

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

vs.

TATIANA LEIBEL,

Respondent,

_____ /

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Elizabeth A. Brown
Clerk of Supreme Court

Case No. 2014-CR-00062
2014-CR-00062BD

RECORD ON APPEAL

VOLUME 4A

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TATIANA LEIBEL
INMATE #1137908
FLORENCE MCCLURE WOMEN'S CORRECTIONAL CENTER
4370 SMILEY ROAD
LAS VEGAS, NEVADA 89115

IN PROPER PERSON

THE STATE OF NEVADA

DOUGLAS COUNTY DISTRICT ATTORNEY

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JAN 14 2015

FILED

2015 JAN 14 AM 10:13

BOBBIE R. WILLIAMS
CLERK

BY M. Slagle DEPUTY

Case No. 14-CR-0062

Dept. No. 1

Douglas County
District Court Clerk

This document does not contain personal information of any person.

IN THE NINTH JUDICIAL DISTRICT DOURT OF THE STATE OF NEVADA IN AND
FOR THE COUNTY OF DOUGLAS

STATE OF NEVADA

Plaintiff,

vs.

TATIANA LEIBEL

Defendant

ORDER RE: MOTION IN LIMINE
REGARDING DEATH CERTIFICATE

Tatiana Leibel, by and through counsel, Kristine L. Brown, filed a motion requesting the state be prohibited from introducing as evidence the Certificate of Death of Harry Leibel or to require that prior to introducing the document into evidence the term "Homicide" be redacted in an appropriate and inconspicuous manner from section 25a (actually 28a). The state filed a non-opposition to introducing as evidence a redacted copy of the Certificate of Death. The matter came before the court for hearing on January 12, 2015.

Based on the defendant's motion, and arguments at hearing,

IT IS HEREBY ORDERED that if the state intends to introduce a copy of the Certificate of Death at trial, section 28a describing manner of death be blacked out, including the typed notions of "ACC, SUICIDE, HOM, UNDET, OR PENDING INVEST" in an appropriate and inconspicuous manner. It is further ordered that the evidence be copied to plain white copy paper.

Dated this 14 day of January ~~2014~~ 2015.


DISTRICT COURT JUDGE

651

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JAN 14 2015

FILED

Case No. 14-CR-0062

Dept. No. 1

Douglas County
District Court Clerk

2015 JAN 14 AM 10:13

BOBBIE R. WILLIAMS
CLERK

BY MBLA DEPUTY

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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

STATE OF NEVADA

Plaintiff,

vs.

TATIANA LEIBEL

Defendant

ORDER RE: MOTION IN LIMINE
REGARDING UNCHARGED
MISCONDUCT AND COLLATERAL
OFFENSES

Tatiana Leibel, by and through counsel, Kristine L. Brown, filed a motion requesting the state be prohibited from introducing evidence of uncharged misconduct or collateral offenses without first giving the appropriate notice so that a *Petrocelli* hearing could be held. The state filed a non-opposition to the motion. A hearing was held on the motion on January 12, 2015.

After considering the merits of the motion, and no opposition having been filed by the state,

IT IS HEREBY ORDERED that the state be prohibited from introducing evidence of uncharged misconduct or collateral offenses without first giving the appropriate notice so that a *Petrocelli* hearing can be held outside the presence of the jury.

Dated this 14 day of January, 2015.


DISTRICT COURT JUDGE

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Case No. 14-CR-0062

JAN 16 2015

Dept. No. 1

Douglas County
District Court Clerk

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2015 JAN 16 AM 9:24

BOBBIE R. WILLIAMS
CLERK

BY msca DEPUTY

IN THE NINTH JUDICIAL DISTRICT DOURT OF THE STATE OF NEVADA IN AND
FOR THE COUNTY OF DOUGLAS

STATE OF NEVADA

Plaintiff,

vs.

TATIANA LEIBEL

Defendant

STIPULATION TO WAIVE PENALTY
HEARING BY JURY

The Defendant, Defendant's Counsel and the State, represented by the Douglas County District Attorney's Office, in the event that the trial in this matter results in a conviction, stipulate to waive a penalty hearing conducted by the trial jury and agree instead to have the sentence imposed by the trial judge pursuant to NRS 175.552(2).

Dated: 1/16/15

Thomas W. Gregory
Thomas W. Gregory
Chief Criminal Deputy District Attorney

Dated: Jan 14, 2015

Kristine L. Brown
Kristine L. Brown
Attorney for the Defendant

I, Tatiana Leibel, defendant, in the event that the trial in this matter results in a conviction, stipulate to waive a penalty hearing conducted by the trial jury and agree instead to have the sentence imposed by the trial judge pursuant to NRS 175.552(2). Prior to signing this stipulation, I have been advised by my attorney that I am charged with Open Murder with the Use of a Firearm, a violation of NRS 200.010(1) through 200.090 and NRS 193.165, a category A felony. I understand I have a right to have a trial in front of a jury divided into two phases. In

Phase
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the first ~~face~~ of the trial, the jury would determine from the evidence and testimony presented whether I am guilty or not guilty of the offense charged. If the jury rendered a verdict of guilty as to the crime of first degree murder, I have a right to have the same jury render a decision as to which statutory penalty or sentence should be imposed. I understand if I am convicted of first degree murder I shall be sentenced to imprisonment in the state prison:

(1) For life without the possibility of parole;

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served; or

(3) For a definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has been served.

Additionally, if the jury makes a determination that a firearm was used in the commission of the offense, I will be sentenced to an additional term of imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 20 years. This sentence must run consecutively to the sentence imposed for the charged crime and probation is not available as a sentencing option.

The jury's decision concerning my sentence would have to be unanimous. If they could not reach a unanimous decision on the sentence, the judge would impose the sentence.

By waiving my right to have a jury determine the sentence, I am agreeing that the judge presiding at the trial in my case will determine the appropriate sentence.

I have discussed this waiver with my attorney. I freely, voluntarily and knowingly enter into this stipulation and agree that it is in my best interest.

Dated: January 14, 2015

Tatiana Leibel
Defendant

Case No. 14-CR-0062

Dept. No. I

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JAN 20 2015

Douglas County
District Court Clerk

FILED

2015 JAN 20 PM 4:40

BOBBIE R. WILLIAMS
CLERK

BY *DeMouca* DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

THE HONORABLE NATHAN TOD YOUNG

-ooo-

STATE OF NEVADA,

Plaintiff,

vs.

TATIANA LEIBEL,

Defendant.

TRANSCRIPT OF PROCEEDINGS

MOTIONS HEARING

MONDAY, JANUARY 12, 2015

MINDEN, NEVADA

For the State:

Thomas W. Gregory,
Deputy District Attorney

For the Defendant:

Kristine Brown,
Deputy Public Defender
-and-
Jamie Henry,
Deputy Public Defender

Reported by:

Capitol Reporters
Michel Loomis, Nevada CCR #228

CAPITOL REPORTERS (775) 882-5322

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1 MINDEN, NEVADA, MONDAY, JANUARY 12, 2015, P.M. SESSION

2 -oOo-

3
4 THE COURT: Before I call the case I'm going to
5 get an interpreter on the line. No, I'm not, I'm going to
6 start this thing. This is Case 14-CR-162, State of Nevada
7 versus Tatiana Leibel. Show the appearance of Mr. Gregory on
8 behalf of the State. Ms. Leibel is here in person accompanied
9 by her attorneys Ms. Brown and Ms. Henry.

10 Ms. Brown, I have been advised that for purposes
11 of today's hearing the defense is willing to allow this matter
12 to be interpreted telephonically with the interpreter at a
13 distant location and interpreting over the phone; is that
14 correct?

15 MS. BROWN: That's correct, Your Honor.

16 THE COURT: Have you been able to discuss that
17 issue with your client?

18 MS. BROWN: Yes, Your Honor.

19 THE COURT: Have you been able to have
20 discussions with your client without the benefit of an
21 interpreter?

22 MS. BROWN: Your Honor, Ms. Leibel does speak
23 English pretty well. She's just -- during the courtroom
24 proceedings she gets confused because things are moving so

1 fast and we don't have time to stop and explain.

2 If we need to have discussions with her I think
3 we can do that in English as long as the court would give us
4 time to go off the record so that we can have a real back and
5 forth discussion. It's not something that can be done easily
6 in a closed table.

7 THE COURT: I understand. But then for purposes
8 of today's hearing it's going to be really hard to do that
9 because you don't have an interpreter here and you've told me
10 before today's date that the telephonic interpreter was okay.

11 So getting that back and forth between the two of
12 you and the privacy to have that conversation is just not
13 something we can accomplish with the telephone.

14 MS. BROWN: No, what I'm saying is if we could --
15 if Ms. Leibel has a question that we need to respond to, if we
16 could just stop and most likely we can discuss it with her.

17 THE COURT: Okay.

18 MS. BROWN: Without an interpreter but without
19 the rush of a quick, you know, desk side conversation. I
20 don't know that the issues would be that complicated today.

21 THE COURT: Ms. Leibel, do you understand me?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand what your attorney
24 just told me?

1 THE DEFENDANT: Yes.

2 THE COURT: Did you understand the questions that
3 I asked your attorney?

4 THE DEFENDANT: Yes.

5 THE COURT: And are you willing to have this
6 matter interpreted with an interpreter over the phone instead
7 of someone present in court today?

8 THE DEFENDANT: Yeah.

9 THE COURT: Okay. I'm going to get an
10 interpreter on the phone. Mr. Gregory, if you have any
11 objections to this process you're going to have to note them.

12 MR. GREGORY: No objection.

13 THE WITNESS: Hello?

14 THE COURT: Hello, this is Judge Young, I'm
15 calling for Anna Sosnovskaya.

16 THE INTERPRETER: This is Anna Sosnovskaya. Good
17 afternoon, Your Honor.

18 THE COURT: Good afternoon, ma'am, I apologize
19 for mispronouncing your name.

20 THE INTERPRETER: You pronounced it perfectly.

21 THE COURT: We are in court right now and you are
22 on a speaker so that everyone in court can hear you. Can you
23 hear me okay?

24 THE INTERPRETER: I can hear you okay, but

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1 unfortunately I also hear an echo with everything.

2 THE COURT: I don't know what to tell you about
3 the echo. This is the only system I have that I can
4 communicate with you.

5 THE INTERPRETER: I understand.

6 THE COURT: Okay. So I'm going to ask each of
7 the parties to speak to you so that you can hear the
8 microphones at each of the tables. And I'm going to begin,
9 Mr. Gregory, would you say something?

10 MR. GREGORY: Good afternoon, my name is
11 Tom Gregory, I'm representing the State.

12 THE COURT: Could you hear him, ma'am?

13 THE INTERPRETER: Yes, I can. Good afternoon.

14 THE COURT: Ms. Brown?

15 MS. BROWN: And I'm Kristine Brown, I'm one of
16 the attorneys for Ms. Leibel.

17 THE COURT: Could you hear Ms. Brown?

18 THE INTERPRETER: Not very well, unfortunately.

19 THE CLERK: Oh, she's on hold. Yeah, you have it
20 on mute. Okay. Wait, don't press hard. Okay. It's off.

21 MS. BROWN: It's off?

22 THE COURT: Try again, Ms. Brown.

23 MS. BROWN: This is Kristine Brown, I'm one of
24 the attorneys for Ms. Leibel.

1 THE COURT: Could you hear that?
2 THE INTERPRETER: Thank you. Good afternoon.
3 Yes, much better.
4 THE COURT: Ms. Henry?
5 MS. HENRY: Jamie Henry, the other attorney for
6 Ms. Leibel.
7 THE COURT: Could you hear that?
8 THE INTERPRETER: Yes, I could hear that. Thank
9 you.
10 THE COURT: Ms. Leibel, would you say something,
11 please?
12 THE DEFENDANT: Yeah, do you hear me? This is
13 Tatiana Leibel.
14 THE COURT: Okay.
15 THE INTERPRETER: Yes, I can hear you.
16 THE COURT: Just a sec.
17 THE DEFENDANT: She said hello.
18 THE INTERPRETER: No, I said hello.
19 THE COURT: Okay. All right. At this point,
20 Ms. Sosnovskaya, I'm going to have you sworn. So if you would
21 raise your right hand and listen to my clerk, please.
22 THE CLERK: She can't hear me.
23 THE COURT: Oh. That's okay. Move to where you
24 have one.

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1 (Sworn.)

2 THE COURT: Thank you. Now, wait a minute,
3 Ms. Reporter, what do you want to tell me?

4 And what's important -- we'll see as we go along.
5 If we can't hear her we'll tell her.

6 Now, we'll begin with a couple of preliminary
7 issues. I've got a number of motions that we'll deal with
8 today, many of which are not -- not responded to or not
9 opposed.

10 I've asked my judicial assistant to provide both
11 sides with copies of the stock jury instructions. I'm going
12 to stop -- stop periodically and allow the interpreter to
13 interpret that. So -- and I apologize, I didn't do that.

14 So let me start over. We're going to deal with a
15 number of issues today. Go ahead.

16 We have a number of motions in this case that
17 are -- that are ready to be decided. I've asked my judicial
18 assistant to provide both sides with copies of the stock jury
19 instructions.

20 I have some additional issues that I want to
21 address which will impact this trial. One of those is the
22 issue of sentencing if in fact there becomes a sentence. And
23 that issue is whether Ms. Leibel, if she is convicted of
24 first-degree murder, whether she's going to waive the

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1 sentencing by the jury and ask that the judge sentence her or
2 whether we'll conduct a jury sentencing in this case.

3 I need to know that before we begin this trial so
4 I can advise prospective jurors of that potential and so that
5 we can plan the court calendar accordingly. So I'm just
6 advising everyone I'm putting that out there and I'm going to
7 want an answer to that today. It's not a new issue, it's
8 something you should have prepared for, it's something you
9 should be aware of and should be prepared to address.

10 I want to turn to the issue of interpreters next.
11 For trial the court is attempting to have two interpreters
12 here throughout the process. The reason that we have decided
13 to have two interpreters throughout the entire trial process
14 is because of the fatigue element that sets in with an
15 interpreter through a day of work. So that the interpreters
16 will take turns and the trial won't have to stop for them to
17 rest.

18 That's an expense which the court has already
19 advised the County it will have to bear. Do you have any
20 objection to there being two interpreters taking turns,
21 Ms. Brown?

