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Kirstin Blaise Lobato Files 770 Page *Habeas Corpus* Petition To Overturn 2006 Convictions

Kirstin Blaise Lobato filed a 770-page *habeas corpus* petition in Clark County District Court in Las Vegas, Nevada on May 5, 2010. Lobato's petition requests that the court overturn her October 2006 convictions related to the July 8, 2001 murder of Duran Bailey in Las Vegas. Bailey was a homeless man beaten and stabbed in the exterior trash enclosure for the Nevada State Bank at 4240 W. Flamingo Road.

Lobato was 18-years-old when twelve days after Bailey's murder she was arrested at her parent's house in Panaca 170 miles north of Las Vegas.

After a four week jury trial, Lobato was convicted in October 2006 of voluntary manslaughter with a deadly weapon and sexual penetration of a dead body – which was the post-mortem cutting of Bailey's rectum. Lobato was sentenced to 13 to 35 years in prison by Judge Valorie Vega. On May 19, 2009 the Nevada Supreme Court affirmed Lobato's conviction.

Lobato's *habeas corpus* petition includes 79 grounds and 101 exhibits supporting that she is factually innocent of Bailey's murder, and her convictions violate her constitutional rights to an impartial jury, due process and a fair trial. Lobato's petition includes twenty-four grounds based on new evidence her jury didn't consider, two grounds the Clark County District Attorney's Office failed to disclose exculpatory evidence, fifty-two grounds of ineffective assistance of counsel by the Clark County Special Public Defender's Office, and one ground that she is actually and factually innocent. Some of the petitions' key grounds follow:

The petition has new evidence supporting Lobato's alibi defense she was at her parent's house in Panaca when Bailey was murdered. Three of North America's leading forensic entomologists, including *CSI* television show advisor Dr. M. Lee Goff, have determined Bailey died sometime between sunset at 8:01 pm and the discovery of his body around 10 pm. A forensic pathologist expert at analyzing time of death has determined Bailey died sometime within two hours of his body's discovery around 10 pm. The prosecution conceded in their arguments to the jury that Lobato could not have been in Las Vegas after 9:30 am, and she was in Panaca from 11:30 am until after Bailey's body was discovered that night. The

new scientific and medical evidence establishes Bailey died at least 10-1/2 hours after the latest time the prosecution argued Lobato could have been in Las Vegas.

The petition's new evidence Bailey died when Lobato was in Panaca is corroborated by new alibi witnesses who establish Lobato was in Panaca the entire weekend of July 6 to 8.

The petition has new evidence by Dr. Allison Redlich, a psychologist expert at analyzing the statement of a criminal suspect. Dr. Redlich determined Lobato's statement at the time of her arrest is not a confession and does not contain incriminating information about Bailey's murder. What Lobato's statement describes is the attempted rape of her in late May 2001 at the Budget Suites Hotel at 4855 Boulder Highway in east Las Vegas. That was six weeks before Bailey's murder at the Nevada State Bank eight miles west of the Budget Suites Hotel.

Dr. Redlich's new evidence is corroborated by nine new alibi witnesses who were told on days preceding Bailey's murder about the attempted rape of Lobato at the Budget Suites Hotel. Some of the witnesses were told in late May 2001 about the rape assault.

The petition has new third-party culprit evidence that Bailey was murdered by "Mexican" friends of a woman Bailey brutally beat and raped a week before his murder, and that about the same time Bailey also assaulted the girlfriend of one of the "Mexicans."

The petition has new evidence of jury misconduct that before Lobato presented her defense at least four jurors discussed the merits of her case and at least one of those jurors had pre-judged Lobato's guilt.

The petition has new evidence that LVMPD homicide Detective Thomas Thowsen committed perjury multiple times during Lobato's trial in an effort to falsely link her to Bailey's murder, and that he manipulated the statements of witnesses to try and falsely make it appear she is guilty.

The petition has new evidence the Clark County District Attorney's Office and Assistant District Attorneys William Kephart and Sandra DiGiacomo prosecuted Lobato knowing she is innocent of Bailey's murder. There is also new evidence Kephart and DiGiacomo taught at least one witness how to lie during his testimony and they told him he could be imprisoned if he truthfully testified about his knowledge that Lobato is innocent of Bailey's murder.

The petition has new evidence the prosecution failed to disclose to Lobato's attorneys Bailey's relationship with law enforcement. That could have given any number of people a motive to murder Bailey. The

phone number of a Las Vegas police officer was written on two different items found in Bailey's pants pockets.

The petition has new forensic science evidence that Bailey's killer made the shoeprints imprinted in blood on cardboard covering Bailey's body and on the concrete leading away from his body. Those shoeprints are 2-1/2 sizes larger than Lobato's shoes.

The petition has new forensic pathology evidence that more than one person murdered Bailey, and Lobato is excluded as the person who inflicted Bailey's cutting wounds, because they were inflicted by a person with medical knowledge or experience in animal husbandry – particularly the skinning (scalping) of Bailey's groin area.

The petition has new forensic science, dental, and crime scene evidence establishing it is physically impossible Lobato's baseball bat was used to hit Bailey in the mouth and knock out his teeth as the prosecution argued to the jury, and which they relied on to convicted her.

Lobato's habeas corpus petition is District Court case no. C-177394. Her petition with links to the exhibits is on the Internet at, http://justicedenied.org/lobato_habeas.pdf

The Innocence Project in New York has accepted Lobato's case to pursue DNA testing of evidence in her case. Lobato's case has been endorsed as a case of actual innocence by the Association in the Defence of the Wrongly Convicted, a Toronto based organization that helps free innocent persons from prison.

Hans Sherrer, editor and publisher of *Justice:Denied* magazine and author of the book, *Kirstin Blaise Lobato's Unreasonable Conviction*, said about the filing of Lobato's petition, "Ms. Lobato's petition has the evidence proving her innocence that her jury didn't know. Ms. Lobato was 170 miles from Las Vegas when Duran Bailey was murdered, and the Las Vegas police have known Ms. Lobato is innocent since three days after her arrest on July 20, 2001. The only reason she was prosecuted and has languished in prison for many years is to cover-up that the police hastily arrested the wrong person for Bailey's murder, and that the Clark County DA's Office hastily filed first-degree murder charges against the wrong person. And remember, the DA reserved the right when they filed the charges to seek the death penalty against Ms. Lobato ... for crimes she did not commit."

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