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tion's case, his omission of it from his interview by Dr. Dennerstein in preparation for his compensation claim was additional evidence he fabricated the incident.

After a hearing on November 22, 2012, Victoria's Court of Appeals quashed Greensill's convictions as a miscarriage of justice, acquitted her of all charges, and ordered her immediate release from custody. The 61-year-old Greensill was released from prison after 2 years and 4 months of imprisonment.

Three weeks after Greensill's release, the Court released its 39-page ruling explaining why it acquitted her. In [Greensill v The Queen](#) [2012] VSCA 306 (December 13, 2012) the appeals court detailed nine key areas that made Greensill's convictions "unsafe and unsatisfactory" requiring her acquittal:

First, "the unlikelihood of the appellant interfering with two boys of eight years of age in a tent in the backyard of her premises while her husband (and children) were nearby. ... [that] involved masturbation, fellatio and sexual intercourse over a protracted period of time..."

Second, "the implausibility that eight year old boys would be capable – in the way graphically described by both [Jim and Dan] in their evidence – of completing full sexual intercourse with an adult female."

Third, "that [Jim and Dan] produced semen at the time of the sexual activities in the tent. This suggestion runs counter to common experience with respect to boys of this age."

Fourth, "the evidence discloses a real likelihood that [Dan and Jim] collaborated, and a real possibility of concoction."

Fifth, "there is independent evidence flowing from his ex-wife that [Jim] bore [Greensill] real animosity for some slight occurring in his childhood."

Sixth, "there is evidence that [Jim] may have had a financial motive in making a complaint."

Seventh, "there is the content of the Professor Dennerstein report, where [Jim] omits any reference to penile-vaginal penetration as part of the tent incident."

Eighth, "there are a number of inconsistencies between the accounts of the two complainants with respect to the tent incident and circumstances closely surrounding it."

Ninth, "there is the significant forensic

Oregon Supreme Court Sets New Eyewitness Guidelines In Overturning Samuel Lawson's Murder Conviction

In unanimously overturning the aggravated murder convictions of Samuel Lawson, the Oregon Supreme Court established comprehensive new guidelines for the admissibility of eyewitness identification evidence in Oregon state courts.

At about 10 p.m. on August 21, 2003, Noris and Sherl Hilde were both shot in their trailer while camping in the Umpqua National Forest in Douglas County, Oregon. Mrs. Hilde was shot first, while standing at the trailer's window, and her husband was shot while talking to the 9-1-1 operator. Mrs. Hilde was seriously wounded but con-

disadvantage flowing to [Greensill] from being tried three decades after the offences are said to have occurred. A material part of the forensic disadvantage is the death of the appellant's husband."

[Click here to read](#) the appeals court's ruling in [Greensill v The Queen](#) [2012] VSCA 306 (December 13, 2012).

Days after her release Greensill [said when interviewed](#) by *The Age* newspaper in Melbourne: "I can't accept in my mind that it's over and I'm really home and I don't have to go back. It hasn't sunk in yet. It's very hard being in there [prison] when you're not guilty. But my three sisters and children and the letters and visits from people all said to hang on because justice will be done one day."

It isn't yet known if Greensill will file a lawsuit for compensation, or if the State of Victoria will attempt to recover the \$62,735² it paid to Jim as "victim" compensation.

The aspect of Josephine Greensill's case of particular interest to people in the United States are the State of Victoria's laws pertaining to "forensic disadvantage" that are specifically intended to protect a person such as Greensill from being convicted of alleged criminal conduct about which possibly exculpatory evidence doesn't exist because of the passage of time from when an alleged crime occurred and when a complaint was made. See, Section 61 of the

scious, and she told the 9-1-1 operator she didn't know who "they" -- referring to the shooter or shooters -- were who shot her and her husband. While emergency services personnel were transporting her to the hospital she stated repeatedly she did not know who the perpetrators were and she had not seen "their" faces.

When the Hilde's arrived at their campsite on the morning of August 21 a man named Samuel Lawson was camped there. When informed they had reserved the campsite the thirty-year-old Lawson apologized, he packed up, and about 40 minutes after the Hilde's arrived he left the area.

The day after the shooting Lawson voluntarily contacted the police when he saw news reports about the shooting. He told the police he had seen and talked with the Hilde's at their campsite the morning they arrived --

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Crimes Act and Section 165B of the Evidence Act, cited verbatim on pages 11-13 of the [court of appeal's ruling](#).

