

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAYSHAWN D. BAILEY,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

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

RECORD ON APPEAL VOLUME 8

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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1 Q What did you do?

2 A I took him home.

3 Q And it's not -- did you set up the polygraph for that same day? Or was it
4 set up for a couple days later?

5 A I was trying to set it up for the following Wednesday because I didn't
6 think the polygraph people would be able to get him in any sooner. We were able to
7 get it scheduled for Tuesday.

8 Q Okay. So a couple days later?

9 A Yes.

10 Q Were you -- were your questions, as a detective, focused on
11 determining -- were you focused on him being the suspect at that time?

12 A No. We were just focusing on his actions and then at some point we
13 started asking about potential trouble houses, party houses, anyone in the
14 neighborhood he felt who might be involved.

15 Q You were just trying to get a lead?

16 A Yes.

17 Q Additionally, did you also ask him further questions about the two
18 people he claimed to see dump the body?

19 A We did.

20 Q And, in fact, did you keep asking him about those people?

21 A Yes.

22 Q And what's the reasoning for that?

23 A He --

24 Q I know it's self-explanatory, but what's the reasoning for that?

25 A We were trying to get a better description of those two people. I, at one

1 point, asked him if he knew who they were would he tell me and he responded by,
2 no, I wouldn't, I wouldn't tell you.

3 Q Because those two people, would they have been the focus of your
4 investigation?

5 A Absolutely.

6 Q Because they're the people that a witness the reported seeing dumping
7 a body?

8 A Yes.

9 Q At the time did you even know if this was going to be a homicide? Or
10 an overdose? Or a suicide? Or did you know?

11 A No. At the time, from what we learned during the initial examination of
12 the decedent, we couldn't tell what we were going to have. There was no outward
13 signs of trauma.

14 Q So while you're trying to figure out who placed the body in the sewer,
15 you didn't, even at that point, you didn't even know if you had a criminal death at
16 your hands?

17 A That's correct.

18 Q And when you drove -- you drove him home, so you drove him right
19 back to 2120 Fred Brown?

20 A Yes, I did.

21 Q Okay.

22 MS. HAMERS: I'll pass the witness.

23 THE COURT: Cross?

24 MS. CLARK: Thank you.

25 ///

1 **CROSS-EXAMINATION OF BUDDY EMBREY**

2 BY MS. CLARK:

3 Q So, Detective Embrey, you responded to that scene, that suspicious
4 death?

5 A Yes, I did.

6 Q Okay. And you knew the brief details from the 9-1-1 call but not much
7 else, right?

8 A That's correct.

9 Q Okay. And then obviously the scene when you found it?

10 A Yes.

11 Q Okay. So you went over to Mr. Bailey, you introduced yourself with
12 your partner ?

13 A Yes.

14 Q Presumably you told him you wanted to talk to him, right?

15 A Yes.

16 Q Okay. So at that time you said that there was a crowd forming and they
17 were getting kind of angry; is that fair?

18 A There was a crowd and you could tell they weren't pleased.

19 Q Okay. So a crowd of civilians?

20 A Yes.

21 Q People in the neighborhood?

22 A Yes.

23 Q And they were gathering to watch? Just to, sort of, be nosey? Find out
24 what was going on? What was what was your take on that?

25 A There was -- probably all of the above. We had a large amount of

1 equipment out there and it was quite obvious. Obviously, the rumors had spread
2 through the neighborhood that we had recovered or had found a body. I think in
3 combination of that and the fact that there was a missing teenager from the
4 neighborhood obviously caused a lot of stress for that neighborhood.

5 Q So when you talked to Mr. Bailey that was out front of his house?

6 A Yeah. It was standing in his driveway.

7 Q Okay. So he was outside as well?

8 A Yes. He was standing right out there.

9 Q And in clear view of this crowd that had formed?

10 A Yes.

11 Q Was some of that anger, in your opinion, directed towards Mr. Bailey
12 while you were talking to him?

13 A I didn't hear any, like, screams or anything, like, toward Mr. Bailey. You
14 could just sense that people were upset about the fact that there was a body and I
15 think they were naturally assuming it was their missing sibling or --

16 Q Sure.

17 A -- relative or --

18 Q And then, obviously, saw you speaking to someone in the
19 neighborhood?

20 A Yes.

21 Q Okay. So fair to say, kind of a -- kind of a hostile situation maybe?

22 A Yes.

23 Q Okay. So when you transported him to headquarters he didn't have a
24 vehicle of his own, right, you drove him?

25 A That's correct.

1 Q Okay. Yourself and Detective Ravelo in the same vehicle?

2 A Yes.

3 Q And Jayshawn, excuse me, Mr. Bailey in the backseat of the vehicle?

4 A No. He was sitting in the front passenger seat.

5 Q Front seat? And so you were his ride to the station and presumably his
6 ride back from the station?

7 A Yes.

8 Q Okay. Now, you said you took him to the suspect interview room?

9 A Yes.

10 Q I think you said you came in from the rear of building?

11 A It's the -- there's only two entrances. The most common one that we
12 use is the rear because it's -- you key your way in. You're right into the interview
13 suite versus if you go in through the front door you have to go through numerous
14 doors to get to where we're going.

15 Q Okay. So you didn't go in the front doors?

16 A No, we didn't.

17 Q Where the public would enter, so to speak?

18 A Nope.

19 Q Okay. So you take him in the back, you put him in the suspect
20 interview room, are there windows in that room?

21 A There's only just a small window on the door.

22 Q On the door? Okay. One door?

23 A One door.

24 Q One door in and out. I presume that door was closed when you were
25 talking to him?

1 A Yes.

2 Q And besides yourself and Detective Ravelo is just Mr. Bailey in the
3 room?

4 A That's correct.

5 Q And you said it was audio and video recorded?

6 A Yes.

7 Q And you told him it was audio and video recorded?

8 A I believe I just told him it was recorded. I don't know if I specified that
9 there was actual video or not.

10 Q Now, you said that he was free to leave the interview room, did you tell
11 him he was free to leave the interview room?

12 A I don't recall. I know it's not on tape. But I do not recall if I told him
13 beforehand or not.

14 Q Okay. Now, you said that you didn't read him any Miranda warnings at
15 this time?

16 A That's correct.

17 Q And you mentioned that you were concerned about a couple of his
18 answers, his story; I mean, would that be fair to say?

19 A Not really his story, the fact of him touching the body was basically my
20 main concern.

21 Q Okay. And forgive me, that -- I would consider that part of his story.

22 A Okay.

23 Q Okay. So when he told you his story about seeing two people put
24 something in the sewer.

25 A Yes.

1 Q Right? And then going in at some point later and touching the body.

2 A Yes.

3 Q Okay. That struck you as suspicious?

4 A I don't know if I would call it suspicious more than just weird.

5 Q So weird --

6 A At that point.

7 Q Weird enough you didn't want to leave it alone?

8 A Yes.

9 Q Okay. So you asked him to do a buccal swab?

10 A Yes.

11 Q But you did tell him if he didn't want to do it you were going to get a
12 search warrant to do it?

13 A Yes.

14 Q And that was while you were that room, right?

15 A Yes.

16 Q Okay. And you also brought up the idea of the polygraph while you
17 were in that room?

18 A I did. Yes.

19 Q Okay. And again that was because of his, sort of, weird answer about
20 that?

21 A Yeah. Pretty much, yes.

22 Q Going into the sewer?

23 Okay. And you mentioned after you talked about the polygraph that
24 Jayshawn asked if that was something that went off brain waves?

25 A That's correct.

1 Q Now, Detective Embrey, you were also present a few days later when
2 he did his polygraph examination, correct?

3 A Yes.

4 Q Okay. And I think the same situation, right, you picked him up for that,
5 took him to the headquarters?

6 A Yes. He -- during the initial interview he said he would need a ride and
7 I agreed to bring him down.

8 Q Okay. And presumably you escorted him into the interview room the
9 second time as well?

10 A Yes.

11 Q Okay. And during that time, that was a room that had no windows in it?

12 A The polygraph, yes, they do not.

13 Q Okay. And you had your partner with you at that time? Jaeger?
14 Detective Jaeger?

15 A When we brought him into the room and, basically, I call it handing it off
16 to the polygrapher, I don't recall if -- I believe Detective Jaeger was with us.

17 Q Okay. And he was placed in a chair in that room?

18 A Yes.

19 Q Back against the wall?

20 A Yes.

21 Q And there was one door in and out of there?

22 A That's correct.

23 Q And he was asked to turn his cell phone off when he went in that room?

24 A Yes, that's correct.

25 Q And keep it off the whole time he was in that room?

1 A Yes.

2 Q And that one door in and out was closed?

3 A Yes.

4 Q Obviously.

5 Now, were you present at that time when Miranda warnings were given
6 to Mr. Bailey?

7 A I was.

8 Q But you were not the one who provided those rights?

9 A No, I was not.

10 Q Who did that? Provide warning?

11 A Detective Rivera, I believe, is his last name, the polygrapher.

12 Q Okay. So he's a detective as well?

13 A He might be a civilian employee. I'm not sure.

14 Q Okay.

15 A I call him a detective.

16 Q Okay. So you didn't drop him off at the polygraphy examination or the
17 polygraph and then leave?

18 A No. No.

19 Q Okay. Did you observe the polygraph examination while it was
20 happening?

21 A I observed a portion of it, yes.

22 Q Okay. Was that via close circuit television, like, sort of a live feed
23 happening?

24 A Much like this, how we have it set up, we're able to monitor the
25 cameras.

1 Q So you're in one room --

2 A Yes.

3 Q -- watching what's happening in another room?

4 Okay. Now, after the polygraph examination you don't go back into that
5 room right away?

6 A No.

7 Q Right?

8 In fact the polygraph examiner talks to Jayshawn for quite a while?

9 A Yes.

10 Q Do you recall that?

11 Okay. By my review, about 25 minutes or so?

12 A I'll have to take your word for it because I wasn't paying attention.

13 Q Sounds about right? Okay.

14 And then at some point you and your partner come in?

15 A Yes.

16 Q And the polygraph examiner leaves and you and Detective Jaeger take
17 over, sort of, the ongoing interrogation after that?

18 A Yes.

19 Q And so you had watched enough of the polygraph to know, sort of, how
20 that happened, right?

21 A That and we have -- had received the results that, obviously, he, in their
22 words, failed.

23 Q Okay. And you had watched at least some of the interview between the
24 polygraph examiner and Mr. Bailey?

25 A The post-polygraph?

1 Q Yes.

2 A Yes, I had.

3 Q Okay. So when you and Detective Jaeger went into the room, there's
4 two of you, smallish room, and Mr. Bailey?

5 A Yes.

6 Q Okay. And one of you is sitting and one of you is standing; do your
7 remember that?

8 A I'm sitting and Detective Jaeger is standing. Yes.

9 Q Okay. And you sort of take over, right, the interrogation?

10 A Because I had -- had the previous interview with him, so, yes.

11 Q Okay. And so you knew -- you knew what he had already told you in
12 the previous interview?

13 A Yes.

14 Q Okay. Now, at this point he's a suspect, right?

15 A At that point, yes.

16 Q Now, during the interrogation you're not just asking him questions, you
17 talk at him a lot, right, you're trying to get people to say things back to you; is that
18 fair?

19 A We're just trying to get them to basically be honest with us about what
20 occurred.

21 Q Okay. And do you recall in this case you sort of suggested a version of
22 the story in which Mr. Bailey was involved but not necessarily very culpable; does
23 that sound right?

24 A Yes. I -- at that time I believed it was a overdose and that either he
25 observed his two friends or he helped his friends place the body in the sewer to, in

1 essence, get rid of it.

2 Q And you, sort of, made that suggestion as to that's probably what
3 happened, right, to Bailey? To Mr. Bailey?

4 A Oh, yes.

5 Q Multiple times?

6 A Yes.

7 Q Probably five times at least?

8 A Yeah, probably at least five.

9 Q Do you remember telling him that if that's what he told you that he
10 would get to go home?

11 A Uh-huh. Yes.

12 Q Again, multiple times?

13 A Yes.

14 Q Okay. You tell us this, you get to go home?

15 A Yep. Yes.

16 Q I'm not going to arrest you, you say this?

17 A Yes.

18 Q Okay. And Mr. Bailey continued to deny having anything to do at that
19 point with the body in the sewer?

20 A That's correct.

21 Q And he probably issues the same number of denials, you know, five,
22 ten, how ever many --

23 A Yes.

24 Q -- to your suggestions?

25 Okay. And that goes on, I would say, and your memory might be better

1 than my recollection, but say maybe 20 minutes? 25 minutes? Another amount of
2 time? Good amount time?

3 A I would say that's a fair estimate.

4 Q Okay. Now, do you remember during that statement telling Mr. Bailey
5 something along the lines of, look, whatever you tell me I'm going to take you home?

6 A Yes. Because I still, at that point, believed this was a drug overdose.
7 And if that was the case, and I explained to him, I knew the victim hadn't been shot, I
8 knew the victim hadn't been stabbed; at that time I didn't believe the subject had
9 been strangled, so at that point I still truly believed that this was an overdose and
10 this is simple disposing of a young girl.

11 Q Okay. And so you did, I mean, maybe your exact words, if you don't
12 mind, "I can tell you this and I can promise you this, no matter what happens here
13 right now with you telling and talking to us, I'm taking you home"?

14 A Yes.

15 MS. CLARK: Okay. Court's indulgence?

16 I'll pass the witness back, Your Honor.

17 THE COURT: Any redirect?

18 MR. SCHWARTZER: I have some, Your Honor.

19 **REDIRECT EXAMINATION OF BUDDY EMBREY**

20 BY MR. SCHWARTZER:

21 Q During the first -- going back to January 19th, 2020, during when the
22 crowd was forming, eventually when he went to this interview -- suspect interview
23 room, whatever -- what -- you called it the suspect interview room?

24 A It's a suspect interview room. Yes.

25 Q With that said, do you interview witnesses in that same room as well?

1 A I do.

2 Q Okay. And that's a room that's, again, set up for audio and video?

3 A Correct.

4 Q Okay. And is that part of the reason why you have -- you interview
5 witnesses there?

6 A Yes.

7 Q Okay. And you said you went through the back, correct?

8 A Yes.

9 Q Is the reason you went -- why did you go through the back versus the
10 front public area?

11 A Simple access, it's through one door instead of multiple doors. I could
12 just park right outside the door. We could walk straight in.

13 Q Is the front lobby open on Sundays?

14 A No.

15 Q Okay. So while it's the front entrance is a public entrance, it wasn't
16 open that day?

17 A That's correct.

18 Q Okay. And then you, like you said, there is a limited amount -- there is
19 less doors going through the back way than the front way?

20 A Yes.

21 Q Okay. When you were talking to Mr. Bailey during that first interview
22 did he also express concern about being labeled a, quote, unquote, snitch?

23 A Yes.

24 Q Is that another reason why it's important to get these -- get potential
25 witnesses away from a crowd?

1 A Yes.

2 Q And, specifically in this case, Mr. Bailey who seemed to be afraid of
3 being labeled as such?

4 A Yes.

5 Q Okay. Now, we talked a lot -- Ms. Clark went into that second interview
6 which now I think we should go into a little bit more now, you picked him up that day
7 on Tuesday, is that correct, on January 21st?

8 A Yes, that's correct.

9 Q Okay. And you did that -- if -- you did that why? Why did you pick him
10 up versus having him come to you?

11 A He asked and said he needed a ride.

12 Q Okay. He didn't have a vehicle to get your location?

13 A That's correct.

14 Q Okay. When you drove him to the -- to this interview do you recall if he
15 was in the front seat or the backseat?

16 A Front seat.

17 Q Okay. And the front seat, again, is that like a normal vehicle front seat
18 where you can just open the door?

19 A Yes.

20 Q Like, the -- you can't, like, lock the door and he can't get out?

21 A It's not a police vehicle.

22 Q Okay.

23 A It is, but it's not secured like a police vehicle.

24 Q Okay. And he wasn't in handcuffs or anything like that?

25 A No, he was not.

1 Q Okay. When he gets into -- gets to the -- the police station, do you take
2 him to the polygraph area?

3 A Yes.

4 Q Now, the polygraph area, specifically where the polygraph people are,
5 there's no windows in that room, correct?

6 A That's correct.

7 Q And the room is fairly small? As we'll see in the video pretty soon.

8 A The actual polygraph room, yes.

9 Q Okay. Now, do -- when people are applying for jobs at Metro do they
10 have to go through the polygraph process as well?

11 A Yes, they do.

12 Q Do they go in those same rooms?

13 A Yes, they do.

14 Q The same windowless small rooms?

15 A Yes.

16 Q So it's not just reserved for people that may or may not be suspects, it's
17 for anyone who goes through a polygraph examination?

18 A That's correct.

19 Q Okay. And in order to be employed by Metro you have to take a
20 polygraph examination?

21 A Yes.

22 Q Okay. So every employee who's been hired since the new
23 headquarters was formed has had to go through that -- into a room like that?

24 A Yes.

25 Q Okay. In the very beginning Miranda rights is read to Mr. Bailey?

1 A That was done by Mr. Rivera. I'll call him Mister.

2 Q Okay. Now, I'm just going to go -- I'm going to start playing the video a
3 little bit here. Bear with me, detective.

4 A My glasses are getting fogged up.

5 THE COURT: Oh, I know. Isn't that awful?

6 THE WITNESS: It's horrible.

7 MR. SCHWARTZER: Okay. So it's not allowing me to sign in.

8 May I approach your clerk?

9 THE COURT: Sure.

10 MR. SCHWARTZER: Thank you.

11 THE CLERK: Judge, just so you know, this is not admitted either.

12 THE COURT: I'm sorry, this is what?

13 THE CLERK: Not admitted.

14 THE COURT: Okay.

15 MR. SCHWARTZER: I'll move to admit it.

16 THE RECORDER: Haly, can you help us?

17 MR. SCHWARTZER: I'm sorry, Your Honor, we did this right before court
18 started and it worked.

19 THE CLERK: Let me see. Can I take your laptop? See up here, up top
20 where it says share screen?

21 MR. SCHWARTZER: Yeah. Cool.

22 THE CLERK: Should be able to do it that way. Let me know if that works.
23 Okay.

24 MR. SCHWARTZER: Okay.

25 ///

1 BY MR. SCHWARTZER:

2 Q And, detective, do you recognize this? What this image is showing?

3 MS. HAMERS: And I'm sorry to interrupt you, I think you said -- we think that
4 Jayshawn can see this too?

5 THE COURT: Mr. Bailey, can you see this?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Okay. Thank you.

8 MS. HAMERS: Okay. Thank you.

9 Sorry to interrupt you. Go ahead.

10 BY MR. SCHWARTZER:

11 Q Do you recognize what's shown in this screen?

12 A That's the polygraph room.

13 Q Okay. And do you see the person that -- who has the back toward us to
14 the camera?

15 A That's Mr. Bailey.

16 Q And does this -- and this is taken on January 21st, of 2020, when
17 Mr. Bailey was taken to polygraph examination; is that correct?

18 A January 21st, yes.

19 MR. SCHWARTZER: Okay. Your Honor, we have -- I mean, both parties
20 have attached this video as part of our motions. I would ask to be able to use it for
21 the purpose of this hearing alone.

22 MS. CLARK: We have no objection.

23 THE COURT: Pardon?

24 MS. CLARK: No objection.

25 MS. HAMERS: No objection.

1 THE COURT: Okay. Are you going to move to admit it?

2 MR. SCHWARTZER: I'll move to admit it. I think I marked it as Exhibit 2.

3 THE CLERK: For video-audio? Yeah.

4 MR. SCHWARTZER: Yeah.

5 THE COURT: It's admitted.

6 **[STATE'S EXHIBIT 2 ADMITTED]**

7 MR. SCHWARTZER: That's not good.

8 THE CLERK: Make sure you mute your BlueJeans. There you go. You
9 should be good now.

10 MR. SCHWARTZER: I don't know it's going to work this way.

11 THE RECORDER: Can I try and mute the jail?

12 THE CLERK: Judge, is it okay if she mutes the jail to try it that way?

13 THE COURT: Sure. He'll be able to hear us, we just won't be able to hear
14 Mr. Bailey.

15 MR. SCHWARTZER: So I'm not sure -- to play the video hear while I'm
16 present in the courtroom, that wouldn't show over --

17 THE RECORDER: Try it again because they muted. There's just a delay.

18 MR. SCHWARTZER: Okay.

19 So I guess --

20 THE COURT: Oh, geez.

21 MR. SCHWARTZER: All right. So --

22 THE CLERK: Let me try something really quick, Judge.

23 MR. SCHWARTZER: And there is no way to use MirrorOp while using
24 BlueJeans?

25 THE CLERK: I might be able to download your video to my BlueJeans and do

1 it that way. Just give me a second.

