

**NEW EVIDENCE
KIRSTIN BLAISE LOBATO
IS INNOCENT OF ANY
INVOLVEMENT IN THE
DEATH OF DURAN BAILEY
IN LAS VEGAS, NEVADA
ON JULY 8, 2001**

Prepared by Hans Sherrer/Justice Denied, hsherrer@justicedenied.org

Overview of Case

(Based on the record of Kirstin Blaise Lobato's case.)

Duran Bailey's body was found in the trash enclosure for the Nevada State Bank at 4240 West Flamingo Road in Las Vegas “around 10 p.m.” on July 8, 2001, by a homeless man who was dumpster diving. Bailey's body was behind a dumpster and he was covered with trash and pieces of cardboard.

The man called emergency 911 at 10:36 p.m. and the first police officer arrived at about 10:50 p.m.



Duran Bailey was found covered with trash and cardboard

The most noticeable aspect of Bailey's murder scene was how bloody it was.



Blood at crime scene with Bailey's body and trash removed. Bailey bled about $\frac{1}{2}$ gallon of blood.

Early on the morning of the 9th while the police were still at the murder scene Diann Parker was observed and her contact information was given to the homicide detectives investigating Bailey's murder, Las Vegas Metro PD Detectives Thomas Thowsen and James LaRoche. Parker had reported being beaten and raped by Bailey a week earlier on July 1, 2001, but the LVMPD had not made any effort to arrest him.

Parker's apartment was in the same block as the murder scene and could be walked there in minutes. The detectives went to her apartment the morning of July 9. Her roommate Steven King was also there. The detectives looked at their hands for cuts and bruises and the shoes they were wearing for blood. They saw none so they left without taking a statement from either Parker or King, and they weren't considered suspects in Bailey's murder.

The detectives talked with Parker's apartment manager about the "Mexicans" who were Parker's neighbors, and who she said were very upset with Bailey when he came into their apartment and slapped her while she was drinking beer with them on the morning of July 1. The Mexicans had words with Bailey and told him to leave Parker alone. Just hours later Bailey barged into Parker's apartment while King was at work, and over several hours beat and raped her. When she reported the rape to the police, she told them Bailey rubbed a knife along her carotid artery, tried to sodomize her, and threatened repeatedly to kill her.



Diann Parker's face and neck after Bailey's beat and raped her on July 1, 2001. Bailey's eyes were blackened and his carotid artery in his neck was cut about where he had rubbed a knife against Parker's neck.

The detectives obtained the Mexicans' names from the apartment manager – but they made no effort to investigate their possible involvement in Bailey's murder.

Clark County Medical Examiner Lary Simms conducted Bailey's autopsy and determined his primary cause of death was a head injury. Simms also determined Bailey had been beaten, stabbed repeatedly, his carotid artery was cut, his rectum had been injured, and his penis amputated. Bailey's attacker inflicted more than 30 external injuries and Bailey had almost a dozen internal injuries. Bailey was a scrawny man who was 5'-10" and weighed 133 pounds at his autopsy.



Duran Bailey's mugshot on October 18, 1999, when he was arrested for battery and domestic violence when he choked his girlfriend's neck.

On July 20, 2001, Lincoln County, Nevada Juvenile Probation Officer Laura Johnson called the Las Vegas Metro PD and inquired if there were any reported crimes involving a man's injured penis. Johnson was transferred to Det. Thowsen. She told Thowsen that a teacher friend of hers told her that a former student had told the teacher that during an attempted rape in Las Vegas she defended herself by trying to cut her would-be rapist's penis. Johnson told Thowsen the young woman lived with her parents' in the Lincoln County town of Panaca, and her name was Kirstin Blaise Lobato. (She goes by her middle name of "Blaise".) Thowsen made the snap judgment 18-year-old Blaise was guilty of Bailey's murder. Thowsen ran Blaise's SCOPE and found she had no criminal record.

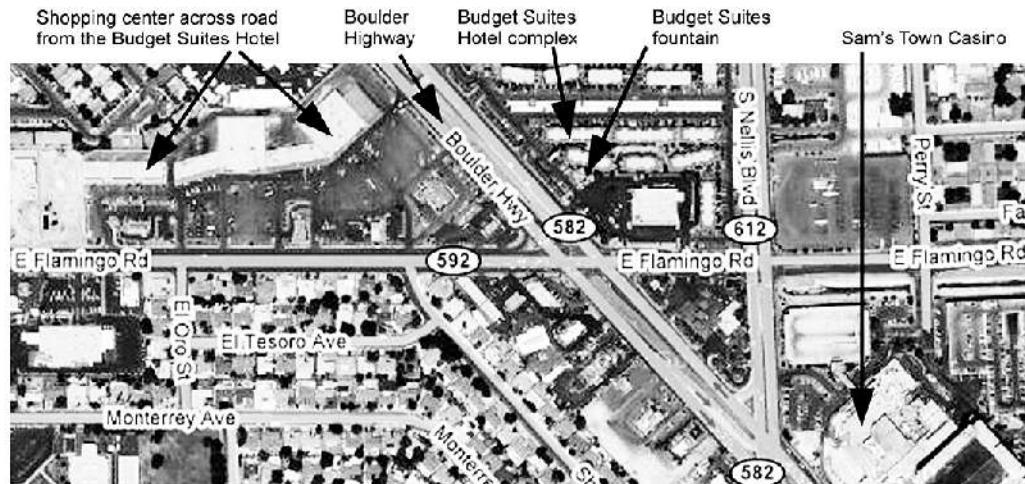


Blaise around the time of her high school graduation.

Within an hour of Johnson's call the detectives and a crime scene analyst left Las Vegas to drive the 170 miles north to Panaca to arrest Blaise for Bailey's murder. When the detectives arrived at Blaise's parents' house they recorded a 26-minute audio statement by Blaise. She described the attempted rape of her at a Budget Suites Hotel on Boulder Highway in east Las Vegas that she identified as happening "over a month ago" – which was mid-June and weeks before Bailey's murder. Blaise said she escaped from her assailant after trying once to cut his exposed penis and he was "crying" as she drove away in her car. She said she didn't hit her assailant, she didn't mention that he bled, and she described in detail where the assault took place. Blaise is 5'-6" and she said her assailant "seemed like a giant compared to me." She later described him as over 6' and 200 pounds. Like Parker and King, she did not have any wounds on her hands or blood on her shoe soles.

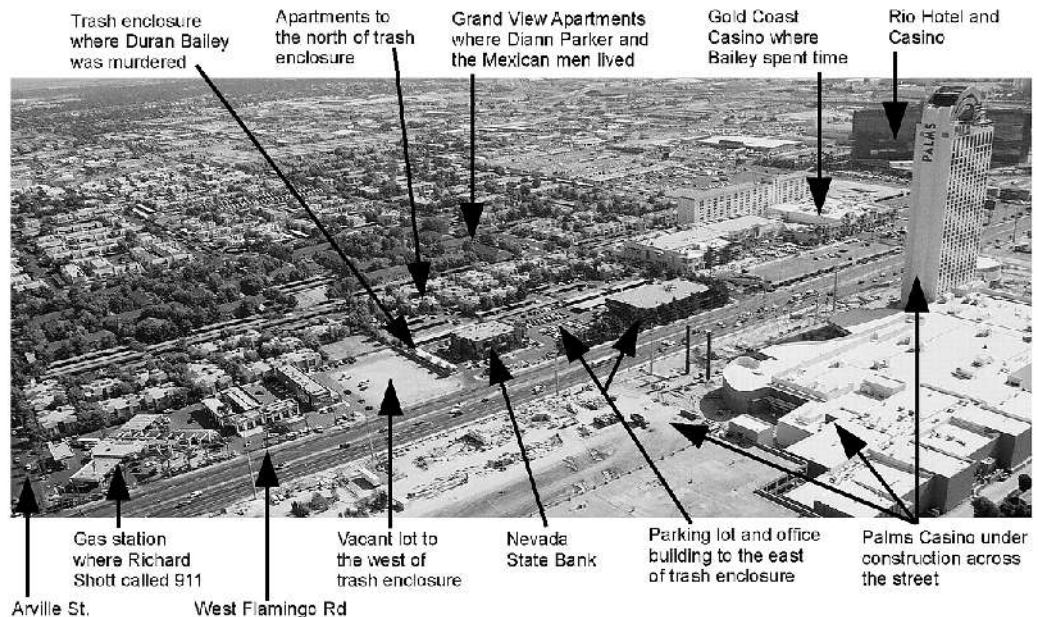
In Blaise's Statement she described in detail the area around the Budget Suites Hotel at 4855 Boulder Highway in east Las Vegas where she said she was sexually assaulted. **Not a single detail in Blaise's Statement matches where Duran Bailey was murdered eight miles away in west Las Vegas at a Nevada State Bank or the area around it.**

Physical landmarks identified by Blaise in her statement as being near the scene of the attempted rape of her



Blaise's statement about the attempted rape of her in May 2001 did not refer to any landmark near the scene of Duran Bailey's murder on July 8, 2001

Physical landmarks near the scene of Duran Bailey's murder



The detectives arrested Blaise for Bailey's murder and seized her car that was transported to Las Vegas for examination by the crime lab. The detective's Arrest Report didn't allege Blaise confessed or provided any details of Bailey's murder. The crime lab found no blood or DNA evidence linking Blaise, any personal item of hers, or her car to Bailey or his murder. Also, her car's tires didn't match the fresh tire tracks at the crime scene.

