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



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| CHRISTOPHER E. PIGEON,<br>Appellant,<br>v.<br>THE STATE OF NEVADA,<br>Respondent. | Case No. 83232 |

# RESPONDENT'S APPENDIX
## Volume 2

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# INDEX

**Volume & Document** **Page No.**

## CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on November 17, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

TERRENCE M. JACKSON, ESQ.
Counsel for Appellant

KAREN MISHLER
Chief Deputy District Attorney

BY */s/ E. Davis*
Employee, District Attorney's Office

KM/Corey Hallquist/ed

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

| **Felony/Gross Misdemeanor** | **COURT MINUTES** | **April 12, 2021** |
|---|---|---|

C-13-290261-1 State of Nevada
vs
Christopher Pigeon

April 12, 2021 11:00 AM Defendant's Motion to Vacate or Reduce Habitual Sentence

HEARD BY: Silva, Cristina D. COURTROOM: RJC Courtroom 11B

COURT CLERK: Natali, Andrea

RECORDER: Villani, Gina

REPORTER:

PARTIES PRESENT:

| | |
|---|---|
| **Bryan A. Schwartz** | **Attorney for Plaintiff** |
| **Christopher Pigeon** | **Defendant** |
| **State of Nevada** | **Plaintiff** |
| **Terrence Michael Jackson** | **Attorney for Defendant** |

**JOURNAL ENTRIES**

COURT NOTED, it read the Motion, Opposition, and Reply. Argument by Mr. Jackson in support of the motion regarding whether there was sufficient evidence, whether the sentence was proportional, whether the habitual criminal finding should be reconsidered and the sentence should be reduced. Colloquy regarding whether a Post-Conviction Petition for Writ of Habeas Corpus (PCWHC) should have been filed instead of this motion. COURT NOTED, it did not believe it could rule on the motion as it did not believe it had jurisdiction. Statement by Deft. regarding matters he would like his attorney to address. COURT DIRECTED, the Deft. not to speak as he had counsel representation and after the Deft. continued to speak, ORDERED, Deft. to be muted. COURT ADVISED, it did not have jurisdiction to grant the relief to vacate or modify the sentence; NOTED there was another avenue to seek relief by PCWHC. COURT FURTHER ADVISED, it did not believe there was an eight amendment issue pending and the Deft. was found to be a habitual criminal. Mr. Schwartz stated he had nothing to add to his Opposition; noting this type of motion is for a specific mistake. COURT ORDERED, the request to incorporate the documents is GRANTED; NOTING it had read the presentence investigation report (PSI), the psycho sexual evaluation, and the sentencing memorandum, because of the arguments regarding the habitual criminal treatment, and those documents were relevant to the District Court's findings of the habitual qualification. COURT FURTHER ORDERED, the motion to vacate or reduce habitual sentence is DENIED WITHOUT PREJUDICE. Mr. Jackson stated he needed to talk to the Deft. further, to determine whether he will be filing an appeal on the denial of the motion or if he is going to file a PCWHC, as there may be an issue due to the timeliness. COURT DIRECTED the State to prepare the findings of fact and conclusions of law and run it by Mr. Jackson before submitting to the Court for signature.

NDC

**MEMO**
STEVEN B. WOLFSON
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CHRISTOPHER PIGEON,
#1694872

Defendant.

CASE NO: C-13-290261-1

DEPT NO: VIII

**SENTENCING MEMORANDUM**

DATE OF HEARING: 4/9/18
TIME OF HEARING: 8:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through ELIZABETH MERCER, Chief Deputy District Attorney, and hereby submits this Memorandum for the Court's consideration.

**STATEMENT OF THE CASE**

On June 5, 2013, the Grand Jury returned a true bill and the State filed an Indictment charging Christopher Pigeon with "two counts of prohibited acts by sex offender, one count attempt first degree kidnapping, one count aggravated stalking, one count luring child with the intent to engage in sexual contact, one burglary, one open and gross lewdness, and one lawful contact with child gross misdemeanor." Pigeon was arraigned and pleaded not guilty on June 12, 2013.

On July 8, 2013, the District Court heard a status check on Pigeon's competency, and referred the matter to Competency Court. On August 2, 2013, the Competency Court found Pigeon not competent and remanded him to the Division of Mental Health Development Services pursuant to NRS 178.425. On December 13, 2013, Pigeon was returned from Lake's Crossing and found competent to proceed with adjudication. However, counsel indicated that there would be a challenge to the competency finding, and the Court ordered a hearing on the matter.

The Court held a hearing on March 21, 2014, wherein Dr. Bradley and Dr. Harder testified. The Court ordered the matter continued pending decision. On April 4, 2014, after taking the matter under advisement, the Court found Pigeon competent and transferred the case back to the originating court.

On April 23, 2014, the District Court heard Pigeon's motion to represent himself, canvassed Pigeon pursuant to Faretta v. California, 422 U.S. 806 (1975), and granted Pigeon's motions to withdraw counsel and ordered that Pigeon would proceed in pro per status. II AA 313.

The State filed a Notice of Intent to Seek Punishment as a Habitual Criminal on July 31, 2014. On August 4, 2014, the State filed an Amended Indictment charging Pigeon with Attempt First Degree Kidnapping (Category B Felony NRS 193.330 200.320), Aggravated Stalking (Category B Felony NRS 200.575), Luring Children With The Intent To Engage In Sexual Conduct (Category B Felony 201.560), Burglary (Category B Felony NRS 205.060), Open Or Gross Lewdness (Category D Felony 201.210), Unlawful Contact With Child (Gross Misdemeanor NRS 207.260), and two counts of Prohibited Acts By Sex Offender (Category D Felony NRS 179D.470 179D.550 179D).

On August 4, 2014, trial was set to begin. Before proceeding, the Court again canvassed Pigeon regarding the State's intent to seek habitual criminal treatment, and whether Pigeon still wished to represent himself. Pigeon stated that he understood the consequences and risks, but still did not want a lawyer appointed. The bifurcated jury trial began on August 4, 2013, and the jury returned verdicts of guilty as to Counts 1-6 on August 5, 2014. The

second portion of the trial, regarding Counts 7-8, was held thereafter, and the jury returned verdicts of guilty on those counts the same day.

On December 1, 2014, the District Court heard and granted the State's request for a no contact order. Pigeon sent a Christmas card to the victim and her family. The Court ordered that Pigeon have no further contact with the victim or her family, and imposed an order authorizing the Clark County Detention Center to intercept and inspect all Pigeon's outgoing mail to prevent any further communications. The written order was filed on December 1, 2014.

On December 10, 2014, the Court sentenced Pigeon, in addition to fees, as follows: under the Large Habitual Criminal statute as to Counts 1, 2, 3, 4, 5, 7 and 8; in Count 1 - to life in the Nevada Department of Corrections (NDC) without the possibility of parole; Count 2 - to life in the NDC without the possibility of parole; Count 3 - to life in the NDC without the possibility of parole; Count 4 - to life in the NDC without the possibility of parole; Count 5 - to life in the NDC without the possibility of parole; Count 6 - sentenced to Clark County Detention Center (CCDC) for 364 days; Count 7 - to life in the NDC without the possibility of parole; Count 8 - to life in the NDC without the possibility of parole; Counts 1, 2, 3, 4, 5, 7 and 8 to run concurrent with 573 days credit for time served. The Judgment of Conviction was filed on December 23, 2014. He appealed his convictions and the Supreme Court ultimately reversed all counts except for the Unlawful Contact with a Minor and one Count of Sex Offender Failure to Register.

The matter is currently scheduled for resentencing on April 3, 2018. This brief is filed in support of the State's position that Defendant should still be adjudged guilty as a Habitual Criminal pursuant to NRS 207.010 and sentenced to Life without the Possibility of Parole.

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## STATEMENT OF FACTS

In May 2013, C.C.[1] was 12 years old and attended Hyde Park Middle School. It is a magnet school, so she would take the city bus to school in the mornings. The bus would pick her up near her home, and she would get off to transfer at the transit center in Downtown Las Vegas. C.C. would ride the bus alone.

On May 15, 2013, C.C. noticed a man at the transit center who made her uncomfortable because he was looking at her. III AA 518. He got on the same bus that she did, and he got off at the same stop that she did. III AA 518. C.C. would often go to the CJ's Mini Mart before school, and she did on that day. III AA 518-19. She noticed that the man followed her into CJ's Mini Mart that day. III AA 519.[2] She did not initiate any contact or conversation with the man that morning, but he continued to look at her while in the store. III AA 520. She bought a pack of gum and immediately left the store. III AA 520. She was in a rush that day, so she did not notice whether the man followed her to school. III AA 520. C.C. thought it was strange that the man followed her, and it caused her to become concerned or worried. III AA 522.

The next day, on May 16, 2013, C.C. noticed the same man looking at her at the transit center again. Again, she did not initiate any contact with him, but tried to avoid him because he concerned her. C.C. was not planning on going to CJ's that morning, and was taking a different route to go straight to school. At that point, Pigeon confronted C.C., blocked her way, and grabbed her hand or wrist while telling her she looked nice or she was beautiful and that he loved her. She told him to leave her alone, and she ran to CJ's because she felt unsafe and knew there would be people there. Despite her telling him to leave her alone, Pigeon followed her into CJ's and sat at the slot machines.

On May 17, 2013, C.C. again saw the same man at the transit center. Again he boarded the same bus she did, looked at her while on the bus, and got off at the same stop she did. Again he followed her into CJ's, where he again told her that she looked nice. He followed

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[1] For purposes of protecting C.C.'s identity, the State will refer to C.C. by her initials, C.C., throughout the brief.

[2] In court, C.C. identified Pigeon as the man who followed her.

her out of the store, and she walked quickly to try to get to school. She was afraid and creeped out.

The store clerk initially reported that the interaction was suspicious, and Detective Lafreniere responded and viewed video surveillance on May 17, 2013. The surveillance footage led him to identify Pigeon as the man who had been following C.C. in the store. Additionally, the footage showed Pigeon masturbating in the store on May 15, 2013.

Lafreniere went from the store to Hyde Park at around school dismissal time hoping to see Pigeon. When he arrived, he saw Pigeon sitting at a park across from the school, "affixed" on the school and rocking back and forth while shaking his legs. As Lafreniere observed, he saw Pigeon get off the bench and walk onto school grounds and actually enter the gated area of the school. He was stopped by a school employee, and Lafreniere made contact and escorted him to the police station. There, he interviewed Pigeon, who made a recorded voluntary statement. A redacted version of the statement was played for the jury and admitted at trial.

C.C.'s grandmother, who is her legal guardian, testified that C.C. took the city bus to school in the mornings. She testified that she did not know Pigeon before police contacted her about the incidents underlying this case, and that she never gave him permission to speak to, touch, or take C.C. anywhere. She also did not give him permission to spend time with C.C. She testified that C.C. was upset by the incidents with Pigeon and was scared afterward.

Pigeon testified during trial to the following:

> I don't often talk to young girls, but I find this particular girl very nice, bright, interesting. **I thought she was a nice specimen**. I like her being slimmer. **I just sort of fell in the first stages of love** with her and was trying to get to know her over the summer. **There were only two weeks before school was out so I was really trying to get to – get her to let me meet her mom or her dad** or maybe I could have come over for dinner or something over the summer. It would have been nice.
>
> **My intention was to marry her** if I could have met her mom and she would have agreed. So I really had good intentions, I'd say. I mean, **obviously I was somewhat sexually attracted to her.**

(emphasis added). Pigeon said that on May 17, 2013, he was at the park after school waiting to see C.C. to try to say hello. He eventually entered the school, because he "was going to look in the hallway briefly to see if [C.C.] might not be there." Pigeon admitted that he never met her family, but he did want to marry and have sex with C.C. with parental permission. He testified that he found her sexually attractive. **He also testified that he still loved C.C., he was happy to see her again in court, he would like to see her again, and he would like to have a relationship with her.**

## ARGUMENT

Despite the fact that Defendant admitted to many of the matters to which C[redacted] testified took place over the course of the several days at issue, the Nevada Supreme Court determined that there was insufficient evidence to sustain many of the charges. Nevertheless, the State submits that this Court should still adjudicate Defendant guilty as a large habitual criminal and sentence him to life in prison without the possibility of parole for the reasons set forth herein.

### I.

### DEFENDANT'S CRIMINAL HISTORY

**El Paso Forgery Convictions**

Defendant was convicted of Forgery of Financial Instruments in Case Nos. 970D06614 and 970D06615 out of El Paso, Texas in 1997. Defendant was originally afforded a grant of probation. On October 3, 2000, that probation was revoked (likely due to his being charged in Case No. 980D4426) and the underlying sentence was imposed.

Then, in Case No. 980D4426, Defendant was again convicted of Forgery of Financial Instruments. He was sentenced to 230 days concurrent to Case Nos. 9700D06614 and 97D06615.

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**El Paso Police Department Case No. 00-076159**[3]

On March 16, 2000, Officers responded to the Restitution Center in El Paso, Texas after being advised by the various complainants that Defendant intentionally exposed himself to them. Officers made contact with three (3) different complainants.

Complainant 1 advised officers that on March 15, 2000, she went to the front of the Center to purchase eye solution for her contacts around 8:00 p.m. While she waited for her items, Defendant approached her. Defendant was not wearing a shirt and had his zipper undone. He placed his hand inside of his pants. She left to notify her supervisor and when they returned he was gone. Then, on March 16, 2000, she was outside having a cigarette with the other two complainants. Defendant was outside and began making a lot of noise to get their attention. Then, he took a seat to the Northeast corner and unzipped his pants. He pulled out his penis and began to masturbate while looking in their direction.

Complainant 2 advised officers that on March 15, 2000, she was waiting in the lobby to have her picture taken. Defendant sat across from her with his zipper undone and tried to expose himself. Then on March 16, 2000 she was outside with Complainants 1 and 3 when Defendant made loud noises to get their attention and began to masturbate.

Complainant 3 corroborated Complainant's 2 statement regarding what happened on March 15, 2000 in the lobby.

Defendant was charged with Indecent Exposure.

**El Paso Police Department Case No. 00-315331**

On November 10, 2000, Officers were dispatched to a call regarding an Indecent Exposure in progress. The Complainant advised officers that while she and her son were waiting for the bus to arrive, she left to use the restroom at a nearby Burger King. **When she returned, she noticed Defendant speaking to her ten year old son**. She noticed that the zipper to Defendant's pants were undone. Then, Defendant approached the right side of Complainant and her son and took his penis out of his pants exposing himself. He then turned to face them and began masturbating. Once police arrived, Complainant pointed Defendant

[3] Copies of the reports from the El Paso indecent exposure cases will be brought to Court for the Court's review but are not being filed as part of this brief as the entirety of the reports is not subject to disclosure pursuan to Texas state law.

out as he was entering the bus. Officers made contact with Defendant and noted that the zipper to his pants was down. Defendant was placed under arrest and charged with Indecency with a Child/Exposure, a felony. That charge was dismissed upon motion of the State in 2017 due to the age of the case.

**El Paso Police Department Case No. 01-220087**

On August 8, 2001, Officers were dispatched to the Mesa Inn Hotel after an employee reported an Indecent Exposure. Upon their arrival, Officers contacted Veronica Guerrero who advised that she was employed at the Hotel as a housekeeper. On that date, she was approached by Defendant was working in one of the rooms. As Defendant was standing outside the room, he exposed his penis and asked her if she had any extra towels. Defendant then grabbed his penis and stood there for a few seconds masturbating. Guerrero called her manager and Defendant fled. A warrant was subsequently issued for Defendant's arrest for Indecent Exposure after police were unable to locate him to place him under arrest.

**Case No. C186418 – Convicted of Gross Misdemeanor Open & Gross Lewdness** (See Arrest Report, attached hereto as "Exhibit 1.")

