

FILED

SEP 12 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

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

SUPREME COURT OF THE STATE OF NEVADA

In the matter of:

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

Case No: 84920  
Dept. No: \_\_\_\_\_

Motion to Compel

New Comes Petitioner, Tatiana Leibel, a pro se litigant in the above-captioned matter and submits to this Honorable Court a Motion to Compel.

This Motion is made and based upon all papers and pleadings on file herein, points and authorities, and attachment.

Dated this 6 day of September, 2022

Respectfully submitted,

*[Signature]*  
Tatiana Leibel

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ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

## Points and Authorities

On September 2, 2022, Appellant received from the 9<sup>th</sup> Judicial District Court the "Index of Pleadings".

The district court has failed to obey the Supreme Court's "Order directing transmission of record and regarding briefing" under a violation of the conduct clearly improperly <sup>on</sup> purposed that have no merit of the partial answers to discovery as appellant's informal brief that were misleading.

Additionally, the district court "HELD the Discovery" of the interrogatories when the principle appeared in the rules themselves.

However, the district court did not include the "Index of Pleadings" as follow (see attachment):

1) "Affidavit" of the arrest, investigator E. Garren, 2-24-2014, (according informal brief "...that affected the verdict were one of the elements of offense legality of the arrest under violation NRS 199.130 was not submitted to the jury, and the false statement about outside crime scene cameras that was insufficient to support that element);

2) "Order" for dismiss, honorable district judge T. Young, 6-6-2022, (according the order, first paragraph, "The motion to dismiss is not opposed by petitioner, with two months having passed since the motion was served upon petitioner by mail on to different occasions");

3) "Motion to dismiss pro per third post-conviction petition for a writ of habeas corpus", district attorney M. Jackson, 3-30-2022, (according informal brief "Appellant receives from

## Points and Authorities

1 the State two Motions, word by word, first motion filed on  
2 3-30-2022 and second on 4-5-2022);

3  
4 4) "Protocol" for moved the furniture, law enforcement the  
5 crime scene, 2-23-2014,  
6 (according informal brief "...in order for the evidence to facilitate the  
7 State's theory of the crime, resulting in the initial stage prosecution  
8 of the Appellant, the end table and coffee table were moved from  
9 their original location, to a location that created the space in bet-  
10 ween to physically allow the access needed to commit the crime  
11 according to the State's theory the photographs in 3<sup>rd</sup> petition of the  
12 exhibits clearly display this (fundamentally miscarriage of justice.");

13  
14 5) "Protocol" for moved the weapon, investigator E. Garren, 2-23-2014,  
15 (according newly discovered evidence, the photographs in 3<sup>rd</sup> petition of  
16 the exhibits clearly display the four photos of the weapon in four  
17 different positions, supported by the four unknown samples of  
18 DNA were collected by the State, by a swabbing of the hammer trig-  
19 ger and strap of the weapon including one unknown print); and

20  
21 6) "Protocol" for telephonic search warrants, the report to Media  
22 by the district attorney T. Gregory on 2-26-2015,  
23 (according informal brief "...the manual record of telephone activity was  
24 produced and used by the State, negating the actual use records, which  
25 resulted in the loss of one hour where prosecutor used during clo-  
26 sing argument to the central issues intended to inflame the pas-  
27 sions of the jury that affected the verdict".)

CERTIFICATE OF MAILING

STATE OF NEVADA

COUNTY OF Supreme Court of Nevada

I am the ☒ Plaintiff/Petitioner ☐ Defendant/Respondent \_\_\_\_\_

Tatiana Leibel for Case No: 84920

On this 6 day of September, 2022, I mailed a copy of the

Following document(s):

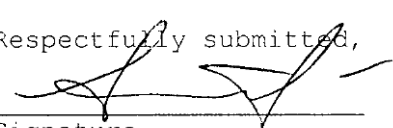
1. Motion to Compel
2. Attachment (pages 94)
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

By United States First Class Mail, to the following addresses:

1. Clerk of Court  
Supreme Court of Nevada  
201 S. Carson Street, Suite 201  
Carson City, NV 89701
2. Attorney General - Nevada  
100 N. Carson St.  
Carson City, NV 89701
3. Clerk of Court & DA  
Douglas County District Court  
P.O. Box 218  
Minden, NV 89423

Dated this 6 day of September, 2022.

Respectfully submitted,

  
Signature

Tatiana Leibel  
Printed Name



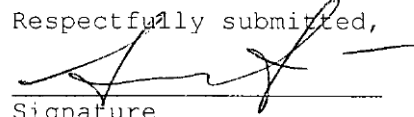
1 Petitioner's constitutional rights have been violated under uncon-  
2 stitutional motivating factors, where clearly shown deliberately con-  
3 cerned of the numerous actions and failure to act amounted to a  
4 deprivation of a right. Also shown specifically how an interroga-  
5 tory is "overly broad" where district court's "Index of Pleadings" was  
6 disobeyed, a law for a pattern of conduct ~~by~~ <sup>NOT</sup> answering to "INITIAL"  
7 discovery.

8 Petitioner request that the interrogatory need not be answer-  
9 ed until designated discovery is complete. For the foregoing  
10 reasons, the Honorable Supreme Court should grant Peti-  
11 tioner's Motion to Compel.

12 This document does not contain the personal information of  
13 any person as defined by MNRS 603A.040

14 Dated this 6 day of September, 2022.

15 Respectfully submitted,

16   
Signature

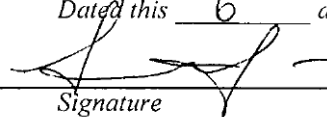
17 Tatiana Leibel  
18 Printed Name

19 DECLARATION UNDER PENALTY OF PERJURY

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

22 I declare, under the penalty of perjury under the laws of the United States of America,  
23 that the above and/or foregoing information is accurate, correct and true to the best of my knowledge, executed  
24 within the terms of <sup>1</sup>NRS 171.102 and <sup>2</sup>NRS 208.165. See <sup>3</sup>28 U.S.C. 1746 and 18 U.S.C. 1621.

25 Dated this 6 day of September, 2022

26   
Signature

27 1137908  
28 Nevada Department of Corrections ID #

26 <sup>1</sup> NRS 171.102

27 <sup>2</sup> NRS 208.165

28 <sup>3</sup> 28 U.S.C.

<sup>1</sup> 1746. Unsworn declarations under penalty of perjury  
18 U.S.C.

§ 1621. Perjury generally

1 This document does not contain the personal information of any person as  
2 defined by NRS 603A.40.

3  
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5 I, the undersigned, understand that a false statement or answer to any  
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7 I declare, under the penalty of perjury under the laws of  
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11 1621.

12 Dated this 6 day of September, 2022

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25  
26  
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28  
Signature

1137908  
Nevada Department of Corrections ID #

<sup>1</sup> NRS 171.102

<sup>2</sup> NRS 208.165

<sup>3</sup> 28 U.S.C.

§1746. Unsworn declarations under penalty of perjury

18 U.S.C.

§ 1621. Perjury generally

Attachment (pages 94)

CASE NUMBER 84920

EXHIBIT I

Order - "writ petition is dismissed" / 6-6-22  
District Judge N. Tod Young

1 Case No. 2014-CR-00062-B

2 Dept. No. I

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JUN - 6 2022

Douglas County  
District Court Clerk

FILED

2022 JUN -6 PM 3:43

BOBBIE R. WILLIAMS  
CLERK

BY D. GOELZ 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 v.

**ORDER**

12 THE STATE OF NEVADA,

13 Respondent.  
14 \_\_\_\_\_/

15 THIS MATTER comes before the court upon Petitioner Tatiana Leibel's "3th -  
16 Petition for Writ of Habeas Corpus (Post-Conviction)/(Factual Innocence)" and the State's  
17 "Motion to Dismiss Pro Per Third Post-Conviction Petition for a Writ of Habeas Corpus."  
18 The motion to dismiss is not opposed by petitioner, with two months having passed since  
19 the motion was served upon petitioner by mail on two different occasions.  
20

21 Reviewing the petition substantively, petitioner re-asserts her innocence. In doing  
22 so, defendant offers her own theories of the case similar to those she has alleged in past  
23 petitions, arguing her belief that the evidence of record is insufficient for a reasonable jury  
24 to have convicted her based upon the 'beyond a reasonable doubt' standard. The court  
25 finds few new arguments in petitioner's self-acknowledged and self-titled successive  
26 petition. For the most part, petitioner re-argues her case and some of the issues raised in  
27 past petitions.  
28

1 Pursuant to NRS 34.745(4),

2 [i]f the petition is a second or successive petition challenging the validity of a  
3 judgment of conviction or sentence and if it plainly appears from the face of the petition or  
4 an amended petition and documents and exhibits that are annexed to it, or from records of  
5 the court that the petitioner is not entitled to relief based on any of the grounds set forth in  
6 subsection 2 of NRS 34.810, the judge or justice shall enter an order for its summary  
7 dismissal and cause the petitioner to be notified of the entry of the order.

8 According to NRS 34.810(1-3),

9 1. The court shall dismiss a petition if the court determines that:

10 (b) The petitioner's conviction was the result of a trial and the grounds for the  
11 petition could have been:

12 (1) Presented to the trial court;

13 (2) Raised in a direct appeal or a prior petition for a writ of habeas  
14 corpus or postconviction relief; or

15 (3) Raised in any other proceeding that the petitioner has taken to secure  
16 relief from the petitioner's conviction and sentence,

17 unless the court finds both cause for the failure to present the grounds and actual prejudice  
18 to the petitioner.

19 2. A second or successive petition must be dismissed if the judge or justice determines that  
20 it fails to allege new or different grounds for relief and that the prior determination was on the  
21 merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the  
22 petitioner to assert those grounds in a prior petition constituted an abuse of the writ.

23 3. Pursuant to subsections 1 and 2, the petitioner has the burden of pleading and proving  
24 specific facts that demonstrate:

25 (a) Good cause for the petitioner's failure to present the claim or for presenting the claim  
26 again; and

27 (b) Actual prejudice to the petitioner.

28 Pursuant to *Mitchell v. State*,

A post-conviction petition for a writ of habeas corpus must be filed within one  
year after the entry of the judgment of conviction or, if a timely appeal is taken from the  
judgment, within one year after this court issues its remittitur. Further, a second or  
successive petition must be dismissed if it fails to allege new or different grounds for relief  
and the prior determination was on the merits, or, if new and different grounds are alleged,  
the petitioner's failure to allege them in the prior petition(s) constitutes an abuse of the  
writ. A petitioner can overcome the bar to an untimely or successive petition by showing  
good cause and prejudice.

*Mitchell v. State*, 122 Nev. 1269, 1273, 149 P.3d 33, 35-36 (2006) (footnotes and citations

1 omitted).

2 “To show good cause, a petitioner must demonstrate that an ‘impediment external  
3 to the defense’ prevented h[er] from complying with the procedural rules.” *Brown v*  
4 *McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014) (citations omitted).

5  
6 Within Ms. Leibel’s third post-conviction petition to issue a writ of habeas corpus,  
7 an impediment external to the defense which prevented Ms. Leibel from complying with  
8 procedural rules is not addressed. Thus, to the extent any new grounds or new theories are  
9 alleged within the petition, they could have been raised during prior proceedings; the court  
10 finds the failure to have done so constitutes an abuse of the writ. As a matter of record,  
11 prior determinations regarding preceding petitions have been on the merits.

12  
13 As determined while addressing Ms. Leibel’s prior petitions, the court finds no  
14 good cause or actual prejudice, including factual innocence or a fundamental miscarriage  
15 of justice, to otherwise excuse the procedural or time limitations presented. Furthermore,  
16 without having presented actual new evidence, Tatiana Leibel cannot demonstrate that it is  
17 more likely than not that no reasonable juror would have convicted her in light of any new  
18 evidence.

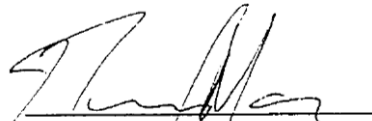
19  
20 Finally, as proffered within the State’s motion to dismiss, at page 2, lines 22 - 23,  
21 Ms. Leibel filed her third petition to issue a writ of habeas corpus, post-conviction, more  
22 than five years after the Nevada Supreme Court issued remittitur from her direct appeal.  
23 There is no indication within the petition that the delay is not the fault of the petitioner.  
24 The court determines, based upon the findings set forth herein, that dismissal of the  
25 petition as untimely will not unduly prejudice the petitioner, having been previously  
26 convicted by a jury of her peers, with that conviction upheld in multiple instances  
27  
28

1 afterward. The third post-conviction petition is untimely as it was filed well beyond the  
2 one year time limit triggered by the Nevada Supreme Court issuing remittitur following  
3 Ms. Leibel's direct appeal of her conviction, NRS 34.726(1), and no good cause for the  
4 delay is present.

5  
6 THEREFORE, for the reasons stated herein, Tatiana Leibel's third, successive writ  
7 petition is DISMISSED; the State's motion to dismiss is GRANTED.

8 IT IS SO ORDERED.

9 Dated this 6 day of June, 2022.

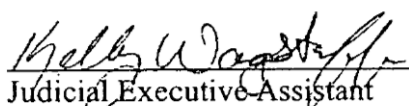
10  
11   
12 NATHAN TOD YOUNG  
District Judge

13 Copies served this 6 day of June, 2022, to:

14 Douglas County District Attorney  
15 via hand delivery

16 Tatiana Leibel, #1137908  
17 Florence McClure Womens Correctional Center  
18 4370 Smiley Road  
Las Vegas, NV 89115

19 Nevada Attorney General  
20 100 N. Carson St.  
Carson City, NV 89701

21   
22 Judicial Executive Assistant  
23  
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APR - 5 2022

Douglas County  
District Court Clerk

2022 APR -5 PM 4:34

CLERK WILLIAMS  
CLERK

M. CARNEY DEPUTY

Case No. 14-CR-00062 B

Dept. No. I

DA 14-343M

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

TATIANA LEIBEL,

Petitioner,

v.

THE STATE OF NEVADA,

Respondent.

**MOTION TO DISMISS PRO PER  
THIRD POST-CONVICTION  
PETITION FOR A WRIT OF  
HABEAS CORPUS**

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

Following the jury trial, 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. Leibel appealed and her conviction was affirmed on December 18, 2015. Remittitur issued on January 12, 2016. Less than a year later Leibel 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. This Court appointed post-conviction counsel on November 28, 2016 and a counseled post-



CASE NUMBER 84920

**EXHIBIT** II

Motion to dismiss / filed 4-5-22  
District Attorney

1 conviction supplemental petition was filed on February 26, 2018. This appointment was  
2 discretionary. NRS 34.750(1). An order denying all of the claims in Leibel's post-conviction  
3 petition for a writ of habeas corpus was issued on December 20, 2018. A timely appeal was  
4 filed in the district court on January 18, 2019. An Order of Affirmance was issued on June, 24,  
5 2020. Remittitur was received by this Court on July 22, 2020. A Second Post-Conviction  
6 Petition for a Writ of Habeas Corpus was filed pro se on November 9, 2020 and January 4,  
7 2021. The second post-conviction petition was dismissed by the Ninth Judicial District Court  
8 in an order issued on January 22, 2021. The district court's decision was affirmed by the  
9 Nevada Supreme Court on December 17, 2021, where the Court agreed that the petition was  
10 untimely, successive, and an abuse of the writ, and appellant did not allege good cause to  
11 excuse the procedural bars. The Court further concluded that appellant did not demonstrate  
12 actual innocence. A remittitur issued on February 14, 2022.

13  
14  
15 Leibel now files a Third Post-Conviction Petition for a Writ of Habeas Corpus pro se.  
16 The petition is second or successive and it plainly appears from the face of the petition that the  
17 petitioner is not entitled to relief and it should be summarily dismissed. NRS 34.745(4).  
18 "Nevada's post-conviction statutes contemplate the filing of one post-conviction petition to  
19 challenge a conviction or sentence." *Brown v. McDaniel*, 130 Nev. 565, 572, 331 P.3d 867,  
20 872 (2014)

21  
22 Leibel filed this petition more than five years after the Nevada Supreme Court issued  
23 remittitur from her direct appeal. Thus, Leibel's petition is untimely filed. *See* NRS 34.726(1).  
24 Moreover, Leibel's petition is successive and/or contains grounds that could have been raised  
25 in a different prior proceeding. *See* NRS 34.810(1)(b) and (2). Nevada's procedural bars are  
26 mandatory. *See, e.g., Clem v. State*, 119 Nev. 615, 623 n. 43, 81 P.3d 521, 527 n.43 (2003).  
27  
28

1 Leibel's petition is procedurally barred absent a demonstration of good cause and  
2 prejudice. *See* NRS 34.726(1); NRS 34.810(3). She failed to demonstrate good cause or  
3 prejudice in her petition. *See, e.g., Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870  
4 (2014) ("We have consistently held that the ineffective assistance of post-conviction counsel in  
5 a noncapital case may not constitute 'good cause' to excuse procedural defaults."); (*State v.*  
6 *Haberstroh*, 119 Nev. 173, 180–81, 69 P.3d 676, 681–82 (2003) (recognizing that NRS chapter  
7 34 requires a demonstration of good cause on the face of the petition). She also failed to  
8 demonstrate actual innocence. Where, as here, Leibel does not provide any "new" evidence,  
9 she cannot demonstrate that "it is more likely than not that no reasonable juror would have  
10 convicted him in light of ... new evidence." *Calderon v. Thompson*, 523 U.S. 538, 559, 118  
11 S.Ct. 1489 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327, 115 S. Ct. 851 (1995)); *see*  
12 *also Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); *Mazzan v. Warden*, 112  
13 Nev. 838, 842, 921 P.2d 920, 922 (1996). Nor can she demonstrate that it is more likely than  
14 not that no reasonable juror would have convicted her absent a constitutional violation.  
15 *See Pellegrini*, 117 Nev. at 887, 34 P.3d at 537. The petition should also be dismissed based on  
16 statutory laches as the State would be prejudiced in its ability to conduct a retrial and petitioner  
17 has failed to demonstrate that a fundamental miscarriage of justice has occurred. NRS 34.800.

