

M.S. Forensic Science, The University of Alabama at Birmingham, Birmingham, AL, 2003

B.A. Biology, The University of Texas, Austin, TX, 2000



Criminalist I July 2005 - Present
Forensic Casework
Las Vegas Metropolitan Police Department Forensic Laboratory
Las Vegas, Nevada

- Performs serological screening, conducts PCR analysis of forensic casework, interprets data from forensic casework, generates reports, and provides court testimony.

Forensic DNA Analyst II February 2004 – July 2005
Mitochondrial DNA Sequencing
Orchid Cellmark Dallas
Dallas, Texas

- Served as the mitochondrial analyst for each of the Orchid labs (Forensics/Genetics/Paternity).
- Specialized in the testing of compromised/difficult samples including hair without roots, bone, and ancient DNA.
- Assisted with research and development of Y-STR testing/databasing

Forensic DNA Analyst II
Contract Casework
Orchid Cellmark Dallas
Dallas, Texas

August 2003 – January 2004

● Performed serological screening, conducted PCR analysis of forensic casework, interpreted data from forensic casework, and generated reports.

<u>Contract</u>	<u>Role</u>	<u>Contract Type</u>
Fort Worth PD Louisiana	Supporting Analyst Supporting Analyst	Suspect and no-suspect casework No-suspect casework

Education Completed

Mitochondrial Analyst Qualified – 2004 – Orchid Cellmark Forensics, Dallas, TX

Forensic Analyst Qualified – 2003 – Orchid Cellmark Forensics, Dallas, TX

DNA Extractions	May 2002 – Present
Amplification	May 2002 – Present
Analysis	May 2002 – Present
Reports	September 2003 – Present
Mitochondrial Sequencing	August 2002 – July 2005
Mitochondrial Analysis	August 2002 – July 2005

American Academy of Forensic Scientists

FBI Audit Training – July 25-26, 2006 – Fredericksburg, VA

Seminar: Racial Profiling SNPs – February 23, 2006 – Seattle, WA

Seminar: The Atypical Serial Killer – February 22, 2006 – Seattle, WA

Workshop: Sexual Homicide – Fantasy Becomes a Reality – February 21, 2006 – Seattle, WA

Seminar: Bioterrorism Mass Disasters – February 21, 2006 – Seattle, WA

Workshop: Advanced Topics in STR DNA Analysis – February 20, 2006 – Seattle, WA

000197

- American Academy of Forensic Sciences Annual Meeting – February 20-25, 2006 –
Seattle, WA
- Accommodating the Demands of Increasing Volume: A Workshop for Public and Private
DNA Profiling Laboratories – September 30, 2005 – Dallas, TX
- Workshop: Implementing Automation in the Lab – September 29, 2005 – Dallas, TX
- Workshop: Presenting DNA Evidence in Court – September 26, 2005 – Dallas, TX
- Promega Corporation's 16th International Symposium on Human Identification –
September 26-30, 2005 – Dallas, TX
- Scientific Working Group on DNA Analysis Methods Annual Meeting – September
25, 2005 – Dallas, TX
- Workshop: Mitochondrial DNA – February 16, 2004 – Dallas, TX
- American Academy of Forensic Sciences Annual Meeting – February 16-21, 2004 – Dallas, TX
- American Academy of Forensic Sciences Annual Meeting – February 17-22, 2003 – Chicago, IL
- North Carolina State University Summer Institute of Statistical Genetics – May 29-31, 2002 –
Raleigh, NC
- Young Forensic Scientists Forum – February 12, 2002 – Atlanta, GA
- American Academy of Forensic Sciences Annual Meeting – February 11-16, 2002 – Atlanta, GA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INST

FILED IN OPEN COURT

OCT 06 2006

3:03P

SHIRLEY B. PARRAQUIRRE CLERK

BY *Billie Jo Craig*

BILLIE JO CRAIG DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KIRSTIN BLAISE LOBATO,

Defendant.

CASE NO: C177394

DEPT NO: II

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

1
2 An Information is but a formal method of accusing a person of a crime and is not of
3 itself any evidence of her guilt.

4 In this case, it is charged in an Information that on or about the 8th day of July, 2001,
5 the Defendant committed the offenses of MURDER WITH USE OF A DEADLY WEAPON
6 and SEXUAL PENETRATION OF A DEAD HUMAN BODY (Felony - NRS 201.450),
7 within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes
8 in such cases made and provided, and against the peace and dignity of the State of Nevada,

9 COUNT I - MURDER WITH USE OF A DEADLY WEAPON

10 did then and there wilfully, feloniously, without authority of law, and with
11 premeditation and deliberation, and with malice aforethought, kill DURAN BAILEY, a
12 human being, by the said Defendant beating the said DURAN BAILEY with a blunt object
13 and/or by stabbing and/or cutting the said DURAN BAILEY, with a deadly weapon, to-wit:
14 a knife.

15 COUNT II - SEXUAL PENETRATION OF A DEAD HUMAN BODY

16 did then and there wilfully, feloniously, and without authority of law, sexually
17 penetrate a dead human body, to-wit: DURAN BAILEY, in the following manner, by
18 inserting a knife into and/or cutting the anal opening of the said DURAN BAILEY..

19 It is the duty of the jury to apply the rules of law contained in these instructions to the
20 facts of the case and determine whether or not the Defendant is guilty of one or more of the
21 offenses charged.

22 Each charge and the evidence pertaining to it should be considered separately. The
23 fact that you may find a defendant guilty or not guilty as to one of the offenses charged
24 should not control your verdict as to any other offense charged.

25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In this case the defendant is accused in an Information alleging an open charge of murder. This charge may include murder of the first degree, murder of the second degree, and voluntary manslaughter.

The jury must decide if the defendant is guilty of any offense and, if so, of which offense.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, from anger, hatred, revenge or from particular ill will, spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful motive or purpose to injure another, or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation of the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Express malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The prosecution is not required to present direct evidence of a defendant's state of mind as it existed during the commission of a crime. The jury may infer the existence of a particular state of mind of a party or a witness from the circumstances disclosed by the evidence.

1
2 Murder of the first degree is murder which is perpetrated by means of any kind of
3 wilful, deliberate, and premeditated killing. All three elements -- willfulness, deliberation,
4 and premeditation -- must be proven beyond a reasonable doubt before an accused can be
5 convicted of first-degree murder.

6 Willfulness is the intent to kill. There need be no appreciable space of time between
7 formation of the intent to kill and the act of killing.

8 Deliberation is the process of determining upon a course of action to kill as a result of
9 thought, including weighing the reasons for and against the action and considering the
10 consequences of the actions.

11 A deliberate determination may be arrived at in a short period of time. But in all
12 cases the determination must not be formed in passion, or if formed in passion, it must be
13 carried out after there has been time for the passion to subside and deliberation to occur. A
14 mere unconsidered and rash impulse is not deliberate, even though it includes the intent to
15 kill.

16 Premeditation is a design, a determination to kill, distinctly formed in the mind by the
17 time of the killing.

18 Premeditation need not be for a day, an hour, or even a minute. It may be as
19 instantaneous as successive thoughts of the mind. For if the jury believes from the evidence
20 that the act constituting the killing has been preceded by and has been the result of
21 premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

1
2 The crime of first degree murder includes the crime of second degree murder. You
3 are instructed that if you find that the State has established that the defendant has committed
4 first degree murder you shall select first degree murder as your verdict. You may find the
5 defendant guilty of second degree murder if:

6 (1) some of you are not convinced beyond a reasonable doubt that the defendant is
7 guilty of murder of the first degree, and

8 (2) all twelve of you are convinced beyond a reasonable doubt the defendant is guilty
9 of the crime of second degree murder.

10 If you are convinced beyond a reasonable doubt that the crime of murder has been
11 committed by the defendant, but you have a reasonable doubt whether such murder was of
12 the first or of the second degree, you must give the defendant the benefit of that doubt and
13 return a verdict of murder of the second degree.

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Murder of the first degree includes murder which is any kind of willful, deliberate and premeditated killing.

All murder which is not Murder of the First Degree is Murder of the Second Degree. Murder of the Second Degree is murder with malice aforethought, but without the admixture of premeditation and deliberation.

1
2 Manslaughter is the unlawful killing of a human being without malice express or
3 implied and without any mixture of deliberation.

4 Voluntary Manslaughter is a voluntary killing upon a sudden heat of passion, caused
5 by a provocation apparently sufficient to make the passion irresistible.

6 The provocation required for Voluntary Manslaughter must either consist of a serious
7 and highly provoking injury inflicted upon the person killing, sufficient to excite an
8 irresistible passion in a reasonable person, or an attempt by the person killed to commit a
9 serious personal injury on the person killing. The serious and highly provoking injury which
10 causes the sudden heat of passion can occur without direct physical contact.

11 For the sudden, violent impulse of passion to be irresistible resulting in a killing,
12 which is Voluntary Manslaughter, there must not have been an interval between the assault
13 or provocation and the killing sufficient for the voice of reason and humanity to be heard;
14 for, if there should appear to have been an interval between the assault or provocation given
15 and the killing, sufficient for the voice of reason and humanity to be heard, then the killing
16 shall be determined by you to be murder. The law assigns no fixed period of time for such
17 an interval but leaves its determination to the jury under the facts and circumstances of the
18 case.

19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The heat of passion which will reduce a homicide to Voluntary Manslaughter must be such an irresistible passion as naturally would be aroused in the mind of an ordinarily reasonable person in the same circumstances. A defendant is not permitted to set up her own standard of conduct and to justify or excuse herself because her passions were aroused unless the circumstances in which she was placed and the facts that confronted her were such as also would have aroused the irresistible passion of the ordinarily reasonable person if likewise situated. The basic inquiry is whether or not, at the time of the killing, the reason of the accused was obscured or disturbed by passion to such an extent as would cause the ordinarily reasonable person of average disposition to act rashly and without deliberation and reflection and from such passion rather than from judgment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The crime of murder may include the crime of voluntary manslaughter. If you find the State has established that the defendant has committed murder you shall select the appropriate degree of murder as your verdict. You may find the defendant guilty of voluntary manslaughter if:

(1) some of you are not convinced beyond a reasonable doubt that the defendant is guilty of murder of either the first or second degree, and

(2) all twelve of you are convinced beyond a reasonable doubt the defendant is guilty of the crime of voluntary manslaughter.

If you are satisfied beyond a reasonable doubt that the killing was unlawful, but you have a reasonable doubt whether the crime is murder or voluntary manslaughter, you must give the defendant the benefit of that doubt and return a verdict voluntary manslaughter.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

You are instructed that if you find a defendant guilty of Murder or Voluntary Manslaughter, you must also determine whether or not a deadly weapon was used in the commission of this crime.

If you find beyond a reasonable doubt that a deadly weapon was used in the commission of such an offense, then you shall return the appropriate guilty verdict reflecting "With Use of a Deadly Weapon".

If, however, you find that a deadly weapon was not used in the commission of such an offense, but you find that it was committed, then you shall return the appropriate guilty verdict reflecting that a deadly weapon was not used.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

“Deadly weapon” means any instrument which, if used in the ordinary manner contemplated by its design and construction, will, or is likely to cause substantial bodily harm or death; any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The State is not required to have recovered the deadly weapon used in an alleged crime, or to produce the deadly weapon in court at trial, to establish that a deadly weapon was used in the commission of the crime.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The killing or attempted killing of another person in self-defense is justified and not unlawful when the person who kills or attempts to kill actually and reasonably believes:

1. That there is imminent danger that the assailant will either kill her or cause her great bodily injury; and
2. That it is absolutely necessary under the circumstances for her to use, in self-defense, force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to herself.

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in self-defense, the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person killing must act under the influence of those fears alone and not in revenge.

An honest but unreasonable belief in the necessity for self-defense does not negate malice and does not reduce the offense from murder to manslaughter.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The right of self-defense is not generally available to an original aggressor, that is a person who has sought a quarrel with the design to force a deadly issue and thus through her fraud, contrivance or fault, to create a real or apparent necessity for making a felonious assault.

The original aggressor is only entitled to exercise self-defense, if she makes a good faith endeavor to decline any further struggle before the mortal blow was given.

Where a person without voluntarily seeking, provoking, inviting, or willingly engaging in a difficulty of her own free will, is attacked by an assailant, she has the right to stand ^{her} ~~his~~ ground and need not retreat when faced with the threat of deadly force.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

201

Actual danger is not necessary to justify a killing in self-defense. A person has a right to defend from apparent danger to the same extent as she would from actual danger. The person killing is justified if:

1. She is confronted by the appearance of imminent danger which arouses in her mind an honest belief and fear that she is about to be killed or suffer great bodily injury; and
2. She acts solely upon these appearances and her fear and actual beliefs; and
3. A reasonable person in a similar situation would believe herself to be in like danger.

The killing is justified even if it develops afterward that the person killing was mistaken about the extent of the danger.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

If evidence of self-defense is present, the State must prove beyond a reasonable doubt that the defendant did not act in self-defense. If you find that the State has failed to prove beyond a reasonable doubt that the defendant did not act in self-defense, you must find the defendant not guilty.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

If a person kills another in self-defense, it must appear that the danger was so urgent and pressing that, in order to save her own life, or to prevent her receiving great bodily harm, the killing of the other was absolutely necessary; and the person killed was the assailant, or that the slayer had really, and in good faith, endeavored to decline any further struggle before the mortal blow was given.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A person who commits a sexual penetration on the dead body of a human being is guilty of Sexual Penetration of a Dead Human Body.

“Sexual penetration” is defined as any intrusion, however slight, of any part of a person’s body or any object manipulated or inserted by a person into the genital or anal openings of the body of another.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The purpose of the statute is to deter the act of sexual penetration of a dead human body and
motive is not an element of that crime.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The flight of a person immediately after the commission of a crime, or after she is accused of a crime, is not sufficient in itself to establish her guilt, but is a fact which, if proved, may be considered by you in light of all other proved facts in deciding the question of her guilt or innocence. Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to such a circumstance are matters for your deliberation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his condition, but whenever the actual existence of any particular purpose, motive or intent is a necessary element to constitute a particular species or degree of crime, evidence of intoxication may be taken into consideration in determining such purpose, motive or intent. Intoxication alone cannot reduce murder to voluntary manslaughter.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The fact that a witness had been convicted of a felony, if such be a fact, may be considered by you only for the purpose of determining the credibility of that witness. The fact of such a conviction does not necessarily destroy or impair the witness' credibility. It is one of the circumstances that you may take into consideration in weighing the testimony of such a witness.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

An "alibi" amounts to a contention that the defendant was not present at the time and place where she is alleged to have committed the offense charged in the Information. It is the State's burden to establish beyond a reasonable doubt each of the essential elements of the offense, and the presence and involvement of the Defendant. If, after a consideration of all the evidence, you have a reasonable doubt as to whether the defendant was present at the time and place the crime was committed, she is entitled to a verdict of not guilty.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, she is entitled to a verdict of not guilty.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

It is a constitutional right of a defendant in a criminal trial that she may not be compelled to testify. Thus the decision as to whether she should testify is left to the defendant on the advice and counsel of her attorney. You must not draw any inference of guilt from the fact that she does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

You are here to determine the guilt or innocence of the Defendant from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant, you should so find, even though you may believe one or more persons are also guilty.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The credibility or believability of a witness should be determined by their manner upon the stand, their relationship to the parties, their fears, motives, interests or feelings, their opportunity to have observed the matter to which they testified, the reasonableness of their statements and the strength or weakness of their recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of their testimony which is not proved by other evidence.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his or her opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In arriving at a verdict in this case as to whether the defendant is guilty or not guilty, the subject of penalty or punishment is not to be discussed or considered by you and should in now way influence your verdict.

If the Jury's verdict is Murder in the First Degree, you will, at a later hearing consider the subject of penalty or punishment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given you in the presence of, and after notice to, the District Attorney and the Defendant and her counsel.

Playbacks of testimony are time-consuming and are not encouraged unless you deem it a necessity. Should you require a playback, you must carefully describe the testimony to be played back so that the court recorder can arrange his/her notes. Remember, the court is not at liberty to supplement the evidence.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

When you retire to consider your verdict, you must select one of your number to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:  10/5/06
DISTRICT JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIRSTIN BLAISE LOBATO,)
)
Appellant,)
)
vs.)
)
THE STATE OF NEVADA,)
)
Respondent.)

Case No. 58913

Electronically Filed
Jan 30 2012 03:32 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S APPENDIX

VOLUME 1

APPEAL FROM NOTICE OF ENTRY OF DECISION AND ORDER
IN THE EIGHTH JUDICIAL DISTRICT COURT

TRAVIS BARRICK
NEVADA BAR #9257
GALLIAN, WILCOX, WELKER
OLSON & BECKSTROM, L.C.
540 E. ST. LOUIS AVENUE
LAS VEGAS , NEVADA 89104
(702 892-3500

CHRIS OWENS
CLARK COUNTY, NEVADA
DISTRICT ATTORNEY
200 LEWIS AVENUE
LAS VEGAS, NEVADA 89155
(702) 671-2500

CATHERINE CORTEZ-MASTO
NEVADA BAR #3926
NEVADA ATTORNEY GENERAL
100 N. CARSON STREET
CARSON CITY, NEVADA 89701
(775) 684-1265

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR APPELLANT

INDEX

VOLUME	DOCUMENT NAME (FILE DATE)	PAGE NO.
9	AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS (5/5/10)	1921-1922
9	AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS SUPPLEMENTAL (6/4/2010)	1924-1935
5	APPELLANT'S OPENING BRIEF (DIRECT APPEAL) (12/26/07)	1048-1111
10	CERTIFICATE OF SERVICE (10/11/10)	2184-2185
10	CERTIFICATE OF SERVICE (10/5/10)	2183
9	CERTIFICATE OF SERVICE OF PETITION FOR WRIT OF HABEAS CORPUS (5/11/10)	1923
5	CERTIORARI DENIED (10/14/09)	1147
1	CLERK'S CERTIFICATE "REVERSED AND REMANDED" (10/5/2004)	126-142
11	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (6/16/11)	2263-2292
5	GRANTING MOTION AND STAYING REMITTUR (05/29/09)	1144
1	INFORMATION (8/9/2001)	1-3
1	INSTRUCTIONS TO THE JURY (10/6/2006) (RELEVANT EXCERPTS)	199-239
2	JUDGMENT OF CONVICTION (2/14/2007)	242-244
1	MOTION IN LIMINE TO EXCLUDE STATEMENTS MADE BY DEFENDANT DURING THE COURSE OF THE JULY 20, 2001 INTERROGATION (10/5/2005)	143-175
5	MOTION TO STAY REMITTITUR (5/26/09)	1141-1143
2	NOTICE OF APPEAL (3/12/2007)	245-246
11	NOTICE OF APPEAL (8/1/11)	2293-2294
11	NOTICE OF APPEARANCE (11/5/10)	2186-2188
11	NOTICE OF ENTRY OF DECISION AND ORDER (8/2/11)	2295
1	NOTICE OF EXPERT WITNESSES (8/21/06)	192-198
1	NOTICE OF EXPERT WITNESSES (9/14/01)	77-103
5	NOTICE OF FILING OF PETITION FOR A WRIT OF CERTIORARI (8/21/09)	1145-1146
11	NOTICE OF MOTION AND MOTION FOR LEAVE TO CONDUCT LIMITED DISCOVERY OF CARDBOARD SHOEPRINT EVIDENCE (12/16/10)	2202-2214

INDEX

VOLUME	DOCUMENT NAME (FILE DATE)	PAGE NO.
11	NOTICE OF MOTION AND MOTION FOR LIMITED DISCOVERY FOR GOOD CAUSE (11/23/10)	2189-2198
1	NOTICE OF MOTION AND MOTION FOR RECIPROCAL DISCOVERY (08/23/2006)	188-191
11	NOTICE OF STATE'S FAILURE TO TIMELY FILE OPPOSITION TO PETITIONER'S MOTION FOR LIMITED DISCOVERY FOR GOOD CAUSE (12/13/10)	2199-2201
11	ORDER DENYING DEFENDANT'S MOTION FOR LEAVE TO CONDUCT LIMITED DISCOVERY OF CARDBOARD SHOEPRINT EVIDENCE (2/14/11)	2228-2229
11	ORDER DENYING DEFENDANT'S MOTION FOR LIMITED DISCOVERY FOR GOOD CAUSE (3/2/11)	2230-2231
5	ORDER DENYING EN BANC RECONSIDERATION (5/19/09)	1140
5	ORDER DENYING REHEARING (3/27/09)	1128
5	ORDER OF AFFIRMANCE (2/5/09)	1112-1116
5	PETITION FOR RECONSIDERATION EN BANC (4/3/09)	1129-1139
5	PETITION FOR REHEARING (2/12/09)	1117-1127
6	PETITION FOR WRIT OF HABEAS CORPUS – POST CONVICTION AND MOTION FOR APPOINTMENT OF COUNSEL (5/5/10)	1150-1371
7	PETITION FOR WRIT OF HABEAS CORPUS – POST CONVICTION AND MOTION FOR APPOINTMENT OF COUNSEL (5/5/10)	1372-1582
8	PETITION FOR WRIT OF HABEAS CORPUS – POST CONVICTION AND MOTION FOR APPOINTMENT OF COUNSEL (5/5/10)	1583-1782
9	PETITION FOR WRIT OF HABEAS CORPUS – POST CONVICTION AND MOTION FOR APPOINTMENT OF COUNSEL (5/5/10)	1784-1920
10	PETITIONER LOBATO'S ANSWER TO THE STATE'S RESPONSE TO THE PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) AND MOTION FOR APPOINTMENT OF COUNSEL (10/2/10)	1978-2182
5	REMITTITUR (10/19/09)	1148-1149
11	REPLY IN SUPPORT OF MOTION FOR LIMITED DISCOVERY FOR GOOD CAUSE (1/5/11)	2220-2223
1	REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE STATEMENTS MADE BY DEFENDANT DURING THE COURSE OF THE JULY 20, 2001 INTERROGATION (2/22/2006)	179-182

INDEX

VOLUME	DOCUMENT NAME (FILE DATE)	PAGE NO.
11	REPORTER'S TRANSCRIPT OF HABEAS CORPUS HEARING MARCH 1, 2011 (3/17/11)	2232-2262
1	REPORTER'S TRANSCRIPT OF JURY TRIAL MAY 10, 2002 (8/7/02) (RELEVANT	104-125
4	REPORTER'S TRANSCRIPT OF JURY TRIAL OCTOBER 2, 2006 (5/16/07)	789-857
4	REPORTER'S TRANSCRIPT OF JURY TRIAL OCTOBER 3, 2006 (5/16/07)	858-909
5	REPORTER'S TRANSCRIPT OF JURY TRIAL OCTOBER 4, 2006 (5/16/07)	910-974
5	REPORTER'S TRANSCRIPT OF JURY TRIAL OCTOBER 5, 2006 (5/16/07)	975-1030
5	REPORTER'S TRANSCRIPT OF JURY TRIAL OCTOBER 6, 2006 (5/16/07)	1031-1035
2	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 14, 2006 (5/16/07)	253-293
2	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 15, 2006 (5/16/07)	294-350
2	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 18, 2006 (5/16/07)	351-396
2	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 19, 2006 (5/16/07)	397-436
2	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 20, 2006 (5/16/07)	437-487
3	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 21, 2006 (5/16/07)	488-530
3	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 22, 2006 (5/16/07)	531-553
3	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 25, 2006 (5/16/07)	554-608
3	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 26, 2006 (5/16/07)	609-645
3	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 27, 2006 (5/16/07)	646-692
4	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 28, 2006 (5/16/07)	693-748
4	REPORTER'S TRANSCRIPT OF JURY TRIAL SEPTEMBER 29, 2006 (5/16/07)	749-788
1	REPORTER'S TRANSCRIPT OF MOTION HEARING MAY 19, 2006 (6/1/06) (RELEVANT EXCERPTS)	183-187
1	REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING AUGUST 7, 2001 (8/31/01)	4-76
5	REPORTER'S TRANSCRIPT OF SENTENCING FEBRUARY 2, 2007 (5/16/07)	1039-1047
5	REPORTER'S TRANSCRIPT OF SENTENCING NOVEMBER 21, 2006 (5/16/07)	1036-1038
2	REPORTER'S TRANSCRIPT OF STATE'S MOTION FOR RECIPROCAL DISCOVERY SEPTEMBER 7, 2006 (5/16/07)	247-252

INDEX

VOLUME	DOCUMENT NAME (FILE DATE)	PAGE NO.
11	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR LIMITED DISCOVERY AND NOTICE OF STATE'S FAILURE TO FILE A TIMELY RESPONSE (12/22/10)	2215-2219
11	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR LIMITED DISCOVERY OF CARDBOARD SHOEPRINT EVIDENCE (1/10/11)	2224-2227
1	STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE STATEMENTS MADE BY DEFENDANT DURING THE COURSE OF THE JULY 20, 2001 INTERROGATION (2/3/2006)	176-178
9	STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) (8/20/10)	1936-1977
2	VERDICT (10/6/2006)	240-241

ORIGINAL

FILED
Aug 9 1 46 PM '01
Shirley L. Burges
CLERK

1 INFO
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

9 I.A. 8/21/01
10 8:30 A.M.
11 SPECIAL PD

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,
13 Plaintiff,

14 -vs-

15 KIRSTIN BLAISE LOBATO,
16 #1691351

17 Defendant.

Case No. C 177394
Dept. No. II

INFORMATION

18 STATE OF NEVADA }
19 COUNTY OF CLARK }ss:

20 STEWART L. BELL, District Attorney within and for the County of Clark, State of
21 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

22 That KIRSTIN BLAISE LOBATO, the Defendant(s) above named, having committed
23 the crimes of MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)
24 (Felony - NRS 200.010, 200.030, 193.165); and SEXUAL PENETRATION OF A DEAD
25 HUMAN BODY (Felony - NRS 201.450), on or about the 8th day of July, 2001, within the
26 County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases
27 made and provided, and against the peace and dignity of the State of Nevada,

28 COUNT I - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

did then and there wilfully, feloniously, without authority of law, and with premeditation
and deliberation, and with malice aforethought, kill DURAN BAILEY, a human being, by the
said Defendant beating; the said DURAN BAILEY with a blunt object and/or by stabbing and/or

COURT CLERK
RECEIVED
AUG 9 2001

000001

1 cutting the said DURAN BAILEY, with a deadly weapon, to-wit: a knife.

2 COUNT II - SEXUAL PENETRATION OF A DEAD HUMAN BODY

3 did then and there wilfully, feloniously, and without authority of law, sexually penetrate
4 a dead human body, to-wit: DURAN BAILEY, in the following manner, by inserting a knife
5 into and/or cutting the anal opening of the said DURAN BAILEY.

6
7 STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

8
9
10 BY 
ERIC G. JORGENSON
Chief Deputy District Attorney
Nevada Bar #001802

11
12
13
14
15
16
17 Names of witnesses known to the District Attorney's Office at the time of filing this
18 Information are as follows:

19	<u>NAME</u>	<u>ADDRESS</u>
20	FORD, D.	LVMPD #4244
21	HEFNER, K.	LVMPD #2185
22	HUTCHISON, J.	LVMPD #3230
23	JOHNSON, LAURA	HC 74 BOX 295, PIOCHE, NV
24	LAROCHELLE, J.	LVMPD #4353
25	MORGAN, B.	LVMPD #4216
26	PARKER, DIANN	4255 W. VIKING #Y-816, LV, NV
27	PIERCE-STAUFFER, S.	CC CORONER'S OFFICE
28	RENHARD, L.	LVMPD #5223

1 SHOTT, RICHARD

5412 RETABLO AVE., LV, NV

2 SIMMS, L.

CC MEDICAL EXAMINER

3 TESTA, J.

LVMPD #6181

4 THOMAS, M.

LVMPD #4032

5 THOWSEN, T.

LVMPD #1467

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

DA#01F12209X/mb

27 LVMPD EV#0107082410

MURD W/DW; PEN O/HMN BDY - F

28 (TK2)

1 CASE NO. C177394

FILED

2

3 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP ^{Aug 31 9 39 AM '01}
4 COUNTY OF CLARK, STATE OF NEVADA *Shirley E. Ruzgine*
5 CLERK

6

7

THE STATE OF NEVADA,)

ORIGINAL

Plaintiff,)

vs.)

CASE NO. 01F12209X

10 KIRSTIN BLAISE LOBATO,)

11 Defendant.)

12 _____)

13

14 REPORTER'S TRANSCRIPT OF
15 PRELIMINARY HEARING

16 BEFORE THE HONORABLE MICHAEL VAN,
17 PRO TEMPORE
18 JUSTICE OF THE PEACE

19 TUESDAY, AUGUST 7, 2001
20 1:00 P.M.

21 APPEARANCES:

22 For the State: ERIC JORGENSEN, ESQ.
23 DEPUTY DISTRICT ATTORNEY

24 For the Defendant: PHILIP KOHN, ESQ.
25 DEPUTY PUBLIC DEFENDER

Reported by: CHRISTA BROKA, CCR. No. 574

CE45
000004

COUNTY CLERK
RECEIVED
AUG 31 2001

INDEX

1		
2		
3	<u>WITNESS</u>	<u>PAGE</u>
4		
5	<u>DIXIE TIENKEN</u>	
6	Direct Examination by Mr. Jorgensen	4
7	Cross-Examination by Mr. Kohn	12
8		
9	<u>LARRY SIMS</u>	
10	Direct Examination by Mr. Jorgensen	17
11	Cross-Examination by Mr. Kohn	29
12		
13	<u>TOM THOWSEN</u>	
14	Direct Examination by Mr. Jorgensen	35
15	Cross-Examination by Mr. Kohn	54
16	Redirect Examination By Mr. Jorgensen	62
17	Recross-Examination By Mr. Kohn	63
18		
19		
20		
21		
22		
23		
24		
25		

000005

1 LAS VEGAS, CLARK COUNTY, NEVADA,

2 AUGUST 7, 2001 AT 1:00 P.M.

3 P R O C E E D I N G S

4

5 THE COURT: 01F12209X, State of Nevada

6 versus Kirstin Blaise Lobato. State prepared?

7 MR. JORGENSEN: State's ready.

8 THE COURT: Defense?

9 MR. KOHN: Yes, Your Honor.

10 THE COURT: State call your first
11 witness.

12 MR. JORGENSEN: State would call --

13 MR. KOHN: Your Honor, may we have a hand
14 loose?

15 THE COURT: Certainly.

16 MR. JORGENSEN: Dixie T-I-E-N-K-E-N.

17 (Whereupon Dixie Tienken was duly sworn.)

18 THE CLERK: State your full name for the
19 record spell your last.

20 THE WITNESS: Dixie Tienken,

21 T-I-E-N-K-E-N.

22 THE COURT: Ms. Tienken, just to explain
23 what's going on, they are going to be asking you
24 some questions. Both the defense counsel and the
25 State will be asking you questions and you need to

000006

1 respond to them because what's happening is we have
2 a court reporter who is going take down this
3 conversation. And it will be made into a
4 transcript and will look similar to that. In order
5 to do that you need to make sure you answer audibly
6 yes, no, huh-uh and uh-huh irritates her so much.
7 So answer yes and no and wait for the question to
8 be fully asked before you start to answer.