Blaise was charged with Bailey's first-degree murder and sexual penetration of his dead body (his injured rectum).

Blaise was convicted in May 2002 of first-degree murder and sexual penetration of Bailey's dead body (his injured rectum). In September 2004 the Nevada Supreme Court overturned Blaise's convictions because of errors by Judge Valorie Vega that deprived Blaise of a fair trial.

Blaise's retrial began on September 11, 2006.

The prosecution's case was based on their contention that Blaise's Statement on July 20, 2001, was a *de facto* confession to Bailey's murder



Kirstin Blaise Lobato free on bail awaiting her retrial

Blaise's alibi defense was that she was in Panaca at her parents' house on the entire day of July 8, 2001 – the day of Bailey's murder in Las Vegas. Blaise attempted to also present the alibi defense that her Statement was about the attempted rape of her at the Budget Suites Hotel in late May 2001. However, Judge Vega barred the jury from hearing any testimony by Blaise's alibi witnesses who she told beginning in late May 2001 about the assault at the Budget Suites Hotel that she describes in her Statement.

After two days of deliberations, on October 6, 2006 the jury found Blaise guilty of voluntary manslaughter and sexual penetration of Bailey's dead body (his injured rectum). Judge Vega sentenced Blaise to 13 to 35 years in prison, and when released she would have to register for life as a sex offender and she would have lifetime supervision by the Nevada Department of Corrections.

Blaise's convictions were affirmed by the Nevada Supreme Court on February 5, 2009, and her convictions became final on October 16, 2009, after the U.S. Supreme Court declined to review her case.

Blaise had a year to file a petition for a writ of *habeas corpus* presenting evidence she should be granted a new trial.

KIRSTIN BLAISE LOBATO FILED A 770-PAGE PETITION FOR A WRIT OF HABEAS CORPUS ON MAY 5, 2010. THE PETITION REQUESTS A NEW TRIAL BASED ON 79 GROUNDS.

Blaise's petition includes 21 grounds of new evidence, 2 grounds the prosecution failed to disclose exculpatory evidence, 52 grounds her lawyers were ineffective in representing her, 1 ground each of prosecutor, police and jury misconduct, and 1 ground of her actual innocence of having anything to do with Duran Bailey's murder and injured rectum.

Comparing New Evidence Of Blaise's Innocence With Evidence The Jury Relied On To Convict Her

New Evidence In Blaise's Habeas Corpus Petition Summarized

1. Blaise's Statement is about the attempted rape of her at a Budget Suites Hotel in May 2001.
2. Blaise is innocent of Bailey's murder says a polygraph examiner used by the Clark County DA's Office, and her shoes were not worn by Bailey's killer.
3. Blaise did not make the shoeprints imprinted in blood on the concrete leading away from Bailey's body and on the cardboard covering his body, which were made by a person involved in his murder.
4. Blaise was in Panaca 170 miles north of Las Vegas the entire weekend of July 6 to July 8, 2001.
5. Blaise did not use methamphetamine on July 6 to July 8, 2001.
6. Methamphetamine was available in Panaca the weekend of July 6 to July 8, 2001.
7. Bailey was murdered between 8 p.m. and discovery of his body "around 10 p.m." on July 8, 2001.
8. Bailey was murdered when unrebutted alibi evidence establishes Blaise was in Panaca.
9. Bailey did not stay or live in the trash enclosure where he was murdered.
10. Bailey was assaulted by more than one person.
11. Bailey was murdered by Diann Parker's "Mexican" friends.
12. Bailey's groin was skinned like an animal after his penis was amputated, and "The perpetrator either had some medical knowledge, or experience skinning an animal." - and Blaise had neither.
13. Bailey's teeth were not knocked out by a baseball bat.
14. Bailey was lying down when he was assaulted.
15. Bailey was alive when his rectum was injured, so it is not a "post-mortem" injury.
16. Bailey was buried alive in trash.

1.

Prosecution argued to the jury the evidence showed Blaise's Statement on July 20, 2001, is not about the attempted rape of her at a Budget Suites Hotel in east Las Vegas that she describes as occurring weeks before Bailey's murder – but that it is about Bailey's murder

New evidence corroborating Blaise's Statement was about an attempted rape at a Las Vegas hotel	Testimony Jury Heard At Trial
<p>At least nine (9) alibi witnesses were told by Blaise beginning in late May 2001 that she was assaulted by a would-be rapist in a Las Vegas hotel's parking lot and she defended herself by trying to cut or stab at his penis. All the alibi witnesses were told about the assault before July 8 – the day of Bailey's murder. The witnesses were told by Blaise about the assault at different times and some were told in Las Vegas and others in Panaca, but what they say Blaise told them doesn't significantly differ from the incident she described in her Statement.</p> <p>Dr. Alison Redlich is a psychologist and one of the country's leading experts at analyzing a person's statement for whether it is a confession to a crime. Dr. Redlich concludes in her report of February 10, 2010, that Blaise's Statement is about her attempted rape at a Budget Suites Hotel on Boulder Highway in east Las Vegas, and it is not a confession to Bailey's murder that occurred weeks later at a bank in west Las Vegas. (See details on next page, 1.2)</p> <p>Detectives Thowsen and LaRochelle's Arrest Report and their Officer's Report about their investigation of the case don't allege Blaise confessed or provided any details of Bailey's murder.</p>	<p>The jury heard none of this alibi witness testimony.</p> <p>The jury heard no expert testimony that Blaise's Statement describes the attempted rape of her at a Budget Suites Hotel weeks before Bailey's murder at a bank eight miles away.</p> <p>The jury heard no testimony that Dets. Thowsen and LaRochelle didn't allege Blaise confessed or provided any details about Bailey's murder.</p>

1.2

Psychologist Dr. Alison Redlich Determines Blaise's Statement Is About Her Attempted Rape At The Budget Suites Hotel Weeks Before Bailey's Murder

From reviewing the materials, it is my expert opinion that Ms. Lobato was not confessing to the murder of Mr. Bailey. Rather, she was "confessing" to an assault in which she was the alleged victim and in which she defended herself by attempting to cut the penis of a man who was allegedly sexually assaulting her. It appears to me that **Ms. Lobato believed she was cooperating with a police investigation, not admitting to a murder that occurred on the other side of town some weeks after her alleged assault.**

Finally, I comment on Detective's Thowsen's claim that suspects often minimize their involvement with crimes. It is likely that some guilty suspects do minimize their involvement, in large part because police interrogators are trained to induce suspects to minimize. ... in my opinion, **Ms. Lobato's version of events should not be construed as minimizing or jumbling the details of the murder of Mr. Bailey, but rather construed as a description of the alleged assault on her.**

(Excerpt from Report of Dr. Allison D. Redlich, February 10, 2010.)

2.

Prosecution argued to the jury the evidence showed Blaise murdered Duran Bailey

New polygraph and shoe evidence Blaise did not murder Bailey

Testimony

New Polygraph (Lie Detector) Evidence

Ron Slay is a Nevada state licensed polygraph examiner with 35 years experience, and he has conducted over 27,000 polygraph examinations. Mr. Slay's expert skill at determining the truthfulness of a person is relied on by clients that include the Clark County District Attorney's Office, the Clark County Public Defenders Office, and the Clark County Special Public Defenders Office. Mr. Slay conducted a polygraph examination of Blaise and determined:

"I am certain Ms. Lobato is innocent of Mr. Bailey's murder."

