IN THE SUPREME COURT OF THE STATE OF NEVADA

No.

DAJON HARDY

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICTCOURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK AND THE HONORABLEMICHELLE LEAVITT, DISTRICT COURT JUDGE,

Respondent.

THE STATE OF NEVADA

Real Parties in Interest.

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Elizabeth A. Brown
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Petition for Writ of Mandamus
Eighth Judicial District Court, Clark County
The Honorable, District Court Judge Michelle Leavitt
District Court Case No. C-23-379167-2

PETITIONER'S APPENDIX – VOLUME 2

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Docket 90391 Document 2025-14805

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on April 2, 2025. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as listed in the e-filing system.

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/s/ Jennifer M. Waldo

An Employee of Waldo Law, LLC.

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DISTRICT COURT

CLARK COUNTY NEVADA

THE STATE OF NEVADA, Plaintiff, vs. DAJON HARDY, Defendant.	Case No.: C-23-379167-2 Dept. No.: XII **MOTION TO DISMISS WITH PREJUDICE FOR FAILURE TO PRESENT EXCULPATORY EVIDENCE TO GRAND JURY**

COMES NOW, the Defendant DAJON HARDY by and through his attorney of record JENNIFER M. WALDO, ESQ., of WALDO LAW, LLC, and respectfully requests that the above matter be dismissed with prejudice due to the State's failure to present exculpatory evidence to the grand jury at the time of the State's presentation.

DATED this 28th day of February, 2025.

WALDO LAW, LLC.

/s/ Jennifer M. Waldo
JENNIFER M. WALDO, ESQ.
Nevada Bar No.: 11900
Attorney for Dajon Hardy

MEMORANDUM OF POINTS & AUTHORITIES

I.

STATEMENT OF FACTS

On October 18, 2023, D.H. and her siblings were removed from their parents' home located at 4311 Boulder Highway, Apartment 314 by the Department of Family Services. D.H. was four years old at the time. Mr. Hardy and Ms. Williams are D.H.'s biological parents. During that removal, while on the drive to Child Haven, D.H. allegedly made statements indicating that Mr. Hardy and Ms. Williams were sexually abusing her. Unfortunately, there is no audio and/or video recording of these statements, nor is there any audio and/or video recording of the questions being asked of D.H. before these allegations were made.

Nonetheless, D.H. was forensically interviewed on October 24, 2023 by Elizabeth Espinoza. That interview was audio and video recorded.[1] Prior to starting the interview, Ms. Espinoza failed to provide D.H. with any preliminary instructions regarding the interview process, the importance of telling the truth and the fact that she could indicate she [D.H.] does not know the answer to a question.[2] The interview proceeds and Ms. Espinoza, through the use of leading questions, obtains a disclosure from D.H. Additionally, Ms. Espinoza interviews two

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[1] The audio recording and video recording differ in this case. Ms. Espinoza leaves the room at one point and turns off the audio but fails to turn the audio recording back on upon her return. The video recording continues to roll. A copy of the transcription of this audio and the full video of the interview will be provided to chambers given the sensitive nature of this information.

[2] Towards the end of the interview, Ms. Espinoza tells D.H. that she can say she does not know the answer to a question when she doesn't know. After being provided this instruction, when D.H. is asked additional questions, she replies she does not know.

of D.H.'s siblings – DM. H. and M.S. During his interview, DM. H. noted that he touched D.H. on her butt and on her vagina and another sibling on his privates because "he saw it" and "wanted to." D.H. never disclosed anything about her brother touching her during her interview even though she was asked about any other inappropriate touching.

Finally, D.H. also made a disclosure against her uncle. However, for unknown reasons, Ms. Espinoza did not follow up on this line of questioning and instead, circled D.H. back to the allegations against her father.

One day later, on October 25, 2023, a physical examination was conducted on D.H. and her siblings. There were no physical findings to substantiate any claims of abuse – sexual or physical - on any of the exams.

II.

PROCEDURAL HISTORY

A criminal complaint was filed against Mr. Hardy on October 27, 2023, charging Mr. Hardy as follows: two (2) counts of Sexual Assault with a Minor under 14 Years of Age; one (1) count of Lewdness with a Child under the Age of 14 and one (1) count of Child Abuse, Neglect or Endangerment. Mr. Hardy entered a not guilty plea and a Preliminary Hearing was set for November 14, 2023.

The Preliminary Hearing was continued numerous times over Mr. Hardy's objections due to the fact that there was a significant delay in obtaining the necessary discovery in this matter from the State.

On December 6, 2023, the State presented the instant matter to a Grand Jury. Two witnesses testified – Detective Hassler and Ms. Espinoza. Detective Hassler testified that he received notification of the case after there was a disclosure made to CPS by D.H. Detective Hassler stated he was not present for the forensic interview but was able to watch it the following day when he returned to work.

As part of his investigation, Detective Hassler also spoke with Tiara Williams regarding D.H.'s disclosure. Ms. Williams denied the allegations made by D.H., but acknowledged that the family all lived in a one bedroom suite and they all slept in the same room. Ms. Williams also stated that she had naked parties with the kids but later amended this statement to say it only happened the one time. Mr. Hardy also denied all allegations to the police.

Ms. Espinoza also testified before the grand jury. She stated she was a forensic interview specialist with the Children's Advocacy Center. Ms. Espinoza stated that these interviews are supposed to be child led, meaning the child is disclosing the allegations, not her. That the questions asked are supposed to be broad and open-ended and not leading. Ms. Espinoza stated this was a critical aspect of the process so she did not taint the process or put words in the child's mouth.

At one point, the State attempted to play the video recording of the forensic interview to the grand jury. However, the DA reported having some technical issues and therefore, only played the audio portion. One grand juror noted it was unfortunate that they did not get to see the interview and see D.H.'s behavior.

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III.

LEGAL ARGUMENT

If the grand jury is to fulfill its purpose of acting as a bulward between those sought to be charged with crimes and their accusers, it must be permitted to investigate and act as an informed body throughout the entire course of the proceedings. *See Frank,* 103 Nev. at 165. It is incumbent on prosecutors who make presentations before grand juries to be adequately informed of the facts and to have conducted sufficient legal research to enable them to properly inform the grand jury on the law and to assist it in its investigation. *See United States v. Sousley,* 453 F.Supp. 754, 758 n. 1 (W.D.Mo.1978); *also see Babayan*, 106 Nev. at 168. (The prosecutor who made the initial presentations to the grand jury impaired its independence by curtailing relevant questioning).

Moreover, as this Court observed in *Frank,* "[t]he grand jury's 'mission is to clear the innocent, no less than to bring to trial those who may be guilty.'" *Frank*, 103 Nev. at 165. (*quoting United States v. Dionisio,* 410 U.S. 1, 16–17, 93 S.Ct. 764, 772–773, (1973)). The grand jury can only accomplish this task if they are provided a complete picture of the evidence, or lack of evidence, which includes any exculpatory evidence.

NRS. 172.145(2) provides in pertinent part as follows:

> 2. If the district attorney is aware of any evidence which will explain away the charge, the district attorney shall submit it to the grand jury.

Exculpatory evidence has been defined as that evidence "which has a tendency to explain away the charge against the target of the grand jury's investigation." *Lane v. District Court*, 104 Nev. 427, 463, 760 P.2d 1245, 1269 (1988) (citing *Frank*, 103 Nev. at 160, 734 P.2d

at 1244). In *Frank*, we concluded that a deputy district attorney who failed to submit evidence that had a tendency to explain away the charge against a defendant violated his duty as dictated by the language of NRS 172.145(2). 103 Nev. at 164-65, 734 P.2d at 1244. In *Dayani v. Eighth Judicial District Court in and for County of Clark*, the Nevada Supreme Court held that a challenge under NRS 172.145(2) may properly be brought through a motion to dismiss. 554 P.3d 222 (Nev. 2024).

