

EXHIBIT

76

More Than 250 Improper Prosecution Closing And Rebuttal Arguments That Kirstin Blaise Lobato's Counsel Did Not Object To.

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

The improper arguments were based on facts not in evidence, misstatements of evidence, improper opinion argument, disparaging the honesty and credibility of defense witnesses, expressing personal opinions, stating contradictory theories of the crime, misstating the law, conflating and confusing facts in evidence, drawing conclusions from speculative inferences, speculation, improper argument that it is the duty of the jury to find Kirstin Blaise Lobato guilty, misstatements of what constitutes reasonable doubt, stating personal opinions about the case as fact, and ADA William Kephart expressing his personal opinion that the Kirstin Blaise Lobato is guilty and the jurors should mark their ballots to convict her as he did. (When there is more than improper argument in a sentence, each error is underlined.) Because the Petitioner is referred to in the prosecution's closing and rebuttal arguments as "Blaise," for consistency that is how she is referred to throughout the document.

ADA Sandra DiGiacomo improper closing arguments (123 total)

"If you look at the phone records for Friday afternoon, it could also be that mom is home and she's looking for Blaise calling Doug, calling the police, calling her father at work. Looking not for Doug, looking for her daughter."

(9 App. 1723; Trans. XIX 119 (10-5-06))

States four facts not in evidence and one speculation. There was no testimony that Becky Lobato called Doug on Friday, 7/6/01, or that she called anyone looking for the Blaise.

"On July 7, 2007 the defendant's down in Las Vegas and mom doesn't know where she's at, so mom goes back to work on that Saturday".

(9 App. 1723; Trans. XIX 119-XIX 120 (10-5-06))

States two facts not in evidence. There was no testimony or evidence introduced that Blaise was in Las Vegas on July 7, 2001, or that her mom didn't know where she was on July 7.

"So the State submits to you, ""because of the fact that the defendant was down there partying since 7/6"" the night of 7/7, she says her attack occurred early morning hours, late evening – or late night hours, that it was sometime before sunup on July 8th that she killed Duran Bailey."

(9 App. 1723; Trans. XIX 121 (10-5-06))

States two facts not in evidence, and speculation. The prosecution did not introduce any evidence Blaise was in Las Vegas at any time on the July 6, 7, or 8, 2001. The state cannot submit anything during closing arguments or rebuttal.

"State submits to you, the reason there wasn't a lot in the urine sample is 'cause Blaise took off the day before, so she only completed part of the urine sample, when she was there the morning of the 6th or possibly in the afternoon of the 6th".

(9 App. 1723; Trans. XIX 120 (10-5-06))

States two facts not in evidence. There was no evidence introduced that Blaise “took off the day before” or that Blaise “only completed part of the urine sample”. The state cannot submit anything during closing arguments or rebuttal.

“We know from the defense witness and Diane Parker that Duran Bailey had sold drugs before” (9 App. 1723; Trans. XIX 121 (10-5-06))

States three facts not in evidence and was a false statement. No defense witness testified that Duran Bailey sold drugs. Diann Parker did not testify that Duran Bailey sold drugs.

“This murder was committed by the defendant.”

(9 App. 1723; Trans. XIX 121 (10-5-06))

States facts not in evidence and usurps the jury’s role as finders of fact. There was no evidence presented at trial to support this statement, and this statement usurps the jury’s role as the finder of fact

“liked to do drugs and she wanted to do it over and over again. She never had to buy drugs,”

(9 App. 1724; Trans. XIX 122 (10-5-06))

Two misstatements of evidence and states facts not in evidence. She liked to do meth, not crack cocaine. There was no testimony presented the she “never had to buy drugs”.

“But she even tells the detectives, in Las Vegas I know where to get drugs”.

(9 App. 1724; Trans. XIX 122 (10-5-06))

States facts not in evidence and misstates the evidence. There was no testimony to where she bought methamphetamine. DiGiacomo misleadingly conflates Bailey’s crack cocaine use and Blaise’s methamphetamine use as the same under the umbrella of “drugs”. There is no testimony that Blaise ever bought drugs from Duran Bailey. There is no evidence that Duran Bailey sold drugs.

“So she’s down there and somehow she comes into contact with Duran Bailey. And somehow they end up back at his place, the trash dumpster where he would stay sometimes on the weekend”.

(9 App. 1724; Trans. XIX 122 (10-5-06))

States four facts not in evidence. There was no testimony that Blaise ever came into contact with Duran Bailey. There is no evidence that he lived at that trash dumpster on the weekends or any other time.

“State submits to you that what happened was “somehow” the defendant hooked up with Duran Bailey for drugs,”

(9 App. 1724; Trans. XIX 122 (10-5-06))

States facts not in evidence. There was no testimony that Blaise ever came into contact with Duran Bailey. There is no evidence that Bailey ever sold any “drugs” and specifically methamphetamine. “Somehow” is impermissible because it is “pure speculation”.

“She stops and “somehow” she goes back to her car and she gets a bat”.

(9 App. 1724; Trans. XIX 123 (10-5-06))

States three facts not in evidence and speculation. There is no evidence or testimony presented that she stops. There is no evidence or testimony presented that she goes back to her car. There was no evidence or testimony presented that the baseball bat found in Blaise's car ever came into contact with Duran Bailey or anyone else. "Somehow" is impermissible because it is "pure speculation".

she went back to the car and she got a bat and she came back,
(9 App. 1724; Trans. XIX 123 (10-5-06))

Three speculations and States facts not in evidence. There was no evidence or testimony presented that she went back to the car. There was no evidence or testimony presented that she got a bat. There was no evidence or testimony presented that she came back. There was no evidence or testimony presented that the baseball bat found in Blaise's car ever came into contact with Duran Bailey or anyone else.

"We know that she can knock over a guy that's 6'6" from a punch in the mouth"
(9 App. 1724; Trans. XIX 123 (10-5-06))

Misstates the evidence. DiGiacomo said this and Blaise's counsel objected that it misstated testimony. The court sustained, but DiGiacomo said it again directly contrary to the court's ruling. Blaise's counsel did not object the second time she said it.

"He goes down. The skull fracture occurs when he falls. And Doc Simms told you that the head trauma itself, the blunt force trauma to the head is gonna render him unconscious"
(9 App. 1724; Trans. XIX 123-XIX124 (10-5-06))

Three misstatements of the evidence and speculation. ME Lary Simms testified that the head trauma occurred 2 hours prior to death, and the unconsciousness occurred due to the swelling.

"What did she do, stabs him a couple of times in the abdomen, makes sure he's dead"
(9 App. 1724; Trans. XIX 124 (10-5-06))

States three facts not in evidence and speculation. There is no witness statement, no corroborating eyewitness or medical evidence that whoever killed Bailey did this.

"was probably pulled by his right arm -- 'cause it's found like"
(9 App. 1724; Trans. XIX 125 (10-5-06))

States fact not in evidence. There is no testimony of this from anyone in the trial, or in any statement.

"She gets in her car and she high tails it out of there and she gets back to Panaca,"
(9 App. 1724; Trans. XIX 125 (10-5-06))

States fact not in evidence and speculation. There is no evidence or testimony presented of this from anyone in the trial, or in any statement.

