IN THE SUPREME COURT OF THE STATE OF NEVADA

DEVON RAY HOCKEMIER,
Appellant,

v.

RENEE BAKER, WARDEN LOVELOCK CORRECTIONAL CENTER (LLC),
Respondent.

CASE NO. 83147

Appeal from the Order Denying Petitions for Writ of Habeas Corpus
Fourth Judicial District Court, County of Elko
The Honorable Kriston N. Hill, District Court Judge, Dept. 1

JOINT APPENDIX (VOLUME 3)

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Dated this 11TH day of NOVEMBER, 2021.

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Dated this 26th day of Oct., 2021.

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CERTIFICATE OF SERVICE

I, BENJAMIN C. GAUMOND, certify that I am the owner of the BEN GAUMOND LAW FIRM, PLLC and that on the 15th day of November, 2021, I served a copy of the foregoing JOINT APPENDIX by:

(a) sending a copy via electronic service to the Clerk of the Supreme Court, the Elko County District Attorney's Office, and the Nevada Attorney General's Office; and

(b) mailing with postage prepaid one (1) copy to Devon Ray Hockemier, NDOC # 1140743, Lovelock Correctional Center, 1200 Prison Road, Lovelock, NV 89149.

DATED this 15th day of November, 2021.

BENJAMIN C. GAUMOND, Owner
BEN GAUMOND LAW FIRM, PLLC

17-

CASE NO: CV-HC--267

DEPT NO.: 2

FILED

2017 SEP 11 PM 1:31

ELKO CO DISTRICT COURT

CLERK DEPUTY

IN THE FOURTH JUDICIALDISTRICT COURT
IN AND FOR THE STATE OF NEVADA COUNTY OF ELKO COUNTY

DEVON RAY HOCKEMEIR,

Petitioner,

vs.

WARDEN BAKER, et al.

Respondent.

PETITIONER'S SUPPLEMENT TO PETITION FOR HABEAS CORPUS RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, DEVON RAY HOCKEMEIR, , Respondent, by and through his newly appointed attorney of record, TONY LIKER, ESQ. and hereby submits his Supplement to Petitioner's Habeas Corpus Relief. PETITIONER DEMANDS ALL DISCOVERY FROM THE STATE OF NEVADA, INCLUDING ALL REPORTS IN THE CUSTODY OF ANY LAW ENFORCEMENT AGENCY

DATED this 8th day of September, 2017

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Attorney for Petitioner
DEVON RAY HOCKEMEIR

NATURE OF ILLEGAL DETENTION

Petitioner is being held in violation of his 5th, 6th, 8th, and 14th Amendment Rights, based

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upon a) these additional grounds:

1. The sheer volume of the 20 counts contained in the Criminal Information, containing triable defensible counts, resulted in oppressive plea barraging, in violation of Petitioner's Federal and State Due Process Rights.
2. There is a jurisdictional defect by this case originating in Justice Court, rather than in Juvenile Court, which was not properly developed by trial counsel, in violation of Petitioner's Federal and State Constitutional Rights.
3. Exculpatory Brady material was suppressed by the State, in violation of the Petitioner's Federal and State Due Process Constitutional Rights.
4. Petitioner reserves the right to respond and submit additional supplemental grounds after discovery and after the State has addressed this Supplement.
5. This Supplement is brought in addition to the Petitioner's grounds.

FACTS IN SUPPORT OF SUPPLEMENT

The Petitioner is currently serving two consecutive life sentences for Lewdness with a Child Under 14 Years, with parole eligibility after ten years. **Exh 1**. Originally, the Petitioner was charged in a 20 Count Criminal Information, **Exh 2**. This 20 Count Information spanned a time frame between September 1, 2009, to February 20, 2010, **Exh 2**. This is almost a six month time frame. Based on the volume of the Courts, the Petitioner really had no option but to accept a guilty plea to two counts 2 and 14. **Exh 3**.

Prior to entering a plea, trial counsel filed a Motion for Contingent Transfer, **Exh 4**. Trial counsel's motion raised the ground that the Petitioner was born November 24, 1992, **Exh 4**, p 2. The alleged offenses occurred between September 2009 and February 2010. Petitioner's counsel argued PART of the relevant parts of NRS 62 B, namely, NRS 62B.330 1) and 3), which are in

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bold:

1. Except as otherwise provided in this title, the juvenile court has exclusive original jurisdiction over a child living or found within the county who is alleged or adjudicated to have committed a delinquent act.

2. For the purposes of this section, a child commits a delinquent act if the child:

(a) Violates a county or municipal ordinance other than those specified in paragraph (f) or (g) of subsection 1 of NRS 62B.320 or an offense related to tobacco;

(b) Violates any rule or regulation having the force of law; or

(c) Commits an act designated a criminal offense pursuant to the laws of the State of Nevada.

3. For the purposes of this section, each of the following acts shall be deemed not to be a delinquent act, and the juvenile court does not have jurisdiction over a person who is charged with committing such an act:

(a) Murder or attempted murder and any other related offense arising out of the same facts as the murder or attempted murder, regardless of the nature of the related offense, if the person was 16 years of age or older when the murder or attempted murder was committed.

(b) Sexual assault or attempted sexual assault involving the use or threatened use of force or violence against the victim and any other related offense arising out of the same facts as the sexual assault or attempted sexual assault, regardless of the nature of the related offense, if:

(1) The person was 16 years of age or older when the sexual assault or attempted sexual assault was committed; and

(2) Before the sexual assault or attempted sexual assault was committed, the person previously had been adjudicated delinquent for an act that would have been a felony if committed by an adult.

(c) An offense or attempted offense involving the use or threatened use of a firearm and any other related offense arising out of the same facts as the offense or attempted offense involving the use or threatened use of a firearm, regardless of the nature of the related offense, if:

(1) The person was 16 years of age or older when the offense or attempted offense involving the use or threatened use of a firearm was committed; and

(2) Before the offense or attempted offense involving the use or threatened use of a firearm was committed, the person previously had been adjudicated delinquent for an act that would have been a felony if committed by an adult.

(d) A felony resulting in death or substantial bodily harm to the victim and any other related offense arising out of the same facts as the felony, regardless of the nature of the related offense, if:

(1) The felony was committed on the property of a public or private school when pupils or employees of the school were present or may have been present, at an activity sponsored by a public or private school or on a school bus while the bus was engaged in its official duties; and

(2) The person intended to create a great risk of death or substantial bodily harm to more than one person by means of a weapon, device or course of action that would normally be hazardous to the lives of more than one person.

