1	Habeas Corpus Petition Grounds One (1) To Seventy-Nine (79) and Supporting Facts
2	KIRSTIN BLAISE LOBATO
3	v. WARDEN OF FMWCC and
4	THE STATE OF NEVADA
5	IN THE EIGHT JUDICIAL DISTRICT COURT OF THE
6	STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK
7	TABLE OF CONTENTS
8	
9	(a) Ground one
10	New forensic entomology evidence that Duran Bailey's time of death was after sunset on July 8, 2001, in Las Vegas, when it is known the Petitioner was 170 miles away in Panaca.
11	
12	(b) Ground two
13	8, 2001, in Las Vegas when it is known the Petitioner was 170 miles away in Panaca.
14	(c) Ground three
15	New entomology and forensic pathology evidence that Duran Bailey's body did not have cockroach and other predator bites establishes his time of death was close to discovery of
16	his body in Las Vegas, when it is known the Petitioner was 170 miles away in Panaca.
17	(d) Ground four
18	New expert psychology evidence the Petitioner's Statement is not a confession to Bailey's murder, and it describes a rape assault at a Budget Suites Hotel in east Las Vegas that
19	occurred weeks before Bailey's murder.
20	(e) Ground five41
21	New alibi witness evidence the rape assault at the Budget Suites Hotel described in the Petitioner's Statement occurred prior to July 8, 2001, which undermines the credibility of
22	Detective Thomas Thowsen's opinion testimony the Petitioner's Statement is a <i>de facto</i> confession, that the prosecution relied on in their jury arguments.
23	
24	(f) Ground six
25	
26	(g) Ground seven51
27	New forensic pathology evidence that more than one person was involved in Duran
28	Bailey's murder, and the Petitioner is excluded as the person who amputated his penis, corroborating that her Statement was about a different incident than Bailey's murder.

1	(h) Ground eight53
2	New forensic pathology and crime scene evidence Duran Bailey was alive when his rectur was injured, so the Petitioner was convicted of a non-existent violation of NRS 201.450
3	
4	(i) Ground nine
5	New forensic pathology evidence that on July 8, 2001, Bailey experienced two attacks two hours apart that were likely separated by a meal.
6	(j) Ground ten
7	New forensic pathology evidence related to the circumstances and time of Duran Bailey murder excludes the Petitioner as a perpetrator.
8	(b) Crown deleven
9	(k) Ground eleven
11	(1) Coopered trueling
	(l) Ground twelve
12 13	and on concrete leading out of the trash enclosure were made by Duran Bailey's murderer, and the Petitioner's shoeprints are excluded.
14	(m) Ground thirteen
15	New forensic science evidence excludes the Petitioner and her car from the crime scene, and undermines the prosecution's theory of the crime.
16	(n) Ground fourteen
New witness evidence Duran Bailey did not live in the trash enclosure where he	New witness evidence Duran Bailey did not live in the trash enclosure where he was murdered establishes the Petitioner could not have known to go there "sometime before
18 19	sunup"on July 8, 2001.
19	(o) Ground fifteen90
20 21	within walking distance of the whom the Detitionar was living and in other nearly town
	(p) Ground sixteen92
22	New third-party culprit evidence that Diann Parker's Mexican friends murdered Duran Bailey.
23	
24	(q) Ground seventeen
25	Bank account were negotiated for cash one to three days after his death.
26	(r) Ground eighteen
27	New forensic science, dental and crime scene evidence the jury convicted the Petitioner based
28	on the prosecution's impossible theory of the crime that Bailey was hit in the mouth in the trash enclosure's northwest corner, and fell backwards and hit his head on the southwest curb.

1	(s) Ground nineteen
2	New legal evidence the Petitioner was convicted of a non-existent violation of NRS 201.450 (Nevada's necrophilia law).
3	(t) Ground twenty
4	New witness evidence of jury misconduct that at least four of Petitioner's jurors discussed the merits of the case prior to the close of evidence, and at least one of those jurors had
5	decided on the Petitioner's guilt.
6	(u) Ground twenty-one
7 8	New evidence LVMPD Detective Thomas Thowsen testified perjuriously multiple times in an effort to falsely link the Petitioner to Duran Bailey's murder.