"Defendant says that – to the police that I committed, I did this, but it was in a different area of town"
(9 App. 1724; Trans. XIX 125 (10-5-06))

Four Misstatements of the evidence. There is nothing in her statement or the police report that says she said she murdered Duran Bailey or committed this crime. There was no evidence or testimony presented that Blaise said this.

“If it did, why on July 18 are they - with Dixie are they checking the Internet then”?
(9 App. 1725; Trans. XIX 126 (10-5-06))

Two misstatements of the evidence. They didn't check the internet on July 18. That was the day Dixie talked to Laura Johnson, not the day Blaise was at Dixie's house.

“Why was she going to the Y to get a paper right after she talked to Laura if it wasn't recent? Why would she want that day's paper”?

(9 App. 1725; Trans. XIX 126 (10-5-06))

Two misstatements of the evidence. Dixie testified that she got the paper every day.

And think about too, Dixie made clear, as the one thing she definitely made clear when she was on the stand, when she talked to the defendant on July 18th

(9 App. 1725; Trans. XIX 127 (10-5-06))

Three misstatements of the evidence. Dixie did not testify that she talked to the Blaise on the 18th. The 18th is the day Dixie talked to Laura Johnson.

“She knew the area where this crime occurred”,

(9 App. 1725; Trans. XIX 128 (10-5-06))

Misstates the evidence and speculation. There is no evidence or testimony presented regarding this. Steve Pzyskowski said his route included that zip code. He did not say that Blaise knew the area.

PG 001725 - XIX 128 Line 24

“She still has this anger 12 years later, 13 years later”

(9 App. 1725; Trans. XIX 128 (10-5-06))

States fact not in evidence and speculation. There was no expert psychological testimony presented that Blaise has anger against anyone.

“She has some deep seeded issues and anger, not only from this”,

(9 App. 1725; Trans. XIX 129 (10-5-06))

States three facts not in evidence and speculation. There was no expert psychological testimony presented that Blaise has anger against anyone, or has deep seeded (seated) issues.

“It's very clear the defendant's someone who committed this murder”.

(9 App. 1725; Trans. XIX 129 (10-5-06))

Speculation and states facts not in evidence. How is this clear? There was no evidence or testimony presented at trial that Blaise was even in Clark County, much less Las Vegas at any time on July 8, 2001.

“No proof of any prior attack”.

(9 App. 1725; Trans. XIX 129 (10-5-06))

Improper argument and the State was trying to benefit from their objection to admittance of the evidence of a “prior attack”. There was no evidence presented at trial because the State objected to Blaise’s alibi witnesses who have evidence of the “prior attack” and Det. Thowsen perjured himself that he conducted an investigation at the Budget Suites on Boulder Highway, and of NRS 629.041 reports, hospital personnel and urologists for persons with a slashed or severed penis. The state wanted to have their cake and eat it too.

“She knew she killed her victim”.

(9 App. 1725; Trans. XIX 129 (10-5-06))

States two facts not in evidence and speculation. This was not in Blaise’s statement or the testimony of anyone she talked with.

“She’s gonna have to minimize when she wants to get this off her chest”

(9 App. 1725; Trans. XIX 129 (10-5-06))

States two facts not in evidence and speculation. There is no expert testimony from any specially trained psychology expert that says Blaise minimized anything about the incident described in her statement, or that she wanted “to get this off her chest”.

“So what is she gonna do to do that? She’s gonna minimize. She’s gonna make the listener have some sympathy for her”.

(9 App. 1725; Trans. XIX 129 (10-5-06))

States three facts not in evidence and speculation. There is no testimony from any specially trained psychology expert that says Blaise minimized anything about the incident described in her statement. This testimony came from Det. Thowsen who is not qualified as an expert.

“In order for Blaise to talk about this and start to get it off her chest, like she did with even Michele Austria, she’s gotta minimize her own actions”.

(9 App. 1726; Trans. XIX 130 (10-5-06))

States three facts not in evidence. There is no expert testimony from any specially trained psychology expert that says Blaise minimized anything about the incident described in her statement. This testimony came from Det. Thowsen who is not qualified as an expert.

“And Detective Thowsen told you that’s very common even when giving confessions”.

(9 App. 1726; Trans. XIX 130 (10-5-06))

States facts not in evidence, Irrelevant. There is no expert testimony from any specially trained psychology expert that Blaise’s statement WAS NOT a description of an attempted sexual assault “over a month ago” at the Budget Suites on Boulder Highway. Blaise did not give a confession.

“And she’s leaving her car behind because she doesn’t want it to be seen”.

(9 App. 1726; Trans. XIX 131 (10-5-06))

States facts not in evidence and speculation. Trial testimony was Blaise’s car was parked on the street in front of her parents’ house in plain view continuously from July 2, 2001 until seized by the LVMPD on July 20, 2001.

“she’s going to Doug’s for the weekend”,
(9 App. 1726; Trans. XIX 131 (10-5-06))

States facts not in evidence and speculation. There was no evidence or testimony to this at trial.

“Now on July 14th and 15th, that’s probably when the defendant went four-wheeling with Michele and got the injuries to her abdomen”.

(9 App. 1726; Trans. XIX 131 (10-5-06))

Misstates the evidence and speculation. There was no evidence or testimony to this at trial.

“So her conversation with Michele, even though she says it was before July 4th, it had to have been after the 13th”.

(9 App. 1726; Trans. XIX 132 (10-5-06))

This misstates the evidence and speculation. Disparaging honesty of witness. Michele Austria testified that her conversation with Blaise took place prior to July 4th. The state cannot change the testimony of a witness.

“Now Dixie, keep in mind she wasn’t a prosecution witness”

(9 App. 1726; Trans. XIX 133 (10-5-06))

Misstates the truth. Dixie was subpoenaed by the prosecution and testified as a prosecution witness.

“She goes to Dixie and she tells her that it was on a hotel street just west of I-15.

(9 App. 1726; Trans. XIX 133 (10-5-06))

Misstates the evidence. Dixie said Blaise told her a hotel street, but not east or west. I-15 is not mentioned at all.

“... defendant said, smelled like old socks that hadn’t been washed in two weeks”.

(9 App. 1726; Trans. XIX 133 (10-5-06))

Two misstatements of the evidence. These words are not in Blaise’s statement or the police report. Those are Detective Thowsen’s words used in his testimony. (PG XIII-75 line 20-21)

“But there are a few points that Dixie was trying to minimize”.

(9 App. 1727; Trans. XIX 134 (10-5-06))

States facts not in evidence. There was no expert testimony that Dixie was minimizing.

“July 21”, this is when Becky starts creating this alibi”.

(9 App. 1727; Trans. XIX 136 (10-5-06))

States facts not in evidence and disparages honesty of witness. There is no testimony that Becky created an alibi. This directly disparaged Becky’s honesty without any evidence presented that it was true.

“Keep in mind that the only people that really see Blaise between July 5th and July 8th are related to her”.