(e) A category A or B felony and any other related offense arising out of the same facts as the category A or B felony, regardless of the nature of the related offense, if the person was at least 16 years of age but less than 18 years of age when the offense was committed, and:

(1) The person is not identified by law enforcement as having committed the offense and charged before the person is at least 20 years, 3 months of age, but less than 21 years of age; or(2) The

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person is not identified by law enforcement as having committed the offense until the person reaches 21 years of age.[1]

The State's opposition relied on NRS 62B(3)(e)(2), italicized above. The State all to coincidently bootstrapped its position by alleging that the police, conveniently and coincidently, learned the identity of Petitioner on November 25, 2013, ONE DAY after Petitioner turned 21, **Exh 5,** pp4-5. Thus, had the Petitioner been able to establish that his identity was learned earlier, this case would have necessarily had to commence in juvenile court. The juvenile court may have elected to keep this case in juvenile court. Petitioner's counsel failed to reply to the State's Opposition, much less ask for a hearing on this crucial issue. This is particularly problematic, because at the preliminary hearing, at page 67, Detective Hessing admitted that he interviewed OM on November 21. At the preliminary hearing, at page 61, Detective Messing specifically stated that first started an investigation into Devon Hockemier on November 21, 2015. Detective Messing then testified that Rydie Overholser identified Petitioner to the Detective Messing, whereupon he *then talked to OM.* P/H, pp 56-58. This necessarily means that the Petitioner's identify was known prior to Petitioner's 21st birthday.

The Contingent Motion to Transfer was filed July 28, 2014. The State opposed on August 6, 2014. The preliminary hearing was entertained on August 18, 2014, after trial counsel knew what he had to establish in order to prevail on the motion. Trial counsel failed to develop this issue, this was a low hanging fruit, that was easy to pluck had trial counsel developed this testimony. Conversely, the State was educated as well, it was crucial that the identity of the Petitioner was learned after November 24. Trial counsel totally abandoned this critical jurisdictional ground.

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[1] Nev. Rev. Stat. Ann. § 62B.330 (West)

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The decision to forbear this critical issue cannot be considered sound strategy, and thus constitutes ineffective assistance of counsel, in violation of Petitioner's State and Federal Constitutional rights, specifically under the 6th and 14th Amendment of the United States Constitution. The Petitioner asks that this Court set this matter for an evidentiary hearing and compel the State to turn over all files in its actual and constructive possession (including but not limited to the Elko Police Department), which bear on the issue of when the police learned the identify of Devon Hockemier. Petitioner further reserves the right to respond to the State's Return.

ARGUMENT

THE COERCIVE PLEA BARGAINING BY OVERCHARGING THE PETITIONER

Instead of filing a charge on each alleged victim, a total of 20 charges were filed. The issue of overcharging a Defendant was addressed in *Com. v. Nace*, 295 A.2d 87 (Pa. Super. 1972), at 90

> __Unfortunately prosecutors at times indulge in 'over-charging' to coerce plea bargaining or to influence juries unduly. Section 3.9(e) of the Standards Relating to the Prosecution Function and the Defense Function promulgated by the ABA Project on Standards for Criminal Justice (Approved Draft, 1971) provides:
> 'The prosecutor should not bring or seek charges greater in number of degree than he can reasonably support with evidence at trial.'
>
> The Commentary to that section observes further:
>
> "'The chief criticism voiced by defense counsel with respect to the exercise of prosecution discretion in this area is that prosecutors 'over-charge' in order to obtain leverage for plea negotiations. Although it is difficult to give a definition of 'overcharging' in verbal form, it is clear that the heart of this criticism is a belief that prosecutors bring charges not in the good faith belief that they are appropriate under the circumstances and with an intention of prosecuting them to a conclusion, but merely as a harassing and coercive device, in the expectation that a guilty plea will result and that it will not be necessary to proceed to trial, verdict and sentence on all of the charges or at the degree of crime originally stated.'
>
> "In view of these two possibilities or other conceivable circumstances, the court below should not have denied the petition without a hearing. The appellant should have an

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opportunity to present any evidence relating to the inadequacy of legal representation arising out of his conviction of joy-riding on the charge of larceny."

In the instant case, the State alleged lesser included or alternate offenses, and could not establish the date or dates of these alleged offenses, having to span within a range of almost six months. As further stated in case, at 89-90, "The right of an accused to fair notice of the charges against him is the essence of procedural due process." The Petitioner, rather than receive fair notice of the charges, was the victim of a scattershot Information. This case presents a textbook example of said overcharging an accused in order to extract a plea.

For the plea-bargaining process to serve the public fairly, it must be implemented with careful discretion, particularly when evaluating who should be charged and what should be charged, to fairly and accurately reflect the criminal conduct involved.[2] If compromised, the potential for injustice and the specter of coercive plea-bargaining move front and center.[3]

In implementing the plea-bargaining process, the state, as the prosecutor of crimes, has a powerful incentive to begin the inevitable negotiating process from a position of strength, which often results in overcharging.[4]Yet whenever a prosecutorial agency files charges that are

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[2] *See* Ronald Wright & Marc Miller, *The Screening/Bargaining Tradeoff*, 55 Stan. L. Rev. 29, 32 (2002).

[3] *See Meares, supra* note 7, at 866 (noting that "vast prosecutorial discretion at the charging stage" can impinge on a defendant's free will to choose whether or not to plead guilty to the proposed charges). This discretion can be attributed to the "natural gap" between the proof required to bring a charge and the proof required to obtain a conviction at trial. *Id.* at 865. A prosecutor may bring a charge so long as there is probable cause, which also may be based on evidence otherwise inadmissible at trial, whereas a conviction at trial would require proof beyond a reasonable doubt in strict compliance with the rules of evidence. *Id.* at 865-66.

[4] *See* Wright & Miller, *supra* note 12, at 33. Any attempt to ascertain how widespread overcharging has become is destined to be only the roughest of estimates. Prosecutorial agencies still fail to acknowledge that such practices even exist, and even in a candid moment, they would not have an incentive to report such practices. *See id.* at 34 (describing the plea-bargaining

disproportionate or misrepresentative of the defendant's actions, that agency abuses its prosecutorial power. [5] This compromises the justice system, and did so in this case.

"There certainly should be some mechanism beyond the charging entity's internal scrutiny to raise the issue of overcharging. Self-policing is generally inadequate and may prove divisive within the policed offices. Furthermore, given that overcharging to obtain leverage is an abominable practice, those prosecutors engaged in such practices should be exposed and held accountable. In any calculus, the cost of reining in a practice that sets the stage for coercive pleas and sentences pales against the human tragedy of pleas and their consequences, which are often disproportionate to the accused's conduct."

"Regarding the possibility of identifying overcharging, such identification must come from an entity apart from the charging prosecutor. To undertake a post-plea analysis, the reviewing

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process as "not open for review or evaluation"). As a result, efforts to quantify the negotiated-disposition practice are relegated to review of the prevailing opinions given by American justice-system scholars, which, in most instances, draw on largely anecdotal evidence. *See, e.g.*, Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 Harv. L. Rev. 2463, 2547 (2004) ("[P]lea bargaining hides within a low-visibility process .... A few researchers have been able to observe bargaining or to review prosecutor's files, but by and large attorneys are reluctant to let outsiders into the plea-bargaining process."); Rebecca Hollander-Blumoff, Note, *Getting to "Guilty": Plea Bargaining as Negotiation, 2* Harv. Negot. L. Rev. 115, 116 n.5 (1997) (noting that the author's data was gathered "from personal interviews with prosecutors and defense attorneys" and that the author had to "maintain interview subjects' anonymity so that they could speak freely")

[5] *See* Bibas, *supra* note 14, at 2470 ("Apart from [certain deterrence considerations], plea bargains should depend only on the severity of the crime, the strength of the evidence, and the defendant's record and need for punishment. This ideal asks prosecutors to be perfectly selfless, perfectly faithful agents of the public interest."); *see also* Stephen J. Schulhofer, *Plea Bargaining as Disaster*, 101 Yale L.J. 1979, 1991 (1992) ("[A]gency problems ... pose massive obstacles to efficient, welfare-enhancing transactions. Prosecutors have few incentives to pursue an optimal deterrence strategy ....").

