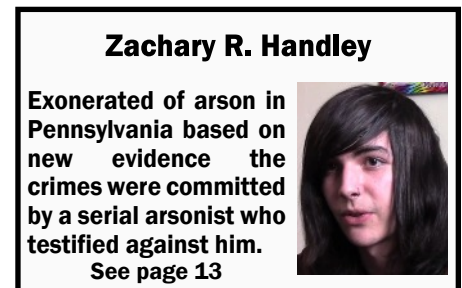
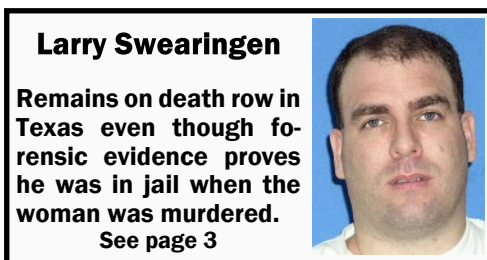
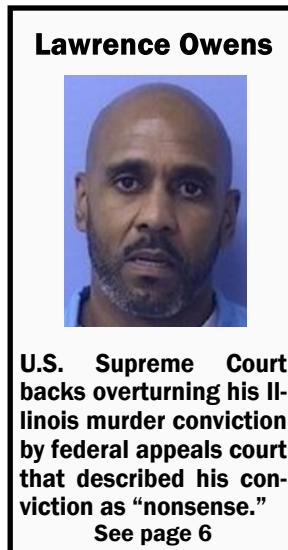


JUSTICE

DENIED

The Magazine for the
Wrongly Convicted

JUSTICE DENIED BEGINS ITS 18TH YEAR



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Message From The Publisher

The nearly herculean effort it takes to be granted a new trial when it is opposed by the prosecution is demonstrated by the bizarre saga of Larry Swearingen. He remains on Texas' death row for the 1999 murder of Melissa Trotter, even though new forensic evidence in 2007, and additional forensic evidence discovered in 2009, proves he was in jail at the time of Ms. Trotter's murder. See. p. 3

The integrity of judges is paramount for the reliability of their rulings to have credibility. The *2015 Judicial Integrity Report* is extremely notable because the *average* rating of state courts in all 50 states was "F." See p. 9.

False confessions are present in many wrongful convictions. Zachary R. Handley suffered the injustice of not only being convicted of arson based on his false conviction coerced by the police, but also by testimony against him by the actual perpetrator: a woman who was a serial arsonist. See p. 13.

In theory a person cannot be convicted of a crime without the prosecution presenting evidence proving each essential element of the crime beyond a reasonable doubt. Lawrence Owens waived a jury trial and put his faith in an Illinois state judge, who found him guilty of murder without evidence he committed the crime. A federal appeals court stated Owens' conviction was based on "nonsense" in granting him a new trial, and the U.S. Supreme Court unanimously backed their ruling. See p. 6.

The prevalence of wrongful convictions in the United States is demonstrated by the fact that in 2015 there was an average of almost six exonerations per week nationally. See p. 10.

Hans Sherrer, Editor and Publisher
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Larry Swearingen On Death Row For Murder Committed When He Was In Jail

By Hans Sherrer

Melissa Aline Trotter was a 19-year-old freshman at Montgomery College in Conroe, Texas when she was last seen by family and friends on December 8, 1998. Twenty-five days later her clothed body was found on January 2, 1999 by hunters in the Sam Houston National Forest north of Conroe. Her body was in such good condition that at first the hunters thought she was a mannequin.

Three days after Ms. Trotter was last seen 27-year-old Larry Ray Swearingen was arrested on December 11 for outstanding traffic tickets. He was in custody from then until Ms. Trotter's body was found three weeks later. He was subsequently charged with kidnapping, raping, and murdering her.

The prosecution's circumstantial case during Swearingen's trial in 2000 was short on facts and long on speculation. There was no direct evidence he was Ms. Trotter's assailant. DNA testing excluded him as the source of blood under her fingernails that was identified as originating from a male, and he was excluded as the source of a pubic hair recovered from a vaginal swab.

During his trial there was testimony Swearingen first met MS. Trotter on December 6 and asked her out. On December 8 they were seen together on the college campus, although he wasn't seen leaving with her.

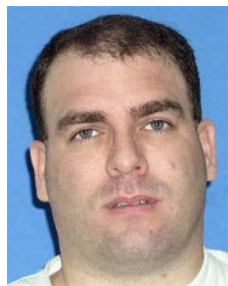
The prosecution's speculation of a scenario of how he could have abducted and killed her was buttressed by the testimony of Harris County Chief Medical Examiner Joye Carter: She testified Ms. Trotter's body was placed in the forest approximately 25 days prior to its discovery. That estimate matched the day she was last seen on December 8.

The jury convicted Swearingen of kidnapping, raping and murdering Ms. Trotter. He was subsequently sentenced to death.

Swearingen's convictions were affirmed on direct appeal, and his state and federal post-conviction petitions were denied.

2007 New Scientific Evidence

More than seven years after Swearingen's



Larry Swearingen
(Tex. DOC)

less than several weeks prior to her disappearance, and the weather in the weeks before discovery of her body, "supports a forensic opinion that Ms. Trotter's body was left in the woods within two weeks of the date of discovery on January 2, 1999." The earliest date Ms. Trotter could have been left in the forest based on Carter's analysis is December 19.

In addition to Carter, five other experts in 2007 – two forensic entomologists and three forensic pathologists – provided an affidavit, report, or testimony during an evidentiary hearing concerning their professional opinion of when Ms. Trotter's body was placed in the forest. Their determinations of the earliest it could have occurred ranged from December 18 to December 23. Two of the pathologists – Dr. Glenn Larkin and Dr. Lloyd White – opined that the minimal deterioration of her pancreas and other internal organs suggests she wasn't left in the forest until after December 28.

The significance of the new evidence provided by the six experts is the earliest Ms. Trotter's body could have been left where it was found, was a week after Swearingen was jailed on December 11. Consequently, it is not physically possible he abducted and murdered her.

2009 New Scientific Evidence

In January 2009 heart, nerve and vascular tissue taken from Trotter's body during her autopsy were discovered preserved in a paraffin block. There was no mention of the preserved tissue in Ms. Trotter's autopsy report. Analysis of those tissues provides the most accurate determination of when Ms. Trotter died, because shortly after a person dies enzymes begin to digest the cells in their major organs. This process usually begins within a few days in organs

conviction Dr. Carter recanted her trial testimony about Ms. Trotter's time of death. Dr. Carter explained in an affidavit dated October 31, 2007, that the condition of Ms. Trotter's torso, her internal organs, her body weight that

such as the heart and liver. The tissue samples were microscopically examined by Dr. Lloyd White, Tarrant County Deputy Medical Examiner, who reported in April 2009:

The slides ... clearly showed tissue architecture and subcellular details that disappear within two or three days of death, unless the tissue is fixed and preserved. It is therefore scientifically certain that Ms. Trotter's body was recovered no more than two or three days after it was left in the National Forest. Without evidence that the body was preserved in another location before being deposited in the National Forest, the microscopic evidence permits only one forensic conclusion, and that is that *Ms. Trotter died no sooner than December 29 or December 30, 1998.*

(Pathological Opinion of Dr. Lloyd White, Tarrant County Deputy Medical Examiner, April 14, 2009.)

Dr. Stephen Pustilnik, Chief Medical Examiner of Galveston County, Texas also microscopically examined the new tissue evidence. He reported in April 2009:

In summary, without prior refrigeration the deceased was killed within reasonable certainty between five to seven days prior to her discovery. This would put the *date of death on or about December 26, 1998.* (Findings of Dr. Stephen Pustilnik, Chief Medical Examiner of Galveston County, Texas, April 14, 2009.)

The expert analysis of the new medical evidence didn't just confirm the earlier evidence that Ms. Trotter died no earlier than December 18, but narrowed it to no earlier than December 26 – which was 15 days after Swearingen was jailed.

Forensic pathologist Dr. Glenn Larkin, a leading authority at medically determining time of death, provided a report in 2007 that the earliest Ms. Trotter could have been placed in forest was December 23, 1998. He also opined that the condition of her body, and the condition of her pancreas, suggested her death may not have occurred until at least December 29. Dr. Larkin was quoted in the January 2009 issue of *Texas Monthly*:

"As a forensic scientist since 1973, I always kept an objective stance when called to testify; however, there comes a point when as a human, and as a Christian, there is a mandate to speak in the interest of justice. This is a moral issue

Swearingen cont. on page 4

Swearingen cont. from page 3

now; no rational and intellectually honest person can look at the evidence and conclude Larry Swearingen is guilty of this horrible crime.” (Italics added)

Appeals based on new evidence denied

Even though DNA and forensic evidence (medical and entomology) supports the conclusion that he did not murder Ms. Trotter – Swearingen’s state habeas petition seeking a new trial based on his actual innocence was denied.

A day before Swearingen’s scheduled execution on January 27, 2009, a federal judge issued a stay for review of his successive federal habeas petition. The judge eventually denied Swearingen’s petition, ruling that although he didn’t exercise the “due diligence” required by federal law in discovering his new evidence, that didn’t make any difference because Swearingen did not present “clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found [Swearingen] guilty of the underlying offense.” (*Swearingen v. Thaler*, No. H-09-300, 2009 WL 4433221 (S.D. Tex. Nov. 18, 2009) Since the U.S. Supreme Court hasn’t ruled that executing a possibly innocent person is a constitutional violation, Swearingen’s new evidence of his innocence didn’t warrant federal habeas relief.

Swearingen appealed to the federal Fifth Circuit Court of Appeals, which [affirmed the denial](#) of his petition in April 2011. (*Swearingen v. Rick Thaler*, No. 09-70036 (5th Cir. 2011))

In July 2011, the Texas Court of Criminal Appeals stayed Swearingen’s third execution date and remanded the case back to the trial court to review and resolve Swearingen’s state habeas claim of actual innocence and due process violations.

The trial court conducted an evidentiary hearing in February and March 2012, after which the trial judge recommended the denial of Swearingen’s petition. On December 12, 2012, The TCCA adopted the trial judge’s findings and conclusions.

Two days later, on December 14, then trial judge Fred Edwards issued a new death warrant for Swearingen, and set his fourth execution date for February 27, 2013.

On January 17, 2013 Swearingen filed a fourth petition for DNA testing of the avail-

able evidence by state of the art techniques. During a hearing held on January 30, 2013, new 9th state District Court Judge Kelly Case – who defeated Edwards’ bid for reelection – issued an indefinite stay of execution. She stressed the need for “certainty over finality” because of the issue of the requested DNA testing.

Judge Case ordered, on June 10, 2013, DNA testing. Then in May 2014 Judge Case granted Swearingen’s fifth petition for DNA testing. The evidence to be tested included hair, Trotter’s rape kit, cigarette butts, ligature, and Trotter’s underwear, shirt, sweater and blue jeans.

The Montgomery County District Attorneys Office appealed each of Judge Case’s orders.

In October 2015 the Texas Court of Criminal Appeals voted 7 to 3 to reverse Judge Case’s orders for DNA testing, and remanded the case back to the trial court. The majority ruled that Swearingen filed to satisfy the requirements for post-conviction DNA testing under Texas Code of Criminal Procedure Chapter 64. (*State v. Swearingen*, 424 SW 3d 32 (Tex. Ct of Crim Appeals 2014)) Three justices dissented, arguing that the DNA testing should be allowed to be conducted. Judge Alcala wrote in his dissent:

“I conclude that, ... DNA testing on the hair evidence and the rape kit linking a different person to this offense would, by a preponderance of the evidence, show that Swearingen would not have been convicted. I, therefore, respectfully dissent from this Court’s judgment that, for the third time in over a decade, denies Swearingen access to DNA testing under Chapter 64 of the Code of Criminal Procedure.” *Id.*, Alcala dissent, *op. cite*, 2

In November 2015, Swearingen’s defense team filed a motion for rehearing in the Texas Court of Criminal Appeals. The motion was supported by an [amicus brief submitted](#) by five forensic scientists.