(9 App. 1727; Trans. XIX 137 (10-5-06))

Misstates the evidence. Michele Austria testified that she saw Blaise on July 7th and Chris Carrington testified he saw Blaise on July 6th and 7th.

“And then you have John Kraft. John and Ashley and her father are all new. They did not testify previously. They come in here and they say that she was there the morning of July 8 at 7:00 a.m. That’s new”.

(9 App. 1727; Trans. XIX 137 (10-5-06))

Improper argument. Denigrates the credibility of witnesses. The state could have subpoenaed them, but the state has never interviewed them. Ashley Lobato, Larry Lobato and John Kraft were not called to testify at the first trial. John Kraft was not interviewed prior to the first trial. A witness has no control over whether they are interviewed or called as a witness. The State was suggesting they were not truthful in their testimony during Blaise’s second trial because they were not called as witnesses in her first trial.

“That car was moved”.

(9 App. 1727; Trans. XIX 137 (10-5-06))

States facts not in evidence and contrary to evidence. All testimony presented at trial was that no one saw it moved.

“Now these are the two things that the State has to prove. We have to prove every material element of the offense as charged and what crime was committed, and we also have to tell you who committed it”.

(9 App. 1727; Trans. XIX 137 (10-5-06))

Two misstatements of the law. The State’s burden of proof is that they must PROVE every material element “beyond a reasonable doubt” and PROVE who committed the crime, not tell the jury who committed the crime. It is up to the jury to determine if the defendant committed the crime, not for the prosecution to tell them. The state has to prove every material element beyond a reasonable doubt and one of those elements is that the defendant committed the crime.

“somebody fleeing the scene. That can be viewed, if you interpret it that was, as consciousness of guilt. Somebody who has just been attacked and reacting in self defense doesn’t normally flee the scene”.

(9 App. 1728; Trans. XIX 138 (10-5-06))

States facts not in evidence and improper opinion argument. There was no expert testimony about the actions of a person who has been sexually assaulted and is able to get away from their attacker.

“She told the detectives that she drove off because she didn’t think anyone would care. It wasn’t because she was afraid of her attacker, it was because she didn’t think anyone would care.”

(9 App. 1728; Trans. XIX 139 (10-5-06))

Misstates the evidence and improper opinion argument. In answering the question from the Detective: Did you use anything to cover him, Blaise said “No, ‘cause I figured nobody would know, you know nobody was around, nobody cared so I figured nobody would care if I just drove off. I didn’t think anybody would miss somebody like that. There was no expert psychology testimony that Blaise’s motive or reason for leaving wasn’t because she was afraid.

“She knew that there was no fear about her attacker seeing her because she knew that he was dead”.

(9 App. 1728; Trans. XIX 139 (10-5-06))

Misstates the evidence and States facts not in evidence. She said he was alive and crying when she left the scene.

“She ditched the car, she got rid of the evidence, she got rid of the clothes she was wearing that she said had blood on them, she got rid of the knife that she used.”

(9 App. 1728; Trans. XIX 139 (10-5-06))

Three misstatements of the evidence and two statements of facts not in evidence. Blaise didn't "ditch the car," she drove it to her ex-boyfriend Jeremy Davis' house and left it there for a few days before picking it up. Blaise does not say in her Statement that she ditched her clothes, that she had blood on her clothes, or that "she got rid of the knife." Steve Pyszkowski testified he saw her with her butterfly knife when she stayed at his house in June 2001. (PG 1086 VI – 17 Line 17-24 and PG 1087 VI – 18 Line 1-17)

“Why leaving a note for Jeremy that says that “I’ve gotta leave”

(9 App. 1728; Trans. XIX 139 (10-5-06))

Misstates the evidence. Jeremy Davis testified there was a note saying that she had to leave here car here and that she'd be back to get it. (Pg 1122 VI – 154 Line 11-12)

“That injury right there to the carotid artery, that was calculated”.

(9 App. 1728; Trans. XIX 140 (10-5-06))

States facts not in evidence. Simms testified that it was a directed violent injury. There is no testimony that Blaise had any medical knowledge or training to make a "directed" wound to any person's carotid artery.

defines first degree murder, second degree murder etc... But says that the State only has to prove 3 things beyond a reasonable doubt,

(9 App. 1728; Trans. XIX 140 (10-5-06))

Misstates the law. Misstates the essential elements that the State has to prove, including that the State must prove the defendant did it beyond a reasonable doubt.

“She wounded him with the stab to the scrotum when she knocked him vulnerable”.

(9 App. 1728; Trans. XIX 141 (10-5-06))

States facts not in evidence and contradictory theory of the crime. This conflicts with the prosecution's theory that the wound to the scrotum was the first wound, and there was no testimony that Bailey was "knocked vulnerable".

“It doesn't matter what the motive was or if it was sexually motivated, it doesn't. If you penetrate a sexual organ after the person's dead, however slight, you're guilty of the crime.”

(9 App. 1729; Trans. XIX 143 (10-5-06))

Misstates the law. A defendant's intent to sexually penetrate a dead person's rectum is an element of the crime, but the motive is irrelevant. Legislative intent is the law was to criminalize anything that would be considered a sexual assault on a live body to also be against the law when perpetrated on a dead body. Slashing the rectum of an individual would never been considered a sexual assault.

“No, all it means is there was no evidence found at the scene that she left behind that’s physically tied to her. Her DNA is not at the scene”.

(9 App. 1729; Trans. XIX 143 (10-5-06))

Misstates the evidence. The only expert testimony at trial by Brent Turvey is it is principal of forensic science that all contact leaves evidence so it is not possible for Bailey’s killer to leave no trace of evidence at the scene.

“It’s very possible there were other people in and out of that dumpster and that they could’ve stepped in the blood that was wet in the back and left it”.

(9 App. 1729; Trans. XIX 145 (10-5-06))

Three misstatements of the evidence. All of the pools of blood were covered. A person entering the trash enclosure after Bailey was murdered would have had to remove all the trash covering the blood, step in the blood, and then replace the trash. But there was no evidence at trial to prove or even suggest that happened. The only testimony was Richard Shott was in the trash enclosure before the police arrived.

“She told us she did”,

(9 App. 1730; Trans. XIX 146 (10-5-06))

States facts not in evidence. She did not ‘tell us she did it’. Nowhere in Blaise’s statement does she confess to the murder of Bailey or his post-mortem mutilation.

“it would just confirm yes, she was there”.

(9 App. 1730; Trans. XIX 146 (10-5-06))

States facts not in evidence. There was no evidence introduced at trial Blaise was at the crime scene, so that was nothing to ‘confirm”.

PG 001730 - XIX 146 line 2-3

“It does not exclude her”.

Misstates the evidence. All of the physical evidence tested in the case excludes Blaise as involved in Bailey’s murder. Her fingerprints and DNA were not found at the crime scene and none of Bailey’s DNA was found in her car or on any personal items of hers.

“It would’ve been nice to have her DNA there, but we don’t need it because we know she was there because she told us she was there”.

(9 App. 1730; Trans. XIX 146 (10-5-06))

Two statements of facts not in evidence. There was no evidence introduced at trial that Blaise “told us she was there”. There was no evidence introduced at trial proving “she was there”.