22 MS. BROWN: No, Your Honor.

23 THE COURT: Mr. Gregory?

24 MR. GREGORY: No, Your Honor.

1 THE COURT: Okay. All right. Let's go -- go
2 ahead, ma'am. I'm sorry.

3 I'd like to turn to the motions that are ripe.
4 The first motion I want to address is the motion to allow the
5 defense to inspect the scene of the alleged offense.

6 Ms. Henry, I see that you have filed a notice of
7 withdrawal of that motion?

8 MS. HENRY: Yes, Your Honor, that is correct.

9 THE COURT: And it's your position that the court
10 does not need to rule on that motion as it is moot?

11 MS. HENRY: Yes, Your Honor.

12 THE COURT: Therefore, with that motion having
13 been withdrawn, the court regards the issue as moot and I will
14 not issue a ruling on it.

15 The next motion I want to address is the motion
16 in limine regarding juror questioning. It appears to the
17 court that the defense has no objection to the State's motion.

18 Mr. Gregory, it appears that your request is that
19 the court -- your preference is that the court simply not
20 allow juror questioning of witnesses; is that correct?

21 MR. GREGORY: It is, Your Honor.

22 THE COURT: Ms. Brown, is it your position that
23 you concur with that request?

24 MS. BROWN: Yes -- yes, Your Honor. I think in a

1 case that has this many potential witnesses it would be
2 basically an unwieldy process.

3 THE COURT: Well, the court has considered the
4 motion. And I've considered the value of allowing jurors to
5 ask questions in this case. The trial is scheduled for two
6 weeks with I believe one day off for law and motion that has
7 already been scheduled. In that period the court must impanel
8 a jury and hear all of the witnesses. At this point,
9 Mr. Gregory, how many witnesses do you anticipate calling?

10 MR. GREGORY: Your Honor, I can tell you that the
11 State filed a notice of witnesses in this case. That
12 basically incorporated anybody who could potentially be a
13 witness. I do expect at trial that the witnesses I would call
14 would be somewhat less than that number.

15 I'm not in a position where I could give this
16 court an exact number, but I think 30 witnesses or so would be
17 an approximation I could give you today.

18 As the case gets closer to trial I'd be happy to
19 share with Your Honor and the court. I'm sorry.

20 THE INTERPRETER: I'm sorry, this is the
21 interpreter speaking. Did the attorney say 3 -- 3-0?

22 THE COURT: 3-0, yes, ma'am.

23 THE INTERPRETER: Thank you.

24 THE COURT: And, Mr. Gregory, you anticipate some

1 of those witnesses are going to be in the nature of technical
2 witnesses or expert witnesses?

3 MR. GREGORY: Yes. We noticed I believe five
4 expert witnesses. I'm expecting -- just wait, let her --
5 sorry.

6 THE COURT: Go ahead, ma'am. Go ahead,
7 Mr. Gregory.

8 MR. GREGORY: So, yes, there will be expert
9 testimony presented by the State.

10 THE COURT: Thank you. And, Ms. Brown, how many
11 witnesses are you anticipating? You don't have to tell me who
12 they are right now or anything, but do you have maybe a round
13 estimation?

14 MS. BROWN: Your Honor, I'm anticipating about
15 eight witnesses, however, there may be overlap with the State.

16 THE COURT: And might any of your witnesses also
17 be technical or expert witnesses?

18 MS. BROWN: Yes, Your Honor.

19 THE COURT: So the court has also considered the
20 nature of the anticipated testimony and the number of
21 witnesses. I've considered the value of juror questions in
22 assisting the jurors to find fact in this case. And in
23 conclusion, I have determined that the attorneys presenting
24 this case are very skilled and very experienced and are likely

1 to produce all of the evidence necessary for a jury to reach a
2 conclusion in this matter that is fair to both parties.

3 I've also considered the difficulty of having to
4 remove the jurors each -- at the end of each witness for the
5 possibility of a -- looking at juror questions. I've
6 considered the impact on the trial process and the impact of
7 fair and equal justice to both sides, rather that's the impact
8 on fair and equal justice to both sides.

9 And I've concluded that although there is Supreme
10 Court precedence which tends to indicate that District Courts
11 should be willing to hear juror questions in this case, I will
12 not allow juror questions. And the jurors will have to decide
13 this case based on the evidence that's presented by the two
14 sides. Therefore, the motion in limine is granted.

15 Mr. Gregory will prepare an order. The order
16 should reflect what I've indicated. Ms. Brown?

17 MS. BROWN: Your Honor, I was just going to ask
18 if Ms. Leibel could have one of her arms released from the
19 cuffs?

20 THE COURT: Absolutely.

21 MS. BROWN: Thank you.

22 THE INTERPRETER: I'm sorry, Your Honor, this is
23 the interpreter, I'm not picking up.

24 THE COURT: The question was whether Ms. Leibel

1 could have one of her arms freed from a handcuff and my
2 response was yes.

3 The next motion is a motion in limine regarding a
4 death certificate. There's a non-opposition filed by the
5 State. Motion is granted. Ms. Brown will prepare an order.

6 MS. BROWN: And, Your Honor, the only issue I
7 would have is the State's not opposing the requested
8 redaction, if that can --

9 THE COURT: Well --

10 MS. BROWN: And the question then becomes can
11 that be done without making it obvious that something has been
12 redacted.

13 THE COURT: Well, let me hear from you whether
14 you think it can be.

15 MS. BROWN: I think if it's on a blue official
16 state paper it's not going to be possible. I don't think if
17 it's a copy of the official death certificate that comes out
18 in black and white then it would be a possibility. The white
19 out or blue out wouldn't be noticeable.

20 THE COURT: Go ahead, ma'am.

21 THE INTERPRETER: I am having trouble hearing
22 counsel, unfortunately.

23 THE COURT: Okay. Ms. Brown, I'm going to ask
24 you to keep your seat.

1 THE CLERK: You muted it.

2 MS. BROWN: How did I mute it?

3 THE COURT: If you hit it twice you've gone right
4 back to where you were.

5 MS. BROWN: Your Honor, I was just saying that if
6 it's on actual blue state paper is what I'm familiar with
7 death certificates looking like, I don't think it's possible
8 to redact it in a manner that's not noticeable.

9 THE COURT: Well, let me ask Mr. Gregory this
10 question. Is there any dispute that this individual is dead?

11 MR. GREGORY: Not from the State.

12 THE COURT: And, Ms. Brown, is there any dispute
13 from you?

14 MS. BROWN: No, Your Honor.

15 THE COURT: Can we stipulate that Mr. Leibel is
16 dead?

17 MS. BROWN: Yes.

18 THE COURT: Go ahead, interpreter. I'm sorry --
19 so what is the probative value of the death certificate,
20 Mr. Gregory?

21 MR. GREGORY: The State does have to prove the
22 death, Your Honor. And what I'm hearing from the defense is
23 that they're not going to be taking issue with that, assuming
24 that's true. There would be no reason to offer the actual

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1 death certificate.

2 THE COURT: So here's my ruling. I'm not going
3 to tell you that you can't offer the death certificate. But
4 if you do, it must be a photocopy thereof on plain white paper
5 with the section regarding in -- it looks like -- it's hard
6 for me to read the number, it looks like maybe 26A, it's --
7 it's in part 2 under cause of death; do you see that?

8 MS. BROWN: I think it's 25A.

9 THE COURT: It's very hard for me to read. It
10 might be 25A. Do you find that section where the answer is
11 homicides?

12 MR. GREGORY: Yes.

13 THE COURT: That must be redacted if you offer
14 this. Specifically -- go ahead, ma'am. Specifically because
15 there is a determination that this cause of death is homicide
16 and one of the options that could have been chosen to fill in
17 that blank as referenced in the heading to that section is
18 suicide, which is the defense position in this case. And so
19 therefore, that entire section must -- including the options
20 must be blacked out if you offer it. Ms. Brown, you'll
21 prepare that order.

22 MS. BROWN: Blacked out or whited out?

23 THE COURT: Well, I -- I do not want someone to
24 use white out that a juror could use their thumbnail to

1 scratch off and see what's under there. So it must be
2 redacted in a fashion that the jurors cannot read through it
3 or find it. Okay.

4 Next I have a motion in limine regarding
5 uncharged misconduct. And in response to that I have a
6 non-opposition by the State in which the State tells me that
7 they do not intend to present such evidence in their case in
8 chief. The State reserves the right to present such evidence
9 should the defense open the door to that evidence.

10 The State specifically has acknowledged that it
11 will request a hearing outside the presence of the jury before
12 seeking the admission of such evidence. Ms. Brown, do you
13 have an opposition to that procedure?

14 MS. BROWN: No, Your Honor.

15 THE COURT: Then that's the procedure that we
16 will follow. And the State is ordered not to present such
17 evidence without first requesting a hearing. And I believe
18 that that -- Ms. Brown, you'll prepare the order on that.

19 MS. BROWN: Yes, Your Honor.

20 THE COURT: I believe that that takes us -- I'm
21 sorry, go ahead, ma'am.

22 I believe that that takes us to the motion in
23 limine regarding the crime scene and autopsy photos. The
24 court greatly appreciates having received this motion because

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1 it allows us to make these determinations at least initially
2 prior to having the jury sit in here.

3 The problem is that I have received the
4 photographs on a memory stick and can't just rule on them in
5 toto.

6 THE INTERPRETER: I apologize, Your Honor, can
7 you please repeat it?

8 THE COURT: I -- I can't rule on that -- on the
9 admissibility of these photos as a group. Each photograph
10 will have or fail to have its own evidentiary value. And each
11 photograph must independently be determined to have probative
12 value and must independently be determined as to whether the
13 prejudice that may result from that photograph outweighs the
14 probative value.

15 As a result, I've had the court's audio-visual
16 equipment set up for today's hearing. And it's my intention
17 to go through all of the photographs today to address the
18 motion in limine.

19 I specifically do not intend to address
20 foundational questions regarding these photos. So you don't
21 have to have any witnesses here, Mr. Gregory. But we do need
22 to review the photographs. I'll hear the objections to them
23 and -- go ahead, ma'am. And make initial determinations as to
24 their admissibility based on an offer of proof from

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1 Mr. Gregory.

2 As to each of these, should there be some failure
3 then subsequently to tie them into your case or for some
4 reason should they become cumulative -- I'll wait, ma'am. The
5 defense will be allowed to renew an objection.

6 By the same token, should I initially determine
7 today that something is not admissible should the
8 circumstances at trial change my opinion, the State is welcome
9 to reoffer these in.

10 Do you have an objection to that process,
11 Ms. Brown?

12 MS. BROWN: Your Honor, in my discussions with
13 Mr. Gregory before court today we think we may be able to
14 narrow down the number of photographs to specific witnesses if
15 given some more time. And we could again bring this up before
16 we're in front of a jury if there's ones that we cannot agree
17 on. That might save the court some time.

18 THE COURT: Do you agree with that, Mr. Gregory?

19 MR. GREGORY: I do, Your Honor. I want the court
20 to know that I've asked the medical examiner who will be
21 appearing here for the State to go through the autopsy photos
22 and pick out only those photos that would be necessary to
23 explain his testimony. Not wishing to have any appeal issues,
24 Your Honor, it would be my goal to not have any of the

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1 photographs be cumulative or to be offered for prejudicial
2 reasons.

3 I propose that I would then share those photos
4 that the State would be offering at trial with Ms. Brown and
5 see if we could come to some consensus about what photos would
6 be admissible at trial.

7 And lastly, I can offer that the number of photos
8 that the State would ultimately be introducing at trial would
9 be far less than the number you've received on the memory
10 stick.

11 THE COURT: Okay. Well, that's exactly what
12 should be done here. And so I -- I applaud that effort. But
13 I need some time frame for that. Because assuming that
14 there's still going to be the possibility of some dispute we
15 need to have the issue resolved prior to trial.

16 Can you give me a time frame of when you might be
17 prepared to at least present those photographs to Ms. Brown?

18 MR. GREGORY: I made the request -- I made the
19 request to Dr. Kubiczek at approximately a week ago and I
20 would say within a week's time I can have the photos to Ms.
21 Brown that I intend to offer.

22 THE COURT: Well, I'm going to tentatively then
23 set this for 9 o'clock, Friday the 23rd. And I know
24 everybody's probably in their last minute trial preparations,

1 I know how those things go, but if you have no dispute you can
2 call off the hearing. Okay?

3 And I would ask you to notify my judicial
4 assistant as early as you can. It gives -- I think that gives
5 you plenty of time, doesn't it, Mr. Gregory?

6 MR. GREGORY: It does plenty.

7 THE COURT: Ms. Brown?

8 MS. BROWN: Yes, Your Honor, thank you.

9 THE COURT: And at that time we can hear any last
10 minute issues that may come up, I think our trial is scheduled
11 to start in two -- two judicial days after that, so on the
12 following Tuesday anyway.

13 MS. BROWN: Yes.

14 THE COURT: So I'll hear anything else that may
15 come up. It is my intention, Mr. Gregory, because you offered
16 this stick stapled to your motion, I'm leaving it in the court
17 file. Although the record should reflect that while I've
18 looked at the photographs, I'm not ruling on the photographs
19 as offered. And that --

20 MR. GREGORY: Understood.

21 THE COURT: -- the photographs you do offer will
22 be numbered differently and will be ruled on when you decide
23 how you want to pare it down.

24 MR. GREGORY: Very well.

1 THE COURT: Go ahead and interpret that. You
2 know, just because you're actually withdrawing these,
3 Mr. Gregory, if you put on the record that you were
4 withdrawing the exhibit to this motion I would return this to
5 you and the clerk wouldn't have to care take it.

6 MR. GREGORY: Thank you, Your Honor, I would ask
7 for the return or I'd ask to withdraw that exhibit from the
8 motion.

9 THE COURT: Any objection, Ms. Brown?

10 MS. BROWN: No, Your Honor.

11 THE COURT: Mr. Gregory, I'm returning the
12 exhibit to you now. Thank you, sir.

13 I'm going to ask at that hearing that I just set
14 for a week from Friday that everyone be prepared to go over
15 the proposed jury instructions at that time. I've got
16 proposed instructions from the State. I don't think I have
17 any from the defense.

18 Okay. I think that's all the motions that I have
19 now. There's at least one other issue I want to bring up.
20 I've had purchased for the court these devices.

