

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

vs.

TATIANA LEIBEL,

Respondent,

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

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

RECORD ON APPEAL

VOLUME 22

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

IN PROPER PERSON

THE STATE OF NEVADA

DOUGLAS COUNTY DISTRICT ATTORNEY

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Case No. 14-CR-0062B

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Douglas County
District Court
Douglas County
District Court Clerk

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BOBBIE R. WILLIAMS
CLERK

BY ANOM DEPUTY

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

TATIANA LEIBEL,

Petitioner,

**ORDER DENYING POST-
CONVICTION PETITION
FOR WRIT OF HABEAS
CORPUS**

THE STATE OF NEVADA,

Respondent.

THIS CAUSE, having come before the Honorable NATHAN TOD YOUNG, District Judge, having considered the matter, including all petitions, motions, and documents on file herein, along with the evidence presented at the post-conviction evidentiary hearing, now therefore, the Court makes the following findings of fact and conclusions of law.

Following a jury trial, petitioner Tatiana Liebel was found guilty of second-degree murder with the use of a deadly weapon, and a judgment of conviction was entered on April 21, 2015. Petitioner appealed and her conviction was affirmed on December 18, 2015. Remittitur issued on January 12, 2016. Less than a year later petitioner filed a hand-written *pro se* post-conviction petition for a writ of habeas corpus raising four grounds for relief and a motion for appointment of counsel. The petition was written in the English language. This Court appointed post-conviction counsel on November 28, 2016 and a counseled post-conviction

1 supplemental petition was filed on February 26, 2018. The supplemental petition raises
2 thirteen grounds for relief. On September 17, 2018, an additional ground was raised in a brief
3 filed by petitioner.

4 On November 15th and 16th of 2018 an evidentiary hearing was held on Petitioner's
5 claims. During the hearing this Court sustained Respondent's objections to the testimony of
6 Natasha Kharikova after considering the related motion, responses, and the arguments of the
7 parties during the hearing.
8

9 **I. *Pro Se* Post-Conviction Petition**

10 All of the claims in in Petitioner's *pro se* post-conviction petition are procedurally
11 barred under NRS 34.810(1)(b) because they could have been presented to the trial court or
12 raised on direct appeal. Nevada's procedural bars are mandatory. *See, e.g., Clem v. State*, 119
13 Nev. 615, 623 n. 43, 81 P.3d 521, 527 n.43 (2003). Claims in a petition that could have been,
14 (1) "presented to the trial court," or (2) "raised in a direct appeal" must be dismissed unless a
15 petitioner demonstrates good cause and actual prejudice. NRS 34.810(1)(b). Petitioner has
16 failed to demonstrate good cause or actual prejudice for any of the claims raised in her *pro se*
17 post-conviction petition. To the extent Petitioner includes the words "actual innocence" in the
18 heading for ground 2, she does not allege that she has any "new evidence" of innocence.
19 "Without any new evidence of innocence, even the existence of a concededly meritorious
20 constitutional violation is not in itself sufficient" to demonstrate actual innocence. *Schlup v.*
21 *Delo*, 513 U.S. 298, 316 (1995). Petitioner has failed to demonstrate that she is entitled to
22 relief with respect to any of the claims raised in her *pro se* post-conviction petition.
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II. Supplemental Post-Conviction Petition

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

This Court “must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Id.* at 689. “There are countless ways to provide effective assistance in any given case,” and “[e]ven the best criminal defense attorneys would not defend a particular client in the same way.” *Id.* at 689-90. There is a strong presumption that counsel took actions for tactical reasons rather than through sheer neglect. *Cullen v. Pinholster*, 563 U.S. 170, 191 (2011).

Petitioner failed to demonstrate deficient performance or prejudice with respect to all of the claims raised in her supplemental post-conviction petition. Petitioner was not denied her constitutional right to effective assistance of counsel.

A. Ground 1

In ground 1 of her supplemental petition, Petitioner argues that trial counsel was constitutionally ineffective because she did not use a Russian interpreter for attorney-client meetings. Both the Petitioner and her trial counsel, Kristine Brown, testified at the post-conviction evidentiary hearing. Ms. Brown testified that her out-of-court attorney-client

1 meetings with Petitioner were conducted in the English language. She testified that she was
2 able to effectively communicate with the Petitioner in the English language during those
3 meetings and that Petitioner declined her offer to obtain the services of a Russian interpreter for
4 those meetings. She further testified that there was no time during all of her out-of-court
5 attorney-client meetings with petitioner where she was concerned that she might need an
6 interpreter and that if she had been concerned she would have requested an interpreter. After
7 considering Ms. Brown's testimony, including her demeanor, this Court finds that her
8 testimony was credible. After considering the Petitioner's testimony, including her demeanor,
9 this Court finds that her testimony was incredible.

11 Petitioner failed to demonstrate that her counsel fell below an objective standard of
12 reasonableness by failing to use an interpreter for attorney-client meetings. *Strickland*, 466
13 U.S. at 688. After considering all of the evidence, this Court finds that Petitioner can
14 effectively communicate in the English language and understand English-language speakers
15 like her attorney Ms. Brown. In a recorded interview Petitioner spent many hours
16 communicating with law enforcement in the English language. And, as she did with her trial
17 attorney, she explicitly denied law-enforcement's offer to obtain a Russian-language
18 interpreter. Petitioner testified that she obtained a college degree in International Affairs with a
19 Minor in Political Science by passing classes that were taught in the English language, took
20 exams that were administered almost exclusively in English, and interned in English-speaking
21 venues like the Nevada Legislature. Petitioner failed to demonstrate that she "in fact does not
22 understand the English language." *Ton v. State*, 110 Nev. 970, 971, 878 P.2d 986, 987 (1994).
23 Even if Petitioner could demonstrate that she has English-language deficiencies such that she
24 needed a Russian-language interpreter for her attorney-client meetings, she has failed to
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1 demonstrate that her trial counsel fell below an objective standard of reasonableness for not
2 recognizing such deficiencies. Trial counsel testified that she had numerous attorney-client
3 meetings with Petitioner and never believed that their communication during those meetings
4 was impaired to the degree that Petitioner needed an interpreter. Nor was she deficient for
5 relying on her client's statement that she did not need an interpreter.

6
7 Petitioner failed to demonstrate a reasonable probability that the results of the
8 proceedings would have been different if she had a Russian interpreter for her attorney-client
9 meetings. She admits that, without an interpreter, she understood that her attorney did not
10 believe it was in her best interest to testify and that her attorney believed that she would go to
11 prison for the rest of her life if she testified. To the extent she had any difficulty understanding
12 other reasons her attorney believed she should not testify, an interpreter would have merely
13 made those reasons not to testify more clear. In her supplemental petition, Petitioner lists her
14 counsel among the authorities that she had "a disinclination to question, to object, or to voice
15 her own ideas and opinions," to because of her upbringing in the Soviet Union. Therefore, it is
16 even less likely that she would disregard her counsel's advice and choose to testify. Her actual
17 testimony at the post-conviction evidentiary hearing did not assist her in meeting her burden.
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20 Because Petitioner fails to satisfy either prong of *Strickland* ground 1 is denied.

21 **B. Ground 2**

22 In ground 2 of her supplemental petition, Petitioner alleges that trial counsel was
23 constitutionally ineffective because she did not procedurally notice forensic scientist David
24 Billau as a trajectory witness and the Court barred his testimony in that capacity.
25

26 Petitioner fails to demonstrate that counsel fell below an objective standard of
27 reasonableness by failing to notice forensic scientist David Billau as a trajectory witness.
28

1 *Strickland*, 466 U.S. 668 at 688. Trial counsel testified that she made a strategic decision to use
2 Billau's testimony to question the trajectory-related conclusions of the State and not to use
3 Billau to offer his own conclusions about trajectory based on the available evidence. And her
4 decision not to notice Billau as a trajectory witness did not prevent her from implementing that
5 strategy during the trial. These kind of strategic decisions are "virtually unchallengeable."
6 *Strickland*, 466 U.S. at 690. The district court did not prevent trial counsel from using Billau's
7 testimony to question the State's trajectory-related conclusions. Petitioner failed to
8 demonstrate that trial counsel performed deficiently by failing to notice forensic scientist David
9 Billau as a trajectory witness.
10

11 Petitioner failed to demonstrate a reasonable probability that, if Mr. Billau had testified
12 and drawn a conclusion about trajectory, the results of the trial would have been different. The
13 testimony of Mr. Billau during the evidentiary hearing failed to satisfy Petitioner's burden
14 under the second prong of *Strickland*. Ms. Brown testified that prior to trial Mr. Billau told her
15 that he could not draw a trajectory-related conclusion because there was not enough evidence.
16 At trial he testified that he could not make a conclusion concerning trajectory based on the
17 investigation because there was not enough information. During the evidentiary hearing, Mr.
18 Billau offered a trajectory-related conclusion but testified that this was his subjective
19 interpretation of what could have happened and he could not testify to a degree of scientific
20 certainty. Mr. Billau's testimony during the post-conviction hearing and Petitioner's arguments
21 did not demonstrate prejudice with respect to ground 2.
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24 Because Petitioner fails to satisfy either prong of *Strickland* ground 2 is denied.
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1 **C. Ground 3**

2 In ground 3 of her supplemental petition, Petitioner argues that trial counsel was
3 constitutionally ineffective because she failed to move to suppress her statements to police.

4 Petitioner not only fails to meet her burden on the deficient performance prong of
5 *Strickland*, but she fails to sufficiently explain what the legal basis for a suppression motion
6 should have been. In support of her claim, Petitioner quotes from the Fourth Amendment
7 standard in *Kimmelman v. Morrison*, 477 U.S. 365, 375 (1986). A suppression claim under the
8 Fourth Amendment, however, would involve evidence obtained through searches or seizures,
9 not suppression of witness statements. Had trial counsel moved to suppress Petitioner's
10 statements under the Fourth Amendment such a claim would have failed. Petitioner also cites
11 the Ninth Circuit's decision in *Heredia-Fernandez* to support her assertion that "it is certainly
12 reasonable that the court would have granted a motion to suppress" because Leibel had
13 "language difficulties" and faced aggressive questioning without an interpreter. The Court in
14 *Heredia-Fernandez* opined that language difficulties may impair the ability of a person in
15 custody to waive their *Miranda* rights in a free and aware manner. *United States v. Heredia-*
16 *Fernandez*, 756 F.2d 1412, 1415 (9th Cir. 1985). In Petitioner's case, however, she failed to
17 demonstrate that she had language difficulties that impaired her ability to waive her *Miranda*
18 rights. In fact, towards the beginning of her interview, investigators asked Petitioner if she
19 needed an interpreter. She responded "no," and explained that she understood English. Before
20 she signed the *Miranda* waiver form, she told them that she could read English.¹ Petitioner has
21 failed to demonstrate that a motion to suppress Petitioner's statements to investigators would
22 have succeeded. Even if she could make such a showing, trial counsel testified that she did not
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28 ¹During a subsequent interview with a Russian interpreter she again signed the *Miranda* waiver
form.

1 seek to suppress Petitioner's statements to the police because trial counsel believed the
2 statements could be helpful to Petitioner's case in the event the entire interview came into
3 evidence and Petitioner chose not to testify. Petitioner failed to demonstrate that trial counsel
4 fell below an objective standard of reasonableness for making such a decision.

5 Petitioner fails to demonstrate a reasonable probability that if trial counsel filed a
6 motion to suppress the results of the proceedings would have been different. First, as discussed
7 above, she fails to demonstrate that her motion to suppress would have succeeded. Second,
8 even if the statements had been suppressed, Petitioner fails to demonstrate a reasonable
9 probability that the results of the trial would have been different. Petitioner does not
10 specifically identify a single statement she made during her interview that she believes affected
11 the outcome of the proceedings against her. She has failed to meet her burden of demonstrating
12 prejudice.
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15 Because Petitioner fails to satisfy either prong of *Strickland* ground 3 is denied.

16 **D. Ground 4**

17 In ground 4 of her supplemental petition, Petitioner argues that trial counsel was
18 constitutionally ineffective because she failed to present trajectory evidence about how the gun
19 worked, "important measurements," or the gun's "unusual cylinder barrel and offset."
20

21 Petitioner fails to demonstrate that counsel fell below an objective standard of
22 reasonableness by failing to present trajectory evidence on the subjects discussed in ground 4.
23 *Strickland*, 466 U.S. 668 at 688. The four sentences that make up all of ground 4 in the
24 supplemental petition and the other arguments and evidence presented to the Court fail to
25 satisfy Petitioner's burden with respect to the first prong of *Strickland*. Petitioner also fails to
26 demonstrate that there is a reasonable probability that the result of the proceeding would have
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1 been different if counsel presented additional trajectory-related evidence on the subjects
2 discussed in ground 4. *Strickland*, 466 U.S. 668 at 694.

3 Because Petitioner fails to satisfy either prong of *Strickland* ground 4 is denied.

4 **E. Ground 5**

5 In ground 5 of her supplemental petition, Petitioner argues that trial counsel was
6 constitutionally ineffective because she failed to present evidence about the victim's use of
7 marijuana and its effects.
8

9 Petitioner failed to demonstrate that counsel fell below an objective standard of
10 reasonableness by failing to present evidence about the victim's use of marijuana and its
11 effects. *Strickland*, 466 U.S. 668 at 688. Ms. Brown testified that she had some concerns that
12 emphasizing the victim's marijuana use could hurt her case and it was possible that it might
13 help their case. If the State could establish that marijuana has an adverse effect on coordination
14 it would make it more difficult for the Petitioner to argue that the victim was able to balance the
15 weapon and shoot himself. The two paragraphs that make up all of ground 5 fail to satisfy
16 Petitioner's burden. Petitioner does not adequately explain why trial counsel had a
17 constitutional obligation to present this evidence to the jury. She does not present any evidence
18 supporting her allegation that, in some people, marijuana triggers underlying mental health
19 issues such as depression and psychosis and may lead to suicidal ideation or reckless and
20 impulsive behavior. Even if Petitioner had some evidence that marijuana may have such
21 effects, she has presented no evidence that it had such an effect on the victim. Her vague
22 statement that "[t]rial counsel should have made sure the jury understood how his use of
23 marijuana would have affected both his physical and mental health," does not allege that any
24 known symptoms of short-term or long-term marijuana use were experienced by the victim.
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1 Petitioner has failed to demonstrate that trial counsel fell below an objective standard of
2 reasonableness for failing to present evidence about the victim's use of marijuana and its
3 effects.

