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Respondent.

Case No. 2649 Supreme Court

Docket 62649 Document 2013-28465

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POINTS AND AUTHORITIES

The State opposes Barbar’s Motion to seal his juvenile court records, contending that once the juvenile court certified Barber to the adult district court for criminal proceedings, “any records associated with the offense [that was certified are]. . .no longer subject to the protections afforded by NRS 62H.030.” Opp. at p. 3 lines 3-8. **The State cites to NO portion of NRS 62H.030 to support this alleged legal principle.**

The fact that the State is unable to point to any statute enacted by the Legislature which says that juvenile court records are no longer subject to the protections of confidentiality of NRS 62H.030 after a juvenile is certified to adult district court is troubling because the State also acknowledges that the jurisdiction of the juvenile court is purely statutory. Opp. P. 3, lines 9-10. Thus, without a statute indicating the alleged legal principle the State asserts, NRS 62H.030 governs this issue. Under NRS 62H.030, Barber’s juvenile court records must be kept confidential.

The State does not dispute that NRS 62H.030 requires juvenile records to remain confidential. But the State suggests that the juvenile records of a certified juvenile are different and directs the Court’s attention to NRS 62B.390(5)(a) which gives the adult criminal court personal jurisdiction over a child who is

1 certified for adult proceedings. Opp. p. 3, lines 13-28. However, this statute does
2 not eliminate the protections of NRS 62H.030.
3

4 Nonetheless, the State argues that once the adult criminal court obtains
5 personal jurisdiction over a child certified from juvenile court then ALL the
6 juvenile court records from the certified case are open for public inspection. Opp.
7 p. 4, lines 1-14. The State basis this contention in part on *Thomas v. State*, 88
8 Nev. 382, 385 (1972) which it claims justifies this result and allows the public
9 access to all records in juvenile court that relate to the child in accord with NRS
10 179A.100(1)(b); NRS 239.010(1).
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13 The State is incorrect. The *Thomas* Court's mention of access to juvenile
14 court records (without a juvenile court order) refers to an investigation conducted
15 by the Department of Parole and Probation for an adult presentence report which
16 contained a defendant's juvenile court delinquency history.
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19 In *Thomas*, a juvenile was convicted after certification to adult court. At
20 sentencing, the Department of Parole and Probation included the defendant's
21 juvenile delinquency history within the report. Thus, there was some discussion
22 regarding the defendant's confidential juvenile records within the confidential
23 adult presentence report. But presentence reports prepared by the Department of
24 Parole and Probation are confidential and not available for public inspection in
25 federal, state, and juvenile courts. NRS 62H.030; NRS 176.156; LCR 32-2.
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1 Thus, the State's argument against the confidentiality of confidential juvenile court
2 records fails because this was merely a matter of the confidential records being
3 placed within another confidential record.
4

5 Likewise, NRS 179A.100(1)(b) and NRS 239.010(1) do not support the
6 State's argument. NRS 179A.100(1)(b) does not discuss juvenile court records
7 and only seems to apply to a criminal defendant's criminal history, such as the
8 information contained within a judgment of conviction, rather than miscellaneous
9 court documents.
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12 The juvenile court documents within Volume IV on pages 652-710 are:

- 13 • Petition 2 in the Juvenile Court listing the delinquency allegations against
14 Barber filed May 13, 2009. IV:652-53; 700-01.
- 15 • Transportation order filed in Juvenile Court on 08/10/09. IV:654.
- 16 • Certification Petition filed in Juvenile Court on 08/13/09. IV:655-57.
- 17 • Memorandum of Points and Authorities in Support of Certification Petition
18 filed in Juvenile Court on 08/17/10. IV: 658-76.
- 19 • Certification Order filed in Juvenile Court on 08/16/10. IV:677-78.
- 20 • Warrant of Arrest filed in Juvenile Court on 08/18/10. IV:679-80.
- 21 • Transcript of Juvenile Court hearing on 09/27/10. IV:681-95.
- 22 • Certification to Adult Status Order filed in Juvenile Court on 09/27/10.
23 IV:696-99.
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- Juvenile Court minutes. IV;702-10.

Thus, none of these documents fall within the preview of NRS 179A.100(1)(b). However, one of the above documents was sent to the adult district court when Barber was certified: Certification to Adult Status Order.

When the juvenile court certified Barber's case to the adult district court, the juvenile court sent two documents: (1) Findings of Probable Cause and Transportation Order for a Certified Adult which was filed in juvenile court on 09/27/10; and (2) the Certification to Adult Status Order filed in juvenile court on 09/27/10. (Exhibit A filed under seal). It is unclear why the four page Certification to Adult Status Order was made part of the justice court file because it contains confidential information regarding the certification hearing and Barber's juvenile delinquency history: all of which is required to be confidential under 62H.030. Thus, the inclusion of this document appears to be in error.

The State's argument regarding NRS 239.010 is also incorrect. NRS 239.010 does not apply because it specifically excludes government records of matters deemed to be confidential from public inspection. All of the above mentioned documents are deemed confidential by NRS 62H.030.