21 THE INTERPRETER: I couldn't hear you.

22 THE COURT: I purchased some devices for the
23 court. Because of the difficulty that we're having right now
24 with the microphone system and how it ties you to the

1 microphone where you're sitting, I recall that when I was
2 trying cases I like to move around the courtroom.

3 They'll be one of these for each of the
4 attorneys. You're welcome to use them or you're welcome -- or
5 you're welcome to stay tied to your chair. You can fit the
6 device in your pocket and just have the microphone on your
7 lapel or wherever.

8 But this way the JAVS or the Jefferson Audio
9 Visual System will be able to hear you and point the camera
10 toward you when you move around the courtroom. You're not
11 required to wear one, but if you choose not to you need to
12 stay in your chair. And this allows you to move over by the
13 jurors or wherever you want to be, I will allow you to pretty
14 much have, you know, free movement around the courtroom as you
15 try this case.

16 Also, Mr. Bates who is the court's computer
17 expert will be available to assist you with any training that
18 you may want to undertake with regard to the audio-visual
19 system that sits between you. You may know how to use it
20 already, but --

21 So, Mr. Gregory, do you have any other issues
22 you'd like to raise today?

23 MR. GREGORY: No, Your Honor. The only thing
24 would be that you brought up sentencing phase. I do have

1 penalty instructions should we get to that point and the
2 Defendant does not waive a jury.

3 THE COURT: Ms. Brown, other than the sentencing
4 issue, is there anything else you'd like to raise today?

5 MS. BROWN: No, Your Honor.

6 THE COURT: Would you like some time to talk to
7 your client about this sentencing issue?

8 MS. BROWN: Your Honor, I don't know that this is
9 a matter that can be discussed quickly. I was going to
10 discuss it with Ms. Leibel last Friday and ended up giving her
11 some bad news of a more personal nature concerning some
12 property and she was very upset.

13 THE INTERPRETER: I'm sorry, you were breaking
14 up, I only heard you partially.

15 MS. BROWN: I was going to discuss this matter
16 with Ms. Leibel last Friday but had to give her some bad news
17 concerning a more personal matter, her -- some property of
18 hers and she was too upset to discuss it.

19 THE INTERPRETER: Thank you very much.

20 THE COURT: Well, here's the difficulty. This
21 matter begins trial in about two weeks. Now, I don't know
22 what the evidence will be and as Ms. Leibel sits before this
23 court she's presumed innocent. And, in fact, I do presume her
24 innocent of this offense, however, when the trial begins we

1 will proceed through trial to the conclusion of the trial.
2 And in the event that the jury finds that the State has proven
3 her guilty beyond a reasonable doubt of the offense of
4 first-degree murder, the sentencing phase of this trial will
5 begin immediately.

6 And you should not expect there to be time to
7 prepare for sentencing at that point. I am very well aware of
8 the difficulty that a defense attorney faces when having to
9 prepare for a trial on the guilt issue and at the same time
10 having to prepare for a sentence.

11 But unless she waives her right to a juror
12 sentencing then -- go ahead. Then that phase of trial will
13 begin immediately after the guilt phase if in fact she's
14 convicted.

15 Witnesses and evidence must be here and ready to
16 go. And it is only fair to the jurors to advise them that
17 this is following the trial and that they're obligated to stay
18 in the courtroom and consider another issue, and that's
19 something that you're going to probably want to voir dire them
20 on.

21 THE INTERPRETER: I apologize, Your Honor, but
22 the connection was bad and you were breaking up.

23 THE COURT: Okay. Would you read back what I
24 said, please?

1 (Record read.)

2 THE COURT: And of course if she determines that
3 she wants to waive the jurors' sentencing and have a judge
4 sentence her, then it changes the nature of the voir dire
5 process and it would necessarily result in a time delay
6 between verdict and sentencing so that a presentence
7 investigation could be prepared.

8 Ms. Brown, if your client needs more time to
9 consider that I'll give her till -- till the hearing on that
10 Friday, but I think -- go ahead, ma'am. But I am likely to
11 not accept a waiver of juror sentencing after that date.
12 Unless you have some authority that says she can waive at any
13 time, because this -- let me pause for the interpreter.

14 Because it's not fair to the State to require
15 them to prepare for that phase of the trial and ambush their
16 time and then -- and then waive at the last minute.

17 Of course, I suppose a waiver is easier than an
18 assertion, so -- so we're presuming that there will be a juror
19 sentencing and you'll need to let me know if she intends to
20 waive that.

21 Ms. Brown?

22 MS. BROWN: Your Honor, I only have one case on
23 tomorrow morning, I would be able to go down after court. I'm
24 seeing Ms. Leibel acting in an agreement, but I would like

1 time to talk to her about that and it would need to be in
2 writing so I could have a written waiver prepared. So I would
3 be able if she wants to do that to file a written waiver
4 tomorrow.

5 THE COURT: It's a significant issue and I want
6 her to have time to think about it.

7 MS. BROWN: We can talk briefly today, she would
8 have a chance -- and she's heard what the interpreter was
9 saying from you.

10 THE COURT: She doesn't have to decide today.
11 She doesn't have to decide tomorrow. Go ahead. And frankly,
12 in rethinking what I just said, I suppose a waiver could
13 happen at any time. I might not allow it, but I'll, you know,
14 I'll consider it. But I think that it would be -- you'd be
15 well served as her counsel and she'd be well served by you
16 having made that decision early. And this is not in any way
17 to say that she is presumed anything but innocent, it's simply
18 a matter of planning for possibilities.

19 Mr. Gregory, did you have anything you want to
20 weigh in on this?

21 MR. GREGORY: No, Your Honor.

22 THE COURT: So unless you file something before
23 that date I'll decide this issue then. You're welcome to file
24 something before that, it would help. And if you do I'll

1 canvass her on it. I think that's all of the issues that we
2 had today. Ms. Leibel, have you been able to hear the
3 interpreter well today?

4 THE DEFENDANT: Yes, thank you very much.

5 THE COURT: You can have a seat, ma'am.

6 THE DEFENDANT: Okay. Thank you.

7 THE COURT: Have you understood what has been
8 said?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you have questions of me that you
11 would like to ask at this point regarding what happened today?
12 In other words, was there part of it you didn't hear or didn't
13 understand?

14 THE DEFENDANT: No, I understood. Thank you very
15 much.

16 THE COURT: Okay. Did the process of having the
17 interpreter on the telephone work for you?

18 THE DEFENDANT: Yes, but -- yeah, good.

19 THE COURT: I ask way too many questions for the
20 interpreter, I apologize. All right. We'll be in recess.
21 Thank you. Thank you all. Madam Interpreter, thank you so
22 much for helping us and for your patience in dealing with all
23 of us, especially me, ma'am. Thank you.

24 THE INTERPRETER: You're very welcome. My

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pleasure, Your Honor, thank you.

THE COURT: Goodbye.

THE INTERPRETER: Goodbye.

(Proceedings concluded at 3:00 p.m.)

1 STATE OF NEVADA)
2 COUNTY OF DOUGLAS)
3

4 I, Michel Loomis, Certified Shorthand Reporter of
5 the Ninth Judicial District Court of the State of Nevada, in
6 and for the County of Douglas, do hereby certify:

7 That I was present in Department No. I of the
8 above-entitled Court and took stenotype notes of the
9 proceedings entitled herein, and thereafter transcribed the
10 same into typewriting as herein appears;

11 That the foregoing transcript is a full, true and
12 correct transcription of my stenotype notes of said
13 proceedings.

14 DATED: At Carson City, Nevada, this 16th day of
15 January, 2015.

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18 Michel Loomis, CCR No. 228
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24

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2 Capitol Reporters
208 North Curry Street
3 Carson City, NV, 89703
(775) 882-5322

4
5 IN THE NINTH JUDICIAL DISTRICT COURT
6 IN AND FOR THE COUNTY OF DOUGLAS, STATE OF NEVADA

7 STATE OF NEVADA,)
8)
9 Plaintiff,)
10 vs.) Case No. 14-CR-0062
11 TATIANA LEIBEL,) Dept. No. I
12 Defendant.)
_____)

13
14
15 AFFIRMATION

16 Pursuant to NRS 239B.030

17 The undersigned does hereby affirm that the following
18 document DOES NOT contain the social security number of
19 any person:
20
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24 MICHEL LOOMIS

1-16-15

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CLERK

BY M. B. [Signature] DEPUTY

Case No. 14-CR-0062

Dept. No. 1

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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

STATE OF NEVADA

Plaintiff,

vs.

TATIANA LEIBEL

Defendant

NOTICE OF WITNESSES

Tatiana Leibel, by and through counsel, Kristine L. Brown provides notice of the names and last known addresses of the witnesses the defense intends to call in its case in chief (excluding witnesses held subject to recall) pursuant to NRS 174.234.

Dr. Bennet Omalu
1132 Junewood Court
Lodi, CA 95242

David Billau
PO Box 10798
Reno, NV 89510

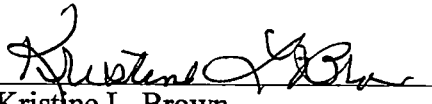
Chaya Anna Leibel
c/o Nancy Strayer
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SanDiego, CA

Chris Headrick
1936 East F. Street
Oakdale, CA

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3 Reno, NV 89511
4 Joseph Rajacic
5 12335 Solitude Drive
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7 Darla Burrows
8 690 Amber Circle
9 Reno, NV 89509
10 Svetlana Raymo
11 8233 Blackburn Avenue #4
12 Los Angeles, CA 90048
13 Yaakov Varol
14 Department of Computer Science and Engineering
15 Scrugham Engineering/Mines Building (SEM) 242
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24 John Marini
25 4395 Bridle Way
26 Reno, Nevada 89519
27 Chris Lucas
28 Tahoe Douglas Fire Protection District
193 Elks Point Road
Zephyr Cove, NV

1 Nick Robidart
2 Tahoe Douglas Fire Protection District
3 193 Elks Point Road
4 Zephyr Cove, NV

5 Dated this 20th day of January, 2015.

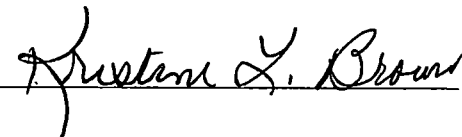
6 
7 Kristine L. Brown
8 State Bar No. 3026
9 1190 High School Street
10 Suite A
11 Gardnerville, Nv. 89410
12 775-783-8642
13 Attorney for Defendant

14
15
16
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20 **CERTIFICATE OF SERVICE**

21 I certify that I am an employee of The Law Office of Kristine L. Brown, LLC, and that on this
22 date I hand-delivered a true and correct copy of the **NOTICE OF WITNESSES** to:

23 The Douglas County District Attorney's Office
24 1038 Buckeye Road
25 Minden, Nv. 89423

26 Dated this 20th day of January, 2015.

27 
28

Case No. 14-CR-0062

Dept. No. 1

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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

STATE OF NEVADA

Plaintiff,

vs.

TATIANA LEIBEL

Defendant

MOTION IN LIMINE REGARDING
TESTIMONY CONCERNING CRIME
SCENE RECONSTRUCTION BY
MATHEW NOEDEL

Tatiana Leibel, by and through counsel, Kristine L. Brown, moves this court for an order prohibiting the state from introducing into evidence and testimony concerning the crime scene reconstruction performed by Mathew Noedel. This motion is based on the following Points and Authorities and the exhibits incorporated by reference.

Dated this 19th day of January, 2015.

Kristine L. Brown
Kristine L. Brown
State Bar No. 3026
1190 High School Street
Suite A
Gardnerville, Nv. 89410
775-783-8642
Attorney for Defendant

POINTS AND AUTHORITIES

At 11:03 a.m. on February 23, 2014, Tatiana Leibel called Douglas County Dispatch to report that her husband, Harry Leibel, had shot himself. Preliminary Hearing Transcript (PHT), p. 12, 16-17. Officers arrived at the scene within minutes and observed Mr. Leibel on the living room floor, apparently deceased. PHT, p. 12, 25-26. Mr. Leibel was pronounced dead by paramedics at 11:15 a.m.

Investigator Garren of the Douglas County Sheriff's Office was assigned as the lead investigator on the case. PHT, p. 42. Investigator Garren arrived at the Leibel residence shortly after noon. Based on Mr. Leibel's injuries and evidence at the scene, Investigator Garren formed the opinion that Mr. Leibel's death did not appear to him to be a suicide. PHT, p. 109.

On December 17, 2014, the state filed a Notice of Experts. Mathew Noedel, Washoe County Crime Lab/Noedel Scientific was listed as one of the experts. In the Notice, it was stated that Noedel "Analyzed the firearm and ammunition to kill the victim. Mr. Noedel is expected to testify regarding the firearm utilized to kill the victim. Mr. Noedel is expected to testify regarding the firearm and ammunition and testify regarding distance and trajectory. Mr. Noedel's curriculum vitae is attached as exhibit C. Mr. Noedel's report has been provided in discovery."

For convenience, a copy of Mr. Noedel's Curriculum Vitae has been attached as Exhibit 1. His Ballistics report is attached as Exhibit 2. Mr. Gregory has advised us for the last several weeks that the trajectory report was forthcoming. On Friday, January 16th, we received a 26 page report from Mr. Noedel entitled Shooting Scene Reconstruction Report. A copy of this report is attached as Exhibit 3. This report opened with the following paragraph:

"This supplemental report was generated in addition to the forensic laboratory work previously conducted by this examiner for the Washoe County Sheriff's Office Forensic Laboratory. I was requested by attorney Thomas Gregory to conduct a shooting scene reconstruction to incorporate the laboratory work with the scene documentation. This reconstruction report relies on the collective data accumulated from Forensic Laboratory reports, the original scene processing reports and photographs, the autopsy report and photographs of Harry Leibel, direct examination of physical evidence and similar data. This report was generated under the sole responsibility of Noedel Scientific LLC and as such is not associated with or under the jurisdiction of the Washoe County Sheriff's Office Forensic Laboratory." Report, pg. 1.

1 As part of discovery, we had previously received a copy of a Forensic Report with 2
3 computer generated scene diagrams. A notation on the reports stated "photographs and
4 measurements were obtained for future trajectory analysis". A copy of the report is attached as
5 Exhibit 4. "Trajectory photos" are attached as Exhibit 5. On January 15, 2015, I had emailed Sgt.
6 Mike Lyford, Joey Lear and Marci Margritier at the Washoe County Forensic Science Division
7 asking if there was a separate report prepared concerning the measurements taken at the scene. I
8 received a response from Sgt. Lyford stating: "The diagram is based on the measurements that
9 were taken. There is no separate report for measurements." Copies of the emails are attached as
10 exhibits 6.

