

Introduction

Duran Bailey was a 44-year-old homeless man murdered in a west Las Vegas bank's trash enclosure on July 8, 2001. His body was found about 10pm on the 8th by a dumpster diver. Bailey's face was brutally beaten, he was stabbed many times in his face, neck, abdomen and scrotum, his penis was amputated, his rectum was sliced, and his skull was fractured. Bailey's autopsy identified 31 external injuries and a number of internal injuries.

Twelve days after Bailey's murder a Las Vegas detective received a phone call with third-hand information that a young woman thwarted a rape attempt in Las Vegas by trying to cut her assailant's penis. The caller said the woman was 18-year-old Kirstin Blaise Lobato, and she lived with her parents in Panaca, Nevada – 170 miles north of Las Vegas. The detective decided from the phone call Ms. Lobato murdered Bailey. That afternoon the detective, his partner, and a crime scene analyst drove to Panaca to arrest Ms. Lobato and impound her car for examination by the crime lab.

After the detectives arrived at the home of Ms. Lobato's parents on the late afternoon of July 20 she gave a 26-minute audio taped statement. She described "over a month ago" fending off a rape attempt in the parking lot of an east Las Vegas hotel by trying once to cut her assailant's exposed penis with her butterfly knife. Her assailant was stooped over and crying when she escaped in her car. She didn't know any details of Bailey's murder, and when shown his picture she didn't recognize him. Although the detective's Arrest Report didn't allege Ms. Lobato confessed or provided any details of Bailey's murder, she was charged with first-degree murder based on the detective's assumption the rape assault against her at the east side hotel was the same event as Bailey's murder weeks later at the west side bank. She was also charged with sexual penetration of a dead body based on the alleged cutting of Bailey's rectum after his death. The DA reserved the right to seek the death penalty.

Ms. Lobato was convicted in May 2002 of first-degree murder and sexual penetration of a dead body (Bailey's rectum cut after his death). She was sentenced to a minimum of 45 years in prison. In 2004 her convictions were overturned by the Nevada Supreme Court based on errors by the trial judge, and the Court ordered her retrial.

During Ms. Lobato's trial that began in September 2006 the prosecution did not introduce any physical, forensic, eyewitness, video surveillance, or documentary evidence tying her, her car, or any item of hers to the crime. Crime lab technicians testified DNA tests of crime scene evidence exclude her, her fingerprints don't match those recovered from the crime scene, her shoe size is 2-1/2 sizes smaller than shoeprints imprinted in blood leading away from Bailey's body, her car's tire treads don't match the fresh tire tracks found at the crime scene, and confirmatory scientific tests were negative for any blood in her car. In addition, no evidence was introduced she knew the homeless Bailey or where he lived. That lack of incriminating evidence is consistent with the fact that no evidence was introduced placing either her or her car in Clark County (Las Vegas) on the day of Bailey's murder, or from *six days before* his murder until *a day afterwards*, while the unrebutted testimony of almost a dozen eyewitnesses, and phone and medical records were introduced establishing that during that time she was in

Panaca 170 miles from Las Vegas. Ms. Lobato's alibi defense was based on the evidence she was in Panaca the entire day of Bailey's murder.

Since the prosecution neither introduced evidence Ms. Lobato had been anywhere in Clark County (Las Vegas) at anytime on the day of Bailey's murder (July 8), nor evidence directly linking her to the crime, the prosecutor's tactic was to convince the jury of her guilt by using their closing and rebuttal arguments based on speculation it is "possible" she committed the crime, as the phantom "evidence" of her guilt missing from the trial itself. The prosecution argued it is "possible" she was in Las Vegas on the early morning of July 8, and it is "possible" she went to the bank's trash enclosure and murdered Bailey without making the bloody shoeprints and fingerprints, and leaving the hair and other evidence found at the crime scene. And it is "possible" she then drove at breakneck speeds to Panaca in time for credible witnesses to see and talk with her that morning. The prosecution's many speculative arguments about what it claimed is "possible" are documented in Ms. Lobato's *habeas corpus* petition ground seventy (p. 309) and Exhibit 76.

The jury bought the prosecution's speculative arguments. Ms. Lobato was convicted on October 6, 2006, of voluntary manslaughter and sexual penetration of a dead body (Bailey's rectum cut after his death). She was sentenced to 13 to 35 years in prison, with no hope of parole without admitting guilt.

The Nevada Supreme Court affirmed Ms. Lobato's convictions on May 19, 2009, and in October 2009 the U.S. Supreme Court declined to review her case.

Ms. Lobato filed a 770-page state *habeas corpus* petition on May 5, 2010. Her petition includes 79 grounds and 101 exhibits supporting her factual innocence of Bailey's murder, and that her convictions violate her constitutional rights to effective assistance of counsel, an impartial jury, due process, and a fair trial. Ms. Lobato's petition includes twenty-four grounds based on new evidence her jury didn't consider, two grounds the prosecution failed to disclose exculpatory evidence, fifty-two grounds of ineffective assistance of counsel by her attorneys, and one ground she is actually and factually innocent.

