

Clark County, Nevada DA Steven Wolfson Lied To Nevada Supreme Court He Doesn't Have Dishonest Cops "Liar's List"

By Hans Sherrer

Evidence has been discovered that Clark County District Attorney Steven Wolfson lied to the Nevada Supreme Court he doesn't have a "Liar's List" of dishonest cops. Wolfson denied he has a "Liar's List," as a defense to one of Kirstin Lobato's claims for a new trial in her habeas corpus appeal currently in the Supreme Court.

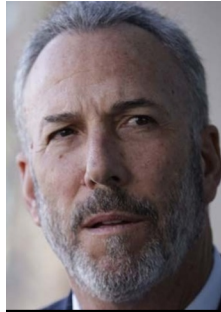
Wolfson's lie to the Supreme Court in Ms. Lobato's case was recently revealed by his admission in an unrelated lawsuit that the "Liar's List" exists.

Metro PD Officer Christopher Cooney filed a lawsuit in Clark County District Court on June 27, 2016 that claims he was defamed by being placed on the DA's *Giglio/Brady* list of dishonest cops, aka "Liar's List." The defendants in *Cooney v. Metro, et. al.*, are the DA's Office, one current and two former Assistant DA's, Metro, and unnamed others.

Wolfson admits the "Liar's List" exists in the DA's Motion To Dismiss Cooney's lawsuit. The motion was filed on October 18, 2016. Wolfson's defense in seeking to dismiss Cooney's lawsuit is absolute prosecutor immunity shields the DA's Office and the three ADAs from civil liability for placing Cooney on the DA's *Giglio/Brady* list of dishonest cops. Wolfson also admits the "Liar's List" is discovery evidence for criminal defendants "involving constitutional obligations imposed by the Supreme Court."

In May 2010 Ms. Lobato filed a habeas corpus petition in the Clark County District Court that requested the overturning of her October 2006 convictions related to the homicide of homeless Duran Bailey on July 8, 2001. Ms. Lobato's alibi defense was she was at her home in Panaca, 165 miles from Las Vegas, when Bailey died in the trash enclosure for a Las Vegas bank. Metro Det. Thomas Thowsen was a key prosecution witness. Ms. Lobato's habeas petition Ground 58 states:

Petitioner was denied effective assistance of counsel in violation of the Nevada Constitution and the Sixth Amendment to the U.S. Constitution, and prejudiced by counsel's objectively



Steven Wolfson in Oct. 2013 (Jessica Ebelhar-Iv, LV Review Journal)

unreasonable failure to file a pre-trial motion for the prosecution to disclose if Detective Thomas Thowsen was on the Clark County District Attorney Office's "Liar's List" of law enforcement officers known to have given false and/or perjurious testimony or false sworn statements in connection with any case... because the prosecution's case hinged on the jury believing that Thowsen was telling the truth, the information was relevant and discoverable ..."

David Roger was the Clark County DA when Ms. Lobato filed her habeas petition. Roger's defense to Ground 58 in the District Court was Ms. Lobato's "bare" assertion wasn't truthful the DA has a "Liar's List" that could have been turned over to her trial lawyer if he had requested it. Acting as Roger's representative, ADA William Kephart wrote the false assertions about the "Liar's List" presented in the State's Response to Ms. Lobato's petition. Kephart also signed the State's Response filed in the District Court on August 20, 2010.

District Court Judge Valorie Vega relied on Rogers and Kephart's dishonesty about the DA's "Liar's List," when she denied Ms. Lobato's Ground 58. Ms. Lobato appealed Judge Vega's denial of her habeas petition to the Nevada Supreme Court.

Wolfson was appointed DA in January 2012. Wolfson's defense to Ground 58 in the Supreme Court was Ms. Lobato's "bare" assertion wasn't truthful the DA has a "Liar's List" that could have been turned over to her trial lawyer if he had requested it. Acting as Wolfson's representative, ADA Steven Owens wrote the false assertions about the "Liar's List" presented in the State's Answering Brief. Owens also signed that brief filed in the Supreme Court on July 6, 2012.

Wolfson's admission on October 18 in the *Cooney* case the "Liar's List" exists, exposes that while acting on behalf of the State of Nevada, Rogers and Kephart lied to Judge Vega in the District Court, and Wolfson and Owens lied to each of the Supreme Court's justices, that the "Liar's List" doesn't exist. The DA's Office is acting in conjunction with the Nevada Attorney General's Office in opposing Ms. Lobato's petition. So Attor-

ney General Catherine Cortez Masto colluded with the DA in lying to Judge Vega, and then to each of the Supreme Court justices about the DA's "Liar's List." On November 8, 2016 Cortez Masto was elected as a United States Senator from Nevada.

The Supreme Court can sanction the State of Nevada for Wolfson, Owens, and Masto's blatant lying about the DA's "Liar's List," by striking the State's defense to Ms. Lobato's Ground 58 under NRAP Rule 28(j). The Supreme Court could then grant Ground 58 as unopposed by the State of Nevada, and order a new trial for Ms. Lobato.

The State Bar of Nevada can sanction Rogers, Kephart and Masto for engaging in extreme dishonesty to influence the District Court's decision, and Wolfson, Owens and Masto can be sanctioned for engaging in extreme dishonesty to influence the Supreme Court's decision in Ms. Lobato's case. Nevada Rules of Professional Conduct Rule 8.4 states: "It is professional misconduct for a lawyer to:"

- “(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) Engage in conduct that is prejudicial to the administration of justice.”

The discovery of evidence that Kephart lied in the District Court may have implications for him beyond possible State Bar sanctions. Kephart left the DA's Office, and he is currently a judge in the very court he lied to — the Clark County District Court.