4 As for Chad Hendrick's statements to law enforcement, Petitioner fails to explain why
5 those statements were so important that her counsel fell below an objective standard of
6 reasonableness for not eliciting them during the trial. Testimony about the victim being in
7 physical pain and deteriorating emotionally during the trial may have made the victim appear
8 even more sympathetic to the jury. Petitioner has failed to meet her burden with respect to the
9 deficient performance prong.
10

11 Petitioner also fails to demonstrate that if she had presented evidence about the victim's
12 use of marijuana and its effects there is a reasonable probability that the results of the
13 proceedings would have been different. Among other things, Petitioner failed to provide this
14 Court with any evidence that known effects of marijuana on some people had that effect on the
15 victim.
16

17 Because Petitioner fails to satisfy either prong of *Strickland* ground 5 is denied.
18

19 **F. Ground 6**

20 In ground 6 of her supplemental petition, Petitioner alleges that trial counsel was
21 constitutionally ineffective because she failed to retain or call a psychological or psychiatric
22 expert to address the complexities of suicidal ideation.

23 Petitioner failed to show that counsel fell below an objective standard of reasonableness
24 by failing to retain or call a psychological or psychiatric expert to address the complexities of
25 suicidal ideation or demonstrate resulting prejudice. *Strickland*, at 688, 694. Petitioner did not
26 present any testimony from any expert addressing "the complexities of suicidal ideation,
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1 including the risks associated with repeated threats of suicide, bullying, and previous suicide
2 attempts” or “the prevalence of suicide in our society, suicide rates amongst members of the
3 Jewish community, the fac[t] that Jewish doctrine has evolved to accept suicide, . . . the
4 predictability or unpredictability of suicide based on prior attempts or threats, and information
5 on planned versus spontaneous suicides.” Petitioner’s vague speculation about what her
6 psychological or psychiatric witness might testify about does not demonstrate that counsel
7 performed deficiently or that any failure by counsel resulted in prejudice.
8

9 Because Petitioner fails to satisfy either prong of *Strickland* ground 6 is denied.

10 **G. Ground 7**

11 In ground 7 of her supplemental petition, Petitioner alleges trial counsel was
12 constitutionally ineffective because she failed to retain or call an expert in blood spatter
13 analysis. Petitioner failed to show that counsel fell below an objective standard of
14 reasonableness by failing to retain or call an expert in blood spatter analysis. *Strickland*, 466
15 U.S. 668 at 688. Petitioner also failed to demonstrate prejudice. *Strickland*, 466 U.S. 668 at
16 694. Even if an expert could have testified to the facts alleged in the supplemental petition,
17 there is not a reasonable probability that the result of the proceedings would not have been
18 different. Among other things, a jury could have believed that Petitioner’s clothes did not have
19 blood spatter on them because she had enough time to clean up and dispose of her clothing
20 between the time of the victim’s death and the time she called 911.
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23 Because Petitioner fails to satisfy either prong of *Strickland* ground 7 is denied.
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1 **H. Ground 8**

2 In ground 8 of her supplemental petition, Petitioner alleges that trial counsel was
3 constitutionally ineffective because she failed to present any witness who could humanize her
4 for the jury.

5 Petitioner failed to show that counsel fell below an objective standard of reasonableness
6 by failing to present any witness who could humanize her for the jury. *Strickland*, 466 U.S.
7 668 at 688. Petitioner also failed to demonstrate a reasonable probability that if her daughter
8 or any other witness presented humanizing testimony, the result of the proceedings would have
9 been different. *Strickland*, 466 U.S. 668 at 694.
10

11 Because Petitioner fails to satisfy either prong of *Strickland* ground 8 is denied.
12

13 **I. Ground 9**

14 In ground 9 of her supplemental petition, Petitioner argues that trial counsel was
15 constitutionally ineffective because she failed to effectively challenge the State's expert's
16 testimony on gunshot residue, his methodology, measurements, notes, or raw data.

17 Petitioner failed to show that counsel fell below an objective standard of reasonableness
18 by failing to effectively challenge the State's expert's testimony on these subjects. *Strickland*,
19 466 U.S. 668 at 688. Petitioner alleges that counsel should have challenged the State's expert's
20 testimony, presented countervailing evidence, and given an alternative explanation. But she
21 fails to present sufficient evidence demonstrating that trial counsel could have accomplished
22 those goals better than she already did during her jury trial. Petitioner did not demonstrate that
23 counsel performed deficiently. Petitioner also failed to demonstrate a reasonable probability
24 that any additional testimony or evidence about gunshot residue, methodology, measurements,
25 notes, or raw data would have resulted in a different outcome of the proceedings.
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1 Because Petitioner fails to satisfy either prong of *Strickland* ground 9 is denied.

2 **J. Ground 10**

3 In ground 10 of her supplemental petition, Petitioner argues that trial counsel was
4 constitutionally ineffective because she failed to move to prevent Sharon Oren from testifying
5 that he was afraid for the victim's life and he thought Petitioner would kill the victim. In her
6 supplemental petition, Petitioner only specifically proffers one basis for such a motion. She
7 states, "if his statements were unexpected and there was a discovery violation, they should have
8 challenged him immediately and called for a mistrial." During the evidentiary hearing,
9 Petitioner proffered a second basis. She argued that Oren's statement was an inadmissible prior
10 bad act.
11

12 Petitioner failed to show that counsel fell below an objective standard of reasonableness
13 by failing to move to prevent Sharon Oren from testifying. *Strickland*, 466 U.S. 668 at 688.
14 During the examination of Sharon Oren, trial counsel repeatedly objected to his testimony as
15 irrelevant and at least one of her objections was sustained because the witness' testimony was
16 speculation. Petitioner contends that the report produced by investigators for Douglas County
17 did not include the witness' statements. She provides no evidence that the State was aware that
18 the witness was going to testify as he did and failed to turn that information over to Petitioner's
19 trial counsel. Petitioner failed to demonstrate that that a discovery violation occurred that, if
20 challenged, should have resulted in a mistrial. Nor did she demonstrate that the witness'
21 statements were inadmissible prior bad act under Nevada law. Petitioner failed to demonstrate
22 that her counsel fell below an objective standard of reasonableness.
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26 Petitioner has also failed to demonstrate a reasonable probability that any
27 motion by trial counsel would have precluded Sharon Oren's testimony and failed to
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1 demonstrate a reasonable probability that even if Oren had not offered his testimony to the jury
2 the results of the proceeding would have been different.

3 Because Petitioner fails to satisfy either prong of *Strickland* ground 10 is denied.

4 **K. Ground 11**

5 In ground 11 of her supplemental petition, Petitioner argues that trial counsel was
6 constitutionally ineffective because she failed to prevent or object to Douglas County Fire
7 Department responders offering scientific and medico-legal testimony beyond their areas of
8 knowledge, without having them qualified as experts.

9 Other than citing to two provisions of the Nevada evidence code, she fails to explain
10 why those provisions excluded the testimony of the witnesses. Nor does she explain why trial
11 counsel fell below an objective standard of reasonableness for not objecting to their testimony
12 under NRS 50.275 and NRS 50.285.

13 "District courts are vested with considerable discretion in determining the relevance and
14 admissibility of evidence." *Castillo v. State*, 114 Nev. 271, 277, 956 P.2d 103, 107-08 (1998).
15 Specifically, "[t]he admissibility and competency of opinion testimony, either expert or
16 nonexpert, is largely discretionary with the trial court." *Watson v. State*, 94 Nev. 261, 264, 578
17 P.2d 753, 756 (1978). To the extent any of the testimony cited by Petitioner is opinion
18 testimony at all, it was admissible lay testimony. NRS 50.265. Petitioner has failed to
19 demonstrate that her counsel performed deficiently in ground 11.

20 Even if trial counsel had objected based on NRS 50.275 and NRS 50.285, she fails to
21 demonstrate that her objection would have been sustained and the witnesses would have been
22 prevented from testifying. Even if the witnesses had not testified, she fails to demonstrate that
23 the results of the proceedings would have been different.

1 Because Petitioner fails to satisfy either prong of *Strickland* ground 11 is denied.

2 **L. Ground 12**

3 In ground 12 of her supplemental petition Petitioner argues that trial counsel was
4 constitutionally ineffective because she failed to object or move to prevent Petitioner's
5 neighbor from testifying that he overheard the couple arguing between July and October of
6 2013 based on relevance under NRS 48.015 and unfair prejudice under NRS 48.035(1).

7 Petitioner failed to show that counsel fell below an objective standard of reasonableness
8 by failing to object or move to prevent Petitioner's neighbor from testifying that he overheard
9 the couple arguing between July and October of 2013. *Strickland*, 466 U.S. 668 at 688. Trial
10 counsel did not fall below an objective standard of reasonableness. She successfully prevented
11 that witness from relaying to the jury the contents of the argument he overheard during the
12 direct examination of the witness. The fact that they were involved in a spirited argument a
13 few months before the victim was shot and killed is relevant to the relationship between the
14 defendant and the victim and goes to Petitioner's motive for shooting the victim. The fact that
15 they were engaged in a spirited argument tends to show that they were having problems in their
16 relationship. The witness' testimony was not unfairly prejudicial. Even if it was unfairly
17 prejudicial, its probative value outweighed any potential prejudice. Petitioner failed to
18 demonstrate that trial counsel fell below an objective standard of reasonableness for failing to
19 object to the testimony under NRS 48.015 and NRS 48.035(1).
20

21 Petitioner failed to demonstrate a reasonable probability that the result of the
22 proceedings would have been different if an objection based on NRS 48.015, NRS 48.035(1) or
23 any other provision of Nevada law had been made. Even if the witness did not testify that the
24 victim and the defendant were engaged in a spirited argument a few months before he was shot,
25 there is not a reasonable probability that the outcome of the proceedings would have been
26 different.

27 Because Petitioner fails to satisfy either prong of *Strickland* ground 12 is denied.
28

1 **M. Ground 13**

2 In ground 13 of her supplemental petition, Petitioner argues that the cumulative effect
3 of the ineffective-assistance-of-counsel claims in her supplemental petition entitles her to relief.
4 Even if ineffective-assistance-of-counsel claims can cumulate, Petitioner failed to demonstrate
5 any error and thus, there is no error to cumulate.

6 **III. Brief Regarding Structural Error**

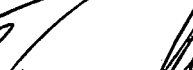
7 In her brief regarding structural error, Petitioner alleges *Cronic*-error occurred based on
8 the absence of a Russian interpreter during the attorney-client meetings with Petitioner's trial
9 counsel. *United States v. Cronic*, 466 U.S. 648 (1984). In *Cronic*, the Supreme Court held that
10 prejudice may be presumed when (1) there is a "complete denial of counsel" at a critical stage
11 of a defendant's trial, or (2) "counsel entirely fails to subject the prosecution's case to
12 meaningful adversarial testing." *Cronic*, 466 U.S. at 659-660. The situation in *Powell v.*
13 *Alabama*, 287 U.S. 45 (1932), "was such a case." *Id.*

14 Petitioner had two attorneys who subjected the State's entire case against Petitioner to
15 meaningful adversarial testing as required by the Sixth Amendment to the United States
16 Constitution. The out-of-court meetings between Petitioner and her attorney have not been
17 recognized as a critical stage by the United States Supreme Court and, even if they were,
18 Petitioner's counsel was present for all of those meetings and discussed the case with Petitioner
19 in a language that she understood: English. No adversarial testing takes place during those
20 meetings. Petitioner has failed to demonstrate that any *Cronic*-error occurred during any of the
21 out-of-court meetings between Petitioner and her counsel. She has not otherwise demonstrated
22 that any other structural error occurred that would entitle her to relief.

23 Petitioner has failed to demonstrate that her counsel performed deficiently or that her
24 performance resulted in prejudice with respect to any claim or sub-claim raised in her petition.
25 She has not demonstrated that any other error she raised, that is properly before this Court,
26 entitles her to relief.
27
28

THEREFORE, IT IS HEREBY ORDERED that the Petitioner's post-conviction
Petition for a Writ of Habeas Corpus is **DENIED**.

Dated this 20 day of December, 2018.


DISTRICT JUDGE

DEC 24 2018

Douglas County
District Court Clerk

FILED

2018 DEC 24 AM 11:21

BOBBIE R. WILLIAMS
CLERK

BY ANOMIA DEPUTY

Case No. 14-CR-0062BD

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.

NOTICE OF ENTRY OF ORDER

THE STATE OF NEVADA,

Respondent.

PLEASE TAKE NOTICE that on December 20th, 2018, the Court entered an Order Denying Post-Conviction Petition for 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 December 24 2018.

Dated December 24, 2018.

CLERK OF COURT

By

DEPUTY

Copies served this 24 day of December, 2018 to:

Tatiana Leibel #1137908

Florence McClure Women's Correctional Center

4370 Smiley Road

Las Vegas, NV 89115

John E. Malone, Esq.

209 N. Pratt Ave.

Carson City, NV 89701

Warden Dwight Neven

Florence McClure Women's Correctional Center

4370 Smiley Road

Las Vegas, NV 89115

Attorney General's Office

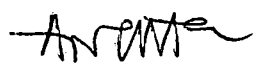
100 N. Carson Street

Carson City, NV 89701

Douglas County District Attorney

1038 Buckeye Road

Minden, NV 89423 (hand delivered)


Deputy Court Clerk

Case No. 14-CR-0062B

Dept. No. I

RECEIVED

DEC 10 2018

RECEIVED

DEC 20 2018

Douglas County
District Court Clerk

2018 DEC 20 PM 1:59

BOBBIE R. WILLIAMS
CLERK

BY ANOMA DEPUTY

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

TATIANA LEIBEL,

Petitioner,

**ORDER DENYING POST-
CONVICTION PETITION
FOR WRIT OF HABEAS
CORPUS**

THE STATE OF NEVADA,

Respondent.

THIS CAUSE, having come before the Honorable NATHAN TOD YOUNG, District Judge, having considered the matter, including all petitions, motions, and documents on file herein, along with the evidence presented at the post-conviction evidentiary hearing, now therefore, the Court makes the following findings of fact and conclusions of law.

Following a jury trial, petitioner Tatiana Liebel was found guilty of second-degree murder with the use of a deadly weapon, and a judgment of conviction was entered on April 21, 2015. Petitioner appealed and her conviction was affirmed on December 18, 2015. Remittitur issued on January 12, 2016. Less than a year later petitioner filed a hand-written *pro se* post-conviction petition for a writ of habeas corpus raising four grounds for relief and a motion for appointment of counsel. The petition was written in the English language. This Court appointed post-conviction counsel on November 28, 2016 and a counseled post-conviction

1 supplemental petition was filed on February 26, 2018. The supplemental petition raises
2 thirteen grounds for relief. On September 17, 2018, an additional ground was raised in a brief
3 filed by petitioner.