(Affidavit of Ron Slay, February 12, 2010.)

Polygraph evidence is admissible in Nevada if the prosecution and defense agree. The only obstacle preventing the jury from hearing Slay's testimony would be the prosecution refusing to agree for the jury hearing his testimony.

New Shoe Evidence

Blaise describes in her Statement of July 20, 2001, that when she was sexually assaulted, "I had on black high heels. I was getting ready to go out." When asked again about her shoes by Det. Thowsen she said, "I was wearing [black] high heel shoes. I can show them to you if you want." She gave those shoes to the detectives and they were tested by the crime lab. Blaise's shoes were excluded as having any of Bailey's blood or DNA on them, and they were also excluded as matching any of the shoeprints imprinted in blood on cardboard or on the concrete leading away from Bailey's body. The prosecution has never disputed that Blaise was wearing her black high-heeled platform shoes during the attack she describes in her Statement. (Photos of Blaise's shoes are on page 2.3.)

(Continued on next page.)

The jury did not hear any expert polygraph testimony, or any expert testimony regarding Blaise's black high-heeled platform shoes she was wearing at the time of the assault she described in her Statement.

2.2

New polygraph and shoe evidence Blaise did not murder Bailey

Testimony

George Schiro has over 25 years of experience as a forensic scientist and crime scene investigator. He has worked over 2900 cases. Mr. Schiro did not testify at Blaise trial. He reviewed *pro bono* four full-color photographs of the black high-heeled platform shoes that Blaise wore during the sexual assault she describes in her Statement of July 20, 2001. (See photos on the next page.) Mr. Schiro states in his Affidavit of February 15, 2010:

19. It is my opinion that had Ms. Lobato been wearing these shoes during the murder, mutilation, and concealment of Duran Bailey, then it is highly likely that she would have left at the scene bloody shoeprints corresponding to the sole patterns of the black high heeled shoes.

20. **No bloody shoeprints corresponding to the sole patterns of the black high heeled shoes were identified or documented at the scene of Mr. Bailey's murder.**

21. It is also my opinion that had Ms. Lobato been wearing these shoes during the murder, mutilation, and concealment of Duran Bailey, then Mr. Bailey's blood would have been present on the black high heeled shoes.

22. **None of Mr. Bailey's blood was found on the black high heeled shoes.**

23. **There is no physical evidence associating Kirstin Lobato with Duran Bailey or the crime scene.** Ms. Lobato is also excluded as the source of key physical evidence found at the crime scene.

(3rd Affidavit of George Schiro, February 15, 2010.)

The jury did not hear any expert polygraph testimony, or any expert testimony regarding Blaise's black high-heel platform shoes.

2.3

New polygraph and shoe evidence Blaise did not murder Bailey

Las Vegas police photos of Blaise's black high-heeled platform shoes she was wearing at the time of the sexual assault she describes in her Statement on July 20, 2001. The high-quality photographs show the shoes are in near new condition. Blaise has said that she never wore the shoes again after she took them off after the assault. So when she gave the shoes to the detectives on July 20 they were in the exact condition they were after the assault.



The arrow points to a tiny spot of blood underneath where the big toe is. The blood was DNA tested and is consistent with Blaise's blood. No other blood was on the shoes.



3.

Prosecution argued to the jury the evidence showed the shoeprints on the concrete could have been made by someone other than Blaise

New evidence the shoeprints imprinted in blood on the concrete and imprinted on cardboard covering Bailey's body were made by Bailey's murderer ... and that person is not Blaise

Trial Testimony

The jury was unaware there were shoeprints imprinted in blood on a piece of cardboard covering Bailey's body matching the pattern of the shoeprints imprinted in blood on the concrete. The jury was also unaware the shoeprints imprinted on the cardboard were made by a person present during and after the attack on Bailey. There was testimony the shoeprints imprinted in blood on the concrete leading away from Bailey's body were at least 2-1/2 sizes larger than Blaise's shoe size.

George Schiro has over 25 years of experience as a forensic scientist and crime scene investigator. He has worked over 2900 cases. Mr. Schiro did not testify at Blaise trial. He reviewed *pro bono* shoeprints imprinted on the concrete and the cardboard and in his Report of March 8, 2010, he states:

“Bloody and non-bloody patent shoeprints with the same tread pattern were photographed and documented at the crime scene. A non-bloody shoeprint on one of the pieces of cardboard had a blood transfer stain deposited over it. This indicates that someone stepped on the cardboard, then this blood transfer stain was deposited over a portion of this non-bloody shoeprint. This indicates that **the person wearing these shoes could have been present before and after the bloodshed took place at the scene**. The non-bloody shoeprint and cardboard should be examined further and analyzed.

(Continued on next page.)

Brent Turvey testified that it is possible the shoeprints imprinted in blood on the concrete leading away from Bailey's body could have been made by someone other than his murderer. Mr. Turvey was not an impressions expert and he didn't mention the shoeprints in his pre-trial report.

3.2

New evidence the shoeprints imprinted in blood on the concrete and imprinted on cardboard covering Bailey's body were made by Bailey's murderer ... and that person is not Blaise

**Trial
Testimony**

(Continued from previous page.)

The bloody shoeprints could have only been left by the person concealing Mr. Bailey's body because all of the blood was covered by the trash concealing his body. Cardboard was first used to cover his body, then the trash was used to further conceal his body and the blood. **While the body and blood were being concealed with trash, the source of the shoeprints stepped in blood and tracked them out upon exiting the enclosure.** William J. Bodziak's report dated March 27, 2002 states that these shoeprints "...most closely correspond to a U.S. men's size 9 athletic shoe of this type. The American women's size equivalent would be approximately size 10." His report further states "...the length of the LOBATO right foot equates to U.S. men's sizes between 6 to 6 1/2. The American women's size equivalent would be approximately size 7 1/2. The right foot size of KIRSTEN LOBATO would therefore be at least 2 1/2 sizes smaller than the estimated crime scene shoe size."

Physical evidence can either include or exclude a person as the source of the evidence. Inconclusive results can also be obtained from physical evidence. Based upon the shoe size of the impressions and the size of the shoes received from Ms. Lobato, **Ms. Lobato is excluded as the source of the shoeprints found at the crime scene.**" (Report of George J. Schiro Jr., March 8, 2010, 1-2)

See shoeprint photographs on the next page, and a photograph of Bailey covered by the trash and cardboard that concealed all the blood at the crime scene.

Brent Turvey testified that it is possible the shoeprints imprinted in blood on the concrete leading away from Bailey's body could have been made by someone other than his murderer.

3.3

New evidence the shoeprints imprinted in blood on the concrete and imprinted on cardboard covering Bailey's body were made by Bailey's murderer ... and that person is not Blaise



Shoeprints imprinted in blood the jury didn't see. LVMPD impressions expert Joel Geller determined these prints were not made by Kirstin Blaise Lobato's shoes.



Shoeprint imprinted on the cardboard with blood over the top of it that the jury didn't see. According to George Schiro's Report of March 8, 2010, the blood splashed over the shoeprint supports that the person who made the shoeprint was present before Bailey's bloodshed began. This is the same shoeprint pattern as the shoeprints imprinted in blood on the cardboard. (photo to the left). So the person was present before and after the bloodshed.



Shoeprints imprinted in blood on the concrete near Bailey's body. William Bodziak determined these shoeprints are at least 2-1/2 sizes larger than Kirstin Blaise Lobato's shoe size. Bodziak and George Schiro both determined these shoeprints were made by the same athletic shoe sold by WalMart as the shoeprints imprinted on the cardboard.



Duran Bailey as he was found buried under trash and cardboard. All of Bailey's blood was covered up by the trash and cardboard. So whoever made the shoeprints imprinted in blood on the cardboard and on the concrete was present when Bailey was covered with the trash and cardboard.

4.

