

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO

Plaintiff-Appellant,

v.

ALEJANDRA MARIA OCHOA

Defendant-Respondent

No. 47796-2020

**Canyon County Case No.
CR14-18-21278**

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON**

**HONORABLE D. DUFF McKEE, District Judge
HONORABLE JEROLD W. LEE, Magistrate Judge**

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CASES AND AUTHORITIES	iii
<u>STATEMENT OF THE CASE</u>	1
<u>Nature of the Case</u>	1
<u>Statement of Facts and Course of Proceedings</u>	1
<u>ISSUES</u>	6
<u>ARGUMENT</u>	7
<u>I. The District Court did not err by concluding that the victim’s toxicology results were competent, relevant, and material to the charge against Ms. Ochoa</u>	7
A. <u>Standard of Review</u>	7
B. <u>The District Court was correct in holding that evidence of drugs in victim’s system was competent, relevant, and material evidence to the essential element of whether Ms. Ochoa’s commission of a traffic infraction was a significant cause of victim’s death.</u>	8
<u>II. The District Court did not err in finding an abuse of discretion in the magistrate’s denial of Ms. Ochoa’s motions to continue</u>	12
A. <u>Standard of Review</u>	12
B. <u>The District Court correctly held that the Magistrate abused its discretion in denying Ms. Ochoa’s requests to continue the jury trial and Ms. Ochoa was prejudiced</u>	8

III.	<u>The District Court did not err in finding that Dr. Groben’s testimony which came directly from the medical records was hearsay which did not fit into any exception for the admissibility of hearsay evidence and was improperly admitted into evidence</u>	15
	A. <u>Introduction and Standard of Review</u>	15
	B. <u>The District Court correctly ruled that Dr. Groben’s testimony from the medical records was hearsay, did not fit into any hearsay exception, was therefore inadmissible and its admission deprived Ms. Ochoa of due process when coupled with the other errors of the Magistrate that are the subject of this appeal</u>	16
	<u>CONCLUSION</u>	18
	<u>CERTIFICATE OF SERVICE</u>	19

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<i>Bailey v. Bailey</i> , 153 Idaho 526, 529, 284 P.3d 970, 973 (2012).....	12
<i>Brady v. Maryland</i> , 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).....	4, 14
<i>Grube v. State</i> , 134 Idaho 24, 27, 995 P.2d 794, 797 (2000).....	4
<i>Huber v. Lightforce USA, Inc.</i> , 159 Idaho 833, 854, 367 P.3d 228, 249 (2016).....	8
<i>J.R. Simplot Co. v. Idaho State Tax Comm’n</i> , 120 Idaho 849, 853, 820 P.2d 1206, 1210 (1991).....	8
<i>Losser v. Bradstreet</i> , 145 Idaho 670, 672, 183 P.3d 758, 760 (2008)	7
<i>Medical Recovery Services, LLC v. Bonneville Billing and Collections, Inc.</i> , 157 Idaho 395, 397, 336 P.3d 802, 804 (2014).....	15
<i>Obendorf v. Terra Hug Spray Co.</i> , 145 Idaho 892, 897, 188 P.3d 834, 839 (2008).....	16
<i>Pelayo v. Pelayo</i> , 154 Idaho 855, 859, 303 P.3d 214, 218 (2013).....	7
<i>Reed v. Reed</i> , 137 Idaho 53, 57, 44 P.3d 1108, 1112 (2002).....	8
<i>State v. Abdullah</i> , 158 Idaho 386, 439, 348 P.3d 1, 54 (2015)	11
<i>State v. Austin</i> , 163 Idaho 378, 381-82, 413 P.3d 778, 781-82 (2018)	12
<i>State v. Ehrlick</i> , 158 Idaho 900, 907, 354 P.3d 462, 469 (2014)	15
<i>State v. Evans</i> , 129 Idaho 758, 762, 932 P.2d 881, 885 (1997)	13
<i>State v. Folk</i> , 162 Idaho 620, 625, 402 P.3d 1073, 1078 (2017).....	7
<i>State v. Gonzalez</i> , 165 Idaho 95, 99, 439 P.3d 1267, 1271 (2019).....	9
<i>State v. Hansen</i> , 108 Idaho 902, 702 P.2d 1362 (Ct.App. 1985)	13, 14
<i>State v. Hedger</i> , 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989).....	13
<i>State v. Hoskins</i> , 165 Idaho 217, 222, 443 P.3d 231, 236 (2019).....	9
<i>State v. Johnson</i> , 148 Idaho 664, 667, 227 P.3d 918, 921 (2010).....	7
<i>State v. Joy</i> , 155 Idaho 1, 6, 304 P.3d 276, 281 (2013)	7
<i>State v. Lampien</i> , 148 Idaho 367, 375, 223 P.3d 750, 758 (2009).....	9