On July 31, 2002, officers with the Las Vegas Metropolitan Police Department were dispatched to the McDonald's located at 1601 W. Charleston after **reports that a male patron was staring at a ten year old Hispanic female child**. When officers arrived, they made contact with several witnesses who reported seeing Defendant watching the young child with his pants undone, his genitals hanging out, and masturbating. At some point when the child left the dining area and went to the playground, he re-adjusted himself so that he could continue to masturbate while watching her. When officers made contact with Defendant his pants were still unzipped. Ultimately he was arrested for Open and Gross Lewdness and Ex-Felon Failure to Register (a misdemeanor). Defendant was ultimately convicted after Jury Trial of Open and Gross Lewdness (gross misdemeanor) and in 2003, he was sentenced to 200 days in CCDC with 175 days CTS.

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**Case No. C208956 – Dismissed without Prejudice** (See Reports, attached hereto as "Exhibit 2.")

On May 5, 2004, Defendant was cited for Loitering about School and Ex-Felon Failure to Change Address after the Clark County School Police responded to Lowman Elementary School in response to information provided by the principal. The principal was advised by a parent that **Defendant opened his pants and stroked his penis in front of her 14 year old daughter and 12 year old son on the CAT bus** on April 22, 2004, and then on May 5, 2004 Defendant was watching children at the playground through the school fence. Defendant was charged with Open or Gross Lewdness, but the case was ultimately dismissed without prejudice based upon an issue with the *Marcum* notice.

**Case No. C216699 – Convicted of Felony Open and Gross Lewdness** (See Arrest Report attached hereto as "Exhibit 3.")

On October 18, 2005 Officer R. Gill of the Las Vegas Metropolitan Police Department was dispatched to the JC Penney store located at 3528 Maryland Parkway in reference to a **male who was standing in the junior's clothing section with his penis out, masturbating.** Clarissa Pickard was the original person reporting. Security Officers Sherman and Boyko confirmed it via closed circuit television. Defendant was arrested and booked on Open and Gross Lewdness, a felony. Defendant was convicted of the charge after Jury Trial in 2006 and sentenced to 19-48 months.

**08FN1701X - Denied in Screening** (See Arrest Report, attached hereto as "Exhibit 4.")

Defendant was released from custody following his conviction in C216699 on July 10, 2008. On July 30, 2008, LVMPD was contacted by Edwards Mini Storage at 5000 W. Cheyenne who advised that they believed Defendant was residing in one of their storage units. Officer Newcomb responded and attempted to contact Defendant but he was already gone. Newcomb called the State Sex Offender Registry and was told that Defendant had not yet registered as a Sex Offender. A little bit later Newcomb located Defendant and placed him under arrest for his failure to register as a Sex Offender. **Defendant specifically told**

**Newcomb, "I am protesting my registration!"** Ultimately, the case was denied because the officer failed to submit additional information requested by the screening deputy.

**08F19304X - Denied in Screening** (See Arrest Report, attached hereto as "Exhibit 5.")

About a month and half later, Defendant was again arrested for Sex Offender Failure to Register. On September 15, 2008, Officers made contact with the manager at the Sunflower Apartment Complex on Fremont and learned that Defendant was living there since September 8, 2008 but was still registered at 117 N. 9th Street. Again, charges were ultimately denied because officers failed to submit the additional information requested by the screening deputy.

**08F25351X - Denied in Screening** (See Arrest Report, attached hereto as "Exhibit 6.")

Then, on December 4, 2008, Defendant was again arrested for failing to register as a Sex Offender. Officers contacted Defendant at 1100 E. Fremont and learned that he was residing at the address in apartment 15 since December 1, 2008. He was registered to apartment 18. The case was denied in screening based upon prosecutorial discretion.

**Case No. C254530 – Convicted of Gross Misdemeanor Open and Gross Lewdness** (See Arrest Report, attached hereto as "Exhibit 7.")

On May 9, 2009, Officer B. Jones and Officer R. Voodre were dispatched to Treasure Island Hotel and Casino in reference to a male who touched a cocktail waitress inappropriately. Upon arrival, Officers made contact with Defendant who had been detained by hotel security. Additionally, they spoke with Marci Mellan, the waitress. According to Mellan, Defendant placed his hand on the small of her back and then slid it onto her buttock in a sexual manner. Additionally a week prior, Defendant aggressively grabbed her arm. Mellan notified security on both occasions. Defendant was charged with Open and Gross Lewdness, a felony but ultimately pled guilty to Open or Gross Lewdness, a Gross Misdemeanor and in 2010 was sentenced to 12 months in the Clark County Detention Center.

**C269318 – Convicted of Felony Open and Gross Lewdness** (See Arrest Report, attached hereto as "Exhibit 8.")

On November 2, 2010, officers responded to the Bellagio Hotel and Casino and made contact with victims Connie Rim and Jenny Sentmanat-Martinez. They advised that at about

11:30 p.m., they were sitting in the slot area next to the poker room. Defendant was seated in the same bank and on the same side, with one open seat between Rim and Defendant. Rim had her back to Defendant and was facing Sentmanat-Martinez. Sentmanat-Martinez was facing Rim and Defendant. Sentmanat-Martinez indicated that while she was talking to Rim, Defendant removed his penis from his pants and began masturbating. She was so shocked that she told Rim to confirm what she saw. Rim turned and saw the same thing. The women got up to report the incident to security and Defendant began to walk away. When security tried to approach him he started to flee.

The officer watched surveillance and confirmed their reports. When the officer contacted Defendant in the security office, Defendant made several spontaneous statements to include that his actions were not illegal so long as the person complaining did not tell him that they were offended. Another comment was that his penis was so impressive that no one would complain about seeing it.

Defendant was arrested and charged with Open and Gross Lewdness, a felony. Defendant pled guilty to the charge and in 2012 was sentenced to 14-36 months in the Nevada Department of Corrections. **The Psychosexual Evaluation in that case indicates that Defendant "is an overall High Risk for sexual recidivism, which indicates that he does not present as safe and amendable to treatment in the community under the supervision of the State at this time.**" Furthermore, the author of that report noted that Defendant was in denial about his prior sexual convictions and did not take accountability for his actions, nor did he exhibit a willingness to engage in treatment.

## I.
## A LIFE SENTENCE IN THE INSTANT CASE IS PROPER.

A life sentence in the instant case is not cruel and unusual. When considering whether a sentence is cruel and unusual, this Court has held that the Eighth Amendment of the United States Constitution "forbids [an] extreme sentence[] that [is] 'grossly disproportionate' to the crime." Despite its harshness, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so

unreasonably disproportionate to the offense as to shock the conscience.'" Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004), overruled on other grounds by Knipes v. State, 124 Nev. Adv. Rep. 79, 192 P.3d 1178 (2008) (citations omitted).

Furthermore, "A district court is vested with wide discretion regarding sentencing" and will only be reversed "if [the sentence] is supported *solely* by impalpable and highly suspect evidence." Denson v. State, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996) (*citing* Renard v. State, 94 Nev. 368, 369, 580 P.2d 470, 471 (1978); Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)). In rendering its sentence, the district court may "consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant." Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998). The purpose of this discretion is to allow the Sentencing Judge to consider all information when determining a suitable punishment that fits both the crime committed and the individual who committed that crime. Id. A Sentencing Judge may consider, for example, prior felony convictions and any underlying charges that were ultimately dismissed in the case in question. See id. Furthermore, "[J]udges spend much of their professional lives separating the wheat from the chaff and have extensive experience in sentencing, along with the legal training necessary to determine an appropriate sentence." Randell v. State, 109 Nev. 5, 7, 846 P.2d 278, 280 (1993) (quoting People v. Mockel, 226 Cal.App.3d 581, 276 Cal.Rptr. 559, 563 (1990)).

In Sims v. State, 107 Nev. 438 (1991), the defendant was convicted of Grand Larceny for unlawfully taking a purse and wallet containing $476.00. On appeal, Sims challenged the Court's decision to adjudicate him as a habitual criminal and sentence him to Life without the Possibility of Parole. In particular, he argued that the sentence was "disproportionate to the gravity of the underlying offense and his prior criminal history, and that the sentence...constituted a violation of the Eighth Amendment's proscription against cruel and unusual punishment." The Supreme Court upheld the sentence and noted,

> The district judge, who is far more familiar with Sims' criminal background and attitude than the members of this court sentenced Sims within the parameters of Nevada law. Although we may very well have imposed a different, more lenient

> sentence, we do not view the proper role of this court to be that of an appellate sentencing body. Moreover, because the Legislature has determined the sentencing limitations and alternatives that our district courts may impose on criminals who habitually offend society's laws, we deem it presumptively improper for this court to superimpose its own views on sentences of incarceration lawfully pronounced by our sentencing judges.

This Court should considered Defendant's previous criminal conduct that has stretched over the course of nearly two decades, his failure to rectify his behavior, and the increasing harm posed by Defendant as exhibited by his conduct in this case, as well as the potential harm caused by a repeated sexual offender/predator such as Defendant Pigeon continuously failing to register as a sexual offender, and impose a sentence within the statutory guidelines.

More specifically, Defendant's first felony conviction was acquired in 1997 when he was convicted of forgery. That was followed by another felony conviction for Forgery for which he was arrested in 1998 and convicted in 2000. Then, from 2000-2013, he was arrested and charged with Open and Gross Lewdness and/or Indecent Exposure eight (8) separate times, excluding the present case. **In at least 3 of those cases, he masturbated while staring at small children, and in a fourth he was masturbating in the Juniors' section of a department store.** Furthermore, records indicate that he was also charged with similar conduct in Pennsylvania, but the State is unaware of the disposition of those charges. Of the five (5) Open and Gross Lewdness cases Defendant has amassed since moving to Las Vegas, two resulted in felony convictions – one in 2006 and one in 2012. He was convicted of Gross Misdemeanor Open and Gross Lewdness in two of those cases – one in 2003 and one in 2010.

**In his most recent felony case prior to the present case, as well as in the current case, Defendant was deemed to represent a high risk of reoffending.** His conduct has grown progressively worse, and in this case Pigeon was actively trying to engage a 12 year old girl in a romantic relationship. His efforts were only thwarted because an observant store clerk noticed Defendant's suspicious behavior and alerted authorities. By his own admissions at trial, Defendant believed the 12-year old C.C. was a "nice specimen" and he still desired a relationship with her. In fact, even after having been found guilty in this case, Defendant sent her a card.

In sum, it is evident from his prior conduct as well as the present case that Defendant sees nothing wrong with the behavior he continues to engage in. Consequently, there is no impetus for him to reform himself. Additionally, he has exhibited that he has no regard for the law and does not feel as though he should have to abide by it. That is reflected not only in his Open and Gross conduct, but in his repeated failures to register as a sex offender. In particular, in Case No. 08FN1701X, he stated to the officer, "I'm protesting my registration!" It is also apparent, by the fact that he has never remained out of custody for any significant period of time before being arrested for additional crimes (See the PSI on file herein), that if released he will continue to victimize whichever community in which he resides.

Defendants' predilection for engaging in sexually deviant behavior coupled with his unwillingness to register as a sex offender, Defendant poses further danger to the community as the public is not aware of his presence, nor are law enforcement officers capable of monitoring him. Thus, the goal of sex offender registration laws is defeated.

In light of his criminal history and his escalating behavior, the State respectfully submits that adjudication as a habitual criminal is proper, and that a sentence of Life Without the Possibility of Parole is still warranted.

**CONCLUSION**

In light of the foregoing, the State respectfully submit that this Court should adjudicated Defendant guilty under NRS 207.010 as a large habitual criminal and sentence him to Life Without the Possibility of Parole.

DATED this 29th day of March, 2018.

Respectfully submitted,

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

BY _____
ELIZABETH MERCER
Chief Deputy District Attorney
Nevada Bar #10681

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 30th day of March, 2018, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

CHRISTOPHER PIGEON
ELY STATE PRISON
4569 NORTH STATE, RT 490
ELY, NV 89301

BY E DelPadre
E. DEL PADRE
Secretary for the District Attorney's Office

EAM/em/GCU

EXHIBIT" 1 "

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

# ARREST REPORT

02F13897X 7

☐ City ☒ County ☒ Adult ☐ Juvenile Sector/Beat _____

| D/EVENT# | ARRESTEE'S NAME (Last, First, Middle) | S.S.# |
|---|---|---|
| 1694872 | PIGEON, CHRISTOPHER E. | |

ARRESTEE'S ADDRESS (Number, Street, City, State, Zip Code)

CHARGES: OPEN AND GROSS LEWDNESS
EX-FELON FAILURE TO CHANGE ADDRESS

| OCCURRED: DATE | DAY OF WEEK | TIME | LOCATION OF ARREST (Number, Street, City, State, Zip Code) |
|---|---|---|---|
| | | | 1601 W CHARLESTON, LV, NV |

| RACE | SEX | D.O.B. | HT | WT | HAIR | EYES | PLACE OF BIRTH |
|---|---|---|---|---|---|---|---|
| W | M | 08/31/62 | 5'11 | 165 | BRO | BRO | |

CIRCUMSTANCES OF ARREST

OFFICERS INVOLVED:

Officer V. Williams, P#4846
Officer R. Johnson, P#6226,
Officer J. Turchetto, P#5441
Officer K. Kartchner, P#6332

DETAILS:

I, Officer V. Williams, P#4846, Officer R. Johnson, P#6226, Officer J. Turchetto, P#5441, and Officer K. Kartchner, P#6332, while on marked patrol, responded to an indecent exposure call at 1601 W Charleston, at McDonald,s.

Upon arrival, we made contact with a white male adult, identified as Pigeon, Christopher, ID/ 1694872, who had been observed by employees at the McDonald's restaurant staring at a hispanic female juvenile (ten years of age), who was identified as . . . . , , DOB/ 11/14/91. is the daughter of the manager of McDonald's–who was seated in the restaurant area at that time, at approximately 0900 hours.

The witnesses stated that they did observe Pigeon watching the child and it was also observed that the subject, Pigeon, did have the zipper of his pants undone–where you could see his genitals. The subject Pigeon was also groping and masturbating himself while watching the child. Witnesses stated that when left the main restaurant area and proceeded to the playground area, Pigeon gathered his belongings and re-seated himself so that he could view the child while she was playing. He continued his open and gross behavior.

Upon our contact, Officer R. Johnson, P#6226, and Officer J. Turchetto, P#5441, made initial contact with Pigeon. It was observed that his zipper on his pants were unzipped; and the subject stated that he was doing nothing wrong at that time.

Officer Kartchner then proceeded to interview the witnesses–where voluntary statements were taken. The mother of the juvenile, identified as L Cordero, did observe the

| ARRESTING OFFICER(S) | P# | APPROVED BY | CONNECTING RPTS. (Type or Event Number) |
|---|---|---|---|
| V. WILLIAMS | 4846 | Lt. Juanita Goode 7-31-02@1750HOURS | EVENT # 020731-0784 |

LVMPD 602 (REV. 12-90) • AUTOMATED

situation and she stated that she did watch Pigeon staring at her daughter, repositioning himself. He also had his hand in his groin area and has placed his legs up where you could see his genitalia exposed.

Another witness, by the name of L Contrera, an employee of McDonald's, also stated that she had observed Pigeon in the restaurant the day before (on 07/30/02) at approximately 0900 hours; and that he had exposed himself to her on that day. Upon myself speaking with , the juvenile stated that she had seen Pigeon staring at her, but she did not observe any open and gross lewdness or behavior at that time. The other witnesses that were employees of McDonald's stated that they had observed him and that he did expose himself and masturbated and groped himself.

Upon records check, it was indicated that the subject, Pigeon, had an address listed in SCOPE, of The Salvation Army, located at 53 Owens. When the subject was asked where he lived, he indicated that for the last four months he had lived at 1130 S Casino Center #5.

Pigeon was in Failure to Change Address, Ex-Felon Status; had been registered as a felon from Texas for Forgery charges. Records check also indicated that he had several outstanding Traffic warrants for his arrest. Upon Triple I, it had also indicated that the subject had been arrested for Indecent Exposure, and dismissed on 03/17/00; also had Felony Three Indecent with a Child arrest on 11/10/00, which was dismissed on 05/02/01 (out of Texas). He has an NCIC Warrant out of Harrisburg, Pennsylvania for Indecent Exposure. Pennsylvania would not extradite for this warrant that is still outstanding.

