

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

vs.

TATIANA LEIBEL,

Respondent,

_____ /

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

RECORD ON APPEAL

VOLUME 14

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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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REQUEST FOR SUBMISSION (FILED NOV 9'20)	3364-3365	(VOL. 25)
REQUEST FOR PAYMENT (FILED FEB 18'15)	789-794	(VOL. 5)
REQUEST FOR PAYMENT (FILED FEB 18'15)	798-799	(VOL. 5)
REQUEST FOR PAYMENT (FILED FEB 18'15)	795-797	(VOL. 5)
REQUEST FOR SUBMISSION OF MOTION (FILED MAR 21'22)	4021-4022	(VOL. 31)
REQUEST FOR APPOINTMENT OF CO-COUNSEL (FILED SEP 29'14)	279	(VOL. 2)
REQUEST FOR SUBMISSION OF MOTION (FILED FEB 1'21)	3860-3861	(VOL. 30)
REQUEST FOR SUBMISSION-(SECOND PETITION OF HABEAS CORPUS POST CONVICTION) (FILED JAN 4'21)	3396-3397	(VOL. 26)
REQUEST FOR SUBMISSION OF MOTION (FILED JAN 4'21)	3398-3399	(VOL. 26)

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REQUEST FOR DISCOVERY (FILED APRIL 17'14)	224-226	(VOL. 2)
REQUEST FOR PAYMENT (FILED FEB 18'15)	803-811	(VOL. 5)
REQUEST FOR SUBMISSION (FILED SEP 13'18)	2487-2489	(VOL. 18)
REQUEST FOR SUBMISSION (FILED APRIL 17'14)	220	(VOL. 2)
REQUEST FOR ROUGH DRAFT TRANSCRIPT (FILED MAY 11'15)	1080-1082	(VOL. 7)
REQUEST FOR PAYMENT (FILED FEB 18'15)	800-802	(VOL. 5)
REQUEST FOR SUBMISSION OF MOTION (FILED JAN 11'21)	3787-3788	(VOL. 30)
RESPONSE TO MOTION IN LIMINE REGARDING JUROR QUESTIONING OF WITNESS (FILED DEC 26'14)	421-423	(VOL. 2)
RESPONSE TO MOTION IN LIMINE REGARDING CRIME SCENE AND AUTOPSY PHOTOGRAPHS (FILED DEC 26'14)	417-420	(VOL. 2)
RESPONSE TO MOTION FOR EXTENSION OF TIME TO FILE SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (FILED JAN 30'18)	1580-1583	(VOL. 11)
RESPONSE TO MOTION FOR EXTENSION OF TIME (FILED JAN 30'18)	1580-1583	(VOL. 11)
RESPONSE TO POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS (PART 1) (FILED MAY 17'18)	1990-2075	(VOL. 14)

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RESPONSE TO POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS (PART 4) (FILED MAY 17'18)	2316-2418	(VOL. 17)
RESPONSE TO POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS (PART 3) (FILED MAY 17'18)	2211-2315	(VOL. 16)
RESPONSE TO BRIEF REGARDING ALLEGED STRUCTURAL ERROR IN FAILING TO OBTAIN AN INTERPRETER. (FILED SEP 29'18)	2506-2510	(VOL. 18)
STATE'S MOTION TO INCREASE BAIL (FILED APRIL 8'14)	61-67	(VOL. 1)
STATE'S NON-OPPOSITION TO DEFENDANT'S MOTION TO CONTINUE (FILED AUG 4'14)	277-278	(VOL. 2)
STIPULATION TO EXTEND TIME TO FILE SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (FILED JUNE 22'17)	1567	(VOL. 11)
STIPULATION TO EXTEND OF TIME TO FILE SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS -SECOND REQUEST (FILED DEC 24'16)	1542	(VOL. 11)
STIPULATION TO WAIVE PENALTY HEARING BY JURY (FILED JAN 16'15)	553-554	(VOL. 4)
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SUBPOENA FILED (FILED JAN 29'15)	707	(VOL. 5)
SUBPOENA FILED (FILED JAN 29'15)	706	(VOL. 5)
SUBPOENA FILED (FILED JAN 29'15)	708	(VOL. 5)
SUPPLEMENTAL CERTIFICATE OF SERVICE RE: REQUEST FOR ROUGH DRAFT TRANSCRIPT (FILED MAY 27'15)	1090	(VOL. 7)
SUPPLEMENTAL POSTCONVICTION PETITION FOR A WRIT OF HABEAS CORPUS NRS 34.361 ET SEQ. (PART 2) (FILED FEB 26'18)	1778-1969	(VOL. 13)
SUPPLEMENTAL EVIDENCE IN MITIGATOR (FILED APR 20'15)	1011-1015	(VOL. 7)
SUPPLEMENTAL POSTCONVICTION PETITION FOR A WRIT OF HABEAS CORPUS NRS 34.361 ET SEQ. (PART 1) (FILED FEB 26'18)	1585-1777	(VOL. 12)
TRANSCRIPT OF PROCEEDINGS- ARRAIGNMENT 4/14/14 (FILED MAY 19'14)	242-261	(VOL. 2)
TRANSCRIPT OF JURY TRIAL 1/27/2015 ROUGH DRAFT (FILED JUNE 18'15)	1105-1119	(VOL. 8)

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TRANSCRIPT OF PROCEEDINGS (POST CONVICTION HEARING 11/16/18) (FILED NOV 29'18)	2561-2637	(VOL. 19)
TRANSCRIPT OF PROCEEDINGS (SENTENCING HEARING) (FILED MAY 5'15)	1019-1077	(VOL. 7)
TRANSCRIPT OF PROCEEDINGS (POST CONVICTION HEARING 11/15/18) (PART 1) (FILED DEC 5'18)	2638-2796	(VOL. 20)
TRANSCRIPT OF JURY TRIAL 2/2/2015 (FILED JUNE 18'15)	1351-1387	(VOL. 10)
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TRANSCRIPT OF PROCEEDINGS (MOTIONS HEARING) (FILED JAN 20'15)	555-584	(VOL. 4)
TRANSCRIPT OF JURY TRIAL 1/23/2015 ROUGH DRAFT (FILED JUNE 18'15)	1092-1104	(VOL. 8)
TRANSCRIPT OF PROCEEDINGS (JURY SELECTION) (FILED MAR 9'15)	816-997	(VOL. 6)
TRANSCRIPT OF JURY TRIAL 2/5/2015 (FILED JUNE 18'15)	1447-1478	(VOL. 11)
TRANSCRIPT OF PROCEEDINGS - PRELIMINARY HEARING (FILED APRIL 16'14)	86-218	(VOL. 1)

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TRANSCRIPT OF PROCEEDINGS (MOTIONS HRG.) (FILED SEP 28 '18)	2511-2519	(VOL. 18)
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TRANSCRIPT OF JURY TRIAL 1/30/2015 (FILED JUNE 18 '15)	1286-1350	(VOL. 10)
TRANSCRIPT OF PROCEEDINGS (MOTION HEARING) (FILED FEB 5 '15)	759-785	(VOL. 5)
VICTIM IMPACT STATEMENTS AND PHOTOGRAPH OF VICTIM (FILED APR 20 '15)	1004-1010	(VOL. 6)

RECEIVED

APR 11 2018

Douglas County
District Court Clerk

FILED

2018 APR 12 PM 1:37

BOBBIE R. WILLIAMS
CLERK

BY MBR DEPUTY

Case No. 14-CR-0062 BD

Dept. No. I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

TATIANA LEIBEL,

Petitioner,

vs.

ORDER

THE STATE OF NEVADA,

Respondent.

A motion having been made and good cause appearing,

IT IS HEREBY ORDERED that the response in this matter be continued to 45 days
from April 12, 2018.

DATED this 11 day of April, 2018.


NATHAN TODD YOUNG
DISTRICT JUDGE

RECEIVED

MAY 16 2018

Douglas County
District Court Clerk

FILED

2018 MAY 16 PM 3:30

BOBBIE R. WILLIAMS
CLERK

BY ANNA DEPUTY

JOHN E. MALONE
State Bar No. 5706
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307
jmalonelaw@gmail.com

IN THE NINTH JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF DOUGLAS, STATE OF NEVADA

TATIANA LEIBEL,
Petitioner

vs.

STATE OF NEVADA,
Respondent.

) Case No. 14 CR 00062 B
) Dept. I

) **EX PARTE MOTION**
) **FOR INTERPRETER FEES**

COMES NOW, John E. Malone, Esq., having been appointed as counsel to represent
Petitioner, TATIANA LEIBEL, and respectfully moves this Honorable Court for an Order for Fees
be granted.

1. It is requested that fees be granted for an interpreter in this matter by Tatyana
Vargason of \$240.00;

2. This motion is based upon the Affidavit of John E. Malone and the attached invoice
of Tatyana Vargason.

DATED this 8th day of May, 2018.

By: _____
JOHN E. MALONE, ESQ.
Attorney for Petitioner, Tatiana Leibel

AFFIDAVIT

STATE OF NEVADA)
 :SS
CARSON CITY)

John E. Malone, being first duly sworn, under penalty of perjury, hereby deposes and says:

1. That affiant is an attorney licensed to practice law in the State of Nevada;

2. That affiant was appointed as counsel to represent the Petitioner, Tatiana Leibel, in the above-entitled matter;

3. That affiant is requesting the Court for an Order for interpreter fees in the amount of TWO HUNDRED FORTY and no/100 DOLLARS (\$240.00) for interpreter fees by Tatyana Vargason for the purpose of preparing a Supplemental Petition for Habeas Corpus;

4. That Petitioner is indigent;

5. That to the best of affiant's knowledge, the items set forth above are correct and will be necessarily incurred in these proceedings;

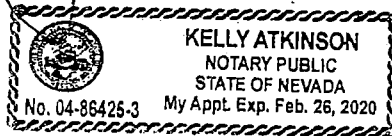
6. That affiant will not been paid from any other source for the time and costs summarized herein.

Further affiant sayeth not.

John E. Malone

Subscribed and Sworn to before me
this 8th day of May, 2018.

Kelly Atkinson
Notary Public (Seal)



Tatyana Vargason

Russian<>English
Court Interpreter/Translator
2026 Silverton Dr
Henderson NV 89074
Phone: [702 556 8559]

INVOICE

DATE:
INVOICE #
Customer ID

5/3/2018
1011

BILL TO

Law Office of John Malone

209 N. Pratt Ave., Carson City, NV 89701

	Fee Amount	AMOUNT
5/2/18 1pm meeting with the client Tatiana Leibel at 4370 Smily Rd Las Vegas, NV	\$120/2hr min	\$240

Subtotal \$ 240.00

OTHER COMMENTS

Deposit is required prior to the assignment.
Cancellation or withdrawal by Contractor. In the event Client cancels within 48 Hours of interpreting assignment, in consideration of Contractor's time, Contractor will receive the minimum.

Other \$ -

TOTAL Due \$ 240.00

Make all checks payable to

1973

Tatyana Vargason

If you have any questions about this invoice, please contact
Tatyana.vargason@gmail.com

Thank You For Your Business!

1974

RECEIVED

MAY 16 2018

Douglas County
District Court Clerk

FILED

2018 MAY 16 PM 3:29

BOBBIE R. WILLIAMS
CLERK

BY ANOW DEPUTY

JOHN E. MALONE
State Bar No. 5706
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307
jmalonelaw@gmail.com

IN THE NINTH JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF DOUGLAS, STATE OF NEVADA

TATIANA LEIBEL,
Petitioner

vs.

STATE OF NEVADA,
Respondent.

) Case No. 14 CR 00062 B
) Dept. I

) EX PARTE MOTION
) FOR INVESTIGATION FEES

COMES NOW, John E. Malone, Esq., having been appointed as counsel to represent
Petitioner, TATIANA LEIBEL, and respectfully moves this Honorable Court for an Order for Fees
be granted.

1. It is requested that fees be granted for investigation of this matter by Spencer
Investigations of \$3,109.18;

2. This motion is based upon the Affidavit of John E. Malone and the attached invoice
of Spencer Investigations..

DATED this 16 day of May, 2018.

By: [Signature]
JOHN E. MALONE, ESQ.
Attorney for Petitioner, Tatiana Leibel

AFFIDAVIT

STATE OF NEVADA)
 :SS
CARSON CITY)

John E. Malone, being first duly sworn, under penalty of perjury, hereby deposes and says:

1. That affiant is an attorney licensed to practice law in the State of Nevada;

2. That affiant was appointed as counsel to represent the Petitioner, Tatiana Leibel, in the above-entitled matter;

3. That affiant is requesting the Court for an Order for investigative fees in the amount not to exceed THREE THOUSAND ONE HUNDRED NINE and 18/100 DOLLARS (\$3,109.18) for investigative fees by Spencer Investigations for the purpose of preparing a Supplemental Petition for Habeas Corpus;

4. That Petitioner is indigent;

5. That to the best of affiant's knowledge, the items set forth above are correct and will be necessarily incurred in these proceedings;

6. That affiant will not been paid from any other source for the time and costs summarized herein.

Further affiant sayeth not.

