

# IN THE SUPREME COURT OF THE STATE OF NEVADA

JAYSHAWN D. BAILEY,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

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Clerk of Supreme Court

Case No: C-20-347887-1  
*Related Case A-22-857574-W*  
Docket No: 85808

# RECORD ON APPEAL VOLUME 2

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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                               -o0o-

4

5   STATE OF NEVADA,                )

6                   Plaintiff,        )

7           vs.                        ) Case No. 20F

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

9           Defendant,                )

10   \_\_\_\_\_)

11

12   STATE OF NEVADA)                ) ss  
13   COUNTY OF CLARK)

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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|--|---|--|---|--|
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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

1 Further, “the basic purpose of the writ is to enable those unlawfully incarcerated to obtain  
2 their freedom...” Johnson v. Avery, 393 U.S. 483, 485; 89 S.Ct. 747 (1969). Since 1912, the  
3 Nevada Supreme Court has recognized that the writ of habeas corpus is the plain, speedy and  
4 adequate remedy by which to determine the legal sufficiency of the evidence supporting a grand  
5 jury indictment. *See for example* Eureka County Bank Habeas Corpus Cases, 35 Nev. 80; 126 P.  
6 655 (1912); Ex parte Stearns, 68 Nev. 155; 227 P.2d 971 (1951); and, Ex parte Colton, 72 Nev.  
7 83; 295 P.2d 383 (1956).

## 9 II. Probable Cause Standard

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

18 At the preliminary hearing stage, probable cause to bind a defendant over for trial “may  
19 be based on ‘slight,’ even ‘marginal’ evidence because it does not involve a determination of  
20 guilt or innocence of an accused.” Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180  
21 (1980). The State is required to present sufficient evidence “to support a reasonable inference  
22 that the accused committed the offense.” Sheriff v. Milton, 109 Nev. 412, 414, 851 P.2d 417, 418  
23 (1993), quoting Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971).

25 Additionally, the evidence received at a preliminary hearing must be legal, competent  
26 evidence. Goldsmith v. Sheriff, 85 Nev. 295, 303; 454 P.2d 86, 91 (1969). No other type of  
27 evidence may be considered, as the rules of evidence require the production of legal evidence  
28

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

DARIN F. IMLAY  
CLARK COUNTY PUBLIC DEFENDER

## CERTIFICATE OF ELECTRONIC SERVICE

By: /s/ Sara Ruano  
An employee of the  
Clark County Public Defender's Office

# 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

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. Schwartzer?

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 Jaeger, 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                               -o0o-

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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DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

Electronically Filed  
5/18/2020 4:58 PM  
Steven D. Grierson  
CLERK OF THE COURT



State of Nevada  
vs  
JAYSHAWN BAILEY

Case No.: C-20-347887-1

Department 12

**NOTICE OF HEARING**

Please be advised that the Defendant's Petition for Writ of Habeas Corpus in the above-entitled matter is set for hearing as follows:

**Date:** June 04, 2020

**Time:** 8:30 AM

**Location:** RJC Courtroom 14D  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.**

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Imelda Murrieta  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Imelda Murrieta  
Deputy Clerk of the Court



**RET**  
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Nevada Bar #001565  
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State of Nevada

DISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of Application,  
of  
JAYSHAWN D. BAILEY,  
#5216003  
for a Writ of Habeas Corpus.

CASE NO: C-20-347887-1  
DEPT NO: XII

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

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

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

1. Respondent admits the allegations of Paragraphs 1 and 2 of the Petitioner's Petition for Writ of Habeas Corpus.
2. Respondent denies the allegations of Paragraph 3 of the Petitioner's Petition for Writ of Habeas Corpus.
3. Paragraphs 4, 5 and 6 do not require admission or denial.

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 2<sup>nd</sup> 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).

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.<sup>1</sup> 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 \_\_\_\_\_  
28 <sup>1</sup> Differential diagnosis, similar to the coroner's approach in this case, is commonly used in other medical diagnosis. One  
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 //

24 //

25 //

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28 //

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 2<sup>ND</sup> 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  
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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

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

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'**

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

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

BY /s/ Michael J. Schwartz  
MICHAEL J. SCHWARTZER  
Chief Deputy District Attorney  
Nevada Bar #010747

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

NAME

ADDRESS

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

20F01585X/lm/MVU  
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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Telephone: (702) 455-4685  
Facsimile: (702) 455-5112  
HamersKM@clarkcountynv.gov  
*Attorneys for Defendant*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
Plaintiff,

v.

JAYSHAWN D. BAILEY,  
Defendant,

CASE NO. C-20-347887-1

DEPT. NO. XII

DATE: June 11, 2020  
TIME: 12:00 p.m.

**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.

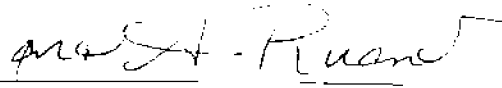
14  
15 DATED this 8th day of June, 2020.

16 DARIN F. IMLAY  
17 CLARK COUNTY PUBLIC DEFENDER

18 By: /s/Kathleen M. Hamers  
19 KATHLEEN M. HAMERS, #9049  
20 Deputy Public Defender  
21  
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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@clarkcountynvda.com](mailto:motions@clarkcountynvda.com) on this 8th day of June, 2020.

By: 

An employee of the  
Clark County Public Defender's Office

*Heather L. Linn*  
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  
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(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,

///

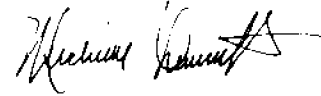
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1 IT IS HEREBY ORDERED that the Defendant's Pretrial Petition for Writ of Habeas  
2 Corpus, shall be, and it is DENIED.

Dated this 17th day of June, 2020

3 DATED this \_\_\_\_\_ day of June, 2020.




C89 CF7 C58E 35BF  
Michelle Leavitt

4  
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

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HamersKM@clarkcountynv.gov

Sara Ruano

ruanosg@clarkcountynv.gov

DA Motions

Motions@clarkcountyda.com

DC 12 Law Clerk

Dept12LC@clarkcountycourts.us

Michael Schwartz

Michael.Schwartz@clarkcountyda.com

*Steven D. Grierson*

1 **ROC**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 MICHAEL SCHWARTZER  
6 Chief Deputy District Attorney  
7 Nevada Bar #010747  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 JAYSHAWN D. BAILEY #5216003,  
13 Defendant.

CASE NO: C-20-347887-1

DEPT NO: XII

14  
15 RECEIPT OF COPY

16  
17 RECEIPT OF COPY of the above and foregoing DVD containing documents Bates  
18 numbered 71-142, social media records for three Facebook accounts and one Instagram  
19 account totaling 86.7 MB, video files from McDonald's totaling 4.61 GB, and one audio file  
20 totaling 932 MB is hereby acknowledged this 22 day of June, 2020.

21  
22 KATHLEEN HAMERS  
23 ATTORNEY FOR DEFENDANT

24 BY

*Devin Proctor*  
PUBLIC DEFENDER  
309 S. Third St. #226  
Las Vegas, Nevada 89101

25  
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27  
28 20F01585X.jn/MVU

*Steven D. Grierson*

1 **ROC**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 MICHAEL SCHWARTZER  
6 Chief Deputy District Attorney  
7 Nevada Bar #010747  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 JUSTICE COURT, LAS VEGAS TOWNSHIP  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 JAYSHAWN D. BAILEY #5216003,

13 Defendant.

CASE NO: C-20-347887-1

DEPT NO: XII

14  
15 RECEIPT OF COPY

16  
17 RECEIPT OF COPY of the above and foregoing DVD containing one video interview  
18 totaling 1.61 GB and five audio files totaling 399 MB is hereby acknowledged this 22  
19 day of June, 2020.

20  
21 KATHLEEN HAMERS  
22 ATTORNEY FOR DEFENDANT

23 BY

*Dawn Proctor*

24 PUBLIC DEFENDER  
25 309 S. Third St. #226  
26 Las Vegas, Nevada 89101

27  
28 20F01585X jn/MVU



MOT  
DARIN F. IMLAY, PUBLIC DEFENDER  
NEVADA BAR NO. 5674  
KATHLEEN M. HAMERS, DEPUTY PUBLIC DEFENDER  
NEVADA BAR NO. 9049  
**PUBLIC DEFENDERS OFFICE**  
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HamersKM@clarkcountynv.gov  
*Attorneys for Defendant*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

|                      |   |                        |
|----------------------|---|------------------------|
| THE STATE OF NEVADA, | ) |                        |
|                      | ) |                        |
| Plaintiff,           | ) | CASE NO. C-20-347887-1 |
|                      | ) |                        |
| v.                   | ) | DEPT. NO. XII          |
|                      | ) |                        |
| JAYSHAWN D. BAILEY,  | ) |                        |
|                      | ) |                        |
| Defendant,           | ) | DATE: July 16, 2020    |
|                      | ) | TIME: 8:30 a.m.        |

**MOTION TO COMPEL PRODUCTION OF DISCOVERY & BRADY MATERIAL**

Defendant, JAYSHAWN D. BAILEY, through counsel, KATHLEEN M. HAMERS, Deputy Public Defender, hereby requests this Honorable Court to order the State of Nevada to produce the discovery and Brady material discussed herein **at least 30 days before trial** pursuant to NRS 174.235; NRS 174.285; Kyles v. Whitley, 514 U.S. 419 (1995); Brady v. Maryland, 373 U.S. 83 (1963) (and their progeny).

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel and Memorandum of Points and Authorities, and oral argument at the time set for hearing this Motion.

DATED this 6<sup>th</sup> day of July, 2020.

DARIN F. IMLAY  
CLARK COUNTY PUBLIC DEFENDER

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



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KATHLEEN M. HAMERS makes the following declaration:

1. I am an attorney licensed to practice law in the State of Nevada and I am a Deputy Public Defender for the Clark County Public Defender's Office, counsel of record for Defendant JAYSHAWN D. BAILEY, in the present matter;

2. I make this Declaration in support of Mr. Bailey's Motion for Production of Discovery & Brady material;

3. I am more than 18 years of age and am competent to testify as to the matters stated herein. I am familiar with the procedural history of the case and the substantive allegations made by The State of Nevada. I also have personal knowledge of the facts stated herein or I have been informed of these facts and believe them to be true.

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

EXECUTED this 6<sup>th</sup> day of July, 2020.

*/s/ Kathleen M. Hamers*  
KATHLEEN M. HAMERS

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 Jayshawn Bailey is charged with one count of murder. A preliminary hearing took place  
4 on April 1, 2020. The State presented two witnesses, Dr. Christina Di Loreto and Detective  
5 Ryan Jaeger. Jayshawn called 911 to report a dead body in the sewer near his home. On January  
6 19, 2020, he reported that he saw two people put something in the sewer about a month ago. He  
7 said that he opened up the sewer two weeks later and saw a body inside. A couple weeks after  
8 that, his conscience got to him, so he called police. Transcript of April 1, 2020, Preliminary  
9 Hearing (hereinafter "PHT") at 22-23.

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

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

17 **ARGUMENT**

18 Prior to trial, prosecutors are required to disclose both inculpatory and exculpatory  
19 information within their actual or constructive possession.

20 **I. Prosecutors must Disclose *Inculpatory* Evidence**

21 NRS 174.235 requires prosecutors to disclose evidence "within the possession,  
22 custody or control of the state, the existence of which is known, or by the exercise of due  
23 diligence may become known," including:

- 24 • The defendant's written or recorded statements or confessions,
- 25 • Any witness's written or recorded statements the prosecuting attorney intends to  
26 call during the witness during the State's case in chief,

- Results or reports of physical or mental examinations, scientific tests or scientific experiments made in connection with the particular case,<sup>1</sup> and
- Books, papers, documents, tangible objects, or copies thereof, which the prosecuting attorney intends to introduce during the State's case in chief.

NRS 174.235(1)(a)-(c).

A. Prosecutors must disclose all inculpatory evidence, regardless of whether the material is intended for use in the government's case in chief

Prosecutors may not lawfully withhold inculpatory information from the defense simply because they do not intend to present the information in the government's case-in-chief. State v. Harrington, 9 Nev. 91, 94 (1873); People v. Carter, 312 P.2d 665, 675 (Cal.1957); People v. Bunyard, 756 P.2d 795, 809 (Cal. 1988). Any holding to the contrary would allow prosecutors to engage in unfair surprise by withholding inculpatory material from the government's case-in-chief, only to surprise the defense by using it in rebuttal. Thus, prosecutors must disclose all inculpatory evidence of which they are actually or constructively aware, including material not necessarily intended for introduction in the prosecution's case-in-chief.

B. Fundamental fairness requires that NRS 174.235 be interpreted to encompass all statements made by a defendant, regardless of whether they are reduced to writing or recorded

While NRS 174.235 obligates prosecutors to disclose a defendant's written or recorded statements, fundamental fairness requires disclosure of unrecorded statements and statements for which a defendant can be held vicariously liable.<sup>2</sup> Courts have recognized the fundamental fairness involved in "granting the accused equal access to his own words, no matter how the

<sup>1</sup> This includes medical data, imaging, films, reports and slides, histological, colposcopic, or otherwise. The right to counsel guaranteed by the Sixth Amendment obligates defense counsel to conduct "an adequate pre-trial investigation into . . . medical evidence." Gersten v. Senkowski, 426 F.3d 588, 605 (2d Cir. 2005). This duty includes obtaining and reviewing pertinent medical imaging even if the testing reveals no significant findings. Id. at 605, 607-10 (discussing the exculpatory nature of "normal" medical examinations in cases in which a complainant alleges physical harm). Thus, the discovery obligations set forth in NRS 174.235(2) require prosecutors to disclose physical imaging and testing.

<sup>2</sup> NRS 51.035(3)(a)-(e) provides that a defendant can be held vicariously liable for statements made by third parties. See also Fields v. State, 129 Nev. 785 (2009) (finding evidence of defendant's silence following wife's complaint that she was in jail because of his conduct admissible as an adoptive admission).

government came by them.” U.S. v. Caldwell, 543 F.2d 1333, 1353 (D.D.C. 1974). This includes allowing an accused access to his unrecorded words, including adoptive or vicarious admissions. Since these admissions are admissible at trial whether recorded or not, NRS 174.235 must be construed to require pretrial disclosure of any unrecorded statements or admissions, including those for which the defendant can be held vicariously liable.

## **II. Prosecutors Must Disclose Exculpatory Evidence as Required by the U.S. and Nevada Constitutions**

The United States and Nevada Constitutions require prosecutors to disclose all exculpatory information of which they are actually or constructively aware. U.S. Const. Amend. V, VI, XIV; Nev. Const. Art. 1, Sect. 8; Brady v. Maryland, 373 U.S. 83 (1963); Kyles v. Whitley, 514 U.S. 419, (1995). A prosecutor’s failure to disclose exculpatory evidence violates the Due Process Clause. Jimenez v. State, 112 Nev. 610, 618 (1996). A due process violation occurs when exculpatory evidence is withheld, regardless of the prosecution’s motive. Jimenez, 112 Nev. 610.

### **A. Brady Places Broad Disclosure Obligations on Prosecutors, Questions About Which Must Be Resolved In Favor Of Disclosure**

Exculpatory evidence is information favorable to the defendant that is material to the issue of guilt or punishment. U.S. v. Bagley, 473 U.S. 667, 675 (1985). Evidence is material and favorable to the accused if its non-disclosure undermines confidence in the outcome of the trial. Kyles, 514 U.S. at 434-35. This evidence must be disclosed even in the absence of a Brady request.<sup>3</sup> Bagley, 473 U.S. at 680-82.

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<sup>3</sup> However, a specific Brady request changes the standard of review on appeal. When a defendant makes a specific request, a reversal is warranted when “there exists a reasonable *possibility* that the claimed evidence would have affected the judgment of the trier of fact.” Jimenez, 112 Nev. 619; State v. Bennett, 119 Nev. 589 (2003). However, absent a specific request, reversal is warranted, “if there exists a reasonable *probability* that, had the evidence been disclosed, the result of the proceeding would have been different.” Bagley, 473 U.S. at 667, 682, 685; Pennsylvania v. Ritchie, 480 U.S. 39, 57 (1986). A reasonable probability is a probability sufficient to undermine confidence in the outcome. Bagley, 473 U.S. at 678, 685; Ritchie, 480 U.S. at 57.

1 Ultimately, prosecutors are tasked with a “broad duty of disclosure.” Strickler, 527 U.S.  
2 at 281; cf. U.S. v. Agurs, 427 U.S. 97, 108 (1976) (holding that “the prudent prosecutor will  
3 resolve doubtful questions in favor of disclosure”). As the Nevada Supreme Court has  
4 explained:

5 Due process does not require simply the disclosure of “exculpatory” evidence.  
6 Evidence also must be disclosed if it provides grounds for the defense to attack the  
7 reliability, thoroughness, and good faith of the police investigation, to impeach the  
8 credibility of the state’s witnesses, or to bolster the defense case against  
prosecutorial attacks. Furthermore, “discovery in a criminal case is not limited to  
investigative leads or reports that are admissible in evidence.” Evidence “need not  
have been independently admissible to have been material.”

9 Mazzan v. Warden, 116 Nev. 48, 67 (2000) (internal citations omitted). Thus, any question as to  
10 whether certain material, information, or evidence falls within the purview of Brady should be  
11 resolved in favor of disclosure. Agurs, 427 U.S. at 108; see also Kyles, 514 U.S. at 439 (“a  
12 prosecutor anxious about tacking too close to the wind will disclose a favorable piece of  
13 evidence.”).

#### 14 B. Favorable Evidence Includes Impeachment Information

15 The Due Process Clause of the Fifth and Fourteenth Amendments requires prosecutors to  
16 disclose “any information about its witnesses that could cast doubt on their credibility.” U.S. v.  
17 Jennings, 960 F.2d 1488, 1490 (9th Cir. 1992). A witness can be attacked by “revealing possible  
18 biases, prejudices, or ulterior motives of the witnesses as they may relate directly to issues or  
19 personalities in the case at hand. The partiality of a witness is . . . always relevant [to]  
20 discrediting the witness and affecting the weight of his testimony.” Davis, 415 U.S. at 316; see  
21 also Lobato v. State, 120 Nev. 512 (2004) (discussing the nine basic modes of impeachment).  
22 Accordingly, favorable evidence includes impeachment information pertaining to all government  
23 witnesses. Giglio v. U.S., 405 U.S. 150, 154 (1972); Youngblood v. West Virginia, 547 U.S.  
24 867 (2006); U.S. v. Bagley, 473 U.S. at 676 (requiring disclosure of all impeachment evidence).

##### 25 *1. Impeachment information includes cooperation agreements and benefits*

26 Impeachment information includes all cooperation agreements between a government  
27 witness and prosecutors. Giglio v. U.S., 405 U.S. 150, 154 (1972) (requiring disclosure of  
28

1 cooperation agreement between government witness and prosecutors). It also includes benefits  
2 provided to a government witness, regardless of whether an explicit deal is outlined. Browning  
3 v. State, 120 Nev. 347, 369 (2004). It is the witness's own anticipation of reward, not the intent  
4 of the prosecutor, which gives rise to the required disclosure. Moore v. Kemp, 809 F.2d 702,  
5 726, 729-30 (11th Cir. 1987); Duggan v. State, 778 S.W.2d 465, 468 (Tex. Crim. App. 1989)  
6 (noting that agreements need not be express or formal arrangements, and recognizing favorable  
7 treatment that is merely implied, suggested, insinuated, or inferred to be of possible benefit to a  
8 witness constitutes proper material for impeachment).

9 Notably, benefits are not limited to agreements made in relation to the case in which they  
10 are sought. Jimenez, 112 Nev. at 622-23. Benefits include evidence that a witness acted as a  
11 paid informant on one or more occasions. State v. Bennett, 119 Nev. 589, 603 (2003).  
12 Additionally, benefits include travel and lodging compensation, immigration assistance of any  
13 kind, whether actual or anticipatory, as well as counseling, treatment, or other assistance  
14 provided to any witness. These benefits are relevant to issues regarding possible bias,  
15 credibility, and motive to lie, all of which constitute impeachment evidence. Davis v. Alaska,  
16 415 U.S. 308 (1974).

17 *2. A witness's criminal history constitutes impeachment information*

18 Impeachment information includes evidence relating to a witness's criminal history.  
19 Briggs v. Raines, 652 F.2d 862, 865-66 (9th Cir. 1981). Under Brady, prosecutors must produce  
20 criminal histories useful to demonstrating a witness's history of, or propensity for, a relevant  
21 character trait. Id. Prosecutors must also produce criminal histories disclosing a witness's bias,  
22 prejudice or motive to lie. Davis, 415 U.S. at 354.

23 A witness's entire criminal record should be disclosed, even if it is more than ten years  
24 old. Moore, 809 F.2d 702. Prosecutors are often under the mistaken impression that they must  
25 disclose only felony convictions within the last ten years that can be utilized for impeachment  
26 under NRS 50.095. However, in Davis, the U.S. Supreme Court found that a witness can be  
27 attacked by "revealing possible biases, prejudices, or ulterior motives . . . . The partiality of a  
28

1 witness is . . . always relevant [to] discrediting the witness and affecting the weight of his  
2 testimony.” 415 U.S. at 354 (internal quotations omitted). The Davis Court found that the  
3 policy interest in protecting offender records must yield to the defendant’s right to cross-examine  
4 as to bias. Id. at 356; see also Lobato v. State, 120 Nev. 512 (2004), discussing the “nine basic  
5 modes of impeachment.” Therefore, even juvenile records, misdemeanors, and older criminal  
6 records may yield information relevant to many forms of impeachment other than that outlined in  
7 NRS 50.095.

8 Prosecutors must also produce criminal history information maintained by law  
9 enforcement agencies other than the Las Vegas Metropolitan Police Department, such as the  
10 federal government’s National Crime Information Center (“NCIC”) database.<sup>4</sup> “[K]nowledge  
11 [of the NCIC database] may be imputed to the prosecutor, or a duty to search may be imposed, in  
12 cases where a search for readily available background information is routinely performed, such  
13 as routine criminal background checks of witnesses.” Odle v. Calderon, 65 F. Supp. 2d 1065,  
14 1072 (N.D. Cal. 1999), rev’d on other grounds by Odle v. Woodford, 238 F.3d 1084 (9th Cir.  
15 2001). A prosecutor’s lack of knowledge regarding a witness’s criminal history does not relieve  
16 the prosecutorial obligation to obtain and produce that information. Martinez v. Wainwright,  
17 621 F.2d 184, 187-89 (5th Cir. 1980) (defendant entitled to criminal records of state-government  
18 witnesses, including data obtainable from the FBI; prosecutor’s lack of awareness of alleged  
19 victim’s criminal history did not excuse duty to obtain and produce rap sheet).

20 Requiring prosecutors to run background checks on their witnesses is not a novel  
21 proposition. See U.S. v. Perdomo, 929 F.2d 967 (3d Cir. 1991) (adopting 5th Circuit’s rationale  
22 in requiring government to obtain complete criminal history on prosecution witnesses). It is the

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23 <sup>4</sup> Federal law permits disclosure of NCIC information under circumstances such as those  
24 here. 28 C.F.R. Chapter 1 addresses the U.S. Dept. of Justice and Criminal Justice Information  
25 Systems. 28 C.F.R. Sec. 20.33 sets forth the instances in which NCIC information may be  
26 disclosed. It provides for NCIC disclosure “(1) To criminal justice agencies for criminal justice  
27 purposes . . . .” 28 C.F.R. Sec. 20.3(g) defines criminal justice agencies as *inter alia* courts.  
28 Additionally, 28 C.F.R. Sec. 20.3 defines the “[a]dministration of criminal justice” to include the  
“performance of any of the following activities . . . adjudication . . . .” Therefore, the C.F.R.  
authorizes prosecutors to access and disclose NCIC data pursuant to Court order as part of a  
criminal case adjudication.

1 prosecutor's "obligation to make a thorough inquiry of all enforcement agencies that had a  
2 potential connection with the witnesses . . . ." U.S. v. Thornton, 1 F.3d 149 (3d Cir. 1993). If the  
3 witness has no criminal history, the prosecutor is not required to produce the NCIC printout, as it  
4 need not disclose a lack of criminal history. U.S. v. Blood, 435 F.3d 612, 627 (6th Cir. 2006).  
5 Thus, prosecutors must run a thorough background check on every witness they intend to call,  
6 and produce all criminal history information to the defense.

7 *3. Impeachment information includes evidence contradicting a government witness's*  
8 *statement*

9 Impeachment evidence encompasses prior inconsistent statements and other evidence that  
10 contradicts government witnesses. Accordingly, prosecutors must disclose prior inconsistent  
11 statements by prosecution witnesses. Lay v. State, 116 Nev. 1185, 1199 (2000). Prosecutors  
12 must also disclose other evidence contradicting the testimony of government witnesses. Rudin v.  
13 State, 120 Nev. 121, 139 (2004).

14 *4. Confidential records must be disclosed if they contain impeachment information*

15 Impeachment evidence can derive from privileged or confidential material. When this  
16 occurs, the privileged or confidential nature of the material at issue must yield to a defendant's  
17 constitutionally secured right to confront and cross-examine those who testify against him.  
18 Davis, 415 U.S. at 356 (finding the State's interest in maintaining confidentiality of juvenile  
19 records must yield to defendant's right to cross-examine as to bias); see also U.S. v. Nixon, 418  
20 U.S. 683, 713 (1974) (generalized assertion of privilege must yield to demonstrated, specific  
21 need for evidence in a pending criminal case). Thus, prosecutors must obtain and disclose  
22 privileged and confidential records when the records contain information bearing on witness  
23 credibility.<sup>5</sup>

24 This includes mental health records. U.S. v. Lindstrom, 698 F.2d 1154, 1166-67 (11th  
25 Cir. 1983); U.S. v. Robinson, 583 F.3d 1265, 1271-74 (10th Cir. 2009); Wyman v. State, 125

26 <sup>5</sup> At a minimum, otherwise confidential or privileged material must be submitted to the  
27 Court for an *in camera* review to determine materiality. Pennsylvania v. Ritchie, 480 U.S. 39, 60  
28 (1987).



1 Nev. 592, 607-08 (2009). It also includes Child Protective Services (or the functional  
2 equivalent) and school records. See Pennsylvania v. Ritchie, 480 U.S. 39, 60 (1987) (defendant  
3 entitled to *in camera* review of Child and Youth Services records<sup>6</sup>); and State v. Cardall, 982  
4 P.3d 79, 86 (Utah 1999) (defendant entitled to complainant's school psychological records  
5 indicating she had propensity to lie and had fabricated prior rape allegations). It further includes  
6 adult and juvenile parole, probation, jail, and prison records. U.S. v. Strifler, 851 F.2d 1197,  
7 1201 (9th Cir. 1988); Carriger v. Stewart, 132 F.3d 463, 479-82 (9th Cir. 1997) (requiring  
8 production of Department of Corrections file on principle government witness); Davis, 415 U.S.  
9 at 356; see also Bennett, 119 Nev. at 603 (2003) (failure to disclose co-conspirator's juvenile  
10 records in penalty hearing amounted to Brady violation). Thus, prosecutors cannot refuse  
11 disclosure of impeachment information on the basis that the information is privileged or  
12 confidential.