“It’s impossible to snip the carotid artery without taking out half the neck”.

(9 App. 1730; Trans. XIX 146 (10-5-06))

Misstates the evidence. Dr. Michael Laufer’s expert medical testimony is that if the scissors were inserted partially open, it is possible (Pg 1441 XIV 98 line 9-12 and Pg 1441 XIV 99 line 6-22).

“You do have physical evidence that links the defendant to that crime scene. You have it with her car. The positive luminol test and the positive phenolphthalein test tell you there was blood”

in that car. And it wasn't a false positive because you heard Dan Ford and you heard Louise Renhard testify that it causes a flashing, kind of like a sparkle when you get a false positive, not like what you got on this car door”.

(9 App. 1730; Trans. XIX 147 (10-5-06))

Four statements of facts not in evidence and misstates the evidence. The confirmatory DNA tests scientifically prove that the luminol and phenolphthalein tests did not return positive results for blood, but for one or more of the many natural and man-made substances that can cause a positive reaction. Presumptive tests can only suggest there might be blood present. Confirmatory tests are what prove that it is blood.

“That does give you some physical evidence that links her to the crime, that's blood.”

(9 App. 1730; Trans. XIX 148 (10-5-06))

Two statements of facts not in evidence. The testimony was the confirmatory tests were all negative for blood, so there was no blood, and the non-existent blood did not constitute “physical evidence.”

“She knew the street location, she knew the area where the crime was committed when she told Dixie”.

(9 App. 1730; Trans. XIX 148 (10-5-06))

Misstates the evidence and States facts not evidence. Dixie testified Blaise described it as near as street with a hotel name. There was no testimony by Dixie that Blaise “knew the area where the crime was committed”.

“She knew what major injury that this victim had”

(9 App. 1730; Trans. XIX 149 (10-5-06))

States facts not in evidence. Bailey's major injury and cause of death was associated with his head fracture. Bailey's other major injury contributing to his cause of death was his severed carotid artery. He also had an injury to his liver, and other injuries to his face and abdomen and his hands. Blaise never mentions any of these injuries in her statement or to any other person or to the police when describing the sexual assault she fought off.

“She knew that somebody had tried to move that body”

(9 App. 1730; Trans. XIX 149 (10-5-06))

States facts not in evidence. Blaise said her attacker was alive and “crying” when she left. Since he was alive there was no body for her to “move”.

“And the only person -- and think about too, she knew what the dumpster enclosure looked like. When she got to that jail cell at CCDC when she's being booked in, she's like yeah, it was just like this except for I could see through the roof.”

(9 App. 1730; Trans. XIX 149 (10-5-06))

States two facts not in evidence. Blaise never said she knew what the dumpster enclosure looked like and she didn't say “it was just like this.” She didn't describe the wire mesh “ceiling” directly above one's head, she didn't describe the block walls, she didn't describe the concrete curb around the base of the enclosure, she didn't describe the steel doors and she didn't describe the dumpster you have to go around to get into the back of the trash enclosure.

“The only way she was able to describe the place, the body, the injuries, the you know, where it happened, how it looked, the only way she knew that, ‘cause she was there.

(9 App. 1731; Trans. XIX 150 (10-5-06))

Six statements of facts not in evidence. Misstates the facts in evidence. There is nothing in evidence that says that Blaise described any of these items. Additionally, the “how it looked” part misstates the evidence in the officer’s report. The detective didn’t say she said “looked like” - in the officer’s report by LaRochelle it reads “While at CCDC, Lobato told Detective Thowsen and I that the incident occurred in a enclosed area similar to the jail cell, but smaller”. Later added to the report were the words ‘did not have covering’ that excludes the Nevada State Bank’s trash enclosure, because of it’s most distinctive feature is the wire mesh “covering” directly above one’s head when standing in it.

ADA William Kephart’s improper closing arguments (130 total)

“They spent \$12,000 on an expert to come in here and tell us what we already knew”.

(9 App. 1740; Trans. XIX 186 (10-5-06))

Misstates the facts and improper argument. Brent Turvey testified that he was paid less than \$7,500. Improper to disparage a witness for the defense. They are in effect telling the jury that the defense spent money on a witness for no good reason. That he was a hired gun for the defense.

“But we have her words, ladies and gentlemen, her words.... We’re here because of her mouth, because of what she said. There’s no one else, you heard no one else has said anything about cutting a man’s penis off in the same vicinity and same time when—from her—other than her”.

(9 App. 1740; Trans. XIX 186 (10-5-06))

Two statements of facts not in evidence and contrary to the evidence presented at trial. Blaise’s statement specifically identifies she was assaulted at the Budget Suites on Boulder Highway – which is eight miles east of the Nevada State Bank, and she identifies it happened over a month prior to her July 20, 2001 statement.

“And didn’t talk about Dixie at all, except for the fact, the one time when Dixie came in here and changed her story about what was said about how big this man was. It was never said before, never heard before until she comes in here after the defense had provided her with an autopsy report, and they had the audacity to ask her whether or not the State has rehearsed the statements with her”.

(9 App. 1740; Trans. XIX 186 (10-5-06))

Misstates the evidence. Dixie testified she told the police detectives that interviewed her about the size of the person who attacked Blaise, but they did not tape that part of her statement.

“Sometimes it gets pretty offensive, ladies and gentlemen, when we’re in a situation what we have, what we gotta deal with. We’re dealing with the evidence that is presented to us and we’re presenting it to you. Do you think for a minute that if we wouldn’t have tested any of those items that we’d be in here, be applauded? ‘Cause what they’d be saying is just what they argued here, isn’t it possible that if you would’ve tested those items it would’ve come back that our client didn’t touch this item or didn’t leave more hair or anything? And they want to -- and there he is

in the same type of argument and throwing it against us and saying, you know what, possibility is not reasonable doubt -- or is reasonable doubt”.

(9 App. 1740; Trans. XIX 187 (10-5-06))

States facts not in evidence and improper to make statements to the jury to elicit their sympathy. None of Blaise’s hair was found at the crime scene.

“Well, ladies and gentlemen, you have to completely throw out all of the statements that the defendant made, let alone her own statement and what she told other people”.

(9 App. 1740; Trans. XIX 187 (10-5-06))

Misstates the evidence and improper argument. Blaise’s statement describes an assault that took place at a different location, weeks before Bailey’s murder and involved a dramatically different event. Here statements to other people were consistent with her police statement on July 20, 2001.

“our experts were right out there, looked at it, took samples of the footprints, and says it was not blood”

(9 App. 1740; Trans. XIX 188 (10-5-06))

Misstates the evidence. Louise Renhard testified portions of the blood was still damp.

“...even though we had two tests, presumptive tests that said it’s blood”.

(9 App. 1740; Trans. XIX 188 (10-5-06))

Misstates the evidence. Testimony at trial was that presumptive tests can only identify there is a possibility a substance might be blood. The confirmatory DNA tests proved there was no blood in her car.

“You know why they found that man to say that, is because they want you to believe that a person used scissors to kill him and not a knife”.