2 MR. SCHWARTZER: Okay.

3 THE CLERK: I just need the meeting ID.

4 MR. SCHWARTZER: Because normally we use Mirror Op, but we can't do
5 that with BlueJeans?

6 THE CLERK: Not with the defendant needing to see it.

7 Because you're pulling it up from a link, right, or a --

8 MR. SCHWARTZER: I'm pulling it up from my --

9 THE CLERK: Because I think you can drag and drop it into BlueJeans and do
10 it that way.

11 MR. SCHWARTZER: Okay.

12 THE CLERK: But hang on.

13 MR. SCHWARTZER: Do you want me try to do that or --

14 THE CLERK: Yeah. If you want to try to do that before I get to it. It's just
15 going to take me a second.

16 MR. SCHWARTZER: All right. Judge, I mean, I guess I can move on.

17 THE COURT: Okay.

18 MR. SCHWARTZER: The question -- what's important, at least from the
19 State's perspective, is that you're able to actually watch the audio-video of this to
20 see the interaction, obviously, between the detectives and Mr. Bailey. I mean, I'll go
21 into a little bit with Detective Embrey, but with the understanding that the Court will
22 watch it on its own, I guess?

23 THE COURT: Absolutely.

24 MR. SCHWARTZER: Okay. And for the record, specifically what the State
25 was trying to play there was -- well, the beginning to the point where Miranda was

1 read, which is I believe at 12:40, in that -- in that area, and then the next clip we
2 were going to play -- well, I'll start it from there and then I'll mention in my next
3 examination the other time stamp.

4 So may I proceed with this witness?

5 THE COURT: You may.

6 BY MR. SCHWARTZER:

7 Q Okay. So, to be clear, when Mr. Bailey was first placed in that room no
8 one's talking to him at first; is that correct?

9 A That's correct.

10 Q And no one's actually in the room as well?

11 A That's correct.

12 Q And we can see from the video, or now we can't see but when the video
13 was up, Mr. Bailey's there, he has no handcuffs, he's not restrained in any way?

14 A No.

15 Q Additionally, he bring with him a Powerade?

16 A Yes.

17 Q So he has something to drink as well?

18 A Yes.

19 Q Is it -- do you recall at any point during the interview where he asks for
20 any food or anything to drink or anything like that?

21 A No, he didn't.

22 Q Okay. So he had all -- he had that Powerade with him during -- during
23 the course of the interview and could have used that at any point?

24 A Yes.

25 Q If he asked to use the bathroom at all, he would have been able to use

1 the bathroom?

2 A Absolutely.

3 Q Okay. But before any questions occur Miranda is read by Mr. Rivera?

4 A Yes.

5 Q With you being either in the room or watching remotely?

6 A I was actually physically present when he did that.

7 Q And, in fact, we can actually -- well, you can't see the video I'm seeing
8 right now but we can see, kind of, like, the top of your head while the -- while the
9 Miranda is being read?

10 A Yes.

11 Q And in this case Miranda was read, every specific right that's read and
12 then Mr. Bailey answers "yes"?

13 A Yes.

14 Q So Mr. Rivera doesn't read the whole thing and says, Do you
15 understand your rights, you know, like we've seen countless times, but in fact goes
16 through every specific part and makes sure that Mr. Bailey responds affirmatively; is
17 that fair?

18 A That's correct.

19 Q Okay. After that's done then they go into the special polygraph portion
20 of it?

21 A Yes.

22 Q Okay. And then after that you and Detective Jaeger leave; is that fair?

23 A That's correct.

24 Q Okay. You say you observe a portion of it remotely watching a video as
25 the polygraph is occurring?

1 A That is.

2 Q Again, this is stuff the Judge will be able to see, I'll get maybe into it
3 with the other detective, but that whole thing is still -- just because you're not there,
4 all that stuff is still being recorded audio and video?

5 A Yes.

6 Q So the demeanor of both Mr. Bailey and Mr. Rivera is all seen
7 throughout the video?

8 A Yes.

9 Q Okay. At some point after he's informed that he's failed the polygraph,
10 specifically regarding the question whether he placed the body in the -- in the sewer,
11 Mr. Rivera then asked him some follow-up questions, right?

12 A Yes.

13 Q And that goes on for about 20 minutes?

14 A Yes.

15 Q After that do you and Detective Jaeger come in and talk to him?

16 A Yes. He summonses -- Mr. Rivera did summon us to the room.

17 Q Okay. And Ms. Clark pointed out multiple -- that you've offered him
18 certain outs; is that right?

19 A I don't know if I would classify that as an out because at that time I truly
20 believe that this was an overdose and this was just the case of them trying to get rid
21 of a body. I wouldn't describe that as an out.

22 Q Okay. So what you were -- what you believe the version of events you
23 were, kind of, telling Mr. Bailey?

24 A Yes.

25 Q Okay. And Mr. Bailey denies that's what occurred at some times?

1 A That's correct.

2 MR. SCHWARTZER: And, Your Honor, for the record that starts about 2:27
3 into the poly -- into the video. And about 20 minutes later, about at two minutes,
4 47 -- two minute -- two hour -- two o'clock, 47 minutes, excuse me, 2:47 p.m. that's
5 when he starts telling you, like, I'm going to tell you what happened?

6 A Yes.

7 Q In fact, at one point he says, "You guys are pressuring me to tell you
8 the truth"?

9 A Yes.

10 Q And then he says, "I'm going to tell you what it is"?

11 A Yes.

12 Q And then at one point he says, "You guys should handcuff me"?

13 A Yes.

14 Q And did you say, "I'm not going to handcuff you"?

15 A That's correct.

16 Q And do you recall what his response to that was?

17 A I don't.

18 Q Okay. Do you recall him saying, "I did some foul shit"?

19 A I do recall that. It was foul shit or some sick shit, something to -- similar
20 to that.

21 Q Okay. And after he says that does he give a version of events in which
22 he is the person who hurt Ms. Trotter?

23 A That's correct.

24 Q Okay. Now, the version of events he gives starting around 2:47 p.m.,
25 2:47, 2:48 p.m. in the interview, is that anywhere similar to the events that you were

1 trying to talk to him about before then?

2 A No.

3 Q Does he provide you with details that you didn't know during the course
4 of the investigation?

5 A Yes.

6 Q Okay. Is that -- were there some of the details that you were able to
7 later find out turned out to be correct?

8 A Yes.

9 Q Specifically, do you recall when -- about where he met Ms. Trotter?

10 A At McDonald's.

11 Q Did you -- were you aware of that before Mr. Bailey told you that?

12 A I was not.

13 Q Okay. But there was subsequent follow up and you were able to
14 actually observe the video surveillance from the McDonald's?

15 A Yes.

16 Q Okay. Additionally, he actually told you who the victim was?

17 A That's correct.

18 Q At no point during this interview did you ever say her name?

19 A No.

20 Q Okay. It was Mr. Bailey who brought it up first?

21 A That's correct.

22 Q At that -- additionally, does -- he tells you -- he tells you and Detective
23 Jaeger after he puts her in a headlock and she passes out and is nonresponsive,
24 does he tell you what he does with the body, like where does he put it?

25 A He said he attempted to do C.P.R. for at least two hours. Once he

1 realized that she -- her forehead started getting cold, that after that he knew she was
2 dead and he placed her in the closet.

3 Q Okay. Is there -- and did he also mention that she was on the floor as
4 well in his room? In his bedroom?

5 A Yes.

6 Q And does he mention putting a blanket on -- on her as well?

7 A I don't recall that.

8 Q Okay. But if that was in the interview that would be some -- you know,
9 you wouldn't have any reason to reject that, right?

10 A That's correct.

11 Q Okay. Eventually DNA was taken in this case?

12 A Yes.

13 Q And eventually DNA was compared in this case?

14 MS. CLARK: And, Your Honor, I'm going to object to this kind of line of
15 questioning. I think we're getting pretty far down into the rabbit hole that doesn't
16 actually go to the question of whether or not these statements were properly
17 Mirandized and voluntarily made.

18 THE COURT: Right. I'm not, I mean, I'm not sure why you're going into this.

19 MR. SCHWARTZER: Well, the reason why I'm going into this is the argument
20 is that he was so suggestible that he, you know, that he basically -- his will was
21 overcome by these detectives. My argument is that if that was the case he would be
22 parroting what the detectives told him versus telling his -- what -- a whole different
23 version of events that had nothing to do with what.

24 THE COURT: Okay. Then why are we getting into the DNA?

25 MR. SCHWARTZER: Because it shows -- because part of -- so they -- one of

1 the cases they bring up, I believe it's Preston, the Ninth Circuit case, they bring up
2 the fact that during the -- in that Ninth Circuit case the defendant in that case, the
3 suspect in that case made claims that were demonstratively false and that was part
4 of the way that they were able to show that the detectives overcome the will of this
5 individual -- of this individual, that he started making statements that were
6 demonstratively false. Here I'm saying it's the opposite.

7 THE COURT: Okay.

8 MR. SCHWARTZER: Mr. Bailey's not giving -- he's giving statements that we
9 can show that is demonstratively true.

10 THE COURT: Okay.

11 MR. SCHWARTZER: And that's just what I'm establishing. I'll move on right
12 after this question.

13 MS. CLARK: I mean, I think that the point that Mr. Schwartzer is trying to
14 make has been made, which is that he wasn't parenting the suggested story that
15 came from Detective Embrey. And I think what he's trying to get into is that these
16 statements that he made were true or, you know, maybe they were, but whether
17 they're true or not is not relevant --

18 THE COURT: Or corroborated.

19 MS. CLARK: -- actually to whether or not his will was overborne at the time
20 that he made them. So I don't think it goes at all to this question.

21 MR. SCHWARTZER: Well, I disagree because I --

22 THE COURT: I'll allow you to ask the question.

23 BY MR. SCHWARTZER:

24 Q Okay. Eventually did DNA support that Ms. Trotter was in the closet
25 and on the floor?

1 A That's correct.

2 Q Okay. During your questioning of Mr. Bailey did any of the statements
3 he made, did it indicate to you that he didn't understand what was occurring?

4 A No.

5 Q Did it seem to you that he -- that those statement were inappropriate for
6 the questions being asked?

7 A All his answers were appropriate to the questioning by both myself and
8 Detective Jaeger.

9 Q Did he seem to understand the seriousness of -- of making such
10 statements?

11 A Yes.

12 Q Did he seem to know that such statements would lead him to going to
13 prison?

14 A That's correct.

15 Q In fact, did that seem to be a fear of his?

16 A Yes.

17 Q Okay. When you suggested the version of disposing of the body to
18 help a friend, you mentioned that he wouldn't be on the hook for any type of crime; is
19 that -- is that right?

20 A That's correct.

21 Q Okay. Did Mr. Bailey bring up the fact of being an accessory?

22 A He did mention that, yes.

23 Q Did he understand to you -- so he didn't just take your word for it, he
24 actually questioned you on whether he would be liable or not?

25 A Yes.

1 Q Did he seem to understand what "accessory" meant?

2 A Yes.

3 Q Did he use it in an appropriate fashion?

4 A Yes, he did.

5 Q Okay. To be clear, this whole interview did not last six hours?

6 A No.

7 Q Okay. And from the time you talked to him after the polygraph
8 examination to the time he makes incriminating statements would that be less than
9 30 minutes? From your talking to him not the polygraph.

10 A From the time that Detective Jaeger and I --

11 Q Yes.

12 A -- approached him the second time?

13 Q Yes.

14 A Yes, that's correct.

15 Q Okay.

16 THE CLERK: Just let me know if you want me to --

17 THE COURT: Okay. We have the video. I guess, I don't know if you want to
18 go back.

19 MR. SCHWARTZER: I'll keep going, Your Honor.

20 THE COURT: Okay.

21 MR. SCHWARTZER: I know we're on, like, a time restraint.

22 THE COURT: Yeah, no problem.

23 MR. SCHWARTZER: So, again, I would urge Your Honor to watch before
24 you make any ruling on this case.

25 Court's indulgence.

1 I'll pass, Your Honor.

2 MS. CLARK: I just have real brief follow up.

3 THE COURT: Absolutely.

4 **RECROSS-EXAMINATION OF BUDDY EMBREY**

5 BY MS. CLARK:

6 Q Jayshawn expressed some concern about being labeled a snitch, right?

7 A That's correct.

8 Q And some concern about the people in the neighborhood?

9 A Yes.

10 Q And you observed some of that yourself obviously?

11 A I did.

12 MS. CLARK: Court's indulgence.

13 Actually, I have no further questions, Your Honor.

14 THE COURT: Okay. Anything else from --

15 MR. SCHWARTZER: Nothing further. Thank you, Your Honor.

16 THE COURT: Okay. Thank you very much for your testimony.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: You may step down.

19 Are you going to want the witness to stay?

20 MR. SCHWARTZER: No, Detective Embrey can -- can leave.

21 THE COURT: Okay. Thank you.

22 And you may call your next witness.

23 MR. SCHWARTZER: Detective Jaeger.

24 THE MARSHAL: I'm sorry?

25 MR. SCHWARTZER: Detective Jaeger.

1 THE CLERK: Please raise your right hand.

2 **RYAN JAEGER,**

3 [having been called as a witness and being first duly sworn testified as follows:]

4 THE CLERK: You may be seated. Please state and spell your first and last
5 name for the record.

6 THE WITNESS: My first name is Ryan, R-Y-A-N; last name of Jaeger,
7 J-A-E-G-E-R.

8 **DIRECT EXAMINATION OF RYAN JAEGER**

9 BY MR. SCHWARTZER:

10 Q Detective, tell the Court how you're employed.

11 A Currently I'm employed with the Las Vegas Metropolitan Police
12 Department assigned as a detective with the Homicide Section.

13 Q And how long have you been in Homicide?

14 A I've been with the police department for almost 23 years now and I've
15 been with Homicide for the last four.

16 Q And how long have you been a detective?

17 A 15 years.

18 Q I'm sorry. I can't see you. There we go.

19 Detective, I want to direct your attention to January 19th of 2020,
20 Fred Brown Drive were you working as a Homicide detective at the time?

21 A I was.

22 Q And were you up, for the lack of a better word, for the next suspicious
23 death case?

24 A Yeah. I was next in line for rotation to be case agent, yes.

25 Q Okay. And by being case agent that means, for the lack of a better

1 word, you would be the lead detective?

2 A That's correct.

3 Q Okay. At the time who was your partner?

4 A At the time my partner was Detective Embrey.

5 Q Okay. And that would be the detective who just left this courtroom?

6 A That's correct.

7 Q Okay. When you respond to -- Detective Embrey already told us a little
8 bit about the background, but I -- did you actually respond to January 19th, 2020, to
9 that location on Fred Brown?

10 A I did.

11 Q As the case agent what was your role at that scene?

12 A So as a case agent you're basically the project manager of the
13 investigation. You direct everything that is done on the case. You're mainly, as the
14 case agents, your main focus is on the physical evidence and the crime scene itself
15 and then you would direct either your partner or other members of your squad to
16 interview witnesses.

17 Q And in this case did you assign anyone to talk to witnesses?

18 A I did.

19 Q And who was that?

20 A Detective Embrey.

21 Q Okay. Now, the nature of the call, was there a 9-1-1 caller that you
22 wanted to have interviewed?

23 A There was.

24 Q And did the 9-1-1 caller give his name on the -- on the recording?

25 A He did.

1 Q And did he give a couple -- give a statement to the dispatcher?

2 A He did.

3 Q And do you recall who that person was?

4 A His name was Jayshawn Bailey.

5 Q Do you see him?

6 A I believe that's him on the monitor.

7 Q Okay. And you just pointed to a monitor behind Ms. Overly here, and
8 that's the individual that -- did you eventually meet Mr. Bailey?

9 A Yes, I did.

10 Q Okay. And so is that individual the person that you met as
11 Jayshawn Bailey?

12 A Yes.

13 MR. SCHWARTZER: Okay. Let the record reflect the identification of the
14 defendant, Your Honor?

15 THE COURT: So reflected.

16 BY MR. SCHWARTZER:

17 Q Now, since you were covering the scene, did you -- did you have -- you
18 said you had Detective Embrey talk to witnesses?

19 A That's correct.

20 Q And so specifically you wanted him to talk to Mr. Bailey?

21 A Yes. Mr. Bailey was person reporting.

22 Q And why did you want him to talk to the person reporting?

23 A They're the ones that -- the person reporting called 9-1-1 and alerted
24 police, we need to interview them to see why they called and what they found.

25 Q And were you aware of the contents of that 9-1-1 call?

1 A I was.

2 Q Based on that 9-1-1 call did you believe Mr. Bailey had some additional
3 information to provide besides what he provided 9-1-1?

4 A I did.

5 Q Okay. Now, did you attend that first interview with Mr. Bailey?

6 A I did not. When that interview was taking place I was actually part way
7 in the sewer or right around the sewer removing the body.

8 Q Okay. And was part of your job as a case agent to, kind of, document
9 where the body was located and the condition of the body?

10 A That's correct.

11 Q And so you were doing that while Detective Embrey was interviewing
12 Mr. Bailey?

13 A That's correct.

14 Q Were you in on a decision to remove Mr. Bailey from that area to go to
15 LVMPD headquarters or was that --

16 A I'm --

17 Q Go ahead.

18 A I was not.

19 Q Okay. So that was Detective Embrey?

20 A That's correct.

21 Q Okay. After he interviewed Mr. Bailey were you around when
22 Mr. Bailey returned to his residence, if you recall?

23 A I don't remember.

24 Q Okay. But to be fair the investigation was still going on past
25 January 19th of 2020?

1 A That's correct.

2 Q Okay. At that point were you aware if this was even a homicide?

3 A I was not.

4 Q Okay. But based on the location of the body it would be -- it would
5 clearly be a suspicious death?

6 A For sure.

7 Q Okay. So at some point were you informed that Mr. Bailey agreed to
8 come back for a polygraph examination?

9 A Yes, I was.

10 Q Who informed you of that?

11 A Detective Embrey.

12 Q Were you on board for that?

13 A I was.

14 Q Okay. Were you involved in the transportation of Mr. Bailey to the
15 polygraph room?

16 A I was.

17 Q Okay. And so it would be you, Detective Embrey, and who else?

18 A And then Jayshawn Bailey in the car.

19 Q Okay. Was Mr. Bailey in handcuffs or anything like that when you were
20 transporting him?

21 A He was not in handcuffs. He was sitting in the front passenger seat
22 next to Detective Embrey.

23 Q Okay. At that point had you had any conversation with Mr. Bailey?

24 A I had not.

25 Q Okay. You took him to LVMPD headquarters?

1 A That's correct.

2 Q And that's where the polygraph examination room is?

3 A That's correct. In the --

4 Q And that polygraph examination room, we've already heard a little bit,
5 but it's a small room that doesn't have a window?

6 A That's correct.

7 Q Okay. But that's where even Metro employees would be polygraphed?

8 A Yes.

9 Q Okay. Were you around when Mr. Bailey was Mirandized?

10 A I was.

11 Q Did Mr. Bailey appear to understand the rights being read to him?

12 A Yes, he did.

13 Q Now, did you read him the rights or did someone else read him the
14 rights?

15 A I did not. The polygraph technician advised him of his rights.

16 Q Did he -- did Mr. Bailey respond in the affirmative after every right was
17 read to him?

18 A He did.

19 Q Okay. In fact, did he ask whether he was a suspect at the time?

20 A He did.

21 Q Okay. So he seemed to understand that the Miranda rights were being
22 read to him?

23 A That's correct and then he signed a form acknowledging that he
24 understood the rights.

25 Q Okay. And there was also a polygraph examination thing as well?

1 A That's correct.

2 Q And that was read to him as well?

3 A That's correct.

4 Q Okay. And he signed that as well?

5 A He did.

6 Q At that point did you and Detective Embrey leave the room?

7 A We did.

8 Q And was the polygraph examination conducted?

9 A It was.

10 Q Now, again, the Judge will be able to review the video. We tried to play
11 the video, just so you're aware, and it did not work out well, so we're not going to
12 play the video for you today. But to be fair there was -- there was -- the polygraph
13 examination occurred and then at some point Mr. Bailey is informed that he failed it;
14 is that correct?