11 In his report, rather than presenting an analysis and opinion concerning trajectory, Mr.
12 Noedel, goes on to analyze scene considerations, the autopsy report, firearm considerations, and
13 bullet path analysis. He then applies his reconstruction elements and ends with the conclusion:
14 "The physical evidence (including the length of the rifle, the length of Harry Leibel's right arm,
15 the distance of each shot, the angle of each shot, the orientation required for each shot and the re-
16 cocking of the hammer after the second shot) best supports that Harry Leibel did not shoot
17 himself during this event." Report, pg. 7.

18 This "opinion" is supported by Photoshopped photos and computer generated images that
19 "scientifically" support his conclusion.

20 The court should preclude Mr. Nodel from testifying concerning this "Shooting
21 Reconstruction" as it does not meet the standard of admissible expert testimony.
22 *NRS 50.275* provides:

23 "If scientific, technical or other specialized knowledge will assist the trier of
24 fact to understand the evidence or to determine a fact in issue, a witness
25 qualified as an expert by special knowledge, skill, experience, training or
26 education may testify to matters within the scope of such knowledge."

27 An expert may, based on those qualifications and within that scope, testify in the form of
28 an opinion. *NRS 50.305*. Testimony of an expert in the form of an opinion or inference is
admissible even if it embraces an ultimate issue to be decided by the trier of fact. *NRS 50.295*.

In *Higgs v. State*, 126 Nev. Adv. Rep. 1; 222 P.3d 648 (2110), the Nevada Supreme Court
reiterated the standard of admissibility as to expert testimony. In *Higgs*, the court stated:

"In *Hallmark*, we stated that *Daubert* and federal court decisions discussing it

1 'may provide persuasive authority.' We did not, however, and do not today,
2 adopt the *Daubert* standard as a limitation on the factors that a trial judge in
3 Nevada may consider. We expressly reject the notion that our decision in
4 *Hallmark* inferentially adopted *Daubert* or signaled an intent by this court to do
5 so. A close reading of *Hallmark* is helpful. This court concluded that the district
6 court abused its discretion in allowing the expert testimony of a biochemical
7 engineer. In so doing, we summarized Nevada's jurisprudence regarding expert
8 witness testimony pursuant to NRS 50.275. We identified the three overarching
9 requirements for admissibility of expert witness testimony pursuant to NRS
10 50.275 as (1) qualification, (2) assistance, and (3) limited scope requirements.
11 This court then identified factors to be considered under each requirement. We
12 were careful to note that the list of factors was not exhaustive, and we recognized
13 that every factor may not be applicable in every case and would likely be
14 accorded varying weight from case to case."
15 *Higgs*, 222 P.3d at 658. (Internal citation omitted).

16 The court in *Higgs* then went on to reiterate that in Nevada, the qualification, assistance,
17 and limited scope requirements are based on legal principles. The requirements ensure reliability
18 and relevance, while not imposing upon a judge a mandate to determine scientific falsifiability
19 and error rate for each case. Although, *Daubert*, is looked upon favorably by the Nevada court,
20 the court again declined to adopt the *Daubert* standard as a limitation on the factors considered
21 for admissibility of expert witness testimony. The court concluded that NRS 50.275 provides the
22 standard for admissibility of expert witness testimony in Nevada. *Id* at 659.

23 In considering the qualification requirement, the court may consider, among other things
24 whether witness had formal schooling, proper licensure, employment experience, and practical
25 experience and specialized training. *Id*, at 659; *Hallmark*, 189 P.3d at 650-51. In determining
26 whether the proffered testimony would assist the jury to understand the evidence or to determine
27 a fact in issue, the court concluded that expert witness testimony "will assist the trier of fact only
28 when it is relevant and the product of reliable methodology." *Id*. at 660; *Hallmark* at 189 P.3d
659. While noting that each case turns upon varying factors, the court articulated five factors to
judge reliability of a methodology, instructing the district court to consider whether the proffered
opinion is (1) within a recognized field of expertise; (2) testable and has been tested; (3)
published and subjected to peer review; (4) generally accepted in the scientific community (not
always determinative); and (5) based more on particularized facts rather than assumption,
conjecture, or generalization. *Id*; *Hallmark* at 189 P.3d 660. Finally, the testimony must be
limited to matters within the scope of the witnesses' area of expertise.

1 Finally, the court has stated that medical opinions concerning causation must be stated to
2 a reasonable degree of medical probability or certainty. *Morsicato v. Save-On Drug Store, Inc.*,
3 *121 Nev. 153; 111 P.3d 1112 (2005)*. This same standard has been applied to other scientific
4 evidence concerning causation. *Las Vegas Metro v. Yeghiazarian*, *129 Ad. Op 81; 312 P.3d 503*
5 *(2013, corrected 2014)*. (*Professional engineer testifying concerning causation in an accident*).

6 Even assuming that Mr. Noedel's testimony would be otherwise admissible expert
7 testimony (which the defense is in no way conceding), the testimony would fail under the
8 *Morisicato/Yeghiazarian* standard which requires testimony concerning causation be stated to a
9 reasonable degree of medical or scientific probability or certainty. As was previously pointed
10 out, Mr. Noedel's conclusion is stated: "The physical evidence (including the length of the rifle,
11 the length of Harry Leibel's right arm, the distance of each shot, the angle of each shot, the
12 orientation required for each shot and the re-cocking of the hammer after the second shot) **best**
13 **supports that Harry Leibel did not shoot himself during this event.**". (emphasis added).
14 This does not meet the standard of a "reasonable degree of medical or scientific probability or
15 certainty". The testimony therefore should be prohibited on this requirement alone.

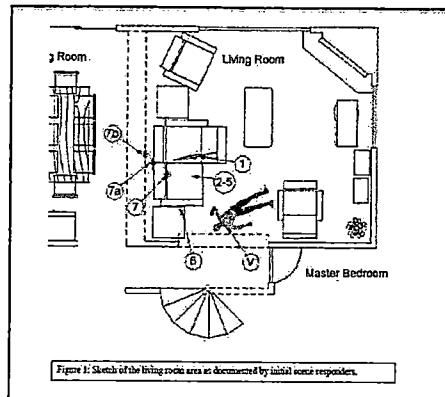
16 Assuming for purposes of this motion that Mr. Noedel has the appropriate qualifications
17 to testify as an expert, the focus of this motion is on the second prong of the criteria: that the
18 testimony will assist the trier of fact, ie., is relevant and the product of reliable methodology. In
19 addition to the factors noted above, all evidence remains subject to exclusion if its probative
20 value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or
21 of misleading the jury. NRS 48.035(1).

22 Crime scene reconstruction encompasses many components that are based in "true
23 science": chemistry, math, physics, etc. where 1+1 always equals 2. A copy of the International
24 Association for Identification requirements are attached as Exhibit 7. Reconstruction itself is an
25 applied science, the art or science of applying scientific knowledge to practical problems.
26 Therefore, although "crime scene reconstruction" maybe generally accepted, the specific
27 application must be scrutinized since it takes on the aura of science.

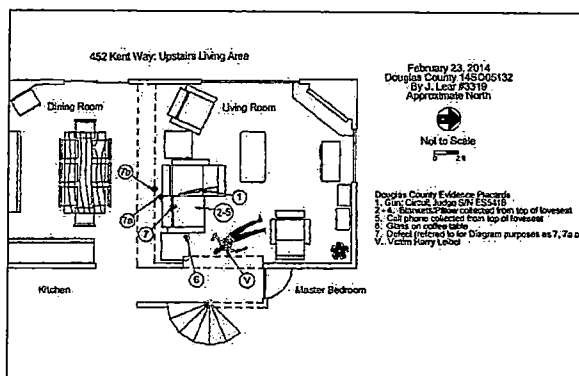
28 Mr. Noedel expresses an opinion in this case concerning trajectory of the second shot.
According to the crime scene log, Mr. Noedel was not present when the original scene was
documented, therefore, he is in the first instance relying on information provided by another

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source, presumably, the Washoe County Forensic Division who documented the scene. According to Sgt Lyford, the diagram attached here as Exhibit 4 was produced from measurements that were taken, but there was no separate report prepared concerning the measurements from the scene, or presumably, how they were arrived at. As part of his report, Mr. Noedel has included Figure 1, a blown up reproduction of the diagram produced by the crime lab:



This blow up omits the information on the original document that the diagram "is not to scale".



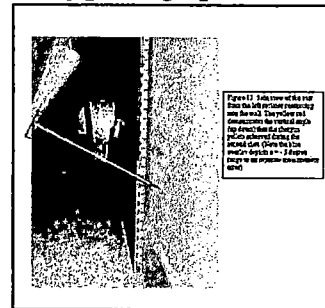
In his report, Mr. Nodel also states:

"Because the seat occupied by Harry Leibel was a recliner (the seat back moved up and down to sit up or recline), the straight line path of this shot could only be connected when the seat was reclined approximately half way back. Therefore, at the time of the second shot, the recliner was neither sitting up-right nor lying flat; it was approximately in the middle position of the reclining range (see figures 10, 11 and 12)." Report, pg. 4.

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...January 13, 2013

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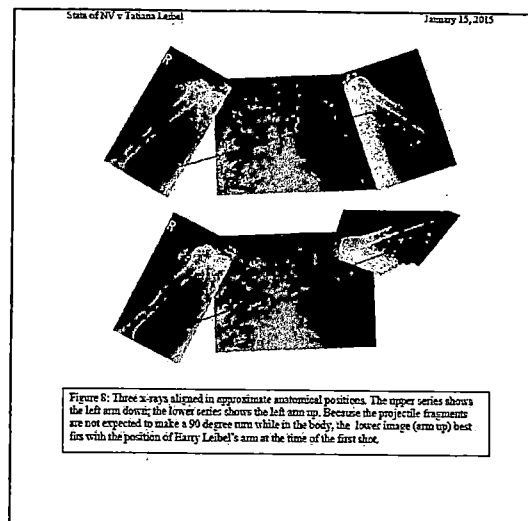
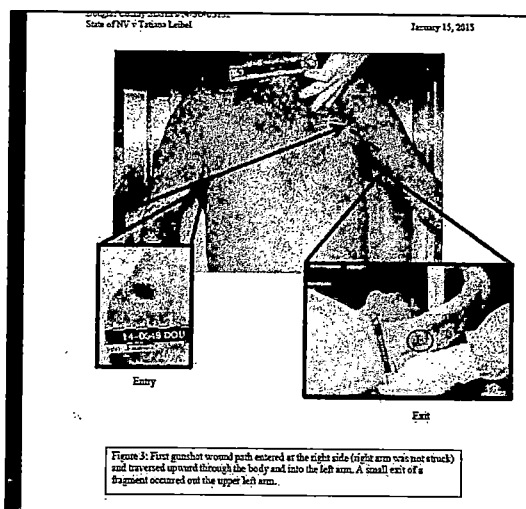


The “scene” itself is not reconstructable in any meaningful fashion. The house is currently in the hands of a third party. The sofa is stored in a storage locker. The drywall was removed to retrieve the pellets. Although portion of drywall was removed in a 5x6 inch “square”, there was no documentation in terms of measurement where the pellets lodged in the underlying structure. See Exhibit 8.

"By connecting the hole through the couch with the fixed perforation in the wall behind the couch, the path of this shot can be measured. The measured path reveals that the horizontal aspect of this shot (that is the left/right angle) was approximately 55 degrees (out from the left as one faces the couch). The vertical aspect (that is the up/down angle) was approximately 25 degrees downward." Report, pg. 4.

The application of the “science” of crime scene reconstruction becomes more problematic the more it is “applied” to the scene. The first shot entered Mr. Leibel’s torso on the right side underneath the arm pit. In the autopsy report, the wound path is described as right to

left with an upward angle with an exit wound of fragments in the left arm. Mr. Noedel has "recreated" this pattern in photographs in his report as follows:



Mr. Noedel is not a medical doctor or pathologist, but based on these images concludes:

"Connecting the trail of fragments that are visible in x-rays demonstrates that the general path of this fired bullet was upward at approximately 15 to 20 degrees (relative to zero degree being a level shot) from his right side toward his left arm. In addition, fragments apparent in his left arm support that **his left arm must have been elevated** in order for the bullet fragment path to remain on a straight line (see figure 8).

Prior to this shot the torso of Harry Leibel would have been able to achieve any number of orientations (twisting, bending, leaning etc.) so his exact original orientation (other than on the left recliner) cannot be independently determined. However, whatever the orientation of his torso at the time of this shot, **he had to be positioned with his left arm elevated.**" Report, pg. 3 (Emphasis added).

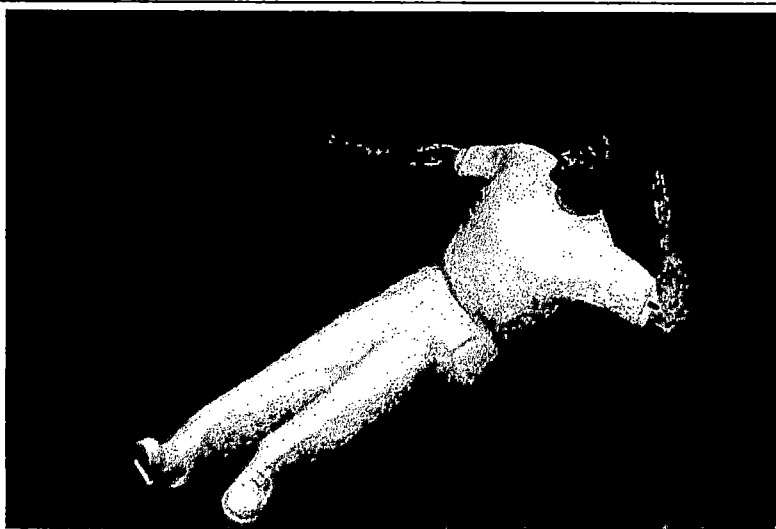
On December 23, 2014, Dr. Kubiczek, the doctor who performed the autopsy, met with myself, co-counsel, Ms. Henry, and the defense investigator to discuss the autopsy protocol. Also present was the prosecutor, Mr. Gregory. At that time, Dr. Kubiczek acknowledged that the shot fragments in the arm could possibly have deflected off a bone in a bent arm. See Declaration of Counsel, attached as exhibit 9. Therefore this premise, that the left arm **must** be extended, is not supported by even the state's medical expert.

