

New Mexico Supreme Court Rules Expert Testimony By Skype Violates Right To Confront Witness

The New Mexico Supreme Court [has ruled](#) the remote two-way video testimony of an expert by Skype violated the federal constitutional right of a defendant to confront that expert in court.

The body of 28-year-old Guadalupe Ashford was found on June 3, 2010 near at the edge of an abandoned apartment complex's parking lot in Albuquerque, New Mexico. Police collected a six-inch by six-inch bloodied brick found near her body that they believed to be the murder weapon.

An Albuquerque Police Department forensic analyst performed DNA testing of the blood on the brick. She found it was Ashford's. DNA testing of swabs of the brick also resulted in the finding of two other DNA profiles. The analyst thought only one of those profiles was complete enough to be uploaded to the FBI's Combined DNA Index System (CODIS) database to search for a possible match.

The FBI's database reported a match with the DNA profile of 49-year-old Truett Clyde Thomas.

Thomas was arrested 25 days after the discovery of Ashford's body, and he was charged with kidnapping and first-degree murder.

Thomas was held in custody for 25 months awaiting trial.

There was no eyewitness or other witness connecting Thomas to Ashford, so the prosecution's case was solely based on the purported match of his DNA with DNA recovered from the crime scene. Thomas insisted he was innocent and that he had never seen or had any contact with Ashford.

Prior to Thomas' trial the DNA analyst moved out of state. Rather than subpoena her to appear in person to provide her expert testimony, the prosecution suggested during a pretrial hearing that she be allowed to testify by way of Skype — a two-way audio-video Internet communications application. Thomas' lawyer expressed reservations, but [he didn't object, saying](#): "I don't like it, but I think it will work. . . . It's just weird."



District Judge
Samuel L. Winder
(Albuquerque Journal)

A week before trial Thomas' lawyer changed his position, [stating during a hearing](#): "... we have rethought our position on that, and we're thinking it's going to cause a confrontation problem." The prosecution's response was that it hadn't issued a subpoena for the analyst to appear in person, and the judge ruled that during the previous hearing Thomas' lawyer had waived objecting to using Skype to present the analyst's expert DNA testimony.

During Thomas' trial the analyst [testified remotely](#) via Skype. "During her testimony ... she was able to see only an image of the attorney questioning her and could not see Defendant, the jury, or the district court judge at any time."

After the jury convicted Thomas of kidnapping and first-degree murder, but before his sentencing, his attorney filed a motion for a new trial based on new DNA evidence: The third DNA profile [found on the brick](#) was a "known profile which should have been investigated by the Albuquerque Police Department," and DNA swabs collected from a beer can and a vodka bottle found at the crime scene would link two persons -- neither of whom was Thomas -- to the crime scene. A post-verdict defense investigation discovered that those items were purchased by two men at a nearby Circle K the night before Ashford's body was found. The motion stated: "The police did not identify this lead during their investigation. ... This new evidence will affect the decision of any reasonable jury."

Thomas' trial judge -- District Judge Samuel L. Winder -- did not preside over the hearing about his new trial motion. During that hearing Thomas' lawyer raised the additional issue for a new trial that Judge Winder had posted comments on his election campaign's Facebook page about Thomas' case throughout his trial, and after the jury's verdict [he posted the comment](#): "Justice was served. Thank you for your prayers." (Judge Winder, a former prosecutor who had been appointed to his position, lost the general election.)

Thomas' motion for a new trial was denied, and he was sentenced to life in prison for murder and 18 years for kidnapping.

Thomas appealed his conviction directly to the New Mexico Supreme Court. (New Mexico's Constitution mandates the appeal of a case involving a death sentence or life sentence to bypass the Court of Appeals and be heard directly by the Su-

preme Court.) Thomas raised a number of issues in his appeal.

On June 20, 2016 the Supreme Court issued its [unanimous ruling](#) in *State v. Thomas* (2016) that the DNA expert's testimony was inadmissible because Thomas' federal constitutional Sixth Amendment right to confront a witness against him was violated by her testimony via Skype. [The Court stated](#):

"The central purpose of the Confrontation Clause, to ensure the reliability of evidence, is served by "[t]he combined effect of . . . physical presence, oath, cross-examination, and observation of demeanor by the trier of fact." ... Under current United States Supreme Court Confrontation Clause jurisprudence, Defendant's Sixth Amendment right to confrontation was violated by the admission of the video testimony."

[The Court ruled](#) the inadmissible expert testimony wasn't harmless and required reversal of both of Thomas' convictions because "the erroneously admitted DNA evidence was all that implicated Defendant in any crime."

The Court also reversed Thomas' kidnapping conviction based on the prosecution's failure to prove that Ashford had been kidnapped. However, the Court declined to reverse his murder conviction on insufficient evidence, since as the jury heard it, the DNA evidence could be interpreted to suggest Thomas' involvement. The kidnapping charge was to be dismissed, but the Court ordered a retrial of Thomas' murder charge.

