

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****August 10, 2006**

01C177394

The State of Nevada vs Kirstin B Lobato

August 10, 2006**10:30 AM****Hearing****ARGUMENT/DECISION ON DEFT'S
MOTION TO
DISMISS Court
Clerk: Billie Jo Craig
Reporter/Recorder:
Lisa Lizotte Heard
By: Valorie Vega****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- Arguments by counsel. Court stated its findings, and ORDERED, Defendant's Motion to Dismiss is DENIED. The State to prepare the Order. All future dates STAND. Court inquired if counsel viewed documents in the Evidence Vault, to which they advised they had. Colloquy regarding status of other issues.

BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 07, 2006**

01C177394

The State of Nevada vs Kirstin B Lobato

September 07, 2006**9:30 AM****All Pending Motions****ALL PENDING
MOTIONS FOR
9/7/06 Court Clerk:
Billie Jo Craig
Reporter/Recorder:
Lisa Lizotte Heard
By: Valorie Vega****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- STATE'S MOTION FOR RECIPROCAL DISCOVERY...DEFT'S MOTION IN LIMINE TO EXCLUDE INFLAMMATORY AND CUMULATIVE PHOTOGRAPHS...CALENDAR CALL

Ms. Zalkin and Ms. Greenberger, Defendant's California attorneys, also present. Counsel announced ready for Trial. Ms. DiGiacomo advised of three witnesses who have not been found and advised their testimony would be read into the record. Mr. Schieck advised they were looking for the same witnesses and would advise the State if they were found. Ms. DiGiacomo advised the Trial would be three weeks long and her case-in-chief would probably end on 9/18/06.

AS TO STATE'S MOTION FOR RECIPROCAL DISCOVERY: As there was no opposition, COURT ORDERED, Motion GRANTED pursuant to EDCR 3.20. The State to prepare the Order. Colloquy regarding scheduling.

AS TO DEFT'S MOTION IN LIMINE: All counsel advised they looked at the photographs in the vault

and found no inked photographs. They would request the same photographs admitted previously be admitted and may request additional photographs be admitted. COURT ORDERED, Motion CONTINUED for ruling. Trial date STANDS. Colloquy regarding scheduling and Ms. DiGiacomo requested Trial end on 9/22/06 at noon. COURT SO ORDERED.

BOND

CONTINUED TO: 9/11/06 10:15 AM DEFT'S MOTION IN LIMINE TO EXCLUDE
INFLAMMATORY AND CUMULATIVE PHOTOGRAPHS
10:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 11, 2006**

01C177394

The State of Nevada vs Kirstin B Lobato

September 11, 2006**10:30 AM****Jury Trial****TRIAL BY JURY****Court Clerk: Billie Jo
Craig****Reporter/Recorder:****Lisa Lizotte Heard****By: Vega, Valorie J.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- DEFT'S MOTION IN LIMINE TO EXCLUDE INFLAMMATORY AND CUMULATIVE
PHOTOGRAPHS ...JURY TRIAL

AS TO DEFT'S MOTION IN LIMINE: Counsel met in Court and reviewed photographs. COURT
ORDERED, matter CONTINUED to 9/12/06 at 11:00 AM for the State to make two copies of Exhibit
125A, a redacted audio tape. The original will be returned to the Clerk.

JURY TRIAL: PROSPECTIVE JURY PANEL PRESENT: Ms. Greenberger and Ms. Zalkin, defendant's
California attorneys, also present. Court introduced staff. The Clerk called the Roll of the prospective
Jury Panel with all present. Ms. DiGiacomo made introductions. Mr. Schieck made introductions.
Voir dire oath given. State's Motion to Admit Prior Testimony of Jeremy Davis and Richard Shott
FILED IN OPEN COURT. Voir dire continues. EVENING RECESS. OUTSIDE PRESENCE OF THE
PROSPECTIVE JURY PANEL: State's Motion was filed in Open Court. If the defense to reply, they
will do so at 11:00 AM on 9/12/06.

01C177394

BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 12, 2006

01C177394

The State of Nevada vs Kirstin B Lobato

September 12, 2006

10:30 AM

Jury Trial

TRIAL BY JURY

Court Clerk: Billie Jo
Craig

Reporter/Recorder:

Lisa Lizotte Heard

By: Vega, Valorie J.

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- DEFT'S MOTION IN LIMINE TO EXCLUDE INFLAMMATORY AND CUMULATIVE
PHOTOGRAPHS ...JURY TRIAL

AS TO DEFT'S MOTION IN LIMINE: As to the State's Motion to Admit Prior Testimony of Jeremy Davis and Richard Shott, arguments by counsel. COURT ORDERED, Motion GRANTED pursuant to EDCR 3.20. The State to prepare the Order. There may be some portions of their testimony redacted before presenting to the Jury which will be done outside the presence of the Jury. Counsel met in Court and reviewed photographs. COURT ORDERED, the following: Defense had no objection to the State admitting photographs from the first Trial. The State will not offer Exhibits 39, 34, 98, 105. The State is moving to ADMIT Exhibits 62, 73, 81, 88, 93A, 97, 100, 101, 102. As there was no objection, COURT SO ORDERED. The Court will hold in abeyance ruling on Exhibits 69 and 70 as the State has not determined whether or not they will offer those Exhibits.

JURY TRIAL: SECOND PROSPECTIVE JURY PANEL PRESENT: Ms. Greenberger and Ms. Zalkin,

PRINT DATE: 08/02/2011

Page 75 of 128

Minutes Date:

August 10, 2001

defendant's California attorneys, also present. Court introduced staff. The Clerk called the Roll of the prospective Jury Panel with all present. Voir dire oath given. Ms. DiGiacomo made introductions. Mr. Schieck made introductions. Voir dire continues with the second Prospective Jury Panel. At 3:40 PM, voir dire continues with both Prospective Jury Panels. Prospective Jury Panel ADMONISHED and released for the evening. OUTSIDE PRESENCE OF THE PROSPECTIVE JURY PANEL: At last sidebar, Court noted discussion regarding punishment held in Chambers. At the prior Trial counsel stipulated to waive punishment by the Jury and Court sentenced defendant. This time the defense wanted a waiver but the State was not in agreement. The Jury will be making the determination on penalty should the case go to penalty phase. The Court did not ask any questions regarding the penalty phase and expected the State to ask such questions. Mr. Schieck has case law to provide to the Court limiting maximum exposure of defendant as to extent of punishment of first Trial if there is a conviction in this Trial. The State had Points and Authorities which it provided to the Court and defense. Court and counsel to review documents tonight and counsel to argue matter at 10:00 AM on 9/13/06. Voir dire to continue at 10:30 AM on 9/13/06.

The Court was unclear whether counsel had stipulated to admit all photographs from the prior Trial or whether counsel to lay foundation. Mr. Schieck requested foundation be laid for this Jury and that he did not anticipate any objections. COURT SO ORDERED and objections to be made where appropriate. EVENING RECESS.
BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 13, 2006**

01C177394

The State of Nevada vs Kirstin B Lobato

September 13, 2006**1:00 PM****Jury Trial****TRIAL BY JURY****Court Clerk: Billie Jo
Craig****Reporter/Recorder:****Lisa Lizotte Heard****By: Vega, Valorie J.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Ms. Greenberger and Ms. Zalkin, defendant's California attorneys, also present. Court reviewed cases submitted by counsel and NRS 175.552, which was marked at Court Exhibit 3. Arguments by counsel. Court stated its findings that there was no violation of law having the Jury do the sentencing phase and it would be in compliance with State statute, and ORDERED, State's request to put forth voir dire questions to the Jury advising they would do the penalty phase if there was a conviction of first degree Murder is GRANTED. Mr. Schieck requested to preserve their right to object to a harsher sentence. COURT SO ORDERED.

As a redacted version of Mr. Davis' testimony was not available, counsel advised they would address at a later time. Ruling on Exhibits 69 and 70 is still pending. Mr. Schieck advised he has still had no response to his phone calls to Ms. Paulette. Ms. DiGiacomo advised she is back now. Court noted Mr. Schieck could talk with her on a break. If no response, to let the Court know.

JURY TRIAL: PROSPECTIVE JURY PANEL PRESENT: Ms. Greenberger and Ms. Zalkin, defendant's California attorneys, also present. Voir dire continues. Court thanked and excused the prospective Jurors in the audience. Peremptory Challenge. Jury and three Alternates selected. OUTSIDE THE PRESENCE OF THE JURY: Counsel made a record of the challenges for cause. JURY PRESENT: Jury and three Alternates selected and sworn. Opening remarks by the Court. The Clerk read the Information to the Jury and stated the defendant's plea thereto. EVENING RECESS. OUTSIDE THE PRESENCE OF THE JURY: Arguments by counsel regarding which portions of the Davis transcript are redacted. Counsel came to agreement.
BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 14, 2006**

01C177394

The State of Nevada vs Kirstin B Lobato

September 14, 2006**10:30 AM****Jury Trial****TRIAL BY JURY****Court Clerk: Billie Jo
Craig****Reporter/Recorder:****Lisa Lizotte Heard****By: Vega, Valorie J.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- JURY PRESENT: Ms. Greenberger and Ms. Zalkin, defendant's California attorneys, also present. Opening statements by Mr. Kephart. Opening statements by Ms. Greenberger. OUTSIDE THE PRESENCE OF THE JURY: Mr. Kephart moved for a Mistrial. Arguments by counsel. Court stated its findings, and ORDERED, request DENIED as relief sought is extreme and not warranted. JURY PRESENT: Testimony and Exhibits presented. (See Worksheets.) EVENING RECESS. OUTSIDE THE PRESENCE OF THE JURY: Counsel agreed any evidence admitted in this Trial may be shown to the Jury on the Elmo without first being published. COURT SO ORDERED. Counsel stipulated to WAIVE JURY NOTEBOOKS. COURT SO ORDERED.

BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 15, 2006

01C177394

The State of Nevada vs Kirstin B Lobato

September 15, 2006

10:30 AM

Jury Trial

TRIAL BY JURY

Court Clerk: Billie Jo
Craig

Reporter/Recorder:

Lisa Lizotte Heard

By: Vega, Valorie J.

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Ms. Greenberger and Ms. Zalkin, defendant's California attorneys, also present. Mr. Kephart OBJECTED to any conversations being brought into evidence between defendant and some witnesses without the State opening the door. Arguments by counsel. Court stated its findings, and ORDERED, request PREMATURE. Mr. Kephart advised the first witness has medical concerns and has to be on the road by 1:00 PM so she can get home before dark. Mr. Schieck acknowledged. Colloquy regarding scheduling of experts. Counsel stipulated that Exhibit 133 is ADMITTED. COURT SO ORDERED. JURY PRESENT: Further testimony and Exhibits presented. (See Worksheets.) OUTSIDE THE PRESENCE OF THE JURY: The State INVOKED THE EXCLUSIONARY RULE. Court ADMONISHED witness Dixie Tienken not to talk to anyone regarding this case. JURY PRESENT: Further testimony and Exhibits presented. (See Worksheets.) EVENING RECESS. OUTSIDE THE PRESENCE OF THE JURY: Court noted and State advised witness Tienken returned at 3:28 PM. The witness advised she arrived about 3:25 PM. She advised

01C177394

she could return on Monday at 3:00 PM. Court advised her she remained under the
ADMONISHMENT not to talk to anyone regarding this case.
BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 18, 2006**

01C177394

The State of Nevada vs Kirstin B Lobato

September 18, 2006**1:00 PM****Jury Trial****TRIAL BY JURY****Court Clerk: Billie Jo
Craig****Reporter/Recorder:****Lisa Lizotte Heard****By: Vega, Valorie J.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- JURY PRESENT: Ms. Greenberger and Ms. Zalkin, defendant's California attorneys, also present. Further testimony and Exhibits presented. (See Worksheets.) EVENING RECESS. OUTSIDE THE PRESENCE OF THE JURY: Mr. Kephart requested Exhibits Q-1 and Q-2 from Dr. Brosiak's report be admitted into evidence when he testifies. Mr. Schieck confirmed he would move for their admittance.

BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 19, 2006**

01C177394

The State of Nevada vs Kirstin B Lobato

September 19, 2006**10:30 AM****Jury Trial****TRIAL BY JURY****Court Clerk: Billie Jo
Craig****Reporter/Recorder:****Lisa Lizotte Heard****By: Vega, Valorie J.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- JURY PRESENT: Ms. Greenberger and Ms. Zalkin, defendant's California attorneys, also present.
Further testimony and Exhibits presented. (See Worksheets.) EVENING RECESS.
BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 20, 2006**

01C177394

The State of Nevada vs Kirstin B Lobato

September 20, 2006**1:15 PM****Jury Trial****TRIAL BY JURY****Court Clerk: Billie Jo
Craig****Reporter/Recorder:****Lisa Lizotte Heard****By: Vega, Valorie J.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- JURY PRESENT: Ms. Greenberger and Ms. Zalkin, defendant's California attorneys, also present. Further testimony and Exhibits presented. (See Worksheets.) OUTSIDE THE PRESENCE OF THE JURY: Mr. Kephart advised of circumstances at lunch break where he, Ms. DiGiacomo, and defendant ended up on the elevator. He wanted to make sure nothing happened and there were was no misbehavior. Mr. Schieck advised there was no issue. He further advised he had ended up on the elevator with the Bailiff and a Juror. JURY PRESENT: Further testimony and Exhibits presented. (See Worksheets.) EVENING RECESS.
BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 21, 2006**

01C177394

The State of Nevada vs Kirstin B Lobato

September 21, 2006**10:00 AM****Jury Trial****TRIAL BY JURY****Court Clerk: Billie Jo
Craig****Reporter/Recorder:****Lisa Lizotte Heard****By: Vega, Valorie J.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

DiGiacomo, Sandra	Attorney
Kephart, William D.	Attorney
Lobato, Kirstin B	Defendant
Roger, David J.	Attorney
Schieck, David M.	Attorney

JOURNAL ENTRIES

- JURY PRESENT: Ms. Greenberger and Ms. Zalkin, defendant's California attorneys, also present. Further testimony and Exhibits presented. (See Worksheets.) OUTSIDE THE PRESENCE OF THE JURY: Upon the Court's inquiry, Ms. DiGiacomo advised counsel stipulated to admit the gold chain, which she will do on the record. Colloquy regarding scheduling of witnesses. Ms. DiGiacomo provided the defense with a copy of Christina Paulette's notes. JURY PRESENT: Further testimony and Exhibits presented. (See Worksheets.) Ms. DiGiacomo advised counsel stipulated that the State's Exhibit 11, a gold chain, belongs to Duran Bailey. The Court received 8 questions from the Jury which will be addressed tomorrow. EVENING RECESS.
BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 22, 2006**

01C177394

The State of Nevada vs Kirstin B Lobato

September 22, 2006**10:30 AM****Jury Trial****TRIAL BY JURY****Relief Clerk:****Michelle Jones****Reporter/Recorder:****Lisa Lizotte Heard****By: Vega, Valorie J.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

DiGiacomo, Sandra

Attorney

Kephart, William D.

Attorney

Lobato, Kirstin B

Defendant

Schieck, David M.

Attorney

JOURNAL ENTRIES

- Ms. Greenberger and Ms. Zalkin, defendant's California attorneys, also present. JURY PRESENT. Testimony and exhibits presented. (See worksheets.) Court advised jury and counsel of upcoming trial schedule. COURT ADMONISHED and EXCUSED jury for the evening recess.

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 25, 2006**

01C177394

The State of Nevada vs Kirstin B Lobato

September 25, 2006**11:00 AM****Jury Trial****TRIAL BY JURY****Relief Clerk:****Michelle Jones****Reporter/Recorder:****Lisa Lizotte Heard****By: Vega, Valorie J.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

DiGiacomo, Sandra

Attorney

Kephart, William D.

Attorney

Lobato, Kirstin B

Defendant

Schieck, David M.

Attorney

JOURNAL ENTRIES

- Ms. Greenberger and Ms. Zalkin, defendant's California attorneys, also present. JURY PRESENT. Testimony and exhibits presented. (See worksheets.) Following a conference at the bench, COURT ORDERED, all items admitted today pertain to the actual bag or envelope and it's contents. COURT ADMONISHED AND EXCUSED jury for the afternoon recess.

JURY PRESENT. Testimony and exhibits presented. (See worksheets.) COURT ADMONISHED AND EXCUSED JURY FOR THE EVENING with the instruction to return on 9/26/06 at 11:00 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 26, 2006**

01C177394

The State of Nevada vs Kirstin B Lobato

September 26, 2006**10:30 AM****Jury Trial****TRIAL BY JURY****Court Clerk: Billie Jo
Craig****Reporter/Recorder:****Lisa Lizotte Heard****By: Vega, Valorie J.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Ms. Greenberger and Ms. Zalkin, defendant's California attorneys, also present. Mr. Kephart advised the Exclusionary Rule was in effect and requested persons to leave the Courtroom. COURT SO ORDERED. Arguments by counsel regarding defense expert witness on the Amended Notice of Witnesses. Court stated its findings, and ORDERED, Motion GRANTED. Dr. Laufer will be permitted to testify in areas where he was properly noticed on the Amended Notice of Witnesses filed 8/18/06. Mr. Kephart objected to Dr. Laufer's power point presentation as he had not seen it on the basis of something inappropriate in the presentation. The State was provided pictures. Ms. Greenberger to advise Dr. Laufer of the Court's ruling before he testified. JURY PRESENT: Further testimony and Exhibits presented. (See Worksheets.) EVENING RECESS.

BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 27, 2006

01C177394

The State of Nevada vs Kirstin B Lobato

September 27, 2006

1:00 PM

Jury Trial

TRIAL BY JURY

Court Clerk: Billie Jo
Craig

Reporter/Recorder:

Lisa Lizotte Heard

By: Vega, Valorie J.

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- JURY PRESENT: Ms. Greenberger and Ms. Zalkin, defendant's California attorneys, also present. Further testimony and Exhibits presented. (See Worksheets.) OUTSIDE THE PRESENCE OF THE JURY: Counsel agreed to the redacted version of Diane Parker's testimony to be read into the record. COURT SO ORDERED. Colloquy regarding DNA testing on the cigarette butts. Nothing was detected for defendant. The State OBJECTED to the power point presentation of Brent Turby as he is not giving any expert testimony but only an opinion based on what other witnesses said. Court directed counsel to bring this matter up before he testifies to be addressed. JURY PRESENT: Further testimony and Exhibits presented. (See Worksheets.) EVENING RECESS. OUTSIDE THE PRESENCE OF THE JURY: The Court questioned separately Juror #1 Arieno and #6 Moir whether they could continue with the Trial next week. Court directed Mr. Arieno to reschedule his appointments and deliveries after Wednesday. As Ms. Moir needed a letter advising the Trial was continuing, Court advised it would be provided. Colloquy regarding scheduling. Mr. Schieck OBJECTED to the

testimony of Det. Thowsen, requested his testimony be stricken, and stated his reasons. Arguments by counsel. Court stated its findings, and ORDERED, Motion to Strike is DENIED. Mr. Schieck advised the reports are hearsay information.

BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 28, 2006

01C177394

The State of Nevada vs Kirstin B Lobato

September 28, 2006

1:00 PM

Jury Trial

TRIAL BY JURY

Court Clerk: Billie Jo
Craig

Reporter/Recorder:

Lisa Lizotte Heard

By: Vega, Valorie J.

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- JURY PRESENT: Ms. Greenberger and Ms. Zalkin, defendant's California attorneys, also present. Further testimony and Exhibits presented. (See Worksheets.) EVENING RECESS. OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding scheduling tomorrow. Counsel stipulated to reading the testimony of Bodziak.

BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 29, 2006**

01C177394

The State of Nevada vs Kirstin B Lobato

September 29, 2006**10:30 AM****Jury Trial****TRIAL BY JURY****Court Clerk: Billie Jo
Craig****Reporter/Recorder:****Lisa Lizotte Heard****By: Vega, Valorie J.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Ms. Greenberger and Ms. Zalkin, defendant's California attorneys, also present. At the hour of 1:09 PM, the State RESTED. Counsel stipulated to ADMIT Exhibit 133. JURY PRESENT: Further testimony and Exhibits presented. (See Worksheets.)

OUTSIDE THE PRESENCE OF THE JURY: Counsel advised of a long argument regarding Brent Turvey's testimony and power point presentation. JURY PRESENT: Further testimony and Exhibits presented. (See Worksheets.) EVENING RECESS. OUTSIDE PRESENCE OF THE JURY: Colloquy regarding scheduling. Arguments by counsel regarding Brent Turvey's testimony and power point presentation. Court stated its findings, and ORDERED, request GRANTED IN PART and DENIED IN PART and Brent Turvey can testify.

BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 02, 2006

01C177394

The State of Nevada vs Kirstin B Lobato

October 02, 2006

1:00 PM

Jury Trial

TRIAL BY JURY

Court Clerk: Billie Jo
Craig

Reporter/Recorder:

Lisa Lizotte Heard

By: Vega, Valorie J.

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- JURY PRESENT: Ms. Greenberger and Ms. Zalkin, defendant's California attorneys, also present. Further testimony and Exhibits presented. (See Worksheets.) OUTSIDE THE PRESENCE OF THE JURY: Arguments by counsel regarding Lobato previous statements. Court stated its findings, and ORDERED, objection SUSTAINED. Colloquy regarding Brent Turvey's updated version of his power point presentation. JURY PRESENT: Further testimony and Exhibits presented. (See Worksheets.) EVENING RECESS. OUTSIDE THE PRESENCE OF THE JURY: Arguments by counsel regarding the State coming on defendant's right to remain silent. Defendant made three prior statements which was testimony in a prior proceeding. Further arguments by counsel. Court stated its findings, and ORDERED, counsel to research matter and meet in Courtroom at 11:30 AM tomorrow. Further arguments by counsel.

BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****October 03, 2006**

01C177394

The State of Nevada vs Kirstin B Lobato

October 03, 2006**10:30 AM****Jury Trial****TRIAL BY JURY****Court Clerk: Billie Jo
Craig****Reporter/Recorder:****Lisa Lizotte Heard****By: Vega, Valorie J.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Ms. Greenberger and Ms. Zalkin, defendant's California attorneys, also present. Arguments regarding legal research regarding testimony issue and defendant's Fifth Amendment rights. Court stated its findings, and ORDERED, counsel may refer to testimony from prior proceedings in this case. The Court reconsiders is prior ruling. JURY PRESENT: Further testimony and Exhibits presented. (See Worksheets.) EVENING RECESS. OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding sidebar discussions as to hearsay. Court stated its findings, and ORDERED, objection SUSTAINED. Arguments by counsel regarding Ashley Lobato as a witness.

BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****October 04, 2006**

01C177394

The State of Nevada vs Kirstin B Lobato

October 04, 2006**1:00 PM****Jury Trial****TRIAL BY JURY****Court Clerk: Billie Jo
Craig****Reporter/Recorder:****Lisa Lizotte Heard****By: Vega, Valorie J.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- JURY PRESENT: Ms. Greenberger and Ms. Zalkin, defendant's California attorneys, also present.
Further testimony and Exhibits presented. (See Worksheets.) EVENING RECESS.
BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****October 05, 2006**

01C177394

The State of Nevada vs Kirstin B Lobato

October 05, 2006**8:30 AM****Jury Trial****TRIAL BY JURY****Court Clerk: Billie Jo
Craig****Reporter/Recorder:****Lisa Lizotte Heard****By: Vega, Valorie J.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Ms. Greenberger and Ms. Zalkin, defendant's California attorneys, also present. Ms. DiGiacomo and defendant not present. Jury Instructions and Verdict form SETTLED IN OPEN COURT. JURY PRESENT: Further testimony and Exhibits presented. (See Worksheets.) OUTSIDE THE PRESENCE OF THE JURY: The Court advised Defendant of her right to testify on her own behalf. Defendant stated she understood. JURY PRESENT: The defense RESTED. Court instructed the Jury. Closing arguments by Ms. DiGiacomo. Closing arguments by Mr. Schieck. Rebuttal arguments by Mr. Kephart. Bailiff, Matron, and Court Recorder sworn to take charge of the Jury. At the hour of 6:35 PM, the Jury retired to deliberate. Court thanked and excused two Alternate Jurors. EVENING RECESS.

BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 06, 2006

01C177394

The State of Nevada vs Kirstin B Lobato

October 06, 2006

8:30 AM

Jury Trial

TRIAL BY JURY

Court Clerk: Billie Jo
Craig

Reporter/Recorder:

Lisa Lizotte Heard

By: Valorie Vega

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- JURY PRESENT: Ms. Greenberger and Ms. Zalkin, defendant's California attorneys, also present. Jury deliberations CONTINUES. At the hour of 3:03 PM, the Jury returned with a verdict of GUILTY in CT. 1 - VOLUNTARY MANSLAUGHTER WITH USE OF A DEADLY WEAPON (F) AND CT. 2 - SEXUAL PENETRATION OF A DEAD HUMAN BODY (F). Jury polled. The Court thanked and excused the Jury. OUTSIDE THE PRESENCE OF THE JURY: COURT ORDERED, matter referred to the Division of Parole and Probation (P & P) and set for sentencing. The State requested defendant be remanded on CT. 2 as it is nonprobationable. Arguments by counsel. Court stated its findings, and ORDERED, defendant REMANDED TO CUSTODY with an in-custody sentencing date. Mr. Schieck argued for the Court to consider House Arrest. Court stated its findings, and ORDERED, defendant REMANDED.

CUSTODY

11/21/06 9:00 AM SENTENCING

PRINT DATE: 08/02/2011

Page 97 of 128

Minutes Date:

August 10, 2001

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****November 21, 2006**

01C177394

The State of Nevada vs Kirstin B Lobato

November 21, 2006**9:00 AM****Sentencing****SENTENCING****Court Clerk: Billie Jo
Craig****Reporter/Recorder:****Lisa Lizotte Heard****By: Vega, Valorie J.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

DiGiacomo, Sandra	Attorney
Kephart, William D.	Attorney
Lobato, Kirstin B	Defendant
Roger, David J.	Attorney
Schieck, David M.	Attorney

JOURNAL ENTRIES

- Ms. Greenberger and Ms. Zalkin, defendant's California attorneys, also present. Court noted counsel met in Chambers regarding a deficiency in the PSI. Arguments by counsel as to need for a psychosexual evaluation if probation to be considered. Mr. Kephart also advised there should not be an enhancement in CT. II. As defendant did not wish to waive the psychosexual evaluation and as Mr. Schieck concurrent with the mistakes in the PSI, COURT ORDERED, matter referred to the Division of Parole and Probation (P & P) for an Amended PSI and sentencing is CONTINUED. Court directed the State to annotate in the file the problems with the current PSI that are to be corrected and that a psychosexual evaluation to be performed. Mr. Kephart noted another mistake was that a new offense by defendant that is currently being processed and that the Attorney General's office should be sending him the information shortly. Court directed him to annotate the file regarding the new offense as well.

CUSTODY**PRINT DATE:** 08/02/2011**Page** 99 of 128**Minutes Date:**

August 10, 2001

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****February 02, 2007**

01C177394

The State of Nevada vs Kirstin B Lobato

February 02, 2007**9:00 AM****Sentencing****SENTENCING****Relief Clerk: Pamela
Humphrey****Reporter/Recorder:****Lisa Lizotte Heard****By: Valorie Vega****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

DiGiacomo, Sandra

Attorney

Kephart, William D.

Attorney

Lobato, Kirstin B

Defendant

Schieck, David M.

Attorney

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Shari Greenburger, Esq., and Sara Zalkin, Esq., also present on behalf of deft.

COURT noted it received the Amended Presentence Investigation Report (PSI) dated 1/17/07 along with a Psychological Evaluation submitted by JoAnn Lujan, LCSW. State moved to offer and admit as Court exhibits a Memorandum with a CD containing recordings of phone calls deft. made while in custody at the Clark County Detention Center (CCDC) and two (2) letters deft. mailed to individuals while in custody and one (1) letter deft. received while in custody. COURT SO ORDERED. Counsel objected to the admission of deft's recorded telephone conversations. COURT ORDERED, RULING STANDS.

Additionally, Mr. Schieck lodged with the COURT a copy of the Psychosexual Risk Assessment report from Dr. Paglini, deft's Sentencing Memorandum, Statement of Defendant in Aid of Sentencing and Letters in Aid of Sentencing. Further, Mr. Schieck argued as to counts one and two running concurrent. Matter submitted. Statements by deft. DEFT. LOBATO ADJUDGED GUILTY of

CT. 1 - VOLUNTARY MANSLAUGHTER WITH USE OF A DEADLY WEAPON (F) AND CT. 2 - SEXUAL PENETRATION OF A DEAD HUMAN BODY (F).

COURT ORDERED, in addition to the \$25 Administrative Assessment fee, \$800 Psychosexual Evaluation fee, \$1,000 fine and the \$150 DNA Analysis fee, Deft. SENTENCED as follows:

COUNT 1 - to a MINIMUM term of FORTY-EIGHT (48) MONTHS and a MAXIMUM term of ONE HUNDRED TWENTY (120) MONTHS in the NEVADA DEPARTMENT OF CORRECTIONS; plus an equal and CONSECUTIVE MINIMUM term of FORTY-EIGHT (48) MONTHS and a MAXIMUM term of ONE HUNDRED TWENTY (120) MONTHS for deadly weapon enhancement in the NEVADA DEPARTMENT OF CORRECTIONS; and

COUNT 2 - to a MINIMUM term of SIXTY (60) MONTHS and a MAXIMUM term of ONE HUNDRED AND EIGHTY (180) MONTHS in the NEVADA DEPARTMENT OF CORRECTIONS CONCURRENT with COUNT 1 with ONE THOUSAND FIVE HUNDRED FORTY-FOUR (1,544) days credit time served.

COURT ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION is imposed to commence upon release from any term of probation, parole or imprisonment. Additionally, the Deft. is ORDERED to submit to a blood or saliva test to determine genetic status and Defendant to REGISTER as a sex offender pursuant to NRS 179D.450 within 48 hours of sentencing or release from custody.

COURT FURTHER ORDERED, deft. REMANDED into CUSTODY. BOND, if any, EXONERATED. NDC

CLERK'S NOTE: As to Count 2 on 2/7/07 Sentence amended to 180 months in the Nevada Department of Corrections./pdh

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****July 15, 2010**

01C177394

The State of Nevada vs Kirstin B Lobato

July 15, 2010**9:00 AM****Motion****STATE'S MTN FOR
EXTENDED
BRIEFING
SCHEDULE/0 Court
Clerk: Nora Pena
Relief Clerk: Sylvia
Courtney/sc
Reporter/Recorder:
Lisa Lizotte Heard
By: Valorie Vega****HEARD BY:****COURTROOM:****COURT CLERK:** Nora Pena**RECORDER:** Lisa Lizotte**REPORTER:****PARTIES****PRESENT:** Jackson, Alzora B. Attorney
Kephart, William D. Attorney**JOURNAL ENTRIES**

- Ms. Jackson advised Deft was represented by the Special Public Defender and neither she nor Deft have been served with State's motion; in the meantime, the Special Defender's Motion to Withdraw has been put on hold. Ms. Jackson stated the Special Public Defender cannot represent Deft post conviction. Statement by Michelle Kabell, who has power of attorney to handle Deft's affairs including filing the petition on Deft's behalf. Mr. Kephart explained he is not attorney of record in this case and will contact the State's appellate division. MATTER TRAILED.

MATTER RECALLED:

Deputy District Attorney Law Clerk Smith appeared and advised Deft was served by mail on 6/25/10. COURT ORDERED, Special Public Defender's motion to withdraw GRANTED; State's motion GRANTED pursuant to EDCR 3.20; 7/22/10 date for Deft's Petition for Habeas Corpus VACATED and RESET; State to file return or motion to dismiss by 8/23/10.

01C177394

NDC

09/30/10 10:30 AM DEFT'S PETITION FOR WRIT OF HABEAS CORPUS

CLERK'S NOTE: A copy of this minute order has been distributed to: Kirstin Blaise Lobato, #95558, Florence McClure Women's Correctional Center, 4370 Smiley Road, North Las Vegas, Nevada 89115.

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 17, 2010**

01C177394

The State of Nevada vs Kirstin B Lobato

September 17, 2010 3:00 AM**All Pending Motions****HEARD BY:** Vega, Valorie J.**COURTROOM:** RJC Courtroom 16B**COURT CLERK:** Nora Pena**RECORDER:** Lisa Lizotte**REPORTER:****PARTIES****PRESENT:****JOURNAL ENTRIES**

- Defendant's pro per motion for recusal of Judge Valorie Vega...Defendant's pro per motion for the Court Clerk to assign a Civil Case number as required by the NRS...Defendant's pro per motion for an expedited hearing and motion for an extension of time to file an answer to the State's response....State's motion to strike or, in the alternative, opposition to improper motions for recusal of Judge Vega, expedited hearing and extension of time, and assignment of Civil Case number

Court advised the three pro per motions were all filed on 9/7/10 and calendared for 9/21/10. Upon reviewing them, this Court learned and observed that they were neither signed by a member of the Nevada Bar nor by the Defendant herself. All three pro per motions are signed as follows: "Kirsten Blaise Lobato by Michelle Ravell attorney in fact." Ms. Ravell had been present in court on 7/15/10 at which time she advised that she was not a licensed attorney. This Court then placed the three pro per motions on this chamber's calendar in order to sua sponte strike the three rogue documents pursuant to EDCR 7.42(a). In the interim the State filed its motion to Strike these three documents as fugitive documents. This Court hereby ORDERED, Sua sponte Strike the three pro per motions pursuant to EDCR 7.42(a) and also GRANTS the State's motion to Strike pursuant to *Salman v. Newell*, 110 Nev. 1333 (1994). Deft's Petition set for 9/30/10 STANDS. State to prepare a global order addressing both rulings.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 28, 2010**

01C177394

The State of Nevada vs Kirstin B Lobato

September 28, 2010 9:00 AM Motion**HEARD BY:** Vega, Valorie J.**COURTROOM:** RJC Courtroom 16B**COURT CLERK:** Nora Pena**RECORDER:** Lisa Lizotte**REPORTER:****PARTIES****PRESENT:** State of Nevada Plaintiff
Thomas, Michelle L. Attorney**JOURNAL ENTRIES**

- Court noted Deft is in pro per status and she is in the Nevada Department of Corrections, therefore, waives appearance for today's purposes. Court advised Deft recently filed three more motions and Court did an answer for the motion to recuse that there are no grounds and reviewed the NRS. Court suggested parties should get another Judge for the motion to recuse and will need to have the Deft here to come to an agreement for the Judge to hear the motion to recuse. COURT ORDERED, Motion set for 9/30th VACATED and matter set for status check on Deft's pro per Petition for Writ and Deft's pro per motion for the Court Clerk to assign a Civil case number as required by the NRS to 11/9 at 9:00 a.m.; and CONTINUED as to Deft's pro per motion for recusal of Judge Vega to 10/5/10 at 9:00 a.m. Clerk to mail a copy of the minutes to Deft.

NDC

10/05/10 9:00 AM DEFT'S PRO PER MOTION FOR RECUSAL OF JUDGE VALORIE VEGA

11/09/10 9:00 AM STATUS CHECK: RESET HEARING DATE ON PETITION FOR WRIT OF HABEAS CORPUS; DEFT'S PRO PER MTN FOR THE COURT CLERK TO ASSIGN A CIVIL CASE NUMBER AS REQUIRED BY THE NRS & DEFT'S PRO PER MTN FOR AN EXPEDITED HEARING AND MTN FOR TIME TO FILE AN ANSWER TO THE STATE'S RESPONSE

CLERK'S NOTE: Copy of minutes sent to Kirstin Lobato #95558 at FMWCC, 4370 Smiley Road, North

PRINT DATE: 08/02/2011

Page 106 of 128

Minutes Date:

August 10, 2001

01C177394

Las Vegas, NV 89115./np

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 05, 2010

01C177394

The State of Nevada vs Kirstin B Lobato

October 05, 2010

9:00 AM

All Pending Motions

HEARD BY: Vega, Valorie J.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Cheryl Carpenter

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- DEFENDANT'S PRO PER MOTION FOR RECUSAL OF JUDGE VALORIE VEGA.....
/STATE'S MOTION TO STRIKE OR, IN THE ALTERNATIVE, OPPOSITION TO DEFENDANT'S
MOTION FOR RECUSAL OF JUDGE VEGA

Tyler Smith, Esq. for the State of Nevada, present and Deft Lobato in pro se, present.

Court advised she had prepared an answer to the motion then yesterday she received a supplemental to recuse, therefore, she wrote out a supplemental answer to be filed today or tomorrow. Pursuant to NRS 1.235 (5)(b) regarding Deft's motion for recusal, the motion should be heard by another Judge and she wanted parties to meet and agree on a Judge so she had the State prepare an order for transport for parties to reach an agreement on a Judge. Mr. Smith believed the motion is untimely and he asked the Court to strike the motion for recusal herself, otherwise, he asked to give it to Chief Judge Ritchie. Court advised she wanted to give the parties an opportunity to select a Judge. Upon Court's inquiry, Deft Lobato reviewed the Legal Directory and chose Judge Smith and the State agreed. Court directed the clerk to email Dept 8 for a date in two weeks. COURT ORDERED, motions (2) to be TRANSFERRED and heard by Judge Smith on 10/20/10 at 8:30 a.m. in Dept 8 and State to prepare the order for transport for that date.

NDC

10/20/10 8:30 AM DEFENDANT'S PRO PER MOTION FOR RECUSAL OF JUDGE VALORIE VEGA

PRINT DATE: 08/02/2011

Page 108 of 128

Minutes Date:

August 10, 2001

10/20/10 8:30 AM STATE'S MOTION TO STRIKE OR, IN THE ALTERNATIVE, OPPOSITION TO
DEFENDANT'S MOTION FOR RECUSAL OF JUDGE VEGA

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 19, 2010

01C177394

The State of Nevada vs Kirstin B Lobato

October 19, 2010

9:00 AM

Motion

HEARD BY: Vega, Valorie J.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Shelly Landwehr

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Petitioner Lobato's Notice Of Motion And Motion For Reconsideration And Vacating Of The Court's Order Striking Three Motion's By Petitioner, And Petitioner's Response To The State's Motion To Strike Or, In The Alternative, Opposition To Improper Motion For Recusal Of Judge Vega, Expedited Hearing, And Extension Of Time, And Assignment Of Civil Case Number

Court NOTED Deft. was not transported and ORDERED matter CONTINUED to 11/09/10.

NDC

CLERK'S NOTE: COPY OF MINUTES MAILED TO DEFT. AT FLORENCE MCCLURE WOMENS CORRECTIONAL CENTER

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 20, 2010

01C177394

The State of Nevada vs Kirstin B Lobato

October 20, 2010

8:30 AM

All Pending Motions

Petitioner Lobato's
Notice of Motion and
Motion for Recusal of
Judge Valorie Vega;
State's Motion to
Strike or, In the
Alternative,
Opposition to
Defendant's Motion
for Recusal of Judge
Vega

HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 16D

COURT CLERK: Katherine Streuber

RECORDER: Jill Jacoby

REPORTER:

PARTIES

PRESENT:	Kephart, William D	Attorney
	Lobato, Kirstin B	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Court stated motion alleges bias by Judge Vega and noted motion is not coherent. Court further noted motion was filed by Michelle Ravell, who is not a licensed attorney. Deft. present. Court advised Deft. he was going to have Ms. Ravell placed in front of the State Bar. Deft. advised she gave Ms. Ravell power of attorney. Court stated there being no showing of bias on the part of Judge Vega as she is a fine judge, ORDERED, motion DENIED. FURTHER, pending status checks and motions are to be in front Judge Vega. Deft. advised she in between counsel at this time. COURT SO NOTED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****November 09, 2010**

01C177394

The State of Nevada vs Kirstin B Lobato

November 09, 2010 9:00 AM**All Pending Motions****HEARD BY:** Vega, Valorie J.**COURTROOM:** RJC Courtroom 16B**COURT CLERK:** Nora Pena**RECORDER:** Lisa Lizotte**REPORTER:****PARTIES**

PRESENT:	Barrick, Travis N.	Attorney
	DiGiacomo, Sandra	Attorney
	Lobato, Kirstin B	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Tyler Smith, DDA present for the State.

STATUS CHECK: RESET HEARING DATE ON DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK: RESET HEARING DATE ON DEFT'S PRO PER MOTION FOR THE COURT CLERK TO ASSIGN A CIVIL CASE NUMBER AS REQUIRED BY THE NRS...STATUS CHECK: RESET HEARING DATE ON DEFT'S PRO PER MOTION FOR AN EXPEDITED HEARING AND MOTION FOR AN EXTENSION OF TIME TO FILE AN ANSWER TO THE STATE'S RESPONSE...DEFT'S PRO PER MOTION FOR RECONSIDERATION AND VACATING OF THE COURT'S ORDER STRIKING THREE MOTION'S BY PETITIONER, AND PETITIONER'S RESPONSE TO THE STATE'S MOTION TO STRIKE OR, IN THE ALTERNATIVE, OPPOSITION TO IMPROPER MOTIONS FOR RECUSAL OF JUDGE VEGA, EXPEDITED HEARING AND EXTENSION OF TIME, AND ASSIGNMENT OF CIVIL CASE NUMBER...DEFT'S PRO PER MTOION FOR AN ORDER IN ACCORDANCE WITH THE PRISONER MAILBOX RULE THAT THE CLERK'S OFFICE CORRECT THE FILING DATE TO SEPTEMBER 10, 2010, OF DEFT'S NOTICE OF MOTION FILE AN ANSWER TO THE STATE'S RESPONSE

Mr. Barrick advised notice of appearance was filed and he advised Ms. Lobato is the Petitioner and he insisted that she be referred as the Petitioner. Court advised Lobato filed under the criminal case

and she is the Defendant in the case. Court noted the Petition is extensive and would need time to prepare for argument. Mr. Barrick noted he has travel plans for 12/16th to Baltimore. COURT ORDERED, ALL MOTIONS CONTINUED to 12/15/10 at 1:30 a.m. and State to prepare the order for transport. Mr. Barrick advised he will work with Mr. Smith and may submit a stipulation as to motions.

NDC

CONTINUED TO: 12/15/10 1:30 PM

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****December 09, 2010**

01C177394

The State of Nevada vs Kirstin B Lobato

December 09, 2010 9:00 AM At Request of Court - RDP**HEARD BY:** Vega, Valorie J.**COURTROOM:** RJC Courtroom 16B**COURT CLERK:** Sharon Chun**RECORDER:** Lisa Lizotte**REPORTER:****PARTIES**

PRESENT:	Barrick, Travis N.	Attorney
	Smith, Tyler D., ESQ	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- COURT ACKNOWLEDGED that Travis Barrick had submitted a Substitution of Counsel and the Court had reviewed it. COURT NOTED that due to the Court's trial schedule, the matters now scheduled for 12/15/10 will have to be moved to another date. Following agreement of counsel, COURT ORDERED, all matters SET for HEARINGS on 1/13/11 at 10:30 A.M, EXCEPT Deft's Pro Per Petition for Writ of Habeas Corpus is to be SET as a STATUS CHECK on 1/13/11 at 10:30 A.M.

NDC

1/13/11-10:30 AM Status Check: Reset Hearing Date On Deft's Pro Per Petition for Writ of Habeas Corpus...Deft's Pro Per Motion for the Court Clerk to Assign a Civil Case Number as Required by the NRS ... Deft's Pro Per Motion for an Expedited Hearing and Motion for An Extension of Time to File an Answer To the State's Response . . . Deft's Pro Per Motion for Reconsideration and Vacating of the Court's Order Striking Three Motion's By Petitioner, and Petitioner's Response to the State's Motion to Strike or, in the Alternative, Opposition to Improper Motions for Recusal of Judge Vega, Expedited Hearing, and Extension of Time, and Assignment of Civil Case Number...Deft's Pro Per Motion for an Order in Accordance with the Prisoner Mailbox Rule that the Clerk's Office Correct the Filing Date to September 10, 2010, of Deft's Notice of Motion for an Expedited Hearing and Motion for an Extension of Time to File an Answer to the State's Response ... Deft's Renewed Motion for Appointment of Counsel ... Deft's Motion for Limited Discovery for Good Cause

PRINT DATE: 08/02/2011

Page 114 of 128

Minutes Date:

August 10, 2001

**DISTRICT COURT
CLARK
DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 13, 2011

01C177394

The State of Nevada vs Kirstin B Lobato

January 13, 2011

10:30 AM

All Pending Motions

HEARD BY: Vega, Valorie J.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Tiffany Lawrence; Monique Alberto; Sara Richardson; Sharon Coffman

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Barrick, Travis N.	Attorney
	DiGiacomo, Sandra	Attorney
	Lobato, Kirstin B	Defendant
	Smith, Tyler D., ESQ	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- STATUS CHECK: RESET HEARING DATE ON DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK: RESET HEARING DATE ON DEFENDANT'S PRO PER MOTION FOR THE COURT CLERK TO ASSIGN A CIVIL CASE NUMBER AS REQUIRED BY THE NRS...STATUS CHECK: RESET HEARING DATE ON DEFENDANT'S PRO PER MOTION FOR AN EXPEDITED HEARING AND MOTION FOR AN EXTENSION OF TIME TO FILE AN ANSWER TO THE STATE'S RESPONSE...DEFENDANT'S PRO PER MOTION FOR RECONSIDERATION AND VACATING OF THE COURT'S ORDER STRIKING THREE MOTION'S BY PETITIONER, AND PETITIONER S RESPONSE TO TE STATE'S MOTION TO STRIKE OR, IN THE ALTERNATIVE, OPPOSITION TO IMPROPER MOTIONS FOR RECUSAL OF JUDGE VEGA, EXPEDITED HEARING, AND EXTENSION OF TIME, AND ASSIGNMENT OF CIVIL CASE NUMBER...DEFENDANT'S PRO PER MOTION FOR AN ORDER IN ACCORDANCE WITH THE PRISONER MAILBOX RULE THAT THE CLERK'S OFFICE CORRECT THE FILING DATE TO SEPTEMBER 10, 2010, OF DEFENDANT'S NOTICE OF MOTION FOR AN EXPEDITED HEARING AND MOTION FOR AN EXTENSION OF TIME TO FILE AN ANSWER TO THE STATE'S RESPONSE...DEFENDANT'S RENEWED MOTION FOR APPOINTMENT OF

COUNSEL...DEFENDANT'S MOTION FOR LIMITED DISCOVERY FOR GOOD CAUSE...DEFENDANT'S MOTION FOR LEAVE TO CONDUCT LIMITED DISCOVERY OF CARDBOARD SHOEPRINT EVIDENCE.

Mr. Barrick advised he wishes to adopt Deft's Pro Per Petition for Writ of Habeas Corpus. COURT ORDERED, matter scheduled for hearing.

Mr. Barrick advised he wishes to adopt Deft's Pro Per Motion for Clerk to Assign a Civil Case Number. COURT ORDERED, matter scheduled for hearing.

Mr. Barrick advised he wishes to withdraw Deft's Motion for Expedited Hearing and Extension of Time with the understanding that State will not strike Deft's Answer to their Response; State acknowledged and agreed to withdraw of the Motion. COURT ORDERED, Motion WITHDRAWN and Status check taken Off-Calendar.

Mr. Barrick advised that Deft's Pro Per Motion for Reconsideration and Vacating Court's Order has been re-filled; therefore, he wished to withdraw the Pro Per Motion. COURT ORDERED, Motion WITHDRAWN.

Mr. Barrick advised that Deft's Pro Per Motion in Accordance with Prisoner's Mailbox Rule has been re-filled; therefore, he wished to withdraw the Pro Per Motion. COURT ORDERED, Motion WITHDRAWN.

Arguments of counsel. Court advised case is in post conviction status and Deft was appointed counsel in both her first and second trial. Moreover, Court noted Deft is not subject to the death penalty in this case; therefore, Deft has not shown good cause for appointment. COURT ORDERED, Deft's Renewed Motion for Appointment of Counsel DENIED pursuant to McKague v. Warden, 112 Nev. 159 (1996). Court directed State to prepare the Order.

Mr. Barrick requested ruling on Deft's Motion for Limited Discovery as it would affect the upcoming hearings. Arguments of counsel. COURT ORDERED, Deft's Motion DENIED without prejudice as premature pursuant to NRS 34.780. Court advised that matter may be renewed if Court determines at the upcoming hearing that an Evidentiary Hearing is warranted. Court directed State to prepare the Order.

Counsel submitted. COURT ORDERED, Deft's Motion for Leave to Conduct Limited Discovery DENIED without prejudice as premature pursuant to NRS 34.780. Court advised that matter may be renewed if Court determines at the upcoming hearing that an Evidentiary Hearing is warranted. Court directed State to prepare the Order.

NDC

03/01/11 10:30AM - HEARING: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS

01C177394

03/01/11 10:30AM - HEARING: DEFT'S MOTION FOR COURT CLERK TO ASSIGN A CIVIL CASE
NUMBER AS REQUIRED BY NRS.

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****March 01, 2011**

01C177394

The State of Nevada vs Kirstin B Lobato

March 01, 2011**10:30 AM****All Pending Motions****HEARD BY:** Vega, Valorie J.**COURTROOM:** RJC Courtroom 16B**COURT CLERK:** Nora Pena**RECORDER:** Lisa Lizotte**REPORTER:****PARTIES**

PRESENT:	Barrick, Travis N.	Attorney
	DiGiacomo, Sandra	Attorney
	Lobato, Kirstin B	Defendant
	Smith, Tyler D., ESQ	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- HEARING: PETITION FOR WRIT OF HABEAS CORPUS...HEARING: MOTION FOR COURT CLERK TO ASSIGN A CIVIL CASE NUMBER AS REQUIRED BY NRS

HEARING: MOTION FOR COURT CLERK TO ASSIGN A CIVIL CASE NUMBER AS REQUIRED BY NRS: Argument by Mr. Barrick as a remedy for the Court to order a new case and this docket would end and a new docket starts. Opposition by Ms. DiGiacomo due to challenge of her underlying conviction and this is a criminal matter. Court stated her findings, and ORDERED, motion DENIED pursuant to NRS 34.730(3).

Court addressed the second issue is she received yesterday as a document, a supplemental exhibits to Petitioner's answer and support of Petition to Writ of Habeas Court and after she received that courtesy copy, she then received a courtesy copy of a document, State's opposition and motion to strike Deft's supplemental exhibit to Petitioner's answer in support of the Writ of Habeas Corpus. Mr. Barrick indicated he will not oppose the State's motion to strike. COURT ORDERED, State's motion to STRIKE supplement exhibit GRANTED pursuant to EDCR 3.20. State to prepare the order and pass it to Mr. Barrick for review prior to review by the Court. Procedurally for all the orders issued today will ask that they be reviewed by both sides. Mr. Barrick moved to renew his motion to appoint Mr.