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authority must have access to the charging prosecutor's entire file, including all police reports, witness statements, forensic results, any documentation that the defense supplied, and transcripts of all court appearances leading up to the negotiated disposition. Armed with such information, a reviewer versed in the criminal justice system likely would be able to determine if a case was overcharged. If the reviewer made such a determination, then the investigation would expand to interviews of the parties involved in the negotiated disposition to determine if the prosecutor used overcharging as leverage to obtain a plea or sentence unduly favorable to the state."[6]

The Petitioner asks that this Court to order the State to turn over all investigative files in this case, including but not limited to any files in the actual possession of the Elko Police Department. Petitioner also asks for a hearing in order to develop this issue, similar to the result in *Nace,* supra.

TRIAL COUNSEL'S DEFICIENT PERFORMANCE WARRANTS DISCOVERY, AND EVIDENTIARY HEARING, AND THE GRANTING OF HABEAS CORPUS RELIEF

To prevail on an ineffective counsel claim, the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Strickland v. Washington*, 104 S.Ct. 2052, 2068, 466 U.S. 668, 694 (U.S.,1984) A reasonable probability is a probability sufficient to undermine confidence in the outcome,' *but it does not require that a defendant demonstrate that he would have been acquitted.*" *State v. Rogers,* 2001 MT 165, ¶ 14, 306 Mont. 130, ¶ 14, 32 P.3d 724, ¶ 14 (quoting *Strickland,* 466

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[6] H. Mitchell Caldwell, Coercive Plea Bargaining: The Unrecognized Scourge of the Justice System, 61 Cath. U.L. Rev. 63, 65–66 (2011)

U.S. at 694, 104 S.Ct. at 2068, 80 L.Ed.2d at 698). *State v. Kougl* 323 Mont. 6, 13, 97 P.3d 1095, 1100 (Mont.,2004). Ineffective assistance cases turn on their individual facts. *Langston v. Wyrick,* 698 F.2d 926, 931 (8th Cir.1982) *Sanders v. Trickey*, 875 F.2d 205, 209 (C.A.8 (Mo.),1989).

The contingent transfer motion was not fully and fairly developed by trial counsel. Trial counsel only had to raise the issue of when the police learned the Petitioner's identity. Clearly, the coincidental alleged learning of the Petitioner's identity ONE DAY AFTER he turned 21 raises all sorts of flags. Had the defense been able to establish that someone in law enforcement learned his identity two days earlier, jurisdiction would be lacking, since the matter had to be initiated in juvenile court. "[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland,* 466 U.S. at 691, 104 S.Ct. 2052. *Bemore v. Chappell*, 788 F.3d 1151, 1162–63 (9th Cir. 2015), cert. denied sub nom. Davis v. Bemore, 136 S. Ct. 1173 (2016), and cert. denied sub nom. Bemore v. Davis, 136 S. Ct. 1831 (2016). There is no reason, consistent with the renderment of effective assistance of counsel, to abandon this crucial line of inquiry.

Conversely, if the State has any evidence in its actual or construction possession which could undermine or in any way impeach the representations made in the State's Opposition to the Motion for Contingent Transfer, it should be turned over to Petitioner's new counsel. Additionally, an evidentiary hearing is required on both issues, the possible Brady violations, and the failure of trial counsel to develop the issue of the age of Petitioner when his identity was learned.

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WHEREFORE, the Petitioner, who reserves the right to supplement after discovery is conducted, and after the State responds in its Return, prays as follows:

1. That this Court set this matter for an evidentiary hearing,
2. That this Court allow discovery in this case, and
3. That after notice and a hearing, that Habeas Corpus Relief be granted.

DATED this 8th day of September, 2017

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DEVON RAY HOCKEMIER

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EXHIBIT 1

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CASE NO. CR-FP-14-635

DEPT. NO. 1

FILED

2015 JAN -9 AM 10:20

ELKO CO DISTRICT COURT

CLERK____ DEPUTY____

IN THE FOURTH JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

THE STATE OF NEVADA,

Plaintiff,

V.

DEVON RAY HOCKEMIER,

Defendant.

/

JUDGMENT OF CONVICTION
(Guilty Plea - Incarceration)

On March 16, 2015, above-named Defendant, DEVON RAY HOCKEMIER [who is further described as follows: Date of birth: 11/24/1992; (age 22); Place of birth: Elko, Nevada] was arraigned and entered a plea of guilty to the crimes described below and as more fully set forth in the criminal information filed herein. Legal counsel present at Defendant's arraignment were Sherburne M. Macfarlan, III, Esq., representing Defendant, and Jonathan L. Schulman, Elko County Deputy District Attorney, representing the State. At the time above-named Defendant entered his plea of guilty, this Court informed him of all applicable constitutional rights, the elements of the crimes charged, and the maximum possible penalty for said crimes. After being so informed, above-named Defendant stated that he understood all of the applicable constitutional rights, the elements of the crimes charged and the maximum possible penalty for said crimes. This Court then made a finding that Defendant had entered his plea freely and voluntarily, and with full understanding of his constitutional rights, the nature of the charges and the consequences of his plea.

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DESCRIPTION OF CONVICTIONS

COUNT 2: LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE, A CATEGORY A FELONY AS DEFINED BY NRS 201.230

COUNT 14: LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE, A CATEGORY A FELONY AS DEFINED BY NRS 201.230

On May 21, 2015, above-named Defendant appeared before this Court for the purpose of Sentencing and entry of a final judgment of conviction in this matter. This Court, the State, and defense counsel had previously received a Pre-Sentence Report which had been prepared by the Division of Parole and Probation. Legal counsel present at Defendant's sentencing were Sherburne M. Macfarlan, III, Esq., representing Defendant, and Jonathan L. Schulman, Elko County Deputy District Attorney, representing the State. Also present was Annis Seopaul, representing the Division of Parole and Probation.

After hearing from all parties and allowing Defendant an opportunity to personally address the Court, this Court finds that the appropriate judgment in this case is and shall be as follows:

SENTENCE TERMS

For the conviction of Count 2, Defendant is sentenced to a maximum term of LIFE in the Nevada Department of Corrections with the possibility of parole after serving a minimum of 10 years. Defendant is credited with 339 days heretofore served as computed to and including the date of this sentencing (May 21, 2015).

For the conviction of Count 14, Defendant is sentenced to a maximum term of LIFE in the Nevada Department of Corrections with the possibility of parole after serving a minimum of 10 years. Said sentence shall run consecutively to the sentence for Count 2. The aggregate term for both counts is a minimum of 20 years with a maximum of LIFE.

Pursuant to NRS 176.0913 the name, social security number, date of birth and any other information identifying Defendant shall be submitted to the central repository for Nevada records of criminal history. Defendant shall submit to a blood and saliva test, to be made by qualified persons. The tests must include analyses of his blood to determine genetic markers and of his saliva to determine its secretor status. The results of the tests shall be submitted to the central repository for Nevada records of criminal history.