<i>State v. Leavitt</i> , 116 Idaho 285, 290, 775 P.2d 599, 604 (1989).....	11
<i>State v. Perry</i> , 139 Idaho 520, 521, 81 P.3d 1230, 1231 (2003).....	7
<i>State v. Thorngren</i> , 149 Idaho 729, 736, 240 P.3d 575, 582 (2010).....	12
<i>State v. Watkins</i> , 148 Idaho 418, 224 P.3d 485 (2009).....	17, 18
<i>Thompson v. State</i> , 164 Idaho 821, 826, 436 P.3d 642, 647 (2019).....	8, 9, 10

STATUTES

I.C. § 18-4006(3)(c).....	12
I.C. § 18-8004.....	9

RULES

I.R.E. 401.....	7
I.R.E. 402.....	7
I.R.E. 403.....	7, 11
I.R.E. 703.....	2, 5, 17

STATEMENT OF THE CASE

Nature of the Case

At trial for vehicular manslaughter, the Magistrate excluded evidence from the jury that the victim had drugs in his system and was deemed to have been operating a motor vehicle under the influence of such drugs. The Magistrate denied defense motions to continue the trial after Alejandra Ochoa received over eight hundred pages of medical and toxicology records regarding the victim less than one month prior to trial. Over half of those pages were received on the eve of trial. Finally, the Magistrate allowed the forensic pathologist, called by the State as its expert witness, to testify directly from the victim's medical records, although the pathologist had no independent opinions regarding the injuries sustained by the victim. The District Court correctly held these decisions by the Magistrate to be in error, to be prejudicial, and to affect the substantial rights of Ms. Ochoa.

Statement of Facts and Course of Proceedings

On April 26, 2018, Alejandra Ochoa was involved in a car accident after pulling out of a Jackson's gas station at the corner of Midway and Karcher in Nampa, Idaho. (Exhibits, p. 139 (Trial Tr., p. 260, L. 1 – P. 261, L. 8); p. 140-141 (Trial Tr., p. 267, L. 11 – p. 268, L. 18).) Ms. Ochoa's vehicle was hit by a motorcycle driven by the victim. (Exhibits, pp. 1, 140 (Trial Tr., p. 140, Ls. 1-9).) It took some time for police to respond to the accident scene and the victim was transported to the hospital prior to police arrival. (Exhibits, p. 140 (Trial Tr., 265, L. 15 – 22).) Police and paramedics believed the victim's injuries were not life-threatening. (Exhibits, p. 140 (Trial Tr., p. 267, Ls. 7-10); p. 185 (Trial Tr., p. 444, Ls. 6-11).) The victim passed away at the hospital roughly seven hours later. (Exhibits, p. 94 (Trial Tr., p. 83, Ls. 11-13); p. 154 (Trial Tr., p. 323, Ls. 18-21).) (R., p. 249.) On October 23, 2018, a criminal complaint was filed against

Ms. Ochoa, charging her with misdemeanor vehicular manslaughter. (R., pp. 12-13.)

Ms. Ochoa requested discovery from the State on November 28, 2019. (R., pp. 20-22) The discovery request included requests for physical examinations and scientific tests, as well as a summary or report of any testimony intended to be introduced through I.R.E. 703, including the facts and data for those opinions. Initially, the case was set for jury trial on March 20, 2019. (R., p. 32.) The State filed a motion to continue the jury trial date on January 31, 2019 and the order continuing the trial to April 3, 2019 was signed by the magistrate court without hearing on February 1, 2019. (R., pp. 33-36.)

On March 6, 2019, the State filed a motion in limine seeking to exclude evidence of drugs in the victim's system. (R., pp. 43-47.) The State disclosed Dr. Groben as an expert witness on March 25, 2019, nine days before trial, but did not disclose the facts and data upon which Dr. Groben based his expert opinions. (Exhibits, pp. 24-26.) Ms. Ochoa filed a motion on March 26, 2019, to exclude the testimony of Dr. Groben due to the late disclosure. (R., 59-61.) On March 28, 2019, the magistrate court heard argument on the State's motion in limine and Ms. Ochoa's motion to exclude Dr. Groben from testifying. (Exhibits, pp. 18-70.) The magistrate court did not rule on the admissibility of the evidence of the victim's drug use, but did put Ms. Ochoa on notice that she would have the burden of showing that the evidence was relevant by way of pre-trial evidentiary hearing. The magistrate court denied Ms. Ochoa's request to exclude Dr. Groben's testimony but continued the trial date to May 1, 2019. On March 28, 2019, the State filed its second motion to continue the trial. (R., pp. 69-70.) Without hearing, the trial was rescheduled for May 8, 2019. (R., 75-76.)