18  
19  
20  
21 Dated this 2 day of April, 2022.

22 MARK B. JACKSON  
23 DISTRICT ATTORNEY

24  
25 By: 

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

CASE NUMBER 84920

**EXHIBIT** III

Motion to dismiss / filed 3-30-22  
District Attorney

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MAR 30 2022

Douglas County  
District Court Clerk

FILED

2022 MAR 30 PM 2:35

JOELIE A. WILLIAMS  
CLERK

BY M. CARNEY DEPUTY

Case No. 14-CR-00062 B

Dept. No. I

DA 14-343M

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IN AND FOR THE COUNTY OF DOUGLAS

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Petitioner,

v.

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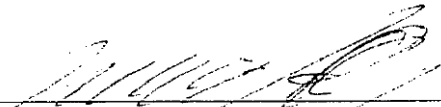
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20 872 (2014)

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12 *also Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); *Mazzan v. Warden*, 112  
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15 *See Pellegrini*, 117 Nev. at 887, 34 P.3d at 537. The petition should also be dismissed based on  
16 statutory laches as the State would be prejudiced in its ability to conduct a retrial and petitioner  
17 has failed to demonstrate that a fundamental miscarriage of justice has occurred. NRS 34.800.

18  
19  
20  
21 Dated this 29 day of March, 2022.

22 MARK B. JACKSON  
23 DISTRICT ATTORNEY

24  
25 By:   
26 Matthew Johnson  
27 Deputy District Attorney  
28 P. O. Box 218  
Minden, Nevada 89423  
(775)782-9800

CASE NUMBER 84920

**EXHIBIT** IV

3<sup>th</sup> petition writ habeas corp / filed 3-21-22



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FILED

MAR 21 2022

2022 MAR 21 AM 11:03

Douglas County  
District Court Clerk

DAVID C. WILLIAMS  
CLERK

*McMullin*

Tatiana Leibel # 1137908  
FLORENCE MCCLURE WOMENS CORRECTIONAL CENTER  
4370 Smiley Road  
Las Vegas, NV 89115

IN THE 9 JUDICIAL DISTRICT COURT of the STATE OF NEVADA

In and for the COUNTY OF Douglas

Tatiana Leibel

PLAINTIFF/PETITIONER

v.

Case No. 2014-CR-00062

The State of Nevada

DEFENDANT/RESPONDENT

3<sup>rd</sup> - PETITION FOR WRIT OF HABEAS CORPUS  
(POST-CONVICTION) ~~(FACTUAL INNOCENCE)~~

1. Name of the institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: Florence McClure Women's Correctional Center
2. Name and location of the court which entered the judgment of conviction under attack:  
The 9<sup>th</sup> Judicial District Court of the  
State of Nevada, Douglas County
3. Date of Judgment of Conviction: April 21, 2015
4. Case Number: 2014-CR-00062
5. Length of sentence: second-degree murder with the use deadly weapon  
If sentence is death, state any date upon which execution is scheduled: \_\_\_\_\_
6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? YES \_\_\_\_\_ NO ✓. If "YES", list the crime(s), case number(s) and sentence(s) being served at this time: \_\_\_\_\_
7. Nature of offense involved in conviction being challenged: legality of the conviction and procedures that produced it

8. What was your plea? (check one)

a) Not guilty ☒ b) Guilty ☐ c) Guilty but mentally ill ☐ (d) Nolo contendere ☐

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details:

N/A

10. If you were found guilty after a plea of not guilty, was the finding made by (check one):

a) JURY ☒ (b) JUDGE WITHOUT A JURY ☐

11. Did you testify at the trial? YES ☐ NO ☒

12. Did you appeal from the judgment of conviction? YES ☒ NO ☐

13. If you do appeal, answer the following:

(a) Name of Court: Supreme Court of Nevada / Court of Appeal

(b) Case Number/Citation: 68113

(c) Result: Affirmance

(d) Date of Result: January 12, 2016

**\*\* ATTACH A COPY OF ORDER/REMITTITUR/DECISION, IF AVAILABLE \*\***

14. If you DID NOT appeal, explain briefly why:

N/A

15. Other than a direct appeal from a judgment of conviction/ sentence, have you previously filed any petitions, applications or motions with respect to this judgment in state or federal court? YES ☒ NO ☐

16. If you answered YES to question 15, provide the following information:

(a) Name of Court: 9th Judicial District Court Douglas County NV

(b) Type of proceeding: post-conviction petition for a writ Habeas Corp.

(c) Grounds raised: this teen

(d) Did you receive an evidentiary hearing? YES ☒ NO ☐

(e) Result of hearing: Denied Date of result: December 20, 2018

(f) Citations of any written opinion, date of orders entered pursuant to result (if known):

Supreme Court NV - Order Affirmance #17989 June 14, 2010

17. SECOND PETITION FILED/APPLICATION/MOTION (if filed):

- (a) Name of Court: 9<sup>th</sup> Judicial District Court Douglas County NV
- (b) Type of proceeding: 2 post-conviction petition for a writ Habeas Corp.
- (c) Grounds raised: four
- (d) Did you receive an evidentiary hearing? YES ☐ NO ☒
- (e) Result of hearing: Denied Date of result: January 22, 2021
- (f) Citations of any written opinion, date of orders entered pursuant to result (if known):  
Supreme Court NV (Adm. Affirmance) #82594 February 7, 2022

18. THIRD/SUBSEQUENT PETITIONS – list same information as in # 17 on separate sheet and attach.

19. Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

- 1) First petition, application, or motion? YES ☒ NO ☐  
Citation or date of decision: Affirmance June 24, 2020 / #77989
- 2) Second petition, application, or motion? YES ☒ NO ☐  
Citation or date of decision: Affirmance February 7, 2022 / #82594  
+ writ certiorari denying February 17, 2022 / #84156
- 3) Third petition, application or motion? YES ☐ NO ☐  
Citation or date of decision: N/A
- 4) IF YOU DID NOT APPEAL from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches, attached to this petition. Your response may not exceed five (5) handwritten or typewritten pages in length).

N/A

20. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other post-conviction proceeding? If so, identify:

- A. Which of the grounds is the same: N/A
- B. Proceedings in which these grounds were raised: Fourteenth Amendment Due Process
- C. Briefly explain why you are raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches, attached to this petition. Your response may not exceed five (5) handwritten or typewritten pages in length).

The violation of petitioner's Constitutional Rights and the trial was fundamentally unfair when the conviction violated under Fourteenth Amendment's Right to Due Process.

21. If any of the grounds listed in this petition, OR listed on any additional pages you have attached, were NOT previously presented in any other state court or federal court, list briefly what ground/s were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches, attached to this petition. Your response may not exceed five (5) handwritten or typewritten pages in length).

N/A

22. Are you filing this petition more than ONE (1) YEAR following the filing of the judgment of conviction or the filing of a decision on Direct Appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches, attached to this petition. Your response may not exceed five (5) handwritten or typewritten pages in length).

Petitioner is factually innocent serves as the actually innocent gateway, did demonstrate actual innocence to overcome the procedural bars by identifying newly discovered evidence / fundamental miscarriage of justice

23. Do you have any petition or appeal now pending in any state court or federal court as to the judgment under attack? YES \_\_\_\_\_ NO ☒  
IF YES, give both court and case number: \_\_\_\_\_

24. Give the name of EACH/EVERY attorney who represented you in the proceeding resulting in your conviction and on direct appeal:

Kris Brown - appointed counsel / trial and direct appeal  
John Malone - appointed counsel / 1st post conviction habeas & appeal

25. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? YES \_\_\_\_\_ NO ☒  
IF YES, specify where and when the sentence is to be served (if you know): \_\_\_\_\_

26. State concisely EVERY ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating grounds and the facts supporting each ground.

A. GROUND ONE:

violation under XIV Amendment Right to Due Process

SUPPORTING FACTS: (Tell your story briefly, without citing cases or law)

Petitioner alleges the illegal conviction to be illegal due to the following misjustices: fundamentally unfair trial, misleading the jury, unfair prejudice, confusing the prosecutory issues, evidence was altered.

**B. GROUND TWO:**

SUPPORTING FACTS: (Tell your story briefly, without citing cases or law)

**C. GROUND THREE:**

SUPPORTING FACTS: (Tell your story briefly, without citing cases or law)

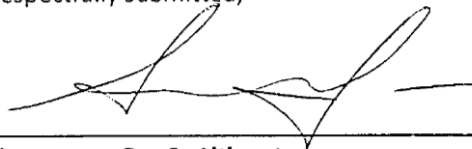
**D. GROUND FOUR:**

SUPPORTING FACTS: (Tell your story briefly, without citing cases or law)

Petitioner asks that this court grant Petitioner relief to which s/he may be entitled in this proceeding.

Dated this 9 day of March, 2022

Respectfully submitted,



Signature, Pro Se Litigant

Tadiana Leibel

Print Name

GROUND 1  
(continued)

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my  
XIV Amendment Right to Due Process, based on these facts:

"Nevada's postconviction habeas statute permits a  
petitioner to challenge a conviction that was obtained in  
violation of the United States or Nevada Constitutions  
or State Law." Nev. Rev Stat. § 34.724

Petitioner alleges in this third petition for writ of  
habeas corpus (post-conviction) (factual innocence), by pre-  
sented cognizable claims that are in violation of her  
Constitutional Rights. The Petitioner's trial was funda-  
mentally unfair. The conviction violated the Petitioner's  
Fourteenth Amendment's Right of the United States  
Constitution and article 1, section 8 of the Nevada Cons-  
titution to Due Process of law.

Petitioner submits the state "INFECTED" the trial with  
unfairness, resulting in a conviction that was a "denial"  
of due process and is cognizable in a habeas corpus be-  
cause a failure resulted in the "fundamental miscar-  
riage of justice", which is rare, and was not present  
because of offense of which petitioner was convicted.

Petitioner's cognizable claims in habeas corpus are

governed by common law, statute, and the professional standards when the Due Process Clause establishes a constitutional "floor" that clearly requires a fair trial.

Petitioner alleges the "illegal" conviction to be illegal due to the following misjustices:

- fundamentally unfair trial
  - due process, speedy trial;
- violation of professional conduct
  - confusing prosecutory issues;
- misleading jury
  - reasonable doubt; and
- falsified/alttered evidence
  - newly discovered evidence.

Petitioner's cognizable claims affect the fact and length when this claim includes challenges to the "LEGALITY" of the underlying "illegal" conviction and of the procedures that produced it.

Petitioner's "statutory" claims cognizable habeas corpus proceedings "1) attack a fundamental defect which inherently results in a complete miscarriage of justice and in a proceeding inconsistent with the "rudimentary" demands of fair procedure; and 2) presented exceptional circumstances rendering the need for the remedy afforded by the writ of habeas corpus as to a violation of an important and funda-

1 mental statutory right that effectuates a constitutional  
2 right."

3  
4 Petitioner's claims to be cognizable in habeas corpus pro-  
5 ceedings the when claim involves "inherently" prejudi-  
6 cial results in a complete miscarriage of justice and  
7 inconsistent on the cognizability of "speedy trial" and  
8 "conflict of interest" dissenting on ground.

9  
10 "The U.S. Supreme Court has not read the Speedy Trial  
11 Clause to call for a flexible or tailored remedy. Instead,  
12 violation of the right demands termination of the  
13 prosecution".

14  
15 The trial court failed to conduct adequate inquiry  
16 when notified that trial prosecutor had potential Conflict  
17 of Interest. Trial counsel committed a violation by not  
18 reporting prosecutorial misconduct due to the understand-  
19 ing that trial counsel would not object to or interfere  
20 with, a prompt trial, so as to "camouflage bribe" nego-  
21 tiations between trial prosecutor, trial judge, and trial counsel.

22  
23 The Supreme Court has recognized that the Due Process  
24 Clause protects against fundamentally unfair prose-  
25 cution and conduct. The Due Process Clause is violated  
26 when "delay undertaken by the government is solely  
27 to gain tactical advantage over the accused".



1 The due process Rights of Petitioners that were violated  
2 at trial, when lead "detective injected extraneous", preju-  
3 dicial material, including "impermissible" references to  
4 Petitioner's national origin (russian). The Fourteenth  
5 Amendment forbids a state to "deny any person  
6 within its jurisdiction the equal protection of the  
7 laws, that all persons similarly situated should be  
8 treated alike"; under "strict scrutiny" level in involving  
9 a "fundamental right" by the "RACIAL DISCRIMINATION".

10  
11 Petitioner is factually innocent, which serves as the "actually  
12 innocent gateway" against the barring by NRS 39.726  
13 and NRS 39.800 when the court issued an order denying  
14 the second petition for a writ of habeas corpus. The  
15 court "misapprehended" a material matter which will  
16 promote substantial justice, as the Petitioner did demon-  
17 strate "actual innocence" to overcome the procedural bars  
18 by identified "newly discovered evidence", not belied by  
19 the record, when Petitioner demonstrated that there  
20 was "reasonable doubt" given by newly discovered evi-  
21 dence according to 2019 Nevada statute adopting Nev.  
22 Rev. Stat. § 34.900-34.990.

23  
24 Petitioner's claim of actual innocence is based on "newly  
25 discovered evidence", not belied by the record for habeas  
26 relief absent an constitutional violation occurring in  
27 the underlying state criminal proceeding. Petitioner  
28 declares that court would reach the merits in

1 this ground because a "fundamental miscarriage of  
2 justice" occurred, as Petitioner said before arrest and  
3 during the trial, she is innocent of the crime, sup-  
4 ported by the "newly discovered evidence" with critical  
5 physical evidence that was not presented at trial.

6  
7 Based on the Supreme Court of Nevada, a modified  
8 version of the "standard" (*Lisle v State*, *Mitchell v*  
9 *State*, and *Berry v State*), clearly shows Petitioner has  
10 focused on the actual innocence gateway, but main-  
11 tains merits by showing good cause and actual pre-  
12 judice supported by the following case law:

13 *Lisle v State*, 131 Nev. 356, 351 P.3d 725-729-30 (2015)

14 "Where a petition is procedurally barred and the peti-  
15 tioner cannot demonstrate good cause, the district  
16 court may never the less reach the merits of any  
17 constitutional claims if the petitioner demonstra-  
18 tes that failure to consider those constitutional  
19 claims would result in a fundamental miscar-  
20 riage of justice. A fundamental miscarriage of  
21 justice requires a colorable showing that the pe-  
22 titioner is actually innocent of the crime".

23  
24 In third petition~~er~~ Petitioner did show a "fundamen-  
25 tal miscarriage of justice" has occurred. The pro-  
26 ceedings resulted in the judgment of conviction when  
27 "fundamental miscarriage of justice" similarly  
28 implicated.

1 Petitioner's successful "actual innocence gateway" is sup-  
2 ported by the following caselaw:

3 *Mitchell v State*, 122 Nev. 1269, 1273-74, 149 P. 3d 33, 36 (2006):

4 "...a fundamental miscarriage of justice required to  
5 overcome the procedural bars to an untimely or  
6 successive petition and to rebut the presumption of  
7 prejudice to the state in conducting a retrial can be  
8 satisfied with a showing of actual innocence".

9  
10 Including, actual innocence has been demonstrated and  
11 supported by the following caselaw:

12 *Berry v State*, 131 Nev. 937, 363 P. 3d 1148, 2015 Nev. Lexis  
13 117, 131 Nev. Adv. Rep. 46 (2015)

14 "...he is actually innocent so that he may pass thro-  
15 ugh the Schlep gateway and his procedurally defect-  
16 ed claims heard on the merits...

17 After determining that BERRY has presented specific  
18 factual allegations of his innocence that are not  
19 belied by the record and assuming that the  
20 new evidence is credible...

21 A district court should examine the evidence  
22 that led to the original conviction and especially  
23 whether the new evidence diminishes the strength  
24 of the evidence presented at trial".

25  
26 Additionally, under that "standard", the Petitioner  
27 demonstrates her constitutional Rights affected by  
28 causing a "miscarriage of justice", under the

multiple fraudulent and/or altered evidence, that was collected by the State when it "INJECTED" personal beliefs into the proceedings and passions in the pursuit of a "illegal" conviction.

The vast amount of evidence remaining on which prosecution relied upon at trial was evidence not sufficient to prove guilt beyond a reasonable doubt. The Due Process Clause requires the state to prove, beyond a reasonable doubt, all of the elements of the offense it defines. When the State attempts this the obligation the writ of habeas corpus will at issue.

The Constitution requires proof beyond a reasonable doubt of every element necessary to constitute the crime. One of the elements of offense legality of arrest under NRS 199.130 was not submitted to jury, and the evidence that was submitted constitutionally insufficient to support that element.

The jury must be instructed to satisfy the due process requirements of both the United States and Nevada Constitutions. The procedural due process rules protect from "deprivations", arise when the State interferes, and the State's procedure was constitutionally insufficient. The State failed to provide Due Process and violated the Constitutions.

1 Respectfully, the court should review Petitioner's habeas  
2 claim that the evidence "adduced" at a State trial was  
3 not sufficient to convict Petitioner beyond a reasonable  
4 doubt. Any such conviction establishes a constitutional  
5 violation which assures that the habeas petitioner is  
6 not being held in violation of Petitioner's Constitutional  
7 Rights. Respectfully, the court should consider all the  
8 evidence, old and new, and based on the total record,  
9 make a probabilistic determination, because jurors  
10 OBEY the instructions of the court, including the  
11 instruction of requiring PROOF BEYOND A REASONABLE  
12 DOUBT.

