

2015 Fall Conference
PROSECUTOR ETHICS UPDATE¹

MATTHEW BATES
CHIEF PROSECUTOR
SUMMIT COUNTY ATTORNEY'S OFFICE
mbates@summitcounty.org

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DISCOVERY/BRADY

District Attorney’s Office not liable for a prosecutor’s single Brady violation absent a showing of pattern of violations.

***Connick v. Thompson*, 131 S.Ct. 1350 (2011).** In a 5-4 decision, the Court held that liability under 42 U.S.C. §1983 could not be imposed against a district attorney’s office for failing to disclose exculpatory material to the defense — required by *Brady v. Maryland* — based on a one-time *Brady* violation. Thompson spent 14 years on death row and 18 years in prison for a

murder conviction that was eventually overturned because a prosecutor failed to disclose exculpatory evidence in a related robbery case. On retrial with the exculpatory evidence properly in the defense's discovery file, a jury acquitted Thompson of murder.

Thompson sued the Orleans Parish District Attorney, Harry Connick, in Connick's official capacity, under §1983. Thompson claimed that Connick failed to train his prosecutors adequately about their *Brady* duties and that the failure-to-train was the cause of the nondisclosure of the lab report. In an opinion by Justice Thomas, the Court disagreed and held that the District Attorney could not be held liable for failure to train for a single *Brady* violation. Rather, Thompson was required to show a pattern of similar constitutional violations by untrained employees.

Prosecution's failure to turn over detective's notes violates *Brady v. Maryland*.

***Smith v. Cain*, No. 10-8145 (U.S. Supreme Court).** By an 8-1 vote, the Court held that prosecutors violated *Brady v. Maryland* by failing to provide defense counsel with statements by the single eyewitness who linked petitioner to the crime that called into question the reliability of that identification. Specifically, the lead detective's notes, made the night of the murder and five days later, contain statements by the eyewitness stating that he could not identify the perpetrators and did not see any faces. These "undisclosed statements were plainly material."

State violated Rule 16 by failing to disclose information known to police but not to prosecutor; but error did not merit reversal where defense never asked for continuance.

***State v Alvarado*, 2014 UT App 87 (Greenwood).** Adrian J Alvarado was charged with several drug related charges after he was stopped for a traffic violation and officers found drugs on his passenger. Specifically, they found marijuana, heroin, mushrooms, balloons, and a digital scale in a duffel bag that the passenger was hiding under her jacket. Alvarado had \$1850 in cash on his person, leading officers to suspect that the duffel bag belonged to him. Alvarado asserted that the drugs and paraphernalia in the duffel bag did not belong to him, but he did admit that he planned on using the \$1850 to purchase drugs. In the middle of the trial, the State learned from the officers that they had, in fact, conducted a controlled buy from Alvarado shortly before the traffic stop using a confidential informant. The State sought to admit this evidence. Alvarado objected, claiming that admission of the evidence would violate Rule 16, as Alvarado had made a discovery request for all exculpatory and inculpatory evidence. Alvarado also moved to dismiss the case. The trial court denied overruled the objection and denied the motion to dismiss. The jury convicted Alvarado, and he appealed.

Held: Affirmed. Because the information was known to the officers, it was deemed to be in the State's possession and subject to the mandates of Rule 16. But Rule 16 also provides for a continuance as a remedy. And Utah's courts have repeatedly held that a party must first avail himself of the remedies in Rule 16 before moving to dismiss the case or exclude the evidence.

Because Alvarado never sought a continuance, he cannot appeal the trial court denial of his motion to exclude the evidence or dismiss the case.

Prosecutor violated discovery rules by failing to inform defense of last minute investigation.

State v. Redcap, 2014 UT App 10 (Voros). Nathan Redcap was a prisoner when he was charged with attempted murder for donning homemade armor made from magazines and shanking a fellow inmate. Redcap presented testimony from two inmates who claimed to have seen the altercation and testified that the victim was in fact the aggressor. The State rebutted their testimony with testimony from its investigator, who had gone to the prison and taken photographs the vantage point of those inmates' cells. The investigator had done this last minute investigation only a week before trial. And the State did not disclose the photographs or the results of the investigation until after the Redcap's witnesses testified. Redcap objected to the photographs and testimony. The trial court overruled his objection, and the jury convicted him. Redcap appealed.

