

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
Plaintiff,)
vs.)
Defendant.) Case No.

**MOTION IN LIMINE TO PREVENT ALL PARTIES FROM REFERRING TO
COMPLAINING WITNESS AS THE “VICTIM”**

Counsel for the above named defendant moves this court, *in limine*, and respectfully requests this Court to order all parties refrain from referring to the complaining witnesses as a “victim” throughout the trial. As grounds, counsel states as follows:

1. “Victim” is defined as:

“The person who is the object of a crime or tort, as the victim of a robbery is the person robbed.” See *Black’s Law Dictionary*, 5th Edition, 1979.

“1: A living being offered as a sacrifice in a religious right; 2: An individual injured or killed; 3: A person cheated, fooled or injured.” See *The Merriam-Webster Collegiate Dictionary*, 1995.

2. The prosecution, and sometimes even the court may be tempted to refer to the complaining witness as a “victim” at various times throughout the trial, within the hearing of the jury. Often the prosecution foresakes the individual’s name and refers to the complaining witness as a “victim” or “the victim.”

3. The prosecution’s use of the word “victim” is inappropriate for a number of reasons. It violates the accused’s Presumption of Innocence. An individual’s right to the Presumption of Innocence, while not grounded in the Constitution, has been recognized

as a defendant's right since the inception of our judicial system. *Coffin v. U.S.*, 156 U.S. 432 (1895); *In Re Winship*, 397 U.S. 358 (1970). By referring to a complaining witness as the "victim," the prosecution, and the court by its tacit approval, has told the jury that a crime was committed or that this person has been cheated, lied to or injured. Thus, the prosecution, and by inference the court, through the use of the word "victim," is advising the jury that the prosecution has already proven an injury of some type and concluded that the person has been victimized, and directed, by inference, an essential element of the offense charged.

4. Furthermore, the prosecution is commenting on the credibility of the witnesses when addressing certain individuals as "victims." The United States Supreme Court and the Oklahoma Court of Criminal Appeals have both held that the prosecution is prohibited from expressing their personal opinion during the trial about a witness's credibility or whether a witness is telling the truth or not. *Unites States v. Young*, 470 U.S. 1 (1985); see *Ray v. State*, Okl.Cr., 510 P.2d 1395 (1973); *Garrett v. State*, 1942 OK CR, 123 P.2d 283; *Robertson v. State*, 1974 OK CR 87, 521 P.2d 1401; *Dupree v. State*, 1973 OK CR 397, 514 P.2d 425. When the prosecution addresses an individual as the "victim," the prosecution is placing more weight on the individual's testimony and stating to the jury this individual is telling the truth because he or she is the "victim." Additionally, the prosecution's conclusion, interpretation and opinion that a witness is a "victim" allows the prosecution to advise the jury that their belief is consistent with the complaining witness story.

5. Moreover, the use of "victim" should be prohibited by the Federal Rules of Evidence and Oklahoma Rules of Evidence - Rule 2403 (Title 12 O.S. § 2403). They

allow relevant evidence to be excluded if the evidence's probative value is outweighed by its prejudicial effect. The prosecution's conclusion, judgment and assessment exhibited by the use of the word "victim" has no probative value. The jury alone determines whether the complaining witness is a "victim" or not, beyond a reasonable doubt. However, the word "victim" has significant prejudicial effect since the word alone means a wrong-doing, that some wrong has been committed and that the prosecution and the court believe this fact to be true. Essentially, allowing the word "victim" to be used also eliminates the causation element of the events in this case. Also, the prosecution takes the fact-finding job from the jury when the prosecution is allowed to refer to the complaining witness as the "victim." Thus, the prejudicial effect substantially outweighs its probative value.

6. Also, the prosecution is removing the fact-finding job from the jury when they constantly refer to the individual as the "victim." The jury's job is to determine the facts of the case and from the facts whether or not there is a "victim." There cannot be a "victim" unless the jury determines that there was a crime or a wrong committed. The prosecution's reference to the individual as the "victim" is paramount to stating that the individual was injured and thus a crime was committed. Telling the jury that a crime was committed before the jury makes that determination usurps the jury's decision.

7. Finally, the use of "victim" by the prosecution and the court is argumentative, and should be prohibited. Counsel and the Court's statements should be limited. The use of the term "victim" should not be used in opening, closing, or during examinations of witnesses, or at any time during the trial.

WHEREFORE, Defendant respectfully requests this Court prohibit all parties from using the term “victim” though out the trial for the reasons stated herein and above. Defendant makes this motion and all motions and objections in this case, whether or not specifically stated at the time of the making of the motion or objection, on the following grounds and authorities: Due Process, Right to Trial by Jury, Right to Counsel, Equal Protection, Cruel and Unusual Punishment, Confrontation, Compulsory Process, Right to Remain Silent, and Right to Appeal Clauses of the Oklahoma and U.S. Constitution, and the 1st, 4th, 6th, 8th, 9th, and 10th, and 14th Amendments to the U.S. Constitution, and Art. 2, Sections 7, 20, 22, 30, of the Oklahoma Constitution, and the Oklahoma State and Federal statutory and case law and the case law previously cited herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND DELIVERY

This is to certify that the undersigned hand delivered a true and correct copy of the above and foregoing motion to the Office of the Tulsa County District Attorney, 9th Floor, Tulsa County Court House, 500 S. Denver Ave., Tulsa, OK 74119, on the same day it was filed with the Tulsa County Criminal Court Clerk.

By: _____
GLEN R. GRAHAM