



# Summaries of Published Opinions: The Nevada Supreme Court and Nevada Court of Appeals

The following summaries include, in bold, a case citation along with the primary areas of practice and/or subject matter addressed in the decisions. In addition, each summary identifies significant new rules of law or issues of first impression decided by Nevada's appellate courts.

These summaries are prepared by the state bar's Appellate Litigation Section as an informational service only and should not be relied upon as an official record of action. While not all aspects of a decision can be included in these brief summaries, we hope that readers will find this information useful, and we encourage you to review full copies of the Advance Opinions, which are located on the Nevada Supreme Court's website at: [https://nvcourts.gov/Supreme/Decisions/Advance\\_Opinions/](https://nvcourts.gov/Supreme/Decisions/Advance_Opinions/).

***Sena v. State*, 138 Nev., Adv. Op. 34 (May 26, 2002) (en banc) – Tolling statutes of limitations under NRS 171.095; unit of prosecution for incest; lesser included offenses; continuing offenses; courtroom closures.**

For purposes of NRS 171.095(1)(b), which governs statutes of limitations for offenses constituting sexual abuse of a child, a child sexual abuse victim's "discovery" of the crime bears the meaning established in *State v. Quinn*. The unit of prosecution for the crime of incest is one count per incestuous relationship.

Open or gross lewdness is not a lesser-included offense of child abuse, neglect, or endangerment via sexual abuse.

Because child abuse, neglect, or endangerment is a continuing offense, the State could only charge one count for the cumulative acts of abuse that occurred over time.

The district court did not "close" the courtroom in violation of defendant's constitutional right to a public trial when it directed the gallery that no one was to come or go during witness testimony or argument.

***Saticoy Bay, LLC Ser. 34 Innisbrook v. Thornburg Mortg. Sec. Tr. 2007-3*, 138 Nev., Adv. Op. 35 (May 26, 2022) (en banc) – Appeal from judgment in action to quiet title and distribute interpleaded funds.**

Before 2015, there was no statutory duty for a homeowners' association (HOA) to record a tender of the superpriority portion of the lien on a property. Therefore, a subsequent purchaser at a 2014 foreclosure sale could not assert a misrepresentation claim against the HOA or its agent for failing to proactively record such a tender.

***Shea v. State*, 138 Nev., Adv. Op. 36 (May 26, 2022) (en banc) – Motions to dismiss based on political question doctrine.**

A dismissal on the basis that a claim presents a nonjusticiable political question requires a showing that the political question has an inextricable link between one of the *Baker* factors and the controversy at issue. Here, appellant's claims that Nevada failed to provide an adequate education were precluded by the political question doctrine because Nevada's Constitution demonstrates a clear textual commitment of public education to the Legislature.

***Thomas v. State*, 138 Nev., Adv. Op. 37 (May 26, 2022) (en banc) – Post-conviction petitions in capital cases.**

The court directed the district court to conduct an evidentiary hearing on whether petitioner could demonstrate cause and prejudice to avoid the procedural bars relating to his claims that the post-conviction attorney who challenged his subsequent death sentence was ineffective for failing to challenge a juror and failing to challenge trial counsel's mitigation investigation.

***Vargas v. J. Morales Inc.*, 138 Nev., Adv. Op. 38 (June 2, 2022) – Special orders after final judgment.**

Orders granting NRCP 60(b)(1) motions filed more than 60 days after entry of judgment are appealable special orders entered after final judgment. Relief may not be sought under NRCP 60(b)(6) when it would have been available under NRCP 60(b)(1)-(5). A party who seeks relief from a judgment based on mistake or excusable neglect may not rely on NRCP 60(b)(6)

to circumvent the six-month time limit for obtaining such relief under NRCP 60(b)(1).

***Guidry v. State*, 138 Nev., Adv. Op. 39 (June 2, 2022) – Jury instructions; Double Jeopardy Clause.**

Reviewing for plain error, the court reversed defendant's conviction for second-degree murder because the trial court's second-degree murder instruction erroneously included language from the involuntary manslaughter statute, omitted the inherently dangerous test for second-degree felony murder, and permitted a conviction without a finding of malice. Additionally, the court held that dual convictions for robbery and grand larceny do not violate the Double Jeopardy Clause.

***Harris v. State*, 138 Nev., Adv. Op. 40 (June 2, 2022) – Section 1983 civil rights claims; defective service.**

Appellant met the subjective and objective components of the deliberate-indifference standard for sufficiently pleading a deprivation of rights claim under 42 U.S.C. § 1983 by pleading that prison staff denied a grievance and disregarded an excessive risk of injury. Further, a party is allowed a *reasonable time* to cure defects in service by fulfilling at least one of the two service of process requirements of Rule 4.2(d)(2) on public officers/employees, and regardless of whether a motion for extension of time has been filed.