

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAYSHAWN BAILEY,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
COUNTY OF CLARK, THE
HONORABLE MICHELLE LEAVITT,
DISTRICT COURT JUDGE,

Respondent,

THE STATE OF NEVADA,

Real Party in Interest.

No. Electronically Filed
Jan 12 2021 08:45 a.m.
(DC No. C-20-347887-1)
Elizabeth A. Brown
Clerk of Supreme Court

**APPENDIX TO PETITION FOR WRIT OF
PROHIBITION/MANDAMUS**

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

v.

JAYSHAWN D. BAILEY,

CASE NO. C-20-347887-1

DEPT. NO. XII

HEARING DATE REQUESTED

PETITION FOR WRIT OF HABEAS CORPUS

TO: The Honorable Judge of the Eighth Judicial District Court of
The State of Nevada, in and for the County of Clark

The Petition of Jayshawn D. Bailey submitted by KATHLEEN M. HAMERS,
Deputy Public Defender, as attorney for the above-captioned individual, respectfully affirms:

1. That he/she is a duly qualified, practicing and licensed attorney in the City
of Las Vegas, County of Clark, State of Nevada.

2. That Petitioner makes application for a Writ of Habeas Corpus; that the
place where the Petitioner is imprisoned actually or constructively imprisoned and restrained of
his liberty is the Clark County Detention Center; that the officer by whom he is imprisoned and
restrained is the Sheriff of Clark County Nevada.

3. That the imprisonment and restraint of said Petitioner is unlawful in that:
Justice Court probable cause finding was based on inadmissible evidence.

4. Pursuant to N.R.S. 34.700, the Defendant does NOT waive the 60 day

1 limitation to be brought to trial, however, Petitioner consents that if Petition is not decided within
2 15 days before the date set for trial, the Court may, without notice of hearing, continue the trial
3 indefinitely to a date designated by the Court.

4 6. That Petitioner personally authorized his aforementioned attorney to
5 commence this action.

6 WHEREFORE, Petitioner prays that this Honorable Court make an order
7 directing the County of Clark to issue a Writ of Habeas Corpus directed to the said the Sheriff of
8 Clark County Nevada, commanding him to bring the Petitioner before your Honor, and return the
9 cause of his imprisonment.

10 DATED this 18th of May, 2020.

11 DARIN F. IMLAY
12 CLARK COUNTY PUBLIC DEFENDER

13
14 By: /s/Kathleen M. Hamers
15 KATHLEEN M. HAMERS, #9049
16 Deputy Public Defender
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DECLARATION

KATHLEEN M. HAMERS makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and I am familiar with the facts and circumstances of this case.

2. That I am the attorney of record for Petitioner in the above matter; that I have read the foregoing Petition, know the contents thereof, and that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true; that Petitioner, JAYSHAWN D. BAILEY, personally authorizes me to commence this Writ of Habeas Corpus action.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 18th day of May, 2020.

/s/Kathleen M. Hamers
KATHLEEN M. HAMERS

1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

3 COMES NOW the Petitioner, JAYSHAWN D. BAILEY, by and through his
4 counsel, KATHLEEN M. HAMERS, the Clark County Public Defender's Office, and submits
5 the following Points and Authorities in Support of Defendant's Petition for a pre-trial Writ of
6 Habeas Corpus.

7 **STATEMENT OF FACTS**

8 Jayshawn Bailey is charged with one count of murder. A preliminary hearing took place
9 on April 1, 2020. The State presented two witnesses, Dr. Christina Di Loreto and Detective
10 Ryan Jaeger. Jayshawn called 911 to report a dead body in the sewer near his home. On January
11 19, 2020, he reported that he saw two people put something in the sewer about a month ago. He
12 said that he opened up the sewer two weeks later and saw a body inside. A couple weeks later,
13 his conscience got to him, so he called police. Transcript of April 1, 2020, Preliminary Hearing
(hereinafter "PHT") at 22-23.

14 At the time that police recovered the body, the decedent in this case had lived nearby and
15 been reported missing. PHT at 28. Detectives interrogate Jayshawn Bailey on January 21, 2020,
16 and numerous times on January 21, 2020.

17 An autopsy was conducted on January 20, 2020. PHT at 6. The medical examiner was
18 unable to discover any fatal traumatic injury or toxicological cause of death. Id at 13-15.
19 However, based on "suspicious circumstances," investigative information and the Defendant's
20 statements she nevertheless determines the manner of death to be homicide. PHT 15.

21
22 **ARGUMENT**

23 I. Applicable Law

24 The Writ of Habeas Corpus is the fundamental instrument for safeguarding individual
25 freedom against arbitrary and lawless action. Its preeminent role is recognized by the
26 admonition that: 'The Privilege of the Writ of Habeas Corpus shall not be suspended.' Harris v.
27 Nelson, 394 U.S. 286, 290-91, 89 S.Ct. 1082 (1969).
28

Further, “the basic purpose of the writ is to enable those unlawfully incarcerated to obtain their freedom...” Johnson v. Avery, 393 U.S. 483, 485; 89 S.Ct. 747 (1969). Since 1912, the Nevada Supreme Court has recognized that the writ of habeas corpus is the plain, speedy and adequate remedy by which to determine the legal sufficiency of the evidence supporting a grand jury indictment. *See for example Eureka County Bank Habeas Corpus Cases*, 35 Nev. 80; 126 P. 655 (1912); Ex parte Stearns, 68 Nev. 155; 227 P.2d 971 (1951); and, Ex parte Colton, 72 Nev. 83; 295 P.2d 383 (1956).

II. Probable Cause Standard

During preliminary hearing proceedings, the State must elicit sufficient evidence demonstrating probable cause that a crime was committed and that the accused was likely the perpetrator. Sheriff v. Miley, 99 Nev. 377, 379; 663 P.2d 343, 344 (1983). If the magistrate determines that evidence establishes probable cause that the defendant committed an offense, the magistrate binds the defendant over to the district court and may admit the defendant to bail. See NRS 171.206. On the other hand, if the evidence does not establish probable cause, the magistrate must discharge the defendant. Id.

At the preliminary hearing stage, probable cause to bind a defendant over for trial “may be based on ‘slight,’ even ‘marginal’ evidence because it does not involve a determination of guilt or innocence of an accused.” Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). The State is required to present sufficient evidence “to support a reasonable inference that the accused committed the offense.” Sheriff v. Milton, 109 Nev. 412, 414, 851 P.2d 417, 418 (1993), quoting Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971).

Additionally, the evidence received at a preliminary hearing must be legal, competent evidence. Goldsmith v. Sheriff, 85 Nev. 295, 303; 454 P.2d 86, 91 (1969). No other type of evidence may be considered, as the rules of evidence require the production of legal evidence

1 and the exclusion of whatever is not legal. Id. (quoting People v. Schubert, 71 Cal.App.2d 733,
2 163 P.2d 498 (1945)). Due process requires adherence to these rules of evidence. Id. There is
3 not one rule of evidence for the trial of cases and another rule of evidence for preliminary
4 examinations—the rule for the admission or rejection of evidence is the same for both
5 proceedings. Id. The rule which requires less evidence at a preliminary examination, or even
6 slight evidence, merely goes to the quantum, sufficiency or weight of evidence and not to its
7 competency, relevancy, or character. Id.

9
10 In this case, inadmissible expert opinion evidence was admitted at preliminary hearing and
11 Defendant's statements were presented in violation of the corpus delicti rule.

12 III. Inadmissible Expert Opinion Evidence

13 An expert can only render opinions on matters within their area of expertise. The medical
14 examiner's area of expertise in this case, is medical examination. Her opinions must be limited
15 to those based on the medical examination of the decedent in this case, not investigative
16 information such as statements and suspicions. In this case, Dr. Di Loreto's opinion as to
17 manner of death, homicide, based on "suspicious circumstances" and investigative information
18 was improper. It is unclear if she relied on statements made by the Defendant in forming her
19 opinion. She testified both that she did rely on his statement, PHT at 15, and that she did not,
20 PHT at 19. Basing her opinions on statements made by the defendant is not basing her opinion
21 on her medical expertise. The medical examiner's opinion testimony that the manner of death in
22 this case was homicide is outside her area of expertise and should not have been admitted.

23 IV. Inadmissible statements made by the Defendant

24 In order to introduce admissions made by a defendant, the State must first present sufficient
25 evidence of the corpus of a crime. Hicks v. Sheriff 86 Nev. 67 (1970) In a murder case, the
26 corpus of the crime is death by criminal agency. Id., 70. "At the very least, there must be
27
28

1 established independent of any confession or admission by the accused, the fact of death and that
2 it resulted from the criminal agency of another and not from natural causes, accident or suicide.”
3 Id., citing Sefton v. State, 72 Nev. 106 (1956).

4 Here, the State relied on Dr. Di Loreto’s opinion testimony that the manner of death is
5 homicide in order to establish death by criminal agency prior to admitting statements made by
6 Jayshawn. PHT at 31-32. Not only was this improper opinion evidence that should not have
7 been admitted and cannot therefore be relied upon to establish death by criminal agency, but
8 even if the State had presented legal evidence that the manner of death in this case was homicide,
9 that determination does NOT establish death by criminal agency. The designation of homicide
10 only establishes that the death was caused by another person, not by criminal agency as is
11 required to establish the corpus of murder.

12 Since the State failed to first establish death by criminal agency, no admissions made by
13 Jayshawn should have been admitted at preliminary hearing.

14 CONCLUSION

15 The remaining evidence in this case, without including the above inadmissible evidence,
16 is insufficient to charge Jayshawn with the charge of murder. The medical examiners opinion
17 that the manner of death is homicide and Jayshawn’s statements to police should not have been
18 admitted. Without that evidence, the State failed to present sufficient evidence. Therefore, the
19 instant case should be dismissed.

20
21 DATED this 18th of May, 2020.

22 DARIN F. IMLAY
23 CLARK COUNTY PUBLIC DEFENDER

24
25 By: /s/Kathleen M. Hamers
26 KATHLEEN M. HAMERS, #9049
27 Deputy Public Defender
28

1 **NOTICE**

2 TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

3 YOU WILL PLEASE TAKE NOTICE that the foregoing PETITION FOR WRIT OF
4 HABEAS CORPUS will be heard on a date and time to be scheduled and notified by District
5 Court Master Calendar.

6
7 DATED this 18th day of May, 2020.

