

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 5

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A: Yeah.

Q: The question I asked you was, "Did you place her body in the sewage pipe?"

A: No, sir.

Q: And you failed your polygraph.

A: That's cool.

Q: Okay? So now I know you did.

A: I did not.

Q: And I'm asking you to tell me - to tell me why? How?

A: (Unintelligible).

Q: If you're afraid - if you're afraid, then talk to me. 'Cause I don't wanna sit here and spin wheels.

A: I'm not afraid of anything.

Q: You know what I'm saying?

A: Yeah.

Q: I don't wanna sit here and spin wheels on this.

A: I just don't wanna...

Q: You know?

A: ...go to jail for something...

Q: I - I came out...

A: ...I didn't do.

Q: I came outta respect.

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- A: (Unintelligible).
- Q: Well then talk to me. If you didn't - if you didn't hurt this woman...
- A: I didn't.
- Q: ...and you only helped put her down in there...
- A: I didn't help.
- Q: ...then tell me. But you did. Or you probably did it on your own. I don't know.
Were you gettin' high with her? Is that what happened?
- A: I don't even know who the person is.
- Q: And I'm not saying that you do. But what I am saying is that you put her down
there or you helped put her down there.
- A: That's crazy.
- Q: Are we g- it's your call, man. This was your polygraph.
- A: I understand.
- Q: It's your call, Jayshawn. You're - you're gonna remember my face tryin' to ask
you. Okay? You're gonna remember that.
- A: Of course.
- Q: I tried to ask you. I treated you with nothin' but 100% respect since the time I
walked in here.
- A: I respect that.
- Q: You know what I mean?
- A: You're a good person. I respect that.

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Q: I let you - I let you do the whole frustrated and angry and I get all those things, man.

A: I understand.

Q: You're not in a good position. Okay? And now you definitely got a failed polygraph. So now your - now your position is even underneath that and I get that. Okay? You're probably scared. You're probably fearful. You don't know what's happening.

A: (Unintelligible).

Q: And you're sittin' in a - you're sittin' a weird chair in a weird office and you got me talking to you.

A: (Unintelligible).

Q: Okay?

A: (Unintelligible).

Q: All right.

A: Yeah, I'm very scared.

Q: I get that - I get that.

A: Yeah.

Q: But, Jayshawn, you don't know what position that I'm comin' from. I'm tellin' you that I know. Do you know what I'm saying, man?

A: I know what you're saying.

Q: I'm telling you that I know. I'm not asking anymore. I know, Jayshawn.

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A: Yes.

Q: All right? I'm telling you that - that I know.

A: That's cool. I know though. I ain't put nobody down there. I know the consequences when you do stuff like that. That's tampering with evidence. Why would I do something like that, knowing - I know the consequences of that. I know...

Q: Jayshawn, tell me how you got her down there.

A: I ain't put nobody down there.

Q: Jayshawn, tell me how you got her down there. Just throw her down there? Did you just throw her down there?

A: If I was to do something like that, I woulda been seen...

Q: Is somebody...

A: ...for one.

Q: ...threatening you?

A: There's nobody threatening me.

Q: Is somebody threatening you?

A: No.

Q: Is that what you're afraid of, man?

A: No.

Q: 'Cause you're lookin' pretty cold right now.

A: Because you're pressuring me and I can't defend myself. Cameras watching me,

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like, I'm nervous. Like, you pressuring me, accusing me.

Q: Jayshawn, this society is full of cameras.

A: Yeah and cameras should prove, like, if that's the case, there's cameras around the neighborhood. He said he's waiting for a camera to come back. Like, he ain't gonna see me.

Q: Jayshawn, talk to me, man.

A: I'm talkin' to you. You gotta believe me, man. Like, real talk. Like, you - you lookin' at me like, "You're the one that did it. You had something to do with it." And when I'm saying, "No," like, you just don't believe any word that comes outta my mouth so what else can I do? You look like you wanna hurt me.

Q: I look like I wanna hurt you?

A: Yes.

Q: I'll step back then.

A: (Unintelligible).

Q: That's not the way (unintelligible).

A: It feels like it. Like, dang, man, it's making me sad 'cause, like, I'm a black man and I just feel like you probably assume every colorblind or...

Q: That's not true.

A: ...or court system be like...

Q: That's not true.

A: It is true.

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- Q: All right, Jayshawn, well, here - here's where we're at.
- A: I wouldn't - I wouldn't even...
- Q: Calm down.
- A: I wouldn't even wanna hurt my own people.
- Q: I got it - I got it.
- A: Okay.
- Q: I'm gonna - I'm gonna step outta here. I'm gonna call the, uh, detective. I'm gonna let him know that we are finished with the polygraph.
- A: All right.
- Q: Okay?
- A: What's the next step? I gotta go to court or something? Like...
- Q: He's gonna - he's probably gonna wanna come in here and talk to you. I'm not sure. I'm not sure what's gonna happen.
- A: All right.
- Q: But you've got a few minutes. I'm gonna come back in. If there's something you wanna tell me, just know that by the time I come back in, I've already called him. All right? I've - I've tried to be respectful with you, tried to talk to you. I don't know what - what else that I can ask you about this. The only thing that I do know, Jayshawn, is that - that - that (unintelligible).
- Q1: (Unintelligible).
- Q: Yeah okay. All right, I'll let you guys - okay.

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Q1: I'm sorry, just...

Q: (Unintelligible) everything here so I can grab...

A: Yeah.

Q: ...this and, uh...

Q1: (Unintelligible). What's up, man?

A: They keep saying I did it 'cause I failed the test. It's making me upset.

Q1: Do you remember our conversation...

A: Yeah.

Q1: ...when we were going back down, I was taking you home, you know, about there's a possibility the two people that - that placed her in the - the sewage drain, didn't kill her. You remember that?

A: Yes.

Q1: Okay wh- what - what do you remember me telling ya?

A: I don't even remember.

Q1: Okay.

A: Are you - I'm sorry, he killed my whole spirit.

Q1: Okay. I told you, if - if the people that put her in the drain didn't kill her, like, strangle her, shoot her, stab her, murder her, criminal intent...

A: I understand.

Q1: ...to cause her death and they just panicked because she overdosed or something else happened with her, right, like some drug usage or alcohol or

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whatever the case may be, and the people panicked...

A: Yeah.

Q1: ...and they don't want this person dead in their house, for whatever reason, and -
and they ended up just dumping her in the sewage drain 'cause they just don't
want her in - that's - that's not a criminal charge. Do you understand that?

A: I believe it is. I mean, you know more than I do but (unintelligible).

Q1: I've been in homicide nine years. Okay? And I'm not gonna sit here and bullshit
ya.

A: Yeah.

Q1: Okay? You feel me?

A: Yeah that's - I think that's tampering with evidence. I mean, uh - uh, tampering -
tampering with evidence.

Q1: Like destruction of evidence?

A: Basically.

Q1: Okay start...

A: I could be wrong though but I'm (unintelligible).

Q1: Okay for destruction of evidence, there has to be a felony crime.

A: Yes.

Q1: If she overdosed, she drank too much friggin' alcohol and aspirated, or whatever
the case may be, what crime do we have? None.

A: Mm-hm.

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Q1: Right?

A: Yeah.

Q1: So we're making a friggin' mountain out of a mole hill.

A: Mm-hm.

Q1: Okay? If that's the case, I need to know. I'm tellin' you right now, just like we promised you, bringing you down here, if you say, "Fuck, Detective Embery, okay, I'm gonna come clean. She was at my buddy's house. She - whatever happened, she died. He asked for help 'cause he friggin' panicked. Um, and - and I could only think or we could only think of putting her in the sewer," I'm taking your ass home.

A: Yeah.

Q1: You don't believe that? It's on recording. Do you know how much trouble I would get in, if I told you that and if you said, "Hey, this is what happened," I take you to jail?

A: To be honest, I feel like - I'm not saying I'm - I didn't do it. I ain't did - I ain't did nothin' that (unintelligible)...

Q1: Okay (unintelligible).

A: But I'm saying though, if I was involved in something like that and, like I said, that person is dead right now, I feel like I'd be accessory to that. Like, I was with that - whatever's...

Q1: Accessory how?

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A: I don't know, man.

Q1: She's not shot. I can tell you that 'cause I went through the examination. And she's not stabbed.

A: Yes.

Q1: Accessory to what?

A: I don't know.

Q1: To her doing too much drugs or drinking too much alcohol?

A: Did they find the cause of death? I don't know.

Q1: Jayshawn, you have to take a little leap of faith here.

A: Okay.

Q1: Okay? And I know I'm not sittin' where you're at and you don't know me. I me, fuck, we've only talked twice. Right?

A: I guess. I understand.

Q1: Um, all our conversations, except for the trip back when I told you that story...

A: Yeah.

Q1: ...have been on recordings. Right?

A: Yes.

Q1: Okay I'll be straight. Did you strangle her?

A: No.

Q1: Okay I don't think you did. You know why? 'Cause I looked at the autopsy. Did you shoot her?

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A: No.

Q1: I just told you she wasn't shot. Did you stab her? No. Okay I personally don't believe you had anything to do with her death. I think probably what you had something to do is, a buddy of yours called in a state of panic and, you being a good friend, helped. That's it. And look at me, I'm telling you right now, if she overdosed, if she drank herself to death, whatever the case may be, you are not gonna get charged. And I'm telling you on tape. You know your story you told us about, you know, seeing the two people and then two weeks later you went down there?

A: I know it all sounds fake.

Q1: No - no - no - no, listen to me. Do you understand there's water monitors in there? Did you see her the day we were out there? Did you see the condition - did you - were you with the officers when they looked down?

A: Um, I took a peek but I had my glasses off so I didn't see - all I seen, like, I think I probably seen, like, a leg and it was, like, real pale ashy bruise. I don't know.

Q1: Okay so...

A: I didn't see nothin' else.

Q1: The day we were there...

A: Yeah.

Q1: ...recovering her body, it's full of water, fluid, waste, sewage. Okay? And what happened was she plugged the drain.

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A: Mm...

Q1: Okay? So the amount of fluid of water that goes through there and - and once we start researching it, is we're able to tell that the timeframe doesn't match up. There's definitely more fluid in there. Okay? Then what you're saying is you went down there and when you - you touched her, it was dry. We know that's not possible. Okay? So that doesn't fit up.

A: (Unintelligible).

Q1: Listen - listen, okay?

A: I'm listening.

Q1: Please listen to me.

A: Yes, sir.

Q1: So we know that doesn't match up. We already know - you already know you're story of you goin' down there and checking on her and - and - doesn't - I mean, come on. No reasonable person would do that. You're not a dumb person. The reason why you're saying your DNA's on there is 'cause you helped your buddy...

A: (Unintelligible).

Q1: ...place her down there. I mean, that - that's the simple fact. And I can tell you right now, you tell me, "Detective Embrey, she was at 1234, um, John Doe Place or Frank's place or whatever and she overdosed. She drank herself - aspirated and I helped my buddy," I'm taking your ass home.

A: But if I don't say anything, I'm not going home. Y'all finna to...

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Q1: Yeah you're going home.

A: But what's the next step though? Like, y'all got...

Q1: You're next step is just you gotta tell me the truth, bro.

A: Bro...

Q1: You have to take that leap - leap of faith. We have a family there that deserves to know the entire truth.

A: I understand.

Q1: You're not a bad person. I already know she wasn't stabbed or shot. Okay? Do I have the toxicology back? No, I don't. Do I suspect she probably overdosed or maybe drank too much and aspirated or something to that effect? Yeah, I don't know. You know? Only you and the person that you're helping, can tell us that. Probably not even you. I think it's the other person that was probably involved and you're just, unfortunately, got hemmed up in a situation you didn't wanna be involved with and you just - honestly, I mean, it goes to show you that you're not a bad person 'cause if you were a true criminal, that body would still be sittin' there. If you're a true bad person, that body would still be sittin' there. But it weighed on you and it weighed on you and it weighed on you. And you were trying to think of a way to get the story out so you could still report it but not be directly involved. So the best way you did was you tell us the story that you went down and checked on her and touched her fabric. That's it. I understand that. You're not a bad person and that's why you're trying to come up with a friggin'

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story to cover on how you can call 9-1-1 to get her body reported. Because you know what? If you didn't call 9-1-1, she would never have been found. You know that. I know that. Detective Jaeger knows that.

A: I do know that.

Q1: Okay? Absolutely, 100%, but you had to come up with a reason and a story on why your DNA might be on her clothing. 'Cause you're a smart person. You're a criminal justice major.

A: I'm not that smart though but...

Q1: You are.

A: I'm not that smart.

Q1: No, if you were that smart, you probably wouldn't have helped your buddy. But the end result is, is you didn't kill her. All you did was help your buddy. We just need to know the - the true scoop and that's it, man.

A: I didn't help nobody, man.

Q1: You did. The polygraph says so. The water level says so. The water level kinda shoots your - your whole statement down. Okay? I mean, that's just the facts.

Q2: Jayshawn, you know how you have people that are always fans of different things? For this next Super Bowl, right, you're gonna have some 49er's fans and then you're gonna have some Kansas City Chiefs' fans. There's always two sides...

Q1: He's a Chief's fan, by the way.

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Q2: There always two sides to everything. Right?

A: Yes.

Q2: I can tell you, Buddy and I are partners on this case and we are on totally opposite sides. When you asked earlier, "What's next?" I can tell you that I spent a better part of eight hours, standing ankle deep in human feces, human shit. There was a 17-year-old girl thrown away like a piece of trash, by an absolute animal. All right? I gave you the benefit of the doubt for Buddy, not for you. So if you wanna know what's next, it's me. I'm comin' after you, buddy. I'm comin' after you with the - the largest budget that Nevada has for a police department. I'm comin' at you with the support of your community. I don't live there. I live close but it's your neighborhood. The whole community is supporting me on this. Why? A little girl got thrown away...

A: Do y'all know who it is?

Q2: ...like a piece of trash.

Q1: We suspect we know who it is.

Q2: We suspect we know who did it. And let me tell you what I have right now. We have city water and we have Clark County. Do you know the difference? So where you live, it's city jurisdiction. Their sewer - sewage treatment plant is a quarter of the size of the county's. The city has way more arms because it's less height they have to monitor. I am reviewing every single one of the high-level water monitors. And I'm telling you, from that data that I'm getting from the city,

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I'm comparing it to your story. I'm also waiting for the touch DNA to come back.

I don't have it yet.

A: (Unintelligible).

Q2: But I'm pretty sure what's gonna come back. And the spots where I'm gonna get touch DNA, match exactly to where you grab a dead body to move it. And who do you think I'm gonna put there? And then the talk is over.

A: I respect that.

Q2: There won't be no more talk.

A: Yes, sir.

Q2: There will be charges filed.

A: Yes, sir.

Q2: I wanted to do it today.

A: I understand that.

Q2: 'Cause I think I got ya.

A: I ain't me.

Q2: Here's what I'm gonna tell you. You do some soul searching and you think really really hard 'cause I'm comin' after you.

A: Well I have nothin' (unintelligible).

Q2: I am bringing the noise.

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

Q2: You did.

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A: I did not.

Q2: But let's get past that. Because think of the story that I get to write up.

A: (Unintelligible) go down for nobody else, man.

Q2: Then don't. So tell us what happened?

A: (Unintelligible) I'm not going down - not gonna throw my life away for nobody else, for their mistakes. I didn't have nothin' to do with that. Seriously, dude, you're making me mad.

Q2: Tell me about their mistakes.

A: I don't know who did it.

Q2: At least I'm gettin' through to you 'cause right now I'm thinking you're some psychopath.

A: I'm far from that.

Q2: I don't know. You're some Dexter shit goin' on right now.

A: That's cool. You can believe that. I'm not tryin' to disrespect you. You're doing your job. But like I say, I had nothin' to do with puttin' - you said it's a 17-year-old girl. I didn't know that but puttin' a girl down there...

Q2: Seventeen to 25.

A: Okay.

Q2: We'll figure it out.

A: I ain't - I don't - I didn't have nothin' to do with that, man.

Q2: That probably lived four houses down from you.

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A: I don't even have the guts to do that. You said four houses down so you're basically saying it's the missing girl.

Q1: We think.

Q2: We think.

A: That's crazy.

Q2: You can be a hero in this. 'Cause you're the one that called it.

Q1: Are you - you're - correct me if I'm wrong, okay?

A: Yeah.

Q1: You think if you tell us exactly the truth and what happened and your involvement, that you're gonna go to jail. Is that correct?

A: I didn't have nothin' to do with this.

Q1: Just - is that what you think? 'Cause what I'm - I'm hearing.

A: If I was involved in this and...

Q1: I think your involvement is you're helping your friend...

A: (Unintelligible).

Q1: ...get rid of a body. (Unintelligible) honestly, I think that's just your - your total involvement. And if she friggin' overdosed or she - do you know what I say by aspirate by alcohol? People, when they vomit, they su- uh, you know, basically, suffocate themselves.

A: Mm-hm.

Q1: Okay if that what happened, then that's something we need to know. If it's an

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overdose, it's something we need to know, bro. I'm telling you. But I can tell you this and I can promise this, I'm - no matter what happens here, right now, with you telling - talking to us, I'm taking you home. Okay? But what I can promise you and look at me. Okay? I've been doing this a long time. Please look at me, Jayshawn. I've respected you. Okay? Is that, one, this isn't going away.

A: Of course.

Q1: Okay? Two, obviously I can't eliminate you so we are gonna look at you heavily. Three, after today, you know, without a doubt, we're gonna find who she was with. I have no doubt about it, zero doubts. Okay? And obviously he's gonna have the same opportunity to tell us what happened. If I hear the story from him and they start to point the finger at you, then - and things change, then obviously you're gonna have some issues. Okay? This is kind of like - have you ever heard, "First at the table eats the most." Okay?

A: Yes.

Q1: This is your, kinda, one opportunity and I'm still sticking strong. I promise you, on tape, it's still recording, you tell us exactly what happened, I'm still taking you home, period. And we go about our business and try to figure out exactly what happened. We wait for autopsy, toxicology results and everything else to come back. And when we go and find your buddy, whoever it is, I don't say, "Jayshawn told me this." Eventually will it come out? Absolutely. But I'm telling you right now, you be honest with me and forthcoming and you say, "She was at my home

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- homie's house and whatever happened, she died. I helped him get rid of her because, obviously, we don't want a 17-year-old dead in our house." And I'm taking you home.

A: I don't even know what to say.

Q1: I - I know you don't because you're in that, "Do I trust you or not?" Right?

A: Either way, if I had somethin' to do with this, I'm gettin' punished.

Q1: What do you mean "punished?"

A: It doesn't matter. Like, it ain't I get to go home and live the rest of my life freely.
Like, no.

Q1: What do you mean? Why wouldn't you?

A: I'm just sayin' (unintelligible).

Q1: You - you've took it upon your shoulders to do the right thing with calling in the police because you didn't feel this person should go unreported. Right?

A: Yeah.

Q1: That's someone's daughter, sister, mother or whatever. Right? Someone's family member.

A: Mm-hm.

Q1: That shows you're a good person. Right?

A: Yeah.

Q1: Take it a step further and just help us figure out what happened to her and why.
That's it. Because don't you think the family deserves to have some answers?

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A: Mm-hm.

Q1: Okay you're in a good spot to help us figure out those answers. I have no doubt, like the polygraph detective, that you helped put her down in the hole, no doubt. Now just talking to you -- um, and I told you, I was honest with you -- coming here, I thought for sure you'd come in here and smoke this test.

A: I mean, it's just that thing squeezing me, like...

Q: No and here's the thing, Jayshawn. They - they go through every single metro employee, 4000 people go through that. These guys are not inexperienced. Everyone has that same issue, everyone. For some things that you said to me that made me cause some concern. Like, on our trip down here, "So I get to go home after this?" which leads me to believe that you're - you're anticipating something going bad. Right?

A: Yeah.

Q: You wouldn't - you wouldn't ask that. An honest person, knowing he's gonna come down here and smoke that - this test, wouldn't ask that. What did we tell you on the way down here? "You're going home, no matter what." We told you that. You just have to take that little leap of faith and help us find out what happened and get some answers for the family. You're not a bad person. I can see it on how you're reacting and how your body is. I'm not even hooked up to the machine. But I can tell you, I've been here thousands of times with people and the way you're acting, is not the way a stone cold killer acts. A stone cold

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killer wouldn't have called 9-1-1 and said there was a body in this drain. You're not that person. Am I wrong?

A: I'm gonna tell y'all this man to man, I ain't no bad person.

Q1: I don't think you are.

A: And I'm not folding either. I know y'all are pressuring me to tell the truth.
(Unintelligible) and I can't hold this in no more. I - I just can't hold this in.

Q1: I know you can't 'cause you're a good person.

A: I can't hold it in.

Q1: So tell me what happened, man.

A: Like, I - I'm just gonna tell - I'mma let y'all know though but, like I said...

Q1: And I'll tell you right now...

A: ...get your handcuffs, like...

Q1: No, we're not going - we're not gonna handcuff you, bro.

A: (Unintelligible).

Q1: Did you kill her?

A: (Unintelligible). I'm ready now.

Q1: Jayshawn you're not a bad person. You know that?

A: I'm not a bad person.

Q1: You know how I know? 'Cause when someone starts cryin' with tears...

A: It doesn't matter.

Q1: It does matter.

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A: I really don't need this.

Q1: So what happened?

A: Is y'all gonna arrest me?

Q1: No, we're not gonna arrest you.

A: Y'all need to.

Q1: Why?

A: Because.

Q1: Because why?

A: I did some foul shit.

Q1: So tell me what happened.

A: I let everybody down. I'm gonna tell y'all the story but just tell my mom that I love her and everything but...

Q1: Oh I will. So what happened, bro?

A: I was coming from the casino. It was about like - maybe like 7, 8 o'clock. Um, I lost my money. I played with, like, \$50. I was on the crap table.

Q1: When was this?

A: December - December 12.

Q1: Okay.

A: I was playing craps, lost, was on my way back to my mom's house, not where I stay at now but I stay at my biological mom's 'cause I got into it with my, um, I got into it with my mom so you she told me I couldn't come back. I - I told her that

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was going there anyways but I stay at where you picked me up from...

Q1: Mm-hm.

A: ...because I had a game, um, I had a game, uh, the next day. I had to get my basketball shoes. So after that I hopped on the bus, I went to the McDonald's to get two Hot 'n Spicys. Uh, Tamiya...

Q1: Do you know her?

A: Yeah she's...

Q1: Okay.

A: ...a friend. Tamiya, that's the girl that was down there, Tamiya Trotter - Tamiya Trotter. I was in there eatin'. She came in cryin' and like I say, I ain't never talked to the girl like that. I just always seen her 'cause she was coming from school. She stay four houses down from me. She came in crying. The type of person I am, I asked, I said, "What's wrong with you?" She said, uh, she got into it with her family and they kicked her out. And then I'm like, "Damn, we in the same boat." So, like, as me being older and she's a little bit younger, I'm preaching. Like, people know me as, like, a person that always help out so I'm preaching like - like, "You gonna get through it and, like, at the end of the day, (unintelligible) your parents," like, and just telling her all type of things. So after that, she said she didn't have nowhere to go for the night. Um, she, um, she, um, like, I - I volunteer - or ask like, "You can come to my house." And then she was like, "Well I'mma see." 'Cause she was talking to her boyfriend. I guess her

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boy- she supposed to go to her boyfriend's house but I guess he flaked or whatever. So after that, I left. If you review the McDonald cameras, you'll see me - and see me - you'll see me.

Q1: What time was this at McDonald's?

A: It was, like, 8:00 to 9:00.

Q1: Okay.

A: So you'll see me communicating with her. I left. I went home and I guess she was still up there 'cause she had her own phone. So, um, it's crazy.

Q1: Did she know where you lived?

A: Yeah she knew where I lived.

Q1: Okay.

A: Sorry.

Q1: No, that's okay. So what happened?

A: Basically, I gave her my Snapchat and being - being honest, I ain't lying no more, like, um, I gave her my Snapchat. I told her...

Q1: And what's your Snapchat?

A: Um, my name.

Q1: Okay.

A: All that. I told her, "Hit me up - hit me up on Snapchat, if you don't get a ride to - or you don't have nowhere else to go." So I gave her my Snapchat. I went, um, I walked to the house. It was cold. Um, I went to the house and I was in there

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cleaning up and everything. I get a message from her, "Hey, can I still come?"

At first, I was like, "Nah because I was telling you before, I was kicked out from that house." So she wasn't even supposed to be there. I wasn't even supposed to be there. But, uh, I stayed there anyway 'cause I had took a shower.

Q1: Is this the house on Fred Brown?

A: Yes.

Q1: Okay.

A: And my mom didn't know anything about this, just to put that out there. So, um, she - she said, "Yeah I'mma come. I don't have nowhere else to go." I said, "Okay, meet me at the back gate." So I go to the back gate. I don't see her. And I'm sayin' - I sent a message. I said, "Where you at?" And then I see her coming in. I see her coming to the, um, to the back gate so I meet her at the gate. And then I take her to my house and I offer - I offer her, like, uh, "Do you need some water or anything? Are you good?" She said, "Yeah I'm fine. Like, she had a little bit - she, like, she was quiet. Like, she didn't really talk like that 'cause she didn't really know me like that. But - so I offered, I said, "Do you want - do you want something from the store?" So I walked to the store and I get her, like, some Gatorade and some Tackies and some little snacks and stuff like that. And, um, I come back from the store and I give her everything. And, um, it's, like, probably, like, 10 o'clock. And I make a pallet on the floor to make her comfortable and I put in a movie. It was called Divergent. It's, like, similar to,

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like, the Mockingjay, if you ever seen that. But we, um, I'm - I'm sittin' on my bed and I'm sipping wine. And, um, before then, I took a, uh - like I said, I'm being honest. I ain't lying no more. Um, I took - I take Xanax.

Q1: Mm-hm.

A: But, like, not like that. I take 'em, like, every blue moon. But I actually took that at the casino.

Q1: Mm-hm.

A: And so, basically, the whole time, I was barred out. That's what we call it. So I - I'm drinking wine at the house and she's sittin' there. And I give her some. We're just chillin' (unintelligible) everything. And I guess, like, after a while, like, she got (unintelligible) started acting weird and, like, she had a Taser. And, like, I guess she started feeling uncomfortable. And, um, I - I don't know, like, not - I ain't, like I say, I ain't makin' nothin' up. Like, she - I don't know if it was the wine or whatever but, like, she just kept playing with that Taser, like - like, 'cause I guess she felt uncomfortable. And she's, like, just, like, aiming it towards me, like, and I'm just like - like, "You gotta chill out with that. Like, you feel me?" And like I said, I'm under the influence, like, I hate when people, like, threaten me with stuff. Like, if the, uh, like, it could be anything but after that, like, she was talking about, like, I guess I made her mad and I stood up and I got in her face. And she had that Taser and, like, she was, like, threatening to tase me, like, putting it against me. And I'm like, "Chill out." And - and - and after that, everything went

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downhill.

Q1: Okay so keep going. What happened?

A: Am I getting arrested?

Q1: Not that - you haven't - you haven't told me anything.

A: Like, what I'm finna tell you though, it's, like, some real shit.

Q1: I don't know what you're gonna tell me, bro.

A: But if it's - if it's - if - if what I tell you, am I getting arrested right - right here and there?

Q2: We can't give you an answer 'cause we don't know what you're gonna say.

Q1: I have told you you're gonna go home but I don't know what you're gonna right - tell - tell me right now.

A: Well I'm going home after I tell you this. I know that for a fact. I thought I was.

Q1: Well tell me - tell me what happened.

A: So we drunk and, like, we really just going at it and, like...

Q1: What do you mean by "going at it?"

A: Like - like, I'm gonna keep it real, like...

Q1: Like, fighting or what?

A: Not fighting but, like, she was getting aggressive. Like, I ain't blaming it on her but, like, she was, like, just being weird with that Taser and, like, I'm off of a Xan and some wine and that shit triggered me. So like, she's gonna tase me and I...

Q1: And you what?

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A: So I grabbed her by the neck.

Q1: Okay and then what happened?

A: I put her in a chokehold for, like, ten seconds. She dropped. I kid you not, it was ten seconds. She dropped. She didn't wake up. She dropped and she wasn't breathing. I swear to God on everything. I panicked. I turned her over. She wasn't breathing. I gave her CPR and mouth-to-mouth. Like, that's what I learned in school.

Q1: Mm-hm.

A: She wasn't - she wasn't breathing and her forehead was still warm so, like, I - I kid you not, I did it for, like, two hours straight. Like - like, from that point in time, I was keeping her, um, her forehead warm. 'Cause I know you - if you keep oxygen to the brain, like, I mean, the brain can't go three minutes without oxygen so I - I just kept giving her mouth-to-mouth...

Q1: Mm-hm.

A: ...giving her CPR. She didn't wake up.

Q1: Why didn't you call 9-1-1?

A: Because, like, I - I panicked.

Q1: Okay. Who was home during this time?

A: My mom.

Q1: Where was she at?

A: In the room asleep. My mom has, like, a hearing...

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Q1: Okay.

A1: Yes and she - she was asleep. Like, she's very old. So...

Q1: Like, then what happened? So you try CPR for a couple of hours.

A: Yes and I - I swear to God, I had the phone. Like, I should pick up and - I dialed, like 9-1, and I didn't even finish the other one.

Q1: Mm-hm.

A: I didn't even put 1 'cause I was so scared 'cause I thought I was finna go to, like, prison. Like, y'all's gonna put me in there for murder, which all - which is already tryin' to happen right now. I panicked. I didn't know what to do. I sat there for, like, eight hours. Like, not eight hours. I sat there for, like, hours, just - just thinking like, "Damn, I just threw my life away for no reason. Like...

Q1: Mm-hm.

A: And I just did this to this girl for no reason. Like, she didn't deserve that." And, um...

Q1: So what happened with her phone and her shoes and - is that all still at the house?

A: I threw that stuff away.

Q1: Where did you throw it at?

A: Trash can.

Q1: So at what point did you take her down to the sewer drain?

A: The next day.

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Q1: What time?

A: Um, the next day, late at night.

Q1: Where was she until then?

A: Huh?

Q1: Where was she until then?

A: In my room.

Q1: At what point do you think you realized she was dead?

A: I know she - that night when I was trying to bring her back, she wasn't coming back. And I kept trying and trying and then, like I said, her forehead, like, started getting cold.

Q1: What, uh, where's the Taser at?

A: Mm, everything is thrown away. I threw away at the little Pearson Community Center.

Q1: Okay so you had her from behind, in a choke, like a - like a rear-necked choke or...

A: Like from the side.

Q1: From the side?

A: Yeah, I swear it was only for, like, ten seconds. But I think when I did it, like, she didn't, like, well, like you said, like, she didn't breath, like, so when I did it, she, like, didn't have no breath in her lungs and that's why, like, she dropped so fast.

Q1: How much Xanax and wine had she taken?

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A: Uh, we took the whole bottle.

Q1: Okay just a standard bottle or a big bottle?

A: Just a standard bottle.

Q1: How about bars - Xannie bars.

A: Nah, that was just only me.

Q1: She didn't have any Xanax? The only thing she had was the wine, as far as you know?

A: Yes, I don't know whatever - whatever she was taking but I gave her some wine.

Q1: And you said you tried CPR for how long do you think?

A: Two - I swear to God, two hours. I did not give up on that girl. So I kept trying and trying and trying and I thought I, like - like I said, I have a heart. I thought about her family 'cause, like I said, I knew who she was. I didn't know - I didn't talk to her everyday but, like I said, I've seen her. But, like, I just thought about, like, her family. At first, I wanted to go, like, knock on her door and, like, on people's door and say like, "Your daughter's dead in my house." But then I'm afraid they finna to, "What?" And just shoot up my house and kill me, right then and there. Like - like, you know what I mean? So - and, like, all night, like I said, I - I can't lie no more. Like, what I told you, like, that was all a lie. I just didn't wanna go to prison for life 'cause, like I said, I got - I had goals and that shit don't matter no more anyways but...