9

10

DIRECT EXAMINATION

11 BY MR. JORGENSEN:

12 Q. Would you rather be called Ms. Tienken or
13 Dixie?

14 A. Dixie.

15 Q. Dixie, do you know why you've been called
16 here today?

17 A. I do.

18 Q. Do you know Kirstin Blaise Lobato?

19 A. Yes, I do.

20 Q. She's here in court?

21 A. Yes.

22 Q. Would you point to her and just describe
23 what she's wearing today?

24 A. She's got a black --

25

MR. KOHN: We stipulated she can identify

000007

1 the Defendant.

2 THE COURT: So stipulated.

3 BY MR. JORGENSEN:

4 Q. Dixie, how long have you known Blaise, you
5 called her Blaise?

6 A. Yes, I call her Blaise.

7 Q. How long have you known Blaise?

8 A. Probably about six years at least.

9 Q. Now, in what capacity did you know Blaise?

10 A. Panaca is a very small town and then she
11 became my student.

12 Q. You're a teacher I assume at the high
13 school?

14 A. I am a teacher at the alternative adult high
15 school.

16 Q. And so you met her through -- there was a
17 teacher student relationship?

18 A. Yes. She graduated from my program.

19 Q. Did you end up -- would you characterize the
20 relationship as a friendly relationship?

21 A. Yes. I really feel that I'm her friend.

22 Q. A confidant?

23 A. Yes.

24 Q. Now, you're aware that Blaise has been
25 charged with murder?

000008

1 A. Yes, I am.

2 Q. And I want to just go back to July, last
3 month, did you have a conversation with Blaise?

4 A. Yes, I did.

5 Q. Would you tell the Court how this all took
6 place, how she came to you, what she told you,
7 where you were and everything?

8 A. Blaise came to my home. I was asleep when
9 she first got there and I invited her in. We sat
10 down and we talked. She told me she had done a bad
11 thing, but the conversation was not limited to
12 that.

13 Q. I'm going to ask you some more about why
14 we're here in court.

15 A. She told me that a man had attempted to rape
16 her and that he pushed her down and then she said
17 that she took out a knife and cut off his penis.

18 Q. Did she tell you where that happened?

19 A. No, not exactly.

20 Q. I'm not asking the address. Did she say it
21 happened up in Panaca?

22 A. No, it happened in Las Vegas, but I do not
23 know the address or where.

24 Q. Did she give you kind of a general area?

25 A. We talked about the general area or place

000009

1 but that doesn't mean that's -- you know, we were
2 talking and I used to live in Las Vegas many years
3 ago.

4 Q. What area were you lead to believe that this
5 took place?

6 A. Somehow I thought it was over off one of the
7 hotel streets, but I don't know what hotel street.
8 I know it was not near my house and my house was
9 close to West Sahara. I know it was not close to
10 that.

11 Q. Might it be on West Flamingo or West
12 Tropicana?

13 MR. KOHN: Objection, that's leading.
14 She didn't say anyone of those two words and
15 counsel did.

16 THE COURT: I will sustain the objection.

17 BY MR. JORGENSEN:

18 Q. You said you don't think it was on Sahara,
19 West Sahara?

20 A. No.

21 Q. It was a street?

22 A. I really don't know where because she never
23 told me where it happened. We just talked,
24 you know, about a lot of different things.

25 Q. Now, you gave a statement to the police?

1 A. Yes.

2 Q. In your statement to them you kind of gave
3 -- you said a hotel street?

4 A. I thought it was a hotel street. I did not
5 say -- I told them I know it was not West Sahara,
6 but it could have been any of those hotel streets
7 and I just named some hotel streets because I know
8 the hotel streets.

9 Q. Do you remember what you told the detective?

10 A. I told them that she told me that a man
11 approached her --

12 Q. I'm asking more about the area or the
13 location?

14 A. Well, like I said, you know, I told him I
15 thought that she said a hotel street. I don't know
16 if it was Tropicana or Flamingo, Desert Inn, I
17 don't know.

18 Q. And you mentioned Tropicana and Flamingo?

19 A. Well, I'm sure I did mention the hotel
20 streets.

21 Q. Do you remember when she came over to your
22 house and woke you up?

23 A. I do know that it was on a Wednesday like
24 early morning because every Wednesday I go to the
25 jail in Lincoln County to teach a GED class. I

000011

1 know that we talked for quite a long time, and then
2 I had to go get a bath and get dressed to go up to
3 the jail. So I do know that it was Wednesday. I
4 told them I wasn't sure which Wednesday it was. I
5 have a lot of things that happened in my life and
6 I'm a little confused about dates.

7 Q. Initially in your statement do you remember
8 what day you thought it was?

9 A. I thought it was like towards the beginning
10 of the month. I know for a fact that it was a
11 Wednesday, but I just wasn't sure which Wednesday.
12 I think I looked at a calendar because they kept
13 giving me a calendar and I think initially I said
14 it was the 11th. I have later since then said I
15 don't think that was the date that I think it was
16 the Wednesday after that because I know I talked to
17 Laura who is the juvenile probation officer that
18 was because I had already tried to look on the
19 computer to try to find anything. Lori then said
20 that because she knew she did a urinalysis of a
21 certain person --

22 MR. KOHN: Objection to whatever Lori
23 said.

24 THE WITNESS: But I know it was a
25 Wednesday.

1 THE COURT: Sustained.

2 BY MR. JORGENSEN:

3 Q. You knew it was a Wednesday and you thought
4 it was probably the 11th or the week after that
5 July 18th?

6 A. I am really not sure. I'm going to say for
7 sure that it was a Wednesday. I am not sure of the
8 date.

9 Q. Okay. The date that you talked -- that
10 Blaise talked to you, did you tell anybody else
11 about your conversation?

12 A. No, not a single one except for accept for
13 Lori and that was because we were trying to find
14 out if anything had really happened to this person.

15 Q. Now, so you told Lori that same day that
16 Blaise talked to you?

17 A. Yes.

18 Q. Then you afterward decided maybe it wasn't
19 the 11th based on a conversation you had with Lori?

20 A. That's correct.

21 Q. Now, did Blaise tell you anything about her
22 car that she owned?

23 A. She told me something about her -- I asked
24 her about her car that I heard she had gotten a
25 car -- this was a long conversation -- she said,

000013

1 yes. And then she told me about another incident
2 that had nothing to do with this incident about her
3 car.

4 Q. Did she say anything about -- did she tell
5 you anything about what she was going to do with
6 her car? I'm talking in July when you're talking
7 to her.

8 A. I asked her, oh, let me see your car. I
9 said, are you driving your car because I was going
10 out to look at her car. Kids are excited when they
11 have their first vehicle that's really theirs. She
12 said, no, I don't have it. I have my dad's truck,
13 so there was no sense going out to look at the car
14 that wasn't there. But I was told of another
15 incident that had nothing to do with this incident
16 about her car.

17 Q. Okay. That's the incident with her
18 ex-boyfriend?

19 A. Yes.

20 Q. Jeremy?

21 A. I believe his name was Jeremy Davis.

22 Q. Did she tell you when that incident took
23 place?

24 A. No, she did not.

25 MR. JORGENSEN: I'll pass the witness.

1 MR. KOHN: Thank you.

2

3

CROSS-EXAMINATION

4 BY MR. KOHN:

5 Q. Would you mind if I used Dixie?

6 A. That's fine.

7 Q. You indicated that she talked about her car
8 was involved in some other incident involving
9 Jeremy; is that right?

10 A. That's correct.

11 Q. I guess he trashed it, is that what
12 happened?

13 A. Yes, inside of her car.

14 Q. He did some bad things to it?

15 A. Yes.

16 Q. I understand that had nothing to do with
17 this incident; right?

18 A. No.

19 Q. Did she seem to you that she was remorseful
20 about anything that happened?

21 A. She was remorseful. She was very
22 frightened.

23 Q. As the district attorney pointed out, you
24 believe when you talked to the police and I believe
25 you talked to the police and had a taped

000015

1 conversation on or about July 26; does that make
2 sense?

3 A. That's correct.

4 Q. So when you talked to them you thought that
5 this incident -- strike that. You thought you were
6 speaking to Blaise, my client, happened about July
7 11th; right?

8 A. No. I don't know when the incident
9 happened. She never indicated to me when it
10 happened. It just happened. It happened when she
11 was in Vegas.

12 Q. Let's start again. You thought that you
13 talked to her, to Blaise, on July 11th; is that
14 what you initially thought?

15 A. That's what I thought.

16 Q. On reflection you now believe it was July
17 18th; is that correct?

18 A. I believe so, but I'm not sure. I just know
19 for sure that it was a Wednesday.

20 Q. Did it happen to start the conversation
21 Tuesday night, do you know when my client went to
22 your house?

23 A. I don't believe it was Tuesday night. It
24 was probably early Wednesday morning.

25 Q. Like how late did she get there?

000016

1 A. I don't know, but what happened was I have
2 to be at the jail at a certain time, and I know
3 that we talked for a long time before that. And I
4 had to be at the jail before 11:00 o'clock.

5 Q. But it is clear in your mind when Blaise
6 arrived at your house it was dark out?

7 A. No, I don't know that it was dark out. I
8 was asleep.

9 Q. So you could have been asleep like -- you
10 were asleep?

11 A. I was asleep.

12 Q. Got it. You don't know exactly how long you
13 talked to Blaise; is that right?

14 A. I would say it was a very lengthy
15 conversation. And also I was talking to her about
16 doing anger management class that we were trying to
17 put together.

18 Q. And did you also indicate to the district
19 attorney that you are pretty sure that that was a
20 day later that talked to Laura Johnson the
21 probation officer?

22 A. I believe so.

23 Q. Are you sure?

24 A. No.

25 Q. Did Blaise give you any indication when this

1 incident happened in terms of her severing
2 someone's penis?

3 A. No, just it happened when she was in Vegas.

4 Q. In your discussion with the police there's
5 some mention you read some news reports?

6 A. That was after Blaise had been arrested.

7 Q. Do you know what days or about what days
8 that you read the newspaper reports -- strike that.
9 Let me ask a different way.

10 Do you know how it was -- let's assume,
11 that you talked to the police on July 26th. How
12 long before that did you read newspaper articles?

13 A. Like a day before.

14 Q. So it was pretty fresh in your mind, the
15 article?

16 A. Yes.

17 Q. At that time?

18 A. Yes.

19 MR. KOHN: May I have moment, Your Honor?
20 I've no other questions, Your Honor.

21 MR. JORGENSEN: No redirect.

22 THE COURT: Ma'am, you can step down.
23 Please if you go out in the hall don't talk to
24 anybody about your testimony.

25 MR. JORGENSEN: The witness can be

1 excused.

2 THE COURT: You can go home if you want.

3 MR. JORGENSEN: Can I interrupt if

4 Dr. Sims shows up?

5 THE COURT: Absolutely.

6 MR. JORGENSEN: Also for the purposes of

7 preliminary hearing, I believe counsel will

8 stipulate that the victim was Duran Bailey; is that

9 correct?

10 MR. KOHN: For the purpose of preliminary

11 hearing. I explained what we're doing.

12 (Whereupon Larry Sims was duly sworn.)

13 THE CLERK: Please be seated. State your

14 name and spell your last for the record.

15 THE WITNESS: Larry Sims, L-A-R-R-Y,

16 S-I-M-S.

17 THE COURT: Have you had testimony

18 elicited in a preliminary hearing before?

19 THE WITNESS: Yes.

20 THE COURT: In Clark County?

21 THE WITNESS: Yes, a number of times.

22 THE COURT: All right.

23 / / /

24 / / /

25 / / /

DIRECT EXAMINATION

1

2 BY MR. JORGENSEN:

3 Q. Sir, what is your profession?

4 A. I'm a forensic pathologist.

5 Q. Are you a D.O.?

6 A. I'm a physician and I'm employed as chief
7 medical examiner for Clark County.

8 Q. You've testified before about autopsies?

9 A. Yeah, probably like 150 times.

10 Q. Doctor, would you just briefly explain the
11 training that you received to do the job as chief
12 medical examiner.13 A. I have a bachelor of science from the
14 University of Tulsa in Tulsa, Oklahoma, that was
15 from '70 to '74; from '74 to '78 I went to medical
16 school at Oklahoma State University College of
17 Osteopathic medicine. I did a rotating internship
18 in Dallas. I was a general practitioner, family
19 doctor, for ten years. Then I went to back to
20 residency at Michigan State University in Grand
21 Rapids, that was in '89 to '93. I had a one year
22 fellowship in forensic pathology at the Cook County
23 Medical Examiner's Office. I worked there until
24 '98 when I came here to work. I have a masters
25 degree in public health. I'm a licensed physician

000020

1 and I'm board certified in anatomic and clinical
2 pathology and forensics.

3 MR. KOHN: For the purpose of preliminary
4 hearing we will stipulate that Dr. Sims is an
5 expert in forensic pathology.

6 BY MR. JORGENSEN:

7 Q. All right. Did you perform an autopsy on an
8 individual that was identified as Duran Bailey?

9 A. Yes.

10 Q. When did you perform that autopsy?

11 A. That was done about noon on July the 9th.

12 Q. Of this year?

13 A. Yes.

14 Q. Now, just very briefly when you perform an
15 autopsy what is the procedure that you follow?

16 A. It's a fairly standard procedure. You do an
17 external examination of the skin from the top of
18 the head to the bottom of the feet, then incisions
19 are made in the body and you examine internal
20 organs.

21 Q. On your external examination you did x-rays
22 and things like that also?

23 A. That's prior, that's what I consider -- you
24 do that prior. The radiographs are prior to even
25 the autopsy beginning.

000021

1 Q. And with this particular examination did you
2 follow your normal procedure?

3 A. Yes.

4 Q. Now, what were the -- what did you find on
5 external examination?

6 A. Well, there was dozens of injuries. Do you
7 want me to go into each individually or sum them
8 up?

9 Q. Would you sum them up?

10 A. There was a number of blunt force injuries
11 all over the head and face. And there was a number
12 of sharp force injuries including slash wounds and
13 stab wounds that involved the neck, face; there
14 were defensive wounds on the hands; there was a
15 stab wound in the abdomen; and there was some
16 sexual mutilation, the penis was amputated; there
17 was a large slash wound in the rectal area.

18 Q. Now, defensive wounds, what do you mean by
19 that?

20 A. Those are wounds that are generally on the
21 lower arms and hands where an individual who's
22 being attacked puts them out to try to block the,
23 you know, the knife or whatever sharp force
24 instrument they are using. They usually get these
25 on the hands or lowers arms.

1 Q. Now, what were the external findings of
2 note?

3 A. He had a number of teeth, front teeth were
4 knocked out.

5 Q. Did you determine how those teeth had been
6 knocked out?

7 A. It was blunt force trauma.

8 Q. Now, before we go on to the internal
9 findings, do you have an opinion as to what caused
10 this blunt force trauma?

11 A. The cause of his blunt force trauma, there
12 wasn't any specific pattern to the bruises and
13 abrasions that occurred, so it could be any kind of
14 object that had sufficient substance to cause blunt
15 force injury. It could have been an object. It
16 could have been a foot. It could have been a fist.
17 It could have been the ground, in relation to the
18 trauma to the back of his head that could have been
19 -- I'm singling this out as an example -- certain
20 parts of it could be striking the ground with the
21 back of his head on the ground that could have
22 caused the same trauma.

23 Q. Was there any external findings at all that
24 would say what type of instrument caused this blunt
25 force trauma?

000023

1 A. Well, in relation to a couple of areas of
2 injury, I don't have them circled here or anything.
3 I did pick out one here on the left side of the
4 face. There were some parallel line abrasions that
5 would indicate it was some kind of rough surface,
6 you know, that could cause the parallel lines when
7 drawn across the skin but that's the only
8 specificity that I can say about such an injury.

9 Q. After you did your external examination and
10 then did the internal examination you followed the
11 normal procedure; is that correct?

12 A. Correct.

13 Q. Doctor, what were your findings upon your
14 internal examination?

15 A. Well, he had a previous surgery on the left
16 side of his head, but there were hemorrhages all
17 underneath the scalp and underneath the skin of the
18 head. There was significant hemorrhage over the
19 surface of his brain. There was a skull fracture
20 that extended from the left side of the head and
21 continued from the front all the way to the back.
22 His internal organs were pale consistent with
23 acute blood loss and hemorrhage in his chest cage.
24 There were stab wounds in the liver. There was a
25 stab wound that severed the carotid artery on the

1 left side. And we did find a few hemorrhages in
2 his pelvis and also the rectum contained silver
3 color paper like fragments that were, you know, man
4 made some kind of silver paper, a number of
5 fragments in there. Also there was a slash wound
6 in the rectum I found in there too.

7 Q. You said paper like man made particles, did
8 you do anything with those at all?

9 A. No, I didn't do anything. As I recall the
10 Metro police took at least one of them because I
11 don't think they took all of them. I think they
12 took one of them into evidence.

13 Q. Now, you indicated that there was some, I
14 believe, hemorrhaging in the chest area?

15 A. In between the ribs.

16 Q. Do you know what caused that?

17 A. That would be blunt force injury.

18 Q. You have indicated stabbing or injuries with
19 a sharp object; is that correct?

20 A. There were stab wounds, yes.

21 Q. There was one on the neck that severed the
22 carotid artery; is that correct?

23 A. Yes.

24 Q. Where else were there stab wounds?

25 A. There was stab wounds on the face, then

1 there was kind of a group of them right at the
2 bottom of the left rib cage that penetrated the
3 liver. The other three were fairly superficial.

4 Q. Those were kind of in the stomach area or
5 abdominal area?

6 A. On the left side.

7 Q. Then of course there were wounds to the
8 rectal area and also to the genital area?

9 A. Correct.

10 Q. Now, have you been able to form an opinion
11 as to the man's cause of death?

12 A. Yes.

13 Q. What is your opinion, Doctor?

14 A. Cause of death I listed as blunt head trauma
15 with significant contributing multiple stab incise
16 wounds and the manner of death was homicide.

17 Q. Is there any way to, for lack of a better
18 term, to age the blunt trauma injuries?

19 A. All of the blunt trauma injuries were new.
20 They were fresh injuries. You can do microscopic
21 sections on them but it's only going to give you a
22 broad category at the very best say, you know, they
23 occurred eight hours or more before death or eight
24 hours after death. In this case all of the blunt
25 force injuries were new or fresh.

000026

1 Q. This couldn't have happened a week before or
2 a couple days before?

3 A. Definitely not a week or even a couple days
4 before, definitely not even 24 hours before.

5 Q. We're talking before death; is that correct?

6 A. Right.

7 Q. You aren't able to say when that man
8 actually died, can you?

9 A. There are different things that you can do
10 to get an idea of what the time of death is in
11 relation to when the person was found. We didn't
12 do that though in this particular case we weren't
13 asked to do that. However, even when they are
14 applied the best estimate is usually a fairly broad
15 window of hours. So it just depends if that's
16 needed or not. Probably the most common is to say
17 measure the potassium level in the fluid from the
18 eye and there's a formula you can use to get a
19 little handle on it. If you're looking at for
20 instance to discern if somebody died at 12:00
21 o'clock or 1:00 o'clock, I'm using that as an
22 example, it's difficult to differentiate between
23 12:00 or 1:00. It's fairly broad.

24 Q. Now, eye fluid is the vitreous fluid?

25 A. Yes.

1 Q. At one point you talked about hemorrhaging
2 on the brain and on other parts of the head. What
3 is the significance of that type of injury and the
4 significance of these hemorrhages?

5 A. Well, there's subdural, subarachnoid
6 hemorrhages. They get their names because the
7 brain is encased by a number of membranes that give
8 them their names of the compartments associated
9 with the membranes' different names. So there's a
10 dural membrane and arachnoid membrane and of course
11 a subdural. It's between the skull and brain, and
12 right next to the dura. Subarachnoid is right next
13 to the arachnoid. The significance in a person
14 that has those is they were subjected to severe
15 head trauma.

16 Q. Is that type when you have bleeding would
17 that indicate that's lethal?

18 A. Oh, it's probably more often a lethal
19 injury.

20 Q. Now, you indicated that there were
21 contributing injuries or stab wounds, which you
22 said the wounds that were from a sharp object.
23 Which wounds are you referring to when you're
24 talking about stab wounds, would that be the
25 genital area and rectal area, below the ribs, and

1 also in the face and neck area, which you are
2 talking about?

3 A. Well, there was what appeared -- the only
4 stab wound that I talked about, the only
5 significant stab wound that was probably made prior
6 to death that contributed to death is the wound in
7 the neck.

8 Q. Now, if one's carotid artery is severed, is
9 that life threatening?

10 A. It is without medical attention probably in
11 the next five minutes it's lethal.

12 Q. Are you able to -- once again for lack of a
13 better word, are you able to determine the order in
14 which these injuries occurred? I'm talking about
15 the stab wound to the artery to the neck and also
16 the injury, blunt trauma to the head and face, can
17 you tell us when they took place in what order?

18 A. Not in relation to just those two sets of
19 wounds. They appeared to have occurred
20 contemporaneous, any such small interval it would
21 be impossible for me to differentiate which
22 occurred first.

23 Q. If someone were to receive a wound like that
24 stab wound to the neck that severed the carotid
25 artery, generally would a person become

1 incapacitated right away?

2 A. They wouldn't be physically incapacitated
3 not right away.

4 Q. What about the trauma you said there was a
5 fractured skull and some trauma, blunt trauma and
6 some injuries, would any of those incapacitate you
7 right away?

8 A. Any kind of blow that's enough to fracture
9 the skull and cause bleeding to the surface of the
10 brain more than likely would knock you out, more
11 likely than not would immediately incapacitate you.

12 Q. Now, you've kind of talked a little about --
13 were any of the injuries either that you found
14 externally or internally did any take place after
15 death or post mortem?

16 A. It appeared to me to a reasonable degree of
17 medical certainty, yes, there was a number of areas
18 post mortem, after death.

19 Q. Which injuries would that be?

20 A. The set of stab wounds in the abdomen did
21 not appear to have bleeding associated with them
22 whatsoever either in the skin or liver, so they
23 were post mortem. The amputation of the penis had
24 no hemorrhaging associated or which bordered it,
25 that looked to be post mortem. And the slash wound

000030

1 in the rectum that also had no hemorrhage
2 associated, that appeared to be post mortem.

3 Q. The slash to rectum, where was that on the
4 outside of the rectum?

5 A. (Witness nods head.)

6 Q. There was evidence that something was placed
7 inside the rectum?

8 A. The slash wound itself was a fairly deep
9 wound that occurred just by taking a knife and kind
10 of spreading the buttocks, and slashing across. It
11 was a deep as a normal adult could have done. To
12 give you an idea of the depth and there was
13 hemorrhage associated it. There were these silver
14 materials that were in the wound that I picked out
15 of the wound and they were the deep inside the
16 rectum. When I did the dissection of the rectum
17 this would indicate there was something in the
18 rectum that left those materials but there were
19 sharp force injuries inside the rectum.

20 Q. Would there have been this sharp force a
21 knife or whatever, would it have gone into the anal
22 opening at all?

23 A. It cut through the anal opening.

24 MR. JORGENSEN: Okay. I'll pass the
25 witness.

CROSS-EXAMINATION

1

2 BY MR. KOHN:

3 Q. Dr. Sims, you indicated that the back of the
4 head, the wound was scraped; is that correct?

5 A. It was the left side of the head a parallel
6 abrasion.

7 Q. I misunderstood.

8 A. In the back of the head there was a
9 significant blood -- amount of blood underneath the
10 skin and there was discoloration, blunt trauma
11 impact to the back of the head, yes.

12 Q. Can you describe that in more detail.

13 A. On the back of the head there was on the
14 surface of the skin was a blue violet discoloration
15 two and a half inches in dimension. It was
16 consistent with a bruise. Then after the skin was
17 brought back over that area to look at the
18 subcutaneous tissues. There was a broad area of
19 hemorrhage on the back of the head that also had
20 clot formation. There was so much blood it
21 actually started to clot.

22 Q. Could that have been the killing blow?

23 A. No, not if you're talking about what I
24 described. It would indicate that there was a
25 severe blow and that in and of itself would not

1 necessarily be lethal to an adult.

2 Q. You indicated some type of scrape abrasion
3 around the wound on the back of head?

4 A. No, contusion.

5 Q. I believe the district attorney asked if it
6 could have been just crushed against the pavement;
7 is that correct?

8 A. There was some discussion of that, yes, that
9 can explain this type of hemorrhage and bruise on
10 the back of the head, yes.

11 Q. Did it look to you like that also could have
12 been from some type of object that struck his head
13 and not on the ground?

14 A. Yes, it's possible.

15 Q. What type of object, could it have been a
16 shoe?

17 A. It could be any kind of object that had a
18 fairly uniform surface, you know, one that wouldn't
19 leave an imprint. Any blunt object that had a
20 fairly uniform surface.

21 Q. What about the scrape on the side of -- the
22 left side of the face, you indicate parallel lines;
23 is that correct?

24 A. Yes.

25 Q. What's that indicate to you?

000033

1 A. That would indicate the surface was granular
2 or, you know, I guess an example it could be
3 concrete or something scraped across that had a
4 rough surface would cause parallel abrasions.

5 Q. Not a hand?

6 A. No, I've never -- if they had some kind
7 jewelry on or something but a fist as far as a hand
8 wouldn't cause that, no.

9 Q. Could you tell how many times the head had
10 been struck?

11 A. No, I didn't make a count. And there were
12 several areas that had confluent injuries, so there
13 was a number of injuries. They struck those areas
14 a number of times.

15 Q. But that most likely killed this man; is
16 that correct?

17 A. Well, what killed him was a combination of
18 this severe head trauma and stab wounds and severed
19 carotid artery, in my opinion.

20 Q. So you couldn't tell if he died of simply
21 because of loss of blood; is that what you're
22 saying?

23 A. The internal organs were very pale
24 consistent with acute blood loss and that
25 definitely would have been a mechanism whereby the

000034

1 stab wound for instance would have killed him.

2 Q. But it's clear to you every one of the stab
3 wounds was post mortem; is that right?

4 A. Not every one of the stab wounds, for
5 instance, in the rectum was ante-mortem, several
6 were ante-mortem. The ones I saw on the abdomen,
7 were post mortem stab wounds.

8 Q. And your testimony was that the penis was
9 severed post mortem?

10 A. It is my opinion that that trauma occurred
11 post mortem.

12 Q. Now, you did this autopsy around noon on
13 July 9th?

14 A. Correct.

15 Q. Do you have opinion when this person died?

16 A. No. And I think the subject was brought up
17 that wasn't an issue at the time of the case. I
18 may be able to do some testing and come up with a
19 broad window, if that's an issue that will serve
20 the court. I don't have any opinion as of right
21 now.

22 Q. Could it have been 48 hours?

23 A. No, sir.

24 Q. What window are we talking about?

25 A. The body wasn't manifesting any significant

1 degree of decomposition, so I would say he had died
2 a lot closer to the time he was discovered than
3 not. So it was definitely within 24 hours. And
4 probably more likely than not some time within 12
5 hours of when he was discovered.

6 Q. You indicated there's some tests you could
7 have done with the fluid in the eyes; is that
8 correct?

9 A. That is correct.

10 Q. Is that test still available to us?

11 A. Yes, sir.

12 Q. You indicated also that there was some
13 silver particles found within the body; is that
14 correct?

15 A. Yes, sir.

16 Q. One was taken by the Metropolitan Police
17 Department?

18 A. As I recall I didn't note that in my report,
19 if my memory serves me since it just happened a few
20 weeks ago, I thought because I remember -- I do
21 remember drawing their attention and I thought they
22 did take some of those in evidence and some were
23 left and would have stayed with the body.

24 Q. Have you had a chance to review the
25 toxicology report that is part of the autopsy

1 report?

2 A. Yes, sir.

3 Q. And it indicates that there was cocaine
4 metabolites found that was one nanogram per
5 milliliter; is that correct?

6 A. Yes.

7 Q. Can you tell us how much is that?

8 A. That's pretty low and there's cocaine in
9 their breakdown, which cocaine was used some hours
10 prior to death.

11 Q. But since no cocaine was found in the
12 bloodstream the cocaine was not taken right around
13 the time of death; is that right?

14 A. That correct.

15 MR. KOHN: I have no further questions.

16 Thank you.

17 THE COURT: Redirect?

18 MR. JORGENSEN: No redirect.

19 THE COURT: Thank you. You are free to
20 go back to work. Thank you, sir.

21 MR. JORGENSEN: Tom Thowsen.

22 (Whereupon Tom Thowsen was duly sworn.)

23 THE CLERK: State your name for the
24 record and spell your last name.

25 THE WITNESS: Tom D. Thowsen,

000037

1 T-H-O-W-S-E-N.

2 DIRECT EXAMINATION

3 BY MR. JORGENSEN:

4 Q. What's your profession?

5 A. Homicide Detective Las Vegas Police
6 Department.

7 Q. How long have you been a homicide detective?

8 A. Nine and a half years.

9 Q. How long have you been a police officer?

10 A. 25 years.

11 Q. You were a detective before you went to
12 homicide?

13 A. Yes.

14 Q. How long have you been a Detective?

15 A. For about five years.

16 Q. Before going to homicide that was robbery?

17 A. Yes.

18 Q. Detective, were you assigned to investigate
19 a homicide of Duran Bailey?

20 A. Yes.

21 Q. How did you first get involved with the
22 case?

23 A. I was originally called at my residence by
24 my supervisor Sergeant Hefner and directed to
25 respond with my partner Detective LaRochelle to the

000038

1 scene at 4240 West Flamingo.

2 Q. What day was that?

3 A. That would have been the 8th of July of this
4 year.

5 Q. About what time?

6 A. I think I got the call a little bit after
7 midnight. I believe I arrived at about 12:55 in
8 the morning.

9 Q. You got the call on the 8th and arrived on
10 the early morning hours of the 9th?

11 A. It would have been the 9th when I actually
12 received the phone call.

13 Q. Where was the location?

14 A. It was 4240 West Flamingo. It was the
15 parking lot area of the Nevada State Bank.

16 Q. Is that near Flamingo and Swenson?

17 A. Flamingo and Arville.

18 Q. Is that in Clark County, Nevada?

19 A. Yes, it is.

20 Q. When you arrived what did you see?

21 A. When I arrived I met with Sergeant Hefner
22 and my partner, we initially spoke together and
23 determined that it was my turn to interview
24 witnesses and Detective LaRochelle's turn to manage
25 the crime scene from that point. We were

000039

1 introduced to the general assignment detective that
2 was already on the scene and met with the person
3 reporting the incident and then were able to
4 examine the actual scene itself.

5 Q. So your main job was to interview witnesses
6 and Detective LaRochelle was to do the scene. Did
7 you look at the scene?