The motion for rehearing was denied on February 10, 2016. That clears the way for the district attorney’s office to file another motion to set a date of execution.

Conclusion

In spite of the fact there is no direct, eyewitness or confession evidence that Larry Swearingen murdered Melissa Trotter, while there is compelling medical and scientific evidence establishing she was placed in the national forest when he was incarcer-

ated in the Montgomery County Jail, the State of Texas continues to defend his conviction and seeks his execution.

Having the perfect alibi: being in custody when Ms. Trotter was murdered, has thus far not been enough under state or federal post-conviction laws for Swearingen to be granted a new trial, during which his jurors could hear all the exculpatory evidence that his jurors in 2000 were unaware existed.

The person or persons who murdered Ms. Trotter should be held responsible for their terrible act. However, it doesn’t serve any rational purpose for an innocent person to be convicted, sentenced to death, and sit on death row for 16 years awaiting execution for her murder.

Click here to read [Justice Denied’s Editorial](#) in January 2009 when Larry Swearingen was previously scheduled to be executed: “Larry Swearingen Scheduled For Execution Based On “Seat Of The Pants” Evidence.”

[Click here to read](#) Justice Denied’s article in Issue 49 (Winter 2012): “Larry Swearingen’s Execution Is Stayed So His Actual Innocence Claim Can Be Considered”

[Click here for a timeline](#) of Swearingen’s case in an article by The Courier (Montgomery County, TX)

Sources:

[Swearingen v. Rick Thaler](#), No. 09-70036 (5th Cir. 2011)

[State v. Swearingen](#), 424 SW 3d 32 (Tex. Ct of Crim Appeals 2014) (Reversing district court order for DNA testing)

[State v. Swearingen](#), No. 77,043 & 77,044 (Tex. Ct of Crim Appeals 2014) (Motion for rehearing)

[DNA testing still unresolved](#) in Montgomery County’s death row case against Larry Swearingen, The Courier (Montgomery County, TX), Jan. 4, 2015 (Detailed timeline of Swearingen’s case.)



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Nicholas M. Menditto Exonerated Of Marijuana Convictions By Con- necticut Supreme Court

The Connecticut Supreme Court [has ordered](#) erasure of Nicholas M. Menditto's two convictions in 2009 related to his possession of less than 1/2 ounce of marijuana. The Court ruled that Connecticut's 2011 law decriminalizing possession of less than 1/2 ounce of marijuana retroactively applies to pre-July 2011 convictions.

Menditto was 25 when he pled guilty in October 2009 to two charges of possessing small quantities of marijuana, which was classified as a controlled (drug) substance under Connecticut state law. The charges were related to two arrests: one for possessing 0.01 ounce of marijuana, and the other for possessing 0.15 ounce. Menditto was sentenced to two years imprisonment, suspended contingent on successfully completing eighteen months of probation.

In March, 2011 — a month before the end of his probation — Menditto was arrested for possessing about 0.03 ounce of marijuana, and charged with violating Connecticut's controlled substance law. As a result of his arrest and new charges Menditto was charged in April 2011 with violating his probation, which carried the possible penalty of serving his two year prison sentence that was suspended in 2009.

Connecticut P.A. 11-71 (General Statutes § 21a-279a) went into effect on July 1, 2011. P.A. 11-71 decriminalized possession of less than 1/2 ounce of marijuana, and transformed it into a minor civil violation with a maximum penalty of a \$150 fine for a first offense, and a fine of between \$200 and \$500 for subsequent offenses..

Based on Connecticut's decriminalization of possessing small amounts of marijuana, Menditto filed a petition to erase his two 2009 convictions; dismiss his probation violation; and dismiss his 2011 controlled substance charge.

Hartford County Superior Court Judge Laura Flynn Baldini denied Menditto's petition. Judge Baldini ruled that P.A. 11-71 did not retroactively apply to convictions and charges prior to July 1, 2011.

Following Judge Baldini's ruling Menditto entered no contest pleas to his possession of a controlled substance charge and the two



probation violation charges. His plea was conditional on the outcome of his appeal of her ruling. Judge Baldini accepted Menditto's plea agreement and sentenced him to pay a fine of \$150 and terminated his probation.

In his appeal to the Connecticut Court of Appeal, Menditto argued Judge Baldini erred denying his petition because P.A. 11-71 retroactively "decriminalized" possession of less than 1/2 ounce of marijuana. Consequently, he argued had been convicted in 2009 and charged in April 2011 with conduct that was not a crime under Connecticut law. In December 2013 the Court of Appeals [affirmed](#) Judge Baldini's ruling in *State v. Menditto*, 147 Conn.App. 232, 80 A. 3d 923 (Conn. Ct. of Appeal, 12-24-2013)

Menditto appealed that ruling, arguing that the appeals court erred in ruling that P.A. 11-71's "decriminalization" of possessing less than one-half ounce of marijuana did not retroactively reclassify it from a crime to a civil violation like a traffic ticket.

In a ruling scheduled for release on March 24, 2015 the Connecticut Supreme Court unanimously ordered erasure of Menditto's 2009 convictions and all public records related to it, but remanded his pending charges filed in 2011 to the trial court to be dealt with consistent with the court's ruling about the 2009 convictions. In *State v. Menditto*, No. SC19272 (Ct. Supreme Ct., 3-24-2015) the Court reviews the legal and common definitions of "decriminalization," and the legislative intent in decriminalizing possession of small amounts of marijuana to a minor civil violation judged by a preponderance of the evidence and not the criminal proof beyond a reasonable doubt standard. The ruling states in part:

Connecticut's erasure law, part I of chapter 961a of the General Statutes, provides in relevant part that "[w]henever any person has been convicted of an offense . . . and such offense has been decriminalized subsequent to the date of such conviction," that person may petition the Superior Court for an order of erasure directing that all public records pertaining to the conviction be destroyed.

...

The question we must resolve, then, is whether changing the status of an illegal act from a crime to a *minor civil violation* constitutes decriminalization for the purposes of the erasure statute.

...
For these reasons, we conclude that the trial court improperly denied the defendant's petitions to erase and destroy the records of his two 2009 marijuana convictions, and we reverse the judgment of the Appellate Court insofar as it held to the contrary.

The judgment of the Appellate Court is reversed in part and the case is remanded to that court with direction to remand the case to the trial court for further proceedings consistent with this opinion; ...

[Click here to read *State of Connecticut v. Nicholas M. Menditto*, No. SC19272 \(Ct. Supreme Ct., 3-24-2015\).](#)

When Menditto's marijuana conviction and probation violations from 2011 are reconsidered by the trial court on remand, it can be expected the trial court will order withdrawal of Menditto's conditional guilty plea and dismiss the marijuana charge and probation violations.

The Court's ruling in Menditto's case opens the door for any person convicted in Connecticut of possessing less than 1/2 ounce of marijuana prior to July 2011 to file a petition for erasure of their conviction and destruction of all public records pertaining to that conviction. Thousands of people may have been convicted of possessing small amounts of marijuana during the decades it was prosecuted as a crime in Connecticut.

Sources:

[State v. Menditto](#), No. SC19272 (Ct. Supreme Ct., 3-24-2015) (Vacating marijuana convictions prior to 2011)

[State Supreme Court Ruling](#) Clears Way For Marijuana Convictions To Be Erased, By Dave Collins (AP reporter), Hartford Courant, March 16, 2015

[State v. Menditto](#), 147 Conn.App. 232, 80 A. 3d 923 (Ct. Ct. of Appeal, 12-24-2013)

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U.S. Supreme Court Backs Federal Appeals Court's Declaration Law- rence Owens' Murder Conviction Is "Nonsense"

The U.S. Seventh Circuit Court of Appeals [has overturned](#) Lawrence Owens murder conviction in Cook County, Illinois on the basis the judge's reason for finding him guilty in 2000 after a bench trial is "nonsense", because it was based on evidence the judge made up out of thin air.

After dark on the evening of September 22, 1999, 17-year-old Ramon Nelson was riding his bike away from a liquor store in Markham, Illinois when he was struck on the head by a wooden stick that could have been a baseball bat. Markham is in Cook County about 20 miles south of Chicago. There was some light from street lamps and nearby buildings.

After hitting Nelson the assailant fled. Nelson was unconscious when he was transported to a hospital. Without regaining consciousness he died the next day as the result of his fractured skull.

In Nelson's coat pockets police found 40 small plastic bags of crack cocaine. The cocaine appeared packaged for individual sale.

Police obtained statements from two persons who claimed to have seen the murder. Maurice Johnnie and William Evans identified Owens from a photo array of six men, and then from a five-man line-up after Owens' arrest. Owens was the only person in both the photo array and the line-up.

When interrogated by the police Owens insisted he did not assault Nelson.

The police investigation discovered no evidence tying Owens to the murder other than the eyewitness evidence, which was relied on to charge him with first-degree murder.

Owens' waived his right to a jury trial. During his bench trial on November 8, 2000 there were significant discrepancies between the testimony of Johnnie and Evans. Evans testified there were two assailants while Johnnie said there was only one, and Evans testified Nelson spoke with his assailants before the assault, while Johnnie testified he didn't. Also, during Evans' testimony he twice pointed to someone else in the photo array as the assailant -- even though Owens was sitting in the courtroom



Lawrence Owens
(Ill. DOC)

at the defense table. Evans testified during cross-examination that he had a prior drug conviction for which he was on probation, and he was in custody on another drug charge. He admitted he agreed to testify in exchange for the State recommending probation on his pending drug charge, and continuation of probation on his previous drug conviction.

The prosecution presented no physical or forensic evidence tying Owens to the crime, and no evidence that Owens was involved with drugs or knew Nelson.

Owens' lawyer did not present any evidence in his defense, instead relying on his closing argument the prosecution introduced insufficient evidence to prove Owens guilty beyond a reasonable doubt.

Judge Joseph M. Macellaio found the 27-year-old Owens guilty of first-degree murder, and sentenced him to 25 years in prison.

Owens conviction was affirmed on direct appeal. In 2003 he filed a state post-conviction petition that raised a number of issues he asserted warranted a new trial. His petition included an Affidavit in which [Owens asserted](#) "he was actually innocent of Nelson's murder and that he repeatedly informed his attorney, Frank Rago of that fact. According to Owens, he told Rago that he had an alibi for the night Nelson was murdered and that he had two witnesses who could corroborate that alibi. ... But, Owens says, Rago failed to investigate or interview his alibi witnesses and "forb[ade] [Owens] to testify [sic] in [his] own defense." Owens' petition included affidavits from the two alibi witnesses detailing he was with them at the home of one of the witnesses the evening of the murder.

While his state petition was still pending, Owens filed a federal habeas corpus petition in December 2008. The State moved to dismiss Owens' federal petition based on his failure to exhaust his state court remedies. Owens countered that through no fault of his own his state petition had been languishing undecided for five years. Owens' federal petition was not dismissed and the State was ordered to answer it, although no action was taken to make a ruling on it until the state proceedings had been concluded.

In 2010 the trial court denied Owens' petition, the Illinois Court of Appeal affirmed that ruling, and in September 2011 the Illinois Supreme Court refused to hear his appeal.

The way was cleared for consideration of Owens' federal petition. An evidentiary hearing was held in March 2013 during which Owens' alibi witness and other persons testified. Owens' petition was denied on February 11, 2014 by U.S. District Court Judge Thomas M. Durkin.