8 DARIN F. IMLAY
9 CLARK COUNTY PUBLIC DEFENDER

10
11 By: /s/Kathleen M. Hamers
12 KATHLEEN M. HAMERS, #9049
13 Deputy Public Defender
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16

17 **CERTIFICATE OF ELECTRONIC SERVICE**

18 I hereby certify that service of the above and foregoing PETITION FOR WRIT
19 OF HABEAS CORPUS was served via electronic e-filing to the Clark County District
20 Attorney's Office at motions@clarkcountyda.com on this 18TH day of May, 2020
21

22 By: /s/ Sara Ruano
23 An employee of the
24 Clark County Public Defender's Office
25
26
27
28

EXHIBIT



1 CASE NO. C347887

2

3

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

4

COUNTY OF CLARK, STATE OF NEVADA

5

6

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 vs.) CASE NO. 20F01585X

10 JAYSHAWN BAILEY,)

11 Defendant.)

12 _____)

13

REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING

14

BEFORE THE HONORABLE HARMONY LETIZIA
JUSTICE OF THE PEACE

15

16 WEDNESDAY, APRIL 1, 2020
9:30 A.M.

17

18 APPEARANCES:

19 For the State:

M. SCHWARTZER, ESQ.
S. OVERLY, ESQ.
DEPUTY DISTRICT ATTORNEYS

20

21

22 For the Defendant:

K. HAMMERS, ESQ.
A. CLARK, ESQ.
DEPUTY PUBLIC DEFENDERS4

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25

Reported by: CHRISTA BROKA, CCR. No. 574

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1 LAS VEGAS, CLARK COUNTY, NEVADA,

2 APRIL 1, 2020 AT 9:30 A.M.

3 P R O C E E D I N G S

4

5

6 THE COURT: Jayshawn Bailey, 20F01585X. This is
7 the time and date scheduled for the preliminary hearing. We
8 are going to have Mr. Bailey remain in the box. Before we get
9 the first witness ready to go are there any preliminary matters
10 we need to address?

11 MR. SCHWARTZER: No, Your Honor. I anticipate
12 based on the testimony of the coroner I am going to amend the
13 criminal complaint on line 13 where it says by strangling
14 and/or asphyxiation and/or unknown means. That's something I
15 intend to do after the coroner if the coroner's testimony is
16 different than what I expect it to be.

17 THE COURT: We have the coroner testifying and who
18 is the other witness?

19 MR. SCHWARTZER: Ryan Jaeger.

20 THE COURT: There is nobody in the courtroom right
21 but if there were any witnesses we would order them out and not
22 to discuss their testimony.

23 MR. SCHWARTZER: Right. We had the victim of the
24 sister here. My understanding is we are not opening to the
25 public based on COVID 19.

1 THE COURT: Right. Thank you so much. Good
2 morning. We can see and hear you. Can you see us and hear us?

3 THE WITNESS: Yes.

4 THE COURT: We are here on Jayshawn Bailey,
5 20F01585X. State can call their first witness.

6 MR. SCHWARTZER: Dr. Christina Di Loreto.

7 THE COURT: Ma'am, can you stand up and raise your
8 hand to swear you in?

9 THE CLERK: Please raise your right hand. Do you
10 solemnly swear the testimony you are about to give be the
11 truth, the whole truth, and nothing but the truth so help you
12 God?

13 THE WITNESS: I do.

14 THE CLERK: Can you please state and spell your
15 first and last name for the record.

16 THE WITNESS: My name is Christa Di Loreto.
17 C-H-R-I-S-T-I-N-A. Last name D-I, space, L-O-R-E-T-O.

18 THE COURT: Thank you, ma'am. Mr. Schwartzer?

19 MR. SCHWARTZER: Thank you, Your Honor.

20

21 DIRECT EXAMINATION

22 BY MR. SCHWARTZER:

23 Q. Doctor, I see some documents in front of you right now
24 is that your report for this case?

25 A. It is and my subpoena.

1 Q. If you need to refer to your report can you let us know
2 that you need to refer to your report and then you will be able
3 to do so. Okay?

4 A. Okay.

5 Q. Doctor, could you tell us what you do for a living?

6 A. I am a forensic pathologist with the Clark County
7 Coroner's Office.

8 Q. How long have you been doing that?

9 A. I've have been with the office since July of 2018.

10 Q. And in order to be a doctor at the coroner's office I
11 assume you have to have a medical degree; is that correct?

12 A. Yes, correct.

13 Q. You went through some post graduate as well to be
14 pathologist; is that correct?

15 A. Correct.

16 Q. You've testified before in your role as a coroner in
17 the Clark County judicial system?

18 A. Yes.

19 Q. About how many times?

20 A. Approximately ten.

21 Q. That includes jury trials, grand jury, and preliminary
22 hearings?

23 A. Correct. This is the first preliminary hearing, yes.

24 Q. Grand juries and jury trials?

25 A. Yes.

1 Q. Doctor, as a coroner I imagine you do autopsies?

2 A. Yes.

3 Q. How many autopsies, and I know you may not have an
4 exact number, but how many autopsies do you believe you have
5 conducted over the last few years?

6 A. I have performed over 500 post mortem examinations that
7 includes autopsies, external examinations, and head
8 examinations.

9 Q. Now I want to direct your attention to an autopsy you
10 did on January 20th, 2020 specifically autopsy case number
11 20-00363. Are you familiar with that autopsy?

12 A. Yes.

13 Q. Did you personally conduct that examination?

14 A. I did.

15 Q. Was the individual you performed the autopsy
16 identified?

17 A. Yes.

18 Q. What was her name?

19 A. Tamyah Trotter.

20 Q. And how old was Miss Trotter?

21 A. Seventeen-years old.

22 Q. When you conducted your examination what's the first
23 thing you do?

24 A. The first thing I do is an external examination of the
25 body so that includes noting any identifying marks, such as

1 scars and tattoos and hair color and documenting injury.

2 Q. Did you do that in this case?

3 A. Yes.

4 Q. Did you find anything of note in the external
5 examination of Miss Trotter?

6 A. Her body was decomposing.

7 Q. Were you able you tell -- are you able to tell how long
8 the body was decomposing with any certainty?

9 A. No.

10 Q. Are you able to ballpark at all or is that impossible
11 as well?

12 A. It is. Based on the circumstances I could estimate but
13 not based on the examination of the body, no.

14 Q. Based on circumstances and by circumstances what do you
15 mean?

16 A. That she has been reported missing in December.

17 Q. You're talking about the timeline that was provided to
18 you by your investigator?

19 A. Correct.

20 Q. Besides the fact Miss Trotter's body was decomposing
21 did you find anything else of note in your external
22 examination?

23 A. No.

24 Q. After you did the external examination what would be
25 the next thing you would do?

1 A. Then we move on to the internal examination which that
2 includes opening the body cavity and examining the organs in
3 the body cavity and then removing the organs to examine them
4 individually.

5 Q. When you were doing that did you find had any injuries
6 of note?

7 A. No.

8 Q. Did you find anything else of note like natural disease
9 or anything outside of a traumatic injury?

10 A. I did not.

11 Q. After you do that what was your next step in your
12 examination?

13 A. In this particular case I also submitted tissue to look
14 at under the microscope to see if there was microscopic natural
15 disease that could be identified and also to find any evidence
16 of injury microscopically. I also performed a toxicology
17 study.

18 Q. Are you familiar with the toxicology findings?

19 A. Yes.

20 Q. Was there anything of note within the toxicology
21 findings?

22 A. The toxicology testing detected ethanol in the blood.

23 THE COURT: Ethanol in the what?

24 THE WITNESS: In the blood.

25 / / /

1 BY MR. SCHWARTZER:

2 Q. What does that indicate to you as a medical examiner?

3 A. In this case it could either be that alcohol was
4 consumed and/or it's present as a decomposition product.

5 Q. Now either/or, could obviously if it was part of the
6 decomposing product it wouldn't be recent for a death but let's
7 say it was alcohol consumed is there an indication that would
8 have been a cause of death?

9 A. No, not at this level.

10 Q. We can be clear when you took the toxicology report you
11 mentioned when you talk about toxicology you mentioned that the
12 body was decomposing were you still able to get blood from the
13 Miss Trotter's body?

14 A. Yes.

15 Q. You were able to -- that was the thing that was
16 submitted for the toxicology?

17 A. Yes, that is what the testing was conducted on.

18 Q. So despite the fact that there has been some
19 decomposing you were still able to acquire that blood?

20 A. Correct.

21 Q. Now you also mentioned you got microscopic slides as
22 well; is that correct?

23 A. Correct.

24 Q. Did you review those microscopic slides as well?

25 A. I did.

1 Q. Did you find anything of note during microscopic
2 slides?

3 A. I did not. There were decomposition changes.

4 Q. Now in your -- we mentioned that you wrote an autopsy
5 report, Doctor?

6 A. Correct.

7 Q. During your report you did mention there was a possible
8 soft issue -- issues with soft tissue and intermuscular
9 hemorrhage, is that correct, in the neck and left lower
10 extremity?

11 A. Yes. In the neck and in the left lower extremity but
12 microscopically I was not able to confirm hemorrhage or injury.

13 Q. So the marks -- what are these marks? How would you
14 view them? Are they dark? Are they light? What would they be
15 like?

16 A. In the neck there was one of the muscles of the neck
17 had some darker discoloration relative to the surrounding
18 tissue.

19 Q. Sure. So could that be an indication of an injury?

20 A. It's possible but I was not able to confirm that.

21 Q. Like you said you did microscopic exams and there
22 wasn't any further evidence of that hemorrhaging; right?

23 A. Correct.

24 Q. And there was nothing -- there was no acute skeletal
25 injury as well?

1 A. Correct.

2 Q. So it fair to say that could have been an injury or a
3 product of decomposing?

4 A. Correct.

5 Q. So you mentioned that you didn't find any natural
6 diseases as well so there was nothing to indicate she died of
7 something natural; is that correct?

8 A. There was not.

9 Q. Now, while talking about asphyxiation and/or choking
10 would that always leave hemorrhaging markings in someone's
11 neck?

12 A. Not necessarily, no.

13 Q. When would it not leave a mark on someone's neck?

14 A. When compression -- when the asphyxia is due to
15 compression of internal structures of the neck depending on how
16 that pressure is applied it may not leave external or internal
17 evidence of injury.

18 Q. So for example if you applied pressure to the carotid
19 artery would that necessarily leave a mark?

20 A. No.

21 Q. And if you applied pressure to the carotid artery for a
22 significant period of time could that cause death?

23 A. Yes.

24 Q. Let's define what a significant portion is. If someone
25 applies pressure to a carotid artery in your opinion as a

1 medical examiner how long would it take for someone to go
2 unconscious?

3 A. So if you had bilateral compression of the carotid
4 artery consciousness can be lost in approximately ten to
5 fifteen seconds.

6 Q. How long do you have to apply that pressure for it to
7 continue to -- let me stop there. Sorry. Bad question.

8 So you can lose consciousness within ten to fifteen
9 seconds from pressure applied to your carotid artery, would you
10 regain consciousness at some point?

11 A. If pressure is released one could regain consciousness
12 within ten to twenty seconds.

13 Q. So pretty quickly?

14 A. Yes.

15 Q. Kind of like holds that we see in UFC and wrestling? I
16 guess if you're familiar with that.

17 A. I am not familiar with that.

18 Q. That's fair. So you would regain consciousness if it
19 was applied for that period of time. How about applying
20 pressure to a carotid artery that would lead to death how long,
21 in your opinion, does that have to be applied for?

22 A. With sustained pressure a couple of minutes.

23 Q. By a couple just to be specific you're talking about
24 one to two minutes, two to three minutes or just a wide range?