8 A. Yes, I did.

9 Q. Were you there for a while?

10 A. For hours.

11 Q. Initially would you describe to the Judge
12 what the scene looked like?

13 A. The scene was in the northwest corner of the
14 parking lot. There is a covered area in which is a
15 full enclosure for a large trash container, the
16 type they can actually pick up and dump in. And
17 the actual bin area had walls on three sides metal
18 gates and a chain link fence on the top. The gates
19 were opened at the time we were there and there was
20 a large trash container that was there. There was
21 a large area behind the dumpster, it was basically
22 a small mountain of trash that has been disbursed
23 around the area.

24 Q. Initially when you got there you saw all the
25 trash were you able to see the body of Duran

000040

1 Bailey?

2 A. Yes, I could see a very little bit, a
3 portion of a foot and you can see a little top of
4 the head under some cardboard and a little bit of
5 his chest area. And then as the crime analyst
6 photographs and they carefully remove things and
7 collect evidence and reveal more and more of body
8 as time went on.

9 Q. Over these hours were you present when the
10 crime analyst would move some of the trash and
11 collect evidence and continue uncovering this crime
12 scene?

13 A. Yes.

14 Q. Now, eventually when the crime scene analyst
15 was able -- I assume there was more than one?

16 A. Yes, there was.

17 Q. They uncovered the body, what did you see?

18 A. I saw a body of a black male lying on his
19 back. You could see there was trauma to the face;
20 there was dried blood on the face; there was dried
21 blood on the chest area. Once the plastic and
22 other garbage was removed then I could see the
23 person's pants were not attached around and were
24 pulled down towards the knees. That's when I
25 noticed that the penis had been removed.

000041

1 Q. Now, initially when you saw Mr. Bailey's
2 body there after it had been all uncovered and
3 realized that his penis had been severed, was the
4 penis -- did you see that penis?

5 A. Initially, no.

6 Q. Were you to able to find the penis?

7 A. Yes.

8 Q. Where was that?

9 A. After more of the garbage was carefully
10 moved bit by bit by the crime scene analyst, the
11 penis was located a little bit to the west of
12 where the body was just a few feet still in the
13 enclosed area on a section of cardboard that was
14 covered in blood.

15 Q. Now, this area where the penis was found you
16 say that the cardboard that was covered in blood,
17 that wasn't right where the Mr. Bailey's body was
18 laying; is that correct?

19 A. No, that wasn't directly underneath the body
20 that was further to the west of the body which
21 actually was in the corner of this enclosure that
22 held the dumpster.

23 Q. Would you say that -- you say there was a
24 wall that went around three sides and in one corner
25 was where you saw the cardboard with blood on it

000042

1 and penis?

2 A. That would be southwest corner.

3 Q. Then away from there how many feet away
4 roughly was the body?

5 A. Roughly five feet.

6 Q. And then where he was compared to where all
7 the blood that you found and the penis, where was
8 this dumpster?

9 A. The dumpster would be another foot or two to
10 the east.

11 Q. So would you just without having you
12 diagram, would you say that man's body was in
13 between where you found all of the blood and where
14 the dumpster was?

15 A. Yes, precisely.

16 Q. And did you ever form an opinion of where
17 you think Mr. Bailey was killed?

18 A. Yes.

19 Q. Where was that?

20 A. Right there in the location in the enclosure
21 that held the dumpster.

22 Q. Do you believe -- do you have an opinion
23 whether you thought he was killed where you found
24 his body?

25 A. Yes.

000043

1 Q. Right at the location?

2 A. No, I have an opinion of where he was
3 killed.

4 Q. What is that opinion?

5 A. That opinion is he was killed where the body
6 was found.

7 Q. Why do you say that?

8 A. Because there was no immediate pool, large
9 pool of blood or spatter as there was in the corner
10 just to the west of where the body was.

11 Q. Now, you said blood splatter what are you
12 talking about that was immediately west, what do
13 you mean?

14 A. In the southwest corner of this enclosure,
15 just adjacent to where the cardboard is, on the
16 cardboard the blood spatter that was on the
17 vertical surface of the enclosure.

18 Q. What causes an object to have splatter?

19 A. It causes splatter by one object hits in a
20 pool area of splatter and causes it to splatter.

21 Q. You say there was splatter on the walls
22 then?

23 A. Yes.

24 Q. It was closer to the cardboard with all of
25 the blood?

000044

1 A. Yes.

2 Q. And I'm not going to ask every single thing
3 you found at the scene and the crime scene analyst
4 recovered and all the evidence, was there anything
5 of note at the crime scene?

6 A. Of note was the penis that was recovered and
7 there was several teeth which were recovered.
8 There was the absence of any knife or similar
9 weapon that could have caused injury.

10 Q. Where were the teeth found that you saw?

11 A. They were found on the ground adjacent to
12 the cardboard piece that had blood on it.

13 Q. So it was closer to where the cardboard was
14 than where his body was?

15 A. Probably in between there.

16 Q. They weren't altogether?

17 A. They were separate.

18 Q. Now initially, we are back to the early
19 morning of July 9th of this last month; is that
20 correct?

21 A. Correct.

22 Q. What did you -- did you try to determine any
23 suspects in this case?

24 A. Yes.

25 Q. What did you do?

000045

1 A. Initially after leaving the scene as
2 daylight was breaking we went back to the office to
3 try and put our heads together to determine what we
4 had before us. We received additional information
5 from one of the criminal scene analysts at the
6 scene that a person had come to the scene and
7 wanted to talk to the police and was inquiring
8 about the death. We determined that there was a
9 female named Diane Parker that had come to the
10 scene and indicated that she had been a victim of a
11 crime a week prior and wanted to know if this was
12 perhaps the same person that had attacked her.
13 That person gave the officers and crime scene
14 analyst at the scene her name, address, and phone
15 number. And that was passed to us so we could go
16 immediately and contact her and speak with her.

17 Q. Then you ended up following up and talked to
18 this woman?

19 A. Yes.

20 Q. This woman that you met with the person that
21 she was referring to actually happens to be the
22 person who died?

23 A. That is correct.

24 Q. It is the person who died?

25 A. Yes.

000046

1 Q. So was she -- what was her name?

2 A. Diane Parker, I believe, is the last name.

3 Q. She did -- were you looking at her as a
4 possible suspect?

5 A. Yes, initially.

6 Q. And anybody else that was around her, did
7 you look at also?

8 A. Yes.

9 Q. Now, eventually you were involved in
10 arresting Kirstin Blaise Lobato; is that correct?

11 A. Correct.

12 Q. When was that?

13 A. That was on the 20th of July, 2001.

14 Q. So about a week afterwards?

15 A. Yes.

16 Q. Before you -- I'm talking in between the
17 time that you discovered the body and when you
18 started to investigate until the time that you got
19 -- ended up meeting with the Defendant or arresting
20 the Defendant, what type of information -- were you
21 involved in providing information to the media
22 about this murder?

23 A. Our supervisors were.

24 Q. Was there information provided about this
25 severed penis?

000047

1 A. Initially that was withheld.

2 Q. Would you just tell the Court how you came
3 about that you even started to investigate the
4 Defendant? Before I go on, we talked about the
5 Defendant. Is she in here?

6 A. Yes, she is.

7 Q. Point to her and describe what she's
8 wearing.

9 A. The young lady wearing the blue top and
10 bottoms and orange socks.

11 MR. KOHN: I'll stipulate, Your Honor.

12 THE COURT: Noted.

13 BY MR. JORGENSEN:

14 Q. How was it that you -- just generally how
15 was it that you just started to look in the area of
16 investigating the Defendant?

17 A. I received a phone call from an individual
18 that was employed as a probation officer in Lincoln
19 County.

20 Q. What was her name, do you remember?

21 A. Her name was Lori Johnson.

22 Q. Did you end up talking with Laura Johnson?

23 A. Yes, I did.

24 Q. Did she provide you any name of any people
25 that had spoken with the Defendant?

1 A. Yes, she did.

2 Q. Who was that?

3 A. That was Dixie.

4 MR. KOHN: Your Honor, I assume this is
5 not offered for the truth of the matters stated.

6 MR. JORGENSEN: Absolutely.

7 MR. KOHN: Then I wouldn't object.

8 BY MR. JORGENSEN:

9 Q. So you had a conversation with this juvenile
10 probation officer and she gave you Dixie's name?

11 A. Yes.

12 Q. Just generally once again for the Court what
13 happened or what peaked your interest or why did
14 you decide this was worthwhile in investigating the
15 Defendant?

16 A. She asked me if we had someone that was
17 killed and their penis had been severed.

18 Q. That was this juvenile probation officer?

19 A. Yes, Lauren Johnson.

20 Q. So based on that information what did you
21 do?

22 A. I told her that we were in the business of
23 receiving information not passing it out and wanted
24 to know what information she had that would make
25 her call and ask that question.

000049

1 Q. Based upon the information what did you do?

2 A. I got with my partner, Detective LaRochelle,
3 and went to Panaca, Nevada.

4 Q. Did you actually have a conversation or did
5 you have an interview with Dixie or the juvenile
6 probation officer?

7 A. I spoke to the juvenile probation officer
8 and obtained a statement from her at that point.

9 Q. What did you do then?

10 A. Then I went to with my partner to contact
11 Sergeant Lee of the Lincoln County sheriff's office
12 and had them escort us to the home of Blaise
13 Lobato.

14 Q. When you went to Blaise Lobato's home, was
15 she there?

16 A. Yes, she was.

17 Q. Did you end up talking with her there?

18 A. Yes, we were invited in by her sister
19 initially and were asked to wait in the living room
20 for her to get down in the shower. She sat down
21 and spoke with us.

22 Q. Would you describe what happened when you
23 met with her, referring to the Defendant not the
24 sister?

25 A. When Miss Lobato came out of the back

1 portion of the house I stood up and introduced
2 myself as Detective Thowsen from the Metro Police
3 Department and Detective LaRochelle as a detective
4 from Metro and asked if she would speak to us. We
5 understood that she had been attacked while in Las
6 Vegas and had down something to defend herself.
7 She sat down on the ottoman of a chair and I
8 inquired a little bit further of her and pointed
9 out that we understood that she was perhaps
10 concerned that her vehicle may have been seen. It
11 has a very distinct license plate. I mentioned
12 that as well we understood that she had been hurt
13 as a child. She began to cry and said something to
14 the effect that she never thought anyone would miss
15 a person like that. I paused for a minute and I
16 gave her the rights of a person arrested from a
17 card and she read that out loud. And asked if she
18 would explain and tell us under the circumstances
19 what went on and she explained a situation which
20 occurred to her in Las Vegas.

21 Q. So now she wasn't under arrest at that time?

22 A. Not initially, No.

23 Q. However you still give her the card with the
24 Miranda warnings; is that correct?

25 A. Yes, that's correct.

000051

1 Q. You had her read her Miranda warnings and
2 she indicated she understood them?

3 A. Yes, she did.

4 Q. Did she indicate she was willing to waive
5 her rights?

6 A. Yes, she did.

7 Q. So then did you end up having -- you did
8 take a statement from her and you had a
9 conversation and allowed her to explain what it was
10 that she knew. What did she tell you?

11 A. She basically said that she had been in Las
12 Vegas and that she had been utilizing
13 methamphetamine for three days with no sleep, and
14 that she couldn't remember a lot, that she would
15 have flashes. She believed that she had gotten out
16 of her car in a parking lot near a location near
17 Sam's Town when an older black man that smelled of
18 alcohol and dirty diapers and he grabbed her and
19 attacked and he threw her down and slapped her in
20 the face and was on top of her about to sexually
21 penetrate her when she retrieved a blue butter fly
22 knife from her rear pocket in her skirt she was
23 wearing and grabbed the man's penis and testicles
24 with her left hand and cut it off. She said at
25 that point she snapped and couldn't remember what

000052

1 else happened. She ultimately says that she leaves
2 the area and that he was still crying when she
3 leaves. She gets in her car and she's covered with
4 blood. She takes off all of her clothing and
5 drives with no clothes to a former boyfriend's
6 house and no one is home. She gets in the shower
7 and changes and leaves the car there for a period
8 of time and ultimately throws away all the
9 clothing. She could not remember if she threw the
10 knife away or traded it for more drugs and
11 ultimately goes back to Panaca to her father's on
12 July 13th. She also mentioned that she worked at a
13 couple different places doing nude dancing to
14 make --

15 Q. I'm not concerned about that right at this
16 point. Now, was that when you initially talked to
17 her and that was before you took a recorded
18 statement from her or what you've described is back
19 before what she told you before the recorded
20 statement.

21 A. Basically before and after were very
22 similar. It was kind of a continuous type
23 conversation. She explained what happened. After
24 she explained what happened I told her that I would
25 like a taped statement from her to record what she

000053

1 had told us and would she agree to us questioning
2 her and she gave us the story once again.

3 Q. She said the same thing on tape?

4 A. Correct.

5 Q. Now she indicated she had been accosted by
6 an older black male?

7 A. Yes.

8 Q. Was Duran Bailey black?

9 A. Yes, he was.

10 Q. What was his age roughly?

11 A. I don't remember off the top of my head. I
12 can refer to his exact date of birth if you'd like.

13 Q. Would that refresh your recollection?

14 A. Yes.

15 MR. KOHN: No objection.

16 THE WITNESS: He was born on 2/5 of 1957
17 according to the scope printout.

18 BY MR. JORGENSEN:

19 Q. Now, she told you that this took place
20 somewhere close to Sam's Town did she say like a
21 street or anything at all?

22 A. She talked about down by Flamingo and
23 Boulder Highway.

24 Q. This wasn't where you found -- Duran
25 Bailey's body wasn't found on that side of town,

1 was it?

2 A. No, it was not.

3 Q. Where was he found?

4 A. On West Flamingo the opposite end of
5 Flamingo.

6 Q. Were you ever able to find the clothes that
7 Blaise said that she was wearing?

8 A. Only a pair of shoes which she presented to
9 us that she did not throw away.

10 Q. The knife did you ever find any?

11 A. No, we did not.

12 Q. Now, did you actually find the automobile
13 that you're talking about her personal automobile
14 that had kind of a distinct license plate on it,
15 did you ever find that car?

16 A. Yes, we did, that was in front of her
17 residence in Panaca.

18 Q. What did you do with that?

19 A. We impounded it and had it processed by the
20 crime lab.

21 Q. Did you find anything inside the vehicle
22 that was of any interest at all?

23 A. Yes, we did.

24 Q. What did you find?

25 A. We found -- our criminal analyst found some

000055

1 items.

2 Q. There was objects that might have caused
3 blunt trauma?

4 A. Yes, there was.

5 Q. What was that?

6 A. There was a baseball bat.

7 Q. At any point did you ask the Defendant about
8 the baseball bat and if she would have used that?

9 A. Not specifically that way. I believe that
10 I'd ask her if there was anything she used to hit
11 the victim other than the knife. And she mentioned
12 that possibly she had because she had a ball bat or
13 something to that effect and she didn't remember if
14 she used it. She did have a bat and it was found
15 in the car.

16 Q. Without telling us directly what was said in
17 the voluntary interview and what you've recited,
18 was there anything that she told you that recalls
19 about the actual confrontation that she had with
20 the black man that she cut his penis off?

21 A. I'm not sure specifically. Just in general
22 that's what happened.

23 MR. JORGENSEN: I'll pass the witness.

24 / / /

25 / / /

000056

1 CROSS-EXAMINATION

2 BY MR. KOHN:

3 Q. Detective, did she say that the man was
4 still alive when she left the scene?

5 MR. JORGENSEN: Objection.

6 THE COURT: What's the objection?

7 MR. JORGENSEN: Well, it's hearsay.

8 MR. KOHN: Well, Your Honor, we've gotten
9 into her statement and I need to ask the Detective
10 what she said to him.

11 MR. JORGENSEN: Actually, I think I will
12 -- I'm going to withdraw the objection.

13 THE WITNESS: I believe her answer was
14 that she was still crying at the time she left

15 BY MR. KOHN:

16 Q. Or he was moaning or something, is that what
17 she said?

18 A. Yes.

19 Q. So she believed the person still to be
20 alive?

21 MR. JORGENSEN: Objection as to what she
22 believed.

23 THE COURT: I'll sustain that one.

24 BY MR. KOHN:

25 Q. You indicated that you had a conversation

000057

1 with her prior to turning on the tape recorder; is
2 that correct?

3 A. That's correct.

4 Q. How long did you speak to her prior to
5 talking to her on the tape recorder?

6 A. Probably 15 minutes or so. You'd be able to
7 tell precisely by looking at the time of rights
8 card and see what time the time starts on the
9 statement on the taped statement.

10 Q. You don't have the rights card with you?

11 A. Yes.

12 Q. What is the time on that, assuming these are
13 accurate.

14 A. May I refer to it?

15 Q. Yes.

16 A. It's signed by Miss Lobato at 5:55 p.m. on
17 7/20 of 2001.

18 Q. How long had you talked to her before she
19 signed the rights because this wasn't when it first
20 happened?

21 A. It would probably be maybe two or three
22 minutes. It was actually -- it was very brief.

23 Q. Did you take notes of the conversation that
24 proceeded the tape recorded conversation?

25 A. I don't believe that I did because normally

000058

1 as I'm talking and asking the questions Detective
2 LaRochelle is taking notes so he probably took
3 notes.

4 Q. Did you use those notes to make a police
5 report?

6 A. Yes.

7 Q. I called you last week; is that correct?

8 A. Yes.

9 Q. At that time the police report was not
10 finished; is that correct?

11 A. That's correct.

12 Q. Is it finished now?

13 A. It's still being typed.

14 Q. It was finished -- it dictated by Detective
15 LaRochelle and will be forwarded to the D.A.'s
16 office?

17 A. Yes, as soon as it's finished.

18 MR. JORGENSEN: I'll give it to you.

19 BY MR. KOHN:

20 Q. How come it's taking so long?

21 A. Because there are some many murder cases, we
22 picked up another murder one week after this one
23 began that was an in-custody homicide. And we've
24 been interviewing people until late and travelling
25 to go Panaca, which is two and a half, three hours,

000059

1 several times.

2 Q. You indicated that when I spoke to you on
3 the phone I asked you about when Diane Parker came
4 to you and you indicated it's in the other report
5 that's not complete?

6 A. Correct.

7 Q. But you indicated that someone named Diane
8 Parker contacted you the night that you found this
9 body, the morning of the 9th. What time did you
10 get to the scene?

11 A. I believe that was about 12:55 in the
12 morning.

13 Q. Would that have been before or after
14 midnight, so it would be the 9th in the morning?

15 A. Yes.

16 Q. That's when you get to the scene?

17 A. Correct.

18 Q. When did you first learn about the other
19 person or other complainant, Diane Parker?

20 A. Sometime like 6:00, 7:00 o'clock in the
21 morning on the 9th.

22 Q. She complained she was sexually assaulted;
23 is that correct?

24 A. That's correct.

25 Q. She's the person that alleged it was the

000060

1 same person who was found dead; is that correct?

2 A. That has been established now, yes.

3 Q. Are more reports coming on that incident
4 with Miss Parker?

5 A. I believe those reports you have everything
6 that we have.

7 Q. There was not very much.

8 A. There was a voluntary statement from her and
9 I think a crime report. That's all I got from the
10 sexual assault detective.

11 Q. Is there more since then that you know of?

12 A. Not that I know of, no. Maybe I can clear
13 this up also. We did confirm with her at the
14 scene, we confirmed with that victim with the use
15 of a photograph this was the correct suspect that
16 she said sexually assaulted her.

17 Q. Okay. Did you investigate her or her peers
18 as it relates to this incident the homicide of
19 Mr. Duran?

20 THE COURT: Diane Parker?

21 THE WITNESS: Yes.

22 BY MR. KOHN:

23 Q. Are those forthcoming?

24 A. They are not actually reports. What we did
25 was ran up information we could find on Diane

000061

1 Parker to see her background and whether there was
2 a crime report and to see if persons she may know
3 that tie in.

4 Q. Without asking for her address, does she
5 live in the neighborhood of this 4240 West
6 Flamingo?

7 A. She lives approximately a block away.

8 Q. You indicated on July 20th when you first
9 met my client that you told her that you knew --
10 I'm paraphrasing what you told the D.A. -- she had
11 been a victim in the past; is that correct?

12 A. Yes.

13 Q. How did you know that?

14 A. From running Miss Lobato in scope and seeing
15 a former crime report from 1989 I believe was the
16 date and having the records pulled and the report
17 so I read that statement from her so we'd have as
18 much information as possible in a brief period
19 before making contact with her.

20 Q. You testified on direct that you found a
21 baseball bat in her vehicle; is that correct?

22 A. I didn't, the crime scene analyst found the
23 baseball bat.

24 Q. Do you know what the baseball bat looks
25 like?

1 A. I have photographs of it. It appears --

2 THE COURT: Do you have a photo?

3 MR. KOHN: I should have, yes. May I
4 approach, Your Honor?

5 THE COURT: Certainly.

6 MR. KOHN: For the record the photograph
7 we do not have but the Detective did share them
8 before the preliminary hearing.

9 BY MR. KOHN:

10 Q. For the record it looks like an aluminum or
11 some type of metal bat; is that correct?

12 A. That's correct.

13 Q. Do you know where that bat is now?

14 A. That bat is in evidence.

15 Q. Has it been analyzed in anyway?

16 A. Yes, it has.

17 Q. Are the results back on that or the analysis
18 on the bat?

19 A. I believe they are.

20 Q. Was the vehicle that you found belonging to
21 my client when you showed me the pictures was that
22 in running order?

23 A. We did not drive it, I towed it, but it
24 appeared to be in running order, yes.

25 Q. Did my client tell you when this happened

1 this incident that she was talking about to you?

2 A. As far as I recall she didn't recall
3 exactly. She talked about these flashes or
4 whatever happened because of drug use.

5 Q. She indicated that she was pretty upset;
6 isn't that correct?

7 A. Yes.

8 Q. Did you ask her to describe the area in
9 which she said the assault occurred?

10 A. Yes.

11 Q. How did she describe it?

12 A. Initially she described it as a parking
13 area. I believe she described she parked her car
14 and there's a building over to the left and just on
15 pavement. After we had taken her to the -- from
16 Panaca to the jail and the crime analysts were
17 photographing and take her clothing and impounding
18 her, she made additional comments she said -- she
19 was in a small holding cell and indicated that the
20 place was similar to a small area like this.

21 Q. Is that in the report somewhere?

22 A. That's in the one that's coming.

23 Q. But it was not in her statement while she
24 was still in Panaca?

25 A. She didn't tell us that until we arrived at

000064

1 the jail.

2 Q. Did she indicate causing any wounds other
3 than the severing of the penis or cutting off the
4 penis?

5 A. As far as I can recall she said she did that
6 and snapped and could not recall.

7 Q. And she didn't describe anything that
8 happened; is that correct?

9 A. That's correct.

10 Q. Did you ask her about anything else?

11 A. Yes.

12 Q. She said she didn't recall; is that correct?

13 A. That's correct.

14 Q. So she never described stabbing someone in
15 the neck or stomach; is that correct?

16 A. That's correct.

17 MR. KOHN: Your Honor, I have no other
18 questions.

19 MR. JORGENSEN: Just one follow-up

20

21 REDIRECT EXAMINATION

22 BY MR. JORGENSEN:

23 Q. You did ask her specifically if she
24 remembered hitting him with something besides a
25 knife?

000065

1 A. Correct.

2 Q. She said no but it's possible and then went
3 and told you she had a baseball bat?

4 A. Correct.

5 MR. JORGENSEN: No further questions.

6

7 RECROSS-EXAMINATION

8 BY MR. KOHN:

9 Q. She didn't say she hit him with a bat?

10 A. She did not.

11 MR. KOHN: No more questions.

12 MR. JORGENSEN: State rests.

13 MR. KOHN: Your Honor, the Defendant is
14 not going to put on any evidence. I have met with
15 my client and I have advised her she has the right
16 to testify at the preliminary hearing and she
17 chooses -- I have advised her not to testify. She
18 would follow my advice.

19 THE COURT: Closing argument?

20 MR. JORGENSEN: I'll waive my opening
21 argument.

22 MR. KOHN: I'll submit it.

23 MR. JORGENSEN: Submit it.

24 THE COURT: Given the Complaint on hand
25 and the testimony that we have, it appears there

000066

1 has been -- a crime has been committed. I want you
2 to understand that you have substantial defenses
3 I'm sure that you're going to raise at the time and
4 it certainly doesn't mean anything my finding with
5 regard to that, but I have at least a scintilla of
6 evidence presented to suggest that a crime has been
7 committed and that there is sufficient cause to
8 believe that Kirstin Blaise Lobato is responsible
9 for those crimes and you're hereby ordered to be
10 held over to answer to the charges in the Eighth
11 Judicial District Court --

12 MR. KOHN: Before the Court does the bind
13 over, I want to make sure he retains jurisdiction,
14 I would like to ask for a reduction in bail or an
15 O.R. on her behalf before you do anything.

16 THE COURT: Yeah. I'm sorry, go ahead.

17 MR. KOHN: Also before you gave us a date
18 both the prosecutor and I will be gone next week.
19 Can we put it off until the week of 20th?

20 THE CLERK: It's going to be August 23rd.

21 MR. KOHN: Great. Now, I want to be
22 heard on bail.

23 THE COURT: Are you going to file a
24 separate motion for that bail?

25 MR. KOHN: No, Your Honor, right now

1 there is no bail.

2 THE COURT: I understand that.

3 MR. KOHN: But I want you to reserve your
4 decision.

5 THE COURT: Are you going to file --

6 MR. KOHN: We can talk right now before
7 giving them jurisdiction.

8 THE COURT: That's fine. Go ahead and
9 make your argument with regard to bail.

10 MR. KOHN: Your Honor, this young woman
11 has no priors whatsoever. The evidence is clear at
12 least at this time, that this is man who had
13 sexually assaulted a woman a number of days before.
14 I have serious questions as to what happened on the
15 night in question. But just using the evidence as
16 presented at this hearing, my client who admitted
17 to being involved and also having admitted being
18 sexually assaulted without going into the details
19 to hurt her any worse than it is. The detective
20 brought up that she has been a victim of sexual
21 assault when she was young. And it happened more
22 than once and happened for an extended amount of
23 time. This is a young woman who needs to be at
24 home. Both her parents asked us, her stepmother
25 who now works at a juvenile facility and her father

000068

1 who has worked at Ely for a long time have been
2 correction officers and they understand what would
3 be required of them. I know that the charge is
4 homicide but this is a very unusual case. And what
5 I'm asking you to do is something creative in terms
6 of some type of house arrest. I'm not even asking
7 that she be allowed to work or go to school or
8 anything else. If the witness that testified
9 earlier, Dixie, wanted to come over and school her
10 great. If not, I think she needs to be home where
11 -- she's not doing well in custody. She has
12 emotional problems and we'll be addressing them. I
13 would like her to be sent home.

14 She was the victim in a civil case a
15 number of years ago and there's an annuity that
16 I've seen today and I can show it to the Court that
17 the father has and it doesn't mature until December
18 2002, at that time it will be worth \$32,000. What
19 I was asking you to do because it can be assigned,
20 I've read it. It could be assigned and I recommend
21 that we assign it to the Court. If she doesn't
22 show up, the Court in this jurisdiction will have
23 \$32,000 in December of 2002. But she has nowhere
24 to go. I realize we're talking about putting this
25 out of the County, but it's still within the State

000069

1 of Nevada. We'll have some type of extradition
2 which will likely send her home where she can't
3 leave home. I'm asking for this because she is not
4 a danger to anyone else. If she's not there, then
5 you can put her right back in jail no excuses. The
6 only time she'll be allowed out is to come to
7 court, see me, or see a psychologist. I know that
8 what I'm asking is a lot in a murder case but this
9 is a very unusual case. We will put \$32,000 for
10 the court. She's not going anywhere.

11 THE COURT: Counsel, can you approach
12 real quick?

13 (Discussion held off the record.)

14 MR. JORGENSEN: Let me make this argument
15 at least. Counsel started his argument out by
16 saying what we do know is that the victim had raped
17 somebody the week before. We don't really know
18 that. This woman claimed that. We don't know
19 anything else. Though it's not part of the
20 evidence since we're doing a bail motion, I can
21 report to the Court that the sexual assault
22 detective that looked at this decided that he was
23 not going to pursue it and didn't feel like there
24 was enough there per se and that's the reason he
25 choose no to do anything with that charge. And we

000070

1 do know what the Defendant tried to do and she says
2 that she was trying to in a sense protect herself
3 and ends up cutting his penis off and he is left
4 wounded or crying, and if that was all the evidence
5 we had we probably wouldn't even be here.

6 What we have is this man and his head was
7 bashed in with a bat or fist, I don't know, but his
8 head was bashed in serious enough it could kill
9 him. He was stabbed in the neck and it cut his
10 artery. It was testified that would have killed
11 him within five minutes. And with those types of
12 injuries what took place after he died, then his
13 penis was cut off and then he was slashed in the
14 rectal area with a knife and stabbed in the
15 stomach. This was a vicious, vicious attack. And
16 so the fact that we do not for sure about his
17 injuries and if you don't believe what she says,
18 we're not talking about a woman that was trying to
19 protect herself from being raped. We are talking
20 about murder.

21 The State opposes. I understand the
22 defense is trying to get an O.R. motion or house
23 arrest and I mean she lives -- does not even live
24 in our county. Counsel was saying that she needs
25 to stay with father and whatever. I'm getting

,000071

1 reports back from witnesses and all that that the
2 Defendant's father is trying to go out and talk
3 people into give alibis for her. I don't think
4 that it's appropriate to seat her with her father.
5 And so I strongly object to the motion made by
6 defense for bail or release.

7 MR. KOHN: May I have five minutes, Your
8 Honor?

9 THE COURT: Certainly. We'll be back in
10 five minutes.

11 (Off the record.)

12 THE COURT: Back on the record. With
13 regard to the bail issue, this is what we're going
14 to do. We're going to have you assign the \$32,000
15 to Clark County. That's essentially the bail more
16 or less with some conditions on it. Condition
17 number 1, that is the location which you provided
18 me an address and that I'll provide to the district
19 attorney's office, that is the location and the
20 only location where she will be. Number 2, there
21 will be extreme supervision from the parole and
22 probation. Ma'am, I want you to understand this
23 means anything, and I mean anything, that is even
24 suspect you will back in the detention center.

25 THE DEFENDANT: Okay.

000072

1 THE COURT: You will be at that location
2 end of the discussion. They will have the
3 opportunity to do any random drug tests at any
4 point in time and you have absolutely zero civil
5 rights while you're there. If they want to search
6 the room that you're staying in, you're going to
7 leave the room and allow them to. If they want to
8 take a urinalysis or if they want to watch while
9 you're doing it, that's fine. They are going to do
10 that. Do you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that the
13 only location where you can be -- as far as
14 counselling that's required at least at this time
15 that may have to be at that home, this is going to
16 be what I refer to as complete house arrest,
17 meaning you can look outside and you can walk in
18 the backyard and that's about it.

19 THE DEFENDANT: All right.

20 THE COURT: Anywhere else, anywhere else
21 off of that designated location, and you'll be back
22 in here. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: This was a difficult case for
25 me, I want you to understand that. You're very

000073

1 young and you've got some issues that you have to
2 deal with, but you have to deal with them. You're
3 represented by counsel and he's very good. I want
4 you to listen to him. I want to make sure that he
5 always knows where you are at every second of every
6 day. All right?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Is there anything else that
9 needs to be done?

