

# Possibility Of Guilt Replaces Proof Beyond A Reasonable Doubt

## Las Vegas Detectives, Prosecutors And Judge Orchestrate Kirstin Blaise Lobato's Serial Rape By The Legal System

By Hans Sherrer

On the hot, arid evening of Sunday, July 8, 2001, a man was 'dumpster diving' in a trash enclosure several blocks west of the Las Vegas strip. Around twilight he lifted a trash covered piece of cardboard next to the dumpster and saw a man's torso. He called 911.

### Police at crime scene

The first police officers arrived at 10:36 p.m. One of the officers went inside the trash enclosure and saw a human foot exposed with the rest of the person's body buried under a pile of trash. He also saw still moist bloody shoeprints leading away from the body toward the trash enclosure's opening.

After medical personnel arrived, one of them lifted the trash covered cardboard and determined the body was that of a dead man.

Several crime scene analysts arrived and they began systematically removing piece by piece the large number of trash items covering the body. Only a few items were collected as evidence, while the rest of the evidence was discarded. When the body was fully uncovered it was apparent that the man had many wounds, including an amputated penis.

It appeared that the man had been living in the trash enclosure.

It wasn't until 3:50 a.m. on Monday the 9th, that the coroner's investigator examined the body at the scene. At 8 p.m. that night the FBI identified the dead man as Duran Bailey from his fingerprints.

When the man who found Bailey's body was questioned, he said he hadn't stepped in Bailey's blood, which was completely covered by trash. His shoes were examined and there was no blood on their soles.

### Autopsy determines Bailey's cause of death was "blunt head trauma"

Clark County Chief Medical Examiner Lary Simms performed Bailey's autopsy. He found

that while alive, Bailey experienced a plethora of serious injuries to his neck, face, head and upper body, including defensive wounds to his arms and right hand. Simms also determined that following Bailey's death he was stabbed several times in his abdomen, his penis was severed at its base, and his anus area was stabbed and sliced. Simms determined Bailey's cause of death was "blunt head trauma," and "a significant contributing condition was multiple stab and incised wounds," including a severed carotid artery. <sup>1</sup>

A month after Bailey's autopsy, Simms expressed his opinion during a preliminary hearing for the person charged with Bailey's murder that it was "more likely than not" his death occurred within 12 hours from when the first officer arrived at the scene – or no earlier than 10:36 a.m. on Sunday, July 8. <sup>2</sup>

### Non-investigation of prime suspects

Las Vegas Metro PD (LVMPD) Homicide Detectives Thomas Thowsen and Jim LaRochelle were assigned to investigate the case.

Thowsen and LaRochelle immediately had a prime suspect. While the crime scene was still being processed on the morning of July 9, a woman named Diann Parker approached one of the police officers and told him, 'I might know who that guy is. I was the victim of a rape a week ago and that might be the guy that did it.' The information was relayed to the detectives.

The detectives went to Parker's apartment on the 9th to informally question her. She told them that Bailey and her were acquaintances, and that she had on occasion exchanged sex with him for crack cocaine that he bought.

During their conversation Parker said that several "Mexican" men in her apartment complex saw Bailey slap and threaten her on July 1 while she was drinking beer with them. The Mexicans talked with Bailey and told him to leave Parker alone. When she left, they were "watching" to make sure she got back to her apartment safely. Later that day Bailey re-



Kirstin "Blaise" Lobato as a H.S. senior before her July 2001 arrest

turned. He became enraged when she told him she didn't want anything more to do with him. After forcing his way into her apartment he beat and kicked her, and raped and tried to sodomize her while holding a knife to her neck and throat and threatening to kill her.

Afraid to go to the police because of Bailey's threats, she did call 911 three days later when he returned and tried to break into her apartment.

She told the officer who responded that reporting Bailey's assault and rape of her was going "to get me killed." She also told the police, "If you all don't catch him, I will be dead." <sup>3</sup> When she asked the officer for protection he told her, "you got to do what you got to do to protect yourself the best you can." <sup>4</sup> She was reluctant to give him too much information about the Mexicans because she thought they could have been in the country illegally.

Parker also told the officer the homeless Bailey "stayed behind the ... Nevada State Bank" at "Flamingo and Arville." That is where Bailey's body was found three days later.

Parker told Thowsen the two apartment numbers where the Mexicans lived. He talked with the apartment complex's manager and learned the names they used to rent the apartments. The manager also told Thowsen they didn't cause any trouble. Thowsen ran a criminal background check on the names. No record showed up for any of them so he did not interview the Mexicans.

Thowsen and LaRochelle not only knew that Parker had a significant motive to want to see Bailey harmed or killed, but the photographs of her extensive injuries from the beating Bailey inflicted and his knife wielding were eerily similar to the wounds about Bailey's face and neck. Bailey even cut her neck with the knife near her carotid artery, just as he was cut days later by his murderer(s).

In spite of the strong circumstantial evidence suggesting Parker and/or the Mexicans may have been involved in Bailey's murder, the detectives didn't pursue investigating them by interrogations or obtaining warrants to search their apartments and vehicles to look for the murder weapon(s), bloody shoes or clothing, or any other possibly incriminating physical evidence that could link them to the crime.

When asked later why on July 9 he didn't interview the Mexicans after talking with Parker, Thowsen said words to the effect, 'It was a long day and we were getting tired and at some point you just have to call it a day.'

See companion article on page 33,  
*Lobato Jurors Engaged In Misconduct.*

**Lobato cont. on page 25**

## **Lobato cont. from page 24**

### **Laura Johnson provides detective with “third-hand” tip about Las Vegas stabbing**

On July 20, twelve days after Bailey’s death, Thowsen received a phone call from Laura Johnson, the juvenile probation officer for Lincoln County, Nevada. Johnson’s office was in the county seat of Pioche – more than 170 miles north of Las Vegas. Johnson informed Thowsen that Dixie Tienken, a Lincoln County teacher, told her that a former student of Dixie’s told Dixie that she had cut off the penis of a man who attacked her in Las Vegas. Johnson told Thowsen that the young woman’s name was Kirstin Blaise Lobato, and she was living with her parents in Panaca, a small town about ten miles southeast of Pioche. (Kirstin goes by, and is known by her middle name, so this article will refer to her as “Blaise”.) Johnson also told Thowsen she checked and learned that Blaise owned a red 1984 Pontiac Fiero with a custom license plate. She also said she had a Lincoln County sheriff deputy drive by the home of Blaise’s parents and her car was parked in front on the public street.

Thowsen ran a background check on Blaise after talking with Johnson. He learned she was 18, and when she was 6-years-old her mother’s boyfriend had sexually assaulted her for nine months in Las Vegas.