15 A That's correct.

16 Q And there was some post-questions asked by the polygraph examiner?

17 A That's correct.

18 Q And then it would go on for, and the video will speak for itself, but
19 roughly about 20 minutes?

20 A That's correct.

21 Q Okay. At that point do you and Detective Embrey re-enter the room?

22 A We do.

23 Q And did the polygraph examiner leave the room?

24 A He did.

25 Q Do you recall how you and Detective Embrey were positioned?

1 A I believe Detective Embrey was sitting down in a chair, eye level with
2 Jayshawn, Jayshawn was in another chair, and I was standing off to Jayshawn's left.

3 Q Okay. Based on the fact that he failed the polygraph examination did
4 you believe he had more information regarding what occurred in this case?

5 A We did.

6 Q Okay. Did Detective Embrey do most of the talking at this point?

7 A He did.

8 Q And why was -- was that something that was predetermined or was that
9 something that kind of flowed naturally?

10 A It just flowed naturally. Detective Embrey had talked to him in the past
11 and had developed some form of rapport with him prior.

12 Q Okay. Did he just go along with everything that Detective Embrey told
13 him?

14 A He did not.

15 Q Okay. Did he question some of the things that Detective Embrey asked
16 him?

17 A He did.

18 Q When Detective Embrey said I wouldn't arrest you, you know, if this was
19 an overdose and you just helped, you know, dispose of the body, did he talk about
20 being, well, what about an accessory?

21 A Yes, he did.

22 Q Okay. Did he use that word appropriately?

23 A Yes, he did.

24 Q Okay. Did you -- did you stay quiet for most of that time?

25 A I did.

1 Q Okay. At some point did you actually enter into the conversation a little
2 bit?

3 A I did.

4 Q Were you as nice as Detective Embrey?

5 A I was not.

6 Q And why is that?

7 A It's an interview technique. I was more stern. I just explained to him
8 that I believe he wasn't telling the truth, that he was way more involved.

9 Q Okay. And this is all something that we can watch on the video, right?

10 A Yes, oh, yes.

11 Q Did you raise your voice?

12 A I did not.

13 Q Did you point at him?

14 A I did not.

15 Q Did you get in his face?

16 A I did not.

17 Q Did you move -- so how you're positioned in the video, correct me if I'm
18 wrong, is you're leaning against a table; is that fair?

19 A The area that we're talking to him in, it's a pretty small room. So there's
20 not -- there's only room for three chairs. So I would have been positioned off to his
21 left kind of leaning on a table two or three feet away from him.

22 Q So I was about to describe, so for the record, I'm going to lean against
23 the counsel table, were you kind of like -- kind of leaning against a table, arms
24 crossed?

25 A Exactly how you're demonstrating.

1 Q Okay. And for the record I'm leaning against the plaintiff's table, arms
2 crossed, looking straight.

3 Did you -- when you were questioning him, did you move from, kind of,
4 that location at all?

5 A I did not.

6 Q You kind of -- you stayed right there by the table, leaning against that
7 table?

8 A Yes.

9 Q Okay. And during that period of time -- was it a long period of time
10 where you asked him, kind of, more -- or was more direct with him than
11 Detective Embrey?

12 A I would say maybe a minute or two that I was speaking.

13 Q And the rest of the time was basically Detective Embrey talking?

14 A That's correct.

15 Q Okay. Now, as soon as you come off more sternly did Mr. Bailey just
16 give up and tell you everything?

17 A His demeanor did change.

18 Q Uh-huh.

19 A And he focused his attention more on speaking with Detective Embrey.

20 Q Okay.

21 A And he -- you could tell from his facial expressions that he was
22 re-evaluating the conversation.

23 MS. CLARK: And, Your Honor, I'm just going to object as to the speculation
24 as to what his facial expressions were.

25 THE COURT: Sustained.

1 MR. SCHWARTZER: Okay.

2 MS. CLARK: Thank you.

3 BY MR. SCHWARTZER:

4 Q But Detective Embrey talked to him some more?

5 A That's correct.

6 Q And then at some point does Mr. Bailey say, "You keep pressuring me
7 for the truth, I'm going to tell you"?

8 A Yes, he does.

9 Q He doesn't say anything like, You're pressuring me to say something I
10 didn't do or anything like that?

11 A No. He does not.

12 Q Okay. Does he then give a statement that incriminates him?

13 A He does.

14 Q And again the Judge will be able to review the video when he does so,
15 but it's roughly around 2:47 p.m. on the polygraph record; is that -- is that fair?
16 Detective?

17 A Yes.

18 Q Okay. And so it would be between 20 and 25 minutes after you guys
19 entered the room the second time?

20 A That's correct.

21 Q Okay. Was there any questions that you observed being asked by
22 either Detective Embrey; Mr. Rivera, the polygraph examiner; or yourself that
23 Mr. Bailey responded in a inappropriate manner?

24 A There was none.

25 Q Did it seem like he couldn't -- didn't comprehend any of the questions

1 being asked of him?

2 A Not at all.

3 Q Did he seem to respond appropriately to those questions?

4 A Yes.

5 Q Okay. Did he seem, for the lack of a better word, troubled during the
6 interview? Like something was weighing on him?

7 A He did.

8 Q Okay. And in the beginning he even talks about possibly being a
9 suspect?

10 A He does.

11 Q And kind of reiterates stuff like that throughout the interview?

12 A Yes.

13 MR. SCHWARTZER: Court's indulgence.

14 BY MR. SCHWARTZER:

15 Q Detective Jaeger, you did a analysis of Mr. Bailey's phone? You had
16 one done?

17 A Afterwards, yes.

18 Q Okay. And that was an iPhone 11?

19 A I believe so, yes.

20 Q Okay. And I don't want to get into the contents too much for the
21 purposes of this hearing, but the searches --

22 MS. CLARK: Your Honor, I'm just going to object on a couple of grounds.
23 One, I don't think this person can testify about the cell phone data. And, second, I
24 don't see how it's relevant in any way, shape, or form to today's hearing.

25 MR. SCHWARTZER: They have a psychologist that says he has the social

1 functioning of a six-year-old for one. And then, number two, this is the lead
2 detective, he would have got --

3 THE COURT: Okay. But you, so, I mean, you got in that obviously he had an
4 iPhone 11.

5 MR. SCHWARTZER: Okay.

6 THE COURT: Is the data going to be able to, I mean, how -- how would
7 whatever came out in the phone dump, how is that going to be relevant?

8 MR. SCHWARTZER: Again it goes to the sophistication of Mr. Bailey.
9 They're saying that he hasn't -- his sophistication is so low that he was over -- his
10 will was overborne by these detectives showing that he did age appropriate
11 searches. My next question was essentially was did he do age-appropriate
12 searches and text messages. And then go from there. I think counters whatever
13 they're --

14 THE COURT: Okay. I'll allow that.

15 MS. CLARK: And, Your Honor, I would just lodge an objection to that
16 question at all. Age-appropriate, first of all, I think requires a level of speculation on
17 the part of this detective and this is unadmitted things he's talking about, evidence
18 he's talking about.

19 THE COURT: Yeah, I mean, that's -- that's actually --

20 MR. SCHWARTZER: Okay.

21 THE COURT: That's actually a really good point. So why don't you just move
22 on.

23 MR. SCHWARTZER: Okay.

24 THE COURT: I mean, we know it's an iPhone 11. I mean, here's the deal,
25 my grandson can probably work my iPhone better than me and he's 7, so.

1 MR. SCHWARTZER: Right. There was some contents I wanted to get into.
2 But I understand, Your Honor.

3 BY MR. SCHWARTZER:

4 Q Detective, during the interview --

5 MR. SCHWARTZER: I'll move on, Your Honor. Thank you.

6 BY MR. SCHWARTZER:

7 Q Detective, during your interview, did Mr. Bailey talk about being
8 employed?

9 A He did.

10 Q Okay. Was he employed at one point -- was he employed at Wendy's,
11 correct?

12 A Yes, he was.

13 Q And he said he had prior employment as well?

14 A That's correct.

15 Q Okay. Did he also talk about going to college?

16 A He did.

17 Q Which is something he would have had to figure out how to pay for?

18 A Yes.

19 Q Okay. And without being able to -- and were you aware whether he had
20 a vehicle or not that he owned?

21 A I don't believe he owned a vehicle.

22 Q So in order to go to his job and to go to college, he would have had to
23 use a bus route; is that fair?

24 A That's correct.

25 MS. CLARK: Your Honor, I think again we're speculating again.

1 THE COURT: Right. The objection is sustained.

2 MS. CLARK: Thank you.

3 MR. SCHWARTZER: Okay.

4 I'll pass the witness, Your Honor.

5 THE COURT: Cross.

6 MS. CLARK: Thank you, Your Honor.

7 **CROSS-EXAMINATION OF RYAN JAEGER**

8 BY MS. CLARK:

9 Q Now, Detective Embrey, you were asked a moment ago that Mr. Bailey
10 talked about being employed, right?

11 A I'm Detective Jaeger, actually.

12 Q I'm so sorry. You -- I know that.

13 Detective Jaeger --

14 A Yes.

15 Q -- you were asked a moment ago about Jayshawn telling you he was
16 employed?

17 A That's correct.

18 Q Okay. You didn't go out and verify his employment records I assume?

19 A I did not.

20 Q And same thing with when he said he was going to college, right?

21 A I did not.

22 Q You didn't e-mail his professors and found out if he was enrolled?

23 A There would be no need, no.

24 Q Right. So that was all just information he told to you?

25 A That's correct.

1 Q Okay. You have no idea if that's true or not?

2 A I do not.

3 Q Now, you talked about being the case agent on this case, so you're sort
4 of in charge of the investigation?

5 A That's correct.

6 Q So you were not present when Detective Embrey, your partner, did that
7 initial interview with Mr. Bailey?

8 A I was not.

9 Q But you were present for the January 21st, interview?

10 A That's correct.

11 Q And it sounds like you escorted him to the station?

12 A I was with when we drove him there, yes.

13 Q Right. And you were there when he was put in the polygraph
14 examination room?

15 A Yes.

16 Q And then you left?

17 A Yes.

18 Q You didn't leave the building?

19 A No.

20 Q Did you continue to watch the live feed television of what was
21 happening in that room while you were outside of that room?

22 A Yes.

23 Q Did you pay close attention to that?

24 A I did.

25 Q So the polygraph examiner didn't just jump into the polygraph exam as

1 soon as you left the room, right?

2 A No. He advised him of his rights. There is a checklist that the
3 polygraph examiner goes through. I think part of the checklist is asking him if he
4 has any health conditions that would prevent him from taking the test or if he's been
5 diagnosed with any mental illnesses.

6 Q And he also talked to him, just had a conversation with him for a while?

7 A Yeah.

8 Q Like, 45 minutes or so?

9 A Yeah.

10 Q Okay. And that's all before the polygraph examination occurred?

11 A Yes.

12 Q Okay. And then the polygraph examination occurred?

13 A Yes.

14 Q And you watched that, right?

15 A I did.

16 Q And, you know, the person gets hooked up and a whole lot of stuff
17 happens, right?

18 A Yes.

19 Q Okay. And is one of those things where the polygraph examiner tells
20 Mr. Bailey to answer "no" to a series of numbers, 1 through 7?

21 A Yes.

22 Q And gives explicit instructions that I want you to say "no" to every
23 answer, right?

24 A Yes.

25 Q And the reason I want you to do that is because I want to be able to tell

1 when you're lying?

2 A I'm not a polygraph examiner.

3 Q Just from watching this one.

4 A But from having a working knowledge, we'll say of it, they do that
5 calibrate the machine.

6 Q Right.

7 A And to verify that the machine is going to work with that individual.

8 Q Okay. So they tell the person to say "no" to questions, numbers 1
9 through 7?

10 A Yes.

11 Q And that's what was done here?

12 A Yes.

13 Q And did Mr. Bailey follow those instructions?

14 A He did.

15 Q He didn't -- let me be more specific, did he answer "yes" to any of the
16 numbers?

17 A I don't believe so.

18 Q Okay. Now, you recall watching that happen, right?

19 A I do. But it's been a while.

20 Q Okay. But you don't recall him making an obvious error in his -- how
21 the test was calibrated?

22 A Not that I can remember.

23 Q And if you don't mind, if I can just show you the transcript of --

24 A It's in the transcript. If he did it, it would be there. It would also be
25 video and audio recording.

1 Q I agree with you. Okay. And that's a fairly simple thing to do, right,
2 saying "no" after 1 through 7 numbers?

3 A Yes.

4 Q Okay. Okay. And just for the sake of the clarity of the record, I know
5 that we have on video and stuff. I am going to show you the transcript of that
6 portion of the beginning of the polygraph exam that you were watching.

7 A Okay.

8 Q If that's okay?

9 MS. CLARK: Your Honor, may I approach?

10 THE COURT: Of course.

11 BY MS. CLARK:

12 Q And if you can just go through and read, sort of, from the top to the
13 bottom.

14 A Okay. Now that the transcript has refreshed my memory, he was
15 asked --

16 Can I read it verbatim, Your Honor?

17 THE COURT: That's up to Ms. Clark.

18 MS. CLARK: That's fine.

19 THE WITNESS: He was asked, Did you read the number 5, and his answer
20 was "yes."

21 BY MS. CLARK:

22 Q Okay. And he was given instructions, specific instructions to answer
23 "no" to every question, right?

24 A That's correct.

25 Q So answer "no" to number 1; answer "no" to number 2; right?

1 A That's correct.

2 Q Okay. And yet when the examiner got to number 5 he wrote -- he said
3 "yes"?

4 A Yes.

5 Q Okay. So based on not answering "no" to numbers 1 through 7 as he
6 was instructed to do, you would agree with me that he didn't follow those
7 instructions, right?

8 A That's correct.

9 Q Now, do you remember him telling the polygraph examiner that he
10 thought he had followed the instructions?

11 A Yes.

12 Q Okay. But he didn't?

13 A No.

14 Q Okay. Now, after the polygraph exam, the examiner leaves the room
15 for 30 seconds or so?

16 A Yes.

17 Q To go get the results of the polygraph?

18 A To get the charts, I think is what they're called, yes.

19 Q Okay. And then it's the examiner who comes back in and talks to him
20 about the results?

21 A Yes.

22 Q Not yourself and not Detective Embrey at this point?

23 A No.

24 Q And the polygraph examiner questions him for about 25 minutes or so?

25 A That's correct.

1 Q And you're watching that happen?

2 A Yes.

3 Q Okay. And the polygraph examiner is telling him that he knows he was
4 involved?

5 A That's correct.

6 Q And Mr. Bailey is continually saying "no"?

7 A I think the words that the polygraph examiner uses, he was deceptive in
8 one of those answers.

9 Q Those aren't the words that the polygraph examiner used with
10 Mr. Bailey.

11 A Yeah. Because it's on their chart. He showed --

12 Q I believe that's probably what's on the chart. But what the examiner
13 said to Mr. Bailey was not you were deceptive in one of the answers.

14 A Okay. Yeah, I wasn't in that conversation.

15 Q Okay. Just based on, you know, what you watched and obviously
16 reviewed prior to today.

17 A Okay.

18 Q Would a fair representation of that conversation between Mr. Bailey and
19 the polygraph examiner, Mr. Rivera, was Mr. Rivera saying, I know you did; and
20 Mr. Bailey saying, No, I didn't?

21 A Yes.

22 Q And that happened a lot?

23 A Yes.

24 Q Over and over and over again in that 25 minute period?

25 A Yes.

1 Q And I think when you testified at the preliminary hearing you said
2 Mr. Rivera wasn't getting anywhere with him at all so we entered?

3 A That's correct.

4 Q Now, I think we talked about when you came in the room, sort of, how
5 you were leaning, Mr. --

6 A Yes.

7 Q -- Detective Embrey was sitting, and Detective Embrey sometimes
8 moved his chair closer to Mr. Bailey and sometimes had it farther away; is that fair?

9 A Yes.

10 Q And for that matter, same thing with Mr. Rivera when he's talking to
11 him?

12 A Yes.

13 Q And you're watching. Sometimes he's moving really close to him?
14 Sometimes he's not?

15 A Yes.

16 Q And at some point when Mr. Rivera is speaking to him and he's really
17 close to him in the chair, Mr. Bailey says he's uncomfortable and is under pressure
18 and Mr. Rivera backs up; do you recall that?

19 A Yes.

20 Q Okay. Now, you mentioned Detective Embrey being the one who
21 spoke first?

22 A That's correct.

23 Q And sort of offered a version of the story that he wanted Mr. Bailey to,
24 kind of, get to?

25 A That's correct.

1 Q Did that multiple times?

2 A Yes.

3 Q And Mr. Bailey denied that multiple times?

4 A Yes.

5 Q And you were obviously present when Detective Embrey said, If this is

6 what happened, I'd take you home; right?

7 A Yes.

8 Q Okay. Whatever you tell me along these lines, I'm taking you home.

9 Now, when you talk to him you jump in the conversation?

10 A I did.

11 Q And you already said you're not as nice.

12 A I did.

13 Q And you tell him that what's coming next is you, that you're coming for

14 him?

15 A That's correct.

16 Q And I think that you used the phrase, I've got the full weight of the

17 Metropolitan Police Department behind me?

18 A Yes.

19 Q The full budget of the police force?

20 A Yes.

21 Q And you used the words "the community"?

22 A That's correct.

23 Q I have the community behind me?

24 A That's correct.

25 Q And I think you talk his neighborhood, the neighborhood he lives in?

1 A Yes.

2 Q Okay. And you talk about how you have the neighborhood on your
3 side?

4 A I did.

5 Q Do you remember using the phrase, Right now I'm thinking you're a
6 psychopath?

7 A Yes.

8 Q And do you remember using the phrase, You've got some Dexter shit
9 going on right now?

10 A Yes.

11 MS. CLARK: Court's indulgence.

12 Just Court's indulgence while I find the part of the transcript I'm trying to
13 get to.

14 BY MS. CLARK:

15 Q Okay. Just to be very clear and specific, Detective Jaeger, when
16 you're -- you're in the room with Detective Embrey, yourself, and Mr. Bailey, yeah?

17 A That's correct.

18 Q Okay. And it's a small interview room, right?

19 A Yes.

20 Q No windows, one door?

21 A That's correct.

22 Q Door is closed, obviously, while you're in there?

23 A Yes.

24 Q Okay. And I think that Mr. Schwartzer did it earlier, but you're leaning
25 on the table like this, arms crossed, right?

1 A Yes.

2 Q Okay. Now, obviously, you're not as close as -- or you're much closer
3 than you and I are right now, right?

4 A Yeah.

5 Q Okay. And so when you're leaning against the table like this, Mr. Bailey
6 is sitting in a chair maybe two feet away from you?

7 A About two feet, yeah.

8 Q Okay. So you're standing up?

9 A Yep.

10 Q He's sitting down?

11 A Yep.

12 Q His back is against a wall?

13 A Yep.

14 Q Okay. And Detective Embrey is between you and the door; is that fair
15 to say?

16 A That's correct.

17 Q Sitting in a chair?

18 A If -- if --

19 Q And he is --

20 A If he was to get up, the door would be, like, he could touch the door with
21 his right hand.

22 Q Detective Embrey could?

23 A Or Jayshawn. Like, the way the room is set up, so they were both right
24 by the door. I was opposite. I was further into the room than the door.

25 Q Okay. And Detective Embrey is sitting physically, directly in front of

1 Jayshawn?

2 A Yes.

3 Q Okay. And you were leaning to the other side?

4 A Yes.

5 Q Okay. Both of you in close proximity to him?

6 A Yes.

7 Q And the door is shut to the side over by Detective Embrey?

8 A Yes.

9 Q And you said you weren't being very nice to him?

10 A No, I -- I --

11 Q So in reality, you told him that you and Buddy, and I assume you mean
12 Detective Embrey by that, are partners on the case but you're on totally opposite
13 sides of the spectrum on this one?

14 A Yes.

15 Q Okay. And that you told Jayshawn that you had spent the better part of
16 eight hours standing ankle deep in human feces, human shit?