Ms. Lobato's new evidence includes:

- Forensic entomology and pathology evidence that Bailey died after 8pm on July 8, 2001. The prosecution conceded during Ms. Lobato's trial she was in Panaca from *at least* 11:30am until after Bailey's body was found that night about 10pm in Las Vegas. (Ground one, p. 24 and Ground two, p. 29)
- Forensic entomology evidence that Bailey's body did not lay in the trash enclosure long enough for the cockroaches that were present to begin feeding on his corpse. (Ground three, p. 32)
- Expert psychology evidence that Ms. Lobato's police statement at the time of her arrest on July 20, 2001, describes her using her knife to thwart a rape assault that occurred weeks before Bailey's murder. (Ground four, p. 36)
- An independent lie detector expert used often by the Clark County District Attorney's Office examined Ms. Lobato and declares she is innocent of Bailey's murder. (Ground four, p. 36)

- Nine alibi witnesses were told by Ms. Lobato prior to Bailey’s murder on July 8, 2001, that she used her knife to ward off a rape attempt in Las Vegas. (Ground five, p. 41)
- Four new alibi witnesses who saw or talked with Ms. Lobato in Panaca on the weekend of July 6 to 8. (Ground six, p. 47)
- Forensic science evidence excludes Ms. Lobato’s shoes and shoe size as the source of shoeprints imprinted in blood on cardboard covering Bailey and leading away from his body on the concrete floor, and that those bloody shoeprints were made by Bailey’s murderer. (Ground eleven, p. 69)
- An acquaintance of Bailey has new evidence that “Mexican” friends of a woman Bailey brutally beat and raped a week before he was killed had the motive, means and opportunity to kill him. (Ground sixteen, p. 92)

This book includes Ms. Lobato’s complete 770-page *habeas corpus* petition. The new evidence in Ms. Lobato’s petition conclusively proves she is innocent of murdering Bailey, and that she was at her parents’ house in Panaca 170 miles north of Las Vegas when the crime occurred. That new evidence complements the evidence of her innocence that has been known for years. Based on the then available evidence, *Justice:Denied – the magazine for the wrongly convicted* published an article in its fall 2004 issue, “Las Vegas Police and Prosecutors Frame Woman 170 Miles From Murder Scene – Kirstin Lobato’s “Very Peculiar Story”” by Hans Sherrer. After Ms. Lobato’s retrial, in its fall 2006 issue *Justice:Denied* published a second article about her case, “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. Then in February 2008 a book authored by Hans Sherrer was published titled, *Kirstin Blaise Lobato’s Unreasonable Conviction: Possibility Of Guilt Replaces Proof Beyond A Reasonable Doubt* (The Justice Institute, 2008). The articles and information about the book is available on Justice Denied’s website, www.justicedenied.org.

There are also two websites dedicated to reporting the truth about Ms. Lobato’s case. One was started in 2002, Guilty Until Proven Innocent, and the other in 2003, justice4kirstin.com.

In March 2010 the Association in Defence of the Wrongly Convicted unanimously endorsed Ms. Lobato’s case as a miscarriage of justice, on the basis she is factually innocent. AIDWYC is a Toronto, Canada based organization. Also in early 2010 the Innocence Project in New York accepted Ms. Lobato’s case to pursue DNA testing of biological evidence that could not only scientifically prove her innocence, but identify the DNA profile of Bailey’s killer or killers.

Asking and answering some basic questions explains why it is known with absolute certainty that Ms. Lobato did not have anything to do with Bailey’s murder.

- Is there any evidence Ms. Lobato (or her car) were anywhere in Clark County (Las Vegas) at anytime on July 8 – the day of Bailey’s murder?
No.
- Is there any evidence that prior to her arrest Ms. Lobato had ever been inside the trash enclosure where Bailey was murdered?
No.

- Was any evidence found in Ms. Lobato's possession or her car linking her to Bailey or his murder?
No.
- Is there a single detail of Bailey's murder in Ms. Lobato's statement on July 20, 2001?
No.
- Is there any mention of cutting her assailant's rectum in her statement?
No.
- Ms. Lobato's statement clearly describes streets, businesses, and landmarks around the east side hotel where she was assaulted, but do any of those details match where Bailey was murdered?
No.
- Is there any evidence Ms. Lobato ever met Bailey, knew who he was, knew anyone who knew him, or knew where he hung out or slept?
No.

The evidence Ms. Lobato did not have anything to do with Bailey's murder is consistent with the unrebutted eyewitness and telephone evidence she and her car were in Panaca the entire day of his murder – July 8. The prosecution admits she was in Panaca from *at least* 11:30 am until after Bailey's body was found. The new forensic entomology and pathology evidence that Bailey died after 8pm when she was indisputably in Panaca, is consistent with the plethora of evidence she did not commit the crime.

The diverse and compelling evidence Ms. Lobato did not murder Bailey exposes the flimsiness of the prosecution's case based on hypothetical speculations of how she might have committed the crime ... without any evidence she did so.

Ms. Lobato's *habeas corpus* petition shines the bright light of the unfiltered truth on her case: She was 170 miles from Las Vegas when Duran Bailey was murdered, there is no evidence linking her to the crime, crime scene evidence excludes her, and there is no evidence she knew Bailey or had ever been to where he was murdered. In contrast there is credible evidence Bailey was murdered by one or more people who knew him and had the motive, means and opportunity to do so.

The facts of Ms. Lobato's case point to only one reasonable conclusion: *at a minimum* she has been subjected for nine years to an extreme miscarriage of justice that screams to be corrected by the overturning of her convictions and her release from prison.

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