacted]	Employment
	RES <u>[redacted] St</u> LV NV <u>89122</u> <small>Street 1 City State ZIP</small>	_____
	EMPL _____ <small>Business Name / Title</small>	_____ Email Address
	<u>_____</u> City State ZIP FAX	
Wit Codes V	NAME <u>[redacted] W [redacted]</u> ID/P No. _____	Residence
	SSN _____ DOB [redacted]	Employment
	RES <u>[redacted]</u> LV NV <u>89122</u> <small>Street 1 City State ZIP</small>	_____
	EMPL _____ <small>Business Name / Title</small>	_____ Email Address
	<u>_____</u> City State ZIP FAX	
Wit Codes VR	NAME <u>A [redacted] Wd [redacted]</u> ID/P No. _____	Residence
	SSN _____ DOB [redacted]	Employment
	RES <u>[redacted]</u> LV NV <u>89122</u> <small>Street 1 City State ZIP</small>	_____
	EMPL _____ <small>Business Name / Title</small>	_____ Email Address
	<u>_____</u> City State ZIP FAX	

Witness Codes:	V: Victim	VR: Victim Related	O: Officer
OOS: Out-Of-State	H: Hostile	DR: Defendant Related	M: Minor

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
WITNESS LIST CONTINUATION

AGENCY CASE NO.

LLV210600104805

CODES	ID / P# / ADDRESS	PHONE #s
Wit Codes VR	NAME <u>Byron Worthey</u> SSN <u>[REDACTED]</u> RES <u>[REDACTED] St</u> <u>LV</u> <small>Street 1 City</small> EMPL <u>Business Name / Title</u> <u>Street 1</u> <u>City</u> <u>State</u>	ID/P No. <u>[REDACTED]</u> 1512 <small>Residence</small> DOB <u>[REDACTED]</u> <small>Employment</small> NV <u>89122</u> <small>State ZIP</small> <u>[REDACTED]</u> <small>Email Address</small> <u>[REDACTED]</u> <u>[REDACTED]</u> <small>ZIP FAX</small>
Wit Codes VR	NAME <u>Hyacinth Worthey</u> SSN <u>[REDACTED]</u> RES <u>3 [REDACTED] St</u> <u>LV</u> <small>Street 1 City</small> EMPL <u>Business Name / Title</u> <u>Street 1</u> <u>City</u> <u>State</u>	ID/P No. <u>[REDACTED]</u> 401 <small>Residence</small> DOB <u>[REDACTED]</u> <small>Employment</small> NV <u>89122</u> <small>State ZIP</small> <u>[REDACTED]</u> <small>Email Address</small> <u>[REDACTED]</u> <u>[REDACTED]</u> <small>ZIP FAX</small>
Wit Codes VR	NAME <u>Patrick Ramiro</u> SSN <u>[REDACTED]</u> RES <u>5863 E. Owens</u> <u>LV</u> <small>Street 1 City</small> EMPL <u>Business Name / Title</u> <u>Street 1</u> <u>City</u> <u>State</u>	ID/P No. <u>[REDACTED]</u> <small>Residence</small> DOB <u>[REDACTED]</u> <small>Employment</small> NV <u>89110</u> <small>State ZIP</small> <u>[REDACTED]</u> <small>Email Address</small> <u>[REDACTED]</u> <u>[REDACTED]</u> <small>ZIP FAX</small>
Wit Codes VR	NAME <u>Matt Theriault</u> SSN <u>[REDACTED]</u> RES <u>[REDACTED]</u> <u>[REDACTED]</u> <small>Street 1 City</small> EMPL <u>Southern Nevada Children's Advocay Center</u> <small>Business Name / Title</small> <u>701 N. Pecos Rd.</u> <u>LV</u> <small>Street 1 City</small>	ID/P No. <u>[REDACTED]</u> <small>Residence</small> DOB <u>[REDACTED]</u> <small>Employment</small> <u>[REDACTED]</u> <u>702-455-5371</u> <small>ZIP</small> <u>[REDACTED]</u> <small>Email Address</small> <u>therm@clarkcountynv.gov</u> <small>Email Address</small> NV <u>89101</u> <small>State ZIP</small> <u>[REDACTED]</u> <u>[REDACTED]</u> <small>ZIP FAX</small>

Witness Codes: V: Victim VR: Victim Related O: Officer
OOS: Out-Of-State H: Hostile DR: Defendant Related M: Minor

STEVEN B. WOLFSON
DISTRICT ATTORNEY
NEVADA STATE BAR NO. 001565
TANNER SHARP
Chief Deputy District Attorney
Nevada State Bar No. 13018
601 North Pecos Road
Las Vegas, NV 89101-2408
(702) 455-5320
Attorney for the State of Nevada

DISTRICT COURT
JUVENILE DIVISION
CLARK COUNTY, NEVADA

In the Matter of:

BYRON JOSHUA WORTHEY-AVILA

Date of Birth: [REDACTED]

A Subject 18 Years of Age.

CASE NO. J-21-353445-D1

DEPT NO. L

COURTROOM NO. 10

ORDER SETTING CERTIFICATION HEARING

This matter having come before this Court on the Petition for Certification filed on behalf of the State of Nevada by Chief Deputy District Attorney, Tanner Sharp, and good cause appearing therefore:

IT IS HEREBY ORDERED that a Juvenile Probation Officer investigate all facts and circumstances necessary to assist the Court in determining whether **BYRON JOSHUA WORTHEY-AVILA** should be certified as provided in NRS 62B.390 for proper criminal proceedings in the Eighth Judicial District Court on the following charge(s):

Petition

Charge

1(1)

Lewdness with a Child Under the Age of 14

1(2)

Lewdness with a Child Under the Age of 14

1(3)

Lewdness with a Child Under the Age of 14

1(4)

Lewdness with a Child Under the Age of 14

1 (5)

Lewdness with a Child Under the Age of 14

2 **IT IS FURTHER ORDERED** that any and all evidence which might mitigate
3 the decision to certify the Subject, including but not limited to evidence of substance
4 abuse, emotional or behavioral problems, be submitted to the assigned Probation Officer
5 not later than two weeks from the date of this Order;

6 IT IS FURTHER ORDERED that the proceedings in this matter be
7 arrested until the time of the submission of the report from the Juvenile Probation
8 Department and that a **Certification Hearing** be set at the hour of 10:00 a.m. on the
9 **16th day of September, 2021**, in the Juvenile Division of the Eighth Judicial District
10 Court.

Dated this 7th day of September, 2021

11 
12

13
14 Submitted by:

81A E38 389D 7D0B
David Gibson
District Court Judge

15 /s/ TANNER SHARP

16 TANNER SHARP

17 Chief Deputy District Attorney
18 Nevada State Bar No. 13018

19 TLS/mrm
20
21
22
23
24
25
26
27
28

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 In the Matter of:

CASE NO: J-21-353445-D1

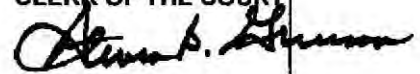
7 Byron Worthey-Avila

DEPT. NO. Family Juvenile
8

9 **AUTOMATED CERTIFICATE OF SERVICE**

10 Electronic service was attempted through the Eighth Judicial District Court's
11 electronic filing system, but there were no registered users on the case. The filer has been
12 notified to serve all parties by traditional means.
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

000036



1 **OPP**
2 EDWARD R. MILEY, ESQ.
3 Nevada Bar No. 6063
4 THE MILEY LAW FIRM
5 501 S. Rancho Dr. STE A1
6 Las Vegas, NV. 89106
7 (702) 942-0600 – office
8 (702) 942-0601 – fax
9 Attorney for Minor

DISTRICT COURT
FAMILY DIVISION - JUVENILE
CLARK COUNTY, NEVADA

10 In the matter of:

11 BYRON JOSHUA WORTHEY-AVILA

12 Date of Birth: [REDACTED]
13 A Subject Minor, 18 yrs. of Age

Case No. J-21-353445-D1
Dept.: L
Courtroom: 10

14
15
16 **OPPOSITION TO CERTIFICATION PETITION**

17 Date of Hearing: 9/16/2021

18 Time of Hearing: 10:00 A.M.

19 COMES NOW, the Subject Minor, BYRON JOSHUA WORTHEY-AVILA, by and
20 through his attorney, Edward R. Miley, Esq. of The Miley Law Firm, and hereby submits
21 his Opposition to the State's Motion for Certification of the Subject Minor to Adult Status.
22 This Opposition is made and based upon the attached Memorandum of Points and
23 Authorities, the attached Exhibits, the pleadings and papers on file in this action and the
24 argument of counsel.
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I.

3 **Statement of Facts**

4 BYRON JOSHUA WORTHEY-AVILA, is before the Court on Petition One. Mr.
5 Worthey-Avila is charged with One, Two, Three, Four, and Five counts of Lewdness
6 with a child under the age of Fourteen.
7

8 The instant charges stem from an incident wherein the State, in its Certification Petition,
9 alleges that BYRON JOSHUA WORTHEY-AVILA sexually assaulted a minor under the
10 age of 14.
11

12 Nevada law sets the age limit at which a person can consent to sexual activity at
13 sixteen (16)¹. Both minors involved in the allegations contained in Petition One were
14 below the age of sixteen (16) at the time of the alleged incident. Additionally, Nevada
15 law does not contain a close in age exception. As such, both persons involved in the
16 allegations of Petition One could be prosecuted under the law.

17 (Exhibit A)

18
19 **The subject minor may be appropriately treated through the jurisdiction of the**
20 **Juvenile court**

21 **Nature and Seriousness of the Charged Offenses**

22
23 The subject minor is before the court facing charges of Four counts of
24 Felony/Lewdness with a child under the age of 14, and One count Felony/Attempt
25 Lewdness with a child under the age of 14.
26
27
28

¹ NRS 200.364

1
2 **Criminal Offenses**

3 BYRON JOSHUA WORTHEY-AVILA is informed and believes and therefore
4 alleges that the offense(s) alleged to have been committed by the subject minor in
5 Petition One would be felonious if committed by an adult, more specifically:

6 **(1) COUNT: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)**

7 **(2) COUNT: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)**

8 **(3) COUNT: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)**

9 **(4) COUNT: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)**

10 **(5) COUNT: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)**

11 **(Exhibit B)**

12 **Family Background**

13 BYRON JOSHUA WORTHEY-AVILA, was referred for a Forensic Psychological
14 Evaluation by Sheila Scott from the Clinical Services Division, Clark County Department
15 of Juvenile Justice Services. Eric S. Smith, Ph.D. **(Exhibit C)**

16 BYRON JOSHUA WORTHEY-AVILA, was born in Las Vegas, Nevada where he
17 was raised. BYRON is the son of Byron Worthey and Laticia Avila. Bryon's parents were
18 married for about four to five years. Mr. Worthey (father) obtained an annulment and
19 remarried when BYRON was about 4. Mr. Worthey (father) is 51 and employed with
20 Wyndham Destinations working in the corporate office as a collector. Mr. Worthey
21 (father) has a previous history of substance abuse and has been sober for 20 years.
22 BYRON's parents separated when he was 12 and he experienced both depression and
23 anger. BYRON stated that he did not get along with his father when younger, but their
24 relationship is better now. After his parents split, his brother, Nathan, continued to
25 reside with their mother. BYRON tried to get closer to his mother but was never
26 successful. BYRON has not had any contact with her since age 16. BYRON's
27 stepmother, Hyacinth Worthey, is an administrative assistant for a hospice company.
28 They never had a "bad relationship" and she was always there for BYRON.

1 However, BYRON was always trying to reunite with his mother which prevented them
2 from being closer. BYRON has one full brother, Nathan, who is 16. His half-siblings
3 include, Z [REDACTED] (14), C [REDACTED] (13), G [REDACTED] (10), and A [REDACTED] (5). BYRON also has two
4 older half siblings and one in middle school from his mother.

5 6 Education

7
8 BYRON JOSHUA WORTHEY-AVILA, stated that he last attended the 12th grade
9 at Chaparral High School. BYRON did not graduate because he did not complete his
10 government or physical education classes. BYRON is currently in the process of
11 completing them and obtaining his GED. BYRON repeated the fourth grade due to his
12 poor performance and his "age issues". BYRON began kindergarten at the age of 4, so
13 the school felt holding him back would put him with his regular age group. BYRON has
14 no I.E.P., or 504 plan in school. BYRON had no idea as to his grade point average, but
15 he mostly obtained C's and D's in his classes. BYRON was not involved in any school
16 sports or other school related activities. BYRON had never been sent to a behavior
17 school. In the past, BYRON recalled having required parent conferences for throwing
18 food in middle school, truancy, and being tardy to class. Regarding vocational interests,
19 he wants to complete his GED, eventually attend a trade school, and would like to focus
20 on engineering or that of an architect.

21 22 Medical History

23
24 BYRON JOSHUA WORTHEY-AVILA, did not report any physical conditions that
25 he is being treated for. BYRON did report that he has a tooth that is cracked and needs
26 dental care. BYRON has no allergic reactions to medications. BYRON has no history of
27 head trauma or seizures.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

3
4
5
6

7
8

9
10
11
12
13
14
15
16

17
18
19
20
21

22
23
24
25
26
27
28

1 BYRON's father, Charles has been charged with three sexual assaults on Zy [REDACTED] (14)
2 and is currently out on bail.

3 Due to the extensive sexual abuse and trauma experienced by BYRON, he
4 became severely depressed and suicidal. BYRON had made three suicide attempts as
5 an adolescent by trying to overdose on anxiety and sleep medications. BYRON was
6 admitted to Desert Parkway Behavioral Healthcare Hospital for one week, Seven Hills
7 Behavioral Health Hospital for one week, and Montevista Psychiatric Hospital of one
8 month. The history of his sexual abuse "came out more" during his time at Montevista
9 Psychiatric Hospital, but he felt "very uncomfortable" and didn't want to talk about it.

10 BYRON, denied ever setting fires or being cruel toward animals. BYRON did not
11 recall any history of being significantly bullied or being exposed to domestic violence.
12 There were no factors noted that would have affected BYRON's level of responsiveness
13 other than facing a Certification Hearing on his charges. BYRON did elicit some anxiety
14 symptoms while discussing his history of being sexually abuses. Regarding recent
15 disturbances in consciousness, none were reported.

16 BYRON's main concerns are 1) his future, 2) the people he cares about the
17 most, and 3) his legal case. If he had any wishes, he would wish 1) to be able to provide
18 for his family, 2) to go back in time and report being sexually abused when he was
19 younger, and 3) to get through the court process, be successful, and have a family.

20 BYRON has no previous juvenile record for violent or non-violent offenses.
21 Historical risk factors that increase the risk for delinquent crime include early caregiver
22 disruption, history of self-harm or suicide attempts, childhood history of maltreatment,
23 poor school achievement, and stress and poor coping.

24 //

25 //

26 //

27 //

28 //

Diagnoses

F43.10 POSTTRAUMATIC STRESS DISORDER
F33.2 MAJOR DEPRESSIVE DISORDER, RECURRENT, SEVERE
Z91.5 PERSONAL HISTORY OF SELF-HARM
Z62.810 PAST HISTORY OF SEXUAL ABUSE IN CHILDHOOD
F51.5 NIGHTMARE DISORDER
Z63.5 DISRUPTION OF FAMILY BY SEPARATION OR DIVORCE
Z55.9 ACADEMIC OR EDUCATIONAL PROBLEM
Z65.3 PROBLEMS RELATED TO OTHER LEGAL CIRCUMSTANCES

Clinical Diagnostic Impressions

SUBSTANCE ABUSE ISSUES: LOW RISK
RISK FOR VIOLENCE/DANGEROUS BEHAVIOR: MODERATE RISK

Psychopathology and Treatment Amenability

Conclusion

BYRON JOSHUA WORTHEY-AVILA, age 18, is appearing before the court on charges of FELONY/LEWDNESS WITH A CHILD UNDER THE AGE OF 14, and FELONY/ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14.

BYRON was aware as to the specific charges filed against him, and the results of the Forensic Psychological Evaluation did not indicate that he has a Conduct Disorder Adolescent-Onset Type. BYRON does, however, have comorbid psychiatric disorders that will require long-term residential treatment. This adolescent has no prior history of being involved in violent crimes.

The severity and persistence of the sexual abuse sustained by BYRON over the years has resulted in long-term effects on his mental health. Psychological problems caused by the sexual abuse include depression, anxiety, anger, post-trauma, nightmares, sleep problems, and suicide attempts. Sexual abuse can also exacerbate various psychiatric symptoms. There is a strong association of interfamilial sexual abuse with suicidal behavior. BYRON is experiencing significant psychiatric disorders

1 related to sexual abuse and he requires treatment with evidence-based trauma-focused
2 interventions. These elements include psychoeducation about trauma and its impact,
3 affective modulation utilizing relaxation and breathing techniques, gradual exposure to
4 trauma memories, and cognitive processing of any inaccurate cognitions like guilt and
5 self-blame. Trauma-focused cognitive- behavioral therapy is usually the most effective
6 psychotherapy intervention. In addition, medications may be warranted to address his
7 psychological symptoms and generate a more positive treatment response to therapy.

8 BYRON needs to be in the Juvenile system so that he may be able to get the
9 help he needs. He won't get that help in the Adult system. Based on the totality of
10 detailed information regarding BYRON JOSHUA WORTHEY-AVILA, it is respectfully
11 urged that the State's petition to certify the subject minor be denied.
12

13
14 Dated this 10th day of September, 2021

15 Miley Law Firm

16
17 /s/ Edward R. Miley

18 Edward R. Miley, Esq.
19 Nevada Bar No. 6063
20 Attorney for Minor
21
22
23
24
25
26
27
28

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

Exhibit A

19

20

21

22

23

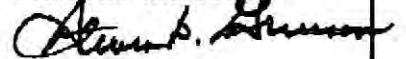
24

25

26

27

28



1 STEVEN B. WOLFSON
2 DISTRICT ATTORNEY
3 NEVADA STATE BAR NO. 001565
4 TANNER SHARP
5 Chief Deputy District Attorney
6 Nevada State Bar No. 13018
7 601 North Pecos Road
8 Las Vegas, NV 89101-2408
9 (702) 455-5320
10 Attorney for the State of Nevada

7 DISTRICT COURT
8 JUVENILE DIVISION
9 CLARK COUNTY, NEVADA

10 In the Matter of:

11 BYRON JOSHUA WORTHEY-AVILA

12 Date of Birth: [REDACTED]

13 A Subject 18 Years of Age.

CASE NO. J-21-353445-D1

DEPT NO. L

COURTROOM NO. 10

14 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
15 **CERTIFICATION PETITION**

16 COMES NOW, the State of Nevada, by and through Steven B. Wolfson, District
17 Attorney, through his Chief Deputy District Attorney, Tanner Sharp, and files the
18 instant Memorandum of Points and Authorities in Support of Certification Petition.

19 DATED this 2nd day of September, 2021.

20
21 STEVEN B. WOLFSON
22 DISTRICT ATTORNEY

23 
24 TANNER SHARP
25 Deputy District Attorney
26 Nevada Bar No. 13018
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
2 **CERTIFICATION PETITION**

3 **BYRON JOSHUA WORTHEY-AVILA's** (Subject) conduct demands that the
4 Juvenile Division of the Eighth Judicial District Court (Juvenile Court) waive jurisdiction
5 and transfer this case to the Criminal Division of the Eighth Judicial District Court
6 (Criminal Court) so that Subject may be certified for proper criminal proceedings as an
7 adult under the provisions of NRS 62B.390.

8 I

9 **THE RECORD BEFORE THE COURT ESTABLISHES PROSECUTIVE**
10 **MERIT AS TO THE OFFENSES CHARGED**

11 The exhibits attached to the instant Memorandum of Points and Authorities in
12 Support of Certification Petition (State's Memorandum) satisfies the minimal standard of
13 prosecutive merit and as such Juvenile Court should enter a finding that the State has met
14 the minimal burden of establishing prosecutive merit and engage in the certification
15 analysis required by NRS 62B.390.¹

16 ¹62B.390. Certification of child for criminal proceedings as adult:

17 1. Except as otherwise provided in subsection 2 and NRS 62B.400, upon a motion by the district attorney and after a full
18 investigation, the juvenile court may certify a child for proper criminal proceedings as an adult to any court that would have
19 jurisdiction to try the offense if committed by an adult, if the child:

- 20 (a) Is charged with an offense that would have been a felony if committed by an adult; and
21 (b) Was 14 years of age or older at the time the child allegedly committed the
22 offense.

23 2. Except as otherwise provided in subsection 3, upon a motion by the district attorney and after a full investigation, the juvenile
24 court shall certify a child for proper criminal proceedings as an adult to any court that would have jurisdiction to try the offense if
25 committed by an adult, if the child:

26 (a) Is charged with:

27 (1) A sexual assault involving the use or threatened use of force or violence against the victim; or

28 (2) An offense or attempted offense involving the use or threatened use of a firearm; and

(b) Was 16 years of age or older at the time the child allegedly committed the offense.

3. The juvenile court shall not certify a child for criminal proceedings as an adult pursuant to subsection 2 if the juvenile court
specifically finds by clear and convincing evidence that:

(a) The child is developmentally or mentally incompetent to understand his situation and the proceedings of the court or to aid his
attorney in those proceedings; or

(b) The child has substance abuse or emotional or behavioral problems and the substance abuse or emotional or behavioral
problems may be appropriately treated through the jurisdiction of the juvenile court.

4. If a child is certified for criminal proceedings as an adult pursuant to subsection 1 or 2, the juvenile court shall also certify the
child for criminal proceedings as an adult for any other related offense arising out of the same facts as the offense for which the
child was certified, regardless of the nature of the related offense.

5. If a child has been certified for criminal proceedings as an adult pursuant to subsection 1 or 2 and the child's case has been
transferred out of the juvenile court:

(a) The court to which the case has been transferred has original jurisdiction over the child;

(b) The child may petition for transfer of the case back to the juvenile court only upon a showing of exceptional circumstances;
and

(c) If the child's case is transferred back to the juvenile court, the juvenile court shall determine whether the exceptional
circumstances warrant accepting jurisdiction.

1 The Nevada Supreme Court has defined the concept of prosecutive merit to mean
2 that there is probable cause to believe that the Subject committed the crime charged:

3
4 "Prosecutive merit" is the term referring to the necessity for establishing the
5 merit of the prosecution's case as a condition for proceeding with the
6 transfer process. According to the Kent [v. United States], 383 U.S. 541, 86
7 S.Ct. 1045 (1966)] memorandum, prosecutive merit exists if there is
8 evidence upon which a grand jury would be expected to return an
9 indictment. To say that there is prosecutive merit is to say that there is
10 probable cause to believe that the subject minor committed the charged
11 crime.

12 Judicial economy requires that a preliminary determination be made as to
13 the prosecutive merit of the charge before going ahead with the transfer
14 process. If there is no prima facie case to support the charge, there is no
15 point in the court's involving itself further in the process. Thus the only
16 reasonable way to proceed is for the court to make an initial determination
17 of prosecutive merit.

18 In the Matter of Seven Minors, 99 Nev. 427, 437, 664 P.2d 947, 953 (1983).

19 The same quantity of evidence is necessary for a magistrate to bind a case over to
20 District Court following a Preliminary hearing. In Kinsey v. Sheriff, 87 Nev. 361, 363,
21 487 P.2d 340, 341 (1971), the Nevada Supreme Court concluded, "[t]o commit an
22 accused for trial, the State is not required to negate all inferences which might explain the
23 his conduct, but only to present enough evidence to support a reasonable inference that
24 the accused committed the offense." Further, "[a] finding of probable cause may be
25 based on slight evidence." Sheriff v. Badillo, 95 Nev. 593, 594, 600 P.2d 221, 222
26 (1979).

27 In Sheriff v. Middleton, 112 Nev. 956, 921 P.2d 282 (1996), the Nevada Supreme
28 Court carefully summarized this area of the law:

At trial, the state bears the burden of proving beyond a reasonable doubt the

1 corpus delicti of the crime and that the defendant committed the crime.
2 Frutiger [v. State], 111 Nev. [1385,] 1389, 907 P.2d [158,] 161 [(1995)];
3 Azbill [v. State]; 84 Nev. [345,] 352, 440 P.2d [1014,] 1018 [(1968), cert.
4 denied, 429 U.S. 895, 97; S.Ct. 257 (1976)]. However, at the preliminary
5 hearing stage, probable cause to bind a defendant over for trial "may be
6 slight, 'even marginal' evidence because it does not involve a
7 determination of guilt or innocence of an accused." Sheriff v. Rhodes, 96
8 Nev. 184, 186, 606 P.2d 178, 180 (1980) (citations omitted); see also,
9 Sheriff v. Milton, 109 Nev. 412, 414, 851 P.2d 417, 418 (1993) (the state
10 need only present sufficient evidence "to support a reasonable inference
11 that the accused committed the offense") (quoting, Kinsey v. Sheriff, 87
12 Nev. 361, 363, 487 P.2d 340, 341 (1971)).

13 Middleton, 112 Nev. at 961, 921 P.2d at 286.

14 The Nevada Supreme Court has stated that the Juvenile Courts of Nevada may
15 make a determination of prosecutive merit based on the written record alone. Moreover,
16 the Court went on to specifically analogize the amount of evidence necessary for
17 establishing prosecutive merit to the amount of evidence necessary for establishing
18 probable cause to detain an adult. The policy reason behind the adoption of this minimal
19 standard is that a juvenile is not entitled to two preliminary hearings.

20 [T]he first business of the juvenile court in a transfer proceeding should
21 be a resolution of the threshold requirement of prosecutive merit. The
22 necessary determination of probable cause can be made preliminarily by
23 the court on the basis of the written record. An adversary hearing is not
24 required, and the probable cause finding may be based on evidence taken
25 from the petition, sworn investigative reports, witnesses' affidavits,
26 police affidavits, or other informal but reliable evidence.

27 Due process does not require that a juvenile be given an adversary
28 hearing comparable to the preliminary hearing examination provided for
in NRS Chapter 171. The process of finding probable cause in transfer
matters is comparable to 172, the finding that must be made in
pre-adjudication detention matters.

In detention cases the "standard- probable cause to believe the suspect has
committed a crime- traditionally been decided by a magistrate in a
nonadversary proceedings on hearsay and written testimony, and the
Court has approved these informal modes of proof." Gerstein v. Pugh,
420 U.S. 103, 120 (1975). After such an informal proof a youth may be
properly and constitutionally detained; there is no reason why similar
proof cannot support a finding of the existence of the level of prosecutive
merit necessary to serve the ends of judicial economy and the individual
protections referred to above.

Transfer proceedings are essentially dispositional in nature and not
adjudicatory. No determination of guilt or innocence is made. A juvenile

1 should not be entitled to two preliminary examinations, one at the
2 juvenile level and another at the adult level. Consequently, the state may
be said to have met its initial burden of showing prosecutive merit if
proof consistent with the holdings in Gerstein can be presented.

3 In re: Three Minors, 100 Nev. 414, 418, 684 P.2d 1121, 1123-24 (1984).

4 The reality of the matter is that the State has established slight or marginal
5 evidence that Subject participated in the offense(s) at issue.

6 II

7 **THE PUBLIC SAFETY AND WELFARE REQUIRES TRANSFER** 8 **OF JURISDICTION OVER THIS MATTER TO THE CRIMINAL** 9 **COURT**

10 The public safety and welfare requires waiver of jurisdiction in this matter from
the Juvenile Court to the Criminal Court.

11 The policy justifying transfer pursuant to NRS 62B.390 amounts to a realization
12 that there is no set age at which a particular juvenile may be held accountable for his or
13 her conduct as an adult and that when a court is called upon to make a personalized
14 determination of which system should adjudicate the questions of guilt and the
15 punishment the primary concern is the safety and welfare of the public and not the best
16 interest of the minor. The Nevada Supreme Court has summarized the development of
17 Juvenile Court as an institution and the public policies driving the evolution of NRS
18 62B.390:

19 Juvenile courts have traditionally been preoccupied with the interests of
20 the child, and the interests of the state, as such, did not become a
21 declared, joint purpose of our Juvenile Court Act until 1949.

22 The Juvenile Court from its inception in Illinois in 1899 until
23 approximately the middle of this century was a child-centered institution
24 based on theories taken from the positive school of criminology and
25 especially on the deterministic principle that youthful law violators are
26 not morally or criminally responsible for their behavior but, rather, are
victims of their environment--an environment which can be ameliorated
and modified much in the way that a physician modifies the milieu
interieur of a sick patient.

27 Under such a doctrine the Juvenile Court tended to lose its identity as a
28 court and became more of a social clinic than a court of law. Lost to

1 such an institution was the moralizing and socializing influence
2 associated with the operation of criminal courts; and, more importantly,
3 lost too were society's ageless responses to criminal behavior:
4 punishment, deterrence, retribution and segregation. So it was that
5 juvenile courts in Nevada prior to 1949 were not charged with
6 administering the criminal law for the protection of society against
7 juvenile criminality but were required to treat the youthful law violator
8 "not as a criminal, but as misdirected, and misguided and needing aid,
9 encouragement and assistance." NCL S 1032.

10 This kind of kindly, paternalistic approach was eventually seen as being
11 ill-suited to the task of dealing with juvenile crime. The legislative
12 response to this realization was that toward the middle of this century a
13 number of state legislatures, including our own, made changes in the
14 purpose clause of Juvenile Court acts so that Juvenile courts were
15 required to consider the public interest as well as the child's interest. This
16 departure from traditional juvenile justice philosophy is significant. We
17 take it to indicate that the status of juvenile courts as courts is to be
18 recognized and that protection of the public against juvenile criminal
19 offenders may be effected by invocation of the means traditionally
20 employed in the judicial administration of the criminal law. Juvenile
21 courts may under such legislative direction properly consider the
22 punitive, deterrent and other accepted adjuncts of the criminal law.

23 Although juvenile courts may have difficulty at times in balancing the
24 interests of the child and the public, there is no irreconcilable opposition
25 between the two. By formally recognizing the legitimacy of punitive and
26 deterrent sanctions for criminal offenses juvenile courts will be properly
27 and somewhat belatedly expressing society's firm disapproval of juvenile
28 crime and will be clearly issuing a threat of punishment for criminal acts
to the juvenile population.

Id., 99 Nev. at 431-32, 664 P.2d at 950 (1983).

Certification is an essential safety valve designed to deal with the worst offenders
or the offenders who engage in the worst conduct:

Transfer has played an important role in juvenile court jurisprudence since
its earliest days and has acted as a safety valve through which offenders
who were within the statutory age of juvenile court jurisdiction could in
appropriate circumstances be held accountable for their criminal acts by
referral to the adult criminal justice system.

Id. at 430, 664 P.2d at 949.

1 This enlightened, modern philosophy of juvenile justice elicited a clear public
2 policy statement from the Nevada Supreme Court: "the court's duty to the public is
3 paramount. The primary purpose of juvenile court intervention in delinquency cases
4 is social control; and when one interest must predominate, it should be that of the
5 public." Id. at 433, 664 P.2d at 951 (emphasis added). In the context of a transfer
6 proceeding this statement of public policy mandated a complete abandonment of the
7 "best interest of the child" standard:

8 Once transfer is justified on the basis of public interest and safety, there is
9 no need to consider the "best interest of the child" or the youth's
10 amenability to treatment in the juvenile court system except insofar as
such considerations bear on the public interest.

11 ...
12 With community protection as the guiding principle to be considered in
13 transfer proceedings, subjective evaluations and prognostications as to
14 whether a given youth is or is not likely to respond favorably to
15 juvenile court treatment will no longer be the court's primary focus in
transfer proceedings; rather, the dispositive question to be addressed by the
court is whether the public interest requires that the youth be placed within
the jurisdiction of the adult criminal courts.

16 Id. at 433-34, 664 P.2d at 951-52 (emphasis added).

17 The focus of the transfer inquiry then is on the conduct of the minor in terms of
18 the danger that conduct represents to society and should not involve an amorphous
19 attempt at guesstimating whether a particular juvenile will be saved by Juvenile Court
20 intervention:

21 [T]he juvenile court no longer bases transfer decisions on the issue of
22 whether a juvenile facing transfer is a suitable subject for the juvenile
23 court's rehabilitation efforts, but, rather, on the youth's criminal
24 conduct and whether under the circumstances the public interest and safety
will permit the youth before the court to be treated as a child."

25 ...
26 The transfer process is based upon the sound idea that there is no arbitrary
27 age at which all youths should be held fully responsible as adults for their
28 criminal acts and that there should be a transition period during which an
offender may or may not be held criminally liable, depending upon the
nature of the offender and the offense.

1 Jeremiah B. v. State, 107 Nev. 924, 926, 823 P.2d 883, 884 (1991) (internal quotation
2 marks and citation omitted) (emphasis added).

3 Furthermore, the Nevada Supreme Court has specifically endorsed punishment as
4 a legitimate response to juvenile offenders: "[T]he integrity of the criminal law is
5 maintained by seeing to it that those who commit crimes are punished. ... [P]unitive
6 incarceration may be justified in juvenile cases for serious criminal violations
7 because the youthful offender deserves to be punished." Scott L. v. State, 104 Nev.
8 419, 422, 760 P.2d 134, 135-36 (1988) (emphasis added). Obviously the most severe
9 punishment Juvenile Court can order is transfer to the criminal justice system for
10 treatment as an adult.

11 This enlightened, modern philosophy of juvenile justice has been codified by the
12 Nevada Legislature. NRS 62B.390 is jurisdictional in nature and establishes two
13 presumptions regarding transfer decisions. Discretionary certification establishes a
14 presumption that a particular juvenile is within the jurisdiction of Juvenile Court while
15 presumptive certification establishes a presumption that a particular defendant is outside
16 the jurisdiction of Juvenile Court.

17 In this case, the State is seeking discretionary certification. Discretionary
18 certification creates a presumption of continued Juvenile Court jurisdiction where the
19 State must demonstrate by clear and convincing evidence that the public safety and
20 welfare requires waiver of jurisdiction. Seven Minors, 99 Nev. at 436-37, 667 P.2d at
21 953. The State may rebut the presumption of continued Juvenile Court jurisdiction by
22 establishing that the decisional matrix requires waiver of jurisdiction:

23
24 In transfer matters, then, we hold that the juvenile court should consider a
25 decisional matrix comprised of the following three categories: first, nature
26 and seriousness of the charged offenses; second, persistency and
27 seriousness of past adjudicated or admitted criminal offenses; and third,
28 what we will refer to as the subjective factors, namely, such personal
factors as age, maturity, character, personality and family relationships and
controls.

1 Id. at 434-35, 664 P.2d at 952.

2 In certification proceedings the "primary and most weighty consideration will be
3 give to the first two of the categories." Id. 435, 664 P.2d at 952. Essentially, the
4 subjective factors act as a "tie breaker:"

5 This third category, involving subjective evaluations of the youth, will come
6 into play principally in close cases in which neither of the other two
7 categories clearly impels transfer to adult court. In such cases, even given
8 fairly serious criminal activity, a decision not to transfer may be properly
9 and wisely made because such individual considerations as mental attitude,
10 maturity level, emotional stability, family support and positive
11 psychological and social evaluations require a finding that the public interest
12 and safety are best served by retaining the youth in the juvenile system.

13 Id.

14 The policy arguments justifying the doctrine of waiver, the specific statutory
15 elements of NRS 62B.390 and or the precedents of the Nevada Supreme Court require
16 transfer of this matter from Juvenile Court to Criminal Court. The primary purpose of
17 Juvenile Court intervention is to protect the safety and welfare of the public and in the
18 matter at hand that obligation requires transfer of Subject Minor to the Criminal Court.

19 CONCLUSION

20 Based on the foregoing, Juvenile Court should waive jurisdiction over Subject
21 Minor.

22 DATED this 2nd day of September, 2021.

23 STEVEN B. WOLFSON
24 DISTRICT ATTORNEY

25 

26 TANNER SHARP
27 Deputy District Attorney
28 Nevada Bar No.13018

TLS/mrm

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF ARREST

Event #: LLV210500104805

I.D. #: _____

True Name: BYRON JOSHUA WORTHEY-AVILIA

Date of Arrest: 08/26/2021

Time of Arrest: 1545

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

Other Charges

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with the Las Vegas Metropolitan Police Department, Clark County, Nevada, being so employed for a period of 15 years.

That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or was committing) the offense(s) of Lewdness with a Child less than 14 / Attempt Lewdness with a Child less than 14 at the location of 3537 Gloucester Gate St Las Vegas, Nevada 89122, and that the offense(s) occurred at approximately 2014 - 2020/2021, in the:

☒ County of Clark

☐ City of Las Vegas

DETAILS FOR PROBABLE CAUSE:

Summary:

On 05/23/2021 Officers from Southeast Area Command responded to [REDACTED] Las Vegas, Nevada 89122. The following is the initial incident crime report taken by Officer L. Tlatenchi P# 18187.

On 05/23/2021 at approximately 2245 hours, I, Officer L. Tlatenchi P#18187 while operating as marked patrol unit 1H responded to a call for service regarding possible lewdness with a minor at [REDACTED] St LVN 89122. Details of the call stated the person reporting recently learned from their 14 year old daughter that her 18 year old step brother has been possibly sexually touching her.

On arrival I made contact with the person reporting who was identified as Worthey, Byron DOB [REDACTED] Byron stated his 14 year old daughter disclosed to him that her stepbrother Worthey-Avila, Byron DOB [REDACTED] has been rubbing his penis on her thighs while she sleeps for the past 7 years and it last occurred in the beginning of 2020.

I spoke with the 14 year old who was identified as W [REDACTED], Z [REDACTED] DOB [REDACTED] Z [REDACTED] stated she remembers her step brother Byron began rubbing his penis on her thighs when she was 7 years old. Z [REDACTED] said Byron would do it as

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are misdemeanor).

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

often as he could. Z████ would wake up with Byron on top of her with his pants down and his penis exposed. Z████ would pretend to be asleep during the acts because she was scared and didn't know what to do. Byron would rub his penis on her thighs until he ejaculated on the bed sheets and then would get back up and leave to his room. Z████ mentioned she never felt any type of penetration. According to Z████ the acts stopped when she told Byron she had a boyfriend. Byron never threatened Z████ in any manner and Z████ would not tell her parents because she was afraid. The PR Byron also mentioned his 5 year old daughter W████, A████ DOB █████ was possibly inappropriately touched as well. Officer could not interview A████ at the moment due to her age.

Step brother Byron was gone on officers arrival. Officers contacted SA detective Wilson P#9177 and also contacted CPS. CPS# 1976183

Due to the above facts and circumstances this incident crime report was created for Lewdness with a child under 14.

Byron Jr. is the suspect, but his family calls him Joshua his middle name. Byron Jr. will be referred to as Joshua in this report.

Z████ W████ Interview:

On 06/04/2021 Matt Theriault interviewed Z████ W████, █████, at the Southern Nevada Children's Advocacy Center, 701 N. Pecos Road Las Vegas, Nevada 89101. The interview was audio and video recorded. The following is a summary of the interview and not verbatim, for the complete interview refer to the transcript.

Matt introduces himself to Z████. Zyrille likes to sing, dance, and watch anime. Z████ listens to Korean, Japanese, and English music. Z████ plays Call of Duty on the PC or PS4. Z████ enjoys playing volleyball at her church. Z████ watches anime on television and reading manga. Z████ wanted to learn Korean and Japanese so she began to watch anime. Z████ likes going to Lake Havasu to swim. Z████ is 14 years old and is in 8th grade. Z████ took pre-algebra, History, and English. Z████ stayed at home the whole school year.

Matt goes over the room with Z████. Matt then goes over the rules with Z████. Z████ agrees to follow the rules and

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

to tell the truth. Z████ then told Matt about her day from when she first woke up until she came to the interview. Z████ then told Matt about everyone she lives with. Matt goes over the likes and dislikes of the people she lives with. Z████ came to talk to Matt because Z████'s older brother, Joshua Worthey-Avllia, tried to

Do it with me." The first incident occurred when she was 7 years old. It occurred in the residence she lives in now. Z████ was sleeping and Joshua was on top of her and would not get off. Z████ describes the room to Matt. This occurred sometime in the morning. Z████ is not sure what she was wearing. Z████ was on her stomach with her shorts and underwear off. Joshua's shorts were off. Joshua was moving up and down on Z████. Z████ felt Joshua's, "Dick," on her body (Lewdness with a Child less than 14 Count - 1). "Dick" is Joshua's private part used to pee. Z████ felt Joshua's penis on her bare skin. Joshua got up when there was white stuff all over Z████. Z████ got up and went to the bathroom to clean herself.

The last time something occurred was in the beginning of 2020. Z████ was not in school at the time. Joshua took off Z████'s shorts. Z████ was on her back in her bedroom. Z████ pushed Joshua in the chest to get him off of her (Attempt Lewdness with a Child less than 14 - Count 1). Z████ got up and locked herself in a different room. Everyone was sleeping and Joshua told Z████ to get on the floor. Z████ told Joshua to do it himself. Joshua pulled down Z████'s shorts. Z████ pulled her shorts up and went back to bed.

Z████ was in her younger brother's bedroom. Z████ was on the bottom bunk bed. Joshua pushed Z████ down on the bed. Z████ was 9 or 10 years old. Z████ was on her back and Joshua pulled down Z████'s shorts. Joshua had his shorts off, and he put his penis in between Z████'s thighs. Z████ knew Joshua was done when white stuff came out (Lewdness with a Child less than 14 Count - 2).

All the other times Joshua did this to Z████ he did the same thing. Z████ is not sure how many times this occurred but it was often.

Z████ was laying on the couch and Joshua put on Z████'s favorite anime. Joshua laid down behind Z████ on the couch. Joshua pulled down Z████'s shorts. Joshua pulled down his shorts a little bit. Joshua put his penis in between

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

Z█████'s thighs. Joshua stopped when there was white stuff that came out and was all over Z█████ (Lewdness with a Child less than 14 - Count 3).

Matt goes over body safety with Z█████ and she disclosed that Joshua grabs Z█████'s breasts. Joshua will grab Z█████'s breasts throughout the day. It occurs somedays not all the time. Joshua grabs Z█████'s breasts over her clothes with his hands.

Joshua's penis is weird shaped, it looks like a rod.

Z█████ told Matt that Joshua touched, T█████ (girl in Z█████ church (C█████s)) and A█████; Z█████'s sister. Z█████ told her parents, Uncle (PJ Ramero), and her friend A█████ R█████. Z█████ told A█████ a couple months ago about Joshua. Z█████ is scared of Joshua.

Z█████ was re-interviewed by Matt Theriault on 06/30/2021, reference LVMPD event LLV210600083712. This event Z█████ discloses information about her uncle, Charles Ariston. All transcripts and summations can be found under this event number, LLV210600083712.

A█████ W█████ Interview:

On 06/04/2021 Matt Theriault interviewed A█████ W█████ at the Southern Nevada Children's Advocacy Center, 701 N. Pecos Road Las Vegas, Nevada 89101. The interview was audio and video recorded. The following is a summary of the interview and not verbatim, for the complete interview refer to the transcript.

Matt introduces himself to A█████. A█████ likes to play with her toys or go outside. A█████ likes to play with her cousins or baby cousins. A█████ plays cards with her cousins. A█████ plays Minecraft on the PS4. A█████ plays survival mode on Minecraft. A█████ likes to watch action movies with superhero's in them. A█████ likes to play with her friends outside. A█████ enjoys eating spaghetti made by her grandparents. A█████ is 6 years old and just finished 1st grade. A█████ likes Math class in school the best. A█████ likes Art and P.E.

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 8177

Print Declarant's Name

Declarant's Signature

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

Matt goes over the room with A[REDACTED]. Matt then goes over and practices the rules with A[REDACTED]. A[REDACTED] understands the rules and agrees to follow the rules. A[REDACTED] told Matt about her day prior to coming in for the interview. Matt then goes over everyone A[REDACTED] lives with. A[REDACTED] told Matt what she likes and dislikes about her family.

A[REDACTED] is unsure why she is talking with Matt. Adrielle would tell her mom or dad if something happened that she did not like. A[REDACTED] told their preacher about what her brother, Joshua, did. Adrielle is scared of strangers. Adrielle's mom and dad have talked to her about parts of her body. Adrielle uses her "peck peck" to pee. No one should touch her buttocks. No one has done anything to Adrielle's buttocks.

Joshua did something to A[REDACTED]'s "peck peck." A[REDACTED] does not want to tell Matt about what Joshua did to her vagina. Matt asked A[REDACTED] what Joshua used to touch her vagina and A[REDACTED] does not answer Matt. The incident occurred at her grandmother's residence, in Joshua's room. A[REDACTED] was on the bed. A[REDACTED]'s dress was on but some clothes were off. Matt again asked A[REDACTED] what Joshua did and she does not answer Matt. Joshua used a part of his body. Matt asked A[REDACTED] what Joshua uses his body part for, but A[REDACTED] does not answer Matt.

A[REDACTED] is not sure if Joshua has touched anyone else. Joshua asked A[REDACTED] to keep a secret. Joshua told A[REDACTED] to be quiet.

Byron Worthey Interview:

On 06/04/2021 I, Detective Wilson P# 9177, conducted a digitally recorded statement with Byron Worthey, A[REDACTED], at the Southern Nevada Children's Advocacy Center, 701 N. Pecos Road Las Vegas, Nevada 89101. The following is a summary of the interview and not verbatim, for the complete interview refer to the transcript.

Byron told me his daughters disclosed what occurred to them during a Saturday during church activities. Byron got the information from his wife. Byron's wife told him what occurred, and Byron left the residence for a while because he was extremely upset. Byron needed to get the police involved because he was not sure how to deal with the situation. Byron talked about the options with his wife, and they decided to call 311 and have the police come and take a report. Byron had a medical issue and ended up in the hospital. Byron left the hospital on Sunday and went home to deal with the

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

[Signature]

P#

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

situation. Byron changed the code, locks, and made sure the cameras were operating to keep Joshua out of the residence.