Here, despite having exculpatory evidence at its disposal, the State failed to present this evidence to the grand jury.

1. Failure to disclose physical examination reports

First, the State never disclosed that a physical examination was done of D.H. one day following the forensic interview. The findings from this examination were negative and yet the grand jury was never made aware of this fact.

D.H. specifically alleged that Mr. Hardy put his fingers inside her, that it was sharp and stinging. Evidence that there were no physical findings of any such penetration would tend to explain away the charges against Mr. Hardy. The grand jury should have had this information before it in order for it to make an informed determination.

2. Failure to present full video of D.H. forensic interview

Second, the grand jury did not get the benefit of seeing the full video interview of D.H. because the State reported having technical difficulties. Counsel is unaware what, if any, issues the DA was experiencing during the proceedings. The State had a CD of the interview and therefore, would not have needed to rely on wi-fi in order to play the recording. It was also noted by at least one grand juror that the video would have been helpful.

Moreover, as noted above, the audio of the interview did not contain the entirety of the interview. Approximately 40 minutes into the interview, Ms. Espinoza leaves the room to speak

to someone else and returns several minutes later. However, upon her return, it does not appear she turns the audio recorder back on but the video continues to roll. She asks a few more questions and then takes D.H. to the bathroom and returns to the room around 8 minutes later. When she returns to the room, Ms. Espinoza apparently turns the recorder back on and it records the last few minutes of the interview. But, by that point, it missed a significant portion of the interview.

Additionally, the audio cannot depict the details of D.H.'s behavior the way the video can. Throughout the interview, D.H. is moving around, climbing up and down the chair, very distracted, asking about certain crayon colors, asking about nail polish and hesitating to answer a number of questions, wherein Ms. Espinoza has to repeat the question or ask it a different way.

The ability to observe an individual's demeanor as they are being questioned is a critical aspect of determining an individual's credibility and reliability. One grand juror even noted that it was unfortunate they could not see D.H. as she was answering the questions.

There was simply no reason for the State not to play the video evidence as it truly was the best evidence of the interview. It not only showed the entire interview but it also depicted D.H.'s demeanor throughout the interview process. The fact that the State had access to the CD but did not play it for the grand jurors is problematic as the grand jurors simply were not given the full weight of the evidence – or lack of evidence – to consider.

3. Failure to disclose allegation against uncle

Third, during her interview, D.H. also made a disclosure regarding her uncle, who was residing with her and her family. Despite the similarities in the allegations, Ms. Espinoza seemingly glossed over this information during the interview and instead, re-focused D.H.'s attention on the allegations against her father. It is unknown whether the grand jury heard this

information as it is not known what portions of the audio were actually played for the grand jury. Review of the grand jury transcript shows that the State is playing portions of the audio and then stopping it and asking Ms. Espinoza follow up questions. But, as the State is not identifying any specific times on the audio or how long the video is playing, it is unknown exactly what portions of the audio were played for the grand jury.

Nonetheless, a disclosure involving another individual that resided in the home with D.H. absolutely should have been fully explored during the interview with D.H. and that information should have been conveyed to the grand jury.

4. Failure to disclose pertinent information from DM. H.'s interview

Fourth, toward the end of the proceedings, one of the grand jurors asked about the other siblings and whether they had been interviewed by Ms. Espinoza. Ms. Espinoza acknowledged interviewing both DM. H. and M.S. However, when the grand jurors asked about those interviews, the State objected and would not let the witness answer.

However, during his interview, DM. H. not only denied that his parents had done anything sexual to him, he also disclosed that he touched D.H. on the butt and the vagina because he "saw it" and "wanted to." He also disclosed touching another sibling. D.H. never disclosed any such touching by her brother during her interview. This information should have been provided to the grand jury to consider. One, it would provide an alternate theory as to how D.H. might know some of the details described if she and her brother were engaging in such sexual behavior. Moreover, it is concerning that D.H. never disclosed any of this touching during her interview, even though she was asked if there was any other inappropriate touching by any other individuals, calling into question her credibility as a reliable witness.

5. Failure to disclose complete information regarding Ms. Williams' denial of allegations and living situation

And finally, while the State elicited the fact that both Ms. Williams and Mr. Hardy denied the allegations, the State failed to elicit the fact that Ms. Williams denied witnessing any inappropriate sexual contact between Mr. Hardy and D.H. This is an important detail because D.H. stated that on one occasion, Mr. Hardy stopped the alleged behavior because Ms. Williams came into the room and saw them. Ms. Williams was adamant in her denial that she never witnessed any such behavior and if she had, she would have "nipped that in the bud" and contacted the police. Detective Hassler even told Ms. Williams that she could not get in trouble if she witnessed such a thing but she still denied ever seeing any such behavior.

Ms. William's statements directly contradict D.H.'s statement. As the entirety of the State's case rests solely on D.H.'s disclosure, any information that would call into question her credibility or reliability should have been provided to the grand jury as exculpatory evidence.

Additionally, during her interview, Ms. Williams told Detective Hassler that they all live in one small room, that she and Dajon will have sex while the kids are in the room and she was not sure if they had seen them, but in the past, her son had walked in on them having sex. She also stated that they have naked parties - Ms. Williams indicated she is very free and open with her body in front of the kids but Mr. Hardy is not – and that the kids will take baths together with their clothes on.

All of these details potentially explain away the charges as it would provide the grand jury an alternative explanation as to how D.H. knows some of the information she relayed outside of any alleged sexual abuse. Especially in light of DM.H.'s statements that he had touched her private parts before because "he wanted to."

The failure of the State to present the foregoing information to the grand jury convened in this case compromised the integrity of the proceedings, resulting in an unfair and prejudicial process to the detriment of Mr. Hardy. Pursuant to *Ostman*, the district court has "a duty to dismiss [the] indictment" where the prosecutor failed to present exculpatory evidence. 107 Nev. at 565, 816 P.2d at 459.

Moreover, dismissal with prejudice is the appropriate remedy here. It is generally recognized in the federal system that:

> The extreme sanction of dismissal of an indictment is justified in order to Achieve one or both of two objectives: first, to eliminate prejudice to a defendant in a criminal prosecution; second, to "help translate the assurances of the United States Attorneys into consistent performances by their assistants."

United States v. Lawson, 502 F. Supp. 158, 169 (D.Md. 1980) (quoting *United States v. Fields*, 592 F.2d 638, 647 (2d Cir. 1978) (footnotes omitted)). At the state level, the dismissal of an indictment serves equally well to eliminate prejudice to a defendant and to curb the prosecutorial excesses of a District Attorney or his staff. Dismissal with prejudice is warranted when the evidence against a defendant is irrevocably tainted or the defendant's case on the merits is prejudiced to the extent "that notions of due process and fundamental fairness would preclude reindictment." Id. at 172.

The State had at its disposal the above information months before presenting the case to the grand jury. There is simply no excuse for the failure to present said evidence and this omission goes beyond mere negligence. Since the time of the initial disclosure, more than a year ago, it is counsel's understanding that D.H. has been residing with her maternal grandmother and other family members from Ms. Williams' side. She and the other children, have, no doubt, been questioned regarding what went on in the home repeatedly, specifically as it relates to the allegations against Mr. Hardy. The only evidence in this case is D.H.'s alleged disclosures. There

is no other corroborating evidence to support these allegations. Given the time that has lapsed and the current home environment of D.H., any evidence against Mr. Hardy has been irrevocably tainted and is now unreliable. As such, the only appropriate remedy is dismissal with prejudice.