The subject was Mirandized, taken into custody, transported to CCDC, and booked accordingly for Open and Gross Lewdness; Ex-Felon Failure to Change Address within 48 Hours, and Five Justice Court Bench Warrants for Traffic Citations.

VW/rak 7693 (Records)
Job #103913
Date & Time Dictated: 07/31/02 1154 hours
Date & Time Transcribed: 07/31/02 1652 hours

cc: Officer V. Williams, P#4846, SWAC
Officer R. Johnson, P#6226, SWAC
Officer J. Turchetto, P#5441, SWAC
Officer K. Kartchner, P#6332, SWAC
Sexual Assault

EXHIBIT "2"

Page 1 of 3

CLARK COUNTY SCHOOL DISTRICT POLICE DEPARTMENT

# INCIDENT REPORT

CCSD Victim: ☒ Yes ☐ No | Event/Case #: 04-0505-43

3

Specific Crime(s): Loitering About School | ☒ Prosecution ☐ INS. ☐ Yes ☐ No | Attempt ☐ | ☐ City ☒ County | ☒ SCH.PROP ☒ M ☐ TELE ☐ GM | ☐ O.J. ☐ F | Area: N/E

Location of Incident: (Location Number & Street): Lowman E/School 4225 N. Lamont st. | City: Las Vegas | State: NV | Zip Code: 89115

| | Month | Day | Year | Day/Wk | Time | Report | Month | Day | Year | Time 24 Hr. | Bias Crime Yes No Unk | Gang Related Yes No Unk | Substance Abuse Yes No Unk |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Occ / Began | 05 | 05 | 04 | Wed | 0845 | | 05 | 05 | 04 | 0945 | ☐ ☒ ☐ | ☐ ☒ ☐ | ☐ ☐ ☒ |
| Occ / Ended | 05 | 05 | 04 | Wed | 0900 | | | | | | | | |

Connecting Records? ☒ Yes ☐ No | Type of Report: W/Statements

If Arrest was made, name Arrestee(s) on appropriate page and place # of Arrestees in box: | Y N | Y N | P# 332 | Reporting Officer: Christopher Hosein

| | | | |
|---|---|---|---|
| Was there a witness? ☒ Victim ☐ Other | XX | Can suspect vehicle be identified? | |
| Can suspect be named? | XX | Is stolen property traceable? (identifiable?) | |
| Can suspect be located? | XX | Is there Physical evidence present? | |
| Can suspect be described? | XX | Is there significant M O ? | XX |
| Can suspect be identified? | XX | Criminalistics work performed? | XX |

Person Reporting: Rudd | Signature | P# 610 | Supervisor Approving Report: S.T. | Follow-Up ☐ Y ☒ N | P# | Specialists/Crime Tech

## ALWAYS LIST VICTIM (S) FIRST

### GENERAL

### PERSONS

| # | | Veh. # | Statement Obtained | Can I.D. Suspect | Name (Last / First / Middle) OR Business Name |
|---|---|---|---|---|---|
| 1 | ☒ V ☐ Contact ☐ W ☐ P/R ☐ Missng/Rnawy | / | Yes ☐ No ☒ | Yes ☒ No ☐ | CCSD/State of NV |

| Date of Birth | Social Security # | Race | Sex | Ht | Wt. | Hair | Eyes | Business/School Name |
|---|---|---|---|---|---|---|---|---|
| / | / | / | / | / | / | / | / | Lowman E/School 4225 N. Lamont st. |

| Residence Address: (Number & Street) | Bldg./Apt.# | City | State | Zip Code | Res.Phone: # |
|---|---|---|---|---|---|
| / | / | / | / | / | / |

Bus.Phone: 702 799-5830 EA | Occupation | ☐ CCSD Employee

| Business/School Address: (Number & Street) | City | State | Zip Code |
|---|---|---|---|
| 4225 Lamont St. | Las Vegas | NV | 89115 |

☐ Student

| # | | Veh. # | Statement Obtained | Can I.D. Suspect | Name (Last / First / Middle) OR Business Name |
|---|---|---|---|---|---|
| 2 | ☐ V ☐ Contact ☒ W ☐ P/R ☐ Missng/Rnawy | / | Yes ☒ No ☐ | Yes ☒ No ☐ | Rudd, |

| Date of Birth | Social Security # | Race | Sex | Ht. | Wt. | Hair | Eyes | Business/School Name: |
|---|---|---|---|---|---|---|---|---|
| 12-9-72 | | Unk | F | 5' 00" | ------ | Blk | Hazl | / |

| Residence Address: (Number & Street) | Bldg./Apt. | # | City | State Zip Code | Res.Phone: |
|---|---|---|---|---|---|
| | | | Las Vegas | 89115 | |

Bus.Phone: / EXT /

| Business/School Address: (Number & Street) | City | State Zip Code | Occupation | ☐ CCSD Employee |
|---|---|---|---|---|
| / | / | // | Unemployed | ☐ Student |

### STOLEN VEHICLE / SUSPECT

| # | ☐ Suspect ☐ Victim | Year | Make | Model | Value |
|---|---|---|---|---|---|
| | | / | / | / | / |

| License # | State | Lic. Type | Mo/Yr |
|---|---|---|---|
| / | / | / | / |

VIN #

DESCRIPTION: 1 2-door, 2 4-door, 3 Bicycle, 4 Convertible, 5 Dirt Bike, 6 Golf Cart, 7 Hatchback, 8 Mini Trk/Camper, 9 Mini Trk/Utility, 10 Moped, 11 Motorcycle, 12 Off-road, 13 Pickup, 14 Pickup w/Camper, 15 RV, 16 Snowmobile, 17 Station Wagon, 18 Trailer, 19 Utility Truck, 20 Van/Mini Van, 99 Other (describe) /

FEATURES: 1 Fl-Bumper, 2 R-Bumper, 3 Bucket Seats, 4 Bench Seats, 5 T-Top, 6 Vinyl top, 7 Hubcaps, 8 4-Wheel Drive, 9 Sunroof, 10 Special Tires, 11 Special Rims, 12 Roll Bar, 13 Spotlights, 14 Level Altered, 15 Tinted Windows, 16 Extra Antenna, 17 Primer, 18 Rust, 19 Decorative Paint, 20 Metallic Paint, 21 Painted Inscription, 22 Sticker on Body, 23 Sticker on window, 24 Door Panels gone, 25 Broken Windows, 26 Loud Muffler, 27 Trailer Hitch / Tow bar, 28 Damage to Front, 29 Damage to Rear, 30 Damage to Side

COLOR 1 (top) / COLOR 2 (bottom) / COLOR 3 (middle): 1 Unknown, 2 Beige, 3 Black, 4 Lt. Blue, 5 Blue, 6 Dk. Blue, 7 Bronze, 8 Brown, 9 Copper, 10 Cream, 11 Gold, 12 Gray, 13 Lt. Green, 14 Green, 15 Dk. Green, 16 Maroon, 17 Orange, 18 Pink, 19 Purple, 20 Red, 21 Silver, 22 Tan, 23 Turquoise, 24 White, 25 Yellow, 26 Primer/Rust, 27 Primer/Gray, 28 Chrome, 29 Lavender, 30 Multi, 99 Other

Lost/Stolen Plates Only: # of Plates Missing ☐ Front ☐ Rear | Where Is Other Plate? | WVS | P # / Date / Time | NCIC

Ignition Locked? Yes ☐ No ☐ Unk ☐ | Door Locked? Yes ☐ No ☐ Unk ☐ | Keys in Vehicle? Yes ☐ No ☐ Unk ☐ | Payments Current? Yes ☐ No ☐ Unk ☐

☐ Registered: ☐ Legal | Tow ☐ Rel ☐ | Owner's Name (Last, First, Middle) or Firm Name | Date of Birth | Social Security #

Address: (Number & Street) | Bldg./Apt.# | City | State | Zip Code | Res.Phone: | Bus.Phone: EXT

### PROPERTY

Property Listing Complete? Y N U

| Pers. # | S B L E Status | UCR Code | Make or Brand / Model | Color(s) | Caliber Size | Barrel Length | S=Ser# O=OAN M=Misc | Serial Number/ OAN | Qty. | Description (Include other Marks of I.D.) | Value |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | BLOCK | |
| | | | | | | | | | | 6/2 | |

UCR CODE CATEGORIES: A Cash/Notes/Casino Chips/etc. | B Jewelry & Precious Metals | C Clothing & Furs | E Office Equip. (Incl. Computers) | F TVs/Stereos/Cameras/NCRs/Phones | G Firearms (NOT Ammo or Scopes) | H Household Goods/Appliances | I Consumable Goods (Incl. Drugs) | J Livestock (NOT Domestic) | K Miscellaneous (Bicycles/Auto Parts/ Badges/etc.)

CCSD4574 -A (REV. 3-99)

000263

CLARK C[illegible]ITY SCHOOL DISTRICT POLICE DEPARTMEN

# INCIDENT REPORT

Event/DR#: 04-0505-4354

## SUSPECT

| # | Cited / Arrested | Veh.# | Statement Obtained? | Name (Last, First, Middle) | Monikers | ID# |
|---|---|---|---|---|---|---|
| 3 | Cited | | Yes☐ No☒ | Pigeon, Christopher, Edward | | |

| Age or DOB | Social Security # | Race | Sex | Ht. | Wt. | Hair | Eyes | Business/School | Occupation |
|---|---|---|---|---|---|---|---|---|---|
| 08/31/62 | | White | Male | 5' 11" | 175 | Brn | Brn | | Unemployed |

| Address: (Number & Street) | Bldg./Apt.# | City | State | Zip Code | Res. Phone |
|---|---|---|---|---|---|
| 4300 Lamont st. | 260 | Las Vegas | NV | 89115 | None |

| Last Seen Wearing | Citation # | Business Phone | Ext. |
|---|---|---|---|
| Blue shorts, Grey Sleeveless T-Shirt, sneakers, glasses | 03284710 | | |

P# Taking ATL / Date / Time:

| # | Cited / Arrested | Veh.# | Statement Obtained? | Name (Last, First, Middle) | Monikers | ID# |
|---|---|---|---|---|---|---|
| | | | Yes☐ No☐ | | | |

| Age or DOB | Social Security# | Race | Sex | Ht. | Wt. | Hair | Eyes | Business/School | Occupation |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |

| Address: (Number & Street) | Bldg./Apt.# | City | State | Zip Code | Res. Phone: |
|---|---|---|---|---|---|
| | | | | | |

| Last Seen Wearing | Citation # | Business Phone | Ext. |
|---|---|---|---|
| | | | |

## NARRATIVE

**Narrative must be completed. Explain solvability factors:**

On 05/05/04 at approx. 0915hrs. I received a call from Dispatch directing me to Lowman Elementary School in reference to a subject of a past lewdness crime on School property.

Upon arrival at 4225 N. Lamont st., I was approached by the assistant principal who was informed by a parent of seeing a white male who had opened his pants and was stroking his penis in front of her 14 yr. old daughter and 12 yr. old son while on the C.A.T Bus #113 on 4/22/04, (see statement attached) now peeping through School fence at Children in playground while dropping her son off to School at Lowman's Elementary.

While conducting an immediate canvass of area, in direction of flight, suspect was seen sitting at Bus Stop bench on Las Vegas Blvd and Lamont st. After conducting my common right of inquiry into his conduct, suspect produced valid identification which was verified by Dispatch through N.C.I.C and S.C.O.P.E and returned as a registered Felon, public lewdness priors, and an active warrant from Pennsylvania. When asked, why was he looking through fence at children? subject replied, " I crossed the street and was just looking, not bothering anyone, you are Clark County Police, why are you asking me questions?"

Citation #03284710 was issued for, "Loitering About School," under N.R.S 207.270 code 5714 and "Failure to change address," as a registered Ex-Felon as required by law under N.R.S 207.100 code 5707, at which time last registered address was given as 35 West Owens and not the current address of 4300 Lamont st. #260 Las Vegas NV 89115. Pennsylvania failed to request extradition as notified by dispatch.

## UCR

**ASSAULT DATA**
1 Hands, Fist, Feet (with substantial injury)
2 Hands, Fist, Feet (without substantial injury)
////

**LARCENY CLASSIFICATION**
A Pocket Picking
B Purse-Snatching
C From Any Coin Oper. Machine
D From Building (Exc. Shoplifting & Coin Oper. Machine)
E From Autos (Exc. Parts & Access.)
F Other ////////////////////////
////

**BURGLARY DATA**
☐ 1 High School
☐ 2 Middle School
☐ 3 Elementary School
☐ 4 Force
☐ 5 No Force
☐ 6 Day (6 am-6pm)
☐ 7 Night (6 pm-6am)
☐ 8 Unknown
☐ 9 Other Dist. Facility
☐ 99 Other //

## GENERAL M.O.

**PREMISE (general)**
1 School Building
2 Bus/Bus Stop
3 School Property
4 Transportation Yard
5 Park/Sports Field
6 Office
7 Child Care
8 Store Room/Shed
9 Street/Roadway
10 Vehicle
11 Warehouse
99 Other 3

**PREMISE (specific)**
1 Elevator/Stairs
2 Driveway
3 Parking Lot
4 Rest Room
5 Room/Classroom/Office
6 Sporting Event
99 Other Sidewalk
99

**SURROUNDING AREA**
1 Alley
2 Adjacent Open Field/Desert
3 Middle of Block
4 Corner
5 Cul-de-Sac
6 Neighborhood/Residential
7 Shopping Center
99 Other playground
99

**RELATIONSHIP TO SUSPECT**
1 Student/Classmate
2 Co-Worker/Partner
3 Former Co-Worker/Partner
4 Fiance
5 Spouse
7 Roommate
8 Former Roommate
9 School / Dist. Employee
10 Immediate Family
11 Neighbor
12 Relative by marriage
13 None
14 Rival Gang Member
99 Other None
13

CCSD 4574 -A(REV. 2-95)

Page 3 of 3

# CLARK COUNTY SCHOOL DISTRICT POLICE DEPARTMENT
# STATEMENT REPORT

Event/DR# 04-0505-4754

**FOR OFFICIAL POLICE USE ONLY**

CHECK ONE: ☐ VICTIM ☒ WITNESS ☐ SUSPECT — If checked, Warning & Waiver below must be completed

**INCIDENT LOCATION**

| Location of Incident: (Number & Street) | City | State | ZipCode |
|---|---|---|---|
| LOWMAN ELEM. SCHOOL 4225 N. Lamont St. | Las Vegas | NV | 89115 |

**PERSON PROVIDING STATEMENT**

Name (Last / First / Middle): RUDD,

| Date of Birth | Social Security # | Race | Sex | Ht. | Wt. | Hair | Eyes | Business/School Name |
|---|---|---|---|---|---|---|---|---|
| 12-9-72 | | — | F | 5 | 11 | B | HZL | |

| Residence Address: (Number & Street) | Bldg./Apt.# | City | State | ZipCode | Res. Phone |
|---|---|---|---|---|---|
| | 259 | LAS VEGAS | NV | 89115 | Bus. Phone: ext. |

| Business/School Address: (Number & Street) | City | State | ZipCode | Occupation: | ☐ CCSD Employee ☐ Student |
|---|---|---|---|---|---|
| | | | | | |

**SUSPECT WARNING AND WAIVER**

**WARNING: BEFORE YOU ARE ASKED ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS**

I am, _____ of the Clark County School District Police Department and inform you that:

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to speak to any attorney and have him/her present with you while you are being questioned.
4. If you cannot afford to hire an attorney, one will be appointed to represent you before any questioning, if you wish one.