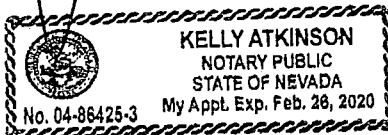


John E. Malone

Subscribed and Sworn to before me
this 8th day of May, 2018.



Notary Public (Seal)



12/22/2017

Invoice: Jeff Partyka

Spencer Investigations
1325 Airmotive Way # 209
Reno NV 89502



20-4696239

John Malone
1865 Monte Vista Drive
Reno NV 89511

Invoice # 01352
Invoice Date December 22, 2017
Balance Due (USD) \$3,109.18

Task	Time Entry Notes	Rate	Hours	Line Total
Case Staffing	[2017-04-113 ~ Tatiana Liebel 05/05/17] Jeff Partyka: Case staffing by Inv. Partyka with Atty. John Malone at Spencer Investigations Conference Room.	90.00	1.5	135.00
Research	[2017-04-113 ~ Tatiana Liebel 05/15/17] Jeff Partyka: Contact 2nd & 3rd Judicial District Courts in an attempt to identify court certified Russian interpreters by Inv. Partyka; info obtained and emailed to Atty. John Malone.	90.00	0.75	67.50
Discovery Document Review	[2017-04-113 ~ Tatiana Liebel 07/17/17] Jeff Partyka: Inv. Partyka reviewed the following Discovery Documents: 1). Douglas County SO Dep. Geoff Marshall report (3 pgs) 2. Cartridge Placement Guide for Taurus rifle. 3. Evidence Log. 4. Dr. Bennet Omalu report (3 pgs). 5. Email dated 12-05-14 from Atty. K. Brown to Dr. Omalu. 6. Typed written letter from Harry Liebel to Tatiana believed written in 2007 (2 pgs). 7. Dr. Omalu email to Atty. K. Brown dated 12-07-14. 8. Joe Delucchi email to Inv. D. Grate dated 12-08-14. 9. Email from Chaya-Ann Liebel to Inv. D. Grate dated 11-23-14. 10. Harry Liebel's Will dated 01-27-05. 11. Phone and SMS messages from 02/22 & 02/23/14. 12. Email from Atty. K. Brown to Atty. N. Strayer dated 07-29-14.	90.00	2.2	198.00

Task	Time Entry Notes	Rate	Hours	Line Total
Discovery Document Review	[2017-04-113 ~ Tatiana Liebel 07/20/17] Jeff Partyka: Inv. Partyka reviewed the following documents & recorded notes from the same: 1. Douglas County SO Suppl. #12 by Det. Cjrzanowski of interviews with five (5) Tahoe-Douglas Fire Personnel. 2. Douglas County SO Suppl#41 (3 pgs) by Det. Garren. 3. Douglas County SO Suppl#27 by Det. Garren. 4. Subpoena Duces Tecum issued to Barton Memorial Hospital for Harry Leibel's medical records.	90.00	2.6	234.00
Discovery Document Review	[2017-04-113 ~ Tatiana Liebel 07/25/17] Jeff Partyka: Inv. Partyka reviewed the following Discovery Documents & recorded notes for the same: 1. Douglas County SO suppl #5 by Dep. Fricke. 2. Crime Scene DVD Photos.	90.00	2.25	202.50
Discovery Document Review	[2017-04-113 ~ Tatiana Liebel 09/12/17] Justin Olson: Discovery Document review by Inv. Olson of Steven Brooks and Chris Hendrik interviews with additional memo's from Officer Garrett.	90.00	2.9	261.00
General	[2017-04-113 ~ Tatiana Liebel 10/24/17] Justin Olson: Prep memo of notes by Inv. Olson from previous Discovery Document review.	90.00	3.2	288.00

Task	Time Entry Notes	Rate	Hours	Line Total
General	<p>[2017-04-113 ~ Tatiana Liebel 11/08/17] Justin Olson: Review of following Discovery Documents by Inv. Olson & recording of notes:</p> <p>Darla Leibel - Burrow interview</p> <p>Sharon Oren - Interview</p> <p>Kevin Schaller - UNR Police</p> <p>Barton Health - Fax</p> <p>Nevada State Board Of Pharmacology:</p> <p>Lee Ann Brooks - Voicemail messages from Tatiana</p> <p>Supplemental narrative:02-23-2014 by Garren.</p>	90.00	1.5	135.00
General	<p>[2017-04-113 ~ Tatiana Liebel 11/09/17] Justin Olson: Review of Discovery Docs by Inv. Olson and records notes from the following:</p> <p>1. James Landis Divorce documents.</p> <p>2. Tatiana Leibel statement from DCSO.</p> <p>3. DCSO - Narrative 08-11-2014 by Officer Barden J.</p> <p>5. Dr. Bennet Omalu letter to Kristine Brown Law dated 11-28-2014.</p>	90.00	1.2	108.00

Task	Time Entry Notes	Rate	Hours	Line Total
General	<p>[2017-04-113 ~ Tatiana Liebel 11/10/17] Justin Olson: Review of Discovery Documents by Inv. Olson; print and organize desired documents and compose notes from the following:</p> <p>6. Letter from Harry Leibel not addressed to anyone dated 10-3-2007.</p> <p>7. Email correspondence.</p> <p>8. Fax from DCSO to Claudette.</p> <p>9. Text summary from Tatiana's phone.</p> <p>10. DCSO - Interviews with Tahoe Douglas Fire personnel.</p> <p>11. DCSO interview with Defendant Tatiana Liebel.</p> <p>12. DCSO -Det. Fricke J. Supplement.</p> <p>13. Notice of expert witnesses dated 12-17-2014.</p> <p>14. DCSO Supplement by Haley S.</p>	90.00	3	270.00
General	<p>[2017-04-113 ~ Tatiana Liebel 11/29/17] Justin Olson: The following Discovery Documents were reviewed by Inv. Olson:</p> <p>16. DCSO - Supplement - Hubkey B. - 02-23-2014 =1</p> <p>17. DCSO - Supplement - Jasperson T.- 04-25-2014 =2</p> <p>18. DCSO - Supplement - Jasperson T. - 03-11-2014 = 2</p> <p>19. Washoe County Medical Examiner's office - Adam Jenkins - 02-23-2014</p> <p>20. Autopsy Protocol - Piotr Kubiczek - 02-24-2014 = 4</p> <p>21. Criminal subpoena - Frontier Communications</p> <p>22. DCSO - Supplement - Love L. - 02-25-2014</p> <p>23. DCSO - Fax - G. Marshal - 02-23-2014</p> <p>24. DCSO - Coroner's Report</p> <p>25. DCSO - Supplement -02-23-2014 - Marshall G.</p> <p>26. DCSO - Jasperson T. - 02-25-2014 = 2</p> <p>27. DCSO Supplement - Milby J. - 02-23-2014</p> <p>28. DCSO Supplement - Moffat D - 02-23-2017 = 2</p>	90.00	6.3	567.00

1980

Task	Time Entry Notes	Rate	Hours	Line Total
	29. DCSO Supplement – Moffat D. – 02-23-2014			
	30. DCSO Supplement – Preston J. – 02-23-2014			
	31. DCSO Supplement – Preston J. – 02-26-2014			
	32. FBI Report – LA David Ricks – 04-30-2017			
	33. Notice of hearing – Concerning Harry Leibel's Estate - 05-05-2017			
	34. DCSO Supplement – Schemenauer J – 03-03-2014 = 3			
	35. State of Nevada – Health and Human Services – T. Scott – 04-01-2014			
	36. DCPA – Claudette Springmeyer – Public Admin. Report – 04-25-2014			
	37. Email correspondence between Dustin Grate and Nancy Strayer.			
	38. DCSO Supplement – Wisneski B. – 02-23-2014			
	39. Certificate of Death – Harry Leibel – 02-23-2014			
	40. Forensic Analytical Laboratories - GSR TEST-SEM/EDS – 08-20-2014 = 4			
	a. Lawrence Wayne – Expert info			
	b. Kevin John Bryne – CV – Expert info			
	c. Jennifer L. Naranjo – CV/ Expert info			
	d. Matthew Noedel – CV/Expert info			
	e. Pitor A. Kubiczek – CV/Expert info			
	f. Brian R. Pool – CV/ Expert Info			
	g. Printed Document			
	41. Certificate of service & Notice of Prosecution witnesses – 12-17-2014			
	42. Frontier Communications Letter – 09-02-2014			
	a. Phone records			
	43. MNS Labs – Toxicology report – 03-11-2014			

Task	Time Entry Notes	Rate	Hours	Line Total
General	<p>[2017-04-113 ~ Tatiana Liebel 11/30/17] Justin Olson: Compose report of Discovery Document review by Inv. Olson and conduct a Review of the following Discovery Documents:</p> <p>44. WSCO – Forensic report – Jennifer L. Naranjo – 04-03-2014 = 3</p> <p>45. WSCO – Forensic report – Kevin J. Byrne – 04-10-2017 = 3</p> <p>46. WSCO – Forensic report – Matthew Noedel – 04-10-2014 = 3</p> <p>45 cartridges, Mic. cartridges, Shirt, Robe, victim collection kit, and copper pellets. – Printed document</p> <p>47. WSCO – Forensic report -Joey Lear/Mike Ivers– 04-07-2014 = 3</p> <p>48. WSCO – Forensic report – Joey Lear/Marci Margritier– 03-13-2014 =3</p> <p>49. WSCO – Forensic report – Marci Margritier– 02-28-2014 = 3</p> <p>50. Nevada Prescription Monitoring Program – Request – Jasperson – 02-28-2014</p> <p>Binder B</p> <p>1. DCSO – Hand written statement – 02-23-2014 =2</p> <p>2. Spencer investigations – Memos.</p> <p>3. WSCO- Forensic report – 12-3-2017</p> <p>4. Application for search and seizure warrant – 02-23-2014</p> <p>5. Blank subpoenas</p> <p>6. Preliminary hearing transcripts – 04-03-2014</p> <p>7. Photographs of Scene</p> <p>8. Phone log – no front page.</p> <p>9. FBI Report</p> <p>10. Will of Harry Leibel</p> <p>11. Duplicate reports from binder A</p> <p>Binder C</p> <p>1. Misc. notes and emails from Dustin Grate</p> <p>2. Hand drawn schematic of scene – Unknown Author – 02-23-2014 = 3</p> <p>3. Noedel Scientific – Report – 01-15-2017 = 4</p> <p>a. Detailed report with schematic – printed document</p>	90.00	5.8	522.00
Case Staffing	<p>[2017-04-113 ~ Tatiana Liebel 12/22/17] Jeff Partyka: Case staffing update by Inv. Partyka with Atty. Malone; deliver binder to Atty. Malone containing relevant Discovery Documents.</p>	90.00	1	90.00

12/22/2017

Invoice: Jeff Partyka

Item	Description	Unit Cost	Quantity	Line Total
Expense	[2017-04-113 ~ Tatiana Liebel 04/24/17] Copies: Case document copies printed at Rick's AEC Reprographics, Inc. in Reno, NV	31.18	1	31.18

Total 3,109.18

Amount Paid 0.00

Balance Due (USD) \$3,109.18

This invoice was sent using **FRESHBOOKS**

1983

RECEIVED

MAY 16 2018

FILED

Douglas County
District Court Clerk

2018 MAY 16 PM 3:30

BOBBIE R. WILLIAMS
CLERK

BY ANOM DEPUTY

1 JOHN E. MALONE
State Bar No. 5706
2 209 N. Pratt Ave.
Carson City, Nevada 89701
3 (775) 830-2307
jmalonelaw@gmail.com

4 **IN THE NINTH JUDICIAL DISTRICT COURT**

5 **IN AND FOR THE COUNTY OF DOUGLAS, STATE OF NEVADA**

7 TATIANA LEIBEL,
Petitioner

8 vs.

9 STATE OF NEVADA,
10 Respondent.

) Case No. 14 CR 00062 B
) Dept. I

) **EX PARTE MOTION**
) **FOR INVESTIGATION FEES**

11
12 COMES NOW, John E. Malone, Esq., having been appointed as counsel to represent
13 Petitioner, TATIANA LEIBEL, and respectfully moves this Honorable Court for an Order for Fees
14 be granted.

15 1. It is requested that fees be granted for investigation of this matter by Spencer
16 Investigations of \$116.56;

17 2. This motion is based upon the Affidavit of John E. Malone and the attached invoice
18 of Spencer Investigations..