10 MR. JORGENSEN: Just for the record, it
11 will be the sheriff's department and Metro who will
12 be in charge of moving her house to house so the
13 Court knows.

14 THE COURT: And this wasn't assigned
15 prior to time that she goes so if you're office can
16 prepare a simple form a one-page assignment
17 document, whatever it is. If you can prepare the
18 document to be signed and get a copy to the
19 district attorney. And MR. KOHN the transportation
20 from the detention center to this location will by
21 the Sheriff's office.

22 MR. KOHN: Yes.

23 THE COURT: And please understand I'm
24 putting a little burden on you to make sure she's
25 there. Ma'am, there's not a whole lot -- I don't

000074

1 mean to be flippant -- there's not a whole lot
2 attorneys have to offer to society other than their
3 reputation. And he's putting his reputation on the
4 line for you.

5 THE DEFENDANT: I understand that.

6 THE COURT: I will tell you as an
7 attorney that will take that much for me believe
8 that you hindered his reputation by doing anything
9 that's crossed the line. Okay?

10 THE DEFENDANT: Mm-hmm.

11 MR. KOHN: Your Honor, just so the Court
12 knows the reason why I didn't continue this when I
13 didn't have all the information is I'm leaving for
14 Europe tomorrow morning at 9:00 o'clock. I am
15 leaving it to my office to do this assigning and
16 all that. And Blaise knows this is not going to
17 happen until we make a copy and forward it to
18 everyone and talk to the house arrest people today
19 but it will probably be a little time so they can
20 secure everything.

21 THE COURT: Please make sure that whoever
22 whichever counsel is going substitute or step in as
23 lead counsel while you're gone --

24 MR. KOHN: They will substitute in for
25 the week.

000075

1 THE COURT: Make sure Mr. Jorgensen knows
2 who that is if there's any questions.

3 MR. KOHN: That will be Darren
4 Richardson.

5 THE COURT: She will bound over to answer
6 to the charges:

7 THE CLERK: August 23rd, 8:30 in
8 Department 2.

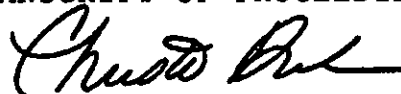
9 * * * * *

10

11 ATTEST: FULL, TRUE AND ACCURATE

12 TRANSCRIPT OF PROCEEDINGS.

13



14

15

CHRISTA D. BROKA, CCR 574

16

17

18

19

20

21

22

23

24

25

000076

ORIGINAL

FILED

2001 SEP 14 PM 3:31

Shirley L. Saniger
CLERK

1 NOTC
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 KIRSTIN BLAISE LOBATO,
12 #1691351

13 Defendant.

Case No. C177394
Dept. No. II

14
15 NOTICE OF EXPERT WITNESSES
16 [NRS 174.234 (2)]

17 TO: KIRSTIN BLAISE LOBATO, Defendant; and

18 TO: PHIL KOHN, Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
20 NEVADA intends to call expert witnesses in its case in chief as follows:

21 1. ALLEN CABRALES - This witness is an expert in the field of crime scene analysis
22 and is expected to testify hereto.

23 2. JENNY CARR - This witness is an expert in the field of crime scene analysis and is
24 expected to testify hereto.

25 3. DANIEL FORD - This witness is an expert in the field of crime scene analysis and is
26 expected to testify hereto.

27 4. TERESA MAIN - This witness is an expert in the field of crime scene analysis and
28 is expected to testify hereto.

COUNTY CLERK
RECEIVED
SEP 14 2001

000077

1 5. LOUISE RENHARD - This witness is an expert in the field of crime scene analysis
2 and is expected to testify hereto.

3 6. LARRY SIMMS - This witness is a medical examiner and is expected to testify
4 regarding the autopsy of the victim.

5 7. MARIA THOMAS - This witness is an expert in the field of crime scene analysis and
6 is expected to testify hereto.

7 8. TOM WAHL - This witness is an expert in the field of crime scene analysis and is
8 expected to testify hereto.

9 The substance of each expert witness' testimony and a copy of all reports made by or at
10 the direction of the expert witness has been provided in discovery.

11 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

12 STEWART L. BELL
13 DISTRICT ATTORNEY
14 Nevada Bar #000477

15 BY 
16 ERIC G. JORGENSON
17 Chief Deputy District Attorney
18 Nevada Bar #001802

19 CERTIFICATE OF FACSIMILE TRANSMISSION

20 I hereby certify that service of NOTICE OF EXPERT WITNESS, was made this 04
21 day of PHIL KOHN, 2001, by facsimile transmission to:

22 PHIL KOHN
23 455-6273

24 BY 
25 Employee of the District Attorney's Office
26
27
28

mb

LAS VEGAS CRIMINALISTICS BUREAU STATEMENT OF QUALIFICATIONS

Name: ALLEN CABRALES

P# 2045

Date: October 24, 1997

CURRENT CLASSIFICATION

	CLASSIFICATION	MINIMUM QUALIFICATIONS
	Crime Scene Analyst I	AA degree with major course work in criminal justice, forensic science, physical science or related field, including specialized training in crime scene investigation
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I
	Senior Crime Scene Analyst	2 years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst
X	Crime Scene Analyst Supervisor	4 years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a bachelor's degree from an accredited college or university with major course work in criminal justice, forensic science, physical science or related field.

FORMAL EDUCATION

Institution	Major	Degree/Date
Los Angeles Baptist College	Biology	BS 5/79

TESTIMONY

Yes	No	
X		Eighth Judicial District, Clark County Nevada
X		Justice Courts of Las Vegas Township

EMPLOYMENT HISTORY

Employer	Title	Date
Las Vegas Metropolitan Police Department	Crime Scene Analyst	1/80 present

PROFESSIONAL AFFILIATIONS

Organization	Date

ALLEN CABRALES
Curriculum Vitae
LVMPD P#2045

000079

LAS VEGAS CRIMINALISTICS BUREAU STATEMENT OF QUALIFICATIONS

Name: DANIEL P. FORD P# 4244 Date: October 24, 1997

CURRENT CLASSIFICATION

	CLASSIFICATION	MINIMUM QUALIFICATIONS
	Crime Scene Analyst I	AA Degree With Major Course Work In Criminal Justice, Forensic Science, Physical Science Or Related Field, Including Specialized Training In Crime Scene Investigation
	Crime Scene Analyst II	18 Months - 2 Years Continuous Service With LVMPD As A Crime Scene Analyst I
X	Senior Crime Scene Analyst	2 Years As A Crime Scene Analyst II To Qualify For The Promotional Test For Senior Crime Scene Analyst
	Crime Scene Analyst Supervisor	4 Years Continuous Service With LVMPD And Completion Of Probation As A Senior Crime Scene Analyst. Must Have The Equivalent Of A Bachelor's Degree From An Accredited College Or University With Major Course Work In Criminal Justice, Forensic Science, Physical Science Or Related Field.

FORMAL EDUCATION

Institution	Major	Degree/Date
Riverside Community College	Administration of Justice	AS 1989

TRAINING

Date	Class Title	Credit Hours
01/07/88	The Patrol Officer – Collection of Evidence, San Bernardino County Sheriff's Department	8
03/07/88 – 03/11/88	Basic Fingerprint Classification, State of California, Bureau of Criminal Identification	40
06/06/88 – 06/10/88	Scientific Investigations Bureau, San Bernardino County Sheriff's Department	
06/20/89	Degree of Associate in Science, Riverside Community College, Riverside, California	2 Years
04/20/90	Police Supervision, San Bernardino County Sheriff's Department	80
10/01/90 – 10/03/90	Advanced Palm Print Identification	
10/22/90 – 11/09/90	Field Evidence Technician, Orange, California	
04/12/91	Latent Print Techniques, California	

DANIEL P. FORD
LVMPD P#4244
Curriculum Vitae

- 1 -

000080

TRAINING

<i>Date</i>	<i>Class Title</i>	<i>Credit Hours</i>
05/13/91 – 05/14/91	Laser Enhanced Latent Evidence, Laser Safety, Chemical Processing Techniques, Ontario Police Department	
09/16/91 – 09/20/91	I.D. Specialist I Orientation	34
12/02/91	New Civilian Orientation	8
04/07/92	DOC Footwear Evidence & Safety in FA Evidence	7
09/08/92	Asian Gangs	3
12/03/92	Gangs in Clark County	3
02/08/93	Stress Management	4
02/12/93	How to Avoid Violence During a Crisis	4
03/02/93	Polilight Laser Photographing & Chemical Techniques	8
03/09/93	NCIC Videotape	
09/11/93	Southern California Association of Fingerprint Officers	8
09/14/93	Crime Scene Preservation and Investigation	3
10/15/93	Communication Skills	7
02/07/94 – 02/11/94	Advanced Latent Fingerprint Techniques	40
08/01/94	Abuse/Neglect of Elderly	2.5
08/23/94	Range Training	1
	Bloodborne Pathogens (Video)	
12/01/94	Driver's Training	8
03/15/95	Asian Gangs	3
01/12/96	Investigation of Officer-Involved Shooting	36
08/10/96	Forensic Technology for Law Enforcement	2
09/16/96 – 09/20/96	Bloodstain Evidence Workshop I	40
11/14	Driver's Training	8
01/24/97	Firearms/Range Training	2
02/12/97, 02/13/97, 02/19/97	Civilian Use of Force and Firearm Training	21
04/15/97	Firearms/Range Training	1.5

DANIEL P. FORD
 LVMPD P#4244
 Curriculum Vitae

000081

TESTIMONY

<i>Yes</i>	<i>No</i>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Eighth Judicial District, Clark County Nevada
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Justice Courts of Las Vegas Township

EMPLOYMENT HISTORY

<i>Employer</i>	<i>Title</i>	<i>Date</i>
Las Vegas Metropolitan Police Department	Crime Scene Analyst	9/91 present

PROFESSIONAL AFFILIATIONS

<i>Organization</i>	<i>Date(s)</i>
International Association Of Identification	88-present

DANIEL P. FORD
LVMPD P#4244
Curriculum Vitae

000082

LAS VEGAS CRIMINALISTICS BUREAU STATEMENT OF QUALIFICATIONS

Name: TERESA M. MAIN

P# 5062

Date: October 24, 1997

CURRENT CLASSIFICATION

	CLASSIFICATION	MINIMUM QUALIFICATIONS
X	Crime Scene Analyst I	AA degree with major course work in criminal justice, forensic science, physical science or related field, including specialized training in crime scene investigation
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I
	Senior Crime Scene Analyst	2 years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst
	Crime Scene Analyst Supervisor	4 years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a bachelor's degree from an accredited college or university with major course work in criminal justice, forensic science, physical science or related field.

FORMAL EDUCATION

Institution	Major	Degree/Date
Brooks Institute Of Photography	Industrial Scientific	BA - 11/93
Community College Of Southern Nevada	Criminal Justice	In Progress

TESTIMONY

Yes	No	
	X	Eighth Judicial District, Clark County Nevada
X		Justice Courts of Las Vegas Township

EMPLOYMENT HISTORY

Employer	Title	Date
Las Vegas Metropolitan Police	Crime Scene Analyst	07/96 - Present
LVMPD Fingerprint - Civil ID - Police Records	ID Tech	02/96 - 07/96
LVMPD Police Records	OA II	12/95 - 02/96
LVMPD Police Records	OA II	06/94 - 09/95
Santa Barbara Sheriff's Office	Records Specialist	1992 - 1994

TERESA M. MAIN
LVMPD P# 5062
Curriculum Vitae
Page -1-

000083

LAS VEGAS CRIMINALISTICS BUREAU

STATEMENT OF QUALIFICATIONS

Name:	LOUISE RENHARD	P#	5223	Date:	October 24, 1997
CURRENT CLASSIFICATION					
	<i>CLASSIFICATION</i>	<i>MINIMUM QUALIFICATIONS</i>			
X	CRIME SCENE ANALYST I	AA DEGREE WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD, INCLUDING SPECIALIZED TRAINING IN CRIME SCENE INVESTIGATION			
	CRIME SCENE ANALYST II	18 MONTHS - 2 YEARS CONTINUOUS SERVICE WITH LVMPD AS A CRIME SCENE ANALYST I			
	SENIOR CRIME SCENE ANALYST	2 YEARS AS A CRIME SCENE ANALYST II TO QUALIFY FOR THE PROMOTIONAL TEST FOR SENIOR CRIME SCENE ANALYST			
	CRIME SCENE ANALYST SUPERVISOR	4 YEARS CONTINUOUS SERVICE WITH LVMPD AND COMPLETION OF PROBATION AS A SENIOR CRIME SCENE ANALYST. MUST HAVE THE EQUIVALENT OF A BACHELOR'S DEGREE FROM AN ACCREDITED COLLEGE OR UNIVERSITY WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD.			
FORMAL EDUCATION					
<i>Institution</i>		<i>Major</i>		<i>Degree/ Date</i>	
UNIVERSITY OF ALASKA		POLICE ADMIN.		AA 12/76	
TESTIMONY					
<i>Yes</i>	<i>No</i>				
X			Eighth Judicial District, Clark County Nevada		
	X	Justice Courts of Las Vegas Township			

EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Title</i>	<i>Date</i>
LAS VEGAS METROPOLITAN POLICE DEPARTMENT	CRIME SCENE ANALYST	7/97 present
STATE OF NV GAMING CONTROL BOARD	AGENT	9/93 - 1/95
PROFESSIONAL AFFILIATIONS		
<i>Organization</i>	<i>Date (s)</i>	

LARY A. SIMMS, D.O., M.P.H.

4548 SPECIAL COURT
LAS VEGAS, NEVADA 89130
Telephone: 702-658-3578
e-mail: MEDXMNR@aol.

Marital Status: Married (June Elizabeth Clee Simms)

PRESENT POSITION

Chief Medical Examiner
Clark County Coroner/Medical Examiner Office
1704 Pinto Lane
Las Vegas, Nevada 89106
702-455-3210
POSITION: Chief Medical Examiner

PREVIOUS WORK EXPERIENCE

Perry Memorial Hospital
Perry, Oklahoma
July 1979 to September 1981

POSITION: Private solo office and hospital practice in family medicine including obstetrics (approximately 75 deliveries); 2000 hours of Emergency Department coverage; total patient contacts for period: 6,000.

Rock County Hospital and Clinic
Bassett, Nebraska
September 1981 to July 1982

POSITION: Private solo office and hospital practice in family medicine and obstetrics (approximately 10 deliveries); 2500 hours of Emergency Department coverage; total patient contacts for period: 1,200.

Park Medical Centers
2255 Fort Street
Lincoln Park, Michigan 48146
313-385-7505

August 1982 to June 1986

POSITION: Member of 20+ physician group that renders primary care in the Detroit and suburban area; hospital privileges at 250 bed acute care hospital, total patient contacts for period: 30,000.

LARY A. SIMMS, D.O., M.P.H.
Curriculum Vitae

- 1 -

000086

Taylor Physicians-Van Bom Clinic, P.C.
21711 Van Born Road
Taylor, Michigan
313-562-6040

June 1986 to January 1987

POSITION: Member of four physician group that renders primary care in the suburban Detroit area and trains family practice residents at Botsford General Hospital; hospital privileges at a 250 bed acute care hospital and a 125 bed acute care hospital; total patient contacts for period: 4500.

Michigan Health Care Center – Park Medical Centers, Inc.
2255 Fort Street
Lincoln Park, Michigan 48146
313-385-7505

January 1987 to June 1989

POSITION: Member of 60+ physician group that renders primary care in the Detroit and suburban area; hospital privileges at 250 bed acute care hospital; total patient contacts for period: 18,000.

Blodgett Memorial Medical Center
1840 Wealthy, S.E.
East Grand Rapids, Michigan 49506
616-774-7722

July 1, 1991 to January 30, 1993

POSITION: Independent contractor for autopsy services for in-house autopsies and Kent County Medical Examiner autopsies; completed approximately one hundred thirty autopsies on a fee-for-service basis.

Cook County Office of the Medical Examiner
Stein Institute of Forensic Medicine
2121 West Harrison Street
Chicago, Illinois 60612-3705
312-666-0500

July 1, 1994 to August 15, 1998

POSITION: Deputy Medical Examiner performing approximately 500-600 medico-legal investigations per year and testify 10-15 times per year.

BOARD STATUS

Board Certified in Anatomic Pathology and Clinical Pathology in 1993 by the American Board of Pathology

Board Certified in Forensic Pathology in 1994 by the American Board of Pathology

LARY A. SIMMS, D.O., M.P.H.
Curriculum Vitae

- 2 -

000087

LICENSES

Diplomate of the National Board of Osteopathic Medical Examiners (1979)

Active licenses in Illinois and Nevada

Inactive licenses in Nebraska, Michigan, Ohio and Oklahoma

EDUCATION

Oklahoma State University

Stillwater, Oklahoma

1970-71

Completed freshman year and transferred to University of Tulsa

University of Tulsa

Tulsa, Oklahoma

1971-74

MAJOR: Philosophy

G.P.A.: 3.34

DEGREE: Bachelor of Science (B.S.)

Oklahoma State University College of Osteopathic Medicine and Surgery

(formerly Oklahoma College of Osteopathic Medicine and Surgery)

1111 West 17th Street

Tulsa, Oklahoma

1974-78

DEGREE: Doctor of Osteopathy (D.O.)

Dallas Memorial Hospital (formerly Dallas Osteopathic Hospital)

5003 Ross Avenue

Dallas, Texas

One year rotating internship with elective time in anesthesiology

1978-79

Grand Rapids Medical Education Center/Michigan State University

200 Cherry Street

Grand Rapids, Michigan

Four year Anatomic and Clinical Pathology Residency

1989-1993

Office of the Medical Examiner of Cook County

Stein Institute of Forensic Medicine

2121 West Harrison Street

Chicago, Illinois 60612-3705

312-666-0500

Fellowship in Forensic Medicine

July 1, 1993 to June 30, 1994

LARY A. SIMMS, D.O., M.P.H.

Curriculum Vitae

- 3 -

000088

University of Illinois at Chicago
Office of the Dean [MC 922]
School of Public Health
2121 West Taylor Street
Chicago, Illinois 60612-7260
312-966-3832

MAJOR: Health Policy Administration and Health Information Management
G.P.A.: 4.56 (5 point grading system)
DEGREE: Master of Public Health (M.P.H.)

ASSOCIATION MEMBERSHIPS

National Association of Medical Examiners

International Association of Coroners and Medical Examiners

PRESENTATIONS, LECTURES AND ACADEMIC CONTRIBUTIONS

Ectopic Thyroid Gland in Neck: Report of a Case (clinical staff presentation 1983)

Simultaneous Intrauterine and Extra-uterine Pregnancies: Report of a Case
(clinical staff presentation 1984)

Heterozygous 21-OH Deficiency in the Father of a Neonate with Congenital Adrenal Hyperplasia: Report of a Case (clinical staff presentation 1985)

Hyperprolactinemia in an Ambulatory Clinic: Incidence, Diagnosis and Management (1985 unpublished manuscript)

Use of Plasmid Fingerprinting in the Diagnosis of Coagulase Negative Staphylococcal Septicemia (Grand Rapids Research Day presentation 1992)

Forensic Aspects of DNA (1993 Office of the Medical Examiner staff lecture series presentation)

Case Report: Lethal Morphine Doses Administered by Family Member in an Elderly Patient Admitted to a Nursing Home (1994 unpublished manuscript)

Forensic Sciences and the Medical Examiner (1994 Office of the Medical Examiner staff lecture series presentation)

Case Report: Sudden Death in A 60 Day Old Male Infant with Hypoplastic Right Coronary Artery (1995 unpublished manuscript)

Modern Death Investigation (Illinois Histology Society Annual Meeting presentation 1995)

LARY A. SIMMS, D.O., M.P.H.
Curriculum Vitae

- 4 -

000089

Database Information System for Tracking Unknown Bodies in a Medical Examiner System (1996 Office of the Medical Examiner staff lecture series presentation)

Modern Death Investigation (University of Illinois at Chicago Criminal Justice Department presentation 1996)

Case Report: Sudden Death in a 6 Day Old Male Infant with Thymic Hypoplasia and Congenital Heart Disease (1996 unpublished manuscript)

Case Report: Sudden Death and Right Ventricular Cardiomyopathy in an Adolescent Male (1996 unpublished manuscript)

Medical Examiner Information Management System: Experience of a Practicing Forensic Pathologist (1996 unpublished manuscript)

Case Report: Sudden Death in a Neonate with Congenital Aneurysm of the Right Ventricle (in preparation)

Case Report: Sudden Death Due to Group A Streptococcal Necrotizing Fasciitis in an HIV-Positive Adult (in preparation)

Modern Death Investigation (University of Illinois at Chicago Criminal Justice Department presentation 1997)

Modern Death Investigation (Midwestern University Faculty Guest Lecture Series presentation 1997)

Modern Death Investigation (Clinical Staff Cook County Department of Corrections and Cermack Hospital presentation 1997)

Suicide and Illinois Law (1997 Office of the Medical Examiner staff lecture series presentation)

Total Quality management in a Medical Examiner System (1997 Master of Public Health program)

Lymphoid Activation in Sudden Infant Death Syndrome: Histology of the Lymph Nodes and Spleen in SIDS Deaths in Chicago 1995-97 (grant application in preparation)

ACADEMIC APPOINTMENTS, AWARDS AND ACTIVITIES

Office of the Medical Examiner Liaison for the University of Illinois at Chicago
Department of Criminal Justice (1996 to 1998)

Medical Consultant to the Industrial Commission of the Illinois State Attorney
General's Office (1996 to 1998)

Grand Rapids Area Medical Education Council Research Foundation Award
(1992) for Clinical Research of Bacterial Plasmids

Chief Resident, Grand Rapids Area Medical Education Center/Michigan State
University Pathology Program (1991-1992)

Clinical Instructor, Michigan State University, Colleges of Human and
Osteopathic Medicine (1990-1992)

Clinical Instructor to clinical clerks from the College of Osteopathic Medicine in
Des Moines, Iowa (1985 to 1989)

Clinical Instructor to Family Practice Residents at Botsford General Hospital and
Michigan Osteopathic Medical Center, Detroit, Michigan (1986-1989)

Advanced Trauma Life Support Certified, 1984

Advanced Cardiac Life Support Certified, 1983

Clinical Instructor to Emergency Medical Services, Rock County, Nebraska
(1981)

Chief of Staff, Perry Memorial Hospital in Perry, Oklahoma (1980-81)

Chief Physician, Noble County Planned Parenthood Clinic (1980-81)

Clinical Instructor, Emergency Medical Services, Noble County, Oklahoma
(1980)

Intern of the Year, Dallas Memorial Hospital, 1979
University of Tulsa President's Honor Roll (4.0 GPA) in 1973 and 1974

Published in the University of Tulsa Poetry Review for two consecutive years
(1973-74)

LARY A. SIMMS, D.O., M.P.H.
Curriculum Vitae

- 6 -

000091

LARY A. SIMMS, D.O., M.P.H.

4548 SPECIAL COURT
LAS VEGAS, NEVADA 89130
Telephone: 702-658-3578
e-mail: MEDXMNR@aol.
Marital Status: Married (June Elizabeth Clee Simms)

PRESENT POSITION

Chief Medical Examiner
Clark County Coroner/Medical Examiner Office
1704 Pinto Lane
Las Vegas, Nevada 89106
702-455-3210
POSITION: Chief Medical Examiner

PREVIOUS WORK EXPERIENCE

Perry Memorial Hospital
Perry, Oklahoma
July 1979 to September 1981
POSITION: Private solo office and hospital practice in family medicine including obstetrics (approximately 75 deliveries); 2000 hours of Emergency Department coverage; total patient contacts for period: 6,000.

Rock County Hospital and Clinic
Bassett, Nebraska
September 1981 to July 1982
POSITION: Private solo office and hospital practice in family medicine and obstetrics (approximately 10 deliveries); 2500 hours of Emergency Department coverage; total patient contacts for period: 1,200.

Park Medical Centers
2255 Fort Street
Lincoln Park, Michigan 48146
313-385-7505
August 1982 to June 1986
POSITION: Member of 20+ physician group that renders primary care in the Detroit and suburban area; hospital privileges at 250 bed acute care hospital, total patient contacts for period: 30,000.

LARY A. SIMMS, D.O., M.P.H.
Curriculum Vitae

- 1 -

000092

Taylor Physicians-Van Born Clinic, P.C.
21711 Van Born Road
Taylor, Michigan
313-562-6040

June 1986 to January 1987

POSITION: Member of four physician group that renders primary care in the suburban Detroit area and trains family practice residents at Botsford General Hospital; hospital privileges at a 250 bed acute care hospital and a 125 bed acute care hospital; total patient contacts for period: 4500.

Michigan Health Care Center – Park Medical Centers, Inc.
2255 Fort Street
Lincoln Park, Michigan 48146
313-385-7505

January 1987 to June 1989

POSITION: Member of 60+ physician group that renders primary care in the Detroit and suburban area; hospital privileges at 250 bed acute care hospital; total patient contacts for period: 18,000.

Blodgett Memorial Medical Center
1840 Wealthy, S.E.
East Grand Rapids, Michigan 49506
616-774-7722

July 1, 1991 to January 30, 1993

POSITION: Independent contractor for autopsy services for in-house autopsies and Kent County Medical Examiner autopsies; completed approximately one hundred thirty autopsies on a fee-for-service basis.

Cook County Office of the Medical Examiner
Stein Institute of Forensic Medicine
2121 West Harrison Street
Chicago, Illinois 60612-3705
312-666-0500

July 1, 1994 to August 15, 1998

POSITION: Deputy Medical Examiner performing approximately 500-600 medico-legal investigations per year and testify 10-15 times per year.

BOARD STATUS

Board Certified in Anatomic Pathology and Clinical Pathology in 1993 by the American Board of Pathology

Board Certified in Forensic Pathology in 1994 by the American Board of Pathology

LARY A. SIMMS, D.O., M.P.H.
Curriculum Vitae

- 2 -

000093

LICENSES

Diplomate of the National Board of Osteopathic Medical Examiners (1979)
Active licenses in Illinois and Nevada
Inactive licenses in Nebraska, Michigan, Ohio and Oklahoma

EDUCATION

Oklahoma State University
Stillwater, Oklahoma
1970-71
Completed freshman year and transferred to University of Tulsa

University of Tulsa
Tulsa, Oklahoma
1971-74
MAJOR: Philosophy
G.P.A.: 3.34
DEGREE: Bachelor of Science (B.S.)

Oklahoma State University College of Osteopathic Medicine and Surgery
(formerly Oklahoma College of Osteopathic Medicine and Surgery)
1111 West 17th Street
Tulsa, Oklahoma
1974-78
DEGREE: Doctor of Osteopathy (D.O.)

Dallas Memorial Hospital (formerly Dallas Osteopathic Hospital)
5003 Ross Avenue
Dallas, Texas
One year rotating internship with elective time in anesthesiology
1978-79

Grand Rapids Medical Education Center/Michigan State University
200 Cherry Street
Grand Rapids, Michigan
Four year Anatomic and Clinical Pathology Residency
1989-1993

Office of the Medical Examiner of Cook County
Stein Institute of Forensic Medicine
2121 West Harrison Street
Chicago, Illinois 60612-3705
312-666-0500
Fellowship in Forensic Medicine
July 1, 1993 to June 30, 1994

LARY A. SIMMS, D.O., M.P.H.
Curriculum Vitae

- 3 -

000094

University of Illinois at Chicago
Office of the Dean [MC 922]
School of Public Health
2121 West Taylor Street
Chicago, Illinois 60612-7260
312-966-3832

MAJOR: Health Policy Administration and Health Information Management
G.P.A.: 4.56 (5 point grading system)
DEGREE: Master of Public Health (M.P.H.)

ASSOCIATION MEMBERSHIPS

National Association of Medical Examiners

International Association of Coroners and Medical Examiners

PRESENTATIONS, LECTURES AND ACADEMIC CONTRIBUTIONS

Ectopic Thyroid Gland in Neck: Report of a Case (clinical staff presentation 1983)

Simultaneous Intrauterine and Extra-uterine Pregnancies: Report of a Case
(clinical staff presentation 1984)

*Heterozygous 21-OH Deficiency in the Father of a Neonate with Congenital
Adrenal Hyperplasia: Report of a Case* (clinical staff presentation 1985)

*Hyperprolactinemia in an Ambulatory Clinic: Incidence, Diagnosis and
Management* (1985 unpublished manuscript)

*Use of Plasmid Fingerprinting in the Diagnosis of Coagulase Negative
Staphylococcal Septicemia* (Grand Rapids Research Day presentation 1992)

Forensic Aspects of DNA (1993 Office of the Medical Examiner staff lecture
series presentation)

*Case Report: Lethal Morphine Doses Administered by Family Member in an
Elderly Patient Admitted to a Nursing Home* (1994 unpublished manuscript)

Forensic Sciences and the Medical Examiner (1994 Office of the Medical
Examiner staff lecture series presentation)

*Case Report: Sudden Death in A 60 Day Old Male Infant with Hypoplastic Right
Coronary Artery* (1995 unpublished manuscript)

Modern Death Investigation (Illinois Histology Society Annual Meeting
presentation 1995)

LARY A. SIMMS, D.O., M.P.H.
Curriculum Vitae

- 4 -

000095

Database Information System for Tracking Unknown Bodies in a Medical Examiner System (1996 Office of the Medical Examiner staff lecture series presentation)

Modern Death Investigation (University of Illinois at Chicago Criminal Justice Department presentation 1996)

Case Report: Sudden Death in a 6 Day Old Male Infant with Thymic Hypoplasia and Congenital Heart Disease (1996 unpublished manuscript)

Case Report: Sudden Death and Right Ventricular Cardiomyopathy in an Adolescent Male (1996 unpublished manuscript)

Medical Examiner Information Management System: Experience of a Practicing Forensic Pathologist (1996 unpublished manuscript)

Case Report: Sudden Death in a Neonate with Congenital Aneurysm of the Right Ventricle (in preparation)

Case Report: Sudden Death Due to Group A Streptococcal Necrotizing Fasciitis in an HIV-Positive Adult (in preparation)

Modern Death Investigation (University of Illinois at Chicago Criminal Justice Department presentation 1997)

Modern Death Investigation (Midwestern University Faculty Guest Lecture Series presentation 1997)

Modern Death Investigation (Clinical Staff Cook County Department of Corrections and Cermack Hospital presentation 1997)

Suicide and Illinois Law (1997 Office of the Medical Examiner staff lecture series presentation)

Total Quality management in a Medical Examiner System (1997 Master of Public Health program)

Lymphoid Activation in Sudden Infant Death Syndrome: Histology of the Lymph Nodes and Spleen in SIDS Deaths in Chicago 1995-97 (grant application in preparation)

ACADEMIC APPOINTMENTS, AWARDS AND ACTIVITIES

Office of the Medical Examiner Liaison for the University of Illinois at Chicago
Department of Criminal Justice (1996 to 1998)

Medical Consultant to the Industrial Commission of the Illinois State Attorney
General's Office (1996 to 1998)

Grand Rapids Area Medical Education Council Research Foundation Award
(1992) for Clinical Research of Bacterial Plasmids

Chief Resident, Grand Rapids Area Medical Education Center/Michigan State
University Pathology Program (1991-1992)

Clinical Instructor, Michigan State University, Colleges of Human and
Osteopathic Medicine (1990-1992)

Clinical Instructor to clinical clerks from the College of Osteopathic Medicine in
Des Moines, Iowa (1985 to 1989)

Clinical Instructor to Family Practice Residents at Botsford General Hospital and
Michigan Osteopathic Medical Center, Detroit, Michigan (1986-1989)

Advanced Trauma Life Support Certified, 1984

Advanced Cardiac Life Support Certified, 1983

Clinical Instructor to Emergency Medical Services, Rock County, Nebraska
(1981)

Chief of Staff, Perry Memorial Hospital in Perry, Oklahoma (1980-81)

Chief Physician, Noble County Planned Parenthood Clinic (1980-81)

Clinical Instructor, Emergency Medical Services, Noble County, Oklahoma
(1980)

Intern of the Year, Dallas Memorial Hospital, 1979
University of Tulsa President's Honor Roll (4.0 GPA) in 1973 and 1974

Published in the University of Tulsa Poetry Review for two consecutive years
(1973-74)

LARY A. SIMMS, D.O., M.P.H.
Curriculum Vitae

- 6 -

000097

LAS VEGAS CRIMINALISTICS BUREAU

STATEMENT OF QUALIFICATIONS

Name: MARIA THOMAS	P# 4032	DATE: October 24, 1997
--------------------	---------	------------------------

CURRENT CLASSIFICATION

	CLASSIFICATION	MINIMUM QUALIFICATIONS
X	CRIME SCENE ANALYST I	AA DEGREE WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD, INCLUDING SPECIALIZED TRAINING IN CRIME SCENE INVESTIGATION
	CRIME SCENE ANALYST II	18 MONTHS - 2 YEARS CONTINUOUS SERVICE WITH LVMPD AS A CRIME SCENE ANALYST I
	SENIOR CRIME SCENE ANALYST	2 YEARS AS A CRIME SCENE ANALYST II TO QUALIFY FOR THE PROMOTIONAL TEST FOR SENIOR CRIME SCENE ANALYST
	CRIME SCENE ANALYST SUPERVISOR	4 YEARS CONTINUOUS SERVICE WITH LVMPD AND COMPLETION OF PROBATION AS A SENIOR CRIME SCENE ANALYST. MUST HAVE THE EQUIVALENT OF A BACHELOR'S DEGREE FROM AN ACCREDITED COLLEGE OR UNIVERSITY WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD.