IV.
CONCLUSION

Based upon the foregoing, it is respectfully requested that this Court grant the instant motion and dismiss the Indictment with prejudice against Mr. Hardy in its entirety.

DATED this 28th day of February, 2025.

WALDO LAW, LLC.

/s/ Jennifer M. Waldo
JENNIFER M. WALDO, ESQ.
Nevada Bar No.: 11900
Attorney for Dajon Hardy

CERTIFICATE OF ELECTRONIC SERVICE

I, do hereby certify that on the 28th day of February, 2025, I did serve a true and correct copy of the foregoing Motion to Dismiss by the following means, addressed as follows:

Clark County District Attorney
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/s/ Jennifer M. Waldo

_____

An Employee of Waldo Law, LLC.

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAJON MAURICE HARDY, #2736611,

Defendant.

CASE NO: **C-23-379167-2**

DEPT NO: **XII**

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE FOR FAILURE TO PRESENT EXCULPATORY EVIDENCE TO GRAND JURY

DATE OF HEARING: **MARCH 11, 2025**
TIME OF HEARING: **8:30 AM**

The State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MICHAEL D. ALLMON, Deputy District Attorney, hereby submits the attached Points and Authorities in State's Opposition to Defendant's Motion To Dismiss With Prejudice For Failure To Present Exculpatory Evidence To Grand Jury.

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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POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

On December 7, 2023, a Grand Jury returned an indictment charging Defendant, Dajon Hardy ("Defendant Hardy") with Count 2 – CHILD ABUSE, NEGLECT, OR ENDANGERMENT (Category B Felony - NRS 200.508.1 - NOC 55226); Counts 3 and 4 – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (Category A Felony - NRS 200.364, 200.366 - NOC 50105), and Count 5 and 6 – LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Category A Felony - NRS 201.230 - NOC 50975). The Grand Jury also charged Defendant Tiara Williams ("Defendant Williams") with Count 1 – SEXUAL ASSAULT WITH A MINOR UNDER 14 YEARS OF AGE (Category A Felony - NRS 200.364, 200.366 - NOC 50105), and Count 2 – CHILD ABUSE, NEGLECT, OR ENDANGERMENT (Category B Felony - NRS 200.508.1 - NOC 55226).

Trial for Dajon Hardy is set for March 17, 2025.

II. STATEMENT OF FACTS

A. Las Vegas Events

On October 18, 2023, D.H. and her siblings were removed from Defendant Williams' and Defendant Hardy's home at 4311 Boulder Highway, Apartment 314 through the Department of Family Services. Grand Jury Transcript at 9, 12 ("GJT") (December 6, 2023). D.H. was four years old at the time. GJT at 8. Defendants Hardy and Williams are D.H.'s biological parents. GJT at 8. The Victim, D.H. was four years old at the time. GJT at 8. During that removal, D.H. made statements indicating that Defendants Hardy and Williams were sexually abusing her. GJT at 10.

As a result, on October 25, 2023, D.H. was forensically interviewed by Elizabeth Espinoza. GJT at 18. That interview was audio and video recorded. GJT at 25. It was introduced and played before the Grand Jury and Grand Jury Exhibit 5. GJT at 25-26.

D.H. disclosed that she, Defendant Williams and Defendant Hardy would have naked parties, which involved them dancing naked to music. These naked parties happened "lots" and occurred in their room or bathroom.

Additionally, Defendant Hardy also touched D.H.'s vagina, a term her mother, Defendant Williams taught her. D.H. described her vagina as her private part and is the part she pees from. Defendant Hardy touched her vagina with his nail, which D.H. explained is attached to his finger. D.H. elaborated, stating that his nail was too sharp. When D.H. told Defendant Hardy it hurt, Defendant Hardy would use it softer. When Defendant Hardy touched D.H.'s vagina, no one else was in the room. Defendant Hardy's finger would move fast and swipe inside her vagina. D.H. further explained that Defendant Hardy touched her vagina "lots of days."

D.H. then disclosed that Defendant Hardy would put his penis in her mouth and make her suck it. Defendant Hardy taught D.H. the word "penis" when he told her to suck it and Defendant Hardy taught D.H. how to suck his penis. D.H. described his penis as brown and a circle. If D.H. told Defendant Hardy to stop, he told her to "hush." Defendant Hardy also told D.H. he would buy her some candy. When this happened, Defendant Hardy's clothes were off and both Defendant Hardy and D.H. were standing. Defendant Hardy would rip off her clothing.

When describing how D.H. would suck Defendant Hardy's penis, she made a kissing noise and puckered her lips in a circle. GJT at 26-27. When D.H. sucked his penis, it made her mouth tickle and his penis would start to wiggle around. According to D.H., Defendant Hardy's his penis tastes like milk and that "milk tastes like mommy's." When D.H. would suck his penis, she saw white inside his penis and that it tasted like salt. This stopped when Defendant Williams entered the room and began yelling at Defendant Hardy.

D.H. further explained that she also used her hands to move Defendant Hardy's penis. She described that it would start popping up "because that's how it works." D.H. described Defendant Hardy's penis as feeling soft and illustrated that she would pop it up and down.

Finally, D.H. disclosed that Defendant Hardy also put her private part on D.H.'s mouth. According to D.H., Defendant William's vagina tasted like salt, like Defendant Hardy's, and ticked when it moved. D.H. would also play with Defendant Williams's vagina by stretching it.

Detective Hassler was assigned to investigate the case on October 20, 2023. GJT at 9. On October 25, 2023, he spoke with Defendant Williams. GJT at 11. Defendant Williams was read her Miranda rights and agreed to speak with detectives. GJT at 11. She explained that she along with Defendant Hardy and five of their children lived at 4311 Boulder Highway, Apartment 314, and slept in the same room. GJT at 13. Defendant Williams initially confirmed that they would all have naked parties, but claimed it only happened once before denying their occurrence completely. GJT at 13. Defendant Williams further denied making D.H. perform oral sex on her. GJT at 13.

Detective Jason LaFreniere spoke with Defendant Hardy. GJT at 14. Defendant Hardy also agreed to speak with detectives after having heard his Miranda rights. GJT at 14. Defendant Hardy denied all allegations. GJT at 15.

B. Los Angeles Events

In May of 2015, M.S. was four years old. The Defendant was M.S.'s step-father. In Los Angeles, California, the Defendant made his four-year-old stepson, M.S., give him oral sex. M.S. stated that the Defendant would spray at him with his penis (describing ejaculation). The Defendant also "fought" M.S. with his penis, while M.S. "fought" with his butt. The Defendant gave his prior victim, M.S., candy for sucking his penis. LAPD arrested the Defendant for Lewd Acts with a Child, in violation of California Penal Code 288(a). The Los Angeles District Attorney declined to prosecute as it did not fit within the LA District Attorney's filing policy.[1]

III. LEGAL ARGUMENT

A. Standard of Review to Sustain an Indictment

"The grand jury ought to find an indictment when all the evidence before them, taken together, establishes probable cause to believe that an offense has been committed and that the defendant has committed it." NRS 172.155.

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[1] The State received reports for this event on February 27 and February 28, 2025. An LAPD detective has requested the audio and video recordings from archives today, February 28, 2025. The State anticipates receiving the audio on March 5, 2025.