At the March 28th hearing, the magistrate court also ruled that the State had no duty to disclose the victim's medical records without a specific request from Ms. Ochoa. Ms. Ochoa filed the specific request for medical records that same date. (R., pp. 63-64.) On April 10, 2019, Ms. Ochoa filed a motion to continue and disclosed an expert witness to the State. (R., pp. 87-118.) The State filed an objection to Ms. Ochoa's request for a continuance and filed a motion to exclude Ms. Ochoa's expert. (R., pp. 128-161.) On April 12, 2019, Ms. Ochoa received 366 pages of medical records from the State. (Exhibits, p. 75 (4/18/19 Tr., p. 4, Ls. 12-14).)

Ms. Ochoa's first motion to continue was argued on April 18, 2019. Ms. Ochoa argued that a continuance was needed in order to have adequate time to review the medical records (366 pages) that were just received, that the toxicology report had not yet been received, and the unavailability of the defense expert. (Exhibits, p. 75 (4/18/19 Tr., p. 4, L. 12 – p. 5, L. 6; p. 6 Ls. 3-20).) The magistrate court denied the request finding no good cause. (Exhibits, p. 78 (4/18/19 Tr., p. 17, L. 20 – p. 18, L. 17).)

On April 23, 2019, an evidentiary hearing was held on the admissibility of the evidence of drugs in the victim's system. Testimony was taken from David Cavanaugh, the defense expert; Dr. Groben, the State's forensic pathologist; and Trooper Madenford, the primary investigating officer. (Exhibits, p. 73.). Mr. Cavanaugh testified that it is important to know all of the factors involved in a crash (Exhibits, p. 84 (4/23/19 Tr., p. 42, L. 7 – p. 43, L. 2).); how drugs can affect a person's ability to drive (Exhibits, p. 84-85 (4/23/19 Tr., p. 43, L. 3 – p. 46, L. 2).); signs of impairment from the elements of a crash (Exhibits, p. 86-87 (4/23/19 Tr., p. 51, L. 2 – p. 53, L. 19).); and the physical evidence of a problem with the victim's driving. (Exhibits, p. 87 (4/23/19 Tr., p. 54, L. 7 – p. 55, L. 1).) Dr. Groben testified that he included the toxicology results in his report (Exhibits, p. 95 (4/23/19 Tr., p. 84, Ls. 10-20).); and about the physical

effects of methamphetamine. (Exhibits, p. 95 (4/23/19 Tr., p. 85, L. 19 – p. 86, L. 17).) Trooper Madenford testified that he made a finding in his report that the victim was under the influence of methamphetamine. (Exhibits, p. 97 (4/23/19 Tr., p. 93, L. 20 – p. 94, L. 19).)

At the conclusion of this testimony, the magistrate court ruled that none of the experts could testify as to the level of impairment with a reasonable degree of certainty, therefore, any testimony regarding the drugs in the victim's system would be speculative. The magistrate court further held that any probative value of the information was substantially outweighed by its prejudicial effect. However, the magistrate court failed to disclose what prejudicial effect the information would have if the testimony was admitted. (Exhibits, p. 100 (4/23/19 Tr., p. 104, Ls. 6-21).) The magistrate court also ruled that the defense would be precluded from offering any testimony regarding the victim's failure to take measures to avoid the collision. (Exhibits, p. 101 (4/23/19 Tr., p. 110, Ls. 12-18).)

At the April 23rd hearing, Ms. Ochoa renewed her motion to continue the trial in order to have sufficient time to review the medical records, speak with hospital staff, and deliberate with possible expert witnesses. (Exhibits, p. 101 (4/23/19 Tr., p. 111, Ls. 8-24).) The magistrate court denied this request, again, finding no good cause for a continuance. (Exhibits, p. 102 (4/23/19 Tr., p. 112, Ls. 12-25).) Ms. Ochoa, once more, renewed her request for a continuance on the morning of trial. Ms. Ochoa finally received the toxicology report at 4:00 p.m. on May 7, 2019, the evening before the start of the trial. The toxicology report was 441 pages long. (Exhibits, p. 102 (Trial Tr., p. 114, L. 21 – p. 116, L. 7).) Ms. Ochoa also maintained that the records contained Brady¹ material and Ms. Ochoa should be afforded adequate time to review

