

Crime Analysis

Nevada v. Kirstin “Blaise” Lobato (2006)

This case involves the sexual homicide of a homeless African-American male who was found beaten, sexually mutilated, and covered with garbage in the dumpster enclosure where he regularly slept—on a bank property across the street from the Palms Hotel in Las Vegas. He was at first unidentified, so authorities logged in his body as John “Palms” Doe because of where he found. His real name was Duran Bailey, and he was a rapist.

As described in *Lobato v. Nevada* (2004):¹

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.

At the crime scene, someone who claimed that she knew the victim approached the police. Her name was Diann Parker, and she had been raped by him a week prior. As Sherrer (2006, p.) explains:²

Las Vegas Metro PD (LVMPD) Homicide Detectives Thomas Thowsen and Jim LaRochelle were assigned to investigate the case.

Thowsen and LaRochelle immediately had a prime suspect. While the crime scene was still being processed on the morning of July 9, a woman named Diann Parker approached one of the police officers and told him, “I might

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¹ *Kirstin Blaise Lobato v. Nevada*. (2004) Supreme Court of Nevada, No. 40370, September 3.

² Sherrer, H. (2006) “Possibility of Guilt Replaces Proof Beyond a Reasonable Doubt,” *Justice: Denied*, issue 34, Fall.

know who that guy is. I was the victim of a rape a week ago and that might be the guy that did it.” The information was relayed to the detectives.

The detectives went to Parker’s apartment on the 9th to informally question her. She told them that Bailey and her were acquaintances, and that she had on occasion exchanged sex with him for crack cocaine that he bought. During their conversation Parker said that several “Mexican” men in her apartment complex saw Bailey slap and threaten her on July 1 while she was drinking beer with them. The Mexicans talked with Bailey and told him to leave Parker alone. When she left, they were “watching” to make sure she got back to her apartment safely. Later that day Bailey returned.

He became enraged when she told him she didn’t want anything more to do with him. After forcing his way into her apartment he beat and kicked her, and raped and tried to sodomize her while holding a knife to her neck and throat and threatening to kill her.

Afraid to go to the police because of Bailey’s threats, she did call 911 three days later when he returned and tried to break into her apartment.

She told the officer who responded that reporting Bailey’s assault and rape of her was going “to get me killed.” She also told the police, “If you all don’t catch him, I will be dead.”

When she asked the officer for protection he told her, “you got to do what you got to do to protect yourself the best you can.” She was reluctant to give him too much information about the Mexicans because she thought they could have been in the country illegally.

Parker also told the officer the homeless Bailey “stayed behind the ... Nevada State Bank” at “Flamingo and Arville.” That is where Bailey’s body was found three days later. Parker told Thowsen the two apartment numbers where the Mexicans lived. He talked with the apartment complex’s manager and learned the names they used to rent the apartments. The manager also told Thowsen they didn’t cause any trouble. Thowsen ran a criminal background check on the names.

No record showed up for any of them so he did not interview the Mexicans.³...

In spite of the strong circumstantial evidence suggesting Parker and/or the Mexicans may have been involved in Bailey’s murder, the detectives didn’t pursue investigating them by interrogations or obtaining warrants to search their apartments and vehicles to look for the murder weapon(s), bloody shoes or clothing, or any other possibly incriminating physical evidence that could link them to the crime.

When asked later why on July 9 he didn’t interview the Mexicans after talking with Parker, Thowsen said words to the effect, “It was a long day and we were getting tired and at some point you just have to call it a day.”

Instead of following up on this lead, police were pulled in a direction that required far less investigative effort. On July 20, Laura Johnson, the juvenile probation officer for Lincoln County, Nevada, contacted detectives. She relayed a tip from Dixie Tienken, a Lincoln County teacher. According to Johnson (triple hearsay?), Tienken

³It should be noted that Diann Parker and her Mexican friends lived in an apartment complex just on the other side of the cement parking lot wall adjacent to the dumpster enclosure, on the same city block as the bank.

had been contacted by a former student who said that she had cut off the penis of a man who attacked her in Las Vegas. This tip led them to the former student, Kirstin “Blaise” Lobato. It should be noted that Tienken later testified to being pressured by detectives during her interview to shape her statements toward implicating Lobato.

