

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Tracie K. Lindeman
Clerk of Supreme Court

JAQUEZ DEJUAN BARBER,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 62649

**OPPOSITION TO APPELLANT'S MOTION TO FILE JUVENILE COURT
DOCUMENTS UNDER SEAL IN THE APPENDIX**

**Appeal From Judgment of Conviction
Eighth Judicial District Court, Clark County**

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1 IN THE SUPREME COURT OF THE STATE OF NEVADA
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4 JAQUEZ DEJUAN BARBER,

5 Appellant,

6 v.

7 THE STATE OF NEVADA,

8 Respondent.
9

Case No. 62649

10 **OPPOSITION TO APPELLANT'S MOTION TO FILE JUVENILE COURT**
11 **DOCUMENTS UNDER SEAL IN THE APPENDIX**

12 COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County
13 District Attorney, through his Chief Deputy, JONATHAN E. VANBOSKERCK, and
14 files this Opposition to Appellant's Motion to File Juvenile Court Documents Under
15 Seal in the Appendix. This motion is filed pursuant to NRAP Rule 27 and is based on
16 the following memorandum and all papers and pleadings on file herein.
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18 Dated this 20th day of September, 2013.
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20 Respectfully submitted,

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

24 BY /s/ Jonathan E. VanBoskerck

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1 **ARGUMENT**

2 Appellant fails to provide a legitimate justification for ignoring a bedrock
3 principle of American jurisprudence. Courts and judicial records are open to the
4 public. As such Appellant's Motion to File Juvenile Court Documents Under Seal in
5 the Appendix (Sealing Motion) must be denied.
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8 This Court has held that, "[b]ased on an 'unbroken, uncontradicted history,
9 supported by reasons as valid today as in centuries past, we are bound to conclude that
10 a presumption of openness inheres in the very nature of a criminal trial under our
11 system of justice.'" Howard v. State, 128 Nev. Adv. Op. 67, p. ___, 291 P.3d 137, 139
12 (2012), quoting, Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 573, 100 S.Ct.
13 2814, 2825 (1980). This deeply rooted respect for one of the fundamental principles
14 of American jurisprudence caused this Court to:
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17 impose the following requirements for sealing records and documents in
18 the criminal cases pending in this court. First, a party seeking to seal a
19 document must file a written motion and serve the motion on all parties
20 involved in the action. Second, the motion must identify the document or
21 information the party seeks to seal. Third, the motion must identify the
22 grounds upon which sealing the subject documents is justified and
23 specify the duration of the sealing order. Although not an exhaustive list,
24 examples of court records in criminal proceedings that may be sealed in
25 this court include records containing privileged attorney-client
26 communications where the privilege has not been waived, records
27 containing information that is permitted or required under federal or
28 Nevada law to be sealed, and records containing information the sealing
of which is justified or required by an identified significant competing
interest. Fourth, the motion must explain why less restrictive means will
not adequately protect the material.

Howard, 128 Nev. Adv. Op. at ___, 291 P.3d at 143 (emphasis added).

1 The inherent defect in the Sealing Motion is the flawed premise. Appellant
2 erroneously contends that the documents in question are juvenile court records. Once
3 the Juvenile Division of the Eighth Judicial District Court (Juvenile Court) certified
4 Appellant for criminal proceedings in the Criminal Division of the Eighth Judicial
5 District Court (Criminal Court) any records associated with the offense of certification
6 were no longer subject to the protections afforded by NRS 62H.030.
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9 The jurisdiction of Juvenile Court is statutory and extends only so far as the
10 Legislature's grant of authority. Kell v. State, 96 Nev. 791, 792-93, 618 P.2d 350,
11 351 (1980) ("the juvenile court system is a creature of statute, and it possesses only
12 the jurisdiction expressly provided for it in the statute"). The Legislature has vested
13 jurisdiction over certified juveniles with the court to which they are certified: "If a
14 child has been certified for criminal proceedings as an adult ... [t]he court to which the
15 child's case has been transferred has original jurisdiction over the child." NRS
16 62B.390(5)(a). As such this Court has recognized that the jurisdiction of Juvenile
17 Court ends once Juvenile Court waives jurisdiction and transfers a case to Criminal
18 Court:
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23 *The order of the juvenile court transferring a child to the adult court is*
24 *the final order of the juvenile court in the civil proceedings pending*
25 *before it. After the juvenile is transferred, the juvenile court loses*
26 *jurisdiction over the juvenile. Thus, the order of certification is properly*
27 *appealable as a final judgment in a civil matter.*