Prosecution argued to the jury the evidence showed Blaise was in Las Vegas from Friday night on July 6 to Sunday morning on July 8, 2001

New evidence Blaise was in Panaca the entire weekend of Friday July 6 to Sunday July 8	Trial Testimony
<p>Three new alibi witnesses provide evidence Blaise was in Panaca from July 6 to July 8.</p> <p>Marilyn Parker Anderson swears in an Affidavit that she saw and talked with Blaise in Panaca at her parents' house on the evening of July 6, and talked with her on the telephone on the afternoon of July 7, and about 10 a.m. on July 8, 2001. Ms. Anderson swears that before Blaise's trial she told this information to two persons in the District Attorney's Office and she was not subpoenaed to testify. (Affidavit of Marilyn Parker Anderson, February 15, 2010.)</p> <p>Kimberlee Isom Grindstaff swears in an Affidavit that she saw and talked with Blaise at her parents' house on the evening of Saturday July 7, 2001. (Affidavit of Kimberlee Isom Grindstaff, December 8, 2009.)</p> <p>Jose Lobato is Blaise's grandfather. He served 21 years in the US Air Force, and then 21 years in the federal immigration service. He swears in an Affidavit, "On July 7, 2001, Blaise called me at my home in El Paso, Texas and wished me a happy birthday. I believe she was in Panaca where she lived with my son and his wife." (Affidavit of Jose Lobato, March 5, 2010.)</p> <p>This new alibi evidence corroborates the trial testimony of 6 people that Blaise and her car were in Panaca on July 6, 8 people that Blaise and her car were in Panaca on July 7, and 5 people that Blaise and her car were in Panaca on the morning of July 8. So there are a total of 7 alibi witnesses that Blaise and her car were in Panaca on July 6, 11 alibi witnesses that Blaise and her car were in Panaca on July 7, and 6 alibi witnesses that Blaise and her car were in Panaca between midnight and 10 am on July 8. There are a total of 15 alibi witnesses that Blaise and her car were in Panaca on July 8 between midnight and after Bailey's body was found. (See the chart and photo on the next page.)</p>	<p>The jury did not hear any testimony by these three alibi witnesses.</p>

4.2

New evidence Blaise was in Panaca the entire weekend of Friday July 6 to Sunday July 8

Date	July 6, 2001	July 7	July 8 (midnight to 10 am)	July 8 (midnight until after discovery of Bailey's body "around 10 pm)
Alibi witnesses Blaise and her car were in Panaca	7	11	6	15
Prosecution witnesses Blaise and her car were in Las Vegas	0	0	0	0



It is 170 driving miles from Panaca to Las Vegas.



Blaise's car where it was parked unmoved in front of her parents' house in Panaca from July 2 to July 20, 2001. The prosecution introduced no evidence that Blaise's car was anywhere in Clark County at anytime on July 6, 7, or 8, 2001.

5.

Prosecution argued to the jury the evidence showed Blaise was high on methamphetamine continuously for three days from Friday July 6 to Sunday July 8, 2001

New evidence Blaise didn't use methamphetamine on the weekend of Friday July 6 to Sunday July 8, 2001	Trial Testimony
<p>Four new alibi witnesses provide evidence Blaise didn't use any methamphetamine on the weekend of Friday July 6 to Sunday July 8.</p> <p>Marilyn Parker Anderson swears in an Affidavit that she saw and talked with Blaise in Panaca at her parents' house on the evening of July 6, and talked with her on the telephone on the afternoon of July 7, and at 10 a.m. on July 8, 2001. Ms. Anderson swears that before Blaise's trial she told this information to two persons in the District Attorney's Office and she was not subpoenaed to testify. Ms. Anderson makes no mention Blaise did not act or sound normal on those three days. (Affidavit of Marilyn Parker Anderson, February 15, 2010.)</p> <p>Kimberlee Isom Grindstaff swears in an Affidavit that she saw and talked with Petitioner at her parents' house on the evening of Saturday July 7, 2001. Grindstaff also swears, "She did not appear to me to be under the influence of any drug at that time." (Affidavit of Kimberlee Isom Grindstaff, December 8, 2009.)</p> <p>Jose Lobato is Blaise's grandfather. He served 21 years in the US Air Force, and then worked for 21 years in the federal immigration service. He swears in an Affidavit, "On July 7, 2001, Blaise called me at my home in El Paso, Texas and wished me a happy birthday. I believe she was in Panaca where she lived with my son and his wife. I believe that Blaise sounded and acted normal during our conversation, because it would stand out in my mind if she didn't." (Affidavit of Jose Lobato, March 5, 2010.)</p> <p>(Continued on next page.)</p>	<p>The jury did not hear this alibi witness testimony that Blaise did not use meth from July 6 to July 8.</p>

5.2

New evidence Blaise didn't use methamphetamine on the weekend of Friday July 6 to Sunday July 8, 2001

Trial Testimony

Kendre Thunstrom swears in an Affidavit that on the afternoon of July 8, 2001, she talked with Blaise at her parents' house. Thunstrom is a "recovering drug addict" and "well aware of the behaviors of drug use." Thunstrom swears, "in my opinion, Blaise was not under the influence of any drugs. ... I would have known immediately if she were under the influence of methamphetamine." Thunstrom also swears, "I did not observe any unusual behaviors from Blaise at all. She was not nervous or anxious." Thunstrom also swears from her personal experience she doesn't think Blaise "had been using methamphetamine during the early morning of July 8, 12 to 15 hours before I saw her that afternoon." (Affidavit of Kendre Thunstrom, March 4, 2010.)

The new alibi evidence by these four witnesses is consistent with the fact the prosecution didn't present any evidence Blaise used methamphetamine at anytime in July 2001.

The jury did not hear this alibi witness testimony that Blaise did not use meth from July 6 to July 8.

6.

Prosecution argued to the jury the evidence showed Blaise drove to Las Vegas the weekend of July 6 to July 8, 2001 to obtain methamphetamine

New evidence methamphetamine was available within walking distance of Blaise's parents' house in July 2001	Trial Testimony
<p>There was no testimony that Blaise used methamphetamine in the month of July 2001 or that she drove the 340-mile round-trip from Panaca to Las Vegas the weekend of July 6 to 8.</p> <p>That didn't deter the prosecution from arguing Blaise did those things because Blaise “can’t control her methamphetamine, wants to get it any time she can.” (Trans. XIX-191 (10-5-06)) The prosecution’s argument assumed that methamphetamine was not available in Panaca, or the nearby Lincoln County towns of Caliente or Pioche, or Alamo in July 2001.</p> <p>Kendre Thunstrom lived in Panaca in July 2001, and she states in her “Affidavit Of Kendre Pope Thunstrom,” dated March 4, 2010:</p> <p>“I was then, and I still am a recovering drug addict. ... In July 2001 methamphetamine was available in Panaca within walking distance of the Lobato's home, and other places in Lincoln County.”</p> <p>With methamphetamine available within minutes in Panaca and other nearby Lincoln County towns, there was no reason for Blaise or anyone else to drive to Las Vegas to obtain it – if they wanted it.</p> <p>Thunstrom's new evidence is consistent with the absence of testimony Blaise used methamphetamine at any time in the month of July 2001, and there was no testimony she drove from Panaca to Las Vegas that weekend. Blaise went to the doctor in Caliente on July 5, and laboratory tests of her blood drawn on July 5 and her urine collected on July 7 were negative for methamphetamine.</p>	<p>The jury did not hear this alibi witness testimony that meth was available within walking distance of Blaise's parents' house the weekend of July 6 to July 8.</p>

7.

