

Russell M. Adams
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

*

V.

*

Indictment:

*

CR 2000433

*

GREG MCMICHAEL

*

TRAVIS MCMICHAEL

*

WILLIAM R. BRYAN

*

4.62 STATE'S MOTION IN LIMINE TO PREVENT ARGUMENTATIVE
QUESTIONING FROM THE DEFENSE-RESTRICTING USE OF THE TERM
"CARJACKING OR HIJACKING"

The defense contends that Mr. Arbery attempted to "car-jack" a motor vehicle during his attempt to run away from the Defendants before he was shot and killed by Travis McMichael¹. This assertion is both factually and legally inaccurate.

(1)

"Car-jacking" is more accurately known as "Hijacking a Motor Vehicle" under Georgia law. Hijacking in the First Degree requires possession of a firearm or weapon when obtaining or attempting to obtain a motor vehicle from another person². No weapon or firearm was found on Mr. Arbery. No witness will testify that Mr. Arbery possessed a weapon or firearm at any point the day of his death.

Hijacking in the Second Degree does not require a firearm or weapon³, but there is no evidence that Mr. Arbery obtained, attempted to obtain, or conspired with anyone to obtain any vehicle of another on February 23, 2020, other than the

¹ Defendant William Bryan's Immunity Motion, Page 4

² O.C.G.A. 16-15-44.1(b)(1)

³ O.C.G.A. 16-5-44.1(b)(2) was enacted to address "slider" crimes, where a perpetrator slides into the vehicle, usually at a gas station, and steals the vehicle from the presence of the person pumping gas.

implication from Mr. Bryan's statement to police that Mr. Arbery reached for his door handle, as Mr. Bryan was attempting to strike Mr. Arbery with his pick-up truck. Mr. Bryan never uses the term carjacking in any of his statements.

(2)

By utilizing the term "carjacking" or "hijacking" 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.⁴ The testimony regarding the facts and 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 facts not in evidence, such as the intent of Mr. Arbery or the speculation of Mr. Bryan.

(3)

Further, such questioning would be eliciting inadmissible lay opinion testimony⁵ as asking a witness, such as a law enforcement officer, whether they thought Mr. Arbery was trying to commit a "carjacking" would not be rationally based on the perception of the witness but on their opinion as to whether the facts given to them fit a legal definition of a crime. It would be just as inadmissible to ask Mr. Bryan, should he testify, if he thought he was being carjacked, as those are not his prior statements and it would call for him to make a legal conclusion.

⁴ *McCann v. State*, 200 Ga.App. 256, 258 (1991) (holding that a prosecutor's repeated questioning of 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).

⁵ 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.

WHEREFORE, the State respectfully requests this Court to prevent argumentative and misleading questioning by the defense as set forth above.

This the 30th day of June, 2021.

/S/ Linda J. Dunikoski

Linda J. Dunikoski
State Bar # 233887
Senior Assistant District Attorney
District Attorney Pro Tempore
Cobb Judicial Circuit

/S/ Larissa Ollivierre

Larissa Ollivierre
State Bar # 743602
Senior Assistant District Attorney
District Attorney Pro Tempore
Cobb Judicial Circuit

/S/ Paul Camarillo

Paul Camarillo
State Bar # 215044
Senior Assistant District Attorney
District Attorney Pro Tempore
Cobb Judicial Circuit

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 4.62 STATE'S MOTION IN LIMINE TO PREVENT ARGUMENTATIVE QUESTIONING FROM THE DEFENSE-RESTRICTING USE OF THE TERM "CARJACKING OR HIJACKING" via the Odyssey E-File System to:

Mr. Robert G. Rubin
Mr. Jason Sheffield
Peters Rubin Sheffield & Hodges, PA
2786 North Decatur Road, Suite 245
Decatur, GA 30033
robertrubin@justiceingeorgia.com
jasonsheffieldattorney@gmail.com
(404) 296-5300

Laura and Frank Hogue
Hogue & Hogue LLP
341 Third Street
PO Box 1795
Macon, GA 31202-1795
(478) 750-8040
laura@hogueandhogue.com
frank@hogueandhogue.com

Mr. Kevin Robert Gough
Ms. Jessica Burton
Kevin Gough Firm LLC
PO Box 898
Brunswick, GA 31521
kevingough.firm@gmail.com
jessica@justice.law
(912) 242-5114

This the 30th day of June, 2021.

/S/ Linda J. Dunikoski
Linda J. Dunikoski
Senior Assistant District Attorney
State Bar # 233887
District Attorney Pro Tempore
Cobb Judicial Circuit
70 Haynes Street, Marietta, GA 30090
Tel. (770) 528-3080
Linda.Dunikoski@CobbCounty.org