13  
14 Petitioner alleges there is not enough evidence in the record  
15 to have convicted beyond a reasonable doubt. Petitioner's  
16 proof by "newly discovered evidence", not belied by the re-  
17 cord, of the petitioner's innocence, does not make out a  
18 cognizable habeas corpus claims absent an independent  
19 constitutional violation such as prosecutorial suppression  
20 of exculpatory evidence. However, the State is forbidden  
21 from giving the personal opinion centered around closing  
22 argument that misleads the jury regarding certain  
23 evidence and makes "unconscionable misrepresenta-  
24 tions of law".

25  
26 Petitioner's "illegal" conviction was obtained through  
27 the use of false evidence, which was known by the  
28 State, constituting a violation of Petitioner's right

1 to due process. The testimony and evidence presented by  
2 the State was false and misleading. According the  
3 criminal law and procedure, court should determined  
4 that perjured testimony and altered evidence known by  
5 the prosecution or should have known, when the  
6 perjury and altered affected the judgment of the jury.

7  
8 Additionally, the State was violated under Nevada Sta-  
9 tutes NRS §52.252 "The content of recordings of te-  
10 lephone calls made through a system established to  
11 provide a telephone number to be used in an emer-  
12 gency, if otherwise admissible, may be proved by a  
13 copy or transcript of the recording which is authen-  
14 ticated by a custodian of the records of the system  
15 in signed affidavit. The custodian must VERIFY in  
16 the affidavit that the copy or transcript is a true  
17 and complete reproduction of the original recording  
18 and that the original recording was made at the  
19 time of the telephone call and in the course of a  
20 regularly conducted activity."

## 21 22 NEWLY DISCOVERED EVIDENCE

23  
24 Where "newly discovered evidence", not belied by the re-  
25 cord, is alleged in a habeas corpus such evidence bears  
26 upon the Constitutionality of Petitioner's detention. How-  
27 ever, the discerned Constitutional Right, enforceable in  
28 habeas corpus proceedings, to freedom from "illegal"

conviction was later shown to be erroneous on the basis of newly discovered evidence and its implications for the underlying conviction.

Petitioner has shown not only Constitutional violation, but proof of de FACTO-existing fact, under basic concepts, of the "direct evidence" of the precise fact in issue.

The Petitioner declares "newly discovered evidence, is critical physical undisclosed photographs, not belied by the record, of the multiple conflicting and altered evidence, that was collected by the state.

Petitioner did demonstrate, in this ground, actual innocence to overcome the procedural bars by identifying newly discovered evidence, not belied by the record, when it is demonstrated that no reasonable juror would have convicted beyond a reasonable doubt given the newly discovered evidence.

Concerning a habeas for Petitioner's innocence, in light of all the evidence supported, both by the reliability of newly discovered evidence and as material to the conviction being challenged, does in turn require an examination of the quality of the evidence that produced the original conviction.

According New Rev. Stat. 52.345(2) "Except as otherwise

1 provided in NRS 52.247, a duplicate is admissible to the same  
2 extent as an original, if the person or office having custo-  
3 dy of the original was authorized to destroy the original  
4 after preparing a duplicate, and in fact did so".

5  
6 The Petitioner declares, no forensic evidence directly  
7 connects the Petitioner to the crime and undisclosed  
8 of the lack of connective forensics resulted in misleading  
9 the jury.

10  
11 A jury verdict is to be overturned if no reasonable jury  
12 could have reached the same verdict based on the evi-  
13 dence submitted, in the abuse of this discretion stan-  
14 dard the trial court committed a clear violation of  
15 judgment.

16  
17 Petitioner presents new discovery evidence as described  
18 in Exhibits, by the photographs, with highlights and  
19 arrows added for easy reference of facts

20  
21 Exhibit #1 • undisclosed color-photograph divided by the  
22 four pictures 1) top-left is shows original placement on  
23 end table of the items and location of the plants;  
24 2) top-right is shows of the gross error regards to  
25 actual date of 2014 - NOT 2013; and 3) down-left is  
26 shows couch when actual crime scene.

27  
28 Exhibit #2 • color-photograph, collected by the State, sho-



1 wing investigator, created location, by sitting on the couch  
2 to demonstrate trajectory which NOT the accurate location  
3 of actual location, actual crime scene (Exhibit # 1(3)), of  
4 the body of Karsy and the trajectory pattern of the bullet.  
5 His location is more to the center full couch than conf-  
6 licting the actual location of both the body and trajectory  
7 which was more to the left and closer to the armrest.

8  
9 Exhibit #3. undisclosed color-photograph is shows end  
10 table was moved from original location to facilitate  
11 Stadel's assertion so access could be made to meet their  
12 crime scene theory by altered evidence.

13  
14 Exhibit #4. color-photograph is shows original placement  
15 of end table plus couch for compared by Exhibit #5.

16  
17 Exhibit #5. color-photograph shows the end table and  
18 couch returned after being moved, resulting in location  
19 other than original. Couch and end table moved farther  
20 to the Right - see location of plants and items on the end  
21 table than conflicting actual crime scene.

22  
23 Exhibit #6. color-photograph is shows original location  
24 of coffee table to the proximity of the body - see  
25 red candles on coffee table.

26  
27 Exhibit #7. color-photographs shows different location  
28 of coffee table moved farther away than conflicting

1 by Exhibit #6. The evidence has been moved, manipulated,  
2 and not documented.

3  
4 In order for the evidence to facilitate the State's theory  
5 of the crime, resulting in the prosecution of the Petitioner,  
6 the end table and coffee table were moved from their  
7 original location, to a location that created the space in  
8 between to physically allow the access needed to commit  
9 the crime according to the State's theory the photographs  
10 in Exhibits clearly display this miscarriage of justice.

11  
12 Exhibit #8 - black & white - photograph collected by the State  
13 is shows the x-ray of the first shot being from lower  
14 right to upper left and shot NOT FATAL. The first shot  
15 did not cause instant death to the chest because mecha-  
16 nism was bleeding.

17  
18 Exhibit #9 - color - photograph collected by the State shows  
19 wound by the second shot by "DIRECT FRONTAL"  
20 on the left shoulder.

21  
22 Exhibit #10 - black & white - photograph shows investi-  
23 gator measuring trajectory of second shot angle  
24 to the couch when standing in location where end  
25 table was originally. The photograph in Exhibit #9  
26 clearly CONFLICTED.

27  
28 Exhibit #11 - black & white - photograph shows the X-RAY

1 of the second shot broke the left CLAVICLE by direct  
2 frontal on the left sholder supported by Exhibit #9.  
3 Includes an explanation why the left arm was not  
4 pliable, and not RIGOR mortis, and a wrong assump-  
5 tion by the State.

6  
7 Exhibit #12. undisclosed color-photograph shows the  
8 soiled clothes on the floor of the bathroom from an  
9 accident Harry had the morning of his "ATYPICAL"  
10 suicide. Which gives validity to the fact that Harry  
11 suffered from bladder incontinence, due to his bladder  
12 cancer surgeries.

13  
14 The autopsy analysis presented by the State's expert  
15 witness, a forensic pathologist, gave trial testimony  
16 of these discrepancies. This resulted in a conflict using  
17 between protocol and trial testimony about the cancer  
18 diagnoses and the surgeries. This is a violation of  
19 FALSE testimony under OATH - NRS 199.150.

20  
21 Exhibit #13. color-photograph shows the first posi-  
22 tion of the rifle butt laying on the extended foot  
23 rest. The body of the rifle is slightly diagonal to  
24 the left, ending with the barred of the gun and  
25 the tip of the barrel resting snug against the back.  
26 Also, the carrying strap of the gun is laying on top  
27 of the stock of the rifle without any part of it  
28 hanging OR dangling off the couch.

1 Four unknown samples of DNA that were collected  
2 by the state, by a swabbing of the hammer trigger and  
3 strap of the weapon including one unknown print.  
4 Petitioner declares newly discovered evidence, not belied  
5 by the record, of four photographs of the weapon in four  
6 diffired positions supported by the four unknown indi-  
7 viduals.

8  
9 Exhibit # 14 • color - photograph shows the second position  
10 of the Rifle carrying strap which is hanging or dan-  
11 gling off the edge of the extended foot rest. The tip  
12 of the barrel was moved to the right and resting much  
13 closer to the crack between the back rest of the couch.

14  
15 Exhibit # 15 • color - photograph shows the third position  
16 of butt on the extended foot rest and the top of the  
17 barrel up against the back seat, not in the crack between  
18 the seats. The strap is laying is "COCKED" back when  
19 the State acused Petitioner from begining investigation.

20  
21 Exhibit # 16 • color - photograph shows the fourth position  
22 of butt of the gun is still on the extended foot rest, but  
23 it is no longer in a diagonal position. The edge of the foot  
24 rest, with the body laying more aligned to the crack  
25 between the couch seats. The strap is hanging or  
26 dangling of the edge.

27  
28 In conclusion, the four unknown individuals other

1 than the Petitioner, corrupted the crime scene.

2  
3 Exhibit #17 • two plus one color-photographs show one table  
4 has white cloth and second table cards has red box-heart-  
5 chocolate. Also, picture together. The day before the tra-  
6 gedy, the petitioner and spouse participated in their  
7 jewish routine "Sabbath" meal. If the jewish people  
8 are going to divorce (by state's accusation) they do not  
9 buy each other gifts on the Valentines day or share  
10 sacred meals together.

11  
12 Exhibit #18 • black & white - media interview report with the  
13 trial prosecutor. A manual record of telephone activity  
14 was produced and used by the State (open and close argu-  
15 ment), negating the actual use records, which resulted  
16 in the loss of one hour. Thus clearly under altered evi-  
17 dence, misled the jury, and miscarriage of justice.

18  
19 Petitioner requests a review based on a modified version  
20 of the "standard" of the sufficiency of the evidence accor-  
21 ding, the constitutional requirement of "proof beyond a  
22 reasonable doubt".

23  
24 Petitioner requests an evidentiary hearing be granted  
25 based on "newly discovered evidence" to address to sound  
26 discretion of the trial court, as the evidence relied on is  
27 in fact newly discovered; the movant has been diligent;  
28 the evidence is not impeaching; the evidence is ma-

1 trial - photographs; and a evidentiary hearing would  
2 produce an "acquittal".

3  
4 Petitioner requests a new trial be granted based on  
5 insufficiency of evidence to justify the findings of fact,  
6 conclusion of law, and judgment of the court.

7  
8 Additionally, Petitioner requests a turnover case  
9 and dismiss with prejudice be granted based under  
10 the Fourteenth Amendment Right to Due Process as the  
11 violations substantially effected Petitioner Constitutional  
12 Rights to a fair trial.

## 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 <sup>1</sup>NRS 171.102 and <sup>2</sup>NRS 208.165. See <sup>3</sup>28 U.S.C. 1746 and 18 U.S.C. 1621.

Dated this 9 day of March, 2022

Signature

Tatiana Leibel

Print Name

1137908  
Nevada Department of Corrections ID Number

This document does not contain the personal information of any person as defined by NRS 603.A.40.

<sup>1</sup> **NRS 171.102** Complaint defined; oath or declaration required. The complaint is a written statement of the essential facts constituting the public offense charged. It must be made upon:

1. Oath before a magistrate or a notary public; or
2. Declaration which is made subject to the penalty for perjury.  
(Added to NRS by 1967, 1400; A 1969, 387; 1983, 446)

<sup>2</sup> **NRS 208.165** Execution of instrument by prisoner. A prisoner may execute any instrument by signing his or her name immediately following a declaration "under penalty of perjury" with the same legal effect as if he or she had acknowledged it or sworn to its truth before a person authorized to administer oaths. As used in this section, "prisoner" means a person confined in any jail or prison, or any facility for the detention of juvenile offenders, in this state.  
(Added to NRS by 1985, 1643)

<sup>3</sup> **28 U.S.C.**

### **§1746. Unsworn declarations under penalty of perjury**

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

(Added Pub. L. 94-550, §1(a), Oct. 18, 1976, 90 Stat. 2534.)

### **PRIOR PROVISIONS**

A prior section 1746 was renumbered section 1745 of this title.

### **§ 1621. Perjury generally**

Whoever—

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

(June 25, 1948, ch. 645, 62 Stat. 773; Pub. L. 88-619, § 1, Oct. 3, 1964, 78 Stat. 995; Pub. L. 94-550, § 2, Oct. 18, 1976, 90 Stat. 2534; Pub. L. 103-322, title

103, § 3202(a)(1)(A), Sept. 12, 2004, 108 Stat. 2147.)

# INDEX OF EXHIBIT(S) Case No. 2014-CR-00061

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- B Exhibit # 2. trajectory which not the accurate location
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- P Exhibit # 16. the fourth position of the rifle - not cocked
- Q Exhibit # 17. media interviews report with the trial prosecutor
- R Exhibit # 18. gifts and share sacred meals, and picture together

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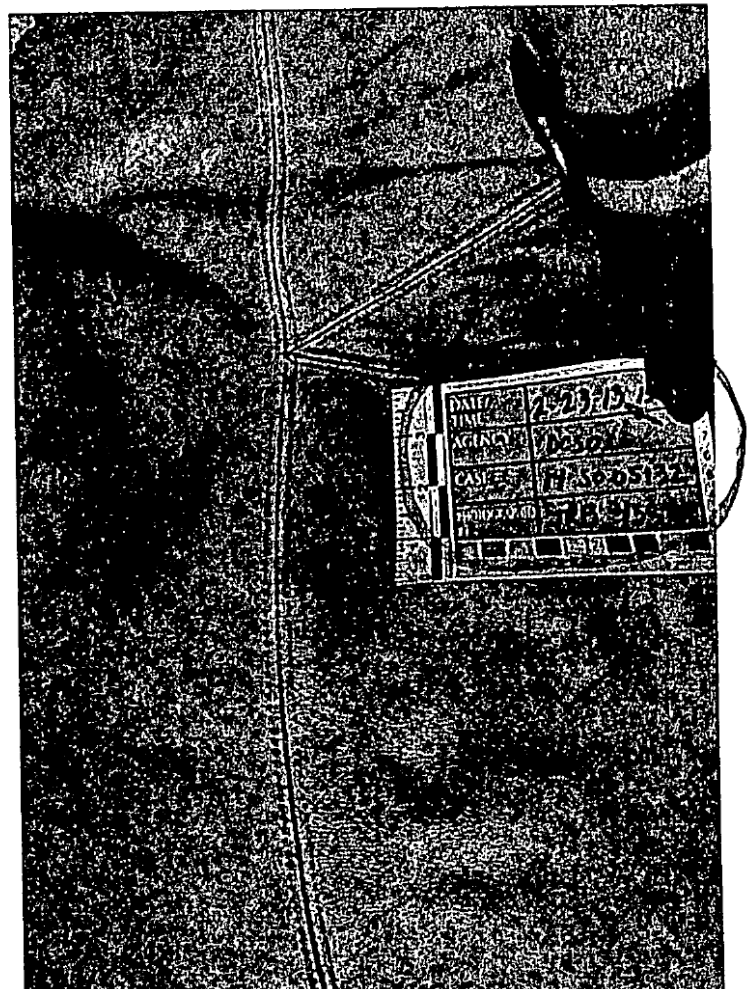
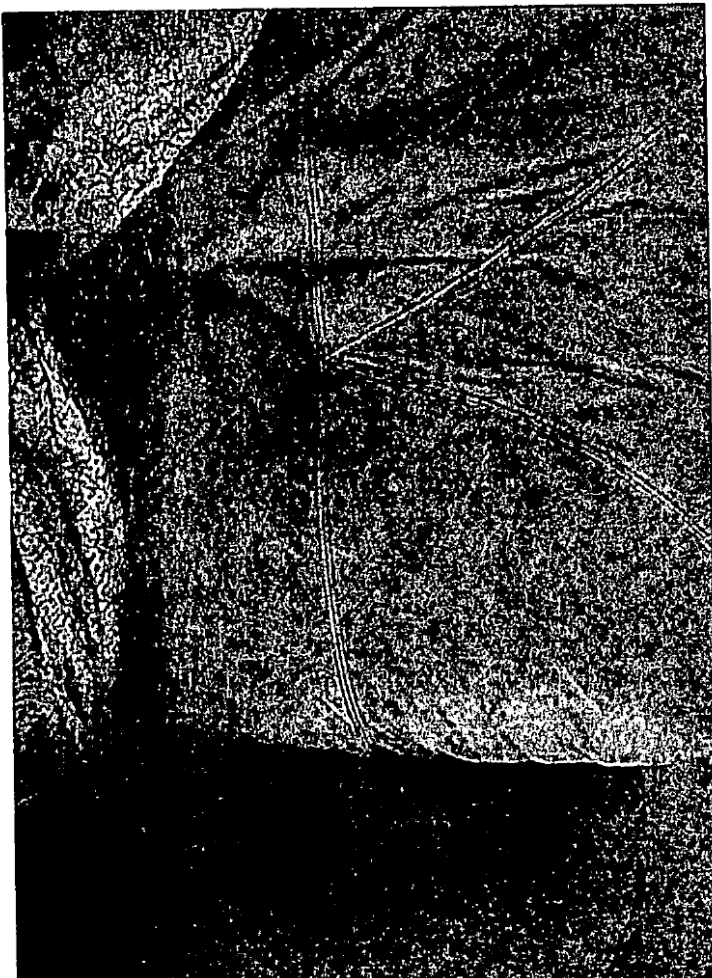
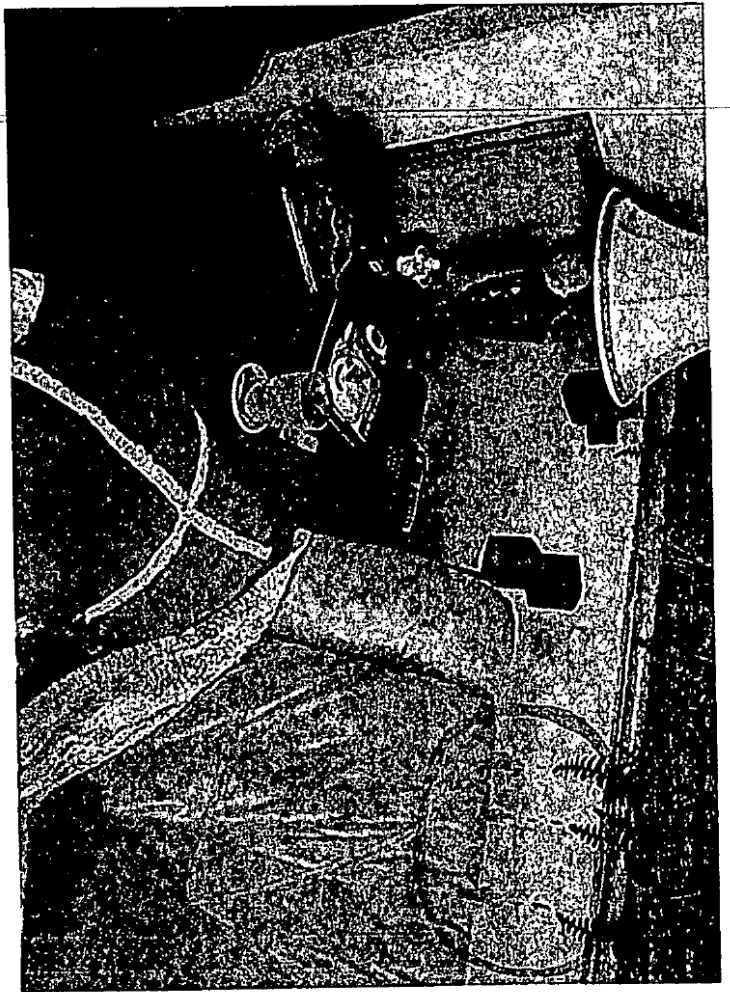
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CASE NUMBER 2014-CA-00062