17 A Oh, that's correct, because I did pulling a body out.

18 Q And you told him there is a 17-year-old girl who had been thrown away
19 like a piece of trash?

20 A Yes.

21 Q And that was by an absolute animal?

22 A Yes.

23 Q And that the only reason he had given him the benefit of the doubt was
24 for Buddy not for him?

25 A Yes.

1 Q And then you proceeded to tell him that I'm coming after you?

2 A Yes.

3 Q With the largest budget that Nevada has for a police department?

4 A Yes. With the support of the community.

5 Q With the support of community?

6 A And his neighborhood, I believe.

7 Q And I think, specifically, the neighborhood he lives in?

8 A Yes.

9 Q And the family that lives four houses down from him?

10 A Yes.

11 Q And at some point you tell him, I am bringing the noise?

12 A Yes.

13 Q Would you agree with me that after you make those statements, the
14 I'm coming after you; I'm bringing the noise, I've got the support of the community,
15 that Jayshawn says, I didn't do anything?

16 A I'd have to check the transcripts, but if --

17 Q Okay.

18 A -- if you have it in front of you, I believe you.

19 Q I think I do.

20 MS. CLARK: Page 118.

21 MS. HAMERS: 118.

22 MS. CLARK: Thanks.

23 Judge, may I approach?

24 THE COURT: Yes.

25 MS. CLARK: Thank you.

1 Mr. Schwartz, it's page 118.

2 MR. SCHWARTZER: What was the question?

3 MS. CLARK: What was my question? My question was about Mr. Bailey
4 denying that he had anything to do with this after --

5 MR. SCHWARTZER: Okay.

6 MS. CLARK: -- the statements by Detective Jaeger. Thank you.

7 THE WITNESS: His exact words are, "I respect that, sir, but I didn't have
8 nothing to do with that."

9 And my reply was, "You did."

10 BY MS. CLARK:

11 Q So after he says, I didn't have anything to do with that; you said, you
12 did, right, you don't accept his denial?

13 A That's correct.

14 Q And would it be fair to say that was a common theme in your talk with
15 him? In this interrogation?

16 A Yes.

17 Q He says I didn't have anything to do with it and you said, I don't accept
18 that, I don't believe you?

19 A I mean --

20 Q Correct.

21 MS. CLARK: Your Honor, I'll pass the witness back.

22 THE COURT: Any redirect?

23 MR. SCHWARTZER: Yes, Your Honor.

24 ///

25 ///

1 **REDIRECT EXAMINATION OF RYAN JAEGER**

2 BY MR. SCHWARTZER:

3 Q When a suspect tells you he didn't do anything, do you just stop your
4 interviews?

5 A No.

6 Q As practice?

7 A No.

8 Q In your experience as a homicide detective, do people right away come
9 and confess to you?

10 A No.

11 Q Usually it takes a little work on your part?

12 A That's correct.

13 Q Okay. So the fact that he denied after you said those statements on
14 page 118, based on other factors, you decide, you and your partner continue to
15 interview Mr. Bailey, correct?

16 A That's correct.

17 Q Okay. And that's something that wasn't done specifically just in this
18 case, right?

19 A No.

20 Q In other homicide investigations do you -- when someone denies they
21 did something but you have you have some evidence they did, you continue to
22 question them?

23 A That's correct.

24 Q And to be clear, we talked about on direct, that was about you saying
25 I'm going to bring the noise and, you know, I have the community behind me, that

1 lasted about a minute in this whole interview?

2 A Probably. Right about there, yeah.

3 Q Okay. Now, when Mr. Bailey eventually does come forward with his
4 incriminating statements does he say it was because you were mean to him?

5 A No.

6 Q Does he mention the fact that he had a guilty conscience?

7 A Yes.

8 Q Does he mention that it's been weighing on him?

9 A Yes.

10 Q And that he was finally ready to tell you what happened?

11 A Yes.

12 Q So, and when he eventually does give his incriminating statement does
13 it include details that you or Detective Embrey fed to him or told him?

14 A Well, it includes details that he would only have known if he was
15 involved.

16 Q Right. But not details -- specifically, he didn't regurgitate what you and
17 Detective Embrey were telling him?

18 A That's correct.

19 Q Okay. And we got into it with Detective Embrey a little bit, but it's stuff
20 that you were able to confirm later on with additional evidence?

21 A Yes.

22 Q Okay. So in fact when this was all over and he finally gives an
23 incriminating statement which is backed up by the evidence, did Detective Embrey
24 even ask specifically why did you eventually decide to come forward with that?

25 A Yes.

1 Q And page 148, does he specifically say, "So I just couldn't hold it in no
2 more, I got that guilty conscience"?

3 A Yes.

4 Q Okay. In the beginning of Ms. Clark's questioning of you she asked you
5 if you ever followed up whether Mr. Bailey did in fact enroll in college; do you
6 remember that line of questioning?

7 A I do.

8 Q As the lead detective in this case, we've talked about this a little bit, but
9 you were able to -- his phone was downloaded and you were provided information
10 from his phone download; is that correct?

11 A Yes.

12 Q And in that phone -- phone download was there in fact a grant of
13 acceptance from FAFSA for community college for college education?

14 A Yes, there was.

15 MR. SCHWARTZER: I have no further questions, Your Honor.

16 THE COURT: Any recross?

17 MS. CLARK: Court's indulgence.

18 MR. SCHWARTZER: I have no further questions, Your Honor.

19 THE COURT: Any recross?

20 MS. CLARK: Court's indulgence.

21 **RECROSS-EXAMINATION OF RYAN JAEGER**

22 BY MS. CLARK:

23 Q Detective Jaeger, what's the FAFSA?

24 A It's an application for a grant for college.

25 Q Okay. Does that mean that he's done well in college?

1 A I don't know.

2 Q Does it mean that he's enrolled in college?

3 A I don't know.

4 Q Okay. And does it mean that he's a great student?

5 A There would be no way to tell.

6 Q Right. Okay. Thank you.

7 MS. CLARK: No further questions, Your Honor.

8 THE COURT: Okay. Anything else?

9 MR. SCHWARTZER: Not by the State, Your Honor.

10 THE COURT: Okay. Thank you very much for your testimony here today.
11 You may step down.

12 Does the State have any further witnesses?

13 MR. SCHWARTZER: No, Your Honor. The State will -- again, with the
14 knowledge that Your Honor will review --

15 THE COURT: Sure.

16 MR. SCHWARTZER: -- the video the State will rest.

17 THE COURT: Any witnesses?

18 MS. HAMERS: Yes. I am just texting to get our expert back on. She was
19 kicked off for the exclusionary rule. But I also am really concerned about the time.

20 THE COURT: You're concerned what?

21 MS. HAMERS: About our time.

22 THE COURT: I know. We have -- well, we can start. We have --

23 THE CLERK: We have 12 minutes and we can reschedule another special
24 setting.

25 MS. HAMERS: So she should be back on. I just sent a text message and

1 she will get back on. We can start her.

2 THE COURT: What's her name?

3 MS. CLARK: Brown, Dr. Brown.

4 THE COURT: Okay. So we'll see when she signs in.

5 MS. HAMERS: It looks like she's there. If you don't mind me asking?

6 Dr. Brown, are you on there with us?

7 THE WITNESS: I am.

8 THE COURT: Okay.

9 MS. HAMERS: Okay. The defense would call Dr. Natalie Brown.

10 THE COURT: All right. Dr. Brown, if you'll raise your right hand so you can
11 be sworn.

12 THE WITNESS: Okay. Can you see me?

13 THE CLERK: Yes.

14 **NATALIE NOVICK BROWN**

15 [having been called as a witness and being first duly sworn testified as follows:]

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

18 THE WITNESS: Sure. Natalie Novick Brown. Novick is spelled N-O-V-I-C-K;
19 Brown, B-R-O-W-N.

20 THE CLERK: And can you spell your first name please?

21 THE WITNESS: N-A-T-A-L-I-E.

22 THE CLERK: Thank you.

23 **DIRECT EXAMINATION OF NATALIE NOVICK BROWN**

24 BY MS. HAMERS:

25 Q Thank you, Dr. Brown. Can you tell us about what you do for a living,

1 please?

2 A Yes. I'm a clinical and forensic psychologist, have been for the past 25
3 or so years, mostly doing forensic psychology these days.

4 Q And I don't know if it was the reception or just me, you said for how
5 many years?

6 A Approximately 25 years, I became licensed in 1995.

7 Q And do you have specialties within that field?

8 A Yes. I specialize in several things. But FASD, fetal alcohol spectrum
9 disorder, is one of my specialties. And I also specialize in evaluating developmental
10 disabilities beyond FASD.

11 Q And what in your educational background qualifies you to do that?

12 A I have, in addition to a Ph.D. in clinical psychology which included an
13 emphasis on developmental psychology, I also completed a post-doctoral fellowship
14 in fetal alcohol spectrum disorders and other developmental disabilities with
15 Dr. Ann Streissguth with the University of Washington. She's a pioneer researcher
16 in FASD. In fact, she was the first psychologist who did research on the behavioral
17 effects of FASD.

18 Q All right. And if it's fair to classify it different than the educational
19 background, what is your experience that qualifies you in that area?

20 A I did initially a lot of clinical work treating individuals and families with
21 children who had fetal alcohol disorders. And I have done hundreds of forensic as
22 well as clinical assessments and evaluations over the years of adolescents,
23 sometimes children but mostly adolescents and adults, with fetal alcohol spectrum
24 disorders, probably around 500 or so at this point in time.

25 Q Thank you. And you were contacted by us, by Jayshawn Bailey's

1 defense team, to determine his intellectual functioning; is that right?

2 A Yes. I was asked to do a psychological, preliminary psychological
3 assessment of Mr. Bailey and that included his cognitive as well as his adaptive
4 functioning.

5 Q And one of the things that you did -- well, did you review things specific
6 to Jayshawn in order to do that?

7 A Yes. I reviewed an abundant body of contemporaneous records.

8 Q And I sent --

9 A There were school records.

10 Q And I should mention this to you now, I should have said it a moment
11 ago, I assume you have your report in front of you?

12 A Yes, I do.

13 Q And if you need to refer to that, that's fine, just let us know that you
14 need to refer to that if I ask you a question that it helps you to look at it; does that
15 make sense?

16 A Yes, it does.

17 Q Okay. And so you were telling me what you reviewed prior to
18 assessments of Jayshawn.

19 A Yes. I had birth records and medical records. Birth records also
20 included the mother's, birth mother's records. I had education records across the
21 school years. I had records from MountainView Hospital, in particular, Valley
22 Hospital and neurology group -- neurology group as well, neurological testing, and I
23 also had discovery.

24 Q And at some point you perform or under -- have Jayshawn undergo
25 some psychological testing; is that right?

1 A Did I perform it? Or did I -- I'm sorry, I didn't quite catch the question.

2 Q I should have stated it that way.

3 Did you perform psychological testing on Jayshawn?

4 A I did not. I did not see him yet. My evaluation was preliminary and I
5 have seen him via Zoom, but I have not seen him in person. I conducted an
6 interview with him but I did not administer anything but questionnaires to him and I
7 administered four different questionnaires to him.

8 Q Okay.

9 A And that was during a Zoom interview.

10 Q Okay. So I should have -- I should have referred to that differently than
11 when -- for example, the first of which I was going to ask you about was the Paulhus
12 Deception Scale; would you call that a questionnaire then rather than testing?

13 A Yes, I would.

14 Q Okay.

15 A Yes. Because the measures I administered were all self-report and so I
16 could read him the questions and then have him respond. And so I administered the
17 Paulhus Deception Scales and Structured Inventory of Malingered Symptomatology
18 and the Gudjonsson Suggestibility Scale. Now, that's not a questionnaire per se,
19 it's -- it is cognitive measure.

20 Q Okay. And I'm going to stop you there, if you don't mind. I'm going to
21 ask you about each of those before we get too far ahead.

22 The first one being the Paulhus Deception Scale, what is that?

23 A That is a self-report measure of whether an individual is responding in a
24 straightforward, open, honest way to questions about himself and it measures a
25 tendency to report in an overly positive way.

1 Q And when you administered that what were the results?

2 A And if you don't mind, I'm going to refer to the results in my report.

3 Q Go right ahead.

4 A I can give you specifics here.

5 He was scored a total score of 3 on the Paulhus and that is a very low
6 score and low scores are good on this measure, the lower the better. And --

7 Q And --

8 Go ahead.

9 A That score indicated no tendency to report in an overly positive way
10 about himself and also supported a conclusion that he likely was very candid or
11 attempted to be candid in his self-reporting.

12 Q Okay.

13 A The second measure, the Structured Inventory of Malingered
14 Symptomatology, or SIMS for short, he scored a 7 on the SIMS and that fell well
15 below the threshold of concern. And on the SIMS, the threshold is 14, a score of 14.
16 And a low score on this measure is also good.

17 Q What is --

18 A And this --

19 Q What exactly is the Structured Inventory of Malingered Symptomatology
20 attempting to measure?

21 A That's a -- that measure is a tendency to self-report psychiatric and
22 neurological symptoms that are likely not valid because a number of the symptoms
23 are not standard for some of these disorders. It measures -- measures things like
24 neurological impairment, if there is over-reporting in terms of neurological
25 symptoms. It measures if there is over-reporting in terms of mood, like depression.

1 It measures if there's is over-reporting of psychotic symptoms or memory problems.
2 Those are some of the things it measures. And in this case his score indicated he
3 reported very few symptoms and so his score was considered positive, positive
4 indication that he was not over-reporting symptoms of any kind of mental health
5 impairment.

6 Q Is it fair to say not malingering? Am I using that terminology correctly?

7 A Yes. Although the way I would report it is there was no evidence of
8 malingering.

9 Q Excellent.

10 A I don't just look at test results to determine that. But these two tests,
11 the Paulhus and the SIMS in conjunction, as well as a self-report from Mr. Bailey
12 was quiet consistent with contemporaneous records from other individuals indicated
13 to me that there was very little likelihood of malingering. I would rule it out,
14 essentially.

15 Q All right. And then the next questionnaire we talked about with was the
16 Gudjonsson Suggestibility Scale also referred to as the GSS 2. Can you tell us what
17 that is?

18 A Gudjonsson is a -- is a cognitive test. But it's administered verbally. So
19 the person doesn't have to do any hands' on work. And this consists of a very short
20 story that is read to the person and it's purported to be, the person is told that it's a
21 memory test and they are asked to repeat as many elements of the story as they
22 can remember after the story is read and about 30 to 50 minutes later they are
23 asked again after intervening tasks to report back what they can remember of the
24 story. After those two elements, then the individual is asked a series of 20
25 questions, 15 of which are leading. Some of those are yes-no and the others are

1 leading questions and they are scored on how likely or how many questions they
2 endorse or give in to and the leading questions, of course, contain erroneous, false
3 information and they are told at the end of those 20 questions that they did very
4 poorly and the questions are going to be asked again and the second time they are
5 urged to be as accurate as possible. So this --

6 Q Doctor, I appreciate that, I have to interrupt you for one second. I'm
7 sorry, we have a timing problem that is not your fault. So let me see how we're
8 going to address that.

9 THE COURT: Right. We're going to have to continue her testimony.

10 MS. HAMERS: Okay. Can we leave her on for availability purposes?

11 THE COURT: Well, I can't give a date right now.

12 MS. HAMERS: Okay.

13 THE COURT: Because we have to -- we have to set that up with the
14 Chief Judge. Sorry.

15 THE CLERK: I, actually, do want to ask if -- while I can, while they're on, I
16 sent an e-mail for next week, are the parties available for next week if I get it
17 approved from DC VII.

18 MS. HAMERS: What day next week?

19 THE CLERK: I'm looking, our best option is probably May 19th, next
20 Wednesday, because our court is available any time that day. But I also sent
21 options for other days.

22 MS. HAMERS: Doctor, would you be available next week on the --

23 THE WITNESS: I am not. I'm going to be -- I'm traveling to Texas for a case
24 next Wednesday. So I'll be traveling all day.

25 MS. HAMERS: Okay.

1 THE CLERK: I am looking at -- I've also offered May 18th at any time after
2 1:30.

3 MS. HAMERS: May 18th in the afternoon, after 1:30, are you available?

4 THE WITNESS: I'm doing an evaluation that day starting at 11:00 in the
5 morning and that's going to go into the afternoon. It's a three-hour drive for me so
6 I'll -- I will not be available.

7 MS. HAMERS: I understand.

8 THE CLERK: The last one date I offered, I now realize is during your
9 settlement conference so you guys just might have to reset your settlement
10 conference.

11 MS. HAMERS: Yeah. We're always going to want our settlement conference
12 after, so.

13 THE CLERK: Right.

14 MR. SCHWARTZER: When is the settlement conference going?

15 MS. HAMERS: The 21st.

16 THE CLERK: Oh, and you -- we just got approved for all those times too.

17 THE COURT: We just got all those times approved?

18 THE CLERK: Approved.

19 Okay. I did get approval for May 21st at 1:30, if the parties can do that.
20 I know that's settlement conference time, but if you cancel that.

21 MS. HAMERS: Are -- do you happen to be available May 21st at 1:30?

22 THE WITNESS: I'm going to be at a settlement conference the previous day
23 and I was going to attend that conference but I could make myself -- I could go to
24 my hotel room and make myself available.

25 THE COURT: So May 21st.

1 THE CLERK: May 21st at 1:30.

2 THE COURT: Do we just have to get that approved?

3 THE CLERK: It's already approved.

4 THE COURT: Okay. Then we'll just set it.

5 MS. HAMERS: We can actually set it.

6 MR. SCHWARTZER: May 21st.

7 THE COURT: What time?

8 MR. SCHWARTZER: So that's a Friday?

9 THE CLERK: 1:30. Yes.

10 MS. HAMERS: And then should I e-mail --

11 THE CLERK: Do you want me to tell her that you're cancelling your
12 settlement conference date?

13 MS. HAMERS: Yes. That's what I was going to say. But we do want a new
14 one, but I'll tell her that.

15 THE CLERK: Yes.

16 MS. HAMERS: And, doctor, I'm sorry to do that to you. That's just sort of a
17 COVID limit that we have in the jail that they only give us so much time right now
18 and that's why we have to continue this later. So I'm sorry to leave you hanging on
19 this afternoon just to let you go.

20 THE WITNESS: Okay. No problem. Will you be sending me a new link?

21 MS. HAMERS: Yes, I will.

22 THE WITNESS: Okay. Okay. All right. Thank you.

23 MS. HAMERS: Thank you, doctor.

24 THE COURT: Thank you.

25 MR. SCHWARTZER: Thank you, Your Honor.

1 THE CLERK: And we'll set trial that week too.

2 THE COURT: Okay. Mr. Bailey, we continued the hearing 'til May 21st to
3 finish her testimony.

4 THE DEFENDANT: Okay.

5 THE COURT: All right. Thank you.

6 PROCEEDING CONCLUDED AT 3:35 P.M.

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22 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
23 video recording of this proceeding in the above-entitled case.

24 
25 SARA RICHARDSON
Court Recorder/Transcriber



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JAYSHAWN D. BAILEY,

Defendant.

CASE NO. C-20-347887-1

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

WEDNESDAY, JUNE 16, 2021

RECORDER'S TRANSCRIPT OF PROCEEDINGS
JACKSON V. DENNO HEARING AND STATUS CHECK: TRIAL SETTING

APPEARANCES:

For the State:

MICHAEL J. SCHWARTZER
Chief Deputy District Attorney

For the Defendant:

KATHLEEN M. HAMERS
ANNA C. CLARK
Deputy Public Defenders

RECORDED BY: SARA RICHARDSON, COURT RECORDER

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1 LAS VEGAS, NEVADA, WEDNESDAY, JUNE 16, 2021, 1:36 P.M.

2 * * * * *

3 THE COURT: Okay. It's nice to see everybody.

4 MS. HAMERS: Nice to see you, Judge.

5 MR. SCHWARTZER: Nice to see you, Your Honor.

6 THE COURT: State versus Jayshawn Bailey, case C347887, he's present
7 and he's in custody and he is joining us over BlueJeans.

8 Do you want to make your appearances?

9 MR. SCHWARTZER: Michael Schwartzer for the State, Your Honor.

10 MS. HAMERS: Kathleen Hamers and Anna Clark for the defendant.

11 Do you need bar numbers?

12 THE CLERK: No.

13 MS. HAMERS: Okay. Thank you.

14 THE COURT: All right. Let's see, where were we?

15 MS. HAMERS: We had called Dr. Natalie Brown and began --

16 THE COURT: Okay.

17 MS. HAMERS: -- her questioning. She is on now. So with the Court's
18 permission I will just continue with that if there's nothing else.