Next, the State misleads this Court by suggesting that despite the wording of NRS 62H.030 which prohibits the public from gaining access to juvenile court records without a court order, NRS 62D.010 allows the public access to juvenile

1 court records because juvenile court proceedings are open to the public. Opp. p. 4-
2 6. NRS 62D.010(2) states: “ Except as otherwise provided in this subsection, each
3 proceeding conducted pursuant to the provisions of this title must be open to the
4 public.” However, the State fails to acknowledge that the open to the public rule is
5 not absolute. The juvenile court may close any proceeding to the public upon a
6 determination that “the closure is in the best interests of the child or the public.”
7
8 NRS 62D.010.
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11 Moreover, the State’s “open to the public” argument is wrong based on
12 statutory construction principles.
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14 It is a well-recognized tenet of statutory construction that multiple
15 legislative provisions be construed as a whole and where possible, a
16 statute should be read to give plain meaning to all of its parts. (cites
17 omitted). It is also well recognized that specific statutes take
precedence over general statutes.

18 *Gaines v. State*, 116 Nev. 359, 365 (2000). Thus, the plain language of NRS
19 62H.030 prohibits the dissemination, inspection, and review of juvenile documents
20 thereby making it a specific statute and allows it to take precedence.
21

22 Next, the State contends that juvenile records are “potentially public
23 information” records because NRS 62H.150 discusses the sealing of juvenile
24 records. Opp. p. 4-5. This is another erroneous argument because the sealing of
25 the records prohibits those within the criminal justice system (such as the police or
26 the Department of Parole and Probation) who are allowed access (by statute) to the
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1 juvenile court records (under certain circumstances) from being allowed to see
2 them at all. Moreover, the State forgot to mention that it is the policy of Nevada
3 to automatically sealed all juvenile court records when a child reaches the age of
4 21 years, unless the legislature enacts a specific exception to this confidentiality
5 rule. NRS 62H.140; NRS 62H.150. Thus, the State's argument is simply false.
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8 Another legally incorrect argument the State sets forth is that "any record of
9 the juvenile court may be opened for inspection on the basis of a mere legitimate
10 interest" citing to NRS 62H.030. NRS 63H.030(2) states: "Except as otherwise
11 provided in this section and NRS 217.110, records of any case brought before the
12 juvenile court may be opened to inspection only by court order to persons who
13 have a legitimate interest in the records." (Emphasis added). Thus, the State forgot
14 to mention the words: "by court order."
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18 Next, the State falsely contends that NRS 62H.040 combined with NRS
19 62H.030 allows the juvenile court to release juvenile court records for the purpose
20 of a civil suit. Neither of these statutes contain this legal proposition. NRS
21 62H.040 only allows the juvenile court to release the name of the juvenile.
22 Moreover, NRS 62H.040 is a specific statute related to civil cases arising out of a
23 juvenile delinquency petition. Statutory construction rules (cited previously)
24 indicate that because the legislature chose to only allow for the release of the
25 juvenile's name and did not include the release of juvenile records within the civil
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1 release statute, the legislature chose to exclude the release of juvenile records for a
2 civil case under NRS 62H.030.

3
4 Next, the State suggests that juvenile records are open to the public because
5 NRS 62D.440 allows victims to know the outcome of a juvenile case. Again,
6 there is nothing within NRS 62D.440 that suggests that a juvenile's records are
7 open to the public or open to the victim for inspection. Instead, it appears that
8 NRS 62D.440 recognizes a victim's rights as protected within the Nevada
9 Constitution. Nev. Const. Art. 1 Sec. 8. Under NRS 62D.440, a victim's
10 knowledge of a juvenile's record is limited to the victim learning the disposition of
11 the case.
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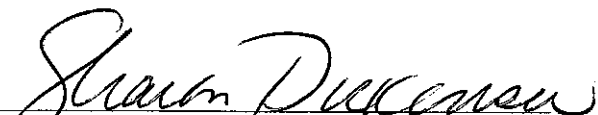
15 Next, the State argues that notification procedures that allowing public
16 disclosure of a juvenile's records show that juvenile records are open to inspection
17 by the public. The State references: (1) NRS 62H.030 (which allows the juvenile
18 court to inform a juvenile's school that a child "caused or attempted to cause
19 serious bodily injury to another person"); (2) juvenile sex offenders disclosures;
20 and (3) NRS 62H.020. The State compares notification statutes to certification
21 adjudications, claiming that because they are designed to protect public safety,
22 then the public should have access to all juvenile records once a child is certified
23 to adult court. Opp. p. 5-6.
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1 Again, there are no statutes that say certification procedures are designed to
2 notify the public about a juvenile's past adjudications. After a case is certified to
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4 adult court the proceedings in adult court are open to the public which means that
5 the public may learn about that particular case after that point.

6
7 Since the filing of Baber's Motion to seeking the sealing of his juvenile
8 court records, the prosecutor filed a motion to strike a portion of the Opening
9 Brief, attaching with it one of the documents that Barber asked this court to seal.
10
11 Thus, it appears that this prosecutor has made himself the decision-maker on this
12 issue (rather than this Court) by making one of the documents open to the public.

13
14 DATED this 23rd day of September, 2013.

15 PHILIP J. KOHN
16 CLARK COUNTY PUBLIC DEFENDER

17
18 By 
19 SHARON G. DICKINSON, #3710
20 Deputy Public Defender
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BY /s/ Carrie M. Connolly
Employee, Clark County Public
Defender's Office