13 *5. Impeachment Information Includes Prior Allegations of Sexual Misconduct and Prior*  
14 *Sexual Knowledge*

15 Under Nevada law, prior false allegations of sexual misconduct amount to an exception  
16 to rape shield laws. Miller v. State 105 Nev. 497 (1989). Accordingly, Nevada law authorizes  
17 disclosure of prior false allegations, including those made by juvenile complainants. NRS  
18 432B.290(3) specifically authorizes child welfare agencies to disclose "the identity of a person  
19 who makes a report or otherwise initiates an investigation . . . if a court, after reviewing the  
20 record *in camera* and determining that there is reason to believe that the person knowingly made  
21 a false report, orders the disclosure." Similarly, the Ninth Circuit recognizes it is error to  
22 exclude evidence of minor's prior false sexual assault allegations as this evidence "might  
23 reasonably have influenced the jury's assessment of [the complainant's] reliability or credibility .  
24 . . ." Fowler v. Sacramento Co. Sheriff's Dept., 421 F.3d 1027, 1032-33; 1040 (9th Cir. 2005).

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25  
26 <sup>6</sup> The Ritchie Court held that the State cannot claim privilege to refuse disclosure of CPS  
27 records, unless there is a statutory scheme that forbids any use, including disclosure to a  
28 prosecutor, of such records. Ritchie, 480 U.S. at 57-58. NRS 432B.290 allows for disclosure of  
such records to the prosecutor and to the court for *in camera* review.

1 Impeachment evidence in sexual misconduct cases further includes evidence of a  
2 complainant's prior sexual conduct to show sexual knowledge. Summitt v. State, 101 Nev. 159  
3 (1985); see also Holley v. Yarborough, 568 F.3d 1091, 1099-1100 (9th Cir. 2009) (finding it was  
4 error to exclude evidence that complainant made comments to friends regarding a prior sexual  
5 encounter and claimed other boys expressed a desire to engage in sexual acts with her, as this  
6 evidence revealed complainant's active sexual imagination, and may have altered jury's  
7 perception of the complainant's credibility and reliability of her claims). Thus, prosecutors must  
8 disclose evidence of a complainant's prior accusations of sexual misconduct as well as evidence  
9 of a complainant's prior sexual conduct in cases where such evidence bears on the charged  
10 crimes.

11 *6. Law enforcement personnel files may contain impeachment information*

12 Under U.S. v. Henthorn, 931 F.2d 29, 31 (9th Cir. 1991), prosecutors must examine law  
13 enforcement personnel files upon defense request. See also U.S. v. Cadet, 727 F.2d 1453 (9th  
14 Cir. 1984). A defendant is not required to make an initial showing of materiality before  
15 prosecutors must examine the files—the examination obligation arises solely from the  
16 defendant's request. Henthorn, 931 F.2d at 31. "Absent such an examination, [the State] cannot  
17 ordinarily determine whether it is obligated to turn over the files." Id. Once examined,  
18 prosecutors must "disclose information favorable to the defense that meets the appropriate  
19 standard of materiality . . . . If the prosecution is uncertain about the materiality of the  
20 information within its possession, it may submit the information to the trial court for an in  
21 camera inspection and evaluation . . . ." Henthorn, 931 F.2d at 30-31 (quoting Cadet, 727 F.2d at  
22 1467-68). Thus, if requested to do so by the defense, the prosecution must canvass relevant law  
23 enforcement personnel files for information material to the case.

24 C. Favorable Evidence Includes Witnesses with Exculpatory Information

25 Prosecutors must disclose the identity of witnesses possessing exculpatory information,  
26 as no legitimate interest is served by precluding the defense from calling such witnesses for trial.  
27  
28

1 U.S. v. Eley, 335 F.Supp. 353 (N.D. Ga. 1972); U.S. v. Houston, 339 F.Supp. 762 (N.D. GA  
2 1972).

3 D. Favorable Evidence Includes Evidence of Third-Party Guilt

4 The U.S. Constitution guarantees a criminal defendant the right to present evidence of  
5 third-party guilt. See Holmes v. South Carolina, 547 U.S. 319 (2006) (holding that refusal to  
6 allow defendant to present evidence of third party guilt deprives him of a meaningful right to  
7 present a complete defense under the Sixth and Fourteenth Amendments to the U.S.  
8 Constitution). Under Brady, prosecutors must disclose all evidence suggesting another  
9 perpetrator committed the charged crimes. Lay, 116 Nev. at 1195-96. This includes evidence  
10 that another individual was arrested in connection with the charged crime. Banks v. Reynolds,  
11 54 F.3d 1508, 1518 n.21 (10th Cir. 1995). It also includes evidence of investigative leads  
12 pointing to other suspects. Jimenez, 112 Nev. at 622-23 (withholding evidence of investigative  
13 leads to other suspects, regardless of admissibility, constitutes Brady violation).

14 Additionally, prosecutors must provide the actual documents, evidence, and reports  
15 pertaining to evidence of third-party guilt; it is not enough for prosecutors to provide the defense  
16 with a summary of the information relating to other suspects. Mazzan, 116 Nev. at 69 (summary  
17 of prosecutor's perspective on written reports relating to potential suspects were constitutionally  
18 inadequate; actual reports should have been disclosed pursuant to Brady); Bloodworth v. State,  
19 512 A.2d 1056, 1059-60 (Md. 1986). Thus, prosecutors must disclose any information or  
20 evidence indicating someone other than the instant defendant committed the charged crimes.

21 E. Favorable Evidence Includes All Evidence that May Mitigate a Defendant's Sentence

22 Favorable evidence also includes evidence which could serve to mitigate a defendant's  
23 sentence upon conviction. Jimenez, 112 Nev. 610. Accordingly, prosecutors must disclose any  
24 evidence tending to mitigate punishment in the instant matter.

25 //

26 //

### 1      **III.    The Disclosure Obligations Conferred by NRS 174.235 and Brady Include Rough** 2      **Notes**

3      Raw notes made by any law enforcement officer or other prosecution agent in connection  
4 with the investigation of instant matter must be disclosed to the defense. See, e.g., State v.  
5 Banks, 2014 WL 7004489 (Nev. S.Ct. Dec. 10, 2014) (unpublished) (court did not take issue  
6 with lower court's order requiring preservation and disclosure of police officer's rough notes);  
7 see also U.S. v. Clark, 385 F.3d 609, 619 (6th Cir. 2004) (finding rough notes discoverable under  
8 F.R.C.P. 16); U.S. v. Molina-Guevara, 96 F.3d 698, 705 (3d Cir. 1996) (remanding on other  
9 grounds but noting that, on remand, production of rough notes required under F.R.C.P. 16); U.S.  
10 v. Harris, 543 F.2d 1247 (9th Cir. 1976) (noting as important, and requiring preservation of, law  
11 enforcement rough notes). Notably, this does not include information amounting to work  
12 product.

13      In Hickman v. Taylor, 329 U.S. 495, 508-11 (1947), the U.S. Supreme Court recognized  
14 the privileged nature of discussions relating to the preparation of a case for trial.<sup>7</sup> The work  
15 product doctrine announced in Hickman shelters not only material generated by an attorney in  
16 preparation for trial, but by his agent, as well:

17      At its core, the work product doctrine shelters the mental processes of the attorney,  
18 providing a privileged area within which he can analyze and prepare his client's  
19 case. But the doctrine is an intensely practical one, grounded in the realities of  
20 litigation in our adversary system. One of those realities is that attorneys often  
21 must rely on the assistance of investigators and other agents in preparation for trial.  
22 It is therefore necessary that the doctrine protect material prepared by agents for the  
23 attorney as well as those prepared by the attorney himself. Moreover, the concerns  
24 reflected in the work-product doctrine do not disappear once trial has begun . . . .

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25      <sup>7</sup> "In performing his various duties, however, it is essential that a lawyer work with a  
26 certain degree of privacy, free from unnecessary intrusion by opposing parties and their  
27 counsel... Proper preparation of a client's case demands that he assemble information, sift what  
28 he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his  
strategy without undue and needless interference... This work is reflected, of course, in  
interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs,  
and countless other tangible and intangible ways – aptly... termed... as the 'work product of the  
lawyer.' Were such materials open to opposing counsel on mere demand, much of what is now  
put down in writing would remain unwritten. An attorney's thoughts, heretofore inviolate,  
would not be his own. Inefficiency, unfairness and sharp practices would inevitably develop in  
the giving of legal advice and in the preparation of cases for trial. The effect on the legal  
profession would be demoralizing. And the interests of clients and the cause of justice would be  
poorly served." Id.

1 U.S. v. Nobles, 422 U.S. 225, 238-39 (1975). Codifying this, NRS 174.235(2) exempts from  
2 discovery:

- 3 1. An internal report, document or memorandum that is prepared by or on behalf  
4 of the prosecuting attorney in connection with the investigation or prosecution  
5 of the case.
- 6 2. A statement, report, book, paper, document, tangible object or any other type of  
7 item or information that is privileged or protected from disclosure or inspection  
8 pursuant to the constitution or laws of this state or the Constitution of the United  
9 States.

10 Accordingly, only raw notes generated by, or on behalf of, the prosecutor are exempted  
11 from disclosure under the work product doctrine. Any other raw notes compiled during the  
12 investigation of this matter must be turned over pursuant to the disclosure obligations imposed  
13 by NRS 174.235 and Brady.

#### 14 **IV. The Disclosure Obligations Set Forth Above Extend to All Material in the** 15 **Prosecutors Actual or Constructive Possession**

16 Prosecutors must turn over all material related to the case in the possession, control and  
17 custody of any government agent or agency. See U.S. v. Blanco, 392 F.3d 382, 388 (9th Cir.  
18 2004). Prosecutors are responsible for disclosing evidence in their possession as well as  
19 evidence held or maintained by other government agents, as “it is appropriate to charge the State  
20 with constructive knowledge” of evidence held by any investigating agency. Bennett, 119 Nev.  
21 at 603.

22 This constructive possession rule applies to evidence that is *withheld* by other agencies.  
23 Bennett, 119 Nev. at 603. Even if investigating officers withhold reports without the  
24 prosecutor’s knowledge, “the state attorney is *charged with constructive knowledge and*  
25 *possession of evidence withheld by other state agents*, such as law enforcement officers.” Id.  
26 (internal quotations and citation omitted) (emphasis added). “Exculpatory evidence cannot be  
27 kept out of the hands of the defense just because the prosecutor does not have it, where an  
28 investigative agency does.” U.S. v. Zuno-Arce, 44 F.3d 1420, 1427 (9th Cir. 1995). “It is a

1 violation of due process for the prosecutor to withhold exculpatory evidence, and his motive for  
2 doing so is immaterial.” Jimenez, 112 Nev. at 618.

3 In fact, a prosecutor has an *affirmative obligation* to obtain Brady material and provide it  
4 to the defense, *even if the prosecutor is initially unaware of its existence*. “The prosecution’s  
5 affirmative duty to disclose evidence favorable to a defendant can trace its origins to early 20th  
6 century strictures against misrepresentation and is of course most prominently associated with  
7 this Court’s decision in Brady . . . .” Kyles, 514 U.S. at 432. This obligation exists even where  
8 the defense does not make a request for such evidence. Id. As the U.S. Supreme Court  
9 explained:

10 This in turn means that the individual prosecutor *has a duty to learn* of any  
11 favorable evidence known to the others acting on the government’s behalf in the  
12 case, including the police. But whether the prosecutor succeeds or fails in meeting  
13 this obligation (whether, that is, a failure to disclose is in good faith or bad faith),  
14 the prosecution’s responsibility for failing to disclose known, favorable evidence  
15 rising to a material level of importance is inescapable. . . . Since then, the  
16 prosecutor has the means to discharge the government’s Brady responsibility if he  
17 will, any argument for excusing a prosecutor from disclosing what he does not  
18 happen to know about boils down to a plea to substitute the police for the  
19 prosecutor, and even for the courts themselves, as the final arbiters of the  
20 government’s obligation to ensure fair trials.

21 Kyles, 514 U.S. at 437-38 (emphasis added) (citations and footnotes omitted); see also Carriger,  
22 132 F.3d at 479-82 (holding that “the prosecution has a duty to learn of any exculpatory evidence  
23 known to others acting on the government’s behalf. *Because the prosecution is in a unique*  
24 *position to obtain information known to other agents of the government, it may not be excused*  
25 *from disclosing what it does not know but could have learned.*” (citations omitted) (emphasis  
26 added). Thus, the disclosure obligations outlined above extend not only to material directly in  
27 the possession of prosecutors, but material prosecutors constructively possess, as well.

28 **V. An “Open File” Policy Does Not Obviate the Disclosure Obligations Outlined Above**

Historically, the Clark County District Attorney’s Office (CCDA) has employed an open  
file policy in which prosecutors allow defense counsel to review the discovery contained in the  
government’s trial file. While the CCDA currently may not be adhering to this practice, it is  
worth noting that an open file policy does not vitiate above-referenced disclosure obligations.

1 Strickler, 527 U.S. at 283 (holding that a prosecutor’s open file policy does not in any way  
2 substitute for or diminish the State’s obligation to turn over Brady material). “If a prosecutor  
3 asserts that he complies with Brady through an open file policy, defense counsel may reasonably  
4 rely on that file to contain all materials the State is constitutionally obligated to disclose under  
5 Brady.” Strickler, 527 U.S. at 283, n.23.; see also Amando v. Gonzalez, 758 F.3d 1119, 1136  
6 (9th Cir. 2014); McKee v. State, 112 Nev. 642, 644 (1996) (reversing a judgment of conviction  
7 based on prosecutorial misconduct where the prosecutor did not make available all relevant  
8 inculpatory and exculpatory evidence consistent with the county district attorney’s open file  
9 policy); see also Furbay v. State, 116 Nev. 481 (2000) (discussing prosecution’s duty to provide  
10 all evidence in its possession where it has promised to do so). Accordingly, if the defense relies  
11 on the government’s assurance of an open file policy, the defense is not required to hunt down  
12 information otherwise obtained and maintained pursuant to that policy.

13 **VI. Adjudication of the Instant Motion is Necessary for Preservation of Issues Relating**  
14 **to Discovery Disclosures**

15 NRS 174.235 requires disclosure of (1) written and recorded statements of a defendant or  
16 any witness the prosecutor intends to call in his case-in-chief; (2) results and reports of any  
17 examinations or tests conducted in connection with the case at bar; and (3) any document or  
18 tangible object the prosecutor intends to introduce in his case in chief—upon the request of the  
19 defense. Additionally, constitutional jurisprudence requires disclosure of any evidence tending  
20 to exculpate the accused. The instant Motion is brought, *inter alia*, to ensure the availability of  
21 appropriate sanctions should later discovery issues arise. This requires a Court Order compelling  
22 the production of the information and material sought herein. Donovan v. State, 94 Nev. 671  
23 (Nev. 1978).

24 A. Nevada Law Provides for Judicial Oversight of the State’s Discovery Obligations

25 Eighth Judicial District Court Rule (EDCR) 3.24 governs discovery motions in local  
26 criminal practice. It states:

- 27 (a) Any defendant seeking a court order for discovery pursuant to the provisions of  
28 NRS 174.235 or NRS 174.245 may make an oral motion for discovery at the

time of initial arraignment. The relief granted for all oral motions for discovery will be as follows:

- (1) That the State of Nevada furnish copies of all written or recorded statements or confessions made by the defendant which are within the possession, custody or control of the State, the existence of which is known or by the exercise of due diligence may become known to the district attorney.
- (2) That the State of Nevada furnish copies of all results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with this case which are within the possession, custody or control of the State, the existence of which is known or by the exercise of due diligence may become known to the district attorney.
- (3) That the State of Nevada permit the defense to inspect and copy or photograph books, papers, documents, tangible objects, buildings, places, or copies or portions thereof, which are within the possession, custody or control of the State, provided that the said items are material to the preparation of the defendant's case at trial and constitute a reasonable request.

- (b) Pursuant to NRS 174.255, the court may condition a discovery order upon a requirement that the defendant permit the State to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof, which the defendant intends to produce at the trial and which are within the defendant's possession, custody or control provided the said items are material to the preparation of the State's case at trial and constitute a reasonable request.

Thus, EDCR 3.24 specifically provides for the discovery motion brought in the instant matter.

Not surprisingly, the Nevada Supreme Court has held that a discovery motion and corresponding order is a prerequisite to obtaining relief under NRS 174.295<sup>8</sup> for later discovery violations:

Although NRS 174.295 provides relief for a prosecutor's failure to notify defense counsel of all discoverable material, that statute is only operative in situations where a previous defense motion has been made and a court order issued. That provision is not applicable to any informal arrangements that are made, as here between counsel without benefit of court sanction.

Donovan, 94 Nev. 671 (internal citations omitted).

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<sup>8</sup> NRS 174.295 sets forth sanctions for discovery violations, such as inspection of material not properly disclosed, trial continuance, or exclusion of the undisclosed material.



1 This comports with other portions of NRS 174, which, by implication, suggests criminal  
2 discovery is a matter that must be pursued by way of motion rather than a simple written or oral  
3 request. For example, NRS 174.285 states that “a request made pursuant to NRS 174.235 or  
4 174.245 may be made only within 30 days after arraignment or at such reasonable time *as the*  
5 *court may permit*. A party shall comply with a request made pursuant to NRS 174.235 or  
6 174.245 not less than 30 days before trial or at such reasonable later time *as the court may*  
7 *permit*.” (Emphasis added). The judicial permission required for late discovery requests and late  
8 compliance contemplates judicial oversight of discovery matters.

9 Similarly, NRS 174.125 contemplates discovery requests via written motion. NRS  
10 174.125 requires that, any motion “which by [its] nature, if granted, delay[s] or postpone[s] the  
11 time of trial must be made before trial, unless an opportunity to make such a motion before trial  
12 did not exist or the moving party was not aware of the grounds for the motion before trial.” A  
13 discovery request, depending on the timing and nature of the request, may necessarily cause a  
14 trial delay. Accordingly, under NRS 174.125, discovery requests should be made via motion  
15 prior to trial. Id.

16 Thus, the statutorily-based discovery requests set forth herein are properly brought before  
17 this Honorable Court and must be adjudicated. Refusal to adjudicate the instant Motion obviates  
18 Mr. Bailey’s statutorily created liberty interest in (1) ensuring access to the discoverable material  
19 covered by NRS 174 and (2) ensuring application of the enforcement and sanction provisions  
20 outlined in NRS 174. Such an arbitrary deprivation of a state-created liberty interest violates the  
21 Due Process Clause. See Hicks v. Oklahoma, 447 U.S. 343, 346 (1980) (arbitrary deprivation of  
22 state-created liberty interest amounts to Due Process violation).

#### 23 B. Brady Material and Relevant Authority

24 Brady and related authority also contemplate pre-trial regulation and adjudication of  
25 prosecutorial disclosures. Brady is not a discovery rule but a rule of fairness and minimum  
26 prosecutorial obligation. Curry v. U.S., 658 A.2d 193, 197 (D.C. 1995) (internal quotations and  
27 citations omitted). It does not require the production of specific documents. It requires the  
28

1 production of information. This prosecutorial obligation is non delegable—it is not contingent  
2 on, nor is the defense required to make, specific Brady requests. See Strickler, 527 U.S. at 281-  
3 82 (setting forth the elements of a Brady claim and clarifying that there is no requirement that  
4 defense make request).<sup>9</sup>

5 However, to prevail on a Brady claim, should one arise, a defendant must establish that  
6 (1) the prosecution was in actual or constructive possession of favorable information; (2) the  
7 prosecution failed to disclose this information to the defense in a timely fashion or at all; and (3)  
8 the withheld information was material to the outcome of the trial. Strickler, 527 U.S. at 281-82.  
9 The standard for determining materiality depends upon whether defense counsel requested the  
10 information at issue and, if a request was made, whether the request was specific or general in  
11 nature. “If a defendant makes no request or only a general request for information, the evidence  
12 is material when a reasonable *probability* exists that the result would have been different had it  
13 been disclosed.” Bennett, 119 Nev. at 600 (emphasis added). Yet, “if the defense request is  
14 specific, the evidence is material upon the lesser showing that a reasonable *possibility* exists of a  
15 different result had there been disclosure.” Id. (emphasis added) Accordingly, the fact and  
16 nature of a Brady request is critical to later adjudication of alleged Brady violations.

17 Defense counsel enjoys to the right to pursue Brady requests—and thereby construct the  
18 record on them—in the manner counsel sees fit. The best way to ensure that the record  
19 adequately reflects the nature and scope of a Brady request is via pre-trial discovery motion—a  
20 motion, as set forth above, specifically provided for by Nevada law.<sup>10</sup> See Myles v. State, 127  
21 Nev. 1161 (2011) (unpublished) (no discovery violation where undisclosed photo not requested  
22 as part of discovery motion).

23 <sup>9</sup> Any argument by prosecutors that “the defense is able to independently seek out any  
24 discovery which they desire . . . it is not the State’s responsibility to perform investigations or  
25 inquiries on behalf of the defense,”—common responses to defense discovery motions—is  
26 patently wrong. Strickler, 527 U.S. at 281-82 (rejecting the argument that defense counsel  
should have uncovered Brady information); Banks v. Dretke, 540 U.S. 668, 695-98 (2004) (“A  
rule thus declaring ‘prosecutor may hide, defendant must seek’ is not tenable in a system  
constitutionally bound to accord defendants due process.”).

27 <sup>10</sup> This is especially true given the absence of compelling Nevada or other authority  
28 recognizing an informal Brady request as sufficient to preserve the record on this critical issue.

1 A cursory review of federal discovery jurisprudence reveals the broad authority with  
2 which trial courts are vested to regulate pretrial Brady disclosures and thereby ensure that this  
3 constitutional rule—which exists to prevent a miscarriage of justice—works as it should.  
4 Bagley, 473 U.S. at 675; U.S. v. Odom, 930 A.2d 157, 158 (D.C. 2007); see also U.S. v. W.R.  
5 Grace, 526 F.3d 499, 509 (9th Cir. 2008) (affirming trial court’s order requiring government to  
6 disclose its finalized witness list a year prior to trial as an exercise of the court’s inherent  
7 authority to manage its docket”); U.S. v. Coppa, 267 F.3d 132, 146 (2d Cir. 2001)  
8 (acknowledging trial court’s discretion to order pretrial disclosures as a matter of sound case  
9 management); U.S. v. Rigas, 779 F. Supp. 408, 414 (M.D. Pa. 2011 (recognizing authority of  
10 trial court to order pretrial disclosure of Brady material to ensure effective administration of  
11 criminal justice system); U.S. v. Cerna, 633 F. Supp. 2d 1053, 1057 (N.D. Cal. 2009) (exercising  
12 power to issue Brady order); U.S. v. Thomas, 2006 WL 3095956 (D.N.J. 2006) (issuing pretrial  
13 order regulating, *inter alia*, Brady disclosures).

14 Indeed, trial courts must, as a constitutional matter, exercise this oversight power. Boyd  
15 v. U.S., 908 A.2d 39, 61 (D.C. 2006) (“courts have the obligation to assure that [prosecutorial  
16 discretion] is exercised in a manner consistent with the right of the accused to a fair trial”); see  
17 also Smith v. U.S., 665 A.2d 962 (D.C. 2008) (abuse of discretion for court to refuse to review a  
18 transcript *in camera* where prosecution concede there were “minor inconsistencies in the  
19 testimony as to how the shooting happened”). As such, judicial oversight of Brady disclosures is  
20 commonplace in federal criminal prosecutions. See, e.g., U.S. v. Johnson, 2010 WL 322143  
21 (W.D. Pa. 2010) (trial court ordering government to disclose all Brady material, including  
22 impeachment material no later than ten days prior to trial); U.S. v. Lekhtman 2009 WL 5095379  
23 at 1 (E.D.N.Y. 2009) (ordering disclosure of Brady material as it is discovered and Giglio  
24 material two weeks before commencement of trial); U.S. v. Rodriguez, 2009 WL 2569116 at 12  
25 S.D.N.Y. 2009) (ordering government to turn over Brady material as it is discovered and Giglio  
26 material twenty-one days before trial); U.S. v. Libby, 432 F. Supp. 2d 81, 86-87 (D.D.C. 2006)  
27 (ordering immediate production of all Brady material); U.S. v. Thomas, 2006 CR 553, 2006 WL

1 3095956 (D.N.J. 2006) (unpublished) (ordering disclosure of “[a]ny material evidence favorable  
2 to the defense related to issues of guilt, lack of guilt, or punishment . . . within the purview of  
3 Brady and its progeny” within ten days of order). Thus, the constitutionally-based Brady  
4 requests set forth herein are properly brought before this Honorable Court and must be  
5 adjudicated to preserve Mr. Bailey’s rights.

6 **VII. The Court Must Adjudicate the Instant Motion Regardless of Whether a Discovery**  
7 **Dispute Exists**

8 A dispute over the discoverability of certain material is not a prerequisite to compelling  
9 production of discovery and exculpatory information. This is because such disputes rarely occur.  
10 With the exception of records that are otherwise privileged (such as CPS or medical records),  
11 prosecutors typically do not inform defense counsel of material they intend to withhold from the  
12 defense. They simply keep the information hidden. The withheld information is later discovered  
13 by the defense either through subsequent defense investigation, fortuitous circumstances, or  
14 during the post-conviction discovery process.

15 Recognizing this, the U.S. Supreme Court has not required defense counsel to divine (and  
16 bring to the Court’s attention) particular information within the government’s file that is being  
17 shielded from defense view:

18 We rejected a similar argument in Strickler. There, the State contended that  
19 examination of a witness’s trial testimony, alongside a letter the witness published  
20 in a local newspaper, should have alerted the petitioner to the existence of  
21 undisclosed interviews of the witness by the police. We found this contention  
22 insubstantial. In light of the State’s open file policy, we noted, ‘it is especially  
23 unlikely that counsel would have suspected that additional impeaching evidence  
24 was being withheld. Our decisions lend no support to the notion that defendants  
25 must scavenge for hints of undisclosed Brady material when the prosecution  
26 represents that all such material has been disclosed. As we observed in Strickler,  
27 defense counsel has no ‘procedural obligation to assert constitutional error on the  
28 basis of mere suspicion that some prosecutorial misstep may have occurred.

24 Banks, 540 U.S. at 695-96 (internal citations omitted). Thus, a dispute need not exist over the  
25 discoverability of a particular piece of information in order for this Court to entertain motions  
26 such as that brought here and enforce the government’s discovery obligations. Accordingly, Mr.