FORMAL EDUCATION

Institution	Major	Degree/ Date
UNIVERSITY OF NEVADA LAS VEGAS	CRIMINAL JUSTICE	BA 12/95

TESTIMONY

Yes	No	
X		Eighth Judicial District, Clark County Nevada
X		Justice Courts of Las Vegas Township

EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Title</i>	<i>Date</i>
LAS VEGAS METROPOLITAN POLICE DEPARTMENT	CRIME SCENE ANALYST	1/97 present
LAS VEGAS METROPOLITAN POLICE DEPARTMENT	RECORDS TECHNICIAN	1/91-1/97
PROFESSIONAL AFFILIATIONS		
<i>Organization</i>	<i>Date(s)</i>	
INTERNATIONAL ASSOCIATION FOR IDENTIFICATION	9/97	

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY
STATEMENT OF QUALIFICATIONS**

Date: 8-15-97

Name: Thomas A. Wahl		P#: 5019	Classification: Criminalist II
Current Discipline of Assignment: Serology / DNA Analysis			
EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Blood Alcohol	
Toolmarks		Breath Alcohol	
Trace Evidence	X	Arson Analysis	
Toxicology		Firearms	
Latent Prints		Crime Scene Investigations	
Serology	X	Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	X
EDUCATION			
<i>Institution</i>	<i>Dates Attended</i>	<i>Major</i>	<i>Degree Completed</i>
University of Wisconsin - La Crosse La Crosse, Wisconsin	1972 - 1977	Medical Technology	BS
ADDITIONAL TRAINING / SEMINARS			
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>	
Advanced Serology Workshop	Illinois Dept. Of Law Enforcement Training Academy / Springfield, IL	8/82	
GM-KM Immunoglobulin Allotyping Workshop	Louisiana State Police Academy / Baton Rouge, Louisiana	3/87	
Statistics Course	Florida Dept. of Law Enforcement Academy / Orlando, FL	5/87	
Isoelectric Focusing Workshop	Florida Dept. Of Law Enforcement Academy / Tallahassee, FL	3/88	
Techniques in Gene Manipulation	Graduate School Course (3 credits)	May-June 1988	
Semen Analysis Workshop	Florida Dept. Of Law Enforcement Academy, Tampa, FL	8/88	
Non-Isotopic Detection of DNA Polymorphisms	Allotype Genetic Testing, Inc. Atlanta, GA	8/88	
Advanced Serology Workshop	Allotype Genetic Testing, Inc. Atlanta, GA	9/88	
Non-Isotopic Detection of DNA Polymorphisms with Applications to Forensic	Allotype Genetic Testing, Inc. Atlanta, GA	12/88	

000100

& Paternity Testing, Bone Marrow Transplantation		
Instructor for Basic/Advanced Serology and PCR Workshops	Analytical Genetic Testing Center Denver, CO	1990 - 1993
Non-Isotopic Analysis of Polymorphic Short Tandem Repeats (STR) Loci Workshop	Promega Corp. Madison, WI	10/93
DNA Typing with STRs Workshop	Promega Corp. Madison, WI	5/95
A Workshop in Statistics for Forensic Scientists	National Forensic Science Technology Center / St. Petersburg, FL	1/96
Statistics Workshop; Seventh International Symposium on Human Identification	Promega Corp. Scottsdale, AZ	9/96

COURTROOM EXPERIENCE

<i>Court</i>	<i>Discipline</i>	<i>Number of Times</i>
19 U.S. Jurisdictions 1 Canadian Jurisdiction	Hairs, Serology, DNA Analysis	>200

EMPLOYMENT HISTORY

<i>Employer</i>	<i>Job Title</i>	<i>Date</i>
Las Vegas Metropolitan Police Department / Las Vegas, NV	Criminalist II	9/95 - present
Genelex Corp. / Seattle, WA	Forensic Supervisor	6/93 - 8/95
Analytical Genetic Testing Center / Denver, CO	Senior Forensic Geneticist	9/88 - 6/93
Florida Dept. Of Law Enforcement Tampa Regional; Crime Laboratory	Crime Lab Analyst - Serology	11/86 - 9/88
Wisconsin Dept. Of Justice Milwaukee Regional Crime Lab	Crime Lab Analyst - Micro/Serology	1/80 - 2/85

PROFESSIONAL AFFILIATIONS

<i>Organization</i>	<i>Date(s)</i>
American Academy of Forensic Sciences	1993 - 1997
Midwestern Association of Forensic Scientists	1982-1984 1992-1997
Southwest Association of Forensic Scientists	1991 - 1997
Southern Association of Forensic Scientists	1987 - 1997

PUBLICATIONS / PRESENTATIONS:

Casework Presentation *APOB Amplified Fragment Length Polymorphism*
Southwest Association of Forensic Scientists
Estes Park, Colorado / October 1992

Forensic Validation Studies on the APOB Amplified Fragment Length Polymorphism
American Academy of Forensic Science / Boston, MA
February 1993, Dr. Moses Schanfield Presenter, Thomas A. Wahl Co-Author.

HLA DQA1 Testing of Non-Human DNA,
Northwest Association of Forensic Scientists

000101

9/14/01

Bend, Oregon / April 1993
<i>Forensic Validation Studies on the APOB Amplified Fragment Length Polymorphism</i> Northwest Association of Forensic Scientists Bend, Oregon / April 1993
<i>Qualitative and Quantitative Assessment of DNA Using Alpha Satellite DNA</i> Midwest Association of Forensic Scientists Madison, Wisconsin / October 1993
<i>Species Specificity Studies using the Amplitype™ Polymarker PCR System</i> Fifth International Symposium on Human Identification Promega Corporation, Scottsdale, Arizona / October 1994
<i>PCR on Trial</i> Joint Meeting of the Canadian Society of Forensic Science and the Northwest Association of Forensic Scientists Forensic Use of PCR Analysis Workshop Vancouver, B.C. / November 1994
<i>To Chelex or Not to Chelex, That is the Question</i> American Academy of Forensic Sciences Seattle, Washington / February 1995
<i>Implementation Studies on the Analysis of the Amplitype Polymarker PCR System</i> American Academy of Forensic Sciences Seattle, Washington / February 1995
<i>Interpretation of DQA1 and Polymarker Dot Blot Data In Mixed and Partially Degraded Specimens</i> California Association of Criminalists, DNA User's Group Seminar Walnut Creek, California / May 1995
<i>Presentation of DNA Evidence - A View from the Expert's Eyes</i> National College of District Attorneys Forensic Evidence Course San Francisco, CA / December 1995
<i>Demonstration: Cross-Examination of DNA Expert—Issue: Quality Control of Lab/Contamination</i> National College of District Attorneys Forensic Evidence Course San Francisco, California / December 1995 Co-Presenter: George Clarke, Deputy District Attorney, Office of the District Attorney, County of San Diego
<i>Resource Session: Serological Evidence in Sexual Assault Cases (When DNA Evidence is Not Available)</i> National College of District Attorneys Forensic Evidence Course San Francisco, California / December 1995
<i>Resource Session: Direct Examination: Introduction of Serological Evidence to Prove Criminal Participation</i> National College of District Attorneys Forensic Evidence Course San Francisco, California / December 1995 Co-Presenter: George Clarke, Deputy District Attorney, Office of the District Attorney, County of San Diego
Schanfield, M.S., Wahl, T.A., Latorra, David and Verret, J.H. (1993) <i>Amplified Fragment Length Polymorphisms (AFLPs) and DQA1 for Forensic Identification</i> , Fourth International Symposium on Human Identification, Promega Corporation, pp. 127-142
Latorra, David, Wahl, Thomas A., Humphreys, Kevin, Schanfield, Moses S. (1993) <i>Forensic Validation Studies on the APOB Amplified Fragment Length Polymorphism</i> , Fourth International Symposium on Human Identification, Promega Corporation, pp. 223-224
Charles S. Baker, MS, Moses S. Schanfield, PhD, Thomas A. Wahl, BS, Robin W. Cotton, PhD, Jullie A. Cooper, MFS, and Cozette Wheeler, PhD, "Proving Death Without A Body-A Case Using Electrophoresis, DNA RFLP, Gm/Km Allotyping, DNA PCR and Histology", American Academy of Forensic Science, San Antonio, Texas, February 1994

Moses S. Schanfield, PhD, David Latorra, MS, Joey Verrett, MS and Thomas A. Wahl, BS, "*Amplified Fragment Length Polymorphisms (AFLP) Inexpensive Environmentally Safe DNA Technology for Forensic Identification*", American Academy of Forensic Science, San Antonio, Texas, February 1994

OTHER QUALIFICATIONS:

American Board of Criminalistics - Diplomate and Fellow (1994 - 1997) in specialty areas of Forensic Biology, Biochemistry, and Molecular Biology.

Certified Medical Technologist by the American Society of Clinical Pathologists (A.S.C.P.) (1977 - 1997)

FILED

AUG 7 8 21 AM '02

Shirley S. Ramirez
CLERK

1 TRAN

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

COPY

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA)

Plaintiff,)

vs.)

KIRSTIN BLAISE LOBATO,)

Defendant.)

CASE NO. C177394

DEPT. NO. II

BEFORE THE HONORABLE VALORIE J. VEGA, DISTRICT JUDGE

FRIDAY, MAY 10, 2002

RECORDER'S TRANSCRIPT RE:
JURY TRIAL

VOLUME 3 - DAY 5

APPEARANCES:

For the State:

SANDRA DIGIACOMO, ESQ.
Deputy District Attorney

WILLIAM KEPHART, ESQ.
Deputy District Attorney

For the Defendant:

PHILIP KOHN, ESQ.
Special Public Defender

GLORIA NAVARRO, ESQ.
Special Public Defender

Recorded by: SHARLEEN NICHOLSON, Court Recorder

000104

1 FRIDAY, MAY 10, 2002; 8:30 A.M.

2
3 (Whereupon the following proceedings were held
4 outside the presence of the jury)

5 THE COURT: The record shall reflect that we're convened outside the
6 presence of the jury in State versus Lobato, C177394, in the presence of Miss
7 DiGiacomo, Mr. Kephart, Mr. Kohn, Miss Navarro and Miss Lobato.

8 State may proceed.

9 MR. KEPHART: Thank you, Your Honor.

10 Your Honor the hearing today we ask the Court to allow for
11 purposes of the, I believe it's a Supreme Court requirement, that we need to
12 do a voluntariness hearing because we intend to introduce the defendant's
13 statement that she gave to the police on the 20th of July.

14 Before we get started, I want to apology to the Court, I informed
15 Mr. Kohn that the statement was given in the jail. And, in fact, Mr. Kohn is
16 correct, it was given at the defendant's house in Panaca.

17 So, we're prepared to proceed on that. The detective is here, if I
18 could start, Your Honor.

19 THE COURT: You may.

20 MR. KEPHART: Okay. The State would call Detective Thowsen.

21 MR. KOHN: For the record, I knew wasn't misleading: I just knew that.
22 And it was -- it's just one line at the very end of the statement, wasn't in the
23 beginning of the statement where it normally is.

24 THE COURT: Okay. Thank you, Mr. Kohn.
25

1 **THOMAS THOWSEN**

2 having been called as a witness by the State, being first duly sworn, testified
3 as follows:

4 THE CLERK: State your name, spelling it for the record, please.

5 THE WITNESS: Thomas D. Thowsen, T-h-o-w-s-e-n.

6 **DIRECT EXAMINATION**

7 BY MR. KEPHART:

8 Q Sir, how are you employed?

9 A I'm a police officer with the Las Vegas Metropolitan Police
10 Department assigned as a homicide detective.

11 MR. KOHN: Oh, Your Honor, we can stipulate that he is a detective for
12 homicide. That he is the lead investigator in this case. And whatever else will
13 just get us right to --

14 MR. KEPHART: Okay.

15 Detective, I want to draw your attention to July 20th of 2001, ask
16 you if you had the opportunity to come into contact with an individual that you
17 know as Kirstin Blaise Lobato?

18 THE WITNESS: Yes.

19 Q (By Mr. Kephart) And, is she in the courtroom now?

20 A Yes, she is.

21 MR. KEPHART: Your Honor, just for the record can you identify her just
22 so we know who you're talking about?

23 THE WITNESS: Yes, I can.

24 Q (By Mr. Kephart) Can you point to her and tell us what she's
25

1 wearing?

2 A She's the young lady wearing the taupe colored jacket with the
3 brown hair.

4 MR. KOHN: And we'll stipulate that he identified my client, Your Honor.

5 Q (By Mr. Kephart) Okay. Where is it that you came into contact
6 with the defendant on July 20th?

7 A At her residence.

8 Q And where is that?

9 A In Panaca, Nevada.

10 Q Okay. And for what reason were you contacting her in a
11 residence in Panaca?

12 A To speak to her about a homicide investigation.

13 Q Okay. And what date was it that that homicide occurred?

14 A On the 8th of July, 2001.

15 Q In what city?

16 A In Las Vegas, Nevada, in Clark County.

17 Q And was the individual identified?

18 A Yes.

19 Q What was his name?

20 A The victim was Duran Bailey.

21 Q Okay. And can you tell me when it was that you -- what time it
22 was that you came into contact with the defendant?

23 A It was just before 6:00 in the evening.

24 Q Okay. And who was all present when you came into contact with
25

1 the defendant?

2 A It was at her residence. Her sister was in another room. A
3 Sergeant Carey Lee from the area police department was there. And, my
4 partner, Detective Jim LaRochelle.

5 Q Okay. And can you tell me if there came a point in time where
6 the defendant agreed to give you a statement with regards to your
7 investigation?

8 A Yes.

9 Q Okay. Did you inform her why you were there? Did you inform
10 her why you were there?

11 A Yes.

12 Q Did you inform her that you were a homicide detective with the
13 Las Vegas Metropolitan Police Department?

14 A That I was and that my partner, Detective LaRochelle, was.

15 Q Okay. And she agreed to give you a statement?

16 A Yes, she did.

17 Q Is there anything that you do prior to actually taking a statement
18 that you've been trained to do in the past with regards to Miranda warnings?

19 A Yes, we have a, an actual rights of person arrested card that we
20 will present to an individual that we're going to be interviewing. And if they
21 can read and write the English language, we'll normally have them read that
22 aloud or I will, is my practice, have them read that aloud to make sure that
23 they can read it at their own pace and fully understand it.

24 Q Okay.

25

1 A And then have them sign it, date it and return it to me.

2 Q Did that happen in this case?

3 A Yes, it did.

4 MR. KEPHART: May I approach, Your Honor?

5 THE COURT: You may.

6 Q (By Mr. Kephart) I'm showing you what's been marked as State's
7 Proposed Exhibit 123 and ask you if you can recognize what that is?

8 A This is a copy of the actual rights' card that has my signature on
9 it, the date of 7/20, 2001, and the time of 5:55 p.m., as well as the event
10 number and the signature of Kristin Blaise Lobato.

11 Q And who is the -- with the name of Kirstin Blaise Lobato, who
12 wrote that?

13 A The signature?

14 Q Yes.

15 A Miss Lobato wrote that.

16 Q Okay. In your presence?

17 A Yes.

18 Q Okay. What about the date and the time?

19 A The date and the time she wrote as well.

20 Q Okay. Now, that's not in the correct place on the card, is that
21 right?

22 A That's correct.

23 Q Okay. But she wrote it in on her own?

24 A Yes.

25

1 Q Okay.

2 A At my request.

3 Q Okay. And this is, also is accompanied with photographs of her?

4 A Yes, it is.

5 Q Okay. And the rights' card you indicated you had her read it?

6 A Yes, I did, out loud.

7 Q After she read it and signed it did she indicate whether or not she
8 wanted to speak to you?

9 A Yes, she did.

10 Q Just so we, you know where we're at here, did she also provide
11 to you certain consent to search for purposes of collecting DNA, her actual
12 room in Panaca and her car, her Pontiac Fiero?

13 A Yes, she did.

14 Q I'm showing you what's been marked as State's Proposed Exhibit
15 124, can you tell me if you identify those?

16 A Yes, these are copies of the three consent to search cards. These
17 were obtained after obtaining her statement from her.

18 Q Okay. And did that also take place in Panaca?

19 A Yes, it did.

20 MR. KEPHART: Your Honor, I'll move to admit State's Proposed Exhibit
21 123 and 124.

22 MR. KOHN: I guess that'd be subject to what comes out of this hearing,
23 Your Honor. I'd ask the Court to withhold.

24 THE COURT: The ruling will be held in abeyance.

25

1 Q (By Mr. Kephart) When the defendant read this rights of person
2 arrested, this is her Miranda warnings, is that correct?

3 A That is correct.

4 Q Okay. When she read these rights and signed it, you indicated
5 that she was willing to give you a statement?

6 A Yes.

7 Q And did she -- then did she give you a statement?

8 A Yes, she did.

9 Q Okay. And in that form of the statement, before she actually gave
10 you a statement on tape, did she also talk to you about why you were up there
11 investigating a homicide?

12 A Yes.

13 Q And Jim LaRoche was there as well?

14 A Yes.

15 Q Okay. And she was forthright with you?

16 A Yes, she was.

17 Q Okay. And when she agreed to give you a statement on tape--
18 and she never stopped the tape or asked you to not question her any longer or
19 anything like that?

20 A No, she did not.

21 Q Okay.

22 A She asked to go blow her nose at one point I think is the only
23 thing she asked if she could do, but nothing --

24 Q Was she allowed to do that?

25

1 A Yes, she was.

2 MR. KEPHART: Okay.

3 Your Honor, once again, I'll renew my request to admit State's
4 Proposed Exhibit 123, 124.

5 THE COURT: Would you approach so that I can review them.

6 (Reviewing)

7 Are you passing the witness?

8 MR. KEPHART: Yes, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. KOHN:

11 Q So, on July the 20th you went to Panaca to meet my client?

12 A Yes.

13 Q How were you dressed?

14 A In plainclothes like a normal day.

15 Q Were you wearing a hat that said Metro on it --

16 A No, I --

17 Q -- Metro homicide?

18 A -- I normally don't do that.

19 Q But you know what kind of hat I'm talking about?

20 A Yes.

21 Q Were you wearing a suit?

22 A I don't believe so.

23 Q But you identified yourself as a police officer?

24 A Yes.

25

1 Q But prior to going to her house you learned some things about
2 Blaise Lobato, isn't that correct?

3 A That's correct.

4 Q You Scoped her?

5 A Yes.

6 Q You learned that she was a victim?

7 A Yes, I did.

8 Q You then -- Your Honor, I'm just leading because I've read the
9 report and it'll be quicker this way.

10 And you learned that she was a victim of a child molest?

11 A Yes, 1989.

12 Q And you obtained that report and you read the report, is that
13 correct?

14 A Yes.

15 Q You went to her house?

16 A Yes.

17 Q You identified yourself?

18 A Yes.

19 Q What was the first thing you said to her?

20 A I believe the first thing that I said after introducing myself and
21 Detective LaRochelle is that we were there to talk to her because we had
22 heard that something had happened to her and she had to defend herself in Las
23 Vegas.

24 Q Then what did you talk about?
25

1 A Her vehicle being very distinct with its license plate.
2 Q Why was that important?
3 A Because I had information to believe that she was concerned that
4 somebody may have seen her vehicle.
5 Q When, in fact, no one in Las Vegas identified her vehicle, isn't that
6 correct?
7 A That's correct.
8 Q So, you talked about her vehicle, you talked about that she had
9 been assaulted in Las Vegas recently, right?
10 A Yes.
11 Q Then what did you talk about?
12 A Then I told her that I knew that she'd been hurt in the past.
13 Q And what were you referring to?
14 A I didn't say it but I was referring to the incident in 1989.
15 Q And it was clear to her what you were talking about, wasn't it?
16 A I'm not sure what her thought process is.
17 Q Okay.
18 A I can only say how she reacted to it.
19 Q I'll withdraw it. If your answer is speculative, I'll withdraw the
20 question.
21 A Okay.
22 Q How did she react?
23 A She began to cry.
24 Q And she seemed visibly upset to you?
25

1 A Yes.

2 Q And then what did she say to you?

3 A I didn't think anyone would miss somebody like him.

4 Q Then what did you do?

5 A I asked her to calm down and that I needed to talk to her about it.

6 And, first, I needed to be aware of the rights on the rights' card and asked her
7 if she could read that out loud.

8 Q So, then you immediately Mirandize her after she said someone -- I
9 didn't think anyone would miss him, is that correct?

10 A Yes.

11 Q You indicated that you have people read the Miranda card aloud?

12 A Yes.

13 Q And it was clear to you that she could read the words?

14 A Yes.

15 Q What made you believe she understood the words? Do you
16 understand, so just wouldn't be able to recite what one reads and, actually,
17 comprehend the meaning of what one reads --

18 A Yes.

19 Q -- right?

20 A Yes.

21 Q So, what -- you, clearly, knew she could read the words, right?

22 A Yes.

23 Q What made you believe she could comprehend the words?

24 A The fact that after the person reads it we would tell them, do you

25

1 understand and do you want to go ahead and speak to us now and explain
2 what happened.

3 Q Did you talk about the right to have an attorney present?

4 A I don't recall if I specifically said that, no, I don't.

5 Q And you knew she was 18 years old, she just turned 18 years
6 old?

7 A Yes.

8 Q Did you talk to her about having her parents present?

9 A No, she was an adult.

10 Q But she was in her parent's house, right?

11 A Yes.

12 Q And then she signed the card that are marked -- I'm sorry, State's
13 Exhibits what?

14 THE COURT: The rights' card is 123, proposed.

15 Q (By Mr. Kohn) Then you had a conversation with her?

16 A Yes.

17 Q That was not audio taped, is that -- or not recorded in any way, is
18 that correct?

19 A That's correct.

20 Q How long was that?

21 A That was about ten minutes.

22 Q Then how long is the audio tape?

23 A The audio tape is about 30 minutes.

24 Q Are you sure you only talked for ten minutes between the Miranda
25

1 warning and the audio tape?

2 A Yes, I can tell that by looking -- that's why I put the time on the
3 Miranda card itself and then when you start the taped statement, we put the
4 time on there that that begins so you can tell how much time has transpired.

5 Q Prying to -- try again. Prior to going to Miss Lobato's house you
6 had spoken with Laura Johnson, is that correct?

7 A Yes, it is.

8 Q She is a probation officer for Lincoln County?

9 A Yes, she is.

10 Q And she indicated that she had information that Blaise Lobato had
11 been involved in an assault and that she may have severed someone's penis, is
12 that basically what you knew?

13 A Yes.

14 Q And you knew you had a case involving Duran Bailey from July 8th
15 of 19, excuse me, 2001, is that correct?

16 A Yes, that's correct.

17 Q So, she clearly was the focus of your investigation at that point?

18 A Yes. At that point, yes.

19 Q I mean when you got to her house?

20 A Yes.

21 MR. KOHN: Your Honor, I have no further questions at this time.

22 THE COURT: Redirect?

23 MR. KEPHART: No, Your Honor.

24 THE COURT: It appears to the Court that --

25

1 MR. KOHN: May I -- I'm sorry, may I argue?

2 THE COURT: You wish argument?

3 MR. KOHN: Yes.

4 MR. KEPHART: That's fine.

5 THE COURT: All right.

6 MR. KOHN: I can just go and they can answer, it would make this quick.

7 MR. KEPHART: That's fine.

8 MR. KOHN: I mean I know what the issue is.

9 And I apologize for interrupting the Court but I didn't want to
10 argue with the Court afterwards, I wanted to let the Court know that I did have
11 some concerns.

12 In terms of the Miranda rights I believe they were vitiated by the
13 fact that the detective brought up the fact that my client was the victim in a
14 molestation when she was about six years old. It is a seminal point in her life.
15 As soon as he brought that up, she went into tears and she was upset. I don't
16 think I need to put her on the stand for that. If the Court wants me to, I will.
17 But I think that it's reasonable to believe that a child who's molested, it gets to
18 the point of being reported, that it is something that could affect them, either
19 generally or specifically, and that her will was overborne by the detectives
20 using that as a starting off place.

21 I mean it wasn't the fact that he talked about, I heard you were
22 attacked down in Las Vegas, I'm not saying that was improper. I mean to get
23 into the focus of what they're talking about is one thing. But then to
24 immediately launch into and I know you were the victim of child molest. He
25

1 didn't say it, but it was shorthand and she, certainly, got it.

2 I believe that this statement is the product of overbearing and it is
3 not free and voluntary. Now, having said that, if the Court rules that from the
4 Miranda time on, that Miranda's prophylactic effect would allow the rest of the
5 statement in, clearly that which was said between the time that Detective
6 Thowsen talks to her about being molested and until he Mirandizes her, there
7 is an important statement; that, clearly, should come out. That's the
8 statement and correct me if I'm wrong, detective, about I don't think anyone
9 would miss him.

10 THE WITNESS: Or someone like him.

11 MR. KOHN: Someone like him. Thank you.

12 And that was said between the time -- I'm asking the detective
13 now Your Honor -- that was said between the time you told her about you
14 knew about the molest and the time of Miranda, is that correct?

15 THE WITNESS: Yes, prior to her being in custody and prior to me asking
16 any questions of her.

17 MR. KOHN: Oh, and I will stipulate she was not in custody. We don't
18 have to go back and redirect. She was not in custody and she was in her
19 house. Submit it, Your Honor.

20 THE COURT: Mr. Kephart.

21 MR. KEPHART: Thank you, Your Honor.

22 Your Honor, it seems like the defense is talking out both sides of
23 their mouth with this one.

24 In one sense she's overbearing but anything beyond Miranda is
25

1 fine. And, in the other sense she, certainly, knows what -- when the officer is
2 talking about when he says you've been hurt in the past and that causes her to
3 cry. She's cognizant enough to know what that means, just from those
4 words, you've been hurt in the past; and to think that she knew he was talking
5 about being molested when all he said was I know you've been hurt in the
6 past, but that's overbearing to the sense that when she drops her head and
7 cried. Her response was not anything in regards to her molestation when she
8 was a kid. Her response is I didn't think anybody would miss him or miss
9 somebody like that. That's her response to the officer's: You know I
10 understand you've been hurt in the past.

11 After she, initially, was cognizant enough to talk about the car and
12 she knew why the detectives were there when they introduced themselves to
13 him (sic). We're here from Las Vegas as homicide detectives. And she clearly
14 agreed, from that point on, to discuss things with the officer. And I believe
15 that everything that was said by the defendant from the point the officers
16 contacted him was, certainly, voluntarily given. The -- and I would request the
17 Court to allow the detectives to testify with regards to everything the
18 defendant told the detective. Thank you.

19 MR. KOHN: Your Honor, may I just say one thing?

20 I'm sure the Court understands where I was going but I don't
21 think counsel does. I want everything stricken. But if the Court doesn't
22 stricken it because the Miranda warning was given, I certainly believe that --
23 prior Miranda. So, I don't know how that's two sides of my mouth. I want
24 everything out. But, if I can't have everything out, there's a fallback position
25

1 which I think is consistent and that's prior to Miranda, that should be out. I
2 hope that's a consistent position.

3 THE COURT: All right.

4 From the defendant having read the Miranda warning herself
5 aloud, having been asked if she understood and if she wanted to talk about it,
6 she was properly advised of her rights.

7 With regard to the initial statement, it was in response to a
8 statement not to a question, but clearly at that point she had been advised that
9 they were officers, why they were there. What the purpose of them
10 contacting her was. The Court does not find that her will was overborne or
11 that her statements were not freely and voluntarily given.

12 The Court grants the motion and admits 123 and 124.

13 MR. KEPHART: Your Honor, I think I heard you say that the -- that you
14 find that her statement was not freely and voluntarily given, was that -- did I
15 hear that wrong?

16 THE COURT: No.

17 MR. KEPHART: Okay.

18 THE COURT: If I misspoke or you heard it wrong, one or the other; the
19 Court believes she said that I found that her will was not overborne and that
20 her statement was freely and voluntarily given.

21 MR. KEPHART: Okay. Thank you, Your Honor.

22 THE COURT: Is there anything further that we need to do outside the
23 presence? (No response) No? Then I will give these two to the clerk. You
24 may step down. I will step down. And the bailiff will retrieve the jury.

25

1 FRIDAY, MAY 10, 2002; 1:38 P.M.

2
3 THE COURT: The record shall reflect that we're resuming trial in State
4 versus Lobato under C177394 in the presence of the 14 members of the jury,
5 Miss DiGiacomo, Mr. Kephart, Mr. Kohn, Miss Lobato and Miss Navarro. And,
6 that the detective has, once again, returned to the stand. And the Court again
7 reminds him he remains under oath. And Mr. Kephart may resume direct.