Working from this "fact", that the left arm had to be extended, Mr. Noedel attempts to position the body of Mr. Leibel at the time the shot was fired. As stated above, he concludes Mr. Leibel was on the left recliner, presumably because that is where the blood ended up. But Dr.

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1 Kubiczek stated that death from this wound would not cause instantaneous death. Therefore, Mr.
2 Leibel could have been in any number of locations, in any number of positions at the time the
3 shot was fired. He just ended up on the couch after the shot.

4 Therefore, what Mr. Noedel has stated as fact is really based more on assumption,
5 conjecture, or generalization. Even if this is the "best guess scenario", it is not a fact. Even
6 though Mr. Noedel admits that "prior to this shot the torso of Harry Leibel would have been able
7 to achieve any number of orientations (twisting, bending, leaning etc.) so his exact original
8 orientation (other than on the left recliner) cannot be independently determined." He then goes
9 on, however, to depict the "approximate orientation Harry Leibel would have to achieve to self
inflict the first shot" in the following image:



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19 Figure 13: Diagram representing the approximate orientation Harry Leibel would have to
20 achieve to self-inflict the first shot (not to scale) assuming he can reach the trigger.

21 All of Mr. Noedel's discussion concerning both shots is qualified by "assuming [Mr.
22 Leibel] can reach the trigger". In support of this "fact", that Mr. Leibel cannot reach the trigger,
23 Mr. Noedel relies on an autopsy photo where Mr. Leibel's arm was "measured":
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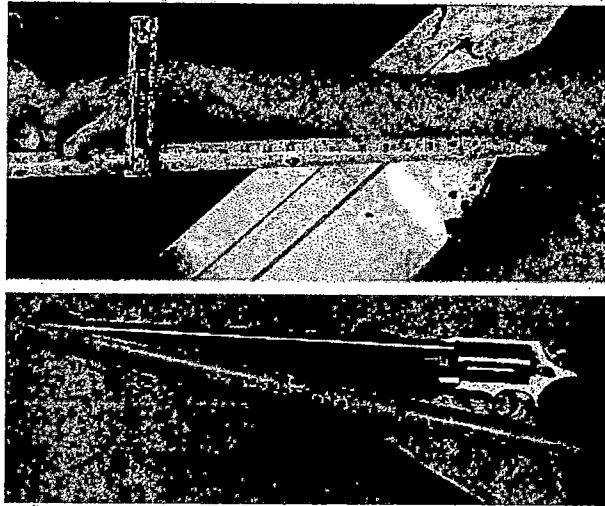


Figure 14: The upper two images were taken at two different times. First, the length of Harry Leibel's arm was measured during his autopsy and photographed. Later, the image of the Rossi/Taurus rifle was taken at the forensic laboratory and photographed with a scale.

These two images were scaled together (so the tape measure distance match each other) and the rifle was positioned with a 3 inch offset (as determined by the laboratory distance testing) to the entry wound to create Figure 15.

As can be seen first in the top photograph, the reach of Mr. Leibel's finger is not shown. Second, there is a distinct arch in the wrist and curve in the hand. As can be demonstrated in court (or through personal experimentation), this causes the "length" of the arm to shorten by several inches. But relying on this "factual" measurement and a verifiable, length of the gun, Mr. Noedel transposes a picture of the gun and Photoshops it into a static position in the autopsy photo to show Mr. Leibel cannot reach the trigger.

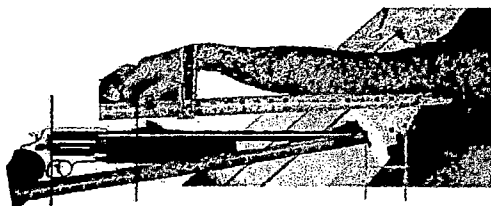


Figure 15: The scaled and repositioned images of the rifle and arm length of Harry Leibel. The green zone represents approximately 3 inch of off-set and the red zone represents the approximate distance beyond the reach of Harry Leibel to self-inflict the gunshot wound to his side.

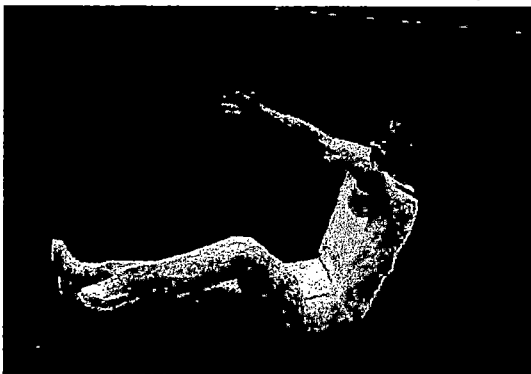
Because these are "static" images it cannot be conclusively eliminated that Harry Leibel could not stretch, twist or contort his body to reach the trigger of the rifle; however, such contortions would be difficult to obtain while keeping the gun muzzle 3 inches away from the entry side of the robe and his left arm elevated.

(Note: The left arm must be elevated at the time this shot was delivered so the left hand cannot be used to support the firearm during this shot).

1 This photo relies on inaccurate information to begin with. It then presents as "fact" that
2 this "is" the position of the gun, although acknowledging in the caption it may not be. But in
3 acknowledging this uses loaded words like "contort". Although the measurement of the gun can
4 be replicated, there is no way at this point to verify Mr. Leibel's actual arm length. This "fact"
5 cannot be tested or reproduced.

6 The "science" of the second shot is somewhat more tied to fact and the scene, because
7 there is trajectory to work with, although the trajectory itself is questionable. As to the second
8 shot, Mr. Noedel concludes: "the top of Harry Leibel's left shoulder must be just at the entry
9 point into the back of the couch identifying that he cannot be sitting "upright" rather he must be
10 slouched down to keep his shoulder low enough for the shot to eclipse his shoulder and continue
11 downward." Report, pg. 5. The presence of fiber around the hole on the couch would indicate the
12 shoulder was near the couch. This anchors Mr. Leibel to at least some position.

13 In order to demonstrate this shot, however, Mr. Noedel uses the following image to
14 represent the "approximate orientation" Harry Leibel would have to be in to self-inflict the
15 second shot:



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22 Figure 16: Diagram representing the approximate orientation Harry Leibel would have to
23 achieve to self-inflict the second shot (not to scale) assuming he can reach the trigger. (Note:
24 the farther his left hand is moved away from his body, the more unlikely a self-inflicted shot
25 becomes because of the limits of his reach with his right arm).

26 Contrary to Mr. Noedel's own opinion, this figure is not slouched. It is not tied to a
27 particular object (a couch). The lower leg position is total speculation. Again, the caveat
28 "assuming he can reach the trigger" is based on erroneous information presented as fact. The
position is based on conjecture and speculation.

To support his conclusion that the physical evidence best supports that Mr. Leibel shot himself, Mr. Noedel submits Figures 17 and 18 to show the approximate position of the shooter during the two shots.



Figure 17: Diagram representing the approximate orientation of a shooter delivering the first shot to Harry Leibel (not to scale). Note: The triangular region represents the areas the rifle can be held and still maintain the appropriate angles.

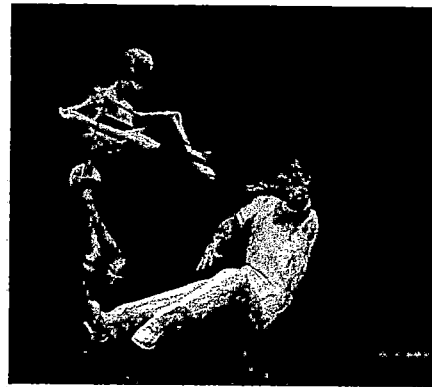


Figure 18: Diagram representing the approximate orientation of a shooter delivering the second shot to Harry Leibel (not to scale). Note: The triangular region represents the areas the rifle can be held and still maintain the appropriate angles.

If nothing else, these photographs are inadmissible pursuant to NRS 48.035 in that they are totally confusing and misleading. The figures float in space on the same plane. In Figure 17, Mr. Leibel reclines on an unknown object with a leg position dictated by what? In Figure 18, he is sitting on the floor, upright, not slouched. Neither of these photographs have any rational relationship to the scene and do not in any way accurately depict the scene. They "approximately" depict nothing.

Finally, Figure 19 is totally misleading.

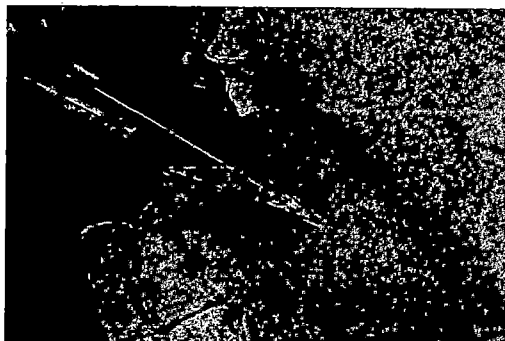


Figure 19: A replica rifle was positioned along the required angle to deliver the second shot. Harry Leibel would have to be between the rifle and the hole in the couch back with the back of his left hand elevated between the rifle and his left shoulder. Note: The triangular region represents the areas the rifle can be held and still maintain the appropriate angles.

1 Although it may depict "trajectory", the weapon is positioned at a significant distance
2 from anyone sitting on the couch. While the actual furniture may have been used, there is no
3 means of determining how it was placed, nor are the confines of the room itself taken into
4 account. While the caption may explain to the jury that this "picture" does not show the actual
5 "position" of the weapon, the "picture" says otherwise. Therefore it is highly prejudicial,
6 misleading and confusing.

7 First, the court should prohibit Mr. Noedel from testifying as an expert based on his
8 conclusion that "The physical evidence (including the length of the rifle, the length of Harry
9 Leibel's right arm, the distance of each shot, the angle of each shot, the orientation required for
10 each shot and the re-cocking of the hammer after the second shot) **best supports that Harry
11 Leibel did not shoot himself during this event.**" (emphasis added). The testimony fails under
12 the *Morisicato/Yeghiazarian* standard which requires testimony concerning causation be stated
13 to a reasonable degree of medical or scientific probability or certainty.

14 Second, the testimony should be excluded because it fails to meet the second criteria of
15 the *Hallmark/Higgs* criteria: the proffered testimony would assist the jury to understand the
16 evidence or to determine a fact in issue. Expert testimony "will assist the trier of fact only when
17 it is relevant and the product of reliable methodology." Although crime scene reconstruction in
18 and of itself may be an accepted "science", it is only as good as the facts relied on. Mr. Noedel
19 relies on erroneous "facts" and undocumented information to reach his conclusions. More
20 important, his conclusion is based on assumptions, conjecture, or generalization. This is taken to
21 a new level when photographs of images are presented as facts when they are only suppositions
22 and have no rational relationship to the scene itself.

23 Although the state may argue that this goes to the weight, not the admissibility of the
24 testimony, the court is charged with being the "gatekeeper" on the admissibility of evidence.
25 There is no doubt that Mr. Noedel has impressive credentials and is an expert in many things. To
26 allow him to apply those credentials to testimony that is not otherwise admissible would be
27 highly prejudicial and misleading to the jury. Therefore, the testimony concerning the "crime
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1 scene reconstruction" should be excluded.
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3 Dated this 19th day of January, 2015.
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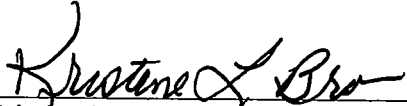
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EXHIBIT 1

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**MATTHEW NOEDEL, NOEDEL SCIENTIFIC
FORENSIC SCIENTIST****EDUCATION**

University of Montana, Missoula, MT 1985
Bachelor of Science - Microbiology
Bachelor of Science - Medical Technology
Minor in Chemistry

California State University, Sacramento, CA 1987
Bachelor of Science - Forensic Science
30 Quarter units of graduate credit in Criminal Justice with Forensic Emphasis

PROFESSIONAL AFFILIATIONS

American Academy of Forensic Scientists
Regular Member

Association of Crime Scene Reconstruction
Board of Directors (February 2005)
Program Chair Annual Meeting 2007
Treasurer (February 2007)
President (February 2013-current)

Association of Firearm and Tool Mark Examiners (AFTE)
Distinguished Member
Certified Member (Firearm, Tool Marks and Gunshot Residue)
Editor AFTE Journal (2002-2007)
Member of the Year (2009)
Nominating Committee (2009)
Assistant Conference Chair (2010)

International Association of Bloodstain Pattern Analysts
Regular Member
Ethics Committee (2009)

Northwest Association of Forensic Scientists
Member at Large (2005)
Program Chair Annual Conference (2000, 2011)
Vice President (2006)
President (2007, 2010, 2011)

CERTIFICATIONS

Certification in Firearms, Tool Marks, and Gunshot Residue Examination
Association of Firearm and Tool Mark Examiners (AFTE)

Certification in Crime Scene Reconstruction
International Association for Identification (IAI)



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EMPLOYMENT

Nov. 7, 2005 – Present

Noedel Scientific

Forensic Consultant

*Forensic Consultation, Reconstruction, Training,
Testimony, Analysis*

Noedel Scientific provides expert forensic analysis in a variety of areas including crime scene reconstruction, firearms examination, bloodstain pattern analysis, and case review. Examinations conducted are prepared with an emphasis on scientific detail for future court presentation.

Apr. 9, 1990 - Nov. 4, 2005

Washington State Patrol Crime Lab

Forensic Scientist III

*Crime Scene Response, Firearm and Tool Mark
Exam, Bloodstain Pattern Analysis, Chemistry, Trace
Evidence*

The Washington State Patrol Crime Laboratory provided forensic examinations for all of the police, sheriff, and prosecuting attorneys in the state of Washington. Of the services offered by the Tacoma Crime Lab, I worked in Chemistry, Drug Analysis, Fire Debris, Trace Evidence, Crime Scene Response, Bloodstain Pattern Interpretation, Firearms and Tool Mark Analysis.

April 1987-April 1990

Chemwest/CompuChem Laboratories

Toxicologist

I was responsible for the forensic examination of biological samples for the presence of drugs, alcohol, poisons and toxins. Both screening and confirmation for these chemicals was conducted in this high volume laboratory setting.