### **Detectives Thowsen and LaRochelle travel to Lincoln County to arrest Blaise**

Thowsen arranged for LaRochelle and crime scene analyst Maria Thomas to travel to Lincoln County, and he called the county sheriff’s office to notify them the three would be arriving that afternoon. Thomas was told that she would be impounding a car – Blaise’s Fiero.

Within an hour or so after receiving Johnson’s phone call, Thowsen, LaRochelle and the crime scene analyst headed north on US Hwy 93 in two vehicles to arrest Blaise for Bailey’s murder.

### **Johnson’s statement to Thowsen and LaRochelle**

After the nearly three hour drive to Pioche, Johnson gave a taped interview to the detectives. She reiterated what she told Thowsen on the phone. However, she added that the detectives shouldn’t contact Dixie – the source of Johnson’s third-hand information about what Blaise had allegedly told Dixie – because she thought Dixie would warn Blaise that they were coming to arrest her.

Compounding Johnson’s implicating of Blaise in Bailey’s murder without any personal knowledge of anything Blaise said, or what she did or didn’t do in Las Vegas, was the fact that Johnson made the false declaration in her statement that Blaise had been in trouble with the law in Lincoln County and sentenced to probation with Johnson supervising her.<sup>5</sup> However, the detectives didn’t know Johnson made-up that inflammatory assertion, because they didn’t verify her claims before deciding Blaise was Bailey’s murderer.<sup>6</sup>

After arranging for a Lincoln County sheriff deputy to accompany them to where Blaise was living, and arranging for a flat-bed tow truck to transport her car to Las Vegas, Thowsen and his colleagues headed to near-by Panaca to arrest Blaise.

### **Detectives unaware the incident Dixie told Johnson about wasn’t Bailey’s murder**

What Thowsen and LaRochelle didn’t know before forming their opinions about Blaise’s guilt, was that the incident Blaise told Dixie about was an attempted rape that she fended off with a knife six weeks prior to Bailey’s murder. Shortly after midnight on or about May 25, a “really big” black man over 6’ and 200 pounds grabbed the 5’-7” and 100 pound Blaise as she got out of her car at the Budget Suites motel near Sam’s Town casino on Vegas’ east side. He threw her onto the ground and as he knelt over her with his pants pulled down, she pulled out a butterfly knife her dad gave her for self-protection and tried to stab or cut his groin area. She was able to get away from him, and she heard him crying and saw him getting up as she drove off.<sup>7</sup>

If the detectives had conducted even a perfunctory investigation into the details of what Blaise told Dixie, they would have learned that prior to Bailey’s murder Blaise had told multiple people about the attack on her that occurred just before the Memorial Day weekend – eight miles from where Bailey was later murdered on Vegas’ west side.<sup>8</sup> They also would have learned from investigating that at least ten people would swear they saw Blaise in Panaca on July 8 at times from very early in the morning, to throughout the day, to late that evening. The detectives also would have discovered much more evidence, including medical and telephone records, that excluded Blaise from even cursory suspicion of being involved in Bailey’s murder.

However, the detectives didn’t have any idea they were targeting the wrong person because they decided to arrest Blaise without conducting an investigation into the substance of Johnson’s conversation with Dixie.

## **Blaise’s July 20, 2001 interrogation**

When the detectives arrived at the home of Blaise’s parents, Larry and Becky Lobato, Blaise was in the shower and they were let in by her younger sister Ashley. Neither of her parents were home. The first thing Thowsen said to Blaise when he began questioning her at 5:55 p.m., was they knew she had been sexually molested by her mother’s boyfriend when she was a child. Blaise began sobbing and continued to do so, even after she signed a Miranda waiver 12 minutes later at 6:07 p.m., which was when Thowsen turned his tape recorder on.

Blaise thought they were interrogating her about the Budget Suites assault in May, because at no time before or after the tape recording began did Thowsen or LaRochelle tell Blaise they were investigating the murder of a man who had been savagely beaten and sexually mutilated, its location in Las Vegas, or the day it happened. Consequently, she had no way of knowing the details of the May assault she told the detectives about bore no relationship whatsoever to the circumstances or details of Bailey’s death six weeks later on July 8. There are 16 significant details in Blaise’s 26-minute recorded statement inconsistent with specific details of Bailey’s death that Thowsen and LaRochelle would have known at the time of her interrogation. There are eight additional significant details in her statement inconsistent with the details of Bailey’s death that the detectives would have been aware of shortly after her arrest, due to forensic testing, expert evidence analysis, or subsequent witness interviews.<sup>9</sup>

### **No matching points between Bailey’s murder and Blaise’s statement**

That Bailey, and Blaise’s assailant were black, both events occurred in Las Vegas, and a cutting instrument was involved, were the only three general areas of intersection between the undisputed circumstances of Bailey’s death and Blaise’s statement. However, those didn’t remotely “match,” because Bailey was a smaller man – shorter and much lighter than Blaise’s assailant; Bailey was killed eight miles west of where Blaise was assaulted; and Blaise only described attempting to cut her assailant once to get free and flee, while Bailey was beaten severely, and stabbed and cut many times before being sexually dismembered.

Thus there are no actual matching points between Blaise’s statement and the details of Bailey’s death. The logical explanation for the dissimilarity is because they were different events.

## **Lobato cont. on page 26**

## Lobato cont. from page 25

### Blaise's arrest

True to the detective's purpose of traveling to Panaca to arrest Blaise on the basis of Johnson's third-hand "double hearsay" information – the detectives abruptly terminated Blaise's interrogation after she told them she had been attacked "over a month ago," and placed her under arrest for Bailey's murder. Her car was loaded on the flatbed tow truck to be taken for examination by the LVMPD Crime Lab.

She was booked into the Clark County Detention Center that night and three days later (7-23) she was charged with, "murder with use of a deadly weapon."<sup>10</sup> Three days later the DA added the charge of "sexual penetration of a dead human body," based on ME Simms belief that Bailey's "anal opening had been cut after his death."<sup>11</sup>

It is indicative of how sloppy, hasty, and incomplete Thowsen and LaRochelle's investigation was that they didn't even discover how to correctly spell Blaise's first name before arresting her for Bailey's first-degree murder. In her statement they spelled her first name *Kirsten* — not *Kirstin*.