Byron's wife told him that his daughter's Z [REDACTED] and A [REDACTED] disclosed to his co-preacher Patrick Ramero (310-989-6838). Byron did not get many details from his wife because he did not want to know them. Byron spoke with Joshua's girlfriend but then she blocked him. Byron also spoke with Joshua's half-brother, Nathan, who denied knowing anything. Byron believes his wife or her family is hiding Joshua. Byron did not have Joshua's social media handles when I spoke with him. Byron stated Joshua left his cell phone in the residence and that he would find it and let me search it. Byron did not have any contact information to A [REDACTED], a girl that lives in the neighborhood that is a disclosure witness that Z [REDACTED] disclosed to. Byron was unaware that "T [REDACTED]," a girl that goes to Byron's church is another possible victim of Joshua. T [REDACTED]'s mother's name is Nina [REDACTED]-2084.

Joshua made two attempts to commit suicide. Joshua spent 9 months in a mental facility:

Hyacinth Worthey Interview:

On 06/18/2021 I, Detective Wilson P# 9177, conducted a digitally recorded statement with Hyacinth Worthey, [REDACTED], at [REDACTED], Las Vegas, Nevada 89122. The following is a summary of the interview and not verbatim, for the complete interview refer to the transcript.

Hyacinth talked to their minister Patrick Ramiro, that there was something bothering Z [REDACTED]. Z [REDACTED] told Hyacinth she woke up with Joshua on top of her. Z [REDACTED] is not sure if there was penetration because she was half asleep. Joshua would push for Z [REDACTED] to have sex. Hyacinth asked Z [REDACTED] how many times Joshua did something like this, and Z [REDACTED] could not count the number of times something occurred between her and Joshua. Hyacinth asked if there was any penetration and Z [REDACTED] told Hyacinth, "No."

Patrick Ramiro then talked with Hyacinth again and told her there was more to the story. Z [REDACTED] did not want to tell Hyacinth about Charles Ariston, JR, Hyacinth's brother. Charles made Z [REDACTED] go to the upstairs den, in the residence and gave his cell phone to [REDACTED]. Charles made Z [REDACTED] give him a blow job.

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#

VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

Hyacinth asked C. If anything happened between her and Joshua. Joshua would try several times to get on top of C., but she would fight him back and he never penetrated C.. Joshua would physically hit C. because she did not comply with what he was trying to do.

C. told her parent the first time Joshua tired something was when they lived at Sienna Suites, 6555 Boulder Highway Las Vegas, Nevada 8912. The family lived at that address approximately 5 years ago.

C. W. Interview:

On 06/30/2021, Matt Theriault interviewed C. W., at the Southern Nevada Children's Advocacy Center, 701 N. Pecos Road Las Vegas, Nevada 89101. The interview was audio and video recorded. The following is a summary of the interview and not verbatim, for the complete interview refer to the transcript.

Matt introduces himself to C.. C. likes to draw, poem books, and anime. C. likes K-pop and heavy metal music. C. uses her phone and the program Pandora to listen to music. C. also enjoys playing games on her phone. C. favorite drawing was of her favorite anime characters. C. is 13 years old and was in 6th grade.

Matt told C. about the room they are in. Matt goes over the rules with C.. C. understood the rules and agreed to follow the rules. C. then told Matt about her day from when she woke up until she came in for the interview. Matt asked C. who she lives with. C. then told Matt about all the people she lives with and likes and dislikes about her family.

Matt asked C. about a time she did not feel safe. Chloe said Joshua, brother, touched Chloe inappropriately. Chloe said Joshua first touched her when she was 10 years old up until she was 13. Joshua would touch Chloe on her body inappropriately.

C. was in her family's apartment, Sienna Suites, 6555 Boulder Highway Las Vegas, NV 89122. It was a 2-bedroom apartment and it occurred in the bedroom shared by all the siblings. C. was wearing her pajamas. Joshua tried to pull down C.'s shorts. C. got up and locked herself in the bathroom. Joshua thought C. was sleeping and Joshua

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#

VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

Event #: LLV210500104805

ID#:

would pull on C's shorts. Joshua would also touch C's chest (Lewdness with a Child Less than 14 - Count 4). It would occur at night in the bedroom she shared with all her siblings.

While at their grandmother's residence, current address, this incident occurred prior to the Sienna Suites Incident. C thinks she was in the 3rd grade. C and Joshua were in the living room. C became uncomfortable and locked herself upstairs in the bedroom. Joshua touched C's waist with his hands. Joshua's hands were moving on C's hips making her uncomfortable. Joshua then touched C's private spot (Lewdness with a Child less than 14 - Count 5. C's private spot is used to pee. Joshua touched C's private spot under her clothes, skin to skin contact. C was uncomfortable. Joshua's hand was moving on C's private spot. The incident stopped when their mother called for Joshua.

C stated there were several other incidents where Joshua would try and touch and pull-down C's underwear. C would get up and lock herself in a bathroom or bedroom. C is not sure how many times Joshua touched her, but it occurred several times.

Joshua would hit C because he was always angry.

Patrick Ramiro Interview:

ON 07/01/2021, I, Detective Wilson P# 9177, conducted a telephone interview with Patrick Ramiro, (). Ramiro agrees and understands to continue knowing with the interview being recorded. Ramiro is a pastor at the church where Z, C, and A W attend. The following is a summary of the interview and not verbatim, for the complete interview refer to the transcript.

On a Saturday after bible study Ramiro asked Z how things were going with her boyfriend, Israel. Ramiro asked if Z was still talking to Israel, and Z told Ramiro she was not talking to Israel but had to pretend like she was. Ramiro asked what Z meant by this and Z stated if she does not act like she is still talking to Israel, then Joshua, her brother, would get mad at Z. Again, Ramiro was puzzled by this comment, so asked Z to explain. Z stated Joshua would not leave her alone. When Z told Joshua she was with Israel, Joshua would leave Z alone. When Z was not with Israel, Joshua would touch Z's breasts and buttocks. Joshua also tries to

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

9177

P#

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

rape Z [REDACTED]

Ramiro asked Z [REDACTED] to elaborate and when Z [REDACTED] was 7 years old until December of 2020, Joshua would get on top of Z [REDACTED] and have sex with her. If Z [REDACTED] pushed Joshua off of her then Joshua would hit or kick Z [REDACTED] forcing her to comply with the sex. There was an incident when Joshua punched Z [REDACTED] in the nose.

Z [REDACTED] was playing the piano while Ramiro was instructing her. Z [REDACTED] told Ramiro she wished she did not say anything. Ramiro then asked Z [REDACTED] what would be happening if you did not say something, and Z [REDACTED] acknowledged that Joshua would be trying to rape Z [REDACTED] every day.

Z [REDACTED] is not sure if Joshua penetrated Z [REDACTED] but has tried multiple time to have sex with Z [REDACTED].

Z [REDACTED] disclosed to Ramiro there was a second suspect, her uncle Charles Ariston (JR). Ramiro again questioned Z [REDACTED] about Charles. There were a couple of times when Charles made Z [REDACTED] suck his penis. This occurred when Z [REDACTED] was 9 or 10 years old and occurred in Charles' bedroom. After her disclosure to Ramiro Z [REDACTED] told her mother what occurred between her and Charles and Joshua.

After Z [REDACTED] told Ramiro about the incidents, Ramiro went and asked C [REDACTED] if Joshua had ever done anything to her. C [REDACTED] told Ramiro, Joshua never touched her, and she did not want to talk about anything. Ramiro asked C [REDACTED] again, at a later time, if Joshua had ever done anything inappropriate with her. Ramiro confronted C [REDACTED] telling her she was not telling the truth. C [REDACTED] told Ramiro she did not want to be involved in what was going on with Z [REDACTED].

Ramiro got up to leave and C [REDACTED] told Ramiro to wait and cry. Ever since C [REDACTED] was a child, Joshua would try and have sex with C [REDACTED] and slap her. Joshua has tried to have sex with C [REDACTED] more times than her sisters combined. C [REDACTED] would be alone in a room and Joshua would come in and attempt to put his penis into C [REDACTED]'s vagina. C [REDACTED] has slapped Joshua back and run out of the room. C [REDACTED] has not said anything before this because she is scared of Joshua. C [REDACTED] stated there was an incident when Joshua pulled a knife out on C [REDACTED] while they were in the kitchen and told her he was going to kill her. C [REDACTED] did not want to tell her parents, so Ramiro told them.

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

[Signature]
Declarant's Signature

[Signature]

P#

VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

After Ramiro's conversation with C [REDACTED], he called A [REDACTED] over and asked her if there were any other incidents that occurred with Joshua besides the first one. A [REDACTED] promised to tell Ramiro the truth. A [REDACTED] told Ramiro her parents told her not to talk about the incident that occurred between her and Joshua before. Ramiro asked A [REDACTED] if Joshua touched her after the first incident, and A [REDACTED] responded, "Yes." Ramiro then asked A [REDACTED] what he did, and A [REDACTED] told Ramiro, Joshua goes on top of A [REDACTED] and touches me right here. A [REDACTED] pointed to her vagina. The last incident occurred when A [REDACTED] was 6 years old. Joshua tried to touch A [REDACTED] all the time. A [REDACTED] is scared because the police were going to her residence to get Joshua.

Ramiro does not know specific details about the incident between A [REDACTED] and Joshua because he was in California when the incident occurred.

Byron Joshua taken into Custody:

On August 26, 2021, I was advised Joshua was possible at a 7eleven located near Indios and Boulder Highway. I along with Detective K. Kirkegard, P# 12919 arrived at 7eleven and observed a male matching the photograph provided by Joshua's father. Detectives approached the male and he verbally identified himself as Bryon Joshua. He was taken into custody by detectives and transported to LVMPD Headquarters for further questions.

Joshua's Interview:

I conducted an interview with Joshua and read him his Miranda Rights. Joshua stated he understood his rights. Joshua disclosed the reason the incident occurred with Z [REDACTED] was because he was a Victim of sexual assault as well. Joshua disclosed there were several incidents that occurred with his uncle Charles Ariston. When I asked Joshua to tell me about the incidents that occurred with Z [REDACTED], Joshua asked for a lawyer.

Declarant must sign all page(s)
with an original signature:

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT
400 S. Martin Luther King Blvd.
Las Vegas, NV 89106



Arrest / Detective Report

Case Report No.: LLV210500104805

Administrative

Location [REDACTED] LAS VEGAS, NV 89122
Occured On (Date / Time) Saturday 2/1/2020 5:00:00 AM
Reporting Officer L18187T - Tlatenchi, Luis
Entered By L18187T - Tlatenchi, Luis
Supervisor 14101 - Necas, Christopher
Jurisdiction Clark County
Route To: Connecting Reports
Body Camera Video
Voluntary Statement
Victim Information Guide
Or Between (Date / Time)
Reported On 5/22/2021
Entered On 6/18/2021 6:37:42 PM
Pro Squad SE 14
Follow Up Disposition Active
Sector / Beat J3

Assisting Officers:
J181708 - Santacruz, John Officer

Offenses

Lewdness W/Child Under14, (1st)(F)-NRS 201.230.2
Completed Yes Hate/Bias None (No Bias)
Entry Premises Entered
Weapons Personal Weapons (Hands, Feet, Teeth, etc.)
Criminal Activities None/Unknown
Type Security Location Type Residence/Home
Domestic Violence Tools No

Victims

Name: W [REDACTED]
Victim Type Individual
Victim of 50975 - Lewdness W/Child Under14, (1st)(F)-NRS 201.230.2
SSN [REDACTED] DOB [REDACTED] Age 12 Sex Female
Can ID Suspect Domestic Battery No
Race Asian, Indian, Samoan, Pacific Islander
Ethnicity Not Hispanic or Latino
Height [REDACTED] Weight [REDACTED] Hair Color [REDACTED] Eye Color [REDACTED]
Employer/School [REDACTED] Work Schedule [REDACTED]
Occupation/Grade [REDACTED] DL State [REDACTED] DL Country [REDACTED]
Resident Resident Tourist Departure Date [REDACTED]
Injury None Observed Injury Weapons Personal Weapons (Hands, Feet, Teeth, etc.)
Addresses [REDACTED], NV 89122 CC United Arab Emirates
Residence [REDACTED]
Phones [REDACTED]
Email [REDACTED]
Offender Relationships S - Worthey-Avila, Byron Joshua
Victim Was Stepsibling (Stepbrother or Stepsister)
Domestic Violence Information
Relationship to Suspect Intimate Relationship
Voluntary Statement Injury Severity Photos Taken
Primary Aggressor Determined
Drug/Alcohol Involvement DV Information Provided Medical Attention

Notes:

Name: W [REDACTED]

Victim Type Individual
Victim of 50975 - Lewdness W/Child Under14, (1st)(F)-NRS 201.230.2
SSN [REDACTED] DOB [REDACTED] Age 4 Sex Female
Can ID Suspect Domestic Battery No
Race Asian, Ethnicity Not
6/19/2021 3:37 PM LLV210500104805

000065

Height Weight Hair Color Eye Color
Employer/School Occupation/Grade DLN
Resident Resident DL State
Injury None Observed Work Schedule
Tourist Departure Date
Injury Weapons Personal Weapons (Hands, Feet, Teeth, etc.)

Indian,
Samoan,
Pacific
Islander

Hispanic
or Latino

Addresses
Residence [REDACTED] Vegas, NV CC United States

Phones

Email

Offender Relationships
S - Worthey-Avila, Byron Joshua
Victim Was Stepsibling
(Stepbrother or Stepsister)

Domestic Violence Information
Relationship to Suspect
Intimate Relationship
Voluntary Statement
Injury Severity
Photos Taken
Primary Aggressor Determined
Drug/Alcohol Involvement
DV Information Provided
Medical Attention

Notes:

Name: W [REDACTED] C [REDACTED]

Victim Type Individual Written Statement No
Victim of 50975 - Lewdness W/Child Under 14, (1st)(F)-NRS 201.230.2
Can ID Suspect Domestic Battery No
SSN DOB [REDACTED] Age 11 Sex Female Race Asian, Indian, Samoan, Pacific Islander Ethnicity Not Hispanic or Latino

Height Weight Hair Color Eye Color
Employer/School Occupation/Grade DLN
Resident Resident DL State
Injury None Observed Work Schedule
Tourist Departure Date
Injury Weapons None

Addresses
Residence [REDACTED] N, 89122 Clark United States

Phones

Email

Offender Relationships
S - Worthey-Avila, Byron Joshua
Victim Was Sibling (Brother or Sister)

Domestic Violence Information
Relationship to Suspect
Intimate Relationship
Voluntary Statement
Injury Severity
Photos Taken
Primary Aggressor Determined
Drug/Alcohol Involvement
DV Information Provided
Medical Attention

Notes:

Suspect

Name: Worthey-Avila, Byron Joshua

Written Stmt. No Alerts Non-English Language

**Aliases
Moniker**

Scope ID
Race **White**
Sex **Male** Height **5' 10"** DOB **[REDACTED]** Age **17** SSN **[REDACTED]**
Employer/School Ethnicity **Not Hispanic or Latino** Build **Brown** Handedness **Brown**
Hair Length Hair Color **Brown** Eye Color **Brown**
Complexion Occupation/Grade
Appearance
Speech manner
DLN
Resident **Resident** Hair Style
Facial hair
Injury/Condition
Speech Characteristics
DL State **DL Country** Place of Birth
Tourist Departure
MO Factors
Weapon Features
Occupation/Grade
Primary Means of Attack/Weapon
Employer/School

Scars, Marks and Tattoos

Addresses
Residence **[REDACTED] VN, 89122 United States**

Phones

Domestic Violence Information
TPO In Effect
Injury Severity
Photos Taken

Drug/Alcohol Involvement
Medical Attention
Suspect Demeanor

Voluntary Statement
DV Info provided

Notes:

Arrestees

Witnesses

Other Entities

Name: Legal Guardian **WORTHY, BYRON**

Written Statement **No** Can ID Suspect **Yes**
SSN **[REDACTED]** DOB **[REDACTED]** Age **50** Race **White** Ethnicity **Not Hispanic or Latino**
Sex **Male** Height **5' 10"** Weight **250** Hair Color **Brown** Eye Color **Blue**
Employer/School Occupation/Grade
Tourist **Resident** Departure Date
DLN **[REDACTED] 410** DL State **Nevada** DL Country **United States**

Addresses
Residence **[REDACTED] 89122 Clark United States**
Phones
Cellular **[REDACTED] 1512**

Missing Person / Runaway

Physical Appearance
Skin Complexion
Hair Length
Speech Characteristics
Injury or Condition
Medical Info
Headwear Color
Disappearance Type
Responsible Adult
Last seen by
Last seen wearing
Footprints Available
Photo Attached
Physical Build
Eye Description
Hair Style
Speech Manner
Distinctive Jewelry
Blood Type
Headwear Color
Teeth Description
Facial Hair
Dominate Hand
Probable Destination
How long at present address
POB
Last seen Date/Time
Fingerprints Available
Dental Available
Circumcised
Missing Before
Relationship to MP
Last seen where
X-rays Available
Corrected Vision

Scars, Marks, Tattoos:

Dead Body Report Information

Coroner/Physician Name
Coroner Case #
Case of Death
Public Administrator
Facility Name
Photos Taken
Coroner/Physician Name
Coroner Seal #
Date/Time Pronounced
Hospital/Mortuary
Attendant Name

Synopsis

Investigation

Scene

Body

Evidence at Scene

Notes:
Father of all children

Name: Legal Guardian Worthy, Hyeleth

Written Statement	No	Can ID Suspect	Yes
SSN	[REDACTED]	DOB	[REDACTED]
Age	32	Race	Asian, Indian, Samoan, Pacific Islander
Sex	Female	Hair Color	Black
Height	5' 0"	Weight	150
Occupation/Grade		Eye Color	Brown
Departure Date			
DL State		DL Country	
Employer/School			
Tourist Resident			
DLN			

Addresses

Residence

Phones

Cellular

Missing Person / Runaway

Physical Appearance
Skin Complexion
Hair Length
Speech Characteristics
Injury or Condition
Medical Info
Headwear Color
Disappearance Type
Responsible Adult
Last seen by
Last seen wearing
Footprints Available
Photo Attached

Physical Build
Eye Description
Hair Style
Speech Manner
Distinctive Jewelry
Blood Type
Headwear Color
Teeth Description
Facial Hair
Dominate Hand
Probable Destination
How long at present address
POB
Last seen Date/Time
Fingerprints Available
Dental Available
Circumcised
Missing Before
Relationship to MP
Last seen where
X-rays Available
Corrected Vision

Scars, Marks, Tattoos:

Dead Body Report Information

Coroner/Physician Name
Coroner Case #
Cause of Death
Public Administrator
Facility Name
Photos Taken
Synopsis

Coroner/Physician Name
Coroner Seat #
Date/Time Pronounced
Hospital/Mortuary
Attendant Name

Investigation

Scene

Body

Evidence at Scene

Notes:
Mother of Victim

Properties

Solvability

Modus Operandi

MO General Occupied? Yes General Premise Single Family Residence MO Against Property Entry Point Entry/Attempt Method Safe Entry Victim Location Maid	Exit Point Entry Tool Suspect Actions Electronic Locks Inspector	Surrounding Area Specific Premise Middle of Block Room Entry Location Vehicle Entry Additional Factors Video Surveillance
MO Against People Victim-Suspect Relationship Victim Condition Under 18 Suspect Pretended to Be Sexual Acts Ejaculated Fondled/Sexual Abuse	Pre-Incident Contact Suspect Solicited/Offered Suspect Actions Vehicle Involvement	

Narrative

On 05/23/2021 at approximately 2245 hours, I, Officer L. Tatenchi P#18187 while operating as marked patrol unit 1H responded to a call for service regarding possible lewdness with a minor at [REDACTED] St LVN 89122. Details of the call stated the person reporting recently learned from their 14 year old daughter that her 18 year old step brother has been possibly sexually touching her.

On arrival I made contact with the person reporting who was identified as Worthey, Byron DOB [REDACTED]. Byron stated his 14 year old daughter disclosed to him that her stepbrother Worthey-Avila, Byron DOB [REDACTED] has been rubbing his penis on her thighs while she sleeps for the past 7 years and it last occurred in the beginning of 2020.

I spoke with the 14 year old who was identified as W[REDACTED], Z[REDACTED] DOB [REDACTED]. Z[REDACTED] stated she remembers her step brother Byron began rubbing his penis on her thighs when she was 7 years old. Z[REDACTED] said Byron would do it as often as he could. Z[REDACTED] would wake up with Byron on top of her with his pants down and his penis exposed. Z[REDACTED] would pretend to be asleep during the acts because she was scared and didn't know what to do. Byron would rub his penis on her thighs until he ejaculated on the bed sheets and then would get back up and leave to his room. Z[REDACTED] mentioned she never felt any type of penetration. According to Z[REDACTED] the acts stopped when she told Byron she had a boyfriend. Byron never threatened Z[REDACTED] in any manner and Z[REDACTED] would not tell her parents because she was afraid.

The PR Byron also mentioned his 5 year old daughter W[REDACTED], A[REDACTED] DOB [REDACTED] 5 was possibly inappropriately touched as well. Officer could not interview A[REDACTED] at the moment due to her age.

Step brother Byron was gone on officers arrival. Officers contacted SA detective Wilson P#1177 and also contacted CPS, CPS# 1976183

Due to the above facts and circumstances this incident crime report was created for Lewdness with a child under 14.

05/27/2021 Det. Wilson P# 9177

Contact information updated with father's information.

06/18/2021 Det. Wilson P# 9177

Contact information with mother added. Victim C[REDACTED] W[REDACTED] has been added under the Victim tab. C[REDACTED] is disclosing Suspect touched her inappropriately.

Patrol Follow-Up
Z[REDACTED] completed a voluntary statement and a ViG was issued.

REQUEST FOR PROSECUTION 1(A)

PAGE 1

AGENCY CASE NO: **LLV210500104805**

SUBMITTING AGENCY

AGENCY: LVMPD	PHONE: 828-3763	AGENCY NOTES:
DETAIL: Sex Crimes	FAX #:	
OFFICER: Detective Wilson	P#: 9177	

DEFENDANT INFORMATION

▲ A	NAME: Worthey-Avila, Byron	ID No: _____	ARR _____
	AKA: _____		PAD _____
	<input type="checkbox"/> AFFIDAVIT FOR WARRANT <input checked="" type="checkbox"/> DECLARATION OF ARREST <input type="checkbox"/> REQUEST SUMMONS <input type="checkbox"/> SCOPE <input type="checkbox"/> FBI <input type="checkbox"/> CII		RET _____
▲	NAME: _____	ID No: _____	ARR _____
	AKA: _____		PAD _____
	<input type="checkbox"/> AFFIDAVIT FOR WARRANT <input type="checkbox"/> DECLARATION OF ARREST <input type="checkbox"/> REQUEST SUMMONS <input type="checkbox"/> SCOPE <input type="checkbox"/> FBI <input type="checkbox"/> CII		RET _____

DA OFFICE USE ONLY

CASE NO. _____	TRACK _____	ATTY _____	DATE _____
----------------	-------------	------------	------------

CHARGE INFORMATION

SEQ NO.	▲	CHARGES	NRS	EVENT NO.	DATE / TIME	LOCATION / ZIP	VICTIM
A	1	LEWDNESS WITH A CHILD LESS THAN 14 <input checked="" type="checkbox"/> F <input type="checkbox"/> GM <input type="checkbox"/> M	201.230.2	210500104805	2014	_____ LAS VEGAS, NEVADA 89122	_____ Worthey, Z
ATTY NOTES:							
A	2	LEWDNESS WITH A CHILD LESS THAN 14 (2 COUNTS) <input checked="" type="checkbox"/> F <input type="checkbox"/> GM <input type="checkbox"/> M	201.230.2	210500104805	2018-2019	_____ LAS VEGAS, NV 89122	_____ Worthey, Z
ATTY NOTES:							
A	3	ATTEMPT LEWDNESS BY PERSON UNDER 18 WITH CHILD LESS THAN 14 <input checked="" type="checkbox"/> F <input type="checkbox"/> GM <input type="checkbox"/> M	201.230.1	210500104805	2020	_____ LAS VEGAS, NEVADA 89122	_____ Worthey, Z
ATTY NOTES:							
A	4	LEWDNESS WITH CHILD LESS THAN 14 <input checked="" type="checkbox"/> F <input type="checkbox"/> GM <input type="checkbox"/> M	201.230.2	210500104805	2016	_____ LAS VEGAS, NEVADA 89122	_____ Worthey, Z
ATTY NOTES:							

LAS VEGAS METROPOLITAN POLICE DEPARTMENT WITNESS LIST

AGENCY CASE NO: LLV210500104805

CODES	ID / P# / ADDRESS	PHONE #s
Wit Codes <div style="border: 1px solid black; padding: 2px; text-align: center;">O</div>	NAME <u>Detective Wilson</u> ID/P No. <u>9177</u> SSN _____ DOB _____ RES _____ <small>Street 1 City State ZIP</small> EMPL <u>LVMPD - Sex Crimes</u> <u>G9177W@LVMPD.COM</u> <small>Business Name / Title Email Address</small> <u>400 S. MLK Blvd.</u> <u>LV</u> <u>NV</u> <u>89106</u> <small>Street 1 City State ZIP FAX</small>	Residence _____ 828-3763 Employment _____
Wit Codes <div style="border: 1px solid black; padding: 2px; text-align: center;">V</div>	NAME <u>Z [REDACTED] W [REDACTED]</u> ID/P No. _____ SSN _____ DOB <u>0 [REDACTED]</u> RES <u>[REDACTED]</u> <u>LV</u> NV <u>89122</u> <small>Street 1 City State ZIP</small> EMPL _____ <small>Business Name / Title Email Address</small> <u>[REDACTED]</u> <u>[REDACTED]</u> <u>[REDACTED]</u> <small>Street 1 City State ZIP FAX</small>	Residence _____ Employment _____
Wit Codes <div style="border: 1px solid black; padding: 2px; text-align: center;">V</div>	NAME <u>C [REDACTED] W [REDACTED]</u> ID/P No. _____ SSN _____ DOB <u>[REDACTED]</u> RES <u>[REDACTED]</u> <u>LV</u> NV <u>89122</u> <small>Street 1 City State ZIP</small> EMPL _____ <small>Business Name / Title Email Address</small> <u>[REDACTED]</u> <u>[REDACTED]</u> <u>[REDACTED]</u> <small>Street 1 City State ZIP FAX</small>	Residence _____ Employment _____
Wit Codes <div style="border: 1px solid black; padding: 2px; text-align: center;">VR</div>	NAME <u>A [REDACTED] W [REDACTED]</u> ID/P No. _____ SSN _____ DOB <u>[REDACTED]</u> RES <u>3 [REDACTED] St</u> <u>LV</u> NV <u>89122</u> <small>Street 1 City State ZIP</small> EMPL _____ <small>Business Name / Title Email Address</small> <u>[REDACTED]</u> <u>[REDACTED]</u> <u>[REDACTED]</u> <small>Street 1 City State ZIP FAX</small>	Residence _____ Employment _____

Witness Codes:	V: Victim	VR: Victim Related	O: Officer
OOS: Out-Of-State	H: Hostile	DR: Defendant Related	M: Minor

LLV210500104806

Witness Codes:	V: Victim	VR: Victim Related	O: Officer
OOS: Out-Of-State	H: Hostile	DR: Defendant Related	M: Minor

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit B

IN THE EIGHTH DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK
JUVENILE DIVISION

Electronically Filed
9/1/2021 4:39 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

In the Matter of:

BYRON JOSHUA WORTHEY-AVILA

JUVI ID: 3560349

UNITY ID#:

Date of Birth: [REDACTED]

Years of Age: 18

CASE NO. J-21-353445-D1

DEPT. L

Courtroom 10

Petition 1

**Plea Hearing: September 16, 2021 at
10:00AM**

PETITION - DELINQUENCY

That there is now within the County of Clark, State of Nevada, the above named minor who resides with his parent(s) or guardian(s) at: [REDACTED] APT 151, LAS VEGAS, NV 89121

Father: BYRON WORTHEY

Stepmother: HYACINTH WORTHEY

Mother: LETICIA AVILA

That your Petitioner, a duly appointed and qualified Deputy District Attorney for the County of Clark, State of Nevada, makes the following declaration:

That Petitioner is informed and believes, and thereon alleges that the facts bringing said minor within the jurisdiction of the Juvenile Court pursuant to NRS 62B.330 are that, in Clark County, Nevada, subject minor:

COUNT 1: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)

On or between March 26, 2018 and June 30, 2021, did willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to wit: C.W., a child under the age of fourteen years, by touching her vaginal area with his hand and/or fingers, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Subject Minor, or said victim, in violation of NRS 201.230 and/or NOC 50975.

LVMPD Event #: 210500104805

COUNT 2: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)

On or between March 26, 2018 and June 30, 2021, did willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to wit: C.W., a child under the age of fourteen years, by touching her vaginal area with his hand and/or fingers, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Subject Minor, or said victim, in violation of NRS 201.230 and/or

NOC 50975.

LVMPD Event #: 210500104805

COUNT 3: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)

On or between March 26, 2018 and June 30, 2021, did willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to wit: C.W., a child under the age of fourteen years, by touching her vaginal area with his hand and/or fingers, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Subject Minor, or said victim, in violation of NRS 201.230 and/or NOC 50975.

LVMPD Event #: 210500104805

COUNT 4: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)

On or between March 26, 2018 and June 30, 2021, did willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to wit: C.W., a child under the age of fourteen years, by touching her chest and/or breast with his hand and/or fingers, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Subject Minor, or said victim, in violation of NRS 201.230 and/or NOC 50975.

LVMPD Event #: 210500104805

COUNT 5: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)

On or between March 26, 2018 and June 30, 2021, did willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to wit: Z.W., a child under the age of fourteen years, by pulling down her shorts with his hand and/or fingers, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Subject Minor, or said victim, in violation of NRS 201.230 and/or NOC 50975.

LVMPD Event #: 210500104805

Subject Minor is in the custody and control of the Juvenile justice services detention facility, and has been since 08-26-2021.

WHEREFORE, Petitioner prays that this matter be set for hearing as it is in the best interest of the public and the subject minor that this proceeding be commenced and that the Court take such further action as is deemed fit and proper under the circumstances and in accordance with the law as the subject minor is in need of treatment and/or rehabilitation.

///

///

I declare that I am the Petitioner named in the foregoing Petition and know the contents thereof: that this petition is true of my own knowledge, except as to those matters stated on information and belief, and that as to those matters I believe it to be true. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 1st day of September, 2021.

STEVEN B. WOLFSON
DISTRICT ATTORNEY

BY: /s/TANNER SHARP
Deputy District Attorney
Petitioner

TLS/rs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit C

1 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
2 STATE OF NEVADA IN AND FOR
3 THE COUNTY OF CLARK
4 JUVENILE DIVISION

5 In the Matter of:)

6 BYRON JOSHUA WORTHEY-AVILA)

CASE NO. J--353445

7 Date of Birth: [REDACTED])

DEPT. A

8 Years of Age: 18 Years of Age.)

9 SUPPLEMENTARY REPORT

10 Please see Exhibit: Certification Evaluation.

11 Submitted by:

12
13
14
15 *Sheila Scott*
16
17 SHEILA SCOTT
18 ADMINISTRATIVE SECRETARY
19 601 N. Pecos Road
20 Las Vegas, NV 89101

21 DATE: 09-08-2021
22
23
24
25
26
27
28

FORENSIC SPECIALISTS LTD.

Eric S. Smith, Ph.D.

Licensed Clinical Psychologist

Clinical & Forensic Psychological Services

September 7, 2021

**Eighth Judicial Court
Family Division - Juvenile
Clark County, Nevada**

FORENSIC PSYCHOLOGICAL EVALUATION ON:

BYRON JOSHUA WORTHEY-AVILA

AGE: 18

DATE OF BIRTH: [REDACTED]

CASE #: J-21-353445

EXAMINED: SEPTEMBER 7, 2021

EXAMINER: ERIC S. SMITH Ph.D.

REASON FOR REFERRAL:

BYRON WORTHEY-AVILA, age 18, was referred for a Forensic Psychological Evaluation by Sheila Scott from the Clinical Services Division, Clark County Department of Juvenile Justice Services. BYRON is facing four counts of FELONY/LEWDNESS WITH A CHILD UNDER THE AGE OF 14, and FELONY/ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14. His Certification Hearing is scheduled for September 16, 2021.

COLLATERAL RECORDS REVIEWED AND CONSULTATIONS:

PREVIOUS JUVENILE RECORD

BOOKING SUMMARY

CLARK COUNTY JUVENILE JUSTICE SERVICES INFORMATION SHEET

DECLARATION OF ARREST REPORT

INTERVIEW WITH BYRON WORTHEY, NATURAL FATHER

**PLEASE NOTE THAT ALL THE FACTS AND OPINIONS HEREIN
CONTAINED ARE BASED UPON REVIEW OF ALL AVAILABLE RECORDS
AND THE CLINICAL DIAGNOSTIC INTERVIEW CONDUCTED ON
SEPTEMBER 7, 2021. THE INTENT OF THIS REPORT IS TO PROVIDE
SIGNIFICANT CLINICAL INFORMATION ON THE MENTAL STATUS OF
BYRON WORTHEY-AVILA AND ANY RECOMMENDATIONS FOR
REHABILITATION AND/OR TREATMENT.**

FAMILY BACKGROUND:

BRYON WORTHEY-AVILA was born in Las Vegas, Nevada where he was raised. He is the son of Byron Worthey and Laticia Avila. His parents were married for about four to five years. Mr. Worthey obtained an annulment and remarried when BYRON was about 4. Mr. Worthey is 51 and employed with Wyndham Destinations working in the corporate office as a collector. He has a previous history of substance abuse and has been sober for 20 years. His parents separated when he was 12 and he experienced both depression and anger. BYRON stated that he did not get along with his father when younger, but their relationship is better now. After his parents split, his brother, Nathan, continued to reside with their mother. BYRON tried to get closer to his mother but was never successful. He has not had any contact with her since age 16. His stepmother, Hyacinth

Worthey, is an administrative assistant for a hospice company. They never had a "bad relationship" and she was always there for BYRON. However, BYRON was always trying to reunite with his mother which prevented them from being closer. BYRON has one full brother, Nathan, who is 16. His half-siblings include, Z█████ (14), C█████ (13), G█████ (10), and A█████ (5). He also has two older half siblings and one in middle school from his mother.

EDUCATIONAL HISTORY:

BYRON stated that he last attended the 12th grade at Chaparral High School. He did not graduate because he did not complete his government or physical education classes. He is currently in the process of completing them and obtaining his GED. He repeated the fourth grade due to his poor performance and his "age issues". BYRON began kindergarten at the age of 4, so the school felt holding him back would put him with his regular age group. He has no I.E.P. or 504 plan in school. He had no idea as to his grade point average, but he mostly obtained C's and D's in his classes. BYRON was not involved in any school sports or other school related activities. He had never been sent to a behavior school. In the past, he recalled having required parent conferences for throwing food in middle school, truancy, and being tardy to class. Regarding vocational interests, he wants to complete his GED, eventually attend a trade school, and would like to focus on engineering or that of an architect.

MEDICAL HISTORY:

BYRON did not report any physical conditions that he is being treated for. He did report that he has a tooth that is cracked and needs dental care. He has no allergic reactions to medications. He has no history of head trauma or seizures.

SUBSTANCE ABUSE HISTORY:

BYRON denied any history of alcohol abuse. He tried marijuana a few times but denied any abuse of the drug. He denied any other abuse of illicit drugs, medications, inhalants, or over-the-counter products.

MENTAL STATUS EXAM:

BYRON was examined while being detained on his current charges. He was informed that the court had referred him for a Psychological Evaluation for his Certification Hearing. BYRON was also informed that the information obtained during the clinical interview was not confidential and that a written psychological report of the findings would be submitted for his Certification Hearing. The purpose of a Certification Hearing was reviewed with BYRON, which he clearly understood and was able to explain to this examiner. Due to the COVID-19 virus restrictions, BYRON was evaluated by phone.

This adolescent male is about 5'7" in height and weighs about 140 lbs. He is nearsighted and wears glasses. He has no problems with his hearing. He has no tattoos and no body piercings. He denied ever being a member of a tagging crew, clique, or organized street gang.

Interpersonal Style: No issues in communicating

Approach: Cooperative and focused

Speech: Coherent/clear/no pressured speech

Conversation: No issues with being defensive or guarded

Recall of Personal History: No difficulty in recall of past and recent events

Alert/Oriented: No impairment

Communications: Clear and understandable

Relevance: On-topic

Thought Processes: No difficulty explaining thoughts and finding words/no indications of a formal thought disorder

Hallucinations and Delusions: No history of hallucinations or delusions

Risk: No current risk of suicide despite history of three suicide attempts

Attention and Concentration: No history of impairment

Motivation: Poor motivation regarding academics

Judgement and Intellectual Ability: Poor judgment and decision-making; evidence of at least average intelligence.

Insight: Fair

Impulse Control: No current issues

Mood: No agitation

Suicidal/Homicidal Thoughts: Denied/no plan to self-harm or harm others

Response to Failures: Has not shown that he has learned from past mistakes or the desire to change his behavior

Response to Rapport: Normal

BYRON stated that he was sexually abused during his childhood. The sexual abuse started when he was about 5 or 6. He reported that he was abused by his stepmother's brother, Charles Aristin, who was a teenager at the time. Charles lived in the home with the rest of the family. The abuse continued until **BYRON** was about 14 or 15 and Charles was an adult. It was later discovered that Charles had been abusing other children in the home and a cousin. According to **BYRON'S** father, Charles has been charged with three sexual assaults on Z [REDACTED] (14) and is currently out on bail.

Due to the extensive sexual abuse and trauma experienced by BYRON, he became severely depressed and suicidal. He had made three suicide attempts as a adolescent by trying to overdose on anxiety and sleep medications. He was admitted to Desert Parkway Behavioral Healthcare Hospital for one week, Seven Hills Behavioral Health Hospital for one week, and Montevista Psychiatric Hospital of one month. The history of his sexual abuse "came out more" during his time at Montevista Psychiatric Hospital, but he felt "very uncomfortable" and didn't want to talk about it.

He denied ever setting fires or being cruel toward animals. He did not recall any history of being significantly bullied or being exposed to domestic violence. There were no factors noted that would have affected BYRON's level of responsiveness other than facing a Certification Hearing on his charges. BYRON did elicit some anxiety symptoms while discussing his history of being sexually abused. Regarding recent disturbances in consciousness, none were reported.

BYRON's main concerns are 1) his future, 2) the people he cares about the most, and 3) his legal case. If he had any wishes, he would wish 1) to be able to provide for his family, 2) to go back in time and report being sexually abused when he was younger, and 3) to get through the court process, be successful, and have a family.

CLINICAL DIAGNOSTIC IMPRESSIONS:

SUBSTANCE ABUSE ISSUES: LOW RISK

RISK FOR VIOLENCE/DANGEROUS BEHAVIOR: MODERATE RISK

BYRON has no previous juvenile record for violent or non-violent offenses. Historical risk factors that increase the risk for delinquent crime include early caregiver disruption, history of self-harm or suicide attempts, childhood history of maltreatment, poor school achievement, and stress and poor coping.

PSYCHOPATHOLOGY AND TREATMENT AMENABILITY:

BYRON WORTHEY-AVILA, age 18, is appearing before the court on charges of FELONY/LEWDNESS WITH A CHILD UNDER THE AGE OF 14, and FELONY/ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14.

BYRON was aware as to the specific charges filed against him, and the results of the Forensic Psychological Evaluation did not indicate that he has a Conduct Disorder Adolescent-Onset Type. He does, however, have comorbid psychiatric disorders that will require long-term residential treatment. This adolescent has no prior history of being involved in violent crimes.

The severity and persistence of the sexual abuse sustained by BYRON over the years has resulted in long-term effects on his mental health. Psychological problems caused by the sexual abuse include depression, anxiety, anger, posttrauma, nightmares, sleep problems, and suicide attempts. Sexual abuse can also exacerbate various psychiatric symptoms. There is a strong association of intrafamilial sexual abuse with suicidal behavior. BYRON is experiencing significant psychiatric disorders related to sexual abuse and he requires treatment with evidence-based trauma-focused interventions. These elements include psychoeducation about trauma and its impact, affective modulation utilizing relaxation and breathing techniques, gradual exposure to trauma memories, and cognitive processing of any inaccurate cognitions like guilt and self-blame. Trauma-focused cognitive-behavioral therapy is usually the most effective psychotherapy intervention. In addition, medications may be warranted to address his psychological symptoms and generate a more positive treatment response to therapy.

DIAGNOSES:

**F43.10 POSTTRAUMATIC STRESS DISORDER
F33.2 MAJOR DEPRESSIVE DISORDER, RECURRENT, SEVERE
Z91.5 PERSONAL HISTORY OF SELF-HARM
Z62.810 PAST HISTORY OF SEXUAL ABUSE IN CHILDHOOD
F51.5 NIGHTMARE DISORDER**

**Z63.5 DISRUPTION OF FAMILY BY SEPARATION OR DIVORCE
Z55.9 ACADEMIC OR EDUCATIONAL PROBLEM
Z65.3 PROBLEMS RELATED TO OTHER LEGAL CIRCUMSTANCES**

DECLARATIONS:

The clinical diagnostic interview, review of collateral records, consultations, and preparation of this report were performed solely by the undersigned. I further declare under penalty of perjury that I personally performed the examination of BYRON WORTHEY-AVILA necessary to produce this report on September 7, 2021.

I declare under penalty of perjury that the information contained in this report is true and correct to the best of my knowledge and belief, except as to information that I have indicated I received from others. As to that information, I declare under penalty of perjury that this report accurately describes the information provided to me and, except as noted herein, that I believe to be true.

This report is a true and accurate representation of the findings of the clinical assessment. The opinions proffered here are rendered to a reasonable degree of psychological certainty. The opinions here are limited to the information provided and may be subject to modification in light of new information.

Signed in the County of Clark on September 7th, 2021.



**Eric S. Smith B.A., B.S., M.A., Ph.D.
Licensed Clinical Psychologist
Clinical and Forensic Psychological Specialist**

1 DTRANS

FILED

NOV 09 2021

Sharon A. Hoffman
CLERK OF COURT

COPY

5 EIGHTH JUDICIAL DISTRICT COURT

6 JUVENILE DIVISION

7 CLARK COUNTY, NEVADA

8
9 In the Matter of:) CASE NO. J-21-353445-D1
10 BYRON WORTHEY-AVILA,) DEPT. L
11 Subject Minor(s).) APPEAL NO. 83621
12) SEALED

13 BEFORE THE HONORABLE DAVID GIBSON, JR.

14 TRANSCRIPT RE: CERTIFICATION FOR TREATMENT AS AN ADULT

15 THURSDAY, SEPTEMBER 16, 2021

16
17 APPEARANCES:

18 For the State: TANNER L. SHARP, ESQ.
19 601 North Pecos Road
20 Las Vegas, Nevada 89101

21 The Defendant: BYRON WORTHEY-AVILA
22 For the Defendant: EDWARD MILEY, ESQ.
23 501 South Rancho Drive
Suite A1
Las Vegas, Nevada 89106

24 ALSO PRESENT:

25 KEVIN BROWN, Probation

1 LAS VEGAS, NEVADA

THURSDAY, SEPTEMBER 16, 2021

2 PROCEEDINGS

3 (THE PROCEEDING BEGAN AT 11:25:59.)

4 THE COURT: Yeah, we can go on. We're on the record,
5 J-21-353445-D1, in the matter regarding Bryon Worthey-Avila,
6 who is present from detention. His father is present by
7 video.

8 Let's go ahead and get the other appearances.

9 MR. SHARP: Tanner Sharp with the District Attorney's
10 Office.

11 MR. BROWN: Kevin Brown, Probation.

12 MR. MILEY: Edward Miley, 6063, for subject minor.

13 THE COURT: All right. This was on for entry of plea
14 counsel -- counsel.

15 Ed, are you ready to go forward?

16 MR. MILEY: This is on for certification, I believe,
17 Your Honor.

18 THE COURT: Is it? That's not what I've got it on for.
19 The (indiscernible)...

20 MR. MILEY: It -- it...

21 THE COURT: I don't have..

22 MR. SHARP: That's correct, Your Honor.

23 THE COURT: ...a cer- I don't have a certification
24 report or anything on this. I don't even have a
25 certification -- oh I do have an opposition.

1 THE CLERK: And there's a petition (indiscernible)...

2 MR. MILEY: Well, obviously we win, Your Honor. That's

3 it.

4 THE COURT: Yeah, no, we do have it. It's all here.

5 Sorry about that.

6 MR. MILEY: Okay. Okay.

7 THE COURT: My -- my com- my computer's doing stupid

8 things. So all right. It's on for certification. Are you

9 ready to argue it?

10 MR. MILEY: Yes, Your Honor.

11 MR. SHARP: Yes, Judge.

12 THE COURT: All right. Let's hear from the State first

13 and then Mr. Miley.

14 MR. SHARP: So, Judge, Mr. Avila is 19 years of age.

15 And quite frankly the certification in my estimation is more

16 of a procedural issue than -- than anything else. So he --

17 Mr. Avila had three younger stepsisters. Their names were

18 Chae Wo [REDACTED], Chae [REDACTED] - Chae Wo [REDACTED]; and then there was a

19 five year old that -- that we will get to here in a minute.

20 But Chae Wo [REDACTED], who is 13 years of age, stated

21 that Byron on multiple occasions would touch her breasts and

22 touch her vaginal area. The -- the point of -- of note for

23 the Court here is that he would've turned 18 back on October

24 21st of 2020. And she turned 13 on March 26, 2021. And so

25 -- so the allegations that she's alluded to would have

1 occurred when she was 18. The issue is of course pinning
2 down, okay, when exactly did these occur and apparently some
3 of these occurred before he would've been 18. Some of these
4 occurred after he turned 18.

5 But to provide the Court with the -- an
6 explanation, the factors, obviously the -- the initial factor
7 that the Court is to consider is the serious and persistent
8 nature of these acts.

9 As I stated Ch[REDACTED]e Wo[REDACTED]y was his -- is his 13-
10 year-old stepsister. She indicated that over the course of
11 about three years, he would repeatedly get her alone and grab
12 and stroke her breasts and would also make skin-to-skin
13 contact with her vaginal area, hand -- hand to -- to vagina.
14 This went on for quite some time until she -- she reported
15 it.