"[P]robable cause may be based on slight, even marginal evidence." Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (internal quotation marks omitted). At "grand jury, the issue of guilt or innocence of the accused is not involved. The evidence need not be sufficient to support a conviction." Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971) (internal citations omitted). "[T]the State is not required to negate all inferences which might explain his conduct, but only to present enough evidence to support a reasonable inference that the accused committed the offense." Id. If the evidence produced establishes a reasonable inference the defendant committed the crime, the probable cause to order the defendant to answer in the District Court has been established. Morgan v. Sheriff, 86 Nev. 23, 24-25, 467 P.2d 600, 601 (1970).

"When evaluating the probable cause determination 'a reviewing court should assume the truth of the state's evidence and all reasonable inferences from it in a light most favorable to the state.'" State v. McKern, 458 P.3d 353, slip op. at 4, unpub. disposition, docket no. 78842, (Nev., March 2, 2020) (citing Sheriff v. Dhadda, 115 Nev. 175, 180, 980 P.2d 1062, 1065 (1999)). The function on review is to determine whether the decision of probable cause can find support in the evidence presented, giving full credit to the evidence. Jacobson v. State, 89 Nev. 197, 200, 510 P.2d 856, 858 (1973).

"Dismissal of an indictment on the basis of governmental misconduct is an extreme sanction that should be utilized infrequently." Lay v. State, 110 Nev. 1189, 1198, 886 P.2d 448, 454 (1994). For a court to dismiss an indictment, even without prejudice, the defendant-petitioner must show substantial prejudice. Id. This means a defendant-petitioner must demonstrate a reasonable probability that the grand jury would not have found probable cause existed to indict the defendant, absent the claimed error or misconduct. Id.

B. The Evidence that Defendant Refers to Does not Explain Away the Charges for Grand Jury

"If the district attorney is aware of any evidence which will explain away the charge, the district attorney shall submit it to the grand jury." NRS 172.145. This obligation does not turn the prosecutor into a defense attorney at grand jury. Mayo v. Eighth Jud. Dist. Ct., 132

Nev. 801, 808, 384 P.3d 486, 490-491 (2016). "NRS 172.145(2) does not require the district attorney to sift through the evidence and conduct research to construct a defense for the accused." Id. at 802. The prosecutor does not have to "present every lead possibly favorable to the defendant." Id. at 808. "Only when the prosecuting attorney has actual knowledge of clearly exculpatory evidence that directly negates guilt must such evidence be presented to the grand jury." Id. (quoting State v. Hogan, 144 N.J. 216, 676 A.2d 533, 544 (1996)).

"Unlike a trial jury, the grand jury sits not to determine guilt or innocence, but to assess whether there is adequate basis for bringing a criminal charge." Id. at 801 (internal quotation marks omitted). "Requiring the prosecutor to ... present all evidence that could be used at trial to create a reasonable doubt as to the defendant's guilt would be inconsistent with the purpose of the grand jury proceeding ...." Id. at 807, 384 P.3d at 490; Jones v. Eighth Judicial Dist. Ct., 538 P.3d 867, unpub. docket no. 86589 (Nev., Nov. 17, 2023) (citing Mayo favorably and rejecting the defendant's petition); see also Schuster v. Eighth Judicial Dist. Court, 123 Nev. 187, 192, 160 P.3d 873, 876 (2007) ("[T]he State is not required to negate all inferences which might explain away an accused's conduct.").

In Mayo, the defendant sent a letter to the state asking it to submit certain exculpatory evidence to the grand jury, but did not specifically mention moyamoya disease. Id. at 801. Then, in a pretrial petition for a writ of habeas corpus, the defendant argued that the state should have presented moyamoya disease, a possible alternative cause of death in a murder, as exculpatory evidence. Id. Without deciding whether the evidence was in fact exculpatory, the district court denied the petition on the grounds that, even though the state had the evidence in it its possession, the state did not appreciate its exculpatory value. The state was therefore not required to submit it to the grand jury to explain away the charge. Id.

The Supreme Court affirmed and held that merely possessing the evidence is not enough for the state to be aware of its exculpatory value, so as to require that the state present it to the grand jury. Id. at 806. To hold otherwise would be to re-write the statute. Id. at 806-07. The Court further noted that such an obligation is contrary to the purpose of an indictment, which is in the early stages of litigation. Id. at 807. A defendant has an opportunity to present

such evidence at trial. Id. at 809.

1. Physical examination reports do not explain away the charges

As noted in the very same medical records that Defendant claims are exculpatory: "The lack of physical exam findings does not exclude the possibility of sexual assault." Cf. Vega v. State, 126 Nev. 332, 342–43, 236 P.3d 632, 639 (2010) (There is no requirement that the testimony of a victim of a sexual offense be corroborated, and the victim's testimony, standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty). Thus, a lack of physical exam findings did not explain away the sexual offense charges.

2. The full video does not explain away the charge

Defendant's assertion that the actual video of the victim's statement would explain away the charge is contrary to the standard of a grand jury and what it means for evidence to be exculpatory. The credibility or believability of a witness is not to be considered for probable cause. That is an issue of weight to be determined in a jury trial.

As noted above, "The grand jury ought to find an indictment when all the evidence before them, taken together, establishes probable cause to believe that an offense has been committed and that the defendant has committed it." NRS 172.155.

"[P]robable cause may be based on slight, even marginal evidence." Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (internal quotation marks omitted). "[T]the State is not required to negate all inferences which might explain his conduct, but only to present enough evidence to support a reasonable inference that the accused committed the offense." Id. If the evidence produced establishes a reasonable inference the defendant committed the crime, the probable cause to order the defendant to answer in the District Court has been established. Morgan v. Sheriff, 86 Nev. 23, 24-25, 467 P.2d 600, 601 (1970); Miner v. Lamb, 86 Nev. 54, 58, 464 P.2d 451, 453 (1970) ("So long as an inference of criminal agency could be drawn, it was proper for the magistrate to draw it and leave to the jury at trial the determination of which expert witness was more credible").

Faced with the issue of two competing and equally plausible experts, the Court ruled in Miner:

> "It is true there was a noncriminal inference as to the cause of her death according to the testimony of Dr. Butler, which was equally plausible. The testimony of both Dr. Clarke and Dr. Butler was competent and thus admissible upon the criminal agency issue. The real question is the weight to be accorded the testimony of these witnesses. So long as an inference of criminal agency could be drawn, it was proper for the magistrate to draw it and leave to the jury at trial the determination of which expert witness was more credible."

Miner, 86 Nev. at 58. See also, Bryant v. Sheriff, Clark County, 86 Nev. 622, 624, 472 P.2d 345, 346 (1970); Wrenn v. Sheriff, Clark County, 87 Nev. 85, 87, 482 P.2d 289, 290 (1971); Ricci, 88 Nev. at 663.

Miner makes clear that determining the credibility of witnesses is not something that is to be considered in a probable cause determination, even when faced with evidence that supports a noncriminal inference.

Even evidence that impeaches a witness's credibility is generally not considered exculpatory. Lay v. State, 110 Nev. at 1198. A "prior inconsistent statement of a witness does not explain away a criminal charge within the meaning of the exculpatory evidence statute." Id. (internal quotation omitted).

Additionally, what defense counsel sees as exculpatory, does not mean that a prosecutor appreciates the exculpatory nature. The fact that a four-year-old victim does not behave like an adult is not exculpatory. Defendant may view the evidence in their own light and make those arguments in closing arguments at trial.

Thus, the demeanor of the victim or anything else that the video of the victim would have offered to defense does not explain away the charge, instead it is something that defense may argue negates the weight of the evidence.

3. Allegations against the uncle do not explain away the charge

The fact that the Victim alleges multiple offenders is not exculpatory. It only becomes exculpatory when one of the allegations has been proven to be false. In fact, the Co-Defendant, Tiara Williams, pleaded guilty to sexual offenses in this case. She pleaded guilty before trial

to charges of Child Abuse and Open or Gross Lewdness in the Presence of a Child for appearing naked in front of the Victim on this instant offense.

