

Russell M Adams
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

STATE OF GEORGIA :
 :
v. : INDICTMENT NO. CR-2000433
 :
TRAVIS MCMICHAEL, :
 :
GREG MCMICHAEL, :
 :
Defendants. :

4.8
**TRAVIS AND GREG McMICHAELS' MOTION IN LIMINE
TO PROHIBIT IMPROPER COMMENTS BY THE STATE**

The McMichaels ask this Court to prohibit the State from making improper comments during remaining pretrial hearings and the trial of this case. These comments include:

1. That this case is not a death penalty case; and
2. Attributing to the defense or the defense attorneys ulterior motives when interposing objections or when seeking to admit evidence.

Defense counsel recalls the State informing the jury of Noted Item 1 in other cases in Cobb County. It is an improper comment on punishment. *See* Council of Superior Court Judges Jury Pattern Instruction 1.70.20 (stating "You are only concerned with the guilt or innocence of the

defendant. You are not to concern yourselves with punishment. *Citing Wilson v. State*, 233 Ga. 479 (1975)). For this reason, the state should be prohibited from giving this admonition to the jury in voir dire or during the trial.

Regarding Noted Item 2, above, in several hearings before this Court, the state has repeatedly interposed objections or responded to defense motions by impugning the motives of the defense or defense attorneys, suggesting that they are not playing by the rules but, instead, have some sinister ulterior motive. Examples of this are comments such as, "Defense counsel is just seeking to smear the character of the victim;" "Defense counsel is just trying to back door inadmissible evidence." By objecting in this way, the state makes a personal attack on the integrity of the defense or the lawyers and sets in the mind of the jurors that the defense is trying to circumvent the rules in a nefarious, unethical, or unlawful way.

Zealous representation of one's client should never be maligned in such a way; especially before a jury. The state has a job to do. The defense has a job to do. Both are honorable and worthy of respect.

Jurors are told not to infer anything from an objection or the Court's ruling in the Preliminary Jury Instructions:

As expected, the lawyers serve as advocates for their clients and are duty-bound to represent their clients to the best of their ability. The lawyers also serve as officers of this court, and as such are bound to follow applicable laws, trial procedure, and rules of evidence during the trial. If at any time the lawyers believe that any law, procedure, or rule of evidence is being violated, they may make motions regarding the conduct of the trial or objections to the admission of evidence. In making these motions or objections, the lawyers are simply seeking to fulfill their duties to their clients and to the court. Sometimes, these motions or objections may require the court to consider outside your presence the questions raised, and you will be excused to the jury room. We will try to minimize the number and length of these interruptions and ask for your patience in this regard.

We ask that the state not be allowed to suggest that the defense attorneys have ulterior motives when objecting to or moving to admit evidence but to simply object on evidentiary grounds – for example: “Objection, Your Honor. 801. That’s hearsay.” And the proponent of the testimony will respond, accordingly, with – for example – “Your Honor, that is admissible as an exception to the hearsay rule, pursuant to 803(2), as an excited utterance.” And then this Court can rule.

Proceeding in this fashion will help assure that the Defendants are receiving a fair trial, consistent with the constitutional and statutory requirements of the United States and the State of Georgia.

This 14th day of July, 2021.

s/Franklin J. Hogue
FRANKLIN J. HOGUE
Attorney for Defendant
State Bar Number 360030
Hogue Fitzgerald & Griffin
341 Third Street
P.O. Box 1795
Macon, GA 31202-1795
478-750-8040
frank@hogueandhogue.com

s/Laura D. Hogue
LAURA D. HOGUE
Attorney for Defendant
State Bar Number 786090
Hogue Hogue Fitzgerald & Griffin
341 Third Street
P.O. Box 1795
Macon, GA 31202-1795
478-750-8040
laura@hogueandhogue.com

s/Robert G. Rubin
ROBERT G. RUBIN
Attorney for Defendant
State Bar Number 618635
Peters, Rubin, Sheffield & Hodges
2786 North Decatur Road
Suite 245
Decatur, GA 30033
404-296-5300
robertrubin@justiceingeorgia.com

s/Jason B. Sheffield
JASON B. SHEFFIELD
Attorney for Defendant
State Bar Number 639719
Peters, Rubin, Sheffield & Hodges
2786 North Decatur Road
Suite 245
Decatur, GA 30033
404-296-5300
jasonsheffieldattorney@gmail.com

Certificate of Service

I hereby certify by my signature that I have served a copy of **4.8 Travis and Greg McMichaels' Motion in Limine to Prohibit Improper Comments by the State** on the Office of the District Attorney for the Cobb Judicial Circuit by delivering it to District Attorney Flynn D. Broady, Jr., by emailing it to:

Linda Dunikoski
Cobb County District Attorney's Office
70 Haynes Street
Marietta, GA 30090
Linda.dunikoski@cobbcounty.org

Courtesy copy:

Kevin Gough
Attorney for William R. Bryan
501 Gloucester Street, Suite 121
P.O. Box 898
Brunswick, GA 31521
Kevingough.firm@gmail.com

July 14, 2021.

s/Robert G. Rubin
ROBERT G. RUBIN