1 Bailey respectfully requests that this Honorable Court adjudicate his Motion to Compel  
2 Production of Discovery.

3 **VIII. Prosecutors Must Oppose or Concede Each Discovery Request; and the Court Must**  
4 **Adjudicate Each Request**

5 Prosecutors often respond to discovery requests some combination of the following: (1) the  
6 government is aware of its discovery obligation and will act accordingly; (2) the government has  
7 complied with the requests or will facilitate review of discovery as needed; or (3) the request is  
8 objectionable as overbroad, immaterial, or not authorized by law. Only the last of these is  
9 responsive to a particular request; the first two are not. Each request needs to be opposed or  
10 conceded. Saying “we have complied” or “we are aware of our discovery obligations” or “we  
11 will facilitate a review of detective notebooks” is nothing more than attempt to subvert a ruling  
12 enforcing the discovery provisions mandated by state and federal law. It is a way to goad the  
13 court into believing the issue is moot. Discovery is a continuing obligation. A criminal  
14 defendant is entitled to an order enforcing the discovery provisions outlined by state and federal  
15 law, regardless of whether the prosecutor has already provided certain requested material, is  
16 aware of pertinent discovery rules, and is willing to facilitate further discovery review. The  
17 prosecutor needs to oppose or concede each request. The Court needs to rule on each request,  
18 accordingly.<sup>11</sup>

19 **IX. Defendant’s Specific Discovery Requests**

20 Based upon the foregoing, Mr. Bailey requests that this Honorable Court enter an order  
21 directing prosecutors to provide the following related to this case:<sup>12</sup>

22 **General Discovery**

23 **1. Defendant’s Statements**

25 <sup>11</sup> Combination responses, which contain conciliatory language in conjunction with some  
26 form of opposition, must be treated as an opposition to a particular request, thereby warranting  
adjudication by this Honorable Court.

27 <sup>12</sup> Significantly, this request is not in any way intended to be a substitute for the  
28 generalized duties described above.

1 All statements made by the defendant and any co-defendants, regardless of whether  
2 the statements were written or recorded, including but not limited to:

- 3 • Comments made at the time of arrest or during transport to the detention center,
- 4 • All conversations, telephonic or otherwise, intercepted by any law enforcement  
5 agencies, including federal authorities, and
- 6 • The substance of any statements, conversations, or correspondence overheard or  
7 intercepted by any jail personnel or other inmates which have not been recorded  
8 or memorialized.

## 8 **2. Potential Witnesses' Statements**

9 All written or recorded statements of witnesses and potential witnesses, including, but  
10 not limited to:

- 11 • Audio and video recording in any form collected by investigating officers or any  
12 other law enforcement agent as part of the investigation of this matter, as well as  
13 any related matters,
- 14 • Notes of interviews, such as notes of patrol officers, or notes of phone calls made  
15 to potential witnesses, or attempts to contact such witnesses, and

## 15 **3. Records Related to Investigation**

16 All records of the Las Vegas Metropolitan Police Department and any other law  
17 enforcement agencies involved in the investigation of this or any related matter,  
18 including, but not limited to:

- 19 • Copies of handwritten or other notes,
- 20 • Investigative leads that were not followed up on,
- 21 • Any other matter bearing on the credibility of any State witness,
- 22 • Information pertaining to this case or any witnesses in this case
- 23 • Any leads or tips provided to law enforcement or a crime tip organization such as  
24 Crime Stoppers, including any reward or benefit received for such tip.

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26 //

27 //

#### 4. Crime Scene Analysis, Evidence Collection, and Forensic Testing

All requests, results, reports, and bench notes pertaining to all crime scene analysis, evidence collection and forensic testing performed in this case,<sup>13</sup> including, but not limited to:

- Photographic, video, and audio recordings of evidence collection and testing,
- Fingerprint Evidence: All latent prints recovered in the instant matter, regardless of their value for identification, as well as exemplars compiled in connection with the investigation of this matter, including:
  - photographs, reports, and recordings related to collecting and testing of fingerprints,
  - Results of fingerprint collection and comparison, and
  - Automated Fingerprint Identification System (AFIS) searches and results,
- DNA Evidence: DNA testing, raw data and Combined DNA Index System (CODIS) searches and results,
- Scientific Evidence: toxicological, chemical, biochemical, laboratory, and other laboratory or forensic analyses, including trace evidence analyses, crime scene reconstruction or blood spatter analysis, and
- Forensic Analysis: reports and notes related to any forensic analysis and requests for forensic analysis, regardless of the outcome of such request.

#### 5. Medical Records

All records, including photos, reports, imaging studies, test results, and notes pertaining to the decedent in this case, including:

- Records generated pursuant to treatment provided in connection with the instant matter; including, without limitation, all emergency medical, fire department, hospital, or other medical care provider records, including all relevant prior medical records,
- All pathological, neuropathological, toxicological, or other medical evaluations of the decedent, including all relevant prior medical records and
- The name and badge number of any EMT personnel who responded to the scene, and all documentation, notes, reports, charts, conclusions, or other diagnostic, prognostic, or treatment information pertaining to any person evaluated, assessed, treated, or cleared by a paramedic at the scene, or transported to a hospital from the scene.

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<sup>13</sup> This is required under NRS 171.1965(1)(b) and NRS 174.235(1)(b).

1           **6. Preservation of and Access to Raw Evidence**

2           Access to and preservation of all material collected in the investigation of this case to  
3           include but not limited to:

- 4           • forensic material, raw data, biological samples and toxicological samples; and  
5           • video surveillance, photographic negatives, and digital negatives.

6           **7. Electronic Communications and Associated Warrants**

7           All intercepted communications, whether electronic oral or otherwise, pertaining to  
8           the instant matter or any related matter, including but not limited to:

9           **8. Law Enforcement Video or Audio Recordings**

10          All video and audio recordings obtained by the Las Vegas Metropolitan Police  
11          Department recording device, including but not limited to:

- 12          • Dashboard cameras,  
13          • Body-mounted officer cameras,  
14          • Any other recording equipment operational during the investigation of this case,  
15          and  
16          • Any video footage captured by body cameras worn by any other officer present  
17          for Las Vegas Metropolitan Police Department for this event and any other related  
18          or connected event number.

19          **9. Non-Activated Body Camera**

20          The name and “P#” of any officer present for Las Vegas Metropolitan Police  
21          Department for this event and any related or connected event number who is required  
22          by department policy to wear, but did not activate his body-worn camera.

23          **10. Monitoring, Tracking, and Associated Warrants**

24          All data, recordings, reports, and documentation of the following: voice monitoring  
25          devices, geographic tracking devices, pen registers, trap and trace devices installed  
26          pursuant to interception, warrant, or other means, obtained by law enforcement  
27          pertaining to the instant matter or any related matter.



1           **11. 911 and 311 Calls**

2           Any and all 911 and 311 recordings to include, but not limited to:

- 3           • Car-to-car audio communications,
- 4           • Car-to-dispatch radio communications, and
- 5           • Unit Log incident print out related to the event.

6           **12. Chain of Custody**

7           All relevant chain of custody reports, including reports showing the destruction of

8           any evidence in the case.<sup>14</sup>

9           **13. Witness Contact Information**

10          All updated witness contact information, including last known addresses and phone

11          numbers. This includes the names and contact information for witnesses who may

12          have information tending to exculpate Mr. Bailey.

13          **14. Information Obtained from Confidential Informants**

14          All information obtained from confidential informants for any aspect of the

15          investigation of this case. This includes, but is not limited to, informants who

16          purportedly obtained information about this case while incarcerated, whether the

17          information came from Mr. Bailey, a co-defendant, unindicted co-conspirator, or

18          another source, regardless of whether prosecutors intend to use the informant-related

19          information at the upcoming trial of this matter.

20          **Exculpatory Evidence**

21               **15. Alternative Suspects**

22          All information which tends to show any doubt that Mr. Bailey committed the crimes

23          alleged, or which shows the possibility of another perpetrator, co-conspirator, aider

24          and abettor, or accessory after the fact, including the names of those individuals.

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27          <sup>14</sup> Destruction of evidence can result in dismissal of the case or a jury instruction stating

28          such evidence is presumed favorable to the accused. Crockett v. State, 95 Nev. 859, 865 (1979);

Sparks v. State, 104 Nev. 316, 319 (1988); Sanborn v. State, 107 Nev. 399, 409 (1991).

1           **16. Identification and Mis-Identification**

2           All statements of identification associated with this case, including any information  
3           concerning witnesses who did not identify Mr. Bailey as the perpetrator of the alleged  
4           crimes.

5           **17. General Exculpatory Evidence Request**

6           All information which shows that Mr. Bailey was not responsible for the death of the  
7           decedent in this case or that would justify his conduct or reduce his culpability.

8           **General Impeachment**

9           **18. Witness Benefits**

10          Disclosure of all express or implied compensation, promises of favorable treatment or  
11          leniency, or any other benefit that any of the State's witnesses received in exchange  
12          for their cooperation with this or any related prosecution.

13          **19. Prior Witness Statements**

14          Disclosure of any and all statements, tangible or intangible, recorded or unrecorded,  
15          made by any witness that are in any manner inconsistent with the written or recorded  
16          statements previously provided to the defense. This includes oral statements made to  
17          an employee or representative of the CCDA or any other government employee, local  
18          or federal, during pre-trial conferences or other investigative meetings.

19          **20. Law Enforcement Impeachment Information—Henthorn Request**

20          Mr. Bailey hereby requests the prosecutor review the personnel files of each officer  
21          involved in this case. After review, the prosecutor must disclose all impeachment  
22          information located in the personnel files of any police witness called to testify at trial  
23          or any pretrial hearing in this matter, including, but not limited to, any Statement of  
24          Complaint regarding the witness or this investigation, any Employee Notice of  
25          Internal Investigation, any Internal Affairs Investigative Report of Complaint, any  
26          witness statement, any Bureau Investigation Supervisory Intervention, and any other

document maintained or generated by the Office of Internal Affairs, Critical Incident Review Panel, or other investigative agency.

## **21. Criminal History Information**

Criminal history information on any actual or potential witness, showing specific instances of misconduct, instances from which untruthfulness may be inferred or instances which could lead to the discovery of admissible evidence. To this end, the defense requests that, the CCDA provide NCIC reports on any lay witnesses the State intends to call at trial or upon whose testimony or statements the State will rely during either the guilt or penalty phases of trial. The defense further requests that the NCIC information be provided to defense counsel as soon as possible and that prosecutors identify those individuals for whom no NCIC information is found. While the defense is not insisting that prosecutors run NCICs on expert or law enforcement witnesses, the defense requests that the State be ordered to comply with its Brady obligations with respect to these witnesses. The instant criminal history request includes, but is not limited to:

- Juvenile records,
- Misdemeanors,
- Out-of-state arrests and convictions,
- Outstanding arrest warrants or bench warrants,
- Cases which were dismissed or not pursued by the prosecuting agency, and
- Any other information that would go to the issues of credibility or bias, or lead to the discovery of information bearing on credibility or bias, regardless of whether the information is directly admissible by the rules of evidence.

## **U Visa and Immigration Related Benefits<sup>15</sup>**

### **22. U Visas<sup>16</sup> and Related Information**

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<sup>15</sup> These requests are made out of an abundance of caution as the defense is unaware of the victim's and witnesses' alienage and legal statuses in the United States.

<sup>16</sup> "The U Visa is an immigration benefit that can be sought by victims of certain crimes who are currently assisting or have previously assisted law enforcement in the investigation or prosecution of a crime, or who are likely to be helpful in the investigation or prosecution of

Information indicating whether the alleged victim, an immediate family member, or any other qualifying person<sup>17</sup> has consulted with a CCDA representative or victim advocate, or any other person acting in a representative capacity, regarding obtaining a U Visa as a result of this case.<sup>18</sup>

### **23. U Visa Policies and Procedures**

All policies and procedures established by any relevant law enforcement agency or the prosecutor's office regarding U Visa certification.<sup>19</sup>

### **24. Application for U Visa**

Information indicating whether the alleged victim, immediate family member, or any other qualifying person has applied for a U Visa as a result of this case.

### **25. United States Citizenship and Immigration Service (UCSIS) I-918 Forms**

All USCIS Form I-918, Petition for U Nonimmigrant Status (Form I-918) completed as a result of this case, including any supporting documentation filed with Form I-918.<sup>20</sup>

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criminal activity. . . . The U Visa provides eligible victims with nonimmigrant status in order to temporarily remain in the United States (U.S.) while assisting law enforcement. If certain conditions are met, an individual with U nonimmigrant status may adjust to lawful permanent resident status.” “U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement,” Dept. of Homeland Sec. (hereinafter “U Visa Guide”), available at: [http://www.dhs.gov/xlibrary/assets/dhs\\_u visa certification guide.pdf](http://www.dhs.gov/xlibrary/assets/dhs_u visa certification guide.pdf) at 1. The crime of domestic violence is identified as a qualifying crime for a U Visa petition. Id. at 3.

<sup>17</sup> The U Visa is available to an alleged victim; her unmarried children under the age of twenty-one; her spouse; her parents, if she is under twenty-one; and unmarried siblings under eighteen years old if the alleged victim is under age twenty-one. Id. at 5. Furthermore, when the principal alleged victim is under twenty-one years old, her noncitizen parent can apply for a U Visa as an “indirect victim” regardless of whether the principal alleged victim is a U.S. citizen or noncitizen. Id. at 13.

<sup>18</sup> “Given the complexity of U Visa petitions, petitioners often work with a legal representative or victim advocate,” and, in fact, “is usually done with the assistance of an advocate.” Id. at 2, 5.

<sup>19</sup> “Whether a certifying agency signs a certification . . . [depends on the] policies and procedures it has established regarding U Visa certification.” “U Visa Guide” at 3; 8 (discussing the best practices in U Visa certifications and department policies). “DHS encourages all jurisdictions to implement U Visa certification practices and policies.” Id. at 9.

1           **26. USCIS Form I-918, Supplement B Forms**

2           All USCIS Forms I-918, Supplement B (Form I-918B) completed by a law  
3           enforcement agency, the prosecuting attorney or representative, any judge, child or  
4           adult protective services, any other authority that has the responsibility for the  
5           investigation or prosecution of a qualifying crime or criminal activity, or any other  
6           certifying agency as a result of this case,<sup>21</sup> including any additional documents,  
7           attachments, or addenda submitted with Form I-918B.<sup>22</sup>

8           **27. Request for Form I-918B**

9           Information indicating whether an individual requested a certifying agency fill out  
10          Form I-918B on behalf of the alleged victim or other qualifying individual, even if  
11          the certifying agency declined to fill out Form I-918B.<sup>23</sup>

12          **28. Refusal to Complete Form I-918B**

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13  
14  
15          <sup>20</sup> This is the U Visa form that must be completed by the individual seeking the U Visa.  
Id. at 2.

16          <sup>21</sup> Form I-918B is the certification document that a law enforcement or other certifying  
17          agency completes for the individual seeking a U Visa. Without the certification, “the victim will  
18          not be eligible for a U Visa.” “In order to be eligible for a U Visa, the victim *must* submit a law  
19          enforcement certification completed by a certifying agency. Certifying agencies include all  
20          authorities responsible for the investigation, prosecution, conviction or sentencing of the  
21          qualifying criminal activity, including but not limited to” law enforcement agencies, prosecutors’  
22          offices, judges, family protective services, Equal Employment Opportunity Commission, Federal  
23          and State Departments of Labor and “other investigative agencies.” Id. at 2-3 (emphasis added),  
24          9. After signing Form I-918B, the certification must be returned to the alleged victim or her  
25          representative. Id. at 6.

26          <sup>22</sup> A certifying agency may submit additional documentation, and if so, it must state “see  
27          attachment” or “see addendum” on Form I-918B. Id. at 6.

28          <sup>23</sup> There is no statute of limitations on signing the law enforcement certification, and a  
law enforcement certification “can even be submitted for a victim in a closed case.” Id. at 4, 10.  
An alleged victim “may be eligible for a U Visa based on having been helpful *in the past* to  
investigate or prosecute a crime.” Id. at 10. Therefore, a certifying agency could wait until after  
the close of the case to fill out Form I-918B and then argue that there is no discoverable  
immigration information or immigration benefit received as part of this case. However, if an  
individual has requested a certifying agency fill out Form I-918B, that individual is therefore  
attempting to gain an immigration benefit as part of this case, which would be discoverable  
regardless of whether the certifying agency has or has not completed the certification.

Information indicating whether a certifying agency has refused to sign or complete Form I-918B on behalf of the alleged victim or other qualifying individual, and any information regarding that certifying agency's refusal to sign or fill out Form I-918B.

#### **29. Evidence submitted to USCIS**

Any evidence submitted to the USCIS as part of a U Visa application by a certifying agency or the individual applying for the U Visa related to this case. This evidence includes, but is not limited to, fingerprint and criminal history information, immigration records, security concerns, and other background information.<sup>24</sup>

#### **30. Contact from USCIS**

Information indicating whether the USCIS has contacted the certifying agency regarding issues or questions based on the information provided in the certification on behalf of the alleged victim or other qualifying individual, and what issues or questions the USCIS had for the certifying agency.<sup>25</sup>

#### **31. USCIS Determination**

Information indicating the USCIS found the alleged victim or other qualifying person inadmissible and any information regarding the reason for the inadmissibility determination.<sup>26</sup>

#### **32. Further Information Disclosed to USCIS**

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<sup>24</sup> The USCIS conducts a background check for all U Visa petitioners. This includes a fingerprint check and name check. This also includes "[a]ny evidence that law enforcement and immigration authorities possess . . . [which] includes, but is not limited to, the person's criminal history, immigration records, and other background information." *Id.* at 5. "If law enforcement believes USCIS should know something particular about a victim's criminal history, that information can be cited on the certification or with an attached report or statement detailing the victim's criminal history with that law enforcement agency or his or her involvement with the crime." *Id.* at 14.

<sup>25</sup> "USCIS may contact the certifying law enforcement agency if there are any issues or questions arise during the adjudication based on information provided in the law enforcement certification." *Id.* at 5, 9.

<sup>26</sup> The USCIS may find the alleged victim or other qualifying person inadmissible when there are security related concerns, multiple or violent criminal arrests, multiple immigration violations, or complicity or culpability in the criminal activity in which she claims the victimization occurred. *Id.* at 8, 14.

Information indicating whether the certifying agency has contacted the USCIS regarding any later-discovered information regarding the alleged victim, the crime, or certification that the agency believes the USCIS should be aware of, or whether the agency contacted the USCIS to withdraw or disavow the certification, including withdrawal or disavowal based upon the alleged victim's failure to cooperate.<sup>27</sup> If the agency has notified the USCIS in writing regarding the withdrawal or disavowal, a copy of the writing is requested.<sup>28</sup>

### **33. Refusal to Cooperate**

Information indicating whether the certifying agency has notified the USCIS that the alleged victim has unreasonably refused to cooperate in the investigation or prosecution of the crime.<sup>29</sup>

### **34. USCIS Requests for Further Information**

Information indicating whether the USCIS has requested further evidence from the petitioner or certifying agency as part of the U Visa process, as well as any information indicating the USCIS suspected fraud in the U Visa application.<sup>30</sup>

### **35. Significant Public Benefit Parole**

Information indicating whether any witness in the case has been granted Significant Public Benefit Parole (SPBP) in connection with this case.<sup>31</sup>

### **36. Violence Against Women Act (VAWA) Relief**

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<sup>27</sup> Id. at 10.

<sup>28</sup> If the alleged victim stops cooperating, the certifying agency can withdraw or disavow Form I-918B, but must notify the USCIS Vermont Service Center in writing. Id. at 12.

<sup>29</sup> Id.

<sup>30</sup> "If USCIS suspects fraud in a U Visa petition, USCIS may request further evidence from the petitioner and may also reach out to the law enforcement agency for further information." Id. at 15. The USCIS has a dedicated fraud detection unit called the Fraud Detection and National Security unit. Id.

<sup>31</sup> SPBP allows a witness, defendant, cooperating source, and immediate family members into the United States for up to one year. Id. at 16.

1 Information indicating whether an alleged victim has self-petitioned for VAWA relief  
2 as a part of this case, and if so, a copy of the completed Form I-360 and corroborating  
3 evidence.<sup>32</sup>

4 **CPS related information**

5 **37. Child Protective Services Records**

6 All Department of Child and Family Services or Child Protective Service (or  
7 equivalent department in another state) records relating to the decedent in this case.

8 **Other Agencies**

9 **38. Contacting Other Agencies**

10 Finally, the defendant requests that this Court order the prosecution to contact other  
11 agencies or agents acting on behalf of or working with the prosecution, or in any  
12 other way a part of the prosecution team, and initiated to ascertain whether any of  
13 those agencies or agents possess or know of any material information that would tend  
14 to exculpate Mr. Bailey, impeach a prosecution witness, or mitigate Mr. Bailey's  
15 possible punishment.

16 **IX. Request for Timely Disclosure**

17 NRS 174.285(1) requires that any discovery request pursuant to NRS 174.235 be made  
18 "within 30 days after arraignment or at such reasonable later time as the court may permit."  
19 NRS 174.285(2) mandates that "A party shall comply with a request made pursuant to NRS  
20 174.235 . . . not less than 30 days before trial or at such reasonable later time as the court may  
21 permit." Accordingly, Mr. Bailey requests that this Honorable Court enter an order directing  
22 prosecutors to provide the discovery sought herein within a reasonable time in advance of trial so  
23 as to enable counsel to effectively prepare. Further, Mr. Bailey requests that this Honorable  
24 Court order that prosecutors be precluded from admitting at trial any discovery or evidence not  
25

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26 <sup>32</sup> The VAWA Visa allows an alleged victim to self-petition for relief without a law  
27 enforcement certification. This relief applies equally to men and women and is available to the  
28 abused spouse or former spouse of a U.S. citizen or lawful permanent resident, the abused child  
of a U.S. citizen or lawful permanent resident, or the abused parent of a U.S. citizen.



1 timely produced. See NRS 174.295 (“If at any time during the course of the proceedings it is  
2 brought to the attention of the court that a party has failed to comply with the provisions of NRS  
3 174.235 to 174.295, inclusive, the court may order the party to permit the discovery or inspection  
4 of materials not previously disclosed, grant a continuance, or *prohibit the party from introducing*  
5 *in evidence the material not disclosed*, or it may enter such other order as it deems just under the  
6 circumstances.”) (emphasis added).

### 7 **CONCLUSION**

8 Based on the foregoing, Mr. Bailey, respectfully requests that this Honorable Court grant  
9 the instant motion, and order the timely disclosure of the material sought herein. NRS 174.235;  
10 Brady v. Maryland, 373 U.S. 83 (1963); U.S.C.A. V, VI, XIV; and Nev. Const. Art. 1 § 8.

11 DATED this 6<sup>th</sup> day of July, 2020.

12 DARIN F. IMLAY  
13 CLARK COUNTY PUBLIC DEFENDER

14  
15 By: /s/Kathleen M. Hamers  
16 KATHLEEN M. HAMERS, #9049  
17 Deputy Public Defender  
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YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the foregoing Motion on for hearing before the Court on the 16<sup>th</sup> day of July, 2020 at 8:30 a.m.

DATED this 6<sup>th</sup> day of July, 2020.

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

I hereby certify that service of the above and forgoing MOTION was served via electronic e-filing to the Clark County District Attorney's Office at [motions@clarkcountynyda.com](mailto:motions@clarkcountynyda.com) on this 6<sup>th</sup> day of July, 2020.

By: /s/Kayleigh Lopatic  
An employee of the  
Clark County Public Defender's Office

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

Electronically Filed  
7/7/2020 2:01 PM  
Steven D. Grierson  
CLERK OF THE COURT



State of Nevada  
vs  
Jayshawn Bailey

Case No.: C-20-347887-1

Department 12

**NOTICE OF HEARING**

Please be advised that the Motion to Compel Production of Discovery & Brady Material in the above-entitled matter is set for hearing as follows:

**Date:** July 21, 2020

**Time:** 12:00 PM

**Location:** RJC Courtroom 14D  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.**

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Ondina Amos  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Ondina Amos  
Deputy Clerk of the Court



NWEW  
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, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

JAYSHAWN D. BAILEY,  
#5216003

Defendant.

CASE NO: C-20-347887-1

DEPT NO: XII

**STATE'S NOTICE OF WITNESSES AND/OR EXPERT WITNESSES**  
**[NRS 174.234]**

TO: JAYSHAWN D. BAILEY, Defendant; and

TO: KATHLEEN HAMERS, Deputy Public Defender, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF  
NEVADA intends to call the following witnesses and/or expert witnesses in its case in chief:

**ANDREWS, D. – LVMPD P#13766** (or designee): Expert in the identification,  
documentation, collection and preservation of evidence, including crime scene analysis and is  
expected to testify as an expert to the identification, documentation, collection and  
preservation of evidence in this case.

**BROWNING, CLAIRE – LVMPD P#15291** (or designee): Expert in the  
identification, documentation, collection and preservation of evidence, including crime scene  
analysis and is expected to testify as an expert to the identification, documentation, collection  
and preservation of evidence in this case.

1           **CHEN-HUYNH, S. – LVMPD P#16064** (or designee): Expert in the identification,  
2 documentation, collection and preservation of evidence, including crime scene analysis and is  
3 expected to testify as an expert to the identification, documentation, collection and  
4 preservation of evidence in this case.

5           **DILORETO, DR. CHRISTINA** (or designee): is a medical doctor employed by the  
6 Clark County Coroner Medical Examiner. She is an expert in the area of forensic pathology  
7 and will give scientific opinions related thereto. She is expected to testify regarding the cause  
8 and manner of death of TAMYAH TROTTER in this case.

9           **GAVIN, DR. LISA** (or designee): is a medical doctor employed by the Clark County  
10 Coroner Medical Examiner. She is an expert in the area of forensic pathology and will give  
11 scientific opinions related thereto. She is also expected to testify regarding the mechanics and  
12 effects of strangulation and other related matters and will testify regarding the cause and  
13 manner of death of TAMYAH TROTTER in this case.

14           **HOVANEK, M. – LVMPD P#13227** (or designee): Expert in the area of cellular  
15 phones, including but not limited to, cellular system technology including cell tower  
16 generation of calls and ability to determine the location where generated, collection and  
17 handling of cellular phones for evidentiary purposes, and the examination, preservation,  
18 retrieval and analysis of cellular call and text records/data, photos and/or video and/or any  
19 other data kept on a cellular phone. Further, this expert will testify to the results of any and  
20 all examinations performed on the cellular phones in this case.

21           **HUSEBY, B. – LVMPD P#14783** (or designee): will testify as an expert in the science  
22 and technology underlying DNA testing, the processes and procedures performed in DNA  
23 testing, the examinations done on any and all evidence in this case, the results of such testing,  
24 and reports prepared in this regard.

