

# IN THE SUPREME COURT OF THE STATE OF NEVADA

JAYSHAWN D. BAILEY,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Electronically Filed  
Jan 17 2023 02:06 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

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

# RECORD ON APPEAL VOLUME 4

**ATTORNEY FOR APPELLANT**  
JAYSHAWN BAILEY # 1256551,  
PROPER PERSON  
P.O. BOX 650  
INDIAN SPRINGS, NV 89070

**ATTORNEY FOR RESPONDENT**  
STEVEN B. WOLFSON,  
DISTRICT ATTORNEY  
200 LEWIS AVE.  
LAS VEGAS, NV 89155-2212

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Generally, Mr. Bailey's adaptive functioning in all three domains addressed in the Vineland-3 is consistent with intellectual disability. Viewed from an age-equivalence perspective, his communication, daily living, and socialization skills are comparable to those of a child in early elementary school (i.e., age six). Moreover, the pattern of diminishing adaptive capacity with advancing age found in Mr. Bailey's Vineland-3 ratings is emblematic of FASD.<sup>62, 63, 64, 65, 66</sup> That is, his adaptive functioning worsened over time in comparison to age-peers, in large part because brain development in FASD is delayed many years.<sup>67</sup>

## Developmental Trajectory

Organic brain damage in FASD directly impairs the executive skills needed to function adequately and deal effectively with the stresses of everyday living. When children exhibit chronic learning, social, and self-regulation problems in the relatively-structured school years, such a pattern essentially predicts that after leaving school, they will have even greater difficulties in the unstructured real world. Adaptive functioning reflects real-world capacity to deal with tasks and challenges in contexts that range from semi-structured school environments to completely unstructured community settings. Compared to typically-developing peers, deficient adaptive functioning appears to be universal in FASD, regardless of IQ.<sup>68, 69, 70, 71, 72, 73, 74</sup>

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<sup>62</sup> Jirikowic, T., Kartin, D., & Carmichael Olson, H. (2008). Children with fetal alcohol spectrum disorders: A descriptive profile of adaptive function. *Canadian Journal of Occupational Therapy*, 75, 238-248.

<sup>63</sup> Streissguth et al., 1991, op. cit.

<sup>64</sup> Whaley, S.E., & O'Connor, M.J. (2003). Increasing the report of alcohol use among low-income pregnant women. *American Journal of Health Promotion*, 17, 369-372.

<sup>65</sup> Carmichael Olson, H., Feldman, J.J., Streissguth, A.P., Sampson, P.D., & Bookstein, F.L. (1998). Neuropsychological deficits in adolescents with fetal alcohol syndrome: Clinical findings. *Alcoholism: Clinical and Experimental Research*, 22, 1998-2012.

<sup>66</sup> Treit, S., Lebel, C., Baugh, L., Rasmussen, C., Andrew, G., & Beaulieu, C. (2013). Longitudinal MRI reveals altered trajectory of brain development during childhood and adolescence in fetal alcohol spectrum disorders. *Journal of Neuroscience*, 12, 10098-10109.

<sup>67</sup> Treit, S., Lebel, C., Baugh, L., Rasmussen, C., Andrews, G., & Beaulieu, C. (2013). Longitudinal MRI reveals altered trajectory of brain development during childhood and adolescence in fetal alcohol spectrum disorders. *Journal of Neuroscience*, 33(24), 10098-10109.

<sup>68</sup> Carmichael Olson, H., Feldman, J.J., Streissguth, A.P., Sampson, P.D., & Bookstein, F.L. (1998). Neuropsychological deficits in adolescents with fetal alcohol syndrome: clinical findings. *Alcoholism: Clinical and Experimental Research*, 22, 1998-2012.

<sup>69</sup> Carr, J. L., Agnihotri, S., & Keightley, M. (2010). Sensory processing and adaptive behavior deficits of children across the fetal alcohol spectrum disorder continuum. *Alcoholism: Clinical and Experimental Research*, 34, 1022-1032.

<sup>70</sup> Crocker, N., Vaurio, L., Riley, E.P., & Mattson, S.N. (2009). Comparison of adaptive behavior in children with heavy prenatal alcohol exposure or attention-deficit/hyperactivity disorder. *Alcoholism: Clinical and Experimental Research*, 33, 2015-2023.

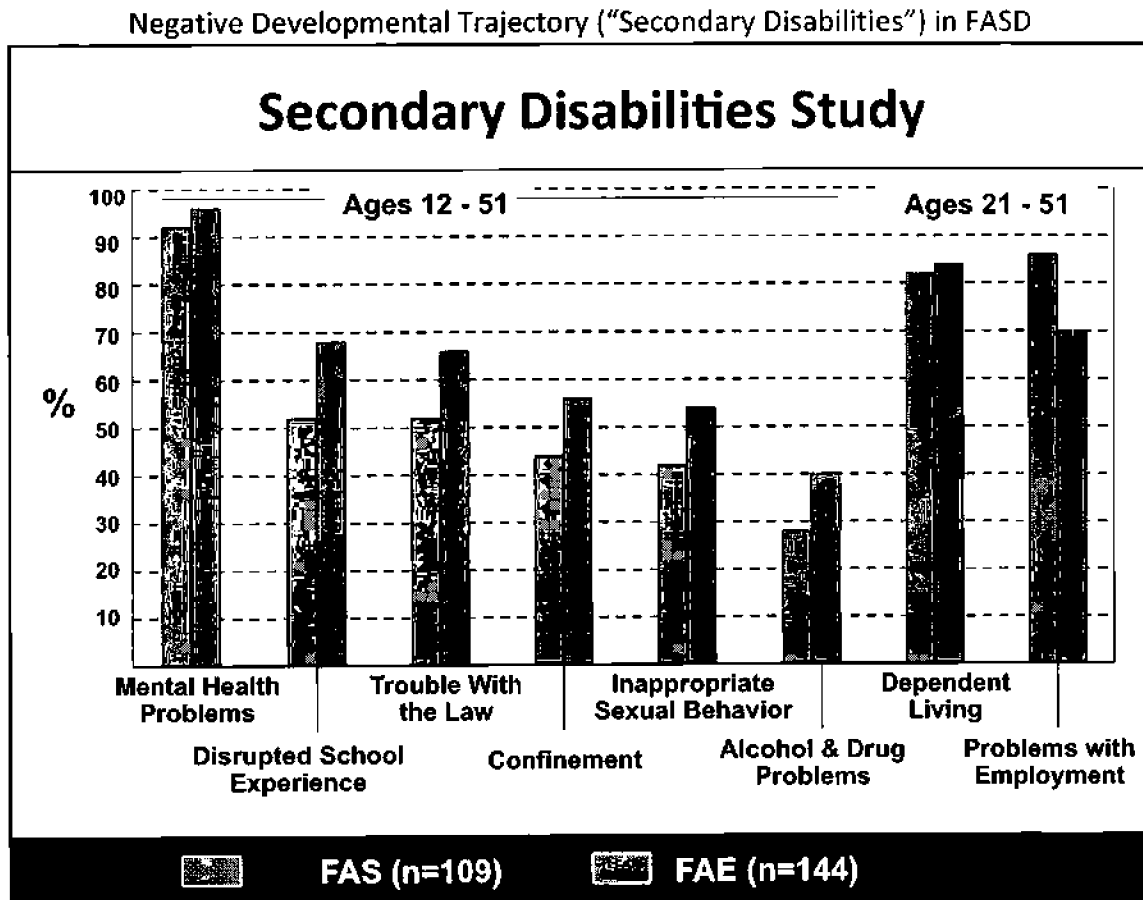
<sup>71</sup> Fagerlund, A., Autti-Ramo, I., Kalland, M., Santtila, P., Hoyme, H. E., Mattson, S. N., & Korkman, M. (2012). Adaptive behavior in children and adolescents with foetal alcohol spectrum disorders: A comparison with specific learning disability and typical development. *European Child and Adolescent Psychiatry*, 21, 221-231.

<sup>72</sup> Jirikowic, T., Kartin, D., & Carmichael Olson, H. (2008). Children with fetal alcohol spectrum disorders: a descriptive profile of adaptive function. *Canadian Journal of Occupational Therapy*, 75, 238-248.

<sup>73</sup> Panczakiewicz, A. L., Glass, L., Coles, C. D., Kable, J. A., Sowell, E. R., Wozniak, J. R., Jones, K. L., Riley, E. P., & Mattson, S. N. (2016). Neurobehavioral deficits consistent across age and sex in youth with prenatal alcohol exposure. *Alcoholism: Clinical and Experimental Research*, 40, 1971-1981.

<sup>74</sup> Streissguth, A. P., Barr, H. M., Kogan, J., & Bookstein, F. L. (1996). Final report: *Understanding the occurrence of secondary disabilities in clients with fetal alcohol syndrome (FAS) and fetal alcohol effects (FAE)*. Seattle, WA: University of Washington Publication Services.

Nearly 25 years ago, research sponsored by the CDC<sup>75</sup> identified eight “secondary disabilities” or negative developmental outcomes that were associated with FASD. The figure below, taken from the secondary disabilities study and reprinted with permission from the Fetal Alcohol and Drug Unit, University of Washington, shows the results of that study.



FAS = Fetal Alcohol Syndrome

FAE = Fetal Alcohol Effects (no facial dysmorphism)

As can be seen above, compared to normally-developing children, those with FASDs are at very high risk of multiple negative developmental outcomes. Along with risk factors (e.g., abuse and neglect), several protective factors were associated with lower risk of secondary disabilities (i.e., early childhood FASD diagnosis, developmental disabilities services during the school years, and positive caregiving. The latter involved environments that were stable, structured, nurturing, and protective. There were no significant differences in cognitive and adaptive functioning between the FAS and FAE groups in this study. [“FAE” is an outdated term that was changed in the late 1990s to “alcohol related neurodevelopmental disorder (ARND).”]

In Mr. Bailey’s case, records establish no secondary disabilities risk factors but only one of three

<sup>75</sup> Streissguth et al., 1996, op. cit.

protective factors. While he was raised in a protective and structured environment, he was not evaluated and diagnosed with an FASD in early childhood. For Dr. Forsythe, who evaluated Mr. Bailey at age three, ADHD symptoms overshadowed the prenatal drug exposure that he noted in his diagnostic formulation. Consequently, Mr. Bailey did not receive an FASD diagnosis early in childhood or developmental disabilities services throughout childhood, both of which are powerful protective factors.

The chart below, which summarizes Mr. Bailey's life history, reflects many of the secondary disabilities typically seen in FASD:

#### Secondary Disabilities Analysis

Secondary Disability	Jayshawn Bailey's Developmental Trajectory
Disrupted Education	<ul style="list-style-type: none"> <li>Received early childhood special education services</li> <li>Despite standardized speech and language assessment that found an expressive language delay (i.e., one test indicated expressive skills fell 7 SDs below the mean), Mr. Bailey was dismissed from the speech therapy program in kindergarten, likely because his caregiver (Wealthy McNair) rated his communication behavior in the average range on the Vineland.</li> <li>Assessed minimally in kindergarten (i.e., cognitive testing and adaptive rating), he failed to qualify for ongoing special education services. From that point on, his academic performance reflected significant learning problems that eventually led to partial retention in 6<sup>th</sup> grade and social promotion in middle school and high school.</li> <li>In 6<sup>th</sup> grade, he failed English 6 (x2), Reading 6 (x2), Math 6, and Home &amp; Career Skills.</li> <li>In 7<sup>th</sup> grade, he failed English 7, Math 7, and History 7.</li> <li>In 8<sup>th</sup> grade, he failed English 8, Math 8 (x2), World Geography 8, and Science 8.</li> <li>In 10<sup>th</sup> grade, he failed Geometry (x2) and Culinary Arts I.</li> <li>In 11<sup>th</sup> grade, he failed Algebra II (x2).</li> <li>In 12<sup>th</sup> grade, he failed English 12, Math/Personal Finance (x2), Science Foundations, and Career Education.</li> <li>He spent three years in 12<sup>th</sup> grade trying to earn his diploma, which he eventually obtained at age 20.</li> </ul>

Mental Health Problems	<ul style="list-style-type: none"> <li>• Diagnosed with multiple developmental delays in early childhood</li> <li>• Diagnosed at age three with ADHD and oppositional defiant disorder</li> </ul>
Substance Abuse	<ul style="list-style-type: none"> <li>• Records documented marijuana use at age 18</li> <li>• Reported in the current evaluation that he drank alcohol infrequently, began smoking marijuana daily at age 16, and abused Xanax (2x/week) from age 21 on</li> </ul>
Trouble with the Law	<ul style="list-style-type: none"> <li>• No record of arrest prior to instant offense</li> <li>• Reported in the current evaluation that he was arrested but “not charged” for domestic violence (DV) assault at age 21</li> </ul>
Confinement	<ul style="list-style-type: none"> <li>• Reported in the current evaluation that he spent 2 days in jail following the DV assault arrest</li> </ul>
Inappropriate Sexual Behavior	<ul style="list-style-type: none"> <li>• None reported</li> </ul>
Employment Problems	<ul style="list-style-type: none"> <li>• Reportedly received SSI disability payments in childhood and young adult years</li> <li>• Per self-report, limited work history included brief employment at McDonald’s (laid off after 3 months for not showing up), Amazon (fired after 6 months for not showing up), and a sign and graphics company (quit after an ambiguous period of time).</li> </ul>
Dependent Living	<ul style="list-style-type: none"> <li>• No evidence or report of independent living</li> </ul>

Data summarized in the table above reflect secondary disabilities in 7 of 8 categories, indicating adverse developmental outcomes predicted in the FASD literature in the absence of early diagnosis and consistent developmental disabilities services.

### Preliminary Diagnostic Analysis

Lifelong functional analysis and standardized adaptive assessment in this preliminary evaluation reveal a widespread pattern of impairments that together constitute a “textbook FASD behavioral history.” That is, *data in this evaluation indicate Mr. Bailey’s lifelong behavioral history is consistent with the adaptive dysfunction seen in neuropsychological disorder associated with prenatal alcohol exposure (ND-PAE).*

As noted in the introductory section, ND-PAE is a likely diagnostic hypothesis for Mr. Bailey's functional/adaptive history as there is no evidence of direct physiological effects of postnatal substance use (no report of substance use prior to age 16), a general medical condition other than FASD (no evidence of a head injury prior to age 18), a genetic condition (ruled out in contemporaneous records), or environmental neglect (ruled out in contemporaneous records).

However, an ND-PAE diagnosis requires evidence of neurocognitive and self-regulatory deficits as well as adaptive deficits in the context of confirmed prenatal alcohol exposure. While the current evaluation found evidence of significant adaptive deficits in three domains (communication, daily living skills, and socialization), and testing in early childhood confirmed neurocognitive and self-regulation deficits, current neuropsychological assessment is necessary to confirm the persistence of Mr. Bailey's deficits, which would be expected in FASD.

### **Suggestibility**

People do not think, make decisions, or act in *complex* real-world situations without executive system involvement and control. Under ideal situations, executive skills in the prefrontal cortex act upon neural information below the level of consciousness (e.g., sensory input, stored memories, and unconscious alert signals, urges, and emotions from the amygdala/limbic system) to interpret, analyze, and ultimately direct goal selection, planning, monitoring, and use of neural feedback.<sup>76, 77</sup> In FASD, executive functioning directly predicts (i.e., causes) adaptive behavior, regardless of IQ. Thus, when executive functioning is impaired by prenatal exposure to alcohol or drugs, adaptive functioning also is impaired, typically well below IQ.<sup>78</sup> In addition, any personal or situational factors that interfere with the cognitive work of the brain will further impair social behavior below baseline levels.

People with FASD are known to function adaptively (i.e., behaviorally) as if they are intellectually disabled.<sup>79</sup> Socialization in particular appears to be universally impaired (i.e., social functioning tends to fall 2 standard deviations below IQ).<sup>80, 81</sup> Suggestibility, the inclination to

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<sup>76</sup> Pennington, B. F., Bennetto, L., McAleer, O., and Roberts, R. J. (1996). Executive functions and working memory: Theoretical and measurement issues. In: G. R. Lyon and N. A. Krasnecor (Eds.), *Attention, memory, and executive function* (pp. 265-282). Baltimore, MD: Paul Brookes Publishing Co.

<sup>77</sup> Stuss, D. T. and Alexander, M. P. (2000). Executive functions and the frontal lobes: A conceptual view. *Psychological Research*, 63, 289-298.

<sup>78</sup>

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<sup>80</sup> Streissguth, Barr, Kogan, & Bookstein, 1996, op. cit.

<sup>81</sup> Schonfeld, A. M., Paley, B., Frankel, F., & O'Connor, M. J. (2006). Executive functioning predicts social skills following prenatal alcohol exposure. *Child Neuropsychology*, 12, 439-452.

accept and act on the influence of others, is an aspect of social behavior. Similar to persons with intellectual disability, most people with FASD are highly suggestible.<sup>82, 83, 84</sup>

Direct testing of Mr. Bailey with the Gudjonsson Suggestibility Scale (GSS) found a very high level of suggestibility consistent with intellectual disability (i.e., nearly 2 standard deviations above average, or the 98<sup>th</sup> percentile). Adaptive behavior assessment with the Vineland-3 found coping skills, an aspect of social behavior, that fell nearly 3 standard deviations below the mean. Thus, Mr. Bailey is highly suggestible, and he has severely impaired coping skills.

The GSS measures *interrogative* suggestibility (i.e., how inclined individuals are to acquiescing to leading questions and changing responses in the face of slight pressure). In FASD, acquiescing and giving in are poor coping strategies that stem directly from executive dysfunction,<sup>85</sup> with far-reaching social implications that generally involve conforming to social influence by following the lead of others and being agreeable or compliant to fit in. For people with impaired social skills, conforming and compliance help mask disabilities to reduce social stigma and peer rejection,<sup>86</sup> thereby facilitating *group acceptance*,<sup>87</sup> a fundamental need all humans have to belong to something greater than the self. As Mr. Bailey's history shows, he is a follower per anecdotal observations from his caregiver and special education staff.

Because of his ND-PAE, it also is likely Mr. Bailey is highly sensitive to stress as prenatal exposure to alcohol alters the neurological "hardwiring" of the hypothalamic-pituitary-adrenal system (HPA axis), thereby causing postnatal hypersensitivity and overreaction to stressful events.<sup>88</sup> Consequently, situations that might cause alarm or fear in anyone<sup>89</sup> (e.g., police questioning as a suspect in a murder investigation) are likely to provoke even more intense emotion in Mr. Bailey, with virtually no executive capacity to cope with such feelings.<sup>90</sup> Heightened reactivity, suggestibility, habitual compliance, and severely impaired baseline coping capacity make it likely he would want to please authority figures in situations perceived as threatening. In fact, the more intimidating the context, the more agreeable he likely would become.

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<sup>82</sup> Novick Brown, N., & Connor, P.D. (2014). Executive dysfunction and learning in children with fetal alcohol spectrum disorders (FASD). *Cognitive Sciences*, 8, 47-105.

<sup>83</sup> Greenspan, S., Novick Brown, N., & Edwards, W. (2016). FASD and the concept of "intellectual disability equivalence." In M. Nelson & M. Trussler (Eds.), *Law and ethics in fetal alcohol spectrum disorder*. Amsterdam: Springer.

<sup>84</sup> Pollard, R., Trowbridge, B., Slade, P. D., Streissguth, A. P., Laktonen, A., & Townes, B. D. (2004). Interrogative suggestibility in a US context: Some preliminary data on normal subjects. *Personality and Individual Differences*, 37(5), 1101-1108.

<sup>85</sup> Novick Brown, N., Gudjonsson, G., & Connor, P. (2011). Suggestibility and fetal alcohol spectrum disorders (FASD): I'll tell you anything you want to hear. *Journal of Psychiatry and Law*, 39, 39-71.

<sup>86</sup> Edgerton, R. B. (1993). *The cloak of competence*. (Rev. Ed.) Berkeley, University of California Press.

<sup>87</sup> Coultas, J. C. (2004). When in Rome .... An evolutionary perspective on conformity. *Group Processes & Intergroup Relations*, 7(4), 317-331.

<sup>88</sup> Keiver, K., Bertram, C.P., Orr, A.P., & Clarren, S. (2015). Salivary cortisol levels are elevated in the afternoon and at bedtime in children with prenatal alcohol exposure. *Alcohol*, 49, 79-87

<sup>89</sup> Shields, G.S., Sazma, M.A., & Yonelinas, A.P. (2016). The effects of acute stress on core executive functions: A meta-analysis and comparison with cortisol. *Neuroscience and Biobehavioral Reviews*, 68, 651-668.

<sup>90</sup> Willford, J. A., Day, R., Aizenstein, H., & Day, N. (2010). Caudate asymmetry: A neurobiological marker of moderate prenatal alcohol exposure in young adults. *Neurotoxicology and Teratology*, 32 (6), 589-594.

Standardized assessment with the MAQ quantified Mr. Bailey's tendency to habitually engage in yay-saying versus nay-saying. Despite reported post-Miranda "education" by his defense team regarding the consequences of rights waiver, Mr. Bailey still was highly inclined (95<sup>th</sup> percentile) to agree to items involving police questioning. For example, he responded "True" to the following items (among many) on the MAQ:

- Telling the police what you know can only help you,
- You can answer police questions without your lawyer being present,
- It will hurt you to not answer the police's questions,
- Staying silent is the same as saying you're guilty,
- If you are innocent you should waive your rights and tell the truth, and
- The police can force you to answer their questions.

## **Opinion**

Overall, convergent data from multiple sources and methods in this evaluation support the following preliminary opinions:

1. **Contemporaneous records document that Mr. Bailey was exposed in utero to alcohol in a pattern known to be associated with fetal alcohol spectrum disorders (FASD). He also was exposed in utero to cocaine, marijuana, and nicotine, which likely had an additive and cumulative effect on prenatal brain development.**
2. **Mr. Bailey's lifelong behavioral history is consistent with the DSM-5 disorder, *neurodevelopmental disorder associated with prenatal alcohol exposure (ND-PAE)*, with definitive diagnosis pending comprehensive neuropsychological assessment. ND-PAE is the diagnosis for the mental defect in FASD.**
3. **Mr. Bailey's cognitive and adaptive functioning are consistent with intellectual disability. Quantitatively, his social functioning is equivalent to that of a six year old.**
4. **Mr. Bailey's suggestibility, impaired coping skills, and habitual tendency to agree are consistent with his ND-PAE. In highly stressful situations he perceives as threatening, these characteristics likely make him highly compliant.**

## **Recommendation**

Mr. Bailey's functional history, significant adaptive dysfunction, and high level of suggestibility strongly suggest the presence of an FASD (i.e., ND-PAE). In order for me to complete diagnostic analysis, it is necessary to have data regarding his current cognitive functioning. Therefore, I recommended he undergo comprehensive cognitive assessment with a neuropsychologist who has formal training and experience in FASD.



**Thank you for the opportunity to evaluate Mr. Bailey. Please notify me immediately if there are factual errors in this report.**

**Respectfully submitted,**

**Natalie Novick Brown, PhD**

*Steven D. Grierson*

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

THE STATE OF NEVADA,  
Plaintiff,

-vs-

JAYSHAWN D. BAILEY #5216003,  
Defendant.

CASE NO: C-20-347887-1

DEPT NO: XII

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing CD containing Snapchat data for three  
accounts totaling 742 KB and CDRs for 702-820-6535 is hereby acknowledged this 25  
day of Feb, 2021.

KATHLEEN HAMERS  
ATTORNEY FOR DEFENDANT

BY

*Amelia B. [Signature]*

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

20F01585X 202003539C jn/MVU



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  
Las Vegas, Nevada 89155  
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:  
TIME:

**DEFENDANT'S MOTION TO EXCLUDE STATEMENTS AND REQUEST FOR  
EVIDENTIARY HEARING PURSUANT TO JACKSON V. DENNO**

COMES NOW, the Defendant, JAYSHAWN D. BAILEY, by and through  
KATHLEEN M. HAMERS, Deputy Public Defender and hereby moves to exclude the  
admission of his statements at trial and requests and evidentiary hearing pursuant to Jackson v.  
Denno, 378 U.S. 368 (1964).

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 4th day of March, 2021.

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 Shawn 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 of the State of Nevada. I also have personal knowledge of the facts stated in the complaint and have been informed of these facts and believe them to be true.

EXECUTED this 4th day of March, 2021.

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**POINTS AND AUTHORITIES**

**STATEMENT OF FACTS**

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

At the time that police recovered the body, the decedent in this case had lived nearby and been reported missing. PHT at 28. Detectives interrogate Jayshawn Bailey on January 19, 2020, and January 21, 2020.

Jayshawn's statements consist of his call to 911 on January 19, 2020; an approximately one hour interrogation at the Las Vegas Metropolitan Police Department on that same day (Interrogation #1); and an over six and half hour interrogation on January 21, 2020 (Interrogation #2). He initially denies any involvement in the decedent's death. Hours into his second interrogation, after repeated questioning and being told he failed a polygraph examination, Jayshawn's will was overborne and he involuntarily says that he killed the decedent and concealed the body himself.

The Defense now moves for a pre-trial evidentiary hearing on voluntariness of Jayshawn's statements and Miranda pursuant to Jackson v. Denno, 378 U.S. 368 (1964). Jayshawn's first interrogation was conducted without issuing Miranda warnings, and no Miranda waiver. In Jayshawn's second interrogation, his statements were not voluntarily made. They were instead the result of his mental disability and suggestibility, in combination with police tactics, resulting in an involuntary confession. Further, Jayshawn's second interrogation

1 contained an inadmissible polygraph examination and if admitted, his statements cannot be  
2 explained without reference to that exam. His statements should not be admitted at trial.

### 4 ARGUMENT

#### 5 **I. THE DEFENSE REQUESTS A HEARING UNDER JACKSON V. DENNO** 6 **BECAUSE THE DEFENDANT'S STATEMENTS SHOULD BE EXCLUDED.**

7 Jayshawn Bailey's statements should be suppressed and he is entitled to an evidentiary  
8 hearing because the statements he made throughout Interrogation #2 were not voluntarily made,  
9 he was not advised of his Miranda rights nor did he waive them for Interrogation #1, he did not  
10 knowingly waive his Miranda rights in Interrogation #2 and, his statements made during  
11 Interrogation #2 further cannot be admitted because they cannot be explained without reference  
12 to his inadmissible polygraph test.

13 The United States Supreme Court has held that the defense is entitled to a pre-trial  
14 evidentiary hearing on the question of Miranda and of the voluntariness of a statement. Jackson  
15 v. Denno, 378 U.S. 368; 84 S. Ct. 1774 (1964). A criminal defendant is deprived of due process  
16 of law if his conviction is based, in whole or in part, upon an involuntary confession even if there  
17 is ample evidence aside from the confession to support the conviction. Id. at 376.

18 Under Wilkins v. State, the initial burden of requesting a voluntariness hearing falls on  
19 the defendant. 96 Nev. 267; 609 P.2d 309 (1980). However, once the request is made, the  
20 burden shifts to the State. The government must show, by a preponderance of the evidence, that  
21 the statement was voluntary. Brimmings v. State, 93 Nev. 434; 567 P.2d 54 (1977); Falcon v.  
22 State, 110 Nev. 530; 874 P.2d 772 (1994) and Colorado v. Connelly, 479 U.S. 157; 107 S.Ct.  
23 515 (1986).

24 The due process requirement that a confession must be voluntary to be admissible is  
25 independent of the Fifth Amendment concerns set out in Miranda. An involuntary statement is  
26 not admissible in evidence; the legal consequence is as if the statement does not exist. *See,*  
27 Mimey v. Arizona, 437 U.S. 385; 98 S. Ct. 2408 (1978). However, even when a statement is

1 considered voluntary, if the individual's Miranda rights were violated, the statement has only one  
2 very limited utility – impeaching a testifying defendant. Even when used for impeachment  
3 purposes, the uses of the statements are limited. Such statements can only be used if a defendant  
4 testifies, and if the defendant's testimony contradicts the statement obtained via the Miranda  
5 violation. Harris v. New York, 401 U.S. 222; 91 S.Ct. 643 (1971) and Oregon v. Hass, 420 U.S.  
6 714; 95 S.Ct. 1215 (1975).

7  
8 **A. JAYSHAWN BAILEY'S STATEMENTS MADE IN INTERROGATION #2**  
9 **SHOULD BE SUPPRESSED BECAUSE THEY WERE NOT VOLUNTARILY**  
10 **MADE.**

11 An involuntary confession is inadmissible at trial. Withrow v. Williams, 507 U.S. 680,  
12 703 (1993). The admission of an involuntary confession violates an individual's Fourteenth  
13 Amendment right to due process of law. Jackson v. Denno, 378 U.S. 368, 376 (1964). During a  
14 custodial interrogation police must not coerce an individual's statement. Oregon v. Elstad, 470  
15 U.S. 298 (1985). If the State intends to use an accused's statement against him, a Jackson v.  
16 Denno hearing is mandated by NRS 47.090 to determine voluntariness. 378 U.S. 368 (1964).

17 A confession is admissible only when it is made freely and voluntarily, without  
18 compulsion or inducement. Steese v. State, 114 Nev. 479, 488 (1998) (citing Passama v. State,  
19 103 Nev. 212, 213 (1987)); see also Franklin v. State, 96 Nev. 417; 610 P.2d 732, 734 - 735  
20 (1980); Crew v. State, 100 Nev. 38; 675 P.2d 986 (1984). In order to be voluntary, a confession  
21 must be the product of a "rational intellect and a free will." Blackburn v. Alabama, 361 U.S.  
22 199, 208 (1960). Further, the confession will be deemed involuntary if coerced by physical  
23 intimidation or psychological pressure. Townsend v. Sain, 372 U.S. 293, 307 (1963). Passama  
24 v. State, 103 Nev. 212; 735 P.2d 321 (1987). The test for voluntariness is the "totality of  
25 circumstances." Mincey v. Arizona, 437 U.S. 385 (1978); Passama v. State, 103 Nev. 212  
26 (1987).

27 In Rosky v. State, the Nevada Supreme Court distinguished a reasonable person objective  
28 custody analysis (which is used for Miranda analysis) from a subjective analysis for

1 voluntariness, holding that voluntariness of a statement involves a subjective element as it is  
2 logically dependent on the defendant's characteristics. Rosky v. State, 111 P. 3d 690. Thus, the  
3 prosecution must prove by a preponderance of the evidence that the statement was voluntary  
4 based on a subjective analysis involving the defendant's state of mind, i.e., that "the defendant's  
5 will was [not] overborne." Id. at 13.

6  
7 **1. JAYSHAWN BAILEY'S WILL WAS OVERBORNE IN INTERROGATION**  
8 **#2 BECAUSE OF HIS INTELLECTUAL DISABILITY AND**  
9 **SUGGESTIBILITY COMBINED WITH THE INTERROGATION**  
10 **TACTICS USED.**

11 An individual's intellectual disability must be considered separate and apart from whether  
12 there was any impermissible police coercion. United States v. Preston, 751 F.3d 1008, 1022 (9th  
13 Cir. 2014). Both the United States Supreme Court and the Court of Appeals for the 9<sup>th</sup> Circuit  
14 have held that the test for voluntariness "is not limited to instances in which the claim is that the  
15 police conduct was 'inherently coercive,'" Miller v. Fenton, 474 U.S. 104, 110, 106 S.Ct. 445, 88  
16 L.Ed.2d 405 (1985) (quoting Ashcraft v. Tennessee, 322 U.S. 143, 154, 64 S.Ct. 921, 88 L.Ed.  
17 1192 (1944)), but "applies equally when the interrogation techniques were improper only  
18 because, in the particular circumstances of the case, the confession is unlikely to have been the  
19 product of a free and rational will," id. (citing Mincey v. Arizona, 437 U.S. 385, 401, 98 S.Ct.  
20 2408, 57 L.Ed.2d 290 (1978)).

21  
22 To determine whether Jayshawn's confession was involuntary, this Court must take into  
23 consideration "the totality of all the surrounding circumstances—*both* the characteristics of the  
24 accused *and* the details of the interrogation." Dickerson v. United States, 530 U.S. 428, 434, 120  
25 S.Ct. 2326, 147 L.Ed.2d 405 (2000) (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 226, 93  
26 S.Ct. 2041, 36 L.Ed.2d 854 (1973)) (internal quotation marks omitted) (emphasis added).  
27  
28



1 It is important to note, “[i]n evaluating the voluntariness of a confession under the totality  
2 of the circumstances, we are not trying to determine whether the suspect told the truth when he  
3 confessed.” United States v. Preston, 751 F.3d 1008, 1017 (9<sup>th</sup> Cir. 2014). “[T]he question of  
4 whether a confession was voluntary is “to be answered with complete disregard of whether or not  
5 [the confessor] in fact spoke the truth.” Id 1018, quoting Rogers, 365 U.S. 534, 544 (1961).

6 In United States v. Preston, the Court of Appeals for the 9<sup>th</sup> Circuit wrote that reduced  
7 mental capacity is a factor that is “critical because it [may] render[ ] him more susceptible to  
8 subtle forms of coercion.” 751 F.3d 1008, 1020 (9<sup>th</sup> Cir. 2014). Jayshawn has a significantly  
9 diminished mental capacity.  
10

11 **a. Jayshawn is mentally disabled**

12 Jayshawn is twenty-three years old and presents as much younger. Based on suspected  
13 diminished mental capacity, the defense had Jayshawn evaluated by Dr. Natalie Novick Brown,  
14 Phd. Exhibit A. February 21, 2021, Forensic Psychological Evaluation prepared by Dr. Natalie  
15 Novick Brown, PhD. She reported that Jayshawn was exposed in utero to alcohol, cocaine,  
16 marijuana and nicotine, “which likely had an additive and cumulative effect on [his] prenatal  
17 brain development.” Dr. Brown Report at 2. Jayshawn’s “lifelong behavioral history is  
18 consistent with the DSM-5 disorder neurodevelopmental disorder associated with prenatal  
19 alcohol exposure (ND-PAE).”<sup>1</sup> ND-PAE is the what the mental defect arising from FASD is  
20 diagnosed as. Jayshawn’s “cognitive and adaptive functioning are **consistent with intellectual**  
21 **disability.**” “Quantitatively, his social functioning is equivalent to that of a **six year old.**” Id.  
22 emphasis added. Jayshawn is highly suggestible and his “suggestibility, impaired coping skills,  
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27 <sup>1</sup> Dr. Brown cannot make a definitive diagnosis without a comprehensive neuropsychological assessment that  
28 cannot be conducted at this time due to the jail restrictions necessary during the COVID-19 pandemic.

1 and habitual tendency to acquiesce are consistent with his ND-PAE. In highly stressful situations  
2 he perceives as threatening, these characteristics likely make him highly compliant.” Id.

3 Dr. Brown summarizes Jayshawn’s life history in her report. Dr. Brown Report at 3-15.  
4 Jayshawn started life premature and in respiratory distress. Id. at 3. He was 4lbs 5oz. Id. at 7.  
5 Jayshawn was born with cocaine in his urine and spent his first month of life in the NICU. Id. at  
6 4. By the age of two, he was experiencing seizures and had an Individual Family Services Plan  
7 to address his special needs. Id. at 6.

8  
9 Jayshawn struggled in school. He began in Early Childhood Special Education in  
10 preschool and went on to struggle with very low grades throughout school. Dr. Brown Report at  
11 15-17. In 2017, at the age of 20 and after three years of 12<sup>th</sup> grade, Jayshawn graduated from  
12 Desert Rose High School with a 1.509 GPA. Id. at 17.

13  
14 **b. Jayshawn is highly suggestible**

15 Perhaps not surprisingly, Jayshawn’s challenges render him highly suggestible. Dr.  
16 Brown administered the Gudjonsson Suggestibility Scale -Version 2 (GSS-2) to Jayshawn. Dr.  
17 Brown Report at 22. This scale evaluates “the susceptibility of an examinee to endorsing  
18 information, particularly in the context of interrogative questioning that features “leading  
19 questions” and pressure from authority.” Id. at 22. Jayshawn had a markedly elevated total  
20 suggestibility score. Such high scores, “associated in the research with one or more of the  
21 following conditions: (1) young age, (2) low IQ, and/or (3) mental disorders, including central  
22 nervous system (CNS) dysfunction in FASD.” Id. at 23.

24 These characteristics are directly addressed in the Preston case. In Preston the Court  
25 wrote that, “These traits—being ‘easily confused,’ ‘highly suggestible and easy to manipulate’—  
26 are consistent with characteristics of the intellectually disabled in general. See Richard A. Leo,  
27 Police Interrogation and American Justice 232 (2008). Studies show that “subjects with IQs well  
28

1 below average, such as those who are borderline or mentally handicapped, tend to be markedly  
2 more suggestible.” Gisli H. Gudjonsson, The Psychology of Interrogations and Confessions: A  
3 Handbook 382 (2003). United States v. Preston, 751 F.3d 1008, 1022 (9th Cir. 2014).

4 According to the Court, these characteristics, combined with certain interrogation tactics,  
5 lead to involuntary confessions from mentally disabled suspects. The Preston Court discusses  
6 several interrogation tactics that they found overbore the will of the defendant in that case and  
7 some that were not present there. Many tactics used in this Jayshawn’s interrogation, coupled  
8 with his mental disability, overbore Jayshawn’s will.  
9

#### 10 **c. Length of Interrogation**

11 Jayshawn’s initial interrogation took place on January 19, 2020. It began at 3:34 pm at  
12 the LVMPD headquarters. Exhibit B. LVMPD transcript titled “Jayshawn Bailey”, (hereinafter  
13 “Interrogation #1”). Although the transcript does not note an end time, the audio recording of  
14 this interrogation is 51 minutes long. Jayshawn’s second interrogation, which is contained in the  
15 transcripts titled Jayshawn Bailey #2 and Jayshawn Bailey #3, took place on January 21, 2020.  
16 Exhibit C. January 21, 2020, transcript titled “Jayshawn Bailey #2”, (hereinafter “Interrogation  
17 #2) and Exhibit D, January 21, 2020, LVMPD transcript titled “Jayshawn Bailey #3”. It was  
18 over six and half hours long.  
19

#### 20 **d. The Setting**

21 Jayshawn’s interrogations took place within the confines of the LVMPD headquarters.  
22 He is questioned by at least three different detectives including one who is conducting a  
23 polygraph examination.  
24

#### 25 **c. Police Tactics**

26 Detectives presented Jayshawn with alternative scenarios, and presented one as  
27 reprehensible while the other was framed as being understandable and acceptable. The Court  
28

1 notes that this technique is recommended and taught by a manual on police interrogation,  
2 *Criminal Interrogation and Confessions* (5th ed. 2013) also known as the “Reid Manual.” The  
3 Preston Court notes, however, that even the Reid Manual itself suggests that the inculpatory  
4 alternatives technique can be unduly coercive when used on suspects who have a seriously  
5 impaired mental ability. The Preston Court goes on to note that this kind of questioning “could  
6 well have exceeded [the] intellectual abilities” of the Defendant in that case because  
7 psychological testing showed that “he is confused by complexity, abstraction, and multiplicity,  
8 and likely to acquiesce in suggestions made by the questioner.” United States v. Preston, 751  
9 F.3d 1008, 1024 (9th Cir. 2014).