¹ Reference is to *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), which established that “the prosecution is bound to disclose to the defense all exculpatory evidence **known** to the state or in its possession.” *Grube v. State*, 134 Idaho 24, 27, 995 P.2d 794, 797 (2000) (emphasis added).

the records. (Exhibits, p. 104-105 (Trial Tr., p. 122, L. 7 – p. 125, L. 6).) The State admitted that its witness was in possession of the toxicology report well before it was disclosed to the defense. (Exhibits, p. 106 (Trial Tr., p. 128, Ls. 15-16).) The State also claimed that the report contained no exculpatory information, based on the fact that the toxicology results had been excluded from evidence. (Exhibit 106, p. 129-130 (Trial Tr., p. 129, L. 19 – p. 130, L. 9).)

Once again, the defense motion to continue the trial was denied. The magistrate court found that Ms. Ochoa failed to show that the toxicology report was exculpatory evidence or that the State had a duty to disclose it. (Exhibits, p. 107 (Trial Tr., p. 134, L. 4 – p. 135, L. 9).) The magistrate court further ruled that the defense was to blame for receiving 441 pages of discovery on the day before trial because it waited until March, 2019 to request documents of which it was aware in December, 2018. (Exhibits, 107-108 (Trial Tr., p. 135, L. 10 – p. 136, L. 14).) The magistrate court also clarified that the defense would be precluded from mentioning the drugs in the victim's system during cross-examination of the State's witnesses. (Exhibits, p. 108 (Trial Tr., p. 136, Ls. 15-22).)

The jury trial thereafter commenced and was held over May 8-9, 2019. During Dr. Groben's testimony as the State's expert witness regarding cause of death, the State asked Dr. Groben to elaborate on what he had learned about the victim's injuries from the medical records. (Exhibits, p. 156 (Trial Tr., p. 328, Ls. 9-11).) The defense objected on hearsay grounds. (Exhibits, p. 156 (Trial Tr., p. 328, L. 12).) The State argued that the information should come in under I.R.E. 703. (Exhibits, p. 156 (Trial Tr., p. 328, L. 14-15).) After testimony was provided outside the presence of the jury, the magistrate court ruled that Dr. Groben could testify to hearsay evidence from the medical records regarding the victim's injuries because the information would help the jury understand the cause of death. (Exhibits, p. 160 (Trial Tr., p.

346, Ls. 11-19).) The magistrate court failed to use a balancing test in assessing whether to admit the hearsay evidence.

At the conclusion of the trial, the jury rendered a verdict of vehicular manslaughter against Ms. Ochoa. (R., p. 197). Ms. Ochoa appealed to the District Court. (R., pp. 199-202.) The District reversed Ms. Ochoa's judgment of conviction and remanded the case for a new trial. (R., p. 238.) Specifically, the District Court held (1) the magistrate erred in granting the State's motion in limine excluding evidence of drugs in the victim (R., p. 241.); (2) the magistrate erred by denying Ms. Ochoa's motions to continue (R., p. 244.); and (3) the magistrate erred by allowing hearsay testimony from the medical records (R., p. 246.) The State timely appealed. (R., pp 253-255.)

ISSUES

- 1. Did the District Court err by concluding that the victim's toxicology results were competent, relevant, and material evidence to an element of the charge against Ms. Ochoa?**
- 2. Did the District Court err in finding the denial of Ms. Ochoa's motions to continue was an abuse of discretion?**
- 3. Did the District Court err in holding that the Magistrate admitted inadmissible hearsay evidence when it allowed Dr. Groben to read into the record material directly from the victim's medical records.**

ARGUMENT

I.

The District Court did not err by concluding that the victim's toxicology results were competent, relevant, and material to the charge against Ms. Ochoa.

A. Standard of Review

On appeal from a District Court decision made while acting in its appellate capacity, the appellate court does not review the Magistrate's decision, but rather directly reviews the decision of the District Court. *Pelayo v. Pelayo*, 154 Idaho 855, 859, 303 P.3d 214, 218 (2013). The Magistrate's findings of facts will be reviewed to determine whether they are based on substantial and competent evidence, and the Magistrate's conclusions of law will be assessed to determine whether they follow from the findings. *Losser v. Bradstreet*, 145 Idaho 670, 672, 183 P.3d 758, 760 (2008). However, the question of whether evidence is relevant is one of law, and the appellate court will freely review. *State v. Joy*, 155 Idaho 1, 6, 304 P.3d 276, 281 (2013).

Evidence is relevant if (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.