At Lobato’s first trial, police also enlisted Korinda Martin, an inmate at the Clark County Detention Center. She testified regarding the following (*Lobato v. Nevada*, 2004):

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, after the State added the sexual penetration charge, Lobato boasted that what she had done was overkill, but that “Darren” deserved it.

But there was more to the story, as provided in the record (*Lobato v. Nevada*, 2004):

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). [FN5] Ultimately, the jury heard no evidence regarding the letters, including Martin's denial of any connection with them.

Lobato actually testified in her own defense. She claimed in essence that an unknown assailant attempted to sexually assault her, that she resisted, cut him with a knife, and fled the area. She denied stating to anyone that she had cut someone's penis off. The only evidence connecting her to the crime remained the coerced statement of Tienker and the dubious testimony of Martin.

The jury convicted Lobato, and 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.

The Nevada Supreme Court heard the case, reviewed the evidence, and reversed the conviction entirely in 2004, explaining (*Lobato v. Nevada*, 2004):

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.* 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 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.

*Because 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.

Subsequent to the reversal, a new trial date was set and the author was contacted to perform a crime scene analysis of the case. The results of that analysis are provided in the report that follows.

It should be noted that right up until the time of trial, and even while she was testifying in September of 2006, DNA criminalist Kristina Paulette of the Las Vegas Metro Police Crime Lab was scrambling to test the items of evidence listed in this author's report for any connection to Lobato, at the direction of prosecutors. None of it did.⁴ However, she was not entirely forthcoming about the tests that she was still running even while giving her testimony under direct examination, and that they ultimately excluded the defendant. The defense called her back to explain the scope and results of her testing more fully during their case, which she did.

⁴According to LVMPD Forensic Laboratory Report of Examination, Biology/ DNA, by criminalist Kristina Paulette on September 5, 2006, she tested "Item KP1D—Pubic hair brushing." STR DNA results confirmed a mixed DNA Sample—Dyran Bailey znc Unknown Donor. Paulette's report concluded, "Kirstin Lobato is *excluded* as a possible contributor of the DNA obtained from the pubic hair."

Moreover, detectives testified that they had bagged evidence from the scene in piles and then sorted through those bags back at the lab, discarding most of it without making any record that it ever existed. Only some of the evidence was recorded and officially “collected” for processing. Given the nature of evidence dynamics, the problems with such a practice should be evident (this is a major evidence dynamics issue; review Chapter 6).

The author was asked to testify regarding all of the following issues, as well as his research and experience related to offenders in emasculation cases (cases involving penis removal). This was in essence profiling testimony, which was admitted by the court. As with *WI v. Kupaza*, the state’s medical examiner gave similar testimony.

Ultimately, the jury convicted Lobato of voluntary manslaughter with a deadly weapon and sexual penetration of a dead body. This is a major step down from the results in the overturned conviction. It seems that the jury was forced by attrition to doubt, and even disbelieve, the prosecution’s theory of the case—but for whatever reason jurors felt that there was something to her involvement that they could not get past. The verdict reflects this—but is also confusing. The facts of the case seem to support either first-degree murder or nothing. This compromise verdict was just that—and seems therefore inherently inappropriate.

The case is currently under appeal.

Forensic Examination Report

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From: Brent E. Turvey, MS, P.O. Box 2175, Sitka, AK 99835, Office (907) 747-5121

Date: October 17, 2005

Re: Kirstin “Blaise” Lobato case

On July 8, 2001, the deceased body of Duran Bailey was found behind a garbage dumpster in an unlocked, three-sided cement enclosure on West Flamingo Road in Las Vegas, Nevada. According to witness statements, he was homeless and slept in this location at night. Kirstin “Blaise” Lobato is charged with his murder.

In August of 2005, this examiner was asked by attorneys Greenberger and Zalkin to examine the forensic evidence in this case with respect to both a possible reconstruction of events and a motivational analysis of the offense behavior.