FINANCIAL AND RESTITUTION REQUIREMENTS

Defendant is ordered to pay the administrative fee in the amount of $25.00 as required by NRS 176.062. Said amount shall be deducted from any cash bail monies posted by Defendant before any remainder is returned upon the

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exoneration of bail. It is further ordered that if Defendant has any monies in the possession of the Elko County Jail, that said monies shall be delivered directly to the Elko County Clerk and applied to this fee.

Defendant is ordered to pay the genetic testing fee of $150.00 as required by NRS 176.0915. Said amount shall be deducted from any cash bail monies posted by Defendant before any remainder is returned upon the exoneration of bail. It is further ordered that if Defendant has any monies in the possession of the Elko County Jail, that said monies shall be delivered directly to the Elko County Clerk and applied to this fee.

Defendant is ordered to pay $855.00 for the psychosexual evaluation fee.

Any cash bail or monies in the possession of the Elko County Jail which belong to Defendant shall be confiscated and applied to this debt.

OTHER REQUIREMENTS

Defendant is required to register as a sex offender pursuant to NRS 179D.441 through NRS 179D.495, prior to being released from custody.

Pursuant to NRS 176.0931, a special sentence of lifetime supervision commences after any period of probation or any term of imprisonment and any period of release on parole.

BAIL

IT IS HEREBY ORDERED that any bail bond previously posted for said Defendant shall be exonerated. Any cash bail posted for said Defendant shall be applied first to fines and/or costs due pursuant to this judgment and, unless otherwise agreed to by the parties, any amount remaining shall be returned by the clerk to the person who posted said cash bail.

ENTRY OF JUDGMENT

IT IS FURTHER ORDERED that the clerk of the above-entitled Court enter this JUDGMENT OF CONVICTION as part of the record in the above-entitled matter.

SO ORDERED this 5 day of June, 2015.

NANCY PORTER
DISTRICT JUDGE - DEPARTMENT 1

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CERTIFICATE OF HAND DELIVERY

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department 1, and that on this 9th day of June, 2015, I personally hand delivered a file stamped copy of the foregoing **JUDGMENT OF CONVICTION** (Guilty Plea - Incarceration) addressed to:

Dept. of Parole and Probation
3920 E. Idaho Street
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]

Elko County Sheriff's Office
775 W. Silver Street
Elko, NV 89801
{1 Certified Copy and 1 File Stamped Copy}
[Box in Clerk's Office]

Mark D. Torvinen, Esq.
Elko County District Attorney
540 Court Street, 2nd Floor
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]

Sherburne M. Macfarlan, III, Esq.
Lockie & Macfarlan, Ltd.
919 Idaho Street
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]

Julie Louise Thrombo

CERTIFICATE OF ELECTRONIC SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Fourth Judicial District Court, Department 1, Elko, Nevada, and that on this 9th day of June, 2015, I caused to be delivered via electronic-mail, a file stamped copy of the foregoing **JUDGMENT OF CONVICTION** (Guilty Plea - Incarceration), along with a copy of Defendant's Pre-Sentence Investigation Report addressed to:

Nevada Department of Corrections
Offender Management Division, Sentence Management
Attn: Shelly Williams, Records Supervisor
E-mail: skwilliams@doc.nv.gov
Attn: Kristy Rodriguez
E-mail: kwinters@doc.nv.gov

Julie Louise Thrombo

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EXHIBIT 2

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CASE NO. CR-FP-14-0635

DEPT. NO. 1

FILED

2014 AUG 28 PM 3:14

ELKO CO DISTRICT CLERK

BY _____ DEPUTY

IN THE FOURTH JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

STATE OF NEVADA,

Plaintiff,

vs.

DEVON RAY HOCKEMIER,

Defendant.

/

CRIMINAL

INFORMATION

COMES NOW THE STATE OF NEVADA, the Plaintiff in the above-entitled cause, by and through its Counsel of Record, the Elko County District Attorney's Office, and informs the above-entitled Court that Defendant above-named, from on or about the 1st day of September, 2009, to on or about the 28th day of February, 2010, at or near the location of City of Elko, within the County of Elko, and the State of Nevada, committed a crime or crimes described as follows:

COUNT 1

SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 14 YEARS, A CATEGORY A FELONY AS DEFINED BY NRS 200.366(3)(c).

That the Defendant willfully and unlawfully subjected another person, to-wit: O.M., who is a child under the age of 14 years, to sexual penetration, to-wit: by inserting his penis into O.M.'s anus, against the victim's will or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his/her conduct.

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Affirmation Pursuant to NRS 239B.030

SSN Does Appear _____

SSN Does Not Appear ✓

IN THE ALTERNATIVE TO COUNT 1,

COUNT 2

LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE, A CATEGORY A FELONY AS DEFINED BY NRS 201.230.

That the Defendant did willfully, unlawfully, feloniously, and lewdly commit a lewd or lascivious act other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, to-wit: O.M., and that said Defendant committed said act with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of either the Defendant or of said minor child in the following manner: by inserting his penis into O.M.'s anus.

IN THE ALTERNATIVE TO COUNTS 1 AND 2,

COUNT 3

OPEN OR GROSS LEWDNESS, A GROSS MISDEMEANOR AS DEFINED BY NRS 201.210.

The Defendant engaged in an act or acts of open and gross lewdness in the following manner: by inserting his penis into O.M.'s anus, all of which occurred in a place open to the public, in the bedroom belonging to the Defendant's mother and/or a room in the Defendant's home.

COUNT 4

SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 14 YEARS, A CATEGORY A FELONY AS DEFINED BY NRS 200.366(3)(c).

That the Defendant willfully and unlawfully subjected another person, to-wit: O.M., who is a child under the age of 14 years, to sexual penetration, to-wit: by inserting his penis into O.M.'s anus, against the victim's will or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his/her conduct.

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IN THE ALTERNATIVE TO COUNT 4,

COUNT 5

LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE, A CATEGORY A FELONY AS DEFINED BY NRS 201.230.

That the Defendant did willfully, unlawfully, feloniously, and lewdly commit a lewd or lascivious act other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, to-wit: O.M., and that said Defendant committed said act with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of either the Defendant or of said minor child in the following manner: by inserting his penis into O.M.'s anus.

IN THE ALTERNATIVE TO COUNTS 4 AND 5,

COUNT 6

OPEN OR GROSS LEWDNESS, A GROSS MISDEMEANOR AS DEFINED BY NRS 201.210.

The Defendant engaged in an act or acts of open and gross lewdness in the following manner: by inserting his penis into O.M.'s anus, all of which occurred in a place open to the public, in the bedroom belonging to the Defendant's mother and/or a room in the Defendant's home.

COUNT 7

SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 14 YEARS, A CATEGORY A FELONY AS DEFINED BY NRS 200.366(3)(c).

That the Defendant willfully and unlawfully subjected another person, to-wit: O.M., who is a child under the age of 14 years, to sexual penetration, to-wit: by inserting his penis into O.M.'s anus, against the victim's will or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his/her conduct.

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IN THE ALTERNATIVE TO COUNT 7,

COUNT 8

LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE, A CATEGORY A FELONY AS DEFINED BY NRS 201.230.