25           **SHUM, AMANDA – LVMPD P#17490** (or designee): will testify as an expert in  
26 the science and technology underlying DNA testing, the processes and procedures performed  
27 in DNA testing, the examinations done on any and all evidence in this case, the results of such  
28 testing, and reports prepared in this regard.

1 These witnesses are in addition to those witnesses endorsed on the Information or  
2 Indictment and any other witness for which a separate Notice of Witnesses and/or Expert  
3 Witnesses has been filed.

4 The substance of each expert witness' testimony and copy of all reports made by or at  
5 the direction of the expert witness has been provided in discovery.

6 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

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

10  
11 BY /s/MICHAEL J. SCHWARTZER  
12 MICHAEL J. SCHWARTZER  
13 Chief Deputy District Attorney  
14 Nevada Bar #10747

15 CERTIFICATE OF ELECTRONIC FILING

16 I hereby certify that service of the above and foregoing was made this 14th day of July,  
17 2020, by Electronic Filing to:

18  
19 KATHLEEN HAMERS, Deputy Public Defender  
Email: [hamerskm@clarkcountynv.gov](mailto:hamerskm@clarkcountynv.gov)

20  
21 BY: /s/Deana Daniels  
22 Deana Daniels  
23 Secretary for the District Attorney's Office  
24  
25  
26  
27

28 20F01585X/dd/MVU

**ASCLD/LAB-International**

**STATEMENT OF QUALIFICATIONS**

|             |                         |             |            |
|-------------|-------------------------|-------------|------------|
| <b>Name</b> | Debbie Andrews P# 13766 | <b>Date</b> | 08/11/2015 |
|-------------|-------------------------|-------------|------------|

|                   |   |
|-------------------|---|
| <b>Laboratory</b> | Las Vegas Metropolitan Police Department - Crime Scene Investigations Section |
|-------------------|---|

|                  |                       |
|------------------|-----------------------|
| <b>Job Title</b> | Crime Scene Analyst I |
|------------------|-----------------------|

Indicate all disciplines in which you do casework:

|  |   |
|--|---|
| <input type="checkbox"/> Drug Chemistry                | <input type="checkbox"/> Toxicology             |
| <input type="checkbox"/> Firearms/Toolmarks            | <input type="checkbox"/> Biology                |
| <input type="checkbox"/> Trace Evidence                | <input type="checkbox"/> Questioned Documents   |
| <input type="checkbox"/> Latent Prints                 | <input checked="" type="checkbox"/> Crime Scene |
| <input type="checkbox"/> Digital & Multimedia Evidence |   |

List all category(ies) of testing in which you do casework:

|  |
|--|
| Crime Scene Investigation; Body Fluid Identification |
|--|

**Breath Alcohol Calibration Categories**

|  |
|--|
| <input type="checkbox"/> Toxicology - Breath Alcohol Measuring Instruments (The work of the laboratory MUST include calibration certificates- do not check the box if work is limited to breath/alcohol testing) |
| <input type="checkbox"/> Toxicology - Breath Alcohol Calibration Reference Material  |

**Education:** List all higher academic institutions attended (list high school only if no college degree has been attained)

| Institution                | Dates Attended              | Major            | Degree Completed |
|----------------------------|-----------------------------|------------------|------------------|
| College of Southern Nevada | 1995-1999, 2001, 2004, 2009 | Nursing          | N/A              |
| Portland Community College | 2012                        | Criminal Justice | N/A              |
|                            |                             |                  |                  |
|                            |                             |                  |                  |

**Other Training:** List continuing education, workshops, in-service and other formal training received. Please include the course title, source and date of the training.

|  |
|--|
| 01/20/09 Introductory Photography for Law Enforcement Personnel (PSR Academy) LVMPD/CSI Section Las Vegas, NV. |
| 01/19/09 Latent Fingerprint Processing (PSR Academy) LVMPD/CSI Section Las Vegas, NV.                          |
| 09/30/15 Crime Scene Analyst Academy LVMPD Las Vegas, NV   |

**Courtroom Experience:** List the discipline/category(ies) of testing in which you have qualified to testify as an expert witness and indicate over what period of time and approximately how many times you have testified in each.

|  |
|--|
| Testified in court from 07/06/2015 to present: |
| Crime Scene Investigation - 1                  |
| Body Fluid Identification - 0                  |

**Professional Affiliations:** List any professional organizations of which you are or have been a member. Indicate any offices or other positions held and the date(s) of these activities.

|  |
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**Employment History:** List all scientific or technical positions held, particularly those related to forensic science. List current position first. Be sure to indicate employer and give a brief summary of principal duties and tenure in each position.

|   |  |               |                       |
|---|--|---------------|-----------------------|
| <b>Job Title</b>  | Crime Scene Analyst I (In Training)      | <b>Tenure</b> | 07/06/2015 to present |
| <b>Employer</b>   | Las Vegas Metropolitan Police Department |               |                       |
| Provide a brief description of principal duties:  |  |               |                       |
| Respond to and investigate crime scenes; perform a variety of tasks in documenting crime scenes including photographically documenting crime scenes, photographing fingerprints, and sketching and diagraming crime scene; powder or chemically process for latent fingerprints; perform and submit fingerprint comparisons; classify fingerprints as appropriate; collect, preserve, and safely package evidence; prepare crime scene and related reports and documentation; ensure accuracy and completeness; testify as an expert witness in court; ensure the adherence to standard safety precautions; recover, unload and impound firearms; and perform related duties as required. |  |               |                       |

|  |  |               |                          |
|--|--|---------------|--------------------------|
| <b>Job Title</b>   | Patrol Services Representative           | <b>Tenure</b> | 12/10/2008 to 07/23/2010 |
| <b>Employer</b>  | Las Vegas Metropolitan Police Department |               |                          |
| Provide a brief description of principal duties:   |  |               |                          |
| Take various reports, including property, crime and non-injury traffic accident reports; assist officers in preliminary crime scene investigations, including protecting crime scenes from bystanders; interview witnesses and victims, record information, and write related reports; respond to non-hazardous calls for service and write related reports; perform traffic control and non-violent crowd control; assist the public by providing necessary information to citizens, including referring them to appropriate government offices and other community resources; transport seized, found, lost, or abandoned property or evidence, and non-injured accident victims, witnesses, victims of crimes, and police personnel, as needed; direct traffic at accident scenes; attend daily briefings; receive subpoenas and testify in court; assist with community-oriented policing programs; exemplify the Department values, both on and off duty. |  |               |                          |
| Crime Scene Duties as a Patrol Services Representative: Investigate less complex crime scenes to include photographically documenting a crime scene, powder process for latent fingerprints, collect, preserve, and safely package evidence and prepare a crime scene related report.  |  |               |                          |

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|--|--|---------------|--|
| <b>Job Title</b>                                 |  | <b>Tenure</b> |  |
| <b>Employer</b>                                  |  |               |  |
| Provide a brief description of principal duties: |  |               |  |
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|--|--|---------------|--|
| <b>Job Title</b>                                 |  | <b>Tenure</b> |  |
| <b>Employer</b>                                  |  |               |  |
| Provide a brief description of principal duties: |  |               |  |
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|--|--|---------------|--|
| <b>Job Title</b>                                 |  | <b>Tenure</b> |  |
| <b>Employer</b>                                  |  |               |  |
| Provide a brief description of principal duties: |  |               |  |
|  |  |               |  |

**Other Qualifications:** List below any scientific publication and/or presentation you have authored or co-authored, research in which you are or have been involved, academic or other teaching positions you have held, and any other information which you consider relevant to your qualification as a forensic scientist.  
(Use additional sheets if necessary.)

|  |
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**ASCLD/LAB-International**

**STATEMENT OF QUALIFICATIONS**

|             |                          |             |           |
|-------------|--------------------------|-------------|-----------|
| <b>Name</b> | Claire Browning P# 15291 | <b>Date</b> | 6/26/2017 |
|-------------|--------------------------|-------------|-----------|

|                   |   |
|-------------------|---|
| <b>Laboratory</b> | Las Vegas Metropolitan Police Department - Crime Scene Investigations Section |
|-------------------|---|

|                  |                       |
|------------------|-----------------------|
| <b>Job Title</b> | Crime Scene Analyst I |
|------------------|-----------------------|

**Indicate all disciplines in which you do casework:**

|                          |  |                                     |                             |
|--------------------------|--|-------------------------------------|-----------------------------|
| <input type="checkbox"/> | <b>Drug Chemistry</b>                    | <input type="checkbox"/>            | <b>Toxicology</b>           |
| <input type="checkbox"/> | <b>Firearms/Toolmarks</b>                | <input type="checkbox"/>            | <b>Biology</b>              |
| <input type="checkbox"/> | <b>Trace Evidence</b>                    | <input type="checkbox"/>            | <b>Questioned Documents</b> |
| <input type="checkbox"/> | <b>Latent Prints</b>                     | <input checked="" type="checkbox"/> | <b>Crime Scene</b>          |
| <input type="checkbox"/> | <b>Digital &amp; Multimedia Evidence</b> |                                     |                             |

**List all category(ies) of testing in which you do casework:**

|  |
|--|
| Crime Scene Investigation; Body Fluid Identification |
|--|

**Breath Alcohol Calibration Categories**

|                          |  |
|--------------------------|--|
| <input type="checkbox"/> | <b>Toxicology</b> - Breath Alcohol Measuring Instruments (The work of the laboratory MUST include calibration certificates- do not check the box if work is limited to breath/alcohol testing) |
| <input type="checkbox"/> | <b>Toxicology</b> - Breath Alcohol Calibration Reference Material  |

**Education:** List all higher academic institutions attended (list high school only if no college degree has been attained)

| Institution                | Dates Attended | Major  | Degree Completed |
|----------------------------|----------------|--|------------------|
| Ivy Tech Community College | 2008-2010      | N/A  | N/A              |
| Purdue University          | 2010-2013      | Interdisciplinary Sciences-<br>Forensic Sciences | BS               |
|                            |                |  |                  |
|                            |                |  |                  |
|                            |                |  |                  |

**Other Training:** List continuing education, workshops, in-service and other formal training received. Please include the course title, source and date of the training.

|  |
|--|
| 09-30-15 Crime Scene Analyst Academy LVMPD Las Vegas, NV                 |
| 07-28-16 Basic Medicolegal Death Investigation IACME Las Vegas, NV       |
| 3-31-17 Basic Bloodstain Recognition Course-LVMPD-C. Moore-Las Vegas, NV |

**Courtroom Experience:** List the discipline/category(ies) of testing in which you have qualified to testify as an expert witness and indicate over what period of time and approximately how many times you have testified in each.

|  |
|--|
| Testified in court from 07/06/2015 to present: |
| Crime Scene Investigation - 3                  |
| Body Fluid Identification - 0                  |

**Professional Affiliations:** List any professional organizations of which you are or have been a member. Indicate any offices or other positions held and the date(s) of these activities.

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**Employment History:** List all scientific or technical positions held, particularly those related to forensic science. List current position first. Be sure to indicate employer and give a brief summary of principal duties and tenure in each position.

|   |  |               |                       |
|---|--|---------------|-----------------------|
| <b>Job Title</b>  | Crime Scene Analyst I                    | <b>Tenure</b> | 07/06/2015 to present |
| <b>Employer</b>   | Las Vegas Metropolitan Police Department |               |                       |
| Provide a brief description of principal duties:  |  |               |                       |
| Respond to and investigate crime scenes; perform a variety of tasks in documenting crime scenes including photographically documenting crime scenes, photographing fingerprints, and sketching and diagraming crime scene; powder or chemically process for latent fingerprints; perform and submit fingerprint comparisons; classify fingerprints as appropriate; collect, preserve, and safely package evidence; prepare crime scene and related reports and documentation; ensure accuracy and completeness; testify as an expert witness in court; ensure the adherence to standard safety precautions; recover, unload and impound firearms; and perform related duties as required. |  |               |                       |

|  |               |
|--|---------------|
| <b>Job Title</b>                                 | <b>Tenure</b> |
| <b>Employer</b>                                  |               |
| Provide a brief description of principal duties: |               |
|  |               |

|  |               |
|--|---------------|
| <b>Job Title</b>                                 | <b>Tenure</b> |
| <b>Employer</b>                                  |               |
| Provide a brief description of principal duties: |               |
|  |               |

|  |  |               |  |
|--|--|---------------|--|
| <b>Job Title</b>                                 |  | <b>Tenure</b> |  |
| <b>Employer</b>                                  |  |               |  |
| Provide a brief description of principal duties: |  |               |  |
|  |  |               |  |

|  |  |               |  |
|--|--|---------------|--|
| <b>Job Title</b>                                 |  | <b>Tenure</b> |  |
| <b>Employer</b>                                  |  |               |  |
| Provide a brief description of principal duties: |  |               |  |
|  |  |               |  |

**Other Qualifications:** List below any scientific publication and/or presentation you have authored or co-authored, research in which you are or have been involved, academic or other teaching positions you have held, and any other information which you consider relevant to your qualification as a forensic scientist.  
(Use additional sheets if necessary.)

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**ASCLD/LAB-International**  
**Application for Accreditation**  
**Attachment 2**

**Statement of Qualifications**

|             |                               |             |            |
|-------------|-------------------------------|-------------|------------|
| <b>Name</b> | Stephanie Chen-Huynh P# 16064 | <b>Date</b> | 08/22/2018 |
|-------------|-------------------------------|-------------|------------|

|                                  |   |
|----------------------------------|---|
| <b>Forensic Service Provider</b> | Las Vegas Metropolitan Police Department – Crime Scene Investigations Section |
|----------------------------------|---|

|                  |                       |
|------------------|-----------------------|
| <b>Job Title</b> | Crime Scene Analyst I |
|------------------|-----------------------|

Indicate all disciplines in which you currently perform testing or calibration work:

|                          |                               |                                     |                          |
|--------------------------|-------------------------------|-------------------------------------|--------------------------|
| <input type="checkbox"/> | Drug Chemistry                | <input type="checkbox"/>            | Biology                  |
| <input type="checkbox"/> | Firearms/Toolmarks            | <input type="checkbox"/>            | Questioned Documents     |
| <input type="checkbox"/> | Trace Evidence                | <input checked="" type="checkbox"/> | Crime Scene              |
| <input type="checkbox"/> | Latent Prints                 | <input type="checkbox"/>            | Toxicology - Testing     |
| <input type="checkbox"/> | Digital & Multimedia Evidence | <input type="checkbox"/>            | Toxicology - Calibration |

For each discipline checked in the table above, list all category(ies) in which you perform work:

|  |
|--|
| Crime Scene Investigation, Body Fluid Identification |
|--|

**Education:** List all higher academic institutions attended (list high school only if no college degree has been attained).

| Institution                    | Dates Attended | Major            | Degree Completed |
|--------------------------------|----------------|------------------|------------------|
| University of Nevada Las Vegas | 2012-2017      | Criminal Justice | Bachelor of Arts |
| University of Phoenix          | 10/2016        |                  |                  |
|                                |                |                  |                  |
|                                |                |                  |                  |

**Continuing Education:** List formal coursework, conferences, workshops, in-service and other training received applicable to past and current forensic related positions.

| Course Title  | Source of Training   | Date(s) of Training |
|---|--|---------------------|
| Crime Scene Analyst Academy                                 | LVMPD Las Vegas, NV  | 09/12/16 - 11/23/16 |
| Hazardous Materials Evidence Collection for CBRNE Incidents | Center for Domestic Preparedness Anniston, AL                            | 11/15/17-11/17/17   |
| Basic Medicolegal Death Investigation Training              | International Association of Coroners & Medical Examiners, Las Vegas, NV | 07/22/18-07/26/18   |
|   |  |                     |

**Testimony:** Complete the information below for testimony provided.

| Discipline or Category of Testimony | Period of Time in Which Testimony Occurred | Approximate Number of Times Testified |
|-------------------------------------|--|---------------------------------------|
| Crime Scene Investigation           | 09/01/2016 to present                      | 0                                     |
|                                     |  |                                       |
|                                     |  |                                       |
|                                     |  |                                       |

**Professional Affiliations:** List professional organizations of which you are or have been a member. Indicate any offices or other positions held and the date(s) of these activities.

| Organization | Period of Membership | Offices or Positions Held/Dates |
|--------------|----------------------|---------------------------------|
|              |                      |                                 |
|              |                      |                                 |
|              |                      |                                 |
|              |                      |                                 |

**Employment History:** List all scientific or technical positions held, particularly those related to forensic science. **List current position first.** Add additional sections as necessary.

|  |  |               |                       |
|--|--|---------------|-----------------------|
| <b>Job Title</b>   | Crime Scene Analyst I                    | <b>Tenure</b> | 09/01/2016 to present |
| <b>Employer</b>  | Las Vegas Metropolitan Police Department |               |                       |
| Provide a brief description of principal duties:   |  |               |                       |
| Respond to and investigate crime scenes; perform a variety of tasks in documenting crime scenes including photographically documenting crime scenes, photographing fingerprints, and sketching and diagramming crime scene; powder or chemically process for latent fingerprints; perform and submit fingerprint comparisons; classify fingerprints as appropriate; collect, preserve, and safely package evidence; prepare crime scene and related reports and documentation; ensure accuracy and completeness; testify as an expert witness in court; ensure the adherence to standard safety precautions; recover, unload and impound firearms; and perform related duties as required. |  |               |                       |

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| <b>Job Title</b>                                 |  | <b>Tenure</b> |  |
| <b>Employer</b>                                  |  |               |  |
| Provide a brief description of principal duties: |  |               |  |
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| <b>Job Title</b>                                 |  | <b>Tenure</b> |  |
| <b>Employer</b>                                  |  |               |  |
| Provide a brief description of principal duties: |  |               |  |
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| <b>Job Title</b>                                 |  | <b>Tenure</b> |  |
| <b>Employer</b>                                  |  |               |  |
| Provide a brief description of principal duties: |  |               |  |
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|--|--|---------------|--|
| <b>Job Title</b>                                 |  | <b>Tenure</b> |  |
| <b>Employer</b>                                  |  |               |  |
| Provide a brief description of principal duties: |  |               |  |
|  |  |               |  |

**Other Qualifications:** List below all personal certifications identifying the issuing organization and the dates; all scientific publications and/or presentations you have authored or co-authored, research in which you are or have been involved, academic or other teaching positions you have held, and any other information which you consider relevant to your qualifications.

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**Christina Di Loreto, M.D.**  
1704 Pinto Lane  
Las Vegas, NV 89106  
(702) 455-3210  
Christina.DiLoreto@ClarkCountyNV.gov

## **EDUCATION**

M.D. Boston University School of Medicine, Boston, MA, May 2009  
Premedical Studies, Mount Holyoke College, South Hadley, MA, Sep 2002-June 2004

B.F.A. Dance/Philosophy, New York University, New York, NY, Jan 2000  
Sarah Lawrence College, Bronxville, NY, Sep 1995-June 1996

## **POSTGRADUATE TRAINING**

7/2016-7/2018 Neuropathology Fellowship, University of California, San Diego Medical Center

7/2015-7/2016 Forensic Pathology Fellowship, San Diego County Medical Examiner's Office

7/2011-7/2015 Pathology Residency-AP/CP, University of California, Davis Medical Center

7/2009-6/2011 Otolaryngology-Head and Neck Surgery Internship/Residency,  
State University of New York Downstate Medical Center

## **LICENSURE AND BOARD CERTIFICATIONS**

4/16/2018 Nevada State Board of Medical Examiners, License #17849

5/20/2011 Medical Board of California, License #A117016

9/5/2018 Diplomate, American Board of Pathology, Forensic Pathology

8/7/2017 Diplomate, American Board of Pathology, Anatomic and Clinical Pathology

## **HONORS AND AWARDS**

7/2015 House Staff Professionalism Award  
University of California, Davis  
School of Medicine Alumni Association

6/2009 Diana Radkowski Award  
Boston University School of Medicine

4/2007 Association of Pathology Chairs Honor Society Award  
Boston University School of Medicine

## **PROFESSIONAL MEMBERSHIPS**

2017-present American Association of Neuropathologists (AANP)

|              |   |
|--------------|---|
| 2014-present | United States and Canadian Academy of Pathology (USCAP) |
| 2011-present | College of American Pathologists (CAP)                  |
| 2011-present | American Society of Clinical Pathology (ASCP)           |
| 2009-present | Alpha Omega Alpha Honor Medical Society                 |

## **EDUCATIONAL ACTIVITIES**

|               |   |
|---------------|---|
| 6/2014-5/2015 | Chief Resident, Department of Pathology and Laboratory Medicine<br>University of California, Davis Medical Center |
| Spring 2009   | Prosecutor, Head and Neck Gross Anatomy<br>Boston University School of Medicine                                   |
| Fall 2008     | Instructor, Introduction to Clinical Medicine<br>Boston University School of Medicine                             |

## **COMMITTEE MEMBERSHIPS**

|               |   |
|---------------|---|
| 7/2014-6/2015 | Resident Representative<br>Residency Advisory Committee, Department of Pathology and Laboratory Medicine<br>University of California, Davis Medical Center                  |
| 7/2014-6/2015 | Resident Representative<br>Residency Recruitment and Review Committee,<br>Department of Pathology and Laboratory Medicine<br>University of California, Davis Medical Center |
| 7/2014-6/2015 | Resident Representative<br>Advisory Committee on Education, Department of Pathology and Laboratory Medicine<br>University of California, Davis Medical Center               |
| 7/2013-6/2015 | Pathology Alternate Representative<br>Resident Medical Staff Committee<br>University of California, Davis Medical Center  |
| 7/2013-6/2015 | Resident Representative, UC Davis Medical Center<br>American Society of Clinical Pathology  |

## **ORAL PRESENTATIONS**

"Neuropathology 101: Basic Neuroanatomy and Neuropathology", UC San Diego, Shiley-Marcos Alzheimer's Disease Research Center ORE Core Lunch & Learn, June 26, 2018, San Diego, CA.

"Errors in Surgical Pathology", UC Davis Medical Center Department of Pathology and Laboratory Medicine Grand Rounds, March 11, 2015, Sacramento, CA.

"Postmortem Examination of a High Altitude Diving-Related Fatality 17 Years After the Incident", California Association of Criminalists Northern Study Group Meeting, December 10, 2014, Richmond, CA.

"Now You 'C' It, Now You Don't: Passive Acquisition of Hgb C Variant by Transfusion", California Blood Bank Society 59th Annual Meeting, Apr 30-May 1, 2014, Incline Village, NV.

"Postmortem Examination of a High Altitude Diving-Related Fatality 17 Years After the Incident", American Academy of Forensic Sciences 66<sup>th</sup> Annual Scientific Meeting, Feb 17-22, 2014, Seattle, WA.

## POSTER PRESENTATIONS

**Di Loreto CM**, Powers MP, Hansen LA, Malicki DM. "Novel *RYR1* mutation in congenital muscular dystrophy", AANP 94<sup>th</sup> Annual Meeting, June 7-10, 2018, Louisville, KY.

Powers MP, **Di Loreto CM**, Hansen LA, Malicki DM. "Infantile high-grade glioma with novel translocation recurring as a ganglion cell tumor", AANP 94<sup>th</sup> Annual Meeting, June 7-10, 2018, Louisville, KY.

Snyder VS, **Di Loreto CM**, Chen JY, Hansen LA, Jones KA. "Non-midline H3 K27M-mutant glioma", AANP 93<sup>rd</sup> Annual Meeting, June 8-11, 2017, Garden Grove, CA.

Snyder VS, **Di Loreto CM**, Malicki DM, Hansen LA. "Rare variants of gliosarcoma: histologic and molecular findings", AANP 93<sup>rd</sup> Annual Meeting, June 8-11, 2017, Garden Grove, CA.

**Di Loreto C**, Zhang Y. "Follow-up study of 42 patients with benign intraductal papilloma diagnosed on core needle biopsy", USCAP 2014 Annual Meeting, Mar 1-7, 2014, San Diego, CA.

**Di Loreto C**, Tomic M, Huang E. "A retrospective review of "suspicious" thyroid fine-needle aspirations at a single institution", American Society of Cytopathology Annual Scientific Meeting, Nov 8-12, 2013, Orlando, FL.

**Di Loreto C**, Gandy L, Freeman L, Fernando L, Gresens C, Parsons J. "The passive acquisition of hemoglobin C via red blood cell exchange", 2013 AABB Annual Meeting, Oct 12-15, 2013, Denver, CO.

**Di Loreto C**, Bishop JW, Gambarotti, Canter R, Borys D. "Diagnostic challenges and advantages of international telepathology between two medical institutions", USCAP 2013 Annual Meeting, Mar 2-8, 2013, Baltimore, MD.

**Di Loreto C**, Tihan T, Jin L-W, Borys E. "Progressing calcifying pseudoneoplasm of the neuraxis", CAP 2012 The Pathologists' Meeting, Sep 9-12, 2012, San Diego, CA.

Crosby SS, Mohan S, **Di Loreto C**, Spiegel JH. "Head and neck sequelae of torture", The Triological Society Eastern Section Meeting, Jan 23-25, 2009, Boston, MA.

## PUBLICATIONS

Gerscovich EO, Sekhon S, Visis T, **Di Loreto C**. "Fetal conversion of a 3-vessel to 2-vessel umbilical cord: sonographic depiction", J Ultrasound Med 2013;32:1303-1305.

Crosby SS, Mohan S, **Di Loreto C**, Spiegel JH. "Head and neck sequelae of torture", Laryngoscope 2010;120:414-419.