11 If you’re afraid of something, talk to me. If you’re afraid of something, then tell  
12 me. Let me – let me relay that before I go out there and say that, “Yes, this dude  
13 is – this dude is some friggin’ serial killer and he mighta – this mighta been the  
14 fourth or fifth body that he’s put in a friggin’ sewage pipe. I don’t know.” That’s  
15 not you though man.

16 Interrogation #2 at 94.

17 Q2: . . . right now I’m thinking you’re some psychopath

18 . . .  
19 Q2: . . . You’re some Dexter shit goin’ on right now.

20 Interrogation #2 at 119.

21 Detectives are essentially telling Jayshawn that if he does not produce a different story, he will  
22 look cold and like a serial killer.

23 The court in Preston also discusses this tactic, noting that the Reid manual “specifically  
24 warns that the questioning ‘should not be, in any way, based on leniency if the more  
25 understanding alternative question is accepted.’ Reid manual, supra, at 300 (emphasis added). It  
26 also cautions that when questioning people of low intelligence, investigators should avoid  
27 offering promises of leniency or using deceptive interrogation techniques due to the vulnerability  
28 of this group.” United States v. Preston, 751 F.3d 1008, 1026 (9th Cir. 2014).

1 Detectives were relentless in insisting that Jayshawn tell them a different story. The  
2 Detective tells Jayshan that "a lot of people, what they do is they start denying – denying –  
3 denying. And then they get down to a point further down the road in the process." Id at 96. He  
4 goes on to tell Jayshawn "What do you think happens once they want to tell the truth at that  
5 point?" Id. "[Y]ou gotta tell us. You gotta talk to us." Id. When Jayshawn's not talking, the  
6 Detective tells him "you're looking pretty cold right now." Id at 106.

7  
8 Jayshawn tells the Detective that he is really pressuring him. Id at 99. Jayshawn is scared  
9 and tells the Detectives this throughout the interview.

10 Jayshawn tells the detective that he is the one with all the power in the interrogation.  
11 And he responds with a threat, the polygrapher, tells him "I could step back, walk out this door,  
12 call – call the – detective and say, "Hey, this dude absolutely placed her body in that sewage  
13 pipe. Have at it." Id at 101. When he won't change his story, he tells him "you're gonna  
14 remember my face tryin to ask you. Okay? You're gonna remember that." Id at 104.

15  
16 After two hours with the polygrapher conducting the polygraph test and then repeatedly  
17 questioning Jayshawn after the polygraph, the other detectives come back in to further  
18 interrogate Jayshawn. Id at 108.

19 Detectives pressure Jayshawn to tell a different story, in fact, they even suggest a version  
20 of the facts to tell, and promise to take him home if he does.

21  
22 "I need to know. If you say . . . "Detective Embry, I'm gonna come clean, she was  
23 at my buddy's house, she died, he asked for help cause he panicked, we could  
24 only think of putting her in the sewer," I'm taking you . . . home."  
Interrogation #2 at 111.

25 They do it again, "a buddy of yours called in a panic and, you being a good friend, helped."  
26 Interrogation #2 at 114. Jayshawn is obviously concerned by this, he tells the detective "but if I  
27 don't say anything, I'm not going home." Id at 114. Jayshawn asks what the next step is if he  
28

1 doesn't change his story. Id at 115. In answer, when his story still doesn't change, Detective  
2 Jaeger threatens him:

3 Q2: I can tell you that I spent a better part of eight hours, standing ankle dep in  
4 human feces, human shit. There was a 17-year-old girl thrown away like a piece  
5 of trash, by an absolute animal. All right, I gave you the benefit of the doubt for  
6 Buddy, not for you. So if you wanna know what's next, it's me. I'm comin' after  
7 you, buddy. I'm comin' after you with the – the largest budget that Nevada has  
8 for a police department. I'm comin' at you with the support of your community.  
9 I don't live there. I live close but its your neighborhood. The whole community  
10 is supporting me on this.

11 Interrogation #2 at 117

12 Q2: I am comin' after you.

13 ...

14 Q2: I am bringing the noise

15 A: I respect that, sir, but I didn't have nothin' to do with that.

16 Q2: Yes you did

17 Interrogation #2 at 118.

18 Detective Embry tells Jayshawn that he only has one opportunity to tell his story and suggests to  
19 him that he tell a particular story and then can go home

20 Q1: This is your, kinda, one opportunity . . . But I'm telling you right now, you be  
21 honest with me and forthcoming and you say, "she was at my home – homie's  
22 house and whatever happened, she died. I helped him get rid of her, because,  
23 obviously we don't want a 17-year-old dead in our house." And I'm taking you  
24 home.

25 Interrogation #2 at 121-122.

26 Detectives spend hours repeatedly insisting the Jayshawn's story is not true, and that he must tell  
27 them a different story.

28 These tactics, combined with Jayshawn's mental disability, worked to get Jayshawn to  
talk, to change his story, and to produce an involuntary confession. His will was overborne. It is  
inconsequential that the Detectives tactics did not produce the exact story that they were asking

1 Jayshawn to tell. The significance is that they worked to cause Jayshwan to give a confession,  
2 involuntarily, not a product of his free and rational will.

3 **B. JAYSHAWN BAILEY'S STATEMENTS MUST BE SUPPRESSED BECAUSE**  
4 **THE GOVERNMENT FAILED TO ADVISE HIM OF HIS RIGHTS PURSUANT**  
5 **TO *MIRANDA* IN INTERROGATION #1 AND HE COULD NOT HAVE**  
6 **KNOWINGLY WAIVED HIS *MIRANDA* RIGHTS IN INTERROGATION #2.**

7 An individual's right not to incriminate himself is protected by the Fifth Amendment to  
8 the United States Constitution and Article 1, Section 8 of the Nevada Constitution. Holyfield v.  
9 Townsell, 101 Nev. 793; 711 P.2d 845 (1985). "[T]he accused must be adequately and  
10 effectively apprised of his rights and the exercise of those rights must be fully honored."  
11 Miranda v. Arizona, 384 U.S. 436, 467; 16 L.Ed.2d 694, 719 (1966). (Emphasis added). The  
Supreme Court went on to say:

12 "[W]e hold that when an individual is taken into custody or otherwise deprived of  
13 his freedom by the authorities in any significant way and is subjected to  
14 questioning, the privilege against self-incrimination is jeopardized. Procedural  
15 safeguards must be employed to protect the privilege, and unless other fully  
16 effective means are adopted to notify the person of his right of silence and to  
17 assure that the exercise of the right will be scrupulously honored, the following  
18 measures are required. He must be warned prior to any questioning that he has  
19 the right to remain silent, that anything he says can be used against him in a court  
20 of law, that he has the right to the presence of an attorney, and that if he cannot  
21 afford an attorney one will be appointed for him prior to any questioning if he so  
desires. Opportunity to exercise these rights must be afforded to him throughout  
the interrogation. After such warnings have been given, and such opportunity  
afforded him, the individual may knowingly and intelligently waive these rights  
and agree to answer questions or make a statement. But unless and until such  
warnings and waiver are demonstrated by the prosecution at trial, no evidence  
obtained as a result of interrogation can be used against him." Miranda v.  
Arizona, 384 U.S. 436, 478-479 (1966).

22 An individual must be informed of their Miranda rights before a custodial interrogation.  
23 Id. at 478-479. Miranda rights are not optional, rather the warnings are "an absolute prerequisite  
24 in overcoming the inherent pressures of the interrogation atmosphere." Id. at 468. Failure to  
25  
26  
27  
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1 Mirandize an individual subject to custodial interrogation will result in the inadmissibility of the  
2 statements obtained from the interrogation. Id. at 479.<sup>2</sup>

3 An individual's statements can only be admissible at trial if Miranda warnings are  
4 provided prior to any custodial interrogation. "Custodial interrogation" takes place when a  
5 suspect is (1) in custody, (2) being questioned by an agent of the police, and (3) subject to  
6 interrogation. Boehm v. State, 113 Nev. 910, 913; 944 P.2d 269, 271 (1997). An individual is  
7 deemed "in custody" for purposes of Miranda where "...there has been a formal arrest, or where  
8 there has been a restraint on freedom of movement of the degree associated with a formal arrest  
9 so that a reasonable person would not feel free to leave." State v. Taylor, 114 Nev. 1071, 1082;  
10 968 P.2d 315, 323 (1998); also *see* United States v. Bengivenga, 845 F.2d 593, 598 (5<sup>th</sup> Cir.  
11 1998); United States v. Moya, 74 F.3d 1117, 1119 (11<sup>th</sup> Cir. 1996). "[T]he term 'interrogation'  
12 under Miranda refers not only to express questioning, but also to any words or actions on the part  
13 of the police (other than those normally attendant to arrest and custody) that the police should  
14 know are reasonably likely to elicit an incriminating response from the suspect. Koza v. State,  
15 102 Nev. 181, 186, 718 P.2d 671, 674-75 (1986) (*quoting* Rhode Island v. Innis, 446 U.S. 291,  
16 301-02 (1980)).

17 In Alward v. State, the Nevada Supreme Court articulated several factors pertinent in  
18 determining custody objectively: "(1) the site of the interrogation, (2) whether the investigation  
19 has focused on the subject, (3) whether the objective indicia of arrest are present, and (4) the  
20 length and form of questioning." No one factor is dispositive. Id. 112 Nev. 141, 912 P. 2d 243  
21 (1996) (overruled on other grounds by Rosky v. State 121 Nev. 184, 111 P.3d 690).

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26 <sup>2</sup> As discussed earlier in the motion, a very narrow exception exists for using a statement procured in violation of  
27 Miranda. The State may use the statement, so long as the court deems the statement voluntary, for the limited  
28 purpose of impeaching the defendant if she chooses to testify at trial and if her testimony contradicts her previous  
statement.



1 The simple fact that a suspect voluntarily appears for an interview and is not under arrest  
2 at the time an incriminating statement is made does not automatically render the questioning  
3 “non-custodial.” Krueger v. State, 92 Nev. 749, 753; 557 P.2d 717, 720 (1976). In fact, the  
4 Nevada Supreme Court has held that once a person becomes the focus of the police investigation,  
5 rather than a mere suspect, that person is considered “in custody and entitled to the protection  
6 established by Miranda.” Id at 754. In the present case, Jayshawn was in police custody for  
7 purposes of Miranda for both of his interrogations.  
8

9 Interrogation #1

10 Detectives interrogated Jayshawn Bailey in an interview room inside the Las Vegas  
11 Metropolitan Police Department Headquarters. He was brought to the LVMPD Headquarters by  
12 Detectives. He was the person who had reported the location of the body, Detectives asked him  
13 numerous details about his story, challenged portions of his story, and asked him to return for  
14 polygraph examination. Jayshawn was the focus of the investigation and entitled to his Miranda  
15 rights. Had warnings been given for that interrogation, Jayshawn did not have the mental  
16 capacity to knowingly waive those rights.  
17

18 Interrogation #2

19 During interrogation #2, Jayshawn was asked to come take a polygraph examination at  
20 the LVMPD Headquarters. He was picked up at his home by a Detective and driven to  
21 Headquarters. While there, Jayshawn is told that he is being afforded his rights because he is “in  
22 a law enforcement building.” Interrogation #2 at 2. Jayshawn remains at the LVMPD  
23 Headquarters for over six and half hours and is repeatedly questioned about his involvement in  
24 the death of Ms. Trotter and is ultimately arrested and taken to jail. Jayshawn was in custody for  
25 purposes of Miranda, he was not adequately advised of his rights, and did not knowingly waive  
26 them.  
27  
28

1 **C. JAYSHAWN'S STATEMENTS MADE IN INTERROGATION #2 MUST BE**  
2 **SUPPRESSED AS THEY CANNOT BE EXPLAINED WITHOUT REFERENCE**  
3 **TO HIS INADMISSIBLE POLYGRAPH EXAMINATION.**

4 NRS 47.120(1) provides:

5 When any part of a writing or recorded statement is introduced by  
6 a party, he may be required at that time to introduce any other part  
7 of it which is relevant to the part introduced, and any party may  
8 introduce any other relevant parts.

9 In Nevada, a defendant in a criminal trial has a statutory right to introduce all relevant  
10 parts of his written or recorded statement when the prosecution presents an incomplete picture of  
11 the statement to the jury. In Domingues v. State, 112 Nev. 683, 917 P.2d 1364 (1996), the  
12 Nevada Supreme Court held that it was error for the district court to limit a defendant's right to  
13 introduce all other relevant parts of his statement to police after prosecutor's introduced part of  
14 the statement at trial.

15 The existence of NRS 47.120 reflects the Nevada Legislature's legitimate concern that it  
16 would be manifestly unfair to allow one party to admit only those parts of a statement that  
17 benefit his case, while precluding the other side from putting the statements in their proper  
18 context.

19 The admission of Jayshawn's post-polygraph statements would be a due process  
20 violation. In Nevada, the results of a polygraph examination are inadmissible at trial absent a  
21 written stipulation by both parties providing for the defendant's submission to the test. Corbett  
22 v. State, 94 Nev. 643, 644, 584 P.2d 704, 705 (1978). There was no stipulation prior to the  
23 polygraph being conducted in this case. Therefore, the results of the polygraph examination are  
24 inadmissible under Nevada law. Allowing the State to present portions of Jayshawn's  
25 incriminating post-polygraph statements, while the Defendant is unable to explain to the jury that  
26 such statements were made directly after the Defendant believed he had failed a police-  
27 dominated polygraph examination, would be unjust. The polygraph is inadmissible and the  
28 Defendant is effectively prevented from placing his post-polygraph admissions into their proper

1 context without mention of the inadmissible polygraph examination. Consequently, the  
2 admission of any of Jayshawn's post-polygraph statements violates his due process rights under  
3 the United States and Nevada Constitutions.

#### 4 5 CONCLUSION

6 For the foregoing reasons, the Defense requests a pre-trial evidentiary hearing on  
7 voluntariness of Jayshawn's statements and Miranda pursuant to Jackson v. Denno, 378 U.S. 368  
8 (1964). Jayshawn's first interrogation was conducted without issuing Miranda warnings, and no  
9 Miranda waiver. In Jayshawn's second interrogation, his statements were not voluntarily made.  
10 They were instead the result of his mental disability and suggestibility, in combination with  
11 police tactics, resulting in an involuntary confession. Further, Jayshawn's second interrogation  
12 contained an inadmissible polygraph examination and if admitted, his statements cannot be  
13 explained without reference to that exam. His statements should not be admitted at trial.

14  
15 DATED this 4th day of March, 2021.

16 DARIN F. IMLAY  
17 CLARK COUNTY PUBLIC DEFENDER

18 By: /s/Kathleen M. Hamers  
19 KATHLEEN M. HAMERS, #9049  
20 Deputy Public Defender  
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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 \_\_\_\_\_, 2021, at \_\_\_\_\_.

DARIN F. IMLAY  
CLARK COUNTY PUBLIC DEFENDER

# **CERTIFICATE OF ELECTRONIC SERVICE**

By: Sara E. Ruona  
An employee of the  
Clark County Public Defender's Office

## **EXHIBIT A**

NORTHWEST FORENSIC ASSOCIATES, LLC  
Natalie Novick Brown, PhD

Clinical and Forensic Psychology

31811 Pacific Hwy S, B-341  
Federal Way, WA 98003  
425-275-1238  
drnataliebrown@gmail.com

### FORENSIC PSYCHOLOGICAL EVALUATION

Name: Jayshawn DeAngelo Bailey  
Case: State of Nevada v. Jayshawn Bailey  
C-20-347887-1  
Date of Birth (Age): January 22, 1997 (Age 23)  
Education: 12<sup>th</sup> Grade  
Date of Report: February 21, 2021

Jayshawn DeAngelo Bailey was referred for psychological evaluation by his defense team (mitigation specialist Emily Reeder and defense attorneys Kathleen Hamers and Anna Clark) in the context of a murder charge involving the death of a 17-year-old woman, whose body was found in a stormwater drain.

Because records document that Mr. Bailey tested positive for cocaine at birth and his mother drank alcohol throughout the pregnancy, I was asked to conduct a preliminary psychological assessment of Mr. Bailey, responding to the following consultative questions:

1. Do records document that Jayshawn Bailey was exposed in utero to alcohol and/or drugs, and if so, how would alcohol and drug exposure likely affect his functioning?
2. Is Mr. Bailey's lifelong behavioral history as depicted in contemporaneous records consistent with the DSM-5 disorder, *neurodevelopmental disorder associated with prenatal alcohol exposure (ND-PAE)*?
3. Is Mr. Bailey's intellectual and adaptive functioning consistent with intellectual disability and if so, can his adaptive functioning be quantified?
4. Is Mr. Bailey suggestible and if so, what are the implications of his suggestibility?

I am a clinical and forensic psychologist with specialized postdoctoral training in fetal alcohol spectrum disorders (FASD) and other neurodevelopmental disabilities. My resume is attached as an appendix to this report.

## SUMMARY OF OPINION

Based upon convergent data from multiple independent sources of information, I hold the following opinion to a reasonable degree of psychological certainty:

1. **Contemporaneous records document that Mr. Bailey was exposed in utero to alcohol in a pattern known to be associated with fetal alcohol spectrum disorders (FASD). He also was exposed in utero to cocaine, marijuana, and nicotine, which likely had an additive and cumulative effect on prenatal brain development.**
2. **Mr. Bailey's lifelong behavioral history is consistent with the DSM-5 disorder, *neurodevelopmental disorder associated with prenatal alcohol exposure (ND-PAE)*, with definitive diagnosis pending comprehensive neuropsychological assessment. ND-PAE is the diagnosis for the mental defect in FASD.**
3. **Mr. Bailey's cognitive and adaptive functioning are consistent with intellectual disability. Quantitatively, his social functioning is equivalent to that of a six year old.**
4. **Mr. Bailey's suggestibility, impaired coping skills, and habitual tendency to acquiesce are consistent with his ND-PAE. In highly stressful situations he perceives as threatening, these characteristics likely make him highly compliant.**

## PROCEDURES

After the purpose of the evaluation and confidentiality limitations were explained, Mr. Bailey agreed to proceed with this evaluation.

1. He was interviewed and tested alone for 1.0 hour on October 28, 2020, and 2.0 hours on November 10, 2020. He was incarcerated in Clark County Detention Center at the time of his interviews, which because of the pandemic were conducted via Zoom with the assistance of his mitigation specialist, who remained in the background behind Mr. Bailey and did not participate in the interviews.
2. Testing consisted of the Paulhus Deception Scales (PDS), Structured Inventory of Malingered Symptomatology (SIMS), Gudjonsson Suggestibility Scale-Version 2 (GSS-2), and Miranda Acquiescence Questionnaire (MAQ).
3. Wealthy McNair (caregiver) was interviewed regarding Mr. Bailey's developmental history. She completed three standardized assessments of his behavior: Vineland Adaptive Behavior

Scales-3 (VABS), Fetal Alcohol Behavior Scale (FABS), and Behavior Rating Inventory of Executive Function-Adult (BRIEF-A).

4. Records from the following sources were reviewed:

- Discovery
- Clark County School District
- University Medical Center
- Mountainview Hospital
- Valley Hospital
- Silver State Neurology

### **DOCUMENTED LIFE HISTORY**

This section summarizes relevant data found in contemporaneous records listed in the Procedures section. Data referencing Mr. Bailey in this section refer to him as "Jayshawn" in childhood and "Mr. Bailey" in adulthood.

***Birth: 1/22/97***

Nearly a month after birth, Jayshawn was discharged from University Medical Center of Southern Nevada (2/18/97) with a final diagnosis of (1) Preterm 34-week appropriate for gestational age male newborn, (2) Respiratory distress with pneumonia, and (3) Maternal substance abuse, including cocaine. The following history was noted:

This preterm male newborn was born at UMC on January 22, 1997, to a mother 31 years old, gravida 6 para 3-0-3-3, who received no prenatal care during this pregnancy, with an EDC of May 1997....She had a history of substance abuse, including this pregnancy.... weight of 107 pounds with 5 feet 6 inches height. She was placed on complete bed rest and fetal monitoring and amniotic membranes were ruptured at the time of birth. The baby was born by normal spontaneous vaginal delivery with a vertex presentation within five minutes after admission. The baby's Apgar scores were 8 and 8 at one and five minutes. The baby was found to be a small preterm who was in mild respiratory distress and was admitted to the NICU for further evaluation and management....The baby's weight was 1945 g or 4 pounds 5 ounces (10-25<sup>th</sup> percentile), height was 43 cm (25<sup>th</sup> percentile), and head circumference was 30.5 cm (25<sup>th</sup> percentile). General appearance: A preterm male newborn with no dysmorphic features but mild respiratory distress. Skin with underlying cyanosis, with good peripheral perfusion .... the baby had mild jaundice, with peak total bilirubin level of 8.9 with direct bilirubin 0.3 at two days of age, with gradual improvement.

Maternal substance abuse, including cocaine. Because of the maternal history of substance use and also because the urine for toxicology from the mom and the baby on admission revealed cocaine metabolite, the baby was closely monitored for any signs of neonatal withdrawal....The baby also had one echocardiogram on January 24 with either a patent



foramen ovale or a small ASD (atrial septal defect), which will be followed by Dr. Stamato in six months. The mother was referred to a social worker, Child Protective Services, and the state welfare system. The baby will be discharged to Child Haven for temporary foster care.

...The mother had no prenatal care but denied any problems during this pregnancy. She smokes about a pack of cigarettes a day and has a history of drug abuse during this pregnancy. She took some marijuana yesterday and also states that she had taken some cocaine a few hours prior to the delivery. She also has been drinking beer (Old English malt liquor), about 3-4 times every week during this pregnancy .... Due to low birth weight and the possibility of sepsis, the baby was transferred to the neonatal intensive care unit for further management.

On 2/18/97, Jayshawn was discharged from the hospital to Child Haven and referred to Special Children's Clinic.

At five months of age, Jayshawn received a physical therapy evaluation (6/30/97) and was diagnosed as follows: (1) Developmental motor delays, (2) Prematurity, (3) Infant of a drug dependent mother, (4) Respiratory distress, and (5) Otitis.

At six months of age, Jayshawn was circumcised (UMC, 7/25/97). It was noted he had been born with congenital phimosis (tight foreskin on the penis).

Around six months of age, Child Protective Services referred Jayshawn for developmental follow-up to Special Children's Clinic (Multidisciplinary Team Conference, DHR Special Children's Clinic, 8/13/97). Guardian Wealthy McNair provided his history. Alleged father Anthony Percy was not named on the birth certificate. Birth mother Angela Bailey was still using drugs. Jayshawn reportedly had eight maternal half-siblings, at least two of whom were born drug exposed. Ms. McNair reported that she had previous experience raising drug-exposed children....Physical examination found that his height of 23 ¾ inches and weight of 12 pounds both fell below the 5<sup>th</sup> percentile. Head circumference of 42.5cm fell at the 10-25<sup>th</sup> percentile. Developmental assessment indicated:

Jayshawn's level of cognitive development, as indicated by his performance on the Bayley Scales of Infant Development (Second Edition), falls in the "mildly delayed" range for his adjusted age. The results of the MDI (Mental Development Index) yields a score of 83 with high confidence (95%) that his true cognitive ability falls within the range of 64-94 (70-84 is considered to be in the "mildly delayed range")....equivalent to a cognitive developmental age of 4 months. Results of the PDI (Physical Development Index) reveals a score of 72 for his adjusted age, with a high confidence (95%) that his true physical ability falls within the range of 57-85. Jayshawn's score on the Bayley is equivalent to the physical development age of 3 months. Results of the Denver Developmental Screening Test (Denver II), which reflects parent report as well as direct observation, indicated an overall result of questionable development. This is based on delays in the gross motor and personal-social skills domains. Standardized assessment indicated the following:

Early Learning Accomplishment Profile (8/1/97; CA 6m, 9d; AA 5m)

Gross Motor:	Scattered
Fine Motor:	Scattered
Cognitive:	5 mos.
Language:	5 mos.
Self-Help:	n/a
Social/Emotional:	4-5 mos.

Jayshawn was determined to be eligible for early intervention services under IDEA.

### **Age 1**

Jayshawn was seen at the emergency department (UMC, 3/19/98) for vomiting, difficulty breathing, and fever. He was diagnosed with an upper respiratory infection. The following history was noted: "Seven weeks premature. He was addicted to cocaine at birth. His mother apparently is still in drug rehabilitation and he is in the legal custody of his (great) grandmother" (i.e., Wealthy McNair).

Around 23 months of age, Jayshawn was seen at the hospital (12/20/98) for coughing and vomiting. His history included:

The patient was a 31-week preemie, four pounds at birth. He spent the first six weeks of his life in the NICU. He was on a ventilator for about the first two weeks according to grandmother. He was also exposed to drugs during the pregnancy. He has had mild reactive airway disease since discharged from the NICU....Discharge diagnosis was Viral upper respiratory infection.

A day after the above hospital visit, Jayshawn was admitted to the hospital for three days (Discharge Summary, UMC, 12/21-24/98). His history was described as follows:

Jayshawn is a 23-month-old African-American male with a history of reactive airway disease. Four days prior to admission he developed a cough, the next day a runny nose, and the next day some vomiting. He had two to three days of fever as well .... seen initially in the emergency department on the 20<sup>th</sup>, diagnosed with a viral syndrome and sent home after an oral fluid challenge. The next day, the patient returned to Lake Mead Hospital where a full septic work up was done. The white count was only 7.6, and a cerebrospinal fluid showed no organisms on Gram's stain and no white blood cells, with high glucose and low protein. Urinalysis was negative. The patient was given a dose of ceftriaxone and was sent over here to University Medical Center for admission....

Past Medical History: The patient has had mild reactive airway disease, but has never required hospitalization. MEDICATIONS: Albuterol nebulized treatments .... He was born preterm at about 30-31 weeks' gestation. The infant of a cocaine using mother. He was in the neonatal intensive care unit for six weeks before going home .... Both parents whereabouts unknown. He lives with his grandmother (i.e., Wealthy McNair) since discharge from the hospital in a two-bedroom apartment.

## **Age 2**

Referred for an Auditory Brainstem Evoked Response (ABR/BAER) evaluation at UMC's Pediatric Outpatient Services (Audiology Report, UMC, 1/19/99), Jayshawn was seen in the context of his caregiver's concern of possible hearing loss as he didn't "respond to noise." His history by this point included ear infections, asthma, and allergy and sinus problems. Ms. McNair reported Jayshawn was born with crack cocaine in his system. Assessment results were within normal limits.

On February 9, 1999, Jayshawn was sent to the **hospital by his pediatrician after he was seen for cough and vomiting. He was discharged on 2-10-99.**

**Around 26 months of age, Jayshawn was seen at the hospital (UMC, 3/19/99) for simple febrile seizure.**

Evaluated at home with his "great grandmother" Wealthy McNair, Jayshawn received a speech and language evaluation (**Initial Speech Pathology Evaluation, First Step, 4/27/99**). He had recently begun experiencing seizures and was not yet under care for them. His history included ear infections. Behaviorally, he was described to have a temper and would throw objects, hit, and sometimes hurt himself. Wealthy also was concerned with his current speech intelligibility and worried that his high palate and overbite will interfered with progress in this area. Assessment found the following:

Receptive/Expressive Language: Per report and observations, Jayshawn demonstrates age-appropriate language skills.

Articulation/Phonology: By report, Jayshawn says no more than 50 different words and gets angry when he is not understood by others. He demonstrates good speech intelligibility at the single- and 2-word level, and as his utterances increase in length and/or complexity, his intelligibility decreases....

Oral-Motor/Feeding: Jayshawn has a high palate and an overbite.

Clinical impressions were the following:

Jayshawn presents with decreased speech intelligibility as his sentences become longer and more complex. He also presents with a probable sensory-based feeding disorder, characterized by facial tactile-defensiveness (i.e., he is defensive towards touch to his face), and aversion to slimy food. In addition, he does not take enough liquids/day and frequently chokes on thin liquids when he does drink them.

**An Individualized Family Services Plan (IFSP; 11/8/99) noted Wealthy McNair was a good caregiver who obtained appropriate services for Jayshawn (e.g., medical care for his asthma attacks and frequent seizures, Early Head Start). Multiple developmental delays were noted (i.e., fine and gross motor skills, speech and language, self-regulation). Regarding the latter,**

records indicated: "...Jayshawn will leave out the first three letters of a word when speaking. He gets very frustrated with his attempts at communication when people do not readily understand him. He may throw tantrums as a result." Asthma attacks were so severe that Jayshawn would "stop breathing and then seizure."

On November 18, 1999, Jayshawn was seen at the hospital (UMC) for fever and diarrhea. His recent history was noted: **"The child has a history of asthma, was hospitalized last year for a viral infection. Also has had surgery for repair of some problems in the teeth and also circumcision."**

An Early Learning Assessment Profile (CCSD Nurse Progress Note, 1/10/00) found multiple developmental delays:

Chronological Age 26 months:

- Gross Motor: 19 mos.
- Fine Motor: 22 mos.
- Cognitive: 21 mos.
- Language: 18 mos.
- Self-Help: 18 mos.
- Social/Emotional: 24 mos.

Chronological Age 33 months:

- Gross Motor: 33 mos.
- Fine Motor: 27 mos.
- Cognitive: 31 mos.
- Language: 33 mos.
- Self-Help: 33 mos.
- Social/Emotional: 33 mos.

A health evaluation completed with Childfind [1/10/00] documented prenatal alcohol and drug (crack cocaine, marijuana, nicotine) exposure and other relevant aspects of Jayshawn's birth:

Mother drank alcohol (liquor, Old English) and smoked crack cocaine, marijuana, and cigarettes during pregnancy....Child was born 9 weeks premature at UMC: 4 lbs 5 ozs, 17 inches long; child needed oxygen; had the following medical conditions at birth: bruises, heart problems, low birth weight, blue baby, seizures, needed transfusions, cord around neck, breathing problems; spent 6 weeks in neonatal unit....Mother and baby had positive screen for cocaine.

Wealthy McNair reported the following: Jayshawn had frequent colds and ear infections and "seizures in his sleep," which she described as, "He cries and cries, gets stiff, and urinates." Jayshawn was taken off Dilantin in November 1999 because his doctors did not think he had seizures and instead perceived his seizures were caused by cocaine exposure. Wealthy reported Jayshawn had asthma, which was triggered by excessive crying.

The Childfind evaluation noted Jayshawn's mother was in her 30s and his father was in his 20s at the time of his birth. Three previous pregnancies had ended with premature births. The following family history was included:

- Family history of seizures in maternal grandmother;
- No genetic disorders on either side of family;
- Mother: history of drug addiction, alcohol problems, emotional problems, mental hospitalization, school behavior problems, bipolar disorder and depression; completed 11<sup>th</sup> grade; height 5'1";
- Father: history of drug addition, alcohol problems, emotional problems; completed 12<sup>th</sup> grade; height 5'10."

The Childfind evaluation documented the following developmental history:

- walked at 15 months,
- potty trained at three years,
- sleep disturbance (i.e., trouble falling asleep, awakens during night, resists going to bed, sleepwalks, restless sleeper),
- eating problems ("picky eater"),
- frequent ear infections,
- congenital heart defect ("8 cm hole in heart, valve closed"),
- seizure disorder (in sleep),
- asthma (Albuterol inhaler),
- allergies,
- skin disorder ("dry skin"),
- stomach aches,
- overactive/restless,
- difficult to discipline,
- nightmares and night terrors,
- learning problems in preschool/kindergarten that included counting, saying ABCs, poor handwriting/coloring skills, understanding what was said (he was enrolled in Community College Preschool for 30 weeks),
- unable to dress himself,
- teeth grinding,
- eye blinking,
- finger movements,
- repeating words/sounds,
- hard to discipline,
- aggressive,
- nervous, fearful, irritable, and quick to lose his temper ("not getting what he wants")
- makes friends easily with younger peers,
- needed constant reassurance and support from nearby adult(s),
- used a lot of obscene language,
- seems to intentionally break rules at home/difficult to discipline,

- easily distracted,
- talks too much,
- purposely destroys property.

**A Multidisciplinary Team Evaluation Report (CCSD, 1/10/00) indicated:**

Jayshawn was referred to Child Find by First-Step, where he had received home intervention. He had been evaluated through SCC and was currently enrolled in a pre-school program....Family concerns included oppositional and destructive behavior at home and speech/language development....Jayshawn was the product of a 34-week gestation and was exposed to alcohol and cocaine in utero. He weighed under 4 ½ pounds at birth and had respiratory distress with possible aspiration pneumonia. Mother and baby had positive toxicology screens. First Step reported that he stayed in the hospital for 2 months with ventilator use and asthma. There was a question of seizures, and a history of colds and ear infections. He took medications for asthma and periodically had severe attacks....He was on several medications. Jayshawn lived with his paternal great-grandmother who was his legal guardian. He had lived with her since his release from Child Haven when he was an infant, and called her "momma." At home, he had a temper and would name call, throw objects, hit and sometimes hurt himself. He was a different child at school. He had no contact with his biological parents.

During the assessment, Jayshawn was observed to be impulsively destructive but responded to verbal limits. He had a short attention span and was impulsive and needed structure and firm direction. During the nursing assessment he cried loudly for 15 minutes when not given candy that he wanted. Standardized assessment found the following standard scores:

- **Vineland Adaptive Behavior Scales (VABS):** Communication 100, Daily Living Skills 113, Socialization 98, Motor Skills 114
- **Social Skills Rating System (M=100, SD=15) :** Social Skills 91, Problem Behaviors 120
- **Bracken Basic Concepts Scale:** 5ss / Concept Age = <2 ½
- **Conners Parent Rating Scale:** Global Index 80, DSM IV Inattentive 61, DSM IV Hyper/Impulsive 65, DSM IV Total 64
- **Differential Ability Scales (DAS):** Overall functioning on the DAS was delayed and in the low average range (GCA = 80). This was consistent with Bayley functioning at 6 months (MDI 83).
- **Language Functioning:** Overall verbal skills on the DAS were delayed but were described by his guardian as age appropriate on the Vineland. He sometimes used sentences but was often unintelligible and seemed to use jargon. He was often hard to understand.
- **Social/Emotional/Behavioral Functioning:** On the Social Skills Rating System (SSRS), his guardian's report indicated delayed socialization skills, consistent with observations.
- **Behavior:** On the Conners Rating Scale, his great-grandmother rated his anxiety, perfectionism., tendency to somaticize, impulsivity and emotional lability as significant problems (T score >70). He had many fears, cried easily, and changed mood quickly.

Based upon the Childfind assessment, Jayshawn was determined to meet criteria for eligibility under the category of Developmentally Delayed. There was a greater than one standard deviation from the mean performance in areas of cognition and social/emotional functioning, as required for eligibility per state regulations. The assessment concluded:

1. Jayshawn is having difficulty with articulation, expressive and receptive language. His speech and language skills should be assessed once he is in a program. Prior to this, his hearing should be tested by audiology as recommended by the nurse.
2. In the home setting it is reported that Jayshawn is often non-compliant and spontaneously aggressive. It is recommended that a positive behavior management program be considered to assist in teaching Jayshawn to respond to directives within a certain period of time and avoid hitting, throwing, tantruming and verbal aggression.

Jayshawn's initial Individualized Education Plan (IEP; 1/14/00) indicated his eligibility category was Developmental Delay, with special education services in the following areas: Cognitive, Social/Emotional, and Communication. The IEP concluded: "Jayshawn's short attention span, demanding behavior, and noncompliance can interfere with learning and success in a group.... Jayshawn demonstrates delays in expressive communication, social/behavioral, and cognitive skills."

Jayshawn was seen at the hospital (UMC, 1/16/00) for a nosebleed and vomiting blood.

### **Age 3**

A CCSD Health Assessment (1/22/00) described physical indicia of FASD (i.e., epicanthal folds, elongated philtrum, slightly curved 5<sup>th</sup> finger, very small stature, weight: 2<sup>nd</sup> percentile) as well as behavioral symptoms seen in FASD (speech articulation problems, very short attention span, cooperative, impulsive, distractible).

A psychological evaluation by Dale Forsythe, EdD (5/12/00) contained the following information:

Jayshawn has been referred by his paternal great-grandmother and by his physician in examining the causative factors in Jayshawn's extreme aggressive behaviors and in ruling out a possible ADHD condition. Jayshawn has a reported history to exposure to crack cocaine during his prenatal development....Jayshawn has been enrolled in the Early Childhood Program and Jayshawn's great-grandmother explained that Jayshawn is also experiencing considerable problems in his behavioral management within his special education programming. Jayshawn typically resists going to sleep at night and has also experienced some episodes of playing with fire. Jayshawn's play was structured during the interview phase of the evaluation, and Jayshawn continued to require constant redirection....Jayshawn's great-grandmother explained that Jayshawn requires constant supervision in his play activities with other children and that Jayshawn tends to be

physically aggressive with even mild confrontations. Jayshawn's ADHD symptoms appear to be pervasive and occurring at school, at home, and within his peer group interactions.

Jayshawn's great-grandmother completed the behavior rating scales and Jayshawn was described as having considerable problems in acting childish and immature, extremely restless, temper problems, problems learning at school, and other behaviors consistent with children diagnosed with ADHD....Jayshawn's speech was generally understandable an estimated 90% of the time and with observed below average quality of speech and below average speech organization.

Dr. Forsythe found the following test results:

- Wechsler Preschool and Primary Scale of Intelligence-Revised (WPPSI-R): FSIQ = 74, PIQ = 76, VIQ = 77 (no significant discrepancies)
- Developmental Test of Visual Motor Integration: Developmental Age Score = 3-2 (pencil grip was awkward, indicating possible problems in his fine motor development).

Recommending hyperactivity medications, Dr. Forsythe reached the following diagnostic conclusions:

- Axis I: Attention Deficit/Hyperactivity Disorder, Combined type  
Oppositional Defiant Disorder
- Axis II: Borderline Intellectual Functioning
- Axis III: Drug baby, by history
- Axis IV: Current Psychosocial Stressors moderate to severe – peer group conflicts and potential for learning problems
- Axis V: GAF 50 – Past Year 50

**On August 30, 2000, Wealthy McNair was appointed Jayshawn's guardian.**

**On August 31, 2000, Jayshawn was taken by ambulance to the hospital (UMC) for fever, hitting his head, and vomiting: "The patient complained of some mild headache to his grandmother this evening. The grandmother got a history from the patient that he banged his head on the bus on the way home from school..." The diagnosis included probable viral syndrome.**

**Standardized speech-language assessment (CCSD, 10/20/00) concluded Jayshawn had delays in "all areas of expressive language skills" based upon the following test results:**

- Peabody Picture Vocabulary test-Revised: 96 SS (39 percentile)
- Test for Auditory Comprehension of Language-Third Edition: 89 SS (23 percentile)
- Expressive One-Word Picture Vocabulary Test: 79 (8 percentile)

**An IEP Addendum (11/6/00) contained Wealthy's concern that Jayshawn was a follower. Speech/language services were added to his IEP to address his expressive language delay.**

#### **Age 4**



Jayshawn's preschool IEP (11/5/01) indicated the ongoing eligibility category of Developmental Delay, with services to address delays in Speech/Language, Fine Motor, Social, and Cognitive. Staff observed his tendency to mimic other children's behavior: "While he is able to refrain from following peers' inappropriate behavior with staff interventions, he is unable to do so independently." The following test results were included:

- Boehm Test of Basic Concepts-Preschool: 8 percentile
- Structured Photographic Expressive Language Test – Preschool: <1 percentile
- Patterned Elicitation Syntax Test: <10 percentile

### **Age 5**

A note from Dr. Gregory (6/21/02) indicated Jayshawn had severe asthma, Attention Deficit Disorder, and allergies.