The U.S. Seventh Circuit Court of Appeals allowed Owens to appeal Judge Durkin's the on the [single issue of whether](#) "the state trial judge who convicted him based his decision on evidence that did not exist, thus denying him due process of law in violation of the Fourteenth Amendment."

On March 23, 2015 a three-judge panel of the U.S. Seventh Circuit Court of Appeals reversed Judge Durkin's ruling and granted Owens' petition. In *Lawrence Owens v Stephen Duncan*, No 14-1419 (7th cir. 3-23-2015), the opinion authored by Circuit Judge Richard A. Posner [stated in part](#):

"Owens was the only person in the line-up who also was in the photo array, thereby diminishing the probative value of the second identification. ... There were [] discrepancies between the two witnesses' testimony.

No evidence was presented that Owens had known Nelson, used or sold illegal drugs, or had any gang affiliation.

For at the end of the parties' closing arguments the judge said: "I think all of the witnesses skirted the real issue. The issue to me was you have a seventeen year old youth on a bike who is a drug dealer [Nelson], who Larry Owens knew he was a drug dealer. Larry Owens wanted to knock him off. I think the State's evidence has proved that fact. Finding of guilty of murder."

That was all the judge said in explanation of his verdict, and it was nonsense. No evidence had been presented that Owens knew that Nelson was a drug dealer or that he wanted to kill him ... or even knew him—a kid on a bike.

... he [the judge] thought that Owens' knowledge that Nelson was a drug dealer was the fact that dispelled reasonable doubt of Owens' guilt.

... But there was no factual basis of any

Owens cont. on p. 7

Lakesha Lanika Artis Acquitted By Virginia Court of Appeals Of Involuntary Manslaughter In Death Of Her Daughter

The Virginia Court of Appeals on June 2, 2015 [acquitted](#) Lakesha Lanika Artis of involuntary manslaughter in the death of her two-year-old daughter Destiney Riddick in 2011. Destiney died from complications related to her accidental ingestion of an unknown quantity of a prescription drug. Although Artis, and her stepmother and her stepmother's boyfriend were convicted of charges and sentenced to prison related to Destiney's death, none of the medical personal who failed to



babysat Destiney. Bullock noticed the Mentos candy container in his bedroom in which he stored his Suboxone was empty. Suboxone is a prescription drug commonly used to treat opiate addictions.

Bullock and Kimberly asked E.A. — another

properly treat her after she was rushed to the hospital were charged with any crime.

On the afternoon of July 16, 2011 Artis' stepmother Kimberly Denise Artis and her stepmother's boyfriend Steven Wade Bullock

toddler under their care — and Destiney who "ate the candy." E.A. pointed to Destiney. After Destiney could not be made to vomit, poison control was called. Bullock and Kimberly were instructed to immediately take Destiney to the hospital. Artis was called at work and she rushed to the hospital.

Destiney arrived at the hospital at 6:14 p.m., and during the next hour her vitals were checked four times, with her oxygen level was as low as 92% and her respiratory rate dropped from 22 breaths per minute to a low of 13. Her low levels were subnormal for a child, that is expected to have 20 to 30 breaths per minute, and a blood oxygen level between 95 and 100%. Destiney's vitals were last checked at 7:15 p.m.

Lakesha cont. on page 8

Owens cont. from p. 6

sort, in the trial record or elsewhere, for the judge's finding that Owens knew Nelson, let alone knew or cared that he was a drug dealer. The judge made it up.

... Nonetheless, to repeat, we can assume that if the evidence of Owens' guilt had been overwhelming, the judge's conjecture that Owens knew Nelson and knew him to be a drug dealer and that Owens was ... himself involved in the drug trade ... could be disregarded as goofy but harmless. But evidence of Owens' guilt was not overwhelming.

Given that the entire case pivoted on two shaky eyewitness identifications, Owens might well have been acquitted had the judge not mistakenly believed that Owens had known Nelson to be a drug dealer and killed him because of it.

The Supreme Court has made clear ... that a judge or a jury may not convict a person on the basis of a belief that has no evidentiary basis whatsoever. Just imagine that the judge in our case had said "I know there's no evidence of guilt, but I also know that prosecutors in the City of Markham never prosecute an innocent person."

And so we reverse the judgment denying Owens relief and give the state 120 days in which to decide whether to retry him. If it does not decide within that period to retry him, he must be released from prison.

[Click here to read](#) *Lawrence Owens v Stephen Duncan*, No 14-1419 (7th cir. 3-23-2015). The Illinois Attorney General's Of-

fice represents Stephen Duncan, who is the Respondent-Appellee because he is the warden of Lawrence Correctional Center where Owens is imprisoned.

On March 26 the State filed a Motion to Stay Issuance of Mandate pending final disposition of a petition for a writ of *certiorari* to the United States Supreme Court that the State said it intended to file. On March 30 Judge Posner denied the motion, indicating that he thinks the State's writ will be a futile exercise.

On October 1, 2015 the Supreme Court [granted the State's petition](#) for a writ of *certiorari*. The petition was accepted to resolve the "Issue:

Whether the Seventh Circuit violated 28 U.S.C. § 2254 and a long line of this Court's decisions by awarding habeas relief in the absence of clearly established precedent from this Court."

On January 12, 2016 the Supreme Court held its oral argument. Several justices expressed skepticism about the State's position, and the following exchange occurred between Justice Kagen and the State of Illinois lawyer:

Justice Kagen: But once you say, as I think you said, and I think you properly said, Look, if what the — the judge's various comments on motive was basically taking him over the line, was that that was the basis for the verdict of guilty, that he didn't think that all the evidence, the other evidence was enough and that that was crucial to his finding, then, if I understand you right, you would say that's a due process vio-

lation because at that point the verdict of guilty is based on evidence that was never presented.

Ms. Shapiro: If the — if the judge found that the elements had not been proven beyond a reasonable doubt.

Justice Kagen: Well, the judge is just saying it's not — you know, this is not enough, and it's necessary for me to think about motive as the missing piece. (*Duncan v. Owens*, No. 14-1516 (USSC, 1-12-2016) (Oral arguments, transcript)

The Court issued a unanimous 9-0 *per curiam* opinion eight days later, on January 20, 2016. The one-sentence ruling stated: "The writ of certiorari is dismissed as improvidently granted." On February 23, 2016 the judgment was issued allowing the Seventh Circuit's ruling to stand.

With the granting of Owens' habeas petition and the reversal of his convictions, the State of Illinois will have to decide whether to dismiss the charges against Owens or attempt to retry him without credible evidence of his guilt.

Source:

[Lawrence Owens v Stephen Duncan](#), No 14-1419 (7th cir. 3-23-2015) (granting state prisoner's federal habeas and ordering new trial)

[Appeals court judge overturns "nonsense" murder conviction](#), By Tina Sfondeles (Staff writer), *Chicago Sun-Times*, March 24, 2015

[Lawrence Owens v. Marc Hodge](#), No. 08 C 7159 (USDC ND IL, Eastern Div.) (2-11-14, Memorandum Opinion and Order denying federal habeas petition)

[Duncan v. Owens](#), No. 14-1516 (U.S.S.C.) (Docket page)

[Duncan v. Owens](#), 577 U.S. ____ (2016) ("The writ of certiorari is dismissed as improvidently granted.")



Lakesha cont. from page 7

Hospital personnel decided not to admit Destiny and discharged her at 9:00 p.m. Artis was given a set of *generic* Discharge Instructions that [stated in part](#): “Nontoxic Ingestion: Your exam shows your ingestion is not likely to cause serious medical problems. Further treatment is not needed at this time.”

In the section of the discharge papers entitled “ED Course/Medical Decision Making,” [the note read](#) as follows: “Pt. here for possible ingestion of Suboxone . . . Pt has remained awake, alert with No respiratory difficulty during her ED course. Pt is stable discharge. Parents re-assured.”

Artis took Destiny home. About 8:30 a.m. the next morning when Destiny didn’t respond to her call, she found that Destiny was cold to her touch. Her husband immediately began to administer CPR and emergency personnel were called and she was transported to the hospital. Efforts to resuscitate Destiny were unsuccessful.

Destiny’s autopsy determined her cause of death was buprenorphine poisoning. (Destiny ingested Suboxone that is a commercial name for buprenorphine.)

In June 2012 Bullock, 51, and Kimberly, 39, [were indicted](#) for felony murder, felony child abuse or neglect and drug possession charges. The drug charges were related to their illegal possession of the Suboxone that Destiny ingested.

In September 2012 Bullock [pled guilty](#) to involuntary manslaughter, felony child abuse and neglect, and possession and conspiracy to possess a Schedule III controlled substance. He was sentenced to 7 years 9 months in prison, to be followed by 20 years of probation. In October 2012 Kimberly pled guilty to the same charges, and she was sentenced to 7 years 6 months in prison.

In March 2013 Artis was indicted for second-degree murder, involuntary manslaughter, and child abuse and neglect. She was released in April on \$200,000 bail pending her trial.

During Artis’ jury trial in February 2014 the prosecution’s case was based on its contention she was criminally negligent for failing to take Destiny back to the hospital after her discharge, which was asserted as the reason she died.

Artis’ defense was she wasn’t negligent because when the hospital discharged Des-

tiney she was informed Destiny’s condition wasn’t serious and she didn’t need additional medical care.

Dr. Richard Hamilton, an emergency medicine and toxicology expert, testified as a defense expert [that Destiny](#) “showed signs and symptoms of Suboxone overdose and . . . should have been admitted to the hospital.” His opinion was based on the deterioration of her blood oxygen level and respiratory rate after arriving at the hospital, and she was displaying signs of Suboxone poisoning that included lethargy, drowsiness, and her pupils had minimal reaction.

Dr. Hamilton [opined it was](#) “absolutely incorrect” for the hospital to conclude that Destiny did not have respiratory difficulty. He also testified that Destiny “was not stable and should never have been discharged,” and that it was “misleading to the parents” to give reassurances that Destiny would be okay.

Prior to the beginning of deliberations the judge granted the defense motion to dismiss the second-degree murder charge as unsupported by the prosecution’s evidence.

The jury convicted Artis of involuntary manslaughter, and the judge showed considerable leniency in sentencing her to six months in prison.

Artis appealed, arguing that the prosecution introduced insufficient evidence to prove her conduct prior to calling 911 on July 17 was criminally negligent, and that her conduct was the proximate cause of Destiny’s accidental death.

On June 2, 2015 the Virginia Court of Appeals unanimously reversed Artis’ conviction and ordered dismissal of her charges on the basis the prosecution introduced insufficient evidence to prove her guilt beyond a reasonable doubt. In *Lakesha Lanika Artis v. Commonwealth of Virginia*, No. 1020141 (Vir. Ct. of Appeals, 06/02/2015) the appeals [court stated](#):

Appellant’s decision not to take Destiny back to the hospital during the next few hours that elapsed during the night after the hospital had just released her at 9:00 p.m. . . . simply did *not* amount to criminal negligence.

First, the evidence does not show that appellant could have known that failure to take Destiny back to the hospital so soon after her discharge would pose a danger to Destiny’s life. . . . the discharge instructions stated that “[y]our exam shows your ingestion is not likely



was entitled to rely on these assurances, and we certainly cannot say that appellant knew or should have known the probable result of not taking Destiny back to the hospital that night so soon after returning home with her.

... Finally, ... there is nothing to indicate that Destiny was experiencing significant discomfort during that relatively short twelve-hour time period [between her discharge and death]. For all these reasons, it strains credulity to say that appellant’s decision not to seek additional medical care for Destiny – but to instead care for her at home over the few hours since the hospital discharged her – constitutes a callous disregard for human life.