4 On November 15th and 16th of 2018 an evidentiary hearing was held on Petitioner's
5 claims. During the hearing this Court sustained Respondent's objections to the testimony of
6 Natasha Kharikova after considering the related motion, responses, and the arguments of the
7 parties during the hearing.
8

9 **I. Pro Se Post-Conviction Petition**

10 All of the claims in in Petitioner's *pro se* post-conviction petition are procedurally
11 barred under NRS 34.810(1)(b) because they could have been presented to the trial court or
12 raised on direct appeal. Nevada's procedural bars are mandatory. *See, e.g., Clem v. State*, 119
13 Nev. 615, 623 n. 43, 81 P.3d 521, 527 n.43 (2003). Claims in a petition that could have been,
14 (1) "presented to the trial court," or (2) "raised in a direct appeal" must be dismissed unless a
15 petitioner demonstrates good cause and actual prejudice. NRS 34.810(1)(b). Petitioner has
16 failed to demonstrate good cause or actual prejudice for any of the claims raised in her *pro se*
17 post-conviction petition. To the extent Petitioner includes the words "actual innocence" in the
18 heading for ground 2, she does not allege that she has any "new evidence" of innocence.
19 "Without any new evidence of innocence, even the existence of a concededly meritorious
20 constitutional violation is not in itself sufficient" to demonstrate actual innocence. *Schlup v.*
21 *Delo*, 513 U.S. 298, 316 (1995). Petitioner has failed to demonstrate that she is entitled to
22 relief with respect to any of the claims raised in her *pro se* post-conviction petition.
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II. Supplemental Post-Conviction Petition

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

This Court “must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Id.* at 689. “There are countless ways to provide effective assistance in any given case,” and “[e]ven the best criminal defense attorneys would not defend a particular client in the same way.” *Id.* at 689-90. There is a strong presumption that counsel took actions for tactical reasons rather than through sheer neglect. *Cullen v. Pinholster*, 563 U.S. 170, 191 (2011).

Petitioner failed to demonstrate deficient performance or prejudice with respect to all of the claims raised in her supplemental post-conviction petition. Petitioner was not denied her constitutional right to effective assistance of counsel.

A. Ground 1

In ground 1 of her supplemental petition, Petitioner argues that trial counsel was constitutionally ineffective because she did not use a Russian interpreter for attorney-client meetings. Both the Petitioner and her trial counsel, Kristine Brown, testified at the post-conviction evidentiary hearing. Ms. Brown testified that her out-of-court attorney-client

1 meetings with Petitioner were conducted in the English language. She testified that she was
2 able to effectively communicate with the Petitioner in the English language during those
3 meetings and that Petitioner declined her offer to obtain the services of a Russian interpreter for
4 those meetings. She further testified that there was no time during all of her out-of-court
5 attorney-client meetings with petitioner where she was concerned that she might need an
6 interpreter and that if she had been concerned she would have requested an interpreter. After
7 considering Ms. Brown's testimony, including her demeanor, this Court finds that her
8 testimony was credible. After considering the Petitioner's testimony, including her demeanor,
9 this Court finds that her testimony was incredible.

11 Petitioner failed to demonstrate that her counsel fell below an objective standard of
12 reasonableness by failing to use an interpreter for attorney-client meetings. *Strickland*, 466
13 U.S. at 688. After considering all of the evidence, this Court finds that Petitioner can
14 effectively communicate in the English language and understand English-language speakers
15 like her attorney Ms. Brown. In a recorded interview Petitioner spent many hours
16 communicating with law enforcement in the English language. And, as she did with her trial
17 attorney, she explicitly denied law-enforcement's offer to obtain a Russian-language
18 interpreter. Petitioner testified that she obtained a college degree in International Affairs with a
19 Minor in Political Science by passing classes that were taught in the English language, took
20 exams that were administered almost exclusively in English, and interned in English-speaking
21 venues like the Nevada Legislature. Petitioner failed to demonstrate that she "in fact does not
22 understand the English language." *Ton v. State*, 110 Nev. 970, 971, 878 P.2d 986, 987 (1994).
23 Even if Petitioner could demonstrate that she has English-language deficiencies such that she
24 needed a Russian-language interpreter for her attorney-client meetings, she has failed to
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1 demonstrate that her trial counsel fell below an objective standard of reasonableness for not
2 recognizing such deficiencies. Trial counsel testified that she had numerous attorney-client
3 meetings with Petitioner and never believed that their communication during those meetings
4 was impaired to the degree that Petitioner needed an interpreter. Nor was she deficient for
5 relying on her client's statement that she did not need an interpreter.
6

7 Petitioner failed to demonstrate a reasonable probability that the results of the
8 proceedings would have been different if she had a Russian interpreter for her attorney-client
9 meetings. She admits that, without an interpreter, she understood that her attorney did not
10 believe it was in her best interest to testify and that her attorney believed that she would go to
11 prison for the rest of her life if she testified. To the extent she had any difficulty understanding
12 other reasons her attorney believed she should not testify, an interpreter would have merely
13 made those reasons not to testify more clear. In her supplemental petition, Petitioner lists her
14 counsel among the authorities that she had "a disinclination to question, to object, or to voice
15 her own ideas and opinions," to because of her upbringing in the Soviet Union. Therefore, it is
16 even less likely that she would disregard her counsel's advice and choose to testify. Her actual
17 testimony at the post-conviction evidentiary hearing did not assist her in meeting her burden.
18

19 Because Petitioner fails to satisfy either prong of *Strickland* ground 1 is denied.
20

21 **B. Ground 2**

22 In ground 2 of her supplemental petition, Petitioner alleges that trial counsel was
23 constitutionally ineffective because she did not procedurally notice forensic scientist David
24 Billau as a trajectory witness and the Court barred his testimony in that capacity.
25

26 Petitioner fails to demonstrate that counsel fell below an objective standard of
27 reasonableness by failing to notice forensic scientist David Billau as a trajectory witness.
28

1 *Strickland*, 466 U.S. 668 at 688. Trial counsel testified that she made a strategic decision to use
2 Billau's testimony to question the trajectory-related conclusions of the State and not to use
3 Billau to offer his own conclusions about trajectory based on the available evidence. And her
4 decision not to notice Billau as a trajectory witness did not prevent her from implementing that
5 strategy during the trial. These kind of strategic decisions are "virtually unchallengeable."
6 *Strickland*, 466 U.S. at 690. The district court did not prevent trial counsel from using Billau's
7 testimony to question the State's trajectory-related conclusions. Petitioner failed to
8 demonstrate that trial counsel performed deficiently by failing to notice forensic scientist David
9 Billau as a trajectory witness.
10

11 Petitioner failed to demonstrate a reasonable probability that, if Mr. Billau had testified
12 and drawn a conclusion about trajectory, the results of the trial would have been different. The
13 testimony of Mr. Billau during the evidentiary hearing failed to satisfy Petitioner's burden
14 under the second prong of *Strickland*. Ms. Brown testified that prior to trial Mr. Billau told her
15 that he could not draw a trajectory-related conclusion because there was not enough evidence.
16 At trial he testified that he could not make a conclusion concerning trajectory based on the
17 investigation because there was not enough information. During the evidentiary hearing, Mr.
18 Billau offered a trajectory-related conclusion but testified that this was his subjective
19 interpretation of what could have happened and he could not testify to a degree of scientific
20 certainty. Mr. Billau's testimony during the post-conviction hearing and Petitioner's arguments
21 did not demonstrate prejudice with respect to ground 2.
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24 Because Petitioner fails to satisfy either prong of *Strickland* ground 2 is denied.
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1 **C. Ground 3**

2 In ground 3 of her supplemental petition, Petitioner argues that trial counsel was
3 constitutionally ineffective because she failed to move to suppress her statements to police.

4 Petitioner not only fails to meet her burden on the deficient performance prong of
5 *Strickland*, but she fails to sufficiently explain what the legal basis for a suppression motion
6 should have been. In support of her claim, Petitioner quotes from the Fourth Amendment
7 standard in *Kimmelman v. Morrison*, 477 U.S. 365, 375 (1986). A suppression claim under the
8 Fourth Amendment, however, would involve evidence obtained through searches or seizures,
9 not suppression of witness statements. Had trial counsel moved to suppress Petitioner's
10 statements under the Fourth Amendment such a claim would have failed. Petitioner also cites
11 the Ninth Circuit's decision in *Heredia-Fernandez* to support her assertion that "it is certainly
12 reasonable that the court would have granted a motion to suppress" because Leibel had
13 "language difficulties" and faced aggressive questioning without an interpreter. The Court in
14 *Heredia-Fernandez* opined that language difficulties may impair the ability of a person in
15 custody to waive their *Miranda* rights in a free and aware manner. *United States v. Heredia-*
16 *Fernandez*, 756 F.2d 1412, 1415 (9th Cir. 1985). In Petitioner's case, however, she failed to
17 demonstrate that she had language difficulties that impaired her ability to waive her *Miranda*
18 rights. In fact, towards the beginning of her interview, investigators asked Petitioner if she
19 needed an interpreter. She responded "no," and explained that she understood English. Before
20 she signed the *Miranda* waiver form, she told them that she could read English.¹ Petitioner has
21 failed to demonstrate that a motion to suppress Petitioner's statements to investigators would
22 have succeeded. Even if she could make such a showing, trial counsel testified that she did not
23
24
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26

27 _____
28 ¹During a subsequent interview with a Russian interpreter she again signed the *Miranda* waiver
form.

1 seek to suppress Petitioner's statements to the police because trial counsel believed the
2 statements could be helpful to Petitioner's case in the event the entire interview came into
3 evidence and Petitioner chose not to testify. Petitioner failed to demonstrate that trial counsel
4 fell below an objective standard of reasonableness for making such a decision.

5 Petitioner fails to demonstrate a reasonable probability that if trial counsel filed a
6 motion to suppress the results of the proceedings would have been different. First, as discussed
7 above, she fails to demonstrate that her motion to suppress would have succeeded. Second,
8 even if the statements had been suppressed, Petitioner fails to demonstrate a reasonable
9 probability that the results of the trial would have been different. Petitioner does not
10 specifically identify a single statement she made during her interview that she believes affected
11 the outcome of the proceedings against her. She has failed to meet her burden of demonstrating
12 prejudice.
13
14

15 Because Petitioner fails to satisfy either prong of *Strickland* ground 3 is denied.

16 **D. Ground 4**

17 In ground 4 of her supplemental petition, Petitioner argues that trial counsel was
18 constitutionally ineffective because she failed to present trajectory evidence about how the gun
19 worked, "important measurements," or the gun's "unusual cylinder barrel and offset."
20

21 Petitioner fails to demonstrate that counsel fell below an objective standard of
22 reasonableness by failing to present trajectory evidence on the subjects discussed in ground 4.
23 *Strickland*, 466 U.S. 668 at 688. The four sentences that make up all of ground 4 in the
24 supplemental petition and the other arguments and evidence presented to the Court fail to
25 satisfy Petitioner's burden with respect to the first prong of *Strickland*. Petitioner also fails to
26 demonstrate that there is a reasonable probability that the result of the proceeding would have
27
28

1 been different if counsel presented additional trajectory-related evidence on the subjects
2 discussed in ground 4. *Strickland*, 466 U.S. 668 at 694.

3 Because Petitioner fails to satisfy either prong of *Strickland* ground 4 is denied.

4 **E. Ground 5**

5 In ground 5 of her supplemental petition, Petitioner argues that trial counsel was
6 constitutionally ineffective because she failed to present evidence about the victim's use of
7 marijuana and its effects.
8

9 Petitioner failed to demonstrate that counsel fell below an objective standard of
10 reasonableness by failing to present evidence about the victim's use of marijuana and its
11 effects. *Strickland*, 466 U.S. 668 at 688. Ms. Brown testified that she had some concerns that
12 emphasizing the victim's marijuana use could hurt her case and it was possible that it might
13 help their case. If the State could establish that marijuana has an adverse effect on coordination
14 it would make it more difficult for the Petitioner to argue that the victim was able to balance the
15 weapon and shoot himself. The two paragraphs that make up all of ground 5 fail to satisfy
16 Petitioner's burden. Petitioner does not adequately explain why trial counsel had a
17 constitutional obligation to present this evidence to the jury. She does not present any evidence
18 supporting her allegation that, in some people, marijuana triggers underlying mental health
19 issues such as depression and psychosis and may lead to suicidal ideation or reckless and
20 impulsive behavior. Even if Petitioner had some evidence that marijuana may have such
21 effects, she has presented no evidence that it had such an effect on the victim. Her vague
22 statement that "[t]rial counsel should have made sure the jury understood how his use of
23 marijuana would have affected both his physical and mental health," does not allege that any
24 known symptoms of short-term or long-term marijuana use were experienced by the victim.
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1 Petitioner has failed to demonstrate that trial counsel fell below an objective standard of
2 reasonableness for failing to present evidence about the victim's use of marijuana and its
3 effects.

4 As for Chad Hendrick's statements to law enforcement, Petitioner fails to explain why
5 those statements were so important that her counsel fell below an objective standard of
6 reasonableness for not eliciting them during the trial. Testimony about the victim being in
7 physical pain and deteriorating emotionally during the trial may have made the victim appear
8 even more sympathetic to the jury. Petitioner has failed to meet her burden with respect to the
9 deficient performance prong.
10

11 Petitioner also fails to demonstrate that if she had presented evidence about the victim's
12 use of marijuana and its effects there is a reasonable probability that the results of the
13 proceedings would have been different. Among other things, Petitioner failed to provide this
14 Court with any evidence that known effects of marijuana on some people had that effect on the
15 victim.
16

17 Because Petitioner fails to satisfy either prong of *Strickland* ground 5 is denied.
18

19 **F. Ground 6**

20 In ground 6 of her supplemental petition, Petitioner alleges that trial counsel was
21 constitutionally ineffective because she failed to retain or call a psychological or psychiatric
22 expert to address the complexities of suicidal ideation.

23 Petitioner failed to show that counsel fell below an objective standard of reasonableness
24 by failing to retain or call a psychological or psychiatric expert to address the complexities of
25 suicidal ideation or demonstrate resulting prejudice. *Strickland*. at 688, 694. Petitioner did not
26 present any testimony from any expert addressing "the complexities of suicidal ideation,
27
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1 including the risks associated with repeated threats of suicide, bullying, and previous suicide
2 attempts” or “the prevalence of suicide in our society, suicide rates amongst members of the
3 Jewish community, the fac[t] that Jewish doctrine has evolved to accept suicide, . . . the
4 predictability or unpredictability of suicide based on prior attempts or threats, and information
5 on planned versus spontaneous suicides.” Petitioner’s vague speculation about what her
6 psychological or psychiatric witness might testify about does not demonstrate that counsel
7 performed deficiently or that any failure by counsel resulted in prejudice.
8

9 Because Petitioner fails to satisfy either prong of *Strickland* ground 6 is denied.

10 **G. Ground 7**

11 In ground 7 of her supplemental petition, Petitioner alleges trial counsel was
12 constitutionally ineffective because she failed to retain or call an expert in blood spatter
13 analysis. Petitioner failed to show that counsel fell below an objective standard of
14 reasonableness by failing to retain or call an expert in blood spatter analysis. *Strickland*, 466
15 U.S. 668 at 688. Petitioner also failed to demonstrate prejudice. *Strickland*, 466 U.S. 668 at
16 694. Even if an expert could have testified to the facts alleged in the supplemental petition,
17 there is not a reasonable probability that the result of the proceedings would not have been
18 different. Among other things, a jury could have believed that Petitioner’s clothes did not have
19 blood spatter on them because she had enough time to clean up and dispose of her clothing
20 between the time of the victim’s death and the time she called 911.
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23 Because Petitioner fails to satisfy either prong of *Strickland* ground 7 is denied.
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1 **H. Ground 8**

2 In ground 8 of her supplemental petition, Petitioner alleges that trial counsel was
3 constitutionally ineffective because she failed to present any witness who could humanize her
4 for the jury.

