

## Lobato cont. from page 32

penetration of a dead body. Schieck moved for continuation of Blaise's release on \$500,000 bond. Kephart opposed it, arguing she was a flight risk because she hadn't personally put up the bond money. Vega adopted Kephart's position and Blaise was taken into custody.

After the verdict, both Kephart and Schieck publicly expressed the opinion that it was a compromise: some jurors wanted to acquit Blaise, and others wanted to convict her of first or second-degree murder. But on the eve of a holiday weekend, the jurors settled in the middle rather than continue deliberating through the holiday, and possibly even then be unable to reach a unanimous non-compromise verdict.

Judge Vega went along with the recommendation of her former colleagues in the Clark County DA's office and sentenced Blaise to the maximum of 13 to 45 years in prison on February 2, 2007, even though she was eligible for probation, she received a positive psychological evaluation from both a prosecution and a defense expert, and there was no evidence presented during the sentencing hearing that she poses any danger to the community.

### Conclusion

Almost six years after Duran Bailey's murder, all the physical evidence and evaluation of the crime scene points exclusively to one or more males as the perpetrator. Yet Blaise has twice been convicted in this death without any evidence whatsoever she was within 170 miles of Las Vegas at the time of his murder.

An examination of Blaise's case reveals deep flaws in the collection and testing of evidence, and the investigation, prosecution and adjudication of serious crimes in Clark County, Nevada, and in a larger sense, juris-

dictions all across the United States. That is because the same bureaucratic police, prosecution and judicial processes and influences involved in Blaise's case are typical of those that prevail throughout the country. It is sobering to consider, but there is every reason to think Blaise could have been convicted – twice – anywhere else under the same circumstances of an underfunded defense, detectives unconcerned about the truth, prosecutors obsessed with "winning at all costs," and an overtly prosecution friendly judge who is a former assistant DA. 42

### Endnotes:

- 1 Autopsy Report: Pathologic Examination On The Body Of Duran Bailey, Clark County Coroner, July 9, 2001 (Las Vegas, NV).
- 2 Simms expressed that opinion during Kirstin "Blaise" Lobato's Preliminary Hearing on August 7, 2001, based on the fact that when examined by the coroner's investigator at the crime scene, "The body wasn't manifesting any significant degree of decomposition, so I would say he had died a lot closer to the time he was discovered than not." See, *State v. Lobato*, Case No. C177394, Reporter's Transcript of Preliminary Hearing, August 7, 2001, 32-33.
- 3 *The State of Nevada v. Kirstin Blaise Lobato*, No. 40370, Transcript Vol. 5, 45, Testimony of Diann Parker, May 14, 2002.
- 4 *Id.*, 46.
- 5 Statement to Las Vegas Metropolitan Police Department by Laura Linn Johnson, Event #010708-2410, July 20, 2001, pp. 2-3.
- 6 Contrary to Johnson's assertion, Lincoln County District Attorney Greg Barlow reports that Blaise has never been investigated, arrested, convicted, sentenced, or served any probationary term for any alleged violation of any law in Lincoln County. District Attorney Barlow provided that information in a letter dated January 4, 2007, to The Justice Institute/Justice Denied, in response to a Public Records Law request.
- 7 This relating of events is a composite of Blaise's statement to Detectives Thowsen and LaRoche on July 20, 2001, and conversations she had with other people. See, Statement to Las Vegas Metropolitan Police Department by Kirsten Blaise Lobato, Event #010708-2410, July 20, 2001, (hereinafter, "Blaise's Statement").
- 8 The testimony of Doug Twining establishes the assault occurred on May 23, 24 or 25, just before the 2001 Memorial Day weekend.
- 9 These 24 details are documented in two charts at, [http://justicedenied.org/issue/issue\\_34/statement\\_differences.htm](http://justicedenied.org/issue/issue_34/statement_differences.htm)
- 10 *The State of Nevada v. Kirstin Blaise Lobato*, No. 01F12209X, Dept. 2, Criminal Complaint, July 23, 2001.
- 11 *The State of Nevada v. Kirstin Blaise Lobato*, No. 01F12209X, Dept. 2, Amended Criminal Complaint, July 26, 2001.
- 12 Larry Lobato testimony on October 3, 2006, at retrial of Kirstin Blaise Lobato.
- 13 William J Bodziak, Footwear Examination Report, Forensic Consultant Services, March 27, 2002.
- 14 *The State of Nevada v. Kirstin Blaise Lobato*, No. 40370, Transcript Vol. 3, 169, Testimony of Korinda Martin, May 10, 2002.
- 15 Crime in the United States 2001, Uniform Crime Reports, FBI, U.S. DOJ, Washington D.C., Table 6, Index of Crime (There were 447 reported rapes in Las Vegas in 2001).
- 16 *Id.* (There were 133 identifiable murders in Las Vegas in 2001).
- 17 Crime in the United States 2001, Uniform Crime Reports, Federal Bureau of Investigation, U.S. Department of Justice, Washington D.C., Table 2.9, Murder, Types of Weapons Used. (A sharp object (knife, scissors, etc.) was involved in 13% of all murders, and 24% of murders were committed with fists or an unknown weapon.)
- 18 "Sensitive" Defendant Denies Mutilation Slaying Charge, Glenn Puit, Las Vegas Review-Journal, May 16, 2002.
- 19 "Reporting to the police," 2001 National Crime Victimization Survey, Bureau of Justice Statistics (U. S. Department of Justice), p. 10. At, <http://www.ojp.gov/bjs/pub/pdf/cv01.pdf>.
- 20 Kephart didn't just argue this in court, but explained it to journalists during the jurors deliberations and then after Blaise was sentenced on August 28, 2002. See, Homeless man's killer sentenced, Las Vegas