(9 App. 1740; Trans. XIX 188 (10-5-06))

Improper argument, attacks the honesty and credibility of a defense witness and misstates the evidence. Kephart not only disparaged the honesty and credibility of a defense witness but also the honesty of Blaise’s counsel. Michael Laufer testified he didn’t determine scissors until he examined the photos of Bailey’s wounds. There was no testimony that Blaise’s counsel requested Laufer do anything improper.

“-- told -- testified before that one times that she remembered seeing the defendant and testified about the day on the 8th, in the afternoon on the 8th, she went to work that day. She never said anything about seeing her before she went to work, getting up and seeing her laying on the floor or laying on the futon or whatever. She went to work, saw her in the afternoon”.

(9 App. 1741; Trans. XIX 190 (10-5-06))

Improper argument, disparages a defense witness and states facts not in evidence. A witness only answers what they are asked and there was no testimony that Becky Lobato was previously asked if she saw Blaise on the morning of July 8th.

“And for the first time -- and also we hear from Mr. Lobato. He comes in here and now he tells you that at 7 o’clock in the morning John, who we hear from the first time, came over and woke

me up and asked me on that particular day, when he was leaving a week later, to help out with checking with my family when I'm gone, the first time".

(9 App. 1741; Trans. XIX 190 (10-5-06))

Improper argument, disparages a defense witness and misstates the evidence. Mr. Lobato was subpoenaed during the first trial but not called as a witness. It is improper to attack the credibility of a witness during closing arguments. Regarding John Kraft, they are impinging the integrity of the witness for not being previously interviewed and subpoenaed. Also it is improper to attack the credibility of a witness during closing arguments.

"We're talking about a methamphetamine addict that has problems with methamphetamine",

(9 App. 1741; Trans. XIX 191 (10-5-06))

States facts not in evidence. There was no testimony that Blaise was a methamphetamine addict.

"says she's out of control",

(9 App. 1741; Trans. XIX 191 (10-5-06))

Misstates the evidence. Blaise does not state that in her statement and no expert testimony at trial provides this information.

"She left, came back to Las Vegas, according to her statement, and spent three days on a binge".

(9 App. 1741; Trans. XIX 191 (10-5-06))

Three statements of facts not in evidence. Blaise did not say in her statement that she left Las Vegas, then came back to Las Vegas, and then spent three days on a binge.

"mom's calling work, mom's calling Doug, mom's calling the sheriff's department, for what she says in a previous statement -- previous testimony, looking for a truck".

(9 App. 1741; Trans. XIX 191 (10-5-06))

Misstates the evidence. Sheriff's Department reported there was no record of a call by the Lobatos'. (See exhibit OO, James Aleman Affidavit.)

"Who's talking about the dates of the 2nd? Who's rehearsing what"?

(9 App. 1742; Trans. XIX 194 (10-5-06))

Two statements of facts not in evidence and improper argument attacking the credibility of every defense witness who testified about seeing Blaise on July 2nd. There is no testimony regarding anyone rehearsing the date of "the 2nd" or any other testimony. Improper to attack the credibility of a witness during closing arguments.

"She went back to Las Vegas, ladies and gentlemen, and did exactly what she told the police, a three day binge. You have the 6th, 7th and 8th. And on the 8th day she killed Duran Bailey".

(9 App. 1742; Trans. XIX 194 (10-5-06))

Four statements of facts not in evidence. Blaise states in her statement that she was on a 14 day binge, and was up for 3 days preceding the attack, and there was no evidence Blaise was in Las Vegas on the 6th, 7th or 8th or that she killed Duran Bailey.

"And he wants -- he knows she's going down to Las Vegas to do methamphetamine. He knows what the lifestyle is himself. She's going to Las Vegas to do that".

(9 App. 1742; Trans. XIX 195 (10-5-06))

Two statements of facts not in evidence. There is no testimony from Larry Lobato that he knows Blaise is going down to Las Vegas to do methamphetamine. In fact Doug Twining's testimony was he and Blaise did not do any meth from July 9 to 13. Larry Lobato testified that methamphetamine was available in Panaca from when his family moved there in the 1990s to the time of his testimony in October 2006.

“She's going to Las Vegas to do that”.

(9 App. 1742; Trans. XIX 195 (10-5-06))

States facts not in evidence. There is no testimony from anyone that Blaise was going to Las Vegas to do methamphetamine. In fact Doug Twining's testimony was he and Blaise did not do any meth from July 9 to 13.

“She said I got the knife Christmas from my dad. This knife that she no longer has, that she just happened to get rid of this present from my dad.”

(9 App. 1742; Trans. XIX 195 (10-5-06))

Misstates the evidence. Steve Pyszkowski testified he saw the knife in June 2001

“Ladies and gentlemen, she went there”.

(9 App. 1742; Trans. XIX 196 (10-5-06))

States facts not in evidence. There is no testimony from anyone at trial that Blaise “went there”.

“she knew where her connects were, she knew where to get dope. And I'm not even telling you that Duran Bailey was selling her dope. But he knew that he -- he was known to sell dope in the past”

(9 App. 1742; Trans. XIX 196 (10-5-06))

Misstates the evidence and states facts not in evidence. There is no testimony from anyone that Blaise did “dope”. There is no testimony that Bailey was known to sell “dope”. There is no testimony that Bailey was a methamphetamine connection for Blaise. There is no testimony that Bailey ever sold methamphetamine. The prosecution is misleading the jury by lumping in all kinds of drugs into one kind called ‘dope’.

“and she is on her three day binge and she's out looking”

(9 App. 1742; Trans. XIX 196 (10-5-06))

Misstates the evidence and speculation. There is no testimony that the Blaise was on a 3-day binge during the time frame that Bailey was murdered and it is speculation that “she's out looking.” Blaise states in her statement to the police that for 7 days before and 7 days after her attack she was on methamphetamine, and she had been up for the three days preceding the attack.

“She finds him, believability that she had met him before.”

(9 App. 1742; Trans. XIX 196 (10-5-06))

Two statements of facts not in evidence There is no testimony that Blaise “finds Bailey” or that she ‘had met him before’.

“Well -- and then his pants are down around his ankles, and the blood stops after she gets down to the point”

(9 App. 1742; Trans. XIX 196 (10-5-06))

Misstates two facts not in evidence. Bailey’s pants were not around his ankles, and blood was on the waistband of his pants.

“How else do you smell that unless you’re right next to the person”?

(9 App. 1742; Trans. XIX 196 (10-5-06))

States facts not in evidence. No expert testified how close you must be to a person to smell them.

“She says in her statement the man’s towering over me. Well, if she’s on her knees he would be towering over her”.

(9 App. 1742; Trans. XIX 197 (10-5-06))

States two facts not in evidence. Blaise said in her statement that she was knocked to the ground and her attacker was on top of her. Blaise does not state in her statement that her attacker was “towering over me,” or that she was on her knees at any time.

“You know, no one is gonna do this to me. No one”

(9 App. 1742; Trans. XIX 197 (10-5-06))

Two statements of facts not in evidence. There is nothing in Blaise’s statement or testimony that says this and no expert or witness testified to this.