8 CON'T DIRECT EXAMINATION

9 BY MR. KEPHART:

10 Q Detective, before we left for lunch we were just discussing the
11 fact that the defendant had been arrested and had been transported to the
12 Clark County Detention Center and was held in a booking cell or a holding cell
13 in the Clark County Detention, is that right?

14 A She was taken to the cell in order to be photographed.

15 Q Okay. And while she's -- can you describe to the jury what the
16 cell looked like?

17 A The cell that I had mentioned before, which I believe is Z4, is a
18 cement structure. It has a painted cement floor, cement walls and a cement or
19 hard ceiling and it's about, approximately, ten foot by ten foot. Off on one
20 side it has a little partition where it has a stainless steel toilet around the
21 corner that you don't really see unless you go around the corner. And the way
22 it's painted, the paint kind of goes up about four inches on the bottom, almost
23 if you look at it, looking like curbing.

24 Q Okay. In conjunction with your description of the jail cell
25

1 remember we talked about the interior of this dumpster bin I guess you'd say
2 (indicating)?

3 A Yes.

4 Q Okay. And does this photo also depict that in the daylight --

5 A Yes, it does.

6 Q -- from a distance? And it shows the parking awning next to it?

7 A Yes, it does.

8 Q While the defendant was in the jail cell that you've described as
9 about ten by ten concrete walls, did she make any statements to you about
10 the jail cell in regards to this case?

11 A Yes, she did.

12 Q What did she say?

13 A She commented that the room looked similar to the area she was
14 in during the attack, however, it seemed a little bit smaller in that when she
15 looked up she could see the awning of a parking structure I believe is the way
16 she explained it.

17 Q Okay. So, the difference that she described was that you could
18 look up from inside the area where the -- her term the attack took place and
19 she could see the parking structure next, and that's what was different about
20 that and the jail cell?

21 A Yes.

22 Q Okay. And the jail cell itself, you said that it had a concrete floor,
23 that right?

24 A That's correct.

25

1 Q So, you're at the scene and then you leave, is that correct?
2 A Yes, after several hours.
3 Q Early in the morning?
4 A Yes.
5 Q And then a Diann Parker shows up at the scene, is that correct?
6 A That is correct.
7 Q And you and counsel discussed that?
8 A Yes.
9 Q And you indicated that you went to her apartment to look at her
10 footwear and her clothes, as well as that of her roommate's, is that correct?
11 A Yes, as well as to talk to her to see what she would have to say.
12 Q Are you familiar with the interview that she had with Officer Scott
13 on July 5th?
14 A Am I familiar with it in -- I know that it existed and got a copy of it
15 and read it at the time.
16 Q Are you familiar with it now?
17 A I haven't re-read it recently, no.
18 Q Do you have it with you?
19 A It should be in here somewhere.
20 Q Can you refer to it, please.
21 THE COURT: The record shall reflect that when he said in here
22 somewhere he referred to a black binder that's to his right, which contains
23 numerous documents, is about five inches thick.
24 Q (By Mr. Kohn) I believe that's his homicide book, is that correct,
25

1 detective?

2 A That's correct.

3 Q And that has everything you did in the case; everything that was
4 done in the case; is that correct?

5 A Yes.

6 Q Can you refer to it, please.

7 A Yes.

8 MR. KOHN: Thank you, Your Honor.

9 THE WITNESS: (Reviewing file) I have located that report.

10 Q (By Mr. Kohn) You, certainly, had access to that report when you
11 interviewed Miss Parker, is that correct?

12 A When I first spoke with her?

13 Q Yes.

14 A No, I did not.

15 Q Did you have it shortly thereafter?

16 A I had it probably -- I received it on the 17th from Detective Scott.

17 Q Did you do anything with it on the 17th?

18 A On the 17th?

19 Q Yes.

20 A I reviewed its contents.

21 Q Did you go back and interview Miss Parker or any of her friends?

22 A I didn't. I re-interviewed Miss Parker at the time I went back to
23 show her the photograph, to determine whether or not the victim in the
24 homicide was, in fact, the same person that she had reported in her report.

25

FILED
IN THE SUPREME COURT OF THE STATE OF NEVADA

2004 OCT -5 PM 3:35

KIRSTIN BLAISE LOBATO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 40370

Shirley B. Haraguan
CLERK

District Court Case No. C177394

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Janette M. Bloom, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "Reversed and remanded."

Judgment, as quoted above, entered this 3rd day of September, 2004.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 29th day of September, 2004.

Janette M. Bloom, Supreme Court Clerk

By: _____

J. Richards
Chief Deputy Clerk

000126

120 Nev., Advance Opinion 57

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIRSTIN BLAISE LOBATO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40370

FILED

SEP 03 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. ...*
CHIEF DEPUTY CLERK

Appeal from a judgment of conviction, pursuant to a jury verdict, of one count of first-degree murder with the use of a deadly weapon and one count of sexual penetration of a dead human body. Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

Reversed and remanded.

David M. Schieck, Special Public Defender, and Gloria M. Navarro, Deputy Special Public Defender, Clark County, for Appellant.

Brian Sandoval, Attorney General, Carson City; David J. Roger, District Attorney, James Tufteland, Chief Deputy District Attorney, and Sandra DiGiacomo, Deputy District Attorney, Clark County, for Respondent.

BEFORE SHEARING, C.J., ROSE and MAUPIN, JJ.

OPINION

By the Court, MAUPIN, J.:

Appellant Kirstin Blaise Lobato appeals from a final judgment of conviction, entered following jury verdicts of guilty on separate counts of first-degree murder with the use of a deadly weapon and sexual

penetration of a dead human body.¹ In this appeal, we consider whether the trial court erred by precluding Lobato from introducing extrinsic evidence to impeach the testimony of a witness for the State. We reverse Lobato's convictions and remand for a new trial.

PROCEDURAL AND FACTUAL HISTORY

On July 8, 2001, Las Vegas Metropolitan Police Department (LVMPD) officers responded to a report of a dead body behind a dumpster on West Flamingo Road in Las Vegas, Nevada. Police later identified the body as that of Duran Bailey (the victim).

An autopsy revealed extensive wounds inflicted by sharp and blunt objects. The coroner testified that the victim's demise preceded discovery of the body by ten to eighteen hours, and that at least some of the documented blunt force injuries were consistent with an assault with a baseball bat or with a fall against a cement curb. However, the coroner identified several broken teeth, abrasions to the head, and a series of depressed and non-depressed skull injuries to the front, side and back of the head. Accordingly, his testimony strongly implied that at least some of the blunt trauma was exclusively attributable to an assault. The coroner also documented that the victim's penis was amputated at the base, and noted a slash wound between the victim's buttocks from above his anus, through and into the rectum, ending at the posterior aspect of the scrotum. These wounds were sustained post-mortem. Finally, the coroner attributed the victim's demise to a laceration of one of his carotid arteries.

¹See NRS 177.015(3); NRS 193.165; NRS 200.030; NRS 201.010; NRS 201.450.

At some point in mid-July 2001, Lobato, a resident of Panaca, Nevada, informed her former teacher and counselor that an older man attacked and attempted to sexually assault her during a recent visit to Las Vegas. She claimed to have cut off the attacker's penis. Some time later, LVMPD Detective Thomas Thowsen learned of Lobato's claim and proceeded to Panaca to interview her. Upon introducing himself to Lobato, Detective Thowsen stated he understood Lobato had been attacked in Las Vegas and been forced to defend herself. Lobato did not respond to this statement. In response to a statement by Detective Thowsen that he "knew she'd been hurt in the past," referring to his knowledge that Lobato was molested when she was six years old, Lobato began to cry and said, "I didn't think anybody would miss him."

Detective Thowsen then administered warnings pursuant to Miranda v. Arizona,² after which Lobato provided a recorded statement. She indicated that she had been assaulted previously in Las Vegas, that she used her butterfly knife to defend herself, and that she cut the man's penis, but she did not know if she completely severed it. She also stated that she managed to escape and left the assailant lying still on the ground and crying. When asked if she hit the man with anything other than her knife, Lobato stated "No, but it's poss—I have a baseball bat that I keep behind my seat or had a baseball bat."³ Lobato was vague about the exact date and details of the incident, claiming she was high on drugs. As a result of the interview, the officers placed Lobato under arrest.

The State ultimately filed an amended criminal complaint charging Lobato with separate counts of murder with the use of a deadly

²384 U.S. 436 (1966).

³Forensic testing did not reveal any blood on Lobato's bat.

weapon and sexual penetration of a dead human body. After a preliminary hearing, the justice court bound Lobato over for trial in district court on both offenses.

Detective Thowsen testified at trial concerning his investigation of the homicide and Lobato's statements.⁴ Several witnesses testified for the State regarding other statements made by Lobato to the effect that she was attacked while in Las Vegas and used a knife in self-defense. These accounts varied concerning the extent to which she inflicted injuries upon her assailant—that she severed her attacker's penis, that she simply slashed the organ, or that she stabbed him in the abdomen.

Korinda Martin, an inmate at the Clark County Detention Center, testified to Lobato's boasts that she was in jail for murder and had forcibly amputated a man's penis and placed it "down his throat." More particularly, Martin indicated that Lobato expressed some worry over blood that might be found in her automobile because she had struck the man in the face and made a series of statements to the effect that she had picked up the assailant, "Darren," with whom she was acquainted, on a public street to purchase methamphetamine; that she was high on drugs; that "Darren" wanted to engage in sex with her and that she refused; that she stabbed him at least eight times in the rectum when he was lying still at the scene; and that, while the man never tried to force her to submit to his sexual advances, she was going to play the "poor me" act and claim that Darren had attempted to sexually assault her. According to Martin,

⁴The district court determined that Lobato voluntarily made her statements to Detective Thowsen and thus allowed him to testify concerning them.

after the State added the sexual penetration charge, Lobato boasted that what she had done was overkill, but that "Darren" deserved it.

Martin testified that she contacted the district attorney's office after her conversations with Lobato and provided police detectives with a statement concerning them. While she requested a letter of recommendation to the parole board in exchange for her testimony, none was forthcoming.

During the State's direct examination, Martin admitted to a prior robbery conviction. However, on cross-examination, she admitted to separate convictions for robbery and coercion. Martin also admitted that she had unsuccessfully attempted to secure her release from custody on several occasions via motions for bail, house arrest, release on her own recognizance, and bail reduction. She admitted that one of the motions was based upon a claim that she was pregnant and that the pregnancy was high risk. Martin stated that, while she would have done whatever was necessary to get out of jail, she would not lie, have someone lie for her, or assist someone to lie to a court.

During a recess hearing outside the presence of the jury, Lobato confronted Martin with two handwritten letters that supported the proposition that Martin had engaged in an attempted fraud upon the sentencing judge in her case. One of the letters was a "cover" letter, purportedly from "Korinda," requesting that "Brenda Self," one of Martin's former co-prisoners, copy an attached recommendation letter in her own handwriting and send it to Martin's sentencing court. The attachment was designed to advise the court that Martin was experiencing a high-risk pregnancy and that Brenda hired Martin in November 2000 and continued to employ her. The letter further stated that Brenda would personally assist Martin in any way possible. Although Martin denied sending,

writing, or having seen either of the letters, Martin agreed that the letter constituted a fraud upon her sentencing court because she had never worked for Brenda. Interestingly, the envelope in which the defense presented the letters bore Martin's return address and prison "body number."

Following Martin's in camera testimony, the State agreed to a handwriting analysis of the letters, and the parties deferred the line of inquiry until the opinion could be secured. When the trial recommenced, Lobato examined Martin concerning prior convictions and attempts to avoid further prison time but made no inquiry about the letters. Later in the proceedings, when Lobato attempted to present her expert's preliminary opinion that Martin wrote the contested letters, the district court excluded any extrinsic evidence concerning authorship of the letters as collateral to the proceedings under NRS 50.085(3).⁵ Ultimately, the jury heard no evidence regarding the letters, including Martin's denial of any connection with them.

⁵NRS 50.085(3) states:

Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime, may not be proved by extrinsic evidence. They may, however, if relevant to truthfulness, be inquired into on cross-examination of the witness himself or on cross-examination of a witness who testifies to an opinion of his character for truthfulness or untruthfulness, subject to the general limitations upon relevant evidence and the limitations upon interrogation and subject to the provisions of NRS 50.090.

Lobato also sought to have Brenda Self testify to Martin's attempt to mislead her sentencing court. Consistent with its prior ruling excluding the handwriting analysis of the letters, the district court denied the request and ruled that, if Self testified, Lobato could elicit Self's opinion of Martin's truthfulness without reference to any conduct giving rise to that opinion.⁶ Following this ruling, Lobato decided not to present Self's testimony.

Lobato testified in her own defense, claiming essentially that an unknown assailant attempted to sexually assault her, and that she resisted, cut him with a knife and fled the area.

The jury returned verdicts of guilty on both charges. Shortly thereafter, a document examiner for the LVMPD filed a report concluding that Martin wrote at least one of the contested letters.⁷ The district court denied Lobato's motion for a new trial based in part upon this new information.

The district court imposed consecutive 20- to 50-year sentences for first-degree murder with the use of a deadly weapon, and a 5- to 15-year sentence for sexual penetration of a dead body. In addition, the district court imposed a special sentence of lifetime supervision should Lobato be released. Finally, the district court ordered genetic marker testing, along with payments of a \$150 DNA analysis fee, a fine of \$10,000 and a \$25 administrative assessment. The court credited Lobato 233 days for time served prior to the imposition of sentence. Lobato filed her timely notice of appeal.

⁶Id.

⁷The LVMPD expert concluded that Martin probably authored the first letter and definitely the second.

DISCUSSION

Impeachment by extrinsic evidence

Lobato argues that the district court erroneously excluded extrinsic evidence rebutting Martin's denial that she sought to perpetrate a fraud upon her own sentencing court. More particularly, she asserts that the letters, the expert handwriting opinions and Brenda Self's testimony, although extrinsic, were admissible on the question of Martin's credibility. We agree and reverse Lobato's conviction and remand for a new trial.

There are nine basic modes of impeachment. The first four involve attacks upon the competence of a witness to testify, *i.e.*, attacks based upon defects of perception, memory, communication and ability to understand the oath to testify truthfully. The second four modes of impeachment involve the use of evidence of prior convictions,⁸ prior inconsistent statements, specific incidents of conduct and ulterior motives for testifying. The ninth mode of impeachment, not pertinent to this appeal, permits attack upon a witness's reputation for truthfulness and necessarily involves the use of extrinsic evidence.

Impeachment by use of extrinsic evidence is prohibited when collateral to the proceedings. Collateral facts are by nature "outside the controversy, or are not directly connected with the principal matter or

⁸NRS 50.095(1) states:

For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime is admissible but only if the crime was punishable by death or imprisonment for more than 1 year under the law under which he was convicted.

issue in dispute.”⁹ The “collateral fact” rule, however, has only limited application. For example, extrinsic evidence that is relevant to any of the first four modes of impeachment is never collateral and thus is always admissible for impeachment purposes.¹⁰ Also, use of prior felony convictions and reputation evidence do not implicate the prohibition against collateral extrinsic evidence. And extrinsic evidence relevant to prove a witness’s motive to testify in a certain way, *i.e.*, bias, interest, corruption or prejudice, is never collateral to the controversy and not subject to the limitations contained in NRS 50.085(3).¹¹ However, use of specific instances of conduct—*i.e.*, an untruthful act not resulting in a conviction—and use of prior inconsistent statements, raise issues under the so-called collateral-fact rule when coupled with a specific contradiction.

Thus, only two modes of impeachment truly implicate the collateral-fact rule. Accordingly, extrinsic proof of a prior inconsistent

⁹Black’s Law Dictionary 262 (6th ed. 1990).

¹⁰John W. Strong, McCormick on Evidence § 49 (5th ed. 1999) [hereinafter McCormick].

¹¹See id. (stating that proof of a witness’s bias, interest, corruption or coercion is exempt from the collateral-fact rule); see also 4 Jack B. Weinstein & Margaret A. Berger, Weinstein’s Federal Evidence § 608.20[3][b] (Joseph M. McLaughlin ed., 2d ed. 2004) (stating that Federal Rule of Evidence 608(b) (which is substantially similar to NRS 50.085(3)) is not implicated when extrinsic evidence is sought to be admitted on the issue of bias; rather its admissibility depends upon whether the bias is a relevant issue in the case); 3A John Henry Wigmore, Wigmore on Evidence § 948, at 783 (Chadbourn rev., 1970) (“The doctrine of excluding facts offered by extrinsic testimony has never been applied to [the subject of bias].”); id. § 1005(b) (“Particular circumstances and expressions indicating bias are provable by extrinsic testimony . . .”).

statement is inadmissible unless the statement is material to the case at hand.¹² And NRS 50.085(3) limits the admissibility of extrinsic evidence for the purpose of attacking credibility based upon specific instances of conduct attributable to the witness. Unless in some way related to the case and admissible on other grounds, extrinsic prior bad act evidence is always collateral and therefore inadmissible to attack credibility.

The State correctly concedes in its arguments before this court that cross-examination of Martin as to whether she wrote the fraudulent letters would have been proper. However, it also correctly argues that the letters, the expert opinions and Self's proposed testimony contradicting Martin's denial of authorship were all inadmissible under NRS 50.085(3) as extrinsic evidence of specific instances of untruthfulness; here, her attempts at subornation of perjury in her separate criminal case.¹³ Certainly, evidence proving that Martin had attempted to induce another

¹²See McCormick, supra note 10, § 49 (identifying two methods by which extrinsic evidence of a prior inconsistent statement is non-collateral: (1) "if the matter is itself relevant to a fact of consequence on the historical merits of the case" and (2) if the extrinsic evidence relates to a "linchpin" fact of the case).

¹³Although the district court ultimately excluded the extrinsic evidence of Martin's attempted fraud upon her own sentencing court, the district court never expressly precluded Lobato from cross-examining Martin regarding whether she wrote the letters. Lobato failed, however, to request that the district court permit her to recall Martin for that purpose. Ordinarily, the failure to ask the impeaching question about prior untruthful acts waives any issue on appeal concerning the propriety of the impeachment itself. We conclude, however, that Lobato's questioning of Martin regarding authorship and knowledge of the letters outside the presence of the jury, along with the definitive exclusionary ruling, were sufficient to preserve for appeal the issue of whether extrinsic evidence on that issue was admissible. See Pineda v. State, 120 Nev. ___, 88 P.3d 827 (2004); Richmond v. State, 118 Nev. 924, 59 P.3d 1249 (2002).

person to lie for her was immaterial in and of itself to the question of whether Lobato committed homicide. We conclude, however, that evidence disproving Martin's denial that she wrote the letters was admissible for another purpose, to wit: to prove Martin's motive, *i.e.*, interest, for testifying for the State.

Although district courts have wide discretion to control cross-examination that attacks a witness's general credibility, a "trial court's discretion is . . . narrow[ed] where bias [motive] is the object to be shown, and an examiner must be permitted to elicit any facts which might color a witness's testimony."¹⁴ Generally, "[t]he only proper restriction should be those inquiries which are repetitive, irrelevant, vague, speculative, or designed merely to harass, annoy or humiliate the witness."¹⁵

The proffered letters and extrinsic evidence relating to them confirmed Martin's desperation to obtain an early release from incarceration and her willingness to adopt a fraudulent course of action to achieve that goal. As Martin testified before the jury, she would have done "whatever it took to get out of jail" in July and August 2001. While the jury heard evidence regarding Martin's other unsuccessful attempts to gain her own release from custody, the extrinsic evidence from the experts and Brenda Self would have supported a very important inference that

¹⁴Bushnell v. State, 95 Nev. 570, 572, 599 P.2d 1038, 1040 (1979); see also Ransey v. State, 100 Nev. 277, 279, 680 P.2d 596, 597 (1984) ("Where [the] purpose of [cross-examination] is to expose bias . . . [the] examiner must be permitted to elicit any facts which might color a witness' testimony,' and the trial court's usual discretion to control the scope of cross-examination is circumscribed." (quoting Eckert v. State, 96 Nev. 96, 101, 605 P.2d 617, 620 (1980))); Jones v. State, 108 Nev. 651, 659, 837 P.2d 1349, 1354 (1992).

¹⁵Bushnell, 95 Nev. at 573, 599 P.2d at 1040.

Martin's cooperation was simply part of a continuum of deceptions taken to secure her freedom. We conclude that the extrinsic evidence concerning the letters demonstrated her strong interest in assisting the State in Lobato's trial. Thus, the extrinsic evidence in this case was admissible because it was relevant to a mode of impeachment that does not implicate the collateral-fact rule—motivation to give false testimony. We therefore hold that the district court erred by not permitting Lobato to introduce extrinsic evidence to impeach Martin on the issue of her motive to testify.¹⁶

Having held that there was error in the record, we must consider whether that error was harmless. NRS 178.598 directs that any error that does not affect a defendant's substantial rights shall be

¹⁶The present matter is distinct from prior cases in which we ruled that extrinsic evidence was inadmissible and therefore collateral. Those cases dealt with evidence of a witness's prior bad acts, not inquiry into a witness's bias or interest, and we ruled that the use of extrinsic evidence in such situations was impermissible. See, e.g., Collman v. State, 116 Nev. 687, 7 P.3d 426 (2000) (district court properly precluded questioning a state witness regarding an abortion; such evidence was immaterial to the question of whether the defendant committed homicide and therefore inadmissible); McKee v. State, 112 Nev. 642, 917 P.2d 940 (1996) (error for prosecutor to impeach defendant with extrinsic evidence regarding drug use on a specific day; such evidence was irrelevant to whether defendant trafficked drugs on another day and was therefore inadmissible collateral evidence); Rowbottom v. State, 105 Nev. 472, 779 P.2d 934 (1989) (error to admit extrinsic evidence of prior bad act to impeach defendant's credibility; prosecutor could only impeach by questioning defendant about the act during defendant's own testimony, not by introducing extrinsic evidence); Rembert v. State, 104 Nev. 680, 766 P.2d 890 (1988) (error to allow State to introduce immaterial extrinsic evidence of defendant's termination from employment; the issue at trial was whether defendant had the opportunity to commit sexual assault; therefore, the extrinsic evidence was collateral).

disregarded. The "exclusion of a witness' testimony is prejudicial if there is a reasonable probability that the witness' testimony would have affected the outcome of the trial."¹⁷ "A reasonable probability is a probability sufficient to undermine confidence in the outcome."¹⁸

Lobato validly characterizes Martin as the State's "star witness." The physical evidence, multiple trauma and the evident use of multiple weapons circumstantially supported a number of theories of criminal culpability, *i.e.*, manslaughter, second-degree murder and first-degree murder. But Lobato's purported admissions to Martin suggested that she was not motivated by a need to defend herself against a sexual assault by the victim, that she had conjured up a false defense to the homicide, and that her actions were simply overkill. Martin certainly provided evidence of Lobato's motivations connected to an illicit drug transaction involving a person with whom she was acquainted, that Lobato was the initial aggressor, and contradicted Lobato's statements that an unknown assailant precipitated the attack. In short, Martin's testimony powerfully underscored the State's circumstantially supported theories of malice and premeditation and substantially undermined Lobato's alternate claims of self-defense and lesser culpability.¹⁹ Because of the equivocal and circumstantial nature of the other evidence supporting the State's allegations of first-degree murder, we cannot conclude that the district court's error was harmless. We therefore

¹⁷Bell v. State, 110 Nev. 1210, 1215, 885 P.2d 1311, 1315 (1994).

¹⁸Strickland v. Washington, 466 U.S. 668, 694 (1984).

¹⁹Because no physical evidence tied Lobato to the homicide, Lobato's statements to other witnesses were circumstantially consistent with theories of self-defense, manslaughter and second-degree murder.

conclude that the exclusion of evidence of Martin's interest in assisting the State constitutes reversible error. In this we wish to stress that in any criminal case, where issues of guilt are close, the testimony of a jailhouse informant should be regarded with particular scrutiny.

Miscellaneous assignments of error

Lobato also contends that the district court erred in admitting her statements to police in violation of Miranda, allowing the State to obtain and use privileged material from her medical files, restricting use of her expert on blood and crime-scene analysis based upon her failure to timely designate the expert before trial, excluding her alibi evidence for lack of timely pretrial notice, and allowing prosecutorial misconduct during final argument. We have considered these assignments of error and find them without merit. We note in passing that the failures to timely designate experts and alibi witnesses may be cured upon remand.²⁰ We also reject Lobato's remaining claims of error, including the assertion

²⁰While Lobato's claims of self-defense and her presentation of alibi witnesses are antagonistic, the parties can resolve the theories of defense upon retrial of this matter.

that NRS 201.450²¹ was unconstitutionally applied and is void for vagueness.²²

CONCLUSION

The district court erred in precluding the defense from fully impeaching a State's witness. Because the error is not harmless, we reverse Lobato's conviction and remand for a new trial.

Maupin, J.
Maupin

We concur:

Shearing, C.J.
Shearing

Rose, J.
Rose

²¹NRS 201.450(2) states:

For the purposes of this section, "sexual penetration" means cunnilingus, fellatio or any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another, including, without limitation, sexual intercourse in what would be its ordinary meaning if practiced upon the living.

²²See Doyle v. State, 112 Nev. 879, 900 n.8, 921 P.2d 901, 914 n.8 (1996) (stating that the plain meaning of NRS 201.450 "is to punish the act of sexual penetration of a dead human body, regardless of motive"), overruled on other grounds by Kaczmarek v. State, 120 Nev. ___, 91 P.3d 16 (2004).

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIRSTIN BLAISE LOBATO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 40370

District Court Case No. C177394

REMITTITUR

TO: Shirley Parraguirre, Clark County Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: September 29, 2004

Janette M. Bloom, Clerk of Court

By: J. Richards
Chief Deputy Clerk

cc: Hon. Valorie Vega, District Judge
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Special Public Defender David M. Schieck

RECEIPT FOR REMITTITUR

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the

REMITTITUR issued in the above-entitled cause, on 10-1-04.

NORRETA CALDWELL

DEPUTY

County Clerk

000142

04-16388

FILED

Oct 5 3 30 PM '05

Shari L. Greenberger
CLERK

1 0071
 2 DAVID M. SCHIECK
 3 Special Public Defender
 4 Nevada Bar No. 0824
 5 333 South 3rd Street, 2nd Floor
 6 Las Vegas NV 89155
 7 (702)455-6265
 8 SHARI L. GREENBERGER
 9 CSB No. 180438
 10 SARA ZALKIN
 11 CSB No. 223044
 12 506 Broadway
 13 San Francisco, California 94133
 14 (415)986-5591
 15
 16 Attorneys for Defendant

10 DISTRICT COURT
 11 CLARK COUNTY, NEVADA

13 STATE OF NEVADA,)	CASE NO. C 177394
)	DEPT. NO. II
14 Plaintiff,)	
)	
15 v.)	
)	Date: _____
16 KIRSTIN LOBATO,)	Time: _____
)	
17 Defendant.)	
18 _____)	

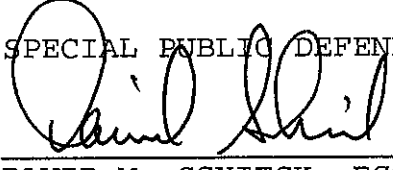
19 **MOTION IN LIMINE TO EXCLUDE STATEMENTS MADE BY DEFENDANT**
 20 **DURING THE COURSE OF THE JULY 20, 2001 INTERROGATION**

21 COMES NOW Defendant KIRSTIN LOBATO, by and through her
 22 attorneys, DAVID M. SCHIECK, Special Public Defender, SHARI L.
 23 GREENBERGER, ESQ. and SARA ZALKIN, ESQ., and hereby moves this
 24 Court, to exclude all statements made during the course of her
 25 July 20, 2001 interrogation.

26 This motion is based upon the attached memorandum of law,
 27 . . .
 28 . . .

1 all pleadings and papers on file herein, and any oral argument
2 this Court may deem necessary.

3 Dated: SEPT. 30, 2005

4 SPECIAL PUBLIC DEFENDER
5 

6 DAVID M. SCHIECK, ESQ.
7 333 S. 3rd Street
8 Las Vegas NV 89155
702/455-6265
Attorneys for LOBATO



SHARI L. GREENBERGER, ESQ.
506 Broadway
San Francisco CA 94133
415/986-5591
Attorneys for LOBATO

9 **NOTICE OF HEARING**

10 TO: STATE OF NEVADA; and
11 TO: DISTRICT ATTORNEY'S OFFICE; counsel:

12 **PLEASE TAKE NOTICE** that the undersigned will bring the
13 foregoing motion on for hearing before the above entitled Court,
14 in Department II thereof, on the 3 day of Sept, 2005, at
15 9 a.m., or as soon thereafter as the matter may be heard.

16 **MEMORANDUM OF LAW**

17 **INTRODUCTION**

18 The defense moves to exclude all evidence relating to the
19 July 20, 2001 interrogation of Ms. Lobato at her home by
20 Detectives Thomas Thowsen, Jim LaRochelle and Sergeant Carey
21 Lee. The information derived from that interrogation fails on
22 three respects.

23 First, her statements made before a Miranda waiver was
24 obtained was allegedly made are nevertheless a result of
25 interrogation as they are the product of psychological ploy
26 utilized by the detectives.

27 Second, the alleged Miranda waiver Ms. Lobato was not
28

1 voluntarily given, as the officer's psychological ploy combined
2 with her existing mental state rendered her incapable to give a
3 voluntary waiver.

4 Third, any statements made by Ms. Lobato are irrelevant
5 because she was speaking of a different occurrence than the July
6 8, 2001 death of Duran Bailey.

7 According to the transcript of the prior proceedings,
8 Detective Thowsen began to suspect Ms. Lobato of Duran Bailey's
9 homicide due to information learned from Lincoln County
10 Probation officer, Laura Johnson.¹ Laura Johnson allegedly had
11 received this hearsay from Dixie Tienken. (See Exhibit A, Vol.
12 III 40:15-41:15).² Ms. Johnson allegedly told Detective Thowsen
13 that she heard from Dixie Tienken that Ms. Lobato had told her
14 that she had been sexually assaulted and may have severed the
15 culprit's penis. (See Exhibit A, Trial Testimony of Detective
16 Thomas Thowsen, Vol. III 16:10-12; 41:12-15)

17 During the subsequent interrogation of Ms. Lobato in
18 connection with the Duran Bailey investigation, Detective
19 Thowsen made no attempt to confirm that the homicide they were
20 questioning her about, and the assault where she was thought to
21 have injured or severed an attacker's penis, occurred on the
22 same date. In fact, and of great significance, they occurred at
23

24 ¹ The defense separately challenges the admissibility of
25 this hearsay in defendant's Motion to Exclude Laura Johnson's
26 Hearsay Statements, filed contemporaneously herewith, and in no
27 way concedes its admissibility.

28 ² For simplicity, omnibus Exhibit A consists of portions
of Detective Thowsen's trial testimony in Vol. III of the first
proceeding with references to specific pages and lines as
indicated.