Six days after Blaise's arrest, Thowsen returned to Lincoln County and interviewed Dixie and several other people. Dixie's taped statement of Blaise's conversation with her differed in important details from Johnson's claims of what Dixie said Blaise said to her. Particularly, Dixie said that Blaise was staying with her parents – not hiding out, and Dixie did not say her parents were doing anything to hide or get rid of her car, or camouflage it by painting it. Nor did Blaise ask her not to tell anyone about the assault she described. Dixie told *Justice Denied* during an interview that Thowsen talked to her for quite some time before turning on his tape recorder. While the tape recorder was off, Dixie said Thowsen tried to pressure her to shape her statement to what he wanted her to say Blaise told her, not what she recollected.

### People in Lincoln County learn Bailey was killed when Blaise was in Panaca

The Las Vegas *Review-Journal* published an article on July 25 that reported Blaise was charged with murdering Bailey on July 8. That article was the first that the Lobato family and other people in Panaca knew that July 8 was the date of the incident Blaise was accused of being involved in.

Blaise's dad Larry called Thowsen and left a message. When Thowsen returned the call, Larry told him they had charged the wrong person because Blaise had been in Panaca all day on the 8th. Thowsen's response was "that as far as he was concerned he had arrested and charged the right person and did not need any further information."<sup>12</sup>

### Crime lab tests exclude Blaise

Almost a week after Blaise's arrest, and days after she was charged, the physical evidence recovered from the crime scene that included, fingerprints and tire treads, as well as Blaise's car and personal effects, were examined by the LVMPD Crime Lab. Blaise was excluded as the source of four identifiable crime scene fingerprints. Her metal baseball bat with a porous rubber handle tested negative for the presence of blood. A spot on the interior of her car's driver's side door panel and on her car seat cover tested weakly positive after a presumptive luminol test for the presence of an unknown iron bearing substance (blood contains iron), but both spots tested negative as being blood when subjected to a precise confirmatory test.

Somewhat remarkably, the single most important piece of evidence recovered from the crime scene – Bailey's severed penis that was handled by his killer – wasn't tested for the presence of identifiable foreign DNA before being buried with his body.

The crime lab did not analyze the bloody shoeprints leading away from Bailey's body, so Blaise's public defenders retained a nationally renowned shoeprint expert, William J. Bodziak. He wrote in his report of March 27, 2002:

"Based on the corresponding dimensions of comparable portions of other brands of footwear having this generic design, it was determined the Q1-Q2 impressions most closely correspond to a U.S. men's size 9 athletic shoe of this type. ... Using a standard Brannock foot-measuring device, the length of the LOBATO right foot equates to U.S. men's sizes between 6 to 6-1/2. ... The right foot size of KIRSTIN LOBATO would therefore be at least 2 1/2 sizes smaller than the estimated crime scene shoe size."<sup>13</sup>

### Prosecution's lack of evidence solved by jailhouse informant

On the eve of Blaise's trial, ten months after her arrest, the prosecution had no physical, forensic or scientific evidence, eyewitness



or confession linking her to Bailey's murder. Neither did they have a single witness who saw her or her car in Las Vegas on the day of Bailey's death or for nearly a week preceding it. In contrast, numerous witnesses said she and her car had been in Panaca on the 8th and the six days preceding it.

What the prosecution did have was a "jailhouse informant" – Korinda Martin. Martin claimed that while they were both in the Clark County Detention Center, Blaise was loudly "bragging" on several occasions in the open area of the jail module (where the prisoners watch television and socialize), "That she was there for murder and that she had cut a man's penis off and stuffed it down his throat."<sup>14</sup> The accurate details about Bailey's murder that Martin claimed Blaise described were included in a July 25, 2001, article about Blaise's arrest in the *Review-Journal*, Las Vegas' most widely read newspaper that was delivered to the jail. While Martin's inaccurate details, such as her claim that Bailey's penis was stuffed in his mouth, were not in the paper.

### Blaise's trial

Blaise's trial began on May 8, 2002, in the courtroom of Clark County District Court Judge Valorie Vega. Blaise's attorneys were Clark County Public Defenders Gloria Navarro and Phillip Kohn. The prosecutors were Assistant D.A.s Sandra DiGiacomo and William Kephart.

The prosecution tried to influence the jury by generally focusing on a series of prongs that they represented during closing arguments were "proven" by the evidence. The prosecution's case during Blaise's trial can be understood by explaining several of the key prongs they argued. The following are eight of those prongs, followed by a rebuttal

## Lobato cont. on page 27

## Lobato cont. from page 26

of why each one didn't implicate Blaise in Bailey's murder.

### First prosecution prong

It was too coincidental that a knife would be used to stab at a man's groin in two separate incidents in Las Vegas six weeks apart.

### Response

The prosecution ignored that Las Vegas was a crime haven in 2001. According to the FBI's 2001 Uniform Crime Report (UCR), Las Vegas had one of the highest rates of rape in the country, 30% above the national average,<sup>15</sup> and murder was so commonplace that it was double the national average, with almost three per week.<sup>16</sup> Also undermining the prosecution "coincidence" claim is that in 2001, almost two out of five murders were committed by cutting or beating – the causes of Bailey's death.<sup>17</sup>

Consequently, it wasn't unusual for Bailey to be beaten and stabbed to death, and six weeks earlier for Blaise to have used a knife to fend off a sexual assault eight miles away in east Las Vegas.

Blaise explained in her statement that she didn't report the May 2001 attack because she had reported previous sexual assaults and the police "basically blew me off. It's been my experience that it doesn't do any good."<sup>18</sup> Her non-reporting of the attempted rape is the norm. The U.S. Dept. of Justice estimates that in 2001 only 39% of rapes and/or sexual assaults nationwide were reported.<sup>19</sup>

### Second prosecution prong

The Budget Suites assault Blaise described and Bailey's murder were the same event.

### Response

The prosecution's attempt to transpose the two events ignored that none of the details in Blaise's statement and during her trial testimony matched the crime scene or the circumstances of Bailey's death. Not the time, the size of her attacker, the type of attack, the injuries involved ... nothing. There are at least 24 specific details in her 26-minute statement that are inconsistent with the facts of Bailey's murder.

### Third prosecution prong

The prosecution's "theory of the crime" was Bailey's murder resulted from "A drug deal gone bad."<sup>20</sup>

### Response

The prosecution's "theory of the crime" was non-fact based speculation for many reasons, including:

- Bailey used crack cocaine, which was in his system at the time of his death, and witnesses testified he didn't use methamphetamines.
- There was no testimony Bailey ever sold drugs of any kind.
- There was no testimony that Bailey and Blaise had ever met, or that she knew Bailey was living in the trash enclosure.
- Multiple witnesses testified that Blaise used methamphetamines when staying in Las Vegas.
- There was no testimony why Blaise would drive 170 miles to Las Vegas *solely* to get meth as the prosecution alleged, when it was available within walking distance of her parent's Panaca house.