“It’s happened to me before, that’s why I have a knife.”

(9 App. 1742; Trans. XIX 197 (10-5-06))

Two statements of facts not in evidence. There is nothing in Blaise’s statement or testimony that Blaise had ever “before” been bum rushed in a parking lot by a man who smelled like dirty diapers. There is nothing in her statement that says she had ever “before” willingly entered a trash enclosure with a man for any purpose. There is nothing that says that this has happened to her before. The testimony was the knife was given to her as a present by her father.

“She walked away and she looked back and saw him crying. Well, you know what’s interesting about that, is she wasn’t concerned about anything but her car because she went back and killed him. She got her bat and she went back in there.”

(9 App. 1742; Trans. XIX 197 (10-5-06))

Five statements of facts not in evidence and one statement that conflicts with the evidence. There is no testimony by anyone that the Blaise “went back” “killed him” “got her bat” or that she “went back in there”. The prosecution is misleading the jury by falsely claiming that Dixie or anyone else testified to these things. These statements are not in Dixie’s statement. There was no testimony by Dixie or by a psychology expert that Blaise wasn’t concerned about anything but her car. This argument conflicts with the testimony that the trash enclosure was cross-ways across the trash enclosure’s opening and that a person could only get in by going around the narrow opening on the north side. It would not have been possible for a person outside the dark trash enclosure to look inside it and see Bailey.

“He never said that. He said that it was consistent with getting hit in the mouth that a bat would bust your teeth out”.

(9 App. 1742; Trans. XIX 197 (10-5-06))

Two misstatements of the facts in evidence. Simms never said “consistent with” or “teeth out”.

“she goes back -- and this is where you get to the first degree murder. She had that opportunity to leave, she had that opportunity to go for help, and she didn't exercise that opportunity. She went back 'cause no one's gonna do this to her, no one.”

(9 App. 1743; Trans. XIX 198 (10-5-06))

Four statements of facts not in evidence. There is no evidence or testimony that Blaise went back once she escaped her attacker. There is no testimony that Blaise ever said ‘no one is going to do this to her. There is no expert psychology testimony about what her frame of mind was. There is only her statement and the testimony of Dixie and others that she immediately left in her car after getting away from her attacker.

“And she went back and smacked him in the mouth with the bat where his teeth busted out, he fell back and he hit his head on that curb, and that's consistent with busting his skull.”

(9 App. 1743; Trans. XIX 198 (10-5-06))

Two misstatements of the facts in evidence and four statements of facts not in evidences. Simms testimony Page (VII-132 and 133) says that he would expect a crush kind of injury if the teeth had been knocked out by a bat. Simms also testified that the skull fracture happened approximately 2 hours prior to death. Simms never testified that Bailey's skull was busted, it was “fractured”. The prosecution's theory is physically impossible because the crime scene notes and testimony of CSA Louise Renhard from Blaise's first trial, and the photographic evidence of the trash enclosure show Bailey's teeth were found in the southwest corner immediately to the west (closest to the outside wall) of where the blood from his carotid artery (neck) wound is concentrated.

“then, ladies and gentlemen, she cuts his penis off and she cuts into his rectum, because no one's gonna do that “

(9 App. 1743; Trans. XIX 198 (10-5-06))

Three statements of facts not in evidence. There is no testimony or evidence presented at trial that Blaise cut off Bailey's penis. There is no testimony or evidence presented at trial that Blaise cut into Bailey's rectum. There is no testimony, and no expert psychological testimony that she said or thought “no one's gonna do that”.

“She's not gonna accept that.”

(9 App. 1743; Trans. XIX 199 (10-5-06))

States facts not in evidence. There is no testimony that Blaise said that, and there were no expert psychological testimony concerning this.

“So what happens? An alibi starts getting created about the 21st by her mom.”

(9 App. 1743; Trans. XIX 199 (10-5-06))

States two facts not in evidence, misstates the evidence and improper argument. There is no testimony that her mom created an alibi. The argument also attacks the credibility and honesty of Blaise's “mom”- which isn't true – Becky Lobato is her “stepmother”.

And it's interesting, why does she tell her parents on a recorded statement -- don't say anything because we're getting recorded, snap at your father, we're getting recorded -- if she didn't do anything wrong?

(9 App. 1743; Trans. XIX 199 (10-5-06))

States facts not in evidence. Standard advice of counsel would be not to talk about the case especially on the telephone.

“And it's interesting, is the only people that came in here and talked about anything happening in this area, especially on the 7th, were family members, except for Chris”

(9 App. 1743; Trans. XIX 199 (10-5-06))

Misstates the facts in evidence. Michele Austria testified she saw Blaise on the 7th and she initialed the defense's calendar that was in evidence.

“And if she did exactly what she told Dixie, that all she wanted to do was get cleaned up and get the hell back to her dad's house, that's exactly what she did. And that puts her right back here on the 8th where you see all these people that are seeing her on the 8th coming back. And who's house did she go clean up at? Doug's?”

(9 App. 1743; Trans. XIX 200 (10-5-06))

States four facts not in evidence. There is nothing in evidence and no testimony at trial that Blaise told Dixie that she was in Las Vegas on the 8th, that Blaise told Dixie she was coming back from Las Vegas on the 8th, no testimony Blaise told Dixie that she went to Doug's house on the 8th to clean up. There is no testimony presented at trial that anyone saw the Blaise on the 8th coming back from Las Vegas. The prosecution is trying to have their cake and eat it too. Either Dixie is credible or she isn't. The prosecution is also putting words in her mouth and using this testimony to prove their case even though she did not say these things.

“They talk about the lack of physical evidence of her at the scene, yet there's so much evidence with regards to what had occurred.”

(9 App. 1743; Trans. XIX 200 (10-5-06))

Conflates and confuses the facts in evidence. There was no evidence of Blaise being at the trash enclosure or inflicting Bailey's 42 separate injuries, but there was evidence Bailey had been murdered. Combining the lack of evidence against the Blaise with Bailey's murder equals zero culpability for the Blaise.

“probably dead,”

(9 App. 1743; Trans. XIX 200 (10-5-06))

Contrary theory of the crime. Either Blaise knew she killed him as the prosecution argued in closing and rebuttal, or she didn't. Here the prosecution concedes that Blaise knows the man she defended herself against is not dead when she left the scene of her attack.

“knows that she cut a man's penis off,”

(9 App. 1743; Trans. XIX 200 (10-5-06))

States facts not in evidence. There is no statement or testimony presented at trial that says Blaise knows she cut a man's penis off. Dixie testified that the man may not have been injured enough to require medical attention.

“I mean she said in her statement she got her car bloody”

(9 App. 1744; Trans. XIX 202 (10-5-06))

States facts not in evidence. There is no where in her statement that she says she got her car bloody, or used the words blood, bleed, bled, bleeding or bloody anywhere in her statement. No witness testified that Blaise said she got in her car bloody.

“She talked about taking her clothes off in the car because they were bloody”

(9 App. 1744; Trans. XIX 202 (10-5-06))

States facts not in evidence. There is no where in her statement that she says her clothes were bloody and the words bloody, blood, bled, bleed or bleeding do not appear in her statement, and no witness testified that she took her clothes off in her car because they were bloody.