EXHIBIT # 1

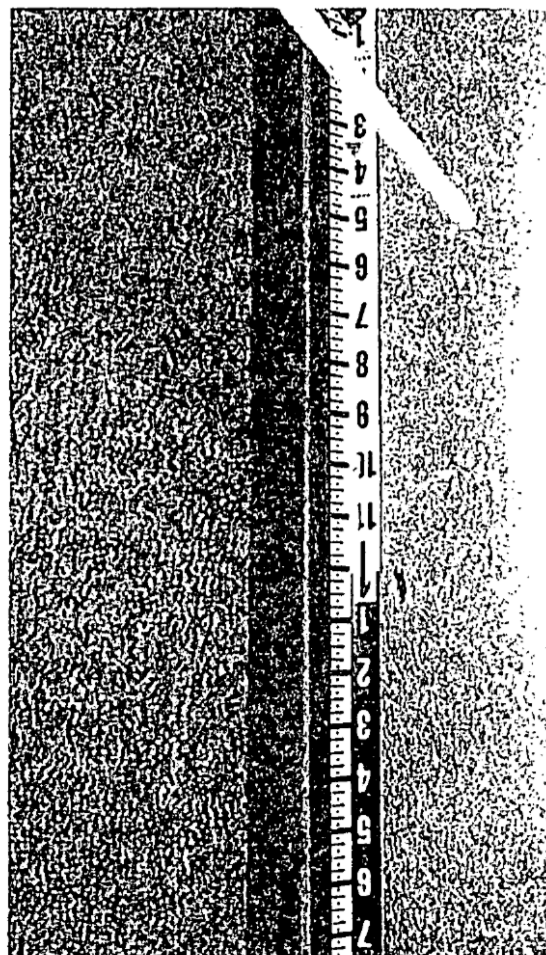
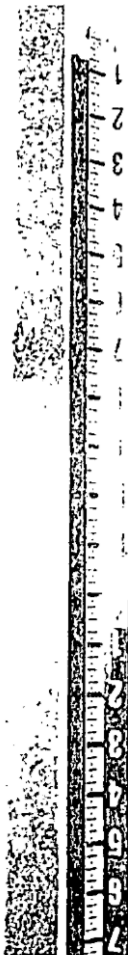
gross error actual date & actual crime scene



CASE NUMBER 2014-CR-00062

**EXHIBIT** #2

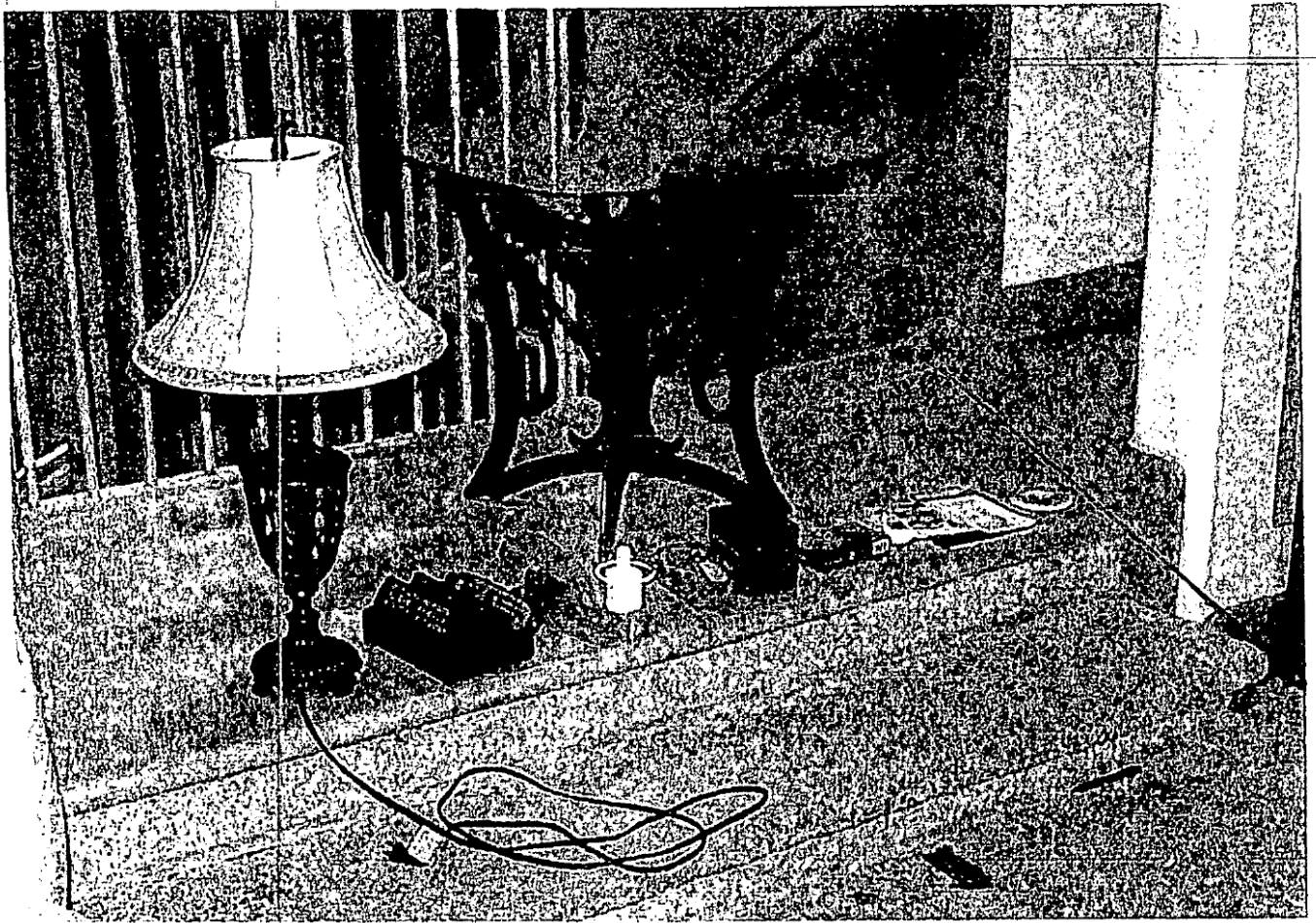
trajectory which not the accurate location



CASE NUMBER 2014-CA-00062

**EXHIBIT** #3

end table was moved from original location



CASE NUMBER 2014-CR-00062

**EXHIBIT** 44

original placement of end table plus couch







CASE NUMBER 2014-CR-00062

**EXHIBIT** #5

end table and couch returned other than original



CASE NUMBER WA-CA-00062

**EXHIBIT** #6

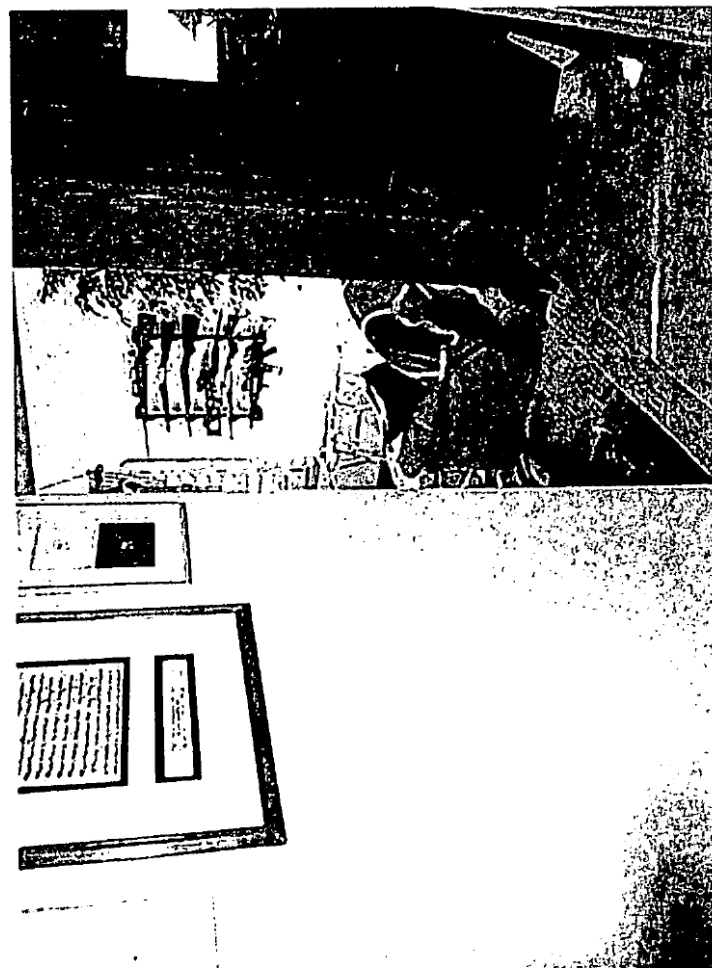
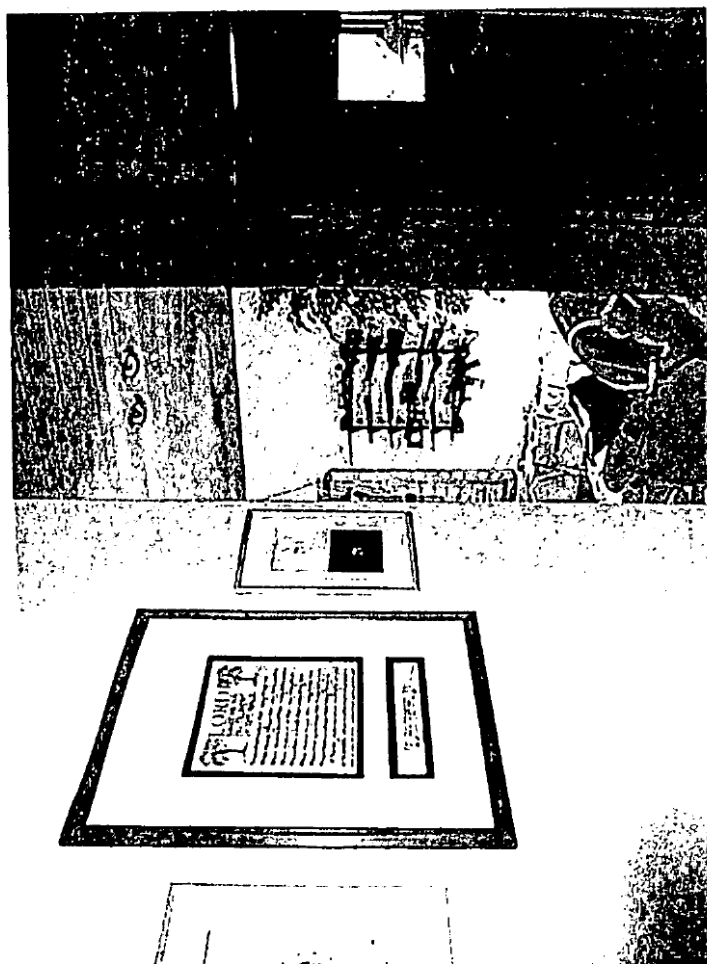
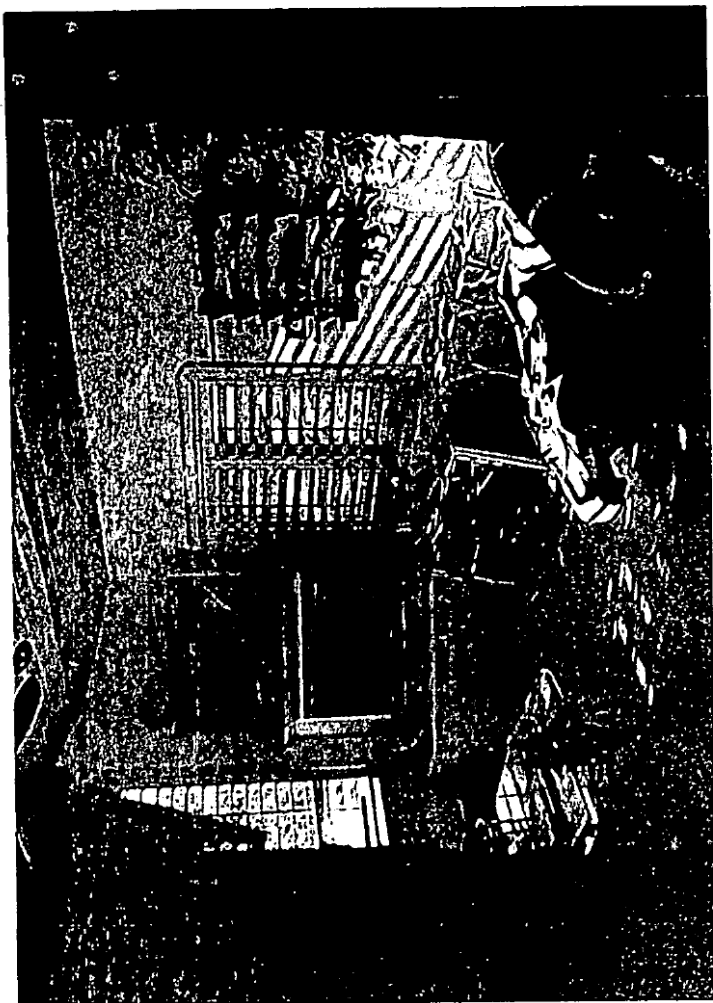
original location coffee table - red candles



CASE NUMBER 1014-CR-00062

**EXHIBIT** #7

coffee table moved different location



CASE NUMBER ACA-CA-00062

EXHIBIT #8

X-ray of the first shot to the chest

## Shooting Scene Reconstruction Report

Douglas County Sheriff #14-SO-05132  
State of NV v Tatiana Leibel

January 15, 2015

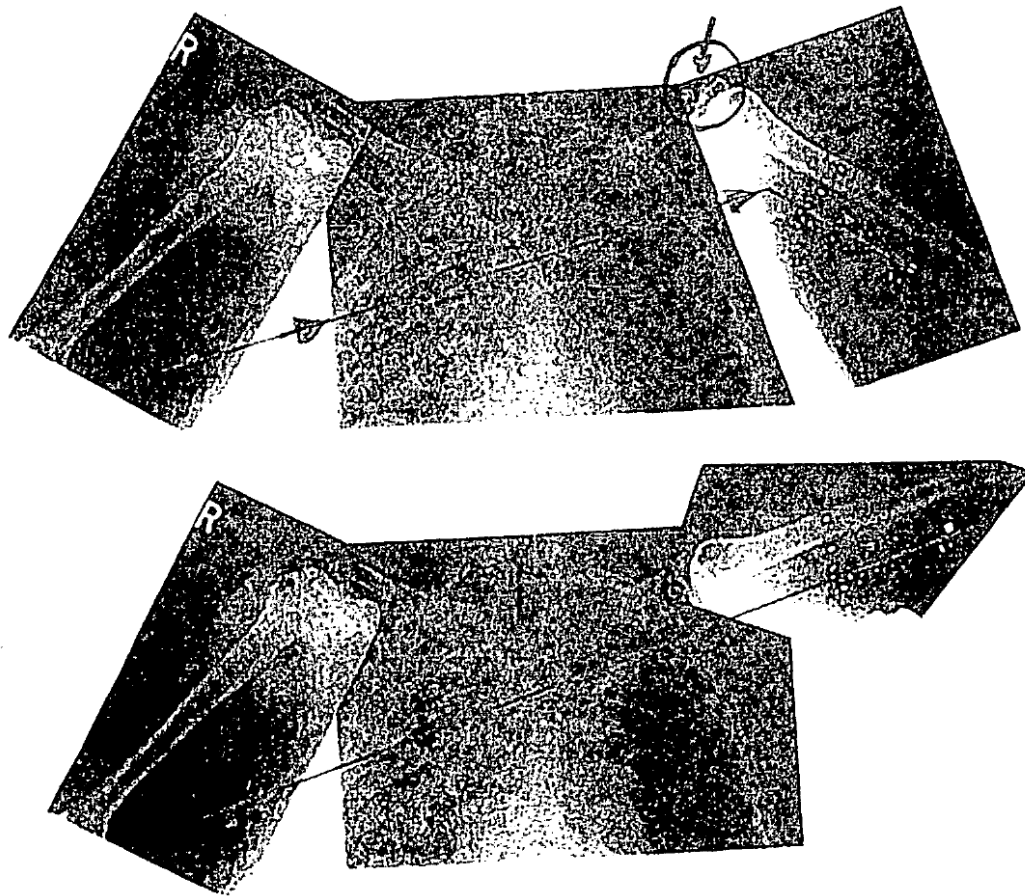


Figure 8: Three x-rays aligned in approximate anatomical positions. The upper series shows the left arm down; the lower series shows the left arm up. Because the projectile fragments are not expected to make a 90 degree turn while in the body, the lower image (arm up) best fits with the position of Harry Leibel's arm at the time of the first shot.