5 Petitioner failed to show that counsel fell below an objective standard of reasonableness
6 by failing to present any witness who could humanize her for the jury. *Strickland*, 466 U.S.
7 668 at 688. Petitioner also failed to demonstrate a reasonable probability that if her daughter
8 or any other witness presented humanizing testimony, the result of the proceedings would have
9 been different. *Strickland*, 466 U.S. 668 at 694.

10 Because Petitioner fails to satisfy either prong of *Strickland* ground 8 is denied.

11 **I. Ground 9**

12 In ground 9 of her supplemental petition, Petitioner argues that trial counsel was
13 constitutionally ineffective because she failed to effectively challenge the State's expert's
14 testimony on gunshot residue, his methodology, measurements, notes, or raw data.

15 Petitioner failed to show that counsel fell below an objective standard of reasonableness
16 by failing to effectively challenge the State's expert's testimony on these subjects. *Strickland*,
17 466 U.S. 668 at 688. Petitioner alleges that counsel should have challenged the State's expert's
18 testimony, presented countervailing evidence, and given an alternative explanation. But she
19 fails to present sufficient evidence demonstrating that trial counsel could have accomplished
20 those goals better than she already did during her jury trial. Petitioner did not demonstrate that
21 counsel performed deficiently. Petitioner also failed to demonstrate a reasonable probability
22 that any additional testimony or evidence about gunshot residue, methodology, measurements,
23 notes, or raw data would have resulted in a different outcome of the proceedings.
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1 Because Petitioner fails to satisfy either prong of *Strickland* ground 9 is denied.

2 **J. Ground 10**

3 In ground 10 of her supplemental petition, Petitioner argues that trial counsel was
4 constitutionally ineffective because she failed to move to prevent Sharon Oren from testifying
5 that he was afraid for the victim's life and he thought Petitioner would kill the victim. In her
6 supplemental petition, Petitioner only specifically proffers one basis for such a motion. She
7 states, "if his statements were unexpected and there was a discovery violation, they should have
8 challenged him immediately and called for a mistrial." During the evidentiary hearing,
9 Petitioner proffered a second basis. She argued that Oren's statement was an inadmissible prior
10 bad act.
11

12 Petitioner failed to show that counsel fell below an objective standard of reasonableness
13 by failing to move to prevent Sharon Oren from testifying. *Strickland*, 466 U.S. 668 at 688.
14 During the examination of Sharon Oren, trial counsel repeatedly objected to his testimony as
15 irrelevant and at least one of her objections was sustained because the witness' testimony was
16 speculation. Petitioner contends that the report produced by investigators for Douglas County
17 did not include the witness' statements. She provides no evidence that the State was aware that
18 the witness was going to testify as he did and failed to turn that information over to Petitioner's
19 trial counsel. Petitioner failed to demonstrate that that a discovery violation occurred that, if
20 challenged, should have resulted in a mistrial. Nor did she demonstrate that the witness'
21 statements were inadmissible prior bad act under Nevada law. Petitioner failed to demonstrate
22 that her counsel fell below an objective standard of reasonableness.
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26 Petitioner has also failed to demonstrate a reasonable probability that any
27 motion by trial counsel would have precluded Sharon Oren's testimony and failed to
28

1 demonstrate a reasonable probability that even if Oren had not offered his testimony to the jury
2 the results of the proceeding would have been different.

3 Because Petitioner fails to satisfy either prong of *Strickland* ground 10 is denied.

4 **K. Ground 11**

5 In ground 11 of her supplemental petition, Petitioner argues that trial counsel was
6 constitutionally ineffective because she failed to prevent or object to Douglas County Fire
7 Department responders offering scientific and medico-legal testimony beyond their areas of
8 knowledge, without having them qualified as experts.

9 Other than citing to two provisions of the Nevada evidence code, she fails to explain
10 why those provisions excluded the testimony of the witnesses. Nor does she explain why trial
11 counsel fell below an objective standard of reasonableness for not objecting to their testimony
12 under NRS 50.275 and NRS 50.285.

13 "District courts are vested with considerable discretion in determining the relevance and
14 admissibility of evidence." *Castillo v. State*, 114 Nev. 271, 277, 956 P.2d 103, 107-08 (1998).
15 Specifically, "[t]he admissibility and competency of opinion testimony, either expert or
16 nonexpert, is largely discretionary with the trial court." *Watson v. State*, 94 Nev. 261, 264, 578
17 P.2d 753, 756 (1978). To the extent any of the testimony cited by Petitioner is opinion
18 testimony at all, it was admissible lay testimony. NRS 50.265. Petitioner has failed to
19 demonstrate that her counsel performed deficiently in ground 11.

20 Even if trial counsel had objected based on NRS 50.275 and NRS 50.285, she fails to
21 demonstrate that her objection would have been sustained and the witnesses would have been
22 prevented from testifying. Even if the witnesses had not testified, she fails to demonstrate that
23 the results of the proceedings would have been different.

1 Because Petitioner fails to satisfy either prong of *Strickland* ground 11 is denied.

2 **L. Ground 12**

3 In ground 12 of her supplemental petition Petitioner argues that trial counsel was
4 constitutionally ineffective because she failed to object or move to prevent Petitioner's
5 neighbor from testifying that he overheard the couple arguing between July and October of
6 2013 based on relevance under NRS 48.015 and unfair prejudice under NRS 48.035(1).

7 Petitioner failed to show that counsel fell below an objective standard of reasonableness
8 by failing to object or move to prevent Petitioner's neighbor from testifying that he overheard
9 the couple arguing between July and October of 2013. *Strickland*, 466 U.S. 668 at 688. Trial
10 counsel did not fall below an objective standard of reasonableness. She successfully prevented
11 that witness from relaying to the jury the contents of the argument he overheard during the
12 direct examination of the witness. The fact that they were involved in a spirited argument a
13 few months before the victim was shot and killed is relevant to the relationship between the
14 defendant and the victim and goes to Petitioner's motive for shooting the victim. The fact that
15 they were engaged in a spirited argument tends to show that they were having problems in their
16 relationship. The witness' testimony was not unfairly prejudicial. Even if it was unfairly
17 prejudicial, its probative value outweighed any potential prejudice. Petitioner failed to
18 demonstrate that trial counsel fell below an objective standard of reasonableness for failing to
19 object to the testimony under NRS 48.015 and NRS 48.035(1).

20
21 Petitioner failed to demonstrate a reasonable probability that the result of the
22 proceedings would have been different if an objection based on NRS 48.015, NRS 48.035(1) or
23 any other provision of Nevada law had been made. Even if the witness did not testify that the
24 victim and the defendant were engaged in a spirited argument a few months before he was shot,
25 there is not a reasonable probability that the outcome of the proceedings would have been
26 different.

27 Because Petitioner fails to satisfy either prong of *Strickland* ground 12 is denied.
28

1 **M. Ground 13**

2 In ground 13 of her supplemental petition, Petitioner argues that the cumulative effect
3 of the ineffective-assistance-of-counsel claims in her supplemental petition entitles her to relief.
4 Even if ineffective-assistance-of-counsel claims can cumulate, Petitioner failed to demonstrate
5 any error and thus, there is no error to cumulate.

6 **III. Brief Regarding Structural Error**


7 In her brief regarding structural error, Petitioner alleges *Cronic*-error occurred based on
8 the absence of a Russian interpreter during the attorney-client meetings with Petitioner's trial
9 counsel. *United States v. Cronic*, 466 U.S. 648 (1984). In *Cronic*, the Supreme Court held that
10 prejudice may be presumed when (1) there is a "complete denial of counsel" at a critical stage
11 of a defendant's trial, or (2) "counsel entirely fails to subject the prosecution's case to
12 meaningful adversarial testing." *Cronic*, 466 U.S. at 659-660. The situation in *Powell v.*
13 *Alabama*, 287 U.S. 45 (1932), "was such a case." *Id.*

14 Petitioner had two attorneys who subjected the State's entire case against Petitioner to
15 meaningful adversarial testing as required by the Sixth Amendment to the United States
16 Constitution. The out-of-court meetings between Petitioner and her attorney have not been
17 recognized as a critical stage by the United States Supreme Court and, even if they were,
18 Petitioner's counsel was present for all of those meetings and discussed the case with Petitioner
19 in a language that she understood: English. No adversarial testing takes place during those
20 meetings. Petitioner has failed to demonstrate that any *Cronic*-error occurred during any of the
21 out-of-court meetings between Petitioner and her counsel. She has not otherwise demonstrated
22 that any other structural error occurred that would entitle her to relief.

23 Petitioner has failed to demonstrate that her counsel performed deficiently or that her
24 performance resulted in prejudice with respect to any claim or sub-claim raised in her petition.
25 She has not demonstrated that any other error she raised, that is properly before this Court,
26 entitles her to relief.
27
28

THEREFORE, IT IS HEREBY ORDERED that the Petitioner's post-conviction Petition for a Writ of Habeas Corpus is **DENIED**.

Dated this 20 day of December, 2018.


DISTRICT JUDGE

AFFIDAVIT OF SERVICE BY MAIL

FILED

2018 DEC 24 AM 11:24

STATE OF NEVADA)

ss BOBBIE R. WILLIAMS CASE NO. 14-CR-0062BD

COUNTY OF DOUGLAS)

CLERK

BY: ANANT DEPUTY

I, 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 affiant served a copy of the NOTICE OF ENTRY OF ORDER (LEIBEL V. STATE OF NEVADA) filed in Case No. 14-CR-0062BD by placing said pleading in an envelope addressed to Tatiana Leibel #1137908, Florence McClure Women's Correctional Center, 4370 Smiley Road, Las Vegas, NV 89115; John E. Malone, Esq., 209 N. Pratt Ave., Carson City, NV 89701; Warden Dwight Neven, Florence McClure Women's Correctional Center, 4370 Smiley Road, Las Vegas, NV 89115; Attorney General's Office, 100 N. Carson St., Carson City, NV 89701; Douglas County District Attorney, 1038 Buckeye Road, Minden, NV 89423 (hand delivered), which envelopes were then sealed and postage fully prepaid thereon, and hereafter were on December 24th, 2018, deposited in the United States mail at Minden, Nevada.

///

///

///

///

3005

That there is a delivery service by United States mail at the
places so addressed, or regular communication by United States
mail between the place of mailing and the places so addressed.

~~FILE~~
BOBBIE WILLIAMS, Clerk of the Court

By: ANOM
Deputy Court Clerk

3006

RECEIVED

JAN 18 2019

FILED

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

Douglas County
District Court Clerk

2019 JAN 18 PM 4:01

BOBBIE R. WILLIAMS
CLERK

BY ANOMR DEPUTY

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

9 TATIANA LEIBEL,

10 Petitioner,

11 vs.

12 STATE OF NEVADA,

13 Respondent.

CASE NO. 14-CR-0062BD

DEPT NO. I

15 NOTICE OF APPEAL

16 NOTICE is hereby given that TATIANA LEIBEL, Petitioner above named, by and through
17 her attorney, JOHN E. MALONE, ESQ., hereby appeals to the Supreme Court of Nevada from the
18 Ninth Judicial District Court's Order Denying her Post-Conviction Petition for Writ of Habeas
19 Corpus.

20 This appeal is to all issues of law.

21 DATED this 17th day of January, 2019.

22
23 JOHN E. MALONE, ESQ.
Attorney for the Petitioner

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that service of the foregoing NOTICE OF APPEAL 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

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

Tatiana Leibel, #1137908
FMWCC
4370 Smiley Rd.
Las Vegas, NV 89115

DATED this 17th day of January, 2019.



Kelly Atkinson

RECEIVED

JAN 18 2019

FILED

JOHN E. MALONE, ESQ.
Nevada Bar No. 5706
209 N. Pratt Ave.
Carson City, NV 89701
Attorney for Petitioner

Douglas County
District Court Clerk

2019 JAN 18 PM 4:0

BOBBIE R. WILLIAMS
CLERK

BY Arnter 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.

CASE NO. 14-CR-0062B
~~17-CR-00129-1B~~

DEPT NO. II

CASE APPEAL STATEMENT

1. Name of Appellant filing this case appeal statement: TATIANA LEIBEL.
2. Identify the judge issuing the order appealed from: HON. NATHAN TOD YOUNG.
3. Identify each appellant and the name and address of counsel for each appellant:
TATIANA LEIBEL, Appellant, JOHN E. MALONE, ESQ., Counsel, 209 N. Pratt Ave., Carson City, NV 89701.
4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent: STATE OF NEVADA, Respondent, Douglas County District Attorney, Counsel, PO Box 218, Minden, NV 89423; Attorney General's Office (for notice only), 100 N. Carson St., Carson City, NV 89701.

///

- 1 5. Indicate whether any attorney identified above in response to question 3 or 4 is not
2 licensed to practice law in Nevada and, if so, whether the District Court granted that
3 attorney permission to appear under SCR 42: All attorneys identified in questions 3 and
4 4 are licensed to practice in Nevada.
- 5 6. Indicate whether Appellant was represented by appointed or retained counsel in the
6 District Court: Counsel was appointed.
- 7 7. Indicate whether Appellant is represented by appointed or retained counsel on appeal:
8 Counsel is appointed.
- 9 8. Indicate whether Appellant was granted leave to proceed in forma pauperis; and the
10 date of entry of the District Court Order granting such leave: Not applicable.
- 11 9. Indicate the date the proceedings commenced in the District Court: Evidentiary
12 Hearing, November 15 and 16, 2018.
- 13 10. Provide a brief description of the nature of the action and result in the District Court,
14 including the type of Order being appealed and the relief granted by the District Court:
15 Appellant was found guilty of second-degree murder with the use of a deadly weapon,
16 and a judgment of conviction was entered. Petitioner appealed, and her conviction was
17 affirmed. Petitioner later filed a writ of habeas corpus which was denied.
- 18 11. Indicate whether the case has previously been the subject of an appeal to or original
19 writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
20 number of the prior proceeding: Docket No. 68113.

