

No. 83621  
No. 84276

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IN THE NEVADA SUPREME COURT

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**B. Joshua W-A, A Minor,**

Appellant,

v.

**State of Nevada,**

Respondent.

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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

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**Appellant's Reply Brief**

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## INTRODUCTION

Joshua had delinquency proceedings initiated against him charging multiple counts under NRS 201.230(1)(b) for conduct that occurred when he was a minor. The Legislature crafted NRS 201.230 to specifically limit criminal, felony liability to persons over the age of 18 and further specifically declared that juvenile offenders commit acts of delinquency when they violate the provisions of this statute. Contrary to the plain meaning of the law, the principles of statutory construction and the doctrine of separation of powers, the court below certified Joshua for adult proceedings. It did so based upon its view that the certification process authorized under NRS 62B.390 allows it to refer “anything that can be charged in my dependency court” for criminal prosecution. 2 ROA 267.

The State argues that the Juvenile Court acted lawfully but does so by misconstruing Joshua’s arguments and by ignoring key passages of NRS 201.230 that contradict the substance of their argument. Further, their legal analysis flouts this Court’s instructions as to how

lawyers and judges are required to approach the interpretation of statutes, as well as the bedrock rules regarding the role of the courts and legislature in determining punishment.

### **REPLY TO THE STATE’S STATEMENT OF THE FACTS**

The facts are adequately set forth in the Opening Brief and are not repeated here. Joshua notes that the State’s Statement of Facts omits that Joshua’s behavior was learned by being sexually abused from the age of 5 to 15 by an older stepbrother. Said stepbrother is currently being prosecuted by the State for sexual abuse he committed upon Joshua’s sisters but not for what he did to Joshua.

### **REPLY TO THE STATE’S ARGUMENT**

- I. NRS 201.230 was written by the Legislature to limit criminal liability to persons 18 years of age or older.<sup>1</sup>**

NRS 62B.390 allows for the certification of children for adult criminal prosecution if the charges they are facing, “would have been a felony if committed by an adult.” In Cote H. v. Eighth Judicial Dist.

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<sup>1</sup> The organizational structure of this Reply Brief mirrors the heading structure used in the State’s Answering Brief.

Court, 124 Nev. 36 (2008), this Court said if the legislature intends for a statute to only apply to adult perpetrators, they can express that limitation by reserving criminal liability to persons that are 18 years of age or older. Cote H., 124 Nev. at 41 n.14, 175 P.3d at 909 n. 14.

Another means a legislature could employ to prevent the possible application of criminal sanctions to juveniles through the certification process is to specifically call a youth's transgression of a statute an act of delinquency. When it comes to the statute in question here, NRS 201.230, our Legislature employed both of these methods in the structure of the statute to make it clear that juveniles are not subject to certification proceedings.

**A. NRS 201.230 bars the certification of these charges.**

The State's legal assertions are belied by the unmistakable structure and plain meaning of NRS 201.230. The argument they make ignores the key provision of the law—the delineation of § (1) into two subsections, (a) applying to offenders over the age of 18, and, (b) applying to juveniles. This two-subsection bifurcation of § (1), along with the “decision-tree” logical structure of the statute in its entirety,

expressly precludes the imposition of criminal sanctions upon juveniles. It is legally impossible for a juvenile to perform the conduct necessary to face the criminal sanctions reserved for adults in NRS 201.230(a)(1) & (2)-(4).

In State v. Colosimo, 122 Nev. 950, 142 P.3d 352 (2009) the accused was charged with violating NRS 201.580, which criminalizes the use of technology to lure children away from their parents or guardians. In Colosimo, the defendant thought he was luring a child away from her parents but was in fact communicating with an undercover officer over the internet. This Court affirmed the dismissal of the charge against Mr. Colosimo because “the actual intended victim here was not ‘less than 16 years of age,’ it was legally impossible for the prosecution to prove that element of the crime charged.” Colosimo, 122 Nev. at 61, 142 P.3d at 359 (2006). Likewise, it is legally impossible for Joshua to face felony sanctions for his conduct as he was under the age of 18 when these offenses were alleged to occur and only those over the age of 18 are subject to felony treatment, according to NRS 201.230.

The State, however, asserts that “nothing in the statute prohibits the Court from sentencing a person under 18 years old who has been certified as an adult” claiming that the language of NRS 201.230(2) supports this assertion. Answering Brief, 9 (herein “AB”). The very first line of NRS 201.230(2) says “Except as otherwise provided in subsections 4 and 5 [ . . . ],” where subsection five says unreservedly that “a person who is under the age of 18 and who commits lewdness with a child under the age of 14 commits a delinquent act.” See NRS 201.230(2) & (5). The State’s argument presents an interpretation which is in direct conflict with the language of the law they are purportedly interpreting.