The appeals court judges in Greensill's case explained at length she was prejudiced because of the unavailability of possibly exculpatory evidence due to the 28 year delay from 1979 to 2007 for her accusers to file a complaint or apparently ever tell anyone about the alleged orgy in her backyard. The appeals court was particularly concerned that it was only after Jim knew Greensill's husband died that Jim contacted the police and he and Dan gave their statements. That deprived Greensill of her husband's testimony for the jurors to consider.

Endnotes:

1. "Jim" was identified in Court papers as "RS" and "Dan" was identified in Court papers as "SC."
2. Jim was awarded AUSD\$65,000 on April 13, 2012. That was \$62,735 at the exchange rate of AUSD\$1.036 to USD\$1 on 4-13-12. There is no record that Dan submitted a compensation claim.

Sources:

[Greensill v The Queen](#) [2012] VSCA 306 (December 13, 2012)

[Court quashes sex offence conviction](#), *The Age* (Melbourne, AUS), December 10, 2012

[Doubts over accusers' evidence led to teacher's release](#), *The Age* (Melbourne, AUS), December 13, 2012

[Female teacher who abused boys](#), 8, in 1970s shows no remorse, *Herald Sun* (Melbourne, AUS), July 21, 2010

[Teacher Josephine Mary Greensill](#) jailed for sex with boys, 8, *Herald Sun*, August 10, 2010



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which was about 12 hours before the shooting.

Two days after the shooting a detective went to Mrs. Hilde's hospital room and showed her a photo line-up that included Lawson's photo. She couldn't speak because of a breathing tube in her throat, so she shook her head "No" in response to the detective's question if the shooter was among the photos. The detective then asked if she saw the photo of anyone she had seen at her campsite earlier on the day of the shooting and she nodded "Yes" -- which corroborated what Lawson had told the police.

Mrs. Hilde was still in the hospital when the police again questioned her about two weeks after the shooting. She could speak and "[she told detectives](#) that after her husband was shot, the perpetrator had entered the trailer and put a pillow over her face. She said that she did not know who he was, and that she could not see the man because it was dark and because of the pillow. She was apologetic that she was unable to help the police more and did not think she could identify anyone."

About a month after the shooting the detectives again interviewed Mrs. Hilde. She changed her story slightly in stating she had briefly seen the shooter. She was shown another photo lineup that included Lawson's photo, and she said the shooter wasn't among the photos. She did not tell the detectives the man who had been at their campsite earlier on the day of the shooting was their assailant.

About a week later Mrs. Hilde was again questioned by the detectives. After they asked her leading questions about the man who had been at their campsite when they arrived, she "[told the detectives](#) that she now believed that man was their assailant. However, she "could not swear" it was him, because she claimed to have seen his face only in profile. Mrs. Hilde declined to view a profile lineup, telling the detective that she did not think she would be able to pick her attacker out of the lineup. The detectives then informed Mrs. Hilde that "the man that you've identified is the person that we have in custody," and identified Samuel Lawson by name."

After that a worker at the facility where Mrs. Hilde was convalescing showed her a newspaper photograph of Lawson with a caption he was arrested for the shootings. Two years after the shootings and about a month before Lawson's trial in 2005, police detectives exposed Mrs. Hilde to Lawson several more times, including surreptitiously bringing her

into the courtroom during a pretrial hearing so she could see him in person. After repeatedly seeing Lawson, Mrs. Hilde then picked him out of the same photo lineup from which that she had been unable to identify her assailant after the attack. The Douglas County DA's Office didn't inform Lawson's lawyers of the detectives activities to influence Mrs. Hilde's identification.

During Lawson's trial Mrs. Hilde positively identified him as the man who shot her and her husband, and [when asked](#) whether she had any doubt as to her identification, Mrs. Hilde responded: "Absolutely not. I'll never forget his face as long as I live." She later added that she "always knew it was him."



The trial judge denied the objection of Lawson's lawyer that Mrs. Hilde's identification was unreliable because it had been tainted by suggestive police procedures. The judge stated that "the reliability and probative value" of Mrs. Hilde's identification was for the jury to decide.