21 ///

22 ///

23 ///

24 ///

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24

12. Indicate whether this appeal involves child custody or visitation: Not applicable.

13. If this civil case, indicate whether this appeal involves the possibility of settlement: Not applicable.

DATED this 17th day of January, 2019.

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that service of the foregoing CASE APPEAL STATEMENT 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

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

Tatiana Leibel, #1137908
FMWCC
4370 Smiley Rd.
Las Vegas, NV 89115

DATED this 17th day of January, 2019.



Kelly Atkinson

RECEIVED

JAN 18 2019

Douglas County
District Court Clerk

FILED

2019 JAN 18 PM 4:00

BOBBIE R. WILLIAMS
CLERK

BY: AW DEPUTY

1 JOHN E. MALONE, ESQ.
Nevada Bar No. 5706
2 209 N. Pratt Ave.
Carson City, NV 89701
3 (775) 461-0254
Attorney for Petitioner
4
5

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS
8

9 TATIANA LEIBEL,

10 Petitioner,

11 vs.

12 STATE OF NEVADA,

13 Respondent.
14

CASE NO. 14-CR-0062BD

DEPT NO. I

15 **CERTIFICATE THAT NO TRANSCRIPT IS BEING REQUESTED**

16 Notice is hereby given that Petitioner, TATIANA LEIBEL, is not requesting the
17 preparation of transcripts for this appeal.

18 DATED this 17 day of January, 2019.

19
20 JOHN E. MALONE, ESQ.
Attorney for the **Petitioner**
21
22
23
24

CERTIFICATE OF SERVICE

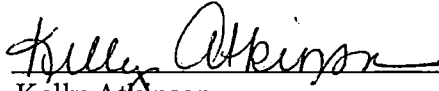
Pursuant to NRCP 5(b), I hereby certify that service of the foregoing NOTICE OF APPEAL was made this date by depositing a true copy of the same for mailing and/or hand delivery in Carson City, Nevada, addressed to each of the following:

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

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

Tatiana Leibel, #1137908
FMWCC
4370 Smiley Rd.
Las Vegas, NV 89115

DATED this 17th day of January, 2019.



Kelly Atkinson

IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

TATIANA LEIBEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

2019 JAN 30 AM 11:05
RECEIVED Supreme Court No. 77989
Douglas County District Court Case No. 14-CR-0062BD

JAN 30 2019
BY [Signature] CLERK
DEPUTY
Douglas County
District Court Clerk

RECEIPT FOR DOCUMENTS

TO: John E. Malone
Douglas County District Attorney/Minden \ Mark B. Jackson, Matthew S. Johnson
Bobbie W. Williams, Douglas County Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

01/29/2019	Appeal Filing Fee waived. Criminal. (SC)
01/29/2019	Filed Notice of Appeal. Appeal docketed in the Supreme Court this day. (Docketing statement and Notice of Briefing Schedule mailed to counsel for appellant.) (SC)

DATE: January 29, 2019

Elizabeth A. Brown, Clerk of Court
lh

3015

RECEIVED

MAR - 7 2019

Douglas County
District Court Clerk

FILED

2019 MAR -7 PM 12:46

DOBBIE WILLIAMS
CLERK
DEPUTY

JOHN E. MALONE
State Bar No. 5706
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 461-0254
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 EXPERT WITNESS 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 the expert witness, Nataliya Kharikova, in
this matter by Tatyana Vargason of \$3,558.93;

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

DATED this 6th day of March, 2019.

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

AFFIDAVIT


STATE OF NEVADA)
 :SS
CARSON CITY)

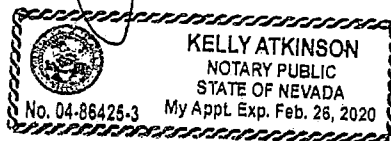
John E. Malone, being first duly sworn, under penalty of perjury, hereby deposes and says:

1. That affiant is an attorney licensed to practice law in the State of Nevada;
2. That affiant was appointed as counsel to represent the Petitioner, Tatiana Leibel, in the above-entitled matter;
3. That affiant is requesting the Court for an Order for interpreter fees in the amount of THREE THOUSAND FIVE HUNDRED FIFTY-EIGHT and 93/100 DOLLARS (\$3,558.93) for expert witness fees by Nataliya Kharikova for the purpose of testifying as an expert witness at evidentiary hearing;
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.

Subscribed and Sworn to before me
this 6th day of March, 2019.


Notary Public (Seal)



John E. Malone

NATALIYA (NATASHA) KHARIKOVA
RUSSIAN TRANSLATOR AND INTERPRETER

Cell: 310 570 9392 • Email: nkharikova@gmail.com • Web: kharikova.com

California Certified Court Interpreter
ATA-certified translator (English to Russian)

Date of invoice: 11/25/18

Address: Nataliya Kharikova
435 Pier Ave, #B
Santa Monica, CA 9045

Bill To: John E. Malone, Esq.
Law Office of John Malone
209 N. Pratt Ave., Carson City, NV 89701

Invoice #/PO: 18-223

Client/Case: Tatiana Leibel

Rate: \$600/full day; \$300/half day

DESCRIPTION	AMOUNT
Preparation/Police Interview Transcript Review/half day	\$300.00
Prison Visit/day	\$600.00
Airfare (Las Vegas)	\$189.40
Ground Transportation (LAX)	\$18.26
Preparation/Review of 2 Police Interviews, video, day	\$600.00
Airfare (Reno)	\$235.98
Airfare (Los Angeles)	\$235.20
Airfare (Los Angeles), new ticket	\$235.20
Hotel (Minden)	\$123.17
Travel Day (Reno), half day	\$300.00
Court Appearance on 11/15/19/day	\$600.00
Court Appearance on 11/15/19/OT	\$300.00
Car Rental (Reno)	\$65.59
Meals (Reno)	\$6.25
Meals (Reno)	\$37.19
Meals (Reno)	\$12.69
Total Services:	\$2,400.00
Total Expenses:	\$1,158.93
TOTAL:	\$3,558.93

THANK YOU FOR YOUR BUSINESS!

3018

eTicket Itinerary and Receipt for Confirmation GKM XVK

From: United Airlines, Inc. (unitedairlines@united.com)

To: FRISBEE_CY@YAHOO.COM

Date: Thursday, October 25, 2018, 6:25 AM PDT

Receipt for confirmation number GKM XVK

UNITED



A STAR ALLIANCE MEMBER



[United logo link to home page](#)

Issue Date: October 25, 2018

Confirmation: GKM XVK

[Check-In >](#)

TRAVELER INFORMATION

Traveler	eTicket Number	Frequent Flyer Number	Seats
KHARIKOVA/NATALIYA	0162423114856	UA-XXXXX233	36A/22A

FLIGHT INFORMATION

Day, Date	Flight	Class	Departure City and Time	Arrival City and Time	Aircraft	Meal
Tue, 30 OCT 18	UA2184W		LOS ANGELES, CA (LAX) 8:22 AM	LAS VEGAS, NV (LAS) 9:32 AM	A-320	
Tue, 30 OCT 18	UA584 T		LAS VEGAS, NV (LAS) 7:05 PM	LOS ANGELES, CA (LAX) 8:20 PM	737-900	

FARE INFORMATION

Fare Breakdown

Airfare:	149.76U.	Form of Payment:
U.S. Transportation Tax:	11.24	VISA
U.S. Flight Segment Tax:	8.20	Last Four Digits
September 11th Security	11.20	3152
Fee:		
U.S. Passenger Facility	9.00	
Charge:		
Per Person Total:	189.40U.	

The airfare you paid on this itinerary totals: 149.76 USD

The taxes, fees, and surcharges paid total: 39.64 USD

Fare Rules: Additional charges may apply for changes in addition to any fare rules listed.

NONREF/0VALUAFTDPT/CHGFEE

Cancel reservations before the scheduled departure time or TICKET HAS NO VALUE.

Baggage allowance and charges for this itinerary.

Baggage fees are per traveler

Origin and destination for checked baggage	1 st bag	2 nd bag	Maximum weight and dimensions per piece of baggage Max wt / dim per piece
10/30/2018 Los Angeles, CA (LAX) to Las Vegas, NV (LAS)	30.00 USD	40.00 USD	50.0lbs (23.0kg) - 62.0in (157.0cm)
10/30/2018 Las Vegas, NV (LAS) to Los Angeles, CA (LAX)	30.00 USD	40.00 USD	50.0lbs (23.0kg) - 62.0in (157.0cm)

MileagePlus Accrual Details

KHARIKOVA/NATALIYA						
Date	Flight	From/To	Award Miles	PQM	PQS	PQD
10/30/2018	2184	Los Angeles, CA (LAX)-Las Vegas, NV (LAS)	470	236	1	94
10/30/2018	584	Las Vegas, NV (LAS)-Los Angeles, CA (LAX)	285	236	1	57
			Award Miles	PQM	PQS	PQD
Nataliya's MileagePlus Accrual totals:			755	472	2	151

Important Information about MileagePlus Earning

- Accruals vary based on the terms and conditions of the traveler's frequent flyer program, the traveler's frequent flyer status and the itinerary selected. United MileagePlus® mileage accrual is subject to the rules of the MileagePlus program

Thanks for tipping, Natasha

Here's your updated Tuesday morning ride receipt.

Total	\$18.26
-------	---------

Trip fare	\$16.26
-----------	---------

Subtotal	\$16.26
----------	---------

Tip	\$2.00
-----	--------

Amount Charged

 nkharikova@gmail.com	\$16.26
--	---------

 nkharikova@gmail.com	\$2.00
--	--------

You rode with Raffi

Transportation Network Company: Raiser-CA, LLC

UberX 7.10 miles | 18 min

■	07:02am 436 Pier Ave, Santa Monica, CA
■	07:21am Terminal 7, 1 World Way, Los Angeles, CA

3021

Nataliya Kharikova's 11/14 Reno/Tahoe trip (PNAO48): Your reservation is confirmed.

From: Southwest Airlines (southwestairlines@ifly.southwest.com)

To: frisbee_cy@yahoo.com

Date: Monday, November 12, 2018, 5:33 PM PST

Here's your itinerary and other important travel information.

[View our mobile site](#) | [View in browser](#)



[Manage Flight](#) | [Flight Status](#) | [My Account](#)



Hi Nataliya,

We're looking forward to flying together! It can't come soon enough. Below you'll find your itinerary, important travel information, and trip receipt. See you onboard soon!

NOVEMBER 14

LAX → RNO

Los Angeles to Reno/Tahoe

Confirmation # **PNAO48**

Confirmation date: 11/12/2018

PASSENGER	Nataliya Kharikova
RAPID REWARDS #	Join or Log in
TICKET #	5262408170801
EXPIRATION¹	November 13, 2019
EST. POINTS EARNED	2,064

Rapid Rewards® points are only estimations.

Your itinerary

Flight: Wednesday, 11/14/2018 Est. Travel Time: **1h 25m** [Anytime](#)

FLIGHT	DEPARTS	ARRIVES
# 0210	LAX 05:55PM	RNO 07:20PM

Payment information

Total cost

Air - PNAO48

Base Fare	\$	206.31
U.S. Transportation Tax	\$	15.47
U.S. 9/11 Security Fee	\$	5.60
U.S. Flight Segment Tax	\$	4.10
U.S. Passenger Facility Chg	\$	4.50
Total	\$	235.98

Payment

Visa ending in 3152

Date: November 12, 2018

Payment Amount: \$235.98

Fare Rules: If you decide to make a change to your current itinerary it may result in a fare increase. In the case you're left with travel funds from this confirmation number, you're in luck! We're happy to let you use them towards a future flight for the individual named on the ticket, as long as the new travel is completed by the expiration date.

Your ticket number: 5262408170801

Prepare for takeoff



24 hours before your departure:

Check-in on Southwest.com® or using the Southwest Mobile App. Use your mobile device and receive a mobile boarding pass.



30 minutes before your departure:

Arrive at the gate prepared to board.



10 minutes before your departure:

This is the last opportunity to board your flight if you are present in the gate area and have met all check-in requirements.

If you do not plan to travel on your flight: Things happen, we understand! Please let us know at least 10 minutes prior to your flight's scheduled departure if you won't be traveling. If you don't notify us, you may be subject to our No Show Policy.

[See more travel tips](#)

Don't miss out on automatic check-in

EarlyBird Check-In® reserves your boarding position at 36 hours before your flight, earlier than regular check-in.

[Get it now >](#)

Your trip confirmation-UORTEU 15NOV

From: American Airlines (no-reply@notify.email.aa.com)

To: FRISBEE_CY@YAHOO.COM

Date: Monday, November 12, 2018, 6:01 PM PST



Hello Nataliya Kharikova!

Issued: Nov 12, 2018

Your trip confirmation and receipt

Record locator: **UORTEU**

Manage Your Trip

Thursday, November 15, 2018

RNO

6:49 PM

Reno



LAX

8:30 PM

Los Angeles

Seats: --

Class: Economy (V)

Meals:

American Airlines 6064

OPERATED BY COMPASS AIRLINES AS AMERICAN
EAGLE.

Free entertainment with the American app »

Nataliya Kharikova

Earn up to a \$200 statement credit + 40,000 bonus miles after qualifying purchases



[Learn more »](#)

AAdvantage # 9T6TR48

Ticket # 0012320915608

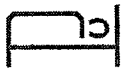
Your trip receipt



Visa XXXXXXXXXXXXXXX3152

Nataliya Kharikova

FARE-USD	\$ 205.58
TAXES AND CARRIER-IMPOSED FEES	\$ 29.62
TICKET TOTAL	\$ 235.20



Hotel offers



Car rental offers



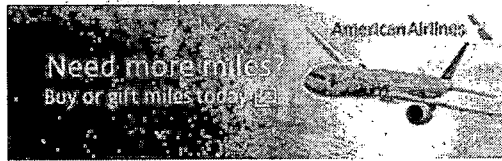
Buy trip insurance



SuperShuttle

Up to 35% off base rates
+ 500 bonus miles

AVIS **Budget**



[Contact us](#) | [Privacy policy](#)

Get the American Airlines app

eTicket Itinerary and Receipt for Confirmation F3PEGM

From: United Airlines, Inc. (unitedairlines@united.com)

To: FRISBEE_CY@YAHOO.COM

Date: Thursday, November 15, 2018, 6:41 PM PST

Receipt for confirmation number F3PEGM



A STAR ALLIANCE MEMBER

[United logo link to home page](#)

Issue Date: November 16, 2018

Confirmation: F3PEGM

TRAVELER INFORMATION

Traveler	eTicket Number	Frequent Flyer Number	Seats
KHARIKOVA/NATALIYA	0162426150579	UA-XXXXX233	---

FLIGHT INFORMATION

Day, Date	Flight Class	Departure City and Time	Arrival City and Time	Aircraft Meal
Thu, 15NOV18	UA5634U	RENO, NV (RNO) 8:05 PM	LOS ANGELES, CA (LAX) 9:51 PM	CRJ-200

Flight operated by SKYWEST AIRLINES doing business as UNITED EXPRESS.