CASE NUMBER 104-CR-00062

**EXHIBIT** BQ

wound by the second shot by direct frontal on left shoulder

Shooting Scene Reconstruction Report

Douglas County Sheriff #14-SO-05132  
State of NV v Tatiana Leibel

January 15, 2015

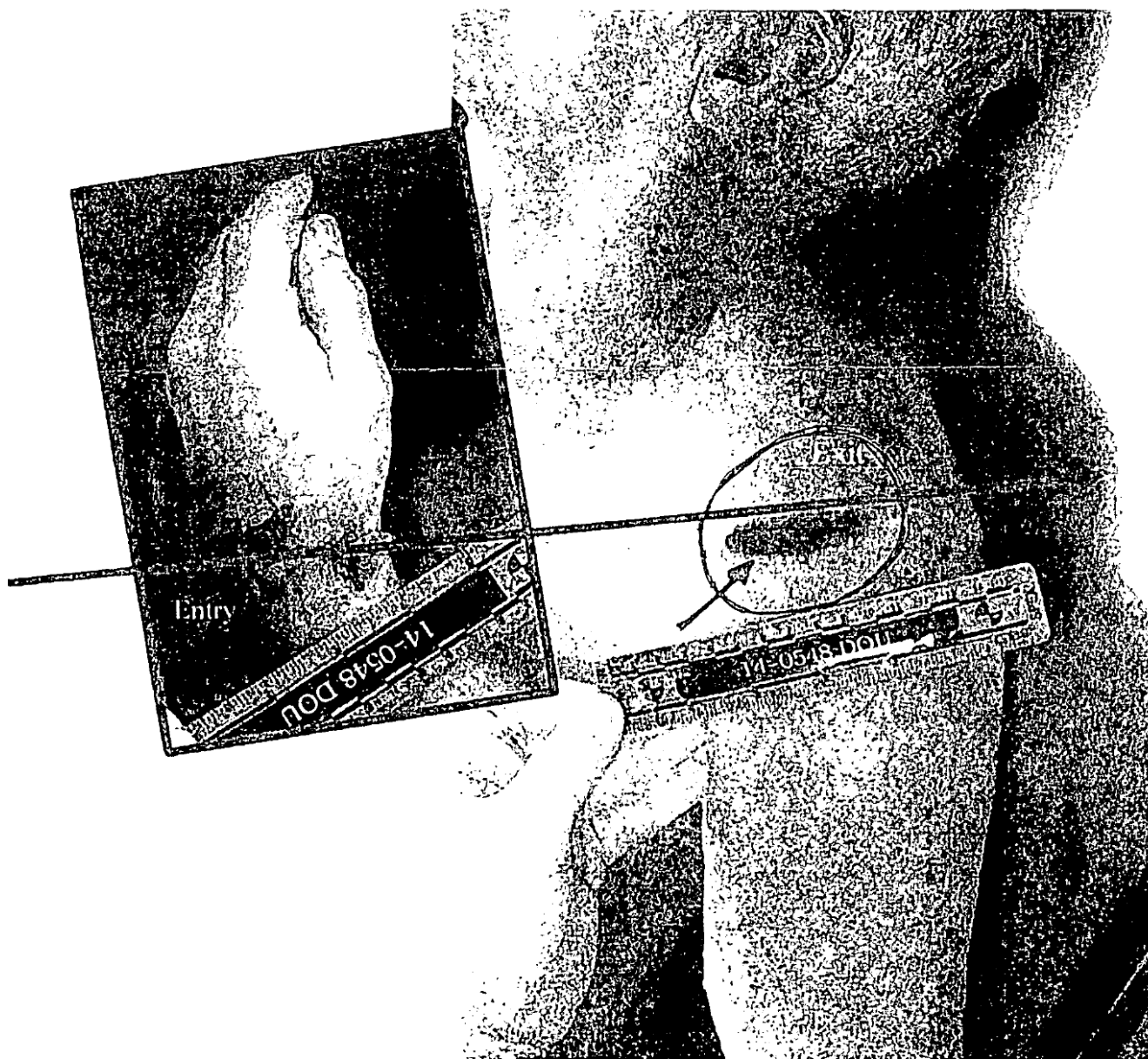
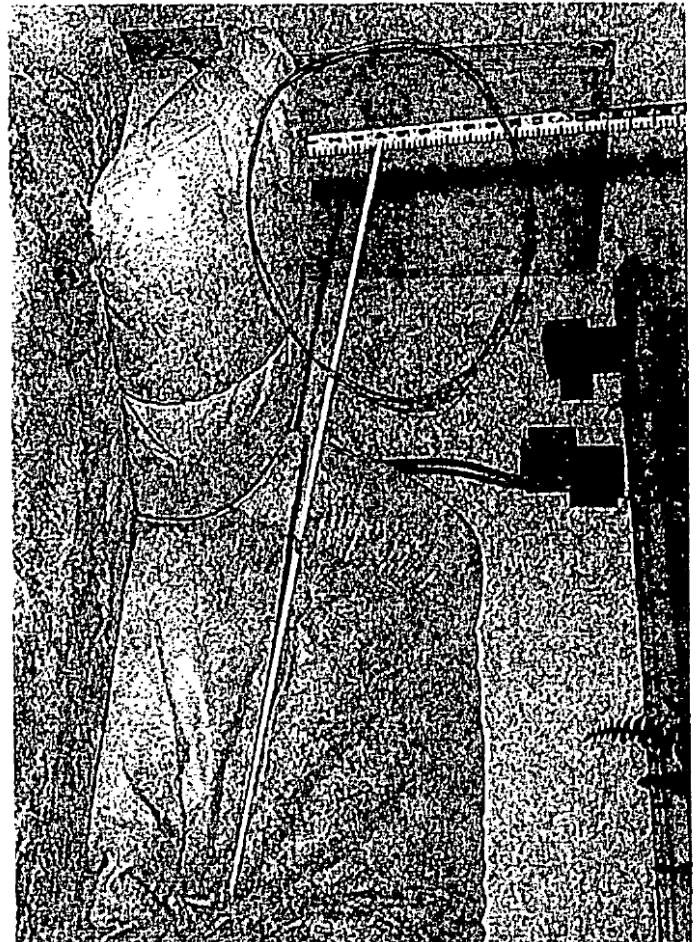
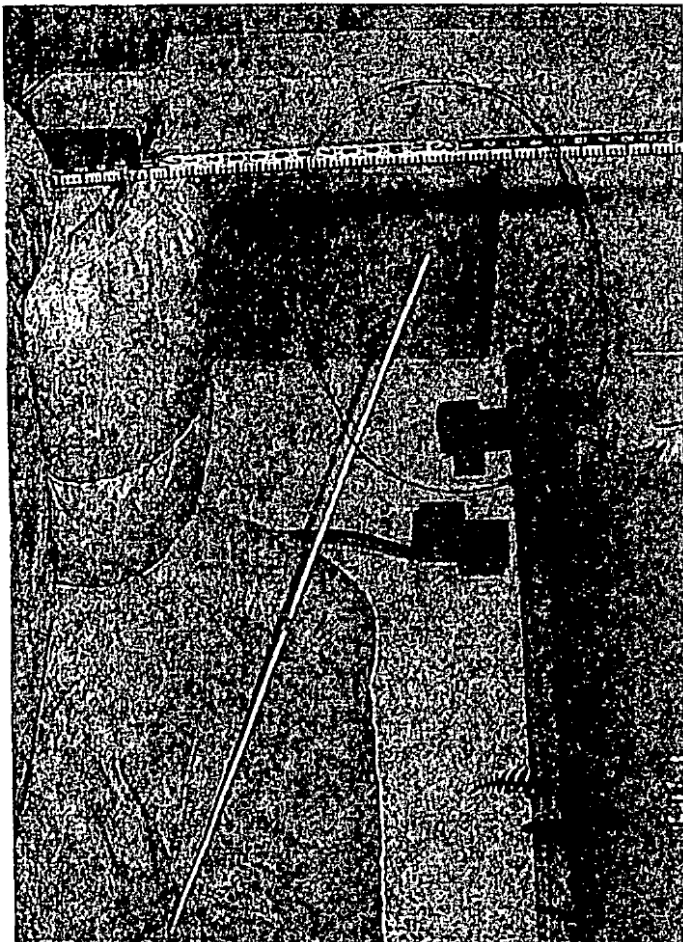
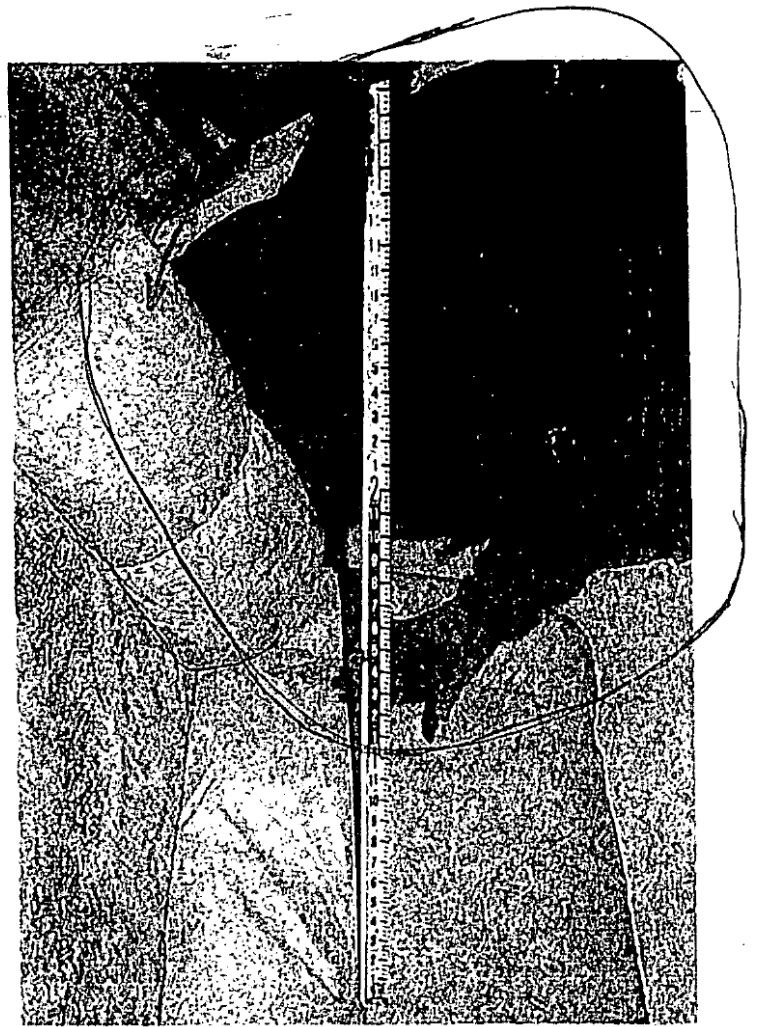
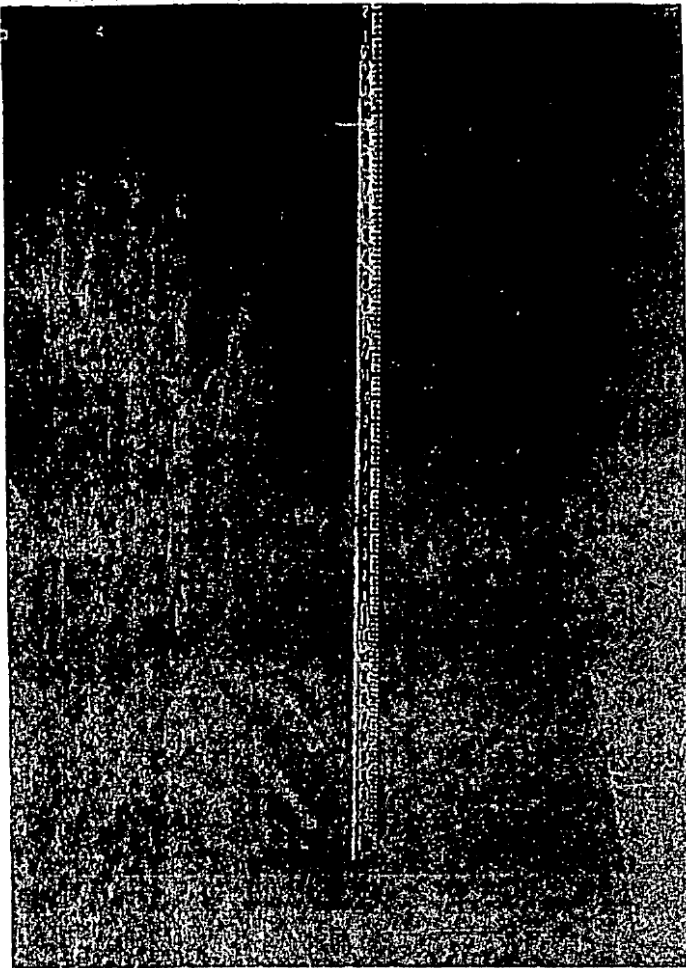


Figure 4: Second gunshot wound from a 4 pellet shotgun load—through the left hand, eclipsing the left shoulder and continuing into the couch behind Harry Leibel.

CASE NUMBER 104-CR-00062

**EXHIBIT** #10

investigator measuring of second shot



CASE NUMBER 20A-CA-00062

EXHIBIT #11

X-ray of the second shot brace left clavicle

1200

PROCEED WITH CARE AND PRECISION. THE FOLLOWING INFORMATION IS FOR YOUR INFORMATION ONLY.

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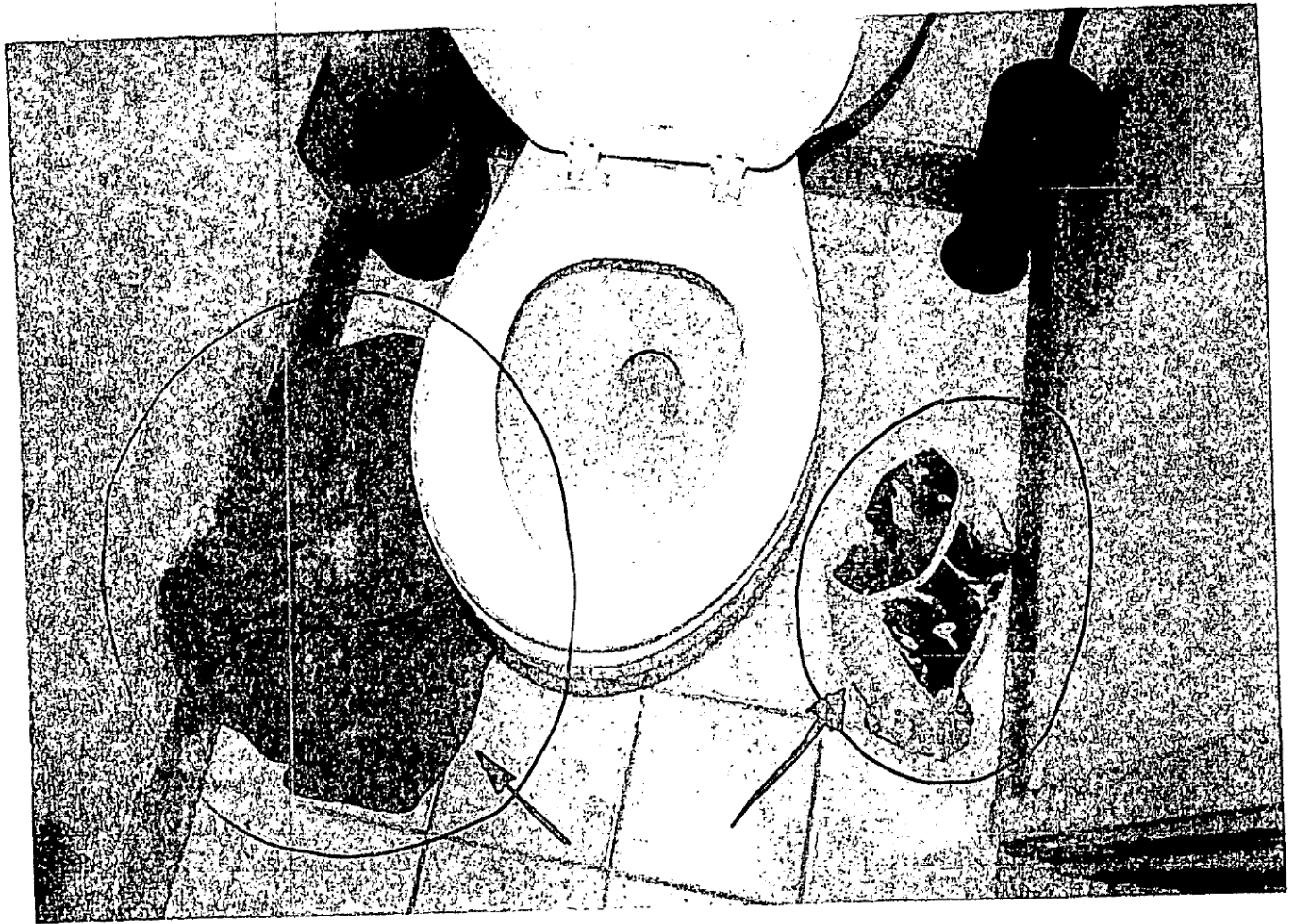
601. 611 + 1

