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## CRIMINAL LAW: BAIL RIGHTS FOR DEFENDANTS CHARGED WITH FIRST-DEGREE MURDER

### Summary

Article 1, Section 7 of the Nevada Constitution withholds bail rights from defendants charged with murders punishable by life sentences when “the proof is evident and the presumption great.”<sup>2</sup> The level of proof necessary to satisfy this standard is greater than that necessary to establish *probable cause*, but less than that necessary to prove *beyond a reasonable doubt*.<sup>3</sup> In finding this standard met, a court may not rely on inference or conjecture, and the proffered evidence must prove all the elements of the charged offense.<sup>4</sup> Here, the district court erred in denying Sewell’s bail, because the admissible evidence did not amount to evident proof and a great presumption.

### Background

In 1997, Las Vegas Metropolitan Police Department (“LVMPD”) officers discovered the dead body of a woman with a gunshot wound to her head. At the scene, they recovered the spent round but not the casing. A medical examiner determined the cause of death was homicide. Further analysis found semen in the victim’s vagina, anus, and jeans. LVMPD did not solve the case.

In 2017, LVMPD found that Sewell’s DNA matched the DNA from the scene of the crime. Also, in 1997, Sewell possessed a revolver that *could* have fired the round used in the homicide, because it was one of many gun models that fired the caliber of the recovered round. During an interview with LVMPD, Sewell confessed to having sex with the victim, but claimed that he fled the scene because his gun went off accidentally. Thereafter, the State charged Sewell with first-degree murder.

Sewell moved for reasonable bail. On a separate motion, the court suppressed his confession because of a violation of his *Miranda* rights. Therefore, the admissible evidence amounted to 1) Sewell’s claim that he did not know the victim, 2) the DNA match, and 3) the possibility that Sewell’s revolver *could* have been the murder weapon. Upon this evidence, the district court denied bail.

Sewell petitioned the Nevada Supreme Court for a writ of mandamus.<sup>5</sup>

### Discussion

Article 1, Section 7 of the Nevada Constitution provides bail rights to all criminal defendants.<sup>6</sup> However, it maintains an exception for defendants charged with certain murders and

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<sup>1</sup> By Connor Bodin.

<sup>2</sup> NEV. CONST. art. 1, § 7.

<sup>3</sup> *Hanley v. State*, 85 Nev. 154, 161, 451 P.2d 852, 857 (1969); *In re Wheeler*, 81 Nev. 495, 500, 406 P.2d 713, 716 (1965).

<sup>4</sup> *Howard v. Sheriff*, 83 Nev. 48, 50, 422 P.2d 538, 539 (1967).

<sup>5</sup> The Nevada Supreme Court may entertain petitions challenging bail decisions. *See Valdez Jimenez v. Eighth Judicial Dist. Court*, 136 Nev. 155, 160–62, 460 P.3d 976, 983–84 (2020).

capital offenses.<sup>7</sup> The State may deny bail to these defendants only when “the proof is evident and the presumption great” that the defendant is guilty.<sup>8</sup> The State must supply competent evidence to meet this standard before bail can be denied.<sup>9</sup>

The level of proof necessary to meet this standard is more than that required to establish *probable cause*, but less than that required to prove *beyond a reasonable doubt*.<sup>10</sup> To deny bail, a district court may not rely upon inferences and conjectural connections between the evidence and the crime.<sup>11</sup>

It is not always clear when the evidence will defeat bail.<sup>12</sup> Previously, the Court has held that a dying declaration may amount to sufficient evidence to defeat bail.<sup>13</sup> However, testimony that a defendant scuffled with the victim prior to the victim’s death is insufficient, because it does not prove the elements of first-degree murder.<sup>14</sup> Even witness testimony that a defendant previously discussed hiring someone to murder the victim was insufficient to defeat bail.<sup>15</sup>

Here, the Court determined the evidence proffered by the State was insufficient to defeat Sewell’s right to bail. The evidence showed that Sewell had sex with the victim and that his gun *could* have fired the round. However, the proof was not evident, nor the presumption great, that Sewell committed the elements of first-degree murder. A conjectural step is required to connect the State’s evidence to the elements of first-degree murder.

## **Conclusion**

The State failed to rebut the presumption in favor of bail under the Nevada Constitution. The State did not provide evident proof, nor demonstrate a great presumption, that Sewell committed first-degree murder, because their theory relied on conjecture and inferences. Therefore, the Supreme Court of Nevada issued a writ of mandamus instructing the district court to admit Sewell to reasonable bail under the necessary conditions.

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<sup>6</sup> NEV. CONST. art. 1, § 7.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Howard, 83 Nev. at 50, 422 P.2d at 539.

<sup>10</sup> Hanley, 85 Nev. at 161, 451 P.2d at 857; Wheeler, 81 Nev. at 500, 406 P.2d at 716.

<sup>11</sup> Howard, 83 Nev. at 51-52, 422 P.2d at 539-40.

<sup>12</sup> Wheeler, 81 Nev. at 500, 406 P.2d at 716.

<sup>13</sup> *Id.* at 501-03, 406 P.2d at 717.

<sup>14</sup> Howard, 83 Nev. at 51, 422 P.2d at 539.

<sup>15</sup> Hanley, 85 Nev. at 162, 451 P.2d at 857.