That the Defendant did willfully, unlawfully, feloniously, and lewdly commit a lewd or lascivious act other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, to-wit: O.M., and that said Defendant committed said act with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of either the Defendant or of said minor child in the following manner: by inserting his penis into O.M.'s anus.

IN THE ALTERNATIVE TO COUNTS 7 AND 8,

COUNT 9

OPEN OR GROSS LEWDNESS, A GROSS MISDEMEANOR AS DEFINED BY NRS 201.210.

The Defendant engaged in an act or acts of open and gross lewdness in the following manner: by inserting his penis into O.M.'s anus, all of which occurred in a place open to the public, in the bedroom belonging to the Defendant's mother and/or a room in the Defendant's home.

COUNT 10

SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 14 YEARS, A CATEGORY A FELONY AS DEFINED BY NRS 200.366(3)(c).

That the Defendant willfully and unlawfully subjected another person, to-wit: O.M., who is a Child under the age of 14 years, to sexual penetration, to-wit: by inserting his penis into O.M.'s anus, against the victim's will or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his/her conduct.

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IN THE ALTERNATIVE TO COUNT 10,

COUNT 11

LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE, A CATEGORY A FELONY AS DEFINED BY NRS 201.230.

That the Defendant did willfully, unlawfully, feloniously, and lewdly commit a lewd or lascivious act other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a Child under the age of 14 years, to-wit: O.M., and that said Defendant committed said act with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of either the Defendant or of said minor child in the following manner: by inserting his penis into O.M.'s anus.

IN THE ALTERNATIVE TO COUNTS 10 AND 11,

COUNT 12

OPEN OR GROSS LEWDNESS, A GROSS MISDEMEANOR AS DEFINED BY NRS 201.210

The Defendant engaged in an act or acts of open and gross lewdness in the following manner: by inserting his penis into O.M.'s anus, all of which occurred in a place open to the public, in the bedroom belonging to the Defendant's mother and/or a room in the Defendant's home.

COUNT 13

SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 14 YEARS, A CATEGORY A FELONY AS DEFINED BY NRS 200.366(3)(c).

That the Defendant willfully and unlawfully subjected another person, to-wit: S.B., who is a Child under the age of 14 years, to sexual penetration, to-wit: by inserting his penis into S.B's anus, against the victim's will or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his/her conduct.

IN THE ALTERNATIVE TO COUNT 13,

COUNT 14

LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE, A CATEGORY A FELONY AS DEFINED BY NRS 201.230.

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That the Defendant did willfully, unlawfully, feloniously, and lewdly commit a lewd or lascivious act other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, to-wit: S.B., and that said Defendant committed said act with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of either the Defendant or of said minor child in the following manner: by inserting his penis into S.B.'s anus.

IN THE ALTERNATIVE TO COUNTS 13 AND 14,

COUNT 15

OPEN OR GROSS LEWDNESS, A GROSS MISDEMEANOR AS DEFINED BY NRS 201.210.

The Defendant engaged in an act or acts of open and gross lewdness in the following manner: by inserting his penis into S.B.'s anus, all of which occurred in a place open to the public, in the Defendant's bedroom and/or a room in the Defendant's home.

COUNT 16

SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 14 YEARS, A CATEGORY A FELONY AS DEFINED BY NRS 200.366(3)(c)

That the Defendant willfully and unlawfully subjected another person, to-wit: S.B., who is a child under the age of 14 years, to sexual penetration, to-wit: by inserting his penis into S.B's mouth and/or had S.B's insert his penis into Defendant's mouth, against the victim's will or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his/her conduct.

IN THE ALTERNATIVE TO COUNT 16,

COUNT 17

LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE, A CATEGORY A FELONY AS DEFINED BY NRS 201.230.

That the Defendant did willfully, unlawfully, feloniously, and lewdly commit a lewd or lascivious act other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, to-wit: S.B., and that said Defendant

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committed said act with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of either the Defendant or of said minor child in the following manner: by inserting his penis into S.B.'s mouth and/or having S.B insert his penis into Defendant's mouth.

IN THE ALTERNATIVE TO COUNTS 16 AND 17,

COUNT 18

OPEN OR GROSS LEWDNESS, A GROSS MISDEMEANOR AS DEFINED BY NRS 201.210

The Defendant engaged in an act or acts of open and gross lewdness in the following manner: by inserting his penis into S.B.'s mouth and/or by having S.B. insert his penis into Defendant's mouth, all of which occurred in a place open to the public, in the Defendant's bedroom and/or a room in the Defendant's home.

COUNT 19

KIDNAPPING IN THE FIRST DEGREE, A CATEGORY A FELONY AS DEFINED BY NRS 200.310(1).

That the Defendant did willfully and unlawfully seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap or carry away another person, to-wit: O.M., with the intent to hold or detain, or held or detained, the victim for ransom, or reward, or for the purpose of committing sexual assault, extortion or robbery upon or from the victim, or for the purpose of killing the victim or inflicting substantial bodily harm upon the victim, or to exact money or valuables from others for the return or disposition of the victim, by the following manner: pulled OM into a room and then sexually assaulted him by inserting his penis into O.M.'s anus.

IN THE ALTERNATIVE TO COUNT 19

COUNT 20

KIDNAPPING IN THE SECOND DEGREE, A CATEGORY B FELONY AS DEFINED BY NRS 200.310(2).

That the Defendant did willfully and without authority of law seized inveigled, took, carried away or kidnapped another person, to-wit: O.M., with the purpose of conveying him/her out of the State of Nevada without authority of law, or in any manner held to service or detained against his/her will.

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All of which is contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Nevada.

Dated: August 28, 2014.

MARK TORVINEN
ELKO COUNTY DISTRICT ATTORNEY

JONATHAN L. SCHULMAN
Deputy District Attorney
State Bar Number: 9180

Declaration By State's Counsel Estimating
The Number Of Days Needed For Trial

COMES NOW THE STATE OF NEVADA, by and through its Counsel of Record the Elko County District Attorney's Office and, specifically by the Deputy District Attorney assigned the above-entitled matter, who, by his signature hereunder, would declare to the above-entitled Court that it is State's Counsel's estimate that four (4) days, including jury selection, should be set aside for the trial of this matter.

JONATHAN L. SCHULMAN
Deputy District Attorney
State Bar Number: 9180

Witnesses' names and addresses known to the District Attorney at the time of filing the above Criminal Information, if known, are as follows.

