

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Ruben Matadamas-Serrano,

Petitioner,

v.

State of Nevada

Respondent.

Appendix to Petition for Writ of Certiorari

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APPENDIX A

Nevada Supreme Court Opinion

Matadamas-Serrano v. State, 584 P.3d 793 (Nev. March 5, 2026)

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUBEN ARTURO MATADAMAS-
SERRANO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88527

FILED

MAR 05 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Appeal from a judgment of conviction, pursuant to jury verdict, of one count of first-degree murder with use of a deadly weapon and one count of burglary while in possession of a deadly weapon. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Affirmed.

F. Virginia Eichacker, Special Public Defender, and Amy Yonesawa and Quintin Dollente, Jr., Chief Deputy Special Public Defenders, Clark County,
for Appellant.

Aaron D. Ford, Attorney General, Carson City; Steven B. Wolfson, District Attorney, Karen Mishler, Chief Deputy District Attorney, and Rachel Krumm, Deputy District Attorney, Clark County,
for Respondent.

BEFORE THE SUPREME COURT, EN BANC.

OPINION

By the Court, PICKERING, J.:

Appellant Ruben Matadamas-Serrano was convicted of first-degree murder and a related burglary charge for fatally stabbing his girlfriend, Maribel Garibay. He argues his convictions should be overturned for *Batson* error, Confrontation Clause violations, evidentiary error, and cumulative error. We find no reversible error and affirm.

I.

Matadamas-Serrano and Garibay had been in a long-term, on-and-off relationship. Both were undocumented immigrants, and in 2018, Matadamas-Serrano was deported. Before Matadamas-Serrano returned to the United States, Garibay married Abel Aguilar.

On the night of the stabbing, Matadamas-Serrano came to visit Garibay at the property where she resided with Aguilar. Matadamas-Serrano was drunk and soon left. He returned an hour or so later, still drunk, and found Garibay with Aguilar in the property's casita. The two men got into a fistfight. Aguilar knocked Matadamas-Serrano down and then went to wash his hands in the bathroom. When he emerged, Matadamas-Serrano ran at him with a knife. Aguilar locked himself in the bathroom and called 911. While on the call, Aguilar heard Garibay say Matadamas-Serrano was stabbing her. After Matadamas-Serrano left, Aguilar came out and found Garibay leaning against the wall, holding her throat, which had been cut. Officers apprehended Matadamas-Serrano in his car at a desert lot, where he had collided with a concrete bunker. Matadamas-Serrano was covered in blood, and he told officers he had stabbed his wife, who had been lying to and cheating on him. Garibay later died of her injuries.

The State charged Matadamas-Serrano with murder with use of a deadly weapon and burglary while in possession of a deadly weapon, and the case proceeded to trial. During jury selection, after for-cause challenges were resolved, the State used five of its eight peremptory challenges to strike venire members belonging to three different ethnic or racial minority groups. Matadamas-Serrano objected pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986). The district court compared this ratio to the racial mix of the group of 30 venire members against whom the strikes were made. Based on that comparison, it concluded that Matadamas-Serrano had not met his burden on the first step of *Batson*, which requires a prima facie showing of race-based discrimination. It therefore denied his *Batson* challenge at step one, without proceeding through *Batson*'s second and third steps. As empaneled, the jury consisted of 12 jurors and two alternates, half of whom identified as Caucasian and half as racial or ethnic minorities.

Matadamas-Serrano filed a motion in limine seeking to exclude testimony from Dr. Stacey Simons, a coroner who did not conduct Garibay's autopsy, but who had reviewed photographs of Garibay's wounds, hospital records, and the autopsy report. The district court denied the motion, ruling that the substitute coroner could testify to "their own findings, conclusions, and opinions based on the autopsy photos." At trial, over Matadamas-Serrano's renewed objection, Dr. Simons used the photographs to explain the path of Garibay's stab wounds. She opined that Garibay had died of complications from those injuries. In addition to Dr. Simons' testimony, the State presented testimony by law enforcement and the audio recording of Aguilar's 911 call, providing the jury with a transcript of the call as a listening aid.

Matadamas-Serrano did not contest that he had stabbed Garibay or that she had died as a result. Instead, he argued that he had been too intoxicated to commit first-degree murder, which requires either premeditation and deliberation or the specific intent needed to establish burglary as a predicate to felony murder. To that end, he presented testimony by Dr. Pohl, an expert in addiction medicine. The district court generally allowed the testimony but with limitations. Matadamas-Serrano also sought to introduce Aguilar's preliminary hearing testimony into evidence. Over Matadamas-Serrano's objection, the court redacted some portions before admitting the preliminary hearing transcript.

II.

On appeal, Matadamas-Serrano alleges the district court improperly denied his *Batson* challenge, violated his Sixth Amendment right to confront witnesses by allowing the substitute coroner to testify and by redacting portions of Aguilar's preliminary hearing testimony, improperly limited Dr. Pohl's expert testimony, and erred by allowing the jury to review the State's transcript of the 911 call. He further argues cumulative error warrants reversal. As explained below, none of these arguments establishes a basis for reversing the judgment of conviction in this case.

A.

Matadamas-Serrano contends that the district court erred by rejecting his *Batson* challenge at step one and should instead have proceeded through all three of *Batson*'s steps before making its decision. He further contends that the district court should not have allowed the State to argue against the prima facie showing he assertedly made at step one.

The Equal Protection Clause prohibits a party from using peremptory challenges to strike "potential jurors solely on account of their

race.” *Batson*, 476 U.S. at 89. When a defendant objects that a peremptory challenge is race-based, *Batson*’s three-step framework applies. *Cooper v. State*, 134 Nev. 860, 861, 432 P.3d 202, 204 (2018); see *Batson*, 476 U.S. at 93-100. First, defense counsel must make a prima facie showing that the State exercised the peremptory challenge(s) based on race. *Williams v. State*, 134 Nev. 687, 689, 429 P.3d 301, 305 (2018). Second, if that showing is made, the State may present a race-neutral explanation for the challenged strike(s). *Id.* at 689, 429 P.3d at 306. Third, and finally, the district court must determine whether the defense has shown purposeful discrimination. *Id.* The district court is not required to proceed to the second and third steps unless the opponent of the strike(s) satisfies the first step. *Watson v. State*, 130 Nev. 764, 775-79, 335 P.3d 157, 166-69 (2014); accord *Barlow v. State*, 138 Nev. 207, 217-18, 507 P.3d 1185, 1197 (2022). This court reviews the district court’s *Batson* findings deferentially and “will not reverse the district court’s decision unless clearly erroneous.” *Watson*, 130 Nev. at 775, 335 P.3d at 165 (internal quotation omitted); accord *Barlow*, 138 Nev. at 218, 507 P.3d at 1197.¹

At step one, the party raising the *Batson* challenge must show “that the totality of the relevant facts gives rise to an inference of discriminatory purpose.” *Johnson v. California*, 545 U.S. 162, 168 (2005) (quoting *Batson*, 476 U.S. at 93-94). “This standard is not onerous and does not require the opponent of the strike to meet his or her ultimate burden of

¹As noted in *Watson*, 130 Nev. at 775 n.2, 335 P.3d at 166 n.2, the federal courts are split as to the standard of review that applies to the prima facie determination that is *Batson*’s first step. We do not address the split because the parties to this appeal do not question the clear-error standard our caselaw applies at all three *Batson* steps. *Id.*; see *Cooper*, 134 Nev. at 861 n.2, 432 P.3d at 204 n.2.

proof under *Batson*.” *Watson*, 130 Nev. at 775, 335 P.3d at 166 (citing *Johnson*, 545 U.S. at 170). But “the mere fact that the State used a peremptory challenge to exclude a member of a cognizable group is not, standing alone, sufficient to establish a prima facie case under *Batson*’s first step; ‘something more’ is required.” *Id.* at 776, 335 P.3d at 166. Although “a ‘pattern’ of strikes against black jurors included in the particular venire might give rise to an inference of discrimination,” *Batson*, 476 U.S. at 97, “a pattern is not the only way to satisfy step one,” *Cooper*, 134 Nev. at 862, 432 P.3d at 205. In addition to a pattern of strikes against members of a targeted group, “circumstances that might support an inference of discrimination include, but are not limited to, the disproportionate effect of peremptory strikes, the nature of the proponent’s questions and statements during voir dire, disparate treatment of members of the targeted group, and whether the case itself is sensitive to bias.” *Watson*, 130 Nev. at 776, 335 P.3d at 166-67.