16 In addition to that, he has a 14-year-old
17 stepsister, who indicated that for about six years, from the
18 time that she was seven years old, which would've been around
19 2014 to the year 2000 when he would've been 17 during the --
20 the last incident, her statement was as -- as often as he
21 could, he would go to her, pull down her pants. He would
22 pull down his pants, and he would rub his penis between her
23 thighs until he would ejaculate on her. Again, this occurred
24 multiple times and eventually stopped around the year 2000
25 when -- when she told him that she had a -- a boyfriend.

1 So, Judge, looking at these acts, we have acts of a
2 heinous and egregious nature. These were repetitive. These
3 were done on not just one victim but two and over the course
4 of several years. And again, and I can go over this and the
5 subjective factors. It looks like some of these occurred
6 when he was 18. So as a jurisdictional matter, we're --
7 we're asking the Court to certify all of these up so that we
8 can present this one case.

9 He does not have any prior history. However
10 looking at the subjective factors, I mentioned -- and -- and
11 this may come up if this goes downtown or if it stays here,
12 it's more of a prior bad acts.

13 But he also has a five-year-old stepsister who was
14 forensically interviewed. And she stated, she indicated that
15 her -- her vaginal area where she goes pee (indiscernible -
16 breaking up) indicated to that forensic interviewer that he
17 did something bad to her (indiscernible). He did not provide
18 any additional information at that time. Hopefully at some
19 point she will.

20 However, I think that is something that the Court
21 can consider as subjective factors as that we yet have a
22 potential third victim who -- who would've been even younger
23 than the initial two victims that are mentioned in the
24 petition itself.

25 He is 19 years of age. Aside from the fact that it

1 appears that some of these occurred after he was 18, we have
2 the three year requirement for him to get the therapy that he
3 needs. Given the action that he's committed, the number of
4 victims, he's going to need at least three years of therapy,
5 which we can't provide given he's almost 19 years of age.

6 Looking at the evaluation that was also provided,
7 his -- he stated he does not use drugs. I understand it's
8 intimated there that he may have been sexually molested
9 himself. Certainly that's a terrible thing. Certainly I --
10 I -- I tried to pull up the name of the person who abused
11 him. I do not find it in the district court records;
12 however, it may still be in justice court. I don't know. I
13 was not able to -- to pull those records up.

14 However, these acts are his. What he did to these
15 young girls, he owns. And there's no indication that he had
16 any mental health issues at that time that would have caused
17 him to act so compulsively that well he had no control or did
18 not know what he was doing.

19 So I would ask that he be certified based on these
20 counts to district court. Thank you.

21 THE COURT: Okay. Ed.

22 MR. MILEY: Judge, thank you. I will be brief. Tanner
23 did a good for citing their portion of it. What I would
24 point out and I think we can see from the psych eval that my
25 client doesn't have any substance abuse problems or

1 (indiscernible - breaking up) issue other than the fact he --
2 he (indiscernible - breaking up) molested growing up and you
3 can see that. It's not a (indiscernible - breaking up) my
4 client attempted suicide so far.

5 So we believe given the fact, the -- the nature of
6 the case, how the case (indiscernible - breaking up) like
7 that, yes, he most likely did these things. We don't have to
8 get into it.

9 The fact is, if he goes to the adult system,
10 there's no way they're gonna be able to address and -- and
11 correct these issues. They go in. They're gonna house them.
12 They're gonna certify him, and they're just gonna move him
13 through the system.

14 At this point, I think he deserves a chance to be
15 redeemed. I think that he has had a series of bad acts
16 portrayed upon him with a minor child. I think he
17 demonstrate that by the suicide attempts.

18 So I think the -- the argument that he doesn't have
19 a mental condition that would cause him to behave in certain
20 ways, while technically true under what we now know the
21 facts, I think obviously the fact he was really molested
22 enough so that he wants to take his own life repeatedly,
23 probably affects him to every -- every day. I think he needs
24 counseling. And that's what the report says is that he needs
25 the counseling in juvenile (indiscernible - breaking up),

1 which I request that we keep him in the juvenile system.

2 THE COURT: Okay. All right. Well, this is a matter of
3 discussion of certification of a State's own admission and
4 their certification report. So Seven Minors is a case that
5 applies.

6 First prosecutive merit, I didn't hear it opposed
7 and given the -- the probable cause-type nature of -- of the
8 earlier allegations enumerated by -- by Tanner, it does look
9 like there's prosecutive merit.

10 So turning to the factors under Seven Minors, the
11 first one, nature and seriousness of the charges, on that
12 factor alone a -- a presumption can be warranted under Nevada
13 law, particularly when the acts are heinous and egregious;
14 and these appear, given the age of the victims, the
15 repetitive nature and everything going into the -- the
16 allegations, they're certainly heinous and egregious; and it
17 could potentially be cert- certified just on that alone.

18 I do like to at least take a look at everything
19 that is available to me under Seven Minors because we are
20 dealing with juvenile crimes, juvenile delinquent acts; and
21 there is a -- there is a purpose for the juvenile system; and
22 we need to determine whether or not this is appropriately
23 handled in the juvenile system.

24 So looking at prior adjudications, we don't have
25 any education -- sorry, any evidence of that. And typically

1 that would bring up subjective factors. Here the subject-
2 the subjective factors being argued, his personal history and
3 how that has probably affected his psychological state and
4 everything involved with that is -- is certainly a factor
5 that the Court's -- Court considers.

6 The -- the issue really is, given the heinous and
7 egregious nature of these -- these issues, this does not
8 appear to be the type of case where sufficient treatment
9 could be conducted in the time we still have.

10 We do from time -- you know, I -- I'm not one that
11 just, you know, has a dead cutoff after 18 because there's a
12 three-year statute because I -- I -- I have plenty of these
13 cases that do terminate and for good reasons where a full
14 three years is not ultimately needed. This is not that case.

15 This is a case where full treatment and given the
16 -- the factors going -- you know, the psychological factors,
17 there would be a whole lot of work to be done that I just
18 don't see getting done in the time frame that the juvenile
19 court has available to it to work with a youth.

20 And in addition, with some of these charges having
21 been alleged to have happened on the same victims while he
22 was over 18, it makes far more sense and I think it is a -- a
23 valid subjective factor to consider that they all be tried in
24 the same place at the same time so that whatever the system
25 can do to help Byron with his own rehabilitation but also to,

1 you know, obtain the required justice that -- that our system
2 asks for in these kinds of cases, that this case is the type
3 that should on the Court's discretion here be certified.

4 Byron will be certified as an adult for these
5 charges and bound over to answer for them in justice court.
6 We don't give a date or a -- or a bail amount at this point
7 in these kinds of proceedings because you will -- he will
8 have a much quicker hearing scheduled once he's transported
9 to the county. And bail considerations and things can be
10 taken care there.

11 So the State can submit an order for his transport
12 and granting the certification. And I will just put a status
13 check next week to make sure he has actually been
14 transported. If he has been, we can take that one, we can
15 vacate that date.

16 THE CLERK: So it will be September 23rd at 10:00.

17 THE COURT: September 23rd at 10 a.m. All right. Thank
18 you.

19 Let's go with McGill Raynarus (ph).

20 MR. MILEY: Thank you.

21 (THE PROCEEDING ENDED AT 11:37:31.)

22 ////

23 ////

24 ////

25 ////

* * * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

Sherry Justice
SHERRY JUSTICE,
Transcriber II

Steven D. Grierson

STEVEN B. WOLFSON
DISTRICT ATTORNEY
NEVADA STATE BAR NO. 001565
TANNER SHARP
Chief Deputy District Attorney
Nevada State Bar No. 13018
601 North Pecos Road
Las Vegas, NV 89101-2408
(702) 455-5320
Attorney for the State of Nevada

DISTRICT COURT
JUVENILE DIVISION
CLARK COUNTY, NEVADA

In the Matter of:

BYRON JOSHUA WORTHEY-AVILA

Date of Birth: [REDACTED]

A Minor 18 Years of Age.

CASE NO. J-21-353445-D1

DEPT NO. 1

COURTROOM NO. 10

FINDING OF PROBABLE CAUSE AND
TRANSPORTATION ORDER FOR A CERTIFIED ADULT

This matter having come before the Court on the 16th day of September, 2021, the subject minor being present in Court and represented by Counsel, the State being represented by STEVEN B. WOLFSON, District Attorney, by and through his Chief Deputy District Attorney at Juvenile Court, after having a Certification Hearing and full investigation, this Court finds probable cause to believe that the crimes stated herein were committed by the subject minor and further finds cause to certify the subject minor to adult status;

IT IS HEREBY ORDERED that the above-named subject minor be transported to the Clark County Detention Center and remanded to the custody of the Clark County Sheriff. Joseph Lombardo;

1 IT IS FURTHER ORDERED that the subject minor be set for Arraignment in the
2 Justice Court of LAS VEGAS Township, Clark County, Nevada; bail is now set
3 in the following amounts for the following charges:

<u>CHARGE</u>	<u>N.R.S.</u>	<u>CASH/SURETY BAIL</u>	<u>PROPERTY</u>
1(1)LEWDNESS WITH A MINOR UNDER 14 LVMPD Event No. 21500104805	201.230 NOC 50975	NO BAIL	
1(2)LEWDNESS WITH A MINOR UNDER 14 LVMPD Event No. 21500104805	201.230 NOC 50975	NO BAIL	
1(3)LEWDNESS WITH A MINOR UNDER 14 LVMPD Event No. 21500104805	201.230 NOC 50975	NO BAIL	
1(4)LEWDNESS WITH A MINOR UNDER 14 LVMPD Event No. 21500104805	201.230 NOC 50975	NO BAIL	
1(5)LEWDNESS WITH A MINOR UNDER 14 LVMPD Event No. 21500104805	201.230 NOC 50975	NO BAIL	

19 DATED this 17th day of September, 2021.

22 TS/tw
23
24
25
26
27
28



Heather L. Smith
CLERK OF THE COURT

STEVEN B. WOLFSON
DISTRICT ATTORNEY
NEVADA STATE BAR NO. 001565
TANNER SHARP
Chief Deputy District Attorney
Nevada State Bar No. 13018
601 North Pecos Road
Las Vegas, NV 89101-2408
(702) 455-5320
Attorney for the State of Nevada

DISTRICT COURT
JUVENILE DIVISION
CLARK COUNTY, NEVADA

In the Matter of:

BYRON JOSHUA WORTHEY-AVILA

Date of Birth: [REDACTED]

A Minor 18 Years of Age.

CASE NO. J-21-353445-D1

DEPT NO. L

COURTROOM NO. 10

CERTIFICATION TO ADULT STATUS ORDER

The above-entitled matter having come on for hearing on 16th day of September, 2021, in the above-entitled Court to determine whether the Subject Minor, **BYRON JOSHUA WORTHEY-AVILA**, should be certified for proper criminal proceedings as an adult under the provisions of NRS 62B.390; and

The Court being duly advised that the Subject Minor, **BYRON JOSHUA WORTHEY-AVILA**, of this Petition is 18 years of age, having been born on the 21st day of October, 2002; and

The Court being fully advised that the subject of this Petition is charged with the offenses of Petition Number 1, Count (1) LEWDNESS WITH A MINOR UNDER 14, a felony under N.R.S. 201.230 NOC 50975, if committed by an adult; Count (2) LEWDNESS WITH A MINOR UNDER 14, a felony under N.R.S. 201.230 NOC 50975, if committed by an adult; Count (3) LEWDNESS WITH A MINOR UNDER 14, a felony under N.R.S. 201.230 NOC 50975, if committed by an adult; Count (4) LEWDNESS WITH A MINOR UNDER 14, a felony under N.R.S. 201.230 NOC 50975, if committed by an adult; Count (5) LEWDNESS WITH A MINOR UNDER 14, a felony under N.R.S. 201.230 NOC 50975, if

1 committed by an adult; said offenses having allegedly been committed on or between March
2 26, 2018 – June 30, 2021.

3 The Court having heard argument in open Court and being fully advised in the
4 premises;

5 NOW, THEREFORE, IT IS HEREBY ORDERED that **BYRON JOSHUA**
6 **WORTHEY-AVILA** be and hereby is Certified to the Eighth Judicial District Court of the
7 State of Nevada in and for the County of Clark for proper criminal proceedings as an adult
8 for the following reasons:

9 **1.Nature and Seriousness of Charged Offense(s):**

10 The Declaration of Arrest signed by G. Wilson of the Las Vegas Metropolitan Police
11 Department (LVMPD) as well as the other reports and statements contained in the record are
12 sufficient to establish prosecutive merit. The Declaration of Arrest is attached as Exhibit A.

13 WHEREFORE, THE COURT FINDS the records supports Prosecutive Merit for
14 Petition Number 1, Counts 1-5.

15 **THE COURT FURTHER FINDS** that in determining the seriousness and nature of
16 the charged offenses pursuant to Seven Minors, the charged offenses are both heinous and
17 egregious given the age of the Subject Minor and victims and the repetitive nature of the
18 offenses.

19 **THE COURT FURTHER FINDS** that although consideration of the seriousness and
20 nature of the charged offenses is sufficient to make a finding in this matter, it has also taken
21 into consideration past adjudicated offenses and subjective factors as outlined in Seven
22 Minors.

23 **THE COURT FURTHER FINDS** that consideration of the persistency and
24 seriousness of past adjudicated or admitted offenses pursuant to Seven Minors is not
25 applicable in this matter.

26 **THE COURT FURTHER FINDS** the following in its consideration of subjective
27 factors pursuant to Seven Minors. The Court has considered the psychological state of the
28 Subject Minor; however, given the heinous and egregious nature of the offenses and the

1 Subject Minor's age, there is insufficient time to provide Subject Minor with the necessary
2 rehabilitative services. Furthermore, as one or more of the offenses occurred when Subject
3 Minor was 18 years of age, all offenses should be tried in the same Court at the same time.

4 Accordingly, the Court grants the State's motion to certify **BYRON JOSHUA**
5 **WORTHEY-AVILA** to adult status on Petition Number 1, Counts 1-5, on discretionary
6 grounds pursuant to In Re Seven Minors, 99 Nev.427, 437, 664 P2d 947, 953 (1983) and
7 orders the Subject Matter be bound over to District Court.

8 The COURT FURTHER ADVISES that subject minor has the right to appeal this
9 decision to the Supreme Court and that a notice of appeal must be filed after the entry of this
10 written Order and no later than 30 days after the date of service of written notice of the entry
11 of this Order.

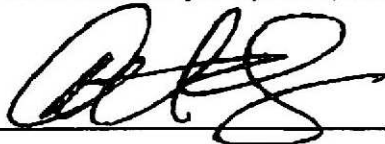
12 The COURT FURTHER ADVISES that subject minor may petition the adult Court
13 for transfer of the case back to the Juvenile Court only upon a showing of exceptional
14 circumstances. If the case is transferred back to Juvenile Court the Judge of this Court shall
15 determine whether the exceptional circumstances warrant accepting jurisdiction.

16 The Director of the Department of Juvenile Justice Services of Clark County is
17 charged with the execution of this Order.

18 This matter is continued for the purpose of arraignment in the Las Vegas Justice
19 Court. The Court having heard argument orders subject minor's bail set by Justice Court.

20 **BYRON JOSHUA WORTHEY-AVILA** is hereby remanded to the custody of the
21 Sheriff.

22 Dated this _____ day of September, 2021, ~~Dated this~~ 21st day of September, 2021

23 
24 _____

25 Submitted by:

26 /s/ TANNER L. SHARP

27 TANNER SHARP

28 Chief Deputy District Attorney

Nevada State Bar No. 13018

6E8 534 1183 8EA0
David Gibson
District Court Judge

FILED

NOV 09 2021

Sharon A. Hoffman
CLERK OF COURT

COPY

EIGHTH JUDICIAL DISTRICT COURT

JUVENILE DIVISION

CLARK COUNTY, NEVADA

In the Matter of:) CASE NO. J-21-353445-D1
) DEPT. L
BYRON WORTHEY-AVILA,)
) APPEAL NO. 83621
Subject Minor(s).)
) SEALED

BEFORE THE HONORABLE DAVID GIBSON, JR.

TRANSCRIPT RE: STATUS CHECK

THURSDAY, SEPTEMBER 23, 2021

APPEARANCES:

For the State: TANNER L. SHARP, ESQ.
601 North Pecos Road
Las Vegas, Nevada 89101

The Defendant: BYRON WORTHEY-AVILA
For the Defendant: EDWARD MILEY, ESQ.
501 South Rancho Drive
Suite A1
Las Vegas, Nevada 89106

ALSO PRESENT:

KEVIN BROWN, Probation

1 LAS VEGAS, NEVADA

THURSDAY, SEPTEMBER 23, 2021

2 PROCEEDINGS

3 (THE PROCEEDING BEGAN AT 10:30:58.)

4 THE COURT: On the record, J-21-353445-D1, in the matter
5 regarding Barwin -- Byron Worthey-Avila, on for status on his
6 transport to CCDC.

7 Let's go ahead and get appearances and the status.

8 MR. SHARP: Tanner Sharp for the District Attorney's
9 Office.

10 MR. BROWN: Kevin Brown, Probation.

11 MR. MILEY: Edward Miley, 6063, for subject minor.

12 THE COURT: All right. Given the absence of detention
13 here, I'm assuming he was transported.

14 MR. MILEY: That's correct.

15 THE COURT: All right. That's the...

16 MR. MILEY: Thank you, guys. Be safe.

17 THE COURT: That's the end of our jurisdiction.

18 MR. TANNER: Thank you.

19 (THE PROCEEDING ENDED AT 10:31:30.)

20 ////

21 ////

22 ////

23 ////

24 ////

25 ////

★ ★ ★ ★ ★

1

2

3

4 correctly transcribed the video proceedings in the above-
5 entitled case to the best of my ability.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

J-21-353445-D1 WORTHEY-AVILA 09/23/2021 TRANSCRIPT
EIGHTH JUDICIAL DISTRICT COURT - JUVENILE DIVISION - TRANSCRIPT VIDEO SERVICES
601 N. Pecos Road, Las Vegas, Nevada 89101 (702) 455-4977

3

000105

Steven D. Grierson

1 NOAS

2 DARIN F. IMLAY, PUBLIC DEFENDER
3 NEVADA BAR No. 5674
4 309 South Third Street, Suite 226
5 Las Vegas, Nevada 89155
6 (702) 455-4685
7 Attorney for Defendant

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 In the Matter of:)

11 **BYRON JOSHUA WORTHEY-AVILA,**)

CASE NO. J-21-353445-D1

12 Date of Birth: [REDACTED])

DEPT. NO. L

13 **NOTICE OF APPEAL**

14 TO: THE STATE OF NEVADA

15 STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY,
16 NEVADA and DEPARTMENT NO. A OF THE EIGHTH JUDICIAL
17 DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE
18 COUNTY OF CLARK.

19 NOTICE is hereby given that Defendant, Byron Joshua
20 Worthey-Avila, appeals to the Supreme Court of the State of Nevada
21 from the order of the District Court, Juvenile Division, entered
22 against said minor on the 21st day of September, 2021, and filed
23 with the Court Clerk as "Certification to Adult Status Order"
24 entered on September 21, 2021, whereby it was ordered that he be
25 certified for proper criminal proceedings as an adult under the
26 provisions of NRS 62B.390.

27 DATED this 6th day of October, 2021

28 DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Kristy S. Holiday
KRISTY S. HOLIDAY, #13519
Deputy Public Defender
309 S. Third Street, Ste. 226
Las Vegas, Nevada 89155
(702) 455-4685

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing
was made this 6th day October, 2021, by Electronic Filing to:

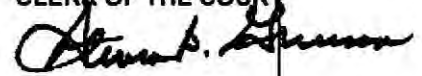
District Attorneys Office
E-Mail Address:

PDmotions@clarkcountyda.com

Jennifer.Garcia@clarkcountyda.com

Eileen.Davis@clarkcountyda.com

/s/ Carrie M. Connolly
Secretary for the
Public Defender's Office



MOT
JoNell Thomas #4771
Clark County Special Public Defender
W. Jeremy Storms #10772
Chief Deputy Special Public Defender
330 S. 3rd St., Suite 800
Las Vegas, Nevada 89155
(702) 455-6265
(702) 455-6273 (fax)
Jeremy.Storms@ClarkCountyNV.gov
Attorney for Worthey-Avila

DISTRICT COURT, JUVENILE DIVISION
CLARK COUNTY

State of Nevada,

Plaintiff,

v.

Byron Joshua Worthey-Avila,
ID: 8454905,

Defendant.

Case No. J-21-353445-D1

Dept. No. L

Hearing Requested

Date:

Time:

**MOTION FOR THE COURT TO ACCEPT JURISDICTION UNDER
NRS 62B.390(5)(C), EXCEPTIONAL CIRCUMSTANCES TO CERTIFICATION,
BECAUSE THE OFFENSES CHARGED MAY ONLY BE PROSECUTED AS
DELINQUENT ACTS AND THEREFORE ARE NOT CERTIFIABLE FOR CRIMINAL
PROCEEDINGS**

COMES NOW, the above-captioned accused, JOSHUA WORTHEY-AVILA, by
and through his attorney of record, JEREMY STORMS, Chief Deputy Special Public
Defender, and moves this Honorable Court to accept jurisdiction of this matter as
Joshua was a juvenile when the acts alleged occurred and governing law mandates
the conduct alleged can only be treated as acts of delinquency, therefore, said conduct
is exempt from the certification process set forth in NRS 62B.390 and may only be
adjudicated in the juvenile court system.

1 This Motion is made and based upon (1) the attached Declaration of Counsel;
2 (2) any exhibits to this Motion; (3) the arguments of Defense Counsel as set forth
3 herein or proffered at the time set for hearing this Motion; (4) any court records and/or
4 filed documents pertaining to the instant case; and (5) any other information
5 tendered to this Honorable Court at the time set for hearing this Motion.
6

7 **NOTICE OF MOTION**

8 To: Clark County District Attorney, attorney for Plaintiff.

9 Notice that the Clark County Special Public Defender, counsel for Defendant,
10 will bring the above and foregoing motion on for hearing before the Court on the ____
11 day of _____, _____ at _____ a.m. / p.m.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

1. I am an attorney duly licensed to practice law in the State of Nevada.
2. I am a Chief Deputy Special Public Defender with the Clark County
al Public Defender's Office.
3. I am appointed to represent the above-captioned accused, JOSHUA
THEY-AVILA, I am more than eighteen (18) years of age and am competent to
y as to the matters stated herein.
4. I am familiar with the facts, circumstances, and procedural
ularities of this case.
5. I am familiar with the substantive allegations lodged by the State of
la against the above-captioned accused, JOSHUA WORTHEY-AVILA.
6. I have personal knowledge of the facts stated herein or I have been
ned of these facts and believe them to be true.

EXECUTED this 19th day of November 2021.

/s/ W. Jeremy Storms
W. Jeremy Storms
Chief Deputy Special Public Defender

POINTS AND AUTHORITIES

I. Procedural History

This case was certified from this Court on September 23, 2021, following a certification hearing held on September 16, 2021. The original Delinquency Petition, filed with the Court on September 1st, 2021, alleged that Joshua was subject to the jurisdiction of the Court because he had committed five (5) counts of lewdness with a child under the age of 14. The petition alleged that lewdness with a minor under 14 was committed against two children, C.W. and Z.W. Counts 1-4 of the Delinquency Petition alleged lewd acts committed against C.W. The fifth and final count filed in the petition alleged an act of lewdness against Z.W. The Criminal Complaint filed by the State in Justice Court 14, however, deviated from the counts this court Certified under NRS 62B.390. The criminal complaint filed after certification alleged five (5) counts of lewdness with a child under the age of 14 committed upon C.W. with no counts alleging lewdness with Z.W.

On September 28th, 2021, the State moved for leave of the Justice Court to amend the original complaint adding seven (7) charges. Counts 6 through 10 alleged lewd acts with a child under 14 committed upon Z.W. and Counts 11 and 12 alleged the same upon C.W. The State did not seek certification from the Juvenile Division of the District Court for Counts 6 through 12 but instead amended the complaint using the procedure available for ordinary adult criminal cases.

Originally, Joshua was appointed the public defender upon his initial appearance in Justice Court on September 21st, 2021. The public defender moved to withdraw from the case based upon a conflict of interest on October 21st, 2021. Counsel from the Special Public Defender was appointed on the same day and after receiving discovery, filed a motion with the Justice Court raising the issues found here. On November 18th, 2021, at a hearing set for the motion, the State stipulated that the issues raised satisfied NRS 62B.390(5)(b) and that Joshua should be granted

1 leave to raise them before this Court to make the case that extraordinary
2 circumstances exist here for the Court to accept jurisdiction of the case.

3 **II. Facts**

4 The Declaration of Arrest submitted in this case spelled out five (5) acts which
5 were submitted as crimes to be prosecuted by the State. Those five acts were: Count
6 1—Attempt Lewdness with a Child Less than 14, Z.W. as named victim; Count 2—
7 Lewdness with a Child Less than 14, Z.W. as named victim; Count 3—Lewdness with
8 a Child Less than 14, Z.W. as named victim; Count 4—Lewdness with a Child Less
9 than 14, C.W. as named victim; Count 5—Lewdness with a Child Less than 14, C.W.
10 as named victim. The Delinquency Petition ultimately filed with this court alleged
11 four (4) counts of lewdness against C.W. and one count of the same against Z.W. The
12 Criminal Complaint filed after certification then alleged five counts of lewdness
13 against C.W. Although it is somewhat common for officers to submit Declarations of
14 Arrest suggesting a set of charges and the state ultimately decides to pursue different
15 ones, this court should be aware of the somewhat confusing discrepancies in this case.
16 Importantly, the Declaration of Arrest does not spell out the five (5) distinct acts the
17 State asserts were committed against C.W. in Justice Court but only specifically
18 describes two acts of alleged lewdness.

19 Some discrepancies and aspects of the specifics allegations made against
20 Joshua will now be explored as they establish a timeline for when these events
21 occurred, showing they all occurred prior to Joshua reaching the age of majority.

22 **A. C.W.—Specific Acts Alleged and Discrepancies.**

23 The Declaration of Arrest references the audio and video recorded interview of
24 C.W. on June 30th, 2021, as containing the factual basis for the charges against
25 Joshua. A review of the transcript of this interview demonstrates discrepancies
26 between what was said and what has been alleged in pleading papers and the
27 Declaration of Arrest. For instance, the Declaration of Arrest states that C.W. told

1 the investigator that "Joshua first touched her when she was 10 years old up until
2 she was 13." See Declaration of Arrest. In the transcribed statement of the interview
3 between the investigator and C.W., however, she stated:

4 Q: That's okay. And when did it go on 'til?

5 A: I can't really remember. It's been a while.

6 Q: Okay.

7 A: Maybe around when I turned thir- maybe when I was
8 about to turn 13.

9 Transcribed Statement of C.W., Recorded June 30th, 2021,
10 Page 13

11 As Joshua turned 18 in October of 2020 and C.W. turned 13 in March of 2021, the
12 difference between alleged lewd acts committed before or after her birthday is
13 significant as to the punishment associated with the charge and as to which court
14 system has jurisdiction. When one drills down on what was said about specific acts,
15 all the acts C.W. described on June 30th, 2021 to Detective Theriault occurred before
16 Joshua turned 18. Likewise, all the acts Z.W. described occurred before Joshua
17 turned 18. This is also significant because during the certification hearing the State
18 made it seem that the charges alleged conducted by Joshua as an adult and this
19 should weigh towards certifying the case:

20 It looks like some of these occurred when he was 18. So as
21 a jurisdictional matter, we're --we're asking the Court to
22 certify all of these up so that we can present this one case.

23 Transcript RE: Certification for Treatment as an Adult,
24 Page 5

25 It should be noted that both the original Delinquency Petition and Criminal
26 Complaint filed in this case allege acts committed between "April 7, 2014, and June
27 30th, 2021." Although June 30th, 2021, is the date that C.W. was interviewed, it

1 appears it would have been impossible for Joshua and C.W. to have had contact with
2 each other for months by that date.

3 For instance, the Declaration of Arrest reports that on June 4th, 2021, Byron
4 Worthey, Joshua's father, told police that he had changed the "code, locks and made
5 sure the cameras were operating to keep Joshua out of the residence." More
6 specifically, in Mr. Worthey's recorded interview he says that he saw that Joshua
7 went to school on a Tuesday in May and otherwise said "I haven't reported him
8 missing because there's little breadcrumbs that shows some sort of activity, like on
9 his social media account." Byron Worthey Statement, Recorded June 6th, 2021, Pages
10 11-13. He also mentions that he did not know where Joshua was when he got a TPO
11 against him. Id. Page 11. So, although the criminal complaint allows for the
12 possibility that acts could have occurred up to the moment C.W. was interviewed on
13 June 30th, 2021, those are not the facts on the ground. Joshua was out of the house
14 and the locks had been changed since May, at least.

15 More specifically in C.W.'s Recorded Statement, the acts she describes being
16 committed against her appear to have occurred at residences the family hasn't lived
17 in since well before Joshua turned 18, which was an apartment at Sienna Suites on
18 Boulder Highway and Russell. We know that the family lived at that address during
19 a time when Joshua was a juvenile because his stepmother, Hyacinth Worthey,
20 confirmed with Detective Theriault that they lived at that address "five years ago"
21 during her interview held on June 18th, 2021. Transcribed Statement of Hyacinth
22 Worthey, Recorded June 18th, 2021, Page 12. C.W. is currently 13 years old with a
23 birthday on March 26, 2008. Joshua is currently one month into his 19th year as his
24 birthday is October 21, 2002.

25 In C.W.'s interview she said that the first time she was touched
26 inappropriately, she "was 10 and it was in an apartment called Sienna Suites."
27

1 Transcribed Statement of C.W., Recorded June 30th, 2021, Page 14. After describing
2 that incident, she then is asked:

3 Q: Um, tell me about a time that it was different.

4 A: Mm, it's when we were back - a while before we moved
5 into the apartments, we were at my grandma's place. We
6 used to live there, and we still do. Um, he would touch me,
7 and I didn't know what to do at all. Like he was touching
8 me, and I didn't know what to do. So, when I got free, I, um,
9 I locked myself in my room with - and now I share a room
10 with my older sister. Right now, I don't share a room with
11 her, but before, I shared a room with my ...

12 Statement of C.W., Recorded June 30th, 2021, Page 17.

13 When asked how long ago this second act of reported touching occurred at her
14 grandmother's place, she said "It was a while ago, a long time." Id.

15 As the interview went on, the investigator attempted to illicit other times C.W.
16 had been touched in a lewd manner. She then describes a third time she was touched:

17 Q: Okay. Um, tell me about any other times you remember
18 something happening.

19 A: Mm, most of the time it's been at Sienna Suites and it's
20 just the same thing: him trying to touch me and me just
21 going away and locking myself in the bathroom.

22 Statement of C.W., Recorded June 30th, 2021, Page 21.

23 Later still in the interview, she is again prompted to recall prior incidents of improper
24 touching, and describes the fourth act of lewd touching that follows:

25 Q: Has there been a time anybody's ever touched or done
26 something to your chest?

27 A: No ...

Q: Okay.

A: ... except that when he did it. That's really about it.

Q: And tell me exactly what he did to your chest?

1 A: Um, he just - just moved his hand around. And I just felt
2 uncomfortable. So as I said before, I just went into the
3 bathroom.

4 Q: When? What time? Which time was that?

5 [. . .]

6 Q: Was it the time at Sienna apartments? Was it at your
7 grandma's house?
8 Or somethin' else?

9 A: Sienna apartments. [. . .]

10 Id. Page 22.

11 With respect to C.W., all of the acts of touching she described occurred at the Sienna
12 Suites or at a time before, which would mean that Joshua was a juvenile at the time
13 these alleged events occurred as they occurred at least five years before June of 2021.

14 **B. B. Z.W.—Timeline of allegations**

15 In the interview Detective Theriault conducted with Z.W., she makes clear that
16 Joshua was a minor when any lewd act she described occurred. When the detective
17 asked Z.W. when Joshua first started lewdly touching her, she said it started, "[w]hen
18 I was 7." Statement of Z.W., Recorded June 4th, 2021, Page 28. When asked when
19 the alleged inappropriate touching ended, the following exchange occurred:

20 Q: Okay. Tell me about the last time.

21 A: Um, it was in 2020 and like I pushed him off of me and
22 was like, "Stop." And then I left the room.

23 Q: When in 2020 was it?

24 A: It was in the beginning of the year.

25 Id. Page 14.
26
27

1 As Joshua's 18th birthday was October 21st, 2020, he was a minor at the time Z.W.
2 alleges the last lewd contact occurred in the beginning of 2020.

3 **III. Argument: Lewdness with a Child Under the Age of 14 Committed by**
4 **a Person Under the Age of 18 is an Act of Delinquency and Cannot be**
5 **Certified for Adult Proceedings under 62B.390.**

6 The charges filed in this matter cannot be certified for adult proceedings. The
7 lewdness statute may very well be unique in Nevada law in the way that it delineates
8 distinct, mutually exclusive punishments for juveniles and adults charged with these
9 proscribed acts. The lewdness statute says that lewd acts by a person under the age
10 of 18 can never be charged as a felony and can only be adjudicated as delinquent acts.
11 NRS 200.230(1)(b),(2),(4),(5). For both legal and factual reasons, this court cannot be
12 divested of jurisdiction over this matter under 62B.390. The relevant statutes to
13 deciding this issue appear on the following pages:

14 **4.370. Jurisdiction.**

15 *3. Justice courts have jurisdiction of all misdemeanors and no other criminal*
16 *offenses except as otherwise provided by specific statute. Upon approval of the*
17 *district court, a justice court may transfer original jurisdiction of a misdemeanor*
18 *to the district court for the purpose of assigning an offender to a program*
established pursuant to NRS 176A.250 or, if the justice court has not established
a program pursuant to NRS 176A.280, to a program established pursuant to that
section.

19 NRS § 4.370 (emphasis added)

20 **62B.310. Exclusive jurisdiction; exceptions; powers of other courts.**

21
22 1. If the juvenile court exercises jurisdiction over a child regarding any matter
23 within the purview of this title, another court may not exercise jurisdiction
24 over the child regarding that matter, unless the juvenile court:

25 (a) Certifies the child for proper criminal proceedings as an adult pursuant to
26 the provisions of this title; or

27 (b) Transfers the case to another court pursuant to the provisions of this title.

[...]

1 NRS 62B.310

2
3 **62B.390. Certification of child for criminal proceedings as adult.**

4 1. Except as otherwise provided in NRS 62B.400, upon a motion by the district
5 attorney and after a full investigation, the juvenile court may certify a child for
6 proper criminal proceedings as an adult to any court that would have jurisdiction
to try the offense if committed by an adult, if the child:

7 (a) Except as otherwise provided in paragraph (b), is charged with an offense that
8 would have been a felony if committed by an adult and was 14 years of age or older
at the time the child allegedly committed the offense; or

9 [...]

10 3. If a child has been certified for criminal proceedings as an adult pursuant to
11 subsection 1 and the child's case has been transferred out of the juvenile court:

12 (a) The court to which the case has been transferred has original jurisdiction over
13 the child;

14 [...]

15 5. If a child has been certified for criminal proceedings as an adult pursuant to
16 subsection 1 or 2 and the child's case has been transferred out of the juvenile court:

17 (a) The court to which the case has been transferred has original jurisdiction over
18 the child;

19 (b) The child may petition for transfer of the case back to the juvenile court only
20 upon a showing of exceptional circumstances; and

21 (c) If the child's case is transferred back to the juvenile court, the juvenile court
22 shall determine whether the exceptional circumstances warrant accepting
jurisdiction.

23 NRS § 62B.390 (Although this statute changed on Oct 1st, 2021, these charges fall under
24 the older statute cite here).

25 **201.230. Lewdness with child under 16 years; penalties.**

26 1. A person is guilty of lewdness with a child if he or she:
27

1 (a) Is 18 years of age or older and willfully and lewdly commits any lewd or
2 lascivious act, other than acts constituting the crime of sexual assault, upon or
3 with the body, or any part or member thereof, of a child under the age of 16 years,
4 with the intent of arousing, appealing to, or gratifying the lust or passions or
5 sexual desires of that person or of that child; or

6 (b) *Is under the age of 18 years and willfully and lewdly commits any lewd or*
7 *lascivious act, other than acts constituting the crime of sexual assault, upon or*
8 *with the body, or any part or member thereof, of a child under the age of 14 years,*
9 *with the intent of arousing, appealing to, or gratifying the lust or passions or*
10 *sexual desires of that person or of that child.*

11 2. *Except as otherwise provided in subsections 4 and 5, a person who commits*
12 *lewdness with a child under the age of 14 years is guilty of a category A felony and*
13 *shall be punished by imprisonment in the state prison for life with the possibility*
14 *of parole, with eligibility for parole beginning when a minimum of 10 years has*
15 *been served and may be further punished by a fine of not more than \$10,000.*

16 3. *Except as otherwise provided in subsection 4, a person who commits lewdness*
17 *with a child who is 14 or 15 years of age is guilty of a category B felony and shall*
18 *be punished by imprisonment in the state prison for a minimum term of not less*
19 *than 1 year and a maximum term of not more than 10 years and may be further*
20 *punished by a fine of not more than \$10,000.*

21 4. *Except as otherwise provided in subsection 5, a person who commits lewdness*
22 *with a child and who has been previously convicted of:*

23 (a) Lewdness with a child pursuant to this section or any other sexual offense
24 against a child; or

25 (b) An offense committed in another jurisdiction that, if committed in this State,
26 would constitute lewdness with a child pursuant to this section or any other
27 sexual offense against a child, is guilty of a category A felony and shall be
punished by imprisonment in the state prison for life without the possibility of
parole.

5. *A person who is under the age of 18 years and who commits lewdness with a*
child under the age of 14 years commits a delinquent act.

[. . .]

NRS § 201.230 (emphasis added)

1 A. Since Josh was under 18 when the alleged acts occurred, said
2 conduct can only be adjudicated as delinquent acts under NRS
3 201.230(5), therefore, these counts are not subject to the
4 certification process.

5 Nevada's constitution grants district courts original jurisdiction in all cases
6 excluded by law from the original jurisdiction of justices' courts. Nev. Const. Art. 6,
7 § 6. The law gives original jurisdiction for delinquency matters to district court
8 juvenile courts. 63B.330. All of the counts charged allege that Josh committed acts
9 that were lewd or lascivious but did not constitute sexual assault while he himself
10 was under the age of 18.

11 Nevada Revised Statutes define "Lewdness with a child under 16 years" in,
12 NRS 201.330. That law says Lewdness can be committed by a person over 18 upon a
13 child under the age of 16, with certain consequences, or another section applies if the
14 accused person was under 18 and the child is under the age of 14 when the alleged
15 lewd act was committed:

16 1. A person is guilty of lewdness with a child if he or she:

17 (a) Is 18 years of age or older and willfully and lewdly
18 commits any lewd or lascivious act, other than acts
19 constituting the crime of sexual assault, upon or with the
20 body, or any part or member thereof, of a child under the
21 age of 16 years, with the intent of arousing, appealing to,
22 or gratifying the lust or passions or sexual desires of that
23 person or of that child; or

24 (b) Is under the age of 18 years and willfully and lewdly
25 commits any lewd or lascivious act, other than acts
26 constituting the crime of sexual assault, upon or with the
27 body, or any part or member thereof, of a child under the
 age of 14 years, with the intent of arousing, appealing to,
 or gratifying the lust or passions or sexual desires of that
 person or of that child.

 NRS § 201.230

1 When lewd and lascivious acts are alleged to have been committed by a person under
2 the age of 18 upon a child under the age of 14, those acts are exclusively delinquent
3 acts. NRS 201.230 (5). Juvenile courts have exclusive "original jurisdiction" over
4 delinquent acts. NRS 62B.330. Justice courts are "courts of limited jurisdiction and
5 have only the authority granted by statute." State v. Sargent, 122 Nev. 210, 214, 128
6 P.3d 1052, 1054 (2006); see also, Nev. Const. Art. 6, § 8. Justice Courts have original
7 jurisdiction over misdemeanor crimes and "no other criminal offenses except as
8 otherwise provided by specific statute." NRS 4.370. No specific statute provides for
9 Justice Court having jurisdiction over delinquent acts; accordingly, Justice Court
10 cannot hear this matter.

11 The law makes clear that the only acts subject to certification from juvenile
12 court are acts that "would have been a felony if committed by an adult." NRS
13 62B.330. No adult can commit the offense Josh is charged with since an adult, by
14 definition, would be over the age of 18 and, therefore, not subject to NRS
15 210.230(1)(b). This section is the only section of the statute that would apply to Josh
16 or any other minor as NRS 210.230(1)(a) is reserved for adults committing lewd acts
17 on children under the age of 16 and juveniles are specifically exempt from other
18 punishments imposed upon adults in §§ (2), (3) and (4). This means that the charge
19 against Josh is not a certifiable charge as it could not be committed by an adult and
20 could never be subject to felony treatment.

21 To interpret the different sections of NRS 210.230 in any other way would be
22 to ignore how the statute was written by the legislature. Sections two, three and four
23 of the statute make it plain that juveniles are not subject to the different provisions
24 of NRS 201.230 that mandate felony treatment of adults but carve out juvenile acts
25 as acts of delinquency:

26 2. *Except as otherwise provided in subsections 4 and 5, a*
27 *person who commits lewdness with a child under the age*
of 14 years is guilty of a category A felony and shall be

1 punished by imprisonment in the state prison for life with
2 the possibility of parole, with eligibility for parole
3 beginning when a minimum of 10 years has been served,
4 and may be further punished by a fine of not more than
5 \$10,000.

6 3. *Except as otherwise provided in subsection 4, a person*
7 *who commits lewdness with a child who is 14 or 15 years of*
8 *age is guilty of a category B felony and shall be punished*
9 *by imprisonment in the state prison for a minimum term*
10 *of not less than 1 year and a maximum term of not more*
11 *than 10 years and may be further punished by a fine of not*
12 *more than \$10,000.*

13 4. *Except as otherwise provided in subsection 5, a person*
14 *who commits lewdness with a child and who has been*
15 *previously convicted of:*

16 [...]

17 5. *A person who is under the age of 18 years and who commits lewdness*
18 *with a child under the age of 14 years commits a delinquent act.*

19 NRS 201.230(2)(emphasis added)

20 To read this statute such that a juvenile could be certified as an adult would be to
21 render §§ (1)(2)(3)(4) and (5) of NRS 201.330 as legal nullities with regard to the
22 treatment those sections specify for juvenile offenders. The rules of statutory
23 construction say such an interpretation of the written law is wrong.

24 **B. The specific provisions and exclusive elements of NRS 201.230**
25 **make the charge uncertifiable for adult proceedings—any**
26 **argument to the contrary runs afoul of the basic tenants of**
27 **statutory interpretation.**

Counsel does not believe there is any conflict of law here between NRS 201.230
and NRS 62B.330, however, he anticipates the State will argue one does exist and
that NRS 62B.330 trumps the language of NRS 201.230 rendering lewd acts by a
minor on a minor under the age of 14 sanctionable only as delinquent acts. When the

1 Supreme Court of Nevada has examined statutes related to juvenile delinquency—or
2 any alleged conflict between statutes—they employ these rules:

3 When two statutory provisions conflict, this court employs
4 the rules of statutory construction, Williams v. Clark Cnty.
5 Dist. Attorney, 118 Nev. 473, 484, 50 P.3d 536, 543 (2002),
6 and attempts to harmonize conflicting provisions so that
7 the act as a whole is given effect, In re Eric L., 123 Nev. 26,
8 31, 153 P.3d 32, 35 (2007). Statutes are interpreted so that
9 each part has meaning. Leven v. Frey, 123 Nev. 399, 405,
10 168 P.3d 712, 716 (2007). Therefore, when a scheme
11 contains a general prohibition contradicted by a specific
12 permission, "the specific provision is construed as an
13 exception to the general one." RadLAX Gateway Hotel
14 L.L.C. v. Amalgamated Bank, 566 U.S. 639, 645, 132 S. Ct.
15 2065, 2071, 182 L. Ed. 2d 967 (2012).

16 State v. Eighth Judicial Dist. Court, 129 Nev. 492, 508-09,
17 306 P.3d 369, 380-81 (2013) (finding specific rule enacted
18 about juvenile sex offender registration trumps a broader
19 rules protecting juvenile offender anonymity).

20 First, the statutes we are talking about do not conflict because NRS 201.230(a)(2) &
21 (5) exclusively speaks to how juveniles are only subject to delinquency proceedings
22 for committing lewd acts and therefore the section of the law that applies in this case
23 can never apply to an adult and is not sanctionable as a felony, thereby outside the
24 purview of NRS 62B.390. See NRS 201.230(1)(b), (2), (3), (4) and (5). Secondly, as
25 any attempt to harmonize conflicting passages in statutes requires the whole of each
26 statute be given effect, any argument by the State that NRS 62B.390 trumps the
27 language in five of the six sections of NRS 201.230 would run afoul of the rule. For
the State to be correct in such an argument they would be asking the court to ignore
the plain meaning of multiple sections of NRS 201.230. For instance, such an
argument would be asking the court to ignore the distinction drawn in section one
between acts of lewdness committed by an adult on a child under 16 in § (a) and acts
of a juvenile committing lewdness on a child under 14 in § (b). Such arguments would
also ignore §§ (2), (3) and (4)'s dictate that juveniles are exempt from the felony status

1 accorded adults who commit lewdness on child under different ages in those sections.
2 The repetitive, deliberate nature of the exclusion of juveniles from these various adult
3 sanctions should heed as a distinct warning to prosecutors that children are not
4 certifiable as adults for those offenses. Finally, if the prosecution was correct in an
5 argument that children can be prosecuted as adults for lewd acts, it would require
6 this Court to ignore the clear directive of § (5) which says a person under 18 that
7 commits lewdness with a child under the age of 14 commits an act of delinquency—
8 full stop.