Q1: Had she admitted or, during that time, taken any drugs? Do you recall?

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A: No, I doubt it. All I know is she - she probably, like I said, I don't know what she was doing but all I know is I gave her some wine, gave her half of it so she was pretty fucked up 'cause I was fucked up off of it.

Q1: Mm-hm.

A: Like I said, I don't drink like that. She told me she don't drink like that. Like I said, it was an accident but that don't matter. Like, murder is murder. I didn't do it on purpose. I did it...

Q1: So the person in the sewage drain is Tamiya?

A: Tamiya Trotter, yeah.

Q1: How long have you known her?

A: I didn't know her like that. I just seen - I just seen her. Like, she'd come from school and, like I said, she stayed four houses down. Like I said, I had a car at the time. Or even I come outside to see her walking - just walking to the house.

Q1: So at the time when you got her in the chokehold, she had a Taser.

A: Yes.

Q1: How close was she? Obviously close enough...

A: It was just damn near to tase me.

Q1: Did she tase you or did she not?

A: No, it was before she put it out and did that.

Q1: Describe the Taser to me.

A: Pink Taser.

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Q1: Like...

A: Very small.

Q1: Did it look similar to a cell phone, kinda square? Or...

A: Yeah it was square.

Q2: It didn't have things that shot out. Right? It just had...

Q1: The prongs.

Q2: ...like, two prongs?

A: Yeah basically the one that you just...

Q2: Touch someone?

A: Yeah not the shootin' thing.

Q1: Was she being aggressive like, "I'm gonna friggin' tase you." Or...

A: She was being aggressive with the Taser and I reacted. I swear to God, I ain't lying - I ain't lying no more. I'm dead-ass serious. That shit don't matter though 'cause I - I, um, I ain't gonna tell you who I told but I told somebody close about it and they ain't involved or anything. I just told 'em about it and...

Q1: So you dumped her, by yourself, down the - the sewer drain. Why the sewer drain?

A: I panicked and, at first, I was gonna put it, like, put her, like, (unintelligible) I don't want y'all thinking I'm evil or crazy 'cause I'm not. I was gonna, like - like, put her outside where she can be found, like, but then I don't know, man.

Q1: How tight do you think you got the chokehold?

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- A: It wasn't tight 'cause I didn't have, like, she was resisting. Like, I had it like this.
- Q1: So she was in a headlock?
- A: Basically a headlock.
- Q1: Okay.
- A: Kinda like a chokehold but that's from behind. I just had her from the side. And I thought I was squeezing her head but I guess I had gotten something around her throat. And she had the Taser like she was trying to tase me too. But, like, she, like, just dropped.
- Q2: And where did you keep her in your room? Was it just in the bed? Was it on the floor?
- A: On the floor.
- Q2: Did you cover her up or anything so your mom wouldn't see?
- A: My mom don't go in my room. Nobody don't go in my room. So I had her on the floor and I put a blanket.
- Q1: Why did you grab her in a headlock? Were you just trying to defend yourself or what? Did you think she was gonna tase you or...
- A: I thought she was gonna tase me and just, like, it was a reaction, like, I ain't gonna say self-defense but, like, that Taser, like, reacted. (Unintelligible) and just I blacked out. Like - like I said, shit don't matter anyways, man.
- Q2: Well I don't know if you - if you blacked out. Right? 'Cause you still can remember.

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Q1: 'Cause you say you did CPR and...

A: (Unintelligible) blacked out under anger.

Q2: So had you not put her in a headlock, what do you think would've happened?

A: Shit, she probably woulda tased me and I probably woulda fell or something.

We'd probably just end up in there fighting. But, like - like I said, I thought about it ever since the incident. I coulda punched her or, like, pushed her or, like, did something different. Like, that - that headlock was so retarded. It was so stupid. It was unnecessary. Like, and physically, I thought when you do something like that, somebody would drop and - and be unconscious but still be able to breath. But when I did it, she dropped and was not breathing.

Q1: Were you surprised she dropped?

A: I was so shocked, yes. And I kid you not, I didn't - when she dropped, I panicked. Like, I didn't keep doing it again and again like that, like...

Q1: Jayshawn, I have to ask this, okay?

A: I understand.

Q1: Did you sexually assault her?

A: I swear to God, I didn't. You can check.

Q1: Did you sleep with her at all consensually that night?

A: No.

Q2: So we've done a lot of tests. We're waiting for results.

A: You guys ain't gonna find (unintelligible).

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Q2: While you're with her, did you kiss her breasts?

A: No, I'm not that stupid.

Q2: Okay did you touch her breast though?

Q1: No, we're talking...

Q2: ...under the clothes or over the clothes?

A: I mean...

Q1: When she was alive.

Q2: When she was alive.

A: No, sir.

Q2: Okay what about, uh, her vagina? Over the clothes, under the clothes?

A: No.

Q1: There was nothing like that?

A: I had to grab her, like, to, like, grip her to, like, move her. But physically, I didn't pull her shit down and - and stuck my finger in her vagina hole and I was kissing on her titties on some - like, that shit and that...

Q2: No you did this as in, like...

A: (Unintelligible).

Q1: There was nothing sexual between the two of you?

Q2: So kinda describe how you get her from your house to the storm drain. Do you carry her by yourself?

A: Yes.

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Q2: So do you - do you carry her out to the street and then lay her down and then move the manhole? Or how does that work?

A: I swear I ain't tryin to say this shit 'cause, man, that shit is really foul, like, how y'all lookin' at me right now.

Q1: I - I'm not judging you one - one bit or another.

A: I'm judging...

Q1: Okay?

A: I'm judging myself.

Q1: You're probably being harder on yourself than we are on you.

A: Okay I'm just lookin', like, I just know. Like, I know who I am and, like, what happened, like - like, "What the fuck's wrong with you?"

Q2: So - so how did it work? I mean, did you open the manhole first?

A: Yes. So when no cars are coming', I hurry up and I put her over there. I had, like, I had to put her on some type of wheel 'cause she's kinda heavy, like...

Q1: What do you mean "wheel?"

A: Trash can.

Q1: Oh okay.

Q2: So you lifted her into the trash can?

A: And I - I didn't have her in there all day though. I just put her in there, I drug it over there, opened the thing and put her in there. And then closed it all by myself. I had no help. And every - every day, like, when it first -when it first

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happened, the first two weeks, like, I've been haunted, like, oh, that shit's been killing me on the inside. I couldn't take it no more. I mean, every other day since then, I couldn't take it and, like I said, when I made that call, I just was, like, I just couldn't do it no more.

Q2: Do you - does your mom have a dog?

A: We do have a dog.

Q2: What - what kinda of dog? Like, puppies or...

A: Yeah two puppies, a Pomeranian, a terrier and the puppies are a mix of Pomeranian-terrier so we have four dogs, total.

Q1: What was she wearing? Do you recall?

A: Um, I think a burgundy shirt, if I'm not mistaken. I don't remember and some sweats.

Q1: Okay.

Q2: Where were her shoes?

A: I threw everything away.

Q2: But what...

A: She had her shoes off when she was in my house. She had her shoes off when the incident happened. And like I said, her bags and shit, I threw away.

Q2: At the Peterson Center?

A: Everything.

Q1: And all this happened and the incident happened the night of the 12th? Or the

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morning of the 13th, right? But then you - what time do you think you put her in the sewage? The - you said the next day.

A: I put her the next day, late at night. So I'd say, like, the 14th.

Q1: Okay so it was after midnight? What do you think should happen, Jayshawn?

A: I know I ain't going home. That's for damn sure. I really wanna commit suicide 'cause I can't - I can't go to prison for life, man. I ain't - I just can't see myself being with dudes forever. Even when I do go in there, like, I'm finna find some way to end myself and, like, I'm sure I can do it. I made a huge mistake. There ain't no such thing as forgiveness in the United States. The court system ain't finna to forgive me. The people - when this story come out, they finna accuse me as an animal, like...

Q1: Or what? The reason why you grabbed her though, is she was gonna tase you. Right?

A: She was finna tase me and I swear to God on everything, she was really being aggressive towards me. Like, no lie, I'm being so honest. Like I told you, I ain't lying to y'all no more. I'm that person that did that shit. Nobody else didn't it. (Unintelligible).

Q1: So it's not like you...

Q2: Did you send any texts with her phone?

A: Um, only the, um, the meet up part. Like, when - when she said she's finna come to my house and that was it.

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Q1: No - no - no, with her phone.

Q2: But after she was dead, did you use her phone to send any texts?

A: She had, um, she told me she had a (unintelligible) so, like, if you don't got the face - the face lock thing, you can't unlock it. Her phone is locked. So I didn't text nobody off her phone.

Q2: What kind of phone was it? Was it an Apple or a LG or...

A: It was a iPhone. It was, like, a X.

Q2: If she was here right now, what would you say to her?

A: I can't answer that 'cause she's not here and she ain't coming back because of me. I just feel like I did the right thing by this. You feel me? Revealing her. You know, I, I mean, I - I did, like, hurt her but...

Q2: You did do the right thing. Jayshawn, have we done - have we made any threats or promises to you today?

Q1: Other than you're going home?

A: Y'all did y'all's job. Y'all are good. I just couldn't lie to y'all anymore, man. I just - I just...

Q1: Why - why did you come and tell us the truth?

A: Because...

Q1: I mean, honestly.

A: Because I can't hold this - I'm not that - I'm not, uh, a person, like, basically, like, I have remorse. Like, I can't - I can't hold that in. Like, it's gonna eat me up

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every day. And her family need to know the truth. And like I said, I'm not no bad person.

Q1: What do you - what do you think should happen to you?

A: I told you.

Q1: What?

A: I'm finna go to jail for life.

Q1: Did you intend to kill her?

A: No.

Q1: What was your intention when you grabbed her by the head?

A: I just wanted her to get that Taser away from me, like...

Q1: Okay. What happened - well, obviously she went unconscious. Right? So the Taser dropped?

A: The Taser dropped.

Q1: And then you immediately tried to render aid?

A: You said, "Lend her in?"

Q1: Render aid.

A: What does that mean?

Q1: You tried CPR and helping her.

A: Yes - yes.

Q1: The one thing you didn't do is call 9-1-1.

A: I did not. Right. I feel like I woulda got arrested that day and they woulda

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charged me with murder. I know it's gonna happen right now.

Q1: Do you think maybe medical could've revived her?

Q2: UMC?

A: UMC don't save but it was a possibility.

Q1: I mean, I know we're speaking...

A: I hope - I hope - I hope they could have.

Q1: Hindsight.

A: I understand.

Q2: Is there anything else that you think is important that we haven't discussed?

A: That's the truth. That's everything.

Q1: You didn't punch her. You didn't hit her.

A: (Unintelligible).

Q1: You didn't sexually assault her. The only thing, you grabbed her in a kind of a headlock for, you said, ten seconds?

A: Literally, it was, like, ten seconds. I didn't have her in there forever. Like, I kid you not.

Q1: I know you were barred out so could that...

A: No - no - no.

Q1: ...time be different?

A: No - no - no - no, trust me. I didn't her in there for that long.

Q2: So when you go into your house, describe which bedroom is yours. 'Cause I - I

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haven't been in your house. I don't...

A: Uh, you go in and you make a left and it's - it's to the back and it's two rooms.

My room will be on your right.

Q2: And what blanket did you put over her? You remember what blanket it was?

A: It was a gray blanket - not gray, beige.

Q2: A beige blanket? Is it still in there?

A: Yes but I slept on it so and that's...

Q1: Was she bleeding at all?

A: I think she - she did bleed.

Q1: From what?

A: I guess, like, when I, uh, that morning, like, there was stuff coming outta her mouth. Like, there was blood on the floor.

Q1: What do you mean "stuff?"

A: Blood on the floor. I woke up and I seen blood on the floor.

Q1: Was it foamy or anything like that?

A: It was blood.

Q1: Okay - okay, um...

Q2: Hang out here. I'm gonna step out for a quick second.

Q1: Yeah. What do you think woulda happened if she never tried to tase you?

A: None of this would never happen.

Q1: I mean, you guys woulda passed out, woke up the next day. Right?

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A: We'd have been cool.

Q1: Huh?

A: We'd have been cool. I'm so scared right now. I know she was even scared but...

Q1: Well have I scared you? How? I mean, I haven't yelled at you.

A: No, I'm just scared because...

Q1: Just scared of your situation 'cause of either afraid of what's gonna happen?

A: I already know what's gonna happen and I'm very scared about this. I never expected...

Q1: Well and fortunately, I mean, here's the deal. I'll be honest with you. There's some extenuating circumstances here. Okay? You know, obviously I think we both know you should've called 9-1-1 that night, no doubt.

A: Okay.

Q1: Right?

A: Yes.

Q1: Would you agree to that?

A: Yes.

Q1: Um, the minute she collapsed, I know you're barred out, panicking and - and freaked out and you had just been arrested for domestic violence, not too - you know, just a few months ago. I get it. You don't wanna be arrested again. You don't wanna be in this situation. Um, but I think we both agree, you shoulda

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called 9-1-1. But we can also both agree, I don't know how I would react with someone coming at me with a Taser.

A: Could I ask you for just one last favor?

Q1: What - what do you need?

A: Can I just call my mom and say I'm not coming back?

Q1: Well let's - let's hold off.

A: I know I'm not coming back. I just wanna let her know and, like, really tell her I love her and everything, tell her I miss the dogs and everything.

Q1: I can tell you what, before we make any decisions and before we leave here...

A: Yeah.

Q1: ...you can call your mom.

A: Thank you.

Q1: Okay? Is that (unintelligible) agree?

A: Yeah.

Q1: Okay.

A: So I just couldn't hold it in no more. I got that guilty conscience.

Q1: Jayshawn, and that's why we did what we did.

A: Uh, he was right, like, but this is...

Q1: Yeah I know he's right.

A: He was right. I lied.

Q1: And I'll be honest, up until you asked that one question, "What would happen?"

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Or "What's gonna happen? Am I gonna come home?" on our way back. I was 100% saying you're being true. I didn't like the fact that you were saying you touched her in so many, like, locations. But I still woulda said what I said. I just didn't like that one question. And it's as simple as that. But you had me fooled. But when I walked in here after you had talked to the detective in here, um, it was quite obvious it was weighing heavily on you. And truly I think - ultimately, I think that's why you agreed to come down here is 'cause you needed to get this out. Right or wrong, whatever happens from here, I can tell this had been weighing heavily on you.

A: And I didn't run or anything. I think...

Q1: I know.

A: I knew what I did and I didn't even, like, try to get away and try to - I just - I just knew it was coming up - it was coming to a head.

Q1: Let me get someone. Can we get, uh, Dave, to come sit with him real quick? I'm gonna have one of my partners sit with you so I can talk to my - my partner. He and I are on this case. Okay?

A: Yeah.

Q1: Can you stay with him?

Q3: Yeah.

Q: All right.

Q3: Thank you. Hey, what's going on, friend?

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A: How you doing?

Q3: Good. I think at this point, we're just kinda figuring out (unintelligible). What are you thinking about?

A: I wish I was somebody else. I just threw my freedom away, threw my - my goals away, my - just threw everything away, for no reason. Like they say, you make that bad decision, like, ten seconds, it costs you your whole life. That's for real.

Q3: Yeah how much freedom would you have had with this looming over you?

A: Huh?

Q3: Hm?

A: Huh?

Q3: How much freedom would you have had with this looming over you? Think about it.

A: I don't even know, man. (Unintelligible).

Q3: Let's not get dramatic quite yet.

A: I know.

Q3: So, I mean, there's - there's a lot of - a lot of things in play, a lot of things that need to be looked at. Um...

A: I know, like, it's murder, two, um, tampering with evidence twice. I'm - I'm looking at, like, 40, 50 years probably, like, a life sentence, like...

Q3: Do you think that's fair?

A: For a type of person like me? No. But for what I did? Yeah. I feel like that's for

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criminals and I'm not a criminal. I think I just made a bad decision. But to other people, they - they gonna look at me as a criminal, look at me as a monster, look at me as something that I'm not.

Q3: Well, ultimately, neither me or my partners will be the ones that will make that decision.

A: I know, the court system will.

Q3: Yep but if you're worried about judgement in this building, don't 'cause that's not what we're here for. At the end of the day, we're just on fact-finding mission. It's nothing personal.

?: (Unintelligible).

?: Okay so, um, we're gonna try and get ahold of 'em (unintelligible).

Q3: How long you lived in Vegas?

A: My whole life.

Q3: Were you born here?

A: Mm-hm.

Q3: Where'd you go to school?

A: Western. I was supposed to go - I started, uh, C- CSN today but I couldn't go. I had to be here. Failed in my first day of college.

Q3: What year did you graduate?

A: Huh?

Q3: What year did you graduate high school?

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A: 2017.

Q3: Mm...

A: I was going to school to be, uh, study for criminal justice. I wanted to be a FBI agent.

Q3: Why - why did you pick that?

A: It's something I'm very interested in, just that field. I wanna - that's why I wanna work for that field and, like, uh, enjoy what I do.

Q3: Well nothing's written in stone yet.

A: Hm?

Q3: I said there's nothing written in stone yet so...

A: What do you mean?

Q3: You just kinda have to figure out - see how this plays out.

A: I already know how it's gonna play out. There's no hope. I'll probably wish I was you.

Q3: And what - that's - what do you mean?

A: That I wish I was just you, in that position.

Q3: Mm...

A: I kinda wish I was in a different place right now but instead, I'm in here, committed a crime. Punishment is a very long time and I never ever expected or even thought about going through something like this. So it's just that and then, like, I'm making my people look bad. Like, I'm - I'm a African American and, you

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know, we're already, like -- what's the word -- already look like criminals. We already are - I can't even pronounce the word. But people already look at - look at us as criminals.

Q3: (Unintelligible) Is that what you mean?

A: (Unintelligible) I just know the word for it too. I just can't think of it but...

Q3: Mm...

A: I'm basically like, settin' an example like, "Yeah, we are." Like, I was - my goal was to make a difference, to let people know that, you know, all black people are not bad people. Just look at me.

Q3: Do you know how much courage it took for you to pick up the phone and call?
How scared were you when you did that?

A: I was very scared 'cause I know I'd be in this position.

Q3: But you did it anyway. Why?

A: I thought about her family. Like, she didn't deserve that and me just knowing that she's down there because of me, I couldn't live with that. I can't. I just couldn't do it no more so I had to call. I just did it for her family. And then when I seen her mom, like, when they found out that somebody was down there, a lot of people came outside. Um, I guess (unintelligible), I know she, um, I guess word got around that it was, like, uh, a black young female in there, she automatically, like, damn near passed out, like, 'cause she thought it was her daughter. But I knew deep down it was and when I would see her, like, I swear, like, I felt so bad,

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like - like, she was really hurt. Her family was hurt. I look online and - and they'd talk about it, like - like, they was really hurt. Just me seeing that, knowing I caused that, like, I couldn't - couldn't do it.

Q3: Where'd you see it online?

A: Um, the Dock Ellis. Um, I guess he, um, works for, like, the missing people. And, like, he had posted and, like, her family'll comment on it and I could tell they was hurt and like they was really worried, like...

Q3: When was the first time you saw one of the missing persons posters or flyers for her?

A: I think, like, five days later - four or five days later. And when I seen the posters, like, uh, I would literally, like, my heart would jump outta my chest. Like, I would be so nervous and just, like, "Wow, like - like, I did this. Like, nobody else did it. I'm the reason why she's missing. I'm the reason why those posters are gettin' put up." It's crazy, like, being put in that situation. Like, it's kinda crazy. It's kinda scary. Like I said, I made that call because, like, her family needed to know. Like, I just felt like that was the right thing to do and, like I said, I - I accept my punishment. I deserve it. Deep down, I feel like - I don't feel like I deserve it because I'm a bad per- I'm not a bad person but I did what I did and I can't rewind time.

Q3: Well ultimately, it's not my case so I don't wanna get into too many details and the nuts and bolts of what happened between you and her there.

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A: Can I ask you a question?

Q3: Mm-hm.

A: If you was a judge and you heard - you heard about this case, like - like, what would you, like, think they would say. Like, how - how much time do you think I would be charged?

Q3: I don't even wanna begin to speculate on that question 'cause I'm not a judge. I don't think like a judge.

A: Can you just estimate (unintelligible) educated guess?

Q3: I mean if you wanna ask me, like, person to person, like, man to man...

A: Right.

Q3: ...honestly, I - I think ultimately you did the right thing by coming forward. You did the right thing by doing the right thing by the family. You know? And then none of that stuff had to be easy. It took a lot of courage to do it. So I - I give you a lot of credit where credit's due. And like I said, I - I don't know what happened in that house. I - I didn't hear most of the interview and I don't wanna ask you a lot of questions about it 'cause I don't wanna muddy the water for the other detectives. But, you know, like, I first walked into room, there was no judgement coming from here. I've sat across the table from monsters, people that have done horrible things. And I don't look at you with the same light as I looked at them. But that's just me to you, man to man.

A: I appreciate that but - but, like, once this gets out to the public to the news, like,

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people are gonna view me as a monster. They're gonna view me as a killer, a weirdo, et cetera.

Q3: You can't do anything to change that.

A: Huh?

Q3: There's nothing you can do to change that. People are gonna make up their own minds.

A: I understand. No, I'm just worried because I let my mom down. Like, she's old. There's nobody there to take care of her. I was really there to take care of her. And like I said, she's 78 and there's no tellin' how long she's gonna be living and to know she's not gonna see me ever again, it's - that kinda - kinda hurts - hurts me. I ain't gonna be able to see my mom again. I - I care about her more than any - anything - anybody else.

Q3: Have you ever been in trouble before for anything else?

A: No. Uh, I got into it with my ex, uh, domestic violence but that was - we just got into it. We got to fighting. You know how that goes. Somebody has to go to jail so...

Q3: Mm-hm.

A: ...I was the person to go. That was it. I ain't never done anything else. Oh, and traffic tickets. Got pulled over for driving with suspended plates. I didn't pay my insurance for, like, I think it's like two or three months. I got pulled over twice for that. That's it. Never done robbery, I don't steal, I ain't never kidnapped nobody,

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never carried a gun, like, nothing like that.

Q3: So any other family in town besides mom?

A: Huh?

Q3: Do you have any other family in town besides mom?

A: Yes.

Q3: Who's in town?

A: Uh, brothers and sisters. I let them down. I got two moms actually. I let my other mom down. I got teammates. I'm on the basketball team. I actually have my own basketball team. I let them down. I got a friends and associates. I let everybody down so...

Q3: Who are you playing basketball for?

A: Um, I play mostly, like, um, I play on my own team. Our name is TMG. I played, um, five, six seasons. Our goal was to, um - 'cause CSN is having a basketball team this year. I was gonna, uh, try out for them. So I've been playing in rec leagues and also I was gonna train the - like, you ever heard of Life Time?

Q3: Mm-hm.

A: It's, like, an expensive gym. I had a membership up there for, like, three months. And I was trying to get into that league because they have, like, players that play overseas. So, like, against, like, competition like that, it gets you really good. So my goal was to do that and try to CSN. If not, then try out for a overseas team and just keep trying and trying. It's, uh, I get picked up. If I did, at least I knew,

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like, I tried. Just knowing that you tried.

Q3: All right, (unintelligible) due process.

A: But that is thrown down the drain. I haven't ate all day. Do you think, like, 'cause it's my birthday tomorrow, I doubt this'll ever happen but I'm just askin'. Like, do you think they'll let me go free for a day or something like that? Is that even possible? Hell no?

Q3: Anything's possible.

A: I wouldn't ask but...

Q3: ...anything's possible.

A: ...tomorrow's my birthday.

Q3: Is it likely? Yeah, it's probably unlikely but...

A: Yeah.

Q3: But nothing's impossible.

A: I - I admit to doing it. I ain't running. I just wanna enjoy my last birthday, like, free for my birthday tomorrow.

Q3: Mm, that would make you what, 23?

A: Twenty-three. I was gonna be going out to eat for the last time and spend time with my mom and stuff like that before I go down.

Q3: Well ultimately, the people that, like, make that decision is the district attorney's office. And when I stepped in here, they were calling them to see what the status was and (unintelligible) and so we should have some answers for you shortly.

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- A: How long (unintelligible) give me an offer or something like that, basically?
- Q3: Oh, no, the (unintelligible). It doesn't work that way. We're not gonna negotiate it in the police headquarters. That's not how any of this works.
- A: So they're gonna think that I'm jail and after they schedule me a court date or something like that?
- Q3: Correct.
- A: That's sad.
- Q3: Like I said, we're not in the business of negotiating deals or, you know, deal with anything with sentencing or anything like that. That's - that's beyond our realm. That's not what we do. So we try to - we create the facts, as best we can, unbiased investigation, the good and the bad so...
- A: I can't turn my phone on? No?
- Q3: No. I keep looking at mine, like, we can get service in here anyway and I don't. Is there someone you want me to call for you?
- A: I just wanna call my mom.
- Q3: (Unintelligible). That was the plan just going forward for the rest of the night before we do anything.
- A: Like, y'all finna keep me here or...
- Q3: What's that?
- A: Y'all finna keep me here?
- Q3: Uh, for the foreseeable future. Probably for the next couple of hours, yes, you'll

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be here. Maybe not so much in this room but you'll be here (unintelligible) with us. So at which point, I don't know if you're gonna being going down to the detention center or - or what's gonna happen. So at this point, I have as many questions as you do.

Q2: All right, Jayshawn, I need you to stand up for me. Put your hands palms together. I'm gonna make it more comfortable for you. All right? Kinda like you're praying there. What we're gonna do is we're gonna walk you out to a room that's a little bit more - more comfortable for you. Okay? And then we're gonna see what direction we take from there. I actually have a call into the DA and I'm waiting on their advice to see what - what is happening from here for right now so...

A: (Unintelligible)?

Q1: Yeah - yeah, no, I said before we go anywhere, you're gonna call your mom. Okay? What we're gonna do is, you know, where we initially talked to you, next door, we're - that's where we're gonna take you. Okay? You're not going to jail yet. It's - and we still have some (unintelligible).

?: (Unintelligible).

Q3: Thank you. So that's - do you need me?

Q1: Does he?

THIS VOLUNTARY STATEMENT WAS COMPLETED 400 S. MARTIN LUTHER KING BLVD., LAS VEGAS, NEVADA ON THE 21ST DAY OF JANUARY, 2020.

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EXHIBIT D

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EVENT #: LLV200100088926

SPECIFIC CRIME: OPEN MURDER

DATE OCCURRED:

TIME OCCURRED:

LOCATION OF OCCURRENCE:

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: JAYSHAWN BAILEY #3

DOB:

SOCIAL SECURITY #:

RACE:

SEX:

HEIGHT:

WEIGHT:

HAIR:

EYES:

HOME ADDRESS: 2120 FRED BROWN DRIVE
 LAS VEGAS, NEVADA 89106

PHONE 1:

WORK ADDRESS:

PHONE 2:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE R. JAEGER, P#5587, LVMPD HOMICIDE SECTION, on January 21, 2020. Also present is DETECTIVE B. EMBREY, P# 8644, LVMPD HOMICIDE SECTION AND DETECTIVE D. HOWARD, P#6824, LVMPD SEXUAL ASSAULT SECTION.

Q: So that way your shoulders aren't gonna get tight. (Unintelligible) spin this around. Now you see how these are shaped? How they're - your wrist is kinda - I'm gonna put it on this way so if you set your - can you sit down for me? 'Cause if you try to twist - slide this over a little bit. So if you twist your hand in there it'll kinda pinch a little bit so try to keep it...

?: Yup (unintelligible).

Q: All right we're gonna figure out what's goin' on and then we'll - I'll let you know as

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soon as I know okay?

A: I can't get my Powerade or somethin'? No?

Q: Oh - hey Buddy what did we do with his Powerade? Did we forget it over there?

Q1: I got it.

Q: We'll get it for you. I'll tell you what. Are you right or left-handed?

A: Right-handed.

Q: Um, in the past it's helped people to write apology letters. Is that something you'd be willing to do? I can get you a pen and a paper. You can just - have you pass some time if you want. I mean you don't have to.

A: (Unintelligible).

Q: But if you think it'll make you feel better.

A: I want to but I want them to hear it from my voice.

Q: Okay. That's good 'cause you're - y- you're a...

A: I - I'm not goin' home?

Q: I don't know. Like, I can't answer that. I don't know. I - do you have a call into the DA, the district attorney's office?

A: Um...

Q: And we're gonna find out. And as soon as I know I'll let you know, okay?

A: (Unintelligible) right?

Q: I would say 60-40.

A: 60% I'm going to jail, 40% I'm goin' home?

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Q: Yeah. But I - I don't know. I mean I'm just pullin' that out of thin air. I have no basis for that until I speak to the district attorney, so hang out here okay?

A: Thank you.

?: All right. I appreciate the question. (Unintelligible).

?: So (unintelligible) already (unintelligible).

?: Yeah.

?: (Unintelligible). Yeah (unintelligible).

?: (Unintelligible).

?: (Unintelligible) I go in (unintelligible).

?: You're - you're right off Thornton (unintelligible) then right on Thornton.

?: (Unintelligible).

?: Yeah you know what I mean? I mean...

?: No.

?: (Unintelligible).

?: (Unintelligible).

Q: Hey Jayshawn what's the - the code to unlock your phone? Is it like a pass pattern or...

A: Uh, it's just ID.

Q: ...or is there a number that you put in?

A: Two five two five two five.

Q: Two five two five, is that your basketball number?

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- A: Huh?
- Q: What - is that your basketball number, or what's the 2525?
- A: Uh, that's just the code I use for everything.
- Q: Okay. It's dead now. I was gonna throw it on the charger or somethin'. So you can (unintelligible). Did you just - did you turn it off or is it dead?
- A: No it should be fully charged. You just gotta turn it on then.
- Q: Okay. So it's just turned off then?
- A: Yeah (unintelligible).
- Q: Thanks, bud.
- A: Am I - I'm not goin' home, am I?
- Q: Mm-mm. And - and - I'm up front. I've been up front with you. Um, I'm not against you and I'm not for you. This is a pretty unique set of circumstances. You know, we as a police department...
- ?: (Unintelligible) in there?
- Q: ...we need to find out, um, what her cause and manner of death was. She could have overdosed. She could have been extremely intoxicated. But your actions are pretty ghoulish, right?
- ?: (Unintelligible).
- Q: I mean callin' 911 and (unintelligible) there. So I - here's what I will promise you Jayshawn. I am going to investigate every aspect of it. If your actions indeed killed her, I'm going to prove that. I don't know if they did it. If your actions didn't

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kill her, I will also prove that. We're gonna take all the necessary steps. You're not just gonna be thrown into the system and forgotten about 'cause this is kind of a unique set of circumstances. You were being attacked with a Taser. That's not lost on us. But also you waited a month to call 911. But on the other hand, you did call 911. And guess what? You came clean. We all know that you were gonna come clean. All - all that is taken - will be taken into account, okay? So for tonight we're gonna run you down to the jail. Um, we're gonna type up the good and we're gonna type up the bad. You know, all the good things that you did.

A: (Unintelligible) in county? So how long am I gonna be there?

Q: Don't know.

A: What?

Q: That's not for me to decide. I don't know. I - I would tell you but it's just a guess.

A: Okay. I mean the only thing I wanna do is just call my mom and (unintelligible).

Q: Yes. Yeah, for sure. We'll get you a phone and we just got a bunch of paperwork that we wanna get done first and then we'll bring your phone in here, put in on speaker or whatever and let you make the call.

A: You know how long that's gonna take?

Q: It depends on how long it takes us to get the paperwork done. Give us about an hour or so. All right. We're workin' - we got a couple guys workin' on it so - um, we're not against you. I'm not mad at you. I don't think any less of you. I want

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you to know that. The reason you called us and the reason that you told us is because you're not a monster. You're just a man caught up in some shit right now. I get it. Trust me, I get it. All right.