“Her dad kind of admitted that he wiped the car out.”

(9 App. 1744; Trans. XIX 202 (10-5-06))

Misstates the evidence. Larry Lobato never said he “wiped the car out”. His testimony was that “we cleaned it out a little bit” (PG 1638 XVIII-31 line 6-19)

“And she tells Dixie, she’s up there hiding her car, her parents are gonna help her get it cleaned or maybe paint it and get rid of it. Dixie wouldn’t tell you that. Dixie kept I didn’t say that, I didn’t say that, I didn’t say that. When Laura came in, she said no, that’s what she told me.”

(9 App. 1744; Trans. XIX 203 (10-5-06))

Misstates the evidence. Dixie testified that she didn’t say it to Laura, it isn’t in her statement to the police, and Blaise never said it in any of her statements to anyone. Laura Johnson testified that Dixie told her that Blaise told her these things.

“Are we just to ignore what’s on these freshly laundered seat covers as the crime scene investigator talked about?”

(9 App. 1744; Trans. XIX 204 (10-5-06))

Misstates the evidence. Louise Renhard did not testify that they were “freshly laundered”, she testified they were clean. (PG 1240 XI-95A line 1-1)

“And when they bring her back to the jail cell and she talks about the inside of the jail cell looking like where this occurred.”

(9 App. 1744; Trans. XIX 204 (10-5-06))

Two misstatements of the evidence. The officer’s report didn’t say she said “looked like” - in the officers report by LaRochelle it reads “While at CCDC, Lobato told Detective Thowsen and I that the incident occurred in a enclosed area similar to the jail cell, but smaller”. Later added to the report were the words ‘did not have covering’. That excluded the trash enclosure from being where Blaise was assaulted because on of it’s most distinctive features is the wire mesh “covering” that is directly above a persons head in the trash enclosure. (see Exhibit ___ photo of trash enclosure)

“...Budget Suites. Which, you know, the detective did go over there and tried to see whether or not -- you know, how do you investigate something that didn’t happen? How do you do that?”

(9 App. 1744; Trans. XIX 204 (10-5-06))

Misstates evidence and states facts not in evidence. Thowsen testified that he had investigated, but was unable to produce any type of report that showed he investigated. The statement that ‘it didn’t happen’ was in Thowsen’s testimony but this was a conclusion of the detective and was not a fact in evidence. There is no evidence it didn’t happen because Thowsen admitted he didn’t look for any witnesses.

“He talks about how he could look out of the inside of something that looked like the inside of the jail cell and see the carport next door next to it.”

(9 App. 1744; Trans. XIX 204 (10-5-06))

States facts not in evidence. Thowsen did not testify to this.

“it’s a pretty good imagination that you’re making it up. It fits perfectly in the crime.”

(9 App. 1744; Trans. XIX 205 (10-5-06))

States facts not in evidence. Draws a conclusion from inference not fact.

“You know what’s interesting as well is that what she does say in her statement as we’re talking about the past tense, how she talks about I didn’t think anybody would miss him, I don’t -- I didn’t think I could put him in -- I didn’t put him in and I don’t think I could have, she’s talking about the dumpster.”

(9 App. 1744; Trans. XIX 205 (10-5-06))

States facts not in evidence and draws a conclusion from inference not in evidence. Blaise did not say in her statement “I didn’t put him in” a dumpster. The attack that Blaise described in her statement happened “over a month ago” so she logically and properly referred to it in the past tense.

“Why do you need to say I don’t think I could put him in it if he was alive? If he’s dead, it’d be maybe throwing him in the garbage can, just throw him away.”

(9 App. 1744; Trans. XIX 205 (10-5-06))

Misstates the evidence. Blaise never said anything about throwing him in the garbage can, throwing him away. The prosecutor runs this together as if it were her words. It is preposterous to even suggest a 100 pound 18 year old female could have even thought to pick up a man weighing almost 140 pounds and life him up 5 feet and ‘throw’ him in a dumpster.

“But you know, when I was on my flutters of the third day of my meth binge, everything went black.”

(9 App. 1744; Trans. XIX 205 (10-5-06))

Three misstatements of the evidence. Blaise says in her statement that after using meth for seven days and being up for three consecutive days “everything starts to flutter. In a complete different part of her Statement she describes that when she got her knife out of her pocket and she was trying to cut her attacker’s penis “everything goes black.”

“She tells Dixie that it was on north of I — I mean west of east of I-15, and she gives hotel names of the streets, Flamingo and Tropicana. “

(9 App. 1744; Trans. XIX 205 (10-5-06))

Misstates the evidence. Dixie says in her statement that she does not recall the name of the street but that Blaise said a hotel street. Dixie also corrects in her trial testimony that she is not sure if

Blaise said west or east, that she could have assumed that because that is where she lived when she lived in Las Vegas.

“about her car being seen. A little red car. You’d have to disregard what Michele says, you’d have to disregard what Paul Rusty — Rusty Brown says.”

(9 App. 1745; Trans. XIX 207 (10-5-06))

Two misstatements of the evidence and casting aspersions on the credibility of truthfulness of witnesses. There is no testimony from Michele Austria or Rusty Brown that Blaise was hiding her car. It is up to the jury to decide the credibility of the witnesses.

“talking about when the phone calls are going from the mom to Doug’s house or to Doug’s cell, and when Doug is returning those calls.”

(9 App. 1745; Trans. XIX 207 (10-5-06))

Two misstatements of the evidence. There is no testimony that those calls were made by Becky (mom), and that Doug was “returning” her calls.

And then at a point in time when they know where she’s at, when she’s in Las Vegas, there’s no phone calls going on anymore.

(9 App. 1745; Trans. XIX 207 (10-5-06))

Misstates the evidence. There were phone calls regularly from Doug to Panaca from July 3rd to July 8th.

“And you don’t see Doug really picking up on the phone calls again until after about 9 o’clock in the morning on the 8 th.”

(9 App. 1745; Trans. XIX 207 (10-5-06))

Misstates the evidence. Doug called Panaca 4 times on the 7th and 3 times on the 8th

“The doc says that it’s more reasonable -- I mean it’s more probable that it happened in the 24 hour span.”

(9 App. 1745; Trans. XIX 207 (10-5-06))

Misstates the evidence. Simms did not testify it was more probable. He testified to a high degree of probability Bailey died within 8-24 hours of being examined by Shelley Pierce-Stauffer, but to reasonable medical certainty 12-18 hours. (VII-20-21 9/20/06)

“And it’s interesting that the defense is arguing that that’s where we want it to be, when often times you find bodies in that interval and they want the doctors to spread it out to the outside of that time frame.”

(9 App. 1745; Trans. XIX 208 (10-5-06))

States multiple facts not in evidence. There is no testimony regarding this rambling argument. Only one doctor, Simms testified about Bailey’s time of death – not doctors.

“And part of that tells us that we want people that are -- have a stake in the community, people that have been around, people that care what happens in their community, people that care what the prosecutions are doing or what the defendants are doing.”