(FOR JUVENILES, ALSO USE THE FOLLOWING JUVENILE MIRANDA PLUS)

5. You have the right to have your parent or guardian present during questioning.
6. Anything you say can and will be used against you in Juvenile Court.
7. (If 16 years or older and accused of a felony) you may be certified as an adult and tried in Adult Criminal Court. Any statement you make can and will be used against you in Adult Court.

WAIVER: 1. I understand each of these rights as explained to me.
2. Having these rights in mind, I wish to make a statement to you now.

_____
Signature

**NARRATIVE**

1. MAY 5, 2004, WHILE DELIVERING MY SON TO SCHOOL, LOWMAN
2. I OBSERVED A MAN ON SCHOOL PROPERTY VIEWING THE
3. PLAYGROUND. PREVIOUSLY ON 4-22-04 THIS SAME MAN
4. ON THE #113 CAT BUS, HAD OPENED HIS PANTS AND
5. WAS STROKING HIS PENIS IN FRONT OF MY 14 YEAR
6. OLD DAUGHTER AND 12 YEAR OLD SON. I WENT TO
7. NOTIFY THE BUS DRIVER AND THE MAN EXITED THE
8. BUS. TODAY SEEING IT WAS THE SAME MAN I
9. RETURNED TO MY SONS SCHOOL AND NOTIFIED
10. THE STAFF. I LOOKED OUT THE DOORS TO IDENTIFY
11. HIM AND HE RAN. I DROVE HOME AND
12. OBSERVED HIM SITING AT THE BUS STOP AND
13. CALLED SCHOOL.
14.
15.
16.
17.
18.
19.

| Statement Taken: | Location of Statement: (Number & Street) | City | State | ZipCode | Month | Day | Year | Time 24 HR. |
|---|---|---|---|---|---|---|---|---|
| | 4225 N. Lamont St. | Las Vegas | NV | 89115 | 05 | 05 | 04 | 1000 |

**AFFIRMATION AND SIGNATURE**

I have read this statement consisting of 1 page(s), and I affirm to the truth and accuracy of the facts contained herein. I understand that knowingly making false statements may subject me to appropriate criminal/civil action as provided by law.

Lynette Rudd
Signature of Person Giving Voluntary Statement

WITNESS: M. Kemp #250 TITLE: CCSDPD
(School Police Officer Only)

GAC 4658

EXHIBIT "3"

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

# ARREST REPORT

05F19898X/3

[ ] City [X] County [X] Adult [ ] Juvenile Sector/Beat H2

| ID/EVENT# | ARRESTEE'S NAME (Last, First, Middle) | S.S.# |
|---|---|---|
| 1694872 | PIGEON, CHRISTOPHER | |

ARRESTEE'S ADDRESS (Number, Street, City, State, Zip Code)
4300 NORTH LAMONT, #260, LAS VEGAS, NEVADA 89110

CHARGES: OPEN AND GROSS LEWDNESS, SECOND OFFENSE

| OCCURRED: DATE | DAY OF WEEK | TIME | LOCATION OF ARREST (Number, Street, City, State, Zip Code) |
|---|---|---|---|
| 10/18/05 | TUESDAY | 1700 HRS | 3528 MARYLAND PARKWAY, LAS VEGAS, NEVADA 89109 |

| RACE | SEX | D.O.B. | HT | WT | HAIR | EYES | PLACE OF BIRTH |
|---|---|---|---|---|---|---|---|
| W | M | 08/31/62 | 5' 11" | 170 | BRO | BRO | ALBANY, NEW YORK |

CIRCUMSTANCES OF ARREST

OFFICERS INVOLVED: Officer R. Gill, P#6237

VICTIMS: Clarissa Pickard
Chris Sherman
Jonathan Boyko

DETAILS:

On October 18, 2005, I, Officer R. Gill, P#6237, while operating as marked patrol unit 3K1, responded to 3528 Maryland Parkway, reference a male who was exposing his penis and masturbating in the junior's clothing section at JCPenney retail store at the Boulevard Mall.

The first victim, Clarissa Pickard, said that she saw the suspect, Christopher Pigeon, with his penis out of his pants and in his hand, and he was stroking it, masturbating in an area open to the public. The second and third victims, Chris Sherman and Jonathan Boyko, said that they observed Pigeon via closed circuit television from the security office doing the same thing that Pickard reported.

In a records check of Pigeon, I learned that he had a previous conviction for open and gross lewdness on 01/06/03 stemming from an arrest on 07/31/02. Pigeon also had a second arrest for the same charge, but with a dismissal on 12/26/04. Due to the first conviction of gross misdemeanor for open and gross lewdness, and the facts presented today, Pigeon was booked into Clark County Detention Center for open and gross lewdness second offense, a felony.

RG/lkt (Records)
Job #29958
Date & Time Dictated: 10/18/05 2344 hours
Date & Time Transcribed: 10/19/05 0728 hours

| ARRESTING OFFICER(S) | P# | APPROVED BY | CONNECTING RPTS. (Type or Event Number) |
|---|---|---|---|
| R. GILL | 6237 | C. Klatt, Lt. | 051018-2265 |

LVMPD 602 (REV. 12-90) • AUTOMATED

EXHIBIT " 4 "

Page 1 of _____

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT**
**DECLARATION OF ARREST**

I.D. #: 1694872

True Name: PIGEON, CHRISTOPHER Date of Arrest: 073008 Time of Arrest: 1050

**OTHER CHARGES RECOMMENDED FOR CONSIDERATION:**

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with LVMPD (Department), Clark County, Nevada, being so employed for a period of 11 years (months). That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or was committing) the offense of EXFELON CONVICTED SEX OFFENDER FAIL TO REGISTER at the location of 5000 W. CHEYENNE LV NV 89108 (ADDRESS / CITY / STATE / ZIP) and that the offense occurred at approximately 1050 hours on the 30 day of JULY, 2008, in the county of ☐ Clark or ☒ City of Las Vegas, NV.

**DETAILS FOR PROBABLE CAUSE:**

ON 073008 AT ABOUT 1016 HRS I, OFF J. NEWCOMB, P#5621, OPERATING AS MARKED UNIT 2X7, ARRIVED AT EDWARDS MINI STORAGE AT 5000 W. CHEYENNE REGARDING A CUSTOMER WHO WAS POSSIBLY LIVING OUT OF STORAGE UNIT. ON CONTACT WITH STAFF AT THE STORAGE FACILITY I WAS INFORMED THAT THE SUBJECT IN QUESTION, CHRISTOPHER PIGEON, HAD ALREADY LEFT THE COMPLEX. A RECORDS CHECK, FROM INFORMATION PROVIDED BY STAFF, SHOWED CHRISTOPHER PIGEON, ID/1694872 WITH DATE OF BIRTH 083162, WAS A CONVICTED SEX OFFENDER. PIGEON WAS CONVICTED OF 032806 OF FELONY OPEN AND GROSS LEWDNESS IN LAS VEGAS NV PLACED A CALL INTO STATE SEX OFFENDOR REGISTRY AND WAS TOLD PIGEON WAS RELEASED FROM PRISON 071008 AND HAD FAILED, AS OF THIS DATE, TO REGISTER WITH THEM AND METRO AS A CONVICTED SEX OFFENDOR. I WAS TOLD THAT PIGEON WAS LAST SEEN WEARING A RED SPORTS JERSEY WITH TAN OR WHITE SHORTS. HE WAS CARRYING A LAUNDRY BAG AND POSSIBLY ENROUTE TO LAUNDROMAT AT [redacted] AND CHEYENNE.

AT 1050 HOURS I EXITED 5000 W. CHEYENNE AND OBSERVED A SUBJECT MATCHING PIGEONS DESCRIPTION. ON CONTACT PIGEON VERBALLY IDENTIFIED HIMSELF. I TOLD HIM HE WAS UNDER ARREST FOR FAILING TO REGISTER AS A SEX OFFENDER, PIGEON STATED "I'M PROTESTING MY REGISTRATION!" PIGEON WAS ARRESTED AND TRANSPORTED TO CCDC.

UNLAWFUL DISSEMINATION OF THIS RECORD IS PROHIBITED. Subject the offender to Criminal Penalties.

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 a misdemeanor).

Released by the Las Vegas Metropolitan Police Department

Declarant must sign second page with original signature.

Declarant's Signature 9621

J NEWCOMB 5621

Print Declarant's Name P #

LVMPD 38 – A (REV. 8-01) (1) ORIGINAL – COURT

000269

Page 1 of _____

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT**
**DECLARATION OF ARREST**

I.D. #: 1694872

True Name: PIGEON, CHRISTOPHER Date of Arrest: 073008 Time of Arrest: 1050

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with LVMPD (Department), Clark County, Nevada, being so employed for a period of 11 years (months). That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or was committing) the offense of FELON CONVICTED SEX OFFENDER FAIL TO REGISTER at the location of 5000 W. CHEYENNE LV NV 89108 (ADDRESS / CITY / STATE / ZIP)

and that the offense occurred at approximately 1050 hours on the 30 day of JULY, 2008, in the county of ☐ Clark or ☒ City of Las Vegas, NV.

**DETAILS FOR PROBABLE CAUSE:**

ON 073008 AT ABOUT 1016 HRS I, OFF J. NEWCOMB. P#5621, OPERATING AS MARKED UNIT 2X7, ARRIVED AT EDWARDS MINI STORAGE AT 5000 W. CHEYENNE REGARDING A CUSTOMER WHO WAS POSSIBLY LIVING OUT OF STORAGE UNIT. ON CONTACT WITH STAFF AT THE STORAGE FACILITY I WAS INFORMED THAT THE SUBJECT IN QUESTION, CHRISTOPHER PIGEON, HAD ALREADY LEFT THE COMPLEX. A RECORDS CHECK, FROM INFORMATION PROVIDED BY STAFF, SHOWED CHRISTOPHER PIGEON, ID/1694872 WITH DATE OF BIRTH 083162, WAS A CONVICTED SEX OFFENDER. PIGEON WAS CONVICTED OF 032806 OF FELONY OPEN AND GROSS LEWDNESS IN LAS VEGAS NV. PLACED A CALL INTO STATE SEX OFFENDER REGISTRY AND WAS TOLD PIGEON WAS RELEASED FROM PRISON 071008 AND HAD FAILED, AS OF THIS DATE, TO REGISTER WITH THEM AND METRO AS A CONVICTED SEX OFFENDER. I WAS TOLD THAT PIGEON WAS LAST SEEN WEARING A RED SPORTS JERSEY WITH TAN OR WHITE SHORTS. HE WAS CARRYING A LAUNDRY BAG AND POSSIBLY ENROUTE TO LAUNDROMAT AT [redacted] AND CHEYENNE.

AT 1050 HOURS I EXITED 5000 W. CHEYENNE AND OBSERVED A SUBJECT MATCHING PIGEONS DESCRIPTION. ON CONTACT PIGEON VERBALLY IDENTIFIED HIMSELF. I TOLD HIM HE WAS UNDER ARREST FOR FAILING TO REGISTER AS A SEX OFFENDER, PIGEON STATED "I AM PROTESTING MY REGISTRATION". PIGEON WAS ARRESTED AND TRANSPORTED TO CCDC.



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 a misdemeanor).

**Declarant must sign second page with original signature.**

JUL 31

Declarant's Signature

J NEWCOMB 5621
Print Declarant's Name P #

LVMPD 22 – A (REV. 6-01) (1) ORIGINAL – COURT

EXHIBIT "5"

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

# DECLARATION OF ARREST

ID#: 1694872 EVENT: 0809151287

| TRUE NAME: | DATE OF ARREST: | TIME OF ARREST: |
|---|---|---|
| PIGEON, CHRISTOPHER | 09-15-08 | 1045 |

| OTHER CHARGES RECOMMENDED FOR CONSIDERATION: |
|---|
| |

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 16 MONTHS.

That I learned the following facts and circumstances which lead me to believe that PIGEON, CHRISTOPHER committed (or was committing) the offense of SEX OFFENDER FAIL TO CHANGE ADDRESS at the location of 1500 FREMONT LV, NV 89101.

That the offense occurred at approximately 1040 hours on the 15 day of SEPTEMBER, 2008.

ON 09-15-08 AT APPROXIMATELY 1040 HRS, I OFFICER R.VOODRE P#10042 AND OFFICER B.ZLATEFF P#9186, WHILE OPERATING AS MARKED BIKE PATROL UNIT 2AB DISCOVERED A SEX OFFENDER WHO FAILED TO CHANGE HIS ADDRESS AT 1500 FREMONT APT120 WHILE CHECKING IDLS.

OFFICERS MADE CONTACT WITH THE MANAGER AT THE SUNFLOWER APARTMENT COMPLEX WHO STATED C. PIGEON HAS BEEN A RESIDENT OF THE COMPLEX SINCE 09-08-08. A RECORDS CHECK OF C. PIGEON SHOWS HE IS A REGISTERED SEX OFFENDER FOR OPEN/GROSS LEWDNESS, WHICH IS A FELONY, AND SHOWS A REGISTERED ADDRESS OF 117 N.9TH ST LV, NV 89101 AS OF 08-08-08. OFFICERS MADE CONTACT WITH C. PIGEON IN ROOM 120, WHO IDENTIFIED HIMSELF VERBALLY. C. PIGEON STATED HE HAS BEEN BUSY AND DIDN'T HAVE THE TIME TO CHANGE HIS ADDRESS. C. PIGEON STATED HE WAS JUST ARRESTED THREE WEEKS AGO FOR FAILURE TO CHANGE ADDRESS, WHICH WAS VERIFIED IN SCOPE, WHICH SHOWS A ARREST DATE OF 07-30-08. C. PIGEON HAD ONE WEEK TO CHANGE HIS ADDRESS AND DID NOT HAVE A VALID REASON HE DID NOT CHANGE HIS ADDRESS WITHIN 48 HOURS.

BASED ON THE ABOVE FACTS AND CIRCUMSTANCES, C. PIGEON WAS PLACED UNDER ARREST FOR SEX OFFENDER FAILURE TO CHANGE ADDRESS AND TRANSPORTED TO CCDC WHERE HE WAS BOOKED ACCORDINGLY.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
**DECLARATION OF ARREST CONTINUATION**
**Page 2**

ID#: 1694872 EVENT: 0809151287

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** 10042

R.VOODRE P#10042

EXHIBIT "6"

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

# DECLARATION OF ARREST

**ID#:** 1694872 **EVENT:** 081204-1030

| TRUE NAME: | DATE OF ARREST: | TIME OF ARREST: |
|---|---|---|
| PIGEON, CHRISTOPHER | 12/04/2008 | 0815 |

| OTHER CHARGES RECOMMENDED FOR CONSIDERATION: |
|---|
| |

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 20 years.

That I learned the following facts and circumstances which lead me to believe that PIGEON, CHRISTOPHER committed (or was committing) the offense of Convicted Sex Offender Failure to Change Address at the location of 1100 E. Fremont Apt. # 18 Las Vegas NV 89101.

That the offense occurred at approximately 0815 hours on the 4th day of December, 2008.

On December 4th 2008 at approximately 0815 hrs. Detective P. Szegedi P# 8295 and I Detective J. Montoya P# 3501 operating as SC73 arrived at 1100 E. Fremont to assist 2A55, Officer R. Bilyeu P# 7524 and 2C22, Officer R. Rodriguez P# 8929, who had come into contact with a white male adult who identified himself verbally as Christopher Pigeon, DOB 8-31-1962, SS#

Christopher Pigeon is a two time convicted Sex Offender for Open/Gross Lewdness out of the State of Nevada, in 2006 and in 2003. A records check shows Pigeon is registered as residing at 1100 E. Fremont Apt# 18 since 09/26/08. However, Pigeon was residing at Apt. # 15 at this same address since 12/01/2008. This was confirmed by Norma Andaluz who is the manager at the 1100 East Fremont Street address.

Due to the fact Pigeon was living at Apt. #15 since December 1, 2008 and we came into contact with him on December 4, 2008, he was arrested for Convicted Sex Offender Failure to Change address within the 48 hours allotted by law.