9 If there is any question as to whether counsel is accurate in the rule application
10 above, one simply has to apply the next maxim of statutory analysis which says that
11 “the specific provision is construed as an exception to the general one.” State v.
12 Eighth Judicial Dist. Court, 129 Nev. at 508-09, 306 P.3d at 380-81 (citing RadLAX
13 Gateway Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 645, 132 S. Ct. 2065, 2071
14 (2012)).¹ Thus, an argument by the state that the general authorization granted
15 them by NRS 62B.390 to seek adult treatment of acts that would have been a felony
16 if committed by an adult requires the court to ignore all of the distinctions drawn
17 between adult and juvenile offenders in NRS 201.230, would be incorrect.

18 If the Court still found a reasonable doubt to persist after applying the rules of
19 statutory construction to deciding this issue, it would then consider how to apply the
20 rule in terms of the rule of lenity. The rule of lenity says that if a law could be
21

22 ¹ The U.S. Supreme Court states the doctrine this way:

23 The general/specific canon is perhaps most frequently applied to statutes in which a
24 general permission or prohibition is contradicted by a specific prohibition or
25 permission. To eliminate the contradiction, the specific provision is construed as an
26 exception to the general one. See, e.g., Morton v. Mancari, 417 U.S. 535, 550-551, 94
27 S. Ct. 2474, 41 L. Ed. 2d 290 (1974).

RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 645, 132 S. Ct.
2065, 2071 (2012)

1 interpreted in a manner that produces a harsher or more lenient result for the
2 accused, it must be read in the more lenient manner. In other words, "[a]mbiguity in
3 a statute defining a crime or imposing a penalty should be resolved in a defendant's
4 favor." Castaneda v. State, 132 Nev. 434, 439, 373 P.3d 108, 111 (2016).

5 Juveniles, as a class of accused persons, are generally afforded lenity, of course.
6 Our justice system is designed to avoid even labeling its response to the misdeeds of
7 juveniles as punishment or to use what happens in juvenile court to judge a person
8 after they turn 21, except under extraordinary circumstances. Statutory
9 interpretation and the fundamental values of the justice system say that interpreting
10 the law the way the State will urge is incorrect.

11 **C. The specific provisions and exclusive elements of NRS 201.230**
12 **make the charge uncertifiable for adult proceedings—any**
13 **argument about the Court's powers to the contrary runs afoul**
of the basic tenants of the separation of powers doctrine.

14 There are other more fundamental, constitutional, reasons why any argument
15 that the court could certify lewdness charges against a child are wrong. For the
16 Court's to interpret 62B.390, so that it trumps all of the distinct provisions of NRS
17 201.330 would violate the ground-rules of the Separation of Powers doctrine. That
18 bedrock principle says that the legislature and Constitution define the limits of the
19 jurisdictions of courts. It also says that it is up to the Legislature to define what is
20 and is not criminal conduct and what the punishment is for criminal conduct. Sheriff
21 Douglas County v. La Motte, 100 Nev. 270, 272 (Nev. 1984). Recently, in an
22 unpublished opinion, all seven justices of the Supreme Court signed an order again
23 reaffirming this doctrine when they found Judge Herndon abused his discretion when
24 he allowed the State to charge second-degree murder in a case of non-intentional
25 vehicular homicide. Leavell v. Eighth Judicial Dist. Court of Nev., 471 P.3d 749
26
27

1 (2020) (Unpublished).² Although the Supreme Court agreed that malice could be
2 inferred from the circumstances of that case which could give rise to a second-degree
3 murder charge, the legislature had preempted such a charge by legislation. Id.

4 The same holds true here. In an abstract sense, the factual allegations against
5 Joshua could give rise to a felony allegation if the legislature had not made clear in
6 the books of law that juveniles are exempt from such treatment. Because of this,
7 courts cannot interpret NRS 62B.390 and NRS 201.330 to mean that a juvenile can
8 be prosecuted as an adult for the lewd acts on minors under 14—it is beyond their
9 power to do so.

10 CONCLUSION

11 As the prohibited acts the State alleges could only be addressed as delinquent
12 acts, it was error to certify them to the adult system. This Court must accept
13 jurisdiction of the matter under NRS 62B.390(5)(c). Accordingly, the resolution of the
14 allegations against Joshua should take place within the juvenile court system.

15 Dated November 19, 2021.

16 Respectfully submitted,

17 JoNell Thomas
18 Clark County Special Public Defender

19 /s/ W. Jeremy Storms
20 W. Jeremy Storms
21 Chief Deputy Special Public Defender
22
23
24
25
26

27 ² This unpublished disposition is citable for its persuasive value under NRAP 36(c)(3).

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

An employee of the
Special Public Defender

IN THE EIGHTH DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK
JUVENILE DIVISION

Electronically Filed
11/22/2021 2:37 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

In the Matter of:

BYRON JOSHUA WORTHEY-AVILA

JUVI ID: 3560349

UNITY ID#:

Date of Birth: [REDACTED]

Years of Age: 19

CASE NO. J-21-353445-D1

DEPT. L

Courtroom 10

Petition 1 - AMENDED

Plea: November 23, 2021 at 10:00AM

AMENDED PETITION - DELINQUENCY

That there is now within the County of Clark, State of Nevada, the above named minor who resides with his parent(s) or guardian(s) at: [REDACTED] 151, LAS VEGAS, NV 89121

Father: BYRON WORTHEY

Stepmother: HYACINTH WORTHEY

Mother: LETICIA AVILA

That your Petitioner, a duly appointed and qualified Chief Deputy District Attorney for the County of Clark, State of Nevada, makes the following declaration:

That Petitioner is informed and believes, and thereon alleges that the facts bringing said minor within the jurisdiction of the Juvenile Court pursuant to NRS 62B.330 are that, in Clark County, Nevada, subject minor:

COUNT 1: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)

On or between March 26, 2018 and June 30 2021, did willfully, lewdly; unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to wit: C.W., a child under the age of fourteen years, by touching the genital area of the said C. W. with his hand and/or fingers, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Subject Minor, or said victim, in violation of NRS 201.230 and/or NOC 50975.

LVMPD Event #: 210500104805

COUNT 2: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)

On or between March 26, 2018 and June 30 2021, did willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to wit: C. W, a child under the age of fourteen years, by touching the genital area of the said C. W. with his hand and/or fingers, with the intent of arousing, appealing to, or

gratifying the lust, passions, or sexual desires of Subject Minor, or said victim, in violation of NRS 201.230 and/or NOC 50975.

LVMPD Event #: 210500104805

COUNT 3: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)

On or between March 26, 2018 and June 30 2021, did willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to wit: C. W, a child under the age of fourteen years, by touching the genital area of the said C. W. with his hand and/or fingers, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Subject Minor, or said victim, in violation of NRS 201.230 and/or NOC 50975.

LVMPD Event #: 210500104805

COUNT 4: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)

On or between March 26, 2018 and June 30 2021, did willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to wit: C. W., a child under the age of fourteen years, by touching the chest and/or breast of the said C. W. with his hand and/or fingers, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Subject Minor, or said victim, in violation of NRS 201.230 and/or NOC 50975.

LVMPD Event #: 210500104805

COUNT 5: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)

On or between March 26, 2018 and June 30 2021, did willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to wit: C. W, a child under the age of fourteen years, by pulling down her shorts wit his hand and/or fingers, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Subject Minor, or said victim, in violation of NRS 201.230 and/or NOC 50975.

LVMPD Event #: 210500104805

COUNT 6: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)

On or between March 26, 2018 and June 30 2021, did willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to wit: Z. W, a chi ld under the age of fourteen years, by Defendant pulling down the pants of Z.W., with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Subject Minor, or said victim, in violation of NRS 201.230 and/or NOC 50975.

LVMPD Event #: 210500104805

COUNT 7: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)

On or between March 26, 2018 and June 30 2021, did willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to wit:

C.W, a child under the age of fourteen years, by Defendant touching and/or rubbing the chest of C. W., with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Subject Minor, or said victim, in violation of NRS 201.230 and/or NOC 50975.

LVMPD Event #: 210500104805

COUNT 8: LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (FELONY)

On or between March 26, 2018 and June 30 2021, id willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to wit: C. W, a child under the age of fourteen years, by Defendant touching and or rubbing the genital area of C.W., with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Subject Minor, or said victim, in violation of NRS 201.230 and/or NOC 50975.

LVMPD Event #: 210500104805

Subject Minor is in the custody and control of the Juvenile justice services detention facility, and has been since November 19, 2021.

WHEREFORE, Petitioner prays that this matter be set for hearing as it is in the best interest of the public and the subject minor that this proceeding be commenced and that the Court take such further action as is deemed fit and proper under the circumstances and in accordance with the law as the subject minor is in need of treatment and/or rehabilitation.

I declare that I am the Petitioner named in the foregoing Petition and know the contents thereof: that this petition is true of my own knowledge, except as to those matters stated on information and belief, and that as to those matters I believe it to be true. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 22nd day of November, 2021.

STEVEN B. WOLFSON
DISTRICT ATTORNEY

BY:/s/TANNER SHARP
Chief Deputy District Attorney
Petitioner

TS/tw

Steven D. Grierson

STEVEN B. WOLFSON
DISTRICT ATTORNEY
NEVADA STATE BAR NO. 001565
TANNER SHARP
Deputy District Attorney
Nevada State Bar No. 13018
601 North Pecos Road
Las Vegas, NV 89101-2408
(702) 455-5320
Attorney for the State of Nevada

DISTRICT COURT
JUVENILE DIVISION
CLARK COUNTY, NEVADA

In the Matter of:

BYRON JOSHUA WORTHEY-AVILA

Date of Birth: [REDACTED]

A Minor 18 Years of Age.

CASE NO. J-21-353445-D1

DEPT NO. L

COURTROOM NO. 17

AMENDED CERTIFICATION PETITION

COMES NOW your Petitioner, the Clark County District Attorney, by and through TANNER SHARP, Deputy District Attorney, and moves this Court to enter an Order directing that a full and complete investigation be completed to assist the Court in determining whether to retain jurisdiction in this matter or certify the subject minor for proper criminal proceedings as an adult. Petitioner prays that proceedings in this matter be arrested pending the Court's jurisdictional decision.

I

Petitioner is informed and believes and therefore alleges that the subject minor named herein is 18 years of age and was 16 and 18 years of age at the time the offense(s) alleged in Petition No. 1 was committed.

///

///

///

II

Petitioner is informed and believes and therefore alleges that the offense(s) alleged to have been committed by the subject minor in Petition No. 1 would be felonious if committed by an adult, more specifically:

Petition No.

1(1)	Lewdness with a Child Under the Age of 14
1(2)	Lewdness with a Child Under the Age of 14
1(3)	Lewdness with a Child Under the Age of 14
1(4)	Lewdness with a Child Under the Age of 14
1(5)	Lewdness with a Child Under the Age of 14
1(6)	Lewdness with a Child Under the Age of 14
1(7)	Lewdness with a Child Under the Age of 14
1(8)	Lewdness with a Child Under the Age of 14

III

Petitioner is informed and believes and therefore alleges that the subject minor named in this Petition has admitted or been adjudicated or been convicted of the following criminal offense(s):

	Offense	Date
None		

IV

Petitioner is informed and believes and therefore alleges that the offense(s) allegedly committed by the subject minor are not subject to presumptive certification to the adult criminal process.

V


Petitioner will supply counsel for subject minor with a true and correct copy of this Certification Petition at the time of the initial hearing scheduled in this matter.

///

1 WHEREFORE, Petitioner prays that these proceedings be arrested pending further
2 Order of the Court and further that the Court enter an Order directing that a full and
3 complete investigation be completed to assist the Court in determining whether to retain
4 jurisdiction in this matter or certify the subject minor for proper criminal proceedings as an
5 adult.

6 DATED this 22nd day of November, 2021.

7
8 STEVEN B. WOLFSON
DISTRICT ATTORNEY

9
10
11 
12 TANNER SHARP
Deputy District Attorney
13 Nevada Bar No.13018

14 TS/mrm
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
11/22/2021 8:10 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

In the Matter of:
Byron Worthey-Avila

Case No.: J-21-353445-D1

Family Juvenile

NOTICE OF HEARING

Please be advised that the Motion For The Court To Accept Jurisdiction Under NRS 62B.390(5)(c) Exceptional Circumstances To Certification. Because The Offenses Charged May Only Be Prosecuted As Delinquent Acts And Therefore Are Not Certifiable For Criminal Proceedings in the above-entitled matter is set for hearing as follows:

Date: December 14, 2021

Time: 11:00 AM

Location: Courtroom 10
Family Courts and Services Center
601 N. Pecos Road
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Pamela Woolery
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Pamela Woolery
Deputy Clerk of the Court

000134

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of:
Byron Worthey-Avila

Case No.: J-21-353445-D1

Family Juvenile

NOTICE OF HEARING

Please be advised that the Motion For The Court To Accept Jurisdiction Under NRS 62B.390(5)(c)Exceptional Circumstances To Certification. Because The Offenses Charged May Only Be Prosecuted As Delinquent Acts And Therefore Are Not Certifiable For Criminal Proceedings in the above-entitled matter is set for hearing as follows:

Date: December 14, 2021

Time: 11:00 AM

Location: Courtroom 10
Family Courts and Services Center
601 N. Pecos Road
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

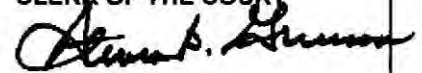
STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Pamela Woolery
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Pamela Woolery
Deputy Clerk of the Court



STEVEN B. WOLFSON
DISTRICT ATTORNEY
Nevada Bar No. 1565
TANNER SHARP
Chief Deputy District Attorney
Nevada Bar No. 13018
601 N. Pecos Road, Ste. 470
Las Vegas, NV 89101
(702) 455-5320

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

In the Matter of:

BYRON JOSHUA WORTHEY-AVILA

Date of Birth: [REDACTED]

Years of Age: 19

Case No.: J- 21-353445-DI

Dept No.: L

Courtroom: 10

**OPPOSITION TO SUBJECT MINOR'S MOTION FOR THE COURT TO
ACCEPT JURISDICTION UNDER NRS 62B.390(5)(C), EXCEPTIONAL
CIRCUMSTANCES TO CERTIFICATION, BECAUSE THE OFFENSES
CHARGED MAY ONLY BE PROSECUTED AS DELINQUENT ACTS AND
THEREFORE ARE NOT CERTIFIABLE FOR CRIMINAL PROCEEDINGS**

COMES NOW, the Clark County District Attorney's Office, by and through,
STEVEN B. WOLFSON, Clark County District Attorney and TANNER SHARP, Chief
Deputy District Attorney, and hereby files its OPPOSITION TO SUBJECT MINOR'S
MOTION FOR THE COURT TO ACCEPT JURISDICTION UNDER NRS
62B.390(5)(C), EXCEPTIONAL CIRCUMSTANCES TO CERTIFICATION,
BECAUSE THE OFFENSES CHARGED MAY ONLY BE PROSECUTED AS
DELINQUENT ACTS AND THEREFORE ARE NOT CERTIFIABLE FOR
CRIMINAL PROCEEDINGS.

///

///

1 This brief is based on the Points and Authorities attached hereto, the papers and
2 pleading on file herein, and such argument as the court will permit at the time of the
3 hearing on this matter.

4 STEVEN B. WOLFSON
5 District Attorney

6 By: 

7 TANNER SHARP
8 Chief Deputy District Attorney
9 Juvenile Division
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

On May 23, 2021, Byron Worthey Sr. reported to law enforcement that his 14-year-old daughter, Z█████ W█████ (DOB ██████) disclosed that her stepbrother Subject Minor, Byron Worthey-Avila, had repeatedly rubbed his penis on her thighs while she slept for the previous seven years, the last incident occurring in the beginning of 2020. (Exhibit 1 – Declaration of Arrest).

Las Vegas Metropolitan Police Department (“LVMPD”) Officer L. Tlatenchi spoke with Z█████e who stated that Subject Minor began rubbing his penis on her thighs and ejaculating when she was 7-years-old and would do so as often as he could. These actions stopped when she told Subject Minor she had a boyfriend. Id.

On June 4, 2021, Z█████ was interviewed at the Southern Nevada Children’s Advocacy Center (“CAC”). She repeated the same allegations, adding that he would rub his penis on her bare skin and would ejaculate on her. This occurred frequently. Id.

On that date Subject Minor’s 5-year-old sister, A█████ W█████y (DOB: ██████) was also forensically interviewed. She disclosed that Subject Minor did something to her “peck peck,” where she goes pee, in the Subject Minor’s room. Subject Minor asked her to keep it a secret and to be quiet. Id.

On June 30, 2021, Subject Minor’s 13-year-old sister C█████ W█████ (DOB: ██████) disclosed that he had touched her inappropriately from the time she was 10 years old until she was 13 years old. Id. C█████ turned 13 on March 26, 2021, at which time

1 Subject Minor would have been 18 ½ years old. She disclosed that Subject Minor would
2 touch her chest, touch her private stop and had attempted to pull down her underwear
3 several times. Id.

4
5 On July 1, 2021, LVMPD Detective Wilson interviewed Patrick Ramiro, the
6 Worthey's minister. He stated that Z [REDACTED] disclosed that Subject Minor would try to have
7 sex with her from the age of seven until December of 2020. She disclosed that he would hit
8 or kick her, forcing her to comply. Subject Minor would have been 18 years of age during
9 the last incident. She also stated that Subject Minor had tried to have sex with her or rape
10 her multiple times. Id.

11
12 Patrick Ramiro also spoke with C [REDACTED] who said that ever since she was a child,
13 Subject Minor would try to have sex with her and slap her. He would attempt to put his
14 penis in C [REDACTED]'s vagina. She disclosed an incident during which he pulled a knife on her
15 and said he was going to kill her. Id.

16
17 Patrick Ramiro also spoke with A [REDACTED] who disclosed that Subject Minor would get
18 on top of her and touch her vagina frequently. The last incident occurred when she was six.
19
20 Id.

21
22 Subject Minor was interviewed on August 26, 2021, and admitted to the incident
23 with Z [REDACTED]. Id.

24
25 On September 3, 2021, the State filed a juvenile delinquency petition, a certification
26 petition, and its memo of points and authorities in support of the certification petition. On
27 September 10, 2021, the Subject Minor filed an Opposition. On September 16, 2021, the
28

1 certification hearing was held and the Court certified the Subject Minor. On September 21,
2 2021, the Court filed the certification order. (Exhibit 2 – Certification Order).

3 The case was subsequently transferred to Justice Court. On September 28, 2021, the
4 State filed an amended criminal complaint after holding a conference with the victims in
5 preparation for the preliminary hearing, during which they made additional disclosures. On
6 November 18, 2021, the Subject Minor motioned the court to strike the added charges in
7 the amended criminal complaint and requested the court send the case back to Juvenile
8 Court for the same reasons provided in their current motion.
9
10

11 On November 18, 2021, the Justice Court transferred the case back to Juvenile Court
12 to resolve the issue of the additional charges and the Subject Minor's motion.
13

14 On November 19, 2021, the Subject Minor filed its current motion. On November
15 22, 2021, the State filed an amended certification petition.
16

17 **II.**

18 **ARGUMENT**

19 Subject Minor argues, "the lewdness statute says that lewd acts by a person under
20 the age of 18 can never be charged as a felony and can only be adjudicated as delinquent
21 acts." This is a clear misrepresentation of the actual language of the statute and ignores
22 other relevant statutes and legal definitions.
23

- 24 i. *The NRS 201.230 simply defines Lewdness with a Minor as a delinquent*
25 *act when committed by a child. It never prohibits the Court from certifying*
26 *the delinquent act of Lewdness with a Minor.*
27
28

1 NRS 201.230(5) simply reads "A person who is under the age of 18 years and
2 who commits lewdness with a child under the age of 14 years commits a delinquent act."
3 There is no confusion as to the plain meaning of the text. When a juvenile commits
4 lewdness with a minor, he is committing a delinquent act. Nothing in that language
5 limits the Court's ability to certify the charge.
6

7 *ii. A person under the age of 18 is a Child.*

8 NRS 201.230(5) applies to individuals under the age of 18. The legal term for this
9 type of individual is "Child." NRS 62A.030(1)(a) defines "Child" as "A person who is
10 less than 18 years of age."
11

12 Therefore, using the appropriate legal terminology, the NRS 201.230 may be read
13 as follows "A Child who commits lewdness with a child under the age of 14 years
14 commits a delinquent act."
15

16 *iii. Virtually all "criminal acts" are delinquent acts when committed by*
17 *children and fall under the jurisdiction of the Juvenile Court.*
18

19 NRS 62B.330(1) states:

- 20 1. Except as otherwise provided in this title, the juvenile court has
21 exclusive original jurisdiction over a child living or found within the county
22 who is alleged or adjudicated to have committed a delinquent act.
23 2. For the purposes of this section, a child commits a delinquent act if the
24 child: (a) Violates a county or municipal ordinance other than those
25 specified in paragraph (f) or (g) of subsection 1 of NRS 62B.320 or an
26 offense related to tobacco;
27 (b) Violates any rule or regulation having the force of law; or
28 (c) Commits an act designated a criminal offense pursuant to the laws of
the State of Nevada.

1 Again, the statute is clear, the Juvenile Court has jurisdiction over delinquent acts
2 which are defined as acts designated as criminal offenses under Nevada law. Nevada
3 classifies such criminal offenses as felonies, gross misdemeanors, and misdemeanors.
4 (NRS 193.120). Therefore, when a juvenile commits sexual assault, robbery, battery
5 with a deadly weapon or any other "felony" the act is deemed to be a delinquent act. As
6 such, every juvenile delinquency petition filed in Juvenile Court alleges the child has
7 committed a delinquent act, not a criminal felony or misdemeanor.
8

9
10 *iv. A juvenile can never be sentenced or criminally penalized based on the*
11 *adjudication of a delinquent act.*
12

13 NRS 201.230(2)-(4) provide the category of felony and criminal penalties
14 associated with Lewdness with a Child. The statutes specifically states that said
15 convictions and penalties do not apply to NRS 201.230(5). There is no contradiction
16 between these statutes and all other statutes governing juvenile matters.
17

18 No matter what delinquent act has been committed, a child is never adjudicated on
19 a felony nor is he ever criminally sentenced for a delinquent act. The statute makes this
20 fundamental legal principle abundantly clear when it states that any juvenile proceeding
21 is "not criminal in nature." (NRS 62D.010). Therefore, a child cannot be "adjudicated"
22 on a **felony** sexual assault, robbery, battery with a deadly weapon or lewdness with a
23 child when committed by a juvenile. Furthermore, none of the criminal statutes relating
24 to sentencing, category of felony, criminal punishment, or required imprisonment apply
25 to delinquent act of sexual assault, robbery, battery with a deadly weapon or any other
26 criminal-like act.
27
28

1 v. *A child may be certified as an adult which then allows the State to*
2 *prosecute the individual for criminal acts.*

3 Although a child may never be criminally convicted or punished for a delinquent
4 act, the State of Nevada provided the Juvenile Court with the ability to determine if a
5 child's actions require he be tried as an adult and face criminal charges.
6

7 NRS 62B.390 states in pertinent part:

8 1. Except as otherwise provided in subsection 2 and NRS 62B.400, upon a
9 motion by the district attorney and after a full investigation, the juvenile court may
10 certify a child for proper criminal proceedings as an adult to any court that would
11 have jurisdiction to try the offense if committed by an adult, if the child:
12

13 (a) Except as otherwise provided in paragraph (b), is charged with an
14 offense that would have been a felony if committed by an adult and was 14
15 years of age or older at the time the child allegedly committed the offense.
16
17

18 The Juvenile Court is given express authority to certify a child for criminal
19 proceedings so long as (1) he is charged with offenses that would be felonies if
20 committed by an adult and (2) he was at least 14 years old when he committed the acts.
21

22 As such, in Juvenile Court a child may only be adjudicated on delinquent acts.
23 However, if he or she is 14 and commits a delinquent act that meets the elements of a
24 felony, the Juvenile Court may certify him for adult criminal proceedings where the he
25 will face felony criminal charges for which he or she may be convicted. This process is
26 true for sexual assault, robbery, battery with a deadly weapon or lewdness with a child.
27
28

1 Furthermore, nothing in NRS 201.230 prevents the Court from certifying a child on the
2 charge of lewdness with a child under 14.

3 vi. *Once certified a person under the age of 18 can be charged with, tried for,*
4 *and convicted of Lewdness with a Child.*

5
6 The Nevada Legislature specifically outlined the elements of Lewdness with a
7 Child when committed by a person under 18 years old.

8
9 NRS 201.230(1)(b) states a person under the age of 18 is guilty of lewdness with a
10 child if he or she “willfully and lewdly commits any lewd or lascivious act, other than
11 acts constituting the crime of sexual assault, upon or with the body, or any part or
12 member thereof, of a child under the age of 14 years, with the intent of arousing,
13 appealing to, or gratifying the lust or passions or sexual desires of that person or of that
14 child.”
15

16 Once certified on the charge of lewdness with a child under 14, the “Child,” or
17 person under 18 years old, is no longer under the jurisdiction of the juvenile court. (NRS
18 (62A.030(2)(c)) and may be charged and convicted of felony criminal charges. (NRS
19 (62B.335.)
20

21
22 \\\

23 \\\

24 vii. *Once convicted a person under the age of 18 will be sentenced according to*
25 *statute.*

26
27 Nothing in the statute prohibits the Court from sentencing a person under 18 years
28 old who has been certified as an adult.

1 NRS 201.230(2) states:

2 Except as otherwise provided in subsections 4 and 5, a person who commits
3 lewdness with a child under the age of 14 years is guilty of a category A
4 felony and shall be punished by imprisonment in the state prison for life
5 with the possibility of parole, with eligibility for parole beginning when a
6 minimum of 10 years has been served, and may be further punished by a
7 fine of not more than \$10,000.
8
9

10 Therefore, if a person who has been certified is convicted of lewdness with a child
11 under 14 year, he will be convicted of a category A felony and sentenced according to
12 criminal statute. This same formula holds true for convictions involving sexual assault,
13 robbery, battery with a deadly weapon or any other criminal act.
14

15 viii. *Although redundant, NRS 201.230 is not an exception to standard juvenile*
16 *legal procedure.*
17

18 As repeatedly stated in this opposition, NRS 201.230 treats juvenile offenders no
19 differently than juveniles are treated when charged with committing virtually any
20 criminal-like offense. The statute simply restates the rule that children commit
21 delinquent acts and cannot be criminally punished for a delinquent act. The following
22 provides the legal procedure for all juvenile cases.
23

24 First, when a person under 18 years old commits offenses, the State alleges they
25 have committed "delinquent acts" not criminal acts.
26

27 Second, the person under 18 is considered a "child" and is therefore under the
28 jurisdiction of the Juvenile Court.

1 Third, if the juvenile remains under the jurisdiction of the Juvenile Court he may
2 only be adjudicated for a delinquent act not a criminal offense.

3 Fourth, the Juvenile Court cannot impose any criminal penalties on the juvenile
4 based on the adjudication.
5

6 These first four basic principles are reiterated in NRS 201.230 which provides that
7 when a child commits the criminal offense of Lewdness with a Minor under 14 he has in
8 fact committed a delinquent act and when a child commits a delinquent act he cannot be
9 convicted of a felony or punished with imprisonment. These principles apply to virtually
10 any offense committed by a child. For example, a juvenile is charged with and
11 adjudicated on the delinquent acts of sex assault or battery with a deadly weapon. That
12 same juvenile cannot be convicted of a felony and sentenced to prison based on the
13 adjudication.
14
15

16 However, the analysis does not end here.
17

18 Fifth, the Juvenile Court may determine when an offense is sufficiently serious
19 that the individual should be treated as an adult and face criminal charges.
20

21 Sixth, if certified the State is allowed to pursue criminal charges against the
22 individual.
23

24 Seventh, if the trier of fact determines beyond a reasonable doubt that the State
25 has met its burden and proved every element, the individual may be convicted and
26 sentenced according to law.

27 There is nothing in the statute that prohibits the State from seeking certification on
28 the charge of Lewdness with a Child under 14. The statute clearly lays out the elements

1 required to prove that a person under 18 has committed the crime and provides the
2 criminal penalty if convicted. Again, this is no different from all other cases for which a
3 juvenile is certified.

4
5 *ix. The Legislature uses precise language when it does seek to ensure a Child*
6 *may not be charged with a criminal offense or certified.*

7 When the Legislature seeks to prohibit the State from seeking adult certification or
8 even charges of delinquent acts, it uses precise language to carve out exceptions.

9 For example, NRS 200.366(5) specifically states that the provisions regarding
10 sexual assault **do not apply** in cases where an individual under 18 has consensual sexual
11 intercourse with another person who is less than two years younger than himself. This
12 clearly eliminates the possibility of filing a juvenile petition or seeking certification in
13 cases where a child has committed such acts.
14

15
16 Another example involves children and sexting. NRS 200.725 criminalizes the
17 distribution of child pornography and provides the penalty for violations. However, the
18 Legislature carved out specific exceptions when a child sends another child a
19 pornographic picture of himself or another child who is less than 4 years younger than
20 himself. The Legislature made distinct categories when such acts were simply violations
21 in which a child is deemed to be in need of supervision and when such acts are
22 considered delinquent and misdemeanor-like offenses (thus barring any adult treatment.)
23

24
25 A third example comes from the statutes related to the charges of Open or Gross
26 Lewdness or Indecent exposure. NRS 201.210 and NRS 201.220 state that any person
27 who commits a first offense is guilty of a gross misdemeanor. However, when a person
28

1 over the age of 18 commits the act in from of a child or vulnerable person he is guilty of
2 a D felony. This language specifically excludes persons under the age of 18 from being
3 convicted of a D felony, or a delinquent act for that matter, under these circumstances.
4 Additionally, the statute allows for a felony second offense whether committed by a
5 child or adult.
6

7 The Legislature did not use such language or distinctions when it drafted the
8 statute related to lewdness with a minor. In fact, the statute clearly states that a person
9 under 18 can be found **guilty**, a criminal term, for lewdness with a minor and never takes
10 steps to prohibit the Juvenile Court from certifying the child. Had the Legislature wanted
11 to carve out such a unique exception in which the Court could not certify the charge, it
12 would have expressly done so.
13
14

15 x. *The Legislature has clearly demonstrated that Lewdness with a Minor is*
16 *sufficiently serious that certification may be warranted.*

17 The Subject Minor's argument rests on the presumption that the Legislature did
18 not believe a juvenile committing the offense of lewdness with a minor would ever be
19 sufficiently serious to merit certification. This presumption is flawed.
20

21 First and foremost, the Legislature included Lewdness with a Child as one of the
22 sexual offenses for which a juvenile is required to register as a sex offender and is
23 subject to community notification unless waived. Furthermore, the Legislature requires
24 the juvenile to prove that he is not a danger to the community and should not be required
25 to register as an adult. (62F.225-624.340).
26

27 Second, the Legislature included Lewdness with a Child as one of the sexual
28 offenses for which the Court is required to notify the school of the adjudication and the

1 Court is required to place the juvenile on probation for at least three years. NRS
2 62F.100- NRS 62F.150).

3 Third, it is absurd to argue that a child may be certified for sex assault, sexually
4 motivated coercion, or even felony open and gross lewdness or indecent exposure but the
5 Legislature simply decided Lewdness with a Minor did not qualify.
6

7 Simply stated, given the existing juvenile law, the language used in the statute
8 itself, and the erroneous presumption of the Subject Minor, it is clear that the Legislature
9 did not expressly or implicitly prohibit certification when a person under 18 has
10 committed Lewdness with a Child under 14.
11

12 III.

13 CONCLUSION

14
15 For all of the foregoing reasons, the State respectfully deny Subject Minor's Motion
16 For The Court To Accept Jurisdiction Under NRS 62B.390(5)(c) Exceptional
17 Circumstances To Certification, Because The Offenses Charged May Only Be Prosecuted
18 As Delinquent Acts And Therefore Are Not Certifiable For Criminal Proceedings.
19

20 STEVEN B. WOLFSON
21 DISTRICT ATTORNEY

22 

23 TANNER SHARP
24 Chief Deputy District Attorney
25 Nevada Bar No.13018
26
27
28

1
2 **CERTIFICATE OF SERVICE**

3 I hereby certify that service of the above and foregoing **OPPOSITION TO**
4 **SUBJECT MINOR'S MOTION FOR THE COURT TO ACCEPT**
5 **JURISDICTION UNDER NRS 62B.390(5)(C), EXCEPTIONAL**
6 **CIRCUMSTANCES TO CERTIFICATION, BECAUSE THE OFFENSES**
7 **CHARGED MAY ONLY BE PROSECUTED AS DELINQUENT ACTS AND**
8 **THEREFORE ARE NOT CERTIFIABLE FOR CRIMINAL PROCEEDINGS.** was
9 made this 6th day of December 2021, via depositing a copy in the U.S. Mail and
10 electronic transmission to the following:
11
12

13
14 JONELL THOMAS, ESQ.

15
16 W. JEREMY STORMS, ESQ.

17 
18

19 Employee of the District Attorney's Office
20 Juvenile Division
21
22
23
24
25
26
27
28

EXHIBIT 1

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK
JUVENILE DIVISION

In the Matter of

BYRON WORTHEY-AVILA

Date of Birth: [REDACTED]

Years of Age: 18

Case No: ** NO J NUMBER **

Dept: Family

DETENTION HEARING/ RECOMMENDATION ORDER

Charges/ Allegations:

NOC 50975 - LEWDNESS WITH A CHILD UNDER (Felony)

NOC 50975 - LEWDNESS WITH A CHILD UNDER (Felony)

NOC 50975 - LEWDNESS WITH A CHILD UNDER (Felony)

NOC 50975 - LEWDNESS WITH A CHILD UNDER (Felony)

NOC 50983 - ATTEMPT LEWDNESS WITH A CHILD (Felony)

Date Detained: 08-26-2021 Date of Offense:

Current Status of Subject Minor:

☒

Person/ Agency Requesting:

JSO UNIT

Reason for Detainment:

☒ Danger to Self

☒ Danger to Community

☒ Safety Concern

1 Safety Concern:

2 Minor Appearing with: _____

3 Based on the affidavit and testimony heard in this
4 matter on the _____ day of _____, 2021, and good cause
5 appearing, it is hereby ORDERED that the above subject minor be:

6 _____ DETAINED _____ RELEASED on _____ EMP
7 _____ HMP
8 _____ House Arrest
9 _____ PRRP
10 _____ Other _____

11 Pending Further proceedings, and

12 _____ REVIEW _____ PLEA _____ R&D _____ CH
13 on the _____ day of _____ at _____ in # _____

14 FURTHER ORDERED: _____ PD _____ Conflict Counsel _____ Appointed

15 _____
16 _____
17 _____
18 _____
19 Dated this _____ day of _____, 20_____
20
21
22
23
24 _____
25 JUVENILE HEARING MASTER/JUDGE
26
27
28

RECEIVE Summary

Booking

Name of Minor **BYRON WORTHEY-AVILA**

Person ID # 3560349

J #

Date/Time of Booking 08-26-2021 06:02PM

Person ID Name Juvi ID	DOB/Age	Ref #	Charge(s)	Offenses Date/Time	Event #
---------------------------	---------	-------	-----------	-----------------------	---------

3560349 BYRON WORTHEY-AVILA10-21-2002

Offense Remarks

Offense Location:

CUSTODY INFORMATION

Received By: Howard Stone

Primary Prob/Parole Officer:

Secondary Prob/Parole Officer:

Custody Location: Booking

Date:08-26-2021 Time: 03:30PM

Custody Officer: G. Wilson

Transportation Officer: G. Wilson

Officer Agency:

Admitting Officer: Howard Stone

Intake Date:08-27-2021

Intake Time: 09:00AM

Assign Date:

Court Status:

Assign Date:

ALLEGED OFFENDER INFORMATION

Name: BYRON WORTHEY-AVILA

Race: White

Hispanic/Latino Origin: 1

DOB: [REDACTED]

Height: 5' 07" Weight: 140lbs

Hair: Brown Eyes: Brown

Age: 18

Sex: Male

Minor's Address: [REDACTED]
VEGAS, NV 89121151, LAS Lives With: CATHRINE GONZALES-
REYES Role: Girlfriend

Comments:

FAMILY INFORMATION

Family Address:
Phone Numbers:

NAME	ROLE	RACE	CARE- TAKER	ADULT RECORD	RESIDENCE
BYRON WORTHEY	Father		N	N	
DOB: [REDACTED] Age: 51					
CATHRINE GONZALES-REYES	Girlfriend		N	N	
DOB: [REDACTED] Age: 18					

DECLARATION OF ARREST

Event #: LLV210500104805

I.D. #: _____

True Name: BYRON JOSHUA WORTHEY-AVILIA Date of Arrest: 08/26/2021 Time of Arrest: 1545

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

Other Charges

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with the Las Vegas Metropolitan Police Department, Clark County, Nevada, being so employed for a period of 15 years.

That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or was committing) the offense(s) of Lewdness with a Child less than 14 / Attempt Lewdness with a Child less than 14 at the location of [REDACTED] St Las Vegas, Nevada 89122, and that the offense(s) occurred at approximately 2014 - 2020/2021, in the:

☒ County of Clark☐ City of Las Vegas

DETAILS FOR PROBABLE CAUSE:

Summary:

On 05/23/2021 Officers from Southeast Area Command responded to [REDACTED] St. Las Vegas, Nevada 89122. The following is the initial incident crime report taken by Officer L. Tlatenchi P# 18187.

On 05/23/2021 at approximately 2245 hours, I, Officer L. Tlatenchi P#18187 while operating as marked patrol unit 1H responded to a call for service regarding possible lewdness with a minor at [REDACTED] St LVN 89122. Details of the call stated the person reporting recently learned from their 14 year old daughter that her 18 year old step brother has been possibly sexually touching her.

On arrival I made contact with the person reporting who was identified as Worthey, Byron DOB [REDACTED]. Byron stated his 14 year old daughter disclosed to him that her stepbrother Worthey-Avila, Byron DOB [REDACTED] has been rubbing his penis on her thighs while she sleeps for the past 7 years and it last occurred in the beginning of 2020.

I spoke with the 14 year old who was identified as W [REDACTED], Z [REDACTED] DOB [REDACTED] Z [REDACTED] stated she remembers her step brother Byron began rubbing his penis on her thighs when she was 7 years old. Z [REDACTED] said Byron would do it as

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are misdemeanor).

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#

CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

often as he could. Z████ would wake up with Byron on top of her with his pants down and his penis exposed. Z████ would pretend to be asleep during the acts because she was scared and didn't know what to do. Byron would rub his penis on her thighs until he ejaculated on the bed sheets and then would get back up and leave to his room. Z████ mentioned she never felt any type of penetration. According to Z████ the acts stopped when she told Byron she had a boyfriend. Byron never threatened Z████ in any manner and Z████ would not tell her parents because she was afraid. The PR Byron also mentioned his 5 year old daughter W████, A████ DOB █████ was possibly inappropriately touched as well. Officer could not interview A████ at the moment due to her age.

Step brother Byron was gone on officers arrival. Officers contacted SA detective Wilson P#9177 and also contacted CPS. CPS# 1976183

Due to the above facts and circumstances this incident crime report was created for Lewdness with a child under 14.

Byron Jr. is the suspect, but his family calls him Joshua his middle name. Byron Jr. will be referred to as Joshua in this report.

Z████ W████ Interview:

On 06/04/2021 Matt Theriault interviewed Z████ W████, DOB █████ 007, at the Southern Nevada Children's Advocacy Center, 701 N. Pecos Road Las Vegas, Nevada 89101. The interview was audio and video recorded. The following is a summary of the interview and not verbatim, for the complete interview refer to the transcript.

Matt introduces himself to Z████. Zyrille likes to sing, dance, and watch anime. Z████ listens to Korean, Japanese, and English music. Z████ plays Call of Duty on the PC or PS4. Z████ enjoys playing volleyball at her church. Z████ watches anime on television and reading manga. Z████ wanted to learn Korean and Japanese so she began to watch anime. Z████ likes going to Lake Havasu to swim. Z████ is 14 years old and is in 8th grade. Z████ took pre-algebra, History, and English. Z████ stayed at home the whole school year.

Matt goes over the room with Z████. Matt then goes over the rules with Z████ Z████ agrees to follow the rules and

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name



Declarant's Signature

9177

P#

CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

to tell the truth. Z████ then told Matt about her day from when she first woke up until she came to the interview. Z████ then told Matt about everyone she lives with. Matt goes over the likes and dislikes of the people she lives with. Z████ came to talk to Matt because Z████'s older brother, Joshua Worthey-Avila, tried to

Do it with me." The first incident occurred when she was 7 years old. It occurred in the residence she lives in now. Z████ was sleeping and Joshua was on top of her and would not get off. Z████ describes the room to Matt. This occurred sometime in the morning. Z████ is not sure what she was wearing. Z████ was on her stomach with her shorts and underwear off. Joshua's shorts were off. Joshua was moving up and down on Z████. Z████ felt Joshua's, "Dick," on her body (Lewdness with a Child less than 14 Count – 1). "Dick" is Joshua's private part used to pee. Z████ felt Joshua's penis on her bare skin. Joshua got up when there was white stuff all over Z████. Z████ got up and went to the bathroom to clean herself.

The last time something occurred was in the beginning of 2020. Z████ was not in school at the time. Joshua took off Z████'s shorts. Z████ was on her back in her bedroom. Z████ pushed Joshua in the chest to get him off of her (Attempt Lewdness with a Child less than 14 – Count 1). Z████ got up and locked herself in a different room. Everyone was sleeping and Joshua told Z████ to get on the floor. Z████ told Joshua to do it himself. Joshua pulled down Z████'s shorts. Z████ pulled her shorts up and went back to bed.

Z████ was in her younger brother's bedroom. Z████ was on the bottom bunk bed. Joshua pushed Z████ down on the bed. Z████ was 9 or 10 years old. Z████ was on her back and Joshua pulled down Z████'s shorts. Joshua had his shorts off, and he put his penis in between Z████'s thighs. Z████ knew Joshua was done when white stuff came out (Lewdness with a Child less than 14 Count – 2).

All the other times Joshua did this to Z████ he dd the same thing. Z████ is not sure how many times his occurred but it was often.

Z████ was laying on the couch and Joshua put on Z████'s favorite anime. Joshua laid down behind Z████ on the couch. Joshua pulled down Z████'s shorts. Joshua pulled down his shorts a little bit. Joshua put his penis in between

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#

CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

Z█'s thighs. Joshua stopped when there was white stuff that came out and was all over Z█ (Lewdness with a Child less than 14 – Count 3).

Matt goes over body safety with Z█ and she disclosed that Joshua gabs Z█'s breasts. Joshua will grab Z█'s breasts throughout the day. It occurs somedays not all the time. Joshua grabs Z█'s breasts over her clothes with his hands.

Joshua's penis is weird shaped, it looks like a rod.

Z█ told Matt that Joshua touched, T█ (girl in Z█'s church (O█s)) and A█, Z█'s sister. Z█ told her parents, Uncle (PJ Ramero), and her friend A█ in R█. Z█ told A█ a couple months ago about Joshua. Z█ is scared of Joshua.

Z█ was re-interviewed by Matt Theriault on 06/30/2021, reference LVMPD event LLV210600083712. This event Z█ discloses information about her uncle, Charles Ariston. All transcripts and summations can be found under this event number, LLV210600083712.

A█ W█ Interview:

On 06/04/2021 Matt Theriault interviewed A█ W█, █, at the Southern Nevada Children's Advocacy Center, 701 N. Pecos Road Las Vegas, Nevada 89101. The interview was audio and video recorded. The following is a summary of the interview and not verbatim, for the complete interview refer to the transcript.

Matt introduces himself to A█. Adrielle likes to play with her toys or go outside. A█ likes to play with her cousins or baby cousins. A█ plays cards with her cousins. A█ plays Minecraft on the PS4. A█ plays survival mode on Minecraft. A█ likes to watch action movies with superhero's in them. A█ likes to play with her friends outside. A█ enjoys eating spaghetti made by her grandparents. A█ is 6 years old and just finished 1st grade. A█ likes Math class in school the best. A█ likes Art and P.E.

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

G. Wilson
Declarant's Signature

9177
P#

CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

Matt goes over the room with A[REDACTED]. Matt then goes over and practices the rules with A[REDACTED]. A[REDACTED] understands the rules and agrees to follow the rules. A[REDACTED] told Matt about her day prior to coming in for the interview. Matt then goes over everyone A[REDACTED] lives with. A[REDACTED] told Matt what she likes and dislikes about her family.

A[REDACTED] is unsure why she is talking with Matt. A[REDACTED] would tell her mom or dad if something happened that she did not like. Z[REDACTED] told their preacher about what her brother, Joshua, did. A[REDACTED] is scared of strangers. A[REDACTED]s mom and dad have talked to her about parts of her body. A[REDACTED] uses her "peck peck" to pee. No one should touch her buttocks. No one has done anything to A[REDACTED]s buttocks.

Joshua did something to A[REDACTED]s "peck peck." A[REDACTED] does not want to tell Matt about what Joshua did to her vagina. Matt asked A[REDACTED] what Joshua used to touch her vagina and A[REDACTED] does not answer Matt. The incident occurred at her grandmother's residence, in Joshua's room. A[REDACTED] was on the bed. A[REDACTED]s dress was on but some clothes were off. Matt again asked A[REDACTED] what Joshua did and she does not answer Matt. Joshua used a part of his body. Matt asked A[REDACTED] what Joshua uses his body part for, but A[REDACTED] does not answer Matt.

A[REDACTED] is not sure if Joshua has touched anyone else. Joshua asked A[REDACTED] to keep a secret. Joshua told A[REDACTED] to be quiet.

Byron Worthey Interview:

On 06/04/2021 I, Detective Wilson P# 9177, conducted a digitally recorded statement with Byron Worthey, [REDACTED], at the Southern Nevada Children's Advocacy Center, 701 N. Pecos Road Las Vegas, Nevada 89101. The following is a summary of the interview and not verbatim, for the complete interview refer to the transcript.

Byron told me his daughters disclosed what occurred to them during a Saturday during church activities. Byron got the information from his wife. Byron's wife told him what occurred, and Byron left the residence for a while because he was extremely upset. Byron needed to get the police involved because he was not sure how to deal with the situation. Byron talked about the options with his wife, and they decided to call 311 and have the police come and take a report. Byron had a medical issue and ended up in the hospital. Byron left the hospital on Sunday and went home to deal with the

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name


Declarant's Signature

P#

CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

situation. Byron changed the code, locks, and made sure the cameras were operating to keep Joshua out of the residence.