I.R.E. 401. Relevant evidence is admissible unless controlled by another rule. I.R.E. 402. The trial court has broad discretion in determining the admissibility of evidence. *State v. Perry*, 139 Idaho 520, 521, 81 P.3d 1230, 1231 (2003). The trial court's decision will be upheld unless a clear abuse of discretion is shown. *State v. Folk*, 162 Idaho 620, 625, 402 P.3d 1073, 1078 (2017).

Admissible evidence may otherwise be excluded if its probative value is substantially outweighed by an unfair prejudice. I.R.E. 403. The abuse of discretion standard is also used for a trial court's determination under I.R.E. 403. *State v. Johnson*, 148 Idaho 664, 667, 227 P.3d 918, 921 (2010). "To determine whether a trial court has abused its discretion, this Court

considers whether it correctly perceived the issue as discretionary, whether it acted within the boundaries of its discretion and consistently with applicable legal standards, and whether it reached its decision by an exercise of reason.” *Reed v. Reed*, 137 Idaho 53, 57, 44 P.3d 1108, 1112 (2002).

B. The District Court was correct in holding that evidence of drugs in victim’s system was competent, relevant, and material evidence to the essential element of whether Ms. Ochoa’s commission of a traffic infraction was a significant cause of victim’s death.

The State chooses to reframe this issue to focus on whether comparative or contributory negligence is relevant in a criminal case. The State argues that the District Court only found the victim’s toxicology results to be relevant in order to prove comparative or contributory negligence, but that is a distortion of the District Court’s findings. The District Court correctly held that the evidence of drugs in the victim’s system was legally relevant to the issues at hand in this case and specifically to the element of whether Ms. Ochoa’s negligence was a significant cause contributing to the victim’s death. “It is well established that this Court will use the correct legal theory to affirm the correct decision of a district court even when it is based on an erroneous legal theory.” *Huber v. Lightforce USA, Inc.*, 159 Idaho 833, 854, 367 P.3d 228, 249 (2016) (citing *J.R. Simplot Co. v. Idaho State Tax Comm’n*, 120 Idaho 849, 853, 820 P.2d 1206, 1210 (1991)).

The State contends that the presence of drugs in the victim is not relevant to the material issue of causation. It bases its argument on a discussion in *Thompson v. State* regarding proximate cause and intervening causes. *Thompson v. State*, 164 Idaho 821, 826, 436 P.3d 642, 647 (2019). The State takes the position that the victim’s toxicology cannot be relevant because it does not meet the definition of an intervening cause under *Thompson. Id.* This argument fails

for a number of reasons. First of all, the State did not raise this position below. The party's position on an issue must be raised at the lower court to be preserved for appeal. *State v. Hoskins*, 165 Idaho 217, 222, 443 P.3d 231, 236 (2019); *State v. Gonzalez*, 165 Idaho 95, 99, 439 P.3d 1267, 1271 (2019). The State only argued that the toxicology results were speculative and overly prejudicial to the courts below.

Second, the State argues that the death in this case was a foreseeable event so Ms. Ochoa cannot escape criminal liability, making the victim's toxicology results irrelevant.² However, it is the intervening event that must have been unforeseeable. *State v. Lampien*, 148 Idaho 367, 375, 223 P.3d 750, 758 (2009). "To relieve a defendant of criminal liability, an intervening cause must be an unforeseeable and extraordinary occurrence." *Id.* The victim's use of a cocktail of illegal substances was an entirely independent act that could not have been reasonably foreseen by Ms. Ochoa. In fact, the state's own expert categorized the victim's actions as "driving under the influence", which is a crime in the State of Idaho. I.C. § 18-8004. (Exhibits, p. 97 (4/23/19 Tr., p. 94, Ls. 2-19); p. 98 (4/23/19 Tr., p. 99, Ls. 15-25).) "In most contexts, a crime or an intentional tort constitutes an independent, intervening cause that precludes a defendant's antecedent crime from being a proximate cause." *Lampien, supra* (quotations omitted).

The final flaw in the State's argument, relying on *Thompson's* discussion of proximate and intervening causes, is that vehicular manslaughter hinges on what is a significant cause of

² The State's argument that a death was a reasonably foreseeable consequence of Ms. Ochoa's negligent act is not borne out by statistics. In 2018 (the most recent year in which data is available), there were only 27 fatal crashes in Canyon County. U.S. Department of Transportation, National Highway Traffic Safety Administration, reported at <https://cdan.nhtsa.gov/stsi.htm#>, June 16, 2020. There were over 16,000 traffic infraction citations filed in Canyon County over that same time period. Canyon County Magistrate Court Case Filings Statistics Report.

