

EXHIBIT

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Twenty-nine Prosecution Opening Statement Falsehoods About Evidence That Petitioner’s Counsel Knew Would Not Be Introduced During Trial, And That Petitioner’s Counsel Should Have Objected To.

State of Nevada v. Kirstin Blaise Lobato, C177394, District Court Clark County, Nevada

“The doctor will tell you that was sexually motivated.”

(6 App. 988; Trans. IV-9 (9-14-06))

Truth: ME Simms was not noticed by the prosecution as a psychology expert, and he is not a psychologist, so he could not provide expert opinion testimony about the motivation of Bailey’s murderer. (Simms did not testify that Bailey’s murder was “sexually motivated”)

“And you’ll also hear that in the past he had actually provided drugs to individuals and he actually traded sex for drugs.”

(6 App. 988; Trans. IV-9 (9-14-06))

Truth: No scheduled witness provided a statement detailing that Bailey “provided drugs to individuals,” so there was testimony expected about that, which the prosecution clearly differentiated from trading “sex for drugs.”

“Well, she ended up telling the police that what she believed was either the 11th or the 18th of July of 2001.”

(6 App. 989; Trans. IV-10 (9-14-06))

Truth: Dixie Tienken did not state in her statement that “she believed she talked with Petitioner on the 11th or the 18th of July of 2001.”

“man, which she describes to Dixie as an old, smelly, black man”

(6 App. 989; Trans. IV-10 (9-14-06))

Truth: Dixie Tienken did not state in her statement that Petitioner told her the man who attacked Petitioner was black.

“butterfly knife is, and that she whipped that out of her skirt”

(6 App. 989; Trans. IV-11 (9-14-06))

Truth: The Petitioner did not state in her Statement of July 20, 2001, and no scheduled witness provided a statement that Petitioner told them that “she whipped” her butterfly knife “out of her skirt.”

“she reached down, grabbed the man’s penis and cut it off.”

(6 App. 989; Trans. IV-11 (9-14-06))

Truth: The Petitioner did not state in her Statement of July 20, 2001, and no scheduled witness provided a statement that Petitioner told them that “she reached down, grabbed the man’s penis and cut it off.” To the contrary, the Petitioner specifically states in her Statement that her attacker threw her to the ground and she was on her back with him above her.

“Dixie says that before she did this, the defendant says that before she cut this man’s penis off is the man tried to put it in her mouth.”

(6 App. 989; Trans. IV-12 (9-14-06))

Truth: Dixie Tienken did not state in her statement that the Petitioner told her the man tried to put it in her mouth. This is not in the Petitioner's statement or the statement of anyone the Petitioner told about the attack.

“She tells Dixie that when she cuts the man’s penis off, Dixie’s words that she said, “She got ick on her,” meaning that she got blood on her.”

(6 App. 989; Trans. IV-12 (9-14-06))

Truth: Dixie did not say, nor did she infer that the Petitioner got blood on her. She made it perfectly clear in her statement that she did not know what the Petitioner was referring to when she said “ick” and there was no expert in any field that was scheduled to testify that the Petitioner meant blood when she said “ick”. Since the man smelled dirty, he could have been a street person whose hands and clothes were covered with grime that rubbed off on her dress and the parts of her body that he touched. That would be “ick.”

“They tell her that they’re from homicide and they tell her why they’re there.”

(6 App. 989; Trans. IV-12 (9-14-06))

Truth: The detectives do not tell the Petitioner that they are there to investigate a homicide that occurred on July 8, 2001 at the Nevada State Bank. There is no scheduled witness that provided any information that the detectives told the Petitioner what crime they were investigating, and in fact when the Petitioner stated that the incident that she was speaking to the detectives about happened on the other side of Las Vegas at a Budget Suites Hotel “over a month ago,” the detectives did not ask any additional questions to clarify when the incident occurred.

“After they show her a picture of the man, she says she was trying to put him out of her mind.”