Because it had already granted Thomas a new trial, the Court didn't have to rule if Judge Winder's Facebook postings and lack of impartiality was so prejudicial that they required a new trial. However, the [Court did note](#):

"A judge must understand the requirements of the Code of Judicial Conduct and how the Code may be implicated in the technological characteristics of social media in order to participate responsibly in social networking. Members of the judiciary must at all times remain conscious of their ethical obligations."

The Bernalillo County DA will have to decide whether to retry Thomas or dismiss the murder charge.

[Click here to read the New Mexico Supreme Court's ruling](#) in *State of New Mexico v. Truett Thomas*, 376 P.3d 184, 2016-NMSC-024 (NM Sup. Ct., 6-20-2016).

Skype cont. from page 15

6,807 Cases Now In Innocents Database

The Innocents Database now includes 6,807 cases: 4,276 from the U.S., and 2,531 from 116 other countries. The database includes 3,159 U.S. cases from 2016 to 1989, when the first DNA exoneration occurred.

The [Innocents Database](#) is the world's largest database of exonerated persons, and it includes all identifiable exonerations in the United States, as well as internationally. The Innocents Database includes:

- 571 innocent people sentenced to death.
- 913 innocent people sentenced to life in prison.
- 2,129 innocent people convicted of a

- homicide related crime.
- 1,037 innocent people convicted of a sexual assault related crime.
- 776 innocent people were convicted after a false confession by him or herself or a co-defendant.
- 2,093 innocent people were convicted of a crime that never occurred.
- 220 innocent people were posthumously exonerated by a court or a pardon.
- 73 people were convicted of a crime when they were in another city, state or country from where the crime occurred.
- 1,757 innocent people had 1 or more co-defendants. The most innocent co-defendants in any one case was 29, and 20 cases had 10 or more co-defendants.
- 12% of wrongly convicted persons are women.
- The average for all exonerated persons is 7-1/8 years imprisonment before their release.
- 31 is the average age when a person is wrongly imprisoned.
- Cases of innocent people convicted in 117 countries are in the database.
- 4,276 cases involve a person convicted in the United States.
- 2,531 cases involve a person convicted in a country other than the U.S.

Skype cont. from page 14

Sources:

[State of New Mexico v. Truett Thomas](#), 376 P.3d 184, 2016-NMSC-024 (NM Sup. Ct., 6-20-2016) (Reversing kidnapping conviction based on insufficient evidence and reversing murder conviction and remanding for new trial.)

[Supreme Court orders new trial in 2010 murder case](#), *Albuquerque Journal*, June 20, 2016

[New Evidence Cited After Conviction](#), *Albuquerque Journal*, October 20, 2012

[Judge on Facebook](#): 'Justice Was Served', *Albuquerque Journal*, Sept. 22, 2012



[Click here to go to the Innocents Database homepage.](#)

All the cases are supported by public sources for research. Those sources include court rulings, newspaper and magazine articles, and books. The database is linked to from [Justice Denied's](#) website.

User defined searches, and user defined sorts of any combination of more than 100 columns of data can be made for:

[U. S. cases from 1989 to 2016](#);

[U. S. cases prior to 1989](#);

and, [International cases up to 2016](#)

The database can now be sorted on a Compensation column to find such information as: the compensation awarded to persons for any year or state, or the compensation awarded in a particular type of case, such as those involving DNA or a false confession, etc.

The Innocents Database is an ongoing project that began more than 19 years ago, and now contains millions of bytes of data related to exonerations. The accessibility and usefulness of that data to the public and researchers is improved by the ability to search and sort for specific information.

Email a question, correction, or suggested addition to the Innocents Database to: innocents@forejustice.org.



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

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

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 conclusively 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.

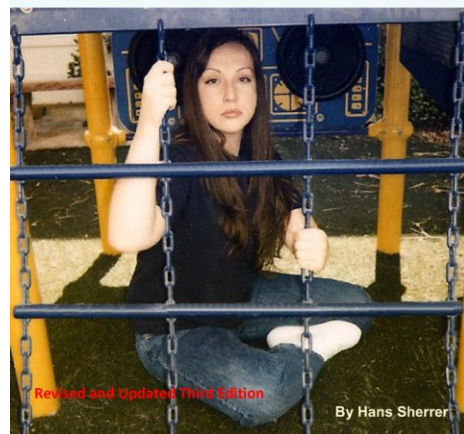
The 3rd revised edition has 57 pages of new information, that includes:

- * 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.

KIRSTIN BLAISE LOBATO'S UNREASONABLE CONVICTION

Possibility Of Guilt Replaces Proof Beyond A Reasonable Doubt



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

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