PRINT DATE: 08/02/2011

Page 119 of 128

Minutes Date:

August 10, 2001

Oram. Court advised there is no rule that allows a motion for reconsideration for criminal motions and will not entertain an oral motion today absent Points and Authorities. .

HEARING: PETITION FOR WRIT OF HABEAS CORPUS: Conference at the bench. COURT ORDERED, Court's exhibits 1 thru 4 marked pursuant to ground #43. (See worksheet.) Exhibits of the four documents were distributed to counsel. Court noted the highlighted on Court's exhibits 1 - 4 were placed by the Court. Argument by Mr. Barrick on the Petition for Writ of Habeas Corpus. Court inquired for clarification as to ground #23. Mr. Tyler advised he will argue on #1 thru #21 and respond to #23 and he argued. Response by Mr. Barrick. Court stated her findings and ORDERED, Decision as to the grounds as follows:

1, 2 and 3 - DENIED pursuant to D'Agostino v. State, 112 Nev. 417 (1996);

4 - DENIED pursuant to the same case D'Agostino and Herrera v. Collins, 506 U.S. 390 (1993) and Jackson v. State, 91 Nev. 314 (1975);

5 - DENIED pursuant to Lobato v. State, 120 Nev. 522 (2004) and barred pursuant to Hall v. State, 91 Nev. 314 (1975) and Pellegrini v. State, 117 Nev. 860 (2001);

6 - DENIED pursuant to NRS 34.810;

7 - DENIED pursuant to Herrera v. Collins and NRS 34.810;

8 - DENIED pursuant to Herrera v. Collins and NRS 34.810;

9 - DENIED pursuant to Hargrove v. State, 100 Nev. 498 (1984) and NRS 34.810 and Herrera v. Collins;

10 - DENIED pursuant to Hargrove v. State and NRS 34.810;

11 - DENIED pursuant to Herrera v. Collins and NRS 34.810;

12 - DENIED pursuant to Herrera v. Collins and NRS 34.810;

13 - DENIED pursuant to Herrera v. Collins and NRS 34.810 and Hargrove v. State;

14 - DENIED pursuant to Herrera v. Collins and NRS 34.810;

15 - DENIED pursuant to Hargrove v. State;

16 - DENIED pursuant to Herrera v. Collins and NRS 34.810;

17 - DENIED pursuant to Herrera v. Collins and NRS 34.810 and Hargrove v. State;

- 18 - DENIED pursuant to Herrera v. Collins and NRS 34.810;
- 19 - DENIED pursuant to Herrera v. Collins and NRS 34.810 and NRS 201.450 and Lobato v. State, 120 Nev. 522 (2004);
- 20 - DENIED pursuant to Herrera v. Collins and NRS 34.810;
- 21 - DENIED, issue as previously ruled on by the Nev. Sp. Crt and therefore, Barred pursuant to Lobato v. State, 120 Nev. 522 (2004) and Hall v. State, 91 Nev. 314 (1975) and NRS 34.810;
- 22 - DENIED pursuant to Herrera v. Collins, NRS 34.810 and Hargrove v. State;
- 23 - DENIED pursuant to all the Law cited under grounds 1 thru 22, inclusive;
- 24 - DENIED pursuant to Herrera v. Collins and NRS 34.810;
- 25 - DENIED pursuant to Herrera v. Collins and NRS 34.810;
- 26 - DENIED pursuant to Herrera v. Collins and NRS 34.810;
- 27 - DENIED pursuant to Strickland v. Washington, 466 U.S. 668, 104 S. Ct. (1984);
- 28 - DENIED pursuant to Strickland v. Washington;
- 29 - DENIED pursuant to Strickland v. Washington;
- 30 - DENIED pursuant to Strickland v. Washington, Molina v. State, 120 Nev. 185 (2004); and Hargrove v. State;
- 31 - DENIED pursuant to Strickland v. Washington, Molina v. State, and Hargrove v. State;
- 32 - DENIED pursuant to Strickland v. Washington and Rhyne v. State, 118 Nev. 28 (1991);
- 33 - DENIED pursuant to Strickland v. Washington and Rhyne v. State;
- 34 - DENIED pursuant to Strickland v. Washington and Rhyne v. State;
- 35 - DENIED pursuant to Strickland v. Washington, Rhyne v. State and Ennis v. State, 122 Nev. 694 (2006);
- 36 - DENIED pursuant to Strickland v. Washington and Rhyne v. State;

37 - DENIED pursuant to Strickland v. Washington and Herrera v. Collins;

38, 39, 40 and 41 - the ruling is the same for all four grounds, DENIED pursuant to Strickland v. Washington, Herrera v. Collins, Rhyne v. State and NRS 34.810;

42 - DENIED pursuant to Strickland v. Washington, Rhyne v. State, Herrera v. Collins and NRS 34.810;

43 - DENIED pursuant to Strickland v. Washington, Herrera v. Collins, NRS 34.810 and notice on file which have been marked as Court's exhibits 1, 2 and 3;

44 - DENIED pursuant to Strickland v. Washington, Rhyne v. State; Herrera v. Collins and NRS 34.810;

45 - DENIED pursuant to Strickland v. Washington, Ennis v. State, Herrera v. Collins and NRS 34.810;

46 - DENIED pursuant to Rowland v. State, 118 Nev. 31 (2002);

47 - DENIED pursuant to Hall v. State, Pellegrini v. State, Strickland v. Washington, Herrera v. State and NRS 34.810;

48 - DENIED pursuant to Strickland v. Washington, Herrera v. State and NRS 34.810;

49 - DENIED pursuant to Riker v. State, 111 Nev. 1316 (1995), State v. Green, 81 Nev. 173 (1965) and Ennis v. State;

50 - DENIED pursuant to Rhyne v. State, Strickland v. Washington, Herrera v. Collins and NRS 34.810;

51 - DENIED pursuant to Lobato v. State and Hall v. State;

52 - DENIED pursuant to Hargrove v. State, 100 Nev. 498 (1984);

53 - DENEID pursuant to Strickland v. Washington, Herrera v. Collins and NRS 34.810;

54 - DENIED pursuant to Strickland v. Washington, Rhyne v. State, Lobato v. State, Hall v. State, and Ennis v. State;

55 - DENIED pursuant to Strickland v. Washington, and Rhyne v. State;

56 - DENIED pursuant to Molina v. State, 120 Nev. 185 (2004) and Strickland v. Washington;

As to 57, cited to the case was *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527 (U.S. 6-25 (2009)) and per our State statute NRS Chapter 51 and 51.135 record of regularly conducted activity and NRS 51.145 absence of entry and record of regularly conducted activities, NRS 51.315 generated exception and exception to the hearsay rule defined under NRS 51.035;

57 DENIED pursuant to NRS Chapter 51 and *Ennis v. State* and *Strickland v. Washington*;

58 - DENIED pursuant to *Hargrove v. State*;

59 - DENIED pursuant to *Lobato v. State*, *Ennis v. State* and *Hargrove v. State*;

60 - DENIED pursuant to *Strickland v. Washington*, *Weber v. State*, 121 Nev. 554 (2005), *Guy v. State*, 108 Nev. 770 (1992), and *Ennis v. State*;

61 - DENIED pursuant to *Strickland v. Washington*, NRS 175.221 and *Lord v. State*, 107 Nev. 28 (1991);

62 and 63 - DENIED pursuant to NRS 201.450; *Lobato v. State*, *Strickland v. Washington*, *Herrera v. Collins*, *Ennis v. State* and NRS 34.810;

64 - DENIED pursuant to *Yarborough v. Gentry*, 540 U.S. 1, (2003), *Rhyne v. State* and *Strickland v. Washington*;

65 - DENIED pursuant to *Rice v. State*, 113 Nev. 1300 (1997) and *Strickland v. Washington*;

66 - DENIED pursuant to *Yarborough v. Gentry* and *Strickland v. Washington*;

67 - DENIED pursuant to *Domingues v. State*, 112 Nev. 683 (1996), *Ennis v. State* and *Strickland v. Washington*;

- 68 - DENIED pursuant to *Rowland v. State*, 118 Nev. 31 (2002) and *Ennis v. State*;

69 - DENIED pursuant to *State v. Green*, 81 Nev. 173 (1965), *Ennis v. State* and *Strickland v. Washington*;

70 - DENIED pursuant to *Strickland v. Washington*, *Hargrove v. State*, and *Ennis v. State*;

71 - DENIED pursuant to *D'Agostino v. State*, *Herrera v. Collins*, *Rhyne v. State* and *Strickland v. Washington*;

72 - DENIED pursuant NRS 34.810, *Hall v. State*, *Lobato v. State*, and *Strickland v. Washington*;

73 - concerns a letter, DENIED pursuant to Herrera v. Collins, Hargrove v. State, Molina v. State and Strickland v. Washington and noted Court is not ruling today on the Petition regarding the DNA testing pursuant to NRS 176.0918 which will be given a hearing date;

74 - DENIED pursuant to Lobato v. State, NRS 34.810, Hall v. State and Strickland v. Washington;

75 - DENIED pursuant to Lobato v. State, Hall v. State, Strickland v. Washington and EDCR 3.20;

76 - DENIED pursuant to Ennis v. State and Strickland v. Washington;

77 - DENIED based on all of the Law on grounds 1 thru 76 and Mulder v. State, 116 Nev. 1 (2000)

78 - DENIED pursuant to the Law cited on the ruling on grounds 1 thru 24 pertaining to evidence, NRS 176.515, Ennis v. State and Mulder v. State;

79 - DENIED pursuant to Hargrove v. State and Strickland v. Washington;

As an overall wrap up, Court finds through out the Petition Defendant sought appointment of counsel, sought an Evidentiary Hearing, sought new trial, none of which are warranted here and the Court had some new affidavits presented but they were unsubstantiated and based on their belief with speculation, there was no new evidence presented, the Defendant got new people to review the old evidence presented at trial, that was available at trial to elaborate on it. State to prepare the order and pass it by Mr. Barrick for review prior to submission to the Court. Mr. Smith requested the transcript for the rulings. COURT SO ORDERED. Court asked the Court Recorder to have the transcript of the ruling prepared from today's proceedings.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****March 31, 2011**

01C177394

The State of Nevada vs Kirstin B Lobato

March 31, 2011**9:00 AM****Petition****HEARD BY:** Vega, Valorie J.**COURTROOM:** RJC Courtroom 16B**COURT CLERK:** Nora Pena**RECORDER:** Lisa Lizotte**REPORTER:****PARTIES**

PRESENT:	Barrick, Travis N.	Attorney
	Smith, Tyler D., ESQ	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Court noted Deft not present and waives her appearance as she is in the prison. COURT ORDERED, Briefing schedule set as follows: State to file opposition 4/14/11, Mr. Barrick to file reply 4/28/11 and matter set for 5/10/11 at 10:30 a.m. Court directed the Stated to prepare an Order for transport of Deft for 5/10th.

NDC

5/10/11 10:30 AM STATUS CHECK: DEFT'S PETITION REQUESTING POST-CONVICTION DNA TESTING PURSUANT TO NRS 176.0918

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 26, 2011

01C177394

The State of Nevada vs Kirstin B Lobato

April 26, 2011

11:00 AM

Hearing

HEARD BY: Vega, Valorie J.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Barrick, Travis N.	Attorney
	Smith, Tyler D., ESQ	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Court indicated she toured the evidence vault with Ann Sly and noted the vault has the evidence from this case. Mr. Smith advised there is evidence in the LVPD vault and he provided a copy of the inventory report of items of evidence. Court stated she didn't know what evidence was not used at trial but items of evidence from the 2002 and 2006 trial are in the Clerk's vault and copy listing items of evidence prepared by Ms. Sly provided to counsel. COURT ORDERED, All evidence with Metro vault and/or Clerk's vault be maintained by the custodian and the LVMPD Inventory list marked as Court's exhibit #1; matter set for 5/10/11 STANDS. State to prepare the order.

Court asked the clerk to left side file the letter from Mr. Barrick and email from Ms. Sly.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 10, 2011

01C177394

The State of Nevada vs Kirstin B Lobato

May 10, 2011

10:30 AM

Petition

HEARD BY: Vega, Valorie J.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Melissa Benson

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:

Barrick, Travis N.

Attorney

Smith, Tyler D., ESQ

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- Deft's presence waived. Ms. DiGiacomo not present and unable to return from a meeting. Colloquy as to continuing the matter. COURT ORDERED, matter CONTINUED for presence of all counsel. FURTHER, Deft's appearance shall be waived for the continuance as well.

NDC

CONTINUED TO: 6/7/11 10:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****June 07, 2011**

01C177394

The State of Nevada vs Kirstin B Lobato

June 07, 2011**10:30 AM****Petition****HEARD BY:** Vega, Valorie J.**COURTROOM:** RJC Courtroom 16B**COURT CLERK:** Nora Pena**RECORDER:** Lisa Lizotte**REPORTER:****PARTIES**

PRESENT:	Barrick, Travis N.	Attorney
	DiGiacomo, Sandra	Attorney
	Smith, Tyler D., ESQ	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Following arguments by counsel, Court stated her findings, and ORDERED, Deft's Petition for Requesting Post-Conviction DNA testing pursuant to NRS 176.0918 is DENIED pursuant to NRS 176.0918 (7) and (8). State to prepare the order and pass it to Mr. Barrick prior to submission to the Court. Mr. Tyler requested transcript for today be prepared. COURT SO ORDERED. Mr. Barrick moved on an oral motion for reconsideration. Court advised there is no local rule for reconsideration in a criminal motion.

NDC

VAULT EXHIBIT FORM

CASE NO: <i>C177394</i>	HEARING DATE: <i>APR 26 2011</i>
DEPT. NO. <i>2</i>	JUDGE: <i>VALORIE J. VEGA</i>
	CLERK: <i>NORA PEÑA</i>
	REPORTER: <i>Lisa Lizotte</i>
PLAINTIFF: <i>The State of Nevada</i>	JURY FEES:
	COUNSEL FOR PLAINTIFF: <i>ERCAN ISCAN</i>
DEFENDANT: <i>Kirstin Lobato</i>	
	COUNSEL FOR DEFENDANT: <i>Travis Barrick</i>

Court's Exhibit

Date Offered Objection Date Admitted

<i>1. Las Vegas Metro Police Dept</i>	<i>4-26-11</i>	<i>no</i>	<i>4-26-11</i>
<i>Inventory List of evidence</i>			

Date Offered	Objection	Date Admitted
--------------	-----------	---------------

[illegible]

CASE NO. C177394

TRIAL DATE: 2/2/07

DEPT. NO. 2

JUDGE: Valorie Vega

State of Nevada

CLERK: Pamela Denipha

REPORTER: Lisa Lizotte

PLAINTIFF

William Kepnart :
Sandra DiSiacomo :

Lobato, Kirstin ^{VS}

COUNSEL FOR PLAINTIFF

David Schleck, Shari Greenburger!

Sara Zalkin

DEFENDANT

COUNSEL FOR DEFENDANT

[illegible]

VAULT EXHIBIT FORM

CASE NO. C177394

TRIAL DATE: 9/11/06

DEPT. NO. _____

JUDGE: V. ALORIE VEGA

CLERK: _____

THE STATE OF NEVADA
PLAINTIFF

REPORTER: LISA LIZOTTE

KIRSTIN BLAISE LOBATO
vs

KERHART / S. DIGIACOMO
COUNSEL FOR PLAINTIFF

DEFENDANT

SCHIECK / GREENBERGER / ZALKIN
COUNSEL FOR DEFENDANT

STATE EXHIBITS

			OFFERED DATE		OBJ		ADMITTED DATE
1	Photo	NV State Bank Sign	9/14	✓	NO	✓	9/14
2	✓	Parking area	✓	✓	✓	✓	✓
3	✓	" "	✓	✓	✓	✓	✓
4	✓	Trash Bin area	9/14	✓	NO	✓	9/14
5	✓	"	9/14	✓	NO	✓	9/14
6	✓	Trash Bin area	9/14	✓	NO	✓	9/14
7	✓	"	✓	✓	✓	✓	✓
8	✓	"	✓	✓	✓	✓	✓
9	✓	"	✓	✓	✓	✓	✓
10	✓	"	✓	✓	✓	✓	✓
11	✓	"	✓	✓	✓	✓	✓
12	✓	" w/ body	✓	✓	✓	✓	✓
13	✓	" "	✓	✓	✓	✓	✓
14	✓	"	✓	✓	✓	✓	✓
15	✓	" w/ body	✓	✓	✓	✓	✓

STATE EXHIBITS

CASE NO. C177394

Date Offered OBJ Admitted Date

16	Photo	Trash area w/body	9/4	✓	NO	✓	9/4
17		"		✓		✓	
18		"		✓		✓	
19		"		✓		✓	
20		"		✓		✓	
21		"		✓		✓	
22		"		✓		✓	
23		"		✓		✓	
24		"		✓		✓	
25		"		✓		✓	
26		"		✓		✓	
27		"		✓		✓	
28		"		✓		✓	
29		"		✓		✓	
30		"		✓		✓	
31		"		✓		✓	
32		"		✓		✓	
33		"		✓		✓	
34		"		✓		✓	
35		"		✓		✓	
36		"		✓		✓	
37		"		✓		✓	
38			9/21	✓	NO	✓	9/21

STATE

EXHIBITS

CASE NO. C 177394

		OFFERED DATE		OBJ	ADMITTED DATE	
✓	39					
✓	40 Photo	9/21	✓	ND	9/21	✓
✓	41 Photo	9/20	✓	ND	9/20	✓
✓	42 Photo	9/19	✓	ND	9/19	✓
✓	43	9/19	✓	ND	9/19	✓
✓	44		✓			✓
✓	45		✓			✓
✓	46 Photo		✓			✓
✓	47		✓			✓
✓	48 Slip Slaps	9/20	✓	ND	9/20	✓
✓	49	9/21	✓	ND	9/21	✓
✓	50	9/21	✓	ND	9/21	✓
✓	51	9/20	✓	ND	9/20	✓
✓	52	9/20	✓	ND	9/20	✓
✓	53	9/20	✓	ND	9/20	✓
✓	54	9/21	✓	ND	9/21	✓
✓	55	9/20	✓	ND	9/20	✓
✓	56	9/19	✓	ND	9/19	✓
✓	57		✓			✓
✓	58		✓			✓
✓	59		✓			✓
✓	60		✓			✓

STATE

EXHIBITS

CASE NO.

C177394

		OFFERED DATE		OBJ	ADMITTED DATE	
- 61	Photo	9/9	✓	NO	9/9	✓
/ 62			✓			✓
/ 63			✓			✓
/ 64			✓			✓
/ 65			✓			✓
/ 66			✓			✓
- 67			✓			✓
- 68			✓			✓
/ 69						
- 70	Photo	9/9	✓	NO	9/9	✓
/ 71			✓			✓
/ 72			✓			✓
/ 73			✓			✓
/ 74			✓			✓
/ 75			✓			✓
/ 76			✓			✓
/ 77			✓			✓
/ 78			✓			✓
/ 79			✓			✓
/ 80			✓			✓
/ 81			✓			✓
/ 82			✓			✓

STATE

EXHIBITS

CASE NO. C177394

		OFFERED		ADMITTED	
		DATE	OBJ	DATE	
✓ 83	Photo	9/19	✓ NO	✓ 9/19	
✓ 84	{	✓	✓	✓	
✓ 85		✓	✓	✓	
✓ 86		✓	✓	✓	
✓ 87		✓	✓	✓	
✓ 88		✓	✓	✓	
✓ 89		✓	✓	✓	
✓ 90		✓	✓	✓	
✓ 91		✓	✓	✓	
✓ 92		✓	✓	✓	
✓ 93		✓	✓	✓	
✓ 94		✓	✓	✓	
✓ 95		✓	✓	✓	
✓ 96		✓	✓	✓	
✓ 97		✓	✓	✓	
✓ 98					
✓ 99	Photo	9/27	✓ NO	✓ 9/27	
✓ 100	{	✓	✓	✓	
✓ 101		✓	✓	✓	
✓ 102		✓	✓	✓	
✓ 103		9/25	✓ NO	✓ 9/25	
✓ 104		9/25	✓ NO	✓ 9/25	

STATE

EXHIBITS

CASE NO. C177394

			OFFERED		ADMITTED	
			DATE	OBJ	DATE	DATE
-105	Photo	V				
-106		Veh.	9/8	✓	NO	✓ 9/8
-107		Veh.	(	✓	(	✓
-108		Veh.	}	✓	}	✓
-109		Veh. Interior	9/5	✓	NO	✓ 9/5
-110		Seat	9/5	✓	NO	✓ 9/5
-111		"	9/5	✓	NO	✓ 9/5
-112		"	9/5	✓	NO	✓ 9/5
-113		"	9/5	✓	NO	✓ 9/5
-114		Door panel	9/5	✓	NO	✓ 9/5
-115			9/21	✓	NO	✓ 9/21
-116		Trash Bin area	9/4	✓	NO	✓ 9/4
-117		" " "	(	✓	(	✓
-118		" " "	}	✓	}	✓
-119		" " "	}	✓	}	✓
-120		" " "	}	✓	}	✓
-121	Blow-up Photo of crime scene		9/4	✓	NO	✓ 9/4
-122	"	Body diagram	9/9	✓	NO	✓ 9/9
-123		Rights cards	9/27	✓	NO	✓ 9/27
-124		Consent to search cards	9/27	✓	NO	✓ 9/27
-125-A	Lobato taped statement		9/27	✓	NO	✓ 9/27
-126						

STATE

EXHIBITS

CASE NO. C177394

			OFFERED		ADMITTED	
			DATE	OBJ	DATE	DATE
✓127	Box & Wrapping	sm wrapping 127-A Box 127-B	9/21	✓ NO	✓	9/21
✓128	Bag - seal covers		9/21	✓ NO	✓	9/21
✓129	Bag - w/ Tan Pants + White Socks		9/25	✓ NO	✓	9/25
✓130	Bag - w/ Plaid shirt		9/25	✓ NO	✓	9/25
✓131	Door Panel		9/21	✓ NO	✓	9/21
✓132						
✓133	Affidavit of Cus. of Recs.		9/5	✓ Dip	✓	9/5
✓133-A						
✓134	Photo		9/27	✓ NO	✓	9/27
✓135	(		✓	(	✓	(
✓136	(		✓	(	✓	(
✓137	Photo Planter area		9/4	✓ NO	✓	9/4
✓138	" "		9/21	✓ NO	✓	9/21
✓139	" "		9/4	✓ NO	✓	9/4
✓140	Tire tracks		9/21	✓ NO	✓	9/21
✓141	Tire tracks		9/21	✓ NO	✓	9/21
✓142	Photo Trash area		9/4	✓ NO	✓	9/4
✓143	" "		(	✓	(	✓
✓144	" "		(	✓	(	✓
✓145			9/21	✓ NO	✓	9/21
✓146			9/20	✓ NO	✓	9/20
✓147			9/20	✓ NO	✓	9/20

STATE

EXHIBITS

CASE NO. C177394

		OFFERED		ADMITTED	
		DATE	OBJ	DATE	
✓ 148	Photo	9/20	✓ NO	✓ 9/20	
✓ 149		9/21	✓ NO	✓ 9/21	
✓ 150		✓	✓	✓	
✓ 151		✓	✓	✓	
✓ 152		9/20	✓ NO	✓ 9/20	
✓ 153		9/21	✓ NO	✓ 9/21	
✓ 154	Bag - Black Shoes	9/25	✓ NO	✓ 9/25	
✓ 154-A		9/25	✓ NO	✓ 9/25	
✓ 155	Bag - Cardboard Box	9/22	✓ NO	✓ 9/22	
✓ 155-A		9/22	✓ NO	✓ 9/22	
✓ 156	Bag - Box Bottom	9/22	✓ NO	✓ 9/22	
✓ 156-A		9/22	✓ NO	✓ 9/22	
✓ 157	Bag - Beer Can	9/22	✓ NO	✓ 9/22	
✓ 157-A		9/22			
✓ 158	Bag	9/22			
✓ 158-A	Aug. 2000 mag.	9/22			
✓ 158-B	Adult mag.	9/22			
✓ 159	Bag Brown Shoes	9/22	✓ NO	✓ 9/22	
✓ 159-A		9/22	✓ NO	✓ 9/22	
✓ 160	Bag Decks	9/22	✓ NO	✓ 9/22	
✓ 160-A		9/22	✓ NO	✓ 9/22	
✓ 161	Bag - Box	9/22	✓ NO	✓ 9/22	
✓ 161-A		9/22	✓ NO	✓ 9/22	

STATE

EXHIBITS

CASE NO. C177394

		OFFERED		ADMITTED	
		DATE	OBJ	DATE	
✓ 162	Bag - Hairpick	9/22	✓ NO	✓	9/22
✓ 162-A		9/22	✓ NO	✓	9/22
✓ 163	Bag - Cardboard	9/22	✓ NO	✓	9/22
✓ 163-A		2	2	1	2
✓ 164	Bag - Chain	9/22	✓ NO	✓	9/22
✓ 164-A		9/22	✓ NO	✓	9/22
✓ 165	Bag watch	9/25	✓ NO	✓	9/25
✓ 165-A		9/25	✓ NO	✓	9/25
✓ 166	Bag metal	9/25	✓ NO	✓	9/25
✓ 166-A		9/25	✓ NO	✓	9/25
✓ 167	Bag post-it note	9/25	✓ NO	✓	9/25
✓ 167-A		9/25	✓ NO	✓	9/25
✓ 168	Bag Gum	9/22	✓ NO	✓	9/22
✓ 168-A		9/22	✓ NO	✓	9/22
✓ 169	Bag ATM Receipt	9/22	✓ NO	✓	9/22
✓ 169-A		9/22	✓ NO	✓	9/22
✓ 170	Bag Rock	9/22	✓ NO	✓	9/22
✓ 170-A		9/22	✓ NO	✓	9/22
✓ 171	Bag Buttons	9/22	✓ NO	✓	9/22
✓ 171-A		9/22	✓ NO	✓	9/22
✓ 172	Bag Condom pack	9/22	✓ NO	✓	9/22
✓ 172-A		9/22	✓ NO	✓	9/22

STATE

EXHIBITS

CASE NO. C177394

		OFFERED		ADMITTED	
		DATE	OBJ	DATE	
✓173	Bag Boarding Pass	9/22	✓ NO	✓	9/22
✓173-A		9/22	✓ NO	✓	9/22
✓174	Bag Cigarette box	9/22	✓ NO	✓	9/22
✓174-A		9/22	✓ NO	✓	9/22
✓175	Bag Chain Link	9/22	✓ NO	✓	9/22
✓175-A					
✓175-B					
✓175-C					
✓175-D					
✓175-E					
✓176	Bag	9/25	✓ NO	✓	9/25
✓176 A	Matchbook				
✓176 B	Wallet				
✓176 C	Paper				
✓177	Bag Gum/Wrappers	9/22	✓ NO	✓	9/22
✓177-A					
✓177-B					
✓177-C					
✓178	Photo - vehicle	9/25	✓ NO	✓	9/25
✓179	(veh.	9/25	✓ NO	✓	9/25
✓180	(veh.	9/8	✓ NO	✓	9/8
✓181	(veh.	9/8	✓ NO	✓	9/8

STATE

EXHIBITS

CASE NO.

C177394

			OFFERED DATE	✓	NO	ADMITTED DATE	✓
- 182	Photo	veh	9/25	✓	NO	9/25	✓
- 183		veh floorboard	9/21	✓	NO	9/21	✓
- 184		veh interior		✓			✓
- 185		" "		✓			✓
- 186		" "		✓			✓
- 187		" "		✓			✓
- 188		" "		✓			✓
- 189		" floorboard		✓			✓
- 190		" dash board		✓			✓
- 191		" floorboard		✓			✓
- 192		" door panel		✓			✓
- 193		" door panel		✓			✓
✓ 194	Vol.	Statement of Stephen Ryszkowski					
✓ 195	Vol.	statement of M. Austria					
- 196	Photo	Defendant	9/8	✓	NO	9/8	✓
- 197	Photo	Defendant	9/8	✓	NO	9/8	✓
- 198	Vol.	statement of P. Brown					
- 199	Photo	body	9/9	✓	NO	9/9	✓
✓ 200		"		✓			✓
✓ 201		"		✓			✓
✓ 202		legs		✓			✓
✓ 203		body		✓			✓

STATE

EXHIBITS

CASE NO. C177394

		OFFERED		OBJ	ADMITTED	
		DATE			DATE	
✓ 204	Photo body	9/19	✓	NO	9/19	✓
✓ 205		(	✓	(	(	✓
✓ 206		(	✓	(	(	✓
✓ 207		(	✓	(	(	✓
✓ 208		(	✓	(	(	✓
✓ 209		(	✓	(	(	✓
✓ 210		(	✓	(	(	✓
✓ 211		(	✓	(	(	✓
✓ 212		(	✓	(	(	✓
✓ 213		(	✓	(	(	✓
✓ 214		(	✓	(	(	✓
✓ 215		(	✓	(	(	✓
216	Vol. Statement of C. Carrington					
✓ 217	Photo	9/20	✓	NO	9/20	✓
✓ 218		(	✓	(	(	✓
✓ 219		(	✓	(	(	✓
✓ 220		9/20	✓	NO	9/20	✓
✓ 221		(	✓	(	(	✓
✓ 222		(	✓	(	(	✓
✓ 223		(	✓	(	(	✓
✓ 224		(	✓	(	(	✓
✓ 225		(	✓	(	(	✓

STATE

EXHIBITS

CASE NO.

C177394

		OFFERED		ADMITTED	
		DATE	OBJ	DATE	
- 226	Photo	9/21	✓ NO	9/21	✓
- 227	.	9/21	✓ NO	9/21	✓
- 228			✓		✓
✓ 229			✓		✓
- 230			✓		✓
✓ 231			✓		✓
✓ 232			✓		✓
✓ 233			✓		✓
✓ 234			✓		✓
✓ 235			✓		✓
✓ 236			✓		✓
✓ 237			✓		✓
✓ 238			✓		✓
✓ 239			✓		✓
✓ 240			✓		✓
✓ 241			✓		✓
✓ 242			✓		✓
✓ 243			✓		✓
✓ 244			✓		✓
✓ 245			✓		✓
✓ 246			✓		✓
✓ 247			✓		✓

STATE

EXHIBITS

CASE NO. C177394

		OFFERED		ADMITTED	
		DATE	OBJ	DATE	
✓ 248)	Photo	9/21	✓ NO	✓ 9/21	
✓ 249)	(	(	✓ (	✓ (	
✓ 250)	(	(	✓ (	✓ (	
✓ 251)	Homicide Legend Diagram	9/22	✓ NO	✓ 9/22	
✓ 252)	" "	9/22	✓ NO	✓ 9/22	
✓ 253)	" " list	9/22	✓ NO	✓ 9/22	
✓ 254)	Photo beer can	9/22	✓ NO	✓ 9/22	
✓ 255)	Bag - Clear plastic bag	9/25	✓ NO	✓ 9/25	
✓ 255A)	Clear plastic bag w/apparent blood	9/25	✓ NO	✓ 9/25	
✓ 256)	Photo womens shoes black	9/25	✓ NO	✓ 9/25	
✓ 257)	Photo womens shoes black	9/25	✓ NO	✓ 9/25	
258)	Large Photo of Dept.	9/25	✓ NO	✓ 9/25	
259)	Media Release	9/25	✓ NO	✓ 9/25	
260)	DR. LAUFER CV	9/26	✓ NO	✓ 9/26	
261)	Photo of Scissors	9/26	✓ NO	✓ 9/26	
262)	Butterfly Knife	9/27	✓ NO	✓ 9/27	
263)	Photo	10/4 9/28	✓ NO	✓ 10/4	
264)	Photo	10/4 9/28	✓ NO	✓ 10/4	
265)	Photo	10/4	✓ NO	✓ 10/4	
266)	Photo	(	✓ (	✓ (	
267)	Photo	(	✓ (	✓ (	
268)	Photo	(	✓ (	✓ (	

DEFENDANT'S EXHIBITS

CASE NO. C177394

Date Offered OBJ Admitted Date

- A	Photo Trash area	9/14	✓	NO	✓	9/14
- B	"	9/14	✓	NO	✓	9/14
- C		9/18	✓	NO	✓	9/18
- D						
- E	Foot prints	9/14	✓	NO	✓	9/14
- F						
- G						
- G-1						
- G-2						
- G-3						
- H						
- I	Chart - Photo of D. Bailey	9/28	✓	NO	✓	9/28
- J	Photo - Parker-Sace	9/28	✓	NO	✓	9/28
- K	Photo	9/28	✓	NO	✓	9/28
- L	Photo	9/28	✓	NO	✓	9/28
- M	Photo	9/28	✓	NO	✓	9/28
- N	Photo	9/28	✓	NO	✓	9/28
- O						
- P						
- Q						
- R						
- S/S-1 copy	Phone bill - cell	10/4	✓	NO	✓	10/4
- T/T-1 copy	Phone bill - home	10/4	✓	NO	✓	10/4

DEFENDANT'S EXHIBITS

CASE NO. C177394

Date Offered OBJ Admitted Date

- U	Photo	9/28	✓	ND	✓	9/28
- V			✓		✓	
- W			✓		✓	
- X			✓		✓	
- Y	Photo	9/28	✓	ND	✓	
- Z						
- AA						
- BB						
- BB-1						
- CC						
- DD	Rpt. of Bodziak - Chart	9/29	✓	ND	✓	9/29
- EE	Cell phone bill	10/5	✓	ND	✓	10/5
- FF						
- GG						
- HH	Medical Record (1 page) Statement	9/28	✓	ND	✓	9/28
- II	Cal. of 2001 July					
- JJ	Cal. Chart (enlarged)	9/8	✓	ND	✓	9/8
- KK	Photo scene	9/21	✓	ND	✓	9/21
- LL	" scene	9/21	✓	ND	✓	9/21
- MM	" scene	9/21	✓	ND	✓	9/21
- NN	Photo	9/25	✓	ND	✓	9/25
- OO		9/26	✓	ND	✓	9/26
- PP		9/26	✓	ND	✓	9/26

DEFENDANT'S EXHIBITS

CASE NO. CMT-394

Date Offered OBJ Admitted Date

88	Photo	9/66	✓	NO	✓	9/66
RR		✓	✓		✓	
SS		✓	✓		✓	
TT		✓	✓		✓	
UU		✓	✓		✓	
VV		✓	✓		✓	
WW		✓	✓		✓	
XX		✓	✓		✓	
YY		✓	✓		✓	
ZZ		✓	✓		✓	
AAA		✓	✓		✓	
BBB		✓	✓		✓	
CCC		✓	✓		✓	
DDD		✓	✓		✓	
EEE		✓	✓		✓	
FFF & FFF-1		✓	✓		✓	
GGG		✓	✓		✓	
HHH		✓	NO		✓	
III		✓	✓		✓	
JJJ		✓	✓		✓	
KKK		✓	✓		✓	
LLL		✓	✓		✓	
MMM		✓	✓		✓	

DEFENDANT'S EXHIBITS

CASE NO.

C177394

Date Offered OBJ Admitted Date

NNN	Photo	9/26	✓	NO	✓	9/26
DDD	{		✓		✓	
PPP			✓		✓	
QQQ			✓		✓	
RRR			✓		✓	
SSS			✓		✓	
TTT			✓		✓	
VVV			✓		✓	
VVV			✓		✓	
WWW						
XXX						
YYY		9/26	✓	NO	✓	9/26
ZZZ		9/26	✓	NO	✓	9/26
AAAA		9/26	✓	NO	✓	9/26
BBBB	trash area	9/2	✓	obj.		
CCCC	Scissors	9/26	✓	NO	✓	9/26
DDDD	Coroner notes - 5 pages					
EEEE	Photo					
FFFF	{					
GGGG						
HHHH						
IIII						
JJJJ						

DEFENDANT'S EXHIBITS

CASE NO. C177394

Date	Offered	OBJ	Admitted	Date
------	---------	-----	----------	------

[illegible]

VAULT EXHIBIT FORM

CASE NO. C177394

TRIAL DATE: 9/11/06

DEPT. NO. II

JUDGE: VALORIE VEGA

THE STATE OF NEVADA

CLERK: BILLIE JO CRAIG

REPORTER: LISA LIZOTE

PLAINTIFF

KIRSTIN BLAISE LOBATO

KEPHART/S. DIGIACOMO

COUNSEL FOR PLAINTIFF

DEFENDANT

SCHIECK/BREENBERGER/ZALKIN

COUNSEL FOR DEFENDANT

COURT EXHIBITS

	OFFERED		ADMITTED	
	DATE	OBJ	DATE	
1) Note from Juror Gur				9/11
2) Note from Juror Tong				9/12
3) Documents from State, Defense, NRS 175.552				9/13
4) Note from Juror Eastburn				9/13
5) Peremptory Challenge Form				9/13
6) Cal. 2001				9/14
7) Note from Juror Moir				9/15
8) Note from Juror				9/18
9) Note from Juror				9/18
10) Note from Juror				9/18
11) Note from Juror				9/18
12) Note from Juror				9/18
13) Note from Juror				9/18
14) Note from Juror				9/18
15) Note from Juror				9/18

COVER

EXHIBITS

CASE NO. C177394

					OFFERED		ADMITTED	
					DATE	OBJ	DATE	
16)	NOTE from door							9/8
17)	" " "							9/8
18)	" " "							9/8
19)	" " "							9/8
20)	" " "							9/8
21)	" " "							9/8
22)	" " "							9/8
23)	" " "							9/9
24)	" " "							9/9
25)	" " "							9/9
26)	" " "							9/9
27)	" " "							9/9
28)	" " "							9/9
29)	" " "							9/9
30)	" " "							9/9
31)	" " "							9/20
32)	" " "							9/20
33)	" " "							9/20
34)	" " "							9/20
35)	" " "							9/20
36)	" " "							9/20
37)	" " "							9/20

COURT

EXHIBITS

CASE NO. C177394

	OFFERED			ADMITTED	
	DATE	OBJ		DATE	
38) Note from Juror				9/60	
39) " " "				9/60	
40) " " "				9/60	
41) " " "				9/60	
42) " " "				9/60	
43) " " "				9/60	
44) " " "				9/60	
45) " " "				9/21	
46) Note from Juror				9/22	
47) " " "				9/22	
48) " " "				9/22	
49) " " "				9/22	
50) " " "				9/22	
51) " " "				9/22	
52) " " "				9/22	
53) " " "				9/22	
54) Note From Juror				9/25	
55) " " " " "				9/25	
56) NRS 629.021				9/27	
57) NRS 629.041				9/27	
58) Note from Juror				9/27	
59) " " "				9/27	

COURT

EXHIBITS

CASE NO. C177394

					OFFERED		ADMITTED	
					DATE	OBJ	DATE	
60)	Note from duror							9/27
61)	" " "							9/27
62)	" " "							9/27
63)	" " "							9/28
64)	" " "							9/28
65)	" " "							9/28
66)	" " "							9/28
67)	" " "							9/28
68)	" " "							9/28
69)	" " "							9/28
70)	" " "							9/28
71)	" " "							9/28
72)	" " "							9/28
73)	" " "							9/28
74)	Power Point presentation							9/29
75)	Heather McBride Vol. Stmt.							10/2
76)	Note from duror							10/2
77)	Notes from jury							10/3
78)	Note from duror							10/3
79)	" " "							10/3
80)	" " "							10/4
81)	" " "							10/4

EXHIBITS

CASE NO.

[illegible]

Original5-6-02 Start
State v. Lobato

States

EXHIBITS

CASE NO. C 177394

			OFFERED		OBJ	ADMITTED		
			DATE			DATE		
1	Photograph	- NV State Bank sign	5/8/02	✓	N/A	5/8		✓
2	"	Parking area	5/8		N/A	5/8		✓
3		Parking stall	5/8		N/A	5/8		✓
4		Food Bar area	5-8-02		N/A	5/8		✓
5		" " "	5-8-02		N/A	5/8		✓
6			5-8		N/A	5-8		✓
7			5-8		N/A	5/8		✓
8								✓
9								✓
10								✓
11								✓
12								✓
13								✓
14								✓
15								✓
16								✓
17								✓
18								✓
19								✓
20								✓
21								✓
22	✓	✓	✓			✓		✓

State's

EXHIBITS

CASE NO. C177394

			OFFERED		OBJ	ADMITTED	
			DATE			DATE	
23.	Photograph — Irish Ben area		5/8			5/8	✓
24							✓
25							✓
26							✓
27							✓
28							✓
29							✓
30							✓
31							✓
32							✓
33							✓
34							✓
35							✓
36							✓
37							✓
38		↓	5/8			↓	✓
39	—	Coroner - Medical Exam Fee					
40	—	Body	5/13	✓	NO OBJ	5/13	✓
41	—	"	5/13		NO OBJ	5/13	✓
42	—	"	5/9		N/O	5/9	✓
43	—	"	5/9		N/O	5/9	✓
44	✓	— Bloody clothes					

Slates

EXHIBITS

CASE NO. C 177394

			OFFERED		OBJ	ADMITTED	
			DATE			DATE	
45.	Photograph	Bloody clothes	5/13	✓	NO OBS	5/13	✓
46	"	"	5/9		N/O	5/9	✓
47	"	"	5/9		N/O	5/9	✓
48	"	"	5/9		N/O	5/9	✓
49		Shoes	5/8		N/O	5/8	✓
50		Shoe	5/13	✓	NO OBS	5/13	✓
51		Body	5/13	✓	NO OBS	5/13	✓
52		Coins, etc.	5/13	✓	NO OBS	5/13	✓
53		watch	5/13	✓	NO OBS	5/13	✓
54		Shoes	5/13	✓	NO OBS	5/13	✓
55		Item marked 01-4231	5/13	✓	NO OBS	5/13	✓
56		Body (back area)	5/9	obj on record		5/9	✓
57		Body (Chest, neck head)	5/9				✓
58		" (" " ")	5/9				✓
59		Body (Head / face)	5/9				✓
60		" (Face area)	5/9				✓
61		" (Cheek area)	5/9	↓		↓	✓
62		" (Face)					
63		" (")	5/9	obj on record		5/9	✓
64		" (")					✓
65		" (Head area)					✓
66	✓	" (Head area)		✓			✓

States

EXHIBITS

CASE NO. C177394

			OFFERED		ADMITTED	
			DATE	OBJ	DATE	
67.	Photograph	(neck area)	5/9	obj on record	5/9	✓
68		(")	5/9	"	5/9	✓
69		(autopsy)				
70		(")				
71		(")	5/9	obj on record	5/9	✓
72		(Body portion)	5/9	"	5/9	✓
73		(" ")				
74		(" ")	5/9	obj on record	5/9	✓
75		(" ")				✓
76		(" ")				✓
77		(Buttox area)				✓
78		(Body)				✓
79		(Scrotum area)				✓
80		(" ")	✓	✓	✓	
81		(" ")				
82		(penis)	5/9	obj on record	5/9	✓
83		(Knee area)				✓
84		(arm + hand)				✓
85		(hand)				✓
86		(")				✓
87		(finger)	✓	✓	✓	✓
88	✓	(Thumb)				

STATE'S EXHIBITS

CASE NO. C 177394

			OFFERED		OBJ	ADMITTED		
			DATE			DATE		
89	Photograph	(Thumb)	5/9	obj on record	5/9			✓
90		(Finger area)						✓
91		(Left arm/hand)						✓
92		(Left hand/side of body)						✓
93		(Left hand + scrotum)	✓	✓	✓			✓93
93-A	Cropped portion of 93							✓93-A
94		(Left hand)	5/9	obj on record	5/9			✓
95		(Thumb)	5/9	obj on record	5/9			✓
96		(Finger)	5/9	obj on record	5/9			✓
97		(Buttocks area + fingers)						
98		- Sugin "Photographed By M. Thomas"						
99		- Deft's head shot	5/10	✓	NO OBS	5/10	✓	
100		- " Right side view						
101		- " Frontal view						
102		- " Back view						
103		- " Hands, palms	5/10	✓	NO OBS	5/10	✓	
104		- " Hands, top	5/10	✓	NO OBS	5/10	✓	
105		- Consent To Search Card						
106		- Automobile, Left side view	5/8	N/A	5/8			✓
107		- " frontal view	5/8	N/A				✓
108		- " Back view	5/8	N/A				✓
109		- " Inside view	5/10	✓	NO OBS	5/10	✓	
110		- Auto seat cover	5/13	✓	NO OBS	5/13	✓	

States

EXHIBITS

CASE NO. C 177394

			OFFERED		OBJ	ADMITTED	
			DATE			DATE	
111.	Photograph	- Auto Seat cover	5/13	✓	NO OBS	5/13	✓
112		- " " "	5/13	✓	NO OBS	5/13	✓
113		- Inside Auto	5/13	✓	NO OBS	5/13	✓
114		- " "	5/13		NO OBS	5/13	✓
115		- " "	5/13	✓	NO OBS	5/13	✓
116		- Trash Bin area	5/8	N/A		5/8	✓
117		" " "	5/8				✓
118		" " "	5/8				✓
119		" " "	5/8				✓
120		" " "	5/8	✓			✓
121	Blow-up Photograph w/ Crime scene		5/8/02	N/A		5/8	✓
122	Diagram of Body, headed Clark Co. Medical Exam		5/9	N/A		5/9	✓
123	Rights of Person Arrested / Photo montage		5/10	✓	OBS	5/10	✓
124	Consent to Search Cards		5/10	✓	OBS	5/10	✓
125	WD 5-14-02 will provide 125A Redacted version Interview w/ Kirsten Blaise Lobato (Audio TAPE)		5/10	✓	NO OBS	5/10	✓
126	Poem / Document	7-29-01	5/13	✓	NO OBS	5/13	✓
127	Bat		5/13	✓	NO OBS	5/13	✓
128	Bio Hazard Bag (01033170)		5/13	✓	NO OBS	5/13	✓

STATE'S

EXHIBITS

CASE NO. C177394

	OFFERED		OBJ	ADMITTED	
	DATE			DATE	
129 Bio Hazard Bag (01033913)	5/13	✓	NO OBS	5/13	✓
130 Bio Hazard Bag (01034702)	5/13	✓	NO OBS	5/13	✓
131 Car Door Panel (Interior)	5/13	✓	NO OBS	5/13	✓
132 Large Photo -	5/15	✓	NO OBS	5/15	✓
133) Affidavit of Custodian of Records	5/16	✓	OBS	5/16	✓
133 A) Final Sample Report 7-16-01					
* 125 A) Redacted Tape Recording interview of Kirsten Hobato	5/17	✓	NO OBS	5/17	✓
134) Picture Holding Cell Door	5/17	✓	NO OBS	5/17	✓
135) " " " Bench	5/17	✓	NO OBS	5/17	✓
136) " " " Doorway / Phone	5/17	✓	NO OBS	5/17	✓

Deft's

EXHIBITS

CASE NO. C177394

		OFFERED		ADMITTED	
		DATE	OBI	DATE	
A.	Photograph - Shoe print in blood	5/8	N/A	5/8	✓
B.	" - I.D. tag re: Taking Photos	5/8	↓	-	-
C.	Tow Receipt Ticket	5/8	-	-	-
D.	"Loss of Jack" newspaper article				
E)	Photo Foot Print / Ruler	5/10	✓ NO OBS	✓	5/10
F)	Photo Holy Family Catholic Church	5/10	✓ NO OBS	✓	5/10
G	Envelope / Addressed to Brenda Self 8/13	By Ship G-3-3 Released to D Counsel + State			
G1	Letter to Brenda 8-10-01 Pg 1				
G 2	" " " " " " Pg 2				
G 3	Letter to the Courts 8-10-01				
H	DEFendants Statement (Karinda Martin 8-13-01)				
I)	Diann Parker signature on Deceased Photo	5/14	✓ NO OBS	✓	5/14
J)	" " Knife Bruise (Photo)	5/14	✓ NO OBS	✓	5/14
K	" " " Shoulder Bruise (Photo)	5/14	✓ NO OBS	✓	5/14
L)	" " " Leg " "	5/14	✓ NO OBS	✓	5/14
M	" " " Arm " "	5/14	✓ NO OBS	✓	5/14
N	" " " Face " "	5/14	✓ NO OBS	✓	5/14
O	APL Lab Results				
P	Work Log	5/15	✓ NO OBS	✓	5/15
Q	B. Habato Cell Phone Record	5/14	✓ OBS	✓	5/14
R	Habato Residence Phone Record	5/14	✓ NO OBS	✓	5/14
S	Cell Phone Record	5/14	✓ NO OBS	✓	5/14

DEFT'S

EXHIBITS

CASE NO. C177394

		OFFERED DATE		OBJ	ADMITTED DATE	
T	Lobato Residence Phone Record	5/14	✓	NO	5/14	✓
U)	Photo Parking Area	5/15	✓	NO OBS	5/15	✓
V	" Fountain	5/15	✓	NO OBS	5/15	✓
W)	Trash Bin @ Budget	5/15	✓	NO OBS	5/15	✓
X	" Parking Area w/awning	5/15	✓	NO OBS	5/15	✓
Y	" Budget Suites	5/15	✓	NO OBS	5/15	✓
Z	Cave Area	5/15	✓	NO OBS	5/15	✓
AA	Pen & Lynx 98	5/15	✓	NO OBS	5/15	✓
BB	NV Young Writers & Artist 1996	5/15	✓	NO OBS	5/15	✓
CC	CV of Expert Bodziak					
DD	Offical Report (Examination Bodziak)	5/16	✓	SIP	5/16	✓
* BB 1	Letter Dept. of Education 8/97					
EE	Vorizon Wireless Phone Record Thomas Twining	5/15	✓	NO OBS	5/15	✓
FF	" " " Page 29 for " "					
GG	" " " Page 30 for " "	5/15	✓	NO OBS	5/15	✓
HH	Kraft medical Bill	5/16	✓	NO OBS	5/16	✓

CASE NO. C 177394

DEPT. NO. II

State of Nevada

PLAINTIFF

VS
Kirstin Blaise Lobato

DEFENDANT

Hearing: 11-26-01
TRIAL DATE:

JUDGE: Valerie J. Vega

CLERK: SHARON CHUN

REPORTER: Sharleen Nicholson

COUNSEL FOR PLAINTIFF

COUNSEL FOR DEFENDANT

[illegible]

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF
ENTRY OF DECISION AND ORDER; DISTRICT COURT MINUTES; EXHIBITS LISTS

STATE OF NEVADA,

Plaintiff(s),

vs.

KIRSTIN B. LOBATO,

Defendant(s),

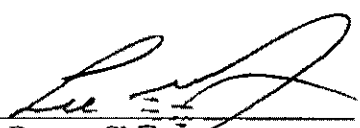
Case No: C177394

Dept No: II

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 2 day of August 2011.