A: I mean I just got a lot of questions. I know you're probably in a rush or whatever but...

Q: Yeah. I mean some of 'em - like as far as how long you're gonna be in there, that's out of my control. I can't answer that. My job is I am a fact finder.

A: Yeah.

Q: That's it. I'm not a prosecutor.

A: So what if there's no evidence that - like, what if my fingerprints or anything wasn't on her at all, then what would...

Q: I'm sure we're gonna get all that out there. It would have only been a matter of time till we got there. I mean DNA sometimes takes six months. But you gave a - did you get a buccal swab that day right there in your interview? They put like a Q-tip in your mouth? Like, run that through your head. You know, were you wearin' gloves?

A: Wearin' gloves to do what?

Q: When you dumped her? You sure wearin' - weren't wearin' gloves during the fight 'cause no one thinks it's gonna happen. So...

A: That's just...

?: Hey Dan how long do you think you - you reported it?

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- ?: Yeah (unintelligible) there's no way that (unintelligible).
- ?: No. That's what I'm saying to the (unintelligible) two hours.
- ?: Yup.
- ?: (Unintelligible).
- ?: What was it, uh, the (unintelligible)?
- ?: Yeah (unintelligible) E-U-A-R (unintelligible) E-A-R (unintelligible).
- ?: (Unintelligible) 25 (unintelligible)?
- ?: (Unintelligible).
- ?: Nah I...
- ?: Okay. Yeah sounds right.
- ?: (Unintelligible). Hey I (unintelligible) later on (unintelligible) we're gonna have him (unintelligible).
- ?: Right over there.
- ?: (Unintelligible). There's a issue (unintelligible). He's probably gonna go (unintelligible).
- ?: Yeah (unintelligible). Oh one more, um, (unintelligible). 5'7" (unintelligible). No I'll call it in right now. (Unintelligible). What can you do with (unintelligible). Yeah I just want him to (unintelligible). Yeah I can tell you (unintelligible).
- ?: That's it.
- ?: (Unintelligible).
- ?: Yeah. Yeah.

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?: You gonna, uh, tell her?

?: Yeah I'm in the (unintelligible). They won't let you go just (unintelligible) on your phone?

?: You already (unintelligible).

?: Yeah he's goin' to court until (unintelligible) we have (unintelligible).

?: Uh, (unintelligible) we have a five thousand (unintelligible) thirty. So I would (unintelligible) I have (unintelligible).

A: Uh, these handcuffs hurt.

?: (Unintelligible).

?: Yeah she feels lonely.

Q1: All right bud. You want to give your mom a call?

A: Yes.

Q1: What's - uh, what's the number? Just to let you know, the - the room is recorded so the phone call will be recorded, so let her know that it's...

A: I can't use my phone?

Q1: No your phone's gonna have been locked up for evidence. So it's been so the - all right you're more than welcome to use my phone if you want. You can use it on speakerphone. You can hold it up to your ear if you want. It's my phone or you can use my phone if you like.

A: All right. I'll use your phone.

Q1: All right. What's the number?

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A: 702-773-53...

Q1: Hold on, 773-53...

A: Six five. Thank you.

Q1: Mm-hm.

?: Uh, you can stay down there or back up. So this one will use data and the job ID number and then look it back up in (unintelligible).

?: (Unintelligible).

?: You can take this (unintelligible). The film will be (unintelligible).

?: Detective will be in here in just a second.

A: Okay. Can I make one more call if that's okay?

Q1: To...

A: Uh, my other mom. I got two moms.

Q1: Oh, you got two mom - yeah. Call - call your other mom, man. Call your people.
So this is the last one, all right?

A: All right man.

?: (Unintelligible).

A: Hey mama. I'm good. How you doin'? Yeah I ain't gonna spend it how I want to.

?: Sorry?

A: I say I ain't gonna be able to spend it how I want to. Um, I got - I'm locked up.

?: What happened to you?

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A: I said I got locked up.

?: Locked up?

A: Yeah.

?: (Unintelligible).

A: For murder.

?: Huh?

A: I said I'm in jail for murder.

?: For murder?

A: Yes.

?: (Unintelligible).

A: I made a mistake last month and I'm in here and I told the detective the truth.

?: (Unintelligible).

A: Yeah. I can't be on the phone for long. I'm talkin' to the detective.

?: (Unintelligible).

A: It's a long story.

?: You over at the jail?

A: No.

?: You over in the county jail?

A: I'm goin' to the county jail right now I guess. I'm at...

?: Where you at?

A: I'm an the...

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?: What - what jail you in now?

A: I'm at the - um, I guess this is a - the detective place I guess? I'm not sure the - the metropol - politician building.

?: (Unintelligible) for murder (unintelligible) hangin' with the wrong people.

A: I don't know.

?: (Unintelligible) threw your life away (unintelligible).

A: I know.

?: Where you at, down at the detective (unintelligible)?

A: Yes.

?: Who did they kill?

A: This girl. It was an accident. It wasn't on purpose.

?: Did you stab her?

A: No.

?: (Unintelligible) 1630.

A: I was gonna call her. She ain't answerin' her phone.

?: (Unintelligible).

?: (Unintelligible).

A: I don't know.

?: (Unintelligible).

A: No I just wanted you to call her and tell her 'cause I ain't comin' back to the house. There ain't nothin' much you can do. I just let everybody down.

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?: (Unintelligible).

A: I know.

?: (Unintelligible).

A: Well - well I - I gotta get off the phone. The detective want his phone back. I gotta get off this phone so...

Q1: As soon as we get you transported you can make as many calls as you want.

A: Okay.

?: I love you (unintelligible).

A: I love you too.

?: I love you (unintelligible).

A: Okay.

?: I'll (unintelligible).

A: Okay. Okay. All right.

?: I love you.

A: I love you too. Can you call mama too and let her know?

?: Huh?

A: Can you let her know too?

?: Yeah I'm gonna call her right now.

A: Okay. Thank you.

Q1: You bet.

?: (Unintelligible) right now we're gonna need (unintelligible).

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?: (Unintelligible).

?: I just said (unintelligible).

?: (Unintelligible) so it's just 001001 (unintelligible) 001000 (unintelligible).

Q1: Hey man. I know you called a couple, uh, but who do you want to list as an emergency contact for you?

A: Um, 702-773-5365.

Q1: Who is that?

A: My mom.

Q1: What's her name?

A: Uh, Welty McNair.

Q1: What is it?

A: Welty (unintelligible) and then McNair, M-C-N-A-I-R.

Q1: M-C-N-A-I-R?

A: Yeah.

Q1: All right.

A: Is he comin' in here to talk to me or...

Q1: Yeah he is.

A: And if I gotta go to the bathroom what...

Q1: You just give me one minute and I'll take you.

Q2: You spoke to your mom right?

A: No, my other mom, not mines - mama - not my mama.

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Q2: Like your mom - do you need - do you know your mom-mom's number or do you wanna call her?

A: I do wanna call her, yes.

Q2: Okay. Let me get a phone for you, okay?

A: All right.

Q2: (Unintelligible) other mom (unintelligible).

Q: (Unintelligible) not sure. Here. Wait a minute. Let's - what's - what's your mom's number?

A: 702-773-5365.

Q: Five...

A: 5365.

Q: 702-773...

A: Yeah, five three.

Q: Five three six five. Here you go man.

?: (Unintelligible) five minutes from my house (unintelligible) got a little kid (unintelligible).

Q: She not answerin'?

A: I guess not. Can I try again or...

Q: Well we got about like 10-15 minutes to let you try again.

A: I know but - so what's gonna happen next?

Q: Uh, we'll take you down to jail, um, and you're gonna be charged with open

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murder. Um, from there they have 72 hours to get you in front of the judge, and the judge determines whether or not there's probable cause to keep you or kick you out to get you a court date to answer for your charges.

A: So what you mean, like, 'keep me,' like...

Q: Keep you in jail. And then there's a bail hearing if they decide on that but I don't have any say in that. I wish I could tell you, like, I think of - I'm - I grew up - you grew up here too, right, with your 530 Soc? I too am a 530 Soc. Um, I wish I could tell you of all the people that I know from growin' up in this town and workin' in this job for 23 years that I could call and pull strings either way but I just can't. I don't have that pull.

A: I thought I was goin' home.

Q: Let's, uh, well we thought you were gonna tell us that you just carried a body to the - to the curb from your friend's house.

A: So if I say somethin' else then I can go home?

Q: Hm?

A: If I say somethin' else then I can go home?

Q: Well no what e- what - what else are you gonna say? I don't want you to start lyin'. We just want the truth. I can tell you already feel better gettin' that off your chest.

A: I let my mom know the truth. I told her.

Q: And what'd she say?

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- A: She was just shocked.
- Q: Was she like call the cops?
- A: I told my mom the truth.
- Q: The one that lives at that address or...
- A: Yes.
- Q: When did you tell her that?
- A: Couple days ago. I told her I ain't kill her but I did put that body over there. I said y- the evidence come back, it gon' back with nothin' on me. I just wanna go home. I don't deserve this. I know she didn't deserve to die.
- Q: Hey let me tell you about 'deserve.' Are you gettin' thrown in the sewer right now and havin' poop wash over your body for the next month?
- A: That's - I'mma keep it real. I feel like they tellin' you to pull out that gun and shoot me in my head.
- Q: That's not gonna happen.
- A: No I know that but, like...
- Q: I'm not even mad at you, man.
- A: Man this is - jail ain't gonna - like I said my mom know the truth.
- Q: Well she knows the partial truth.
- A: The whole truth.
- Q: A lie by an omission is still a lie, right? If I tell you I ate food but didn't eat the food that I wasn't supposed to...

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A: I told y'all what y'all wanted to hear.

Q: That's not true.

A: I told my mom I was with that girl, woke up, she ain't wake up. She was dead on my floor. Panicked. Put her in the sewers. I told her. I told my mom I didn't have nothin' to do with her dyin'. I don't know how she died.

Q: I know she had a Taser.

A: She had a Taser.

Q: I know you know she had a Taser.

A: Yeah. And the Pearson stuff is true, like the - that's the - me killin' her.

Q: What do you mean the piercing stuff?

A: Huh?

Q: What do you mean the piercing stuff?

A: I was talkin' about like me, like, puttin' her belongings over there.

Q: Oh the Pearson. I thought you said piercing, like...

A: Yeah.

Q: ...like your ear pierced or somethin'.

A: But me really, like, put her in a headlock and stuff...

?: (Unintelligible).

Q: Hey can you stand up for me real quick? Do you have any, uh, house keys or anything on it? Here, stand up for me. I'm gonna let you - can you stand up with your - I want you...

VOLUNTARY STATEMENT

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EVENT #: LLV200100088926

STATEMENT OF: JAYSHAWN BAILEY #3

?: (Unintelligible).

Q: All right have a seat right here.

?: (Unintelligible).

Q1: All right man. Couple more minutes are we're gonna get you outta here. Are you left or right-hand?

A: Right-handed.

Q1: Okay. This is basically your current - uh, today's date. This is - we're doin' a search warrant for - basically for your body but the only thing that we're takin' from you is your phone. I don't think we're takin' any swabs or photos from you, at least not that I've been aware from. But I'm gonna bring in the search warrant here shortly, but I'm just - this is the (unintelligible) that says that we're taking your Apple iPhone and I'm leaving this paperwork with you.

A: Am I getting my phone back?

Q1: Yup. Uh, we're not gonna damage it. All we're gonna do is make - uh, we're gonna do a search - separate search warrant for your phone and we're gonna make a digital image of your phone. It doesn't corrupt it. It doesn't hurt any of the files. It doesn't erase or delete anything. All it is, is just give us basically a clone of your phone and then it will go back to your property so you can get it back just in the same exact condition that you gave it to us.

A: So...

Q1: Except maybe a little bit more charged up.

VOLUNTARY STATEMENT

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STATEMENT OF: JAYSHAWN BAILEY #3

A: So after this, like, I'm still goin' to the county?

Q1: Yes.

A: For what?

Q1: What - what are you bein' booked for?

A: Yes.

Q1: Uh, it's my understanding that you're being booked for open murder.

A: But I told 'em I didn't do nothin'. Do I sign right here?

Q1: Yes sir. And like I said that - by signing it you're not doing anything e- except acknowledging that I'm giving you this paper and that we took your phone.

A: (Unintelligible) I wasn't telling the truth.

Q1: All right I will let you talk to Detective Embrey about that but that's your copy. That's yours. Okay? There is a, uh, copy of the search warrant that I was tellin' you about.

A: Can I still go to the bathroom or not?

Q1: Yup. Give me one second.

?: (Unintelligible).

Q1: Oh yeah (unintelligible) see the podiatrist, the hair cutter and (unintelligible).

?: (Unintelligible).

Q1: You ready to use the bathroom? So what we're gonna do - I'm gonna take the handcuff off, give you a chance to rest and roll your shoulders a little bit 'cause I know you've been handcuffed here for an hour or so, so it's gotta be gettin'

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VOLUNTARY STATEMENT

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uncomfortable. Give you a chance to use the bathroom and then - uh, then we'll be on our way to county, okay? Uh, do you have any questions for Detective Embrey before we go?

A: I mean why I'm goin' down there 'cause I ain't do nothin' wrong.

Q2: Okay well you understand what you confessed to right?

A: Yeah but that wasn't the truth.

Q2: Okay. Well you understand that entire room is audio and video recorded right?

A: I lied.

Q2: Okay. Well then that's between you and your attorney and we'll address that.

Mm-kay? Um, you've already lied a couple times. That's been established, right?

A: And I continue...

Q2: Okay.

A: I continue to lie.

Q2: Okay.

A: (Unintelligible) that too.

Q2: Okay. So which lie do we believe? Here's the thing. You were showin' emotion and you're doin' the right thing and stand up as - as a man okay? There are certain circumstances on this case, okay? Don't make things worse by continuing to lie. At this point probably the best thing you can do is just not talk okay? Don't be changing your story. Don't be sayin' this happened and - and

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this happened. That's the last thing you wanna do at this point, you feel me?

A: Yes.

Q2: So, you know, just wait to talk to an attorney.

A: Okay.

Q2: Okay?

A: Mm-hm.

Q2: So, you know...

A: I ain't mean to make you upset. I just...

Q2: What's that?

Q: And you - I'm not upset you - with you, man. You're in a world of...

Q2: You're in a situation, um, and I truly understand it. I don't think you're a bad person. I'm not judging you one bit. I felt that from - from talking to you. And I truly, truly, truly, truly felt the scenario I was tellin' you is that you were helpin' a buddy with her overdosing or being drugged or somethin'. I truly felt that, okay? Because I look at you and you just don't - bad decision followed by another bad decision by another bad decision. I'm not judging you, man. I've seen true killers in here. I been in homicide long enough to know what a stone cold killer looks like and acts like and - and is and you just don't strike me as that person. You still don't, even after you told me what happened you still don't, okay?

A: Yeah.

Q2: Feel me? I'm not mad at you. I'm not angry. I know you're tryin' to go back on

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what you told us over there. That still doesn't even make me mad. You're just panicking and panicking and panicking. Just - just don't say anything. Okay?

A: I just...

Q2: Wait to talk to your attorney. That's probably the best advice at this point.

A: You know when I'll be able to do that?

Q2: I would imagine someone - uh, I sh- I don't know if you'll have a hearing tomorrow or the next day, um, but at some point in time you'll be in front of a - in a judge and then you'll have an opportunity either probably be appointed an attorney or maybe, I don't know if your mom's gonna get you an attorney and have him come talk to you or whatever but probably either tomorrow or the next day. I'm not exactly sure what the timeframe is.

A: All right.

Q2: Okay?

A: Yes. So after I leave the bathroom can I leave now? Can I...

Q2: Yeah, yeah, they're gonna take you to the jail and, you know, we - we have to do this unfortunately. You made some statements about harming yourself and - and we - we just - our hands are kinda tied.

A: You said harming myself?

Q2: Yeah, remember you said you wanted to kill yourself?

A: Feel like it.

Q2: Exactly. So we have to do some stuff to protect you okay?

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A: Yeah.

Q2: So just, uh, don't be changing your statement. Just don't talk to anything - anyone until you talk to your attorney.

Q1: (Unintelligible) so yeah neither of those two phone calls that you made were to an attorney correct?

A: (Unintelligible).

Q2: Whatever legal advice the detective gave you take it for what it's worth. Nah you're good. Hey Dave I'm gonna stop the recording now so...

?: Okay.

Q2: (Unintelligible) just never experienced (unintelligible).

Q1: All right man. I cleared up what I need cleared up. You ready to go? (Unintelligible) couple for you and put your palms together kinda like you're clappin'. There you go.

A: Actually, uh, can I take my glasses off?

Q1: I'll take 'em off for you in a second once I start...

THIS VOLUNTARY STATEMENT WAS COMPLETED AT 400 S. MARTIN LUTHER KING BLVD., LAS VEGAS, NEVADA ON THE 21ST DAY OF JANUARY, 2020.

RJ:NETTRANSCRIPTS
RJ004

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
3/9/2021 7:18 AM
Steven D. Grierson
CLERK OF THE COURT



State of Nevada
vs
Jayshawn Bailey

Case No.: C-20-347887-1
Department 12

NOTICE OF HEARING

Please be advised that the Defendant's Motion To Exclude Statements and Request For Evidentiary Hearing Pursuant To Jackson v. Denno in the above-entitled matter is set for hearing as follows:

Date: March 23, 2021
Time: 11:00 AM
Location: RJC Courtroom 14D
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

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

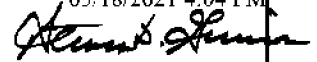
STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Marie Kramer
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

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

By: /s/ Marie Kramer
Deputy Clerk of the Court


CLERK OF THE COURT

1 EXPR
2 DARIN F. IMLAY, PUBLIC DEFENDER
3 NEVADA BAR NO. 5674
4 KATHLEEN M. HAMERS, DEPUTY PUBLIC DEFENDER
5 NEVADA BAR NO. 9049
6 **PUBLIC DEFENDERS OFFICE**
7 309 South Third Street, Suite 226
8 Las Vegas, Nevada 89155
9 Telephone: (702) 455-4685
10 Facsimile: (702) 384-1969
11 HamersKM@clarkcountynv.gov
12 *Attorneys for Defendant*

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

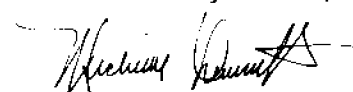
10 THE STATE OF NEVADA,)
11 Plaintiff,) CASE NO. C-20-347887-1
12 v.) DEPT. NO. XII
13 JAYSHAWN D. BAILEY,)
14 Defendant,)

15 **EX PARTE ORDER FOR TRANSCRIPT**

16 Upon the ex parte application of the above-named Defendant, JAYSHAWN D.
17 BAILEY, by and through, KATHLEEN M. HAMERS, Deputy Public Defender, and good cause
18 appearing therefor,

19 IT IS HEREBY ORDERED that the Certified Court Recorder SARA
20 RICHARDSON, prepare at Clark County expense, a transcript of the Defendant's Petition For
21 Writ of Habeas Corpus hearing proceedings for case C-20-347887-1 heard on June 11, 2020 in
22 District Court Department 12.

Dated this 18th day of March, 2021



DISTRICT COURT JUDGE

25 Submitted by:
26 DARIN F. IMLAY
27 CLARK COUNTY PUBLIC DEFENDER

1F9 AA4 2F19 8183
Michelle Leavitt
District Court Judge

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

1 **CERTIFICATE OF ELECTRONIC SERVICE**

2 The forgoing Ex Parte Order For 6/11/2020 Transcript was served by e-mailing a
3 copy thereof, on the 16th day of March, 2021, to the following:

4 SARA RICHARDSON
5 RichardsonS@clarkcountycourts.us
6 Court Recorder for DC Dept. 12

7 /s/ Sara Ruano
8 An Employee of the
9 CLARK COUNTY PUBLIC DEFENDER'S OFFICE

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24
25 Case Name: State of Nevada vs. Jayshawn D. Bailey

26 Case No. C-20-347887-1

27 Dept No. XII
28

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
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: 3/18/2021

15 PUBLIC DEFENDER

PDclerk@ClarkCountyNV.gov

16 Kathleen Hamers

HamersKM@clarkcountynv.gov

17 Sara Ruano

ruanosg@clarkcountynv.gov

18 DA Motions

Motions@clarkcountyda.com

19 DC 12 Law Clerk

Dept12LC@clarkcountycourts.us

20 Michael Schwartz

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OPPS

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Clark County District Attorney
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200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAYSHAWN D. BAILEY,
#5216003

Defendant.

CASE NO: C-20-347887-1

DEPT NO: XII

**STATE'S OPPOSITION TO DEFENDANT'S MOTION TO EXCLUDE
STATEMENTS**

DATE OF HEARING: MARCH 30, 2021
TIME OF HEARING: 11:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MICHAEL J. SCHWARTZER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Exclude Statements.

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

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

7 On April 1, 2020, a preliminary hearing was conducted. At the conclusion of evidence,
8 Judge Letizia bound the case up to district court for trial. An Information was filed on April
9 2, 2020.

10 On April 16, 2020, Defendant was arraigned in district court and invoked his right to a
11 speedy trial.

12 On May 18, 2020, Defendant filed a Petition for Writ of Habeas Corpus. The State filed
13 a Return to the Writ on June 2, 2020. Defendant filed a Reply on June 8, 2020. The Court
14 denied the Petition of Writ on June 11, 2020.

15 The Defendant’s trial date was vacated and continued to September 28, 2020. The
16 Defendant filed a Motion for Discovery on July 6, 2020 and the State filed a Response on July
17 15, 2020. The Court ruled on the discovery motion on July 21, 2020.

18 On September 23, 2020, Defendant requested a continuance for jury trial and the State
19 had no opposition. Trial was rescheduled for January 4, 2021. That trial date was subsequently
20 vacated due to administrative order. Eventually, a new trial setting of March 22, 2021 was set
21 by the court.

22 On March 3, 2021, Defense requested a continuance which was not opposed by the
23 State. The jury trial was vacated and has not been reset at this time.

24 Defendant’s motion was filed on March 8, 2021, the State responds accordingly.

25 **STATEMENT OF RELEVANT FACTS**

26 On January 19, 2020, the Defendant called 911 stating that a month prior he noticed
27 two people putting something in the sewer up the street from his house. See “Preliminary
28 Hearing Transcript”. The Defendant stated he waited two weeks, went down to the sewer, and

1 found a body. PHT, 21. The Defendant claimed he waited another couple of weeks and his
2 conscience got to him, so he called police. PHT, 21-22. Patrol officers arrived at the scene at
3 the intersection of Fred Brown and Dwayne Stedman. PHT, 21. Officers removed the sewer
4 cover and saw the body below. PHT, 22. Homicide Detectives Yaeger and Embrey arrived at
5 the scene. PHT, 22.

6 Detective Yaeger observed the body inside the sewer, as well as a blue Puppy Chow
7 dog food bag, a plastic bowl, and a fake flower petal. PHT, 24. Detectives confirmed the
8 deceased body missing person Tamyah Trotter ("Trotter"). PHT, 28. Detectives discovered
9 that the Defendant resided three (3) houses from the sewer where Trotter's body was found.
10 PHT, 28. Detectives also discovered that Trotter's house was located on the same street as the
11 Defendant's home and the sewer. PHT, 28.

12 On January 21, 2020, Detectives interviewed Defendant. PHT, 29. Defendant
13 consented to a polygraph examination. PHT, 31. After the polygraph, Detectives re-
14 interviewed the Defendant. PHT, 31. Defendant admitted that on December 12, 2019, he ran
15 into Trotter at a McDonalds near their residences. PHT, 32-33. Defendant claimed Trotter said
16 she had been kicked out of her house and did not have a place to sleep. PHT, 33. Further,
17 Defendant claimed the two exchanged Snapchat information and continued to communicate
18 through the app. PHT, 33. Defendant claimed Trotter asked to come to his house later that
19 night and he agreed. PHT, 33. Defendant stated Trotter came over and they drank a bottle of
20 wine together. PHT, 34.

21 At some point in the night, Defendant claimed Trotter became aggressive and
22 brandished a pink taser. PHT, 34. He stated that he grabbed Trotter and put her in a headlock
23 for approximately ten (10) seconds. PHT, 34. Afterwards, Defendant indicated Trotter's body
24 went limp. PHT, 34. Defendant claimed he tried performing CPR for two (2) hours but
25 Trotter's body turned cold and he thought she was dead. PHT, 35. He hid Trotter's body in his
26 bedroom until the following night. PHT, 35. That night, Defendant admitted that he loaded
27 Trotter's body into a large wheeled garbage can and dumped her body in the sewer. PHT, 35.

1 On January 20, 2020, an autopsy was performed on Trotter's body. PHT, 6. Forensic
2 Pathologist, Dr. Christina Di Loreto ("DiLoreto"), indicated there was possible soft tissue
3 injury and hemorrhage in the left lower extremity. PHT, 10. One of the muscles of the neck
4 had darker discoloration relative to the surrounding tissue. PHT, 10. DiLoreto indicated the
5 discoloration could have resulted from injury or decomposition. PHT, 11. DiLoreto stated that
6 asphyxiation or choking would not necessarily leave a mark on someone's neck depending on
7 how pressure was applied and if the asphyxia is due to compression of internal structures of
8 the neck. PHT, 11. Specifically, if pressure to the carotid artery was applied, there may not be
9 a mark. PHT, 11. DiLoreto indicated that pressure to the carotid artery would result in loss of
10 consciousness within ten to fifteen seconds. PHT, 12. However, pressure that was applied for
11 a couple of minutes could result in death. PHT, 12. DiLoreto determined Trotter's cause of
12 death was homicide by unspecified means. PHT, 15.

13 On January 21, 2020, Detectives executed a search warrant at the Defendant's
14 residence. PHT, 36. Detectives recovered a matching Puppy Chow dog food bag. PHT, 37.
15 They also recovered apparent blood on the carpet and hair. PHT, 37. Blood recovered from
16 Defendant's room matched Trotter's DNA.

17 **Defendant's Statements**

18 **911 Call**¹

19 On January 19, 2020, Defendant called Las Vegas Metropolitan Police Department
20 ("LVMPD") via 9-1-1 at 12:24 pm. He requested a police unit to his residence. He initially
21 told the dispatcher that he believed there was a dead body in the sewer by his house. When
22 asked to clarify, Defendant told the dispatcher that he "went down there (the sewer)" and saw
23 a dead, black female. He went on to tell the dispatcher that he initially saw "somebody put
24 something" in the sewer four weeks before he made the 9-1-1 call. Defendant went on to
25 explain that two weeks after seeing somebody put something in the sewer, he went into the
26 sewer to "check it out" and found the body. He told dispatcher that he did not initially call 9-
27
28

¹ These details are taken from the recording which is marked as Exhibit A.

1 1-1 about the body because he “touched her (the body)” and did not want to get into trouble.
2 The dispatcher told Defendant that police will be in contact with him.

3 **1st Statement**

4 After police responded to Defendant’s 9-1-1 call, Trotter’s body was found, and
5 homicide detectives were called to the scene.

6 Detectives Embry and Ravelo interviewed Defendant at LVMPD headquarters. At this
7 point, Defendant was not in custody² and Miranda rights were not provided. Defendant told
8 detectives that he was working at a Wendy’s fast-food restaurant and was taking classes at a
9 local community college. Statement#1, pgs. 37, 44.

10 Defendant expanded on what he told the LVMPD dispatcher. He told detectives that
11 four weeks prior to his 911 call, around the midnight hour, he observed two people put
12 “something inside of the hole.” Statement #1, pg. 5. He told detectives that it was “pitch black”
13 outside, so he could not identify the two individuals. Statement #1, pg. 5. Defendant told
14 detectives that two weeks later, he went into the sewer and observed the body of a black female
15 with his cellular phone light. Statement# 1, pgs. 6, 19-20. Per Defendant, he was in the sewer
16 for less than one minute. Statement#1, pg. 39. He further told detectives that he touched the
17 body in the chest and leg area because he wanted to, “see who it was.” Statement#1, pgs. 23-
18 24. Defendant told detectives that he did not recognize the person. Statement #1, pg. 30. He
19 told the detectives that they would not find any connection between him and the person they
20 found in the sewer. Statement #1, pgs. 30-31.

21 Defendant also told the detectives he did not initially call the police because he was
22 worried that people “in the neighborhood” were going to look at him in a certain “type of
23 way.” Statement #1, pg. 33. Specifically, he told detectives that he worried that people would
24 think he was “snitchin” by calling the police. Statement#1, pg. 45. Defendant eventually called
25 the police because the situation was “stressing” him out. Statement #1, pg. 45.

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² Detective Ravelo noted in the interview that Defendant was not in handcuffs. Statement# 1, pg. 33, 48.

1 Near the end of the interview, Defendant agreed to take a polygraph examination later
2 in the week and voluntarily provided a DNA sample. Statement #1, page 34-35. When the
3 interview was concluded, Defendant was driven back to his residence.

4 **2nd Statement**

5 On January 21, 2020, Detectives Embry and Jaegar picked Defendant up from his
6 residence around 12:00 pm and transported him to LVMPD headquarters for the scheduled
7 polygraph examination. Defendant was read his Miranda rights by the detectives. Statement#
8 2, pg. 3. Moreover, Defendant read the polygraph consent form out loud on the recording.
9 Statement# 2, pg. 4.

10 The homicide detectives left the interview room and the polygraph examiner, Phil
11 Rivera, interviewed Defendant. Defendant told Mr. Rivera that he probably should not be
12 doing the polygraph examination because he believed he was a suspect since it took him two
13 weeks to report the dead body but nevertheless, he continued the interview. Statement #2, pg.
14 33. Mr. Rivera asked Defendant to “walk (him) through” the incident. Statement #2, pg. 35.

15 Defendant told Mr. Rivera that he was smoking marijuana outside on his front porch
16 between 12:00 and 1:00 am, when he noticed two people putting something underground
17 outside his residence. Statement #2, pg. 35-36. Defendant stated the metal manhole cover for
18 the sewer made a loud noise when it was moved, and that the noise was what drew his attention
19 to those people. Statement# 2, pg. 36. He was unable to give any further details of these two
20 people because it was too dark outside. Statement# 2, pg. 36. Defendant said after about two
21 weeks went by, he waited until late at night and looked into the sewer himself, wherein he
22 discovered a dead body. Statement# 2, pg. 39. He climbed into the sewer and manipulated the
23 body, touching the chest and leg area. Statement #2, pg. 40. After another two weeks,
24 Defendant said he called the police because he felt like the person in sewer had a family and
25 they would be worried. Statement #2, pg. 41. Defendant told Mr. Rivera that he did not
26 recognize the body in the sewer. Statement #2, pg. 45.

27 After this discussion, the polygraph examination was conducted. Statement #2, pgs. 61-
28 75. Mr. Rivera informed Defendant that he failed the polygraph examination. Statement# 2,

1 pg. 75. Per Mr. Rivera, Defendant specifically failed on the part of whether he (Defendant)
2 placed Trotter in the sewer. Statement # 2, pgs. 76-85. Defendant initially continued to deny
3 that he placed Trotter in the sewer. Mr. Rivera informed the homicide detectives of the
4 polygraph examination results and left the room. Statement# 2, pg. 108-109.

5 The homicide detectives proceeded to interview Defendant again. They asked
6 Defendant if Trotter overdosed at a friend's house. Statement #2, pg. 111. They told Defendant
7 if Trotter overdosed and he panicked, he would go home that day. Statement #2, pg. 111. In
8 response, Defendant told the detectives that, "I'm not saying I'm – I didn't do it." Statement
9 #2, pg. 111. Moreover, Defendant told detectives that he still believed he would be culpable
10 as an "accessory." Statement #2, pg. 111.