19 DATED this 9th day of May, 2018.

20 By: _____
JOHN E. MALONE, ESQ.
21 Attorney for Petitioner, Tatiana Leibel
22
23
24

AFFIDAVIT

STATE OF NEVADA)
:SS
CARSON CITY)

John E. Malone, being first duly sworn, under penalty of perjury, hereby deposes and says:

1. That affiant is an attorney licensed to practice law in the State of Nevada;

2. That affiant was appointed as counsel to represent the Petitioner, Tatiana Leibel, in the above-entitled matter;

3. That affiant is requesting the Court for an Order for investigative fees in the amount not to exceed ONE HUNDRED SIXTEEN and 56/100 DOLLARS (\$116.56) for investigative fees by Spencer Investigations for the purpose of preparing a Supplemental Petition for Habeas Corpus;

4. That Petitioner is indigent;

5. That to the best of affiant's knowledge, the items set forth above are correct and will be necessarily incurred in these proceedings;

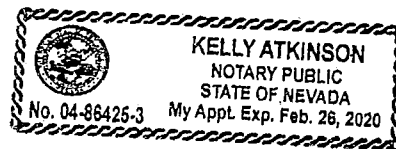
6. That affiant will not been paid from any other source for the time and costs summarized herein.

Further affiant sayeth not.

John E. Malone

Subscribed and Sworn to before me
this 24 day of May, 2018.

Kelly Atkinson
Notary Public (Seal)





Spencer Investigations
1325 Airmotive Way #175
Reno NV 89502

Invoice: John Malone



20-4696239

John Malone
1865 Monte Vista Drive
Reno NV 89511

Invoice # 01388
Invoice Date March 5, 2018
Balance Due (USD) \$116.56

Task	Time Entry Notes	Rate	Hours	Line Total
Discovery Document Review	[2017-04-113 ~ Tatiana Liebel 12/11/17] Justin Olson: Organize Discovery Documents by Inv. Olson; begin report of findings and pull specific documents and deliver to Suprv. Inv. Jeff Partyka at Spencer Investigations Office.	90.00	1.2	108.00

Item	Description	Unit Cost	Quantity	Line Total
Expense	[2017-04-113 ~ Tatiana Liebel 12/11/17] Mileage: 16 round trip travel miles by Inv. Olson @ \$0.535 per mile to deliver docs to Suprv. Jeff Partyka.	8.56	1	8.56

Total 116.56
Amount Paid 0.00
Balance Due (USD) \$116.56

This invoice was sent using **FRESHBOOKS**

1986

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MAY 16 2018

Douglas County
District Court Clerk

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2018 MAY 17 PM 1:51

BOBBIE R. WILLIAMS
CLERK

BY ANOWAR DEPUTY

JOHN E. MALONE
State Bar No. 5706
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307
jmalonelaw@gmail.com

IN THE NINTH JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF DOUGLAS, STATE OF NEVADA

TATIANA LEIBEL,
Petitioner

vs.

STATE OF NEVADA,
Respondent.

Case No. 14 CR 00062 B
Dept. I

ORDER GRANTING
EX PARTE MOTION FOR
INVESTIGATION FEES

PURSUANT to the Ex Parte Motion for Investigation Fees of counsel and good cause appearing,

IT IS HEREBY ORDERED that the Nevada State Public Defender pay forthwith a sum not to exceed THREE THOUSAND ONE HUNDRED NINE and 18/100 DOLLARS (\$3,109.18) to Spencer Investigations, 1325 Airmotive Way, Suite 209, Reno, NV 89502, in remuneration for the costs of defense investigation in the above-entitled action. It is further ordered that both the ex parte motion for fees filed herewith and this order be sealed.

DATED this 17 day of May, 2018.


DISTRICT COURT JUDGE

Respectfully Submitted By:
John E. Malone, Esq.

1987

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MAY 16 2018

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District Court Clerk

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BY ANNA DEPUTY

JOHN E. MALONE
State Bar No. 5706
209 N. Pratt Ave.
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IN THE NINTH JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF DOUGLAS, STATE OF NEVADA

TATIANA LEIBEL,)	Case No. 14 CR 00062 B
Petitioner)	Dept. I
vs.)	
STATE OF NEVADA,)	ORDER GRANTING
Respondent.)	EX PARTE MOTION FOR
)	INTERPRETER FEES

PURSUANT to the Ex Parte Motion for Interpreter Fees of counsel and good cause appearing,

IT IS HEREBY ORDERED that the Nevada State Public Defender pay forthwith a sum of TWO HUNDRED FORTY and no/100 DOLLARS (\$240.00) to Tatyana Vargason, Court Interpreter, 2026 Silverton Dr., Henderson, NV 89074, in remuneration for the costs of post-conviction writ preparation in the above-entitled action.

DATED this 17 day of May, 2018.


DISTRICT COURT JUDGE

Respectfully Submitted By:
John E. Malone, Esq.

1988

FILED

2018 MAY 17 PM 1:51

BOBBIE R. WILLIAMS
CLERK
BY ANONAS DEPUTY

IN AND FOR THE COUNTY OF DOUGLAS, STATE OF NEVADA

STATE OF NEVADA,
Respondent.

DISTRICT COURT JUDGE

Respectfully Submitted By:
John E. Malone, Esq.

1989

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FILED

Case No. 14-CR-00623D • MAY 17 2018

2018 MAY 17 AM 11:03

Dept. No. I

Douglas County
District Court Clerk

BOBBIE R. WILLIAMS
CLERK

BY mta DEPUTY

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

TATIANA LEIBEL,

Petitioner,

**RESPONSE TO POST-
CONVICTION PETITION
FOR WRIT OF HABEAS
CORPUS**

THE STATE OF NEVADA,

Respondent.

Respondent, by and through, the Douglas County District Attorney's Office, responds to Tatiana Leibel's (Leibel) post-conviction petition for a writ of habeas corpus filed in the above-entitled matter. This response is based on the following memorandum of points and authorities, as well as all other pleadings, documents, and exhibits on file.¹

STATEMENT OF THE CASE

Leibel shot her husband to death with a Taurus "Circuit Judge" rifle while he sat on his couch in his family room on the morning of February 23, 2014. Leibel told her friend later that night that the victim was shot between 9:30 a.m. and 10:00 a.m. Exhibit 8 at 157. At 9:56 a.m. on the morning of the victim's death she texted her daughter and told her, "I'm still home. I

¹The relevant transcripts of the trial court proceedings are on file with this Court and/or attached as exhibits to this answer.

1 have on comfortable(sic) situation. I explain little bit later, from what I can." Exhibit 6 at 157.
2 Leibel waited until 11:03 a.m. to call 9-1-1 and tell them that the victim had been shot. Exhibit
3 5 at 16. She claimed it was suicide.

4 When first responders discovered the body upstairs, the blood had already begun to
5 coagulate, Exhibit 6 at 32, there were signs that rigor mortis had already begun to set in, *id.* at
6 68, and there was no electrical activity in the victim's body, *id.* at 66. When the first
7 responders looked at the nearby rifle they noticed that it was still cocked. Exhibit 6 at 69.

8
9 The investigators who took custody of the weapon also noticed that the hammer was
10 still cocked. Exhibit 6 at 135. Two rounds had been fired, and the cylinder was in position to
11 fire a third round. *Id.* at 136. A witness testified that the rifle was "double action," meaning
12 that if you applied 13 or 14 pounds of pressure and pulled the trigger back farther you could
13 rotate the cylinder, cock the hammer, and if you kept pulling, fire the weapon. Exhibit 8 at 50-
14 52. If you manually cocked the weapon, it would only take three or four pounds of pressure to
15 fire it. *Id.* at 51.

16
17 The first round that was fired from the gun hit the victim in his right torso and the
18 second round went through his left hand. Exhibit 6 at 205; Exhibit 7 at 107-127. The distance
19 between the victim's right armpit and the tip of the right third finger was measured to be
20 between 24 and 25 inches. Exhibit 7 at 130. A witness testified that a straight line from the
21 end of the muzzle of the gun to the trigger is approximately 21 inches if the gun is uncocked
22 and 22 inches when it is cocked. Exhibit 8 at 64. Based on test fires of the gun and an analysis
23 of the robe the victim was wearing when he was shot, a witness testified that the end of the
24 muzzle was most likely between 2 and 6 inches from the victim's robe when it was fired, but
25 that it could have been as far away as 18 inches when he was fired. Exhibit 8 at 80. The
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1 State's expert testified that based on this evidence, all of the other physical evidence, and his
2 reconstruction, the best explanation was that the victim did not shoot himself and someone else
3 delivered the shots. Exhibit 8 at 100. Leibel was the only other person in the house when the
4 victim was shot.

5 Following the jury trial, Liebel was found guilty of second-degree murder with the use
6 of a deadly weapon, and a judgment of conviction was entered on April 21, 2015. Exhibit 13.
7 Leibel appealed and her conviction was affirmed on December 18, 2015. Exhibits 14 and 15.
8 Remittitur issued on January 12, 2016. Exhibit 16. Less than a year later Leibel filed a hand-
9 written *pro se* post-conviction petition for a writ of habeas corpus raising four grounds for
10 relief and a motion for appointment of counsel. It was written in the English language.

11 This Court appointed post-conviction counsel on November 28, 2016 and a counseled
12 post-conviction supplemental petition was filed on February 26, 2018. The supplemental
13 petition raises thirteen grounds for relief.

14 ARGUMENT

15 I. Standard of Review

16 "Any person convicted of a crime and under sentence of . . . imprisonment who claims
17 that the conviction was obtained . . . in violation of the Constitution of the United States or the
18 Constitution or laws of this State, may . . . file a post-conviction petition for a writ of habeas
19 corpus." NRS 34.724(1).

20 A. Procedural Bars

21 Nevada's procedural bars are mandatory. *See, e.g., Clem v. State*, 119 Nev. 615, 623 n.
22 43, 81 P.3d 521, 527 n.43 (2003). Claims in a petition that could have been, (1) "presented to
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1 the trial court,” or (2) “raised in a direct appeal” must be dismissed unless a petitioner
2 demonstrates good cause and actual prejudice. NRS 34.810(1)(b).

3 **B. Evidentiary Hearing**

4 This Court must determine whether an evidentiary hearing is required upon review of
5 the return, answer and all supporting documents which are filed. NRS 34.770(1). A petitioner
6 is only “entitled to a post-conviction evidentiary hearing when he asserts claims supported by
7 specific factual allegations not belied by the record that, if true, would entitle him to relief.”
8 *Mann v. State*, 118 Nev. 351, 353, 46 P.3d 1228, 1229 (2002). If petitioner does not satisfy that
9 standard, this Court must dismiss the petition without an evidentiary hearing. NRS 34.770(2).
10

11 **C. Ineffective Assistance of Counsel**

12 The proper standard under which to review a claim of ineffective assistance of counsel
13 was established by the United States Supreme Court over three decades ago. *See Strickland v.*
14 *Washington*, 466 U.S. 668 (1984). To show that counsel was ineffective, a petitioner “must
15 show that counsel’s representation fell below an objective standard of reasonableness.” *Id.* at
16 688. The petitioner must also demonstrate prejudice in that “there is a reasonable probability
17 that, but for counsel’s unprofessional errors, the result of the proceeding would have been
18 different.” *Id.* at 694. “Failure to make the required showing of either deficient performance or
19 sufficient prejudice defeats [an] ineffectiveness claim.” *Id.* at 700.
20

21
22 “There are countless ways to provide effective assistance in any given case,” and
23 “[e]ven the best criminal defense attorneys would not defend a particular client in the same
24 way.” *Id.* at 689-90 (1984). There is a strong presumption that counsel took actions for tactical
25 reasons rather than through sheer neglect. *Cullen v. Pinholster*, 563 U.S. 170, 191 (2011).
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1 **II. All of the Claims in the *Pro Se* Post-Conviction Petition Are Procedurally Barred.**

2 All of the claims in in Leibel's *pro se* post-conviction petition are procedurally barred
3 under NRS 34.810(1)(b) because they could have been presented to the trial court or raised on
4 direct appeal.

5 Although the heading for ground 1 in the *pro se* petition alleges that petitioner was
6 denied her constitutional right to effective assistance of counsel, the nine pages that appear
7 under that heading do not allege that counsel failed to do a single thing. *Pro se* Petition at 6-
8 14.² Such bare allegations do not "overcome the presumption that his attorney fully discharged
9 his duties." *Masters v. State*, 91 Nev. 170, 171, 533 P.2d 765, 765 (1975); *see also Strickland*,
10 466 U.S. at 689 ("a court must indulge a strong presumption that counsel's conduct falls within
11 the wide range of reasonable professional assistance"). Allegations concerning errors in the
12 forensic pathologist's report, errors by responding officers, investigators, paramedics,
13 prosecution expert witnesses, and the prosecutor himself, *Pro se* Petition at 6-14, could have
14 been presented to the trial court or raised on direct appeal.

