IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

THE STATE OF NEVADA,

Appellant,

vs.

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

TATIANA LEIBEL,

Respondent,
_____/

RECORD ON APPEAL

VOLUME 18

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PAGES 2419-2531

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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Case No. 14-CR-0062 B

Dept. No. I

RECEIVED
MAY 24 2018
Douglas County
District Court Clerk

FILED
2018 MAY 24 PM 3:30
BOBBIE R. WILLIAMS
CLERK
BY _____ DEPUTY

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

TATIANA LEIBEL,

Petitioner,

vs.

STATE OF NEVADA

Respondent.

_____/

ORDER SETTING HEARING

The above-entitled matter is set for: Evidentiary Hearing

TO COMMENCE on: Wednesday, September 19, 2018, at 9:00 a.m. - *Firm* setting

TIME ALLOWED: One (1) day

COURT REPORTER REQUESTED:

( ) NO (XX) YES ( ) PLAINTIFF ( ) DEFENDANT

IT IS SO ORDERED.

DATED this 24 day of May, 2018.

NATHAN TOD YOUNG
DISTRICT JUDGE

NATHAN TOD YOUNG
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

Copies served by mail this 24 day of May, 2018 to:

John E. Malone
209 N. Pratt Ave.
Carson City, NV 89701

Matthew Johnson
Deputy District Attorney
via hand delivery

Judicial Executive Assistant

NATHAN TOD YOUNG
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

Case No: 14-CR-0062B
Dept. No: I

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CLERK
BY _____ DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

TATIANA LEIBEL,

Petitioner,

vs.

ORDER FOR ISSUANCE OF WRIT OF HABEAS CORPUS

THE STATE OF NEVADA,

Respondent.

_____/

The Petition and Supplemental Petition of TATIANA LEIBEL, by and through her attorney, JOHN E. MALONE, ESQ., in the above-entitled matter, having been filed and supported with a memorandum of points and authorities, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Clerk of the Ninth Judicial District Court of the State of Nevada, in and for the County of Douglas, issue the Writ of Habeas Corpus as is attached hereto.

DATED this 24 day of May, 2018.

_____
DISTRICT JUDGE

292

Case No: 14-CR-0062B
Dept. No: I

RECEIVED
MAY 24 2018
Douglas County
District Court Clerk

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

TATIANA LEIBEL,

Petitioner

vs.

WRIT OF HABEAS CORPUS

THE STATE OF NEVADA,

Respondent.

_____/

GREETINGS TO: THE STATE OF NEVADA, JAMES DZURENDA, et al.

WHEREAS, by an Order of this Court made in the above-captioned matter, it is ordered that a Writ of Habeas Corpus be issued and directed to you,

THEREFORE, we command you that if you have the body of the above-captioned Petitioner, who is detained by you as it is alleged together with the time and cause of such imprisonment and detention, that she be brought before the above-entitled Court, in the courtroom thereof at Minden, Nevada, at 9 **o'clock a.m. on the 19th day of September, 2018**, to do and receive what shall then and there be considered concerning the above captioned person, and that you have then and there this Writ and

/ / /

make due return hereof.

DATED this 24 day of May, 2018.

CLERK OF THE COURT

By: _____
DEPUTY CLERK

CASE NO. 14-CR-0062BD

DEPT. NO. I

FILED

2018 MAY 25 AM 8:45

BOBBIE R. WILLIAMS
CLERK

BY [illegible] DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

In The Matter Of The Application of

TATIANA LEIBEL,

For A Writ of Habeas Corpus,

AFFIDAVIT OF
PERSONAL SERVICE

_____/

Autumn Newton, being sworn, says that she is a citizen of the United States, over 18 years of age, a resident of Douglas County, and not a party to the within action. This affiant's business address is P. O. Box 218, Minden, NV 89423.

That on May 25th, 2018, affiant personally served the WRIT OF HABEAS CORPUS (copy attached) on the Sheriff of Douglas County, Nevada.

BOBBIE R. WILLIAMS, CLERK OF COURT

By: [illegible]
Deputy Court Clerk

Copies served by U.S. Mail this 25th day of May, 2018 to: Douglas County District Attorney, P. O. Box 218, Minden, NV 89423 (hand delivered); John E. Malone, 209 N. Pratt Ave., Carson City, NV, 89701

By: [illegible]
Deputy Court Clerk

RECEIVED
MAY 24 2018
Douglas County
District Court Clerk

Case No: 14-CR-0062B
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.

WRIT OF HABEAS CORPUS

THE STATE OF NEVADA,

Respondent.

_____/

GREETINGS TO: THE STATE OF NEVADA, JAMES DZURENDA, et al.

WHEREAS, by an Order of this Court made in the above-captioned matter, it is ordered that a Writ of Habeas Corpus be issued and directed to you,

THEREFORE, we command you that if you have the body of the above-captioned Petitioner, who is detained by you as it is alleged together with the time and cause of such imprisonment and detention, that she be brought before the above-entitled Court, in the courtroom thereof at Minden, Nevada, at 9 **o'clock a.m. on the 19th day of September, 2018**, to do and receive what shall then and there be considered concerning the above captioned person, and that you have then and there this Writ and

/ / /

make due return hereof.

DATED this 24 day of May, 2018.

CLERK OF THE COURT

By: _____
DEPUTY CLERK

Case No. 14-CR-0062BD

Dept. No. I

FILED

2018 MAY 25 AM 8:58

BOBBIE R. WILLIAMS
CLERK

BY [signature] DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

TATIANA LEIBEL,

Petitioner,

vs.

NOTICE OF ENTRY OF ORDER

THE STATE OF NEVADA,

Respondent.

_____/

PLEASE TAKE NOTICE that on May 24th, 2018, the court entered an Order for Issuance of Writ of Habeas Corpus in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this Court within 33 days after the date of this notice is mailed to you. This notice was mailed on May 25, 2018.

Dated May 25, 2018.

[signature]

CLERK OF COURT

By [signature]

DEPUTY

2427

Copies served this 25 day of May, 2018 to:

Tatiana Leibel #1137908
Florence McClure Women's Correctional Center
4370 Smiley Rd.
Las Vegas, NV 89115

John E. Malone
209 N. Pratt Ave
Carson City, NV 89701

Dwight Neven, Warden
Florence McClure Women's Correctional Center
4370 Smiley Rd.
Las Vegas, NV 89115

Attorney General's Office
100 N. Carson Street
Carson City, NV 89701

Douglas County District Attorney
1038 Buckeye Road
Minden, NV 89423 (hand delivered)

Deputy Court Clerk

2428

Case No: 14-CR-0062B

Dept. No: I

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MAY 24 2018

Douglas County
District Court Clerk

FILED

2018 MAY 24 PM 3:31

DOBBIE R. WILLIAMS
CLERK

BY _____ DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

TATIANA LEIBEL,

Petitioner,

vs.

ORDER FOR ISSUANCE OF WRIT OF HABEAS CORPUS

THE STATE OF NEVADA,

Respondent.

_____/

The Petition and Supplemental Petition of TATIANA LEIBEL, by and through her attorney, JOHN E. MALONE, ESQ., in the above-entitled matter, having been filed and supported with a memorandum of points and authorities, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Clerk of the Ninth Judicial District Court of the State of Nevada, in and for the County of Douglas, issue the Writ of Habeas Corpus as is attached hereto.

DATED this 24 day of May, 2018.

_____
DISTRICT JUDGE

2429

RECEIVED
MAY 25 2018
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District Court Clerk

FILED
2018 MAY 25 AM 10: 31
BOBBIE R. WILLIAMS
CLERK
BY DEPUTY

Case No. 14-CR-0062B

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.

THE STATE OF NEVADA,

Respondent.

_____/

CERTIFICATE OF SERVICE

On the 25th day of May, 2018, I certify that a copy of the Writ of Habeas Corpus was served by mailing a copy thereof, first class mail, postage prepaid to:

Tatiana Leibel # 1137908
Florence McClure Women's
Correctional Center
4370 Smiley Rd.
Las Vegas, NV 89115

John E. Malone, Esq.
209 N. Pratt Ave.
Carson City, NV 89701

Dwight Neven, Warden
Florence McClure Women's
Correctional Center
4370 Smiley Rd.
Las Vegas, NV 89115

Attorney General's Office
100 N. Carson St.
Carson City, NV 89701

Douglas County District
Attorney's Office
1038 Buckeye Rd.
Minden, NV 89423
(hand delivered)

Dated this 25th day of May, 2018.

Judicial Executive Assistant

24302

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2018 AUG -8 PM 3:36
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CLERK
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JOHN E. MALONE, ESQ.
Nevada Bar No. 5706
209 N. Pratt Ave.
Carson City, NV 89701
(775) 461-0254
Attorney for the Petitioner

IN THE NINTH JUDICIAL DISTRICT COURT

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

TATIANA LEIBEL, Petitioner, vs. STATE OF NEVADA, Respondent.	Case No: 14 CR 00062 B Dept. No.:

APPLICATION FOR ORDER TO PRODUCE PRISONER

The application of JOHN E. MALONE, Esq., counsel for Petitioner, TATIANA LEIBEL, respectfully shows as follows:

1. That he is a duly qualified Attorney for the State of Nevada.

2. That TATIANA LEIBEL, #1137908, is presently in custody at Florence McClure Women's Correctional Center, Las Vegas, Nevada;

3. That TATIANA LEIBEL, #1137908, is to appear in person before the above-entitled Court on the 19th **day of September 19, 2018, at 9:00 a.m.** as the Petitioner in regards to the above-entitled matter.

///

///

///

///

WHEREFORE, Applicant prays that an order be issued, ordering the appearance of TATIANA LEIBEL, #1137908, before the above Court, and directing the execution of said order by the Nevada Department of Corrections.

DATED this 8th day of August, 2018.

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

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

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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. EX PARTE MOTION FOR FUNDS FOR A PSYCHIATRIC EXPERT

COMES NOW petitioner Tatiana Leibel, through her attorney, the undersigned John E. Malone, and files this ex parte motion for funds for a psychological or psychiatric expert pursuant to NRS 7.135, NRS 34.780 and *State v. District Court*, 85 Nev. 241, 453 P.2d 421, 85 Nev. 241 (1969). I affirm that this document does not contain the social security number of any person.

Dated this 8th day of August, 2018

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307
Attorney for Tatiana Leibel

POINTS AND AUTHORITIES

Tatiana Leibel respectfully moves this court to approve the expenditure of up to $5,000 for the reasonable and accounted for services of Dr. Thomas Bittker, Ph.D., a psychiatric expert, subject to application for additional funds if needed. In support thereof, she submits the following:

1. Ms. Leibel, who is indigent, has filed a postconviction petition for a writ of habeas corpus, and the court has ordered an evidentiary hearing. Ms. Leibel requests funds to hire a psychiatric expert to testify at the hearing.

2. Ms. Leibel intends to present testimony from a psychiatric expert to testify regarding causes and manifestations of suicidal ideation resulting from chronic physical pain, emotional pain, and marijuana use and abuse. Dr. Bittker will explain to the court that Harry Leibel could have been suicidal after suffering significant chronic pain, that chronic marijuana use could exacerbate suicidal tendencies, and that Harry could have been inclined to take his own life.

3. Ms. Leibel requests the funds for an expert to assist counsel to develop and present both her defense theory and to cross-examine the State's expert.

4. Counsel is not sufficiently knowledgeable in the area of psychology or psychiatry to challenge adequately the State expert's reports and evidence to discern how that evidence, or lack of evidence, bears on the issue of whether Harry Leibel was or could have been suicidal or

how chronic and daily marijuana use might have affected his state of mind. Ms. Leibel requests the funds pursuant to NRS 7.135:

> The attorney appointed by a magistrate or district court to represent a defendant is entitled, in addition to the fee provided by NRS 7.125 for the attorney's services, to be reimbursed for expenses reasonably incurred by the attorney in representing the defendant and may employ, subject to the prior approval of the magistrate or the district court in an ex parte application, such investigative, expert or other services as may be necessary for an adequate defense.