19 THE COURT: Okay. Dr. Brown.

20 THE WITNESS: Good afternoon.

21 THE COURT: Are you ready?

22 THE WITNESS: I'm ready.

23 THE COURT: Okay. If you'll just raise your right hand so you can be sworn
24 by the clerk.

25 ///

1 **NATALIE NOVICK BROWN,**

2 [having been called as a witness and being first duly sworn testified as follows:]

3 THE COURT: Thank you. Go ahead.

4 THE CLERK: Would you please state and spell your first and last name for
5 the record.

6 THE WITNESS: My name is Natalie Novick Brown, N-A-T-A-L-I-E; Novick is
7 N- [inaudible] I-C-K; Brown, B-R-O-W-N.

8 THE CLERK: Thank you.

9 THE COURT: Go ahead.

10 MS. HAMERS: Thank you, Judge.

11 **CONTINUED DIRECT EXAMINATION OF NATALIE NOVICK BROWN**

12 BY MS. HAMERS:

13 Q Dr. Brown, I believe last time we left off and we were talking about the
14 Gudjonsson Suggestibility Scale. I don't know if you have notes, but does that look
15 like where we left off to you as well?

16 A I can't -- no, I can't remember where we left off, but that's fine.

17 Q That's just fine. Can you tell us what the Gudjonsson Suggestibility
18 Scale is? The GSS 2?

19 A Yes. It's a standardized measure of interrogative suggestibility and it is
20 a widely used measure. It's used around the world and it is essentially one-of-a-kind
21 measure that [inaudible] or tries to replicate what happens in an interrogative
22 situation to determine how suggestible a person is, how easily led.

23 Q Okay. And that was something that you did with Mr. Bailey?

24 A Yes.

25 Q And what were the results of that test?

1 A Mr. Bailey was highly suggestible, almost two standard deviations
2 above the mean, and that suggestibility was comprised of a tendency to easily
3 acquiesce or go along with whatever might be suggested to him.

4 Q In addition to that, you completed what I'm going to call standardized
5 behavior assessments with Jayshawn and I'm going to ask you about some of
6 those. Is that -- is that term workable for you that you did some standardized
7 behavior assessments?

8 A Yes.

9 Q Okay.

10 A And standardized means they're norm [inaudible] --

11 THE COURT: Sorry, it's the jail. Sorry.

12 MS. HAMERS: Okay. We're just listening to some of the jail there. Sorry
13 about that.

14 BY MS. HAMERS:

15 Q Okay. So some of this you do by the way of collateral interviewing; is
16 that right?

17 A Yes. And I interview individuals who know the person very well and can
18 rate their behavior on various measures and one of the primary measures I
19 administered was Vineland Adaptive Behavior Scale and the Vineland was
20 administered to Mr. Bailey's caregiver, Wealthy McNair. There were two other
21 measures I administered to her, the Behavior Rating Inventory of Executive
22 Functioning and -- the BRIEF for short, and the Fetal Alcohol Behavior Scale which
23 is a screen -- a screening measure for fetal -- possibility of FASD or Fetal Alcohol
24 Spectrum Disorder.

25 Q I'm going to ask you a little bit about each of those, the Vineland

1 Adaptive Behavior Scale, what is that?

2 A That is the most widely used adaptive measure and adaptive behavior
3 is everyday behavior. The Vineland happens to measure communication skills, daily
4 living skills or practical skills, and socialization or social skills.

5 Q And what did you learn through that assessment with regard to
6 Jayshawn?

7 A According to the behavior ratings which were confirmed with another
8 measure, the BRIEF, in terms of reliability, Mr. Bailey's adaptive functioning is
9 significantly deficient, below the first percentile and -- that's three or more standard
10 deviation below the mean and he had low scores in all three categories:
11 Communication skills, daily living skills, and socialization skills.

12 Q And the BRIEF, the Behavior Rating Inventory of Executive Functioning
13 or of Executive Function, what is that?

14 A That's a measure that I administer. It's a standardized measure, again,
15 and it has -- the benefit of this measure and the reason why I use it in conjunction
16 with the Vineland is the Vineland doesn't have any embedded reliability [inaudible]
17 scales and, in fact, no adaptive measure has that kind of capacity. So the BRIEF
18 does have validity scales. It's administered in exactly the same way and in
19 conjunction with the Vineland.

20 In fact, the behavior items are very similar and the way that the -- the
21 informant or respondent is supposed to respond is exactly the same as the
22 Vineland. So I administer the BRIEF back to back with the Vineland in order to get
23 the validity scales in terms of the respondent's presentation whether they're overly
24 positive, overly negative, so forth. And on the BRIEF Wealthy McNair's scores were
25 all valid. There were three validity measures or there are on the -- on the BRIEF.

1 One is negativity, one is infrequency, and another is inconsistency and her -- her
2 scores were valid in all three categories and interpretive in terms of the Vineland,
3 this means that her -- her ability to rate Mr. Bailey's behavior is valid, is
4 straightforward.

5 Q Okay. And when we're looking at the BRIEF is it fair to say that that
6 somewhat is then corroborating the Vineland results or findings?

7 A Yes. That's one way I -- one of many ways I use to corroborate
8 Vineland results. In this case I used a multiple list of ways to corroborate the
9 Vineland results but that was one of them.

10 Q Okay. And then the Fetal Alcohol Behavior Scale, what is that?

11 A That's the FABS for short. That was -- that's a measure that was
12 developed a couple decades ago with the University of Washington and it measures
13 the behavioral characteristics or profile of individuals with Fetal Alcohol Spectrum
14 Disorders and it's used as a screening measure. It's one of the very few validated
15 screening measures for FASD and in this case it was administered to
16 Wealthy McNair again and results on that measure fell solidly within the FASD
17 range.

18 In other words, she measured or she rated Mr. Bailey's behaviors in
19 several categories: Communication and speech, personal manner, emotions, his
20 motor skills, his academic work, and his social skills and his physiological
21 functioning, all of those categories were within the FASD range.

22 Q And if you don't recall, we talked last time about the things that you
23 reviewed in Jayshawn's background, his birth records, education records, we had
24 been through some of those. When you did these assessments and considered
25 them in conjunction with all of that background did you have some opinions about

1 Jayshawn's functioning?

2 A Yes, I did. You requested opinions in several areas and the records
3 were useful in my ability to review his behavior across his entire lifespan and
4 analyze that in conjunction with your referral questions and the results of the
5 analysis or the evaluation that I did, first of all, indicated that he was exposed in
6 utero to alcohol in a pattern that is consistent with FASD, pattern known to produce
7 FASD conditions; and he was also exposed in utero to cocaine, marijuana, and
8 nicotine in large quantities and those additional substances would have an additive
9 and cumulative effect on whatever effects alcohol produced.

10 And I might add that the evidence in the contemporaneous records of
11 the prenatal exposure was substantial, more than I almost ever see in FASD
12 evaluations. It was abundant and -- in medical records and in school records and
13 child [indiscernible] records and in collateral reports, contemporaneous collateral
14 reports as well. So abundant evidence of prenatal exposure.

15 Another conclusion I reached is that the lifelong behavioral functioning,
16 Mr. Bailey's lifelong behavior was and is consistent with a Fetal Alcohol Spectrum
17 Disorder. In particular, there is a D.S.M.-5 mental health diagnosis for the central
18 nervous system sequelae of FASD and that is -- it's a mouthful, it's called
19 Neurodevelopmental Disorder Associated with Prenatal Alcohol Exposure or
20 ND-PAE for short. And Mr. Bailey's lifelong functioning is consistent, without
21 exception, with ND-PAE which constitutes a mental defect. And as I indicated,
22 convergent data from multiple areas support that diagnosis.

23 And a third conclusion I reached was that Mr. Bailey's cognitive and
24 adaptive functioning are also consistent with intellectual disability. And you asked
25 me to quantify that functioning and in terms of the Vineland assessment, his social

1 functioning is equivalent to that of a six-year-old.

2 And final conclusion I reached per your request was that Mr. Bailey's
3 suggestibility, his impaired coping skills capacity, and his tendency, his lifelong
4 tendency to acquiesce are consistent with ND-PAE. And according to my evaluation
5 and records he is going to be most inclined in highly stressful situations to be very
6 compliant.

7 And there was another test that I administered along those lines, a
8 standardized assessment, that indicated that as well.

9 Q And when you talked about highly stressful situations are there
10 circumstances then that can sort of exacerbate the suggestibility as Jayshawn may
11 experience it?

12 A Yes. Any situation that would involve stress is going to further impair
13 his baseline capacity. And, for example, police interrogation is highly stressful
14 for everyone. I've never seen an exception in my 25 years of practice. So
15 Mr. Bailey is likely in that kind of a situation to be highly stressed and fearful and
16 that's going to increase or further impair his deficits.

17 Q And is it fair to say that that can happen when or maybe because of in
18 that circumstance you're around people of great authority?

19 A Yes. Well, in the testing that I gave him, the Gudjonsson, [inaudible]
20 like Mr. Bailey see me as -- as a person with authority. But it's, in my opinion,
21 low-key authority as opposed to interrogative questioning in a police situation. I
22 would think that would be more stressful. Although, undoubtedly, a situation
23 involving a psychologist who is evaluating is also stressful.

24 Q Sure. If he's experiencing fear could that make him even more
25 suggestible?

1 A Fear would ratchet up the stress, yes.

2 Q I'm sorry, that broke up a little for me. What did you --

3 A Yes, I agreed it would. Fear would ratchet up the stress of a situation to
4 even higher levels.

5 Q And what about length of time in an interrogative situation?

6 A Well, the length of time just prolongs the stress and exacerbates or
7 prolongs the -- the general impairment. The impairment is going to exist without the
8 stress but given a long term period of stress it's going to be maintained at a severely
9 impaired level for over that period of time. In other words, what I'm saying is it
10 doesn't dissipate just because it's a lengthy process. It remains high stress.

11 Q Okay.

12 MS. HAMERS: Court's indulgence.

13 I don't have any other questions. I'll pass the witness right now.

14 THE COURT: Thank you very much.

15 Cross-examination.

16 MR. SCHWARTZER: Thank you, Your Honor.

17 **CROSS-EXAMINATION OF NATALIE NOVICK BROWN**

18 BY MR. SCHWARTZER:

19 Q Good afternoon, doctor.

20 A Good afternoon, counsel.

21 Q So my understanding is you were able to do about three hours of
22 interviews with Mr. Bailey; is that correct?

23 A In total, yes.

24 Q Is that your typical time that would you take in a case like this? Or
25 would it be more or less?

1 A No, that is typical.

2 Q And is it typically done in person or is it typically done by Zoom like you
3 did in this case?

4 A Well, pre-COVID it would have been done in person.

5 Q Okay.

6 A Yes.

7 Q So before --

8 A [Inaudible] I've just started to do in-person interviews. I've been
9 vaccinated, so I've just started.

10 Q Okay. So before the pandemic you would do all these interviews in
11 person; is that correct?

12 A Yes.

13 Q Okay. So this is -- this would be -- the pandemic, obviously, special
14 circumstances for everybody, but this would be unique in the way you would actually
15 do the interview; is that fair?

16 A Yes. But I didn't feel like it affected the results.

17 Q Okay. And then, additionally, there was an individual in at least some
18 of the interviews, is that correct, the social worker?

19 A Social worker?

20 Q There was a Emily Reeder?

21 MS. HAMERS: Dr. Emily Reeder, mitigation specialist.

22 THE WITNESS: Oh, she's the mitigation specialist.

23 THE COURT: Okay. That's your mitigation specialist?

24 MR. SCHWARTZER: Okay.

25 MS. HAMERS: That's right.

1 MR. SCHWARTZER: Dr. Reeder, I apologize. I didn't know. I apologize,
2 counsel.

3 BY MR. SCHWARTZER:

4 Q She was involved -- she was in some of this interview process as well?

5 A She facilitated the Zoom connection. She got her -- she used her
6 computer and got it connected and then she was in the background and Mr. Bailey
7 could not see her. She sat, I think she sat -- she was in the background. I didn't pay
8 any attention to her as well.

9 Q But that's atypical as well; is that correct? Like, you don't normally have
10 another person in there during these one-on-ones with your patient?

11 A That's correct. But his back was to her. That's correct.

12 Q Okay. Additionally, you were able -- did you take notes during this --
13 during these interviews?

14 A I did on my laptop, yes.

15 Q Did you save those notes?

16 A I do.

17 Q Could you keep those notes, please?

18 A I'm sorry?

19 Q Can you keep those notes, please?

20 A I always do. Yes.

21 Q Okay. And were those notes provided to the defense? To Mr. Bailey's
22 counsel?

23 A Defense did not request them.

24 Q Okay. But you would typically not destroy those notes; is that fair?

25 A That's typical, yes. And they're saved for years now online.

1 Q Okay. And you were also able to review, I just have "discovery"; is that
2 fair?

3 A No. I reviewed school records --

4 Q Okay.

5 A Let's see.

6 Q Well, let's --

7 A Let me look at my list.

8 Q Doctor, before we get into the other stuff you talked about, I want to talk
9 about discovery and then we can get into your other -- your other things you
10 reviewed, okay?

11 A Yes. I was talking about -- oh, discovery, yes.

12 Q Okay. So what specific -- what specifically do you recall reviewing from
13 the discovery?

14 A Legal records and the --

15 Q What legal records?

16 A Police records, the information, the charging documents as I recall, this
17 is going back in time and I have a lot of cases, so I reviewed information about the
18 offense at length, also investigation records.

19 Q Did you review any of the statements made by Mr. Bailey?

20 A I did.

21 Q Did -- so you were familiar with all three statements he's provided?

22 A I am and --

23 Q Okay.

24 A -- also there was video.

25 Q And you review --

1 A At least one video, more than one video, I believe.

2 Q Okay. So you're aware of everything that was said in those interviews?

3 A I am.

4 Q Okay. Did you review Clark County School District records, University
5 Medical Center records, MountainView Hospital records, Valley Hospital records,
6 and Silver State Neurology records; is that correct?

7 A That is correct.

8 Q And you -- do you still have all those records?

9 A I do.

10 Q Okay. And would you maintain them?

11 A I retain them.

12 Q Okay.

13 A They're electronically stored.

14 Q Okay. So I want to get into the -- one of the things you mentioned is
15 suggestibility, that Mr. Bailey is someone that's highly suggestible based on your
16 diagnosis of him during this three-hour interview; is that correct?

17 A Yes. And my diagnosis is based on several things.

18 Q Okay. So regarding the suggestibility, tell -- define suggestibility to me.

19 A The tendency to be easily led or persuaded by others.

20 Q Okay. Easily led and -- easily led and persuaded by others, is that --
21 that's how you would define suggestibility?

22 A Well, that's -- that's one of the ways I would define it.

23 Q Okay. So when you say someone's highly suggestible you're stating
24 that if I tell Mr. Bailey, you know, the sky is red in a highly stressful situation he
25 might acquiesce to the sky is red, right?

1 A If -- in -- if you said it in a highly stressful situation in a certain way, he
2 would be inclined to agree with you.

3 Q He would adopt my answers?

4 A Well, if you were to say I have evidence and I can show you evidence
5 that the sky is actually red rather than blue and you were to say it in a way that
6 conveyed you were convinced you were right, he would be inclined to go along with
7 you.

8 Q Okay. So, and that's what I -- kind of want to get into. So, basically,
9 what would happen in these highly stressful situations is Mr. Bailey would adapt to
10 answers of the person that he sees in authority; is that correct?

11 A Generally.

12 Q Okay.

13 A Yeah. That's --

14 Q Whether they were true -- whether they were true or not, right?

15 A Whether they were accurate or not, he would be inclined to go along
16 with however the interrogator led him.

17 Q Okay. So, specifically, he would be -- well, when you say "led him," are
18 you talking about the interviewer would be suggesting answers in the form of
19 questions to Mr. Bailey?

20 A Well, it can happen in that way but other ways as well.

21 Q Well, tell me some of these other ways.

22 A Well, typically, answers -- typically, questions are asked in a general,
23 open way and then if the answer is not pleasing to the questioner, then the
24 questioner becomes more directed and leading and initially, and I think in
25 Mr. Bailey's case, if I recall correctly, he denied any -- any knowledge of the offense

1 and so forth and it was only after the interrogator, the police officer or detective,
2 became more forceful in terms of questioning that Mr. Bailey began to acquiesce.

3 Q Okay. And by "acquiesce" you're talking about adopting answers that
4 the interviewer, the police detective was providing in the form of questions or even
5 suggestions maybe?

6 A Yes. Eventually. And that's a -- that's a gradual --

7 Q Okay.

8 A -- process and -- but, yes.

9 Q Okay. So that's how you -- that's how you say suggestibility is in play
10 here. So let me go into this, one of the ways that you determine during your
11 interviews if someone's malingering is you go -- you ask -- you go through certain
12 tests, right, to see if an individual might be malingering adaptability functions or
13 intelligence, correct?

14 A That's one -- that's one way, yes.

15 Q Okay. What are -- what -- what does that test do? What do you -- how
16 do -- how do you determine if someone is malingering or not? Like, what does that
17 test do?

18 A Are you talking about the malingering tests that I administer?

19 Q Sure.

20 A Those -- those tests, well, the Paulhus, for example, determines
21 whether someone is inclined to view himself in an overly positive way
22 unintentionally, just generally see himself in a positive way and it also has another
23 measure that is designed to determine if the individual is deliberately portraying
24 himself in a positive way.

25 Q Well, how do you find out the second -- how do you find out that second

1 part?

2 A The Paulhus has two parts to it and the items are designed to address
3 one or both of those characteristics.

4 Q Well, I understand how it's designed, but how do you determine -- so
5 you have a subjective view which is how someone views themselves and then you --

6 A Right.

7 Q -- supposedly have an objective view to see if that view is in line with
8 reality. So how do you determine that second part?

9 A Well, what I do is I compare self-report with contemporaneous data.

10 Q Okay. So you use data --

11 A [Inaudible]

12 Q Hold on a second, doctor.

13 So you use data that is something that is kind of a -- data that is
14 indisputable, something that is factual and compare it to his subjective way of
15 viewing himself?

16 A Correct.

17 Q Okay. So a good way to determine if someone is being truthful is to
18 have this data that you know is factually correct and comparing the answers to that
19 data?

20 A I would disagree. I wouldn't use the word "truthful."

21 Q Okay?

22 A That's entirely different than the way I view it.

23 Q What word would you use?

24 A But this -- these -- well, the measure that I was talking about is used to
25 determine self-presentation.

1 Q Okay.

2 A And that's not truthful. A person can be overly positive in the way they
3 see themselves and they're not deliberately lying when they -- when they -- when
4 they a describe themselves in an overly positive way.

5 Q I get that, but the point of the matter is in order to make the comparison
6 you need some type of anchor, right, some type of data that would -- that you can
7 view objectively?

8 A Yes. Which -- yes, and I did that in this case.

9 Q Okay.

10 A And what I found was although the measure itself indicated he was not
11 inclined to be overly positive, I found some evidence, not a lot, generally his
12 self-report was generally consistent with records but --

13 Q Okay.

14 A -- one area, it was not and that's when he was describing his school
15 history.

16 Q Understand. So, additionally, I would also point out there's several
17 times in the report that it is mentioned that his IQ is close to average level; is that
18 fair?

19 A Well, it changed in terms of how -- what the measurement indicated
20 over the years.

21 Q Okay.

22 A He has not been tested recently and that's my recommendation that he
23 be tested recent -- currently. But his -- his IQ it was -- he was tested when he was a
24 very young child and it was in the ID range.

25 Q Okay.

1 A It was tested once when he was in school and that was when he was, I
2 think, [inaudible] or 6 somewhere in that. He was in kindergarten.

3 Q Okay.

4 A And he -- and he -- he got an average, generally average IQ on that
5 particular measure which is not really a measure used.

6 Q Okay.

7 A In the ID setting.

8 Q So --

9 A He was also tested at age 3.

10 Q The question was just about IQ. I'm going to go on to another question,
11 doctor.

12 So regarding -- at age 9 though he was found ineligible for special
13 education services; that's correct?

14 A Yes. Because of -- there was lack of discrepancy among his scores.

15 Q So the point of the matter was he wasn't in special education from 9 on
16 out, right?

17 A That is correct.

18 Q Okay. So, additionally, he graduated high school, I understand it was
19 with a low G.P.A. and it took a couple years, but he did graduate high school, right?

20 A It took three years and he got a diploma.

21 Q Okay.

22 THE COURT: Did he graduate high school? Is there a difference between
23 graduating and getting a diploma?

24 MR. SCHWARTZER: I don't know.

25 THE COURT: I just -- doctor?

1 THE WITNESS: There is. Yes.

2 THE COURT: Okay. Because there --

3 THE WITNESS: He was awarded a diploma which is -- which makes it
4 comply with the requirements that they provided him but he didn't graduate in the
5 normal sense.