11 Detectives told Defendant that they did not believe that he killed Trotter but that "a
12 buddy...(who) called in a state of panic and, you being a good friend, helped." Statement #2,
13 pg. 113. They also told Defendant that his story that there were no fluids in the sewer when he
14 checked on Trotter's body was not possible, since Trotter's body plugged the sewer drain
15 when it was placed in the sewer. Statement #2, pg. 113. After confronting Defendant with this
16 inaccuracy in his story, Detective Embry appealed to Defendant to tell them what happened
17 so the family could have some closure. Statement #2, pg. 115. Defendant continued to deny
18 being involved at this point. Statement #2, pg. 120.

19 A few minutes later, Defendant tell the detectives that he was "ready now" and that the
20 detectives need to arrest because he "did some foul shit." Statement #2, pg. 124. He told
21 detectives that on the night of December 12, 2019, he was playing craps at a local casino and
22 lost some money. Statement #2, pg. 125. Afterwards, he went to the McDonalds near his
23 residence where he ran into "Tamiya" (Trotter). Statement #2, pg. 126. He told detectives that
24 Trotter was in the McDonalds crying because her family had kicked her out of the house.
25 Statement #2, pg. 126. After talking with Trotter for a while, Defendant said he volunteered
26 his place as somewhere Trotter could stay for the night. Statement#2, pg. 126. Trotter was
27 reluctant because "she was talking to her boyfriend." Statement#2, pg. 126. Defendant said he
28 gave Trotter his Snapchat account name and left the McDonalds alone. Statement #2, pg. 127.

1 Sometime later in the night, Defendant said Trotter contacted him via Snapchat and asked if
2 she could come over Defendant's residence. Statement #2, pg. 128.

3 Defendant told detectives that he snuck Trotter into his residence that he shares with
4 his grandmother through the back gate. Statement #2, pg. 128. Around 10 pm that night,
5 Defendant said he took a Xanax and was drinking some wine while watching a movie with
6 Trotter. Statement #2, pg. 128-129. Trotter also had some wine but not Xanax. Statement #2,
7 pgs. 133-134 Defendant said he was "barred out" and Trotter started to make him feel
8 uncomfortable because she was playing with a pink taser. Statement #2, pgs. 129, 135. He told
9 detectives that Trotter would aim the taser in his direction, which "triggered" him. Statement
10 #2, pg. 129-130. This led to a verbal argument between Defendant and Trotter. Statement #2,
11 pgs. 129-130.

12 Defendant said Trotter got near him with the taser, so he put her in a "chokehold for,
13 like, ten seconds." Statement #2, pg. 131, 135. Per Defendant, Trotter dropped and was
14 unresponsive. Statement #2, pg. 131. He told detectives that he tried to help her with CPR that
15 he "learned from school" but was unable to revive her. Statement #2, pg. 131. He told the
16 detectives that he did not call for medical help because he panicked and believed he would be
17 arrested for murder. Statement #2, pgs. 131-132. Afterwards, Defendant told detectives that
18 he sat in his room for hours thinking he "threw his life away for no reason" and that he "just
19 did this to this girl for no reason." Statement #2, pg. 132.

20 Defendant told detectives he threw away Trotter's belongings at the Pearson
21 Community Center. Statement #2, pgs. 132-133. The next night, Defendant told detectives
22 that he transported Trotter's body with a trash can and put her in the sewer. Statement #2, pgs.
23 140-141. Defendant noticed that some of Trotter's blood was on his floor as well. Statement
24 #2, pg. 146.

25 Near the end of the interview, Defendant told detectives that he could not "lie to y'all
26 (the police) anymore" because he had "remorse" for what happened. Statement #2, pg. 143-
27 144. He also told detectives that he believed Trotter's family deserved to know the truth.
28

1 Statement #2, pg. 144. At the end of the interview Defendant was placed into custody.
2 Statement# 2, p. 160.

3 4 **ARGUMENT**

5 **I. DEFENDANT'S STATEMENT WAS VOLUNTARY, AND THE** 6 **STATEMENT SHOULD BE ADMITTED AT TRIAL**

7 Once voluntariness of a confession has been raised as an issue, there must be a hearing
8 pursuant to Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774 (1964), before an accused's
9 statements are brought before a jury. At this hearing, the Court must hear evidence concerning
10 what the defendant told the police and the circumstances under which the defendant made the
11 statements. The Court must then decide (1) whether his statement was voluntary using the
12 totality of the circumstances, and (2) whether Miranda was violated. In this regard, Nevada
13 adopted the "Massachusetts rule." See Grimaldi v. State, 90 Nev. 89, 518 P.2d 615 (1974). It
14 is the burden of the defendant to ask for such a hearing. See Wilkins v. State, 96 Nev. 367,
15 372, 609 P.2d 309, 312 (1980).

16 The State's burden of proof at a Jackson v. Denno hearing is a preponderance of the
17 evidence, both with respect to voluntariness (Brimmage v. State, 93 Nev. 434, 567 P.2d 54
18 (1977), Falcon v. State, 110 Nev. 530, 874 P.2d 772 (1994)), and with respect to Miranda.
19 Falcon, 110 Nev. 530, 874 P.2d 772. In making this determination, the Court is to look at the
20 totality of the circumstances. See Alward v. State, 112 Nev. 141, 912 P.2d 243 (1996);
21 Passama v. State, 103 Nev. 212, 735 P.2d 321 (1987).

22 If the Court finds that the statement was involuntary, it ceases to exist legally and cannot
23 be used for any purpose. Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408 (1978). If it was
24 voluntary but Miranda was violated, it can only be used for impeachment if the defendant
25 testifies and contradicts the statement. Harris v. New York, 401 U.S. 222, 91 S.Ct. 643 (1971);
26 Oregon v. Hass, 420 U.S. 714, 95 S.Ct. 1215 (1975); McGee v. State, 105 Nev. 718, 782 P.2d
27 1329 (1989).

28 When a defendant is fully advised of his Miranda rights and makes a free, knowing and
voluntary statement to the police, such statements are fully admissible at trial. Miranda v.

1 Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966); Stringer v. State, 108 Nev. 413, 417, 836 P.2d
2 609, 611-612 (1992). *Coercive police conduct is a "necessary predicate" to a finding that a*
3 *Defendant's statement is involuntary such that its admission violates the Defendant's Due*
4 *Process rights.* Colorado v. Connelly, 479 U.S. 157, 167, 107 S.Ct. 515, 522 (1986)(emphasis
5 added).

6 "A confession is admissible only if it is made freely and voluntarily, without
7 compulsion or inducement." Franklin v. State, 96 Nev. 417, 421, 610 P.2d 732, 734-35 (1980).
8 In order to be considered voluntary, a confession must be the product of free will and rational
9 intellect. Blackburn v. Alabama, 361 U.S. 199, 208, 80 S. Ct. 274, 280 (1960). A confession
10 is involuntary if it is the product of physical intimidation or psychological torture. Townsend
11 v. Sain, 372 U.S. 293, 307, 83 S. Ct. 745, 754 (1963). To determine the voluntariness of a
12 confession, the court must consider the effect of the totality of the circumstances on the will
13 of the defendant. Passama, 103 Nev. at 213, 735 P.2d at 323. Essentially, the question is
14 whether the defendant's will was overborne when he confessed. Id.

15 In Passama, *supra*, the Nevada Supreme Court, citing Schneckloth v. Bustamonte, 412
16 U.S. 218, 93 S.Ct. 2041 (1973), delineated the following factors to be considered when
17 evaluating the voluntariness of a confession:

18 the youth of the accused; his lack of education or his low
19 intelligence; the lack of any advice of constitutional rights; the
20 length of detention; the repeated and prolonged nature of
21 questioning; and the use of physical punishment such as the
22 deprivation of food or sleep.

23 Id.

24 The Nevada Supreme Court has examined whether a confession was voluntary or not
25 on several occasions. See e.g., Franklin, 96 Nev. at 421, 610 P.2d at 735 (detective's
26 statements did not amount to promises of leniency inducing defendant to confess, thereby
27 rendering defendant's confession involuntary, where detective promised to release defendant
28 on his own recognizance if he cooperated with authorities from another state and to
recommend lighter sentences); Barren v. State, 99 Nev. 661, 664, 669 P.2d 725, 727 (1983)

1 (detective's statement to appellant that he would be "going home" was not a promise of
2 leniency, but rather an ambiguous, but innocuous statement that detective would drive
3 appellant home after the interview); Chambers v. State, 113 Nev. 974, 981, 944 P.2d 805, 809
4 (1997) (where defendant walked into hospital and shouted to anyone around that there was a
5 dead body in his hotel room, and later claimed he did so only because he was intoxicated and
6 not well rested but appeared relatively coherent in his interactions with police, his confession
7 was not involuntary where he was questioned for four hours after having been stabbed).

8 In the instant case, after consideration of the totality of the circumstances, the record
9 clearly demonstrates that Defendant's confession was made freely and voluntarily, and it
10 should therefore not be suppressed.

11 **II. DEFENDANT'S FIFTH AMENDMENT RIGHTS WERE NOT VIOLATED**

12 Defendant claims that his statement was involuntary because his "intellectual disability
13 and suggestibility" combined with "interrogation tactics" overborne his will and violated his
14 due process rights. However, Defendant's statements when reviewed in the required totality
15 of circumstances context were voluntary, and thus admissible.

16 Defendant heavily relies on U.S. v. Preston, 751 F.3d 1008 (9th Cir. 2014). In that case,
17 the Ninth Circuit stated that a defendant's age, intellectual disability, lack of sophistication
18 and interrogation techniques are all factors to consider while determining if a confession was
19 involuntary. The defendant in Preston had an IQ of sixty-five, took special education classes
20 until he dropped out of school, and had significant problems with "verbal communication and
21 comprehension." Preston, 751 F.3d at 1010. After reviewing the interview and the suppression
22 hearing, the Preston Court found that the defendant's severe intellectual disability, police
23 officer's threats that their questions will not end, and false promises of leniency and
24 confidentiality led to an involuntary confession. Preston, 751 F.3d at 1027-1028. The Preston
25 court pointed out defendant's adopted answers that were "demonstrably false" as strong
26 evidence of defendant Preston's suggestibility. Id., at 1026.

27 There are numerous ways this case is easily distinguishable from Preston. In Preston,
28 the defendant's disability was obvious in his interview. Specifically, the defendant did not

1 understand what the word “disabled” meant and agreed that he was unable to finish school
2 because of his intellectual disability. Preston, 751 F.3d at 1021. Moreover, the investigators in
3 Preston used questions that heavily suggested an answer that were adopted by the defendant.
4 Preston, 751 F.3d at 1024-1025. Some of these answers were proven to be demonstrably false.
5 Preston, 751 F.3d at 1026. Moreover, the officers in Preston misled the defendant into
6 believing his written confession was “just an apology note to the (victim)” and that it would
7 “never leave the folder or the United States Attorney’s office.” Id.

8 In this case, Defendant’s “disability” was not obvious to the detectives. Defendant had
9 a job, an expansive smart phone that he was paying for and was enrolled at a local community
10 college. He also questioned some of the detective’s statements indicating he was not just going
11 along with questions being asked by them. He also used words like “accessory” in the proper
12 context. While detectives did use questions that would suggest an answer with Defendant.
13 Defendant *did not* adopt the answers suggested by the question but instead told detectives
14 another version of events. He also provided detectives with several answers the have been
15 proven to be true. For example, he told detectives the name of the victim (before she was
16 identified), that they met at a McDonalds³, that her blood would be located inside of his room⁴
17 and that she had a pink taser⁵. Finally, Defendant had no illusion that his statement would be
18 kept secret like the defendant in Preston. This is demonstrated from his statement where he
19 showed great concern about what people would think of him when the statement was to be
20 released.

21 Additionally, a review of Defendant’s kites from Clark County Detention Center
22 demonstrates that Defendant is not someone who just goes along to avoid conflict. In the kites,
23 Defendant request house arrest due to the pandemic and an underlying medical issue.
24 Moreover, a review of the kites show Defendant knows the process for cashing checks,
25 accessing the phone at the jail and how to make requests for case law. Defendant followed up
26 with the jail to make sure he received the case law he was looking for in his requests.

27 ³ Video surveillance and phone records demonstrate both Defendant and victim were at the McDonalds located at 1003
28 E. Lake Mead on December 12, 2019.

⁴ This has been confirmed by DNA results

⁵ Trotter was carrying a pink taser per her older sister.

1 Defendant also made several requests to replace missing or damaged items such as glasses and
2 shoes. Finally, Defendant was also able to question detention center employees regarding
3 missing food items. Defendant's kites clearly demonstrate that he is not someone who's lack
4 of intelligence (as claimed by Defendant's motion) stops him from advocating for himself.⁶

5 Therefore, Defendant's "intellectual disability and suggestibility" is not enough to
6 show that detectives overborne his will and got an involuntary confession. As for other factors,
7 Defendant was about twenty-three years old at the time of the interview and graduated from
8 high school⁷. Defendant had at least two jobs per his interview, one at Amazon and later one
9 at Wendy's. He also was able to enroll in community college courses. Moreover, Defendant
10 was advised of his Miranda rights and was not subject to any physical punishment such as
11 deprivation of food or sleep. All these factors favor not excluding the statement.

12 Finally, Defendant claims that his interview lasted over six and half hours. That would
13 be incorrect for this analysis. Per the Officer's Report, Defendant was picked up at his house
14 around 12:00 pm. There is no indication in the record that Defendant was sleep deprived or
15 under the influence of any substance during the interview. He was brought into the polygraph
16 examination room at 12:21 pm. There is no indication that any statements were taken from
17 Defendant before 12:21 pm. Defendant confesses to his involvement in the matter around 2:49
18 pm. Thus, the confession occurred after about two and half hours of questioning.⁸ Defendant
19 was handcuffed and arrested at 3:55 pm.

20 In Chambers v State, 113 Nev. 974, 944 P.2d 805 (1997), the Supreme Court of Nevada
21 discussed the admissibility of confessions and statements when made after a defendant is
22 advised of his Miranda rights. In that case, Chambers, confessed after four hours of
23 questioning to murdering a man in his hotel room. Defendant also had a stab wound and
24 claimed to be intoxicated during the interview. Ultimately, the Nevada Supreme Court
25 affirmed the trial court's decision to allow the statement into evidence. The Chambers Court
26

27 ⁶ Kites are attached as Exhibit B.

28 ⁷ Defendant claims in his motion that his struggle with graduation had to do with his intellectual disability. Defendant told detectives that he did not initially graduate from high school due to hanging out with the "wrong crowd." Statement #1, pg. 41.

⁸ See Exhibit C, Audio/Video of Statement #2.

1 found that Chambers was not subject to any physical coercion or emotional overreaching. That
2 his answers to questions were also intelligent and logical. It also noted that Chambers was
3 treated politely by the officers, and the transcript of the interview reveals that no coercive
4 interrogation techniques were employed. Thus, his confession was deemed voluntary.
5 Chambers, 113 Nev. at 980-981.

6 Similar to Chambers, Defendant was read his Miranda rights, was not subject to
7 physical coercion or emotional overreaching. Moreover, he answered the detectives
8 questioning intelligently and logically based on the question. He was questioned for close to
9 four hours like Chambers, but he confessed after only about two and half hours of questions.
10 Thus, while considering the totality of the circumstances in light with the case law,
11 Defendant's statement should not be suppressed.

12 **III. DEFENDANT'S MIRANDA RIGHTS WERE NOT VIOLATED**

13
14 Defendant asserts that both interviews need to be suppressed because Defendant was not
15 read in his Miranda rights during Interview #1 which occurred two days prior to Interview #2.
16 However, Defendant was not in custody for purposes of Miranda for Interview #1 and was
17 clearly read his Miranda rights before Interview #2. Thus, Defendant's motion should be
18 denied.

19 **A. Defendant Was Not in Custody for Interview #1.**

20 As this Court is aware, "Miranda warnings are "required when a suspect is subjected to
21 a custodial interrogation." Archanian v. State, 122 Nev. 1019, 1038, 145 P.3d 1008, 1021
22 (2006). A defendant is "in custody" for purposes of Miranda if he or she has been formally
23 arrested or his or her freedom has been restrained to "the degree associated with a formal arrest
24 so that a reasonable person would not feel free to leave." State v. Taylor, 114 Nev. 1071, 1082,
25 968 P.2d 315, 323 (1998). "Custody is determined by the totality of the circumstances,
26 'including the site of the interrogation, whether the objective indicia of an arrest are present,
27 and the length and form of the questioning.'" Carroll v. State, 371 P.3d 1023, 1032 (2016).
28 Importantly, an "individual is not in custody for Miranda purposes if the police are merely

1 asking questions at the scene of the crime or where an individual questioned is merely the
2 focus of a criminal investigation.” Carroll, 371 P.3d at 1032 (internal citations omitted).

3 1. Site of Interrogation

4 The Nevada Supreme Court has discussed factors related to the site of interrogation
5 which are relevant to the determination of whether an individual is in custody. Most recently,
6 in Carroll, the court discussed distinctions between the circumstances of Carroll, where the
7 court found a suspect was in custody, and those in Silva v. State, 113 Nev. 1365, 951 P.2d 591
8 (1997), where the court found a suspect was not in custody.

9 The Nevada Supreme Court recognizes that the fact that questioning occurs at a police
10 station "does not automatically mean that [a suspect] was in custody." Silva, 113 Nev. at 1370,
11 951 P.2d at 594. Instead, the length of time of the questioning, whether the police withheld
12 food or drink from a suspect or made promises to the suspect are factors which can suggest
13 custodial status. Id. at 1370, 951 P.2d at 594. The position of the parties in the interview room
14 relates to whether a suspect is in custody for the court. If the room is small and the suspect is
15 the furthest from the door, the “environment” suggests custody according to the court. Carroll,
16 371 P.3d at 1032. In addition, if detectives do not allow an individual to use their phone or
17 refuse to let him leave upon request to do so, the individual is more likely to be deemed in
18 custody for purposes of Miranda. Id. Finally, if detectives promise to investigate aspects of
19 a suspect’s claim, it is suggestive of custodial status, according to the court. Id.

20 In the instant case, the police did not question Defendant for a very lengthy amount of
21 time. As the person who reported the dead body, it is not unusual for police to interview
22 Defendant. The entire interview lasted less than an hour. In addition, they never denied
23 Defendant food or drink. Defendant had access to his phone and was not in handcuffs. He
24 was told repeatedly that he would be driven home and in fact was driven home after the
25 interview. The detectives even told Defendant how he would be listed as witness in the arrest
26 report since Defendant told the detectives he was uncomfortable even being involved with the
27 case due to the neighborhood. Statement#1, pg. 59-60. At this point, Defendant is clearly not
28 seen as a suspect but someone who could provide information for the investigation.

1 2. Objective indicia of arrest

2 The Nevada Supreme Court has stated that objective “indicia of arrest comprise the
3 following:

4 (1) whether the suspect was told that the questioning was voluntary or that he
5 was free to leave; (2) whether the suspect was not formally under arrest; (3)
6 whether the suspect could move about freely during questioning; (4) whether
7 the suspect voluntarily responded to questions; (5) whether the atmosphere of
8 questioning was police-dominated; (6) whether the police used strong-arm
9 tactics or deception during questioning; and (7) whether the police arrested the
10 suspect at the termination of questioning.
11

12
13 Carroll, 371 P.3d at 1033, citing Taylor, 114 Nev. 1071, 1082 n.1, 968 P.2d 315, 323

14
15 n.1.

16 In the instant case, detectives told Defendant that the questioning was voluntary. Page
17 4. Defendant was not under arrest. He was never handcuffed and responded to questions
18 voluntarily. The detectives removed him from the crime scene where family members and
19 friends of the victim were present to avoid any conflict. The detectives did not yell at or
20 threaten Defendant; the questioning was not police dominated. In fact, Defendant asked the
21 detectives almost as many questions as they asked Defendant. At the end of the interview,
22 Defendant was not arrested and was driven back to his residence.

23 3. Length and Form of the Questioning
24

25 The length and form of the questioning also indicate that Defendant was not in custody.
26 The interview was not protracted, and the questioning was subdued and methodical. The
27 detectives did not threaten Defendant. Unlike Carroll, Defendant did not experience a series
28 of questioners. The two detectives sat with Defendant and conducted all the questioning

1 themselves. They did not take breaks to switch who was doing the questioning. It was a
2 subdued conversation and one that would be typical of a witness not a primary suspect. At no
3 time was the questioning aggressive or intimidating. This factor therefore weighs in favor of
4 Defendant not being in custody at the time of the interview.

5 Thus, when considering all the circumstances, Defendant was not in custody per
6 Miranda and therefore Statement #1 should not be suppressed.

7 B. Defendant Was Read His Miranda Rights in Interview #2

8 Defendant's Miranda rights were administered in the beginning of Interview #2.
9 Interview #2, pg. 2-3 Missouri v. Seibert, 542 U.S. 600, 124 S.Ct. 2601 (2004), discusses the
10 proposition that anytime Miranda warnings are given part-way into the interview, the
11 subsequent waiver is invalid, and the statements must be suppressed. However, this case, as
12 discussed below, does not involve a Seibert violation.

13 Any honest discussion of Seibert requires discussion of another case—Oregon v.
14 Elstad, 470 U.S. 298, 105 S. Ct. 1285 (1985). The question presented in Elstad was “whether
15 an initial failure of law enforcement officers to administer the warnings required by Miranda
16 v. Arizona, . . . without more, ‘taints’ subsequent admissions made after a suspect has been
17 fully advised of and has waived his Miranda rights.” Id. at 300, 105 S.Ct. at 1288 (internal
18 citation omitted). In Elstad, the police initially met with the defendant at his home, and prior
19 to giving Miranda warnings, informed him that they believed he was involved in a burglary.
20 Id. at 301, 105 S.Ct. at 1289. Not having been given his Miranda warnings, nor having waived
21 them, the defendant admitted to being there. Id. Subsequently, after being transported back to
22 the police station, defendant was Mirandized, and gave a full statement confessing to the
23 crime. Id. At trial, defendant attempted to suppress the statement, arguing that the first
24 confession “let the cat out of the bag,” thus tainting the subsequent confession. Id. at 302, 105
25 S.Ct. at 1289. The trial court suppressed the pre-warning confession but admitted the post-
26 Miranda warning. Id. The Oregon Appellate Court reversed the ultimate conviction, finding
27 that the post-warning statements were inadmissible because the waiver of Miranda was
28 ineffective. Id. at 303, 105 S.Ct. at 1289–90.

1 The United States Supreme Court reversed the holding of the Oregon Appellate Court.
2 The Court noted that the “fruit of the poisonous tree” doctrine first arose in the context of a
3 Fourth Amendment violation, not a Fifth Amendment violation. Id. at 305–307, 105 S.Ct. at
4 1291–92. The exclusionary rule applied from a Fourth Amendment violation requires there to
5 be an actual violation of a constitutional right, though a Miranda violation may result in the
6 suppression of the statements even if there was indeed no violation of the Fifth Amendment.
7 Id. After looking to the application of the “poisonous tree” doctrine to third-party testimony
8 following a Miranda violation, the Supreme Court addressed the issue when the subsequently
9 obtained evidence is the defendant’s own statement. Id. at 308–09, 105 S.Ct. at 1292–93.
10 There, the Court held, “[t]hough *Miranda* requires that the unwarned admission must be
11 suppressed, the admissibility of any subsequent statement should turn in these circumstances
12 solely on whether it is knowingly and voluntarily made.” Id. at 309, 105 S.Ct. at 1293
13 (emphasis in original).

14 In addressing whether the subsequent admissions were voluntarily made, the Court
15 noted that the failure to give Miranda does not automatically mean that the initial statements
16 were coerced. Id. The Court noted it had “never held that the psychological impact of voluntary
17 disclosure of a guilty secret qualifies as state compulsion or compromises the voluntariness of
18 a subsequent informed waiver.” Id. at 312, 105 S.Ct. at 1294. The Court concluded,
19 When neither the initial nor the subsequent admission is coerced, little justification exists for
20 permitting the highly probative evidence of a voluntary confession to be irretrievably lost to
21 the factfinder.

22 We must conclude that, absent deliberately coercive or improper tactics in
23 obtaining the initial statement, the mere fact that a suspect has made an
24 unwarned admission does not warrant a presumption of compulsion. A
25 subsequent administration of Miranda warnings to a suspect who has given
26 a voluntary but unwarned statement ordinarily should suffice to remove
27 the conditions that precluded admission of the earlier statement. In such
28 circumstances, the finder of fact may reasonably conclude that the suspect

1 made a rational and intelligent choice whether to waive or invoke his
2 rights.

3 Id. at 312–13, 105 S.Ct. at 1294–96.

4 Nearly two decades later, the Supreme Court was faced with another instance of mid-
5 stream Miranda warnings. In Missouri v. Seibert, 542 U.S. 600, 124 S.Ct. 2601 (2004), the
6 Court re-addressed the issue. In that case, the defendant’s son died in his sleep, and she feared
7 that she would be charged with neglect. Id. at 605, 124 S.Ct. at 2605. The defendant and her
8 sons developed a plan to conceal any signs of neglect by incinerating his body inside the
9 mobile home. Id. In the ensuing fire, a mentally ill teenager living with the family, also died.
10 Id. at 604, 124 S.Ct. at 2605–06.

11 The defendant was subsequently interviewed by the police, at 3 A.M. at the hospital
12 where she was being treated for burns. Id. at 604, 124 S.Ct. at 2606. The arresting officer
13 followed specific instructions that he not provide the defendant with her Miranda warnings.
14 Id. The officer questioned her for 30 to 40 minutes, and ultimately procured a confession. Id.
15 at 604–05, 124 S.Ct. at 2606. After a short break, the defendant was given her Miranda
16 warnings, which she waived in writing. Id. at 605, 124 S.Ct. at 2606. Following the written
17 waiver, the detectives confronted the defendant with her recently-given, unwarned statements.
18 Id. Throughout the remainder of the interview, the defendant was confronted with her prior
19 statements, and was essentially re-questioned about the same topics as prior to the warnings.
20 Id. During litigation on the statements, the officer testified that he made a “conscious decision”
21 to withhold the Miranda warnings. Id. at 605–06, 124 S.Ct. at 2606. The officer testified to a
22 specific interrogation technique—question, warn, re-question. Id. at 606, 124 S.Ct. at 2606.
23 The ultimate statements were “largely a repeat of information . . . obtained” previously. Id.
24 (ellipses in original). The Missouri Supreme Court held the post-warning statements
25 inadmissible, distinguishing Elstad on the grounds that there had been an intentional
26 withholding of the Miranda warnings, and that it was specifically intended to deprive the
27 defendant of the effectiveness of the Miranda warning. Id. at 606–07, 124 S.Ct. at 2607.

1 Seibert did not result in one majority opinion, although a majority of the Court
2 concurred in the outcome—affirming the Missouri Supreme Court. See generally id. Four of
3 the justices concurred in both outcome and opinion, with Justice Kennedy concurring in the
4 judgment. Id. at 618–22, 124 S.Ct. at 2614–16. Justice Kennedy’s concurrence narrowed the
5 approach adopted by the remaining plurality. Id.; see People v. Montgomery 375 Ill. App. 3d
6 1120, 1126 (2007). The plurality opinion adopted a multifactor test to determine the
7 effectiveness of “mid-stream” warnings in both “intentional and unintentional two-stage
8 interrogations.” Seibert, 542 U.S. at 621, 124 S.Ct. at 2616. The plurality of the Court looked
9 to the fact that a person who had just confessed, may not truly believe that they had a choice
10 to remain silent, especially when confronted with their unwarned statements. Id. at 611–13,
11 124 S.Ct. at 2610–11 (“Upon hearing warnings only in the aftermath of interrogation and just
12 after making a confession, a suspect would hardly think he had a genuine right to remain silent,
13 let alone persist in so believing once the police began to lead him over the same ground
14 again.”). The interrogation involved was “systematic, exhaustive, and managed with
15 psychological skill. When the police were finished, there was little, if anything, of
16 incriminating potential left unsaid.” Id. at 616, 124 S.Ct. at 2612.

17 Justice Kennedy believed that the plurality’s test, applied to every mid-stream warning,
18 “cuts too broadly.” Id. at 622, 124 S.Ct. at 2616. Instead, Kennedy’s opinion limited the multi-
19 factor effectiveness test only to cases “in which the two-step interrogation technique was used
20 in a calculated way to undermine the *Miranda* warning.” Id. Absent such an intentional
21 technique, the Elstad ruling, in which a valid waiver of Miranda allowed subsequent
22 statements to be admitted, was still applicable. Id.

23 Where there is not a controlling opinion from the United States Supreme Court, such
24 as in the Seibert plurality, most Courts consider the controlling holding to be the narrowest
25 grounds on which the justices concurred. Marks v. United States, 430 U.S. 188, 193, 97 S. Ct.
26 990, 993 (1977); United States v. Long Tong Kiam, 432 F.3d 524, 532 (3rd Cir. 2006) (“This
27 Court applies the Seibert plurality opinion as narrowed by Justice Kennedy.”); United States
28 v. Ollie, 442 F.3d 1135, 1142 (8th Cir. 2006) (“Because Justice Kennedy provided the fifth

1 vote [in Seibert] and his concurrence resolved the case on narrower grounds than did the
2 plurality, it is his reasoning that rules the present case.”); United States v. Briones, 390 F.3d
3 610, 613–14 (8th Cir. 2004) (applying Justice Kennedy’s narrower concurring opinion from
4 Seibert.); People v. Loewenstein, 378 Ill. App. 3d 984, 992 (2008); State v. Lebron, 979 So.
5 2d 1093, 1095 (Ct. App. Fl. 2008); Montgomery, 375 Ill. App. 3d at 1127. The Ninth Circuit
6 has also specifically adopted Justice Kennedy’s narrowed opinion as the controlling opinion
7 from Seibert. United States v. Williams, 435 F.3d 1148, 1158 (9th Cir. 2006) (“This narrower
8 test—that excludes confessions made after a deliberate, objectively ineffective mid-stream
9 warning—represents *Seibert*’s holding. In situations where the two-step strategy was not
10 deliberately employed, *Elstad* continues to govern the admissibility of postwarning
11 statements.”).

12 Understanding the controlling holding from Seibert, that a defendant must show a
13 deliberate two-step process designed to eliminate the effectiveness of Miranda warnings,
14 Defendant here cannot avail himself of the balancing test then demanded by Seibert. Here,
15 Defendant does not attempt to argue that detectives intentionally used a two-step technique to
16 extract a confession to Trotter’s murder, then use that confession to procure a post-warning
17 confession. Indeed, it would be impossible to do so, given the nature of the questioning in
18 Interview #1. Moreover, there was at least a twenty-four-hour break from Interview #1 to
19 Interview #2. Thus, as such, this Court need not undertake any balancing test from Seibert,
20 and Defendant’s subsequent waiver of his Miranda rights allow in his post-warning statements.

21 Defendant’s argument also suffers from a second fatal flaw. The concern the Court
22 addressed in Seibert was the use of an unwarned confession to negate the effectiveness of the
23 Miranda warnings, and secure a second, admissible confession. See generally Seibert, 542
24 U.S. 600, 124 S.Ct. 2601. As addressed above, defendants, to avail themselves of the multi-
25 factor test set forth in Seibert must show a deliberate intention to avoid Miranda’s effects
26 through a two-step technique. More basic to the argument, and equally missing from this case,
27 is the existence of an unwarned confession to be used against a defendant.

