

Russell M. Adams
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

*

V.

*

Indictment:

*

CR 2000433

*

TRAVIS MCMICHAEL

*

GREG MCMICHAEL

*

WILLIAM R BRYAN

*

4.4

STATE'S RESPONSE TO DEFENDANTS MOTION IN LIMINE
TO EXCLUDE THE USE OF THE WORD "VICTIM"

There is no legal basis for excluding the use of the word "victim" at a criminal trial. The Georgia Supreme Court first addressed this issue in 2017, however, the Georgia Court of Appeals addressed this issue as far back as 1992. See *Gober v. State*, 203 Ga. App. 5, 6 (1992), overruled on other grounds by *Dudley v. State*, 273 Ga. 466 (2001). Both Courts have consistently held that it is not an abuse of discretion for the trial court to allow the use of the word "victim" at trial over the objection of the defendant.

In *McCray v. State*, 301 Ga. 241, 247-248 (2017), McCray motioned in limine to preclude the State from referring, at trial, to the man McCray shot as a "victim," since McCray was asserting that he acted in self-defense. While McCray argued that the determination of whether the other man was a victim of a crime was an issue to be determined by the jury, and that the State's repeated use of the term "victim" to describe the other man amounted to an improper commentary on the evidence, it was within the trial court's discretion to allow the State to refer to the man McCray shot as the "victim."

While the defendants may try to claim that they will be harmed by the State's use of the word "victim" at trial, the higher Courts will not find that there was an

abuse of discretion in allowing the State to refer to Ahmaud Arbery as the victim in this case. (The denial of a motion in limine is reviewed on appeal for abuse of discretion and will not be reversed unless the trial court's discretion was abused. *Davis v. State*, 285 Ga. 343, 346 (2009)).

The Georgia Supreme Court has held in *McCray, Rowland v. State*, 306 Ga. 59, 67, (2019) (also a self-defense case) and *Clark v. State*, 300 Ga. 899, 902 (2017) (a case concerned with the use of the word “murder” at trial), that it will not be error to deny the defendant’s motion in limine, since determining whether the deceased was a victim of a crime, or was “murdered,” are issues for the jury and the appropriate jury instructions makes that clear. Thus, as long as the trial court provides the appropriate jury instructions, as to the elements of the crimes, the presumption of innocence, the State's burden of proof, and justification by reason of self-defense, there is no harm to the defendants.

Therefore, the State requests that the Court DENY the defendant’s Motion and allow the use of the word “victim” at trial.

This the 29th day of January, 2021.

/S/ Jesse Evans
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Deputy Chief Assistant District Attorney
District Attorney Pro Tempore
Cobb Judicial Circuit

/S/ Linda J. Dunikoski
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State Bar # 233887
Senior Assistant District Attorney
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served opposing counsel with a true and correct copy of the above 4.4 STATE'S RESPONSE TO DEFENDANTS MOTION IN LIMINE TO EXCLUDE THE USE OF THE WORD "VICTIM" via the Odyssey E-File System to:

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This the 29th day of January, 2021.

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