## LISA GAVIN, M.D., M.P.H.

|                           |   |
|---------------------------|---|
| CURRENT POSITION          | <b>Forensic Pathologist</b> (Medical Examiner), 2009 to present<br>Clark County Office of the Coroner/Medical Examiner, Las Vegas, Nevada   |
| TRAINING AND<br>EDUCATION | <b>Forensic Pathology Fellowship</b> , 2008 to 2009<br>Office of the Chief Medical Investigator, Albuquerque, New Mexico<br><br><b>Surgical Pathology Fellowship</b> , 2007-2008<br>Hartford Hospital, Hartford, Connecticut<br><br><b>Anatomic &amp; Clinical Pathology Residency</b> , 2002 – 2007<br>Hartford Hospital, Hartford, Connecticut<br><br><b>Post-Sophomore Fellowship in Pathology</b> , 2001 – 2002<br>University of Connecticut Health Center, Farmington, Connecticut<br><br><b>Medical Degree</b> , 2001<br>University of Connecticut School of Medicine, Farmington, Connecticut<br><br><b>Master Degree of Public Health</b> , 1994<br>Columbia University School of Public Health, New York, NY<br><br><b>Bachelor of Arts with Honors</b> , 1991<br>Mount Holyoke College, South Hadley, Massachusetts |
| CERTIFICATION             | <b>Anatomic Pathology</b> , May 2015<br><br><b>Forensic Pathology</b> , September 2015<br><br>Actively participating in <b>Continuing Certification</b> (Maintenance of Certification)  |
| MEDICAL LICENSE           | <b>State of Nevada</b> , 2009 – present (unrestricted)<br><br><b>State of New Mexico</b> , 2008 – 2010 (unrestricted)   |

WORK AND  
EDUCATION  
EXPERIENCE

**Adjunct Professor** (Clinical Precept, 2011 – present)

Touro University School of Medicine, Henderson Nevada

**Acting Lead Medical Examiner**, June 2017 – April 2019

Clark County Office of the Coroner/Medical Examiner, Las Vegas, Nevada

**Manager/Supervisor of the Forensic Division** (including the Forensic Pathologists) during the Mass Fatality (Mass Shooting) 1 October 2017 (Route 91 Harvest Country Music Festival) Incident

**Preceptor for Medical Students**, January – June 2017

Western University of Health Sciences College of Osteopathic Medicine of the Pacific

**Teacher of “Correlated Medical Problem Solving” Course**, 2001 – 2002

University of Connecticut School of Medicine, Farmington Connecticut

**Manager of South Marshall Street Pediatric Clinic**, 1995 – 1997

Salvation Army, South Marshall Street, Hartford Connecticut

**Administrative Assistant to the Director of Admissions & Career Development and to the Director of Academic & Student Affairs**, 1992 – 1994

Columbia University School of Public Health, New York, NY

**Tutor & Evaluator of Children with Learning Disabilities**, 1988 – 1994 & 1996 – 1997

Milford, Connecticut & Farmington, Connecticut

**Research Assistant Department of Pediatric Cardiology**, Yale University School of Medicine Summer 1992

**Coordinator of Infant Registration Project**, 1991 – 1992

New York City Department of Health: Office of Child Health Planning, New York, NY

**Research Assistant Department of Pediatric Endocrinology**, Yale University School of Medicine Summer 1991

**Intern at Lipid Clinic Department of Pediatrics**, Yale University School of Medicine Summer 1990

CONSULTATION AND  
AREA OF INTEREST

- Sworn in as Expert in Strangulation in the Eighth Judicial District Court in Clark County, Nevada
- Review cases and provide consultation for Prosecution and for Defense in Domestic Violence Cases, particularly Strangulation

INVITED LECTURES  
AND TEACHING

Annual presenter for the Strangulation Seminar  
Las Vegas, Nevada 2016 – present

Annual presenter for Bring Your Child to Work Day at Clark County Coroner/Medical  
Examiner Office 2010 – present

Presenter at the International Association of Coroners & Medical Examiners Conference,  
2015, 2016, 2017, 2018, 2019

Lecturer for Introduction for Criminal Investigations Class at the University of Las Vegas  
Department of Criminal Justice November 2018; September 2019

Presenter for the 2<sup>nd</sup> Annual Richard C Froede Memorial Forensic Pathology Lecture at  
the 38<sup>th</sup> Annual Meeting of the Mountain, Desert, and Costal Forensic Anthropologist  
Meeting, May 2018

Presenter for American Academy of Forensic Sciences at CSI Mini Camp (Community  
Outreach During AAFS 2016 Annual Meeting) at Las Vegas Natural History Museum  
February 2016

Lecturer in Monthly Investigator Training Sessions, Clark County Office of the  
Coroner/Medical Examiner 2016

Regular Lecturer at the Veterans Tribute Career and Technical Academy 2012 – present

Lecturer for Pulmonary Laboratory Sessions at the University of New Mexico School of  
Medicine April 28 – 29, 2009

Lecturer at Seminar on Death Investigations, New Mexico Office of Medical Investigator  
August 2008

Presenter at Pediatric Tumor Board, Adult Tumor Board, and, Breast Tumor Board  
Hartford Hospital, Hartford Connecticut 2006 – 2008

Guest speaker for Public Relations Department at Hartford Hospital for local middle-  
school children

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| EXTRAMURAL<br>PROFESSIONAL<br>ACTIVITIES | Active member of Monthly Clark County Child Death Review 2017 – present  |
|  | Active participant in the Nevada Donor Network and Clark County Office of the Coroner/Medical Examiner quarterly meetings 2017 – present                             |
|  | Assisted in conducting interviews for positions within the Forensics Division of the Clark County Office of the Coroner/Medical Examiner 2017                        |
|  | Assisted in conducting interviews for Assistant Coroner of the Clark County Office of the Coroner/Medical Examiner 2017  |
|  | Continuing Education Chair for American Academy of Forensic Sciences 2018 – present  |
| SERVICE WORK<br>AND OTHER                | Local Arrangements Chair for American Academy of Forensic Sciences 68th Annual Meeting   |
|  | Interviewed for (and featured in) special Crime Lab exhibit for the Mob Museum Las Vegas, Nevada   |
|  | Guidance to Medical Technician Students, College Students and High School Students interested in future careers in Medicine  |
|  | Editor of personal statements and resumes, particularly for those interested in the field of forensics and in medicine   |
|  | Guest with concentrated study at Infectious Disease Pathology Branch, Centers for Disease Control and Prevention, Atlanta, Georgia May 4 – 6, 2009                   |
|  | Attended Seminar on Death Investigations and Multiple Fatalities presented by The New Mexico Office of the Medical Investigator, Albuquerque, New Mexico August 2008 |
|  | Annual Host for summer high-school student tours of Hartford Hospital Department of Pathology Hartford, Connecticut  |
|  | Education of Medical Students & Residents on rotation in Hartford Hospital Department of Pathology Hartford, Connecticut   |
|  | Resident Representative for the ACGME (Accreditation Council for Graduate Medical Education) Hartford Hospital Hartford, Connecticut                                 |
|  | Delegate for the Connecticut Society of Pathologists   |
|  | Lecture (Unknown Case Presentation) Focal Nodular Hyperplasia for the Connecticut Society of Pathologists  |
|  | Manager of South Marshall Street Clinic in Salvation Army's South Marshall Street Shelter in Hartford, Connecticut   |
|  | Educator for Hartford Health Education Program through the University of Connecticut School of Medicine  |

*(continued, next page)*

Served as Present of Student Government Association Columbia University School of Public Health

Served as Hall President at Mount Holyoke College

Served as Student Advisor at Mount Holyoke College

Volunteered at Operation Hope: A Shelter for the Homeless

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MEMBERSHIPS

American Academy of Forensic Sciences (AAFS), 2009 – present

National Association of Medical Examiners (NAME), 2010 – present

International Association of Coroners & Medical Examiners (IAC&ME), 2010 – present

American Society for Clinical Pathology 2002 – 2008, 2010 – 2013, 2018 – present

College of American Pathologists 2002 – 2009, 2015, 2018 – present

United States and Canadian Academy of Pathology 2005 – 2007

American Association of Blood Banks 2006

AWARDS AND  
SCHOLARSHIPS

Donation Champion, from Nevada Donor Network, 2018

Kenneth S. Field Award of Appreciation, from AAFS Staff, 2016

Dr. Beckett Book Award, 2007

Martin Berman Immunopathology Award, 2007

Bloomberg Award for Psychiatry, 2001

UConn Women's Auxiliary Scholarship, 1995

Frank & Florence Marino Scholarship, 1995 & 1996

Student Government Service Award Columbia University, 1993

Michael F. DeVecchio, Jr. Scholarship, 1992

Juvenile Diabetes Foundation Summer Student Scholarship, 1991

Elected into Mount Holyoke College Chapter of Sigma Xi the Scientific Research Society, 1991

Margaret Altman Summer Internship Scholarship, 1990

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|--|---|
| RESEARCH<br>EXPERIENCE AND<br>PUBLICATIONS | <p>Feder HM Jr, Solomon B, Gavin LD. "Polyoma Virus Hemorrhagic Cystitis in an Otherwise Normal Child" Pediatric Infectious Disease Journal, 2008 Oct; 27(10):948-9.</p> <p>Metastatic Testicular Choriocarcinoma in a Young Male with Abdominal Pain, 2007Hartford Hospital Department of Pathology &amp; University of Connecticut Department of Internal Medicine</p> <p>Inter-observer Variability in Diagnosing Colon Biopsies as Indefinite for Dysplasia, 2006 Hartford Hospital Department of Pathology</p> <p>Susceptibility of Streptococcus Pneumoniae to Moxifloxacin and Other Antimicrobial Agents, 2004 Hartford Hospital Department of Pathology &amp; Laboratory Medicine</p> <p>Active researcher and editor on publication (with acknowledgement) ~ Whittemore R, Wells JA, Castellsague X. "A second-generation study on 427 probands with congenital heart defects and their 837 children" Journal of American College of Cardiology, 1994 May; 23(6):1459-67.</p> |
| RESIDENT AND<br>FELLOW TOPICS              | <p>Two Unusual Neuropathology Cases, January 2008</p> <p>Testicular Germ Cell Tumors, October 2007</p> <p>Waldenstroms Macroglobulinemia, October 2005</p> <p>Minimal Change Disease &amp; Focal Segmental Glomerular Sclerosis, October 2004</p> <p>Crescentic Glomerulonephritis or Rapidly Progressive Glomerulonephritis, January 2004</p> <p>Mitral Valve Prolapse and Sudden Death, July 2003</p>   |
| COURT TESTIMONY                            | See separate attachment.  |



## **DETECTIVE MATTHEW HOVANEK P#13227**

**Las Vegas Metropolitan Police Department**  
**400 S. Martin Luther King Blvd.**  
**Las Vegas, NV 89106**  
**Office (702) 828-1388**  
**Email M13227H@LVMPD.com**

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## **CURRICULUM VITAE**

### **CURRENT EMPLOYMENT**

- Detective and Computer Forensic Examiner, Las Vegas Metropolitan Police Department, September 2017 to present.
- Employed with LVMPD since 2008.
- Acquired over 2600 hours of police specific training, of which, more than 600 hours are in areas relevant to conducting examinations on electronic storage devices and associated techniques.

### **BACKGROUND AND EDUCATION CURRICULUM**

- Bachelor of Science (Business Management)
  - University Nevada Las Vegas, 2005
- Nevada POST Certification Category I
  - Las Vegas Metropolitan Police Department, 2008

### **CERTIFICATIONS**

- Cellebrite- Cellebrite Certified Logical Operator October 2016
  - Recertified November 2018
- Cellebrite- Cellebrite Certified Physical Analyst October 2016
  - Recertified November 2018
- Magnet MFCE Certified on April 3, 2018
- Certified Cellular Master Technician on April 13, 2018
- Certified IACIS BCFE Forensics on May 4, 2018
- Certified Best Practices in MAC Forensics on May 18, 2018
- Certified DVR examiner on May 31, 2018

- IACIS Certified Forensic Computer Examiner on June 27, 2018
- Cellebrite – Cellebrite Certified Drone Data Analyst on January 30, 2019
- Berla - iVe Examiner on May 24, 2019
- IACIS Certified Mobile Device Examiner on August 21, 2019

## FORENSIC TRAINING

- Magnet Internet Evidence Finder
  - By Magnet Forensics, September 2016, 24 Hours
- Access Data Mac Forensics
  - By Access Data, October 2017, 24 Hours
- Access Data FTK Bootcamp
  - By Access Data, November 2017, 24 Hours
- Access Data Applied Decryption
  - By Access Data, December 2017, 24 Hours
- Access Data Advanced FTK
  - By Access Data, January 2018, 24 Hours
- Axion Intermediate
  - By Magnet Forensics, January 2018, 32 Hours
- Access Data FTK Forensic Fundamentals
  - By Access Data, February 2018, 24 Hours
- Access Data FTK Windows 10 Forensics
  - By Access Data, March 2018, 24 Hours
- Basic Computer Forensic Examiner
  - By IACIS, April 2018, 76 Hours
- Best Practices in MAC Forensics
  - By Sumuri, May 2018, 40 hours
- Access Data Android Forensic Analysis
  - By Access Data, August 2018, 24 Hours
- Cellebrite Drone Investigation Training
  - By Cellebrite, January 2019 , 24 Hours
- NCFI Advanced Mobile Device Examiner
  - By United States Secret Service, October 2019, 32 hours



## CLASSES ATTENDED

- Cellebrite Mobile Forensics
  - By Cellebrite, Oct 2016, 35hrs
- Cellular Master Technician level 3
  - By Wild PCS Cellular Training, April 2018, 40 hours
- DVR Examiner
  - By DME Forensics, May 2018, 24 hours
- Basic Computer Forensic Examiner
  - By IACIS, May 2018, 76 hours
- Law Enforcement & Emergency Services Video Association Inc. Level 1
  - By LEVA, February 2019, 40 hours
- Mobile Device Forensic Examiner
  - By IACIS, May 2019, 36 hours
- BERLA iVe Examiner
  - By BERLA, May 2019, 40 hours

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
FORENSIC LABORATORY  
CURRICULUM VITAE**

Date: 01/22/14

Name: Brianne Huseby

P# 14783

Classification: Forensic Scientist II

Current Discipline of Assignment: Bio/DNA Detail

| EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)  |                        |                                      |                         |
|--|------------------------|--------------------------------------|-------------------------|
| Controlled Substances                      |                        | Toxicology/Blood Alcohol             |                         |
| Toolmarks                                  |                        | Toxicology/Breath Alcohol            |                         |
| Trace Evidence                             |                        | Toxicology/Drugs                     |                         |
| Arson Analysis                             |                        | Firearms                             |                         |
| Latent Prints                              |                        | Crime Scene Investigations           |                         |
| Serology                                   | X                      | Clandestine Laboratory Response Team |                         |
| Document Examination                       |                        | DNA Analysis                         | X                       |
| Quality Assurance                          |                        | Technical Support / DNA              |                         |
| EDUCATION                                  |                        |                                      |                         |
| <i>Institution</i>                         | <i>Dates Attended</i>  | <i>Major</i>                         | <i>Degree Completed</i> |
| University of Washington                   | 1997-2001              | Zoology, minor in Chemistry          | BS                      |
|  |                        |                                      |                         |
|  |                        |                                      |                         |
| ADDITIONAL TRAINING / SEMINARS             |                        |                                      |                         |
| <i>Course / Seminar</i>                    | <i>Location</i>        | <i>Dates</i>                         |                         |
| DNA FAM/ArmedXpert Training                | WSP- Seattle Crime Lab | 06/25-26/13                          |                         |
| NIST Mixture Interpretation Webinar        | WSP- Seattle Crime Lab | 06/13/13                             |                         |
| FBI NDIS Annual Review                     | WSP- Seattle Crime Lab | 05/31/13                             |                         |
| Applied Biosystems HID Univ-Future Trends  | WSP- Seattle Crime Lab | 09/13/12                             |                         |
| CODIS 7.0 Training – FBI                   | WSP- Seattle Crime Lab | 09/11/12                             |                         |
| Plexor HY Demonstration/Training – Promega | WSP- Seattle Crime Lab | 08/01/12                             |                         |

| ADDITIONAL TRAINING / SEMINARS             |                        |              |
|--|------------------------|--------------|
| <i>Course / Seminar</i>                    | <i>Location</i>        | <i>Dates</i> |
| CODIS 7.0 Training – FBI                   | WSP- Seattle Crime Lab | 03/23/12     |
| NDIS Annual Eligibility Training – FBI     | WSP- Seattle Crime Lab | 01/31/12     |
| Criminalistics Workshop – Schneck          | WSP- Seattle Crime Lab | 12/07-08/11  |
| NWAFS- HID Future Trends in DNA            | Tacoma, WA             | 09/26/11     |
| NDIS Annual Eligibility Training – FBI     | WSP- Seattle Crime Lab | 01/14/11     |
| Hair Evaluation for DNA Analysis – Schneck | WSP- Seattle Crime Lab | 06/01-02/10  |
| FBI NDIS Annual Review                     | WSP- Seattle Crime Lab | 03/31/10     |
| AAFS General Meeting                       | Seattle, WA            | 02/26/10     |
| Advances in Forensic DNA Analysis – AAFS   | Seattle, WA            | 02/22/10     |
| DNA Population Statistics – Carmody        | WSP- Seattle Crime Lab | 07/31/09     |
| DNA Mixture Training – Shutler, Hodge      | WSP- Seattle Crime Lab | 01/06/09     |
| Future Trends in DNA Technology –ABI       | WSP- Seattle Crime Lab | 08/12/08     |
| Qiagen EZ1 Biorobot Demo and Training      | WSP- Seattle Crime Lab | 11/29/07     |
| Case Approach Tools – PCFSI                | WSP- Seattle Crime Lab | 09/22/07     |
| Future Trends in DNA Technology –ABI       | WSP- Seattle Crime Lab | 06/06/06     |
| AAFS General Meeting                       | Seattle, WA            | 02/22-24/06  |
| FBI Audit Training Course                  | Seattle, WA            | 02/21-22/06  |
| ABI 7000/Quantifiler Training              | WSP- Seattle Crime Lab | 02/07/06     |
| NWAFS General Meeting                      | Tacoma, WA             | 11/15/05     |
| CODIS Eligibility Guidelines               | WSP- Seattle Crime Lab | 07/26/05     |
| Clothing Examination – PCFSI               | WSP- Seattle Crime Lab | 06/24/05     |
| Population Genetics and Statistics – NFSTC | Seattle, WA            | 05/19/05     |
| Comparison Fluorescence STR Data – Myriad  | Seattle, WA            | 02/16/05     |
| Future Trends in DNA Technology –ABI       | Seattle, WA            | 09/21/04     |
| ABI 7000 Quantifiler Kit – ABI             | Seattle, WA            | 04/14-15-04  |
| Bloodstain Pattern Analysis – Tom Bevel    | Seattle, WA            | 02/23-27/04  |
| DNA Population Statistics – Carmody        | WSP- Seattle Crime Lab | 11/19/03     |

| ADDITIONAL TRAINING / SEMINARS  |                              |                        |
|---|------------------------------|------------------------|
| <i>Course / Seminar</i>   | <i>Location</i>              | <i>Dates</i>           |
| Presentation Skills – WSP   | Olympia, WA                  | 09/09-11/03            |
| Trends in Forensic DNA Technology –ABI  | WSP- Seattle Crime Lab       | 09/03/03               |
| Basic Microscopy – Schneck  | WSP- Seattle Crime Lab       | 05/14-16/03            |
| STR DNA Analysis and Typing – CCI   | Sacramento, CA               | 01/28-31/03            |
| Courtroom Testimony – Ron Smith   | Criminal Justice TC – Burien | 01/06-07/03            |
| COURTROOM EXPERIENCE  |                              |                        |
| <i>Court</i>  | <i>Discipline</i>            | <i>Number of Times</i> |
| Superior Court (WA state, King, Kitsap, Clallam Counties)                           | Biology/DNA                  | 32                     |
| EMPLOYMENT HISTORY  |                              |                        |
| <i>Employer</i>   | <i>Job Title</i>             | <i>Date</i>            |
| Las Vegas Metropolitan Police Dept.   | Forensic Scientist 2         | 2013-present           |
| Washington State Patrol   | Forensic Scientist 3         | 2005-2013              |
| Washington State Patrol   | Forensic Scientist 2         | 2003-2005              |
| Washington State Patrol   | Forensic Scientist 1         | 2002-2003              |
| University of Washington  | Laboratory Technologist      | 1998-2002              |
|   |                              |                        |
|   |                              |                        |
|   |                              |                        |
| PROFESSIONAL AFFILIATIONS   |                              |                        |
| <i>Organization</i>   | <i>Date(s)</i>               |                        |
| American Academy of Forensic Sciences, Northwest Association of Forensic Scientists | 2002-present                 |                        |
| PUBLICATIONS / PRESENTATIONS:   |                              |                        |
| N/A   |                              |                        |
|   |                              |                        |

|                       |
|-----------------------|
| OTHER QUALIFICATIONS: |
| N/A                   |

Las Vegas Metropolitan Police Department  
Forensic Laboratory

## CURRICULUM VITAE

Date: 01/07/2020

Name: Amanda Shum P#: 17490 Classification: Forensic Lab Technologist

Current Discipline of Assignment: Forensic Lab - DNA

| EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)   |   |  |                         |
|---|---|--|-------------------------|
| Controlled Substances   |   | Toxicology/Blood Alcohol                       |                         |
| Toolmarks   |   | Toxicology/Breath Alcohol                      |                         |
| Trace Evidence  |   | Toxicology/Drugs                               |                         |
| Arson Analysis  |   | Firearms                                       |                         |
| Latent Prints   |   | Crime Scene Investigations                     |                         |
| Serology  | x   | Clandestine Laboratory Response Team           |                         |
| Document Examination  |   | DNA Analysis                                   |                         |
| Quality Assurance   |   | Technical Support / DNA                        | x                       |
| EDUCATION   |   |  |                         |
| <i>Institution</i>  | <i>Dates Attended</i>                               | <i>Major</i>                                   | <i>Degree Completed</i> |
| University of California, Santa Cruz  | 08/12 - 12/15                                       | Molecular, Cellular, and Developmental Biology | BS                      |
| California State University, Los Angeles  | 08/16 - 05/18                                       | Criminalistics                                 | MS                      |
|   |   |  |                         |
| ADDITIONAL TRAINING / SEMINARS  |   |  |                         |
| <i>Course / Seminar</i>   | <i>Location</i>                                     | <i>Dates</i>                                   |                         |
| Emergency Management Institute – An Introduction to the National Incident Management System | Online – FEMA (Federal Emergency Management Agency) | 12/17/19                                       |                         |
| Emergency Management Institute – Introduction to Incident Command System                    | Online – FEMA (Federal Emergency Management Agency) | 12/16/19                                       |                         |

Las Vegas Metropolitan Police Department  
Forensic Laboratory

[illegible]

Las Vegas Metropolitan Police Department  
Forensic Laboratory

| ADDITIONAL TRAINING / SEMINARS |                 |              |
|--------------------------------|-----------------|--------------|
| <i>Course / Seminar</i>        | <i>Location</i> | <i>Dates</i> |
|                                |                 |              |
|                                |                 |              |

| COURTROOM EXPERIENCE    |                   |                        |
|-------------------------|-------------------|------------------------|
| <i>Court</i>            | <i>Discipline</i> | <i>Number of Times</i> |
| Clark County Grand Jury | DNA/Biology       | 1                      |
|                         |                   |                        |
|                         |                   |                        |
|                         |                   |                        |
|                         |                   |                        |

| EMPLOYMENT HISTORY                         |   |                  |
|--|---|------------------|
| <i>Employer</i>                            | <i>Job Title</i>                                | <i>Date</i>      |
| Las Vegas Metro Police Department          | Forensic Lab Technologist                       | 7/2/18 - present |
| California State University of Los Angeles | Police Orientation & Preparation Program Mentor | 7/2017 - 8/2017  |
|  |   |                  |
|  |   |                  |
|  |   |                  |
|  |   |                  |
|  |   |                  |
|  |   |                  |

| PROFESSIONAL AFFILIATIONS                               |                 |
|---|-----------------|
| <i>Organization</i>                                     | <i>Date(s)</i>  |
| California Association of Criminalists Affiliate Member | 09/16 - present |



Las Vegas Metropolitan Police Department  
Forensic Laboratory

|   |
|---|
| <b>PUBLICATIONS / PRESENTATIONS:</b>  |
| UV-VIS and ATR-FTIR Spectroscopic Investigations of Postmortem Interval Based on Porcine Vitreous Humor |
| California Association of Criminalists Spring Seminar 2018 Thesis Poster Presentation                   |
| <b>OTHER QUALIFICATIONS:</b>  |
|   |



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DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

JAYSHAWN D. BAILEY,  
#5216003

Defendant.

CASE NO: C-20-347887-1

DEPT NO: XII

**STATE'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL PRODUCTION  
OF DISCOVERY AND BRADY MATERIAL**

DATE OF HEARING: JULY 21, 2020  
TIME OF HEARING: 12:00 PM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MICHAEL J. SCHWARTZER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Motion to Compel Production of Discovery and Brady Material.

This Response is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

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

7 On April 1, 2020, a preliminary hearing was conducted. At the conclusion of evidence,  
8 Judge Letizia bound the case up to district court for trial. An Information was filed on April  
9 2, 2020. Transcripts of the hearing were filed with this Court on April 27, 2020. Trial is  
10 currently set for August 10, 2020.

11 Defendant filed the instant motion on July 6, 2020. The State responds accordingly.

12 **STATEMENT OF FACTS**

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

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

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

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

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

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

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

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

19 Dr. Christina DiLoreto testified at the preliminary hearing that she ruled Tamyah's  
20 death as homicide by unknown means. Dr. DiLoreto went into detail about the several steps  
21 she took to reach that conclusion. She explained that during her external examination she  
22 observed that Tamyah's body was decomposing but there was no evidence of any external  
23 injuries. (PH, 7). Dr. DiLoreto further testified that during her internal examination she found  
24 some evidence of discoloration of the soft tissue in the neck area but that she was unable to  
25 confirm the injury upon microscopic inspection. (PH, 10). She testified that the discoloration  
26 in the neck could be the result of an injury but could also be a product of decomposition. (PH  
27 10).

1 After Dr. DiLoreto completed her external and internal examination, she took tissue  
2 samples from the body for microscopic examination in order to determine if there were any  
3 microscopic evidence of natural diseases or injuries that could have caused Tamyah's death.  
4 (PH, 8). The microscopic examination did not reveal any such injuries or natural disease. (Ph,  
5 8, 10). Dr. DiLoreto also performed a toxicology study to determine if something Tamyah's  
6 consumed may have killed her. (PH, 9). The toxicology report detected ethanol in Tamyah's  
7 blood which could have been present due to consumption of alcohol prior to death or due to  
8 decomposition. (PH 9). However, nothing in the toxicology report hinted at a cause of death.  
9 (PH, 9-10). Finally, Dr. DiLoreto also reviewed Tamyah's prior medical records but nothing  
10 in those records indicate anything but Tamyah was healthy seventeen-year-old. (PH, 13).

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

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

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

### 25 ARGUMENT

26 Defendant's Motion should be summarily denied as Brady does not create a right to  
27 pretrial discovery and discovery statutes only permit discovery orders where the State refuses  
28 to comply with the statutes. Even if the Court considers Defendant's substantive requests, most

1 of the requests are vague and overly broad, requesting material beyond the scope of that  
2 required to be disclosed by statute and/or Brady.

3 **I. DEFENDANT'S MOTION TO COMPEL MUST BE DENIED AS THERE IS NO**  
4 **STATUTORY OR CONSTITUTIONAL BASIS FOR THE COURT TO ORDER**  
5 **DISCLOSURE OF DISCOVERY AT THIS TIME.**

6 Defendant cites both the Nevada Revised Statutes and Brady and its progeny to support  
7 his request for discovery. However, Defendant has not fulfilled the necessary requirements to  
8 allow the Court to compel discovery under statute. Further, Brady and its progeny does not  
9 authorize the Court to order discovery. Thus, neither source provides authority for the Court  
10 to order discovery at this time. The Court must therefore deny Defendant's motion.