28 Castillo v. State, 106 Nev. 349, 351, 792 P.2d 1133, 1134 (1990) (emphasis added).

1 Transfer not only includes jurisdiction over the person of the certified juvenile
2 and the certification offenses but necessarily imparts authority over documents related
3 to both. Thomas v. State, 88 Nev. 382, 385, 498 P.2d 1314, 1316 (1972) (“an order
4 certifying a minor to be treated as an adult carries with it not only power over the
5 minor, but also the right to consider, for purposes related to the subject offense,
6 records that relate to him.”). The certification order transfers authority over the
7 records as well as Appellant and as such Appellant’s reliance on NRS 62H.030 is
8 misplaced. Id. The certification order removed Appellant and the documents from
9 the protections of Chapter 62.¹ Once outside Juvenile Court’s jurisdiction, the
10 documents become public documents subject to review and scrutiny by the general
11 public. NRS 179A.100(1)(b); NRS 239.010(1).

12 Moreover, even if the documents are still considered Juvenile Court records in
13 the context of this appeal, Appellant’s reliance on NRS 62H.030 is still misplaced.
14 Juvenile Court is not a sealed environment and a great deal of information related to
15 juvenile court matters is of a public nature. Every bit of information placed in the
16 record at a juvenile court hearing is in the public arena since juvenile court
17 “proceeding[s] ... must be open to the public.” NRS 62D.010(2). Even information
18 designated as juvenile court records are potentially public information since NRS
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¹ A request to seal limited to the duration of an appeal might have been appropriate in the context of an appeal from a certification order pursuant to NRS 62D.500. However, Appellant’s failure to appeal from the certification order renders this possibility a moot point.

1 62H.150 prevents the sealing of certain juvenile records until the juvenile reaches age
2 of 30. Any record of the juvenile court may be opened for inspection on the basis of a
3 mere legitimate interest. NRS 62H.030. The ability to open a juvenile court record
4 on the basis of a mere legitimate interest is in addition to the right to have information
5 released for the purposes of a civil suit. NRS 62H.040. The victims of juvenile
6 offenders are entitled to know the outcome of the case. NRS 62D.440.

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9 Most tellingly, juvenile delinquents who are perceived as dangerous are already
10 subject to varying degrees of public disclosure. Schools must be notified and
11 provided case specific information whenever a juvenile delinquent is determined to
12 have “caused or attempted to cause serious bodily injury to another person[.]” NRS
13 62E.030(1). Juvenile sex offenders are subject to extensive public disclosure of
14 information derived from juvenile court records. See, State v. Eighth Judicial District
15 Court (Logan D.), 129 Nev. Adv. Op. 52, 306 P.3d 369 (2013). Further, NRS
16 62H.020 allows for the release of information to the news media and specifically
17 authorizes the news media to broadcast the name of a juvenile delinquent, the race of
18 a juvenile delinquent and the facts of the case under certain circumstances.

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21 These exceptions to the alleged “cone of silence” over juvenile proceedings
22 indicate a legislative decision to release information to the public where there is a
23 potential danger to public safety. This Court has stated that the primary purpose of
24 the certification process is public safety. In the Matter of Seven Minors, 99 Nev. 427,
25 443, 664 P.2d 947, 951 (1983), disapproved on other grounds as stated in, In re
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1 William S., 112 Nev. 432, 132 P.3d 1015 (2006). As such, a certification order more
2 than justifies removing the cloak of secrecy from documents related to an offense over
3 which the Juvenile Court has waived jurisdiction on the grounds of public safety.
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5 Juvenile Court's decision to waive jurisdiction is a judicial finding that
6 Appellant's offense and/or delinquent history required that he be prosecuted as an
7 adult and subject to the more meaningful punishment and deterrence of the criminal
8 system. This judicial determination was a specific choice to remove Appellant from
9 the special protections afforded under Chapter 62. As such Appellant may not avail
10 himself of the protections of Chapter 62 to erroneously seal records. This Court
11 should deny the Sealing Motion and order Appellant to file an amended appendix
12 containing the missing documents.
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16 CONCLUSION

17 WHEREFORE, the State respectfully requests that this Court deny the Sealing
18 Motion and direct Appellant to file an amended appendix including the missing
19 documents.
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21 Dated this 20th day of September, 2013.
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23 Respectfully submitted,

24 STEVEN B. WOLFSON
25 Clark County District Attorney
Nevada Bar # 1565

26 BY /s/ Jonathan E. VanBoskerck
27 JONATHAN E. VANBOSKERCK
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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 20th day of September, 2013. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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Nevada Attorney General

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Deputy Public Defender

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney

BY /s/ j. garcia
Employee, District Attorney's Office

JEV/jg