(6 App. 989; Trans. IV-13 (9-14-06))

Truth: The Petitioner did not make this statement to the police, and there is no scheduled witness that provided this information. The Petitioner stated that “she had put him out of her mind”.

“This looks just like the place or similar to the place that this happened.””

(6 App. 990; Trans. IV-14 (9-14-06))

Truth: The Petitioner did not make this statement to the police and there is no scheduled witness that provided this information. What the Petitioner told the detectives after her arrest was changed during the prosecution’s opening from the word “reminds”, to “looks like.” The prosecution’s false characterization has the effect of insinuating to the jury that the Petitioner had knowledge of the way the crime scene “looked,” when there is no evidence to support that.

“And she describes, she describes it as the only difference is that she could see out, as she’s looking up, and she says, “I could see the parking structure from inside.””\ (6 App. 990; Trans. IV-14 (9-14-06))

Truth: The Petitioner did not make this statement to the police and there is no scheduled witness that provided this information. The words “parking structure” do not appear in the Petitioner’s statement, or in the record of what she told the detectives after her arrest. And there is no “parking structure” at the Nevada State Bank where Bailey was murdered. A common feature of both locations, as at locations all over Las Vegas, but that isn’t what the prosecution said it would prove, is they had carports for some parking spaces. This statement is again an

insinuation to the jury that the Petitioner described the crime scene where Duran Bailey was murdered and there was no scheduled witness that would provide any information that the Petitioner had ever been to the crime scene or knew what it looked like. There is no record of this in the arrest report written hours after the Petitioner is alleged to have said this.

“she threw away the knife,”

(6 App. 990; Trans. IV-14 (9-14-06))

Truth: The Petitioner did not say in her statement of July 20, 2001, that “she threw away the knife,” and Steve Pyszkowski was a scheduled witness and he stated in his Statement that he saw her knife when she was living at his house in June 2001.

“told Dixie that she was concerned that somebody would have seen her red Fiero.”

(6 App. 990; Trans. IV-15 (9-14-06))

Truth: Dixie did not state this in her statement. Laura Johnson who did not speak with the Petitioner, said this in her statement that Dixie said the Petitioner said this.

“Now Laura will tell you Dixie told her that the defendant told Dixie that she went back to Panaca because she needed to hide her car, needed to hide out, and there’s a possibility her parents would even help her get it painted.”

(6 App. 990; Trans. IV-15 (9-14-06))

Truth: Laura Johnson’s statement on July 20, 2001 does not state that the defendant told Dixie this. Johnson’s statements regarding the car were what she said Dixie told her.

“You’re gonna hear testimony from the medical examiner about the extent of the injuries that Mr. Bailey received and to the degree of the injury that would be consistent with the use of that bat.”

(6 App. 990; Trans. IV-15 (9-14-06))

Truth: There was no expected testimony from ME Lary Simms, based on his testimony at the preliminary hearing and at the first trial, that any of Bailey’s injuries were “consistent with the use of that bat.” – that is, the Petitioner’s bat.

“she tells the police on the taped statement, that it happened on the 20th of July, that it happened a couple of weeks ago in Las Vegas.”

(6 App. 990; Trans. IV-16 (9-14-06))

Truth: The Petitioner does not state in her statement of July 20, 2001 that “it happened on the 20th of July,” or that “it happened a couple of weeks ago in Vegas.” The petitioner specifically states that ‘this was already over a month ago’ that the attack had occurred, and she had talked with a woman who may have been attacked by the same man.

And she said, “There is one near but I didn’t put him in it. I don’t think I could have.”

(6 App. 990; Trans. IV-16 (9-14-06))

Truth: The Petitioner does not state this in her statement of July 20, 2001, and no scheduled witness provides this information. Reference to a dumpster in her statement is brought up by the police detective, not the Petitioner.

“You’re gonna hear from her friends that tell you that whenever they were together she would bring methamphetamine to the table.”