Held: Affirmed. A prosecutor has an ongoing to duty to disclose evidence requested under rule 16. This duty exists whether the evidence is reduced to a written report or is merely communicated to the prosecutor verbally. The prosecutor violated that duty by not disclosing his investigator's investigation a week before trial. But considering the totality of the evidence, the violation was harmless.

Prosecutor's withholding of co-defendant's plea agreement wrongful under *Brady*, but harmless where defendant obtained and used plea agreement at trial.

State v. Doyle, 2010 UT App 351 (Christiansen) (Memo.) Doyle was charged with drug crimes. A co-defendant was given a plea deal in exchange for testimony. The prosecutor did not disclose to Doyle the co-defendant's plea agreement and, in response to Doyle's discovery requests, asserted that the plea agreements were "nondiscoverable." Additionally, when the co-defendant testified at trial, she incorrectly stated that she received no deal for her testimony, and the prosecutor took no steps to correct the false testimony.

Held: The prosecutor committed misconduct by not disclosing the deal and by not correcting the co-defendant's false testimony. It noted that the prosecutor's objection to disclosing the plea deal was meritless because the duty to disclose plea deals under *Brady* is well-established. The court nevertheless affirmed Doyle's conviction because Doyle's attorney found the agreement on his own and impeached the co-defendant with it. The court explained that the "effective advocacy by Doyle's attorney in this case rendered the false testimony harmless" by revealing the co-defendant's motive for testifying.

Rule 16: Trial court abused its discretion in denying Defendant's motion to compel discovery of return on search warrant, supporting affidavits, and task force procedure manuals, but error was harmless.

State v. Tanner, 2011 UT App 39 (Thorne). Tanner was accused of drug distribution after selling methamphetamine several times to a confidential informant. Tanner suspected that the CI had lied to the police about some things. In order to impeach the CI, Tanner sought discovery of the search warrant affidavit for his house, the return of the search warrant, and the Utah County Major Crimes Task Force procedure manuals. The trial court determined that the material Tanner sought would not be admissible at trial under Rule 401, 402, and 403, Utah Rules of Evidence, and that Tanner therefore did not meet the good cause standard to compel discovery under Rule 16(a)(5), Utah Rules of Criminal Procedure.

The court of appeals disagreed. It noted that good cause under rule 16 does not require admissibility at trial. It only requires that the material be necessary to the proper preparation of the defense. Such a showing is made "whenever the trial court is apprised of the fact that the evidence is material to an issue to be raised at trial." Tanner had clearly articulated in his motions that the State's case rested largely on the credibility of the CI and that the return on the warrant was necessary to verify the accuracy of some of the CI's statements to the task force. The trial court thus erred in denying Tanner's motion to compel.

But the court of appeals nevertheless affirmed Tanner's convictions. It noted that the task force had searched the CI and his car before each buy, given the CI by money, followed the CI to and from Tanner's residence, and recovered drugs from the CI after the buy. In light of the "overwhelming evidence of [Tanner]'s guilt" any error was harmless.

Discovery: Trial court did not abuse its discretion when it dismissed case for the prosecution's failure to fully comply with discovery order.

American Fork City v. Asiata, 2009 UT app 214 (Thorne). Asiata, a spectator at a high school football game, was charged with class B misdemeanor assault after he went on the field and twice kicked a player in the head. During the investigation, police collected several video recordings of the incident, created copies, and returned all the originals to their owners, except one. When the City did not respond to Asiata's discovery requests, Asiata sought and obtained a court order directing the City to turn over video footage of the fight. Concerned that the duplicate recordings were incomplete or edited, Asiata asked to view the original recordings and to be given the names of and addresses of the owners of the original recordings. Upon learning that the City possessed only one original recording and that the names and addresses of the owners of the other videos were unavailable, Asiata moved to suppress all the video recordings. The district court gave the City 30 days to produce the original recordings and contact information of the owners and warned that non-compliance would result in a dismissal of the case. Just before expiration of the 30-day deadline, the City partially complied with the order. As promised, the district court dismissed.

Held: The City was obligated to comply with the district court's order whether or not the recordings were admissible and whether or not the evidence was exculpatory. The court declined to address the City's argument that the trial court did not comply with Utah R. Crim. P. 25, because the City did not raise that argument below.

PROSECUTORIAL MISCONDUCT

Argument that officer had no reason to plant evidence on defendant and that he could lose his job for doing so was not impermissible "vouching"; argument that prosecutor and most people don't carry lots of cash on them was permissible inference from the evidence.