1 different locations, and on different dates. Mr. Bailey's death
2 occurred on July 8, 2001, while the assault on Ms. Lobato
3 happened at least one month prior to this interrogation. (See
4 Exhibit A, Trial Vol. III 109:3-7)

5 When the officers arrived at Ms. Lobato's residence Ms.
6 Lobato was in the shower. According to Detective Thowsen's
7 testimony, Ms. Lobato's sister met them in the garage and
8 invited them in the house to wait. (See Exhibit A, Trial Vol.
9 III 45:12-17) Once Ms. Lobato emerged from the shower, the
10 officers identified themselves and Detective Thowsen immediately
11 told her that he understood that "she had been attacked in Las
12 Vegas and had to defend herself." (See Exhibit A, Trial Vol.
13 III 46:2-7)

14 Detective Thowsen conceded that Ms. Lobato was the focus of
15 the Duran Bailey homicide investigation when they arrived at her
16 house. (See Exhibit A, Trial Vol. III 16:17-20) Detective
17 Thowsen commented on her distinctive license plate because he
18 "had information to believe that she was concerned that somebody
19 may have seen her vehicle," although no one had reported her
20 vehicle in connection with any crime. (See Exhibit A, Trial
21 Vol. III 13:2-7) Detective Thowsen testified that he next told
22 her that he "knew that she had been hurt in the past." (See
23 Exhibit A, Trial Vol. III 46:14-17) Ms. Lobato began to cry and
24 according to Detective Thowsen said, "I didn't think anyone
25 would miss him." (See Exhibit A, Trial Vol. III 46:18-22)

26 It was not until after this exchange that the officers
27 claimed to have obtained a waiver of Ms. Lobato's constitutional
28 rights under Miranda v. Arizona. Ms. Lobato's parents were not

000146

1 home when the officers obtained their Miranda waiver and the
2 officers hastily conducted their interview to avoid interaction
3 with the Ms. Lobato's parents. (See Exhibit A, Trial Vol. III
4 109:8-17) Ms. Lobato submits that the psychological ploy used
5 by the officers, combined with her already fragile mental state,
6 was enough to invalidate any such waiver. Accordingly,
7 statements made to the officers before the Miranda waiver must
8 be excluded, and any statements made afterwards are not
9 voluntarily given and must also be excluded at Ms. Lobato's
10 upcoming trial.

11 ARGUMENT

12 I.

13 DEFENDANT'S PRE-MIRANDIZED STATEMENT MUST BE
14 EXCLUDED BECAUSE IT WAS THE PRODUCT OF
15 DETECTIVE THOWSEN'S OVERT COERCION

16 Before statements made during a custodial police
17 interrogation are admissible, defendant must make a knowing,
18 intelligent and voluntary waiver of her Fifth Amendment rights.
19 Miranda v. Arizona, 384 U.S. 436 (1966). "[I]f a suspect is
20 subject to abusive police practices and actually or overtly
21 compelled to speak, it is reasonable to infer both an
22 unwillingness to speak and a perceptible assertion of the
23 privilege." New York v. Quarles, 467 U.S. 649, 672 (1984)
24 [Justice O'Connor, concurring in part and dissenting in part.]

25 A. Ms. Lobato Was in Police Custody.

26 Although the prosecution may attempt to argue that Ms.
27 Lobato was not in custody during the interrogation with the
28 police, the circumstances of the interrogation strongly suggest
otherwise. In U.S. v. Bekowies, 432 F.2d 8, (9th Cir. 1980) the

1 defendant was found to be in custody in his own home. "Custody
2 will be found if the person questioned is effectively deprived
3 of his freedom of movement, even though the interrogation occurs
4 in his own home." Id. at 12.

5 Bekowies was a prosecution for harboring and concealing a
6 fugitive where the court looked at various factors in their
7 totality of the circumstances approach, including the fact that
8 the officers had an arrest warrant when they entered the
9 defendant's home; the officer's mistake as to the identity of
10 Bekowies as being their suspect created a sense that Bekowies
11 was not free to leave; Bekowies knew the agents had his house
12 under surveillance; the officers forced Bekowies to accompany
13 them through various locations around the apartment; finally the
14 officers were certain that the fugitive they sought was in
15 Bekowies' apartment, so they insisted that Bekowies allow them
16 to search his bedroom.

17 The facts and the circumstances of the instant case
18 similarly indicate a custodial interrogation in that Ms. Lobato
19 did not feel that she was free to leave, even within the
20 confines of her own home. Moreover, when the officers arrived,
21 she was in the shower and they remained to wait for her to
22 commence their interrogation when she emerged, creating a
23 deliberate sense of urgency in the interview. (See Exhibit A,
24 Vol. III 45:12-17)

25 Like Bekowies, where the officers had an arrest warrant for
26 the fugitive Mr. Bekowies was alleged to have harbored, Ms.
27 Lobato was the express focus of the investigation when the
28 officers arrived in her home. (See Exhibit A, Trial Vol. III

1 16:17-20). The officers here also made a critical error in
2 judgment which gave Ms. Lobato the impression that they would
3 not allow her to leave, by deliberately ignoring the fact that
4 Ms. Lobato was describing an incident different than that which
5 they were there to investigate and in which she was victimized.

6 The officers mistook her allegedly inculpatory statements
7 as confessions when, in fact, she was referring to an attempted
8 rape where she was forced to defend herself weeks before Mr.
9 Bailey was killed. Although there is no indication that Ms.
10 Lobato was under direct surveillance, the officers had already
11 investigated her, and had information about the molestation she
12 suffered as a child, as well as hearsay statements from Laura
13 Johnson and Dixie Tienken. Like Bekowies, the volume of three
14 officers in her home enhanced the sense of a custodial
15 interrogation. Furthermore, Ms. Lobato at the ripe young age of
16 eighteen had no experience with the criminal justice system. It
17 is reasonable and certain that she would not and did not feel
18 free to leave under the circumstances. Ms. Lobato's mother was
19 only present briefly during the "interview" - until she was
20 escorted outside the room by Sergeant Lee. (See Exhibit A,
21 Trial Vol. III 109:24-110:2). Instead of allowing her parents
22 to participate in the interview process, which might have
23 alleviated the custodial dimension, the officers deliberately
24 hurried the interview in a concerted effort to avoid contact
25 with Ms. Lobato's parents. When cross-examined on the issue of
26 why Detective Thowsen did not make sure the dates of the two
27 incidents were the same, he responded, that he was hurrying
28 because he did not want to have a confrontation with the father

1 who was arriving home. (See Exhibit A, Trial Vol. III 109:8-
2 17). Based on the foregoing, the totality of the circumstances
3 in the instant case indicate that Ms. Lobato was in custody for
4 purposes of the Fifth and Fourteenth Amendment rights embodied
5 in Miranda v. Arizona.

6 B. Ms. Lobato Was Interrogated from the Outset of the
7 Officer's Presence on the Scene.

8 The questioning need not be express, but rather, when
9 officers confront a defendant with alleged evidence, and make
10 statements likely to elicit a response, defendant's statements
11 made before Miranda warnings are given are inadmissible.
12 Weathers v. State, 105 Nev. 199 (1989).

13 In Weathers, officers outlined the evidence against the
14 defendant, before seeking a Miranda waiver. During the course
15 of outlining the evidence against him, the defendant made
16 incriminating statements, acknowledging that he knew who had
17 seen him running from the scene of the crime. The Court held
18 that the trial court erred in admitting those statements
19 because, although not the product of direct police questioning,
20 were the nonetheless the "'functional equivalent' of express
21 questioning." Weathers, 105 Nev. 199, 201 (1989).

22 In the instant case, as noted above, officers arrived at
23 Ms. Lobato's house having already determined that Ms. Lobato was
24 their primary suspect. Upon introduction, Detective Thowsen
25 told her that they "were there to talk to her because [they] had
26 heard that something had happened to her and she had to defend
27 herself in Las Vegas." (See Exhibit A, Trial Vol. III 12:20-23)

28 Detective Thowsen then commented on her distinct license

1 plate "[b]ecause [he] had information to believe that she was
2 concerned someone may have seen her vehicle," although nobody
3 had reported her vehicle in connection with any crime. (See
4 Exhibit A, Vol. III 13:2-7)

5 Finally, Detective Thowsen testified, "[t]hen I told her
6 that I knew she had been hurt in the past." Ms. Lobato broke
7 down crying and was visibly upset. Ms. Lobato then allegedly
8 said, "I didn't think anyone would miss somebody like him."
9 (See Exhibit A, Trial Vol. III 46:18-22).

10 Detective Thowsen admitted that he intentionally brought up
11 her 1989 molestation at the age of 6, and she began to cry.
12 (See Exhibit A, Trial Vol. III 13:8-23) The emotionally charged
13 response, "I didn't think anyone would miss someone like him"
14 was made before Miranda warnings were given, but after the
15 detective's psychological ploy was in action. (See Exhibit A,
16 Trial Vol. III 14:2-7)

17 Analogous to the situation in Weathers, Ms. Lobato was
18 interrogated through the use of subversive tactics designed to
19 implicate her in the current crime being investigated, by
20 statements designed to elicit an emotional response, before
21 Miranda warnings were given. Therefore, following the logic of
22 Weathers, her statements made in response to the officers
23 psychological pressure tactics must be excluded.

24 II.

25 MS. LOBATO'S MIRANDIZED STATEMENTS WERE NOT
26 VOLUNTARILY GIVEN BECAUSE HER WILL WAS
27 OVERBORNE BY DETECTIVE THOWSEN'S
28 PSYCHOLOGICAL PLOY

A defendant's statements are not voluntarily given if

1 police conduct, and the facts and circumstances of the
2 interrogation suggest the defendant's decision to speak was
3 based on the defendant's will being overborne. Mincey v.
4 Arizona, 437 U.S. 385, 401-402 (1978).

5 Governmental coercion can invalidate an otherwise
6 voluntarily given Miranda warning. Colorado v. Connelly, 479
7 U.S. 157, 169-170 (1986). "To determine the voluntariness of a
8 confession, the court must consider the effect of the totality
9 of the circumstances on the will of the defendant. [citations
10 omitted]. The question in each case is whether the defendant's
11 will was overborne when he confessed." Passama v. State, 103
12 Nev. 212, 214 (1987). "We note that [defendant's] mental
13 condition by itself does not dispose of the inquiry into
14 constitutional voluntariness; but when police officers turn to
15 more subtle forms of psychological pressure, the defendant's
16 mental condition becomes a more significant factor in the
17 voluntariness calculus." Allan v. State, 118 Nev. 19, 25 (2002)
18 [overruled in part on other grounds, Rosky v. State, 111 P.3d
19 690, 694 (2005)].

20 "Under the Due Process Clause of the Fourteenth Amendment,
21 a confession is involuntary only if the suspect's ability to
22 exercise his free will was overborne by police coercion. The
23 court must analyze the voluntariness of a defendant's confession
24 under the totality-of-the-circumstances analysis." Allan, 118
25 Nev. at 24.

26 The court suggested some factors to consider in the
27 totality of circumstances approach, including: "the youth of the
28 accused; his lack of education or his low intelligence; the lack

1 of any advice of constitutional rights; the length of detention;
2 the repeated and prolonged nature of questioning; and the use of
3 physical punishment such as the deprivation of food or sleep."
4 *Id.*, citing Passama v. State, 103 Nev. 212, 214 (1987).

5 In Allan the defendant was a methamphetamine user who cried
6 throughout the interrogation. The Court acknowledged that the
7 defendant had not been physically coerced, or deprived of food,
8 and was twice advised of his constitutional rights. The Court
9 nonetheless reversed Allan's conviction because the confession
10 was not voluntary, as the investigating officer ignored Allan's
11 request for counsel. The court further seized on Allan's mental
12 state, explaining that his recent use of methamphetamine made
13 him more susceptible to the detective's "subtle forms of
14 psychological persuasion." *Id.* at 25.

15 Here, the totality of circumstances heavily weighs in favor
16 of excluding Ms. Lobato's statements during the July 20, 2001
17 questioning. Ms. Lobato was only 18 years old at the time.
18 Like Allan, Ms. Lobato was a methamphetamine user, and cried
19 constantly throughout the interrogation.³ Her instability was
20 accelerated by Detective Thowsen's overt psychological
21 persuasion and ensuing interrogation. He began the interview by
22 consciously forcing Ms. Lobato to relive the 9 months of terror
23 and molestation she suffered at the age of 6, by her mother's
24 boyfriend. Ms. Lobato's will was completely and unequivocally
25 overborne by this subversive tactic. Ms. Lobato did not make a
26 voluntary waiver of her constitutional rights, and therefore all

27
28 ³ The fact that Ms. Lobato cried throughout her statement
is evidence from listening to the audiotape thereof.

1 statements elicited on July 20, 2001 must be excluded.

2 III.

3 THE JULY 20, 2001 STATEMENTS ARE IRRELEVANT
4 BECAUSE MS. LOBATO WAS NOT DESCRIBING THE
5 JULY 8, 2001 KILLING OF DURAN BAILEY.

6 NRS § 48.025 states that all relevant evidence is generally
7 admissible, except as otherwise limited, while irrelevant
8 evidence is inadmissible. "Relevant evidence" is that having any
9 tendency to make the existence of any fact that is of
10 consequence to the determination of the action more or less
11 probable than it would be without the evidence. (NRS § 48.015).

12 When a piece of evidence has no "clear connection" to the
13 alleged crime, it is irrelevant and must be excluded. Beck v.
14 State, 105 Nev. 910 (1989).

15 Ms. Lobato's statements on July 20, 2001 have no clear
16 connection to the death of Duran Bailey. Ms. Lobato believed
17 the police were asking her about a separate incident that
18 occurred on East Flamingo and Boulder Highway, at the Budget
19 Suites where she was the victim of a sexual assault. In
20 contrast, Duran Bailey died on the other side of town in the
21 parking lot at Nevada State Bank, on West Flamingo and Arville.
22 Knowing from Ms. Lobato that the date of her attack differed by
23 at least thirty days with Duran Bailey's death, the officers
24 chose not inquire as to the location of the assault against Ms.
25 Lobato before conducting her full interview. Furthermore,
26 during the course of that interview, when it became obvious that
27 Ms. Lobato was speaking of a different location, the police
28 deliberately avoided asking any follow up questions. (See
Exhibit A, Trial Vol. III: 109:3-7)

1 Significantly, the two incidents happened at different
2 times. Duran Bailey was killed on July 8, 2001. Officers
3 interviewed and arrested Ms. Lobato on July 20, 2001. When
4 questioned about when she was assaulted Ms. Lobato said that it
5 was over a month ago. Ms. Lobato's assault occurred before June
6 20, 2001, not twelve days prior, when Mr. Bailey's body was
7 discovered. (See Exhibit A, Trial Vol. III: 109:3-7)

8 Notwithstanding the discrepancies with the time and place
9 of Ms. Lobato's assault, and that of Duran Bailey's murder, it
10 is suspect that these "well-trained" officers never asked any
11 follow up questions to resolve these differences. (See Exhibit
12 A, Trial Vol. III 110:16-111:3). Because the assault Ms. Lobato
13 described was an entirely different incident, her statements on
14 July 20, 2001 are totally irrelevant to the prosecution for
15 Duran Bailey's death on July 8, 2001, and must be excluded.

16 IV.

17 THE DANGER OF UNFAIR PREJUDICE, CONFUSING
18 THE ISSUES AND MISLEADING THE JURY
19 SUBSTANTIALLY OUTWEIGHS THE PROBATIVE VALUE
20 OF MS. LOBATO'S JULY 20, 2001 STATEMENTS.

21 "Although relevant, evidence is not admissible if its
22 probative value is substantially outweighed by the danger of
23 unfair prejudice, of confusion of the issues or of misleading
24 the jury." NRS 48.035.

25 It is within the sound discretion of the trial court to
26 exclude relevant evidence if the probative value is
27 substantially outweighed by the danger of unfair prejudice,
28 confusing the issues or misleading the jury. Larson v. State,
102 Nev. 448, (1986) citing NRS 48.035(1).

1 In Larson, a sexual assault and kidnapping prosecution, the
2 defendant argued that the sexual acts were consensual, and as
3 evidence of such consent offered a photograph of the victim
4 smiling an hour after the alleged assault and kidnapping. The
5 trial court held that the probative value of the photograph was
6 marginal, and that the danger of confusing the issues or
7 misleading the jury justified the exclusion of the evidence.

8 In the instant case, Ms. Lobato's statements on July 20,
9 2001 are highly prejudicial, confuse the issues and mislead the
10 jury. Ms. Lobato was the victim of a crime that occurred at a
11 different time and location for the event. The evidence of this
12 past attack has marginal probative value with regards to the
13 investigation for the July 8, 2001 death of Duran Bailey when
14 balanced against the great likelihood of extreme prejudice,
15 confusion of issue and misleading the jury. Furthermore, it is
16 highly inflammatory, and prejudices Ms. Lobato in that the
17 jurors may convict on the basis of statements that were not
18 describing the events surrounding the death of Mr. Bailey.
19 Moreover, the issues are confused and the jury will be misled
20 by introduction of these statements, because by connecting her
21 with the assault she described, they are more likely to convict
22 her for the murder of Duran Bailey.

23 V.

24 DEFENDANT SEEKS EXCLUSION OF THE JULY 20,
25 2001 STATEMENTS AS WELL AS ALL TESTIMONY AND
26 REFERENCES BY THE STATE REGARDING STATEMENTS
27 MADE BY MS. LOBATO DURING THAT
28 INTERROGATION, AND RECORDINGS OR NOTES
REFLECTING THE SAME.

In the first trial of Ms. Lobato, the jury was made aware

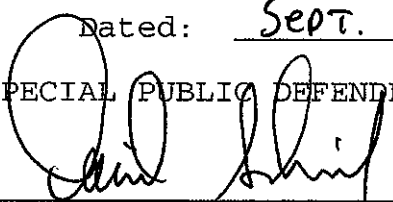
1 of statements made by Ms. Lobato during the July 20, 2001
2 interrogation. The prosecution began their closing argument by
3 referring to Ms. Lobato's illegally obtained statement, "I
4 didn't think somebody would miss somebody like that." (See
5 Exhibit B, State's Closing Argument, Vol. VIII 78:8-10). It was
6 thereafter repeatedly referenced at trial, by Detective Thowsen,
7 and brought during the course of Ms. Lobato's cross-examination.


8 Predicated upon the arguments outlined herein, where the
9 introduction of this evidence is highly prejudicial, based on
10 speculation and conjecture, and not supported by any sound
11 scientific, physical or medical evidence, all of this evidence
12 must be excluded from Ms. Lobato's upcoming trial.

13 WHEREFORE, Ms. Lobato hereby respectfully requests that the
14 instant motion be granted, and that this Court order that all of
15 this evidence be excluded, specifically including but not
16 limited the tape recording of the interview, and any reference
17 to statements made during the interview, all testimonial
18 references to the Ms. Lobato's statements before, during and
19 after the July 20, 2001 interview, as well as exclusion of those
20 statements from the State's opening and closing argument.

21 Dated: Sept. 30, 2005

22 SPECIAL PUBLIC DEFENDER

23 
24 DAVID M. SCHIECK, ESQ.
25 333 S. 3rd Street
26 Las Vegas NV 89155
702/455-6265
Attorneys for LOBATO

27 
28 SHARI L. GREENBERGER, ESQ.
506 Broadway
San Francisco CA 94133
415/986-5591
Attorneys for LOBATO

EXIBIT a

000158

1 Q But prior to going to her house you learned some things about
2 Blaise Lobato, isn't that correct?

3 A That's correct.

4 Q You Scoped her?

5 A Yes.

6 Q You learned that she was a victim?

7 A Yes, I did.

8 Q You then -- Your Honor, I'm just leading because I've read the
9 report and it'll be quicker this way.

10 And you learned that she was a victim of a child molest?

11 A Yes, 1989.

12 Q And you obtained that report and you read the report, is that
13 correct?

14 A Yes.

15 Q You went to her house?

16 A Yes.

17 Q You identified yourself?

18 A Yes.

19 Q What was the first thing you said to her?

20 A I believe the first thing that I said after introducing myself and
21 Detective LaRochelle is that we were there to talk to her because we had
22 heard that something had happened to her and she had to defend herself in Las
23 Vegas.

24 Q Then what did you talk about?
25

1 A Her vehicle being very distinct with its license plate.
2 Q Why was that important?
3 A Because I had information to believe that she was concerned that
4 somebody may have seen her vehicle.
5 Q When, in fact, no one in Las Vegas identified her vehicle, isn't that
6 correct?
7 A That's correct.
8 Q So, you talked about her vehicle, you talked about that she had
9 been assaulted in Las Vegas recently, right?
10 A Yes.
11 Q Then what did you talk about?
12 A Then I told her that I knew that she'd been hurt in the past.
13 Q And what were you referring to?
14 A I didn't say it but I was referring to the incident in 1989.
15 Q And it was clear to her what you were talking about, wasn't it?
16 A I'm not sure what her thought process is.
17 Q Okay.
18 A I can only say how she reacted to it.
19 Q I'll withdraw it. If your answer is speculative, I'll withdraw the
20 question.
21 A Okay.
22 Q How did she react?
23 A She began to cry.
24 Q And she seemed visibly upset to you?
25

~~000648~~

1 A Yes.

2 Q And then what did she say to you?

3 A I didn't think anyone would miss somebody like him.

4 Q Then what did you do?

5 A I asked her to calm down and that I needed to talk to her about it.

6 And, first, I needed to be aware of the rights on the rights' card and asked her

7 if she could read that out loud.

8 Q So, then you immediately Mirandize her after she said someone -- I

9 didn't think anyone would miss him, is that correct?

10 A Yes.

11 Q You indicated that you have people read the Miranda card aloud?

12 A Yes.

13 Q And it was clear to you that she could read the words?

14 A Yes.

15 Q What made you believe she understood the words? Do you

16 understand, so just wouldn't be able to recite what one reads and, actually,

17 comprehend the meaning of what one reads --

18 A Yes.

19 Q -- right?

20 A Yes.

21 Q So, what -- you, clearly, knew she could read the words, right?

22 A Yes.

23 Q What made you believe she could comprehend the words?

24 A The fact that after the person reads it we would tell them, do you

25

1 warning and the audio tape?

2 A Yes, I can tell that by looking -- that's why I put the time on the
3 Miranda card itself and then when you start the taped statement, we put the
4 time on there that that begins so you can tell how much time has transpired.

5 Q Prying to -- try again. Prior to going to Miss Lobato's house you
6 had spoken with Laura Johnson, is that correct?

7 A Yes, it is.

8 Q She is a probation officer for Lincoln County?

9 A Yes, she is.

10 Q And she indicated that she had information that Blaise Lobato had
11 been involved in an assault and that she may have severed someone's penis, is
12 that basically what you knew?

13 A Yes.

14 Q And you knew you had a case involving Duran Bailey from July 8th
15 of 19, excuse me, 2001, is that correct?

16 A Yes, that's correct.

17 Q So, she clearly was the focus of your investigation at that point?

18 A Yes. At that point, yes.

19 Q I mean when you got to her house?

20 A Yes.

21 MR. KOHN: Your Honor, I have no further questions at this time.

22 THE COURT: Redirect?

23 MR. KEPHART: No, Your Honor.

24 THE COURT: It appears to the Court that --

25

1 Q At any point in time did you consider them to be a suspect?

2 A Not after our initial contact with them and they let us speak with
3 them and look through their apartment.

4 Q So, you ruled them out as a suspect, either one of them?

5 A We didn't completely rule them out but there was nothing linking
6 them. They would still remain in the back of our mind --

7 Q Okay.

8 A -- in case something new would transpire that we would need to
9 look at that might connect. But as -- from what we had there was nothing to
10 indicate that they were involved.

11 Q Okay. And between the time that you spoke to Dianna Parker and
12 her roommate and the 20th, was there anything that transpired with regards to
13 this case? Anything come up in your investigation?

14 A No, it did not.

15 Q And then on the 20th you said that you got some information and
16 what was that?

17 A I learned that a probation officer from Panaca and Pioche, Nevada,
18 had information about a person that had been talking about severing a person's
19 penis.

20 Q Okay. And how was that? Did you talk to the probation officer
21 yourself?

22 A I talked to her on the phone about 9:00 in the morning and made
23 arrangements to go that same day, to drive to her location in Panaca and speak
24 with her.

25

1 Q Okay. And that was on the 20th?

2 A Yes.

3 Q Did you go up there on the 20th then?

4 A Yes, I did.

5 Q Okay. And is her name Laura Johnson?

6 A Yes, it is.

7 Q Okay. And at that time that you talked to Laura Johnson were
8 you made aware of a person by the name of Dixie --

9 A Yes.

10 Q -- Tienken, I think her name is.

11 A Tienken, yes.

12 Q Okay. And you -- were you made aware that Dixie had spoken to
13 Kirstin Lobato about severing a person's penis?

14 A Yes, they all referred to her as Blaise though in their
15 conversations.

16 Q Okay. So, when you traveled to Panaca you knew that the person
17 you wanted to talk to, eventually, would be Kirstin Lobato, Blaise?

18 A That's correct.

19 Q And did you talk to Dixie on the 20th or was it just Laura?

20 A It was just Laura.

21 Q And why is that?

22 MR. KOHN: Objection, it's going to go to hearsay. May we approach?

23 THE COURT: Counsel may approach.

24 (Whereupon a bench conference

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

was held)

THE COURT: Overruled. You may answer.

Q (By Mr. Kephart) Why is it that you did not talk to Dixie before you went and talked to the defendant?

A I did not want Blaise to be warned.

Q That you were coming?

A Yes.

Q So, there come a point in time that you -- that -- did you take a statement at that point in time from Laura?

A Yes, I did.

Q Okay. Right there when you get there?

A I sat down and spoke with her first about what information she may have --

Q Okay.

A -- and then asked if she would give me a taped statement, which she agreed. And then I took a taped statement.

Q Tell me a little bit about that. How is it when you come in to contact a person that you're investigating a case and you want to take a statement from him. How do you guys conduct your statements?

A What we would do is anytime you introduce yourself and meet somebody and you're going to try and gather some information, if you just walked up and stuck a tape recorder in pretty much anybody's face, they're going to be thinking about the tape recorder and, maybe, feeling very uncomfortable.

000677

1 investigation in the same manner that you just described?

2 A I conduct all of my interviews on all the investigations that I do in
3 that same way.

4 Q Okay. How long do you particularly talk to an individual before
5 you talk to them on tape?

6 A Depends on the individual and the circumstance. Some people
7 may feel comfortable talking with you right off the bat and you can talk to
8 them for five or ten minutes and get the information. Other people may be
9 nervous or upset about something where you have to talk about something
10 else. Or, you might need to hear about their family or their dog or something
11 else for a half an hour, before they want to get into talking about the incident
12 at hand. So, it depends on each case.

13 Q Did there come a point in time then that you decided to go talk to
14 Blaise?

15 A Yes.

16 Q Okay. And just so we know who you're talking about, can you
17 tell us if she's in the courtroom now?

18 A Yes, I can.

19 Q Can you point to her and describe an article of clothing she's
20 wearing for the record?

21 A She's the lady at the defense table on the extreme, my extreme
22 right-hand side wearing a taupe colored jacket and has brown hair pulled back.

23 MR. KOHN: For the record we'll stipulate he identified our client.

24 Q (By Mr. Kephart) When you saw her on the 20th though she
25

1 looked a little different, didn't she?

2 A Yes, she did.

3 Q And describe the difference.

4 A She looked thinner. She had shorter hair that was blonde, it was
5 very blonde, wearing jeans and like a halter top.

6 Q Okay.

7 A Blue fingernails.

8 Q And where was it that you came into contact with her?

9 A At her home in Panaca.

10 Q Okay. And who was present when you went to her home in
11 Panaca?

12 A I went with my partner, Detective LaRoche. We had a crime
13 scene analyst that followed us there that waited outside. We also had a
14 member of the local sheriff's department there, a Sergeant Lee, that took us
15 'cause he knew where the house was and knew the family.

16 At her house, her sister was present in the garage, initially, and
17 invited us into the house to wait for Miss Lobato as she was in the shower.

18 Q And she eventually came out of the shower?

19 A Yes.

20 Q Okay. And what happened when she came out of the shower?

21 A We were in -- we were standing in the living room area of her
22 home and I introduced myself as Detective Tom Thowsen from Metro homicide
23 and introduced my partner as Detective Jim LaRoche from Metro homicide.

24 Q And what was her response to that? Was there any response
25

1 when you told 'em you're here from Metro homicide?

2 A She didn't say anything, initially, no.

3 Q Okay. Did you have any further discussions with her from there--

4 A Yes.

5 Q -- or did it end there?

6 A No. Immediately upon saying that I told her that we understood
7 that she had been attacked in Las Vegas and had to defend herself.

8 Q Okay. And that's from information you received from Laura that
9 was relating Dixie?

10 A That is correct.

11 Q No one else had told you that at this time?

12 A That is correct.

13 Q Did she respond to you when you said that to her?

14 A Not initially. I followed that immediately with I notice that your
15 car is parked outside and it is -- has a very distinct license plate. She
16 responded immediately to that by saying that maybe somebody was borrowing
17 my car. And with that I told her that I knew that she'd been hurt in the past.

18 Q And what was her response when you said that I'd known that
19 you'd been hurt in the past?

20 A She kind of dropped her head and started to cry. She sat down
21 on an ottoman that was in the living room and I sat down on the couch just
22 adjacent to her and she said, I didn't think anybody would miss him.

23 Q Had you said anything to her prior to that statement, I didn't think
24 anyone would miss him, did you say anything to her that you were there

25

1 investigating a murder of a man?

2 A No.

3 Q Did you say anything that you were there investigating a murder,
4 other than your telling her you're there from homicide?

5 A Just that I'm telling her from homicide and I'm carrying a
6 notebook that says homicide on it.

7 Q And was she agreeable to talk to you?

8 A Yes, she was.

9 Q Didn't say that she didn't want to speak to you or anything?

10 A No, she did not.

11 Q Didn't ask that her parents be present or anything like that?

12 A No, she did not.

13 MR. KEPHART: Can I approach, Your Honor?

14 THE COURT: You may.

15 Q (By Mr. Kephart) I'm showing you what's been marked and
16 admitted as State's Exhibit Number 123. Just so the jury knows what that is,
17 can you tell us what that is?

18 A This is a Xerox copy of the rights of person arrested card, which
19 contains Miranda rights. This particular card is a copy of the one that was
20 given to Miss Lobato, where I'd had her read it aloud back to me and,
21 afterwards, asked her if she understood and would speak with me. She
22 indicated that she would. And she signed her name. And I asked her if she'd
23 put the date and time.

24 She signed her name on a signature line and she wrote the time of
25

1 5:55 p.m. and the date of 7/20/01. And she actually wrote that on the file
2 line instead of the date and time line. And then I have my signature and
3 personnel number next to it. And then I have the file number just below that.