9	(v) Ground twenty-two
10	New evidence of police and prosecutor misconduct in maliciously and negligently prosecuting the Petitioner when they had evidence the Petitioner did not murder Duran
11	Bailey or cut his rectum after death.
12	(w) Ground twenty-three
13	New forensic entomology, forensic pathology, forensic science, crime scene reconstruction, psychology, alibi witnesses, dental, third-party culprit, police perjury, and prosecution and
14	police misconduct evidence establishes the Petitioner is actually and factually innocent of any involvement with the murder and cutting of Duran Bailey's rectum on July 8, 2001.
15	(x) Ground twenty-four
16	New evidence the Petitioner's conviction was based on false evidence.
17	(y) Ground twenty-five
18	The prosecution failed to disclose to Petitioner in violation of <i>Brady v. Maryland</i> , et al. the relationship between Duran Bailey and law enforcement.
19	(z) Ground twenty-six
20	The prosecution failed to disclose to Petitioner in violation of <i>Brady v. Maryland</i> , et al. that
21	there is no such person as Daniel Martinez with Social Security Number 3**-0*-0***, and Detective Thomas Thowsen perjuriously testified he ran a criminal background check on
22	that non-existent person and he had a clean criminal record.
23	(aa) Ground twenty-seven
24	Petitioner's counsel prejudicially failed to investigate Diann Parker's Mexican friends at the Grand View Apartments as Duran Bailey's killers.
25	(bb) Ground twenty-eight
26	Petitioner's counsel prejudicially failed to investigate seven unique handwritten telephone
27	numbers that were found in Duran Bailey's pant's pockets that could have resulted discovery of Bailey's killer, exculpatory witnesses or other exculpatory evidence.
28	

1	(cc) Ground twenty-nine
2	Petitioner's counsel prejudicially failed to subpoena Duran Bailey's Nevada State Bank checking account records for July 2001, including one check processed on July 12, 2001,
3	and two checks processed on July 13, 2001, that were likely negotiated by Bailey's killer.
4	(dd) Ground thirty.
5	Petitioner's counsel failed to obtain a court order for testing of Diann Parker's DNA to support the Petitioner's third-party culprit defense that her Mexican friends murdered Bailey.
6	(ee) Ground thirty-one
7	Petitioner's counsel prejudicially failed to investigate and subpoena or obtain a court order for records of groin area or penis cutting wounds treated at all Las Vegas area medical care
8	facilities during May and June 2001, all reports filed under NRS 629.041 for non-accidental knife wounds of a person's groin area or penis treated at Las Vegas area medical care
9 10	facilities during May and June 2001, and all Las Vegas area police reports involving a cutting wound to a person's groin area or penis during May and June 2001.
11	(ff) Ground thirty-two.
12	Petitioner's counsel prejudicially failed to depose and subpoena LVMPD Detective James LaRochelle to impeach Detective Thomas Thowsen's testimony regarding four
13	investigations he testified he conducted to try and verify the assault described in the Petitioner's Statement of July 20, 2001, and other matters Thowsen testified about.
14	remoter's Statement of July 20, 2001, and other matters Thowsen testified about.
15	(gg) Ground thirty-three
16	Thowsen's secretary to impeach Detective Thomas Thowsen's regarding a search of NRS 629.041 reports filed in May, June and July 2001 that he testified he directed her to perform.
17	(hh) Ground thirty-four
18	(hh) Ground thirty-four
memorandums, and/or regulations homicide detectives are required to conducting a homicide investigation, to impeach Detective Thomas Thows regarding four investigations he testified he conducted to try and verify the as	memorandums, and/or regulations homicide detectives are required to follow when
	regarding four investigations he testified he conducted to try and verify the assault described in the Petitioner's Statement of July 20, 2001, and other matters Thowsen testified about.
21	in the retitioner's Statement of July 20, 2001, and other matters Thowsen testined about.