25 A. More of a range. It depends upon the sustained

1 pressure as well as the individual factors such as their
2 overall health, things like that.

3 Q. Okay. Now, with Miss Trotter did you see anything else
4 regarding her health? Was she a fairly healthy seventeen-year
5 old? Was she a sick seventeen-year old? Can you tell is
6 anything about her physical condition?

7 A. Yes, I find no anatomic natural disease. I attempted
8 an all area medical record search and only found one medical
9 record.

10 Q. What was that for?

11 A. I believe she had gastroenteritis.

12 Q. Okay. Sorry, go ahead.

13 A. Just a diarrheal illness that appeared to be resolved.

14 Q. I guess a stomach bug or something?

15 A. Yes.

16 Q. Would that have affected her overall health if that
17 stomach had passed?

18 A. No.

19 Q. So outside of this medical record for having a stomach
20 issue at some point she appeared to be a healthy seventeen-year
21 old?

22 A. Correct.

23 Q. Doctor, were you able to come up with a cause and
24 manner of death?

25 A. Yes.

1 MS. HAMMERS: I'm going to object to her testimony
2 as to manner. I think she is qualified to talk about cause of
3 death. The manner of death I don't think her qualifications
4 would go to.

5 THE COURT: Mr. Schwartzner?

6 MR. SCHWARTZER: I think by statute she's as a
7 medical examiner for the coroner's office by statute is able to
8 -- she is supposed to give an opinion regarding cause and
9 manner. If you want me to establish more in her expertise in
10 determining death, I can do so.

11 THE COURT: Ms. Hammer?

12 MS. HAMMERS: I think in this case what she is
13 relying on according to her report and based on what she says
14 she comes up with a manner of death based on circumstances,
15 suspicious circumstances, investigative information, and not
16 anything that has to do with the examination of the body.

17 MR. SCHWARTZER: That's still what someone
18 considers for cause and manner of death.

19 THE COURT: All right.

20 MR. SCHWARTZER: Circumstances are absolutely
21 something that can factor into that.

22 THE COURT: The objection is overruled. You can
23 answer the question. Do you need him to repeat it?

24 THE WITNESS: Yes, please.

25 / / /

1 BY MR. SCHWARTZER:

2 Q. Sure. Doctor, after your examination were you able to
3 determine a cause and manner of death in Miss Trotter's case?

4 A. Yes.

5 Q. Can you tell us what the cause would be?

6 A. The cause of death was homicide by unspecified means.

7 Q. And what does that mean unspecified means?

8 A. It's where no fatal traumatic injury was identified.
9 No fatal natural disease was identified. No toxicological
10 cause of death was identified. There are suspicious
11 circumstances such as an intent to hide the body from view.

12 Q. The suspicious circumstances how would you determine
13 those? How did you find out those suspicious circumstances?

14 A. We have our own investigators in our office that attend
15 the scenes and initiated a death investigation from our office.

16 Q. Did you consider -- are you familiar that Mr. Bailey
17 gave a statement in this case?

18 A. Yes.

19 Q. Did you consider his statement while considering your
20 cause of death?

21 A. I did.

22 Q. Then what would be your determination of manner of
23 death?

24 A. Homicide.

25 MR. SCHWARTZER: I have no further questions.

1 I'll pass the witness.

2 THE COURT: Cross-examination.

3 MS. HAMMERS: Thank you.

4

5 CROSS-EXAMINATION

6 BY MS. HAMMERS:

7 Q. Doctor, can you hear me?

8 A. Yes.

9 Q. When someone has died by strangulation what types of
10 things would you expect to see?

11 A. Well you can see petechial hemorrhages in the eyes
12 around the face. You may see external injury to the neck as
13 well as internal injuries such as hemorrhages in the skeletal
14 muscle and other soft tissues. You could also see fracture of
15 the laryngeal structures into the hyoid bone or the thyroid
16 cartilage.

17 Q. And you didn't see any of those things in this case?

18 A. I did not.

19 Q. And as far as asphyxiation again if we were talking
20 about a non-decomposed body, what types of things would you
21 expect to see?

22 A. Well asphyxia is a very broad term under which
23 strangulation falls. In asphyxia in general you may not have
24 see any findings or the findings maybe nonspecific. You may
25 see --

1 Q. Go ahead. You may see what?

2 A. You may see petechial hemorrhages, maybe congestion of
3 the tissues what we call fluidity of the blood it doesn't clot
4 up. There's nonspecific findings and you can also find no
5 negative findings or no findings.

6 Q. The things you just listed you could see, you didn't
7 see any of them in this case?

8 A. Correct.

9 Q. And when you have a body that has begun decomposing or
10 is decomposed is there a way you classify that as far as a
11 little decomposed, a lot decomposed, further along in
12 decomposition?

13 A. I kind of do a generalization. I try in my report to
14 be more descriptive to just describe the decomposition changes.

15 Q. Okay. I want to use your words they are better than
16 mine, was this body very decomposed?

17 A. No.

18 Q. And decomposition takes some period of time; right?

19 A. Correct.

20 Q. And is there a way we can at least say this is a death
21 that could not have occurred that day or the day before? Is
22 there a timeframe that you would be comfortable with? What I
23 mean by that is: This body must have been decomposing for at a
24 least certain period of time?

25 A. I could say with confidence that the death did not

1 occur on the day that the body was found. A decomposition
2 there are generalizations you can make but it also varies
3 depending on the external environment and the internal
4 environment how fast or slow changes occur. I can't be more
5 specific?

6 Q. Nothing beyond that day. From what you are looking at
7 it is entirely possible it happened the day before?

8 A. It could have been -- I can't say.

9 Q. I wanted to go back to what you were testifying to on
10 direct examination as far as examining both the body and
11 medical records to determine health. Do you understand what I
12 mean?

13 A. No.

14 Q. For your determination that you had no signs that was
15 anything other than a healthy seventeen-year old?

16 A. Correct.

17 Q. Did find evidence of gallstones?

18 A. I did.

19 Q. Okay. That something that was not based on medical
20 records but something that you saw in your own examination?

21 A. Correct.

22 Q. How are you able to see that?

23 A. When I examined the liver the gallbladder is attached
24 to the liver. I opened the gallbladder visualized gallstones.

25 Q. When you make a determination as far as manner of death

1 and you make a determination that's a homicide in this case;
2 that's right?

3 A. Yes.

4 Q. You said that was based on information you received
5 from the coroner's investigator?

6 A. And photographs showing where the decedent was found.

7 Q. Is part of what you considered statements that were
8 made by the defendant in this case?

9 A. No.

10 MS. HAMMERS: I don't have any other questions.
11 Thank you.

12 THE COURT: Any redirect?

13 MR. SCHWARTZER: Just one thing.

14

15 REDIRECT EXAMINATION

16 BY MR. SCHWARTZER:

17 Q. Doctor?

18 A. Yes.

19 Q. The gallstones mentioned by defense counsel did that
20 factor into Miss Trotter's death at all based on your
21 examination?

22 A. No. That was incidental findings. People often have
23 gallstones.

24 MR. SCHWARTZER: Nothing further, Your Honor.

25 THE COURT: Anything based on that?

1 MS. HAMMERS: Nothing.

2 THE COURT: Thank you very much, ma'am, for
3 testimony. You are free to log off. Please don't discuss your
4 testimony with anyone. Thank you, ma'am.

5 THE WITNESS: Thank you.

6 THE COURT: That's it for our witnesses by Blue
7 Jean.

8 State, who is your next witness?

9 MR. SCHWARTZER: State calls Detective Ryan
10 Jaeger.

11 THE CLERK: Please raise your right hand. Do you
12 solemnly swear the testimony you are about to give be the
13 truth, the whole truth, and nothing but the truth so help you
14 God.

15 THE WITNESS: I do.

16 THE CLERK: Please be seated. State and spell
17 your name for the record.

18 THE WITNESS: My name is Ryan Yaeger, R-Y-A-N,
19 J-A-E-G-E-R.

20 THE COURT: Thank you. Mr. Schwartzer?

21

22 DIRECT EXAMINATION

23 BY MR. SCHWARTZER:

24 Q. Sir, how are you employed?

25 A. Currently I am employed as a detective with the Las

1 Vegas Metropolitan Police Department assigned to the homicide
2 section.

3 Q. How long have you been a detective?

4 A. I've been a detective fifteen years.

5 Q. How long have been in homicide?

6 A. Just over three.

7 Q. I want to direct your attention to January 19th of
8 2020. Were you working as a homicide detective at that time?

9 A. I was.

10 Q. Were you called out to a scene out here in Clark
11 County, Nevada?

12 A. I was.

13 Q. Where was the scene on January 19th, 2020?

14 A. The scene was at the intersection of Fred Brown and
15 Dwayne Stedman.

16 Q. And that's here in Clark County?

17 A. That's correct. It's near Lake Mead and Martin Luther
18 King that part of town.

19 Q. By the time -- let me ask you this: What was the
20 nature of the call that you were responding to?

21 A. The police department had received a 911 call and the
22 caller stated that about a month prior he noticed two people
23 putting something in the sewer right up the street from his
24 house. He waited approximately two weeks, went down to the
25 sewer, and saw a body. He waited another couple of weeks and

1 his conscience got to him so he called the police to report a
2 body down in the sewer.

3 Q. Before you would have arrived uniformed patrol officers
4 responded?

5 A. That's correct.

6 Q. Would the uniform patrol officers vetted to see if
7 there was actually somebody in the sewer?

8 A. That's correct. The first arriving uniformed patrolmen
9 actually removed the sewer cover and could look from the street
10 level down in the sanitary sewer and see the body.

11 Q. Once they see what they determined to be a body or
12 deceased person in the sewer that's when homicide would be
13 called out?

14 A. That's correct.

15 Q. When you get called out do you get called out by
16 yourself or do you get called out by team? How do you guys get
17 called out?

18 A. We are called out as a squad. There's six detectives
19 and one sergeant gets called out.

20 Q. Do you work with a partner as well?

21 A. We do. Within each case you're assigned a case agent
22 and the case agent always work in pairs. My partner in this
23 case was Detective Buddy Embrey.

24 Q. Did you and Detective Embrey arrive around the same
25 time?

1 A. Close proximity, yes.

2 Q. Was it determined that this was going to be -- that
3 someone was going to take the lead in this case?

4 A. We work on a rotation. Based on the rotation I lead on
5 the case.

6 Q. You are what we call the case agent?

7 A. That's correct.

8 Q. As a case agent is part of your responsibility
9 delegating what people do?

10 A. That's correct.

11 Q. In this case what were -- what did you do at the scene
12 initially and what did you have the other detectives do?

13 A. So my role was dedicated to the scene. The body and
14 crime scene. I delegated Detective Embrey to do the interview
15 with Jayshawn Bailey who was the PR on the call.