Steven D. Grierson, Clerk of the Court



Lee Gunter, Deputy Clerk

1 Thus, Defendant is not entitled to relief under Strickland. Insofar as Defendant may be
2 raising this issue as a substantive claim, it is barred pursuant to NRS 34.810 since it could
3 have been raised with the trial court or on direct appeal. Moreover, as an alternate view of
4 the evidence adduced at trial, it does not establish a valid claim of actual innocence. Thus,
5 Defendant has failed to demonstrate good cause to overcome the procedural bar.

6 35. As to Ground 45, regarding counsel's failure to object to the admission of
7 Defendant's butterfly knife into evidence, Defendant has failed to demonstrate that counsel
8 was deficient or that she was prejudiced. The presentation of defense and evidence is
9 ultimately counsel's responsibility. Defendant has also failed to delineate a legal basis upon
10 which counsel could have objected, and any such objection by counsel would have been
11 futile. Thus, Defendant is not entitled to relief under Strickland. Insofar as Defendant may be
12 raising this issue as a substantive claim, it is barred pursuant to NRS 34.810 since it could
13 have been raised with the trial court or on direct appeal. Moreover, as an alternate view of
14 the evidence adduced at trial, it does not establish a valid claim of actual innocence. Thus,
15 Defendant has failed to demonstrate good cause to overcome the procedural bar.

16 36. As to Ground 46, regarding counsel's failure to vouch for the credibility of
17 alibi witnesses, Defendant has failed to demonstrate that counsel was deficient or that she
18 was prejudiced. Vouching for the credibility of witnesses is improper. Defendant is therefore
19 not entitled to relief under Strickland. Insofar as Defendant may be raising this issue as a
20 substantive claim, it is barred pursuant to NRS 34.810 since it could have been raised with
21 the trial court or on direct appeal. Moreover, as an alternate view of the evidence adduced at
22 trial, it does not establish a valid claim of actual innocence. Thus, Defendant has failed to
23 demonstrate good cause to overcome the procedural bar. Finally, Defendant raised this issue
24 on direct appeal, and it was denied by the Nevada Supreme Court in Lobato v. State 49087
25 Order of Affirmance 2/5/09. It is therefore barred by the doctrine of law of the case.

26 37. As to Ground 47, regarding counsel's failure to object to Detective Thowsen's
27 testimony on the basis that he was not noticed as an expert and gave improper opinion
28 testimony, Defendant has failed to demonstrate that counsel was deficient or that she was

1 prejudiced. Defendant is therefore not entitled to relief under Strickland. Insofar as
2 Defendant may be raising this issue as a substantive claim, it is barred pursuant to NRS
3 34.810 since it could have been raised with the trial court or on direct appeal. Moreover, as
4 an alternate view of the evidence adduced at trial, it does not establish a valid claim of actual
5 innocence. Thus, Defendant has failed to demonstrate good cause to overcome the
6 procedural bar. Finally, Defendant raised this issue on direct appeal, and it was denied by the
7 Nevada Supreme Court in Lobato v. State 49087 Order of Affirmance 2/5/09. It is therefore
8 also barred by the doctrine of law of the case.

9 38. As to Ground 48, regarding counsel's failure to object to Detective Thowsen's
10 testimony in response to a juror's question that he did not do further investigation at the
11 Budget Suites because he knew "it happened on West Flamingo," Defendant has failed to
12 demonstrate that counsel was deficient or that she was prejudiced. She is therefore not
13 entitled to relief under Strickland. Insofar as Defendant may be raising this issue as a
14 substantive claim, it is barred pursuant to NRS 34.810 since it could have been raised at trial
15 or on direct appeal. Moreover, as an alternate view of the evidence adduced at trial, it does
16 not establish a valid claim of actual innocence. Thus, Defendant has failed to demonstrate
17 good cause to overcome the procedural bar.

18 39. As to Ground 49, regarding counsel's failure to object to the State's referral to
19 Defendant's statement as a "confession," this statement did not constitute prosecutorial
20 misconduct, and Defendant has failed to demonstrate that the remark was patently
21 prejudicial. The prosecutor was commenting on testimony, asking the jury to draw
22 inferences from the evidence, and stating fully his views as to what the evidence shows,
23 which is permissible. Any objection by counsel would have been futile, and counsel
24 therefore cannot be deemed ineffective.

25 40. As to Ground 50, regarding counsel's cross-examination of Detective Thowsen
26 on his investigation pertaining to the Budget Suites and any reports or incidents of injuries to
27 an individual's groin or penis, Defendant has failed to demonstrate that counsel was deficient
28 or that she was prejudiced. Moreover, the manner of cross-examination and the presentation

1 of defense is ultimately counsel's responsibility. She is therefore not entitled to relief under
2 Strickland. Insofar as Defendant may be raising this issue as a substantive claim, it is barred
3 pursuant to NRS 34.810 since it could have been raised with the trial court or on direct
4 appeal. Moreover, as an alternate view of the evidence adduced at trial, it does not establish
5 a valid claim of actual innocence. Thus, Defendant has failed to demonstrate good cause to
6 overcome the procedural bar.

7 41. As to Ground 51, regarding Detective Thowsen's hearsay testimony pertaining
8 to his investigation of other reports of incidents of a severed or slashed penis, this issue was
9 raised on direct appeal. The Nevada Supreme Court found it to be harmless error in Lobato
10 v. State 49087 Order of Affirmance 2/5/09. This claim is therefore barred by the doctrine of
11 law of the case.

12 42. As to Ground 52, regarding counsels' failure to object and move for a mistrial
13 based upon alleged frauds on the court, this is a bare allegation insufficient for relief.
14 Moreover, as shown in Court's Exhibit 4, Ground 52 contains an error of fact. Judge Vega
15 was not a colleague in the Clark County District Attorney's Office with either former Chief
16 Deputy District Attorney William Kephart or Chief Deputy District Attorney Sandra
17 DiGiacomo.

18 43. As to Ground 53, regarding counsel's cross-examination of Detective
19 Thowsen, Defendant has failed to demonstrate that counsel was deficient or that she was
20 prejudiced. She is therefore not entitled to relief under Strickland. Insofar as Defendant may
21 be raising this issue as a substantive claim, it is barred pursuant to NRS 34.810 since it could
22 have been raised with the trial court or on direct appeal. Moreover, as an alternate view of
23 the evidence adduced at trial, it does not establish a valid claim of actual innocence. Thus,
24 Defendant has failed to demonstrate good cause to overcome the procedural bar.

25 44. As to Ground 54, regarding counsel's failure to determine the source of
26 Detective Thowsen's knowledge regarding the past sexual abuse of Defendant, Defendant
27 has failed to demonstrate that counsel was deficient or that she was prejudiced. Moreover,
28 the manner of cross-examination and the presentation of defense is ultimately counsel's

1 responsibility. She is therefore not entitled to relief under Strickland. Insofar as Defendant
2 claims this rendered her Miranda waiver involuntary, Defendant previously challenged the
3 admission of her statement as involuntary based upon these same arguments, and it was
4 rejected by the Nevada Supreme Court in Lobato v. State, 120 Nev. at 522, 96 P.3d at 772
5 (2004). The Court's ruling on this issue constitutes the law of the case, and it may not be
6 revisited.

7 45. As to Ground 55, regarding counsel's cross-examination of Laura Johnson,
8 Defendant has failed to demonstrate that counsel was deficient or that she was prejudiced.
9 Moreover, the manner of cross-examination and the presentation of defense is ultimately
10 counsel's responsibility. She is therefore not entitled to relief under Strickland.

11 46. As to Ground 56, regarding counsel's failure to investigate the availability of
12 methamphetamine in Las Vegas, Defendant has failed to demonstrate how a better
13 investigation would have rendered a more favorable outcome probable. Defendant has failed
14 to demonstrate that counsel was deficient or that she was prejudiced. She is therefore not
15 entitled to relief under Strickland.

16 47. As to Ground 57, regarding counsel's failure to object to the testimony of
17 Zachary Robinson, this testimony was admissible pursuant to NRS Chapter 51. Under NRS
18 51.135 it is admissible as a record of a regularly conducted business activity. Under NRS
19 51.145, it is also admissible as an absence of entry and records of a regularly conducted
20 business activity. It is also admissible under the catch-all provision of NRS 51.315. Insofar
21 as Defendant cites Melendez-Diaz v. Massachusetts, 129 S.Ct. 2527 (2009), counsel at the
22 time of trial did not have the benefit of that decision and cannot be deemed ineffective
23 because of it. In any event, the absence of information in a report is non-testimonial, and
24 defense counsel was able to cross-examine Mr. Robinson. As such, any objection would
25 have been futile, and counsel cannot be deemed ineffective.

26 48. As to Ground 58, regarding counsel's failure to obtain the State's alleged
27 "liar's list," this is a bare allegation insufficient for relief.

28 ///

1 49. As to Ground 59, regarding counsel's failure to move for a directed acquittal
2 per NRS 175.381, the court notes that it would have denied such a motion. Moreover,
3 Defendant challenged her conviction on the basis of insufficient evidence on direct appeal
4 which was rejected by the Nevada Supreme Court in Lobato v. State 49087 Order of
5 Affirmance 2/5/09. As such, any such motion would have been futile, and counsel cannot be
6 deemed ineffective. This is also a bare allegation insufficient for relief.

7 50. As to Ground 60, regarding counsel's failure to object to Jury Instruction No.s
8 26 and 33, similar instructions were upheld by the Nevada Supreme Court in Weber v. State,
9 121 Nev. 554 (2005) and Guy v. State, 108 Nev. 770 (1992), respectively. As such, any
10 objection by counsel would have been futile, and he cannot be deemed ineffective under
11 Strickland.

12 51. As to Ground 61, regarding counsel's failure to object to Jury Instruction No.
13 31 defining reasonable doubt, the same instruction was upheld by the Nevada Supreme Court
14 in Lord v. State, 107 Nev. 28 (1991). Moreover, NRS 175.211 mandates that no other
15 definition of reasonable doubt may be given. As such, counsel cannot be deemed ineffective
16 under Strickland.

17 52. As to Grounds 62 and 63, regarding counsel's failure to submit alternative
18 instructions on NRS 201.450 which included an element of sexual intent, this argument was
19 rejected by the Nevada Supreme Court in Lobato v. State, 120 Nev. 512, 522, 96 P.3d 765,
20 772 (2004). As such, any such attempt by counsel would have been futile, and Defendant is
21 not entitled to relief under Strickland. Insofar as Defendant may be raising this issue as a
22 substantive claim, it is barred pursuant to NRS 34.810 since it could have been raised at trial
23 or on direct appeal. Moreover, as an alternate view of the evidence adduced at trial, it does
24 not establish a valid claim of actual innocence. Thus, Defendant has failed to demonstrate
25 good cause to overcome the procedural bar.

26 53. As to Ground 64, regarding counsel's failure to argue during closing that the
27 State had failed to prove each element beyond a reasonable doubt, review of counsel's
28 summation is highly deferential because of the broad range of legitimate defense strategy at

1 that stage, and Defendant has failed to overcome this high standard. Moreover, the
2 presentation of defense is ultimately defense counsel's responsibility. As such, Defendant
3 has failed to demonstrate that counsel was deficient or that she was prejudiced. She is not
4 entitled to relief under Strickland.

5 54. As to Ground 65, regarding counsel's failure to object to the State's opening
6 statement, Defendant has failed to demonstrate that any of the prosecutor's statements could
7 not be proved at trial or were made in bad faith. Therefore, the statements did not constitute
8 prosecutorial misconduct. As such, any objection by defense counsel would have been futile,
9 and he cannot be deemed ineffective. Defendant is therefore not entitled to relief under
10 Strickland.

11 55. As to Ground 66, regarding counsel's failure to object to the prosecutor's
12 argument in closing regarding the victim's head wounds, counsel is given wide latitude in
13 deciding how to best represent a client during closing arguments. Defendant has failed to
14 demonstrate that counsel was deficient or that she was prejudiced. She is therefore not
15 entitled to relief under Strickland.

16 56. As to Ground 67, regarding counsel's failure to object to the prosecutor's
17 argument concerning Defendant's guilt, the prosecutor was providing his belief in
18 Defendant's guilt as a conclusion from the evidence presented, which is permissible. Any
19 objection by counsel would have been futile, and counsel cannot be deemed ineffective.
20 Defendant has failed to demonstrate that counsel was deficient or that she was prejudiced.
21 She is therefore not entitled to relief under Strickland.

22 57. As to Ground 68, also regarding counsel's failure to object to the prosecutor's
23 argument that several alibi witnesses had not testified previously, the prosecutor's argument
24 pertained to the credibility of the witnesses. As this case involves numerous material
25 witnesses and the outcome depended on which witnesses were telling the truth, reasonable
26 latitude should be given to the prosecutor to argue the credibility of the witness. As such, any
27 objection by counsel would have been futile, and counsel cannot be deemed ineffective.

28 ///

1 Defendant has failed to demonstrate that counsel was deficient or that she was prejudiced.
2 She is therefore not entitled to relief under Strickland.

3 58. As to Ground 69, regarding counsel's failure to object to the prosecutor's
4 argument that the positive presumptive tests for blood in Defendant's car were physical
5 evidence linking her to the crime scene, the prosecutor was commenting on testimony,
6 asking the jury to draw inferences from the evidence, and stating fully his views as to what
7 the evidence shows, which is permissible. As such, any objection by counsel would have
8 been futile, and counsel cannot be deemed ineffective. Defendant has failed to demonstrate
9 that counsel was deficient or that she was prejudiced. She is therefore not entitled to relief
10 under Strickland.

11 59. As to Ground 70, regarding counsel's failure to object to alleged "false
12 arguments" made by the prosecutor, these are bare allegations insufficient for relief. As such,
13 any objection by counsel would have been futile, and counsel cannot be deemed ineffective.
14 Defendant has failed to demonstrate that counsel was deficient or that she was prejudiced.
15 She is therefore not entitled to relief under Strickland.

16 60. As to Ground 71, regarding counsel's failure to retain a dental expert, it is
17 ultimately counsel's responsibility to control the presentation of defense. Insofar as
18 Defendant is raising this issue as a substantive claim, as an alternate opinion of evidence that
19 was presented at trial, it does not establish actual innocence. Since it was also available
20 before or during trial with reasonable diligence, it is not newly discovered. Defendant has
21 failed to demonstrate that counsel was deficient or that she was prejudiced. She is therefore
22 not entitled to relief under Strickland.

23 61. As to Ground 72, regarding counsel's failure to file a motion for judgment of
24 acquittal per NRS 175.381(2) due to insufficient evidence, the sufficiency of the evidence
25 issue was raised on direct appeal and rejected by the Nevada Supreme Court in Lobato v.
26 State 49087 Order of Affirmance 2/5/09. The Court's ruling on this constitutes the law of the
27 case, and it may not be revisited. Defendant has failed to demonstrate that counsel was
28 deficient or that she was prejudiced. She is therefore not entitled to relief under Strickland.

1 62. As to Ground 73, regarding counsel's alleged inadequate post-trial
2 investigation, this ground concerns a letter which the Court finds carries less weight than an
3 affidavit. This is a bare allegation insufficient for relief. Defendant has also failed to
4 demonstrate how a better investigation would have rendered a more favorable outcome
5 probable. Furthermore, the science has advanced since the time of trial, and appellate
6 counsel must review the job that was done at the trial and the performance of trial counsel
7 which cannot be deficient if such scientific advancements did not exist and were not
8 available at the time.

9 63. As to Ground 74, regarding appellate counsel's alleged failure to raise the
10 sufficiency of the evidence on appeal, this issue was indeed raised on direct appeal and
11 rejected by the Nevada Supreme Court in Lobato v. State 49087 Order of Affirmance 2/5/09.
12 This claim is therefore belied by the record. Defendant has failed to demonstrate that counsel
13 was deficient or that she was prejudiced. She is therefore not entitled to relief under
14 Strickland. Insofar as Defendant may be raising this issue as a substantive claim, it is barred
15 pursuant to NRS 34.810 since it could have been raised on direct appeal. Defendant has
16 failed to demonstrate good cause to overcome the procedural bar.

17 64. As to Ground 75, regarding appellate counsel's alleged failure to raise the
18 denial of her motion to suppress on appeal, this issue was indeed raised on direct appeal and
19 rejected by the Nevada Supreme Court in Lobato v. State 49087 Order of Affirmance 2/5/09.
20 This claim is therefore belied by the record. Defendant has failed to demonstrate that counsel
21 was deficient or that she was prejudiced. She is therefore not entitled to relief under
22 Strickland. Insofar as Defendant may be raising this issue as a substantive claim, it is barred
23 pursuant to EDCR 3.20 since the 15-days before trial deadline has passed.

24 65. As to Ground 76, regarding appellate counsel's failure to argue in her petition
25 for rehearing that the Nevada Supreme Court's ruling was based upon a false assumption of
26 fact, such an action by counsel would have been futile. Counsel cannot therefore be deemed
27 ineffective. Defendant has failed to demonstrate that counsel was deficient or that she was
28 prejudiced. She is therefore not entitled to relief under Strickland.

66. As to Ground 77, there is no cumulative error as to warrant relief. This is a homicide case, and the Defendant's own words constituted compelling evidence. Defendant was also twice convicted. As such, guilt was not a close call.

67. As to Ground 78, Defendant's claims of new evidence are insufficient to warrant relief.

68. As to Ground 79, regarding Defendant's claim that her counsel failed to diligently represent her, these are bare allegations insufficient for relief. Defendant has failed to demonstrate that counsel was deficient or that she was prejudiced. She is therefore not entitled to relief under Strickland.

CONCLUSIONS OF LAW

1. "To merit a new trial, newly-discovered evidence must be evidence that could not have been discovered through reasonable diligence either before or during trial." D'Agostino v. State, 112 Nev. 417, 423, 915 P.2d 264, 267 (1996) (citing Sanborn v. State, 107 Nev. 399, 406, 812 P.2d 1279, 1284 (1991)).

2. Post-trial affidavits are “obtained without the benefit of cross-examination.” Herrera v. Collins, 506 U.S. 390, 417, 113 S.Ct. 853 (1993). They should be “treated with a fair degree of skepticism.” Id. at 423, 113 S.Ct. at 853 (O’Connor, J., concurring). A claim of “actual innocence” is not itself a constitutional claim, but “instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits.” Id. at 404, 113 S.Ct. at 862. Assuming, *arguendo*, an independent claim of actual innocence exists, the threshold for showing such a claim is “extraordinarily high.” Id. at 419, 113 S.Ct. at 870 (1993).

3. Polygraph results are inadmissible at trial unless there is a written stipulation signed by the prosecuting attorney, the defendant, and defense counsel. Jackson v. State, 116 Nev. 334, 997 P.2d 121 (2000).

4. "The law of a first appeal is law of the case on all subsequent appeals in which the facts are substantially the same." Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (*quoting* Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). "The doctrine of

1 the law of the case cannot be avoided by a more detailed and precisely focused argument
2 subsequently made after reflection upon the previous proceedings." Hall, 91 Nev. at 316,
3 535 P.2d at 799. Under the law of the case doctrine, issues previously decided on direct
4 appeal may not be reargued in a habeas petition. Pellegrini v. State, 117 Nev. 860, 34 P.3d
5 519 (2001) (citing McNelson v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)).

6 5. Absent a showing of good cause and prejudice, claims which could have been
7 presented to the trial court or on direct appeal are barred. NRS 34.810(1)(b).

8 6. Claims asserted in a petition for post-conviction relief must be supported with
9 specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v.
10 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked" allegations are not
11 sufficient, nor are those belied and repelled by the record. Id.

12 7. Counsel cannot be deemed ineffective for failing to make futile objections or
13 motions. Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006).

14 8. Trial counsel has the "immediate and ultimate responsibility of deciding if and
15 when to object, which witnesses, if any, to call, and what defenses to develop." Rhyne v.
16 State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).

17 9. In order to assert a claim for ineffective assistance of counsel a defendant must
18 prove that he was denied "reasonably effective assistance" of counsel by satisfying the two-
19 prong test of Strickland v. Washington, 466 U.S. 668, 686-87, 104 S.Ct. 2052, 2063-64
20 (1984). *See also* State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this
21 test, the Defendant must show first that his counsel's representation fell below an objective
22 standard of reasonableness, and second, that but for counsel's errors, there is a reasonable
23 probability that the result of the proceedings would have been different. Strickland, 466 U.S.
24 at 687-88, 694, 104 S.Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev.
25 430, 432, 683 P.2d 504, 505 (1984) (adopting Strickland two-part test in Nevada). The court
26 begins with the presumption of effectiveness and then must determine whether or not the
27 petitioner has proved disputed factual allegations underlying his ineffective-assistance claim

28 ///

1 by a preponderance of the evidence. Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33
2 (2004).

3 10. The United States Supreme Court has held that there is a constitutional right to
4 effective assistance of counsel in a direct appeal from a judgment of conviction. Evitts v.
5 Lucey, 469 U.S. 387, 396-97, 105 S.Ct. 830, 836-837 (1985); *see also* Burke v. State, 110
6 Nev. 1366, 1368, 887 P.2d 267, 268 (1994). The federal courts have held that in order to
7 claim ineffective assistance of appellate counsel the defendant must satisfy the two-prong
8 test set forth by Strickland, 466 U.S. at 687-688, 694, 104 S.Ct. at 2065, 2068; Williams v.
9 Collins, 16 F.3d 626, 635 (5th Cir. 1994); Hollenback v. United States, 987 F.2d 1272, 1275
10 (7th Cir. 1993); Heath v. Jones, 941 F.2d 1126, 1130 (11th Cir. 1991). In order to prove that
11 appellate counsel's alleged error was prejudicial; the defendant must show that the omitted
12 issue would have had a reasonable probability of success on appeal. *See* Duhamel v. Collins,
13 955 F.2d 962, 967 (5th Cir. 1992); Heath, 941 F.2d at 1132.

14 11. Counsel may not vouch for the veracity of a witness. *See* Rowland v. State,
15 118 Nev. 31, 39 P.3d 114 (2002). Furthermore, while it is generally improper for a
16 prosecutor to call the defendant or a witness a liar, "when a case involves numerous material
17 witnesses and the outcome depends on which witnesses are telling the truth, reasonable
18 latitude should be given to the prosecutor to argue the credibility of the witness-even if this
19 means occasionally stating in argument that a witness is lying." *Id.*, at 39, 39 P.3d at 119.

20 12. NRS 201.450 is constitutionally firm. Lobato v. State, 120 Nev. 512, 522, 96
21 P.3d 765, 772 (2004).

22 13. A defendant who contends that her attorney was ineffective because he did not
23 adequately investigate must show how a better investigation would have rendered a more
24 favorable outcome probable. Molina v. State, 120 Nev. 185, 87 P.3d 533, 538 (2004).

25 14. The standard of review for prosecutorial misconduct rests upon Defendant
26 showing "that the remarks made by the prosecutor were 'patently prejudicial.'" Riker v.
27 State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995).

28 ///

1 15. Under State v. Green, 81 Nev. 173, 400 P.2d 766 (1965), the prosecutor has
2 the right to comment on testimony, to ask the jury to draw inferences from the evidence, and
3 has the right to state fully his views as to what the evidence shows. Id. at 176.

4 16. On direct appeal, the Nevada Supreme Court concluded that the admission of
5 Detective Thowsen's testimony concerning his investigation of other reports of incidents of a
6 severed or slashed penis was harmless error. Lobato v. State 49087 Order of Affirmance
7 2/5/09.

8 17. Defendant challenged the admission of her statement to the police as
9 involuntary based upon the same argument that the psychological tactic used by the officers
10 rendered her statement involuntary on direct appeal, and it was rejected by the Nevada
11 Supreme Court. Lobato v. State, 120 Nev. 512, 522 (2004). Moreover, the Court also
12 rejected Defendant's claim that the State had improperly used privileged information from
13 her medical files. Id.

14 18. Defendant challenged her conviction on the basis of insufficient evidence on
15 direct appeal which was rejected by the Nevada Supreme Court. Lobato v. State 49087 Order
16 of Affirmance 2/5/09.

17 19. The language contained in Jury Instruction No. 26 was upheld by the Nevada
18 Supreme Court in Weber v. State, 121 Nev. 554, 119 P.3d 107 (2005).

19 20. The language contained in Jury Instruction No. 33 was upheld by the Nevada
20 Supreme Court in Guy v. State, 108 Nev. 770, 839 P.2d 578 (1992).

21 21. The definition of reasonable doubt contained in Jury Instruction No. 31 was
22 upheld by the Nevada Supreme Court in Lord v. State, 107 Nev. 28, 38-40, 806 P.2d 548,
23 554-56 (1991). Moreover, NRS 175.211 states:

24 1. A reasonable doubt is one based on reason. It is not mere
25 possible doubt, but is such a doubt as would govern or control a
26 person in the more weighty affairs of life. If the minds of the
27 jurors, after the entire comparison and consideration of all the
28 evidence, are in such a condition that they can say they feel an
abiding conviction of the truth of the charge, there is not a
reasonable doubt. Doubt to be reasonable must be actual, not
mere possibility or speculation.

1 2. No other definition of reasonable doubt may be given by the court to
2 juries in criminal actions in this State.

3 22. NRS 201.450 does not contain an element of sexual intent. Lobato, 120 Nev.
4 512, 522, 96 P.3d 765, 772.

5 23. "Counsel has wide latitude in deciding how best to represent a client, and
6 deference to counsel's tactical decisions in his closing presentation is particularly important
7 because of the broad range of legitimate defense strategy at that stage." Yarborough v.
8 Gentry, 540 U.S. 1, 5-6, 124 S.Ct. 1, 4 (2003). As such, "judicial review of a defense
9 attorney's summation is therefore highly deferential." Id.

10 24. A prosecutor may not make statements in opening arguments which cannot be
11 proved at trial. Rice v. State, 113 Nev. 1300, 1312, 949 P.2d 262, 270 (1997) (modified on
12 other grounds by Richmond v. State, 118 Nev. 924, 932, 59 P.3d 1249, 1254 (2002)).
13 However, misconduct does not lie unless such a statement is made in bad faith. Id. at 1312-
14 1313, 949 P.2d at 270.

15 25. "Statements by the prosecutor, in argument, indicative of his opinion, belief, or
16 knowledge as to the guilt of the accused, when made as a deduction or conclusion from the
17 evidence introduced in the trial, are permissible and unobjectionable." Domingues v.
18 State, 112 Nev. 683, 696, 917 P.2d 1364, 1373 (Nev.,1996) (citing Collins v. State, 87 Nev.
19 436, 439, 488 P.2d 544, 545 (1971)).

20 26. Relevant factors to consider in evaluating a claim of cumulative error are (1)
21 whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the
22 gravity of the crime charged. Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854 -
23 855 (2000); see also Big Pond v. State, 101 Nev. 1, 692 P.2d 1288 (1985).

24 27. N.R.S. 176.515 states:

25 1. The court may grant a new trial to a defendant if required as a matter
26 of law or on the ground of newly discovered evidence.

27 2. If trial was by the court without a jury the court may vacate the
28 judgment if entered, take additional testimony and direct the entry of a
new judgment.

1 3. Except as otherwise provided in NRS 176.0918, a motion for a new
2 trial based on the ground of newly discovered evidence may be made
3 only within 2 years after the verdict or finding of guilt.

4 4. A motion for a new trial based on any other grounds must be made
5 within 7 days after the verdict or finding of guilt or within such further
6 time as the court may fix during the 7-day period.

7 28. EDCR 3.20. Motions.

8 (a) Unless otherwise provided by law or by these rules, all motions must
9 be served and filed not less than 15 days before the date set for trial.
10 The court will only consider late motions based upon an affidavit
11 demonstrating good cause and it may decline to consider any motion
12 filed in violation of this rule...

13 29. "Hearsay means a statement offered in evidence to prove the truth of the matter
14 asserted..." NRS 51.035.

15 30. NRS 51.315 states:

16 1. A statement is not excluded by the hearsay rule if:

- 17 (a) Its nature and the special circumstances under which it was made
18 offer strong assurances of accuracy; and
19 (b) The declarant is unavailable as a witness.

20 2. The provisions of NRS 51.325 to 51.355, inclusive, are illustrative
21 and not restrictive of the exception provided by this section.

22 31. "A memorandum, report, record or compilation of data, in any form, of acts,
23 events, conditions, opinions or diagnoses, made at or near the time by, or from information
24 transmitted by, a person with knowledge, all in the course of a regularly conducted activity,
25 as shown by the testimony or affidavit of the custodian or other qualified person, is not
26 inadmissible under the hearsay rule unless the source of information or the method or
27 circumstances of preparation indicate lack of trustworthiness." N.R.S. 51.135.

28 32. "Evidence that a matter is not included in the memoranda, reports, records or
data compilations, in any form, of a regularly conducted activity is not inadmissible under
the hearsay rule to prove the nonoccurrence or nonexistence of the matter, if the matter was
of a kind of which a memorandum, report, record or data compilation was regularly made
and preserved." N.R.S. 51.145.

*This is non-testimonial and therefore
factually distinct from the reports addressed in Melendez-Diaz v.
MA, 129 S.Ct. 2527 (2009) citing to Crawford v. WA, 541 U.S. 36
(2004).*

1 33. Grounds 1, 2, and 3 are denied pursuant to D'Agostino v. State, 112 Nev. 417,
2 423, 915 P.2d 264, 267 (1996).

3 34. Ground 4 is denied pursuant to D'Agostino v. State, 112 Nev. 417, 915 P.2d
4 264 (1996), Herrera v. Collins, 506 U.S. 390, 113 S.Ct. 853 (1993), and Jackson v. State,
5 116 Nev. 334, 997 P.2d 121 (2000).

6 35. Ground 5 is denied pursuant to Hall v. State, 91 Nev. 314, 315, 535 P.2d 797,
7 798 (1975) and Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001).

8 36. Ground 6 is denied pursuant to NRS 34.810.

9 37. Grounds 7, 8, 11, 12, 14, 16, 18, 20, 24, 25, and 26 are denied pursuant to
10 Herrera v. Collins, 506 U.S. 390, 417, 113 S.Ct. 853 (1993) and NRS 34.810.

11 38. Grounds 9, 13, 17, 22 are denied pursuant to Hargrove v. State, 100 Nev. 498,
12 502, 686 P.2d 222, 225 (1984), Herrera v. Collins, 506 U.S. 390, 417, 113 S.Ct. 853 (1993),
13 and NRS 34.810.

14 39. Ground 10 is denied pursuant to Hargrove v. State, 100 Nev. 498, 502, 686
15 P.2d 222, 225 (1984) and NRS 34.810.

16 40. Ground 15 is denied pursuant to Hargrove v. State, 100 Nev. 498, 502, 686
17 P.2d 222, 225 (1984).

18 41. Ground 19 is denied pursuant to Herrera v. Collins, 506 U.S. 390, 417, 113
19 S.Ct. 853 (1993), NRS 34.810, NRS 201.450, and Lobato v. State, 120 Nev. 512, 522
20 (2004).

21 42. Ground 21 is denied pursuant to Lobato v. State, 120 Nev. 512, 522 (2004),
22 Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975), and NRS 34.810.

23 43. Ground 23 is denied pursuant to the law cited under Grounds 1 through 22,
24 inclusive.

25 44. Grounds 27, 28, 29, are denied pursuant to Strickland v. Washington, 466 U.S.
26 668, 104 S.Ct. 2052 (1984).

27 ///

28 ///

1 45. Grounds 30 and 31 are denied pursuant to Strickland v. Washington, 466 U.S.
2 668, 104 S.Ct. 2052 (1984), Molina v. State, 120 Nev. 185, 87 P.3d 533, 538 (2004), and
3 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

4 46. Grounds 32, 33, 34, 36, 55 are denied pursuant to Strickland v. Washington,
5 466 U.S. 668, 104 S.Ct. 2052 (1984) and Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002).

6 47. Ground 35 is denied pursuant to Strickland v. Washington, 466 U.S. 668, 104
7 S.Ct. 2052 (1984), Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002), and Ennis v. State, 122
8 Nev. 694, 137 P.3d 1095 (2006).

9 48. Ground 37, 43, 48, 53 is denied pursuant to Strickland v. Washington, 466
10 U.S. 668, 104 S.Ct. 2052 (1984), Herrera v. Collins, 506 U.S. 390, 417, 113 S.Ct. 853
11 (1993), and NRS 34.810.

12 49. Grounds 38, 39, 40, 41, 42, 44, 50 are denied pursuant to Strickland v.
13 Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), Herrera v. Collins, 506 U.S. 390, 417,
14 113 S.Ct. 853 (1993), Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002), and NRS 34.810.

15 50. Ground 45 denied pursuant to Strickland v. Washington, 466 U.S. 668, 104
16 S.Ct. 2052 (1984), Herrera v. Collins, 506 U.S. 390, 417, 113 S.Ct. 853 (1993), Ennis v.
17 State, 122 Nev. 694, 137 P.3d 1095 (2006), and NRS 34.810.

18 51. Ground 46 is denied pursuant to Rowland v. State, 118 Nev. 31, 39 P.3d 114
19 (2002), Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975), Strickland v. Washington, 466 U.S.
20 668, 104 S.Ct. 2052 (1984), Herrera v. Collins, 506 U.S. 390, 417, 113 S.Ct. 853 (1993), and
21 NRS 34.810.

22 52. Ground 47 is denied pursuant to Hall v. State, 91 Nev. 314, 535 P.2d 797
23 (1975), Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001), Strickland v. Washington, 466
24 U.S. 668, 104 S.Ct. 2052 (1984), Herrera v. Collins, 506 U.S. 390, 417, 113 S.Ct. 853
25 (1993), and NRS 34.810.

26 53. Ground 49 is denied pursuant to Riker v. State, 111 Nev. 1316, 1328, 905 P.2d
27 706, 713 (1995), State v. Green, 81 Nev. 173, 400 P.2d 766 (1965), and Ennis v. State, 122
28 Nev. 694, 137 P.3d 1095 (2006).

1 54. Ground 51 is denied pursuant to Lobato v. State 49087 Order of Affirmance
2 2/5/09 and Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975).

3 55. Grounds 52, 58 are denied pursuant to Hargrove v. State, 100 Nev. 498, 686
4 P.2d 222 (1984).

5 56. Ground 54 is denied pursuant to Strickland v. Washington, 466 U.S. 668, 104
6 S.Ct. 2052 (1984), Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002), Lobato v. State, 120
7 Nev. 512, 522 (2004), Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975), and Ennis
8 v. State, 122 Nev. 694, 137 P.3d 1095 (2006).

9 57. Ground 56 is denied pursuant to Strickland v. Washington, 466 U.S. 668, 104
10 S.Ct. 2052 (1984) and Molina v. State, 120 Nev. 185, 87 P.3d 533, 538 (2004).

11 58. Ground 57 is denied pursuant to NRS Chapter 51 (NRS 51.035, 51.135,
12 51.145, and 51.315), Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006), and Strickland v.
13 Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

14 59. Ground 59 is denied pursuant to Lobato v. State 49087 Order of Affirmance
15 2/5/09, Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006), and Hargrove v. State, 100 Nev.
16 498, 686 P.2d 222 (1984).

17 60. Ground 60 is denied pursuant to Strickland v. Washington, 466 U.S. 668, 104
18 S.Ct. 2052 (1984), Weber v. State, 121 Nev. 554, 119 P.3d 107 (2005), Guy v. State, 108
19 Nev. 770, 839 P.2d 578 (1992), and Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006).

20 61. Ground 61 is denied pursuant to Strickland v. Washington, 466 U.S. 668, 104
21 S.Ct. 2052 (1984), ^{NRS 175.221} and Lord v. State, 107 Nev. 28, 38-40, 806 P.2d 548, 554-56 (1991).

22 62. Grounds 62 and 63 are denied pursuant to Lobato v. State, 120 Nev. 512, 522
23 (2004), NRS 201.450, Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984),
24 Herrera v. Collins, 506 U.S. 390, 417, 113 S.Ct. 853 (1993), Ennis v. State, 122 Nev. 694,
25 137 P.3d 1095 (2006), ^{NRS 201.450} and NRS 34.810.

26 63. Ground 64 is denied pursuant to Yarborough v. Gentry, 540 U.S. 1, 5-6, 124
27 S.Ct. 1, 4 (2003), Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), and
28 Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002).

1 64. Ground 65 is denied pursuant to Rice v. State, 113 Nev. 1300, 1312, 949 P.2d
2 262, 270 (1997) and Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

3 65. Ground 66 is denied pursuant to Yarborough v. Gentry, 540 U.S. 1, 5-6, 124
4 S.Ct. 1, 4 (2003) and Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

5 66. Ground 67 is denied pursuant to Domingues v. State, 112 Nev. 683, 917 P.2d
6 1364 (1996), Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006), and Strickland v.
7 Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

8 67. Ground 68 is denied pursuant to Rowland v. State, 118 Nev. 31, 39 P.3d 114
9 (2002), Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006), and Strickland v. Washington,
10 466 U.S. 668, 104 S.Ct. 2052 (1984).

11 68. Ground 69 is denied pursuant to Strickland v. Washington, 466 U.S. 668, 104
12 S.Ct. 2052 (1984), State v. Green, 81 Nev. 173, 400 P.2d 766 (1965), and Ennis v. State, 122
13 Nev. 694, 137 P.3d 1095 (2006).

14 69. Ground 70 is denied pursuant to Strickland v. Washington, 466 U.S. 668, 104
15 S.Ct. 2052 (1984), Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984), and
16 Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006).

17 70. Ground 71 is denied pursuant to D'Agostino v. State, 112 Nev. 417, 915 P.2d
18 264 (1996), Herrera v. Collins, 506 U.S. 390, 113 S.Ct. 853 (1993), Strickland v.
19 Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), and Rhyne v. State, 118 Nev. 1, 38 P.3d
20 163 (2002).

21 71. Grounds 72, and 74 are denied pursuant to NRS 34.810, Lobato v. State 49087
22 Order of Affirmance 2/5/09, Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975),^{NRS 34.810} and
23 Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

24 72. Ground 73 is denied pursuant to Herrera v. Collins, 506 U.S. 390, 113 S.Ct.
25 853 (1993), Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), Molina v. State,
26 120 Nev. 185, 87 P.3d 533, 538 (2004), and Hargrove v. State, 100 Nev. 498, 502, 686 P.2d
27 222, 225 (1984). (See also NRS 176.0918.)

28 ///

1 73. Ground 75 is denied pursuant to Lobato v. State 49087 Order of Affirmance
2 2/5/09, Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975), Strickland v. Washington,
3 466 U.S. 668, 104 S.Ct. 2052 (1984), and EDCR 3.20.

4 74. Ground 76 is denied pursuant to Strickland v. Washington, 466 U.S. 668, 104
5 S.Ct. 2052 (1984) and Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006).

6 75. Ground 77 is denied pursuant to the law cited in the denial of Grounds 1-76
7 and Mulder v. State, 116 Nev. 1, ~~17, 992 P.2d 843, 854-855~~ (2000).

8 76. Ground 78 is denied pursuant to the law cited in the denial of Grounds 1-24
9 pertaining to evidence, NRS 176.515, Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006),
10 and Mulder v. State, 116 Nev. 1, ~~17, 992 P.2d 843, 854-855~~ (2000).

11 77. Ground 79 is denied pursuant to Hargrove v. State, 100 Nev. 498, 502, 686
12 P.2d 222, 225 (1984) and Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

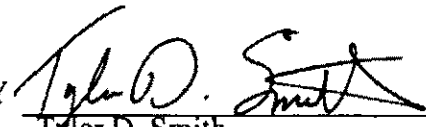
13 78. The request for counsel was moot when Mr. Barrick confirmed as counsel
ORDER and the requests for an evidentiary
hearing and new trial are both unwarranted.

14 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas
15 Corpus (Post-Conviction) shall be, and it is, hereby denied.

16 DATED this 14th day of June, 2011.

17
18 
DISTRICT JUDGE SL

19
20 DAVID ROGER
21 DISTRICT ATTORNEY
Nevada Bar #002781

22
23 BY 
24 Tyler D. Smith
25 Deputized Law Clerk
Nevada Bar #011870
26
27
28

Jason, Debbie

From: Smith, Tyler
Sent: Tuesday, May 24, 2011 11:23 AM
To: Daniels, Deana; Jason, Debbie
Subject: FW: Lobato Findings of Fact

From: Smith, Tyler
Sent: Tuesday, May 24, 2011 11:17 AM
To: 'Travis N. Barrick'
Subject: RE: Lobato Findings of Fact

Travis:

Thank you for your response. I have no problem with that correction and will make sure the Order is revised to reflect it. I'll go ahead and forward the document to Judge Vega.

Thank you for your professionalism and courtesy throughout this process. I will see you at the next hearing on June 7th.

Tyler

From: Travis N. Barrick [mailto:tbarrick@gwwwo.com]
Sent: Tuesday, May 24, 2011 11:07 AM
To: Smith, Tyler
Cc: Travis N. Barrick
Subject: RE: Lobato Findings of Fact

Tyler:

Out of respect for all the work you put into the Order, I poured through it, the case law, the Order of Affirmance, the Petition and the Transcript.

Though I disagree completely with the outcome, you did a splendid job on the Order and I have only one objections/corrections (other than to put my name in CAPS just like yours).

In paragraph 38, page 12, I would like it to read: As to Ground 48, regarding counsel's failure to object to Detective Thowsen's testimony in response to a juror's question that he did not do further investigation ...

Thank you for your patience.

Travis N. Barrick, Esq.



**GALLIAN
WILCOX**
WELKER, OLSON
& BECKSTROM, LLC

540 E. St. Louis Avenue

EXHIBIT "1"

Las Vegas, Nevada 89104
(702) 892.3500
(702) 386-1946 - Facsimile
(702) 351-7422 - Cell
tbarrick@gww.com

NOTICE: Information contained in this transmission to the named addressee is proprietary information and is subject to attorney-client privilege and work product confidentiality. If the recipient of this transmission is not the named addressee, the recipient should immediately notify the sender and destroy the information transmitted without making any copy or distribution thereof.

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used and cannot be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code; or (b) promoting, marketing or recommending to another party any transaction or tax-related matter addressed herein.

From: Smith, Tyler [mailto:Tyler.Smith@ccdavn.com]
Sent: Monday, May 23, 2011 1:21 PM
To: Travis N. Barrick; 'Gutierrez, Siria'
Subject: Lobato Findings of Fact

Mr. Barrick,

According to my records, the State's proposed Findings of Fact, Conclusions of Law, and Order were sent to you the week of April 18, 2011. As indicated in the attached letter, I requested that you respond with your proposed revisions or objections in writing by Monday, May 9, 2011. I still have not received them. I understand that the findings are lengthy and that you were out of town recently. I would just like to request a status update.

Thank you,



Tyler D. Smith

Deputized Law Clerk
Criminal Appeals Unit
(702) 671-2748
tyler.smith@ccdavn.com

***** This electronic transmission is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original. - Clark County District Attorney's Office

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****August 10, 2001**

01C177394

The State of Nevada vs Kirstin B Lobato

August 10, 2001**9:30 AM****Request of Court****AT THE REQUEST
OF THE COURT
Court Clerk: Sharon
Chun
Reporter/Recorder:
Sharleen Nicholson
Heard By: Valorie
Vega****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	Jorgenson, Eric G.	Attorney
	Lobato, Kirstin B	Defendant
	PUBDEF	Attorney
	Public Defender	Attorney

JOURNAL ENTRIES

- Conference held in Chambers with counsel. Court convened and the Court advised it had received the file late yesterday and had reviewed it; however, a transcript has not yet been received for review. Further, the Court noted that this hearing regarding bail was brought at the request of both counsel. Initial arguments heard from both counsel. Mr. Richards requested that the status quo remain until Mr. Kohn can be present to argue the merits. Following additional colloquy, the COURT ORDERED that the bail as set by Judge Van was invalid under law and SET ASIDE; therefore, according to the Amended Bail Schedule of 8/1/01, the COURT ORDERS the following bail set: Count I - No Bail
Count II - \$3,000.00

FURTHER ORDERED, further argument for bail setting will be heard upon Mr. Kohn's return and scheduled for 8/21/01 at time of initial arraignment.

CUSTODY

PRINT DATE: 08/02/2011

Page 1 of 128

Minutes Date:

August 10, 2001

01C177394

8/21/01 8:30 AM HEARING: BAIL SETTING

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****August 21, 2001**

01C177394

The State of Nevada vs Kirstin B Lobato

August 21, 2001**8:30 AM****All Pending Motions****ALL PENDING
MOTIONS (08-21-01)
Relief Clerk: Cindy
Lory/cnl
Reporter/Recorder:
Sharleen Nicholson
Heard By: Valorie
Vega****HEARD BY:****COURTROOM:****COURT CLERK:** Nora Pena**RECORDER:** Lisa Lizotte**REPORTER:****PARTIES****PRESENT:** Lobato, Kirstin B Defendant
PUBDEF Attorney**JOURNAL ENTRIES**

- ARRAIGNMENT...HEARING: BAIL SETTING
DEFENDANT LOBATO ARRAIGNED, PLED NOT GUILTY and INVOKED THE 60-DAY RULE.
COURT ORDERED, matter set for trial. Arguments by counsel regarding bail amount and discovery.
COURT ORDERED, BAIL SET on Count I at \$200,000.00 and on Count II at \$50,000.00. COURT
ORDERED, matter set for status check on discovery.
CUSTODY
08-30-01 8:30 AM STATUS CHECK: DISCOVERY
09-20-01 9:00 AM CALENDAR CALL
09-24-01 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****August 30, 2001**

01C177394

The State of Nevada vs Kirstin B Lobato

August 30, 2001**8:30 AM****Status Check****STATUS CHECK:
DISCOVERY Court
Clerk: Sharon Chun
Reporter/Recorder:
Sharleen Nicholson
Heard By: Valorie
Vega****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	Lobato, Kirstin B	Defendant
	Ponticello, Frank M.	Attorney
	Public Defender	Attorney

JOURNAL ENTRIES

- Mr. Kohn stated he was concerned about not receiving all discovery prior to the trial date. Mr. Jorgenson advised that the reports were just to be approved and then would be forwarded to Mr. Kohn; however, in the meantime, he invited Mr. Kohn to review his files. Mr. Jorgenson further advised that there were no more DNA tests run. The Court stated that if there was any more difficulty to advise Chambers and the matter will be placed back on calendar. COURT ORDERED, calendar call and trial dates STAND.
CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 20, 2001

01C177394

The State of Nevada vs Kirstin B Lobato

September 20, 2001

9:00 AM

Calendar Call

CALENDAR CALL

Relief Clerk: Theresa
Lee

Reporter/Recorder:

Sharleen Nicholson

Heard By: Valorie

Vega

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Jorgenson, Eric G.

Attorney

Lobato, Kirstin B

Defendant

PUBDEF

Attorney

Public Defender

Attorney

JOURNAL ENTRIES

- Mr. Kohn advised Court he received police reports last Tuesday, September 11, 2001, which was a bad day. He read them on Wednesday. He does not feel they were deliberately held from him. There is a witness in Panaca, and he has had only four weeks since the arraignment to prepare this case for trial. The Deft. did not waive her speedy trial rights. Deft. does not want to waive. Deft. is still invoking her right to speedy trial, and would ask for a trial date at the earliest date. Court informed counsel the Court has a case set for the week of 11/13/01. Mr. Kohn requested preference if the Court's #1 case goes away for that date. Court examined Deft. regarding representations of her attorney. Deft. concurred. COURT ORDERED, trial date VACATED AND RESET. Mr. Kohn stated counsel for the Deft. will be out of the country on 11/8/01 at calendar call. Mr. Kohn stated he missed something at the Preliminary Hearing, but read it in the Preliminary Hearing transcript. Mr. Kohn stated he is going to file a Writ and requested the matter set for hearing at the end of October, SO ORDERED. Mr. Kohn stated he will respond orally if he needs to.

01C177394

CUSTODY

10/25/01 8:30 A.M. DEFT.'S PETITION FOR WRIT OF HABEAS CORPUS

11/8/01 9:00 A.M. CALENDAR CALL

11/13/01 10:00 A.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****October 25, 2001**

01C177394

The State of Nevada vs Kirstin B Lobato

October 25, 2001**8:30 AM****All Pending Motions****ALL PENDING
MOTIONS
(10/25/01) Court
Clerk: Sharon Chun
Reporter/Recorder:
Sharleen Nicholson
Heard By: Valorie
Vega****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Jorgenson, Eric G.

Attorney

Lobato, Kirstin B

Defendant

Navarro, Gloria M.

Attorney

Public Defender

Attorney

JOURNAL ENTRIES**- DEFT'S PETITION FOR WRIT OF HABEAS CORPUS...DEFT'S MOTION TO DISMISS**

Following arguments by counsel per pleadings, COURT ORDERED Deft's Petition for Writ of Habeas Corpus DENIED. FURTHER ORDERED, Deft's Motion to Dismiss, DENIED pursuant to NRS 201.450.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****November 08, 2001**

01C177394

The State of Nevada vs Kirstin B Lobato

November 08, 2001**9:00 AM****Calendar Call****CALENDAR CALL**
Court Clerk: Sharon
Chun/ssc Relief
Clerk: Theresa Lee
Reporter/Recorder:
Sharleen Nicholson
Heard By: Vega,
Valorie J.**HEARD BY:****COURTROOM:****COURT CLERK:** Nora Pena**RECORDER:** Lisa Lizotte**REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Lobato, Kirstin B	Defendant
	Navarro, Gloria M.	Attorney
	PUBDEF	Attorney
	Public Defender	Attorney

JOURNAL ENTRIES

- The Court noted that this was the priority case on the 11/13/01 trial stack. Mr. Kohn stated that he had spoken to Eric Jorgenson about witnesses and lab reports and that he is prepared for trial. Ms. Allred advised the State is ready for trial; however, there was a question pending about witnesses and Mr. Jorgenson is in North Las Vegas this morning and unavailable until later today. The Court advised that because of the Overflow trial scheduling in Dept. VII, the calendar call would have to be held as quickly as possible. COURT ORDERED, CONTINUED for presence of Mr. Jorgenson tomorrow morning.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 09, 2001

01C177394

The State of Nevada vs Kirstin B Lobato

November 09, 2001

9:00 AM

Calendar Call

CALENDAR CALL

Relief Clerk: Theresa
LeeReporter/Recorder:
Sharleen NicholsonHeard By: Valorie
Vega

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Jorgenson, Eric G.	Attorney
	Lobato, Kirstin B	Defendant
	Navarro, Gloria M.	Attorney
	PUBDEF	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- Court stated for the record, the Court and Counsel had a discussion in Chambers and at side bar this morning. The State is having difficulty with one witness. Counsel wish to put a stipulation on the record. Mr. Jorgenson concurred, the Medical Examiner is only available the first two days of next week and one of the days, Monday, is a holiday. Counsel have AGREED to continue the trial two weeks, until 11/26/01. Deft. has agreed to STIPULATE to a WAIVER of her SPEEDY TRIAL RIGHTS for two weeks. The State and Defense are concerned with resetting the trial date two weeks and not knowing the availability of their witnesses. IF there is a problem with witnesses at that point, the State will STIPULATE with the Defense to REDUCE Deft.'s BAIL to \$50,000 with HOUSE ARREST. Court stated this was discussed at a prior bail motion. Mr. Kohn stated he is concerned with a conditional waiver of the 60 day rule. Most Judges feel either you waive or you do not. If

something were to go wrong, he would not want the trial date continued out six months. Mr. Kohn stated if this matter does not go to trial on 11/26/01, Deft. will clearly waive her speedy trial rights with the provision of the \$50,000 bail and House Arrest. COURT ORDERED, Trial Date VACATED AND RESET to 11/26/01 at 10:30 A.M. FURTHER ORDERED, this Calendar Call is CONTINUED to Tuesday, 11/20/01 at 9:00 A.M. Court stated, Deft. is only stipulating to waive her speedy trial rights up to 11/26/01, otherwise the implication remains in place. Mr. Jorgenson requested Court Order subpoenas extended for both sides until the new date. COURT ORDERED, ALL existing Subpoenas will remain in effect during this trial time. Mr. Jorgenson inquired if there could be four alternate jurors? Mr. Kohn concurred. Colloquy between Court and counsel re the Jury Selection process in Dept. II. Mr. Kohn stated there was a prior order that Deft. would be brought over to his office today, and requested that order remain in effect, SO ORDERED.