In district court, Matadamas-Serrano based his *Batson* challenge on the State’s use of five of its eight peremptory strikes against venire members who identified as members of any racial or ethnic minority, not members of a single minority. At the time the strikes were exercised, the prospective jurors had been passed for cause, leaving 30 venire members, 12 of whom identified as racial or ethnic minorities and 18 who identified as Caucasian or white.² The State’s strikes removed two African Americans, one Asian, two Hispanics, and three Caucasians. The defense

²These numbers are drawn from the errata Matadamas-Serrano filed before oral argument in this case, correcting the slightly different numbers used in his opening and answering briefs. The State did not object to the corrections.

also exercised eight strikes, all against Caucasians. The record does not show how the composition of the group shifted each time the State and the defense made their alternating strikes. It does show, however, that the empaneled jury consisted of 12 jurors and two alternates, seven of whom identified as racial or ethnic minorities—including an African American, an Asian, and three, possibly four Hispanics—and seven of whom identified as Caucasian. Expressed in terms of percentages, after for-cause challenges, the State exercised 62.5% of its peremptory challenges (5 of 8) to remove 41.6% of the venire members who identified as racial or ethnic minorities (5 of 12), which, when the peremptory-strike process began, comprised 40% of the venire members (12 of 30), and when it concluded, produced a jury that, counting the alternates, consisted of 50% racial or ethnic minorities and 50% Caucasians (7/7 of 14).

The district court did not clearly err when it denied Matadamas-Serrano's *Batson* challenge at step one. The defense largely based its *Batson* challenge on the State having used five out of its eight peremptory challenges against venire members who identified as racial or ethnic minorities. But "[m]erely identifying minority venire members struck by the State does not meet the burden of showing an inference of discriminatory purpose." *Barlow*, 138 Nev. at 217-18, 507 P.3d at 1197 (holding that the fact the State used four peremptory challenges to remove minorities is not, without more, sufficient to move past step one); *Watson*, 130 Nev. at 779, 335 P.3d at 168 (concluding that "the State's use of six of its nine peremptory challenges against women, standing alone, was not sufficient to give rise to an inference of discrimination"). This is because "the raw number of peremptory challenges used against targeted-group members is meaningless without some point of reference." *Watson*, 130

Nev. at 777, 335 P.3d at 167 (quoting Kenneth J. Melilli, *Batson in Practice: What We Have Learned About Batson and Peremptory Challenges*, 71 Notre Dame L. Rev. 447, 476 (1996)). The ratio between the number of strikes the State made against targeted-group members and the total number of peremptory strikes it made provides one point of reference, but “[t]hat point of reference has little meaning . . . without additional information such as the number of targeted-group members remaining in the venire after the for-cause challenges.” *Id.*

As noted above, the State exercised 62.5% of its peremptory strikes to remove 41.6% of the minorities, who comprised 40% of the venire remaining when the peremptory strike process began. This disparity is close to though somewhat greater than that in *Watson*, where the State used 67% of its strikes against women, who constituted 56% of the venire after the for-cause challenges, and we affirmed the district court’s decision to reject the defendant’s *Batson* challenge at step one. *Id.* at 778-79, 335 P.3d at 168. However, the disparity is less than that in *Cooper*, where the State used 40% of its peremptory challenges to remove 67% of the African Americans who made up just over 13% of the venire, and we reversed the decision to reject the *Batson* challenge at step one. *Cooper*, 134 Nev. at 865, 432 P.3d at 207. During voir dire in *Cooper*, though, the State asked the venire about their opinions on the Black Lives Matter movement, a question with race-based implications that had “at best, minimal relevance,” making it “particularly problematic” that the district court did not proceed to step two and ask the State the reasons for its disproportionate strikes. *Id.* at 864-65, 432 P.3d at 206-07.

The *Batson* challenge in this case rested on the peremptory challenge percentages and did not present the added component of the State having singled out individuals who identified as racial or ethnic minorities with marginally relevant race-sensitive questions and statements during voir dire. The disparity in the percentages shifted as the strikes progressed, because the defense used all eight of its strikes on Caucasians to the point that the percentage of minorities increased from 40% to 50% by the time the parties completed their strikes. See *Watson*, 130 Nev. at 778-79, 335 P.3d at 168 (noting that the shift in percentage composition of the venire due to defense strikes is a relevant point of reference to consider in evaluating the step one showing) (citing *United States v. Martinez*, 621 F.3d 101, 110-11 (2d Cir. 2010)); cf. *United States v. Hernandez-Quintana*, 874 F.3d 1123, 1129 (9th Cir. 2017) (considering the empaneled jury's racial makeup as one factor in addressing step one). On this record, we cannot say that the district court clearly erred in overruling the *Batson* challenge at step one.

Matadamas-Serrano makes two additional arguments, neither of which carries. First, he contends that the district court erred when it allowed the State to argue that its use of five out of eight of its peremptory strikes did not legally establish the prima facie showing required to move past step one. The district court acknowledged Matadamas-Serrano's percentage-based challenge, then said, "however, at this time, I'm going to—" when the State interrupted and asked to make a record. At that point, the State argued the additional reference points recognized in *Watson* and the cases just discussed, on which the defense was also heard. The district court shared its record of how the venire members identified their race or ethnicity with the parties, then overruled the *Batson* challenge at step one. Matadamas-Serrano cites no authority that prohibits argument from both

sides on whether the step one showing has been made. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (“It is appellant’s responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.”). Matadamas-Serrano’s second argument—that he is Hispanic and his immigration status was an issue in this case that should have been considered at step one—likewise fails, because he does not support it with authority or cogent argument in his opening brief. *Id.*

B.

Matadamas-Serrano next argues the district court violated his confrontation rights by allowing a coroner who did not perform the autopsy to testify at trial. Relying on *Smith v. Arizona*, 602 U.S. 779 (2024), he contends that one expert may not, in support of her opinion, convey another nontestifying expert’s statements, and that Dr. Simons improperly testified to the coroner’s pathology report and used that report to form her opinion and refresh her recollection. He also contends the statements in the pathology report were both testimonial in nature and hearsay as used at trial. Though typically we apply discretionary review to the district court’s evidentiary rulings and rulings on a motion in limine, we review de novo whether a defendant’s Confrontation Clause rights were violated. *See Chavez v. State*, 125 Nev. 328, 339, 213 P.3d 476, 484 (2009); *Whisler v. State*, 121 Nev. 401, 406, 116 P.3d 59, 62 (2005).

The Confrontation Clause bars “the testimonial statement of an otherwise unavailable witness . . . unless the defendant had an opportunity to previously cross-examine the witness regarding the witness’s statement.” *Polk v. State*, 126 Nev. 180, 183, 233 P.3d 357, 359 (2010) (quoting *Medina v. State*, 122 Nev. 346, 353, 143 P.3d 471, 476 (2006)). We have previously determined that a substitute coroner’s independent opinion, based on their

own review of the crime photographs and autopsy report, does not offend the defendant's confrontation rights so long as the expert does not effectively introduce testimonial hearsay into evidence, such as by quoting the autopsy report. *See Flowers v. State*, 136 Nev. 1, 8-9, 456 P.3d 1037, 1045 (2020).

The United States Supreme Court's plurality opinion in *Williams* indicated that an expert could recite a lab analyst's findings for "the legitimate nonhearsay purpose of illuminating the expert's thought process." *Williams v. Illinois*, 567 U.S. 50, 78 (2012). This led to widespread confusion over whether such testimony violated the Confrontation Clause. *Smith*, 602 U.S. at 789. The Supreme Court clarified this issue in *Smith*. There, the State sent items seized on a search warrant to a crime lab for analysis, noting the name of the accused and the upcoming trial in its request to the lab. *Id.* at 789-90. Prosecutors had also communicated with the lab analyst about which items needed testing. *Id.* at 790. The lab analyst prepared notes and a report, documenting her lab work and results showing that the seized drugs included methamphetamine, marijuana, and cannabis. *Id.* But because that analyst was unavailable for trial, a substitute analyst testified instead, relying on the absent analyst's records to describe the testing method and opine as to the test results. *Id.* at 790-91.

On review, the Supreme Court held that "[w]hen an expert conveys an absent analyst's statements in support of his opinion, and the statements provide that support only if true, then the statements come into evidence for their truth." *Id.* at 783. The Court reiterated that the Confrontation Clause applies to testimonial hearsay—to testimonial statements that come into evidence for their truth. *Id.* at 792-93. In that

case, the testifying analyst had necessarily “accepted the truth of what the [absent analyst] had reported about her work in the lab,” and “the jury could credit [the absent analyst’s] opinions identifying the substances only because it too accepted the truth” of the lab reports. *Id.* at 798. Though the testifying analyst could fairly opine as to how the lab functioned, testify generally about forensic guidelines and techniques, or even answer hypothetical questions about conclusions he could draw if an out-of-court statement were true, the testifying analyst could not be used to “relay what [the absent analyst] wrote” or become a “mouthpiece” for her at trial. *Id.* at 798-800. But because the state court had not decided whether the absent analyst’s statements were testimonial, the Supreme Court remanded for that court to make the determination in the first instance. *Id.* at 801-02.

