

Russell M. Adams
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

*

V.

*

Indictment:

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CR 2000433

*

GREG MCMICHAEL

*

TRAVIS MCMICHAEL

*

WILLIAM R. BRYAN

*

4.63 STATE'S MOTION IN LIMINE TO PREVENT ARGUMENTATIVE
QUESTIONING FROM THE DEFENSE-RESTRICTING USE OF THE TERMS
"BURGLARY" OR "CRIMINAL TRESSPASS"

The State anticipates the Defense may attempt to question witnesses regarding their opinion as to whether Mr. Arbery had committed a burglary or criminal trespass on the day of his death and/or on prior occasions.

The State anticipates that questions from counsel or testimony from witnesses may contain the legal terms "Burglary," "Criminal Trespass," and "Citizen's Arrest." These terms are often used (sometimes incorrectly) in everyday parlance, in the media, on television, and in movies. The legal definition of these terms varies among jurisdictions and it is common for people to have a misguided notion of how these crimes are actually defined in the state of Georgia.

Asking witnesses a question that calls for them to opine whether Mr. Arbery was committing a crime would be argumentative and would be inappropriate lay witness opinion.¹ An argumentative question is one that interposes a viewpoint under

¹ If a witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences shall be limited to those which are 1) Rationally based on the perception of the witness, 2) Helpful to a clear understanding of the witness's testimony or the determination of a fact in issue, and 3) not based on scientific, technical, or other specialized knowledge. *O.C.G.A. 24-7-701*.

the guise of asking a question.² Argumentative questions are restricted both federally and under Georgia law.³

By utilizing the term “Burglary” or “Criminal Trespass” while questioning a witness, defense counsel would be inappropriately challenging the witness about a legal term of art and a legal conclusion under the guise of seeking factual testimony.

The testimony regarding the actions that Mr. Arbery took that day must come from the mouth of the witness or other legally admissible evidence, and not the mouth of defense counsel in the form of argumentative or misleading questioning that assume either (1) facts not in evidence or a (2) legal conclusion that is the province of the jury.

In addition, asking questions which call for a witness to inartfully misuse the legal terms “Burglary” or “Criminal Trespass” should not be allowed. Such questioning would be eliciting inadmissible lay opinion testimony as asking a witness whether Mr. Arbery committed a “Burglary” or “Criminal Trespass.” Such lay opinion testimony would not be rationally based on the perception of the witness but on their opinion as to whether the facts as perceived by them fit a legal definition of a crime.

WHEREFORE, the State respectfully requests this Court to prevent argumentative and misleading questioning by the defense as set forth above, and to prevent the defense from misleading the jury as to these specific legal definitions.

² BLACK’S LAW DICTIONARY 114 (8th ed. 2004)

³ *McCann v. State* 200 Ga.App. 256, 258 (1991) (holding that a prosecutor’s repeated questioning a lay witness about the “buddy syndrome” in an aggravated child molestation case improper); *U.S. v Williams* 181 Fed. Appx.805, 806-807 (11th Cir. 2006)

This the 30th day of June, 2021.

/S/ Linda J. Dunikoski

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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 4.63 STATE’S MOTION IN LIMINE TO PREVENT ARGUMENTATIVE QUESTIONING FROM THE DEFENSE-RESTRICTING USE OF THE TERMS “BURGLARY” OR “CRIMINAL TRESSPASS” via the Odyssey E-File System to:

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This the 30th day of June, 2021.

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