### Fourth prosecution prong

Korinda Martin testified that Blaise bragged at the Clark County Detention Center about killing Bailey.

### Response

Undermining Martin's claims is that the accurate details about Bailey's death that Martin testified Blaise said, were included in a *LV Review-Journal* article published five days after Blaise's arrest. The inaccurate details Martin testified about weren't in the media.

### Fifth prosecution prong

The prosecution portrayed Blaise as a bad person of low moral character who grew up in the sticks of Lincoln County, used methamphetamines, and on two occasions engaged in amateur exotic dancing in Las Vegas.

### Response

Contrary to the prosecution's intimations, there was no testimony supporting that because of her upbringing, experiences or lifestyle Blaise would ever harm anyone except in self-defense.

### Sixth prosecution prong

To explain how Bailey's extensive injuries could have been inflicted by a person of Blaise's slender physique, the prosecution speculated that after she stabbed him while he was standing, she repeatedly hit him with the aluminum baseball bat that she kept in the back seat of her car for self-protection.

### Response

That speculation was unsupported by testimony. ME Lary Simms testified that Bailey "didn't have any skull fractures that were depressed like, you know, a bat would depress somebody."<sup>21</sup>

Thomas Wahl, a technician with the LVMPD Crime Lab, testified, "There was no blood, hairs or tissue recovered from the aluminum baseball bat or detected on that item."<sup>22</sup> The bat has a porous rubber handle that had no trace blood residue.

George Schiro was a forensic scientist of national repute retained by Blaise's public defenders to expertly analyze the prosecution's physical evidence. He wrote in his Forensic Science Report:

"There is no documentation of blood spatter above a height of 12 inches on any of the surrounding crime scene surfaces. ...The confined space of the crime scene enclosures and the lack of [blood] cast-off indicate that a baseball bat was not used to beat Mr. Bailey. The beating was more likely due to a pounding or punching type motion."<sup>23</sup>

Judge Vega, however, did not allow the jury to hear Schiro's exculpatory blood 'spatter' and 'cast off' testimony. She sustained the prosecution's objection that Blaise's lawyers had not provided them with proper notice of the scope of his expert testimony.

### Seventh prosecution prong

Since Blaise described stabbing at her assailant as he hovered over her, the prosecution argued that Bailey was standing with his pants down when he was stabbed in his groin.

### Response

Schiro's analyzed the evidence for 'vertically dripped blood':

"The photographs of his pants also do not indicate the presence of any vertically dripped blood. This indicates that he did not receive any bleeding injuries while in a standing position."<sup>24</sup>

Judge Vega, however, did not allow the jury to hear Schiro's exculpatory blood dripping testimony. She sustained the prosecution's objection that Blaise's lawyers had not provided them with proper notice of the scope of his expert testimony.

## Lobato cont. on page 28

## Lobato cont. from page 27

### Eighth prosecution prong

To fit Bailey's murder with Blaise's statement that she was on a methamphetamine binge and awake for the three days preceding being assaulted, the prosecution speculated she drove her car from Panaca to Las Vegas on July 6. They further speculated that after murdering Bailey early on the morning of the 8th, Blaise drove back for Panaca, arriving around 10 a.m.

### Response

The prosecution presented no evidence whatsoever that Blaise was in Las Vegas on July 6, 7 or 8; numerous people saw Blaise in Panaca on July 6, 7 or 8; and multiple people saw Blaise's car was parked in front of her parent's house from July 2 to July 20.

Furthermore, the prosecution's argument completely ignored that Blaise also said she was out of her mind on meth for a week before and after she was assaulted. Yet, Blaise's blood sample taken at the Caliente Clinic on July 5 didn't test positive for meth, her urine sample was collected on July 7, and many people saw she was tired and lethargic for four or five days after arriving in Panaca on July 2 – not hyped up on meth. Blaise's boyfriend Doug Twining has testified that he and Blaise only smoked marijuana while she was in Las Vegas from July 9 to 13, when her dad picked her up and took her back to Panaca.

The jury, however, was unaware of some of the alibi testimony corroborating Blaise's presence in Panaca from July 2 through July 9. Citing inadequate notice to the prosecution, Judge Vega barred the jury from being exposed to that exculpatory information.

### Defense expert Schiro's testimony limited

Vega did not allow the jury to hear the majority of defense witness Schiro's proposed expert testimony that would have undermined that the prosecution's case had any pretense of a scientific basis.

The jury also did not hear Schiro's crime scene reconstruction based on his analysis of the evidence that Bailey's murder was a premeditated methodically executed event.

Schiro was allowed to testify about the testing for the presence of blood in Blaise's car. He discussed that both presumptive luminol and phenolphthalein tests were subject to a high incidence of false positives, and that negative confirmatory tests indicated to him that human blood did not cause the weakly positive

presumptive tests for two spots in Blaise's car.

After he had given his very limited testimony, Schiro, who had spent the overwhelming majority of his career as a prosecution witness identifying crime scene evidence that inculpated an accused person, told reporters in the courthouse hallway what Judge Vega barred him from telling Blaise's jurors: "There is no evidence to tie Ms. Lobato to the crime scene. I feel the evidence is even exclusionary on her behalf." <sup>25</sup>

### The prosecution's case didn't implicate Blaise in Bailey's death

At the point that the prosecution and defense rested their cases, none of the prosecution's prongs supported implicating Blaise as Bailey's killer.

### Conclusion of Blaise's trial

The closing arguments were made on Friday, May 18, 2002. DA DiGiacomo's argument was based on a multitude of speculations about how and why Blaise had murdered Bailey.

Blaise's lawyer Kohn, emphasized that the detectives did not identify the date of the man's stabbing they were talking about when they interrogated Blaise. Furthermore, he pointed out that the detectives and prosecutors were wrongly assuming she was talking about Bailey, when none of the details of the incident she described matched those of his death. Kohn told the jury, "Two people talking about two different incidents." <sup>26</sup> He compared the prosecution of Blaise to the Salem Witch Trials, during which many innocent women were put to death, "Women who were different, who were odd and who said stupid things." <sup>27</sup>

DA Kephart asserted in his rebuttal argument that Blaise's acknowledgement during her interrogation that she stabbed at a man's groin area to fend off his sexual assault constituted a confession to Bailey's murder.

### Verdict and sentence

Judge Vega finished reading the jury instructions at 9 p.m. The jury began deliberations immediately. After five hours they announced they had arrived at a verdict. At 3 a.m. their verdicts of guilty to both counts were read in court, and Blaise, who had been free on \$50,000

bond, was taken into custody.