16 Q. So Jayshawn Bailey was determined to be the person who
17 did the 911 call?

18 A. That's correct.

19 Q. Was he there on the scene as well?

20 A. He was.

21 Q. Do you see him in the courtroom today?

22 A. Yes, I do.

23 Q. Can you point to him and identify a piece of clothing?

24 A. He's in the blue shirt and the gold glasses.

25 MR. SCHWARTZER: Let the record reflect the

1 Detective identified Mr. Bailey?

2 THE COURT: The record will so reflect.

3 BY MR. SCHWARTZER:

4 Q. Could you tell this Court about that scene, how would
5 you describe the scene?

6 A. The scene was actually the sanitary sewer so when you
7 flush your toilet everything from the toilet goes down to these
8 pipes. It's a manhole that sits level with the street. When
9 the manhole is removed about five feet below street level is a
10 two feet round it's a pipe that runs into the ground with the
11 sewage running through it. Inside the pipe was the body. Next
12 to the body was a blue Puppy Chow dog food bag, a black plastic
13 bowl and like a fake flower petal.

14 Q. Were photographs taken of the scene?

15 A. They were.

16 Q. Now, you're not the person who had specifically taken
17 the photographs?

18 A. I was not.

19 Q. That would be someone else, right, a crime scene
20 analyst?

21 A. A crime scene analyst. I believe Heather Ovens took
22 the photographs.

23 Q. You're familiar with the photographs from that day?

24 A. That's correct.

25 Q. In fact as the case agent you reviewed those yourself?

1 A. That's correct.

2 Q. You would have personally seen them yourself -- you
3 would have personally seen what was being photographed?

4 A. That's correct.

5 MR. SCHWARTZER: Your Honor, may I approach?

6 THE COURT: Yes.

7 BY MR. SCHWARTZER:

8 Q. Let's start with State's Proposed Exhibits 1 through 5.
9 Detective, just quietly look through those and see if you
10 recognize those photographs.

11 A. These are photographs taken of the crime scene on the
12 19th.

13 Q. You recognize these photographs from that scene that
14 were taken near or at that time this investigation was going on
15 on January 19th?

16 A. Yes, I did.

17 MR. SCHWARTZER: Move for admission of 1 through
18 5, Your Honor.

19 MS. HAMMERS: I have to clarify. You recognized
20 those because these are things you saw?

21 THE WITNESS: Yes.

22 MS. HAMMERS: Not because these are photographs
23 that someone gave you previously and just seen the photographs?

24 THE WITNESS: I recognized these photographs
25 because I was standing at the scene as the photographs were

1 taken.

2 MS. HAMMERS: That's all I wanted to clarify.

3 Thank you. No objection.

4 THE COURT: State's 1 through 5 will be admitted.

5 BY MR. SCHWARTZER:

6 Q. On Exhibits 1 through 5 those show -- those depict the
7 scene; is that correct?

8 A. Yes.

9 Q. Could you go through the photographs, go through them
10 with the Judge and tell the Judge what you are seeing?

11 THE COURT: You can go through them and then I'll
12 look at them.

13 THE WITNESS: The top of the first one is an
14 overview of where Fred Brown and Dwayne Stedman meet. It just
15 shows the sanitary sewer cover in the middle of the road. It's
16 kind of an overview. The second one -- the second one is the
17 manhole cover has been removed and it's a shot from street
18 level down looking into the sanitary sewer.

19 BY MR. SCHWARTZER:

20 Q. This also shows that Puppy Chow bag as well?

21 A. It does. The second pictures is a close up more in
22 focus detail view of what was in the sanitary sewer.

23 Q. Again showing the bag?

24 A. The Puppy Chow dog food bag, that's correct. This next
25 picture just shows the steps that were taken to get detectives

1 down into the sewer and the method we used to hoist the body.

2 THE COURT: Can we identify what number is on the
3 back?

4 THE WITNESS: State's 5.

5 THE COURT: Thank you.

6 THE WITNESS: Now we are back to State's Exhibit 4
7 this just shows that once the body is removed the legs of body
8 were actually plugging the flow of the drain and causing the
9 water level inside the pipe to rise. This just shows once the
10 body is removed the functioning water level of the sewer.

11 BY MS. HAMMERS:

12 Q. How was body removed?

13 A. We had detectives from our armored section put straps
14 around it and actually hoist the body out.

15 Q. Once that happened what happened with the material that
16 was inside the sewer?

17 A. There was a jacket with a green stripe kind of
18 underneath the body. The space was confined that only one
19 person could fit in there. When you were down there you
20 couldn't bend over because your knees would hit one side and
21 your butt would hit the other side. So they got a strap around
22 it and when they lifted it up the jacket fell off and the
23 pressure of the current of all the pent up water washed the
24 jacket from underneath the body into the drain. Then the level
25 of the drain quickly subsided to working level.

1 Q. Were you able to recover that jacket or did the jacket
2 become lost in the sewer system?

3 A. The jacket became lost in the sewer system.

4 Q. What you have is the 911 call and you have a body in
5 the sewer. Were you able to identify who that body was?

6 A. There was a missing persons report that we were made
7 aware of very early on in the investigation of Tamyah Trotter
8 and she lived about six houses away from this sewage drain.

9 Q. At that point in your investigation do you start to
10 investigate this as the person that being that missing person
11 Tamyah Trotter?

12 A. We weren't really sure but we were going with the
13 investigation that it was her.

14 Q. How far away -- the 911 caller was the defendant
15 Mr. Bailey. Were you able to determine where he was living at
16 that time?

17 A. He was living at 2120 which was three houses away from
18 where the sewer was.

19 Q. Were you able to determine -- you mentioned that Tamyah
20 Trotter was about four houses away from this sewage that's
21 where she was living?

22 A. She was living with her sister, that's correct. I
23 don't know her address. It's on the same street. 2126 maybe.

24 Q. That's what I'm getting at is both the defendant and
25 Miss Trotter's residences were close to each other?

1 A. That's correct.

2 Q. Now, Mr. Bailey gave a statement to another detective;
3 is that correct?

4 A. That's correct.

5 Q. And that would be your partner?

6 A. Yes, Detective Embrey.

7 Q. But you weren't present during that initial statement?

8 A. I was not.

9 Q. Fair to say on January 19th, 2020, Mr. Bailey wasn't
10 arrested?

11 A. He was not.

12 Q. On January 20th, 2020, did you attend the autopsy?

13 A. We did.

14 Q. On January 21st, 2020, did you have a follow-up
15 investigation with the defendant?

16 A. We did. Detective Embrey reached out to Jayshawn
17 Bailey and requested that he take a polygraph test.

18 Q. Did Mr. Bailey agree to do so?

19 A. He did. He actually -- we had the test scheduled for
20 12:30 that afternoon. At first he asked if we could schedule
21 it later because he had to take a college courses. He had a
22 class and then he said that it was important he take the test
23 and he changed his class schedule to meet us.

24 Q. Where did he meet you at?

25 A. We actually drove to his house to pick him up and drove

1 him to headquarters.

2 Q. Specifically where at headquarters did you talk to
3 Mr. Bailey?

4 A. Headquarters is kind of set up in a U. It's three
5 buildings. We have an A building, a B building, and a C
6 building. The bottom part of the U is the B building and it
7 took place on the second floor of the B building.

8 Q. By headquarters you're talking about that building on
9 Bonneville and --

10 A. It's Martin Luther King and Alta.

11 Q. At that point did a polygraph operator become involved
12 as well?

13 A. That's correct.

14 Q. Before Mr. Bailey was going through a polygraph
15 examination and was asked any further questions was he
16 Mirandized?

17 A. He was.

18 Q. Was that Miranda captured on tape?

19 A. It was.

20 Q. Did Mr. Bailey acknowledge that he understood his
21 rights?

22 A. He did.

23 Q. Did he continue to do the polygraph?

24 A. He did. There's also a consent for polygraph form that
25 he completed.

1 Q. That also includes waiver of Miranda rights?

2 A. That's correct.

3 Q. And did you witness the polygraph?

4 A. We were not in the room. The polygraph is video and
5 audio recorded and we watch it remotely from a different
6 location.

7 Q. You have a live feed?

8 A. That's correct.

9 Q. I'm not going to get into the questions asked by the
10 polygraph examiner but at the end of the examination did you
11 then re-interview Mr. Bailey?

12 A. We did.

13 Q. And that would be you and who else?

14 A. Detective Embrey.

15 Q. And during this interview did the story change from
16 what you talked about the 911 call?

17 A. It did.

18 Q. Can you tell the Court how that statement changed?

19 MS. HAMMERS: I'm going to raise an objection. I
20 think that -- I'm not going to do this on every question, all
21 of these statements I think there are corpus problems here
22 because we have an individual who had died. We have not
23 established this was a death by criminal agency. So we haven't
24 met corpus for murder. I think beyond that we can't admit
25 statements by Mr. Bailey as far as confessions or admissions.

1 I would be objecting to any of them coming in.

2 THE COURT: Mr. Schwartzer?

3 MR. SCHWARTZER: My response would be you heard
4 the coroner say this was a homicide, Your Honor. I think this
5 statement is against an interest which would be allowed.

6 THE COURT: All right. The objection will be
7 overruled but I understand the objection is for all statements
8 that were elicited from him moving forward.

9 MS. HAMMERS: Thank you.

10 BY MR. SCHWARTZER:

11 Q. Okay. Did the statement -- in this interview after the
12 polygraph examination did the statement change from what was
13 said on January 19th, 2020, that you referred to?

14 A. Yes.

15 Q. Can you tell us how?

16 A. We started the interview we told him we believed he had
17 took part in dumping the body. He did not think he actually
18 killed her but he participated in dumping the body and he knew
19 way more than he was telling us about actually disposing of the
20 body. As the interview progressed his conscience kind of got
21 to him and he broke down and he just said you guys got me. I'm
22 going to tell you everything. Then he went into the story. On
23 December 12th he was at McDonald's --

24 Q. That would be December 12th --

25 A. 2019.

1 Q. And what McDonald's?

2 A. The one at Lake Mead and Martin Luther King within
3 walking distance of the both of their residences maybe two
4 blocks away.

5 Q. All right.

6 A. At the McDonald's and he ran into Miss Trotter and she
7 was kind of despondent. She had been kicked out of her house
8 and she didn't have a place to live.

9 Q. This was Mr. Bailey telling you this?

10 A. That's correct. They exchanged Snapchat. A way to
11 communicate via Snapchat and Jayshawn went home. A short time
12 later there was communication from Miss Trotter to Jayshawn can
13 I come over to your house. He allowed her to come stay at his
14 residence.

15 Q. Okay. Did Mr. Bailey say whether he was intoxicated or
16 not?

17 A. He said he had taken Xanax and was drinking wine.

18 Q. Did he say whether Miss Trotter at McDonald's was
19 intoxicated?

20 A. He didn't believe she was.

21 Q. At some point in this new statement did he say Miss
22 Trotter came over to his residence?

23 A. Yes.

24 Q. At that point when she was at his residence did he say
25 she drank some alcohol?

1 A. Yes, they had finished a bottle of wine together.

2 Q. Then did he say what happened after that?

3 A. Miss Trotter became aggressive towards him and was
4 brandishing a pink in color Tazer.

5 Q. We are referring to Miss Trotter and he is referring to
6 Miss Trotter, did the defendant actually give you the name of
7 the person who came over?