... The evidence in this case simply does not support a finding beyond a reasonable doubt that appellant’s decision not to take Destiny back to the hospital was *criminally negligent*. Accordingly, we must reverse appellant’s conviction for involuntary manslaughter.

[Click here to read the court’s opinion](#) in *Lakesha Lanika Artis v. Commonwealth of Virginia*, No. 1020141 (Vir. Ct. of Appeals, 06/02/2015).

Artis remains in prison serving a two year sentence for her child abuse conviction in an incident unrelated to Destiny’s poisoning.

Source: [Lakesha Lanika Artis v. Commonwealth of Virginia](#), No. 1020141 (Vir. Ct. of Appeals, 06/02/2015) (Insufficient evidence to prove beyond a reasonable doubt that Artis’ conduct was criminally negligent; conviction of involuntary manslaughter reversed and dismissed.)

[Jury verdict overturned](#), By Tracy Agnew, *Suffolk News-Herald*, June 4, 2015

[Mother guilty in child’s death](#), By Tracy Agnew, *Suffolk News-Herald*, February 13, 2014

[Bond granted for Suffolk mother charged in 2-year-old’s drug death](#), *WVEC TV Chnl 13* (Hampton Roads, VA), April 3, 2013

[Stepgrandmom sentenced in Suffolk toddler’s death](#), By Jeff Sheler, *The Virginian-Pilot*, January 14, 2013

[Toddler dies after eating pills kept in candy dish](#); grandmother wanted on murder charges, By Philip Caulfield, *New York Daily News*, July 2, 2012



State Courts Earn 'F' Rating In 2015 Judicial Integrity Report

State courts in the U.S. earned an overall judicial integrity rating of F in a [new report released](#) by The Center for Public Integrity (CPI). The courts in only eight states earned a judicial integrity rating above D-, and courts in 33 states flunked by earning an F judicial integrity rating.

The "2015 State Integrity Investigation" report was [released by the CPI](#) in November 2015. The report evaluates and scores judicial accountability in each state based on 32 criteria. (The 32 criteria are listed below.) A score of 90 or above was given an A; 80 or above a B; 70 or above a C; 60 or above a D; and 59 or less an F. The highest scoring state was Alaska, with a B rating and a score of 82. Three states scored a C rating: Arizona (77); New Mexico (73); and, Virginia (72). Thirteen states earned a D rating — with nine of those states earning a D-. Thirty-three states were given an F rating, with eleven of those states earning a sub-50 score. So 42 of the 50 states earned a judicial accountability rating of D- or F. The four lowest scoring states were Pennsylvania (43); New York (43); Louisiana (40); and with a score of 30, Michigan by far earned the lowest state judicial integrity rating.

The following is a chart of the states from the highest rating to the lowest. Click on the highlighted name of a state to go to that state's page in the State Integrity 2015 report, and then click on that pages "Judicial Accountability" heading to see that state's score for each of the 32 criteria comprising the state's judicial accountability rating.

| Rank | State | Grade | Score |
|------|------------------------------|-------|-------|
| 1. | Alaska | B | 82 |
| 2. | Arizona | C | 77 |
| 3. | New Mexico | C | 73 |
| 4. | Virginia | C | 72 |
| 5. | Missouri | D | 67 |
| 6. | Colorado | D | 66 |
| 7. | Maryland | D | 64 |
| 7. | Rhode Island | D | 64 |
| 9. | Arkansas | D | 63 |
| 9. | North Dakota | D | 63 |
| 11. | Washington | D | 62 |
| 12. | Alabama | D | 62 |
| 13. | Nebraska | D | 61 |
| 14. | South Dakota | D | 61 |
| 15. | Georgia | D | 61 |
| 16. | Montana | D | 60 |
| 17. | Ohio | D | 60 |
| 18. | New Jersey | F | 59 |



| | | | |
|-----|--------------------------------|---|----|
| 18. | West Virginia | F | 59 |
| 20. | California | F | 58 |
| 21. | Iowa | F | 58 |
| 21. | Vermont | F | 58 |
| 23. | Utah | F | 58 |
| 24. | Mississippi | F | 57 |
| 25. | South Carolina | F | 57 |
| 26. | Hawaii | F | 56 |
| 27. | Massachusetts | F | 56 |
| 28. | Kentucky | F | 56 |
| 29. | North Carolina | F | 55 |
| 30. | Minnesota | F | 55 |
| 31. | Indiana | F | 55 |
| 32. | Oregon | F | 55 |
| 33. | Wisconsin | F | 53 |
| 34. | Maine | F | 53 |
| 35. | Nevada | F | 53 |
| 36. | New Hampshire | F | 52 |
| 37. | Tennessee | F | 51 |
| 38. | Florida | F | 51 |
| 39. | Idaho | F | 51 |
| 40. | Wyoming | F | 49 |
| 41. | Connecticut | F | 49 |
| 41. | Texas | F | 49 |
| 43. | Illinois | F | 49 |
| 43. | Kansas | F | 49 |
| 45. | Oklahoma | F | 48 |
| 46. | Delaware | F | 46 |
| 47. | Pennsylvania | F | 43 |
| 48. | New York | F | 43 |
| 49. | Louisiana | F | 40 |
| 50. | Michigan | F | 30 |

The average score was 56 for the 50 states.

The 32 criteria for evaluating each state's judicial accountability are:

Can members of the judiciary be held accountable for their actions?

In law, state-level judges are prohibited from using state resources for personal purposes.

In practice, state-level judges do not use state resources for personal purposes.

In law, state-level judges are required to give reasons for their decisions.

In practice, state-level judges give reasons for their decisions.

In law, there is a disciplinary agency for the state-level judicial system.

In law, the leadership of the entity/ies for judicial discipline is protected from political interference.

In practice, the entity/ies mandated to exert judicial disciplinary measures independently initiates investigations and imposes penalties on offenders.

In law, citizens can access court administrative records.

In practice, the citizens can access court decisions and opinions within a reasonable time period and at no cost.

In practice, court decisions and opinions are accessible to the public in open data format.

Is the process for selecting state-level judges transparent and accountable?

In law, there is an independent confirmation process for state-level judges (i.e. conducted by the legislature or an independent body), based on professional criteria.

In practice, professional criteria are followed in selecting state-level judges.

In law, there is a process in place to evaluate the performance of judges.

In law, citizens can access the performance evaluations of judges.

In practice, state-level judges' performance evaluations are complete and detailed.

Are there regulations governing conflicts of interest for the state-level judiciary?

In law, state-level judges are required to file an asset disclosure form.

In law, state-level judges' asset disclosure forms are regularly audited.

In law, gifts and hospitality offered to state-level judges are regulated.

In law, nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are prohibited when hiring judicial staff.

In law, there are restrictions for state-level judges entering the private sector after leaving the government.

In law, state-level judges must recuse themselves from cases in which they may have a conflict of interest.

Are the regulations governing conflicts of interest for the state-level judiciary effective?

In practice, state-level judges' asset disclosures are independently audited.

In practice, state-level judges adhere to the law governing gifts and hospitality.

State Courts cont. on page 10

300 U.S. Exonerations In 2015

Three hundred exonerations in the United States in 2015 are documented in the [Innocents Database](#), which is the only database in the world that attempts to compile all known exonerations in the United States, as well as internationally. The database includes 202 international exonerations in 2015. The 2015 U.S. exonerations were greater than the 231 in 2014, and the international exonerations were almost the same as the 207 in 2014.

The Innocents Database that is linked to from [Justice Denied's](#) website, currently includes 6,184 cases — 3,782 from the U.S. and 2,402 from 116 other countries.

State Courts cont. from page 9

In practice, judicial branch actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

In practice, state-level judges recuse themselves from cases in which they may have a conflict of interest.

In practice, state-level judges adhere to the law governing private sector employment after leaving office.

Can citizens access the asset disclosure records of members of the state-level judiciary?

In practice, citizens can access the asset disclosure records of state-level judges within a reasonable time period and at no cost.

In practice, the asset disclosure records of state-level judges are complete and detailed.

In practice, asset disclosure records of state-level judges are accessible to the public in open data format.

The CPI's 2015 State Integrity Investigation is a comprehensive assessment of state government accountability and transparency conducted in partnership with [Global Integrity](#). CPI reports that the project uses extensive research by reporters in each state to grade and rank the states based on existing laws and analysis of how well they are implemented. [Click here](#) for detailed information about the CPI's State Integrity 2015 investigation, including its scorecard methodology.

Source:

[States flunk at integrity](#). By Nicholas Kusnetz, The Center for Public Integrity, November 9, 2015 (updated 11-23-2015)

[State Integrity 2015](#) Report, [www.publicintegrity.org](#)
[Global Integrity](#), [www.globalintegrity.org](#)



The 300 known U.S. exonerations in 2015 include:

- 77 Homicide cases
- 3 Homicide/Sexual assault cases
- 11 Sexual assault cases
- 10 Child sexual assault cases
- 11 Robbery/Theft/Burglary cases
- 19 Assault cases
- 65 Drug cases
- 15 Fraud/Forgery cases
- 1 Child abuse case
- 19 Cases involving violent crimes not listed above
- 69 Cases involving non-violent crimes not listed above

The Innocents Database includes 202 known exonerations in 2015 in countries other than the U.S. Those cases are:

- 53 Homicide cases
- 1 Homicide/Sexual assault cases
- 7 Sexual assault cases
- 9 Child sexual assault cases
- 13 Robbery/Theft/Burglary cases
- 13 Assault cases
- 12 Drug cases
- 22 Fraud/Forgery cases
- 10 Cases involving violent charges not listed above
- 62 Cases involving non-violent charges not listed above

It is notable that the types of cases that involved an exoneration in 2015 both in and outside the United States aren't appreciably different, except for many more drug cases in the U.S. What is extraordinary, is the additional length of time that a person in the U.S. spends incarcerated before their exoneration compared with other countries. Excluding non-violent and drug cases, in 2015 the average person was incarcerated in the U.S. for almost 12-1/2 years before their exoneration, while it was less than half that outside the U.S. — 5-1/2 years.

Although DNA exonerations get a lot of attention, there were only eight exonerations in the U.S. in 2015 based on new DNA evidence, and six others in which new DNA evidence contributed to an exoneration along with other exculpatory evidence. In 2015 there wasn't a single international exoneration that was based on new DNA evidence, or contributed to by new DNA evidence.

The state's with five or more known exonerations in 2015 are:

Texas, 59
New York, 29
Illinois, 24

North Carolina, 21
Wisconsin, 9
Florida, 8
Iowa, 8
Pennsylvania, 8
Washington, 8
Alaska, 6
Connecticut, 6
Indiana, 6
Ohio, 6
Alabama, 5
California, 5
Virginia, 5

The countries with five or more known exonerations are:

United States 300
United Kingdom (England, Scotland, Wales, & Northern Ireland), 45
India, 29
New Zealand, 13
Australia, 9
Canada, 9
Pakistan, 9
Italy, 8
China, 6
Costa Rica, 6
Bahamas, 5
Egypt, 5
Ireland, 5

The sortable version of the Innocents Database that [became available online](#) in December 2015, allows both user defined searches, and user defined sorts of any combination of more than 100 columns of data. The Innocents Database's homepage is at [www.forejustice.org/innocentsdatabase.htm](#).



Visit the Innocents Database

Includes details about more than 5,700 wrongly convicted people from the U.S. and other countries.

[www.forejustice.org/search_idb.htm](#)

Visit the Wrongly Convicted Bibliography

Database of hundreds of books, law review articles, movies and documentaries related to wrongful convictions.