CUSTODY

11/20/01 9:00 A.M. CALENDAR CALL

11/26/01 10:30 A.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****November 20, 2001**

01C177394

The State of Nevada vs Kirstin B Lobato

November 20, 2001**9:00 AM****Calendar Call****CALENDAR CALL
Court Clerk: Sharon
Chun
Reporter/Recorder:
Sharleen Nicholson
Heard By: Valorie
Vega****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**Brown, Philip H.
Lobato, Kirstin B
PUBDEF
Special Public
DefenderAttorney
Defendant
Attorney
Attorney**JOURNAL ENTRIES**

- Counsel stated they were prepared for trial and anticipated eight days for completion. Mr. Brown advised there were five or six out-of-state witnesses planned. COURT ORDERED, trial date stands as set.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 26, 2001

01C177394

The State of Nevada vs Kirstin B Lobato

November 26, 2001

10:30 AM

Jury Trial

TRIAL BY JURY (VH
11/26/01) Court
Clerk: Sharon Chun
Reporter/Recorder:
Sharleen Nicholson
Heard By: Valorie
Vega

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Jorgenson, Eric G.	Attorney
	Lobato, Kirstin B	Defendant
	Navarro, Gloria M.	Attorney
	PUBDEF	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- At the hour of 10:15 A.M. the Court convened OUTSIDE PRESENCE OF JURY PANEL to hear the State's Motion to Continue Trial. Mr. Jorgenson advised that an essential witness, Louise Renhard, Crime Scene Analyst, is out-of- state until 12/7/01. He advised that he was not aware that she was possibly the only analysis who investigated the Deft's automobile, as well as the crime-scene. He produced copies of the Crime Scene Reports for the Court. Mr. Kohn stated that he opposed a trial continuance and that he would stipulate that the bat was found inside Deft's car and that she applied Luminol; however, he felt that her testimony was limited and she could not testify as to how Luminol works. He further felt that other detectives were possibly present and would stipulate to other issues, if appropriate. The Court inquired if any other Detectives were present at the vehicle scene. Mr. Jorgenson advised he did not know, the reports did not reflect anyone else. COURT ORDERED, OFF

RECORD, while Mr. Jorgenson places a telephone call for information.

When Mr. Jorgenson returned to the court room, COURT ORDERED, ON RECORD. Mr. Jorgenson advised that no one else saw the bat or was present when Ms. Renhard tested the bat; therefore, he reiterated his need for a trial continuance.

COURT ORDERED, State's Motion to Continue Trial, GRANTED; trial VACATED and RESET to start on 12/5/01 at 10:30 A.M. FURTHER ORDERED, current subpoenas remain in effect.

Mr. Kohn requested that the Court reconsider because of his need to reschedule witnesses and the fact that the Deft. had invoked. He further requested an O.R. Release/House Arrest and bail reduction, if the continuance date stands. Mr. Jorgenson noted that the State had previously agreed to a \$50,000 bail.

COURT ORDERED, BAIL REDUCED TO FIFTY-THOUSAND DOLLARS (\$50,000) TOTAL: (COURT I - \$30,000.00 & COUNT II - \$20,000.00). FURTHER ORDERED, if Deft. meets bail, she is to be PLACED ON HOUSE ARREST administered by the Clark County Detention Center and Deft. is to submit to RANDOM URINALYSIS, as deemed necessary.

CUSTODY

12/5/01 10:30 AM TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****December 05, 2001**

01C177394

The State of Nevada vs Kirstin B Lobato

December 05, 2001**10:30 AM****Jury Trial****TRIAL BY JURY****Relief Clerk: Theresa
Lee****Reporter/Recorder:****Carrie Hansen Heard****By: Valorie Vega****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Lobato, Kirstin B	Defendant
	Navarro, Gloria M.	Attorney
	PUBDEF	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- Mr. Kohn stated he contacted the Court and counsel yesterday and advised them Metro did not do the photos asked for last time and would like to send them out to an Expert who is on his way to Turkey. COURT ORDERED, Deft.'s motion to continue the trial is GRANTED, trial date reset. Court inquired of Deft. if she is WAIVING her speedy trial rights. Deft. concurred. Ms. Allred/DiGiacomo stated everyone is in agreement with continuing the trial date to April, 2002.

BOND (H.A.)**4/25/02 9:00 A.M. CALENDAR CALL****4/29/02 10:00 A.M. TRIAL BY JURY**

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****April 25, 2002**

01C177394

The State of Nevada vs Kirstin B Lobato

April 25, 2002**9:00 AM****Calendar Call****CALENDAR CALL
Court Clerk: Sharon
Chun
Reporter/Recorder:
Sharleen Nicholson
Heard By: Vega,
Valorie J.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	Kephart, William D.	Attorney
	PUBDEF	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- Mr. Kohn explained that since Deft. Lobato is on house arrest, there is a transportation problem. COURT ORDERED Deft's appearance is WAIVED for this hearing. Counsel stipulated to a calendar call continuance and requested the trial begin on 5/6/02 to accomodate scheduling of witness. COURT ORDERED, the Calendar Call is CONTINUED and the Jury Trial of 4/29/02 is VACATED and RESET to begin on 5/6/02.

BOND (H.A.)**5/6/02 10:00 AM TRIAL BY JURY**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 02, 2002

01C177394

The State of Nevada vs Kirstin B Lobato

May 02, 2002

9:00 AM

Calendar Call

CALENDAR CALL
Court Clerk: Sharon
Chun
Reporter/Recorder:
Sharleen Nicholson
Heard By: Valorie
Vega

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Navarro, Gloria M.	Attorney
	PUBDEF	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- Counsel announced they were ready to proceed to trial. Mr. Kephart stated witness availability and that counsel may be able to agree on photographs, etc. He requested the addition of Charlie Mahoney and Joel Geller to the Witness Lists. No opposition by Defense; however, Mr. Kohn advised he will need additional reports, tapes, photographs, etc. from any investigations not yet turned over. Mr. Kephart agreed to do so. Colloquy held regarding testimony re Luminol. Mr. Kephart advised that testimony will be presented as to experience and training re Luminol, but Tom Wahl will testify as to any chemical reactions as to that or other chemicals. Arguments by Defense and Mr. Kephart as to what reports/work product should be turned over to Defense. COURT ORDERED, anything relating to the crime scene is to be turned over to Defense. Mr. Kephart agreed to do so.

01C177394

COURT ORDERED, trial date STANDS to begin on 5/6/02 at 10:30 A.M. Following a short bench conference, COURT ORDERED, Deft. to REMAIN ON HOUSE ARREST.
BOND (H.A.)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 06, 2002

01C177394

The State of Nevada vs Kirstin B Lobato

May 06, 2002

10:30 AM

Jury Trial

TRIAL BY JURY
Court Clerk: Sharon
Chun
Reporter/Recorder:
Sharleen Nicholson
Heard By: Vega,
Valorie J.

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Navarro, Gloria M.	Attorney
	PUBDEF	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- The trial convened with the jury panel seated. Introductions made by the Court and all counsel. Panel members sworn and voir dire began with panel members being excused for cause. Following lunch recess, OUTSIDE PRESENCE OF JURY PANEL, Mr. Kephart advised the Court that panel number 67 had approached him to advise counsel that they should "keep down their table conversation". The Court requested the Bailiff to usher juror no. 67 to the court room. Upon the Court's query he advised that he didn't actually hear what was said, but, overheard sounds and chatter. All counsel advised the Court they were satisfied that the juror was not tainted; he was returned to the jury services room with the other panel members.

Jury panel members were seated and the voir dire continued, some being queried outside presence of

the other panel members. OUTSIDE PRESENCE OF THE JURY PANEL the Defense reserved the right to excuse panel member #64. The State made a record of the reasons for challenges for cause. PANEL MEMBERS RETURNED to the court room and the Court read the instructions re the law of the case. The first thirty-four panel members were seated for additional voir dire. Additional members excused for cause. The Court admonished panel members and ORDERED the trial CONTINUED tomorrow morning.

OUTSIDE PRESENCE OF JURY PANEL the Court was made aware of a note from Panel Member #44. The Court stated it would address it tomorrow morning. COURT ORDERED evening recess.

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****May 07, 2002**

01C177394

The State of Nevada vs Kirstin B Lobato

May 07, 2002**10:00 AM****Jury Trial****TRIAL BY JURY**
Court Clerk: Sharon
Chun
Reporter/Recorder:
Sharleen Nicholson
Heard By: Vega,
Valorie J.**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Navarro, Gloria M.	Attorney
	PUBDEF	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- The trial reconvened with all panel members present. The Court thanked and excused Panel Member #44 for cause. Voir dire continued. Additional panel members excused for cause. OFF RECORD the voir dire of Panel Member #104 was played back. ON THE RECORD the Court advised that the Defense wished to challenge for cause Panel Member #104 after playing back her taped voir dire; however, the Court had released the additional twenty jurors and only one was left in the pool from the audience. The Court advised it was concerned it would be another week before another panel could be obtained. Colloquy held regarding waiving the second alternate if there was a lack of jurors. JURY PANEL RETURNED TO THE COURT ROOM. COURT ORDERED Jury Panel Member #104 excused for cause. The last panel member was seated and voir dired. Peremptory

Challenge conducted and additional panel members were excused.

Final jurors were sworn and seated. COURT ORDERED, JURORS RECESSED and the trial is CONTINUED to tomorrow morning. Jury List FILED IN OPEN COURT.

OUTSIDE PRESENCE OF JURORS Mr. Kohn requested that the statement(s) made by his client to the State be made available. Mr. Kephart advised that any statements made by Deft. Lobato at the jail and at her home would be made available to Defense counsel.

COURT ORDERED, EVENING RECESS.

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****May 08, 2002**

01C177394

The State of Nevada vs Kirstin B Lobato

May 08, 2002**10:00 AM****Jury Trial****TRIAL BY JURY**
Court Clerk: Sharon
Chun
Reporter/Recorder:
Sharleen Nicholson
Heard By: Vega,
Valorie J.**HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Navarro, Gloria M.	Attorney
	PUBDEF	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- The trial reconvened OUTSIDE PRESENCE OF JURORS. Mr. Kohn objected to showing of proposed exhibits; argument by Mr. Kephart. COURT ORDERED OBJECTION to showing of Exhibit #117 OVER-RULED. FURTHER ORDERED, the showing of Exhibits #113 & 114 will be disallowed during opening statement.

JURORS SEATED. The Information was read and the Court gave Instructions to the jurors. Opening statements made by both counsel. OUTSIDE PRESENCE OF JURORS Mr. Kohn advised he had been handed the fingerprint report, the 4/18/02 report re the search warrant, and the Detective's report of 4/9/02 regarding the Deft's statement and he argued for exclusion of the report as being untimely and that he had not yet received the diagrams. The Court noted that at Calendar Call the State was

ordered to provide the report(s) as soon as received. Mr. Kephart stated he had just received them yesterday and that the diagrams were not going to be brought up at trial. Arguments held regarding relevance. COURT ORDERED that the issues could be readdressed later, if appropriate, outside presence of the jurors. The Court further noted that clarification was required regarding the diagram of the jail cell and requested the State to bring to Court tomorrow morning. The State agreed to make phone calls during the break to request same.

JURORS SEATED. Witnesses were sworn and testified; exhibits presented. (See Lists.) OUTSIDE PRESENCE OF JURORS arguments heard regarding presentation of exhibits. COURT ORDERED that the autopsy photographs are to be shown to the Court prior to being shown to the jurors. FURTHER ORDERED, the Defense's objection to presentation of Exhibits 12, 13, and 16 is OVER- RULED. JURORS RETURNED TO THE COURT ROOM. Additional witnesses were sworn and testified; exhibits presented. COURT ORDERED JURORS RECESSED and to return tomorrow morning.

OUTSIDE PRESENCE OF JURORS arguments heard regarding Exhibits 106, 107, and 108 regarding the photographs of the Deft's license plate. COURT ORDERED, Defense's Objection is OVER- RULED. The Defense moved for case dismissal based on prosecutor misconduct, regarding the fact that the Deft's statements were not made available to the Defense. Ms. DiGiacomo argued that the Statute applies to only written and recorded statements. The Court stated it was not aware of any Statutes which determined that the State was to prescreen all witnesses, transcribe the statements and make available to the criminal defense; however, the State was cautioned that the State is to provide any other statements to Defense. COURT ORDERED, DEFENSE'S MOTION TO DISMISS is DENIED. Mr. Kohn further argued that due process is at issue and there are duties not cited in the Nevada Revised Statutes. Ms. DiGiacomo advised that everything has been provided to the Defense and that the witness, Darin, had been provided on the witness list. The Court so noted.

JURORS RETURNED TO THE COURT ROOM. Witness testimony continued. COURT ORDERED JURORS RECESSED and to return tomorrow morning. OUTSIDE PRESENCE OF JURORS the Court advised counsel to be present tomorrow morning at 10:00 a.m. FURTHER ORDERED, per stipulation, counsel will remain this evening to review the autopsy photographs. FURTHER ORDERED, at request of Defense counsel the Exclusionary Rule will be invoked tomorrow. COURT ORDERED, EVENING RECESS; CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 09, 2002

01C177394

The State of Nevada vs Kirstin B Lobato

May 09, 2002

8:30 AM

Jury Trial

TRIAL BY JURY
Court Clerk: Sharon
Chun
Reporter/Recorder:
Sharleen Nicholson
Heard By: Vega,
Valorie J.

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Navarro, Gloria M.	Attorney
	PUBDEF	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- The trial reconvened OUTSIDE PRESENCE OF JURORS. Arguments heard regarding the Defense's objections to various autopsy photographs; Dr. Larry Simms was sworn and testified regarding the photographs. Admission of exhibits were settled on the record. The State requested leave to file a Supplemental Alibi Witness List; objection made by the Defense. COURT ORDERED, RULING RESERVED until the time the witness is to be presented.

JURORS SEATED. Witnesses sworn and testified; exhibits presented. (See Lists.) OUTSIDE PRESENCE OF JURORS arguments heard regarding redacting portions of the Detective's written statement. Redaction was settled on the record.

JURORS SEATED. Witness testimony continued. OUTSIDE PRESENCE OF JURORS the Defense

objected to showing of exhibits showing scratches; arguments heard. The State stipulated that it would not present photographs with Deft's scratches and that stomach scratches were not from the crime scene.

JURORS SEATED. Witnesses sworn; exhibits presented. COURT ORDERED, JURORS RECESSED and to return tomorrow morning.

OUTSIDE PRESENCE OF JURORS Mr. Kephart stated that Mr. Kohn spoke to a witness in front of the jury during the break and that it was inappropriate as the jurors may have overheard. The Court admonished counsel not to have such further conversations in front of jurors.

COURT ORDERED EVENING RECESS; CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 10, 2002

01C177394

The State of Nevada vs Kirstin B Lobato

May 10, 2002

10:30 AM

Jury Trial

TRIAL BY JURY
Relief Clerk: Keith A.
Reed
Reporter/Recorder:
Sharleen Nicholson
Heard By: Vega,
Valorie J.

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Navarro, Gloria M.	Attorney
	PUBDEF	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Mr. Kephart advised the Court of the need for a hearing as to the voluntariness of statements made by the Deft. to the police at her home and moved for the admission of state's exhibits # 123 & 124. COURT ORDERED, hearing to be held; ruling on admissibility of exhibits # 123 and 124 held in abeyance. HEARING HELD: Arguments by Mr. Kohn and Kephart. Court stated findings and ORDERED, motion GRANTED; state's exhibits 123 & 124 ADMITTED. JURY PRESENT: Testimony and exhibits presented. (See worksheets.) OUTSIDE THE PRESENCE OF THE JURY: Notice Of Defendant's Expert Witnesses FILED IN OPEN COURT. Mr. Kephart objected to the filing arguing the curriculum vitae needed to be filed 21 days prior to start of trial. Court stated findings and ORDERED, objection OVER RULED; state will be allowed to contact

the witnesses. Mr. Kephart noted a continuance may be necessary due to the late filing of the curriculum vitae to confer with experts. JURY PRESENT: Testimony and exhibits presented. (See worksheets.) Court admonished and released the jury to return May 13, 2002 @ 10:30 AM. OUTSIDE THE PRESENCE OF THE JURY: Court noted Mr. Kohn presented 2 hand written letters that will be marked as G1 - G3 and directed witness Karinda Martin be returned to the Court for testimony May 13, 2002. Mr. Kohn requested a copy of the probation report from Dept. XIV to compare the hand written letter from Ms. Martin. In referencing a poem written by Karinda Martin 7-29-01, Mr. Kephart requested the Court provide a 2 sheet to LVMPD and restrict the questioning of Ms. Martin regarding the information therein. Colloquy between Court and counsel regarding handwriting samples/ 2 sheets. COURT ORDERED, if there is a voluntary statement attached to the Presentence Investigation Report (PSI), it is to be turned over. FURTHER ORDERED, Ms. Labato will voluntarily provide a 2 sheet. Parties STIPULATE to the allow defense counsel to remove from the trial exhibits #'s G1-G3 WAIVING any defects in the chain of custody for the purpose of obtaining a handwriting analysis.

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****May 13, 2002**

01C177394

The State of Nevada vs Kirstin B Lobato

May 13, 2002**10:30 AM****Jury Trial****TRIAL BY JURY****Relief Clerk: Keith A.
Reed****Reporter/Recorder:
Sharleen Nicholson****Heard By: Vega,
Valorie J.****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Navarro, Gloria M.	Attorney
	PUBDEF	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Mr. Kephart advised the Court he has obtained hand writing exemplars from Korinda Martin, the Deft. and from Brenda Self which are being analyzed today. Mr. Kohn noted the handwriting samples from the Deft's P & P report are identical to Defense exhibit G3. He stated witnesses may need to be called out of order and it may be necessary to conduct additional investigations to determine who wrote which letters. Argument by Mr. Kephart regarding NRS 50.835(3). He argued the matter of the handwriting expert should have been taken care of sooner; Defense counsel cannot impeach with extrinsic evidence. He objected to any continuances and stated he is entitled to proceed with his case in chief. Colloquy by Court and counsel regarding the handwriting analysis and its expected completion date. Court stated testimony will continue with

Ms. Martin; she will be excused subject to being recalled for later testimony. Court noted the presence of a still photographer and advised him of the Courts request not to photograph the face of witness Korinda Martin due to a concern for her safety. Court requested the photographer pass along the Court's request to his superiors at the Review Journal . JURY PRESENT: Testimony and exhibits presented. (See worksheets.) OUTSIDE THE PRESENCE OF THE JURY: Ms. Navarro objected to and moved for the suppression of the testimony of the forensic chemist as to Luminol and Phenolphthalein. She argued the test are not admissible; they provide false positives and are non time specific. Mr. Kephart argued there has been no controlling case law provided by Defense counsel and requested the motion be denied. He stated Defense counsel has the right to cross examine the witness who will say the test are presumptive and may produce false positives. He argued DNA and Hemoglobin test will not always come back confirmatory. Court stated the matter goes to its weight versus its admissibility and ORDERED, objection OVERRULED; motion DENIED. Testimony and exhibits presented. (See worksheets.) State rest. COURT ORDERED, matter CONTINUED to May 14, 2002 @ 11:00 AM.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 14, 2002

01C177394

The State of Nevada vs Kirstin B Lobato

May 14, 2002

10:30 AM

Jury Trial

TRIAL BY JURY
Relief Clerk: Keith A.
Reed
Reporter/Recorder:
Sharleen Nicholson
Heard By: Vega,
Valorie J.

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Navarro, Gloria M.	Attorney
	PUBDEF	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- OUTSIDE PRESENCE OF JURY: Colloquy/verification of parties regarding exhibits admitted for juror deliberations. Testimony and exhibits presented. (See worksheets.). Court noted states objection to defense exhibits J,K, L, M & N and upon hearing respective positions of argument by counsel ORDERED, objection OVER RULED; photos WILL NOT be excluded. Colloquy between Court and counsel regarding phone and medical records; questions as to the criteria for entry and whether or not information contained therein is privileged. JURY PRESENT Testimony and exhibits presented. (See worksheets.) Court admonished and released the Jury to return May 15, 2002 at 10AM. OUTSIDE THE PRESENCE OF THE JURY: Colloquy between Court and counsel regarding further proceedings. Court advised the Deft. of her 5th amendment rights as to testimony. COURT

01C177394

ORDERED, proceedings CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 15, 2002

01C177394

The State of Nevada vs Kirstin B Lobato

May 15, 2002

11:00 AM

Jury Trial

TRIAL BY JURY
Relief Clerk: Keith A.
Reed
Reporter/Recorder:
Sharleen Nicholson
Heard By: Vega,
Valorie J.

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Navarro, Gloria M.	Attorney
	PUBDEF	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- Testimony and exhibits presented. (See worksheets.) OUTSIDE THE PRESENCE OF THE JURY: Mr. Kohn addressed the Court regarding the hand writing exemplars and requested to obtain "kite" of Karinda Martin; was informed will need an order from the Court to obtain. Colloquy between Court and counsel regarding "kites". COURT ORDERED, copy of "kites" to be made with set of copies to be provided to the state and defense counsel. Court noted states objection to the admission of Deft. exhibit BB. Mr. Kephart noted he would not oppose the admission of the fingerprint experts report; only object to the introduction of the C.V. Report; will stipulate to the experts testimony. Mr. Kohn moved for the admission of the C.V. Colloquy between Court and counsel regarding admission of C.V. of Florida expert witness. Court stated the stipulation will be, the witness is a witness in the

area of shoe impressions and footwear. JURY PRESENT: Testimony and exhibits presented. (See worksheets.) OUTSIDE THE PRESENCE OF THE JURY: Court noted at a side bar defense counsels objections to questioning during the states cross examination in regards to cutting off of the penis. Mr. Kohn argued there is misconduct on behalf of the state's phraseology of questioning " would other testimony be untruthful"; question should not be allowed. Mr. Kephart argued the Supreme Court's only concern with the phrase would be if the term liar was used. Colloquy between Court and counsel regarding confidentiality issues surrounding reports of Dr. Paglini. Court noted the objection was not raised until after lunch and into the 4th cross examination; Court ruled prior waiver occurred. JURY PRESENT: Court admonished the jury and ORDERED, proceedings CONTINUED to 5-16-02 @ 11:00 AM. Mr. Kohn. requested he be permitted to call a witness not previously noticed. Mr. Kephart objected. Without ruling, COURT ORDERED, proceedings CONTINUED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 16, 2002

01C177394

The State of Nevada vs Kirstin B Lobato

May 16, 2002

11:00 AM

Jury Trial

TRIAL BY JURY
Relief Clerk: Keith A.
Reed
Reporter/Recorder:
Sharleen Nicholson
Heard By: Vega,
Valorie J.

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Navarro, Gloria M.	Attorney
	PUBDEF	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- JURY PRESENT: Court advised jurors of stipulation to admission of exhibit DD. Testimony and exhibits presented. (See worksheets.) OUTSIDE THE PRESENCE OF THE JURY: Mr. Kephart noted his objection to the late/improper notice of and expert witness and would further object to any testimony by the expert beyond luminol or phenolphthalein testing. Mr. Kohn argued the Defense had not intended to use the information in it's case and chief, but upon revelation of the states evidence and theory, there is more research to be done based upon the states cross examination of the Deft. Mr. Kephart moved for the exclusion of the testimony of expert Schiro. Court stated findings and ORDERED, defense counsel may call Mr. Schiro regarding expert testimony. Due to late disclosure, Court requested an offer of proof as to the issues of latent fingerprints, footprints and

blood splatters. Offer of proof presented by Mr. Kohn. Court stated findings and ORDERED, objection SUSTAINED as to the objection to the footprint testimony; ruling RESERVED on issues of latent fingerprints and blood splatters. Mr. Kephart moved for a 1 week continuance. Due to Court schedule, COURT ORDERED, state's motion for continuance DENIED. JURY PRESENT: Testimony and exhibits presented. (See worksheets.) OUTSIDE THE PRESENCE OF THE JURY: Mr. Kephart advised the Court he was served over the noon hour with a Supplemental Notice Of Alibi of a neighbor of the Deft. Further arguments by counsel regarding qualifications of expert for testimony. Court stated findings noting notice not timely and ORDERED, objection SUSTAINED as to testimony of blood splatters; will allow questioning as to the lack of Deft's fingerprints in the Fiero. Ms. DiGiacomo noted concerns regarding comments in the hall from the family of the Deft. regarding the jury. Court directed defense counsel to reiterate to the individuals the need to keep their voices down in the hallway. JURY PRESENT: Testimony and exhibits presented. (See worksheets.) OUTSIDE THE PRESENCE OF THE JURY: Colloquy between Court and counsel regarding the Supplemental Notice Of Alibi. Mr. Kephart noted his objection to the use of the witnesses noticed in the Supplemental Notice of Alibi; filing is not timely or proper under statute. Argument in support of introduction of Supplemental Alibi witness by Mr. Kohn. He argued statute notes must provide to state all known information; the name of the witness was not know until yesterday. Court finds notice untimely; will allow the notice to be filed. Bench Memo & Supplemental Notice Of Alibi Witness FILED IN OPEN COURT. Argument by Mr. Kohn in reconsideration of Court's findings. Mr. Kohn advised the Court he has all the handwritten kites/exemplars of Karinda Martin and have a letter preliminarily showing Karinda Martin lied to the Court; Ms. Martin wrote the letters to Brenda Self. He further argued, there is an element of malice attributed to Karinda Martin; District Attorney cannot prove murder without her. He moved for a continuance to until an opinion has been rendered to as to whether to proceed forward with testimony of Brenda Self, or to exclude the testimony of Karinda Martin. Colloquy between Court and counsel regarding kites. COURT ORDERED, pursuant to NRS 50.085, all testimony regarding defense exhibits G & G1-G3 to be held outside the presence of the jury. Upon the inquiry of Mr. Kohn Court clarified its prior ruling and ORDERED, new witness noted in the Supplemental Notice of Alibi WILL NOT be allowed to testify as the disclosure was not timely. Mr. Kohn moved for a continuance. COURT ORDERED, motion DENIED. Ms. DiGiacomo moved for the admission of state's exhibit #133. Colloquy between Court and counsel regarding further proceedings. JURY PRESENT: Defense REST. Court admonished and excused the jury to return May 17, 2002 @ 1:00 PM.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 17, 2002

01C177394

The State of Nevada vs Kirstin B Lobato

May 17, 2002

11:00 AM

Jury Trial

TRIAL BY JURY
Relief Clerk: Keith A.
Reed
Reporter/Recorder:
Sharleen Nicholson
Heard By: Valorie
Vega

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Navarro, Gloria M.	Attorney
	PUBDEF	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Jury instruction settled. Ms. DiGiacomo advised the Court she has returned state's exhibit #125 to the clerk as well as a redacted copy of exhibit # 125 labeled state's exhibit # 125A and moved for its admission and the withdrawal of state's exhibit # 125. There being no opposition COURT SO ORDERED. Court stated it will advise the jury state's exhibit # 133 was admitted and that the urine sample was tested for the presence of meth on July 5 and none was found. JURY PRESENT. Testimony and exhibits presented. (See worksheets.) State rest. Jury instructed by the Court. Closing arguments by Ms. DiGiacomo, Mr. Kohn and Mr. Kephart. At the hour of 6:45 PM the jury retired for dinner/deliberations. OUTSIDE THE PRESENCE OF THE JURY: Mr. Kohn noted for the record his objection to the 25th and 26th jury instruction regarding sexual

penetration. Court advised counsel Juror # 6, Mr. Templeton was selected the fore person and informed the Court the jury wishes to remain and deliberate. OUTSIDE THE PRESENCE OF THE JURY: At the hour of 1:50 AM on May 18, 2002, Court noted it met with counsel in Chambers and formulated a note that was sent back to the jury inquiring of them regarding the progress of deliberations and if they desired to continue. Court noted the jury indicated via notes that they were making progress and desired to continue with deliberations. Mr. Kohn requested the Court release the jury to return on Monday, May 20 to continue with deliberations. Mr. Kephart opposed and requested the jury be allowed to continue with deliberations as they have indicated they are making progress. OUTSIDE THE PRESENCE OF THE JURY: Court advised counsel at the hour of 2:15 AM it was made aware the jury had reached a verdict and is returning to the Courtroom at this time. JURY PRESENT: On May 18, 2002 at the hour of 2:50 AM, the jury returned with verdicts of GUILTY as to COUNT I, FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (F) and GUILTY as to COUNT II, SEXUAL PENETRATION OF A DEAD HUMAN BODY (F). Jury polled. Court thanked and excused the jury stating they are released from the penalty phase of the case. OUTSIDE THE PRESENCE OF THE JURY: Court noted for the record that at side bar, counsel STIPULATED as to the charge of First Degree Murder that the sentence will be a number of years and referred the matter to P & P. Mr. Kephart requested the Court remand the Deft. to custody. COURT ORDERED, Deft. REMANDED TO CUSTODY, matter set for SENTENCING. Mr. Kohn requested the Deft. be allowed to be given her medication. COURT ORDERED, a note to be placed on the Deft's booking sheet that she be seen by the medical staff so that she an assessment can be made for her medication. CUSTODY

7-2-02 8:30 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 18, 2002

01C177394

The State of Nevada vs Kirstin B Lobato

June 18, 2002

8:30 AM

Motion

DEFT'S MTN TO
EXTEND TIME TO
FILE MTN FOR
NEW TRIAL
ALTERNATIVE
MTN FOR/21 Relief
Clerk: Keith A. Reed
Reporter/Recorder:
Sharleen Nicholson
Heard By: Vega,
Valorie J.

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Navarro, Gloria M.	Attorney
	PUBDEF	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- Mr. Kohn moved to file a supplemental exhibit and stated he would have no objection to a continuation of matters for the state to review it. Mr. Kephart stated he would not oppose the filing. Supplemental Exhibit In Support Of Reply To State's Response To Motion To Extend Time To File Motion For A New Trial & Opposition To Deft's Motion For A New Trial FILED IN OPEN COURT. Mr. Kohn stated he is prepared to go forward without the testimony of Korinda Martin; but would like to have the transcript of her testimony. Upon the Court's inquiry, the Court Reporter stated the

preparation of the transcripts has been completed; but not yet proofed. Mr. Kohn stated since the transcripts are done, he would like time to review them to make sure certain objections made are contained therein. Colloquy between Court and counsel regarding the transcripts. Upon conferring with the clerk preparing the transcripts, Court determined it will be two weeks before the transcripts are completed. Both parties advised they would like to review the transcripts before proceeding. Colloquy between Court and counsel regarding pending motions and further proceedings. Court stated all motions should be ruled upon prior to sentencing and ORDERED, motions CONTINUED; scheduled sentencing date VACATED to be re calendared.

CUSTODY

7-18-02 8:30 AM STATUS CHECK: RESCHEDULING OF SENTENCING DATE

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****July 18, 2002**

01C177394

The State of Nevada vs Kirstin B Lobato

July 18, 2002**10:30 AM****All Pending Motions****ALL PENDING
MOTIONS (7/18/02)
Court Clerk: Sharon
Chun
Reporter/Recorder:
Sharleen Nicholson
Heard By: Valorie
Vega****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Chrysanthis, Alexandra C.	Attorney
Lobato, Kirstin B	Defendant
Navarro, Gloria M.	Attorney
PUBDEF	Attorney
Special Public Defender	Attorney

JOURNAL ENTRIES

- DEFT'S MOTION TO EXTEND TIME TO FILE MOTION FOR NEW TRIAL, OR IN THE ALTERNATIVE, MOTION FOR NEW TRIAL...STATUS CHECK: RESCHEDULING OF SENTENCING DATE

The Court was advised that the transcript will not be ready until 8/22/02. COURT ORDERED, Deft's Motion to Extend Time, SET FOR ARGUMENT; the Status Check was continued to same time. CUSTODY

8/22/02 10:30 AM DEFT'S MOTION TO EXTEND TIME TO FILE MOTION FOR NEW TRIAL OR, IN THE ALTERNATIVE, MOTION FOR NEW TRIAL...STATUS CHECK: RESCHEDULING OF

01C177394

SENTENCING DATE.

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****August 22, 2002**

01C177394

The State of Nevada vs Kirstin B Lobato

August 22, 2002**10:30 AM****All Pending Motions****ALL PENDING
MOTIONS (8/22/02)
Court Clerk: Sharon
Chun
Reporter/Recorder:
Sharleen Nicholson
Heard By: Valorie
Vega****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Navarro, Gloria M.	Attorney
	PUBDEF	Attorney
	Special Public Defender	Attorney

JOURNAL ENTRIES

- ARGUMENT: DEFT'S MOTION TO EXTEND TIME TO FILE MOTION FOR NEW TRIAL...STATUS CHECK: RESCHEDULING OF SENTENCING DATE

Counsel argued per pleadings, supplemental pleadings, and oppositions.

COURT ORDERED, Deft's Motion to Extend Time to File Motion for New Trial: re: Expert, George Shiro, DENIED, pursuant to Libby v. State, 115 Nev. 45 (1999); re: Missing Persons Report: That was argument made by the Prosecutor in closing, as to what inference could be deemed by phone records, and, that does not warrant relief requested. Therefore, DENIED. re: Korinda Martin: Jurors had an opportunity to evaluate her credibility in light of her convictions of felony and prison time, but, the

information regarding her letters written on sentencing was collateral and extrinsic and ruling was appropriate; therefore, DENIED.

The COURT FOUND that the Defense did not meet its burden and therefore, Defendant's Motion to Extend Time to File Motion for New Trial is DENIED pursuant to Evans v. State, 112 Nev. 1172 (1996).

FURTHER ORDERED, since the Pre-Sentence Report has been received, matter SET for Sentencing.
8/27/02 10:30 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 27, 2002

01C177394

The State of Nevada vs Kirstin B Lobato

August 27, 2002

10:30 AM

Sentencing

SENTENCING

Court Clerk: Sharon
Chun

Reporter/Recorder:

Sharleen Nicholson

Heard By: Valorie
Vega

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Navarro, Gloria M.	Attorney
	PUBDEF	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- Officer Snell of Parole and Probation (P & P) present. DEFT. LOBATO ADJUDGED GUILTY of COUNT I - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER) and COUNT II - SEXUAL PENETRATION OF A DEAD HUMAN BODY (F). Arguments made by Mr. Kephart on behalf of the State, no statements were made by Deft., Mr. Kohn argued on behalf of the Deft. The Court noted that the Pre-Sentence Investigation and Report (PSI) reflected, on page no. 1, that Count II indicated a mandatory fine, however, a fine was not cited in the recommendations. Mr. Snell stated that evidently P & P did not recognize the fine as being mandatory. The Statute was reviewed by the Court and all counsel, after which, all stipulated that the fine was not mandatory, but, left up to the discretion of the Court.

COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee and \$150.00 DNA Analysis fee, Deft. SENTENCED as follows:

COUNT I - a MAXIMUM of FIFTY (50) YEARS and a MINIMUM of TWENTY (20) YEARS in the Nevada Department of Corrections (NDC) plus an equal and CONSECUTIVE MAXIMUM of FIFTY (50) YEARS and a MINIMUM of TWENTY (20) YEARS in the Nevada Department of Corrections for Use of a Deadly Weapon.

COUNT II - a MAXIMUM of FIFTEEN (15) YEARS and a MINIMUM of FIVE (5) YEARS in the Nevada Department of Corrections (NDC). FURTHER ORDERED, a FINE in the AMOUNT of TEN-THOUSAND DOLLARS (\$10,000) is imposed. FURTHER, a SPECIAL SENTENCE of LIFETIME SUPERVISION is imposed to commence upon release from any term of probation, parole or imprisonment. Additionally, the Deft. is ORDERED to submit to a blood or saliva test to determine genetic markers and to PAY a \$150.00 DNA Analysis fee to the Clark County Clerk. COUNT II is to be SERVED CONCURRENTLY TO COUNT I.

FURTHER ORDERED, Deft. GRANTED TWO-HUNDRED THIRTY-THREE (233) DAYS CREDIT for time served.

Deft. Labato REMANDED to custody for sentence imposition.

NDC

CLERK'S NOTE: To correct a clerical error the minutes have been corrected to reflect the sentences as "years" instead of "months". /sc

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****October 07, 2004**

01C177394

The State of Nevada vs Kirstin B Lobato

October 07, 2004**9:00 AM****Request of Court****AT THE REQUEST
OF THE COURT:
RESET TRIAL DATE
Court Clerk: Billie Jo
Craig
Reporter/Recorder:
Lisa Lizotte Heard
By: Valorie Vega****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Navarro, Gloria M.	Attorney
	Pike, Randall H.	Attorney
	Roger, David J.	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- Court noted matter returned from the Nevada Supreme Court to reset Trial date. CONFERENCE AT BENCH. The State to prepare an Order to Transport. COURT ORDERED, matter SET for Defendant's Oral Motion to Reduce Bail and Status Check: Reset Trial Date. Colloquy regarding Trial date. Counsel requested the Bail Motion be heard before a Trial date is set as the Bail Motion outcome may alter a Trial date. Ms. DiGiacomo and Mr. Kephart will be prosecuting counsel and Ms. Navarro and Mr. Schieck will be defense counsel. RECALLED LATER at request of Ms. Navarro who requested a Trial date. COURT ORDERED, matter to TRAIL for Ms. Navarro to locate Ms. DiGiacomo. RECALLED. Ms. DiGiacomo and Ms. Navarro present. Counsel requested a Trial date for three weeks. COURT ORDERED, matter SET for Trial. The Status Check date is VACATED.

01C177394

NDC

10/28/04 9:00 AM DEFT'S ORAL MOTION FOR BAIL REDUCTION

11/9/04 9:30 AM CALENDAR CALL

11/15/04 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 28, 2004

01C177394

The State of Nevada vs Kirstin B Lobato

October 28, 2004

9:00 AM

All Pending Motions

ALL PENDING
MOTIONS FOR
10/28/04 Court Clerk:
Billie Jo Craig
Reporter/Recorder:
Liz Garcia Heard By:
Valorie Vega

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Navarro, Gloria M.	Attorney
	Roger, David J.	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- DEFT'S ORAL MOTION FOR BAIL REDUCTION...DEFT'S MOTION FOR RELEASE WITHOUT BAIL OR REINSTATE BAIL INTENSIVE SUPERVISION

Court noted it received no reply. Ms. Navarro argued that Trial set for three weeks at the State's request. The State argued for no release. If the Court was inclined to set a bail, the State requested \$500,000.00. Ms. Navarro argued for lower bail. COURT ORDERED, Defendant's Motion for Bail is GRANTED for reasonable bail of \$450,000.00 in CT. I and \$50,000.00 in CT. II for a TOTAL BAIL OF \$500,000.00. Trial date STANDS. Ms. Navarro requested defendant remain in the women's prison or a lower bail. As the Court had no jurisdiction and the State would not pay to house defendant, COURT ORDERED, request DENIED for reconsideration.

01C177394

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****November 09, 2004**

01C177394

The State of Nevada vs Kirstin B Lobato

November 09, 2004**9:00 AM****All Pending Motions****ALL PENDING
MOTIONS 11/9/04
Relief Clerk: Jennifer
Lott
Reporter/Recorder:
Lisa Lizotte Heard
By: Valorie Vega****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Schieck, David M.	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- Defendant WAIVED his speedy trial rights. Mr. Kephart expressed concern reading Rule 250; however, State did not file a written response. State is prepared to go forward without defendant. COURT ORDERED, motion is GRANTED; trial date VACATED and RESET.

NDC

2/3/05 9:30 A.M. CALENDAR CALL

2/7/05 10:00 A.M. TRIAL BY JURY

**DISTRICT COURT
CLADISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 27, 2005

01C177394

The State of Nevada vs Kirstin B Lobato

January 27, 2005

9:00 AM

Motion to Continue

DEFT'S MTN TO
CONTINUE TRIAL
DATE/38 Court
Clerk: Billie Jo Craig
Reporter/Recorder:
Lisa Lizotte Heard
By: Valorie Vega

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- CONFERENCE AT BENCH. Upon the Court's inquiry, defendant confirmed she was to make arrangements to have Attorney Serra represent her with Mr. Schieck's office as local counsel. Mr. Schieck advised defendant indigent and qualified for services of the Special Public Defender's Office. The State confirmed it was informed of this a long time ago and requested matter be set for a Status Check to reset the Trial date. Court inquired if someone was to come up with funds to hire Attorney Serra, to which Mr. Schieck advised they would and not use defendant's trust fund. COURT ORDERED, matter SET for Reset Trial Date. Defendant's PRESENCE WAIVED at next Court date. NDC

2/1/05 9:00 AM RESET TRIAL DATE

PRINT DATE: 08/02/2011

Page 51 of 128

Minutes Date:

August 10, 2001

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****February 01, 2005**

01C177394

The State of Nevada vs Kirstin B Lobato

February 01, 2005**9:00 AM****Conversion Hearing Type****RESET TRIAL DATE****Court Clerk: Billie Jo
Craig****Reporter/Recorder:****Lisa Lizotte Heard****By: Valorie Vega****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Roger, David J.	Attorney
	Schieck, David M.	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- COURT ORDERED, Defendant's PRESENCE WAIVED today. Court noted Trial to be reset and Mr. Serra was being retained. Mr. Schieck advised Mr. Serra's office will be handling this matter and Mr. Schieck will be local counsel. Colloquy regarding new Trial date. COURT ORDERED, Trial date is VACATED and RESET. The State to prepare an Order to Transport to have defendant present at Calendar Call.

NDC

11/3/05 9:30 AM CALENDAR CALL

11/7/05 10:00 AM JURY TRIAL

**DISTRICT COURT
DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 08, 2005

01C177394

The State of Nevada vs Kirstin B Lobato

March 08, 2005

9:00 AM

Motion to Associate
Counsel

DEFT'S MTN TO
ASSOCIATE
COUNSEL/42 Court
Clerk: Billie Jo Craig
Reporter/Recorder:
Lisa Lizotte Heard
By: Valorie Vega

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Roger, David J.	Attorney
	Schieck, David M.	Attorney
	Schubert, David	Attorney
	Special Public	Attorney
	Defender	

JOURNAL ENTRIES

- COURT ORDERED, defendant's PRESENCE WAIVED today. As there was no opposition and Motion in writing, COURT ORDERED, Defendant's Motion to Associate Counsel is GRANTED. Mr. Schieck submitted the Order to the Court, which was signed and returned to him.
NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****August 16, 2005**

01C177394

The State of Nevada vs Kirstin B Lobato

August 16, 2005**9:00 AM****Motion to Associate
Counsel****DEFT'S MTN TO
ASSOCIATE
COUNSEL/43 Court
Clerk: Billie Jo Craig
Reporter/Recorder:
Lisa Lizotte Heard
By: Valorie Vega****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	Pike, Randall H.	Attorney
	Roger, David J.	Attorney
	Seabrook, Kristin E.	Attorney

JOURNAL ENTRIES

- COURT ORDERED, defendant's PRESENCE WAIVED today. As there was no opposition, COURT ORDERED, Defendant's Motion to Associate Counsel is GRANTED. Mr. Pike to prepare the Order. He submitted the Order to the Court, which was signed and returned for filing.
NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****October 27, 2005**

01C177394

The State of Nevada vs Kirstin B Lobato

October 27, 2005**9:00 AM****Request****STATE'S REQUEST
RE TRIAL DATE
Relief Clerk: Carole
D'Aloia
Reporter/Recorder:
Lisa Lizotte Heard
By: Valorie Vega****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** DiGiacomo, Sandra Attorney
Kephart, William D. Attorney
Schieck, David M. Attorney**JOURNAL ENTRIES**

- Court noted the absence of the Defendant as he is currently in the Nevada Department of Corrections and, ORDERED, Defendant's presence WAIVED this date. Court advised it conferred with counsel in chambers prior to calendar and this matter will be addressed at time of calendar call. COURT ORDERED, calendar call date STANDS. Ms. DiGiacomo advised she will prepare an Order to Transport so Defendant will be present.
CUSTODY (COC-NDC)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 03, 2005

01C177394

The State of Nevada vs Kirstin B Lobato

November 03, 2005

9:30 AM

All Pending Motions

ALL PENDING
MOTIONS FOR
11/3/05 Relief Clerk:
Carole D'Aloia
Reporter/Recorder:
Lisa Lizotte Heard
By: Valorie Vega

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Pike, Randall H.	Attorney
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- CALENDAR CALL...DEFT'S MOTION TO ADMIT FORMER TESTIMONY OF DECEASED WITNESS ...DEFT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF THE BASEBALL BAT...DEFT'S MOTION IN LIMINE TO EXCLUDE PHOTOGRAPHS...DEFT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF LAURA JOHNSON...DEFT'S MOTION IN LIMINE TO EXCLUDE CONTENTS OF LICENSE PLATE...DEFT'S MOTION IN LIMINE TO EXCLUDE INFLAMMATORY AND CUMULATIVE PHOTOGRAPHS...DEFT'S MOTION IN LIMINE TO EXCLUDE LOBATO'S TRIAL TESTIMONY...DEFT'S MOTION IN LIMINE TO EXCLUDE STATEMENT MADE BY DEFENDANT DURING INTERROGATION...DEFT'S MOTION IN LIMINE TO EXCLUDE WITNESS TESTIMONY OR EVIDENCE PERTAINING TO HER JOURNAL

Shari Greenberger and Sara Zalkin are counsel also appearing with Mr. Pike. COURT ORDERED, defendant's PRESENCE WAIVED today. Mr. Pike requested Trial date be reset as he was not ready. Ms. DiGiacomo advised it was a joint request as this Court would not be available. At stipulation of

counsel, COURT ORDERED, Trial date is VACATED and RESET. COURT ORDERED, a briefing schedule set as follows: Defense to file Motions by 12/31/05 State to respond by 1/31/06 Defense reply due 2/16/06 HEARING ON ALL MOTIONS: 3/3/05 9:00 AM

COURT ORDERED, all above Motions CONTINUED. Defendant's Motion in Limine to Exclude Evidence of Presumptive Blood Tests set for 11/15/05 is also CONTINUED.

NDC

CONTINUED TO: 3/3/06 9:00 AM ALL PENDING MOTIONS

4/6/06 9:30 AM CALENDAR CALL

4/17/06 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 03, 2006

01C177394

The State of Nevada vs Kirstin B Lobato

March 03, 2006

9:00 AM

All Pending Motions

ALL PENDING
MOTIONS FOR
3/3/06 Relief Clerk:
Michelle Jones
Reporter/Recorder:
Lisa Lizotte Heard
By: Valorie Vega

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- DEFT'S MOTION TO ADMIT FORMER TESTIMONY OF DECEASED WITNESS...DEFT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF THE BASEBALL BAT...DEFT'S MOTION IN LIMINE TO EXCLUDE PHOTOGRAPHS...DEFT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF LAURA JOHNSON...DEFT'S MOTION IN LIMINE TO EXCLUDE CONTENTS OF LICENSE PLATE...DEFT'S MOTION IN LIMINE TO EXCLUDE INFLAMMATORY AND CUMULATIVE PHOTOGRAPHS...DEFT'S MOTION IN LIMINE TO EXCLUDE LOBATO'S TRIAL TESTIMONY...DEFT'S MOTION IN LIMINE TO EXCLUDE STATEMENT MADE BY DEFENDANT DURING INTERROGATION...DEFT'S MOTION IN LIMINE TO EXCLUDE WITNESS TESTIMONY OR EVIDENCE PERTAINING TO HER JOURNAL...DEFT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF PRESUMPTIVE BLOOD TESTS...DEFT'S MOTION TO DISMISS BASED ON STATE'S FAILURE TO PRESERVE AND COLLECT EXULPATORY EVIDENCE.

Court noted parties STIPULATED to a continuance as the Attorneys from San Francisco are in trial and unable to appear today. COURT ORDERED, trial date STANDS, and matters continued. Court

01C177394

further noted the Deft. has posted bail and ORDERED, Deft's presence WAIVED. COLLOQUY between Court and counsel regarding Deft's financial status. COURT ORDERED, counsel to research the Deft's financial status to determine if she qualifies to be represented by the Public Defender's office; further matter set for status check.

CONTINUED TO: 3/27/06 9:30 AM

3/27/06 9:30 AM STATUS CHECK: INDIGENCE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 27, 2006

01C177394

The State of Nevada vs Kirstin B Lobato

March 27, 2006

9:30 AM

All Pending Motions

ALL PENDING
MOTIONS FOR
3/27/06 Court Clerk:
Billie Jo Craig
Reporter/Recorder:
Debi Van Blaricom
Heard By: Valorie
Vega

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Lobato, Kirstin B	Defendant
	Patrick, Clark W.	Attorney
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- DEFT'S MOTION TO ADMIT FORMER TESTIMONY OF DECEASED WITNESS...DEFT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF THE BASEBALL BAT...DEFT'S MOTION IN LIMINE TO EXCLUDE PHOTOGRAPHS...DEFT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF LAURA JOHNSON...DEFT'S MOTION IN LIMINE TO EXCLUDE CONTENTS OF LICENSE PLATE...DEFT'S MOTION IN LIMINE TO EXCLUDE INFLAMMATORY AND CUMULATIVE PHOTOGRAPHS...DEFT'S MOTION IN LIMINE TO EXCLUDE LOBATO'S TRIAL TESTIMONY... DEFT'S MOTION IN LIMINE TO EXCLUDE STATEMENT MADE BY DEFENDANT DURING INTERROGATION...DEFT'S MOTION IN LIMINE TO EXCLUDE WITNESS TESTIMONY OR EVIDENCE PERTAINING TO HER JOURNAL...DEFT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF PRESUMPTIVE BLOOD TESTS...DEFT'S MOTION TO DISMISS BASED ON

STATE'S FAILURE TO PRESERVE AND COLLECT EXCULPATORY EVIDENCE...STATUS CHECK:
INDIGENCE

Court noted a telephone call on Friday advising counsel agreed to continue matters. As there was no objection, COURT ORDERED, above matters CONTINUED. As counsel agreed, COURT ORDERED, Trial date is VACATED and RESET in ordinary course.