4. DM. H.'s interview does not explain away the charge

As noted above, even claims of inconsistent statements by a witness may not be necessarily exculpatory. Thus, the lack of a disclosure by the Victim concerning contact with another child does not explain away the charge. Instead, it is something that defense counsel can explore at trial to impeach the witness. Furthermore, the fact that one of the children is acting out sexually with the other children is just as easily inculpatory to the Defendant.

5. A denial by the Co-Defendant does not explain away the charge

NRS 51.345 provides in part:

> A statement tending to expose the declarant to criminal liability and offered to exculpate the accused in a criminal case is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Furthermore, the same Co-Defendant has pleaded guilty to two felony offenses in this very case, as noted above.

Lastly, the State did note that both denied the allegations.

Thus, a self-serving uncorroborated statement by a co-defendant does not explain away the charge.

C. Dismissal with Prejudice Would be an Unwarranted and Extreme Remedy

Even when a prosecution has been found to be deficient and denied a defendant due process of law before the grand jury, it did not mandate dismissal with prejudice. State v. Babayan, 106 Nev. 155, 171, 787 P.2d 805, 818 (1990). To dismiss a case with prejudice a defendant must establish "finding of aggravated circumstances and only after a balancing of its deterrent objectives with the interest of society in prosecuting those who violate its laws." Morgan v. State, 134 Nev. 200, 205, 416 P.3d 212, 220 (2018).

Here, this case does not warrant dismissal without prejudice, much less the much higher sanction of dismissal with prejudice.

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CONCLUSION

Because the issues raised do not actually explain away the charge and even if it did, there is not a reasonable probability that the grand jury would not have found probable cause existed to indict the defendant upon the presentation of such evidence, the Court should deny the motion.

DATED this 10th day of March, 2025.

Respectfully submitted,

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

BY */s/ Michael D. Allmon*
MICHAEL D. ALLMON
Deputy District Attorney
Nevada Bar #15169

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made this 10th day of MARCH 2025, to:

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BY: */s/ Howard Conrad*
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

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DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, vs. DAJON MAURICE HARDY, Defendant.	CASE NO. C-23-379167-2 DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

TUESDAY, MARCH 11, 2025

RECORDER'S TRANSCRIPT OF PROCEEDINGS
ALL PENDING MOTIONS

APPEARANCES:

For the State: MICHAEL D. ALLMON
Deputy District Attorney

For the Defendant: JENNIFER M. WALDO, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER

LAS VEGAS, NEVADA, TUESDAY, MARCH 11, 2025, 10:21 A.M.

* * * * *

THE COURT: State versus Hardy, Mr. Hardy is present and he's in custody. What page is this one on?

THE CLERK: 10.

THE COURT: 10? Sorry. Do you guys want to make your appearances?

MS. WALDO: Sure.

MR. ALLMON: Good morning, Your Honor, Michael Allmon for the State, 15169.

MS. WALDO: And good morning, Your Honor, Jennifer Waldo on behalf of Mr. Hardy.

THE COURT: Okay. And he is present and in custody, case C379167. Okay. There's two motions on. I know there's a motion to dismiss. You want to be heard first?

MS. WALDO: Sure, Your Honor. So I received the State's opposition yesterday and there's a couple things that I just wanted to point out. Certainly the defense understands that the burden on the State at a grand jury proceeding or a preliminary hearing is, obviously, slight or marginal evidence. That being said, we know from the NRS that the State still has an obligation to present exculpatory evidence, basically evidence that has a tendency to explain away the charges.

If you look at the cases cited by the State, they're actually readily distinguishable from this case. In the first case, in the Mayo case, that was a case involving a -- the defendant's wife had been murdered and he had been accused of committing the murder. Prior to the grand jury proceedings in that case, his attorney had sent over a letter essentially citing to two references that were found in the

wife's health notes from the hospital indicating that he wanted the State to provide that information to the grand jury.

However, because the defendant -- defense attorney hadn't a time to actually investigate, he did not know why that information in those health notes were actually potentially exculpatory. That information was found out more than a year after the case had been indicted when he actually started investigating this reference to this moyamoya disease. It's a very rare disease and he indicated that he thought that could have been the cause of death, but he didn't know that until more than a year after the grand jury had already convened and indicted the defendant.

That's not the case that we have here. Obviously we know that the physical examination and this information that we're referencing in our motion to dismiss was readily available to this prosecutor at the time that she presented the case to the grand jury. The physical exam reports were done on October 24th, 2023, that was actually the same day as the forensic interview that was conducted. And the information -- Ms. Williams had obviously been interviewed by the police in October of 2023 as well and that information was also available to the prosecutor at the time of the grand jury.

The State also referenced to this Miner case and that case is a little bit different because in the Miner case it's also a murder case where essentially that case went to a preliminary hearing. The defense called their own expert to testify regarding the cause of death because they believe the cause of death was related to the fact that the victim had used barbiturates as well as alcohol and they thought that was the primary cause of death; whereas, the medical examiner for the State indicated that it was blunt force trauma to the head.

So in that case though, both of these experts testified at the preliminary hearing. The magistrate ultimately opined and said, okay, this is going to be a credibility finding that needs to go to the fact-finder at trial, so the case was bound over and set for trial. But in that case the magistrate got to hear both -- both sides of the case, they got to hear from the defense expert as well as the State's expert and ultimately opined that the case needed to go to trial.

In this case the grand jury didn't get to hear any of this information because it was not presented. In State v. Babayan we have a very similar allegation where we have a number of kids that are making allegations against two defendants of sexual assault. This is at a school setting as opposed to, like, a home setting. But in that case one of the issues that the Court noted was a problem and the exculpatory evidence that wasn't presented was the reports of a physical exam. The doctors had examined several of the children. They had made findings that there was no indication of sexual assault and the prosecutor had that information at the time that the case was presented to the grand jury and it was not presented and the Babayan case said, no, that was an error of the State.

This information was readily available. Even if it's not entirely dispositive of the fact that a sex assault may have occurred because obviously we know that sometimes there aren't findings, that doesn't necessarily mean that the information should not have been presented because it said it certainly could potentially explain away the charges, but also it could indicate that perhaps the assault did not occur the way that the victims said that they occurred. So they said it actually got multiple layers of exculpatory because it explains away the charges but it also indicates that perhaps the victim is not recounting the events correctly as well.

Additionally, in Babayan the Court noted that sometimes when you look

at the exculpatory pieces of evidence, sometimes you -- individually, maybe on their own, they're not enough to explain away the charges, but when you look at them in the totality, it certainly would be enough to -- to explain away the charges and that's a case that we have here. We know from Ms. Williams' statement to the police that we have a living environment that is perhaps less than ideal. The children -- there was five children in the home and three adults. They're living, essentially, in a single bedroom suite. It's what -- they were, you know, making the best of the situation that they had. It's what they could afford at the time.

We know from Ms. Williams' test -- statement that the children had been exposed to, you know, basically, the sexual relationship between their parents because of that living environment. We know that the kids had walked in on them at times or had seen them having -- having sexual relations. Wasn't ideal, again, but it was something that we know occurred and she told Detective Hassler about this information.

While the State did in fact present information to the grand jury that both Ms. Williams and Mr. Hardy were denying the allegations, she stopped it there and she basically left it and didn't go one step further to talk about the living situation. And, again, I would cite to Babayan because we have a circumstance where this was a school. One of the -- several -- some of the information that they said should have been presented to the grand jury was how the school was laid out, the fact that there were people coming and going from the school constantly because some of the allegations indicated that the assaults had occurred out in the open and that there was a tutorial service that actually rented space at the school so there would have been individuals present at the time that some of these allegations were supposedly occurring and there was no other witness that could corroborate

what these students were saying happened.