JARED LOWRY, 1401 COLLEGE AVENUE, ELKO, NV 89801

SB, - ADDRESS REDACTED

CHARLES SCOTT BRIDGE, 91 PARK RD., ELKO, NV 89801

HYDIE FAWN OVERHOLSER, 91 SOUTH PARK RD., ELKO, NV 89801

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OM – ADDRESS REDACTED

PAMELA ERNESTINE, 560 JUNIPER ST. #9, ELKO, NV 89801

ALISHA TURNER, DCFS, 1010 RUBY VISTA #101, ELKO, NV 89801

ZACHARY HESSING, 1401 COLLEGE AVENUE, ELKO, NV 89801

DR. KRISTEN MACLEOD, M.D., 5301 RENO CORPORATE, DR., RENO, NV 89511-2381

CARRIE E POWER, 391 EDGEBROOK DRIVE, OR 247 BLUFFS AVE., SPRING CREEK, NV 89815

CERTIFICATE OF SERVICE

I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the Elko County District Attorney's Office, and that on the 28th day of August, 2014, I hereby served a copy of the Criminal Information, by delivering, mailing, faxing, or causing to be delivered, faxed, or mailed, a copy of said document to the following:

By delivering to:

HONORABLE NANCY PORTER
FOURTH JUDICIAL DISTRICT COURT
ELKO COUNTY COURTHOUSE
ELKO, NV 89801

By mailing to:

SHERBURNE M. MACFARLAN III
ATTORNEY AT LAW
919 IDAHO ST.
ELKO, NV 89801

for KURRI SULLIVAN
FELONY CASEWORKER

DA#F-14-94099

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EXHIBIT 3

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CASE NO. CR-FP-14-0635

DEPT. NO. 1

FILED

2015 FEB 18 PM 2:31

ELKO CO DISTRICT COURT

CLERK____ DEPUTY____

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

THE STATE OF NEVADA,

Plaintiff,

vs.

DEVON R. HOCKEMIER,

Defendant,

---/

AMENDED MEMORANDUM OF PLEA AGREEMENT

I hereby agree to enter pleas of guilty to Counts 2 and 14 of the Criminal Information filed on August 28, 2014 wherein I am charged in each count with: LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE, A CATEGORY A FELONY AS DEFINED BY NRS 201.230.

My decision to plead guilty is based upon the plea agreement in this case in which the State has agreed to file a Criminal Information charging me with the above mentioned felonies. The District Attorney's Office agrees that it will file no further charges arising out of facts related to this incident, now known by the District Attorney's Office, and will dismiss the remaining Counts contained within the Criminal Information at the time of sentencing. At the time of sentencing, the parties will be free to argue for any sentence they deem appropriate, including whether the sentences should be run consecutively or concurrently.

CONSEQUENCES OF THE PLEA

I understand that as a consequence of my pleas of guilty, I will be imprisoned for a period of life with the possibility of parole after ten (10) years on each count, and I may be fined up to $10,000 on each count. I understand that the law requires me to pay an administrative assessment fee, and that in some instances I may be required to pay other costs incurred by the State in this prosecution, such as drug analysis fees or costs of extradition.

I understand that I may be ordered to make restitution to any victim of the offenses to which I am pleading guilty and to the victim of any related offense which is being dismissed or not prosecuted as a result of this agreement, and that even though charges have been dismissed or not brought as a result of this agreement, they may still be considered by the judge in determining the appropriate sentence to be imposed in my case.

I understand that I AM NOT eligible for probation for the offenses to which I am pleading guilty. I also understand that pursuant to NRS 179D.097, I will be required to register as a sex offender. Further, pursuant to NRS 176.0931, I will subject to lifetime supervision. I understand that in order to be released from lifetime supervision, I must:

1. Comply with the provisions of NRS 179D.010 to NRS 179D.550 (registration as a sex offender), inclusive;
2. Not be convicted of any offense that poses a threat to the safety or well-being of others for an interval of at least 10 consecutive years after my last conviction or release from incarceration, which ever occurs later; and
3. To be deemed not likely to pose a threat to the safety of

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others, as determined by a person professionally qualified to conduct psychosexual evaluations, if released from lifetime supervision.

4. A person who is released from lifetime supervision remains subject to the provisions for registration as a sex offender and to the provisions for community notification unless the person is otherwise relieved from the operation of those provisions.

I understand that if I plead guilty to two or more charges, the sentences may be served concurrently or consecutively, at the discretion of the judge who sentences me.

I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the Court within the limits prescribed by law. I understand that if my attorney, or the State, or both, recommends any particular sentence, the Court is not obligated to follow those recommendations.

I understand that the Division of Parole and Probation will conduct an investigation into, and prepare a report on, my background and other matters relevant to determining the appropriate sentence to be imposed. My attorney and I, as well as the District Attorney, unless he has otherwise agreed in this document to remain silent, will all have the opportunity to comment on the information contained in the report at the time of sentencing.

COLLATERAL CONSEQUENCE OF DEPORTATION

If you are not a citizen of the United States of America, you are hereby advised that conviction of the offense for which you

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have been charged may have the consequences of deportation, exclusion from admission to the United States of America, or denial of naturalization pursuant to the laws of the United States of America.

WAIVER OF RIGHTS

By entering my pleas of guilty, I understand that I am waiving and forever giving up the following rights and privileges:

1. The constitutional right against self-incrimination, including the right to choose whether to testify at trial, and the right to prohibit the prosecutor from commenting on my silence if I choose not to testify.

2. The constitutional right to a speedy, fair and public trial by an impartial jury; the constitutional right to be assisted at trial by an attorney, either retained by me, or appointed for me if I am indigent and cannot afford an attorney; the right to require the State to prove each element of the offense with which I am charged beyond a reasonable doubt; the constitutional right to confront and cross-examine my accusers, and the constitutional right to subpoena witnesses in by behalf.

3. The right to appeal, with the assistance of retained or appointed counsel, the conviction as well as any legal issues arising prior to entry of this guilty plea. By pleading guilty, I specifically waive my right to appeal any and all such issues.

VOLUNTARINESS OF PLEA

I have discussed the elements of all of the original charges against me with my attorney and I understand the nature of those charges.

I understand that the State would have to prove each element

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of the charges against me at trial beyond a reasonable doubt.

I have discussed with my attorney any possible defenses, defense strategies, and circumstances which might be favorable to me.

All of the foregoing elements, consequences, rights and waiver of rights, have been thoroughly explained to me by my attorney. My attorney has answered all of my questions regarding this plea agreement and its consequences to my satisfaction.

I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.

I am satisfied that my attorney is skilled in criminal defense and that I have been fully and fairly served by my attorney.

I am not now under the influence of any intoxicating liquor, controlled substance or other substance which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea. I am signing this agreement freely and voluntarily, after consultation with my attorney, and I am not acting under duress, coercion, or promises of leniency except as expressly set forth in this agreement.

DATED this 17th day of February, 2015.

Devon Hockemier

DEVON R. HOCKEMIER
Defendant

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DATED this 17th day of February, 2015.

JONATHAN L. SCHULMAN
Nevada Bar No. 9180
Deputy District Attorney

CERTIFICATE OF COUNSEL

I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court, hereby certify that:

1. I have fully explained to the Defendant the allegations contained in the charges to which guilty pleas are being entered.

2. I have advised the Defendant of the penalties for each charge and the restitution that the Defendant may be ordered to pay.

3. All pleas of guilty offered by the Defendant pursuant to this Agreement are consistent with the facts known to me and are made with my advice to the Defendant and are in the best interest of the Defendant.

4. To the best of my knowledge and belief, the Defendant:

a. Is competent and understands the charges and the consequences of pleading guilty as provided in this Agreement.

b. Executed this Agreement and will enter all guilty pleas pursuant hereto voluntarily.

c. Was not under the influence of intoxicating liquor, a controlled substance or other substance at the time of the execution of this Agreement.

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DATED this 17 day of Februy, 2015.