Speech and language assessment (10/28/02) found expressive language delay:

- Structured Photographic Expressive Language Test-II: 4<sup>th</sup> percentile
- Patterned Elicitation Syntax Test (PEST): ~7 SD (standard deviations) below average

On 11/25/02, Jayshawn was dismissed from the Speech Therapy Program.

### **Age 6**

A Multidisciplinary Evaluation Team Report (CCSD, 5/29/03) in kindergarten (McCaw Elementary) contained the following standard scores, which supported a conclusion that Jayshawn no longer qualified for special education services because he did not have an educational disability. It was recommended that he consult with the school psychologist and speech therapist. Assessment results were the following:

- Kaufman Assessment Battery for Children (K-ABC; mean = 100, SD=15):
  - Sequential = 100 SS
  - Simultaneous Processing 106 SS
  - Nonverbal 100 SS
  - Mental Processing Composite 104 SS
- Bracken Basic Concept Scale:
  - 98 SS
- Vineland Adaptive Behavior Scales:
  - Communication 98 SS
  - Daily Living Skills 78 SS
  - Socialization 89 SS
  - COMPOSITE: 86 SS

### **Age 7**

On July 21, 2004, Jayshawn was seen at the hospital (UMC) for vomiting, abdominal pain, and diarrhea.

### ***Age 9***

Standardized achievement testing in the school records (January 2007) indicated the following test results in fourth grade:

- Word Reading: 50 percentile
- Reading Comprehension: 7 percentile
- Spelling: 51 percentile
- Total Language: 35 percentile
- Math Computation: 55 percentile
- Math Concepts: 43 percentile
- Science: 53 percentile

On 7/3/07, Jayshawn was found ineligible for special education services.

### ***Age 14***

Medical records (UMC, 1/23/11) documented that Jayshawn was seen for a laceration to his palm. He reported he was trying to cut a plastic bottle with a knife when he was injured.

### ***Age 15***

Jayshawn was seen for a sore throat at the hospital emergency room (UMC, 9/2/12). He was diagnosed with acute pharyngitis. Medical records indicated he had a history of heart surgery in 1999 to close a hole in his heart.

Seen at the hospital for chest wall pain (UMC, 2/19/13), he was found to have irregular heart rhythm. The impression was heartburn.

### ***Age 17***

Seen for chest pain (UMC, 3/3/14), Jayshawn had another abnormal ECG, which was interpreted as possible pericarditis.

### ***Age 18***

Jayshawn presented to the emergency department (Mountain View Hospital, 6/4/15) with chest pain, a third time in three years. He noted he was smoking marijuana prior to the chest pain. Impression was Costochondritis (temporary inflammation of chest wall), and he was diagnosed with Tietze's disease (benign inflammation of costal cartilage).

## **Age 20**

Jayshawn presented at the hospital (Valley Hospital, 4/29/17), complaining of abdominal pain for the preceding two months. An ultrasound of the gallbladder was normal. He was diagnosed with epigastric pain of uncertain causes.

Seen at the hospital for numbness (Valley Hospital, 4/30/17), Jayshawn was found to have low blood pressure and low pulse rate. He was diagnosed with parasthesias (tingling/prickling sensation).

Jayshawn went to the emergency room complaining of “numbness all over” (UMC, 5/5/17). He thought his pain was “brain related,” but an EKG showed bradycardia. He reported being seen at Valley Hospital five days earlier for the same problem, and nothing was found.

Seen at the hospital for a headache (Valley Hospital, 5/24/17), Jayshawn was diagnosed with acute headache, acute anxiety, and acute hypokalemia. A standard CT scan of the brain was normal. He was prescribed Lorazepam.

Jayshawn was seen by Silver State Neurology (5/20/17) for headaches and numbness. A little over a month later (6/28/17), EEG results at this clinic indicated “possible electrographic seizure activity in the right hemisphere.” Nerve conduction velocity electromyography indicated “possible small fiber polyneuropathy, based on abnormal SSR (sympathetic skin response).” Sometime later (8/18/17), an Auditory Evoked Potential test showed Jayshawn had a possible right acoustic nerve lesion and possible left-sided brainstem lesions.

On 10/13/17, after three years of 12<sup>th</sup> grade, Jayshawn graduated from high school with a 1.509 GPA.

## **Age 21**

Seen at Silver State Neurology (4/18/18) for headaches and anxiety (up to two times per week), Jayshawn reported poor memory and concentration. It was noted he had hit his head on concrete and lost consciousness about three years earlier. Impressions were the following: headaches, anxiety, poor memory, poor concentration, and concussion.

Seen at the hospital for a headache (Valley Hospital, 5/5/18), an abnormal ECG was found: “T-wave abnormality, consider anterior ischemia.”

Seen for anxiety and headache at Silver State Neurology (10/24/18), Jayshawn was taking Celexa at the time. It was recommended that he stop Lexapro and Celexa and have an MRI.

## **Age 22**

Seen at the hospital after a car accident (UMC, 5/13/19), records noted: "Patient unrestrained front passenger in vehicle traveling 5-10 mph that was rear-ended at approximately 70 mph. Patient was ambulatory at scene, positive LOV (loss of vision) and no airbag, complaining of head pain..." He was discharged the same day.

**INSTANT OFFENSE:** Jayshawn Bailey is charged with killing 17-year-old Tamyah Trotter (reported missing on December 14, 2019) and placing her body in a storm drain.

### ACADEMIC PERFORMANCE

Deficiencies in Jayshawn's academic performance are emphasized for clarity in bold type below:

DATES	GR	SCHOOL	COURSE	ACAD MARKS	COMMENTS RE CORE ACADEMIC DEFICIENCY
12/2000	P	Craig Elementary	<b>Early Childhood Special Education</b>		<b>Early childhood IEP services based on developmental delays in Speech/Language, Fine Motor, Social, and Cognitive skills</b>
2001-02	P	Newton Elementary	<b>Early Childhood Special Education</b>		
2002-03	K	McCaw Elementary	<b>Early Childhood Special Education</b>	Unavail.	
2003-04	1	May Elementary		Unavail.	
2004-05	2	May Elementary	Reading <b>Oral &amp; Written Language</b> <b>Arithmetic</b> Science Social Science Social Growth	C <b>D</b> <b>D</b> S S S	<b>Performed below grade level in Arithmetic and Oral &amp; Written Language.</b>
2005-06	3	May Elementary	Reading <b>Oral &amp; Written Language</b> <b>Arithmetic</b> Science Social Science <b>Social Growth</b>	<b>D</b> <b>D</b> <b>D</b> B C N	<b>Performed below grade level in Arithmetic, Reading, and Oral &amp; Written Language.</b> <b>Deficient Social Growth</b>
2006-07	4	Booker Elementary	Reading Oral & Written Language <b>Arithmetic</b> Science Social Science Social Growth	B C <b>D</b> C C S	<b>Performed below grade level in Arithmetic</b>
2007-08	5	Booker Elementary (10 days absent)	Reading <b>Oral &amp; Written Language</b> <b>Arithmetic</b> Science <b>Social Science</b>	<b>D</b> <b>D</b> <b>D</b> C <b>D</b>	<b>Performed below grade level in Arithmetic, Reading, Oral &amp; Written Language, and Social Science</b>

			Social Growth	S	
2008-09	6	West Prep <sup>1</sup>	English 6 Reading 6 Study Skills Math 6 PE 6 Science 6 Home & Career Skills Computer Lit Social Studies Beginning Art	F / F F / F D D / F A C / B F / P / D / B	Failed English, Reading, and Math in 6 <sup>th</sup> grade  Failed Home & Career Skills in 6 <sup>th</sup> grade (i.e., deficient adaptive performance in Daily Living Skills)  Socially promoted to 7 <sup>th</sup> grade but retained in English, Reading, and Math until skills reached grade level in the second half of 7 <sup>th</sup> grade
2009-10	7	West Prep	English 6 / English 7 Reading 6 / Reading 7 Study Skills / Study Skills 7 Math 6 / Math 7 Soc Stdies / US/NV History 7 PE 6 Science 6 / Science 7 Title 17 Math	C / F D / D C / B D / F D / F A D / D / D	Failed English 7, Math 7, and History 7  Performed below grade level in Reading 7, Science, and Title 17 Math (remedial)
2010-11	8	West Prep	US/NV History 7 Intro Multimedia English 8 Math 8 / Math 7 / Math 8 World Geography 8 Science 8 Advisory 8	C C / C F / C F / D / F F / F D / F C / A	Socially promoted to 8 <sup>th</sup> grade despite failing multiple core academic courses in 7 <sup>th</sup> grade  Failed Math 8 as well as Geography 8 and Science 8 and failed first semester of English 8  Promotion to 9 <sup>th</sup> grade was contingent on passing Math 8 in summer school
	8 Sum	West Prep	English 8 Math 8	A D	Performed below grade level in Math 8
2011-12	9	Western High School	English 1 Medical Terms Principles of Science Algebra 1 Fund Math Concepts PE 1 Foods/Nutr 1	C B D D C A B	Performed below grade level in Science and Algebra 1  Completed a class in Fundamental Math Concepts to improve basic math skills
2012-13	10	Western High School	English 10 Geometry Biology	D / D F / F D / C	Failed Geometry in 10 <sup>th</sup> grade and received marks below

<sup>1</sup> West Prep is one of the few middle schools in Las Vegas that does not admit students based on test scores, attendance, or interviews. Most students at West Prep are below grade level in reading and math when they arrive, and more than a third have special needs. Teachers adjust lessons to meet the needs of slower learners. (Source: <https://insideschools.org/school/03M421>)

2013-14	11	Western High School	World History	C / D	grade level in English 10, Biology, and History
			PE II	B / C	
2013-14	11	Western High School	Culinary Arts I	F / D	Failed Algebra II in 11 <sup>th</sup> grade and received marks below grade level in all courses except Composition
			Health Science II	B / B	
			English 11	C / D	
			Composition	B / A	
			Algebra II	F / F	
			Fund of Math Concepts	D / D	
			Princ Anat/Phys Health*	D / D	
2014-15	12	Western High School	US History	D / D	Failed English and two basic Math and Science classes and received marks below grade level in Reading Proficiency (a remedial class), Math Applications, Algebra I (his second attempt for this subject), and US Government
			Sports Medicine I	B / D	
			English 12	F	
			Reading Proficiency	D	
			Math Applications	D / D	
			Algebra I	/ D	
			Math - Personal Finance	F / F	
2015-16	12	Desert Rose High School	Science Foundations	D / F	Completed two Pre-Algebra classes in 12 <sup>th</sup> grade, indicating ongoing weakness in basic math skills
			US Government	D / RP <sup>2</sup>	
2015-16	12	Desert Rose High School	Pre-Algebra	C	Passed US Government on third attempt
			Pre-Algebra	C	
			US Government	C	
2016-17	12	Desert Rose High School	Career Ed	F	Failed Career Education (ongoing adaptive difficulty in basic Daily Living Skills) and performed below grade level in Physics
			Physics	/ D	
2017-18	Adult		NHSPE Prep:	A	Granted diploma on 10/13/17, after three years of 12 <sup>th</sup> grade (GPA = 1.509)

\* Absences were not a problem during any school year.

## INFORMED CONSENT

Informed consent for evaluation was obtained from the evaluatee to ensure he was sufficiently conversant of the nature and purpose of the assessment and understood the possible use of information obtained from such. He also was informed of the limits of confidentiality in forensic evaluations and offered the opportunity to speak with his attorney, which he declined. [Mitigation Specialist Emily Reeder facilitated the interviews, which were conducted via Zoom. She remained in the background behind Mr. Bailey and did not participate in the interviews.]

<sup>2</sup> "RP" (Report in Progress) indicates additional coursework needed to be completed before receipt of a final grade.

## INTERVIEW

Mr. Bailey reported he was not taking prescribed psychotropic medication at the time of his interviews.

### *Medical*

He endorsed asthma, chest pain, headaches, and stomach pain at the present time, attributing the latter to an “unhealthy diet.” He reported his neurologist prescribed an anxiety medication for him when he was 21, which he didn’t always take. He described a birth defect: “I have a hole in my heart and irregular heartbeat. I had to wear a monitor on my chest from age five to 10.” (Records documented heart surgery around age two to close the hole in his heart, after which he had ongoing heart-related problems such as irregular heart rhythm, heart pain, abnormal echocardiogram). He reported head injuries playing football, including one or two times (ages 16 and 18) when he lost consciousness. He reported falling on his head once or twice while playing basketball, the first time at age 13. He noted, “I was very small my whole life, and I’d get tackled very hard.” He added his headaches likely stemmed from his head injuries and attributed his memory problems to head injuries. He also reported six blackouts for unknown reasons. After one of the blackouts when he was in his early teens, his vision seemed to worsen.

### *Family Medical*

From records: seizure history (maternal grandmother); no genetic disorders on either side of family

### *Mental Health*

He reported current anxiety as well as cognitive problems in the following areas: memory (lifelong), attention and concentration, understanding others, expressing his thoughts when called on in class, following rules and instructions, getting along with others, being on time, keeping enough money to last from paycheck to paycheck, doing things impulsively that he later regretted, getting upset at trivial things, forgetting or missing appointments, and being surprised when he got in trouble. He denied a history of outpatient mental health counseling in childhood as well as use of psychotropic medications.

### *Family Mental Health*

From records: psychiatric hospitalization/depression and bipolar disorder (mother); emotional problems (father)

### *Substance Abuse*

He reported infrequent social drinking (“once or less a week....at parties....if I had a girl over”). He also reported drinking “twice

every six months." Typically, he drank wine ("I drink two or three shots and I be toasted"). He began using marijuana at age 16, reportedly "peer-pressured" into trying the drug. From that point on until his arrest, he smoked marijuana daily. At age 21, he began abusing Xanax ("peer pressured into taking one"), which he used approximately twice a week.

*Family Substance Abuse*

From records: alcohol abuse and drug addiction (mother); alcohol abuse and drug addiction (father)

*Residential*

He reported he was living with his "foster" mother (i.e., Wealthy McNair) at the time he was arrested and had lived with her his entire life. He then noted he had "two moms," referencing his biological mother Angie Bailey ("I stay with my mom for maybe six months before"). At one point in the months before his arrest, he lived in an apartment for two weeks with a girlfriend and her two children. The situation ended because of arguments ("I was paying for everything....I had my mom paying the bills, and I was paying her, couldn't afford it"). He noted it was his idea originally to get the apartment ("I was trying to play super hero").

*Caregiving*

He considered Wealthy McNair his "mother" and primary caregiver, although he reportedly lived with his biological mother for six months when he was 20 because he was arguing a lot with Ms. McNair. (He could not recall what they typically argued about.) He reported no childhood adversity, including abuse, neglect, and domestic violence. He described Ms. McNair as a "loving" caregiver who maintained a structured household with rules he was expected to follow (e.g., "I had to go to school, no ditching or dropping out, make sure everything was clean, no running the streets"). His biological mother introduced him to his father about a year before his arrest.

*Interpersonal*

He began dating around age 14, which also was around the time of his first sexual experience. He reported four serious relationships in his life, the longest of which lasted a year. He has no children.

*Education*

He reported special education services in elementary school, noting he had learning disabilities that affected his academic performance, especially in math ("I had no memory for math and really struggled, couldn't memorize all the steps"). Reportedly, he received Bs and Cs in elementary school, average grades in middle



school although he “barely passed” eighth grade, “excellent” grades in ninth grade, average grades in tenth and eleventh grades, and failing grades in twelfth grade. He was suspended several times for fighting, noting he never started a fight but would react if he was bullied. He was never expelled. After initially saying he “graduated” from school at age 18, he said he then went to Desert Rose High School to get his diploma and received it at age 21. He reported he was a guard on his high school football team for three years, but his grades suggest otherwise. Asked what his goals were when he was in high school, he responded, “I wanted to go to college and play basketball, take criminal justice.” Asked why he didn’t pursue his goals, he stated, “Girls, weed, I was easily influenced, a follower. I would rather hang out with girls than take care of my business. I’d smoke weed and become lazy. I started to ditch in twelfth grade. I gave up in school. I didn’t have the grades for basketball my senior year. Basketball was my life at the time. I was very good at it. It was my only opportunity for a scholarship. So I gave up.” [On 10/13/17 (age 20), after three years of 12<sup>th</sup> grade, Jayshawn graduated from high school with a 1.509 grade point average.]

*Family Education*

From records: mother (Angela Bailey) completed 11<sup>th</sup> grade; presumed father Anthony Percy completed 12<sup>th</sup> grade

*Employment*

He received SSI disability payments, which went to Wealthy McNair until he turned 18 and started receiving SSI directly. His job history included employment as a cook for McDonald’s. He variously reported he worked at McDonald’s for three months, “less than a month,” and “three years.” He noted he learned by observing others cooking (“when you show me something, I can get the hang of it”). After initially saying he quit the job because of interpersonal problems with a manager, he then said he got another job at Amazon and stopped showing up at McDonald’s. He was fired after six months of work at Amazon (“missed two days”). He also worked for Sign and Graphics (“holding signs, passing out cards”), variously reporting he worked there from age 16 to 18, then reporting he started working there at age 19. He quit because he couldn’t tolerate extreme weather conditions.

*Arrest History*

He reported his current incarceration was “technically” his only arrest, noting he was incarcerated following an argument with his girlfriend (“...someone has to go to jail when they’re called....I was in jail two days but wasn’t arrested”). He said he “agreed” to go to

jail rather than his girlfriend because "she had two kids." He said he was released without any charges being filed.

*Confinement*

He reportedly spent two days in jail in the context of domestic violence with his girlfriend.

*Current Adjustment*

He reported he had been incarcerated for approximately 10 months and spent his time in jail reading and working out. He could not recall the book he was currently reading. He said he was charged with murder, noting he had never been arrested before. He denied any problems adjusting to jail, indicating he had not received any write-ups for aggression although he had been placed in "the hole" (segregation) one time after arguing with and disobeying a corrections officer.

*Adaptive Behavior*

After taking the written test three times, he obtained his driver's license at age 21. However, he purchased his first car at age 18, which he drove "around the neighborhood." He acknowledged citations for driving without insurance ("I paid it for two or three months, then stopped"), indicating his license was suspended due to multiple tickets shortly before his arrest. He had a bank card and sometimes overdrew his account. He also had a credit card at one point but lost it because it was "overdrawn." The only thing he had purchased on credit was "food." He had never written a check or paid bills. He gave some of his money to his mother (i.e., Wealthy McNair) to help with bills. He acknowledged significant problems managing his money: "I had financial problems. When I get it, I want to spend it right away. I would buy games...a lot of fast food...clothes at the mall...Xanax, weed."

Structured conduct disorder assessment was negative, although Mr. Bailey reported stealing a deck of playing cards once at age 14 when he was with friends at a Walmart, who also were shoplifting.

Structured FASD assessment with the Life History Screen indicated a score of 20/26 (i.e., strong likelihood of FASD).

## **CURRENT PSYCHOLOGICAL TESTING**

### **Paulhus Deception Scales (PDS)**

Mr. Bailey produced an overall score on the PDS (Total Score = 3) that was well within the normal range and indicated a straightforward approach to self-reporting.

### Structured Inventory of Malingered Symptomatology (SIMS)

Mr. Bailey's total raw score of 7 on the SIMS fell well below the threshold of concern (i.e., 14). Such results suggest no deliberate attempt to over-report mental health or cognitive symptoms, including neurological impairment.

### Gudjonsson Suggestibility Scale – Version 2 (GSS-2)

Early on in the evaluation process, Mr. Bailey was administered the Gudjonsson Suggestibility Scale – 2 (GSS-2).<sup>3</sup> The GSS-2 addresses the susceptibility of an examinee to endorsing information, particularly in the context of interrogative questioning that features “leading questions” and pressure from authority. During administration of the GSS-2, the examinee is read a short story containing 40 distinct elements and then asked to recall as much of the story as possible (i.e., maximum score = 40). Up to 50 minutes later, the examinee is again asked to recall as much of the story as they can after which 20 questions are asked, 15 of which are “leading” (Yield 1). After the first round of questions, the examinee is asked to repeat the task ostensibly to potentially improve his/her performance (Yield 2). The number of times answers are changed between the first and second round of questions is counted (Shift). The sum of Yield 1 and Shift is reported as “Total Suggestibility.”

GSS-2

Category	Max Possible Score	Adults - Forensic Mean (SD)	Examinee's Raw Score	Percentile	z Score [(raw-M)/SD]
Immediate Recall	40	10.9 (7.1)	4.0	16	-1.0
Delayed Recall	40	9.2 (6.9)	4.0	18	-0.8
Distortions 1 + Fabrications 1	Range: 0-6	1.56 (1.32)	2.0	37	0.3
Distortions 2 + Fabrications 2	Range: 0-4	1.75 (1.27)	3.0	16	1.0
Yield 1	15	6.5 (4.1)	11	86	1.1
Yield 2	15	7.9 (4.6)	15	94	1.5
Shift	20	4.4 (3.6)	7	75	0.7
Total Suggestibility	35	10.9 (6.0)	21	97	1.7

**Note: Bold-face type indicates 1 or more standard deviations beyond the mean (i.e., a significant deficit).**

Mr. Bailey's Total Suggestibility score on the GSS-2 is markedly elevated and nearly two standard deviations above that of normally-developing adults, suggesting he is significantly prone to

<sup>3</sup> Gudjonsson, G. (1997). *The Gudjonsson Suggestibility Scales manual*. Hove, East Sussex, UK: Psychology Press.

acquiescing to leading questions and likely to confabulate in order to fill in blanks in his memory. High Total Suggestibility scores, such as in Mr. Bailey's situation, are associated in the research with one or more of the following conditions: (1) young age, (2) low IQ, and/or (3) mental disorders, including central nervous system (CNS) dysfunction in FASD.

### **Miranda Acquiescence Questionnaire (MAQ)**

Mr. Bailey reported that despite telling the police he understood his Miranda rights as he waived them during questioning: "When I was being interrogated, I wasn't really understanding what it mean at the time. Now I do. It went through one ear and out the other. I heard them on TV before, but I wasn't thinking, not comprehending those words they were telling me." He explained that at the time of police questioning he thought he was required to answer questions but later, after discussing his Miranda waiver with his defense team, he now (i.e., at the time of his interview) understood his waiver was a mistake.

During the current evaluation, Mr. Bailey was administered the MAQ, a formal measure of acquiescence to determine if – despite post-interrogation education from his defense team – he exhibited a tendency to acquiesce to questions (i.e., yea-saying) versus the opposite tendency (i.e., nay-saying). MAQ item pairs are worded in discrepant if not contradictory directions (e.g., whether staying silent either protects or incriminates detainees), and responding in the same direction to items with dissimilar content provides solid evidence of acquiescence (i.e., true to both items) or disacquiescence (i.e., false to both items). Beyond response style, the MAQ also is useful in identifying inaccurate beliefs that may have been relevant to Miranda understanding. Rogers and Drogin<sup>4</sup> recommended the MAQ be used in a case-specific manner to evaluate how serious misconceptions may have affected an arrestee's waiver decision.

Mr. Bailey's responses on the MAQ indicated average nay-saying tendency (i.e., 55<sup>th</sup> percentile) but a significantly high yea-saying tendency (95<sup>th</sup> percentile). For example, he acquiesced to a statement indicating he could answer questions without his lawyer being present and also responded there was no reason to disobey the police. He perceived it would hurt him to not answer the police officer's questions and similarly perceived that staying silent was the same thing as saying he was guilty. He perceived he could trust police promises, believed the police could force him to answer their questions, and did not perceive he needed his lawyer present before answering police questions.

Thus, despite his claim during interview that he understood the Miranda warnings, Mr. Bailey's MAQ results nonetheless suggested that acquiescence played a substantive role in his interactions with police.

## **STANDARDIZED BEHAVIOR ASSESSMENT**

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<sup>4</sup> Rogers, R., & Drogin, E.Y. (2019). *Conducting Miranda evaluations*. New York: Springer.

Wealthy McNair reported she raised Mr. Bailey throughout childhood: “I adopted Jayshawn at birth. There’s no blood relationship. His mother didn’t want him and neither did her family. I worked with his mother’s mother (i.e., Mr. Bailey’s maternal grandmother) for years.” Asked about the circumstances surrounding Mr. Bailey’s gestation, Ms. McNair reported his birth mother was “a street lady that drank and used drugs during the pregnancy with Jayshawn and didn’t try to stop. I saw her using drugs during the pregnancy and drinking beer.” Ms. McNair said that during visits with her daughter (a friend of the biological mother), she observed Mr. Bailey’s mother using substances. Ms. McNair reported Mr. Bailey lived with her throughout his life until the day of his arrest. She confirmed he had a learning disability, received special education services, and left high school before graduating, later obtaining his GED.

Ms. McNair was administered the following behavior rating measures to provide standardized assessments of Mr. Bailey’s behavior:

#### **Behavior Rating Inventory of Executive Function – Adult (BRIEF-A)**

Based on the results she produced on the BRIEF-A validity scales shown below, Ms. McNair rated Mr. Bailey’s behavior in a straightforward, unbiased manner:

BRIEF Reliability Scales		
Validity Scale	Clinical Threshold Score	Wealthy McNair [caregiver]
Negativity	≥ 6	1
Infrequency	≥ 3	0
Inconsistency	≥ 8	2
		<b>VALID</b>

#### **Vineland Adaptive Behavior Scales-3 (Vineland-3)**

Adaptive functioning involves typical everyday behavior, including ability to translate cognitive potential (i.e., IQ) into real-world skills<sup>5</sup>, rather than performance in the formal structured context of a cognitive testing session.<sup>6</sup> DSM-5 indicates adaptive functioning is measured by performance in three domains: *conceptual* (e.g., competence in memory, language, reading, writing, math reasoning, acquisition of practical knowledge, problem solving, and judgment in novel situations), *social* (e.g., awareness of others’ thoughts, feelings, and experiences; empathy; interpersonal communication skills; friendship abilities; social judgment), and *practical* (e.g., learning and self-management across life settings, including personal care, job responsibilities, money management, recreation, self-management of behavior, school and

<sup>5</sup> Sparrow S., Balla D.A., & Cicchetti, D. (1984). *Vineland Adaptive Behavior Scales* (expanded form). Circle Pine, MN: American Guidance Service.

<sup>6</sup> Edwards, W.J., & Greenspan, S. (2014). Adaptive behavior and fetal alcohol spectrum disorders. *Journal of Psychiatry and Law*, 38, 419-447.

work task organization). In typically developing individuals, adaptive behavior skills are commensurate with intellectual ability.<sup>7</sup>

Per DSM-5, adaptive functioning may be assessed using both clinical evaluation and individualized, culturally appropriate, psychometrically sound measures. An example of the latter is the Vineland Adaptive Behavior Scales – Third Edition (Vineland-3)<sup>8</sup>, which was used in the current evaluation to quantify Mr. Bailey’s adaptive behavior in the three domains endorsed by DSM-5. Using measures such as the Vineland-3 to measure adaptive behavior is the standard of practice in the mental health field,<sup>9, 10, 11</sup> and a robust body of research supports the measure’s reliability.<sup>12, 13, 14</sup>

Per the Vineland-3 test manual, the measure should be administered to family members or other individuals who know the subject very well. In Mr. Bailey’s case, his caregiver Wealthy McNair rated his behavior. The reliability of her approach to behavior rating was verified by valid results on the BRIEF-A (see above).

Vineland-3 ratings of Mr. Bailey’s behavior, shown in the table below, were scored by computer from an algorithm created by the test developer (Pearson). Behavior ratings were converted to standard scores for major domains (Mean = 100, Standard Deviation/SD = 15) and v-scale scores for subdomains (Mean = 15, Standard Deviation/SD = 3) and then compared to age-based norms. Results were the following:

Vineland Adaptive Behavior Scales-3  
[SS Mean = 100, SD = 15; v-scale mean = 15, sd = 3]

Subdomain / DOMAIN	Wealthy McNair [caregiver]	
	v-Scale Score / Std Score	Percentile
<i>Receptive</i>	1	
<i>Expressive</i>	1	
<i>Written</i>	7	
<b>COMMUNICATION</b>	<b>20 SS</b>	<b>&lt;1 percentile</b>
<i>Personal</i>	8	
<i>Domestic</i>	6	
<i>Community</i>	5	

<sup>7</sup> Sparrow, S.S., Cicchetti, D., & Bella, D.A. (2005). *Vineland Adaptive Behavior Scales*, 2. Minneapolis, MN: NCS Pearson, Inc.

<sup>8</sup> Sparrow, S.S., Cicchetti, D.V., & Saulnier, C.A. (2016). *Vineland Adaptive Behavior Scales, Third Edition (Vineland-3)*. San Antonio, TX: Pearson.

<sup>9</sup> Tasse, M.J. (2009). Adaptive behavior assessment and the diagnosis of mental retardation in capital cases. *Applied Neuropsychology*, 16, 114-123.

<sup>10</sup> Greenspan, S., & Switzky, H.N. (2006). Forty-four years of AAMR manuals. In *What is mental retardation?: Ideas for an evolving disability in the 21<sup>st</sup> century*. Switzky, H.N., & Greenspan, S. (Eds.). Washington, DC: American Association of Mental Retardation.

<sup>11</sup> Edwards & Greenspan, op. cit.

<sup>12</sup> Tasse, op. cit.

<sup>13</sup> Greenspan & Switzky, op. cit.

<sup>14</sup> Edwards & Greenspan, op. cit.

<b>DAILY LIVING SKILLS</b>	<b>42 SS</b>	<b>&lt;1 percentile</b>
<i>Interpersonal Relationships</i>	<b>9</b>	
<i>Play/Leisure Time</i>	<b>7</b>	
<i>Coping Skills</i>	<b>7</b>	
<b>SOCIALIZATION</b>	<b>37 SS</b>	<b>&lt;1 percentile</b>
<b>GLOBAL COMPOSITE</b>	<b>34 SS</b>	<b>&lt;1 percentile</b>

Key: SS = Standard Score AE = Age Equivalence

\* **Bold font = clinically elevated (i.e., 1 or more standard deviations above the mean)**

Vineland-3 results shown above provide reliable data that quantify the nature and severity of Mr. Bailey's adaptive behavior. Results show that compared to other young adults, Mr. Bailey's adaptive functioning is severely deficient.

### **Fetal Alcohol Behavior Scale (FABS)**

The FABS<sup>15</sup> was developed by researchers at the University of Washington to describe the "behavioral essence" of the adaptive/functional deficits associated with Fetal Alcohol Spectrum Disorders. The FABS, which contains 36 items that differentiate FAS from non-FAS persons, are imbedded within the larger Personal Behaviors Checklist, which contains 71 items. The behaviors addressed by the FABS are controlled by prefrontal cortex (i.e., executive functions). Using a reference sample of 472 patients aged 2 to 51 diagnosed with Fetal Alcohol Syndrome (FAS) or Fetal Alcohol Effects (FAE), the FABS demonstrated high item-to-scale reliability and good test-retest reliability over an average interval of five years, identifying subjects with known or presumed prenatal alcohol exposure in detection studies. The FABS, which assesses eight behavioral domains (Communication and Speech, Personal Manner, Emotions, Motor Skills and Activities, Academic/Work Performance, Social Skills/Interactions, and Bodily/Physiologic Functions), predicted dependent living among adult patients with FASD.. A score of 15 or higher distinguishes persons with FASD from those without FASD.

Results of Wealthy McNair's rating of Mr. Bailey's behavior on the FABS (i.e., total score of 26) fall well above the threshold level of 15, indicating the "signature" behavior profile unique to individuals with FASD.

### **DATA ANALYSIS and OPINION**

Jayshawn Bailey is a 23-year-old man charged with murder in the death of 17-year-old Tamya Trotter in Las Vegas, Nevada.

I have been asked by defense counsel to address the following consultative questions:

1. Do records document that Jayshawn Bailey was exposed in utero to alcohol and/or drugs, and if so, how would alcohol and drug exposure likely affect his functioning?

<sup>15</sup> Streissguth, A.P., Bookstein, F.L., Barr, H.M., Press, S., & Sampson, P.D. (1998). A Fetal Alcohol Behavior Scale. *Alcoholism: Clinical and Experimental Research*, 22, 325 – 333.

2. Is Mr. Bailey's lifelong behavioral history as depicted in contemporaneous records consistent with the DSM-5 disorder, *neurodevelopmental disorder associated with prenatal alcohol exposure (ND-PAE)*?
3. Is Mr. Bailey's intellectual and adaptive functioning consistent with intellectual disability and if so, can his adaptive functioning be quantified?
4. Is Mr. Bailey suggestible and if so, what are the implications of his suggestibility?

Opinions expressed in the section that follow are held to a reasonable degree of psychological certainty.

### **Background Regarding FASD/ND-PAE**

ND-PAE is the DSM-5 diagnosis for the central nervous system (CNS) dysfunction ("mental defect") in FASD medical conditions, which include (a) fetal alcohol syndrome (FAS), (b) partial FAS (pFAS), and (c) alcohol related neurodevelopmental disorder (ARND). Although FAS is considered the most severe medical condition because of facial dysmorphology, growth deficiency, and lower IQ, there is no difference among the three medical conditions in terms of the scope and severity of brain damage. That is, ND-PAE is the diagnosis used by mental health providers to designate the brain damage in all three conditions.

ND-PAE stems from prenatal exposure to alcohol. Alcohol is a neurobehavioral teratogen that can cause brain damage in the unborn children of women who drink during pregnancy, leading to FASDs and ND/PAE. Exposure to other substances besides alcohol known to be teratogenic (e.g., cannabis, cocaine, methamphetamine, nicotine) often produces additive and cumulative neurodevelopmental harm.<sup>16</sup> For example, according to a summary of the research published by the Alcohol and Drug Abuse Institute at the University of Washington,<sup>17</sup> prenatal exposure to cannabis is associated with decreased birth weight for gestational age, inattention and impulsivity, subtle learning and memory deficits, and deficits in important executive functions needed for problem-solving (i.e., sustaining attention, visual memory, analysis, integration).

Alcohol exposure at any time during gestation can damage the developing central nervous system, especially early in pregnancy before many women know they are pregnant.<sup>18</sup> Regular or binge episodes of alcohol exposure in utero are especially deleterious, causing pervasive but often subtle brain damage that manifests as cognitive deficits in a range of affected functional domains, including:

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<sup>16</sup> Behake, M., & Smith, V.C. (2013). Prenatal substance abuse: Short- and long-term effects on the exposed fetus. *Pediatrics*, 131, e1009-1024.

<sup>17</sup> <https://adai.uw.edu/pubs/pdf/2016pregnantwomenchildren.pdf>

<sup>18</sup> Maier, S. E., & West, J. R. (2001). Drinking patterns and alcohol-related birth defects. *Alcohol Research and Health*, 25, 168-169.



- global or sub-global intellectual skills,<sup>19, 20</sup>
- attention and activity level,<sup>21, 22</sup>
- rate of information processing,<sup>23, 24</sup>
- auditory comprehension,<sup>25, 26</sup>
- visual perception and construction,<sup>27, 28</sup>
- learning and memory,<sup>29, 30</sup>
- motor skills,<sup>31, 32</sup>
- social communication,<sup>33, 34, 35</sup> and
- executive functioning.<sup>36, 37, 38</sup>

<sup>19</sup> Adnams, C. M., Kodituwakku, P. W., Hay, A., Moltano, C. D., Viljoen, D., & May, P. A. (2001). Patterns of cognitive-motor development in children with fetal alcohol syndrome from a community in South Africa. *Alcoholism: Clinical and Experimental Research*, 25, 557–562.

<sup>20</sup> Streissguth, A. P., Barr, H. M., & Sampson, P. D. (1990). Moderate prenatal alcohol exposure: effects on child IQ and learning problems at age 7 1/2 years. *Alcoholism: Clinical and Experimental Research*, 14, 662–669.

<sup>21</sup> Bertrand, J., Floyd, L. L., Weber, M. K., O'Connor, M., Johnson, K. A., Riley, E., & Cohen, D. (2004). *Guidelines for identifying and referring persons with fetal alcohol syndrome*. Atlanta, GA: Centers for Disease Control and Prevention.

<sup>22</sup> Kodituwakku, P. W., Handmaker, N. S., Cutler, S. K., Weathersby, E. K., & Handmaker, S. D. (1995). Specific impairments in self-regulation in children exposed to alcohol prenatally. *Alcohol: Clinical and Experimental Research*, 19, 1558–1564.

<sup>23</sup> Jacobson, S. W. (1998). Specificity of neurobehavioral outcomes associated with prenatal alcohol exposure. *Alcoholism: Clinical and Experimental Research*, 22, 313–320.

<sup>24</sup> Burden, M. J., Jacobson, S. W., & Jacobson, J. L. (2005). Relation of prenatal alcohol exposure to cognitive processing speed and efficiency in childhood. *Alcoholism: Clinical and Experimental Research*, 29, 1473–1483.

<sup>25</sup> Franklin, L., Deitz, J., Jirikowic, T., & Astley, S. (2008). Children with fetal alcohol spectrum disorders: Problem behaviors and sensory processing. *American Journal of Occupational Therapy*, 62, 265–273.

<sup>26</sup> Rasmussen, C., Tamana, S., Baugh, L., Andrew, G., Tough, S., & Zwaigenbaum, L. (2013). Neuropsychological impairments on the NEPSY-II among children with FASD. *Child Neuropsychology*, 19, 337–349.

<sup>27</sup> Coles, C. D., Patzman, K. A., Lynch, M. E., & Freides, D. (2002). Auditory and visual sustained attention in adolescents prenatally exposed to alcohol. *Alcoholism: Clinical and Experimental Research*, 26, 263–271.

<sup>28</sup> Connor, P. D., Streissguth, A. P., Sampson, P. D., Bookstein, F. L., & Barr, H. M. (1999). Individual differences in auditory and visual attention among fetal alcohol-affected adults. *Alcoholism: Clinical and Experimental Research*, 23, 1395–1402.

<sup>29</sup> Aragon, A. S., Kalberg, W. O., Buckley, D., Barela-Scott, L. M., Tabachnick, B. G., & May, P. A. (2008). Neuropsychological study of FASD in a sample of American Indian children: Processing simple versus complex information. *Alcoholism: Clinical and Experimental Research*, 32, 2136–2148.

<sup>30</sup> Kaerning, K. L., & Halverson, P. T. (2000). Spatial memory following prenatal alcohol exposure: more than a material specific memory deficit. *Child Neuropsychology*, 6, 115–128.

<sup>31</sup> Connor, P. D., Sampson, P. D., Streissguth, A. P., Bookstein, F. L., & Barr, H. M. (2006). Effects of prenatal alcohol exposure on fine motor coordination and balance: A study of two adult samples. *Neuropsychologia*, 44, 744–751.