[www.forejustice.org/biblio/bibliography.htm](#)

Visit Justice Denied's Wordpress Page

Justice Denied's Wordpress page has the latest articles and information. See, [www.justicedenied.org/wordpress](#)

Nevada Grants 17 Unconditional Pardons In 2015

The Nevada Board of Pardons has [issued 17 unconditional pardons](#) in 2015.

The nine members of the Nevada Board of Pardons Commissioners are the governor, the attorney general, and the seven members of the supreme court.

The pardons board has the authority to issue a conditional pardon that can commute or reduce a sentence, or eliminate or remit a fine, or that doesn't restore gun rights.

The board also has the authority to issue an "unconditional pardon" that removes some disabilities and restores some civil rights resulting from the person's conviction. Those can include restoration of the persons right to vote and serve on a jury; eligibility for some occupational licenses or jobs; and, ownership and/or possession of a firearm. However, in Nevada only a court has the authority to vacate or expunge a conviction, or seal a criminal record, so:

- A pardon forgives but does not forget the persons crime.
- A pardon does not overturn a judgment of conviction.
- A pardon does not erase or obliterate the fact that one was once convicted of a crime.
- A pardon does not substitute a good reputation for one that is bad.
- A pardon does not relieve a convicted sex offender of the requirement to register as such.
- A pardon does not attest to rehabilitation of a person.

Consequently, the term "unconditional pardon" can be misleading, because it refers to the pardon board granting a person all the relief that the board has the legal authority to confer under Nevada Revised Statutes Chapter 213 — Pardons And Paroles; Remissions Of Fines And Commutations Of Punishments.

Since Nevada does not currently provide for a court to declare a person actually innocent, the only way for an innocent person to be relieved of some of the consequences of



their conviction is to pursue a pardon.

To be considered for an unconditional pardon, typically a significant period of time must have passed since a person's case was closed (I.e., his or her sentence (including probation or parole) was completed.), and the person has had no subsequent charges.

During its annual meeting on November 16, 2015 the Nevada Board of Pardons issued an unconditional pardon to 17 individuals, and conditional pardons to 3 persons. None of the 20 were in prison. The board also commuted the sentence of one prisoner to time served, and ordered that another prisoner's two sentences run concurrently.

[Click here to read the results](#) of the Nevada Board of Pardons meeting on November 16, 2015.

The Nevada Board of Pardons website is www.pardons.nv.gov.



3rd Revised and Updated Edition of "Kirstin Blaise Lobato's Unreasonable Conviction" Now Online!

The third revised and updated edition of [Kirstin Blaise Lobato's Unreasonable Conviction](#) — *Possibility of Guilt Replaces Proof Beyond A Reasonable Doubt*, has just been published! The book is available in PDF format to be read or downloaded at no charge for personal use from [Justice Denied's](#) website.*

More than 61,000 copies of the second edition of *Kirstin Blaise Lobato's Unreasonable Conviction* were downloaded from Justice Denied's website until it was replaced on Feb. 10 with the third edition.

The book details how Kirstin Lobato has twice been convicted of a July 8, 2001 Las Vegas homicide when the prosecution doesn't deny it has no physical, forensic, eyewitness, confession, informant, surveillance video or documentary evidence she was in Las Vegas at any time on the day of the crime. The prosecution also concedes she was at her home 165 miles from Las Vegas at the time new forensic entomology and forensic pathology evidence conclusive-

ly proves the man died between 8 p.m. and 10 p.m. The book also details that in 2001 the 18-year-old Ms. Lobato was prosecuted even though the Las Vegas Metropolitan Police Department and the Clark County District Attorney's Office obtained evidence three days after her arrest she is innocent.

The 3rd revised edition has 57 pages of new information, that includes:

- * An updated Timeline of Ms. Lobato's case from 2001 to the present, that begins on p. 10.
- * Six new sub-chapters in the Appendix that begin on page 150. Those include a Power Point presentation of Ms. Lobato's case and the new evidence in her habeas corpus petition currently under review by the Nevada Supreme Court. Ms. Lobato's petition includes new evidence her jury didn't hear by more than two dozen expert, alibi, and third-party culprit witnesses that supports her actual innocence.

The 232-page book written by *Justice Denied's* editor and publisher Hans Sherrer is supported by 427 source endnotes. In documents filed in the Nevada Supreme Court, the Clark County District Attorney's Office and the State of Nevada don't assert there is a single factual error in the book.

[Click here to download at no charge](#)

KIRSTIN BLAISE LOBATO'S UNREASONABLE CONVICTION

Possibility Of Guilt Replaces Proof Beyond A Reasonable Doubt



Kirstin Blaise Lobato's Unreasonable Conviction in PDF format from www.justicedenied.org/kbl.htm.

Justice Denied's webpage with information about the Kirstin Lobato case is www.justicedenied.org/kbl.htm.

Kirstin Lobato's website with extensive information about her case is www.justice4kirstin.com.

* The book can be printed at no charge for non-commercial use only.



NY Appeals Court Acquits Jennifer Jorgensen Of Manslaughter In Death Of Her Daughter

On October 22, 2015 the [New York State Court of Appeals acquitted](#) Jennifer Jorgensen of manslaughter and ordered dismissal of her indictment. The appeals court ruled New York's manslaughter statute doesn't apply to the death of an infant born after an alleged "reckless" act by a pregnant mother.

Jorgensen was 29-years-old and 34-months pregnant when on May 30, 2008 the car she was driving crossed into the lane of oncoming traffic and collided with another vehicle in Ridge, New York. Ridge is on Long Island about 60 miles west of New York City.

At the time of the collision Jorgensen wasn't wearing a seat belt and she was speeding.

Jorgensen was taken to the hospital where she consented to an emergency cesarean section. Her infant daughter, Ashley Jorgensen-Kaiser, died five days later. An autopsy identified Ashley died due to injuries sustained in the accident — while she was still in her mother's womb.

The two people in the other vehicle died from their injuries: Robert Kelley died at the scene, and Mary Kelly died about three weeks later.

A laboratory analysis of Jorgensen's blood detected a blood alcohol level of .06 — below the legal limit of .08 — and the presence of the anti-anxiety medication Clonazepam — which she had a prescription to use.

Thirteen months later, in July 2009, Jorgensen was indicted on three counts of first-degree manslaughter, one count of aggravated vehicular homicide, and one count of operating a motor vehicle while under the combined influence of alcohol or drugs. The [charges were based](#) on the Suffolk County District Attorney's theory that Jorgensen was acting recklessly when she

struck the Kelly's vehicle, because she was driving without a seat belt in excess of 50 miles per hour in a 30 mile-per-hour zone while under the influence of prescription drugs and/or alcohol. Jorgensen was released on bail.

Jorgensen's trial in March 2011 ended in a mistrial due the jury's inability to reach any unanimous verdicts after six days of deliberations.

Jorgensen was retried on all the charges. On March 19, 2012 the jury acquitted Jorgensen of all charges except for second-degree manslaughter in the death of her daughter. In June 2012 Jorgensen was sentenced to serve three to nine years in prison, however, she was allowed to remain free on bond pending the outcome of her appeal.

On January 22, 2014 the Appellate Division of the Supreme Court of New York [affirmed Jorgensen's conviction](#). She appealed that ruling.

On October 22, 2015 the New York State Court of Appeals reversed the Appellate Division's decision and Jorgensen's conviction. The appeals court held that New York's manslaughter statute doesn't apply to the death of an infant born after an alleged unintentional "reckless" act by the pregnant mother. In *The People v. Jennifer Jorgensen*, No. 179 (NYS Court of Appeal, 10-15-2015) [the court stated](#):

The sole issue that we reach on this appeal ... is whether a woman can be convicted of manslaughter for reckless conduct that she engaged in while pregnant that caused injury to the fetus *in utero* where the child was born alive but died as a result of that injury days later. We hold that it is evident from the statutory scheme that the legislature ... did not intend to hold pregnant women criminally responsible for conduct with respect to themselves and their unborn fetuses unless such conduct is done intentionally....

The People concede that, had defendant not consented to the cesarean section with the result that the child be born alive, she would not have been prosecuted for manslaughter in the second degree. ... it would create a perverse incentive for a pregnant woman to refuse a cesarean section out of fear that if her baby is born alive she would face criminal charges for her alleged reckless conduct, jeopardizing the health of the woman and the unborn fetus.

...



Jennifer Jorgensen hugs her fiancé Rich Kaiser on October 22, 2015 after her conviction was overturned (Randee Daddona)

The imposition of criminal liability upon pregnant women for acts committed against a fetus that is later born and subsequently dies as a result of injuries sustained while *in utero* should be clearly defined by the legislature, not the courts. It should also not be left to the whim of the prosecutor. Conceivably, one could find it "reckless" for a pregnant woman to disregard her obstetrician's specific orders concerning bed rest; take prescription and/or illicit drugs; shovel a walkway; engage in a contact sport; carry groceries; or disregard dietary restrictions. ... At present, such conduct, if it caused a stillbirth, would not result in criminal prosecution of the mother if the fetus died *in utero*. Any change in the law with regard to such matters would be within the province of the legislature.

Accordingly, the order of the Appellate Division should be reversed, and the remaining count of the indictment dismissed.

[Click here to read](#) the New York Court of Appeals ruling in *The People v. Jennifer Jorgensen*, No. 179 (NYS Court of Appeal, 10-15-2015)

Jorgensen, now 36, continues to live in Suffolk County.

Source:

[The People v. Jennifer Jorgensen](#), No. 179 (NYS Court of Appeal, 10-22-2015) (Reversing Court of Appeals ruling, and reversing conviction on basis of insufficient evidence and ordering dismissal of charges.)

[New York's highest court tosses manslaughter conviction](#) against Jennifer Jorgensen of Sound Beach in 2008 crash, By Andrew Smith (Staff writer), Newsday, October 22, 2015

[People v. Jorgensen](#), 113 AD 3d 793, 978 N.Y.S.2d 361, 2014 NY Slip Op 379 (NY Appellate Div., 2nd Dept. 1-22-2014) (Affirming conviction)

[Ridge woman convicted of manslaughter 2nd degree](#); acquitted of four other charges, Press Release, County of Suffolk District Attorney's Office, March 19, 2012



Zachary R. Handley Exonerated Of Arson Based On New Evidence The Prosecution's Star Witness Is A Serial Arsonist And He Falsely Confessed

Northampton County Judge Anthony S. Beltrami [has vacated](#) Zachary R. Handley's 2008 convictions related to two arson fires in Stockertown, Pennsylvania. Judge Beltrami's ruling was based on new evidence the prosecution's star witness is a serial arsonist who likely committed the crimes, and that Handley falsely confessed. Handley's exoneration is directly attributable to the post-conviction investigation of his case initiated by Judge Beltrami.

On November 7, 2007, 25-year-old Karla Ann Dewey reported a dumpster on fire behind Tony's Pizza in Stockertown. She told the police that she could see the dumpster from the 4-plex townhouse where she lived, and that just before the fire started she saw some kids riding their bikes in the area of the dumpster.

Three weeks later, on November 27, 2007, Dewey called 911 at 5:30 p.m. to report a fire at her townhouse. The occupants of all four units safely exited the building before it was engulfed in flames and destroyed.

Officer Joseph J. Straka of the Stockertown Police Department responded to the call. Dewey told Straka that at 5:20 p.m. she was walking outside when she saw three children talking while on their bikes in the parking lot for Cosmo's Restaurant across the street from her townhouse. A few minutes later while still outside, she [said she saw](#) "the boy that lives across from Tony's Pizza with the yellow bicycle" on the front porch of her townhouse. Soon afterwards [she saw](#) a "black smoke cloud" coming from her residence, and she "ran back up to [her] house."