Byron's wife told him that his daughter's Z [REDACTED] and A [REDACTED] disclosed to his co-preacher Patrick Ramero ([REDACTED] 6838). Byron did not get many details from his wife because he did not want to know them. Byron spoke with Joshua's girlfriend but then she blocked him. Byron also spoke with Joshua's half-brother, Nathan, who denied knowing anything. Byron believes his wife or her family is hiding Joshua. Byron did not have Joshua's social media handles when I spoke with him. Byron stated Joshua left his cell phone in the residence and that he would find it and let me search it. Byron did not have any contact information to A [REDACTED], a girl that lives in the neighborhood that is a disclosure witness that Z [REDACTED] disclosed to. Byron was unaware that "T [REDACTED]," a girl that goes to Byron's church is another possible victim of Joshua. T [REDACTED]'s mother's name is Nina ([REDACTED] 2084).

Joshua made two attempts to commit suicide. Joshua spent 9 months in a mental facility.

Hyacinth Worthey Interview:

On 06/18/2021 I, Detective Wilson P# 9177, conducted a digitally recorded statement with Hyacinth Worthey, [REDACTED], at [REDACTED] t. Las Vegas, Nevada 89122. The following is a summary of the interview and not verbatim, for the complete interview refer to the transcript.

Hyacinth talked to their minister Patrick Ramiro, that there was something bothering Z [REDACTED]. Z [REDACTED] told Hyacinth she woke up with Joshua on top of her. Z [REDACTED] is not sure if there was penetration because she was half asleep. Joshua would push for Z [REDACTED] to have sex. Hyacinth asked Z [REDACTED] how many times Joshua did something like this, and Z [REDACTED] could not count the number of times something occurred between her and Joshua. Hyacinth asked if there was any penetration and Z [REDACTED] told Hyacinth, "No."

Patrick Ramiro then talked with Hyacinth again and told her there was more to the story. Z [REDACTED] did not want to tell Hyacinth about Charles Ariston, JR, Hyacinth's brother. Charles made Z [REDACTED] go to the upstairs den, in the residence and gave his cell phone to C [REDACTED]. Charles made Z [REDACTED] give him a blow job.

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name


Declarant's Signature

P#

CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

Hyacinth asked C[REDACTED] if anything happened between her and Joshua. Joshua would try several times to get on top of C[REDACTED], but she would fight him back and he never penetrated C[REDACTED]. Joshua would physically hit C[REDACTED] because she did not comply with what he was trying to do.

C[REDACTED] told her parent the first time Joshua tried something was when they lived at Sienna Suites, 6555 Boulder Highway Las Vegas, Nevada 8912. The family lived at that address approximately 5 years ago.

C[REDACTED] W[REDACTED] Interview:

On 06/30/2021, Matt Theriault interviewed C[REDACTED] W[REDACTED], [REDACTED], at the Southern Nevada Children's Advocacy Center, 701 N. Pecos Road Las Vegas, Nevada 89101. The interview was audio and video recorded. The following is a summary of the interview and not verbatim, for the complete interview refer to the transcript.

Matt introduces himself to C[REDACTED]. C[REDACTED] likes to draw, poem books, and anime. C[REDACTED] likes K-pop and heavy metal music. C[REDACTED] uses her phone and the program Pandora to listen to music. C[REDACTED] also enjoys playing games on her phone. C[REDACTED] favorite drawing was of her favorite anime characters. C[REDACTED] is 13 years old and was in 6th grade.

Matt told C[REDACTED] about the room they are in. Matt goes over the rules with C[REDACTED]. C[REDACTED] understood the rules and agreed to follow the rules. C[REDACTED] then told Matt about her day from when she woke up until she came in for the interview. Matt asked C[REDACTED] who she lives with. C[REDACTED] then told Matt about all the people she lives with and likes and dislikes about her family.

Matt asked C[REDACTED] about a time she did not feel safe. C[REDACTED] said Joshua, brother, touched C[REDACTED] inappropriately. C[REDACTED] said Joshua first touched her when she was 10 years old up until she was 13. Joshua would touch C[REDACTED] on her body inappropriately.

C[REDACTED] was in her family's apartment, Sienna Suites, 6555 Boulder Highway Las Vegas, NV 89122. It was a 2-bedroom apartment and it occurred in the bedroom shared by all the siblings. C[REDACTED] was wearing her pajamas. Joshua tried to pull down C[REDACTED]'s shorts. C[REDACTED] got up and locked herself in the bathroom. Joshua thought C[REDACTED] was sleeping and Joshua

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#

CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

would pull on C's shorts. Joshua would also touch C's chest (Lewdness with a Child Less than 14 – Count 4). It would occur at night in the bedroom she shared with all her siblings.

While at their grandmother's residence, current address, this incident occurred prior to the Sienna Suites incident. C thinks she was in the 3rd grade. C and Joshua were in the living room. C became uncomfortable and locked herself upstairs in the bedroom. Joshua touched C's waist with his hands. Joshua's hands were moving on C's hips making her uncomfortable. Joshua then touched C's private spot (Lewdness with a Child less than 14 – Count 5. C's private spot is used to pee. Joshua touched C's private spot under her clothes, skin to skin contact. C was uncomfortable. Joshua's hand was moving on C's private spot. The incident stopped when their mother called for Joshua.

C stated there were several other incidents where Joshua would try and touch and pull-down C's underwear. C would get up and lock herself in a bathroom or bedroom. C is not sure how many times Joshua touched her, but it occurred several times.

Joshua would hit C because he was always angry.

Patrick Ramiro Interview:

ON 07/01/2021, I, Detective Wilson P# 9177, conducted a telephone interview with Patrick Ramiro, Ramiro agrees and understands to continue knowing with the interview being recorded. Ramiro is a pastor at the church where Z, C, and A W attend. The following is a summary of the interview and not verbatim, for the complete interview refer to the transcript.

On a Saturday after bible study Ramiro asked Z how things were going with her boyfriend, Israel. Ramiro asked if Z was still talking to Israel, and Z told Ramiro she was not talking to Israel but had to pretend like she was. Ramiro asked what Z meant by this and Z stated if she does not act like she is still talking to Israel, then Joshua, her brother, would get mad at Z. Again, Ramiro was puzzled by this comment, so asked Z to explain. Z stated Joshua would not leave her alone. When Z told Joshua she was with Israel, Joshua would leave Z alone. When Z was not with Israel, Joshua would touch Z's breasts and buttocks. Joshua also tries to

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#

CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

rape Z [REDACTED]

Ramiro asked Z [REDACTED] to elaborate and when Z [REDACTED] was 7 years old until December of 2020, Joshua would get on top of Z [REDACTED] and have sex with her. If Z [REDACTED] pushed Joshua off of her then Joshua would hit or kick Z [REDACTED] forcing her to comply with the sex. There was an incident when Joshua punched Z [REDACTED] in the nose.

Z [REDACTED] was playing the piano while Ramiro was instructing her. Z [REDACTED] told Ramiro she wished she did not say anything. Ramiro then asked Z [REDACTED] what would be happening if you did not say something, and Z [REDACTED] acknowledged that Joshua would be trying to rape Z [REDACTED] every day.

Z [REDACTED] is not sure if Joshua penetrated Z [REDACTED] but has tried multiple time to have sex with Z [REDACTED]

Zyrelle disclosed to Ramiro there was a second suspect, her uncle Charles Ariston (JR). Ramiro again questioned Z [REDACTED] about Charles. There were a couple of times when Charles made Z [REDACTED] suck his penis. This occurred when Z [REDACTED] was 9 or 10 years old and occurred in Charles' bedroom. After her disclosure to Ramiro Z [REDACTED] told her mother what occurred between her and Charles and Joshua.

After Z [REDACTED] told Ramiro about the incidents, Ramiro went and asked C [REDACTED] if Joshua had every done anything to her. C [REDACTED] told Ramiro, Joshua never touched her, and she did not want to talk about anything. Ramiro asked C [REDACTED] again, at a later time, if Joshua had ever done anything inappropriate with her. Ramiro confronted C [REDACTED] telling her she was not telling the truth. C [REDACTED] told Ramiro she did not want to be involved in what was going on with Z [REDACTED]

Ramiro got up to leave and C [REDACTED] told Ramiro to wait and cry. Ever since C [REDACTED] was a child, Joshua would try and have sex with C [REDACTED] and slap her. Joshua has tried to have sex with C [REDACTED] more times than her sisters combined. C [REDACTED] would be alone in a room and Joshua would come in and attempt to put his penis into C [REDACTED]'s vagina. C [REDACTED] has slapped Joshua back and run out of the room. C [REDACTED] has not said anything before this because she is scared of Joshua. C [REDACTED] stated there was an incident when Joshua pulled a knife out on C [REDACTED] while they were in the kitchen and told her he was going to kill her. C [REDACTED] did not want to tell her parents, so Ramiro told them.

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name


Declarant's Signature

P#

CONTINUATION REPORT

Event #: LLV210500104805

ID#: _____

After Ramiro's conversation with C [REDACTED], he called A [REDACTED] over and asked her if there were any other incidents that occurred with Joshua besides the first one. A [REDACTED] promised to tell Ramiro the truth. A [REDACTED] told Ramiro her parents told her not to talk about the incident that occurred between her and Joshua before. Ramiro asked A [REDACTED] if Joshua touched her after the first incident, and A [REDACTED] responded, "Yes." Ramiro then asked A [REDACTED] what he did, and A [REDACTED] told Ramiro, Joshua goes on top of A [REDACTED] and touches me right here. A [REDACTED] pointed to her vagina. The last incident occurred when A [REDACTED] was 6 years old. Joshua tried to touch A [REDACTED] all the time. Adrielle is scared because the police were going to her residence to get Joshua.

Ramiro does not know specific details about the incident between A [REDACTED] and Joshua because he was in California when the incident occurred.

Byron Joshua taken into Custody:

On August 26, 2021, I was advised Joshua was possible at a 7eleven located near Indios and Boulder Highway. I along with Detective K. Kirkegard, P# 12919 arrived at 7eleven and observed a male matching the photograph provided by Joshua's father. Detectives approached the male and he verbally identified himself as Bryon Joshua. He was taken into custody by detectives and transported to LVMPD Headquarters for further questions.

Joshua's Interview:

I conducted an interview with Joshua and read him his Miranda Rights. Joshua stated he understood his rights. Joshua disclosed the reason the incident occurred with Z [REDACTED] was because he was a Victim of sexual assault as well. Joshua disclosed there were several incidents that occurred with his uncle Charles Ariston. When I asked Joshua to tell me about the incidents that occurred with Z [REDACTED], Joshua asked for a lawyer.

Declarant must sign all page(s)
with an original signature.

G. WILSON P# 9177

Print Declarant's Name

Declarant's Signature

P#



Arrest / Detective Report

Administrative

Location 3537 GLOUCESTER GATE ST LAS VEGAS, NV 89122 Sector /Beat J3
Occurred On (Date / Time) Saturday 2/1/2020 5:00:00 AM Or Between (Date / Time)
Reporting Officer L18187T - Tlatenchi, Luis Reported On 5/22/2021
Entered By L18187T - Tlatenchi, Luis Entered On 6/18/2021 8:37:42 PM
Supervisor 14101 - Necas, Christopher Follow Up Pro Squad SE 14 Follow Up
Jurisdiction Clark County Report Type Disposition Active
Route To: Related Cases
Connecting Reports Body Camera Video
Voluntary Statement
Victim Information Guide

Assisting Officers:
J18170S - Santacruz, John Officer

Offenses

Lewdness W/Child Under14, (1st)(F)-NRS 201.230.2
Completed Yes Hate/Bias None (No Bias)
Entry Premises Entered Type Security Domestic Violence No
Weapons Personal Weapons (Hands, Feet, Teeth, etc.) Location Type Residence/Home Tools
Criminal Activities None/Unknown

Victims

Name: W [REDACTED], Z [REDACTED]
Victim Type Individual Written Statement Yes Can ID Suspect
Victim of 50975 - Lewdness W/Child Under14, (1st)(F)-NRS 201.230.2 Domestic Battery No
SSN DOB [REDACTED] Age 12 Sex Female Race Asian, Indian, Samoan, Pacific Islander Ethnicity Not Hispanic or Latino
Height Weight Hair Color Eye Color
Employer/School Work Schedule
Occupation/Grade DL State DL Country Tourist Departure Date
Resident Resident Injury Weapons Personal Weapons (Hands, Feet, Teeth, etc.)
Injury None Observed
Addresses
Residence [REDACTED] 89122 CC United Arab Emirates

Phones

Email

Offender Relationships
S - Worthey-Avila, Byron Joshua Victim Was Stepsibling (Stepbrother or Stepsister)

Domestic Violence Information
Relationship to Suspect Primary Aggressor Determined
Intimate Relationship Drug/Alcohol Involvement
Voluntary Statement DV Information Provided
Injury Severity Medical Attention
Photos Taken

Notes:

Name: W [REDACTED], A [REDACTED]

Victim Type Individual Written Statement No Can ID Suspect
Victim of 50975 - Lewdness W/Child Under14, (1st)(F)-NRS 201.230.2 Domestic Battery No
SSN DOB [REDACTED] Age 4 Sex Female Race Asian, Ethnicity Not
6/19/2021 3:37 PM LLV210500104805 Page 1 of 5

000166

Indian,
Samoan,
Pacific
Islander

Hispanic
or Latino

Height Weight Hair Color Eye Color
Employer/School
Occupation/Grade Work Schedule
DLN DL State DL Country
Resident Resident Tourist Departure Date
Injury None Observed Injury Weapons Personal Weapons (Hands, Feet, Teeth, etc.)

Addresses
Residence NV CC United States

Phones

Email

Offender Relationships
S - Worthey-Avila, Byron Joshua Victim Was Stepsibling
(Stepbrother or Stepsister)

Domestic Violence Information
Relationship to Suspect Primary Aggressor Determined
Intimate Relationship Drug/Alcohol Involvement
Voluntary Statement DV Information Provided
Injury Severity Medical Attention
Photos Taken

Notes:

Name: w. c.

Victim Type Individual Written Statement No
Victim of 50975 - Lewdness W/Child Under14, (1st)(F)-NRS 201.230.2 Can ID Suspect
Domestic Battery No
SSN DOB Age 11 Sex Female Race Asian,
Indian,
Samoan,
Pacific
Islander Ethnicity Not
Hispanic
or Latino

Height Weight Hair Color Eye Color
Employer/School
Occupation/Grade Work Schedule
DLN DL State DL Country
Resident Resident Tourist Departure Date
Injury None Observed Injury Weapons None

Addresses
Residence 89122 Clark United States

Phones

Email

Offender Relationships
S - Worthey-Avila, Byron Joshua Victim Was Sibling (Brother or
Sister)

Domestic Violence Information
Relationship to Suspect Primary Aggressor Determined
Intimate Relationship Drug/Alcohol Involvement
Voluntary Statement DV Information Provided
Injury Severity Medical Attention
Photos Taken

Notes:

Suspect

Name: Worthey-Avila, Byron Joshua

Written Stmt. No Alerts Non-English Language

Aliases
Moniker

Scope ID [REDACTED] Age 17 SSN [REDACTED]
Race White Ethnicity Not Hispanic or Latino Build [REDACTED]
Sex Male Height 5' 10" Weight 145 Hair Color Brown
Employer/School Occupation/Grade
Hair Length
Complexion
Appearance
Speech manner
DLN
Resident Resident DL State Tourist Departure DL Country
Habitual Offender Status
Primary Means of Attack/Weapon MO Factors
Employer/School Weapon Features
Occupation/Grade

Scars, Marks and Tattoos

Addresses
Residence [REDACTED] 89122 United States

Phones

Domestic Violence Information

TPO in Effect
Injury Severity
Photos Taken
Drug/Alcohol Involvement
Medical Attention
Suspect Demeanor
Voluntary Statement
DV Info provided

Notes:

Arrestees

Witnesses

Other Entities

Name: Legal Guardian WORTHEY, BYRON

Written Statement No Can ID Suspect Yes
SSN [REDACTED] DOB [REDACTED] Age 50 Race White Ethnicity Not Hispanic or Latino
Sex Male Height 5' 10" Weight 250 Hair Color Brown Eye Color Blue
Employer/School Occupation/Grade
Tourist Resident Departure Date
DLN [REDACTED] DL State Nevada DL Country United States

Addresses

Residence [REDACTED], 89122 Clark United States

Phones

Cellular [REDACTED]

Missing Person / Runaway

Physical Appearance
Skin Complexion
Hair Length
Speech Characteristics
Injury or Condition
Medical Info
Headwear Color
Disappearance Type
Responsible Adult
Last seen by
Last seen wearing
Footprints Available
Photo Attached
Physical Build
Eye Description
Hair Style
Speech Manner
Distinctive Jewelry
Headwear Color
Teeth Description
Facial Hair
Dominate Hand
Blood Type
Probable Destination
How long at present address
POB
Last seen Date/Time
Fingerprints Available
Dental Available
Circumcised
Missing Before
Relationship to MP
Last seen where
X-rays Available
Corrected Vision

Scars, Marks, Tattoos:

Dead Body Report Information

Coroner/Physician
Coroner Case #
Case of Death
Public Administrator
Facility Name
Photos Taken
Coroner/Physician Name
Coroner Seal #
Date/Time Pronounced
Hospital/Mortuary
Attendant Name

Synopsis

Investigation

Scene

Body

Evidence at Scene

Notes:

Father of all children

Name: Legal Guardian Worthey, Hyacinth

Written Statement No

Can ID Suspect Yes

SSN [REDACTED] DOB [REDACTED] Age 32 Race Asian, Indian, Samoan, Pacific Islander Ethnicity Not Hispanic or Latino
Sex Female Height 5' 0" Weight 150 Hair Color Black Eye Color Brown
Employer/School Occupation/Grade
Tourist Resident Departure Date
DLN DL State DL Country

Addresses

Residence [REDACTED] AS VEGAS, NV 89122 Clark United States

Phones

Cellular [REDACTED] 01

Missing Person / Runaway

Physical Appearance Physical Build Headwear Color
Skin Complexion Eye Description Teeth Description
Hair Length Hair Style Facial Hair
Speech Characteristics Speech Manner Dominate Hand
Injury or Condition Distinctive Jewelry
Medical Info Blood Type
Headwear Color Probable Destination
Disappearance Type How long at present address
Responsible Adult Relationship to MP POB
Last seen by Last seen where Last seen Date/Time
Last seen wearing Fingerprints Available
Footprints Available Dental Available
Photo Attached X-rays Available Circumcised
Corrected Vision

Scars, Marks, Tattoos:

Dead Body Report Information

Coroner/Physician Coroner/Physician Name
Coroner Case # Coroner Seal #
Case of Death Date/Time Pronounced
Public Administrator Hospital/Mortuary
Facility Name Attendant Name
Photos Taken

Synopsis

Investigation

Scene

Body

Evidence at Scene

Notes:

Mother of Victim

Properties

Solvability

Modus Operandi

MO General Occupied? Yes General Premise Single Family Residence MO Against Property Entry Point Entry/Attempt Method Safe Entry Victim Location Maid	Surrounding Area Specific Premise Exit Point Entry Tool Suspect Actions Electronic Locks Inspectress	Middle of Block Room Entry Location Vehicle Entry Additional Factors Video Surveillance
MO Against People Victim-Suspect Relationship Victim Condition Under 18 Suspect Pretended to Be Sexual Acts Ejaculated Fondled/Sexual Abuse	Pre-Incident Contact Suspect Solicited/Offered Suspect Actions Vehicle Involvement	

Narrative

On 05/23/2021 at approximately 2245 hours, I, Officer L. Tlatenchi P#18187 while operating as marked patrol unit 1H responded to a call for service regarding possible lewdness with a minor at [REDACTED] LVN 89122. Details of the call stated the person reporting recently learned from their 14 year old daughter that her 18 year old step brother has been possibly sexually touching her.

On arrival I made contact with the person reporting who was identified as Worthey, Byron DOB [REDACTED]. Byron stated his 14 year old daughter disclosed to him that her stepbrother Worthey-Avila, Byron DOB [REDACTED] has been rubbing his penis on her thighs while she sleeps for the past 7 years and it last occurred in the beginning of 2020.

I spoke with the 14 year old who was identified as Worthey, Zyrille DOB [REDACTED]. Zyrille stated she remembers her step brother Byron began rubbing his penis on her thighs when she was 7 years old. Zyrille said Byron would do it as often as he could. Zyrille would wake up with Byron on top of her with his pants down and his penis exposed. Zyrille would pretend to be asleep during the acts because she was scared and didn't know what to do. Byron would rub his penis on her thighs until he ejaculated on the bed sheets and then would get back up and leave to his room. Zyrille mentioned she never felt any type of penetration. According to Zyrille the acts stopped when she told Byron she had a boyfriend. Byron never threatened Zyrille in any manner and Zyrille would not tell her parents because she was afraid.

The PR Byron also mentioned his 5 year old daughter Worthey, Adrielle DOB [REDACTED] was possibly inappropriately touched as well. Officer could not interview Adrielle at the moment due to her age.

Step brother Byron was gone on officers arrival. Officers contacted SA detective Wilson P#9177 and also contacted CPS. CPS# 1976183

Due to the above facts and circumstances this incident crime report was created for Lewdness with a child under 14.

*****05/27/2021 Det. Wilson P#
9177*****

Contact information updated with father's information.

*****06/18/2021 Det. Wilson P#
9177*****

Contact information with mother added. Victim Chloe Worthey has been added under the Victim tab. Chloe is disclosing Suspect touched her inappropriately.

Patrol Follow-Up
Zyrille completed a voluntary statement and a VIG was issued.

REQUEST FOR PROSECUTION 1(A)

PAGE 1

AGENCY CASE NO: **LLV210500104805**

SUBMITTING AGENCY

AGENCY: LVMPD	PHONE: 828-3763	AGENCY NOTES:
DETAIL: Sex Crimes	FAX #: _____	
OFFICER: Detective Wilson	P#: 9177	

DEFENDANT INFORMATION

▲ A	NAME: Worthey-Avila, Byron	ID No: _____	ARR _____
	AKA: _____		PAD _____
	<input type="checkbox"/> AFFIDAVIT FOR WARRANT <input checked="" type="checkbox"/> DECLARATION OF ARREST <input type="checkbox"/> REQUEST SUMMONS <input type="checkbox"/> SCOPE <input type="checkbox"/> FBI <input type="checkbox"/> CII		RET _____

▲	NAME: _____	ID No: _____	ARR _____
	AKA: _____		PAD _____
	<input type="checkbox"/> AFFIDAVIT FOR WARRANT <input type="checkbox"/> DECLARATION OF ARREST <input type="checkbox"/> REQUEST SUMMONS <input type="checkbox"/> SCOPE <input type="checkbox"/> FBI <input type="checkbox"/> CII		RET _____

DA OFFICE USE ONLY

CASE NO. _____	TRACK _____	ATTY _____	DATE _____
----------------	-------------	------------	------------

CHARGE INFORMATION

SEQ NO.	▲	CHARGES	NRS	EVENT NO.	DATE / TIME	LOCATION / ZIP	VICTIM
A	1	LEWDNESS WITH A CHILD LESS THAN 14 <input checked="" type="checkbox"/> F <input type="checkbox"/> GM <input type="checkbox"/> M	201.230.2	210500104805	2014	[REDACTED] LAS VEGAS, NEVADA 89122	W [REDACTED], Z [REDACTED]
ATTY NOTES:							
A	2	LEWDNESS WITH A CHILD LESS THAN 14 (2 COUNTS) <input checked="" type="checkbox"/> F <input type="checkbox"/> GM <input type="checkbox"/> M	201.230.2	210500104805	2016-2018	[REDACTED] LAS VEGAS, NV 89122	W [REDACTED], Z [REDACTED]
ATTY NOTES:							
A	3	ATTEMPT LEWDNESS BY PERSON UNDER 18 WITH CHILD LESS THAN 14 <input checked="" type="checkbox"/> F <input type="checkbox"/> GM <input type="checkbox"/> M	201.230.1	210500104805	2020	3 [REDACTED] LAS VEGAS, NEVADA 89122	W [REDACTED], Z [REDACTED]
ATTY NOTES:							
A	4	LEWDNESS WITH CHILD LESS THAN 14 <input checked="" type="checkbox"/> F <input type="checkbox"/> GM <input type="checkbox"/> M	201.230.2	210500104805	2016	[REDACTED] LAS VEGAS, NEVADA 89122	W [REDACTED], C [REDACTED]
ATTY NOTES:							

WITNESS LIST

AGENCY CASE NO: LLV210500104805

CODES		ID / P# / ADDRESS	PHONE #s
Wit Codes O	NAME	Detective Wilson	ID/P No. 9177
	SSN		DOB
	RES		Residence 828-3763
	EMPL	LVMPD - Sex Crimes	Employment
	Street 1	City	State
	400 S. MLK Blvd.	LV	NV
	Street 1	City	State
			ZIP 89106
			FAX
			Email Address G9177W@LVMPD.COM
Wit Codes V	NAME	Z [REDACTED] W [REDACTED]	ID/P No.
	SSN		DOB
	RES		Residence
	EMPL		Employment
	Street 1	City	State
		LV	NV
	Street 1	City	State
			ZIP 89122
			FAX
			Email Address
Wit Codes V	NAME	C [REDACTED] W [REDACTED]	ID/P No.
	SSN		DOB
	RES		Residence
	EMPL		Employment
	Street 1	City	State
		LV	NV
	Street 1	City	State
			ZIP 89122
			FAX
			Email Address
Wit Codes VR	NAME	A [REDACTED] W [REDACTED]	ID/P No.
	SSN		DOB
	RES		Residence
	EMPL		Employment
	Street 1	City	State
		LV	NV
	Street 1	City	State
			ZIP 89122
			FAX
			Email Address

Witness Codes:	V: Victim	VR: Victim Related	O: Officer
OOS: Out-Of-State	H: Hostile	DR: Defendant Related	M: Minor

WITNESS LIST CONTINUATION

AGENCY CASE NO.

LLV210500104805

CODES		ID / P# / ADDRESS	PHONE #s
Wit Codes	VR	NAME <u>Byron Worthey</u>	ID/P No. <u>[REDACTED] 512</u>
		SSN <u>[REDACTED]</u>	DOB <u>[REDACTED]</u>
		RES <u>[REDACTED] LV</u>	NV <u>89122</u>
		Street 1 <u>[REDACTED]</u> City <u>LV</u> State <u>[REDACTED]</u> ZIP <u>[REDACTED]</u>	Employment <u>[REDACTED]</u>
		EMPL <u>[REDACTED]</u>	Email Address <u>[REDACTED]</u>
		Street 1 <u>[REDACTED]</u> City <u>[REDACTED]</u> State <u>[REDACTED]</u> ZIP <u>[REDACTED]</u> FAX <u>[REDACTED]</u>	
Wit Codes	VR	NAME <u>Hyacinth Worthey</u>	ID/P No. <u>[REDACTED] 401</u>
		SSN <u>[REDACTED]</u>	DOB <u>[REDACTED]</u>
		RES <u>[REDACTED] LV</u>	NV <u>89122</u>
		Street 1 <u>[REDACTED]</u> City <u>LV</u> State <u>[REDACTED]</u> ZIP <u>[REDACTED]</u>	Employment <u>[REDACTED]</u>
		EMPL <u>[REDACTED]</u>	Email Address <u>[REDACTED]</u>
		Street 1 <u>[REDACTED]</u> City <u>[REDACTED]</u> State <u>[REDACTED]</u> ZIP <u>[REDACTED]</u> FAX <u>[REDACTED]</u>	
Wit Codes	VR	NAME <u>Patrick Ramiro</u>	ID/P No. <u>[REDACTED] 5838</u>
		SSN <u>[REDACTED]</u>	DOB <u>[REDACTED]</u>
		RES <u>5863 E. Owens LV</u>	NV <u>89110</u>
		Street 1 <u>5863 E. Owens</u> City <u>LV</u> State <u>[REDACTED]</u> ZIP <u>[REDACTED]</u>	Employment <u>[REDACTED]</u>
		EMPL <u>[REDACTED]</u>	Email Address <u>[REDACTED]</u>
		Street 1 <u>[REDACTED]</u> City <u>[REDACTED]</u> State <u>[REDACTED]</u> ZIP <u>[REDACTED]</u> FAX <u>[REDACTED]</u>	
Wit Codes	VR	NAME <u>Matt Theriault</u>	ID/P No. <u>[REDACTED]</u>
		SSN <u>[REDACTED]</u>	DOB <u>[REDACTED]</u>
		RES <u>[REDACTED]</u>	ZIP <u>[REDACTED]</u>
		Street 1 <u>[REDACTED]</u> City <u>[REDACTED]</u> State <u>[REDACTED]</u>	Employment <u>702-455-5371</u>
		EMPL <u>Southern Nevada Children's Advocacy Center</u>	Email Address <u>therm@clarkcountynv.gov</u>
		701 N. Pecos Rd. LV NV 89101	ZIP <u>89101</u> FAX <u>[REDACTED]</u>
		Street 1 <u>701 N. Pecos Rd.</u> City <u>LV</u> State <u>NV</u>	

Witness Codes:
OOS: Out-Of-State

V: Victim
H: Hostile

VR: Victim Related
DR: Defendant Related

O: Officer
M: Minor

JJ INTAKE RISK CLASSIFICATION

Name: BYRON WORTHEY-AVILA

Date of Assessment: 08-26-2021

Case #: ** NO J NUMBER **

Name of Assessor: _____

1.. Most Serious Alleged Offense (MANDATORY – Select Only One) Category C: Felony Sexual Offenses	15
2.. Additional Charges in this Referral Four (4) or More Felonies in this Referral	8
3.. Number of Prior Adjudicated Referrals and/or Pending Referrals in the Last 12 Months N/A	0
4.. Supervision Status N/A	0
5.. History of Bench Warrants (Failure to Appear) in the Last 12 Months N/A	0
6.. Domestic Violence N/A	0
Mandatory Detainment Circumstances N/A	0
Special Detainment Circumstances N/A	0
Judicial Order Information N/A	0
JO-VOP Most Serious Violation N/A	0
Override Up None	0
Override Down None	0
Comments	
Comments	

Score: 23 – Secure Detention

601 NORTH PECOS ROAD
LAS VEGAS, NV 89101-2408

TO BE COMPLETED BY PEACE OFFICER PRIOR TO BOOKING

10/21/02

DATE OF BIRTH

MONTH(S)

YEARS OF SERVICE

1500

TIME OFFENSE

3537 GLOUCESTER AVE 89122

CRIME LOCATION

[illegible]

EXHIBIT 2

Heather B. Smith
CLERK OF THE COURT

STEVEN B. WOLFSON
DISTRICT ATTORNEY
NEVADA STATE BAR NO. 001565
TANNER SHARP
Chief Deputy District Attorney
Nevada State Bar No. 13018
601 North Pecos Road
Las Vegas, NV 89101-2408
(702) 455-5320
Attorney for the State of Nevada

DISTRICT COURT
JUVENILE DIVISION
CLARK COUNTY, NEVADA

In the Matter of:

BYRON JOSHUA WORTHEY-AVILA

Date of Birth: [REDACTED]

A Minor 18 Years of Age.

CASE NO. J-21-353445-D1

DEPT NO. L

COURTROOM NO. 10

CERTIFICATION TO ADULT STATUS ORDER

The above-entitled matter having come on for hearing on 16th day of September, 2021, in the above-entitled Court to determine whether the Subject Minor, **BYRON JOSHUA WORTHEY-AVILA**, should be certified for proper criminal proceedings as an adult under the provisions of NRS 62B.390; and

The Court being duly advised that the Subject Minor, **BYRON JOSHUA WORTHEY-AVILA**, of this Petition is 18 years of age, having been born on the 21st day of October, 2002; and

The Court being fully advised that the subject of this Petition is charged with the offenses of Petition Number 1, Count (1) LEWDNESS WITH A MINOR UNDER 14, a felony under N.R.S. 201.230 NOC 50975, if committed by an adult; Count (2) LEWDNESS WITH A MINOR UNDER 14, a felony under N.R.S. 201.230 NOC 50975, if committed by an adult; Count (3) LEWDNESS WITH A MINOR UNDER 14, a felony under N.R.S. 201.230 NOC 50975, if committed by an adult; Count (4) LEWDNESS WITH A MINOR UNDER 14, a felony under N.R.S. 201.230 NOC 50975, if committed by an adult; Count (5) LEWDNESS WITH A MINOR UNDER 14, a felony under N.R.S. 201.230 NOC 50975, if

1 committed by an adult; said offenses having allegedly been committed on or between March
2 26, 2018 – June 30, 2021.

3 The Court having heard argument in open Court and being fully advised in the
4 premises;

5 NOW, THEREFORE, IT IS HEREBY ORDERED that **BYRON JOSHUA**
6 **WORTHEY-AVILA** be and hereby is Certified to the Eighth Judicial District Court of the
7 State of Nevada in and for the County of Clark for proper criminal proceedings as an adult
8 for the following reasons:

9 **1.Nature and Seriousness of Charged Offense(s):**

10 The Declaration of Arrest signed by G. Wilson of the Las Vegas Metropolitan Police
11 Department (LVMPD) as well as the other reports and statements contained in the record are
12 sufficient to establish prosecutive merit. The Declaration of Arrest is attached as Exhibit A.

13 WHEREFORE, THE COURT FINDS the records supports Prosecutive Merit for
14 Petition Number 1, Counts 1-5.

15 **THE COURT FURTHER FINDS** that in determining the seriousness and nature of
16 the charged offenses pursuant to Seven Minors, the charged offenses are both heinous and
17 egregious given the age of the Subject Minor and victims and the repetitive nature of the
18 offenses.

19 **THE COURT FURTHER FINDS** that although consideration of the seriousness and
20 nature of the charged offenses is sufficient to make a finding in this matter, it has also taken
21 into consideration past adjudicated offenses and subjective factors as outlined in Seven
22 Minors.

23 **THE COURT FURTHER FINDS** that consideration of the persistency and
24 seriousness of past adjudicated or admitted offenses pursuant to Seven Minors is not
25 applicable in this matter.

26 **THE COURT FURTHER FINDS** the following in its consideration of subjective
27 factors pursuant to Seven Minors. The Court has considered the psychological state of the
28 Subject Minor; however, given the heinous and egregious nature of the offenses and the

1 Subject Minor's age, there is insufficient time to provide Subject Minor with the necessary
2 rehabilitative services. Furthermore, as one or more of the offenses occurred when Subject
3 Minor was 18 years of age, all offenses should be tried in the same Court at the same time.

4 Accordingly, the Court grants the State's motion to certify **BYRON JOSHUA**
5 **WORTHEY-AVILA** to adult status on Petition Number 1, Counts 1-5, on discretionary
6 grounds pursuant to In Re Seven Minors, 99 Nev.427, 437, 664 P2d 947, 953 (1983) and
7 orders the Subject Matter be bound over to District Court.

8 The COURT FURTHER ADVISES that subject minor has the right to appeal this
9 decision to the Supreme Court and that a notice of appeal must be filed after the entry of this
10 written Order and no later than 30 days after the date of service of written notice of the entry
11 of this Order.

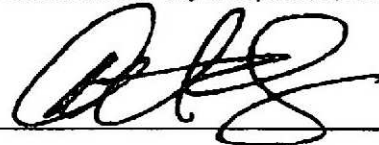
12 The COURT FURTHER ADVISES that subject minor may petition the adult Court
13 for transfer of the case back to the Juvenile Court only upon a showing of exceptional
14 circumstances. If the case is transferred back to Juvenile Court the Judge of this Court shall
15 determine whether the exceptional circumstances warrant accepting jurisdiction.

16 The Director of the Department of Juvenile Justice Services of Clark County is
17 charged with the execution of this Order.

18 This matter is continued for the purpose of arraignment in the Las Vegas Justice
19 Court. The Court having heard argument orders subject minor's bail set by Justice Court.

20 **BYRON JOSHUA WORTHEY-AVILA** is hereby remanded to the custody of the
21 Sheriff.

22 Dated this _____ day of September, ~~2021~~ this 21st day of September, 2021

23
24 

25 Submitted by:

26 /s/ TANNER L. SHARP

27 TANNER SHARP

28 Chief Deputy District Attorney

Nevada State Bar No. 13018

6E8 534 1183 8EA0
David Gibson
District Court Judge

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 In the Matter of:

CASE NO: J-21-353445-D1

7 Byron Worthey-Avila

DEPT. NO. Family Juvenile

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

10 This automated certificate of service was generated by the Eighth Judicial District
11 Court. The foregoing Certification Order was served via the court's electronic eFile system to
12 all recipients registered for e-Service on the above entitled case as listed below:

13 Service Date: 9/21/2021

14 Tanner Sharp

Tanner.Sharp@ClarkCountyNV.gov

15 JUVI DELINQ JUVI DA DELINQ

DAJuvenileEFile@clarkcountynv.gov

16 JUVI DELINQ JUVI DJJS PROBATION

djjsprobationefile@clarkcountynv.gov

17 JUVI DELINQ JUVI DJJS RECORDS

DJJSRecordseFile@clarkcountynv.gov

18 JUVI DELINQ DJJS PROBATION JUVI
19 ADMINISTRATION

djjsprobationadmin@clarkcountynv.gov

20 Edward Miley

emiley@mileylaw.com

Steven D. Grierson

RPLY
JoNell Thomas #4771
Clark County Special Public Defender
W. Jeremy Storms #10772
Chief Deputy Special Public Defender
330 S. 3rd St., Suite 800
Las Vegas, Nevada 89155
(702) 455-6265
(702) 455-6273 (fax)
Jeremy.Storms@ClarkCountyNV.gov
Attorney for Worthey-Avila

DISTRICT COURT, JUVENILE DIVISION
CLARK COUNTY

State of Nevada,

Plaintiff,

v.

Byron Joshua Worthey-Avila,
ID: 8454905,

Defendant.

Case No. J-21-353445-D1
Dept. No. L

Date:
Time:

**REPLY TO STATE'S OPPOSITION TO MOTION FOR THE COURT TO ACCEPT
JURISDICTION UNDER NRS 62B.390(5)(C), EXCEPTIONAL CIRCUMSTANCES
TO CERTIFICATION, BECAUSE THE OFFENSES CHARGED MAY ONLY BE
PROSECUTED AS DELINQUENT ACTS AND THEREFORE ARE NOT
CERTIFIABLE FOR CRIMINAL PROCEEDINGS**

JOSHUA WORTHEY-AVILA, hereby answers the State's opposition to
Joshua's original motion and respectfully moves this Honorable Court to accept
jurisdiction in this case as NRS 201.230 makes alleged acts of lewdness committed
by juveniles non-certifiable acts of delinquency.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7

I. NRS 201.230 may not be read as a redundancy under the rules lawyers are required to utilize when interpreting statutes.

To address the State’s contentions, it will be assumed *arguendo* that there is conflict between these two statutes. When such a conflict in laws exist, the Supreme Court requires that such a dispute is decided with the following set of rules:

When two statutory provisions conflict, this court employs the rules of statutory construction, Williams v. Clark Cnty. Dist. Attorney, 118 Nev. 473, 484, 50 P.3d 536, 543 (2002).

1 and attempts to harmonize conflicting provisions so that
2 the act as a whole is given effect, In re Eric L., 123 Nev. 26,
3 31, 153 P.3d 32, 35 (2007). Statutes are interpreted so that
4 each part has meaning. Leven v. Frey, 123 Nev. 399, 405,
5 168 P.3d 712, 716 (2007). Therefore, when a scheme
6 contains a general prohibition contradicted by a specific
7 permission, "the specific provision is construed as an
8 exception to the general one." RadLAX Gateway Hotel,
L.L.C. v. Amalgamated Bank, 566 U.S. 639, 645, 132 S. Ct.
2065, 2071, 182 L. Ed. 2d 967 (2012).

State v. Eighth Judicial Dist. Court, 129 Nev. 492, 508-09,
306 P.3d 369, 380-81 (2013).

9 Applying these rules, it is plain that the State's assertion that NRS 201.230
10 merely contains a redundant restatement of how NRS 62B.390 functions cannot be
11 correct. Laws cannot be read to contain such redundancies, nor is such an
12 interpretation of NRS 201.230 a cogent interpretation of the words and structure of
13 that statute.

14 In fact, there is not a conflict between these two statutes as NRS 201.230
15 precludes those under the age of 18 from being prosecuted as adults much in the same
16 way as the examples the State gives of such laws in § ix of its Opposition. It is
17 axiomatic that the "essential elements of the crime must be proven before a conviction
18 could be had." State v. Green, 45 Nev. 297, 301, 202 P. 368, 369 (1921). With respect
19 to acts of lewdness committed by a minor, NRS 201.230 says such acts constitute
20 delinquencies and never meet the elements of a crime.

21 It is the legislature's exclusive domain to determine punishment, we may not
22 second guess the directive that acts of lewdness by minors are delinquent acts. See
23 Lapinski v. State, 84 Nev. 611 (1968) (holding that a statute passed giving total
24 discretion to the prosecution to seek misdemeanor, gross misdemeanor or felony
25 sanctions for vehicular theft was a prohibited delegation of legislative powers). The
26 State reads too broad an authority bestowed upon its office when it asserts the power
27 to call for the certification of a minor for this offense.

1 **II. The State's examples of offenses precluded by the legislature from**
2 **certification supports counsel's reading of NRS 201.230.**

3 The State refers to NRS 200.366(5) as a statute which establishes that sexual
4 assault charges may not be brought against a minor for having consensual sex with
5 a person two years younger than the accused. That section reads, "The provisions of
6 this section do not apply to a person who is less than 18 years of age and who commits
7 any of the acts described in paragraph (b) of subsection 1 . . ." NRS 200.366. Such a
8 carve-out is no different than what we see in NRS 201.230, the distinction the state
9 is attempting to draw is not apparent other than different verbiage is used to achieve
10 the same end. The other statutes referenced by the State likewise support Joshua's
11 position.

12 The next example the state provides the court is a legislative exception for
13 minors sending explicit photographs via cellular devices, i.e., "sexting,"
14 acknowledging that such acts cannot be certified as a child pornography offense.
15 Although the State cited NRS 200.725 in their brief, the statute in question which
16 creates the carve-out is NRS 200.737 which for a second offense deems the offending
17 conduct an act of delinquency. NRS 200.737 uses language that is near
18 indistinguishable from the verbiage in NRS 201.230 which the State urges the court
19 to interpret as a redundant, cliff-notes version of NRS 62B.390 buried in another
20 statute. NRS 200.737 reads as follows:

21 4. A minor who violates subsection 1:

22 [. . .]

23 (b) For the second or a subsequent violation:

24 (1) *Commits a delinquent act*, and the court may order the
25 detention of the minor in the same manner as if the minor
26 had committed an act that would have been a misdemeanor
27 if committed by an adult; and

1 (2) Is not considered a sex offender or juvenile sex offender
2 and is not subject to registration or community notification
3 as a juvenile sex offender pursuant to title 5 of NRS, or as
4 a sex offender pursuant to NRS 179D.010 to 179D.550,
5 inclusive.

6 NRS 200.737 (*emphasis added*)

7 Although this statute goes on to make clear a subsequent offense of “sexting”
8 does not trigger sex offender registration—like an act of juvenile lewdness clearly
9 would—the way it carves out juveniles from criminal prosecution is understood by
10 the State. As the exact same language is used in NRS 201.230, the state should
11 accept that the lewdness statute also dictates that minors which engage in this
12 prohibited activity likewise commit acts that may only be sanctioned as
13 delinquencies.

14 Finally, the State argues that the lewdness statute is understood to prohibit
15 certifying children for that offense because felony treatment is only permissible for
16 those “over the age of 18.” As the same delineation between criminal or delinquent
17 status is made based upon age in NRS 201.230, the lewdness statute supports
18 Joshua’s arguments.

19 **III. Joshua’s argument makes no presumption about legislative intent
20 because such speculation is not a part of the analysis lawyers are
21 bound to employ when solving the legal question presented.**

22 When presented with a question of statutory interpretation, if the statute
23 under consideration is clear on its face, a court cannot go beyond the statute in
24 determining legislative intent. Robert E. v. Justice Court of Reno Twp., 99 Nev. 443,
25 445, 664 P.2d 957, 959 (1983). Here, the plain language of the statute, the rules of
26 statutory interpretation and the various other statutes cited by the state support
27 counsel’s reading of NRS. 201.230. Besides, legislative intent is demonstrated by
reference to legislative history. Here, the State makes policy arguments as to why it
should be allowed to certify a charge crafted by the legislature to apply only to minors

1 which does not contain the elements that would make it prosecutable against an adult
2 as a felony. Such arguments are not proof of legislative intent, nor are such
3 arguments relevant to deciding this issue given the plain language of the statute.

4 As a minor adjudicated delinquent for acts of lewdness is subject to registration
5 as a sex offender and potentially subject to community notification requirements,
6 serious consequences exist for such acts of delinquency. Likewise, as the State
7 correctly points out, such minors could be subject to notification requirements to their
8 school and are required to be placed on 3 years of mandatory probation demonstrate
9 serious consequences for such adjudications. Serious penalties do exist for this
10 conduct by a child.

11 CONCLUSION

12 As the prohibited acts the State alleges could only be addressed as delinquent
13 acts, it was error to certify them to the adult system. This Court must accept
14 jurisdiction of the matter under NRS 62B.390(5)(c). Accordingly, the resolution of the
15 allegations against Joshua should take place within the juvenile court system.

16 Dated December 9, 2021

17 Respectfully submitted,

18 JoNell Thomas
19 Clark County Special Public Defender

20 /s/ W. Jeremy Storms
21 W. Jeremy Storms
22 Chief Deputy Special Public Defender
23
24
25
26
27

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27

An employee of the
Special Public Defender

FILED

JAN 06 2022

John J. Gibson
CLERK OF COURT

1 DTRANS

2

3

4

COPY

5

EIGHTH JUDICIAL DISTRICT COURT

6

JUVENILE DIVISION

7

CLARK COUNTY, NEVADA

8

9 In the Matter of:) CASE NO. J-21-353445-D1
10 BYRON WORTHEY-AVILA,) DEPT. L
11 Subject Minor(s).) APPEAL NO. 83621
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

SEALED

BEFORE THE HONORABLE DAVID GIBSON, JR.