<sup>32</sup> Doney, R., Lucas, B. R., Jones, T., Howat, P., Sauer, K., & Elliott, E. J. (2014). Fine motor skills in children with prenatal alcohol exposure or fetal alcohol Spectrum disorder. *Journal of Developmental and Behavioral Pediatrics*, 35, 598–609.

<sup>33</sup> Abkarian, G. G. (1992). Communication effects of prenatal alcohol exposure. An investigation of intra-individual variability in children with fetal alcohol spectrum disorder (FASD). *Journal of Communication Disorders*, 25, 221–240.

<sup>34</sup> Adnams, C. M., Kodituwakku, P. W., Hay, A., Moltano, C. D., Viljoen, D., & May, P. A. (2001). Patterns of cognitive-motor development in children with fetal alcohol syndrome from a community in South Africa. *Alcoholism: Clinical and Experimental Research*, 25, 557–562.

<sup>35</sup> Becker, M., Warr-Leeper, G. A., & Leeper, Jr., H. A. (1990). Fetal alcohol syndrome: A description of oral motor, articulatory, short-term memory, grammatical, and semantic abilities. *Journal of Communication Disorders*, 23, 97–124.

<sup>36</sup> Kodituwakku, P. W., Kalberg, W., & May, P. A. (2001). The effects of prenatal alcohol exposure on executive functioning. *Alcohol Research and Health*, 25, 192–198.

<sup>37</sup> Mattson, S. N., Goodman, A. M., Caine, C., Delis, D. C., & Riley, E. P. (1999). Executive functioning in children with heavy prenatal alcohol exposure. *Alcoholism: Clinical and Experimental Research*, 23, 1808–1815.

<sup>38</sup> Rasmussen, C. (2005). Executive functioning and working memory in fetal alcohol spectrum disorder. *Alcoholism: Clinical and Experimental Research*, 29, 1359–1367.

As DSM-5 now recognizes, it is higher-level executive functioning rather than IQ that most determines how information is processed in the brain and ultimately manifests as adaptive behavior. Executive functioning is an umbrella term for a set of interrelated higher-order cognitive processes that involve conscious effort or supervisory attention and guide purposeful goal-directed behavior.<sup>39, 40, 41, 42</sup> Intact executive skills are necessary for competent performance of daily life activities, socially appropriate behavior, and successful academic functioning. Executive functions are analogous to an air traffic controller in the brain that synthesizes, organizes, and directs thoughts, emotional responses, and regulates behavior.<sup>43</sup> Among other things, executive skills include planning, set-shifting (unconsciously shifting attention from one task to another), working memory (limited-capacity storage of information while performing mental operations on that information), fluency (retrieving task-related information from memory), response inhibition (i.e., impulse control), and attentional vigilance (maintaining focus and concentration over a period of time necessary to accomplish a task). Since the executive system processes lower-level (i.e., unconscious) neural information from other brain regions, if lower-level input is distorted due to brain damage outside the frontal lobes, this is likely to further impair mental control and behavior.<sup>44</sup>

Systematic reviews of the FASD literature have identified a prototypical cognitive profile in ND-PAE that involves generalized executive deficits in the processing and integration of *complex* information.<sup>45, 46</sup> Task complexity increases in direct proportion to intrinsic mental challenge, defined as complex cognitive processing that requires multiple neural circuits and/or interhemispheric transfer of neural information.<sup>47</sup> Task complexity not only is a function of mental challenge but also a function of contextual factors such as novelty, ambiguity, environmental structure, external guidance, distraction, unpredictability, simultaneous task demands, abstract/compound social demands, and time and/or performance pressure. Of course, additional personal factors such as stress, frustration, anger, boredom, acute intoxication, and/or fatigue increase complexity and further erode executive control.

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<sup>39</sup> Anderson, P. (2002). Assessment and development of executive function (EF) during childhood. *Child Neuropsychology*, 8, 71–82.

<sup>40</sup> Stuss, D. T., & Knight, R. T. (2002). *Principles of frontal lobe functioning*. New York: Oxford University Press.

<sup>41</sup> Shallice, T., & Burgess, P. (1998). The domain of supervisory processes and the temporal organization of behaviour. In A. Roberts, T. Robbins, & L. Welskrantz (Eds.), *The prefrontal cortex: Executive and cognitive functions* (pp. 22-35). New York: Oxford University Press.

<sup>42</sup> Welsh, M. C., & Pennington, B. F. (1998). Assessing frontal lobe functioning in children: Views from developmental psychology. *Developmental Neuropsychology*, 4, 199–230.

<sup>43</sup> Gioia, G. A., Isquith, P. K., & Guy, S. C. (2001). Assessment of executive functions in children with neurological impairment. In R. J. Simeonsson & S. L. Rosenthal (Eds.), *Psychological and developmental assessment: Children with disabilities and chronic conditions* (pp. 317-356). New York: Guilford Press.

<sup>44</sup> Kodituwakku, P. W. (2009). Neurocognitive profile in children with fetal alcohol spectrum disorders. *Developmental Disabilities Research Review*, 15, 218-224.

<sup>45</sup> Ibid.

<sup>46</sup> Kodituwakku et al., 1995, op. cit.

<sup>47</sup> Kodituwakku, P., & Kodituwakku, E. (2014). Cognitive and behavioral profiles of children with fetal alcohol spectrum disorders. *Current Developmental Disorders Reports*, 1, 149-160.

The more elements of complexity in a task, the more impaired mental processing will be in FASD.<sup>48</sup> The complexity-based deficit in FASD manifests in neuropsychological test performance as significant within- and between-task variability<sup>49</sup> and in deficient adaptive functioning. Comprehensive neuropsychological assessments of individuals with FASD often find cognitive profiles that reflect this variability,<sup>50, 51, 52, 53</sup> manifesting as:

- (a) *Test Variability* (i.e., variable test scores reflecting relative strengths and weaknesses across the entire battery of testing, with similar variability within tests), and
- (b) *Context-Dependent Thinking and Behavior* (i.e., poorer results on low-structure tests requiring more independent thinking in the context of significant adaptive dysfunction).

There is a causal link between executive and adaptive functioning in FASD.<sup>54, 55</sup> That is, if higher-level thinking is impaired, adaptive behavior likewise will be impaired. Adaptive behavior has been defined as the performance of daily activities required for personal and social self-sufficiency or the ability to respond successfully to everyday demands.<sup>56</sup> More simply put, adaptive behavior is *typical everyday behavior*. Since the everyday world is a very complex place full of surprises, it is not surprising that a deficient adaptive profile is a robust finding in the FASD literature. Adaptive assessment in the FASD context must be comprehensive enough to find impairments if they exist and sensitive enough to appreciate that adaptive behavior likely will vary based upon task complexity as well as personal and environmental factors that enhance or reduce need for independent decision making.

In accord with DSM-5, if Mr. Bailey's life history is consistent with FASD, data in this evaluation will reflect impaired functioning in at least two adaptive domains across multiple environments. There also will be evidence his mother consumed alcohol during her pregnancy with him.

Determining whether there are impairments in neurocognitive functioning and self-regulation will require current neuropsychological testing.

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<sup>48</sup> Jacobson, S. W., Jacobson, J. L., Stanton, M. E., Meintjes, E. M., & Moltano, C. D. (2011). Biobehavioral markers of adverse effect in fetal alcohol spectrum disorders. *Neuropsychological Reviews*, 21, 148-166.

<sup>49</sup> Ali, S., Kerns, K. A., Mulligan, B. P., Carmichael Olson, H., & Astley, S. J. (2018). An investigation of intra-individual variability in children with fetal alcohol spectrum disorder (FASD). *Child Neuropsychology*, 24, 617-637.

<sup>50</sup> Aduato, S. A., & Cohen, D. E. (2011). *Prenatal alcohol use and fetal alcohol spectrum disorders: Diagnosis, assessment and new directions in research and multimodal treatment*. New Jersey: Bentham Science Publishers Ltd.

<sup>51</sup> Ali et al., 2018, op. cit.

<sup>52</sup> Kodituwakku et al., 1995, op. cit.

<sup>53</sup> Novick Brown, N. (2019). Fetal alcohol spectrum disorders (FASD): Intellectual disability equivalence. In G. Becker, K. Henricke, & M. Klein (Eds.), *Adults with fetal alcohol spectrum disorders: Diagnosis, screening, intervention, and addiction prevention*. Vol. 2. Berlin, Germany: De Gruyter Publisher.

<sup>54</sup> Schonfeld, A. M., Paley, B., Frankel, F., & O'Connor, M. J. (2006). Executive functioning predicts social skills following prenatal alcohol exposure. *Child Neuropsychology*, 12, 439-452.

<sup>55</sup> Ware, A. L., Crocker, N., O'Brien, J. W., Deweese, B. N., Roesch, S.C., Coles, C. D., Kable, J. A., May, P. A., Kalberg, W. O., Sowell, E. R., Jones, K. L., Riley, E. P., & Mattson, S. N. (2012). Executive function predicts adaptive behavior in children with histories of heavy prenatal alcohol exposure and attention deficit/hyperactivity disorder. *Alcoholism: Clinical and Experimental Research*, 36, 1431-1441.

<sup>56</sup> Sparrow, S. S., Balla, D. A., & Cicchetti, D.V. (1984). Vineland adaptive behavior scales. American Circle Pines, MN: American Guidance Service.

## **Clinical Presentation**

Results of psychological screening (Paulhus Deception Scales and Structured Inventory of Malingered Symptomatology) found that while Mr. Bailey occasionally reported inaccurate information due to cognitive difficulties (mostly involving time sequences and dates), there was no indication of positive self-presentation bias and no indication of malingered symptomatology with respect to his self-report. Generally, he presented in a manner consistent with FASD (e.g., open, childlike, and naïve).

## **Prenatal Alcohol and Drug Exposure**

Contemporaneous records documented alcohol use (beer consumption three to four times per week), cigarette smoking (a pack of cigarettes per day), and drug abuse (marijuana and cocaine use) throughout Angela Bailey's pregnancy with her son Jayshawn, which included use of both drugs in the hours preceding his birth.

Records also documented that Jayshawn Bailey has eight older maternal half-siblings, at least two of whom were born drug exposed.

**The information provided above is of the type commonly viewed in the clinical context as "confirmation" of prenatal alcohol exposure in an amount found by the research to lead to FASD conditions.<sup>57, 58</sup>**

Using other substance (e.g., nicotine, marijuana, cocaine) during pregnancy is known to produce additive and cumulative effects in offspring exposed to alcohol in utero.

## **Physical Indicia of FASD**

Contemporaneous records documented a constellation of physical symptoms:

- prematurity (7-9 weeks) and the following medical conditions at birth:
  - bruises,
  - congenital heart defect (heart surgery in 1999 to close 8 cm hole in his heart, after which he had ongoing irregular heart rhythm, heart pain, abnormal echocardiogram)
  - low birth weight,
  - needed transfusions,
  - cord around neck,
  - mild jaundice,

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<sup>57</sup> Streissguth, A.P., Sampson, P.D. & Barr, H.M. (1989). Neurobehavioral dose-response effects of prenatal alcohol exposure in humans from infancy to adulthood. *Annals of the New York Academy of Science*, 562,145-158.

<sup>58</sup> Bookstein, F.L., Sampson, P.D., Streissguth, A.P. & Barr, H.M. (1990). Measuring "dose" and "response" with multivariate data using partial least squares techniques. *Communications in Statistics*, 19, 765-804.

- six weeks in neonatal unit,
- respiratory distress (on a ventilator for first two weeks of life);
- **seizure disorder (in sleep);**
- reactive airway disease in early childhood (required hospitalization),
- asthma, sinus problems;
- frequent ear infections in early childhood;
- poor suck response: “does not take enough liquids/day and frequently chokes on thin liquids when he does drink them”;
- sensory-based feeding disorder (i.e., tactile defensiveness regarding his face);
- facial abnormalities: epicanthal folds, elongated philtrum, high palate and overbite;
- clinodactyly (slightly curved fifth finger);
- congenital phimosis (tight foreskin on the penis);
- **dry skin disorder;**
- growth deficit (weight below 5<sup>th</sup> percentile at age three months and at the 2<sup>nd</sup> percentile at age three years);
- facial tics (eye blinking); and
- **multiple indications of possible brain damage found during neurological testing/EEG at age 20.**

### **Documented Behavior**

Contemporaneous records documented a large constellation of behavioral symptoms during Mr. Bailey’s childhood:

- sleep disturbance (i.e., trouble falling asleep, waking during night, sleepwalking, restless sleep, night terrors),
- eating problems (“picky eater”),
- overactive/restless;
- difficult to discipline,
- fearful/nervous;
- cranky/irritable/quick to lose temper/multiple tantrums;
- learning problems in preschool/kindergarten that included counting, saying ABCs,
- poor handwriting/coloring skills,
- difficulty understanding what adults were saying to him;
- unable to dress himself by kindergarten;
- repeating words/sounds (perseveration);
- impulsive aggression;
- needed constant reassurance and support from nearby adult(s);
- used a lot of obscene language in early childhood;
- seemed to intentionally break rules and destroy property at home;
- easily distracted; and
- talked too much.

## **Developmental Delay**

Mr. Bailey exhibited documented evidence of pervasive developmental delays in early childhood:

- At five months of age, he was diagnosed with Developmental Motor Delays.
- At six months of age, testing with the Bayley found an overall developmental score of 83, which was equivalent to more than 1 standard deviation (SD) below the mean/average.
- At seven months of age, standardized assessment found evidence of delays in fine/gross motor skills, speech/language, cognitive functioning, and social/emotional skills.
- At age two, standardized assessment found delays in fine/gross motor skills, speech/language, self-help (i.e., daily living skills), and social/emotional functioning.
- At age three, standardized assessment found delays in fine motor skills, speech/language (expressive and receptive), cognitive skills (testing with the Differential Ability Scales found a global score of 80, which fell more than 1 SD below the mean), and social skills. In addition, assessment with the Conners Parent Rating Scale found strong evidence of inattentiveness, hyperactivity, and impulsivity.
- At age three, cognitive assessment by Dr. Forsythe with the Wechsler Preschool and Primary Scale of Intelligence-Revised (WPPSI-R) found a Full-Scale IQ of 74, with a Verbal IQ of 77 and Performance IQ of 76.
- At age three, speech/language assessment found deficient expressive language skills (8<sup>th</sup> percentile) but adequate receptive language skills.
- At age four, testing found impairment in basic cognitive skills and expressive language.
- At age five, testing found significant impairment in speech/language. Cognitive testing with the Kaufman found an average IQ.
- At age nine, achievement testing found basic skills in the average range except Reading Comprehension, which fell at the 7<sup>th</sup> percentile.

## **Academic Performance**

Summarizing Mr. Bailey's academic records, at age three and four he qualified for special education services in Cognitive, Fine Motor, Social, and Communication under the category Developmental Delay. From age three to five, he received intensive services in order to prevent ongoing developmental delay and academic failure.

Throughout elementary school, he generally performed below grade level in Arithmetic and Oral/Written Language and occasionally performed below grade level in Reading. Social behavior was deficient in 3<sup>rd</sup> grade.

As external structure decreased and coursework became more complex in middle school, learning disabilities became more apparent. Despite failing English, Reading, and Math in 6<sup>th</sup> grade, he was *socially promoted* to 7<sup>th</sup> grade but *retained* in all 3 core academic classes until his skills reached grade level in the last half of 7<sup>th</sup> grade. He also failed Home & Career Skills in 6<sup>th</sup> grade, indicating deficient adaptive performance in Daily Living Skills. In 7<sup>th</sup> grade, he failed English 7, Math 7, and History 7 and performed below grade level in Reading 7, Science, and Title 17 Math (a remedial class). Socially promoted to 8<sup>th</sup> grade despite failing multiple core academic courses in 7<sup>th</sup> grade, he failed Math 8 as well as Geography 8 and Science 8 and failed the first semester of English 8. Promotion to 9<sup>th</sup> grade was contingent upon passing Math 8 and English 8 in summer school: he received an A in English 8 and barely passed Math 8 with an academic mark of “D,” despite taking the class a third time.

In high school, he showed ongoing weakness in mathematics. He performed below grade level in Science and Algebra 1 in 9<sup>th</sup> grade and completed a class in Fundamental Math Concepts to improve basic math skills. In 10<sup>th</sup> grade, he failed Geometry and received marks below grade level in English 10, Biology, and History. In 11<sup>th</sup> grade, he failed Algebra II and received marks below grade level in all courses except Composition. In 12<sup>th</sup> grade, failed English and two basic Math and Science classes and received marks below grade level in Reading Proficiency (a remedial class), Math Applications (a remedial class), Algebra I (his second attempt for this subject), and US Government. In his second year of 12<sup>th</sup> grade, he completed two Pre-Algebra classes, indicating ongoing weakness in basic math skills and passed US Government on his third attempt. In his third year of 12<sup>th</sup> grade, he failed Career Education (ongoing adaptive difficulty in basic Daily Living Skills) and performed below grade level in Physics. After three years of 12<sup>th</sup> grade, he was granted a high school diploma on 10/13/17. His cumulative grade point average was 1.509.

### **Current Standardized Behavior Assessment**

Standardized behavior assessment included a measure (FABS) that was developed to distinguish persons with FASD from normally-constituted individuals. Administered to Mr. Bailey’s caregiver Wealthy McNair, test results indicated a pattern of behavior well within the range reliably associated with FASD.

### **Current Standardized Adaptive Assessment**

Brain development from infancy through the young adult years is significantly delayed in FASD,<sup>59</sup> which along with congenital brain damage explains the substantial adaptive delays in this population.<sup>60</sup> As previously noted, adaptive functioning involves typical *everyday behavior* rather than performance in the formal structured context of a cognitive testing situation.<sup>61</sup>

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<sup>59</sup> Streissguth et al., 1991, op. cit.

<sup>60</sup> Ibid.

<sup>61</sup> Edwards, W.J., & Greenspan, S. (2014). Adaptive behavior and fetal alcohol spectrum disorders. *Journal of Psychiatry and Law*, 38, 419-447.

Wealthy McNair rated Mr. Bailey's adaptive behavior on the Vineland-3 in this evaluation, and the reliability of her behavior ratings was verified by three validity scales on a separate measure (BRIEF-A), which was administered immediately after the Vineland-3. The BRIEF-A is virtually identical to the Vineland-3 with respect to behavior rating protocol (i.e., both measures ask raters to indicate if they "often," "sometimes," or "never" observed the evaluatee engaging in each behavior listed in the instrument).

Vineland results Ms. McNair showed that compared to normally-developing peers, Mr. Bailey's Communication, Daily Living, and Socialization skills fell below the 1<sup>st</sup> percentile during his young adult years. Notably, assessment found Mr. Bailey's coping skills (a sub-domain of Socialization on the Vineland-3 that measures ability to control emotions and handle stress while trying to solve problems) were severely impaired (i.e., nearly 3 standard deviations below average).

The reliability of Mr. Bailey's adaptive scores on the Vineland-3 not only is supported by validity scale on the BRIEF-A, but also is consistent with evidence from multiple independent sources regarding his behavioral history, such as:

- behaviors documented in contemporaneous records across the lifespan;
- pervasive developmental delays in early childhood, which supported early childhood special education services in multiple domains;
- significant learning problems across the school records, reflected in consistently deficient academic performance, despite an average IQ;
- results on the FABS that reflected the behavioral essence of FASD in terms of Mr. Bailey's communication and speech, personal manner, emotional functioning, motor skills and activities, academic performance, social Skills and interactions, and bodily/physiologic functioning;
- clinical impressions during the interview; and
- declining adaptive performance with increasing age, which is emblematic of FASD.

Regarding the latter point, Vineland results show that as he aged, Mr. Bailey's adaptive skills dropped further and further behind normally developing age-peers such that by the time of the offense, he was profoundly deficient in adaptive functioning:

Vineland Adaptive Behavior Scales				
[Mean = 100; SD = 15]				
AGE	COMMUNICATION	DAILY LIVING SKILLS	SOCIALIZATION	GLOBAL COMPOSITE
3	100	113	98	<i>Not provided</i>
6	98	78	89	86
22	20	42	37	34



Generally, Mr. Bailey's adaptive functioning in all three domains addressed in the Vineland-3 is consistent with intellectual disability. Viewed from an age-equivalence perspective, his communication, daily living, and socialization skills are comparable to those of a child in early elementary school (i.e., age six). Moreover, the pattern of diminishing adaptive capacity with advancing age found in Mr. Bailey's Vineland-3 ratings is emblematic of FASD.<sup>62, 63, 64, 65, 66</sup> That is, his adaptive functioning worsened over time in comparison to age-peers, in large part because brain development in FASD is delayed many years.<sup>67</sup>

## Developmental Trajectory

Organic brain damage in FASD directly impairs the executive skills needed to function adequately and deal effectively with the stresses of everyday living. When children exhibit chronic learning, social, and self-regulation problems in the relatively-structured school years, such a pattern essentially predicts that after leaving school, they will have even greater difficulties in the unstructured real world. Adaptive functioning reflects real-world capacity to deal with tasks and challenges in contexts that range from semi-structured school environments to completely unstructured community settings. Compared to typically-developing peers, deficient adaptive functioning appears to be universal in FASD, regardless of IQ.<sup>68, 69, 70, 71, 72, 73, 74</sup>

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<sup>62</sup> Jirikowic, T., Kartin, D., & Carmichael Olson, H. (2008). Children with fetal alcohol spectrum disorders: A descriptive profile of adaptive function. *Canadian Journal of Occupational Therapy*, 75, 238-248.

<sup>63</sup> Streissguth et al., 1991, op. cit.

<sup>64</sup> Whaley, S.E., & O'Connor, M.J. (2003). Increasing the report of alcohol use among low-income pregnant women. *American Journal of Health Promotion*, 17, 369-372.

<sup>65</sup> Carmichael Olson, H., Feldman, J.J., Streissguth, A.P., Sampson, P.D., & Bookstein, F.L. (1998). Neuropsychological deficits in adolescents with fetal alcohol syndrome: Clinical findings. *Alcoholism: Clinical and Experimental Research*, 22, 1998-2012.

<sup>66</sup> Treit, S., Lebel, C., Baugh, L., Rasmussen, C., Andrew, G., & Beaulieu, C. (2013). Longitudinal MRI reveals altered trajectory of brain development during childhood and adolescence in fetal alcohol spectrum disorders. *Journal of Neuroscience*, 33, 10098-10109.

<sup>67</sup> Treit, S., Lebel, C., Baugh, L., Rasmussen, C., Andrews, G., & Beaulieu, C. (2013). Longitudinal MRI reveals altered trajectory of brain development during childhood and adolescence in fetal alcohol spectrum disorders. *Journal of Neuroscience*, 33(24), 10098-10109.

<sup>68</sup> Carmichael Olson, H., Feldman, J. J., Streissguth, A. P., Sampson, P. D., & Bookstein, F. L. (1998). Neuropsychological deficits in adolescents with fetal alcohol syndrome: clinical findings. *Alcoholism: Clinical and Experimental Research*, 22, 1998-2012.

<sup>69</sup> Carr, J. L., Agnihotri, S., & Keightley, M. (2010). Sensory processing and adaptive behavior deficits of children across the fetal alcohol spectrum disorder continuum. *Alcoholism: Clinical and Experimental Research*, 34, 1022-1032.

<sup>70</sup> Crocker, N., Vaurio, L., Riley, E.P., & Mattson, S.N. (2009). Comparison of adaptive behavior in children with heavy prenatal alcohol exposure or attention-deficit/hyperactivity disorder. *Alcoholism: Clinical and Experimental Research*, 33, 2015-2023.

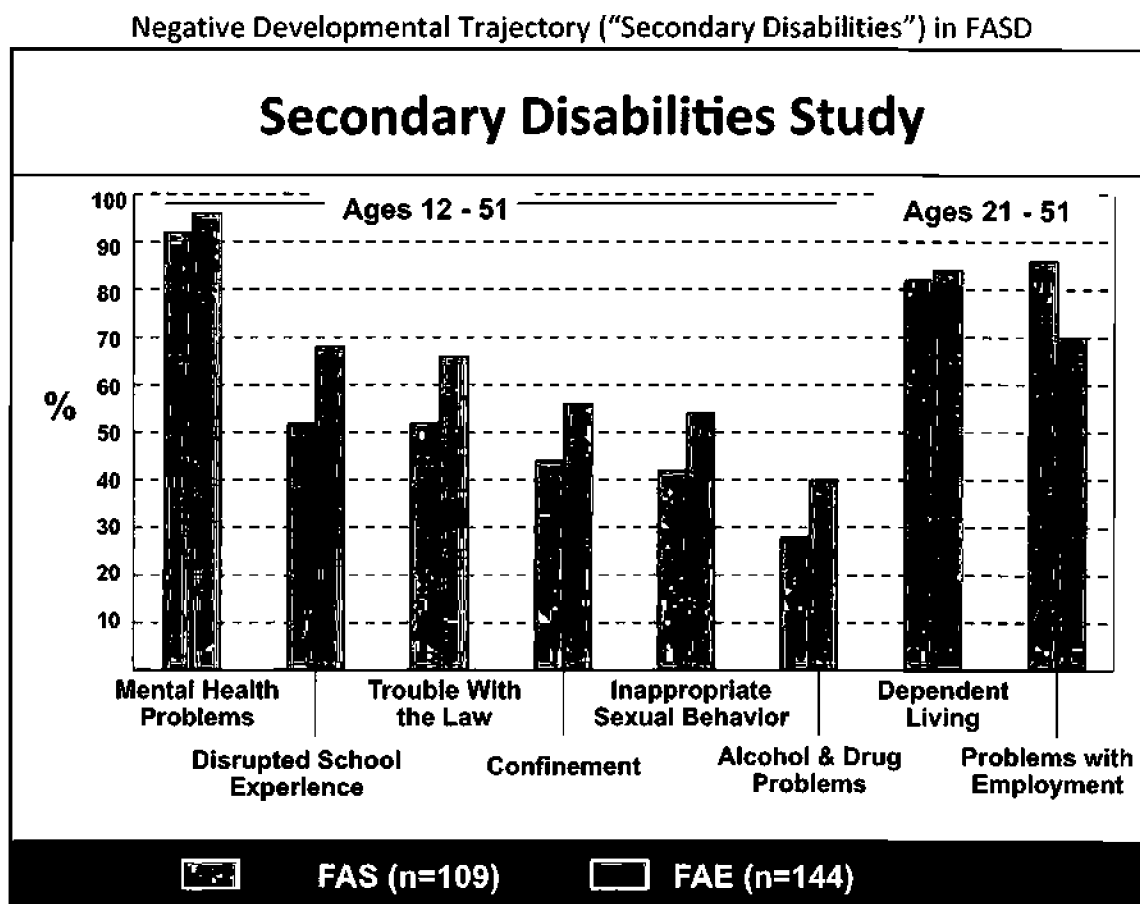
<sup>71</sup> Fagerlund, A., Autti-Ramo, I., Kalland, M., Santtila, P., Hoyme, H. E., Mattson, S. N., & Korkman, M. (2012). Adaptive behavior in children and adolescents with foetal alcohol spectrum disorders: A comparison with specific learning disability and typical development. *European Child and Adolescent Psychiatry*, 21, 221-231.

<sup>72</sup> Jirikowic, T., Kartin, D., & Carmichael Olson, H. (2008). Children with fetal alcohol spectrum disorders: a descriptive profile of adaptive function. *Canadian Journal of Occupational Therapy*, 75, 238-248.

<sup>73</sup> Panczakiewicz, A. L., Glass, L., Coles, C. D., Kable, J. A., Sowell, E. R., Wozniak, J. R., Jones, K. L., Riley, E. P., & Mattson, S. N. (2016). Neurobehavioral deficits consistent across age and sex in youth with prenatal alcohol exposure. *Alcoholism: Clinical and Experimental Research*, 40, 1971-1981.

<sup>74</sup> Streissguth, A. P., Barr, H. M., Kogan, J., & Bookstein, F. L. (1996). Final report: *Understanding the occurrence of secondary disabilities in clients with fetal alcohol syndrome (FAS) and fetal alcohol effects (FAE)*. Seattle, WA: University of Washington Publication Services.

Nearly 25 years ago, research sponsored by the CDC<sup>75</sup> identified eight “secondary disabilities” or negative developmental outcomes that were associated with FASD. The figure below, taken from the secondary disabilities study and reprinted with permission from the Fetal Alcohol and Drug Unit, University of Washington, shows the results of that study.



FAS = Fetal Alcohol Syndrome

FAE = Fetal Alcohol Effects (no facial dysmorphism)

As can be seen above, compared to normally-developing children, those with FASDs are at very high risk of multiple negative developmental outcomes. Along with risk factors (e.g., abuse and neglect), several protective factors were associated with lower risk of secondary disabilities (i.e., early childhood FASD diagnosis, developmental disabilities services during the school years, and positive caregiving. The latter involved environments that were stable, structured, nurturing, and protective. There were no significant differences in cognitive and adaptive functioning between the FAS and FAE groups in this study. [“FAE” is an outdated term that was changed in the late 1990s to “alcohol related neurodevelopmental disorder (ARND).”]

In Mr. Bailey’s case, records establish no secondary disabilities risk factors but only one of three

<sup>75</sup> Streissguth et al., 1996, op. cit.

protective factors. While he was raised in a protective and structured environment, he was not evaluated and diagnosed with an FASD in early childhood. For Dr. Forsythe, who evaluated Mr. Bailey at age three, ADHD symptoms overshadowed the prenatal drug exposure that he noted in his diagnostic formulation. Consequently, Mr. Bailey did not receive an FASD diagnosis early in childhood or developmental disabilities services throughout childhood, both of which are powerful protective factors.

The chart below, which summarizes Mr. Bailey's life history, reflects many of the secondary disabilities typically seen in FASD:

#### Secondary Disabilities Analysis

Secondary Disability	Jayshawn Bailey's Developmental Trajectory
Disrupted Education	<ul style="list-style-type: none"> <li>Received early childhood special education services</li> <li>Despite standardized speech and language assessment that found an expressive language delay (i.e., one test indicated expressive skills fell 7 SDs below the mean), Mr. Bailey was dismissed from the speech therapy program in kindergarten, likely because his caregiver (Wealthy McNair) rated his communication behavior in the average range on the Vineland.</li> <li>Assessed minimally in kindergarten (i.e., cognitive testing and adaptive rating), he failed to qualify for ongoing special education services. From that point on, his academic performance reflected significant learning problems that eventually led to partial retention in 6<sup>th</sup> grade and social promotion in middle school and high school.</li> <li>In 6<sup>th</sup> grade, he failed English 6 (x2), Reading 6 (x2), Math 6, and Home &amp; Career Skills.</li> <li>In 7<sup>th</sup> grade, he failed English 7, Math 7, and History 7.</li> <li>In 8<sup>th</sup> grade, he failed English 8, Math 8 (x2), World Geography 8, and Science 8.</li> <li>In 10<sup>th</sup> grade, he failed Geometry (x2) and Culinary Arts I.</li> <li>In 11<sup>th</sup> grade, he failed Algebra II (x2).</li> <li>In 12<sup>th</sup> grade, he failed English 12, Math/Personal Finance (x2), Science Foundations, and Career Education.</li> <li>He spent three years in 12<sup>th</sup> grade trying to earn his diploma, which he eventually obtained at age 20.</li> </ul>

Mental Health Problems	<ul style="list-style-type: none"> <li>Diagnosed with multiple developmental delays in early childhood</li> </ul>
	<ul style="list-style-type: none"> <li>Diagnosed at age three with ADHD and oppositional defiant disorder</li> </ul>
Substance Abuse	<ul style="list-style-type: none"> <li>Records documented marijuana use at age 18</li> <li>Reported in the current evaluation that he drank alcohol infrequently, began smoking marijuana daily at age 16, and abused Xanax (2x/week) from age 21 on</li> </ul>
Trouble with the Law	<ul style="list-style-type: none"> <li>No record of arrest prior to instant offense</li> <li>Reported in the current evaluation that he was arrested but “not charged” for domestic violence (DV) assault at age 21</li> </ul>
Confinement	<ul style="list-style-type: none"> <li>Reported in the current evaluation that he spent 2 days in jail following the DV assault arrest</li> </ul>
Inappropriate Sexual Behavior	<ul style="list-style-type: none"> <li>None reported</li> </ul>
Employment Problems	<ul style="list-style-type: none"> <li>Reportedly received SSI disability payments in childhood and young adult years</li> <li>Per self-report, limited work history included brief employment at McDonald’s (laid off after 3 months for not showing up), Amazon (fired after 6 months for not showing up), and a sign and graphics company (quit after an ambiguous period of time).</li> </ul>
Dependent Living	<ul style="list-style-type: none"> <li>No evidence or report of independent living</li> </ul>

Data summarized in the table above reflect secondary disabilities in 7 of 8 categories, indicating adverse developmental outcomes predicted in the FASD literature in the absence of early diagnosis and consistent developmental disabilities services.

### **Preliminary Diagnostic Analysis**

Lifelong functional analysis and standardized adaptive assessment in this preliminary evaluation reveal a widespread pattern of impairments that together constitute a “textbook FASD behavioral history.” That is, *data in this evaluation indicate Mr. Bailey’s lifelong behavioral history is consistent with the adaptive dysfunction seen in neuropsychological disorder associated with prenatal alcohol exposure (ND-PAE).*

As noted in the introductory section, ND-PAE is a likely diagnostic hypothesis for Mr. Bailey's functional/adaptive history as there is no evidence of direct physiological effects of postnatal substance use (no report of substance use prior to age 16), a general medical condition other than FASD (no evidence of a head injury prior to age 18), a genetic condition (ruled out in contemporaneous records), or environmental neglect (ruled out in contemporaneous records).

However, an ND-PAE diagnosis requires evidence of neurocognitive and self-regulatory deficits as well as adaptive deficits in the context of confirmed prenatal alcohol exposure. While the current evaluation found evidence of significant adaptive deficits in three domains (communication, daily living skills, and socialization), and testing in early childhood confirmed neurocognitive and self-regulation deficits, current neuropsychological assessment is necessary to confirm the persistence of Mr. Bailey's deficits, which would be expected in FASD.

### **Suggestibility**

People do not think, make decisions, or act in *complex* real-world situations without executive system involvement and control. Under ideal situations, executive skills in the prefrontal cortex act upon neural information below the level of consciousness (e.g., sensory input, stored memories, and unconscious alert signals, urges, and emotions from the amygdala/limbic system) to interpret, analyze, and ultimately direct goal selection, planning, monitoring, and use of neural feedback.<sup>76, 77</sup> In FASD, executive functioning directly predicts (i.e., causes) adaptive behavior, regardless of IQ. Thus, when executive functioning is impaired by prenatal exposure to alcohol or drugs, adaptive functioning also is impaired, typically well below IQ.<sup>78</sup> In addition, any personal or situational factors that interfere with the cognitive work of the brain will further impair social behavior below baseline levels.

People with FASD are known to function adaptively (i.e., behaviorally) as if they are intellectually disabled.<sup>79</sup> Socialization in particular appears to be universally impaired (i.e., social functioning tends to fall 2 standard deviations below IQ).<sup>80, 81</sup> Suggestibility, the inclination to

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<sup>76</sup> Pennington, B. F., Bennetto, L., McAleer, O., and Roberts, R. J. (1996). Executive functions and working memory: Theoretical and measurement issues. In: G. R. Lyon and N. A. Krasnecor (Eds.), *Attention, memory, and executive function* (pp. 265-282). Baltimore, MD: Paul Brookes Publishing Co.

<sup>77</sup> Stuss, D. T. and Alexander, M. P. (2000). Executive functions and the frontal lobes: A conceptual view. *Psychological Research*, 63, 289-298.

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<sup>80</sup> Streissguth, Barr, Kogan, & Bookstein, 1996, op. cit.

<sup>81</sup> Schonfeld, A. M., Paley, B., Frankel, F., & O'Connor, M. J. (2006). Executive functioning predicts social skills following prenatal alcohol exposure. *Child Neuropsychology*, 12, 439-452.

accept and act on the influence of others, is an aspect of social behavior. Similar to persons with intellectual disability, most people with FASD are highly suggestible.<sup>82, 83, 84</sup>

Direct testing of Mr. Bailey with the Gudjonsson Suggestibility Scale (GSS) found a very high level of suggestibility consistent with intellectual disability (i.e., nearly 2 standard deviations above average, or the 98<sup>th</sup> percentile). Adaptive behavior assessment with the Vineland-3 found coping skills, an aspect of social behavior, that fell nearly 3 standard deviations below the mean. Thus, Mr. Bailey is highly suggestible, and he has severely impaired coping skills.

The GSS measures *interrogative* suggestibility (i.e., how inclined individuals are to acquiescing to leading questions and changing responses in the face of slight pressure). In FASD, acquiescing and giving in are poor coping strategies that stem directly from executive dysfunction,<sup>85</sup> with far-reaching social implications that generally involve conforming to social influence by following the lead of others and being agreeable or compliant to fit in. For people with impaired social skills, conforming and compliance help mask disabilities to reduce social stigma and peer rejection,<sup>86</sup> thereby facilitating *group acceptance*,<sup>87</sup> a fundamental need all humans have to belong to something greater than the self. As Mr. Bailey's history shows, he is a follower per anecdotal observations from his caregiver and special education staff.

Because of his ND-PAE, it also is likely Mr. Bailey is highly sensitive to stress as prenatal exposure to alcohol alters the neurological "hardwiring" of the hypothalamic-pituitary-adrenal system (HPA axis), thereby causing postnatal hypersensitivity and overreaction to stressful events.<sup>88</sup> Consequently, situations that might cause alarm or fear in anyone<sup>89</sup> (e.g., police questioning as a suspect in a murder investigation) are likely to provoke even more intense emotion in Mr. Bailey, with virtually no executive capacity to cope with such feelings.<sup>90</sup> Heightened reactivity, suggestibility, habitual compliance, and severely impaired baseline coping capacity make it likely he would want to please authority figures in situations perceived as threatening. In fact, the more intimidating the context, the more agreeable he likely would become.

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<sup>82</sup> Novick Brown, N., & Connor, P.D. (2014). Executive dysfunction and learning in children with fetal alcohol spectrum disorders (FASD). *Cognitive Sciences*, 8, 47-105.

<sup>83</sup> Greenspan, S., Novick Brown, N., & Edwards, W. (2016). FASD and the concept of "intellectual disability equivalence." In M. Nelson & M. Trussler (Eds.), *Law and ethics in fetal alcohol spectrum disorder*. Amsterdam: Springer.

<sup>84</sup> Pollard, R., Trowbridge, B., Slade, P. D., Streissguth, A. P., Laktonen, A., & Townes, B. D. (2004). Interrogative suggestibility in a US context: Some preliminary data on normal subjects. *Personality and Individual Differences*, 37(5), 1101-1108.

<sup>85</sup> Novick Brown, N., Gudjonsson, G., & Connor, P. (2011). Suggestibility and fetal alcohol spectrum disorders (FASD): I'll tell you anything you want to hear. *Journal of Psychiatry and Law*, 39, 39-71.

<sup>86</sup> Edgerton, R. B. (1993). *The cloak of competence*. (Rev. Ed.) Berkeley, University of California Press.

