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### Summary of In re George J., 128 Nev. Advanced Opinion No. 32

Emily Navasca  
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CRIMINAL LAW AND PROCEDURE - JUVENILE JUSTICE

**Summary**

The Court considered an appeal from a district court's order transferring a juvenile case to justice court for adult criminal proceedings pursuant to NRS 62B.335.

**Disposition/Outcome**

The Court concluded that when NRS 62B.330(3) divests a juvenile court of jurisdiction, that court does not then obtain jurisdiction under NRS 62B.335. NRS 62B.335 applies to delinquent acts and not non-delinquent acts as defined by NRS 62B.330(3).

NRS 62B.330(3) defines non-delinquent acts that lie outside the scope of a juvenile court's jurisdiction. Pursuant to NRS 62B.330(3)(e)(1), a crime committed by a person between 16 and 18 years of age can be considered a non-delinquent act if the young person is identified and charged between the ages of 20 years and 3 months and 21 years of age, even if the crime would have been considered a category A or B felony if committed by an adult.

Under NRS 62B.335, if the person commits a delinquent act but is identified before reaching 21 years of age and apprehended after reaching 21 years of age, the juvenile court retains jurisdiction to conduct a hearing. The purpose of the hearing is to determine whether to dismiss charges or to transfer the case to district court for adult criminal proceedings.

The Court concluded that, when read together, NRS 62B.335 only applies to delinquent acts and not to non-delinquent acts defined under NRS 62B.330(3). Thus while the juvenile court lacked jurisdiction under NRS 62B.330(3) and erred when it held a hearing under NRS 62B.335, it reached the correct result by transferring the case to district court for adult criminal proceedings.

**Factual and Procedural History**

When Appellant was 17 years old, he allegedly committed acts which would be considered category A or B felonies if committed by an adult. The State later identified Appellant as the alleged perpetrator when Appellant was 20 years and 8 months of age. The State filed a delinquency petition when appellant was 20 years and 10 months of age. After Appellant turned 21, the State served him with the outstanding warrant for the charges in the petition.

In juvenile court, the State and Appellant disputed the applicability of NRS 62B.330(3)(e)(1) and NRS 62B.335. Appellant argued that while NRS 62B.335 better suited the facts of the case, it did not apply as it was not in effect at the time he allegedly committed the offenses and should not apply retroactively. The State argued for application of NRS 62B.330(3)(e)(1), divesting the juvenile court of jurisdiction. The juvenile court concluded that NRS 62B.335 applied to the case, and transferred it to justice court for criminal proceedings because there was probable cause to believe that Appellant committed the offenses.

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<sup>1</sup>By Emily Navasca.

## Discussion

Justice Hardesty wrote for the Court, sitting as a three justice panel. As both statutes were in effect at the time that the State initiated proceedings, the Court concluded that the statutes applied regardless of when Appellant allegedly committed the offenses.<sup>2</sup> The Court focused on which statutory provision applied in this case. Appellant argued that the Nevada Legislature intended NRS 62B.335 to apply to all individuals excluded pursuant to NRS 62B.330(3)(e)(1) and apprehended prior to their 21st birthday, while the State maintained that NRS 62B.330(3)(e)(1) divested jurisdiction from juvenile court.

Under NRS 62B.330(1), juvenile courts have exclusive jurisdiction over a child “who is alleged or adjudicated to have committed a delinquent act.”<sup>3</sup> NRS 62B.330(3) limits jurisdiction by listing non-delinquent acts, such as murder, attempted murder, sexual assault, and attempted sexual assault, which lie outside the scope of juvenile court jurisdiction. In 2009, the Nevada Legislature amended the statute to include as non-delinquent acts category A or B felonies and related offenses committed by a person between 16 and 18 years of age but not identified and charged before 20 years and 3 months of age.<sup>4</sup>

NRS 62B.335 also deals with juvenile court jurisdiction in regards to category A or B felonies and related offenses committed by a person between 16 and 18 years of age. However, this statute confers jurisdiction to conduct a hearing to determine whether to dismiss or transfer a case to district court for adult criminal proceedings. For such jurisdiction to be conferred, the person must have been charged and identified by law enforcement prior to reaching 21 years of age but was not apprehended until after 21 years of age.

The Court analyzed the apparent contradiction between the two provisions by reading the plain language of the statutes to determine legislative intent.<sup>5</sup> By interpreting the statutes in harmony with one another,<sup>6</sup> the court concluded that NRS 62B.335 only confers jurisdiction for hearings in cases dealing with delinquent acts, as non-delinquent acts lie firmly outside juvenile court jurisdiction under NRS 62B.330(3). Furthermore, reading NRS 62B.335 to apply to non-delinquent acts would circumvent the limiting purpose of NRS 62B.330(3) and grant jurisdiction to any juvenile case, creating an absurd result the Court wishes to avoid.<sup>7</sup>

In this case, the Court concluded that the juvenile court erred in maintaining jurisdiction to hold a hearing under NRS 62B.335, as NRS 62B.330(3)(e)(1) divested the juvenile court of jurisdiction. Pursuant to NRS 62B.330(3)(e)(1), Appellant committed non-delinquent acts when he was 17, acts that would have been classified as A or B felonies if committed by an adult. The

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<sup>2</sup> State v. Barren, 128 Nev. P.3d (Adv. Op. No. 31 , 2012).

<sup>3</sup> NEV. REV. STAT. § 62B.330(1) (2007).

<sup>4</sup> NEV. REV. STAT. § 62B.330(3)(e)(1) (2007).

<sup>5</sup> State v. Lucero, 127 Nev. \_\_\_, \_\_\_, 249 P.3d 1226, 1228 (2011); *see also* Hobbs v. State, 127 Nev. \_\_\_, \_\_\_, 251 P.3d 177, 179 (2011).

<sup>6</sup> Albios v. Horizon Communities, Inc., 122 Nev.409, 418, 132 P.3d 1022, 1028 (2006), Allianz Ins. Co. v. Gagnon, 109 Nev. 990, 993, 860 P.2d 720, 723 (1993); *see also* Leven v. Frev, 123 Nev. 899, 405, 168 P.3d 712, 716 (2007).

<sup>7</sup> Pellegrini v. State, 117 Nev. 860, 874, 34 P.3d 519, 528-29 (2001).

State identified and charged him when he was between the ages of 20 years and 3 months and 21 years. Even though the Court determined that the juvenile court erred in maintaining jurisdiction, the Court affirmed the decision because the juvenile court achieved the correct result when it transferred the case to district court for adult criminal proceedings.<sup>8</sup>

### **Conclusion**

When NRS 62B.330(3) divests a juvenile court of jurisdiction, that court does not then obtain jurisdiction under NRS 62B.335, as NRS 62B.335 applies only to delinquent acts and not non-delinquent acts as defined by NRS 62B.330(3).

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<sup>8</sup> See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).