

How innocents are convicted

For these stories on the David Bush conviction, I have reviewed over 4,000 pages of trial transcripts, the Wyoming Supreme Court ruling on the appeal, witness interview transcripts, child custody transcripts and other material. I have considered letters purported to clear David Bush of the murder of his wife in 1990 and others that implicate an alternate suspect.

Why do I do this? Why do I spend hours and hours reading, discussing, e-mailing, writing letters and reviewing material? Do I think that whatever I conclude will make the difference in whether an innocent man is released from prison or a guilty one will be sentenced for the crime? Will I conclude that I believe David Bush is innocent and should be freed?

Honestly, I ask myself those questions and a lot of others frequently. I could have used the time for other stories or just doing nothing. That works for the other news media in Cheyenne.

When you sink your teeth into a case where a trial was held 16 years after the disappearance of a person and the missing person's body has never been found and there has never been eyewitness testimony nor a confession, you better be prepared to be challenged. And, to complicate things, the convicted has always maintained his innocence.

So, to paraphrase someone else, if not me, who? And, if not now, when?

A challenge such as this one interests me like no mundane bridge over railroad tracks or a second-tier park on the southside could ever do.

David Bush has a wife who believes in his innocence with all her heart and soul and spent ten years by his side before he was arrested and tried for the disappearance and murder of his first wife, Lynn Knieval Bush. His current wife has her own children who believe in David Bush's innocence, including one who testified at his sentencing about how she trusted him and felt safe with him and "knew" he could never commit an act like he had just been convicted of doing.

His wife contacted me a year or so back, after David had been convicted but before his appeal had run its course. I told her my readers were local - not in Casper - and that the necessary case files would be tied up until the Supreme Court issued their ruling. In effect, I turned her down.

A few years ago, I was contacted by a guy named Johnny Lopez who was then incarcerated at the Riverton Honor Farm. He had always maintained that he had committed no criminal act - that he had not struck his best friend on the side of the head, resulting in his friend's death that night. He would not plead guilty to second degree murder or manslaughter in exchange for a brief sentence at the county jail, he wrote, because he did not want to admit he had done anything to cause the death of his friend. He had to write because he had no access to a computer and we never spoke by phone.

In response to his entreaty for help, he told me that he had written every organization and person he could think of, television programs and Innocence Project, asking for their involvement to clear his name. I wrote him that I had no audience in Riverton and could not dedicate enough time on his story to do it justice.

He wrote back and reminded me that a tag line on the Cheyenne Herald said, "In Search of the Truth," and counterattacked me by saying that claim itself must not be the truth. He hit me where it hurt.

It just so happened that the case files (he was also convicted in Casper) were at the Wyoming Supreme Court. He had won a reversal of his first conviction (for second degree murder) and his subsequent conviction of voluntary manslaughter was being appealed. So, I had ready access to the files and I reviewed them.

I did in his case what I promised to do in the David Bush case - review all the material I could get my hands on and offer an opinion as to whether I thought a jury should have convicted based on the evidence and testimony presented at trial. Not based on what I was told or what someone wrote me in a letter but based on the official record. Based on what a jury could consider in its deliberations.

I learned two valuable lessons with the Johnny Lopez convictions. First, that the State has all the resources and a public defender has little money to fight back with. In the Lopez case, the State hired a pathologist from Denver to bolster the local pathologist's testimony. The defense could not contend with the expert from Denver's contradictory and confusing testimony with an expert of their own. The other thing I took away from my review of the Johnny Lopez convictions was that a jury in Casper will convict anyone of anything the prosecution charges them with. That might be a slight exaggeration. There may have been some high-profile acquittals up there, but it's not far from the absolute truth.

I learned from the Lopez review that a review of trial transcripts can leave one scratching their head and wondering, "what were they thinking?" Lopez should not have been convicted, in my opinion.

I have been told by two people who have held the highest prosecutorial positions in the state (when I asked them why innocent people are convicted) "Because they're sitting there." In other words, there is a frontier justice mentality that if they weren't guilty, they wouldn't be on trial.