6 MR. SCHWARTZER: Okay.

7 THE COURT: Okay. But was he awarded the same diploma that other
8 students were awarded?

9 THE WITNESS: That I do not know because --

10 THE COURT: Okay.

11 THE WITNESS: -- I did not have records that told me that.

12 BY MR. SCHWARTZER:

13 Q Either way, he has either a diploma or he graduated high school, he
14 can put on a job application that he is -- he is a high school graduate; is that fair?

15 A Generally that would be an appropriate thing to say.

16 Q Okay. He's maintained jobs before, right, at Amazon, McDonald's, and
17 I noticed you don't have in there, but also Wendy's as well?

18 A He had short-term, part-time, entry level jobs, yes.

19 Q I mean, Amazon was for six months though; is that short term?

20 A That's short term --

21 Q Okay.

22 A -- in my -- in my experience with these evaluations, yes.

23 Q Okay. Now, you said he has adaptability functionality of a six-year-old?

24 A Socially, yes.

25 Q What does -- I mean, as someone who has a six-year-old who would

1 not be able to have a job at Amazon; what does that mean?

2 A And that may mean -- that might be why he only lasted six months
3 there, but what that means is when he interacts with people he doesn't have social
4 skills beyond the six-year-old level.

5 Q Okay. But he has romantic relationships which you noted in your
6 report, right, with adult women?

7 A He has, well, presumably they were adult women.

8 Q Okay.

9 A He has had -- he's had relationships with same-age females.

10 Q Okay.

11 A So that was in his childhood, his teenage years as well.

12 Q He was also able to get his high school diploma, correct?

13 A With supports, yes.

14 Q Okay.

15 A With some support.

16 Q I mean, in some cases he actually got -- in some classes in high school
17 he actually got, I mean, I understand a lot of his things are Cs, Ds and even some
18 Fs, but in some of his high school he was able to get As and -- at least a couple of
19 As, right?

20 A He got an A in P.E. one quarter, one semester, yeah.

21 Q Well, I think there is more than that. I mean, he got an A in English 8,
22 right, in 2010, 2011?

23 A I'm going to have to check that.

24 Q That was in eighth grade.

25 A [Inaudible]

1 Q I'm sorry, I didn't hear you.

2 A I'm looking at my report and, yes, in summer school he got an A in
3 English 8.

4 Q I mean, he got an A in composition in 11th grade?

5 A Yes, he did.

6 Q He got an A in his prep for the diploma, right?

7 A Yes.

8 Q Additionally, we mentioned he had jobs at several places. I know
9 they're entry-level jobs, but they're still jobs, right?

10 A Yes, he did.

11 Q He's able to read, right? You notice that the way he says he passes
12 time in jail is he reads and works out?

13 A Yes. He is able to read and we don't know currently what his reading
14 capacity is.

15 Q Sure.

16 A Because he hasn't been tested for many years.

17 Q I mean, he asks books from Lisa Jackson. Do you know who that is?
18 The author. I mean, that's adult writing.

19 A I've heard of her but I don't know beyond that.

20 Q Okay. So it's not like he's asking for, you know, coloring books, right?
21 He's asking for actual novels and literature?

22 A Well, the six-year-old's social behavior is not the same thing as reading
23 skills. It's entirely different.

24 Q Okay. Were you able to go through his phone history at all and review
25 his Google searches or anything like that?

1 A I don't recall that for this case.

2 Q Do you remember going through his phone at all regarding text
3 messages he would have with friends that are of contemporary age or even
4 romantic relationships?

5 A That sounds more familiar but it's been a while since I read through the
6 discovery so many months and lots of cases, so I didn't read the discovery in
7 preparation for today.

8 Q But, obviously, one of the things -- if you're saying someone has a
9 six-year-old social -- social functioning, how that person interacts with social peers
10 would be important, right?

11 A Yes. But keep in mind social interaction and writing are two separate
12 kinds of skills and so a person can be more adept at putting his thoughts with time
13 into the written context than he can in speaking and interacting. Interacting requires
14 in-the-moment thinking, thinking on the spot, interacting on the spot, reciprocal
15 communication, and that's where individuals with executive functioning impairments
16 have considerable problems. And --

17 Q So the impairment isn't -- the impairment isn't if he has time to think and
18 review a text message and respond, the impairment is if he has to think on the spot?

19 A In the moment.

20 Q Okay. So you're not saying he has a six-year-old social functioning
21 when it comes to generally life, it's just a six-year-old social functioning, in your
22 opinion, when he has to think on the spot?

23 A Yeah. Interacting with others, yes.

24 Q Okay.

25 A One thinking in the moment, making decisions in the moment.

1 Q Not when he's had time to think about it; is that correct?

2 A Well, it depends on what it is. But if it's an social decision I would have
3 to have specifics, but socially what I'm talking about in terms of six-year-old, the
4 Vineland measures interactive social skills, the ability to interact successfully, age
5 adequately with peers --

6 Q Okay.

7 A -- or with others. So that's what the Vineland is measuring and that's all
8 that that particular item on the Vineland is measuring. It is not measuring -- that
9 item, social skills, is not measuring his writing skills. Although the Vineland did
10 assess his written communication skills.

11 Q So I guess the point of the matter is when you say he has the social
12 functioning of a six-year-old you're not saying he acts like a six-year-old or that he
13 has the IQ of a six-year-old or the education of a six-year-old, it just has to do with
14 specifically when he has to respond to something in a quick fashion?

15 A Yes.

16 Q Okay. You said in your report that there are several things that you
17 would want further testing on; is that correct?

18 A Yes.

19 Q Okay.

20 A His current neuropsychological functioning.

21 Q I mean, specifically, let me get to it, I mean, there is no, like, you know,
22 I've seen probably your work actually when it comes to Fetal Alcohol Syndrome, but
23 there's, like, photographs and there are different photographs taken from different
24 angles and stuff like that when you do analysis for diagnosing someone with Fetal
25 Alcohol Syndrome, correct?

1 A Yes.

2 Q And that wasn't done in this case?

3 A That's for the medical doctors.

4 Q Correct?

5 A Well, I'm not an M.D. I wasn't doing a medical evaluation. I was doing
6 a psychological.

7 Q As far as you know, you haven't seen any photographs like that that you
8 would typically see in a Fetal Alcohol Syndrome diagnosis?

9 THE COURT: Let me just, it's my understanding she has not diagnosed him
10 with that.

11 MR. SCHWARTZER: Okay.

12 THE COURT: Am I correct? I don't -- okay.

13 THE WITNESS: [Inaudible] correct.

14 BY MR. SCHWARTZER:

15 Q And would you want to see, obviously, an assessment by a
16 neuropsychologist as well to make more -- a further analysis in this case, right?

17 A To make a definitive diagnosis of ND-PAE, yes.

18 Q Okay.

19 MR. SCHWARTZER: Okay. Your Honor, I have no further questions. I'll
20 pass.

21 THE COURT: Thank you.

22 Any redirect?

23 MS. HAMERS: Thank you, Judge.

24 ///

25 ///

1 **REDIRECT EXAMINATION OF NATALIE NOVICK BROWN**

2 BY MS. HAMERS:

3 Q What's the difference between IQ and adaptive functioning?

4 A A world of difference. IQ is intellectual functioning. Intellectual
5 functioning measured in a highly structured environment typically and that's the
6 capacity to solve verbal and nonverbal problems in a highly structured, directed
7 environment. Adaptive functioning is everyday behavior in a -- usually a typically
8 completely unstructured environment where the individual has to think on his feet in
9 terms of every decision he makes and every behavior he engages in.

10 Executive functioning controls adaptive functioning and if we had
11 testing, current testing, we would know if Mr. Bailey's executive functioning is
12 impaired. Given all the records, they suggest it is significantly impaired which would
13 explain the significantly impaired adaptive functioning in Wealthy McNair's adaptive
14 function ratings on the Vineland.

15 Q Adaptive functioning is how one functions in the real world; is that fair to
16 say?

17 A Yes.

18 Q When you were talking about Jayshawn's high school graduation, when
19 you looked through that, the records of his last years in high school, his last three
20 years in high school, those were at Desert Rose High School; is that right?

21 A Correct.

22 Q Are you aware that that's an alternative high school?

23 A I am -- I was not aware of that.

24 Q And that's actually where he graduated after three years of the 12th
25 grade; is that right?

1 A Yes.

2 Q Okay. When someone has the adaptive functioning of a six-year-old do
3 they necessarily act like a six-year-old?

4 A They will act like a six-year-old in some situations. It's very contextual.
5 In highly structured situations, they will tend to act more like their age. They will be
6 at their very best capacity.

7 In highly unstructured and stressful situations, that's when they will
8 most act to the lowest level of their capacity. And in this case, in the everyday
9 unstructured situations, six-year-old in Mr. Bailey's situation.

10 Q And we can't -- we can't say that a six-year-old child is the same as a
11 young man in his early 20s who has adaptive function that has been quantified to be
12 equivalent of that of a six-year-old, right, those two things aren't going to look the
13 same?

14 A Correct.

15 Q In fact, the quantification of that adaptive functioning was something
16 that I asked for in order to put that in terms that's easier for us to understand; is that
17 right?

18 A You're correct.

19 Q Because it's not, in your line of work, the best measure or best way to
20 refer to that functioning partially because of those differences?

21 A Yes. That can be very misleading and so I typically don't age-quantify
22 the Vineland results and it's for this very reason that I don't.

23 Q Understood. Can someone with that level of adaptive functioning have
24 a job?

25 A Certainly, because a job doesn't just require social ability, social skills

1 and highly -- first of all, jobs are usually structured. They require daily living skills
2 and practical skills. And most people with intellectual disability are able to do the
3 kinds of jobs that Mr. Bailey was able to do.

4 Q And to whatever level the intellectual disability is when someone has
5 reached their 20s they have more learning and more experience that has taken
6 place than someone who's six years old, right?

7 A Correct.

8 Q And I want talk to you a little bit just to clarify where we were as far as
9 diagnosis versus whether or not his functioning and history was consistent with
10 FASD, if I could. We had some limitations on whether or not we could make a
11 diagnosis in this case; is that right?

12 A That is correct.

13 Q And your preference would be to have a current neuropsych done in
14 order for that diagnosis to be made?

15 A Yes.

16 Q And that was not something we were able to accommodate last year?

17 A That's correct, due to COVID as I understood it.

18 Q And so what do you do as the next best thing? Is it the next best
19 thing -- can you kind of describe how we end up where we are and does that have
20 any reliability without that neuropsych?

21 A Well, yes. The next best thing is the evaluation that I conducted and
22 what I -- all I could say is every -- Mr. Bailey's life history was or is consistent with an
23 FASD and that's what -- I couldn't do more than that if I were to have neuropsych
24 functioning except what I could also add is that his current functioning is consistent
25 with substantial impairment and FASD. So I would be able to add that current

1 functioning is consistent and that would allow me to indicate that behavior and
2 functioning across the entire lifespan is consistent with FASD or ND-PAE in this
3 case and I could make a definitive diagnosis because I've ruled out other possible
4 explanations for the impairments and all the problems and difficulties he's had in his
5 functioning across his life.

6 MS. HAMERS: I don't have any other questions for you right now. Thank
7 you, doctor.

8 THE COURT: Any recross?

9 MR. SCHWARTZER: Nothing further, Your Honor. Thank you.

10 THE COURT: Okay. Can we excuse this witness?

11 MS. HAMERS: Yes.

12 THE COURT: Okay. Doctor, thank you very much for your testimony here
13 today and you are excused. Thank you for being here.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Okay. Do you want to call your next witness?

16 MS. HAMERS: We have no other witnesses.

17 THE COURT: Okay.

18 MR. SCHWARTZER: State has nothing in rebuttal, Your Honor.

19 THE COURT: All right. So I would -- do you want a minute to prepare or are
20 you ready to prepare for oral argument?

21 MS. HAMERS: I am ready for argument.

22 THE COURT: Perfect. Let's go.

23 MS. HAMERS: Are you ready for argument?

24 MR. SCHWARTZER: Yes.

25 MS. HAMERS: Thank you, Judge. And I trust that the Court has as fresh in

1 its memory as it can, all of the questioning that we had as far as what actually
2 happened in these interrogations. I know you've also had the opportunity to watch
3 them or read them or anything else.

4 THE COURT: Right. I just want to make sure the record was clear, I did have
5 an opportunity to watch the video.

6 MS. HAMERS: Okay. And -- oh, and I would just ask also, did we -- has
7 Dr. Brown's report been made part of the record?

8 THE CLERK: No.

9 MS. HAMERS: I would move to admit that as well.

10 THE COURT: Okay. Do you -- is it marked?

11 THE CLERK: It is. Exhibit 1.

12 THE COURT: Okay. Any objection?

13 MR. SCHWARTZER: No, Your Honor.

14 THE COURT: Okay. Exhibit 1 is admitted.

15 THE CLERK: I mean, I'm sorry, Exhibit A.

16 MS. HAMERS: I'm sorry. I was out of order on that.

17 THE COURT: I'm sorry. It's Exhibit A. Okay. So Exhibit A is admitted.

18 **[DEFENSE EXHIBIT A ADMITTED]**

19 THE COURT: Did you have any other exhibits you wanted to admit?

20 MS. HAMERS: No.

21 THE COURT: Okay. Are those marked?

22 THE CLERK: These are just proposed.

23 THE COURT: Okay.

24 MS. HAMERS: Those are just the transcript of the interviews I think.

25 Okay. So I -- Jayshawn's statements to the police in this case were not

1 voluntarily made. I think it's really, really important to remember through all of this,
2 we're talking about whether or not the confession was voluntary. We have to look at
3 that with complete disregard as to whether or not what he said was truthful or
4 whether or not it appears truthful based on other evidence in the case.

5 We have to look, first, to all of his individual characteristics. This is
6 something that we're looking at that's individual to him. He's fairly young, he lacks
7 significant experience with law enforcement, and most importantly, he is
8 intellectually disabled. I don't think that there's any question about that going
9 through his history and the evaluations that Dr. Brown went through. His cognitive
10 and adaptive functioning is consistent with intellectual disability. His social
11 functioning is significantly diminished and equivalent to that of a six-year-old and he
12 is highly suggestible. These go to the absolute core of whether or not he can make
13 a voluntary confession under the circumstances of this case.

14 We also look at the interrogation, specifically in this case, in conjunction
15 with those qualities and that's what renders the statements involuntary here. And I
16 think it's important to remember there, we're not talking about what the detectives
17 knew about his intellectual functioning, whether they intended to have this result,
18 whether or not under other circumstances their tactics would have been acceptable,
19 we're looking at what was the result of that potentially through no one's fault, but
20 does that leave us with an involuntary statement because if it does, we can't admit it
21 and it doesn't matter if the detectives were acting, you know, within -- within all of
22 their rules and policies and otherwise on the up-and-up here.

23 Here we had a really lengthy interrogation. When the detectives were
24 talking to Jayshawn they relentlessly insist that he tells them a different story. They
25 relentlessly reject the story that he's telling them. And they suggest a story for

1 Jayshawn to tell. And I know the State finds it really significant that, well, they
2 suggested a particular story to him and he didn't latch on to that exact story, but
3 that's not the end of the game here. It doesn't matter that he didn't take the bait and
4 go with the story they wanted him to go with. What matters is what they suggested
5 him to do, what he was overborne in was that he had to tell a different story, he had
6 to come clean about what happened, and that he couldn't continue to deny this. So
7 just because he didn't -- they didn't say, hey, we think you were just helping your
8 friend; oh, I was just helping my friend then, doesn't mean that the things he said
9 were voluntary.

10 The way the suggestibility worked here and the way he acquiesced in
11 what the police wanted was he went ahead and told them and that's what he did not
12 voluntarily. It doesn't matter that he didn't pick their story. So I understand the
13 distraction in that, but that's really not the point. The point is whether or not the
14 statement was voluntarily made and it's not even though he didn't, frankly, I'm not
15 sure he knew the difference as to exactly what story they wanted to hear, the fact is
16 that he acquiesces in changing his story and telling these police what happened and
17 that's what was involuntarily made. It doesn't matter if it was true or not, it doesn't
18 matter if it was the story they used or not, what matters for him is that it wasn't
19 voluntarily made, and I think the statement should be suppressed for that reason.

20 Just briefly, I would note that based on really similar reasons, I also do
21 think the statement was made in violation of Miranda. I think that his intellectual
22 functioning really causes him to be also unable to give a valid waiver. I'd note that
23 when he's advised of Miranda he's told it's only because he's in a law enforcement
24 building. He's told he's not a suspect. Basically saying those things cuts completely
25 against what the point of the Miranda waiver -- the Miranda warnings is to let him

1 know that what he says can be used against him by telling him he's only getting
2 them because of the building he's in and that he's not a suspect implies the exact
3 opposite. But I do think given his intellectual disability he couldn't understand the
4 consequences of his statement and didn't have a valid waiver.

5 I will note that we had also filed in our motion, there is another problem
6 with the admission of these statements separate and aside from the voluntariness
7 and the Miranda issue and that is the polygraph. There is a polygraph examination
8 in -- embedded in the middle of this statement. Pursuant to N.R.S. 47.120, we
9 should -- if the State wants to admit any portion of his statement, here presumably
10 the statements that Jayshawn made after the polygraph examination, we can't really
11 do that unless we're able to admit the other parts of the statement or explain the
12 context.

13 Here the context as to what he says when he speaks after the
14 polygraph is absolutely after they have told him, We're rejecting this; you failed the
15 poly; these things aren't right. Without being able to get into that we're really not
16 able to tell the full story and give the context to his statements and, consequently,
17 that would deny him due process. So we're asking that these statements not be
18 admitted at trial.

19 THE COURT: Thank you.

20 MR. SCHWARTZER: I mean, Your Honor, the test here is the totality of
21 circumstances and I think it's really important to go over the case law when it comes
22 to overboring a will. Because what you have in those cases, specifically, in the
23 case that is cited to in their brief which is the Ninth Circuit, that U.S. v. Preston case.
24 But also if you just go to Passama v. State which is Nevada -- 103 Nev. 212, a 1987
25 case, which is something that we always cite to for the standard when it comes to

1 the totality of the circumstances. If you look at those cases, the overbearing of the
2 will has to do not only with the intelligence of the individual, not only to do with the
3 site of where the interview is occurring and promises made, but also to do with the
4 questioning itself and the questioning itself being highly suggestible.

5 So I understand Ms. Hamers has kind of preempted the fact that this
6 was going to be my argument, but it's -- if you go through the case law when courts
7 have decided against overbearing will when someone comes and then confesses
8 after, you know, a variety of reasons and the courts have found it to be overbearing
9 will, it's because of the questioning itself, the questioning -- and promises made.

10 In U.S. v. Preston, obviously, you had the promise made by the federal
11 agents that, you know, no matter what you say no one's going to hear about this,
12 we're going to put this in the secret file in the Department of Justice, it's an apology
13 letter to the victim, and that person was so intellectually disabled that they didn't
14 even graduate high school or even get past the ninth grade, among other things as
15 well as verbally impaired as well.

16 I mean, that's not what happened here clearly. Here there were no --
17 there were no promises he wouldn't go to jail if he confessed to the murder or
18 anything like that. There are promises that we'll drive you home if, you know, if you
19 say, you know, that this was an overdose or what have you. But there is no outright
20 promises that no one's going to see this confession.

21 In fact, throughout that interview Mr. Bailey is very concerned about
22 what other people are going to think when he finally tells the truth. And make no
23 qualms about it, he says, You guys are pressuring me to tell the truth. So even
24 Mr. Bailey recognizes the fact that it's not "I want to hear anything," it's to tell the
25 truth.

1 And then on top that what you see in both Preston and Passama is the
2 questioning is -- leads them to the story, like, they suggested the answers. In
3 Passama specifically and first in -- it had to do with a sexual assault case, a
4 lewdness case on a minor, and they said, well, where did I, you know, where did I
5 touch her. You touched her in the vagina. Why did I do that? Well, some people do
6 that because it creates pleasure for them. They put the answer into their questions.
7 You don't have that here.

8 I mean, you have the fact that they're trying to lead him down a road
9 which he doesn't eventually go. But the implied answers aren't what Mr. Bailey goes
10 for. What Mr. Bailey goes for in the statement is something that is borne out, by the
11 way, by other evidence, by the DNA, by video surveillance, by the phones, all that
12 other stuff, as a story that's absolutely and, in fact, you can see from when you
13 watch the interview, it almost takes the detectives aback. They didn't realize that
14 was what the story was going to be that Mr. Bailey was going to say.