Prosecution argued to the jury the evidence showed Bailey was murdered as early as 3:50 a.m. on July 8, 2001

New evidence Bailey died sometime between 8 p.m. and moments before his body's discovery “around 10 p.m.” on July 8, 2001	Trial Testimony
<p>Dr. Glenn M. Larkin is a forensic pathologist with 46 years experience and an expert at determining time of death from medical evidence. Dr. Larkin reviewed the medical evidence <i>pro bono</i> and in his report of January 5, 2010, he states:</p> <p>“It is my opinion to a reasonable medical and scientific certainty that Bailey was killed in the evening, a few hours at most before he was discovered, more likely than not within two hours before discovery, perhaps at dusk. The lack of blow fly infestation suggests an even shorter time between [when] Bailey died and was discovered.” (Affidavit of Glenn M. Larkin, M.D., 8.)</p> <p>Bailey’s body was discovered “around 10pm”, so based on Dr. Larkin's determination, Bailey's earliest time of Bailey's death was about 8 pm.</p> <p>Dr. Gail S. Anderson is one of only fifteen forensic entomologists in North America certified by the American Board of Forensic Entomology, and her C.V. is 73 pages long. Dr. Anderson reviewed the entomology evidence <i>pro bono</i> and in her report of December 17, 2009, she states:</p> <p>In this case the extensive wounds, accessibility, season and temperature would have made these remains extremely attractive to insects immediately after death if they had been present during the daylight hours. The lack of insect activity and lack of insect eggs show that the remains could not have been present at the scene during the daylight hours of 8 July 2001. ...</p> <p>In consideration of the above, it is my opinion ... that to a reasonable scientific certainty Mr. BAILEY's death occurred after sunset on 8 July 2001 20:01 h (8:01pm), and most probably after full dark at 21:08 h (9:08 pm). I do not believe that it is possible that the remains were present during the entire daylight hours of 8 July 2001.” (Report of Dr. Gail S. Anderson, 17 December 2009, 5.)</p>	<p>The jury heard Medical Examiner Lary Simms' testimony there is a “probability” Bailey died as early as 3:50 a.m. on July 8, 2001, which means his body would have lain in the trash enclosure for more than 16 hours, and during all the daylight hours of July 8 before his discovery “around 10 p.m.” that night.</p>

7.2

New evidence Bailey died sometime between 8 p.m. and moments before his body's discovery "around 10 p.m." on July 8, 2001

Trial Testimony

Dr. Linda-Lou O'Connor is a professor in the Department of Entomology at the University of Kentucky. in Lexington, Kentucky. Dr. O'Connor is the treasurer of the North American Forensic Entomology Association. Dr. Anderson reviewed the entomology evidence *pro bono* and in her report of December 17, 2009, she states: "Based on the lack of colonization of blow flies and/or flesh flies, **estimated postmortem interval is after sunset, which was at 8:01pm** on July 8, 2001." (Forensic Entomology Investigation Report (of Dr. Linda-Lou O'Connor), February 11, 2010, 1.)

Dr. M. Lee Goff is one of only fifteen forensic entomologists in North America certified by the American Board of Forensic Entomology. He has conducted training courses at the FBI Academy, he is a consultant for the television crime dramas *CSI* and *CSI: Miami*, and he is the author of *A Fly For The Prosecution: how insect evidence helps solve crimes* (Harvard University Press, 2000). Dr. Goff reviewed the entomology evidence *pro bono* and in his report of March 12, 2010, he concurs with Dr. Anderson's finding that "**to a reasonable scientific certainty Mr. BAILEY's death occurred after sunset** on 8 July 2001 20:01 h (**8:01pm**), **and most probably after full dark** at 21:08 h (**9:08 pm**)." (Report of Dr. M. Lee Goff, March 12, 2010.)

Doctors Larkin, Anderson, O'Connor and Goff all wrote in their respective reports that there were no cockroach or other rodent bites (such as rats) on Bailey's body. The lack of cockroach bites suggests Bailey died very soon before the discovery of his body "around 10 p.m." because cockroaches feed on dead bodies, and LVMPD Crime Scene Analyst Louise Renhard wrote in her crime scene report that cockroaches infested a beer can near Bailey's body. Consequently, Bailey could not have been lying dead in the trash enclosure for very long before discovery of his body around "10 p.m."

The new forensic pathology and forensic entomology evidence conclusively establishes Bailey died no earlier than 8 p.m. - which is more than 16 hours after Dr. Simms testified it is possible he died at 3:50 p.m. - and Bailey "probably" died less than an hour before his body's discovery "around 10 p.m."

The jury heard Medical Examiner Lary Simms' testimony there is a "probability" Bailey died as early as 3:50 a.m. on July 8, 2001.

The jury heard no testimony there were cockroaches near Bailey's body.

8.

Prosecution argued to the jury the evidence showed Blaise was in Las Vegas at the time of Bailey's murder on July 8, 2001

New evidence Bailey was murdered when the prosecution agreed un rebutted alibi evidence establishes Blaise was in Panaca	Trial Testimony
<p>The prosecution agreed during their closing arguments that Blaise's alibi evidence showed that on July 8, 2001, she was in Panaca from "11:30 a.m." and "probably" from 10 a.m. until after Bailey's body was found that night "around 10 p.m." The evidence at trial was that traveling at 72 mph it takes about 3 hours to travel from Panaca to Las Vegas, and driving at a very high speed it is possible to make the trip in 2 hours. Consequently, based on the prosecution's arguments the latest Blaise could have been in Las Vegas was 9:30 a.m. (11:30 a.m. - 2 hours), and the earliest she could have been in Las Vegas was 7 a.m. (10 a.m. - 3 hours).</p> <p>The new evidence by forensic entomologists Dr. Gail Anderson, Dr. Linda Lou-O'Connor, and M. Lee Goff, that to a reasonable scientific certainty Bailey's earliest time of death was after sunset at 8:01 p.m., and by forensic pathologist Dr. Glenn Larkin that he died after 8 p.m., means Bailey died at least 10-1/2 hours AFTER the LATEST time that the prosecution conceded to the jury Blaise could have been in Las Vegas on July 8 – 9:30 am. (8 p.m. - 9:30 a.m. = 10-1/2 hours) Dr. Anderson and Dr. Goff's determination that Bailey "most probably" died after 9:08 pm means he died at least <u>14 hours</u> AFTER the EARLIEST time that the prosecution conceded to the jury the Petitioner could have been in Las Vegas on July 8 – 7 a.m.. (9 p.m. - 7 a.m. = 14 hours) Dr. Anderson specifically rejects the possibility Bailey's body could have lain in the trash enclosure during the entire daylight hours of July 8 – which was implicit in the prosecution's argument to the jury that Bailey died in the trash enclosure "sometime before sunup" and he lay there all day until discovery of his body after dark that night "around 10 p.m."</p>	<p>The jury heard unrebutted testimony by 13 credible alibi witnesses that on July 8, 2001, Blaise and her car were seen in Panaca from 1 a.m. until after Bailey's body was found that night around 10 p.m.</p> <p>The three alibi witnesses who saw and talked with Blaise between 1 a.m. and 7 a.m. were relatives.</p>

9.

Prosecution argued to the jury the evidence showed Bailey stayed in the trash enclosure where he was murdered

New evidence Bailey did not stay or live in the trash enclosure	Testimony
<p>Richard Shott was the homeless man who found Bailey's body while dumpster diving. Shott told Det. Thomas Thowsen at the crime scene that the trash enclosure was usually locked, and he went into the trash enclosure because he noticed the gate was partially open. The cut lock was found by the police on the ground outside the trash enclosure</p> <p>There was no evidence at trial that Blaise knew Bailey or knew anyone who knew him, and since he didn't stay or live at the trash enclosure she couldn't have know to go there to find him. Whoever killed Bailey knew to go to the the trash enclosure and that its gate wouldn't be locked.</p> <p>Steven King was Diann Parker's domestic partner from 2000 to her death in 2005. King and Parker shared the apartment where she reported Bailey beat and raped her on the evening of July 1, 2001. King was at work when the attack occurred.</p> <p>Steven King is the only known person who knew Diann Parker, Bailey and the Mexican men who were Parker's friends living in a neighboring apartment. Those Mexicans warned Bailey on the morning of July 1, 2001, to leave Parker alone after he came into their apartment while she was drinking beer with them and he slapped her. A week later Bailey was murdered on July 8. King and Diann knew and referred to Bailey by his nickname of "St Louis." King twice swears in an Affidavit that Bailey did not live/stay in the trash enclosure where he was murdered. King also swears that he believes Bailey was lured there to be murdered by a trap set by the Mexicans.</p> <p>Excerpts from Steven King's Affidavit are on the next page.</p>	<p>The jury did not hear any testimony that Bailey did not stay or live in the trash enclosure.</p>

9.2

New evidence Bailey did not stay or live in the trash enclosure	Testimony
<p>Affidavit of Steven King:</p> <p>14. ... I knew he did not “live” at the Nevada State Bank.</p> <p>22. Before Diann died in Louisville, Kentucky we discussed the murder of “St Louis” on a number of occasions. I absolutely believe Diann’s male Hispanic friends killed “St Louis” in retaliation for mistreating and raping Diann, and mistreating other women they knew.</p> <p>23. Because “St Louis” was murdered at the Nevada State Bank where he did not “live,” my belief is he was lured there by some kind of bait and ambushed by Diann’s male Hispanic friends. (Affidavit of Steven King, February 17, 2010.)</p> <p>King's new evidence is consistent with Parker's statement to the police when she reported her rape by Bailey, that he was staying in a house behind the Palms Hotel and Casino – which is across the street from the Nevada State Bank. Parker died in 2005 and the jury didn't hear testimony from her statement about where Bailey lived.</p>	<p>The jury did not hear any testimony that Bailey did not stay or live in the trash enclosure.</p>

10.