The other thing I've come away with after reviewing transcripts of several trials is jury mentality, "Well, if they didn't do it, who did?" In other words, the accused is the most likely to have committed the crime. As though there are no stranger-on-stranger crimes committed. The stepfather of Jaycee Dugard was a suspect in her disappearance for 18 years - until she was rescued from the hold of a sexual predator. The stepfather was the last person to see her the day she was abducted.

He did not rescue Jaycee. There were some who thought he had a hand in her abduction. But, it is sometimes not the most obvious person (usually a spouse) who commits the crime.

Another thing I look for in these reviews is how the police and prosecution handled their responsibilities. Did they exceed their authority? Did they plant evidence or testimony? Did they coach witnesses? Did they investigate thoroughly before reaching a conclusion or did they decide what they thought happened and then build evidence to support that conclusion?

For those naive enough to think that never happens, welcome to the real world. Let us assume it seldom happens. But it would be folly to believe it never happens.

Police are in the business of solving crimes and making arrests and prosecutors are in the business of convicting those charged.

In the David Bush case, authorities dismissed the possibility that Lynn Bush's disappearance may have been the deed of a stranger or someone other than David Bush. Their thought process was that no one else could possibly have a motive to abduct her - other than her husband. And her husband's motive was that he was having multiple affairs. That is the motive they pursued in spite of friends of Lynn testifying that she had told them she (Lynn) knew of the affairs and "would never leave David".

Having no evidence that linked David Bush to his wife's disappearance and, by inference, murder, the prosecution built their case on circumstantial evidence. In most instances, it was "imaginary" evidence. And testimony that changed from 16 years earlier, when Lynn had disappeared - always to David Bush's detriment and to the State's favor.

In the Bush case, the State used the 15 years from the date of the disappearance until charging Bush with First Degree Murder, to build its case. Bush, on the other hand, had no attorney and no investigators working to build a defense. He did not know the prosecution was making "deals" with witnesses, in particular the woman with whom he was having an affair at the time of his wife's disappearance and whom had moved into his house within three weeks after the disappearance. She and Bush had long since parted ways and David did not know the Casper Police Department and Wyoming DCI were coaching her, at best, and putting words into her mouth, at worst, that would lead to his conviction.

After more than 15 years, she would remember that David Bush had told her in a telephone conversation the night Lynn did not return home after going to the store for milk, that "It's done. She's gone."

He did not have an opportunity to test the pickup Lynn was driving the late afternoon of December 8, 1990 for blood. That pickup had been surrendered to Lynn's family even though it should have

gone to her husband as next of kin at the time. He had not been charged with anything linked to her disappearance. Lynn's family then sold the pickup.

David Bush had no access to the taped interrogations of him or interviews with other witnesses because they were lost and reports for the trial were rewritten from memory. The damaging tapes of interviews with his daughter when she was 2 1/2 to 3 1/2 years old were lost. All that remained were the notes the psychologist said she had made.

While law enforcement was refreshing the memories of witnesses against him, David Bush had no opportunity to remind them of what they had said 15 years earlier, when events were fresher in their mind. He was not building a defense. Either because he knew he didn't need to construct a defense for something he hadn't done or because he couldn't afford to. Citizens cannot match funds with the government. Nor resources or people.

Even with 15 years to prepare a case against an unsuspecting "suspect," what the prosecution presented took a lot of connecting blurry dots to lead to a conclusion of any kind for the jury.

The prosecutor laid out, in his opening statement, that what the 2 1/2 year old daughter had told a counselor and then a psychiatrist, but now could not remember, would be pivotal in his offer of proof. He promised the jury "DNA and physical evidence of the defendant's involvement in this murder." That simply wasn't presented. DA Blonigen said: "Misty Bush was an eyewitness." Never did the little girl say to the professionals, who were working with law enforcement more than treating this traumatized child, that she had seen her daddy kill her mommy. In fact, time after time after time, when asked, she said she had not seen any blood on her mommy and had not seen her daddy hurt her mommy.

To play to the sympathies and empathy of jurors, Blonigen said that "anxieties" were caused the little girl "by watching David kill Lynn." And that Misty had said, her mommy had an "owie on her head," had her stomach cut," and, "was buried in two holes, near Christmas trees with no lights and candy canes."