**B. The State’s argument improperly assumes NRS 201.230 “is redundant” and is “not an exception” to the certification procedure of NRS 62B.390.**

The rules of statutory interpretation can be used to resolve a dispute between two seemingly legitimate interpretations. More fundamentally, these rules should be in the heart of every lawyer and judge because when they settle on an interpretation that runs afoul of the rules, they can rest assured that they are wrong. Here the state’s



argument is that NRS 201.230's division into adult and juvenile sections was an exercise in stating what is always true—a juvenile's conduct is handled as delinquency until a judge says that it is criminal. The State cites no authority for this argument. A long history of legal interpretation says that reading specific clauses as nullities is an invalid approach to the text of a statute. See e.g., State v. Eighth Judicial Dist. Court, 129 Nev. at 508-09, 306 P.3d at 380-81 (citing RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 645, 132 S. Ct. 2065, 2071 (2012) (citing Morton v. Mancari, 417 U.S. 535, 550-551, 94 S. Ct. 2474, 41 L. Ed. 2d 290 (1974) ).

**II. When the Legislature says that the exclusive sanction for an act is delinquency, there is no room for debate.**

The State argues in this section that the plain meaning of NRS 201.230 is that “[t]he subsection only labels the act as delinquent [ . . . ] calling the act a delinquent act does not automatically preclude that allegation from being certified.” AB 13. It is up to the legislative branch to say what is and is not criminal conduct and what the punishment is for criminal conduct. Sheriff, Douglas County v. La Motte, 100 Nev.

270, 272, 680 P.2d 333, 334 (Nev. 1984). Moreover, the legislature may not pass laws divesting themselves of the power to set penalties for offenses, as this is their exclusive domain. See Lapinski v. State, 84 Nev. 611, 446 P.2d 645, 645 (1968). The Legislature does not create “labels;” they define penalties.

**III. The Legislative History demonstrates that the plain meaning of NRS 201.230 is what the Legislature intended, although this analysis is unnecessary.**

It is Joshua’s assertion that the plain meaning of NRS 201.230 is clear and further analysis under the rules of statutory construction is unnecessary.

The State takes issue, however, with Joshua’s characterization of what was being discussed by the Assembly Judiciary Committee on February 13<sup>th</sup>, 2015. This aspect of the legislative history was only presented to give context to the process.

The State did not, however, dispute the key point of the presentation of the legislative history which demonstrated that § (5), as passed, was drafted and inserted by the legislators. The legislative

history shows that the legislature decided to replace the limited exclusion of minors from the certification process that had been proposed by the Attorney General. The categorical bar on adult prosecution of juvenile offenders represents a choice made by the Senate Judiciary Committee when they passed NRS 201.230 into law.

**IV. Roper demonstrates that public policy can and does acknowledge that juveniles are not “little adults.”**

The United States Supreme Court recognizes that there are fundamental differences between adult and juvenile offenders. Both the State and the court below indicated treating Joshua as anything less than an adult sex-offender was “absurd.” Roper is a counterexample to the policy views expressed by the court below and the State.

**V. The concept of lenity was raised in the court below.**

This issue was not waived. See ROA 124.

**VI. The Court exercised its discretion in an unconstitutional manner.**

In this case the Juvenile Court stated that:

I think in this case it still comes down to the same—same position the Court had before. My belief is that were that statute to be apply—applied in the way it’s being argued currently, that the

result to me would unnecessarily expose the pu—the public to danger and would be contrary to what I believe to be in my discretionary powers under certification to have any—any delinquent act that I deem needing to be heard by a criminal court—by a—by—cri—in a criminal context by an adult court. I— I think it applies to anything that can be charged in my dependency court; and if I’m wrong, I’m happy to be told I’m wrong. It’s not going to hurt my ego.

2 ROA 267.

The Court in its ruling and the State in its briefing have asserted that the judge’s certification powers under NRS 62B.390 trump the specific delinquency sanction the Legislature wrote into NRS 201.230. Our statutory scheme limits certification and the constitution gives the power to set penalties to the legislature. From the comments made *supra*, the court below thinks otherwise.

Despite the plain meaning of NRS 201.230, the court below certified this case and may have done so in other juvenile cases in the past. See 1 ROA 199. When the court below certified Joshua, its exercise of power violated the Separation of Powers clause. The district court’s ruling must be reversed as it constituted an abuse of discretion.

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**CONCLUSION**

For the reasons set forth above, Joshua submits the order certifying him for adult prosecution should be vacated and the case remanded to juvenile court.

DATED this 9<sup>th</sup> day of May, 2022.

Respectfully submitted,

JoNell Thomas  
Special Public Defender

/s/ W. Jeremy Storms

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## CERTIFICATE OF COMPLIANCE

1. I hereby certify this brief does comply with the formatting requirements of NRAP 32(a)(4).
2. I hereby certify that this brief does comply with the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook, 14 point font.
3. I hereby certify that this brief does comply with the word limitation requirement of NRAP 32(a)(7)(A)(ii). The relevant portions of the brief are 1748 words.
4. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular, NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix

where the matter relied on is to be found. I understand that I may be subject to sanction in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 9<sup>th</sup> day of May, 2022.

Respectfully submitted,

JoNell Thomas  
Special Public Defender

/s/ W. Jeremy Storms

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Chief Deputy Special Public Defender

### **CERTIFICATE OF SERVICE**

I hereby certify that on 5/9/2022, a copy of Appellant's Reply Brief was served by mail, postage prepaid, to:

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An Employee of the  
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