15 So clearly when you look at overborning a will, we're looking at how
16 suggestive those questions are and if they just -- they just -- the person just gives up
17 and I'm -- just goes along with what the detectives have to say. In this case that
18 clearly did not happen. In this case what happened was after being questioned for
19 about two and a half hours in the first interview, which is admissible, we have plenty
20 of case law, Chambers, even Passama, Stringer, all of them have over two hours,
21 he -- Mr. Bailey finally gave the version of events that occurred and those version of
22 events is, again, backed up by independent evidence.

23 So while the -- when you review this in totality of the circumstances, the
24 State would submit that there is no overborning of the will and clearly there can't be
25 that overwhelming suggestibility when Mr. Bailey doesn't even go with what's

1 suggested.

2 When it comes to the Miranda, the rights, not only was he read the
3 Miranda rights but he was also read and actually read it himself in the interview, the
4 thing to do with a polygraph examiners which is even more thorough going into that
5 individual rights. Mr. Bailey seems to be well aware of his rights because he knows
6 when he says that he's, you know, You guys are going to have to handcuff me.
7 They're like, No. He goes, Well, what I'm about to tell you, you're going to have to
8 handcuff me. He's aware that what he's going to say is going to lead to him to being
9 arrested.

10 So throughout the interview you can take apart different parts where
11 Mr. Bailey seems to be aware that he knows that these are being recorded and that
12 eventually this is going to be used against him, and, in fact, that seems to be one of
13 his primary concerns. So there is nothing in the record that suggests he doesn't
14 understand his Miranda rights that were read to him. And, quite frankly, they didn't
15 get into the first interview versus second interview, I would just rely on Seibert on
16 that and I'll submit it on that.

17 When it comes to the polygraph, Your Honor, there's been a couple
18 cases that I've had where we've had polygraphs and we've been able to take it out.
19 Obviously, the case law here that we cited to, specifically, I think it's Paulette, that
20 was done as well. I mean, whether it was one investigator not believing him or
21 multiple investigators not believing him, we can make it out -- we can sanitize it
22 where the polygraph comes out. It's something that's been deemed acceptable in
23 many cases and we find the law in Paulette that won't be an issue as well,
24 Your Honor.

25 So at the end of the day, the statement should come in, not necessarily

1 the State's going to use the statement, quite frankly, but the statement should come
2 in if the State does deem --

3 THE COURT: What did you say?

4 MR. SCHWARTZER: The State might not -- I might not use this in my
5 case-in-chief, quite frankly, the statement itself.

6 THE COURT: Okay.

7 MR. SCHWARTZER: But it should -- it should still be something that's
8 available to the State based on the fact that when you see the totality of the
9 circumstances this wasn't overborne of the will of Mr. Bailey.

10 MS. HAMERS: It doesn't matter if it was true. It just doesn't matter if it was
11 true. And in the Preston case they thought that that confession was also not true.
12 But it doesn't matter for the analysis. If hours of not accepting his denials, appealing
13 to his suggestibility, if what he was suggested to do was tell the truth and he did and
14 he didn't do it voluntarily, it needs to be suppressed. It doesn't matter if it's true.

15 And I don't think -- and we keep coming back to this with the State and
16 it just doesn't matter. Obviously, I'm not going to say it's true. But it doesn't matter.
17 For this analysis, if it wasn't -- if he told the truth and he didn't do it voluntarily, it
18 needs to be suppressed and I think that's where we are here today. So I don't think
19 the fact that when he gives up he tells the truth means that the State could use it. It,
20 in fact, means the opposite and so I think I'd ask the Court to suppress it.

21 THE COURT: Okay. Anything else?

22 MS. HAMERS: No.

23 MR. SCHWARTZER: No, Your Honor.

24 THE COURT: Okay. At this time the Court's going to deny the motion. As
25 you all know, I mean, this is just the first step. If the statement does come in you'll

1 be able to ask the jury the same issues and it will be up to the jury whether they will
2 consider it.

3 Now, I know you guys have a settlement conference for the 10th, I think
4 we should set a trial date now.

5 MS. HAMERS: Okay.

6 THE COURT: Just so you at least have a trial date.

7 MR. SCHWARTZER: That's fine, Your Honor. I think we both agree on that.
8 The one issue, talking with Ms. Hamers, I think we're going to have is unfortunately
9 the settlement conference is the same week as Lance Reberger.

10 THE COURT: Oh, geez.

11 MR. SCHWARTZER: Which is -- and I think Ms. Hamers would -- I'm the --
12 basically I've handled this case from the start. Ms. Overly has been involved here
13 and there, but she doesn't know the case quite as well as I do.

14 MS. HAMERS: And the settlement conference is just so incredibly important
15 and I don't want to say personality driven, but I think it's important that we have the
16 prosecutor who's been the lead on the case.

17 MR. SCHWARTZER: That's fair.

18 MR. HAMERS: I am going to ask you both if you will accommodate it since
19 it's a very short period of time, if we can still do it while you're in that trial. I know
20 that that's not the most fun.

21 THE COURT: Well, that -- I was just going to ask that question. What time is
22 it?

23 MR. SCHWARTZER: That's a good question, Your Honor. I should know
24 that.

25 MS. HAMERS: I have it -- I have it here somewhere.

1 MR. SCHWARTZER: If I may look at my phone?

2 MS. HAMERS: 10:30.

3 THE COURT: Of course.

4 Do you know what day of the week it is?

5 MS. HAMERS: Tuesday, August 10th.

6 THE COURT: When do we start that trial?

7 MR. SCHWARTZER: We start on the 9th picking a jury. Obviously, with
8 Mr. Reberger representing himself it might be a lengthy process.

9 THE COURT: It's going to be a lengthy process. We'll still be in jury
10 selection.

11 MR. SCHWARTZER: So I don't have a problem taking -- if -- with, obviously,
12 the Court's permission, I don't -- if the Court is inclined to do so, I can go to that in
13 the morning. And maybe --

14 THE COURT: Yeah, I probably would keep it.

15 MR. SCHWARTZER: -- I can even have Mr. Flinn do some of the jury
16 selection if it runs past in the afternoon.

17 THE COURT: Oh, you mean you can just have co-counsel continue with jury
18 selection?

19 MR. SCHWARTZER: If he just --

20 THE COURT: That would be great. I thought you just wanted to start later on
21 that day.

22 MR. SCHWARTZER: If we're still in jury selection, I don't have a problem with
23 Mr. Flinn handling it. Obviously, if we got to openings and stuff like that I would
24 prefer -- I would need to be here.

25 THE COURT: Well, yeah, of course.

1 MR. SCHWARTZER: But if we're just in jury selection I can have Mr. Flinn do
2 that part.

3 THE COURT: Then absolutely. Absolutely. Because I'd like to you keep the
4 settlement conference.

5 Mr. Bailey, are you okay? You seem like you're trying to get our
6 attention.

7 THE DEFENDANT: Yes. I'm trying to get your attention. Did I have the
8 opportunity to testify?

9 THE COURT: Well --

10 MS. HAMERS: No.

11 THE COURT: Your attorney didn't call you as a witness.

12 MS. HAMERS: And that's right. And Mr. Bailey and I have talked about that
13 and that was my decision not to call you as a witness for this hearing.

14 THE DEFENDANT: But I did want to say this is very important. I understand
15 you made your decision. I respect that. But, you know, the detectives and the State
16 is doing crooked things and I don't feel like I had a fair hearing and the reason I'm
17 saying that is because during that audit -- the audio --

18 MS. HAMERS: Jayshawn, let's talk about this in another context.

19 THE COURT: Yeah.

20 MS. HAMERS: Okay?

21 THE COURT: Right. I do think it's good idea to listen to your attorney.

22 THE DEFENDANT: I feel like this needs to be on record, ma'am. May I
23 please say it, please?

24 MS. HAMERS: We can do that in another time in another way. Let's talk
25 about that another time.

1 THE DEFENDANT: Am I able to speak?

2 THE COURT: I don't think it's a good idea. Your attorney has told you not to.

3 THE DEFENDANT: But I --

4 THE COURT: And I think you should listen to your attorney. That's my
5 opinion.

6 MS. HAMERS: It's not your last day in court. We'll have other opportunities.
7 Let's leave it for today.

8 THE COURT: And that's exactly correct.

9 THE DEFENDANT: But the thing is, the reason why I want to speak is
10 because when I -- if I do have to appeal, the Supreme Court could hear my
11 argument.

12 MS. HAMERS: We'll deal with that. I will talk to about that.

13 THE DEFENDANT: What I'm trying to say is really important. May I please
14 speak?

15 MS. HAMERS: If you were physically here with me, I would physically stop
16 from you talking. But you're on a computer. I can't.

17 THE DEFENDANT: Thank you.

18 During that interrogation I told --

19 MS. HAMERS: Jayshawn, this isn't evidence. This is just you talking. It's just
20 trouble.

21 THE COURT: Right.

22 MS. HAMERS: Stop doing it.

23 THE COURT: I mean, here's the thing, you're not under oath. It's not
24 testimony, so.

25 THE DEFENDANT: But can I say this, please?

1 MS. HAMERS: This -- no. Not under this context -- we'll talk about it. We'll
2 find a way for you say it, not today.

3 THE DEFENDANT: No, this is important. This isn't fair because the thing I'm
4 trying to say --

5 MS. HAMERS: Not today.

6 THE DEFENDANT: The thing I'm trying to say is they edited the audio, so,
7 therefore, my defense couldn't even figure -- find out -- couldn't even argue,
8 basically, I don't know how to say it, but, like I told the detective --

9 MS. HAMERS: Jayshawn --

10 THE COURT: Listen.

11 MS. HAMERS: We'll talk about it another time. We're not doing this here
12 today. She can't do anything about it no matter what you say.

13 THE COURT: That is --

14 MS. HAMERS: It's not on the record for anyone here. It's helping nothing.
15 We'll talk about it again. We could -- it's not the only motion we can file in court.

16 THE COURT: And that's correct. And you really should discuss this with your
17 attorney and your attorney will know how to handle that issue and litigate it in front of
18 the court if that becomes an issue.

19 THE DEFENDANT: That's not fair, ma'am. That's not fair at all.

20 THE CORRECTIONS OFFICER: Are you guys setting a trial date or you're all
21 set with him?

22 MR. SCHWARTZER: We need to set a trial date.

23 MS. CLARK: Yeah, let's set a trial date.

24 THE COURT: Yeah, we are.

25 THE CORRECTIONS OFFICER: Okay. Just checking because I can cut it

1 off if you needed me to but if we're setting a trial date, I'll wait.

2 MR. SCHWARTZER: Yeah, we're --

3 THE COURT: Okay. Thank you.

4 MR. SCHWARTZER: So do you want to do two weeks after, I mean, I'll be in
5 Reberger from August 9th, I assume that's going to go two weeks. It might --
6 I mean --

7 THE COURT: I think it'll go --

8 MR. SCHWARTZER: -- with Reberger, who knows how long it's going to go,
9 so.

10 THE COURT: I'm going to estimate the longest.

11 MR. SCHWARTZER: So I guess I would ask for, I mean, I'm booked in
12 September, but I know this is invoked trial despite all the --

13 THE COURT: No, he waived.

14 MR. SCHWARTZER: Oh, did he?

15 MS. HAMERS: He didn't waive.

16 MR. SCHWARTZER: We had a writ, but I don't think he --

17 THE COURT: Yeah, he waived and we've already handled this issue.
18 Remember, I said I'm not going to consider the writ unless he --

19 MS. HAMERS: Different case. This one -- this writ had the same language in
20 it and we heard the writ and he never waived.

21 THE COURT: It's not this case?

22 MS. HAMERS: That's right.

23 THE COURT: What's the other case?

24 MS. HAMERS: The other case is Matthew Ayala.

25 THE COURT: Oh my gosh.

1 MS. HAMERS: Which was more recent.

2 THE COURT: Okay.

3 MS. HAMERS: His writ -- writ was a year ago. I know exactly why you're
4 thinking that.

5 THE COURT: Oh my goodness.

6 MS. HAMERS: It's a different case.

7 THE COURT: Okay.

8 MR. SCHWARTZER: So I guess I would ask for first week of September. I
9 think there's good cause, based on the fact that I will be in trial from August 9th to, I
10 mean --

11 MS. HAMERS: Well, we're not -- I'm not --

12 MR. SCHWARTZER: Okay.

13 MS. HAMERS: I'm not pushing a date that quick. If you want to go further out
14 in September, I think that's going to be fine.

15 MR. SCHWARTZER: Okay. I'll just --

16 THE COURT: Right. We can --

17 THE CLERK: September 20 looked better than any other date.

18 THE COURT: September 20th apparently looks like the best date.

19 MS. HAMERS: You want to do September 20th?

20 MR. SCHWARTZER: Okay. Sure, I have, like, two trials, who cares?

21 MS. HAMERS: I only have one other one set that week. That'll be good.

22 MR. SCHWARTZER: That's fine, Your Honor.

23 MS. HAMERS: I'm sorry, was that okay with you?

24 MS. CLARK: Yeah. No, I mean, I just work here, so.

25 MS. HAMERS: I know.

1 MS. CLARK: No, I'm fine.

2 THE COURT: So we'll do September 20th will be your trial date.

3 THE CLERK: September 20 is the trial date at 10:30 a.m.; calendar call,
4 September 9, 8:30 a.m.

5 MR. SCHWARTZER: Thank you, Your Honor.

6 MS. HAMERS: Thank you, Your Honor.

7 THE COURT: Thank you.

8 MS. HAMERS: Jayshawn, we'll talk again real soon.

9 THE CORRECTIONS OFFICER: So we have September 9th the calendar
10 call, 8:30; and September 20 for jury trial at what time?

11 THE CLERK: At 10:30.

12 THE CORRECTIONS OFFICER: Okay. Thank you.

13 MR. SCHWARTZER: Your Honor, do you want the State --

14 THE COURT: Thank you.

15 MR. SCHWARTZER: Do you want the State to do the order or --

16 THE COURT: Please.

17 MR. SCHWARTZER: Thank you.

18 THE COURT: I really don't know the exact time .

19 PROCEEDING CONCLUDED AT 2:43 P.M.

20 * * * * *

21

22 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
23 video recording of this proceeding in the above-entitled case.

24

25


SARA RICHARDSON
Court Recorder/Transcriber

Kathleen M. Hamers
CLERK OF THE COURT

ORDR

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

ORDER

THIS MATTER having come before the Court on October 18, 2022, and good cause appearing therefore,

IT IS HEREBY ORDERED that the Motion to Withdraw as Attorney of Record is GRANTED.

Dated this 24th day of October, 2022

Michelle Leavitt

DISTRICT COURT JUDGE

658 0D1 2907 3C37

Michelle Leavitt
District Court Judge

Submitted by:

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By /s/Kathleen M. Hamers

KATHLEEN M. HAMERS, #9049
Deputy Public Defender

1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 State of Nevada

CASE NO: C-20-347887-1

7 vs

DEPT. NO. Department 12

8 Jayshawn Bailey
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 10/24/2022

15 PUBLIC DEFENDER

PDclerk@ClarkCountyNV.gov

16 Kathleen Hamers

HamersKM@clarkcountynv.gov

17 Sara Ruano

ruanosg@clarkcountynv.gov

18 DC 12 Law Clerk

Dept12LC@clarkcountycourts.us

19 Michael Schwartz

Michael.Schwartz@clarkcountyda.com

20 Anna Clark Chief Deputy Public Defender

Anna.Clark@clarkcountyNV.gov

21 Jennifer Hall

Jennifer.hall@clarkcountyda.com

22 Alexander Chen

Alexander.chen@clarkcountyda.com

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 16, 2020**

C-20-347887-1 State of Nevada
vs
Jayshawn Bailey

April 16, 2020 3:30 PM Initial Arraignment

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Kory Schlitz

RECORDER: Stacey Ray

REPORTER:

PARTIES

PRESENT:	BAILEY, JAYSHAWN D	Defendant
	Hamers, Kathleen M.	Attorney
	Schwartzter, Michael J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFENDANT BAILEY ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for status check. Upon Court's inquiry, Mr. Schwartzter indicated the matter is not going before the Death Review Committee. Ms. Hamers stated this case had a Preliminary Hearing and no transcripts have been filed. COURT ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs, if the Transcript has not been filed as of today; Counsel has 21 days from the filing of the Transcript. Pursuant to Administrative Order 17-05 this COURT ORDERS the case REASSIGNED to Department 12.

CUSTODY

4/23/2020 12:00 P.M. STATUS CHECK: TRIAL SETTING (DEPT 12)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 23, 2020**

C-20-347887-1

State of Nevada

vs

Jayshawn Bailey

April 23, 2020**12:00 AM****All Pending Motions****HEARD BY:** Leavitt, Michelle**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Haly Pannullo**RECORDER:** Sara Richardson**REPORTER:****PARTIES****PRESENT:**

BAILEY, JAYSHAWN D

Defendant

Hamers, Kathleen M.

Attorney

Schwartzter, Michael J.

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- MOTION FOR OWN RECOGNIZANCE RELEASE ... STATUS CHECK: TRIAL SETTING

All parties appeared by video. Arguments by counsel regarding Defendant's Motion for Release. Upon Court's inquiry, Mr. Schwartzter advised he is not sure why the Preliminary Hearing Transcript has not been filed. COURT ORDERED, Motion for Release CONTINUED for the Preliminary Hearing Transcript to be reviewed. As to trial setting, Mr. Schwartzter noted the Defendant has invoked. COURT FURTHER ORDERED, Status Check regarding trial setting CONTINUED.

CUSTODY

CONTINUED TO: 05/07/20 8:30 AM OR 12:00 PM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 07, 2020

C-20-347887-1 State of Nevada
 vs
 Jayshawn Bailey

May 07, 2020 12:00 AM All Pending Motions

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	BAILEY, JAYSHAWN D	Defendant
	Hamers, Kathleen M.	Attorney
	Schwartzner, Michael J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFENDANT'S MOTION FOR OWN RECOGNIZANCE RELEASE STATUS CHECK: TRIAL SETTING

Counsel submitted as to the Defendant's Motion. COURT STATED proof is evident and presumption is great; therefore, ORDERED, Defendant Motion for Release DENIED. Colloquy regarding trial dates. COURT FURTHER ORDERED, trial dates SET.

CUSTODY

08/04/20 8:30 AM CALENDAR CALL

08/10/20 10:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 11, 2020

C-20-347887-1 State of Nevada
 vs
 Jayshawn Bailey

**June 11, 2020 12:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT: BAILEY, JAYSHAWN D Defendant
 Hamers, Kathleen M. Attorney
 Schwartzer, Michael J. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- All parties appeared by video. Following arguments by counsel. COURT ORDERED, Defendant's Petition for Writ of Habeas Corpus DENIED; State to prepare the Order.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 15, 2020

C-20-347887-1 State of Nevada
 vs
 Jayshawn Bailey

**July 15, 2020 2:00 PM Central Trial Readiness
Conference**

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Kimberly Estala

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT:	Bailey, Jayshawn D	Defendant
	Clark, Anna	Attorney
	Hamers, Kathleen M.	Attorney
	Schwartz, Michael J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Ms. Hamers announced not ready for August due to outstanding discovery and requested a continuance of the trial without Defendant waiving. State advised no opposition to a continuance. COURT ORDERED, department trial VACATED, central trial RESET.

CUSTODY

09/23/20 2:00 PM CENTRAL CALENDAR CALL (LLA)
09/28/20 8:00 AM CENTRAL JURY TRIAL (LLA)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****July 21, 2020**

C-20-347887-1 State of Nevada
vs
Jayshawn Bailey

July 21, 2020	12:00 AM	Motion to Compel	Motion To Compel Production Of Discovery & Brady Material
----------------------	-----------------	-------------------------	--

HEARD BY: Leavitt, Michelle**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Haly Pannullo**RECORDER:** Sara Richardson**REPORTER:****PARTIES**

PRESENT:	Bailey, Jayshawn D	Defendant
	Hamers, Kathleen M.	Attorney
	Schwartzner, Michael J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- COURT ORDERED as follows:

1. MOTION GRANTED to extent it is required by NRS 174.235.
2. MOTION GRANTED to extent it is required by NRS 174.235.
3. MOTION GRANTED to extent it is required by NRS 174.235.
4. MOTION GRANTED to extent it is required by NRS 174.235.
5. MOTION GRANTED to extent it is required by NRS 174.235.