David Bush has said that, if authorities asked little Misty to show - by holding up her fingers - how many holes her mommy's body had been put in, she would show two fingers because that's how they taught her to show how old she was - a common teaching example. The "cut" on mommy's stomach could have been the scar on Lynn's stomach from delivering Misty by Caesarian section.

What authorities and professionals subjected this poor little girl to in the months after her mother's disappearance is despicable. They took her on "the mountain" in search of her mother's body. Where her daddy had dumped the body - how he had gotten off the blood she repeatedly said wasn't on her mommy.

An innocent in prison?

Each reader must know a child 2 1/2 years old. Imagine tormenting that child, shortly after her mommy just up and disappeared, that her daddy had caused her mommy to be gone and how they had to find the body to punish her "bad daddy."

It was all about nailing the smug and arrogant David Bush, a guy who had three affairs going at the same time when most of the law enforcement officers could do no better than one. One of the CPD officers, when questioning David Bush's young half-brother Todd, told Todd if they could nail David, he would want the prosecution to pursue the death penalty. No appeals, no delays. Just kill him.

Nice way to get information from a younger sibling who adored his older brother.

The prosecution had prepared witnesses to say what would help their case but it didn't always work. When the DA questioned David Bush's father, pretty much estranged from David his whole life - once turning the young boy (11 or so) over to authorities when David had run away from an abusive stepfather and David was placed in St. Joseph's Home in Torrington. Such love! This exchange took place:

Q. And you recall, in the same statement to Mr. McMullin, David saying he would have to retrain his daughter for a new mother?

A. Don't remember.

One of David's mistresses gave damning testimony against him at trial, even though she steadfastly defended him for the two years they lived together after Lynn Bush had disappeared. And later. They had split up in late 1992. In 2006, she was granted immunity. She then remembered things she had never said before.

Even though David Bush allegedly said to her (according to her in 2006 but not in '90, '91 or '92), from a card party he held the night Lynn disappeared, "It's done. She's gone." Yet, she moved in with him, helped the authorities try to entrap him with incriminating statements (by allowing herself to be "wired" in a motel room), after all the opportunities she had to help, she didn't tell anyone about the terminally incriminating statements for 15 years - until March 11, 2006.

She (Trudy Dooling) testified that he had also told her: "That he had buried her in roadwork out in front of his house." She was making stuff up to help authorities. But, that scenario didn't fit with what they had coached the little girl to say about "the mountains" so those words were dropped like a hot potato. Did they notice any fresh digging near his house back in 1990? Or didn't they bother looking for something that obvious? They knew it wasn't true so they didn't pursue it.

When asked if David had ever told her that he had killed Lynn, Trudy answered:

A. Never -- he never admitted to killing her."

When questioned in 2004 and 2005, Trudy had said she didn't take his comments about killing Lynn seriously, "he was always cynical and sarcastic." She didn't take his words seriously until just before the trial, when the prosecution needed her testimony to bolster the unrecorded words of the little girl - that her daddy had "hurt my mommy."

When little Misty started counseling, she saw a male psychologist for three months. She said nothing incriminating about her dad and the in-laws changed professionals. To a woman, they said, because Misty might relate better to her. That woman, Lynn Gordon, also knew that if she didn't come up with words to satisfy law enforcement and Lynn Bush's family, she would also be dismissed.

Ms. Gordon started to counsel Misty a month before the little girl's third birthday. She disagreed with the defense attorney that she was working in concert with law enforcement (which would have changed her right to testify in this case).

When Gordon said she was independent, that she was providing "treatment" for the little girl, she was asked about contacts with police and said they were basically minimal. Then she was asked about sending an 88 page fax to the DA's office on May 8, 1992. She said she was "just asking what they knew about Misty" that might aid her in her treatment program.

This woman repeatedly asked Misty:

Q. Did you see mommy die?
A. No, but my mommy is dead.

Gordon diagnosed Misty with PTSD (Post Traumatic Stress Disorder) and clung to her conclusion that it was brought on by watching her mommy be killed, even though Misty never told her that she had seen her mommy killed.

Both this psychologist and the psychiatrist that was brought in during the custody dispute, admitted that PTSD can also be the result of being told repeatedly (by others) of a traumatic event.