It is not known why the DA and AG lied to conceal the "Liar's List" from Judge Vega, and then from the Supreme Court justices. What is known, is truthfully disclosing the existence of the "Liar's List" to Judge Vega and the Supreme Court justices would only hurt the State's defense against Ms. Lobato's habeas petition if Det. Thowsen had been on the list. (Thowsen is now retired.)

Without benefit of knowing Wolfson, Owens, Rogers, Kephart and Masto lied about the "Liar's List," the Supreme Court did not grant Ground 58 in its on November 23, 2016 ruling in Ms. Lobato's habeas case. Her case was sent back to the District Court for a limited evidentiary hearing and proceedings concerning her actual innocence claim. That ruling is not yet final.

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Federal Circuit Court Rules Judge Doesn't Have Power To Expunge Valid Conviction

A U.S. District Court judge doesn't have the authority to expunge a person's legally valid conviction. That was the ruling of the U.S. Second Circuit Court of Appeals on August 11, 2016. The person involved in the case was identified as "Jane Doe" in the court's decision.

In 1997 Jane Doe joined an automobile insurance fraud scheme, and she participated in a staged car accident in Brooklyn, New York. Doe feigned being injured, and she was paid \$2,500 from an injury claim.

Doe and others involved in the insurance scam were indicted by a federal grand jury for "knowingly and willfully" participating in a "scheme . . . to defraud any health care benefit program," in violation of 18 U.S.C. § 1347.

Doe was convicted by a jury in 2001.

Doe was a single mother with no prior criminal history who worked as a home health aide. She was sentenced to five years probation on March 25, 2002.

Doe completed her probation and she had no further legal problems. She found that because of her felony fraud conviction she was unable to keep a job in the health care field. Some employers disqualified her after

Wolfson cont. from p. 12

The Supreme Court has the authority to act on its own initiative to correct the injustice of rewarding DA Wolfson, AG Masto, and the State of Nevada for their extreme dishonesty. The Supreme Court can revise its ruling by granting Ground 58, and order that Ms. Lobato be granted a new trial in light of the new evidence the justices were deliberately lied to in order to manipulate their decision.

The existence of the "Liar's List" was exposed in an article about the *Cooney* case in a *Las Vegas Tribune* article published on September 27, 2016, "Lawsuits Against Metro's Phony Leaders."

(Note: This article was published in the December 12, 2016 issue of the *Las Vegas Tribune* (www.lasvegastribune.net).



U.S. District Court Judge John Gleeson

learning of her criminal history before hiring her, and she was let go by other employers when they learned of it after she was hired.

On October 30, 2014 Doe filed a *pro se* motion in the District Court requesting expungement of her conviction, "because of the undue hardship it has created for her in getting — and especially keeping — jobs."

The U.S. Attorney's Office opposed Doe's motion, arguing that the District Court lacked jurisdiction to expunge a valid conviction.

U.S. District Court Judge John Gleeson, who presided over Doe's trial in 2001, granted her motion on May 21, 2015. Gleeson ordered the "Government to seal all hard copy records and to delete all electronic records of Doe's conviction."

Gleeson determined he had the jurisdiction to consider Doe's motion and issued his order based on the Second Circuit's ruling in *United States v. Schnitzer*, 567 F.2d 536 (2d Cir. 1977) and the U.S. Supreme Court's ruling in *Kokkonen v. Guardian Life Insurance Company of America*, 511 U.S. 375 (1994). The appeals court ruled in *Schnitzer* that "[a] court, sitting in a criminal prosecution, has ancillary jurisdiction to issue protective orders regarding dissemination of arrest records," and that "expungement . . . usually is granted only in extreme circumstances." The Supreme Court ruled in *Kokkonen* that under certain conditions a District Court has "limited ancillary jurisdiction of collateral proceedings ..."

Gleeson found that Doe's conviction was "extreme" enough to warrant expungement of her criminal record and cited three reasons. First, her offense was in 1997, and she has not been arrested since her conviction in 2001. Second, Doe's "criminal record has had a dramatic adverse impact on her ability to work." Third, "[t]here is no specter now that she poses a heightened risk to prospective employers in the health care field."

The U.S. Attorney's Office appealed Gleeson's order.

On August 11, 2016 the Second Circuit Court of Appeals vacated Gleeson's order, and remanded the case for dismissal of Doe's motion for lack of jurisdiction by the

District Court. In *Doe v. United States*, No. 15-1967-cr (2nd Cir., 08-11-2016) the Court ruled that Gleeson misapplied the two cases he relied on to grant Doe's motion: *Schnitzer* only applies to the "expungement" of arrest records — not a valid conviction; and *Kokkonen* doesn't apply to the circumstances of Doe's case.

Although they ruled the District Court was powerless to consider Doe's motion, the appeals court was sympathetic for her plight. The court noted:

First, our holding that the District Court had no authority to expunge the records of a valid conviction in this case says nothing about Congress's ability to provide for jurisdiction in similar cases in the future. As described above, Congress has done so in other contexts. It might consider doing so again for certain offenders who, like Doe, want and deserve to have their criminal convictions expunged after a period of successful rehabilitation.

Second, only a few months ago (while this appeal was pending), the Attorney General of the United States recognized and aptly described the unfortunate life-long toll that these convictions often impose on low-level criminal offenders: ... "[T]oo often, the way that our society treats Americans who have come into contact with the criminal justice system . . . turns too many terms of incarceration into what is effectively a life sentence."

[Click here to read](#) *Doe v. United States*, No. 15-1967-cr (2nd Cir., 08-11-2016).

Sources:

[Doe v. United States](#), No. 15-1967-cr (2nd Cir., 08-11-2016) (Reversing district court's order expunging valid conviction.)



2016 Innocents Database Exoneration Report

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