FARE INFORMATION

Fare Breakdown

Airfare:	205.58U S D
U.S. Transportation Tax:	15.42
U.S. Flight Segment Tax:	4.10
September 11th Security	5.60
Fee:	
U.S. Passenger Facility	4.50
Charge:	
Per Person Total:	235.20U

Form of Payment:

VISA
Last Four Digits
3152

S
e Ticket Total: 235.20U
D S
D

The airfare you paid on this itinerary totals: 205.58 USD

The taxes, fees, and surcharges paid total: 29.62 USD

Fare Rules: Additional charges may apply for changes in addition to any fare rules listed.

REFUNDABLE

Baggage allowance and charges for this itinerary.

Baggage fees are per traveler

Origin and destination for checked baggage	1 st bag	2 nd bag	Maximum weight and dimensions per piece of baggage Max wt / dim per piece
11/15/2018 Reno, NV (RNO) to Los Angeles, CA (LAX)	30.00 USD	40.00 USD	50.0lbs (23.0kg) - 62.0in (157.0cm)

MileagePlus Accrual Details

KHARIKOVA/NATALIYA						
Date	Flight	From/To	Award Miles	PQM	PQS	PQD
11/15/2018	5634	Reno, NV (RNO)-Los Angeles, CA (LAX)	1030	390	1	206
			Award Miles	PQM	PQS	PQD
Nataliya's MileagePlus Accrual totals:			1030	390	1	206

Important Information about MileagePlus Earning

- Accruals vary based on the terms and conditions of the traveler's frequent flyer program, the traveler's frequent flyer status and the itinerary selected. United MileagePlus® mileage accrual is subject to the rules of the MileagePlus program
- Once travel has started, accruals will no longer display. You can view your MileagePlus account for posted accrual



Guest Name: Nataliya Kharikova
 435 Pier Ave, #B
 Santa Monica, CA 90405 USA

Room #: 148
 Folio #: R104542-1
 Group #:
 Guests: 2
 Clerk: RYANN

CL #:

CC #:

Arrival: 11/14/18 Time: 09:35 PM Depart: 11/15/18 Time: 08:25 AM Status: HIST

Date	Description	Reference	Comment	Charged	Credit
11/14/2018	ROOM CHARGE	148		\$109.00	\$0.00
11/14/2018	ROOM TAX	148	ROOM TAX	\$14.17	\$0.00
11/15/2018	PAY VISA	Ck Out 08:25	*****3132	\$0.00	(\$123.17)

Folio Balance: \$9.99



Rental Agreement Summary

RA #: 542195160
Renter: NATALIYA KIMRIKOVA



Dates & Times

Pickup

Nov 14, 2018

7:15 PM

Return

Nov 15, 2018

6:30 PM



Location

2001 E PLUMB LN C/O
RENO ARPT
RENO, NV 89502-3299
7753253877

2001 E PLUMB LN
RENO, NV 89502
7753237848



Vehicle

Make/Model: NISS/NISSA

Color: WHITE

Car Class Driven: ECON

Car Class Charged: ECON

Miles In: 10566

Mileage: 324

Fuel In: Full

License: 88KP629

Int #: 706PLD

Miles Out: 16742

Fuel Out: Full

State/Province: CA

Vehicle #: JN610352



Charges

	Price/Unit	Total
TIME & DISTANCE	1.0 \$45.79 / DAY	\$45.79
11/14/2018 - 11/15/2018		
NO CHARGE	0.0 \$0.00 / MILE	\$0.00
DISTANCE		
11/14/2018 - 11/15/2018		
LONG REC 11.11	11.1100X	\$5.29
CT		
UNCONSOLIDATED	1.0 \$3.50 / DAY	\$3.50
ACTIVITY CHG		
\$3.50/DAY		
OV FEE 10 PCT	10.0000X	\$4.57
ASIDE COUNTY TAX	2.0000X	\$0.91
PCT		
VEHICLE LICENSE	1.0 \$1.85 / DAY	\$1.85
OST 1.00/DAY		
SALES TAX	8.2700X	\$3.78

Total Charges: \$65.59

Charge To: VISA xxx3182

Subject to Audit

Or Reservations: 1-800-RENT-A-CAR

RECEIVED

FILED

MAR - 7 2019

Douglas County
District Court Clerk

2019 MAR - 7 PM 3:37

BOBBIE R. WILLIAMS
CLERK
DEPUTY

JOHN E. MALONE
State Bar No. 5706
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 461-0254
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
EXPERT WITNESS FEES

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

IT IS HEREBY ORDERED that the Nevada State Public Defender pay forthwith a sum not to exceed THREE THOUSAND FIVE HUNDERED FIFTY-EIGHT and 93/100 DOLLARS (\$3,558.93) to Nataliya Kharikova, 435 Pier Ave., #B, Santa Monica, CA 90405, in remuneration for the costs of testifying as an expert witness in the above-entitled action. It is further ordered that both the ex parte motion for fees filed herewith and this order be sealed.

DATED this 7 day of March, 2019.

DISTRICT COURT JUDGE

Respectfully Submitted By:
John E. Malone, Esq.

3030

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

RECEIVED

2020 JUN 26 AM 11:03

TATIANA LEIBEL,

Appellant,

vs. DEPUTY

THE STATE OF NEVADA,

Respondent.

JUN 26 2020

Douglas County
District Court Clerk

2014 CK - 00062 BD

No. 77989

FILED

JUN 24 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY Stuparu
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

Appellant claims that the district court erred in denying her claims of ineffective assistance of counsel. To prove ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

3031

20-23457

First, appellant, whose native language is Russian, argues that trial counsel should have used an interpreter for attorney-client meetings because her limited understanding of English did not allow her to make a fully informed decision about whether to testify. Appellant has not demonstrated deficient performance or prejudice. Trial counsel testified at the evidentiary hearing that she was able to communicate with appellant, explained anything appellant did not understand, and appellant declined an interpreter for attorney-client meetings. Trial counsel obtained an interpreter for court proceedings because there would be no opportunity to explain issues appellant did not understand. The district court found trial counsel's testimony credible and that appellant could communicate effectively in English. The record supports the district court's findings. Appellant has lived in the United States for 25 years and graduated from the University of Nevada, Reno, completing courses taught in English. The district court observed appellant's language abilities in her recorded interviews with the police and during court proceedings.¹ Appellant further has not demonstrated a reasonable probability of a different outcome had trial counsel obtained an interpreter for attorney-client meetings. Therefore, the district court did not err in denying this claim.²

¹The district court canvassed appellant about her right to testify, and she affirmatively indicated she did not want to testify. Trial counsel testified that she advised appellant not to testify because of concerns regarding prior bad acts, and appellant has not demonstrated that she did not understand counsel's advice.

²Appellant's related argument that the district court abused its discretion in not allowing a certified Russian-English interpreter to testify as an expert regarding appellant's understanding of English is without merit. The district court determined that the interpreter did not have information that would assist it in evaluating appellant's ability to understand English during attorney-client meetings. NRS 50.275 ("If

Next, appellant argues that trial counsel should have objected to S. Oren's testimony that he was afraid for the victim's life and warned the victim that appellant may kill him. Although trial counsel objected several times on the grounds of relevance and speculation, appellant argues that trial counsel should have argued that this testimony constituted prior-bad-act evidence, hearsay, and the evidence had not been disclosed by the State. Appellant also argues that trial counsel should have cross-examined Oren about the statement. Appellant fails to demonstrate deficient performance or prejudice. The district court determined that this testimony did not involve a prior bad act, and appellant has not demonstrated otherwise. See NRS 48.045(2) (describing prior-bad-act evidence). Appellant has not demonstrated any discovery violation regarding this statement. See *Bradley v. Eighth Judicial Dist. Court*, 133 Nev. 754, 759, 405 P.3d 668, 673 (2017) (recognizing that there is not a general constitutional right to discovery); cf. NRS 174.235(1)(a) (providing that the prosecuting attorney shall permit the defendant to inspect and copy any written or recorded statements). Appellant has not made any cogent

scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge, skill, experience, training or education may testify to matters within the scope of such knowledge."). The witness, while qualified as an interpreter, did not perform any testing, only vaguely referred to standards in evaluating language competence, and did not detail any specialized knowledge or training in evaluating a person's language abilities from watching videos, observing interviews, or in making a determination about cultural influences on an interview with a non-English speaker. The district court watched the same videos and observed appellant in the courtroom, including at trial. Therefore, we conclude the district court did not abuse its discretion. *Perez v. State*, 129 Nev. 850, 856, 313 P.3d 862, 866 (2013) ("We review a district court's decision to allow expert testimony for an abuse of discretion.").

argument regarding hearsay, and it is unclear that she made this argument in the proceedings below. See *Maresca v. State*, 103 Nev. 669, 672-73, 748 P.2d 3, 6 (1987). Appellant has also not shown what testimony cross-examination on this subject would have elicited, let alone that cross-examination would have elicited favorable testimony. Finally, appellant has not demonstrated that there was a reasonable probability of a different outcome had trial counsel further challenged the testimony given the substantial evidence of guilt presented at trial. Therefore, the district court did not err in denying this claim.³

Next, appellant argues that trial counsel should have provided proper notice that the defense forensic expert would testify about his trajectory conclusion. Appellant fails to demonstrate deficient performance or prejudice. When the State objected to a question that might elicit the defense expert's conclusion about the trajectory of the projectiles, trial counsel stated that she did not intend to have the expert provide a trajectory conclusion. Rather, trial counsel presented the expert to challenge the methodology and reliability of the State's expert and explain that there was insufficient information to make a trajectory conclusion. Although the same defense expert offered a trajectory conclusion at the postconviction evidentiary hearing, he agreed that trajectory analysis involves some

³Appellant's argument that appellate counsel was ineffective in failing to challenge the admissibility of this testimony as a prior bad act fails for the same reasons discussed above. See *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996) (requiring a petitioner to demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have had a reasonable probability of success on appeal); see also *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 94-95 (2003) (stating that plain error requires a demonstration of error, that the error was plain, and that the error affected the defendant's substantial rights).

measure of subjective interpretation and that he could not testify to his conclusion with any degree of scientific certainty. Given that testimony, appellant has not demonstrated trial counsel's strategy was unreasonable. *Strickland*, 466 U.S. at 690-91 (observing that strategic decisions are virtually unchallengeable). And considering the subjectivity and lack of scientific certainty in the expert's testimony during the evidentiary hearing and the substantial evidence of guilt presented at trial, appellant further fails to demonstrate a reasonable probability of a different outcome at trial had the expert testified about the trajectory of the projectiles. Therefore, the district court did not err in denying this claim.

Next, appellant argues that trial counsel should have introduced evidence of the victim's marijuana use to show how it could affect his mental and physical health. Appellant fails to demonstrate deficient performance or prejudice. Appellant did not provide any expert testimony supporting her statements about the effects of marijuana use on a person's mental and physical health, and thus, she fails to carry her burden of proof. *See Means*, 120 Nev. at 1011-13, 103 P.3d at 32-33 (recognizing that the burden of proof lies with the habeas petitioner). The jury heard testimony about marijuana use and some possible effects from the defense medical expert. Trial counsel testified at the evidentiary hearing that emphasizing the marijuana use could have hurt the case, in part because, to the extent that marijuana may affect coordination, it may have supported the State's theory that the victim could not have shot himself. Appellant fails to demonstrate that there was a reasonable probability of a different outcome had trial counsel engaged an expert and presented additional testimony about the victim's marijuana use. Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant argues that trial counsel should have presented expert testimony about suicidal ideation to educate the jury about the complexities of suicide. Appellant notes that trial counsel was aware from multiple sources of the victim's suicidal threats and health issues. Appellant fails to demonstrate deficient performance or prejudice. Again, appellant presented no such testimony at the evidentiary hearing to support this claim. Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant argues that trial counsel should have presented testimony to humanize her because she did not testify. Appellant argues that her daughters could have testified that she was a loving wife and mother, supportive partner, and loved member of her community. Appellant has not demonstrated deficient performance or prejudice. Again, at the evidentiary hearing, appellant did not present testimony from any witnesses to support this claim. And trial counsel testified concern with the potential testimony of appellant's daughters regarding prior bad acts and information that would run counter to the close-family defense. At trial, appellant presented testimony from friends about their positive observations of the defendant's relationship with the victim. Appellant has not demonstrated a reasonable probability of a different outcome had trial counsel presented additional evidence given the substantial evidence presented at trial. Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant argues that trial counsel should have objected to the testimony of the first responders on the basis that they were not qualified to give expert opinions on how long the victim had been dead, blood clotting, rigor mortis, the smell of gunpowder, the temperature of the victim's body, and observations about the gunshot holes in the couch and


wall. Appellant has not demonstrated deficient performance or prejudice. Testimony about what the first responders observed in responding to the call was admissible. NRS 48.015 (“[R]elevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.”); NRS 50.025(1)(a) (allowing for testimony based on a witness’ personal knowledge); *Burnside v. State*, 131 Nev. 371, 382, 352 P.3d 627, 636 (2015) (“A lay witness may testify to opinions or inferences that are ‘[r]ationally based on the perception of the witness; and . . . [h]elpful to a clear understanding of the testimony of the witness or the determination of a fact in issue.’” (quoting NRS 50.265)). Trial counsel presented testimony from the defense medical expert calling into question the first responders’ testimony about their observations and presented testimony calling into question the integrity of the crime scene. Appellant has not demonstrated a reasonable probability of a different outcome if trial counsel would have further challenged the first responders’ testimony. Therefore, we conclude that the district court did not err in denying this claim.


Next, appellant argues that trial counsel should have objected to a neighbor’s testimony about fights between appellant and the victim months before the victim’s death. Appellant fails to demonstrate deficient performance or prejudice. Trial counsel successfully objected to the witness sharing the contents of the argument. The State presented the testimony to rebut the defense witnesses’ description of a loving marriage and the evidence was relevant to show that appellant and the victim were having problems in their relationship and the victim was killed after an argument. See NRS 48.015 (describing relevant evidence). Further, the probative value is not substantially outweighed by the danger of unfair prejudice. See


NRS 48.035(1). Appellant has not demonstrated a reasonable probability of a different outcome had trial counsel further objected to the neighbor's testimony. Therefore, we conclude that the district court did not err in denying this claim.