Here was a little girl who had her beloved mother disappear, without notice or warning, without a goodbye to the little girl who was the center of mommy's universe, and no one could explain to her why her mommy left so suddenly nor when she'd be back - a little girl who would literally be snatched from her father's arms, screaming for her daddy and taken to DFS without explanation or being told when she would again see her daddy (according to David Bush, Misty was taken from his arms by officers with drawn guns, one placed under his chin by an officer who seemed to be trying to incite violence on the part of David Bush) - and then placed in the comfort and wealth of her maternal grandparents without being allowed to see her daddy for months - and then having her name changed from Misty Bush to Misty Knievel. All of this would not have been as likely to bring on PTSD as allegedly seeing some part of her mother's disappearance - which she continually denied witnessing?

I do not like to write anything that reflects badly on the little girl. She was made a pawn by those trying desperately to charge and convict her daddy of killing her mommy and getting rid of the body in a myriad of ways. But, there were things said by the child that went unnoticed at trial or were not introduced.

Once, when she said her mommy was in two holes, she added, "there's a monster in there."

When questioning Ms. Gordon about her leading Misty to believe there had been blood on her mommy even though Misty had said repeatedly there wasn't:

Q. [You asked] How did all the blood get wiped off, after Misty said she hadn't seen any blood?

Q. Your question could leave ... lead a little girl to believe that you didn't accept her first answer.

A. It might.

A. (reading from DSM-IV-TR, a professional Bible) "It is extremely typical of children to say what they perceive the adult of the situation wants them to say."

Q. Especially if the same question is put to them repeatedly, correct?

A. Correct.

Q. On numerous occasions, she told you that she did not see her daddy hurt her mommy, correct?

A. Several. Not numerous. When you refer to numerous, more than 70%.

But, in sessions on 7/27/91, 9/16/91, 11/27/91, 12/13/91, 12/20/91 and 1/10/92, when asked if she had seen her daddy hurt her mommy, Misty had said "no."

Q. How many times did Misty say she saw her daddy hurt her mommy?

A. Sir, I have not counted the number of times.

Q. Well, you put them all in your report, didn't you?

A. Sir, I did not count the number of times.

Q. So you do not know how many times?

A. Not now, no.

While the psychologist testified that her asking leading questions would not affect Misty's responses, she also testified that when David "consistently replied with questions such as, who told you to say that" that did lead Misty to change her responses from "Misty did" to "Grandma did." David's challenges came when Misty said "you hurt mommy" at their meetings in the psychologist's office. *More to come. It gets even worse.*

New DDA Executive Director

After several years of inertia, there is finally a chance to move the downtown into the 21st Century. At least a chance.

But, what are the odds of upgrading the holder of the position of executive director? If the board fears hiring someone who could actually do the job and uses the well-paying position instead to reward an unemployed friend, nothing positive will happen. No improvement will come.

In an effort to read the job description for the position to be filled, I went to the DDA website. It's no wonder the downtown has stagnated in the past eight years. Anyone considering opening a business down there and first went to the DDA website to get a flavor for what their success potential would be downtown would scrub their interest upon downloading.

The presentation begins with a fictional "Boots Walker" telling those who found the website that there are "a million things to do downtown." What? A million?

The website displays a "proposed ordinance" that was rejected by the City governing body over two years ago. Do they not know (the DDA board) that the ordinance was not approved or are they trying to discourage anyone from locating a business in the downtown?

On another issue - when describing the very popular Farmer's Market, the DDA website reads: "explore a varied display of fresh local produce ..." There is very little local produce at the Farmer's Market. We just don't have the soil around here to grow the crops. Most comes from Colorado or a wholesaler from Utah.

If the proposed design guidelines ordinance (that failed and is inoperative) doesn't revolt, one can link to a 2006 Downtown Plan that was also ignored and never approved or implemented.

One of the requirements for the executive director's position is a "four year degree." It does not say "from an accredited university" so there may be a candidate in mind that has a degree from Kennedy-Western or Preston University, once darlings of the insiders but degree sellers, not accredited institutions. Salary range is \$55,000 - \$90,000 with a one year contract. That should satisfy a lot of friends. There is no way the job will attract candidates with the desired experience and qualifications. No way.



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