Her lawyer Navarro told reporters, "She placed her belief in the justice system, and she ended up being convicted of a crime that she did not commit." <sup>28</sup>

On July 2, 2002, Blaise was sentenced to serve a minimum of 40 years before becoming eligible for parole.

### Blaise's conviction reversed by Nevada Supreme Court on September 3, 2004

On September 3, 2004, the Nevada Supreme Court reversed Blaise's conviction and remanded her case for a new trial. *Lobato v. State*, 96 P.3d 765 (Nev. 09/03/2004) The reversal was based on Judge Vega's failure to allow Blaise's lawyers to cross-examine Korinda Martin about letters suggesting leniency that she wanted sent to her sentencing judge. The Court noted, "The proffered letters and extrinsic evidence relating to them confirmed Martin's desperation to obtain an early release from incarceration and her willingness to adopt a fraudulent course of action to achieve that goal." <sup>29</sup> The Court also ruled that it was prejudicial error for Vega to bar Blaise' lawyers from examining the woman the letters were mailed to, as well as introducing the letters themselves.

### New defense lawyers for Blaise's retrial

After reviewing her case and becoming convinced of her innocence, San Francisco based lawyers Shari Greenberger and Sara Zalkin agreed to represent Blaise pro-bono during her retrial as co-counsel to her lead lawyer, David Schieck, with the Clark County Special Public Defenders Office. In December 2005 Blaise was released pending her retrial on a \$500,000 bond posted by supporters believing in her innocence. For reasons unknown, Blaise's attorneys did not move to recuse Vega from the case in spite of her known bias against Blaise.

### Vega's pretrial rulings favor the prosecution

The Nevada Supreme Court was bluntly disappointed with the prejudicial effect of a number of Judge Vega's prosecution favorable rulings during Blaise's trial. The pretrial motions hearings for Blaise's retrial were the first opportunity for Vega, a former Clark County, Nevada prosecutor, to indicate if she was going to continue to openly favor her former colleagues. At the



Blaise after her pretrial release on bail in December 2005.

### Lobato cont. on page 29

## Lobato cont. from page 28

conclusion of those hearings in May 2006, there was no doubt she was not going to be more balanced. Vega did not grant any defense motion in limine or suppression outright. The following are some of her rulings.

- The prosecution could introduce as one of the murder weapons, the bat found in Blaise's car when it was searched on July 20, 2001, even though it had no known connection to Bailey's murder.
- The prosecution could introduce pictures and testimony about Blaise's custom license plate, even though her car was not found to have any connection whatsoever with Bailey's death. Her tire tracks didn't match those found at the crime scene and confirmatory scientific tests excluded the presence of any blood in her car.
- The prosecution could introduce the "double hearsay" testimony of Laura Johnson about what she alleged Dixie Tienken said that Blaise had said. The defense argued, "By seeking to introduce this impermissible hearsay the State is trying to circumvent the rules of evidence."<sup>30</sup> Judge Vega denied the defense's motion without prejudice as premature, since Johnson had not yet testified, but the defense could object for the record when Johnson testified. Thus, Vega cleverly sided with the prosecution by allowing Johnson to testify about the "double hearsay" statements without making a ruling on the motion's merits.
- The prosecution could introduce Blaise's July 20, 2001 statement, even though her lawyers argued that its details had no relevance to Bailey's death, and she advised Thowsen and LaRochelle in the statement that the incident she described occurred more than a month prior to the interrogation, and thus more than two weeks prior to Bailey's death.
- The prosecution could introduce presumptive tests of two spots on Blaise's car that weakly tested positive (indicating the possible presence of an iron bearing substance, one of which is blood.), even though the much more sophisticated and precise confirmatory tests returned negative results for the presence of blood. Blaise's lawyers argued in vain that the jury would be misled that the weakly positive presumptive tests inferred the presence of blood in Blaise's car, when the spots were disproven as blood by the negative confirmatory tests.
- The prosecution could introduce what amounted to about 140 photographs of the crime scene and Bailey's autopsy photos. Blaise's lawyers argued unsuccessfully that the cumulative effect of the photos, many that were near duplicates, would

have "the principle effect of inciting and inflaming the jury, due to graphic depictions of the victim's body, the horror of the crime and the cumulative effect of unnecessarily duplicative photographs."<sup>31</sup>

- Judge Vega also denied the defense motion to dismiss the charges based on "the state's failure to preserve and collect exculpatory evidence." Blaise's lawyers argued the failure to collect and/or preserve potentially exculpatory crime scene evidence for testing was a fatal due process violation caused by the "bad faith," or at a minimum the "gross negligence" of the police. Judge Vega ruled that in July 2001 the crime scene investigators and police could not have been expected to know that fingerprints and scientific testing such as DNA, could possibly identify Bailey's murderer(s) from their handling of any particular item, so they couldn't have acted in "bad faith" in failing to collect and preserve the crime scene evidence.
- Judge Vega also denied a defense motion to dismiss the charges on the basis that the prosecution "cannot establish the corpus delicti of the crime with evidence independent of defendant's extrajudicial admissions."<sup>32</sup> Just weeks before the motion was heard, the Nevada Supreme Court reiterated, "It has long been black letter law in Nevada that the corpus delicti of a crime must be proven independently of the defendant's extra-judicial admissions." *Edwards v. State*, 132 P.3d 581 (Nev. 04/27/2006). Due to the absence of any evidence independent of her July 20, 2001, statement and her other purported extra-judicial statements, Blaise's lawyers argued that contrary to the prohibition by the Nevada Supreme Court, the prosecution relied solely on her extra-judicial statements "to prove the *corpus delicti* of Bailey's homicide."<sup>33</sup> Although Vega was aware that there must be independent evidence of Blaise's alleged guilt apart from interpretations and recollections of her purported extra-judicial statements, she nevertheless denied the motion.

It was evident from Vega's pre-trial rulings that she was going to allow the prosecutors free-reign to run a replay of Blaise's first trial.

### **Pubic hair DNA tests excluded Blaise in Sept 2006**

Several weeks before Blaise's retrial was scheduled to begin on September 11, 2006, the prosecution disclosed that it had finally ordered DNA testing of a pubic hair found during a combing of Bailey's pubic hair on the day his body was discovered. The hair had remained untested for years in his rape kit, even though the defense had repeatedly asked for it to be tested.

The DNA test excluded Blaise and Bailey as the hair's source, but it did reveal that it came from an unidentified male. That finding was consistent with ME Simms' testimony during Blaise's May 2002 trial that the manner of Bailey's murder had homosexual overtones.