Smith clarified that “courts cannot make an end run around the Confrontation Clause by claiming the underlying facts are only being offered to explain an independent opinion.” *Busby v. State*, 422 So. 3d 974, 978 (Miss. 2025) (explaining *Smith*’s holding); *see also Roalson v. Noble*, 116 F.4th 661, 666 n.1 (7th Cir. 2024) (explaining that in *Smith* the testifying analyst problematically testified to the truth of the absent analyst’s report). *Smith* does not, however, impose a categorical rule that a substitute expert may not testify or that any degree of exposure to testimonial hearsay necessarily renders the testifying expert’s opinion inadmissible. Rather, “*Smith* addresses the admissibility of the *basis* for an expert’s opinion—not the opinion itself.” *Commonwealth v. Gordon*, 266 N.E.3d 369, 399 (Mass. 2025) (Georges, J., concurring); *see also Smith*, 602 U.S. at 783. The substitute expert’s testimony will therefore be inadmissible if the expert is merely a conduit for another analyst’s testimonial statements, or if the expert both relies on and conveys those absent analyst’s testimonial

statements in support of their opinion. *Id.* But if the record shows the expert's opinion is meaningfully independent and not based on testimonial hearsay, it will not violate the Confrontation Clause even where the expert may have reviewed another expert's report in preparation for trial. *See, e.g., Jeremias v. State*, 134 Nev. 46, 54, 412 P.3d 43, 51 (2018) (concluding that a substitute coroner's testimony did not violate the Confrontation Clause where she testified to the independent conclusion she had formed based on photographs); *Vega v. State*, 126 Nev. 332, 340, 236 P.3d at 632, 638 (2010) (concluding the expert could offer an independent opinion based on her review of a video recording and diagram); *see also Gordon*, 266 N.E.3d at 400-01 (Georges, J., concurring) (focusing "on whether the testifying expert's opinion is meaningfully independent, based on the totality of the information reviewed," and listing cases allowing testifying experts to form conclusions based on "raw data").

Statements are testimonial when they "would lead an objective witness to reasonably believe that the statements would be available for use at a later trial." *Medina*, 122 Nev. at 354, 143 P.3d at 476 (citation modified); *see also Davis v. Washington*, 547 U.S. 813, 822 (2006) (explaining that statements are testimonial where "the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution"). Whether autopsy reports are testimonial is a subject of debate. *See Carolyn Zabrycki, Toward a Definition of "Testimonial": How Autopsy Reports Do Not Embody the Qualities of a Testimonial Statement*, 96 Calif. L. Rev. 1093, 1093-94 (2008); *cf. State v. Maxwell*, 9 N.E.3d 930, 950 (Ohio 2014) (concluding autopsy reports are created primarily to document the cause of death for the public records and public health, and are therefore nontestimonial); *State v. Bass*, 132 A.3d

1207, 1225 (N.J. 2016) (concluding the autopsy report was testimonial where the autopsy was conducted in the presence of two law enforcement officers shortly after the shooting, and the medical examiner transmitted collected evidence to an investigator). Nevada law has not addressed whether autopsy reports are generally nontestimonial or may be testimonial when considered in context, and the parties do not provide sufficient information about Nevada’s rules regarding autopsies or the circumstances surrounding Garibay’s autopsy to determine that point here.

Regardless, we need not resolve that question. Even assuming *arguendo* the autopsy report was testimonial, Matadamas-Serrano fails to show a Confrontation Clause violation on this record. Though Dr. Simons acknowledged she had reviewed the autopsy report, she also reviewed and relied on the hospital records and photographs of the victim’s wounds. Notably, in denying Matadamas-Serrano’s motion in limine to bar the substitute coroner, the district court instructed that the substitute coroner could testify to her own “opinions based on the autopsy photos,” which were admitted into evidence and are nontestimonial. *Cf. People v. Nadey*, 555 P.3d 961, 1009 (Cal. 2024) (explaining testimony based on autopsy photographs does not violate the Confrontation Clause because “photographs [are] not hearsay”); *People v. Leon*, 352 P.3d 289, 314 (Cal. 2015) (explaining photographs are not testimonial statements and that “the admission of autopsy photographs, and competent testimony based on such photographs, does not violate the confrontation clause”) (emphasis added). The record shows that Dr. Simons relied on those photos as the basis for the findings and opinion she expressed to the jury. Consistent with the district court’s ruling on the pretrial motion in limine, the record does not show that Dr. Simons’ testimony depended on the truth of the original autopsy report

or that she merely conveyed the absent expert's testimonial statements, as was problematic in *Smith*.

But even had the district court erroneously admitted some testimonial hearsay, that error would have been harmless beyond a reasonable doubt. Dr. Simons testified that Garibay had been stabbed and that those wounds caused significant blood loss, leading to her death. And Matadamas-Serrano did not contest that he fatally stabbed Garibay. Accordingly, any error on this point would not be reversible. *See Polk*, 126 Nev. at 184, 233 P.3d at 359 (explaining a *Crawford* violation will be harmless if the State can show beyond a reasonable doubt the error did not contribute to the verdict).

C.

Next, Matadamas-Serrano complains that when the district court allowed him to read Aguilar's preliminary hearing testimony into the record, it improperly "allowed the State to make new objections" and then "redacted the preliminary hearing transcript based on those new rulings" instead of concluding, as it should have done, that "the State's new objections were waived because they were not contemporaneously made in the justice court." *See* NRS 51.325 (if the witness is unavailable at trial, their preliminary hearing testimony is admissible). Matadamas-Serrano argues this violated his Confrontation Clause rights, as those "redactions negated the defense's opportunity to effectively cross-examine [Aguilar] because the defense had no opportunity to rephrase its questions or ask different questions in light of the court's rulings on the State's new objections," and that while "the complete preliminary hearing transcript could have been used to attack [Aguilar's] credibility, . . . the redactions limited the defense's ability to do that at trial."

Our caselaw does not address how the contemporaneous objection rule applies in this context, *cf. Riddle v. State*, 96 Nev. 589, 591, 613 P.2d 1031, 1033 (1980) (noting that generally a contemporaneous objection is needed to preserve an issue for appeal). Assuming it applies, Matadamas-Serrano does not identify what redacted portions he believes were improperly excluded, much less show that their exclusion violated the Confrontation Clause. Nor does he explain why the redactions harmed his ability to attack Aguilar's credibility in view of the portions that were admitted. *See Jeremias*, 134 Nev. at 59, 412 P.3d at 54 (this court may decline to consider arguments that are not supported by cogent argument); *Morrison v. State*, 140 Nev., Adv. Op. 24, 548 P.3d 431, 441 (Nev. Ct. App. 2024) (faulting defendant for failing to cite portions of the record supporting his argument, as required by NRAP 28(e)(1)). Nevertheless, having reviewed the admitted transcript, which includes Matadamas-Serrano's cross-examination about gaps in Aguilar's memory of the crime, his questions about Aguilar's short-term memory loss and PTSD, and instances of Aguilar bristling at questions and being uncooperative, we conclude Matadamas-Serrano fails to show the district court erred by redacting the transcript. *Cf. State v. Eighth Jud. Dist. Ct. (Baker)*, 134 Nev. 104, 106-07, 412 P.3d 18, 21-22 (2018) (explaining the conditions that must be met before a preliminary hearing transcript may be used at trial and reviewing the trial court's decision for an abuse of discretion). Moreover, under these facts any error would be harmless. *See Polk*, 126 Nev. at 184, 233 P.3d at 359 (noting any error will be harmless if the State can show beyond a reasonable doubt that the error did not contribute to the verdict).

D.

Matadamas-Serrano contends that the district court committed evidentiary and constitutional error because it did not allow his addiction specialist, Dr. Pohl, to testify that Matadamas-Serrano was so intoxicated he could not have formed the specific intent required for first-degree murder. “A district court’s decision to admit or exclude evidence is reviewed on appeal under an abuse-of-discretion standard.” *Collins v. State*, 133 Nev. 717, 724, 405 P.3d 657, 664 (2017). But “whether an evidentiary error rises to the level of a constitutional violation” presents a legal question that we review de novo. *United States v. Pineda-Doval*, 614 F.3d 1019, 1032-33 (9th Cir. 2010).

Voluntary intoxication does not excuse criminal conduct. NRS 193.220. It may negate the specific intent required for first-degree murder, however, thereby reducing the degree of the crime. *Id.*; see *King v. State*, 80 Nev. 269, 271-72, 392 P.2d 310, 311 (1964) (recognizing that intoxication may prevent the premeditation and deliberation needed for first-degree murder); *Tucker v. State*, 92 Nev. 486, 488-89, 553 P.2d 951, 952-53 (1976) (recognizing that intoxication may defeat the specific intent required for burglary as a predicate to felony murder). These principles derive from NRS 193.220, which states:

No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his or her condition, but whenever the actual existence of any particular purpose, motive or intent is a necessary element to constitute a particular species or degree of crime, the fact of the person’s intoxication may be taken into consideration in determining the purpose, motive or intent.