OTHER RESPONSIBILITIES

- Former Chemical Hygiene and Safety Officer-Tacoma Laboratory
- Former Leaf Marijuana identification Instructor
- Instruct various Crime Scene Training—Firearms
- Certified IBIS and Drugfire computerized database operator
- Washington State Patrol Firearms Review Committee
- Primary Responder and Crime Scene Consultant—Washington State Patrol Crime Lab Crime Scene Response Team

TOURS ATTENDED

- ❖ Nosler bullet Factory, Bend Oregon
- ❖ CCI/Speer Ammunition Factory, Lewiston, Idaho
- ❖ Arnold Arms Specialty Rifle Manufacturer, Arlington, WA
- ❖ Olympic Arms Pistol and Rifle Manufacturing, Olympia WA
- ❖ Alchemy Arms Pistol Manufacturing, Auburn, WA
- ❖ Ruger Firearms & Investment Casting, Ct. Facility
- ❖ Marlin Rifle Factory
- ❖ Savage Arms Factory
- ❖ Wilson Arms barrel making facility
- ❖ Barnes Bullet Manufacturing
- ❖ North American Arms Manufacturing
- ❖ Schneider Barrel Manufacture-Payson, AZ
- ❖ Ruger Firearms, Prescott, AZ Facility
- ❖ LAR Firearms-Jordon, UT

SPECIALIZED TRAINING

Factory Authorized Armory Training from the following firearm manufacturers:

Colt	Smith & Wesson	Ruger
Sig Sauer	Glock	Remington
Beretta	Heckler & Koch (MP-5)	Hi-Point

- Beeman Air Rifle Workshop
- Lassen College Law Enforcement School
- ATF Arson and Accelerant Detection
- California Department of Justice Basic Forensic Hair examination
- Restek Capillary Chromatography Seminar
- Tire Footprint Workshop
- McCrone's Advanced Microscopy
- Crime Scene Photography
- Hewlett Packard Gas Chromatography Inlet Systems
- Infra-red Technology--Bio Rad
- Advanced Crime Scene Response
- Crime Scene response In Service Training
- Exterior Ballistics and Reloading
- Crime Scene Response-Criminal Justice Training Center
- Characterization of Projectile Performance-Yuma proving Grounds
- ATF Serial Number Restoration
- Basic Bloodstain Pattern Analysis—TBI
- FBI Gunshot and Primer Residue School-Dillon/Rosati—August 1997
- Exterior Ballistics and Long Range Trajectory Workshop—July 2001
- Washington State Patrol Firearms Instructor—June 2001

SPECIALIZED TRAINING CONTINUED

- Investigation of Occult Crime Scenes—Lt. Randy Johnson; April 18th 2001
- Explosion and Bombing Crime Scenes—James Crippen; April 19th 2001
- Advanced Bloodstain Pattern Analysis Workshop—Toby Wolson, Metropolitan Police Institute, Miami, FL —May 7-11, 2001
- Marshall's Reagent and GSR Workshop-April 22, 2002
- Examination of the Taser non lethal weapon character-April 22, 2002
- Consecutive Manufactured Knife Blade Study- April 22, 2002
- Black Powder and Black Powder Substitute Analysis-April 23, 2002
- Ricochet Workshop—April 7, 2003 Instructed by Lucian Haag at the CAC/NWAFS joint meeting in Reno, NV
- Colt 1911 Style Pistol Armorer's Course—April 8th, 2003 Instructed by Vancouver PD Rob Caunt at the CAC/NWAFS joint meeting in Reno, NV
- Crime Zone Software Tools-October 14, 2003 NWAFS meeting Portland, OR
- Utilization of Crime Zone 7.0-October 24, 2003 ACSR Annual Conference Oklahoma City, OK
- Adobe Photoshop Techniques-October 24, 2003 ACSR Annual Conference Oklahoma City, OK
- Fluorescein Techniques-April 19-21, 2004 NWAFS Spring Meeting Missoula, Montana
- Putting Power in your Point-February 11, 2005 ACSR Annual Conference 2005
- LED/UV macro Photography-February 11, 2005 ACSR Annual Conference 2005
- Investigation of Lethal Force Encounters-June 10, 2005 CJTC—Dr. Lewinski of the Force Science Research Center, Mankato, MN
- Investigation of Firearms Misadventures-June 2005 AFTE Annual Conference, Indianapolis, Indiana
- Innovative Forensic Techniques-August 31, 2005. Oregon State Police Crime Lab sponsored training from Kjell Carlson, the inventor of the casting material Mikrosil
- Math, Physics and Computers in Advanced Bloodstain Pattern Analysis, October 24-28, 2005; Alberta Justice Staff College, Edmonton, Alberta
- Forensic Ethics by Peter Barnett, Carolyn Gannett-February 2010, ACSR Annual Conference San Diego, CA
- The Basics of Firearm Mechanism, by Rob Caunt, Vancouver Police Crime Laboratory NWAFS Conference September 29, 2010
- Photogrammetry in Post Scene Analysis and Reconstruction Workshop February 9, 2011 ACSR Conference Jacksonville, FL

PUBLICATIONS/PRESENTATIONS

Technical notes published in Microgram-An International U.S. Department of Justice, Drug Enforcement Administration publication dedicated to reporting trends and topics related to current controlled substance analysis.

"Separation of Isomers of (d/l) Amphetamine and (d/l) Methamphetamine from Urine by GC and GC/MS". Presented at the 29th annual meeting of the American Academy of Forensic Scientists; Las Vegas, NV. February 1988

"Solid Phase Extraction of Morphine and Codeine". Presented at the Fall meeting of the California Association of Toxicologists, San Diego, Ca. 1989

"Variations on Charcoal Strip Exposure for Absorption/Elution Recovery of Flammable Liquids". Presented at the Fall meeting of the Northwest Association of Forensic Scientists; Portland Oregon, October 1992

"Understanding Your Mass Spectrometer" Crime Scene—A Quarterly Newsletter of the Northwest Association of Forensic Scientists; Volume 21—#3 p. 9 1995

"Uses and Implementation of the Caswell Indoor Firing Range for Forensic Purposes". Presented at the Firearms Round Table during the Northwest Association of Forensic Scientists Spring Conference, Spokane Wa. April 1996

"Drop Testing a .45 Auto Colt 1911". Association of Firearm and Toolmark Examiners Journal Volume 29 #2 Spring 1997 p. 183

"Persistence of Gunshot Residue on Clothing". Presented at the Spring Northwest Association of Forensic Scientists meeting Missoula, MT. April, 1997

"Velocity Drop During the Depletion of CO2 Cartridges in a Pellet Pistol". Association of Firearm and Tool Mark Examiners Journal Volume 30, Number 3; Summer 1998 p. 435;

- Presented at the Northwest Association of Forensic Scientists Fall Meeting Las Vegas, NV Fall 1997

"Slam Firing Calico M-100/M-100P Firearms". Association of Firearm and Tool Mark Examiners Journal Volume 30, Number 3; Summer 1998 p. 527

"Lead Patterns Observed in Ricochets". Presented at the Spring Northwest Association of Forensic Scientists meeting Anchorage, AK. April, 1999

"An Unusual Jennings By Bryco Model 59". Association of Firearm and Tool Mark Examiners Journal Volume 31, Number 2; Summer 1999 p. 147

PUBLICATIONS/PRESENTATIONS CONTINUED

"Tap Rack No Bang". Presentation at the Spring Northwest Association of Forensic Scientists meeting Sacramento CA May, 2000

"Full Auto Armory and Workshop" Instructor...Fall 2000 NWAFS Conference...Seattle, WA

"Examination of Unusual .22 Caliber Ammunition". Presentation at the Association of Firearm and Tool Mark Examiners Annual Conference St. Louis, MO; June, 2000.

"Examination of 12 Gauge Flare Guns". Presentation at the Association of Firearm and Tool Mark Examiners Annual Conference Newport Beach CA; July 11th, 2001

"Detection of Gunshot Residues on Secondary Surfaces". Presentation at the NWAFS Spring Conference, Spokane, WA; April 25th, 2002.

"Forensic Black Powder Workshop". Instructor at the NWAFS Spring Conference, Spokane, WA; April 23rd, 2002

"Firearms in the Forensic Environment" Instructor at the International Association for Identification Spring Conference, Tacoma, WA; May 7, 2003.

"Semiautomatic Firearm Ejection Patterns" Instructor at the NWAFS Fall Conference, Portland, OR; October 15, 2003

"An Interesting Shotgun Pattern Reconstruction" Presentation at the ACSR annual conference (Last Piece Society) Oklahoma City, OK; October 23, 2003

"Tool Marks in Bone—Evaluation of a "Sawzall" Presentation at the NWAFS Spring Conference, Missoula, Montana April, 2004

"Evaluation of Non-Replenishing Blood Drip Trails" Presentation at the IABPA Annual Conference October 2004; Tucson Arizona (Second presentation at the request of the Scientific Working Group for Bloodstain Pattern Analysis April 4, 2005)

"Trajectory Documentation Using a 360 Degree Scale" Instructor for the Washington State Patrol Crime Laboratory—presented to the Washington State Patrol Crime Scene Response Team, July 27, 2005

"Special Topics for Crime Scene Examination" Instructor for the Joint IAI/NWAFS Conference May 18, 2005

PUBLICATIONS/PRESENTATIONS CONTINUED

"Shabazz v Shabazz-An Interesting Shooting Reconstruction" Presentation at the ACSR annual conference (Last Piece Society) Albuquerque, NM; February, 2006

"The Influence of Intermediate Objects Positioned Close to the Muzzle of a Firearm"
Presented at the Association of Firearm and Tool Mark Examiners Annual Conference
Springfield, Massachusetts— June, 2006.

"Processing and Reconstructing Shooting Crime Scenes"—A 40 hour course on crime scene processing in shooting incidents. Instructor July 24-28, 2006—Olympia Police Department, Olympia, WA

"Processing and Reconstructing Shooting Crime Scenes"—A 40 hour course on crime scene processing in shooting incidents. Instructor December 19-23, 2006—Seattle Police Department, Seattle, WA

"Understanding and Exploring Gunshot Residue"—Lecture and Practical examinations pertaining to GSR. Instructor-January 23, 2007—Association for Crime Scene Reconstruction

"Microscopic Examination of Hair Damaged by the Passage of a Fired Bullet" Hamburg*, Chris & Noedel, Matthew. A technical presentation presented January 22, 2007—Association for Crime Scene Reconstruction

"Using Adobe Photoshop Tools for Bloodstain Documentation" A technical presentation at the International Association for Bloodstain Pattern Analysts. San Antonio, Texas, October 4, 2007

"Processing and Reconstructing Shooting Crime Scenes"—A 40 hour course on crime scene processing in shooting incidents. Instructor November 26-30, 2007—Olympia Police Department, Olympia, WA

"Processing and Reconstructing Shooting Crime Scenes"—A 40 hour course on crime scene processing in shooting incidents. Instructor December 5-9, 2008, Norman Police Department, Norman OK

"Exploring the CSI Effect" A presentation for the "Inn at the Court"; a training conference of a collection of Judges and Attorneys— February 9th, 2009 Tacoma, WA

"Using Lasers to Document Bullet Trajectories" Instructor--Presented in two sessions at the Association for Crime Scene Reconstruction Conference Feb 10-14, 2009, Denver, CO

PUBLICATIONS/PRESENTATIONS CONTINUED

"Preparing Reports for Shooting Crime Scenes" Instructor--Presented in two sessions at the Association for Crime Scene Reconstruction Conference Feb 10-14, 2009, Denver, CO

"Processing and Reconstructing Shooting Crime Scenes"—A 40 hour course on crime scene processing in shooting incidents. Instructor July, 2009, Tacoma Police Department, Tacoma, WA

"Examination of Vehicles for Shooting Reconstruction"—Sep 22, 2009. Instructor—NWAFS Annual conference, Ft. Collins, Colorado

"Life of a Bullet" Presented at the 2009 Seventh Annual Violent Crimes Investigators' Regional Training Conference, November 5, 2009-Seattle, WA

"Practical Crime Scene Analysis and Reconstruction" Gardner, RM; Bevel, Tom. Contributing Author Chapter 7—Shooting Scene Processing and Reconstruction CRC Press, Published July 2009

"Semiautomatic Firearm Ejection Patterns"—February 11, 2010. Instructor to two sessions of this hands on workshop. ACSR Conference-San Diego, February 2010.

"Shooting Scenes" What You Don't Know Can Hurt You—May 11, 2010. A CLE training session at the Snohomish County Public Defenders Association, Everett, WA

"Processing and Reconstructing Shooting Crime Scenes"—A 40 hour course on crime scene processing in shooting incidents. Instructor April 2010, Olympia Police Department, Olympia, WA

"Forensic Aspects of Airsoft Replica Arms" Instructor of this 8 hour workshop that covered the design, construction, forensic examination and importance of airsoft firearms in forensic applications. NWAFS Training Conference-Portland OR, September 29, 2010

"Exploring the Limit of Gunpowder Particle Quantity for Distance Determination"
A presentation at the NWAFS Technical Session October 1, 2010-Portland OR

"Processing and Reconstructing Shooting Crime Scenes"—A 40 hour course on crime scene processing in shooting incidents. Instructor April 2011, Spokane County Sheriff's Office/Spokane Police Department, Spokane, WA

"Omni-Car: Crime Scene Processing" Co-instructor for a workshop involving techniques to process automobiles for trajectory, bloodstains, bullet documentation and recovery, shoe print, DNA considerations and overall vehicle processing. September 2011-NWAFS Conference-Tacoma, WA

PUBLICATIONS/PRESENTATIONS CONTINUED

"Techniques for Successful Presentations with PowerPoint™" Co-instructor for a workshop involving techniques to organize, present and enhance digital material for presentation in court or at professional settings. September 2011-NWAFS Conference- Tacoma, WA

"Fired Bullet Impact Site Evaluation: Tumbling Bullet versus Angled Shot" Matthew Noedel, Noedel Scientific-Puyallup, WA--A presentation outlining how to evaluate bullet impact sites in context to a crime scene processing and reconstruction. September 2011-NWAFS Conference-Tacoma, WA

"Special Research Workshop #2: Characterizing Bullet Damage in Clothing" Mentor of basic research in the performance of various caliber and design of fired bullets through a variety of clothing items. September 2011-NWAFS Conference-Tacoma, WA

"Trajectory Documentation" Instructor of this 3-day class for Washoe County Sheriff Office FIS Section. Class involved the proper evaluation, documentation and processing of fired bullet paths and determining horizontal and vertical trajectory values in simulated building material and vehicles. October 2011