Between September 16 and October 3 of 2005, this examiner received material related to this case from attorney Shari Greenberger, including, but not limited to, the following:

1. Las Vegas Metro Police Department (LVMPD) crime scene evidence list
2. LVMPD crime scene diagram
3. LVMPD arrest and incident reports
4. LVMPD crime scene and evidence reports
5. LVMPD investigator’s reports
6. LVMPD voluntary statements of witnesses

7. LVMPD forensic laboratory reports of examination
8. Crime scene and autopsy photos
9. Autopsy report of Duran Bailey
10. Autopsy evidence form
11. APL toxicology report
12. Preliminary hearing testimony
13. Trial testimony of Dr. Larry Simms
14. Clark County coroner's investigation reports
15. Reports and testimony of criminalist Tom Wahl of the LVMPD forensic lab
16. Report and testimony of fingerprint examiner Joel Gellere,
17. Report and testimony of defense reconstructionist George Schiro
18. LVMPD reports and witness statements related to the sexual assault with weapon of Diann Parker on July 1, 2001

On October 1 of 2005, this examiner visited the crime scene in Las Vegas, Nevada, during both daylight hours and evening hours with attorneys Greenberger and Zalkin, and investigator James Aleman.

On October 5, 2005, investigator James Aleman faxed this examiner an undated copy of "FOLLOW-UP NOTES" from the Clark County Coroner's Office by investigative staff supervisor William Gaza relating to the death of Duran Bailey. It was advised that these notes had just been sent from the coroner's office and had not been discovered previously.

FINDINGS

After a careful review of the facts and information provided, it is the opinion of this examiner that:

1. There is no physical evidence associating Kirstin "Blaise" Lobato, or her vehicle (a red 1984 Fiero), to the crime scene.
2. The offender in this case would have transferred bloodstains to specific areas of any vehicle they entered and operated.
3. The failure of luminol to luminesce at any of the requisite sites in the defendant's vehicle is a reasonably certain indication that blood was not ever present, despite any conventional attempts at cleaning.
4. There are several items of potentially exculpatory evidence that were present on or with the body at the crime scene but subsequently not submitted to the crime lab for analysis.
5. A primary motive in this case is directed anger expressed in the form of brutal injury, overkill, and sexual punishment to the victim's genitals.
6. The wound patterns in this case may be used to support a theory of multiple assailants.

DISCUSSION

1. There is no physical evidence associating Kirstin "Blaise" Lobato to the crime scene.

According to LVMPD forensic lab reports by criminalist Thomas Wahl, all of the evidence from the body or the crime scene that he was asked to examine excluded Ms. Lobato. This includes the following:

- TAW 1, item 1O and 1P: DNA from left and right fingernail clippings of Duran Bailey.
- TAW 3, item 16: DNA from saliva on a wad of chewing gum found at the scene with victim's blood on it.
- TAW 10, items 7, 8, and 9: DNA from blood sample and control swabs from sandal at scene.
- TAW 6, item 2: A pair of Nike Air shoes collected from Ms. Lobato were negative for blood.
- TAW 7, item 2: An aluminum baseball bat collected from Ms. Lobato was negative for blood.
- TAW 8, item 2: A seat cover collected from Ms. Lobato's vehicle was negative for blood.
- TAW 11, item 10: Small pieces of unknown wax like trace evidence with "silver colored paper" collected from Duran Bailey's rectum at autopsy were not associated with Ms. Lobato's vehicle or any item associated with her.

None of the footwear seized from Ms. Lobato by the LVMPD could be associated with the crime scene or the bloody footwear impressions found leading out of the crime scene area.

None of the tire tracks found at the scene by the LVMPD were associated with Ms. Lobato's vehicle.

None of the fingerprint examinations performed by the LVMPD associated Ms. Lobato with the scene or the crime.

2. The offender in this case would have transferred bloodstains to specific areas of any vehicle he or she entered and operated.

After stabbing the victim so many times, cutting off the victim's penis, moving the victim, and walking around in the victim's blood in such a confined space, there would have been blood on the offender's hands and feet at the very least.

This would necessarily result in bloody footwear impressions on the ground leading away from the body, which was the case. It would also necessarily result in bloody transfer to the interior and exterior door handles, the steering wheel, the gearshift, the driver's side floor pads, and any of the foot pedals. This transfer, even if wiped or washed away with conventional cleaning agents, would be detectable using luminol.

3. The failure of luminol to luminesce at any of the requisite sites in the defendant's vehicle would be a reasonably certain indication that blood was not ever present, despite any conventional attempts at cleaning.