Whether voluntary intoxication negates the specific intent needed to commit certain crimes “is normally a fact issue for the jury to resolve.” *King*, 80 Nev. at 272, 392 P.2d at 311; *Tucker*, 92 Nev. at 489, 553 P.2d at 952. As such, it may be the subject of expert testimony, see NRS 50.275 (providing that a qualified expert may testify when “scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or determine a fact in issue”), so long as the evidence is “otherwise admissible,” NRS 50.295, and the witness “does not stray from [qualified expert opinions] about factual matters to conclusions about the appropriate verdict,” *Pundyk v. State*, 136 Nev. 373, 378, 467 P.3d 605, 609 (2020), or “give a direct opinion on the defendant’s guilt or innocence in a criminal case,” *Collins*, 133 Nev. at 724, 405 P.3d at 664.

At trial, Matadamas-Serrano presented testimony from Dr. Pohl to establish his intoxication defense to first-degree murder. Dr. Pohl interviewed Matadamas-Serrano, who told him he blacked out and had no memory of the crime, and reviewed video footage and hospital records establishing his extreme intoxication the night it occurred. Because Matadamas-Serrano did not testify at trial, the district court sustained the State’s hearsay objection to Dr. Pohl relating what Matadamas-Serrano told him about blacking out. Through Dr. Pohl, however, the jury learned that (1) Matadamas-Serrano was extremely intoxicated when the crime occurred, as evidenced by a video showing him passed out in his car about an hour beforehand and a blood-alcohol level of .276 two hours afterwards; (2) this level of intoxication impairs judgment, coordination, impulse-control, and memory—“the thinking, judging, remembering, deciding part of the brain,”—and can cause blackouts; (3) in a blackout, a person “can’t record memory. And if you are unable to record memory, it’s impossible to

decide to do something and follow through on that decision, which is, as I understand, at the basis of intent.” In closing argument, the defense relied on Dr. Pohl’s testimony to argue that Matadamas-Serrano’s intoxication put him in a blackout state such that he could not and did not premeditate or deliberate, as required for first-degree murder, or act with the specific intent required for burglary, which was the predicate to the felony-murder charge.

During Dr. Pohl’s testimony, the State objected that he should not be allowed to testify to legal conclusions or to give opinions as to guilt or innocence. The district court heard argument outside the presence of the jury and partially sustained these objections. It ruled that the defense could ask Dr. Pohl whether “the level of intoxication that you’ve testified to [could] affect a person’s ability to form specific intent,” including whether “in his opinion, could the level of his intoxication that he’s already testified to, the .276, have affected the ability of Ruben Matadamas[-Serrano] to form a specific intent.” Dr. Pohl was then asked and answered the question(s) the district court authorized.

Citing *Pundyk*, 136 Nev. at 375-76, 467 P.3d at 607-08, Matadamas-Serrano argues that “Dr. Pohl should have been permitted to testify [directly] to whether Ruben [Matadamas-Serrano] was able to form specific intent.” In *Pundyk*, the defendant pleaded not guilty by reason of insanity (NGRI) and sought to introduce expert opinion testimony about his mental state, specifically, that “he failed to appreciate the wrongfulness of his conduct due to a delusional state.” *Id.* at 375, 467 P.3d at 607. The district court excluded the evidence. Reversing, we held that NRS 50.295 allows expert testimony on a defendant’s mental state equally with any other ultimate issue of fact, so long as the expert does not offer a direct

opinion on the defendant's guilt or innocence. *Id.* at 376, 467 P.3d at 608. In doing so, we overruled our decision in *Winiarz v. State*, 104 Nev. 43, 51 n.6, 752 P.2d 761, 766 n.6 (1988), which purported to incorporate FRE 704(b) into Nevada law. Like FRE 704(a), NRS 50.295 declares that opinion evidence is not objectionable because it embraces an ultimate issue. FRE 704(b) creates an exception to FRE 704(a), providing that an expert in a criminal case may not testify that the defendant "did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense." But because Nevada's evidence code omits the FRE 704(b) exception, *Pundyk* concluded that judicially adding it as *Winiarz* did "is contrary to NRS 50.295." 136 Nev. at 377 n.2, 467 P.3d at 608 n.2.

The State argues that *Pundyk* is limited to NGRI pleas, but we disagree. The part of *Winiarz* that *Pundyk* overruled did not concern an NGRI plea but testimony that the defendant did not premeditate or deliberate the killing because he was too drunk to form such intent. *Id.* at 376-77, 467 P.3d at 608 (citing *Winiarz*, 104 Nev. at 50-51, 752 P.2d at 766). Such testimony, *Pundyk* held, was admissible under NRS 50.295. *Id.* While *Pundyk* recognized that the testimony in *Winiarz* that went beyond premeditation and deliberation to state that the defendant "murdered her husband in cold blood" was properly excluded because it was prejudicial and an improper opinion on the defendant's guilt or innocence, its holding permitting expert testimony on the effect a defendant's intoxication had on their capacity to premeditate or deliberate applies here.

We therefore conclude, based on *Pundyk*, that the district court erred in limiting Dr. Pohl's testimony as it did. The error, however, was evidentiary, not constitutional. See 29 Charles Alan Wright & Arthur Miller, *Fed. Prac. & Proc. Evid.* § 6286 (2d ed. 2016) (collecting cases holding

that FRE 704(b)'s exclusion of expert testimony on a defendant's state of mind in a criminal case does not "deny due process, equal protection, or the right to compulsory process") (footnotes omitted). And, as the State argues, the error was harmless. Given the substantial evidence and argument the jury heard about Matadamas-Serrano's intoxication and his incapacity to form the specific intent required for first-degree murder, there is not a reasonable probability that the limits the district court placed on Dr. Pohl's testimony affected the outcome of the trial. *See Bell v. State*, 110 Nev. 1210, 1215, 885 P.2d 1311, 1315 (1994) (holding that, in a case of evidentiary error, the test is whether "there is a reasonable probability that the witness'[s] testimony would have affected the outcome of the trial").

E.

Matadamas-Serrano argues due process, equal protection, and his right to present a defense were violated when the State provided the jury with an uncertified transcript of Aguilar's 911 call. Other courts addressing transcripts as a listening aid have allowed their use where the transcript helps the jurors follow the audio tape and precautions are taken. *See, e.g., United States v. Holton*, 116 F.3d 1536, 1541 (D.C. Cir. 1997) (describing the various procedures a district court may follow before allowing a transcript); *United States v. Howard*, 80 F.3d 1194, 1198-1200 (7th Cir. 1996) (explaining that court's preferred procedure and concluding the district court did not abuse its discretion in allowing the transcript where it reviewed portions of the tape against the transcript and properly instructed the jurors). Importantly, this transcript was not admitted into evidence, and Matadamas-Serrano points to no Nevada law regarding listening aids that would bar the district court from exercising its discretion to allow such here. Further, the record shows the district court assessed the transcript's accuracy before allowing the jury to view it, and the court

also instructed the jurors that if they detected any discrepancies between the transcript and the audio, the audio would control. *Cf.* 23A C.J.S. *Criminal Procedure and Rights of the Accused* § 1475 (2025) (explaining that courts have wide discretion in allowing written transcripts as listening aids to audiotope recordings, that one accepted procedure is for the trial court to assess the accuracy of the transcript against the recording before allowing the jury to see it, and that the court should instruct the jury that the audiotope controls in the event of any discrepancy between the two). On these facts, the district court did not abuse its discretion by allowing the jury to view the transcript while listening to the 911 call. *Cf. Howard*, 80 F.3d at 1198 (reviewing the district court’s decision to permit written transcripts as a listening aid for an abuse of discretion); *Chavez v. State*, 125 Nev. 328, 339, 213 P.3d 476, 484 (2009) (reviewing evidentiary rulings for an abuse of discretion).

F.

Finally, Matadamas-Serrano contends cumulative error applies and warrants reversal. But cumulative error requires multiple errors to cumulate, and here there was only one. *See Barlow v. State*, 138 Nev. 207, 221, 507 P.3d 1185, 1199 (2022) (“Because we discern only one error, there is nothing to cumulate.”). Further, even were we to credit Matadamas-Serrano’s allegations of error as to the substitute coroner and Aguilar’s preliminary hearing testimony, those would not tip the scale here. Cumulative error’s balancing test requires us to weigh “(1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged.” *Valdez v. State*, 124 Nev. 1172, 1195, 196 P.3d 465, 481 (2008). Though the third factor favors Matadamas-Serrano, the other two do not. As explained above, the alleged errors were insignificant when viewed in context of the other evidence presented at trial

and the purpose for which the evidence was admitted, and we conclude they would not cumulate to reversible error here. *See Pascua v. State*, 122 Nev. 1001, 1008 n.16, 145 P.3d 1031, 1035 n.16 (2006) (rejecting appellant's argument of cumulative error where the errors alleged were insignificant or nonexistent).

We therefore affirm.

Pickering, J.
Pickering

We concur:

Herndon, C.J.

Parraguirre, J.