1 Seven years after Seibert was decided, the Supreme Court decided a case more
2 analogous to the instant one—Bobby v. Dixon, 565 U.S. 23, 132 S.Ct. 26 (2011). In that case,
3 police were investigating a murder, which also included the sale of the victim’s car. Id. at 24–
4 25, 132 S.Ct. at 27–28. During the investigation, the defendant happened to stop by the police
5 station on an unrelated issue, and when he was given Miranda warnings and asked about the
6 victim’s disappearance, he refused to speak without an attorney. Id. at 25, 132 S.Ct. at 28.
7 Later in the investigation, detectives again spoke with the defendant. Id. this time, detectives
8 specifically chose not to give defendant his Miranda warnings, fearing that he would refuse to
9 speak with them. Id. During that interview, the defendant admitted to signing the victim’s
10 name and cashing the check but claimed that he had permission to do so. Id. The defendant,
11 when challenged, claimed that he did not know anything about the victim’s disappearance,
12 and had nothing to do with it. Id. at 25–26, 132 S.Ct. at 28. The defendant was booked on a
13 forgery charge based upon his statements.

14 Later the same day, the detectives returned to the defendant, armed with knowledge of
15 where the victim was buried. Id. at 26, 132 S.Ct. at 28. This time the defendant was given his
16 Miranda warnings, signed the waiver of rights, and spoke with the detectives. Id. Defendant
17 then gave a full confession to the murder itself. Id. The Appellate Court, on an interlocutory
18 appeal, agreed that the confession to the forgery, given pre-warning, was properly suppressed,
19 but holding that the post-warning confession was admissible. Id. at 26–27, 132 S.Ct. at 28–29.
20 Upon review to the Supreme Court, that Court held the post-warning confession admissible.
21 Id. at 31, 132 S.Ct. at 31. The Court noted several important distinctions between Dixon’s
22 situation, and that in Seibert. Id. The Court noted

23 In this case, no two-step interrogation technique of the type that concerned the Court in
24 Seibert undermined the Miranda warnings Dixon received. In Seibert, the suspect's first,
25 unwarned interrogation left “little, if anything, of incriminating potential left unsaid,” making
26 it “unnatural” not to “repeat at the second stage what had been said before.” **But in this case**
27 **Dixon steadfastly maintained during his first, unwarned interrogation that he had**
28 **“[n]othing whatsoever” to do with Hammer's disappearance. Thus, unlike in *Seibert*,**

1 **there is no concern here that police gave Dixon *Miranda* warnings and then led him to**
2 **repeat an earlier murder confession, because there was no earlier confession to repeat.**
3 Indeed, Dixon contradicted his prior unwarned statements when he confessed to Hammer's
4 murder. Nor is there any evidence that police used Dixon's earlier admission to forgery to
5 induce him to waive his right to silence later. *Id.* (internal citations omitted) (italics in original,
6 bold added).

7 The Court noted there was “simply ‘no nexus’ between Dixon's unwarned admission
8 to forgery and his later, warned confession to murder.” *Id.* Thus the Court concluded that the
9 effectiveness of the *Miranda* warnings provided before the confession were not impacted by
10 any “two-step interrogation technique.” *Id.* at 32, 132 S.Ct. at 32.

11 The *Dixon* rationale—that *Seibert* is not implicated where there is not a pre-warning
12 confession—is not limited to *Dixon*. See, e.g., *State v. Clifton*, 296 Neb. 135, 155–58 (2017)
13 (“Thus, essential to a *Miranda* violation under *Seibert* is an inculpatory prewarning statement
14 that somehow overlaps with statements made in the postwarning interrogation”); *State v.*
15 *Jarnagin*, 351 Ore. 703, 722 (2012); *People v. Brown*, 2012 Mich. App. LEXIS 1630, 2012
16 WL 3556982 (Ct. App. Mich. August 16, 2012) (unpublished decision) (“Hence, just like the
17 United States Supreme Court found in *Bobby*, ‘there is no concern here that police gave [the
18 defendant] *Miranda* warnings and then led him to repeat an earlier murder confession, because
19 there was no earlier confession to repeat. Indeed, [the defendant] contradicted his prior
20 unwarned statements when he confessed to [the] murder.’”); *State v. Martinez*, 2012 Ariz.
21 App. Unpub. LEXIS 1446, *United States v. Isles*, 2015 U.S. Dist. LEXIS 8300, 2015 WL
22 327143 (D.C. V.I. 2015) (“Here, the undisputed testimony — which the Court credits — was
23 that no incriminating statements were made when Detective Cruz first spoke to Defendant
24 Isles. On the contrary, she made *exculpatory* statements indicating that she had no role in the
25 robbery. As a result, by definition, the two-step approach prohibited in *Siebert* is
26 inapplicable.”) (emphasis in original). Similarly, the Nevada Supreme Court, albeit in an
27 unpublished decision, came to the same conclusion. *Young v. State*, 2012 Nev. Unpub. LEXIS
28 860, 2012 WL 2196332 (Order of Affirmance, June 14, 2012) (“[U]nlike in *Seibert*, appellant

1 did not confess prior to being given his *Miranda* warnings. In fact, appellant was adamant that
2 he had done nothing wrong. Therefore, the concerns that existed in *Seibert* did not exist in this
3 case.”).

4 The point made by these courts is well taken—if a defendant does not give an
5 inculpatory statement prior to receiving the Miranda warnings, the concerns about using that
6 unwarned statement in such a way as to minimize the effectiveness of those warnings, simply
7 do not exist. If there are no unwarned inculpatory statements to use, the defendant is not put
8 in a position where he is “hearing warnings only in the aftermath of interrogation and just after
9 making a confession.” Seibert, 542 U.S. at 611–13, 124 S.Ct. at 2610–11.

10 In this case, there were no pre-warning inculpatory statements with which to confront
11 him. Indeed, the first statements Defendant made after his warnings were purely exculpatory.
12 Simply put, this is not an instance where, pre-warning, Defendant was subjected to
13 interrogation that “[w]hen the police were finished, there was little, if anything, of
14 incriminating potential left unsaid.” Id. at 616, 124 S.Ct. at 2612. As such, Defendant’s
15 Statement # 2 should not be suppressed.

16
17 **III. EVIDENCE OF THE POLYGRAPH EXAMINATION CAN BE REMOVED**
18 **FROM DEFENDANT’S SECOND INTERVIEW AND THUS THE**
19 **STATEMENT IS ADMISSIBLE.**

20 In Nevada, polygraph results may be considered reliable when taken under proper
21 conditions and with proper safeguards in place. See Corbett v. State, 94 Nev. 643, 644–45,
22 584 P.2d 704, 705 (1978). However, the safeguards include the requirement of a written
23 stipulation signed by the prosecuting attorney, the defendant, and his counsel providing for
24 defendant’s submission to the test. Corbett, 94 Nev. at 644–45, 584 P.2d at 705. Absent a
25 written stipulation, polygraph evidence may properly be excluded. Domingues v. State, 112
26 Nev. 683, 695, 917 P.2d 1364, 1373 (1996).

27 While the polygraph evidence should be excluded when there is no stipulation in place,
28 that does not mean that statements made to the polygraph examiner or to a detective after an
examination should be excluded. In fact, the Nevada Supreme Court has found that a

1 defendant's statement obtained while preparing for a polygraph examination to be admissible
2 even while the results of the polygraph examination were not. Paulette v. State, 92 Nev. 71,
3 72-73, 545 P.2d 205, 206 (1976). In Paulette, the defendant made "certain incriminating
4 statements" to the examiner. Id. These statements were presented during the jury trial. Id. The
5 results of the examination were not. Id. The Nevada Supreme Court affirmed the conviction
6 and stated that the record reflected that Paulette was advised of his Miranda rights and made
7 a voluntary statement, thus the statements to the polygraph examiner was admissible. Id.

8 Therefore, if Defendant's statements are found to be voluntary, they should be admitted
9 per Nevada case law.

10 CONCLUSION

11 Based upon the foregoing, the State's position is that Defendant's statements were
12 voluntary and thus admissible. However, due the case law, the State would respectfully request
13 that this Court order a hearing pursuant to Denno. However, the State would also respectfully
14 request that pursuant to NRS 174.245 that Dr Brown's notes as well as any testing results be
15 disclosed to the State before said hearing, if the defense intends to call Dr. Brown as a witness
16 at that hearing.

17 DATED this 23rd day of March, 2021.

18 Respectfully submitted,

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

21
22 BY /s/MICHAEL J. SCHWARTZER
MICHAEL J. SCHWARTZER
23 Chief Deputy District Attorney
Nevada Bar #010747
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OPPS

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAYSHAWN D. BAILEY,
#5216003

Defendant.

CASE NO: C-20-347887-1

DEPT NO: XII

**STATE'S AMENDED OPPOSITION TO DEFENDANT'S MOTION TO EXCLUDE
STATEMENTS**

DATE OF HEARING: MARCH 30, 2021
TIME OF HEARING: 11:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MICHAEL J. SCHWARTZER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Exclude Statements.

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

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

7 On April 1, 2020, a preliminary hearing was conducted. At the conclusion of evidence,
8 Judge Letizia bound the case up to district court for trial. An Information was filed on April
9 2, 2020.

10 On April 16, 2020, Defendant was arraigned in district court and invoked his right to a
11 speedy trial.

12 On May 18, 2020, Defendant filed a Petition for Writ of Habeas Corpus. The State filed
13 a Return to the Writ on June 2, 2020. Defendant filed a Reply on June 8, 2020. The Court
14 denied the Petition of Writ on June 11, 2020.

15 The Defendant’s trial date was vacated and continued to September 28, 2020. The
16 Defendant filed a Motion for Discovery on July 6, 2020 and the State filed a Response on July
17 15, 2020. The Court ruled on the discovery motion on July 21, 2020.

18 On September 23, 2020, Defendant requested a continuance for jury trial and the State
19 had no opposition. Trial was rescheduled for January 4, 2021. That trial date was subsequently
20 vacated due to administrative order. Eventually, a new trial setting of March 22, 2021 was set
21 by the court.

22 On March 3, 2021, Defense requested a continuance which was not opposed by the
23 State. The jury trial was vacated and has not been reset at this time.

24 Defendant’s motion was filed on March 8, 2021, the State responds accordingly.

25 **STATEMENT OF RELEVANT FACTS**

26 On January 19, 2020, the Defendant called 911 stating that a month prior he noticed
27 two people putting something in the sewer up the street from his house. See “Preliminary
28 Hearing Transcript”. The Defendant stated he waited two weeks, went down to the sewer, and

1 found a body. PHT, 21. The Defendant claimed he waited another couple of weeks and his
2 conscience got to him, so he called police. PHT, 21-22. Patrol officers arrived at the scene at
3 the intersection of Fred Brown and Dwayne Stedman. PHT, 21. Officers removed the sewer
4 cover and saw the body below. PHT, 22. Homicide Detectives Yaeger and Embrey arrived at
5 the scene. PHT, 22.

6 Detective Yaeger observed the body inside the sewer, as well as a blue Puppy Chow
7 dog food bag, a plastic bowl, and a fake flower petal. PHT, 24. Detectives confirmed the
8 deceased body missing person Tamyah Trotter ("Trotter"). PHT, 28. Detectives discovered
9 that the Defendant resided three (3) houses from the sewer where Trotter's body was found.
10 PHT, 28. Detectives also discovered that Trotter's house was located on the same street as the
11 Defendant's home and the sewer. PHT, 28.

12 On January 21, 2020, Detectives interviewed Defendant. PHT, 29. Defendant
13 consented to a polygraph examination. PHT, 31. After the polygraph, Detectives re-
14 interviewed the Defendant. PHT, 31. Defendant admitted that on December 12, 2019, he ran
15 into Trotter at a McDonalds near their residences. PHT, 32-33. Defendant claimed Trotter said
16 she had been kicked out of her house and did not have a place to sleep. PHT, 33. Further,
17 Defendant claimed the two exchanged Snapchat information and continued to communicate
18 through the app. PHT, 33. Defendant claimed Trotter asked to come to his house later that
19 night and he agreed. PHT, 33. Defendant stated Trotter came over and they drank a bottle of
20 wine together. PHT, 34.

21 At some point in the night, Defendant claimed Trotter became aggressive and
22 brandished a pink taser. PHT, 34. He stated that he grabbed Trotter and put her in a headlock
23 for approximately ten (10) seconds. PHT, 34. Afterwards, Defendant indicated Trotter's body
24 went limp. PHT, 34. Defendant claimed he tried performing CPR for two (2) hours but
25 Trotter's body turned cold and he thought she was dead. PHT, 35. He hid Trotter's body in his
26 bedroom until the following night. PHT, 35. That night, Defendant admitted that he loaded
27 Trotter's body into a large wheeled garbage can and dumped her body in the sewer. PHT, 35.

1 On January 20, 2020, an autopsy was performed on Trotter's body. PHT, 6. Forensic
2 Pathologist, Dr. Christina Di Loreto ("DiLoreto"), indicated there was possible soft tissue
3 injury and hemorrhage in the left lower extremity. PHT, 10. One of the muscles of the neck
4 had darker discoloration relative to the surrounding tissue. PHT, 10. DiLoreto indicated the
5 discoloration could have resulted from injury or decomposition. PHT, 11. DiLoreto stated that
6 asphyxiation or choking would not necessarily leave a mark on someone's neck depending on
7 how pressure was applied and if the asphyxia is due to compression of internal structures of
8 the neck. PHT, 11. Specifically, if pressure to the carotid artery was applied, there may not be
9 a mark. PHT, 11. DiLoreto indicated that pressure to the carotid artery would result in loss of
10 consciousness within ten to fifteen seconds. PHT, 12. However, pressure that was applied for
11 a couple of minutes could result in death. PHT, 12. DiLoreto determined Trotter's cause of
12 death was homicide by unspecified means. PHT, 15.

13 On January 21, 2020, Detectives executed a search warrant at the Defendant's
14 residence. PHT, 36. Detectives recovered a matching Puppy Chow dog food bag. PHT, 37.
15 They also recovered apparent blood on the carpet and hair. PHT, 37. Blood recovered from
16 Defendant's room matched Trotter's DNA.

17 **Defendant's Statements**

18 **911 Call**¹

19 On January 19, 2020, Defendant called Las Vegas Metropolitan Police Department
20 ("LVMPD") via 9-1-1 at 12:24 pm. He requested a police unit to his residence. He initially
21 told the dispatcher that he believed there was a dead body in the sewer by his house. When
22 asked to clarify, Defendant told the dispatcher that he "went down there (the sewer)" and saw
23 a dead, black female. He went on to tell the dispatcher that he initially saw "somebody put
24 something" in the sewer four weeks before he made the 9-1-1 call. Defendant went on to
25 explain that two weeks after seeing somebody put something in the sewer, he went into the
26 sewer to "check it out" and found the body. He told dispatcher that he did not initially call 9-
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28

¹ These details are taken from the recording which is marked as Exhibit A.

1 1-1 about the body because he “touched her (the body)” and did not want to get into trouble.
2 The dispatcher told Defendant that police will be in contact with him.

3 **1st Statement**

4 After police responded to Defendant’s 9-1-1 call, Trotter’s body was found, and
5 homicide detectives were called to the scene.

6 Detectives Embry and Ravelo interviewed Defendant at LVMPD headquarters. At this
7 point, Defendant was not in custody² and Miranda rights were not provided. Defendant told
8 detectives that he was working at a Wendy’s fast-food restaurant and was taking classes at a
9 local community college. Statement#1, pgs. 37, 44.

10 Defendant expanded on what he told the LVMPD dispatcher. He told detectives that
11 four weeks prior to his 911 call, around the midnight hour, he observed two people put
12 “something inside of the hole.” Statement #1, pg. 5. He told detectives that it was “pitch black”
13 outside, so he could not identify the two individuals. Statement #1, pg. 5. Defendant told
14 detectives that two weeks later, he went into the sewer and observed the body of a black female
15 with his cellular phone light. Statement# 1, pgs. 6, 19-20. Per Defendant, he was in the sewer
16 for less than one minute. Statement#1, pg. 39. He further told detectives that he touched the
17 body in the chest and leg area because he wanted to, “see who it was.” Statement#1, pgs. 23-
18 24. Defendant told detectives that he did not recognize the person. Statement #1, pg. 30. He
19 told the detectives that they would not find any connection between him and the person they
20 found in the sewer. Statement #1, pgs. 30-31.

21 Defendant also told the detectives he did not initially call the police because he was
22 worried that people “in the neighborhood” were going to look at him in a certain “type of
23 way.” Statement #1, pg. 33. Specifically, he told detectives that he worried that people would
24 think he was “snitchin” by calling the police. Statement#1, pg. 45. Defendant eventually called
25 the police because the situation was “stressing” him out. Statement #1, pg. 45.

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² Detective Ravelo noted in the interview that Defendant was not in handcuffs. Statement# 1, pg. 33, 48.

1 Near the end of the interview, Defendant agreed to take a polygraph examination later
2 in the week and voluntarily provided a DNA sample. Statement #1, page 34-35. When the
3 interview was concluded, Defendant was driven back to his residence.

4 **2nd Statement**

5 On January 21, 2020, Detectives Embry and Jaegar picked Defendant up from his
6 residence around 12:00 pm and transported him to LVMPD headquarters for the scheduled
7 polygraph examination. Defendant was read his Miranda rights by the detectives. Statement#
8 2, pg. 3. Moreover, Defendant read the polygraph consent form out loud on the recording.
9 Statement# 2, pg. 4.

10 The homicide detectives left the interview room and the polygraph examiner, Phil
11 Rivera, interviewed Defendant. Defendant told Mr. Rivera that he probably should not be
12 doing the polygraph examination because he believed he was a suspect since it took him two
13 weeks to report the dead body but nevertheless, he continued the interview. Statement #2, pg.
14 33. Mr. Rivera asked Defendant to “walk (him) through” the incident. Statement #2, pg. 35.

15 Defendant told Mr. Rivera that he was smoking marijuana outside on his front porch
16 between 12:00 and 1:00 am, when he noticed two people putting something underground
17 outside his residence. Statement #2, pg. 35-36. Defendant stated the metal manhole cover for
18 the sewer made a loud noise when it was moved, and that the noise was what drew his attention
19 to those people. Statement# 2, pg. 36. He was unable to give any further details of these two
20 people because it was too dark outside. Statement# 2, pg. 36. Defendant said after about two
21 weeks went by, he waited until late at night and looked into the sewer himself, wherein he
22 discovered a dead body. Statement# 2, pg. 39. He climbed into the sewer and manipulated the
23 body, touching the chest and leg area. Statement #2, pg. 40. After another two weeks,
24 Defendant said he called the police because he felt like the person in sewer had a family and
25 they would be worried. Statement #2, pg. 41. Defendant told Mr. Rivera that he did not
26 recognize the body in the sewer. Statement #2, pg. 45.

27 After this discussion, the polygraph examination was conducted. Statement #2, pgs. 61-
28 75. Mr. Rivera informed Defendant that he failed the polygraph examination. Statement# 2,

1 pg. 75. Per Mr. Rivera, Defendant specifically failed on the part of whether he (Defendant)
2 placed Trotter in the sewer. Statement # 2, pgs. 76-85. Defendant initially continued to deny
3 that he placed Trotter in the sewer. Mr. Rivera informed the homicide detectives of the
4 polygraph examination results and left the room. Statement# 2, pg. 108-109.

5 The homicide detectives proceeded to interview Defendant again. They asked
6 Defendant if Trotter overdosed at a friend's house. Statement #2, pg. 111. They told Defendant
7 if Trotter overdosed and he panicked, he would go home that day. Statement #2, pg. 111. In
8 response, Defendant told the detectives that, "I'm not saying I'm – I didn't do it." Statement
9 #2, pg. 111. Moreover, Defendant told detectives that he still believed he would be culpable
10 as an "accessory." Statement #2, pg. 111.

11 Detectives told Defendant that they did not believe that he killed Trotter but that "a
12 buddy...(who) called in a state of panic and, you being a good friend, helped." Statement #2,
13 pg. 113. They also told Defendant that his story that there were no fluids in the sewer when he
14 checked on Trotter's body was not possible, since Trotter's body plugged the sewer drain
15 when it was placed in the sewer. Statement #2, pg. 113. After confronting Defendant with this
16 inaccuracy in his story, Detective Embry appealed to Defendant to tell them what happened
17 so the family could have some closure. Statement #2, pg. 115. Defendant continued to deny
18 being involved at this point. Statement #2, pg. 120.

19 A few minutes later, Defendant tell the detectives that he was "ready now" and that the
20 detectives need to arrest because he "did some foul shit." Statement #2, pg. 124. He told
21 detectives that on the night of December 12, 2019, he was playing craps at a local casino and
22 lost some money. Statement #2, pg. 125. Afterwards, he went to the McDonalds near his
23 residence where he ran into "Tamiya" (Trotter). Statement #2, pg. 126. He told detectives that
24 Trotter was in the McDonalds crying because her family had kicked her out of the house.
25 Statement #2, pg. 126. After talking with Trotter for a while, Defendant said he volunteered
26 his place as somewhere Trotter could stay for the night. Statement#2, pg. 126. Trotter was
27 reluctant because "she was talking to her boyfriend." Statement#2, pg. 126. Defendant said he
28 gave Trotter his Snapchat account name and left the McDonalds alone. Statement #2, pg. 127.

1 Sometime later in the night, Defendant said Trotter contacted him via Snapchat and asked if
2 she could come over Defendant's residence. Statement #2, pg. 128.

3 Defendant told detectives that he snuck Trotter into his residence that he shares with
4 his grandmother through the back gate. Statement #2, pg. 128. Around 10 pm that night,
5 Defendant said he took a Xanax and was drinking some wine while watching a movie with
6 Trotter. Statement #2, pg. 128-129. Trotter also had some wine but not Xanax. Statement #2,
7 pgs. 133-134 Defendant said he was "barred out" and Trotter started to make him feel
8 uncomfortable because she was playing with a pink taser. Statement #2, pgs. 129, 135. He told
9 detectives that Trotter would aim the taser in his direction, which "triggered" him. Statement
10 #2, pg. 129-130. This led to a verbal argument between Defendant and Trotter. Statement #2,
11 pgs. 129-130.

12 Defendant said Trotter got near him with the taser, so he put her in a "chokehold for,
13 like, ten seconds." Statement #2, pg. 131, 135. Per Defendant, Trotter dropped and was
14 unresponsive. Statement #2, pg. 131. He told detectives that he tried to help her with CPR that
15 he "learned from school" but was unable to revive her. Statement #2, pg. 131. He told the
16 detectives that he did not call for medical help because he panicked and believed he would be
17 arrested for murder. Statement #2, pgs. 131-132. Afterwards, Defendant told detectives that
18 he sat in his room for hours thinking he "threw his life away for no reason" and that he "just
19 did this to this girl for no reason." Statement #2, pg. 132.

20 Defendant told detectives he threw away Trotter's belongings at the Pearson
21 Community Center. Statement #2, pgs. 132-133. The next night, Defendant told detectives
22 that he transported Trotter's body with a trash can and put her in the sewer. Statement #2, pgs.
23 140-141. Defendant noticed that some of Trotter's blood was on his floor as well. Statement
24 #2, pg. 146.

25 Near the end of the interview, Defendant told detectives that he could not "lie to y'all
26 (the police) anymore" because he had "remorse" for what happened. Statement #2, pg. 143-
27 144. He also told detectives that he believed Trotter's family deserved to know the truth.
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1 Statement #2, pg. 144. At the end of the interview Defendant was placed into custody.
2 Statement# 2, p. 160.

3 4 **ARGUMENT**

5 **I. DEFENDANT'S STATEMENT WAS VOLUNTARY, AND THE** 6 **STATEMENT SHOULD BE ADMITTED AT TRIAL**

7 Once voluntariness of a confession has been raised as an issue, there must be a hearing
8 pursuant to Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774 (1964), before an accused's
9 statements are brought before a jury. At this hearing, the Court must hear evidence concerning
10 what the defendant told the police and the circumstances under which the defendant made the
11 statements. The Court must then decide (1) whether his statement was voluntary using the
12 totality of the circumstances, and (2) whether Miranda was violated. In this regard, Nevada
13 adopted the "Massachusetts rule." See Grimaldi v. State, 90 Nev. 89, 518 P.2d 615 (1974). It
14 is the burden of the defendant to ask for such a hearing. See Wilkins v. State, 96 Nev. 367,
15 372, 609 P.2d 309, 312 (1980).

16 The State's burden of proof at a Jackson v. Denno hearing is a preponderance of the
17 evidence, both with respect to voluntariness (Brimmage v. State, 93 Nev. 434, 567 P.2d 54
18 (1977), Falcon v. State, 110 Nev. 530, 874 P.2d 772 (1994)), and with respect to Miranda.
19 Falcon, 110 Nev. 530, 874 P.2d 772. In making this determination, the Court is to look at the
20 totality of the circumstances. See Alward v. State, 112 Nev. 141, 912 P.2d 243 (1996);
21 Passama v. State, 103 Nev. 212, 735 P.2d 321 (1987).

22 If the Court finds that the statement was involuntary, it ceases to exist legally and cannot
23 be used for any purpose. Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408 (1978). If it was
24 voluntary but Miranda was violated, it can only be used for impeachment if the defendant
25 testifies and contradicts the statement. Harris v. New York, 401 U.S. 222, 91 S.Ct. 643 (1971);
26 Oregon v. Hass, 420 U.S. 714, 95 S.Ct. 1215 (1975); McGee v. State, 105 Nev. 718, 782 P.2d
27 1329 (1989).

28 When a defendant is fully advised of his Miranda rights and makes a free, knowing and
voluntary statement to the police, such statements are fully admissible at trial. Miranda v.

1 Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966); Stringer v. State, 108 Nev. 413, 417, 836 P.2d
2 609, 611-612 (1992). *Coercive police conduct is a "necessary predicate" to a finding that a*
3 *Defendant's statement is involuntary such that its admission violates the Defendant's Due*
4 *Process rights.* Colorado v. Connelly, 479 U.S. 157, 167, 107 S.Ct. 515, 522 (1986)(emphasis
5 added).

6 "A confession is admissible only if it is made freely and voluntarily, without
7 compulsion or inducement." Franklin v. State, 96 Nev. 417, 421, 610 P.2d 732, 734-35 (1980).
8 In order to be considered voluntary, a confession must be the product of free will and rational
9 intellect. Blackburn v. Alabama, 361 U.S. 199, 208, 80 S. Ct. 274, 280 (1960). A confession
10 is involuntary if it is the product of physical intimidation or psychological torture. Townsend
11 v. Sain, 372 U.S. 293, 307, 83 S. Ct. 745, 754 (1963). To determine the voluntariness of a
12 confession, the court must consider the effect of the totality of the circumstances on the will
13 of the defendant. Passama, 103 Nev. at 213, 735 P.2d at 323. Essentially, the question is
14 whether the defendant's will was overborne when he confessed. Id.

15 In Passama, *supra*, the Nevada Supreme Court, citing Schneckloth v. Bustamonte, 412
16 U.S. 218, 93 S.Ct. 2041 (1973), delineated the following factors to be considered when
17 evaluating the voluntariness of a confession:

18 the youth of the accused; his lack of education or his low
19 intelligence; the lack of any advice of constitutional rights; the
20 length of detention; the repeated and prolonged nature of
21 questioning; and the use of physical punishment such as the
22 deprivation of food or sleep.

22 Id.

23 The Nevada Supreme Court has examined whether a confession was voluntary or not
24 on several occasions. See e.g., Franklin, 96 Nev. at 421, 610 P.2d at 735 (detective's
25 statements did not amount to promises of leniency inducing defendant to confess, thereby
26 rendering defendant's confession involuntary, where detective promised to release defendant
27 on his own recognizance if he cooperated with authorities from another state and to
28 recommend lighter sentences); Barren v. State, 99 Nev. 661, 664, 669 P.2d 725, 727 (1983)

(detective's statement to appellant that he would be "going home" was not a promise of leniency, but rather an ambiguous, but innocuous statement that detective would drive appellant home after the interview); Chambers v. State, 113 Nev. 974, 981, 944 P.2d 805, 809 (1997) (where defendant walked into hospital and shouted to anyone around that there was a dead body in his hotel room, and later claimed he did so only because he was intoxicated and not well rested but appeared relatively coherent in his interactions with police, his confession was not involuntary where he was questioned for four hours after having been stabbed).

In the instant case, after consideration of the totality of the circumstances, the record clearly demonstrates that Defendant's confession was made freely and voluntarily, and it should therefore not be suppressed.

II. DEFENDANT'S FIFTH AMENDMENT RIGHTS WERE NOT VIOLATED

Defendant claims that his statement was involuntary because his "intellectual disability and suggestibility" combined with "interrogation tactics" overborne his will and violated his due process rights. However, Defendant's statements when reviewed in the required totality of circumstances context were voluntary, and thus admissible.

Defendant heavily relies on U.S. v. Preston, 751 F.3d 1008 (9th Cir. 2014). In that case, the Ninth Circuit stated that a defendant's age, intellectual disability, lack of sophistication and interrogation techniques are all factors to consider while determining if a confession was involuntary. The defendant in Preston had an IQ of sixty-five, took special education classes until he dropped out of school, and had significant problems with "verbal communication and comprehension." Preston, 751 F.3d at 1010. After reviewing the interview and the suppression hearing, the Preston Court found that the defendant's severe intellectual disability, police officer's threats that their questions will not end, and false promises of leniency and confidentiality led to an involuntary confession. Preston, 751 F.3d at 1027-1028. The Preston court pointed out defendant's adopted answers that were "demonstrably false" as strong evidence of defendant Preston's suggestibility. Id., at 1026.

There are numerous ways this case is easily distinguishable from Preston. In Preston, the defendant's disability was obvious in his interview. Specifically, the defendant did not

1 understand what the word “disabled” meant and agreed that he was unable to finish school
2 because of his intellectual disability. Preston, 751 F.3d at 1021. Moreover, the investigators in
3 Preston used questions that heavily suggested an answer that were adopted by the defendant.
4 Preston, 751 F.3d at 1024-1025. Some of these answers were proven to be demonstrably false.
5 Preston, 751 F.3d at 1026. Moreover, the officers in Preston misled the defendant into
6 believing his written confession was “just an apology note to the (victim)” and that it would
7 “never leave the folder or the United States Attorney’s office.” Id.

8 In this case, Defendant’s “disability” was not obvious to the detectives. Defendant had
9 a job, an expansive smart phone that he was paying for and was enrolled at a local community
10 college. He also questioned some of the detective’s statements indicating he was not just going
11 along with questions being asked by them. He also used words like “accessory” in the proper
12 context. While detectives did use questions that would suggest an answer with Defendant.
13 Defendant *did not* adopt the answers suggested by the question but instead told detectives
14 another version of events. He also provided detectives with several answers the have been
15 proven to be true. For example, he told detectives the name of the victim (before she was
16 identified), that they met at a McDonalds³, that her blood would be located inside of his room⁴
17 and that she had a pink taser⁵. Finally, Defendant had no illusion that his statement would be
18 kept secret like the defendant in Preston. This is demonstrated from his statement where he
19 showed great concern about what people would think of him when the statement was to be
20 released.

21 Additionally, a review of Defendant’s kites from Clark County Detention Center
22 demonstrates that Defendant is not someone who just goes along to avoid conflict. In the kites,
23 Defendant request house arrest due to the pandemic and an underlying medical issue.
24 Moreover, a review of the kites show Defendant knows the process for cashing checks,
25 accessing the phone at the jail and how to make requests for case law. Defendant followed up
26 with the jail to make sure he received the case law he was looking for in his requests.

27 ³ Video surveillance and phone records demonstrate both Defendant and victim were at the McDonalds located at 1003
28 E. Lake Mead on December 12, 2019.

⁴ This has been confirmed by DNA results

⁵ Trotter was carrying a pink taser per her older sister.