the death, not proximate cause. *Thompson*, 164 Idaho at 828, 436 P.3d at 649. The operative word is “significant”. In *State v. McKay*, the Court analyzed the importance of the word “significant” in finding that there was a material issue of fact in McKay’s claim of ineffective assistance of counsel regarding the jury instructions which failed to use the word “significant”. *State v. McKay*, 148 Idaho 567, 571-72, 225 P.3d 700, 704-705 (2010). The Court further reasoned that without the word “significant”, a jury could convict even if it found McKay’s unlawful act to be a negligible cause of death. *Id.*

Unlike the *Thompson* and *McKay* cases, in which jury instructions were the issue, the jury in the case at hand was missing crucial information to be able to make a reasoned determination of what was a significant cause of the victim’s death. It is that very information that the State claims is not even relevant. The State actually even scoffs at the District Court’s decision that the jury had the right to have and consider all of the factors involved in the case. The State contends the information of the victim’s drug use was too speculative to be relevant. However, the information itself was not speculative at all. The victim did have several drugs in his system. The ISP trooper, who investigated the crash, did find that the victim was driving under the influence based on the levels of drugs in his system. These are facts. These are facts that are relevant to whether Ms. Ochoa’s negligence was a significant cause of the victim’s death.

The State’s speculation argument rests on the Magistrate’s finding that the drugs in the victim’s system were irrelevant because no expert could testify as to the level of impairment caused by the drugs. This was not the proper legal standard for determining relevancy. The speculation argument is simply smoke and mirrors which evades the actual issue of the relevancy of actual facts. To further its argument on speculation, the State cites to cases in which expert

opinion was denied because the opinion itself was mere speculation. That is not the issue in this case and those cases are not pertinent to the true issue. Ms. Ochoa's expert was not denied the ability to testify. Ms. Ochoa's expert was denied the ability to testify to the actual facts that existed. Furthermore, Ms. Ochoa was denied the ability to question the State's experts on those same facts. Facts that were included in the reports of those same expert witnesses called by the State.

Finally, the State argues that even if the evidence is relevant, the jury would have an emotional response to it, causing its prejudicial effect to outweigh its probative value. A jury may have an emotional response to any evidence in a case in which a person has died. In many (if not the majority of) criminal cases, it is the State that seeks to introduce evidence which may evoke a strong emotional response from the jury. "[T]he fact that certain evidence is horrifying and gruesome, is not in and of itself sufficient reason for exclusion." *State v. Abdullah*, 158 Idaho 386, 439, 348 P.3d 1, 54 (2015) (citing *State v. Leavitt*, 116 Idaho 285, 290, 775 P.2d 599, 604 (1989)). The evidence in the case at hand is not even the type of gruesome evidence the State routinely uses in cases like *Abdullah* and *Leavitt*. Yet, the State is concerned that the jury would be prejudiced by the notion of the victim as a "meth user". Luckily, for the thousands of cases in which the State is supportive of emotion-evoking evidence, that is not the standard employed by I.R.E. 403. The prejudicial effect must substantially outweigh the probative value of the evidence. Here, the potential prejudice is minor considering the evolving societal norms of drug use and sympathy towards drug addictions in light of the opioid epidemic in this country. Yet, the evidence of drugs in the victim's system is highly probative evidence to the issue of significant cause(s) contributing to the victim's death.

The State's argument at its most basic is that a traffic infraction, a car crash, and the death of another equals vehicular manslaughter under I.C. § 18-4006(3)(c). That is the only explanation for the State's reasoning that the toxicology results cannot be relevant to whether Ms. Ochoa's negligence, i.e. traffic infraction, was a significant cause contributing to the death of another. However, the statute in question is not a per se statute. Even if it were, Ms. Ochoa has a right to present a defense. *State v. Austin*, 163 Idaho 378, 381-82, 413 P.3d 778, 781-82 (2018). But it is not a per se statute. The State had the burden to show more than just the three elements noted above. The State had the burden to prove Ms. Ochoa's negligence as a significant cause contributing to the death of the victim. Not just contributing to the traffic accident, but to the actual death. The District Court did not err in ruling that the jury had the right to have all of the evidence in order to determine what was and was not a significant cause of death. The District Court correctly found the evidence to be relevant and found its probative value not outweighed by any perceived prejudicial effect.

II.

The District Court did not err in finding an abuse of discretion in the Magistrate's denial of Ms. Ochoa's motions to continue.