8 A. Tamyah.

9 Q. Does he actually use the last name as well --

10 A. Yes --

11 Q. -- Tamyah Trotter is what he says the person's name is?

12 A. He does. That's correct, yes.

13 Q. I didn't mean to interrupt.

14 A. She was getting so aggressive with the Tazer that he
15 grabbed her and put her in a headlock which he thought was only
16 about ten seconds.

17 Q. Did he show what the headlock looked like?

18 A. He did. He kind of demonstrated the headlock.

19 Q. Describing this for the Court you took your -- do that
20 again.

21 A. He took his left arm and circled it around her head and
22 grabbed his right arm. He thought for about ten seconds. Then
23 her body just went limp.

24 Q. Then he repeated that ten seconds a few times in the
25 statement?

1 A. Yes.

2 Q. After Miss Trotter went limp what did the defendant say
3 happened?

4 A. He performed CPR on her. He said he could still feel
5 she was warm so he performed CPR for what he thought was two
6 hours. She didn't come back and she started getting cold. So
7 he believed she was dead.

8 Q. What did he do after that?

9 A. He actually hid her in his bedroom.

10 Q. Did he tell you how long he hid her in his bedroom for?

11 A. Until that entire day until the next night.

12 Q. Did he tell you what he did with Miss Trotter's body
13 the next night?

14 A. He loaded the body up into a very large wheeled garbage
15 can and used the garbage can as a cart and wheeled the garbage
16 to the sewer where he dumped the body down into the sewer.

17 Q. Did he say whether anyone helped him?

18 A. He said he was alone.

19 Q. So no one helped him -- according to the defendant no
20 one helped him move the body or open the manhole cover?

21 A. No.

22 Q. Or dispose of the body?

23 A. That's correct.

24 Q. Did he tell you why he didn't initially call the
25 police?

1 A. He was afraid of repercussions. He was scared of
2 police. He didn't want to explain why he had Tamyah dead in
3 his room.

4 Q. Now after you give that statement did he also give a
5 third statement as well after this statement?

6 A. As far as?

7 Q. I guess at some point after he gave this statement and
8 his polygraph examination, did you and Detective Embrey go out
9 of the room to try and talk to the district attorney's office?

10 A. We did.

11 Q. After you guys came back in did the defendant talk some
12 more regarding this incident?

13 A. Yes, he did.

14 Q. Did he actually recant at that point?

15 A. He said it was more of a self-defense and then he just
16 said you know what I'm evil.

17 Q. Did you do a search warrant at his residence that day?

18 A. We did.

19 Q. That was back on January 21st, 2020?

20 A. That's correct.

21 Q. That was at 2120 Fred Brown Drive?

22 A. That's correct.

23 Q. Was the search warrant actually executed and formed at
24 that time?

25 A. It was.

1 Q. Did you find anything of note during your search at
2 2120 Fred Brown Drive?

3 A. In the residence we found a matching Puppy Chow dog
4 food bag that was full. It appeared that one dog food bag was
5 empty and was put in the garbage can that he used and when he
6 dumped the body the Puppy Chow bag fell out of the garbage can
7 and into the sewer. In his bedroom we also found apparent
8 blood on the carpet.

9 Q. How about some hair as well?

10 A. There was --

11 MS. CLARK: Objection, Your Honor. Leading.

12 BY MR. SCHWARTZER:

13 Q. Was there hair found at the scene?

14 THE COURT: Overruled.

15 THE WITNESS: Yes, there was.

16 BY MR. SCHWARTZER:

17 Q. Was this -- and besides the blood and the hair was
18 there also other items recovered from the bedroom?

19 A. Yes. There was some condoms in the garbage can. Used
20 condoms in trash can. There was also gloves.

21 Q. Were those recovered as well?

22 A. They were.

23 Q. Have those all been submitted for DNA testing?

24 A. They have.

25 Q. As of today's date has that DNA testing returned?

1 A. We have not.

2 Q. But those were submitted near the time of this search?

3 A. In January sometime, yes.

4 Q. And since you mentioned the condoms was it -- did you
5 specifically ask the question of whether he had sex or sexual
6 relations with --

7 A. It was.

8 Q. What did the defendant say?

9 A. He said he did not.

10 MR. SCHWARTZER: May I approach, Your Honor?

11 THE COURT: Yes.

12 BY MR. SCHWARTZER:

13 Q. Showing you Exhibits 6 through 8. These are
14 photographs that I want you to take a look and let me know if
15 you recognize them?

16 A. I recognize them.

17 Q. Are these photograph that were taken during the
18 execution of the search warrant?

19 A. They are.

20 Q. You recognize them because you are the case agent and
21 reviewed all photographs?

22 A. That's correct. I was there when they were taken.

23 Q. That's my next question.

24 MR. SCHWARTZER: Move for admission of Exhibits 6
25 through 8.

1 THE COURT: Any objection?

2 MS. HAMMERS: No Your Honor.

3 THE COURT: State's Exhibit 6 through will be
4 admitted.

5 BY MR. SCHWARTZER:

6 Q. I am going to ask for you to go through the photographs
7 real quick and tell the Judge what we are looking at. Just
8 announce what photograph you are looking at.

9 A. State's Exhibit 6 is an overview of the Puppy Chow dog
10 food bag as we found it in place inside the residence. Number
11 7 is just a close up of the front of the bag to show it's the
12 same brand and the same make and type and size as the bag that
13 was found in the sewer. Then State's Exhibit No. 8 is a
14 photograph to the right of the picture is are the two garbage
15 cans that would have been on the north side of his residence.
16 One of those would have been the garbage can used as a cart to
17 haul Tamyah's body to the sewer.

18 MR. SCHWARTZER: Court's indulgence. I'll pass
19 the witness.

20 THE COURT: Cross-examination.

21

22 CROSS-EXAMINATION

23 BY MS. CLARK:

24 Q. Detective Jaeger, you said you were the lead case
25 agent?

1 A. Yes, I was.

2 Q. You actually responded to the scene on Fred Brown on
3 the 19th?

4 A. I did.

5 Q. Mr. Bailey was present at that time?

6 A. He was.

7 Q. He stayed present the whole time?

8 A. That's correct.

9 Q. Now when Mr. Bailey gave that statement on the 19th you
10 weren't present for that statement; correct?

11 A. I was not.

12 Q. So you remained at the scene?

13 A. Yes.

14 Q. Was Mr. Bailey transported to headquarters or was he
15 interviewed at the scene?

16 A. He was transported to headquarters.

17 Q. Was that by your partner Detective Embrey?

18 A. Yes.

19 Q. Was it only Detective Embrey that was transporting --

20 A. Detective Embrey and Robello (phonetic.) There was two
21 of them.

22 Q. Two detectives?

23 A. Yes.

24 Q. Do you know if he was transported in a squad car or
25 unmarked car, do you remember?

1 A. I don't know if it was Detective Embrey's or Robello's
2 car but it would have been an unmarked LVMPD car. I believe it
3 was Detective Embrey has a gray SUV.

4 Q. He was transported by detectives who probably look very
5 much like yourself plain clothes officers wearing badges --

6 A. Yes.

7 Q. -- fair to say? Not physically look like you.

8 A. Not many people do.

9 Q. You remained at the scene so you were there when the
10 body was retrieved?

11 A. That's correct.

12 Q. You mentioned a couple of items that you physically
13 observed inside of the sewer. I think one of them was a fake
14 flower petal?

15 A. It was a purple plastic flower petal.

16 Q. That could have been something that someone flushed
17 down the toilet?

18 A. Yes.

19 Q. You mentioned that as soon as the body was removed the
20 water level dissipated immediately?

21 A. That's correct.

22 Q. The items that you saw in the manhole cover the dog
23 food bag, et cetera, were those impounded by officers or were
24 they lost when --

25 A. We collected those prior and they were impounded by CSA

1 Heather Ovens.

2 Q. Same CSA that took the photographs?

3 A. Yes.

4 Q. You mentioned Mr. Bailey obviously was not arrested in
5 January 19th?

6 A. No.

7 Q. On January 21st you contacted him about taking a
8 polygraph examination?

9 A. Detective Embrey did. I think he made the call from my
10 desk. We were right next to each other.

11 Q. That was something he agreed to do, Mr. Bailey agreed
12 to voluntarily?

13 A. Yes.

14 Q. Obviously he agreed to that date you asked him to come
15 in even though he had another obligation?

16 A. Yes. He changed his class schedule for it.

17 Q. Now you weren't present -- going back for a second, you
18 weren't there on the 19th when Detective Embrey interviewed
19 Mr. Bailey. Were you aware that a DNA test was done that time?

20 A. A DNA? A buccal swab.

21 Q. A buccal swab.

22 A. Yes.

23 Q. Some pictures were taken of Mr. Bailey?

24 A. That's correct.

25 Q. At that time on the 21st was he your only suspect in

1 this case?

2 A. He was only the suspect and witness.

3 Q. On the 21st Detective Embrey went to his home to pick
4 him up?

5 A. Yes.

6 Q. In an unmarked vehicle or squad scar?

7 A. Same unmarked vehicle.

8 Q. Same situation in plain clothes?

9 A. Yes.

10 Q. Seems like you wear your badge everywhere?

11 A. When I am on duty.

12 Q. Were you wearing it that day?

13 A. Yes.

14 Q. Same as Detective Embrey.

15 A. Yes.

16 Q. Do you carry a firearm with you?

17 A. Yes.

18 Q. When Mr. Bailey was transported for the interview was
19 he in the backseat of the car?

20 A. He was in the front seat.

21 Q. Front seat. You were in the backseat?

22 A. Mm-hmm.

23 Q. You mentioned you interviewed him at headquarters
24 building B?

25 A. That's correct.

1 Q. Second floor?

2 A. Yes.

3 Q. You and Detective Embrey walked him into the building?

4 A. Yes.

5 Q. Took him upstairs?

6 A. Yes.

7 Q. Put him in an interview room?

8 A. There's a parking spot behind the building so you don't
9 have to walk as far. We went in the back and it's one flight
10 of stairs up.

11 Q. Okay. You took the stairs up?

12 A. Yes.

13 Q. When you put him in an interview room I assume that
14 interview room doesn't have windows to the outside?

15 A. No. Two of them do but not the one he was in.

16 Q. Not the one he was in. No windows. Obviously there
17 was a door to the room?

18 A. Yes.

19 Q. Was the door closed while you were talking to him?

20 A. Yes.

21 Q. Do you know if it was locked or unlocked?

22 A. It wouldn't have been locked.

23 Q. Besides yourself and Detective Embrey you said there
24 was one other or examiner in the room, the polygraph examiner?