Pigeon has numerous priors for Ex Felon Failure to Change Address and Sex Offender Failure to Change Address among other arrests. He was uncooperative stating he did not have to register, that we were just harassing him and that he is not a sex offender. On another occassion, Pigeon had contact with patrol officers, where he was hiding/living in a storage locker and was also uncooperative with the officers stating he did not have to register.

Christopher Pigeon was arrested for Convicted Sex Offender Failure to register NRS 179D.550. He was transported to CCDC and booked accordingly.



DEC 04 2008

Released to Clark County DA's OFFICE
Las Vegas Metropolitan Police Department

By: _____

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**DECLARATION OF ARREST CONTINUATION**



**ID#:** 1694872 **EVENT:** 081204-1030

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** José Montoya
JOSE MONTOYA

EXHIBIT "1"

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

# ARREST REPORT

09F09599X/3

[ ] City [X] County [X] Adult [ ] Juvenile Sector/Beat M2

| ID/EVENT# | ARRESTEE'S NAME (Last, First, Middle) | S.S.# |
|---|---|---|
| 1694872 | PIGEON, CHRISTOPHER | |

ARRESTEE'S ADDRESS (Number, Street, City, State, Zip Code)

CHARGES: OPEN AND GROSS LEWDNESS, NRS 201.210

| OCCURRED: DATE | DAY OF WEEK | TIME | LOCATION OF ARREST (Number, Street, City, State, Zip Code) |
|---|---|---|---|
| 05/09/09 | SATURDAY | 2130 HRS | 3300 SOUTH LAS VEGAS BOULEVARD, LAS VEGAS, NEVADA, 89109 |

| RACE | SEX | D.O.B. | HT | WT | HAIR | EYES | PLACE OF BIRTH |
|---|---|---|---|---|---|---|---|
| | M | 08/31/62 | | | | | |

CIRCUMSTANCES OF ARREST

OFFICERS INVOLVED: Officer B. Jones, P#9679, 7M3B
Officer R. Voodre, P#10042, 7M3B

VICTIM: Mellan,

WITNESS: Abbott, Al-Amin
Treasure Island Security

DETAILS:

On May 9, 2009, at approximately 2110 hours, I, Officer B. Jones, P#9679, and Officer R. Voodre, P#10042, while operating as marked patrol unit 7M3B, responded to the Treasure Island at 3300 South Las Vegas Boulevard in reference to a male who had touched a cocktail waitress inappropriately. Upon arrival, the male, who was in security custody, identified himself verbally as Christopher Pigeon, date of birth 08/31/62, social security . A records check showed that Pigeon was a registered sex offender for two counts of open and gross lewdness from 2003 and 2006 in Nevada. I spoke with Mellan, , a cocktail waitress at the Treasure Island, who had stated that Pigeon had put his hand on the small of her back and slid it onto her buttock in a sexual manner.

She then notified security and Pigeon was taken into custody by Security Officer Al-Amin Abbott. Mellan stated she had previous contact with Pigeon on May 2, 2009, when he aggressively grabbed her arm before he was escorted off the property by security. While I had Pigeon on custody, I conducted a one-on-one and Mellan confirmed that Pigeon was the same man she claimed touched her. Security footage shows a brief clip of Pigeon getting up from a slot machine and following Mellan off camera at 1937 hours. The video

| ARRESTING OFFICER(S) | P# | APPROVED BY | CONNECTING RPTS. (Type or Event Number) |
|---|---|---|---|
| B. JONES | 9679 | +++APPROVED+++<br>LT J Whitehead 3487<br>05/10/09 @ 1406 hrs | 090509-3258<br>REQUEST FOR PROSECUTION, WITNESS LIST, TCR, DOA, ICR, TWO VOLUNTARY STATEMENTS |
| | | | |

LVMPD 602 (REV. 12-90) - AUTOMATED

did not show the actual incident as Pigeon walked out of range. Pigeon was transported to Clark County Detention Center and booked for felony open and gross lewdness based on his two prior convictions.

BJ/dkj (Reports)
Job#127177
Date & Time Dictated: 05/10/09 0114 hours
Date & Time Transcribed: 05/10/09 0709 hours

VEGAS METROPOLITAN POLICE DEPARTMENT

# ARREST REPORT

10F21022X/01

[ ] City [X] County [X] Adult [ ] Juvenile Sector/Beat M/3

| ID/EVENT# | ARRESTEE'S NAME (Last, First, Middle) | S.S.# |
|---|---|---|
| 1964872 | PIGEON, CHRISTOPHER E | |

ARRESTEE'S ADDRESS (Number, Street, City, State, Zip Code): 200 S 8TH ST, LAS VEGAS, NV 89101

CHARGES: OPEN AND GROSS LEWDNESS (2 COUNTS) NRS 201.210

| OCCURRED: DATE | DAY OF WEEK | TIME | LOCATION OF ARREST (Number, Street, City, State, Zip Code) |
|---|---|---|---|
| 11-2-10 | TUE | 2323 | 3600 S LAS VEGAS BLVD, LAS VEGAS, NV 89109 |

| RACE | SEX | D.O.B. | HT | WT | HAIR | EYES | PLACE OF BIRTH |
|---|---|---|---|---|---|---|---|
| W | M | 8-31-62 | 6'0" | 165 | BRO | BRO | ALBANY, NY |

**CIRCUMSTANCES OF ARREST**

OFFICERS INVOLVED: T. CRUMRINE #8881/ 1M49

VICTIMS: Rim, Connie Haejung

LV, NV 89131

Sentmanat-Martinez, Jenny

LV, NV 89117

PROPERTY IMPOUNDED: One VHS Surveillance tape from Bellagio Hotel Impounded to LVMPD Evidence Vault

On 11-2-10 at approximately 2340 hours, I Officer T. Crumrine #8881 operating marked patrol unit 1M49 was assigned to an indecent exposure call at Bellagio Hotel and Casino 3600 S Las Vegas Blvd, Las Vegas, NV 89109. Upon arrival at 2350 hours, I made contact with victims Rim, Connie and Sentmanat-Martinez, Jenny who stated that at approximately 2320 hours they were sitting in the slot area next to the poker room. Rim and Sentmanat-Martinez stated that a white male adult suspect (later identified as Pigeon, Christopher) was sitting at a slot machine in the same bank and on the same side, with one open seat between Rim and the suspect. Rim had her back to Pigeon and was facing Sentmanat-Martinez who was facing Rim and Pigeon. Sentmanat-Martinez stated that while she was talking to Rim she observed Pigeon remove his penis from his pants and begin masturbating while looking at both Rim and Sentmanat-Martinez. Sentmanat-Martinez stated that she was so shocked that she told Rim to turn around and look to confirm what she saw. Rim stated that she turned around and observed Pigeon holding his penis and masturbating. Sentmanat-Martinez and Rim got up and went to the poker room to summon security. Sentmanat-Martinez stated that Pigeon got up and began walking away, and that when security approached Pigeon he attempted to run before being detained by security.

I then made contact with Bellagio Surveillance and viewed video which showed Sentmanat-Martinez, Rim and Pigeon sitting as described in the slot area at 2323 hours when Pigeon puts his hand in his crotch area for approximately one minute. Pigeon's back was facing the camera. The video shows Sentmanat-Martinez signal Rim to turn around and Rim turns and looks at Pigeon, then Sentmanat-Martinez and Rim get up and run toward the poker room. Pigeon got up and walked off moments later.

CONFIDENTIAL

| ARRESTING OFFICER(S) | P# | APPROVED BY | CONNECTING RPTS. (Type or Event Number) |
|---|---|---|---|
| T. Crumrine | 8881 | Lt. A. Walsh p# 5994 11/03/10 0525 hrs | TCR/DOA/ICR/Vol. Stmt./Prop. Rpt |
| | | | RIM IMAGED |

LVMPD 602 (REV. 12-90) • AUTOMATED/WP12

I made contact with Pigeon at 0005 hours and advised Pigeon that he was under arrest for Open and Gross Lewdness. While completing paperwork in the security office, Pigeon made several spontaneous and unsolicited statements. The first was that his actions were not illegal so long as the person complaining did not tell him that they were offended. The second was that his penis was so impressive that no person would complain about seeing it. These statements were captured on Bellagio Surveillance video and audio.

A records check revealed that Pigeon has three previous convictions for Open and Gross Lewdness, all of which are in Las Vegas: Case number C-216699 Conviction date 3-28-06 (Felony), Case number C-186418 Conviction date 1-6-03 (Gross Misd), Case number C254530 Conviction date 11-18-09.

Due to the fact that Pigeon did fondle and touch his penis to an extent amounting to more than exposure, in a place open to the public, I placed Pigeon under arrest for two counts of Open and Gross Lewdness NRS 201.210. I transported Pigeon to Clark County Detention Center and booked Pigeon accordingly.

**ORDR**

Judge Douglas E. Smith
Eighth Judicial District Court
Department VIII
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155
(702)671-4338

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

-vs-

CHRISTOPHER PIGEON,

Defendant.

CASE NO: C-13-290261-1

DEPT NO: VIII

## SPECIAL FINDINGS

Based upon the totality of the circumstances, all pleadings in Mr. Pigeon's case, NRS 207.010, Eighth Amendment to the Constitution of the United States, Defendant's PSI, past Nevada State cases, many arrests and convictions of Mr. Pigeon:

1. Defendant was in his late 40s when this crime was committed.

2. Defendant illegally moved from an apartment to a storage unit of which a photo of the storage unit was set up as a bedroom.

3. Defendant said, "I don't often talk to young girls, but I find this particular girl [12 years of age] very nice, bright, interesting. I thought she was a 'nice specimen.' I just sort of fell in the first stages of love with her and was trying to get to know her over the summer. There were only two weeks before school was out so I was really trying to get to -- get her to let me meet her mom or dad."

4. Pigeon further said, "My intention was to marry her … I mean, obviously I was somewhat sexually attracted to her."

5. Pigeon said on May 17, 2013, he was at the park across from C.C.'s school because he "was going to look in the hallway briefly to see if [C.C.] might not be there."

6. Pigeon admitted that he never met her family but he did want to marry and have sex with C.C. with parental permission.

7. Pigeon testified he found C.C. sexually attractive.

8. At trial, Pigeon testified that he still loved C.C., he was happy to see her again in court, he would like to see her again, he would like to have a relationship with her.

9. At the time of sentencing, the Court determined Defendant was a large habitual criminal under NRS 207.010.

10. The Court reviewed the 1997 conviction, 970D06614 and 970D06615, Defendant was convicted of a felony.

11. Defendant was convicted under 980D4426 for felony Forgery of Financial Instruments.

12. On March 16, 2000 at a Restitution Center, Defendant intentionally exposed himself to three different people.

13. One of the Complainants Defendant exposed himself at returned and masturbated in front of the lady.

14. In the lobby of the Restitution Center, Defendant sat across from the Complainant and exposed himself.

15. Defendant approached a 10-year-old boy on November 10, 2000. Defendant's zipper was undone and then he exposed himself and masturbated.

16. In Case C186418, Defendant was convicted of a gross misdemeanor Open and Gross Lewdness.

17. That in Case C186418, Defendant was seen watching a young child, pants undone, genitals hanging out, and he was masturbating.

18. On May 5, 2004 in Case C208956, ultimately dismissed, Defendant was loitering at Lowman Elementary School. Defendant was seen with open pants and stroked his penis in front of a 14-year-old girl and a 12-year-old boy. Defendant's case was dismissed on a legal technicality.

19. In Case C216699 on October 18, 2005, Defendant was in JC Penney on

Maryland Parkway standing in the juniors' clothing section, penis was out and Defendant was masturbating. Defendant was convicted at jury trial, sentenced to 19 to 48 months.

20. In Case 08FN1701, while was denied in screening at Clark County District Attorney's Office, Defendant was arrested for moving to a storage unit, Defendant told police he was protesting sexual offender registration.

21. In Case 08F19304, Defendant was arrested for living in a storage unit without registering. Ultimately it was denied for prosecution.

22. Prosecutors did not proceed in another arrest for moving without registering, 08F25351.

23. In C254530, Defendant was convicted of Gross Misdemeanor Open and Gross Lewdness occurring May 9, 2009. Defendant touched a cocktail waitress, the day before he had grabbed her also. Defendant pled guilty to a Gross Misdemeanor Open and Gross Lewdness.

24. In C269318, Defendant was convicted of Felony Open and Gross Lewdness occurring November 2, 2010 at the Bellagio Hotel. Defendant took out his penis and began masturbating in front of two females. Defendant told police that it was not illegal if the viewers were not offended. Defendant pled guilty to Felony Open and Gross Lewdness.

25. The psychosexual evaluation indicated Defendant "is an overall high risk for sexual recidivism, which indicates that he does not present as safe and amenable to treatment in the community under supervision of the State."

26. The sentence is not cruel and unusual based upon the Eighth Amendment of the United States Constitution.

27. Defendant's life sentence is not disproportionate to the crime despite the harshness.

28. "A district court is vested with wide discretion regarding sentencing" and will only be reversed "if [the sentence] is supported *solely* by impalpable and highly suspect evidence." Denson v. State, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996) (citing Renard v. State, 94 Nev. 368, 369, 580 P.2d 470, 471 (1978); Silks v. State, 92 Nev. 91, 94, 545 P.2d

1159, 1161 (1976)).

29. In rendering its sentence, the district court may "consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant." Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998).

30. In Sims v. State, 107 Nev. 438 (1991), Sims was convicted of Grand Larceny for unlawfully taking a purse and wallet containing $476.00. On appeal, Sims challenged the Court's decision to adjudicate him as a habitual criminal and sentenced him to life without the possibility of parole. In particular, he argued that the sentence was "disproportionate to the gravity of the underlying offense and his prior criminal history, and that the sentence ... constituted a violation of the Eighth Amendment's proscription against cruel and unusual punishment." The Supreme Court upheld the sentence and noted:

> The district judge, who is far more familiar with Sims' criminal background and attitude than the members of this court, sentenced Sims within the parameters of Nevada law. Although we may very well have imposed a different, more lenient sentence, we do not view the proper role of this court to be that of an appellate sentencing body. Moreover, because the Legislature has determined the sentencing limitations and alternatives that our district courts may impose on criminals who habitually offend society's laws, we deem it presumptively improper for this court to superimpose its own views on sentences of incarceration lawfully pronounced by our sentencing judges.

31. I find that the Defendant has shown signs and actions to be a pedophile and a threat to society.

32. While harsh, life without the possibility of parole best protects the people of the state of Nevada.

This 14 day of May 2018

**DOUGLAS E. SMITH**
**DISTRICT COURT JUDGE**

## CERTIFICATE OF SERVICE

I hereby certify that on the 14 day of May 2018, a copy of this Order was electronically served to all registered parties in the Eighth Judicial District Court Electronic Filing Program and/or placed in the attorney's folder maintained by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper parties or per the attached list as follows:

Liz Mercer, Elizabeth.mercer@clarkcountyda.com

Christopher Pigeon, #90582
High Desert State Prison
P.O. Box 650
Indian Springs, Nevada 89070

Jill Jacoby

Jill Jacoby, Judicial Executive Assistant

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

| | | |
|---|---|---|
| CHRISTOPHER PIGEON, | ) | SUPREME COURT NO. 67083 |
| Appellant, | ) | |
| vs. | ) | **APPEAL** |
| STATE OF NEVADA, | ) | |
| Respondent. | ) | DISTRICT COURT NO. C-290261 |

# APPELLANT'S OPENING BRIEF

SANDRA L. STEWART
Attorney at Law
Nevada Bar No.: 6834
140 Rancho Maria Street
Las Vegas, Nevada 89148
(702) 363-4656
Attorneys for Appellant

## TABLE OF CONTENTS

## TABLE OF CONTENTS
(continued)

PAGE

## TABLE OF AUTHORITIES

**NEVADA CASES** **PAGE**

## TABLE OF AUTHORITIES (continued)

**OUT-OF-STATE CASES** **PAGE**

## TABLE OF AUTHORITIES (continued)

**OUT-OF-STATE CASES** **PAGE**

## TABLE OF AUTHORITIES (continued)

**RULES AND STATUTES** **PAGE**

# I

## JURISDICTIONAL STATEMENT

### A. BASIS FOR APPELLATE JURISDICTION

NRAP 4(b); NRS 177.015(3)

### B. FILING DATES ESTABLISHING TIMELINESS OF APPEAL

12-23-14: Judgment of Conviction filed[1]

12-15-14: Notice of Appeal filed[2]

### C. ASSERTION OF FINAL ORDER OR JUDGMENT

This appeal is from a judgment of conviction.