State v. Ashcraft, 2015 UT 5 (Lee). Over two nights, officer sees truck belonging to known drug trafficker repeatedly driving through motel parking lot known for drug activity. Ashcraft (not the owner of the truck) is driving with a female passenger. Ashcraft tells the officer that he borrowed the truck from the known drug trafficker. Ashcraft has on him \$793 in cash and a pocketknife with a brownish/black tar substance that looks like (and field tests as) heroin. Ashcraft claims ignorance about a green bag hidden in the bed of the truck, but before the officer can open it, accuses the officer of planting it. The bag has 30-40 baggies of heroin, a bunch of pills, two digital scales, glass pipes with residue on them, and a pink stun gun.

Held: The prosecutor did not impermissibly vouch for the officer when he argued in closing that the officer had "no ax to grind" and "nothing to gain by" planting evidence and that an officer doing "something like that" puts his "career on the line." The argument was not a statement that the prosecutor personally knew the officer was truthful and did not imply that the prosecutor knew more about the officer than the jurors did. Rather, the argument, like the defense's argument that the officer planted the evidence, was "in accordance with common-sense incentives and reasonable inferences generally known to the jury." The prosecutor also did not ask the jury to consider evidence not before it when he stated that he personally only carried about \$10 in his wallet at a time and that it was not normal for most people to have as much cash as defendant did. While the prosecutor may have "gone too far" by pressing this inference in light of his own personal experience, he rendered that mistake harmless by immediately telling the jury to rely on their own experience and not his own.

Repeatedly calling defense arguments "red herrings" not prosecutorial misconduct.

State v. Jones, 2015 UT 19 (Nehring). Jones raised several claims of prosecutorial misconduct during closing, including repeatedly calling defense arguments "red herrings."

Held: Affirmed. Nothing wrong with contesting an opposing party's theories as irrelevant or improbable by calling them "red herrings," so long as the comments don't amount to a personal attack on defense counsel or an insinuation that the defense intends to mislead the jury. The comments here were confined to the defense theories.

Prosecutor's statement that the jury should convict DUI Defendant to "nip" his conduct "before somebody gets killed" was improper but harmless.

State v. Olola, 2014 UT App 263 (Davis) (memo). Julius Olola was convicted of DUI. During closing arguments, the prosecutor asked the jury to convict Olola in order to "nip" his conduct "before somebody gets killed." Olola did not object to the statement when it was made. But he appealed the conviction and claimed that the statement improperly suggested that the jury base its decision on the impact it would have on society rather than on the facts.

Held: Affirmed. The statement was improper. But in the context of the jury instructions, the facts, and the entirety of the prosecutor's closing argument, the statement was harmless.

Prosecutor's comment that "the State has no interest in convicting the innocent" okay because in context he was only explaining why the State has such a heavy burden of proof.

State v. Christensen, 2014 UT App 166 (Roth). Christensen was convicted of felony theft and criminal mischief. In rebuttal closing, the prosecutor stated that he welcomed the heavy burden of proof beyond a reasonable doubt because "the State has no interest in convicting anyone that's innocent."

Held: The prosecutor's statement was okay because in context the prosecutor was not suggesting that the State only prosecutes people who are guilty or that his office would have never brought charges if defendant had in fact committed the charged crimes. Rather, he was only reminding the jury of the uncontroversial point that the criminal justice system requires proof beyond a reasonable doubt to avoid convicting the innocent.

Prosecutor's closing argument that a State's witness has "no reason to lie" was not impermissibly bolstering the witness's testimony; it was merely a reasonable inference from the evidence, even if not the only one.

State v. Christensen, 2014 UT App 166 (Roth). Christensen was convicted of felony theft and criminal mischief. In closing, the prosecutor argued that although a witness had initially lied to police, she had "no reason to lie" on the stand at trial.

Held: This was not impermissible bolstering. The prosecutor did not state his personal beliefs or improperly call the jury's attention to facts not in evidence. The prosecutor only drew the reasonable inferences from the evidence. Although Christensen's counsel drew the opposite inference during his closing, this did not make the prosecutor's argument unreasonable or improper.

It's okay to call "asinine" closing defense argument "asinine."

