

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Tara 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 MOTION TO RECONSIDER DENIAL OF 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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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 MOTION TO RECONSIDER DENIAL OF MOTION TO**
12 **FILE JUVENILE COURT DOCUMENTS UNDER SEAL IN THE APPENDIX**

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 Motion to
16 Reconsider Denial of Motion to File Juvenile Court Documents Under Seal in the
17 Appendix. This motion is filed pursuant to NRAP Rule 27 and is based on the
18 following memorandum and all papers and pleadings on file herein.
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20 Dated this 31st 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
28 Nevada Bar #006528
Office of the Clark County District Attorney

ARGUMENT

This Court recently described the motions practice in this matter as a “spate.” (Order, filed October 29, 2013, p. 1). Cognizant that such a description potentially does not reflect well on the attorneys involved, Respondent attempted to be careful regarding any response to Appellant’s Motion to Reconsider Denial of Motion to File Juvenile Court Documents Under Seal in the Appendix (Motion to Reconsider). (Appellant’s Motion to Reconsider Denial of Motion to File Juvenile Court Documents Under Seal in the Appendix, filed October 30, 2013). The instant reply is offered only to increase the scope of Respondent’s request to strike and to request clarification as to whether this Court will treat the Reconsideration Motion as brought under Nevada Rules of Appellate Procedure (NRAP) Rule 27 or NRAP Rule 40 so that Respondent can determine whether it has the option of filing an opposition.

Respondent’s concerns regarding Appellant’s citation to unpublished opinions are equally applicable to Appellant’s Opposition to State’s Motion to Strike Portions of Appellant’s Motion to Reconsider Denial of Motion to File Juvenile Court Documents Under Seal (Opposition to Motion to Strike Motion to Reconsider) and Appellant’s Amended Motion to Reconsider Denial of Motion to File Juvenile Court Documents Under Seal (Amended Motion to Reconsider). (Appellant’s Opposition to State’s Motion to Strike Portions of Appellant’s Motion to Reconsider Denial of Motion to File Juvenile Court Documents Under Seal, filed October 31, 2013; Appellant’s Amended Motion to Reconsider Denial of Motion to File Juvenile Court

1 Documents Under Seal, filed October 31, 2013). Both of these pleadings offer
2 citation to an unpublished opinion of this Court and the Opposition to Motion to
3 Strike Motion to Reconsider offers extended discussion of that precedent. Id.
4 However, “[a]n unpublished opinion ... of the Nevada Supreme Court shall not be
5 regarded as precedent and shall not be cited as legal authority[.]” Supreme Court
6 Rules (SCR) Rule 123. Appellant does not appear to disagree that a plain reading of
7 the text of SCR Rule 123 bars consideration of the unpublished opinion but offers
8 various arguments why the rule should not apply to this case. (Opposition to Motion
9 to Strike Motion to Reconsider, filed October 31, 2013, p. 2-4). This Court should
10 decline to rely upon the unpublished opinion and should strike reference to it from
11 Appellant’s various pleadings. However, if this Court concludes that there is
12 something unique about this case or the unpublished order, Respondent would request
13 leave of court to address the document without fear of violating SCR Rule 123.¹
14

15 Additionally, Respondent would request guidance from this Court as to whether
16 the Motion to Reconsider will be adjudicated under NRAP Rule 27 or Rule 40.
17 Respondent believes that the request to reconsider should be treated as arising under
18 NRAP Rule 40 since Appellant is asking this Court to rehear or reconsider an issue it
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25 ¹ While Counsel for Respondent may appear overly cautious regarding compliance
26 with the rules of this Court, Counsel for Respondent believes that such caution is
27 warranted since Appellant has already personally accused Counsel for Respondent by
28 name of unethical conduct and/or prosecutorial misconduct. (Appellant’s Opposition
to State’s Motion to Strike Issues within Appellant’s Opening Brief, filed October 1,
2013, p. 5-6).

1 has already disposed of. However, Respondent does not desire to forfeit the right to
2 oppose reconsideration if this Court views the request as properly brought under
3 NRAP Rule 27. Clarification from this Court would allow Respondent to determine
4 whether it may file an opposition pursuant to NRAP Rule 27(a)(3) or whether to wait
5 for direction from this Court pursuant to NRAP Rule 40(d).
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7 CONCLUSION

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9 WHEREFORE, the State respectfully requests that this Court strike the
10 reference to an unpublished opinion from Appellant's various pleadings or give the
11 State leave to address the unpublished opinion without fear of violation of SCR Rule
12 123. The State additionally requests clarification whether the Motion to Reconsider
13 will be adjudicated under NRAP Rule 27 or Rule 40 so the State can determine
14 whether it has the right to file opposition or whether an opposition will only be
15 accepted upon the invitation of this Court.
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19 Dated this 31st day of October, 2013.

20 Respectfully submitted,

21 STEVEN B. WOLFSON
22 Clark County District Attorney
Nevada Bar # 1565

23 BY */s/ Jonathan E. VanBoskerck*

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BY /s/ j. garcia
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JEV/jg