TRANSCRIPT RE: MOTION

THURSDAY, DECEMBER 16, 2021

1 APPEARANCES:

2 For the State of Nevada: TANNER L. SHARP, ESQ.
3 Deputy D.A. - Juvenile
4 601 N. Pecos Rd.
Las Vegas, Nevada 89101

5 The Minor: BYRON WORTHEY-AVILA
6 For the Minor: WILLIAM J. STORMS, ESQ.
7 Chief Deputy
8 Special Public Defender
330 S. Third St., 8th Flr.
Las Vegas, Nevada 89155

9
10 ALSO PRESENT:

11 OFFICER KEVIN BROWN
12 Probation
13
14
15
16
17
18
19
20
21
22
23
24
25

1 LAS VEGAS, NEVADA

THURSDAY, DECEMBER 16, 2021

2 PROCEEDINGS

3 (THE PROCEEDING BEGAN AT 10:01:05.)

4 THE COURT: Okay. We're on the record. J-21-353445-D1,
5 matter of Worthy, Byron Worthy-Avila. He's present from
6 detention on the screen. His father's present by video.

7 Go ahead and start in the courtroom with
8 appearances. Then we'll go to the screen.

9 MR. STORMS: Your Honor, Jeremy Storms from the Special
10 Public Defender, bar number 10772, on Joshua's behalf.

11 THE COURT: All right.

12 MR. SHARP: Tanner Sharp with the District Attorney's
13 Office. And, Judge, I apologize. I had a chance to speak
14 with opposing counsel. And I think I may have told him I
15 would be in the courtroom. If he would like me to come
16 (breaking up - indiscernible), I can certainly do that. It's
17 (breaking up - indiscernible) up to him.

18 THE COURT: I'm -- I'm good either way. Do you think
19 Tanner needs to be in the courtroom?

20 MR. STORMS: No, unless he would prefer to be because I
21 am. I wouldn't want to...

22 THE COURT: Yeah, it's...

23 MS. STORMS: ...appear to gain some advantage that way
24 or something.

25 THE COURT: No, it's -- it's no problem.

1 MR. SHARP: No.

2 THE COURT: We -- we -- we do a mix...

3 MR. SHARP: I'm okay with that, Judge. So...

4 THE COURT: We do a mix bag down here pretty frequently,
5 so.

6 MR. STORMS: Okay, Judge.

7 THE COURT: Any -- any other appearances on this before
8 we start?

9 MR. BROWN: Kevin Brown, Probation.

10 THE COURT: Okay. All right. This is defense's motion
11 for the Court to accept jurisdiction under exceptional cirva-
12 circumstances of certification, argument being that the
13 charged -- the charge acts are by definition delinquent and
14 can't be tried as adult acts.

15 I did read the motion. I read the opposition. So
16 if -- I'll -- it's your motion, Mr. Storms, if you want to --
17 if you want to argue high points, that's fine. And then I'll
18 hear from Tanner. But I did -- I did read both -- both
19 (indiscernible)...

20 MR. STORMS: Judge, did you get my reply to his
21 opposition? I -- I...

22 THE COURT: Let's see.

23 MR. STORMS: I filed a reply.

24 THE COURT: I did not get the reply. So if you want to
25 reply verbally, that would be -- that's fine.

1 MR. STORMS: Okay. I apologize for that. I -- I
2 attempted to file a reply that was a few -- some six pages.

3 THE COURT: Oh, wait a minute. There it did come in on
4 the 9th. It just didn't come under the right file. Okay.

5 MR. STORMS: In -- you know, in my reply, you know, I --
6 I -- I'll just go with my argument that I -- that I already
7 kind of set -- set out. There are some cases that I cited
8 there that I guess I'll -- I'll just make sure to try to
9 reference in my argument here.

10 But, Judge, you know, this -- this -- this issue of
11 lewdness, lewdness -- standalone lewdness charges being
12 uncertifiable is one of these circumstances that, you know,
13 where -- where an issue can set -- can avoid adjudication for
14 a period of time because when I see these charges, typically,
15 I mean, there are lewdness charges are always coupled with
16 sex assault charges. Sex assault charges are mandatory
17 certification charges. Mandatory certification charges and
18 other charges coupled with them, they go to adult court. I
19 mean, that's the way the rules work.

20 So -- so, you know, it's not unusual for this to
21 not maybe been decided at this point in time. The law's only
22 been around for about this is the end of the fifth year
23 essentially the law being written the way it is.

24 But here you have an unu- unusual modus operandi
25 where the -- the -- it speaks to the fact that Joshua was

1 sexually abused by his -- his uncle from the age of five to
2 fifteen. And -- and this sort of behavior it's alleged would
3 be a -- a product of -- of being abused himself.

4 But again, something like this, you know, and
5 sometimes and things just to be -- avoid adjudication. We've
6 had a recent issue in adult court and it -- I'm sure if
7 affects court down here. Valdez Jimenez where the supreme
8 court said that, hey, if justice court, district court's
9 gonna detain someone accused of a crime, then they have to
10 show, the same, they have to show by clear and convincing
11 evidence that there's no other way to guarantee the safety of
12 the community and the person's appearance in court other than
13 detaining them or if the bail's set so high it functions as
14 a detainer, they have to meet that high standard with a full-
15 blown hearing.

16 The law -- the case that they made that decision
17 based upon, Judge, was -- was passed in 1987, where it was
18 found -- excuse me. It was ruled on by the supreme court in
19 1987. So for 33 years, Nevada -- Nevada courts were not
20 following what had been found to be a constitutional right
21 that people have -- have whenever they're accused of a crime.
22 It's just that it's a type of thing that hadn't -- had evaded
23 essentially adjudication up to that point in time.

24 So -- so that was a legal mistake that had -- had
25 been kind of perpetuated because of -- of a not being aware

1 of a constitutional issue. But here the State's urging the
2 Court to make a different kind of legal mistake in -- in the
3 way that they're saying the Court should interpret 201.230.

4 You know, and I -- I in my pleadings go through all
5 the ways that the law says that we as lawyers have to read a
6 law. You know, that the -- you know, if it has the plain
7 meaning we have to give it as such.

8 And if there's some sort of issue of how to
9 interpret it's plain meaning, then you go through the rules
10 of interpretation that, you know, I've belabored extensively
11 in my pleadings. So I -- I -- I -- I won't go over it much
12 here other than to say that, you know, the bottom line is
13 when the State points out to the -- to use as here's the type
14 of -- here's the type of statutes that -- that say we can't
15 certify a charge.

16 They point to a statute that says, a charge that
17 defines a felony such that a person with the age of 18 could
18 never be con- be convicted of a felony. That's the type of
19 charge that isn't certifiable. They also point to another
20 charge that says that a type of charge where the only
21 punishment that the -- that the statute delineates is one
22 where the person can only be found de- guilty of a delinquent
23 act or found to be delinquent. Those, they point to two
24 different statutes that have those elements to say these are
25 the types of things, Judge, where we can ask you to -- to --

1 to make this an adult charge.

2 Well, the statute in question has both of those
3 things built into it on both the person under age eight -- of
4 18 can never be convicted of a felony and that a
5 person of the age of 18 commits a delinquent act when they
6 commit such an act.

7 You know, if we look at this statute as a decision
8 treaty as which is the way it's written and read it, you
9 know, basically as a -- as a -- as a in the language of logic
10 just as -- as -- as a computer whether as a bully in kind of
11 a stream. What it says is that if you input a person accused
12 of the -- of the age eight -- of less than the age of 18, the
13 only result that can be derived is that they commit a
14 delinquent act. And then that's because the legislature
15 decides such things.

16 The prosecution doesn't have the ability to say
17 that this -- this statute is meaningless in the face of the
18 larger kind of judicial process. And the -- and the
19 legislature can't give them the ability to choose whichever
20 way they want to try to prosecute a crime. One of the cases
21 I cited in my reply to them was a case where back in the 70s
22 or 60s or so the Nevada Legislature said that if there's a
23 case of a stolen vehicle, the prosecution based upon the
24 facts can decide whether or not the charges are a
25 misdemeanor, gross misdemeanor or felony.

1 The supreme court said, hey, they can't do that.
2 The -- the -- the legislature cannot advocate their -- their,
3 you know, power in the -- in the separation of power
4 structure to the prosecutor for them to decide what the
5 penalty as the legislature must write the penalty and the
6 prosecutor must honor the penalty that the legislature wrote.

7 So, you know, Judge -- Chief Justice Roberts, you
8 know, whenever he was being confirmed, famously said, judges
9 are there to call balls and strikes. Well, I mean, the
10 reality is, for a supreme court justice for some issues in
11 the world the judge -- judges have to kind of rule on, that's
12 just -- that's -- it's not that simple and cut and dry.

13 But I would submit that that ball and strike, you
14 know, analogy in this circumstance is completely appropriate.
15 I mean, this is a situation where one side might really
16 disagree with what the umpire calls when he calls a strike
17 here. But if you look at that -- if you look at that pitch
18 and, you know, on the camera and look at the imposition of
19 the strike zone, this ball is well (indiscernible) in the
20 strike zone. There's really not a question about the way the
21 law's written precludes them certifying it. I mean, for them
22 to ask you to do it, to do that, is to ask you just to not to
23 follow the rules.

24 And under circumstance where this issue is in
25 exclusively this Court's subject matter jurisdiction, I would

1 submit that the -- the State has to provide much more to the
2 Court than what they have to ask you to advocate your
3 jurisdiction for this issue.

4 If the Court has any question, I'd be happy to
5 answer it. And I would like to reply potentially to whatever
6 the State brings up in its argument.

7 THE COURT: That's fine.

8 Tanner.

9 MR. SHARP: So, Judge, I -- I certainly understand where
10 defense is -- is seeking to make this inference from the
11 statute. But frankly, I -- I do not see it there.

12 First of all just looking at the plain language of
13 the statute, it states, a person who is under the age of 18
14 years and who commits lewdness with a child under the age of
15 14 years commit- commits a delinquent act. So right out of
16 the out there, there is no prohibition on certification. Any
17 reference to their being a prohibition is an inference that
18 defense is trying to make.

19 When you actually break down the statute itself,
20 what does the statute say? It's first of all it states a
21 person who is under the age of 18 years, under the age of 18,
22 which by definition is a child, who commits lewdness with a
23 child under the age of 14, which is defined in the statute,
24 which we also know as defined by the statute would be a
25 category A felony if committed by an adult, commits a

1 delinquent act.

2 Now, Judge, quite frankly, this is no different
3 than any other delinquent act that we come across. This is
4 the same for armed robbery, for sex assault, for burglary.

5 In addition to that, the defense tries to argue
6 that in the section, notably section two that deals with the
7 penalties that it specifically states that subsection five
8 does not apply. Well, breaking that down, what does
9 subsection two state? Well, it essentially states if you
10 commit this act, it is a category A felony. But subsection
11 five does not apply. Well, why wouldn't it apply? Because
12 it is a delinquent act.

13 Again, taken with every other prior delinquent act
14 that we come across. In fact, initially defense counsel
15 stated that there were things like sex assault that are
16 automatic, essentially automatic certifications. And that's
17 not quite accurate. There's some cases where if there's an
18 underlying felony and there's a violent sex assault, that may
19 be a mandatory cert. But most of the cases that we have,
20 quite frankly, are all discretionary. They're all up to the
21 Court. So they are all delinquent acts until the Court
22 certifies the child to be treated as an adult.

23 Really, Judge, this comes down to two
24 interpretations of the statute, quite frankly. And one of
25 those interpretations leads to a -- a very absurd result. So

1 the State's interpretation, and quite frankly the
2 interpretation of the PD's office of the Court's that we've
3 had since the inception of the statute is essentially that
4 the legislature in an overabundance of caution wanted to
5 ensure that the State did not seek basically a direct file,
6 basically skip these steps that are required and say, well,
7 let legislature didn't say that this was delinquent acts. So
8 we can just go ahead and send this straight downtown.

9 That would be an overabundance of caution that the
10 legislature can in its power do and that it appears that the
11 legislature in its power has done. And let me point out why
12 I believe that.

13 So the interpretation of the defense counsel is
14 that because the legislature wrote this bill in such a way as
15 to say, well, this is a delinquent act. And you can't punish
16 it, a delinquent act, as a felony. Therefore they were
17 trying to, thereby the -- the Court can infer that this was
18 not certifiable, quite frankly doesn't make sense in light of
19 all of the other statutes. So for example, all other sex
20 offenses that are felonies, in fact all other felonies, are
21 certifiable. So essentially, this would be the unicorn.
22 This would be the one felony that is actually not
23 certifiable.

24 Second of all, when you look at the consequences of
25 a felony lewdness with a minor that the legislature has

1 included, they are the same consequences that you see for any
2 other felony sex offense. So for example, they have to
3 register as a juvenile. They may have to provide community
4 notification not only as a juvenile and as an adult. They
5 are required to do school notification. They are required to
6 have three years of formal probation. Those are all things
7 that the Court sees with sex assault, attempt sex assault,
8 sexually motivated coercion. All of these are grouped into
9 the same category.

10 So why then would the legislature step back and
11 say, well, yeah, we think that lewdness with a minor is as
12 serious that we're gonna treat it as serious as all of these
13 other cases except we're not gonna certify it.

14 There, Judge, when the legislature wants to make
15 sure that a particular act cannot be certified, it does so
16 clearly in the language. And the way that it does it is by
17 ensuring, A, that the alleged act is not a crime.

18 So for example, we all know what sex assault is.
19 And we also know that sex assault with a minor under 14 is
20 per se sex assault. However, the legislature actually carved
21 out a -- an exception that stated, well, if there's less than
22 two years of age between the kids and it's consensual, then
23 it's not sex assault. And that's how we get to the issue,
24 well, is that even a delinquent act? No, obviously it's not
25 certifiable.

1 Second of all, if you look at the statutes on
2 sexting, now generally if you have an adult who's sending a
3 picture of -- of a child, basically child pornography --
4 pornography to someone else, you're looking at a felony that
5 can potentially be certifiable if not for the fact that the
6 legislature actually came in and said, first of all, if they
7 send a picture of themselves it's a CHINS offense. Second of
8 all, if a kid sends a picture of somebody else and there's
9 less than four years difference, that's a misdemeanor. With
10 it being a misdemeanor or a CHINS offense, you thereby cannot
11 certify these kids.

12 And, Judge, in looking at the statute that we have
13 now, basically, the -- the defense counsel is asking to look
14 at this in a vacuum. What I mean by that is, they're saying,
15 well, look. The legislature is saying this is just a
16 delinquent act. Well, Judge, there is no such thing as a
17 delinquent act by itself.

18 And what I mean by that is it has to be tied to
19 some kind of criminal offense from municipal code. That's
20 why when we charge these, we state, you know, sexual assault,
21 which would be a delinquent act, which is a sexual assault,
22 which would be considered a felony if committed by an adult
23 because it always have to be charged to some kind of criminal
24 act.

25 Well, if this is not charged or tied to a category

1 A felony, then what crime is it tied to because you can't
2 just say, this is a delinquent act. It actually has to be
3 tied to a law or to a felony code or municipal code. It has
4 to be tied to some kind of law that would indicate some kind
5 of act of criminality. And here if we're not tying it to the
6 category A felony, what are we tying it to?

7 And, Judge, finally, this -- this essentially would
8 result in some very absurd results especially for the victims
9 in this case. And the question is, would the legislature
10 have intended this?

11 So I -- I know this is rather graphic, but let's
12 say we have a 17-year-old who repeatedly molests a three-
13 year-old by rubbing his penis on her vagina. He does it
14 multiple times. He's ejaculating on her. And the
15 legislature is going to come in and say, well, whoa. Whoa.
16 Wait. Wait. Wait. There -- we -- we know it's serious.
17 But we're just gonna call it a delinquent act. We're not
18 gonna tie any crime to it. And we're just gonna call it a
19 delinquent act.

20 But if that same 17-year-old penetrates her, even
21 just a little bit, well, then that's certifiable. We're
22 gonna kick him downtown, and we can treat him as an adult.
23 And quite frankly, Judge, one of the rules of interpretation
24 is, you cannot get an absurd result. And that is essentially
25 the case here is we all know based on how the legislature's

1 treated this, that this is a very serious offense.

2 Again, would it have been nicer if the legislature
3 had maybe written this a little bit differently? Sure. But
4 again, Judge, as I laid out, there -- there is no conflict
5 here. The legislature is stating, A, if you have a kid under
6 18 that does this, initially it's a delinquent act. So you
7 can't treat him as a felony -- felon right off the bat. But
8 it does not prohibit any kind of certification treatment.

9 And again, if that's not the case, then you're
10 gonna come up with some pretty absurd results that don't
11 comport with the other statutes certain way the leg-
12 legislature's treated this. With that, I'll submit. Thank
13 you.

14 THE COURT: Thank you.

15 Reply.

16 MR. STORMS: Judge, you know, the -- the State cites to
17 section two of 201.230 for the proposition that a lewd act is
18 a felony and that therefore propo- this fifth section of the
19 statute doesn't apply.

20 But when you read section two it says except as
21 otherwise provided in subsection four and five, a person
22 commits a lewd act commits a felony. You look to section
23 four it says except as otherwise provided in sub- subsection
24 five, a person commits a lewd act, commits a felony in
25 different ways depending on what the age of the child.

1 Subsection five, a lewd act committed by a minor is
2 a delinquent act that they -- this -- he's -- the State says
3 that this is I'm saying that this rule that is a delinquent
4 act is untied to any criminal prohibition and against
5 conduct. It is within the statute penalizing lewdness with a
6 child under 16 for adults, you know, that the State says that
7 -- that sex -- there's no other sex charges that -- that
8 carve out an exception for juveniles although later does
9 acknowledge the -- the -- the sexting-type statute.

10 He also cited the open and gross statute for the
11 proposition that certain conduct was considered a felony for
12 adults but not for a juvenile so therefore it's a delinquent
13 act.

14 What he's asking the Court to do is to nullify the
15 plain language of the statute in its interpretation based
16 upon the idea that -- that we know that he knows what the
17 legislature meant to do. And that's unfortunately with the
18 rules that we have, the way that we are allowed to interpret
19 law, you know, that the -- you only get to legislative
20 history if there is some sort of actual conflict within the
21 plain meaning of the language, you know. And -- and the
22 rules say that there isn't under the circumstance.

23 It is true that sometimes laws are written that
24 have unintended consequences. But fixing those consequences
25 are above essentially our -- you know, his paygrade, my

1 paygrade or respectfully the district court's paygrade.
2 That's a -- that's a -- that's something that the legislature
3 does. They're the ones that enact penalties. And we are
4 obligated to -- to follow the way that they've written --
5 they've written the law.

6 And so ultimately, all of the arguments the State
7 is making, you know, are -- are ones that are outside of the
8 way that -- that we as humble lawyers are supposed to
9 interpret the law and -- and just call it and it is
10 essentially putting themselves in the place of the legislature
11 that passed this that very well might have passed a law that
12 has consequences that they might not have contemplated or --
13 or -- or understood that an extreme case might cause
14 preservation amongst folks having to apply the rule. But
15 that is the rule.

16 And -- and -- and -- and so with that rule, the way
17 it's written, those -- those sorts of concerns are -- are
18 outside of review essentially with -- with the tools that we
19 are provided to interpret it here. And I'll submit it on
20 that, Judge. And, you know, ask if the Court is mulling this
21 over that it would consider reading my reply before -- before
22 making its decision. But otherwise, I'll submit it.

23 THE COURT: I read your reply. I'm not mulling it over.
24 I know exactly what I think about this. I've read through --
25 through.

1 There one thing that wasn't addressed in oral
2 argument is my understanding is when this went up on
3 certification, it then based on interviews, there were a
4 number of other things that were then alleged and charged
5 against the youth.

6 I believe that the justice court was correct in
7 sending those back, if they charged additional charges that I
8 didn't consider at the time of -- of certification and they
9 were alleged to have been committed when he was a minor, then
10 they would need to go through the certification process
11 before they could properly be charged in -- in the adult
12 court.

13 That being said, however, how I see the stat- the
14 legislature doing here is stating the obvious that when a --
15 when a juvenile commits a -- a -- an act that would otherwise
16 be categorized as a crime, it's a delinquent act. It doesn't
17 take it out of this Court's di- discretionary certification.

18 The State can always ask the Court to certify a
19 delinquent act as a crime and have a trial, have the youth
20 stand -- stand trial in the adult court.

21 It's a novel argument. It's a unique argument. I
22 even give you points for creativity. But I think it's
23 absurd. This -- this -- this statute does not preclude the
24 Court's discretionary powers under the certification, the law
25 governing certification. This was -- this is a -- is

1 discretionally certifiable. I certified it. I'm not
2 reconsidering. So the motion's denied.

3 I'd -- I -- I'm happy to take direction from above,
4 if it goes up. But I -- I think it would be not only an
5 absurd result, I think it's a real stretch to read the
6 statute this way. So that's the Court's order. The State
7 can -- the State can write up an order denying the motion.
8 And you guys can take it from there. As far as the...

9 MR. SHARP: And, Judge...

10 THE COURT: ...extra crimes it's gonna need to be
11 charged as juvenile first and be subject to the certification
12 process if they want to try him as an adult on -- on anything
13 else if they came -- if they came in contact with after
14 further interviews.

15 MR. SHARP: And, Judge, we -- we did file an amended
16 petition and motion. Generally, the way that has worked in
17 the past is when -- when the Court or basically when we have
18 the same set of facts and circumstances and there's just
19 additional allegations, we'll bring it back down and the
20 Court will automatically certify them. Obviously, I believe
21 opposing counsel has the opportunity to argue against that if
22 he would like to.

23 THE COURT: Yeah. I gotta do everything...

24 MR. SHARP: I thought so.

25 THE COURT: ...automatically. The statute...

1 MR. SHARP: Okay.

2 THE COURT: ...stuff automatically. I hear things. So
3 if you guys want to charge him with those crimes, with those
4 delinquent acts and ask me to certify them, set it for
5 certification. I -- I already certified specific counts.
6 They went up. As far as I'm concerned, they were certified
7 correctly under the circumstances. There's new counts that
8 need to follow the process.

9 MR. SHARP: Very good. So, Judge, we have filed that
10 amended petition and the amended motion. Can we just set
11 this maybe for a month? It may give time for opposition to
12 draft a reply and then we can make that argument?

13 THE COURT: Sure I can put it on my certification
14 calendar in a month.

15 THE CLERK: So that would be January 11th at 10 a.m.

16 THE COURT: January 11th at 10 a.m.

17 MR. STORMS: Judge, can I just briefly check my
18 calendar? I've got a bunch of matters set around then
19 (indiscernible).

20 THE COURT: Yeah, that's okay.

21 MR. STORMS: I have a calendar call that afternoon and a
22 settlement conference. But I'm not sure. Do you hear these
23 at 10:00 and they...

24 THE COURT: 10 a.m.

25 MR. STORMS: ...tend -- tend to be done in 30 minutes or

1 so?

2 THE COURT: Oh yeah.

3 MR. STORMS: Okay. That should be fine.

4 THE COURT: Okay. Yeah, we'll keep that date then. All
5 right. Thank you, counsel.

6 MR. STORMS: Thank you.

7 (THE PROCEEDING ENDED AT 10:26:18.)

8

9

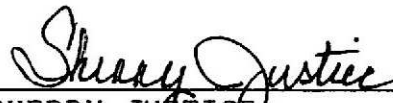
* * * * *

10

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

14

15


SHERRY JUSTICE
COURT RECORDER/TRANSCRIBER

16

17

18

19

20

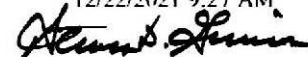
21

22

23

24

25



CLERK OF THE COURT

STEVEN B. WOLFSON
DISTRICT ATTORNEY
NEVADA STATE BAR NO. 001565
TANNER SHARP
Deputy District Attorney
Nevada State Bar No. 13018
601 North Pecos Road
Las Vegas, NV 89101-2408
(702) 455-5320
Attorney for the State of Nevada

DISTRICT COURT
JUVENILE DIVISION
CLARK COUNTY, NEVADA

In the Matter of:
BYRON JOSHUA WORTHEY-AVILA
Date of Birth: [REDACTED]

CASE NO. J-21-353445-D1
DEPT NO. L

COURT ORDER

The Subject Minor's Motion For The Court To Accept Jurisdiction having come on for hearing on December 16, 2021, before Judge David Gibson, Jr.; present was Byron Joshua Worthey-Avila with his attorney, Chief Deputy Public Defender Jeremy Storms; Kevin Brown with Juvenile Probation; Tanner Sharp with the District Attorney's Office; and, the Subject Minor's father, Byron Worthey.

Upon review of the facts of the case, all papers and pleadings on file, arguments of counsel, and for good cause appearing;

THE COURT HEREBY FINDS NRS 201.230(5) states the obvious: when a juvenile commits lewdness with a minor under 14 years of age, he or she commits a delinquent act.

THE COURT FURTHER FINDS that the statute does not take the ability to certify this act from the Court's discretion.

///

1 **THE COURT FURTHER FINDS** that the Subject Minor's argument that the statute
2 is intended to prohibit the Court from certifying any allegations of lewdness with a child
3 under 14 years of age is absurd.

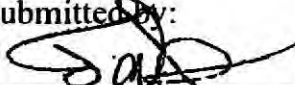
4 **THE COURT HEREBY ORDERS** that the Juvenile's Motion is DENIED.

5
6 Dated this 21st day of December, 2021.

Dated this 22nd day of December, 2021



8 Submitted by:

9 
10 TANNER SHARP
11 Chief Deputy District Attorney
12 Nevada State Bar No. 13018

748 060 7CF6 D0DD
David Gibson
District Court Judge

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 In the Matter of:

CASE NO: J-21-353445-D1

7 Byron Worthey-Avila

DEPT. NO. Family Juvenile
8

9 **AUTOMATED CERTIFICATE OF SERVICE**

10 This automated certificate of service was generated by the Eighth Judicial District
11 Court. The foregoing Order was served via the court's electronic eFile system to all
12 recipients registered for e-Service on the above entitled case as listed below:

13 Service Date: 12/22/2021

14 JUVI DELINQ JUVI DA DELINQ

DAJuvenileEFile@clarkcountynv.gov

15 JUVI DELINQ JUVI DJJS PROBATION

djjsprobationefile@clarkcountynv.gov

16 JUVI DELINQ JUVI DJJS RECORDS

DJJSRecordseFile@clarkcountynv.gov

17 JUVI DELINQ DJJS PROBATION JUVI
18 ADMINISTRATION

djjsprobationadmin@clarkcountynv.gov

Edward Miley

emiley@mileylaw.com

19 Carrie Connolly

connolcm@clarkcountynv.gov

20 Kristy Holiday

kristy.holiday@clarkcountynv.gov

21 PD Motions

PDMotions@clarkcountynv.gov

22 Jennifer Garcia

Jennifer.Garcia@clarkcountynv.gov

23 Eileen Davis

Eileen.Davis@clarkcountynv.gov

24 Brandon Lewis

brandon.lewis@clarkcountynv.gov

25 W. Jeremy Storms

jeremy.storms@clarkcountynv.gov
26
27
28

000212

1 Elizabeth Araiza

elizabeth.araiza@clarkcountynv.gov

2 Office of the Special Public Defender

SpecialPDdocs@clarkcountynv.gov

3 District Attorney

motions@clarkcountyda.com

4 Tanner Sharp

tanner.sharp@clarkcountyda.com

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK
JUVENILE DIVISION

Steven D. Grierson

In the Matter of:)
)
BYRON JOSHUA WORTHEY-AVILA) CASE NO. J-21-353445-D1
) DEPT. L
Date of Birth: October 21, 2002)
)
Years of Age: 19 Years of Age.)

SUPPLEMENTARY REPORT

Please see Exhibit: Certification Evaluation.

Submitted by:

Sam Lee Jr.

SAM LEE JR.
JUVENILE PROBATION OFFICER
601 N. Pecos Road
Las Vegas, NV 89101

DATE: 12-23-2021

FORENSIC SPECIALISTS LTD.

Eric S. Smith, Ph.D.

Licensed Clinical Psychologist

Clinical & Forensic Psychological Services

September 7, 2021

**Eighth Judicial Court
Family Division - Juvenile
Clark County, Nevada**

FORENSIC PSYCHOLOGICAL EVALUATION ON:

BYRON JOSHUA WORTHEY-AVILA

AGE: 18

DATE OF BIRTH: [REDACTED]

CASE #: J-21-353445

EXAMINED: SEPTEMBER 7, 2021

EXAMINER: ERIC S. SMITH Ph.D.

REASON FOR REFERRAL:

BYRON WORTHEY-AVILA, age 18, was referred for a Forensic Psychological Evaluation by Sheila Scott from the Clinical Services Division, Clark County Department of Juvenile Justice Services. BYRON is facing four counts of FELONY/LEWDNESS WITH A CHILD UNDER THE AGE OF 14, and FELONY/ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14. His Certification Hearing is scheduled for September 16, 2021.

COLLATERAL RECORDS REVIEWED AND CONSULTATIONS:

PREVIOUS JUVENILE RECORD

BOOKING SUMMARY

CLARK COUNTY JUVENILE JUSTICE SERVICES INFORMATION SHEET

DECLARATION OF ARREST REPORT

INTERVIEW WITH BYRON WORTHEY, NATURAL FATHER

**PLEASE NOTE THAT ALL THE FACTS AND OPINIONS HEREIN
CONTAINED ARE BASED UPON REVIEW OF ALL AVAILABLE RECORDS
AND THE CLINICAL DIAGNOSTIC INTERVIEW CONDUCTED ON
SEPTEMBER 7, 2021. THE INTENT OF THIS REPORT IS TO PROVIDE
SIGNIFICANT CLINICAL INFORMATION ON THE MENTAL STATUS OF
BYRON WORTHEY-AVILA AND ANY RECOMMENDATIONS FOR
REHABILITATION AND/OR TREATMENT.**

FAMILY BACKGROUND:

BYRON WORTHEY-AVILA was born in Las Vegas, Nevada where he was raised. He is the son of Byron Worthey and Laticia Avila. His parents were married for about four to five years. Mr. Worthey obtained an annulment and remarried when BYRON was about 4. Mr. Worthey is 51 and employed with Wyndham Destinations working in the corporate office as a collector. He has a previous history of substance abuse and has been sober for 20 years. His parents separated when he was 12 and he experienced both depression and anger. BYRON stated that he did not get along with his father when younger, but their relationship is better now. After his parents split, his brother, Nathan, continued to reside with their mother. BYRON tried to get closer to his mother but was never successful. He has not had any contact with her since age 16. His stepmother, Hyacinth

Worthey, is an administrative assistant for a hospice company. They never had a "bad relationship" and she was always there for BYRON. However, BYRON was always trying to reunite with his mother which prevented them from being closer. BYRON has one full brother, Nathan, who is 16. His half-siblings include, Z██████ (14), Ch██████ (13), G██████ (10), and A██████ (5). He also has two older half siblings and one in middle school from his mother.

EDUCATIONAL HISTORY:

BYRON stated that he last attended the 12th grade at Chaparral High School. He did not graduate because he did not complete his government or physical education classes. He is currently in the process of completing them and obtaining his GED. He repeated the fourth grade due to his poor performance and his "age issues". BYRON began kindergarten at the age of 4, so the school felt holding him back would put him with his regular age group. He has no I.E.P. or 504 plan in school. He had no idea as to his grade point average, but he mostly obtained C's and D's in his classes. BYRON was not involved in any school sports or other school related activities. He had never been sent to a behavior school. In the past, he recalled having required parent conferences for throwing food in middle school, truancy, and being tardy to class. Regarding vocational interests, he wants to complete his GED, eventually attend a trade school, and would like to focus on engineering or that of an architect.

MEDICAL HISTORY:

BYRON did not report any physical conditions that he is being treated for. He did report that he has a tooth that is cracked and needs dental care. He has no allergic reactions to medications. He has no history of head trauma or seizures.

SUBSTANCE ABUSE HISTORY:

BYRON denied any history of alcohol abuse. He tried marijuana a few times but denied any abuse of the drug. He denied any other abuse of illicit drugs, medications, inhalants, or over-the-counter products.

MENTAL STATUS EXAM:

BYRON was examined while being detained on his current charges. He was informed that the court had referred him for a Psychological Evaluation for his Certification Hearing. BYRON was also informed that the information obtained during the clinical interview was not confidential and that a written psychological report of the findings would be submitted for his Certification Hearing. The purpose of a Certification Hearing was reviewed with BYRON, which he clearly understood and was able to explain to this examiner. Due to the COVID-19 virus restrictions, BYRON was evaluated by phone.

This adolescent male is about 5'7" in height and weighs about 140 lbs. He is nearsighted and wears glasses. He has no problems with his hearing. He has no tattoos and no body piercings. He denied ever being a member of a tagging crew, clique, or organized street gang.

Interpersonal Style: No issues in communicating

Approach: Cooperative and focused

Speech: Coherent/clear/no pressured speech

Conversation: No issues with being defensive or guarded

Recall of Personal History: No difficulty in recall of past and recent events

Alert/Oriented: No impairment

Communications: Clear and understandable

Relevance: On-topic

Thought Processes: No difficulty explaining thoughts and finding words/no indications of a formal thought disorder

Hallucinations and Delusions: No history of hallucinations or delusions

Risk: No current risk of suicide despite history of three suicide attempts

Attention and Concentration: No history of impairment

Motivation: Poor motivation regarding academics

Judgement and Intellectual Ability: Poor judgment and decision-making; evidence of at least average intelligence.

Insight: Fair

Impulse Control: No current issues

Mood: No agitation

Suicidal/Homicidal Thoughts: Denied/no plan to self-harm or harm others

Response to Failures: Has not shown that he has learned from past mistakes or the desire to change his behavior

Response to Rapport: Normal

BYRON stated that he was sexually abused during his childhood. The sexual abuse started when he was about 5 or 6. He reported that he was abused by his stepmother's brother, Charles Aristin, who was a teenager at the time. Charles lived in the home with the rest of the family. The abuse continued until BYRON was about 14 or 15 and Charles was an adult. It was later discovered that Charles had been abusing other children in the home and a cousin. According to BYRON'S father, Charles has been charged with three sexual assaults on Z█████ (14) and is currently out on bail.

Due to the extensive sexual abuse and trauma experienced by BYRON, he became severely depressed and suicidal. He had made three suicide attempts as a adolescent by trying to overdose on anxiety and sleep medications. He was admitted to Desert Parkway Behavioral Healthcare Hospital for one week, Seven Hills Behavioral Health Hospital for one week, and Montevista Psychiatric Hospital of one month. The history of his sexual abuse "came out more" during his time at Montevista Psychiatric Hospital, but he felt "very uncomfortable" and didn't want to talk about it.

He denied ever setting fires or being cruel toward animals. He did not recall any history of being significantly bullied or being exposed to domestic violence. There were no factors noted that would have affected BYRON's level of responsiveness other than facing a Certification Hearing on his charges. BYRON did elicit some anxiety symptoms while discussing his history of being sexually abused. Regarding recent disturbances in consciousness, none were reported.

BYRON's main concerns are 1) his future, 2) the people he cares about the most, and 3) his legal case. If he had any wishes, he would wish 1) to be able to provide for his family, 2) to go back in time and report being sexually abused when he was younger, and 3) to get through the court process, be successful, and have a family.

CLINICAL DIAGNOSTIC IMPRESSIONS:

SUBSTANCE ABUSE ISSUES: LOW RISK

RISK FOR VIOLENCE/DANGEROUS BEHAVIOR: MODERATE RISK

BRYON has no previous juvenile record for violent or non-violent offenses. Historical risk factors that increase the risk for delinquent crime include early caregiver disruption, history of self-harm or suicide attempts, childhood history of maltreatment, poor school achievement, and stress and poor coping.

PSYCHOPATHOLOGY AND TREATMENT AMENABILITY:

BYRON WORTHEY-AVILA, age 18, is appearing before the court on charges of FELONY/LEWDNESS WITH A CHILD UNDER THE AGE OF 14, and FELONY/ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14.

BYRON was aware as to the specific charges filed against him, and the results of the Forensic Psychological Evaluation did not indicate that he has a Conduct Disorder Adolescent-Onset Type. He does, however, have comorbid psychiatric disorders that will require long-term residential treatment. This adolescent has no prior history of being involved in violent crimes.

The severity and persistence of the sexual abuse sustained by BYRON over the years has resulted in long-term effects on his mental health. Psychological problems caused by the sexual abuse include depression, anxiety, anger, posttrauma, nightmares, sleep problems, and suicide attempts. Sexual abuse can also exacerbate various psychiatric symptoms. There is a strong association of intrafamilial sexual abuse with suicidal behavior. BYRON is experiencing significant psychiatric disorders related to sexual abuse and he requires treatment with evidence-based trauma-focused interventions. These elements include psychoeducation about trauma and its impact, affective modulation utilizing relaxation and breathing techniques, gradual exposure to trauma memories, and cognitive processing of any inaccurate cognitions like guilt and self-blame. Trauma-focused cognitive-behavioral therapy is usually the most effective psychotherapy intervention. In addition, medications may be warranted to address his psychological symptoms and generate a more positive treatment response to therapy.

DIAGNOSES:

**F43.10 POSTTRAUMATIC STRESS DISORDER
F33.2 MAJOR DEPRESSIVE DISORDER, RECURRENT, SEVERE
Z91.5 PERSONAL HISTORY OF SELF-HARM
Z62.810 PAST HISTORY OF SEXUAL ABUSE IN CHILDHOOD
F51.5 NIGHTMARE DISORDER**

**Z63.5 DISRUPTION OF FAMILY BY SEPARATION OR DIVORCE
Z55.9 ACADEMIC OR EDUCATIONAL PROBLEM
Z65.3 PROBLEMS RELATED TO OTHER LEGAL CIRCUMSTANCES**

DECLARATIONS:

The clinical diagnostic interview, review of collateral records, consultations, and preparation of this report were performed solely by the undersigned. I further declare under penalty of perjury that I personally performed the examination of BYRON WORTHEY-AVILA necessary to produce this report on September 7, 2021.

I declare under penalty of perjury that the information contained in this report is true and correct to the best of my knowledge and belief, except as to information that I have indicated I received from others. As to that information, I declare under penalty of perjury that this report accurately describes the information provided to me and, except as noted herein, that I believe to be true.

This report is a true and accurate representation of the findings of the clinical assessment. The opinions proffered here are rendered to a reasonable degree of psychological certainty. The opinions here are limited to the information provided and may be subject to modification in light of new information.

Signed in the County of Clark on September 7th, 2021.

A handwritten signature in black ink, appearing to read "Eric S. Smith", written over a horizontal line.

**Eric S. Smith B.A., B.S., M.A., Ph.D.
Licensed Clinical Psychologist
Clinical and Forensic Psychological Specialist**

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK
JUVENILE DIVISION

In the Matter of:

BYRON JOSHUA WORTHEY-AVILA,

Date of Birth: [REDACTED]

Years of Age: 19 Years of Age

CASE NO. J-21-353445-D1

DEPT. L

CERTIFICATION HEARING REPORT

Date of Hearing: January 11, 2022

Time of Hearing: 10:00AM

Courtroom: 10

Reason for Hearing:

On January 11, 2022, the Clark County District Attorney's Office filed a motion requesting that a Juvenile Probation Officer be ordered to investigate all the facts and circumstances necessary to assist the Juvenile Court Judge in determining whether BYRON JOSHUA WORTHEY-AVILA should be certified as provided in Nevada Revised Statute for proper criminal proceedings in the

Eighth Judicial District Court on the following Petitions:

Petition 1, Count: 1 LEWDNESS WITH A CHILD UNDER NOC 50975 Level: Felony;

Petition 1, Count: 2 LEWDNESS WITH A CHILD UNDER NOC 50975 Level: Felony;

Petition 1, Count: 3 LEWDNESS WITH A CHILD UNDER NOC 50975 Level: Felony;

Petition 1, Count: 4 LEWDNESS WITH A CHILD UNDER NOC 50975 Level: Felony;

Petition 1, Count: 5 LEWDNESS WITH A CHILD UNDER NOC 50975 Level: Felony;

Petition 1, Count: 6 LEWDNESS WITH A CHILD UNDER NOC 50975 Level: Felony;

Petition 1, Count: 7 LEWDNESS WITH A CHILD UNDER NOC 50975 Level: Felony;

Petition 1, Count: 8 LEWDNESS WITH A CHILD UNDER NOC 50975 Level: Felony;

Petition 1, Count: 9 ATTEMPT LEWDNESS WITH A CHILD NOC 50983 Level: Felony.

Whereabouts of Subject Minor:

Address: [REDACTED] Las Vegas, NV 89121

Placements:

Byron was residing with his father at his residence ([REDACTED] Las Vegas, NV 89121) until April 2021. He ran away from his father's house and moved in with his girlfriend and her parents. He lived with his girlfriend for approximately 4 months until he was arrested on August 26, 2021. September 16, 2021, Bryon was certified and ordered to be transported to the Clark County Detention Center. On November 9, 2021, he was transported back to the Clark County Juvenile Detention Center for additional pending charges where he remains in custody.

Nature and Seriousness of Charged Offense(s):

The alleged incident is sexual in nature. On May 23, 2021, Las Vegas Metropolitan Police Department responded to a call for service regarding possible lewdness with a minor. Details of the call stated the person reporting recently learned that their 14-year-old daughter had possibly been sexually touched by her 18-year-old half-brother. Byron is the suspect, but his family call him by his middle name, Joshua.

Upon arrival, Officers made contact with the person reporting the alleged sexual abuse. The reported stated that his 14-year-old daughter disclosed her half-brother, Byron, has been rubbing his penis on her thighs while she sleeps. This has been occurring for the past 7 years and last occurred in the beginning of 2020. The arresting Officers spoke with the victim and she stated she remembers Byron began rubbing his penis on her thighs when she was 7 years old. She said Byron would do it as often as he could. She would wake up with Byron on top of her with his pants down and his penis exposed. She would pretend to be asleep during the acts because she was scared and didn't know what to do. Byron would rub his penis on her thighs until he ejaculated on the bed sheets and then would get back up and leave the room. She mentioned she never felt any type of penetration.

1 According to the victim, the acts stopped when she told Byron she had a boyfriend. Byron never
2 threatened her in any manner, and she did not tell her parents because she was afraid. The person
3 reporting also reported that his 5-year-old daughter was possibly inappropriately touched as well.
4

5 During a forensic interview, the 5-year-old victim reported that Byron did something to her
6 vagina. She did not want to tell the interviewer what Byron did to her vagina. Byron told her to keep
7 a secret. Byron also told her to be quiet.
8

9 There is a third victim that was reported, which is another half-sister that is currently 13
10 years old. Byron's stepmother asked her if anything happened between her and Byron. She reported
11 Byron would try several times to get on top of her, but she would fight him back and he never
12 penetrated her. Byron would physically hit her because she did not comply with what he was trying
13 to do. The third victim reported the first time Byron tried something inappropriate was
14 approximately 5 years ago. During the third victim's forensic interview, she reported that Byron
15 first touched her when she was 10 years old until she was 13. She reported that Byron would pull on
16 her shorts and would also touch her chest. Byron touched her vagina under her clothing, with skin-
17 to-skin contact. The third victim reported there were several other incidents where Byron would try
18 and touch or pull-down her underwear. She was not sure of how many times Byron touched her, but
19 it occurred several times. Byron would hit her because he was always angry.
20

21 **Persistency and Seriousness of Past Adjudicated or Admitted Criminal Offenses:**

22 Byron does not have a delinquent history or prior referrals to the Department of Juvenile Justice
23 Services.
24

25 **Subjective Factors:**

26 Byron Joshua Worthey-Avila was born to Leticia Avila and Byron Worthey in Las Vegas,
27 NV. They had another child during their relationship together, Nathan Avila. They had marital
28

1 issues and Mr. Worthy is unsure if Nathan is biologically his child. Byron was approximately 3
2 years old when his parents were separated. Him and his brother were separated, Nathan went to live
3 with his mother and Byron lived with his father. Byron's biological mother was not involved in his
4 life and did not return into his life until he was 16 years old. Mr. Worthy got remarried to Hyacinth
5 Worthy. He and Hyacinth have 4 children together: Z█████ W█████, C█████ W█████, G█████
6 W█████, and A█████ W█████. Although there are no substantiated CPS investigations, the family
7 does have a CPS history with reports of excessive physical discipline. There is an uncle, Charles
8 Ariston Jr., that is currently in-custody at CCDC for allegations of assaulting the children as well.
9 Byron also reported that he was sexually abused by his uncle, which was reported to Las Vegas
10 Metropolitan Police Department. Byron's disclosure assisted in the arrest of his uncle.

11
12 Byron last attended Chaparral High School and failed his Senior year due to credit
13 deficiency. He was credit deficient due to a mental health hospitalization and missing a lot of school
14 due to his depression and anxiety. While being in Juvenile Detention, Byron was able to complete
15 his credit retrieval and obtain his GED.

16
17 Byron reports he was diagnosed with anxiety at the age of 17 years old. He has been
18 hospitalized due to his mental health on 3 occasions. The first time he was hospitalized was at
19 Desert Parkway. He reported that his family was going to California for a church event, and he did
20 not want to go. He was also dealing with issues of his mother coming back into his life. He ran
21 away, stole medication from a homeless person and attempted to overdose. He was found in a
22 parking lot and transported to the hospital. The second time he was hospitalized was at Seven Hills.
23 He attempted suicide by trying to overdose on his prescribed medication. While at Seven Hills, it
24 was determined that he needed long term care due to his previous suicide attempts and he was
25 admitted to MonteVista Hospital. Byron reports that he is anxious and has communication
26 problems, he often times finds himself depressed. He does have a history of running away from
27 home and leaving home without permission. Byron was sexually abused by his uncle that is
28

1 currently incarcerated. He has a low self-esteem. He is shy and withdrawn and is a victim of
2 bullying. He has witnessed domestic violence in the household, he remembers a time his stepmother
3 threw an iron at his father.