Fourteen-year-old Zachary Handley was the boy Dewey was referring to, and he lived



Zachary R. Handley in April 2015 after his exoneration. (Riley Yates, The Morning Call)

cause the fire at the townhouse. Straka then left.

The fire marshal's investigation determined the fire was intentionally started by the igniting of a couch on the building's porch.

When questioned again, Dewey identified Handley as one of the boys on a bike by the burning dumpster.

With the townhouse fire officially classified as a crime and Dewey's statements implicating Handley in the townhouse and dumpster fires, Straka called Handley's stepmother and arranged for him to be brought to the station for questioning on December 19, 2007. When they arrived at the police station, Straka first talked privately with Handley's parents. His father later testified [about that meeting](#):

As we were sitting in the room, Officer Straka explained to us that he had evidence against [Zachary], putting him on that property, on that porch. He said to us that, you know, we can do this the easy way or the hard way. The hard way is I can arrest him tonight, I can take him down to the juvenile probation center, and he can spend Christmas down there, or the other way is he can come in here and we can do all this through the mail, basically probably go down to court in a month or so, and we'll get [Zachary] some counseling.

Handley's parents told him what Straka had said. He [became upset](#) and "started crying and . . . said I didn't do this, dad, I didn't do this." He told his parents he didn't want to spend Christmas in the juvenile detention center.

Handley insisted he was innocent, but after Straka read Handley his *Miranda* rights Handley gave Straka a written statement admitting to the fires at Dewey's townhouse

two blocks from her. Straka went to where Handley lived while the fire department was still at the smoldering townhouse. In the presence of his father and stepmother Handley [told Straka](#) "he didn't know what happened" to

and the dumpster at Tony's Pizza.

Straka didn't tell the truth to Handley's parents. Two days later — four days before Christmas -- he was arrested and detained after being charged with three felonies and two misdemeanors related to the two fires.[N. 1] Handley was held in custody pending the outcome of his case.

Handley recanted his confession, insisted he was innocent, and refused to admit his guilt to the charges. As a juvenile he was not entitled to a jury trial. His trial on January 14, 2008 was presided over by Northampton County Judge Anthony S. Beltrami. (In Pennsylvania a juvenile trial is known as an "adjudicatory hearing.")

There was no physical or forensic evidence linking Handley to the fires, so the prosecution's case was based on Dewey's eyewitness testimony and Handley's recanted confession.

Handley's father testified that Straka suggested to his son what should be in his statement, and Handley testified that he didn't start the fires. He [stated that](#) Straka stood over him as he wrote the statement, and "it was kind of like he was telling me what to write. . . . You know I was making up the story the whole time."

Regarding why he admitted starting the fires to Straka, [Handley testified](#):

"Because I was scared that I was going to be in [detention] for Christmas. And my first reaction was, you know, I love my parents too much and my family to be in here for Christmas. And I love Christmas. . . . So I knew if I didn't admit to it I would be in that night and I wouldn't be able to spend Christmas with my family."

Judge Beltrami found Handley guilty of all charges, and ordered that he remain in custody pending his sentencing hearing (known as a "dispositional hearing" for a juvenile).

The hearing was held on February 4, 2008 before Judge William F. Moran, not Judge Beltrami. Judge Moran was presented with four separate reports evaluating Handley prepared by: the Center for Arson Research, Inc.; psychiatrist Dr. Larry E. Dumont; psychologist Dr. Arthur J. Eisenbuch; and the Northampton County Juvenile Probation Department. During all of Handley's interviews he insisted he did not start the fires



Townhouses under construction where Dewey's townhouse building burned to the ground. The parking lot for Cosmo's Restaurant is across the street. (Google Streetview, 2009)

Handley cont. on page 14

Handley cont. from page 13

and he gave a false statement to Officer Straka because he made it clear it was the only way he could spend Christmas at home.

The evaluator with the Center for Arson Research [reported that](#) Handley “clearly expressed that he was not involved in any fire[-]setting behaviors and how the police wronged him. ... the police officer lied to him and made him tell a lie.” Dr. Dumont diagnosed Handley with impulse control disorder, and Dr. Eisenbuch diagnosed Handley with conduct disorder and adolescent onset, and the Juvenile Probation Department recommended Handley’s placement in the Cornell Abraxas Open-Residential Fire-Setter Program.



Abraxas Youth Center, South Mountain, Penn.
(Google Streetview, Aug. 2012)

Judge Moran was also presented with a victim impact statement by Karla Dewey [in which she stated](#) that “for [her], it was another devastating tragedy because this was the *second* fire [she] [had] been in. The other was [her] *family’s house* in 2003.” Dewey also stated that her husband, Richard, was a “[*firefighter*] for Upper Nazareth Township.”

Handley [stated during](#) his sentencing hearing, “One of the witnesses said she saw me there at [Cosmo’s] riding [my] bike ... at 5:30 ... I was in my house at 5:10.”

Judge Moran followed the Juvenile Probation Department’s recommendation and sentenced Handley to the Cornell Abraxas Open Residential Fire-Setter Program for a period of six to twelve months, and ordered him to pay restitution of \$625,541.62 for damage caused by the fires.

On February 6, 2008 Handley was transported to Cornell Abraxas Youth Center in South Mountain, Pennsylvania -- 155 miles east of Stockertown.

Handley repeatedly told staff members he didn’t start the fires and he had been coerced by Officer Straka to falsely confess. After a year at Cornell Abraxas, Handley was released on February 2, 2009 and placed on six months probation. Handley

had been in custody for a year and six weeks after his arrest on December 21, 2007.

On November 14, 2012 a civil Judgment Order for Restitution in the amount of \$625,541.62 was entered against Handley.

When interviewed in January 2008 by the Center for Arson Research [Handley professed](#), “I know eventually God will help me out. My time is coming. I hope God realizes that. God knows I didn’t do anything. Lying is a sin. He knows. I hope everyone else can realize that.”

Handley’s time came years later after Dewey was outed as a serial arsonist.

On September 6, 2012 Dewey was charged in Northampton County with an arson fire in October 2009 at St. John’s UCC Church in Nazareth. A surveillance camera recorded Dewey entering a vacant church office where she was for about thirty seconds, before leaving as a fire broke out in the office. The affidavit of probable cause filed in that case [stated Dewey](#), “is also [a] *person of interest in six (6) other unsolved ARSONS/Criminal Mischief - Suspicious Fires within Nazareth Borough.*”

The next day, September 7, multiple charges were filed against Dewey related to an arson fire at her home in Nazareth on March 13, 2012. The fire investigation determined the fire was started by the deliberate ignition of her living room couch. At the time the fire was started Dewey’s three-year-old child was at home with her.

Northampton County has nine judges, and following her arraignment Dewey’s case [was by](#) “sheer coincidence” assigned to Judge Beltrami. However, he didn’t remember Dewey’s connection to Handley’s case when in May 2013 Dewey entered a guilty plea to charges related to the arson of her house, in exchange for the dropping of charges in the church arson.[Note 2] Judge Beltrami ordered a pre-sentence investigation report, and it was while reading that report in June 2013 that he recalled Dewey was the State’s eyewitness in Handley’s arson case.

Judge Beltrami obtained Handley’s case file. Reading it he saw for the first time Dewey’s victim impact statement that had information about the burning of her family’s home in 2003, and that her husband was a firefighter. While reading Dewey’s statement, it occurred to Judge Beltrami that three of her homes had been destroyed by fire: in 2003, in 2007, and the 2012 fire that

she had entered a guilty plea to starting.

Judge Beltrami had a strong suspicion it wasn’t a coincidence that fire had destroyed three of Dewey’s homes, and that she happened to be nearby and witness the fires Handley had been convicted of starting.

During Dewey’s sentencing hearing on July 12, 2013, Judge Beltrami notified her that he had recalled she was the sole eyewitness in Handley’s arson case. He also told her he was appointing an attorney to represent Handley regarding her factual admissions in open court during her plea hearing, as they related to Handley’s case. Regarding the suspicious circumstances of Dewey’s allegedly witnessing of the two fires in 2007, [Judge Beltrami stated:](#)

So I started to look at all these pieces, and I have strong concerns about whether or not you were involved in those other cases, whether you lied in court. I can’t be fair to you. There is no way I can give you a fair trial. I have to recuse myself from the case.

With Judge Beltrami’s rejection of her May 2013 guilty plea it was left for another judge to determine if it should be accepted and sentence her accordingly.

On August 30, 2013 Judge Baratta accepted Dewey’s plea agreement. On September 6 he sentenced her to 36 to 120 months imprisonment for her arson conviction, and a consecutive term of 6 to 12 months imprisonment for endangering the welfare of her child.



Karla Dewey in 2013 when she pled guilty to arson
(Harry Fisher, Morning Call)

On May 16, 2014 Handley’s court appointed attorney filed a post-conviction “Motion for *Nunc Pro Tunc* Relief Pur[s]uant to Pa.R.J.C.P. 622.” [The Motion asserted](#) that “[o]n July 12, 2013, it was revealed that potential exculpatory evidence may be available to [Handley] and a potential alternative suspect may have committed the acts charged against [him].” The basis for the Motion was the “after-discovered evidence as it relates to the primary eyewitness identifying [him] at his” adjudicatory hearing.” The Motion stated “the facts surrounding Karla Dewey’s guilty plea to setting a fire at her residence on March 13, 2012, by ignit-

Handley cont. on page 15

Handley cont. from page 14

ing a living room couch on fire, were nearly identical to those she used to inculcate Juvenile when she acted as the Commonwealth's primary witness at Juvenile's contested adjudicatory hearing on January 14, 2008." The Motion requested that Handley be granted a "new adjudicatory hearing and/or order the expungement of his record and strike the restitution judgment."

The State vigorously opposed Handley's Motion, arguing for its dismissal on three grounds: it was time-barred; it didn't present new evidence; and the Court didn't have jurisdiction because he was no longer a juvenile under the Court's supervision.

Judge Beltrami heard oral arguments on November 12, 2014. The State and Handley's lawyer stipulated that in arriving at his decision Judge Beltrami could consider Handley's entire juvenile file, and Dewey's criminal files and presentence investigation report.



Northampton County Judge Anthony S. Beltrami (Bill Adams, Express-Times)

On March 13, 2015 Judge Beltrami granted Handley's Motion in a 33-page ruling that detailed the Motion was filed timely, it presented new evidence related to Dewey's credibility and Handley's confession, and the court had jurisdiction because the Motion was filed before Handley's 21st birthday and his restitution was still under court control. *In the Interest of Zachary R. Handley*, No. jv-766-2007 (Northampton County Ct. of Common Pleas, 3-13-15) [states in part](#):

Unbeknownst to Juvenile, the Commonwealth, and the Court at the time of Juvenile's adjudicatory hearing, Karla Dewey, the "independent" Commonwealth witness who implicated Juvenile in the fires, was, in fact, a serial arsonist.

... In this case, Juvenile's adjudication was not based upon direct evidence but, rather, upon circumstantial evidence primarily attributable to the testimony of Karla Dewey. The emergence of undeniable after-discovered evidence related directly to Karla Dewey authorizes this Court to question her credibility.