Bell, J.

Stiglich, J.

Cadish, J.

Lee, J.

APPENDIX B

Eighth Judicial District Court, Clark County, Nevada

Judgment of Conviction

State v. Matadamas-Serrano, Case No. C-20-348870-1,

2024 Nev. Dist. LEXIS 432 (Eighth Jud. Dist. Ct. March 27, 2024)

JOC

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

RUBEN ARTURO MATADAMAS-SERRANO,
#2632781

Defendant.

CASE NO. C-20-348870-1

DEPT. NO. II

JUDGMENT OF CONVICTION
(JURY TRIAL)

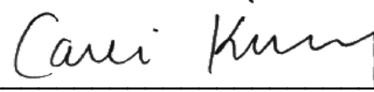
The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – MURDER (FIRST DEGREE) WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030, 193.165, and COUNT 2 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – MURDER (FIRST DEGREE) WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030, 193.165, and COUNT 2 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; thereafter, on the 26th day of March, 2024, the Defendant was present in court for

APP. 024

1 sentencing with counsels, CHARLES CANO, Deputy Special Public Defender, and,
2 QUINTIN DOLLENTE, Deputy Special Public Defender, and good cause appearing,

3 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
4 addition to the \$25.00 Administrative Assessment Fee, \$5,000.00 Restitution payable
5 to Victims of Crime, and \$150.00 DNA Analysis Fee including testing to determine
6 genetic markers plus \$3.00 DNA Collection Fee, the Defendant is SENTENCED to the
7 Nevada Department of Corrections (NDC) as follows: COUNT 1 - LIFE with a
8 MINIMUM parole eligibility of TWENTY (20) YEARS, plus a CONSECUTIVE term of a
9 MAXIMUM of TWENTY (20) YEARS with a MINIMUM parole eligibility of SIX (6)
10 YEARS for the Deadly Weapon Enhancement; and COUNT 2 - a MAXIMUM of
11 FIFTEEN (15) YEARS with a MINIMUM parole eligibility of SIX (6) YEARS,
12 CONCURRENT with COUNT 1; with ONE THOUSAND FIVE HUNDRED EIGHTY-
13 ONE (1,581) DAYS credit for time served. The AGGREGATE TOTAL sentence is LIFE
14 with a MINIMUM Parole Eligibility of TWENTY-SIX (26) YEARS.
15
16
17

18 Dated this 27th day of March, 2024

19 
20

21 **BC3 EAF ED3B 2C4D**
22 **Carli Kierny**
23 **District Court Judge**
24
25
26
27
28

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 State of Nevada

CASE NO: C-20-348870-1

7 vs

DEPT. NO. Department 2

8 Ruben Matadamas-Serrano
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/27/2024

15 Charles Cano

charles.cano@clarkcountynv.gov

16 Quintin Dollente

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18 David Lopez-Negrete

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20 Pam Weckerly Chief Deputy District Attorney

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21 DC 9 Law Clerk

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22 Marc DiGiacomo Chied Deputy District Attorney

Marc.DiGiacomo@clarkcountyda.com

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Jaclyn Mosley

Jaclyn.Mosley@clarkcountynv.gov

APPENDIX C

Nevada Supreme Court Order Denying Rehearing

Entered April 8, 2026

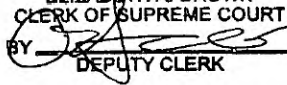
IN THE SUPREME COURT OF THE STATE OF NEVADA

RUBEN ARTURO MATADAMAS-
SERRANO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88527

FILED

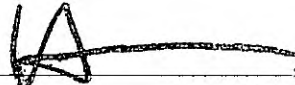
APR 08 2026

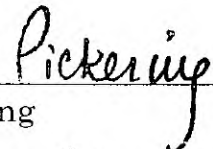
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

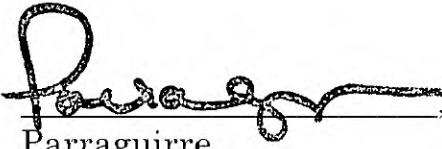
ORDER DENYING REHEARING

Rehearing denied. NRAP 40(a),(h).

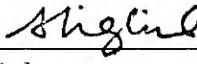
It is so ORDERED.

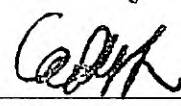
, C.J.
Herndon

, J.
Pickering

, J.
Parraguirre

, J.
Bell

, J.
Stiglich

, J.
Cadish

, J.
Lee

cc: Hon. Carli Lynn Kierny, District Judge
Special Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

APPENDIX D

Eighth Judicial District Court's Oral Decision on Matadamas-Serrano's Pre-Trial Motion in Limine to Preclude Dr. Simons' Testimony

(Excerpt from Transcript)



1 **RTRAN**

2
3
4
5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7
8 **STATE OF NEVADA,**

9 **Plaintiff,**

10 **vs.**

11 **RUBEN ARTURO**
12 **MATADAMAS-SERRANO,**

13 **Defendant.**

CASE NO. C-20-348870-1

DEPT. NO. II

14 **BEFORE THE HONORABLE CARLI KIERNY,**
15 **DISTRICT COURT JUDGE**
16 **TUESDAY, FEBRUARY 6, 2024**

17 ***RECORDER'S TRANSCRIPT OF PROCEEDING:***
18 ***ALL PENDING MOTIONS***

19 **APPEARANCES:**

20 **For the State:**

MARC DiGIACOMO, ESQ.,
Chief Deputy District Attorney

21
22 **For the Defendant:**

CHARLES A. CANO, ESQ.,
QUINTIN M. DOLLENTE, JR., ESQ.,
Chief Deputy Special Public Defenders

23
24 **RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER**
25

1 THE COURT: Generally, the State is not allowed to present
2 unduly prejudicial or cumulative photographs, however they are allowed
3 to present autopsy photographs to establish the cause of in -- of death
4 or injury. One to two photos max per injury, show it to the defense
5 before we start and defense can make any additional contemporaneous
6 objections.

7 MR. CANO: And that's fine. I anticipate prior to those coming
8 in, we'll meet with the State and see what we can work out.

9 THE COURT: Does that sound reasonable?

10 MR. DiGIACOMO: That's very reasonable.

11 THE COURT: Okay. All right. So that's the ruling on that.
12 The motion to preclude expert testimony about the findings of non-
13 testifying experts in violation of the Sixth Amendment confrontation
14 clause, which was filed on 1/25/24. Did you want to be heard any
15 further on that?

16 MR. CANO: We'll submit it to the Court, Your Honor.

17 THE COURT: Anything else, Mr. DiGiacomo?

18 MR. DiGIACOMO: No. We'll submit on the opposition.

19 THE COURT: Okay. I'm going to deny that at this time. The
20 substitute coroner can testify about their own findings, conclusions, and
21 opinions based on the autopsy photos and my experience has been that
22 they in fact have come certain many times even in a case Mr.
23 DiGiacomo had different opinions than the original coroner. And so
24 ultimately, I do know that these coroners are looking at them
25 independently and forming their own conclusions based on the

1 photographs and things that were taken, and so I don't find there is a
2 confrontation clause issue with that, and so I'm going to deny the
3 motion. State to prepare the order.

4 MR. DiGIACOMO: Thank you, Judge.

5 THE COURT: See you guys back for central calendar call.

6 MR. CANO: One other issue I think that --

7 THE COURT: Oh, sure.

8 MR. CANO: -- I can bring it up here. Abel Aguilar is one of
9 the main witnesses, a victim of the burden with intent potentially.

10 THE COURT: Remind me, is he a roommate or is he --

11 MR. DiGIACOMO: He's the husband of the deceased.

12 MR. CANO: Of decedent, yes.

13 MR. DiGIACOMO: Decedent.

14 THE COURT: Okay.

15 MR. DiGIACOMO: He is in the bathroom and calls 911 during
16 the incident.

17 THE COURT: Oh, okay.

18 MR. CANO: Yes, and the reason why I'm bringing him up is
19 we just got transcripts from the 911, regarding him as well as the
20 decedent --

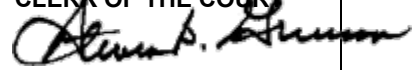
21 THE COURT: Mm-hmm.

22 MR. CANO: -- in this case. And we anticipate obviously the
23 State trying to move into 911 issues. I just inquired with Mr. DiGiacomo
24 if they anticipate bringing him in. He says that he does not anticipate
25 having have him to come in to testify.