15 The allegations in grounds 2, 3, and 4 also could have been presented to the trial court
16 or raised on direct appeal. *Pro se* Petition at 15-29. These procedurally barred claims include
17 allegations that the defendant's *Miranda* rights were violated, due process rights were violated,
18 she was "arrested under false evidence," "there is reasonable doubt," "false statements were
19 made," "errors occurred during [the] investigation," she was denied her constitutional right to
20 "expert witness-right to confrontation," and cumulative error. *Id.*

21 To the extent Leibel includes the words "actual innocence" in the heading for ground 2,
22 she does not allege that she has any "new evidence" of innocence. *Pro se* Petition at 15-19.

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28 ²The *pro se* petition does not have sequential numbering and the page numbers here refer to the
total number of pages not the actual number listed on the page.

1 “Without any new evidence of innocence, even the existence of a concededly meritorious
2 constitutional violation is not in itself sufficient” to demonstrate actual innocence. *Schlup v.*
3 *Delo*, 513 U.S. 298, 316 (1995). Furthermore, neither the Nevada Supreme Court nor the
4 United States Supreme Court has recognized a free-standing claim of actual innocence. *See*
5 *Berry v. State*, 131 Nev. ___, ___, 363 P.3d 1148, 1154 n. 3 (2015) (citing *McQuiggin v.*
6 *Perkins*, 569 U.S. ___, ___, 133 S.Ct. 1924, 1931 (2013)). Such a claim is not cognizable under
7 the United States Constitution.
8

9 To the extent this Court can decipher an actual ineffective-assistance-of-counsel claim
10 in Leibel’s *pro se* petition, she fails to satisfy either prong of *Strickland*.
11

12 **II. All of the Claims In the Supplemental Post-Conviction Petition Lack Merit.**

13 Leibel fails to demonstrate that her trial counsel performed deficiently or that her trial
14 counsel’s performance resulted in prejudice. She was not deprived the constitutionally
15 effective assistance of counsel and all of her claims should be denied.
16

17 **A. Ground 1 Lacks Merit.**

18 In ground 1 of her supplemental petition Leibel argues that trial counsel was
19 constitutionally ineffective because she did not use an interpreter for attorney-client meetings.
20 Supplemental Petition at 5-9.

21 **1. Counsel Did Not Perform Deficiently.**

22 In order to satisfy the first prong of *Strickland* Leibel must show that counsel’s failure
23 to use an interpreter for attorney-client meetings fell below an objective standard of
24 reasonableness. *Strickland*. at 688. She fails to meet her burden because she does not identify
25 a single thing her trial counsel tried to tell her that she did not understand, or a single thing she
26 tried to tell her trial counsel that counsel did not understand, during any attorney-client
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1 meeting. Supplemental Petition at 5-9. She merely claims that conversation with her trial
2 counsel was "difficult for her." *Id.* at 5-6. "Bare" or "naked" claims like this are insufficient to
3 grant relief. *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Even if such an
4 allegation was true, counsel does not fall below an objective standard of reasonableness by not
5 utilizing an interpreter when her client finds conversation to be "difficult." In her sworn
6 declaration, counsel for Leibel told the district court that in private conversation with Leibel
7 she was able to work through any language difficulties her client had in communicating with
8 her. Exhibit 1 at 5. To the extent Leibel complains about the allegedly "cursory and abrupt"
9 nature of their conversation about whether she should testify and her counsel's legal advice that
10 if she testified she would go to prison for the rest of her life, those complaints are about the
11 quality of counsel's legal advice not whether the advice was understandable. Supplemental
12 Petition at 6.

13
14
15 Leibel's citation to the Nevada Supreme Court's decision in *Ton* also does not
16 demonstrate that her counsel fell below an objective standard of reasonableness. Supplemental
17 Petition at 5. The *per curiam* panel decision in *Ton* does not hold that attorney-client meetings
18 are "crucial stages of the criminal process." *Ton v. State*, 110 Nev. 970, 971, 878 P.2d 986, 987
19 (1994). Nor could they be because they are not part of the proceedings in a Nevada criminal
20 case at all. *See* Nevada Revised Statutes, Title 14, Procedure in Criminal Cases. The panel in
21 *Ton* only found a federal due process right to an interpreter when a defendant "in fact does not
22 understand the English language." *Ton*, 110 Nev. at 971, 878 P.2d at 987. Leibel understands
23 English. Her counsel's sworn declaration states that she "speaks English as a second
24 language," and her counsel told the district court that, "she can communicate in conversational
25 English." Exhibit 1 at 3 and 5. She had to speak English to obtain her degree from the
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1 University of Nevada and was pursuing a master's degree at the same institution. Exhibit 8 at
2 159. She spoke with her husband in English and she communicated with members of the
3 public during her more than 20 years in the United States in English. She wrote a 29 page *pro*
4 *se* post-conviction petition for a writ of habeas corpus in English. No provision of Nevada law
5 placed an obligation on Leibel's counsel to utilize an interpreter during attorney-client
6 meetings. It was reasonable for trial counsel to communicate with her client without an
7 interpreter because Leibel spoke English, she was able to work out any communication
8 difficulties during private conversation, and Leibel does not claim she ever asked her attorney
9 to utilize an interpreter during their attorney-client meetings. Leibel's counsel did not fall
10 below an objective standard of reasonableness.
11

12
13 **2. Petitioner Was Not Prejudiced By Counsel's Performance.**

14 In order to satisfy the second prong of *Strickland* Leibel must demonstrate that "there is
15 a reasonable probability that, but for counsel's unprofessional errors, the result of the
16 proceeding would have been different." *Strickland*, 466 U.S. 668 at 694. Leibel has failed to
17 meet her burden. Leibel fails to demonstrate that the results of the proceedings would have
18 been different. She admits that, without an interpreter, she understood that her attorney did not
19 believe it was in her best interest to testify and that she in fact believed that Leibel would go to
20 prison for the rest of her life if she testified. Supplemental Petition at 6. To the extent she had
21 any difficulty understanding other reasons her attorney believed she should not testify, an
22 interpreter would have merely made those reasons not to testify more clear. Leibel lists her
23 counsel among the authorities that she had "a disinclination to question, to object, or to voice
24 her own ideas and opinions," to because of her upbringing in the Soviet Union. *Id.* Therefore,
25 it is even less likely that she would disregard her counsel's advice. *Id.* She has presented no
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1 evidence that her trial counsel believed there was any reason that she *should* testify. She fails
2 to demonstrate that an interpreter would have caused her to change her mind about testifying.
3 An interpreter was present in the courtroom when Leibel was canvassed on her decision not to
4 testify. Exhibit 10 at 135. The district court stressed to Leibel that the decision about whether
5 to testify was hers and hers alone. *Id.*

6
7 Even if an interpreter would have caused her to change her mind about testifying,
8 Leibel has failed to demonstrate that the result of the proceeding would have been different if
9 she testified. The “bare” claim that “the defense *could* have benefitted from her testimony and
10 presence on the stand,” is not sufficient to demonstrate that the result of the proceeding would
11 have been different. *Hargrove*, 100 Nev. at 502, 686 P.2d at 225. Leibel’s claim that because
12 she chose not to testify she missed an opportunity to “humanize” herself and “tell her story to
13 the jury” also fails to demonstrate that result of the proceedings would be different. Leibel
14 presents no evidence that the jury misunderstood her human qualities and fails to explain what
15 her story would have been and why the jury would have believed it and found her not guilty.
16 Leibel failed to demonstrate any probability that the results of the proceedings would have been
17 different if an interpreter was present during attorney’s client meetings much less a “reasonable
18 probability.” *Strickland*, 466 U.S. 668 at 694.

19
20
21 Because Leibel fails to satisfy either prong of *Strickland* ground 1 should be denied.

22 **B. Ground 2 Lacks Merit.**

23 In ground 2 of her supplemental petition Leibel alleges that trial counsel was
24 constitutionally ineffective because she did not procedurally notice forensic scientist David
25 Billau as a trajectory witness and the Court barred his testimony in that capacity. Supplemental
26 Petition at 9-12.
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1 **1. Counsel Did Not Perform Deficiently.**

2 In order to satisfy the first prong of *Strickland* Leibel must show that counsel fell below
3 an objective standard of reasonableness by failing to notice forensic scientist David Billau as a
4 trajectory witness. *Strickland*, 466 U.S. 668 at 688. She fails to meet her burden because trial
5 counsel made a strategic decision to use Billau's testimony to question the trajectory-related
6 conclusions of the State and not to use Billau to offer his own conclusions about trajectory
7 based on the available evidence. These kind of strategic decisions are "virtually
8 unchallengeable." *Strickland*, 466 U.S. at 690. The district court did not prevent trial counsel
9 from using Billau's testimony to question the State's trajectory-related conclusions.
10

11 According to trial counsel's own statements to the district court at the time of the trial,
12 counsel had no intention of using Billau as a trajectory witness. She wanted to use Billau's
13 testimony to argue to the jury that there was not sufficient information from the investigation
14 for a determination about trajectory to even be made. Exhibit 9 at 73-75. Trial counsel told the
15 district court that she wanted to question the State's trajectory-methodology and raise doubts
16 about whether the available evidence was sufficient to come to a conclusion at all. *Id.* The
17 district court overruled the State's objection based on lack of notice because trial counsel did
18 not intend to have Billau "offer his own trajectory" conclusions but instead wanted him to
19 evaluate the trajectory conclusions offered by the State. *Id.* at 74. Billau could not question the
20 State's ability to come to a conclusion about trajectory while at the same time coming to his
21 own conclusion about trajectory based on the very same evidence. Counsel made a strategic
22 decision to question whether there was sufficient information to come to a conclusion about
23 trajectory rather than have a trajectory witness offer his or her own conclusion about trajectory.
24 *Id.* at 73-75. And her decision not to notice Billau as a trajectory witness did not prevent her
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1 from implementing that strategy during the trial. She did not fall below an objective standard
2 of reasonableness for pursuing such a strategy.

3 **2. Petitioner Was Not Prejudiced By Counsel's Performance.**

4 In order to satisfy the second prong of *Strickland* Leibel must demonstrate that "there is
5 a reasonable probability that, but for counsel's unprofessional errors, the result of the
6 proceeding would have been different." *Strickland*, 466 U.S. 668 at 694. Leibel has failed to
7 demonstrate that, if Billau had drawn a conclusion about trajectory based on the available
8 evidence, the results of the trial would have been different. She has not provided this Court
9 with any report from Billau about trajectory. This Court can know with certainty that the
10 results of the proceeding would not have been different if trial counsel had noticed Billau
11 because Billau actually testified that he could not make a conclusion concerning trajectory
12 based on the investigation that was done because there was not enough information. Exhibit 9
13 at 84. If Billau was unable to make a conclusion about trajectory there is no likelihood that the
14 results of the proceedings would have been different if he had been noticed as an expert on
15 trajectory.
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18 Because Leibel fails to satisfy either prong of *Strickland* ground 2 should be denied.
19

20 **C. Ground 3 Lacks Merit.**

21 In ground 3 of her supplemental petition Leibel argues that trial counsel was
22 constitutionally ineffective because she failed to move to suppress her statements to police.
23 Supplemental Petition at 12-14. This claim is cursory at best. In fact it is not even clear what
24 provision of law she believes her counsel should have moved to suppress her statements under.
25

26 *Id.*

27 /

1 **1. Counsel Did Not Perform Deficiently.**

2 In order to satisfy the first prong of *Strickland* Leibel must show that counsel fell below
3 an objective standard of reasonableness by failing to move to suppress her statements to police.
4 *Strickland*, 466 U.S. 668 at 688. Leibel not only fails to meet her burden on this prong, but she
5 fails to even explain what the legal basis for a suppression motion should have been.
6
7 Supplemental Petition at 12-14

8 In support of her claim, Leibel quotes from the Fourth Amendment standard in
9 *Kimmelman v. Morrison*, 477 U.S. 365, 375 (1986). *Id.* at 12. A suppression claim under the
10 Fourth Amendment, however, would involve evidence obtained through searches or seizures,
11 not suppression of witness statements. Had trial counsel moved to suppress Liebel's statements
12 under the Fourth Amendment such a claim would certainly have failed.

13
14 Leibel also cites the Ninth Circuit's decision in *Heredia-Fernandez* to support her
15 assertion that "it is certainly reasonable that the court would have granted a motion to suppress"
16 because Leibel had "language difficulties" and faced aggressive questioning without an
17 interpreter. *Id.* at 13. The Court in *Heredia-Fernandez* opined that language difficulties may
18 impair the ability of a person in custody to waive their *Miranda* rights in a free and aware
19 manner. *United States v. Heredia-Fernandez*, 756 F.2d 1412, 1415 (9th Cir. 1985). In this
20 case, however, there is no evidence that Leibel had language difficulties that impaired her
21 ability to waive her *Miranda* rights. In fact towards the beginning of her interview, before she
22 was read her *Miranda* rights, signed the *Miranda* waiver form, and agreed to speak with the
23 law enforcement, the investigators asked Leibel if she needed an interpreter. She responded
24 "no," and explained that she understood English. Petitioner's Exhibit D at 35. She told them
25 she was speaking English the way she was during the interview because she was "too
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1 emotional now.” *Id.* Before she signed the *Miranda* waiver form, she told them that she could
2 read English. *Id.* at 38.³

3 Because a motion to suppress Leibel’s statements to investigators would have failed,
4 she did not fall below an objective standard of reasonableness for not moving to suppress the
5 statements.