Finally, appellant argues that any deficiencies in counsel's performance should be cumulated for purposes of determining prejudice. Even assuming multiple instances of deficient performance could be cumulated for purposes of demonstrating prejudice, *see McConnell v. State*, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009), as appellant has not demonstrated deficient performance, there is nothing to cumulate. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Cadish

cc: Hon. Nathan Tod Young, District Judge
John E. Malone
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

RECEIVED

TATIANA LEIBEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

JUL 22 2020

Douglas County
District Court Clerk

Supreme Court No. 77989
District Court Case No. 14-CR-0062BD

BOBBIE R. WILLIAMS
CLERK

BY ANOMIA DEPUTY

REMITTITUR

TO: Bobbie W. Williams, Douglas County Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: July 20, 2020

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze
Administrative Assistant

cc (without enclosures):

Hon. Nathan Tod Young, District Judge
John E. Malone
Douglas County District Attorney/Minden

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on July 22, 2020.

ANOMIA
District Court Clerk

RECEIVED

IN THE SUPREME COURT OF THE STATE OF NEVADA

Douglas County
District Court
JUL 22 2020 9:39 AM

TATIANA LEIBEL,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

BOBBIE R. WILLIAMS
CLERK

BY ANNA DEPUTY

No. 77989

FILED

JUN 24 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY STUPEN
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

Appellant claims that the district court erred in denying her claims of ineffective assistance of counsel. To prove ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

3040
20-23457

First, appellant, whose native language is Russian, argues that trial counsel should have used an interpreter for attorney-client meetings because her limited understanding of English did not allow her to make a fully informed decision about whether to testify. Appellant has not demonstrated deficient performance or prejudice. Trial counsel testified at the evidentiary hearing that she was able to communicate with appellant, explained anything appellant did not understand, and appellant declined an interpreter for attorney-client meetings. Trial counsel obtained an interpreter for court proceedings because there would be no opportunity to explain issues appellant did not understand. The district court found trial counsel's testimony credible and that appellant could communicate effectively in English. The record supports the district court's findings. Appellant has lived in the United States for 25 years and graduated from the University of Nevada, Reno, completing courses taught in English. The district court observed appellant's language abilities in her recorded interviews with the police and during court proceedings.¹ Appellant further has not demonstrated a reasonable probability of a different outcome had trial counsel obtained an interpreter for attorney-client meetings. Therefore, the district court did not err in denying this claim.²

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measure of subjective interpretation and that he could not testify to his conclusion with any degree of scientific certainty. Given that testimony, appellant has not demonstrated trial counsel's strategy was unreasonable. *Strickland*, 466 U.S. at 690-91 (observing that strategic decisions are virtually unchallengeable). And considering the subjectivity and lack of scientific certainty in the expert's testimony during the evidentiary hearing and the substantial evidence of guilt presented at trial, appellant further fails to demonstrate a reasonable probability of a different outcome at trial had the expert testified about the trajectory of the projectiles. Therefore, the district court did not err in denying this claim.

Next, appellant argues that trial counsel should have introduced evidence of the victim's marijuana use to show how it could affect his mental and physical health. Appellant fails to demonstrate deficient performance or prejudice. Appellant did not provide any expert testimony supporting her statements about the effects of marijuana use on a person's mental and physical health, and thus, she fails to carry her burden of proof. *See Means*, 120 Nev. at 1011-13, 103 P.3d at 32-33 (recognizing that the burden of proof lies with the habeas petitioner). The jury heard testimony about marijuana use and some possible effects from the defense medical expert. Trial counsel testified at the evidentiary hearing that emphasizing the marijuana use could have hurt the case, in part because, to the extent that marijuana may affect coordination, it may have supported the State's theory that the victim could not have shot himself. Appellant fails to demonstrate that there was a reasonable probability of a different outcome had trial counsel engaged an expert and presented additional testimony about the victim's marijuana use. Therefore, we conclude that the district court did not err in denying this claim.

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Next, appellant argues that trial counsel should have objected to the testimony of the first responders on the basis that they were not qualified to give expert opinions on how long the victim had been dead, blood clotting, rigor mortis, the smell of gunpowder, the temperature of the victim's body, and observations about the gunshot holes in the couch and

wall. Appellant has not demonstrated deficient performance or prejudice. Testimony about what the first responders observed in responding to the call was admissible. NRS 48.015 (“[R]elevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.”); NRS 50.025(1)(a) (allowing for testimony based on a witness’ personal knowledge); *Burnside v. State*, 131 Nev. 371, 382, 352 P.3d 627, 636 (2015) (“A lay witness may testify to opinions or inferences that are [r]ationally based on the perception of the witness; and . . . [h]elpful to a clear understanding of the testimony of the witness or the determination of a fact in issue.” (quoting NRS 50.265)). Trial counsel presented testimony from the defense medical expert calling into question the first responders’ testimony about their observations and presented testimony calling into question the integrity of the crime scene. Appellant has not demonstrated a reasonable probability of a different outcome if trial counsel would have further challenged the first responders’ testimony. Therefore, we conclude that the district court did not err in denying this claim.

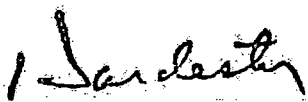
Next, appellant argues that trial counsel should have objected to a neighbor’s testimony about fights between appellant and the victim months before the victim’s death. Appellant fails to demonstrate deficient performance or prejudice. Trial counsel successfully objected to the witness sharing the contents of the argument. The State presented the testimony to rebut the defense witnesses’ description of a loving marriage and the evidence was relevant to show that appellant and the victim were having problems in their relationship and the victim was killed after an argument. See NRS 48.015 (describing relevant evidence). Further, the probative value is not substantially outweighed by the danger of unfair prejudice. See

NRS 48.035(1). Appellant has not demonstrated a reasonable probability of a different outcome had trial counsel further objected to the neighbor's testimony. Therefore, we conclude that the district court did not err in denying this claim.

Finally, appellant argues that any deficiencies in counsel's performance should be cumulated for purposes of determining prejudice. Even assuming multiple instances of deficient performance could be cumulated for purposes of demonstrating prejudice, see *McConnell v. State*, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009), as appellant has not demonstrated deficient performance, there is nothing to cumulate. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Parraguirre, J.


Hardesty, J.


Cadish, J.

cc: Hon. Nathan Tod Young, District Judge
John E. Malone
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk

CERTIFIED COPY
This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: July 20, 2020
Supreme Court Clerk, State of Nevada
By K. meetz Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

TATIANA LEIBEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

JUL 22 2020
Douglas County
District Court Clerk

RECEIVED
FILED
Supreme Court No. 77989
2020 JUL 22 AM 9:39
District Court Case No. 14-CR-0062BD

BOBBIE R. WILLIAMS
CLERK

BY ANNE DEPUTY

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 24 day of June, 2020.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
July 20, 2020.

Elizabeth A. Brown, Supreme Court Clerk

By: Kaitlin Meetze
Administrative Assistant

RECEIVED

NOV 09 2020

FILED

1 Tatiana Leibel # 1137968 Douglas County District Court Clerk
2 Florence McClure Women's Correctional Center
3 4370 Smiley Road
4 Las Vegas, NV 89115

NO _____

20 NOV -9 P1:23

5 In the 9 Judicial District Court of the State of Nevada

6 In and for the County of Douglas BOBBIE R. WILLIAMS
7 CLERK
8 DEPUTY

9 In the matter of:

10 Tatiana Leibel)
11 Plaintiff/Petitioner)
12 V.)
13 The State of Nevada)
14 Defendant/Respondent)

Case No: 14CR0062 BD /

Dept. No: SC 77989

DATA OF Hearing: _____

Time OF Hearing: _____

NOTICE OF MOTION

15 Please take notice that the Petitioner, Tatiana Leibel,
16 a pro se litigant, will bring on for hearing the above-
17 named Motion for Petition for writ of Habeas Corpus
18 (2nd post-conviction) of this Court as soon as the
19 matter may be heard by the Court.

20 Please take notice that your failure to oppose
21 and/or to otherwise respond to Petitioner's motion
22 will be deemed as the consenting to and/or the
23 granting of Petitioner's motion.

24 Dated this 27 day of October, 2020

25 Respectfully submitted,

26 Tatiana Leibel
27
28

1 Tatiana Leibel # 1137908
2 Florence McClure Women's Correctional Center
3 4370 Smiley Road
4 Las Vegas, NV 89115

5 In the 9 Judicial District Court of the State of Nevada
6 In and for the County of Douglas

7 In the matter of:

8 Tatiana Leibel
9 Plaintiff/Petitioner
10 V.
11 The State of Nevada
12 Defendant/Respondent

Case No: 14 CR 0062 BD/

Dept. No: SC 779 89

13 MOTION FOR PETITION FOR Writ OF HABEAS CORPUS (2nd post-conviction)

14 Now Comes Petitioner, Tatiana Leibel, a pro se
15 litigant in the above-captioned matter and submits
16 to this Honorable Court a Petition for Writ of Habeas
17 Corpus (2nd post-conviction) based on papers and plea-
18 dings on FILE herein and the Petitioner's attached
19 Affidavit's and Exhibit's.

20
21 Dated this 27 day of October, 2020

22 Respectfully submitted,

23 

24 Tatiana Leibel

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DECLARATION UNDER PENALTY OF PERJURY

I, the undersigned, understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury.

I declare, under the penalty of perjury under the laws of the United States of America, that the above and/or foregoing information is accurate, correct and true to the best of my knowledge, executed within the terms of ¹NRS 171.102 and ²NRS 208.165. See ³28 U.S.C. 1746 and 18 U.S.C. 1621.

Dated this 27 day of October, 2020

[Signature]
Signature

1137908
Nevada Department of Corrections #

¹ NRS 171.102

² NRS 208.165

³ 28 U.S.C.

§1746. Unsworn declarations under penalty of perjury

18 U.S.C.

§ 1621. Perjury generally

RECEIVED

NOV 09 2020

FILED

Tatiana Leibel

1137908

Douglas County
Florence McClure Women's Correctional Center
4370 Smiley Road
Las Vegas, NV 89115

NO

20 NOV -9 P1:24

In the 9 Judicial District Court of the State of Nevada

In and for the County of Douglas

BOBBIE R. WILLIAMS

BY [Signature] DEPUTY

In the matter of:

Tatiana Leibel

Plaintiff/Petitioner

V.

The State of Nevada

Defendant/Respondent

Case No: 14 CR 0062801

Dept. No: SC 77989

DATE OF HEARING:

TIME OF HEARING:

NOTICE OF MOTION

Please take notice that the Petitioner, Tatiana Leibel, a pro se litigant, will bring on for hearing the above-named Motion for Petition to Establish Factual Innocence of this Court as soon as the matter may be heard by the Court.

Please take notice that your failure to oppose and/or to otherwise respond to Petitioner's motion will be deemed as the consenting to and/or the granting of Petitioner's motion.

Dated this 27 day of October, 2020

Respectfully submitted,
[Signature]
Tatiana Leibel

1 Tatiana Leibel # 1137908
2 Florence McClure Women's Correctional Center
3 4370 Smiley Road
4 Las Vegas, NV 89115

5 In the 9 Judicial District Court of the State of Nevada
6 In and for the County of Douglas

7 In the matter of:

8 Tatiana Leibel)
9 Plaintiff/Petitioner)
10 V.)
11 The State of Nevada)
12 Defendant/Respondent)

Case No: ACK0062 BD/


Dept. No: SC 77989

13 MOTION FOR PETITION TO ESTABLISH FACTUAL INNOCENCE

14 New Comes Petitioner, Tatiana Leibel, a prose
15 litigant in the above-captioned matter and sub-
16 mits to this Honorable Court a Petition to Estab-
17 lish Factual Innocence based on papers and plea-
18 dings on FILE herein and the Petitioner's attached
19 Affidavit's according NRS 34.900-34.990.

20 Dated this 27 day of October, 2020

21 Respectfully submitted,

22 

23 Tatiana Leibel

DECLARATION UNDER PENALTY OF PERJURY

I, the undersigned, understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury.

I declare, under the penalty of perjury under the laws of the United States of America, that the above and/or foregoing information is accurate, correct and true to the best of my knowledge, executed within the terms of ¹NRS 171.102 and ²NRS 208.165. See ³28 U.S.C. 1746 and 18 U.S.C. 1621.

Dated this 27 day of October, 2010

Signature

1137908
Nevada Department of Corrections #

¹ NRS 171.102

² NRS 208.165

³ 28 U.S.C.

§1746. Unsworn declarations under penalty of perjury

18 U.S.C.

§ 1621. Perjury generally

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

In The 9 Judicial District Court of the State of Nevada
In and for the County of Douglas

In the matter of:

Tatiana Leibel)
Plaintiff/Petitioner)
The State of Nevada)
Defendant/Respondent)

Case No: 14CR0062BD

Dept No.: _____

REQUEST FOR SUBMISSION OF MOTION

It is requested that the Motion for

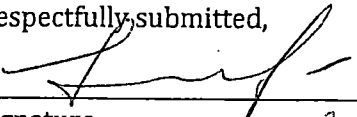
Petition to Establish Factual Innocence

which was filed on the ____ day of October, 2020, in the above-entitled matter be submitted
to the Court for decision.

The undersigned certifies that a copy of this request has been mailed to all counsel of record.

Dated this 27 day of October, 2020

Respectfully submitted,



Signature

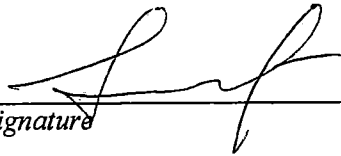
Tatiana Leibel
Print Name

DECLARATION UNDER PENALTY OF PERJURY

I, the undersigned, understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury.

I declare, under the penalty of perjury under the laws of the United States of America, that the above and/or foregoing information is accurate, correct and true to the best of my knowledge, executed within the terms of ¹NRS 171.102 and ²NRS 208.165. See ³28 U.S.C. 1746 and 18 U.S.C. 1621.

Dated this 27 day of October, 2010


Signature

1137908
Nevada Department of Corrections ID #

¹ NRS 171.102

² NRS 208.165

³ 28 U.S.C.

§1746. Unsworn declarations under penalty of perjury

18 U.S.C.

§ 1621. Perjury generally

RECEIVED

FILED

NOV 09 2020

NO

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

Douglas County
District Court Clerk

20 NOV -9 P1:24

In the 9 Judicial District Court of the State of Nevada

In and for the County of

Douglas

ROBBIE R. WILLIAMS
CLERK
DEPUTY

In the matter of:

Tatiana Leibel)
Plaintiff/Petitioner)
v. The State of Nevada)
Defendant/Respondent)

Case No: 14-CR-0062 BD

Dept No.: SC # 77989

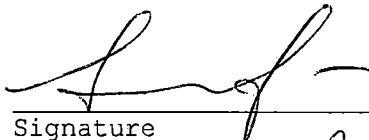
MOTION TO WITHDRAW COUNSEL

COMES NOW Defendant, Tatiana Leibel, In Proper
Person and hereby moves this Honorable Court for an ORDER granting her
permission to withdraw her present counsel of record in the proceeding
action.