We have a similar circumstance here because we have Ms. Williams testifying about their living situation. We also -- providing information as well about the fact that Mr. Hardy was rarely, if ever, alone with the kids, that usually there was always another adult present, and yet none of this information was presented to the grand jury for consideration.

When we turn to the video, it's not just the defense saying that the video was in fact the best evidence, we have a grand juror actually saying we would have liked to see the victim in this case, we would have liked to see D.H. because it would have helped them get a better understanding of, kind of, some of the information that she was relaying.

We already know that the audio that was presented does not match up to the video because the audio was turned off for a portion of time. But additionally when you watch that video you see the -- the forensic interviewer has to keep going back and asking D.H. questions over and over and over again. She has to keep saying I can't hear you, I can't hear you. Then she repeats the information to D.H. as she's hearing it but it's not necessarily -- some of the words you can't make out because she's talking so quietly. She's also up and down on her seat. She's moving around, she's coloring, she's asking about nail polish, she's asking --

THE COURT: So she's acting normal, you know.

MS. WALDO: I understand she's a kid.

THE COURT: I know, she's a child.

MS. WALDO: But these are things that I think that were important for the grand jury to see so that they could take that into consideration when they're evaluating the credibility of her testimony because really this is the crux of the

State's case, it is her statement and her statement alone. We do know that they talked to two other kids in the home, neither one of them indicated there had been any sort of sexual abuse directed toward the 5-year-old son as well as the older son who I think is about 12 at this time. He is not my client's biological son. He is Ms. Williams' biological son.

So I do think and in this case we know she had access to the video, so if you can't play that video at that time then perhaps what you need to do is come back at a later date when you can play the appropriate evidence for that grand jury to consider before just going forward on basically a partial piece of evidence.

Let's see, now, I -- that also leads me, obviously, to D.M.H.'s interview, and obviously, their initials are the same so that's why I used the D.M. for him. He is five years old at the time that he's being interviewed. The police or the forensic interviewer asked him questions, he denies that there's any sort of abuse going on in the home but does volunteer on his own that he has been touching some of his siblings, not at the direction of either of his parents. There is no indication that is what's taking place, but he does represent that to the interviewer.

Ms. Williams, during her statement to Detective Hassler tells the police that she was aware that some of that was going on and she basically, she and Mr. Hardy immediately shut that down. She talked to him about the fact that these are private parts, that no one can touch these private parts and that you should, you know, and that's why, ultimately why they started using bathing suits or clothing when the kids were in the bath together, to make sure that they weren't seeing each other in that way.

That being -- again, that information wasn't presented to the grand jury and, obviously, this is information that could explain away some of these charges.

One of the things that I've heard --

THE COURT: You think that would explain away the charges?

MS. WALDO: Yes, Your Honor. Because, obviously, it gives a basis for how D.H. would know some of this information if she and her brother are engaged in certain types of behavior that obviously they shouldn't be, but if they are that would explain away how she would know some of this.

THE COURT: Well, you would want the grand jury to hear that?

MS. WALDO: I think the grand jury should have heard that in this case in order to fully evaluate because, one, we know that D.H. did not disclose any -- any such touching by her brother during the -- during her forensic interview. So, obviously, that's a problem. If he's volunteering that, yes, I'm the -- I am doing these things to her and she's not disclosing that during her own interview and she was asked multiple times not just about Mr. Hardy but also about Ms. Williams, about the uncle, and that as well as anybody else in the house. I mean, she was given many opportunities to disclose about that information and she didn't.

One of the grand jurors did in fact ask about the other siblings in the home and if they were interviewed, but that's when the State shut that down and said, no, there's no charges related to D.M.H. so we're not -- I'm not going to let you answer that. But that information should still have been potentially disclosed because that is something that the grand jury could consider because, again, one of the things that Ms. Barker has -- and Ms. Kollins has testified about repeatedly in this case is some of the details that D.H. disclosed during her interview. Well, if in fact her brother and her are engaging in some of this behavior, that would explain some justification or explanation as to how she would have known some of those details.

THE COURT: The 5-year-old brother?

MS. WALDO: Yes.

THE COURT: No. That would not explain some of the details that she gave. I don't think it would, but --

MS. WALDO: Well, specific --

THE COURT: I mean, she gave specific details that you would have to be a man --

MS. WALDO: Yes.

THE COURT: -- you know, to describe what -- there's no way a -- it wouldn't make sense to me, but I'm just saying, some of the detail that she gave I don't think would make sense that she would get them from a 5-year-old boy.

MS. WALDO: Yes. Related to certain allegations.

THE COURT: Right.

MS. WALDO: But some of the allegations that she has made I think there would be an explanation there. I mean, there are -- yes, I'm not -- it doesn't -- again, it doesn't have to be fully dispositive, it just has to have a tendency to explain away some of the charges. And, again, it's just a consideration for the grand jury to consider when they're looking at the totality of the circumstances.

Ultimately, if they would have heard all this information and so opined and still indicted Mr. Hardy, that's a different circumstance. But the problem here is they didn't hear any of that information. And I think when you look at the case law, it's pretty clear; if you look at the NRS, it's pretty clear, this information was available to the State, its potential exculpatory value was readily known to the State. This wasn't a situation where we're dealing with some kind of unique disease or a situation where the information was being presented to the State more than a year

after the case had been indicted. This stuff -- this is information that was readily available to them and they just simply did not present it and they should have.

THE COURT: Okay. Thank you.

MR. ALLMON: Thank you, Your Honor. Your Honor, the reason why a lot of that case law is cited talking about the standard of grand jury is because that's what we're determining, had the State presented the evidence that they're asking for, even assuming that it -- that it should have been, right, even if we grant that, hey, they've identified some exculpatory information, should have been shown, even if we had done that, would it have changed the outcome? And the answer is, no, it wouldn't have changed the outcome. None of this would have changed that.

A lot of this is all great for defense to raise at trial. I don't think a lot of it goes to the weight of whether or not it happened. Whether or not a five-year-old did some of these acts, the victim is talking about ejaculation, which a five-year-old can't do. And so that has to have come from an adult.

Additionally, had -- if we flip this, if we were to look at it and say the State did present all this stuff about a five-year-old being sexually molested, what he says is that somebody touched him, he doesn't remember who, some adult did, he doesn't remember the exact facts and that he has been touching. That's indicative of a child who has been sexually --

THE COURT: Right. That would be my concern, I think it would be too prejudicial to let it come in.

MR. ALLMON: That's -- we would have had them been complaining that the State brought in all this irrelevant prejudicial information just to make them look bad at the grand jury when you have a victim that's been touched by an adult and then he's passing on the abuse to his younger siblings, which is exactly what that would

be.

And so -- and then with the medical exam, the medical exam itself says this -- a lack of evidential -- evidentiary findings is not evidence of a lack of abuse. That's plain, that's not going to change anything. So, and a lot of this stuff too is oral sex, ejaculation on to the victim, so I just don't see how that would have changed anything.

Really what you -- what this boils down to is a weight versus admissibility type of argument in a lot of ways, where they're arguing the body language of the victim and if we would have seen the video we would have seen that body language, that's not really relevant for grand jury or prelim.

THE COURT: Why was the video not -- I'm just curious, what happened?

MR. ALLMON: The --

THE COURT: Because I remember I reviewed it and I saw, I mean, I -- it was a video.

MS. WALDO: Right.

THE COURT: I could hear and see the child with the -- the person doing the interviewing.