6
7 **2. Petitioner Was Not Prejudiced By Counsel’s Performance.**

8 In order to satisfy the second prong of *Strickland* Leibel must demonstrate that “there is
9 a reasonable probability that, but for counsel’s unprofessional errors, the result of the
10 proceeding would have been different.” *Strickland*, 466 U.S. 668 at 694. Leibel’s fails to
11 demonstrate prejudice in ground 3 because, as discussed above, her motion to suppress would
12 have failed. Even if the statements had been suppressed, the State would have proved beyond a
13 reasonable doubt that Leibel committed murder. Leibel does not identify a single statement she
14 made during her first interview that she believes affected the outcome of the proceedings
15 against her. She has failed to meet her burden of demonstrating prejudice.

16 Because Leibel fails to satisfy either prong of *Strickland* ground 3 should be denied.

17
18 **D. Ground 4 Lacks Merit.**

19 In ground 4 of her supplemental petition Leibel argues that trial counsel was
20 constitutionally ineffective because she failed to present trajectory evidence about how the gun
21 worked, “important measurements,” or the gun’s “unusual cylinder barrel and offset.”
22 Supplemental Petition at 14.

23
24 **1. Counsel Did Not Perform Deficiently.**

25 In order to satisfy the first prong of *Strickland* Leibel must show that counsel fell below
26 an objective standard of reasonableness by failing to present trajectory evidence on those
27

28 ³During a subsequent interview with a Russian interpreter she again signed the *Miranda* waiver form.

1 subjects. *Strickland*, 466 U.S. 668 at 688. The four sentences that make up all of ground 4 fail
2 to satisfy Leibel's burden. Leibel does not explain how evidence about how the gun worked,
3 "important measurements," or the gun's "unusual cylinder barrel and offset," would have given
4 the "jury a basis for concluding that the victim could have shot himself." Supplemental
5 Petition at 14. "Bare" or "naked" claims like ground 4 are insufficient to grant relief.
6
7 *Hargrove*, 100 Nev. at 502, 686 P.2d at 225. Because Leibel failed to explain the importance
8 of the allegedly absent trajectory evidence, she has failed to show that her counsel fell below an
9 objective standard of reasonableness for not presenting it.

10 **2. Petitioner Was Not Prejudiced By Counsel's Performance.**

11 In order to satisfy the second prong of *Strickland* Leibel must demonstrate that "there is
12 a reasonable probability that, but for counsel's unprofessional errors, the result of the
13 proceeding would have been different." *Strickland*, 466 U.S. 668 at 694. Here, Leibel also
14 failed to meet her burden because she failed to explain the importance of the missing trajectory
15 evidence or how it would have affected the outcome of the proceedings.
16

17 Because Leibel fails to satisfy either prong of *Strickland* ground 4 should be denied.
18

19 **E. Ground 5 Lacks Merit.**

20 In ground 5 of her supplemental petition Leibel argues that trial counsel was
21 constitutionally ineffective because she failed to present evidence about the victim's use of
22 marijuana and its effects. Supplemental Petition at 15.

23 **1. Counsel Did Not Perform Deficiently.**

24 In order to satisfy the first prong of *Strickland* Leibel "must show that counsel fell
25 below an objective standard of reasonableness by failing to present evidence about the victim's
26 use of marijuana and its effects. *Strickland*, 466 U.S. 668 at 688. The two paragraphs that
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1 make up all of ground 5 fail to satisfy Leibel's burden. Leibel does not adequately explain why
2 trial counsel had a constitutional obligation to present this evidence to the jury. She does not
3 provide a declaration, affidavit, or report from any expert, supporting her allegation that, in
4 some people, marijuana triggers underlying mental health issues such as depression and
5 psychosis and may lead to suicidal ideation or reckless and impulsive behavior. Even if Leibel
6 had some evidence that marijuana may have such affects, she has presented no evidence and
7 made no allegations that it had such an effect on the victim. Her vague statement that "[t]rial
8 counsel should have made sure the jury understood how his use of marijuana would have
9 affected both his physical and mental health," does not allege that any known symptoms of
10 short-term or long-term marijuana use were experienced by the victim. Supplemental Petition
11 at 15. Leibel has failed to demonstrate that trial counsel fell below an objective standard of
12 reasonableness for failing to present expert testimony about the victim's use of marijuana and
13 its effects.
14

15
16 As for Chad Hendrick's statements to law enforcement, Leibel fails to explain why
17 those statements were so important that her counsel fell below an objective standard of
18 reasonableness for not eliciting them during the trial. Testimony about the victim being in
19 physical pain and deteriorating emotionally during the trial may have made the victim appear
20 even more sympathetic to the jury. Leibel has failed to meet her burden with respect to this
21 prong.
22

23
24 **2. Petitioner Was Not Prejudiced By Counsel's Performance.**

25 In order to satisfy the second prong of *Strickland* Leibel must demonstrate that "there is
26 a reasonable probability that, but for counsel's unprofessional errors, the result of the
27 proceeding would have been different." *Strickland*, 466 U.S. 668 at 694. Even if Leibel could
28

1 have presented evidence that the victim's marijuana use affected his mental health or
2 contributed to his suicidal, reckless, or impulsive behavior, the result of the proceedings would
3 not have been different because the physical evidence made suicide unlikely, if not impossible,
4 and all of the evidence presented to the jury supported the conclusion that Leibel shot the
5 victim. Furthermore, Leibel failed to provide this Court with any evidence that known effects
6 of marijuana on some people had that effect on the victim.
7

8 Because Leibel fails to satisfy either prong of *Strickland* ground 5 should be denied.

9 **F. Ground 6 Lacks Merit.**

10 In ground 6 of her supplemental petition Leibel alleges that trial counsel was
11 constitutionally ineffective because she failed to retain or call a psychological or psychiatric
12 expert to address the complexities of suicidal ideation. Supplemental Petition at 15.
13

14 **1. Counsel Did Not Perform Deficiently.**

15 In order to satisfy the first prong of *Strickland* Leibel "must show that counsel fell
16 below an objective standard of reasonableness by failing to retain or call a psychological or
17 psychiatric expert to address the complexities of suicidal ideation. *Strickland*. at 688. Leibel
18 argues that "the record includes multiple references to [the victim's] suicidal tendencies and
19 threats," but Leibel fails to cite to any portion of the record. Supplemental Petition at 15-16.
20 Leibel does not provide a declaration, affidavit, or report from any expert addressing "the
21 complexities of suicidal ideation, including the risks associated with repeated threats of suicide,
22 bullying, and previous suicide attempts" or "the prevalence of suicide in our society, suicide
23 rates amongst members of the Jewish community, the fac[t] that Jewish doctrine has evolved to
24 accept suicide, . . . the predictability or unpredictability of suicide based on prior attempts or
25 threats, and information on planned versus spontaneous suicides." *Id.* at 15-16. Thus, her
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1 vague reference to such an expert's expected testimony is mere speculation that does not
2 provide any specific reason why trial counsel should have called such a witness. Leibel has
3 failed to demonstrate that trial counsel fell below an objective standard of reasonableness for
4 failing to retain or call a psychological or psychiatric expert.

5
6 **2. Petitioner Was Not Prejudiced By Counsel's Performance.**

7 In order to satisfy the second prong of *Strickland* Leibel must demonstrate that "there is
8 a reasonable probability that, but for counsel's unprofessional errors, the result of the
9 proceeding would have been different." *Strickland*, 466 U.S. 668 at 694. Leibel's vague
10 speculation about what her psychological or psychiatric witness might testify about does not
11 demonstrate that there is a reasonable probability that, but for counsel's failure to call such an
12 expert, the result of the proceeding would have been different.

13
14 Because Leibel fails to satisfy either prong of *Strickland* ground 6 should be denied.

15 **G. Ground 7 Lacks Merit.**

16 In ground 7 of her supplemental petition Leibel alleges trial counsel was
17 constitutionally ineffective because she failed to retain or call an expert in blood spatter
18 analysis. Supplemental Petition at 16.

19
20 **1. Counsel Did Not Perform Deficiently.**

21 In order to satisfy the first prong of *Strickland* Leibel "must show that counsel fell
22 below an objective standard of reasonableness by failing to retain or call an expert in blood
23 spatter analysis. *Strickland*, 466 U.S. 668 at 688. Leibel has failed to satisfy her burden.
24 Counsel did not fall below an objective standard of reasonableness by failing to call such an
25 expert because the evidence presented at trial showed that Leibel had more than enough time
26 between when the victim was shot and when she called 911 to clean up and dispose of any
27
28

1 clothing that had blood spatter on it. Furthermore, Leibel has failed to demonstrate that an
2 expert even exists who would "testify that you would expect to see high-velocity blood spatter
3 on an assailant who had fired into a victim at the ranges alleged in this case." Supplemental
4 Petition at 16. She has not provided this Court with an affidavit, declaration, or report from
5 such an expert. In the absence of proof that such an expert even exists, counsel did not perform
6 deficiently.
7

8 **2. Petitioner Was Not Prejudiced By Counsel's Performance.**

9 In order to satisfy the second prong of *Strickland* Leibel must demonstrate that "there is
10 a reasonable probability that, but for counsel's unprofessional errors, the result of the
11 proceeding would have been different." *Strickland*, 466 U.S. 668 at 694. This prong fails for
12 the same reasons that the first prong fails. First, Leibel has failed to demonstrate that an expert
13 exists to testify as she claim the expert would. Second, even if an expert could have testified to
14 those facts, the result of the proceedings would not have been different because there is an easy
15 explanation for why Leibel's clothes did not have blood spatter on them. She had ample time
16 to clean up and dispose of her clothing between the time of the victim's death and the time she
17 called 911.
18
19

20 Because Leibel fails to satisfy either prong of *Strickland* ground 7 should be denied.

21 **H. Ground 8 Lacks Merit.**

22 In ground 8 of her supplemental petition Leibel alleges that trial counsel was
23 constitutionally ineffective because she failed to present any witness who could humanize
24 Leibel for the jury. Supplemental Petition at 17.
25
26 /
27 /
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1. Counsel Did Not Perform Deficiently.

In order to satisfy the first prong of *Strickland* Leibel must show that counsel fell below an objective standard of reasonableness by failing to present any witness who could humanize her for the jury. *Strickland*, 466 U.S. 668 at 688. Leibel alleges that her daughter could have given testimony that showed her mom was a “loving mother and wife, . . . a supportive partner, [and a] loved member of her community.” Supplemental Petition at 17. Such good character evidence would have opened the door to allow the State to present evidence of bad character. *Mitchell v. State*, 124 Nev. 807, 817, 192 P.3d 721, 728 (2008). Furthermore, the only evidence Leibel presents about what her daughter might testify about on these subjects is a letter. The letter does not say she is a beloved member of the community or a supportive partner and it is primarily about the daughter and her siblings, not about Leibel. Petitioner’s Exhibit D. At most the letter says Leibel is a good person because she made funeral arrangements for the victim and calls her daughter from jail. *Id.* Trial counsel did not fall below an objective standard of reasonableness for failing to present such testimony. To the extent Leibel alleges that there were other witnesses who could testify about other good character traits, she fails to provide the names of those witnesses or proffer what their testimony would be in her supplemental petition. Trial counsel did not perform deficiently.

2. Petitioner Was Not Prejudiced By Counsel’s Performance.

In order to satisfy the second prong of *Strickland* Leibel must demonstrate that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. 668 at 694. Leibel has failed to demonstrate that testimony about funeral arrangements, calls from jail, or any other good character trait would have resulted in a different outcome of her trial. At a minimum, such

1 testimony would have done little to paint Leibel in a better light. At most, such testimony
2 would have opened the door to more damaging negative character evidence. Leibel has failed
3 to demonstrate prejudice.

4 **I. Ground 9 Lacks Merit.**

5 In ground 9 of her supplemental petition Leibel argues that trial counsel was
6 constitutionally ineffective because she failed to effectively challenge the State's expert's
7 testimony on gunshot residue, his methodology, measurements, notes, or raw data.
8 Supplemental Petition at 17-18.

9
10 **1. Counsel Did Not Perform Deficiently.**

11 In order to satisfy the first prong of *Strickland* Leibel "must show that counsel fell
12 below an objective standard of reasonableness by failing to effectively challenge the State's
13 expert's testimony on gunshot residue, his methodology, measurements, notes, or raw data.
14 *Strickland*, 466 U.S. 668 at 688. Leibel alleges that counsel should have challenged the State's
15 expert's testimony, presented countervailing evidence, and given an alternative explanation.
16 But she fails to provide any detailed explanation about how trial counsel should have
17 accomplished those goals. Trial counsel cannot fall below an objective standard of
18 reasonableness for failing to do something that is impossible. Leibel fails to provide an
19 affidavit, declaration, or report from any ballistics expert which challenges the State's expert's
20 testimony, presents countervailing evidence, or offers an alternative explanation. Speculation
21 about such an expert and his or her testimony is not enough to satisfy the first prong of
22 *Strickland*. Counsel did not perform deficiently.