<sup>87</sup> Coultas, J. C. (2004). When in Rome .... An evolutionary perspective on conformity. *Group Processes & Intergroup Relations*, 7(4), 317-331.

<sup>88</sup> Keiver, K., Bertram, C.P., Orr, A.P., & Clarren, S. (2015). Salivary cortisol levels are elevated in the afternoon and at bedtime in children with prenatal alcohol exposure. *Alcohol*, 49, 79-87

<sup>89</sup> Shields, G.S., Sazma, M.A., & Yonelinas, A.P. (2016). The effects of acute stress on core executive functions: A meta-analysis and comparison with cortisol. *Neuroscience and Biobehavioral Reviews*, 68, 651-668.

<sup>90</sup> Willford, J. A., Day, R., Aizenstein, H., & Day, N. (2010). Caudate asymmetry: A neurobiological marker of moderate prenatal alcohol exposure in young adults. *Neurotoxicology and Teratology*, 32 (6), 589-594.

Standardized assessment with the MAQ quantified Mr. Bailey's tendency to habitually engage in yay-saying versus nay-saying. Despite reported post-Miranda "education" by his defense team regarding the consequences of rights waiver, Mr. Bailey still was highly inclined (95<sup>th</sup> percentile) to agree to items involving police questioning. For example, he responded "True" to the following items (among many) on the MAQ:

- Telling the police what you know can only help you,
- You can answer police questions without your lawyer being present,
- It will hurt you to not answer the police's questions,
- Staying silent is the same as saying you're guilty,
- If you are innocent you should waive your rights and tell the truth, and
- The police can force you to answer their questions.

### Opinion

Overall, convergent data from multiple sources and methods in this evaluation support the following preliminary opinions:

1. **Contemporaneous records document that Mr. Bailey was exposed in utero to alcohol in a pattern known to be associated with fetal alcohol spectrum disorders (FASD). He also was exposed in utero to cocaine, marijuana, and nicotine, which likely had an additive and cumulative effect on prenatal brain development.**
2. **Mr. Bailey's lifelong behavioral history is consistent with the DSM-5 disorder, *neurodevelopmental disorder associated with prenatal alcohol exposure (ND-PAE)*, with definitive diagnosis pending comprehensive neuropsychological assessment. ND-PAE is the diagnosis for the mental defect in FASD.**
3. **Mr. Bailey's cognitive and adaptive functioning are consistent with intellectual disability. Quantitatively, his social functioning is equivalent to that of a six year old.**
4. **Mr. Bailey's suggestibility, impaired coping skills, and habitual tendency to agree are consistent with his ND-PAE. In highly stressful situations he perceives as threatening, these characteristics likely make him highly compliant.**

### Recommendation

Mr. Bailey's functional history, significant adaptive dysfunction, and high level of suggestibility strongly suggest the presence of an FASD (i.e., ND-PAE). In order for me to complete diagnostic analysis, it is necessary to have data regarding his current cognitive functioning. Therefore, I recommended he undergo comprehensive cognitive assessment with a neuropsychologist who has formal training and experience in FASD.

Thank you for the opportunity to evaluate Mr. Bailey. Please notify me immediately if there are factual errors in this report.

Respectfully submitted,

Natalie Novick Brown, PhD



## **EXHIBIT B**

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**VOLUNTARY STATEMENT**

PAGE 1

EVENT #: LLV200100088926

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**SPECIFIC CRIME:** MURDER

**DATE OCCURRED:**

**TIME OCCURRED:**

**LOCATION OF OCCURRENCE:**

**CITY OF LAS VEGAS**

**CLARK COUNTY**

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**NAME OF PERSON GIVING STATEMENT:** JAYSHAWN BAILEY

**DOB:** 01/22/1997

**SOCIAL SECURITY #:**

**RACE:**

**SEX:**

**HEIGHT:**

**WEIGHT:**

**HAIR:**

**EYES:**

**HOME ADDRESS:**

**PHONE 1:**

**WORK ADDRESS:**

**PHONE 2:**

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The following is the transcription of a tape-recorded interview conducted by DETECTIVE EMBREY, P#8644, LVMPD HOMICIDE SECTION, on 01/19/2020 at 1534 hours. ALSO PRESENT DURING INTERVIEW RAVELO, P#6538.

A: When I do sign up.

Q1: Yeah. Yeah.

A: Like for me personally I'm not really into that but (unintelligible) most people that do...

Q1: Right. Right.

A: ...there's somethin' on the line.

Q1: Right. Right.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 2

EVENT #: LLV200100088926  
STATEMENT OF: JAYSHAWN BAILEY

- Q: Warm in here.
- Q1: A little bit.
- Q: Is it Ja- Jayshawn or Jayshawn.
- A: Uh, Jayshawn, J-A-Y-S-H-A-W-N.
- Q: Okay. And last of Bailey, B-A-I-L-E-Y?
- A: Yes.
- Q: And your date of birth is 1-22-97?
- A: Yeah.
- Q: 530993763?
- A: Yeah.
- Q: And you live at your mom's which is 2120 Fred Brown, right?
- A: Yeah.
- Q: And I have a phone number of 702-752-1069?
- A: That's correct.
- Q: Okay. Jayshawn what - we're down here, um, obviously we need to get the story and I think, uh, you admitted to the officer that you actually touched the body. So at the end of when we're done talking, um, if...
- A: (Unintelligible) that's when I was scared though 'cause I did go down there and touch - like physically...
- Q: We'll - we'll - we'll talk that - we'll talk that.
- A: And I did my research and I'm not, you know, a dumb person, like I probably got

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 3

EVENT #: LLV200100088926  
STATEMENT OF: JAYSHAWN BAILEY

a little evidence down there...

Q: And that's fine.

A: ...and like I said...

Q: So what this is - and I'll explain it to you before you get all anxious about it and stuff...

A: All right.

Q: ...is a buccal swab kit. So obviously you said you did some research and maybe your DNA's on her clothing or something, okay?

A: Mm-hm.

Q: What this is does is yeah it confirms that your - that's your DNA but we can also - if we have like for example if he had grabbed her we could differentiate you from him.

A: (Unintelligible).

Q: Cool?

A: Yeah that's good.

Q: So as long as you be honest with us and forthcoming and you say, "Hey I did, I went down and - and - and did this," and then we find your DNA where you told us, hey that's cool.

A: Okay.

Q: Okay?

A: Mm-hm.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
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EVENT #: LLV200100088926  
STATEMENT OF: JAYSHAWN BAILEY

- Q: Um, but we'll - we'll cover all that so don't - don't get all nervous and - and anxious on us, okay?
- A: (Unintelligible) I ain't never been in this position a day in - day in my life, it's like kind of uncomfortable for me.
- Q: Sure, I understand.
- A: (Unintelligible) answerin' questions so...
- Q: No and that's it.
- A: Yeah.
- Q: You know. I'm gonna turn our tape recorder on so we can, uh - um, record our conversation, okay?
- A: All right.
- Q: That way just like when we cover the buccal swab it's all recorded, it's not he said, uh, she said type thing, okay?
- A: I understand.
- Q: I should've put my glasses on...
- Q1: I know what you're saying...
- Q: ...gettin' frickin' bl- blind.
- Q1: ...(unintelligible).
- Q: Okay it's recording. Uh, Operator this is Detective B. Embrey, P# 8644. I'm conducting one voluntary statement under Event # 2001010088926. This is reference a dead body, um, in the area of 2136 Fred Brown, Las Vegas, Nevada,

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT**  
**VOLUNTARY STATEMENT**  
**PAGE 5**

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**STATEMENT OF: JAYSHAWN BAILEY**

89106. Uh, person giving today's statement it's gonna be last of Bailey, B-A-I-L-E-Y, first of Jayshawn, and that's J-A-Y-S-H-A-W-N. His date of birth is 1-22-97. He has a Social Security Number of 530993763. He has a phone number of 702-752-1069. He lives with his mom at 2120 Fred Brown Drive. Uh, also present for this interview is gonna be Detective E. Ravelo, and # 6538. Today's day and time is gonna be January 19, 2020, it is, uh, 1538 hours. And we are currently located, uh, Las Vegas Headquarters. Jayshawn do you understand we're recording our conversation?

A: Yeah.

Q: Okay. So, um, just tell me - tell me how - how we're here today.

A: So basically I'd say four weeks ago I'll say like 12 o' clock I went outside to smoke a blunt, I smoke weed and I was out there smokin' and I seen like two people like walkin' towards that area - area. But it's pitch black so I couldn't really like see who it was but I seen them puttin' something inside of the - inside of the hole. So when I did that - well when I was, um, lookin' - I'm sorry, I'm just nervous...

Q: Take a deep breath.

A: ...(unintelligible) eyes on me like...

Q: No no, just take a deep breath, relax, okay?

A: But - no I'm good.

Q: Um, was this - you said...

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
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STATEMENT OF: JAYSHAWN BAILEY

A: So ba- basically I seen, um, two people put something in there and like I said, I was lookin' tryin' to figure out what was going on (unintelligible). I'm lookin' and like I said (unintelligible) ain't really lookin' into it like deeply...

Q: Mm-hm.

A: ...so I went back in the house and like over - like days passed I get to thinkin' like - like damn I'm tryin' to figure out what's really in there so I'd say like two weeks after that I do go down there and I do lift up the - the (unintelligible) thing. Mind you, it's pretty heavy but you can really lift it up. So I lift it up and I move it to the side and I'm makin' sure there ain't no cars and nobody lookin' around so I go down there. I flash first before I go down there and I look and all I see is a dead person and I'm like - like damn, what the fuck. So I do go down there and look and I'm tryin' to see who it is and then I couldn't really get a visual 'cause it was dark and then like I said, was nobody to see me like down there and they be thinkin' I - I did it, you know what I mean, so...

Q: Mm-hm.

A: ...I did look down there and - and that's really it. And then two weeks after that I just had that guilty conscious like damn, like I'm really walkin' back and forth and goin' past that way, you know, and it's a dead body down there and not reportin' it. And the reason I ain't report it right then - right then and there is just because like I ain't - I ain't feel like - I ain't tryin' to get involved in anything or anything like that so...

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT**  
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- Q: Okay. So let's back up. Four weeks ago, so is this - um, I'm lookin' at my calendar, was this before Christmas or after Christmas?
- A: Um, I believe it was after - after Christmas.
- Q: After?
- A: Yes.
- Q: Was it before New Year's or after?
- A: I'm not sure, I think it was like probably in between.
- Q: Okay.
- A: In between like I'd say like it wasn't 2020, that's what I'm sayin'.
- Q: Okay.
- A: Four weeks ago I did go down there...
- Q: But it was after Christmas?
- A: Yeah.
- Q: And the reason why I ask is 'cause obviously those are pretty - most people remember Christmas and New Year's.
- A: Yeah.
- Q: And you're pretty sure it was before New Year's but after Christmas.
- A: Yes.
- Q: So Christmas was on a Wednesday and New Year's was on that following...
- A: I really don't know specific dates...
- Q: Okay.



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- A: ...I really just went outside late at night 'cause I do that often...
- Q: Mm-hm.
- A: ...and like I said like how my house is set up I seen like two people and I ain't pay attention to it at first but I hear like the - the, uh, I can't even pronounce it but the metal thing making noise...
- Q: The manhole cover?
- A: So I'm lookin', I'm like what's goin' on like and then like I'm high so I'm really just concentrating tryin' to figure out and then like I said (unintelligible) mind my business and like - like I said, I went back in the house and as days went on like I'm really thinkin' like did they put something in there so like...
- Q: Okay so you're chillin', um, smokin' a blunt...
- A: Mm-hm.
- Q: ...and you hear the manhole cover being moved?
- A: Yes.
- Q: So that draws your attention and you look down there and you see two people?
- A: I seen two people but...
- Q: Was there a car with them or no?
- A: ...(unintelligible) - I ain't seen no car. But it was pitch black so I couldn't really...
- Q: Is there no street lights down there?
- A: They got a little - little light bulbs but it don't - can't really...
- Q: Okay.

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A: ...they don't really work like that.

Q: On their size and statute would you guess if they were females or males?

A: Um, they'd have to be males.

Q: Okay.

A: Yeah.

Q: Could you hear them talking at all?

A: I ain't hear them talking at all, I just seen two people down there.

Q: Okay. So when you look and you saw them it - it didn't look like - you couldn't see if they were moving anything?

A: I mean it seemed like it, like the way like they was like movin' like it seemed like they was puttin' somethin' in there, you know what I'm sayin'.

Q: Okay.

A: But I couldn't really see for sure 'cause it's - it's dark and like I said, I stay a little bit...

Q: Sure.

A: ...(unintelligible) from the manhole so...

Q: Um, did - how long roughly, and I know this is four weeks ago and you're high, I get that, um, how long roughly time-wise were they down there?

A: Um, like I said, when they was down there I went back in the house and like I said, I'm mindin' my business, I ain't stay out there and I was watchin' 'em the whole time so...

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Q: Sure. Sure.

A: ...I went back in my house and do what I was doin'.

Q: So at that point you didn't know they were puttin' a body down there?

A: No I did not.

Q: Okay. So let's fast forward, you said that a couple weeks ago...

A: No, two weeks after that. Four weeks - it was fo- four weeks ago and then two weeks after that.

Q: Okay so...

A: After days goin' - after days goin' past I'm thinkin' like - like somethin's probably really down there, I should go check it out but like I said, I'm - I'm nervous, I'm scared, I don't want to go down there and - and try to go up in there like I said, somebody see me and be like oh he - he probably did something, they thinkin' I - I did it, you know what I mean, so I went to like - I finally just said, you know, I'm fixin' to go down there, I waited 'til like maybe like 2:00 in the mornin'...

Q: Mm-hm.

A: ...so there wasn't a lot of traffic gonna be goin' on so I made sure there wasn't nobody walkin' around, I lift it up...

Q: How did you lift it up?

A: Um, it got like two little holes...

Q: Mm-hm.

A: ...so ba- really like puttin' your back into it so I lift it and I pulled it, I kind of lift the

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whole thing up so I have to like...

Q: So you didn't have a tool or anything, you just used your...

A: ...(unintelligible) - I - I ain't have no tool.

Q: Okay.

A: I lift it to like get it on the edge so when, you know, like goin' a little - well I can't really pronounce it, I can show you though. And then I just scooted it over, I had the flash and I look down there and I seen somethin' and I seen like a person, I went down there to see who it was.

Q: How did you climb down? I haven't looked, can you...

A: It got the little - it got the little steps, the little steps...

Q: Oh there's ladders?

A: Yeah there's ladders down there.

Q: Okay. So in the bottom of it is, uh, it's a sewage drain, right, is there fluid and stuff down there?

A: It's concrete.

Q: It's all concrete?

A: I seen concrete down there.

Q: So that's how you stepped on?

A: I ain't go all the way down.

Q: Oh you didn't?

A: No.

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Q: Did you reach down and - 'cause you said you - something about touchin' her?

A: I - I touched her but I ain't go all the way down.

Q: Whe- where at?

A: Um, I'd say like the body area and like the...

Q: Like...

A: ...pants leg - yeah like tryin' to see like...

Q: Oh the pants leg.

A: Yeah like tryin' to see who it was so...

Q: Okay. Why did you touch...

A: Just bein' weird.

Q: Okay. Did you recognize the person?

A: I did not. 'Cause I was just so like worried about like not tryin' to be seen so I just climbed back up and, you feel me, close the thing...

Q: Mm-hm.

A: ...and went back to the house.

Q: Okay. And you said that was a couple weeks ago at around 2 o' clock in the morning?

A: Yeah that was like two weeks ago.

Q: And then why did you I gu- it's today that you called, right?

A: Yeah. I just had that guilty conscious like, you know what, I know somethin's down there and just me goin' there - goin' basically just - goin' - livin' basically

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day by day and just not sayin' anything, I feel like that wasn't the right thing to do and like I'm a good person so like I said you know what, I'm fixin' to call them, say I seen somethin' down there. And that's what I did today.

Q: Have you told anyone else about this?

A: I haven't told nobody. I mean the people that asked today it was like I ain't really want to tell them 'cause like I said I don't want nobody thinkin' I did it and...

Q: Sure.

A: ...stuff like that so...

Q: Did you tell your mom?

A: Uh, well I told her when they found out so...

Q: Like today?

A: Yeah, today.

Q: Okay. But in the last - and I just want to be clear...

A: I ain't tell nobody, like...

Q: Four weeks ago when you - you seen these people you didn't realize they were puttin' a body there?

A: I did not.

Q: Curiosity got the best of you so two weeks ago, or two weeks after which was two weeks ago you crawl down there and that's when you realize there was a body?

A: Yeah.

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Q: And basically you were scared 'cause you didn't want to be hey I'm the one who did this.

A: Basically.

Q: Two weeks ago, um - and you said it was dry, there was no fluid or anything in there?

A: I ain't - I ain't seen no fluids.

Q: Okay.

A: I seen like (unintelligible) like I can see like - I couldn't really tell 'cause it's dark but I just ain't really seen no fluids down there though.

Q1: Jayshawn I got a - a couple questions. So first and foremost just to - for clarification...

A: All right.

Q1: ...who lives at the house with you?

A: My mom.

Q1: What's your mom's name?

A: Uh, Wealthy McNair.

Q1: Wilty?

A: Wealthy, uh, like Wealth- Wealthy.

Q1: Mm-hm. McNair you said?

A: Yeah I - yes.

Q1: Okay. And is she home now?

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A: She's home.

Q1: Okay. How old is - is - is Mom?

A: Uh, she's I think 78, 79.

Q1: Okay. And she's the only one that lives in the house with you?

A: Yes we have somebody that stay there but she hasn't been there in the past few weeks...

Q1: Okay.

A: ...so no, so...

Q1: What's that person's name?

A: Her name is Tahoney.

Q1: Honey?

A: Tahoney.

Q1: Oh Tahoney.

A: Yes.

Q1: And what's her last name?

A: Uh, it is Percy.

Q1: Percy?

A: Yes.

Q1: But she hasn't been there for two weeks?

A: Yeah she's been gone, well her and my mom got in a altercation and I guess she told her to go so she haven't been back since.



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Q1: How - how old is she?

A: Um, I'm not sure, I know she in her late 30s, almost close to her 40s.

Q1: Okay.

A: Yeah.

Q1: Okay. Um, where the - the manhole cover is to where your house is is approximately what, three houses over roughly?

A: Um, like four.

Q1: Three or four houses.

A: Yeah.

Q1: Right, so it's not like you're like way down the street or at the end of the block, right, you're only about three or four houses down which is typically each house in the front is 60 to 70 feet on average, I just happen to know that, don't ask me why but...

A: Mm-hm.

Q1: So let's just go big and go 500 feet which is not a whole lot, right? So - and the reason I'm bringin' that up is even when it's dark, okay, let's just pretend that you and are the ones that did this, right, we're the ones that are gonna dump this body down this - this manhole cover...

A: I couldn't even imagine doing something like that.

Q1: Correct, but let's just pretend it's me and you, like one of us or both of us are gonna have to carry this person.

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A: Yeah.

Q1: So it's gonna be like hella obvious if I got a body over my - my shoulder or if you and I are carrying one down there.

A: Yeah.

Q1: So when that draws your attention you're not that far away, you're only three to four houses over, did you see them carrying this person?

A: No I did not...

Q1: An- and - and here's another thing, right, like just...

A: yeah.

Q1: ...briefly lookin' in there and you saw - you saw the body, it wasn't wrapped in anything, correct?

A: No.

Q1: Right, it wasn't in a bag or a blanket or any- sheets or anything like that, it's literally a person with clothing on so it wasn't like they were hiding it. So did you see them carrying the body? And I - and I get that you're tryin' to...

A: Not like carryin' like that, like I said, it was pitch black but I seen them like putting something in there to have it open and then like puttin' something in there but I couldn't really visualize it, like I said, it was black so like I said, that's when I was just like thinkin', like skeptical like - like hm, like what did they put in there, you know what I mean, I...

Q1: Mm-hm.

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A: ...like physically see you gonna put a whole like human being in there. So I just seen them put something in there and I was just like...

Q1: Did you see 'em like push it in, kick it in...

A: I was like - when we go ba- I know it's gonna be dark but I ain't seen none of that, it is so dark over there in that little corner so I ain't see...

Q1: And you - you mentioned earlier when he was asking you, you didn't see a car so they had to have walked up with a body?

A: Yeah I ain't seen no car.

Q1: In the middle of the street.

A: Like I said, I don't know...

Q1: What time of da- night do you think this was?

A: This was like - like - like 12:00, 1:00 in the mornin' 'cause I was smokin' like around 12:00.

Q1: Mm-hm. Mm-hm.

A: And the...

Q1: You think they saw you standing out there smoking a blunt?

A: Uh, they ain't seen me 'cause my porch light was off so it's kind of dark.

Q1: Okay

A: I seen them though so - and I'm lookin' and like I said, I finished it and I went back in the house like I said, I ain't really pay attention 'cause like I'm just mindin' my own business...

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Q1: Mm-hm.

A: ...not tryin' to get involved in anything like that so...

Q1: Right. So you - you see that, you don't see where they go from there?

A: I don't, I went back in the house.

Q: So they were still there at the manhole cover when you went back in the house?

A: I believe so, yes.

Q: Okay.

Q1: When you go back two weeks ago...

A: Mm-hm.

Q1: ...and you went into the manhole cover, what time of day was that?

A: Um, I went like early in the morning because like I said, I ain't want nobody to see me go down there.

Q1: Before sunlight?

A: Yeah like early in the morning, I'd say like 2:00 in the mornin', 2- 2:00 in the mornin' like 2:00 in the mornin', 2:00, 3:00 in the morning.

Q1: Okay. And the manhole cover has - like on either side it has little slots, right, and they usually have a tool that hooks on that to take it off.

A: I ain't...

Q1: You - you stuck your hands in there?

A: No it don't go - it's like these little - it's like I can't really visualize right now but it's like a little hole right here...

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Q1: On the - on the edge of it?

A: Um, not on the edge, it's like - like say this is the - the manhole, the metal thing...

Q1: Yeah. Yeah yeah yeah yeah.

A: ...there's a little hole right here and then I think there's a little hole - like a little bit on the sides like...

Q1: You - you...

A: ...like you - you...

Q1: ...you stuck your fingers in there?

A: I stuck my fingers in there and lift it up.

Q1: Damn, they're heavy.

A: Yeah.

Q1: So you don't - you didn't use a tool like he asked, right?

A: I ain't use no tool.

Q1: Okay. Um, so you remove it, you said you had to like...

A: I had to like use my strength to push it to the side a little bit so I can like, you know, scoot it over.

Q1: Right.

A: And...

Q1: And then you had a flashlight?

A: Yeah I had my phone.

Q1: Okay. So...

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A: When I did that...

Q1: ...here's - here's a question for you that I'm kind of curious about, like obviously two dudes going up to a manhole cover, removing it, it's kind of weird but it was so weird to the point that you go back in there at 2 o' clock in the morning when it's dark out...

A: And that's what...

Q1: ...so you're trying to be - you're trying to hide yourself from anybody else seeing you goin' down there too, right?

A: That's what - that's what I told the officer, I said like I was just bein' weird like I don't know why I did that but I was just bein' nosey, I was tryin' to figure out what was down there like so...

Q1: Okay. So you go at 2 o' clock in the morning 'cause you don't want anybody else - 'cause you know somethin's up...

A: Yes.

Q1: ...okay? What'd you think you were gonna find?

A: I'm not sure to be honest. Like I said, I ain't know what they was puttin' down there so when I went to that little manhole and lift it up I looked and I seen a dead body in there and I'm just like - like that shit is crazy that somebody was really down there. Then like me bein' weird like - like I don't know, like I...

Q1: What do you mean by, "Me bein' weird," like...

A: I had like...

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Q1: ...explain that to me.

A: ...(unintelligible) like - like I feel like ya all lookin' at me like why would you go down there when you see something like that...

Q: Well yeah I think that anybody would ask that, right?

A: Yeah that's what I'm sayin', like a person basically like lookin' at me like you weird, like why would you go down there, and like I said, I don't know, I couldn't even give you an answer for that.

Q1: Most people would not have done that, especially when they look down there with a light and they see a body...

A: Yeah.

Q1: ...they're gonna say what? What do you think they're gonna say?

A: Be scared, call the police.

Q1: Yeah, there you go, right? 'Cause that's the - the normal reaction.

A: Yeah.

Q1: But instead you crawl down in there and then let's take it a step further, you did what?

A: I went down - I went down there, went down the steps 'cause like the little step like to- towards the end is right there...

Q1: Mm-hm.

A: ...and I- I'm tryin' to see who it is, I'm tryin' to see really down there.

Q1: Mm-hm.

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A: And like I said, I - I was touchin' on her, like not like doin' no weird shit but I touched her and so I'm like tryin' to see who it was...

Q1: Can you - can you make out that it's a female?

A: Yeah it was a female.

Q1: Okay. How old do you think that female was?

A: I'm not sure.

Q1: And you touched her?

A: I did touch her.

Q1: Can you tell me where?

A: Like I said, the - the chest area and the pants leg area.

Q1: So both?

A: Um, not at once - not at the same time but yeah I did...

Q1: Where - when you touched her in the chest area, just like how?

A: Like - like that, like tryin' to like - like I can't really explain it, I grabbed like this and then like with her pants leg like that and then that's when I was like I gotta get back up. And I can't really visualize her 'cause like she was like really like pale, like - like it just looked so nasty. And like I said, I wasn't really down there for a long time so...

Q1: What were you trying to do when you grabbed her shirt?

A: I wasn't tryin' to do anything.

Q1: Well I mean you grabbed it for a reason.



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A: I was tryin' to see who it was, tryin' to like move her to the side 'cause like I say, I didn't want to touch her face or nothin' like that 'cause her face looked like - like someone like it was decomposed and like they ain't - shouldn't touch that and like (unintelligible) I should be like touchin' her clothes and like instead of me touchin' her actual skin, you know what I mean so...

Q1: So you touched her shirt in her chest area?

A: Yes.

Q1: Did you touch - and you touched her pants where do you think? 'Cause you - remember, we discussed it earlier, we're gonna - we're gonna find your DNA on her, right?

A: Yes.

Q1: Okay. Where on her are we gonna find your DNA?

A: It was like on her little pants leg like right up here.

Q1: On the inside of her thigh?

A: It was like yeah kind of like towards like the outside.

Q: You're describing the right leg?

A: Um, like as she was positioned like I don't even know which leg it was 'cause I ain't have my flashlight just lookin' at her and just really like, you feel me, like, analyzin' her, really touchin' on her like that. I had the light like facin' her - it was just hard like holdin' the light at the same time then like on the little rail thing and it was just kind of hard.

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Q1: Did you touch her anywhere else besides her shirt, chest or the inside of her - possibly her right leg?

A: No.

Q1: Anywhere else? Are we gonna find your DNA on her body?

A: Mm, like fingerprints, that's really it.

Q1: Where's your fingerprint gonna be?

A: I told you like by the chest and like...

Q1: No I'm talkin' like bare skin.

A: What you mean, like...

Q1: Inside the shirt or inside the pants are we gonna find your DNA in tha- in there?

A: No. (Unintelligible) I touched her clothing, I ain't - I ain't do any sexual weird shit like...

Q1: Right, and I - I - I'm not even askin' that, I'm just saying like...

A: ...(unintelligible)...

Q1: ...'cause I just want you to think back, this was only a couple weeks ago and obviously this is not something that happens every day so you should be able to remember.

A: Yeah.

Q1: Besides on her actual shirt or her actual pants is your DNA gonna be on her skin anywhere?

A: No.

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Q1: On her body anywhere?

A: It shouldn't be.

Q1: Shouldn't be?

A: No.

Q1: What do you mean by shouldn't be?

A: 'Cause I ain't - I touched on her clothing, I ain't touch her...

Q1: You didn't touch her skin.

A: No.

Q1: Okay.

A: (Unintelligible).

Q1: And not - nowhere near her body either?

A: No.

Q1: Did you remove anything?

A: No. I know you seem like you're trying to make it seem like I - like I...

Q1: We have to ask these questions.

A: I understand...

Q1: Trust me Jayshawn...

A: ...(unintelligible)...

Q1: ...this is gonna sound super weird but we have to ask this stuff because we have to get clarification. Remember we're gonna test all this stuff, right?

A: Yeah I understand like...

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Q1: We're gonna test - we're gonna test her, we're gonna test her clothing...

A: Yes.

Q1: ...and we have to verify that - where you touched it so we can eliminate that.

A: Yeah.

Q1: You understand that?

A: Yeah.

Q1: That's why I'm asking you these kind of weird questions.

A: Yeah like I ain't goin' down there to have sex, I ain't even have time to, like the thing was somewhat open so there was cars that would pass by like 'cause they drive somewhat over it like they probably - the car would've hit it or something like that so everything was just like fast. So I ain't...

Q1: So your DNA will be strictly from your hands?

A: Basically, I ain't - I ain't use any other body parts touch her with.

Q: Jayshawn do you - you understand why we're askin' right? Because this is not a normal thing for people to do. Once they realize it's a body...

A: Yeah.

Q: ...and you're already kind of panicked or stressed about bein' blamed (unintelligible) so, you know, our question is why would you go down and touch her? That - I mean...

Q1: You understand that, right? I mean like remember when I said like normal people would've been like oh shit, right, and they jump out of there or they look

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and they see it and they call the police right away, even you said that. Instead  
you go down there...

A: Yeah.

Q1: ...and you touch her.

Q: You know, I mean obviously it's - she's dead and - and it's a body so that's -  
that's why we're asking. I mean we have to.

A: Like I said, I'm bein' honest with ya all...

Q: No...

A: ...I'm not lyin', it's just...

Q1: Is your...

A: ...I - I just feel guilty because like you said, I ain't report it right then and there,  
like I feel bad like fam- I don't know, like I don't know.

Q1: So we have to ask the hard questions, you understand?

A: Yeah.

Q1: That's - that's what we do, we have to ask these questions and nothing is out of  
bounds, there is no limit to what we have to ask because we have to clarify.

A: Yeah.

Q1: You understand that? So the fact that you touched her on her shirt and her leg  
with your hands is a start. So if there's anything else...

A: I mean I touched the rails like I said, with my bare hands, like...

Q1: No I'm - I'm talking about her- herself.

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A: Okay.

Q1: You said the rails while you're climbing up and down, right? Yeah that - I get that. But I'm talking about the victim. Anything else?

A: I mean that's it. Like I said, after I did that I climbed back up and closed the thing and luckily nobody seen me so I went about my day.

Q1: Why would you say luckily?

A: Because like people in that neighborhood they like - some people be out late at night, some people be drivin' past like, so that's why I said luckily. I was really like panickin' at that moment because like I ain't want to be seen doin' something like that. The reas- I don't know why I went down there and did that and I just don't know, like but...

Q: Who- who's the lady that was living with you?

A: Um, her name is Tahoney.

Q: Ta- how do you spell that?

A: Uh, T-A, and then Honey.

Q: Okay. And what's her last name?

A: Uh, Percy.

Q: Okay. Let me - and I'll be point black, is that Tahoney Percy down there and - I mean you know - you would recognize her, right?

A: Not at all.

Q: Okay. That's not her?

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A: She couldn't even - I don't even know if her body could even go down there  
'cause that manhole is like kind of...

Q: Oh. So Tahoney's a big girl?

Q1: She's - she's a bigger girl?

A: She's not huge but she got some weight on her.

Q: Okay.

A: If you ain't skinny ya all can't go down there, like...

Q: Okay.

A: ...ya all not gonna fit so...

Q: You understand we have to ask, right?

A: Yeah.

Q1: So here- here's a follow up question to that that we have to ask, you know we're  
gonna identify who this is, right?

A: Of course.

Q1: Okay. Do you know this person?

A: I don't.

Q1: Is there any way, shape or form that we eventually either it be tonight, a week  
from now or a month from now gonna find a connection between this victim and  
you?

A: None at all.

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Q1: Not at all?

A: None.

Q1: You've never met this person, you don't know this person...

A: I don't know who it is.

Q1: Okay.

A: That's the thing.

Q1: Okay.

A: I ain't sit there and visualize like...

Q1: Your DNA is only on the clothing on the outside. Is your...

A: (Unintelligible)...

Q1: ...any bodily fluid gonna be in this person?

A: What you talkin' about, my sperm or anything?

Q1: That's correct.

A: No.

Q1: Or on th- this person's clothing?

A: No I'm not sick.

Q1: No semen of yours is in this person or around this person or on this person?

A: No, sir.

Q1: Look at me though...

A: No...

Q1: ...look at me - look at me for a second...



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A: No, sir. No, sir.

Q1: Look at me for a second.

A: I ain't - I ain't that weird, no.

Q1: Listen - no I didn't say you are...

A: Yeah.

Q1: ...you know we have to ask that, right?

A: (Unintelligible)...

Q1: Okay. Okay I just want you to understand that...

A: Yeah.

Q1: ...we have to ask this stuff because believe it or not there's people out there that would - would do something like that so...

A: (Unintelligible)...

Q: Jayshawn, hard question comin', did you put this body down there?

A: No, sir.

Q: Okay. If - and I'm not saying we're going to, uh, if we ask you to take a polygraph reference that question will you be willing to take that? Do you know what a polygraph is?

A: Like a lie detector test?

Q: Yeah.

A: I mean I guess so.

Q: Okay. What do you think the results of that lie detector test would be?

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- A: Come back negative, I ain't kill nobody...
- Q: Okay.
- A: ...or put nobody down there. I - to be honest with you I ain't even want to report it like because I didn't...
- Q: Because of this?
- A: ...want to be in this position, I know people in the neighborhood are gonna look at me some type of way and it's like I should just - I just regret...
- Q1: Well they...
- A: ...even saying anything, just kept my mouth..
- Q1: Let - let me tell you, when we drive you back over there and you go back home and you're not locked up in CCDC, you're not in handcuffs, that's gonna defeat that, right?
- A: Yeah but...
- Q1: That's all there is to it so just don't even sweat that stuff. People are gonna talk anyway man, you know how it is.
- Q: I'm gonna be - I'm not the - probably the - between the two of us I'm kind of the jerk, okay? Did you - if you knew who the two people were would you tell us?
- A: (Unintelligible)...
- Q: 'Cause I know you're stressed about that.
- A: ...I'm not like no snitch so I wouldn't tell like...
- Q: Okay. Let me, um...

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A: ...that. I really don't know...

Q: ...do you know who?

A: No I don't. Like I said, I couldn't even see who it was, it's pitch black and like I said...

Q1: Could you tell if they were white, black or Hispanic?

A: Couldn't tell.

Q: Okay. But even if you knew you wouldn't tell us?

A: No.

Q: Okay. I just - here- here's the deal Jayshawn, I want to totally eliminate you, that way I can feel good about it so maybe this coming week I'll get in touch with you and have you come down and do a polygraph. And like I said that'd be the - basically the one question and then - and we're good to go. Um...

Q1: Are you - are you willing to work with us on this case to make sure that we eliminate you 100%?

A: I'll do a polygraph test but I'm not tryin' to get involved in anything like...

Q: Okay.

A: ...'cause I ain't do nothing wrong, I just went down there and like I said, I found it and...

Q1: But you want us to eliminate you, correct?

A: Yes.

Q1: Okay. Are you willing...

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Q: I'm not...

A: (Unintelligible)...

Q1: ...to do whatever it takes to do that?

A: Yes. I just feel like a polygraph test, that's it so I can prove to ya all I'm not lyin'.

Q: Okay.

A: And that's really it, I ain't tryin' to like...

Q: That's a huge part for us.

A: ...(unintelligible), you know what I mean.

Q1: Okay. So you understand we're gonna take a sample of your DNA today, right?

A: That's cool.

Q1: We have to compare it to the DNA that we talked about on the shirt and on the pants, eliminate that part of it. And that's why I ask you is this DNA sample that we're gonna take from you gonna show up anywhere else on this victim?

A: No.

Q1: Okay.

A: Just to, uh...

Q1: Clarify.

Q: Do you have any questions for us?

A: No not at all.

Q: How long have you lived in that neighborhood?

A: Eight years.

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Q: Eight years. Any trouble houses? Any trouble - trouble that has been in that neighborhood?

A: Uh, no it's actually a peaceful neighborhood.

Q: No neighbors that frickin' fight like crazy? 'Cause we all have 'em?

A: Um, not that I know of. People get in little arguments but they keep that, you know, in they household.

Q: Okay.

A: They don't go outside and have the whole neighborhood lookin' so...

Q: Is there any party houses down there?

A: Mm, no I don't think so.

Q: Okay. Obviously are you partyin' at your mom's? Probably not, right?

A: I don't even party.

Q: Okay.

A: Like I said, I go to work, I play basketball and I'm goin' to school and that's it.

Q: Where do you go work - uh, where do you work at?

A: Uh, I just start at Wendy's but before that I was workin' at Amazon.

Q: Oh Amazon?

A: Yes.

Q: What were you doing at Amazon?

A: Um, unloadin' boxes.

Q: Oh out there at the...

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A: The one on - on Alexander and Pecos.

Q1: Distribution center?

A: I think so.

Q1: Yeah.

A: But just transferrin' like boxes from...

Q1: What was your - were you workin' when this happened, the - the three days ago  
roughly when these two guys dropped the body...

A: I was workin' at Wendy's not at, um...

Q1: What was your shift?

A: Uh, 5:30 to 1:00 in the morning.

Q1: Okay. What - and you obviously you weren't workin' that night?

A: No.

Q1: Okay. Um...

Q: How - how come you left Amazon?

A: I got fired.

Q: Oh that sucks bro.

A: Messed that up.

Q: Did you, um, or have you since this occurred heard anyone in the neighborhood  
talkin' about anything weird that might be connected to this?

A: Not at all. Dude was tellin' me, um, his - I guess his one niece was missin' or  
somethin' like that. I seen her po- her posters around the, uh, neighborhood and

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like on the main streets but he was tryin' to see if that was her. Like I said, I don't know who in there.

Q: And did it look like...

Q1: Did it look to you when you saw the body that it might've been that person?

A: I can't really visualize like how the body was like decomposin', I can't really tell.  
Like I said, I wasn't down there...

Q: Okay.

A: ...just examin'in' it but...

Q1: Did you see any - any injuries on the body?

A: Um, like I said, I can't really tell.

Q: You said it looked like it was decomposing...

A: Like decomposing...

Q: ...is that on the face, the - I mean was...

A: Like the face, it looked like...

Q: ...was it close? Obviously it's close to you.

A: ...it looked like - like I said, after the fact but like I said, like it looked ashy, like it looked like, you know what I mean, like...

Q: Okay.

A: ...it just - I can't really describe it, like...

Q: Did it stink?

A: It did stink.

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Q: It did.

Q1: Did you notice any - oh I'm sorry.

Q: Go ahead.

Q1: Did you notice any blood coming from the - from the body at all?

A: Like I said, I ain't examine it like that. I ain't look at the whole like area like - I'm pretty sure yes because when a body do decompose blood still be down there but (unintelligible) ain't really look like...

Q: How - how long do you think you were down there?

A: Mm, probably like - mm, probably like less than a minute.

Q: Okay.

A: Everything was like fast so...

Q1: Did you take pictures?