CASE NUMBER ACA-CR-00062

**EXHIBIT** #12

soiled clothes on the floor of the bathroom







CASE NUMBER 1014-CA-00062

**EXHIBIT** #13

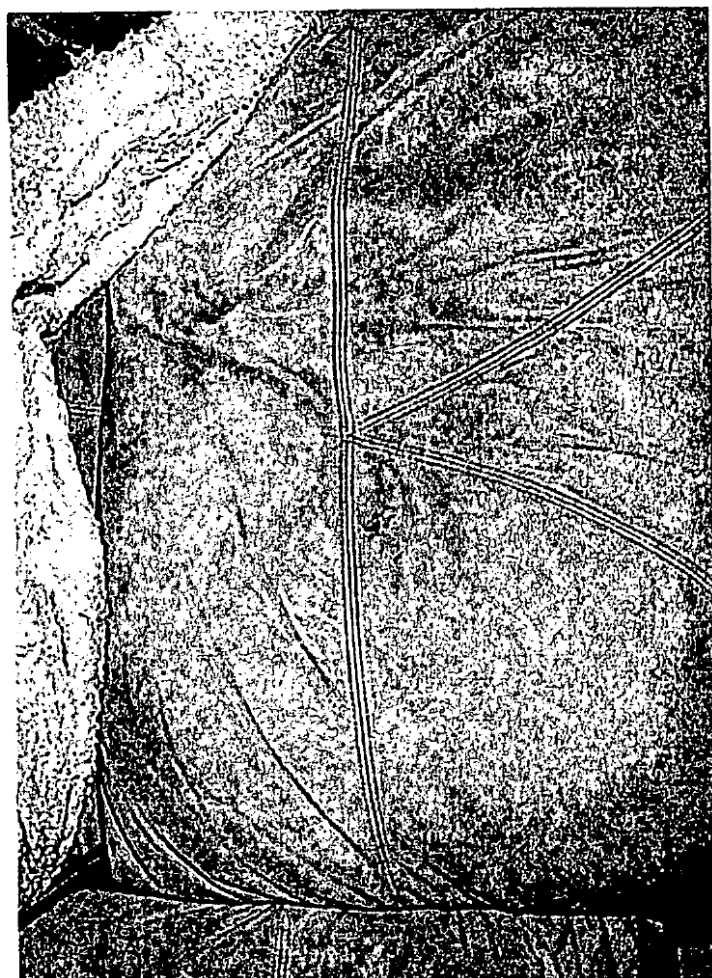
the first position of the Rifle - not cocked



CASE NUMBER 1014-CR-00062

EXHIBIT 214

the second position of the rifle - not cocked

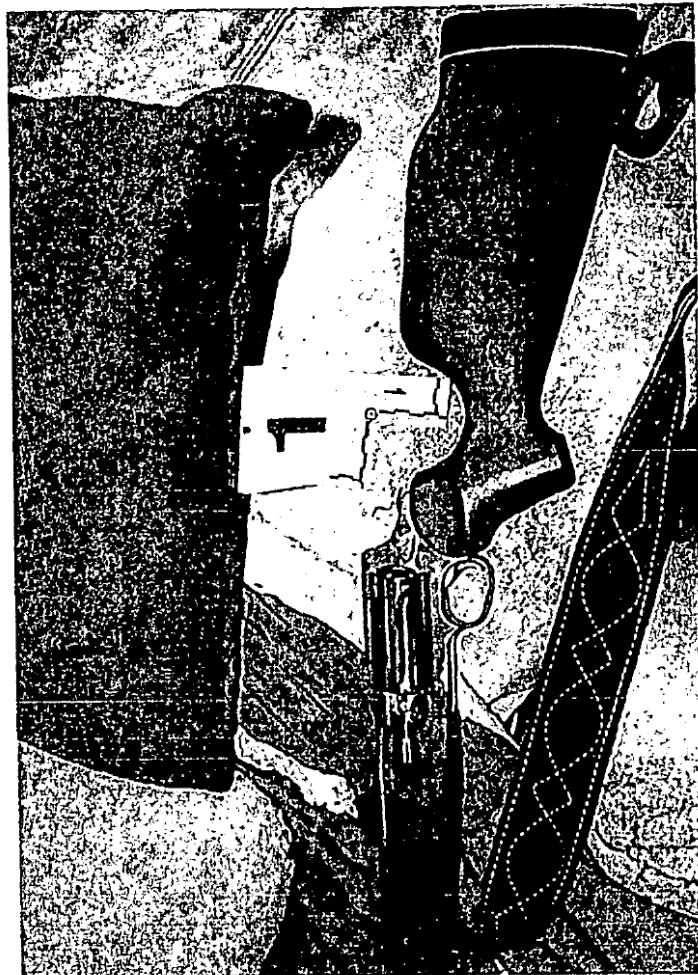


CASE NUMBER 104-CA-00062

EXHIBIT #15

the third position of the rifle-docked

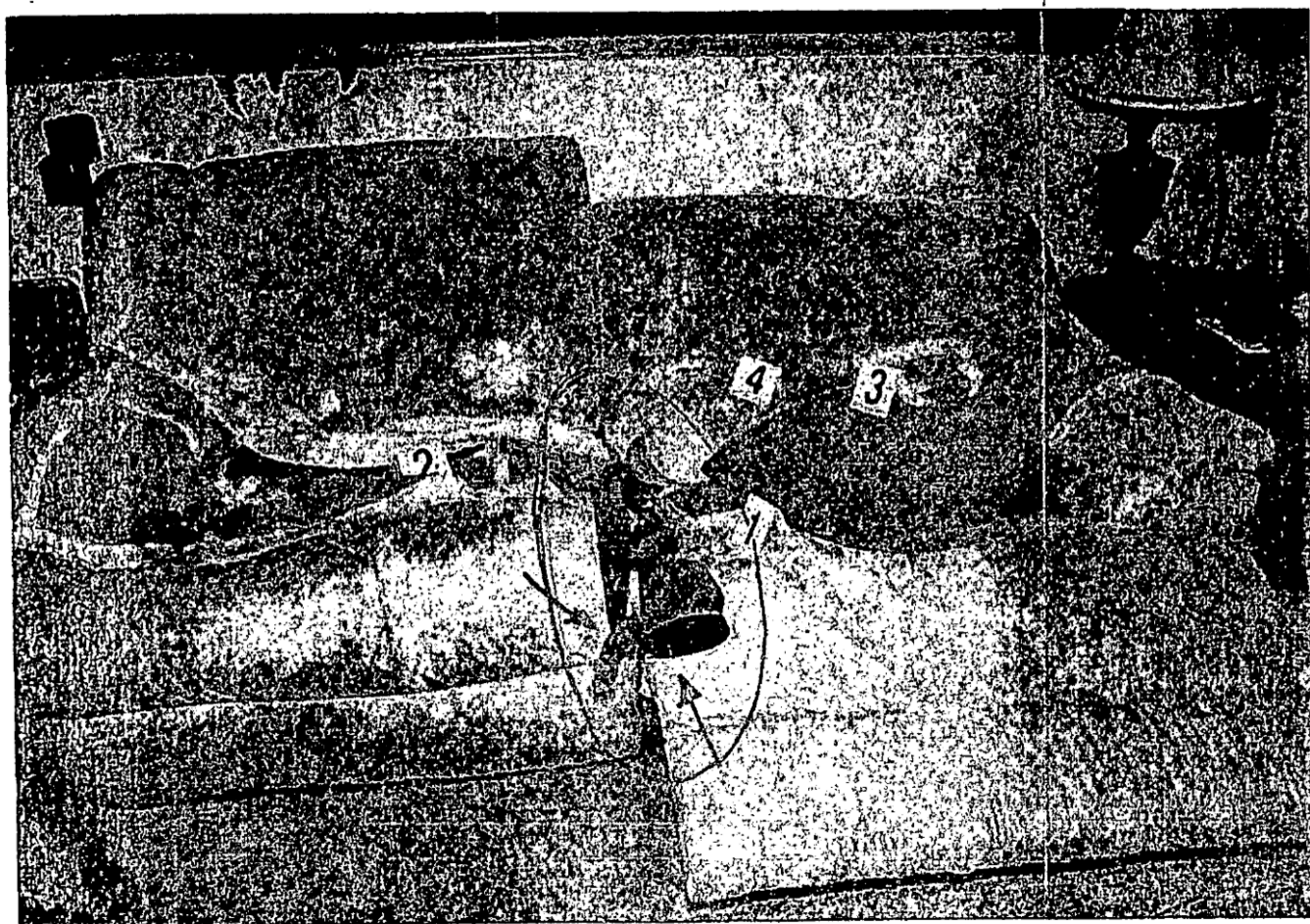




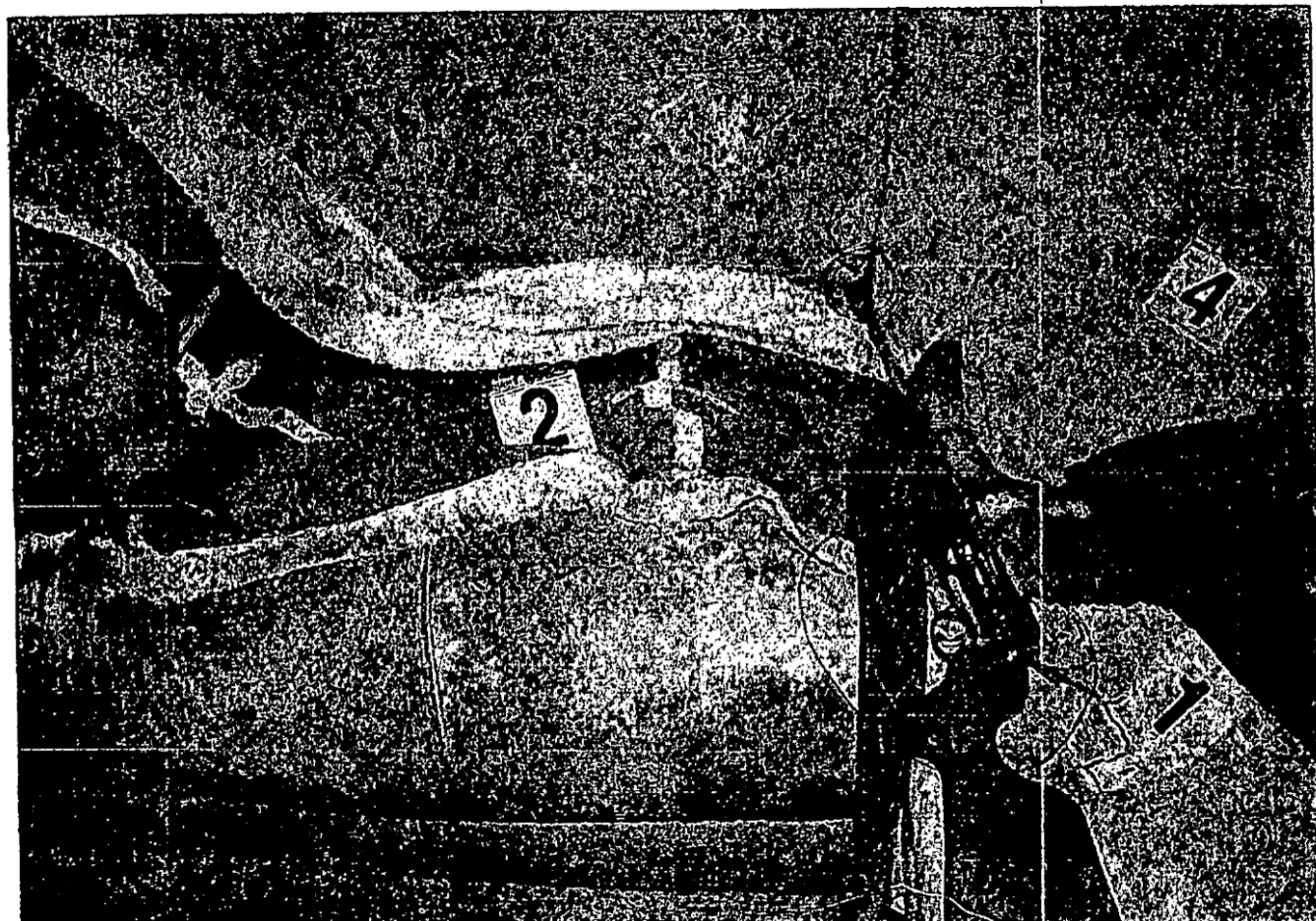
CASE NUMBER 104-CR-00062

**EXHIBIT** # 16

the fourth position of the rifle - not covered



4

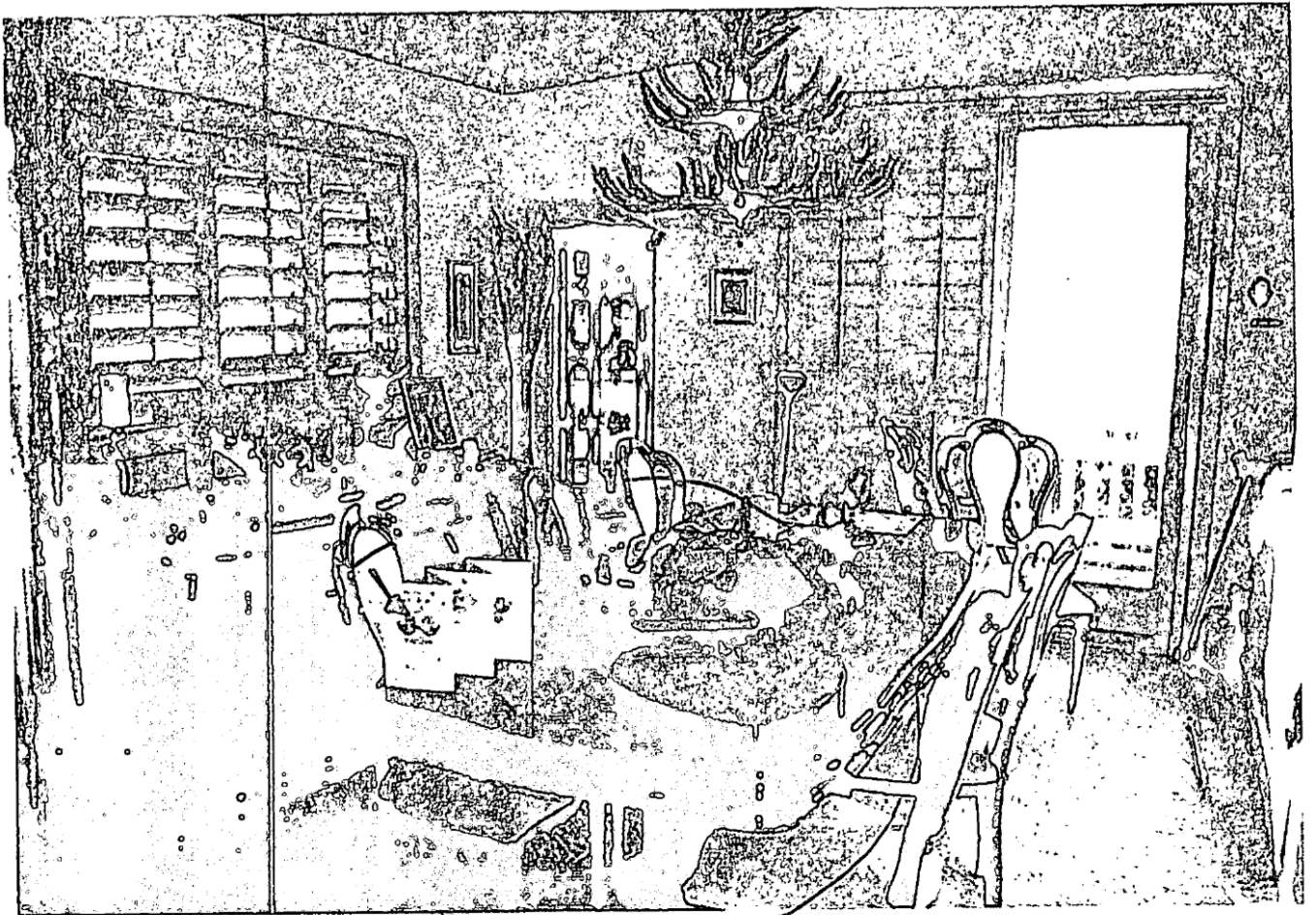
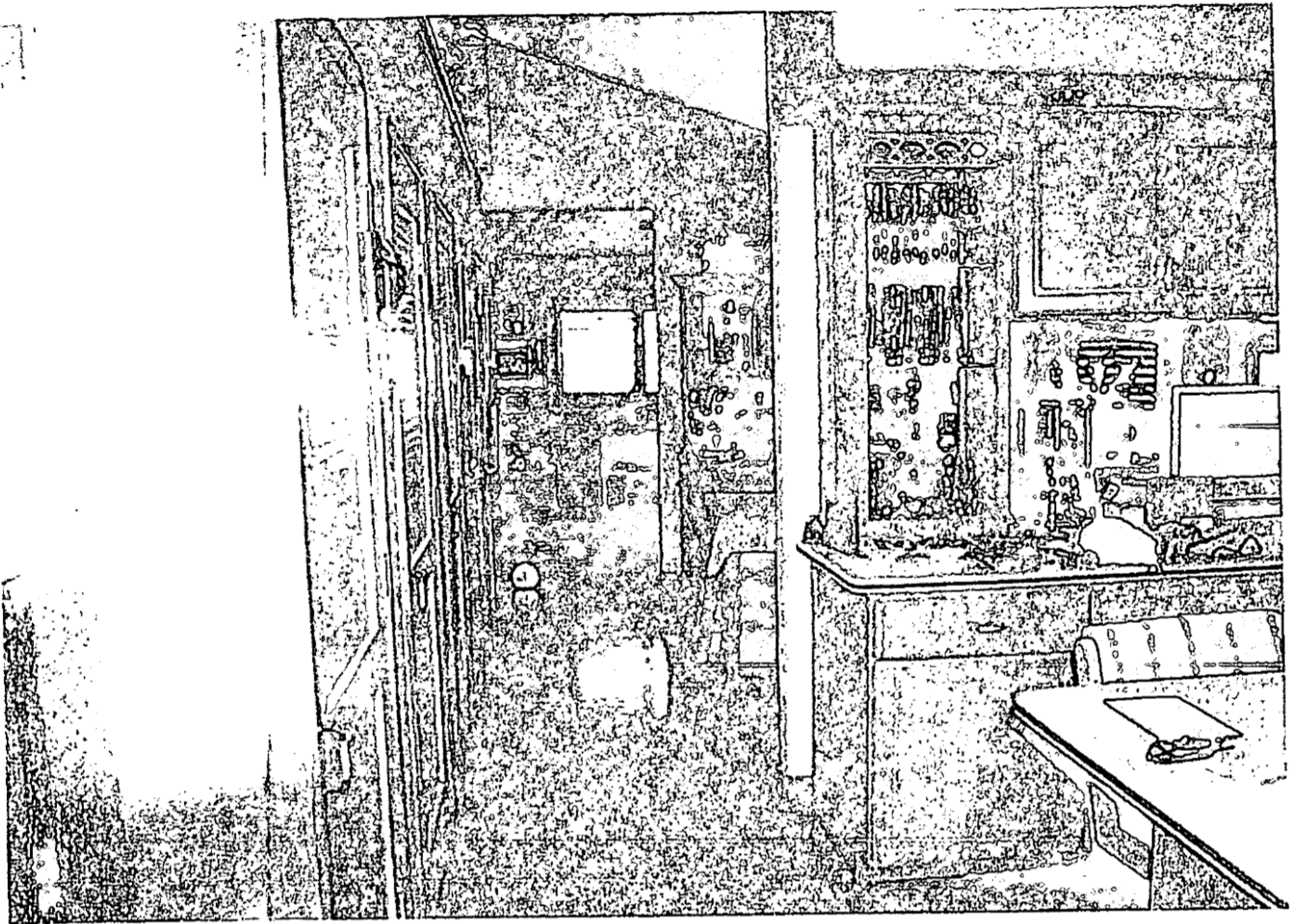