Prosecution argued to the jury the evidence showed that Blaise alone attacked Bailey

New evidence Bailey was assaulted by more than one person	Testimony
<p>Dr. Glenn M. Larkin is a forensic pathologist with 46 years experience. Dr. Larkin reviewed the medical evidence <i>pro bono</i> and in his report of January 5, 2010, he states:</p> <p>“to a reasonable medical and scientific certainty ... There is a good probability that more than one person was involved in this attack and murder.” (Report of Glenn M. Larkin, M.D., January 5, 2010, 8.)</p> <p>Dr. Larkin’s determination is in part based on the fact that, “Given the poor lighting, it suggests that a third hand was involved to supply light.” (Report of Glenn M. Larkin, M.D., January 5, 2010, 5.)</p> <p>The prosecution argued to the jury the evidence showed Bailey was murdered “sometime before sunup” on July 8 by one person only, and the new evidence in Blaise's <i>habeas</i> petition is that Bailey died after sundown on July 8, and most likely after dark, and two or more people were involved. So based on both the prosecution's theory of the crime and Blaise's new evidence, more than one person was involved in Bailey's murder because of the poor lighting before sunup and after sundown.</p>	<p>There was no testimony at trial that more than one person was involved in Bailey's murder, and the prosecution argued to the jury that the evidence showed Blaise alone murdered Bailey.</p>

10.2

New evidence Bailey was assaulted by two or more people

Testimony

Furthermore, Dr. Larkin determined that, “**At least one perpetrator was skilled either with medical knowledge or animal husbandry to effect the mutilation of Bailey’s groin area.**” (Report of Glenn M. Larkin, M.D., January 5, 2010, 8.) As Dr. Larkin notes, the careful “skinning” of Bailey’s groin area could not have been accomplished by a lone person groping in the dark trash enclosure. No evidence was introduced at trial that Blaise “was skilled either with medical knowledge or animal husbandry.” The testimony at trial was Blaise was a female 18-year-old high school graduate. Furthermore, the prosecution argued to the jury Blaise inflicted Bailey’s wounds while she was in a methamphetamine fueled rage – not while she was in a calm state of mind and acting carefully and thoughtfully as the skilled person performed who skinned Bailey’s groin.

Based on Dr. Larkin’s new evidence it is impossible that any lay person without specialized skills under the influence of methamphetamine and acting alone could have inflicted Bailey’s groin injury in the dark trash enclosure.

There was no testimony at trial that two or more people were involved in Bailey’s murder, and the prosecution argued to the jury that the evidence showed Blaise alone murdered Bailey.

11.

Prosecution argued to the jury the evidence showed Bailey was not murdered by Diann Parker's Mexican friends

New evidence Diann Parker's Mexican friends murdered Bailey	Testimony
<p>Steven King was Diann Parker's domestic partner from 2000 to her death in 2005. King and Parker shared the apartment where she reported Bailey beat and raped her on the evening of July 1, 2001. King was at work when the attack occurred.</p> <p>Steven King is the only known person who knew Diann Parker, Bailey and the Mexican men who were Parker's friends living in a neighboring apartment. Those Mexicans warned Bailey on the morning of July 1, 2001, to leave Parker alone after he came into their apartment while she was drinking beer with them and he slapped her. A week later Bailey was murdered on July 8. King and Diann knew and referred to Bailey by his nickname of "St Louis."</p> <p>King swears in an Affidavit that he believes Diann's Mexican friends murdered Bailey as retaliation for what he did to her and the girlfriend of one of the Mexicans.</p> <p>12. Around that same time [as Diann's rape] I believe "St Louis" also attacked a girlfriend of one of Diann's Hispanic male friends at the Grand View Apartments.</p> <p>17. A few weeks after the murder at the Nevada State Bank, Diann's male Hispanic friends vanished.</p> <p>22. Before Diann died in Louisville, Kentucky we discussed the murder of "St Louis" on a number of occasions. I absolutely believe Diann's male Hispanic friends killed "St Louis" in retaliation for mistreating and raping Diann, and mistreating other women they knew.</p> <p>23. Because "St Louis" was murdered at the Nevada State Bank where he did not "live," my belief is he was lured there by some kind of bait and ambushed by Diann's male Hispanic friends.</p> <p>25. ... I am absolutely certain that Kirstin Blaise Lobato did not murder "St Louis." (Affidavit of Steven King, February 17, 2010)</p>	<p>The jury did not hear any testimony that the Mexicans murdered Bailey.</p>

11.2

New evidence Diann Parker's Mexican friends murdered Bailey

Map showing that Diann Parker and her Mexican friends lived half-a-block from where Duran Bailey was murdered

Diann Parker's apartment

Apartment where Parker's Mexican friends lived.



Grand View Apartments



Diann Parker's apartment

Apartment where Parker's Mexican friends lived.

Where Duran Bailey was murdered.

12.

Prosecution argued to the jury the wound to Bailey's groin was caused by his penis amputation

New evidence Bailey's groin was skinned like an animal after his penis was amputated, and whoever skinned him “was skilled either with medical knowledge, or experience skinning an animal”

Trial Testimony

Dr. Glenn M. Larkin is a forensic pathologist with 46 years experience. Dr. Larkin reviewed the medical evidence *pro bono* and in his report of January 5, 2010, he states:

The amount of skin — covered by dense hair — attached to the cut end of the penis — “surgical margin” — is much smaller than the defect seen on the distal abdominal wall. This suggests **two separate acts of mutilation**. ... **The perpetrator either had some medical knowledge, or experience skinning an animal.**” (Report of Glenn M. Larkin, M.D., January 5, 2010, 5.)

The only evidence at trial was Bailey was murdered by a single person, and the prosecution argued to the jury that Blaise was that lone person. However, no evidence was introduced at trial that Blaise “was skilled either with medical knowledge or animal husbandry.” The testimony was Blaise was an 18-year-old high school graduate, not a medical school student or skilled with animal husbandry. Furthermore, the prosecution argued to the jury that Blaise inflicted Bailey’s wounds while she was in a methamphetamine fueled rage – not while she was in a calm state of mind and acting carefully to perform the near surgical skinning of Bailey's groin.

ME Lary Simms testified that Bailey's groin wound was caused by his penis amputation.

There was no testimony Blaise “was skilled either with medical knowledge, or experience skinning an animal.”

13.

Prosecution argued to the jury the evidence showed Bailey was hit in the mouth with a baseball bat that knocked out his teeth

New evidence a baseball bat was not used to hit Bailey in the mouth and knock out his teeth

Trial Testimony

Dr. Mark Lewis is a dental surgeon in Las Vegas. Dr. Lewis reviewed the dental evidence *pro bono* and in his Affidavit of April 26, 2010, he states:

In my professional opinion, **I do not believe that a baseball bat was used to knock out Bailey's teeth** because I would expect that the teeth would have been fragmented by the force needed to forcibly remove them with a baseball bat. (Affidavit of Mark Lewis DDS, April 26, 2010.)

Seven of Bailey's teeth were found only inches from where the left side of where his head had been lying on the cardboard in the trash enclosure's southwest corner where there was a large concentration of blood from his carotid artery wound. Six of Bailey's teeth were intact, and only one was fragmented.

A crime scene diagram on page 13.3 (page after next) shows that all of Bailey's teeth were bunched in a small area immediately to the left of where his head would have been lying in the trash enclosure's southwest corner. If Bailey had been hit in the mouth while standing in the northwest corner his seven teeth would have been scattered about – not bunched together.

ME Lary Simms testified it is possible a bat could have been used to knock out Bailey's teeth.