PRINT DATE: 01/17/2023

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Minutes Date: April 16, 2020

6. MOTION GRANTED to extent it is required by NRS 174.235.
7. MOTION GRANTED to extent it is required by NRS 174.235.
8. MOTION GRANTED to extent it is required by NRS 174.235.
9. MOTION DENIED.
10. MOTION GRANTED to extent it is required by NRS 174.235.
11. MOTION GRANTED to extent it is required by NRS 174.235.
12. MOTION GRANTED.
13. State is to comply with NRS 174.234.
14. There are no confidential informants or statutory exception; MOTION DENIED.
15. State to comply with Brady obligations.
16. MOTION GRANTED to extent it is required by NRS 174.235.
17. State to comply with Brady obligations.
18. State is to disclose anything other than the statutory witness fee.
19. MOTION GRANTED to extent it is required by NRS 174.235.
20. MOTION DENIED WITHOUT PREJUDICE as there is no showing of any materiality or any basis for them to make the review.
21. State is to disclose any prior felonies or crimes of moral turpitude.
- 22 THROUGH 36. MOTION DENIED as those issues are not in this case.
37. Court will sign an order that any CPS records are to be provided to the Court for an in camera review.

COURT FURTHER ORDERED, both sides are to make timely disclosures; Defense is to prepare the Order. Statement by Defendant regarding his innocence.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 23, 2020

C-20-347887-1 State of Nevada
 vs
 Jayshawn Bailey

September 23, 2020 2:00 PM Central Calendar Call

HEARD BY: Barker, David **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Kimberly Estala

RECORDER: Nancy Maldonado

REPORTER:

PARTIES

PRESENT:	Bailey, Jayshawn D	Defendant
	Hamers, Kathleen M.	Attorney
	Schwartzner, Michael J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Ms. Hamers announced not ready and requested a trial continuance. Statement by Defendant requesting to proceed with trial. Argument by Ms. Hamers to continue the trial until January for good cause. State advised no opposition to a continuance based on the representations of Ms. Hamers. COURT ORDERED, trial date VACATED, matter SET for status check to reset the trial.

CUSTODY

10/06/20 12:00 PM STATUS CHECK: RESET TRIAL (DEPT 12)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****October 06, 2020**

C-20-347887-1

State of Nevada

vs

Jayshawn Bailey

October 06, 2020**12:00 AM****Status Check: Reset Trial
Date****HEARD BY:** Leavitt, Michelle**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Haly Pannullo**RECORDER:** Sara Richardson**REPORTER:****PARTIES****PRESENT:**

Bailey, Jayshawn D

Defendant

Clark, Anna

Attorney

Hamers, Kathleen M.

Attorney

Schwartzter, Michael J.

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- Ms. Hamers advised the Defendant wants to move to dismiss counsel and appoint new counsel; therefore, requested the Defendant make that request outside the presence of the State. Defendant stated he needs more time to think about it. Ms. Hamers requested trial be reset and advised they will speak to the Defendant some more. Defendant confirmed he wants to speak with his attorney. COURT ORDERED, matter SET for Trial and Status Check regarding trial readiness.

CUSTODY

11/18/20 8:30 AM OR 11/20/20 12:00 PM (DEPENDING ON PANDEMIC) STATUS CHECK: TRIAL READINESS

12/29/20 8:30 AM OR 12:00 PM (DEPENDING ON PANDEMIC) CALENDAR CALL

01/04/21 10:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 14, 2020

C-20-347887-1 State of Nevada
 vs
 Jayshawn Bailey

October 14, 2020 7:30 AM Minute Order

HEARD BY: Leavitt, Michelle **COURTROOM:** Chambers

COURT CLERK: Haly Pannullo

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERED, Department of Family Services Records SEALED, marked and ADMITTED into evidence. Records provided to the runner from the Public Defender's Office and the secretary for the MVU District Attorney team on 10/13/20, in chambers.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 04, 2020

C-20-347887-1 State of Nevada
vs
Jayshawn Bailey

December 04, 2020 12:00 AM Status Check: Trial
Readiness

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Bailey, Jayshawn D	Defendant
	Hamers, Kathleen M.	Attorney
	Schwartzner, Michael J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Court stated trials will not be proceeding at this time and ORDERED, trial dates VACATED and RESET; matter SET for central trial readiness in lower level.

CUSTODY

01/13/21 11:30 AM CENTRAL TRIAL READINESS (LLA)

01/19/21 8:30 AM OR 12:00 PM (DEPENDING ON PANDEMIC) CALENDAR CALL

01/25/21 10:30 AM JURY TRIAL

PRINT DATE: 01/17/2023

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Minutes Date: April 16, 2020

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 18, 2020

C-20-347887-1 State of Nevada
vs
Jayshawn Bailey

**December 18, 2020 12:00 AM Motion for Own
Recognizance
Release/Setting Reasonable
Bail**

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Bailey, Jayshawn D	Defendant
	Hamers, Kathleen M.	Attorney
	Overly, Sarah	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Following arguments by counsel, COURT ORDERED, Motion DENIED; State to prepare the Order.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 19, 2021**

C-20-347887-1 State of Nevada
vs
Jayshawn Bailey

January 19, 2021 11:00 AM Calendar Call

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Bailey, Jayshawn D	Defendant
	Hamers, Kathleen M.	Attorney
	Schwartzner, Michael J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Ms. Hamers advised a Petition was filed to stay the proceedings. Upon Court's inquiry, Ms. Hamers advised they are not waiving speedy trial; therefore, will be requesting that this matter be stayed and the Defendant remain in invoked status. Court inquired as to the Defense wanting the Court to vacate this trial date. Ms. Hamers confirmed that is their request. Court inquired as to the Defendant waiving. Ms. Hamers clarified the Defendant is not waiving and requested this matter be stayed with the Defendant remaining invoked. Court stated that does not make sense as there is a trial set next week and the Defense is requesting the Court to vacate this trial, keep him in an invoked status and stay this matter. Ms. Hamner so confirmed. COURT STATED the Defense is requesting the trial date be vacated and ORDERED, trial dates VACATED; matter SET for Status Check regarding trial setting, depending if the Court grants the Defense's request for Stay.

CUSTODY

01/26/21 11:00 AM STATUS CHECK: TRIAL SETTING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 26, 2021

C-20-347887-1 State of Nevada
 vs
 Jayshawn Bailey

January 26, 2021 11:00 AM All Pending Motions

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Bailey, Jayshawn D	Defendant
	Clark, Anna	Attorney
	Overly, Sarah	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFENDANT'S MOTION TO STAY DISTRICT COURT PROCEEDINGS ... STATUS CHECK:
TRIAL SETTING (INVOKED)

Counsel submitted. COURT ORDERED, stay DENIED; matter SET for trial. Defendant inquired as to why the Motion was denied. Court directed the Defendant to call his attorney.

CUSTODY

03/16/21 (TIME TO BE DETERMINED) CALENDAR CALL

03/22/21 (TIME TO BE DETERMINED) JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 03, 2021**

C-20-347887-1

State of Nevada

vs

Jayshawn Bailey

March 03, 2021**11:30 AM****Central Trial Readiness
Conference****HEARD BY:** Jones, Tierra**COURTROOM:** RJC Lower Level Arraignment**COURT CLERK:** Kristin Duncan**RECORDER:** Victoria Boyd**REPORTER:****PARTIES****PRESENT:**

Bailey, Jayshawn D

Defendant

Hamers, Kathleen M.

Attorney

Overly, Sarah

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- The State present via Blue Jeans.

Upon Court's inquiry, Ms. Hamers stated that the defense could be ready for trial on April 5, 2021; however, they intended to file a Motion to Suppress on March 5, 2021. Due to the circumstances, Ms. Hamers requested the case go back to DC12 for the Motion to Suppress, then come back to Central Trial Readiness. Additionally, Ms. Hamers requested the setting of a settlement conference. There being no objection by the State, COURT ORDERED the pending trial dates were hereby VACATED. COURT FURTHER ORDERED the SETTING of a settlement conference. The Court noted that defense counsel would have to file the Motion for Suppress, and receive a date for said Motion from DC12.

CUSTODY

PRINT DATE: 01/17/2023

Page 16 of 34

Minutes Date: April 16, 2020

4/15/21 10:30 AM (LLA) SETTLEMENT CONFERENCE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 30, 2021**

C-20-347887-1

State of Nevada

vs

Jayshawn Bailey

March 30, 2021**11:00 AM****Motion**

**Defendant's Motion
To Exclude
Statements and
Request For
Evidentiary Hearing
Pursuant To Jackson
v. Denno**

HEARD BY: Leavitt, Michelle**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Haly Pannullo**RECORDER:** Sara Richardson**REPORTER:****PARTIES**

PRESENT:	Bailey, Jayshawn D	Defendant
	Clark, Anna	Attorney
	Schwartzner, Michael J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- COURT STATED there is an inclination to grant the Jackson v Denno Hearing and ORDERED, Court Clerk to contact the parties and SET hearing.

CLERK'S NOTE: Subsequent to Court, matter SET for Jackson v Denno hearing and parties notified via email.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 12, 2021

C-20-347887-1 State of Nevada
 vs
 Jayshawn Bailey

May 12, 2021 1:30 PM All Pending Motions

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK:
 Haly Pannullo

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Bailey, Jayshawn D	Defendant
	Clark, Anna	Attorney
	Hamers, Kathleen M.	Attorney
	Overly, Sarah	Attorney
	Schwartzner, Michael J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- State INVOKED the exclusionary rule. Defendant stated he wants to speak with his attorney.
MATTER TRAILED.

MATTER RECALLED. All parties present as before. Testimony and exhibits presented. (See worksheets)

COURT ORDERED, matter CONTINUED for continued testimony.

CUSTODY

CONTINUED TO: 05/21/21 1:30 PM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 16, 2021

C-20-347887-1 State of Nevada
 vs
 Jayshawn Bailey

June 16, 2021 1:30 PM All Pending Motions

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK:
Carolyn Jackson

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Clark, Anna	Attorney
	Hamers, Kathleen M.	Attorney
	Schwartzter, Michael J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- JACKSON V DENNO HEARING . . . STATUS CHECK: TRIAL SETTING

Testimony and Exhibits presented (see worksheets). Closing arguments by Ms. Hammers and Mr. Schwartzter. COURT stated its FINDINGS and ORDERED, Motion DENIED.

Court stated the parties are scheduled for a settlement conference and the matter should be set for trial. Mr. Schwartzter advised that he has trial beginning on the same date as the settlement conference and although Ms. Overly is familiar with this case he would prefer to attend the settlement conference. Colloquy regarding scheduling issues and whether the Defendant is invoked. COURT ORDERED, matter SET for trial.

CUSTODY

09-09-21 08:30 AM CALENDAR CALL

PRINT DATE: 01/17/2023

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Minutes Date: April 16, 2020

09-20-21 10:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 10, 2021

C-20-347887-1 State of Nevada
 vs
 Jayshawn Bailey

August 10, 2021 10:30 AM Settlement Conference

HEARD BY: Barker, David **COURTROOM:** No Location

COURT CLERK:

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Matter not settled.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 03, 2021

C-20-347887-1 State of Nevada
 vs
 Jayshawn Bailey

September 03, 2021 11:00 AM Pre Trial Conference

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Bailey, Jayshawn D	Defendant
	Hamers, Kathleen M.	Attorney
	Schwartzner, Michael J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Parties announced ready for trial and agreed to 14 witnesses total with one week for trial, maybe go into the second week. State noted there may be an issue with a witness due to covid and will requested audio or visual testimony. COURT SO NOTED and ORDERED, trial dates STAND.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 03, 2021

C-20-347887-1 State of Nevada
 vs
 Jayshawn Bailey

September 03, 2021 1:00 PM Minute Order

HEARD BY: Leavitt, Michelle

COURTROOM: Chambers

COURT CLERK: Haly Pannullo

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- COURT ORDERED, Motion for supplemental discovery filed on August 30, 2021 at 12:00 pm, and the Motion in Limine to Preclude Admission of Irrelevant and Prejudicial Internet Search filed on August 30, 2021 at 11:49 am are to be SEALED by Order of the Court as they contain personal identifying information that should not be part of the public record.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 09, 2021

C-20-347887-1 State of Nevada
vs
Jayshawn Bailey

September 09, 2021 11:00 AM All Pending Motions

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Bailey, Jayshawn D	Defendant
	Hamers, Kathleen M.	Attorney
	Schwartzner, Michael J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFENDANT'S MOTION IN LIMINE TO PRECLUDE ADMISSION OF IRRELEVANT AND PREJUDICIAL INTERNET SEARCH
COURT ORDERED, matter OFF CALENDAR.

DEFENDANT'S MOTION IN LIMINE TO PRECLUDE EXPERT OPINION TESTIMONY THAT THE MANNER OF DEATH IN THIS CASE IS HOMICIDE
COURT ORDERED, matter OFF CALENDAR.

[54] STATE'S NOTICE OF MOTION AND MOTION TO PRESENT TESTIMONY OF EXPERT WITNESS DR. CHRISTINA DILORETO THROUGH AUDIO VISUAL TRANSMISSION AT TRIAL
COURT ORDERED, matter OFF CALENDAR.

DEFENDANT'S MOTION FOR SUPPLEMENTAL DISCOVERY RELATED TO EXPERT WITNESS DR. CHRISTINA DI LORETO
COURT ORDERED, matter OFF CALENDAR.

PRINT DATE: 01/17/2023

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Minutes Date: April 16, 2020

MOTION FOR SPECIFIC DISCLOSURE AND IDENTIFICATION OF ELECTRONIC EVIDENCE
COURT ORDERED, matter OFF CALENDAR.

CALENDAR CALL

NEGOTIATIONS are as contained in the Guilty Plea Agreement electronically filed by counsel.
DEFT. BAILEY ARRAIGNED AND PLED GUILTY TO VOLUNTARY MANSLAUGHTER OF A
VULNERABLE PERSON (F). Court ACCEPTED plea, and, ORDERED, matter referred to the
Division of Parole and Probation (P & P) and SET for sentencing; trial dates VACATED.

CUSTODY

01/05/22 8:30 AM OR 01/07/22 11:00 AM (DEPENDING ON PANDEMIC) SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 08, 2021

C-20-347887-1 State of Nevada
 vs
 Jayshawn Bailey

November 08, 2021 3:30 PM Minute Order

HEARD BY: Leavitt, Michelle

COURTROOM: Chambers

COURT CLERK: Haly Pannullo

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- MOTION FOR OWN RECOGNIZANCE RELEASE OR SETTING OF REASONABLE BAIL

The court having reviewed the pleadings submitted herein, does hereby deny Defendant s Motion. The hearing on November 9, 2021 is vacated and Ms. Overly, Esq. is to prepare the order for the court.

CLERK'S NOTE: The above minute order has been distributed to:
Hamers, Kathleen <hamerskm@ClarkCountyNV.gov>; Sarah Overly
<Sarah.Overly@clarkcountyda.com>; 'Teresa Slade' <Teresa.Slade@clarkcountyda.com>
hvp/11/8/21

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 06, 2022

C-20-347887-1 State of Nevada
 vs
 Jayshawn Bailey

January 06, 2022 11:00 AM Motion

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Samantha Albrecht

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Bailey, Jayshawn D	Defendant
	Hamers, Kathleen M.	
	Overly, Sarah	Attorney
	Public Defender	
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Upon Court's inquiry, Defendant confirmed he wanted to withdraw his plea. COURT ORDERED, Public Defender WITHDRAWN and status check SET for appointment of new counsel; sentencing VACATED.

CUSTODY

1/13/2022 11:00 AM STATUS CHECK: CONFIRMATION OF COUNSEL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 13, 2022

C-20-347887-1 State of Nevada
 vs
 Jayshawn Bailey

**January 13, 2022 11:00 AM Status Check:
Confirmation of Counsel**

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT: Bailey, Jayshawn D Defendant
 Kocka, Frank Attorney
 State of Nevada Plaintiff
 Zadrowski, Bernard B. Attorney

JOURNAL ENTRIES

- Mr. Kocka confirmed as counsel and noted he has not received anything on this case. COURT SO NOTED and ORDERED, matter SET for Status Check regarding Motion to Withdraw Plea.

CUSTODY

01/27/22 STATUS CHECK: MOTION TO WITHDRAW PLEA

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 27, 2022

C-20-347887-1 State of Nevada
 vs
 Jayshawn Bailey

January 27, 2022 11:00 AM Status Check

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Haly Pannullo
Pharan Burchfield

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT: Bailey, Jayshawn D Defendant
 Kocka, Frank Attorney

JOURNAL ENTRIES

- Defendant requested a call with counsel. MATTER TRAILED.

MATTER RECALLED. All parties present as before. Mr. Kocka stated in receipt of file from the Public Defender's and confirmed no conflicts; therefore, needs time with Defendant to go over file. Colloquy regarding Mr. Kocka's request for a contact visit order with the jail. COURT ORDERED, matter CONTINUED; Mr. Kocka to prepare order.

CUSTODY

CONTINUED TO: 03/17/22

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 17, 2022

C-20-347887-1 State of Nevada
 vs
 Jayshawn Bailey

March 17, 2022 11:00 AM Status Check

HEARD BY: Cherry, Michael A. **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT: Bailey, Jayshawn D Defendant
 Kocka, Frank
 Overly, Sarah Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Following Mr. Kocka's representations, COURT ORDERED, Motion DENIED; matter REFERRED back to the Public Defender's Office and SET for Sentencing.

CUSTODY

04/08/22 SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 08, 2022

C-20-347887-1 State of Nevada
 vs
 Jayshawn Bailey

April 08, 2022 11:00 AM Sentencing

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Bailey, Jayshawn D	Defendant
	Hamers, Kathleen M.	Attorney
	Overly, Sarah	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT. BAILEY ADJUDGED GUILTY of VOLUNTARY MANSLAUGHTER OF A VULNERABLE PERSON (F). Matter argued Ms. Overly and Ms. Hamers. Statement by Defendant. Based upon Defendant's representations, COURT ORDERED, matter CONTINUED.

CUSTODY

CONTINUED TO: 04/21/22

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 21, 2022**

C-20-347887-1 State of Nevada
vs
Jayshawn Bailey

April 21, 2022 11:00 AM Sentencing

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT:	Bailey, Jayshawn D	Defendant
	Clark, Anna	Attorney
	Hamers, Kathleen M.	Attorney
	Overly, Sarah	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT. BAILEY ADJUDGED GUILTY OF VOLUNTARY MANSLAUGHTER OF A VULNERABLE PERSON (F). Argument by counsel and statement by Defendant. Victim speaker Sakari Taylor and Mykiah Trotter SWORN and TESTIFIED. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, a \$150.00 DNA Analysis fee, including testing to determine genetic markers and a \$3.00 DNA Collection fee; Deft. SENTENCED to a MINIMUM of FOUR (4) YEARS and a MAXIMUM of TEN (10) YEARS plus a CONSECUTIVE term of a MINIMUM of FOUR (4) YEARS and a MAXIMUM of TEN (10) YEARS in the Nevada Department of Corrections (NDC) for Vulnerable Person Enhancement, for an AGGREGATE SENTENCE of a MINIMUM PAROLE ELIGIBILITY after EIGHT (8) YEARS and a MAXIMUM of TWENTY (20) YEARS with EIGHT HUNDRED TWENTY-TWO (822) DAYS credit for time served.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 18, 2022

C-20-347887-1 State of Nevada
 vs
 Jayshawn Bailey

October 18, 2022 8:30 AM Motion to Withdraw as Counsel Motion to Withdraw as Attorney of Record

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Haly Pannullo

RECORDER: Sara Richardson

REPORTER:

PARTIES

PRESENT: Clark, Anna
 Jaramillo, Haley Ann Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Defendant not present. COURT ORDERED, Motion to Withdraw Counsel GRANTED; Ms. Clark to prepare the Order.

NDC

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated January 11, 2023, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises eight volumes with pages numbered 1 through 1902.

STATE OF NEVADA,

Plaintiff(s),

vs.

JAYSHAWN D. BAILEY,

Defendant(s),

Case No: C-20-347887-1

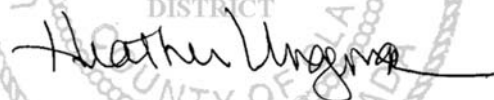
Related Case A-22-857574-W

Dept. No: XII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 17 day of January 2023.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk