

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA.

CASENO.: 16-2012-CF-011572

DIVISION: CR-D

STATE OF FLORIDA

VS.

MICHAEL DAVID DUNN

DEFENDANT'S MOTION IN LIMINE
REGARDING USE OF SPECIFIC TERMS

The Defendant MICHAEL DUNN, by and through undersigned counsel, moves this Honorable Court to enter its Order in *Limine* restricting as to use of the word "Victim;" and would show:

Any comments relating to the alleged victim(s) in the charging document as actual "victims" during the course of the trial. Said comments are not relevant, unfairly prejudicial, emotionally charged and furthermore improper.

The Defendant would further state that the affirmative defense of "self-defense", or Justifiable Use of Deadly Force to be more exact, is at true issue in this cause. The defendant asserted said affirmative defense from the very onset of this case prior to his arrest, not only to law enforcement in Brevard County, but Duval County Homicide detectives as well. Any reference to the word "victim" would be self-bolstering of the State's own witnesses, or the witness themselves.

Florida trial courts routinely refrain from referring, and instruct counsel to refrain from referring, to the decedent as the "victim". The use of the term "victim" conveys the message that it is a foregone conclusion that a crime has been committed and that the defendant has committed that crime. See Fla. Std. Jury Instr. 3.10 (captioned "Rules for Deliberation"), which expressly instructs the jury not to decide the case "because you feel sorry for anyone.". See also *Allen v.*

State, 644 A.2d 982, 983 n.1 (Del. 1994) ("when, as here, consent is the sole defense in a rape case, the use of the term 'victim' by a prosecutor at trial is improper and to be avoided"); *Hayes v. State*, 58 Ga. 35, 49 (Ga. 1877) ("The use of the word victim is not favorable to cool and dispassionate trial"); *Veteto v. State*, 8 S.W.3d 805, 816-7 (Tex. App. 2000). This also holds prevalent and true for the other named men in the indictment for counts two through four.

Accordingly, the Defendant seeks this Court to enter its Order directing all counsel and witnesses to refrain from referring to the decedent, or any other alleged victim filed in this cause, as "the victim", but to refer to them instead either by names or as the "decedent" for Count one. We are confident that the Court anticipated utilizing this same practice throughout the trial without provocation, but filed this motion in the abundance of caution and to err on the side of caution and reasonableness.

WHEREFORE, the defendant respectfully requests that all above inferences, terminology, comments and/or similar be deemed improper, and the State ordered to admonish their witnesses accordingly.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the Office of the State Attorney, Duval County, 220 East Bay St., Jacksonville, Florida 32202 by Efile, Email, Hand Delivery or Facsimile this 2nd September, 2014.

Office of Jeffrey E. Lewis
Criminal Conflict & Civil Regional Counsel

BY: Waffa J. Hanania
WAFFA J. HANANIA -888631
Assistant Regional Counsel
100 West Bay Street, Suite 600
Jacksonville, FL 32202
Phone: (904) 301-1112
Fax: (904) 301-1120
waffa.hanania@rc1.myflorida.com