22	(ii) Ground thirty-five
about Petitioner's methamphetamine use which ended Bailey's murder, and to bar conflating Petitioner's p	Petitioner's counsel prejudicially failed to file motion <i>in limine</i> to exclude all testimony about Petitioner's methamphetamine use which ended more than a week prior to Duran
	Bailey's murder, and to bar conflating Petitioner's previous methamphetamine use and
25	Bailey's ongoing crack cocaine use under the umbrella of "drugs" and "drug use" because it was irrelevant, prejudicial and had no probative value.
26	(jj) Ground thirty-six
27	Petitioner's counsel prejudicially failed to file discovery request for all discoverable materials.
28	

1 2	(kk) Ground thirty-seven
3	
4	(ll) Ground thirty-eight
56	expert entomology testimony about Duran Bailey's time of death, which was after sunset on July 8, 2001, in Las Vegas, when it is known the Petitioner was 170 miles away in Panaca.
7	(mm) Ground thirty-nine
8	Petitioner's counsel prejudicially failed to retain a psychologist and introduce expert testimony the Petitioner's Statement is not a confession to Bailey's murder, and that it describes a rape assault at a Budget Suites Hotel in east Las Vegas weeks before his murder.
	(nn) Ground forty
10	(nn) Ground forty
11	exculpatory expert forensic pathology testimony about all facets of the medical evidence
12	related to Duran Bailey's murder to counter the testimony of prosecution expert Medical Examiner Lary Simms.
13	(oo) Ground forty-one
14	Petitioner's counsel prejudicially failed to retain forensic scientist and blood pattern expert
15	George Schiro, and present his exculpatory testimony about multiple aspects of Duran Bailey's murder.
16	(pp) Ground forty-two
17 18	Petitioner's counsel prejudicially failed to cross-examine ME Lary Simms about his time of death for Duran Bailey that was irreconcilably inconsistent with his preliminary hearing
	testimony that he died within 12 hours of his body's discovery, which was a period of time
19	when the prosecution concedes the Petitioner was not in Las Vegas; and about Simms' preliminary hearing testimony that Bailey's rectum wound was ante-mortem which was
20	irreconcilably inconsistent with his trial testimony that it was post-mortem.
21	(qq) Ground forty-three219
22	Petitioner's counsel prejudicially failed to object that the prosecution did not comply with
23	the required statutory notice of expert testimony under NRS 174.234(2) for expert testimony by Louise Renhard, Daniel Ford, Thomas Wahl and Kristina Paulette about
24	luminol and/or phenolphthalein testing in general, and in particular luminol and/or phenolphthalein testing of Petitioner's personal items and her car.
25	phenoiphinalem testing of Fetitioner's personal items and her car.
26	(rr) Ground forty-four
27	Petitioner's counsel prejudicially failed to introduce into evidence Petitioner's exculpatory
$\begin{bmatrix} 27 \\ 28 \end{bmatrix}$	black high-heeled platform shoes she was wearing when assaulted at the Budget Suites Hotel that did not have any of Duran Bailey's blood on them.

1 2	(ss) Ground forty-five
3	butterfly knife provided by Detective Thomas Thowsen that had no connection to the Petitioner, Duran Bailey, or the crime.
4	(tt) Ground forty-six
5 6	evidence that the attack described in her Statement of July 20, 2001, occurred prior to July 8, 2001, is trustworthy and admissible under state and federal hearsay exceptions.
7	(uu) Ground forty-seven
<i>'</i>	(uu) Ground forty-seven
8 9	the required statutory notice of expert testimony under NRS 174.234(2) for expert psychology opinion testimony by Detective Thomas Thowsen that the Petitioner "jumbled"
10	details of Bailey's murder to "minimize" her involvement in the crime.
	(vv) Ground forty-eight
11	Petitioner's counsel prejudicially failed to make a motion for a mistrial after Detective
12	Thomas Thowsen's declared in response to a juror's question about what he did at the Budget Suites Hotel – "there's no sense looking for a witness to something that we know didn't
13	happen there. We know it happened on West Flamingo." – when Thowsen's declaration was
14	not fact but his personal opinion that the Petitioner was a liar in her Statement and guilty of Bailey's murder, and no curative instruction could undo Thowsen's irreparable prejudice to
15	Petitioner's right to an unbiased and impartial jury, due process of law, and a fair trial.
16	(ww) Ground forty-nine
17	Petitioner's counsel prejudicially failed to make a motion for a mistrial when during Detective Thomas Thowsen's direct testimony ADA William Kephart committed egregious prosecutorial
18	misconduct by making as a statement of fact the Petitioner gave Thowsen "her confession" to Bailey's murder, when there was no testimony that she did, and Kephart's prosecutorial
19	misconduct so gravely prejudiced the Petitioner's rights to an impartial and unbiased jury, due
20	process, and a fair trial that no curative instruction could undo the prejudicial effect of Kephart's false statement, and the appropriate sanction was dismissal of the charges with prejudice.