While the Court declines to conclusively evaluate the voluntariness of Juvenile's confession at this stage of the proceeding, it would appear that, based upon the after-discovered evidence and the totality of circumstances, Juvenile's confession may have been false. In the present case, Karla Dewey was a reporting party in both fires and was the individual who implicated Juvenile. Officer Straka relied upon Karla Dewey's statements in his investigation. Officer Straka went to Juvenile's home on the evening of the fire solely based upon Karla Dewey's statement that she observed Juvenile on her porch moments before the structure fire. When Officer Straka first interviewed him, Juvenile stated that he did not know what happened. However, based upon further discussions with Karla Dewey, Officer Straka reinstated contact with Juvenile on December 19, 2007, six days before Christmas. Thus, even though he "didn't do it," Juvenile agreed to give a written statement because he did not want to spend Christmas in detention. ... Juvenile recounted that Officer Straka was telling him what to write and that he wrote it even though it was not true. Juvenile testified that he only made the statement because he was scared that he was going to be in detention for Christmas. ... After he gave his statement, Juvenile steadfastly maintained that it was false both prior to and during the adjudicatory hearing, as well as during the fire-setting evaluation, the psychiatric evaluation, the psychological evaluation, the social history investigation, and the treatment at the Abraxas program.

Accordingly, it has become abundantly clear to this Court that fire is an instrument of power and a weapon of choice to which Karla Dewey was no stranger. It has also become abundantly clear that it appears to be more than a mere coincidence that the common denominator in all of these fires is Karla Dewey. The goals of the juvenile justice system are thus best served in this case by granting Juvenile's Motion, as the after-discovered evidence is so compelling as to warrant a new adjudicatory hearing pursuant to Pa.R.J.C.P. 620(F).

Judge Beltrami issued an Order vacating Handley's "adjudication of delinquency," and ordered his \$625,541.62 "civil judgment restitution Order ... shall be STRICKEN."

[Click here to read](#) Judge Beltrami's ruling

in, *In the Interest of Zachary R. Handley*, No. jv-766-2007 (Northampton County Ct. of Common Pleas, 3-13-15).

Handley's case is over because Northampton County District Attorney John Morganelli announced he would not appeal what he described as Judge Beltrami's persuasive ruling, or retry Handley. Morganelli [told reporters](#), "We have an opportunity to correct something, if it was a mistake."

Serial arsonist Karla Dewey is divorced and serving her 3-1/2 to 11 year sentence at SCI Cambridge Springs as inmate OU6156. The statute of limitations has expired so she can't be prosecuted for the 2007 arsons Handley was convicted of committing, and perjury for her testimony during his 2008 trial.

Handley, now 22, is married and living in Nazareth, Pennsylvania with his wife Marissa and their 3-year-old son, Oliver.

When interviewed by *The Morning Call* after his convictions were overturned [Handley explained](#):

"Karla Dewey was a pyromaniac and she lit her own house on fire and blamed it on me. I got nailed with it. If I had more intelligence and realized they were duping me and trying to get a false confession out of me I would not have confessed to anything. But when you're a little kid and being interrogated by the police and them telling you are going to spend Christmas in jail and this and that, you kind of try to figure a plausible way out of that, and at the time I was too young to figure that out."

[Click here to view a video](#) of *The Morning Call*'s interview of Handley.

Handley may have the basis for a federal civil rights lawsuit against Northampton County, the borough of Stockertown and its Officer Straka, and possibly others officially involved in his case.

Handley's case is beyond extraordinary because the wrong perpetrated on him would not have come to light without the action of Judge Beltrami initiating an investigation to discover if he had erred in finding Handley guilty in 2008, appointing Handley a lawyer to further investigate, and then rejecting the State's persistent efforts to have Handley's post-conviction Motion dismissed. There is no other known exoneration in U.S. history

Handley cont. on page 16

Handley cont. from page 15

that is attributable to the post-conviction investigative efforts of the judge responsible for the person's conviction.[Note 3] Judge Beltrami also took the extraordinary action of voluntarily recusing himself from Dewey's criminal case to ensure she would be treated fairly. Judge Anthony S. Beltrami's biography is on the [Northampton County Ct. of Common Pleas](http://NorthamptonCountyCt.ofCommonPleas) website.

Endnotes:

Note 1: Handley was charged with being a juvenile, delinquent of arson endangering persons, as a felony of the first degree; and criminal mischief, for the dumpster fire that occurred at Tony's Pizza. He was charged as a juvenile, delinquent of arson endangering persons, and arson endangering property, as felonies of the first degree; and recklessly endangering another person, as a misdemeanor of the second degree.

Note 2: Dewey agreed to plead guilty to one count of arson endangering property, as a felony of the first degree, and one count of endangering welfare of children, as a misdemeanor of the first degree.

Note 3: See, The Innocents Database that documents every known exoneration in U.S. history at, www.forejustice.org/innocentsdatabase.htm.

Source:

[*In The Interest of Zachary R. Handley*](#), No. jv-766-2007 (Ct of Common Pleas, Northampton County, PA, Juvenile, 3-13-15) (vacating adjudication of guilt, striking restitution order, and ordering new trial)

[*Wrongly convicted of arson*](#), Stockertown teen trying to move on, By Riley Yates, *The Morning Call*, April 4, 2015

[*Judge orders new trial for Stockertown arson*](#), By Pamela Lehman, *The Morning Call*, March 13, 2015

[*Judge grants new hearing for Moore Township man*](#) convicted of arson as a child, By Tom Shortell, *The Express-Times*, March 13, 2015



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NBC Channel 3 broadcasts fabricated Kirstin Lobato hit story

By Hans Sherrer

NBC Channel 3 (KSNV-TV) in Las Vegas broadcast *Death in the Desert* during its 11 o'clock news on February 29, 2016. Reporter Marie Mortera's story was about the Kirstin Blaise Lobato case.

Ms. Lobato was convicted in October 2006 of charges related to the July 8, 2001 homicide of Duran Bailey in the trash enclosure for a west Las Vegas bank. Ms. Lobato asserts she is factually innocent, in her *habeas corpus* petition that is being reviewed by the Nevada Supreme Court.

There are many gravely serious problems with Mortera's story. Those problems include:

- * She fabricated non-existent "evidence" against Ms. Lobato in at least three instances;

- * She made a number of misleading and/or deceptive statements;

- * She spliced together audio from different parts of Ms. Lobato's police statement to make them appear contiguous;

- * She completely disregarded Ms. Lobato's new evidence supporting her factual innocence; and,

- * She neither reported on, nor questioned Ms. Lobato's prosecutor William Kephart during his interview, about the evidence he has known of Ms. Lobato's innocence for more than 14 years, and his criminal conduct and extensive prosecutor misconduct detailed in Ms. Lobato's petition. (Kephart is currently a Eighth Judicial (Clark County) District Court Judge.)

More than two weeks before Mortera's story was broadcast, the Las Vegas *Tribune* reported in its Feb. 12-18, 2016 issue that the Clark County DA's Office and Metro PD have known since 2001 that Ms. Lobato did not commit Bailey's homicide.

Ms. Lobato gave an audio recorded police statement at the time of her arrest. She described that prior to mid-June 2001 she used her pocketknife to fend off an attempted rape at a Budget Suites Hotel on Boulder Highway in east Las Vegas.¹

The following are eleven "problems" with Mortera's story, in the order they were broadcast. The "Problem" following each excerpt summarizes what is wrong with Mortera's commentary or Kephart's statement.

1. Lobato statement: "I got out of my car, and he came out of nowhere and grabbed me from behind."

Mortera commentary: "The recording is of then-18-year-old Kirstin Blaise Lobato describing to Metro investigators how a methamphetamine fueled trip to Las Vegas ended in mayhem."

Problem: Misleading and deceptive. There is no evidence that methamphetamine had anything to do with the Budget Suites Hotel assault, or that Ms. Lobato was on a "trip to Las Vegas" when it occurred.²

2. Lobato statement: "He came out of nowhere and grabbed me from behind." "I cut his penis, I remember that."

Problem: Deceptive. Viewers weren't informed Ms. Lobato's two sentences were spliced from different parts of her audio statement to make it appear they were together.³

3. Lobato statement: "He was, he was crying."

Mortera commentary: "'He' was Duran Bailey, a homeless man, brutally killed."

Problem: Complete fabrication. No evidence in Ms. Lobato's statement or presented at trial that Bailey was the man who assaulted her at the Budget Suites Hotel.⁴

4. Mortera commentary: "Lobato told police Bailey tried to sexually assault her near Boulder Highway in 2001, and to defend herself she pulled out a knife and cut him in the groin."

Problem: Complete fabrication. Lobato did not tell police Bailey was her assailant, he didn't physically match the description of her assailant, and she did not recognize Bailey when she was shown a photo of him.⁵

5. Kephart interview: "I am given a task to present evidence that we have, uh, there, there certainly no evidence that was, you know, uh, manufactured or anything like that. We just present what we have to the jury, and give the jury an opportunity to decide."

Problem: False statements. Kephart's

Lobato cont. on page 17

Lobato cont. from page 16

lack of honesty could have been exposed by Mortera confronting him with the evidence in Ms. Lobato's habeas petition that the trial transcript documents Kephart misstated evidence and manufactured non-existent "evidence" during his opening statement and rebuttal argument to the jury.⁶ Given the gravitas of Kephart's position as the spokesperson for the State, the jury would be expected to rely on his falsehoods as true.

6. Mortera commentary: "Lobato's tearful words were described as a confession,"⁷

Problem: Complete fabrication. Ms. Lobato's statement was not "described as a confession" during Kephart's opening statement;⁸ ADA Sandra DiGiacomo's closing argument;⁹ or Kephart's rebuttal argument;¹⁰ and there was no testimony during her trial that it was a confession.¹¹

7. Mortera commentary: "[Michelle] Ravell is Lobato's surrogate mother and believes Kirstin was back in her home town at the time of Bailey's killing, not in Las Vegas."

Problem: Misleading and deceptive. It is not a partisan belief by Ravell that Ms. Lobato was "not in Las Vegas" when Bailey died. Ms. Lobato's habeas petition includes new forensic evidence un rebutted by the State that Bailey died after 8 p.m. on July 8, 2001,¹² a time when the State has publicly admitted she was in Panaca.¹³

8. Mortera commentary: "So what could get Lobato, now in her 30s, out of prison? Proof of a different killer."

Problem: Misleading and deceptive. Mortera doesn't inform viewers that Ms. Lobato's habeas case pending before the Nev. Supreme Court is seeking a new trial or dismissal of her charges. Her petition includes new forensic evidence proving it is physically impossible she committed Bailey's homicide.¹⁴ Mortera's statement is factually inaccurate because the actual perpetrator was identified in only 9 out of 300 known exonerations in the U.S. in 2015 – 3% of cases.¹⁵

9. Mortera commentary: "After a decade of courtroom motions, arguments, denials, reversals, and appeals, an offer from the Innocence Project to test DNA from the crime scene, along with a public petition demanding the use of DNA technology, is raising hope for freedom."

Problem: Misleading and factually in-

complete. The Innocence Project offered to pay for DNA testing more than five years ago. Judge Vega sided with the DA Office's vigorous opposition, and denied Ms. Lobato's petition for DNA testing in July 2011 – more than four years ago.¹⁶ The change.org petition that DA Steven Wolfson ignored, was submitted to him almost three years ago in May 2013.

10. Kephart interview: "I stand behind what we did, um, I have, I have no qualms about what happened, and, and how we prosecuted this matter. I believe it's completely, uh, justice."

Problem: Deceptive and misleading. Ms. Mortera didn't confront Kephart with the incidents documented in Ms. Lobato's habeas petition of his alleged criminal conduct, his lying to Judge Vega, his misstating of evidence and manufacturing of non-existent "evidence" for the jury, and his serial misconduct that Ms. Lobato asserts deprived her of a fair trial.¹⁷

11. Mortera commentary: "Lobato, her family, and supporters believe otherwise. They say DNA testing of evidence from the scene, such as a piece of gum that had blood on it, could lead investigators to someone else. All this as Lobato's appeal moves its way through the courts."