- Review-Journal, August 28, 2002; Jurors Deliberate Severed Penis Slaying, Glen Puit, Las Vegas Review-Journal, May 17, 2002.
- 21 *The State of Nevada v. Kirstin Blaise Lobato*, No. 40370, Transcript Vol. 2, 38, Testimony of Lary Simms, May 9, 2002.
- 22 *The State of Nevada v. Kirstin Blaise Lobato*, No. 40370, Transcript Vol. 4, 124, Testimony of Thomas Wahl, May 13, 2002.
- 23 Crime Scene Reconstruction and Forensic Science Interpretation in *State v. Lobato*, Case No. C177394, Forensic Science Resources, Case No. FSR2-02, May 31, 2002, p. 3. (Bold in original.) This report was completed after Blaise's trial.
- 24 *Id.*, p. 3. (Bold in original.)
- 25 Expert's Testimony Limited, Las Vegas Review-Journal, May 17, 2002. (emphasis added)
- 26 Jurors Deliberate Severed Penis Slaying, Glenn Puit (staff), Las Vegas Review-Journal, May 17, 2002.
- 27 *Id.*
- 28 Convicted Killer Turned Down Plea Deal, Las Vegas Journal-Review, May 29, 2002.
- 29 *Lobato v. State*, 96 P.3d 765 (Nev. 09/03/2004)
- 30 Defendant Lobato's Notice Of Motion And Motion In Limine To Exclude Testimony Of Laura Johnson, *State v. Lobato*, No. C177394, District Court, Clark County, NV, p. 12.
- 31 Defendant Lobato's Notice Of Motion And Motion In Limine To Exclude Inflammatory and Cumulative Photographs, *State v. Lobato*, Case No. C177394, Dept II, District Court, Clark County, Nevada, p. 4.
- 32 Kirstin Lobato's Motion To Dismiss Because The State Cannot Establish The Corpus Delicti Of The Crime With Evidence Independent Of Defendant's Extrajudicial Admissions, *State v. Lobato*, Case No. C177394, Dept II, District Court, Clark County, Nevada.
- 33 *Id.* at 6.
- 34 Defendant Lobato's Notice Of Motion And Motion In Limine To Exclude Witness Korinda Martin's Testimony ..., *State v. Lobato*, Case No. C177394 ("...the presentation of said testimony is tantamount to suborning perjury.")
- 35 Simms has twice revised his estimate of Bailey's time of death, even though the information upon which he based his initial estimate remains unchanged.
- 36 Reducing a Guilty Suspect's Resistance to Confessing: Applying Criminological Theory to Interrogation Theme Development, By Brian Parsi Boetting, M.S., FBI Law Enforcement Bulletin, August 2005 Volume 74 Number 8, United States Department of Justice Federal Bureau of Investigation Washington, DC 20535-0001. (Emphasis added to original.)
- 37 Report Re: Lobato, Michael D. Laufer, MD, September 24, 2006, Interpretation of findings, No. 8, p. 3.
- 38 *Id.*, Conclusions, No. 5, p. 4.
- 39 Forensic Examination Report, Brent E. Turvey, MS, October 17, 2005, p. 2.
- 40 Brent Turvey's testimony on October 2, 2006, at Kirstin "Blaise" Lobato's retrial.
- 41 A chart of the alibi witnesses is at, [http://www.justicedenied.org/issue/issue\\_34/alibi.htm](http://www.justicedenied.org/issue/issue_34/alibi.htm)
- 42 For a discussion of the dominance of bureaucratic processes in the United States, see, The Inhumanity of Government Bureaucracies, Hans Sherrer, *The Independent Review*, Vol. 5, No. 2, Fall 2000, 249-264.