Mrs. Hilde's testimony was crucial for the prosecution because there was no physical, forensic, confession or informant evidence linking Lawson to the shootings. The jury convicted Lawson on five counts of aggravated murder, three counts of attempted aggravated murder, and two counts of first-degree robbery. He was sentenced to life in prison without the possibility of parole.

[Lawson argued](#) during his appeal to the Oregon Court of Appeals that "Mrs. Hilde should not have been permitted to identify defendant in court because police officers had used "unduly suggestive" identification procedures prior to defendant's trial." Oregon's precedent for evaluating the admissibility of contested eyewitness identification testimony was *State v. Classen*, 285 Or. 221, 590 P.2d 1198 (1979), which established a two-part test: The trial court must first determine if the procedure used to obtain the witnesses' identification was suggestive, and if so, whether the identification has a source independent of the suggestive procedure that makes it reliable. [The appeals court](#) affirmed Lawson's conviction after determining that although the police had used suggestive procedures, Lawson's lawyer had extensively cross-examined Mrs. Hilde and an instruction cautioned the jury about the reliability of eyewitness identification, thus Mrs. [Hilde's identification](#)

was "reliable enough to allow the jury to consider it in its deliberations."

Lawson appealed to the Oregon Supreme Court. On November 29, 2012 the [Court ruled in](#) *State of Oregon v. Samuel Adam Lawson*, No. SC S059234 (OR SC) that Lawson was entitled to a new trial because of questions about the reliability of Mrs. Hilde's identification. The Court also ruled that in the 33 years since *Classen* there have been considerable developments in determining the reliability of eyewitness evidence which necessitated the Court to establish new comprehensive guidelines for a trial court to determine the admissibility of eyewitness evidence the defense is seeking to exclude. The Court stated regarding Lawson's conviction:

"The alterations in Mrs. Hilde's statements over time are indicative of a memory altered by suggestion and confirming feedback. ... In light of current scientific knowledge regarding the effects of suggestion and confirming feedback, the preceding circumstances raise serious questions concerning the reliability of the identification evidence admitted at defendant's trial. ... - we reverse and remand the case to the trial court for a new trial. Due to the novelty and complexity of the procedures we have articulated today, the parties must be permitted on retrial to (1) supplement the record with any additional evidence that may bear on the reliability of the eyewitness identifications at issue here, and (2) present arguments regarding the appropriate application of the new procedures set out in this opinion." [48-49]

Regarding the new guidelines for admitting contested eyewitness evidence the Court stated:

"To summarize: Under this revised test governing the admission of eyewitness testimony, when a criminal defendant files a pretrial motion to exclude eyewitness identification evidence, the state as the proponent of the eyewitness identification must establish all preliminary facts necessary to establish admissibility of the eyewitness evidence. See OEC 104; OEC 307. When an issue raised in a pretrial challenge to eyewitness identification evidence specifically implicates OEC 602 or OEC 701, those preliminary facts must include, at minimum, proof under OEC 602 that the proffered eyewitness has personal knowledge of the matters to which the witness will testify, and proof under OEC 701 that

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any identification is both rationally based on the witness's first-hand perceptions and helpful to the trier of fact.

If the state satisfies its burden that eyewitness evidence is not barred by OEC 402, the burden shifts to the defendant to establish under OEC 403 that, although the eyewitness evidence is otherwise admissible, the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay or needless presentation of cumulative evidence. If the trial court concludes that the defendant opposing the evidence has succeeded in making that showing, the trial court can either exclude the identification, or fashion an appropriate intermediate remedy short of exclusion to cure the unfair prejudice or other dangers attending the use of that evidence.” [44]

[Click here to read or download](#) *State of Oregon v. Samuel Adam Lawson*, No. SC S059234 (OR SC). Oregon is now at the forefront of trying to ensure contested eyewitness testimony has a reasonable degree of reliability before it is admissible evidence.

Under the Oregon Supreme Court's new guidelines it seems doubtful Lawson will be retried because there is no evidence he committed the crime except for Mrs. Hilde's testimony, and it is known she only identified him after the police detectives repeatedly suggested through photographs and words that he was her assailant. The irony of Lawson's prosecution is his identity wouldn't have been known except that he voluntarily contacted the police to tell them he saw and talked with the Hilde's at their campsite about 12 hours before the shootings.