SHERBURNE M. MACFARLAN, III
Nevada Bar No. 3999
Attorney for Defendant

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EXHIBIT 4

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(Exh. #26 I
1 of 4

Case No. 14-CR-00635 4

FILED
ELKO TOWNSHIP
JUSTICE/MUNICIPAL COURT
2014 JUL 28 PM 3:06
CLERK

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

THE STATE OF NEVADA,

Plaintiff,

vs.

DEVON R. HOCKEMIER,

Defendant.

CONTINGENT MOTION TO TRANSFER CASE TO JUVENILE COURT

COMES NOW, the Defendant, by and through his attorneys of record, Lockie & Macfarlan, Ltd., and hereby contingently moves this Court for an Order transferring this case to Juvenile Court. This Motion is based upon the attached points and authorities, the attached affidavit of counsel, and any evidence adduced at a hearing on this matter.

DATED this 29 day of July, 2014.

SHERBURNE M. MACFARLAN, III
Lockie & Macfarlan, Ltd.
919 Idaho Street
Elko, Nevada 89801
Bar # 3999

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(Exh. #26 I, 2 of 4

POINTS AND AUTHORITIES

Factual Background:

The defendant has been charged with multiple counts of Sexual Assault and related offenses. The Criminal Complaint alleges these offenses occurred between September 1, 2009 and February 28, 2010. The Complaint does not specify specific dates for the offenses. The discovery provided by the District Attorney's Office suggests that the defendant's birth date is November 24, 1992. Thus, the alleged offenses occurred prior to the defendant turning eighteen years of age.

Argument:

NRS 62B.370(1) provides:

> Except as otherwise provided in this title, a court shall transfer a case and record to the juvenile court if, during the pendency of a proceeding involving a criminal offense, it is ascertained that the person who is charged with the offense was less than 18 years of age when the person allegedly committed the offense.

An exception to this rule is if the case had been transferred to adult court pursuant to NRS 62B.330.

NRS 62B.330 provides in pertinent part:

> 1. Except as otherwise provided in the title, the juvenile court has exclusive original jurisdiction over a child living or found within the county who is alleged or adjudicated to have committed a delinquent act.
>
> ***
>
> 3. For the purposes of this section, each of the following acts shall be deemed not to be a delinquent act, and the juvenile court does not have jurisdiction over a person who is charged with committing such an act:
>
> ***

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(Exh. #26.1 3 of 4

(b) Sexual assault or attempted sexual assault involving the use or threatened use of force or violence against the victim and any related offense arising out of the same facts as the sexual assault or attempted sexual assault, regardless of the nature of the related offense, if:

***

(1) The person was 16 years of age or older when the sexual assault or attempted sexual assault was committed; and

(2) Before the sexual assault or attempted sexual assault was committed, the person previously had been adjudicated delinquent for an act that would have been a felony if committed by an adult.

Counsel believes that at a hearing on this Motion, two facts will become apparent: (1) the defendant was seventeen years of age at the time of the alleged offenses, and (2) at the time of the alleged offenses, the defendant had not previously been adjudicated delinquent for an act that would have been a felony if committed by an adult.

CONCLUSION

Based on the foregoing, it is respectfully requested that after a hearing on this Motion, the case be transferred to Juvenile Court for further proceedings.

DATED this 28 day of July, 2014.

SHERBURNE M. MACFARLAN, III
Lockie & Macfarlan, Ltd.
919 Idaho Street
Elko, Nevada 89901
Bar # 3999

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(Exh #2CI)
4 of 4

AFFIDAVIT

County of Elko)
: ss
State of Nevada

Sherburne M. Macfarlan, III, being first duly sworn, deposes and says:

1. I am the court appointed attorney for the above-named petitioner;

2. To the best of my knowledge, the factual allegations contained within the forgoing Motion are accurate.

DATED this 28 day of July, 2014.

SHERBURNE M. MACFARLAN, III

Subscribed and sworn to before me this 28 day of July, 2014.

DANIELLE R. LEYVA
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 07-10-17
Certificate No: 93-1629-6

NOTARY PUBLIC

CERTIFICATE OF HAND DELIVERY

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Lockie & Macfarlan, Ltd., Attorneys at Law, and that on the 28 day of July, 2014, I hand-delivered a true and correct copy of the above and foregoing CONTINGENT MOTION TO TRANSFER CASE TO JUVENILE COURT to the following:

Elko Co. D.A. 540 Court St., 2nd Floor, Elko, NV 89801

Danielle Leyva

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Macfarlan Copy
(Exh. #26J)
1 of 7

CASE NO. 14-CR-00635

FILED
ELKO TOWNSHIP
JUSTICE/MUNICIPAL COURT
2014 AUG -6 PM 3:08
CLERK_____

IN THE ELKO JUSTICE COURT
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

THE STATE OF NEVADA,
Plaintiff,
vs.
DEVON RAY HOCKEMIER,
Defendant.

OPPOSITION TO CONTINGENT MOTION TO TRANSFER CASE TO JUVENILE COURT

COMES NOW, Plaintiff, State of Nevada, by and through its attorneys, MARK TORVINEN, District Attorney for the County of Elko, and JONATHAN L. SCHULMAN, Deputy District Attorney, and submits the following Points and Authorities in support of its Opposition, together with all pleadings and papers on file herein.

Dated this 6th day of August, 2014.

MARK TORVINEN
Elko County District Attorney

By: _____
JONATHAN L. SCHULMAN
Deputy District Attorney
State Bar Number: 9180

RECEIVED AUG 11 2014

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(Exh #26 J)
2 of 7

POINTS AND AUTHORITIES

I. Factual Background

Devon Hockemier ("Defendant") was charged with multiple counts of Sexual Assault on individuals under the age of 14 as well as related offenses. These offenses are alleged to have occurred between September 1, 2009, and February 28, 2010. The Defendant's date of birth is November 24, 1992, which could mean that some of the offenses occurred prior to the Defendant turning 18 years of age.

II Argument

The relevant sections of NRS 62B.370 that is relevant here states:

> 1. Except as otherwise provided in this title, a court shall transfer a case and record to the juvenile court if, during the pendency of a proceeding involving a criminal offense, it is ascertained that the person who is charged with the offense was less than 18 years of age when the person allegedly committed the offense.
>
> 2. A court shall not transfer a case and record to the juvenile court if the proceeding involves a criminal offense:
>
> (a) Excluded from the original jurisdiction of the juvenile court pursuant to NRS 62B.330; or
>
> (b) Transferred to the court pursuant to NRS 62B.335.

NRS 62B.330 is an exception that would prevent this case being sent to juvenile court. The relevant portions of NRS 62B.330 state:

> 1. Except as otherwise provided in this title, the juvenile court has exclusive original jurisdiction over a child living or found within the county who is alleged or adjudicated to have committed a delinquent act.
>
> ...
>
> 3. For the purposes of this section, each of the following acts shall be deemed not to be a delinquent act, and the juvenile court does not have jurisdiction over a person who is charged

(Exh. #26
3 of 7

with committing such an act:

...

(e) A category A or B felony and any other related offense arising out of the same facts as the category A or B felony, regardless of the nature of the related offense, if the person was at least 16 years of age but less than 18 years of age when the offense was committed, and:

(1) The person is not identified by law enforcement as having committed the offense and charged before the person is at least 20 years, 3 months of age, but less than 21 years of age; or

(2) The person is not identified by law enforcement as having committed the offense until the person reaches 21 years of age.