"Terminal Ballistics: Bullet Performance in Tissue Simulant" Instructor of this 4 hour course which involved the theory and practical performance of various fired bullets. Lecture and live fire demonstrations of hollow-point bullet performance fired directly into ballistic gelatin, animal (beef) ribs, and through intermediate targets. ACSR Annual Conference-Monterey, CA February, 2012

"Examination of Bullet Defects from Test Fires Through Fabric" Noedel, Matthew; Cwiklik, Chesterene; Haakenstad; Lisa Crime Scene, Volume 38 (Issue 2): pages 40-45 Spring, 2012

Temperature of Ejected Cartridge Cases. A one day workshop provided at the Northwest Association of Forensic Scientists annual Training Conference-Missoula, MT. This research based workshop involved attempts to evaluate the absolute temperature of cartridge cases at the moment they are ejected from a semiautomatic firearm. September 23, 2012

Shooting Scene Reconstruction. Instructor Michigan State Police. 3 day course involving ammunition, trajectory and vehicle damage assessment in shooting scene processing. October 2012, Frankenmuth, MI

Long Range Ballistics. Instructor of this ½ day workshop which involves the theory of long range bullet flight, using various computer programs to determine long range flight properties of fired bullets, considering drag and ballistic coefficient for projectiles. NWAFS Annual Conference- September 25, 2012, Missoula MT

PUBLICATIONS/PRESENTATIONS CONTINUED

Forensic Consultation and Training-Kingston, Jamaica. Monthly visits to Kingston Jamaica involve providing forensic scene and reconstruction training to investigators and forensic examiners working for the new government agency INDECOM (the Independent Commission of Investigations). Provide backlog reduction as needed and initiate start-up of a ballistic facility to compare fired bullets and cartridge cases via comparison microscopy. Since July 2012-current

Shooting Scene Reconstruction. Instructor Michigan State Police. 3 day course involving ammunition, trajectory and vehicle damage assessment in shooting scene processing. September 9-11, 2013, Frankenmuth, MI

Ricochet and Impact to Concrete Surfaces. Mentor-this 1 day workshop conducted basic research into the performance of projectiles and the resultant properties of bullets fired into painted concrete surfaces. NWAFS Annual Conference September 16, 2013

Makings Black Powder. This 1 day course covered the properties, chemistry and techniques of manufacturing black powder propellant from the required raw materials. Batches of black powder manufactured by each student were then test fired and the velocity and energy data recorded. NWAFS Annual Conference September 17, 2013

Keynote Speaker: "Matthew Noedel Presents: Tales from the Private Side of Forensic Firearms Examination and Crime Scene Reconstruction" This keynote presentation discussed various experiences in working as a private forensic examiner in the current climate of forensic analysis. NWAFS Annual Conference September 18, 2013



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SELECT TESTIMONY

Testimony related activity has involved serving as an expert witness in firearms, crime scene examination and crime scene reconstruction for over 15 years. An average year involves providing approximately 2-5 testimonies from events ranging from simple firearm function testing to complete crime scene reconstruction. A select list of recent, complicated casework during which I was accepted as an expert are summarized below:

June 2007

State of Washington v Belz

Thurston County Juvenile Court—Olympia, WA

Testimony involved the examination of a pistol for accidental versus unintentional discharge and the reconstruction of a single gunshot that occurred in a confined space. Specialized testing involved generating a test drop pendulum device and the characteristics of a dropped versus fired semiautomatic pistol.

July 2006

State of Washington v Benjamin Asaeli et al.

Pierce County Superior Court—Tacoma, WA

Testimony involved the examination, appearance and deformation of fired bullets and gunshot residues detected on the clothing of the victim. Residues that support a close range gunshot to the side of the victim were located and processed using infra-red video techniques and fired bullets were assessed to determine which had gone through the windshield of a vehicle, versus those that did not impact a significant intermediate object.

May 2006

State of Minnesota v Larry Clark—Conspiracy to commit Murder

Ramsey County Superior Court—St. Paul, MN

Testimony involved the examination of documents and crime scene work to reconstruct the trajectory of a single fired bullet that struck and killed a police officer in the year 1970. By examination of the old police reports, examination of the physical evidence and the current appearance of the scene, information missing from the 1970 era examination was filled in and documented with 2006 technologies. This analysis helped demonstrate the most likely trajectory of the fatal shot.

SELECT TESTIMONY CONTINUED

December 2005

State of Washington vs William Joice—Attempted Murder 1st degree
King County Superior Court

Testimony involved the examination of a vehicle that had been struck by fired bullets in conjunction with a recovered semiautomatic pistol, a suppressor and fired ammunition. The reconstruction presented revealed the position a shooter would have been in to deliver the shots and the trajectory that each shot would have traveled. One fired bullet struck the victim in the back of the head and bloodstain pattern examination helped position the victim at the time he was struck by the bullet.

September 2005

State of Washington vs Dwight C. Feeser—Homicide
Grays Harbor County Superior Court

Testimony involved the analysis of a sawed off shotgun in association with a wound pattern observed on the body of the deceased victim. Testing identified the range and orientation of the fatal shot. Distance determination based on the spread of the shot was presented and discussed during the trial.

May 2005

State of Washington vs Trollers Takbar Fleming —Homicide
Pierce County Superior Court

Testimony involved the analysis of a pistol, fired bullets, fired cartridge cases and multiple bullet holes through a driver's window (from inside to outside). Shot sequencing and positional information was related based on trajectory examination, bloodstain patterns and shooting reconstruction. The shooting had occurred from inside the car while the car was being driven. The victim was the driver who had received multiple gunshot wounds to the head, all of which exited.

February 2005

State of Washington vs Jerry Bartlett Jones—Homicide
Snohomish County Superior Court

Testimony involved the examination of clothing, old crime scene documentation and data and bloodstain patterns from a 17 year old stabbing homicide. Crime scene reconstruction was based on the examination and testing of original photos, suspects' statements and newly examined evidence. This case was reviewed and presented on the CBS television show 48 Hours.

ADDITIONAL RECENT TESTIMONY

The following testimonies were presented in various courts since 2006:

2/13/2006 State of WA v Paul Nunn
3/1/2006 State of WA v Mario Sanchez
3/27/2006 State of WA v Elmore
6/12/2006 State of WA v Schreiber
8/7/2006 State of WA v Pearson
2/6/2007 State of WA v Brightman
3/15/2007 State of WA v Holloway
10/30/2007 State of WA v Moi
11/7/2007 State of WA v Hunter
12/11/2007 State of Nevada vs Hartzog—(Las Vegas NV)

5/5/2008 State of WA-vs Tony Smith—Triple Homicide—5/5/2008
King County Superior Court

5/8/08 Las Vegas, NV Superior court: State of Nevada v Victor Anthony
Ramos... LVMPD event 07 1007 0044

6/10-11/08
Event 07-0203-0334 and 07-0203-0669
State of NV vs Frank Macias

10/21/08
State of WA vs Fortier, Bryce D.
GSR on white coat—Snohomish County

11/7/08
State of WA vs O'Reilley
Officer involved shooting reconstruction—Snohomish County, WA

5/22/09
State of WA vs Roy Clark
Walla Walla, WA
Officer Involved Shooting Reconstruction-Columbia County WA

10/1/09
State of KS-v- Kim Hudson
District 5 Judge S. R. Tatum
Officer Involved Shooting, Olathe, KS



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ADDITIONAL RECENT TESTIMONY CONTINUED

11/3/09

State of CA-v-Threats
Superior Court-Vista, CA Dept 22
Judge Kirkman (Death Penalty Case)
San Diego, CA
San Diego County Public Defenders Office
Tool Mark case/homicide

11/19/09

State of WA-v-Besabe
Seattle, WA
King County Prosecutor's Office
Firearm/Shooting Reconstruction

12/17/09

State of WA-v-Hedgcoth
Everett, WA
Snohomish County Public Defender's Assn.
Homicide case/Reconstruction/Bloodstain pattern exam

2/2/2010

State of Alabama-v-Benjamin
Dothan, AL
Judge Menheim, Houston County
Dothan AL
Shooting reconstruction and distance determination in death penalty case

3/10/2010

State of WA-v-Steele
Tacoma, WA
Judge Culpepper, Pierce County, WA
Pre-Trial Motions involving trajectory analysis and documentation

3/23/2010

State of WA-v-Steele
Tacoma, WA
Judge Culpepper, Pierce County, WA
Criminal trial involving trajectory analysis and documentation

3/31/2010

State of WA-v- Weens
Seattle, WA
Judge Yu, King County WA
Firearm operability and recognition, Robbery/FA Enhancement



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ADDITIONAL RECENT TESTIMONY CONTINUED

5/10/2010

State of WA-v-Steele

Tacoma, WA

Judge Flemming, Pierce County, WA

Criminal trial involving trajectory analysis and documentation

6/15/2010

State of NV v Carvell Roots

Las Vegas, NV

Dept. 4 Judge Hardcastle

Criminal Trial—Firearm exam and comparison

8/26/2010

State of WA vs Moore

Seattle, WA

Judge Cahran-King County Superior Court

Assault case/firearm properties

2/23/2011

Utah County Sheriff Case # 06UC04447

Sieloff-v-Overson et. al

Salt Lake City, Utah

District Court #S35 Lee A. Dever Judge

Civil case-reconstruction of a long range fired bullet trajectory

5/30-31/2011

Australia Testimony via Video Link

Western Australia-v- Mikhail

Examination of shotgun components and scene reconstruction relative to a double homicide

6/2/2011

State of Texas v Charles Payne

Dallas, TX

Superior court testimony in an Officer Involved Shooting

6/21/2011

Las Vegas, NV

Grand Jury testimony reference forensic firearms examinations conducted at the Las Vegas Metro Crime Lab

10/26-27/2011

Tacoma, WA

State of WA v. Kitsap Rifle and Revolver Club

Deposition 10/7/11; testimony 10/26-27/11

Reconstruction of long range trajectories in relation to the Kitsap Rifle Club

ADDITIONAL RECENT TESTIMONY CONTINUED

11/22/2011

State of WA-vs-Rance Cox
Criminal, Hired by Prosecution
Tacoma, WA
Superior Court Judge Grant
Re-trial 1992 era examination of Cocaine

1/6/2012

William Ostling et al. v City of Bainbridge Island et al.
Deposition; Civil; Hired by Plaintiff
Federal-United States District Court Western Washington
Judge Leighton
Civil case involving Officer delivering shots through a door resulting in death to the person inside

3/8/2012

State of NV-vs-McFarland and Hill
Elko, NV
Criminal; Hired by Prosecution
Washoe County SO L0042-12-3
No gun-fired bullet exam and testimony via phone

5/7/2012

State of Washington v Joshua D. Monson
Snohomish County Superior Court
Defense consultation reference bloodstain patterns and shooting reconstruction single shot to victim in apartment.

5/14-15/2012

Jeremiah D. O'Sullivan-v-Bruce Gosnell
Civil; Hired by Plaintiff
Circuit Court State of Oregon
Linn County-Albany, Or
Civil case for plaintiff on wrong death from homeowner shooting through a window at victim.

5/18/2012; 5/21/2012

William Ostling et al. v City of Bainbridge Island et al.
Civil; Hired by Plaintiff
Federal-United States District Court Western Washington-Judge Leighton
Civil case involving Officer delivering shots through a door resulting in death to the person inside



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ADDITIONAL RECENT TESTIMONY CONTINUED

6/20/2012

State of NV-v-Davis

Criminal; hired by Prosecution

Shooting scene and shotgun performance evaluations in homicide case.

Second Judicial District—Washoe County

8/2012 State of NV case

Criminal; Hired by Prosecution

Examination of Air Soft replica pistol used in hold-ups around Reno, NV

Stege Amos Prosecutor

9/10-11/2012

State of IL—v—Christopher Vaughan

Criminal; hired by Prosecution

Quadruple homicide trial in Joliet, IL involved trajectory, shooting scene reconstruction and other aspects of scene reconstruction

1/24/2013

Deposition-Civil case-Hired by Plaintiff

Estate of Burgs-vs- Chicago Police Department

Officer involved shooting incident

1/28/2013

Deposition-Criminal Case Hired by Plaintiff

State of Florida vs- Reed

Shooting reconstruction involving single shot from revolver. Trajectory and operation of Serrifile revolver with mis-matched ammunition

2/22/2013

Civil Trial Testimony-Federal Court-Portland, Or

Salanitro v Beaverton Police

Officer involved shooting reconstruction

3/8/2013

Criminal Trial Testimony

State of WA-v-Richard Peters

Snohomish, CO, WA

Forensic exam and reconstruction involving unintentional discharge claim via a Colt Double Eagle 45 caliber pistol.

3/21/2013

State of NV-v-Matthew Deacon

Judge Al Kacin

Elko, NV

Criminal Prosecution-Examination and reconstruction of single shotgun wound involving firearm and distance testing.

ADDITIONAL RECENT TESTIMONY CONTINUED

3/27/2013

Criminal Trial Testimony-Judge Lyons

State of IL-v-Blake Irby

Peoria, IL

Criminal Defense-Reconstruction of double homicide involving cross-fire within a mini-van.

5/1/2013 Criminal Trial Testimony

State of Florida v Larry Reed

Clearwater, Florida

Criminal Prosecution-Indoor shooting scene reconstruction and firearm examination

10/10/2013

State of Nevada v Rodriguez, Evaristo et al.

Reno, NV

Criminal prosecution of a shooting incident in a parking garage

EXHIBIT 2

L0644-14-2,8,10

WASHOE COUNTY SHERIFF'S OFFICE
MICHAEL HALEY, SHERIFF
FORENSIC SCIENCE DIVISION
911 PARR BLVD.
RENO, NV 89512
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FORENSIC REPORT

LABORATORY NUMBER: L0644-14-2,8,10
AGENCY: DOUGLAS CO. S.O.
AGENCY CASE #: 14SO05132
SUSPECT: LEIBEL, TATIANA
VICTIM: LEIBEL, HARRY
PERSON REQUESTING: J. BARDEN
DATE OF SUBMISSION: 4/10/2014
OFFENSE: HOMICIDE

Received from the Washoe County Sheriff's Office (WCSO) Evidence Section on April 21, 2014, April 22, 2014 and May 30, 2014

The submitted items were identified as:

<u>CONTROL#</u>	<u>DESCRIPTION</u>
W283407	One Rossi/Taurus model "Circuit Judge", 410/45 Colt caliber carbine with revolver action (serial number E85418).
W283401	Sixteen* unfired 45 Colt cartridges (☆—☆ (Starline) headstamp)
W283402	One box containing: <ul style="list-style-type: none">▪ Eleven Winchester 410, 3 inch shotshells-not examined▪ Thirteen Winchester 410, 2 ½ inch shotshell (#9 shot)-not examined▪ One hundred and fifty three 45 Colt unfired cartridges (☆—☆ (Starline) headstamp) semi-wadcutter design-not examined▪ Seventeen** "Federal" brand, 410 caliber 2 ½ inch 4 pellet 000Buck shotshells
W283403	One shirt (worn by Harry Leibel)-not examined
W283405	One black "Harley-Davidson" brand bath robe (worn by Harry Leibel)

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"This report contains interpretations, opinions and conclusions of the author."