Problem: Deceptive and misleading. There is no basis in reality for Mortera to create the impression that Ms. Lobato is depending on DNA testing for her exoneration. Regarding "Lobato's appeal," Mortera's story doesn't make a single mention of Ms. Lobato's habeas petition pending in the Nevada Supreme Court, which details why she asserts she hasn't received "justice." Mortera's story could have had substance by reporting that Ms. Lobato's petition includes: new evidence by more than two dozen witnesses supporting Ms. Lobato's factual innocence; exculpatory evidence Kephart concealed from her during her trial; ineffective assistance of her trial and appellate lawyers, and it documents more than 160 instances of prosecutorial misconduct by Kephart during her trial.¹⁸

The foregoing starkly demonstrates that Marie Mortera had scant regard for reporting the truth in *Death in the Desert*. Mortera's fabrications have earned her the distinction of standing alongside Stephen Glass who produced stories with fabrications at the *New Republic*, and Jayson Blair who produced stories with fabrications at *The New York Times*. Both Glass and Blair

were terminated for their conduct.

NBC Channel 3 (KSNV-TV) assisted Mortera by choosing to broadcast a story so divorced from the truth, that not even a gossip tabloid like the *National Enquirer* would have published it in print.

Hans Sherrer is President of the Justice Institute based in Seattle, Washington that conducted a post-conviction investigation of Ms. Lobato's case, and promotes awareness of wrongful convictions. Its website is, www.justicedenied.org.

Author's note: This article was originally published, without the endnotes, as the lead front-page article in the *Las Vegas Tribune*, March 9-15, 2016 issue, with the title: "Local NBC Channel 3 broadcasts fabricated Kirstin Lobato hit story."

Endnotes:

1. NSC, No. 58913, Exhibit 125A (audio of Lobato Statement)
2. *Id.*
3. *Id.* The first sentence is on transcript page 4 of the audio, and the second sentence is on page 6.
4. *Id.*
5. *Id.* The Officer's Report dated August 22, 2001 documents Ms. Lobato didn't recognize Bailey when shown his photo, p. 17.
6. 9 Appellant's Appendix (App.) 1819-1823, 1835-1847 (Exhibits 75 and 76), filed in Nev. Sup. Ct., case no. 58913.
7. Remainder of sentence: "and prosecutors used that interview, along with other evidence, to convict her twice, once in 2002 and again after a retrial in 2006."
8. 2 App. 255
9. 5 App. 1004
10. 5 App. 1021
11. 2 App. 267 to 4 App. 747 (State's trial direct testimony)
12. 6 App. 1173-1184
13. 5 App. 1008. Thirteen witnesses establish Ms. Lobato was in Panaca on July 8, 2001, and the State publicly conceded during Ms. Lobato trial in 2006 that she was in Panaca on July 8 from at least "11:30 a.m. through that night." *Id.* Another problem may be that Ms. Lobato or Ravell may take exception to Ravell being identified as Ms. Lobato's "surrogate mother," because her step-mother is active in her life.
14. 6 App. 1173-1184 (Documenting Bailey died when Ms. Lobato was in Panaca.); and, 6 App. 1222-1226 (Killer's shoeprints imprinted in blood don't match Ms. Lobato.)
15. <http://forejustice.org/innocentsdatabase.htm>
16. *State v. Lobato*, No. 1C177394 (Clark County District Court), 7-27-2001 (Findings of Fact, Conclusions of Law and Order Denying Petition Requesting Post-Conviction DNA Testing Pursuant to NRS 176.0918)
17. 7 App. 1402-1409, 1448-1467
18. 6 App. 1150 to 9 App. 1920



High Fence Foodie Cookbook Now Available!

High Fence Foodie is a new cookbook by Texas prisoner Celeste Johnson that was recently published by The Justice Institute.

High Fence Foodie has more than two hundred easy to prepare recipes for meals, soups, snacks, desserts, and beverages. These recipes can be made from basic items a prisoner can purchase from their unit's commissary, or people on the outside can purchase from a convenience or grocery store. They are written by Celeste Johnson, a woman imprisoned in Texas who loves to cook and try out new combinations of the simple food ingredients available to her.

High Fence Foodie's all new recipes are a follow-up to the more than 200 recipes in *From The Big House To Your House* that was written by Celeste Johnson and five fellow prisoners at the Mountain View Unit, a woman's prison in Gatesville, Texas.

From The Big House To Your House received

rave reviews on Amazon.com, with 75% of reviewers giving it 4 or 5 stars! Some of the comments are:

"A lot of the recipes are very imaginative, and fun to make. Well worth the money." J.C.

"I loved the food and was inspired by the can-do attitude of the ladies involved with this project." Dan

"My daughter got this for her husband for father's day. He loves using it!!" J.H.

"I am a college student making a limited income and these recipes are great and fulfilling for people like me who don't have a ton of \$ to spend on groceries." Alicia

"I sent this to my daughter. She absolutely loves this little cookbook!" D. G.

High Fence Foodie continues the high standard of *From The Big House To Your House*!



Celeste hopes her recipes will ignite a reader's taste buds as well as spark their imagination to explore unlimited creations of their own! She encourages substitutions to a reader's individual tastes or availability of ingredients. She is confident users of her recipes will enjoy creating a home-felt comfort whether behind the High Fence, or at Your House!

Celeste Johnson does not financially profit from sales of *High Fence Foodie*. All profits from the book's sale are donated to [The Justice Institute](http://www.justicedenied.org). Justice Denied to contribute to its work on behalf of wrongly convicted persons.

[Click here for more information](#) about the book's contents and to [order it from Justice Denied](#) with no shipping charge.

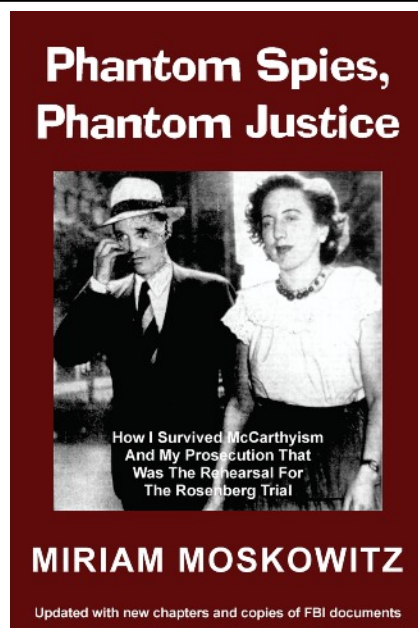
[Click here to buy High Fence Foodie from Amazon.com.](#)

Phantom Spies, Phantom Justice!

Phantom Spies, Phantom Justice by Miriam Moskowitz was published in July 2012 by Justice Denied/The Justice Institute. The book is Ms. Moskowitz' autobiography that explains how it came to be that in 1950 she was falsely accused, indicted and convicted of obstruction of justice in a grand jury that was investigating Soviet espionage. The book's subtitle is *How I Survived McCarthyism And My Prosecution That Was The Rehearsal For The Rosenberg Trial*. The Afterword written by Justice Denied's editor and publisher Hans Sherrer states in part:

Miriam Moskowitz is an innocent person who was caught up in the whirlwind of anti-communist hysteria that prevailed in this country at the time of her trial in 1950. We know that because of FBI documents she obtained through the Freedom of Information Act decades after her conviction for conspiring to obstruct justice during a grand jury investigation.

The prosecution's case depended on the trial testimony of FBI informant Harry Gold. He testified that in 1947 she observed a conversation during which he and her business



partner, Abraham Brothman, allegedly discussed providing false testimony to a grand jury investigating possible Soviet espionage. She did not testify before that grand jury.

The FBI documents Ms. Moskowitz obtained are proof that prior to her trial Mr. Gold told the FBI she was *not present* during that alleged conversation. Furthermore, Mr. Gold told the FBI he didn't speak candidly in front of Ms. Moskowitz because of

her possible negative reaction if he said something incriminating in her presence, and he didn't like her.

Although Ms. Moskowitz's case had nothing directly to do with the Rosenberg trial that took place four months after her trial, they were tied together because Mr. Gold was a key witness against the Rosenbergs and the same prosecutors and judge were involved in both trials.

Phantom Spies, Phantom Justice is a compelling story of how an innocent 34-year-old woman found herself being publicly branded as an enemy of the United States. Ms. Moskowitz is now 96 and still seeking the justice of having her conviction overturned, although she can't get back the time she spent incarcerated because of her two-year prison sentence.

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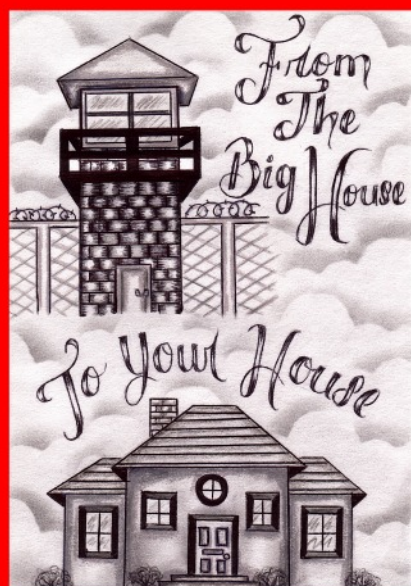
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Edwin M. Borchard – Convicting The Innocent

Edwin M. Borchard – *Convicting The Innocent and State Indemnity For Errors Of Criminal Justice* has [been published](#) by The Justice Institute/Justice Denied.

Yale University Law School Professor Edwin Borchard was an early pioneer in exposing the causes of wrongful convictions and the inadequacy of compensation for exonerated persons in the United States. So it is important that it be remembered his works laid the foundation for today's advocates for wrongly convicted persons, and the encouragement of public policies that may prevent wrongful convictions and ensure adequate indemnification when they occur.

This 358-page book includes Borchard's key works *European Systems Of State Indemnity For Errors of Criminal Justice*, and *Convicting The Innocent: Sixty-Five Actual Errors of Criminal Justice*. The Table of Contents is:

Introduction

Chapter 1. Edwin M. Borchard: Pioneer In Analyzing Wrongful Convictions And Advocate For Compensation

Chapter 2. Edwin Borchard, Law Expert, Dead

Chapter 3. European Systems Of State Indemnity For Errors Of Criminal Justice

Chapter 4. Convicting The Innocent: Sixty-Five Actual Errors Of Criminal Justice

Convicting the Innocent (Chapter 4) has not lost its luster as one of the most insightful books published on the topic of wrongful convictions. Seventy-one years after its publication the multitude of causes underlying the cases of injustice it details not only continue to plague the legal system in the United States, but they are arguably more prevalent today than when the book was published, with the exception of confessions extracted by physical violence.

Compensating exonerated persons is as topical a subject as it was one hundred years after Borchard's article about indemnifying wrongly convicted persons. Borchard article (Chapter 3) makes it clear that many European countries were more advanced in providing indemnification 100 years and more ago, than is the norm in the United States in 2015.

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COMPILED AND INTRODUCTION
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Justice:Denied provides a forum for people who can make a credible claim of innocence, but who are not yet exonerated, to publicize their plight. *Justice:Denied* strives to provide sufficient information so that the reader can make a general assessment about a person's claim of innocence. However unless specifically stated, *Justice: Denied* does not take a position concerning a person's claim of innocence.

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By Hans Sherrer

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"These wrongful convictions represent a systemic failure, a failure by prosecutors, defense attorneys, by judges, by the system. These wrongful convictions destroy lives, and no matter what happens, Ms. Gathers will not get back those 10 years." Kings County, NY DA Ken Thompson after Vanessa Gathers' 1998 manslaughter conviction was vacated on February 23, 2016.

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See p. 3.

The Magazine for the Wrongly Convicted

The scales of justice are tipped against innocent people all across the country - from Maine to Hawaii and from Alaska to Florida.

Justice:Denied provides a public voice for innocent people victimized by that tragic reality.