23 /

24 /

2. **Petitioner Was Not Prejudiced By Counsel's Performance.**

In order to satisfy the second prong of *Strickland* Leibel must demonstrate that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. 668 at 694. Because Leibel does not explain how counsel could have more effectively challenged the State's expert's testimony on gunshot residue, his methodology, measurements, notes, or raw data, or even provide the report of a ballistics expert, she fails to demonstrate prejudice.

Because Leibel fails to satisfy either prong of *Strickland* ground 9 should be denied.

J. **Ground 10 Lacks Merit.**

In ground 10 of her supplemental petition Leibel argues that trial counsel was constitutionally ineffective because she failed to move to prevent Sharon Oren from testifying that he was afraid for the victim's life and he thought Leibel would kill the victim. Supplemental Petition at 18-19.

1. **Counsel Did Not Perform Deficiently.**

In order to satisfy the first prong of *Strickland* Leibel "must show that counsel fell below an objective standard of reasonableness by failing to move to prevent Sharon Oren from testifying. *Strickland*, 466 U.S. 668 at 688. During the examination of Sharon Oren trial counsel repeatedly objected to his testimony as irrelevant and at least one of her objections was sustained because the witness' testimony was speculation. Exhibit 8 at 33-39. Leibel does not explain what more her trial counsel could have done to preclude Oren's testimony. She contends that the report produced by investigators for Douglas County did not include those statements and provides no evidence that the State was aware that the witness was going to make those statements and failed to turn that information over to Leibel's trial counsel.

1 Because Leibel does not provide any other basis for an objection or otherwise explain how she
2 believes her counsel could have prevented the witness' testimony, she has not demonstrated
3 that her counsel fell below an objective standard of reasonableness.

4 **2. Petitioner Was Not Prejudiced By Counsel's Performance.**

5 In order to satisfy the second prong of *Strickland* Leibel must demonstrate that "there is
6 a reasonable probability that, but for counsel's unprofessional errors, the result of the
7 proceeding would have been different." *Strickland*, 466 U.S. 668 at 694. Leibel has failed to
8 demonstrate prejudice. She has failed to demonstrate that any motion by trial counsel would
9 have precluded Sharon Oren's testimony and failed to demonstrate that even if Oren had not
10 offered his testimony to the jury the results of the proceeding would have been different. The
11 physical evidence presented a trial made suicide unlikely, if not impossible, and all of the
12 evidence presented to the jury supported the conclusion that Leibel shot the victim. Leibel has
13 not met her burden.
14
15

16 Because Leibel fails to satisfy either prong of *Strickland* ground 10 should be denied.

17 **K. Ground 11 Lacks Merit.**

18 In ground 11 of her supplemental petition Leibel argues that trial counsel was
19 constitutionally ineffective because she failed to prevent or object to Douglas County Fire
20 Department responders offering scientific and medico-legal testimony beyond their areas of
21 knowledge, without having them qualified as experts. Supplemental Petition at 19. Leibel
22 claims that their testimony was "*arguably* inadmissible pursuant to NRS 50.275 and .285" but
23 fails to provide any detailed explanation as to why. *Id.* The only testimony of Douglas County
24 Fire Department responders that Leibel cites is the testimony from Nick Robidart and James
25
26
27
28

1 Antti on pages 25, 28, 31-34, and 35 of the February 2, 2015 transcript. Exhibit 9. Those
2 individuals were called by Leibel as a witnesses. They were not called by the State.

3 **1. Counsel Did Not Perform Deficiently.**

4 In order to satisfy the first prong of *Strickland* Leibel “must show that counsel fell
5 below an objective standard of reasonableness by failing to prevent or object to the Douglas
6 County Fire Department responders’ testimony. *Strickland*, 466 U.S. 668 at 688. Leibel has
7 failed to meet her burden. Other than citing to two provisions of the Nevada evidence code,
8 she fails to explain why those provision excluded the testimony of Robidart and Antti. Nor
9 does she explain why trial counsel fell below an objective standard of reasonableness for not
10 objecting to their testimony under NRS 50.275 and NRS 50.285.

11 “District courts are vested with considerable discretion in determining the relevance and
12 admissibility of evidence.” *Castillo v. State*, 114 Nev. 271, 277, 956 P.2d 103, 107-08 (1998).
13 Specifically, “[t]he admissibility and competency of opinion testimony, either expert or
14 nonexpert, is largely discretionary with the trial court.” *Watson v. State*, 94 Nev. 261, 264, 578
15 P.2d 753, 756 (1978). To the extent any of the testimony cited by Leibel is opinion testimony
16 at all, it was admissible lay testimony. NRS 50.265. The witnesses rationally testified based
17 on what they saw, smelled, touched, or otherwise perceived. Exhibit 9 at 21-35. No district
18 court would have sustained an objection based on their testimony. Leibel has failed to
19 demonstrate that her counsel performed deficiently in ground 11.

20 **2. Petitioner Was Not Prejudiced By Counsel’s Performance.**

21 In order to satisfy the second prong of *Strickland* Leibel must demonstrate that “there is
22 a reasonable probability that, but for counsel’s unprofessional errors, the result of the
23 proceeding would have been different.” *Strickland*, 466 U.S. 668 at 694. As discussed above,
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1 even if trial counsel had objected based on NRS 50.275 and NRS 50.285, her objection would
2 have been overruled and the witnesses would have still been permitted to testify. Therefore, no
3 prejudice resulted. Even if the two witnesses did not offer the testimony on pages 25, 28, 31-
4 34, and 35 of the February 2, 2015 transcript, the results of the proceedings would not have
5 been different because that testimony was largely cumulative of the testimony presented by
6 other witnesses during the State's case in chief.
7

8 Because Leibel fails to satisfy either prong of *Strickland* ground 11 should be denied.

9 **L. Ground 12 Lacks Merit.**

10 In ground 12 of her supplemental petition Leibel argues that trial counsel was
11 constitutionally ineffective because she failed to object or move to prevent Leibel's neighbor
12 from testifying that he overheard the couple arguing between July and October of 2013 based
13 on relevance under NRS 48.015 and unfair prejudice under NRS 48.035(1). Supplemental
14 Petition at 20-21.
15

16 **1. Counsel Did Not Perform Deficiently.**

17 In order to satisfy the first prong of *Strickland* Leibel "must show that counsel fell
18 below an objective standard of reasonableness by failing to object or move to prevent Leibel's
19 neighbor from testifying that he overheard the couple arguing between July and October of
20 2013. *Strickland*, 466 U.S. 668 at 688. Trial counsel did not fall below an objective standard
21 of reasonableness. She successfully prevented that witness from relaying to the jury the
22 contents of the argument he overheard during the direct examination of the witness. Exhibit 10
23 at 140. The fact that they were involved in a spirited argument a few months before the victim
24 was shot and killed is relevant to the relationship between the defendant and the victim and
25 goes to Leibel's motive for shooting the victim. The fact that they were engaged in a spirited
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1 argument tends to show that they were having problems in their relationship. This testimony
2 was not unfairly prejudicial at all. To the extent it was unfairly prejudicial, its probative value
3 outweighed any potential prejudice. Trial counsel did not fall below an objective standard of
4 reasonableness for failing to object to the testimony under NRS 48.015 and NRS 48.035(1)
5 because the objection would have been overruled and had no effect on the outcome of the trial.
6

7 **2. Petitioner Was Not Prejudiced By Counsel's Performance.**

8 In order to satisfy the second prong of *Strickland* Leibel must demonstrate that "there is
9 a reasonable probability that, but for counsel's unprofessional errors, the result of the
10 proceeding would have been different." *Strickland*, 466 U.S. 668 at 694. The result of the
11 proceedings would not have been different because any objection by trial counsel would have
12 been overruled. Furthermore, even if the witness did not testify that the victim and the
13 defendant were engaged in a spirited argument a few months before he was shot, the outcome
14 of the proceedings would not have been different. The physical evidence presented at trial
15 made it unlikely, if not impossible that the victim committed suicide, and all of the evidence
16 presented to the jury supported the conclusion that Leibel shot the victim. Leibel has not met
17 her burden.
18

19
20 Because Leibel fails to satisfy either prong of *Strickland* ground 12 should be denied.

21 **M. Ground 13 Lacks Merit.**

22
23 In ground 13 of her supplemental petition Leibel argues that the cumulative effect of the
24 ineffective-assistance-of-counsel claims in her supplemental petition entitles her to relief.
25 Supplemental Petition at 21-24. Ineffective-assistance-of-counsel claims cannot cumulate. *See*
26 *Fisher v. Angelone*, 163 F.3d 835, 852-53 (4th Cir.1998) (explaining why ineffective assistance
27 of counsel claims, like claims of trial court error, must be reviewed individually, rather than
28 collectively); *see also McConnell v. State*, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009), *as*

1 *corrected* (July 24, 2009) (explaining that the Nevada Supreme Court is “not convinced” that
2 ineffective-assistance-of-counsel claims can cumulate). “[U]nder *Strickland v. Washington*,
3 466 U.S. 668 (1984), an error of constitutional magnitude occurs in the Sixth Amendment
4 context only if the defendant demonstrates (1) deficient performance *and* (2) prejudice.
5 *Lockhart v. Fretwell*, 506 U.S. 364, 370 n.2 (1993) (emphasis added). If Leibel demonstrates
6 that her counsel’s performance was deficient and resulted in prejudice, she is entitled to relief
7 and there is no need to cumulate. *Strickland*, 466 U.S. at 693-95. If she cannot demonstrate
8 that her counsel’s performance was deficient *and* resulted in prejudice there is no constitutional
9 error, *see Lockhart*, 506 U.S. at 370 n.2, and, thus, no error to cumulate.

10 To the extent a cumulative ineffective-assistance-of-counsel claims is cognizable in a
11 state post-conviction petition, Leibel’s claim lacks merit. She has failed to demonstrate any
12 error and thus, there is no error to cumulate.

13
14 **III. Petitioner is Not Entitled to an Evidentiary Hearing On Any Of Her Claims.**


15 Although Leibel claims that she “seeks an evidentiary hearing” on page one of her
16 supplemental post-conviction petition for a writ of habeas corpus, she fails to notify this Court
17 or respondent about any witnesses or other evidence she wants to present or admit during such
18 a hearing. Supplemental Petition. None of the claims in Leibel’s *pro se* petition and
19 supplemental petition are supported by specific factual allegations not belied by the record that,
20 if true would entitle him to relief. *See Nika v. State*, 124 Nev. 1272, 1301, 198 P.3d 839, 858
21 (2008); *Mann v. State*, 118 Nev. 351, 353, 46 P.3d 1228, 1229 (2002); *Hargrove v. State*, 100
22 Nev. 498, 502–03, 686 P.2d 222, 225 (1984). Nor has she provided this Court with an
23 affidavit, declaration, or other statement of any witness indicating what testimony they would
24 provide if an evidentiary hearing was held. This Court should, therefore, deny her petition
25 without an evidentiary hearing. NRS 34.770(2).
26
27
28

CONCLUSION

Respondent submits that Leibel failed to show that trial counsel was constitutionally ineffective in any of the grounds raised in the petition. Therefore, respondent respectfully requests that the petition for writ of habeas corpus be denied.

Dated this 16 day of May, 2018.

MARK B. JACKSON
DISTRICT ATTORNEY

By: 

Matthew Johnson
Deputy District Attorney
P. O. Box 218
Minden, Nevada 89423
(775)782-9800

Case No. 14-CR-0062

Dept. No. I

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

TATIANA LEIBEL,

Petitioner,

vs.

R E T U R N
(Post Conviction Petition for
Writ of Habeas Corpus)

THE STATE OF NEVADA,

Respondent.

Whereas, a Petition for Writ of Habeas Corpus was filed on or about November 14, 2016, in the Ninth Judicial District Court of the State of Nevada, in and for the County of Douglas, return is hereby made and Respondent, State of Nevada, by and through the Douglas County District Attorney's Office, states as follows:

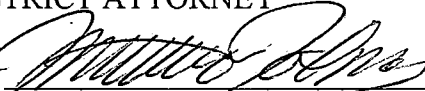
1. Petitioner is in the custody of Nevada Department of Corrections, by virtue of Judgment of Conviction entered by the Ninth Judicial District of the State of Nevada. A certified copy the Judgment of Conviction is attached hereto and incorporated herein by reference.

2. That said conviction was not obtained and said sentence was not imposed in violation of the constitution of the United States or the constitution or laws of the State of Nevada.