See also, State v. District Court, 85 Nev. 241, 453 P.2d 421, 85 Nev. 241 (1969); *Widdis v. Second Judicial Dist. Ct*, 114 Nev. 1224 1228, 968 P.2d 1165, 1167 (1998) ("[T]he State has a duty to provide reasonable and necessary defense services at public expense to indigent criminal defendants who have nonetheless retained private counsel.") and *Ake v. Oklahoma*, 470 U.S. 68, 86-87 (1985).

5. The services of a defense psychological expert are necessary to enable counsel to prepare effectively for the evidentiary hearing and to present evidence on Ms. Leibel's behalf. A denial of this motion would violate Ms. Leibel's equal protection rights because she certainly would hire a psychologist if she were not indigent. *See United States v. Meriwether*, 486 F.2d 498, 506 (5th Cir. 1973) (equal protection questions raised when indigent defendant's case subjected to pretrial scrutiny by prosecutor, while nonindigent defendant able to proceed without such scrutiny); *see also Griffin v. Illinois*, 351 U.S. 12, 19 (1956) ("There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.").

////

6. Ms. Leibel therefore requests authorization to spend up to $5,000 for the services of a psychiatric expert. Counsel will apply to the Court for additional funds if warranted.

Dated: 8-8-18

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307
Attorney for Tatiana Leibel

VERIFICATION pursuant to NRS 34.735

Under penalty of perjury, the undersigned declares that the undersigned is counsel for the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

DATED: 8-8-18

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307

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

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District Court Clerk

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BOBBIE R. WILLIAMS
CLERK
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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. EX PARTE MOTION FOR FUNDS FOR A CRIME SCENE EXPERT

COMES NOW petitioner Tatiana Leibel, through her attorney, the undersigned John E. Malone, and files this ex parte motion for funds for a crime scene expert pursuant to NRS 7.135, NRS 34.780 and *Widdis v. Second Judicial Dist. Ct*, 114 Nev. 1224 1228, 968 P.2d 1165, 1167 (1998). I affirm that this document does not contain the social security number of any person.

Dated this 8th day of August, 2018

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307
Attorney for Tatiana Leibel

FACTUAL BACKGROUND

Tatiana Leibel respectfully moves this court to approve the expenditure of up to $5,000 for the services of David Billau, dba Forensic Technical, a crime scene investigator with expertise in ballistics, trajectory analysis, firearms operation, general crime scene investigation and crime scene experience, including his experience in investigating crimes of violence and suicides, subject to application for additional funds if needed. In support thereof, she submits the following:

Ms. Leibel, who is indigent, has filed a postconviction petition for a writ of habeas corpus, and the court has ordered an evidentiary hearing. Ms. Leibel requests funds to hire a trajectory expert to testify at the hearing.

Ms. Leibel intends to present testimony from Mr. Billau to testify regarding the inconsistencies and problems with the State's case as presented at trial, including, but not limited to, ballistics, trajectory analysis, firearms operation, general crime scene investigation, and crime scene investigation experience including investigating and distinguishing violent crimes and suicides.

Ms. Leibel requests the funds for an expert to assist counsel to develop and present a defense theory and to cross-examine the State's expert.

Counsel is not sufficiently knowledgeable in the area of ballistics trajectory to examine adequately the State expert's reports and the physical evidence and discern how that evidence, or lack of evidence, bears on the issue of whether Harry Leibel could have shot himself – either

intentionally or by accident. *See* Commentary to American Bar Association Guideline for the Appointment and Performance of Defense Counsel in Death Penalty Cases 4.1, 31 Hofstra L. Rev. 913, 955 (2003) (requiring access to consulting experts, including serologists).

The services of this expert are necessary to enable counsel to prepare effectively for the evidentiary hearing and to present evidence on Ms. Leibel's behalf. A denial of this motion would violate Ms. Leibel's equal protection rights because she certainly would hire a defense trajectory expert if she were not indigent. *See United States v. Meriwether*, 486 F.2d 498, 506 (5th Cir. 1973) (equal protection questions raised when indigent defendant's case subjected to scrutiny by prosecutor, while nonindigent defendant able to proceed without such scrutiny); *see also Griffin v. Illinois*, 351 U.S. 12, 19 (1956) ("There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.").

Ms. Leibel therefore requests authorization to spend up to $5,000 for the services of David Billau, dba Forensic Technical Alliance. Counsel will apply to the Court for additional funds if warranted.

For these reasons, Ms. Leibel respectfully requests that this Court enter an order granting the motion.

Dated: 8-8-18

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307
Attorney for Tatiana Leibel

VERIFICATION pursuant to NRS 34.735

Under penalty of perjury, the undersigned declares that the undersigned is counsel for the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

DATED: 8-8-18

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307

2440

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

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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. EX PARTE MOTION FOR FUNDS INVESTIGATION FEES

TATIANA LEIBEL, the above-named Petitioner, by and through her attorney, John E. Malone, Esq., moves this Court for an Order authorizing extraordinary funds at state expense for investigative fees to assist the defense of TATIANA LEIBEL at a total charge not to exceed $5,000.00.

This motion is made and based upon all papers and pleadings on file, as well as the attached Points and Authorities and Affidavit of Counsel.

I affirm that this document does not contain the social security number of any person.

Dated this 8th day of August, 2018.

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307
Attorney for Tatiana Leibel

2441

AFFIDAVIT OF COUNSEL

STATE OF NEVADA)
:
CARSON CITY)

JOHN E. MALONE, being first duly sworn on oath, deposes and says:

1. I am an attorney duly licensed to practice law in the State of Nevada assigned to represent the Juvenile, TATIANA LEIBEL.

2. Although funds for expert assistance is authorized by contract, Conflict Counsel has not been expressly funded by any other source to pay for investigation into this matter by a professional.

3. I believe that investigation is needed to properly prepare for the evidentiary hearing set for September 19, 2018. All expenses and charges will be itemized when billed and will be reasonably necessary for the defense of Ms. Leibel. This investigation is needed to adequately and knowledgeably defend my client and represent her interests in his case.

4. This office has been informed that the cost of an investigation should not exceed $5,000.00.

DATED this 8th day of August, 2018.

JOHN E. MALONE

SUBSCRIBED AND SWORN (or affirmed) to before me this 8th day of August, 2018.

Kelly Atkinson
Notary Public

KELLY ATKINSON
NOTARY PUBLIC
STATE OF NEVADA
No. 04-86425-3 My Appt. Exp. Feb. 26, 2020

2442

VERIFICATION pursuant to NRS 34.735

Under penalty of perjury, the undersigned declares that the undersigned is counsel for the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

DATED: 8-8-18

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307

2443

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

RECEIVED
AUG 08 2018
Douglas County
District Court Clerk

FILED
2018 AUG -8 PM 3:37
BOBBIE R. WILLIAMS
CLERK
BY ANOME DEPUTY

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. EX PARTE MOTION FOR POSTCONVICTION REPRESENTATION EXPERT

COMES NOW petitioner Tatiana Leibel, through her attorney, the undersigned John E. Malone, and files this ex parte motion for funds for the services of Richard P. Davies, Esq., an expert in the representation of defendants at trial for purposes of postconviction collateral challenges pursuant to NRS 7.135, NRS 34.780 and *Widdis v. Second Judicial Dist. Ct*, 114 Nev. 1224 1228, 968 P.2d 1165, 1167 (1998). I affirm that this document does not contain the social security number of any person.

Dated this 8th day of August, 2018

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307
Attorney for Tatiana Leibel

2444

POINTS AND AUTHORITIES

Tatiana Leibel respectfully moves this court to approve the expenditure of up to $5,000 for the services of attorney Richard P. Davies, an expert trail attorney who will provide analysis of how counsel in a murder trial is expected to proceed, pursuant to reasonable standards. Counsel will petition the court for additional funds if needed.

Ms. Leibel, who is indigent, has filed a postconviction petition for a writ of habeas corpus, and the court has ordered an evidentiary hearing. Ms. Leibel requests the funds to hire an expert in standard legal practice to testify at the hearing.

Ms. Leibel intends to present testimony from Mr. Davies to testify regarding the performance of Ms. Leibel's counsel both in preparation for and at trial, including their investigation, analysis of the issues, preparation of witnesses, and conduct of the trial overall.

Ms. Leibel requests the funds pursuant to NRS 7.135:

> The attorney appointed by a magistrate or district court to represent a defendant is entitled, in addition to the fee provided by NRS 7.125 for the attorney's services, to be reimbursed for expenses reasonably incurred by the attorney in representing the defendant and may employ, subject to the prior approval of the magistrate or the district court in an ex parte application, such investigative, expert or other services as may be necessary for an adequate defense.

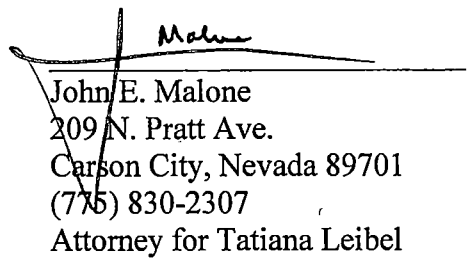
See also Widdis v. Second Judicial Dist. Ct, 114 Nev. 1224 1228, 968 P.2d 1165, 1167 (1998) ("[T]he State has a duty to provide reasonable and necessary defense services at public expense to indigent criminal defendants who have nonetheless retained private counsel.") and *Ake v. Oklahoma*, 470 U.S. 68, 86-87 (1985).

The services of Mr. Davies are necessary to enable counsel to prepare effectively for the evidentiary hearing and to present evidence to the court on Ms. Leibel's behalf. A denial of this motion would violate Ms. Leibel's equal protection rights because she certainly would hire a linguistics expert if she were not indigent. *See United States v. Meriwether*, 486 F.2d 498, 506 (5th Cir. 1973) (equal protection questions raised when indigent defendant's case subjected to pretrial scrutiny by prosecutor, while nonindigent defendant able to proceed without such scrutiny); *see also Griffin v. Illinois*, 351 U.S. 12, 19 (1956) ("There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.").

CONCLUSION

Ms. Leibel therefore requests authorization to spend up to $5,000 for the services of a postconviction legal expert. Counsel will apply to the Court for additional funds if warranted.

Dated: 8-8-18



John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307
Attorney for Tatiana Leibel

2446

VERIFICATION pursuant to NRS 34.735

Under penalty of perjury, the undersigned declares that the undersigned is counsel for the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

DATED: 8-8-18.

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307

2447

CASE NO.: 14-CR-0062

DEPT. NO.: I

RECEIVED
AUG 09 2018
Douglas County
District Court Clerk

FILED
2018 AUG -9 AM 9:25
BOBBIE R. WILLIAMS
CLERK
BY [illegible] DEPUTY

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

TATIANA LEIBEL,

Petitioner,

v.

THE STATE OF NEVADA

Respondent.

_____/

ORDER

IN THIS MATTER counsel for the Petitioner has filed an *ex parte* motion for Post Conviction Representation Expert. Although the body of that motion references "a linguistics expert", the Court assumes that to be some form of a proofreading error. Having reviewed the entire motion and supporting argument, the motion is DENIED.

IT IS SO ORDERED.

Dated this day of August 9, 2018.

NATHAN TOD YOUNG
District Judge

NATHAN TOD YOUNG
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Ninth Judicial District Court in and for the County of Douglas, and that on this 9 August 2018, I deposited in the county mailing system for postage and mailing with the United States Postal Service in Minden, Nevada, a true copy of the forgoing document addressed as follows:

John E. Malone
209 N. Pratt Ave.
Carson City, NV 89701

Judicial Executive Assistant

NATHAN TOD YOUNG
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV

2449

RECEIVED
AUG 08 2018
Douglas County
District Court Clerk

FILED
2018 AUG -9 AM 9:01
BOBBIE R. WILLIAMS
CLERK
BY Anome DEPUTY

JOHN E. MALONE, ESQ.
Nevada Bar No. 5706
209 N. Pratt Ave.
Carson City, NV 89701
(775) 461-0254
Attorney for the Petitioner

IN THE NINTH JUDICIAL DISTRICT COURT

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

TATIANA LEIBEL,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

Case No: 14 CR 00062 B

Dept. No.:

ORDER TO PRODUCE PRISONER

It appearing to the satisfaction of the above-entitled Court that application has been duly made by JOHN E. MALONE, ESQ, counsel for Petitioner, TATIANA LEIBEL, showing the necessity that TATIANA LEIBEL, #1137908, currently incarcerated at Florence McClure Women's Correctional Center, be brought before the above-entitled court for the evidentiary hearing in the above-entitled matter;

NOW THEREFORE, IT IS HEREBY ORDERED that the Nevada Department of Corrections bring said before the above-entitled court, for said hearing on the **19th day of September, 2018, at 9:00 o'clock A.m.**

DATED this 9 day of August, 2018.