CONTINUED TO: 5/19/06 9:00 AM ABOVE MATTERS

9/7/06 9:30 AM CALENDAR CALL

9/11/06 10:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 19, 2006

01C177394

The State of Nevada vs Kirstin B Lobato

May 19, 2006

9:00 AM

Status Check

STATUS CHECK:
INDIGENCE Court
Clerk: Willa Pettice
Reporter/Recorder:
Lisa Lizotte Heard
By: Vega, Valorie J.

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- COURT ORDERED, matter CONTINUED to be heard at Calendar Call.
BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****May 19, 2006**

01C177394

The State of Nevada vs Kirstin B Lobato

May 19, 2006**9:00 AM****All Pending Motions****ALL PENDING
MOTIONS(5/19/06)
Court Clerk: Willa
Pettice
Reporter/Recorder:
Lisa Lizotte Heard
By: Valorie Vega****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Kephart, William D.	Attorney
	Lobato, Kirstin B	Defendant
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- DEFT'S MOTION TO ADMIT FORMER TESTIMONY OF DECEASED WITNESS . . . DEFT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF THE BASEBALL BAT . . . DEFT'S MOTION IN LIMINE TO EXCLUDE PHOTOGRAPHS . . . DEFT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF LAURA JOHNSON . . . DEFT'S MOTION IN LIMINE TO EXCLUDE CONTENTS OF LICENSE PLATE . . . DEFT'S MOTION IN LIMINE TO EXCLUDE INFLAMMATORY AND CUMULATIVE PHOTOGRAPHS . . . DEFT'S MOTION IN LIMINE TO EXCLUDE LOBATO'S TRIAL TESTIMONY . . . DEFT'S MOTION IN LIMINE TO EXCLUDE STATEMENT MADE BY DEFT DURING INTERROGATION . . . DEFT'S MOTION IN LIMINE TO EXCLUDE WITNESS TESTIMONY OR EVIDENCE PERTAINING TO HER JOURNAL . . . DEFT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF PRESUMPTIVE BLOOD TESTS . . . DEFT'S MOTION TO DISMISS BASED ON STATE'S FAILURE TO PRESERVE AND COLLECT EXCULPATORY EVIDENCE
Shari Greengerger, Esq. and Sara Zalkin, Esq., appeared PRO HAC VICE for Deft.

MOTION IN LIMINE TO EXCLUDE PHOTOGRAPHS: Following arguments by counsel, COURT ORDERED, Motion GRANTED. DEFT'S MOTION IN LIMINE TO EXCLUDE CONTENTS OF LICENSE PLATE: Following arguments by counsel, COURT ORDERED, Motion DENIED. DEFT'S MOTION IN LIMINE TO EXCLUDE PHOTOGRAPHS: Following arguments by Counsel, COURT ORDERED, Motion DENIED. DEFT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF LAURA JOHNSON: Following arguments by Counsel, COURT ORDERED, Motion DENIED. DEFT'S MOTION IN LIMINE TO EXCLUDE CONTENTS OF LICENSE PLATE: Following arguments by Counsel, COURT ORDERED, Motion DENIED. DEFT'S MOTION IN LIMINE TO EXCLUDE INFLAMMATORY AND CUMULATIVE PHOTOGRAPHS: Following arguments by Counsel, COURT ORDERED, Motion CONTINUED to be heard at Calendar Call. DEFT'S MOTION IN LIMINE TO EXCLUDE LOBATO'S TRIAL TESTIMONY: Following Arguments by Counsel, COURT ORDERED, Motion DENIED. DEFT'S MOTION IN LIMINE TO EXCLUDE STATEMENT MADE BY DEFT DURING INTERROGATION: Following arguments by Counsel, COURT ORDERED, Motion DENIED. DEFT'S MOTION IN LIMINE TO EXCLUDE WITNESS TESTIMONY OR EVIDENCE PERTAINING TO HER JOURNAL: At the request of Ms. Greenberger, COURT ORDERED, Motion CONTINUED. DEFT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF PRESUMPTIVE BLOOD TESTS: Following arguments by Counsel and request by Deft's Counsel for an evidentiary hearing, COURT ORDERED, Motion DENIED. DEFT'S MOTION TO DISMISS BASED ON STATE'S FAILURE TO PRESERVE AND COLLECT EXCULPATORY EVIDENCE: Following arguments by Counsel and request by Deft's Counsel for an evidentiary hearing, COURT ORDERED, Motion DENIED.

BOND

5/23/06 9:00 A.M. DEFT'S MOTION IN LIMINE TO EXCLUDE WITNESS TESTIMONY OR EVIDENCE PERTAINING TO HER JOURNAL/STATUS CHECK: INDIGENCE

9/7/06 9:00 A.M. DEFT'S MOTION IN LIMINE TO EXCLUDE INFLAMMATORY AND CUMULATIVE PHOTOGRAPHS

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****May 23, 2006**

01C177394

The State of Nevada vs Kirstin B Lobato

May 23, 2006**9:00 AM****All Pending Motions****ALL PENDING
MOTIONS FOR
5/23/06 Court Clerk:
Billie Jo Craig
Reporter/Recorder:
Lisa Lizotte Heard
By: Valorie Vega****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	DiGiacomo, Sandra	Attorney
	Lobato, Kirstin B	Defendant
	Roger, David J.	Attorney
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- STATUS CHECK: INDIGENCE...STATUS CHECK: SET DATE ON ARGUMENT/DECISION ON MOTION TO EXCLUDE TESTIMONY/EVIDENCE ON JOURNAL...DEFT'S MOTION IN LIMINE TO EXCLUDE ALL EVIDENCE REGARDING DR PAGLINI'S EVALUATION OF MS LOBATO AS TO STATUS CHECK: INDIGENCE: Arguments by counsel regarding defendant being indigent. Upon the Court's inquiry as to an annuity, defendant advised her father had power of attorney and it was gone. COURT ORDERED, matter SET for Argument/Decision on Motion to Exclude Testimony/Evidence on Journal. COURT ORDERED, a briefing schedule set as follows: Deft's Brief Due: 6/30/06 State's Opposition Due: 7/14/06 Defense Reply Due: 7/21/06 ARGUMENT/DECISION: 7/28/06 9:00 AM AS TO DEFT'S MOTION IN LIMINE TO EXCLUDE ALL EVIDENCE REGARDING DR PAGLINI'S EVALUATION OF MS LOBATO: COURT ORDERED, a briefing schedule set as follows: Reply Due: 6/30/06 ARGUMENT/DECISION: 7/28/06 9:00 AM

AS TO DEFT'S MOTION IN LIMINE TO EXCLUDE INFLAMMATORY AND CUMULATIVE PHOTOGRAPHS: COURT ORDERED, Defendant's Motion in Limine set for 5/19/06 is CONTINUED to 9/7/06 at 9:30 AM with the Calendar Call.

COURT ORDERED, Trial date STANDS.

BOND

CONTINUED TO: 7/28/06 9:00 AM ARGUMENT/DECISION ON MOTION TO EXCLUDE TESTIMONY/EVIDENCE ON JOURNAL...DEFT'S MOTION IN LIMINE TO EXCLUDE ALL EVIDENCE REGARDING DR PAGLINI'S EVALUATION OF MS LOBATO

9/7/06 9:30 AM DEFT'S MOTION IN LIMINE TO EXCLUDE INFLAMMATORY AND CUMULATIVE PHOTOGRAPHS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 28, 2006

01C177394

The State of Nevada vs Kirstin B Lobato

July 28, 2006

9:00 AM

All Pending Motions

ALL PENDING
MOTIONS (7/28/06)
Relief Clerk: Willa
Pettice
Reporter/Recorder:
Lisa Lizotte Heard
By: Valorie Vega

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	DiGiacomo, Sandra	Attorney
	Lobato, Kirstin B	Defendant
	Schieck, David M.	Attorney

JOURNAL ENTRIES

- ARGUMENT/DECISION MOTION TO EXCLUDE TESTIMONY/EVIDENCE ON JOURNAL . . .
DEFT'S MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND SUBSTANCE OF
EXPECTATIONS, OR ACTUAL RECEIPT OF BENEFITS OF PREFERENTIAL TREATMENT FOR
KORINDA MARTIN'S COOPERATION WITH THE STATE . . . DEFT'S MOTION TO DISMISS . . .
DEFT'S MOTION IN LIMINE TO EXCLUDE ALL EVIDENCE REGARDING DR. PAGLINI'S
EVALUATION OF MS. LOBATO

Sara Zalkin, Esq., and Shari Lynn Greenberger, Esq. also appeared on behalf of Deft.

ARGUMENT/DECISION MOTION TO EXCLUDE TESTIMONY/EVIDENCE ON JOURNAL:

Arguments by Ms. Greenberger regarding the credibility of the witness, Korinda Martin, stating the Attorney General investigated her at length and she was prosecuted by the Clark County District Attorney, where they stated in their arguments Martin was a "liar" and "not credible". Further arguments by Ms. Greenberger stating it would be unethical for Martin to testify and Martin has motivation to testify falsely. Opposition by Ms. Digiacomo stating there is no authority to exclude a

witness even though she is painted as a liar, further, Martin gave the District Attorney's Office information about the murder before the autopsy results were published. Following further arguments by counsel regarding evidence which was not preserved and Martin's sexual involvement with a corrections officer, COURT ORDERED, Motion DENIED as to excluding testimony of Martin; DENIED as to exclusion of testimony regarding the journal and GRANTED as to admitting evidence of Martin's sentencing in her own case; Ms. DiGiacomo to prepare the Order.

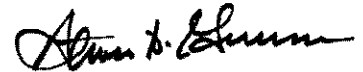
DEFT'S MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND SUBSTANCE OF EXPECTATIONS, OR ACTUAL RECEIPT OF BENEFITS OF PREFERENTIAL TREATMENT FOR KORINDA MARTIN'S COOPERATION WITH THE STATE: The Court stated it did not have an Opposition to this Motion. Ms. DiGiacomo stated she was on trial and did not file an opposition. Ms. Zalkin stated this Motion is regarding special treatment the witness is getting regarding her testimony in the first trial. Ms. DiGiacomo advised Martin requested her office to write a letter to the Parole Board for her and they did, however, it was not promised to her. There was nothing promised to Martin or any other witness for their testimony. COURT ORDERED, there being no Opposition filed by the State, Motion GRANTED; Defense Counsel to prepare the Order, the State to provide any discovery to Defense.

DEFT'S MOTION TO DISMISS: Mr. Schieck advised he would like to file a Reply to State's Opposition and requested Motion be continued. Following opposition by Ms. DiGiacomo, COURT ORDERED, Reply due 8/4/06, date set for Argument/Decision on Motion to Dismiss.

DEFT'S MOTION IN LIMINE TO EXCLUDE ALL EVIDENCE REGARDING DR. PAGLINI'S EVALUATION OF MS. LOBATO: Arguments by Ms. Greenberger stating the report should be excluded because it is privileged and Martin did not waive her privilege; further, the report was disclosed by prior counsel which does not constitute a voluntary disclosure. Opposition by Ms. DiGiacomo stating the court is aware of what privileged information is and this report was done for the purpose of litigation and preparation of defense strategy and, therefore, privilege does not apply. Following further arguments by Ms. Greenberger and opposition by Ms. DiGiacomo, the Court stated its Findings and ORDERED, Motion DENIED. Court recessed following discussions regarding upcoming Motions and discovery. The Court stated the trial date appears to be secure.

8/10/06 10:30 A.M. ARGUMENT/DECISION ON MOTION TO DISMISS

NOAS
Travis Barrick, #9257
GALLIAN, WILCOX, WELKER
OLSON & BECKSTROM, L.C.
540 E. St. Louis Avenue
Las Vegas, Nevada 89104
Telephone: (702) 892-3500
Facsimile: (702) 386-1946
tbarrick@gwwo.com
Attorneys for Petitioner



CLERK OF THE COURT

Electronically Filed
Aug 02 2011 03:20 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KIRSTIN BLAISE LOBATO,

Petitioner,

Vs.

THE STATE OF NEVADA,

Respondent.

Case No.: C177394

Dept No.: II

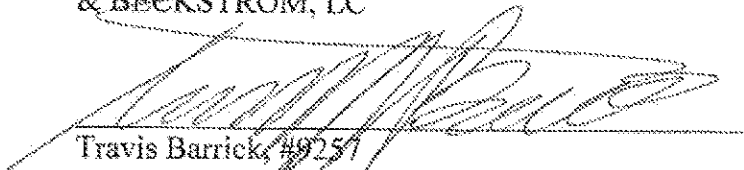
NOTICE OF APPEAL

NOTICE OF APPEAL

Notice is hereby given that Kirstin Blaise Lobato, petitioner named above, hereby appeals to the Supreme Court of Nevada from the Order denying her Petition for Habeas Corpus, the Order for which was filed on June 16, 2011. As of the date of this Notice of Appeal, no Notice of Entry of Order has been filed or served upon Ms. Lobato.

DATED this 1st day of August 2011.

GALLIAN WILCOX WELKER, OLSON
& BECKSTROM, LC



Travis Barrick, #9257
540 E. St. Louis Avenue
Las Vegas, Nevada 89104
Attorneys for Petitioner

1 **CERTIFICATE OF MAILING**

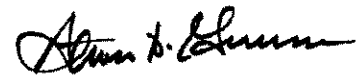
2 I HEREBY CERTIFY that on the 1st day of August, 2011, a copy of the foregoing
3 upon each of the parties by hand delivery and depositing a copy of same in a sealed envelope in
4 the U. S. mail, registered, first-class postage fully prepaid, and addressed to those counsel of
5 record:
6

7 David Rogers, Esq.
8 District Attorney's Office
9 200 Lewis Avenue
10 Las Vegas, Nevada 89155

Catherine Cortez-Masto, Esq.
Office of the Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101

11
12
13
14 
15 An Employee of
16 GALLIAN, WILCOX, WELKER
17 OLSON & BECKSTROM LC
18
19
20
21
22
23
24
25
26
27
28

ASTA
Travis Barrick, #9257
GALLIAN, WILCOX, WELKER
OLSON & BECKSTROM, L.C.
540 E. St. Louis Avenue
Las Vegas, Nevada 89104
Telephone: (702) 892-3500
Facsimile: (702) 386-1946
tbarrick@gwwwo.com
Attorneys for Petitioner


CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

* * *

KIRSTIN BLAISE LOBATO,

Appellant,

Vs.

THE STATE OF NEVADA,

Respondent.

Case No.: C177394

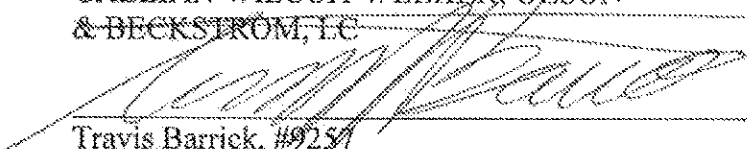
Dept No.: II

CASE APPEAL STATEMENT

Petitioner, Kirstin Blaise Lobato, by and through her counsel of record, Travis N. Barrick, Esq. of the law firm of GALLIAN, WILCOX, WELKER, OLSON & BECKSTROM, LC, hereby submits her Case Appeal Statement regarding her appeal from the District Court Order denying her Petition for Habeas Corpus, the Order for which was filed on June 16, 2011. As of the date of this Case Appeal Statement, no Notice of Entry of Order has been filed or served upon Ms. Lobato.

DATED this 7 th day of August 2011.

GALLIAN WILCOX WELKER, OLSON
& BECKSTROM, LC


Travis Barrick, #9257
540 E. St. Louis Avenue
Las Vegas, Nevada 89104
Attorneys for Petitioner

CASE APPEAL STATEMENT

1. Name of Appellant: Kirstin Blaise Lobato;
2. Judge: Hon. Valerie J. Vega;
3. Counsel for Appellant: Travis Barrick, #9257
GALLIAN, WILCOX, WELKER
OLSON & BECKSTROM, L.C.
540 E. St. Louis Avenue
Las Vegas, Nevada 89104;
4. Respondent: State of Nevada
David Rogers, Esq.
District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155
5. Pro hac vice: Not applicable;
6. Representation in District Court:
Yes, Appellant was represented by pro-bono counsel in the District Court;
7. Representation on Appeal:
Yes, Appellant is represented by pro-bono counsel on appeal;
8. *In forma pauperis*:
Yes, Appellant was granted leave to proceed *in forma pauperis* on or after May 5, 2010. However, with the appearance of Mr. Barrick, this matter is no longer applicable;
9. Commencement: *Habeas Corpus* Petition filed on May 5, 2010;
10. Description:
By way of her Petition, Ms. Lobato seeks to have set aside the underlying conviction for Voluntary Manslaughter and Sexual Penetration of a Dead Human Body.
11. Previous appeal or original writ:
No, Ms. Lobato's Petition has not previously been the subject of an appeal or original Writ;
12. Child custody or visitation: No; and
13. Settlement: Not applicable.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 1st day of August, 2011, a copy of the foregoing upon each of the parties by hand delivery and depositing a copy of same in a sealed envelope in the U. S. mail, registered, first-class postage fully prepaid, and addressed to those counsel of record:

David Rogers, Esq.
District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155

Catherine Cortez-Masto, Esq.
Office of the Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101


An Employee of
GALLIAN, WILCOX, WELKER
OLSON & BECKSTROM LC

CASE SUMMARY**CASE No. 01C177394****The State of Nevada vs Kirstin B Lobato**§
§
§
§
§
§
§

Location: **Department 2**
 Judicial Officer: **Vega, Valorie J.**
 Filed on: **08/09/2001**
 Conversion Case Number: **C177394**
 Defendant's Scope ID #: **1691351**
 Lower Court Case Number: **01F12209**

CASE INFORMATION

Offense	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. VOLUNTARY MANSLAUGHTER	F	01/01/1900	Case Flags:	Bail Set
1. DEGREES OF MURDER	F	01/01/1900		Appealed to Supreme Court
1. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	F	01/01/1900		Custody Status - Nevada
2. SEXUAL PENETRATION OF DEAD HUMAN BODY	F	01/01/1900		Department of Corrections

Bonds

Converted Surety Bond #AUL2039034 \$5,000.00
 11/21/2005 Posted
 11/21/2005 Active
 Counts: 1, 1, 1, 2

Converted Surety Bond #R511505658 \$50,000.00
 11/28/2001 Posted
 11/28/2001 Active
 Counts: 1, 1, 1, 2

DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number 01C177394
 Court Department 2
 Date Assigned 08/09/2001
 Judicial Officer Vega, Valorie J.

PARTY INFORMATION

Defendant	Lobato, Kirstin B	<i>Lead Attorneys</i> Barrick, Travis N. <i>Retained</i> 7028896363(W)
Plaintiff	State of Nevada	Roger, David J. 702-671-2700(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX**

01/01/1900	Plea (Judicial Officer: User, Conversion) 1. VOLUNTARY MANSLAUGHTER Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 1. DEGREES OF MURDER Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion)

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

	1. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Not Guilty	
01/01/1900	Plea (Judicial Officer: User, Conversion) 2. SEXUAL PENETRATION OF DEAD HUMAN BODY Not Guilty	
08/09/2001	 Criminal Bindover <i>CRIMINAL BINDOVER Fee \$0.00</i>	01C1773940001.tif pages
08/09/2001	Hearing <i>AT THE REQUEST OF THE COURT</i>	01C1773940002.tif pages
08/09/2001	Hearing <i>INITIAL ARRAIGNMENT</i>	01C1773940003.tif pages
08/09/2001	 Information <i>INFORMATION</i>	01C1773940004.tif pages
08/10/2001	Request of Court (9:30 AM) (Judicial Officer: Vega, Valorie J.) Events: 08/09/2001 Hearing <i>AT THE REQUEST OF THE COURT Court Clerk: Sharon Chun Reporter/Recorder: Sharleen Nicholson Heard By: Valorie Vega</i>	
08/10/2001	Hearing <i>HEARING: BAIL SETTING</i>	01C1773940005.tif pages
08/10/2001	 Order <i>ORDER GRANTING PERMISSION OF MEDIA ENTRY</i>	01C1773940007.tif pages
08/21/2001	Initial Arraignment (8:30 AM) (Judicial Officer: Vega, Valorie J.) Events: 08/09/2001 Hearing <i>INITIAL ARRAIGNMENT Heard By: Valorie Vega</i>	
08/21/2001	Hearing (8:30 AM) Events: 08/10/2001 Hearing <i>HEARING: BAIL SETTING</i>	
08/21/2001	All Pending Motions (8:30 AM) (Judicial Officer: Vega, Valorie J.) <i>ALL PENDING MOTIONS (08-21-01) Relief Clerk: Cindy Lory/cnl Reporter/Recorder: Sharleen Nicholson Heard By: Valorie Vega</i>	
08/21/2001	Hearing <i>STATUS CHECK: DISCOVERY</i>	01C1773940008.tif pages
08/21/2001	Motion <i>ALL PENDING MOTIONS (08-21-01)</i>	01C1773940011.tif pages
08/21/2001	 Order <i>ORDER GRANTING PERMISSION OF MEDIA ENTRY</i>	01C1773940012.tif pages
08/21/2001	 Order <i>ORDER GRANTING PERMISSION OF MEDIA ENTRY</i>	01C1773940013.tif pages
08/22/2001	 Order <i>ORDER GRANTING PERMISSION OF MEDIA ENTRY</i>	01C1773940014.tif pages

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

08/23/2001	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	01C1773940015.tif pages
08/23/2001	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	01C1773940016.tif pages
08/28/2001	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940018.tif pages
08/30/2001	Status Check (8:30 AM) (Judicial Officer: Vega, Valorie J.) Events: 08/21/2001 Hearing <i>STATUS CHECK: DISCOVERY Court Clerk: Sharon Chun Reporter/Recorder: Sharleen Nicholson Heard By: Valorie Vega</i>	
08/31/2001	 Reporters Transcript <i>REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING</i>	01C1773940017.tif pages
09/10/2001	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940019.tif pages
09/14/2001	 Expert Witness List <i>NOTICE OF EXPERT WITNESSES</i>	01C1773940020.tif pages
09/14/2001	 Expert Witness List <i>NOTICE OF WITNESSES</i>	01C1773940021.tif pages
09/17/2001	 Order <i>ORDER TO TRANSPORT</i>	01C1773940022.tif pages
09/20/2001	Calendar Call (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>CALENDAR CALL Relief Clerk: Theresa Lee Reporter/Recorder: Sharleen Nicholson Heard By: Valorie Vega</i>	
09/20/2001	Petition <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS</i>	01C1773940023.tif pages
09/24/2001	CANCELED Jury Trial (10:00 AM) <i>Vacated</i>	
09/24/2001	 Petition <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS/11</i>	01C1773940026.tif pages
09/24/2001	 Motion <i>DEFT'S MTN TO DISMISS/12</i>	01C1773940027.tif pages
09/26/2001	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940028.tif pages
09/27/2001	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B	01C1773940029.tif pages

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

RECEIPT OF COPY

09/27/2001	 Order Filed By: Defendant Lobato, Kirstin B <i>ORDER</i>	01C1773940030.tif pages
10/01/2001	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940031.tif pages
10/01/2001	 Writ Filed by: Defendant Lobato, Kirstin B <i>WRIT OF HABEAS CORPUS</i>	01C1773940032.tif pages
10/08/2001	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>EX PARTE ORDER TO TRANSPORT</i>	01C1773940033.tif pages
10/12/2001	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>EX PARTE ORDER TO TRANSPORT</i>	01C1773940034.tif pages
10/12/2001	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>EX PARTE ORDER TO TRANSPORT</i>	01C1773940035.tif pages
10/15/2001	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940036.tif pages
10/15/2001	 Certificate Filed By: Defendant Lobato, Kirstin B <i>DECLARATION OF MAILING</i>	01C1773940037.tif pages
10/18/2001	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940038.tif pages
10/23/2001	 Writ <i>RETURN TO WRIT OF HABEAS CORPUS</i>	01C1773940039.tif pages
10/23/2001	 Opposition <i>OPPOSITION TO DEFENDANTS MOTION TO DISMISS</i>	01C1773940040.tif pages
10/24/2001	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940041.tif pages
10/25/2001	Petition for Writ of Habeas Corpus (8:30 AM) Events: 09/20/2001 Petition <i>DEFT'S PTN FOR WRIT OF HABEAS CORPUS</i>	
10/25/2001	Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Vega, Valorie J.) Events: 09/24/2001 Petition	

CASE SUMMARY**CASE No. 01C177394***DEFT'S PTN FOR WRIT OF HABEAS CORPUS/11 Heard By: Valorie Vega*

10/25/2001	Motion to Dismiss (8:30 AM) (Judicial Officer: Vega, Valorie J.) Events: 09/24/2001 Motion <i>DEFT'S MTN TO DISMISS/12 Heard By: Valorie Vega</i>	
10/25/2001	All Pending Motions (8:30 AM) (Judicial Officer: Vega, Valorie J.) <i>ALL PENDING MOTIONS (10/25/01) Court Clerk: Sharon Chun Reporter/Recorder: Sharleen Nicholson Heard By: Valorie Vega</i>	
10/25/2001	Motion <i>ALL PENDING MOTIONS (10/25/01)</i>	01C1773940042.tif pages
10/29/2001	 Notice Filed By: Defendant Lobato, Kirstin B <i>NOTICE OF ALIBI WITNESS</i>	01C1773940043.tif pages
10/29/2001	 Expert Witness List Filed By: Defendant Lobato, Kirstin B <i>NOTICE OF DEFENDANTS EXPERT WITNESSES</i>	01C1773940044.tif pages
10/31/2001	 Request Filed by: Defendant Lobato, Kirstin B <i>EX PARTE REQUEST AND ORDER FOR THE COURTS IN-CAMERA INSPECTION OF CHILD PROTECTIVE SERVICES RECORDS PROTECTIVE SERVICES RECORDS</i>	01C1773940045.tif pages
11/05/2001	 Order <i>ORDER</i>	01C1773940046.tif pages
11/06/2001	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940047.tif pages
11/08/2001	Calendar Call (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>CALENDAR CALL Court Clerk: Sharon Chun/ssc Relief Clerk: Theresa Lee Reporter/Recorder: Sharleen Nicholson Heard By: Vega, Valorie J.</i>	
11/08/2001	 Expert Witness List Filed By: Defendant Lobato, Kirstin B <i>NOTICE OF WITNESSES</i>	01C1773940050.tif pages
11/08/2001	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	01C1773940051.tif pages
11/09/2001	Calendar Call (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>CALENDAR CALL Relief Clerk: Theresa Lee Reporter/Recorder: Sharleen Nicholson Heard By: Valorie Vega</i>	
11/09/2001	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940052.tif pages
11/13/2001	CANCELED Jury Trial (10:00 AM) <i>Vacated</i>	
11/19/2001		01C1773940053.tif pages

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

	 Conversion Case Event Type <i>ORDER TO TRANSPORT</i>	
11/20/2001	Calendar Call (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>CALENDAR CALL Court Clerk: Sharon Chun Reporter/Recorder: Sharleen Nicholson Heard By: Valorie Vega</i>	
11/26/2001	Jury Trial (10:30 AM) (Judicial Officer: Vega, Valorie J.) <i>TRIAL BY JURY (VH 11/26/01) Court Clerk: Sharon Chun Reporter/Recorder: Sharleen Nicholson Heard By: Valorie Vega</i>	
11/26/2001	 Order <i>MEDIA REQUEST TO PERMIT CAMERA ACCESS TO PROCEEDINGS & ORDER GRANTING</i>	<i>01C1773940056.tif pages</i>
11/26/2001	 Order <i>MEDIA REQUEST TO PERMIT CAMERA ACCESS TO PROCEEDINGS & ORDER GRANTING</i>	<i>01C1773940057.tif pages</i>
11/26/2001	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	<i>01C1773940059.tif pages</i>
11/27/2001	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	<i>01C1773940060.tif pages</i>
11/27/2001	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	<i>01C1773940061.tif pages</i>
11/28/2001	 Bond <i>BAIL BOND #R50-11505658 - \$50,000.00</i>	<i>01C1773940058.tif pages</i>
11/28/2001	 Order <i>MEDIA REQUEST TO PERMIT CAMERA ACCESS TO PROCEEDINGS AND ORDER GRANTING</i>	<i>01C1773940062.tif pages</i>
12/05/2001	Jury Trial (10:30 AM) (Judicial Officer: Vega, Valorie J.) <i>TRIAL BY JURY Relief Clerk: Theresa Lee Reporter/Recorder: Carrie Hansen Heard By: Valorie Vega</i>	
02/08/2002	 Order <i>MEDIA REQUEST TO PERMIT CAMERA ACCESS TO PROCEEDINGS - ORDER GRANTING</i>	<i>01C1773940065.tif pages</i>
04/10/2002	 Expert Witness List Filed By: Defendant Lobato, Kirstin B <i>NOTICE OF DEFENDANTS EXPERT WITNESSES</i>	<i>01C1773940066.tif pages</i>
04/15/2002	 Order <i>ORDER FOR PRODUCTION OF INMATE KORINDA JEAN MARTIN</i>	<i>01C1773940067.tif pages</i>
04/18/2002	 Expert Witness List Filed By: Defendant Lobato, Kirstin B	<i>01C1773940068.tif pages</i>

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

SUPPLEMENTAL NOTICE OF WITNESSES

04/25/2002	Calendar Call (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>CALENDAR CALL Court Clerk: Sharon Chun Reporter/Recorder: Sharleen Nicholson Heard By: Vega, Valorie J.</i>	
04/29/2002	CANCELED Jury Trial (10:00 AM) <i>Vacated</i>	
04/29/2002	 Notice <i>NOTICE OF REBUTTAL ALIBIS</i>	01C1773940070.tif pages
04/29/2002	 Expert Witness List <i>SUPPLEMENTAL NOTICE OF WITNESSES</i>	01C1773940071.tif pages
05/02/2002	Calendar Call (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>CALENDAR CALL Court Clerk: Sharon Chun Reporter/Recorder: Sharleen Nicholson Heard By: Valorie Vega</i>	
05/06/2002	Jury Trial (10:30 AM) (Judicial Officer: Vega, Valorie J.) <i>TRIAL BY JURY Court Clerk: Sharon Chun Reporter/Recorder: Sharleen Nicholson Heard By: Vega, Valorie J.</i>	
05/07/2002	Jury Trial (10:00 AM) <i>TRIAL BY JURY Court Clerk: Sharon Chun Reporter/Recorder: Sharleen Nicholson Heard By: Vega, Valorie J.</i>	
05/08/2002	Jury Trial (10:00 AM) <i>TRIAL BY JURY Court Clerk: Sharon Chun Reporter/Recorder: Sharleen Nicholson Heard By: Vega, Valorie J.</i>	
05/08/2002	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE CALENDAR CALL</i>	01C1773940073.tif pages
05/08/2002	 Jury List <i>DISTRICT COURT JURY LIST</i>	01C1773940074.tif pages
05/09/2002	Jury Trial (8:30 AM) <i>TRIAL BY JURY Court Clerk: Sharon Chun Reporter/Recorder: Sharleen Nicholson Heard By: Vega, Valorie J.</i>	
05/09/2002	 Notice <i>SUPPLEMENTAL NOTICE OF REBUTTAL ALIBIS</i>	01C1773940075.tif pages
05/10/2002	Jury Trial (10:30 AM) <i>TRIAL BY JURY Relief Clerk: Keith A. Reed Reporter/Recorder: Sharleen Nicholson Heard By: Vega, Valorie J.</i>	
05/10/2002	 Expert Witness List Filed By: Defendant Lobato, Kirstin B <i>NOTICE OF DEFENDANTS EXPERT WITNESSES</i>	01C1773940078.tif pages
05/13/2002	Jury Trial (10:30 AM) <i>TRIAL BY JURY Relief Clerk: Keith A. Reed Reporter/Recorder: Sharleen Nicholson Heard By: Vega, Valorie J.</i>	
05/14/2002	Jury Trial (10:30 AM) <i>TRIAL BY JURY Relief Clerk: Keith A. Reed Reporter/Recorder: Sharleen Nicholson</i>	

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

	<i>Heard By: Vega, Valorie J.</i>	
05/14/2002	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE: PROTION OF JURY TRIAL DEFENDANT'S OPENING STATEMENT STATEMENT</i>	<i>01C1773940076.tif pages</i>
05/14/2002	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE: PORTION OF JURY TRIAL STATE'S OPENING STATEMENT</i>	<i>01C1773940077.tif pages</i>
05/15/2002	Jury Trial (11:00 AM) <i>TRIAL BY JURY Relief Clerk: Keith A. Reed Reporter/Recorder: Sharleen Nicholson Heard By: Vega, Valorie J.</i>	
05/15/2002	 Memorandum <i>BENCH MEMO</i>	<i>01C1773940082.tif pages</i>
05/16/2002	Jury Trial (11:00 AM) (Judicial Officer: Vega, Valorie J.) <i>TRIAL BY JURY Relief Clerk: Keith A. Reed Reporter/Recorder: Sharleen Nicholson Heard By: Vega, Valorie J.</i>	
05/16/2002	 Expert Witness List Filed By: Defendant Lobato, Kirstin B <i>SUPPLEMENTAL NOTICE OF ALIBI WITNESS</i>	<i>01C1773940083.tif pages</i>
05/16/2002	 Memorandum Filed By: Defendant Lobato, Kirstin B <i>BENCH MEMO</i>	<i>01C1773940084.tif pages</i>
05/17/2002	Jury Trial (11:00 AM) <i>TRIAL BY JURY Relief Clerk: Keith A. Reed Reporter/Recorder: Sharleen Nicholson Heard By: Valorie Vega</i>	
05/17/2002	 Filing <i>FILING</i>	<i>01C1773940143.tif pages</i>
05/17/2002	 Filing <i>FILING</i>	<i>01C1773940144.tif pages</i>
05/17/2002	 Filing <i>FILING</i>	<i>01C1773940145.tif pages</i>
05/18/2002	Conversion Case Event Type <i>SENTENCING Vj 6-18-02</i>	<i>01C1773940079.tif pages</i>
05/18/2002	 Judgment <i>VERDICT</i>	<i>01C1773940081.tif pages</i>
05/18/2002	 Instructions to the Jury <i>INSTRUCTIONS TO THE JURY</i>	<i>01C1773940085.tif pages</i>
05/21/2002	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	<i>01C1773940087.tif pages</i>

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

05/21/2002	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	01C1773940088.tif pages
05/22/2002	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940089.tif pages
05/28/2002	 Motion <i>DEFT'S MTN TO EXTEND TIME TO FILE MTN FOR NEW TRIAL ALTERNATIVE MTN FOR/21</i>	01C1773940090.tif pages
05/29/2002	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940091.tif pages
05/29/2002	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940092.tif pages
06/06/2002	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	01C1773940093.tif pages
06/06/2002	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	01C1773940094.tif pages
06/07/2002	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940095.tif pages
06/12/2002	 Response <i>STATES RESPONSE TO MOTION TO EXTEND TIME TO FILE MOTION FOR NEW TRIAL AND OPPOSITION TO DEFENDANTS MOTION FOR NEW TRIAL</i>	01C1773940096.tif pages
06/14/2002	 Reply Filed by: Defendant Lobato, Kirstin B <i>REPLY TO STATES RESPONSE TO MOTION TO EXTEND TIME TO FILE MOTION FOR NEW TRIAL AND OPPOSITION TO DEFENDANTS MOTION FOR A NEW TRIAL</i>	01C1773940097.tif pages
06/18/2002	Motion (8:30 AM) (Judicial Officer: Vega, Valorie J.) Events: 05/28/2002 Motion <i>DEFT'S MTN TO EXTEND TIME TO FILE MTN FOR NEW TRIAL ALTERNATIVE MTN FOR/21</i> Relief Clerk: Keith A. Reed Reporter/Recorder: Sharleen Nicholson Heard By: Vega, Valorie J.	
06/18/2002	Hearing <i>STATUS CHECK: RESCHEDULING OF SENTENCING DATE</i>	01C1773940098.tif pages
06/18/2002	 Conversion Case Event Type <i>ORDER TO TRANSPORT</i>	01C1773940099.tif pages
		01C1773940100.tif pages

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

06/18/2002	 Exhibits Filed By: Defendant Lobato, Kirstin B <i>SUPPLEMENTAL EXHIBIT IN SUPPORT OF REPLY TO STATES RESPONSE TO MOTION TO EXTEND TIME TO FILE MOTION FOR NEW TRIAL AND OPPOSITION TO DEFENDANTS MOTION FOR A NEW TRIAL TIME TO FILE MOTION FOR NEW TRIAL AND OPPOSITION TO DEFENDANTS MOTION FOR A NEW TRIAL</i>	
06/20/2002	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940101.tif pages
06/20/2002	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940102.tif pages
06/26/2002	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	01C1773940103.tif pages
06/26/2002	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	01C1773940104.tif pages
07/02/2002	CANCELED Sentencing (8:30 AM) Events: 05/18/2002 Conversion Case Event Type <i>Vacated</i>	
07/03/2002	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940105.tif pages
07/09/2002	 Exhibits Filed By: Defendant Lobato, Kirstin B <i>SUPPLEMENTAL EXHIBIT A IN SUPPORT OF REPLY TO STATES RESPONSE TO MOTION TO EXTEND TIME TO FILE MOTION FOR NEW TRIAL AND OPPOSITION TO DEFENDANTS MOTION FOR A NEW TRIAL EXTEND TIME TO FILE MOTION FOR NEW TRIAL AND OPPOSITION TO DEFENDANTS MOTION FOR A NEW TRIAL</i>	01C1773940106.tif pages
07/09/2002	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940107.tif pages
07/18/2002	Motion (10:30 AM) (Judicial Officer: Vega, Valorie J.) <i>DEFT'S MTN TO EXTEND TIME TO FILE MTN FOR NEW TRIAL ALTERNATIVE MTN FOR/21</i>	
07/18/2002	Status Check (10:30 AM) (Judicial Officer: Vega, Valorie J.) Events: 06/18/2002 Hearing <i>STATUS CHECK: RESCHEDULING OF SENTENCING DATE Heard By: Valorie Vega</i>	
07/18/2002	All Pending Motions (10:30 AM) (Judicial Officer: Vega, Valorie J.) <i>ALL PENDING MOTIONS (7/18/02) Court Clerk: Sharon Chun Reporter/Recorder: Sharleen Nicholson Heard By: Valorie Vega</i>	
07/18/2002	Conversion Case Event Type <i>ARGUMENT: DEFT'S MOTION TO EXTEND TIME TO FILE MTN FOR NEW TRIAL, MTN NEW TRIAL</i>	01C1773940108.tif pages

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

07/18/2002	Motion <i>ALL PENDING MOTIONS (7/18/02)</i>	01C1773940109.tif pages
07/18/2002	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940110.tif pages
08/06/2002	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	01C1773940111.tif pages
08/06/2002	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940112.tif pages
08/06/2002	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	01C1773940113.tif pages
08/06/2002	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940114.tif pages
08/07/2002	 Reporters Transcript <i>REPORTER'S TRANSCRIPT OF JURY TRIAL VOLUME 1 DAY 3</i>	01C1773940115.tif pages
08/07/2002	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE JURY TRIAL VOLUME 2 DAY 4</i>	01C1773940116.tif pages
08/07/2002	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE: JURY TRIAL VOLUME 3 - DAY 5</i>	01C1773940117.tif pages
08/07/2002	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE: JURY TRIAL VOLUME 5 - DAY 7</i>	01C1773940118.tif pages
08/07/2002	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE: JURY TRIAL VOLUME 7 - DAY 9</i>	01C1773940119.tif pages
08/07/2002	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE: JURY TRIAL - VERDICT VOLUME 9 - DAY 11</i>	01C1773940120.tif pages
08/07/2002	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE: JURY TRIAL VOLUME 4 - DAY 6</i>	01C1773940121.tif pages
08/07/2002	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE: JURY TRIAL VOLUME 8 - DAY 10</i>	01C1773940122.tif pages
08/07/2002	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE: JURY TRIAL VOLUME 6 - DAY 8</i>	01C1773940123.tif pages
08/07/2002	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE JURY TRIAL VOLUME 3 DAY 5</i>	01C1773940198.tif pages

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

08/20/2002	 Supplement Filed by: Defendant Lobato, Kirstin B <i>SUPPLEMENT TO NEW TRIAL MOTION WITH TRANSCRIPT REFERENCES</i>	01C1773940125.tif pages
08/22/2002	Status Check (10:30 AM) (Judicial Officer: Vega, Valorie J.) <i>STATUS CHECK: RESCHEDULING OF SENTENCING DATE Heard By: Valorie Vega</i>	
08/22/2002	Hearing (10:30 AM) (Judicial Officer: Vega, Valorie J.) Events: 07/18/2002 Conversion Case Event Type <i>ARGUMENT: DEFT'S MOTION TO EXTEND TIME TO FILE MTN FOR NEW TRIAL, MTN NEW TRIAL Heard By: Valorie Vega</i>	
08/22/2002	All Pending Motions (10:30 AM) (Judicial Officer: Vega, Valorie J.) <i>ALL PENDING MOTIONS (8/22/02) Court Clerk: Sharon Chun Reporter/Recorder: Sharleen Nicholson Heard By: Valorie Vega</i>	
08/22/2002	Conversion Case Event Type <i>SENTENCING</i>	01C1773940126.tif pages
08/22/2002	Motion <i>ALL PENDING MOTIONS (8/22/02)</i>	01C1773940127.tif pages
08/26/2002	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	01C1773940128.tif pages
08/27/2002	Sentencing (10:30 AM) (Judicial Officer: Vega, Valorie J.) Events: 08/22/2002 Conversion Case Event Type <i>SENTENCING Court Clerk: Sharon Chun Reporter/Recorder: Sharleen Nicholson Heard By: Valorie Vega</i>	
08/27/2002	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE: PARTIAL TRANSCRIPT RE COURTS ORDER ARGUMENT: RESCHEDULING OF SENTENCING DATE DEFENDANTS MOTION TO EXTEND TIME TO FILE MOTION FOR NEW TRIAL STATUS CHECK: RESCHEDULING OF SENTENCING DATE DEFENDANTS MOTION TO EXTEND TIME TO FILE MOTION FOR NEW TRIAL STATUS CHECK:</i>	01C1773940129.tif pages
08/27/2002	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940130.tif pages
09/04/2002	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	01C1773940132.tif pages
09/04/2002	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	01C1773940133.tif pages
09/04/2002	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940134.tif pages
09/04/2002	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B	01C1773940135.tif pages

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

RECEIPT OF COPY

09/16/2002	Judgment <i>ADMINISTRATION/ASSESSMENT FEE</i>	01C1773940136.tif pages
09/16/2002	Judgment <i>GENETIC TESTING FEE</i>	01C1773940137.tif pages
09/16/2002	Judgment <i>FINE</i>	01C1773940138.tif pages
09/16/2002	 Judgment <i>JUDGMENT OF CONVICTION - JURY TRIAL</i>	01C1773940139.tif pages
09/16/2002	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	01C1773940140.tif pages
09/17/2002	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940141.tif pages
10/10/2002	 Proposed Jury Instructions Not Used At Trial <i>PROPOSED JURY INSTRUCTIONS NOT USED AT TRIAL</i>	01C1773940142.tif pages
10/14/2002	 Jury List <i>AMENDED DISTRICT COURT JURY LIST</i>	01C1773940146.tif pages
10/15/2002	 Notice of Appeal Filed By: Defendant Lobato, Kirstin B <i>NOTICE OF APPEAL</i>	01C1773940147.tif pages
10/15/2002	 Statement <i>CASE APPEAL STATEMENT</i>	01C1773940148.tif pages
11/18/2002	 Order Filed By: Defendant Lobato, Kirstin B <i>ORDER</i>	01C1773940149.tif pages
12/02/2002	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE: DEFTS PETITION FOR WRIT OF HABEAS CORPUS DEFTS MOTION TO DISMISS TO DISMISS</i>	01C1773940150.tif pages
12/02/2002	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE: ARGUMENT: DEFTS MOTION TO EXTEND TIME TO FILE MOTION FOR NEW TRIAL STATUS CHECK: RESCHEDULING OF SENTENCING DATE MOTION FOR NEW TRIAL STATUS CHECK: RESCHEDULING OF SENTENCING DATE</i>	01C1773940151.tif pages
12/02/2002	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE: TRIAL BY JURY JURY SELECTION</i>	01C1773940152.tif pages
12/02/2002	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE: TRIAL BY JURY MOTION TO CONTINUE TRIAL</i>	01C1773940153.tif pages

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

12/02/2002	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE: TRIAL BY JURY JURY SELECTION</i>	01C1773940154.tif pages
12/02/2002	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE: SENTENCING</i>	01C1773940155.tif pages
03/13/2003	 Order Filed By: Defendant Lobato, Kirstin B <i>ORDER FOR RELEASE OF EVIDENCE</i>	01C1773940156.tif pages
03/21/2003	 Receipt <i>RECEIPT OF EXHIBITS</i>	01C1773940157.tif pages
05/14/2003	 Ex Parte Order Filed By: Defendant Lobato, Kirstin B <i>EX PARTE ORDER FOR CONTACT VISIT</i>	01C1773940158.tif pages
10/05/2004	Hearing <i>AT THE REQUEST OF THE COURT: RESET TRIAL DATE</i>	01C1773940161.tif pages
10/05/2004	 NV Supreme Court Clerks Certificate/Judgment -Remanded USJR <i>NEVADA SUPREME COURT CLERKS CERTIFICATE/ JUDGMENT - REVERSED AND REMANDED</i>	01C1773940162.tif pages
10/05/2004	Judgment Filed By: Defendant Lobato, Kirstin B <i>CLERK'S CERTIFICATE REVERSED/REMANDED</i>	01C1773940167.tif pages
10/07/2004	Request of Court (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 10/05/2004 Hearing <i>AT THE REQUEST OF THE COURT: RESET TRIALDATE Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Valorie Vega</i>	
10/07/2004	Motion <i>DEFT'S ORAL MTN FOR BAIL REDUCTION</i>	01C1773940163.tif pages
10/21/2004	 Order <i>ORDER FOR PRODUCTION OF INMATE</i>	01C1773940168.tif pages
10/25/2004	 Motion <i>DEFT'S MTN FOR RELEASE WITHOUT BAIL OR TO REINSTATE BAIL INTENSIVE SUPERVIS/32</i>	01C1773940169.tif pages
10/25/2004	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940170.tif pages
10/25/2004	 Expert Witness List <i>SUPPLEMENTAL NOTICE OF EXPERT WITNESSES</i>	01C1773940171.tif pages
10/26/2004	 Expert Witness List <i>NOTICE OF EXPERT WITNESSES</i>	01C1773940173.tif pages
10/27/2004		01C1773940174.tif pages

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

	 Opposition <i>OPPOSITION TO DEFENDANTS MOTION FOR RELEASE WITHOUT BAIL OR IN THE ALTERNATIVE TO REINSTATE BAIL INTENSIVE SUPERVISION OR HOUSE ARREST ALTERNATIVE TO REINSTATE BAIL INTENSIVE SUPERVISION OR HOUSE ARREST</i>	
10/28/2004	Motion for Own Recognizance Release/Setting Reasonable Bail (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 10/07/2004 Motion <i>DEFT'S ORAL MTN FOR BAIL REDUCTION Heard By: Valorie Vega</i>	
10/28/2004	Motion (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 10/25/2004 Motion <i>DEFT'S MTN FOR RELEASE WITHOUT BAIL OR TO REINSTATE BAIL INTENSIVE SUPERVIS/32 Heard By: Valorie Vega</i>	
10/28/2004	All Pending Motions (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>ALL PENDING MOTIONS FOR 10/28/04 Court Clerk: Billie Jo Craig Reporter/Recorder: Liz Garcia Heard By: Valorie Vega</i>	
10/28/2004	Motion <i>ALL PENDING MOTIONS FOR 10/28/04</i>	01C1773940172.tif pages
11/01/2004	 Expert Witness List <i>SUPPLEMENTAL NOTICE OF WITNESSES</i>	01C1773940175.tif pages
11/03/2004	 Motion <i>DEFT'S MTN TO CONTINUE TRIAL/34</i>	01C1773940176.tif pages
11/03/2004	 Order Filed By: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	01C1773940177.tif pages
11/04/2004	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940181.tif pages
11/09/2004	Motion to Continue (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 11/03/2004 Motion <i>DEFT'S MTN TO CONTINUE TRIAL/34 Heard By: Valorie Vega</i>	
11/09/2004	All Pending Motions (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>ALL PENDING MOTIONS 11/9/04 Relief Clerk: Jennifer Lott Reporter/Recorder: Lisa Lizotte Heard By: Valorie Vega</i>	
11/09/2004	Calendar Call (9:30 AM) <i>CALENDAR CALL</i>	
11/09/2004	Motion <i>ALL PENDING MOTIONS 11/9/04</i>	01C1773940180.tif pages
11/15/2004	CANCELED Jury Trial (10:00 AM) <i>Vacated</i>	
11/22/2004	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	01C1773940182.tif pages

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

01/21/2005	 Motion <i>DEFT'S MTN TO CONTINUE TRIAL DATE/38</i>	01C1773940183.tif pages
01/21/2005	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	01C1773940184.tif pages
01/21/2005	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940185.tif pages
01/27/2005	Motion to Continue (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 01/21/2005 Motion <i>DEFT'S MTN TO CONTINUE TRIAL DATE/38 Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Valorie Vega</i>	
01/27/2005	Hearing <i>RESET TRIAL DATE</i>	01C1773940186.tif pages
02/01/2005	Conversion Hearing Type (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 01/27/2005 Hearing <i>RESET TRIAL DATE Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Valorie Vega</i>	
02/03/2005	CANCELED Calendar Call (9:30 AM) <i>Vacated</i>	
02/07/2005	CANCELED Jury Trial (10:00 AM) <i>Vacated</i>	
02/23/2005	 Motion <i>DEFT'S MTN TO ASSOCIATE COUNSEL /42</i>	01C1773940189.tif pages
02/23/2005	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940190.tif pages
03/08/2005	Motion to Associate Counsel (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 02/23/2005 Motion <i>DEFT'S MTN TO ASSOCIATE COUNSEL /42 Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Valorie Vega</i>	
03/08/2005	 Order Filed By: Defendant Lobato, Kirstin B <i>ORDER ADMITTING TO PRACTICE</i>	01C1773940191.tif pages
07/28/2005	 Motion <i>DEFT'S MTN TO ASSOCIATE COUNSEL /43</i>	01C1773940192.tif pages
08/16/2005	Motion to Associate Counsel (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 07/28/2005 Motion <i>DEFT'S MTN TO ASSOCIATE COUNSEL /43 Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Valorie Vega</i>	
08/16/2005	 Order Filed By: Defendant Lobato, Kirstin B <i>ORDER ADMITTING TO PRACTICE</i>	01C1773940194.tif pages