11 **A. Defendant's Motion to Compel must be denied as the State has not failed to**  
12 **comply with any discovery requirements imposed by statute.**

13 Under common law, a defendant has no right of discovery. State v. Wallace, 97 Ariz.  
14 296, 399 P.2d 909 (1965). This, of course, may be superseded by statute. Discovery in Nevada  
15 is controlled by NRS 174.235-174.295.

16 Pursuant to NRS 174.295(2),

17 If at any time during the course of the proceedings it is brought to the attention  
18 of the court that a party **has failed to comply** with the provisions of NRS  
19 174.234 to 174.295, inclusive, the court may order the party to permit the  
20 discovery or inspection of materials not previously disclosed, grant a  
21 continuance, or prohibit the party from introducing in evidence the material not  
22 disclosed, or it may enter such other order as it deems just under the  
23 circumstances.

24 (Emphasis added).

25 In Franklin v. Eighth Judicial District Court, 85 Nev. 401, 455 P.2d 919 (1969), the  
26 Nevada Supreme Court found the District Court erred in granting a defendant's for discovery  
27 beyond the scope of the NRS 174.235. The Court noted the discovery statutes "represent the  
28 legislative intent with respect to the scope of allowable pre-trial discovery and are not lightly  
to be disregarded." Based on the aforementioned, the discovery statutes should be strictly  
construed as the "right" to discovery did not exist at common law.

NRS 174.235 requires the State to allow the defense to inspect and copy various pieces

1 of information. Further, NRS 174.235 allows for the defense to seek an order to compel only  
2 upon the State's failure to allow such an inspection. It is clear from the language of the statutes  
3 that a motion to compel is only appropriate where the State refuses a defendant's request to  
4 review the discoverable material in its possession. Here, Defendant filed a motion to compel  
5 discovery prior to ever inspecting and copying the information in the possession of the State.  
6 Thus, a motion to compel discovery is not properly before the court. As there is no allegation  
7 the State has failed to comply with its statutorily imposed discovery duties, the Court must  
8 deny the motion in its entirety.

9 **B. Brady and its progeny do not authorize the Court to order pretrial discovery.**  
10 **The State determines whether information is "material" so as to require**  
11 **disclosure.**

12 The State has an obligation to disclose exculpatory evidence pursuant to Brady v.  
13 Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963). However, the rule of Brady v. Maryland, 373  
14 U.S. 83 (1963) is founded on the constitutional requirement of a fair trial. Brady is not a rule  
15 of discovery. As the Supreme Court held in Weatherford v. Bursy, 429 U.S. 545, 559, 97 S.  
16 Ct. 837, 846 (1977):

17 There is no general constitutional right to discovery in a criminal case, and Brady  
18 did not create one... 'the Due Process Clause has little to say regarding the  
19 amount of discovery which the parties must be afforded....' Wardius v. Oregon,  
20 412 U.S. 470, 474, 93 S. Ct. 2208, 2212, 37 L.Ed.2d 82 (1973).

21 See also, Pennsylvania v. Ritchie, 480 U.S. 39, 52, 107 S.Ct. 989, 999 (1987); Thus, "the  
22 Brady rule is not an evidentiary rule that grants broad discovery powers to a defendant." United  
23 States v. Quinn, 123 F.3d 1415, 1421 (11th Cir. 1997).

24 Additionally, Brady does not require the State to conduct trial preparation and  
25 investigation on behalf of the defense. Evans v. State, 117 Nev. 609, 627, 28 P.3d 498, 511  
26 (State not required to compile information or pursue an investigative lead simply because it  
27 could conceivably develop evidence helpful to defense); U.S. v. Marinero, 904 F.2d 251 (5<sup>th</sup>  
28 Cir. 1990), accord U.S. v. Pandozzi, 878 F.2d 1526, 1529 (1<sup>st</sup> Cir. 1989); U.S. v. Meros, 866  
F.2d 1304 (11<sup>th</sup> Cir. 1989). The obligation is to produce material exculpatory information  
which the defense would not be able to obtain itself through an ordinary exercise of diligence.

1 Steese v. State, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998); Rippo v. State, 113 Nev. 1239,  
2 1257-58, 946 P.2d 1017, 1028-29 (1997); Browning v. State, 120 Nev. 347, 355-56, 370, 91  
3 P.3d 39, 46, 55 (2004).

4 Further, while defense attorneys routinely claim they need information to conduct  
5 investigation to determine whether exculpatory information exists, that is simply not the law.  
6 Once the defense requests certain material from the State, it is the State, not the defense, nor  
7 the Court, makes the determination as to whether the requested information should be turned  
8 over. See, United States v. Henthorn, 931 F.2d 29, 31 (9<sup>th</sup> Cir. 1990); United States v. Santiago,  
9 46 F.3d 885, 895 (9<sup>th</sup> Cir. 1995); See also, Sonner v. State, 112 Nev. 1328, 930 P.2d 707  
10 (1996). The materials need only be turned over to the defense if the State finds they contain  
11 information that is or may be material to a defendant's case. Henthorn, 931 F.2d 29. If the  
12 State is unsure as to the materiality, it may submit the information to the trial court for in  
13 camera inspection. Id. The State makes this determination at its own peril and thus often errs  
14 on the side of disclosure. Mazzan v. Warden, 116 Nev. 48, 993 P.2d 25 (2000), citing U.S. v.  
15 Agurs, 427 U.S. 97, 93 S.Ct. 2392 (1976); Berger v. U.S., 295 U.S. 78, 55 S.Ct. 629 (1935).

16 Moreover, even where Brady requires disclosure, such is not necessarily required prior  
17 to trial. Reviewing courts consider the facts surrounding disclosure, including whether the  
18 information was used at trial to determine whether the information was disclosed in a timely  
19 manner. To comply with Brady, disclosure 'must be made at a time when [the] disclosure  
20 would be of value to the accused.'" United States v. Gordon, 844 F.2d 1397, 1403 (9<sup>th</sup> Cir.  
21 1988). For example, evidence of impeachment of a witness need not be disclosed until the  
22 witness testifies. United States v. Rinn, 586 F.2d 113 (9<sup>th</sup> Cir. 1978).

23 Brady and its progeny are remedies **post trial** for the prosecution's failure to perform  
24 its responsibility. U.S. v. Arias-Izquierdo, 449 F.3d 1168 (11<sup>th</sup> Cir. 2006), citing U.S. v. Agurs,  
25 427 U.S. 97, 96 S.Ct. 2392 (1976). Brady does not support the defense's request to investigate  
26 independent of the prosecution, or to ensure the prosecution completes its duty. Defendant's  
27 Motion must therefore be denied.

28 ///



1 **II. SHOULD THE COURT ENTERTAIN DEFENDANT'S REQUESTS TO COMPEL**  
2 **EVIDENCE, THE STATE RESPONDS IN TURN**

3 **A. Discovery required by statute.**

4 Pursuant to NRS 174.235:

5 1. Except as otherwise provided in NRS 174.233 to 174.295, inclusive, at the  
6 request of a defendant, the prosecuting attorney shall permit the defendant to  
inspect and to copy or photograph any:

7 (a) Written or recorded statements or confessions made by the  
8 defendant, or any written or recorded statements made by a witness the  
9 prosecuting attorney intends to call during the case in chief of the State,  
10 or copies thereof, within the possession, custody or control of the State, the  
existence of which is known, or by the exercise of due diligence may  
become known, to the prosecuting attorney;

11 (b) Results or reports of physical or mental examinations, scientific tests  
12 or scientific experiments made in connection with the particular case, or  
copies thereof, within the possession, custody or control of the State, the  
13 existence of which is known, or by the exercise of due diligence may  
become known, to the prosecuting attorney; and

14 (c) Books, papers, documents, tangible objects, or copies thereof, which  
15 the prosecuting attorney intends to introduce during the case in chief of  
the State and which are within the possession, custody or control of the  
16 State, the existence of which is known, or by the exercise of due diligence  
may become known, to the prosecuting attorney.

17 2. The defendant is not entitled, pursuant to the provisions of this section, to the  
discovery or inspection of:

18 (a) An internal report, document or memorandum that is prepared by or  
19 on behalf of the prosecuting attorney in connection with the investigation  
or prosecution of the case.

20 (b) A statement, report, book, paper, document, tangible object or any  
21 other type of item or information that is privileged or protected from  
disclosure or inspection pursuant to the Constitution or laws of this state  
22 or the Constitution of the United States.

23 3. The provisions of this section are not intended to affect any obligation placed  
24 upon the prosecuting attorney by the Constitution of this state or the Constitution  
of the United States to disclose exculpatory evidence to the defendant.

25  
26 The Nevada Supreme Court has previously recognized that district courts should not  
27 order disclosure beyond what is statutorily mandated as the legislative intent demonstrated in  
28 the statutes is not to be disregarded lightly. Franklin v. Eighth Judicial District, 85 Nev. 401,

1 402-03, 455 P.2d 919, 920 (1969) (superseded by statute on other grounds). Further, the  
2 district courts' discretion in ordering discovery is predicated on a showing that the evidence  
3 sought is material to the presentation of the defense and the existence of the evidence is known  
4 or may become known through due diligence to the State. Riddle v. State, 96 Nev. 589, 590,  
5 613 P.2d 1031, 1032 (1980).

6 **B. Requirements imposed upon the State by Brady and its progeny.**

7 Pursuant to Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963), due process requires  
8 the State to disclose evidence that is favorable to the defense if it is material to either guilt or  
9 punishment. "Favorable" evidence is not limited to exculpatory evidence, evidence must also  
10 be disclosed if it provides grounds for the defense to impeach the credibility of the State's  
11 witnesses. Kyles v. Whitley, 514 U.S. 419, 433-34, 115 S.Ct. 1555, 1565 (1985).

12 However, the prosecution is not required to disclose evidence that is simply not  
13 inculpatory and might merely form the groundwork for a favorable argument on the  
14 defendant's behalf. See, e.g., United States v. Hauff, 473 F.2d 1350, 1354 (7th Cir. 1973);  
15 Smith v. United States, 363 A.2d 667, 669 (D.C. 1976). For example, although the prosecution  
16 must produce evidence suggesting someone other than the defendant committed the crime,  
17 Brady does not create a right to information concerning all possible suspects, particularly if  
18 the number of such suspects is large and evidence of their possible involvement is slight.  
19 Jarrell v. Balkcom, 735 F.2d 1242, 1258 (11th Cir. 1984). Whether a piece of evidence is  
20 favorable under Brady often depends on the context of the existing or potential evidentiary  
21 record as evidence is to be considered collectively, not item by item. Kyles v. Whitley, 514  
22 U.S. 419, 115 S.Ct. 1555 (1995), Lay v. State, 116 Nev. 1185, 1194, 14 P.3d 1256, 1262  
23 (2000).

24 Following a specific discovery request, evidence is material if there is a reasonable  
25 possibility that the evidence would have affected the outcome, i.e. it undermines the  
26 confidence of the outcome in the proceeding. Mazzan v. Warden, Ely State Prison, 116 Nev.  
27 48, 993 P.2d 25 (2000). Following a general request for discovery, evidence is material if there  
28 is a reasonable probability that the evidence would have affected the outcome. Id.

1       The State acknowledges Brady obligations extend to materials in the hands of State  
2 agents. However, the State is only accountable for the evidence in the hands of State agencies  
3 who are actually acting on its behalf in the investigation and prosecution of the case. See Kyles  
4 v. Whitley, 514 U.S. 419, 437, 115 S.Ct. 1555, 1567 (1995)(“This in turn means that the  
5 individual prosecutor has a duty to learn of any favorable evidence known to the others *acting*  
6 *on the government’s behalf in the case*, including the police.”); Carriger v. Stewart, 132 F.3d  
7 463, 479 (9<sup>th</sup> Cir. 1997)(“[T]he prosecution has a duty to learn of any exculpatory evidence  
8 known to others *acting on the government’s behalf*.”).

9       The State is not required to disclose evidence, which is available to the defendant via  
10 other sources, including diligent investigation. Steese v. State, 114 Nev. 479, 495, 960 P.2d  
11 321, 331 (1998) Rippo v. State, 113 Nev. 1239, 1257-58, 946 P.2d 1017, 1028-29 (1997);  
12 Browning v. State, 120 Nev. 347, 355-56, 370, 91 P.3d 39, 46, 55 (2004); See also, Coe v.  
13 Bell, 161 F.3d 320 (6<sup>th</sup> Cir. 1998) (no Brady violation “where a defendant ‘knew or should  
14 have known the essential facts permitting him to take advantage of any exculpatory  
15 information,’ or where the evidence is available [] from another source, because in such cases  
16 there is really nothing for the government to disclose.” Similarly, the State is not required to  
17 conduct a defendant’s investigation or to assist in the presentation of the defense’s case. See  
18 Evans v. State, 117 Nev. 609, 627, 28 P.3d 498, 511 (2001) (State not required to compile  
19 information or pursue an investigative lead simply because it could conceivably develop  
20 evidence helpful to the defense); U.S. v. Marinero, 904 F.2d 251 (5<sup>th</sup> Cir. 1990), accord U.S.  
21 Pandozzi, 878 F.2d 1526, 1529 (1<sup>st</sup> Cir. 1989); U.S. v. Meros, 866 F.2d 1304 (11<sup>th</sup> Cir. 1989).  
22 “The rationale underlying Brady is not to supply a defendant with all the evidence in the  
23 Government's possession which might conceivably assist the preparation of his defense, but  
24 to assure that the defendant will not be denied access to exculpatory evidence only known to  
25 the Government.” United States v. LeRoy, 687 F.2d 610, 619 (2d Cir. 1982). Thus, the scope  
26 of the government's disclosure requirements does not extend to “its investigative files merely  
27 because they contain information which could assist the defendant.” United States v. Reddy,  
28 190 F. Supp. 2d 558, 575 (S.D.N.Y. 2002);

1       **C. Defendant's requests for discovery.**

2       While there is no authority permitting the Court to grant Defendant's Motion, in the  
3       event the Court wishes to consider Defendant's requests, the State responds to each request  
4       below. The State intends to comply with both constitutional and statutory discovery  
5       requirements. However, most of Defendant's requests are overly broad, in that each includes  
6       items which are not subject to disclosure under statute or Brady.

7             **1. Defendant's Statements**

8       Defendant requests a plethora of statements made by Defendant, whether recorded or  
9       unrecorded. Defendant's request is overly broad. Under Defendant's request, the State would  
10      have to provide the defense with every word Defendant uttered from the time police contacted  
11      him on the day of the offense to the time he was released. Such is not feasible, not reasonable,  
12      and not required by Brady and/or statute.

13      The State will turn over any written or recorded statements made by Defendant  
14      within the State's constructive custody as required by NRS 174.235(1)(a). However, NRS  
15      174.235 does not require the State to turn over unrecorded or unwritten statements made to  
16      any person, therefore Defendant's request is overly broad. Defendant's statements do not fall  
17      within the purview of Brady as they are within his knowledge. Defendant's request should be  
18      denied to the extent it requests statements beyond that required to be disclosed by statute.

19      Moreover, the State will order all the jail calls made by Defendant and provide them to  
20      defense. However, it should be noted that the defense can also subpoena these calls from Clark  
21      County Detention Center.

22             **2. Witness Statements**

23      Defendant requests written or recorded statements of potential witnesses and notes  
24      related thereto. Defendant's request is overly broad. NRS 174.235 requires the State to  
25      disclose only written or recorded statements of Defendant or witnesses the State intends to call  
26      in its case in chief. Defendant's request, by contrast, encompasses non testifying witnesses is  
27      therefore beyond the scope of the statute. Further, the State is not required by statute to turn  
28      over all recordings "collected [] as a part of the investigation."

1 As to defense counsel's requires for notes, such should not be disclosed assuming the  
2 statements are memorialized elsewhere. As explained by the Oregon Court of Appeals,  
3 expanding the statute to include notes related to statements would be against public policy –

4 We construe the statute to require production of any "statement" which is  
5 intended by its maker as an account of an event or a declaration of a fact. The  
6 statutory purposes of providing witness statements are to minimize surprise,  
7 avoid unnecessary trial, provide adequate information for informed pleas and  
8 to promote truthful testimony by allowing examination based on prior  
9 inconsistent statements. . . Requiring preservation and availability of  
10 fragmentary notes intended only as a touchstone for memory would be more  
11 likely to discourage police officers from taking notes, with a consequent  
12 reduction in accuracy, than to promote the statutory goals. Furthermore, it  
13 would be unfair and misleading to allow cross-examination of a witness based  
14 upon fragmentary or cryptic notes which were never intended to express a  
15 complete statement. For these reasons, we hold that fragmentary notes are not  
16 subject to production under discovery statutes.

17 State v. Bray, 569 P.2d 688, 690 (Ore. App. 1977)(finding trial court erred in precluding  
18 officer testimony because his notes were not provided, but content thereof was contained in  
19 disclosed reports); See also, State v. Wrisley, 909 P.2d 877 (Ore. App. 1995)(noting that police  
20 notes are not discoverable when their substance is incorporated into a report disclosed to the  
21 defendant); State v. Jackson, 571 P.2d 523 (Ore. App. 1978)(holding that a rough draft of a  
22 report an officer dictated to a stenographer was not discoverable). Further, the Supreme Court  
23 has repeatedly rejected the notion that due process requires the State to turn over a complete  
24 accounting of all investigatory work. United States v. Agurs, 427 U.S. 97 (1976)(rejecting the  
25 claim that a "prosecutor has a constitutional duty routinely to deliver his entire file to defense  
26 counsel."); see also Moore v. Illinois, 408 U.S. 786, 795 (1972) ("We know of no  
27 constitutional requirement that the prosecution make a complete and detailed  
28 accounting to the defense of all police investigatory work on a case").

29 The State acknowledges its duty under Brady if any of the aforementioned items  
30 contained material exculpatory or impeachment material the defense could not otherwise  
31 obtain via due diligence investigation. The State will comply with said duty. However,  
32 Defendant's request should be denied to the extent it is beyond statutory or Brady

1 requirements.

2 3. Metro records

3 Defendant requests Metro records, including notes, investigative leads not followed  
4 up on, and “information pertaining to this case or any witnesses in this case”. Defendant’s  
5 request is overly broad. The State is only required by statute to turn over the requested  
6 information if it intended to introduce the documents in its case in chief or if it contained a  
7 statement of a witness the State intended to call in its case in chief. The State is not required  
8 by statute to turn over “investigative leads not followed up on”. United States v. Agurs, 427  
9 U.S. 97 (1976)(rejecting the claim that a “prosecutor has a constitutional duty routinely to  
10 deliver his entire file to defense counsel.”); see also Moore v. Illinois, 408 U.S. 786, 795 (1972)  
11 (“We know of no constitutional requirement that the prosecution make a complete and detailed  
12 accounting to the defense of all police investigatory work on a case”).

13 The State acknowledges such records could potentially be Brady material if the records  
14 contained material exculpatory or impeachment material not otherwise available to the  
15 defense. To the extent such information falls within Brady’s purview, the State will comply.  
16 To the extent the request is overly broad to encompass information the State is not required to  
17 disclose under statute and/or Brady, the request should be denied.

18 To the extent Defendant requests officer notes, see State’s above response to (2).

19 As for “criminal tip organizations”, the State does not have any Crimestopper tips in its  
20 file.

21 Crimestoppers of Nevada started in Las Vegas in 1979, under the name “Secret  
22 Witness.” It is a citizen, media, and police co-operative program created to involve the public  
23 in the fight against crime. It is a privately funded, non-profit organization. See,  
24 [www.crimestoppersofnv.com](http://www.crimestoppersofnv.com). Because of the independent nature of the Crimestoppers  
25 organization, it is not an arm of the State for purposes of Brady and its progeny.

26 The organization does not act on behalf of the State as an investigative agency. As  
27 such, the State has no obligation to obtain or provide this information for the defense. See  
28 Kyles v. Whitley, 514 U.S. 419, 437, 115 S.Ct. 1555, 1567 (1995)(“This in turn means that

1 the individual prosecutor has a duty to learn of any favorable evidence known to the others  
2 acting on the government's behalf in the case, including the police."); Carriger v. Stewart, 132  
3 F.3d 463, 479 (9th Cir. 1997)("[T]he prosecution has a duty to learn of any exculpatory  
4 evidence known to others acting on the government's behalf.")

5 Through Crimestoppers, citizens are provided with a vehicle (telephone number or  
6 reporting via the web) to supply the police with information about a crime and remain  
7 anonymous while doing so. The Crimestoppers program operates in a manner which does not  
8 involve the taking of a tipster's name or any identifying information. Crimestoppers assigns a  
9 code or code number as the only "identifier" of one who communicated information with  
10 Crimestoppers. Certainly, it is the cloak of anonymity which allows citizens to feel safe when  
11 providing information to the organization. To take away the right of citizens to be able to  
12 safely communicate information without fear of retaliation will have a chilling effect on  
13 Crimestoppers.

14 Anonymity is the key to such a program. It is the promise of anonymity which allays  
15 the fear of criminal retaliation which otherwise discourages citizen involvement in reporting  
16 crime. In turn, by guaranteeing anonymity Crimestoppers provides law enforcement with  
17 information it might never otherwise obtain. "We are satisfied the benefits of a Crimestoppers-  
18 type program - citizen involvement in reporting crime and criminals - far outweigh any  
19 speculative benefits to the defense arising from imposing a duty on law enforcement to gather  
20 and preserve evidence of the identity of informants who wish to remain anonymous." People  
21 v. Callen, 194 Cal.App.3d 558, 563 (Cal.App.3.Dist.1987)

22 Courts and Legislatures have been favorable to protecting Crimestoppers records and  
23 information because there is a significant interest in encouraging citizens to report information  
24 regarding crimes without the fear of having their identities disclosed and facing possible  
25 retaliation. For example, New Mexico statutes provide that the records, reports, and files of  
26 the New Mexico Crime Stoppers Commission shall not be subject to subpoena except by Order  
27 of a Court and even if the proper showing is made to warrant such a subpoena, the Court must  
28 conduct an *in camera* review. N.M.S.A. Sec. 29-12a-4. Texas has enacted similar statutes.

1 See, V.T.C.A. Sec. 414.008. Moreover, both jurisdictions have criminal penalties for unlawful  
2 disclosure. Similarly, in U.S. v. Zamora, 784 F.2d 1025 (10th Cir. 1986), the Court upheld the  
3 defendant's federal conviction for manufacture of a controlled substances and possession of  
4 methamphetamine with intention to distribute. The Court ruled that the Crimestopper  
5 informer's identity did not require disclosure on defendant's mere allegation that the informant  
6 was more than a mere tipster. Importantly, the Zamora Court relied upon the U.S. Supreme  
7 Court's decision in Rovario v. U.S., 353 U.S. 53, 77 S.Ct. 623 (1957) in reaching its decision  
8 and reasoned "[ ] Rovario and its progeny have held that if a confidential informant was only  
9 a 'tipster,' and not an active participant in the criminal activity charged, disclosure of the  
10 informant's identity is not required."

11 Crimestoppers is a non-profit organization, which is not a part of the LVMPD or North  
12 Las Vegas Police Department. It does not act on behalf of the State in the prosecution of cases.  
13 As such, records regarding payments that organization has made to persons who have provided  
14 information to LVMPD or North Las Vegas Police Department are not within the State's  
15 possession for purposes of Brady. More importantly, those records are completely  
16 confidential, and payments are made anonymously.

17 The State respectfully requests that if this Court order the disclosure of any  
18 Crimestopper information that such disclosure be provided to the Court for an *in camera*  
19 review.

#### 20 4. Crime Scene Analysis, Evidence Collection and Forensic Testing

21 First, the State objects to this request as overbroad and duplicative. The details of all  
22 crime scene analysis and evidence collection have been turned over to the defense in the form  
23 of records from LVMPD.

24 The defense is not entitled to the CSA's "complete file," as this is neither material nor  
25 exculpatory given the facts of this case. All CSA report in this case have been turned over to  
26 the defense. All photographs have also been turned over to the defense.

27 As the defense is aware, the State expects a DNA report in this case. Due to the invoked  
28 status, the COVID-19 pandemic and significant amount of material to be tested in this matter,



1 a report has not been produced by LVMPD forensic laboratory at the time of this filing. The  
2 undersigned has recently talked with the DNA analyst handling the case and she has informed  
3 the undersigned that a DNA report will be produced by the end of July or first week of August.

4 The State at this point does not expect any fingerprint evidence reports.

5 5. Medical Records

6 Defendant requests for medical records for the victims from the instant offense. The  
7 State is only required to provide the requested materials under Brady if such materials include  
8 material exculpatory information in the State's constructive possession not otherwise available  
9 to the defense via due diligence investigation. Moreover, the State would only be required to  
10 turn over the requested information under statute if, either, 1) the State intended to introduce  
11 the records in its case in chief; or, 2) the medical examinations were in connection with the  
12 underlying offense and the records were in the State's constructive possession. Defendant's  
13 request is therefore overly broad. The request should be denied to the extent it is overly broad.  
14 The State has provided autopsy reports and records for the victim. The State will subpoena the  
15 medical records used by the forensic pathologist in this case and provide said records to the  
16 defense once they are received.

17 6. Preservation and Access to Evidence

18 Defendant's request is overly broad. Statute would require the State to turn over the  
19 requested material if the State intended to introduce as much in its as in chief. Brady would  
20 require the State to turn over the requested material if such included material exculpatory or  
21 impeachment information within constructive custody of the State not otherwise available to  
22 the defense via due diligence investigation. However, the State has no reason to believe any  
23 of the foregoing materials are at issue in the instant case, therefore the issue is moot and should  
24 be denied. Should the Court wish to consider the matter, the request should be denied to the  
25 extent it encompasses information beyond that required by statute and/or Brady.

26 To the extent Defendant's request is to "preserve" evidence, under the due process  
27 clause of the Fourteenth Amendment the government has a limited duty to preserve evidence  
28 for the defense. The duty to preserve derives from the due process guarantee to "fundamental

1 fairness” in trial which requires that defendants have access to exculpatory evidence.  
2 California v. Trombetta, 467 U.S. 479, 104 S.Ct. 2528 (1984). The Supreme Court first  
3 addressed the duty as it related to breath samples in DUI cases. Id. The Court explained that  
4 the duty to preserve was related, but distinct from that required by Brady, and therefore must  
5 be more limited – specifically, to evidence that might be expected to play a significant role in  
6 the suspect’s defense. Trombetta, 467 U.S. 479, 104 S.Ct. 2528. The Supreme Court refused  
7 to impose an overly broad duty to preserve on the government, noting that, even in the Brady  
8 context, it had repeatedly found the government is not required to turn over its entire case file  
9 or to outline all police investigatory work. Id.

10 Thus, for due process to require the government to preserve evidence, two (2)  
11 conditions must be met – 1) the evidence possesses obvious exculpatory value prior to its  
12 destruction; and 2) the defendant cannot obtain comparable information by other reasonably  
13 available means. Id. The Nevada Supreme Court has construed the second requirement as  
14 “prejudice”. Leonard v. State, 117 Nev. 53, 17 P.3d 397 (2001). In demonstrating prejudice,  
15 it is not sufficient to allege a “merely hoped-for conclusion” or that the “examination of the  
16 evidence would have been helpful in preparing a defense”. Id.