District Judge

2450

RECEIVED
AUG 08 2018
Douglas County
District Court Clerk

FILED
2018 AUG -9 AM 9:34
BOBBIE R. WILLIAMS
CLERK
BY ANDMS DEPUTY

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

ORDER

Having considered the motion of the petitioner, Tatiana Leibel, and cause appearing,

IT IS HEREBY ORDERED that Ms. Leibel's motion for up to $5,000 in funds for a psychological or psychiatric expert is granted.

DATED: August 9, 2018

By: _____
Judge

RECEIVED
AUG 08 2018
Douglas County
District Court Clerk

FILED
2018 AUG -9 AM 9:35
BOBBIE R. WILLIAMS
CLERK
BY [illegible] DEPUTY

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

ORDER

Having considered the motion of the petitioner, Tatiana Leibel, and cause appearing,

IT IS HEREBY ORDERED that Ms. Leibel's motion for funds up to $5,000 for a trajectory expert is granted.

DATED: August 9, 2018

By: _____
Judge

2452

RECEIVED
AUG 08 2018
Douglas County
District Court Clerk

FILED
2018 AUG -9 AM 9:36
BOBBIE R. WILLIAMS
CLERK
BY ANOWA DEPUTY

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

ORDER

Having considered the motion of the petitioner, Tatiana Leibel, and cause appearing,

IT IS HEREBY ORDERED that Ms. Leibel's motion for funds up to $5,000 for an investigation fees is granted.

DATED: August 9, 2018

By: _____
Judge

RECEIVED
AUG 16 2018
Douglas County
District Court Clerk

FILED
2018 AUG 16 PM 3:13
BOBBIE R. WILLIAMS
CLERK
BY ANOWE 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 $360.00;

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

DATED this 15th day of August, 2018.

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

2454

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 THREE HUNDRED SIXTY and no/100 DOLLARS ($360.00) 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 claimant will not be 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 15th day of August, 2018.

Kelly Atkinson
Notary Public (Seal)

KELLY ATKINSON
NOTARY PUBLIC
STATE OF NEVADA
No. 04-86425-3 My Appt. Exp. Feb. 26, 2020

2455

.Tatyana Vargason

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

INVOICE

DATE:	8/10/2018
INVOICE #	1012
Customer ID	

BILL TO
Law Office of John Malone

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

	Fee Amount	AMOUNT
8/10/18 11am-3 pm meeting with the client Tatiana Leibel at 4370 Smily Rd, Las Vegas, NV (3 hours)	$120/2hr min	$360
	Subtotal	$ 360.00
	Other	$ -
	TOTAL Due	**$ 360.00**

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.

Make all checks payable to
Tatyana Vargason

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

Thank You For Your Business!

2456

RECEIVED
AUG 16 2018
Douglas County
District Court Clerk

FILED
2018 AUG 20 AM 10: 46
BOBBIE R. WILLIAMS
CLERK
BY 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 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 THREE HUNDRED SIXTY and no/100 DOLLARS ($360.00) 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 20 day of August, 2018.

DISTRICT COURT JUDGE

Respectfully Submitted By:
John E. Malone, Esq.

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

RECEIVED
AUG 30 2018
Douglas County
District Court Clerk

FILED
2018 AUG 30 PM 2:26
BOBBIE R. WILLIAMS
CLERK
BY DEPUTY

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 No. I **NOTICE OF EXPERT WITNESSES**

COMES NOW, the Defendant, TATIANA LEIBEL, by and through her counsel, JOHN E. MALONE, ESQ., hereby lists the expert witnesses that the Defendant expects to call for testimony during its case-in-chief in the trial which is presently set to commence on September 19, 2018 at 9:00 a.m. before this Court.

The Defendant acknowledges a continuing duty to provide notice of witnesses and discoverable materials to the prosecution pursuant to NRS 174.234, 174.235 and 174.295, as amended by Chapter 494, Statutes of Nevada 1997.

NOTICE OF EXPERT WITNESSES

The Defendant intends to call the individuals listed below as expert witnesses in its case-in-chief in the trial in this matter. In addition, the Defense has attached as exhibits copies of the experts' curriculum vitas. No reports have been made by or at the direction of the expert witnesses at the current time. Should reports be made, subsequent to this filing, copies will be immediately provided to the State.

2458

Kay Ellen Armstrong, Esq.
Nevada State Bar No. 715
209 N. Pratt Ave.
Carson City, NV 89701
(775) 720-7453
klnatty@pyramid.net

Graduated from Oklahoma University in 1982
Admitted to practice in OK in 1982
Admitted to practice in NV in 1984
Death Penalty qualified under NV SCR 250

The Defendant expects that Ms. Armstrong will testify to the following:

Ms. Armstrong was originally appointed to represent Ms. Leibel as SCR 250 counsel and participated in the preliminary hearing held in this case. Ms. Armstrong is expected to testify regarding Ms. Leibel's facility with the English language and the necessity to utilize a Russian speaking interpreter in Attorney/Client conversations. Ms. Armstrong is expected to testify regarding the necessity of obtaining a psychological evaluation of the decedent in cases where suicide is an issue in murder prosecutions.

David C. Billau, Owner/Consultant
Forensic Technical Alliance
PO Box 10798
Reno, NV 89510
(775) 848-0594

The Defendant expects that Mr. Billau will testify to the following:

Mr. Billau is expected to testify on crime scene investigation, crime-scene re-construction, ballistics, trajectory, the operation of firearms (including the Rossi Circuit Judge Carbine involved in this case), the use of Forensic testing utilized in shooting investigations, statistics regarding such investigations (including cases of suicide). And any other relevant issues that fall within his training, experience and qualifications.

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///

Janice Fung, MA
Alcohol and Drug Counselor, License # 631-L
3500 Lakeside Ct., Ste 101
Reno, NV 89509
(775) 786-6880
jagcarry@sbcglobal.net

Ms. Fung is expected to testify regarding the impact of Marijuana use on the users judgment, mental activity, physical coordination, as well as other mental and physical effects of the drug on the user.

DATED this 30th day of August, 2018.

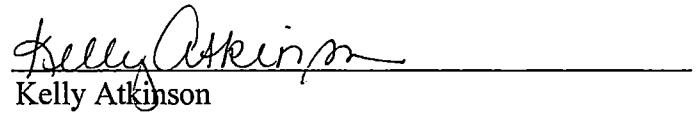
JOHN E. MALONE, ESQ.
Attorney for Petitioner

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that service of the foregoing NOTICE OF EXPERT WITNESSES was made this date by depositing a true copy of the same for mailing and/or hand delivery in Carson City, Nevada, with additional copies sent via facsimile and via electronic mail addressed to each of the following:

Douglas County District Attorney's Office
PO Box 218
Minden, NV 89423

DATED this 30th day of August, 2018.



Kelly Atkinson

Forensic Technical Alliance

David C. Billau

Consultant

FORENSIC TECHNICAL ALLIANCE

PO BOX 10798
RENO, NEVADA 89510
(775) 848-0594

Profile

David C. Billau retired Deputy Sheriff Sergeant, supervising the Forensic Investigation Section of the Washoe County Sheriff's Office Crime Laboratory in Reno, Nevada in January 2005.

Mr. Billau has thirty years experience within the Forensic Science Field employed with various public law enforcement agencies including the City of Glendale Police Department, in Southern California; the Reno Police Department and the Washoe County Sheriff's Office in Reno, Nevada. During his employment with these agencies, Mr. Billau was involved in solving many high profile murder cases.

Through the International Association for Identification, Mr. Billau carried certifications as a Senior Crime Scene Analyst and a Certified Latent Print Examiner.

After retiring from the public sector, Mr. Billau choose to provide his experience as a Forensic Consultant to legal professionals and the law enforcement community throughout the country and internationally.

Experience

Forensic Technical Alliance - Reno, Nevada
Owner-Forensic Consulting Services
May 2005 to Present

Washoe County Sheriff's Office - Reno, Nevada
Sergeant/Supervisor of the Forensic Investigation Section
Washoe County Forensic Science Services
Certified Senior Crime Scene Analyst and Certified Latent Print Examiner
1989 to January 2005

PO BOX 10798
RENO, NEVADA 89510
(775) 848-0594

Experience

Reno Police Department - Reno, Nevada
Crime Scene Technician / Certified Latent Print Examiner
1982 to 1989

Glendale Police Department - Glendale, California
Senior Identification Technician
Assistant Supervisor of Crime Laboratory / Evidence and Records Personnel
1975 to 1982

Education

Glendale Community College, Glendale, California (AA-1974)
California State University, Northridge - Fine Arts
California State University, Los Angeles - Industrial Studies / Criminal Justice

Law Enforcement Education / Training

(1975)
Eastman Kodak Company - Whittier, California
Investigative Techniques
(24 hrs)

California State University, Long Beach
Field Evidence Technician Course
(120 hrs)

(1976)
Rio Hondo College - Whittier, California
Advanced Latent Print Techniques
(40 hrs)

(1977)
Rio Hondo College - Whittier, California
Arson Investigation (40 hrs)

2463

Forensic Technical Alliance

Law Enforcement Education / Training

PO BOX 10798
RENO, NEVADA 89510
(775) 848-0594

(1979)
Sirchie Fingerprint Laboratory - Medford, New Jersey
Investigation & Evidence Collection Techniques
(40 hrs)

(1982)
San Francisco, California Police Department
Homicide Investigation Techniques
(40 hrs)

(1984)
San Francisco, California Police Department
Blood Stain Pattern Interpretation
(40 hrs)

(1985)
Washoe County Sheriff's Office - Reno, Nevada
Homicide Investigation - Scene to Court Room
(40 hrs)

(1987)
Truckee Meadows Community College - Reno, Nevada
Medicolegal Death Investigation
(40 hrs)

Nevada Division of Emergency Management - Reno, Nevada
Orientation to Hazardous Materials Training
(8 hrs)

State of Nevada Fire Marshal - Carson City, Nevada
Fire / Arson Investigation
(24 hrs)

2464

Forensic Technical Alliance

PO BOX 10798
RENO, NEVADA 89510
(775) 848-0594

Law Enforcement Education / Training

(1988)
International Association for Identification
Annual Educational Conference
(40 hrs)

Truckee Meadows Community College - Reno, Nevada
Criminology
(40 hrs)

Orange County Sheriff's Office - Santa Ana, California
Laser Search - Laser Workshop
(24 hrs)

(1989)
Federal Bureau of Investigation - Quantico, Virginia
Admin. Advanced Latent Fingerprint Course
(120 hrs)

Rocky Mountain Division of the International Association for Identification
Boulder, Colorado
Search Methods & Techniques for Clandestine Grave Sites
(24 hrs)

(1990)
High Sierra Law Enforcement Academy - Reno, Nevada
Basic Certificate
(480 hrs)

Blood Stain Pattern Analysis Conference - Reno, Nevada
(32 hrs)

Forensic Technical Alliance

PO BOX 10798
RENO, NEVADA 89510
(775) 848-0594

Law Enforcement Education / Training

(1991)
Bomb Technician & Investigator Course - Reno, Nevada
(40 hrs)

Advanced Crime Scene Reconstruction - Reno, Nevada
(32 hrs)

Spectrum - Forensic Advancements Symposium - Detroit, Michigan
(32 hrs)