13.2

New evidence a baseball bat was not used to hit Bailey in the mouth and knock out his teeth

Trial Testimony

George Schiro has over 25 years of experience as a forensic scientist and crime scene investigator. He has worked over 2,900 cases. Mr. Schiro did not testify at Blaise trial. He reviewed the crime scene evidence and in his Report of March 8, 2010, he states:

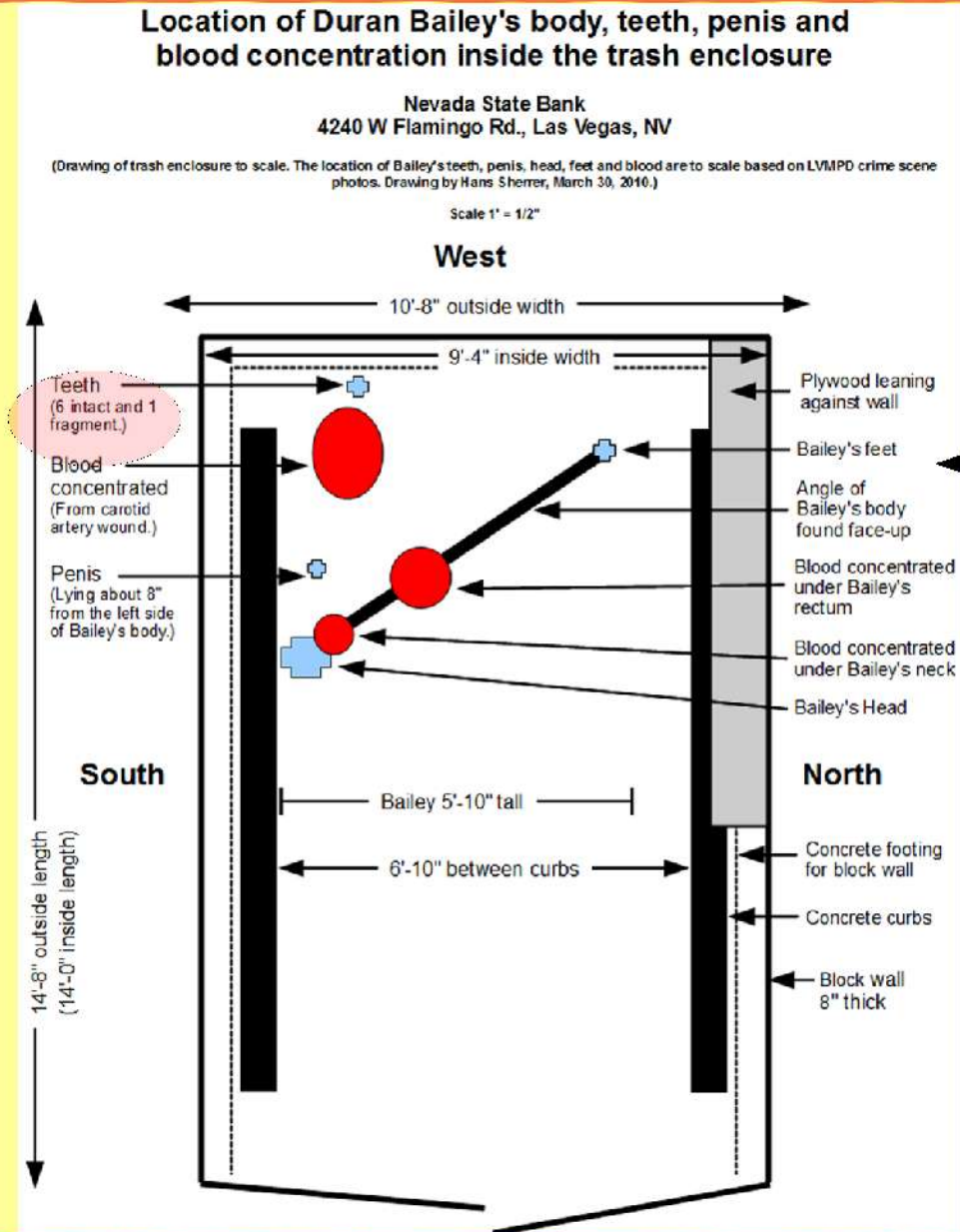
“When a person is bleeding and repeatedly beaten with a long object, such as a baseball bat or a tire iron, or is repeatedly stabbed using an arcing motion, then cast-off blood spatters corresponding to the arc of the swing are produced. There is no documentation of any cast-off blood spatters on the surrounding surfaces. This indicates that arcing motions were not used in the homicide of Mr. Bailey. **The confined space of the crime scene enclosure and the lack of cast-off indicate a baseball bat was not used to beat Mr. Bailey.** I further determined that the beating was more likely due to a pounding or punching type motion.” (Forensic Science Resources (George J. Schiro Jr.) Report, March 8, 2010, 4.)

The trial testimony was no blood was found on Blaise's baseball bat that she kept in her car for self-defense. That is consistent with the new evidence by Dr. Lewis, Mr. Schiro, and the location of Bailey's teeth. (See the diagram on the next page.)

ME Lary Simms testified it is possible a bat could have been used to knock out Bailey's teeth.

13.3

Diagram Showing Location Of Bailey's Body, Teeth And Blood Pools



This is approximately where Bailey would have been standing if hit in the mouth as the prosecution argued to the jury.

14.

Prosecution argued to the jury the evidence showed Bailey was standing up when he was attacked and stabbed in his scrotum

New evidence Bailey was lying down when he was assaulted	Testimony
<p>George Schiro has over 25 years of experience as a forensic scientist and crime scene investigator. He has worked over 2,900 cases. Mr. Schiro did not testify at Blaise trial. He reviewed the crime scene evidence and in his Report of March 8, 2010, he describes his crime scene reconstruction:</p> <ol style="list-style-type: none">1. The killer enters the enclosure.2. Mr. Bailey is lying on the ground, possibly sleeping.3. (These events cannot be sequenced. They all happened at some point, but not necessarily in the order listed.) ... The killer stabs the victim in the face, head, scrotum, and possibly the abdomen. At some point, Mr. Bailey's pants come down. Mr. Bailey manages to use his hands and arms in an effort to defend himself. His left carotid artery is cut while he is on the ground. Mr. Bailey is also beaten forcefully about the head with a blunt object most likely using a pounding or punching type motion or his head is slammed forcefully against the surrounding concrete.4. Mr. Bailey's anus was then lacerated.5. Mr. Bailey's body was turned over.6. The killer stabs Mr. Bailey in the abdomen and severs his penis.7. Mr. Bailey is covered with the cardboard.8. Trash is deposited on Mr. Bailey and the blood.9. The killer exits the enclosure. (6-7) <p>(Forensic Science Resources (George J. Schiro Jr.) Report, March 8, 2010.)</p>	<p>ME Lary Simms testified that it is possible Bailey's first stabbing wound was to his scrotum and he could have been standing up.</p> <p>That testimony was relied on by the prosecution to argue to the jury that Bailey was knocked down after being immobilized by a stab to his scrotum.</p>

14.2

New evidence Bailey was lying down when he was assaulted	Testimony
<p>George Schiro also states in his Report:</p> <p>“The photographs demonstrate numerous blood spatter patterns. There is no documentation of blood spatter above a height of 15 inches on any of the surrounding crime scene surfaces. This indicates Mr. Bailey received his bleeding injuries while lying on the ground. 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.” (Forensic Science Resources (George J. Schiro Jr.) Report, March 8, 2010.)</p> <p>The photographs on the next page (13.3) show there is no blood where Bailey would have been standing if he was stabbed in the scrotum and then fell backward as the prosecution argued to the jury.</p>	<p>ME Lary Simms testified that it is possible Bailey's first stabbing wound was to his scrotum and he could have been standing up.</p> <p>That testimony was relied on by the prosecution to argue to the jury that Bailey was knocked down after being immobilized by a stab to his scrotum.</p>

14.3

Crime scene photographs showing there is no blood where Bailey would have been standing if he had been stabbed in the scrotum while standing up as the prosecution argued to the jury

Bailey's scrotum would have bled profusely if it was stabbed while he was standing up. Yet, there is no blood where he would have been standing if his scrotum had been stabbed while standing in the northwest corner as the prosecution argued to the jury. Bailey's blood was concentrated in the southwest corner where Bailey was lying down when stabbed in his carotid artery.