17 In Trombetta, the Supreme Court found the breath samples failed to meet either criteria  
18 to amount to a due process violation. Id. The original breathalyzer tests all indicated the  
19 defendants were intoxicated, therefore the chances that the samples possessed any exculpatory  
20 value was incredibly low. Id. Additionally, defendants had the opportunity to challenge the  
21 results of the breathalyzer tests via other means, including cross examination and inspections.  
22 Id. Similarly, in Leonard v. State, the police failed to preserve a voice message left by  
23 defendant Leonard on a witness’s pager indicating that “ten more people gonna die”. Leonard,  
24 117 Nev. 53. The Nevada Supreme Court found no due process violation occurred as Leonard  
25 failed to demonstrate police could be reasonably anticipate the message had any exculpatory  
26 value. Id.

27 The Supreme Court later considered whether the government had a duty to preserve  
28 evidence which was not material, but only potentially useful, in that it could have led to further

1 investigation by the defense. Arizona v. Youngblood, 488 U.S. 51, 109 S.Ct. 333  
2 (1988)(government failed to preserve child sex assault victim's clothing for further testing);  
3 Illinois v. Fisher, 540 U.S. 544, 124 S.Ct. 1200 (2004)(government failed to preserve  
4 narcotics). The Court refused to extend due process so far, emphasizing again that the State is  
5 not required to turn over a detailed accounting of all investigatory work, much less preserve  
6 such materials. Id. The Court rejected the notion that due process imposed an undifferentiated  
7 and absolute duty to retain and preserve all material that might be of conceivable evidentiary  
8 significance in a particular prosecution. Youngblood, 488 U.S. 51 (1988). In an effort to  
9 reasonably limit the duty to preserve, the Court found destruction of evidence that was only  
10 potentially useful only violates due process if the destruction was in bad faith. Id. The bad  
11 faith requirement "limits the extent of police obligation to preserve evidence to reasonable  
12 bounds and confines it to classes of cases where interest of justice most clearly require it, i.e.,  
13 those cases in which the police themselves by their conduct indicate that the evidence could  
14 form a basis for exonerating the defendant." Youngblood, 488 U.S. 51, 58; Fisher, 540 U.S.  
15 544, 549.

16 Whether the defense requests preservation of evidence does not change the standard of  
17 protection afforded by due process. In Illinois v. Fisher, 540 U.S. 544, the defendant requested  
18 the State preserve any evidence in his controlled substance case. However, after defendant  
19 bench warranted, the drugs in question were destroyed in the ordinary course of business. Id.  
20 The Supreme Court did not treat the case any differently than those where no request had been  
21 made and found no violation of due process because the drugs were not exculpatory, and the  
22 government did not act in bad faith. Id. In so ruling, the Supreme Court once again noted the  
23 very reason the bad faith requirement was implemented was to "limit the extent of the police's  
24 obligation to preserve evidence to reasonable grounds[.]" Id.

25 Similarly, in Sheriff v. Warner, 112 Nev. 1234, 926 P.2d 775 (1996), defendant Warner  
26 was charged with arson and murder in connection with a fire in his mobile home which killed  
27 his wife. Although Warner obtained a court order to preserve the mobile home and its contents,  
28 the entire mobile home was relinquished to the mortgagor. Id. Despite the court order, the

1 Nevada Supreme Court treated the case as any other destruction of evidence case and found  
2 no due process violation occurred as Warner failed to demonstrate how the unavailability of  
3 any of the evidence prejudiced him. Id. The Supreme Court explicitly rejected the lower  
4 court's holding that the state's failure to preserve evidence amounted to a due process violation  
5 because he was unable to refute the State's version of events and/or corroborate his own  
6 version of events. Id. In so doing the Supreme Court reiterated that mere assertions that  
7 examination of evidence could have potentially revealed exculpatory evidence does not  
8 amount to prejudice. Id.

9 Defendant does not cite, nor could the State discover, any authority to support the  
10 contention that the duty to preserve evidence supports a defense request to preserve items for  
11 which no evidentiary value has been shown. The State acknowledges its duty to preserve under  
12 the due process clause of the Fourteenth Amendment, as outlined above, and will comply with  
13 said duty, as it must even in the absence of a Court order. Thus, Defendant's Motion to  
14 Preserve should be denied as moot.

15 To the extent Defendant's Motion seeks to preserve specific items, the specific requests  
16 should be denied as they are unduly vague and constitute a fishing expedition which imposes  
17 an unreasonable burden on law enforcement. Defendant's requests essentially amount to a  
18 request that the Las Vegas Metropolitan Police Department preserve every item ever  
19 connected to the instant event, so that Defendant can later review it to decide whether the  
20 information is of value to him. However, such is exactly what the Supreme Court refused to  
21 find was required by due process in Youngblood when it explained it would not extend due  
22 process to an undifferentiated and absolute duty to retain and preserve all material that might  
23 be of conceivable evidentiary significance in a particular prosecution. Youngblood, 488 U.S.  
24 51 (1988). Defendant's Motion to Preserve must therefore be denied.

#### 25 7. Electronic communication

26 The State objects to Defendant's overbroad, boilerplate request as it is not relevant to  
27 the instant case. The facts of this case give no indication that electronic surveillance of any  
28 kind was conducted, and the State is unaware of any such surveillance being conducted.

1           8. Video/audio recordings

2           Defendant's request is overly broad. Statute would require the State to turn over the  
3 requested material if the State intended to introduce the recording in its case in chief or if the  
4 material included recorded statements related and relevant to the case made by a witness the  
5 State intends to call in its case in chief. Brady would require the State to turn over the requested  
6 material if such included material exculpatory or impeachment information within  
7 constructive custody of the State not otherwise available to the defense via due diligence  
8 investigation.

9           The State believes body worn camera videos and all video and/or audio recordings have  
10 been provided to defense. If the defense believes they are missing a specific body worn camera  
11 and or recording, it should inform the State.

12           9. Non-Activated Body Camera

13           Defendant requests the name of any police officer who did not activate his or her  
14 body camera in connection with the instant offense. Such is not required by statute. Brady  
15 would only require the State to turn over such information if it amounted to materially  
16 exculpatory or impeachment information not otherwise available to the defense via due  
17 diligence investigation. Defendant's request should be denied. With that said, the State is  
18 unaware of any police officer who failed to

19           10. Monitoring, Tracking and Associated Warrants

20           The State objects to Defendant's overbroad, boilerplate request as it is not relevant to  
21 the instant case. The facts of this case give no indication tracking warrants of any kind were  
22 used in this case. Downloads of Defendant's phone have been provided to defense. The State  
23 is still waiting for T-Mobile to respond to the warrant for the victim's cellphone records

24           11. 911/311

25           Defendant's request is overly broad. Statute would require the State to turn over the  
26 requested material if the State intended to introduce as much in it's as in chief or if the material  
27 included recorded statements related and relevant to the case made by a witness the State  
28 intends to call in its case in chief. Brady would require the State to turn over the requested

1 material if such included material exculpatory or impeachment information within  
2 constructive custody of the State not otherwise available to the defense via due diligence  
3 investigation. The request should be denied to the extent it encompasses information beyond  
4 that required by statute and/or Brady. The State has provided defense counsel with dispatch  
5 records, including the CAD log and unit log. The State has also provided the 911 call made by  
6 Defendant.

7 12. Chain of custody

8 Defendant's request is overly broad. Statute does not require the State to turn over the  
9 requested materials. Brady would only require the State to turn over the requested material if  
10 such was material exculpatory or impeachment information in the State's constructive custody  
11 not otherwise available to the defense via due diligence investigation. To the extent the State  
12 discovers such information, it will comply with Brady. Defendant's request should be denied  
13 to the extent it is beyond that required by Brady and/or statute.

14 13. Witness contact information

15 Defendant's request is overly broad. Statute only requires the State to provide names  
16 and addresses for witnesses the State intends to call in its case in chief. The State will comply  
17 with statutory notice requirements. However, the State is not required by statute or Brady to  
18 turn over phone numbers for any person or contact information for persons other than those it  
19 intends to call in its case in chief. Defendant's request should be denied to the extent it requests  
20 information beyond the statutory notice requirements.

21 14. Confidential Informants

22 NRS 49.335 affords the State an exclusive statutory privilege to protect the identity of  
23 informers. Under that statute, "[t]he State or a political subdivision thereof has a privilege to  
24 *refuse to disclose the identity of a person who has furnished to a law enforcement officer*  
25 *information purporting to reveal the commission of a crime.*" (Emphasis added). This privilege  
26 precludes this Court from ordering the disclosure of the identities of any informants. NRS  
27 49.335, 49.345.

1       The privilege, moreover, is resilient in the face of the defendant's numerous statutory  
2 and constitutional rights. See NRS 49.365; NRS 174.234(7). First, the defendant's statutory  
3 discovery rights must yield to the State's exclusive privilege. NRS 174.234(7). Although the  
4 State must disclose the identities of witnesses it intends to call in its case in chief pursuant to  
5 the defendant's statutory rights in NRS 174.234, the State cannot be ordered to disclose the  
6 identity of an informer under that statute because

7       [a] party is not entitled, pursuant to the provisions of [NRS 174.234], to the  
8 disclosure of the name or address of a witness or any other type of item or  
9 information *that is privileged or protected from disclosure or inspection*  
10 *pursuant to the Constitution or laws of this state or the Constitution of the United*  
11 *States.*

12 NRS 174.234(7) (emphasis added).

13       Second, the State's privilege does not dissipate in light of a defendant's constitutional  
14 rights to a fair trial, to present witnesses on his behalf, and to confront and cross-examine  
15 witnesses. By statute, if the Court finds that an informant is a percipient witness who "can...  
16 supply information constituting a defense [or] rebut a necessary element of an offense," State  
17 v. Stiglitz, 94 Nev. 158, 161, 576 P.2d 746, 747-48 (1978), the court may *dismiss* proceedings  
18 against a defendant if the State thereafter declines to disclose the identity of the informer. NRS  
19 49.365; Sheriff v. Vasile, 96 Nev. 5, 8, 604 P.2d 809, 810 (1980) (district court's dismissal of  
20 charges affirmed when the State refused to disclose the identity of a confidential informant  
21 who was the only independent percipient witness to a drug transaction); Routhier v. Sheriff,  
22 93 Nev. 149, 560 P.2d 1371 (1977) (district court should have dismissed charges against  
23 defendant when the State refused to reveal the identity of a percipient confidential informant  
24 who set up and witnessed the drug transaction leading to the criminal charge); cf. Stiglitz, 94  
25 Nev. at 161, 576 P.2d at 747-48 (the identity of an informant need not be revealed where he  
26 merely introduces a government agent to the defendant); Twigg v. Sheriff, 95 Nev. 112, 590  
27 P.2d 630 (1979) (same). The decision to disclose the informant's identity, however, ultimately  
28 remains in the hands of the State regardless of the Court's determination that a confidential  
informant is a percipient witness.

1 The Nevada Supreme Court has recognized that a defendant is entitled to discovery of  
2 an informer's identity when the informer both set up the meeting between the officer and  
3 defendant and witnessed the actual transaction. See Sheriff v. Vasile, 96 Nev. 5 (1980). In  
4 Vasile the police officer testified that he was introduced to Vasile through the confidential  
5 informant and the informant was present for the actual drug transaction. Vasile requested the  
6 name of the informant from the officer. The State objected under the applicable statutes and  
7 the objection was upheld by the Justice Court. Ultimately, Vasile sought relief in District  
8 Court where the case was dismissed. Thereafter the State appealed. The Supreme Court  
9 affirmed, holding:

10  
11 In Routhier v. Sheriff, the informant set up and witnessed the transaction which  
12 led to the criminal charges. That was precisely the situation involved in the  
13 present case. The informant here was seated in the undercover police car with  
14 Officer Douglas and Vasile. He was apparently the only independent witness  
15 who could hear and see the transaction in question. He was a material witness  
16 whose identity should have been disclosed. The magistrate's refusal to require  
17 disclosure or dismiss the charges was error. Id. at 8 (emphasis added).

18 The Vasile Court, however, acknowledged that a request for the identity of an informer  
19 need not result in the automatic disclosure of the informer's identity.

20 The identity of an informant need not be disclosed where he is not a material witness,  
21 because he can neither supply information constituting a defense nor rebut a necessary element  
22 of an offense. Id. at 8 (citing Twigg v. Sheriff, 95 Nev. 112 (1979) and State v. Stiglitz, 94  
23 Nev. 158 (1979)). Hence, this Court must determine whether the confidential informant  
24 involved in the present case could provide information that requires disclosure.

25 Finally, although NRS 49.375(1) creates a lone exception to the privilege by requiring  
26 the State to disclose an informer's identity "[i]f information from an informer is relied upon  
27 to establish the legality of the means by which evidence was obtained and the [court] is not  
28 satisfied that the information was received from an informer reasonably believed to be  
reliable..." the defendant's boilerplate motion does not claim that the exception applies in  
this case. See EDCR 3.20(b) ("a party filing a motion must also serve and file with it a  
memorandum of points and authorities in support of *each ground thereof*" and the failure to



1 do so “may be construed as an admission that the motion is not meritorious, as cause for its  
2 denial or as a waiver of all grounds not so supported” (emphasis added)). Even then, the  
3 disclosure may be made *in camera*, and the records of the *in camera* disclosure sealed. NRS  
4 49.375(2)-(3).

5 In this case, the State is unaware of any confidential informants.

6 15. Alternative Suspects

7 Defendant requests any information suggesting there is an alternative suspect to the  
8 offense. The request could include Brady material, if the requested information contained  
9 materially exculpatory or impeachment information within the State’s possession. However,  
10 such is unlikely as Defendant admitted to killing Ms. Trotter.

11 16. Identification and Misidentification

12 The State will turn over any written or recorded statements made by witnesses within  
13 the State’s constructive custody as required by NRS 174.235(1)(a) as well anything that  
14 encompasses Brady material or impeachment material

15 17. General Exculpatory Request

16 Defendant requests any information showing Defendant was not responsible for the  
17 death of Ms. Trotter or that it was justified. The State acknowledges Defendant’s request could  
18 encompass Brady material if the requested information was materially exculpatory or  
19 impeachment information within the State’s possession.

20 18. Witness Benefits

21 Defendant requests a plethora of information related to witness “benefits”. Statute does  
22 not require the State to turn over the requested materials. Brady would only require the State  
23 to turn over the requested material if such was material exculpatory or impeachment  
24 information in the State’s constructive custody not otherwise available to the defense via due  
25 diligence investigation. To the extent the State discovers such information, it will comply with  
26 Brady. Defendant’s request should be denied to the extent it is beyond that required by Brady  
27 and/or statute.

28 ///

1           19. Prior Witness Statements

2           This request should be granted to the extent Defendant seeks audio recorded or written  
3 statements of witnesses. He is not, however, generally entitled to handwritten notes,  
4 summaries of oral statements, or memoranda. As to inconsistent witness statements, this  
5 request should be granted to the extent that (1) the statement is materially inconsistent so as to  
6 affect the credibility of a witness, see Giglio 405 U.S. at 153–55; and (2) the statement is made  
7 to the prosecutor or an investigative agent of the prosecutor, as the State should not be held  
8 vicariously responsible to disclose inconsistent statements made to an government employee  
9 who is uninvolved in the investigation or prosecution of this case. See Wilson, Smith, supra.  
10 The request should be denied to the extent Defendant seeks material falling outside of those  
11 two categories of material. Should handwritten notes of detectives or other members of the  
12 prosecution team contain exculpatory Brady or Giglio material, the State will provide that  
13 information to defense counsel.

14           20. Police personnel files

15           The Defendant, without any showing of materiality or relevance, has requested that the  
16 personnel files of all law enforcement witnesses the State intends to call at trial.

17           As support for this contention, the Defendant cites the Court to United States v.  
18 Henthorn, 931 F.2d 29 (9th Cir. 1991), a brief opinion in which the Ninth Circuit held that the  
19 prosecution has a duty to review the personnel files of testifying police officers for exculpatory  
20 evidence and/or evidence material to the defense. Id.

21           Other jurisdictions have refused to follow the Henthorn rationale, satisfied that the  
22 interests of justice and fairness are served by the long-standing requirement that the defense  
23 must make some type of prima facie showing of materiality before police personnel files are  
24 combed. In the instant case, the Defendant has made no offer to support the bare contention  
25 that the requested personnel files would be of significance to the defense of the charged  
26 offenses. As such, there is no basis upon which for this Court to grant the request.

27           Certainly, Due Process mandates the disclosure of favorable evidence, material for  
28 impeachment or exculpatory purposes, to an accused upon request. Brady v. Maryland, 373

1 U.S. 83 (1963), but the evidence must be material for one of those purposes for Brady to apply.  
2 United States v. Pitt, 717 F.2d 1334, 1339 (11th Cir. 1983). In Pitt, the defense requested the  
3 personnel file of the chief case agent to search for impeachment information, without any  
4 showing that evidence material to the defense would be found in that file (painfully similar to  
5 the request in the instant motion). The Court there stated:

6 We fail to see how, and the appellant has failed to show us how, the  
7 contents of FBI Agent Lewis' personnel file would likely contain  
8 anything material to an alleged threat against Pitt, especially when the  
9 official records show that the agent was out of town on the day the  
10 alleged threat was made.

11 The request for the agent's personnel file, under the facts of this case,  
12 was frivolous. Pitt was entitled to fish, but not with this thin a pole.

13 Id. at 1339 [emphasis supplied].

14 Other jurisdictions have refused to follow the isolated Henthorn rationale. See United  
15 States v. Quinn, 123 F.3d 1415, 1422 (11th Cir. 1997); United States v. Andrus, 775 F.2d 825,  
16 843 (7th Cir. 1985) ("Mere speculation that a government file may contain Brady material is  
17 not sufficient to require...in camera inspection..."); United States v. Driscoll, 970 F.2d 1472,  
18 1482 (6th Cir. 1992), abrogated on other grounds by Hampton v. United States, 191 F.3d 695  
19 (6<sup>th</sup> Cir. 1999). All of these jurisdictions follow the long-standing rule that the defense must  
20 make some showing of materiality before such a broad and over-reaching discovery request  
21 can be entertained.

22 Most importantly, and most conveniently omitted from the Defendant's authorities, is  
23 the fact that the Nevada Supreme Court has ruled on this issue. In Sonner v. State, 112 Nev.  
24 1328, 930 P.2d 707 (1996), the defense requested the personnel file of the Nevada Highway  
25 Patrol Trooper who was allegedly shot by the defendant. The Nevada Supreme Court  
26 emphatically stated:

27 Although the State may not withhold evidence favorable to the  
28 accused and material to either guilt or sentence, the State is under no  
obligation to accommodate a defendant's desire to flail about in a  
fishing expedition to try to find a basis for discrediting a victim. See  
State v. Blackwell, 120 Wash.2d 822, 845 P.2d 1017, 1021 (1993)  
("Defense counsel's broad unsupported claim that the police officers'  
personnel files may lead to material information does not justify  
automatic disclosure of the documents.") As the Washington

Supreme Court observed: “A defendant must advance some factual predicate which makes it reasonably likely that requested file will bear information material to his or her defense. A bare assertion that a document ‘might’ bear such fruit is insufficient.”

Id. at 1340-41.

Based on Nevada law, the Defendant in the instant case is required to advance a foundation that the personnel files of law enforcement witnesses are likely to bear information material to the defense. Notwithstanding the fact establishing such a foundation is unlikely, the fact remains that it has not even been attempted. As a result, the request should be denied.

The State will make a Brady request with LVMPD and any results will be provided to the defense.

## 21. Criminal History

The requests should be granted to the extent Defendant seeks material falling within NRS 174.235 or exculpatory Brady material in the possession of the prosecution team. The request should be denied to the extent Defendant seeks material falling outside of those two categories of material. Defendant’s requests for misdemeanor convictions, juvenile convictions and arrests of every witness including any charges that were dismissed or not pursued is overbroad and not supported by statute. Felony convictions and crimes of moral turpitude are the only relevant information that must be provided by the State. See NRS 50.095, NRS 50.085, Bushnell v. State, 95 Nev. 570, 572, 599 P.2d 1038 (1979) (credibility may be attacked by showing of a felony conviction, not mere arrest).<sup>1</sup>

Defendant has requested that the State provide National Crime Information Center (NCIC) reports on all possible State witnesses and to provide said reports to the Defendant.

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<sup>1</sup> In Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974), the Supreme Court held that a state's policy interest in protecting the confidentiality of a juvenile offender's records, must yield to the right of effective cross-examination to test the credibility of a witness under the Sixth Amendment of the federal constitution. In Davis the state of Alaska was required to surrender the juvenile records of the prosecution witness, so that the defendant could show the existence of possible bias or prejudice which the witness may have felt because of his then current status as a juvenile on probation. However, Davis does not require the discovery of juvenile records “to impeach the general credibility of a witness through cross-examination about his past delinquency adjudications or criminal convictions.” (Emphasis added.) See Id. at 321, 94 S.Ct. at 1113; also see Pickard v. State, 94 Nev. 681, 683-84, 585 P.2d 1342, 1343 (NRS 50.095(4) is consistent with Davis); NRS 50.095(4): “Evidence of juvenile adjudications is inadmissible (to attack the credibility of a witness).”

1 The State has not run an NCIC inquiry on all witnesses, nor does it plan to do so in this matter.  
2 The State has no legitimate reason to make such an inquiry and strenuously objects to defense  
3 requests that the State provide this information. Pursuant to 28 C.F.R. §20.33(b) as codified  
4 under 28 U.S.C.A. § 534 (2002), criminal history information may only be disseminated to  
5 law enforcement agencies, those hired by law enforcement agencies and to those who have  
6 entered into signed agreements for the specific and authorized use of criminal background  
7 information. Pursuant to 28 C.F.R. §20.25,

8 Any agency or individual violating subpart B of these regulations shall be  
9 subject to a civil penalty not to exceed \$10,000 for a violation occurring before  
10 September 29, 1999, and not to exceed \$11,000 for a violation occurring on  
11 after September 29, 1999.

12 In addition, pursuant to 28 C.F.R. §20.38,  
13 Access to systems managed or maintained by the FBI is subject to cancellation in regard to  
14 any agency or entity that fails to comply with the provisions of subpart C of this part.

15 If the State is forced to disseminate such information to the defense in this matter, the  
16 State and/or the individual who provides the NCIC information runs the risk of civil penalties  
17 and loss of future access to the NCIC system. In addition, the Multi-System Guide 4 (MSG4)  
18 published by the Las Vegas Metropolitan Police Department (LVMPD) states that “[d]ata  
19 stored in each of our criminal justice systems . . . must be protected to ensure correct, legal  
20 and efficient dissemination and use.” P. 21. The MSG4 further states that “[d]issemination  
21 of CHI [Criminal History Information] that does not belong to the LVMPD or is obtained  
22 through NCIC, NCJIS or NLETS is prohibited.” Id.

23 As a user of the National Crime Information Center (NCIC) database, the State is  
24 prohibited from disseminating criminal history information to non-criminal justice agencies  
25 as defined by Title 28 Code of Federal Regulations (CFR)§ 20.33, which describes a criminal  
26 justice agency as: (1) Courts; and (2) a government agency or any subunit thereof which  
27 performs the administration of criminal justice pursuant to a statute or executive order, and  
28 which allocates a substantial part of its annual budget to the administration of criminal justice.  
Unless specifically authorized by federal law, access to the NCIC/III for non-criminal justice

1 purposes is prohibited.

2 A 1989 United States Supreme Court case looked at this issue from the standpoint of  
3 an invasion of privacy and ruled accordingly:

4 Accordingly, we hold as a categorical matter that a third party's request for law  
5 enforcement records or information about a private citizen can reasonably be  
6 expected to invade that citizen's privacy, and that when the request seeks no  
7 "official information" about a Government agency, but merely records that the  
Government happens to be storing, the invasion of privacy is "unwarranted."

8 United States Department of Justice v. the Reporters Committee for Freedom of the Press, 109  
9 S.Ct. 1468, 1485 (1989).

10 Criminal defense attorneys, public or private, are not within the definition of "criminal  
11 justice agency," nor is the criminal defense function considered a "criminal justice purpose."  
12 Therefore, Defendant is not entitled to the criminal history information he seeks.  
13 Defendant's request should be denied.

14 22. Requests 22 to 36 U Visa and Immigration Related Benefit

15 These requests should be denied as overbroad, irrelevant and boilerplate. The State is  
16 unaware of any witness in this case that would be eligible for benefits mentioned in these  
17 requests. If the defense has a specific witness that they suspect may receive immigration  
18 benefit based on this case, the State will investigate and communicate the findings to the  
19 defense.

20 37. CPS Protective Service Records

21 The State does not have access to CPS records and such records require a court order.  
22 The statutory requirements for such records also provide that this Court should review such  
23 records *in camera* before decided if they should be released or not. See NRS 432B, generally

24 38. Catch all

25 Defendant's request should be denied as moot. The State is already compelled by the  
26 United States Constitution to comply with Brady. A court order does not change the State's  
27 burden.

28 ///

1       **D. Timely Disclosure**

2       Defendant requests the discovery be provided in a “reasonable time in advance of trial  
3 to enable counsel to effectively prepare”. Again, the State understands its burden under Brady  
4 to provide information at a time allowing the defense to use the information at trial. The State  
5 diligently attempts to provide the defense with all materials as soon as possible and will  
6 continue to do so.

7       There are several items that the State is still waiting on or attempting to obtain for the  
8 pending trial. Specifically, the State believes a DNA report will be issued within the next  
9 couple of weeks in this matter. The State is also waiting on phone records for Ms. Trotter as  
10 well as information from Snapchat.

11       Defendant’s request for an order precluding the State from using any previously  
12 unproduced discovery is inappropriate and premature currently. Such remedy is the most  
13 extreme allowed under statute. NRS 174.295(2) suggests additional remedies including,  
14 discovery or inspection of the undisclosed materials, a continuance, or any order deemed just  
15 under the circumstances. Should any discovery issues arise, the Court should consider the  
16 totality of circumstances before determining the remedy. Defendant’s request should therefore  
17 be denied.

18                               **CONCLUSION**

19       Defendant’s Motion must be denied as it is not properly before the Court under statute  
20 or Brady. To the extent the Court wishes to consider the Motion, the State requests the Court  
21 to deny any request beyond the scope of statute and/or Brady and its progeny.