### **Prosecution Surprise – No Korinda Martin Testimony During Retrial**

The prosecution had let it be known during pretrial proceedings that they intended to present the same case during Blaise's retrial as during her first trial. That, however, wasn't true. The defense found out during opening statements that Korinda Martin wouldn't be called as a prosecution witness. The prosecution may have been influenced to omit Martin as a witness because the defense contended in a pretrial motion to exclude Martin's testimony that allowing her testimony would constitute subornation of perjury by prosecutors DiGiacomo and Kephart.<sup>34</sup> The prosecutors also knew that based on Vega's pretrial rulings they didn't need Martin's testimony.

### **Prosecution strategy**

Since there was no physical, forensic, scientific, circumstantial, documentary, eyewitness or confession evidence linking Blaise, her car, or any item of hers within 170 miles of Las Vegas at the time of Bailey's murder, the prosecution's primary strategy was to argue: 'It is possible she did it.' The defense had timely filed its notice of an alibi defense, and over a dozen witnesses were scheduled to testify who would place Blaise in Panaca from July 2 to 9. So the success of the prosecution's 'It is possible' strategy depended on their success at blocking anyone from testifying about their knowledge of the attack on Blaise six weeks before Bailey's murder.

### **Dixie Tienken testifies**

Dixie had been Blaise's adult education teacher when she earned her GED at 17 in 2000. Blaise considered Dixie her friend and during a three hour conversation in early July 2001 that covered many topics, Blaise mentioned she had fended off a sexual assault with her knife when she had been staying in Las Vegas. Dixie didn't provide any testimony specifically linking Blaise to Bailey's murder, and she actually provided testimony supporting that the attack Blaise described had occurred between one and two months prior to their conversation. Although the prosecution treated Dixie as a hostile witness, her testimony was necessary to lay the foundation for "Star Witness" Laura Johnson's "double

## **Lobato cont. on page 30**



## Lobato cont. from page 29

hearsay” testimony about what Johnson claimed Dixie told her Blaise had said.

### “Star Witness” Laura Johnson testifies

During Laura Johnson’s “double hearsay” testimony, she testified that Dixie said Blaise said that when she was coming out of a strip club where she worked in Las Vegas, a man attacked her while his penis was hanging out of his pants and she cut it off. Johnson also said Dixie said Blaise said she was “hiding out” at her parents house and her parents were trying to get rid of her car, or get it painted to hide it. Thus Johnson provided the magic phrases suggesting Blaise had a ‘guilty mind’, which Dixie denied Blaise told her. First, that Blaise had been “hiding out” in Panaca, and second, with the help of her parents she wanted to “get rid” of her car or “hide” it by painting it.

### ME Simms “Games” Bailey’s Time of Death

During Blaise’s Preliminary Hearing in August 2001, ME Simms’ testified that Bailey died no earlier than 10:36 a.m. on July 8. That didn’t jibe with Blaise’s statement that she was attacked during very early morning hours, so at Blaise’s first trial he “gamed” Bailey’s time of death by expanding it six hours to the pre-dawn time of 4:36 a.m. That allowed the prosecution to argue that the nighttime assault on Blaise and Bailey’s death were the same event. During Blaise’s retrial Simms further “gamed” Bailey’s time of death to as early as 3:50 a.m.<sup>35</sup>

### Detective Thowsen testifies

During Detective Thowsen’s direct testimony and cross-examination, he described informally visiting Diann Parker after being told she had been at Bailey’s murder scene asking about him. Thowsen also described her telling him that Bailey beat and raped her on July 1, after several Mexicans in her apartment complex told him earlier that day to leave her alone after he slapped and threatened her while she was drinking beer with them. Thowsen then talked to the apartment manager who provided him with the names used by the Mexicans. He said they didn’t cause any trouble. After Thowsen ran a background check on the names that returned nothing, he didn’t question the Mexicans.

Although Bailey’s murder was rich with fertile leads, Thowsen did no more “investigating” into Bailey’s case until getting a call from Johnson on July 20 about her

conversation with Dixie. He described doing a background check on Blaise, and contacting the Lincoln County Sheriff that he would be driving up that afternoon with another detective and a crime scene analyst to interview a witness and arrest a murder suspect.

During defense attorney David Schieck’s cross-examination, Thowsen was asked why he didn’t investigate the Budget Suites attack Blaise described in her statement before arresting her, Thowsen replied, ‘Because it didn’t happen.’ Thowsen elaborated that every detail in Blaise’s statement that is inconsistent with Bailey’s crime scene or manner of death is explainable as “minimizing.” Which he described as a guilty person’s technique of reducing the seriousness of what he or she did.

Thowsen’s testimony about Blaise’s alleged “minimizing” was critical to the prosecution, because nothing in her statement identified her as involved in Bailey’s murder. What Schieck didn’t know during his cross-examination was that Thowsen fabricated his explanation that she had “minimized” her involvement. According to the FBI and other experts in police interrogation techniques, “minimizing” is what a detective does to induce a suspect who has already admitted to an identifiable level of involvement in a crime to further incriminate him or herself by confessing to more specific details. The following are excerpts from an article in the August 2005 issue of the *FBI Law Enforcement Bulletin*, titled, “Reducing a Guilty Suspect’s Resistance to Confessing”:

The investigator presents the acceptable reasons to confess, usually in one of three ... categories: rationalizations, projections of blame, and minimizations. ... investigators can try to reduce, or *minimize*, the heinous nature of the crime so it produces less guilt or shame for the suspect. ...

Because the focus of the rational choice theory is centered on self-interest, projecting the blame on anything else is appropriate to reduce the suspect’s feelings of guilt. ... the investigator can *minimize* the woman’s shame by acknowledging her righteousness ...

To make the crime more acceptable, the investigator can *minimize* the suspect’s deviant actions by explaining how he has seemingly overcome overwhelming natural circumstances...

Regarding *minimizations*, the investigators could suggest that engaging in property crimes to obtain the American dream offers a much more acceptable route than committing violent crimes.

... To *minimize* the crime, the investigator can convince the suspect that his actions were minor offenses ...<sup>36</sup>

The preceding explanation of “minimization” in an official FBI publication clarifies that during Blaise’s interrogation neither Thowsen nor LaRochelle “minimized” her involvement in the assault she described. Further undermining Thowsen’s credibility about “minimization” is that Blaise said nothing to reduce her involvement in the assault she described in her statement.

Thowsen’s false testimony about “minimizing” to explain away the absence of similarity between Blaise’s statement and the details of Bailey’s death wasn’t a minor infraction. It was the cornerstone of his testimony.