Bailey's blood was concentrated in the trash enclosure's southwest corner where Bailey was lying down when his carotid artery was cut.

Southwest corner of trash enclosure.



Bailey's right foot is about where he would have been standing, if he had been stabbed in his scrotum while standing as the prosecution argued to the jury. A scrotum wound would bleed profusely --- but there is no blood on the ground.



Northwest corner of trash enclosure.

15.

Prosecution argued to the jury the evidence showed Blaise was dead when his rectum was injured

New evidence Bailey was alive when his rectum was injured, so whoever murdered him didn't violate NRS 201.450(1)	Trial Testimony
<p>Medical Examiner Lary Simms testified during Blaise's preliminary hearing on August 7, 2001, that Bailey's rectum wound was "ante-mortem" – which means it was inflicted while he was alive. During Blaise's trial Simms testified that Bailey's rectum wound was inflicted after he was dead. Blaise's lawyer did not cross-examine Simms to expose that his trial testimony was 180 degrees opposite of his preliminary hearing testimony that Bailey was alive when his rectum was injured.</p> <p>Dr. Glenn M. Larkin is a forensic pathologist with 46 years experience. Dr. Larkin reviewed the medical evidence <i>pro bono</i> and in his report of January 5, 2010, he states:</p> <p>"It is my opinion to a reasonable medical and scientific certainty that Bailey survived either conscious or not, a short time after being attacked." (Report of Glenn M. Larkin, M.D., 8.)</p> <p>Dr. Larkin also provided a supplemental report regarding ME Simms' "Neuropathology Examination" of Bailey in which ME Simms notes, "Serial sectioning demonstrates compression of the lateral ventricles. The central contents demonstrate a right to left shift." Dr. Larkin responded to this finding: "These structural changes do not take place quickly, supporting the idea that Bailey died a while after his assault." (Dr. Glenn M. Larkin Notes on Neuropathological Report by Larry Simms DO, March 5, 2010.)</p>	<p>Medical Examiner Lary Simms testified that Bailey's rectum wound was inflicted when he was dead (post-mortem).</p>

15.2

New evidence Bailey was alive when his rectum was injured, so whoever murdered him didn't violate NRS 201.450(1)

Trial Testimony

There is also **new photographic evidence** Bailey was alive when his rectum was injured, because there were pools of blood underneath his rectum and by his severed carotid artery **after** his rectum was injured and he was rolled on his back. See the photos on the next page (15.3). Those photos supports that Bailey's heart was pumping blood after his rectum was injured.

Also, it is not unusual for a person to live for some time after experiencing blood loss similar to Bailey. A surfer off the coast in southern Florida who lost about half his blood lived for more than 40 minutes before he died. (Shark attack victim died from massive blood loss, *The Washington Post*, February 5, 2010.)

Since Bailey was alive when his rectum was injured it is physically impossible that whoever murdered him violated NRS 201.450(1) – Sexual penetration of a dead body – since a violation of that law requires that the victim is dead. Yet Blaise was convicted of violating that statute even though Bailey was alive – which means she was convicted of a non-existent crime.

Medical Examiner Lary Simms testified that Bailey's rectum wound was inflicted when he was dead (post-mortem).

15.3

Photograph Showing Pool Of Blood Under Bailey's Rectum Wound

The pools of blood underneath Bailey's rectum wound and his neck where he had a severed carotid artery are **visual confirmation he was alive when his rectum wound was inflicted**. After his rectum was injured he was rolled on his back in the position his body was found.

Duran Bailey's body superimposed over blood at scene

Image 1 – Bailey's body superimposed over blood at scene



LVMPD photo 40390019 (blood at scene) superimposed over LVMPD photo 40400010 (Bailey's body at scene).

Photos superimposed by Hans Sherrer on March 30, 2010 using the software program: Image Merger.EXE v.1.0.19

Blood concentrated under Bailey's rectum wound

Image 2 – Bailey at scene



Blood concentrated under Bailey's carotid artery wound and blood runoff

Bailey's rectum wound

Bailey's carotid artery neck wound

Blood runoff from neck wound

LVMPD photo: 40400010 (reduced from original size)

Image 3 – Blood at scene



Blood concentrations under Bailey's body

LVMPD photo: 40390019 (reduced from original size)

16.

Prosecution argued to the jury the evidence showed Bailey was dead before he was buried with trash

New evidence Bailey was buried alive in trash	Testimony
<p>Dr. Glenn M. Larkin is a forensic pathologist with 46 years experience. Dr. Larkin reviewed the medical evidence <i>pro bono</i> and in his report of January 5, 2010, he states:</p> <p>“It is my opinion to a reasonable medical and scientific certainty that Bailey survived either conscious or not, a short time after being attacked.” (Report of Glenn M. Larkin, M.D., 8.)</p> <p>Dr. Larkin also provided a supplemental report regarding ME Simms’ “Neuropathology Examination” of Bailey in which ME Simms notes, “Serial sectioning demonstrates compression of the lateral ventricles. The central contents demonstrate a right to left shift.” Dr. Larkin responded to this finding: “These structural changes do not take place quickly, supporting the idea that Bailey died a while after his assault.” (Dr. Glenn M. Larkin Notes on Neuropathological Report by Larry Simms DO, March 5, 2010.)</p> <p>There is also new photographic evidence that Bailey was alive when his rectum was injured, because there were pools of blood underneath his rectum and by his severed carotid artery after his rectum was injured and he was rolled on his back. See the photos on page 15.3. Those photos support that Bailey’s heart was pumping blood after his rectum was injured.</p> <p>Also, it is not unusual for a person to live for some time after experiencing blood loss similar to Bailey. A surfer off the coast in southern Florida who lost about half his blood lived for more than 40 minutes before he died. (Shark attack victim died from massive blood loss, <i>The Washington Post</i>, February 5, 2010.)</p>	<p>ME Lary Simms testified Bailey’s rectum injury and penis amputation took place after he was dead.</p> <p>Bailey was buried with trash and covered with cardboard after those injuries were inflicted.</p>

16.2

New evidence Bailey was buried alive in trash

Testimony

Consequently, Bailey was alive when he was buried in trash and covered with cardboard – and the prosecution didn't present any evidence at trial or even argue to the jury that Blaise covered Bailey with any trash or cardboard. Blaise describes in her Statement of July 20, 2001, that after getting away from her assailant in the Budget Suites Hotel's parking lot she immediately escaped in her car. There was no known trash or cardboard in the hotel's parking lot.

ME Lary Simms testified Bailey's rectum injury and penis amputation took place after he was dead.

Bailey was buried with trash and covered with cardboard after those injuries were inflicted.



Bailey as he was found covered with trash and cardboard.

Affidavits and Reports referred to in this presentation

Kirstin Blaise Lobato's Statement of July 20, 2001.
Kirstin Blaise Lobato's Petition For A Writ of Habeas Corpus, May 5, 2010.
Affidavit of Ron Slay, February 12, 2010.
3rd Affidavit of George Schiro, February 15, 2010.
Report of George J. Schiro Jr., March 8, 2010.
Affidavit of Kimberlee Isom Grindstaff, December 8, 2009.
Affidavit of Jose Lobato, March 5, 2010.
Affidavit of Marilyn Parker Anderson, February 15, 2010.
Affidavit of Kendre Thunstrom, March 4, 2010.
Affidavit of Steven King, February 17, 2010.
Affidavit of Mark Lewis DDS, April 26, 2010.
Report of Dr. Gail S. Anderson, 17 December 2009.
Report of Dr. M. Lee Goff, March 12, 2010.
Forensic Entomology Investigation Report (of Dr. Linda-Lou O'Connor), February 11, 2010,
Affidavit of Glenn M. Larkin, M.D., January 5, 2010.
Dr. Glenn M. Larkin Notes on Neuropathological Report by Larry Simms DO, March 5, 2010.
Report of Dr. Allison D. Redlich, February 10, 2010.

Credit

This presentation was prepared by Hans Sherrer with Justice Denied. Hans Sherrer and Justice Denied are solely responsible for its content. If you have questions or comments contact Hans Sherrer –

Email: hsherrer@justicedenied.org

Phone: 206-335-4254

Fax: 206-279-1631

Mail: Justice Denied

PO Box 68911

Seattle, WA 98168

Internet: www.justicedenied.org