25 A. When the polygraph was going on we weren't in the room.

1 It was just Jayshawn and the polygraph examiner. Then he
2 stepped out and then it was Detective Embrey and myself.

3 Q. Correct. Before you stepped out for the polygraph
4 examination you gave him Miranda warnings?

5 A. The polygraph examiner did.

6 Q. Were you present for that?

7 A. Yes.

8 Q. At that point you, Detective Embrey, and the polygraph
9 examiner were in the room?

10 A. Yes.

11 Q. Then you and Detective Embrey left the room and he was
12 alone with the polygraph examiner?

13 A. Correct.

14 Q. But you were watching like via a two-way mirror or a
15 live feed on the camera?

16 A. It's a live feed on the camera.

17 Q. Now after that polygraph examination the examiner did
18 they leave as soon as the test was over and come get you?

19 A. The examiner was interviewing him about the results of
20 the test. The interviewer he wasn't getting anywhere with him.
21 It was just a back and forth with him of I think I passed and
22 no you failed.

23 Q. I don't want to cut you off. Let me ask you this: The
24 officer that does the polygraph is a law enforcement officer;
25 right?

1 A. He's a retired law enforcement officer. I don't think
2 he is a Nevada post certified officer.

3 Q. I'm not sure what post certified means.

4 A. It's police officer standards of training. He's
5 retired from out-of-state who gets hired as a civilian to do
6 all polygraph examinations.

7 Q. He would not have a P number?

8 A. He does have a P number but everybody who works for the
9 department has P number. Even if you work in records you would
10 have a P number.

11 Q. He is a civilian contractor who comes in and does
12 polygraphs?

13 A. Yes.

14 Q. Did you authorize him to do some questioning after the
15 test was over as the case agent?

16 A. As far as?

17 Q. Would you have authorized that civilian polygraph
18 examiner to conduct questioning of your suspect?

19 A. Yes.

20 Q. While you were watching?

21 A. Yes.

22 Q. Then after he conducted some questioning of his own
23 while you were watching he leaves and you and Detective Embrey
24 come back in the room?

25 A. That's correct.

1 Q. When you and Detective Embrey come back in -- was there
2 ever a time when Mr. Bailey was left alone in that room?

3 A. I don't think so.

4 Q. In between the polygraph examiner leaving and you
5 coming back in?

6 A. Because there's equipment and stuff in the room that
7 you don't want to get damaged. There would be someone in the
8 room.

9 Q. You mean the polygraph equipment?

10 A. Yes.

11 Q. When you re-entered the room you didn't reissue any
12 Miranda warnings; correct?

13 A. No.

14 MS. CLARK: Court's indulgence.

15 BY MS. CLARK:

16 Q. You were asked some questions a moment ago obviously
17 when you went back in Mr. Bailey told you what -- the story
18 about what happened and the state asked you some questions
19 about a third statement he made even after that. Do you
20 remember those questions?

21 A. Yes.

22 Q. The third time he's classified the incident was more of
23 self-defense?

24 A. That's correct.

25 Q. That's seems to be fairly consistent with what he said

1 in the original statement to you?

2 A. That's correct.

3 MS. CLARK: Court's indulgence.

4 THE COURT: Sure.

5 MS. CLARK: I don't have any further questions.

6 THE COURT: Any redirect?

7 MR. SCHWARTZER: No.

8 THE COURT: Thank you very much, Detective, for
9 your testimony. You are free to step down and free to leave.
10 Please do not discuss your testimony, sir. Thank you. Any
11 other witnesses from the state?

12 MR. SCHWARTZER: No, the state -- before I rest
13 based on the coroner's testimony regarding the amendment I
14 made.

15 THE COURT: Yes.

16 MR. SCHWARTZER: At this point I think I will take
17 out strangling and leave it as asphyxiation and/or unknown
18 means.

19 THE COURT: With that the state rests?

20 MR. SCHWARTZER: State rests.

21 THE COURT: Any witnesses by the defense?

22 MS. HAMMERS: No, Your Honor. We have spoken to
23 Mr. Bailey and he is aware of his right to testify today and he
24 is going to waive that right.

25 THE COURT: Mr. Bailey, I too will advise you have

1 the right to testify at this preliminary hearing but it's my
2 understanding you're to going waive that right; is that
3 correct?

4 THE DEFENDANT: Yes.

5 THE COURT: Defense rests?

6 MS. HAMMERS: Yes.

7 THE COURT: Any argument by the state?

8 MR. SCHWARTZER: Waive and reserve for rebuttal.

9 THE COURT: Argument by defense.

10 MS. HAMMERS: We'll submit.

11 THE COURT: Mr. Bailey, sir, it does appear to me
12 from the testimony adduced at this preliminary hearing and the
13 evidence presented to the Court there's slight or marginal
14 evidence to believe that the crime of murder has been committed
15 and the defendant Jayshawn Bailey has committed these charges.
16 Sir, you are going to appear in the Eighth Judicial District
17 Court on the following date and time:

18 THE CLERK: April 3rd at 8:00.

19 * * * * *

20

21 ATTEST: FULL, TRUE AND ACCURATE

22 TRANSCRIPT OF PROCEEDINGS.

23

24 \s\Christa Broka

25 CHRISTA D. BROKA, CCR 574

1 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

2 COUNTY OF CLARK, STATE OF NEVADA

3 -ooo-

4

5 STATE OF NEVADA,)

6 Plaintiff,)

7 vs.) Case No. 20F

8 JAYSHAWN BAILEY,) ATTEST RE: NRS 239B.030

9 Defendant,)

10)

11

STATE OF NEVADA)

12) SS

COUNTY OF CLARK)

13

14 I, Christa D. Broka, a Certified Shorthand Reporter
15 within and for the county of Clark and the State of Nevada, do
16 hereby certify:

17 That REPORTER'S TRANSCRIPT OF PROCEEDINGS was reported
18 in open court pursuant to NRS 3.360 regarding the above
19 proceedings in Las Vegas Justice Court 3, 2020, Lewis Avenue,
20 Las Vegas, Nevada.

21 That said TRANSCRIPT:

22 X Does not contain the Social Security number of any
23 person.

24 Contains the Social Security number of a person.

25

1 ATTEST: I further certify that I am not interested in
2 the events of this action.

3

4 \s\Christa Broka

5 CHRISTA D. BROKA, CCR 574

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7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 In the Matter of Application,

10 of

11 JAYSHAWN D. BAILEY,
12 #5216003

13 for a Writ of Habeas Corpus.

CASE NO: C-20-347887-1

DEPT NO: XII

14 **STATE'S RETURN TO WRIT OF HABEAS CORPUS**

15 DATE OF HEARING: JUNE 11, 2020
16 TIME OF HEARING: 12:00 P.M.

17 COMES NOW, JOE LOMBARDO, Sheriff of Clark County, Nevada, Respondent,
18 through his counsel, STEVEN B. WOLFSON, Clark County District Attorney, through
19 MICHAEL J. SCHWARTZER, Chief Deputy District Attorney, in obedience to a writ of
20 habeas corpus issued out of and under the seal of the above-entitled Court on the 18th day of
21 May, 2020, and made returnable on the 2nd day of June, 2020, at the hour of 12:00 o'clock
22 P.M., before the above-entitled Court, and states as follows:

23 1. Respondent admits the allegations of Paragraphs 1 and 2 of the
24 Petitioner's Petition for Writ of Habeas Corpus.

25 2. Respondent denies the allegations of Paragraph 3 of the Petitioner's
26 Petition for Writ of Habeas Corpus.

27 3. Paragraphs 4, 5 and 6 do not require admission or denial.
28

1 4. The Petitioner is in the actual custody of JOE LOMBARDO, Clark
2 County Sheriff, Respondent herein, pursuant to a Criminal Information, a copy of which is
3 attached hereto as Exhibit 1 and incorporated by reference herein.

4 Wherefore, Respondent prays that the Writ of Habeas Corpus be discharged and the
5 Petition be dismissed.

6 DATED this 2nd day of June, 2020.

7 Respectfully submitted,

8 STEVEN B. WOLFSON
9 Clark County District Attorney
 Nevada Bar # 001565

10 BY /s/MICHAEL J. SCHWARTZER
11 MICHAEL J. SCHWARTZER
12 Chief Deputy District Attorney
 Nevada Bar #010747

13
14 **POINTS AND AUTHORITIES**

15 **STATEMENT OF THE CASE**

16 On January 21, 2020, Defendant Jayshawn Bailey (“Defendant”) was arrested for the
17 crime of murder. On January 22, 2020, Defendant was charged via a Criminal Complaint with
18 one count of Open Murder. Defendant was arraigned on January 24, 2020 and a preliminary
19 hearing was originally set for March 4, 2020.

20 On March 4, 2020, the preliminary hearing was continued due to the autopsy report not
21 being finished. On April 1, 2020, a preliminary hearing was conducted. At the conclusion of
22 evidence, Judge Letizia bound the case up to district court for trial. An Information was filed
23 on April 2, 2020. Transcripts of the hearing were filed with this Court on April 27, 2020. Trial
24 is currently set for August 10, 2020.

25 On May 18, 2020, Defendant filed the instant Petition for Writ of Habeas Corpus. The
26 State responds accordingly.

27 //

28 //

STATEMENT OF FACTS

Seventeen-year-old Tamyah Trotter went missing on December 12, 2019. (Preliminary Hearing, pages 6, 28, 32). At the time, she was living with her older sister on Fred Brown Drive, just a few houses away from Defendant's residence. (PH, 28).

On January 19, 2020, Defendant called 911 and reported that there was body inside a sewer drain right outside his house on 2120 Fred Brown Drive. (PH, 21, 28). After some prompting, Defendant told the 911 dispatcher that he saw two people place something in the sewer a month prior and two weeks later he opened the manhole to see what was placed in there. (PH, 21). Once he removed the manhole cover, Defendant told the dispatcher that he observed a deceased female. (PH, 21). He also told the dispatcher that he waited an additional two weeks to call the police. (PH, 21).

Police officers arrived, removed the manhole cover and observed the body of a deceased, decomposing African American juvenile female later identified as Tamyah Trotter. (PH, 22). Next to Tamyah's body was a bag blue Puppy Chow dog food bag. (PH, 24). Police officers had to use straps in order to hoist her body out of the sewer. (PH, 26).

Homicide detectives were called out to the scene and interviewed Defendant. (PH, 29). Defendant was not arrested on that date.

On January 21, 2020, Defendant agreed to a polygraph examination. (PH, 29). After the examination was completed, homicide detectives re-interviewed Defendant. (PH, 31)

Defendant told police that on December 12, 2019, he ran into Tamyah at the McDonalds and that she was upset because her family kicked her out. (PH, 32-33). Defendant further told police that Tamyah came over to his house later that night. (PH, 33). He also told police that he was intoxicated at the time. (PH, 33). Defendant said Tamyah came over and started drinking wine with him. (PH, 33-34). He said this made her aggressive toward him and that she produced a taser. (PH, 34). Defendant said Tamyah got close to him with the taser, so he put her in a headlock for approximately ten (10) seconds at which time Tamyah's body went limp. (PH, 34).

1 Afterwards, Defendant told detectives he tried to help Tamyah but was unable to
2 resuscitate her. (PH, 34-35). He hid her body in his room until late the next night. (PH, 35).
3 He then moved Tamyah's body with the use of a trash can to the sewer drain where he dumped
4 her body. (PH, 35).