4
5 Byron reported an experimental history of alcohol and drug use. He reports that he only
6 experimented with marijuana and alcohol however, he does not enjoy it. He does not currently use
7 any drugs or alcohol.

8
9 Byron failed his senior year of high school and obtained his GED while being placed in
10 Juvenile Detention. He did not have an Individual Education Plan or a 504 Plan. Byron has an
11 extensive amount of trauma in his lifetime. Byron believes he can benefit from counseling and is
12 open to receiving treatment.

13
14 **Prior Services:**

15 Byron has not received prior services from the Department of Juvenile Justice Services.

16
17 **Community Protection:**

18 There are three factors that must be considered when deliberating certification: history of
19 prior adjudication, subjective factors, and the seriousness of the alleged offenses.

20
21 Byron is 19 years old. He does not have a prior delinquent history.

22
23 Byron has some protective factors as his family has been supportive during this process and wants
24 the best for him. While in detention, Byron was able to get his Adult GED. Prior to being detained,
25 Byron had a part-time job with Dynamic Cleaning where he would clean houses and provide
26 janitorial services. He was employed with them for approximately 6 months. He has limited drug or
27 alcohol use. He only experimented with alcohol and marijuana and does not actively use because he
28

1 does not enjoy it.

2
3 The allegations of this incident are sexual in nature and spanned over a lengthy amount of time.

4 There are multiple victims in this case. If these charges are proven to be true, the alleged victims in
5 this matter may require intensive therapy and long-term trauma as a result of the offense.

6
7 Please refer to the Certification Evaluation that is filed as a Supplementary Report for additional
8 information regarding this case.

9
10 **Recommendation:**

11 The Probation Department is not responsible to make the recommendation approving or denying the
12 Motion to Certify.

13
14
15 Submitted by:

16
17 

18 _____
19 SAM LEE JR.
20 JUVENILE PROBATION OFFICER
21 601 N. Pecos Road
22 Las Vegas, NV 89101

12/30/2021

DATE

23
24 Approved by:

25 

26 _____
27 KATHERINE HUNCOVSKY
28 JUVENILE PROBATION SUPERVISOR

12/30/2021

DATE

CLARK COUNTY DEPARTMENT OF JUVENILE JUSTICE SERVICES

PREVIOUS RECORD SHEET
(FOR CERTIFICATION REPORTS)

Name: BYRON JOSHUA WORTHEY-AVILA

Case # J--353445

<u>Ref. Date</u>	<u>Offense</u>	<u>Court Date</u>	<u>Disposition</u>
08-26-2021	LEWDNESS WITH A CHILD UNDER		Approved by DA
08-26-2021	LEWDNESS WITH A CHILD UNDER		Approved by DA
08-26-2021	LEWDNESS WITH A CHILD UNDER		Approved by DA
08-26-2021	LEWDNESS WITH A CHILD UNDER		Approved by DA
08-26-2021	ATTEMPT LEWDNESS WITH A CHILD		Denied by DA
08-26-2021	LEWDNESS WITH A CHILD UNDER		Approved by DA
08-26-2021	LEWDNESS WITH A CHILD UNDER		Approved by DA
08-26-2021	LEWDNESS WITH A CHILD UNDER		Approved by DA
08-26-2021	LEWDNESS WITH A CHILD UNDER		Approved by DA

1 CTNC

FILED

JAN 06 2022

CLERK OF COURT

2 ORIGINAL

3
4 EIGHTH JUDICIAL DISTRICT COURT

5 JUVENILE DIVISION

6 CLARK COUNTY, NEVADA

7 In the Matter of:) CASE NO. J-21-353445-D1
8) DEPT. L
9 BYRON WORTHEY-AVILA,)
10 Subject Minor(s).) APPEAL NO. 83621
11) SEALED

12 CERTIFICATION OF TRANSCRIPTS/NOTIFICATION OF COMPLETION

13 The office of Transcript Video Services received a
14 request for transcript and one copy, for the purpose of
15 appeal, from Jeremy Storms, Esq., for the following
16 proceedings in the above-captioned case:

17 DECEMBER 16, 2021

18 I do hereby certify that true and accurate copies of the
19 transcript requested in the above-captioned case were filed
20 with the Eighth Judicial District Court on January 06, 2022;
21 and ordering party was notified January 06, 2022

22 DATED this 6th day of January, 2022.

23 
24 Sherry Justice
Court Recorder/Transcriber

Steven D. Grierson

STEVEN B. WOLFSON
DISTRICT ATTORNEY
NEVADA STATE BAR NO. 001565
TANNER SHARP
Deputy District Attorney
Nevada State Bar No. 13018
601 North Pecos Road
Las Vegas, NV 89101-2408
(702) 455-5320
Attorney for the State of Nevada

DISTRICT COURT
JUVENILE DIVISION
CLARK COUNTY, NEVADA

In the Matter of:

BYRON JOSHUA WORTHEY-AVILA

Date of Birth: [REDACTED]

A Minor 18 Years of Age.

CASE NO. J-21-353445-D1

DEPT NO. L

COURTROOM NO. 17

2nd AMENDED CERTIFICATION PETITION

COMES NOW your Petitioner, the Clark County District Attorney, by and through TANNER SHARP, Deputy District Attorney, and moves this Court to enter an Order directing that a full and complete investigation be completed to assist the Court in determining whether to retain jurisdiction in this matter or certify the subject minor for proper criminal proceedings as an adult. Petitioner prays that proceedings in this matter be arrested pending the Court's jurisdictional decision.

I

Petitioner is informed and believes and therefore alleges that the subject minor named herein is 18 years of age and was 16 and 18 years of age at the time the offense(s) alleged in Petition No. 1 was committed.

///

///

///

II

Petitioner is informed and believes and therefore alleges that the offense(s) alleged to have been committed by the subject minor in Petition No. 1 would be felonious if committed by an adult, more specifically:

Petition No.

I(1)	Lewdness with a Child Under the Age of 14
I(2)	Lewdness with a Child Under the Age of 14
I(3)	Lewdness with a Child Under the Age of 14
I(4)	Lewdness with a Child Under the Age of 14
I(5)	Lewdness with a Child Under the Age of 14
I(6)	Lewdness with a Child Under the Age of 14
I(7)	Lewdness with a Child Under the Age of 14
I(8)	Lewdness with a Child Under the Age of 14

III

Petitioner is informed and believes and therefore alleges that the subject minor named in this Petition has admitted or been adjudicated or been convicted of the following criminal offense(s):

Offense	Date
None	

IV

Petitioner is informed and believes and therefore alleges that the offense(s) allegedly committed by the subject minor are not subject to presumptive certification to the adult criminal process.

V

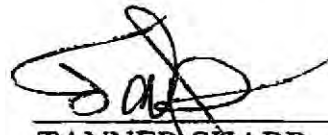
Petitioner will supply counsel for subject minor with a true and correct copy of this Certification Petition at the time of the initial hearing scheduled in this matter.

///

1 WHEREFORE, Petitioner prays that these proceedings be arrested pending further
2 Order of the Court and further that the Court enter an Order directing that a full and
3 complete investigation be completed to assist the Court in determining whether to retain
4 jurisdiction in this matter or certify the subject minor for proper criminal proceedings as an
5 adult.

6 DATED this 28th day of January, 2022.

7
8 STEVEN B. WOLFSON
9 DISTRICT ATTORNEY

10
11 
12 TANNER SHARP
13 Deputy District Attorney
14 Nevada Bar No.13018

15
16
17
18
19
20
21
22
23
24
25
26
27
28
TS/mrm

AFFIDAVIT

STATE OF NEVADA }
COUNTY OF CLARK } ss:

DAWN WOOD, being first duly sworn, deposes and says:

1. That I am currently employed as a Victim Witness Advocate with the Clark County District Attorney's Office.
2. That on October 22, 2021, I met with the alleged victims, identified as Z.W. and C.W.
3. That during that meeting I spoke with Z.W. in a private setting outside the hearing and vision of all other witnesses in the case.
4. That Z.W. recalled a time between March 26, 2018 and June 30, 2021, where she was wearing a shirt and pants.
5. That Byron Worthey-Avila (Subject Minor) entered Z.W.'s room and pulled her pants down.
6. That Subject Minor mounted Z.W.
7. That Subject Minor moved his body all around on top of her. (Count 6).
8. That Z.W. was afraid of Subject Minor because he would hit her and boss her around.
9. That C.W. disclosed a time between March 26, 2018 and June 30, 2021, when Subject Minor touched and/or rubbed the chest of C.W.
10. That C.W. recalled playing a game with Subject Minor. That C.W. hid in the bathroom. That Subject Minor entered the bathroom.
11. That Subject Minor put his hands under her shirt touching and/or rubbing her chest. That Subject Minor also put his hands down Z.W.'s pants to touch and/or rub her vagina. (Count 7).
12. That C.W. disclosed another incident during an evening between March

26, 2018 and June 30, 2021.

13. That C.W. shared a room with her other siblings.

14. That Subject Minor entered the room where he removed C.W.'s pajama pants. That Subject Minor also removed his pants.

15. That Subject Minor moved close to C.W. That C.W. felt Defendant's skin touch her vagina. That C.W. was not certain whether Defendant's penis, hand and/or finger touched her vagina. (Count 8)

16. That C.W. is afraid of Subject Minor because he is angry. That Subject Minor would choke and hit C.W.


17. That all these events occurred while Z.W. and C.W. were under the age of fourteen.

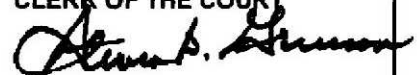
18. That all these events occurred within Clark County, Nevada.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on

January 28, 2022


DAWN WOOD
Victim Witness Advocate
Clark County District Attorney's
Office



STEVEN B. WOLFSON
DISTRICT ATTORNEY
NEVADA STATE BAR NO. 001565
TANNER SHARP
Chief Deputy District Attorney
Nevada State Bar No. 13018
601 North Pecos Road
Las Vegas, NV 89101-2408
(702) 455-5320
Attorney for the State of Nevada

DISTRICT COURT
JUVENILE DIVISION
CLARK COUNTY, NEVADA

In the Matter of:

BYRON JOSHUA WORTHEY-AVILA

Date of Birth: [REDACTED]

A Subject 18 Years of Age.

CASE NO. J-21-353445-D1

DEPT NO. L

COURTROOM NO. 10

**AMENDED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF CERTIFICATION PETITION**

COMES NOW, the State of Nevada, by and through Steven B. Wolfson, District Attorney, through his Chief Chief Deputy District Attorney, Tanner Sharp, and files the instant Memorandum of Points and Authorities in Support of Certification Petition.

DATED this 21st day of January, 2022.

STEVEN B. WOLFSON
DISTRICT ATTORNEY



TANNER SHARP
Deputy District Attorney
Nevada Bar No.13018

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
2 **CERTIFICATION PETITION**

3 **BYRON JOSHUA WORTHEY-AVILA's** (Subject) conduct demands that the
4 Juvenile Division of the Eighth Judicial District Court (Juvenile Court) waive jurisdiction
5 and transfer this case to the Criminal Division of the Eighth Judicial District Court
6 (Criminal Court) so that Subject may be certified for proper criminal proceedings as an
7 adult under the provisions of NRS 62B.390.

8 **I**

9 **THE RECORD BEFORE THE COURT ESTABLISHES PROSECUTIVE
10 MERIT AS TO THE OFFENSES CHARGED**

11 The exhibits attached to the instant Memorandum of Points and Authorities in
12 Support of Certification Petition (State's Memorandum) satisfies the minimal standard of
13 prosecutive merit and as such Juvenile Court should enter a finding that the State has met
14 the minimal burden of establishing prosecutive merit and engage in the certification
15 analysis required by NRS 62B.390.¹

16 ¹62B.390. Certification of child for criminal proceedings as adult:

17 1. Except as otherwise provided in subsection 2 and NRS 62B.400, upon a motion by the district attorney and after a full
18 investigation, the juvenile court may certify a child for proper criminal proceedings as an adult to any court that would have
19 jurisdiction to try the offense if committed by an adult, if the child:

20 (a) Is charged with an offense that would have been a felony if committed by an adult; and
21 (b) Was 14 years of age or older at the time the child allegedly committed the
22 offense.

23 2. Except as otherwise provided in subsection 3, upon a motion by the district attorney and after a full investigation, the juvenile
24 court shall certify a child for proper criminal proceedings as an adult to any court that would have jurisdiction to try the offense if
25 committed by an adult, if the child:

26 (a) Is charged with:

27 (1) A sexual assault involving the use or threatened use of force or violence against the victim; or

28 (2) An offense or attempted offense involving the use or threatened use of a firearm; and

(b) Was 16 years of age or older at the time the child allegedly committed the offense.

3. The juvenile court shall not certify a child for criminal proceedings as an adult pursuant to subsection 2 if the juvenile court
specifically finds by clear and convincing evidence that:

(a) The child is developmentally or mentally incompetent to understand his situation and the proceedings of the court or to aid his
attorney in those proceedings; or

(b) The child has substance abuse or emotional or behavioral problems and the substance abuse or emotional or behavioral
problems may be appropriately treated through the jurisdiction of the juvenile court.

4. If a child is certified for criminal proceedings as an adult pursuant to subsection 1 or 2, the juvenile court shall also certify the
child for criminal proceedings as an adult for any other related offense arising out of the same facts as the offense for which the
child was certified, regardless of the nature of the related offense.

5. If a child has been certified for criminal proceedings as an adult pursuant to subsection 1 or 2 and the child's case has been
transferred out of the juvenile court:

(a) The court to which the case has been transferred has original jurisdiction over the child;

(b) The child may petition for transfer of the case back to the juvenile court only upon a showing of exceptional circumstances;
and

(c) If the child's case is transferred back to the juvenile court, the juvenile court shall determine whether the exceptional
circumstances warrant accepting jurisdiction.

1 The Nevada Supreme Court has defined the concept of prosecutive merit to mean
2 that there is probable cause to believe that the Subject committed the crime charged:

3
4 "Prosecutive merit" is the term referring to the necessity for establishing the
5 merit of the prosecution's case as a condition for proceeding with the
6 transfer process. According to the Kent [v. United States], 383 U.S. 541, 86
7 S.Ct. 1045 (1966)] memorandum, prosecutive merit exists if there is
8 evidence upon which a grand jury would be expected to return an
9 indictment. To say that there is prosecutive merit is to say that there is
10 probable cause to believe that the subject minor committed the charged
11 crime.

12 Judicial economy requires that a preliminary determination be made as to
13 the prosecutive merit of the charge before going ahead with the transfer
14 process. If there is no prima facie case to support the charge, there is no
15 point in the court's involving itself further in the process. Thus the only
16 reasonable way to proceed is for the court to make an initial determination
17 of prosecutive merit.

18 In the Matter of Seven Minors, 99 Nev. 427, 437, 664 P.2d 947, 953 (1983).

19 The same quantity of evidence is necessary for a magistrate to bind a case over to
20 District Court following a Preliminary hearing. In Kinsey v. Sheriff, 87 Nev. 361, 363,
21 487 P.2d 340, 341 (1971), the Nevada Supreme Court concluded, "[t]o commit an
22 accused for trial, the State is not required to negate all inferences which might explain the
23 his conduct, but only to present enough evidence to support a reasonable inference that
24 the accused committed the offense." Further, "[a] finding of probable cause may be
25 based on slight evidence." Sheriff v. Badillo, 95 Nev. 593, 594, 600 P.2d 221, 222
26 (1979).

27 In Sheriff v. Middleton, 112 Nev. 956, 921 P.2d 282 (1996), the Nevada Supreme
28 Court carefully summarized this area of the law:

 At trial, the state bears the burden of proving beyond a reasonable doubt the

1 corpus delicti of the crime and that the defendant committed the crime.
2 Frutiger [v. State], 111 Nev. [1385,] 1389, 907 P.2d [158,] 161 [(1995)];
3 Azbill [v. State], 84 Nev. [345,] 352, 440 P.2d [1014,] 1018 [(1968), cert.
4 denied, 429 U.S. 895, 97; S.Ct. 257 (1976)]. However, at the preliminary
5 hearing stage, probable cause to bind a defendant over for trial "may be
6 slight, 'even marginal' evidence because it does not involve a
7 determination of guilt or innocence of an accused." Sheriff v. Rhodes, 96
8 Nev. 184, 186, 606 P.2d 178, 180 (1980) (citations omitted); see also,
9 Sheriff v. Milton, 109 Nev. 412, 414, 851 P.2d 417, 418 (1993) (the state
10 need only present sufficient evidence "to support a reasonable inference
11 that the accused committed the offense") (quoting, Kinsey v. Sheriff, 87
12 Nev. 361, 363, 487 P.2d 340, 341 (1971)).

13 Middleton, 112 Nev. at 961, 921 P.2d at 286.

14 The Nevada Supreme Court has stated that the Juvenile Courts of Nevada may
15 make a determination of prosecutive merit based on the written record alone. Moreover,
16 the Court went on to specifically analogize the amount of evidence necessary for
17 establishing prosecutive merit to the amount of evidence necessary for establishing
18 probable cause to detain an adult. The policy reason behind the adoption of this minimal
19 standard is that a juvenile is not entitled to two preliminary hearings.

20 [T]he first business of the juvenile court in a transfer proceeding should
21 be a resolution of the threshold requirement of prosecutive merit. The
22 necessary determination of probable cause can be made preliminarily by
23 the court on the basis of the written record. An adversary hearing is not
24 required, and the probable cause finding may be based on evidence taken
25 from the petition, sworn investigative reports, witnesses' affidavits,
26 police affidavits, or other informal but reliable evidence.

27 Due process does not require that a juvenile be given an adversary
28 hearing comparable to the preliminary hearing examination provided for
in NRS Chapter 171. The process of finding probable cause in transfer
matters is comparable to 172, the finding that must be made in
pre-adjudication detention matters.

In detention cases the "standard- probable cause to believe the suspect has
committed a crime- traditionally been decided by a magistrate in a
nonadversary proceedings on hearsay and written testimony, and the
Court has approved these informal modes of proof." Gerstein v. Pugh,
420 U.S. 103, 120 (1975). After such an informal proof a youth may be
properly and constitutionally detained; there is no reason why similar
proof cannot support a finding of the existence of the level of prosecutive
merit necessary to serve the ends of judicial economy and the individual
protections referred to above.

Transfer proceedings are essentially dispositional in nature and not
adjudicatory. No determination of guilt or innocence is made. A juvenile

1 should not be entitled to two preliminary examinations, one at the
2 juvenile level and another at the adult level. Consequently, the state may
be said to have met its initial burden of showing prosecutive merit if
proof consistent with the holdings in Gerstein can be presented.

3 In re: Three Minors, 100 Nev. 414, 418, 684 P.2d 1121, 1123-24 (1984).

4 The reality of the matter is that the State has established slight or marginal
5 evidence that Subject participated in the offense(s) at issue.

6 II

7 **THE PUBLIC SAFETY AND WELFARE REQUIRES TRANSFER** 8 **OF JURISDICTION OVER THIS MATTER TO THE CRIMINAL** 9 **COURT**

10 The public safety and welfare requires waiver of jurisdiction in this matter from
the Juvenile Court to the Criminal Court.

11 The policy justifying transfer pursuant to NRS 62B.390 amounts to a realization
12 that there is no set age at which a particular juvenile may be held accountable for his or
13 her conduct as an adult and that when a court is called upon to make a personalized
14 determination of which system should adjudicate the questions of guilt and the
15 punishment the primary concern is the safety and welfare of the public and not the best
16 interest of the minor. The Nevada Supreme Court has summarized the development of
17 Juvenile Court as an institution and the public policies driving the evolution of NRS
18 62B.390:

19
20 Juvenile courts have traditionally been preoccupied with the interests of
21 the child, and the interests of the state, as such, did not become a
declared, joint purpose of our Juvenile Court Act until 1949.

22 The Juvenile Court from its inception in Illinois in 1899 until
23 approximately the middle of this century was a child-centered institution
24 based on theories taken from the positive school of criminology and
25 especially on the deterministic principle that youthful law violators are
26 not morally or criminally responsible for their behavior but, rather, are
27 victims of their environment--an environment which can be ameliorated
and modified much in the way that a physician modifies the milieu
interieur of a sick patient.

28 Under such a doctrine the Juvenile Court tended to lose its identity as a
court and became more of a social clinic than a court of law. Lost to

1 such an institution was the moralizing and socializing influence
2 associated with the operation of criminal courts; and, more importantly,
3 lost too were society's ageless responses to criminal behavior:
4 punishment, deterrence, retribution and segregation. So it was that
5 juvenile courts in Nevada prior to 1949 were not charged with
6 administering the criminal law for the protection of society against
7 juvenile criminality but were required to treat the youthful law violator
8 "not as a criminal, but as misdirected, and misguided and needing aid,
9 encouragement and assistance." NCL S 1032.

10 This kind of kindly, paternalistic approach was eventually seen as being
11 ill-suited to the task of dealing with juvenile crime. The legislative
12 response to this realization was that toward the middle of this century a
13 number of state legislatures, including our own, made changes in the
14 purpose clause of Juvenile Court acts so that Juvenile courts were
15 required to consider the public interest as well as the child's interest. This
16 departure from traditional juvenile justice philosophy is significant. We
17 take it to indicate that the status of juvenile courts as courts is to be
18 recognized and that protection of the public against juvenile criminal
19 offenders may be effected by invocation of the means traditionally
20 employed in the judicial administration of the criminal law. Juvenile
21 courts may under such legislative direction properly consider the
22 punitive, deterrent and other accepted adjuncts of the criminal law.

23 Although juvenile courts may have difficulty at times in balancing the
24 interests of the child and the public, there is no irreconcilable opposition
25 between the two. By formally recognizing the legitimacy of punitive and
26 deterrent sanctions for criminal offenses juvenile courts will be properly
27 and somewhat belatedly expressing society's firm disapproval of juvenile
28 crime and will be clearly issuing a threat of punishment for criminal acts
to the juvenile population.

Id., 99 Nev. at 431-32, 664 P.2d at 950 (1983).

Certification is an essential safety valve designed to deal with the worst offenders
or the offenders who engage in the worst conduct:

Transfer has played an important role in juvenile court jurisprudence since
its earliest days and has acted as a safety valve through which offenders
who were within the statutory age of juvenile court jurisdiction could in
appropriate circumstances be held accountable for their criminal acts by
referral to the adult criminal justice system.

Id. at 430, 664 P.2d at 949.

1 This enlightened, modern philosophy of juvenile justice elicited a clear public
2 policy statement from the Nevada Supreme Court: "the court's duty to the public is
3 paramount. **The primary purpose of juvenile court intervention in delinquency cases**
4 **is social control**; and when one interest must predominate, it should be that of the
5 public." Id. at 433, 664 P.2d at 951 (emphasis added). In the context of a transfer
6 proceeding this statement of public policy mandated a complete abandonment of the
7 "best interest of the child" standard:

8 Once transfer is justified on the basis of public interest and safety, **there is**
9 **no need to consider the "best interest of the child" or the youth's**
10 **amenability to treatment** in the juvenile court system except insofar as
such considerations bear on the public interest.

11 ...
12 With community protection as the guiding principle to be considered in
13 transfer proceedings, **subjective evaluations and prognostications as to**
14 **whether a given youth is or is not likely to respond favorably to**
15 **juvenile court treatment will no longer be the court's primary focus** in
transfer proceedings; rather, the dispositive question to be addressed by the
court is whether the public interest requires that the youth be placed within
the jurisdiction of the adult criminal courts.

16 Id. at 433-34, 664 P.2d at 951-52 (emphasis added).

17 The focus of the transfer inquiry then is on the conduct of the minor in terms of
18 the danger that conduct represents to society and should not involve an amorphous
19 attempt at guesstimating whether a particular juvenile will be saved by Juvenile Court
20 intervention:

21 **[T]he juvenile court no longer bases transfer decisions on the issue of**
22 **whether a juvenile facing transfer is a suitable subject for the juvenile**
23 **court's rehabilitation efforts, but, rather, on the youth's criminal**
24 **conduct** and whether under the circumstances the public interest and safety
will permit the youth before the court to be treated as a child."

25 ...
26 The transfer process is based upon the sound idea that there is no arbitrary
27 age at which all youths should be held fully responsible as adults for their
28 criminal acts and that there should be a transition period during which an
offender may or may not be held criminally liable, depending upon the
nature of the offender and the offense.

1 Jeremiah B. v. State, 107 Nev. 924, 926, 823 P.2d 883, 884 (1991) (internal quotation
2 marks and citation omitted) (emphasis added).

3 Furthermore, the Nevada Supreme Court has specifically endorsed punishment as
4 a legitimate response to juvenile offenders: "[T]he integrity of the criminal law is
5 maintained by seeing to it that those who commit crimes are punished. ... [P]unitive
6 incarceration may be justified in juvenile cases for serious criminal violations
7 because the youthful offender deserves to be punished." Scott L. v. State, 104 Nev.
8 419, 422, 760 P.2d 134, 135-36 (1988) (emphasis added). Obviously the most severe
9 punishment Juvenile Court can order is transfer to the criminal justice system for
10 treatment as an adult.

11 This enlightened, modern philosophy of juvenile justice has been codified by the
12 Nevada Legislature. NRS 62B.390 is jurisdictional in nature and establishes two
13 presumptions regarding transfer decisions. Discretionary certification establishes a
14 presumption that a particular juvenile is within the jurisdiction of Juvenile Court while
15 presumptive certification establishes a presumption that a particular defendant is outside
16 the jurisdiction of Juvenile Court.

17 In this case, the State is seeking discretionary certification. Discretionary
18 certification creates a presumption of continued Juvenile Court jurisdiction where the
19 State must demonstrate by clear and convincing evidence that the public safety and
20 welfare requires waiver of jurisdiction. Seven Minors, 99 Nev. at 436-37, 667 P.2d at
21 953. The State may rebut the presumption of continued Juvenile Court jurisdiction by
22 establishing that the decisional matrix requires waiver of jurisdiction:

23
24 In transfer matters, then, we hold that the juvenile court should consider a
25 decisional matrix comprised of the following three categories: first, nature
26 and seriousness of the charged offenses; second, persistency and
27 seriousness of past adjudicated or admitted criminal offenses; and third,
28 what we will refer to as the subjective factors, namely, such personal
factors as age, maturity, character, personality and family relationships and
controls.

1 Id. at 434-35, 664 P.2d at 952.

2 In certification proceedings the "primary and most weighty consideration will be
3 give to the first two of the categories." Id. 435, 664 P.2d at 952. Essentially, the
4 subjective factors act as a "tie breaker:"

5 This third category, involving subjective evaluations of the youth, will come
6 into play principally in close cases in which neither of the other two
7 categories clearly impels transfer to adult court. In such cases, even given
8 fairly serious criminal activity, a decision not to transfer may be properly
9 and wisely made because such individual considerations as mental attitude,
10 maturity level, emotional stability, family support and positive
11 psychological and social evaluations require a finding that the public interest
12 and safety are best served by retaining the youth in the juvenile system.

11 Id.

12 The policy arguments justifying the doctrine of waiver, the specific statutory
13 elements of NRS 62B.390 and or the precedents of the Nevada Supreme Court require
14 transfer of this matter from Juvenile Court to Criminal Court. The primary purpose of
15 Juvenile Court intervention is to protect the safety and welfare of the public and in the
16 matter at hand that obligation requires transfer of Subject Minor to the Criminal Court.

17 **CONCLUSION**

18 Based on the foregoing, Juvenile Court should waive jurisdiction over Subject
19 Minor.

20 DATED this 21st day of January, 2022.

21 STEVEN B. WOLFSON
22 DISTRICT ATTORNEY

23
24 

25 TANNER SHARP
26 Deputy District Attorney
27 Nevada Bar No.13018
28

TLS/mrm

A F F I D A V I T

STATE OF NEVADA }
COUNTY OF CLARK } ss:

DAWN WOOD, being first duly sworn, deposes and says:

1. That I am currently employed as a Victim Witness Advocate with the Clark County District Attorney's Office.
2. That on October 22, 2021, I met with the alleged victims, identified as Z.W. and C.W.
3. That during that meeting I spoke with Z.W. in a private setting outside the hearing and vision of all other witnesses in the case.
4. That Z.W. recalled a time between March 26, 2018 and June 30, 2021, where she was wearing a shirt and pants.
5. That Byron Worthey-Avila (Subject Minor) entered Z.W.'s room and pulled her pants down.
6. That Subject Minor mounted Z.W.
7. That Subject Minor moved his body all around on top of her. (Count 6).
8. That Z.W. was afraid of Subject Minor because he would hit her and boss her around.
9. That C.W. disclosed a time between March 26, 2018 and June 30, 2021, when Subject Minor touched and/or rubbed the chest of C.W.
10. That C.W. recalled playing a game with Subject Minor. That C.W. hid in the bathroom. That Subject Minor entered the bathroom.
11. That Subject Minor put his hands under her shirt touching and/or rubbing her chest. That Subject Minor also put his hands down Z.W.'s pants to touch and/or rub her vagina. (Count 7).
12. That C.W. disclosed another incident during an evening between March

26, 2018 and June 30, 2021.

13. That C.W. shared a room with her other siblings.

14. That Subject Minor entered the room where he removed C.W.'s pajama pants. That Subject Minor also removed his pants.

15. That Subject Minor moved close to C.W. That C.W. felt Defendant's skin touch her vagina. That C.W. was not certain whether Defendant's penis, hand and/or finger touched her vagina. (Count 8)

16. That C.W. is afraid of Subject Minor because he is angry. That Subject Minor would choke and hit C.W.

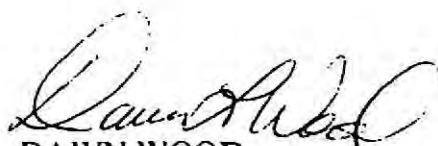
17. That all these events occurred while Z.W. and C.W. were under the age of fourteen.

18. That all these events occurred within Clark County, Nevada.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on

January 28, 2022


DAWN WOOD
Victim Witness Advocate
Clark County District Attorney's
Office

No. 83621
No. 84276

IN THE NEVADA SUPREME COURT

B. Joshua W-A, a Minor,

Appellant,

v.

State of Nevada,

Respondent.

FILED

APR 19 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *S. Young*
DEPUTY CLERK

Direct Appeal from an Order of the District Court
Juvenile Division for Certification of Adult Status
Eighth Judicial District Court
Honorable David Gibson Jr., District Court Judge
District Court Case No. J-21-353445-D1

APPELLANT'S APPENDIX VOLUME 2 OF 2

Redacted

JoNell Thomas
State Bar #4771
Special Public Defender
W. Jeremy Storms
State Bar #10772
Chief Deputy Special Public Defender
330 South 3rd Street
Las Vegas, NV 89155
(702) 455-6265
Attorneys for Appellant Byron W-A

MAR 30 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

22-12334

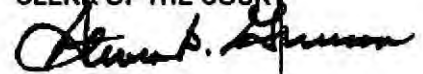
VOLUME PLEADING

PGS

1	2 nd Amended Certification Petition (1/28/22)	231-35
1	Amended Certification Petition (11/22/21)	131-33
1	Amended Memorandum of Points and Authorities in Support of Certification Petition (1/31/22)	236-46
1	Amended Petition - Delinquency (11/22/21)	128-30
1	Certification Hearing Report (12/30/21)	223-29
1	Certification Petition (9/3/21)	4-6
1	Certification of Transcripts/Notification of Completion (1/6/22)	230
1	Certification to Adult Status Order (9/21/21).....	100-02
2	Certification to Adult Status Order on Additional Counts 6-8 (2/9/2022)	275-81
2	Court Minutes (unfiled)	285-93
1	Court Order (12/22/21)	210-13
1	Finding of Probable Cause and Transportation Order for a Certified Adult (9/17/21).....	98-99

2	Finding of Probable Cause and Transportation Order for a Certified Adult (2/8/22)	271-74
1	Memorandum of Points and Authorities in Support of Certification Petition (9/3/21)	7-33
1	Motion for the Court to Accept Jurisdiction Under NRS 62B.390(5)(C), Exceptional Circumstances to Certification, Because the Offenses Charged may Only be Prosecuted as Delinquent Acts and Therefore are not Certifiable for Criminal Proceedings (11/19/21).....	108-27
1	Notice of Appeal (10/6/21)	106-07
2	Notice of Appeal (2/15/22)	282-84
1	Notice of Hearing (11/22/21)	134-35
1	Opposition to Certification Petition (9/10/21).....	37-86
2	Opposition to Certification Petition (2/2/2022).....	247-57
1	Opposition to Subject Minor's Motion for the Court to Accept Jurisdiction Under NRS 62B.390(5)(C), Exceptional Circumstances to Certification, Because the Offenses Charged may Only be Prosecuted as Delinquent Acts and Therefore are not Certifiable for Criminal Proceedings (12/6/21).....	136-80
1	Order Setting Certification Hearing (9/7/21)	34-36
1	Petition - Delinquency (9/1/2021).....	1-3

1	Reply to State's Opposition to Motion for the Court to Accept Jurisdiction Under NRS 62B.390(5)(C), Exceptional Circumstances to Certification, Because the Offenses Charged may Only be Prosecuted as Delinquent Acts and Therefore are not Certifiable for Criminal Proceedings (12/9/21).....	181-87
1	Reporter's Transcript September 15, 2021 [SEALED] (11/9/21)	87-97
1	Reporter's Transcript September 23, 2021 [SEALED] (11/9/21)	103-05
1	Reporter's Transcript December 16, 2021 [SEALED] (1/6/22)	188-209
2	Reporter's Transcript February 3, 2022 [SEALED] (2/17/22)	258-70
1	Supplementary Report (12/23/21)	214-22



OPPS
JoNell Thomas #4771
Clark County Special Public Defender
W. Jeremy Storms #10772
Chief Deputy Special Public Defender
330 S. 3rd St., Suite 800
Las Vegas, Nevada 89155
(702) 455-6265
(702) 455-6273 (fax)
Jeremy.Storms@ClarkCountyNV.gov
Attorney for Worthey-Avila

DISTRICT COURT, JUVENILE DIVISION
CLARK COUNTY

State of Nevada,

Plaintiff,

v.

Byron Joshua Worthey-Avila,
ID: 8454905,

Defendant.

Case No. J-21-353445-D1

Dept. No. L

OPPOSITION TO CERTIFICATION PETITION

Joshua Worthey-Avila, hereby opposes the State's Motion for Certification of the Subject Minor to Adult Status as it is illegal to certify a child to adult status for these charges and because treatment has been shown to be far more effective than incarceration for juveniles who have engaged in sexually abusive behaviors learned through their own sexual abuse. Thus, the court must exercise its responsibility to reform and redirect children away from delinquent behavior in this case because it is the only legal option available to it and treatment has been shown to be far more effective than criminalization for this class of youthful offenders.

POINTS AND AUTHORITIES

Counsel understands that certification appears a forgone conclusion in this matter, however, the arguments below are submitted with respect to the illegality of certification so this court is aware of the further information that has been developed supporting the arguments previously raised as this information will be presented to the Supreme Court. Also, the studies discussed below are being presented to the court for its consideration.

I. Cote H. v. Eighth Judicial District Court, where the Supreme Court decided a challenge to an earlier version of NRS 201.230, supports Joshua's interpretation of the plain meaning of the current law.

In 2008, an earlier version of NRS 201.230 that did not limit the felony application of the law to adults as it does now, was challenged. See Cote H. v. Eighth Judicial District Court, 124 Nev. 36, 175 P.3d 906 (2008). In that case, a minor under the age of 14 challenged the application of the statute against him arguing that since he was himself was under the age of 14, the statute did not apply to him as he was a part of the class of persons protected by the law. Id. The Supreme Court denied his claim, summarizing the circumstance in the following manner:

We conclude that, by its ordinary meaning, the term "person" is broad and all-encompassing. As a result, it is applicable to adults and minors, even if they are members of the class protected by the statute by virtue of their age. We further conclude that if the Legislature intended NRS 201.230(1) to only apply to perpetrators over the age of 14, the Legislature would have expressed that limitation as it has done in other statutes.

Cote H. v. Eighth Judicial Dist. Court, 124 Nev. 36, 40, 175 P.3d 906, 908-09 (2008)

In footnote 14, the Supreme Court gave an example of how the Legislature could express the limitation of the application of the statute's application upon children, "e.g., NRS 200.364 (limiting criminal liability for statutory sexual seduction to a

1 person 18 years of age or older)." Cote H., footnote 14. The changes made in the 2015
2 legislative session created a limitation of the felony application of NRS 201.230 to all
3 persons under the age of 18 in exactly the way the Court described in Cote H.

4 **II. Although the plain meaning of the statute governs here, the**
5 **legislative history confirms that NRS 201.230 should be interpreted**
6 **in the manner in which it is written.**

7 When presented with a question of statutory interpretation, if the statute
8 under consideration is clear on its face, a court cannot go beyond the statute in
9 determining legislative intent. Robert E. v. Justice Court of Reno Twp., 99 Nev. 443,
10 445, 664 P.2d 957, 959 (1983). Here, the plain language of the statute, the rules of
11 statutory interpretation and the various other statutes cited by the state support
12 counsel's reading of NRS. 201.230. The State has argued that it researched the
13 legislative history of NRS 201.230 and that the history supports its interpretation
14 that NRS 201.230 merely recites procedural rules expressed elsewhere regarding
15 certification. Such an assertion is unsupported by the legislative history.

16 **A. AB 49: Juveniles were excluded from adult penalty because of**
17 **concerns raised by legislators.**

18 NRS 201.230 was changed to delineate different and distinct penalties for
19 adult and juvenile offenders in the 2015 legislative session. In that session, Assembly
20 Bill No. 49 (herein, "AB 49") was introduced on behalf of the Attorney General, having
21 been prefiled on December 20th, 2014. AB 49 proposed numerous changes to
22 provisions governing crimes including a number of sex related offenses such as
23 "revenge pornography," sexual assault, lewdness with a child, open and gross
24 lewdness, indecent exposure and sexual contact with a pupil as well as other rules
25 related to sex crimes. The law, as proposed by the attorney general, made no
26 distinction between lewd acts committed by adults or juveniles. NRS 201.230
27 likewise contained no such distinction between juvenile and adult offenders prior to
the 2015 legislative session.

1 The proposed changes to NRS 201.230 in the Attorney General's introduced
2 version of AB 49 created a category B felony, with a 2-to-20-year sentencing range for
3 a person who commits a lewd act on a child who is 14 or 15 years of age, reserving A
4 felony treatment for people who commit lewd acts on minors under the age of 14.

5 On February 13th, 2015 a hearing was held on AB 49 in the Assembly Judiciary
6 Committee. When prosecutors presented the proposed changes to the lewdness with
7 a child law which they were recommending in AB 49, specific concerns were raised
8 about how the lewdness statute currently and with the proposals being made,
9 criminalized children's conduct:

10 **Vice Chairman Nelson:** Has the statute changed
11 regarding someone under 14 to the age of 15 not being able
12 to give consent?

13 **James Sweetin:** Essentially, with the lewdness statute, if
14 you were over the age of 21, then that is correct. Regarding
15 open and gross lewdness, offensive touching is a lewd act.
That is how it is defined and the act would have to meet
those criteria in order to satisfy the statute.

16 **Assemblywoman Diaz:** In the scenario that
17 Assemblyman Wheeler referred to of a 17-year-old with a
18 15-year-old, the 17-year-old could have some legal
19 consequences for those actions. Will this individual have
to register as a sex offender for the rest of his life?

20 **James Sweetin:** This is not a change; it is current law.
21 We are just not elevating an individual who is under 21 to
these additional penalties.

22 **Assemblyman Jones:** I personally started going to
23 parties in junior high where we would be kissing, and other
24 things like that. What happens if 13- or 14-year-olds are
participating in these activities?

25 **James Sweetin:** Again, there is no limitation to age in
26 regard to offensive touching. If the elements are met in
27 that scenario, this is not a change but the current law, that
is lewdness with a child. As I indicated, the juvenile court

1 has jurisdiction over those crimes until someone is 18 years
2 old. In addition, they are normally resolved in juvenile
3 court. If there are other circumstances, they might go to
adult court.

4 **Assemblyman Jones:** Are we pretending these things do
5 not happen in junior high school?

6 [. . .]

7 **John T. Jones, Jr:** I think it is important to point out that
8 your questions have been regarding law that is currently
9 in effect. Right now, it is illegal to sexually touch a child
under the age of 14. That is currently the law and this
statute does nothing to change that law.

10 Minutes from the Committee on the Judiciary, February 13, 2015 pages 17 -19.

11
12 AB 49 was hotly debated. The Assembly Committee on the Judiciary minutes of April
13 8th, 2015 capture the passage of AB 49 out of the Judiciary Committee. The original
14 bill proposal submitted by the attorney general was presented at this hearing with
15 proposed amendments submitted by Brett Kandt, Special Assistant Attorney
16 General. Ira Hansen, chairman of the Judiciary Committee, opened AB 49 up for a
17 vote by observing, "[t]his is a consensus bill; no one is totally happy, but the theory is
18 that is supposed to be a good thing."

19 The bill that was up for a vote that day had been amended. In relevant part,
20 what had changed was a reduction of the penalty for committing lewdness on a child
21 who is 14 or 15 to a B felony, with a one-to-ten-year sentencing range. Otherwise,
22 the amendments proposed by the attorney general in the version of AB 49 up for a
23 vote on April 8th, 2015, reduced the two-to-twenty-year range for lewdness with a
24 minor under the age of 14 to a term of one-to-ten years. A new section was added, §
25 6, which declared that the penalties contained in the lewdness statute would not
26 apply to minors when "there is a gap of 2 years or less between the age of the
27

1 perpetrator and victim” unless force, inability to consent or use of intoxicants
2 diminished the capacity of the victim.

3 The proposal noted that the purpose of these changes were to “[c]larify
4 application of the law and impose appropriate penalties.” Although the newly
5 amended AB 49 was passed out of committee, three assemblypersons, Araujo, Diaz
6 and Ohrenschall voted no. Although Assemblypersons Thompson and Anderson
7 voted to pass the bill out of committee, they both indicated they could change their
8 vote on the floor. As Assemblyman Thompson observed, “there is still a lot more that
9 needs to resonate with me, especially with all of the amendments. I want to reserve
10 my right to potentially change my vote on the floor.”

11 **B. The Senate Judiciary members added NRS 201.230(5), thus, it**
12 **was the legislatures’ intent to categorically exclude juveniles**
13 **from adult sanctions for lewdness allegations.**

14 On May 13th, 2015, AB 49, was up for a vote in the Senate Judiciary
15 Committee. Mr. Guinan, a policy analyst for the committee, introduced a working
16 session document that contained three proposed amendments to AB 49 submitted by
17 the Attorney General’s Office. That version of AB 49 for the first time proposed
18 separating the statute into a section with penalties for adult conduct and a separate
19 section setting forth penalties for juvenile conduct. The proposal set forth these
20 distinctions in the manner existent in the law today in §§(1)(a) and (1)(b). The
21 attorney general submitted bill noted that the proposed changes to the lewdness
22 statute were made to “Revise Section 15 [proposed changes to the lewdness statute]
23 to clarify provisions addressing lewdness committed by a person who is 18 or older or
24 who is less than 18 and who assaults a child under the age of 14.”

25 The proposals made by the attorney general were ultimately not voted out of
26 committee without change. As Chair Greg Brower noted before the vote on the bill
27 they were moving out of committee, “the first two amendments were proffered during
the bill hearing by the Nevada AG’s Office. The third amendment has been worked

1 out." The bill was passed out of committee, with one vote of no and one senator being
2 absent for the vote.

3 The amended version of AB 49 passed by the Senate Judiciary Committee on
4 that day of May 13th for the first time contained § (5) that exists in the law to this
5 day—the section that makes lewd act committed by a person under the age of 18
6 strictly acts of delinquency. As Chair Brower said at the time of the committee vote
7 on AB 49, the third amendment making lewd acts by minors acts of delinquency was
8 worked out in committee. In other words, the legislators struck the language
9 proposed by the Attorney General limiting prosecutions of minors for lewdness with
10 a minor under 14 only to those cases where "there is a gap of 2 years or less between
11 the age of the perpetrator and victim" and replaced a limited exclusion of minors from
12 felony treatment to a categorical one.

13 In summary, the legislative history shows that the idea of dividing NRS
14 201.230 into two categories of sanctions, one for adults and another for juveniles was
15 because of choices made by legislators. The Attorney General attempted to propose
16 a limited carve out to exclude a narrow class of minors from felony exposure for
17 lewdness with a minor under 14. The bill that passed the Senate Judiciary
18 Committee struck the language proposed by the Attorney General and instead put
19 forth what was worked out by the legislatures themselves—an exclusion of juveniles,
20 categorically, from the felony penalties created for adults who commit acts of
21 lewdness with minors. Accordingly, even if this court could have read the plain
22 meaning of NRS 201.230 to be supportive of multiple interpretations, the legislative
23 history is contrary to the court's interpretation.

1 III. The current state of research supports the notion that most juveniles
2 will not reoffend if provided treatment for sexually inappropriate
3 behavior and that treatment reduces recidivism.

4 The 2017 Association for the Treatment of Sexual Abusers (ATSA) "Practice
5 Guidelines for Assessment, Treatment, and Intervention with Adolescents Who Have
6 Engaged in Sexually Abusive Behavior" states:

[C]urrent data also show that the base rate for sexual
7 recidivism is low – between 3 and 10 percent, with a global
8 average of approximately 5 percent. Studies from the past
9 15 years have found the reported mean sexual recidivism
10 rate to be approximately 2.75 percent. Research shows
11 that sexually abusive behavior in adolescents rarely
12 persists into adulthood. The vast majority of most
13 adolescents who have engaged in sexually abusive behavior
14 do not continue to sexually abuse and are not on a life
15 trajectory for repeat offending.

16 Many of the current risk assessment tools utilized to predict juvenile sexual re-
17 offense have been found to not accurately estimate recidivism. Youths adjudicated
18 for a sexual offense are far more likely to recidivate with a non-sexual offense than a
19 sexual offense.¹ Research has found that juveniles adjudicated for sexual offenses do
20 not have a higher rate of sexual recidivism compared to youth originally adjudicated
21 for non-sexual offenses.²

22 Community intervention may be more beneficial and less harmful than
23 incarceration. Research has shown those younger in age have "deteriorated in
24 response to confinement and others showed no appreciable change (Bukstel &
25 Kilmann, 1980)." Haney (2002), opined regarding the impact of incarceration has on
26 individuals, included that "institutionalization or 'prisonization' has become

¹ M.F. Caldwell, "Study Characteristics and Sex Offender Recidivism," (2009) 54 *Int'l
J. Offender Therapy* 1-16.

