

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

**REPLY TO OPPOSITION TO MOTION TO STRIKE PORTIONS OF
APPELLANT'S BRIEF FOR LACK OF JURISDICTION AND MOTION TO
HOLDING BRIEFING IN ABEYANCE**

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

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Counsel for Respondent

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 **REPLY TO OPPOSITION TO MOTION TO STRIKE PORTIONS OF**
11 **APPELLANT'S BRIEF FOR LACK OF JURISDICTION AND MOTION TO**
12 **HOLDING BRIEFING IN ABEYANCE**

13 COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County
14 District Attorney, through his Chief Deputy, JONATHAN E. VANBOSKERCK, and
15 files this Reply to Opposition to Motion to Strike Portions of Appellant's Brief for
16 Lack of Jurisdiction and Motion to Hold Briefing in Abeyance. This motion is filed
17 pursuant to NRAP Rule 27(a)(4) and is based on the following memorandum and all
18 papers and pleadings on file herein.
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20 Dated this 2nd day of October, 2013.

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22 Respectfully submitted,

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

25
26 BY /s/ Jonathan E. VanBoskerck

27 Jonathan E. VanBoskerck
Chief Deputy District Attorney
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Office of the Clark County District Attorney
28

1 **ARGUMENT**

2 Appellant's attempt to escape his failure to appeal the Certification Order is
3 premised upon the faulty assumption that the jurisdiction of the Criminal Division of
4 the Eighth Judicial District Court (Criminal Court) is dependent upon the jurisdiction
5 of the Juvenile Division of the Eighth Judicial District Court (Juvenile Court). It is
6 not and as such Arguments I and II should be struck from Appellant's Opening Brief
7 for lack of jurisdiction.
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10 Appellant contends that his failure to timely pursue appeal of the Juvenile Court
11 Certification Order is not fatal to Arguments I and II of his Opening Brief because "if
12 the juvenile court did not have jurisdiction then the district court could not have
13 jurisdiction." (Appellant's Opposition to State's Motion to Strike Issues within
14 Appellant's Opening Brief (Opposition), filed October 1, 2013). This Court explicitly
15 rejected this view in State v. Barren, 128 Nev. ___, 279 P.3d 182 (2012), where this
16 Court addressed jurisdictional issues related to transfer of jurisdiction from Juvenile
17 Court to Criminal Court. Barren held "that ... some court always has jurisdiction over
18 a criminal defendant." Id. at ___, 279 P.3d at 184. In reaching this unsurprising
19 conclusion Barren relied upon NRS 171.010, which states that "[e]very person ... is
20 liable to punishment by the laws of this state for a public offense[.]" This Court also
21 noted that Castillo v. State, 110 Nev. 535, 542, 874 P.2d 1252, 1257 (1994),
22 disapproved of on other grounds, Woods v. State, 111 Nev. 428, 892 P.2d 944 (1995),
23 had rejected a similar "home free" on jurisdictional grounds argument from a juvenile
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1 certified from juvenile to criminal court. Finally, this Court cited to extensive
2 authority standing for the proposition that the general jurisdiction of a district court
3 would grant jurisdiction over a juvenile defendant where the statutory jurisdiction of
4 juvenile court failed. Barren, 128 Nev. at ___, 279 P.3d at 184. This Court ended this
5 portion of the analysis by noting that the jurisdiction of the criminal courts of Nevada
6 is general and that the jurisdiction of the juvenile courts is statutory and limited. Id.
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9 As such, even if this Court had jurisdiction to address arguments I and II, any
10 discussion on the merits would lead to the conclusion that Criminal Court had
11 jurisdiction regardless of any jurisdictional defect in the Juvenile Court proceedings.
12 Either Juvenile Court appropriately transferred jurisdiction or the general jurisdiction
13 of Criminal Court would spring back into place upon a failure of Juvenile Court
14 jurisdiction.
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17 This Court should strike Arguments I and II of Appellant's Opening Brief for
18 lack of jurisdiction and deny Appellant's Sealing Motion as Moot.¹
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21 ¹ Appellant raises three issues that are irrelevant to this Court's lack of jurisdiction
22 over Arguments I and II but still should not go unaddressed. First, Appellant cites to
23 Truesdell v. State, 129 Nev. ___, 304 P.3d 396 (2013), as supporting his view that the
24 jurisdiction of this Court cannot be raised by motion but must instead be argued in an
25 answering brief. (Opposition, p. 4). Truesdell is silent on this point. Second,
26 Appellant complains that Respondent attached the Certification Order as an exhibit to
27 the Motion to Strike Portions of Appellant's Brief for Lack of Jurisdiction and Motion
28 to Holding Briefing in Abeyance (Motion to Strike). (Opposition, p. 5). Counsel for
Respondent was cognizant of Appellant's concerns; however, "[i]f a motion is
supported by affidavits or other papers, they *shall* be served and filed with the
motion." NRAP 27(a)(2) (emphasis added). The Certification Order, and its'
warnings regarding appellate obligations, supported the Motion to Strike and as such

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CONCLUSION

WHEREFORE, the State respectfully requests that this Court hold the briefing schedule in abeyance until such time as it strikes Arguments I and II from Appellant's Opening Brief for lack of jurisdiction and denies Appellant's Motion to File Juvenile Court Documents Under Seal in the Appendix, filed September 17, 2013, as moot.

Dated this 2nd day of October, 2013.

Respectfully submitted,

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Respondent attached them. Third, Appellant complains that the Motion to Strike is "a thinly veiled attempt to obtain a continuance ... or ... to deny Barber his rights to Due Process on appeal." (Opposition, p. 6-7). The Due Process complaint is accompanied by argument regarding the ethical obligations of a prosecutor. (Opposition, p. 6). The continuance contention is of questionable validity since the longstanding practice of the Clark County District Attorney and Public Defender has been to stipulate to or not oppose reasonable first time extension requests and this Court has been generous in granting such requests. As to the attack on this prosecutor's ethics, Counsel for Respondent is aware of the ethical obligations of a prosecutor and if Counsel for Appellant believes that the Motion to Strike was not a legitimate argument offered in reliance upon the precedents of this Court the appropriate venue for her allegation is the State Bar of Nevada. Counsel for Respondent will refrain from addressing the substance of Appellant's attacks upon the ethics of Counsel for Respondent unless directed to do so by this Court since the use of unfounded attacks upon the ethics of counsel tends to devalue the ethical rules as a means of promoting professional conduct by lawyers.

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BY /s/ j. garcia
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