### Prosecution’s case lacked evidence implicating Blaise

There were several dozen witnesses during the prosecution’s nearly three-week case. Those witnesses included police officers, several crime lab technicians, medical examiner’s office personnel, relatives of Bailey, and friends and acquaintances of Blaise. What is notable about those witnesses is that not a single one provided any testimony linking Blaise to any involvement in Bailey’s murder, or that on July 8 she had been within 170 miles of Las Vegas, or that she had ever met Bailey. Not even the two key witnesses, Johnson and Thowsen, provided any testimony that was anything more than conjecture that Blaise possibly could have been referring to Bailey’s death when she described fending off a sexual assault with her knife.

That lack of testimonial evidence was backed up by the absence of any physical, forensic or scientific evidence that Blaise or her car was present at the crime scene. Her involvement was in fact undermined by the crime scene fingerprints that excluded her, the DNA test of the pubic hair found on Bailey’s body that excluded her, the bloody male shoeprints that excluded her, the tire tracks that excluded her car, and the DNA on chewing gum found on the cardboard covering Bailey’s body that excluded her.

During cross-examination of law enforcement witnesses, the defense was repeatedly able to expose the multiple deficiencies in the collection, preservation, and/or testing of crime scene evidence. The portrait painted by the defense’s cross-examination was that with a few exceptions, the LV Metro PD handled Bailey’s crime

## Lobato cont. on page 31

## Lobato cont. from page 30

scene and investigation like they were a cross between the Keystone Cops and rank amateurs.

### Two defense experts

The defense did not retain Schiro for Blaise's retrial, but it did enlist two experts who testified, Dr. Michael Laufer and Brent Turvey.

#### Dr. Michael Laufer testifies Bailey was likely murdered with scissors

Dr. Michael Laufer is associated with Stanford Medical School and the nationally recognized inventor of more than 100 medically related products.

In the course of reviewing the autopsy report, and autopsy and crime scene photos, Laufer began doubting that Bailey's stab and slashing wounds were caused by a knife, as he had been told when he agreed to review the case. He noticed they resembled scissors wounds he had treated during his years as an emergency room doctor. So he proceeded to conduct a photographed controlled experiment to see if he could duplicate Bailey's wounds by stabbing scissors into a flesh substitute – foam rubber tightly covered with ultra suede.

In his final report, dated September 24, 2006, Laufer determined that Bailey's stab wounds were consistent with being caused by scissors, and that barber scissors with a finger hook were the most likely type used to inflict Bailey's wounds. He also concluded that scissors were likely used to snip his carotid artery, and "The penile amputation was most likely performed with scissors."<sup>37</sup>

Laufer's experiment that duplicated a wound to Bailey's abdomen disclosed "a 'ring distance' between the inside of the second finger and the inside of the fifth finger of the assailant's hand of at least 5.8 cm."<sup>38</sup> The "ring distance" of Blaise's hand was measured to be 4.3 cm. Thus Laufer concluded her hand is much smaller than Bailey's assailant.



Laufer also determined that because the bleeding of Bailey's blood stopped at the waist level of his pants, the wounds above his waist were inflicted while his pants were pulled up.

Laufer testified to his findings about Bailey's wounds and cause of death on direct examination. The prosecution, however, successfully blocked his testimony about the case's extensive blood evidence. Judge Vega agreed

with the prosecutors that the defense had not provided the required notice about the extent of Laufer's expert testimony.

Kephart was taken aback during his cross-examination, when Laufer testified that he provided his expertise in Blaise's case pro bono. Laufer said, "The first thing I was told [by defense lawyer Greenberger] was, 'We don't have any money.'"

#### Brent Turvey testifies no physical evidence implicates Blaise in Bailey's murder

The other defense expert was Brent Turvey, a forensic scientist and criminal profiler. After analyzing a large number of case reports and documents, Turvey completed a report dated October 17, 2005. His findings were:

1. There is no physical evidence associating Kirstin "Blaise" Lobato, or her vehicle (a red 1984 Fiero), to the crime scene.
2. The offender in this case would have transferred bloodstains to specific areas of any vehicle they entered and operated.
3. The failure of Luminol to luminesce at any of the requisite sites in the defendant's vehicle is a reasonably certain indication that blood was not ever present, despite any conventional attempts at cleaning.
4. There are several items of potentially exculpatory evidence that were present on or with the body at the crime scene but subsequently not submitted to the crime lab for analysis.
5. A primary motive in this case is directed anger expressed in the form of brutal injury, overkill and sexual punishment to the victim's genitals.
6. The wound patterns in this case may be used to support a theory of multiple assailants.<sup>39</sup>

Turvey testified to his findings on direct examination. Key points of his testimony revolved around forensic science's "exchange principle," which is that "every contact leaves a trace" and, "no evidence means no proof of contact."<sup>40</sup> The "exchange principle" is the basis of his conclusion that there is no physical evidence Blaise was involved in Bailey's murder.

Turvey's cross-examination was much more contentious than Laufer's. The biggest fireworks occurred when Turvey resisted DiGiacomo's attempts to pressure him to acknowledge that the two spots in Blaise's car that weakly tested positive after a presumptive test, "possibly" could be blood. Turvey repeatedly responded that the much more precise confirmatory testing of the spots were negative for blood, so the idea it was blood "had to be let go."

A nationwide Westlaw search of state and federal appellate cases revealed only 16 homicides where an adult victim's penis was actually cut off. In all but one case it was a male, or a group of two or more males, who committed the murder and the ultimate removal of the victim's penis:

...  
Notably, the alleged circumstances in only one case involved a female acting alone to attack, subdue, and remove the penis of an adult male victim – *Nevada v. Kirstin Blaise Lobato*.

Forensic Examination Report, Brent E. Turvey, MS, October 17, 2005, p. 3.

#### Four witnesses not allowed to testify attack on Blaise was before Bailey's death

The prosecution knew that prior to Bailey's murder Blaise talked with at least five people about the May 2001 Budget Suites assault. Those five people are Steve Pyszkowski, Kathy Renninger, Michelle Austria, Heather McBride, and Blaise's dad, Larry Lobato.

During Blaise's first trial Vega had allowed Pyszkowski, Austria and McBride to testify that they were told about the assault against Blaise in Las Vegas on days that ranged from a month to six days preceding Bailey's murder on July 8. Larry was told by Blaise about the attack in late June 2001, but he wasn't called as a witness by the defense.

Four of those people, Pyszkowski, Austria, McBride, and Larry testified at Blaise's retrial, but Judge Vega blocked all of them from testifying about their knowledge of the May assault, by sustaining the prosecution's objections it was hearsay.