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W283406 Five ammunition components removed from W283407:

- Two unfired 45 Colt cartridges (★—★ (Starline) headstamp)
- One unfired 410 caliber shotshell ("Federal 000Buck")
- One fired 410 caliber shotshell ("Federal 000Buck")
- One fired 45 Colt cartridge case (★—★ (Starline) headstamp)

W283404 Victim Collection Kit from Autopsy containing the following firearm related items: Left Lung fragment; Right Lung fragment; Right side fragment; Left sleeve fragment; Left arm fragment; wad from body bag; and wad from left wrist (received 4/22/14)

W283416 Four copper coated pellets (received 5/29/2014)

Also received: Miscellaneous images from the scene (including Q88343), x-rays and autopsy of Harry Leibal depicting the locations and appearance of apparent gunshot wounds to his body

***Note:** Six of the submitted cartridges from W283401 were used for test firing and one cartridge was disassembled. Two of the test fired cartridge cases and the recovered test fired bullets were retained at the Washoe County Sheriff's Office (WCSO) Firearm Section under exhibit #NW04400. The remaining components and disassembled cartridge are stored back with the original package.

****Note:** Eight of the submitted "Federal" brand shotshells from W283402 were used for test firing and one cartridge was disassembled. Two of the test fired shotshells were retained at the Washoe County Sheriff's Office (WCSO) Firearm Section under exhibit #NW04400. The remaining components are stored back with the original package.

During the course of this examination, the following items of evidence were created.

NW04400 Test fired bullets, cartridge cases, shotshells, wad portions, a barrel cast and the barrel patch from the Rossi firearm (serial number ES5416). This item will be stored in the long-term evidence storage location in the Firearms Section of the WCSO-FSD.

Q63431 Test targets at known distances generated from the Rossi firearm (serial number ES5416)

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RESULTS OF EXAMINATION:

FIREARM

The Rossi/Taurus firearm was examined, test fired and found to be operational with no noted malfunctions. Various features examined with this gun include:

- The gun can fire both 410 shotshells or 45 Long Colt caliber ammunition
- The gun is designed with a counter-clockwise revolving cylinder containing 5 chambers (a 5 shot maximum capacity)
- The gun can be fired in both single or double action
- The single action trigger pull is approximately 3 to 3 ½ pounds
- The double action trigger pull is approximately 15 to 17 pounds
- The gun has a functioning "transfer bar" internal safety
- The gun has 6 lands and grooves in the rifled barrel with a smooth "choke" insert in the last approximately 1 ½ inches of barrel
- The gun has a barrel length of approximately 18 ½ inches with an overall length of approximately 35 5/8 inches
- The distance from the muzzle end to the trigger is approximately 21 inches in double action and 22 inches in single action

COMPARISON

Test fired shotshells, bullets and cartridge cases from this firearm were compared to the submitted fired bullet fragments and fired cartridge cases with the following results:

- The fired 410 shot shell (W283406) was labeled "Federal" brand 000 Buck and was identified as having been fired in the submitted Rossi firearm (serial number ES5416).
- The fired 45 Colt cartridge case (W283406) was identified as having been fired in the submitted Rossi firearm (serial number ES5416).
- The fired bullet fragments were consistent with pieces of a single fired bullet jacket and consistent in design to the projectiles from the "Starline" cartridges submitted with the firearm. These fired bullet fragments exhibit similar class characteristics as the "Starline" test fired bullets; however, lack sufficient reproducible matching information for a conclusive result. The outcome of this comparison is therefore inconclusive.
- The two pieces of plastic wad are consistent with the appearance of wad in the Federal 410 000 Buck shotshells submitted from this event.

AMMUNITION

The sixteen unfired 45 Colt cartridges ("Starline" headstamp) from item W283401 are visually consistent with "Extreme Shock" brand 185 grain "Enhanced Penetration Round". These cartridges are no longer in production and were marketed as a copper jacketed "frangible" round whereby the projectile fragments into multiple irregular pieces upon penetration into soft tissue.

- The two unfired cartridges and the fired cartridge case from W283406 are consistent with this design of ammunition.

The seventeen unfired 410 caliber shotshells ("Federal" brand) from item W283402 were labeled 000 Buck ("triple-ott-buck") and contain four pellets in a linear stack organized with a plastic wad.

- The fired 410 shotshell and the unfired shell from W283406 are consistent with this design of ammunition.
- The four recovered pellets (W283416) are consistent with copper coated 000 Buck pellets and similar in design as the Federal brand shotshells listed above

DISTANCE TESTING

A black "Harley-Davidson" brand robe (W283405) was examined visually, microscopically and chemically for the presence of bullet defects and gunshot residue with the following results:

Six defects consistent with the passage of a projectile were located as follows (relative to the robe lying flat on a table):

- Two through the upper left front chest
- One just below the seam toward the top and back of the left shoulder
- One through the rear left arm
- Two through the mid-right side at the right side belt loop

The x-ray images provided from the autopsy of Harry Leibel exhibit a collection of fragments between the area of his right hip, across the interior of his chest and into his left arm. In addition, fragments collected along this path (Right side fragment; Right Lung fragment; Left Lung fragment; and Left arm fragment) are visually consistent with fragments from the "Extreme Shock" ammunition located with the gun and at the residence.

- The ammunition that caused the bullet path depicted in x-rays best fits with the "Extreme Shock" 45 Colt ammunition.

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"This report contains interpretations, opinions and conclusions of the author."

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- A dense pattern of gunpowder, soot, nitrites and vaporous lead was located at the right side belt loop of the robe.
- This pattern of gunshot residue is consistent with test fired 45 Colt, Extreme Shock ammunition and the Rossi rifle fired at muzzle to target distances of farther than contact but closer than approximately 18 inches. The test patterns most like the pattern observed on the robe occurred at test distances between approximately 2 inches to 6 inches.

Additional autopsy images of the left hand of Harry Leibel demonstrate a heavy dark pattern and a partial piece of plastic in and around a wound to his left hand. The heavy dark pattern (visually consistent with soot from gunshot residue) was scaled to life size (1 to 1 image) and compared to test shots using the Rossi rifle and Federal 410; 4 pellet, 000 Buck shotshells with the following results:

- The pattern of soot deposition most consistent with the deposition on the left hand of Harry Leibel was observed at muzzle to target distances of farther than contact but closer than approximately 6 inches. The pattern on the hand was most consistent with test shots generated at approximately 3 inches.

The above listed evidence was returned to the WCSO Evidence Section.


Matthew Noedel
Firearms Examiner

7/10/2014
Date

EXHIBIT 3

Shooting Scene Reconstruction ReportDouglas County Sheriff #14-SO-05132
State of NV v Tatiana Leibel

January 15, 2015

This supplemental report was generated in addition to the forensic laboratory work previously conducted by this examiner for the Washoe County Sheriff's Office Forensic Laboratory. I was requested by attorney Thomas Gregory to conduct a shooting scene reconstruction to incorporate the laboratory work with the scene documentation. This reconstruction report relies on the collective data accumulated from Forensic Laboratory reports, the original scene processing reports and photographs, the autopsy report and photographs of Harry Leibel, direct examination of physical evidence and similar data. This report was generated under the sole responsibility of Noedel Scientific LLC and as such is not associated with or under the jurisdiction of the Washoe County Sheriff's Office Forensic Laboratory.

This assessment was conducted with the materials and information provided. Should additional relevant information or evidence become available, or if the direct examination of additional physical evidence related to this event is conducted, a supplemental report may need to be generated to incorporate the new information or evidence. All measurements are approximate and bullet path angles should be considered with at least +/- 5 degrees of measurement error.

Background

On February 23, 2014, Douglas County Sheriff's Officers responded to 452 Kent Way, Zephyr Cove, NV, in response to a 911 call for assistance. Upon their arrival, it was discovered that Harry Leibel had sustained two gunshot wounds and was dead on the living room floor. His surviving wife, Tatiana Leibel, had placed the 911 call and provided statements that included Harry Leibel had shot himself and other details about how the incident had taken place.

Examination Results*Scene Considerations*

Harry Leibel was located on the floor of the upstairs level of the house adjacent to a double reclining chair when documentation began (see figure 1). Tatiana Leibel reported that he had been positioned on the left reclining chair (relative to one looking at the chairs from the front) at the time he was shot, but she moved him to the floor while following the instructions from the 911 operator. A rifle (Rossi/Taurus model Circuit Judge) was located on the right recliner. Heavy bloodstain deposits were present on a tan blanket partially tucked between the left arm and seat cushion of the recliner. A perforation consistent with a bullet hole was present through the back of the left seatback the projectiles exited the seat and re-entered the wall behind the recliner (see figure 2). The four projectiles that were recovered from inside the wall behind the recliner were consistent with large, individual shotgun pellets.

- The combination of observations above support that Harry Leibel was located in the left seat of the double recliner at the time he received his two gunshot wounds.
- The design of the recovered rifle (Rossi/Taurus model Circuit Judge) can shoot both single projectiles and shotgun shells.

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Autopsy Report

The autopsy photographs and documentation identify that Harry Leibel had received two separate gunshot wounds. One gunshot wound entered on the right side of his chest and continued through his body upward and into his left arm (to include an exit wound of a bullet fragment; see figure 3). The projectile that caused this wound track fragmented into small pieces of copper and lead and some of these pieces were recovered during the autopsy. Another gunshot wound perforated the back of his left hand, exited at the base of the left thumb and continued to graze the left shoulder (see figures 4 and 5).

- The projectile that caused the wound path from the right side to the left arm was consistent with a single projectile that arrived to the body intact and fragmented inside the body along the entire course of the wound path. Bullet fragments were recovered from the right side, right lung, left lung and left arm. These fragments were determined by microscopic examination to be consistent with multiple pieces of the same projectile. This shot was the fatal shot to Harry Leibel.
- Laboratory examination of the exterior of the robe worn by Harry Leibel revealed gunshot residues in the form of a heavy deposit on smoke/soot, gun powder, nitrites and lead surrounding the right belt loop of the robe. The laboratory examination indicated that the size and distribution of these gunshot residues was most consistent with a muzzle (the end of the rifle) to target (the side of the robe) distance of approximately 2 to 6 inches from the robe surface.
- The wound path through the left hand exhibited a heavy pattern of smoke/soot and gunpowder surrounding the entry with a portion of plastic wad inside the wound. The presence of the piece of plastic wad supports that this wound was associated with a shotgun load. An additional piece of plastic shotgun wad was recovered from inside the body bag that transported Harry Leibel. A linear scrape eclipsed the top of his left shoulder and the shotgun pellets were recovered from inside the wall behind the couch.
- Laboratory examination of the size and density of the gunshot residue surrounding the wound to the left hand was most consistent with a muzzle to target distance of approximately 3 inches from the back of the hand.

Firearm Considerations

The firearm recovered from the couch was identified by Tatiana Leibel as the gun that was responsible for the wounds to Harry Leibel. Tatiana Leibel stated that she only handled the firearm by the sling after Harry Leibel had been shot (moving it from the floor to the couch); therefore the condition of the rifle upon recovery represents the condition of the rifle after the second shot had occurred.

The firearm indicated is a Rossi/Taurus rifle (serial number ES5416) with an 18 ½ inch barrel (approximately 35 ½ inches overall) that has a 5-shot revolving cylinder that can accommodate both 45 Colt and 410 shotgun ammunition. When this rifle was recovered, the hammer was discovered to be cocked into "single action". In addition, the rifle was discovered with one fired 45 Colt cartridge case and

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one fired 410 shotshell in that order in the chambers. Because the rifle cylinder revolves to the left (counterclockwise), the order in which shots were delivered can be deduced.

- Cocking the rifle into single action requires a distinctive movement of the hammer of the gun. Cocking the gun is achieved by depressing the top of the hammer downward which both rotates the cylinder and loads the tension on the mainspring. This maneuver causes the cylinder to rotate thereby introducing the next round of ammunition "in-line" and ready for a pull of the trigger.
- The sequence that shots were delivered based on the position of fired cartridge cases in the cylinder was the 45 Colt first and the 410 shotshell second. Therefore, it is known that the first shot to Harry Leibel was the shot to his right side and the second shot was to the back of his left hand and shoulder continuing through the couch and into the wall (see figure 6).
- The additional unfired cartridges present in the revolving cylinder were two 45 Colt and one 410 shot shell with the following characteristics:
 - The 45 Colt was consistent in design with a brand called "Extreme Shok". This brand of projectile is designed to arrive to the target intact; and then fragment into multiple pieces along the wound path.
 - The 410 shotshells were identified as "Federal" brand and were loaded with four pellets of 000 Buck that are stacked in a line in the shell and controlled by a plastic wad.

Bullet Path Analysis

There are two bullet paths to consider from this event as follows:

The first shot that struck Harry Leibel (based on the sequence of fired cartridge cases in the cylinder) was the single projectile that entered his right side, fragmented along the path inside his body generally ending in his left arm (see figure 7).

- Connecting the trail of fragments that are visible in x-rays demonstrates that the general path of this fired bullet was upward at approximately 15 to 20 degrees (relative to zero degree being a level shot) from his right side toward his left arm. In addition, fragments apparent in his left arm support that his left arm must have been elevated in order for the bullet fragment path to remain on a straight line (see figure 8).
- Prior to this shot the torso of Harry Leibel would have been able to achieve any number of orientations (twisting, bending, leaning etc.) so his exact original orientation (other than on the left recliner) cannot be independently determined. However, whatever the orientation of his torso at the time of this shot, he had to be positioned with his left arm elevated.