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7 MONTANA ELEVENTH JUDICIAL DISTRICT COURT
8 FLATHEAD COUNTY

9	STATE OF MONTANA,)	
10)	Cause No. DC-20-459 B
11	Plaintiff,)	
12)	ORDER
13	vs.)	RE
14)	MOTION TO DISMISS
15	BRADLEY HILLIOUS,)	
16)	
17	Defendant.)	

18 **FACTS**

19 Amanda Hillious died on December 19, 2020 following an incident at her home near
20 Kalispell, Montana on December 15, 2020 when she was found unconscious at the bottom of a
21 staircase by her husband, Defendant Bradley Hillious. First responders transported Amanda to the
22 hospital after she could not be revived at home.

23 Also on the day of the incident, December 15, officers obtained a search warrant for the
24 home. The crime scene team found evidence of a struggle at the base of the stairs, disturbed
25 furniture, blood stains and bloody towels. The warrant indicates it was issued for the purpose of
26 locating evidence of attempted deliberate homicide. A copy of the warrant was left in the home
27 on that day. The next day, a separate warrant was executed leading to seizure of Defendant's
28 phone.

While at the hospital, medical providers documented Amanda's numerous injuries including
extensive soft tissue swelling throughout the neck, acute bilateral rib fractures, and a lacerated
liver.

Following her death on December 19, Amanda's body was transported to the Montana State
Crime Lab in Missoula, Montana where the medical examiner conducted an autopsy. The
examiner provided a brief statement of his conclusions before completion of the autopsy report:
the cause of Amanda's death was blunt force injuries associated with neck compression with the
manner of death being homicide. The examiner's autopsy report was completed the following
April, 2021.

On December 21, two days after her death, Amanda's body was released to Darlington
Cremation and Burial Service in Kalispell. On an Authorization form, the coroner released the
body to Darlington's custody, and authorized disposal of the body. On December 23, four days
after Amanda's death, Defendant identified himself as the Authorizing Agent on an Authorization
for Cremation form provided by Darlington. In summary, the Form authorizes Darlington to
cremate Amanda's "human remains." Defendant signed this Form on that date after representing,
in writing, he had authority to do so as Amanda's spouse, and Amanda had "[expressed] verbal
instructions to be cremated." By signing the form, Defendant acknowledged he

1 [has] identified the human remains that were delivered
2 to the funeral home as the decedent, and [has] authorized
3 the funeral home to deliver the decedent to Darlington
4 Crematory for cremation.

5 As for the time of cremation, the Form states

6 Darlington Crematory is authorized to perform the cremation
7 upon receipt of the human remains and necessary permits,
8 **at its discretion**, and according to its crematory schedule,
9 as work permits, without obtaining further authorization
10 or instructions. (Emphasis added)

11 On December 24, the same day the State received the examiner's brief statement of
12 conclusions, an Information was filed with this Court charging Defendant with Deliberate
13 Homicide in relation to his wife's death. *Doc. 3*. On the same date, Darlington cremated Amanda's
14 human remains, one day after Defendant authorized the cremation. Thus, Defendant was charged
15 with Deliberate Homicide one day after he authorized Darlington to cremate Amanda's remains,
16 three days after the State released the remains to Darlington.

17 **ORDER**

18 Defendant's Motion to Dismiss Due Process Violation, Failure to Preserve Evidence is
19 **DENIED.**

20 **RATIONALE**

21 Defendant's contentions are found at *Def. Rply. Br., p. 7*:

22 The State released the body on December 21, 2020. At that
23 moment, Mr. Hillious had not been charged or arrested for
24 her [Amanda's] death. Her medical treatment revealed
25 injuries related to a fall along with multiple health issues
26 previously unknown to defendant or his wife. Regardless,
27 Mr. Hillious had no reason to preserve her remains. Mr.
28 Hillious did not have legal counsel to advise him of the fact
that an independent autopsy might be needed. **However,**
the fact the State intentionally released the body for
cremation, before Mr. Hillious was charged, is a per se
Due Process Violation, that requires a dismissal of the
charge against Mr. Hillious. (Emphasis added).

The basic argument is the release of the human remains by the State on December 21 rather than
its retention as evidence deprived Defendant of the opportunity for an independent autopsy. "Mr.
Hillious is entitled to an independent autopsy." *Def. Open. Br., p. 3*. "Mr. Hillious has no means
to rebut the autopsy report by the State." *Def. Open. Br., p. 6*.

Noticeably absent from Defendant's contentions is any reference to the Darlington
Authorization for Cremation, and Defendant's role in the cremation of his wife: two days after the
release of the remains to Darlington, Defendant authorized cremation which occurred the next
day. An ambiguous allusion to this may appear at *Def. Rply. Br., p. 9* where Defendant writes,
comparing the instant case to an unrelated case involving a vehicle:

The State attempts to shift blame for this situation to the defense,
arguing that if only the defense had examined the vehicle earlier, it
would have been in its impounded condition. [Citation] The State
attempts to shift the blame in this case [the instant case] also, saying

1 Mr. Hillious himself released the body. However, Mr. Hillious
2 would not have been able to make any arrangements had the
3 State upheld its duty to preserve evidence. Only the State knew
it would be filing a criminal case against Mr. Hillious.