(9 App. 1745; Trans. XIX 208 (10-5-06))

Improper argument for the prosecutor to vest the jury with the duty to find the defendant guilty because they care what happens in their community.

“And I ask you, using your commonsense, is it reasonable to believe that we have a pure coincidence here? Is that reasonable to believe? And that’s that step you have to get over as to reasonable doubt.”

(9 App. 1745; Trans. XIX 208 (10-5-06))

Improper argument about what constitutes explanation of reasonable doubt and does not conform to what is in the jury instruction. The prosecution is arguing that if the jury decides the single fact of Bailey’s penis amputation and Blaise trying to cut her would be rapists penis is too coincidental, they should find her guilty – to the exclusion of all other evidence.

“that’s because you, the jury, are the ones that make the reasonable inference and draw those inferences to determine the guilt or innocence of the defendant. You do that. You make that decision”

(9 App. 1745; Trans. XIX 209 (10-5-06))

Misstates the role of the jury. The jury can decide based on the evidence and reasonable inference they draw from it, but not decide based on the prosecution’s speculations and inferences drawn from their speculation.

“Is that something that you’re really gonna pick up from that statement? I suggest that you won’t.”

(9 App. 1745; Trans. XIX 209 (10-5-06))

States his personal opinion about the weight to be given evidence, and instructs the jury he would disregard the evidence in her statement

In this case, ladies and gentlemen, there’s nothing to support a self defense. And the reason why, as I explained earlier, is because there was a cooling down period. There was a point in time where the defendant had to make a choice as to whether or not to walk away from what she started or to finish it. She decided to finish it because she was gonna be identified.

(9 App. 1745; Trans. XIX 209 (10-5-06))

States at least seven facts not in evidence. None of the above statements has any basis in fact or testimony. There was no testimony or evidence presented to support this scenario.

“It went to a point where there was a directed wound to the carotid artery. There was a blunt force trauma to the head that knocks him down. Directed wound to the liver area.”

(9 App. 1746; Trans. XIX 210 (10-5-06))

Misstates the evidence and conflicting theory of crime. Simms testified that the blunt force trauma to the back of Bailey’s skull happened approx 2 hours prior to death. There was no testimony that Blaise had medical training or advanced anatomy classes or even knew where the liver or the carotid artery is. This argument conflicts with DiGiacomo’s closing argument that Blaise knocked him down by punching him in the face, and then stabbing his neck.

“But then there’s arguments talking about at a point where she has an opportunity to abandon that and didn’t do that.”

(9 App. 1746; Trans. XIX 210 (10-5-06))

Misstates the role of the jury and misstates law regarding what constitutes proof of a defendant's guilt beyond a reasonable doubt. Improper for jury to consider prosecution arguments as "evidence" upon which to base their verdict.

"I mean there's certainly evidence that she's guilty of sexual penetration of a dead human body by the injury to his rectum."

(9 App. 1746; Trans. XIX 211 (10-5-06))

Improper argument, states his opinion as fact, usurps the fact finding role of the jury and misstates what constitutes proof of guilt beyond a reasonable doubt. It is the jury's job to determine the facts and it is not proper for prosecutor to voice his opinion as the only conclusion the jury could come to. The injury to Bailey's rectum is not the only element the prosecution must prove by evidence beyond a reasonable doubt.

"And you heard to McCroskeys talk about how they -- they may not even have been there. But they do know when they were there and they saw the car that it hadn't been moved. And that's highly consistent with her coming up there after the --after the 8th , 'cause they were gone potentially the 4th of July where they drive to Fallon, Nevada and stay for just a couple days. They go there for a period of time and spend time with their family."

(9 App. 1746; Trans. XIX 212 (10-5-06))

Misstates the evidence. The McCrosky's testified that they were home the 6th 7th, and 8th, and saw Blaise's car in front of her parents' house, and they didn't see it moved during that period of time.

"when she killed Duran Bailey. When she was the meth addict, when she was the knife toting individual"

(9 App. 1746; Trans. XIX 213 (10-5-06))

States opinion as fact, misstates the evidence. There is no evidence she killed Duran Bailey. There was no evidence presented and no expert testimony that she was a "meth addict". There was testimony that Blaise was known for toting a knife for a long time, not just during the time frame when Duran Bailey was killed. Witnesses living in Panaca testified it was common for women to carry a knife.

"when she's the one that would do anything for methamphetamine."

(9 App. 1746; Trans. XIX 213 (10-5-06))

States facts not in evidence. There is no testimony or evidence presented at trial regarding this.

"We're here because of what she did in July of 2001, what she did to Duran Bailey."

(9 App. 1746; Trans. XIX 213 (10-5-06))

States facts not in evidence. There is no testimony regarding this. There is no testimony or evidence presented at trial that Blaise did anything to Duran Bailey.

"now, and it's time for you to mark it as I did, guilty of first degree murder with the use of a deadly weapon, and guilty of sexual penetration of a dead human body."

(9 App. 1746; Trans. XIX 213 (10-5-06))

Improper argument states the prosecutor's personal opinion and misstates the role of the prosecutor. Kephart states that he personally found Blaise guilty and that the jurors should find her guilty as he personally did.

"Look and see if there's any stab wounds to the pants."
(9 App. 1747; Trans. XIX 214 (10-5-06))

Misstates evidence and States facts not in evidence. There was no testimony that there were "stab wounds to the pants". Blaise said in her statement that her attacker's penis was exposed.

"She said it was on West Tropicana or Flamingo. Corroborated."
(9 App. 1747; Trans. XIX 214 (10-5-06))

Misstates the evidence. Blaise specifically states in her statement that she was assaulted at the Budget Suites on Boulder Highway which is on the East side of Las Vegas.

"She said it was near a dumpster. Corroborated."
(9 App. 1747; Trans. XIX 214 (10-5-06))

Misstates the evidence and her statement. Blaise specifically states in her statement that she was assaulted in the parking lot at the Budget Suites on Boulder Highway and that there was a dumpster not too far away.

"She said she couldn't put him in the dumpster. Corroborated."
(9 App. 1747; Trans. XIX 214 (10-5-06))

Misstates the evidence. Blaise said in her statement "I don't think I could have". Blaise was an 18 year old female, about 100 pounds and she described her attacker as "huge". She could not have lifted a huge man up 4 feet under any circumstances.

"Said that she was bloody and got in her car, Corroborated."
(9 App. 1747; Trans. XIX 214 (10-5-06))

States facts not in evidence. There is no testimony during the trial that Blaise got any blood on her when she was assaulted. In her statement she doesn't mention the words blood, bloody, bleed, bled or bleeding a single time.

"Said she wanted to leave and get back — her car back to her dad's house. Corroborated."
(9 App. 1747; Trans. XIX 214 (10-5-06))

States facts not in evidence and two misstatements of the evidence. There was no evidence that she wanted to get her car back to her dad's house. The evidence from her statement was she drove her car to her ex-boyfriend Jeremy Davis' house and left her car for some days. Jeremy Davis' testimony corroborated that she left her car at his house for several days around Memorial Day 2001.