Homicide - Death Investigation - Reno, Nevada
(32 hrs)

Advanced Palm Print Identification Course - Scottsdale, Arizona
(40 hrs)

(1992)
Clandestine Drug Laboratory Investigators Seminar - Salt Lake City, Utah
(32 hrs)

Federal Bureau of Investigation - Quantico, Virginia
Latent Print Photography
(80 hrs)

(1993)
Critical Issues Seminar - Reno, Nevada
(24 hrs)

State of Nevada - Peace Officer Standard of Training
Instructor Development Course - Reno, Nevada
(40 hrs)

California Homicide Investigators Annual Seminar - Reno, Nevada
(24 hrs)

Forensic Technical Alliance

PO BOX 10798
RENO, NEVADA 89510
(775) 848-0594

Law Enforcement Education / Training

(1993)
Federal Bureau of Investigation - Minden, Nevada
Hostage Negotiations
(24 hrs)

Polaroid Imaging - Sparks, Nevada
Basic Theories & Principles
(8 hrs)

Washoe County Sheriff's Office - Reno, Nevada
Transitional Pistol Training
(16 hrs)

Clandestine Drug Laboratory Safety Course - Reno, Nevada
(32 hrs)

(1994)
State of Nevada - Peace Office Standard of Training
Awarded Intermediate & Advanced Certificates

International Association for Identification - Phoenix, Arizona
Annual Educational Conference
(40 hrs)

International Homicide Investigators Association - Reno, Nevada
Annual Educational Conference
(40 hrs)

State of Nevada
First Line Supervisor Course - Reno, Nevada (40 hrs)

(1995)
State of Nevada - Peace Officer Standard of Training
Field Training Officer Program - Reno, Nevada (40 hrs)

Forensic Technical Alliance

Law Enforcement Education / Training

(1996)
Northern Nevada-California Drugfire Networking - Reno, Nevada
(24 hrs)

PO BOX 10798
RENO, NEVADA 89510
(775) 848-0594

(1998)
International Association for Identification
Annual Educational Conference
(40 hrs)

(1999)
Nevada State Division of the IAI - Las Vegas, Nevada
1st Educational Conference
(40 hrs)

(2000)
California Criminalistics Institute - Sacramento, California
Serial Number Restoration
(40 hrs)

Nevada State Division of the IAI - Reno, Nevada
2nd Educational Conference
(40 hrs)

(2001)
California Criminalistics Institute - Sacramento, California
Tire Track & Tire Impression Evidence Examination
(40 hrs)

California Criminalistics Institute - Sacramento, California
Footwear Impression Evidence
Detection/Recovery & Examination
(40 hrs)

Forensic Technical Alliance

PO BOX 10798
RENO, NEVADA 89510
(775) 848-0594

Law Enforcement Education / Training

(2001)
International Association for Identification
Annual Educational Conference
(40 hrs)

Washoe County Health Department - Reno, Nevada
Clandestine Drug Laboratory Safety Re-Certification
(32 hrs)

(2002)
Washoe County Health Department - Reno, Nevada
Clandestine Drug Laboratory Safety Re-Certification
(8 hrs)

(2003)
State of Nevada - Peace Officer Standard of Training
Terrorism Awareness for Nevada Peace Officers - Reno, Nevada
(8 hrs)

Washoe County Health Department - Reno, Nevada
Clandestine Drug Laboratory Safety Re-Certification
(8 hrs)

(2004)
American College of Forensic Examiners - Peach Tree, Georgia
Certified Forensic Consultant Conference
(16 hrs)

(2007)
International Association for Identification - San Diego, California
Annual Educational Conference
(40 hrs)

Forensic Technical Alliance

PO BOX 10798
RENO, NEVADA 89510
(775) 848-0594

Certifications

Certificate in Underwater Photography - East Los Angeles College
Certificate in Photography - Glendale Community College
IAI Certified Latent Print Examiner (1987)
IAI Certified Senior Crime Scene Analyst (1991)
Basic Certificate (State of Nevada P.O.S.T. - 1991)
Intermediate Certificate (State of Nevada P.O.S.T. - 1994)
Advanced Certificate (State of Nevada P.O.S.T. - 1994)
Nevada P.O.S.T. Instructor (1993)
Certified Forensic Consultant (2004)

Courses Instructed

Glendale Community College - Glendale, California
Police Reserve Academy / Explorer Academy
Subjects: Science of Fingerprints & Crime Scene Investigation

Nevada P.O.S.T. Academy - Carson City, Nevada
Subjects: Science of Fingerprints; Crime Scene Preservation & Evidence Collection & Preservation

High Sierra P.O.S.T. Academy - Reno, Nevada
Subjects: Science of Fingerprints; Crime Scene Preservation & Evidence Collection & Preservation

Nevada Highway Patrol - Reno, Nevada
Subject: Crime Scene Investigation & Photography

Reno Police Department - Reno, Nevada
Subject: Crime Scene Investigation

Washoe County Sheriff's Office - Reno, Nevada
Subject: Crime Scene Investigation

Sparks Police Department - Sparks, Nevada
Subject: Crime Scene Investigation

22470

PO BOX 10798
RENO, NEVADA 89510
(775) 848-0594

Courses Instructed

Washoe County School District (Security/Attendance Division)
Subject: Crime Scene Preservation

Sierra Nevada Job Corps (Security/Investigation Division)
Subject: Crime Scene Preservation and Evidence Collection & Preservation

Lyon County Sheriff's Office - Fernley, Nevada
Subject: Crime Scene Preservation; Evidence Collection & Preservation;
Science of Fingerprints & Crime Scene Photographs

Guest Lecturer

University of Nevada - Reno, Nevada
Criminal Justice Department

Truckee Meadows Community College - Reno, Nevada
Criminal Justice Department

Sacramento City College - Sacramento, California
Criminal Justice Department

State Bar of Nevada - Reno, Nevada
Criminal Law Division

High Sierra Fire Academy - Reno, Nevada
Arson Investigation Division

Washoe County Health Department - Reno, Nevada
(Environmental Services)
Bio Hazard Evidence Collection & Preservation

Washoe County Sheriff's Office Search & Rescue - Reno, Nevada
Crime Scene Search & Evidence Collection and Preservation

Forensic Technical Alliance

PO BOX 10798
RENO, NEVADA 89510
(775) 848-0594

Professional Organizations

International Association for Identification
Life Active Member
Parent Body Member Since 1985

Nevada State Division of the International Association for Identification
Founding Vice President - 1998 to 2001

American College of Forensic Examiners
Member Since 2004

Qualifications

Mr. Billau has qualified as an expert witness in the states of California and Nevada and also within the Federal Court System. He has also testified before the Nevada State Senate Judiciary Committee regarding the Science of Fingerprints.

His area of expertise covers the fields of Crime Scene Investigation, including, Crime Scene Photography; Crime Scene Preservation; Evidence Collection and Preservation; Blood Stain Pattern Analysis; Latent Fingerprint Development and Identification; Shoe & Tire Impression Evidence and Tool Mark Identification.

Janice Fung, MA

Licensed Alcohol and Drug Counselor #631-L
3500 Lakeside Court, Suite 101, Reno Nevada 89509
Telephone Number: 775-786-6880, Cell: 775-771-9261 Fax: 775-786-6899
Email: jagcarry@sbcglobal.net

EDUCATION:
Master of Arts Degree in Counseling and Educational Psychology
University of Nevada, Reno, 1992

Bachelor of Arts Degree in Communication Disorders and Speech Science
University of Colorado, Boulder, 1984

Associate of Arts Degree in General Education
University of Maryland, Munich Germany, 1982

CERTIFICATION:
Nevada Licensed Alcohol and Drug Abuse Counselor (Number 631-L)
Since October 1989

National Certified Addiction Counselor II (Number 013235)
Since November 1999-November 2017

PROFESSIONAL EXPERIENCE:
Private Practice, Alcohol and drug abuse evaluations, provide annual CLE class to Public Defender's Office, September 2004 to the present

Westhills Hospital, Reno, Nevada, Intensive Outpatient Counselor, Provided individual and group counseling to people with alcohol and drug addictions, September 2003 to September 2004

Bureau of Vocational Rehabilitation – Taught resume writing classes, 2004

Ryan White Care Coordinator for the Nevada State Health Division. Managed the Ryan White Title II grant. August 1999 to March 2001 (Left to be a stay at home mom)

Perinatal Substance Abuse Coordinator for the Nevada State Health Division. Coordinated statewide initiatives to develop prevention, intervention and treatment services infrastructure for pregnant women and their families, grant writing.
February 1997 to August 1999

Program Manager for the State of Nevada, Division of Parole and Probation's Community Resource Center. Responsible for the overall administration, development, implementation and evaluation of this alcohol and drug treatment, employment and educational program for chronic offenders.
April 1996 to February 1997 (Program funding was eliminated by the state legislature.)

Treatment Director for the State of Nevada, Division of Parole and Probation's Community Resource Center. Responsible for treatment development, implementation and evaluation. Reviewed all evaluations and treatment plans. Functioned as the Program Manager since December 1995.
August 1995 to April 1996

Program Director for the State of Nevada's Drug Addiction and Alcoholism Referral and Monitoring Program. On a statewide basis administered, developed, implemented and evaluated this Social Security Administration alcohol and drug referral and monitoring program in accordance with Federal regulations. Evaluated and placed all SSI and SSDI clients with substance abuse as a primary diagnosis into treatment. Responsible for all administrative, fiscal and clinical decisions.
July 1992 to August 1995 (Program funding was eliminated by Congress)

Rehabilitation Counselor for the State of Nevada, Rehabilitation Division. Provided individual and group vocational counseling to adults and adolescents with physical and mental disabilities. Provided job seeking skills, job training and job placement.
August 1988 to July 1992

Industrial Therapist for the State of Nevada, Mental Health Institute. Developed, implemented and evaluated vocational programs for adults with chronic mental health disorders.
February 1986 to August 1988

Occupational Therapy Technician III for the State of Nevada, Mental Health Institute. Assisted occupational therapist with the treatment of adults with chronic mental health disorders.
March 1985 to February 1986

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Case No. 14-CR-0062 B

Dept. No. I

IN THE NINTH JUDICIAL DISTRICT COURT OF TH STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

TATIANA LEIBEL,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

/

MOTION TO COMPEL COMPLIANCE WITH DISCLOSURE REQUIREMENTS UNDER NRCP 16.1(2)(B) AND REQUEST TO SHORTEN TIME TO RESPOND

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

Respondent, the State of Nevada, by and through the Douglas County District Attorney's Office, moves this Court to compel petitioner Tatiana Leibel (Leibel) to comply with her obligation under Nevada Rule of Civil Procedure 16.1(2)(B) and provide this Court with the written reports required by the rule. This motion is based on the following memorandum of points and authorities and all other pleadings and documents on file.

FACTUAL BACKGROUND

On May 25, 2018, the State requested Leibel to provide a list of witnesses and/or evidence it intended to admit during the evidentiary hearing scheduled for September 19, 2018. The State also requested the same information from Leibel's attorney in person. On August 30, 2018, Leibel filed a Notice of Expert Witnesses. Leibel did not provide a list of lay witnesses.

On September 4, 2018, the State spoke with Leibel's attorney who indicated that he does not have written reports for any of his expert witnesses.

ARGUMENT

Nevada Revised Statute 34.780(1) makes the Nevada Rules of Civil Procedure (NRCP) apply to post-conviction proceedings to the extent they are not inconsistent with NRS 34.360 to 34.830. NRCP 16.1(2)(B) requires any disclosure of the identity of expert witnesses to "be accompanied by a written report prepared and signed by the witness." "The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years." NRCP 16.1(2)(B). Leibel's Notice of Expert Witnesses filed August 30, 2018 is not accompanied by a written report prepared and signed by the expert witness. The State moves this Court to compel Leibel to comply with her obligations under Rule 16.1(2)(B).