A. Standard of Review

A district court's decision made under its appellate authority is reviewed directly. *Bailey v. Bailey*, 153 Idaho 526, 529, 284 P.3d 970, 973 (2012). The appellate court does not review the Magistrate's decision, but rather affirms or reverses the district court. *Id.* Whether to grant or deny a motion for continuance rests in the discretion of the trial court. *State v. Thorngren*, 149 Idaho 729, 736, 240 P.3d 575, 582 (2010). On review of a discretionary decision, the analysis includes whether the court recognized the issue as discretionary, whether the decision was made within the boundary of the court's discretion and consistent with legal

standards, and whether the decision was produced by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989). A defendant must show her rights were prejudiced by denial of her request for continuance. *State v. Evans*, 129 Idaho 758, 762, 932 P.2d 881, 885 (1997).

B. The District Court correctly held that the Magistrate abused its discretion in denying Ms. Ochoa's requests to continue the jury trial and Ms. Ochoa was prejudiced.

At the State's conclusion of its argument regarding the denial of Ms. Ochoa's motions to continue, the State comments that the medical records and toxicology results of the victim were not relevant. That is really the crux of the State's position. There cannot possibly be prejudice to Ms. Ochoa in not allowing sufficient time to review medical records when the records themselves are not relevant. However, it defies all reason and logic to conclude that medical records of a deceased are not relevant in an involuntary manslaughter case. Medical records could only be irrelevant in an involuntary manslaughter case if the statute was a veiled per se statute, which seems to be an overarching theme for the State's various arguments.

The State claims that this case is indistinguishable from *State v. Hansen*, 108 Idaho 902, 702 P.2d 1362 (Ct.App. 1985). However, there are several significant differences between this case and *Hansen*. In *Hansen*, the evidence received by the defense days before trial was a report which analyzed a piece of cloth and determined the piece was part of an undergarment worn by the victim. *Id* at 903-04, 1363-64. There is no indication how lengthy the report was but it contained a simple conclusion. In the case at hand, there were over eight hundred (800) pages of medical and toxicology records received within a month of the trial. More than half of these pages were received on the eve of trial. These documents did not contain one mere simple conclusion. They contained all the information about the victim between the time of the car accident and the time of death. They also contained in-depth information regarding the type and

amount of substances, both legal and illegal, in the victim's body at the time he was taken to the hospital. Besides being vastly more voluminous than the evidence in *Hansen*, it was also more complex.

The report in *Hansen* was created at the behest of the prosecution and turned over immediately after it was created. *Id.* It was created to support the State's theory of the case, not to prove an element of the charge. In contrast, the medical and toxicology records in this case were created at the time of the victim's death and contained highly probative information as to an element of the crime alleged against Ms. Ochoa. Plus, these highly probative documents were in the possession of the State's expert before the charges were even brought against Ms. Ochoa. They were used in determining whether any charges would even be brought against Ms. Ochoa. This time frame was obviously well before trial. Yet, the State takes cover from the late disclosure by claiming it did not have actual physical control over the documents.

Lastly, the report in *Hansen* contained no exculpatory information. It was clearly inculpatory. However, the documents in the case at hand did contain exculpatory information. Information that the State was required to disclose to the defense under the dictates of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) and its progeny of cases. Rather than supporting the State's contention that there was no prejudice, *Hansen* accentuates just how prejudicial it was to Ms. Ochoa to deny her the time necessary to review and analyze the considerable, complex information contained in these documents.

It is clear that the State wishes to completely ignore the interests of Ms. Ochoa in obtaining a fair trial. The State continuously seeks to blame Ms. Ochoa for the State's late disclosure and seems eager to use the denial of a continuance as some sort of just "punishment" for Ms. Ochoa's expectation that the State would disclose exculpatory information and

information that its own experts relied upon. The District Court, however, correctly analyzed the effect the late disclosure of such complex material would have on the defense. It recognized that the Magistrate failed to take into account the reasonable preparation time that should be expected under the circumstances. The District Court also recognized the disparity between the Magistrate's treatment of the State, which was granted two continuances without even the requirement of an argument, and Ms. Ochoa who was denied clearly necessary preparation time. The District Court did not err in finding the denial of a continuance was an abuse of discretion and unmistakably prejudicial to Ms. Ochoa.

III.

The District Court did not err in finding that Dr. Groben's testimony which came directly from the medical records was hearsay which did not fit into any exception for the admissibility of hearsay evidence and was improperly admitted into evidence.