State v. Fouse, 2014 UT APP 29 (Orme). Fouse's wife got a domestic violence protective order against him. Fouse addressed and mailed several letters to his wife's sisters, who lived in adjoining apartments to his wife. The letters, although addressed to the sisters, were clearly aimed at Fouse's wife and contained veiled threats and pleas to get back together. Fouse also left a box on his wife's back doorstep that contained wedding mementos and various

letters, including one addressed to his wife. Fouse was charged with stalking and six counts of violating a protective order. In closing, the defense argued that the State didn't buy its own theory because it had not charged the wife's sister as an accomplice for delivering Fouse's letters. The prosecutor responded in rebuttal by calling that argument "asinine" and "a huge red herring."

Held: While using terms like "asinine" and "red herring" can be "unwise and hyperbolic," "colloquial, vigorous, and colorful" comments often fall "within the wide latitude" permitted counsel in closing argument. In this case, the defense argument "was asinine and the State's characterization of it as such during rebuttal did not rise to the level of prosecutorial misconduct." And it's okay to call defense counsel's *theory* a "red herring"; but it's not okay to accuse "opposing counsel of using such a distraction as part of a purposeful scheme to mislead the jury."

Prosecutor's final closing remark that jury had "the power to make" the abuse stop was improper, but harmless.

State v. Wright, 2013 UT App 142 (Roth). In child sex abuse case, prosecutor argued in rebuttal closing that the jury had no reason not to believe the victim: The victim "doesn't want to hurt her father. She loved him even after he did horrible things to her. She just wants him to stop hurting her. *You have the power to make that stop.*"

Held: Affirmed. Most of the prosecutor's argument was a fair response to defense counsel's closing that the victim was motivated to lie so that she would not have to go live with her father. But the last sentence was improper because it appealed to the jurors' emotions by contending that they had a duty to protect the alleged victim. But this single sentence in a closing and rebuttal argument that filled 15 transcript pages of otherwise appropriate remarks was harmless, particularly where trial court immediately reminded jury that counsel's arguments were not evidence.

Prosecutor's use of red herring idiom and reference to Defendant's story as a ploy and tactic to distract was improper; appealing to jurors' passions by arguing that the victim would never walk his daughter down the aisle was also improper.

State v. Campos, 2013 UT App 213 (Voros). Reginald Campos was charged with attempted murder and aggravated assault arising from the shooting of David Serbeck. In his rebuttal closing, the prosecutor discussed the red herring idiom and told the jury that Campos's story was unbelievable and was just a tactic to confuse and distract them. The prosecutor also reminded the jury that Campos had stolen Serbeck's ability to run, bike, and walk his daughter down the aisle. He added, "[W]hen you do something like that on the streets of our community then you should be held accountable." Campos's attorney did not object to the statements. The jury convicted Campos. Campos appealed, claiming that his attorney was ineffective for not objecting.

Held: Reversed. The prosecutor's statements called to the jury's attention matters that they would not be justified in considering in determining their verdict. The statements about the

consequences of Serbeck's physical injuries appealed to the passions of the jury rather than the evidence. And the statements about the red herring amounted to an unfounded and inflammatory attack on defense counsel.

Prosecution's discussion of witness credibility and analogizing prison to a zoo and inmates to predators and prey was not improper.

State v. Redcap, 2014 UT App 10 (Voros). Nathan Redcap was a prisoner when he was charged with attempted murder for donning homemade armor made from magazines and shanking a fellow inmate. Redcap presented testimony from two inmates who claimed to have seen the altercation and testified that the victim was in fact the aggressor. In closing, defense counsel suggested that the prison guards who had testified were not credible and that the inmates who had testified were heroes. In rebuttal, the prosecutor argued that the guards had no bias and had an obligation to protect all inmates. The prosecutor also pointed to the inmate witnesses' many convictions and stated that one more perjury conviction would not bother them. Lastly, he compared the prison to a zoo and argued that the law ought to equally protect all prisoners, regardless of the harsh conditions in the prison.

Held: Affirmed. The prosecutor's statements were proper in light of defense counsel's attack on the guards' credibility and counsel's suggestion that the inmate witnesses were heroes.

Sarcastic comments, accusing defendant of lying, asking defendant whether another witness was lying, minimizing the burden of proof, and suggesting that there was no evidence to support the defense did not warrant reversal because it was either not error or was harmless beyond reasonable doubt.