A: None at all.

Q: We have to ask that because people do.

Q1: There's no pictures on your phone?

A: No.

Q1: Did you tell anybody, um...

A: I ain't tell nobody.

Q1: You didn't even tell your mom, huh?

A: I told - I told her like when it happened when I called - like when I called and basically told her a body was there and that's when people was comin' up to me



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and I was just like tellin' everybody but...

Q1: That's today though, right?

A: That's today. Other than that...

Q1: So what did - what did your mom say when you told her that?

A: Like she was shocked, like - like there's somethin' down there, like she was just shocked. She was just tryin' to figure out who, you feel me, was down there 'cause my mom old so like she - she just, yeah she don't comprehend things like straight like correctly...

Q1: Mm-hm. Mm-hm.

A: ...about everything so...

Q: So you know - obviously you live in that neigh- that neighborhood for eight years, is there anyone that's been missing?

A: Like I said, um...

Q: Other than that girl.

A: Um, I'm not sure.

Q: Okay. So no one like down on the corner - corner house or whatever, haven't seen her and...

A: No.

Q: Okay. Do you guys - are you that kind of neighborhood where you talk with your neighbors, or no?

A: I don't even communicate with my neighbors like that.

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Q: Okay so everyone kind of keeps to themselves?

A: Mm-hm.

Q: Have you provided your DNA sample before?

A: Mm, no.

Q: Okay.

Q1: You mentioned earlier that you had made some stupid decisions, bad decisions earlier in your life, what - what were you referring to?

A: Just like basically growin' up, I mean I don't want ya all thinkin' it's every typical black person thing but I fell in love with basketball with a early age and I've been like strivin', tryin' to get to the next level, played high school, I was really good at it but my senior year like I surrounded myself with the wrong crowd, was not goin' to school, was ditchin', like just bein' arrogant and, you feel me, like I didn't graduate on time, I didn't like - that kind of woke me up like I wa- I got people in my - in my circle that - that preach to me and want me to succeed, they want me to get ahead so I'd have people tell me like, "You gotta change your ways," so I went back to school, I got - got my diploma and, um, that's really it. Like I got a - I got - I got put in jail like behind a girl, like...

Q1: What do you mean, 'caught like a DV case'?

A: Domestic violence, yeah it was all (unintelligible)...

Q1: Mm-hm. How long ago was that?

A: Um, I think that was in like No- October, November I think.

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Q1: Of this last year?

A: Yeah. I was in there for like two days and I just seen myself just - I just keep fuckin' up, I keep messin' up, keep messin' up so I'm just tryin' to stay positive and get back on - on...

Q1: Was that your only arrest?

A: That's my only arrest.

Q1: So a DV case. What is her name?

A: Um, Mary- Marylee.

Q1: Marylee?

A: Yes. That was my ex.

Q1: Do you guys still talk or no?

A: Not at all.

Q1: No. After - after the DV that did it, huh?

A: Basically. I mean we talked a little bit after that but like relationship-wi-relationship-wise we wasn't - we wasn't really feelin' each other no more so...

Q: That kind of ended it.

A: Basically.

Q1: White girl, black girl?

A: Black.

Q1: Okay how old is she?

A: Uh, she a year older than me so I think she turnin' 24. She 23 right now.

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Q1: Is she still here in town?

A: Yeah.

Q: Are you still going through that case or is it done?

A: It's done.

Q: What happened?

A: Um, a altercation like she - like I guess - I'm being honest, I - I overreacted and we got to fightin', I did like - like overdo it and I was just punchin' her.

Q: Mm-hm.

A: Like I said, I'm not no bad person but I did make a huge mistake and I ended up goin' to jail for it, I got out of jail, I, um, tried to go apologize and when I apologized her - her father came outside and chased me.

Q: Oh damn.

Q1: Damn.

A: I ain't even mad though 'cause if I was a father I would do the same thing (unintelligible) chased me like he tried to get me, he couldn't catch me though but like after that like I was in an altercation with them and just tryin' to stay out the way 'cause like I say, I didn't want them to come shoot up my house or anything like that. So after that I just stayed out the way so...

Q: Just be done.

Q1: Do you have a car?

A: I used to.

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Q1: You don't have it anymore?

A: No.

Q1: What happened to it?

A: Um, she actually messed it up. To be honest she messed up the windshield, she put dents in it and it was like a little older car so I gave up on it so I sold it. And that's like the, um, that's like a car that's bad luck 'cause I got a lot of tickets in there so - like I said, (unintelligible) I was kind of nervous 'cause like I said, I got warrants so lie I was afraid I was goin', you know, tell what happened and then get locked up. And I got school on Tuesday and I gotta go to work (unintelligible) my job so...

Q1: You got just traffic tickets though, right?

A: Just traffic tickets.

Q: Where you goin' to school at?

A: Uh, CSN.

Q: For just general studies or are you...

A: Um...

Q1: He just started.

A: ...no, uh, Criminal Justice.

Q: Oh okay. What are your, uh, traffic tickets for?

A: Um, Driving with Suspended Ins- um, Suspended Plates so basically no insurance.

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Q: Is that out of Justice or City?

A: Um, I think it's City.

Q: Okay.

Q1: When did you, uh, like get rid of that car?

A: Um, last year.

Q: Okay. If - if you have any knowledge about who that was down in the manhole - manhole would you tell us?

A: I mean I would. Like I said, I'm - I'm here to help.

Q: Okay. Well and the reason why I ask obviously you already said that if you knew who put that person down or you knew who the two people you were describing...

A: Yeah.

Q: ...that you wouldn't tell us.

A: No I wouldn't.

Q: So if you knew who that was in the manhole you would tell us though, right?

A: Yeah. I don't know who it is. Like I say, I ain't - I wouldn't tell ya all who did it, I don't know who did it because that backfires on me and puts, you know, my little household in jeopardy 'cause people don't play about that, they don't, uh, play about their life I guess so I don't want people thinkin' I was snitchin' but I didn't need to have a lot of attention like back at the house it's like kind of crazy, it's kind of like messin' me up mentally, kind of like stressed out.

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Q: Mm-hm.

A: And this is the first time in my whole life I've been in this little room and like I'm bein' interrogated like, I'm being interviewed, you know what I mean, and it's like I'm not used to this like so I'm just like...

Q: Mm-hm. I think both of us can tell you're very uncomfortable.

A: (Unintelligible) yeah I'm really uncomfortable right now, like - and then like ya all thinkin' - I don't know how ya all operate and ya all probably assumin' I did it and that's what I was afraid of when I was thinkin' about callin', like they gonna think I did it, like that shit's crazy so - but I just like it's the right thing to do 'cause I have a heart, I'm not fixin' to - I know somethin's down there, I'm not fixin' to like just not say nothin' about it, like that person whoever it is down there they - they got a family like - well I know it's a female but she has a family or anything like that so...

Q: Mm-hm.

A: ...I can at least do that. Like when I made that call I feel a little relief like - like I - I did something good today so...

Q: So just basically the reason why you had to call today is you just couldn't take it anymore?

A: I couldn't take it, it was stressin' me out. Like just me dealing - like I said, I never dealed with nothin' like this in my life and me just bein' in my room or goin' to work and knowin' just like a corpse, like I seen a corpse and like no one in this

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town here, nobody else gonna know except for I guess the mother fuckers that did it but like me just seein' that shit like shit...

Q: What's your schedule like this week?

A: Um, I actually was supposed to go to work, I was hopin' I could get like a little...

Q: Oh I'll give you my card and - and Event# , okay?

A: Okay.

Q: And then if your manager want, my cell number's on it, they can call me and - and ask me.

A: Yeah I work, uh, like five days a week. I was gonna check the schedule - I was gonna check the schedule today 'cause it come out on Sundays so...

Q: Okay. So you think maybe Wednesday you might be able to be available for a couple hours?

A: Mm-hm.

Q: Okay.

A: I believe so.

Q: So what I'll do is, um, probably 'cause tomorrow's a holiday, um, Tuesday I'll get a hold of our polygraph unit and see if we can squeeze you in Wednesday. The only think I'm gonna ask you is - and I don't know how much weed you smoke but you gotta be straight, cool? Can't be high when you come down here. Um, and if you need a ride I'll (unintelligible) down and grab you and bring you - 'cause it's here in the next building over.



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A: Yeah I'm gonna need a ride 'cause...

Q: Okay I'll give - I'll - I'll pick you up, that's no big deal or, um...

Q1: Jayshawn what's your, uh - before I forget, uh, what's your, uh, Facebook or Instagram, whatever?

A: Um, Facebook is - I mean do I have to tell you my Facebook? But it's, um, Jayshawn Bailey, it's my name.

Q1: Okay. Listen, um, once again, I'm - I need to remind you in case you forgot, and I'm not trying to be a dick but you want to remove yourself from this situation as mu- as quickly as possible from - right now you're not in trouble, you're not in handcuffs, if you were a suspect you'd have a set of handcuffs on and you'd be hooked to that table right there. Okay? You're not.

A: Mm-hm.

Q1: But at the same time we have to eliminate you to move on to the next person and find out who actually did this.

A: I understand.

Q1: Okay? And you said, "I will do anything," which I would do anything, I'd be like, "Hey guys, I know it's gonna sound weird as fuck but this is what I found out, this is what I seen, this is what I touched, you guys can have everything you need to eliminate me from that column." So I'm not trying to be rude to you in any way but you giving me your Facebook or your Instagram or whatever you got goin' on is only gonna help eliminate you from that column, you understand that? Your

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DNA is one of those things. That polygraph that we're talkin' about is another one of those things. We eliminate you, get you out of the way, we move on with the investigation.

A: Yeah.

Q1: You understand that?

A: How does the polygraph test work though? I don't...

Q: So what happens is...

A: Does it go off of brain waves? Like I just - I don't really...

Q: It - it goes off of your physical reactions. You know, like you - you and I are sittin' here talkin' and - and you're - you're breathing, your normal pulse rate, they'll monitor - obviously you've lied before, right?

A: Yeah.

Q: Have you ever been stone cold busted in a lie, like ah shit? Do you remember that feeling?

A: Yeah.

Q: Okay. So whether you show it outwardly or not your body, you react to that and that's what they monitor. So what they'll do is ask a series of questions...

A: Mm-hm.

Q: ...where they know you'll be honest like, "Is your name Jayshawn Bailey?" "Yes." "Do you live in Las Vegas?" "Yes." You know, um, "Is Las Vegas in Oregon?" You know, and they'll tell you, "Purposely lie." "Yes." And then they'll monitor to

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see how your body reacts.

A: Mm-hm.

Q: If you're tellin' the truth you have no issue. Cool?

A: That's cool. I - I do got anxiety though so like even just me bein' interrogated like two hours, like four hours on me I...

Q: These guys...

A: ...(unintelligible).

Q: The only thing I'm gonna ask you is probably the most important thing is is that you don't be high.

A: I won't.

Q: Okay?

A: (Unintelligible) weed and like I just smoke all day or nothin' like...

Q: We deal - I mean we - we both had to take a polygraph when - when we got hired and I can tell you right now, um, I had anxiety goin' in. But that- that's what they deal with, that's - it's dealt for stress.

A: Yeah.

Q: Okay?

Q1: They - and they understand and they know that people when they go into that setting are gonna be stressed out and they - they totally get it. They will sit with you, they will talk to you for quite a while before they even start the - the test at all. They'll explain everything about it, they'll ask you ten times, "Do you have

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any questions," and then they'll start the questioning.

Q: And I promise you that each question they ask you they will tell you which - every question before they start. Like, "Did you place her down the manhole," is probably gonna be a question like that or very similar but every question you would - will hear. They'll be no surprise questions when they put you on the - the monitor.

A: Mm-hm.

Q: Okay? So every question you will know. So and I'll be honest, i- is there anything that you're leaving out today with us?

A: No.

Q: This is kind of, um, I won't call it a freebee but if there is we need to know about it now and let us address it. You cool?

A: Good.

Q: Okay. Obviously you go to school, you've been in school so I'm gonna let you read this. And what this is is a Consent for DNA Collection. And it's just basically gonna be, um, for the comparison on any DNA we find on her.

A: Now I have a question, if I - I'm gonna sign it though I'm just sayin' like if I - if I choose not to then like...

Q: Well then I'll go get a search warrant.

A: A search warrant?

Q: Yeah.

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- A: What you - what you gonna sear- what you gonna search?
- Q: Just to get your DNA, that's it.
- A: That's crazy.
- Q: Well and you said you're willin' to do whatever it takes, right?
- A: I'm gonna do it though, I ain't...
- Q: No, no...
- A: ...(unintelligible)...
- Q: And you're a Criminal Justice major, right? Or you're working in criminal justice and there's probably a certain lack of trust with us, right, I just met you, you just met us.
- A: Mm-hm.
- Q: Cool? Is that fair to say?
- A: Yeah.
- Q: Okay. You already told us you touched her so I expect to find your DNA on her. All this does if there was a mixture of DNA it helps me take yours out of it.
- A: Okay.
- Q: Cool? Is that - that's no trick, right? So go ahead read this and if you consent just go ahead and sign. And, uh, if you don't mind, date and time. It is the 19th...
- Q1: Jayshawn you understand that this is 100% consensual, right?
- Q: ...and it 4:23 if you don't mind puttin' the time. You okay, man?
- A: I'm okay.

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Q: Okay. We will, uh - if you think you need counseling I'll have someone reach out to you, okay? At least, uh, they'll contact you in the next couple days and I'll be in contact with you about the polygraph. But I want to feel very comfortable about eliminating you, okay? Oh there it is.

Q1: While he's doing that, is there any answers to any of the questions that we have asked you so far that you want to change?

A: No (unintelligible) like I just feel like ya all think I really committed a murder?

Q1: No.

Q: No.

Q1: No dude let me tell you - let me - let me stop you right there and - and here's what I'm gonna tell you. First hardest lesson that I ever learned comin' to the Homicide Unit was never assume anything.

A: I know, I mean...

Q1: So I don't - I don't assume a thing until it's all done with.

A: If I did it, trust me, I wouldn't even call you guys and say that I...

Q1: Well...

A: ...(unintelligible)...

Q1: ...that- that's - that's honestly irrelevant because there's a lot of people that do do that but I'll tell you this, I don't assume a thing until it's all over with. So please don't think that because we're not thinking that way.

Q: Okay open up and say ah. And what this is I'm just gonna swab each cheek and

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then it goes right straight in here, okay? Um, your name's on it.

Q1: I did that.

Q: Okay?

A: So once that come back...

Q1: So that's what I'm...

A: ...negative everything's good?

Q1: Say what?

A: So once that come back negative everything's good?

Q1: We'll let you know.

Q: We'll let you know.

Q1: And that's why I'm giving you the opportunity now 'cause if you wanted to change any answers this would be the time to do it.

A: (Unintelligible).

Q1: Okay.

Q: Does this go inside with it?

Q1: Yes.

Q: Are you sure?

Q1: I just did one.

Q: Okay. Well if it comes back (unintelligible) I'll call you 'cause I know you're good for it so...

Q1: Well maybe I didn't do it right either but I put it in there 'cause I wanted to...

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Q: Where did you go?

Q1: I wanted it...

Q: When did you do it?

Q1: I don't know, a week or two ago. I wanted...

Q: Oh so...

Q1: ...it saved in there so...

Q: ...when you're in Florida you're gonna get the call of, "Hey you did this wrong."

Q1: Sure.

Q: And then - then I'll know. Okay. Before I turn the tape recorder off is there any questions that you have for us?

A: No.

Q: Okay. Anything left Eric?

Q1: No, sir.

Q: Okay. Operator this concludes...

A: (Unintelligible) oh my bad. So like if - if ya all do find like my evidence on there like what's like - what ya all gonna do, like (unintelligible)...

Q: Well you told me you touched her, right?

A: No I did, like...

Q: Okay.

A: ...what if the polygraph test come back like - like negative - not negative but positive but...



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Q: Like you were lying?

A: I'm not lying but I'm just saying 'cause sometimes like I don't believe a machine like can determine like if you're lying or not. Like I don't really...

Q: Jayshawn let me tell you this, if you're being truthful with us...

A: I'm being truthful.

Q: ...then you have nothing to worry about.

A: All right.

Q: Um...

A: I'm just the type of person I like to know the like the scenarios, like what else, you know...

Q: Yeah I can tell you right now they'll - they will run you through a series of dry runs, dry tests or whatever and they'll be able to tell me through that little series of tests whether you're testable or not. Some people aren't just for whatever reason. But, um, if - hypothetically speaking...

A: Yes.

Q: ...your DNA, you already said you touched her, and you fail the polygraph, can I arrest you based on that? No. Okay? If down the road we get her identified and there's some connection between you and that person, yeah there's gonna be some issues, okay? I'm not a bullshitter, I don't lie to you, I don't fluff crap, okay?

A: Mm-hm.

Q: Um, that's just how I am, I'm a straight shooter. Okay? If you're being honest

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then there's no issues. I appreciate your honesty by telling me you wouldn't tell me if you knew who that was.

A: Yeah.

Q: You know, that's something you have to live with, not me. Cool?

A: Everything good.

Q: All right, Eric?

Q1: No, nothing else.

Q: Operator this, uh, concludes the interview. It is 1629, same persons present.

Q1: What type of, uh, iPhone is that?

A: I got the 11.

Q1: You like it?

A: I feel like it's overrated but it do got a lot of features (unintelligible).

Q1: How much is it?

A: Um, I gotta pay I think like \$800 but I'm doin' payments with my, uh, phone company.

Q: Who's the company go through?

A: Uh, Boost.

Q: Boost? Who's that off of?

A: Uh, Sprint.

Q: Is that...

Q1: Yeah. That's right.

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Q: That's - I got Sprint and I'm not - how's your service for you?

A: Same as Sprint, trash.

Q: Yeah. I'm actually thinkin' about switching to T-Mobile tru- truthfully. I've had Sprint forever.

Q1: Any questions for us at all?

A: I'm out of questions.

Q1: Hey what are you worried about?

A: It's just like me going back to this house like and just people just - I don't know, 'cause people smart, like they might really be assumin' that I did this, like - like people might really think that I had something to do with this like...

Q1: Well you know the first question is they're gonna say, right?

A: I don't know, I just...

Q1: What do you think they're gonna say? What's - what do you think the first question they're gonna ask?

A: Like what happened, like...

Q1: Well besides that. What's the one obvious question that they're gonna ask?

A: Did you do it?

Q1: Yeah. 'Cause you know why, they're gonna be wondering like how in the fuck did this dude know she was down there.

Q: And then the next question's gonna be is who did it?

Q1: Right? I mean you would think the same thing, right? If all of a sudden I - I came

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up out of nowhere and said, "Yeah there's a dead body down in that manhole cover," "How'd you know that?" That's the first thing they're gonna say.

A: I already know it.

Q1: You know what I mean? That's what they're wonderin'. How would anybody know that? And then obviously they don't know. But if they did know that you went down in there and touched this girl then they're gonna be like whoa that's weird.

Q: Yeah. And...

Q1: Wouldn't you think that?

A: Of course.

Q: Here's how we operate, just to appease your mind...

A: Mm-hm.

Q: ...okay, we don't go to your neighborhood and say, "Jayshawn told us this and he did this," at all, okay?

A: I know.

Q: Just like if you said, "Hey it was whoever and whoever dumped this body down there," we don't run to them and say, "Jayshawn saw your ass." Eventually that would probably come out in court but we're not gonna straight up and front you out like that.

A: I understand.

Q: Okay? In fact, because you're so worried about it you'd probably be Cooperating

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Witness # 5. Until it got to court no one would know who you were until that happened. And we don't go down and, "Jayshawn saw A and B dump this body, do you know anything about it," okay? That's not how we operate.

A: Yeah my whole point I just wasn't tryin' to get involved in any of this.

Q1: Let me ask you somethin', just out of your - just your - your - your opinion since you li- you live there right now, right, and you've been in this neighbor for - for eight years...

A: Yeah.

Q1: ...you mentioned earlier you didn't see a car...

A: I didn't see no car.

Q1: ...that leads me to believe that this is perhaps somebody that lives near this manhole cover.

A: Yeah that's (unintelligible)...

Q1: Do you think the same thing?

A: Like I said, I don't...

Q1: Did that cross your head at all?

A: I mean they could've had a vehicle, they probably ducked it off, like I said, people ain't just gonna park right there and just do it like, I don't know...

Q1: But they had to be in a hurry because they're not gonna hang around and do that shit, right, and be hangin' out so they had to be movin'. So if the car is sittin' by it ain't gonna be too far away.

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A: Yeah like I said, I ain't - I ain't seen no car, like it was at night, like people that stay there there's a lot of cars right there so that's why I ain't - I don't know.

Q1: Do you think it's somebody that lives in that area?

A: I couldn't even tell you.

Q1: Did that cross your mind?

A: No. I try not to think about it but I'm stressin' out.

Q: This has fucked you up, huh?

A: Yeah.

Q: Did you think it would fuck you up this bad?

A: I mean not really.

Q: Is this your first body?

A: I ain't kill nobody.

Q: No no no, that you've seen.

A: Oh, yeah yeah yeah.

Q: No.

A: No that's...

Q1: Jayshawn man.

A: ...that's what I was tryin' to (unintelligible)...

Q1: Stop thinkin' like that.

A: When you say a body that mean like...

Q1: No have you seen a dead body is what he means.

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Q: Yeah.

A: No.

Q1: Do you have any tattoos?

A: Um, I do. I got my initials on my back on my biceps and, uh, I think tricep or bicep one of those and, um, my, uh, mom's name on my arm.

Q1: Do you have anything on your chest or your stomach or anything?

A: Not at all.

Q1: Can you lift your - your sleeves up? Turn it over. You look like a dude I went to high school with, man you guys are just both of you ju- just as skinny as like that.

A: Yeah.

Q1: Let me see your other arm.

A: Yeah I'm skinny...

Q1: I'm tryin' to remember that guy's name.

Q: You think I was tryin' to trick you with that question? Uh, one thing before, um, we go I'm gonna snap a couple pictures of your face with glasses and without, okay?

A: All right.

Q: So and instead of taking you out and havin' a ID done in front of everyone all I'm gonna do is it put it on my ca- on my phone.

A: And why are you taking pictures of me?

Q: It's just for our records. When it goes into our big binder your picture's there. I

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can pull your - do you have a driver's license?

A: Mm-hm.

Q: Do you look like your driver's license?

A: Yes.

Q: Same hair and all that?

Q1: How old is your license?

A: Uh...

Q1: I know it's suspended but how old is it?

Q: Let me see your driver's license.

A: It's not - it's not - it's not suspended.

Q1: Oh I thought you said you had suspended license and...

A: Insurance.

Q1: Oh with the insurance is what you had.

Q: Okay see the reason why I do that is 'cause you have a goatee now.

A: Okay.

Q: Okay? Like to me, you look way skinnier than...

Q1: Yeah.

Q: ...in person than you do in this. Did you lose some weight man?

A: No I don't think so.

Q: Go ahead and just stand up for a hair real quick for me. And then snap a quick picture. And then I'll have you put your glasses on too. Relax, okay, we're not



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trying to hem you up on anything.

Q1: How much do you think you weigh?

A: I weight like - less than 130.

Q1: Damn.

Q: Uh, put your glasses on.

Q1: That picture does not do...

Q: No he looks like...

Q1: Well it - he - his weight is right, 130- I think it says 38 but that picture...

Q: Okay.

A: So you're sayin' my face is skinny like...

Q: Yeah.

Q1: Yeah.

A: ...like I'm sick or somethin' or...

Q: No.

Q1: No. No just skinnier than that picture, that's all. Do you have any - any siblings?

A: I do.

Q1: What - brother, sister?

A: I got a brother (unintelligible).

Q1: They live here in town?

A: Yeah we all grew up in different houses so....

Q1: You still talk to 'em?

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A: Um, my youngest...

Q: Can you put that - can you take that?

Q1: Your younger what, I'm sorry?

A: (Unintelligible) talk to my younger brother and sister, I don't talk to my older...

Q: I'll be right back.

A: ...older sister.

Q1: No? What do they do?

A: (Unintelligible) I know my sister she is like - she do hair and she do somethin' but  
like she's doin' somethin' good 'cause she's bringin' in money, she just don't - I  
really never...

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**THIS VOLUNTARY STATEMENT WAS COMPLETED LVMPD HQ, LAS VEGAS, NV  
AT 01/19/2020 ON THE 19TH DAY OF JANUARY 2020, AT UNK HOURS.**

BE: net transcripts  
BE002

B8644E @ 02/28/2020

## **EXHIBIT C**

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT**  
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**SPECIFIC CRIME:** MURDER

**DATE OCCURRED:**

**TIME OCCURRED:**

**LOCATION OF OCCURRENCE:**

**CITY OF LAS VEGAS**

**CLARK COUNTY**

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**NAME OF PERSON GIVING STATEMENT:** JAYSHAWN BAILEY #2

**DOB:**

**SOCIAL SECURITY #:**

**RACE:**

**SEX:**

**HEIGHT:**

**WEIGHT:**

**HAIR:**

**EYES:**

**HOME ADDRESS:** 2120 FRED BROWN DRIVE  
LAS VEGAS, NV. 89106

**PHONE 1:** 702-752-1069

**WORK ADDRESS:**

**PHONE 2:**

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The following is the transcription of a tape-recorded interview conducted by DETECTIVE B. EMBREY, P#8644, LVMPD HOMICIDE SECTION, on January 21, 2020. Also present is DETECTIVE R. JAEGER, P#5587, LVMPD HOMICIDE SECTION and LVMPD Examiner, Phil Rivera, P#17036.

Q: ...be in for the rest of the, uh, or until you get all settled up, okay?

A: All right.

Q: Have a seat. Once again, got eye in sky right up above you and you gonna be watched it's just protocol. Okay?

A: Uh-huh.

Q: Cool. (Unintelligible) you can set anything you want right there, man. Cool. Just make sure you keep your cell phone powered off in this room though. Okay?

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A: Okay.

Q: Appreciate it.

A: Man, I had nothin' to do with this. They're treating me like a suspect  
(unintelligible).

Q: All right, Jayshawn.

Q1: Uh, you're in good hands. Um. they'll call me when you're, uh, ready to go and  
I'll pick you up and take you back to your house.

A: (Unintelligible).

Q1: Cool? Just be honest. You got this, okay?

Q: Hey, uh, Buddy?

Q1: Yeah.

Q: I'm just gonna read...

Q1: Okay, yeah.

Q: ...the Miranda before you take off outta here. All right, Jayshawn, can you just  
give me a quick representation of why you think that you are here today? I just  
wanna make sure that we're both on the same page.

A: Um, basically, I believe I'm here is because I'm a witness to a dead person.

Q: Okay and because you are here, you're in a law enforcement building, you are  
still afforded all your rights, just like everybody else that walks in here. Okay?

A: Uh-huh.

Q: So what I'm gonna do is before we even start off with this, I'm still gonna read

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you your rights. You're afforded everything. Okay? It's standard. We do it with everybody. Okay? You have the right to remain silent. Do you understand that?

A: Mm-hm.

Q: Anything you say can be used against you in a court of law. Do you understand that? Can I please have you say "yes" or "no?"

A: Yes.

Q: You have the right to consult with an attorney before questioning. Do you understand that?

A: Yes.

Q: You have the right to the presence of an attorney during questioning. Do you understand that?

A: Yes.

Q: If you cannot afford an attorney, one will be appointed before questioning. Do you understand that?

A: Yes.

Q: Do you understand all these rights?

A: Yes. Am I a suspect?

Q: Perfect. No.

Q1: No - no - no.

Q: It's - it's because the nature of what we're - we are talking about here. I'm gonna ask you questions regarding possibly a crime. Correct?

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A: I understand.

Q: So because of that, I wanna make sure that you - you are fully aware that you are still fully afforded all your rights. Okay?

A: Yeah I understand.

Q: And we even go a step even beyond that. Okay? So what I'm gonna have you do here, if you would for me please, this is, basically, a polygraph consent form. Okay? If I can have you read this out loud for me, I'm not gonna have you sign off on anything yet until I fully explain this to you. But I want you to, uh, g- go ahead and read this out loud. "I," state your first and last name, read down the contents and then stop right there for me, please.

A: Read the whole thing? I - I, Jayshawn Bailey, do hereby voluntarily consent to be examined by the polygraph (unintelligible) I am in good health and know of no reason why I cannot receive the polygraph examination. I have had the details of this examination explained to my sa- uh, satisfaction and voluntary - voluntarily give me permission for administrative polygraph access- accessories to be attached to my body. I fully understand that I have the right to refuse any questions, if my answers to the question would tend to incriminate or degrade me. If I start the examination, I may stop at any time. The test will be audio recorded and may or may not be video recorded. I - I read this agreement form and completely and fully understand these contents.

Q: Okay let me take that from you, Jayshawn. So I'm gonna explain this to you

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before I ask you to sign off on this. Okay?

A: Uh-huh.

Q: The accessories are gonna be attached to your body. If you look over to your left, do you see those two tubes hanging on the side of my desk right there?

A: Yeah.

Q: Those are called pneumograph tubes. One of those tubes, Jayshawn, is gonna right here, right across your upper chest. The other one's gonna go across your lower abdominal area. Okay?

A: Okay.

Q: This right here, a blood pressure cuff, same thing you got when you go to the doctor's office. But the only thing is I'm gonna put in on your left forearm during the exam. Okay? I'm gonna place two of these pads right here on your right palm, just like that. What I'm measuring there is the opening and closing of your sweat glands on your palm. Okay? That black pad - did you see that black pad that you sat on?

A: Yes.

Q: That's a movement sensor. So during the exam, you gotta be still. But any type of movement from you in the hands, feet, body, it's - it's just gonna record that on my screen.

A: To be honest, I'm just like a, uh, anxiety, like, moving person so but I mean it's...

Q: It's pretty quick - it's pretty quick. It's only about 2 minutes. Okay? And I've -



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I've seen you sat still pretty much the entire time when I've talked to you so I do appreciate that.

A: (Unintelligible).

Q: If you look to your right there, that blue light right there, Jayshawn, that's a camera. So this whole room is audio and video recorded. From the time that you walked in today 'til the time you leave, this entire room is audio and video recorded. Okay? There's even another camera right up top up there, if you can see that.

A: Yeah (unintelligible).

Q: You saw that earlier, right?

A: Yeah (unintelligible).

Q: All right so if any questions on here would intend to incriminate or degrade you, you can stop this exam at any point in time. You just have to let me know that. Okay?

A: I'm trying to cooperate but at the end of the day...

Q: I appreciate that.

A: ...I just - I just...

Q: That's why...

A: ...don't wanna be in this situation, like...

Q: I know. That's why you are here and we do appreciate that. But I still wanna let you know, this is all your rights, basically. Okay? Do you have questions about

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any of this?

A: Uh, no.

Q: Okay. If you're agreeable with that, if you would please, print your first and last name, sign, date and time for me, please, on that top two right there.

Q1: (Unintelligible).

A: Uh, you said print or just...

Q: Yeah print right there. And then you have to sign. And then today's date and time right there. Today is the 21st.

A: Yeah tomorrow's my birthday.

Q: Tomorrow's your birthday?

Q1: Happy early birthday, man.

Q: And t- time is 12:44.

A: And I put that anywhere?

Q: On that same line as the date.

A: Okay.

Q: Yep and, Detective, if you could just sign right there...

Q1: Yeah.

Q: ...as a witness, I'd appreciate it.

Q1: I sure will.

Q: Thank you, sir. So your detective's just gonna step out. Once we're finished, I'll give him a call and then, uh, do you have any questions for him before he

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leaves?

A: Uh, do these results comes back today or do they take a couple of days to come back or how does that work?

Q: They will today.

A: Oh today?

Q: They will today. Okay? (Unintelligible).

A: I'm good.

Q1: All right, I'll see you later. Okay?

A: All right.

Q: All right, Jayshawn, appreciate all that. We're gonna go over a few questions here before we get started. Okay?

A: All right.

Q: Jayshawn, what is your social?

A: 530-99-3763.

Q: 3763?

A: Yes.

Q: And your date of birth?

A: Uh, 01-22-1997.

Q: 1997 and how old are you, Jayshawn?

A: I'm 22 years old.

Q: Twenty-two? Where were you born?

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A: Uh, Las Vegas, Nevada.

Q: Born and raised in Las Vegas, huh?

A: Yes.

Q: Jayshawn, how much sleep did you get last night?

A: Not that much. I was up last night playing a game all day.

Q: Really?

A: Yeah.

Q: (Unintelligible)?

A: Just, like, uh, gettin' ready - it's my - gonna be my first day of school. It was supposed to be today but I had to come here so...

Q: You're supposed to get a lot of rest first, before the first day of school, man.

A: I'm nervous. It's, like, my first day of college so I was just so anxious to, you know, go.

Q: I hear you.

A: And then I got that call 'cause we was supposed to do this Wednesday.

Q: I got ya.

A: ...instead of, like, Tuesday so I'm like, "Damn, like..."

Q: I got ya. Okay. So what do you think, just about, like, three, four hours, a few hours?

A: What you mean? Like...

Q: Sleep - sleep time, about three, four hours or somethin'?

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A: I went to sleep around, like, 1:00, 2:00.

Q: Then you got up?

A: And I went to - yeah, went to sleep around 1:00 or 2:00 and got up around, like, uh, I was supposed to get up around 8:30 'cause class start at 9:00. But I did get up around, like, 8:30 so...

Q: Okay so you got what? About six - five, six hours?

A: Five, six hours.

Q: Okay that's pretty good. Any pain today?

A: No.

Q: Any medical conditions?

A: I got asthma.

Q: Okay.

A: And anxiety.

Q: Any other medical concerns that we should be aware of?

A: Uh, not that I know of.

Q: How would you rate your general health? Good fair or poor?

A: To be honest, my health is, like, six, seven. I just don't go to the doctor and get it checked. I checked out 'cause of, uh, something that happened to me, like, uh, say, like, in 2017. I, uh, had a bad experience going to the hospital. I got injected with, like, um, some type of medication they gave me.

Q: Yeah.

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A: And, like, I had a bad reaction.

Q: Okay.

A: So now I'm afraid to go to doctors to (unintelligible).

Q: Because of that...

A: Yeah.

Q: ...like, allergic reaction or somethin'?

A: I don't know what - I thought I was gonna die that day. I guess it was a - they injected me with, like, five different medications in my veins.

Q: Okay so - so - so I'm just gonna - gonna say that you had a...

A: Yeah.

Q: ...uh, medical reaction...

A: Yeah - yeah.

Q: ...in 2017...

A: Yeah.

Q: ...to an injection?

A: Mm-hm.

Q: All right but they didn't diagnose you with anything, right?

A: No, I went there for headaches and I guess that medicine was supposed to calm me down but it made it worse.

Q: Got ya. Any other medications that - that you're taking right now?

A: Albuterol for asthma.

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Q: Got ya. That's just - just your inhaler, right?

A: Yes.

Q: Anything else...

A: Um...

Q: ...that you take, like, on a regular basis or prescribed?

A: No.

Q: No?

A: That's it.

Q: Any - any alcohol in the past 24 hours?

A: No.

Q: Any heart conditions?

A: Um, I had a hole in my heart.

Q: Was that something that you were, like...

A: Born with.

Q: ...when you were younger...

A: Yeah.

Q: ...that - that they told you?

A: Yes.

Q: Have they told you that, uh, like, recently or anything like that or is that just something...

A: I actually - I actually do need to go get it checked. Like I said, I haven't been

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going to the doctor and really tryin' to take care of my body so I don't know what's wrong with me but I know there's some things wrong with me. That's why, uh...

Q: I got ya.

A: ...I rated myself as, like, a six...

Q: Yeah.

A: ...like, seven, for health.

Q: Just there.

A: I'm not - I'm not 100% so...

Q: I got ya. But that hole in your heart, is that something that, like, they told you ever since, like, a small child, that you've just always known that you've had?

A: Yeah. I don't know if it clo- well, I think they told me it closed up but, like...

Q: Okay.

A: ...I guess from me, like, smokin' and stuff, I don't know if it opened back up or anything like that?

Q: So is something that you're personally concerned with?

A: Yes.

Q: Okay. You ever been diagnosed with any type of mental health issues, anything like that, other than, like, anxiety? I know you already told me anxiety but anything else? Nothin'?

A: No.



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Q: Okay. How about illegal drug use? I know you're here for a polygraph but I gotta know, have - have you taken anything recently? Nothin'?

A: No, I ain't - sometimes I smoke weed. I don't even smoke weed like that.

Q: Don use - okay, just - just what? Occasionally?

A: Yeah.

Q: Overall, would you say you're in fair health?

A: Yeah fair - fair to average.

Q: I got ya. All right, I appreciate you coming in. It looks like you got - what, you got a PowerAde over there? I got water down here. Would like a water also? No?

A: I'm good.

Q: Okay, all right, I'm gonna grab me one here. All right so, Jayshawn, tell - tell me a little bit about yourself. So I know you were born here in Las Vegas. I know you're 22. I know you were just about to start college, what, this morning?

A: Yeah this morning.

Q: Did - you went to high school and elementary and everything out here?

A: Yeah.

Q: Did you grow up with mom and dad?

A: Um, I don't even have a dad. Never grew up with a dad.

Q: Okay so it's been...

A: Uh...

Q: ...just been mom, basically?

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A: Yeah I grew up with a foster mom and I know biological mom. I talk to her, like, from time to time.

Q: Okay so - so it's pretty much just been your foster mom there - there for you.

A: Yes.

Q: Okay where'd you go to high school at?

A: I went to Western.

Q: Play any sports?

A: Yeah I played, uh, basketball for three years.

Q: Did you?

A: Yeah.

Q: You play varsity or did...

A: (Unintelligible).

Q: So you're pretty good then?

A: I played varsity my junior year and, uh, sophomore year, I played JV, freshman - I played freshman year.

Q: Okay.

A: Um, I was real, like, you probably hear a lot of people say, "I'm good. I coulda went here." Like I...

Q: I hear it all the time.

A: Yeah, I'm like, "No." Um, I had a offer but, like I said, I didn't graduate on time so that set me back. And, like I said, my head wasn't right. I was hanging out with

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the wrong crowd just...

Q: So, like, you weren't focused?

A: Yeah basically so that was the end of that but I'm tryin' to get back on track.

That's why I'm tryin' to go to school now and turn my life around, I guess.

Q: I got ya.

A: Yeah.

Q: I got ya. So wh- wh- when you were in high school, when you say that you got -  
you got an offer, what - what - was it from, like, a...

A: Um, I actually had...

Q: ...good college or something?

A: (Unintelligible).

Q: Or was that junior college stuff?

A: It was, uh, it was a college in - I forgot what is called. It was a all-black college in  
something - something, South Carolina.

Q: Okay.

A: Um, I knew, uh, I ran into a dude and I guess he's been comin' to some of my  
games and he actually, uh, had a talk with me one day and he said, "You know  
what? Like, I can help you go here." And he talked tellin' me how - he took me  
the library. He made me fill out, like, fill out the application and everything. But I  
told him I didn't have my diploma and, um, I think, this summer I have one more  
chance to pass the proficiencies 'cause...

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Q: Oh yeah.

A: ...that's when I take the proficiencies.

Q: Yeah.