21	(xx) Ground fifty246
22	Petitioner's counsel prejudicially failed to use available information to impeach Detective
23	Thomas Thowsen's testimony about his alleged investigations of the Petitioner's Statement
23 24	by allegedly contacting Las Vegas urologists and hospitals, searching for NRS 629.041 reports, and going to the Budget Suites Hotel on Boulder Highway.
	(yy) Ground fifty-one
25	Petitioner's counsel prejudicially failed to object on confrontation grounds to Detective
26	Thomas Thowsen's testimony about what he said his secretary told him she did and learned from searching for NRS 629.041 reports about a cutting injury to a groin or penis in May,
27 28	June and July 2001, and what he said Las Vegas urologists and hospital personal told him they did or did not do or learned regarding a cut or severed penis in May, June and July 2001.

1	(zz) Ground fifty-two253
2	Petitioner's counsel prejudicially failed to object and make a motion for a mistrial and a motion for dismissal with prejudice based on: ADA William Kephart's egregious
3	prosecutorial misconduct of suborning perjury from Detective Thomas Thowsen about
searches of NRS 629.041 reports he did not conduct; perpetrating egregion	searches of NRS 629.041 reports he did not conduct; perpetrating egregious fraud on the court by misrepresenting to Judge Valorie Vega what Thowsen's direct testimony about the
5	NRS 629.041 reports would be, and then committing further fraud on the court by
	misrepresenting to Judge Vega what Thowsen's direct testimony was to avoid her striking his testimony as hearsay; and ADA Sandra DiGiacomo's prosecutorial misconduct of
aiding and abetting Kephart in executing his multiple frauds on the court, and	aiding and abetting Kephart in executing his multiple frauds on the court, and if the motion for a mistrial was not granted, the failure to object waived the claim on direct appeal.
8	(aaa) Ground fifty-three260
9	Petitioner's counsel prejudicially failed to use available information during cross-
10	examination of Detective Thomas Thowsen to impeach his testimony about what he said the Petitioner said about the holding cell she was held in after her arrest.
11	(bbb) Ground fifty-four267
12	Petitioner's counsel prejudicially failed to question Detective Thomas Thowsen during
13	cross-examination about the information about the Petitioner's sexual assaults as a child that he used in a torture like tactic to extract the Petitioner's waiver of her Miranda rights.
14	to determine if he legally obtained the childhood information he used against the Petitioner, and if not, the admissibility of the Petitioner's Statement could have been challenged.
15	(ccc) Ground fifty-five269
16	Petitioner's counsel prejudicially failed to use available information to impeach Laura
17	Johnson's credibility during her cross-examination.
18	(ddd) Ground fifty-six
19	Petitioner's counsel prejudicially failed to investigate or have witnesses testify about the area of Las Vegas where methamphetamine was readily bought on the street in June and
20	July 2001, and it didn't include the Nevada State Bank on West Flamingo Road where
21	Duran Bailey was murdered.
	(eee) Ground fifty-seven
22 23	Robinson's hearsay testimony about the Budget Suites Hotel during May, June and July 2001.
24	(fff) Ground fifty-eight
25	Petitioner's counsel prejudicially failed to file a pre-trial motion for the disclosure of Detective Thomas Thowsen history of giving false and/or perjurious testimony, his
$\begin{bmatrix} 25 \\ 26 \end{bmatrix}$	disciplinary record for dishonest and/or unethical conduct during his law enforcement
	career, and his history of mental health issues.