2017

1 Dated this 16 day of May, 2018.

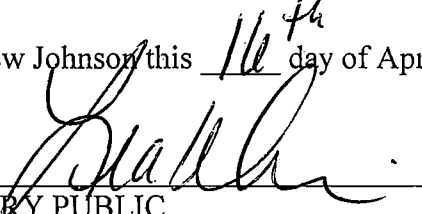
2 MARK B. JACKSON
3 DISTRICT ATTORNEY

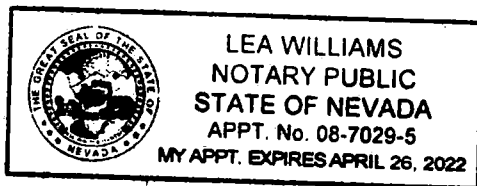
4 By: 

5 Matthew Johnson
6 Deputy District Attorney
7 P. O. Box 218
8 Minden, Nevada 89423
9 (775)782-9800

10 SUBSCRIBED and SWORN to before me by

11 Matthew Johnson this 16th day of April, 2018.

12 
13 NOTARY PUBLIC



CASE NO. 14-CR-0062

FILED

DEPT. NO. I

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BOBBIE R. WILLIAMS
CLERK

Douglas County
District Court Clerk

BY W. L. DEPUTY

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

THE STATE OF NEVADA,

Plaintiff,

vs

JUDGMENT OF CONVICTION

TATIANA LEIBEL,

Defendant,

On the 14th day of April 2014, the defendant above-named appeared before the Court with counsel, Kristine L. Brown, Esq. and entered a plea of NOT GUILTY to the crime of

OPEN MURDER WITH THE USE OF A FIREARM, a category A felony, in violation of NRS 200.010(1) through NRS 200.090 and NRS 193.165 committed on or about February 23, 2014.

On the 5th day of February 2015, the defendant above-named appeared before this Court with counsel, Kristine L. Brown, Esq., and Jamie Henry, Esq., and was found GUILTY BY JURY VERDICT of the crime of SECOND DEGREE MURDER, a category A felony, in violation of NRS 200.030 and NRS 200.010(1). Pursuant to NRS 193.165, the jury further unanimously decided that the crime was committed with the use of a firearm.

2019

1
2 On the 20th day of April 2015, the defendant above-
3 named appeared before the Court for sentencing with counsel,
4 Kristine L. Brown, Esq., and Jamie Henry, Esq., and the State
5 was represented by Deputy District Attorney Brian Filter, Esq.
6 No sufficient legal cause was shown by the defendant as to why
7 judgment should not be pronounced against her. The Court
8 adjudged the defendant guilty of the crime of SECOND DEGREE
9 MURDER, a category A felony, in violation of NRS 200.030 and
10 NRS 200.010(1).

11 The Court then sentenced the defendant to
12 imprisonment with the Nevada Department of Corrections for a
13 maximum term of twenty-five (25) years with a minimum parole
14 eligibility of ten (10) years. The Court then enhanced the
15 sentence for the USE OF A FIREARM, pursuant to NRS 193.165 with
16 a consecutive term of imprisonment with the Nevada Department
17 of Corrections for a maximum term of five (5) years with a
18 minimum parole eligibility of two (2) years. The Court further
19 ordered the defendant to pay the following to the District
20 Court Clerk: one hundred and fifty dollars (\$150.00) as a fee
21 for obtaining and testing samples of blood and saliva to
22 determine genetic markers pursuant to NRS 176.0915(1), three
23 dollars (\$3.00) as an administrative assessment fee pursuant to
24 NRS 176.0623(1) for obtaining and testing the genetic markers,
25 and twenty-five dollars (\$25.00) as an Administrative
26 Assessment Fee.
27

28 The Court further ordered that the defendant shall

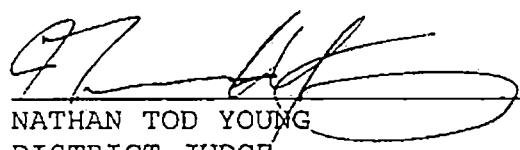
2020

1
2 pay the Court ordered fees of (\$150.00 + \$3.00 + \$25.00) within
3 six (6) months of today's sentencing hearing.

4 This judgement constitutes a lien, pursuant to NRS
5 176.275. If the defendant does not pay the Fines and Fees as
6 ordered by the Court, collection efforts may be undertaken
7 against the defendant pursuant to the laws of this State.

8 The defendant is given credit for four hundred
9 nineteen (419) days pre-sentence confinement time.

10
11 Dated this 21 day of April, 2015

12
13 
14 NATHAN TOD YOUNG
15 DISTRICT JUDGE
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CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original in file and of record in my office.

DATE

4-26-18

BOBBIE R. WILLIAMS Clerk of Court
of the State of Nevada, in and for the County of Douglas,

By  Deputy

20217

Case No. 14-CR-0062

Dept. No. I

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

TATIANA LEIBEL,

Petitioner,

vs.

CERTIFICATE OF SERVICE

THE STATE OF NEVADA,

Respondent.

Pursuant to NRCP 5(b), I certify that I am an employee of the District Attorney for Douglas County, Nevada, and that I deposited for delivery with Reno Carson Messenger/U.S. Mail, a true copy of the Answer to Petition for Writ of Habeas Corpus (Post-Conviction), Points and Authorities in Support of Answer to Petition for Writ of Habeas Corpus (Post-Conviction), and Return (Post-Conviction) addressed to:

John E. Malone, Esq.
209 North Pratt Avenue
Carson City, Nevada 89701

DATED this 17th day of April, 2018.



2022

Case No. 14-CR-0062

Dept No. I

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

THE STATE OF NEVADA,
Appellant,

vs.

TATIANA LEIBEL,
Appellee.

INDEX OF EXHIBITS TO ANSWER TO STATE POST CONVICTION PETITION

Exhibit Number	Title	Date
Exhibit 1	Application for Appointment of Interpreter	April 18, 2014
Exhibit 2	Motion in Limine Regarding Testimony Concerning Crime Scene Reconstruction by Mathew Noedel	January 23, 2015
Exhibit 3	Opposition to Defendant's Motion in Limine Re: Crime Scene Reconstruction	January 22, 2015
Exhibit 4	Motions Hearing Final Transcript	January 23, 2015
Exhibit 5	Trial Rough Draft	January 27, 2015
Exhibit 6	Jury Trial Rough Draft	January 28, 2015
Exhibit 7	Jury Trial Rough Draft	January 29, 2015
Exhibit 8	Jury Trial Rough Draft	January 30, 2015
Exhibit 9	Trial Rough Draft	February 2, 2015
Exhibit 10	Trial Rough Draft	February 4, 2015
Exhibit 11	Closing Arguments Rough Draft	February 5, 2015
Exhibit 12	Verdict	February 5, 2015
Exhibit 13	Judgment of Conviction	April 21, 2015
Exhibit 14	Notice of Appeal	May 11, 2015
Exhibit 15	Order of Affirmance	December 18, 2015
Exhibit 16	Remittitur	January 12, 2016

EXHIBIT 1

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DOUGLAS COUNTY
DISTRICT ATTORNEY

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APR 18 2014

DOUGLAS COUNTY
DISTRICT ATTORNEY

Case No. 14-CR-0062

Dept. No. II

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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

APPLICATION FOR APPOINTMENT
OF INTERPRETER

Tatiana Leibel, defendant above named, by and through her attorney, Kristine L. Brown, applies to this court for an order authorizing the appointment of a Russian interpreter at county expense. This application is based on NRS 50.0545(1), the following Points and Authorities, Declaration of Counsel and the pleadings and papers on file in this matter.

Dated this 18th day of April, 2014.

Kristine L. Brown
Kristine L. Brown

Bar No. 3026

1190 High School Street

Suite A

Minden, Nv. 89410

775-783-8642

Attorney for the defendant

POINTS AND AUTHORITIES

An interpreter must be appointed at public expense for a person with a language barrier who is a defendant in a criminal proceeding. NRS 50.0545(1). A "person with a language barrier" means a person who speaks a language other than English and who cannot readily understand or communicate in the English language. NRS 50.0545(2)(b); 1.510.

There is no Nevada case law interpreting this statute. Courts in other states when faced with the same issue have turned to case law interpreting the Federal Rules for guidance. *Tsen v. State*, 176 P.3d 1, (Court of Appeals, Alaska 2008). In 1978, the United States Congress enacted the federal Court Interpreters Act, 28 U.S.C. § 1827. According to the legislative history of the Court Interpreters Act, Congress did not intend the Act to "create new constitutional rights for defendants or expand existing constitutional safeguards". *United States v. Joshi*, 896 F.2d 1303, 1309 (11th Cir. 1990), citing House of Representatives Report No. 1687 (95th Congress, 2nd session, 1978), pp. 2-4. Rather, the Act was intended to head off potential constitutional problems by establishing a standard procedure for trial judges to use when evaluating the need for an interpreter, and then appointing a qualified interpreter if one is needed. *Id.*

Under subsection (d)(1) of the Act, a trial judge's duty to investigate the appointment of an interpreter arises when the judge is placed on notice that the defendant speaks only or primarily a language other than English, so that it appears that the defendant's lack of skill in English will inhibit his or her comprehension of the proceedings or inhibit communication with counsel or the presiding judicial officer, or, if the defendant takes the stand, inhibit the defendant's comprehension of questions and ability to meaningfully present testimony.

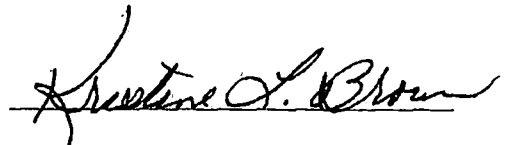
1 Federal courts have interpreted this Act to give trial judges broad discretion when
2 deciding whether a defendant's English language skills are so lacking as to require word-for-
3 word translation of the trial testimony. See, for instance, *United States v. Sandoval*, 347 F.3d
4 627, 632 (7th Cir. 2002). The decision whether to order full non-English interpretation of the
5 trial testimony involves a balancing of the defendant's right to due process against the public's
6 interest in the economical administration of criminal justice. *United States v. Martinez*, 616
7 F.2d 185, 188 (5th Cir. 1980). The decision whether to order word-for-word interpretation of
8 the trial testimony hinges on many variables. Chief among these variables are (1) the extent to
9 which the defendant can comprehend spoken English, (2) the extent to which the defendant can
10 express himself or herself in English, and (3) the degree to which the trial testimony will
11 present complex or subtle issues of fact that will require the defendant's input (*i.e.*, the
12 defendant's participation in formulating the defense case and in devising the cross-examination
13 of adverse witnesses). See *United States v. Febus*, 218 F.3d 784, 791-92 (7th Cir. 2000).

17 Tatiana Leibel's primary language is Russian. As is set out in the following Declaration
18 of Counsel, she can communicate in conversational English. Even then, it is often necessary to
19 stop and explain phrases or concepts to her, or to give her an opportunity to formulate a
20 sentence in English. She has often expressed confusion about what has happened in a court
21 hearing when an interpreter was not present. Word for word interpretation was provided during
22 the preliminary hearing.

24 As the State and Court have pointed out, Mrs. Leibel has been charged with the most
25 serious offense there is, murder. If convicted, she faces the possibility of life in prison without
26 the possibility of parole. Therefore, she should be afforded every opportunity to understand
27 every stage of the proceedings.
28

1 Based on the foregoing, the defendant asks that a Russian interpreter be appointed at
2 public expense and be available at every court proceeding.

3 Dated this 18th day of April, 2014.



Kristine L. Brown,
Bar No. 3026
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775-783- 8642
Attorney for Defendant

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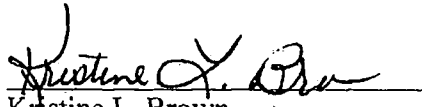
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1 April 14th, she could tell me that her home had been taken from her, but she could not explain the
2 court's rational in reaching that conclusion.

3 Mrs. Leibel is very intelligent and is actively involved in questioning the "science" that
4 led to her being charged in her husband's death. It is essential for her full participation in the
5 court proceedings for her to have a "real time" understanding of the testimony, arguments of
6 counsel and rulings of the court that would be provided by simultaneous translation from English
7 to Russian. In order to quickly be able to discuss matters with counsel, it would be necessary to
8 have an interpreter present at all times. Mrs. Leibel's ability to actively participate in court
9 proceedings is severely restricted without the presence of a Russian speaking interpreter.

10
11 Dated this 18th day of April, 2014.

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13 
14 Kristine L. Brown
15 State Bar No. 3026
16 1190 High School Street
17 Suite A
18 Gardnerville, Nv. 89410
19 775-783-8642
20 Attorney for Defendant
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1 Case No. 14-CR-0062

2 Department No. II

3 This document does not contain personal information of any person

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BY P. GREGORY
DEPUTY

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DISTRICT COURT CLERK

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

9 STATE OF NEVADA)

10 Plaintiff,)

11 vs.)