A: I just need the math. I passed everything else and I'm gonna be honest, when it comes to math, like, I'm not so intelligent with that. I kinda, like, suck at it.

Q: Yeah I'm right here with you.

A: Yeah.

Q: I'm not good at math.

A: Yeah, um, that was it. I didn't get my, uh, diploma because of that. So it took me two years. I went to Desert Rose for two years and I finally got my diploma and ever since then, I've just been deciding what I wanted to do. I thought about goin' into the military. And I ended up, "Hey, no, I'm gonna go to school." So that was what I wanted to do.

Q: That's - that's kinda where you're at right now.

A: Yeah.

Q: Did you work after - after high school or did...

A: Yeah I always stayed with a little side, like, a little - like, a little job or something.

Q: What kinda work were you doing?

A: Uh, fast food. I worked at Amazon recently. And that's really it. Just fast food jobs and Amazon.

Q: You stopped working at Amazon?

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A: I got fired.

Q: Did you?

A: Mm-hm.

Q: All right. I heard it's pretty tough there, pretty - pretty strict on things.

A: It is.

Q: Yeah.

A: That's why I'm not there no more.

Q: Yeah some of those guys, man, you know, you hear some stuff, you're like, "Damn, that's," usually, at that, it woulda been a, you know, a written warning somewhere else but other companies will just straight terminate you, you know, for the same thing on first offense.

A: I understand.

Q: I got ya. So did you grow up - so I know you grew up with - with, uh, a foster mom. Right? Any, like, uh, brothers or sisters around you or any other, uh, were - were you growing up, you know, as a - as a single kid or were...

A: At my foster mom's, I grew up as a single, uh, kid but I always had family, like, her family. You know what I mean?

Q: Yeah.

A: Um, my real family, I do got, um, two sisters and four brothers.

Q: Mm-hm.

A: Um, one passed away and I got a younger brother and a older brother and then

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there's me. That's four of us. I actually heard, um, I got a brother that my mom don't know about. So, like, I got a brother out there somewhere but that's it.

Q: Hey.

A: Yeah.

Q: Are - are - are they still here, like, in Las Vegas or are they somewhere else?

A: They're still here.

Q: Do you ever see 'em?

A: Yeah my younger brother and younger sister. I don't have a good relationship with my older brother or - or older sister.

Q: Do you see 'em like just, like - like, on a regular basis or is it just, like, every now and then?

A: Every now and then, yes.

Q: Okay. Do they kinda look up to you at all?

A: (Unintelligible).

Q: Are they kinda...

A: That's why I feel like I let 'em down.

Q: And the reason why I say is because it sounds like you're pretty good at basketball, sounds like you're going to school now.

A: Yeah.

Q: So I mean do, you know, are they lookin' at you, you tryin' to, you know...

A: I try to set - I try to set a good example.

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Q: Okay.

A: But like I said, I ain't - I ain't there yet so and that's really it.

Q: Uh, you're still young though.

A: I know.

Q: You're still young. You're still doin' the right thing. Sometimes it takes people a while.

A: Yeah but I'm gonna be honest with ya, the people I went to school with, they - they my age, 22, and they already finished college. They already got they degrees and everything and like I operate, I don't like being left behind. I like to - I wanna be on the same level as...

Q: Super - 'cause it's that competitiveness in you.

A: Yeah, like, not even just competitive though. I just - I just wanna - life is short. I wanna be, like, I wanna get everything, you know, fast. Like, I wish I woulda got my diploma on time and went to school and I probably wouldn't even be in Vegas right now or anything like that so...

Q: Yeah I hear ya.

A: And then now I'm thinking about, like, the road I'm going down. Like, I'm really sittin' in the office. I was thinking about - thinking about this whole time, uh, I'm sittin' in this office right now and, like, I'm not sayin', like, y'all are accusing me or something but, like, I'm - I just know I feel like a suspect and I'm just thinking like - like, "Damn, Jayshawn, like, if you only woulda, like, went to school and took

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things seriously, you wouldn't be in this position right now." Little stuff like that so, like, I'm - I'm just mad at myself. Like, I kinda wanna tear up though but I'm not gonna tear up though.

Q: No.

A: But I'm just like...

Q: I got ya.

A: I'm disappointed in myself though just, like...

Q: I got ya. You feel that you should be in a different position and, unfortunately, you feel that this position right now is - is not one that you would rather be in, which anybody would rather not be in this position. Right?

A: Yeah basically. I'm just speaking for myself. I don't how the other people operate though but I know how I am as a person and this is not what...

Q: I got ya.

A: Yeah.

Q: I got ya.

A: I mean, we shouldn't even be having this conversation right now but we are so I just gotta deal with it. And hopefully, like, later down the road, I can, like, really just be a whole different person.

Q: What do you - what do you feel, since, like, high school to - to now, has been - I mean, I don't - I don't think you're - I don't think you're falling off or doing anything bad or not falling behind. I personally don't - don't see it that way.



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A: I know.

Q: I'm twice your age.

A: Mm...

Q: Um, what - what - what do you - what do you think has been holding you back?

A: Mm, to be honest, that's a good question. I just feel like the area I live in...

Q: Mm-hm.

A: ...and the people I'm surrounded with. Like, when they say like, "The circle you hang around with - that birds fly. I don't know how to pronounce it but my mom always tell me that. She's, like, a little bit older so she say like...

Q: Yeah.

A: ...the old school terms but...

Q: Yeah.

A: I - I just feel like my crowd and, you know, living in, like, a not-good sorta area, like, uh, like, basically poverty. Like, you know, everybody live over there is strugglin'. Everybody over there is not, like - like, succeeding. Like, it's kinda hard tryin' to make it out. But, like, that ain't excuse 'cause people do make it outta there.

Q: When you're sayin' that the crowd that you hang around with, what - what do you mean?

A: Um, they're not bad people. It's just they don't have - they - they basically went to school...

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Q: Mm-hm.

A: ...but they gave up. Um, they do drugs, smoke weed and all that other stuff and, like, they're cool people but they're just not making no moves. You know what I mean?

Q: I hear ya, not going anywhere.

A: Yeah I'm not saying, like, they have their ambitions, just like me, but...

Q: Yeah.

A: ...they just ain't doin' it right now so...

Q: I got ya. You know, sometimes it takes people five, ten - we were just - I was just having this conversation, this same one, the - the other day, with - with another friend...

A: Mm-hm.

Q: ...and about their kids. You know, I mean, it does happen. Sometimes people don't realize until they're 25, 30, 35, before they feel like, "Hey, this is what I wanna do. I've got the motivation now." And then they go. Man, you're still 22. You're still young. You know what I mean?

A: Yeah, 22's not young. Trust me. Like I said, I got people, like, just got they bachelor's degree, 22 years old, like...

Q: Yeah.

A: ...finna do their careers.

Q: I hear ya - I hear ya.

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A: Uh-huh.

Q: It's never too late to start - to start goin' back to school. What - what were you signed up to go to school for?

A: Um, criminal justice.

Q: Criminal justice?

A: Actually, like, I wanna be like a FBI agent. Actually, like, I don't know where, like, should or anything like that.

Q: Yeah.

A: I just wanna work on finding missing people. Like, I always think - I've been thinking about that since, like, 20- like, '17, 2018, like...

Q: Yeah.

A: Like, I - I don't know, like, I've done a lot with the research and, like, there do be a lot of missing people and stuff like that.

Q: Yeah.

A: And, like, I wanna, you know, help find people and stuff like that. Not even just the missing people but just be an FBI agent, like...

Q: Yeah.

A: ...find things out. So that's why I chose criminal justice. I wanted to be an athletic trainer at first but I was like, "You know what? Like I just felt like I just wanna help, like, help people out."

Q: Help people?

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A: Yeah.

Q: So when you're talking about, like, uh, research and finding people, I mean, is that kinda like what - what, like, intrigued you? Like say, "Okay, what profession can I get into that the FBI would - would allow me to be able to do those things?"

A: Yeah I actually don't know what it's called. Do you know what it's called?

Q: Well FBI. I mean, everybody. you know, just law enforcement in general.

A: Yeah.

Q: You know what I mean?

A: But I know y'all have special detectives that do, like - like, specialize in finding people. You know what I mean?

Q: Yeah.

A: So that's what I wanted to do. Like, a lot - you know, I was at work one day and, um, I looked online and, like, um, I seen like - I just searched up missing people and, like, something just clicked - literally, uh, it just clicked in my head like, "You know, I wanna go to school and, like, you know, help find people." 'Cause that's kinda foul. You know what I mean? So...

Q: Yeah.

A: And that's what I want to do or just be involved in the FBI period. I feel like it's a cool job.

Q: Involved in helping.

A: Yeah and I tryin' to avoid something. I ain't tryin' to (unintelligible).

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Q: Yeah I hear ya.

A: Yeah.

Q: I hear ya. So what, uh, how long ago did that, like, come in - come into your mind?

A: Uh, I was actually workin' at McDonald's and they have, like, a little office...

Q: Yeah.

A: ...and that was, like, back in 2017, going into 2018. So I've been thinking about it though but then I stopped thinking about it but....

Q: Did you ever volunteer anywhere or help anybody or - you know what I mean? Like, get interested in stuff like or just kinda just - just in your...

A: No.

Q: ...mind?

A: No - no, it's just in my mind. But when I went to school and had to do a major I wanna pick...

Q: Yeah.

A: ...that's when it came back. I'm like, "You know what? I wanna do criminal justice and I wanna be an FBI agent." So...

Q: When did you sign up for school?

A: I signed up, I think it was, in November. And I was supposed to start today. Like I said, I had a communication class at 9:00.

Q: Yeah.

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A: And like I said, he called today so I had to be here.

Q: Yeah we appreciate you coming in and I won't try and take up, you know, too - too much of your time. And I - and I appreciate you sharing your life stuff. You can see this has nothin' to do but I'm gonna be honest with you. You - you don't see no - no badge on me, no gun on me.

A: (Unintelligible).

Q: There's - there's - there's nothin' there so...

A: You're just doin' your job.

Q: You know, so, um, you gotta picture them, you and I'm - I'm, like, right in the middle here. Okay? I'm gonna - I'm gonna give you a good polygraph test. I'm gonna explain to you how this whole thing works. I'm not gonna hide anything from you today, Jayshawn.

A: Mm-hm.

Q: Okay? Anything that I - I've been talking to you about personal stuff. I appreciate you sharing it 'cause you coulda told me, "Hey, kick rocks. I don't wanna - I don't wanna talk to you about stuff like that. But you were open with me and I feel like you were pretty honest and sincere with that so I do appreciate that.

A: Yeah.

Q: All right? So before I even start asking you any questions about, uh, why we are here today, I'm gonna explain this whole polygraph thing here to you. Okay?

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A: All right.

Q: It's - you seem like a pretty smart guy. You probably already have - you've probably seen this on tv and stuff like that. Right? No? So usually the reason why people lie, Jayshawn, is because we're afraid of some type of consequence. Would you agree with that?

A: Of course.

Q: Yeah we're afraid of some type of consequence. And that consequence, it could be anything. It could be being embarrassed, being ashamed, gettin' in trouble. It could be anything. Just picture yourself as, like, a small kid. Remember when - when mom caught you doing something, coming home late from school or not turning in your homework, remember how you felt?

A: I'm already knowing.

Q: Yep so it's because you were afraid of some type of consequence -- getting grounded, getting spanked or whatever it might be. I don't know what kinda punishments you - that - that - that you went through but whenever we're afraid or in fear, the brain automatically tries to protect us.

A: Mm-hm.

Q: Okay?

A: I'm gonna be honest with you, I don't mean to cut you off but I'm always afraid. Like, even - I take the bus and...

Q2: Right?

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A: ...I stay down and I just feel like all eyes are on me, I get nervous.

Q: Well anxiety, that's what you told me. Right?

A: Like, I'm always nervous. That's why I say I need to go to the doctor and, um, you know, get some medication for it. I told him that before. Like...

Q: I got ya.

A: Even when he was talking to me in there.

Q: Mm-hm.

A: Like, I ain't lying. I'm tellin' the truth and everything but...

Q: I got ya.

A: ...when I just get the eyes on me, I just - I just get nervous.

Q: Your body changes?

A: Like, I don't know why but...

Q: Okay.

A: ...it happens all the time. Like, I know if I was to go to school and sit in that classroom, like...

Q: Right.

A: ...I just - just get nervous. I don't know and so that's just how I am so (unintelligible).

Q: Remember when you were a kid...

A: Huh?

Q: Remember when you were a kid playing hide and seek?



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A: Yeah.

Q: Wh- which we all did, right? Remember when you had to go hide? You were probably nervous even looking for a hiding spot. And until you found that hiding spot and you hid behind that tree or bush or house or whatever it was...

A: Mm-hm.

Q: ...you were nervous. Right? That's exactly the way that you are now. You walked in here nervous. Every second, every minute that goes by, your nervous level's probably gonna continue to - to raise. Right?

A: Yeah.

Q: Same thing playing hide and seek as a kid. Remember how you felt when those footsteps were walking directly towards you?

A: Mm-hm.

Q: Remember how you felt?

A: I'll be (unintelligible) I wasn't nervous. I was just like, "I hope he don't find me."

Q: Yeah.

A: Yeah.

Q: Yeah and why - and why would you hope that they wouldn't find you?

A: 'Cause I'd get caught and...

Q: Exactly.

A: ...and lose.

Q: So that's what we measure, exactly what you just said.

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A: Yeah.

Q: You're getting caught.

A: Yeah.

Q: It's different - it's different. You're always gonna be nervous but nervousness and fear is different.

A: I understand.

Q: And you - you said it yourself right there. You're gettin' caught.

A: Of course.

Q: So that's what we measure. It's that fear of getting caught. It's not nervousness. It's not any of those other things.

A: Yeah.

Q: It's the fear of getting caught. Your body automatically changes, just like you felt when that person was about to find you. Your heart rate increases. In return, you start to pump out more blood from your heart so your blood pressure starts to go up. Blood needs oxygen.

A: Yeah.

Q: So if you're pumping out more blood, you need more oxygen in your body. And how do you get more oxygen in your body?

A: You can breathe...

Q: You breathe.

A: ...heavy.

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Q: There it is. You see those tubes? I set 'em up around your chest?

A: Yeah.

Q: That's what we're measuring. Okay?

A: I'm gonna have to be honest with you though. Like, I know you know your job. I respect that.

Q: Yeah.

A: But it's making me upset because, like, I tell a specific, like, I know people that do con and they lie.

Q: Yeah.

A: I'm dead-ass serious. I don't have nothing to do with killin' nobody or puttin' a body in the sewage. I don't even have the guts to do that so...

Q: I got ya.

A: Like, it just makes me upset 'cause I hate being accused of something I didn't do, like...

Q: We're not accusing you any- anything.

A: I feel like it.

Q: We're not accusing you of...

A: I understand you're doin' your job.

Q: ...anything.

A: Yeah.

Q: I appreciate that.

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A: You know but it just...

Q: I got ya. It's - it's - it's (unintelligible). You told me that when you first walked in here. You know, "I don't even feel like I should even - even be here and I'm upset with myself because I'm sittin' here."

A: Yeah.

Q: I remember that and - and I get that.

A: To be honest, like - I'm gonna be honest. Like, I took two weeks to report that but I'm a smart person. Like, I'm like, "You know what? If I report this, they gonna think I did it. I might be a suspect." That's, like, one of the reasons why I didn't...

Q: I got ya.

A: ...make that call.

Q: I got ya.

A: But, like, the person I am, like, that's somebody's family member down there. And they - and like I said, she's probably missin'. I don't know who it - who it was but it's just the principle. Like, me making that call is just the right thing to do.

Q: I got ya.

A: But I thought about it like, "You know what? Like, they might think I did it and the people in the neighborhood gonna be, like, lookin' at me funny." Like, I saw people lookin' at me weird and it's like, man, you know, I should've never been - I shoulda just left it alone.

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Q: (Unintelligible).

A: I shoulda just...

Q: I got ya.

A: ...ignored it. Like, you know what I mean? That's why when I made that call, I said, "Can I stay anonymous?" Like, I don't even wanna be involved in any of this. Like...

Q: Right.

A: Like, they said they was gonna look through cameras. Like, I hope they did 'cause they was not finna see my dreads or whatever I had on, like, in that area, like...

Q: So - so - so let's talk about that.

A: Yeah.

Q: If you want, you can sit back in that chair. You can sit on that little pad. I don't want you - I want you - you know, I want you to be comfortable when - wh- wh- when you're here talkin' to me.

A: Do I have to sit on this thing or does this...

Q: Um...

A: ...work with the little thing?

Q: Yeah - yeah, just, uh, sit on that. It isn't doing anything right now. We're not even doing the test. But when we're doing the test, that's when I'll turn everything on. But as far as doing that, I want - I want you to sit with your - you

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know, if you wanna be comfortable, be comfortable, man.

A: All right.

Q: All right? You just looked a little uncomfortable trying to sit there with your...

A: I had my but in the air so (unintelligible). I'm good though.

Q: All right so walk - walk me through when you first noticed this incident taking place, happened, or did you hear something?

A: I'm gonna tell you from the beginning.

Q: Tell me from the beginning.

A: And, like, it's gonna make me upset but basically, like, I kid you not, I got a game system at home. I'm playing a game.

Q: Mm-hm.

A: I smoke weed. Okay? So I go outside and the piece is about this big. I ain't smokin' a whole blunt. Like, it don't take me that much to get high.

Q: Outside on the front porch, back porch?

A: Uh, the front. We live like...

Q: Okay.

A: We live in a community so basically I live in a 1-story house.

Q: Yeah.

A: I went outside to right in front of the front gara- front of the garage. I lit - lit - let's call it a blunt. I lit my blunt up...

Q: Yeah.

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A: ...and I was smokin' and I'm just, you know, chillin', lookin' around. It's late at night and I'd say it's about, like, 12:00, 1:00 in the morning. I see two people, like, where my house is...

Q: Mm-hm.

A: ...I can't really, uh, describe it 'cause you haven't been there or anything but...

Q: Mm-hm.

A: ...I know he has but it's - I see two people, like, over here and it feel like - it seemed - it seemed like they puttin' something, like - like, in, like - like, underground. You know what I mean? But I hear, like, a, um, what is it? Um, I can't even pronounce the word. That's why I'm tryin' to take my ass back to school. But the - the metal thing, like, the metal thing for sewage.

Q: Okay.

A: I hear it movin' so - in my head, I'm high so I'm like - I'm like, "What's goin' on?" Like, it seemed like they puttin' something in there. So I hear the metal thing - the metal sewer thing hittin' the concrete. It's makin' a loud-ass noise.

Q: Yeah.

A: So I'm lookin' but at the end of the day, I can't see 'cause in our neighborhood, we got these tiny little light bulbs and that don't work so...

Q: Okay.

A: ...like, that's pointless. But like I said, I couldn't see anything and I just noticed this strange activity over there. So I was smokin'. I'm just mindin' my business

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'cause, you know, that's what I do. I finna to go down there and be like, "Hey, what y'all doing?" Like...

Q: Right.

A: So I finished my little thing and go back in the house. All right, I get to thinking like - I'm wondering like, "I wonder what they put down there." Like - like I said, I've been stayin' there for - I didn't tell you but I've been stayin' there for eight years and I ain't never seen no strange activity or anything like that before.

Q: How far was it from where you were standing?

A: It's was, like, four hou- uh, four houses down from where the little sewage thing is.

Q: Okay is it like a sewage drain or something?

A: It's like a sewage drain. That's where that body was at.

Q: Sewage drain?

A: Yes.

Q: Okay.

A: So I'm - I'm - where I left off at? All right so I'm...

Q: You said you went back in the house.

A: I went back in the house and I'm thinking like, "Oh, like, damn." I'm tryin' to figure out what's really down there. I keep thinking about it but I didn't pay it no mind. So, like, day - as days go by, like, you know, walking past - 'cause I go to the gym every day. I go home. I play basketball. I do a lot of different things. I'm



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walkin' past it every day. Every time I walk past it, I look toward that direction.

I'm like, "I think there's really somethin' down there." But I'm just, like, you know,

I didn't say nothin', you know, mess with it. So days go by and - and, um,

specifically, two weeks pass by. And, like, when - when - I was actually in the

room one night and I said, "You know what? I really wanna go down there and

see what it is." Like and I was, like, I was tellin' him like, "I'm - I'm weird. I'm

gonna be so honest with you but I'm so nosey. I'm like - like, I'm just curious.

Like, I wanna know what's really down there.

Q: Right.

A: So I really go there. Uh, actually, I'm gonna tell you specifically. I - I went out the

house. It's, like, 2:00, 3:00 in the morning. It's late so I know there ain't gonna

be a lot of cars passing by or whatever or people outside. So, uh, like I said, I

walked down there. And the thing is heavy so I go up to the sewage thing and I

lift it with my fingers...

Q: Right.

A: ...but I can't lift it up like...

Q: Like the cover?

A: Yeah.

Q: Okay.

A: I ain't a hulk so I can't just lift it up but I use - I put my back into it and I'm sliding

and I'm, like, lifting.

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Q: Yeah.

A: And I - I get - I get it up and I try to scoot it to the edge so it - I can't pronounce it -  
- but I scoot it to the edge to the point where it's not, like, in that hole.

Q: Yeah.

A: And then I just push it open. I got my phone. I'm lookin' around makin' sure  
nobody don't see me.

Q: Right.

A: 'Cause then that's gonna - then I'm gonna get caught and they gonna look at me  
funny or anything like that.

Q: Right.

A: So I look down and it's, like I said, I don't know what was down there. I looked  
down there and I see a dead body. And I said, "What the fuck?" Like, that shit  
kinda had me scared. I'm like, "Damn." But like I said, I'm weird. I don't know  
why, like, and that's what makes - that's why people look at me, like, how you're  
lookin' at me, how they looked at me. That's makes me look suspicious 'cause I  
told them I went down there and they...

Q: Okay.

A: ...lookin' at me like, "Okay, why - okay, why would you go down there?" Like I  
said, I don't know, man. I'm weird. But I just wanted to know who it was. So I go  
- I go down the little steps. They got like these little things, like, a little ladder  
thing.

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Q: Right.

A: So I hurry up and go down there 'cause I'm afraid a car gonna come by or people gonna come outside and look so everything is fast. I go down there and I see, like - like, a person. I know it was a female. I looked, flashed the light, it was a female. But, like, she was decomposed. It stank so bad but it was, like, decomposed. And she looked, like, pale. Like, I actually looked and, like, I'm lookin' but I couldn't really get the visual of the face 'cause I'm so nervous that, you know, somebody's gonna, you know what I mean, come and drive past.

Q: Right.

A: Or somebody's gonna come look. So I go down there. Like, I keep going down there and I - I touch, like, I touch on, like, the little chest area -- for what reason, I don't know why -- the pants leg area and - and I just climbed back up and - and, uh, came out and closed the thing and - and went about my day, went back to the house. And it was like, "Damn, there's really a dead body down there." It's, like, I didn't report it right then and there. Like I say, I ain't tryin' to get into anything like...

Q: Got ya.

A: You know what I mean? But over time, it was haunting me. Like, I felt like I know that something's down there and I didn't call nobody or tell nobody. So, like, days go by. Like I said, I walk to the gym or I'd be outside chillin' and everything like that or I go to work, come home from work and - and, uh, like I

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said, that little sewage thing is right by my house so I'm thinking like, "Okay, I know it's something down there and I'm not tellin' - I'm not tellin' nobody." And that's kinda foul 'cause I have a heart. I felt like that - that girl, like, whoever that is down there, like, she has a family. They probably worried. So I'm like - like - and I'm like, "Should I just call?" Like and it took me like - it took me some time. It took me, like, two weeks, like, to really, like, make that call. And, um, was it, uh, I think it was when the Chiefs played. It was Saturday.

Q: Mm-hm.

A: I, uh, I woke up that morning and like I said, I was playing the game and everything and, uh, it was on con- it'd been - it'd been on my conscience ever since then. But that day, I was like, "You know what? I'm finna call 911 and tell 'em I seen a body down there." And that's everything. And then, like I said, officers showed up and they was like, "You did a good job," and everything. The whole time, I'm like, "I shouldn't have never did that shit 'cause they're gonna think I did it." 'Cause, like, it - it kinda looked suspicious like - like, "How do you know there was a body down there?" Like, and I'm like - I'm thinking to myself 'cause I always, like, play out scenarios.

Q: Yeah.

A: Like and I'm just thinking like, "Damn, I shouldn't have did that." Like, even when I called the, uh, operator, I told her like, "Can I stay anonymous about this?" "No, I need your address," this and that. So I said, "All right, put my address then." I

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just saw everything happen, man, and...

Q: Did you - did you, uh, when you first came out that night...

A: Yes.

Q: ...did you hear voices or anything? Like, the people that you said that were moving her?

A: No voices. Like - like I said, I heard, like, the - the metal thing move and, like...

Q: Yeah.

A: And like I said, I'm not no dumb person, like...

Q: I hear ya.

A: I see - I just felt like - I seen, like - it seemed like they was puttin' something in there. Like...

Q: Right.

A: It seemed like they was puttin' somethin' in there 'cause see I physically seen, like, them puttin' the body in there 'cause...

Q: Right.

A: (Unintelligible) 'cause I seen two people puttin' a body inside there. But it just seemed like it. And this - how my house is positioned from that sewage area, like...

Q: Mm-hm.

A: ...I'm lookin'. And, like, I - I don't know if you smoke weed but when you smoke weed, like, it make you concentrate. It make you think harder so...

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Q: Right.

A: ...like, I'm really, like, (unintelligible) and really lookin' and thinkin', "What the fuck?" And like I said, when I heard that metal thing, I'm like, "Oh yeah, seem like they puttin' something down there." So that answers your question?

Q: Did - did you notice how many people?

A: There was two people. I couldn't see who it was 'cause, like I said, the lights, it's like pitch black. It's, like, in the corner and there's no light so I couldn't really tell. Um, they asked me was there a car like...

Q: That's - that's my next question but...

A: Uh, yeah, um, the cars, like, people got - people that stay in that area, they got cars parked but I didn't see no running car or anything like that. So I ain't...

Q: You didn't see them get back into a car...

A: I didn't see no car.

Q: ...that they start up, like, right afterwards and take off?

A: No, I didn't see no car.

Q: Okay did - did you hear of - of anything that, like, happened on the block or anything like that? You sound pretty familiar, you know, with - with the - the area. I mean, did you hear of anything like...

A: I didn't hear nothin'.

Q: You know what I mean? Like, little rumors? I'm not sayin' it was true but, you know, did you hear anything?

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A: I didn't hear nothin'. I never heard a car. People mind their business. I didn't hear nothin'.

Q: Okay.

A: So like I said, I don't - I don't know what happened. Like I said, I'm the type of person, I try to stay outta the way 'cause...

Q: Right.

A: ...it can come back to you. Like, you'll find out, like, I was kinda scared 'cause, like I said, that body has been found. Like, the lo- people in the neighborhood gonna talk so, like, I feel like the people that did it, they gonna be like, "Okay - okay, like, uh, like, who told? Or, like, happened? tryin' to play it off and - and people know it's me 'cause, like, everybody - when the incident happened, police is out there. Everybody's standing outside and detective's pointing me out. Everybody lookin' at me 'cause they know, like, I called. And it's like - it just seemed like - I ain't gonna say snitching but, like...

Q: Got ya.

A: ...they know I told. And, like, now, like, I ain't tryin' to switch the subject but, like, now since after that, people look at me, like, weird like, "How did he know there was something down there?" Like, the people are just lookin' at me funny so I don't feel comfortable. (Unintelligible) even just answer to say, you know what? Like I ain't even tryin' to...

Q: Yeah.

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A: Yeah.

Q: It's - it's weighing on you is what it sounds like. 'Cause you said you kept walkin' past there goin' to work and knowing that there's something down there that you already saw.

A: Yeah it's haunting me but I'm talking about just the people that just - they knew that, like, I'm the one that called it in. Like, you know what I mean? I'm the one that seen it. So and then I was getting kinda pressed by, like, um, my family 'cause, like, there's a missing girl in that area, I believe, like, uh, 'cause there was posters everywhere and stuff like that. And - and, like, he, uh, I guess, one of the family members came up to me tryin' to basically see like - he was tryin' to ask me like, "Do you know what that person looked like?" I'm like, "No, I don't know what that person looked like." And he like, "Cause my little niece has been missing and if that's her down there, man, I'm finna be mad at you and the neighborhood." And I'm just like, "I don't have nothin' to do with that, bro. I'm just doin' the right thing, bro." Like - like, I know how this family operate. Like, you know, they weird. They might shoot something up so like...

Q: Got ya.

A: ...I don't know.

Q: So, uh, do you look who - who the person is or was?

A: You talkin' about the dead person?

Q: Yeah. I mean now, after the fact. I'm not sayin', uh...



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A: Um, I couldn't really tell. I couldn't get a visual of the face. Like, it's not like I was down there and, like, grabbed her by the face and had the camera really examine her. Like, I was just so scared of not being seen, I...

Q: You just know it was a female?

A: I just know it was a female 'cause of like the - her breast area. Like, uh, I can just, you know, I know - I know...

Q: You know the female (unintelligible). Okay, all right so what - what I wanna do is - is I - is I wanna - is I wanna, me and you both together, what - what type of question do you think that I could ask you, to clear this entire thing up? If you were in my shoes, what question would you wanna be asked? Do you think that once we ask that question (unintelligible)?

A: Um probably, like, ask, like, "Did you do it?" Like, that'd be like the obvious question, "Did you put that down there? Did you have anything involved with it?"

Q: Mm-hm.

A: And I would tell you, "Hell, no." Like and I hate - I swear, I hate that shit, bro. It makes me upset.

Q: It makes you upset.

A: I had nothin' to do with that.

Q: I got ya.

A: Right.

Q: And that - and that's why I'm askin' you...

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A: Yeah.

Q: ...what question. We're gonna come up with this together, either way.

A: I understand.

Q: You know what I mean? I mean, that - that - that's what we're here for and, uh, and I wanna make sure that you understand this also. So I think your - your input is - is - is just as good as mine.

A: Okay.

Q: How about - and - and - and you said, "Did I put that down there?"

A: Yes.

Q: Okay how about - how about if we came out with, "put her down where?" What is that called?

A: That's the sewage.

Q: Sewage?

A: Yes.

Q: Okay, like, a sewage drain?

A: Um...

Q: Is that what you would say?

A: Because it's concrete. I don't know what it is but I thought a sewage drain was, like, you, like, where liquid be at. You know what I mean?

Q: Mm-hm.

A: Like - like - like - like what's the word? Feces?

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Q: Mm-hm.

A: I thought it'd be stuff like that but what I seen was concrete, like, so I'm pretty sure it's, like - like, sewage pipes that goes through underground or something like that.

Q: A sewage pipe?

A: I'm really not educated with the little storage drain so...

Q: I got ya. Is that the way you would recognize it? Sewage pipes?

A: That's what I recognize.

Q: Okay.

A: Yeah.

Q: How about - how about if we said, uh, "Did you physically place her in the sewage pipe?"

A: No, like, I'm gonna be honest. I couldn't even do that. I couldn't even...

Q: I got ya.

A: ...like - like...

Q: And that's your - and that's your question.

A: Yeah.

Q: But just kinda tidy it up and be a little bit more direct with it. Right? So you - you, absolutely, with 100% certainty, know what I mean by that?

A: I understand.

Q: And what I mean by "placing," I mean carrying, assisting someone else...

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A: Yes.

Q: ...puttin' her down there, throwin' her down there...

A: Yeah.

Q: ...forcing her down there, whatever it might've been. Did you physically place her in the sewage pipe?

A: (Unintelligible).

Q: And - and where is that sewage pipe located at? Is that on your street?

A: It's on my street. It's four houses down.

Q: Okay.

A: And it's like - I don't know what the address of the house is but (unintelligible).

Q: I don't even need to know that. I just need to know it is on your street?

A: It's on my street.

Q: How about if I said, "Did you physically place...

A: No, mm-mm.

Q: ...place her body in the sewage pipe on your street?"

A: No.

Q: Okay (unintelligible).

A: When I have to say, "Hell, no," plenty of times, it makes me upset. I keep, like...

Q: I got ya. Y- you realize though that this is a question I'm gonna be askin' you here?

A: Do your thing.

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Q: Okay? That's why we're here.

A: Yes.

Q: Okay, all right so, Jayshawn, before you came in here today, what do you - what do you think I'm doin' as part of my job?

A: You're just tryin' to find the person who did it, like, uh, and I respect that.

Q: Yeah.

A: Like, you're doing your job. I understand.

Q: Kinda like the same kinda work that you potentially wanna be able to - to do.

Right?

A: Yes.

Q: But do - do you - do you think I'm lookin' at any case facts or anything like that or seein' who's comin' in here, who's gonna be sittin' in my office today or anything like that?

A: I'm not sure.

Q: If you were in my position, is that what you'd be doing? Would you be gettin' ready for this polygraph? Would you be doin' any research or anything?

A: I don't know. Maybe.

Q: Probably, right? Yeah. And I'm gonna be honest with you. I have nothin' to hide from that. I absolutely was, with 100%. Okay?

A: Okay.

Q: That - that's part of my job. This is what I get paid to do. Okay? This is why I

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come into work every day and it's what I get paid to do.

A: Okay.

Q: So before you came in here today, I - I knew very very little about why you were even here, to be honest. You saw me here even asking you what your name was. Okay?

A: Yeah.

Q: So the only thing I have to go off of, is I know what type of situation that - that we got here.

A: I understand.

Q: Okay? And we have a body that was in - that was in a sewage pipe.

A: And that's about...

Q: Okay?

A: I understand.

Q: So what I do is I try and look for the type of person. I try to look and find out who a - a series of - of characteristics and these characteristics are all within one big, uh, booklet or reference material that - that we have here as - as polygraph examiners. Okay? And you talked about the FBI before we even started talkin' about this. Right?

A: Yeah.

Q: Have you heard of the FBI profile unit?

A: No.

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Q: It's - it's - it's a unit of, like, psychologists and psychiatrists and what they do is they try and help solve crimes throughout the entire country of missing persons, of homicides, of serial killers, whatever it might've been. What they do is they go around to local agencies and they try and assist them - they try and assist them by saying, "Hey, we don't have any suspects but this is the type of person that you should be looking for, based on this is the crime. this is the type of person, through our series of profiles and research, that you should be looking for."

Okay?

A: Okay.

Q: So what they do is they start getting -- this is, like, in the '70s and '80s -- they start getting bogged down with all these requests from, you know, law enforcement agencies in California, Texas, New York, Idaho, whatever it might've been. They all wanted this unit because they have unsolved crimes. Okay? So what they started to do is they started doing research and they started putting together reference material in this big book about this friggin' thick. It's updated in March of every year so it's gonna get updated again. And it has in this book, from something very very small is, like, a crime of shoplifting, to something very very big, Jayshawn, as something as big as a serial killer. Okay?

A: I understand.

Q: And I'm not saying that you're either one of those. I'm just telling you...

A: Right.

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Q: ...what this book entails. Okay?

A: Okay.

Q: So what I do before Jayshawn comes in here...

A: Mm-hm.

Q: ...is I look for the type of person that could place a dead body down in a sewage pipe. Okay?

A: I understand.

Q: And what it tells me, it tells me that I should be looking for three types of characteristics in that person. Okay?

A: And what are those three types of characteristics?

Q: I gonna go over that with you.

A: Okay.

Q: Okay? I have nothin' to hide from you 'cause I gonna ask 'em to you. But why do you think I was asking Jayshawn to tell me a little about himself before we even got started?

A: You want to see what type of person I am.

Q: Exactly - exactly.

A: Do I seem like a bad though?

Q: No.

A: Be honest.

Q: No, nope and I've been honest with you since you walked in here. I have nothing



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to hide from you - I have nothing to hide from you. I'm gonna give you a polygraph. We're gonna find out either way. Right?

A: Of course.

Q: So what I did is I found out the top three characteristics of a person that could do that. And before I even get going, Jayshawn, is I'm gonna tell you right off the bat, I don't think you're this type of person. Okay?

A: I'm not that type of person.

Q: But, Jayshawn, I've only been talking to you for what, 40, 45 minutes?

A: Yeah.

Q: I don't know Jayshawn all that well, just like Jayshawn's heard me talk and he's probably - hasn't figured me out all that well yet either but you pretty - probably have a good, uh, perception of myself. Correct?

A: Right.

Q: You seem like a smart guy. Right?

A: Yeah.

Q: So...

A: I ain't that smart though but, uh...

Q: You're a smart guy - you're a smart guy. You know, I can see you probably walk up to someone on the street and be like, "Hey, that's a bad dude. I ain't - I ain't messin' around with - with those people."

A: Yeah.

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Q: Right? So that - that's what I was doing, Jayshawn. Okay?

A: (Unintelligible).

Q2: So what this type of person is ,basically, a person that is a liar.

A: Okay.

Q: Okay? It's a person that has always been known to be a liar, a person that usually cannot even function in society because they lie too much. They can't tell the truth. They're constantly in trouble.

A: Yeah.

Q: And the reason why I know that you're not that type of person, Jayshawn, is because you've been able to hold down jobs. You're enrolling yourself in college. You are...

A: Trust me, I didn't mean to cut you off but...

Q: Y- you...

A: ...that don't...

Q: Is that you?

A: I ain't tellin' on myself but I'm just sayin' like...

Q: That's not you.

A: ...you can't really, like, go off of that. You can't really say that 'cause I (unintelligible).

Q: I can't say that but you can tell me whether you are or not. Right?

A: I'm not lying. I'm just saying though for like...

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Q: I can hear ya.

A: I'm saying, in general, like, people can play things off though but, like...

Q: I hear ya.

A: ...not really, like, you can't really judge that.

Q: No, you can but you know what? Those - those types of people that - once -  
once those types of people that are able to play those things off and get around  
in society...

A: Mm-hm.

Q: ...do - do you know what types of people those - those types of people are?

A: I don't know.

Q: They're, like, sociopaths and psychopaths. Those are the types of people that  
can excel in society, that can do things that, like, you be like, "Damn, this dude is  
a friggin' liar 'cause I've known him ever since a kid but he's doing well for  
himself." But you, deep down inside, know what type of person that is. But we're  
not talkin' about those types of people. I'm talking about the type of dude that's,  
you know, locked up in jail - in prison and those type of people that gotta be  
separated from everyone else. Why? Because they're a liar.

A: Yeah.

Q: They're a liar. The ones on the streets, you know what I'm talking about, the  
ones that be like, "Man, I ain't trusting anything that woman says because she a  
flat out liar."

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A: Mm-hm.

Q: And she ain't gonna hold any job because she - she steals. She lies because she steals, et cetera. You know what I'm talking about.

A: Yeah.

Q: Those types of people.

A: Yeah I do but, like, the thing about that, I was gonna say...

Q: Yeah.

A: Like, I know a lot of people say people go to jail because they're bad people. I really believe deep down, like, people that's really in jail, like, everybody's not bad. I feel like people that do go to jail, like, I feel like that's not the right way to, like, you know, punish them for that. Depends on what - what they done but...

Q: Right.