4 This comment is unclear: Defendant made an “arrangement” – presumably to cremate Amanda at
5 Darlington’s discretion – two days after the State released human remains to Darlington. As
6 understood by the Court, the argument seems to be as follows: The State denied Defendant due
7 process by releasing the remains thereby forcing Defendant, then without legal counsel, to quickly
8 authorize cremation and, logically, deprive himself of an independent autopsy, all while Defendant
had no idea he might be charged with deliberate homicide as he was one day after the
“arrangement,” nor any idea he may want an independent autopsy in the event he was charged in
relation to Amanda’s death.

9 Defendant cites *State v. Colvin*, 2016 MT 129, in support of his position. In *Colvin*,
10 Defendant Colvin was charged with attempted deliberate homicide when he shot at the victim
11 while the victim was in his car. The State had possession of the car. The defense attorney moved
12 to inspect the car, and the motion was granted on the same day the State filed a motion to return
13 certain other property to the victim. Despite the order allowing defense inspection of the car, the
14 State returned the car to the victim without leave to do so nor notice to the defense or the court.
15 The trial court determined, and the Montana Supreme Court confirmed, the car constituted a crime
scene, and that the release of the car contrary to an order requiring its disclosure amounted to a
due process violation. *Colvin* ¶¶ 16, 19. Defendant equates the human remains of Amanda
Hillious to a crime scene which Defendant has been deprived of examining as a result of State
action, and hence is a violation of due process under *Colvin* under what is referred to as a *Brady*
analysis as described in *Garding v. State*, 2020 MT 163 ¶ 26.

16 The State contends the Court should deny the defense motion for any one of three reasons:

17 **1. The Defendant Caused the Destruction of Evidence:** The December 21 release of human
18 remains to Darlington did not trigger the need to cremate those remains pursuant to Defendant’s
19 authorization as quickly as Darlington did, and was entitled to do, pursuant to the authorization.
20 Defendant has produced no evidence supporting the necessity of Defendant’s hasty destruction of
the evidence. He knew a homicide investigation was in progress in which he was a suspect, is
responsible for the cremation, and therefore cannot claim a denial of due process. §§ 1-3-206-208
MCA.

21 **2. The Defendant has Failed to Establish a Brady Violation:** To establish a violation under
22 *Brady v. Maryland*, 373 U.S. 83 (1963) as interpreted in Montana under *Garding, supra*, a
23 defendant must show 1) the State possessed evidence favorable to the defense; 2) the prosecution
suppressed the favorable evidence; and 3) there is a reasonable probability the outcome of the
proceedings would have been different had the evidence been disclosed.

24 As for the first requirement. The State contends that although it had possession of Amanda’s
25 remains through the release of her remains to Darlington, that during this period Defendant can
26 point only to inconsistencies between the voluminous medical records and the autopsy. Those
27 inconsistencies, if that is what they are, will still be available at trial for analysis. Also, the State
28 did not possess the remains after releasing them to Darlington on December 21 nor, obviously, on
December 24 when cremation occurred pursuant to Defendant’s authorization. Therefore, the
State contends the first *Garding* element has not been proven - the State relinquished possession
of the potentially favorable evidence to Darlington in trust for Defendant. The decision to cremate
the remains was not made by the State.

As for the second requirement, the State points out again the State did not suppress
Amanda’s remains. By authorizing cremation, Defendant rendered further examination of the
remains impossible.

1 As for the third requirement, the likelihood of a different outcome, Defendant has not
2 established that an opportunity for an independent autopsy would have been favorable to the
3 defense. The State notes the availability to the defense of the substances preserved by the medical
4 examiner: x-rays, scans, electrocardiograms, blood analyses, photographs, tissues and samples. It
is not as though Defendant lacks comparable evidence which could prove favorable in addition to
the medical records.

5 **3. Neither State v. Colvin nor Public Policy Support the Defendant's Motion:** The State's
6 position on the applicability of *Colvin, supra*, to the facts of the instant case is that *Colvin* does
7 not apply for two reasons: 1) *Colvin* involved defiance of a court order which the instant case
8 does not; 2) *Colvin* involved a vehicle, not a human body. The State is unaware of legal precedent
suggesting a body must be preserved until a defendant has had an opportunity to examine it citing
cases to the contrary.

9 The Court adopts the reasoning of the State in its first argument, *supra*, and does not find a
10 *Garding* analysis suitable to the limited facts of the case. The suppression/destruction of the
11 remains was the sole responsibility of Defendant. Whether he acted unwittingly in depriving
12 himself of an independent autopsy is not for the Court to determine, but there is no evidence
13 supporting the basic defense suggestion the State acted improperly, contrary to its protocols in
such a situation, or contrary to law. As stated, Defendant is not without material to contest cause
of death. The Court finds no due process violation.

14 **ELECTRONICALLY** dated and signed below.