NRS 200.266(3) clearly states that Sexual Assault on a Child Under the Age of Fourteen Years of Age is a Category A felony so that part of NRS 62B.330(3)(e) is satisfied. The Defendant turned 18 years old on November 24, 2010, so the alleged acts occurred when the Defendant was at least 17 years old and perhaps 18 years old so that part of NRS 62B.330(3)(e) is satisfied as well.

? Criminally Charged time per. is Sept 1 2007 - Feb 28 2010

The police did not identify the Defendant as the person having committed the offense until he was 21 years old. The police were investigating other offenses when one of the alleged victims in this case on November 20, 2013, and he told the Detective that an individual who he used to live with during the time period charged did inappropriate things with him. The alleged victim was able to give a description of the person who allegedly did inappropriate things with him, but could not identify him. The Detective then ended the interview, and tried unsuccessfully to contact the alleged victim's mother. When the Detective interviewed the child's mother several days later, she informed him that the individual is the Defendant. The Defendant turned 21 years old on November 24, 2013, and

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the Detective did not learn his identify until November 25, 2013. That satisfied NRS 62B.330 (3)(e)(2) which does not make this a delinquent act so the Juvenile Court does not have jurisdiction in this case, and thus this case is appropriately charged in the Elko Justice Court.

There is some case law on this topic. State v. Barren deals with a Defendant who was charged with Category A or B felonies when he was seventeen years old, but he was not identified until after he reached 21 years old. State v. Barren, 279 P.3d 182, 183 (2012). The State filed charges in the Justice Court, but that court determined that it did not have jurisdiction because the State did not first file a petition in juvenile court. The juvenile court determined it did not have jurisdiction due to NRS 62B.330(3)(e)(2), and sent the case back to the justice court. The Justice Court then determined it had jurisdiction under NRS 62B.330(3)(e)(2). The Defendant filed a writ of mandamus in District Court asking for the case to be dismissed because of timing issues as NRS 62B.330(3)(e)(2) was enacted after the Defendant allegedly committed these crimes. The District Court granted the writ, and the case went to the Nevada Supreme Court. Id. 279 P.3d at 183-184.

The Barren Court started with determining which court has jurisdiction, and started off with the juvenile court's jurisdiction. The "Juvenile Court has exclusive jurisdiction over a *child* living or found within the county who is alleged or adjudicated to have committed a *delinquent act*. Id. 279 P.3d at 185 citing NRS 62B.330(1) (emphasis added by the Barren Court). NRS 62A.030(1)(b) defines a "child," as "[a] person who is less than 21 years of age and subject to the jurisdiction of the juvenile court for an unlawful act that was committed before the person reached 18 years of age." Id. NRS 62A.030(2) limits the definition of "child" as the term does not include a person who is excluded from the jurisdiction of the juvenile court pursuant to NRS 62B.330. NRS 62B.330(3) limits the broad definition of

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"delinquent act" by listing acts that are not considered to be "delinquent acts" and are therefore not within the juvenile court's exclusive original jurisdiction. Barren, 279 P.3d at 185. NRS 62B.330(3) excludes from the juvenile court's jurisdiction specific cases like Barren's. Id.

The dispute in Barren was whether 62B.330(3)(e)(2) applied as it did not go into effect until after the date that the Defendant allegedly committed the offenses. The Supreme Court eventually concluded that jurisdiction in Barren is determined on the date when the State initiated proceedings against him rather than the date when he alleged committed the offenses. Barren, 279 P.3d at 187. The Court ruled that at the time the State initiated proceedings, NRS 62B.330(3)(e)(2) was in effect and the juvenile court did not have jurisdiction. Id.

The Defendant in this case has been alleged to commit the crimes in the complaint after NRS 62B.330 was amended, and therefore the juvenile court does not have jurisdiction due to the Defendant not being identified until after he turned 21 years old, and he is charged with Category A felonies and related offenses which occurred after he turned 16 years old.

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III. Conclusion

The Court should deny the Defendant's motion as the juvenile court does not have jurisdiction over the Defendant pursuant to NRS 62B.330 which leaves this court as the only court that does have jurisdiction.

Dated this 6th day of August, 2014 .

MARK TORVINEN
Elko County District Attorney

By: _____
JONATHAN L. SCHULMAN
Deputy District Attorney
State Bar Number: 9180

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the Elko County District Attorney's Office, and that on the 6th day of August, 2014, I served the foregoing Opposition, by delivering, mailing or by facsimile transmission or causing to be delivered, mailed or transmitted by facsimile transmission, a copy of said document to the following:

By mailing to:

SHERBURNE M. MACFARLAN III
ATTORNEY AT LAW
919 IDAHO ST
ELKO, NV 89801

Kurri Sullivan
KURRI SULLIVAN
FELONY CASEWORKER

DA# 94099

EXHIBIT 5

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CASE NO. 14-CR-00635

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JUSTICE/MUNICIPAL COURT
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IN THE ELKO JUSTICE COURT
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

THE STATE OF NEVADA,
Plaintiff,
vs.
DEVON RAY HOCKEMIER,
Defendant.

OPPOSITION TO CONTINGENT MOTION TO TRANSFER CASE TO JUVENILE COURT

COMES NOW, Plaintiff, State of Nevada, by and through its attorneys, MARK TORVINEN, District Attorney for the County of Elko, and JONATHAN L. SCHULMAN, Deputy District Attorney, and submits the following Points and Authorities in support of its Opposition, together with all pleadings and papers on file herein.

Dated this 6th day of August, 2014.

MARK TORVINEN
Elko County District Attorney

By: _____
JONATHAN L. SCHULMAN
Deputy District Attorney
State Bar Number: 9180

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POINTS AND AUTHORITIES

I. **Factual Background**

Devon Hockemier ("Defendant") was charged with multiple counts of Sexual Assault on individuals under the age of 14 as well as related offenses. These offenses are alleged to have occurred between September 1, 2009, and February 28, 2010. The Defendant's date of birth is November 24, 1992, which could mean that some of the offenses occurred prior to the Defendant turning 18 years of age.

II **Argument**

The relevant sections of NRS 62B.370 that is relevant here states:

> 1. Except as otherwise provided in this title, a court shall transfer a case and record to the juvenile court if, during the pendency of a proceeding involving a criminal offense, it is ascertained that the person who is charged with the offense was less than 18 years of age when the person allegedly committed the offense.
>
> 2. A court shall not transfer a case and record to the juvenile court if the proceeding involves a criminal offense:
>
> (a) Excluded from the original jurisdiction of the juvenile court pursuant to NRS 62B.330; or
>
> (b) Transferred to the court pursuant to NRS 62B.335.

NRS 62B.330 is an exception that would prevent this case being sent to juvenile court. The relevant portions of NRS 62B.330 state:

> 1. Except as otherwise provided in this title, the juvenile court has exclusive original jurisdiction over a child living or found within the county who is alleged or adjudicated to have committed a delinquent act.
>
> ...
>
> 3. For the purposes of this section, each of the following acts shall be deemed not to be a delinquent act, and the juvenile court does not have jurisdiction over a person who is charged