(6 App. 990; Trans. IV-16 (9-14-06))

Truth: No scheduled witness says this in their statemen.

“And they’d also tell you that she would do anything she could do to get her hands on methamphetamine.”

(6 App. 990; Trans. IV-16 (9-14-06))

Truth: No scheduled witness says this in their statement.

“Interestingly, in her statement, she tells the police,”I didn’t tell anybody about this.”

(6 App. 990; Trans. IV-16 (9-14-06))

Truth: The Petitioner did not state this in her statement of July 20, 2001 and ADA William Kephart not only knew this was false, but he was completely disingenuous, because the prosecution’s trial strategy was to block the Petitioner’s alibi witnesses who she told “about this,” from testifying as to what she told them.

“her friends, Dixie, all seem to be consistent about her cutting a man’s penis off.”

(6 App. 990; Trans. IV-17 (9-14-06))

Truth: Dixie told the detectives in her statement that the man may not have been injured enough to require medical attention, and his biggest problem could be explaining what happened to his wife or girlfriend. The statements of the scheduled witnesses who talked with the Petitioner are consistent that Petitioner said she used her knife to defend herself against an attacker in Las Vegas, but they are not consistent about the injury.

and that shortly after she moved in with her new boyfriend, who you’ll hear that she and he did methamphetamine quite often together

(6 App. 990; Trans. IV-17 (9-14-06))

Truth: The Petitioner did not state in her statement of July 20, 2001, nor did any scheduled witnesses provide information that the Petitioner did methamphetamine with her new boyfriend shortly after she moved in with him. The Petitioner did not move in with any new boyfriend until she left Panaca on July 9, 2001, and in his statement Doug Twining says they only smoked marijuana while Petitioner was in Las Vegas from July 9 to July 13.

“Keep in mind she’s got a new boyfriend, she’s doing methamphetamine, she’s up in Panaca with her -- and she’s fighting with her mom.”

(6 App. 990; Trans. IV-17 (9-14-06))

Truth: The Petitioner does not state in her statement, and there is no scheduled witness who states in their statement that the Petitioner was doing methamphetamine when she was up in Panaca or at any time from when the Petitioner returned home from Las Vegas on July 2, 2001 until her arrest on July 20, 2001. Medical records of lab tests of her blood drawn on July 5 and her urine collected on July 7 were negative for methamphetamine.

Dixie will tell you that her family covers for each other.

(6 App. 991; Trans. IV-18 (9-14-06))

Truth: Dixie Tienken did not state this in her statement.

“she told Dixie she had gotten in her car bloody.”

(6 App. 991; Trans. IV-19 (9-14-06))

Truth: Dixie Tienken did not say this in her statement.

“Well, I’m not telling you anything other than what you’re gonna hear from the evidence, what you’re gonna hear from the stand, what people are gonna tell you, what they saw, what they heard when they testify to you.”

(6 App. 991; Trans. IV-21 (9-14-06))

Truth: This statement is patently false because the prosecution and defense know that no scheduled witnesses were going to provide the information supporting more than two dozen opening statement claims by the prosecution, and that in some cases the expected testimony was contrary to the prosecution’s claims. Many of the prosecution’s opening statement claims were contrived out of thin air.

tells Dixie that she was concerned about her vehicle being seen to the point where she wanted to leave it in Panaca, hide it, clean it up, possibly get it painted.

(6 App. 991; Trans. IV-21 (9-14-06))

Truth: Dixie never says this in her statement, and denies during her testimony that she ever said these words to Laura Johnson. These words belong to Laura Johnson, and are hearsay within hearsay. The Petitioner does not state this in her statement of July 20, 2001 and no scheduled witness provides this information other than Laura Johnson including any of the witnesses that the Petitioner spoke to about the incident in which she defended herself against an attempted rape. The Petitioner was not trying to “hide” her car as it was parked in front of her parents’ home and could easily be seen by anyone driving by.