Without the written reports detailing Leibel's experts' anticipated testimony the State can only guess what they might testify about and cannot adequately prepare for cross-examination. For example, David Billau's anticipated testimony covers subjects as broad as "crime scene investigation, crime-scene reconstruction, ballistics, trajectory, the operation of firearms, the use of Forensic testing utilized in shooting investigations, statistics regarding investigations," and "any other relevant issues that fall within his training, experience, and qualifications." Notice of Expert Testimony at 2. The State would be unfairly prejudiced if

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

Leibel's experts are permitted to testify without Leibel disclosing the written reports required under Rule 16.2(2)(B), in advance of the scheduled evidentiary hearing with sufficient time to allow the State to prepare for the hearing. This Court should compel disclosure.

REQUEST FOR SHORTENING OF TIME TO RESPOND TO MOTION

Because the Notice of Expert Witnesses was filed 20 days before the September 19, 2018 evidentiary hearing, and the limited time available to the Court and the parties to take action, the State requests that this Court shorten the time for Leibel to respond to three days. NJDCR10.

Dated this 4 day of September, 2018.

MARK B. JACKSON
DISTRICT ATTORNEY

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

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

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Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

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,

Plaintiff,

vs.

CERTIFICATE OF SERVICE

TATIANA LEIBEL,

Defendant.

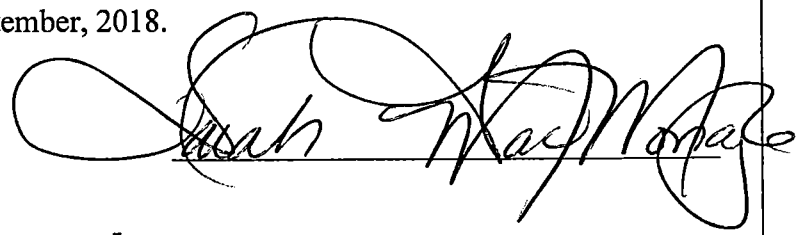
_____/

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 a true copy of Motion to Compel Compliance With Disclosure Requirements Under NRCP 16.1(2)(B) addressed to:

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

- ☐ U.S. Mail
- ☐ Reno/Carson Messenger
- ☐ Hand Delivery
- ☐ By placing a copy in the pick-up folder in the District Attorney's Office.
- ☑ Email

DATED this 4 day of September, 2018.



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Case No. 14-CR-0062B

Dept. No. I

IN THE NINTH JUDICIAL DISTRICT COURT OF TH STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

TATIANA LEIBEL,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

ORDER SHORTENING TIME TO RESPOND TO MOTION TO COMPEL

Good cause appearing, counsel for petitioner shall have three days from the date of this order to respond to the motion to compel.

Dated this 6 day of September, 2018.

District Court Judge

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

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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

PETITIONER'S RESPONSE TO MOTION TO COMPEL AND COUNTERMOTION FOR WAIVER OF OBLIGATION TO PRODUCE EXPERT REPORTS PURSUANT TO NRCP 16.1(a)(2)(B)

Tatiana Leibel hereby submits the following response to the State's motion to compel and countermotion for a waiver of any obligation to provide expert witness reports pursuant to NRCP 16.1(a)(2)(B). This response is based on the following points and authorities, the documents on file with the court, and any argument at the hearing.

DATED this 6th day of September, 2018.

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307
Attorney for Tatiana Leibel

2480

POINTS AND AUTHORITIES

A postconviction habeas petition is a hybrid cause of action, a mix of civil and criminal proceedings. "It is a special statutory remedy which is essentially unique." *Hill v. Warden*, 96 Nev. 38, 40, 604 P.2d 807, 808 (1980). Due to the unique nature of habeas corpus proceedings, the statutory provisions governing post-conviction petitions for a writ of habeas corpus in NRS chapter 34 control such proceedings. *See* NRS 34.720 (stating that NRS 34.720 to NRS 34.830 apply "only to petitions for writs of habeas corpus"); NRS 34.780(1) (stating that the Nevada Rules of Civil Procedure apply to proceedings for post-conviction petitions for a writ of habeas corpus to the extent they are not inconsistent with NRS Chapter 34); *see also Cnty. of Clark v. Howard Hughes Co.*, 129 Nev. —, ——, 305 P.3d 896, 897 (2013) (explaining that where a specific and general statute are contrary, the specific statute controls).

NRS 34.780 provides that the Nevada Rules of Civil Procedure will govern to the extent they are not inconsistent with Chapter 34. However, "[i]t does not follow from the enactment of provisions calling for the application of the Nevada Rules of Civil Procedure that the legislature intended such matters to proceed 'in all respects' as a civil proceeding." *Mazzan v. State*, 109 Nev. 1067, 1073, 863 P.2d 1035, 1038 (1993). In the case of the blanket requirement to produce expert witness reports, NRCP 16.1 is effectively inconsistent with the provisions of the habeas proceedings.

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For one thing, NRCP 16.1 anticipates a detailed pretrial scheduling order that establishes the deadlines and plans for pretrial practice, which would have included deadlines for notices of witnesses, pretrial motions, etc. No such order has been entered here, and the parties have not met or conferred regarding any such issues, as is anticipated by NRCP 16.1.

As noted by the State, NRCP 16.1 sets out provisions for disclosure of expert witnesses in civil litigation and anticipates that designated experts will create and provide formal reports to be submitted pretrial for review and analysis. This strict process does not function as well in the criminal context, nor in the postconviction habeas context; experts in criminal trials do not necessarily prepare formal reports that are distributed to all parties pretrial. Specifically, NRS 174.234 and NRS 176.271 govern the designation and use of expert witnesses in criminal proceedings. Counsel complied with the criminal statutory provisions, which do not anticipate the same process as in the civil context at all. Here, Ms. Leibel has designated experts to address the State's arguments and conclusions that already appear in the trial transcripts; they have not prepared additional analytical materials. Accordingly, in the context of this postconviction habeas hearing, the defense respectfully requests that the court grant a waiver of any obligation to require the designated experts to prepare formal reports. *See* NRCP 16.1(a)(2)(B). If deemed necessary, counsel can offer more detailed explanation of the anticipated subjects of testimony.

Counsel responds further that, as provided in NRS 34.780, he was unable to secure witnesses before the evidentiary hearing was set. It is only after the date for an evidentiary hearing is set that counsel can begin to make use of the discovery options under the NRCP. *See* NRS 34.780(2). Counsel further informs the court that although he had initially established a

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commitment from the witnesses, two of them subsequently because unavailable, and counsel was obliged to find two new appropriate witnesses. Counsel apologizes to the court and to opposing counsel for the delay.

DATED this 5th day of September, 2018.

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307
Attorney for Tatiana Leibel

AFFIRMATION PURSUANT TO 239B.030

I affirm that this document does not contain the social security number of any person. NRS 239B.030.

Dated: 9-5-18

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307
Attorney for Petitioner
Tatiana Leibel

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that service of the foregoing PETITIONER'S RESPONSE TO MOTION TO COMPEL AND COUNTERMOTION FOR WAIVER OF OBLIGATION TO PRODUCE EXPERT REPORTS PURSUANT TO NRCP 16.1(a)(2)(B) was made this date by depositing a true copy of the same for mailing and/or hand delivery in Carson City, Nevada, addressed to each of the following:

Douglas County District Attorney's Office
PO Box 218
Minden, NV 89423

DATED this 6th day of September, 2018.

Kelly Atkinson

Kelly Atkinson

2484

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Noel S. Waters, Esq.
State Bar No. 58
209 N. Pratt Ave.
Carson City, NV 89701
(775)883-3990
Attorney for Petitioner

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR DOUGLAS COUNTY

TATIANA LEIBEL, Petitioner, vs. STATE OF NEVADA, Respondent	Case No. 14 CR 00062 B Dept No.

NOTICE OF WITNESSES

COMES NOW, the Petitioner, TATIANA LEIBEL, by and through her counsel, John E. Malone, Esq., hereby gives notice that she intends to call the following witnesses for the hearing currently set to commence on Wednesday, September 19, 2018, at 9:00 a.m. before this Court.

Kay Ellen Armstrong, Esq.
209 N. Pratt Ave.
Carson City, NV 89701
(775) 720-7453

Kristine L. Brown, Esq.
1190 High School St., Ste A
Gardnerville, NV 89410
(775) 783-8642

Jamie C. Henry, Esq.
335 West 1st St.
Reno, NV 89503
(775) 324-0362

Tatiana Leibel, #1137908
Florence McClure Women's Correctional Center

Chaya-Anna Leibel
3030 Suncrest Dr.
San Diego, CA 92116
(619) 855-5509

DATED this 10th day of September, 2018.

JOHN E. MALONE, ESQ.
Attorney for Petitioner

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that service of the foregoing NOTICE OF WITNESSES was made this date by depositing a true copy of the same for mailing and/or hand delivery in Carson City, Nevada, with additional copies sent via facsimile and via electronic mail addressed to each of the following:

Douglas County District Attorney
PO Box 218
Minden, NV 89423

DATED this 10th day of September, 2018.

Kelly Atkinson

Kelly Atkinson

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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.

THE STATE OF NEVADA,

Respondent.

REQUEST FOR SUBMISSION

The State of Nevada, by and through Matthew S. Johnson, Deputy District Attorney with the Douglas County District Attorney's Office, requests that Respondent's Motion to Compel be submitted for decision. The time for responsive pleadings has passed, and the parties and the court may now deem the matter submitted. *See* D.C.R. 13(3) and (4), and NJDCR 6(d).

Dated this 13th day of September, 2018.

MARK B. JACKSON
DISTRICT ATTORNEY

By: Peter P. Hoff #13499 for:

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

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

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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,

Plaintiff,

vs.

CERTIFICATE OF SERVICE

TATIANA LEIBEL,

Defendant.

_____/

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 a true copy of Request for Submission of Motion to Compel Compliance With Disclosure Requirements Under NRCP 16.1(2)(B) and proposed order addressed to:

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

- [x] U.S. Mail
- [ ] Reno/Carson Messenger
- [ ] Hand Delivery
- [ ] By placing a copy in the pick-up folder in the District Attorney's Office.
- [x] Email

DATED this 13th day of September, 2018.

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

02489

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Case No. 14-CR-0062-B

Dept. No. I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

TATIANA LEIBEL,

Petitioner,

v.

THE STATE OF NEVADA,

Respondent.

_____/

ORDER

THIS MATTER comes before the court upon the State's Motion to Compel Compliance with Disclosure Requirements Under NRCP 16.1(a)(2)(B) and Petitioner Tatiana Leibel's Response to Motion to Compel and Countermotion for Waiver of Obligation to Produce Expert Reports Pursuant to NRCP 16.1(a)(2)(B).

Having examined all relevant pleadings and papers on file herein, the court now enters the following order, good cause appearing: THAT the State's motion is DENIED; and petitioner's countermotion is GRANTED.

The State seeks production of written reports from Petitioner Tatiana Leibel's designated expert witnesses. The Notice of Expert Witnesses filed on August 30, 2018, at lines 22-23 of page 1, indicates that "[n]o reports have been made by or at the direction of the expert witnesses at the current time." Petitioner's response to the motion affirms that such is still the case at page 3, lines 13-14.

NATHAN TOD YOUNG
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

Nevada Revised Statute 174.234(2)(c) requires production of a copy of all reports made by or at the direction of a designated expert witness in preparation for a criminal trial. Generation of a written report is not mandatory; by implication, where no report is generated, no report is required to be produced.

To the extent NRCP 16.1(a)(2)(B) requires an expert witness disclosure be accompanied by a written report prepared and signed by the witness, the court finds the more specific criminal practice arising by statute to be controlling over the general application of the Nevada Rules of Civil Procedure and hereby waives the inconsistent civil procedure requirement for an expert witness to generate a written report. However, if such a written report is created by petitioner's designated expert witness, a copy is to be timely provided to the State.

IT IS SO ORDERED.

Dated this day of September 13, 2018.