5 Police executed a search warrant on Defendant's residence. (PH, 36-37). During the
6 search, police found blood and human hair in Defendant's bedroom. (PH, 37). They also found
7 the same type of Puppy Chow dog food bag that was found in the sewer with Tamyah's body.
8 (PH, 37).

9 Dr. Christina DiLoreto testified at the preliminary hearing that she ruled Tamyah's
10 death as homicide by unknown means. Dr. DiLoreto went into detail about the several steps
11 she took to reach that conclusion. She explained that during her external examination she
12 observed that Tamyah's body was decomposing but there was no evidence of any external
13 injuries. (PH, 7). Dr. DiLoreto further testified that during her internal examination she found
14 some evidence of discoloration of the soft tissue in the neck area but that she was unable to
15 confirm the injury upon microscopic inspection. (PH, 10). She testified that the discoloration
16 in the neck could be the result of an injury but could also be a product of decomposition. (PH
17 10).

18 After Dr. DiLoreto completed her external and internal examination, she took tissue
19 samples from the body for microscopic examination in order to determine if there were any
20 microscopic evidence of natural diseases or injuries that could have caused Tamyah's death.
21 (PH, 8). The microscopic examination did not reveal any such injuries or natural disease. (Ph,
22 8, 10). Dr. DiLoreto also performed a toxicology study to determine if something Tamyah's
23 consumed may have killed her. (PH, 9). The toxicology report detected ethanol in Tamyah's
24 blood which could have been present due to consumption of alcohol prior to death or due to
25 decomposition. (PH 9). However, nothing in the toxicology report hinted at a cause of death.
26 (PH, 9-10). Finally, Dr. DiLoreto also reviewed Tamyah's prior medical records but nothing
27 in those records indicate anything but Tamyah was healthy seventeen-year-old. (PH, 13).
28

1 Dr. DiLoreto concluded that Tamyah's death was homicide because at the examination
2 there was no fatal traumatic injury or natural disease or toxicological item present in Tamyah.
3 (PH 15). Moreover, Tamyah was found under suspicious circumstances with intent to hide
4 the body from public view. (PH 15).

5 Upon additional questioning by the State, Dr. DiLoreto testified that asphyxiation by
6 applying pressure to the carotid artery would not necessary leave any marks on the body both
7 internally and externally. (PH, 11). She went on to explain that bilateral compression to the
8 carotid artery in the neck would lead to unconsciousness in approximately ten to fifteen
9 seconds. (PH, 12). However, one would quickly regain consciousness (within seconds) after
10 the pressure is released. (PH, 12). But if the pressure on the carotid artery is sustained for a
11 "couple of minutes" it could lead to death. (PH, 12).

12 Further, while Dr. DiLoreto considered Defendant's statement for cause of death
13 (unknown means), she specifically testified that she did not consider Defendant's statements
14 for making her determination that the manner of death was homicide. (PH 15, 19).

15 ARGUMENT

16 At probable cause proceedings, the State need only show that a crime has been
17 committed and that the accused probably committed it. The finding of probable cause to
18 support a criminal charge may be based on "slight, even 'marginal' evidence . . . because it
19 does not involve a determination of the guilt or innocence of the accused." Sheriff v. Hodges,
20 96 Nev. 184, 186, 606 P.2d 178, 180 (1980).

21 "To commit an accused for trial, the State is not required to negate all inferences which
22 might explain his conduct, but only to present enough evidence to support a reasonable
23 inference that the accused committed the offense." Kinsey v. Sheriff, 87 Nev. 361, 363, 487
24 P.2d 340, 341 (1971). Sheriff v. Miley, 99 Nev. 377 (1983). This Court need not consider
25 whether the evidence presented at the grand jury may, by itself, sustain a conviction, since at
26 the grand jury the State need not produce the quantum of proof required to establish the guilt
27 of accused beyond a reasonable doubt. See Hodges, 96 Nev. at 186, 606 P.2d at 180; Miller
28

1 v. Sheriff, 95 Nev. 255, 592 P.2d 952 (1979); McDonald v. Sheriff, 87 Nev. 361, 487 P.2d
2 340, (1971).

3 At the preliminary hearing stage, the State's burden with respect to the *corpus delicti* is
4 the same as its burden to show probable cause. The State must present evidence supporting a
5 “reasonable inference” of injury by criminal agency. Sheriff, Washoe Cty. v. Middleton, 112
6 Nev. 956, 961–62, 921 P.2d 282, 286 (1996). Confessions and admissions of the defendant
7 may not be used to establish *corpus delicti* absent sufficient independent evidence. Id. citing
8 Hooker v. Sheriff, 89 Nev. 89, 506 P.2d 1262 (1973). Once the State presents independent
9 evidence that the offense has been committed, admissions and confessions may then be used
10 to corroborate the independent proof. Id. citing Myatt v. State, 101 Nev. 761, 763, 710 P.2d
11 720 (1985). However, all other relevant evidence may be considered. The *corpus delicti* may
12 be established by purely direct evidence, partly direct and partly circumstantial evidence, or
13 entirely circumstantial evidence. Id. citing Hooker, 89 Nev. at 92, 506 P.2d at 1263.

14 The purpose of the coroner is to investigate deaths within Clark County that are violent,
15 suspicious, unexpected or unnatural in order to identify and report on the cause and manner of
16 death. Clark County Code (“CCC”) § 2.12.060. When the Coroner's Office is notified of a
17 death, and it is determined that the circumstances of the death fall under the jurisdiction of the
18 Coroner's Office, a coroner investigator responds to the scene and conducts a medicolegal
19 investigation. Information is gathered from the scene and persons, such as witnesses, law
20 enforcement officers and family members: the decedent is identified; the next of kin is notified;
21 and property found on or about the decedent is secured. The investigation often entails
22 obtaining medical records or health information of the decedent. Most often the decedent is
23 transported to the Coroner's Office. A postmortem examination is conducted by a medical
24 examiner, which may include an autopsy. CCC §§ 2.12.060, 2.12.280.

25 In conducting the autopsy, the Medical Examiners perform an external and internal
26 exam of the body of the decedent. They review investigative findings, medical records, health
27 history prior to commencing the exam. The organs are examined, and histology samples along
28 with blood is submitted to a laboratory for analysis. It is the *responsibility* of the medical

1 examiner to determine the cause and manner of death. CCC §§ 2.12.040, 2.12.060 (emphasis
2 added). The manner of death is the method by which someone died. The five manners of death
3 are homicide, suicide, natural, accident and undetermined. The cause of death is the
4 circumstance that triggers a death such as a gunshot wound, heart attack or drug overdose. The
5 medical examiner documents findings, including the cause and manner of death in an autopsy
6 report. CCC §§ 2.12.060, 2.12.040, 2.12.250; *also see* NRS 440.430.

7 **1. Dr. DiLoreto's Expert Opinion was Not Improper**

8 Per the Nevada Supreme Court, expert testimony is admissible if it meets the following
9 three requirements, described as the “qualification,” “assistance,” and “limited scope”
10 requirements:

11 1) [the expert] must be qualified in an area of “scientific, technical or other
12 specialized knowledge” (the qualification requirement); (2) his or her
13 specialized knowledge must “assist the trier of fact to understand the evidence
14 or to determine a fact in issue” (the assistance requirement); and (3) his or her
15 testimony must be limited “to matters within the scope of [his or her
16 specialized] knowledge” (the limited scope requirement).

17 Perez v. State, 129 Nev. 850, 856, 313 P.3d 862, 866 (2013) (internal citations omitted).

18 Evidence as to manner of death is regularly admitted in murder cases. *See Blake v.*
19 State, 121 Nev. 779, 121 P.3d 567 (2005) (Dr. Telgenhoff concluded the manner of death was
20 homicide); West v. State, 119 Nev. 410, 75 P.3d 808 (2003) (doctor testified manner of death
21 was undetermined); Archanian v. State, 122 Nev. 1019, 1026, 145 P.3d 1008, 1014 (2006) (the
22 forensic pathologist concluded that Quiroga died from blunt force trauma and that the
23 manner of death was homicide).

24 In this case, Defendant claims that the use of investigative information and *possible* use
25 of Defendant's statement was improper expert opinion. However, Defendant fails to support
26 the argument with any citation to case law or statute. Contrary to Defendant's assertion, the
27 Nevada Supreme Court recently ruled that a coroner's determination of “homicide” (as
28 opposed to “accident”) in a case, partially based on his discussions with law enforcement at

1 the scene, to be proper. *See Cooper v. State*, 454 P.3d 720 (2019) (unpublished) (coroner based
2 his homicide determination on “standards made at the scene...trajectory of the
3 bullet....discussions with the detectives and other people on the scene...[and] his on-scene
4 investigation”).

5 In the California case of *People v. Mercado*, the State admitted evidence from the
6 medical examiner that the manner of death was homicide where the doctor testified that the
7 information used to determine manner of death was received from a coroner investigator. The
8 California Supreme Court disagreed with Mercado's contention that the opinion that the
9 manner of death was homicide was based upon a report by the coroner's investigator who
10 interviewed witnesses at the scene, who told the investigator that the victim was run over by a
11 car, and that the information violated the Confrontation Clause. *People v. Mercado*, 216 Cal.
12 App. 4th 67, 84, 156 Cal. Rptr. 3d 804, 815 (2013). Although this decision was based on a
13 different argument (Confrontation Clause), the case supports the decision of the justice court
14 in this case. Experts are allowed to rely on other information to make a determination,
15 including information provided by investigators. In this case, as in *Mercado*, Dr. DiLoreto
16 properly relied on information received during the investigation in the case.

17 Dr. DiLoreto detailed to the court how she came to the homicide by unknown means
18 opinion. (PH, 15-16). Specifically, Dr. DiLoreto was able to rule out traumatic injury, fatal
19 natural disease and toxicological cause of death. (PH, 15). She then considered the coroner's
20 investigation, specifically that body was placed in a way that showed an intent to hide it. (PH,
21 15). After reviewing and/or conducting the external examination, internal examination, X-
22 Rays, prior medical reports, microscopic examinations and coroner's investigation, Dr.
23 DiLoreto concluded it was homicide.¹ It is not improper for Dr. DiLoreto to consider any of
24 these items while making her determination. Thus, Defendant Petition should be denied.

25 //

26 //

27 ¹ Differential diagnosis, similar to the coroner's approach in this case, is commonly used in other medical diagnosis. One
28 of the most common is multiple sclerosis, which relies on ruling out other conditions that might produce similar signs
and symptoms as multiple sclerosis. *See* <https://www.mayoclinic.org/diseases-conditions/multiple-sclerosis/diagnosis-treatment/drc-20350274> (last accessed on June 1, 2020).

1 **2. Defendant's Statement Was Not Inadmissible**

2 The purpose of the corpus delicti rule is to establish that an injury or crime in fact
3 occurred. Domingues v. State, 112 Nev. 683, 691-93, 917 P.2d 1364, 1370-72 (1996)

4 The aim of the rule is to protect against an accused's conviction based solely upon an
5 uncorroborated confession. Id., at 691, 917 P.2d at 1371.

