

NOTICE TO ATTORNEYS CONCERNING CLOSING ARGUMENTS

Counsel are reminded of the provisions of G.S. 15A-1230 setting parameters for closing arguments, as well as the cases cited below. Jury arguments that violate these parameters will not be permitted in the trial of this case, with or without objection from opposing counsel. In the event of any doubt as to the propriety of a planned argument, counsel should address those concerns during the charge conference.

In closing arguments to the jury, an attorney shall not:

- (1) become abusive,
- (2) express his personal belief as to the truth or falsity of the evidence,
- (3) express his personal belief as to which party should prevail, or
- (4) make arguments premised on matters outside the record.

The trial court will monitor vigilantly the course of such arguments, intervene as warranted, entertain objections, and impose remedies pertaining to those objections. Such remedies include, but are not necessarily limited to, requiring counsel to retract portions of an argument deemed improper or issuing instructions to the jury to disregard such arguments. *State v. Jones*, 355 N.C. 117, ___ S.E.2d ___ (1998).

EXAMPLES OF IMPROPER ARGUMENTS:

1. *Reference to notorious crimes; personally degrading remarks.* A prosecutor's reference to the "Columbine [school] shootings" and the "Oklahoma City bombing" as examples of national tragedies; degrading remarks against the defendant, saying "You got this quitter, this loser, this worthless piece of -- who's mean. . . . He's as mean as they come. He's lower than the dirt on a snake's belly..." An argument containing these remarks was improper for three reasons: (1) it referred to events and circumstances outside the record; (2) by implication, it urged jurors to compare defendant's acts with the infamous acts of others; and (3) it attempted to lead jurors away from the evidence by appealing instead to their sense of passion and prejudice. *State v. Jones*, 355 N.C. 117, ___ S.E.2d ___ (1998).

2. *Expressing an opinion that a witness is lying.* "He can argue to the jury that they should not believe a witness, but he should not call him a liar." *State v. Golphin*, 352 N.C. 364, ___ S.E.2d ___ ().

3. *Reference to Defendant's failure to testify.* The prosecutor may comment on a defendant's failure to produce witnesses or exculpatory evidence to contradict or refute evidence presented by the State, but it is error for the prosecutor to comment directly on a defendant's right not to testify by stating, "'The defendant has not taken the stand in this case.'" *State v. Barden*, 356 N.C. 316, ___ S.E.2d ___ (2002).

4. Urging jury to make an example of this defendant. It is error for counsel for the state, in argument to the jury, to comment on the frequent occurrence of murder in the community and the formation of vigilance committees and mobs, and to state that the same are caused by laxity in the administration of the law, and that they should make an example of the defendant. *State v. Phifer*, 197 N.C. 729, 150 S.E. 353 (1929).

5. Urging the jury to follow community sentiment. It is proper to tell the jury that they are the voice and conscience of the community, but it is improper to demand punishment because of community sentiment, asking the jury to lend an *ear* to the community rather than a *voice*. *State v. Scott*, 314 N.C. 309, 333 S.E.2d 296 (1985).

6. Argument conveying perceived accountability of jury to the victim, the witnesses, the community, or society in general. *State v. Boyd*, 311 N.C. 408, 319 S.E.2d 189 (1984).

EXAMPLES OF PROPER ARGUMENTS:

1. Urging jury to disbelieve certain testimony. Counsel are entitled to comment during closing argument on any contradictory evidence as the basis for the jury's disbelief of a witness' story. Where the record includes evidence contradicting the witness' statement, counsel may comment on the untruthfulness of that statement. *State v. Golphin*, 352 N.C. 364, ___ S.E.2d ___ ().

2. Reminding jury of their duty to make a decision. It is permissible for a prosecutor to argue that "the buck stops here" or that jurors had become "judges" or had become the "they" as in "they ought to do something". These statements correctly inform the jury that for purposes of the trial they have become representatives of the community and it is proper for them to act as the voice and conscience of the community, so as to temper the harshness of the law with the common sense judgment of the community. *State v. Scott*, 314 N.C. 309, 333 S.E.2d 296 (1985).