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

09/13/2005	 Media Request and Order <i>MEDIA REQUEST AND ORDER</i>	01C1773940195.tif pages
09/13/2005	 Notice <i>NOTIFICATION OF MEDIA REQUEST</i>	01C1773940196.tif pages
09/13/2005	 Media Request and Order <i>MEDIA REQUEST AND ORDER</i>	01C1773940197.tif pages
10/05/2005	 Motion <i>DEFT'S MTN IN LIMINE TO EXLCUDE PHOTOGRAPHS/44</i>	01C1773940199.tif pages
10/05/2005	 Motion <i>DEFT'S MTN IN LIMINE TO EXLUDE EVID OF THE BASEBALL BAT/45</i>	01C1773940200.tif pages
10/05/2005	 Motion <i>DEFT'S MTN IN LIMINE TO EXCLUDE TESTIMONY OF LAURA JOHNSON/46</i>	01C1773940201.tif pages
10/05/2005	 Motion <i>DEFT'S MTN IN LIMINE TO EXCLUDE CONTENTS OF LICENSE PLATE/47</i>	01C1773940202.tif pages
10/05/2005	 Motion <i>DEFT'S MTN IN LIMINE TO EXCLUDE INFLAMMATORY & CUMULATIVE PHOTOGRAPHS/48</i>	01C1773940203.tif pages
10/05/2005	 Motion <i>DEFT'S MTN IN LIMINE TO EXLCUDE LOBATO'S TRIAL TESTIMONY/49</i>	01C1773940204.tif pages
10/05/2005	 Motion <i>DEFT'S MTN IN LIMINE TO EXLCUDE STATEMNT MADE BY DEFT DURING INTERROG/50</i>	01C1773940205.tif pages
10/05/2005	 Motion <i>DEFT'S MTN IN LIMINE TO EXLCUDE WITNESS TESTIM OR EVID PERTAIN TO HER JOURNAL/51</i>	01C1773940206.tif pages
10/05/2005	 Motion <i>DEFT'S MTN TO ADMIT FORMER TESTIMOY OF DECEASED WITNESS/52</i>	01C1773940207.tif pages
10/10/2005	 Certificate Filed By: Defendant Lobato, Kirstin B <i>CERTIFICATE OF MAILING</i>	01C1773940208.tif pages
10/14/2005	 Expert Witness List Filed By: Defendant Lobato, Kirstin B <i>NOTICE OF DEFENDANTS EXPERT WITNESS</i>	01C1773940209.tif pages
10/24/2005	Hearing <i>STATE'S REQUEST RE TRIAL DATE</i>	01C1773940211.tif pages
10/27/2005	Request (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 10/24/2005 Hearing	

CASE SUMMARY**CASE No. 01C177394**

STATE'S REQUEST RE TRIAL DATE Relief Clerk: Carole D'Aloia Reporter/Recorder:
Lisa Lizotte Heard By: Valorie Vega

11/01/2005	 Motion <i>DEFT'S MTN IN LIMINE TO EXCLUDE EVIDENCE OF PRESUMPTIVE BLOOD TESTS /54</i>
11/03/2005	Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 10/05/2005 Motion <i>DEFT'S MTN IN LIMINE TO EXCLUDE PHOTOGRAPHS/44 Heard By: Valorie Vega</i>
11/03/2005	Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 10/05/2005 Motion <i>DEFT'S MTN IN LIMINE TO EXCLUDE EVID OF THE BASEBALL BAT/45 Heard By: Valorie Vega</i>
11/03/2005	Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 10/05/2005 Motion <i>DEFT'S MTN IN LIMINE TO EXCLUDE TESTIMONY OF LAURA JOHNSON/46 Heard By: Valorie Vega</i>
11/03/2005	Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 10/05/2005 Motion <i>DEFT'S MTN IN LIMINE TO EXCLUDE CONTENTS OF LICENSE PLATE/47 Heard By: Valorie Vega</i>
11/03/2005	Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 10/05/2005 Motion <i>DEFT'S MTN IN LIMINE TO EXCLUDE INFLAMMATORY & CUMULATIVE PHOTOGRAPHS/48</i>
11/03/2005	Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 10/05/2005 Motion <i>DEFT'S MTN IN LIMINE TO EXCLUDE LOBATO'S TRIAL TESTIMONY/49 Heard By: Valorie Vega</i>
11/03/2005	Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 10/05/2005 Motion <i>DEFT'S MTN IN LIMINE TO EXCLUDE STATEMENT MADE BY DEFT DURING INTERROG/50 Heard By: Valorie Vega</i>
11/03/2005	Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 10/05/2005 Motion <i>DEFT'S MTN IN LIMINE TO EXCLUDE WITNESS TESTIMONY OR EVID PERTAIN TO HER JOURNAL/51 Heard By: Valorie Vega</i>
11/03/2005	Motion (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 10/05/2005 Motion <i>DEFT'S MTN TO ADMIT FORMER TESTIMONY OF DECEASED WITNESS/52 Heard By: Valorie Vega</i>
11/03/2005	Calendar Call (9:30 AM) <i>CALENDAR CALL</i>
11/03/2005	All Pending Motions (9:30 AM) (Judicial Officer: Vega, Valorie J.) <i>ALL PENDING MOTIONS FOR 11/3/05 Relief Clerk: Carole D'Aloia Reporter/Recorder: Lisa Lizotte Heard By: Valorie Vega</i>
11/03/2005	Motion <i>ALL PENDING MOTIONS FOR 11/3/05</i>

01C1773940212.tif pages

01C1773940215.tif pages

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

11/03/2005	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940216.tif pages
11/07/2005	<i>CANCELED Jury Trial (10:00 AM)</i> <i>Vacated</i>	
11/15/2005	Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 11/01/2005 Motion <i>DEFT'S MTN IN LIMINE TO EXCLUDE EVIDENCE OF PRESUMPTIVE BLOOD TESTS /54 Heard By: Valorie Vega</i>	
11/21/2005	 Conversion Case Event Type <i>ORDER TO TRANSPORT</i>	01C1773940217.tif pages
11/21/2005	 Bond <i>BOND - #AUL-2039034 - \$5000.00</i>	01C1773940218.tif pages
01/04/2006	 Motion <i>DEFT'S MTN TO DISMISS BASED ON STATE'S FAILURE TO PRESERVE & COLLECT EVID/58</i>	01C1773940219.tif pages
01/04/2006	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940220.tif pages
01/06/2006	 Notice Filed By: Defendant Lobato, Kirstin B <i>NOTICE OF HEARING</i>	01C1773940221.tif pages
02/03/2006	 Opposition <i>STATES OPPOSITION TO DEFENDANTS MOTION IN LIMINE TO EXCLUDE LOBATOS TRIAL TESTIMONY TESTIMONY</i>	01C1773940222.tif pages
02/03/2006	 Response <i>STATES RESPONSE TO DEFENDANTS MOTION TO ADMIT THE FORMER TESTIMONY OF DECEASED WITNESS DIANN PARKER PURSUANT TO NRS 51.325 AND NRS 51.055 AND STATES MOTION TO ADMIT PRIOR TESTIMONY OF DIANN PARKER DECEASED WITNESS DIANN PARKER PURSUANT TO NRS 51.325 AND NRS 51.055 AND STATES MOTION TO ADMIT PRIOR TESTIMONY OF DIANN PARKER</i>	01C1773940223.tif pages
02/03/2006	 Opposition <i>STATES OPPOSITION TO DEFENDANTS MOTION TO EXCLUDE KORINDA MARTINS TESTIMONY OR ALTERNATIVELY TO EXCLUDE 1) ANY EVIDENCE OR TESTIMONY PERTAINING TO HER JOURNAL PER THE DESTRUCTION OF EXCULPATORY EVIDENCE AND 2) ADMIT EXTRINSIC EVIDENCE OF KORINDA MARTINS FRAUD UPON THE COURT OR ALTERNATIVELY TO EXCLUDE 1) ANY EVIDENCE OR TESTIMONY PERTAINING TO HER JOURNAL PER THE DESTRUCTION OF EXCULPATORY EVIDENCE AND 2) ADMIT EXTRINSIC EVIDENCE OF KORINDA MARTINS FRAUD UPON THE COURT</i>	01C1773940224.tif pages
02/03/2006	 Opposition <i>STATES OPPOSITION TO DEFENDANTS MOTION IN LIMINE TO EXCLUDE STATEMENT MADE BY DEFENDANT DURING THE COURSE OF THE JULY 20 2001 INTERROGATION DEFENDANT DURING THE COURSE OF THE JULY 20 2001 INTERROGATION</i>	01C1773940225.tif pages

CASE SUMMARY**CASE No. 01C177394**

02/03/2006	 Opposition <i>STATES OPPOSITION TO DEFENDANTS MOTION IN LIMINE TO EXCLUDE PHOTOGRAPHS WITH THE INTERLINEATION GUILTY THE INTERLINEATION GUILTY</i>	01C1773940226.tif pages
02/03/2006	 Opposition <i>STATES OPPOSITION TO DEFENDANTS MOTION IN LIMINE TO EXCLUDE EVIDENCE OF THE BASEBALL BAT BASEBALL BAT</i>	01C1773940227.tif pages
02/03/2006	 Opposition <i>STATES OPPOSITION TO DEFENDANTS MOTION IN LIMINE TO EXCLUDE CONTENTS OF DEFENDANTS LICENSE PLATE DEFENDANTS LICENSE PLATE</i>	01C1773940228.tif pages
02/03/2006	 Opposition <i>STATES OPPOSITION TO DEFENDANTS MOTION IN LIMINE TO EXCLUDE INFLAMMATORY AND CUMULATIVE PHOTOGRAPHS CUMULATIVE PHOTOGRAPHS</i>	01C1773940229.tif pages
02/03/2006	 Opposition <i>STATES OPPOSITION TO DEFENDANTS MOGION TO DISMISS BASED ON STATES FAILURE TO PRESERVE AND COLLECT EXCULPATORY EVIDENCE PRESERVE AND COLLECT EXCULPATORY EVIDENCE</i>	01C1773940230.tif pages
02/03/2006	 Opposition <i>STATES OPPOSITION TO DEFENDANTS MOTION IN LIMINE TO EXCLUDE TESTIMONY OF LAURA JOHNSON BASED ON DOUBLE HEARSAY LAURA JOHNSON BASED ON DOUBLE HEARSAY</i>	01C1773940231.tif pages
02/03/2006	 Opposition <i>STATES OPPOSITION TO DEFENDANTS MOTION IN LIMINE TO EXCLUDE EVIDENCE OF PRESUMPTIVE BLOOD TESTS PRESUMPTIVE BLOOD TESTS</i>	01C1773940232.tif pages
02/22/2006	 Reply Filed by: Defendant Lobato, Kirstin B <i>REPLY TO STATES OPPOSITION TO DEFENDANTS MOTION IN LIMINE TO EXCLUDE INFLAMMATORY AND CUMULATIVE PHOTOGRAPHS INFLAMMATORY AND CUMULATIVE PHOTOGRAPHS</i>	01C1773940233.tif pages
02/22/2006	 Reply Filed by: Defendant Lobato, Kirstin B <i>REPLY TO STATES OPPOSITION TO DEFENDANTS MOTION IN LIMINE TO EXCLUDE STATEMENT MADE BY DEFENDANT DURING THE COURSE OF THE JULY 20 2001 INTERROGATION STATEMENT MADE BY DEFENDANT DURING THE COURSE OF THE JULY 20 2001 INTERROGATION</i>	01C1773940234.tif pages
02/22/2006	 Reply Filed by: Defendant Lobato, Kirstin B <i>REPLY TO STATES OPPOSITION TO DEFENDANTS MOTION TO DISMISS BASED ON STATES FAILURE TO PRESERVE AND COLLECT EXCULPATORY EVIDENCE STATES FAILURE TO PRESERVE AND COLLECT EXCULPATORY EVIDENCE</i>	01C1773940235.tif pages
02/22/2006	 Reply Filed by: Defendant Lobato, Kirstin B <i>REPLY TO STATES OPPOSITION TO DEFENDANTS MOTION IN LIMINE TO EXCLUDE CONTENTS OF DEFENDANTS LICENSE PLATE CONTENTS OF DEFENDANTS LICENSE PLATE</i>	01C1773940236.tif pages

CASE SUMMARY**CASE No. 01C177394**

02/22/2006	 Reply Filed by: Defendant Lobato, Kirstin B <i>REPLY TO STATES OPPOSITION TO DEFENDANTS MOTION IN LIMINE TO EXCLUDE TESTIMONY LAURA JOHNSON BASED ON DOUBLE HEARSAY TESTIMONY LAURA JOHNSON BASED ON DOUBLE HEARSAY</i>	01C1773940237.tif pages
02/22/2006	 Reply Filed by: Defendant Lobato, Kirstin B <i>REPLY TO THE STATES OPPOSITION TO DEFENDANTS MOTION IN LIMINE TO EXCLUDE EVIDENCE OF PRESUMPTIVE BLOOD TESTS EVIDENCE OF PRESUMPTIVE BLOOD TESTS</i>	01C1773940238.tif pages
02/22/2006	 Reply Filed by: Defendant Lobato, Kirstin B <i>REPLY TO THE STATES OPPOSITION TO DEFENDANTS MOTION IN LIMINE TO EXCLUDE PHOTOGRAPHS WITH THE INTERLINEATION GUILTY PHOTOGRAPHS WITH THE INTERLINEATION GUILTY</i>	01C1773940239.tif pages
02/22/2006	 Reply Filed by: Defendant Lobato, Kirstin B <i>REPLY TO STATES OPPOSITION TO DEFENDANTS MOTION TO EXCLUDE KORINDA2 ADMIT EXTRINSIC EVIDENCE OF KORINDA MARTINS FRAUD UPON THE COURT PERTAINING TO HER JOURNAL PER THE DESTRUCTION OF EXCULPATORY EVIDENCE AND MARTINS TESTIMONY OR ALTERNATIVELY TO EXCLUDE 1 ANY EVIDENCE OR TESTIMONY 2 ADMIT EXTRINSIC EVIDENCE OF KORINDA MARTINS FRAUD UPON THE COURT PERTAINING TO HER JOURNAL PER THE DESTRUCTION OF EXCULPATORY EVIDENCE AND MARTINS TESTIMONY OR ALTERNATIVELY TO EXCLUDE 1 ANY EVIDENCE OR TESTIMONY</i>	01C1773940240.tif pages
02/22/2006	 Reply Filed by: Defendant Lobato, Kirstin B <i>REPLY TO STATES OPPOSITION TO DEFENDANTS MOTION IN LIMINE TO EXCLUDE EVIDENCE OF THE BASEBALL BAT EVIDENCE OF THE BASEBALL BAT</i>	01C1773940241.tif pages
02/22/2006	 Application Filed By: Defendant Lobato, Kirstin B <i>APPLICATION FOR WAIVER OF FEE PURSUANT TO NEVADA SUPREME COURT RULE 42-3-E 42-3-E</i>	01C1773940242.tif pages
02/22/2006	 Application Filed By: Defendant Lobato, Kirstin B <i>APPLICATION FOR WAIVER OF FEE PURSUANT TO NEVADA SUPREME COURT RULE 42-3-E</i>	01C1773940243.tif pages
03/02/2006	Motion to Dismiss (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 01/04/2006 Motion <i>DEFT'S MTN TO DISMISS BASED ON STATE'S FAILURE TO PRESERVE & COLLECT EVID/58 Heard By: Valorie Vega</i>	
03/03/2006	All Pending Motions (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>ALL PENDING MOTIONS FOR 3/3/06 Relief Clerk: Michelle Jones Reporter/Recorder: Lisa Lizotte Heard By: Valorie Vega</i>	
03/03/2006	Motion in Limine (9:30 AM) <i>DEFT'S MTN IN LIMINE TO EXCLUDE PHOTOGRAPHS/44 Heard By: Valorie Vega</i>	
03/03/2006	Motion in Limine (9:30 AM) <i>DEFT'S MTN IN LIMINE TO EXCLUDE EVID OF THE BASEBALL BAT/45 Heard By:</i>	

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

	<i>Valorie Vega</i>	
03/03/2006	Motion in Limine (9:30 AM) <i>DEFT'S MTN IN LIMINE TO EXCLUDE TESTIMONY OF LAURA JOHNSON/46 Heard By: Valorie Vega</i>	
03/03/2006	Motion in Limine (9:30 AM) <i>DEFT'S MTN IN LIMINE TO EXCLUDE CONTENTS OF LICENSE PLATE/47 Heard By: Valorie Vega</i>	
03/03/2006	Motion in Limine (9:30 AM) <i>DEFT'S MTN IN LIMINE TO EXCLUDE INFLAMMATORY & CUMULATIVE PHOTOGRAPHS/48</i>	
03/03/2006	Motion in Limine (9:30 AM) <i>DEFT'S MTN IN LIMINE TO EXCLUDE LOBATO'S TRIAL TESTIMONY/49 Heard By: Valorie Vega</i>	
03/03/2006	Motion in Limine (9:30 AM) <i>DEFT'S MTN IN LIMINE TO EXCLUDE STATEMENT MADE BY DEFT DURING INTERROG/50 Heard By: Valorie Vega</i>	
03/03/2006	Motion in Limine (9:30 AM) <i>DEFT'S MTN IN LIMINE TO EXCLUDE WITNESS TESTIMONY OR EVIDENCE PERTAINING TO HER JOURNAL/51 Heard By: Valorie Vega</i>	
03/03/2006	Motion (9:30 AM) <i>DEFT'S MTN TO ADMIT FORMER TESTIMONY OF DECEASED WITNESS/52 Heard By: Valorie Vega</i>	
03/03/2006	Motion in Limine (9:30 AM) <i>DEFT'S MTN IN LIMINE TO EXCLUDE EVIDENCE OF PRESUMPTIVE BLOOD TESTS/54 Heard By: Valorie Vega</i>	
03/03/2006	Motion to Dismiss (9:30 AM) <i>DEFT'S MTN TO DISMISS BASED ON STATE'S FAILURE TO PRESERVE & COLLECT EVID/58 Heard By: Valorie Vega</i>	
03/03/2006	Hearing <i>STATUS CHECK: INDIGENCE</i>	01C1773940244.tif pages
03/03/2006	Motion <i>ALL PENDING MOTIONS FOR 3/3/06</i>	01C1773940245.tif pages
03/27/2006	Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>DEFT'S MTN IN LIMINE TO EXCLUDE PHOTOGRAPHS/44 Heard By: Valorie Vega</i>	
03/27/2006	Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>DEFT'S MTN IN LIMINE TO EXCLUDE EVIDENCE OF THE BASEBALL BAT/45 Heard By: Valorie Vega</i>	
03/27/2006	Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>DEFT'S MTN IN LIMINE TO EXCLUDE TESTIMONY OF LAURA JOHNSON/46 Heard By: Valorie Vega</i>	
03/27/2006	Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>DEFT'S MTN IN LIMINE TO EXCLUDE CONTENTS OF LICENSE PLATE/47 Heard By: Valorie Vega</i>	
03/27/2006	Motion in Limine (9:00 AM) <i>DEFT'S MTN IN LIMINE TO EXCLUDE INFLAMMATORY & CUMULATIVE PHOTOGRAPHS/48</i>	

CASE SUMMARY**CASE No. 01C177394**

03/27/2006	Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>DEFT'S MTN IN LIMINE TO EXLCUDE LOBATO'STRIAL TESTIMONY/49 Heard By: Valorie Vega</i>	
03/27/2006	Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>DEFT'S MTN IN LIMINE TO EXLCUDE STATEMNTMADE BY DEFT DURING INTERROG/50 Heard By: Valorie Vega</i>	
03/27/2006	Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>DEFT'S MTN IN LIMINE TO EXLCUDE WITNESS TESTIM OR EVID PERTAIN TO HER JOURNAL/51 Heard By: Valorie Vega</i>	
03/27/2006	Motion (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>DEFT'S MTN TO ADMIT FORMER TESTIMOY OF DECEASED WITNESS/52 Heard By: Valorie Vega</i>	
03/27/2006	Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>DEFT'S MTN IN LIMINE TO EXCLUDE EVIDENCEOF PRESUMPTIVE BLOOD TESTS /54 Heard By: Valorie Vega</i>	
03/27/2006	Motion to Dismiss (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>DEFT'S MTN TO DISMISS BASED ON STATE'S FAILURE TO PRESERVE & COLLECT EVID/58 Heard By: Valorie Vega</i>	
03/27/2006	Status Check (9:30 AM) (Judicial Officer: Vega, Valorie J.) Events: 03/03/2006 Hearing <i>STATUS CHECK: INDIGENCE</i>	
03/27/2006	All Pending Motions (9:30 AM) (Judicial Officer: Vega, Valorie J.) <i>ALL PENDING MOTIONS FOR 3/27/06 Court Clerk: Billie Jo Craig Reporter/Recorder: Debi Van Blaricom Heard By: Valorie Vega</i>	
03/27/2006	Motion <i>ALL PENDING MOTIONS FOR 3/27/06</i>	01C1773940248.tif pages
04/06/2006	CANCELED Calendar Call (9:30 AM) <i>Vacated</i>	
04/07/2006	 Order <i>ORDER FOR WAIVER FOR STATE BAR FEE</i>	01C1773940249.tif pages
04/17/2006	CANCELED Jury Trial (10:00 AM) <i>Vacated</i>	
05/09/2006	 Motion <i>DEFT'S MTN IN LIMINE TO EXCLUDE ALL EVID RE: EVALUATION/64</i>	01C1773940250.tif pages
05/09/2006	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940251.tif pages
05/18/2006	 Opposition <i>STATES OPPOSITION TO DEFENDANTS MOTION IN LIMINE TO EXCLUDE ALL EVIDENCE REGARDING DR PAGLINIS EVALUATION OF MS LOBATO REGARDING DR PAGLINIS EVALUATION OF MS LOBATO</i>	01C1773940252.tif pages
05/19/2006	Motion in Limine (9:00 AM) <i>DEFT'S MTN IN LIMINE TO EXLCUDE PHOTOGRAPHS/44 Heard By: Valorie Vega</i>	

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

05/19/2006	Motion in Limine (9:00 AM) <i>DEFT'S MTN IN LIMINE TO EXCLUDE EVID OF THE BASEBALL BAT/45 Heard By: Valorie Vega</i>	
05/19/2006	Motion in Limine (9:00 AM) <i>DEFT'S MTN IN LIMINE TO EXCLUDE TESTIMONY OF LAURA JOHNSON/46 Heard By: Valorie Vega</i>	
05/19/2006	Motion in Limine (9:00 AM) <i>DEFT'S MTN IN LIMINE TO EXCLUDE CONTENTS OF LICENSE PLATE/47 Heard By: Valorie Vega</i>	
05/19/2006	Motion in Limine (9:00 AM) <i>DEFT'S MTN IN LIMINE TO EXCLUDE LOBATO'S TRIAL TESTIMONY/49 Heard By: Valorie Vega</i>	
05/19/2006	Motion in Limine (9:00 AM) <i>DEFT'S MTN IN LIMINE TO EXCLUDE STATEMENT MADE BY DEFT DURING INTERROG/50 Heard By: Valorie Vega</i>	
05/19/2006	Motion in Limine (9:00 AM) <i>DEFT'S MTN IN LIMINE TO EXCLUDE WITNESS TESTIMONY OR EVID PERTAIN TO HER JOURNAL/51 Heard By: Valorie Vega</i>	
05/19/2006	Motion (9:00 AM) <i>DEFT'S MTN TO ADMIT FORMER TESTIMONY OF DECEASED WITNESS/52 Heard By: Valorie Vega</i>	
05/19/2006	Motion in Limine (9:00 AM) <i>DEFT'S MTN IN LIMINE TO EXCLUDE EVIDENCE OF PRESUMPTIVE BLOOD TESTS /54 Heard By: Valorie Vega</i>	
05/19/2006	Motion to Dismiss (9:00 AM) <i>DEFT'S MTN TO DISMISS BASED ON STATE'S FAILURE TO PRESERVE & COLLECT EVID/58 Heard By: Valorie Vega</i>	
05/19/2006	Status Check (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>STATUS CHECK: INDIGENCE Court Clerk: Willa Pettice Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>	
05/19/2006	All Pending Motions (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>ALL PENDING MOTIONS(5/19/06) Court Clerk: Willa Pettice Reporter/Recorder: Lisa Lizotte Heard By: Valorie Vega</i>	
05/19/2006	Motion in Limine (9:30 AM) <i>DEFT'S MTN IN LIMINE TO EXCLUDE INFLAMMATORY & CUMULATIVE PHOTOGRAPHS/48</i>	
05/19/2006	Hearing <i>STATUS CHECK: SET DATE ON ARG/DEC ON MTN TO EXCLUDE TESTIMONY/EVIDENCE ON JOURNAL</i>	01C1773940253.tif pages
05/19/2006	Motion <i>ALL PENDING MOTIONS(5/19/06)</i>	01C1773940256.tif pages
05/23/2006	Status Check (9:00 AM) <i>STATUS CHECK: INDIGENCE</i>	
05/23/2006	Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 05/09/2006 Motion <i>DEFT'S MTN IN LIMINE TO EXCLUDE ALL EVID RE: EVALUATION/64</i>	

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

05/23/2006	Status Check (9:00 AM) Events: 05/19/2006 Hearing <i>STATUS CHECK: SET DATE ON ARG/DEC ON MTNTO EXCLUDE TESTIMONY/EVIDENCE ON JOURNAL</i>	
05/23/2006	All Pending Motions (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>ALL PENDING MOTIONS FOR 5/23/06 Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Valorie Vega</i>	
05/23/2006	Conversion Case Event Type <i>ARGUMENT/DECISION MOTION TO EXCLUDE TESTIMONY/EVIDENCE ON JOURNAL</i>	01C1773940254.tif pages
05/23/2006	Motion <i>ALL PENDING MOTIONS FOR 5/23/06</i>	01C1773940255.tif pages
05/26/2006	 Order Filed By: Defendant Lobato, Kirstin B <i>EX PARTE MOTION AND ORDER TO PREPARE TRANSCRIPT</i>	01C1773940257.tif pages
05/30/2006	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940258.tif pages
06/01/2006	 Reporters Transcript <i>REPORTER'S TRANSCRIPT OF HEARING OF ALL PENDING MOTIONS</i>	01C1773940259.tif pages
06/19/2006	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940260.tif pages
06/30/2006	 Reply Filed by: Defendant Lobato, Kirstin B <i>DEFENDANTS REPLY TO STATES OPPOSITION TO MOTION IN LIMINE TO EXCLUDE EVIDENCE REGARDING DR PAGLINIS EVALUATION OF MS LOBATO EVIDENCE REGARDING DR PAGLINIS EVALUATION OF MS LOBATO</i>	01C1773940261.tif pages
06/30/2006	 Brief Filed By: Defendant Lobato, Kirstin B <i>SUPPLEMENTAL BRIEFING IN SUPPORT OF DEFENDANTS MOTION IN LIMINE TO EXCLUDE WITNESS KORINDA MARTINS TESTIMONY IN ENTIRETY PER RECENTLY RECEIVED DISCOVERY COMPILED BY THE ATTORNEY GENERAL WITNESS KORINDA MARTINS TESTIMONY IN ENTIRETY PER RECENTLY RECEIVED DISCOVERY COMPILED BY THE ATTORNEY GENERAL</i>	01C1773940262.tif pages
07/19/2006	 Motion <i>DEFT'S MTN TO DISMISS /69</i>	01C1773940263.tif pages
07/19/2006	 Motion <i>DEFT'S MTN TO COMPEL /70</i>	01C1773940264.tif pages
07/19/2006	 Receipt of Copy Filed by: Defendant Lobato, Kirstin B <i>RECEIPT OF COPY</i>	01C1773940265.tif pages
		01C1773940266.tif pages

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

07/27/2006	 Opposition <i>STATES OPPOSITION TO DEFENDANTS MOTION TO DISMISS BECAUSE THE STATE CANNOT ESTABLISH THE CORPUS DELICTI OF THE CRIME WITH EVIDENCE INDEPENDENT OF LOBATOS EXTRAJUDICIAL ADMISSIONS ESTABLISH THE CORPUS DELICTI OF THE CRIME WITH EVIDENCE INDEPENDENT OF LOBATOS EXTRAJUDICIAL ADMISSIONS</i>	
07/28/2006	Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>DEFT'S MTN IN LIMINE TO EXCLUDE ALL EVIDRE: EVALUATION/64</i>	
07/28/2006	Hearing (9:00 AM) Events: 05/23/2006 Conversion Case Event Type <i>ARGUMENT/DECISION MOTION TO EXCLUDE TESTIMONY/EVIDENCE ON JOURNAL</i>	
07/28/2006	Motion to Dismiss (9:00 AM) Events: 07/19/2006 Motion <i>DEFT'S MTN TO DISMISS /69</i>	
07/28/2006	Motion to Compel (9:00 AM) Events: 07/19/2006 Motion <i>DEFT'S MTN TO COMPEL /70</i>	
07/28/2006	All Pending Motions (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>ALL PENDING MOTIONS (7/28/06) Relief Clerk: Willa Pettice Reporter/Recorder: Lisa Lizotte Heard By: Valorie Vega</i>	
07/28/2006	Conversion Case Event Type <i>ARGUMENT/DECISION ON DEFT'S MOTION TO DISMISS</i>	<i>01C1773940267.tif pages</i>
07/28/2006	Motion <i>ALL PENDING MOTIONS (7/28/06)</i>	<i>01C1773940268.tif pages</i>
08/04/2006	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ALL PENDING MOTIONS</i>	<i>01C1773940269.tif pages</i>
08/07/2006	 Reply Filed by: Defendant Lobato, Kirstin B <i>DEFENDANTS REPLY TO STATES OPPOSITION TO MOTION TO DISMISS BECAUSE THE STATE CANNOT ESTABLISH THE CORPUS DELICTI OF THE CRIME WITH EVIDENCE INDEPENDENT OF LOBATOS EXTRAJUDICIAL ADMISSIONS CANNOT ESTABLISH THE CORPUS DELICTI OF THE CRIME WITH EVIDENCE INDEPENDENT OF LOBATOS EXTRAJUDICIAL ADMISSIONS</i>	<i>01C1773940270.tif pages</i>
08/07/2006	 Order Filed By: Defendant Lobato, Kirstin B <i>ORDER</i>	<i>01C1773940271.tif pages</i>
08/10/2006	Hearing (10:30 AM) (Judicial Officer: Vega, Valorie J.) Events: 07/28/2006 Conversion Case Event Type <i>ARGUMENT/DECISION ON DEFT'S MOTION TO DISMISS Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Valorie Vega</i>	
08/18/2006	 Expert Witness List Filed By: Defendant Lobato, Kirstin B <i>AMENDED NOTICE OF DEFENDANTS EXPERT WITNESSES</i>	<i>01C1773940272.tif pages</i>
08/21/2006	 Expert Witness List <i>NOTICE OF EXPERT WITNESSES</i>	<i>01C1773940273.tif pages</i>

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

08/24/2006	 Motion <i>STATES MTN FOR RECIPROCAL DISCOVERY/73</i>	01C1773940274.tif pages
08/24/2006	 Expert Witness List Filed By: Defendant Lobato, Kirstin B <i>SECOND AMENDED NOTICE OF ALIBI WITNESSES</i>	01C1773940275.tif pages
08/30/2006	 Media Request and Order <i>MEDIA REQUEST AND ORDER</i>	01C1773940276.tif pages
09/01/2006	 Expert Witness List Filed By: Defendant Lobato, Kirstin B <i>NOTICE OF WITNESSES</i>	01C1773940277.tif pages
09/07/2006	Motion (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 08/24/2006 Motion <i>STATES MTN FOR RECIPROCAL DISCOVERY/73 Heard By: Valorie Vega</i>	
09/07/2006	Calendar Call (9:30 AM) (Judicial Officer: Vega, Valorie J.) <i>CALENDAR CALL Heard By: Valorie Vega</i>	
09/07/2006	All Pending Motions (9:30 AM) (Judicial Officer: Vega, Valorie J.) <i>ALL PENDING MOTIONS FOR 9/7/06 Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Valorie Vega</i>	
09/07/2006	Motion in Limine (10:15 AM) <i>DEFT'S MTN IN LIMINE TO EXCLUDE INFLAMMATORY & CUMULATIVE PHOTOGRAPHS/48</i>	
09/07/2006	Motion <i>ALL PENDING MOTIONS FOR 9/7/06</i>	01C1773940278.tif pages
09/08/2006	 Order <i>ORDER</i>	01C1773940279.tif pages
09/08/2006	 Order <i>ORDER</i>	01C1773940280.tif pages
09/08/2006	 Request <i>EX PARTE MOTION FOR RELEASE OF INFORMATION</i>	01C1773940281.tif pages
09/08/2006	 Request <i>EX PARTE MOTION FOR RELEASE OF INFORMATION</i>	01C1773940282.tif pages
09/11/2006	Jury Trial (10:30 AM) (Judicial Officer: Vega, Valorie J.) <i>TRIAL BY JURY Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>	
09/11/2006	Motion in Limine (11:00 AM) (Judicial Officer: Vega, Valorie J.) <i>DEFT'S MTN IN LIMINE TO EXCLUDE INFLAMMATORY & CUMULATIVE PHOTOGRAPHS/48</i>	
09/11/2006	 Request <i>MOTION TO ADMIT PRIOR TESTIMONY OF JEREMY DAVIS AND RICHARD SHOTT</i>	01C1773940284.tif pages

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

09/12/2006	Jury Trial (10:30 AM) <i>TRIAL BY JURY Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>
09/12/2006	Motion in Limine (11:00 AM) <i>DEFT'S MTN IN LIMINE TO EXCLUDE INFLAMMATORY & CUMULATIVE PHOTOGRAPHS/48</i>
09/13/2006	Jury Trial (1:00 PM) <i>TRIAL BY JURY Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>
09/13/2006	 Media Request and Order <i>MEDIA REQUEST AND ORDER</i>
09/14/2006	Jury Trial (10:30 AM) <i>TRIAL BY JURY Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>
09/15/2006	Jury Trial (10:30 AM) <i>TRIAL BY JURY Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>
09/18/2006	Jury Trial (1:00 PM) <i>TRIAL BY JURY Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>
09/19/2006	Jury Trial (10:30 AM) <i>TRIAL BY JURY Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>
09/20/2006	Jury Trial (1:15 PM) <i>TRIAL BY JURY Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>
09/21/2006	Jury Trial (10:00 AM) <i>TRIAL BY JURY Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>
09/21/2006	 Media Request and Order <i>MEDIA REQUEST AND ORDER</i>
09/22/2006	Jury Trial (10:30 AM) <i>TRIAL BY JURY Relief Clerk: Michelle Jones Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>
09/25/2006	Jury Trial (11:00 AM) <i>TRIAL BY JURY Relief Clerk: Michelle Jones Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>
09/26/2006	Jury Trial (10:30 AM) <i>TRIAL BY JURY Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>
09/27/2006	Jury Trial (1:00 PM) <i>TRIAL BY JURY Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>
09/28/2006	Jury Trial (1:00 PM) <i>TRIAL BY JURY Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>

01C1773940286.tif pages

01C1773940287.tif pages

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

09/29/2006	Jury Trial (10:30 AM) <i>TRIAL BY JURY Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>	
10/02/2006	Jury Trial (1:00 PM) <i>TRIAL BY JURY Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>	
10/03/2006	Jury Trial (10:30 AM) <i>TRIAL BY JURY Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>	
10/04/2006	Jury Trial (1:00 PM) <i>TRIAL BY JURY Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>	
10/05/2006	Jury Trial (8:30 AM) (Judicial Officer: Vega, Valorie J.) <i>TRIAL BY JURY Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>	
10/06/2006	Jury Trial (8:30 AM) <i>TRIAL BY JURY Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Valorie Vega</i>	
10/06/2006	Conversion Case Event Type <i>SENTENCING</i>	01C1773940290.tif pages
10/06/2006	Judgment <i>VERDICT</i>	01C1773940291.tif pages
10/06/2006	 Instructions to the Jury <i>INSTRUCTIONS TO THE JURY</i>	01C1773940292.tif pages
10/06/2006	 Verdict <i>VERDICT</i>	01C1773940293.tif pages
10/06/2006	Disposition (Judicial Officer: User, Conversion) 1. DEGREES OF MURDER Charges Amended/Dropped	
10/10/2006	 Proposed Jury Instructions Not Used At Trial <i>PROPOSED JURY INSTRUCTIONS NOT USED AT TRIAL</i>	01C1773940294.tif pages
10/19/2006	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	01C1773940295.tif pages
10/30/2006	 Order <i>ORDER</i>	01C1773940296.tif pages
10/30/2006	 Order <i>ORDER</i>	01C1773940297.tif pages
10/30/2006	 Order <i>ORDER</i>	01C1773940298.tif pages

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

10/30/2006	 Order <i>ORDER DENYING DEFENDANTS MOTION TO DISMISS</i>	<i>01C1773940299.tif pages</i>
11/03/2006	 Media Request and Order <i>MEDIA REQUEST AND ORDER FOR CAMERA ACCESS TO COURT PROCEEDINGS</i>	<i>01C1773940301.tif pages</i>
11/06/2006	 Conversion Case Event Type <i>ORDER TO TRANSPORT</i>	<i>01C1773940300.tif pages</i>
11/17/2006	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>LETTERS IN AID OF SENTENCING</i>	<i>01C1773940302.tif pages</i>
11/20/2006	 Statement Filed by: Defendant Lobato, Kirstin B <i>STATEMENT OF DEFENDANT IN AID OF SENTENCING</i>	<i>01C1773940303.tif pages</i>
11/21/2006	Sentencing (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 10/06/2006 Conversion Case Event Type <i>SENTENCING Court Clerk: Billie Jo Craig Reporter/Recorder: Lisa Lizotte Heard By: Vega, Valorie J.</i>	
11/30/2006	 Conversion Case Event Type Party: Defendant Lobato, Kirstin B <i>ORDER TO TRANSPORT</i>	<i>01C1773940304.tif pages</i>
01/30/2007	 Memorandum Filed By: Defendant Lobato, Kirstin B <i>DEFENDANT LOBATOS SENTENCING MEMORANDUM</i>	<i>01C1773940305.tif pages</i>
02/02/2007	Sentencing (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>SENTENCING Relief Clerk: Pamela Humphrey Reporter/Recorder: Lisa Lizotte Heard By: Valorie Vega</i>	
02/02/2007	Disposition (Judicial Officer: User, Conversion) 1. VOLUNTARY MANSLAUGHTER Guilty	
02/02/2007	Disposition (Judicial Officer: User, Conversion)	
02/02/2007	Disposition (Judicial Officer: User, Conversion) 1. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Guilty	
02/02/2007	Disposition (Judicial Officer: User, Conversion) 2. SEXUAL PENETRATION OF DEAD HUMAN BODY Guilty	
02/02/2007	Disposition (Judicial Officer: User, Conversion)	
02/02/2007	Sentence (Judicial Officer: User, Conversion) 1. VOLUNTARY MANSLAUGHTER Adult Adjudication Converted Disposition: Sentence# 0001: Minimum 20 Years to Maximum 50 Years	

CASE SUMMARY**CASE No. 01C177394**

Placement: NSP
 Converted Disposition:
 Sentence# 0002:
 Minimum 20 Years to Maximum 50 Years
 Placement: NSP
 Cons/Conc: Consecutive
 w/Charge Item: 0001
 and Sentence#: 0001
 Converted Disposition:
 Sentence# 0003: CREDIT FOR TIME SERVED
 Minimum 233 Days to Maximum 233 Days
 Converted Disposition:
 Sentence# 0004: ADMINISTRATION FEE
 Amount: \$25.00
 Converted Disposition:
 Sentence# 0006: SENTENCE VACATED
 Converted Disposition:
 Sentence# 0007:
 Minimum 48 Months to Maximum 120 Months
 Placement: NSP
 Converted Disposition:
 Sentence# 0008:
 Minimum 48 Months to Maximum 120 Months
 Placement: NSP
 Cons/Conc: Consecutive
 w/Charge Item: 0001
 and Sentence#: 0007
 Converted Disposition:
 Sentence# 0009: CREDIT FOR TIME SERVED
 Minimum 999 Days to Maximum 999 Days
 Converted Disposition:
 Sentence# 0010: CREDIT FOR TIME SERVED
 Minimum 545 Days to Maximum 545 Days
 Converted Disposition:
 Sentence# 0011: LIFETIME SUPERVISION
 Converted Disposition:
 Sentence# 0012: PSYCHO-SEXUAL EVALUATION FEE
 Amount: \$800.00
 Converted Disposition:
 Sentence# 0013: FINE
 Amount: \$1000.00
 Converted Disposition:
 Sentence# 0014: DNA FEE/GENETIC MARKERS ANALYSIS
 Amount: \$150.00
 Converted Disposition:
 Sentence# 0015: ADMINISTRATION FEE
 Amount: \$25.00

02/02/2007

Sentence (Judicial Officer: User, Conversion)**2. SEXUAL PENETRATION OF DEAD HUMAN BODY****Adult Adjudication**

Converted Disposition:
 Sentence# 0001:
 Minimum 5 Years to Maximum 15 Years
 Placement: NSP
 Cons/Conc: Concurrent
 w/Charge Item: 0001
 and Sentence#: 0001
 Converted Disposition:
 Sentence# 0002: LIFETIME SUPERVISION
 Converted Disposition:
 Sentence# 0003: DNA FEE/GENETIC MARKERS ANALYSIS
 Amount: \$150.00
 Converted Disposition:
 Sentence# 0004: SENTENCE VACATED

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

02/14/2007	 Judgment <i>JUDGMENT OF CONVICTION/PSYCHOSEXUAL FEE</i>	01C1773940307.tif pages
02/14/2007	Judgment <i>JUDGMENT OF CONVICTION/FINE</i>	01C1773940308.tif pages
03/12/2007	 Request Filed by: Defendant Lobato, Kirstin B <i>REQUEST FOR ROUGH DRAFT TRANSCRIPT</i>	01C1773940309.tif pages
03/12/2007	 Statement Filed by: Defendant Lobato, Kirstin B <i>CASE APPEAL STATEMENT</i>	01C1773940310.tif pages
03/12/2007	 Notice of Appeal Filed By: Defendant Lobato, Kirstin B <i>NOTICE OF APPEAL (SC 49087)</i>	01C1773940311.tif pages
05/16/2007	 Certificate <i>CERTIFICATE OF MAILING</i>	01C1773940313.tif pages
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT STATES MOTION FOR RECIPROCAL DISCOVERY DEFENDANTS MOTION IN LIMINE TO EXCLUDE INFLAMMATORY AND CUMULATIVE PHOTOGRAPHS DEFENDANTS MOTION IN LIMINE TO EXCLUDE INFLAMMATORY AND CUMULATIVE PHOTOGRAPHS</i>	01C1773940314.tif pages
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT STATUS CHECK INDIGENCE</i>	01C1773940315.tif pages
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT SENTENCING</i>	01C1773940316.tif pages
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT JURY TRIAL DAY 10 VOLUME X</i>	01C1773940317.tif pages
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT JURY TRIAL DAY 8 VOLUME VIII</i>	01C1773940318.tif pages
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT JURY TRIAL DAY 7 VOLUME VII</i>	01C1773940319.tif pages
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT JURY TRIAL DAY 12 VOLUME XII</i>	01C1773940320.tif pages
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT JURY TRIAL DAY 2 VOLUME II</i>	01C1773940321.tif pages
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT JURY TRIAL DAY 1 VOLUME I</i>	01C1773940322.tif pages
05/16/2007	 Reporters Transcript	01C1773940323.tif pages

CASE SUMMARY**CASE No. 01C177394**

	<i>REPORTER'S TRANSCRIPT ROUGH DRAFT DEFENDANTS ORAL MOTION FOR BAIL REDUCTION REDUCTION</i>	
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT DEFENDANTS MOTION TO CONTINUE TRIAL DATE</i>	<i>01C1773940324.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT DEFENDANTS MOTION TO ASSOCIATE COUNSEL</i>	<i>01C1773940325.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT DEFENDANTS MOTION IN LIMINE</i>	<i>01C1773940326.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT DEFENDANTS MOTION IN LIMINE</i>	<i>01C1773940327.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT JURY TRIAL DAY 14 VOLUME XIV</i>	<i>01C1773940328.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT JURY TRIAL DAY 16 VOLUME XVI</i>	<i>01C1773940329.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT JURY TRIAL DAY 20 VOLUME XX</i>	<i>01C1773940331.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT SENTENCING</i>	<i>01C1773940332.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGHT DRAFT DEFENDANTS MOTIONS IN LIMINE</i>	<i>01C1773940333.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT JURY TRIAL DAY 9 VOLUME IX</i>	<i>01C1773940334.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT JURY TRIAL DAY 5 VOLUME V</i>	<i>01C1773940335.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT JURY TRIAL DAY 3 VOLUME III</i>	<i>01C1773940336.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT DEFENDANTS MOTION TO CONTINUE TRIAL</i>	<i>01C1773940337.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT DEFENDANTS MOTION TO ASSOCIATE COUNSEL</i>	<i>01C1773940338.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT JURY TRIAL DAY 13 VOLUME XIII</i>	<i>01C1773940339.tif pages</i>
05/16/2007		<i>01C1773940340.tif pages</i>

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT JURY TRIAL DAY 17 VOLUME XVII</i>	
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT ARGUMENT/DECISION MOTION TO DISMISS AND DEFENDANTS MOTIONS IN LIMINE TO EXCLUDED INFLAMMATORY AND CUMULATIVE PHOTOGRAPHS AND DEFENDANTS MOTIONS IN LIMINE TO EXCLUDED INFLAMMATORY AND CUMULATIVE PHOTOGRAPHS</i>	<i>01C1773940341.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT JURY TRIAL DAY 6 VOLUME VI</i>	<i>01C1773940342.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT AT THE REQUEST OF THE COURT RESET TRIAL DATE</i>	<i>01C1773940343.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT DEFENDANTS MOTION IN LIMINE</i>	<i>01C1773940344.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT JURY TRIAL DAY 19 VOLUME XIX</i>	<i>01C1773940345.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT JURY TRIAL DAY 11 VOLUME XI</i>	<i>01C1773940346.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT RESET TRIAL DATE</i>	<i>01C1773940347.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT JURY TRIAL DAY 4 VOLUME IV</i>	<i>01C1773940348.tif pages</i>
05/16/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT JURY TRIAL DAY 15 VOLUME XV</i>	<i>01C1773940349.tif pages</i>
05/17/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT ROUGH DRAFT JURY TRIAL DAY 18 VOLUME XVIII</i>	<i>01C1773940330.tif pages</i>
11/02/2007	 Reporters Transcript <i>REPORTER'S TRANSCRIPT RE JURY TRIAL DAY 12 VOLUME XII PORTION OF TRANSCRIPT</i>	<i>01C1773940350.tif pages</i>
02/13/2008	 Request <i>EX PARTE MOTION FOR EXPEDITED VIDEO TESTIMONY RECORD</i>	<i>01C1773940351.tif pages</i>
02/13/2008	 Order <i>ORDER FOR EXPEDITED VIDEO TESTIMONY RECORD</i>	<i>01C1773940352.tif pages</i>
07/28/2008	 Receipt of Copy <i>RECEIPT OF COPY</i>	<i>01C1773940193.tif pages</i>
10/20/2008	 Notice Filed By: Defendant Lobato, Kirstin B	<i>01C1773940210.tif pages</i>

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

	<i>AMENDED NOTICE OF ALIBI WITNESS</i>	
10/16/2009	 Judgment <i>CLERK'S CERTIFICATE JUDGMENT AFFIRMED</i>	<i>01C1773940354.tif pages</i>
10/16/2009	Judgment <i>CLERK'S CERTIFICATE REHEARING DENIED</i>	<i>01C1773940355.tif pages</i>
10/16/2009	Judgment <i>CLERK'S CERTIFICATE PETITION DENIED</i>	<i>01C1773940356.tif pages</i>
05/05/2010	 Affidavit in Support Filed By: Defendant Lobato, Kirstin B <i>AFFIDAVIT IN SUPPORT OF REQUES TO PROCEED IN FORMA PAUPERIS</i>	<i>01C1773940357.tif pages</i>
05/05/2010	 Petition Filed by: Defendant Lobato, Kirstin B <i>PETITION FOR WRIT OF HABEAS CORPUS - POST CONVICTION AND MTN FOR APPOINTMENT OF COUNSEL OF COUNSEL</i>	<i>01C1773940358.tif pages</i>
05/05/2010	 Affidavit in Support Filed By: Defendant Lobato, Kirstin B <i>AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS</i>	<i>01C1773940360.tif pages</i>
05/07/2010	Petition <i>PTN FOR WRIT OF HABEAS CORPUS VJ 7/15/10</i>	<i>01C1773940359.tif pages</i>
05/07/2010	 Order for Petition for Writ of Habeas Corpus <i>ORDER FOR PETITION FOR A WRIT OF HABEAS CORPUS</i>	<i>01C1773940361.tif pages</i>
05/11/2010	 Certificate Filed By: Defendant Lobato, Kirstin B <i>CERTIFICATE OF SERVICE BY MAIL</i>	<i>01C1773940362.tif pages</i>
06/04/2010	 Affidavit in Support Filed By: Defendant Lobato, Kirstin B <i>AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS SUPPLEMENTAL</i>	<i>01C1773940363.tif pages</i>
06/08/2010	 Certificate Filed By: Defendant Lobato, Kirstin B <i>CERTIFICATE OF SERVICE BY MAIL</i>	<i>01C1773940364.tif pages</i>
06/28/2010	 Motion <i>STATE'S MTN FOR EXTENDED BRIEFING SCHEDULE/0</i>	<i>01C1773940366.tif pages</i>
07/08/2010	 Change of Address Filed By: Defendant Lobato, Kirstin B <i>NOTICE OF CHANGE OF ADDRESS</i>	<i>01C1773940367.tif pages</i>
07/15/2010	Motion (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 06/28/2010 Motion <i>STATE'S MTN FOR EXTENDED BRIEFING SCHEDULE/0 Court Clerk: Nora Pena Relief Clerk: Sylvia Courtney/sc Reporter/Recorder: Lisa Lizotte Heard By: Valorie Vega</i>	
07/15/2010	Petition	<i>01C1773940368.tif pages</i>

CASE SUMMARY**CASE No. 01C177394***DEFT'S PTN FOR WRIT OF HABEAS CORPUS*

07/22/2010	CANCELED Petition for Writ of Habeas Corpus (10:30 AM) Events: 05/07/2010 Petition <i>Vacated</i>
08/20/2010	 Response Filed by: Plaintiff State of Nevada <i>State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)</i>
09/07/2010	 Motion Filed By: Defendant Lobato, Kirstin B <i>Petitioner Lobato's Notice of Motion for an Expedited Hearing and Motion for an Extension of Time to File an Answer to the State's Response</i>
09/07/2010	 Motion Filed By: Defendant Lobato, Kirstin B <i>Petitioner Lobato's Notice of Motion and Motion for the Court Clerk to Assign a Civil Case Number as Required by NRS</i>
09/07/2010	 Motion Filed By: Defendant Lobato, Kirstin B <i>Petitioner Lobato's Notice of Motion and Motion for Recusal of Judge Valorie Vega</i>
09/13/2010	 Recorders Transcript of Hearing <i>Recorder's Transcript Re: State's Motion for Extended Briefing Schedule- Heard 07-15-2010</i>
09/14/2010	 Opposition <i>State's Motion to Strike or, In the Alternative, Opposition to Defendant's Motions for Recusal of Judge Vega, for Expedited Hearing and Extension of Time, and Assignment of a Civil Case Number</i>
09/16/2010	 Supplement <i>Supplement to State's Motion to Strike or, in the Alternative, Opposition to Improper Motions for Recusal of Judge Vegas, Expedited Hearing and Extension of Time and Assignment of Civil Case Number</i>
09/16/2010	 Application Filed By: Plaintiff State of Nevada <i>Application and Order for Transcripts</i>
09/17/2010	Motion (3:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 09/07/2010 Motion <i>Petitioner Lobato's Notice of Motion for an Expedited Hearing and Motion for an Extension of Time to File an Answer to the State's Response</i>
09/17/2010	Motion (3:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 09/07/2010 Motion <i>Petitioner Lobato's Notice of Motion and Motion for the Court Clerk to Assign a Civil Case Number as Required by NRS</i>
09/17/2010	Motion (3:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 09/07/2010 Motion <i>Petitioner Lobato's Notice of Motion and Motion for Recusal of Judge Valorie Vega</i>
09/17/2010	Motion to Strike (3:00 AM) (Judicial Officer: Vega, Valorie J.)