MR. ALLMON: And my understanding, it was admitted and so when it's admitted they have it. If they wanted to see it they could have stopped and viewed it. They have that --

THE COURT: Well, why would they hear it and not see it? Do you see my point?

MR. ALLMON: And I don't understand that either. That's not really clear to me. I wasn't at the grand jury either, so I'm only --

THE COURT: I don't know how you could hear it but not see it.

MS. WALDO: Well, Your Honor, she tried -- my understanding is she tried to play the video, she was having difficulties, she indicated to me that it was related to Wi-Fi but it was on a CD so that doesn't really make sense. So there's a separate audio recording, that's what she played.

THE COURT: Okay. So it was separate. Okay.

MS. WALDO: Yeah.

THE COURT: Because I couldn't figure out how --

MS. WALDO: Yeah. There -- she had a -- the -- Ms. Espinoza had a little recorder on the table and she was recording at the same time that they were videoing.

THE COURT: Okay. I got it.

MS. WALDO: But then when she left the room, she turned -- the first time she left the room to go talk to, I'm presuming CPS, she turned that recorder off and she didn't turn it back on until they had -- she had taken D.H. to the bathroom and then came back to the room.

THE COURT: Okay. But it was admitted into evidence? I mean, did they --

MR. ALLMON: The audio recording was.

THE COURT: -- have the ability when they were deliberating to look at it?

MS. WALDO: No. She couldn't get the CD to play.

THE COURT: Okay. So just -- they couldn't see it at all?

MS. WALDO: No.

THE COURT: Okay.

MR. ALLMON: Okay. But again that goes to, like, a you're looking, you're evaluating the weight --

THE COURT: I was just curious.

MR. ALLMON: You're -- yes, Your Honor. You're evaluating the weight, you're watching the body language, that's not something really for a grand jury or a judge at preliminary hearing to do, that's something for a jury when we're talking, you know, believability of witnesses and things like that. Facially, the record exists that the victim disclosed the abuse, there's evidence in the record that supports that, and so playing the video would have made no difference. And so when you look at all of these, essentially, they have no bearing on whether or not a jury -- a grand jury should have found probable cause here. There is sufficient evidence.

I would also note too, I recognize the defense can file this now, but the fact that it is filed so late also raises issues too about filing a motion to dismiss when these issues could have been raised a long time ago. And so right here the -- we are essentially looking at a -- the same standard as we would be in a pretrial writ even though it's filed as a motion to dismiss and whether or not the evidence on the record supports that, it does; whether or not the evidence that defense claims is exculpatory, which the State says a lot of it is not even exculpatory, some of it's even inculpatory, some of it's over prejudicial and shouldn't have been admitted anyway, and that would have no impact on whether or not they would have found probable cause and so, therefore, the case should not be dismissed and certainly not with prejudice.

MS. WALDO: And, Your Honor, the State can keep saying it wouldn't have impacted the grand jury, but the question is we don't know that. The grand jury was asking questions about the video, they were asking questions about the other children in the home, so clearly that shows they do have some concerns, perhaps, about what might -- what might or might not be going on at home, if there were other witnesses to these alleged incidents. And, again, the --

THE COURT: And you think letting the -- I just feel like if you told them some of these other things, how could that not be prejudicial?

MS. WALDO: Well, because --

THE COURT: I mean, I don't see it as being exculpatory at all.

MS. WALDO: Okay. So -- but that -- I mean, but, honestly, that -- we're dealing with one -- one piece of information that you're perhaps saying is potentially not exculpatory which is the disclosure or the information provided by D.M.H. during his interview.

THE COURT: Right.

MS. WALDO: We still have several other factors that we're talking about. We're talking about the forensic report. I guaran --

THE COURT: I know, but how is that exculpatory?

MS. WALDO: What's that?

THE COURT: I mean, that's just something to consider, but we all know, I mean, experts say all the time, there can be, I mean, you could have different penetration than we did here and still not have findings and it doesn't mean the abuse did not occur.

MS. WALDO: Well, Babayan specifically said the examination reports are exculpatory and I promise you that if there had been some sort of findings on that exam that were helpful to the State, that information would have been presented to the grand jury. So the problem is that we've got a case that clearly says the physical examination reports are exculpatory and they should have been presented, in this case we know that they weren't.

The State can argue it wouldn't have made a difference, but the bottom line is that the information should have been presented for the grand jury to decide

because, again, I point to the fact that they're asking questions about certain pieces of evidence and other information and they're not being told any of that information. And, in fact, at one point Ms. Kollins stopped and said, no, you're not going to answer that question. So even if you believe that the D.M.H. interview, some of that information would have been inculpatory or prejudicial, set that aside, we still have other pieces of evidence that we're saying are exculpatory and should have been presented for the grand jury to consider.

The State potentially could have been right, we might have been in the same position as we are now with an indictment. But at the end of the day we don't know that because it wasn't ever presented and the State doesn't have any excuse for not presenting that information.

THE COURT: Okay. Anything else?

MS. WALDO: No, Your Honor.

MR. ALLMON: No, Your Honor.

THE COURT: Okay. At this time the Court's going to deny the motion to dismiss.

The next one is --

MS. WALDO: And, Your Honor, just to be aware, given the Court's ruling, I am going to be asking for a stay at this point because my client would like to take this issue up to the Supreme Court.

THE COURT: Well, you can take it up to the Supreme Court without asking for a stay, right?

MS. WALDO: Well, the problem is that with our current trial date, obviously, we've got this other pending motion, our trial date is March 17th.

THE COURT: What's the State's position?

MR. ALLMON: I mean, defense chose to file this motion now and it was timely heard by the Court.

THE COURT: Yeah, but that case just came out, right? I mean, the case that you relied upon. I know it's a fairly new --

MR. ALLMON: It's a 2024 decision, yes.

MS. WALDO: Yes.

MR. ALLMON: I don't know the month that it came out. That's true.

THE COURT: Okay. Maybe it isn't as new as I thought. When did that -- when was that published? Within the last six months, right?

MS. WALDO: Yes. It was -- it's relatively recent.

THE COURT: Okay. That's what I thought.

MS. WALDO: We originally didn't file -- I was going to file this as a pretrial writ. I didn't because we didn't want -- my client at that time was invoked.

THE COURT: That's right.

MS. WALDO: So that's why I didn't file a pretrial writ, the codefendant did. And then when that case came out, I flagged it as a, okay, I've got to -- I've got to look at this issue because I want to raise some of these arguments regarding exculpatory pieces of evidence.

THE COURT: Would you guys be ready to go next week?

MS. WALDO: Realistically, given the other motion filed by the State, if the Court's going to set that for Franks hearing or is going to --

THE COURT: Right. See, I think it has to -- I think it has to be set for a hearing.

MS. WALDO: Okay.

MR. ALLMON: I agree.

MS. WALDO: So the problem for us, of course, is that there's still information that we're missing from that. I got the -- the interview of M.S. on the 5th, my expert hasn't had a chance to review that. He did have some concerns about the forensic interviews that were conducted in our case, so I do want him to look at that interview. So realistically, I don't think I can be ready if the Court's going to set it for a hearing because the reality is if the Court ultimately grants it, I'd have to seek a continuance at that point because there is some outstanding discovery from that case as well, specifically, Ms. Williams gave an interview to the police in that case, I'd like to see that because the information I have is different from what's in the police report that I received.

MR. ALLMON: The information you have from what?

MS. WALDO: About --

THE COURT: Why did it take so long? How come -- did you guys just get this information?

MR. ALLMON: I just --

THE COURT: I mean, because you got it from another jurisdiction, I understand that.