27	

1	(ggg) Ground fifty-nine
2	Petitioner's counsel prejudicially failed to make a NRS 175.381(1) motion for Judge Vega
2	to advise the jury to acquit the defendant of all charges at the close of the State's case, at the
3	close of the defense's case, and after at the State's rebuttal, on the basis the prosecution did
4	not introduce evidence proving beyond a reasonable doubt the essential element that on July 8, 2001, the Petitioner was "within Clark County" and at the Nevada State Bank and
4	inside the trash enclosure in its parking lot at the exact time Duran Bailey was murdered, so
5	she could not have committed her accused crimes, and there was insufficient evidence for
6	the jury to find her guilty.
7	(hhh) Ground sixty
<i>'</i>	Petitioner's counsel prejudicially failed to object to jury instructions 26 and 33 that
8	empowered the jury to determine the Petitioner's "guilt or innocence," and thus eliminated
9	the Petitioner's "presumption of innocence," and eliminated the State's burden of proof by
	shifting the burden to the Petitioner to prove she was innocent.
10	
11	(iii) Ground sixty-one
	affairs of life" reasonable doubt standard that allowed the jury to find her guilty by
12	calculating odds like the jurors would do if they were playing a game of craps, or poker or
13	blackjack in a Las Vegas casino, and the prejudice of instruction 31 was compounded by
	jury instructions 26 and 33 that empowered the jury to determine the Petitioner's "guilt or
14	innocence," and thus eliminated the Petitioner's "presumption of innocence," and
15	eliminated the State's burden of proof by shifting the burden to the Petitioner to prove she
	was innocent.
16	(jjj) Ground sixty-two
17	Petitioner's counsel prejudicially failed to submit NRS 201.450 ("sexual penetration of a
18	dead body") jury instruction that properly stated the law.
10	(kkk) Ground sixty-three
19	Petitioner's counsel prejudicially failed to object to NRS 201.450 ("sexual penetration of a
20	dead body") jury instruction that did not properly state the law and permitted the jury to
21	convict the Petitioner of a non-existent violation of the necrophilia law.
21	
22	(Ill) Ground sixty-four
23	Petitioner's counsel prejudicially failed to explain to the jury that the prosecution had not
23	proved each essential element of each charge, because evidence beyond a reasonable doubt was not introduced that the Petitioner was anywhere within Clark County at any time on July 8,
24	2001, the day Duran Bailey was murdered in Las Vegas, and therefore they must acquit her.
25	2001, the day Buran Buney was mardered in Eas vegas, and therefore they must acquire her.
	(mmm) Ground sixty-five
26	Petitioner's counsel prejudicially failed to object during the prosecution's opening statement
27	to a multitude of false claims of what would be proven by witnesses that Petitioner's counsel
	knew would not be proved during the trial.
28	

1	(nnn) Ground sixty-six
2	Petitioner's counsel prejudicially failed to object to prosecution's closing and rebuttal arguments that Duran Bailey's skull was fractured at the same time as his external injuries,
3	when ME Lary Simms testified it was contemporaneous with Bailey's brain swelling that began at least two hours before death, which meant Bailey was subjected to two separate
4	attacks in the last hours of his life.
5	(ooo) Ground sixty-seven
()	Petitioner's counsel prejudicially failed to object and make a motion for a mistrial when during ADA William Kephart's rebuttal argument he committed egregious and irreparable
7	prosecutorial misconduct by telling the jury he personally believes the Petitioner is guilty and the jurors should follow his lead and mark their ballots to convict her as he did: "it's
8 9	time for you to mark it as I did, guilty of first degree murder with the use of a deadly weapon, and guilty of sexual penetration of a dead human body.", and if the motion for a
10	mistrial was not granted, the failure to object waived the claim on direct appeal.
11	(ppp) Ground sixty-eight
12	rebuttal arguments that prejudicially smeared and disparaged the credibility and truthfulness
13	of defense alibi witnesses John Kraft, Larry Lobato, and Ashley Lobato because they had not been called to testify by the Petitioner's counsel during her first trial.
14	(qqq) Ground sixty-nine
15	Petitioner's counsel prejudicially failed to object and make a motion for a mistrial when ADA Sandra DiGiacomo and ADA William Kephart committed egregious and irreparable
16	prosecutorial misconduct during closing and rebuttal arguments, respectively, by declaring the Petitioner said she had blood on her, her clothes were bloody and that she got in her car bloody,
17 18	when there was no evidence introduced at trial supporting those fatally prejudicial claims, and if the motion for a mistrial was not granted, the failure to object waived the claim on direct appeal.