22       DATED this 15th day of July, 2020.

23                               Respectfully submitted,

24                               STEVEN B. WOLFSON  
25                               Clark County District Attorney  
26                               Nevada Bar #001565

27                               BY /s/MICHAEL J. SCHWARTZER  
28                               MICHAEL J. SCHWARTZER  
                                  Chief Deputy District Attorney  
                                  Nevada Bar #010747

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CERTIFICATE OF ELECTRONIC TRANSMISSION

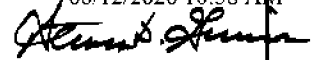
I hereby certify that service of the above and foregoing was made this 15th day of July, 2020, by electronic transmission to:

KATHLEEN HAMERS, Deputy Public Defender  
Email: [hamerskm@clarkcountynv.gov](mailto:hamerskm@clarkcountynv.gov)

BY: /s/ D. Daniels  
Secretary for the District Attorney's Office

20F01585X/MJS/dd-MVU



  
CLERK OF THE COURT

ORDR  
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*Attorneys for Defendant*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

|                      |   |                        |
|----------------------|---|------------------------|
| THE STATE OF NEVADA, | ) |                        |
|                      | ) |                        |
| Plaintiff,           | ) | CASE NO. C-20-347887-1 |
|                      | ) |                        |
| v.                   | ) | DEPT. NO. XII          |
|                      | ) |                        |
| JAYSHAWN D. BAILEY,  | ) |                        |
|                      | ) |                        |
| Defendant,           | ) |                        |
| _____                | ) |                        |

**ORDER**

DEFENDANT'S MOTION TO COMPEL PRODUCTION OF DISCOVERY  
AND BRADY MATERIAL, having come before the Court on July 21, 2020, and good cause  
appearing therefore,

IT IS HEREBY ORDERED:

**Defense Request 1: Defendant's Statements**

All statements made by the defendant and any co-defendants, regardless of whether  
the statements were written or recorded, including but not limited to:

- Comments made at the time of arrest or during transport to the detention center,
- All conversations, telephonic or otherwise, intercepted by any law enforcement agencies, including federal authorities, and
- The substance of any statements, conversations, or correspondence overheard or intercepted by any jail personnel or other inmates which have not been recorded or memorialized.

**GRANTED, to the extent it is required by NRS 174.235.**

**Defense Request 2: Potential Witnesses' Statements**

1 All written or recorded statements of witnesses and potential witnesses, including, but  
2 not limited to:

- 3 • Audio and video recording in any form collected by investigating officers or any  
4 other law enforcement agent as part of the investigation of this matter, as well as  
5 any related matters,
- 6 • Notes of interviews, such as notes of patrol officers, or notes of phone calls made  
7 to potential witnesses, or attempts to contact such witnesses.

8 **GRANTED, to the extent it is required by NRS 174.235.**

9 **Defense Request 3: Records Related to Investigation**

10 All records of the Las Vegas Metropolitan Police Department and any other law  
11 enforcement agencies involved in the investigation of this or any related matter,  
12 including, but not limited to:

- 13 • Copies of handwritten or other notes,
- 14 • Investigative leads that were not followed up on,
- 15 • Any other matter bearing on the credibility of any State witness,
- 16 • Information pertaining to this case or any witnesses in this case
- 17 • Any leads or tips provided to law enforcement or a crime tip organization such as  
18 Crime Stoppers, including any reward or benefit received for such tip.

19 **GRANTED, to the extent it is required by NRS 174.235.**

20 **Defense Request 4: Crime Scene Analysis, Evidence Collection, and Forensic Testing**

21 All requests, results, reports, and bench notes pertaining to all crime scene analysis, evidence  
22 collection and forensic testing performed in this case, including, but not limited to:

- 23 • Photographic, video, and audio recordings of evidence collection and testing,
- 24 • Fingerprint Evidence: All latent prints recovered in the instant matter, regardless  
25 of their value for identification, as well as exemplars compiled in connection with  
26 the investigation of this matter, including:
  - 27 ○ photographs, reports, and recordings related to collecting and testing of  
28 fingerprints,
  - Results of fingerprint collection and comparison, and
  - Automated Fingerprint Identification System (AFIS) searches and results,

- DNA Evidence: DNA testing, raw data and Combined DNA Index System (CODIS) searches and results,
- Scientific Evidence: toxicological, chemical, biochemical, laboratory, and other laboratory or forensic analyses, including trace evidence analyses, crime scene reconstruction or blood spatter analysis, and
- Forensic Analysis: reports and notes related to any forensic analysis and requests for forensic analysis, regardless of the outcome of such request.

**GRANTED, to the extent it is required by NRS 174.235.**

**Defense request 5: Medical Records**

All records, including photos, reports, imaging studies, test results, and notes pertaining to the decedent in this case, including:

- Records generated pursuant to treatment provided in connection with the instant matter; including, without limitation, all emergency medical, fire department, hospital, or other medical care provider records, including all relevant prior medical records,
- All pathological, neuropathological, toxicological, or other medical evaluations of the decedent, including all relevant prior medical records and
- The name and badge number of any EMT personnel who responded to the scene, and all documentation, notes, reports, charts, conclusions, or other diagnostic, prognostic, or treatment information pertaining to any person evaluated, assessed, treated, or cleared by a paramedic at the scene, or transported to a hospital from the scene.

**GRANTED, to the extent it is required by NRS 174.235.**

**Defense request 6: Preservation of and Access to Raw Evidence**

Access to and preservation of all material collected in the investigation of this case to include but not limited to:

- forensic material, raw data, biological samples and toxicological samples; and
- video surveillance, photographic negatives, and digital negatives.

**GRANTED, to the extent it is required by NRS 174.235.**

**Defense request 7: Electronic Communications and Associated Warrants**

All intercepted communications, whether electronic oral or otherwise, pertaining to the instant matter or any related matter.

**GRANTED, to the extent it is required by NRS 174.235.**

1 **Defense Request 8: Law Enforcement Video or Audio Recordings**

2 All video and audio recordings obtained by the Las Vegas Metropolitan Police  
3 Department recording device, including but not limited to:

- 4 • Dashboard cameras,  
5 • Body-mounted officer cameras,  
6 • Any other recording equipment operational during the investigation of this case,  
7 and  
8 • Any video footage captured by body cameras worn by any other officer present  
9 for Las Vegas Metropolitan Police Department for this event and any other related  
10 or connected event number.

11 **GRANTED, to the extent it is required by NRS 174.235.**

12 **Defense Request 9: Non-Activated Body Camera**

13 The name and "P#" of any officer present for Las Vegas Metropolitan Police  
14 Department for this event and any related or connected event number who is required  
15 by department policy to wear, but did not activate his body-worn camera.

16 **DENIED.**

17 **Defense Request 10: Monitoring, Tracking, and Associated Warrants**

18 All data, recordings, reports, and documentation of the following: voice monitoring  
19 devices, geographic tracking devices, pen registers, trap and trace devices installed  
20 pursuant to interception, warrant, or other means, obtained by law enforcement  
21 pertaining to the instant matter or any related matter.

22 **GRANTED, to the extent it is required by NRS 174.235.**

23 **Defense Request 11: 911 and 311 Calls**

24 Any and all 911 and 311 recordings to include, but not limited to:

- 25 • Car-to-car audio communications,  
26 • Car-to-dispatch radio communications, and  
27 • Unit Log incident print out related to the event.

28 **GRANTED, to the extent it is required by NRS 174.235.**

**Defense Request 12: Chain of Custody**

1 All relevant chain of custody reports, including reports showing the destruction of  
2 any evidence in the case.

3 **GRANTED.**

4 **13. Witness Contact Information**

5 All updated witness contact information, including last known addresses and phone  
6 numbers. This includes the names and contact information for witnesses who may  
7 have information tending to exculpate Mr. Bailey.

8 **STATE IS ORDERED TO COMPLY WITH NRS 174.234.**

9 **Defense Request 14: Information Obtained from Confidential Informants**

10 All information obtained from confidential informants for any aspect of the  
11 investigation of this case. This includes, but is not limited to, informants who  
12 purportedly obtained information about this case while incarcerated, whether the  
13 information came from Mr. Bailey, a co-defendant, unindicted co-Conspirator, or  
14 another source, regardless of whether prosecutors intend to use the informant-related  
15 information at the upcoming trial of this matter.

16 **DENIED.**

17 **Defense Request 15: Alternative Suspects**

18 All information which tends to show any doubt that Mr. Bailey committed the crimes  
19 alleged, or which shows the possibility of another perpetrator, co-conspirator, aider  
20 and abettor, or accessory after the fact, including the names of those individuals.

21 **STATE IS ORDERED TO COMPLY WITH BRADY OBLIGATIONS.**

22 **Defense Request 16: Identification and Mis-Identification**

23 All statements of identification associated with this case, including any information  
24 concerning witnesses who did not identify Mr. Bailey as the perpetrator of the alleged  
25 crimes.

26 **GRANTED, to the extent it is required by NRS 174.235.**

27 **Defense Request 17: General Exculpatory Evidence Request**  
28

1 All information which shows that Mr. Bailey was not responsible for the death of the  
2 decedent in this case or that would justify his conduct or reduce his culpability.

3 **STATE IS ORDERED TO COMPLY WITH BRADY OBLIGATIONS.**

4 **Defense Request 18: Witness Benefits**

5 Disclosure of all express or implied compensation, promises of favorable treatment or  
6 leniency, or any other benefit that any of the State's witnesses received in exchange  
7 for their cooperation with this or any related prosecution.

8 **STATE IS ORDERED TO DISCLOSE ANYTHING OTHER THAN THE**  
9 **STATUTORY WITNESS FEES.**

10 **Defense Request 19: Prior Witness Statements**

11 Disclosure of any and all statements, tangible or intangible, recorded or unrecorded,  
12 made by any witness that are in any manner inconsistent with the written or recorded  
13 statements previously provided to the defense. This includes oral statements made to  
14 an employee or representative of the CCDA or any other government employee, local  
15 or federal, during pre-trial conferences or other investigative meetings.

16 **GRANTED, to the extent it is required by NRS 174.235.**

17 **Defense Request 20: Law Enforcement Impeachment Information—Henthorn Request**

18 Mr. Bailey hereby requests the prosecutor review the personnel files of each officer  
19 involved in this case. After review, the prosecutor must disclose all impeachment  
20 information located in the personnel files of any police witness called to testify at trial  
21 or any pretrial hearing in this matter, including, but not limited to, any Statement of  
22 Complaint regarding the witness or this investigation, any Employee Notice of  
23 Internal Investigation, any Internal Affairs Investigative Report of Complaint, any  
24 witness statement, any Bureau Investigation Supervisory Intervention, and any other  
25 document maintained or generated by the Office of Internal Affairs, Critical Incident  
26 Review Panel, or other investigative agency.

27 **DENIED WITHOUT PREJUDICE, as there has been no showing of any materiality**  
28 **or basis for review.**

1 **Defense Request 21. Criminal History Information**

2 Criminal history information on any actual or potential witness, showing specific  
3 instances of misconduct, instances from which untruthfulness may be inferred or  
4 instances which could lead to the discovery of admissible evidence. To this end, the  
5 defense requests that, the CCDA provide NCIC reports on any lay witnesses the State  
6 intends to call at trial or upon whose testimony or statements the State will rely  
7 during either the guilt or penalty phases of trial. The defense further requests that the  
8 NCIC information be provided to defense counsel as soon as possible and that  
9 prosecutors identify those individuals for whom no NCIC information is found.  
10 While the defense is not insisting that prosecutors run NCICs on expert or law  
11 enforcement witnesses, the defense requests that the State be ordered to comply with  
12 its Brady obligations with respect to these witnesses. The instant criminal history  
13 request includes, but is not limited to:

- 14 • Juvenile records,
- 15 • Misdemeanors,
- 16 • Out-of-state arrests and convictions,
- 17 • Outstanding arrest warrants or bench warrants,
- 18 • Cases which were dismissed or not pursued by the prosecuting agency, and
- 19 • Any other information that would go to the issues of credibility or bias, or lead to  
20 the discovery of information bearing on credibility or bias, regardless of whether  
the information is directly admissible by the rules of evidence.

21 **STATE IS ORDERED TO DISCLOSE ANY PRIOR FELONIES OR CRIMES OF**  
22 **MORAL TERPITUDE.**

23 **Defense Request 22: U Visas and Related Information**

24 Information indicating whether the alleged victim, an immediate family member, or  
25 any other qualifying person has consulted with a CCDA representative or victim  
26 advocate, or any other person acting in a representative capacity, regarding obtaining  
27 a U Visa as a result of this case.

28 **DENIED.**

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All policies and procedures established by any relevant law enforcement agency or the prosecutor's office regarding U Visa certification.

**DENIED.**

## 24. Application for U Visa

Information indicating whether the alleged victim, immediate family member, or any other qualifying person has applied for a U Visa as a result of this case.

## 25. United States Citizenship and Immigration Service (UCSIS) I-918 Forms

All USCIS Form I-918, Petition for U Nonimmigrant Status (Form I-918) completed as a result of this case, including any supporting documentation filed with Form I-918.

**DENIED.**

## 26. USCIS Form I-918, Supplement B Forms

All USCIS Forms I-918, Supplement B (Form I-918B) completed by a law enforcement agency, the prosecuting attorney or representative, any judge, child or adult protective services, any other authority that has the responsibility for the investigation or prosecution of a qualifying crime or criminal activity, or any other certifying agency as a result of this case, including any additional documents, attachments, or addenda submitted with Form I-918B.

**DENIED.**

## 27. Request for Form I-918B

Information indicating whether an individual requested a certifying agency fill out Form I-918B on behalf of the alleged victim or other qualifying individual, even if the certifying agency declined to fill out Form I-918B.

**DENIED.**

## 28. Refusal to Complete Form I-918B



1 Information indicating whether a certifying agency has refused to sign or complete  
2 Form I-918B on behalf of the alleged victim or other qualifying individual, and any  
3 information regarding that certifying agency's refusal to sign or fill out Form I-918B.

4 **DENIED.**

5 **29. Evidence submitted to USCIS**

6 Any evidence submitted to the USCIS as part of a U Visa application by a certifying  
7 agency or the individual applying for the U Visa related to this case. This evidence  
8 includes, but is not limited to, fingerprint and criminal history information,  
9 immigration records, security concerns, and other background information.

10 **DENIED.**

11 **30. Contact from USCIS**

12 Information indicating whether the USCIS has contacted the certifying agency  
13 regarding issues or questions based on the information provided in the certification on  
14 behalf of the alleged victim or other qualifying individual, and what issues or  
15 questions the USCIS had for the certifying agency.

16 **DENIED.**

17 **31. USCIS Determination**

18 Information indicating the USCIS found the alleged victim or other qualifying person  
19 inadmissible and any information regarding the reason for the inadmissibility  
20 determination.

21 **DENIED.**

22 **32. Further Information Disclosed to USCIS**

23 Information indicating whether the certifying agency has contacted the USCIS  
24 regarding any later-discovered information regarding the alleged victim, the crime, or  
25 certification that the agency believes the USCIS should be aware of, or whether the  
26 agency contacted the USCIS to withdraw or disavow the certification, including  
27 withdrawal or disavowal based upon the alleged victim's failure to cooperate. If the  
28

1 agency has notified the USCIS in writing regarding the withdrawal or disavowal, a  
2 copy of the writing is requested.

3 **DENIED.**

4 **33. Refusal to Cooperate**

5 Information indicating whether the certifying agency has notified the USCIS that the  
6 alleged victim has unreasonably refused to cooperate in the investigation or  
7 prosecution of the crime.

8 **DENIED.**

9 **34. USCIS Requests for Further Information**

10 Information indicating whether the USCIS has requested further evidence from the  
11 petitioner or certifying agency as part of the U Visa process, as well as any  
12 information indicating the USCIS suspected fraud in the U Visa application.

13 **DENIED.**

14 **35. Significant Public Benefit Parole**

15 Information indicating whether any witness in the case has been granted Significant  
16 Public Benefit Parole (SPBP) in connection with this case.

17 **DENIED.**

18 **36. Violence Against Women Act (VAWA) Relief**

19 Information indicating whether an alleged victim has self-petitioned for VAWA relief  
20 as a part of this case, and if so, a copy of the completed Form I-360 and corroborating  
21 evidence.

22 **DENIED.**

23 **37. Child Protective Services Records**

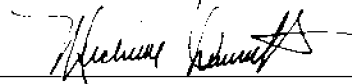
24 All Department of Child and Family Services or Child Protective Service (or  
25 equivalent department in another state) records relating to the decedent in this case.

26 **GRANTED FOR *IN CAMERA* REVIEW,** Defense will submit an order to the Court.  
27  
28

1                   **IT IS FURTHER ORDERED**, both the State and the Defense are to make timely  
2 disclosures.

3                               DATED 11th day of August, 2020.

4   Dated this 12th day of August, 2020

5   

6   \_\_\_\_\_  
DISTRICT COURT JUDGE

7 Submitted by:

8 DARIN F. IMLAY  
9 CLARK COUNTY PUBLIC DEFENDER

B7B 283 32F3 67D1  
Michelle Leavitt  
District Court Judge

10  
11 By /s/Kathleen M. Hamers  
12 KATHLEEN M. HAMERS, #9049  
13 Deputy Public Defender  
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26 Case Name: Jayshawn D. Bailey

27 Case No.: C-20-347887-1

28 Dept. No.: XII

1 **CSERV**

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3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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5  
6 State of Nevada

CASE NO: C-20-347887-1

7 vs

DEPT. NO. Department 12

8 Jayshawn Bailey  
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10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 8/12/2020

15 PUBLIC DEFENDER

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16 Kathleen Hamers

HamersKM@clarkcountynv.gov

17 Sara Ruano

ruanosg@clarkcountynv.gov

18 DA Motions

Motions@clarkcountyda.com

19 DC 12 Law Clerk

Dept12LC@clarkcountycourts.us

20 Michael Schwartz

Michael.Schwartz@clarkcountyda.com

*Kathleen M. Hamers*

CLERK OF THE COURT

1 ORDR

2 DARIN F. IMLAY, PUBLIC DEFENDER

3 NEVADA BAR NO. 5674

4 KATHLEEN M. HAMERS, DEPUTY PUBLIC DEFENDER

5 NEVADA BAR NO. 9049

6 **PUBLIC DEFENDERS OFFICE**

7 309 South Third Street, Suite 226

8 Las Vegas, Nevada 89155

9 Telephone: (702) 455-4685

10 Facsimile: (702) 455-5112

11 HamersKM@clarkcountynv.gov

12 *Attorneys for Defendant*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 THE STATE OF NEVADA, )

16 Plaintiff, )

17 v. )

18 JAYSHAWN D. BAILEY, )

19 Defendant, )

CASE NO. C-20-347887-1

DEPT. NO. XII

20 **EX PARTE ORDER**

21 Upon the motion, by and through KATHLEEN HAMERS, Clark County Deputy Public  
22 Defender, and good cause appearing therefor,

23 IT IS HEREBY ORDERED that the Custodian of Records, Department of Family  
24 Services, 121 S. Martin Luther King Dr., Las Vegas, NV 89106 provide all records, including  
25 any and all records on investigations, child abuse allegations, Unity notes, treatment provider  
26 reports and diagnoses, birth records, case plans, on TAMYAH TROTTER (DOB: X-XX-2002)  
27 to District Court Judge Michelle Leavitt, 200 Lewis Avenue, Las Vegas, NV 89155.

28 DATED \_\_\_\_ day of August, 2020. *Dated this 12th day of August, 2020*

*Michelle Leavitt*  
DISTRICT COURT JUDGE

Submitted by:

DARIN F. IMLAY

CLARK COUNTY PUBLIC DEFENDER

By *Kathleen M. Hamers*

KATHLEEN M. HAMERS, #9049

Deputy Public Defender

C08 C5E A205 CF3B

Michelle Leavitt

District Court Judge

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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5  
6 State of Nevada

CASE NO: C-20-347887-1

7 vs

DEPT. NO. Department 12

8 Jayshawn Bailey  
9

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20 Michael Schwartz

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NEVADA BAR NO. 5674  
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NEVADA BAR NO. 9049  
**PUBLIC DEFENDERS OFFICE**  
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Facsimile: (702) 455-5112  
HamersKM@clarkcountynv.gov  
*Attorneys for Defendant*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

v.

JAYSHAWN D. BAILEY,

Defendant,

CASE NO. C-20-347887-1

DEPT. NO. XII

DATE: December 18, 2020

TIME: 12:00 p.m.

**MOTION FOR OWN RECOGNIZANCE OR SETTING OF BAIL**

COMES NOW, the Defendant, JAYSHAWN D. BAILEY, by and through KATHLEEN M. HAMERS, Deputy Public Defender and hereby and moves this Honorable Court for an order releasing the Defendant from custody on his own recognizance or, in the alternative, for the setting of bail in a reasonable amount.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 14th day of December, 2020.

DARIN F. IMLAY  
CLARK COUNTY PUBLIC DEFENDER

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

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1. I am an attorney duly licensed to practice law in the State of Nevada; I am a Public Defender for the Clark County Public Defender's Office appointed to represent Shashawn D. Bailey in the present matter;

2. I am more than 18 years of age and am competent to testify as to the matters in dispute. I am familiar with the procedural history of the case and the substantive law applicable to the case. I am a resident of the State of Nevada. I also have personal knowledge of the facts stated in the complaint and believe them to be true.

EXECUTED this 14th day of December, 2020.

2



## POINTS AND AUTHORITIES

Mr. Bailey's case having recently been continued, he is asking this Court to readdress his bail.

1. A denial of bail is improper in Jayshawn's case

The Nevada Supreme Court recently explained, in an Unpublished Order, that while the right to bail is limited for those accused of capital murder or murder punishable by life in prison, when the proof is evident or the presumption is great that the defendant committed the crime charged, the State bears the burden of presenting admissible evidence greater than that necessary to establish probable cause in order to establish that the defendant committed the crime charged. Sewall v. State, Nevada Supreme Court No. 81309, Unpublished Order 20-43966 at 2-3. Furthermore, the evidence must establish that the accused committed murder in the first degree. Id at 4.

Here, Jayshawn is not charged with murder under a felony murder theory. In order for the State to "rebut the presumption in favor of bail under Article 1, section 7 of the Nevada Constitution," Sewall at 4, it must present a quantum of evidence greater than that required by probable cause, id at 3, and that evidence must support a willful, deliberate and premeditated theory, id at 4.

"Denial of bail is not proper where the district court relies on "conjecture or "by stacking inference upon inference," Sewall at 3, quoting Howard v. State, 83 Nev. At 51-52 (1967). The evidence relied upon in this case does not tend to establish that Jayshawn committed murder of the first degree. To get to such a conclusion, one must rely on inference and conjecture.

The evidence presented at preliminary hearing in this case was that Jayshawn reported the victim's body in the sewer, Transcript of Preliminary Hearing at 21, and that he told police a story of self defense and accidental death, Id at 33-36. That story was that the victim was aggressive with a taser and he had to stop her with a choke hold, not that he committed a first degree murder. This cannot support a finding of evident proof or great presumption of first degree murder.

1 In Sewall, the Defendant's semen was found in the victim's vagina and rectum and the he  
2 also owned a firearm that could have fired the round recovered at the crime scene. Sewall at 3.  
3 This was not enough to meet the States burden and support a no bail hold.

4 In Howard v. Sheriff of Clark County, there was evidence that the Defendant engaged in  
5 a scuffle with the victim at the time of the traffic stop and that the victim, a police officer, was  
6 shot and killed. The Nevada Supreme Court explained that this evidence was not sufficient for  
7 the denial of bail because "only evidence tending to show the elements of first degree murder  
8 will allow the trial court to deny" bail. 83 Nev. 48, 50 (1967).

9 In Hancly v. State, the Nevada Supreme Court upheld the District Court finding of  
10 probable cause, but nevertheless, reversed the lower court's denial of bail where evidence  
11 established that the Defendant hired and paid two men to murder the victim and his parts of his  
12 shotgun were found near the scene of the murder. 85 Nev. 154, 159-161 (1969).

13 The evidence presented in this case does not establish a quantum of proof greater than  
14 probable cause to establish that Jayshawn committed a willful, deliberate and premeditated  
15 murder. Such a conclusion would rely on inference and conjecture. A denial of bail in  
16 Jayshawn's case would be improper.

17  
18 2. Jayshawn is not a flight risk or a danger to the community

19 Jayshawn has no criminal history. He is 23 years old and has lived in Las Vegas his  
20 entire life with no prior convictions or failures to appear. Pretrial services assessed him as **LOW**  
21 **RISK**. Prior to his incarceration, he was working at Wendy's. He was living with the woman  
22 who has raised him as his mother and he was enrolled and scheduled to begin classes at the CSN  
23 on January 16, 2020. He attended Western High school and ultimately graduated from Desert  
24 Rose in 2017.

25 Jayshawn's conduct in the investigation of this case has shown that he is not a flight risk.  
26 He was the person reporting. He cooperated with detectives each time they requested he appear,  
27  
28

1 answer questions, or submit to DNA or consent to search. Jayshawn's lack of criminal history  
2 show he is not known to be violent or a threat to the community.

3 **CONCLUSION**

4 The evidence presented in this case does not establish a quantum of proof greater than  
5 probable cause to establish that Jayshawn committed a willful, deliberate and premeditated  
6 murder. A denial of bail in Jayshawn's case would be improper. He is asking to be released. He  
7 is not a flight risk or a danger to the community and house arrest or intensive supervision is the  
8 least restrictive means that would ensure his attendance at future court appearances.

9  
10  
11 DATED this 14th day of December, 2020.

12 DARIN F. IMLAY  
13 CLARK COUNTY PUBLIC DEFENDER

14 By: /s/Kathleen M. Hamers  
15 KATHLEEN M. HAMERS, #9049  
16 Deputy Public Defender  
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[illegible]

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing MOTION on for hearing before the Court on the 18th day of December, 2020, at 12:00 p.m.

DARIN F. IMLAY  
CLARK COUNTY PUBLIC DEFENDER

## CERTIFICATE OF ELECTRONIC SERVICE

By: /s/ Kathleen M. Hamers -PD  
An employee of the  
Clark County Public Defender's Office

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTHUR LEE SEWALL, JR.,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
DAVID BARKER,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 81309

**FILED**

DEC 04 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

**ORDER GRANTING PETITION FOR WRIT OF MANDAMUS**

This is an original petition for a writ of mandamus challenging a district court order denying a motion for release on reasonable bail.

The State charged petitioner Arthur Sewall, Jr., by indictment with first-degree murder with the use of a deadly weapon. Sewall moved to suppress his confession based on a *Miranda* violation, which the district court granted, and we affirmed. *State v. Sewall*, Docket No. 79437 (Order of Affirmance, Apr. 16, 2020). Sewall subsequently moved for release on reasonable bail. The district court denied the motion, finding “that the proof [was] evident and the presumption great” that Sewall committed the charged crime. Sewall has petitioned this court for a writ of mandamus, challenging the constitutionality of the district court’s bail order.

“A writ of mandamus will issue when the respondent has a clear, present legal duty to act” or to control an arbitrary or capricious exercise of discretion. *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981) (citing NRS 34.160). A district

**PLEADING  
CONTINUES  
IN NEXT  
VOLUME**