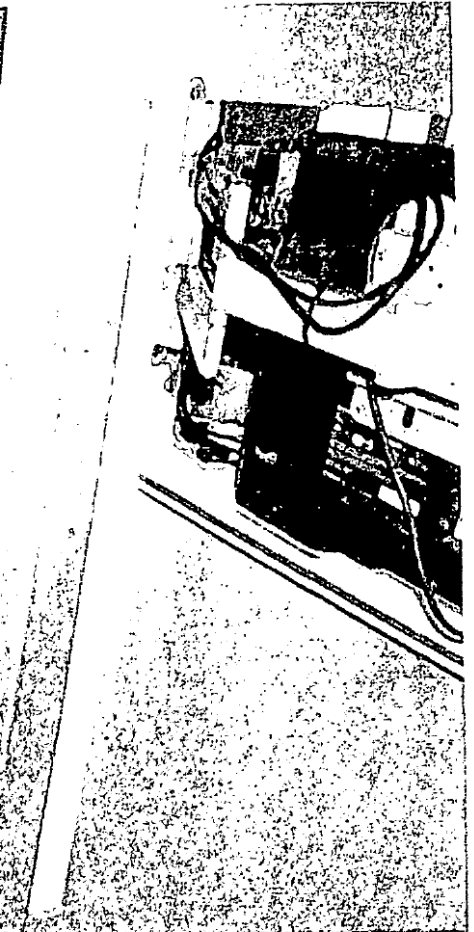
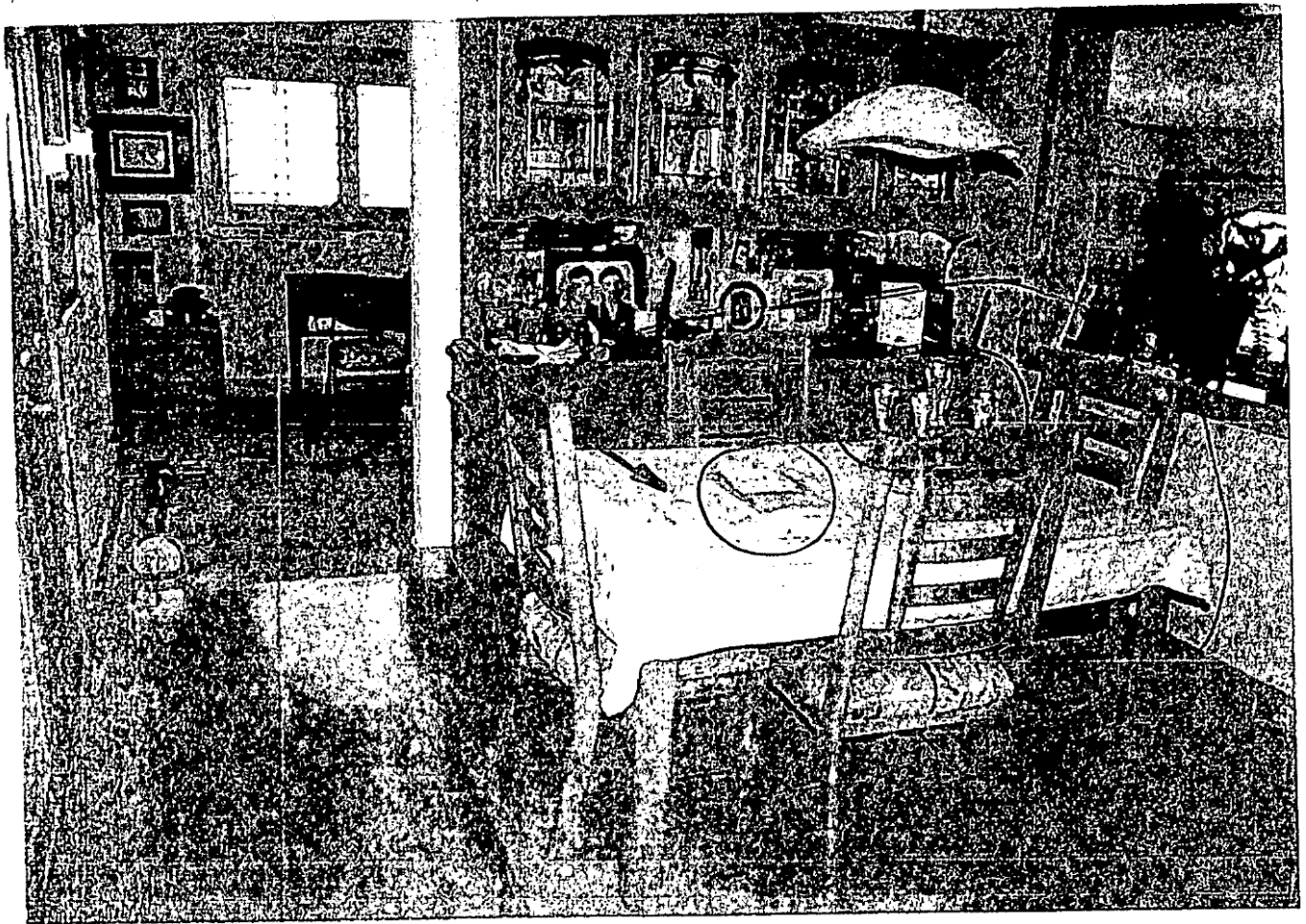


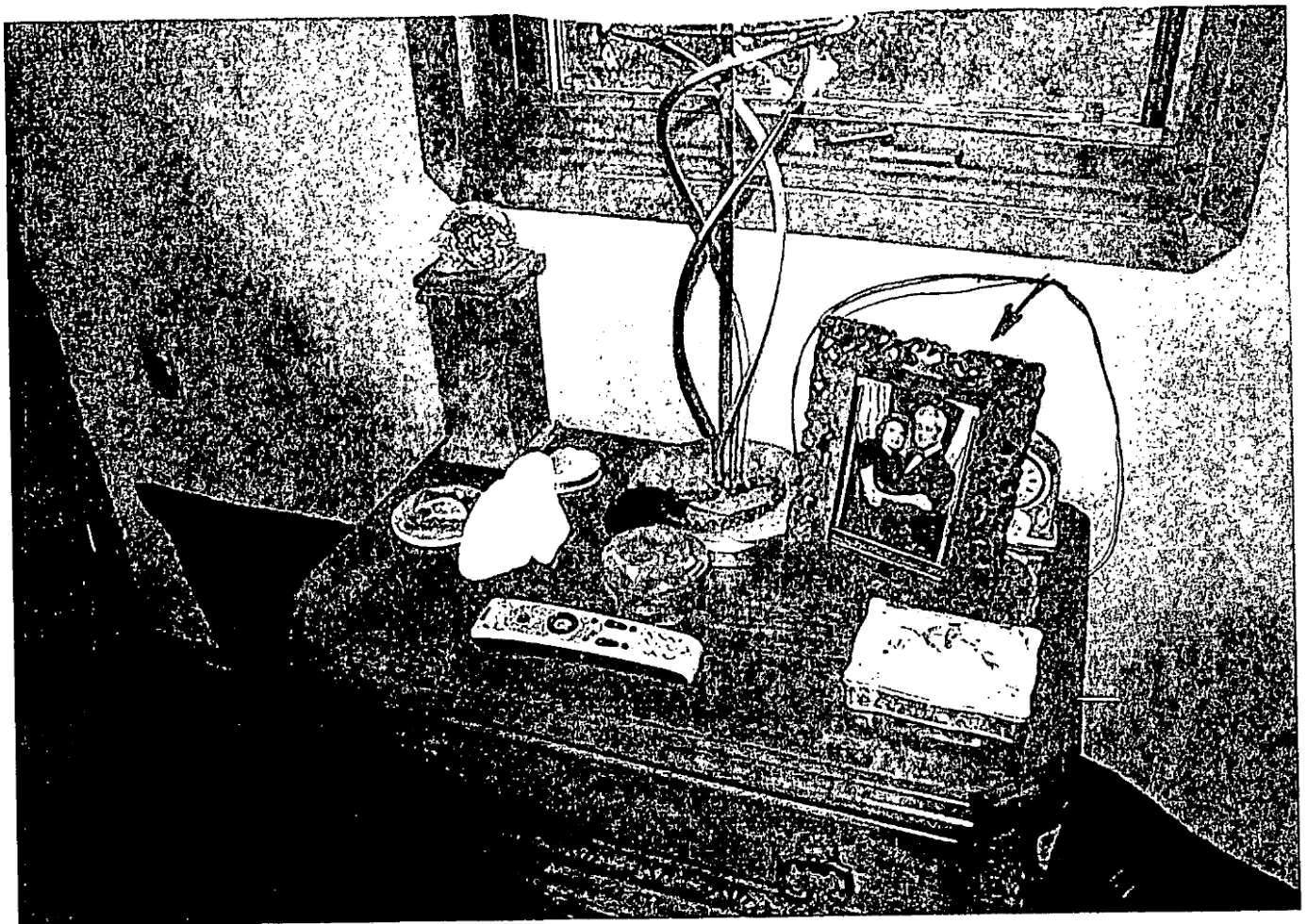
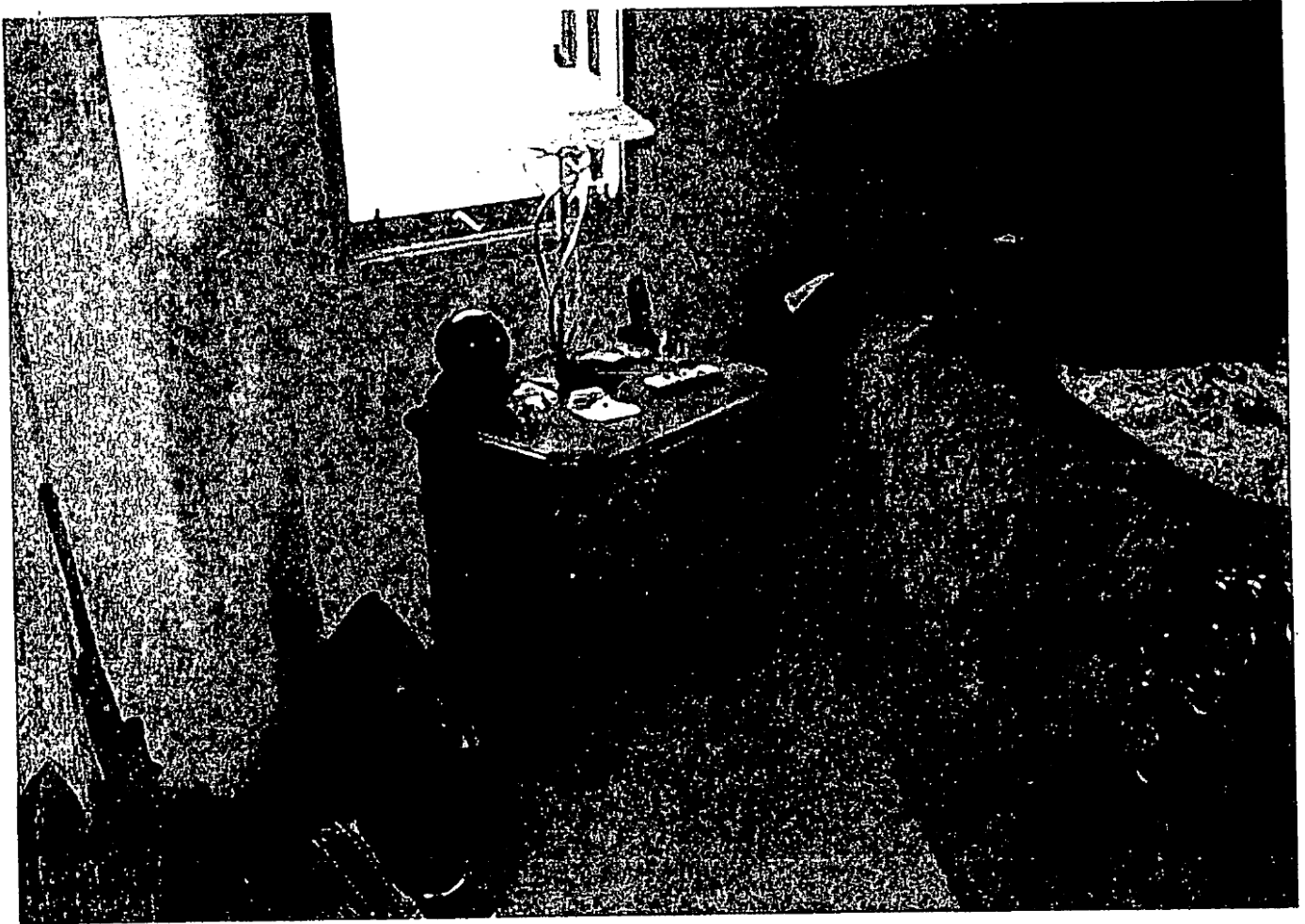
CASE NUMBER 2014-CR-00062

EXHIBIT # 817

gifts, share sacred meals, and picture







CASE NUMBER 2014-ER-00062

**EXHIBIT # 18**

media interviews report with the trial prosecutor  
"developed a protocol for telephonic search warrants"

Note: The corruption with regards to the unfairness in justice system were caused petitioner to lose many family members during incarceration, including younger daughter, Chaya-Anha.



YOUR AD HERE &gt;

# Genoa resident only Douglas attorney among judge finalists

Local | February 26, 2015

Staff Reports



Douglas County Prosecutor Tom Gregory talks to television reporters about the arrest and extradition of Bay Area Rapid Transit officer Johannes Mehserle. Mehserle fatally shot Oscar Grant III on Jan. 1, 2009. The shooting was the topic of the 2013 movie "Fruitvale Station."

## Finalist Biographies

Thomas W. Gregory, 45, has worked for the Douglas County District Attorney's Office since January 2007. He was promoted to chief deputy district attorney in the criminal division in 2009.

During 2014, Gregory processed three murder cases, including the Tatiana Leibel murder trial, which resulted in a conviction earlier this month. In his application, he said he developed a protocol for telephonic search warrants.

Before coming to the district attorney's office, Gregory, a native Nevadan, was in private practice for four years in Reno. He served as a deputy district attorney in the Washoe County District Attorney's Office from 1996 to 2003. He also served in the White Pine County District Attorney's Office.

Gregory clerked for district judges Tom Perkins and Gibbons.

He is a 1987 graduate of Douglas High School and a 1991 graduate of the University of the Pacific. He graduated from McGeorge School of Law in 1994. During law school he worked for Noel Manoukian his first summer and for U.S. District Judge Howard McKibben in the second.

Carson City, Nev. — Only one Douglas County resident made the final cut in the search for Judge Michael Gibbons' replacement on Wednesday.

Douglas County prosecutor Tom Gregory, 45, was selected by the Nevada Commission on Judicial Selection, along with Reno resident Douglas Rands and Carson City resident David Sarnowski.

All three names will go to Gov. Brian Sandoval, who will make the final decision.

There is no requirement that the appointee live in Douglas County, but if someone out of the county is selected, they must move here.

A total of 13 attorneys submitted applications for the vacancy. Applicants had to be Nevada attorneys with two years of residency and 10 years of legal experience.

The Commission's interviews were open to the public. A public comment period was provided at the start of the interview schedule and before the deliberations and voting on the selection of the nominees.

In selecting the nominees, the commission considered the applicants' interviews along with information in comprehensive applications about education, law practice, business involvement, community involvement, and professional and personal conduct. The commission also considered letters of reference and public statements during the interview process.

The applications of the nominees, with the exceptions of medical records and personal identification information, are available on the Supreme Court of Nevada website at: <http://www.nevadajudiciary.us/index.php/judicialselection>.

The commission is composed of seven permanent members — the Supreme Court Chief Justice, three nonattorneys appointed by the governor and three attorneys appointed by the State Bar of Nevada.