CASE SUMMARY**CASE No. 01C177394**

Events: 09/14/2010 Opposition

State's motion to strike or, in the alternative, opposition to improper motions for recusal of Judge Vega, Expedited Hearing and Extension of Time, and Assignment of Civil Case Number

09/17/2010	 All Pending Motions (3:00 AM) (Judicial Officer: Vega, Valorie J.)
09/17/2010	 Motion Filed By: Defendant Lobato, Kirstin B <i>Petitioner Lobato's Notice of Motion for an Expedited Hearing and Motion for an Extension of Time to File an Answer to the State's Response</i>
09/21/2010	 Notice of Motion <i>Petitioner Lobato's Notice of Motion and Motion for Recusal of Judge Valorie Vega</i>
09/21/2010	 Notice of Motion <i>Petitioner Lobato's Notice of Motion for An Expedited Hearing and Motion for an Extension of Time to File an Answer to the State's Response</i>
09/21/2010	 Notice of Motion <i>Petitioner Lobato's Notice of Motion and Motion for the Court Clerk to Assign a Civil Case Number as Required by the NRS</i>
09/22/2010	 Order Filed By: Plaintiff State of Nevada <i>Order Sua Sponte Striking Defendant's Pro Per Motions and Granting the State's Motion to Strike</i>
09/23/2010	 Notice of Change of Hearing
09/27/2010	 Affidavit <i>Opening Procedural Remarks</i>
09/28/2010	 Motion (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>Per Court's Request</i>
09/29/2010	 Opposition <i>State's Motion to Strike or, In the Alternative, Opposition to Defendant's Motion for Recusal of Judge Vega</i>
10/01/2010	 Supplement Filed by: Defendant Lobato, Kirstin B <i>Supplement to Petitioner Lobato's Motion for Recusal of Judge Valorie Vega</i>
10/02/2010	 Answer (Criminal) Filed By: Defendant Lobato, Kirstin B <i>Petitioner Lobato's Answer to the State's Response to the Petition for Writ of Habeas Corpus (Post Conviction) and Motion for Appointment of Counsel</i>
10/02/2010	 Motion Filed By: Defendant Lobato, Kirstin B <i>Petitioner Lobato's Notice Of Motion And Motion For Reconsideration And Vacating Of The Court's Order Striking Three Motion's By Petitioner, And Petitioner's Response To The State's Motion To Strike Or, In The Alternative, Opposition To Improper Motion For Recusal Of Judge Vega, Expedited Hearing, And Extension Of Time, And Assignment Of</i>

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

Civil Case Number.

10/04/2010	 Order for Production of Inmate
10/05/2010	Motion (9:00 AM) (Judicial Officer: Smith, Douglas E.) 10/05/2010, 10/20/2010 Events: 09/21/2010 Notice of Motion <i>Petitioner Lobato's Notice of Motion and Motion for Recusal of Judge Valorie Vega</i>
10/05/2010	Motion to Strike (9:00 AM) (Judicial Officer: Smith, Douglas E.) 10/05/2010, 10/20/2010 Events: 09/29/2010 Opposition <i>State's Motion to Strike or, In the Alternative, Opposition to Defendant's Motion for Recusal of Judge Vega</i>
10/05/2010	 All Pending Motions (9:00 AM) (Judicial Officer: Vega, Valorie J.)
10/05/2010	 Certificate of Service Filed by: Defendant Lobato, Kirstin B <i>Certificate of Service by Mail</i>
10/07/2010	 Supplement <i>Supplement to Court's Procedural Remarks and Answer</i>
10/07/2010	 Order for Production of Inmate <i>Order for Production of Inmate</i>
10/11/2010	 Certificate of Service Filed by: Defendant Lobato, Kirstin B
10/14/2010	 Opposition <i>State's Opposition to Defendant's Motion for Reconsideration and Vacating Court's Order Striking Three Motions by Petitioner, and Petitioner's Response to the State's Motion to Strike or, in the Alternative, Opposition to Improper Motions for Recusal of Judge Vega, Expedited Hearing and Extension of Time, and Assignment of a Civil Case Number</i>
10/16/2010	 Certificate of Service Filed by: Defendant Lobato, Kirstin B
10/19/2010	 Motion (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 10/02/2010 Motion <i>Petitioner Lobato's Notice Of Motion And Motion For Reconsideration And Vacating Of The Court's Order Striking Three Motion's By Petitioner, And Petitioner's Response To The State's Motion To Strike Or, In The Alternative, Opposition To Improper Motion For Recusal Of Judge Vega, Expedited Hearing, And Extension Of Time, And Assignment Of Civil Case Number.</i>
10/20/2010	 All Pending Motions (8:30 AM) (Judicial Officer: Smith, Douglas E.) <i>Petitioner Lobato's Notice of Motion and Motion for Recusal of Judge Valorie Vega; State's Motion to Strike or, In the Alternative, Opposition to Defendant's Motion for Recusal of Judge Vega</i>
11/01/2010	 Motion Filed By: Defendant Lobato, Kirstin B <i>Motion for an Order in Accordance with the Prisoner Mailbox Rule that the Clerk's Office Correct the Filing Date to September 10, 2010 of Peittioner Lobato's Notice of Motion for</i>

CASE SUMMARY**CASE No. 01C177394**

Expedited Hearing and Motion for an Extension of Time to File an Answer to the State's Response

11/03/2010	 Opposition <i>State's Opposition to Defendant s Motion for An Expedited Hearing and Motion for An Extension of Time to File an Answer to the State s Response</i>
11/03/2010	 Opposition <i>State's Opposition to Defendant s Motion for the Clerk to Assign a Civil Case Number as Required by the NRS</i>
11/05/2010	 Notice <i>Notice of Appearance</i>
11/08/2010	 Opposition <i>State's Opposition to Defendants for and Order in Accordance with the Prisoner Mailbox Rule that the Clerk s Office Correct the Filing Date to September 10, 2010, of Defendants Motion for An Expedited Hearing and Motion for An Extension of Time to File an Answer to the State Response</i>
11/09/2010	Status Check (9:00 AM) (Judicial Officer: Vega, Valorie J.) 11/09/2010, 01/13/2011 <i>Status Check: Reset Hearing on Defendant's Pro Per Petition for Writ of Habeas Corpus</i>
11/09/2010	Status Check (9:00 AM) (Judicial Officer: Vega, Valorie J.) 11/09/2010, 01/13/2011 Events: 09/17/2010 Motion 09/21/2010 Notice of Motion <i>Status Check: Reset hearing date for Petitioner Lobato's Notice of Motion for an Expedited Hearing and Motion for an Extension of Time to File an Answer to the State's Response</i>
11/09/2010	Motion (9:00 AM) (Judicial Officer: Vega, Valorie J.) 11/09/2010, 01/13/2011 Events: 09/21/2010 Notice of Motion <i>Reset hearing date on Petitioner Lobato's Notice of Motion and Motion for the Court Clerk to Assign a Civil Case Number as Required by the NRS</i>
11/09/2010	Motion (9:00 AM) (Judicial Officer: Vega, Valorie J.) 11/09/2010, 01/13/2011 <i>Petitioner Lobato's Notice Of Motion And Motion For Reconsideration And Vacating Of The Court's Order Striking Three Motion's By Petitioner, And Petitioner's Response To The State's Motion To Strike Or, In The Alternative, Opposition To Improper Motion For Recusal Of Judge Vega, Expedited Hearing, And Extension Of Time, And Assignment Of Civil Case Number.</i>
11/09/2010	 All Pending Motions (9:00 AM) (Judicial Officer: Vega, Valorie J.)
11/15/2010	 Order for Production of Inmate <i>Order for Production of Inmate Kirstin Lobato BAC #95558</i>
11/23/2010	 Notice of Motion <i>Notice of Motion and Renewed Motion for Appointment of Counsel</i>
11/23/2010	 Motion <i>Notice of Motion and Motion for Limited Discovery for Good Cause</i>
11/29/2010	

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

	 Errata <i>Errata Re: Notice of Motion and Motion for Limited Discovery for Good Cause</i>
12/09/2010	 At Request of Court - RDP (9:00 AM) (Judicial Officer: Vega, Valorie J.)
12/13/2010	 Notice <i>Notice of State's Failure to Timely File Opposition to Petitioner's Motion for Limited Discovery for Good Cause</i>
12/13/2010	 Notice <i>Notice of State's Failure to Timely File Opposition to Petitioner's Renewed Motion for Appointment of Counsel</i>
12/16/2010	 Motion <i>Notice of Motion and Motion for Leave to Conduct Limited Discovery of Carboard Shoeprint Evidence</i>
12/22/2010	 Opposition <i>State's Opposition to Defendant s Motion for Limited Discovery and Notice of State s Failure to File a Timely Response</i>
12/22/2010	 Opposition <i>State's Opposition to Defendant s Renewed Motion for Appointment of Counsel and Notice of State s Failure to File a Timely Response</i>
12/30/2010	 Order for Production of Inmate
01/05/2011	 Reply <i>Reply in Support of Renewed Motion for Appointment of Counsel</i>
01/05/2011	 Reply <i>Reply in Support of Motion for Limited Discovery for Good Cause</i>
01/10/2011	 Opposition <i>State's Opposition to Defendant s Motion for Limited Discovery of Cardboard Shoeprint Evidence</i>
01/13/2011	Motion (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>Notice of Motion and Motion for Leave to Conduct Limited Discovery of Cardboard Shoeprint Evidence</i>
01/13/2011	Motion (10:30 AM) (Judicial Officer: Vega, Valorie J.) Events: 11/01/2010 Motion <i>Motion for an Order in Accordance with the Prisoner Mailbox Rule that the Clerk's Office Correct the Filing Date to September 10, 2010 of Peittioner Lobato's Notice of Motion for Expedited Hearing and Motion for an Extension of Time to File an Answer to the State's Response</i>
01/13/2011	Motion (10:30 AM) (Judicial Officer: Vega, Valorie J.) <i>Notice of Motion and Renewed Motion for Appointment of Counsel</i>
01/13/2011	Motion (10:30 AM) (Judicial Officer: Vega, Valorie J.) Events: 12/16/2010 Motion <i>Notice of Motion and Motion for Limited Discovery for Good Cause</i>
01/13/2011	CANCELED All Pending Motions (10:30 AM) (Judicial Officer: Vega, Valorie J.)

DEPARTMENT 2
CASE SUMMARY
CASE No. 01C177394

Vacated

01/13/2011	CANCELED Status Check (10:30 AM) (Judicial Officer: Vega, Valorie J.) <i>Vacated - per Clerk</i> <i>Duplicate Entry/Calendaring Error</i>
01/13/2011	 All Pending Motions (10:30 AM) (Judicial Officer: Vega, Valorie J.)
02/14/2011	 Order Denying Motion Filed By: Plaintiff State of Nevada <i>Order Denying Defendant's Motion for Leave to Conduct Limited Discovery of Cardboard Shoeprint Evidence</i>
02/15/2011	 Order for Production of Inmate <i>Order for Production of Inmate Kirstin Lobato, Bac #95558</i>
02/24/2011	 Supplemental <i>Supplemental Exhibits to Petitioner's Answer in Support of Petition for Writ of Habeas Corpus</i>
02/28/2011	 Opposition <i>State's Opposition and Motion to Strike Defendant's Supplemental Exhibits to Petitioner's Answer in Support of Petition for Writ of Habeas Corpus</i>
03/01/2011	 Petition <i>Petition Requesting Post-Conviction DNA Testing Pursuant to NRS 176.0918</i>
03/01/2011	Hearing (10:30 AM) (Judicial Officer: Vega, Valorie J.) <i>Petition for Writ of Habeas Corpus</i>
03/01/2011	Hearing (10:30 AM) (Judicial Officer: Vega, Valorie J.) <i>Motion for Court Clerk to Assign a Civil Case Number as Required by NRS</i>
03/01/2011	 All Pending Motions (10:30 AM) (Judicial Officer: Vega, Valorie J.)
03/02/2011	 Order Denying Motion Filed By: Plaintiff State of Nevada <i>Order Denying Defendant's Motion for Limited Discovery for Good Cause</i>
03/07/2011	 Order Denying Motion Filed By: Plaintiff State of Nevada <i>Order Denying Defendant's Renewed Motion for Appointment of Counsel</i>
03/17/2011	 Recorders Transcript of Hearing Party: Plaintiff State of Nevada <i>Records Transcript Re: Hearing: Petition For Writ Of Habeas Corpus Hearing: Motion For Court Clerk To Assign A Civil Case Number As Required By NRS - Heard 03/01/2011</i>
03/31/2011	 Petition (9:00 AM) (Judicial Officer: Vega, Valorie J.) 03/31/2011, 05/10/2011, 06/07/2011 Events: 03/01/2011 Petition <i>Status Check on the Petition Requesting Post Conviction DNA Testing Pursuant to NRS 176.0918</i>
04/14/2011	 Opposition

CASE SUMMARY**CASE No. 01C177394**

State's Opposition to Defendant's Petition for Genetic Marker Analysis Pursuant to NRS 176.0918

04/26/2011	 Hearing (11:00 AM) (Judicial Officer: Vega, Valorie J.) <i>Hearing at the Request of the Court Re: NRS 176.0918(4)(c)</i>
04/27/2011	 Notice
04/28/2011	 Reply <i>Reply in Support of Petition Requesting Post-Conviction DNA Testing Pursuant to NRS 176.0918</i>
04/28/2011	 Order Denying Motion <i>Order Denying Defendant's Motion for Court Clerk to Assign a Civil Case Number as Required by the NRS</i>
05/11/2011	 Order <i>Order of Preservation Pursuant to NRS 176.0918</i>
05/11/2011	 Order Granting Motion Filed By: Plaintiff State of Nevada <i>Order Granting State's Motion to Strike Defendant's Supplemental Exhibits to Petitioner's Answer in Support of Petition for Writ of Habeas Corpus</i>
05/13/2011	 Notice of Entry of Order <i>Notice of Entry of Order</i>
06/16/2011	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff State of Nevada
06/30/2011	 Reporters Transcript Filed By: Plaintiff State of Nevada <i>Reporters Transcript Re: Deft's Petition Requesting Post-Conviction DNA Testing Pursuant to NRS 176.0918 - Heard 06/07/2011</i>
07/27/2011	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff State of Nevada <i>Findings of Fact, Conclusions of Law and Order Denying Petition Requesting Post-Conviction DNA Testing Pursuant to NRS 176.0918</i>
08/01/2011	 Notice of Appeal (criminal) <i>Notice of Appeal</i>
08/01/2011	 Case Appeal Statement <i>Case Appeal Statement</i>
08/01/2011	 Motion to Reconsider <i>Motion to Reconsider Order re: Petition Requesting Post-Conviction DNA Testing Pursuant to NRS 176.0918</i>
08/02/2011	Notice of Entry of Decision and Order
08/02/2011	Notice of Entry of Decision and Order

CASE SUMMARY**CASE No. 01C177394**

09/01/2011 | **Motion to Reconsider** (9:00 AM) (Judicial Officer: Vega, Valorie J.)
Events: 08/01/2011 Motion to Reconsider
*Motion to Reconsider Order re: Petition Requesting Post-Conviction DNA Testing
Pursuant to NRS 176.0918*

DATE**FINANCIAL INFORMATION**

Defendant Lobato, Kirstin B
Total Charges
Total Payments and Credits
Balance Due as of 8/2/2011

10,213.00
47.34
10,165.66

1 **ORDR**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 Tyler D. Smith
6 Deputized Law Clerk
7 Nevada Bar #011870
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 KIRSTIN BLAISE LOBATO,
12 #1691351

13 Defendant.

CASE NO: 01C177394

DEPT NO: II

14 FINDINGS OF FACT, CONCLUSIONS OF
15 LAW AND ORDER

16 DATE OF HEARING: March 1, 2011
17 TIME OF HEARING: 10:30 A.M.

01C177394
FFCO
Findings of Fact, Conclusions of Law and C
1475166



18 THIS CAUSE having come on for hearing before the Honorable Valorie J. Vega,
19 District Judge, on the 1st day of March, 2011, the Petitioner being present, Represented by
20 TRAVIS BARRICK¹, the Respondent being represented by DAVID ROGER, District
21 Attorney, by and through Sandra K. DiGiacomo, Chief Deputy District Attorney, and Tyler
22 D. Smith, Deputized Law Clerk, and the Court having considered the matter, including
briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the
Court makes the following findings of fact and conclusions of law:

23 PROCEDURAL HISTORY

24 On August 9, 2001, Kirstin Blaise Lobato, hereinafter "Defendant," was charged by
25 way of Information with Murder With Use of a Deadly Weapon (Open Murder) and Sexual
26 Penetration of a Dead Human Body. Defendant's jury trial began on May 7, 2002. On May
27
28

1. Exhibit 4 attached hereto shows Mr. Barrick's written approval
of this order.

CLERK OF THE COURT

JUN 16 2011

RECEIVED

520
FILED
JUN 16 8 36 AM '11
Clerk of the Court

569

1 18, 2002, Defendant was found guilty of First Degree Murder With Use of a Deadly Weapon
2 and Sexual Penetration of a Dead Human Body. On August 27, 2002, Defendant was
3 sentenced as follows: Count 1 - First Degree Murder With Use of a Deadly Weapon, to a
4 maximum of fifty (50) years and a minimum parole eligibility of twenty (20) years plus and
5 equal and consecutive term for use of a deadly weapon; Count 2 – Sexual Penetration of a
6 Dead Human Body, to a maximum of fifteen (15) years and a minimum parole eligibility of
7 five (5) years, to run concurrently with Count 1; further, a Special Sentence of Lifetime
8 Supervision imposed to commence upon release of any term of probation, parole, or
9 imprisonment; two hundred thirty-three (233) days credit for time served. A Judgment of
10 Conviction (Jury Trial) was filed September 16, 2002.

11 Defendant filed a Notice of Appeal on October 15, 2002. On September 3, 2004, the
12 Nevada Supreme Court reversed Defendant's conviction and remanded for a new trial.
13 Lobato v. State, 120 Nev. 512, 96 P.3d 765 (2004). Remittitur issued on September 24,
14 2004.

15 Defendant's second trial began on September 11, 2006. On October 6, 2006,
16 Defendant was found guilty of Voluntary Manslaughter With Use of a Deadly Weapon and
17 Sexual Penetration of a Dead Human Body. On February 2, 2007, Defendant was sentenced
18 as follows: Count 1 – Voluntary Manslaughter With Use of a Deadly Weapon, to a
19 maximum of one hundred twenty (120) months with a minimum parole eligibility of forty-
20 eight (48) months, plus and equal and consecutive term for the use of a deadly weapon;
21 Count 2 – Sexual Penetration of a Dead Human Body, to a maximum of one hundred eighty
22 (180) months with a minimum parole eligibility of sixty (60) months, Count 2 to run
23 consecutive to Count 1, with one thousand five hundred forty-four (1,544) days credit for
24 time served. It was further ordered that a special sentence of lifetime supervision be imposed
25 upon release from any term of imprisonment, probation, or parole. Additionally, Defendant
26 was ordered to register as a sex offender upon any release from custody.

27 Defendant filed a Notice of Appeal on March 12, 2007. On February 5, 2009, the
28 Nevada Supreme Court affirmed Defendant's conviction. Defendant filed a petition for

1 rehearing which was denied on March 27, 2009. Defendant filed a petition for en banc
2 reconsideration which was denied on May 19, 2009. Remittitur issued on October 14, 2009.
3 Defendant filed the instant petition on May 5, 2010.

4 FINDINGS OF FACT

5 1. The Court adopts the procedural history outlined above as its first finding of
6 fact.

7 2. As to Grounds 1, 2, and 3, involving the affidavits of Dr. Gail S. Anderson, Dr.
8 Linda-Lou O'Connor, Dr. M. Lee Goff, and Dr. Glenn M. Larkin, the affidavits are simply
9 an elaboration or opinion based upon the evidence available and presented at trial. It was
10 available before or during trial with reasonable diligence. Thus, it is not newly discovered.

11 3. As to Ground 4, involving Dr. Redlich's affidavit, the affidavit is simply an
12 elaboration or opinion based upon the evidence available and presented at trial. It was
13 available before or during trial with reasonable diligence. Thus, it is not newly discovered.
14 Moreover, as an alternate opinion of evidence that was presented at trial, it does not establish
15 actual innocence. In so far as Defendant cites polygraph examinations, those would have
16 been inadmissible without a written stipulation signed by the prosecuting attorney, the
17 defendant, and defense counsel.

18 4. As to Ground 5, involving the voluntary statements of several witnesses who
19 claim that Defendant allegedly confided in them about cutting a man's penis prior to the
20 victim's death, this issue was previously ruled on by the Nevada Supreme Court in Lobato v.
21 State, 120 Nev. 512, 522, 96 P.3d 765 (2004) and is therefore barred by the doctrine of law
22 of the case.

23 5. As to Ground 6, involving the affidavits of Marily Parker Anderson, Kimberly
24 Isom Grindstaff, Kendre Thunstrom, and Jose Lobato, these individuals were known to
25 Defendant at the time of trial. Thus, it is not newly discovered evidence. Moreover, as a
26 claim of newly discovered evidence, this ground is procedurally barred under NRS 34.810
27 since it could have been raised in a timely motion for new trial. Defendant has failed to
28 demonstrate good cause to overcome the procedural bar.

1 6. As to Grounds 7 and 8, involving Dr. Larkin's affidavit, the affidavit is simply
2 an elaboration or opinion based upon the evidence available and presented at trial. It was
3 available before or during trial with reasonable diligence. Thus, it is not newly discovered.
4 Moreover, as a claim of newly discovered evidence, this ground is procedurally barred under
5 NRS 34.810 since it could have been raised in a timely motion for new trial. As an alternate
6 opinion of evidence that was presented at trial, it does not establish actual innocence. Thus,
7 Defendant has failed to demonstrate good cause to overcome the procedural bar.

8 7. As to Ground 9, involving the petitioner's claim that the victim was "possibly
9 subjected to two separate attacks," this is a bare allegation which is insufficient for relief.
10 This evidence was available before or during trial with reasonable diligence. Thus, it is not
11 newly discovered. Moreover, as a claim of newly discovered evidence, this ground is
12 procedurally barred under NRS 34.810 since it could have been raised in a timely motion for
13 new trial. As an alternate opinion of evidence that was presented at trial, it does not establish
14 actual innocence. Thus, Defendant has failed to demonstrate good cause to overcome the
15 procedural bar.

16 8. As to Ground 10, involving Dr. Larkin's affidavit, the affidavit is simply an
17 elaboration or opinion based upon the evidence available and presented at trial. Moreover, as
18 a claim of newly discovered evidence, this ground is procedurally barred under NRS 34.810
19 since it could have been raised in a timely motion for new trial. Since it was also available
20 before or during trial with reasonable diligence, it is not newly discovered. Thus, Defendant
21 has failed to demonstrate good cause to overcome the procedural bar. Moreover, many of Dr.
22 Larkin's opinions are bare allegations insufficient for relief.

23 9. As to Grounds 11 and 12, involving the affidavit of George J. Schiro, Jr., this
24 evidence was available before or during trial with reasonable diligence. Thus, it is not newly
25 discovered. Moreover, as a claim of newly discovered evidence, this ground is procedurally
26 barred under NRS 34.810 since it could have been raised in a timely motion for new trial. As
27 an alternate opinion of evidence that was presented at trial, it does not establish actual

28 ///

1 innocence. Thus, Defendant has failed to demonstrate good cause to overcome the
2 procedural bar.

3 10. As to Ground 13, involving the affidavit of George J. Schiro, Jr., the affidavit
4 is simply an elaboration or opinion based upon the evidence available and presented at trial.
5 Moreover, as a claim of newly discovered evidence, this ground is procedurally barred under
6 NRS 34.810 since it could have been raised in a timely motion for new trial. Since it was
7 also available before or during trial with reasonable diligence, it is not newly discovered. As
8 an alternate opinion of evidence that was presented at trial, it does not establish actual
9 innocence. Thus, Defendant has failed to demonstrate good cause to overcome the
10 procedural bar. Moreover, many of Mr. Schiro's opinions are bare allegations insufficient for
11 relief.

12 11. As to Ground 14, involving that affidavit of Steven King, the court finds that
13 the affidavit contains mere speculation. Furthermore, the assertion that the victim did not
14 live in the trash enclosure where he was murdered is merely a legal theory that could have
15 been presented at trial. This ground does not constitute "new evidence." Moreover, as a
16 claim of newly discovered evidence, this ground is procedurally barred under NRS 34.810
17 since it could have been raised in a timely motion for new trial. Since it was also available
18 before or during trial with reasonable diligence, it is not newly discovered. As a speculative
19 opinion it does not establish actual innocence. Thus, Defendant has failed to demonstrate
20 good cause to overcome the procedural bar.

21 12. As to Ground 15, regarding the defendant's access to methamphetamine in
22 Lincoln County, NV, it is a bare allegation insufficient for relief.

23 13. As to Ground 16, also involving the affidavit of Steven King, the court finds
24 that the affidavit contains mere speculation which is based on belief and not evidence or
25 actual knowledge. Moreover, as a claim of newly discovered evidence, this ground is
26 procedurally barred under NRS 34.810 since it could have been raised in a timely motion for
27 new trial. Since it was also available before or during trial with reasonable diligence, it is

28 ///

1 not newly discovered. As a speculative opinion it does not establish actual innocence. Thus,
2 Defendant has failed to demonstrate good cause to overcome the procedural bar.

3 14. As to Ground 17, involving the victim's financial information, the allegation
4 that the victim's checks were allegedly cashed by the perpetrator of the crime is a bare
5 allegation insufficient for relief. Moreover, as a claim of newly discovered evidence, this
6 ground is procedurally barred under NRS 34.810 since it could have been raised in a timely
7 motion for new trial. Since it was also available before or during trial with reasonable
8 diligence, it is not newly discovered. As a speculative opinion, it does not establish actual
9 innocence. Thus, Defendant has failed to demonstrate good cause to overcome the
10 procedural bar.

11 15. As to Ground 18, involving the affidavits of George J. Schiro, Jr. and Mark
12 Lewis, DDS, the affidavits are simply an elaboration or opinion based upon the evidence
13 available and presented at trial. They were available before or during trial with reasonable
14 diligence. Thus, they are not newly discovered evidence. Moreover, as a claim of newly
15 discovered evidence, this ground is procedurally barred under NRS 34.810 since it could
16 have been raised in a timely motion for new trial. As an alternate opinion of evidence that
17 was presented at trial, it does not establish actual innocence. Thus, Defendant has failed to
18 demonstrate good cause to overcome the procedural bar.

19 16. As to Ground 19, concerning the constitutionality of NRS 201.450, the
20 constitutionality of the statute was upheld by the Nevada Supreme Court in Lobato v. State,
21 120 Nev. 512, 522, 96 P.3d 765, 772 (2004), and therefore this claim does not establish
22 "actual innocence." Moreover, this ground is procedurally barred under NRS 34.810 since it
23 could have been raised in a timely motion for new trial or on direct appeal. Since it was
24 available before or during trial with reasonable diligence, it is not newly discovered. Thus,
25 Defendant has failed to demonstrate good cause to overcome the procedural bar.

26 17. As to Ground 20, involving the affidavit of John Albert Kraft, as a claim of
27 newly discovered evidence, this ground is procedurally barred under NRS 34.810 since it
28 could have been raised in a timely motion for new trial. Since it could have been timely

1 discovered with reasonable diligence, it is not newly discovered. Moreover, as it regards
2 alleged juror misconduct, the affidavit does not establish a viable claim of actual innocence.
3 Thus, Defendant has failed to demonstrate good cause to overcome the procedural bar.

4 18. As to Ground 21, involving Detective Thowsen's testimony, this issue was
5 previously ruled on by the Nevada Supreme Court in Lobato v. State 49087 Order of
6 Affirmance 2/5/09, and is, therefore, barred from further consideration by the doctrine of law
7 of the case. Moreover, as a claim of newly discovered evidence, this ground is procedurally
8 barred under NRS 34.810 since it could have been raised in a timely motion for new trial.
9 Since it could have been timely discovered with reasonable diligence, it is not newly
10 discovered. Thus, Defendant has failed to demonstrate good cause to overcome the
11 procedural bar.

12 19. As to Ground 22, involving allegations of malicious prosecution and police
13 misconduct, Defendant's claims consist of bare allegations insufficient for relief. Moreover,
14 as a claim of newly discovered evidence, this ground is procedurally barred under NRS
15 34.810 since it could have been raised in a timely motion for new trial. Since it could also
16 have been timely discovered with reasonable diligence, it is not newly discovered. As a bare
17 allegation, this ground also does not establish a viable claim of actual innocence. Thus,
18 Defendant has failed to demonstrate good cause to overcome the procedural bar.

19 20. As to Ground 23, Grounds 1 through 22 fail to establish that Defendant is
20 entitled to relief.

21 21. As to Ground 24, involving claims of alleged "false evidence," these claims
22 are largely based upon the affidavits and arguments presented in Grounds 1-23. As claims of
23 newly discovered evidence, this ground is procedurally barred under NRS 34.810 since it
24 could have been raised in a timely motion for new trial. Since it could have been timely
25 discovered reasonable diligence, it is not newly discovered. As it is also based upon
26 speculative opinions, it does not establish a valid actual innocence claim. Thus, Defendant
27 has failed to demonstrate good cause to overcome the procedural bar.

28 ///

1 22. As to Grounds 25 and 26, involving Defendant's claims of Brady violations,
2 these claims are barred under NRS 34.810 since they could have been raised in a timely
3 motion for a new trial or on direct appeal. Since they were also available with reasonable
4 diligence, it is not newly discovered. As they are also based upon speculative opinions and
5 alternate interpretations of the evidence presented at trial, they do not establish a valid actual
6 innocence claim. Thus, Defendant has failed to demonstrate good cause to overcome the
7 procedural bar.

8 23. As to Ground 27, regarding trial counsel's alleged failure to investigate the
9 "Mexicans" as the real killers, Defendant has failed to establish that counsel's conduct fell
10 below an objective standard of reasonableness. Defendant has also failed to establish that,
11 but for counsel's alleged errors, the outcome of the trial would have been different. Thus,
12 Defendant is not entitled to relief under Strickland v. Washington, 466 U.S. 668 (1984). (VLA)

13 24. As to Ground 28, regarding trial counsel's alleged failure to investigate the
14 phone numbers recovered from the victim's person, Defendant has failed to establish that
15 counsel's conduct fell below an objective standard of reasonableness. Defendant has also
16 failed to establish that, but for counsel's alleged errors, the outcome of the trial would have
17 been different. Thus, Defendant is not entitled to relief under Strickland.

18 25. As to Ground 29, regarding trial counsel's failure to investigate the victim's
19 financial information, Defendant has failed to establish that counsel's conduct fell below an
20 objective standard of reasonableness. Defendant has also failed to establish that, but for
21 counsel's alleged errors, the outcome of the trial would have been different. Thus, Defendant
22 is not entitled to relief under Strickland.

23 26. As to Grounds 30 and 31, regarding trial counsel's failure to obtain Ms.
24 Parker's DNA sample and alleged failure to investigate and subpoena information on
25 reported knife wounds, these are bare allegations which are insufficient for relief. Moreover,
26 Defendant has failed to establish the counsel's conduct fell below an objective standard of
27 reasonableness. Defendant has also failed to establish that, but for counsel's alleged errors,
28 the outcome of the trial would have been different since she has not shown how a better

1 investigation would have rendered a more favorable outcome probable. Thus, Defendant is
2 not entitled to relief under Strickland.

3 27. As to Grounds 32, 33, and 34, regarding trial counsel's failure to call Detective
4 LaRochelle and Detective Thowsen's secretary to testify and counsel's failure to subpoena
5 LVMPD documents to impeach Detective Thowsen's testimony, it is counsel's ultimate
6 responsibility to decide which witnesses to call, if any. Moreover, Defendant has failed to
7 satisfy either prong of Strickland since she has not demonstrated what testimony or
8 information such actions would have revealed.

9 28. As to Ground 35, regarding counsel's failure to move to exclude evidence of
10 Defendant's drug use, it is counsel's ultimate responsibility to decide if and when to object.
11 Any such motion made by counsel would have been futile since the evidence was relevant,
12 and Defendant has failed to demonstrate that it was legally inadmissible. Counsel cannot be
13 deemed ineffective for failing to make futile objections or motions. Thus, Defendant is not
14 entitled to relief under Strickland.

15 29. As to Ground 36, regarding counsel's failure to file a motion for discovery, it
16 is counsel's ultimate responsibility to decide what motions to file. Moreover, Defendant has
17 failed to demonstrate the counsel was deficient or that she was prejudiced because she has
18 not delineated what evidence such a motion would have uncovered. Thus, Defendant is not
19 entitled to relief under Strickland.

20 30. As to Ground 37, regarding counsel's failure to move to dismiss her charge of
21 violating NRS 201.450, insofar as Defendant may be raising this as substantive claim, it is
22 barred pursuant to NRS 34.810 as it could have been raised in a timely motion for new trial
23 or on direct appeal. Insofar as Defendant is raising this as a claim of ineffective assistance of
24 counsel, Defendant has failed to demonstrate that counsel was deficient or that she was
25 prejudiced. She is therefore not entitled to relief under Strickland. Defendant has failed to
26 show good cause to overcome the procedural bar.

27 31. As to Grounds 38, 39, 40, and 41, regarding counsel's failure to call a forensic
28 entomologist, a psychologist, a forensic pathologist, and a forensic scientist, insofar as

1 Defendant may be raising these as substantive claims, they are barred pursuant to NRS
2 34.810 as they could have been raised in a timely motion for new trial. As alternate opinions
3 of evidence that was presented at trial, they do not establish actual innocence. Moreover,
4 these grounds are ultimately and were ultimately the call of the lead trial counsel. Defendant
5 has failed to demonstrate that had counsel taken such action it would have led to a different
6 outcome at trial. She is therefore not entitled to relief under Strickland. Thus, Defendant has
7 failed to demonstrate good cause to overcome the procedural bar.

8 32. As to Ground 42, regarding counsel's cross-examination of Dr. Simms
9 concerning the victim's time of death, Defendant has failed to demonstrate that counsel was
10 ineffective or that she was prejudiced. The manner of cross-examination and the
11 development of defenses is ultimately counsel's responsibility. Defendant is therefore not
12 entitled to relief under Strickland. Insofar as Defendant may be raising this issue as a
13 substantive claim, it is barred pursuant to NRS 34.810 since it could have been raised at trial
14 or on direct appeal. Moreover, as an alternate view of the evidence adduced at trial, it does
15 not establish a valid claim of actual innocence. Thus, Defendant has failed to demonstrate
16 good cause to overcome the procedural bar.

17 33. As to Ground 43, regarding counsel's failure to object to the testimony of
18 Thomas Wahl, Daniel Ford, Louise Renhard, and Kirstina Paulette, Defendant has failed to
19 demonstrate that counsel was ineffective or that she was prejudiced. As demonstrated by
20 Court's Exhibits 1, 2, and 3, all witnesses were properly noticed by the State. Defendant is
21 therefore not entitled to relief under Strickland. Insofar as Defendant is raising this issue as a
22 substantive claim, it is barred pursuant to NRS 34.810 since it could have been raised at trial
23 or on direct appeal. As this issue is one of expert witness qualifications, it does not establish
24 a valid claim of actual innocence. As such, Defendant has failed to demonstrate good cause
25 to overcome the procedural bar.

26 34. As to Ground 44, regarding counsel's failure to enter Defendant's black shoes
27 into evidence, Defendant has failed to demonstrate that counsel was deficient or that she was
28 prejudiced. The presentation of defense and evidence is ultimately counsel's responsibility.

1 Thus, Defendant is not entitled to relief under Strickland. Insofar as Defendant may be
2 raising this issue as a substantive claim, it is barred pursuant to NRS 34.810 since it could
3 have been raised with the trial court or on direct appeal. Moreover, as an alternate view of
4 the evidence adduced at trial, it does not establish a valid claim of actual innocence. Thus,
5 Defendant has failed to demonstrate good cause to overcome the procedural bar.

6 35. As to Ground 45, regarding counsel's failure to object to the admission of
7 Defendant's butterfly knife into evidence, Defendant has failed to demonstrate that counsel
8 was deficient or that she was prejudiced. The presentation of defense and evidence is
9 ultimately counsel's responsibility. Defendant has also failed to delineate a legal basis upon
10 which counsel could have objected, and any such objection by counsel would have been
11 futile. Thus, Defendant is not entitled to relief under Strickland. Insofar as Defendant may be
12 raising this issue as a substantive claim, it is barred pursuant to NRS 34.810 since it could
13 have been raised with the trial court or on direct appeal. Moreover, as an alternate view of
14 the evidence adduced at trial, it does not establish a valid claim of actual innocence. Thus,
15 Defendant has failed to demonstrate good cause to overcome the procedural bar.

16 36. As to Ground 46, regarding counsel's failure to vouch for the credibility of
17 alibi witnesses, Defendant has failed to demonstrate that counsel was deficient or that she
18 was prejudiced. Vouching for the credibility of witnesses is improper. Defendant is therefore
19 not entitled to relief under Strickland. Insofar as Defendant may be raising this issue as a
20 substantive claim, it is barred pursuant to NRS 34.810 since it could have been raised with
21 the trial court or on direct appeal. Moreover, as an alternate view of the evidence adduced at
22 trial, it does not establish a valid claim of actual innocence. Thus, Defendant has failed to
23 demonstrate good cause to overcome the procedural bar. Finally, Defendant raised this issue
24 on direct appeal, and it was denied by the Nevada Supreme Court in Lobato v. State 49087
25 Order of Affirmance 2/5/09. It is therefore barred by the doctrine of law of the case.

26 37. As to Ground 47, regarding counsel's failure to object to Detective Thowsen's
27 testimony on the basis that he was not noticed as an expert and gave improper opinion
28 testimony, Defendant has failed to demonstrate that counsel was deficient or that she was

1 prejudiced. Defendant is therefore not entitled to relief under Strickland. Insofar as
2 Defendant may be raising this issue as a substantive claim, it is barred pursuant to NRS
3 34.810 since it could have been raised with the trial court or on direct appeal. Moreover, as
4 an alternate view of the evidence adduced at trial, it does not establish a valid claim of actual
5 innocence. Thus, Defendant has failed to demonstrate good cause to overcome the
6 procedural bar. Finally, Defendant raised this issue on direct appeal, and it was denied by the
7 Nevada Supreme Court in Lobato v. State 49087 Order of Affirmance 2/5/09. It is therefore
8 also barred by the doctrine of law of the case.

9 38. As to Ground 48, regarding counsel's failure to object to Detective Thowsen's
10 testimony in response to a juror's question that he did not do further investigation at the
11 Budget Suites because he knew "it happened on West Flamingo," Defendant has failed to
12 demonstrate that counsel was deficient or that she was prejudiced. She is therefore not
13 entitled to relief under Strickland. Insofar as Defendant may be raising this issue as a
14 substantive claim, it is barred pursuant to NRS 34.810 since it could have been raised at trial
15 or on direct appeal. Moreover, as an alternate view of the evidence adduced at trial, it does
16 not establish a valid claim of actual innocence. Thus, Defendant has failed to demonstrate
17 good cause to overcome the procedural bar.

18 39. As to Ground 49, regarding counsel's failure to object to the State's referral to
19 Defendant's statement as a "confession," this statement did not constitute prosecutorial
20 misconduct, and Defendant has failed to demonstrate that the remark was patently
21 prejudicial. The prosecutor was commenting on testimony, asking the jury to draw
22 inferences from the evidence, and stating fully his views as to what the evidence shows,
23 which is permissible. Any objection by counsel would have been futile, and counsel
24 therefore cannot be deemed ineffective.

25 40. As to Ground 50, regarding counsel's cross-examination of Detective Thowsen
26 on his investigation pertaining to the Budget Suites and any reports or incidents of injuries to
27 an individual's groin or penis, Defendant has failed to demonstrate that counsel was deficient
28 or that she was prejudiced. Moreover, the manner of cross-examination and the presentation

1 of defense is ultimately counsel's responsibility. She is therefore not entitled to relief under
2 Strickland. Insofar as Defendant may be raising this issue as a substantive claim, it is barred
3 pursuant to NRS 34.810 since it could have been raised with the trial court or on direct
4 appeal. Moreover, as an alternate view of the evidence adduced at trial, it does not establish
5 a valid claim of actual innocence. Thus, Defendant has failed to demonstrate good cause to
6 overcome the procedural bar.

7 41. As to Ground 51, regarding Detective Thowsen's hearsay testimony pertaining
8 to his investigation of other reports of incidents of a severed or slashed penis, this issue was
9 raised on direct appeal. The Nevada Supreme Court found it to be harmless error in Lobato
10 v. State 49087 Order of Affirmance 2/5/09. This claim is therefore barred by the doctrine of
11 law of the case.

12 42. As to Ground 52, regarding counsels' failure to object and move for a mistrial
13 based upon alleged frauds on the court, this is a bare allegation insufficient for relief.
14 Moreover, as shown in Court's Exhibit 4, Ground 52 contains an error of fact. Judge Vega
15 was not a colleague in the Clark County District Attorney's Office with either former Chief
16 Deputy District Attorney William Kephart or Chief Deputy District Attorney Sandra
17 DiGiacomo.

18 43. As to Ground 53, regarding counsel's cross-examination of Detective
19 Thowsen, Defendant has failed to demonstrate that counsel was deficient or that she was
20 prejudiced. She is therefore not entitled to relief under Strickland. Insofar as Defendant may
21 be raising this issue as a substantive claim, it is barred pursuant to NRS 34.810 since it could
22 have been raised with the trial court or on direct appeal. Moreover, as an alternate view of
23 the evidence adduced at trial, it does not establish a valid claim of actual innocence. Thus,
24 Defendant has failed to demonstrate good cause to overcome the procedural bar.

25 44. As to Ground 54, regarding counsel's failure to determine the source of
26 Detective Thowsen's knowledge regarding the past sexual abuse of Defendant, Defendant
27 has failed to demonstrate that counsel was deficient or that she was prejudiced. Moreover,
28 the manner of cross-examination and the presentation of defense is ultimately counsel's

1 responsibility. She is therefore not entitled to relief under Strickland. Insofar as Defendant
2 claims this rendered her Miranda waiver involuntary, Defendant previously challenged the
3 admission of her statement as involuntary based upon these same arguments, and it was
4 rejected by the Nevada Supreme Court in Lobato v. State, 120 Nev. at 522, 96 P.3d at 772
5 (2004). The Court's ruling on this issue constitutes the law of the case, and it may not be
6 revisited.

7 45. As to Ground 55, regarding counsel's cross-examination of Laura Johnson,
8 Defendant has failed to demonstrate that counsel was deficient or that she was prejudiced.
9 Moreover, the manner of cross-examination and the presentation of defense is ultimately
10 counsel's responsibility. She is therefore not entitled to relief under Strickland.

11 46. As to Ground 56, regarding counsel's failure to investigate the availability of
12 methamphetamine in Las Vegas, Defendant has failed to demonstrate how a better
13 investigation would have rendered a more favorable outcome probable. Defendant has failed
14 to demonstrate that counsel was deficient or that she was prejudiced. She is therefore not
15 entitled to relief under Strickland.

16 47. As to Ground 57, regarding counsel's failure to object to the testimony of
17 Zachary Robinson, this testimony was admissible pursuant to NRS Chapter 51. Under NRS
18 51.135 it is admissible as a record of a regularly conducted business activity. Under NRS
19 51.145, it is also admissible as an absence of entry and records of a regularly conducted
20 business activity. It is also admissible under the catch-all provision of NRS 51.315. Insofar
21 as Defendant cites Melendez-Diaz v. Massachusetts, 129 S.Ct. 2527 (2009), counsel at the
22 time of trial did not have the benefit of that decision and cannot be deemed ineffective
23 because of it. In any event, the absence of information in a report is non-testimonial, and
24 defense counsel was able to cross-examine Mr. Robinson. As such, any objection would
25 have been futile, and counsel cannot be deemed ineffective.

26 48. As to Ground 58, regarding counsel's failure to obtain the State's alleged
27 "liar's list," this is a bare allegation insufficient for relief.

28 ///

1 49. As to Ground 59, regarding counsel's failure to move for a directed acquittal
2 per NRS 175.381, the court notes that it would have denied such a motion. Moreover,
3 Defendant challenged her conviction on the basis of insufficient evidence on direct appeal
4 which was rejected by the Nevada Supreme Court in Lobato v. State 49087 Order of
5 Affirmance 2/5/09. As such, any such motion would have been futile, and counsel cannot be
6 deemed ineffective. This is also a bare allegation insufficient for relief.

7 50. As to Ground 60, regarding counsel's failure to object to Jury Instruction No.s
8 26 and 33, similar instructions were upheld by the Nevada Supreme Court in Weber v. State,
9 121 Nev. 554 (2005) and Guy v. State, 108 Nev. 770 (1992), respectively. As such, any
10 objection by counsel would have been futile, and he cannot be deemed ineffective under
11 Strickland.

12 51. As to Ground 61, regarding counsel's failure to object to Jury Instruction No.
13 31 defining reasonable doubt, the same instruction was upheld by the Nevada Supreme Court
14 in Lord v. State, 107 Nev. 28 (1991). Moreover, NRS 175.211 mandates that no other
15 definition of reasonable doubt may be given. As such, counsel cannot be deemed ineffective
16 under Strickland.

17 52. As to Grounds 62 and 63, regarding counsel's failure to submit alternative
18 instructions on NRS 201.450 which included an element of sexual intent, this argument was
19 rejected by the Nevada Supreme Court in Lobato v. State, 120 Nev. 512, 522, 96 P.3d 765,
20 772 (2004). As such, any such attempt by counsel would have been futile, and Defendant is
21 not entitled to relief under Strickland. Insofar as Defendant may be raising this issue as a
22 substantive claim, it is barred pursuant to NRS 34.810 since it could have been raised at trial
23 or on direct appeal. Moreover, as an alternate view of the evidence adduced at trial, it does
24 not establish a valid claim of actual innocence. Thus, Defendant has failed to demonstrate
25 good cause to overcome the procedural bar.

26 53. As to Ground 64, regarding counsel's failure to argue during closing that the
27 State had failed to prove each element beyond a reasonable doubt, review of counsel's
28 summation is highly deferential because of the broad range of legitimate defense strategy at

1 that stage, and Defendant has failed to overcome this high standard. Moreover, the
2 presentation of defense is ultimately defense counsel's responsibility. As such, Defendant
3 has failed to demonstrate that counsel was deficient or that she was prejudiced. She is not
4 entitled to relief under Strickland.

5 54. As to Ground 65, regarding counsel's failure to object to the State's opening
6 statement, Defendant has failed to demonstrate that any of the prosecutor's statements could
7 not be proved at trial or were made in bad faith. Therefore, the statements did not constitute
8 prosecutorial misconduct. As such, any objection by defense counsel would have been futile,
9 and he cannot be deemed ineffective. Defendant is therefore not entitled to relief under
10 Strickland.

11 55. As to Ground 66, regarding counsel's failure to object to the prosecutor's
12 argument in closing regarding the victim's head wounds, counsel is given wide latitude in
13 deciding how to best represent a client during closing arguments. Defendant has failed to
14 demonstrate that counsel was deficient or that she was prejudiced. She is therefore not
15 entitled to relief under Strickland.

16 56. As to Ground 67, regarding counsel's failure to object to the prosecutor's
17 argument concerning Defendant's guilt, the prosecutor was providing his belief in
18 Defendant's guilt as a conclusion from the evidence presented, which is permissible. Any
19 objection by counsel would have been futile, and counsel cannot be deemed ineffective.
20 Defendant has failed to demonstrate that counsel was deficient or that she was prejudiced.
21 She is therefore not entitled to relief under Strickland.

22 57. As to Ground 68, also regarding counsel's failure to object to the prosecutor's
23 argument that several alibi witnesses had not testified previously, the prosecutor's argument
24 pertained to the credibility of the witnesses. As this case involves numerous material
25 witnesses and the outcome depended on which witnesses were telling the truth, reasonable
26 latitude should be given to the prosecutor to argue the credibility of the witness. As such, any
27 objection by counsel would have been futile, and counsel cannot be deemed ineffective.

28 ///

1 Defendant has failed to demonstrate that counsel was deficient or that she was prejudiced.
2 She is therefore not entitled to relief under Strickland.