State v. Davis, 2013 UT App 228 (Voros). Eric Joseph Davis was charged with various sexual offenses after he raped and sodomized his wife using a XXL dildo. During her cross-examination of Davis, the prosecutor made several sarcastic comments about his testimony. On two of the three occasions, the court admonished the prosecutor. The prosecutor also accused Davis of lying and asked him to opine on the credibility of another witness. Then during closing, she minimized the burden of proof. Davis immediately objected, and both the court and the prosecutor directed the jury to look at the instruction. She also suggested that there was no evidence in support of Davis's defense that his wife was falsely accusing him of rape and that Davis had made his defense up. The jury convicted Davis, and he appealed.

Held: Affirmed. While the prosecutor's sarcastic comments were disrespectful and represented her opinion of the evidence, the court's admonition was sufficient to cure the error. Accusing Davis of lying was permissible because it was based in the evidence and not on the prosecutor's personal opinion. But asking Davis to opine about another witness's veracity was improper. The error was harmless, however, because defense counsel objected and the trial court intervened and prevented Davis from answering the question. Likewise, minimizing of the reasonable doubt standard did not warrant reversal because the court cured any error with a cautionary instruction. Lastly, the prosecutor's arguments about the lack of

evidence did not improperly shift the burden of proof. Prosecutors may comment on the paucity of the evidence so long as they do not overtly refer to a defendant's failure to testify.

Prosecutor's statements warranted reversal.

State v. Thompson, 2014, UT App 14 (McHugh). In 2002, Michael W Thompson, a long-haul trucker, and a friend passed through Salt Lake and stayed at the home of A.T., a sixteen year-old girl. A year and a half later, A.T. came forward with allegations that she and Thompson had engaged in acts of oral sex. A jury convicted Thomson of two counts of forcible sodomy. Thompson appealed his conviction, claiming that his counsel had been ineffective for not objecting to numerous inappropriate statements by the prosecutor. The statements allegedly included asking Thompson to opine on the credibility of another witness, personally vouching for A.T.'s credibility, personally vouching for the credibility of the State's expert, rendering a personal opinion about a defense witness's credibility, calling Thompson a liar, giving his expert opinion about how to interpret body language, and asking the jury to send a message to Thompson for the people of the State of Utah.

Held: Reversed. Not all of the alleged misstatements were improper. But the cumulative effect of those that were prejudiced Thompson and warrant a new trial. The prosecutor did not improperly question Thompson about another witness's veracity. Parties may not ask a witness to speculate about whether another witness is being truthful. But parties may, on cross-examination, draw out distinctions between the testimony of two witnesses. The prosecutor's questions, "You think [the witness] was wrong about that?" and "One of those wasn't true. Which one was the truth?" were appropriate questions to highlight discrepancies in defense witnesses' testimony. The prosecutor also did not improperly vouch for A.T.'s credibility. Expressing a personal belief about a witness's veracity during closing is improper. But a prosecutor may make statements about a witness's veracity that are based in evidence. The prosecutor's statements about A.T.'s testimony fell into the latter category and were not improper. The prosecutor's statement that Thompson was lying was also properly based in evidence. But the prosecutor did improperly comment on two witnesses' veracity when he told the jury, "I think [my expert] was credible" and "I don't think [the defense witness] was credible. I think he was being dishonest with you." He also improperly offered expert testimony. The prosecutor pointed out in closing that when asked about improper acts with A.T. Thompson would often shut his eyes and shake his head "no." The prosecutor then stated, "To me, that's a classic sign of dishonesty." Lastly, the prosecutor improperly appealed to the jury's passions and prejudices in closing when he argued that a guilty verdict would send a message that the people of Utah would not stand for such crimes.

Prosecutor cannot accuse the defense of trying to "confuse" the jury or of not believing their own defense, but he can be mildly sarcastic and call the defendant a "liar."

State v. Clark, 2014 UT App 56 (Christiansen). In murder prosecution, prosecutor argued in closing that the defense had introduced out-of-court witness statements to "A: Confuse you. Or B: They don't believe their defense." The prosecutor also basically called the defendant a liar and used sarcasm in argument.

Held: Affirmed. Telling the jury that the defense was trying to confuse the jury that and that the defense didn't believe their own defense was improper because it cast "uncalled for aspersions on defense counsel." (See *State v. Campos*). But the comments in context were harmless beyond a reasonable doubt. And it's okay to call the defendant a liar so long as doing so only discloses what the jury could have already reasonably inferred from the evidence. The prosecutor's few, isolated "sarcastic" statements were not so "unrelenting and pervasive" that they amounted to an attempt to "inflame" the jury.

