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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

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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