NATHAN TOD YOUNG
District Judge

Copies served by mail this day of September 13, 2018, to:

John E. Malone, Esq.
411 Mill St.
Reno, NV 89502

Douglas County District Attorney
(via hand delivery)

Tatiana Leibel, #1137908
Florence McClure Womens Correctional Center
4370 Smiley Road
Las Vegas, NV 89115

Judicial Executive Assistant

NATHAN TOD YOUNG
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

2491

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

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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

NOTICE OF ASSOCIATION OF COUNSEL

PLEASE TAKE NOTICE that JOHN E. MALONE, ESQ., attorney of record for Petitioner, TATIANA LEIBEL, hereby associates MARK MAUSERT, ESQ. as co-counsel for Tatiana Leibel in this matter. The name, office address, telephone number and fax number of associated counsel is as follows:

Mark Mausert, Esq.
930 Evans Ave.
Reno, NV 89512
Phone: (775) 786-5477
Fax: (775) 786-9652

2492

Attorney, Mark Mausert, concurs in the filing of this Notice of Association of Counsel.

DATED this 17th day of September, 2018, respectfully submitted.

John E. Malone
Attorney for Tatiana Leibel

2493

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

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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

BRIEF REGARDING STRUCTURAL ERROR IN FAILING TO OBTAIN AN INTERPRETER

Petitioner Tatiana Leibel, through her attorney of record, John E. Malone, hereby submits the following brief regarding structural error and ineffective assistance per se based on trial counsel's failure to use an interpreter during any of their attorney-client conversations and meetings with Ms. Leibel.

Dated: 9-17-18

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307
Attorney for Tatiana Leibel

2494

MEMORANDUM OF POINTS AND AUTHORITIES

Tatiana Leibel contends that it was structural error and per se ineffective assistance of counsel for trial counsel to fail to secure a Russian interpreter to be present to assist at any – and all – of her meetings with counsel. The error mandates granting her a new trial.

Structural error is that which fundamentally affects the proceedings and is reversible per se. Whether the district court's actions in this case constituted structural error is a question of law. *Barral v. State*, 131 Nev. Adv. Op. 52, 353 P.3d 1197, 1198 (2015) (*citing Neder v. United States*, 527 U.S. 1, 7, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999) ("[W]e have recognized a limited class of fundamental constitutional errors that defy analysis by harmless error standards. Errors of this type are so intrinsically harmful as to require automatic reversal (i.e., affect substantial rights) without regard to their effect on the outcome." (internal citations and quotation marks omitted)); *see also* NRCP 61 ("No error ... in anything done or omitted by the court ... is ground for granting a new trial or for setting aside a verdict ..., unless refusal to take such action appears to the court inconsistent with substantial justice.").

It is beyond dispute that a defendant who cannot effectively communicate with her counsel effectively has no counsel, in violation of her Sixth Amendment rights. Although the Nevada Supreme Court has not specifically addressed the situation at issue here, clearly, a criminal defendant's ability, or lack thereof, to understand the English language and whether an interpreter should be provided, implicates the constitutional rights of due process, confrontation of witnesses, and effective assistance of counsel. *See generally United States v. Johnson*, 248 F.3d 655 (7th Cir.2001); *United States v. Carrion*, 488 F.2d 12 (1st Cir.1973), cert. denied, 416 U.S. 907, 94 S.Ct. 1613, 40 L.Ed.2d 112 (1974); *United States v. Gallegos-Torres*, 841 F.2d 240 (8th Cir.1988); *United States ex rel. Negron v. New York*, 434 F.2d 386 (2d Cir.1970); *People v. Escalante*, 256

Ill.App.3d 239, 194 Ill.Dec. 580, 627 N.E.2d 1222 (1994); *People v. Gutierrez*, 177 Cal.App.3d 92, 222 Cal.Rptr. 699 (1986). Although some cases have suggested that it may not always be error for an attorney or court to refuse to appoint an interpreter, this case is different. Here, it was understood that Tatiana needed an interpreter for all her court proceedings, including the preliminary hearing, and the entire trial. For counsel, therefore, to neglect to have an interpreter present for attorney-client meetings at which counsel should have been investigating the facts; discussing defenses, evidence and witnesses; and Tatiana's rights – including her right to testify – was clearly a failure so profound as to vitiate her access to counsel. Indeed, a full year passed between the preliminary hearing and the trial, and not once was Tatiana able to speak fully and fluently with her lawyers. Whether or not Tatiana thought she needed an interpreter in order to understand the nuances and complexities of her situation, her rights, and her participation in the proceedings is not relevant; that is why she has a lawyer – to know better than she what is going on, what is at stake, and what she needs to navigate the process.

In *United States v. Cronic*, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984), decided the same day as *Strickland v. Washington*, 488 U.S. 688 (1984), the Supreme Court established that certain deficient performances of counsel justified a per se presumption of ineffectiveness under the Sixth Amendment. *See id.* at 658-659, 104 S.Ct. at 2046. The Court identified three situations implicating the right to counsel that involved circumstances "so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." *Id.* at 658, 104 S.Ct. at 2046-47. The first situation is where the accused was completely denied counsel. *Id.* at 659, 104 S.Ct. at 2047. Complete denial of counsel includes, for example, "when counsel was either totally absent, or prevented from assisting the accused during a critical stage of the proceeding." *Id.* at 659 n. 25, 104 S.Ct. at 2047 n. 25. The second situation warranting a similar

presumption of prejudice is "if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing" because this results in an "adversary process itself [that is] presumptively unreliable." *Id.* The final situation is in cases similar to *Powell v. Alabama*, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932), where the defendant faces circumstances in which it is not likely that any attorney could provide effective assistance – such as not speaking the same language. *Id.* at 659-661, 104 S.Ct. at 2047-48. Tatiana contends that not having a Russian interpreter at her meetings with counsel constituted a "total breakdown" in the adversarial process, most specifically in depriving her of her ability to understand her right to testify at trial, thereby presumptively prejudicing her under *Cronic* and resulting in structural error that fundamentally prejudiced the proceedings.

Respectfully submitted, this 17 day of September 2018.

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307
Attorney for Tatiana Leibel

AFFIRMATION PURSUANT TO 239B.030

I affirm that this document does not contain the social security number of any person. NRS 239B.030.

Dated: 9-17-18

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307
Attorney for Petitioner
Tatiana Leibel

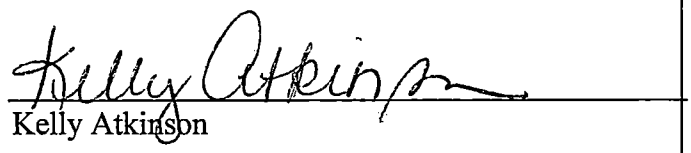
2498

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that service of the foregoing BRIEF REGARDING STRUCTURAL ERROR IN FAILING TO OBTAIN AN INTERPRETER was made this date by depositing a true copy of the same for mailing and/or hand delivery in Carson City, Nevada, addressed to each of the following:

Douglas County District Attorney's Office
PO Box 218
Minden, NV 89423

DATED this 17th day of September, 2018.



Kelly Atkinson

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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

THE STATE OF NEVADA,

Petitioner,

vs.

TATIANA LEIBEL,

Respondents.

/

MOTION TO STRIKE BRIEF REGARDING STRUCTURAL ERROR OR, IN THE ALTERNATIVE, MOTION FOR SUFFICIENT TIME TO RESPOND TO BRIEF IN WRITING

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

Respondent, the State of Nevada, by and through the Douglas County District Attorney's Office, moves this Court to strike petitioner's Brief Regarding Structural Error in Failing to Obtain an Interpreter or, in the alternative, moves this Court to provide respondent with an adequate opportunity to respond to petitioner's belated brief in writing. This motion is based on the following memorandum of points and authorities and all other pleadings and documents on file.

Leibel was given 455 days after she was appointed post-conviction counsel in this case to file a supplemental petition. She filed the supplemental petition on February 26, 2018. Now, 203 days after she filed her supplemental petition, on the eve of this Court's previously scheduled evidentiary hearing, she has filed a new document titled Brief Regarding Structural Error in Failing to Obtain an Interpreter. The brief raises new, previously unasserted claims,

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including a *Cronic*-claim under the United States Supreme Court's opinion in *United States v. Cronic*, 466 U.S. 648 (1984). This claim is not the same claim raised in her supplemental petition.

This Court has the discretion to decide whether the new claims in petitioner's September 17, 2018 brief are properly before this Court and does not abuse its discretion by determining that those claims are not properly before the Court because they were not previously raised. *See Barnhart v. State*, 122 Nev. 301, 303-04, 130 P.3d 650, 652 (2006). If this Court allows petitioner to belatedly assert the new claims, "the district court should not resolve those issues without allowing the State the opportunity to respond," and should allow "the State to file supplemental pleadings addressing the additional issues." *Barnhart v. State*, 122 Nev. 301, 303, 130 P.3d 650, 652 (2006). Any additional issues the Court permits petitioner to raise should be stated explicitly on the record. *Id.*

Petitioner does not have good cause for raising the new claims in his brief over 200 days after he filed his supplemental petition and those claims are not properly before this Court. If this Court exercises its discretion to nonetheless consider those claims, respondent requests the opportunity to respond to any new claims and petitioner's brief in writing following the evidentiary hearing in this matter.

Dated this 18 day of September, 2018.

MARK B. JACKSON
DISTRICT ATTORNEY

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

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

Case No. 68113

Dept No. II

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

THE STATE OF NEVADA,

Plaintiff,

vs.

CERTIFICATE OF SERVICE

TATIANA LEIBEL,

Defendant.

_____/

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 a true copy of Motion to Strike New Claim Or Alternatively Provide Respondents with an Opportunity to File a Response, addressed to:

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

☐ U.S. Mail
☐ Reno/Carson Messenger
☐ Hand Delivery
☒ Email
☐ By placing a copy in the pick-up folder in the District Attorney's Office.

DATED this 18th day of September, 2018.

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

Case No. 14-CR-0062-BD

Dept. No. I

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

TATIANA LEIBEL,

Petitioner,

v.

THE STATE OF NEVADA,

Respondent.

ORDER SETTING
CONTINUED HEARING

The above-entitled matter is set for: Continued Evidentiary Hearing

TO COMMENCE on: Thursday, November 15, 2018, at 9:00 a.m.

TIME ALLOWED: Eight (8) hours

COURT REPORTER REQUESTED:

( ) NO (XX) YES

IT IS SO ORDERED.

DATED this day of September 19, 2018.

NATHAN TOD YOUNG
DISTRICT JUDGE

Copies served by mail this day of September 19, 2018 to:

John E. Malone, Esq.
209 N. Pratt Ave.
Carson City, NV 89701

Mark Mausert, Esq.
930 Evans Ave.
Reno, NV 89512

Matthew Johnson, Esq.
Deputy District Attorney's Office
via hand delivery

Judicial Executive Assistant

NATHAN TOD YOUNG
DISTRICT JUDGE
DOUGLAS COUNTY
P.O. BOX 218
MINDEN, NV 89423

JOHN E. MALONE, ESQ.
Nevada Bar No. 5706
209 N. Pratt Ave.
Carson City, NV 89701
(775) 461-0254
Attorney for the Petitioner

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IN THE NINTH JUDICIAL DISTRICT COURT

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

TATIANA LEIBEL,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

Case No: 14 CR 00062 B

Dept. No.:

APPLICATION FOR ORDER TO PRODUCE PRISONER

The application of JOHN E. MALONE, Esq., counsel for Petitioner, TATIANA LEIBEL, respectfully shows as follows:

1. That he is a duly qualified Attorney for the State of Nevada.

2. That TATIANA LEIBEL, #1137908, is presently in custody at Florence McClure Women's Correctional Center, Las Vegas, Nevada;

3. That TATIANA LEIBEL, #1137908, is to appear in person before the above-entitled Court on the **15th day of November, 2018, at 9:00 a.m.** as the Petitioner in regards to the above-entitled matter.

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WHEREFORE, Applicant prays that an order be issued, ordering the appearance of TATIANA LEIBEL, #1137908, before the above Court, and directing the execution of said order by the Nevada Department of Corrections.