Prosecutor should not have asked defendant if it would "surprise him" that the prosecutor did not believe "a word" he had just said.

State v. Bragg, 2013 UT App 282 (Billings). Bragg invited a mother and her four boys to move in with him. Mother agreed, even though Bragg disclosed that he was a registered sex offender for having sexually abused his daughter. Not long after moving in, Bragg began sexually abusing Mother's seven-year-old son. Notwithstanding red flags everywhere, the victim's reports of inappropriate contact, and Bragg's unconvincing explanations, Mother stayed put. Eventually, Bragg's daughter turned him in. Bragg testified and after he proffered a lame explanation for one of the alleged instances of abuse, the prosecutor asked, "Would it surprise you that I don't believe a word you just told me?" Before Bragg's attorney could get out of his seat, the trial court sustained the anticipated objection on the grounds that the prosecutor's comment was "argumentative." The prosecutor apologized and withdrew the comment and continued with cross-examination.

Held: Affirmed. The prosecutor's comment was clearly improper. But it was harmless. The exchange following the comment made it clear to the jury that the remark was inappropriate and should not be considered. The trial court didn't even wait to hear counsel's objection before sustaining it and condemning the comment as argumentative. The prosecutor immediately apologized and withdrew the remark. The jury was also instructed that counsel's comments were not evidence. Also, the evidence of guilt in this case was pretty overwhelming.

Prosecutor who knowingly proffered tainted witness testimony and did not correct record when it was discovered was properly fired.

Larsen v. Davis County, 2014 UT 74 (Voros). Before an aggravated robbery trial in which identification was the key issue, Tyler James Larsen, a Davis County prosecutor, visited with two eyewitnesses and showed them a photograph of the defendant. At trial, defense counsel asked one of eyewitnesses whether he had been shown a photograph of the defendant. The witness responded no. Larsen made no effort to correct the record. Defense counsel later asked the second eyewitness whether she had been shown a photograph of the defendant. She replied yes. Counsel moved for and was granted a mistrial. The Davis County Attorney gave Larsen a pre-termination letter accusing him of misconduct at the trial and placing him on administrative leave. The County Attorney then held a pre-disciplinary hearing at which confronted the Larsen about the misconduct and also confronted him about past instances of misconduct. The County ultimately found that the misconduct at trial warranted termination and fired Larsen. Larsen appealed, claiming that the pre-termination letter did not give him

adequate notice of the allegations against him. The district court agreed and set aside the county's termination decision. The County appealed.

Held: Reversed. Using tainted testimony at trial and not fully disclosing the facts once the scheme was revealed were sufficient grounds to warrant termination. Larsen was thus not denied due process by the discussion of his past misconduct at the pre-termination hearing and in his termination letter.

Prosecutor's two misstatements of the evidence during closing, while harmless by themselves, were harmful when combined with counsel's ineffectiveness for embracing the misstatements.

***State v. King*, 2010 UT App 396 (Orme).** This is the fifth and final opinion in this case. In the first four opinions, the court of appeals twice reversed King's conviction for sexual abuse of a child and the Utah Supreme Court twice reversed the court of appeals. In this opinion, the court of appeals again reversed King's conviction based on the prosecutor's misstatements of the evidence during closing argument and defense counsel's acceptance of those misstatements in his own closing.

The prosecutor improperly urged the jury to consider matters not in evidence when he made two statements during closing that were not supported by the evidence. While these two statements by themselves were not harmful, they were in combination with defense counsel's deficient performance in conceding the truth of one of the misstatements. Given the "comparatively thin evidence" supporting the verdict, the prosecutor's two misstatements, the court's failures to correct the misstatements, and defense counsel's affirmative acceptance of one of the misstatements, cumulatively amounted to prejudicial error.

Held: The court of appeals found no error in allowing the police detective and social worker who interviewed the alleged victim to testify that they had both dealt with cases in which allegations of abuse had been substantiated and cases in which such allegations had not been substantiated. This testimony was not "a direct opinion" of another witness's truthfulness on a particular occasion, in violation of Utah R. Evid. 608(a). Rather, it was the product of the State's attempt to establish that the witnesses were qualified professionals in their respective field and not zealots inclined to pursue all claims that came before them. To the extent that the alleged victim's grandmother improperly bolstered the child's testimony by saying that she believed her granddaughter, it was harmless. The testimony would not have been surprising to the jury; obviously had grandmother disbelieved her granddaughter, she would not have called police.