² *Ibid.*; K. McCann & P. Lussier, "Antisociality, Sexual Deviance, and Sexual
Reoffending in Juvenile Sex Offenders: A Metaanalytical Investigation" (2008) 6 *Youth
Violence & Juv. Just.* 363-385.

1 extraordinarily prolonged and intense" after release. He defined institutionalization

2 as:

3 [F]acilitated in cases in which persons enter institutional
4 settings at an early age, before they have formed the ability
5 and expectation to control their own life choices. [. . .]
6 Younger inmates have little in the way of already
7 developed independent judgment, so they have little if
8 anything to revert to or rely upon if and when the
9 institutional structure is removed.

10 He also stated, "[a]mong other things, these recent changes in prison life mean that
11 prisoners in general (and some prisoners in particular) face more difficult and
12 problematic transitions as they return to the free world."

13 In 2006, the Adam Walsh Child Protection and Safety Act authorized the
14 establishment of the Office of Sex Offender Sentencing, Monitoring, Apprehending,
15 Registering and Tracking ("SMART") within the U.S. Department of Justice, the first
16 federal office devoted solely to sex offender management-related activities. The
17 SMART office authorized a study summarizing researchers' and practitioners'
18 knowledge about sex offender management, particularly, to highlight the differences
19 research has shown to exist between the management of juvenile and adult sex
20 offenders.

21 The key findings related to juvenile offenders where that individual studies
22 have consistently found at least modest treatment effects for sexual and nonsexual
23 recidivism. Doing statistical analysis on multiple studies, i.e., meta-analysis, has
24 consistently found that sex offender treatment works, particularly multisystemic and
25 cognitive-behavioral treatment approaches with juveniles who have sexually
26 offended. Finally, cost-benefit analysis demonstrates that sex offender treatment
27 programs for youth can provide a positive return on taxpayer investment. See

[https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/somapi_full_report](https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/somapi_full_report_t.pdf)

t.pdf

1 Adolescents are not "little adults." Juvenile sex offenders cannot be described

2 or, even less, understood by analogy with adult sex offenders. Often, sexually

3 inappropriate behavior is learned by juveniles through their own abuse, neglect and

4 dysfunctional family dynamics, as is the case with Joshua. Youths' brains are still

5 developing, however, and learned interpersonal incompetence, lack of self-

6 management and behavior learned through their own abuse can be changed in the

7 proper treatment milieu.

8 The studies cited here are very much just the tip of the iceberg when it comes

9 to the scholarship on sexually inappropriate behavior by juveniles. In summary, the

10 notion of treating juveniles for such behavior instead of incarcerating them is not far-

11 fetched. The legislature's decision to decriminalize acts of lewdness by juveniles is

12 supported by current research.

13 CONCLUSION

14 As the prohibited acts the State alleges could only be addressed as delinquent

15 acts, Joshua should not be certified for criminal prosecution. Accordingly, the

16 resolution of the allegations against Joshua should take place within the juvenile

17 court system.

18 Dated February 2, 2021.

19 Respectfully submitted,

20 JoNell Thomas

21 Clark County Special Public Defender

22 /s/ W. Jeremy Storms

23 W. Jeremy Storms

24 Chief Deputy Special Public Defender

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing was made on February 2, 2021, by

electronic filing to:

Party

State of Nevada

Email

motions@clarkcountvda.com

Brandon.Lewis@clarkcountvda.com

tanner.sharp@clarkcountvda.com

Signed,

/s/ Elizabeth (Lisa) Ariza

An employee of the

Special Public Defender

1 DTRANS

2
3
4
5 EIGHTH JUDICIAL DISTRICT COURT
6 JUVENILE DIVISION
7 CLARK COUNTY, NEVADA
8

9 In the Matter of:) CASE NO. J-21-353445-D1
10 BYRON WORTHEY-AVILA,) DEPT. L
11 Subject Minor(s).) APPEAL NO. 83621
12) SEALED

13 BEFORE THE HONORABLE DAVID GIBSON, JR.
14 TRANSCRIPT RE: CERTIFICATION FOR TREATMENT AS AN ADULT
15 THURSDAY, FEBRUARY 03, 2022

16
17 APPEARANCES:

18 For the State: TANNER L. SHARP, ESQ.
19 601 North Pecos Road
20 Las Vegas, Nevada 89101

21 The Defendant: BYRON WORTHEY-AVILA
22 For the Defendant: WILLIAM J. STORMS, ESQ.
23 330 s. Third Street
24 Suite 800
25 Las Vegas, Nevada 89101

26 ALSO PRESENT:

KATIE HUNCOVSKY, Probation

1 LAS VEGAS, NEVADA

THURSDAY, FEBRUARY 03, 2022

2 P R O C E E D I N G S

3 (THE PROCEEDING BEGAN AT 10:29:19.)

4 THE COURT: All right. We are on the record, J-21-
5 353445-D1, matter regarding Byron Worthey-Avila, who's
6 present from detention. It looks like we have a parent or
7 adult representative present. Let's go ahead and get the
8 appearances from counsel.

9 MR. SHARP: Tanner Sharp with the district attorney's
10 office.

11 MS. HUNCOVSKY: Katie Huncovsky with probation.

12 MR. STORMS: Jeremy Storms from the special public
13 defender's office.

14 THE COURT: All right. This is the time for
15 certification. Are we ready for argument today?

16 MR. SHARP: I believe so, Judge.

17 THE COURT: Okay. All right.

18 MR. STORMS: We are, Judge.

19 THE COURT: All right. Let's start with the State. And
20 then -- and then we can hear from counsel.

21 So, Tanner, when you're ready.

22 MR. SHARP: So, Judge, thank you. I wanted to go
23 through the procedural history in this case just to bring
24 everyone up-to-date.

25 First of all, Byron is 20 years old. He'll turn 21

1 in October. Date of birth is [REDACTED]. And this
2 case initially came in as a juvenile petition on September
3 2nd of last year. We filed a certification on September 3rd,
4 and essentially the allegations were that he had sexually
5 abused his two sisters during a time range of March 26
6 through June -- June 30th of 2021.

7 Now one of the issues we had obviously is the time
8 range that at least one of the sisters gave. Some of the
9 incidents likely occurred when he was 18 years of age;
10 however, in order to make sure we have all of our bases
11 covered, we still wanted the Court to -- to certify him on
12 all charges.

13 Essentially the allegations were against one
14 sister, C.W.; and that included him touching her vaginal area
15 with his hands and fingers. And with the sister C.W., it was
16 pulling down her shorts.

17 There were a total of five counts. We argued for
18 certification on September 16th. The Court granted that and
19 certified him up on the five charges.

20 And I just wanted to go over the order that was
21 issued on September 21st, 2021. The Court found that there
22 was probable cause. The Court found that the serious nature
23 of the acts were heinous and egregious given the age of the
24 victims, the age of the subject minor and the repetitive
25 nature.

1 I will note as well, Judge, that the Court covered
2 the -- his juvenile history and subjective factors; however,
3 I noticed that in the order that I submitted, instead of
4 saying that the history portion was not applicable because he
5 did not have any prior history, I stated the serious nature
6 of the acts, which was discussed prior in the order, was not
7 applicable. So I will get you an amended copy of that order;
8 but just to make the record clear, he -- he did not have any
9 prior history.

10 But in the subjective factors, the Court found that
11 it had considered his psychological state but that with the
12 heinous and egregious nature of the offenses, the subject
13 minor's age, there was not sufficient time to provide subject
14 minor with rehabilitative services; and as one or more of the
15 offenses occurred when subject minor was 18, all offenses
16 should be tried in the same court.

17 Jumping forward a little bit, so once this case was
18 certified, obviously it went downtown. I believe they were
19 getting ready for a preliminary hearing. In the meantime,
20 the motion for the Court to accept jurisdiction based on the
21 arguments that the lewdness with minor charges could not be
22 certified was filed in our court. That was argued, as the
23 Court is well aware, on December 16th.

24 The Court denied that motion; however, back on
25 October 22nd of 2021, the victim's advocate for the district

1 attorney's office as well as the criminal deputy district
2 attorney sat down and held a pretrial conference with the --
3 the same two sisters, who were the victims in this case.

4 And during the course of that, sister C.W.
5 basically alleged that during that same time period between
6 March 26th, 2018, and June 30th of 2021, that subject minor
7 had pulled her pants down, mounted her and moved his body up
8 and down on her. And she told them that she was afraid
9 because he would hit her.

10 C.W., the other sister, also disclosed that during
11 that same time frame there were again additional allegations
12 in which apparently the two of them were playing a game. She
13 hid in the bathroom. He entered and then began putting his
14 hands up her shirt and down her pants and was rubbing her
15 chest and her vaginal area.

16 There was also a second incident during that same
17 time period in which he came into her bedroom, pulled down
18 her pants, pulled down his pants; and she says that she could
19 feel basically skin and skin contact with her vaginal area.
20 She didn't know if it was his hand or his penis, but there
21 was contact. She also indicated that she was afraid that he
22 would hit or choke her.

23 And again these essentially merit the same
24 allegations that he was certified on. And so given that, the
25 State filed an amended petition here on November 22nd, 2021;

1 and then on January 1st of this year, we filed an amended
2 petition with the affidavit of the victim's advocate in
3 support of the -- the probable cause findings.

4 And so, Judge, as far as our argument is concerned,
5 we're -- we're looking at the same set of facts and
6 circumstances. We're only here on the certification of
7 (breaking up - indiscernible) seven and eight. They mirror
8 the prior allegations, same time frame, same victims, same
9 course of treatment.

10 We do have the affidavit, which is sufficient for
11 probable cause in this matter. As the Court's aware, this is
12 more of an issue of jurisdiction than finding any kind of a
13 guilt. And the nature of the acts are just as heinous and
14 egregious.

15 Certainly history is not applicable; but again,
16 subjective factors, if nothing else, it's actually worse at
17 this point in time because he's 20 years old and turning 21
18 in October, which certainly does not provide any amount of
19 time for rehabilitation; and just goes to prove the serious
20 nature of the acts, the repetitive nature of the acts.

21 And then just quickly, if I can respond to the
22 opposition that was filed. So he...

23 THE COURT: Yeah, I think that would be the most
24 efficient way to do it, Tanner, if you want to get the -- the
25 legal arguments on that.

1 MR. SHARP: I'm sorry, say that -- what was that? I'm
2 sorry.

3 THE COURT: I think that would be the most efficient way
4 to do it to just address any of the opposing, the -- the
5 reply and the legal, more arguments to it; and then we can
6 let -- we can let counsel argue the whole thing, as well.

7 MR. SHARP: Very good. Okay.

8 So, Judge, in -- in looking at the opposition,
9 essentially it concedes that it's a foregone conclusion that
10 he's going to be certified on -- on these three counts. And
11 essentially attempts to, I think, ask the Court to reconsider
12 it's prior motion regarding the lewdness with a minor and
13 whether the Court has discretion to certify that. And again,
14 Judge, we've already made that argument. It's been before
15 the Court. The Court's already issued its order.

16 I will add one thing. Given that in -- in looking
17 at the history, because Mr. Storms does note the -- the
18 legislative history, I went through that history as well,
19 Judge; and quite frankly, when I went through it, I did not
20 find anything that was definitive for or against the argument
21 as to what the legislature was thinking as to whether we
22 could certify a juvenile on a lewdness with a minor case.

23 Generally, and this is my recollection based on
24 having read it some time ago, they were primarily concerned
25 with the adult side of the crime itself. In fact, I think

1 the largest concern is -- is they were trying to push the sex
2 assault under the age of 14 being placed into lobby because
3 it did not require consent.

4 But even in the -- the history that he provides I
5 would note, let's see, it would be on page four, Mr. Sweeten,
6 who is a deputy D.A. downtown, stated, again, there's no
7 limitation to age in the age in regard to (indiscernible)
8 touching. If the elements are met in that scenario, that is
9 not a charge but the current law that lewdness -- that is
10 lewdness with a child.

11 As I indicated, the juvenile court has jurisdiction
12 over those crimes until someone is 18 years old. In
13 addition, they are normally resolved in juvenile courts. If
14 there are other circumstances, they might go to the adult
15 court. And there's nothing here to state that anyone in the
16 legislature said, well, we never want them to go to the adult
17 court. We want to remove the decision of discretion from the
18 -- from the juvenile court.

19 And so, Judge, again, my reading of the history is
20 that it provides nothing for -- for my argument or, frankly,
21 for Mr. Storms' argument, as well. And if this has been
22 argued previously, I would ask that the Court just simply
23 retain it's -- it's prior decision in this matter. And with
24 that, I'll submit.

25 THE COURT: Okay.

1 Mr. Storms.

2 MR. STORMS: Thank you, Your Honor. I really appreciate
3 the opportunity the Court's given me to brief this issue and
4 raise these issues with the Court.

5 And I understand that -- that presenting these
6 other legal arguments and factual arguments based upon the
7 legislative history probably not something that was going to
8 sway the Court from its previous decision. I just wanted to
9 submit that information because I did find it and develop it
10 since our last argument.

11 And otherwise, you know, Joshua was born on [REDACTED]
12 [REDACTED]. That makes him 19 right now, 19 years and four
13 months old. So he's not 20. At least that's what the math
14 says.

15 THE COURT: Right.

16 MR. STORMS: And then -- and then I'll just submit on
17 those other arguments. And -- and I appreciate the
18 opportunity to appear in front of you.

19 THE COURT: Okay. All right. Thank you.

20 MR. SHARP: And, Judge, I would just note that is
21 absolutely correct. I apologize. I should never be allowed
22 to do math, so.

23 THE COURT: That's why I went to law school.

24 MR. STORMS: Yeah, I -- I used my computer to make sure.

25 THE COURT: I went laws -- I went to law school so I

1 could get out of the math of course.

2 All right. Well, I, first off with respect to the
3 opposition and the additional legislative his- history issues
4 and things, I'm -- I'm fine with that being filed with the
5 Court. I understand the defense wanted to establish the
6 record. And -- and, frankly, I would never stand in the way
7 of having one of my -- my decisions reviewed by a higher
8 court.

9 I think in this case it still comes down to the
10 same -- same position the Court had before. My belief is
11 that were that statute to be apply -- applied in the way it's
12 being argued currently, that the result to me would
13 unnecessarily expose the pu- the public to danger and would
14 be contrary to what I believe to be in my discretionary
15 powers under certification to have any -- any delinquent act
16 that I deem needing to be heard by a criminal court -- by a
17 -- by cri- in a criminal context by an adult court. I -- I
18 think it applies to anything that can be charged in my
19 dependency court; and if I'm wrong, I'm happy to be told I'm
20 wrong. It's not gonna hurt my ego.

21 With respect to Byron and the particular charges
22 involved here, I do see that they are part and parcel of the
23 previously argued certification, victims, set of
24 circumstances, all of that commonality and the original
25 decisions I made. I did find probable cause before. I find

1 it now.

2 I'm looking at the -- the factors for discretionary
3 certification under the -- the -- the relevant case law, the
4 Seven Minors case. I think that these -- these do fall under
5 the exact same categories the previous ones did. I do find
6 them to be heinous and egregious.

7 I also find that with respect to the subjective
8 factors, as there was no prior adjudicated delinquent
9 history, his age does not afford the juvenile court
10 appropriate time to get him appropriate treatment. That
11 should these -- should these allegations be proved beyond a
12 reasonable doubt, I do not think the juvenile court would be
13 suited to rehabilitate a youth who had those particular
14 charges substantiated.

15 So I do be- still believe under -- under the -- the
16 case law and the statutes that these additional charges
17 should be adjudicated and -- and pursued in one court, and
18 that court should be the adult court.

19 So, Tanner, you can go ahead and provide me an
20 order certifying on these -- these charges, as well.

21 And -- and I welcome any direction from above
22 should this go up to a higher court.

23 MR. STORMS: Judge, can I add something, please?

24 THE COURT: Yeah.

25 MR. STORMS: I -- I would just request, if there's any

1 way to expedite the transcript of this hearing. And in fact,
2 you know, I filed a -- a cert- filed an appeal from the
3 original certification before I was an attorney.

4 THE COURT: Uh-huh.

5 MR. STORMS: The date that I need to file on that is
6 February 10th. Unfortunately, these proceedings have crept
7 to close to that date for me to file 'em -- file 'em -- a
8 certi- a notice of appeal here and get it joined to that case
9 under the date we have.

10 THE COURT: I see.

11 MR. STORMS: But, you know, the idea that if -- if -- if
12 ultimately I am correct on this, I want to get him to some
13 sort of treatment as -- as -- as quickly as possible. So I'm
14 trying to do my best to -- to move this appellate process as
15 quickly as possible essentially.

16 THE COURT: Yes.

17 MR. STORMS: So I just make that request if it's at all
18 accommodatable to get a...

19 THE COURT: No, that -- that makes perfect sense. And
20 if an order from me will help you expedite those -- those
21 transcripts and things you need, you can submit that to my
22 department; and I'll -- I'll certainly...

23 MR. STORMS: Thank you, Your Honor.

24 THE COURT: ...sign off on that.

25 MR. STORMS: Appreciate that.

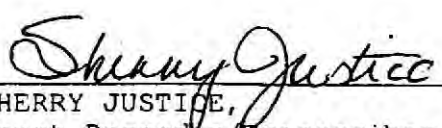
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

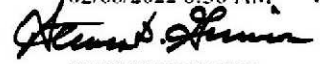
THE COURT: Okay. All right. Thank you.

(THE PROCEEDING ENDED AT 10:44:05.)

* * * * *

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


SHERRY JUSTICE,
Court Recorder/Transcriber II


CLERK OF THE COURT

STEVEN B. WOLFSON
DISTRICT ATTORNEY
NEVADA STATE BAR NO. 001565
RAVI BAWA
Chief Deputy District Attorney
Nevada State Bar No. 7595
601 North Pecos Road
Las Vegas, NV 89101-2408
(702) 455-5320
Attorney for the State of Nevada

DISTRICT COURT
JUVENILE DIVISION
CLARK COUNTY, NEVADA

In the Matter of:

BYRON JOSHUA WORTHEY-AVILA

Date of Birth: [REDACTED]

A Minor 18 Years of Age.

CASE NO. J-21-353445-D1

DEPT NO. L

COURTROOM NO. 10

**FINDING OF PROBABLE CAUSE AND
TRANSPORTATION ORDER FOR A CERTIFIED ADULT**

Justice Court for: LAS VEGAS

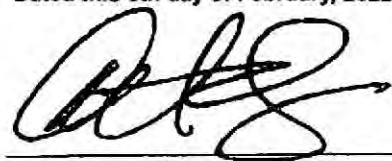
This matter having come before the Court on the 3RD day of FEBRUARY, 2022, the subject minor being present in Court and represented by Counsel, the State being represented by STEVEN B. WOLFSON, District Attorney, by and through his Chief Deputy District Attorney at Juvenile Court, after having a Certification Hearing and full investigation, this Court finds probable cause to believe that the crimes stated herein were committed by the subject minor and further finds cause to certify the subject minor to adult status;

IT IS HEREBY ORDERED that the above-named subject minor be transported to the Clark County Detention Center and remanded to the custody of the Clark County Sheriff, Joseph Lombardo;

1 IT IS FURTHER ORDERED that the subject minor be set for Arraignment in the
2 Justice Court of LAS VEGAS Township, Clark County, Nevada; bail is now set
3 in the following amounts for the following charges:

<u>CHARGE</u>	<u>N.R.S.</u>	<u>CASH/SURETY BAIL</u>	<u>PROPERTY</u>
1(1)LEWDNESS WITH A MINOR UNDER THE AGE OF 14 LVMPD Event No. 210500104805	201.230 NOC 50975	NO BAIL	
1(2)LEWDNESS WITH A MINOR UNDER THE AGE OF 14 LVMPD Event No. 210500104805	201.230 NOC 50975	NO BAIL	
1(3)LEWDNESS WITH A MINOR UNDER THE AGE OF 14 LVMPD Event No. 210500104805	201.230 NOC 50975	NO BAIL	
1(4)LEWDNESS WITH A MINOR UNDER THE AGE OF 14 LVMPD Event No. 210500104805	201.230 NOC 50975	NO BAIL	
1(5)LEWDNESS WITH A MINOR UNDER THE AGE OF 14 LVMPD Event No. 210500104805	201.230 NOC 50975	NO BAIL	
1(6)LEWDNESS WITH A MINOR UNDER THE AGE OF 14 LVMPD Event No. 210500104805	201.230 NOC 50975	NO BAIL	
1(7)LEWDNESS WITH A MINOR UNDER THE AGE OF 14 LVMPD Event No. 210500104805	201.230 NOC 50975	NO BAIL	
1(8)LEWDNESS WITH A MINOR UNDER THE AGE OF 14 LVMPD Event No. 210500104805	201.230 NOC 50975	NO BAIL	

Dated this 8th day of February, 2022



TS/tw

B3B 4BA BB40 7E73
David Gibson
District Court Judge

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 In the Matter of:

CASE NO: J-21-353445-D1

7 Byron Worthey-Avila

DEPT. NO. Family Juvenile

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

10 This automated certificate of service was generated by the Eighth Judicial District
11 Court. The foregoing Transportation Order - Probable Cause Finding was served via the
12 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

13 Service Date: 2/8/2022

14 JUVI DELINQ JUVI DA DELINQ

DA.JuvenileEFile@clarkcountynv.gov

15 JUVI DELINQ JUVI DJJS PROBATION

djjsprobationefile@clarkcountynv.gov

16 JUVI DELINQ JUVI DJJS RECORDS

DJJSRecordseFile@clarkcountynv.gov

17 JUVI DELINQ DJJS PROBATION JUVI
18 ADMINISTRATION

djjsprobationadmin@clarkcountynv.gov

19 Edward Miley

emiley@mileylaw.com

20 Carrie Connolly

connolecm@clarkcountynv.gov

21 Kristy Holiday

kristy.holiday@clarkcountynv.gov

22 PD Motions

PDMotions@clarkcountyda.com

23 Jennifer Garcia

Jennifer.Garcia@clarkcountyda.com

24 Eileen Davis

Eileen.Davis@clarkcountyda.com

25 Tanner Sharp

tanner.sharp@clarkcountyda.com

26 Brandon Lewis

brandon.lewis@clarkcountyda.com

27
28 000273

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

W. Jeremy Storms

jeremy.storms@clarkcountynv.gov

Elizabeth Araiza

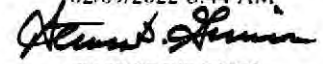
elizabeth.araiza@clarkcountynv.gov

Office of the Special Public Defender

SpecialPDdocs@clarkcountynv.gov

District Attorney

motions@clarkcountyda.com


 CLERK OF THE COURT

STEVEN B. WOLFSON
 DISTRICT ATTORNEY
 NEVADA STATE BAR NO. 001565
 TANNER SHARP
 Chief Deputy District Attorney
 Nevada State Bar No. 13018
 601 North Pecos Road
 Las Vegas, NV 89101-2408
 (702) 455-5320
 Attorney for the State of Nevada

DISTRICT COURT
 JUVENILE DIVISION
 CLARK COUNTY, NEVADA

In the Matter of:

BYRON JOSHUA WORTHEY-AVILA

Date of Birth [REDACTED]

A Minor 19 Years of Age.

CASE NO.J-21-353445-D1

DEPT NO. L

COURTROOM NO. 10

CERTIFICATION TO ADULT STATUS ORDER ON ADDITIONAL COUNTS 6-8

The above-entitled matter having come on for hearing on the 3rd day of February, 2022, in the above-entitled Court to determine whether the Subject Minor, **BYRON JOSHUA WORTHEY-AVILA**, should be certified for proper criminal proceedings as an adult under the provisions of NRS 62B.390 for additional charges filed subsequent to the original certification proceedings held on September 16, 2021; and

The Court having ordered the certification of Subject Minor, **BYRON JOSHUA WORTHEY-AVILA** on Counts 1-5 on Petition 1 on September 21, 2021; and

The Court being duly advised that the Subject Minor, **BYRON JOSHUA WORTHEY-AVILA**, of this Petition is 19 years of age, having been born on the [REDACTED] and [REDACTED]

The Court being fully advised that the State filed a 2nd Amended Certification Petition on January 28, 2022, charging **BYRON JOSHUA WORTHEY-AVILA** with an additional three counts as follows: 2nd Amended Certification Petition Number 1, Count (6) LEWDNESS WITH A MINOR UNDER 14, a felony under N.R.S. 201.230 NOC 50975 , if committed by an adult; Count (7) LEWDNESS WITH A MINOR UNDER 14, a felony

1 under N.R.S. 201.230 NOC 50975 , if committed by an adult; Count (8) LEWDNESS WITH
2 A MINOR UNDER 14, a felony under N.R.S. 201.230 NOC 50975, if committed by an adult;
3 said offenses having allegedly been committed on or between March 26, 2018 – June 30,
4 2021.

5 The Court having heard argument in open Court and being fully advised in the
6 premises;

7 NOW, THEREFORE, IT IS HEREBY ORDERED that **BYRON JOSHUA**
8 **WORTHEY-AVILA** be and hereby is Certified to the Eighth Judicial District Court of the
9 State of Nevada in and for the County of Clark for proper criminal proceedings as an adult
10 on the additional charges for the following reasons:

11 **I. Nature and Seriousness of Charged Offense(s):**

12 The Affidavit signed by Victim Witness Advocate Dawn Wood of the Clark County
13 District Attorney's Office as well as the other reports and statements contained in the record
14 are sufficient to establish prosecutive merit.

15 WHEREFORE, THE COURT FINDS the records supports Prosecutive Merit for 2nd
16 Amended Certification Petition Number 1, Counts 6-8.

17 **THE COURT FURTHER FINDS** that in determining the seriousness and persistent
18 nature of the charged offenses pursuant to Seven Minors, the charged offenses are the same
19 category as Counts 1-5 which were certified previously and are both heinous and egregious.

20 **THE COURT FURTHER FINDS** that although consideration of the seriousness and
21 nature of the charged offenses is sufficient to make a finding in this matter, it has also taken
22 into consideration past adjudicated offenses and subjective factors as outlined in Seven
23 Minors.

24 **THE COURT FURTHER FINDS** that consideration of past adjudicated or admitted
25 offenses pursuant to Seven Minors is not applicable in this matter.

26 **THE COURT AGAIN FINDS** that given the Subject Minor's age, there is
27 insufficient time to provide Subject Minor with the necessary rehabilitative services and that
28 this matter should be handled in the adult criminal court.

1 Accordingly, the Court grants the State's motion to certify **BYRON JOSHUA**
2 **WORTHEY-AVILA** to adult status on 2nd Amended Certification Petition Number 1,
3 Counts 6-8, on discretionary grounds pursuant to In Re Seven Minors, 99 Nev.427, 437, 664
4 P2d 947, 953 (1983) and orders the Subject Matter be bound over to District Court on
5 Counts 1-8.

6 The COURT FURTHER ADVISES that subject minor has the right to appeal this
7 decision to the Supreme Court and that a notice of appeal must be filed after the entry of this
8 written Order and no later than 30 days after the date of service of written notice of the entry
9 of this Order.

10 The COURT FURTHER ADVISES that subject minor may petition the adult Court
11 for transfer of the case back to the Juvenile Court only upon a showing of exceptional
12 circumstances. If the case is transferred back to Juvenile Court the Judge of this Court shall
13 determine whether the exceptional circumstances warrant accepting jurisdiction.

14 The Director of the Department of Juvenile Justice Services of Clark County is
15 charged with the execution of this Order.

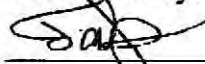
16 This matter is continued for the purpose of arraignment in the Las Vegas Justice
17 Court. The Court having heard argument orders subject minor's bail set by Justice Court.

18 **BYRON JOSHUA WORTHEY-AVILA** is hereby remanded to the custody of the
19 Sheriff.

20 Dated this _____ day of February, 2022. ~~Dated this 9th day of February, 2022~~

21 
22 _____

23 Submitted by:

24 
25 _____

26 **TANNER SHARP**

27 Chief Deputy District Attorney
28 Nevada State Bar No. 13018

758 B1E 0464 C48D
David Gibson
District Court Judge

AFFIDAVIT

STATE OF NEVADA }
COUNTY OF CLARK } ss:

DAWN WOOD, being first duly sworn, deposes and says:

1. That I am currently employed as a Victim Witness Advocate with the Clark County District Attorney's Office.
2. That on October 22, 2021, I met with the alleged victims, identified as Z.W. and C.W.
3. That during that meeting I spoke with Z.W. in a private setting outside the hearing and vision of all other witnesses in the case.
4. That Z.W. recalled a time between March 26, 2018 and June 30, 2021, where she was wearing a shirt and pants.
5. That Byron Worthey-Avila (Subject Minor) entered Z.W.'s room and pulled her pants down.
6. That Subject Minor mounted Z.W.
7. That Subject Minor moved his body all around on top of her. (Count 6).
8. That Z.W. was afraid of Subject Minor because he would hit her and boss her around.
9. That C.W. disclosed a time between March 26, 2018 and June 30, 2021, when Subject Minor touched and/or rubbed the chest of C.W.
10. That C.W. recalled playing a game with Subject Minor. That C.W. hid in the bathroom. That Subject Minor entered the bathroom.
11. That Subject Minor put his hands under her shirt touching and/or rubbing her chest. That Subject Minor also put his hands down Z.W.'s pants to touch and/or rub her vagina. (Count 7).
12. That C.W. disclosed another incident during an evening between March

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


26, 2018 and June 30, 2021.

- 13. That C.W. shared a room with her other siblings.
- 14. That Subject Minor entered the room where he removed C.W.'s pajama pants. That Subject Minor also removed his pants.
- 15. That Subject Minor moved close to C.W. That C.W. felt Defendant's skin touch her vagina. That C.W. was not certain whether Defendant's penis, hand and/or finger touched her vagina. (Count 8)
- 16. That C.W. is afraid of Subject Minor because he is angry. That Subject Minor would choke and hit C.W.
- 17. That all these events occurred while Z.W. and C.W. were under the age of fourteen.
- 18. That all these events occurred within Clark County, Nevada.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on

January 28, 2022


DAWN WOOD
Victim Witness Advocate
Clark County District Attorney's
Office

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 In the Matter of:

CASE NO: J-21-353445-DI

7 Byron Worthey-Avila

DEPT. NO. Family Juvenile

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

10 This automated certificate of service was generated by the Eighth Judicial District
11 Court. The foregoing Certification Order was served via the court's electronic eFile system to
12 all recipients registered for e-Service on the above entitled case as listed below:

13 Service Date: 2/9/2022

14 JUVI DELINQ JUVI DA DELINQ

DAJuvenileEFile@clarkcountynv.gov

15 JUVI DELINQ JUVI DJJS PROBATION

djjsprobationefile@clarkcountynv.gov

16 JUVI DELINQ JUVI DJJS RECORDS

DJJSRecordseFile@clarkcountynv.gov

17 JUVI DELINQ DJJS PROBATION JUVI
18 ADMINISTRATION

djjsprobationadmin@clarkcountynv.gov

Edward Miley

emiley@mileylaw.com

19 Carrie Connolly

connolem@clarkcountynv.gov

20 Kristy Holiday

kristy.holiday@clarkcountynv.gov

21 PD Motions

PDMotions@clarkcountyda.com

22 Jennifer Garcia

Jennifer.Garcia@clarkcountyda.com

23 Eileen Davis

Eileen.Davis@clarkcountyda.com

24 Tanner Sharp

tanner.sharp@clarkcountyda.com

25 Brandon Lewis

brandon.lewis@clarkcountyda.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

W. Jeremy Storms	jeremy.storms@clarkcountynv.gov
Elizabeth Araiza	elizabeth.araiza@clarkcountynv.gov
Office of the Special Public Defender	SpecialPDdocs@clarkcountynv.gov
District Attorney	motions@clarkcountyda.com

Steven D. Grierson

1 NOAS
2 JoNell Thomas #4771
3 Clark County Special Public Defender
4 W. Jeremy Storms #10772
5 Chief Deputy Special Public Defender
6 330 S. 3rd St., Suite 800
7 Las Vegas, Nevada 89155
8 (702) 455-6265
9 (702) 455-6273 (fax)
10 Jeremy.Storms@clarkcountynv.gov
11 Attorney for Worthey-Avila

8 DISTRICT COURT
9
10 JUVENILE DIVISION
11
12 CLARK COUNTY

13 In the Matter of:

14 BYRON JOSHUA WORTHEY-AVILA

15 Date of Birth: [REDACTED]
16 A Minor 19 Years of Age.

Case No. J-21-353445-D1
Dept. No. L
Courtroom No. 10

17 NOTICE OF APPEAL

18 TO: THE STATE OF NEVADA, PLAINTIFF;
19
20 TO: THE CLARK COUNTY DISTRICT ATTORNEY, ATTORNEY FOR PLAINTIFF; AND
21
22 TO: DEPARTMENT L OF THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE
23 OF NEVADA, IN AND FOR THE COUNTY OF CLARK;

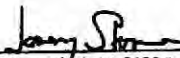
24 NOTICE is hereby given that Byron Joshua Worthey-Avila, appeals to the
25 Nevada Supreme Court from order of the District Court, Juvenile Division, entered
26 against said minor on the 3rd day of February, 2022, and filed with the Court Clerk
27 as "Certification to Adult Status Order on Additional Counts 6-8" filed February 9,

1 2022, whereby is was ordered that he be certified for proper criminal proceedings as
2 an adult under the provisions of NRS 62B.390.¹

3 Dated February 15, 2022.

4 Respectfully submitted,

5 JoNell Thomas
6 Clark County Special Public Defender

7 
8 Jeremy Storms (Feb 15, 2022 14:58 PST)

9 W. Jeremy Storms
10 Chief Deputy Special Public Defender

11
12
13
14
15
16
17
18
19
20
21
22
23
24 ¹ The Court granted the State's Certification Petition on September 16, 2021
25 as to Counts 1-5 of the Petition-Delinquency against Mr. Worthey-Avila. A Notice
26 of Appeal was filed October 6, 2021 and docketed under case number 83621. The
27 instant appeal is from the Court's granting of the Certification Petition on February
3, 2022 as to Counts 6-8 of the Amended Petition-Delinquency against Mr. Worthey-
Avila. Counsel for Mr. Worthey-Avila will move the Nevada Supreme Court to
consolidate the appeals.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on February 15, 2022, I deposited in the United States Post Office at Las Vegas, Nevada, a copy of the Notice of Appeal, postage prepaid, addressed to the following:

District Attorney's Office
200 Lewis Ave., 3rd Floor
Las Vegas NV 89155

Tanner Sharp, Chief Deputy District Attorney
200 Lewis Ave., 3rd Floor
Las Vegas NV 89155

Jonathan VanBorskerck, Chief Deputy District Attorney
Alexander Chen, Chief Deputy District Attorney
200 Lewis Ave., 3rd Floor
Las Vegas NV 89155

Dated February 15, 2022.

Signed,

/s/ Kathleen Fitzgerald

An employee of the
Special Public Defender

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Juvenile Delinquent - Sex Offense

COURT MINUTES

September 16, 2021

J-21-353445-D1

In the Matter of:
Byron Worthey-Avila

September 16, 2021	10:00 AM	Certification for Treatment as an Adult
--------------------	----------	---

HEARD BY:	Gibson, David, Jr.	COURTROOM:	Courtroom 10
-----------	--------------------	------------	--------------

COURT CLERK:	Mecham, Erin
--------------	--------------

INTAKE OFFICER:

PARTIES PRESENT:

State of Nevada, Not Present	Steven B Wolfson, Attorney, Not Present
Byron Worthey-Avila, Delinquent Subject Minor, Present	Edward Miley, ESQ, Attorney, Present
Byron Worthey, Father, Present	
Hyacinth Worthey, Step-Mother, Not Present	
Leticia Avila, Mother, Not Present	

CHARGES:	1	Lewdness with a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)
	2	Lewdness with a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)
	3	Lewdness with a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)
	4	Lewdness with a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)
	5	Lewdness with a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)

PLEAS:

DISPOSITION:

SENTENCE:

JOURNAL ENTRIES

CUSTODY.

Probation represented by Kevin Brown. Parties present via Video Conference.

State advised the Court the minor is now 19 years old and as a jurisdictional matter they are asking all charges be sent to the adult court to be heard as one case.

Arguments by counsel regarding certification.

COURT stated its FINDINGS and FURTHER FINDS the State MET its burden by clear and convincing evidence; and ORDERED, Petition for Certification is hereby GRANTED; matter shall be SET for Arraignment before Las Vegas Justice Court. NO Bail has been SET, noting, Justice of the Peace or District Court Judge may reset the amounts. Status Check on transport

State to prepare the transport order.

FUTURE HEARINGS:

Sep 23, 2021 10:00AM Status Check
Courtroom 10 Gibson, David, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Juvenile Delinquent - Sex Offense

COURT MINUTES

September 23, 2021

J-21-353445-D1

In the Matter of:
Byron Worthey-Avila

September 23, 2021	10:00 AM	Status Check
--------------------	----------	--------------

HEARD BY:	Gibson, David, Jr.	COURTROOM: Courtroom 10
-----------	--------------------	-------------------------

COURT CLERK: Mecham, Erin

INTAKE OFFICER:

PARTIES PRESENT:

State of Nevada, Present

Tanner L. Sharp, Attorney, Present

Byron Worthey-Avila, Delinquent Subject Minor,
Not Present

Edward Miley, ESQ, Attorney, Present

Byron Worthey, Father, Not Present

Hyacinth Worthey, Step-Mother, Not Present

Leticia Avila, Mother, Not Present

CHARGES:

- | | |
|---|---|
| 1 | Lewdness with a Child Under the Age of 14
Mar 26 2018 (Felony) 201.230 (201.230) |
| 2 | Lewdness with a Child Under the Age of 14
Mar 26 2018 (Felony) 201.230 (201.230) |
| 3 | Lewdness with a Child Under the Age of 14
Mar 26 2018 (Felony) 201.230 (201.230) |
| 4 | Lewdness with a Child Under the Age of 14
Mar 26 2018 (Felony) 201.230 (201.230) |
| 5 | Lewdness with a Child Under the Age of 14
Mar 26 2018 (Felony) 201.230 (201.230) |

PLEAS:

DISPOSITION:

SENTENCE:

JOURNAL ENTRIES

PROBATION represented by Officer Brown. All Parties Present via audio visual.

State confirmed Subject Minor was Transported to CCDC (Clark County Detention Center).

COURT ORDERED, OFF CALENDAR.

CLERK'S NOTE: Minutes Completed by Courtne Hoskin by review of JAVS - ch

FUTURE HEARINGS:

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Juvenile Delinquent - Sex Offense

COURT MINUTES

November 23, 2021

J-21-353445-D1

In the Matter of:
Byron Worthey-Avila

November 23, 2021	10:00 AM	Certification for Treatment as an Adult
-------------------	----------	---

HEARD BY:	Gibson, David, Jr.	COURTROOM:	Courtroom 10
-----------	--------------------	------------	--------------

COURT CLERK:	Mecham, Erin
--------------	--------------

INTAKE OFFICER:	
-----------------	--

PARTIES PRESENT:

State of Nevada, Present	Brandon L. Lewis, Attorney, Present
--------------------------	-------------------------------------

Byron Worthey-Avila, Delinquent Subject Minor, Present	Brandon L. Lewis, Attorney, Present William J. Storms, Attorney, Present
--	---

Byron Worthey, Father, Present

Hyacinth Worthey, Step-Mother, Not Present

Leticia Avila, Mother, Not Present

CHARGES:	1	Lewdness with a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)
	2	Lewdness with a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)
	3	Lewdness with a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)
	4	Lewdness with a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)
	5	Lewdness with a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)
	6	Lewdness With a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)
	7	Lewdness With a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)
	8	Lewdness With a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)

PLEAS:

DISPOSITION:

SENTENCE:

JOURNAL ENTRIES

CUSTODY.

J-21-353445-DT and J-21-353445-D1 heard concurrently.

Probation represented by Officer Lee.

State advised the Court they spoke with District Attorney (DA) Tanner Sharp. Minor was previously certified and the matter was sent downtown. After the DA downtown spoke with the victim and family there were additional disclosures that added new charges. The case was sent back to juvenile to have the additional charges added and amended and then certified. DA Sharp is requesting every pending matter be heard with the Motion and the Motion to be heard on December 16th on the Juvenile Sex Offense (JSO) Calendar. They would request the minor remain detained pending the motion.

Attorney Storms informed the Court they raised legal issues with the certifiability of the lewdness charges. There are issues that need to be addressed and the Motion is applying to all of the charges not just the new charges. They would request a briefing schedule for the motion and the arguments be in person. As to the detention status Probation was looking at Eagle Quest placement however there are issues due to insurance problems.

Probation reported Shannon West would not accept minor due to JSO charges. Medicaid could be applied for to pay for placement at Eagle Quest. Eagle Quest was staffed and they are pending the approval. If approved they would request release to Probation for placement with JSO release conditions.

Court ORDERED, minor is conditionally released to Probation for placement at Eagle Quest if Medicaid is approved; with JSO release conditions. Briefing schedule is for the State to have opposition filed by December 7th and written reply by the Defense is to be done by December 14th. Motion RESCHEDULED for December 16, 2021 at 10:00am and parties are allowed to be in person.

FUTURE HEARINGS:
Dec 16, 2021 10:00AM Motion Courtroom 10 Gibson, David, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Juvenile Delinquent - Sex Offense

COURT MINUTES

December 16, 2021

J-21-353445-D1

In the Matter of:

Byron Worthey-Avila

December 16, 2021	10:00 AM	Motion
-------------------	----------	--------

HEARD BY:	Gibson, David, Jr.	COURTROOM:	Courtroom 10
-----------	--------------------	------------	--------------

COURT CLERK:	Mecham, Erin
--------------	--------------

INTAKE OFFICER:

PARTIES PRESENT:

State of Nevada, Present	Tanner L. Sharp, Attorney, Present
Byron Worthey-Avila, Delinquent Subject Minor, Present	William J. Storms, Attorney, Present
Byron Worthey, Father, Present	
Hyacinth Worthey, Step-Mother, Not Present	
Leticia Avila, Mother, Not Present	

CHARGES:	1	Lewdness with a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)
	2	Lewdness with a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)
	3	Lewdness with a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)
	4	Lewdness with a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)
	5	Lewdness with a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)
	6	Lewdness With a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)
	7	Lewdness With a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)
	8	Lewdness With a Child Under the Age of 14 Mar 26 2018 (Felony) 201.230 (201.230)

PLEAS:

DISPOSITION:

SENTENCE:

JOURNAL ENTRIES

CUSTODY.

Probation represented by Kevin Brown. Attorney Storm present IN Court.

Court noted this is a motion set by Defense and they have reviewed the reports.

Arguments by counsel regarding motion.

Court noted the minor was certified on this petition previously however if there are new counts it would need to be set for Certification on those counts.

State advised the Court they already filed an amended petition and motion to include the additional charges.

Following Statements: Court stated its FINDINGS and ORDERED, Motion DENIED. State to submit order on the motion. Matter SET January 11, 2022 at 10:00am for Certification on the new charges added.

FUTURE HEARINGS:

Jan 11, 2022 10:00AM Certification for Treatment as an Adult Courtroom 10 Gibson, David, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Juvenile Delinquent - Sex
Offense**

COURT MINUTES

February 03, 2022

J-21-353445-D1 In the Matter of: Byron Worthey-Avila

February 03, 2022	10:00 AM	Certification for Treatment as an Adult
-------------------	----------	---

HEARD BY: Gibson, David, Jr.	COURTROOM: Courtroom 10
-------------------------------------	--------------------------------

INTAKE OFFICER:	
------------------------	--

PARTIES:	
State of Nevada:	Attorney: Sharp, Tanner L.
Delinquent Subject Minor: Worthey-Avila, Byron	Attorney: Storms, William J.
Father: Worthey, Byron	

COURT CLERK:	Erin Mecham
---------------------	-------------

CHARGES:
<ol style="list-style-type: none"> 1. Lewdness with a Child Under the Age of 14 March 26, 2018 - June 30, 2021 (Felony) 201.230 (201.230) 2. Lewdness with a Child Under the Age of 14 March 26, 2018 - June 30, 2021 (Felony) 201.230 (201.230) 3. Lewdness with a Child Under the Age of 14 March 26, 2018 - June 30, 2021 (Felony) 201.230 (201.230) 4. Lewdness with a Child Under the Age of 14 March 26, 2018 - June 30, 2021 (Felony) 201.230 (201.230) 5. Lewdness with a Child Under the Age of 14 March 26, 2018 - June 30, 2021 (Felony) 201.230 (201.230) 6. Lewdness With a Child Under the Age of 14 March 26, 2018 - June 30, 2021 (Felony) 201.230 (201.230) 7. Lewdness With a Child Under the Age of 14 March 26, 2018 - June 30, 2021 (Felony) 201.230 (201.230) 8. Lewdness With a Child Under the Age of 14 March 26, 2018 - June 30, 2021 (Felony) 201.230 (201.230)

Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

PLEAS:

DISPOSITION:

SENTENCE:

JOURNAL ENTRIES

CUSTODY.

- Probation represented by Katie Huncovsky.

State advised the Court, minor was certified on the petition previously and they will be submitting an amended order as the minor did not have a previous history. During interview with the victims there were additional disclosures and an amended petition was filed before this court for certification.

Arguments by counsel regarding certification.

Defense requested the transcript be expedited as they want him to begin treatment as quickly as possible. They would

COURT stated its FINDINGS and FURTHER FINDS the State MET its burden by clear and convincing evidence; and ORDERED, Petition for Certification is hereby GRANTED; matter shall be SET for Arraignment before Las Vegas Justice Court. No Bail SET, Justice of the Peace or District Court Judge may reset the amounts. State to prepare the transport order. Defense to submit order for expedited transcript for the court's signature.

FUTURE HEARINGS:	

Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.