1 Defendant also made several requests to replace missing or damaged items such as glasses and
2 shoes. Finally, Defendant was also able to question detention center employees regarding
3 missing food items. Defendant's kites clearly demonstrate that he is not someone who's lack
4 of intelligence (as claimed by Defendant's motion) stops him from advocating for himself.⁶

5 Therefore, Defendant's "intellectual disability and suggestibility" is not enough to
6 show that detectives overborne his will and got an involuntary confession. As for other factors,
7 Defendant was about twenty-three years old at the time of the interview and graduated from
8 high school⁷. Defendant had at least two jobs per his interview, one at Amazon and later one
9 at Wendy's. He also was able to enroll in community college courses. Moreover, Defendant
10 was advised of his Miranda rights and was not subject to any physical punishment such as
11 deprivation of food or sleep. All these factors favor not excluding the statement.

12 Finally, Defendant claims that his interview lasted over six and half hours. That would
13 be incorrect for this analysis. Per the Officer's Report, Defendant was picked up at his house
14 around 12:00 pm. There is no indication in the record that Defendant was sleep deprived or
15 under the influence of any substance during the interview. He was brought into the polygraph
16 examination room at 12:21 pm. There is no indication that any statements were taken from
17 Defendant before 12:21 pm. Defendant confesses to his involvement in the matter around 2:49
18 pm. Thus, the confession occurred after about two and half hours of questioning.⁸ Defendant
19 was handcuffed and arrested at 3:55 pm.

20 In Chambers v State, 113 Nev. 974, 944 P.2d 805 (1997), the Supreme Court of Nevada
21 discussed the admissibility of confessions and statements when made after a defendant is
22 advised of his Miranda rights. In that case, Chambers, confessed after four hours of
23 questioning to murdering a man in his hotel room. Defendant also had a stab wound and
24 claimed to be intoxicated during the interview. Ultimately, the Nevada Supreme Court
25 affirmed the trial court's decision to allow the statement into evidence. The Chambers Court

26
27 ⁶ Kites are attached as Exhibit B.

28 ⁷ Defendant claims in his motion that his struggle with graduation had to do with his intellectual disability. Defendant told detectives that he did not initially graduate from high school due to hanging out with the "wrong crowd." Statement #1, pg. 41.

⁸ See Exhibit C, Audio/Video of Statement #2.

1 found that Chambers was not subject to any physical coercion or emotional overreaching. That
2 his answers to questions were also intelligent and logical. It also noted that Chambers was
3 treated politely by the officers, and the transcript of the interview reveals that no coercive
4 interrogation techniques were employed. Thus, his confession was deemed voluntary.
5 Chambers, 113 Nev. at 980-981.

6 Similar to Chambers, Defendant was read his Miranda rights, was not subject to
7 physical coercion or emotional overreaching. Moreover, he answered the detectives
8 questioning intelligently and logically based on the question. He was questioned for close to
9 four hours like Chambers, but he confessed after only about two and half hours of questions.
10 Thus, while considering the totality of the circumstances in light with the case law,
11 Defendant's statement should not be suppressed.

12 **III. DEFENDANT'S MIRANDA RIGHTS WERE NOT VIOLATED**

13
14 Defendant asserts that both interviews need to be suppressed because Defendant was not
15 read in his Miranda rights during Interview #1 which occurred two days prior to Interview #2.
16 However, Defendant was not in custody for purposes of Miranda for Interview #1 and was
17 clearly read his Miranda rights before Interview #2. Thus, Defendant's motion should be
18 denied.

19 **A. Defendant Was Not in Custody for Interview #1.**

20 As this Court is aware, "Miranda warnings are "required when a suspect is subjected to
21 a custodial interrogation." Archanian v. State, 122 Nev. 1019, 1038, 145 P.3d 1008, 1021
22 (2006). A defendant is "in custody" for purposes of Miranda if he or she has been formally
23 arrested or his or her freedom has been restrained to "the degree associated with a formal arrest
24 so that a reasonable person would not feel free to leave." State v. Taylor, 114 Nev. 1071, 1082,
25 968 P.2d 315, 323 (1998). "Custody is determined by the totality of the circumstances,
26 'including the site of the interrogation, whether the objective indicia of an arrest are present,
27 and the length and form of the questioning.'" Carroll v. State, 371 P.3d 1023, 1032 (2016).
28 Importantly, an "individual is not in custody for Miranda purposes if the police are merely

1 asking questions at the scene of the crime or where an individual questioned is merely the
2 focus of a criminal investigation.” Carroll, 371 P.3d at 1032 (internal citations omitted).

3 1. Site of Interrogation

4 The Nevada Supreme Court has discussed factors related to the site of interrogation
5 which are relevant to the determination of whether an individual is in custody. Most recently,
6 in Carroll, the court discussed distinctions between the circumstances of Carroll, where the
7 court found a suspect was in custody, and those in Silva v. State, 113 Nev. 1365, 951 P.2d 591
8 (1997), where the court found a suspect was not in custody.

9 The Nevada Supreme Court recognizes that the fact that questioning occurs at a police
10 station "does not automatically mean that [a suspect] was in custody." Silva, 113 Nev. at 1370,
11 951 P.2d at 594. Instead, the length of time of the questioning, whether the police withheld
12 food or drink from a suspect or made promises to the suspect are factors which can suggest
13 custodial status. Id. at 1370, 951 P.2d at 594. The position of the parties in the interview room
14 relates to whether a suspect is in custody for the court. If the room is small and the suspect is
15 the furthest from the door, the “environment” suggests custody according to the court. Carroll,
16 371 P.3d at 1032. In addition, if detectives do not allow an individual to use their phone or
17 refuse to let him leave upon request to do so, the individual is more likely to be deemed in
18 custody for purposes of Miranda. Id. Finally, if detectives promise to investigate aspects of
19 a suspect’s claim, it is suggestive of custodial status, according to the court. Id.

20 In the instant case, the police did not question Defendant for a very lengthy amount of
21 time. As the person who reported the dead body, it is not unusual for police to interview
22 Defendant. The entire interview lasted less than an hour. In addition, they never denied
23 Defendant food or drink. Defendant had access to his phone and was not in handcuffs. He
24 was told repeatedly that he would be driven home and in fact was driven home after the
25 interview. The detectives even told Defendant how he would be listed as witness in the arrest
26 report since Defendant told the detectives he was uncomfortable even being involved with the
27 case due to the neighborhood. Statement#1, pg. 59-60. At this point, Defendant is clearly not
28 seen as a suspect but someone who could provide information for the investigation.

1 2. Objective indicia of arrest

2 The Nevada Supreme Court has stated that objective “indicia of arrest comprise the
3 following:

4 (1) whether the suspect was told that the questioning was voluntary or that he
5 was free to leave; (2) whether the suspect was not formally under arrest; (3)
6 whether the suspect could move about freely during questioning; (4) whether
7 the suspect voluntarily responded to questions; (5) whether the atmosphere of
8 questioning was police-dominated; (6) whether the police used strong-arm
9 tactics or deception during questioning; and (7) whether the police arrested the
10 suspect at the termination of questioning.
11

12
13 Carroll, 371 P.3d at 1033, citing Taylor, 114 Nev. 1071, 1082 n.1, 968 P.2d 315, 323

14
15 n.1.

16 In the instant case, detectives told Defendant that the questioning was voluntary. Page
17 4. Defendant was not under arrest. He was never handcuffed and responded to questions
18 voluntarily. The detectives removed him from the crime scene where family members and
19 friends of the victim were present to avoid any conflict. The detectives did not yell at or
20 threaten Defendant; the questioning was not police dominated. In fact, Defendant asked the
21 detectives almost as many questions as they asked Defendant. At the end of the interview,
22 Defendant was not arrested and was driven back to his residence.

23
24 3. Length and Form of the Questioning

25 The length and form of the questioning also indicate that Defendant was not in custody.
26 The interview was not protracted, and the questioning was subdued and methodical. The
27 detectives did not threaten Defendant. Unlike Carroll, Defendant did not experience a series
28 of questioners. The two detectives sat with Defendant and conducted all the questioning

1 themselves. They did not take breaks to switch who was doing the questioning. It was a
2 subdued conversation and one that would be typical of a witness not a primary suspect. At no
3 time was the questioning aggressive or intimidating. This factor therefore weighs in favor of
4 Defendant not being in custody at the time of the interview.

5 Thus, when considering all the circumstances, Defendant was not in custody per
6 Miranda and therefore Statement #1 should not be suppressed.

7 B. Defendant Was Read His Miranda Rights in Interview #2

8 Defendant's Miranda rights were administered in the beginning of Interview #2.
9 Interview #2, pg. 2-3 Missouri v. Seibert, 542 U.S. 600, 124 S.Ct. 2601 (2004), discusses the
10 proposition that anytime Miranda warnings are given part-way into the interview, the
11 subsequent waiver is invalid, and the statements must be suppressed. However, this case, as
12 discussed below, does not involve a Seibert violation.

13 Any honest discussion of Seibert requires discussion of another case—Oregon v.
14 Elstad, 470 U.S. 298, 105 S. Ct. 1285 (1985). The question presented in Elstad was “whether
15 an initial failure of law enforcement officers to administer the warnings required by Miranda
16 v. Arizona, . . . without more, ‘taints’ subsequent admissions made after a suspect has been
17 fully advised of and has waived his Miranda rights.” Id. at 300, 105 S.Ct. at 1288 (internal
18 citation omitted). In Elstad, the police initially met with the defendant at his home, and prior
19 to giving Miranda warnings, informed him that they believed he was involved in a burglary.
20 Id. at 301, 105 S.Ct. at 1289. Not having been given his Miranda warnings, nor having waived
21 them, the defendant admitted to being there. Id. Subsequently, after being transported back to
22 the police station, defendant was Mirandized, and gave a full statement confessing to the
23 crime. Id. At trial, defendant attempted to suppress the statement, arguing that the first
24 confession “let the cat out of the bag,” thus tainting the subsequent confession. Id. at 302, 105
25 S.Ct. at 1289. The trial court suppressed the pre-warning confession but admitted the post-
26 Miranda warning. Id. The Oregon Appellate Court reversed the ultimate conviction, finding
27 that the post-warning statements were inadmissible because the waiver of Miranda was
28 ineffective. Id. at 303, 105 S.Ct. at 1289–90.

1 The United States Supreme Court reversed the holding of the Oregon Appellate Court.
2 The Court noted that the “fruit of the poisonous tree” doctrine first arose in the context of a
3 Fourth Amendment violation, not a Fifth Amendment violation. Id. at 305–307, 105 S.Ct. at
4 1291–92. The exclusionary rule applied from a Fourth Amendment violation requires there to
5 be an actual violation of a constitutional right, though a Miranda violation may result in the
6 suppression of the statements even if there was indeed no violation of the Fifth Amendment.
7 Id. After looking to the application of the “poisonous tree” doctrine to third-party testimony
8 following a Miranda violation, the Supreme Court addressed the issue when the subsequently
9 obtained evidence is the defendant’s own statement. Id. at 308–09, 105 S.Ct. at 1292–93.
10 There, the Court held, “[t]hough *Miranda* requires that the unwarned admission must be
11 suppressed, the admissibility of any subsequent statement should turn in these circumstances
12 solely on whether it is knowingly and voluntarily made.” Id. at 309, 105 S.Ct. at 1293
13 (emphasis in original).

14 In addressing whether the subsequent admissions were voluntarily made, the Court
15 noted that the failure to give Miranda does not automatically mean that the initial statements
16 were coerced. Id. The Court noted it had “never held that the psychological impact of voluntary
17 disclosure of a guilty secret qualifies as state compulsion or compromises the voluntariness of
18 a subsequent informed waiver.” Id. at 312, 105 S.Ct. at 1294. The Court concluded,
19 When neither the initial nor the subsequent admission is coerced, little justification exists for
20 permitting the highly probative evidence of a voluntary confession to be irretrievably lost to
21 the factfinder.

22 We must conclude that, absent deliberately coercive or improper tactics in
23 obtaining the initial statement, the mere fact that a suspect has made an
24 unwarned admission does not warrant a presumption of compulsion. A
25 subsequent administration of Miranda warnings to a suspect who has given
26 a voluntary but unwarned statement ordinarily should suffice to remove
27 the conditions that precluded admission of the earlier statement. In such
28 circumstances, the finder of fact may reasonably conclude that the suspect

1 made a rational and intelligent choice whether to waive or invoke his
2 rights.

3 Id. at 312–13, 105 S.Ct. at 1294–96.

4 Nearly two decades later, the Supreme Court was faced with another instance of mid-
5 stream Miranda warnings. In Missouri v. Seibert, 542 U.S. 600, 124 S.Ct. 2601 (2004), the
6 Court re-addressed the issue. In that case, the defendant’s son died in his sleep, and she feared
7 that she would be charged with neglect. Id. at 605, 124 S.Ct. at 2605. The defendant and her
8 sons developed a plan to conceal any signs of neglect by incinerating his body inside the
9 mobile home. Id. In the ensuing fire, a mentally ill teenager living with the family, also died.
10 Id. at 604, 124 S.Ct. at 2605–06.

11 The defendant was subsequently interviewed by the police, at 3 A.M. at the hospital
12 where she was being treated for burns. Id. at 604, 124 S.Ct. at 2606. The arresting officer
13 followed specific instructions that he not provide the defendant with her Miranda warnings.
14 Id. The officer questioned her for 30 to 40 minutes, and ultimately procured a confession. Id.
15 at 604–05, 124 S.Ct. at 2606. After a short break, the defendant was given her Miranda
16 warnings, which she waived in writing. Id. at 605, 124 S.Ct. at 2606. Following the written
17 waiver, the detectives confronted the defendant with her recently-given, unwarned statements.
18 Id. Throughout the remainder of the interview, the defendant was confronted with her prior
19 statements, and was essentially re-questioned about the same topics as prior to the warnings.
20 Id. During litigation on the statements, the officer testified that he made a “conscious decision”
21 to withhold the Miranda warnings. Id. at 605–06, 124 S.Ct. at 2606. The officer testified to a
22 specific interrogation technique—question, warn, re-question. Id. at 606, 124 S.Ct. at 2606.
23 The ultimate statements were “largely a repeat of information . . . obtained” previously. Id.
24 (ellipses in original). The Missouri Supreme Court held the post-warning statements
25 inadmissible, distinguishing Elstad on the grounds that there had been an intentional
26 withholding of the Miranda warnings, and that it was specifically intended to deprive the
27 defendant of the effectiveness of the Miranda warning. Id. at 606–07, 124 S.Ct. at 2607.

1 Seibert did not result in one majority opinion, although a majority of the Court
2 concurred in the outcome—affirming the Missouri Supreme Court. See generally id. Four of
3 the justices concurred in both outcome and opinion, with Justice Kennedy concurring in the
4 judgment. Id. at 618–22, 124 S.Ct. at 2614–16. Justice Kennedy’s concurrence narrowed the
5 approach adopted by the remaining plurality. Id.; see People v. Montgomery 375 Ill. App. 3d
6 1120, 1126 (2007). The plurality opinion adopted a multifactor test to determine the
7 effectiveness of “mid-stream” warnings in both “intentional and unintentional two-stage
8 interrogations.” Seibert, 542 U.S. at 621, 124 S.Ct. at 2616. The plurality of the Court looked
9 to the fact that a person who had just confessed, may not truly believe that they had a choice
10 to remain silent, especially when confronted with their unwarned statements. Id. at 611–13,
11 124 S.Ct. at 2610–11 (“Upon hearing warnings only in the aftermath of interrogation and just
12 after making a confession, a suspect would hardly think he had a genuine right to remain silent,
13 let alone persist in so believing once the police began to lead him over the same ground
14 again.”). The interrogation involved was “systematic, exhaustive, and managed with
15 psychological skill. When the police were finished, there was little, if anything, of
16 incriminating potential left unsaid.” Id. at 616, 124 S.Ct. at 2612.

17 Justice Kennedy believed that the plurality’s test, applied to every mid-stream warning,
18 “cuts too broadly.” Id. at 622, 124 S.Ct. at 2616. Instead, Kennedy’s opinion limited the multi-
19 factor effectiveness test only to cases “in which the two-step interrogation technique was used
20 in a calculated way to undermine the *Miranda* warning.” Id. Absent such an intentional
21 technique, the Elstad ruling, in which a valid waiver of Miranda allowed subsequent
22 statements to be admitted, was still applicable. Id.

23 Where there is not a controlling opinion from the United States Supreme Court, such
24 as in the Seibert plurality, most Courts consider the controlling holding to be the narrowest
25 grounds on which the justices concurred. Marks v. United States, 430 U.S. 188, 193, 97 S. Ct.
26 990, 993 (1977); United States v. Long Tong Kiam, 432 F.3d 524, 532 (3rd Cir. 2006) (“This
27 Court applies the Seibert plurality opinion as narrowed by Justice Kennedy.”); United States
28 v. Ollie, 442 F.3d 1135, 1142 (8th Cir. 2006) (“Because Justice Kennedy provided the fifth

1 vote [in Seibert] and his concurrence resolved the case on narrower grounds than did the
2 plurality, it is his reasoning that rules the present case.”); United States v. Briones, 390 F.3d
3 610, 613–14 (8th Cir. 2004) (applying Justice Kennedy’s narrower concurring opinion from
4 Seibert.); People v. Loewenstein, 378 Ill. App. 3d 984, 992 (2008); State v. Lebron, 979 So.
5 2d 1093, 1095 (Ct. App. Fl. 2008); Montgomery, 375 Ill. App. 3d at 1127. The Ninth Circuit
6 has also specifically adopted Justice Kennedy’s narrowed opinion as the controlling opinion
7 from Seibert. United States v. Williams, 435 F.3d 1148, 1158 (9th Cir. 2006) (“This narrower
8 test—that excludes confessions made after a deliberate, objectively ineffective mid-stream
9 warning—represents *Seibert*’s holding. In situations where the two-step strategy was not
10 deliberately employed, *Elstad* continues to govern the admissibility of postwarning
11 statements.”).

12 Understanding the controlling holding from Seibert, that a defendant must show a
13 deliberate two-step process designed to eliminate the effectiveness of Miranda warnings,
14 Defendant here cannot avail himself of the balancing test then demanded by Seibert. Here,
15 Defendant does not attempt to argue that detectives intentionally used a two-step technique to
16 extract a confession to Trotter’s murder, then use that confession to procure a post-warning
17 confession. Indeed, it would be impossible to do so, given the nature of the questioning in
18 Interview #1. Moreover, there was at least a twenty-four-hour break from Interview #1 to
19 Interview #2. Thus, as such, this Court need not undertake any balancing test from Seibert,
20 and Defendant’s subsequent waiver of his Miranda rights allow in his post-warning statements.

21 Defendant’s argument also suffers from a second fatal flaw. The concern the Court
22 addressed in Seibert was the use of an unwarned confession to negate the effectiveness of the
23 Miranda warnings, and secure a second, admissible confession. See generally Seibert, 542
24 U.S. 600, 124 S.Ct. 2601. As addressed above, defendants, to avail themselves of the multi-
25 factor test set forth in Seibert must show a deliberate intention to avoid Miranda’s effects
26 through a two-step technique. More basic to the argument, and equally missing from this case,
27 is the existence of an unwarned confession to be used against a defendant.

1 Seven years after Seibert was decided, the Supreme Court decided a case more
2 analogous to the instant one—Bobby v. Dixon, 565 U.S. 23, 132 S.Ct. 26 (2011). In that case,
3 police were investigating a murder, which also included the sale of the victim’s car. Id. at 24–
4 25, 132 S.Ct. at 27–28. During the investigation, the defendant happened to stop by the police
5 station on an unrelated issue, and when he was given Miranda warnings and asked about the
6 victim’s disappearance, he refused to speak without an attorney. Id. at 25, 132 S.Ct. at 28.
7 Later in the investigation, detectives again spoke with the defendant. Id. this time, detectives
8 specifically chose not to give defendant his Miranda warnings, fearing that he would refuse to
9 speak with them. Id. During that interview, the defendant admitted to signing the victim’s
10 name and cashing the check but claimed that he had permission to do so. Id. The defendant,
11 when challenged, claimed that he did not know anything about the victim’s disappearance,
12 and had nothing to do with it. Id. at 25–26, 132 S.Ct. at 28. The defendant was booked on a
13 forgery charge based upon his statements.

14 Later the same day, the detectives returned to the defendant, armed with knowledge of
15 where the victim was buried. Id. at 26, 132 S.Ct. at 28. This time the defendant was given his
16 Miranda warnings, signed the waiver of rights, and spoke with the detectives. Id. Defendant
17 then gave a full confession to the murder itself. Id. The Appellate Court, on an interlocutory
18 appeal, agreed that the confession to the forgery, given pre-warning, was properly suppressed,
19 but holding that the post-warning confession was admissible. Id. at 26–27, 132 S.Ct. at 28–29.
20 Upon review to the Supreme Court, that Court held the post-warning confession admissible.
21 Id. at 31, 132 S.Ct. at 31. The Court noted several important distinctions between Dixon’s
22 situation, and that in Seibert. Id. The Court noted

23 In this case, no two-step interrogation technique of the type that concerned the Court in
24 Seibert undermined the Miranda warnings Dixon received. In Seibert, the suspect's first,
25 unwarned interrogation left “little, if anything, of incriminating potential left unsaid,” making
26 it “unnatural” not to “repeat at the second stage what had been said before.” **But in this case**
27 **Dixon steadfastly maintained during his first, unwarned interrogation that he had**
28 **“[n]othing whatsoever” to do with Hammer's disappearance. Thus, unlike in *Seibert*,**

1 **there is no concern here that police gave Dixon *Miranda* warnings and then led him to**
2 **repeat an earlier murder confession, because there was no earlier confession to repeat.**
3 Indeed, Dixon contradicted his prior unwarned statements when he confessed to Hammer's
4 murder. Nor is there any evidence that police used Dixon's earlier admission to forgery to
5 induce him to waive his right to silence later. *Id.* (internal citations omitted) (italics in original,
6 bold added).

7 The Court noted there was “simply ‘no nexus’ between Dixon's unwarned admission
8 to forgery and his later, warned confession to murder.” *Id.* Thus the Court concluded that the
9 effectiveness of the *Miranda* warnings provided before the confession were not impacted by
10 any “two-step interrogation technique.” *Id.* at 32, 132 S.Ct. at 32.

11 The *Dixon* rationale—that *Seibert* is not implicated where there is not a pre-warning
12 confession—is not limited to *Dixon*. See, e.g., *State v. Clifton*, 296 Neb. 135, 155–58 (2017)
13 (“Thus, essential to a *Miranda* violation under *Seibert* is an inculpatory prewarning statement
14 that somehow overlaps with statements made in the postwarning interrogation”); *State v.*
15 *Jarnagin*, 351 Ore. 703, 722 (2012); *People v. Brown*, 2012 Mich. App. LEXIS 1630, 2012
16 WL 3556982 (Ct. App. Mich. August 16, 2012) (unpublished decision) (“Hence, just like the
17 United States Supreme Court found in *Bobby*, ‘there is no concern here that police gave [the
18 defendant] *Miranda* warnings and then led him to repeat an earlier murder confession, because
19 there was no earlier confession to repeat. Indeed, [the defendant] contradicted his prior
20 unwarned statements when he confessed to [the] murder.’”); *State v. Martinez*, 2012 Ariz.
21 App. Unpub. LEXIS 1446, *United States v. Isles*, 2015 U.S. Dist. LEXIS 8300, 2015 WL
22 327143 (D.C. V.I. 2015) (“Here, the undisputed testimony — which the Court credits — was
23 that no incriminating statements were made when Detective Cruz first spoke to Defendant
24 Isles. On the contrary, she made *exculpatory* statements indicating that she had no role in the
25 robbery. As a result, by definition, the two-step approach prohibited in *Siebert* is
26 inapplicable.”) (emphasis in original). Similarly, the Nevada Supreme Court, albeit in an
27 unpublished decision, came to the same conclusion. *Young v. State*, 2012 Nev. Unpub. LEXIS
28 860, 2012 WL 2196332 (Order of Affirmance, June 14, 2012) (“[U]nlike in *Seibert*, appellant

1 did not confess prior to being given his *Miranda* warnings. In fact, appellant was adamant that
2 he had done nothing wrong. Therefore, the concerns that existed in *Seibert* did not exist in this
3 case.”).

4 The point made by these courts is well taken—if a defendant does not give an
5 inculpatory statement prior to receiving the Miranda warnings, the concerns about using that
6 unwarned statement in such a way as to minimize the effectiveness of those warnings, simply
7 do not exist. If there are no unwarned inculpatory statements to use, the defendant is not put
8 in a position where he is “hearing warnings only in the aftermath of interrogation and just after
9 making a confession.” Seibert, 542 U.S. at 611–13, 124 S.Ct. at 2610–11.

10 In this case, there were no pre-warning inculpatory statements with which to confront
11 him. Indeed, the first statements Defendant made after his warnings were purely exculpatory.
12 Simply put, this is not an instance where, pre-warning, Defendant was subjected to
13 interrogation that “[w]hen the police were finished, there was little, if anything, of
14 incriminating potential left unsaid.” Id. at 616, 124 S.Ct. at 2612. As such, Defendant’s
15 Statement # 2 should not be suppressed.

16
17 **III. EVIDENCE OF THE POLYGRAPH EXAMINATION CAN BE REMOVED**
18 **FROM DEFENDANT’S SECOND INTERVIEW AND THUS THE**
19 **STATEMENT IS ADMISSIBLE.**

20 In Nevada, polygraph results may be considered reliable when taken under proper
21 conditions and with proper safeguards in place. *See Corbett v. State*, 94 Nev. 643, 644–45,
22 584 P.2d 704, 705 (1978). However, the safeguards include the requirement of a written
23 stipulation signed by the prosecuting attorney, the defendant, and his counsel providing for
24 defendant’s submission to the test. Corbett, 94 Nev. at 644–45, 584 P.2d at 705. Absent a
25 written stipulation, polygraph evidence may properly be excluded. Domingues v. State, 112
26 Nev. 683, 695, 917 P.2d 1364, 1373 (1996).

27 While the polygraph evidence should be excluded when there is no stipulation in place,
28 that does not mean that statements made to the polygraph examiner or to a detective after an
examination should be excluded. In fact, the Nevada Supreme Court has found that a

1 defendant's statement obtained while preparing for a polygraph examination to be admissible
2 even while the results of the polygraph examination were not. Paulette v. State, 92 Nev. 71,
3 72-73, 545 P.2d 205, 206 (1976). In Paulette, the defendant made "certain incriminating
4 statements" to the examiner. Id. These statements were presented during the jury trial. Id. The
5 results of the examination were not. Id. The Nevada Supreme Court affirmed the conviction
6 and stated that the record reflected that Paulette was advised of his Miranda rights and made
7 a voluntary statement, thus the statements to the polygraph examiner was admissible. Id.

8 Therefore, if Defendant's statements are found to be voluntary, they should be admitted
9 per Nevada case law.

10 CONCLUSION

11 Based upon the foregoing, the State's position is that Defendant's statements were
12 voluntary and thus admissible. However, due the case law, the State would respectfully request
13 that this Court order a hearing pursuant to Denno. However, the State would also respectfully
14 request that pursuant to NRS 174.245 that Dr Brown's notes as well as any testing results be
15 disclosed to the State before said hearing, if the defense intends to call Dr. Brown as a witness
16 at that hearing.

17 DATED this 23rd day of March, 2021.

18 Respectfully submitted,

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

21
22 BY /s/MICHAEL J. SCHWARTZER
MICHAEL J. SCHWARTZER
23 Chief Deputy District Attorney
Nevada Bar #010747
24
25
26
27
28

CD PROVIDED TO COURT

EXHIBIT 'A'

EXHIBIT 'B'

Request Report

Printed: 3/9/2021 7:46:47AM

Request Number:	371727	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 3K 51S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
03/27/2020 02:36 pm		ORIGINAL REQUEST:	
		IS MY CELLPHONE IN MY PROPERTY	
03/28/2020 12:21 pm		CLOSED:	C8505B
		Your property list does not show a cell phone.	
06/03/2020 01:32 pm		FLAG CHANGED	A6887M
		FLAGGED AS OTHER	

Request Number:	371732	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 3K 51S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
06/03/2020 01:06 pm		ACA CODE CHANGED	A6887M
		ACA CODE MAIL OR CORRESPONDENCE	
06/03/2020 01:06 pm		FLAG CHANGED	A6887M
		FLAGGED AS OTHER	
03/28/2020 12:17 pm		CLOSED:	C8505B
		What letter are you referring to? Did you receive a pink slip stating that we placed a letter in your property?	
03/27/2020 02:39 pm		ORIGINAL REQUEST:	
		WHY WAS MY LETTER TAKEN AWAY. I WAS TOLD IT WAS IN TYPED IN BLACK PRINT ON AN COMPUTER	

Request Number:	376006	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 3K 51S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
04/06/2020 02:58 pm		ORIGINAL REQUEST:	
		CAN I GET HOUSE ARREST I HAVE A SERIOUS ASTHMA CONDITION AND THIS VIRUS IS GETTING WORSE AND I SPOKE TO THE SERGANT HE SAID THAT IF YOU HAVE A UNDERLYING DISEASE AND YOU GET THE VIRUS YOU WILL BE FIGHTING FOR YOUR LIFE AND IM REALLY SCARED BECAUSE IM IN A DORM FULL OF INMATES AND I STRONGLY BELIEVE I CAN CATCH THIS DISEASE VERY FAST ITS A HIGH POSSIBILITY AND EVEN WHEN I HAVE A COLD I CAN BARELY BREATHE SO I CAN AMAGINE WHAT THIS VIRUS WILL PUT ME THROUGH SO AM I ELGIBLE FOR HOUSE ARREST	
04/07/2020 07:39 am		CLOSED:	A17637A
		You need to be Court Ordered to House Arrest. Your Lawyer can address this issue with the Court.	