4 Q Okay. And then there's photos below that, is that just for your --
5 came from your file?

6 A Yeah, that's something separate that's just on the same --

7 Q From your file?

8 A -- same page from my file, yes.

9 Q Okay. And this accurately depicts, basically, a photocopy of the
10 rights' card?

11 A That's correct.

12 Q Okay. At this point in time was the defendant arrested? The
13 point and time that you gave her this card?

14 A No.

15 Q This is a standard issued Miranda warnings card that the
16 Metropolitan Police Department uses?

17 A Yes, it is.

18 Q And it has on the card the information that he has a right to
19 remain silent? They have a right to an attorney, if they choose. They don't
20 have to speak if they choose. That information?

21 A That is correct.

22 Q Okay. And it's easily readable? Anyone could read it if they
23 understand English?

24 A If they understand and can read and write the English language,
25

1 July 8th or July 9th?

2 A No.

3 Q When she told you this happened over a month ago, did you ask
4 any follow-up questions whatsoever?

5 A According to this, no, I did not.

6 Q Forget this. I mean did you ask any follow-up questions later?

7 A We just had general conversations.

8 Q Right. And you did ask a question about maybe being in another
9 place, right?

10 A Yes. I might make it, so it's understood, as we're doing this
11 statement, as we're getting toward the end, you can kind of tell that my voice
12 is kind of fast as I'm asking the questions and that is because I'm hearing her
13 mother drive up and I'm being made aware that her father may be coming
14 home and so I'm trying to gather the information that we can and be gone
15 from the residence, so we don't have any sort of confrontation with the father
16 with these different things on the wall. It was a big concern for my partner
17 and I both.

18 Q Wasn't her mother already there?

19 A The mother showed up part way through.

20 Q Right.

21 A And then we had information that the father -- we can hear people
22 talking in the garage or just outside of the room that we are and we can tell
23 that things are getting a little bit excited out there.

24 Q Was her mother allowed in to the interview?

25

~~000714~~

1 A Her mother came in briefly and then I believe she went back out
2 talking with the -- Sergeant Lee.

3 Q But then you didn't take this to some other location like your car
4 on the way home and ask her, wait a second, you were talking about this a
5 month ago. And you know that a month ago puts you back in June?

6 A You know, when we're talking to somebody over various different
7 things, when we sit here and read this in black and white it's quite easy to see
8 specific times and that. When you're talking with somebody live and you're
9 trying to think of your next question and make sure you have things
10 documented, you don't notice every little thing, I'm afraid to say, until you can
11 go back and review it.

12 Q But irrespective of that, you never asked her where she was on that
13 weekend, right, July 8th, July 9th?

14 A Not specifically, no.

15 Q Generally?

16 A We asked her if she could remember when this happened and she
17 could not specifically.

18 Q But even when she told you that it happened over a month ago,
19 you didn't ask any follow-up questions, right?

20 A That's correct.

21 Q And when she was describing this incident happening at the
22 Boulder Suites, you didn't ask her anything about any other -- about anything
23 at the Nevada bank, is that correct?

24 A No, I didn't want to put the Nevada State Bank in her mind. As I
25

1 said, we asked or I asked could it have happened some place else and because
2 of this drug and not sleeping that you're not certain? She responded that it
3 could have.

4 Q But you didn't give her any specific locations?

5 A No, I did not.

6 Q And you, certainly, never asked about the Nevada State Bank?

7 A No, I did not.

8 MR. KOHN: Court's indulgence. May I approach?

9 THE COURT: Yes, you may.

10 Q (By Mr. Kohn) State's Exhibit 106. Is it easier up here?

11 A Yes.

12 Q That depicts my client's car?

13 A Yes, the red car.

14 Q That's where it was when you drove to the house?

15 A Yes.

16 Q Right in front of the house?

17 A Yes.

18 Q Where anybody could see it?

19 A Anybody in Panaca.

20 Q But it certainly wasn't being hidden from someone who was in
21 Panaca, was it?

22 A If they're in Panaca, no, it wouldn't be.

23 Q In her statement Miss Lobato talked about a church that she went
24 to right after this happened.

25

EXHIBIT B

000174

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Whereupon the Court read instructions on the law
to the jury)

THE COURT: Would counsel please approach.

(Whereupon a bench conference
was held)

THE COURT: The State may proceed with its opening.

MS. DIGIACOMO: Thank you, Your Honor.

CLOSING ARGUMENT

BY MS. DIGIACOMO:

I didn't think somebody would miss somebody like that. Those are the words Blaise Lobato used to describe to the detective, Duran Bailey, the man she murdered. Somebody like that. Somebody who might do drugs. Somebody who's a vagrant. Somebody who might have raped another woman.

This case you need to keep your eye on the ball and focus on what this case is about. This case is about a cold, calculated murder committed by this defendant on Duran Bailey.

This case is not about how Duran Bailey might have raped another woman. This case is not about how that woman, Diann Parker, might have sought revenge on him and might have had some Mexicans, who she doesn't know their names, exact that revenge for her.

This case is about Blaise Lobato and what she did on July 8th of 2001.

Now, Mr. Kephart in his opening told you that this case is kind of

~~001609~~

FILED

FEB 3 10 23 AM '06

Sandra K. Digiacomo
CLERK

1 **OPPS**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 SANDRA K. DIGIACOMO
6 Deputy District Attorney
7 Nevada Bar #006204
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)
10 Plaintiff,)
11 -vs-)
12 KIRSTIN BLAISE LOBATO,)
13 #1691351)
14 Defendant.)

CASE NO: C177394
DEPT NO: II

STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO
EXCLUDE STATEMENT MADE BY DEFENDANT DURING THE
COURSE OF THE JULY 20, 2001 INTERROGATION

DATE OF HEARING: 03/03/06
TIME OF HEARING: 9:00 AM

18 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
19 SANDRA K. DIGIACOMO, Deputy District Attorney, and hereby submits the attached
20 Points and Authorities in Opposition to Defendant's Motion In Limine To Exclude Statement
21 Made By Defendant During The Course Of The July 20, 2001 Interrogation.

22 This opposition is made and based upon all the papers and pleadings on file herein,
23 the attached points and authorities in support hereof, and oral argument at the time of
24 hearing, if deemed necessary by this Honorable Court.

25 ///
26 ///
27 ///
28 ///

1 **POINTS AND AUTHORITIES**

2 In her motion, which is in reality a motion to suppress, Defendant requests that this
3 Court exclude: (1) her statements to detectives before Miranda as they were a product of
4 interrogation and psychological ploy; and (2) her statements to detectives after Miranda as
5 the detective's psychological ploy combined with her mental state rendered the waiver of her
6 rights involuntary. Moreover, Defendant alleges that the statements were irrelevant as she
7 was confessing to a different incident. Defendant's assertions are wholly without merit.

8 First, this Court conducted a hearing pursuant to Jackson v. Denno, 378 U.S. 368
9 (1964), and concluded that Defendant's statements were freely and voluntary given and that
10 her will was not overborne. (Trial Transcript, Volume 3: pp. 5-20). Second, Defendant was
11 not in custody at the time of questioning, and defense counsel stipulated to that fact.
12 Therefore, since Miranda warnings are only required prior to custodial interrogations,
13 detectives were not obligated to give them to Defendant. (Trial Transcript, Volume 3: p.
14 18); Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966). Third, the defense raised
15 these issues, with the exception of the relevance argument, in the Nevada Supreme Court;
16 that Court rejected Defendant's claims as being without merit. See Appellant's Opening
17 Brief Attached as Exhibit 1 to Opposition to Defendant's Motion in Limine to Exclude
18 Evidence of Presumptive Blood Tests; State v. Lobato, 120 Nev. 512, 96 P.3d 765, 772
19 (2004). Lastly, as to the relevance argument, such does not preclude the statements from
20 coming into evidence; pursuant to NRS 51.035, any statement of a party offered by his
21 opponent is admissible---relevance is not a requirement.

22 Defendant wants this Court to reconsider its prior ruling but does not proffer any new
23 reason to this Court as to why it should do so. This Court's prior ruling was appropriate as
24 confirmed by the Nevada Supreme Court; therefore, it should stand.

25 ///

26 ///

27 ///

28 ///

1 CONCLUSION

2 Based upon the foregoing, this Court should deny Defendant's Motion in Limine to
3 Exclude Statements Made by Defendant During the Course of the July 20, 2001
4 Interrogation.

5 DATED this 3RD day of February, 2006.

6 Respectfully submitted,

7 DAVID ROGER
8 Clark County District Attorney
9 Nevada Bar #002781

10
11 BY 

12 SANDRA K. DIGIACOMO
13 Deputy District Attorney
14 Nevada Bar #006204

15 CERTIFICATE OF FACSIMILE TRANSMISSION

16
17 I hereby certify that service of Opposition to Defendant's Motion In Limine To
18 Exclude Statement Made By Defendant During The Course Of The July 20, 2001
19 Interrogation, was made this 3RD day of February, 2006, by facsimile transmission to:

20 SPECIAL PUBLIC DEFENDER
21 FAX #455-6273

22 
23 Secretary for the District Attorney's Office

24
25
26
27
28 SDK/sam

1 RPLY
2 DAVID M. SCHIECK
3 Special Public Defender
4 Nevada Bar No. 0824
5 330 S. Third St., Ste. 800
6 Las Vegas NV 89155
7 (702)455-6265
8 SHARI L. GREENBERGER
9 CSB No. 180438
10 SARA ZALKIN
11 CSB No. 223044
12 506 Broadway
13 San Francisco, California 94133
14 (415)986-5591

15 Attorneys for Defendant

16 DISTRICT COURT
17 CLARK COUNTY, NEVADA

18 STATE OF NEVADA,)	CASE NO. C 177394
)	DEPT. NO. II
19 Plaintiff,)	
)	
20 v.)	
)	DATE: 3-3-06
21 KIRSTIN LOBATO,)	TIME: 9:00 A.M.
)	
22 Defendant.)	

23 **REPLY TO STATE'S OPPOSITION TO DEFENDANT'S**
24 **MOTION IN LIMINE TO EXCLUDE STATEMENT**
25 **MADE BY DEFENDANT DURING THE**
26 **COURSE OF THE JULY 20, 2001 INTERROGATION**

27 COMES NOW Defendant, KIRSTIN LOBATO, by and through her
28 attorneys, and replies to the State's Opposition to Defendant's
29 Motion in Limine to Exclude Statement made by Defendant during
30 the Course of the July 20, 2001 Interrogation, as follows:

31 ARGUMENT

32 The Nevada Supreme Court reversed Ms. Lobato's conviction,
33 and remanded the case for a new trial. Lobato v. State, 96 P.3d
34 765 (Nev. 2004). Subsequently, with the assistance of new
35 counsel, Ms. Lobato submitted various Motions in Limine to
36 exclude evidence at her upcoming trial. The State argues that

Shirley B. Pangburn
FEB 22 3 47 PM '06
FILED

1 the issue of the voluntariness of her confession was already
2 decided at her past trial, and she should not be able to raise
3 this issue again. The remand order re-opened the entire
4 prosecution of this case, and all issues pertaining thereto are
5 subject to litigation. Therefore, the outcome of the prior
6 hearing on this issue is not dispositive.

7 This reasoning holds true for other conclusions of the
8 proceedings at Ms. Lobato's first trial as well. Like the
9 voluntariness issue, the State urges this Court to adopt the
10 trial court's determination that Ms. Lobato was not in custody
11 during the July 20, 2001 interrogation. Yet, subsequent to
12 Supreme Court's remand, this issue also must be relitigated. In
13 its opposition the State makes no effort to distinguish the
14 numerous cases cited by Ms. Lobato which indicate that her
15 confession was coerced and not voluntary, nor do they cite any
16 authority for a contrary proposition.

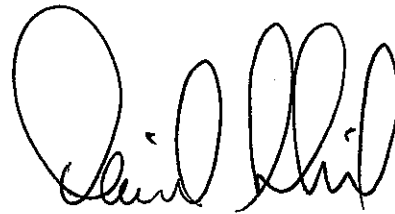
17 The State's final contention, that "pursuant to NRS 51.035,
18 any statement of a party offered by his opponent is
19 admissible—relevance is not a requirement" is absurd. (State's
20 Opposition, page 2) NRS 48.025, states without exception that,
21 "[e]vidence which is not relevant is not admissible." There is
22 no language in NRS 51.035 that creates an exception to the
23 relevance requirement. Instead, NRS 51.035(3)(a) merely defines
24 what statements are not hearsay but this inquiry depends on a
25 preliminary showing of relevancy and thus admissibility.

26 CONCLUSION

27 The State fails to point to any authority which disputes
28 the conclusion that Ms. Lobato's alleged confession was the

1 product of police coercion. By virtue of the fact that this
2 case was remanded for a new trial, the State may not rely on
3 what happened during the first trial, particularly in light of
4 the constitutional issues at stake. Finally, the State does not
5 dispute the fact that during the July 20, 2001 interrogation Ms.
6 Lobato was speaking of a different incident from the one police
7 were questioning her about. Instead, the State attempts to
8 validate the admissibility of these statements by making the
9 assertion that anything she has ever said, at any time, no
10 matter how irrelevant, is admissible, simply by virtue of the
11 fact that she said it and it is offered by the State. Because
12 the State has cited no contrary authority to that presented in
13 Ms. Lobato's moving papers, and because those statements were
14 the involuntary product of coercion, and are moreover
15 irrelevant, Ms. Lobato respectfully requests that this Court
16 exclude all statements made during the course of the July 20,
17 2001 interrogation.

18 Dated: February 21, 2006



19
20
21 DAVID M. SCHIECK, ESQ.
SHARI L. GREENBERGER, ESQ.
SARA ZALKIN, ESQ.
22 330 S. Third St., Ste. 800
Las Vegas NV 89155
23 Attorneys for LOBATO
24
25
26
27

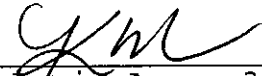
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RECEIPT OF COPY

RECEIPT of a copy of the foregoing Reply to State's
Opposition to Defendant's Motion to Exclude Statement is hereby
acknowledged.

DATED: 2/22, 2006.

DISTRICT ATTORNEY'S OFFICE



200 Lewis Ave., 3rd Floor
Las Vegas NV 89155

ORIGINAL

FILED

JUN -1 1 38 PM '06

Lizotte
CLERK

1 TRAN

2

3

4

5

6

7

DISTRICT COURT

CLARK COUNTY, NEVADA

8

THE STATE OF NEVADA,

9

Plaintiff,

CASE NO. C177394

10

vs.

DEPT. II

11

KIRSTIN BLAISE LOBATO,

12

Defendant.

13

14

BEFORE THE HONORABLE VALORIE J. VEGA, DISTRICT COURT JUDGE

15

MAY 19, 2006

16

**RECORDER'S TRANSCRIPT OF HEARING OF
ALL PENDING MOTIONS**

17

18

APPEARANCES:

19

For the State:

BILL KEPHART, ESQ.

20

Chief Deputy District Attorney

21

SANDRA K. DIGIACOMO, ESQ.

Deputy District Attorney

22

For the Defendant:

DAVID M. SCHIECK, ESQ.

23

Special Public Defender

24

SHARI LYNN GREENBERGER, ESQ.

SARA ZALKIN, ESQ.

25

RECORDED BY: LISA LIZOTTE

RECEIVED

JUN -1 2006

-1-

COUNTY CLERK

000183

1 Friday, May 19, 2006 - 9:00 a.m.

2
3 THE COURT: The record shall reflect that this is the time set to handle
4 various motions pretrial in the case of State versus Lobato, C177394. The
5 Court will ask that counsel state appearances for the record.

6 MS. GREENBERGER: Good morning, Your Honor, Shari Greenberger
7 appearing on behalf of Ms. Lobato. She is present, out of custody.

8 MS. ZALKIN: Good morning, Your Honor, Sara Zalkin also on behalf of
9 Ms. Lobato.

10 MR. SCHIECK: David Schieck, local counsel, Special Public Defender's
11 Office.

12 MS. DiGIACOMO: Sandra DiGiacomo and Bill Kephart for the State.

13 THE COURT: Thank you. We have various motions scheduled for
14 today. I did a cheat sheet for the clerk. Going to take them in the calendar
15 order. The first one is Defendant's motion to admit former testimony of
16 deceased witness. That is the clerk's motion number 52. That pertains to a
17 witness who testified at the prior trial, but subsequently became deceased,
18 being Diane Parker. The State filed a response rather than an opposition --

19 MS. DiGIACOMO: Right, as well as a countermotion.

20 THE COURT: -- and I wasn't sure what counsel's preference was in
21 terms of the method of presentation of that testimony before the jury in the
22 new trial, so perhaps counsel can address that.

23 MS. GREENBERGER: May we just have a moment to confer, Your
24 Honor?

25 THE COURT: Yes.

1 intelligent, and voluntary. She was in police custody. The *Bekowies* case, B-E-
2 K-O-W-I-E-S, stands for the proposition that an interrogation can occur in your
3 home if you're deprived of freedom of movement. We would note for the Court
4 that when the officers arrived at her house there were two officers, one CSA
5 detective, and a local law enforcement, so there were four officers. Ms. Lobato
6 was in her shower. Her parents were not home. The express focus of the
7 investigation was on a homicide. They ignored the fact that she advised them
8 that she was a victim to a different incident at a different time, and they
9 focused from the inception on the molestation that she suffered in the past.

10 They hurried the interview towards the end of it to avoid contact
11 with her parents, and that was a deliberate action they took and never explored
12 the fact that she admitted to them that she was a victim of a crime that had
13 occurred at least a month prior to their interrogation which would be before
14 June 20th, 2001.

15 The interrogation was designed to elicit an emotional response
16 from Ms. Lobato, and the premirandized statements. The law enforcement
17 utilized subversive tactics that were designed to implicate her in the current
18 crime that's being investigated.

19 All of the statements she made were in response to the
20 psychological pressure and tactics that were being utilized, and these
21 statements were not voluntary.

22 The Court needs to look at the youth of Ms. Lobato. At the time
23 she was 18 years old. She was extremely emotionally vulnerable. She was
24 crying during the entirety of the interrogation. She was an admitted user of
25 methamphetamine at the time that she was subject to the attack. She had

1 been molested for nine months at the age of six, and because of all these facts,
2 we submit to the Court that her will was overborne.

3 More importantly, the statements that were elicited were not
4 relevant because of the fact that it was a separate incident. Ms. Lobato was
5 not making a knowing and intelligent confession to the police. The police knew
6 that a crime had occurred at West Flamingo at the Nevada State Bank on July
7 8th, 2001. Ms. Lobato had been attacked on East Flamingo at the Budget
8 Suites, and the time period again is critical. Ms. Lobato's attack was over a
9 month before the interrogation. She advised the police this. They never
10 pursued this or questioned her on it to try to elicit whether they were in fact
11 talking about the same incident, and the admission of these statements are
12 highly prejudicial, confusing, and misleading to the jury.

13 If this testimony is admitted, the jury is likely to make
14 connections between her prior assault and the homicide of Duran Bailey, and
15 we would ask the Court to consider the highly prejudicial nature of it in
16 conjunction with the Supreme Court's ruling that noted the lack of physical
17 evidence.

18 Again, we remind the Court this is a circumstantial case, and the
19 State must make a preliminary showing of relevance.

20 We're seeking to exclude all of the statements that she made, all
21 of the testimony derived therefrom which includes her trial testimony and the
22 references to the statements made by the State in opening and closing
23 argument. Thank you.

24 MS. DiGIACOMO: Your Honor, with regard to both motions, you've
25 already had a hearing the last time, found her statements were voluntary. No

1 Miranda was needed, and I mean, unless you want further review, the Supreme
2 Court's upheld that, and we'll submit it.

3 MS. GREENBERGER: Well, Your Honor, this is the second trial, and we
4 feel bound to preserve the record and address both of these arguments, and the
5 reversal was predicated on Korinda Martin not on the Miranda-type issues.

6 THE COURT: The prior hearing and ruling is law of the case. Although
7 it has been remanded for retrial as counsel indicated, it was predicated on the
8 Supreme Court's review of the testimony of Korinda Martin, and the prior
9 hearing still remains law of the case. The Court as to the number 45 motion,
10 denies the motion to exclude pursuant to *Harrison v. United States*, 392 U.S.
11 219 from 1968. The Court denies the number 50 motion pursuant to *Miranda*
12 *v. Arizona*, 384 U.S. 436, from 1966.

13 The next motion is the number 51 motion. It is Defendant's
14 motion in limine to exclude witness testimony or evidence pertaining to her
15 journal.

16 MS. GREENBERGER: This motion is related to Korinda Martin, Your
17 Honor, although not specified in the sheet you gave us.

18 THE COURT: Yes.

19 MS. GREENBERGER: Before we begin this motion, Your Honor, I want
20 to make sure that the Court and the prosecution has a full set of exhibits,
21 because in the transmission, one of my copies is missing a lot of exhibits, and
22 this motion happens to have a number of them, A through P, and some of the
23 exhibits, especially the ones that reference the prior judicial proceedings in front
24 of Judge Mosley on April 19th, 2005, and in the U.S. District Court; I want to
25 make sure that the Court has all these materials.


CLERK

1 MTN
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 SANDRA DIGIACOMO
6 Deputy District Attorney
7 Nevada Bar #006204
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2211
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,
12 -vs-
13 KIRSTIN BLAISE LOBATO,
14 #1691351
15 Defendant.

Case No. C177394
Dept No. II

NOTICE OF MOTION AND MOTION FOR RECIPROCAL DISCOVERY

DATE OF HEARING: 9/7/06

TIME OF HEARING: 9:30 A.M.

19 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
20 SANDRA DIGIACOMO, Deputy District Attorney, and files this Notice of Motion and
21 Motion for Reciprocal Discovery.

22 This Motion is made and based upon all the papers and pleadings on file herein, the
23 attached points and authorities in support hereof, and oral argument at the time of hearing, if
24 deemed necessary by this Honorable Court.

NOTICE OF HEARING

26 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned
27 will bring the foregoing motion on for setting before the above entitled Court, in Department
28 II thereof, on Thursday, the 7th day of September, 2006, at the hour of 9:30 o'clock A.M., or

1 as soon thereafter as counsel may be heard.

2 DATED this 23rd day of August, 2006.

3
4 DAVID ROGER
5 Clark County District Attorney
6 Nevada Bar #002781

7
8 BY /s/SANDRA DIGIACOMO
9 SANDRA DIGIACOMO
10 Deputy District Attorney
11 Nevada Bar #006204

12 **POINTS AND AUTHORITIES**

13 The State hereby formally requests reciprocal discovery from the defense regarding
14 its case in chief for both the guilt phase and the possible penalty phase. Pursuant NRS
15 174.245 the State requests the following:

16 (a) Written or recorded statements made by a witness the
17 defendant intends to call during the case in chief of the
18 defendant, or copies thereof, within the possession, custody or
19 control of the defendant, the existence of which is known, or by
20 the exercise of due diligence may become known, to the
21 defendant;

22 (b) Results or reports of physical or mental examinations,
23 scientific tests or scientific experiments that the defendant
24 intends to introduce in evidence during the case in chief of the
25 defendant, or copies thereof, within the possession, custody or
26 control of the defendant, the existence of which is known, or by
27 the exercise of due diligence may become known, to the
28 defendant; and

(c) Books, papers, documents or tangible objects that the
defendant intends to introduce in evidence during the case in
chief of the defendant, or copies thereof, within the possession,
custody or control of the defendant, the existence of which is
known, or by the exercise of due diligence may become known,
to the defendant.

The State also requests pursuant NRS 174.245 and NRS 175.552 that reciprocal
discovery be conducted before the commencement of the penalty phase of the Defendant's

1 second trial. For purposes of rules governing discovery, the terms "case in chief" in NRS
2 174.245 are interpreted to include the penalty phase of murder prosecutions, particularly
3 capital cases. *See also Floyd v. State*, 118 Nev. 156, 167-168, 42 P.3d 249, 257-258,
4 *Kaczmarek v. State*, 120 Nev. 314, 91 P.3d 16 (2004), *Deutscher v. State*, 95 Nev. 669, 601
5 P.2d 407. However, NRS 175.552(3), which governs sentencing procedures in first degree
6 murder trials, specifically requires discovery of evidence pertaining to any aggravating or
7 mitigating circumstances in the penalty phase of first degree murder cases, whether or not
8 the State seeks the death penalty.

9 The State further requests that this Court order the defense to turn over any such
10 evidence immediately so that any motion in limine deemed necessary upon review of the
11 evidence may be timely filed by the State.

12 13 CONCLUSION

14 Based upon the above and foregoing Points and Authorities, the State respectfully
15 requests this Court grant the State's Motion for Reciprocal Discovery in compliance with
16 Nevada's discovery statutes.

17 DATED this 23rd day of August, 2006.

18 DAVID ROGER
19 Clark County District Attorney
Nevada Bar #002781

20
21 BY /s/SANDAR DIGIACOMO
22 SANDRA DIGIACOMO
23 Deputy District Attorney
24 Nevada Bar #006204
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of State's Motion for Reciprocal Discovery, was made
this 23rd day of August, 2006, by facsimile transmission to:

DAVID M. SCHIECK
SPECIAL DEPUTY PUBLIC DEFENDER
455-6273

BY Aileen Collins
Employee of the District Attorney's Office

Shirley Blumquist
CLERK

1 **NOTC**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 SANDRA DIGIACOMO
6 Deputy District Attorney
7 Nevada Bar #006204
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

12 KRISTIN BLAISE LOBATO,
13 #1691351)

14 Defendant.)

CASE NO: C177394

DEPT NO: II

NOTICE OF EXPERT WITNESSES
[NRS 174.234(2)]

17 TO: KRISTIN BLAISE LOBATO, Defendant; and

18 TO: OFFICE OF THE PUBLIC DEFENDER, Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
20 NEVADA intends to call the following witnesses in its case in chief:

21 REBEKAH J. HULL is a Forensic DNA Analyst with Sorenson Genomics, and is an
22 expert in the area of DNA technology, and will give scientific opinions related thereto. She
23 is expected to testify regarding the DNA profiling analysis and related procedures she
24 performed in this case.

25 KRISTINA PAULETTE is a Criminalist with the Las Vegas Metropolitan Police
26 Department and is an expert in the area of DNA technology, and will give scientific opinions
27 related thereto. She is expected to testify regarding the DNA profiling analysis and related
28 procedures she performed in this case.

1 The substance of each expert witness' testimony and a copy of all reports made by or
2 at the direction of the expert witness has been provided in discovery.

3 A copy of each expert witness' curriculum vitae, if available, is attached hereto.
4

5
6 BY 
7 DAVID ROGER
8 DISTRICT ATTORNEY
9 Nevada Bar #002781

10 CERTIFICATE OF FACSIMILE TRANSMISSION

11 I hereby certify that service of Notice of Expert Witnesses, was made this 21st day of
12 August, 2006, by facsimile transmission to:

13
14 OFFICE OF THE PUBLIC DEFENDER
15 455-5112

16
17 BY Aileen Collins
18 Employee of the District Attorney's Office
19
20
21
22
23
24
25
26
27

28 /ajc

Rebekah J. Hull
Sorenson Genomics
2495 S West Temple
SLC, UT. 84115
Phone (801) 462-1461
rhull@sorensongenomics.com

QUALIFICATIONS

I have years of laboratory experience working with various types of samples using sterile techniques. I have a proficient knowledge of computer programs such as Word, Excel, Powerpoint, Paup, DNASTAR, SeqEd, Genescan, Genotyper, and GeneMapper. I work very well independently or as an integral part of a research team.

EDUCATION

*B.S. degree in Life Science; minor in Philosophy;
University of Portland*

EMPLOYMENT HISTORY

2006-current Forensic DNA Analyst; Sorenson Genomics

Perform serological screening of cases, known and question sample extractions, quantification and amplification of DNA extracts, and STR analysis. Responsible for writing case reports and testifying to results.

2005-2006 Forensic DNA Analyst; Myriad Genetics

Perform serological screening of cases, known and question sample extractions, quantification and amplification of DNA extracts, and STR analysis. Responsible for writing case reports and testifying to results.

*2001-2004 Researcher/Lab Manager; Population Genetics Lab
Portland State University*

Maintain inventory, maintain sample databases, extract, PCR, and sequence relevant samples (from guano, tissue biopsies, ancient teeth & bone), align and edit sequences, maintain sequence database and PAUP files, perform RFLP analysis and gel electrophoresis, develop novel species-specific primers, optimize microsatellite primers, and communicate with collaborators.

1999-2001 Teaching Assistantship; Portland State University

Taught undergraduate biology lab courses including Principles of Biology and Cell Biology.

1997-1999 Surgery Assistant; Animal Eye Clinic

Maintained inventory, oversaw pharmacy and surgery prep, and assisted in examinations, surgery, client communication, and writing of reports to primary care veterinarians.

1996-1997 Laboratory Teaching Assistant, University of Portland

Prepared materials for Genetics and Histology & Cell Physiology lab courses.

SPECIALIZED TRAINING AND PROFESSIONAL MEETINGS

- American Association of Forensic Sciences: SNPs seminar and general meeting, Seattle, WA, February 2006.
- ABI GeneMapperID Training, at Myriad Genetic Laboratories, Inc., December 15, 2005; Jamie Handelsman, Forensic Field Application Specialist.
- Certification of Casework DNA Analysis, Myriad Forensic Laboratories, 2005
- Certification of Serological Screening, Myriad Forensic Laboratories, 2005

NOTABLE RESEARCH RECOGNITION

Development of novel species-specific primers for inventorying bat species from mixed guano samples.

Methods for inventorying and monitoring bats using genetics.

Nov. 2002 32nd Annual North American Symposium on Bat Research, Burlington, VT. Co-author of speech presentation.

*A study of infant behavior and communal care of young in a captive group of straw-colored fruit bats, *Eidolon helvum*.*

Nov. 2002 32nd Annual North American Symposium on Bat Research, Burlington, VT. Poster presentation.

*A preliminary study of infant rearing and mating behaviors in a captive group of straw-colored fruit bats, *Eidolon helvum*.*

April 2002 3rd Annual NW Consortium for Wildlife Conservation Research, Corvallis, OR. Speech presentation.

Oct. 2001 4th Annual Society of Environmental Journalists, Portland, OR. Poster presentation.

Oct. 2001 31st Annual North American Symposium on Bat Research, Victoria, Canada. Poster presentation.

*Culturable bacteria associated with *Bemisia argentifolii* and pyrethroid degradation*

Oct. 1997 6th Regional Conference on Undergraduate Research, Murdock College Science Research Program, Willamette University, Salem, Oregon. Poster presentation.

*Behavior and spatial use of *Pteropus pygmaeus*.*

Oct. 1997 6th Regional Conference on Undergraduate Research, Murdock College Science Research Program, Willamette University, Salem, Oregon. Poster presentation.

*Hand preference in *Pteropus rodricensis*.*

Nov. 1996 5th Regional Conference on Undergraduate Research, Murdock College Science Research Program, Willamette University, Salem, Oregon. Poster presentation.

COMMENDATIONS & SCHOLARSHIPS

Certificate of Appreciation for Contributions to the Department of Biology
March 24, 1997 David Alexander, PhD, Advisor

Murdock Scholarship for Research with *Pteropus rodricensis*
May 1996-August 1996 Becky Houck, PhD, Advisor