

Reward cont. from p. 18

17. Explain why the Clark County District Attorney's Office wants to prevent the police officer whose phone number was handwritten on two pieces of paper found in Mr. Bailey's pants pockets, from testifying in court under oath about what he may know about Mr. Bailey's homicide, and person or persons who may have committed the crime or have information about the crime.

18. Explain why Clark County DA Steven Wolfson adamantly opposes post-conviction DNA testing of numerous evidence items collected at the crime scene, by DNA testing techniques perfected since Ms. Lobato's trial that could identify the DNA profile of Mr. Bailey's assailant, and that could be uploaded to the FBI's national DNA database to search for a match. (Trial testimony established that DNA testing of a limited number of crime scene evidence items excluded the presence of Ms. Lobato's DNA.)

19. Explain why the DA's Office has disregarded the unequivocal determination of Las Vegas polygraph examiner Ron Slay that "I am certain Ms. Lobato is innocent of Mr. Bailey's murder," when he has conducted over 27,000 polygraph examinations and the DA's Office has so much confidence in his competence as a polygraph expert that it has relied on him to determine if suspects are telling the truth.

20. Explain why the DA's Office has disregarded the unequivocal public declaration by current United States District Court Judge Gloria Navarro that was published in the *Las Vegas Review-Journal* in 2002, that Ms. Lobato is innocent and she was "convicted of a crime that she did not commit" -- based on her first-hand knowledge of Ms. Lobato's case as one of her lawyers at the time -- when President Barack Obama endorsed Judge Navarro's legal ability and sound judgment in December 2009 by accepting Nevada Senator Harry Reid's recommendation and nominated her to be a U.S. District Court judge, and the United States Senate expressed its total confidence in Judge Navarro's legal ability and judgment by unanimously confirming her to a lifetime appointment by a vote of 98-0 in May 2010. (Judge Navarro has not retracted her declaration, and she referenced the 2002 *Review-Journal* article in her written submission to the U.S. Senate prior to her confirmation as a U.S. District Court judge.)

Send any questions regarding the contest to: contest@justicedenied.org.

Information about Ms. Lobato's case is available on Justice Denied's website at www.justicedenied.org/kbl.htm.

DA Wolfson's CRU Deceived The Innocents Project About Kirstin Lobato's Case

By Hans Sherrer
Justice Denied

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Kirstin Lobato's application for review of her claim that new evidence proves her actual innocence of Duran Bailey's homicide in Las Vegas on July 8, 2001, was rejected in March 2017 by DA Steven Wolfson's Conviction Review Unit (CRU).

Documents obtained by Justice Denied show Wolfson's CRU deceived the Innocents Project (IP) based in New York, which submitted the application on Ms. Lobato's behalf.

In addition, Wolfson's CRU disregarded nationally recognized CRU standards of what constitutes new evidence of actual innocence in its evaluation of her application.

Evidence supports that Wolfson's CRU rejected Ms. Lobato's application for non-legal reasons, without any meaningful consideration of her new evidence and how it applies to the relevant facts of her case.

More than two dozen CRUs have been set-up around the country in the last ten years as an extra-judicial method for a DA's Office to review a convicted person's claim of actual innocence based on new evidence.

Wolfson hired Dan Silverstein to head Clark County's CRU that was established in the fall of 2016.

Ms. Lobato submitted her application to the CRU on March 7, 2017 while her habeas corpus petition challenging her 2006 convictions was pending in the district court. An issue the district court is considering is her habeas claim of actual innocence supported by new evidence from more than 20 people that includes multiple experts and alibi witnesses.

Her CRU application stated six areas of new evidence proving her actual innocence:

1. New forensic evidence establishes Duran Bailey died after 8 p.m. on the evening of July 8. During Ms. Lobato's trial the prosecution did not dispute the fact

she was in Panaca from late morning on July 8 until the early morning of July 9.

2. New expert psychology evidence Ms. Lobato's police statement of July 20, 2001 detailed her attempted rape in the parking lot of a Budget Suites Hotel in east Las Vegas prior to mid-June 2001, and it was not about Bailey's homicide weeks later in a west Las Vegas bank's trash enclosure.

3. New alibi evidence Ms. Lobato told many people from late May to July 4, 2001 about the attempted rape of her in the Budget Suites Hotel parking lot; and, new evidence of police perjury.

4. New alibi evidence Ms. Lobato was in Panaca the entire weekend of July 7 and July 8.

5. New forensic science evidence the physical evidence in Ms. Lobato's case excludes her from the crime scene and undercuts the prosecution's narrative of the crime.

6. New evidence Metro did not investigate suspects who had the motive, means and opportunity to commit Bailey's homicide.

The jury that convicted Ms. Lobato heard none of that new evidence.

New York's Brooklyn District Attorney's Office CRU (Brooklyn CRU) is the country's most well-known CRU and considered a national model. Twenty-three people have been exonerated as a result of its work from 2014 to 2017.

Ms. Lobato's CRU application includes five types of evidence the Brooklyn CRU has relied on to exonerate 19 people. Those types are, with the number of exonerations in parenthesis:

- Alibi corroborated (2)
- Expert analysis of crime related evidence (3)
- Alternate suspect likely committed crime (3)
- Defendant's statement unreliable link to crime (4)
- False or unreliable prosecution witness (7)

Two of the Brooklyn CRU's 23 exonerations have been based on new DNA evidence. Its most recent exoneration involved new evidence of false police trial testimony -- which was also presented in Ms. Lobato's CRU application.