Consider the following scientific facts regarding luminol testing in a forensic context:

- When luminol oxidizes, it glows in a process called chemiluminescence.
- It's not the blood that glows in a positive luminol reaction, but it is the iron in the blood that makes the luminol glow.
- Luminol oxidation is catalyzed by the presence of metal ions such as copper, iron, and cyanide.

- As blood dries, it turns brownish and rusty colored; Fe(2) oxidizes to Fe(3). Consequently, the older the bloodstain, the more intense the reaction with luminol.
- Luminol is extremely sensitive; studies have shown that it can detect blood in 1 part per million (1:1,000,000). This includes blood that may be found in urine.
- Luminol is sensitive enough to pick up minute traces of blood even when attempts have been made to wash it away with various cleaning agents such as bleach and ammonia.
- Luminol tests cannot distinguish between human blood and animal blood.
- Brass, bronze, and similar alloys containing copper can give false positives for blood when using luminol.
- Luminol reacts with some cleaning agents, including certain bleaches, *Fast Orange*, *The Works*, *Fantastic*, and *Babo Cleanser*.
- Luminol reacts with many different kinds of vegetation.
- What this all means is that it takes considerable effort to clean any visible bloodstain from clothing to such a degree that Luminol would fail to detect evidence of its presence. This in no small part explains why Gaensslen (1983) reports the following (pp. 247–248):

A number of compounds have been used for the [presumptive] tests, and in particular the test is often named after the chemical compound that is used. Some of the compounds are: benzidine, phenolphthalein, leucomalachite green, ortho-tolidine, tetramethylbenzidine, ortho-dianisidine, and luminol....

Most authorities agree that positive presumptive tests alone should not be taken to mean that blood is definitely present. A positive test suggests that the sample could be blood and indicates [the need for] confirmatory testing. On the other hand, a negative presumptive test is a reasonably certain indication that blood is absent, although in rare circumstances an inhibiting chemical could be present.

This is in agreement with the testimony of LVMPD criminalist Thomas Wahl (pp. 964–965):

Luminol is used primarily to determine or to detect the possibility of blood being present on something that cannot be seen with the naked visual eye. And perpetrators do attempt, have been known to attempt to wash out blood from certain items such that they cannot be seen visually with the naked eye and that's why Luminol is an important tool in crime scene investigation to try to be able to detect blood that's not visually apparent and may have been washed out or diluted.

According to criminalist Wahl, the vehicle seat cover (TAW 8, item 5) and the interior left door panel (TAW 9) of Ms. Lobato's vehicle:

...yielded weak positive presumptive tests for the presence of blood in one area of each item. Human blood could not be confirmed from either item. Human DNA was not detected in extracts prepared from swabbings collected from both items.

Consequently, it is most accurate to say that no blood of any kind was found in Ms. Lobato's vehicle. Furthermore, it is a reasonable scientific certainty that no blood was ever transferred to those areas in or on the car where

Luminol results were negative. This precludes the possibility that the person who committed this crime also entered and operated Ms. Lobato's vehicle immediately after its commission.

4. There are several items of potentially exculpatory evidence that were present on or with the body at the crime scene but subsequently not submitted to the crime lab for analysis.

Item No. 01032493 1; EV# 0107082410 "SEXUAL ASSAULT KIT, DOE, JOHN"

This item appears to be a sexual assault kit performed on the victim in this case, Duran Bailey. According to the Autopsy Evidence Form by CSA Maria Thomas, this sexual assault kit contains combed pubic hair and a penile swab. At the very least, the penile swab and any pubic combings should be tested for DNA in order to confirm or refute the theory that any particular person had sexual contact with the victim prior to death.

It must be noted that the victim's actual penis was not collected and retained as an item of evidence, and was apparently buried with the victim's body (re: communication with Investigator James Aleman on October 5, 2005).

Item No. 01034392 1; EV# 0107082410

3—"CIGARETTE BUTTS"

These items may or may not be the cigarette butts evident in photo 40400012.jpg. The cigarettes in that photograph are located on the victim's right abdomen, left thigh, and left hand.

The cigarettes in that photograph are associated with a single expended paper match (Item 1034392 2) located on his right thigh.

The cigarettes in that photograph are associated with what appears to be ash in the same area.

The cigarettes in that photograph may also be associated with dark injuries described vaguely under Chest and Abdomen; Item 1 as "scattered irregular and curvilinear pressure marks" (see p. 4 of the autopsy report).