DATED this 25th day of Sept, 2018.

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

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BY DEPUTY

Case No. 14-CR-0062B

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.

THE STATE OF NEVADA,

Respondent.

_____/

RESPONSE TO BRIEF REGARDING ALLEGED STRUCTURAL ERROR IN FAILING TO OBTAIN AN INTERPRETER

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

Respondent, the State of Nevada, by and through the Douglas County District Attorney's Office, responds to petitioner's Brief Regarding Alleged Structural Error in Failing to Obtain an Interpreter. This response is based on the following memorandum of points and authorities and all other pleadings and documents on file.

Petitioner Tatiana Leibel (Leibel) is not entitled to a new trial based on the new allegations in her Brief Regarding Structural Error. She admits that no Nevada Supreme Court case entitles her to relief based on her allegation that counsel did not secure a Russian interpreter to assist with her meetings with counsel. *Brief* at 2. She admits an attorney can refuse to request an interpreter without committing error. *Brief* at 3.

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No *Cronic*-error occurred here. In *Cronic*, the Supreme Court held that prejudice may be presumed when (1) there is a "complete denial of counsel" at a critical stage of a defendant's trial, or (2) "counsel entirely fails to subject the prosecution's case to meaningful adversarial testing." *United States v. Cronic*, 466 U.S. 648, 659-660 (1984). The situation in *Powell v. Alabama*, 287 U.S. 45 (1932), "was such a case." *Id.* The situation in *Cronic* itself was not such a case. *See Cronic*, 466 U.S. at 666 (concluding that Sixth Amendment was not violated). Leibel's case does not resemble the case laid out in *Powell*. *Powell* involved nine African-Americans who were completely denied counsel. *Powell*, 287 U.S. at 58. *Powell* has nothing to do with a defendant, like Leibel, who speaks English as a second language and had counsel throughout the criminal proceedings. *Id.*

Leibel had two attorneys who subjected the State's entire case against Leibel to meaningful adversarial testing as required by the Sixth Amendment to the United States Constitution. The out-of-court meetings between Leibel and her attorney have not been recognized as a critical stage by the United States Supreme Court and, even if they were, Leibel's counsel was present for all of those meetings and discussed the case with Leibel in a language that she understood: English. No adversarial testing takes place during those meetings. No *Cronic*-error occurred during any of the out-of-court meetings between Leibel and her counsel.

To the extent Leibel relies on the opinions of other state courts and federal circuits to support her arguments, this Court is not bound by those decisions. *See, e.g.*, *Guerrina v. State*, 134 Nev. ___, ___ n.3, 419 P.3d 705 n.3, 709 (2018). Furthermore, those cases are inapposite to Leibel's claim. *See United States v. Johnson*, 248 F.3d 655, 663 (7th Cir. 2001) (addressing allegations of court error not ineffective assistance of counsel); *United States v. Carrion*, 488

Douglas County District Attorney
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F.2d 12, 14 (1st Cir. 1973) (addressing when a defendant has a right to an interpreter in court proceedings not during out-court-meetings); *United States v. Gallegos-Torres*, 841 F.2d 240, 242 (8th Cir. 1988) (addressing allegations of *court* error and the right to an interpreter for *court proceedings*); *U. S. ex rel. Negron v. State of N. Y.*, 434 F.2d 386, 389 (2d Cir. 1970) (addressing defendant's right to have his *trial proceedings* translated); *People v. Escalante*, 256 Ill. App. 3d 239, 245, 627 N.E.2d 1222, 1227 (1994) (addressing the absence of an interpreter *at trial*); *People v. Gutierrez*, 177 Cal. App. 3d 92, 222 Cal. Rptr. 699 (Ct. App. 1986) (interpreting the California Constitution); *cf. United States v. Ademaj*, 170 F.3d 58, 62 (1st Cir. 1999) (rejecting the application of *Cronic* to an allegation involving the absence of an interpreter prior to trial); *see also Weaver v. Massachusetts*, ___ U.S. ___, 137 S. Ct. 1899, 1913 (2017) (explaining that "[w]hen a structural error is raised in the context of an ineffective-assistance claim . . . petitioner must show prejudice in order to obtain a new trial.").

Leibel's constitutional rights were not violated under *Cronic* or *Strickland.* She has failed to overcome the "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Strickland*, 466 U.S. at 689. Leibel's counsel, who was present with Leibel throughout the criminal proceedings, did not fall below an objective standard of reasonableness for failing to secure an interpreter for out-of-court meetings with Leibel. Leibel's counsel subjected the prosecution's case to meaningful adversarial testing and there is not a reasonable probability that the results of the proceedings would have been different if Leibel had an interpreter for the out-of-court meetings with her attorney.

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Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

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Her post-conviction petition for a writ of habeas corpus should be denied.

Dated this 27 day of September, 2018.

MARK B. JACKSON
DISTRICT ATTORNEY

By:

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

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

2509

Case No. 68113

Dept No. II

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

THE STATE OF NEVADA,

Plaintiff,

vs.

CERTIFICATE OF SERVICE

TATIANA LEIBEL,

Defendant.

_____/

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 a true copy of Response to Brief Regarding Structural Error In Failing to Obtain an Interpreter, addressed to:

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

☒ U.S. Mail
☐ Reno/Carson Messenger
☐ Hand Delivery
☐ By placing a copy in the pick-up folder in the District Attorney's Office.

DATED this 28 day of September, 2018.

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

2510

Case No. 14-CR-0062B

Department One

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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HONORABLE NATHAN TOD YOUNG, DISTRICT JUDGE

TATIANA LEIBEL,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

_____/

TRANSCRIPT OF PROCEEDINGS

Motions Hearing

Wednesday, September 19, 2018

Minden, Nevada

Reported by: Susan Kiger, CCR 343, RPR

APPEARANCES:

For the State: MATTHEW JOHNSON, ESQ.
Deputy District Attorney
Minden, Nevada

For the Defendant: JOHN MALONE, ESQ.
Attorney at Law
Carson City, Nevada

MARK MAUSERT, ESQ.
Attorney at Law
Reno, Nevada

Also Present: Tatiana Iacona, Interpreter
Zoya Spivakovsky, Interpreter

MINDEN, NEVADA, WEDNESDAY, SEPTEMBER 19, 2018, A.M. SESSION

-000-

THE COURT: Thank you. Everyone have a seat, please. This is case 14-CR-0062, Tatiana Leibel versus State of Nevada. Ms. Leibel is here. And we have -- she does have an interpreter who is working for her, so we are going to have her sworn right now.

(The interpreter was sworn.)

THE COURT: Thank you, ma'am.

Now, I'm sorry I didn't introduce everyone else. Mr. Malone is here and Mr. Mausert are here representing Ms. Leibel. Mr. Johnson is here with the District Attorney's Office representing the State of Nevada.

I met with the attorneys in my chambers a few minutes ago at which time Mr. Malone advised me that he is seriously ill today. He cannot proceed based on his illness and needs to continue this matter. Mr. Johnson has advised me he doesn't have an objection to that continuance.

I understand that this is difficult for everyone, but it is impossible to try such a serious case when you are too ill to concentrate and, frankly, may not be able to stay in the room. That having been said, I have agreed that I will continue this matter.

To the interpreters who have traveled a great distance to be here, the Court greatly appreciates your assistance. And as I look at dates to reschedule this, I'm going to request that you advise me of your availability for those potential dates. And I apologize to everyone in the room who anticipated having some resolution of this matter today. But sometimes things come up, and it is more important that both the State of Nevada and Ms. Leibel get a full and fair hearing rather than one that is the result of illness and ends up needing to be abbreviated.

And so, Mr. Johnson, is it true that you agreed to continue this?

MR. JOHNSON: Yes, Your Honor.

THE COURT: Okay. Thank you, sir.

All right. Let's look at our calendars. How far out do we need to go? Mr. Malone, I'm going to ask you to speak the least, but I need to know your availability, sir.

MR. MALONE: Your Honor, I do have a trial set in January. Sorry. January 23rd to 25.

THE COURT: Is it possible to do this this year on November 15th?

MR. MALONE: Yes.

THE COURT: Mr. Mausert, sir?

MR. MAUSERT: I believe so, Your Honor.

THE COURT: Mr. Johnson, sir?

MR. JOHNSON: Your Honor, November 15th is available to me right now.

THE COURT: I have the entire day available. I don't want to push it off too far. This is important to Ms. Leibel and to the State.

To my interpreters, November 15th is okay?

THE INTERPRETER: Yes.

THE COURT: Thank you so much. We are -- and to my witnesses, Ms. Brown, I know that your calendar -- you're not my witnesses, and I don't mean that in a negative way. But to the witnesses, I know, Ms. Brown, you're going to be a witness. Are you available on the 15th, ma'am?

MS. BROWN: I am, Your Honor.

THE COURT: Thank you. I don't know who the other witnesses in this case are, but counsel are welcome to ask their respective witnesses.

MR. MALONE: Mr. Billau?

MR. BILLEAU: Yes, I'm available.

MR. MALONE: And Chaya-Anna?

MS. CHAYA-ANNA LEIBEL: Yes.

THE COURT: Very well. I thank you. We are going to set this matter for Thursday, November 15th of the year 2018 beginning at the hour of 9:00 a.m.

1 Now, the only other matters that there was a
2 motion to strike a pleading that was filed by the Petitioner's
3 counsel. That motion to strike is denied. However, the State
4 is going to have two weeks from today to file a response to
5 that. And then you'll have five days after that, sir, to file
6 a reply to that response.
7 MR. MALONE: Thank you.
8 THE COURT: Is there anything else that I may do
9 for you today?
10 MR. JOHNSON: No, Your Honor.
11 THE COURT: Sir?
12 MR. MALONE: Yes, Your Honor. I've been asked
13 by Ms. Leibel's daughter, Chaya-Anna is here in the courtroom
14 and very good friends, Nancy Strayer, and the Rijasics
15 (phonetic) --
16 THE COURT: I recognize them.
17 MR. MALONE: -- are here. Would they be able to
18 visit her for the next hour or so?
19 THE COURT: Sir, the custodial conditions are not
20 in my control. Now, I believe that she is in the custody of
21 the Department of Corrections. She may be held downstairs,
22 and I don't know if they need to leave right away or not.
23 MR. MALONE: Okay.
24 THE COURT: What you may do, and my bailiff is

right behind you, Mr. Malone, they may ask him, and he may request a courtesy of the Department of Corrections correctional officers, and if they are willing, then maybe a visit can be arranged. But she's not in my custody. She's in the custody of the Department of Prisons.

MR. MALONE: That's all.

THE COURT: That's who controls the issue. I appreciate that you want to see her. I appreciate that you want to see your family and friends, but that's not my choice. Okay? And that's how that will work. So you can talk to the bailiff and maybe he'll talk to the correctional officer for you. Is there anything else, sir?

MR. MALONE: No, Your Honor.

THE COURT: Is there anything else from anyone?

MR. JOHNSON: No, Your Honor.

THE COURT: To the interpreters, enjoy your vacation in Lake Tahoe. Thank you. We are in recess.

(Proceedings concluded.)

--000--

STATE OF NEVADA)
) ss.
DOUGLAS COUNTY)

I, SUSAN KIGER, a certified court reporter in the State of Nevada, DO HEREBY CERTIFY:

That I am not a relative, employee or independent contractor of counsel to any of the parties, or a relative, employee or independent contractor of the parties involved in the proceeding, or a person financially interested in the proceedings;

That I was present in Department No. I of the above-entitled Court on September 19, 2018, and took verbatim stenotype notes of the proceedings had upon the matter captioned within, and thereafter transcribed them into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 8, is a full, true and correct transcription of my stenotype notes of said proceedings.

DATED: At, Carson City, Nevada, this 25th day of September, 2018.

Susan Kiger

SUSAN KIGER, CCR No. 343

CAPITOL REPORTERS
123 W. Nye Lane, Suite 107
Carson City, Nevada 89706
775-882-5322

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

TATIANA LEIBEL,

Petitioner,

v.

STATE OF NEVADA,
Respondent.