MR. ALLMON: We did, Your Honor. So I just came onto the case, not this last Thursday, but I believe the Thursday before. The day before I filed the motion was the day that I received this case. That's -- when I received it, I reached out to LAPD and I got it. I called in every favor I could get to get it over there. And so LAPD, they have given me everything they have and every time that I've gotten something from LAPD, I have disclosed it to defense the exact same day that I have received it. So I'm not --

THE COURT: But it's pretty significant information, I mean, I think.

MR. ALLMON: I agree. And so I do know that -- I did tell defense that if they want a continuance for that information, I have no objection, I mean, that's --

THE COURT: Right. Because I wondered if -- regardless, if you guys would be ready to go. Because I think it for sure has to have a hearing.

MR. ALLMON: And I would agree.

THE COURT: I don't think I can -- I wouldn't want to make a decision on an offer of proof. I know you indicated that in the motion, but, no, I like to hear the witnesses testify.

MR. ALLMON: Okay.

THE COURT: So --

MS. WALDO: Right. And, Your Honor, part of my objection for that was just the late filing. This case --

THE COURT: Right.

MS. WALDO: -- was filed in October of '23.

THE COURT: I think it's kind of late too.

MS. WALDO: But, I mean --

THE COURT: But, I mean, he's telling me as soon as he got on the case, I mean, because I think you made a good point, you know, the State said we're ready to go, we're ready to go, but I never heard about this information.

MS. WALDO: No.

THE COURT: I mean, it's fairly -- fairly new. I'm assuming then you probably wouldn't object to a stay? I mean, I don't think I have to give a stay in order for you to go up to the Supreme Court on a writ because you have to file a writ and it doesn't appear as though you all are going to be ready to go next week anyways, if the State wants to proceed on this motion. I guess the State could --

MR. ALLMON: I have no objection.

THE COURT: -- withdraw the motion.

MR. ALLMON: No, Your Honor. I have no objection to a continuance.

MS. WALDO: Okay.

THE COURT: I mean, I'm just saying, if you really wanted to keep the trial date you could withdraw it because I just don't think it would be fair for the defense to have to be ready on that significant of an issue. You just barely got the discovery?

MS. WALDO: Yes, Your Honor.

THE COURT: And you think -- do you have it all?

MS. WALDO: No. I know for a fact that Ms. Williams gave an interview and I do want to see that. Because they were relying on some of that information.

THE COURT: Okay. And you think LAPD has that?

MR. ALLMON: No, Your Honor. I think that I've -- I've given over everything that LAPD has in their records and so they -- they indicated to me that it was in, like, a off-site storage and that it was retrieved from off-site storage and that that -- I was told by the detective that was assisting me there that they have given me everything that they have.

THE COURT: Okay. Who interviewed Ms. Williams though? Does it say?

MR. ALLMON: I forget. I believe -- I would -- I would guess it would be the case agent, but I'd have to look at the report from LAPD to see who did that.

MS. WALDO: Yeah, I don't -- I don't remember the detective's name. But he -- in the summary of the -- in the police report there's references to the statement that she gave. So I'm assuming, I guess it's possible they didn't record it. I suppose that's -- and transcribe it. I suppose that is --

THE COURT: Yeah, it is possible. Maybe they don't have it.

MS. WALDO: But I guess I'd want to get that clarification.

THE COURT: There's just a summary then of her --

MS. WALDO: Yeah.

THE COURT: Okay.

MS. WALDO: It's not even -- it's not entire -- her entire statement, it just kind of points to a couple pieces of information that they said that she disclosed during her interview. So I think there's more to it, I just don't know that.

THE COURT: Okay.

MR. ALLMON: And I'll -- I'll submit in another request to them to ask them for that specifically, but I -- I anticipate that is -- I'm going to be told that it doesn't exist.

THE COURT: Okay. So I'll grant the stay so you can take this issue up on a writ. Do you want -- well, I guess if I grant the stay we can't set the Franks hearing, right?

MS. WALDO: No.

THE COURT: Because you have to stay all the proceedings.

MS. WALDO: Correct.

THE COURT: How long is it going to take you -- I hope it doesn't take --

MS. WALDO: Well, they have to --

THE COURT: Because sometimes it takes a minute for them to get to that.

MS. WALDO: I know. I know. And I've spoken with my client about that. I think he still wants to proceed with the stay.

THE COURT: Well, I guess you would know, I mean, if they grant the writ, then we know it'll be longer.

MS. WALDO: Right. It is possible that they'll decline to even review it. So if

that happens then we can -- I can notify the Court and the State right away as well.

THE COURT: Okay. If you want to prepare the stay and then we can put it on for, like, maybe 60 days.

MS. WALDO: Okay.

THE COURT: And we can find out if they -- if they agreed to hear the writ and if not, we can proceed and go to trial. I'll give you a trial date right after that.

MS. WALDO: Okay, Your Honor.

THE CLERK: Do you want me to give them a date?

THE COURT: Yeah, 60 days.

THE CLERK: Okay.

THE COURT: You can't read my mind?

THE CLERK: Status check for a stay will be May 13th at 8:30 a.m.

THE COURT: How long would you need to get ready for the Franks hearing on the -- the motion you filed? Is it some -- I mean, I'm just wondering is it --

MR. ALLMON: Yeah.

THE COURT: Sometimes it's something we can first day of trial or a couple days before trial.

MR. ALLMON: No.

THE COURT: But I don't know if you would want to know whether you have to defend this issue earlier?

MR. ALLMON: We would --

MS. WALDO: I think I would prefer to know if we have to defend it --

THE COURT: Earlier.

MS. WALDO: -- before the -- before the --

MR. ALLMON: And I have -- if I can have witnesses testify by video, I can set

it probably quicker.

THE COURT: Okay.

MR. ALLMON: But -- because I do have -- essentially every witness for the Franks motion is out of state and so if we come back and we say maybe four to five weeks, if it's by video, I should be able to get that done.

THE COURT: Okay.

MS. WALDO: Okay.

THE COURT: All right. And you can prepare the order

MS. WALDO: Thank you, Your Honor.

PROCEEDING CONCLUDED AT 10:49 A.M.

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

Sara Richardson

SARA RICHARDSON
Court Recorder/Transcriber

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3/12/2025 3:04 PM

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03/12/2025 3:02 PM
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY NEVADA

THE STATE OF NEVADA, Plaintiff, vs. DAJON HARDY, Defendant.	Case No.: C-23-379167-2 Dept. No.: XII **ORDER**

This matter having come before this Court on the 11th day of March, 2025, Plaintiff THE STATE OF NEVADA appearing through its attorney Steve Wolfson, Esq. District Attorney, and Michael Allmon, Esq., Deputy District Attorney and Defendant DAJON HARDY, appearing in person and through his attorney, Jennifer M. Waldo, Esq., the Court having reviewed the pleadings, heard oral argument, and good cause appearing:

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IT IS HEREBY ORDERED that Defendant's Motion to Dismiss for Failure to Present Exculpatory Evidence is denied.

IT IS FURTHER ORDERED that Defendant's request to stay the district court proceedings to file a Writ of Mandamus with the Nevada Supreme Court is herein granted.

Dated this 12th day of March, 2025

DISTRICT COURT JUDGE

96F DA5 DA3F BE4F
Michelle Leavitt
District Court Judge

Respectfully submitted:
WALDO LAW, LLC.

/s/ Jennifer M. Waldo
JENNIFER M. WALDO, ESQ.
Nevada Bar No. 11900
Attorney for Dajon Hardy

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada	CASE NO: C-23-379167-2
vs	DEPT. NO. Department 12
Dajon Hardy	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 3/12/2025

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