As evident in photograph 40400009.jpg, these cigarette butts were located under a plastic bag that shielded them from the garbage that was subsequently placed on top of the body. This associates them more directly with the crime and any related activity. Each cigarette could be examined for latent prints and tested for DNA to confirm or refute the theory that any particular person was at that location after the victim's pants were pulled down, but before the plastic bag was placed over the victim's body.

Uncollected Item

"White Paper Towels"

According to the recently discovered FOLLOW-UP NOTES from the Clark County Coroner's Office by William Gazza, referencing observations at the scene on 07/09/01 on the first page:

The decedent's penis had been cut off, but the testicles remained. There were what appeared to be white paper towels stuffed in the open wound in this area.

This examiner is unable to locate any reference to white paper towels (or any other paper towels) having been collected from the body at the scene, or submitted to the lab for latent or bloody print examination. This item, having been placed into the wound by the offender, could have contained valuable exculpatory evidence that is now apparently irrecoverable.

5. A primary motive in this case is directed anger expressed in the form of brutal injury, overkill, and sexual punishment to the victim's genitals.

According to Turvey (2002, p. 307) motives are the "emotional, psychological, and material needs that impel and are satisfied by behavior."

No profit motivation is evident in this case, as the victim is homeless, has no valuables, is indigent, and is obviously so to all.

No power motivations are evident in this case, as these involve only the force necessary to commit the offense (a robbery, rape, or homicide). They do not involve overkill.

Intense, directed anger is evidenced in this case by the combination of brutal force, lethal force, overkill, and the time spent with the victim inflicting superficial cuts and performing peri/postmortem sexual mutilation.

Brutal and lethal force is evidenced in this case by repeated injuries that inflict tremendous damage until death results: the cumulative blunt-force trauma, stab wounds, and incise wounds to the victim's face, neck, and head. These include, but are not necessarily limited to, the following:

- The contusion to the back of the scalp
- The 4.5-inch superficial incised wound to the left neck
- Multiple abrasions and contusions to the left side of the face and head
- Multiple abrasions and contusions to the right side of the face and head
- The 1.2-inch stab wound to the anterolateral right forehead
- The superficial incised wound group to the left lateral neck
- The premortem stab wound evident to the remaining scrotum
- The stab wound and associated 2.5-inch incise wound on the anterolateral left neck
- The stab would to the left chin
- The 0.6-inch stab wound to the anterior neck
- The 1.2-inch incise wound above the right eye
- The multiple superficial incise wounds in near the left eye and eyelids
- The multiple lacerations of the lips, associated with the fractures and avulsions of the teeth
- The .75-inch incise wound on the chin
- The 2.8-inch incise wound to the left upper chest
- Overkill is evidenced by injury that goes beyond what is needed to kill the victim, including, but not limited to, the following:
 - The postmortem removal of the penis and associated partial removal of the scrotum
 - The incise wound to the rectum
 - The incise wound to the perineum
 - The four postmortem stab wounds to the upper abdomen

It is a common misapprehension that this kind of sexual mutilation (cutting off the victim's penis; incising the victim's rectum) may suggest a female attacker.

In the context of a homicide, this form of sexual mutilation is almost exclusively associated with male victims killed by male offenders. In such cases, one or more male offenders kill a male victim and remove his penis in the peri/postmortem interval to do the following:

- Satisfy jealousy, spite, or rage relating to real or perceived sexual rivalry
- Punish or torture the victim for a real or perceived wrong—retribution
- Collect a trophy
- Feminize a victim in an attempt to “normalize” a sexual assault

Moreover, a nationwide *Westlaw* search of state and federal appellate cases revealed only 16 homicides where an adult victim's penis was actually cut off. In all but one case it was a male, or a group of two or more males, who committed the murder and the ultimate removal of the victim's penis.

- Most of the cases involved brutal attacks to the victim prior to death, even torture in some cases, and evidence of overkill.
- Seven of the cases involved multiple male offenders (two to eight).
- More than a third of the cases involved homosexual offenders.
- Notably, the alleged circumstances in only one case involved a female acting alone to attack, subdue, and remove the penis of an adult male victim—*Nv v. Kirstin Blaize Lobato*.