# II

## STATEMENT OF ISSUES

**ISSUE NO. 1: Whether PIGEON'S 5th and 14th Amendment rights to due process and a fair trial were violated amounting to prejudicial error and requiring reversal of his convictions where he was incompetent to stand trial because he did not have a rational understanding of the proceedings against him.**

**ISSUE NO. 2: Whether PIGEON's 5th, 6th, and 14th amendment right to counsel and a fair trial were violated amounting to prejudicial error and requiring reversal of his convictions where the court allowed him to represent himself even though he lacked the mental capacity to competently conduct his trial defense unless represented.**

....

....

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1 PA/4/849.

2 PA/4/846.

**ISSUE NO. 3: Whether PIGEON'S 5th and 14th amendment rights to due process and a fair trial were violated amounting to prejudicial error and requiring reversal of his convictions where:**

**a. the conviction for lewdness was not supported by the evidence because (1) the only evidence supporting that charge was testimony of a police officer from a video tape that he viewed which the police negligently failed to preserve and which the defendant believes would have in fact been exculpatory, and (2) the purported act of masturbation occurred in an area of a convenience store where no person was likely to observe the act and no person did actually observe the act;**

**b. the conviction for aggravated stalking was not supported by the evidence because the purported victim admitted that PIGEON never threatened her;**

**c. the conviction for luring children with intent to engage in sexual conduct was not supported by the evidence because PIGEON never attempted to persuade, lure, or transport the purported victim anywhere and had no intention of engaging in sexual contact with her unless her parents expressly consented to a marriage between the purported victim and PIGEON;**

**d. the conviction for attempted first degree kidnapping was not supported by the evidence because there was no testimony or other evidence that PIGEON took any action toward committing the act of kidnapping, had any present ability to transport the purported victim, or that he intended to detain or imprison her in any way;**

**e. the conviction for burglary was not supported by the evidence because the testimony indicated that PIGEON entered the convenience store without any felonious intent, but rather, for the sole purpose of watching the purported victim.**

....

....

**ISSUE NO. 4: Whether PIGEON'S right against double jeopardy was violated amounting to prejudicial error and requiring reversal of his convictions where he was charged and convicted of two counts of failing to register as a sex offender during the same time period which constitutes multiple punishments for the same offense.**

**ISSUE NO. 5: Whether PIGEON's 8th Amendment right against cruel and unusual punishment was violated amounting to prejudicial error and requiring reversal of his convictions where he was sentenced to life in prison without the possibility of parole for simply following a 12-year-old girl to school on a public bus on three occasions, which sentence is so disproportionate to the offense committed as to be completely arbitrary and shocking to the sense of justice.**

**ISSUE NO. 6: Whether PIGEON's 5th and 14th amendment rights to due process of law were violated amounting to prejudicial error and requiring reversal of his convictions where he was found to be an habitual criminal based on three underlying felonies, two of which were already enhanced from misdemeanors, and there was no evidence that PIGEON constituted a serious threat to society.**

**ISSUE NO. 7: Whether PIGEON'S 5th and 14th amendment rights to due process of law were violated amounting to prejudicial error and requiring reversal of his convictions where the prosecutor erroneously argued to the jury that it would be illegal for PIGEON to marry the alleged victim.**

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## III

## STATEMENT OF THE CASE[3]

### A. NATURE OF THE CASE

This is a case about a 51-year-old man suffering from paranoid schizophrenia with delusions of grandeur who was sentenced to life in prison **without possibility of parole** for following a 12-year-old girl[4] on a public bus three mornings and lightly touching her on the arm one time to tell her he thought she was pretty. He was never previously convicted of any crime involving children.[5]

He was tried after a psychologist testified at a competency hearing that in his opinion PIGEON was not able to conduct a meaningful defense or avoid incriminating himself because he did not understand that he had done anything wrong, and he was operating under the delusion that the child in question was in love with him.[6] Despite that testimony, not only was PIGEON referred to trial, he was permitted to represent himself and during the course of the trial did, indeed, incriminate himself. The judge even put the instances where PIGEON incriminated himself, on the record.[7]

---

3 "PA" shall at all times herein refer to PIGEON's Appendix filed herewith.
4 PA/3/515.
5 PA/1/38.
6 PA/2/288-290.
7 PA/4/691.

## B. COURSE OF PROCEEDINGS

Please see the Appendix table of contents which is sorted chronologically.

## C. DISPOSITION BY THE COURT BELOW[8]

| COUNT | CHARGE | SENTENCE |
|---|---|---|
| 1 | Attempted 1st Degree Kidnapping | Life w/out |
| 2 | Aggravated Stalking | Life w/out |
| 3 | Luring Children w/Intent to Engage in Sex | Life w/out |
| 4 | Burglary | Life w/out |
| 5 | Open Or Gross Lewdness | Life w/out |
| 6 | Unlawful Contact With a Child | 364 days |
| 7 | Prohibited Acts By A Sex Offender | Life w/out |
| 8 | Prohibited Acts By A Sex Offender | Life w/out |

All counts to run concurrent.

# IV

# STATEMENT OF RELEVANT FACTS

PIGEON is a 51-year-old[9] father of three children,[10] who suffers from paranoid schizophrenia with delusions of grandeur.[11] Before this horrible mental disease became chronic he obtained a business degree from the University of Notre Dame and an architectural degree from Drexel University.[12] He was also a Captain in the United States Army, honorably discharged.[13] At the time of the events

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8 Taken from the Amended Indictment (PA/2/396) and the Judgment Of Conviction (PA/4/849).

9 PA/1/1.

10 PA/1/12.

11 PA/2/277-278, 279

12 PA/12/321.

13 PA/1/67, 74.

which are the subject of this case, PIGEON was homeless, sometimes sleeping in a storage unit which he rented.[14] He had no car, and either walked or used the public bus system to get around.[15]

**On May 15, 2013** according to the alleged victim (C[redacted]), PIGEON got on the same public bus that she rode to school every morning. PIGEON sat on the bottom floor of the bus and she sat on the top. There was no conversation between them. She got off the bus near her school and went into CJ's Mini Mart. PIGEON looked at her when she was in the store but said nothing to her. When she left the store for school she did not notice if he followed her.[16] According to a store employee, PIGEON did not appear to be following C[redacted].[17] According to a police officer who was not present on May 15th, but watched a store video which was unavailable at trial, the video showed that PIGEON had his hands in his pockets and was pulling at his genitals and his groin area while he was staring in the direction of C[redacted].[18] PIGEON at all times denied that he masturbated in the store.[19]

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14 PA/1/55, 63, 65.
15 PA/1/8, 11.
16 PA/3/519-521.
17 PA/3/483.
18 PA/3/560-561.
19 PA/1/21, 22, 33, 34, 44, 69.

**On May 16, 2013**, according to C[redacted], PIGEON again boarded the same bus she rode to school. He again sat on the bottom floor and she sat on the top.[20] When she left the bus and started for CJ's Mini Mart, PIGEON caught up with her near a parking lot in front of Sonio's Restaurant[21] lightly touched her hand and told her she looked nice.[22] C[redacted] ignored him and went on her way to CJ's Mini Mart.[23] PIGEON followed her and sat down at the slot machines.[24] When she left the store to go to school she did not notice if PIGEON followed her or not.[25] PIGEON's testimony regarding this day is the same as Candace's.[26] According to a store employee, PIGEON was watching C[redacted] the entire time they were in CJ's Mini Mart.[27]

**On May 17, 2013**, according to C[redacted], PIGEON boarded the same bus as C[redacted] but this time both were on the bottom floor because the top floor was too crowded for C[redacted] to go up there.[28] When they got to CJ's Mini Mart, PIGEON again told her that she was beautiful. She ignored him and walked away.[29] He

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20 PA/3/524.
21 PA/3/526.
22 PA/4/812-813.
23 PA/3/526.
24 PA/3/527.
25 PA/3/528.
26 PA/4/670.
27 PA/3/484.
28 PA/3/531.
29 PA/3/531.

followed her out of CJ's Mini Mart which "creeped her out."[30] This testimony differed from her recorded statement where she stated that when she left CJ's Mini Mart she was rushing because she was late for school so did not notice if PIGEON followed her out of the store or not.[31] According to the store employee, PIGEON came in the store and was watching C[redacted]. He told her she looked nice. When she left, PIGEON followed her out of the store.[32]

## V

## SUMMARY OF ARGUMENT

PIGEON was completely overcharged and over sentenced. He was sentenced to life **without possibility of parole** for merely following a 12-year-old girl on three occasions and lightly touching her on the hand once, to get her attention to tell her that he thought she looked nice. PIGEON and the girl were at all times in public in the presence of other persons. He never made any attempt or suggestion that she accompany him to another place. He didn't even have any means of transporting her to another place as he was homeless and had no car. He simply followed where she went, always in public. That is all he did. The sentence is so out of proportion to the crime as to shock the conscience of any rational person.

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30 PA/3/532.
31 PA/4/812.
32 PA/3/485-492.

He was convicted under the large habitual because of two prior felonies for lewdness which were originally misdemeanors that were enhanced to felonies. Neither involved children.[33] One was for touching a waitress on the back at Treasure Island. A second was for having his hand in his pocket at Bellagio.[34] A third felony was for forging his parents' names on some checks in 2000 – 13 years ago.[35]

The man is a paranoid schizophrenic with delusions of grandeur who believed that the girl in question loved him and that the two of them would eventually obtain her parents' consent to marry. This is what he believes, and that was the defense he presented at his trial. He should not have been deemed competent to stand trial, let alone to represent himself completely unassisted by counsel. This was really a travesty of justice, and PIGEON should at a minimum be afforded a new trial where he is required to have counsel to represent him. Precedent to that, he should be ordered to intensive psychological testing to determine if he is even competent to stand trial and assist with his defense given his severe mental illness. This should be done by someone other than Lakes Crossing whose stated purpose is to find competency.

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33 PA/3/413-415.
34 PA/4/661.
35 PA/3/415.

## VI

## ARGUMENT

### A. PIGEON NOT COMPETENT TO STAND TRIAL

**(Standard of Review: Clear Error[36])**

Under a clear error standard, an appellate court must accept the lower court's findings of fact unless upon review the appellate court is left with the definite and firm conviction that a mistake has been committed.[37] In this case, the competency court held a hearing, but made no findings of fact regarding her competency decision.[38]

It is clear that "the criminal trial of an incompetent defendant violates due process."[39] In order to be placed on trial a defendant must understand the essential elements of "a fair trial, including the right to effective assistance of counsel, the rights to summon, to confront, and to cross-examine witnesses, and the right to testify on one's own behalf or to remain silent without penalty for doing so."[40] Moreover, a defendant may not be placed on trial for a criminal offense unless he "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding--and . . . a rational as well as factual understanding of the

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36 *United States v. Friedman,* 366 F.3d 975, 980 (9th Cir. 2004).
37 *Sawyer v. Whitley,* 505 U.S. 333, 346 n.14 (1992).
38 PA/2/312.
39 *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996).
40 *Riggins v. Nevada*, 504 U.S. 127, 139-40 (1992).

proceedings against him."[41]

It is important to note at the outset that PIGEON is mentally ill. Two psychologists agree on this – one hired by the defense, and one from Lakes Crossing. But, PIGEON does not believe he has any mental illness. He is like the schizophrenic in the movie A Beautiful Mind who was seriously ill but because of the illness and delusions which were very real to him, did not believe that he was ill. He could not understand how he could be so brilliant and still be mentally ill. In his mind, he was the smartest man in the room, and everyone else was out of step. He believed the world that his sick mind conjured for him, was real. The sad truth is that he WAS brilliant. He WAS a genius. Schizophrenia and genius are not mutually exclusive. They can, and often do, co-exist in the same person. So, it is important to realize that in this case, PIGEON actually believed that C[redacted] was in love with him. He actually believed that he could go to her parents and that they would agree for the two of them to get married. This was his reality. This is what he believed, and what he believes to this day. He does not believe he is mentally ill because he constantly harkens back to a time before the mental illness took over when he obtained two college degrees and attained the rank of Captain in the Army. He cannot comprehend how he could have accomplished those goals if

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41 *Dusky v. United States*, 362 U.S. 402, 402 (1960); *State v. McNeil*, 405 N.J. Super. 39, 47-48 (App.Div. 2009).

he had been mentally ill. The sad truth is that he probably accomplished them before the disease manifested.

With that preamble, we turn to the facts of this case.

**Dr. Bradley** from Lakes Crossing testified that PIGEON stayed at Lakes Crossing in 2009 for five weeks and in 2011 for one year.[42] He diagnosed PIGEON as a chronic paranoid schizophrenic with narcissistic personality with delusions of grandeur.[43] PIGEON was discharged from Lakes Crossing in 2012 **as competent on two anti-psychotic medications**; a combination of Rispedal and Zyprexa.[44] In 2013, Dr. Bradley noted that PIGEON refused to take his medications.[45] During the competency hearing for this case, Dr. Bradley found PIGEON competent to stand trial even though he was not taking his medications which he had previously found in 2012 that PIGEON needed, to be competent. Dr. Bradley further testified that in determining PIGEON's competency to stand trial in this case, he never discussed with him whether PIGEON believed that C[redacted] was in love with him, the history of interactions between PIGEON and C[redacted] conversations between PIGEON and C[redacted], PIGEON's plan to ask C[redacted]'s parents for permission to marry her, or how PIGEON intended to defend the case.[46]

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42 PA/2/201, 275-276.
43 PA/2/277-278.
44 PA/2/285.
45 PA/2/280.
46 PA/2/283.

**Dr. Harder**, the defense psychologist, noted that the mission statement of Lakes Crossing is to restore people to competency. Dr. Harder agreed with Dr. Bradley that PIGEON was suffering from paranoid schizophrenia with delusions of grandeur.[47] He testified that PIGEON was in love with C[redacted] and wanted to marry her. PIGEON planned to defend himself by informing the jury that C[redacted] was in love with him.[48] Dr. Harder concluded that in his opinion, PIGEON would have a difficult time not incriminating himself or saying things that would be damaging to his case.[49] He testified that PIGEON was oblivious to the fact that he had committed a crime. He described it as a fixed delusion which could interfere with PIGEON's ability to aid counsel in his defense.[50] Dr. Bradley (Lakes Crossing) described a fixed delusion as one where a person entering a home believed that he owned the home and so could not be found guilty of home invasion.[51] This is the type of delusion that PIGEON suffers from. Dr. Harder felt that PIGEON was capable of understanding the court process but that his delusions would keep him from understanding that what he did was wrong or how to keep from incriminating himself.[52] He said that PIGEON was suffering from erotomenia delusion which is a diagnosis for people who believe that someone is in

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47 PA/2/290.
48 PA/2/288-289.
49 PA/2/290.
50 PA/2/292-293.
51 PA/2/283.
52 PA/2/294.

love with them, who is in fact not in love with them.[53]

PIGEON's attorney at the competency hearing stated that PIGEON wanted to let everyone know that he is the smartest man in the room and that is why a 12-year-old girl fell in love with him.[54] PIGEON then himself stated at the competency hearing that "we enjoyed one another's company seemingly due to body language, due to nearness, upbeat small talk and also facial expressions."[55] All this despite Candace's testimony that they never talked to each other, let alone engaged in "upbeat small talk."