Sources:

[State of Oregon v. Samuel Adam Lawson](#), SC S059234 (OR Sup. Ct., November 29, 2012) (en banc)

[State of Oregon v. Samuel Adam Lawson](#), No. A132640 (OR Ct. of Appeals, December 15, 2010)

[Oregon Supreme Court ruling](#) described as 'landmark' decision on eyewitness testimony, *The Oregonian* (Portland), November 29, 2012

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Will Kirstin Lobato's New Scientific Evidence Of Her Actual Innocence Matter To The Nevada Supreme Court?

By Hans Sherrer

Commentary for the *Las Vegas Tribune*
(July 22, 2013)

Is it in the public interest for a person to be imprisoned for crimes there is scientific evidence the person didn't commit? The Nevada Supreme Court is currently considering whether new scientific evidence of Kirstin Blaise Lobato's actual innocence warrants overturning her convictions.

Duran Bailey was a homeless man whose body was found around 10 p.m. on July 8, 2001 near the Las Vegas Strip in a bank's trash enclosure. Bailey's autopsy determined he died from Blunt Head Trauma, and he had many bloody wounds.

Kirstin Lobato was convicted on October 6, 2006 of voluntary manslaughter and other charges related to Bailey's homicide. She was sentenced to 13 to 35 years in prison.

An undisputed fact during Kirstin's trial is she was at her home in Panaca, Nevada 165 miles north of Las Vegas on July 8, 2001 from at least 11:30 a.m. and probably from 10 a.m., until after Bailey's body was found that night. A Nevada DOT supervisor testified the driving time from Las Vegas to Panaca is about three hours.

Since Kirstin couldn't have been in Las Vegas earlier than 8:30 a.m. (11:30 minus 3 hours), and probably no earlier than 7 a.m. (10 a.m. minus 3 hours), it is physically impossible she committed Bailey's homicide if he died *after* 8:30 a.m. on July 8, and there is a reasonable doubt she did so if he died *between* 7 and 8:30 a.m.

To establish Bailey could have died before 7 a.m. the prosecution introduced the testimony of Clark County ME Dr. Lary Simms. The jury relied on his testimony it is *possible* Bailey died before 7 a.m. to convict Kirstin.

After Kirstin's convictions were affirmed on appeal in 2009, a post-conviction investigation of her case was undertaken to discover new evidence, including more precisely determining Bailey's time of death.

The science of forensic entomology dates

back more than 1,000 years. It is known "Blow flies are attracted to human remains, and any other carrion or meat product, in order to lay their eggs. Eggs are laid within minutes of the remains being located by blow flies, meaning that they are laid within a very short time after death, usually minutes. ... Therefore, a bloody wound is extremely attractive to female blow flies and they would be expected to lay large numbers of egg masses on the body. ... Blow flies are *diurnal* animals, meaning they are *only active during daylight hours*." (Report of Dr. Gail S. Anderson, Dec. 17, 2009)

Three forensic entomologists were provided with reports, weather data, testimony, and photographs related to Bailey's death. They independently determined no insect eggs are visible on Bailey's body, and thus to a reasonable scientific certainty he died *after sunset at 8:01 p.m.* – and he most probably died *after full dark at 9:08 p.m.* The new scientific forensic entomology evidence establishes it is physically impossible Kirstin committed Bailey's homicide because it is undisputed she was home in Panaca at 8 p.m.



Kirstin Blaise Lobato during her trial in Sept. 2006. (Michelle Ravell)

A number of cockroaches were in a beer can found within arms reach of Bailey's body. The three forensic entomologists noted in their reports there were no insect bites on Bailey's body. Cockroaches feed on human flesh and unlike flies they are nocturnal. Consequently, Bailey likely died shortly before his body was discovered since cockroaches would have feasted on his body if it had lain in the dark trash enclosure for any length of time.

Dr. Simms did not consider the absence of insect eggs or insect bites when he testified about Bailey's time of death, even though considering their presence or absence is necessary to reliably determine when he died.

The new forensic entomology evidence renders Dr. Simms' testimony as lacking any credibility about Bailey's time of death and that his body could have lain in the trash enclosure where he was killed for up to 18 hours before being discovered.

In May 2010 Kirstin filed a *habeas corpus* petition in the Clark County District Court that included a request for a new trial based on her new evidence Bailey died when she was 165 miles from Las Vegas.

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