Request Number:	378215	Status: CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 3K 51 S		Current Location:	ST 2P 16 S
Inmate Number:	5216003	Inmate Secondary Number:	2000004298	
<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>	
04/12/2020 07:30 pm		ORIGINAL REQUEST:		
		CAN I HAVE MY RELATIVE COME PICK UP MY WALLET OUT MY PROPERTY		
04/12/2020 07:38 pm		CLOSED:		C16381F
		NO WE ARE NOT RELEASING PROPERTY UNLESS ITS AN EMERGENCY		
Request Number:	386927	Status: CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 3K 34 S		Current Location:	ST 2P 16 S
Inmate Number:	5216003	Inmate Secondary Number:	2000004298	
<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>	
05/07/2020 09:13 pm		ORIGINAL REQUEST:		
		IS IT A POSSIBILITY THAT I CAN RELEASE MY WALLET TO MY MOTHER IT IS AN EMERGENCY. I HAVE A DEBIT CARD AND ID IN THERE THAT I NEED FOR ME TO GET MONEY FOR ME TO BAIL OUT CAN YOU RELEASE MY WALLET FROM PROPERTY		
05/07/2020 11:14 pm		CLOSED:		K18583H
		You will need to ask your module officer for a Property Release Form. Once we receive the completed form, she can come pick it up.		
06/30/2020 12:39 pm		FLAG CHANGED		A6887M
		FLAGGED AS OTHER		
Request Number:	389792	Status: CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 3K 34 S		Current Location:	ST 2P 16 S
Inmate Number:	5216003	Inmate Secondary Number:	2000004298	
<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>	
07/15/2020 03:03 pm		ACA CODE CHANGED		A6887M
		ACA CODE INMATE PROPERTY		
07/15/2020 03:03 pm		FLAG CHANGED		A6887M
		FLAGGED AS OTHER		
05/16/2020 08:09 pm		ORIGINAL REQUEST:		
		I TALK TO SOMEONE ABOUT ME RELEASING MY WALLET TO MY MOTHER I TOLD THEM IT WAS AN EMERGENCY AND SOMEONE TOLD ME THEY WOULD ALLOW HER TO COME GET MY WALLET BUT WHEN SHE TRIED THEY WOULDN'T LET HER IN I FILLED OUT A RELEASE FORM AND EVERYTHING		
05/17/2020 10:46 am		CLOSED:		D17034M
		IF THIS IS THE CASE, YOUR MOTHER SHOULD ADVISE THAT THEY CHECK WITH A SUPERVISOR TO MAKE SURE.		
Request Number:	390010	Status: CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 3K 34 S		Current Location:	ST 2P 16 S
Inmate Number:	5216003	Inmate Secondary Number:	2000004298	
<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>	

Request Number:	390010	Status: CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 3K 34 S		Current Location:	ST 2P 16 S
Inmate Number:	5216003		Inmate Secondary Number:	2000004298
<u>Stamp</u>	<u>Action</u>		<u>User</u>	
	<u>Detail</u>			
05/18/2020 01:05 pm			R16925H	
CLOSED:				
	It is against the vendor's policy to accept personal debit/credit cards from incarcerated inmates. You will have to contact your bank directly to see what options they are able to offer you.			
05/17/2020 08:21 pm				
ORIGINAL REQUEST:				
	Can I deposit money onto my own account using my personal debit/credit card?			
Request Number:	390011	Status: CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 3K 34 S		Current Location:	ST 2P 16 S
Inmate Number:	5216003		Inmate Secondary Number:	2000004298
<u>Stamp</u>	<u>Action</u>		<u>User</u>	
	<u>Detail</u>			
05/17/2020 08:23 pm				
ORIGINAL REQUEST:				
	I HAVE TWO CHECKS AM I ABLE TO CASH THEM IN HERE AND ONTO MY ACCOUNT?			
05/18/2020 01:08 pm			R16925H	
CLOSED:				
	We can put them on your books depending on the type of check (where it comes from, who it is made out to, etc.). We can only determine that once we see the checks. Any check for your account would be subject to a 10-business day hold. If we cannot deposit it to your account, we would put it in your property. Complete and send a Property Release Form to Inmate Accounts so we may retrieve the items from your property bag.			
Request Number:	391261	Status: CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 3K 34 S		Current Location:	ST 2P 16 S
Inmate Number:	5216003		Inmate Secondary Number:	2000004298
<u>Stamp</u>	<u>Action</u>		<u>User</u>	
	<u>Detail</u>			
05/21/2020 03:01 pm			C8505B	
CLOSED:				
	If you want to mail your items home, its all or nothing. We will not pick just a few items. You are allowed to keep your clothing, but that is all.			
05/21/2020 02:58 pm				
ORIGINAL REQUEST:				
	CAN I FILL OUTA PROPERTY RELEASE FORM TO GET MY ID AND MY RED DEBIT CARD FROM MY WALLET SO I CAN MAILTHE ITEMS HOME ?			
07/23/2020 09:51 am			A6887M	
FLAG CHANGED				
FLAGGED AS OTHER				
Request Number:	393234	Status: CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 3K 34 S		Current Location:	ST 2P 16 S
Inmate Number:	5216003		Inmate Secondary Number:	2000004298
<u>Stamp</u>	<u>Action</u>		<u>User</u>	
	<u>Detail</u>			
07/23/2020 02:58 pm			A6887M	
FLAG CHANGED				
FLAGGED AS OTHER				
05/27/2020 08:18 pm				
ORIGINAL REQUEST				
	CAN I MAIL MY WALLET HOME ?			

Request Number:	393234	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 3K 34 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
05/27/2020 11:27 pm			C16381F
CLOSED:			
'T WOULD BE ALL YOUR PERSONAL PROPERTY OR NOTHING			

Request Number:	395302	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 3K 34 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
06/05/2020 09:14 am			S18397D
CLOSED:			
Checks/Money orders are subject to a 10 business day hold. Provided the check/money order clears, funds will be available to you on the afternoon of 06/08/20.			
06/04/2020 07:35 pm			
ORIGINAL REQUEST:			
I HAD TWO CHECKS DEPOSITED ON MAY 22ND AND I UNDERSTAND THAT IT TAKES 10 BUSSINESS DAYS FOR IT TO PROCESS AND TODAY IS THE 10TH DAYAND IT DOESNT SHOW ON MY ACCOUNT MY QUESTION IS HOW MUCH LONGER WILL IT TAKE TO PROCESS ??????			

Request Number:	395853	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 3K 34 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
06/06/2020 05:01 pm			
ORIGINAL REQUEST:			
MAY I RECIEVE A FICTION NOVEL FROM THE AUTHOR NAMED LISA JACKSON ?			
06/08/2020 02:47 pm			ELENA LEGAL LIBRARY
CLOSED:			
Book rotations are currently being modified for the duration of the coronavirus outbreak. Your module will sporadically receive new materials, but we do not provide specific books upon request. Thank you.			

Request Number:	396096	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 3K 34 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
06/08/2020 02:54 pm			ELENA LEGAL LIBRARY
CLOSED:			
The library includes dictionaries in your book rotations, but is unable to provide them upon request. Please continue to check your book rotations for new titles. Thank you.			
06/07/2020 02:21 pm			
ORIGINAL REQUEST:			
MAY I GET A DICTIONARY SENT TO ME ??			

Request Number:	397448	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 3K 34 S			Current Location:	ST 2P 16 S
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
06/11/2020 02:36 pm		ORIGINAL REQUEST:	
		I AM BEING UNLAWFULLY INCARERATED WHO CAN I TALK TO ABOUT MY SITUATION	
06/11/2020 04:08 pm			L17258D
		CLOSED:	
		Please contact your attorney.	

Request Number:	404046	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 3K 34 S			Current Location:	ST 2P 16 S
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
07/06/2020 12:32 pm			JANET SECURUS
		CLOSED:	
		You cant unblock it. The owner of the phone number will need to call Securus Customer Service at (800) 844-6591, to have it unblocked.	
07/03/2020 01:28 pm		ORIGINAL REQUEST:	
		HOW CAN I UNBLOCK A NUMBER THAT ACCIDENTLT RETRICTED MY CALL BY PRESSING THE WRONG NUMBER	

Request Number:	404604	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 3K 34 S			Current Location:	ST 2P 16 S
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
07/05/2020 01:29 pm		ORIGINAL REQUEST:	
		I DIDNT RECIEVE MY TUESDAY ORDER ON JUNE 28TH THE ORDER NUMBER IS 1369066 AND ALSO MORE	
		POEPL IN 3K DIDNT RECIEVE THERES EITHER	
07/07/2020 11:30 am			SCHNEKAARAMARK
		CLOSED:	
		YOUR MISSING ORDERS WERE REPR'NTED	

Request Number:	409114	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 2P 38 S			Current Location:	ST 2P 16 S
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
07/20/2020 11:25 am			SCHNEKAARAMARK
		CLOSED:	
		YOU WERE GIVEN CREDIT	
07/17/2020 10:09 pm		ORIGINAL REQUEST:	
		I DIDNT RECIEVE MY TERIYAKI JACKS LINK ON MY LAST ORDER	

Request Number:	409925	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 2P 38 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
07/20/2020 08:59 pm		ORIGINAL REQUEST:	
		IT WONT LET ME ORDER FOR TOMMOROW IT SAYS 2 ORDERS PER WEEK BUT TODAY IS MONDAY AND ITS A NEW WEEK ?	
07/21/2020 11:30 am		CLOSED:	SCHNEKA ARAMARK
		MONDAY IS NOT A NEW WEEK.	
		YOU ARE ALLOWED TWO ORDERS A WEEK.	
		THE COMMISSARY WEEK STARTS ON THURSDAYS	

Request Number:	417961	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
08/13/2020 08:02 am		CLOSED:	SCHNEKA ARAMARK
		THERE ARE NO RESTRICTIONS ON YOUR ACCOUNT	
08/12/2020 08:11 pm		ORIGINAL REQUEST:	
		WHEN WILL I BE OFF COMMISARY RESTRICTION ?	

Request Number:	419342	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
08/16/2020 09:35 pm		ORIGINAL REQUEST:	
		IS MY GLA**ES ON MY PROPERTY ?	
08/16/2020 09:59 pm		CLOSED:	C16381F
		YES BUT THEY ARE BROKEN	
12/03/2020 02:57 pm		FLAG CHANGED	A6887M
		FLAGGED AS IN FAVOR OF INMATE	
12/03/2020 02:57 pm		ACA CODE CHANGED	A6887M
		ACA CODE INMATE PROPERTY	
09/16/2020 12:23 pm		CLOSED:	J9291R
		THE RESPONSE FROM C16381F IS INCORRECT. THIS ANSWER WAS BASED ON THE ANNOTATION ON THE COMPUTER CONCERNING YOUR PROPERTY; THEY DID NOT PHYSICALLY CHECK THE PROPERTY. YOUR GLASSES WERE GIVEN TO YOU ON 01/27/2020. WE ONLY RECEIVED COMMISARY TO PLACE ON YOUR PROPERTY WAS CABD BOTH TIMES. YOU WILL NEED TO WRITE A GRIEVENCE TO THE FLOOR SGT. TO INVESTIGATE WHERE YOUR GLASSES WENT	

Request Number: 419799	Status: CLOSED	Inmate Name: BAILEY, JAYSHAWN D
Initial Location: ST 4N 16 S	Current Location: ST 2P 16 S	
Inmate Number: 5216003	Inmate Secondary Number: 2000004298	

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
12/02/2020 01:31 pm	ACA CODE CHANGED	ACA CODE INMATE PROPERTY	A6887M
12/02/2020 01:31 pm	FLAG CHANGED	FLAGGED AS OTHER	A6887M
08/18/2020 03:53 pm	CLOSED:	No	M16673F
08/17/2020 10:24 pm	ORIGINAL REQUEST:	IS THERE AN IPHONE 11 IN MY PROPERTY ??	

Request Number: 421906	Status: CLOSED	Inmate Name: BAILEY, JAYSHAWN D
Initial Location: ST 4N 16 S	Current Location: ST 2P 16 S	
Inmate Number: 5216003	Inmate Secondary Number: 2000004298	

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
08/24/2020 01:20 pm	ORIGINAL REQUEST:	I SENT A RELEASE FORM FOR ME TO RECIEVE MY GLA**ES I STILL HAVENT RECIEVED THEM YET ?	
12/15/2020 12:24 pm	ACA CODE CHANGED	ACA CODE INMATE PROPERTY	A6887M
12/15/2020 12:24 pm	FLAG CHANGED	FLAGGED AS OTHER	A6887M
08/24/2020 02:34 pm	CLOSED:	A movement officer has to retrieve any allowable property from the property room.	M16673F

Request Number: 422661	Status: CLOSED	Inmate Name: BAILEY, JAYSHAWN D
Initial Location: ST 4N 16 S	Current Location: ST 2P 16 S	
Inmate Number: 5216003	Inmate Secondary Number: 2000004298	

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
08/27/2020 08:26 am	CLOSED:	call records will be delivered to your unit	DENISE SECURUS
08/26/2020 01:37 pm	ORIGINAL REQUEST:	CAN I GET A PRINT OUT OF MY LAST 20 CALLS	

Request Number: 434102	Status: CLOSED	Inmate Name: BAILEY, JAYSHAWN D
Initial Location: ST 4N 16 S	Current Location: ST 2P 16 S	
Inmate Number: 5216003	Inmate Secondary Number: 2000004298	

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
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Request Number:	434102	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S-	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

[Stamp](#)[Action](#)[Detail](#)[User](#)

09/28/2020 01:09 pm

ORIGINAL REQUEST:

HOW CAN I PRINT OUT CASES ?

09/29/2020 02:53 pm

CLOSED:

ELENA LEGAL LIBRARY

We can print out cases that you need. Please provide the name and citation for the case and we will print it out for you.
Thank you.

Request Number:	434105	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

[Stamp](#)[Action](#)[Detail](#)[User](#)

09/28/2020 02:44 pm

CLOSED:

D17034M

YOUR INVENTORY SHOWS THAT ON 1/27/20 YOUR YELLOW METAL GLASSES WERE SENT TO YOU. THERE ARE
NO GLASSES IN YOUR PROPERTY AT THIS TIME.

09/28/2020 01:34 pm

ORIGINAL REQUEST:

I HAD GLA**ES IN MY PROPERTY WHAT HAPPEN TO THEM ?

12/28/2020 10:57 am

ACA CODE CHANGED

A6887M

ACA CODE INMATE PROPERTY

12/28/2020 10:57 am

FLAG CHANGED

A6887M

FLAGGED AS OTHER

Request Number:	436174	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

[Stamp](#)[Action](#)[Detail](#)[User](#)

10/03/2020 01:36 pm

ORIGINAL REQUEST:

CAN I GET THE CASE PRINT OUT ITS CALLED BROOKEY LEE WEST VS THE STATE OF NEVADA THE CASE
NUMBER IS 38696

10/05/2020 03:15 pm

CLOSED:

JUSTIN LEGAL LIBRARY

Your materials are being printed and will arrive in the mail system soon. Thank you.

Request Number:	436841	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

[Stamp](#)[Action](#)[Detail](#)[User](#)

12/17/2020 08:03 am

ACA CODE CHANGED

M13486H

ACA CODE INMATE PROPERTY

Request Number:	436841	Status: CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S		Current Location:	ST 2P 16 S
Inmate Number:	5216003		Inmate Secondary Number:	2000004298
<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>	
12/17/2020 08:03 am		FLAG CHANGED	M13486H	
		FLAGGED AS OTHER		
10/05/2020 06:30 pm		CLOSED:	C16381F	
		IF YOU PUT IN A PROPERTY RELEASE		
10/05/2020 01:30 pm		ORIGINAL REQUEST:		
		CAN FAMILY COME PICK UP PROPERTY MY MOTHER HAS BEEN TRYING TO PICK UP MY PROPERTY SINCE MAY AND THEY STILL DENIED HER ???		
Request Number:	437320	Status: CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S		Current Location:	ST 2P 16 S
Inmate Number:	5216003		Inmate Secondary Number:	2000004298
<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>	
10/06/2020 02:43 pm		ORIGINAL REQUEST:		
		CAN YOU UNBLOCK THE NUMBER 7027735365 MY MOM ACCIDENTLY RESTRICTED THE JAIL NUMBER SHE IS 79 YEARS OLD SHE DOESNT KNOW HOW TO UNBLOCK IT??		
10/06/2020 05:01 pm		CLOSED:	JANET SECURUS	
		I spoke to Mrs. McNair. The block has been removed.		
Request Number:	437322	Status: CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S		Current Location:	ST 2P 16 S
Inmate Number:	5216003		Inmate Secondary Number:	2000004298
<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>	
10/07/2020 12:22 pm		CLOSED:	JUSTIN LEGAL LIBRARY	
		Your materials are being printed and will arrive in the mail system soon. Thank you.		
10/06/2020 02:45 pm		ORIGINAL REQUEST:		
		CAN I PLEASE GET THE CASE PRINTED AND SENT TO ME ITS LESEAN TARUS COLLINS VS THE STATE OF NEVADA THE CITATION NUMBER IS 69269		
Request Number:	437683	Status: CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S		Current Location:	ST 2P 16 S
Inmate Number:	5216003		Inmate Secondary Number:	2000004298
<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>	
10/07/2020 02:48 pm		ORIGINAL REQUEST:		
		ATTENTION PROPERTY SUPERVISOR I TALK TO AN OFFICER ABOUT MY GLA**ES THAT I HAD IN 2P AND I WENT TO THE HOLE I GOT ROLLED UP AND I BELIEVE THE OFFICERS THREW MY GLA**ES AWAY OR SOMEONE STOLE THEM HOW CAN I FIGURE OUT WHAT HAPPEN TO THEM ?		
12/17/2020 09:59 am		ACA CODE CHANGED	M13486H	
		ACA CODE INMATE PROPERTY		

Request Number:	437683	Status: CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S		Current Location:	ST 2P 16 S
Inmate Number:	5216003		Inmate Secondary Number:	2000004298
<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>	
12/17/2020 09:59 am		FLAG CHANGED	M13486H	
		FLAGGED AS OTHER		
10/08/2020 01:50 pm		CLOSED:	D6284M	
		Your request must be sent to the Floor Sergeant.		
Request Number:	438337	Status: CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S		Current Location:	ST 2P 16 S
Inmate Number:	5216003		Inmate Secondary Number:	2000004298
<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>	
10/09/2020 06:40 am		CLOSED:	DENISE SECURUS	
		new pin is 632547		
10/08/2020 10:19 pm		ORIGINAL REQUEST:		
		CAN I CHANGE MY PIN NUMBER PLEASE ?		
Request Number:	439023	Status: CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S		Current Location:	ST 2P 16 S
Inmate Number:	5216003		Inmate Secondary Number:	2000004298
<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>	
10/11/2020 07:26 am		ORIGINAL REQUEST:		
		MY PIN NUMBER FOR THE PHONE DOESNT WORK : REQUESTED A NEW PIN AND I TRIED TO USE IT AND IT DIDNT WORK?		
10/12/2020 10:30 am		GROUP ASSIGNED CHANGED	L6453R	
		TO INMATE TELEPHONES		
10/12/2020 10:34 am		CLOSED:	JANET SECURUS	
		I just changed your PIN number again. It is 796506		
Request Number:	439665	Status: CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S		Current Location:	ST 2P 16 S
Inmate Number:	5216003		Inmate Secondary Number:	2000004298
<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>	
12/22/2020 11:36 am		ACA CODE CHANGED	M13486H	
		ACA CODE INMATE PROPERTY		
12/22/2020 11:37 am		FLAG CHANGED	M13486H	
		FLAGGED AS OTHER		
10/14/2020 09:32 am		CLOSED:	M16673F	
		The property release form is ready but the person has not been in yet.		

Request Number:	439665	Status: CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S		Current Location:	ST 2P 16 S
Inmate Number:	5216003	Inmate Secondary Number:	2000004298	

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
10/12/2020 10:05 pm		ORIGINAL REQUEST: IS MY PROPERTY RELEASE FORM AVAILABLE SOWEALTHY MCNAIR CAN COME PICK UP ALL MY PROPERTY	

Request Number:	440673	Status: CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S		Current Location:	ST 2P 16 S
Inmate Number:	5216003	Inmate Secondary Number:	2000004298	

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
10/15/2020 08:57 am		ORIGINAL REQUEST: CAN I PLEASE GET THESE TWO CASES PRINTED OUT MIDDLETON VS THE STATE OF NEVADA 31489 AND FRUTIGER VS THE STATE OF NEVADA 25950	
10/19/2020 08:52 am			JUSTIN LEGAL LIBRARY
CLOSED:		Your materials are being printed and will arrive in the mail system soon. Thank you.	

Request Number:	441385	Status: CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S		Current Location:	ST 2P 16 S
Inmate Number:	5216003	Inmate Secondary Number:	2000004298	

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
10/19/2020 09:16 am			IVONNE ARAMARK
CLOSED:		MISSNG ITEMS WILL BE REDELIVERED ONLY IF C.O SIGNS WITH P# AND THE ORIGINAL COMMISSARY RECEIPT IS RETURNED	
10/16/2020 10:39 pm		ORIGINAL REQUEST: ODER NUMBER 31794 I DIDNT RECIEVE BLUE OCEAN BREEZE AND ON ORDER NUMBER 1425846 I DIDNT RECIEVE 4 CHIPS AHOYS COOKIES	

Request Number:	442026	Status: CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S		Current Location:	ST 2P 16 S
Inmate Number:	5216003	Inmate Secondary Number:	2000004298	

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
10/19/2020 07:58 am		ORIGINAL REQUEST: MAY I PLEASE GET THE FOLLOWING CASES PRINTED OUT THNK YOU..... HOOKER VS SHERIFF CLARK COUNTY NEVADA 6987..... WRENN VS SHERIFF CLARK COUNTY NEVADA 6378..... TERTROUS VS SHERIFF CLARK COUNTY NEVADA 7127	
10/21/2020 11:41 am			ELENA LEGAL LIBRARY
CLOSED:		Your research materials are being printed and will arrive in your module through the mail system. Thank you.	

Request Number:	442550	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
10/20/2020 03:13 pm			JANET SECURUS

CLOSED:

A printout fo calls from 9/20/2020 thru 10/20/2020 will be delivered to you.

10/20/2020 01:57 pm

ORIGINAL REQUEST:

CAN I GET A PRINT OUT OF MY CALLS FOR THE LAST 30 DAYS

Request Number:	442552	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
10/20/2020 01:59 pm			

ORIGINAL REQUEST:

HOW CAN I SIGN UP FOR ANGER MANAGEMENT PROGRAM

10/20/2020 02:00 pm

CLOSED:

T7689L

You have been sent self-study packet number 1 with the instruction sheet. Please follow the directions. You can only receive 1 credit every 7 days. You must be sentenced to county time to received credit. Flat sentences cannot earn credit. Once we process your packet we will send the next packet.

Request Number:	443428	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
10/26/2020 07:59 am			JUSTIN LEGAL LIBRARY

CLOSED:

Your materials are being printed and will arrive in the mail system soon. Thank you.

10/22/2020 02:39 pm

ORIGINAL REQUEST:

CAN I PLEASE HAVE THE FOLLOWING CASES PRINTED AZBILL VS THE STATE OF NEVADA 5541 AND HICKS VS SHERIFF CLARK COUNTY NEVADA 5986 AND SIMPSON VS SHERIFF CLARK COUNTY NEVADA 6394 THANK YOU

Request Number:	445019	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
10/26/2020 10:20 pm			

ORIGINAL REQUEST:

DID I RECIEVE SOME PICTURES MY RELATIVE SENT THEM IN LAST WEEK AND I DIDNT RECIEVE THEM ??

10/26/2020 11:12 pm

CLOSED:

C16381F

WE DO NOT HOLD ANY INCOMING MAIL UNLESS IT VIOLATES POLCY IF THAT WAS THE CASE YOU WOULD HAVE RECEIVED A PROPERTY RECEIPT

12/30/2020 08:23 am

FLAG CHANGED

FLAGGED AS OTHER

M13486H

Request Number:	445019	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
12/30/2020 08:23 am			M13486H
	ACA CODE CHANGED		
	ACA CODE MAIL OR CORRESPONDENCE		

Request Number:	445043	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
10/27/2020 10:53 am			B8968P
	CLOSED:		
	THEY JUST COME TO THE JAIL		
10/26/2020 10:49 pm			
	ORIGINAL REQUEST:		
	HOW DO MY RELATIVE SIGN UP FOR VISITS ???		

Request Number:	445698	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 4N 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
10/28/2020 01:49 pm			
	ORIGINAL REQUEST		
	CAN I PLEASE GET THIS CASE PRINTED OUT ... SNOW VS THE STATE OF NEVADA 1238		
10/29/2020 08:11 am			ELENA LEGAL LIBRARY
	CLOSED:		
	Your research materials are being printed and will arrive in your module through the mail system. Thank you.		

Request Number:	464912	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 2P 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
12/28/2020 07:20 am			IVONNE ARAMARK
	CLOSED:		
	7527 GLASSES- EVERY 180 DAYS		
12/21/2020 03:17 pm			L6453R
	GROUP ASSIGNED CHANGED		
	TO COMMISSARY		
12/21/2020 02:40 pm			
	ORIGINAL REQUEST:		
	I AM WONDERING IF I CAN SOMEHOW GET SOME NEW PRESCRIPTION GLA**ES I ALREADY HAD SOME BUT THEY GOT LOST OR SOMEONE STOLE THEM		

Request Number:	467116	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 2P 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
12/28/2020 07:37 am		ORIGINAL REQUEST:	
		I BEEN HERE PAST 180 DAYS CAN I SOMEHOW RECIEVE PRECRIPTION GLA**ES	
12/28/2020 02:01 pm			K14510L
		CLOSED:	
		That is a medical issue, you must request a paper medical kite.	

Request Number:	467506	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 2P 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
12/29/2020 08:51 am			S18397D
		CLOSED:	
		This is a request that must be answered by your module Officer.	
12/28/2020 10:17 pm		ORIGINAL REQUEST:	
		I HAVE HOLES IN MY JAIL SHOES AM I ELGIBLE FOR A NEW PAIR I BEEN HERE FOR A YEAR ALREADY AND ALSO A NEW BLANKET ??	

Request Number:	468247	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 2P 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
12/30/2020 07:37 pm		ORIGINAL REQUEST:	
		CAN I GET THESE CASES PRINTED OUT PLEASE IVER FSKO V. STATE 3179 AND LASLEY WILLIAMS V STATE 7909	
12/31/2020 11:51 am			JUSTIN LEGAL LIBRARY
		CLOSED:	
		Your materials are being printed and will arrive in the mail system soon. Thank you.	

Request Number:	469186	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 2P 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
01/05/2021 09:51 am			JUSTIN LEGAL LIBRARY
		CLOSED:	
		We found Hill. Check your citation for Kelso. Full citations look like this: Smith v. Jones, *23 Nev. 456. Thank you.	
01/01/2021 08:43 pm		ORIGINAL REQUEST:	
		CAN I GET THESE CASES PRINTED PLEASE KELSO V. STATE 2846 AND HILL V. STATE 12980	

Request Number:	470218	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 2P 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
01/04/2021 09:23 pm		ORIGINAL REQUEST: CAN I PLEASE RECIEVE THE HOLY BIBLE NEW VERSION CATHOLIC VERSION IF ITS POSSIBLE THANK YOU	
01/05/2021 11:01 am		CLOSED: SENT	B8968P

Request Number:	471338	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 2P 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
01/11/2021 11:46 am		CLOSED: Your research materials are being printed and will arrive in your module through the mail system. Thank you	ELENA LEGAL LIBRARY
01/07/2021 01:52 pm		ORIGINAL REQUEST: CAN I GET THESE CASES PRINTED OUT PLEASE BERNELL BRYANT V. SHERIFF CLARK COUNTY NEVADA 86 NEV.622 CITATION NUMBER 6255 AND SAMUEL CULVERSON V. THE STATE OF NEVADA CITATION NUMBER 19866	

Request Number:	471340	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 2P 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
01/07/2021 01:55 pm		ORIGINAL REQUEST: CAN THE MODULE 2P RECIEVE NEW BOOKS AND DICTIONARY BOOKS TOO	
01/11/2021 09:33 am		CLOSED: Book rotations are currently being modified for the duration of the coronavirus outbreak. Your module will sporadically receive new materials. The library also includes dictionaries in your book rotation. Thank you.	ELENA LEGAL LIBRARY

Request Number:	472129	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 2P 16 S	Current Location:	ST 2P 16 S		
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		

<u>Stamp</u>	<u>Action</u>	<u>Detail</u>	<u>User</u>
01/12/2021 02:31 pm		CLOSED: Your research materials are being printed and will arrive in your module through the mail system. Thank you.	ELENA LEGAL LIBRARY
01/09/2021 02:25 pm		ORIGINAL REQUEST: CAN I GET THESE CASES PRINTED OUT PLEASE.... LYNDEN OREN KELSO V. STATE OF NEVADA CITATION NUMBER 10135 AND ELTON PARSON V. THE STATE OF NEVADA 74 NEV. 302 CITATION NUMBER 4031 AND DOUGLAS DOYLE ROBERTS V. STATE OF NEVADA CITATION NUMBER 16242 THANK YOU	

Request Number:	474217	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 2P 16 S			Current Location:	ST 2P 16 S
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		
<u>Stamp</u>	<u>Action</u>	<u>Detail</u>		<u>User</u>	
01/14/2021 10:05 pm		ORIGINAL REQUEST:			
		CAN I GET THIS CASE PRINTED OUT PLEASE..... WALTER HORACE SEFTON V. THE STATE OF NEVADA 72			
		NEV. 106 CITATION NUMBER 3863			
01/19/2021 08:57 am				ELENA LEGAL LIBRARY	
		CLOSED:			
		Your research materials are being printed and will arrive in your module through the mail system. Thank you.			
Request Number:	478204	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 2P 16 S			Current Location:	ST 2P 16 S
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		
<u>Stamp</u>	<u>Action</u>	<u>Detail</u>		<u>User</u>	
01/26/2021 02:27 pm				JANET SECURUS	
		CLOSED:			
		Im sorry, but we do not have the capability of granting Free phone calls. Free calls are only available when an inmate is first booked. Once you are assigned to a housing unit, those calls are forfeited.			
01/26/2021 01:41 pm		ORIGINAL REQUEST:			
		IS IT POSSIBLE FOR ME TO GET FREE CALLS???			
Request Number:	482784	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 2P 16 S			Current Location:	ST 2P 16 S
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		
<u>Stamp</u>	<u>Action</u>	<u>Detail</u>		<u>User</u>	
02/08/2021 01:25 pm		ORIGINAL REQUEST:			
		IS IT POSSIBLE TO RECIEVE A LIST OF THE NUTRITION FACTS ON THE MEALS SERVED HERE			
02/09/2021 09:36 am				R12849L	
		CLOSED:			
		Trinity does not provide nutritional facts as they are subject to change daily. Thank you.			
Request Number:	484192	Status:	CLOSED	Inmate Name:	BAILEY, JAYSHAWN D
Initial Location:	ST 2P 16 S			Current Location:	ST 2P 16 S
Inmate Number:	5216003	Inmate Secondary Number:	2000004298		
<u>Stamp</u>	<u>Action</u>	<u>Detail</u>		<u>User</u>	
02/16/2021 08:42 am				JUSTIN LEGAL LIBRARY	
		CLOSED:			
		Your materials are being printed and will arrive in the mail system soon. Thank you.			
02/11/2021 07:38 pm		ORIGINAL REQUEST:			
		CAN I PLEASE GET THE CASE PRINTED OUT..... SHERIFF CLARK COUNTY NEVADA V. DENNIS L LARSGAARD 96			
		NEV. 486 CITATION NUMBER 12349			

Total Requests: 55

CD PROVIDED TO COURT

EXHIBIT 'C'



ROPP
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,	)	CASE NO. C-20-347887-1
)	
v.	)	DEPT. NO. XII
)	
JAYSHAWN D. BAILEY,)	
	)	DATE: March 30, 2021
Defendant,	)	TIME: 11:00 a.m.
_____)	

**DEFENDANT'S REPLY TO STATE'S OPPOSITION
TO MOTION TO EXCLUDE STATEMENTS**

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

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

DATED this 25th day of March, 2021.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

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

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I. Voluntariness

The State mentions that Preston Court found defendant's interrogations to be demonstrably false as evidence of the defendant's suggestibility in that case, and that is not the case here. While the demonstrably false statements in that case helped to show the defendant's suggestibility, statements given during interrogation being false, or demonstratively false, is not necessary to establish that they were not voluntarily made. If suggestibility results in involuntary statements, those statements should not be admitted whether demonstrably false or not. The test is whether they were voluntarily made.

The State relies on whether the Defendant's disability was obvious. The issue is whether the Defendant's disability rendered his statements made in interrogation involuntary, not whether that disability was obvious to his interrogators.

The State appears to find it significant that Jayshawn is able to complete coherent “kites” within the jail to show that he “is not someone who just goes along to avoid conflict.” State’s Opposition at 12. The contexts are incomparable. The result of interrogative tactics on an intellectually disabled individual, and the voluntariness of the statements made, cannot be compared to the ability to request his glasses or the cashing of his checks. This evidence is irrelevant to the issue of whether Jayshawn’s interrogation statements were voluntarily made.

The State suggests that the Defendant only “claims” that his interview lasted over six and half hours. The State provided the Defense with a video of interrogation that lasted from 12:20pm to 4:00pm, this is what is contained in the transcript labeled “Bailey Transcribed 2.” Then, additionally, the State provided the audio of three additional hours, this is what is contained in the transcript labelled “Bailey Transcribed #3/” These recordings take place on the same day and appear to have taken place one after another.

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1 II. Miranda

2 The Defendant was not advised of his Miranda rights during his first interrogation and
3 did not knowingly waive them during his second interrogation. The state bears the burden of
4 establishing that Defendant was not in custody during his first interrogation and that he
5 knowingly waived those rights in his second interrogation. The circumstances surrounding his
6 custody during Interrogation #1 must be evaluated during an evidentiary hearing, and, given
7 Jayshawn's disability, he could not have voluntarily waived his rights in Interrogation #2.

