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### Barber v. State, 131 Nev. Adv. Op. 103 (December 31, 2015)

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## CRIMINAL PROCEDURE: EVIDENCE

### Summary

The Court considered an appeal from a district court conviction. The Court reversed the Eighth Judicial District Court's judgment of conviction, pursuant to a jury verdict of burglary and grand larceny. The juvenile court retains jurisdiction over Barber because the legislation did not include language regarding jurisdiction stripping or dismissal requirements. However, the Court reversed the judgment because the prosecution presented insufficient evidence to support Barber's conviction.

### Background

On January 21, 2009, Aldegunda Mendoza returned home to find her home ransacked and property missing. When a Las Vegas Metropolitan Police Department (LVMPD) officer arrived, he quickly opined that someone had broken into the home via the master bathroom window. Robbie Dahn, a crime scene analyst called by the LVMPD officer, found several sets of fingerprints at the scene, one of which—a palm print—belonged to Appellant Barber.

The juvenile court issued an arrest warrant on May 12, 2009, and the State served the warrant the same day. Also on May 12, the State filed a juvenile delinquency petition charging Barber with burglary and grand larceny. The juvenile court had not made a final disposition regarding the petition by August 16, 2010 when the State filed a petition to certify Barber for criminal proceedings as an adult. The juvenile court granted the State's petition for certification as an adult. After a three-day trial, a jury convicted Barber on both counts.

### Discussion

#### **A. Did the Juvenile Court Have Proper Jurisdiction?**

Barber asserted that the juvenile court lost jurisdiction over him when they failed to make a decision regarding the State's delinquency petition within one year of the State filing the petition, as prescribed by NRS § 62D.310(3).<sup>3</sup> Because fifteen months passed before the juvenile court made a decision regarding the State's certification petition, Barber contended that the juvenile court exercised improper jurisdiction over him.

Because this jurisdictional issue was a matter of first impression before the Court, this matter required the Court to interpret NRS § 62D.310(3). This Court reviews questions of statutory interpretation *de novo*, with a focus on the legislative intent behind the statute.<sup>4</sup> The Court recognized that the "juvenile court system is a creation of statute" that possesses the powers granted to it by the statutes.<sup>5</sup> Because Barber committed the alleged acts when he was only 17 years old, the juvenile court possessed jurisdiction over him. However, Barber contends that the juvenile court lost jurisdiction over him when it failed to comply with the one year requirement of NRS § 62D.310(3). The Court disagrees.

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<sup>1</sup> By Ronni N. Boskovich.

<sup>3</sup> NEV. REV. STAT. § 62D.310(3) (2013).

<sup>4</sup> *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011).

<sup>5</sup> *Kell v. State*, 96 Nev. 791, 792-93, 618 P.2d 350, 351 (1980).

While the language in NRS § 62D.310(3) may seem clear,<sup>6</sup> the Court recognized that “the statute does not specify a remedy or sanction when the juvenile court does not comply with the statutory deadlines.”<sup>7</sup> If the Legislature intended to strip jurisdiction or require dismissal, explicit language would normally be included in the statute. Here, the Court looked to two other state statutes similar to NRS § 62D.310(3), both of which included express language regarding dismissal.<sup>8</sup> Furthermore, the Court noted a similar Vermont statute in which a Vermont court determined that the time constraints were suggestive rather than binding.<sup>9</sup>

Therefore, the juvenile court retains jurisdiction over Barber due to the absence of express statutory language articulating ramifications for noncompliance.

### **B. Did the Prosecution Present Sufficient Evidence?**

When examining the sufficiency of evidence, the Court considers “whether, after reviewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”<sup>10</sup> Here, the Court considered identity evidence, specifically whether fingerprint evidence is sufficient to uphold a conviction for burglary.

The location of Barber’s palm print served as the deciding factor in this case. This Court has previously held that a defendant’s fingerprints on objects *inside* the home were sufficient to identify the defendant without corroborating evidence.<sup>11</sup> However, Dahn discovered Barber’s palm print on the *outside* of the home, on the master bathroom window. In a later case, this Court, relying on *Carr*, held that a fingerprint on a window screen leaning against the house was sufficient evidence to support a burglary conviction.<sup>12</sup> However, because burglary requires entry,<sup>13</sup> fingerprints on the outside of the home without additional corroborating evidence are insufficient to support a burglary conviction. The Court thus overruled *Gieger* to that extent.

The prosecution did not introduce enough evidence during the trial to support Barber’s burglary conviction. The only evidence that the prosecution offered to support its theory was Barber’s palm print on the outside of the window, that Mendoza did not know Barber, and that there was no reason for Barber’s palm print to be on the window. The prosecution did not offer any evidence to prove that Barber actually entered the home or stole the property. Therefore, the limited evidence presented against Barber in this case is insufficient to support a conviction for burglary and grand larceny.

### **Conclusion**

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<sup>6</sup> NEV. REV. STAT. § 62D.310(3) (2013) (“The juvenile court shall not extend the time for final disposition of a case beyond 1 year from the date on which the petition in the case was filed.”).

<sup>7</sup> Barber v. State, 131 Nev. Adv. Op. 103 at 6 (Dec. 31, 2015).

<sup>8</sup> Fla. R. Juv. P. 8.090(m) (permitting dismissal); 705 Ill. Comp. Stat. Ann. 405/5-601(3) (2005) (requiring dismissal).

<sup>9</sup> In re J.V., 573 A.2d 1196, 1196 (Vt. 1990).

<sup>10</sup> Rose v. State, 123 Nev. 194, 202, 163 P.3d 408, 414 (2007).

<sup>11</sup> Carr v. State, 96 Nev. 936, 939, 620 P.2d 869, 871 (1980).

<sup>12</sup> Geiger v. State, 112 Nev. 938, 940-41, 920 P.2d 993, 995 (1996).

<sup>13</sup> See NEV. REV. STAT § 205.060(1) (2010).

Although the juvenile court does retain jurisdiction over Barber, the Court reversed the judgment of conviction from the lower court because the prosecution presented insufficient evidence to support a conviction for burglary and grand larceny.