19	(rrr) Ground seventy
20	Petitioner's counsel prejudicially failed to object and make a motion for a mistrial based on the egregious and irreparable egregious prosecutorial misconduct of more than 250 false,
21	fabricated, and/or improper prosecution statements during closing and rebuttal arguments
that were used as a substitute for evidence of the retitioner's guilty the pre-	that were used as a substitute for evidence of the Petitioner's guilty the prosecution did not introduce during the trial, and if the motion for a mistrial was not granted, the failure to
23	object waived claims on direct appeal based on the prosecution's closing and rebuttal arguments – including gross prejudicial prosecutorial misconduct, and if the motion for a
24	mistrial was not granted, the failure to object waived the claim on direct appeal.
25	(sss) Ground seventy-one
26	Petitioner's counsel prejudicially failed to retain a dental expert and introduce exculpatory expert dental testimony that Bailey's teeth were not knocked out by a baseball bat.
27	
28	

1	(ttt) Ground seventy-two
acquittal within 7 days after the jury's verdict on the basis the prosecution did no evidence proving beyond a reasonable doubt the essential element that the Peti "within Clark County" and at the Nevada State Bank and inside the trash enclosed.	Petitioner's counsel prejudicially failed to make a NRS 175.381(2) motion for a judgment of acquittal within 7 days after the jury's verdict on the basis the prosecution did not introduce
	evidence proving beyond a reasonable doubt the essential element that the Petitioner was
	"within Clark County" and at the Nevada State Bank and inside the trash enclosure in its parking lot at the exact time Bailey was murdered, so she could not have committed her
5	accused crimes, and there was insufficient evidence for the jury to find her guilty.
6	(uuu) Ground seventy-three
	Petitioner's counsel prejudicially failed to file a post-verdict motion for DNA testing of crime
0 11	techniques developed after the Petitioner's conviction and prior to the Nevada Supreme Court's ruling on her direct appeal, and those tests could scientifically identify Bailey's killer and
9	provide invaluable new exculpatory evidence supporting vacating the Petitioner's convictions.
10	(vvv) Ground seventy-four
11	Petitioner's counsel prejudicially failed to brief and argue in her Nevada Supreme Court direct appeal "insufficiency of the evidence" claim that her conviction was based on an
12	inverted pyramid of speculation by the prosecution, and from that point speculative
13	inferences were piled on speculative inferences upon which additional speculative inferences were piled, and that was used by the prosecution as a substitute for actual
14	evidence the Petitioner was in Clark County on July 8, 2001, and that she murdered Bailey.
15	(www) Ground seventy-five
16	Petitioner's counsel prejudicially failed to brief and argue in her Nevada Supreme Court direct appeal claim that the Petitioner's "statements to detectives on July 20, 2001, were not voluntary
17	and should have been suppressed from use as evidence," that Judge Vega abused her discretion by misapplying the "law of the case" doctrine in admitting the Petitioner's Statements.
18	(xxx) Ground seventy-six346
19	Petitioner's counsel prejudicially failed to include as argument in the "Petition For Rehearing"
20	and the "Petition For Reconsideration En Banc" that the NSC's ruling was based on two false assumptions, when the truth is there is no evidence the Petitioner's Statement is an admission of
21	guilt to Duran Bailey's murder and the post-mortem cutting of his rectum, and there were no
22	positive luminol or phenolphthalein tests for blood in the Petitioner's car.
23	(yyy) Ground seventy-seven
24	Cumulative prejudicial errors by Petitioner's trial and appellate counsel supports vacating the Petitioner's conviction and dismissal of the charges with prejudice or a new trial.
	(zzz) Ground seventy-eight
25	Cumulative new exculpatory evidence supports vacating the Petitioner's conviction and
26	dismissal of the charges with prejudice or a new trial.
27	(aaaa) Ground seventy-nine.
28	Petitioner's counsel prejudicially failed to diligently represent her prior to, during, or after trial.