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CRU cont. from p. 19

Silverstein is certainly aware of the Brooklyn CRU that is the national model. He wrote in a December 17, 2016 email: "We've spoken to virtually every CRU, I myself spoke to about ten chiefs ..."

Ms. Lobato's application was submitted to the CRU on Tuesday, March 7. That same day the IP was informed by Silverstein in an email: "We are travelling out of the jurisdiction on Thursday and Friday for an interview in another case." The first work day after his travelling he would be able to devote to her application was Monday, March 13.

Three days later, on March 16 the letter was produced from Silverstein to the IP rejecting Ms. Lobato's application for review. The stated reason for rejecting her case was:

"The new evidence presented in Lobato's application — the opinions of forensic entomologists, crime scene reconstructionists, and false confession experts, additional alibi witnesses, and impeachment of Detective Thowsen's credibility — does not meet the criteria for re-investigation by the Conviction Review Unit, because it is not capable of potential substantiation."

On its face, that explanation is dishonest.

Nineteen of the 23 people exonerated by Brooklyn's CRU -- 83% of the cases -- relied on the same types of new evidence Ms. Lobato submitted as proving her actual innocence. Additionally, her application included five of the eight types of new evidence that have resulted in all of the Brooklyn CRU's exonerations.

Furthermore, her application included types of new evidence that has resulted in at least 91% of CRU exonerations nationally.

It is known Silverstein has been in contact with CRUs across the country. He can't reasonably feign ignorance that people are regularly being exonerated based on the same types of new evidence Ms. Lobato submitted.

The CRU's letter also stated: "New evidence that raises factual questions rightfully decided by a jury does not *substantiate* the petitioner's innocence in the same way as a DNA test or a third party confession."

That statement is patently false, because as explained above, the Brooklyn CRU has exonerated 19 people based on non-DNA evidence of types submitted by Ms. Lobato,

and none of its exonerations were based on a "third party confession."

The dishonesty by the DA's Office regarding the rejection of Ms. Lobato's CRU application goes far beyond its disreputable claim the new evidence of her actual innocence can't be substantiated. Consider the following three examples:

First. Silverstein's stated in his rejection letter:

I have reviewed the entirety of your application, the affidavits and expert reports you submitted, as well as the transcript of the August 7, 2001 preliminary hearing, transcripts of both of Kirstin Lobato's jury trials from May 2002 and September 2006, the complete investigation conducted by the Las Vegas Metropolitan Police Department, and all of the motions, petitions, and other documents in the case.

The documents Silverstein cites total over 7,000 pages. Using a standard font the King James Authorized Bible is said to be about 1,200 pages long. So in the nine days from when the CRU received Ms. Lobato's application to when the rejection letter was produced, Silverstein claims he reviewed the equivalent of six Bibles full of detailed and complex information — and those nine days included a weekend and at least two other days when he was traveling while working on another case.

Second. Silverstein also stated in his rejection letter:

"Clearly, the information presented could raise questions regarding Lobato's guilt in this matter; however, such questions have been presented to and considered by two separate juries ..."

That statement is inaccurate because her application presented new legal evidence of her actual innocence -- not "information," and it is a fact verifiable by anyone who actually reads her case documents that "two separate juries" did not hear, and hence did not "consider," her new evidence by more than 20 people supporting her actual innocence. The following is just one example of the statements extreme falsity.

The documents Silverstein claimed to have read detail Ms. Lobato's new forensic evidence — which was discovered after her second trial in 2006 so it is impossible any jury "considered" it — that establishes Bailey died after 8 p.m. on the evening of July 8. The prosecution conceded during their argument to the jury that credible evidence

establishes she was in Panaca 165 miles from Las Vegas the entire afternoon and evening of July 8 until after Bailey's body was found. The prosecution freely made that concession because it was unimportant to their case: which hinged on their narrative Bailey died in the very early morning hours of July 8, which is when the prosecution asserted she was in Las Vegas.

Thus, the jurors who convicted Ms. Lobato didn't know her new forensic evidence Bailey died after 8 p.m., a time when it was undisputed during her 2006 trial she was in Panaca.

Third. The CRU's letter to the IP rejecting Ms. Lobato's application was produced on March 16, 2017. However, Silverstein did not inform the IP her application had been rejected. Not knowing it was futile, on March 27 the IP provided the CRU with an additional forensic report concerning Bailey's time of death.

Fifteen days after the CRU's rejection letter was produced, it was sent to the IP with the date March 31 in an email that stated: "Attached, please find a letter explaining the Conviction Review Unit's decision not to accept this case for a formal reinvestigation."

From the foregoing it is known Ms. Lobato's CRU application was not rejected for legal reasons; and, the CRU did not even take the facts of her case and the new evidence of her actual innocence into consideration in rejecting her application.

It is also known the CRU deceived the IP by waiting more than two weeks to inform it Ms. Lobato's application had been rejected.

The conduct of the DA's Office regarding Ms. Lobato's CRU application has serious implications. It is conceivable she would now be free if she had been prosecuted by the Brooklyn DA's Office. An investigation of her application by the Brooklyn CRU could realistically have resulted in their advocacy for her exoneration as it has done in almost two dozen cases.

Consequently, there is reason to conclude Kirstin Lobato is currently in prison only because of the egregiously dishonest mishandling of her CRU application by Wolfson's Office.

The information in this article came from sources that include public records requests to the Clark County District Attorney's Office.