Tom Gregory

Governor Sandoval appointed Judge Michael P. Gibbons to the Nevada Court of Appeals on 12/17/14.  
Sworn in 1/5/15.

1/29/2015

TRIAL 1/27/2015 — 2/5/2015

<https://nvcourts.gov/Supreme/News/38> Applications Received by the Judicial Selection Commission for Vacancies in 8th and 9th Judicial Districts/ Denotes application has been received.

Interviews for position scheduled for 2/23/15

Newspaper on 2/25/15 (13 attorneys submitted applications for the vacancy in the 9th district applications only available online for 3 years) Three finalists selected by the Nevada Commission on Judicial Selection submitted to the Governor.

3/19/15 Appointed to Ninth District Court of Nevada by Governor Sandoval. Took office 4/13/15

Ran in Primary election 6/14/16, General election 11/8/16, unopposed elected to 6 year term ends 1/4/21

Dear Honorable Judge Young,

On the morning of Sunday, February 23, 2014, I received a phone call that scarred me for a lifetime. My mother called me hysterically crying, unable to make out any words that I could understand. After continuously asking her what had happened, but not being able to understand what she was saying, a deputy took over and told me that my father had taken his life and was found dead on the scene. I dropped to the floor, unable to comprehend what was just said to me. After hearing that I had lost my father, I came home to Lake Tahoe the next day to be with my mother. I arrived early the next morning and I was surprised to find my mother still being questioned at the sheriff's station. When she was finally released from questioning, for the first time since that horrific phone call, I was able to finally hug my mother. I was finally able to cry with her from the terrible loss of my father. We both could not understand how my father's death happened and were just in shock. For the rest of the day, my mother tried to make arrangements for his funeral since in the Jewish faith, my father's body needed to be buried within a certain time frame. Her actions did not mirror those of someone who had just shot her husband. Her actions were those of a loving wife who had just witnessed her husband committing suicide.

After being able to be in my mother's arms for that entire day, the next morning we were told to go to our home by Deputy Garren. We were told that our home was going to be released to us. However, Deputy Garren lied and tricked us in order to get us there. Once we arrived at the house, Garren pulled my mother out of the car and put her in handcuffs. Deputy Garren was taking my mother away after I had just lost my father two mornings before. Now both of my parents had been stripped from my life, and the second time, I actually had to witness it happen. At that moment, I had become an orphan. I was a child at 19 years old who had not only lost her father, but had witnessed her mother being ripped away from her life.

Since that day, I have had to grieve my father's death on my own. Since that day, I have had to cry myself to sleep without having my mother's arms wrapped around me. It has been terrible and torturous enough that my father has not been in my life, but my mother has been held in jail and I have not been able to grieve with her. I have been alone through the loss of my dad and my mom too. My parents and I were extremely close. Even though I left for college and live in San Diego, I visited home every break and holiday. I talked to my parents on the phone everyday or every other day. Unfortunately for the past year I have had no one to visit, and no one to call. Somehow I have managed to stay in school, but after every good grade I get on a test, there has been no one to tell. My mom calls me from jail every day, but I can't call her, it is not even close to being the same. We get a fifteen-minute time limit a day and then I am left alone again till the next phone call.

The loss of both my parents from my life has been extremely hard, but what has made it even harder are the lies and facades that Cheron Bartee and Justin Liebel have painted for the court. I have read both of their letters and although there are no direct lies, there are definitely misconceptions that I would like the court to be aware of. To begin, both of their letters have pictures of my father with them, however those pictures were taken many years ago. As much as Cheron and Justin



would have liked to have been close with their father, they were not, especially Cheron. Just so you are aware, Harry was initially my stepfather. Before him, there was no man who I ever considered calling my dad. He came into my life when I was eight years old and married my mother a year later. After that, I considered him to be my daddy as I was his little girl. Together, he and my mother raised me from a young girl to an adult. Cheron however stopped speaking to her father five years before his death. She sent him a hateful and mean letter telling him that she no longer considered him her father and that he was not part of her life anymore. It hurt him dearly, but they did not speak even once since that letter was given to him which would now be six years ago. In Cheron's letter, she stated Harry would not be a part of his grandchildren's lives. The only reason my father knew that Cheron had her first child was because I saw a picture on Facebook. After telling him that she gave birth to a little girl, he said that he did not care to even know his granddaughter's name because Cheron was not her daughter and that was not his grandchild. As sad as that was, Cheron should not be painting this picture of her and Harry being close at all since they were the exact opposite.

Since my father's death, Cheron has given away or sold all of his personal things. She had no care for any of his things that are sentimental to me, they were just tossed away to strangers, I wasn't even asked. Cheron may have been close to her father when she was younger, but the truth is that they had not spoken one word to each other for over five years. Cheron definitely has the right to be emotional about her father's death, but she does not have the right to be able to paint these misconceptions to the courtroom. In regards to Justin Leibel, he was still occasionally present in Harry's life even though Cheron was not. Once a year, twice if stretching it, he would visit our home in Lake Tahoe and stay for a short period of time. In court, he told the courtroom that they spoke about once a month. To me this does not resemble a close child and parent relationship, definitely not like the one I had with my parents. The last time I remember seeing Cheron was when I was in middle school, I am now a junior in college. As for Justin, I saw him twice when I was in high school and when he visited after Cheron gave birth to her first child, he tried telling my father about it but my dad refused to listen. Cheron and Justin are asking to have my mother, the only parent I have left, to be sentenced to life because they believe she took their father's life even though they barely spoke to each other. Instead of acting like my siblings, they have shut me out completely, turning everyone against my mother, and have tossed away all of my parents things. My mom's jewelry, her fur coats, all are gone. These were Mom's personal things not part of "Harry's estate." Cheron was appointed the executor of the estate without the court knowing the truth about her nonexistent relationship with her father and she chose to give away all of our family's possessions. Even though she took away my parents things, she cannot take away the memories I have with my father, the memories that she never made with him. On top of losing both my parents, Cheron and Justin have made this past year unbearable for me.

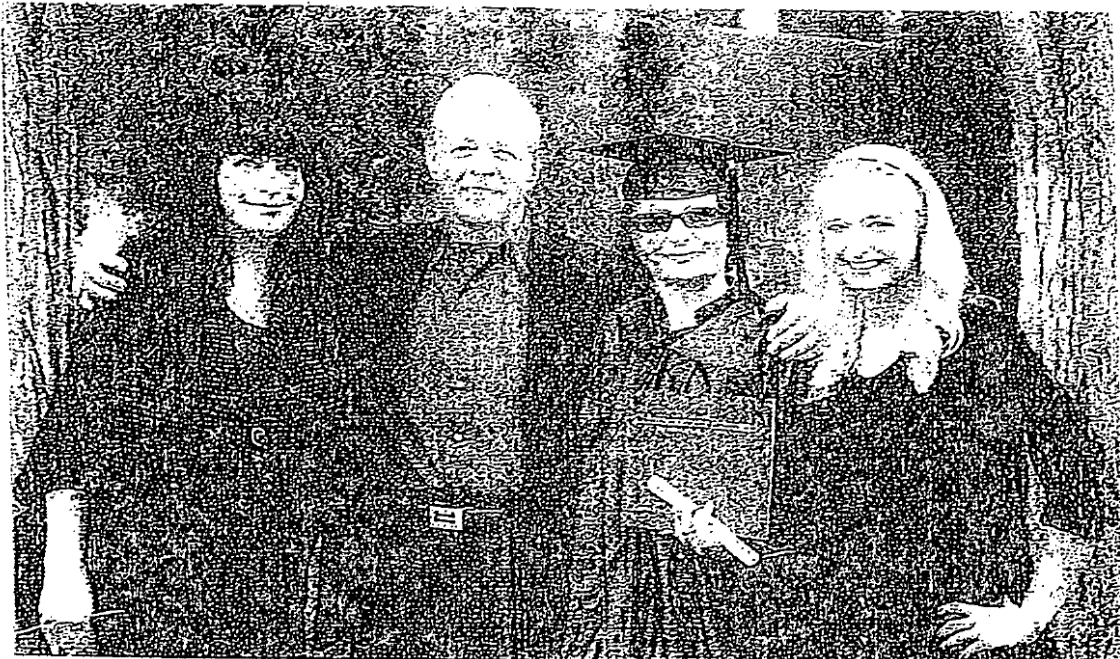
My mother is the most loving, sweet, kind-hearted woman that I have been so lucky enough to have in my life. Unfortunately this nurturing mother has been wrongly accused and has been sentenced to prison. I cannot even put into words on how terrible this makes me feel. My mom did not kill my dad!

This past year, I lost my father, my mother was been taken away from me, and my home has been left an empty place of memories, so I beg you Judge Young, please do not leave me with a life of feeling like an orphan. Do not sentence my mother with the highest sentencing. I already bear the hard loss of not ever having my father be at my college graduation, or my wedding, or seeing him hold his future grandchildren. Please do not let those moments be left without my mother being there as well. My mother already has three grandchildren that she will miss years of seeing them grow older, please do not take away from her being a part of their lives too. Please do not leave me with the absent memories of my mother not being a part of my adulthood. I haven't even turned 21 yet and I already have to deal with losing them both, please do not let me go on living my life without my mother. I beg of you to please give my mother the lowest sentencing possible. Since day one she has claimed her innocence because she has been wrongly accused of my father's murder. My parents loved each other. This has been the hardest year for me; please do not have me keep living through terrible ones for the rest of my life alone. Please let me know what it feels like again to be in my mother's arms and to at least have one parents present in my life.

Thank you for your consideration,

*Chaya Anna Leibel*

Chaya-Anna Leibel



Mom's college graduation - UNR

Chaya-Anna past away - 2019

CASE NUMBER 84920

**EXHIBIT** V

Public defender, points & authorities / 1-19-2015

## POINTS AND AUTHORITIES

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

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

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

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

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

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

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

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

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

22 *NRS 50.275* provides:

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

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

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

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

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

15 *Higgs*, 222 P.3d at 658. (Internal citation omitted).

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

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

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

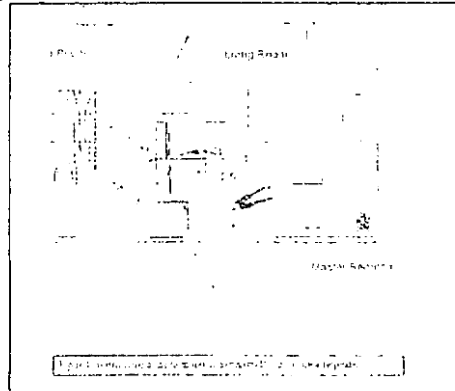
6 Even assuming that Mr. Noedel's testimony would be otherwise admissible expert  
7 testimony (which the defense is in no way conceding), the testimony would fail under the  
8 *Morsicato/Yeghiazarian* standard which requires testimony concerning causation be stated to a  
9 reasonable degree of medical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

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

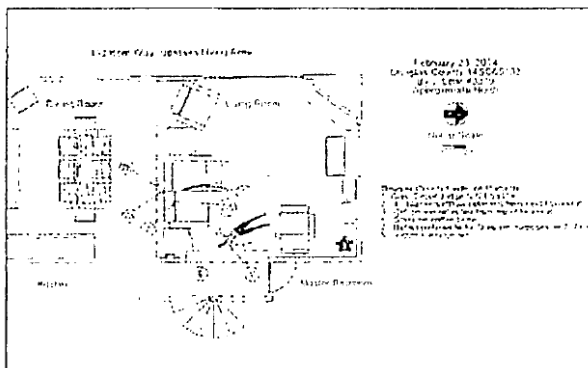
22 Crime scene reconstruction encompasses many components that are based in "true  
23 science": chemistry, math, physics, etc. where 1+1 always equals 2. A copy of the International  
24 Association for Identification requirements are attached as Exhibit 7. Reconstruction itself is an  
25 applied science,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

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

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



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



20 In his report, Mr. Nodel also states:

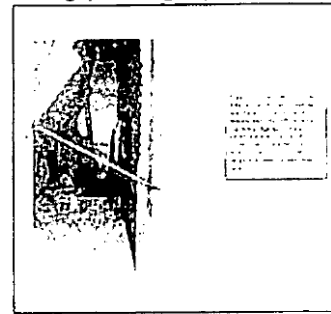
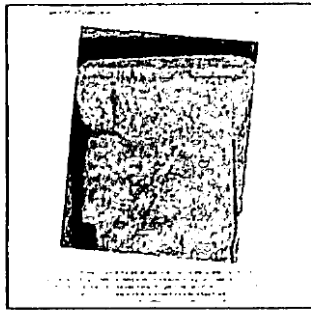
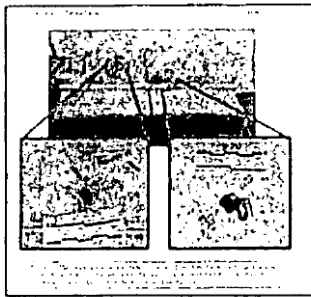
21 "Because the seat occupied by Harry Leibel was a recliner (the seat back moved up and down to  
22 sit up or recline), the straight line path of this shot could only be connected when the seat was  
23 reclined approximately half way back. Therefore, at the time of the second shot, the recliner was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

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26  
27  
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1  
2 In support of this assertion, Mr. Noedel refers to the following photographs.



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

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

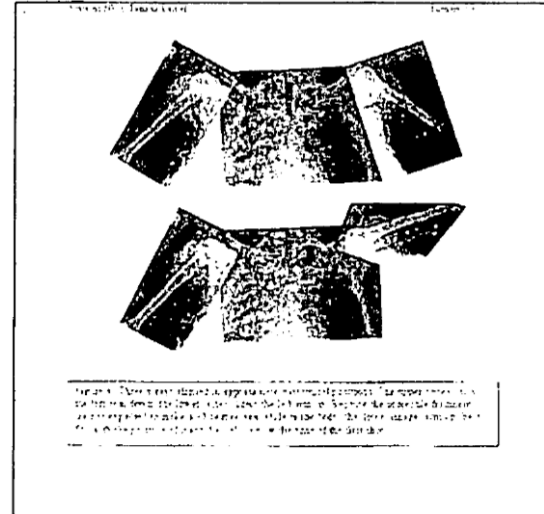
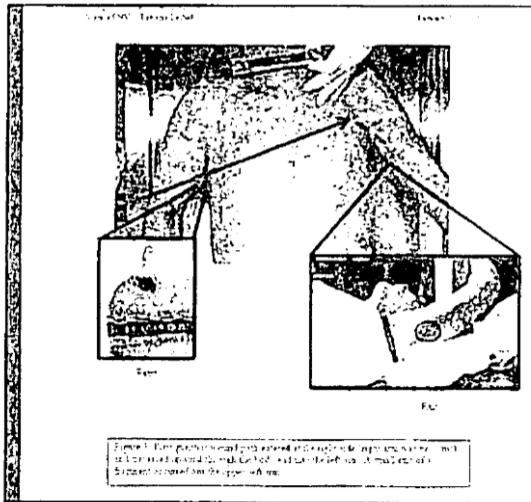
16 In spite of this, Mr. Noedel concluded:

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

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

25 The application of the "science" of crime scene reconstruction becomes more  
26 problematic the more it is "applied" to the scene. The first shot entered Mr. Leibel's torso on the  
27 right side underneath the arm pit. In the autopsy report, the wound path is described as right to  
28

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



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

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

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

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

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

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

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



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

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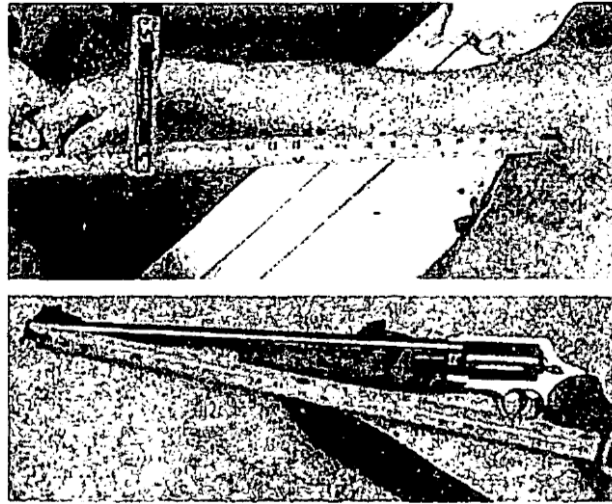


Figure 14: The upper two images were taken at two different times. First, the length of Harry Leibel's arm was measured during his autopsy and photographed. Later, the image of the Rossi Taurus rifle was taken at the forensic laboratory and photographed with a scale.

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

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

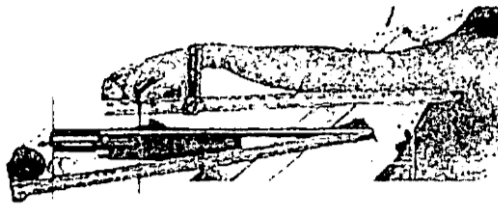


Figure 15: The scaled and repositioned images of the rifle and arm length of Harry Leibel. The green zone represents approximately 3 inch of offset and the red zone represents the approximate distance beyond the reach of Harry Leibel to self-inflict the gunshot wound to his side.

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

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

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

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

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



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Figure 15: Diagram representing the approximate orientation Harry Leibel would have to  
assume to self-inflict the second shot that is to be assumed he can reach the trigger. Note  
the position his left hand is moved away from his body. He would not be a self-inflicter that  
becomes because of the limits of his reach with his right arm.

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

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



12 Figure 17. Diagram representing the approximate orientation of a shooter during the first  
13 shot to (Hans Leibel) shot to (Hans Leibel). The triangular region represents the area the rifle  
14 can be held and still maintain the appropriate angles.



Figure 18. Diagram representing the approximate orientation of a shooter during the  
second shot to (Hans Leibel) shot to (Hans Leibel). The triangular region represents the area the  
rifle can be held and still maintain the appropriate angles.

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

20 Finally, Figure 19 is totally misleading.



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

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

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

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

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