APPENDIX E

Eighth Judicial District Court's Oral Decision on Matadamas-Serrano's Renewed Objection to Preclude Dr. Simons' Testimony
at Trial

(Excerpt from Transcript)



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

STATE OF NEVADA,	)	
Plaintiff,	)	CASE NO. C-20-348870-1
vs.	)	DEPT. NO. II
	)	
RUBEN MATADAMAS-SERRANO,	)	TRANSCRIPT OF
Defendant.	)	PROCEEDINGS
_____	)	

BEFORE THE HONORABLE CARLI KIERNY, DISTRICT COURT JUDGE

WEDNESDAY, FEBRUARY 14, 2024

**TRANSCRIPT OF HEARING RE:
JURY TRIAL - DAY 3**

APPEARANCES:

FOR THE STATE:	MARC DIGIACOMO, ESQ. Chief Deputy District Attorney JOHN TORRE, ESQ. Deputy District Attorney
----------------	--

FOR THE DEFENDANT:	CHARLES CANO, ESQ. QUINTIN DOLLENTE, ESQ. MELINDA SIMPKINS, ESQ. Chief Deputy Special Public Defenders
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RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER
TRANSCRIBED BY: DICTABIRD TRANSCRIPTION SERVICES, LLC

APP. 032
000719

1 THE COURT: Otherwise we will take an involuntary
2 15-minute break.

3 Oh, State, there's some pictures --

4 MR. DIGIACOMO: I will grab them.

5 THE COURT: -- still left up on the stand.

6 MR. DIGIACOMO: Yeah. I will grab those.

7 **STACEY SIMONS**

8 [having been called as a witness and being first duly
9 affirmed, testified as follows:]

10 THE CLERK: You may be seated.

11 THE WITNESS: Thank you.

12 THE CLERK: And may I have you please state and spell
13 your first and last name.

14 THE WITNESS: Yes. My first name is Stacey,
15 S-t-a-c-e-y, last name is Simons, S-i-m-o-n-s.

16 **DIRECT EXAMINATION**

17 BY MR. DIGIACOMO:

18 Q Doctor, how are you employed?

19 A I am a medical examiner with the Clark County Office
20 of the Coroner/Medical Examiner.

21 Q How long have you been with Clark County?

22 A Since April of 2023.

23 Q How long have you been a medical examiner or forensic
24 pathologist?

25 A Since 2010 when I started my fellowship year.

1 Q I'm imagining to do the job that you do, you have
2 certain training, education, and background?

3 A Yes. That's correct. So I am a medical doctor. So I
4 did four years of undergraduate school and then went to four
5 years of medical school. After four years of medical school,
6 I trained as a pathologist for four years. After the four
7 years training as a pathologist -- at which time, I was
8 already a medical doctor -- I had one year of specialty
9 training in forensic pathology. And then went out into the
10 workforce.

11 Q And then where did you practice medicine before you
12 came to Clark County?

13 A So I practiced mostly in Florida. So from 2010 until
14 2016, I was practicing in Florida at some of the larger
15 offices: Miami, Jacksonville. Then I went out to Hawaii and I
16 was the coroner's physician for a year and a half in Maui
17 County in Hawaii. And then came back. Was in Palm Beach
18 County in Florida for two and half years and then a short bit
19 in Brevard County. And then came out to Clark County.

20 Q What does a medical examiner, forensic pathologist,
21 coroner's physician, what do they do for a living?

22 A So basically, we're trained -- as a pathologist, we
23 are trained to identify disease and injury. As a forensic
24 pathologist, we have extra training that allows us to evaluate
25 a person who has passed away in situations of unexplained

1 death, unexpected death, sudden death, suspicious death, and
2 violent death. And so the job entails doing an examination of
3 the outside of the body and then an examination of the inside
4 of the body, looking at things -- you know, for injury,
5 disease, and trying to put those pieces together.

6 Q At times, do you also have to review medical records?
7 Let's say a victim was transported or spent a substantial time
8 in -- in a medical facility?

9 A Yes. I would say that's a large portion of our job.
10 And, you know, upwards of hundreds of cases a year require
11 record reviews. Yeah.

12 Q Now, obviously, you weren't here in December of 20 --
13 December 31st of 2019 when this autopsy was conducted. What
14 information did you have to form the opinions you're going to
15 give this jury today?

16 A So I had access to the autopsy report from the
17 pathologist who performed the autopsy, as well as photographs
18 that were taken during the time of the autopsy. I also had
19 access to a limited but -- but pretty complete set of medical
20 records that were, you know, again, just the usual records
21 that we have available. And then access to, you know, just
22 sort of information that our investigators had put together.
23 It's an investigator's report that are -- that's internal to
24 the coroner's office.

25 Q Did you review all of that information and form your

1 own opinions as to, like, the cause and manner of death of
2 Maribel Garibay?

3 A Yes, I did.

4 Q Now, the medical examiner who did conduct this
5 examination, she is no longer with Clark County Coroner's
6 Office. Would that be fair?

7 A That's correct. Yes.

8 Q Now, when the coroner's office gets a --

9 MR. CANO: I don't mean to interrupt.

10 Your Honor, prior to her giving her opinion on this, I
11 just want to renew our objection that you previously ruled on.

12 THE COURT: Okay.

13 MR. CANO: Just [indiscernible].

14 THE COURT: Noted for the record. Thank you.

15 MR. CANO: Thank you.

16 Go ahead.

17 BY MR. DIGIACOMO:

18 Q Prior to -- sorry, ma'am. I can't remember the
19 question.

20 Oh, when a deceased person, a human body comes into
21 the coroner's office, is it assigned a unique number?

22 A Yes, it is.

23 Q And that unique number, does it go on everything
24 including the photographs?

25 A Yes.

APPENDIX F

Eighth Judicial District Court's Oral Decision on Matadamas-Serrano's
Batson Challenge at Trial
(Excerpt from Transcript)

1 Holman; Seat 2, 951, Hockersmith; Seat 3, 712, Roldan; Seat 4,
2 738, Su; Seat 5, 743, Rodriguez; Seat 6, 807, Waymire; Seat 8,
3 814, Yurk; Seat 9, 945, Kahle; Seat 10, 846, Russell-Truman;
4 Seat 11, 942, Nance -- sorry -- 968, Crom; 12, 942 -- sorry.
5 Did I mess this up?

6 MR. DIGIACOMO: No. 942 --

7 THE COURT: 942 --

8 MR. CANO: Is that 11, Nance?

9 THE COURT: 11, Nance. Seat 12 would be 879,
10 Guerrero; Seat 13 would be 908, Carrillo; and then Seat 14
11 would be 918, Pickering; Hay would fall off naturally --

12 MR. CANO: Yes.

13 THE COURT: -- given the -- given the -- okay. That's
14 as it certainly sits. Did you want -- did either side want to
15 make a record or an objection regarding the other side's use
16 of peremptory challenges?

17 MR. CANO: Yes, Your Honor.

18 THE COURT: Okay.

19 MR. CANO: Does the State have any?

20 MR. DIGIACOMO: No.

21 MR. CANO: Okay. We would like to make a challenge
22 based on *Batson versus Kentucky*. Seems to be a pattern of
23 eliminating mixed-raced minorities. The first eight pics:
24 Day, Ayson, Fabian, Williams, and Coreas have all identified
25 themselves as either black, Hispanic, or Asian -- Latino or

1 Asian. It seems to be a pattern of eliminating minorities
2 from this panel. My client is of Latino descent. I believe
3 that there's a prima facie case of a recognizable group that's
4 being eliminated. Based on the totality of the circumstances
5 of the facts, we think that it's improper to eliminate them.

6 And also, I'm not sure if any of this information is
7 going to be coming out or not, my client's immigration status
8 may be a factor. That makes it a sensitive to bias in this
9 case. We are basing our -- our objections on *Batson versus*
10 *Kentucky*, 476 U.S. 79; as well as *Wasson v. State*, 130 Nev.
11 764; and *Diomampo versus State*, 124 Nev. 414.

12 THE COURT: So you are just saying that in general, as
13 to support the people -- the people being stricken by the
14 State are a member of a cognizable racial group, you are just
15 saying, in general, they are minorities?

16 MR. CANO: Well, I mean, they all identified that way
17 on their --

18 THE COURT: I wouldn't -- don't you have to do that
19 separately for each minority group or no?

20 MR. DIGIACOMO: There's a case directly in Nevada that
21 says they have to identify the distinct group, because
22 otherwise, everybody in the panel is essentially a minority or
23 more than 50 percent now of a panel is minority, so how are we
24 supposed to be able to do pics.

25 MR. CANO: According to what they identified

1 themselves on the jury questionnaire and per the *Diomampo*
2 *versus State*, 124 Nev. 414, mixed-raced challenges are fine.
3 So, I mean, they don't have to be for -- they are recognizable
4 groups of Asians, Latinos, and African Americans are being
5 challenged by the State.

6 And just to make a further record, I believe there was
7 nothing said by any one of those individuals that have been
8 stricken by the State to say that they wouldn't be able to be
9 fair and impartial in this case as well.

10 THE COURT: Okay. Okay. So the *Diomampo* does seem to
11 state that they are all members of recognized ethnic
12 minorities that the State used there peremptories on. Two
13 were African American, two were Hispanic, so I believe even
14 though I haven't -- haven't seen it, I believe that it's
15 acceptable to mixed-racial challenges.