8
9 III. Polygraph

10 Although clearly the State's preference would be to admit the Defendant's statements
11 without any reference to his polygraph examination, this would be a due process violation.
12 Jayshawn cannot adequately defend his statements without the context of the polygraph
13 examination nor can he take advantage of N.R.S. 47.120, providing the full context of his
14 statements. The statements made during Interrogation #2 should not be admitted.

15 **CONCLUSION**

16 For the foregoing reasons, the Defense requests a pre-trial evidentiary hearing on
17 voluntariness of Jayshawn's statements and Miranda pursuant to Jackson v. Denno, 378 U.S. 368
18 (1964). Jayshawn's first interrogation was conducted without issuing Miranda warnings, and no
19 Miranda waiver. In Jayshawn's second interrogation, his statements were not voluntarily made.
20 They were instead the result of his mental disability and suggestibility, in combination with
21 police tactics, resulting in an involuntary confession. Further, Jayshawn's second interrogation
22 contained an inadmissible polygraph examination and if admitted, his statements cannot be
23 explained without reference to that exam. His statements should not be admitted at trial.

24 DATED this 25th day of March, 2021.

25 DARIN F. IMLAY
26 CLARK COUNTY PUBLIC DEFENDER
27 By: /s/Kathleen M. Hamers
28 KATHLEEN M. HAMERS, #9049
 Deputy Public Defender

1 **CERTIFICATE OF ELECTRONIC SERVICE**

2 I hereby certify that service of the above and forgoing DEFENDANT'S REPLY
3 TO STATE'S OPPOSITION TO MOTION TO EXCLUDE STATEMENTS was hereby served
4 this 25th day of March 2021 via electronic e-filing service to:

5 CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
6 Motions@clarkcountyda.com
7 MICHAEL J. SCHWARTZER, Chief Deputy District Attorney
8 E-mail: michael.schwartz@clarkcountyda.com
9 Attorney for Plaintiff, State of Nevada

10 By: /s/ Sara Ruano
11 Secretary for the Clark County Public Defender's Office
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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

THURSDAY, JUNE 11, 2020

**RECORDER'S TRANSCRIPT OF PROCEEDINGS
DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS**

APPEARANCES:

For the State:

MICHAEL J. SCHWARTZER
Chief Deputy District Attorney
via teleconference

For the Defendant:

KATHLEEN M. HAMERS
Deputy Public Defender
via teleconference

RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 LAS VEGAS, NEVADA, THURSDAY, JUNE 11, 2020, 12:06 P.M.

2 * * * * *

3 THE COURT: State of Nevada versus Jayshawn Bailey, C347887.

4 MS. HAMERS: Kathleen Hamers on his behalf.

5 THE COURT: Thank you. And Mr. --

6 MR. SCHWARTZER: Michael Schwartz -- I'm sorry. Michael Schwartzer for
7 the State.

8 THE COURT: Thank you.

9 Mr. Bailey is present and in custody. Go ahead, counsel, I have -- it's
10 your petition for writ of habeas corpus.

11 MS. HAMERS: Thank you, Judge, and did you receive our reply filed this
12 week as well?

13 THE COURT: I did. Thank you.

14 MS. HAMERS: Thank you. Okay. So I would just note this -- what's going on
15 here are two things that we challenge that happened at the preliminary hearing.
16 First is this is a case where the medical examiner was unable to determine a cause
17 of death but based on what she called suspicious circumstances and an intent to
18 hide the body from view, she testified to her opinion that the manner of death was
19 homicide. This opinion was improper and outside the scope of her expertise as we
20 laid out in our petition.

21 What happens after that is then the State relies on this determination,
22 this opinion by the medical examiner in order to determine death by criminal agency
23 in order to satisfy the *corpus delicti* rule, and then admit Jayshawn's own
24 statements. Both the medical examiner's opinion on the manner of death being
25 homicide as well as Jayshawn's statements then being admitted should not have

1 been admitted at the preliminary hearing, and without those pieces of evidence,
2 there was insufficient evidence to establish probable cause and so we're asking that
3 the petition be granted and the case be dismissed.

4 THE COURT: Okay. Mr. Schwartzer.

5 MR. SCHWARTZER: Yes, Your Honor. I mean, I think that -- I think what
6 was kind of overlooked is there was a process that the coroner went through in
7 order to make a determination which was spelled out not only in our facts section
8 but also in our argument section. I mean, Dr. Di Loreto went down the many steps
9 she took in order to make that determination which is she looked at -- she did an
10 internal examination, she did an external examination, she did a toxicology, she
11 looked at the medical records of our young victim, the 17-year-old, who was
12 otherwise healthy except for, you know, the fact of the way she was found on top of
13 everything else. So you combine that with the fact that she was found in a sewer
14 with no other way of dying, stuffed in a sewer the way she was, and with a manhole
15 over it with no way for her to put the manhole, you know, there herself after she's
16 placed in there, so clearly this isn't a place that she positioned herself. It is, in our
17 opinion, proper for the coroner to come up with this conclusion.

18 I think what Ms. -- Ms. Hamers is doing is I think it's proper
19 cross-examination. I imagine at trial, if we get that far, that that's would be strong
20 cross-examination done by defense in order to go with the, you know, how the
21 doctor came to her opinion. But the point of the matter at the end of the day, the
22 doctor is in her scope to make that opinion. It's not only determined by a County
23 code that they -- they have the right to make this determination regarding the cause
24 and manner of death, but also as noted in our opposition, coroner's often rely on
25 notes from the investigation, be it their own coroner investigator, which she said she

1 relied upon in the preliminary hearing, or the homicide investigation, which we
2 quoted that case that was recently published -- unpublished, excuse me, in 2019
3 where -- where that was used.

4 So I think it's a proper opinion, and therefore, if it's a proper opinion, the
5 statement doesn't really come in. The second part of the argument saying that the
6 statement is improper because there's no corpus, at the same time, the fact that she
7 is placed in the sewer with no, you know, toxicology or natural reasons why she's
8 dead, I think that is slight or marginal evidence of a homicide just itself, even without
9 the coroner's opinion. So therefore the opinion -- the statement by Mr. Bailey
10 where he said he choked her and that she died after he choked her should come in.

11 So based on those two things, Your Honor, we're going to ask you to
12 deny this petition.

13 THE COURT: Okay. Anything else?

14 MS. HAMERS: There it is.

15 Just briefly, Judge, I think we -- I think we addressed those arguments
16 by the State in our reply. I disagree that because there's a code or because there
17 was also a medical examination and medical research done on this case that then
18 the Medical Examiner can opine based on something outside of that because those
19 things are outside of her area of expertise and she says that's what she relied on,
20 suspicious circumstances and an intent to hide the body from view. She was asked
21 about it again on cross-examination, she said it was based on the information she
22 received from the coroner investigator and the photographs showing where the
23 decedent was found. So even though she did an examination and found no fatal
24 traumatic injury, no fatal disease, no toxicology cause of death, her determination
25 that it was homicide was based on that information that we believe falls outside of

1 her area of expertise.

2 And I would note that with regard to, okay, even if we didn't have that
3 evidence we still would have had enough evidence to establish *corpus* of the crime
4 based on maybe circumstantial evidence, that's not the determination that was
5 made by the J.P. in this case and that was not the argument made by the State.
6 What the State said, if I'm recalling it word for word, was we just had the coroner
7 testify that this was a homicide, not that outside of her opinion that there would be
8 enough circumstantial evidence.

9 THE COURT: Okay. At this --

10 MS. HAMERS: And I don't have anything further.

11 THE COURT: Thank you. At this time the Court's going to deny the petition.
12 The State can prepare the order.

13 MR. SCHWARTZER: Yes, Your Honor.

14 PROCEEDING CONCLUDED AT 12:12 P.M.

15 * * * * *

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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



ACKN

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Attorneys for Jayshawn Bailey

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

Jayshawn Bailey,

Defendant.

CASE NO. C-20-347887-1

DEPT NO. 12

SETTLEMENT CONFERENCE ACKNOWLEDGMENT

Defendant Jayshawn Bailey, following discussion with his (or her) counsel
Kathleen Hamers, agrees to participate in the settlement conference program, which is
described in the attached Exhibit. Defendant understands that program is voluntary, that he (or
she) may

///

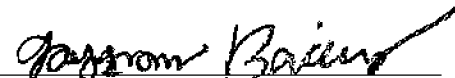
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decline to participate, and that he (or she) may stop participating while the settlement conference is underway.

Dated this 03 day of April, 2021.


Defendant



Defendant's Counsel

EXHIBIT
SUPREME COURT RULE 252

Rule 252(2).

Settlement conferences in criminal cases. The purpose of a settlement conference is to facilitate good faith discussions to resolve any criminal case before the district court in a manner that serves the interest of justice.

(a) In any criminal case before the district court, either party may request a settlement conference, or the trial judge may, on its own, recommend that counsel with settlement authority participate in a settlement conference. A case will not be referred to a settlement conference if any party objects. The defendant must consent on the record or in writing before a case is referred to a settlement conference. In all cases, the settlement conference must not be before the trial judge. If settlement discussions do not result in an agreement, the case must be returned to the trial judge.

(b) Beyond all else, participation in a settlement conference is voluntary by the parties, and no party has any right to an offer, or may raise any claim from any fact or circumstance that occurs during the settlement conference, including but not limited to the bad faith of the parties in participating in the conference. Decision-making authority remains with the parties and not the settlement judge. The trial judge, the settlement judge, or any party may unilaterally terminate the settlement conference at any time.

(c) Settlement conferences must, in all respects, be confidential and not reported or recorded.

(d) Communications between the settlement judge and the trial judge. The settlement judge and the trial judge must have no contact or

communication, except that the settlement judge may, without comment or observation, report to the trial judge that:

- (1) The parties cannot reach an agreement;
- (2) The parties have reached an agreement, and the agreement reached may be reduced to writing, signed by the prosecuting attorney, the defendant, and defense counsel and submitted to the court for approval;
- (3) Meaningful attempt to settle is ongoing; or
- (4) The settlement Judge withdraws from further participation in potential settlements.

(e) Should the settlement conference result in a settlement agreement, the terms of the agreement must be reduced to a guilty plea agreement in accordance with NRS 174.063 and signed by the defendant, defense counsel (if any), and the prosecutor. The parties must file the guilty plea agreement with the trial judge. Any party may withdraw from an agreement before the trial judge accepts the plea.

(f) If the parties reach a guilty plea agreement that involves any stipulations, the trial judge agrees that such a settlement shall be conditioned on the trial judge's acceptance of and agreement to follow the stipulations. If the trial judge is unwilling to abide by the stipulations, then either side may withdraw from the guilty plea agreement.



MLIM
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NEVADA BAR NO. 5674
KATHLEEN M. HAMERS, DEPUTY PUBLIC DEFENDER
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Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,	)	CASE NO. C-20-347887-1
)	
v.	)	DEPT. NO. XII
)	
JAYSHAWN D. BAILEY,)	
	)	DATE: September 9, 2021
Defendant,	)	TIME: 10:30 a.m.
)	

**MOTION IN LIMINE TO PRECLUDE EXPERT OPINION TESTIMONY THAT THE
MANNER OF DEATH IN THIS CASE IS HOMICIDE**

COMES NOW, the Defendant, JAYSHAWN D. BAILEY, by and through KATHLEEN M. HAMERS, Deputy Public Defender, and hereby moves this Court to enter an order *in limine* precluding the State of Nevada from presenting expert testimony that the manner of death was homicide in this case.

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

DATED this 26th day of August, 2021.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

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

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KATHLEEN M. HAMERS makes the following declaration:

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

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

EXECUTED this 26th day of August, 2021.

/s/Kathleen M. Hamers
KATHLEEN M. HAMERS

1 **POINTS AND AUTHORITIES**

2
3 **FACTS**

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

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

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

18 **ARGUMENT**

19 An expert can only render opinions on matters within their area of expertise and only when
20 his or her scientific, technical or other specialized knowledge will assist the trier of fact. NRS
21 50.275. The medical examiner's area of expertise in this case, is medical examination and only
22 her opinions based thereon will assist the jury in understanding the evidence. Her opinions as to
23 suspicious circumstances, defendant statements, or any investigative information that the jury
24 can evaluate without the need for scientific, technical, or specialized knowledge are not
25 admissible. Her opinions must be limited to those based on the medical examination of the
26 decedent in this case, not investigative information such as statements and suspicions. Dr. Di
27 Loreto's opinion that the manner of death in this case is homicide, is not admissible expert
28

1 opinion testimony.

2 Dr. DiLoreto testified at preliminary hearing that she conducted an external examination of
3 the decedent's body and was able determine that the body was decomposing, nothing more.
4 PHT at 7. She conducted an internal examination with no findings. PHT at 8. She found
5 nothing of note on the microscopic slides. PHT at 10. She opines that the death was a homicide
6 by unspecified means and explains "[i]t's where no fatal traumatic injury was identified. No
7 fatal natural disease was identified. No toxicological cause of death was identified. **There are**
8 **suspicious circumstances such as an intent to hide the body from view.**" PHT at 15
9 (emphasis added). She was asked if she was familiar with and considered the defendant's
10 statement in determining cause of death and affirmed that she did. Id. She concludes that the
11 manner of death is homicide. Id.

12 In this case, Dr. Di Loreto's opinion as to manner of death, homicide, based on "suspicious
13 circumstances" and investigative information would be improper. Basing her opinions on
14 statements made by the defendant and suspicious circumstances is not basing her opinion on her
15 medical expertise, it doesn't require expert testimony to evaluate the statements or
16 circumstances, and her opinion is not based on the medical examinations she performed in the
17 case. This is information that can be considered by the jury without any expert opinion evidence.
18 The medical examiner's opinion testimony that the manner of death in this case was homicide is
19 not based on specialized medical knowledge and the jury can easily evaluate the same evidence
20 without the use of expert testimony.

21 The Supreme Court of Iowa addressed this same issue in State v. Tyler, 867 N.W.2d 136
22 (2015).

23 The Court concluded:

24 After surveying the authority on the issue, we conclude there are circumstances
25 when a medical examiner's opinions on cause or manner of death may assist the
26 jury, even when such opinions are based in part on witness statements or
27 information obtained through police investigation. However, our review of the
28 caselaw confirms there is no bright-line rule for determining such information.
Instead, whether a medical examiner's opinion on cause or manner of death is
admissible depends on the particular circumstances of each case. For example,

1 when a medical examiner bases his or her opinion of cause or manner of death
2 largely on witness statements or information obtained through police
3 investigations, such opinions would ordinarily be inadmissible under [the Iowa
4 expert witness statute] because they would not assist the trier of fact In
5 contrast, when a medical examiner bases his or her opinion on cause or manner of
6 death primarily on the autopsy, such opinions will likely assist the jury in
7 understanding evidence and would ordinarily be admissible.

8 Tyler, at 162-163 (internal citations omitted).

9 The Court of Appeals of Arizona, considering the issue, concluded:

10 [T]he trial court . . . should consider the extent to which the medical examiner's
11 opinion assists the jury in interpreting and/or understanding the circumstances of
12 the victim's death. For example, when, as her, the medical examiner's opinion
13 regarding the manner of death is based largely on the testimony of lay witnesses
14 whose credibility the jury can determine without the aid of expert testimony, an
15 expert's opinion regarding the manner of death would normally be inadmissible.
16 On the other hand, a medical examiner's testimony regarding the manner of death
17 that is based primarily on the expert's external and internal examination of the
18 body will frequently assist the jury in understanding the evidence and would
19 ordinarily be admissible.

20 State v. Sosnowicz, 270 P.3d 917, 924-925 (2012).

21 The Supreme Court of Georgia similarly has held that it is error to allow expert opinion
22 testimony by a medical examiner that the manner of death is homicide where that opinion is not
23 based on medical evidence.

24 The medical examiner, qualified as an expert in forensic pathology, specifically
25 testified that he could not determine a cause of death based on his examination of
26 the body, including the autopsy. He also specifically testified that his opinion that
27 the manner of death was due to homicide was based entirely upon the
28 circumstances surrounding [the decedent's] demise as related to him by a
detective working on the case. . . . where it is possible for the jurors to take the
same elements and constituent factors which guide the expert to his conclusions
and from them alone make an equally intelligent judgment of the ir own,
independently of the opinion of others, then undoubtedly this should be done.

Maxwell v. State, 414 S.E.2d 470, (1992), *overruled on other grounds by* Wall v. State, 500
S.E.2d 904, (Ga. 1998).

1 Here, Dr. Di Loreto's opinion as to the manner of death being homicide in this case is not
2 based on specialized knowledge, her opinion will not assist the jury in understanding the
3 evidence, and should not be admitted at trial.

4 **CONCLUSION**

5 Based on the foregoing, the Defense requests that this Court enter an order *in limine*
6 precluding the State of Nevada from presenting at trial Dr. Di Loreto's opinion that the death in
7 this case was a homicide.

8
9 DATED this 26th day of August, 2021.

10 DARIN F. IMLAY
11 CLARK COUNTY PUBLIC DEFENDER

12
13 By /s/Kathleen M. Hamers
14 KATHLEEN M. HAMERS, #9049
15 Deputy Public Defender
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YOU WILL PLEASE TAKE NOTICE that the foregoing MOTION IN LIMINE will be heard on September 9, 2021, at 10:30 a.m. in District Court, Department XII.


DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

CERTIFICATE OF ELECTRONIC SERVICE

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
Motions@clarkcountyda.com
 MICHAEL J. SCHWARTZER, Chief Deputy District Attorney
 E-mail: michael.schwartzter@clarkcountyda.com
 Attorney for Plaintiff, State of Nevada

7

Exhibit A



CASE NO. C347887

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA,)
Plaintiff,)
vs.) CASE NO. 20F01585X
JAYSHAWN BAILEY,)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING

BEFORE THE HONORABLE HARMONY LETIZIA
JUSTICE OF THE PEACE

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

APPEARANCES:

For the State:

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

For the Defendant:

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

Reported by: CHRISTA BROKA, CCR. No. 574

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1 LAS VEGAS, CLARK COUNTY, NEVADA,

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

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

4

5

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

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

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

19 MR. SCHWARTZER: Ryan Jaeger.

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

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

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

3 THE WITNESS: Yes.

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

6 MR. SCHWARTZER: Dr. Christina Di Loreto.

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

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

13 THE WITNESS: I do.

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

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

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

19 MR. SCHWARTZER: Thank you, Your Honor.

20

21 DIRECT EXAMINATION

22 BY MR. SCHWARTZER:

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

25 A. It is and my subpoena.

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

4 A. Okay.

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

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

8 Q. How long have you been doing that?

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

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

12 A. Yes, correct.

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

15 A. Correct.

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

18 A. Yes.

19 Q. About how many times?

20 A. Approximately ten.

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

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

24 Q. Grand juries and jury trials?

25 A. Yes.

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

2 A. Yes.

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

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

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

12 A. Yes.

13 Q. Did you personally conduct that examination?

14 A. I did.

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

17 A. Yes.

18 Q. What was her name?

19 A. Tamyah Trotter.

20 Q. And how old was Miss Trotter?

21 A. Seventeen-years old.

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

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

1 scars and tattoos and hair color and documenting injury.

2 Q. Did you do that in this case?

3 A. Yes.

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

6 A. Her body was decomposing.

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

9 A. No.

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

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

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

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

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

19 A. Correct.

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

23 A. No.

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

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

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

7 A. No.

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

10 A. I did not.

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

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

18 Q. Are you familiar with the toxicology findings?

19 A. Yes.

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

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

23 THE COURT: Ethanol in the what?

24 THE WITNESS: In the blood.

25 / / /

1 BY MR. SCHWARTZER:

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

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

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

9 A. No, not at this level.

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

14 A. Yes.

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

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

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

20 A. Correct.

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

23 A. Correct.

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

25 A. I did.

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

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

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

6 A. Correct.

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

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

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

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

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

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

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

23 A. Correct.

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

1 A. Correct.

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

4 A. Correct.

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

8 A. There was not.

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

12 A. Not necessarily, no.

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

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

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

20 A. No.

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

23 A. Yes.

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

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

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

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

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

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

13 Q. So pretty quickly?

14 A. Yes.

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

17 A. I am not familiar with that.

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

22 A. With sustained pressure a couple of minutes.

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

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

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

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

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

10 Q. What was that for?

11 A. I believe she had gastroenteritis.

12 Q. Okay. Sorry, go ahead.

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

14 Q. I guess a stomach bug or something?

15 A. Yes.

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

18 A. No.

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

22 A. Correct.

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

25 A. Yes.

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

5 THE COURT: Mr. Schwartz?

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

11 THE COURT: Ms. Hammer?

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

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

19 THE COURT: All right.

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

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

24 THE WITNESS: Yes, please.

25 / / /

1 BY MR. SCHWARTZER:

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

4 A. Yes.

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

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

7 Q. And what does that mean unspecified means?

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

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

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

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

18 A. Yes.

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

21 A. I did.

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

24 A. Homicide.

25 MR. SCHWARTZER: I have no further questions.

1 I'll pass the witness.

2 THE COURT: Cross-examination.

3 MS. HAMMERS: Thank you.

4

5 CROSS-EXAMINATION

6 BY MS. HAMMERS:

7 Q. Doctor, can you hear me?

8 A. Yes.

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

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

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

18 A. I did not.

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

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

1 Q. Go ahead. You may see what?

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

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

8 A. Correct.

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

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

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

17 A. No.

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

19 A. Correct.

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

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

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

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

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

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

13 A. No.

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

16 A. Correct.

17 Q. Did find evidence of gallstones?

18 A. I did.

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

21 A. Correct.

22 Q. How are you able to see that?

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

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

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

3 A. Yes.

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

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

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

9 A. No.

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

12 THE COURT: Any redirect?

13 MR. SCHWARTZER: Just one thing.

14

15 REDIRECT EXAMINATION

16 BY MR. SCHWARTZER:

17 Q. Doctor?

18 A. Yes.

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

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

24 MR. SCHWARTZER: Nothing further, Your Honor.

25 THE COURT: Anything based on that?

1 MS. HAMMERS: Nothing.

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

5 THE WITNESS: Thank you.

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

8 State, who is your next witness?

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

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

15 THE WITNESS: I do.

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

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

20 THE COURT: Thank you. Mr. Schwartzer?

21

22 DIRECT EXAMINATION

23 BY MR. SCHWARTZER:

24 Q. Sir, how are you employed?

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

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

3 Q. How long have you been a detective?

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

5 Q. How long have been in homicide?

6 A. Just over three.

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

9 A. I was.

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

12 A. I was.

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

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

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

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

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

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

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

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

5 A. That's correct.

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

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

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

14 A. That's correct.

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

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

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

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

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

1 A. Close proximity, yes.

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

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

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

7 A. That's correct.

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

10 A. That's correct.

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

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

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

18 A. That's correct.

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

20 A. He was.

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

22 A. Yes, I do.

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

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

25 MR. SCHWARTZER: Let the record reflect the

1 Detective identified Mr. Bailey?

2 THE COURT: The record will so reflect.

3 BY MR. SCHWARTZER:

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

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

14 Q. Were photographs taken of the scene?

15 A. They were.

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

18 A. I was not.

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

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

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

24 A. That's correct.

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

1 A. That's correct.

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

4 A. That's correct.

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

6 THE COURT: Yes.

7 BY MR. SCHWARTZER:

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

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

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

16 A. Yes, I did.

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

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

21 THE WITNESS: Yes.

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

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

1 taken.

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

3 Thank you. No objection.

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

5 BY MR. SCHWARTZER:

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

8 A. Yes.

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

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

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

19 BY MR. SCHWARTZER:

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

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

23 Q. Again showing the bag?

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

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

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

4 THE WITNESS: State's 5.

5 THE COURT: Thank you.

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

11 BY MS. HAMMERS:

12 Q. How was body removed?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 A. That's correct.

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

4 A. That's correct.

5 Q. And that would be your partner?

6 A. Yes, Detective Embrey.

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

8 A. I was not.

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

11 A. He was not.

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

13 A. We did.

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

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

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

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

24 Q. Where did he meet you at?

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

1 him to headquarters.

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

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

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

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

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

13 A. That's correct.

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

17 A. He was.

18 Q. Was that Miranda captured on tape?

19 A. It was.

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

22 A. He did.

23 Q. Did he continue to do the polygraph?

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

1 Q. That also includes waiver of Miranda rights?

2 A. That's correct.

3 Q. And did you witness the polygraph?

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

7 Q. You have a live feed?

8 A. That's correct.

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

12 A. We did.

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

14 A. Detective Embrey.

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

17 A. It did.

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

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

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

2 THE COURT: Mr. Schwartzer?

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

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

9 MS. HAMMERS: Thank you.

10 BY MR. SCHWARTZER:

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

14 A. Yes.

15 Q. Can you tell us how?

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

24 Q. That would be December 12th --

25 A. 2019.

1 Q. And what McDonald's?

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

5 Q. All right.

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

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

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

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

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

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

20 A. He didn't believe she was.

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

23 A. Yes.

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

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

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

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

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

8 A. Tamyah.

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

10 A. Yes --

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

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

13 Q. I didn't mean to interrupt.

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

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

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

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

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

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

1 A. Yes.

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

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

8 Q. What did he do after that?

9 A. He actually hid her in his bedroom.

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

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

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

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

17 Q. Did he say whether anyone helped him?

18 A. He said he was alone.

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

21 A. No.

22 Q. Or dispose of the body?

23 A. That's correct.

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

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

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

6 A. As far as?

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

10 A. We did.

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

13 A. Yes, he did.

14 Q. Did he actually recant at that point?

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

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

18 A. We did.

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

20 A. That's correct.

21 Q. That was at 2120 Fred Brown Drive?

22 A. That's correct.

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

25 A. It was.

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

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

9 Q. How about some hair as well?

10 A. There was --

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

12 BY MR. SCHWARTZER:

13 Q. Was there hair found at the scene?

14 THE COURT: Overruled.

15 THE WITNESS: Yes, there was.

16 BY MR. SCHWARTZER:

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

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

21 Q. Were those recovered as well?

22 A. They were.

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

24 A. They have.

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

1 A. We have not.

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

3 A. In January sometime, yes.

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

7 A. It was.

8 Q. What did the defendant say?

9 A. He said he did not.

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

11 THE COURT: Yes.

12 BY MR. SCHWARTZER:

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

16 A. I recognize them.

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

19 A. They are.

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

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

23 Q. That's my next question.

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

1 THE COURT: Any objection?

2 MS. HAMMERS: No Your Honor.

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

5 BY MR. SCHWARTZER:

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

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

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

20 THE COURT: Cross-examination.

21

22 CROSS-EXAMINATION

23 BY MS. CLARK:

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

1 A. Yes, I was.

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

4 A. I did.

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

6 A. He was.

7 Q. He stayed present the whole time?

8 A. That's correct.

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

11 A. I was not.

12 Q. So you remained at the scene?

13 A. Yes.

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

16 A. He was transported to headquarters.

17 Q. Was that by your partner Detective Embrey?

18 A. Yes.

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

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

22 Q. Two detectives?

23 A. Yes.

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

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

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

6 A. Yes.

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

8 A. Not many people do.

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

11 A. That's correct.

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

15 A. It was a purple plastic flower petal.

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

18 A. Yes.

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

21 A. That's correct.

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

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

1 Heather Ovens.

2 Q. Same CSA that took the photographs?

3 A. Yes.

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

6 A. No.

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

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

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

13 A. Yes.

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

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

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

20 A. A DNA? A buccal swab.

21 Q. A buccal swab.

22 A. Yes.

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

24 A. That's correct.

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

1 this case?

2 A. He was only the suspect and witness.

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

5 A. Yes.

6 Q. In an unmarked vehicle or squad scar?

7 A. Same unmarked vehicle.

8 Q. Same situation in plain clothes?

9 A. Yes.

10 Q. Seems like you wear your badge everywhere?

11 A. When I am on duty.

12 Q. Were you wearing it that day?

13 A. Yes.

14 Q. Same as Detective Embrey.

15 A. Yes.

16 Q. Do you carry a firearm with you?

17 A. Yes.

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

20 A. He was in the front seat.

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

22 A. Mm-hmm.

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

25 A. That's correct.

1 Q. Second floor?

2 A. Yes.

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

4 A. Yes.

5 Q. Took him upstairs?

6 A. Yes.

7 Q. Put him in an interview room?

8 A. There's a parking spot behind the building so you don't

9 have to walk as far. We went in the back and it's one flight

10 of stairs up.

11 Q. Okay. You took the stairs up?

12 A. Yes.

13 Q. When you put him in an interview room I assume that

14 interview room doesn't have windows to the outside?

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

16 Q. Not the one he was in. No windows. Obviously there

17 was a door to the room?

18 A. Yes.

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

20 A. Yes.

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

22 A. It wouldn't have been locked.

23 Q. Besides yourself and Detective Embrey you said there

24 was one other or examiner in the room, the polygraph examiner?

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

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

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

5 A. The polygraph examiner did.

6 Q. Were you present for that?

7 A. Yes.

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

10 A. Yes.

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

13 A. Correct.

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

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

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

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

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

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

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

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

7 Q. He would not have a P number?

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

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

13 A. Yes.

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

16 A. As far as?

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

19 A. Yes.

20 Q. While you were watching?

21 A. Yes.

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

25 A. That's correct.

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

3 A. I don't think so.

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

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

9 Q. You mean the polygraph equipment?

10 A. Yes.

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

13 A. No.

14 MS. CLARK: Court's indulgence.

15 BY MS. CLARK:

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

21 A. Yes.

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

24 A. That's correct.

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

1 in the original statement to you?

2 A. That's correct.

3 MS. CLARK: Court's indulgence.

4 THE COURT: Sure.

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

6 THE COURT: Any redirect?

7 MR. SCHWARTZER: No.

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

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

15 THE COURT: Yes.

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

19 THE COURT: With that the state rests?

20 MR. SCHWARTZER: State rests.

21 THE COURT: Any witnesses by the defense?

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

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

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

4 THE DEFENDANT: Yes.

5 THE COURT: Defense rests?

6 MS. HAMMERS: Yes.

7 THE COURT: Any argument by the state?

8 MR. SCHWARTZER: Waive and reserve for rebuttal.

9 THE COURT: Argument by defense.

10 MS. HAMMERS: We'll submit.

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

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

19 * * * * *

20

21 ATTEST: FULL, TRUE AND ACCURATE

22 TRANSCRIPT OF PROCEEDINGS.

23

24 \s\Christa Broka

25 CHRISTA D. BROKA, CCR 574

1 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

2 COUNTY OF CLARK, STATE OF NEVADA

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5 STATE OF NEVADA,)

6 Plaintiff,)

7 vs.) Case No. 20F

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

9 Defendant,)

10 _____)

11

STATE OF NEVADA)

12) ss

COUNTY OF CLARK)

13

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

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

21 That said TRANSCRIPT:

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

24 _____ Contains the Social Security number of a person.

25

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

3

4 \s\Christa Broka

5 CHRISTA D. BROKA, CCR 574

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C-20-347887-1
)	
v.	)	DEPT. NO. XII
)	
JAYSHAWN D. BAILEY,)	
	)	DATE: September 9, 2021
Defendant,	)	TIME: 10:30 a.m.
)	

**MOTION FOR SPECIFIC DISCLOSURE AND
IDENTIFICATION OF ELECTRONIC EVIDENCE**

COMES NOW, the Defendant, JAYSHAWN D. BAILEY, by and through KATHLEEN M. HAMERS, Deputy Public Defender and hereby requests that this Court order the State of Nevada to specifically disclose and identify and electronic evidence that will be admitted at trial.

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

DATED this 26th day of August, 2021.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

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

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KATHLEEN M. HAMERS makes the following declaration:

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

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

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

EXECUTED this 26th day of August, 2021.

/s/Kathleen M. Hamers
KATHLEEN M. HAMERS

**PLEADING
CONTINUES
IN NEXT
VOLUME**