A: Like, I just - I just read and I didn't, like - I know people that really went to prison that, like, for the crime they did, it's petty, like, and they servin', like - like, three, four, five, six years. And it's like...

Q: Right.

A: ... "Are you really, like, givin' 'em six years, throwing away six years of their life because they..."

Q: For somethin' small?

A: ...they got caught with a gun that's not registered in their name?"

Q: Got ya.

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A: They have, uh, but I don't know.

Q: I got ya.

A: I don't get it, man.

Q: No, I know what you're saying, that the crime doesn't fit the punishment.

A: Yeah I got a good friend that's really in prison. He did, like, he's doing two years.

He said he's gettin' out next month.

Q: Right.

A: But he got caught up because he had a loaded gun on him and they found it on him. It wasn't registered. He didn't carry, uh, what is it called, a carry permit or whatever it's called.

Q: Right.

A: He had that so like...

Q: Right.

A: ...he got - he got, um, charged with a gun charge...

Q: Right.

A: ...or something like that.

Q: Let me ask you this then. That - that - that same person...

A: Yes.

Q: ...is he liar? Is he a bad person?

A: He's not a bad person. He made bad decisions though.

Q: He made bad decisions but is that - is that that type of person that we're

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describing, that liar, that one that can't function in society that everybody doesn't wanna be around...

A: (Unintelligible).

Q: ...because they - they'd burn 'em? No. You - you know what I'm talking about. Right?

A: Yeah.

Q: This type of person is - is - is that lowest of the lowest, that nobody can even get around with.

A: Okay.

Q: Okay? And that's the type of person that I'm looking for with that type - and trust me, Jayshawn, I - I've had 'em sittin' in that chair before. And I told 'em straight out 'cause I said, "Hey, I think that you are that type of person." You, I'm telling you straight up, that I don't think you're that type of person. Why? Because you function in society. You care. There's a reason why you are here today. It's because you care about those types of things. If you did, you would continue lying and nobody would ever even know about it. But that's not you.

A: I'm not - to be honest with you, I respect you, sir.

Q: Yeah.

A: I'm not callin' you a liar but...

Q: Mm-hm.

A: ...as your job, you gotta say anything to make it to - make sure that test...

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Q: Mm-hm.

A: ...comes back either negative or positive so, like...

Q: I got ya.

A: I'm not - I'm not saying you're lying but...

Q: I got ya.

A: ...at the end of the day, you gotta do what you gotta do.

Q: Well let me ask you this. Then I'm gonna ask you straight out...

A: All right.

Q: ...are you a liar?

A: Um, I - I lie but about this situation, no. I'll lie about some little stuff like...

Q: I'm not talk- I'm not talking about when you were a little child and stuff like that.

I'm - I'm talking about - how - how about this? Are you a person that lies to someone in authority?

A: No.

Q: No. I didn't - I - I didn't think so.

A: Yeah.

Q: Are you a type of person that mans up for something that they did? And I'm not saying what it is. Right?

A: I man up.

Q: Do you lie to avoid responsibility for things that you did?

A: Um...

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Q: No. Right? How about this. Do you lie to get other people into trouble? 'Cause that's the same situation. Everything of what I just said is the same type of situation. Are you that type of dude?

A: No.

Q: I didn't think so. Okay? That's it.

A: Yeah.

Q: Those are the top three there and I - I can tell you this already, I was like, "I don't - I don't think he is but I don't know." Okay? So I just asked it to you. We don't even have to go over that again.

A: (Unintelligible).

Q: Okay?

A: And I respect that. You're doing...

Q: Okay.

A: ...your job.

Q: All right.

A: Just like...

Q: How about this?

A: Okay.

Q: How about this, Jayshawn? I'm - I'm gonna go over - I'm gonna go over a few questions with you. We have pretty much already covered all - all the - all the test questions but if I was to ask you - if I was sayin' - if I was to ask you, "Did



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you physically place her body in the sewage pipe?" what would your answer be?

A: It'd be, "No."

Q: Did you physically place her body in the sewage pipe on your street?

A: No.

Q: Do you remember ever lying to get someone else into trouble?

A: No.

Q: Do you remember ever lying to avoid responsibility for something you did?

A: No.

Q: Do you remember ever lying to someone in authority?

A: No.

Q: Are you in Las Vegas?

A: Yes.

Q: Are you currently in the state of Nevada?

A: Yes.

Q: Have you ever attended school?

A: Yes.

Q: Pretty easy, right?

A: Mm-hm.

Q: Okay. Give me a second. I'm gonna step out for about a few minutes here. I'm gonna input these questions, come back. You'll see me type in here a little bit. We're gonna come put components on. We're gonna get this done. Okay?

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A: Yeah.

Q: Appreciate it. Just give me a few minutes.

A: It's makin' me mad, man. I didn't do this shit (unintelligible). If I was accusing somebody (unintelligible) do nothin'. It's making me mad, being in here for no reason. Just ask me the same questions over and over again. But I ain't got nothin' to do with it. I'm sorry. I'm just talkin' to myself.

Q: Talking? Sure, I do it all the time, man. Just give me a second here.

A: (Unintelligible)?

Q: Yeah - yeah, go ahead.

A: Can I ask you a question?

Q: Yeah go ahead.

A: How much you, uh, if you don't mind me asking, how much you bring in a year for your salary?

Q: Uh, You know what I mean? It all depends on, you know, like, how long that you've been doing it for. But it's - it's pretty good. It's - it's - it's...

A: (Unintelligible).

Q: ...you know, it's equal to, like, police officer pay. It's police officer pay.

A: So is that, like, 60, 70?

Q: Yeah it can go up a little higher too, you know, with overtime and stuff. Yeah it's still government work. You're never gonna get rich doing government work. But it's a good living, able to support myself. Right?

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A: Mm-hm. I was just wondering.

Q: Okay everything is in, Jayshawn. It just printed it out. Let me grab it. We're gonna come in and we're gonna put the components on (unintelligible).

A: All right.

Q: All right, Jayshawn, I appreciate you being patient now.

A: (Unintelligible).

Q: All right, go ahead and put your hands together just like this, Jayshawn.

A: I need to take this off or...

Q: No, you're good with that. That's (unintelligible). Yeah you're good. Just like that. Place 'em straight above your head. This first one, remember, is gonna go across your lower abdominal area and right over the top of you, just like that. This next one's gonna go across your upper chest. If I could just have you just hold your hair up just a little bit there. There you go. Comin' over here. Okay go ahead and relax it. I just wanna make sure I didn't get it caught there.

A: No, that's all good.

Q: Put your left arm down on that thing. Put it right underneath here. Kinda straighten your arm out. There you go. Okay put your elbow straight down right there. Okay. All right. Jayshawn, go ahead and sit back for me. So that's where you're gonna be when we're doing the test. Just like that, okay? What I wanna do here first, Jayshawn, is I wanna put this pad of paper right there just like that, this pen right there just like that. What I'm gonna do is I - is I want you

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to write a number on that pad between -- make sure - make sure you listen to me on this one...

A: (Unintelligible).

Q: ...between the numbers two and six, any single digit number -- don't tell me what it is -- in between...

A: In between two and six?

Q: ...two and six, any number in between two and six. I'm gonna turn around, Jayshawn. When I turn around, write that number on the pad, turn the pad over and then tell me that you're done. Okay?

A: I'm done.

Q: Okay don't tell me what it is. Single digit between two and six, correct?

A: Yes.

Q: Okay. Keep that pad right there just like that. Jayshawn, put your right hand just like that, flat as you can. Make sure you don't take that pad off. Don't...

A: Oh no.

Q: (Unintelligible) it's just a little sweaty right now so I wanna make sure these things stick good. Okay? There you go. Some people have got those dry old hands. You know what I'm saying? (Unintelligible).

A: (Unintelligible) moisturize.

Q: Yeah.

A: (Unintelligible).

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Q: No, yours is perfect. Move your hand right over here for me.

A: (Unintelligible).

Q: Put your elbow right back down?

A: Like this?

Q: Yeah flat as you can. Palm down right there. (Unintelligible) just like that.

Okay? See the way your hand is? Perfect, Jayshawn. Okay keep your hand just like that. I need your feet flat on the floor, right in front of you. Head nice and straight forward right at this wall. Make sure you keep your eyes open the entire time, Jayshawn. When you answer your questions, we went over the questions already. You remember those, right? Make sure you don't answer like this, "Yes, no." I need you just to be a statue just like that, just exactly like how you are and answer with the appropriate "yes" or "no" response. Okay? So you wrote that number down there on that pad. Okay?

A: Now this thing's so tight, that's why I still - I feel uncomfortable.

Q: Which one is tight?

A: Just the body part. It's like...

Q: You want me to loosen it up a little bit?

A: I can probably do it though but you got - you got...

Q: I don't want - not if it fits tight on ya.

A: I probably (unintelligible).

Q: I just can't have it...

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A: ...(unintelligible).

Q: There you go. See that?

A: Yeah - yeah.

Q: You got a whole hand in there. Let me get this bottom one. Whole hand in there. You good?

A: I'm good.

Q: Better?

A: Yeah.

Q: Okay, all right so we went over the questions already. I had you write a number between two and six on that pad, Jayshawn. Okay? Don't tell me what that number is.

A: Are you gonna ask me the same questions over?

Q: So here's what I want you to do, is I'm gonna add the numbers one and seven to that. Okay? The very first question I'm gonna ask you on this test - we're gonna do a small test here first before we get into the actual test. Okay? What I'm gonna do is I'm gonna say, "Regarding the number you wrote on that piece of paper," and I want you just to listen to me and don't answer anything yet.

"Regarding the number you wrote on that piece of paper, did you write the number one?" And, Jayshawn, what I want you to do is I want you to answer, "No." "Did you write the number two?" "No." "Did you write the number three?" "No." "Did you write the number four?" "No." "Did you write the number five?"

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"No." "Did you write the number six?" "No." " Did you write the number seven?"

"No." So in other words, Jayshawn, I want you to answer, "no" from one, all the way through seven. Okay? Now, obviously, one of those numbers is the number that you wrote. Okay? One of those numbers is the number that you wrote but I still want you to answer, "No." Okay? So that's the way it's gonna go. One through seven, answer, "No."

A: All right.

Q: Jayshawn, when I - when I get to number seven, what I want you to do is pay attention to me 'cause I'm gonna give you further instructions at that point.

A: All right.

Q: Okay does that make sense?

A: Yeah.

Q: All right, give me a second. We're gonna get rollin'. Jayshawn, this - this blood pressure cuff is gonna be constricted on your arm for about two to three minutes. Okay? So for two to three minutes, it's gonna be constricted. Your hands gonna feel a little tingling, we're gonna feel a little numbness.

A: (Unintelligible).

Q: That - that's normal. Okay?

A: Yeah.

Q: Any time you feel any chest pains, fainting, dizziness or anything like that, you let me know. Okay?

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A: All right.

Q: Please remain still. The test is about to begin. Regarding the number you wrote on that piece of paper, did you write the number one?

A: No.

Q: Did you write the number two?

A: No.

Q: Did you write the number three?

A: No.

Q: Did you write the number four?

A: No.

Q: Did you write the number five?

A: Yes.

Q: Test is now over. Please remain still. All right, Jayshawn, (unintelligible) here. Okay, Jayshawn, so - so I do this test for a couple of reasons. Okay? Part of it is, is that we're gonna go right into the actual test after this. Okay? But I need to make sure that you can follow instructions. Okay?

A: Okay.

Q: Do you remember the instructions that I gave you at the beginning of this test?

A: Yes, you want me to say everything "no," and...

Q: Correct and then I'll give you follow-up instructions after I went through - after the number seven. Correct?



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A: (Unintelligible).

Q: Did you follow those instructions?

A: Yes.

Q: No you didn't. You answered "yes," to number five. You were supposed to answer "no." Okay? So this is what the test is gonna be like. Okay? And I do this partly to get you prepared for - for the actual test. Okay?

A: All right.

Q: It - it lets me know that all the components and everything are working on you correctly. And they are. Okay? But also it lets me know that you are able to follow instructions on this test. Okay?

A: Okay.

Q: Do you remember the questions that we went over prior to me walking out of the room?

A: No.

Q: You don't remember those?

A: No.

Q: Okay I'm gonna go over those questions one more time. I already know the answers 'cause we already went over that. Okay? And then we'll go into the actual test. Regarding whether you physically placed her body in the sewage pipe, do you intend to answer truthfully?

A: Yes.

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Q: Did you physically place her body in the sewage pipe?

A: No.

Q: Did you physically place her body in the sewage pipe on your street?

A: No.

Q: Do you remember ever lying to someone in authority?

A: No.

Q: Do you remember ever lying to avoid responsibility for something you did?

A: No.

Q: Do you remember ever lying to get someone else into trouble?

A: No.

Q: Have you ever attended school?

A: Yes.

Q: Are you in Las Vegas?

A: Yeah.

Q: Are you currently in the state of Nevada?

A: Yes.

Q: Okay those are pretty easy, right? Same thing that we went over. It's very important that you answer these questions correctly. Okay?

A: All right.

Q: That's what we did on the first one to see. I think now you recognize that. Okay?

A: All right.

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Q: All right, you ready? Okay same thing. It's gonna feel exactly the same way. It's only about two minutes. Okay?

A: All right.

Q: All right, you ready?

A: Yeah I'm sorry if I get upset 'cause...

Q: You're fine - you're fine.

A: 'Cause I - I really hate when, like, the same questions is asked all the time.

Q: That's part of the polygraph though, man. Okay?

A: Yeah.

Q: And I appreciate you being cooperative. All right, you ready?

A: I guess.

Q: Okay. Please remain still. The test is about to begin. Are you in Las Vegas?

A: Yes.

Q: Regarding whether you physically placed her body in the sewage pipe, do you intend to answer truthfully?

A: Yes.

Q: Do you remember ever lying to someone in authority?

A: No.

Q: Did you physically place her body in the sewage pipe?

A: No.

?: (Unintelligible).

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?: Okay.

Q: Do you remember ever lying to avoid responsibility for something you did?

A: No.

Q: Did you physically place her body in the sewage pipe on your street?

A: No.

Q: Do you remember ever lying to get someone else into trouble?

A: No.

Q: This part of the test is over. Please remain still. Okay relax. Jayshawn, just stay quiet, stay seated. We'll start the next one in about 15 seconds. Same thing.  
Okay?

A: Uh-huh.

Q: Okay same thing. Please remain still. The test is about to begin. Have you ever attended school?

A: Yes.

Q: Regarding whether you physically placed her body in the sewage pipe, do you intend to answer truthfully?

A: Yeah.

Q: Do you remember ever lying to avoid responsibility for something you did?

A: No.

Q: Did you physically place her body in the sewage pipe?

A: No.

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Q: Do you remember every lying to get someone else into trouble?

A: No.

Q: Did you physically place her body in the sewage pipe on your street?

A: No.

Q: Do you remember ever lying to someone in authority?

A: No.

Q: This part of the test is over. Please remain still while I take the instrument out of operation. Okay relax. Same thing, just remain still. In about 30 seconds, we'll start the next one.

Q: Okay same thing. Please remain still. The test is about to begin. Are you currently in the state of Nevada?

A: Yes.

Q: Keep your eyes open. Regarding whether you physically placed her body in the sewage pipe, do you intend to answer truthfully?

A: Yes.

Q: Do you remember ever lying to get someone else into trouble?

A: No.

Q: Eyes open. Did you physically place her body in the sewage pipe?

A: No.

Q: Do you remember ever lying to someone in authority?

A: No.

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- Q: Did you physically place her body in the sewage pipe on your street?
- A: No.
- Q: Do you remember ever lying to avoid responsibility for something you did?
- A: No.
- Q: This part of the test is over. Please remain still while I take the instrument out of operation. Relax. All right, turn your right hand over, Jayshawn. Let's get this off you. (Unintelligible). This goes off last. (Unintelligible). Just like this, hands above your head, bend forward. Let's take this top one off first from around you. Black one coming off next from around you. Jayshawn, ta- take off those two pads, place them sticky side together and then toss 'em right in that trash can. Jayshawn, give me a few minutes. I'm gonna go grab your charts and then we'll come back and we'll - we'll talk about it. Okay? Give me a few minutes. Go ahead and grab a drink if you want. Just make sure you keep your cell phone off and just give me a few minutes. All right. All right, Jayshawn, so I got the results of your polygraph. Okay?
- A: All right.
- Q: And before I even start talking to you about 'em, I think me and you both know the results already. Okay?
- A: It should come back negative.
- Q: You're right.
- A: I'm good.

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Q: No - no - no, that you didn't pass.

A: I didn't pass?

Q: Yeah.

A: What you mean?

Q: You didn't pass.

A: How?

Q: That's what - that's what I'm here to ask you - that's what I'm here to ask you.

A: You talking about...

Q: You're not confident - you're not confident in your answer.

A: No, if my answer is not correct, it just that the - you was squeezing my arm and,  
like I said...

Q: That's the way a polygraph is - that's the way a polygraph is done.

A: And I like I said from the beginning, I have anxiety.

Q: I understand that.

A: My heartrate goes (unintelligible).

Q: I understand.

A: (Unintelligible).

Q: Jayshawn - Jayshawn, I want you to listen to me here. Okay?

A: All right.

Q: 'Cause now it's - now it's serious time. Okay?

A: Of course.

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Q: Now it's serious time.

A: Yeah.

Q: I brought you in here - remember I told you, after this test, we're both gonna know the truth after this. Okay?

A: I know.

Q: I know the truth now and I want you to know that. I want you - and I want you to be 100% that I know the truth. Okay? I'm 100% that I know the truth.

A: That's good.

Q: You - you placed that body in the sewage pipe. You absolutely did.

A: I really didn't.

Q: I know that now. Okay?

A: Like, to be honest, you - you let a machine determine the truth (unintelligible).

Q: No, your body told me.

A: I have a reason.

Q: Your body told me that.

A: I get nervous when I hop on the bus.

Q: I don't care about nervousness. We don't measure nervousness. I told you that. I do not measure nervousness. I told you that from the get go. Okay?

A: All right.

Q: You did.

A: I did not.



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Q: And I know that.

A: That's cool.

Q: I haven't called any detectives or did anything yet. Okay?

A: That's cool.

Q: I want you to talk to me - I want you to talk to me about this. Okay? 'Cause now it's serious time. There's - there's - there's no more of this maybe or, you know, that you didn't do it or what- whatever it was. If you helped someone, then talk to me. If you did it for a reason, I need you to talk to me, man.

A: I didn't do nothin' - I ain't killed nobody. I ain't put nobody in there.

Q: I didn't say...

A: I - I...

Q: ...you killed anybody. I didn't say that.

A: I - I - I understand.

Q: What I'm...

A: This...

Q: But what I am saying is, is that you did place the body down in there. That's what I'm saying. No - no - no, I'm not even asking anymore. I know you did.

A: I didn't.

Q: Okay? I know you did.

A: I didn't.

Q: And I'm 100% about that.

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A: I'd put that on my life, I ain't had nothin' - now you're gonna make me upset.  
You're doing your job. I respect that. I swear to god I ain't put nothin' in there.

(Unintelligible).

Q: You did.

A: I did not.

Q: And I'm - and I'm asking you why, Jayshawn.

A: I'm gonna look you dead in your eye, I did not put nothin' in there. I'm serious.

Q: And I'm asking you why.

A: I already knew because I...

Q: Did you help someone?

A: I help...

Q: Did you help someone?

A: Help who?

Q: I don't know. But - but - but you placed that body in there, Jayshawn. Whether it was with help or whether it was for a reason, whether you didn't know that maybe she wasn't deceased at the time, I don't know and that's what I'm here - coming in here to ask you, out of respect for you. I'm coming in here outta respect for you. I didn't have to do that.

A: Yeah.

Q: You know what I'm saying? I didn't have to do that. I coulda went straight in there and called the detective and said, "Absolutely, 100%, Jayshawn placed her

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body in there." How, why, when? I don't know. But I came outta here from respect for you, to ask you why.

A: I didn't do it.

Q: You didn't do what?

A: I didn't put nothin' in there. I don't even know who was in there. I already told you...

Q: Well you did, Jayshawn?

A: ...I seen two people.

Q: Well you did and we've already proved that and - and your body told me that. Do you know that?

A: I got a (unintelligible).

Q: Every time I asked you that - every time I asked you that question, your body said, "Yes, I did."

A: It's crazy 'cause when I go on interviews for jobs, uh, and my heart beating fast - I'm just a nervous person but...

Q: I don't measure nervousness, Jayshawn.

A: I'm just saying my heart...

Q: You can be as...

A: ...my heart...

Q: ...nervous as you want.

A: ...heart - heart. I didn't move at all. Like, when you said that, like, I just - heart -

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like, I go to an interview and the lady say, um...

Q: Jayshawn, we're - we're spinning circles here, man.

A: All right.

Q: You know what I'm saying? We're just spinning circles here.

A: Yeah. I don't even know who was in there. Like I said, I ain't - how can I physically drag, like, you tellin' me I dragged a body...

Q: I am not saying that.

A: But how...

Q: No, I'm not.

A: Okay.

Q: I - that's not what I'm saying.

A: You're saying I...

Q: All I'm saying is, is that you placed that body down in there.

A: How?

Q: Whether it was help with someone else or whether you did it all by yourself.

A: I don't even talk to nobody (unintelligible).

Q: Or whether you did it all by yourself, Jayshawn.

A: How can I...

Q: But I want...

A: ...do that by myself?

Q: ...you to look at me now. Remember, you said, "Look into my eyes." I want you

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to look into my eyes.

A: Yeah.

Q: I know with 100% certainty, that you did do it.

A: No.

Q: Yes.

A: No.

Q: Yes.

A: (Unintelligible).

Q: There's no question anymore. My - no, I'm judging off of your body. Your body told me that. Your body said, "Yes."

A: No.

Q: And all that you're doing, man, is just asking you. And I want you to talk to me 'cause I don't think you're that kinda guy. I don't think you're some coldblooded killer. I'm not saying that.

A: (Unintelligible).

Q: I don't think you are.

A: I understand and I respect that.

Q: You know what I'm saying? I don't think you are. But what I'm saying is that something happened, Jayshawn. Now whether you got scared and you - and you placed her in there for something else, maybe for her safety. I don't know. Maybe she died down there after that. I don't know. But what I'm asking you,

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Jayshawn, is that I know that you did put a body in there. I know that.

A: (Unintelligible).

Q: Okay? I know that now. I'm not asking anymore. I know that. And all I'm asking you is to explain to me how it happened. Why?

A: I didn't have nothin' to do with that (unintelligible).

Q: Were you guys gettin' high together or something?

A: I ain't - I don't even know who that person is. It's crazy.

Q: Did somebody else ask you to do it? Were you afraid because someone else asked you? I don't know, Jayshawn.

A: Like, I don't have nothin' - I told you. I seen two people put that down there. I don't know...

Q: Jayshawn, you were one of those persons...

A: No.

Q: ...or person.

A: No.

Q: That was you.

A: No.

Q: It was you.

A: No.

Q: Okay? It was you. It absolutely was you.

A: All right. You can believe that just off of a...

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Q: Off of your body.

A: Now you're judging me off of technology.

Q: No, I'm judging off of your body.

A: Technology.

Q: I'm judging off of your body.

A: Technology.

Q: Your physiology told me that, Jayshawn.

A: Not technology, a machine.

Q: Absolutely not.

A: Yeah a machine. It's - like I said, it's cool. Like, people really (unintelligible).

Q: Let me ask you this. What type of person would do that?

A: Hm?

Q: What type of person...

A: A cruel person. I'm far from a cruel person.

Q: What do you - what do you think should happen to that type of person,  
Jayshawn?

A: They would go to prison for life, of course. I - I know the consequences. I'm just  
- I'm just lettin' you know.

Q: What type of person would do that and not tell anybody about it? This person's  
probably got a family...

A: (Unintelligible).

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Q: ...people that's wondering what's going on.

A: Yeah.

Q: You said you've got brothers. You said you've got sisters or siblings. Right?

A: I'm not...

Q: You grew up with people.

A: I'm not no cruel person.

Q: I'm not saying that you are. And that's what I'm saying, is I don't think - I don't think it was done out of cold blood.

A: Yeah.

Q: But I'm asking you, were you guys gettin' high and - and - and...

A: No.

Q: ...you put her down there for - to help her out for someone else - to hide her again somewhere else? I don't know, Jayshawn.

A: I don't know who was down in there.

Q: But I can't tell your story for you. Only you can tell me. You know what I'm saying? Only you can tell me, man.

A: Tell you what?

Q: Tell me what happened.

A: I literally was smokin' and seein' two people doing some weird activity down there.

Q: That's not true - that's not true.



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A: You don't have to believe me.

Q: That's not true.

A: You don't have to believe me.

Q: Did they call you over to ask you to help? Did they know you?

A: I don't even know who they was.

Q: Are you afraid of them now?

A: I am afraid of them.

Q: Because - because - because you helped? Is that what it is?

A: No I ain't never helped.

Q: Did you get yourself into something that you didn't intend to do? Did you have no way out 'cause they woulda hurt you either way? I don't know, Jayshawn. I don't know, man. I'm asking you to talk to me.

A: Talk to you?

Q: Tell me what happened, Jayshawn.

A: You're a cool - you're a cool man. I respect that. But like I said, I ain't got nothin' to do with that.

Q: Let's get in here - let's - let's get in here man to man now. Okay? Man to man, all right? I'm a man, you're a man. All right? What happened, dude?

A: Nothin' happened.

Q: You're - you - you are the type of person that can't hold this inside of them. Do you know that? You know that and I know it. You're this type of person that

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can't hold it inside.

A: 'Cause I didn't do nothin' wrong.

Q: And you wanna tell me so bad.

A: You want me to tell you so bad.

Q: No - no, you want to tell me so bad. Either way, I know the results of the test. I  
have nothin' to gain.

A: I understand.

Q: Either way, I know what happened.

A: Okay.

Q: I don't know. May- may- maybe you went out there and killed her and placed her  
there. I don't know.

A: No.

Q: But that's why I'm asking you to tell me your side of the story. Tell me your side  
of the story.

A: I didn't have nothing nothin' to do...

Q: 'Cause that's pretty cold, man. You know that? That's pretty cold.

A: I didn't do it though.

Q: That's pretty cold, dude.

A: It is cold. I ain't...

Q: That's a cold dude right there.

A: Yeah it ain't me.

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Q: Now either you were looking out because maybe you mighta been the next one down there. I don't know. Or you were afraid of that. I don't know. You said there's some pretty rough dudes in that area. I don't know. And I know it's not a good area. That's what you said. All your friends around me, they went around and they caught got up in some - some bad stuff. I seems like nobody can - can get outta there.

A: Yeah.

Q: Right?

A: Mm-hm.

Q: And now you wanna try and make - make a good life for yourself and go to school. And I understand that. And maybe you got caught up into something that you didn't intend to do. But - but maybe you didn't have any other choice. And I don't know that.

A: I know where you're comin' from.

Q: You know what I'm saying?

A: Yeah but...

Q: And I'm tryin' to ask you here.

A: Yeah but...

Q: And right now, you're lookin' like a coldblooded killer.

A: Mm...

Q: That's what you're lookin' like. You look like a coldblooded killer. Because I

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know that you did put her in there. I know that already.

A: Yeah.

Q: That's not even in question anymore. We're beyond that question.

A: Yeah.

Q: Okay? I'm beyond that question.

A: You can believe that.

Q: Were you sittin' there gettin' high with her?

A: I don't even know...

Q: Was she gettin' high with you?

A: ...who the person is - I don't even know who the person is.

Q: Did somebody else ask you? Did somebody else threaten you to put her down there?

A: I don't even know who the person is.

Q: Okay did somebody else threaten you, Jayshawn?

A: If somebody was to ask me some shit like that, I would look at them crazy and walk away. When it comes to serious stuff like that, like I say, I never...

Q: This is serious stuff.

A: It is serious.

Q: This is serious stuff, man.

A: I don't have anything to do with it.

Q: There ain't no joke - there ain't joke with this anymore.

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- A: And you're saying you don't believe me.
- Q: No, I don't believe you. I don't gotta believe you because you already told me your answer. Your answer told me. Your body told me.
- A: I mean - I mean, like I said, you ain't gonna believe me. You judge me off of that. I respect that. You're doing your job but honest...
- Q: Jayshawn, the only thing is I'm not believin' is that you're a coldblooded killer. That's what I don't believe. That's what I don't believe. That's the only part of this that I do not believe. You might be though.
- A: No.
- Q: But I don't believe that. But you might be. But I don't believe that, Jayshawn. And that's why I'm asking you, how did you get caught up into this?
- A: I didn't caught up in anything.
- Q: You did it on your own?
- A: I didn't do nothing on my own. You gotta believe me, like, honest.
- Q: We're beyond that - we're beyond that, Jayshawn.
- A: (Unintelligible).
- Q: You put that body down there.
- A: I didn't put...
- Q: Okay?
- A: ...nothin' down there.
- Q: You put that body down there and I know it.

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A: Sir...

Q: Okay?

A: I didn't put nothin'...

Q: When you walked in here, you were the only one that knew that.

A: No.

Q: You were the only one that knew that.

A: I walked in here to try...

Q: Now...

A: ...to prove a point that I had nothin' to do with it.

Q: Now there's two people that know it. Okay? There's two people that know it now, me and you. We both know.

A: Sir, I didn't have nothin' to do with it.

Q: What's keeping you from telling me, man? Are you afraid?

A: I'm not...

Q: Let me ask you this.

A: ...afraid of nothin'.

Q: Let me just ask you this. Are you afraid?

A: I'm not afraid of nothin'. If I was to do something like that I admit I would do, I would go down for - for killing somebody and having...

Q: I didn't say you killed somebody.

A: I'm just sayin' if somebody - like, that's...

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- Q: I just asked you if you put it - I just asked you if you put it - put it in the sewage pipe. That's it.
- A: Well I mean, she's there so therefore she - I would be...
- Q: I don't know when she died, man.
- A: I'm just sayin', she wasn't alive...
- Q: I don't know.
- A: ...when she was down there. It's - it's bad even talking about it - thinking about it 'cause, like I said, I do grieve for the family. That is a foul thing. I have a heart.
- Q: You just said that she wasn't alive when she was down there. Talk to me.
- A: I - I went down there and I seen she - she was dead. But I didn't have nothin' to do with that. And that's the thing. When I made that call, I told you I would be accused. Like, y'all would accuse me as a suspect. I'm a nervous person. I walked in here nervous.
- Q: You can be as nervous...
- A: That thing where...
- Q: ...as you want.
- A: ....I don't be nervous...
- Q: This test is designed for a nervous person. Did you know that?
- A: No.
- Q: This test is designed for a nervous person.
- A: Okay.

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Q: That's what it's designed for, man.

A: Yeah.

Q: Okay? A lot of times, people think they can just walk in here and they're gonna walk out and they're just gonna be like, "Oh, yeah, this thing didn't work." No, man, this thing works.

A: Of course. I ain't doubting...

Q: Okay?

A: ...that, yeah.

Q: 'Cause the only thing I did, man, was just measure your body. That's it. I didn't do anything else.

A: You want me to just talk (unintelligible).

Q: I put stuff on you.

A: I understand. Even when we - before you did all that...

Q: I get that.

A: ...my heart was beating fast...

Q: Yeah but guess what?

A: ...like, it seems like.

Q: Guess what?

A: The same thing.

Q: Guess what? To that question, your body said, "Yes," every time I asked it to you. Okay, Jayshawn? Now. you can sit - now you can sit here - you can sit



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here and play this game of, "I don't know who - who - who - who it even is. I was out there smokin' weed." But I know better, man.

A: So I'm being (unintelligible).

Q: I know better. You were not.

A: Okay.

Q: You were not - you were not being truthful with me.

A: Okay.

Q: And I get it. If you're afraid of something, talk to me. If you're afraid of something, then tell me. Let me - let me relay that before I go out there and say that, "Yes, this dude is - this dude is some friggin' serial killer and he mighta - this mighta been the fourth or fifth body that he's put in a friggin' sewage pipe. I don't know." That's not you though, man.

A: Hell no.

Q: Okay? That's not you though.

A: Of course.

Q: But talk to me. Tell me what happened, dude.

A: I mean, nothin' happened.

Q: Who are you afraid of?

A: I ain't afraid of nobody.

Q: That's not true. I can see it right in your friggin' face.

A: (Unintelligible).

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Q: I can see it in your heart right now.

A: Because you're (unintelligible).

Q: You wanna tell me - you wanna tell me...

A: Tell you...

Q: ...the truth.

A: ...what?

Q: The truth.

A: The truth?

Q: The truth.

A: I seen two people put something down there.

Q: No - no. Did you go over there and help 'em? Did they ask you?

A: No - no.

Q: Did they ask you and you're afraid of them because you don't wanna get caught up anymore?

A: I'm afraid of everybody. I'm afraid of you right now. I'm afraid of this - everybody in this office. I'm afraid of people in the neighborhood. I'm afraid of everybody right now.

Q: And you think keep not tellin' us the truth, you think that's gonna help, man? You wanted to so bad with that phone call. That's where you started because it was weighing and weighing and weighing on you. And now you got an opportunity. 'Cause here's what happens, Jayshawn, is that a lot of people, what they do is

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they start denying - denying - denying - denying. And then they get down to a point further down the road in the process. Okay? Follow me here.

A: I understand.

Q: Further down the road in the process to where they wanna tell the truth. They wanna tell the truth at that point, after they've denied - denied and lied all the way through. They haven't told the whole truth. What do you think happens once they want to tell the truth at that point?

A: That'd be too late.

Q: Nobody believes 'em, Jayshawn. Nobody believes 'em. And we understand if you came in here afraid. Okay? You're not in a very good neighborhood. We understand that. We understand there's probably people out there. Okay? We understand that. But you gotta tell us. You gotta talk to us.

A: I - I didn't have nothin' to do with this.

Q: Well you did - you did have something to do with it.

A: I didn't.

Q: I don't know whether you're the cause of it but you definitely placed her or helped place her down in there.

A: I didn't. I couldn't even think of that. I probably...

Q: You...

A: I woulda panicked and probably, like I said, (unintelligible) I probably woulda panicked and like...

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Q: You didn't panic. No you wouldn't.

A: I would (unintelligible).

Q: No you wouldn't.

A: How do you know?

Q: No you wouldn't.

A: How do you know that I wouldn't?

Q: 'Cause I know you did it. That's why.

A: Because of a machine?

Q: Mm-hm.

A: Okay.

Q: Not because of a machine. Because of your body.

A: I have a weird body. Like, even just talking to you right now, my - my - my heart beating fast.

Q: Yeah. It doesn't fly here, man. I just want you to know, that don't fly here.

A: I'm being honest.

Q: Okay? I do this for a living.

A: I respect that.

Q: Okay? I've talked to a lot - thousands of people in my life.

A: I...

Q: Thousands.

A: I respect that.

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Q: All right? And I know a criminal when I got one here right in front of me and that's not you.

A: I'm not a criminal.

Q: And that's why I'm saying is I think you got caught up into something that you didn't intend or maybe you didn't even want. And by you sitting here and not telling me the whole truth...

A: Mm-hm.

Q: ...it just - it just makes you look bad, man. You understand what I'm saying?

A: (Unintelligible) I look bad.

Q: That's pretty cold. You know what I'm saying?

A: It is.

Q: It's pretty cold, dude. That's someone's sister. It's someone's mom or someone's aunt or whoever it mighta been.

A: (Unintelligible).

Q: Okay? And that - that was haunting you for the last two, three, four weeks, whatever it was. It was haunting you.

A: It was haunting me.

Q: And I'm sure that you were thinking about it. You were probably dreaming about it. Whatever it mighta been and seeing it and all we're asking you is to tell us how and why.

A: It's just that I don't know.

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Q: And you can't even do that.

A: Because I'm being honest.

Q2: And you can't even do that.

A: I'm telling you, man. Like, you're really pressuring me, like...

Q: Let me ask you this. Were you closer that what you're telling me?

A: What do you mean closer, like, (unintelligible).

Q: When they were puttin it in there? Instead - instead - instead of just - no, I'm just asking you, where you closer than just outside your porch? Were you a little closer...

A: Nah, I ain't...

Q: ...than what you were saying?

A: I - I think I woulda been noticed if I woulda walked a little bit closer. I woulda been seen 'cause, like I said, my house is not far from that little sewage pipe.

Q: Did they ask you to help?

A: I don't even know who it was. And if they woulda seen me, I'm pretty sure they woulda got nervous like, "Oh there's somebody right there." You know what I mean?

Q: What - why did you put her body down there? Did - did they ask you? Who asked you, Jayshawn?

A: Sir...

Q: Who asked you, Jayshawn?

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A: I didn't not put that body...

Q: Who asked you?

A: Nobody didn't ask me. I didn't have nothin' to do with it. I don't even know who it is.

Q: It's you. Right now, it's you.

A: Oh I did it?

Q: It's you.

A: I did it?

Q: You put her body down there.

A: How?

Q: That's why I'm asking you. You tell me. Don't ask me the question. I've been asking you that for the last 30 minutes. Tell me.

A: I don't know how.

Q: That's what I've been asking you, man.

A: I don't know how.

Q: You - you definitely know how. You're thinking - you're probably thinking about it right now. You absolutely are, man.

A: I don't know.

Q: That's why you touched her. Because you know your body touched her. You know your body touched her when you placed her down there.

A: I (unintelligible).

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Q: You know that for a fact.

A: No, I wasn't...

Q: Okay?

A: ...down there until (unintelligible).

Q: All right, that's been working all the way up until this point. It ain't gonna work no more. It doesn't work now. Okay?

A: I respect that.

Q: It doesn't work now.

A: I understand. But I didn't have nothin' to do with that, sir. And I'm being very honest. I ain't tryin' to get angry. Like, you - you the power right here but...

Q: I ain't got no power. I'm tryin' to ask you.

A: Yeah.

Q: I could step out, Jayshawn. I could step back, walk out this door, call - call the - the detective and say, "Hey, this dude absolutely placed her body in that sewage pipe. Have at it."

A: Because...

Q: Okay?

A: ...of this? Because of this?

Q: 'Cause that's the next step, Jayshawn. That's the next step, man.

A: Can I ask you a question though? Um, it's a movie - this have nothin' to do with this but...



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Q: Well let's stay focused, man. I don't wanna talk about movies.

A: No - no - no, it's - it's (unintelligible)...

Q: Go ahead.

A: ...a documentary, I believe. Um, I don't know what it's called. Basically, a dude got accu- accused of murder and he went to prison and served, I think, 20 plus years. And he - he studied to be a lawyer. I'm pretty sure you heard about it. It's just now coming out.

Q: I'm sure it's happened (unintelligible).

A: (Unintelligible). I'm pretty sure he took the polygraph test. I'm pretty sure he did everything that you, like - and he failed and he doing something for something he didn't do because of he probably...

Q: I don't know about that case, Jayshawn. Are there things out there like that? I don't know.

A: I'm just saying, sir.

Q: I - I don't know but what I do know is that you placed the body in that sewage pipe. I didn't say you killed her. I didn't say any of those things.

A: Of course.

Q: You never heard me say that. I'm not saying that.

A: Yeah.

Q: Maybe you did. I don't know. But I'm not saying you did that 'cause I didn't ask you that question.

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