16 MR. CANO: Right. Yeah, it doesn't have to be just
17 one group.

18 THE COURT: Sure.

19 MR. CANO: It can be mixed. Yes. That's what
20 we're --

21 THE COURT: All right. So who were the challenges
22 that you were making them on? Which juror numbers?

23 MR. CANO: If I can see the sheet, I can give it to
24 Your Honor. I can tell you their names. Day is 734; Ayson is
25 766, I believe.

1 THE COURT: 734, Day. The next one was which one?

2 MR. CANO: Ayson.

3 THE COURT: Ayson. Okay.

4 MR. CANO: Ayson, 766.

5 THE COURT: Okay.

6 MR. CANO: Then they did Fabian, 706.

7 THE COURT: 706.

8 MR. CANO: And then they did Williams, 719. And those
9 last three were three minorities in a row. And then the last
10 one they did was Coreas, 713. Those are the ones that
11 identified themselves on their --

12 THE COURT: Okay.

13 MR. CANO: -- jury questionnaire.

14 THE COURT: And so Day identifies as?

15 MR. CANO: African American.

16 THE COURT: Okay. Ayson identifies as?

17 MR. CANO: Asian.

18 THE COURT: Fabian identifies as?

19 MR. CANO: Hispanic. Latino.

20 THE COURT: Okay. And then Williams?

21 MR. CANO: African American.

22 THE COURT: And Coreas?

23 MR. CANO: Hispanic or Latino.

24 THE COURT: So the -- so the -- so a total of the
25 eight that were used, you are saying five --

1 MR. CANO: Five out of the eight.

2 THE COURT: -- identify as --

3 MR. CANO: Yeah. Five out of the eight.

4 THE COURT: Five out of eight. Okay. All right. So
5 I find that the defense has raised sufficient facts to show a
6 prima facie case; however, at this time, I'm going to --

7 MR. DIGIACOMO: Well, Judge, before we get there, I
8 would like to make a record about that.

9 THE COURT: Okay.

10 MR. DIGIACOMO: All due respect, I understand you can
11 say mixed race, but which mixed race would it be? They are
12 basically taking the population of the State of Nevada. Look
13 at our jury right now. Ms. Holman, African American; Ms. Su,
14 Asian; Ms. Rodriguez, I am assuming is Hispanic based on the
15 name. I'm just looking at these without even going through
16 the list we got. Ms. Guerrero, Mr. Carrillo or Ms. Carrillo,
17 they are essentially making an impossible task for the State
18 which is, hey, guess what, you only get to use your strikes on
19 the Caucasian jurors which are less than 50 percent of the
20 jurors. So we get -- we get half the jury pool that you don't
21 get to make peremps on; or essentially, I get to know
22 everything the State -- went into their decision process on
23 four or five of your pics. And if the panel is 50 percent of
24 a mixed race and we use 50 percent of our peremps on the mixed
25 race, how is that a prima facie case that we have utilized are

1 peremps on -- on -- in a way that targets a particular group
2 or race? How is that humanly possible if that is the
3 situation that we are faced with here?

4 Looking at the makeup of this particular jury, Judge,
5 there -- and I'm just going through this quickly now because I
6 did not expect them to go, we get to pick every racial group
7 and then lump them together to decide that there's proof.

8 What do we -- what do we do with somebody who says other race
9 or there has been a number of other races that are in here as
10 well, Judge. Their ethnicities are different than their race.
11 Some of them have race, Caucasian; ethnicity, Hispanic or
12 Latino. How are you supposed to actually know that those
13 people are, in fact, a member of that race?

14 I actually thought Ms. Fabian was Asian looking at
15 her, but apparently she identified in her list as Hispanic.
16 Now, she was wearing a mask so it was difficult to tell. But
17 that being said, I don't think that they can make -- just
18 basically saying by numbers that we've done this when they are
19 basically lumping every racial group together.

20 THE COURT: So I mean, how do we reconcile this with
21 *Diomampo* where they used --

22 MR. DIGIACOMO: I'm looking --

23 THE COURT: -- two different racial groups together to
24 make a challenge with Hispanics and African Americans.

25 MR. CANO: Asian -- African American.

1 THE COURT: Ultimately --

2 MR. DIGIACOMO: I'm looking --

3 THE COURT: -- when we are looking at those two groups
4 we would expect, what, 12 percent of the population for
5 African Americans and 22 to 23 percent for Asian -- for
6 Hispanic Americans.

7 MR. DIGIACOMO: And they have added Asians as well, so
8 how many Asians do we have?

9 THE COURT: And now we are at 10 percent -- I know.

10 MR. DIGIACOMO: How -- how is it that we are supposed
11 to be able to do pics? How is it that that matches?

12 And I am looking at *Diomampo* --

13 THE COURT: Sure.

14 MR. DIGIACOMO: -- right now because there's also --
15 it was -- I realize, and I believe maybe it is Turner
16 [phonetic] here because there is a yellow flag here.

17 [Pause in the proceedings.]

18 MR. DIGIACOMO: So if you add those up, right, what
19 are we at? 50 percent of the population and we used five
20 strikes out of nine that becomes -- and then you also have to
21 look at the panel. What was the panel, right --

22 THE COURT: Right.

23 MR. DIGIACOMO: -- in order to make that assessment.
24 So even if you make that assessment, you would have to go
25 through the panel and decide what was the panel. They struck

1 some that identify as Hispanic. They struck some that --
2 well, they didn't strike anybody that identified as African
3 American. I mean, that puts us at a really difficult position
4 to say based solely on numbers that this somehow qualifies. I
5 think you have to do an analysis of the whole thing.

6 What are all the jurors? What do they identify as,
7 both race and ethnicity because there is a whole lot of them
8 who say they are white but then also say their ethnicity is
9 Hispanic.

10 THE COURT: So I mean -- so *Diomampo* gets us to, A,
11 that the people are a member of a cognizable racial group.
12 However, I understand Mr. DiGiacomo's argument that when you
13 add it up, they are no longer a minority when lumped together
14 in that way and I think that has some merit.

15 How do you -- how do you -- defense, how do you
16 establish the proponent of a strike, use the peremptory
17 challenges to remove from the venire members of the strike
18 opponent of -- I guess it doesn't have to be the same race. I
19 mean, how do you establish the second component, that they are
20 using it purposefully?

21 MR. CANO: Well, I think that you can tell by the
22 number of patterns, you know, they have eight peremps, they
23 used five out of the eight to eliminate people who identify
24 themselves as a minority group.

25 THE COURT: So then the other four would have been

1 used on --

2 MR. CANO: There was --

3 THE COURT: -- people that identify as white?

4 MR. CANO: There was plenty of other people that could
5 have been used. I believe -- I believe --

6 THE COURT: So what raises an inference that they're
7 excluding prospective jurors from the jury because of their
8 race?

9 MR. CANO: Can you repeat that, Your Honor. I'm
10 sorry.

11 THE COURT: What about the use of these strikes, given
12 what the entire venire itself looks like, raises an inference
13 that the proponent of a strike -- that the State excluded
14 prospective jurors from the jury because of race?

15 MR. CANO: Well, I would disagree with their
16 categorization that 50 percent of the makeup was of minority.
17 I don't believe it was.

18 THE COURT: We should have the breakup -- the
19 breakdown of all of the racial components of the -- of the
20 panel. Do you guys have that as page 2 or the second exhibit?

21 MR. CANO: I didn't --

22 MR. DIGIACOMO: We just have individuals. We don't --
23 we don't get that.

24 MR. CANO: We don't get that.

25 MR. DIGIACOMO: Do you have it?

1 [Pause in the proceedings.]

2 THE COURT: You guys don't have the ethnicity and race
3 report?

4 MR. DIGIACOMO: No. But we have them individually and
5 I could go through those and put them on the record.

6 Ms. Holman, Juror Number 1, says race is
7 black/African-American. Ms. Fabian says other race/ethnicity
8 Hispanic-Latino.

9 Ms. Milmeister said she was white --

10 THE COURT: No. I have -- literally the numbers. I
11 can make that easier for you --

12 MR. DIGIACOMO: Oh, you do?

13 THE COURT: -- of the racial breakdown of the
14 numbers --

15 MR. DIGIACOMO: Okay.

16 THE COURT: -- if you guys want. Okay. So I'm
17 ultimately going to make it a Court's exhibit. The race
18 report, there is 5 Asian individuals in the 55, 6 African
19 American, 0 Hawaiian or Pacific Islander, 0 Native
20 American/Native Alaskan, 5 other race, 0 unknown, 39 white or
21 Caucasian.

22 MR. CANO: So 39 in 55.

23 MR. DIGIACOMO: And here is what I would say about the
24 *Diomampo*, Judge, is during the jury selection, the State used
25 all four of its peremptory challenges to dismiss prospective

1 jurors, all members of recognized --

2 THE COURT: And then 14 Hispanic.

3 MR. DIGIACOMO: -- ethnic minorities and then
4 ultimately went through those.

5 But on our panel, Judge -- and that's -- as opposed to
6 the 32 is the only one we have to worry about. We don't have
7 to worry about the rest that were behind us.