This Motion is made and based upon all papers, pleadings, and exhibits
on file with the Court which are hereby incorporated by this reference, the
Points and Authorities herein, and attached Affidavit of Defendant.

Dated this 27 day of October, 2020

Respectfully submitted,



Signature

Tatiana Leibel
Print Name

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1 POINTS AND AUTHORITIES

2 NRS 7.055 states in pertinent part:

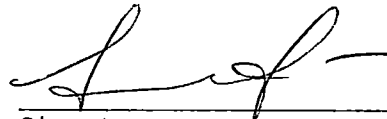
- 3 1. An attorney who has been discharged by his client shall
4 upon demand and payment of the fee due from the client,
5 immediately deliver to the client all papers, documents,
6 pleadings and items of tangible personal property which
7 belong to or were prepared for that client.
8 2. ...If the court finds that an attorney has, without just
9 cause, refused or neglected to obey its order given under
10 this section, the court may, after notice and fine or
11 imprison him until contempt purged. If the Court finds
12 that the attorney has, without just cause, withheld the
13 client's papers, documents, pleadings, or other property,
14 the attorney is liable for costs and attorney's fees.

15 Counsel in the above-entitled case was court-appointed due to
16 Defendant's indigence. Defendant does not owe counsel any fees.

17 WHEREFORE, Defendant prays this Honorable Court, **GRANT** her Motion to
18 Withdraw Counsel and that counsel deliver Defendant all papers, documents,
19 pleadings, discovery and any other tangible property which belong to or were
20 prepared for the Defendant to allow Defendant the proper assistance that is
21 needed to insure that justice is served.

22 Dated this 27 day of October, 2020

23 Respectfully submitted,

24 

25 Signature

26 Tatiana Leibel
27 Print Name
28

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

In The 9 Judicial District Court of the State of Nevada
In and for the County of Douglas

In the matter of:

Tatiana Leibel
Plaintiff/Petitioner

Case No: 14-CR-0062 BD/

The State of Nevada
Defendant/Respondent

Dept No.: SC 77989

AFFIDAVIT

STATE OF NEVADA)

COUNTY OF Douglas)

1. I am the ☒ Plaintiff/Petitioner ☐ Defendant/Respondent in the above entitled action. I have personal knowledge of the facts contained in the above-entitled case and am competent to testify to these facts.
2. My personal knowledge or personal observations of the situation is/are as follows:

According to "ORDER OF AFFIRMANCE" from Supreme Court of Nevada #77989 June 24, 2020, I prays this Honorable Court, GRANT my motion to withdraw Counsel was court-appointed (John E. Malone), who a write of Habeas Corpus 1st Post-conviction Petition and Appeal. (see attachment). Post-conviction counsel failed to challenge the trial counsel's ineffectiveness and to present the new experts and evidence.

Attachment

TATIANA LEIBEL, Appellant, vs. THE STATE OF NEVADA, Respondent.
SUPREME COURT OF NEVADA
2020 Nev. Unpub. LEXIS 619
No. 77989
June 24, 2020, Filed

Notice:

NOT DESIGNATED FOR PUBLICATION. PLEASE CONSULT THE NEVADA RULES OF APPELLATE PROCEDURE FOR CITATION OF UNPUBLISHED OPINIONS.

Editorial Information: Prior History

Leibel v. State, 131 Nev. 1312, 2015 Nev. Unpub. LEXIS 1510 (Dec. 18, 2015)

Judges: Parraguirre, J., Hardesty, J., Cadish, J.

Opinion

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

Appellant claims that the district court erred in denying her claims of ineffective assistance of counsel. To prove ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, appellant, whose native language is Russian, argues that trial counsel should have used an interpreter for attorney-client meetings because her limited understanding of English did not allow her to make a fully informed decision about whether to testify. Appellant has not demonstrated deficient performance or prejudice. Trial counsel testified at the evidentiary hearing that she was able to communicate with appellant, explained anything appellant did not understand, and appellant declined an interpreter for attorney-client meetings. Trial counsel obtained an interpreter for court proceedings because there would be no opportunity to explain issues appellant did not understand. The district court found trial counsel's testimony credible and that appellant could communicate effectively in English. The record supports the district court's findings. Appellant has lived in the United States for 25 years and graduated from the University of Nevada, Reno, completing courses taught in English. The district court observed appellant's language abilities in her recorded interviews with the police and during court proceedings.¹ Appellant further has not demonstrated a reasonable probability of a different outcome had trial counsel obtained an interpreter for attorney-client meetings. Therefore, the district court did not err in denying this claim.²

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Next, appellant argues that trial counsel should have objected to S. Oren's testimony that he was afraid for the victim's life and warned the victim that appellant may kill him. Although trial counsel objected several times on the grounds of relevance and speculation, appellant argues that trial counsel should have argued that this testimony constituted prior-bad-act evidence, hearsay, and the evidence had not been disclosed by the State. Appellant also argues that trial counsel should have cross-examined Oren about the statement. Appellant fails to demonstrate deficient performance or prejudice. The district court determined that this testimony did not involve a prior bad act, and appellant has not demonstrated otherwise. See NRS 48.045(2) (describing prior-bad-act evidence). Appellant has not demonstrated any discovery violation regarding this statement. See *Bradley v. Eighth Judicial Dist. Court*, 133 Nev. 754, 759, 405 P.3d 668, 673 (2017) (recognizing that there is not a general constitutional right to discovery); cf. NRS 174.235(1)(a) (providing that the prosecuting attorney shall permit the defendant to inspect and copy any written or recorded statements). Appellant has not made any cogent argument regarding hearsay, and it is unclear that she made this argument in the proceedings below. See *Maresca v. State*, 103 Nev. 669, 672-73, 748 P.2d 3, 6 (1987). Appellant has also not shown what testimony cross-examination on this subject would have elicited, let alone that cross-examination would have elicited favorable testimony. Finally, appellant has not demonstrated that there was a reasonable probability of a different outcome had trial counsel further challenged the testimony given the substantial evidence of guilt presented at trial. Therefore, the district court did not err in denying this claim.³

Next, appellant argues that trial counsel should have provided proper notice that the defense forensic expert would testify about his trajectory conclusion. Appellant fails to demonstrate deficient performance or prejudice. When the State objected to a question that might elicit the defense expert's conclusion about the trajectory of the projectiles, trial counsel stated that she did not intend to have the expert provide a trajectory conclusion. Rather, trial counsel presented the expert to challenge the methodology and reliability of the State's expert and explain that there was insufficient information to make a trajectory conclusion. Although the same defense expert offered a trajectory conclusion at the postconviction evidentiary hearing, he agreed that trajectory analysis involves some measure of subjective interpretation and that he could not testify to his conclusion with any degree of scientific certainty. Given that testimony, appellant has not demonstrated trial counsel's strategy was unreasonable. *Strickland*, 466 U.S. at 690-91 (observing that strategic decisions are virtually unchallengeable). And considering the subjectivity and lack of scientific certainty in the expert's testimony during the evidentiary hearing and the substantial evidence of guilt presented at trial, appellant further fails to demonstrate a reasonable probability of a different outcome at trial had the expert testified about the trajectory of the projectiles. Therefore, the district court did not err in denying this claim.

Next, appellant argues that trial counsel should have introduced evidence of the victim's marijuana use to show how it could affect his mental and physical health. Appellant fails to demonstrate deficient performance or prejudice. Appellant did not provide any expert testimony supporting her statements about the effects of marijuana use on a person's mental and physical health, and thus, she fails to carry her burden of proof. See *Means*, 120 Nev. at 1011-13, 103 P.3d at 32-33 (recognizing that the burden of proof lies with the habeas petitioner). The jury heard testimony about marijuana use and some possible effects from the defense medical expert. Trial counsel testified at the evidentiary hearing that emphasizing the marijuana use could have hurt the case, in part because, to the extent that marijuana may affect coordination, it may have supported the State's theory that the victim could not have shot himself. Appellant fails to demonstrate that there was a reasonable probability of a different outcome had trial counsel engaged an expert and presented additional testimony about the victim's marijuana use. Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant argues that trial counsel should have presented expert testimony about suicidal

ideation to educate the jury about the complexities of suicide. Appellant notes that trial counsel was aware from multiple sources of the victim's suicidal threats and health issues. Appellant fails to demonstrate deficient performance or prejudice. Again, appellant presented no such testimony at the evidentiary hearing to support this claim. Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant argues that trial counsel should have presented testimony to humanize her because she did not testify. Appellant argues that her daughters could have testified that she was a loving wife and mother, supportive partner, and loved member of her community. Appellant has not demonstrated deficient performance or prejudice. Again, at the evidentiary hearing, appellant did not present testimony from any witnesses to support this claim. And trial counsel testified concern with the potential testimony of appellant's daughters regarding prior bad acts and information that would run counter to the close-family defense. At trial, appellant presented testimony from friends about their positive observations of the defendant's relationship with the victim. Appellant has not demonstrated a reasonable probability of a different outcome had trial counsel presented additional evidence given the substantial evidence presented at trial. Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant argues that trial counsel should have objected to the testimony of the first responders on the basis that they were not qualified to give expert opinions on how long the victim had been dead, blood clotting, rigor mortis, the smell of gunpowder, the temperature of the victim's body, and observations about the gunshot holes in the couch and wall. Appellant has not demonstrated deficient performance or prejudice. Testimony about what the first responders observed in responding to the call was admissible. NRS 48.015 ("[R]elevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence."); NRS 50.025(1)(a) (allowing for testimony based on a witness' personal knowledge); *Burnside v. State*, 131 Nev. 371, 382, 352 P.3d 627, 636 (2015) ("A lay witness may testify to opinions or inferences that are 'Nationally based on the perception of the witness; and . . . [h]elpful to a clear understanding of the testimony of the witness or the determination of a fact in issue.'" (quoting NRS 50.265)). Trial counsel presented testimony from the defense medical expert calling into question the first responders' testimony about their observations and presented testimony calling into question the integrity of the crime scene. Appellant has not demonstrated a reasonable probability of a different outcome if trial counsel would have further challenged the first responders' testimony. Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant argues that trial counsel should have objected to a neighbor's testimony about fights between appellant and the victim months before the victim's death. Appellant fails to demonstrate deficient performance or prejudice. Trial counsel successfully objected to the witness sharing the contents of the argument. The State presented the testimony to rebut the defense witnesses' description of a loving marriage and the evidence was relevant to show that appellant and the victim were having problems in their relationship and the victim was killed after an argument. See NRS 48.015 (describing relevant evidence). Further, the probative value is not substantially outweighed by the danger of unfair prejudice. See NRS 48.035(1). Appellant has not demonstrated a reasonable probability of a different outcome had trial counsel further objected to the neighbor's testimony. Therefore, we conclude that the district court did not err in denying this claim.

Finally, appellant argues that any deficiencies in counsel's performance should be cumulated for purposes of determining prejudice. Even assuming multiple instances of deficient performance could be cumulated for purposes of demonstrating prejudice, see *McConnell v. State*, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009), as appellant has not demonstrated deficient performance, there is nothing to cumulate. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

/s/ Parraguirre, J.

Parraguirre

/s/ Hardesty

Hardesty

/s/ Cadish

Cadish

Footnotes

1

The district court canvassed appellant about her right to testify, and she affirmatively indicated she did not want to testify. Trial counsel testified that she advised appellant not to testify because of concerns regarding prior bad acts, and appellant has not demonstrated that she did not understand counsel's advice.

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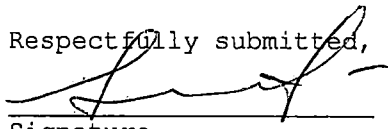
Appellant's related argument that the district court abused its discretion in not allowing a certified Russian-English interpreter to testify as an expert regarding appellant's understanding of English is without merit. The district court determined that the interpreter did not have information that would assist it in evaluating appellant's ability to understand English during attorney-client meetings. NRS 50.275 ("If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge, skill, experience, training or education may testify to matters within the scope of such knowledge."). The witness, while qualified as an interpreter, did not perform any testing, only vaguely referred to standards in evaluating language competence, and did not detail any specialized knowledge or training in evaluating a person's language abilities from watching videos, observing interviews, or in making a determination about cultural influences on an interview with a non- English speaker. The district court watched the same videos and observed appellant in the courtroom, including at trial. Therefore, we conclude the district court did not abuse its discretion. *Perez v. State*, 129 Nev. 850, 856, 313 P.3d 862, 866 (2013) ("We review a district court's decision to allow expert testimony for an abuse of discretion.").

3

Appellant's argument that appellate counsel was ineffective in failing to challenge the admissibility of this testimony as a prior bad act fails for the same reasons discussed above. See *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996) (requiring a petitioner to demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have had a reasonable probability of success on appeal); see also *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 94-95 (2003) (stating that plain error requires a demonstration of error, that the error was plain, and that the error affected the defendant's substantial rights).

Dated this 27 day of October, 2020.

Respectfully submitted,


Signature

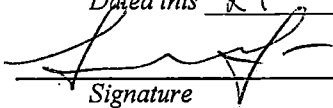
Tatiana Leibel
Printed Name

DECLARATION UNDER PENALTY OF PERJURY

I, the undersigned, understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury.

I declare, under the penalty of perjury under the laws of the United States of America, that the above and/or foregoing information is accurate, correct and true to the best of my knowledge, executed within the terms of ¹NRS 171.102 and ²NRS 208.165. See ³28 U.S.C. 1746 and 18 U.S.C. 1621.

Dated this 27 day of October, 2020


Signature

1137908
Nevada Department of Corrections ID #

¹ NRS 171.102

² NRS 208.165

³ 28 U.S.C.

§1746. Unsworn declarations under penalty of perjury

18 U.S.C.

§ 1621. Perjury generally

1 Florence McClure Women's Correctional Center
4370 Smiley Rd.
2 Las Vegas, NV 89115

3 In the 9 Judicial District Court of the State of Nevada

4 In and for the County of Douglas

5 In the matter of:

6 Tatiana Leibel)
Plaintiff/Petitioner)

Case No: 14-CR-0062BD

7 v. The State of Nevada)
8 Defendant/Respondent)

Dept No.: SC #77989

9 ORDER TO WITHDRAW COUNSEL

10 The Proper Person Motion of Defendant, requesting an Order to Withdraw
11 Counsel in the above entitled action having moved the Court on this day, and
12 in good cause appearing.

13 IT IS HEREBY ORDERED, that Defendant's Motion to Withdraw Counsel is
14 GRANTED.

15 IT IS HEREBY ORDERED that Counsel deliver to Defendant at her address,
16 all documents, papers, pleadings, discovery, and any other tangible property
17 in the above-entitled case.

18 Dated this _____ day of _____, 20____
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23 DISTRICT COURT JUDGE
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