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### Summary of Nevada v. Barren, 128 Nev. Adv. Op. 31

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*Nevada Law Journal*

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CRIMINAL LAW AND PROCEDURE – JUVENILE JURISDICTION

**Summary**

An appeal from a district court order granting writ of mandamus directing the justice court to dismiss a criminal complaint for lack of jurisdiction.

**Disposition/Outcome**

The Court reversed and remanded the district court's judgment to dismiss for lack of jurisdiction. The Court held that NRS 62B.330(3)(e)(2) - which divests juvenile jurisdiction when juvenile felons are identified after they turn 21 - governs jurisdiction over any proceeding initiated after the statute's effective date, regardless of when the offense was committed.

**Factual and Procedural History**

DNA collected from a 2005 kidnapping and sexual assault later identified the perpetrator as Gregory Barren in 2009. Barren was 17 at the time of the offense and 21 when he was identified. In October 2009, the State brought charges against Barren in justice court for first-degree kidnapping with a deadly weapon, sexual assault with a deadly weapon, and attempted sexual assault with a deadly weapon. Each charge was an A or B felony if committed by an adult.

The State brought charges against Barren in justice court, which transferred to juvenile court. However, juvenile court found it lacked jurisdiction because charges were not initiated before Barren turned 21. The case was subsequently transferred back to the justice court which accepted jurisdiction on the basis that newly enacted NRS 62B.330(3)(e)(2)<sup>2</sup> applied to the facts of Barren's case. The justice court noted that Barren would not have been subject to juvenile court jurisdiction even prior to the 2009 amendment, and Nevada law required that some court, district or juvenile, must always have jurisdiction over a criminal defendant.

Barren filed a petition for writ of mandamus requesting the district court order the justice court to dismiss for lack of jurisdiction. The district court granted the petition and remanded the case to the justice court to dismiss, reasoning that NRS 62B.330(3)(e)(2) could not apply retroactively because it would be an ex post facto violation. The State appealed.

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<sup>1</sup> By Amanda Ireland.

<sup>2</sup> NEV. REV. STAT. § 62B.330(3)(E)(1) (2009). The provision (which went into effect October 1) divests a juvenile court of jurisdiction over a person who committed a category A or B felony between 16 and 18 years of age, but is not identified by law enforcement as having committed the offense until the person reaches 21 years of age.

## Discussion

Justice Hardesty wrote the unanimous opinion of the Court sitting in a three justice panel. The Court stressed that some court always has jurisdiction over a criminal defendant. The issue here was not whether a court had jurisdiction, but which court had jurisdiction over Barren.

To determine jurisdiction in Barren's case, the Court examined the statutory scope of the juvenile court's jurisdiction. Under NRS 62B.330, "the juvenile court has exclusive original jurisdiction over a child . . . who is alleged or adjudicated to have committed a delinquent act."<sup>3</sup> The provisions defined a child as "[a] person who is less than 21 years of age and subject to the jurisdiction of the juvenile court for an unlawful act that was committed before the person reached 18 years of age."<sup>4</sup> However, the breadth of delinquency is limited by NRS 62B.330(3), which lists acts not within juvenile jurisdiction such as murder, sexual assault or felonies committed with a weapon. Further, NRS 62B.330(3)(e)(2) expressly excludes cases such as Barren's: (e) a category A or B felony . . . if the person was at least 16 years of age but less than 18 years of age when the offense was committed, and (2) the person is not identified by law enforcement . . . until the person reaches 21 years of age.

The parties disputed whether NRS 62B.330(3)(e)(2) governs jurisdiction in this case because it did not go into effect until after the date of the offenses.<sup>5</sup> The Court concluded that retroactivity analysis was unnecessary because "statutes 'conferring or ousting jurisdiction' that 'speak to the power of the court rather than to the rights or obligations of the parties' generally do not raise concerns about retroactivity."<sup>6</sup> Additionally, the Court noted that many courts have held that juvenile jurisdiction ". . . does not depend on the defendant's age at the time the criminal act was committed, but [on] his age at the time judicial proceedings were initiated."<sup>7</sup> In *State v. Little*, the Supreme Court of Oregon held that determining a juvenile court's jurisdiction based on the offender's age at the time of the offense could create "absurd" results.<sup>8</sup> Under such a rule "a person [could] commit crimes before his sixteenth birthday, happy in the knowledge that his worse fate, if caught, [would] be a brief period of treatment as a delinquent child."<sup>9</sup>

Statutory language limits juvenile jurisdiction to persons less than 21 years of age. So, to conclude that juvenile courts had exclusive jurisdiction over all offenses committed by minors regardless of their age when proceedings commenced would render statutory age limit language superfluous. To avoid such an "absurd result", contrary to the plain language of NRS 62B.330(3)(e), the Court concluded that jurisdiction in Barren's case was determined on the day the State initiated proceedings rather than the date Barren allegedly committed the offenses.

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<sup>3</sup> NEV. REV. STAT. 62B330(1) (emphasis added).

<sup>4</sup> NEV. REV. STAT. 62A030(1)(b).

<sup>5</sup> The Court noted that NRS 62B.330(3)(e)(2) applied to offenses already committed the day it went into effect, because the language referred to a person who "was" at least 16, when the offense "was committed."

<sup>6</sup> *Henry v. Ashcroft*, 175 F. Supp. 2d 688, 693 (S.D.N.Y. 2001) (quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 274 (1994)).

<sup>7</sup> *State v. Godines*, 236 P.3d 824, 829 (Or. Ct. App. 2010).

<sup>8</sup> 407 P.2d 627, 628-29 (Or. 1965).

<sup>9</sup> *Id.* at 630.

## **Conclusion**

NRS 62B.330(3)(e)(2) governs jurisdiction over any proceedings initiated after the provision went into effect on October 1, 2009, regardless of when the offense was committed.