True to Dr. Harder's prediction, PIGEON did, in fact, incriminate himself. The following are PIGEON's own words at the trial:

Q. And what initially interested you in following her?
A. She seemed attracted to me. I mentioned in the interview yesterday, facial expressions, body language, and she glanced at me often. She didn't seem to mind my company.
Q. Did you know how old she was or did you learn that later?
A. I knew that she was probably a junior high student.
Q. And is that because you knew she went to Hyde Park, which is a junior high school?
A. Yeah. I didn't discover that until later though.
Q. So did you think that she was around the age of 12?
A. Yes. 12 or 13, I figured.
Q. Okay. When she asked you that one day kind of the – by Sonio's to leave her alone, how did you interpret that?

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53 PA/2/297.
54 PA/2/300.
55 PA/2/300-303.

A. I actually was somewhat shocked because she seemed to like my attention. I felt kind of bad about it. I followed her to make sure she wasn't going away nuts or anything.[56]
Q. With her parental permission, you were saying, you did want to marry and have sex with her. Is that right?
A. That's correct.
Q. Okay.
A. Only with permission and of course, marriage.[57]
Q. Why did you take the bus route from central station to Charleston and Valley View?
A. Well, I always – I rode the bus with her on purpose. It was to be with her.
Q. Where were you going?
A. I walked her to school.
Q. Were you only following C[redacted]?
A. Yes.
Q. Do you still love C[redacted]?
A. Yes, I do.
Q. Were you happy to see her again in Court?
A. Yes, I was.
Q. Do you hope to see C[redacted] again someday?
A. ...I mean, I would really – I really do hope to see her again. However, I'd have to have permission for that.
Q. Do you want to pursue a relationship with C[redacted] or another teenager in the future?
A. Only with C[redacted]. Otherwise I don't want to chase any more teenagers. Except for maybe an 18 or 19 year old. Perhaps a student at UNLV.
Q. ...What would you think of a man that would approve of a 50 year old following a teenager?
A. Well, ideally you talk to them and not follow them. Or walk with them instead. I'd say it's okay some of the time as long as she doesn't say anything about it....But, I'd say it would depend on the circumstances.[58]

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56 PA/4/665-666.
57 PA/4/668.
58 PA/4/670-671.

PIGEON also let the jury know that he had been in jail before and that he was previously convicted of sex offenses. During opening statement, PIGEON stated that "I've been in Las Vegas for 15 years. I do have some prior lewdness charges, but they are very minor I thought. Mostly good natured."[59] He also mentioned that, "I do draw extensively while I'm locked up."[60] He further stated during trial as follows:

> Briefly, we mentioned I have prior charges at the beginning of this – at the opening arguments of this trial. Those were in 2002, 2006, 2009, and then again in 2012. I will say all of those if they were my first charges would have been misdemeanors. So they're all misdemeanor lewdness charges. One of them, as I mentioned earlier, was for touching a waitress in the back at Treasure Island Casino. That one was reduced to a misdemeanor. Another one was for having my hand in my pocket. And then there are two more that are, I think, were very mild. I don't think it was that serious an issue. However, I did spend time in prison. Two years, the once, which I spent mostly in the County Jail. And another time I spent two years and nine months; six months in County Jail and two years and three months in the prison system at both High Desert and Lovelock for that crime.[61]

The trial judge commented on this.[62]

In this case, the competency court made no findings of fact regarding competency. She took the matter under submission, then entered a one-sentence ruling that PIGEON was competent.[63] A different judge who did not have access

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59 PA/3/476.
60 PA/4/659.
61 PA/4/661.
62 PA/4/691.
63 PA/2/312.

to the transcript of the competency hearing, tried the case. PIGEON should never have been permitted to stand trial until he had been on his anti-psychotic medications, which Dr. Bradley of Lakes Crossing had stated in 2012 was a prerequisite to competency for PIGEON. Based on the testimony at the competency hearing, there is no rational basis for the court's finding that PIGEON was competent without his medication, and the court made no record of the reasoning behind its finding of competency. Based on the foregoing, the matter should be remanded for a new trial after a finding of competency by an independent psychologist appointed by the court (not from Lakes Crossing).

## B. PIGEON NOT COMPETENT TO REPRESENT HIMSELF

**(Standard of Review: de novo[64])**

The validity of a *Faretta* waiver is a mixed question of law and fact reviewed de novo. De novo review means that the appellate court views the case from the same position as the district court.[65] The appellate court must consider the matter anew, the same as if it had not been heard before, and as if no decision previously had been rendered.[66]

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64 *United States v. Erskine,* 355 F.3d 1161, 1166 (9th Cir. 2004).

65 *League of Wilderness Defenders v. Forsgren,* 309 F.3d 1181, 1183 (9th Cir. 2002).

66 *Ness v. Commissioner,* 954 F.2d 1495, 1497 (9th Cir. 1992).

In this case, the ultimate insult was that even though two psychologists agreed that PIGEON suffered from paranoid schizophrenia with delusions of grandeur, he was permitted to represent himself at trial![67] As stated above, there was a plethora of testimony from the psychologists that while PIGEON understood the court process, he did not understand that what he had done was wrong, and had no idea how to competently represent himself without self incrimination. That is exactly what happened in this case. He was unable to present a viable defense. He admitted he had previously been imprisoned for sex offenses. He testified that he was in love with C[redacted] and believed that she loved him. He told the jury that he would like to see her again. He told the jury that he would still pursue marriage with this 12-year-old girl with her parents' consent.

This unmedicated man suffering from paranoid schizophrenia should never have been permitted to try to defend himself without assistance of counsel, especially given the seriousness of the charges and potential sentence. That it occurred is a travesty of justice, and deprived him of all semblance of a fair trial, in violation of his 5th and 14th Amendment rights to due process of law. The proof is in the pudding when one looks at the multiple life sentences he received without possibility of parole for simply following a 12-year-old girl on three occasions.

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67 PA/2/324.

The United States Supreme Court has held that a trial court may insist on representation for a defendant who is competent to stand trial but who is suffering from severe mental illness to the point where he is not competent to perform the more arduous task of representing himself.

> We now turn to the question presented. We assume that a criminal defendant has sufficient mental competence to stand trial (*i.e.*, the defendant meets *Dusky*'s standard) and that the defendant insists on representing himself during that trial. We ask whether the Constitution permits a State to limit that defendant's self-representation right by insisting upon representation by counsel at trial--on the ground that the defendant lacks the mental capacity to conduct his trial defense unless represented. Several considerations taken together lead us to conclude that the answer to this question is yes.[68]

The *Edwards* court went on to state that, "... insofar as a defendant's lack of capacity threatens an improper conviction or sentence, self-representation in that exceptional context undercuts the most basic of the Constitution's criminal law objectives, providing a fair trial....Even at the trial level . . . the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer. See also *Sell* v. *United States*, 539 U.S. 166, 180, 123 S. Ct. 2174, 156 L. Ed. 2d 197 (2003).[69] As the Ninth Circuit noted, "The [*Edwards*] Court concluded that the constitutional guarantee of a fair trial permits a district court to override a *Faretta* request for defendants whose

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68 *Indiana v. Edwards*, 554 U.S. 164, 174 (U.S. 2008).

69 *Edwards, supra,* at 176-177.

mental disorder prevented them from presenting any meaningful defense."[70]

Indeed, courts have recognized that a trial judge has a continuing duty to ensure the defendant is afforded a fair trial and to appoint counsel for the defendant during trial if the court determines the defendant is no longer competent to present his or her own defense.[71] In the case at bar, the trial judge had misgivings throughout the trial about PIGEON's competence, and noted those for the record as mentioned above.

PIGEON contends that he was not competent to stand trial without being on his anti-psychotic medication, but even if he was competent to stand trial within the meaning of *Dusky*, he was certainly not competent to represent himself. Accordingly, the matter should be remanded for a new trial where he is represented by counsel.

## C. VERDICT NOT SUPPORTED BY THE EVIDENCE

**(Standard of Review: de novo)**

Claims of convictions which are supported by insufficient evidence are reviewed de novo.[72] "The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to

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70 *United States v. Johnson*, 610 F.3d 1138, 1144-1145, (9th Cir. Cal. 2010).
71 *State v. Dahl,* 776 N.W.2d 37, 45 (N.D. 2009).
72 *United States v. Shipsey,* 363 F.3d 962, 971 n.8 (9th Cir. 2004).

constitute the crime with which he is charged".[73]

## 1. LEWDNESS CHARGE

PIGEON was convicted of gross lewdness for allegedly masturbating with his hand inside his pocket on one occasion at the CJ's Mini Mart. No one at the mini mart observed him doing this.[74] The entire claim is based on a police officer's testimony that he watched a video from the Mini Mart in which he observed PIGEON with his hands in his pocket and it appeared to him that PIGEON was masturbating.[75] He had that video copied but did not check to see if the video was readable until after it had already been dubbed over by the mini mart people.[76] So, at trial, there was no actual video for the jury to review. PIGEON asserts that the testimony should never have been allowed and he did object to that at trial.[77] PIGEON asserts that the actual video would have been exculpatory. The video was the best evidence of what was purportedly depicted therein, it was within the sole province of the police and district attorney to obtain and preserve that evidence, and since they were negligent in doing so, testimony about it should not have been admitted.

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73 *Apprendi v. New Jersey*, 530 U.S. 466, 477 (U.S. 2000).
74 PA/3/495, 521.
75 PA/3/556-557, 560-561, 569-570, 572.
76 PA/3/556-557.
77 PA/3/557-559.

### a) Testimony Should Have Been Excluded

NRS 52.235 provides that "[t]o prove the content of a writing, recording or photograph, the original writing, recording or photograph is required, except as otherwise provided in this Title." Generally the state may produce other evidence of a lost video where the state was not the one that lost it. However, where the state has lost or destroyed the evidence, the United States Supreme Court has held that the secondary evidence of the lost or destroyed evidence (police testimony in this case) must be suppressed if the state either lost or destroyed the evidence in bad faith or the evidence possessed an exculpatory value that was apparent before the evidence was destroyed and is of such a nature that the defendant would not be able to obtain comparable evidence by other reasonably available means.[78] The Second Circuit explained that following that logic, in order for the defendant to prevail on having such evidence excluded, he must first show that the evidence has been lost and that the loss is chargeable to the State.[79]

In this case, PIGEON has at all times asserted that he was not masturbating in the store. He believes that the actual video would have born that out, and was therefore exculpatory. There is no other way that he can disprove the state's claim except through the actual video. And, finally, the state is the entity that obtained

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[78] *Arizona v. Youngblood,* 488 U.S. 51, 57 (1988); *California v. Trombetta,* 467 U.S. 479, 489 (1984).

[79] *State v. Nelson,* 219 Ore.App. 443, 453 (Or.Ct.App. 2008).

the video and is the entity that either lost or destroyed it. The officer's testimony regarding the video should never have been admitted, and without that testimony there was no evidence of lewdness, since no one actually in the mini mart observed PIGEON doing anything which could be considered lewd.

**b) Lewdness Was Not Proven**

Even if the police officer's testimony of what he saw on the video was properly admitted and PIGEON was rubbing his penis with his hand inside his pants at the mini mart, that does not prove lewdness within the meaning of the charging documents and the jury instruction which was given in this case.

The amended indictment in this case, charges PIGEON with gross lewdness as follows:

> ...did on or about May 15, 2013, then and there willfully, and unlawfully and feloniously commit an act of open or gross lewdness by masturbating his penis **while in the presence of** C[redacted] Carpenter and/or other employees or patrons of CJ's Mini Mart..."[80] (Emphasis added)

The jury instruction states:

> ...gross is defined as being indecent, obscene or vulgar. Lewdness is defined as any act of a sexual nature **which the actor knows is likely to be observed** by the victim who would be affronted by the act.[81] (Emphasis added)

In closing arguments, the district attorney advised the jury as follows:

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80 PA/1/182.

81 PA/4/747.

> Open is used to modify the term lewdness. It includes acts which are committed in a private place or **which are committed in an open, as opposed to secret, manner.** It includes an act done in an open fashion, clearly intending that the act could be offensive to the victim. The term gross is defined as being indecent, obscene, or vulgar. Lewdness is any act of a sexual nature, **which the actor knows is likely to be observed by the victim,** who would be affronted by the act.[82] (Emphasis added)

In this case, PIGEON was back behind some store shelving when he was supposedly masturbating. No one inside the mini mart observed him masturbating. And, PIGEON at all times denied that he ever masturbated or even touched his penis while in the mini mart.[83]

For the foregoing reasons, the lewdness charge should be dismissed.

## 2. AGGRAVATED STALKING CHARGE

It is important to note at the outset that PIGEON was charged and convicted not of simple stalking, but of aggravated stalking. Regular stalking is a simple misdemeanor. In order to rise to the level of aggravated stalking, the stalker must threaten the victim with the intent to cause the person to be placed in reasonable fear of death or substantial bodily harm.[84]

This Court has held that it was error for a court to fail to instruct the jury that a necessary element of aggravated stalking is that the defendant must have

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82 PA/4/677-678.
83 PA/1/21, 22, 33, 39, 44, 69.
84 NRS 200.575.

threatened the victim.[85] In this case, the court properly instructed the jury, but the jury failed to follow that instruction. Certainly, if it is error for a court to neglect to properly instruct a jury, it is also error for a jury to fail to follow the instruction.

In this case, the jury found PIGEON guilty of aggravated stalking, despite the fact that **THERE WAS ABSOLUTELY NO TESTIMONY OR EVIDENCE PRESENTED DURING TRIAL THAT PIGEON EVER THREATENED C[redacted] IN ANY WAY.**[86] His only verbal interaction with C[redacted] was to tell her that she looked pretty. That is all he did.

This is clearly a case where the jury felt that PIGEON was guilty of stalking and just kind of glossed over the "aggravated" part. PIGEON **was** guilty of stalking C[redacted], but that is not what was charged and that is not what PIGEON was convicted of. That conviction cannot stand where the stalking part is born out by the evidence by the "aggravated" part is not. The conviction for aggravated stalking must be reversed.

### 3. LURING CHILDREN CHARGE

PIGEON was convicted of luring C[redacted] with the intent to engage in sexual conduct.

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85 *Rossana v. State,* 113 Nev. 375 (1997).

86 See discussion above under "Relevant Facts" where Candace's testimony is discussed with cites to the record.

**First of all,** he never "lured" her anywhere. He simply followed her and talked to her twice. PIGEON never even thought of luring C[redacted] anywhere.

Q. Okay, all right. Um, she ever been over to your place?
A. No.
Q. Okay. You ever been to hers?
A. No.[87]
Q. You ever think about kidnapping anybody?
A. No.
Q. No?
A. No.
Q. Not even a little bit?
A. I don't even have a car. How am I gonna kidnap.
Q. Like, maybe, like grab 'em and just...
A. No.
Q. ...take 'em in the bathroom at the park or something like that?
A. No.
Q. Nothing like that crosses your mind?
A. No.
Q. What about, like, a – just an opportunity. Maybe you were at that park and just – you want – that girl?
A. No. I don't do that.[88]

PIGEON simply followed C[redacted]. He never even talked to her except to tell her that she looked nice.

**Secondly**, realizing that PIGEON never lured C[redacted] anywhere, the state focused on the sexual part, but even then had to really stretch. It claimed that because PIGEON said he wanted to have sex with her if they were married, that he had the intention of having sex with her regardless of whether they were married or not. That is not true, and is not supported by the evidence in this case. What

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87 PA/1/16.
88 PA/1/57-58.