8 THE COURT: Right. You are right.

9 MR. DIGIACOMO: So Ms. Holman, Ms. -- as I said, I
10 think I put on the record Ms. Milmeister, Ms. Nevarez was --
11 well, she was excused for cause. Ms. -- Mr. Roldan says
12 white/Caucasian. Mr. Coreas says, oh, yeah. He says
13 white/Caucasian, slash -- and then he says ethnicity Hispanic,
14 so now of the --

15 THE COURT: Oh, so you -- when you do see the
16 breakdown, you -- as Mr. Cano indicated, there were -- white
17 Caucasian does include then 14 of those --

18 MR. DIGIACOMO: White Caucasians --

19 THE COURT: -- white --

20 MR. DIGIACOMO: -- are Hispanic.

21 THE COURT: -- are Hispanic. Correct.

22 MR. DIGIACOMO: Yes.

23 MR. CANO: Yeah, we are talking about who is in the
24 box, we're not just talking about who is in the jury pool.

25 THE COURT: I understand.

1 MR. CANO: Yeah.

2 THE COURT: That's what Mr. DiGiacomo just said.

3 MR. DIGIACOMO: That's what I'm going through. So of
4 our first five jurors, three of which are minorities, more
5 than 50 percent.

6 THE COURT: Okay.

7 MR. DIGIACOMO: Mr. Coreas says that he is
8 white/Caucasian but then he says his ethnicity is Hispanic.
9 And then Mr. Williams says he is Asian. Ms. Duque says
10 white/Caucasian not Hispanic. Ms. Day says she is African
11 American. Ms. Su says she is Asian. And Mr. Rodriguez says
12 he is white/Caucasian, Hispanic-Latino.

13 So of the first 1, 2, what, 11 jurors, there was a
14 single -- two. There are two Caucasians of the -- what are we
15 supposed to do when we are using peremps? We can only use it
16 on the two? One of which they took out of the group. So we
17 were down to one possible Caucasian from our first 11 picks.

18 Mr. Ayson says he's Asian. Mr. Johnson was Caucasian
19 but they took him, so we couldn't take him. Mr. --
20 Ms. Watters says she's Caucasian but they took them; we
21 couldn't take them. Ms. Buttery was Caucasian, they took
22 them; we couldn't take them. We did take Ms. Locke who was
23 Caucasian.

24 Mr. Goldman was a fill so I have to go backwards to
25 find Mr. Goldman. Let's see what he reports. 929,

1 Mr. Goldman was Caucasian. They took him so we couldn't.

2 Mr. Carmichael --

3 THE COURT: Okay.

4 MR. CANO: If we are doing this, Your Honor, I mean --

5 MR. DIGIACOMO: -- 800.

6 MR. CANO: I don't mean to interrupt, Marc, but I
7 mean, they are saying we took them, they couldn't. I mean
8 they, you know, prior to Mr. Goldman being a peremp, they
9 picked Ms. Ayson. They could have taken Mr. Goldman if they
10 wanted to.

11 MR. DIGIACOMO: Well -- but --

12 MR. CANO: So I mean, they are making these choices
13 and I'm just trying to make sure that the record is clear.

14 THE COURT: Sure.

15 MR. CANO: It's not like, you know, oh, we took all of
16 these pics so they didn't have any pics so they were stuck
17 with doing this, because that's what he is trying to draw the
18 picture and that's not the case.

19 MR. DIGIACOMO: Well, in all due respect, you have to
20 look at the panel as a whole. Mr. Carmichael, which we did
21 take, was Caucasian. Ms. Morgan, which was Caucasian, they
22 took her. Mr. Waymire says he's Caucasian not Hispanic. He
23 is still on the jury. Ms. Yurk says other race. I don't know
24 what other race is, but I -- she is still on the jury. Kahle,
25 945, says she is white/Caucasian. She is still on the jury.

1 Russell-Truman, white/Caucasian. Mr. Groberg, he was
2 white/Caucasian but he was taken by the defense. Mr. Crom,
3 968, white/Caucasian. Mr. Nance, 942 --

4 THE COURT: Okay.

5 MR. DIGIACOMO: -- we are almost done, Judge --
6 white/Caucasian. Mr. Guerrero identified as -- 879, I believe
7 he identified as Hispanic but he might have been
8 white/Caucasian with Hispanic -- white/Caucasian, ethnicity
9 Hispanic, is still on the jury. Mr. Williams, white/Caucasian
10 but he was taken by the defense. Mr. Carrillo or
11 Ms. Carrillo -- Mr. Carrillo says white Hispanic --
12 white/Caucasian and Hispanic, still on the jury. Mr. Ennis or
13 Ms. Ennis is 914 which is white/Caucasian, taken by the
14 defense. And the last one is Pickering, white/Caucasian.

15 So what were we supposed to do -- when you look at
16 that list, what are we supposed to do? And so if I used my
17 five peremps, I had to use them on only Caucasians? How
18 would -- how could you make an assessment that somehow there
19 was a race basis? I get Dicampo [sic] in the sense that you
20 had four peremps and used all four on the only Hispanics on
21 the panel or the only two racial groups on the panel, that can
22 be a prima facie case one way or the other. But to say it in
23 this case, we want to combine all of them without looking at a
24 whole, we have 32 people we want the 12 best jurors, what are
25 they saying I'm being race [sic] about? That I want to

1 exclude what?

2 THE COURT: All right. Beyond the race of the first
3 five people -- of the five people that you have established,
4 anything else that you want to put on the record regarding the
5 State using race as a factor to strike these jurors?

6 MR. CANO: No, Your Honor. I mean, I think we
7 established a prima facie case. I think the Court had said
8 that we did. I think it's up to them going to the next step
9 to give neutral-based reasons for it. You can see the makeup
10 of the panel that we have.

11 They -- you can see a systematic pattern, that they
12 have choices to make. And, you know, I'm not going to go into
13 the State's of mind as to why they made those choices, but five
14 out of the eight peremps that they make were people of
15 different ethnicities or mixed races. I mean, different
16 ethnicities but as a group, it's a mixed-race challenge that
17 we're making as we are allowed to by *Diomampo*. And I think
18 we've established that.

19 So I think next step is if they've got to, you know,
20 give their race base -- other race-neutral basis since we are
21 offering these people, otherwise, I don't think they are
22 proper exemptions and they should be allowed to stay on the
23 panel.

24 THE COURT: So I'm still really having a difficulty
25 with you saying that they're using these -- them. I

1 understand that you are grouping them, but when we look at the
2 racial composition, when -- if you are looking at African
3 Americans, we have an African American left on the jury. If
4 we are looking at Hispanics, we have three Hispanics left on
5 the jury. If we are looking at Asians, we have one left. And
6 then we have somebody who's other race.

7 So I don't know that given the fact that these are
8 minority groups and so we wouldn't expect them to be
9 necessarily as represented in the numbers as equally -- as
10 much as Caucasian people when there are so many of them
11 already on the jury, I don't know that you have established
12 that -- even the prima fascia case, which I am understanding
13 is a very light burden.

14 MR. CANO: Well, Your Honor, I mean, if you look at
15 the pattern of the people, I mean, it's obvious that they
16 marked all eight of them that are of minority descents and,
17 you know, they, you know, eliminate all of them. Then it's a
18 no-brainer as far as establishing a prima facie case because
19 there is an obvious pattern. But when you look at the five
20 out of the eight that are available when they had other
21 choices then they are choosing to systematically eliminate
22 those despite the fact that there are other minorities that
23 are left on the panel, we still have established that prima
24 facie case, Your Honor.

25 THE COURT: State, final word before I make a ruling

1 and move on on this one.

2 MR. DIGIACOMO: Just that, Judge -- and, you know, as
3 you recall, the first 12, there was only, in their world,
4 three jurors that I get to choose from in the first 12 that
5 were in the box. Otherwise, I have to answer to being called
6 a racist, and I think that's not prima facie evidence that I
7 am a racist.

8 THE COURT: All right. At this point, I'm going to
9 find that the State -- that the defense has not sustained
10 count one, that first prima facie case of racial
11 discrimination. So we are not going to go further to step
12 two.

13 Anything further before we bring in the jury and
14 excuse the members that have been picked?

15 MR. DIGIACOMO: Not from the State.

16 MR. CANO: Not from defense, Your Honor.

17 THE COURT: Okay. Let's bring in the jury.

18 [Prospective jury panel reconvened at 5:26 p.m.]

19 THE COURT: Marshal Stephenson, is this the entire
20 jury box?

21 THE MARSHAL: It is.

22 THE COURT: Okay. You may be seated.

23 At this time, I'm going to thank and excuse the
24 following jurors. If your name is read, feel free to exit out
25 the back doors. 706, Fabian; 707, Milmeister; 713, Coreas;