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## Lobato Jurors Engaged In Misconduct

The following is a copy of the notarized affidavit mailed on November 9, 2006, to David Schieck, Kirstin Blaise Lobato's lead lawyer. It documents that a week before jury deliberations began, jurors were discussing the case and appear to have formed opinions without consideration of the defense's case, the presentation of which began only hours before the events related in the affidavit. Querying the jurors during an evidentiary hearing could flesh out the degree of their discussions and opinions formed prior to commencement of deliberations on Oct. 5, 2006.

### Affidavit of Hans Sherrer

State of Washington )

) SS:

County of King )

I, Hans Sherrer, first duly sworn, depose and say that the foregoing is true and correct to the best of my knowledge and belief:

1) On Friday, September 29, 2006, I was a spectator at the trial of Kirstin Blaise Lobato

in the courtroom of Judge Valorie Vega on the 16th floor of the Clark County Courthouse in Las Vegas, Nevada.

2) At about 1 p.m. that afternoon the prosecution rested its case in chief and the defense began presenting its case.

3) At about 3:30 p.m., during the trial's afternoon "stretch" break, I was in the men's public bathroom on the 16th floor.

4) My attention was drawn to two men in the bathroom, when one referred to "differences of opinion."

5) The other man responded to the first man's comment by saying, "Deliberations are going to take a long time."

6) I noticed that both men were jurors in the Kirstin Lobato trial.

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## Jurors cont. from p. 33

7) I recognized the man who made the response about "deliberations" was the same juror I had observed dozing (or actually sleeping) in the courtroom for about fifteen minutes on the afternoon of Tuesday, September 26, 2006, during the testimony out of turn by defense witness Dr. Michael Laufer.

8) In regards to the September 26 incident involving that juror, on the morning of Wednesday, September 27, 2006, I informed Clark County Deputy District Attorney William Kephart that I had something I wanted to jointly inform the prosecution and defense attorneys about, and later that morning I jointly informed them what I had observed the juror doing, and showed Mr. Kephart the written note I had made about the incident the preceding day at the time of the incident.

9) Based on the comments of the two jurors on the afternoon of September 29, 2006, I had reason to believe that after complete presentation of the prosecution's case, but after only partial presentation of the defense's case, the jurors were deeply divided in their opinion about the impact of the evidence presented as it affected Ms. Lobato's conviction or acquittal.

10) After Ms. Lobato's conviction on the afternoon of October 6, 2006, I read an article on Court TV's website about the trial's outcome, and that story included the analysis by both Ms. Lobato's attorney David Schieck and Deputy DA Kephart that the verdict was a "compromise" by jurors divided between wanting to acquit her, and wanting to convict her of more than voluntary manslaughter.

11) After reading the news reports about the verdict, I knew that the jurors' conversation

concerning the differing opinions formed by the jurors that I overheard in the bathroom six days before the jury began deliberating accurately reflected that the jurors were sharply divided about the case, and that they had resolved being a "hung jury" by settling on what both the defense and prosecution attorneys recognize was a compromise verdict.

12) While attending the trial I witnessed that prior to an adjournment for lunch, a "stretch break," or after a day's proceedings, Judge Vega admonished the jury with words to the effect that jurors were not to talk amongst themselves about the trial or form or express any opinion on any subject related to the trial until the case was submitted to them.

13) On the morning of October 9, 2006, the Monday after the Friday afternoon verdict in Ms. Lobato's case, I called the office of the Clark County Special Public De-

fender and asked for Mr. Schieck, whereupon the woman answering the telephone informed me that he was in Carson City, Nevada, and would return the following day.

14) On Tuesday, October 10, 2006, at about 10 a.m., I called the office of the Clark County Special Public Defender and asked for Mr. Schieck, whereupon the woman answering the telephone informed me he wasn't available but I could leave a message on his voice mail.

15) After being transferred to Mr. Schieck's voice mail, I left a message that I had information concerning juror conduct during Ms. Lobato's case, and that I would be sending him an affidavit.

BY:

Hans Sherrer

Subscribed and sworn to before me, this 9th day of November, 2006.

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