6 Proof of the corpus delicti may be made totally by direct evidence, partially by direct
7 and partially by circumstantial evidence or totally by circumstantial evidence. *See* Azbill v.
8 State, 84 Nev. 345, 440 P.2d 1014 (1968), Hooker v. Sheriff, 89 Nev. 89, 506 P.2d 1262
9 (1972), The State of Hawaii v. Alexander, 612 P.2d 110 (1980), West v. State, 232 GA 861,
10 209 SE.2nd 195 (1974); State v. Caldwell, 241 Oregon 355, 405 P.2d 847 (1965).

11 In this case, there is no issue with the corpus delicti rule. Dr. DiLoreto testified that
12 based on her examinations, existing medical records and toxicological report, Tamyah died at
13 the hands of another person and therefore her death was homicide. This alone is enough to
14 satisfy the corpus delicti issue since it established that Tamyah suffered an injury, specifically
15 death, from the hands of another.

16 Dr. DiLoreto stated that she came to that conclusion without considering Defendant's
17 statement. (PH 19). However, even if she did consider the statement, such consideration would
18 be proper. Defendant's explanation that he put Tamyah in a chokehold with the use of his arm
19 fits into Dr. DiLoreto explanation at preliminary hearing about the lack of damage that could
20 occur due to asphyxiation via pressure to the Cortaid artery. Defendant's statement only
21 bolsters the conclusion made by the medical examiner. Therefore, Defendant's Petition should
22 be denied.

23 //

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1 CONCLUSION

2 Based upon the above and foregoing Points and Authorities, Defendant's Petition for
3 Writ of Habeas Corpus must be denied.

4 DATED this 2ND day of June, 2020.

5 Respectfully submitted,

6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar # 001565

9 BY /s/MICHAEL J. SCHWARTZER
10 MICHAEL J. SCHWARTZER
11 Chief Deputy District Attorney
12 Nevada Bar #010747
13

14 CERTIFICATE OF ELECTRONIC TRANSMISSION

15 I hereby certify that service of the above and foregoing was made this 2nd day of June,
16 2020, by electronic transmission to:

17 KATHLEEN HAMERS, Deputy Public Defender
18 Email: hamerskm@clarkcountynv.gov
19

20 BY: /s/ D. Daniels
21 Secretary for the District Attorney's Office
22
23
24
25
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28



INFM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHAEL J. SCHWARTZER
Chief Deputy District Attorney
Nevada Bar #010747
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

I.A. 4/3/20
1:45 PM
PD

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAYSHAWN D. BAILEY,
#5216003

Defendant.

CASE NO: C-20-347887-1

DEPT NO: III

INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss.

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That JAYSHAWN D. BAILEY, the Defendant(s) above named, having committed the crime of **MURDER (Category A Felony - NRS 200.010, 200.030 - NOC 50000)**, on or about the 12th day of December, 2019, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did willfully, unlawfully, feloniously and with malice

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EXHIBIT '1'

W:\2020\2020F\015\85\20F01585-INFM-001.DOCX

1 aforethought, kill TAMYAH TROTTER, a human being, by asphyxiation and/or unknown
2 means, the said killing having been willful, deliberate and premeditated.

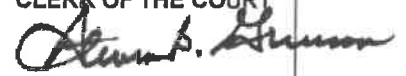
3 STEVEN B. WOLFSON
4 Clark County District Attorney
5 Nevada Bar #001565

6 BY /s/ Michael J. Schwartzer
7 MICHAEL J. SCHWARTZER
8 Chief Deputy District Attorney
9 Nevada Bar #010747

10 Names of witnesses known to the District Attorney's Office at the time of filing this
11 Information are as follows:

<u>NAME</u>	<u>ADDRESS</u>
CUSTODIAN OF RECORDS	CCDC
CUSTODIAN OF RECORDS	CLARK COUNTY CORONER'S OFFICE
CUSTODIAN OF RECORDS	LVMPD COMMUNICATIONS
CUSTODIAN OF RECORDS	LVMPD RECORDS
DILORETO, DR. CHRISTINA	CLARK COUNTY CORONER'S OFFICE
EMBREY, B.	LVMPD P#8644
GREGORIO, R.	LVMPD P#13748
JAEGER, R.	LVMPD P#5587
TRAMMELL, MATTHEW or Designee	CCDA INVESTIGATOR
TROTTER, TAMYAH	2100 FRED BROWN DR., LVN 89106
WARD, KENDRA	2100 FRED BROWN DR., LVN 89106

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27 20F01585X/lm/MVU
28 LVMPD EV#200100088926
 (TK3)



DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR NO. 5674
KATHLEEN M. HAMERS, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 9049
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
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Facsimile: (702) 455-5112
HamersKM@clarkcountynv.gov
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	CASE NO. C-20-347887-1
Plaintiff,)	
)	DEPT. NO. XII
v.)	
)	DATE: June 11, 2020
JAYSHAWN D. BAILEY,)	TIME: 12:00 p.m.
)	
Defendant,)	

DEFENDANT'S REPLY TO STATE'S RETURN TO WRIT OF HABEAS CORPUS

COMES NOW, the Defendant, JAYSHAWN D. BAILEY, by and through
KATHLEEN M. HAMERS, Deputy Public Defender and hereby submits the following reply.

DATED this 8th day of June, 2020.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/Kathleen M. Hamers
KATHLEEN M. HAMERS, #9049
Deputy Public Defender

ARGUMENT

I. Improper Expert Opinion

The medical examiners testimony in this case that the manner of death was homicide was not within the scope of her specialized knowledge. While Dr. DiLoreto certainly has specialized knowledge that may be relevant to this case (the examination of the decedent, the review of toxicology findings, the evidence or lack thereof of any injuries, etc.), the determination that the manner of death is homicide based on suspicious circumstances or an apparent attempt to conceal the body, is outside the scope of her specialized knowledge. This testimony should not have been admitted.

The State's reliance on the Clark County Code, which permits a coroner to report on cause and manner of death is misplaced. That code does not alter the requirement that an expert opinion must be within the scope of that witness' expertise. In this case, the opinion by the medical examiner that the manner of death is homicide based on suspicious circumstances and an apparent intent to hide the body remains outside the scope of her expertise.

If the Court in Cooper, the Unpublished Opinion cited by the State, determined that the coroner there based the opinion that the manner of death was homicide on his or her specialized knowledge, and that the determination was within the scope of that specialized knowledge, then it would be admissible. While that holding certainly is not binding, it is also not applicable in this case. The issue here is whether the State can admit opinion evidence that is outside the scope of the coroner's expertise. The opinion that a death is a homicide based on suspicious circumstances and an apparent intent to hide the body, is outside the scope of this witness' specialized knowledge.

The California Supreme Court's determination in Mercado, cited by the State, that a medical examiner may rely on hearsay information without violating the Confrontation Clause, is also inapplicable here. The issue is not whether the medical examiner can receive hearsay information, but whether the opinion itself, the manner of death being homicide when based on

1 suspicion or a perceived intent to hide the body, is within the scope of the medical examiner's
2 expertise. It is not.

3 II. Defendant's Statement

4 Without the improper testimony of Dr. DiLoreto that the death in this case was a
5 homicide, the State failed to establish death by criminal agency prior to the admission of
6 Jayshawn Bailey's own statements in violation of the corpus delicti rule.

7
8 **CONCLUSION**

9 The remaining evidence in this case, without including the above inadmissible evidence,
10 is insufficient to charge Jayshawn with murder. The medical examiners opinion that the manner
11 of death is homicide and Jayshawn's statements to police should not have been admitted.
12 Without that evidence, the State failed to present sufficient evidence. Therefore, the instant case
13 should be dismissed.

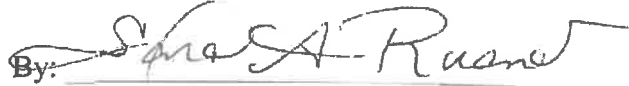
14
15 DATED this 8th day of June, 2020.

16 DARIN F. IMLAY
17 CLARK COUNTY PUBLIC DEFENDER

18
19 By: /s/Kathleen M. Hamers
20 KATHLEEN M. HAMERS, #9049
21 Deputy Public Defender
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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and forgoing REPLY was served via electronic e-filing to the Clark County District Attorney's Office at motions@clarkcountydade.com on this 8th day of June, 2020.

By: 

An employee of the
Clark County Public Defender's Office

Heather S. Smith
CLERK OF THE COURT

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHAEL J. SCHWARTZER
Chief Deputy District Attorney
Nevada Bar #10747
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

JAYSHAWN BAILEY,
#5216003

Defendant.

CASE NO: C-20-347887-1

DEPT NO: XII

**ORDER DENYING DEFENDANT'S PRETRIAL PETITION FOR WRIT OF
HABEAS CORPUS**

DATE OF HEARING: 6/11/20
TIME OF HEARING: 12:00 P.M.

THIS MATTER having come on for hearing before the above entitled Court on the 11th day of June, 2020, the Defendant being present, REPRESENTED BY KATHLEEN HAMERS, Deputy Public Defender, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through MICHAEL J. SCHWARTZER, Chief Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

///


///

///

1 IT IS HEREBY ORDERED that the Defendant's Pretrial Petition for Writ of Habeas
2 Corpus, shall be, and it is DENIED.

Dated this 17th day of June, 2020

3 DATED this _____ day of June, 2020.


C89 CF7 C58E 35BF
Michelle Leavitt

5 DISTRICT JUDGE

6 STEVEN B. WOLFSON
7 Clark County District Attorney
Nevada Bar #001565

8
9 BY 

MICHAEL J. SCHWARTZER
Chief Deputy District Attorney
Nevada Bar #10747

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DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada

CASE NO: C-20-347887-1

vs

DEPT. NO. Department 12

JAYSHAWN BAILEY

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Envelope ID: 6194880
Service Date: 6/17/2020

PUBLIC DEFENDER	PDclerk@ClarkCountyNV.gov
Kathleen Hamers	HamersKM@clarkcountynv.gov
Sara Ruano	ruanosg@clarkcountynv.gov
DA Motions	Motions@clarkcountyda.com
DC 12 Law Clerk	Dept12LC@clarkcountycourts.us
Michael Schwartzer	Michael.Schwartzter@clarkcountyda.com

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAYSHAWN BAILEY,)	No.
)	(DC No. C-20-347887-1)
Petitioner,)	
v.)	
THE EIGHTH JUDICIAL DISTRICT)	
COURT OF THE STATE OF NEVADA,)	
COUNTY OF CLARK, THE)	
HONORABLE MICHELLE LEAVITT,)	
DISTRICT COURT JUDGE,)	
Respondent,)	
)	
THE STATE OF NEVADA,)	
Real Party in Interest.)	
)	

**APPENDIX TO PETITION FOR WRIT OF
PROHIBITION/MANDAMUS**

DARIN F. IMLAY
Clark County Public Defender
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Attorney for Appellant

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Clark County District Attorney
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AARON D. FORD
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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the ____ day of _____, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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BY /s/ Carrie M. Connolly
Employee, Clark County Public Defender's Office