3 58. As to Ground 69, regarding counsel's failure to object to the prosecutor's
4 argument that the positive presumptive tests for blood in Defendant's car were physical
5 evidence linking her to the crime scene, the prosecutor was commenting on testimony,
6 asking the jury to draw inferences from the evidence, and stating fully his views as to what
7 the evidence shows, which is permissible. As such, any objection by counsel would have
8 been futile, and counsel cannot be deemed ineffective. Defendant has failed to demonstrate
9 that counsel was deficient or that she was prejudiced. She is therefore not entitled to relief
10 under Strickland.

11 59. As to Ground 70, regarding counsel's failure to object to alleged "false
12 arguments" made by the prosecutor, these are bare allegations insufficient for relief. As such,
13 any objection by counsel would have been futile, and counsel cannot be deemed ineffective.
14 Defendant has failed to demonstrate that counsel was deficient or that she was prejudiced.
15 She is therefore not entitled to relief under Strickland.

16 60. As to Ground 71, regarding counsel's failure to retain a dental expert, it is
17 ultimately counsel's responsibility to control the presentation of defense. Insofar as
18 Defendant is raising this issue as a substantive claim, as an alternate opinion of evidence that
19 was presented at trial, it does not establish actual innocence. Since it was also available
20 before or during trial with reasonable diligence, it is not newly discovered. Defendant has
21 failed to demonstrate that counsel was deficient or that she was prejudiced. She is therefore
22 not entitled to relief under Strickland.

23 61. As to Ground 72, regarding counsel's failure to file a motion for judgment of
24 acquittal per NRS 175.381(2) due to insufficient evidence, the sufficiency of the evidence
25 issue was raised on direct appeal and rejected by the Nevada Supreme Court in Lobato v.
26 State 49087 Order of Affirmance 2/5/09. The Court's ruling on this constitutes the law of the
27 case, and it may not be revisited. Defendant has failed to demonstrate that counsel was
28 deficient or that she was prejudiced. She is therefore not entitled to relief under Strickland.

1 62. As to Ground 73, regarding counsel's alleged inadequate post-trial
2 investigation, this ground concerns a letter which the Court finds carries less weight than an
3 affidavit. This is a bare allegation insufficient for relief. Defendant has also failed to
4 demonstrate how a better investigation would have rendered a more favorable outcome
5 probable. Furthermore, the science has advanced since the time of trial, and appellate
6 counsel must review the job that was done at the trial and the performance of trial counsel
7 which cannot be deficient if such scientific advancements did not exist and were not
8 available at the time.

9 63. As to Ground 74, regarding appellate counsel's alleged failure to raise the
10 sufficiency of the evidence on appeal, this issue was indeed raised on direct appeal and
11 rejected by the Nevada Supreme Court in Lobato v. State 49087 Order of Affirmance 2/5/09.
12 This claim is therefore belied by the record. Defendant has failed to demonstrate that counsel
13 was deficient or that she was prejudiced. She is therefore not entitled to relief under
14 Strickland. Insofar as Defendant may be raising this issue as a substantive claim, it is barred
15 pursuant to NRS 34.810 since it could have been raised on direct appeal. Defendant has
16 failed to demonstrate good cause to overcome the procedural bar.

17 64. As to Ground 75, regarding appellate counsel's alleged failure to raise the
18 denial of her motion to suppress on appeal, this issue was indeed raised on direct appeal and
19 rejected by the Nevada Supreme Court in Lobato v. State 49087 Order of Affirmance 2/5/09.
20 This claim is therefore belied by the record. Defendant has failed to demonstrate that counsel
21 was deficient or that she was prejudiced. She is therefore not entitled to relief under
22 Strickland. Insofar as Defendant may be raising this issue as a substantive claim, it is barred
23 pursuant to EDCR 3.20 since the 15-days before trial deadline has passed.

24 65. As to Ground 76, regarding appellate counsel's failure to argue in her petition
25 for rehearing that the Nevada Supreme Court's ruling was based upon a false assumption of
26 fact, such an action by counsel would have been futile. Counsel cannot therefore be deemed
27 ineffective. Defendant has failed to demonstrate that counsel was deficient or that she was
28 prejudiced. She is therefore not entitled to relief under Strickland.

66. As to Ground 77, there is no cumulative error as to warrant relief. This is a homicide case, and the Defendant's own words constituted compelling evidence. Defendant was also twice convicted. As such, guilt was not a close call.

67. As to Ground 78, Defendant's claims of new evidence are insufficient to warrant relief.

68. As to Ground 79, regarding Defendant's claim that her counsel failed to diligently represent her, these are bare allegations insufficient for relief. Defendant has failed to demonstrate that counsel was deficient or that she was prejudiced. She is therefore not entitled to relief under Strickland.

CONCLUSIONS OF LAW

1. “To merit a new trial, newly-discovered evidence must be evidence that could not have been discovered through reasonable diligence either before or during trial.” D’Agostino v. State, 112 Nev. 417, 423, 915 P.2d 264, 267 (1996) (citing Sanborn v. State, 107 Nev. 399, 406, 812 P.2d 1279, 1284 (1991)).

2. Post-trial affidavits are “obtained without the benefit of cross-examination.” Herrera v. Collins, 506 U.S. 390, 417, 113 S.Ct. 853 (1993). They should be “treated with a fair degree of skepticism.” Id. at 423, 113 S.Ct. at 853 (O’Connor, J., concurring). A claim of “actual innocence” is not itself a constitutional claim, but “instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits.” Id. at 404, 113 S.Ct. at 862. Assuming, *arguendo*, an independent claim of actual innocence exists, the threshold for showing such a claim is “extraordinarily high.” Id. at 419, 113 S.Ct. at 870 (1993).

3. Polygraph results are inadmissible at trial unless there is a written stipulation signed by the prosecuting attorney, the defendant, and defense counsel. Jackson v. State, 116 Nev. 334, 997 P.2d 121 (2000).

4. “The law of a first appeal is law of the case on all subsequent appeals in which the facts are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (*quoting Walker v. State*, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of

1 the law of the case cannot be avoided by a more detailed and precisely focused argument
2 subsequently made after reflection upon the previous proceedings.” Hall, 91 Nev. at 316,
3 535 P.2d at 799. Under the law of the case doctrine, issues previously decided on direct
4 appeal may not be reargued in a habeas petition. Pellegrini v. State, 117 Nev. 860, 34 P.3d
5 519 (2001) (citing McNelson v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)).

6 5. Absent a showing of good cause and prejudice, claims which could have been
7 presented to the trial court or on direct appeal are barred. NRS 34.810(1)(b).

8 6. Claims asserted in a petition for post-conviction relief must be supported with
9 specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v.
10 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked” allegations are not
11 sufficient, nor are those belied and repelled by the record. Id.

12 7. Counsel cannot be deemed ineffective for failing to make futile objections or
13 motions. Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006).

14 8. Trial counsel has the “immediate and ultimate responsibility of deciding if and
15 when to object, which witnesses, if any, to call, and what defenses to develop.” Rhyne v.
16 State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).

17 9. In order to assert a claim for ineffective assistance of counsel a defendant must
18 prove that he was denied “reasonably effective assistance” of counsel by satisfying the two-
19 prong test of Strickland v. Washington, 466 U.S. 668, 686-87, 104 S.Ct. 2052, 2063-64
20 (1984). *See also* State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this
21 test, the Defendant must show first that his counsel's representation fell below an objective
22 standard of reasonableness, and second, that but for counsel's errors, there is a reasonable
23 probability that the result of the proceedings would have been different. Strickland, 466 U.S.
24 at 687-88, 694, 104 S.Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev.
25 430, 432, 683 P.2d 504, 505 (1984) (adopting Strickland two-part test in Nevada). The court
26 begins with the presumption of effectiveness and then must determine whether or not the
27 petitioner has proved disputed factual allegations underlying his ineffective-assistance claim

28 ///

1 by a preponderance of the evidence. Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33
2 (2004).

3 10. The United States Supreme Court has held that there is a constitutional right to
4 effective assistance of counsel in a direct appeal from a judgment of conviction. Evitts v.
5 Lucey, 469 U.S. 387, 396-97, 105 S.Ct. 830, 836-837 (1985); *see also* Burke v. State, 110
6 Nev. 1366, 1368, 887 P.2d 267, 268 (1994). The federal courts have held that in order to
7 claim ineffective assistance of appellate counsel the defendant must satisfy the two-prong
8 test set forth by Strickland, 466 U.S. at 687-688, 694, 104 S.Ct. at 2065, 2068; Williams v.
9 Collins, 16 F.3d 626, 635 (5th Cir. 1994); Hollenback v. United States, 987 F.2d 1272, 1275
10 (7th Cir. 1993); Heath v. Jones, 941 F.2d 1126, 1130 (11th Cir. 1991). In order to prove that
11 appellate counsel's alleged error was prejudicial; the defendant must show that the omitted
12 issue would have had a reasonable probability of success on appeal. *See* Duhamel v. Collins,
13 955 F.2d 962, 967 (5th Cir. 1992); Heath, 941 F.2d at 1132.

14 11. Counsel may not vouch for the veracity of a witness. *See* Rowland v. State,
15 118 Nev. 31, 39 P.3d 114 (2002). Furthermore, while it is generally improper for a
16 prosecutor to call the defendant or a witness a liar, "when a case involves numerous material
17 witnesses and the outcome depends on which witnesses are telling the truth, reasonable
18 latitude should be given to the prosecutor to argue the credibility of the witness-even if this
19 means occasionally stating in argument that a witness is lying." *Id.*, at 39, 39 P.3d at 119.

20 12. NRS 201.450 is constitutionally firm. Lobato v. State, 120 Nev. 512, 522, 96
21 P.3d 765, 772 (2004).

22 13. A defendant who contends that her attorney was ineffective because he did not
23 adequately investigate must show how a better investigation would have rendered a more
24 favorable outcome probable. Molina v. State, 120 Nev. 185, 87 P.3d 533, 538 (2004).

25 14. The standard of review for prosecutorial misconduct rests upon Defendant
26 showing "that the remarks made by the prosecutor were 'patently prejudicial.'" Riker v.
27 State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995).

28 ///

1 15. Under State v. Green, 81 Nev. 173, 400 P.2d 766 (1965), the prosecutor has
2 the right to comment on testimony, to ask the jury to draw inferences from the evidence, and
3 has the right to state fully his views as to what the evidence shows. Id. at 176.

4 16. On direct appeal, the Nevada Supreme Court concluded that the admission of
5 Detective Thowsen's testimony concerning his investigation of other reports of incidents of a
6 severed or slashed penis was harmless error. Lobato v. State 49087 Order of Affirmance
7 2/5/09.

8 17. Defendant challenged the admission of her statement to the police as
9 involuntary based upon the same argument that the psychological tactic used by the officers
10 rendered her statement involuntary on direct appeal, and it was rejected by the Nevada
11 Supreme Court. Lobato v. State, 120 Nev. 512, 522 (2004). Moreover, the Court also
12 rejected Defendant's claim that the State had improperly used privileged information from
13 her medical files. Id.

14 18. Defendant challenged her conviction on the basis of insufficient evidence on
15 direct appeal which was rejected by the Nevada Supreme Court. Lobato v. State 49087 Order
16 of Affirmance 2/5/09.

17 19. The language contained in Jury Instruction No. 26 was upheld by the Nevada
18 Supreme Court in Weber v. State, 121 Nev. 554, 119 P.3d 107 (2005).

19 20. The language contained in Jury Instruction No. 33 was upheld by the Nevada
20 Supreme Court in Guy v. State, 108 Nev. 770, 839 P.2d 578 (1992).

21 21. The definition of reasonable doubt contained in Jury Instruction No. 31 was
22 upheld by the Nevada Supreme Court in Lord v. State, 107 Nev. 28, 38-40, 806 P.2d 548,
23 554-56 (1991). Moreover, NRS 175.211 states:

24 1. A reasonable doubt is one based on reason. It is not mere
25 possible doubt, but is such a doubt as would govern or control a
26 person in the more weighty affairs of life. If the minds of the
27 jurors, after the entire comparison and consideration of all the
28 evidence, are in such a condition that they can say they feel an
abiding conviction of the truth of the charge, there is not a
reasonable doubt. Doubt to be reasonable must be actual, not
mere possibility or speculation.

2. No other definition of reasonable doubt may be given by the court to juries in criminal actions in this State.

22. NRS 201.450 does not contain an element of sexual intent. Lobato, 120 Nev. 512, 522, 96 P.3d 765, 772.

23. "Counsel has wide latitude in deciding how best to represent a client, and deference to counsel's tactical decisions in his closing presentation is particularly important because of the broad range of legitimate defense strategy at that stage." Yarborough v. Gentry, 540 U.S. 1, 5-6, 124 S.Ct. 1, 4 (2003). As such, "judicial review of a defense attorney's summation is therefore highly deferential." Id.

24. A prosecutor may not make statements in opening arguments which cannot be proved at trial. Rice v. State, 113 Nev. 1300, 1312, 949 P.2d 262, 270 (1997) (modified on other grounds by Richmond v. State, 118 Nev. 924, 932, 59 P.3d 1249, 1254 (2002)). However, misconduct does not lie unless such a statement is made in bad faith. Id. at 1312-1313, 949 P.2d at 270.

25. "Statements by the prosecutor, in argument, indicative of his opinion, belief, or knowledge as to the guilt of the accused, when made as a deduction or conclusion from the evidence introduced in the trial, are permissible and unobjectionable." Domingues v. State, 112 Nev. 683, 696, 917 P.2d 1364, 1373 (Nev.,1996) (citing Collins v. State, 87 Nev. 436, 439, 488 P.2d 544, 545 (1971)).

26. Relevant factors to consider in evaluating a claim of cumulative error are (1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged. Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854 - 855 (2000); see also Big Pond v. State, 101 Nev. 1, 692 P.2d 1288 (1985).

27. N.R.S. 176.515 states:

1. The court may grant a new trial to a defendant if required as a matter of law or on the ground of newly discovered evidence.

2. If trial was by the court without a jury the court may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment.

1 3. Except as otherwise provided in NRS 176.0918, a motion for a new
2 trial based on the ground of newly discovered evidence may be made
only within 2 years after the verdict or finding of guilt.

3 4. A motion for a new trial based on any other grounds must be made
4 within 7 days after the verdict or finding of guilt or within such further
time as the court may fix during the 7-day period.

5 28. EDCR 3.20. Motions.

6 (a) Unless otherwise provided by law or by these rules, all motions must
7 be served and filed not less than 15 days before the date set for trial.
8 The court will only consider late motions based upon an affidavit
9 demonstrating good cause and it may decline to consider any motion
filed in violation of this rule...

10 29. "Hearsay means a statement offered in evidence to prove the truth of the matter
11 asserted..." NRS 51.035.

12 30. NRS 51.315 states:

13 1. A statement is not excluded by the hearsay rule if:

14 (a) Its nature and the special circumstances under which it was made
15 offer strong assurances of accuracy; and

16 (b) The declarant is unavailable as a witness.

17 2. The provisions of NRS 51.325 to 51.355, inclusive, are illustrative
and not restrictive of the exception provided by this section.

18 31. "A memorandum, report, record or compilation of data, in any form, of acts,
19 events, conditions, opinions or diagnoses, made at or near the time by, or from information
20 transmitted by, a person with knowledge, all in the course of a regularly conducted activity,
21 as shown by the testimony or affidavit of the custodian or other qualified person, is not
22 inadmissible under the hearsay rule unless the source of information or the method or
23 circumstances of preparation indicate lack of trustworthiness." N.R.S. 51.135.

24 32. "Evidence that a matter is not included in the memoranda, reports, records or
25 data compilations, in any form, of a regularly conducted activity is not inadmissible under
26 the hearsay rule to prove the nonoccurrence or nonexistence of the matter, if the matter was
27 of a kind of which a memorandum, report, record or data compilation was regularly made
28 and preserved." N.R.S. 51.145.

*This is non-testimonial and therefore
factually distinct from the reports addressed in Melendez-Diaz v.
MA, 129 S.Ct. 2527 (2009) citing to Crawford v. WA, 541 U.S. 36
(2004).*

1 33. Grounds 1, 2, and 3 are denied pursuant to D'Agostino v. State, 112 Nev. 417,
2 423, 915 P.2d 264, 267 (1996).

3 34. Ground 4 is denied pursuant to D'Agostino v. State, 112 Nev. 417, 915 P.2d
4 264 (1996), Herrera v. Collins, 506 U.S. 390, 113 S.Ct. 853 (1993), and Jackson v. State,
5 116 Nev. 334, 997 P.2d 121 (2000).

6 35. Ground 5 is denied pursuant to Hall v. State, 91 Nev. 314, 315, 535 P.2d 797,
7 798 (1975) and Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001).

8 36. Ground 6 is denied pursuant to NRS 34.810.

9 37. Grounds 7, 8, 11, 12, 14, 16, 18, 20, 24, 25, and 26 are denied pursuant to
10 Herrera v. Collins, 506 U.S. 390, 417, 113 S.Ct. 853 (1993) and NRS 34.810.

11 38. Grounds 9, 13, 17, 22 are denied pursuant to Hargrove v. State, 100 Nev. 498,
12 502, 686 P.2d 222, 225 (1984), Herrera v. Collins, 506 U.S. 390, 417, 113 S.Ct. 853 (1993),
13 and NRS 34.810.

14 39. Ground 10 is denied pursuant to Hargrove v. State, 100 Nev. 498, 502, 686
15 P.2d 222, 225 (1984) and NRS 34.810.

16 40. Ground 15 is denied pursuant to Hargrove v. State, 100 Nev. 498, 502, 686
17 P.2d 222, 225 (1984).

18 41. Ground 19 is denied pursuant to Herrera v. Collins, 506 U.S. 390, 417, 113
19 S.Ct. 853 (1993), NRS 34.810, NRS 201.450, and Lobato v. State, 120 Nev. 512, 522
20 (2004).

21 42. Ground 21 is denied pursuant to Lobato v. State, 120 Nev. 512, 522 (2004),
22 Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975), and NRS 34.810.

23 43. Ground 23 is denied pursuant to the law cited under Grounds 1 through 22,
24 inclusive.

25 44. Grounds 27, 28, 29, are denied pursuant to Strickland v. Washington, 466 U.S.
26 668, 104 S.Ct. 2052 (1984).

27 ///

28 ///

1 45. Grounds 30 and 31 are denied pursuant to Strickland v. Washington, 466 U.S.
2 668, 104 S.Ct. 2052 (1984), Molina v. State, 120 Nev. 185, 87 P.3d 533, 538 (2004), and
3 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

4 46. Grounds 32, 33, 34, 36, 55 are denied pursuant to Strickland v. Washington,
5 466 U.S. 668, 104 S.Ct. 2052 (1984) and Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002).

6 47. Ground 35 is denied pursuant to Strickland v. Washington, 466 U.S. 668, 104
7 S.Ct. 2052 (1984), Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002), and Ennis v. State, 122
8 Nev. 694, 137 P.3d 1095 (2006).

9 48. Ground 37, 43, 48, 53 is denied pursuant to Strickland v. Washington, 466
10 U.S. 668, 104 S.Ct. 2052 (1984), Herrera v. Collins, 506 U.S. 390, 417, 113 S.Ct. 853
11 (1993), and NRS 34.810.

12 49. Grounds 38, 39, 40, 41, 42, 44, 50 are denied pursuant to Strickland v.
13 Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), Herrera v. Collins, 506 U.S. 390, 417,
14 113 S.Ct. 853 (1993), Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002), and NRS 34.810.

15 50. Ground 45 denied pursuant to Strickland v. Washington, 466 U.S. 668, 104
16 S.Ct. 2052 (1984), Herrera v. Collins, 506 U.S. 390, 417, 113 S.Ct. 853 (1993), Ennis v.
17 State, 122 Nev. 694, 137 P.3d 1095 (2006), and NRS 34.810.

18 51. Ground 46 is denied pursuant to Rowland v. State, 118 Nev. 31, 39 P.3d 114
19 (2002), Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975), Strickland v. Washington, 466 U.S.
20 668, 104 S.Ct. 2052 (1984), Herrera v. Collins, 506 U.S. 390, 417, 113 S.Ct. 853 (1993), and
21 NRS 34.810.

22 52. Ground 47 is denied pursuant to Hall v. State, 91 Nev. 314, 535 P.2d 797
23 (1975), Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001), Strickland v. Washington, 466
24 U.S. 668, 104 S.Ct. 2052 (1984), Herrera v. Collins, 506 U.S. 390, 417, 113 S.Ct. 853
25 (1993), and NRS 34.810.

26 53. Ground 49 is denied pursuant to Riker v. State, 111 Nev. 1316, 1328, 905 P.2d
27 706, 713 (1995), State v. Green, 81 Nev. 173, 400 P.2d 766 (1965), and Ennis v. State, 122
28 Nev. 694, 137 P.3d 1095 (2006).

1 54. Ground 51 is denied pursuant to Lobato v. State 49087 Order of Affirmance
2 2/5/09 and Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975).

3 55. Grounds 52, 58 are denied pursuant to Hargrove v. State, 100 Nev. 498, 686
4 P.2d 222 (1984).

5 56. Ground 54 is denied pursuant to Strickland v. Washington, 466 U.S. 668, 104
6 S.Ct. 2052 (1984), Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002), Lobato v. State, 120
7 Nev. 512, 522 (2004), Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975), and Ennis
8 v. State, 122 Nev. 694, 137 P.3d 1095 (2006).

9 57. Ground 56 is denied pursuant to Strickland v. Washington, 466 U.S. 668, 104
10 S.Ct. 2052 (1984) and Molina v. State, 120 Nev. 185, 87 P.3d 533, 538 (2004).

11 58. Ground 57 is denied pursuant to NRS Chapter 51 (NRS 51.035, 51.135,
12 51.145, and 51.315), Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006), and Strickland v.
13 Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

14 59. Ground 59 is denied pursuant to Lobato v. State 49087 Order of Affirmance
15 2/5/09, Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006), and Hargrove v. State, 100 Nev.
16 498, 686 P.2d 222 (1984).

17 60. Ground 60 is denied pursuant to Strickland v. Washington, 466 U.S. 668, 104
18 S.Ct. 2052 (1984), Weber v. State, 121 Nev. 554, 119 P.3d 107 (2005), Guy v. State, 108
19 Nev. 770, 839 P.2d 578 (1992), and Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006).

20 61. Ground 61 is denied pursuant to Strickland v. Washington, 466 U.S. 668, 104
21 S.Ct. 2052 (1984), ^{NRS 115.221} and Lord v. State, 107 Nev. 28, 38-40, 806 P.2d 548, 554-56 (1991).

22 62. Grounds 62 and 63 are denied pursuant to Lobato v. State, 120 Nev. 512, 522
23 (2004), NRS 201.450, Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984),
24 Herrera v. Collins, 506 U.S. 390, 417, 113 S.Ct. 853 (1993), Ennis v. State, 122 Nev. 694,
25 137 P.3d 1095 (2006), ^{NRS 201.450} and NRS 34.810.

26 63. Ground 64 is denied pursuant to Yarborough v. Gentry, 540 U.S. 1, 5-6, 124
27 S.Ct. 1, 4 (2003), Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), and
28 Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002).

1 64. Ground 65 is denied pursuant to Rice v. State, 113 Nev. 1300, 1312, 949 P.2d
2 262, 270 (1997) and Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

3 65. Ground 66 is denied pursuant to Yarborough v. Gentry, 540 U.S. 1, 5-6, 124
4 S.Ct. 1, 4 (2003) and Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

5 66. Ground 67 is denied pursuant to Domingues v. State, 112 Nev. 683, 917 P.2d
6 1364 (1996), Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006), and Strickland v.
7 Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

8 67. Ground 68 is denied pursuant to Rowland v. State, 118 Nev. 31, 39 P.3d 114
9 (2002), Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006), and Strickland v. Washington,
10 466 U.S. 668, 104 S.Ct. 2052 (1984).

11 68. Ground 69 is denied pursuant to Strickland v. Washington, 466 U.S. 668, 104
12 S.Ct. 2052 (1984), State v. Green, 81 Nev. 173, 400 P.2d 766 (1965), and Ennis v. State, 122
13 Nev. 694, 137 P.3d 1095 (2006).

14 69. Ground 70 is denied pursuant to Strickland v. Washington, 466 U.S. 668, 104
15 S.Ct. 2052 (1984), Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984), and
16 Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006).

17 70. Ground 71 is denied pursuant to D'Agostino v. State, 112 Nev. 417, 915 P.2d
18 264 (1996), Herrera v. Collins, 506 U.S. 390, 113 S.Ct. 853 (1993), Strickland v.
19 Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), and Rhyne v. State, 118 Nev. 1, 38 P.3d
20 163 (2002).

21 71. Grounds 72, and 74 are denied pursuant to NRS 34.810, Lobato v. State 49087
22 Order of Affirmance 2/5/09, Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975), and
23 Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). NRS 34.810

24 72. Ground 73 is denied pursuant to Herrera v. Collins, 506 U.S. 390, 113 S.Ct.
25 853 (1993), Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), Molina v. State,
26 120 Nev. 185, 87 P.3d 533, 538 (2004), and Hargrove v. State, 100 Nev. 498, 502, 686 P.2d
27 222, 225 (1984). (See also NRS 176.0918.).

28 ///

1 73. Ground 75 is denied pursuant to Lobato v. State 49087 Order of Affirmance
2 2/5/09, Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975), Strickland v. Washington,
3 466 U.S. 668, 104 S.Ct. 2052 (1984), and EDCR 3.20.

4 74. Ground 76 is denied pursuant to Strickland v. Washington, 466 U.S. 668, 104
5 S.Ct. 2052 (1984) and Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006).

6 75. Ground 77 is denied pursuant to the law cited in the denial of Grounds 1-76
7 and Mulder v. State, 116 Nev. 1, ~~17, 992 P.2d 845, 854 - 855~~ (2000).

8 76. Ground 78 is denied pursuant to the law cited in the denial of Grounds 1-24
9 pertaining to evidence, NRS 176.515, Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006),
10 and Mulder v. State, 116 Nev. 1, ~~17, 992 P.2d 845, 854 - 855~~ (2000).

11 77. Ground 79 is denied pursuant to Hargrove v. State, 100 Nev. 498, 502, 686
12 P.2d 222, 225 (1984) and Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

13 78. The request for counsel was moot when Mr. Barrick confirmed as counsel
14 ORDER and the requests for an evidentiary
hearing and new trial are both unwarranted.

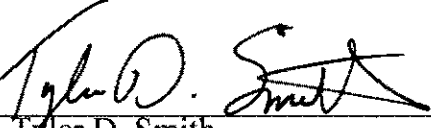
15 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas
16 Corpus (Post-Conviction) shall be, and it is, hereby denied.

17 DATED this 14th day of June, 2011.

18 
DISTRICT JUDGE SL6

19
20 DAVID ROGER
21 DISTRICT ATTORNEY
22 Nevada Bar #002781

23 BY


24 Tyler D. Smith
25 Deputized Law Clerk
26 Nevada Bar #011870
27
28

Jason, Debbie

From: Smith, Tyler
Sent: Tuesday, May 24, 2011 11:23 AM
To: Daniels, Deana; Jason, Debbie
Subject: FW: Lobato Findings of Fact

From: Smith, Tyler
Sent: Tuesday, May 24, 2011 11:17 AM
To: 'Travis N. Barrick'
Subject: RE: Lobato Findings of Fact

Travis:

Thank you for your response. I have no problem with that correction and will make sure the Order is revised to reflect it. I'll go ahead and forward the document to Judge Vega.

Thank you for your professionalism and courtesy throughout this process. I will see you at the next hearing on June 7th.

Tyler

From: Travis N. Barrick [mailto:tbarrick@gwwwo.com]
Sent: Tuesday, May 24, 2011 11:07 AM
To: Smith, Tyler
Cc: Travis N. Barrick
Subject: RE: Lobato Findings of Fact

Tyler:

Out of respect for all the work you put into the Order, I poured through it, the case law, the Order of Affirmance, the Petition and the Transcript.

Though I disagree completely with the outcome, you did a splendid job on the Order and I have only one objections/corrections (other than to put my name in CAPS just like yours).

In paragraph 38, page 12, I would like it to read: As to Ground 48, regarding counsel's failure to object to Detective Thowsen's testimony in response to a juror's question that he did not do further investigation ...

Thank you for your patience.

Travis N. Barrick, Esq.



**GALLIAN
WILCOX**
WELKER, OLSON
& BECKSTROM, LLC

540 E. St. Louis Avenue

EXHIBIT "1"

Las Vegas, Nevada 89104
(702) 892.3500
(702) 386-1946 - Facsimile
(702) 351-7422 - Cell
tbarrick@gww.com

NOTICE: Information contained in this transmission to the named addressee is proprietary information and is subject to attorney-client privilege and work product confidentiality. If the recipient of this transmission is not the named addressee, the recipient should immediately notify the sender and destroy the information transmitted without making any copy or distribution thereof.

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used and cannot be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code; or (b) promoting, marketing or recommending to another party any transaction or tax-related matter addressed herein.

From: Smith, Tyler [<mailto:Tyler.Smith@ccdavn.com>]
Sent: Monday, May 23, 2011 1:21 PM
To: Travis N. Barrick; 'Gutierrez, Siria'
Subject: Lobato Findings of Fact

Mr. Barrick,

According to my records, the State's proposed Findings of Fact, Conclusions of Law, and Order were sent to you the week of April 18, 2011. As indicated in the attached letter, I requested that you respond with your proposed revisions or objections in writing by Monday, May 9, 2011. I still have not received them. I understand that the findings are lengthy and that you were out of town recently. I would just like to request a status update.

Thank you,



Tyler D. Smith
Deputized Law Clerk
Criminal Appeals Unit
(702) 671-2748
tyler.smith@ccdavn.com

***** This electronic transmission is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original - Clark County District Attorney's Office

FILED

AUG 02 2011

Steven D. Grierson
CLERK OF COURT

1 NOED

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 KIRSTIN B. LOBATO,

6 Petitioner,

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

Case No: 01C177394
Dept No: II

10 NOTICE OF ENTRY OF
DECISION AND ORDER

11 PLEASE TAKE NOTICE that on June 16, 2011, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on August 2, 2011.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 By: *Lee Gunter*
18 Lee Gunter, Deputy Clerk

19 CERTIFICATE OF MAILING

20 I hereby certify that on this 2 day of August 2011, I placed a copy of this Notice of Entry of Decision and
21 Order in:

22 The bin(s) located in the Office of the District Court Clerk of:
23 Clark County District Attorney's Office
Attorney General's Office – Appellate Division

24 ☒ The United States mail addressed as follows:

25 Kirstin Lobato # 95558
4370 Smiley Rd.
26 North Las Vegas, NV 89115

Travis Barrick
540 E. St. Louis Ave.
Las Vegas, NV 89104

27 *Lee Gunter*
28 Lee Gunter, Deputy Clerk

48
FILED
JUN 16 8 36 AM '11
Clerk of the Court

1 **ORDR**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **Tyler D. Smith**
6 **Deputized Law Clerk**
7 **Nevada Bar #011870**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

KIRSTIN BLAISE LOBATO,
#1691351

Defendant.

CASE NO: 01C177394

DEPT NO: II

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: March 1, 2011
TIME OF HEARING: 10:30 A.M.

01C177394
FFCO
Findings of Fact, Conclusions of Law and C
1476166



18 THIS CAUSE having come on for hearing before the Honorable Valorie J. Vega,
19 District Judge, on the 1st day of March, 2011, the Petitioner being present, Represented by
20 TRAVIS BARRICK¹, the Respondent being represented by DAVID ROGER, District
21 Attorney, by and through Sandra K. DiGiacomo, Chief Deputy District Attorney, and Tyler
22 D. Smith, Deputized Law Clerk, and the Court having considered the matter, including
23 briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the
24 Court makes the following findings of fact and conclusions of law:

PROCEDURAL HISTORY

25 On August 9, 2001, Kirstin Blaise Lobato, hereinafter "Defendant," was charged by
26 way of Information with Murder With Use of a Deadly Weapon (Open Murder) and Sexual
27 Penetration of a Dead Human Body. Defendant's jury trial began on May 7, 2002. On May
28

1. Exhibit 1 attached hereto shows Mr. Barrick's written approval
of this order.

RECEIVED
JUN 16 2011
CLERK OF THE COURT

566

1 18, 2002, Defendant was found guilty of First Degree Murder With Use of a Deadly Weapon
2 and Sexual Penetration of a Dead Human Body. On August 27, 2002, Defendant was
3 sentenced as follows: Count 1 - First Degree Murder With Use of a Deadly Weapon, to a
4 maximum of fifty (50) years and a minimum parole eligibility of twenty (20) years plus and
5 equal and consecutive term for use of a deadly weapon; Count 2 – Sexual Penetration of a
6 Dead Human Body, to a maximum of fifteen (15) years and a minimum parole eligibility of
7 five (5) years, to run concurrently with Count 1; further, a Special Sentence of Lifetime
8 Supervision imposed to commence upon release of any term of probation, parole, or
9 imprisonment; two hundred thirty-three (233) days credit for time served. A Judgment of
10 Conviction (Jury Trial) was filed September 16, 2002.

11 Defendant filed a Notice of Appeal on October 15, 2002. On September 3, 2004, the
12 Nevada Supreme Court reversed Defendant's conviction and remanded for a new trial.
13 Lobato v. State, 120 Nev. 512, 96 P.3d 765 (2004). Remittitur issued on September 24,
14 2004.

15 Defendant's second trial began on September 11, 2006. On October 6, 2006,
16 Defendant was found guilty of Voluntary Manslaughter With Use of a Deadly Weapon and
17 Sexual Penetration of a Dead Human Body. On February 2, 2007, Defendant was sentenced
18 as follows: Count 1 – Voluntary Manslaughter With Use of a Deadly Weapon, to a
19 maximum of one hundred twenty (120) months with a minimum parole eligibility of forty-
20 eight (48) months, plus and equal and consecutive term for the use of a deadly weapon;
21 Count 2 – Sexual Penetration of a Dead Human Body, to a maximum of one hundred eighty
22 (180) months with a minimum parole eligibility of sixty (60) months, Count 2 to run
23 consecutive to Count 1, with one thousand five hundred forty-four (1,544) days credit for
24 time served. It was further ordered that a special sentence of lifetime supervision be imposed
25 upon release from any term of imprisonment, probation, or parole. Additionally, Defendant
26 was ordered to register as a sex offender upon any release from custody.

27 Defendant filed a Notice of Appeal on March 12, 2007. On February 5, 2009, the
28 Nevada Supreme Court affirmed Defendant's conviction. Defendant filed a petition for

1 rehearing which was denied on March 27, 2009. Defendant filed a petition for en banc
2 reconsideration which was denied on May 19, 2009. Remittitur issued on October 14, 2009.
3 Defendant filed the instant petition on May 5, 2010.

4 FINDINGS OF FACT

5 1. The Court adopts the procedural history outlined above as its first finding of
6 fact.

7 2. As to Grounds 1, 2, and 3, involving the affidavits of Dr. Gail S. Anderson, Dr.
8 Linda-Lou O'Connor, Dr. M. Lee Goff, and Dr. Glenn M. Larkin, the affidavits are simply
9 an elaboration or opinion based upon the evidence available and presented at trial. It was
10 available before or during trial with reasonable diligence. Thus, it is not newly discovered.

11 3. As to Ground 4, involving Dr. Redlich's affidavit, the affidavit is simply an
12 elaboration or opinion based upon the evidence available and presented at trial. It was
13 available before or during trial with reasonable diligence. Thus, it is not newly discovered.
14 Moreover, as an alternate opinion of evidence that was presented at trial, it does not establish
15 actual innocence. In so far as Defendant cites polygraph examinations, those would have
16 been inadmissible without a written stipulation signed by the prosecuting attorney, the
17 defendant, and defense counsel.

18 4. As to Ground 5, involving the voluntary statements of several witnesses who
19 claim that Defendant allegedly confided in them about cutting a man's penis prior to the
20 victim's death, this issue was previously ruled on by the Nevada Supreme Court in Lobato v.
21 State, 120 Nev. 512, 522, 96 P.3d 765 (2004) and is therefore barred by the doctrine of law
22 of the case.

23 5. As to Ground 6, involving the affidavits of Marily Parker Anderson, Kimberly
24 Isom Grindstaff, Kendre Thunstrom, and Jose Lobato, these individuals were known to
25 Defendant at the time of trial. Thus, it is not newly discovered evidence. Moreover, as a
26 claim of newly discovered evidence, this ground is procedurally barred under NRS 34.810
27 since it could have been raised in a timely motion for new trial. Defendant has failed to
28 demonstrate good cause to overcome the procedural bar.

1 6. As to Grounds 7 and 8, involving Dr. Larkin's affidavit, the affidavit is simply
2 an elaboration or opinion based upon the evidence available and presented at trial. It was
3 available before or during trial with reasonable diligence. Thus, it is not newly discovered.
4 Moreover, as a claim of newly discovered evidence, this ground is procedurally barred under
5 NRS 34.810 since it could have been raised in a timely motion for new trial. As an alternate
6 opinion of evidence that was presented at trial, it does not establish actual innocence. Thus,
7 Defendant has failed to demonstrate good cause to overcome the procedural bar.

8 7. As to Ground 9, involving the petitioner's claim that the victim was "possibly
9 subjected to two separate attacks," this is a bare allegation which is insufficient for relief.
10 This evidence was available before or during trial with reasonable diligence. Thus, it is not
11 newly discovered. Moreover, as a claim of newly discovered evidence, this ground is
12 procedurally barred under NRS 34.810 since it could have been raised in a timely motion for
13 new trial. As an alternate opinion of evidence that was presented at trial, it does not establish
14 actual innocence. Thus, Defendant has failed to demonstrate good cause to overcome the
15 procedural bar.

16 8. As to Ground 10, involving Dr. Larkin's affidavit, the affidavit is simply an
17 elaboration or opinion based upon the evidence available and presented at trial. Moreover, as
18 a claim of newly discovered evidence, this ground is procedurally barred under NRS 34.810
19 since it could have been raised in a timely motion for new trial. Since it was also available
20 before or during trial with reasonable diligence, it is not newly discovered. Thus, Defendant
21 has failed to demonstrate good cause to overcome the procedural bar. Moreover, many of Dr.
22 Larkin's opinions are bare allegations insufficient for relief.

23 9. As to Grounds 11 and 12, involving the affidavit of George J. Schiro, Jr., this
24 evidence was available before or during trial with reasonable diligence. Thus, it is not newly
25 discovered. Moreover, as a claim of newly discovered evidence, this ground is procedurally
26 barred under NRS 34.810 since it could have been raised in a timely motion for new trial. As
27 an alternate opinion of evidence that was presented at trial, it does not establish actual
28

///

1 innocence. Thus, Defendant has failed to demonstrate good cause to overcome the
2 procedural bar.

3 10. As to Ground 13, involving the affidavit of George J. Schiro, Jr., the affidavit
4 is simply an elaboration or opinion based upon the evidence available and presented at trial.
5 Moreover, as a claim of newly discovered evidence, this ground is procedurally barred under
6 NRS 34.810 since it could have been raised in a timely motion for new trial. Since it was
7 also available before or during trial with reasonable diligence, it is not newly discovered. As
8 an alternate opinion of evidence that was presented at trial, it does not establish actual
9 innocence. Thus, Defendant has failed to demonstrate good cause to overcome the
10 procedural bar. Moreover, many of Mr. Schiro's opinions are bare allegations insufficient for
11 relief.

12 11. As to Ground 14, involving that affidavit of Steven King, the court finds that
13 the affidavit contains mere speculation. Furthermore, the assertion that the victim did not
14 live in the trash enclosure where he was murdered is merely a legal theory that could have
15 been presented at trial. This ground does not constitute "new evidence." Moreover, as a
16 claim of newly discovered evidence, this ground is procedurally barred under NRS 34.810
17 since it could have been raised in a timely motion for new trial. Since it was also available
18 before or during trial with reasonable diligence, it is not newly discovered. As a speculative
19 opinion it does not establish actual innocence. Thus, Defendant has failed to demonstrate
20 good cause to overcome the procedural bar.

21 12. As to Ground 15, regarding the defendant's access to methamphetamine in
22 Lincoln County, NV, it is a bare allegation insufficient for relief.

23 13. As to Ground 16, also involving the affidavit of Steven King, the court finds
24 that the affidavit contains mere speculation which is based on belief and not evidence or
25 actual knowledge. Moreover, as a claim of newly discovered evidence, this ground is
26 procedurally barred under NRS 34.810 since it could have been raised in a timely motion for
27 new trial. Since it was also available before or during trial with reasonable diligence, it is

28 ///

1 not newly discovered. As a speculative opinion it does not establish actual innocence. Thus,
2 Defendant has failed to demonstrate good cause to overcome the procedural bar.

3 14. As to Ground 17, involving the victim's financial information, the allegation
4 that the victim's checks were allegedly cashed by the perpetrator of the crime is a bare
5 allegation insufficient for relief. Moreover, as a claim of newly discovered evidence, this
6 ground is procedurally barred under NRS 34.810 since it could have been raised in a timely
7 motion for new trial. Since it was also available before or during trial with reasonable
8 diligence, it is not newly discovered. As a speculative opinion, it does not establish actual
9 innocence. Thus, Defendant has failed to demonstrate good cause to overcome the
10 procedural bar.

11 15. As to Ground 18, involving the affidavits of George J. Schiro, Jr. and Mark
12 Lewis, DDS, the affidavits are simply an elaboration or opinion based upon the evidence
13 available and presented at trial. They were available before or during trial with reasonable
14 diligence. Thus, they are not newly discovered evidence. Moreover, as a claim of newly
15 discovered evidence, this ground is procedurally barred under NRS 34.810 since it could
16 have been raised in a timely motion for new trial. As an alternate opinion of evidence that
17 was presented at trial, it does not establish actual innocence. Thus, Defendant has failed to
18 demonstrate good cause to overcome the procedural bar.

19 16. As to Ground 19, concerning the constitutionality of NRS 201.450, the
20 constitutionality of the statute was upheld by the Nevada Supreme Court in Lobato v. State,
21 120 Nev. 512, 522, 96 P.3d 765, 772 (2004), and therefore this claim does not establish
22 "actual innocence." Moreover, this ground is procedurally barred under NRS 34.810 since it
23 could have been raised in a timely motion for new trial or on direct appeal. Since it was
24 available before or during trial with reasonable diligence, it is not newly discovered. Thus,
25 Defendant has failed to demonstrate good cause to overcome the procedural bar.

26 17. As to Ground 20, involving the affidavit of John Albert Kraft, as a claim of
27 newly discovered evidence, this ground is procedurally barred under NRS 34.810 since it
28 could have been raised in a timely motion for new trial. Since it could have been timely

1 discovered with reasonable diligence, it is not newly discovered. Moreover, as it regards
2 alleged juror misconduct, the affidavit does not establish a viable claim of actual innocence.
3 Thus, Defendant has failed to demonstrate good cause to overcome the procedural bar.

4 18. As to Ground 21, involving Detective Thowsen's testimony, this issue was
5 previously ruled on by the Nevada Supreme Court in Lobato v. State 49087 Order of
6 Affirmance 2/5/09, and is, therefore, barred from further consideration by the doctrine of law
7 of the case. Moreover, as a claim of newly discovered evidence, this ground is procedurally
8 barred under NRS 34.810 since it could have been raised in a timely motion for new trial.
9 Since it could have been timely discovered with reasonable diligence, it is not newly
10 discovered. Thus, Defendant has failed to demonstrate good cause to overcome the
11 procedural bar.

12 19. As to Ground 22, involving allegations of malicious prosecution and police
13 misconduct, Defendant's claims consist of bare allegations insufficient for relief. Moreover,
14 as a claim of newly discovered evidence, this ground is procedurally barred under NRS
15 34.810 since it could have been raised in a timely motion for new trial. Since it could also
16 have been timely discovered with reasonable diligence, it is not newly discovered. As a bare
17 allegation, this ground also does not establish a viable claim of actual innocence. Thus,
18 Defendant has failed to demonstrate good cause to overcome the procedural bar.

19 20. As to Ground 23, Grounds 1 through 22 fail to establish that Defendant is
20 entitled to relief.

21 21. As to Ground 24, involving claims of alleged "false evidence," these claims
22 are largely based upon the affidavits and arguments presented in Grounds 1-23. As claims of
23 newly discovered evidence, this ground is procedurally barred under NRS 34.810 since it
24 could have been raised in a timely motion for new trial. Since it could have been timely
25 discovered reasonable diligence, it is not newly discovered. As it is also based upon
26 speculative opinions, it does not establish a valid actual innocence claim. Thus, Defendant
27 has failed to demonstrate good cause to overcome the procedural bar.

28 ///

1 22. As to Grounds 25 and 26, involving Defendant's claims of Brady violations,
2 these claims are barred under NRS 34.810 since they could have been raised in a timely
3 motion for a new trial or on direct appeal. Since they were also available with reasonable
4 diligence, it is not newly discovered. As they are also based upon speculative opinions and
5 alternate interpretations of the evidence presented at trial, they do not establish a valid actual
6 innocence claim. Thus, Defendant has failed to demonstrate good cause to overcome the
7 procedural bar.

8 23. As to Ground 27, regarding trial counsel's alleged failure to investigate the
9 "Mexicans" as the real killers, Defendant has failed to establish that counsel's conduct fell
10 below an objective standard of reasonableness. Defendant has also failed to establish that,
11 but for counsel's alleged errors, the outcome of the trial would have been different. Thus,
12 Defendant is not entitled to relief under Strickland v. Washington, 466 U.S. 668 (1984). (440)

13 24. As to Ground 28, regarding trial counsel's alleged failure to investigate the
14 phone numbers recovered from the victim's person, Defendant has failed to establish that
15 counsel's conduct fell below an objective standard of reasonableness. Defendant has also
16 failed to establish that, but for counsel's alleged errors, the outcome of the trial would have
17 been different. Thus, Defendant is not entitled to relief under Strickland.

18 25. As to Ground 29, regarding trial counsel's failure to investigate the victim's
19 financial information, Defendant has failed to establish that counsel's conduct fell below an
20 objective standard of reasonableness. Defendant has also failed to establish that, but for
21 counsel's alleged errors, the outcome of the trial would have been different. Thus, Defendant
22 is not entitled to relief under Strickland.

23 26. As to Grounds 30 and 31, regarding trial counsel's failure to obtain Ms.
24 Parker's DNA sample and alleged failure to investigate and subpoena information on
25 reported knife wounds, these are bare allegations which are insufficient for relief. Moreover,
26 Defendant has failed to establish the counsel's conduct fell below an objective standard of
27 reasonableness. Defendant has also failed to establish that, but for counsel's alleged errors,
28 the outcome of the trial would have been different since she has not shown how a better

1 investigation would have rendered a more favorable outcome probable. Thus, Defendant is
2 not entitled to relief under Strickland.

3 27. As to Grounds 32, 33, and 34, regarding trial counsel's failure to call Detective
4 LaRochelle and Detective Thowsen's secretary to testify and counsel's failure to subpoena
5 LVMPD documents to impeach Detective Thowsen's testimony, it is counsel's ultimate
6 responsibility to decide which witnesses to call, if any. Moreover, Defendant has failed to
7 satisfy either prong of Strickland since she has not demonstrated what testimony or
8 information such actions would have revealed.

9 28. As to Ground 35, regarding counsel's failure to move to exclude evidence of
10 Defendant's drug use, it is counsel's ultimate responsibility to decide if and when to object.
11 Any such motion made by counsel would have been futile since the evidence was relevant,
12 and Defendant has failed to demonstrate that it was legally inadmissible. Counsel cannot be
13 deemed ineffective for failing to make futile objections or motions. Thus, Defendant is not
14 entitled to relief under Strickland.

15 29. As to Ground 36, regarding counsel's failure to file a motion for discovery, it
16 is counsel's ultimate responsibility to decide what motions to file. Moreover, Defendant has
17 failed to demonstrate the counsel was deficient or that she was prejudiced because she has
18 not delineated what evidence such a motion would have uncovered. Thus, Defendant is not
19 entitled to relief under Strickland.

20 30. As to Ground 37, regarding counsel's failure to move to dismiss her charge of
21 violating NRS 201.450, insofar as Defendant may be raising this as substantive claim, it is
22 barred pursuant to NRS 34.810 as it could have been raised in a timely motion for new trial
23 or on direct appeal. Insofar as Defendant is raising this as a claim of ineffective assistance of
24 counsel, Defendant has failed to demonstrate that counsel was deficient or that she was
25 prejudiced. She is therefore not entitled to relief under Strickland. Defendant has failed to
26 show good cause to overcome the procedural bar.

27 31. As to Grounds 38, 39, 40, and 41, regarding counsel's failure to call a forensic
28 entomologist, a psychologist, a forensic pathologist, and a forensic scientist, insofar as

1 Defendant may be raising these as substantive claims, they are barred pursuant to NRS
2 34.810 as they could have been raised in a timely motion for new trial. As alternate opinions
3 of evidence that was presented at trial, they do not establish actual innocence. Moreover,
4 these grounds are ultimately and were ultimately the call of the lead trial counsel. Defendant
5 has failed to demonstrate that had counsel taken such action it would have led to a different
6 outcome at trial. She is therefore not entitled to relief under Strickland. Thus, Defendant has
7 failed to demonstrate good cause to overcome the procedural bar.

8 32. As to Ground 42, regarding counsel's cross-examination of Dr. Simms
9 concerning the victim's time of death, Defendant has failed to demonstrate that counsel was
10 ineffective or that she was prejudiced. The manner of cross-examination and the
11 development of defenses is ultimately counsel's responsibility. Defendant is therefore not
12 entitled to relief under Strickland. Insofar as Defendant may be raising this issue as a
13 substantive claim, it is barred pursuant to NRS 34.810 since it could have been raised at trial
14 or on direct appeal. Moreover, as an alternate view of the evidence adduced at trial, it does
15 not establish a valid claim of actual innocence. Thus, Defendant has failed to demonstrate
16 good cause to overcome the procedural bar.

17 33. As to Ground 43, regarding counsel's failure to object to the testimony of
18 Thomas Wahl, Daniel Ford, Louise Renhard, and Kirstina Paulette, Defendant has failed to
19 demonstrate that counsel was ineffective or that she was prejudiced. As demonstrated by
20 Court's Exhibits 1, 2, and 3, all witnesses were properly noticed by the State. Defendant is
21 therefore not entitled to relief under Strickland. Insofar as Defendant is raising this issue as a
22 substantive claim, it is barred pursuant to NRS 34.810 since it could have been raised at trial
23 or on direct appeal. As this issue is one of expert witness qualifications, it does not establish
24 a valid claim of actual innocence. As such, Defendant has failed to demonstrate good cause
25 to overcome the procedural bar.

26 34. As to Ground 44, regarding counsel's failure to enter Defendant's black shoes
27 into evidence, Defendant has failed to demonstrate that counsel was deficient or that she was
28 prejudiced. The presentation of defense and evidence is ultimately counsel's responsibility.