#### Alibi witnesses

Thirteen people testified that they saw Blaise in Panaca between July 2 and July 9.<sup>41</sup> Ten of those people testified they saw her on the weekend of July 7 and 8. All of the relatives, acquaintances, and neighbors who also testified about seeing Blaise's car parked in front of her parents house said they never saw it moved or parked in a different position on the city street behind a utility trailer, after she arrived from Las Vegas on July 2, until the police took it away on July 20.

#### Kristina Paulette

During LVMPD Crime Lab technician Kristina Paulette's testimony on September 25 as a prosecution witness, she described the

## Lobato cont. on page 32



## **Lobato cont. from page 31**

DNA test results of a pubic hair combed from Bailey's public hair that remained untested in Bailey's rape kit for more than five years. The test not only excluded Blaise, but it was from an unidentified male. After the retrial began DiGiacomo instructed the police crime lab to perform DNA testing of three cigarette butts found on Bailey's body. That DNA report was issued two days after Paulette testified for the prosecution, so she was called as a defense witness on October 2. She testified that one butt did not have isolatable DNA, another had Bailey's DNA (from his blood) and the DNA of an unidentified person, and the third only had the DNA of an unidentified male. Paulette testified that Blaise was conclusively excluded as a source of the DNA on the second and third cigarette butts.

### **Closing arguments**

The personality differences between the two prosecutors and Blaise's lawyer conducting the closing, David Schieck were stark. Prosecutor DiGiacomo has the bearing and mannerisms of a spoiled, petulant child. Prosecutor Kephart has a forceful personality and the mannerisms of a snake-oil salesman. While Schieck has an earnest, low key manner.

#### **DiGiacomo's closing argument**

DiGiacomo's closing revolved around the theme: It is possible Blaise killed Bailey.

To support her 'It's possible she did it' claim, DiGiacomo speculated about numerous allegations that were unsupported by any trial evidence. She even had a PowerPoint presentation laying out her supposition that Blaise was Bailey's killer. Although DiGiacomo made her arguments without caution or restraint, Blaise's lawyers didn't object.

#### **Schieck's closing argument**

Schieck's closing was built on several inter-related themes: the crime scene evidence that was collected and tested excludes Blaise; there is nothing in her statement that incriminates her in Bailey's murder; nothing in her possession or her car links her to Bailey's murder; the unrebutted alibi testimony of nearly a dozen people establishes she was in Panaca the entire day of July 8; and because of the complete absence of inculpatory evidence, the prosecution was seeking to have Blaise convicted on their speculation it was possible she killed Bailey – and not proof beyond a reasonable doubt.

He described the prosecution's case as: "It's possible it happened this way;" "somehow Blaise came into contact with Mr. Bailey;" "Somehow, somehow, somehow, it goes on and on."

Schieck explained that the prosecution was supporting their scenario of the crime with the argument, "There is nothing to disprove this so it must be true." He told the jurors, "The prosecution is actually defending themselves from the lack of evidence and trying to convince you that somehow they have proved anything in this case."

Schieck plainly asked the jury, "Isn't it possible that she wasn't there and that's why they have no evidence? Isn't it possible they are prosecuting an innocent person? Isn't that a possibility if they want to talk about possibilities?"

Schieck emphasized, "What happened in this case is a snap judgment was made to arrest Blaise Lobato in Panaca, Nevada, and for the next five years the state and the detectives have attempted to prove their case after they made their arrest instead of doing it the right way of getting your facts straight before you arrest someone and charge them with murder."

He encouraged the jurors to listen to Blaise's taped statement, telling them, "There is no evidence in that statement that is going to convict her in this case."

He also told the jury that when the defense presents an alibi defense, the burden is on the state to disprove the alibi beyond a reasonable doubt. Yet the prosecution presented no testimonial or documentary evidence rebutting Blaise's alibi of continuously being in Panaca from the afternoon of July 2 until the early morning of July 9. So she wasn't even in Las Vegas when Bailey was murdered on the 8th.

Schieck gave the jury a bit of a history lesson by telling them that the prosecution's burden of proving a defendant guilty beyond a reasonable doubt was embedded in the Bill of Rights to prevent a person such as Blaise from being convicted without any evidence. He explained, "The burden of proof is beyond a reasonable doubt, not, it's possible."

#### **Kephart's rebuttal closing argument**

Kephart is an experienced prosecutor who knows from more than 100 jury trials that evidence of a defendant's guilt isn't necessary to win a conviction, as long as he is able to push the jurors emotional buttons that make them bypass the thought process

and feel a defendant is guilty without being able to coherently articulate why.

Since the prosecution had no direct or circumstantial evidence upon which to base an argument for the jury to find Blaise guilty, Kephart resorted during his rebuttal to using his forceful personality to command the jury's attention while he made an emotion laden zealous argument for a guilty verdict based on the theme that it was too coincidental for a man to be non-fatally wounded by having his groin area stabbed or cut as Blaise described in her statement, and six weeks later for another man across town to have his penis severed after he was dead.

Kephart's argument bet that the all-white middle-class jury could be induced to disregard that no evidence tied Blaise to Bailey's murder if they could be convinced that in July 2001 she was a thoroughly bad and depraved young woman who would do anything to satisfy what he alleged was her meth craving. Kephart's wild-eyed ranting about Blaise during his closing was in some ways reminiscent of old film clips of fevered denunciations by Hitler and other Nazis of Jews as subhuman and deserving of punishment.

Kephart's closing emotional appeal to the jury was showing them a large blow-up of Blaise's picture taken when she was arrested in Panaca on July 20. He thundered that the short-haired bleach blond 18-year-old with no make-up shown in the picture is who the jury was judging and should convict – not the attractive 23-year-old brunette with long "swept-back" hair sitting at the defense table. As with DiGiacomo's closing, the defense allowed Kephart to run-off his mouth unrestrained by objections.

#### **Jury's verdict**

After Kephart's fire-breathing evangelical closing, some trial observers might have been concerned the jury would rush out like a lynch mob and convict Blaise in short order while in a fevered state of mind. The jury began deliberating at 6:45 p.m. on Thursday, October 5, and when they requested to go home at midnight, it was known that at least one juror wanted to at least consider the evidence. The jury resumed deliberating at 8:30 a.m. on Friday, the day before the beginning of the Columbus Day holiday weekend. In mid-afternoon, after more than ten hours of deliberation, they notified the bailiff they had reached a verdict.

The jury convicted Blaise of voluntary manslaughter with a deadly weapon and sexual

## **Lobato cont. on page 33**

## 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 Loba-

to 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.

## Jurors continued on page 34