6. The wound patterns in this case may be used to support a theory of multiple assailants.

The wound patterns and bloodstains in this case evidence that the victim was attacked in the location where he was found, that he fought back at first given the defensive injuries on his hands and forearms, but that he was ultimately overpowered and was unable to physically resist.

The victim was subsequently beaten, cut, and stabbed repeatedly all over the face, head, neck, and abdomen from all directions and with multiple weapons (at least one blunt force object and one sharp force object).

It would be irresponsible not to suggest the theory that more than one person was involved in the attack on the victim given the following:

- Evidence of multiple weapons
- Multiple injuries at a wide variety of locations from multiple directions
- Stab and incise wounds of varying lengths and depths

It is important to note that the available physical evidence does not disprove this possibility. Nor does the case material suggest that this issue has been seriously explored or properly addressed by any of the forensic experts in this case.

Please do not hesitate to contact me with any questions.

Brent Turvey, M.S., Forensic Science

FIGURE III.1

An aerial view shows that the bank property and the apartment complex where Diann Parker lived share the same city block. The bank is the building in the lower left region of the photo, and the dumpster is located at the top end of the long car-cover area on the left side of the parking lot. The pool at the apartment complex is clearly visible, as are many of the apartment buildings.

**FIGURE III.2**

Police crime scene photos show how crime scene investigators improvised a light source at the scene to assist with processing efforts—the headlights of a police cruiser. Unfortunately, it also shows half a dozen officers and a car right on top of the only exit from the dumpster area, where the offender may have left physical evidence. It is unclear why it was necessary for so many officers to be inside the tape doing nothing.

**FIGURE III.3**

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. They found the body of Duran Bailey beneath a pile of garbage.



**FIGURE III.4**

According to the report by footwear pattern expert Bill Bodziak, the bloody footwear impressions at crime scene, on cardboard beneath the trash and on concrete leading away from the body, were no match to any of Lobato's footwear.

**FIGURE III.5**

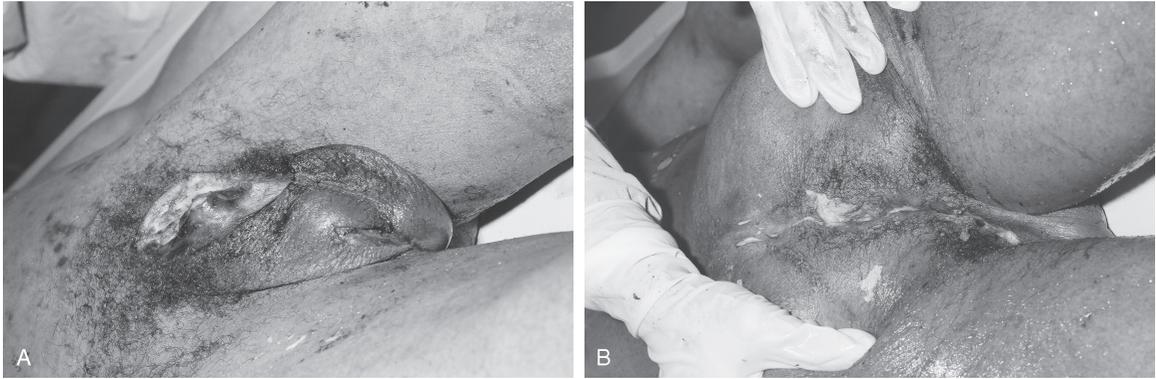
Crime scene investigator's pull back the plastic wrapped around Duran Bailey's midsection to reveal the evidence beneath, as well as some of his injuries. According to Coroner's investigator William Gazza, "The decedent's penis had been cut off, but the testicles remained. There were what appeared to be white paper towels stuffed in the open wound in this area." The penis was recovered at the scene near the body beneath the trash.

**FIGURE III.6**

According to criminalist Tom Wahl, the vehicle seat cover (TAW 8, item 5) and the interior left door panel (TAW 9) of Lobato's vehicle "yielded weak positive presumptive tests for the presence of blood in one area of each item. Human blood could not be confirmed from either item. Human DNA was not detected in extracts prepared from swabbings collected from both items."

FIGURE III.7

Dr. Eric Laufer testified for the defense and determined that some of the sharp-force stab injuries were consistent with having been inflicted by scissors.

**FIGURE III.8**

Bailey's genitals and rectum were mutilated with multiple sharp-force injuries.

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