PIGEON has always admitted was that he was in love with C[redacted] and wanted to obtain her parents' permission to marry her.[89]

> A. I think she's attractive. Maybe in a few years I wouldn't mind marrying her.[90]
> A. Well, eventually maybe sex with parental permission and marriage.
> Q. Okay. If her parents said she's good now, would you do it?
> A. Yes.
> Q. Okay. Do you think they would?
> A. I think so.
> Q. If they met you?
> A. Yes. I mean, it's not, like, a bum or anything. I have an education.[91]
> Q. Okay. You said before that if you had parental permission you would have sex with her?
> A. Marry, yes. And have sex.
> Q. You'd marry her?
> A. Yes.
> Q. And have sex?
> A. Yes.[92]
> Q. Okay. But you – but see, you're – you're confusing me because you're saying that with parental permission you'd have sex with her, but she's still young.
> A. Yeah. But...
> Q. But you keep saying she's young.
> A. But if there's marriage – it would be with the intention of marrying her.
> Q. Okay. So what if it was with the intention of marrying her and having sex with her in the park if she wanted to have sex?
> A. I wouldn't have sex with her in the park.[93]

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89 PA/1/22.
90 PA/1/23.
91 PA/1/29.
92 PA/1/46.
93 PA/1/47.

Naturally, if they were married, he would expect to have sex with her.[94] But, PIGEON has at all times maintained that he had no intention of trying to have any type of sexual involvement with C[redacted] unless they were married. While the thought that he could get a 12-year-old girl to marry him was delusional as discussed above, it was not criminal.

### 4. ATTEMPTED 1ST DEGREE KIDNAPPING CHARGE

It is incredible that the state even charged PIGEON with attempted kidnapping, let alone that he was convicted of it. The attempt instruction in this case provided that the defendant had to (1) have the intent to commit the crime, (2) perform some act toward its commission, and (3) fail to consummate the intended act.[95] There was absolutely no evidence that PIGEON intended to kidnap C[redacted] or that he did anything toward accomplishing such an act. As he pointed out, the man was homeless and didn't have a car or any other means of transportation, save the public transportation system.

This Court held in *Burkhart v. State,*[96] that where all contacts with a minor took place in a public place, the defendant had no means of transporting the minor, and there was no testimony which would have allowed a jury to infer what the defendant intended to do with the child, that "[n]o rational juror could have

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94 PA/1/29, 46.
95 PA/4/742.
96 *Burkhart v. State,* 107 Nev. 797, 799 (1991).

inferred from this evidence that appellant seized Mathew with the specific intent to detain him against his will. Any inference as to appellant's specific intent must have been based on unbridled speculation." In this case there was even less evidence of an intent to kidnap. Unlike the situation in Burkhart, it is undisputed that PIGEON never "seized" C[redacted] or took any other act which could even remotely be deemed an act in furtherance of kidnapping her.

This Court has held many times that for an attempt conviction to lie, there must be an overt act which goes beyond mere preparation to commit the crime.[97] Evidently, the state is claiming that PIGEON's momentary touching of Candace's hand to tell her he thought she looked pretty that day, constituted an attempt to kidnap her. This Court has rejected such speculative conclusions. "The legislature did not intend that every momentary physical contact should constitute a seizure for the purpose of defining a felony carrying a possible penalty of up to seven and one-half years."[98]

There was no kidnapping here and there was no intent or attempt to kidnap C[redacted].[99] The conviction should be reversed.

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97 *State v. Verganadis,* 50 Nev. 1 (1926); *Moffett v. State,* 96 Nev. 822 (1980); *Tanksley v. State,* 113 Nev. 997 (1997).

98 *Burkhart, supra,* at 799.

99 PA/4/670, 680-682.

## 5. BURGLARY

PIGEON was convicted of burglary which was charged in the indictment as follows:

> ...did on May 15, 2013, May 16, 2013 and/or May 17, 2013 then and there willfully, unlawfully, and feloniously enter, with intent to commit Battery and/or Kidnapping, and/or Luring a Minor, that certain building occupied by CJ's Mini Mart....[100]

The state argued in closing that it charged PIGEON with burglary because he entered the mini mart with the intent to grab C[redacted],[101] kidnap her,[102] and lure her.[103] That is nothing but fantasy. PIGEON entered the store to watch C[redacted]. That is all he intended, and that is all he did. There is absolutely no evidence of any other intent. The kidnapping and luring counts are discussed above. As to the battery claim, PIGEON was in the store with C[redacted] on three different occasions but at no time in those three encounters did he exhibit any intent nor did he attempt to so much as touch C[redacted] even when he was standing right next to her and told her she looked nice that day. The only time he touched her was outside the mini mart on one occasion when he put his hand momentarily on her arm.

The burglary count should be dismissed.

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100 PA/2/398.
101 PA/4/677.
102 PA/4/677.
103 PA/4//677-678.

## D. DOUBLE JEOPARDY/REDUNDANCY ISSUE

**(Standard of Review: de novo)**

Double jeopardy claims are reviewed de novo.[104]

The Double Jeopardy Clause protects against three distinct abuses: a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and multiple punishments for the same offense.[105]

In this case, PIGEON was required to register as a sex offender for two prior lewdness charges. He was living and registered at 200 South Eighth Street until January 5, 2013. After that, he left and failed to register a new address within the required 48 hours.[106] He had not registered from January 5, 2013 when he left that residence until the date he was picked up for the charges in this case. So, he was at all times from January 5, 2013 until May 17, 2013 unregistered. Yet, he was not charged with one count of failing to register; he was arbitrarily charged with two. He was charged in Count 7 with failing to register on January 7, 2013.[107] And, then he was charged in Count 8 for failing to register between April 22, 2013 and May 17, 2013.[108] It was one continuous crime. He was charged twice for the same

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104 *United States v. Patterson,* 292 F.3d 615, 622 (9th Cir. 2002).

105 *Williams v. State,* 118 Nev. 536, 548 (2002); *Byars v. State,* 336 P.3d 939, 948 (Nev. 2014).

106 PA/4/700-701, 703, 707-708.

107 PA/2/399.

108 PA/2/399.

crime. PIGEON objected to this.[109]

This Court stated that, [w]hile often discussed along with double jeopardy, a claim that convictions are redundant stems from the legislation itself and the conclusion that it was not the legislative intent to separately punish multiple acts that occur close in time and make up one course of criminal conduct. We have declared convictions redundant when the facts forming the basis for two crimes overlap, when the statutory language indicates one rather than multiple criminal violations was contemplated, and when legislative history shows that an ambiguous statute was intended to assess one punishment. "'When a defendant receives multiple convictions based on a single act, this court will reverse "redundant convictions that do not comport with legislative intent."'" After the facts are ascertained, an examination of whether multiple convictions are improperly redundant begins with an examination of the statute.[110]

> The statute in question here is NRS 179D.470 which provides that:
>
> If a sex offender changes the address at which he or she resides...the sex offender shall, not later than 48 hours after such a change in status, provide notice of the change in status....

Whether one analyzes this issue under a Double Jeopardy analysis or a redundancy analysis, the outcome is the same. PIGEON was twice convicted of the same crime – for failing to register as a sex offender between January 7, 2013

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109 PA/4/712.

110 *Wilson v. State,* 121 Nev. 345, 355-356 (2005).

and May 17, 2013. One of the convictions must be reversed.

## E. CRUEL AND UNUSUAL PUNISHMENT

**(Standard of Review: de novo[111])**

The Eight Amendment to the Constitution provides that excessive bails shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. In this case, PIGEON has been sentenced to seven life sentences without possibility of parole for following a 12-year-old girl on three separate occasions, speaking to her one time to tell her she was pretty, and lightly touching her on the hand. The sentence is outrageous and completely shocking given the offense. While this sentence was within statutory guidelines under the large habitual rules, "...the bare fact that a sentence is within the maximum prescribed by the legislature does not prevent if from violating the constitutional ban against cruel and unusual punishment."[112]

The United States Supreme Court has directed that "a court's proportionality analysis under the Eighth Amendment should be guided by objective criteria, including (i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions."[113]

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111 *United States v. Leon H.,* 365 F.3d 750, 752 (9th Cir. 2004).

112 *Faulkner v. State,* 445 P.2d 815, 818 (Alaska 1968).

113 *Solem v. Helm,* 463 U.S. 277, 292 (1983).

PIGEON's offense in this case was minor. He stalked a 12-year-old girl and told her he thought she was pretty. In Nevada, there are only four crimes for which life without possibility of parole may be imposed, to wit: first degree murder (NRS 200.030), kidnapping in the first degree (NRS 200.310), sexual assault (NRS 200.366), and battery resulting in substantial bodily harm (NRS 200.400). Crimes for which life without possibility of parole is not within the sentencing guidelines include:

Second Degree Murder
Mayhem
Second Degree Kidnapping
Robbery
Administration of Poison
Slavery
Mutilation of Female Genitalia
Child Pornography

In this case, the judge did not even follow the state's recommendation in sentencing. Instead, the judge sentenced PIGEON to life without possibility of parole because he felt that it was the only way to protect the children of Nevada from PIGEON.

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> THE COURT: Question I have, is it with or without the possibility of parole? And the only way I can protect our children from you, Mr. Pigeon, is sentence you to life without the possibility of parole.[114]
> THE DEFENDANT: I would like to add that the sentence without parole is a bit extreme. Even Mr. Schifalacqua didn't ask for life without parole.
> THE COURT: It's not his charge, it's my charge. I've got to determine whether you're a threat to society. And I believe –
> THE DEFENDANT: I've never –
> THE COURT: -- that we are lucky to have caught this when we did so that little girl wasn't violated. I saw your bedroom in that storage unit. I'm sure that's where you were headed. Thank you.[115]

The court's conclusion was unfounded. PIGEON did nothing to C[redacted]. He was never previously arrested in connection with any offense involving children. There was no evidence of child pornography or other child-related sex paraphernalia in PIGEON's storage locker.[116] The storage locker was on the other side of town (at Cheyenne and Rancho[117]) from where PIGEON saw C[redacted], and he had no means of transporting her anywhere.

The problem here is that the judge was no doubt somewhat prejudiced against PIGEON because he was representing himself – and saying crazy things. After all, this was not the same judge who conducted the competency hearing. He did not know that PIGEON was suffering from severe mental illness. All he knew was that another judge had found PIGEON to be competent. So, as far as the trial

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114 PA/4/824.
115 PA/4/825-826.
116 See Exhibits 18-32 which are pictures of the storage locker. PA/3/599-612.
117 PA/3/567.

court was concerned, PIGEON was a mentally competent man who wanted to marry a 12-year-old girl that he believed was in love with him. He did not understand that PIGEON was delusional, and that his illness was making him believe these things. The court simply did not have all the facts when it sentenced PIGEON to life in prison without the possibility of parole.

The sentence is a travesty as was the entire trial. The matter should be remanded for new sentencing which comports with the crimes actually committed.

## F. ERRONEOUS HABITUAL DETERMINATION

**(Standard of Review: de novo[118] )**

As stated above, PIGEON was previously convicted of gross lewdness which were originally misdemeanors but which were raised to felonies.

> THE COURT: Okay. Here is a conviction, C269318, open or gross lewdness, Category D felony, occurring on October 31st, 2012....It is certified raised. Okay. The second one they handed me is C216699...open or gross lewdness, a Category D felony...And that's a felony raised....
> THE DEFENDANT: Yes. Both of those were raised from misdemeanors.
> THE COURT: And then a Texas case, October 3rd, 2000....It is a forgery.
> THE DEFENDANT: Those are forgeries of my parent's checks.[119]

So, two of the priors upon which the habitual was based were actually misdemeanors which were raised or enhanced to felonies. It was error to apply the

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118 *United States v. Leon H.*, 365 F.3d 750, 752 (9th Cir. 2004).

119 PA/2/415.

habitual statute, itself an enhancement provision, to these already enhanced misdemeanors.

> Case was remanded where the sentence imposed for the offense of robbery with the use of a deadly weapon, victim over age 65, appeared to have been enhanced consecutively by NRS 193.165, use of a deadly weapon, or NRS 193.167, victim over age 65, and this section, **habitual** criminal. The sentencing court may enhance each primary offense pursuant to one enhancement statute; however, imposition of consecutive enhancements applied to a primary offense is inconsistent with the application of the **habitual** offender statute and the permissible uses of enhancement under NRS 193.165 and NRS 193.167. [120]

Moreover, the habitual criminality statute exists to enable the criminal justice system to deal determinedly with career criminals who pose a serious threat to public safety.[121] It may be an abuse of discretion for the court to enter a habitual criminal adjudication when the convictions used to support the adjudication are nonviolent and remote in time.[122] The convictions which supported the habitual determination in this case were all non-violent. The forgery charge was over ten years old. The others involved allegedly touching a cocktail waitress on the back and lewdness at a casino involving PIGEON's hands in his pockets.

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120 *Barrett v. State*, 105 Nev. 361 (1989).

121 *Sessions v. State,* 106 Nev. 186 (1990).

122 *Sessions, supra,* at 191.

> Even if Tanksley is considered a career criminal, he does not appear to be a violent criminal who poses a "threat to public safety." Tanksley obviously suffers from serious mental illness and most likely belongs in a mental hospital, not prison; therefore, sentencing him as a habitual criminal does not serve the interests of justice and was an abuse of discretion.[123]

The habitual determination was an abuse of discretion and should be reversed.

## G. PROSECUTORIAL MISCONDUCT

**(Standard of Review: de novo[124])**

Prosecutorial misconduct results when a prosecutor's statements so infect the proceedings with unfairness as to make the results a denial of due process.[125] The state's whole case centered on PIGEON's desire to marry and have sex with C[redacted], a 12-year-old girl.

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123 *Tanksley v. State,* 113 Nev. 997, 1007-1008 (1997, dissent).

124 *United States v. Bridges,* 344 F.3d 1010, 1014 (9th Cir. 2003).

125 *Browning v. State,* 124 Nev. 517, 533 (2008).

In this case, in closing argument, the prosecutor stated:

> The crime of attempt first degree kidnapping. In order for there to be an attempt, you have to find that he had the intent to commit the crime; that he took some act towards the commission of that crime, and he failed to actually complete the crime. Which is why it's an attempt first degree kidnapping versus an actual kidnapping. The elements of kidnapping are that every person who leads, takes, entices, or carries away or detains any minor...with the intent to keep, imprison, or confine him from his parents or guardians. He obviously intended to take her away from her guardians because he wanted to have sex with her. With the intent to perpetrate upon the person of the minor any unlawful act is guilty of kidnapping. **As the Judge just instructed you, it would have been illegal for Christopher Pigeon, a 50 year old man, to marry C[redacted] C[redacted], a 12 year old little girl.**[126] (Emphasis added)

That is not true. NRS 122.025 provides that a person under 12 years of age may be married with the consent of her parents or legal guardian and a district court.

The matter should be remanded for a new trial because the prosecutor led the jury to believe that PIGEON's intent to get to know C[redacted] with marriage as the goal, was illegal, when that intent was not.

## VII

## CONCLUSION

PIGEON's convictions should be reversed because he was not competent to stand trial without being medicated, even with medication, his mental illness is so severe that he could not receive a fair trial unless represented by counsel, the

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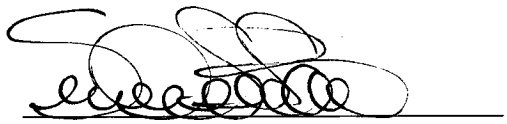
126 PA/4/673-674.

evidence did not support the convictions, the failure to register convictions are redundant and/or violate the double jeopardy clause of the Constitution, the habitual finding was an abuse of discretion, the punishment is completely out of proportion to crimes, and prosecutorial misconduct so infected the proceedings as to render the verdict suspect.

Respectfully submitted,

Dated this 9th day of March, 2015.



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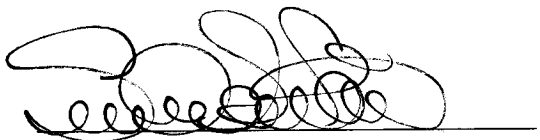
## VIII

## CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this opening 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 N.R.A.P. 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript of appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure. I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4), 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 Word 14.4.3 For Mac with Times New Roman 14-point. I further certify that this opening brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because it either does not exceed 30 pages or it contains no more than 14,000 words.

DATED: March 9, 2015



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