

Electronically Filed  
Oct 04 2013 04:36 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

Appellant,

VS.

THE STATE OF NEVADA,

Respondent.

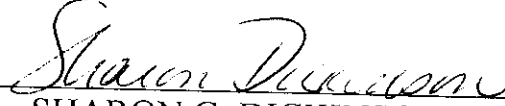
Case No. 62649

Comes Now Appellant JAQUEZ DEJUAN BARBER, by and  
Duty Public Defender SHARON G. DICKINSON, and replies to  
Opposition to his Motion to Strike” the juvenile court exhibit  
the “State’s Motion to Strike Issue I and Issue II of Appellant’s  
rief.” Within the “State’s Opposition to Strike the Exhibit,” the  
attached the same juvenile court exhibit – now for a second time  
ched pretrial services documents labeled “confidential.” Thus,

1 Barber asks this Court to strike the juvenile court documents and the 2  
2 documents marked "confidential."  
3

4 DATED this 4<sup>th</sup> day of October, 2013.

5 PHILIP J. KOHN  
6 CLARK COUNTY PUBLIC DEFENDER  
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9 By   
10 SHARON G. DICKINSON, #3710  
11 Deputy Public Defender  
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1 **POINTS AND AUTHORITIES**

2 The prosecutor argues that the motion to strike his exhibit should be  
3 denied based on all his arguments within his Opposition to the Sealing of the  
4 Juvenile Court documents and because the Certification Order was made  
5 public on 10/21/10. Opp. p. 2, lines 1-9.  
6

7  
8 The prosecutor contends that he is required to attach the Juvenile  
9 Court certification document (which he has now done twice) because NRAP  
10 27(a)(2) says: “[i]f a motion is supported by affidavits or other papers, they  
11 shall be served and filed with the motion.” Opp. p. 2. lines 15-24. But, the  
12 Juvenile Court document does not SUPPORT his argument. And, he added  
13 two additional documents that have the words CONFIDENTIAL clearly on  
14 the front. Even if these documents supported his argument, he could have  
15 filed the documents under seal or he could have referred to documents in the  
16 appendix or he could have left the documents off his motion.  
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21 The prosecutor gives a second reason for attaching the documents. He  
22 claims that he can attach the documents as an exhibit because the issue of  
23 sealing this particular Juvenile Court document, or the CONFIDENTIAL  
24 documents, is moot because they were available to the public through the  
25 district court bindover from justice court.  
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1 Basically, the prosecutor believes that once a document is made  
2 public (by mistake or plan) then the document is forever public even if it  
3 was suppose to be confidential as a matter of law. Thus, the next time  
4 someone mistakenly files a sexual assault victim's medical records (in  
5 violation of HIPAA rules) or forgets to redact the social security number of a  
6 witness (according to the court's rules) or attaches a defendant's PSI (in  
7 violation of NRS 176.156), even though this information is required to be  
8 kept confidential, Prosecutor VanBoskerck contends that he is free to do  
9 whatever he wants with the documents. Clearly, that is not correct.  
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14 As an officer of the court, if the prosecutor knows that a confidential  
15 document was mistakenly released, he should take steps to stop any further  
16 release. Moreover, in this case, in fairness to a defendant, when a motion to  
17 seal a document is pending before this Court, the prosecutor should delay  
18 attaching the document to his motion and instead wait for this Court's  
19 decision.  
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22 What began as a motion to seal juvenile court documents filed by  
23 Barber more than 2 weeks ago, has exploded with the prosecutor making a  
24 litany of fallacious arguments within a series of motions, oppositions, and  
25 replies. Thus, we are now seeing the modus operandi of the State when  
26  
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28

1 addressing *Howard v. State*, 128 Nev. Adv. Op. No. 67, 291 P.3d 137  
2 (2012), issues. Is this what the *Howard* Court contemplated?  
3

4 As previously noted, all juvenile records are confidential. NRS  
5 62H.030. Under NRS 62H.030, the public is denied access to inspect, copy,  
6 or review juvenile records unless the juvenile court issues an order allowing  
7 the information be made open to inspection. NRS 62H.030(2).<sup>1</sup> Thus, the  
8 Nevada Legislature enacted NRS 62H.030 with an acute awareness that  
9 public policy favors the confidentiality of all juvenile court records.  
10

11 Contrary to the mandates of NRS 62H.030, in *Howard v. State*, 128  
12 Nev. Adv. Op. No. 67, 291 P.3d 137 (2012), this Court held that there is a  
13 presumption in favor of allowing the public access to all documents filed  
14 within the Nevada Supreme Court. *Id.* at 142. At this juncture, the *Howard*  
15 decision makes every request for sealing documents a battle. The State  
16 began fighting the battle in *Howard*, won, and now battles all motions to  
17 seal.  
18

19 This Court can change this. Based on the above, and based on the  
20 past two weeks or more of litigation on the issue, Barber asks this Court  
21 issue a published order holding: any documents that have a juvenile court  
22 seal showing that they have been filed in juvenile court or documents  
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28 <sup>1</sup> There are some limited exceptions to this rule but none of the  
exceptions apply in this case.

1 showing the juvenile court minutes will be an automatic exception to the  
2 Howard sealing rules which allow for a battle of motions, replies, and  
3 oppositions. Instead, the Court could require the party seeking to seal the  
4 juvenile court documents within the Appendix to simply file a motion  
5 containing a cover sheet and an affidavit or declaration explaining that all  
6 the documents are juvenile court documents.  
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9  
10 Barber asks this Court to issue a public order, as the Court did in *Vest*  
11 *v. State*, 120 Nev. 699 (2004), thereby effectively eliminating what has  
12 occurred here from happening again in the future. This would prohibit the  
13 State from making the sealing of juvenile court records a battle in the future.  
14

15 Barber also asks this Court to Strike the exhibits attached to the  
16 State's motions. Knowing that the prosecutor will more than likely file  
17 another motion or several other motions after Barber files this Reply and that  
18 the prosecutor may likely continue to attach the Juvenile Court Certification  
19 document or other CONFIDENTIAL documents, Barber asks this Court in  
20 advance, to strike those also.  
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22

23 DATED this 4th day of October, 2013.  
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25 PHILIP J. KOHN  
26 CLARK COUNTY PUBLIC DEFENDER

27 By Sharon Dickinson  
28 SHARON G. DICKINSON, #3710  
Deputy Public Defender

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CATHERINE CORTEZ MASTO  
STEVEN S. OWENS

SHARON G. DICKINSON  
HOWARD S. BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to: JAQUEZ DEJUAN BARBER, NDOC No: 1039024, c/o High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070.

BY /s/ Carrie M. Connolly  
Employee, Clark County Public  
Defender's Office