12 TATIANA LEIBEL)

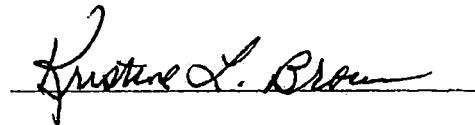
13 Defendant)

CERTIFICATE OF SERVICE

14
15 I certify that I am an employee of The Law Office of Kristine L. Brown, LLC, and that on this
16 date I hand-delivered a true and correct copy of Application for Appointment of Interpreter to:

17 The Douglas County District Attorney's Office
18 1038 Buckeye Road
19 Minden, Nv. 89423

20 Dated this 18th day of April, 2014.

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EXHIBIT 2

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Case No. 14-CR-0062

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Dept. No. 1

Douglas County
District Court Clerk

BOBBIE R. WILLIAMS
CLERK
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BY _____ 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.

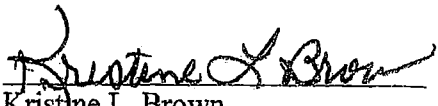
TATIANA LEIBEL

Defendant

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.


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Attorney for Defendant

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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*).

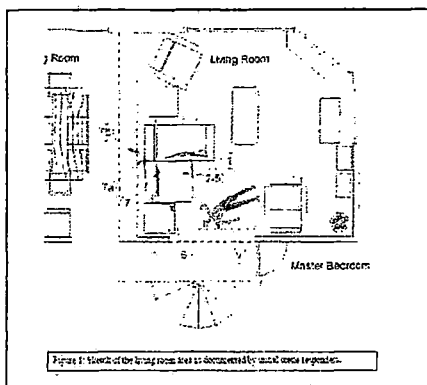
6 Even assuming that Mr. Noedel's testimony would be otherwise admissible expert
7 testimony (which the defense is in no way conceding), the testimony would fail under the
8 *Morsicato/Yeghiazarian* standard which requires testimony concerning causation be stated to a
9 reasonable degree of medical or 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, i.e., 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).

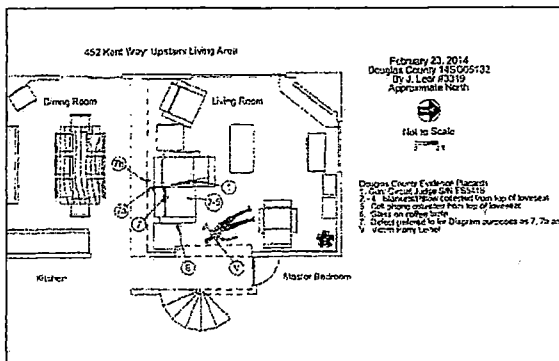
22 Crime scene reconstruction encompasses many components that are based in "true
23 science": chemistry, math, physics, etc. where 1+1 always equals 2. A copy of the International
24 Association for Identification requirements are attached as Exhibit 7. Reconstruction itself is an
25 applied science, 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

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. Noedel also states:

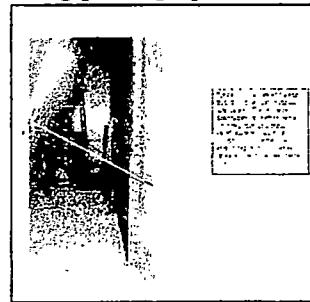
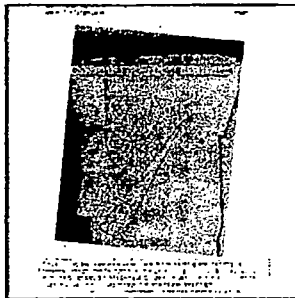
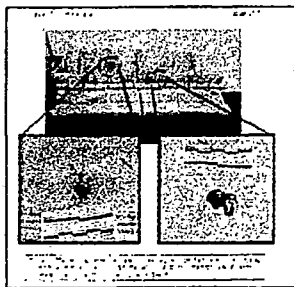
"Because the seat occupied by Harry Leibel was a recliner (the seat back moved up and down to sit up or recline), the straight line path of this shot could only be connected when the seat was reclined approximately half way back. Therefore, at the time of the second shot, the recliner was neither sitting 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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2 In support of this assertion, Mr. Nodel refers to the following photographs.



8 The "approximate middle position" however, is never defined in terms of degrees or a
9 reproducible angle. Nor is there any mention of how this "middle position" determination was
10 made. Other than the photographs, there was no documentation from the crime lab.

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

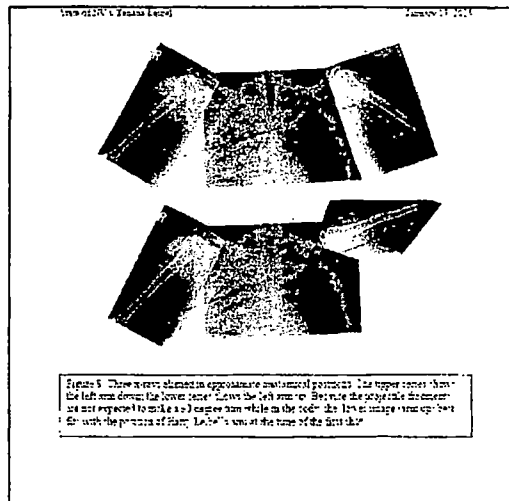
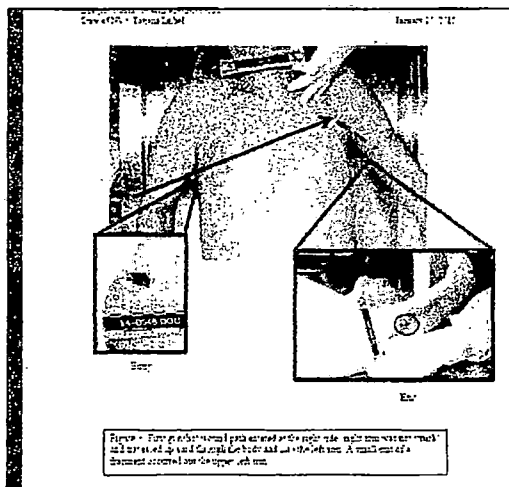
16 In spite of this, Mr. Noedel concluded:

17 "By connecting the hole through the couch with the fixed perforation in the wall behind the
18 couch, the path of this shot can be measured. The measured path reveals that the horizontal
19 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.

20 The science of trajectory is based in math, measurements and angles, and is generally
21 accepted. The application of this science to any given scene requires reliable underlying
22 documentation. Under the second criteria in the *Higgs/Hallmark* standard, this conclusion fails.
23 The reliability of a methodology and underlying data is questionable. The reliability of the
24 underlying data is unreproducible and untestable. The conclusions themselves are based on
25 assumptions, conjecture, or generalization.

26 The application of the "science" of crime scene reconstruction becomes more
27 problematic the more it is "applied" to the scene. The first shot entered Mr. Leibel's torso on the
28 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).

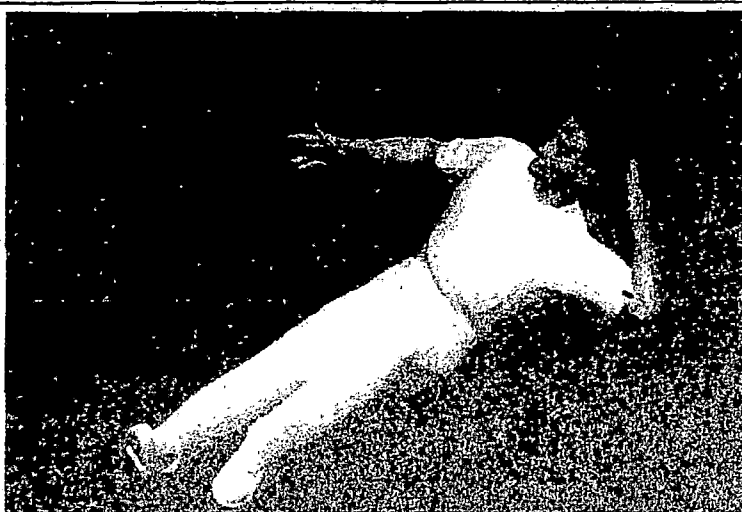
Prior to this shot the torso of Harry Leibel would have been able to achieve any number of orientations (twisting, bending, leaning etc.) so his exact original orientation (other than on the left recliner) cannot be independently determined. However, whatever the orientation of his torso at the time 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.

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
10 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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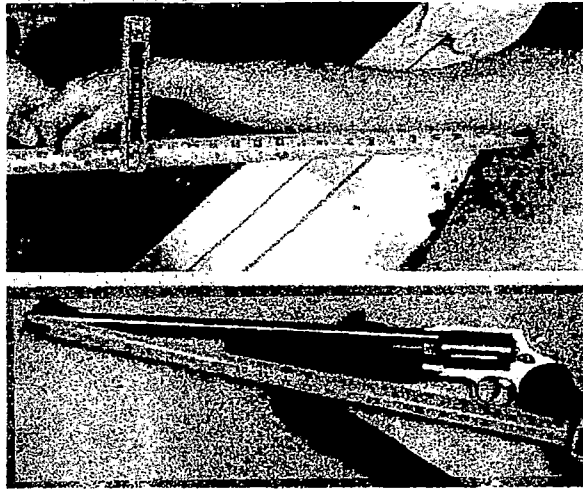


Figure 14: The upper two images were taken at two different times. First, the length of Harry Leibel's arm was measured during his autopsy and photographed. Later, the image of the Ross/Taurus rifle was taken at the forensic laboratory and photographed with a scale.

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.

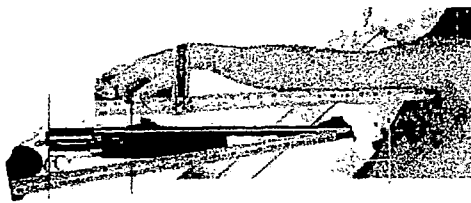


Figure 15: The scaled and repositioned images of the rifle and arm length of Harry Leibel. The green zone represents approximately 3 inch of off-set and the red zone represents the approximate distance beyond the reach of Harry Leibel to self-inflict the gunshot wound to his side.

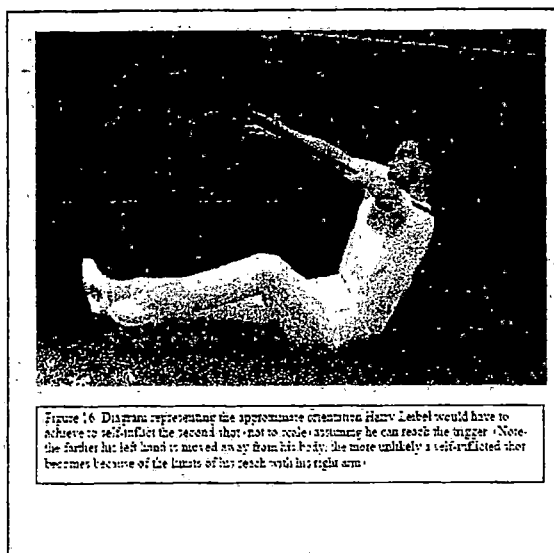
Because these are "static" images it cannot be conclusively eliminated that Harry Leibel could not stretch, twist or contort his body to reach the trigger of the rifle; however, such contortions would be difficult to obtain while keeping the gun muzzle 3 inches away from the entry side of the ribs and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



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

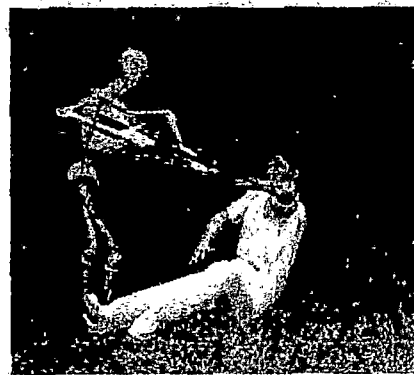


Figure 18: Diagram representing the approximate orientation of a shooter delivering the second shot to Harry Leibel (not to scale). Note: The triangular region represents the areas the rifle can be held and still maintain the appropriate angles.

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
28

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////

1 scene reconstruction" should be excluded.

2
3 Dated this 19th day of January, 2015.

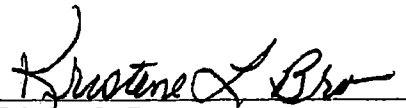
4
5 
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9 Suite A
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11 775-783-8642
12 Attorney for Defendant
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EXHIBIT 1



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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



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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



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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



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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



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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

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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



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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



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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.



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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.



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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



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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.



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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

2066 40

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:

CONTROL#	DESCRIPTION
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 Leibell)-not examined
W283405	One black "Harley-Davidson" brand bath robe (worn by Harry Leibell)

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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 Leibel 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, nitrates 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


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 approximates 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.

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

January 15, 2015

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, nitrates 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

Shooting Scene Reconstruction Report

Douglas County Sheriff #14-SO-05132

State of NV v Tatiana Leibel

January 15, 2015

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.