A. Standard of Review

On appeal, a decision by a district court under its appellate capacity is reviewed directly. *Medical Recovery Services, LLC v. Bonneville Billing and Collections, Inc.*, 157 Idaho 395, 397, 336 P.3d 802, 804 (2014). On issues of abuse of discretion, the appellate court will review the Magistrate's findings to determine if those findings were supported by substantial and competent evidence and if the Magistrate's conclusions came from the findings. *Id.* There is a three part test to determine whether there has been an abuse of discretion: (1) did the lower court understand the issue as one of discretion; (2) did the court act within the boundaries of that discretion and apply correct legal standards; and (3) was the decision reached by an exercise of reason. *State v. Ehrlick*, 158 Idaho 900, 907, 354 P.3d 462, 469 (2014). "In the case of an incorrect ruling regarding evidence, this Court will grant relief on appeal only if the error affects

a substantial right of one of the parties.” *Id* (quoting *Obendorf v. Terra Hug Spray Co.*, 145 Idaho 892, 897, 188 P.3d 834, 839 (2008)).

B. The District Court correctly ruled that Dr. Groben’s testimony from the medical records was hearsay, did not fit into any hearsay exception, was therefore inadmissible and its admission deprived Ms. Ochoa of due process when coupled with the other errors of the Magistrate that are the subject of this appeal.

The State argues that the District Court’s analysis of this issue was not supported, and in fact was contrary, to the record. The State specifically cites to the District Court’s finding that Dr. Groben “was not using the medical records as a resource” but was “referring to the medical records for the medical cause of death.” *Brief of App.*, p. 29 (quoting Clerk’s Record, pp. 248-49.) The State goes on to point out that Dr. Groben testified that the medical professionals treating the victim merely documented the victim’s injuries but did not determine the cause of death. *Id.* (quoting Exhibits, p. 159 (Trial Tr., p. 342, L. 18 – p. 343, L. 12).) However, upon a closer look at Dr. Groben’s testimony, it becomes clear that Dr. Groben was indeed getting the cause of death from the medical records and not merely using them as a resource. While Dr. Groben certainly proclaimed at the trial that he was the arbiter of the cause of death, he previously testified to the following:

A. Because his injuries were so severe that he died from his injuries.

Q. And how do you know that, Doctor?

A. Because he bled to death.

Q. But do you have any –

A. The medical records say that. Professionals who do this for a living got inside the body and visually looked at this, documented it, tried to treat him, couldn’t, and he died. And I’ve read their reports.

(Exhibits, p.96 (4/23/19 Tr., p. 89, Ls. 16-25).)

In addition to the above colloquy, Dr. Groben also volunteered the following information when asked about his use of medical records, “And in a case like this where they’ve done surgery, it’s absurd for me to go in and look because they’ve already repaired everything. So I wouldn’t even be able to tell for sure the injuries for sure because they repaired it. So for me to know exactly what was there that caused their injury...” (Exhibits, p. 159 (Trial Tr., p. 342, Ls. 4-10.)). Dr. Groben in fact could not formulate his own opinion as to what actually caused the injuries to the victim, just as the District Court opined. The District Court was in fact correct in its assessment of the relationship between the medical records and Dr. Groben’s function as the coroner’s representative. What Dr. Groben could do, and did do, is use the medical records to determine how to categorize an official manner and cause of death. (Exhibits, p. 153 (Trial Tr., p. 319, Ls. 13-21).)

Such categorization was plain on its face and did not warrant a reading of specific medical information from the medical records. The District Court properly concluded that a treating physician would be needed to interpret the contents of the medical record and that is supported by Dr. Groben’s admission, noted above, that he could not know what was behind any particular injury. There was not substantial, competent evidence to support the Magistrate’s finding that this hearsay in the form of medical records was admissible under I.R.E. 703 to help the jury understand the cause of death.

Furthermore, the Magistrate’s decision was directly contrary to the holding in *State v. Watkins*, 148 Idaho 418, 224 P.3d 485 (2009). The *Watkins* court took great pains to review the changes in I.R.E. 703 that would “prevent an expert witness from serving as a conduit for the introduction of otherwise inadmissible evidence.” *Id* at 427, 494. The Magistrate found that *Watkins* was inapplicable because the facts were different, but the Magistrate failed to utilize the

legal standard set forth in *Watkins*. Allowing Dr. Groben's hearsay testimony in the form of a graphic recitation of the injuries identified in the medical records obfuscated the true issue of what was a significant factor in contributing to the death. This was clearly error, which the District Court found to be prejudicial to Ms. Ochoa and which, taken cumulatively, deprived Ms. Ochoa of a fair trial.

CONCLUSION

Ms. Ochoa respectfully requests this Court affirm the District Court's decision reversing her conviction and remanding the case for a new trial.

DATED this 2nd day of July, 2020.

A handwritten signature in black ink, appearing to read "Jill B. Musser". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jill Baker Musser
Attorney for Alejandra Ochoa

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd of July, 2020, I served a true and correct copy of the foregoing BRIEF OF RESPONDENT upon the individuals named below and in the manner noted:

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