Case No. 14-CR-0062B

Dept. No. One

AFFIRMATION
Pursuant to NRS 239B.030

The Undersigned does hereby affirm that the following document **DOES NOT** contain the social security number of any person: (List of document(s) attached below)

1) Motions Hearing -- Wednesday, 9/19/18

-or-

The undersigned does hereby affirm that the document named below **DOES** contain the social security number of a person as required by state or federal law or for the administration of a public program or for an application for a federal or state grant: (List of document(s) attached containing social security number information below)

1) _____

2) _____

(Your signature) Susan Kiger Susan Kiger (Date) 9/26/18

JOHN E. MALONE, ESQ.
Nevada Bar No. 5706
209 N. Pratt Ave.
Carson City, NV 89701
(775) 461-0254
Attorney for the Petitioner

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IN THE NINTH JUDICIAL DISTRICT COURT

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

TATIANA LEIBEL, Petitioner, vs. STATE OF NEVADA, Respondent.	Case No: 14 CR 00062 B Dept. No.:

ORDER TO PRODUCE PRISONER

It appearing to the satisfaction of the above-entitled Court that application has been duly made by JOHN E. MALONE, ESQ, counsel for Petitioner, TATIANA LEIBEL, showing the necessity that TATIANA LEIBEL, #1137908, currently incarcerated at Florence McClure Women's Correctional Center, be brought before the above-entitled court for the evidentiary hearing in the above-entitled matter;

NOW THEREFORE, IT IS HEREBY ORDERED that the Nevada Department of Corrections bring said before the above-entitled court, for said hearing on the **15th day of November, 2018, at 9:00 o'clock A.m.**

DATED this 1 day of October, 2018.

District Judge

2520

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

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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 No. I **NOTICE OF EXPERT WITNESS**

COMES NOW, the Petitioner, TATIANA LEIBEL, by and through her counsel, JOHN E. MALONE, ESQ., hereby lists the expert witnesses that she expects to call for testimony during its case-in-chief in the evidentiary hearing which is presently set to commence on November 15, 2018 at 9:00 a.m. before this Court.

The Petitioner acknowledges a continuing duty to provide notice of witnesses and discoverable materials to the respondent pursuant to NRS 174.234, 174.235 and 174.295, as amended by Chapter 494, Statutes of Nevada 1997.

NOTICE OF EXPERT WITNESS

The Petitioner intends to call the individuals listed below as expert witnesses in its case-in-chief in the evidentiary hearing in this matter. In addition, counsel has attached as exhibits copies of the experts' curriculum vitas. No reports have been made by or at the direction of the expert witnesses at the current time. Should reports be made, subsequent to this filing, copies will be immediately provided to the State.

Natasha Kharikova
Russian Translator and Interpreter
Santa Monica, CA 90405
(310) 570-9392
nkharikova@gmail.com

The Petitioner expects that Ms. Kharikova will testify to the following:

Ms. Kharikova is expected to testify regarding Petitioner's need for an interpreter at all of her meetings with counsel due to Petitioner's inadequacy in speaking and understanding the English language.

DATED this 24 day of October, 2018.

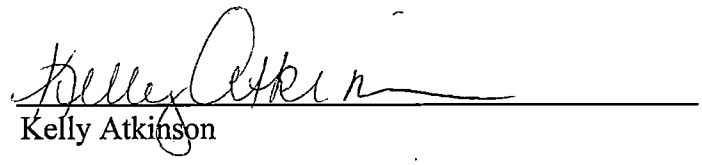
JOHN E. MALONE, ESQ.
Attorney for Petitioner

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that service of the foregoing NOTICE OF EXPERT WITNESS was made this date by depositing a true copy of the same for mailing and/or hand delivery in Carson City, Nevada, with additional copies sent via facsimile and via electronic mail addressed to each of the following:

Douglas County District Attorney's Office
PO Box 218
Minden, NV 89423

DATED this 24th day of October, 2018.



Kelly Atkinson

NATASHA KHARIKOVA

RUSSIAN TRANSLATOR AND INTERPRETER

Nataliya "Natasha" Kharikova
Santa Monica, CA | 90405 | USA
+1 310 570 9392 | nkharikova@gmail.com | kharikova.com

Summary

- Professionally trained conference interpreter with 18 years of experience (English-Russian)
- California Certified Court Interpreter
- US Federal Court Qualified Interpreter
- ATA-Certified Translator (English to Russian)

Select Interpretation Experience

Government/NGO

- 2018 UITP Metropolitan Railway Assembly and International Rail Forum for North America, Los Angeles, CA
- 2018 Russian American Pacific Partnership Annual Meeting, Anchorage, AK
- 2018 Expert Lectures by former President of Kyrgyzstan Dr. Roza Otunbayeva, Monterey, CA
- 2017 UN World Meteorological Organization, 13th Symposium on Education and Training (SYMET-XIII), Bridgetown, Barbados
- 2017 Geographic Information Systems (GIS) Day Forum, Monterey, CA
- 2015 Special Olympics Opening and Closing Ceremony Meetings, Los Angeles, CA
- 2015 Special Olympics Head of Delegations meetings, Los Angeles, CA
- Executive Committee and Executive Board Meetings, Union of Healthcare Workers, Southern CA, 2013 – present
- SEUI Local #2015 Leadership Assembly, Southern CA, 2016 – present
- 2012 USCENTCOM Regional Cooperation Command Post Exercise, Bishkek, Kyrgyzstan
- International Visitors Council of Los Angeles Tour Groups, Los Angeles, CA

Media

- 2018 Fox Sports, FIFA World Cup national broadcast, pre-match, half time and post-match interviews, Los Angeles, CA
- 2014 American Film Festival, Los Angeles, CA
- TV and Film Shoots, Sports and Fashion Interviews, Los Angeles, CA and Moscow, Russia, 2004 – present

Technical/Science

- 2017 Telemedicine Familiarization Tour, San Diego and Los Angeles, CA
- Harman Technical Academy (acoustics), Los Angeles, CA, 2013 – present
- 2015 Zaporizhstal Study Tour, maintenance and repairs in the steel industry, various cities, USA
- 2015 Sibur Study Tour, maintenance and repairs in the oil and gas industry, various cities, USA
- 2014 RuSciTech Forum (science and business cooperation), Tempe, AZ

Marketing/Finance

- 2018 Direct Selling Company Convention, Salt Lake City, UT
- 2018 MLM Company Global Broadcast, Salt Lake City, UT
- 2017 Disruptive Leadership Course, Palo Alto, CA
- 2016 Los Angeles Auto Show, Los Angeles, CA
- 2016 Distributor Meeting for a large MLM company, various cities, USA, 2015 – present
- IHRSA Convention and Trade Show (sports and fitness), various cities, USA, 2013 – present
- Trainings and workshops for a large nutrition company, Los Angeles, CA, 2012 – present

Medical

- 2017 Ministry of Health Visit and Audit (Kazakhstan), Gilead Sciences, San Dimas, CA
- 2012 Dermalogica Professionals' Symposium, Los Angeles, CA
- ZO Skincare Distributor Meetings, Dana Point, CA, 2014 – present
- 2012 DIO Implant Systems Conference, UCLA School of Dentistry, Los Angeles, CA

Legal

- 2015 International Dispute Resolution Exchange Program for Russian Lawyers, Hong Kong, China
- 2015 International Commercial Arbitration Exchange Program for Russian Lawyers, London, UK
- Effective Restorative Justice Conference, Leicester, UK
- Depositions, hearings, criminal and civil trials at the state and federal level, CA

Professional Affiliations

- American Translators Association (Voting Member)
- Association of Independent Judicial Interpreters of California (Member, Former Treasurer)

Education

Middlebury Institute of International Studies at Monterey, CA, USA

- MA in Conference Interpretation (English and Russian) with Distinction

Russian State University for the Humanities, Moscow, Russia

- BA in Philology (English and Russian)
- MA in Philology (English and Russian)

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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
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TATIANA LEIBEL, Petitioner vs. STATE OF NEVADA, Respondent.	Case No. 14 CR 00062 B Dept.

EX PARTE MOTION FOR FUNDS FOR LINGUISTICS EXPERT

COMES NOW petitioner Tatiana Leibel, through her attorney, the undersigned John E. Malone, and files this ex parte motion for funds for a linguistics expert pursuant to NRS 7.135, NRS 34.780 and *Widdis v. Second Judicial Dist. Ct*, 114 Nev. 1224 1228, 968 P.2d 1165, 1167 (1998). I affirm that this document does not contain the social security number of any person.

Dated this 24th day of October, 2018

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307
Attorney for Tatiana Leibel

POINTS AND AUTHORITIES

Tatiana Leibel respectfully moves this court to approve the expenditure of up to $3,000 for the services of Natasha Kharikova, a interpreter and linguistics expert, subject to application for additional funds if needed. In support thereof, she submits the following:

Ms. Leibel, who is indigent, has filed a postconviction petition for a writ of habeas corpus, and the court has ordered an evidentiary hearing. Ms. Leibel requests funds to hire an interpreter and linguistics expert. Ms. Leibel expects to present evidence at the hearing that she did not have the services of a Russian/English interpreter during any of her conversations with trial counsel. Ms. Leibel intends to present testimony from a linguistics and translation expert to testify regarding Ms. Leibel's needs for a translator and interpreter at all her meetings with counsel.

Counsel requires an expert witness to testify regarding the area of linguistics, translation, and interpretation to adequately present an argument and evidence regarding Ms. Leibel's ability to understand her rights or her ability to communicate with trial counsel. In ADKT 411 the Nevada Supreme Court directed that counsel "should ensure that at [the initial interview] and at all successive interviews and proceedings that barriers to communication, such as differences in language or literacy, are overcome." ADKT 411 Standard 4-4(c) (emphasis added); *cf.* "*Commentary to American Bar Association Guideline for the Appointment and Performance of Defense Counsel in Death Penalty Cases 4.1*," 31 Hofstra L. Rev. 913, 955 (2003) (requiring access to consulting experts).

Ms. Leibel requests the funds pursuant to NRS 7.135:

> The attorney appointed by a magistrate or district court to represent a defendant is entitled, in addition to the fee provided by NRS 7.125 for the attorney's services, to be reimbursed for expenses reasonably incurred by the attorney in representing the defendant and may employ, subject to the prior approval of the magistrate or the district court in an ex parte application, such investigative, expert or other services as may be necessary for an adequate defense.

See also Widdis v. Second Judicial Dist. Ct, 114 Nev. 1224 1228, 968 P.2d 1165, 1167 (1998) ("[T]he State has a duty to provide reasonable and necessary defense services at public expense to indigent criminal defendants who have nonetheless retained private counsel.") and *Ake v. Oklahoma*, 470 U.S. 68, 86-87 (1985).

The services of a defense linguistics and interpretation expert are necessary to enable counsel to prepare effectively for the evidentiary hearing and to present evidence on Ms. Leibel's behalf. A denial of this motion would violate Ms. Leibel's equal protection rights because she certainly would hire a linguistics expert if she were not indigent. *See United States v. Meriwether*, 486 F.2d 498, 506 (5th Cir. 1973) (equal protection questions raised when indigent defendant's case subjected to pretrial scrutiny by prosecutor, while nonindigent defendant able to proceed without such scrutiny); *see also Griffin v. Illinois*, 351 U.S. 12, 19 (1956) ("There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.").

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CONCLUSION

Ms. Leibel therefore requests authorization to spend up to $3,000 for the services of a linguistics expert. Counsel will apply to the Court for additional funds if warranted.

Dated: 10-24-18

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307
Attorney for Tatiana Leibel

VERIFICATION pursuant to NRS 34.735

Under penalty of perjury, the undersigned declares that the undersigned is counsel for the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

DATED: 10-24-18

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 830-2307

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ORDER

Having considered the motion of the petitioner, Tatiana Leibel, and cause appearing,

IT IS HEREBY ORDERED that Ms. Leibel's motion for UP TO $3,000 in funds for a linguistics expert is granted.

DATED: 10-25-18

By: _____
Judge