

[CAPTION]

MOTION IN LIMINE TO PRECLUDE IMPROPER REFERENCE TO THE COMPLAINING WITNESS AS THE "VICTIM"

The Defendant, by counsel, respectfully requests this Court for an order prohibiting improper reference to the complaining witness in this case as the "victim." In support of this motion, Defendant states the following:

1. Use of the term "victim" improperly assumes the ultimate issue to be tried in this case, whether the complaining witness was the victim of the offense(s) alleged to have been committed by the Defendant. Jackson v. State, 600 A.2d 21 (Del. 1991) (word "victim" should not be used in case where commission of crime is in dispute).

2. Further, use of the term "victim" to refer to the complaining witness necessarily implies that Defendant is guilty of the offense(s) charged.

3. While Defendant concedes that the State may refer to the complaining witness as the "victim" during opening and closing argument to the jury, they may not do so during evidentiary portions of the trial. It is black-letter law that "[q]uestions assuming the very facts in issue or which are controverted are improper." 98 C.J.S., Witnesses, Sec. 341(b) at 53; accord E.W. Cleary, McCormick on Evidence, Sec. 7 at 14 (3d ed. 1984).

4. It would be equally improper for the Court to refer to the complaining witness as the "victim" during the conduct of these proceedings:

Essential to the concept of a fair trial is the requirement of complete neutrality on the part of the presiding judge and in criminal trials [the judge] should exercise the greatest care to avoid prejudicing the cause of the state or of the accused by his language or his conduct.

J.R. Kemper, Annotation, Prejudicial Effect of Trial Judge's Remarks. During Criminal Trial. Disparaging Accused, 34 A.L.R.3d 1313, 1319 (1970). "It is therefore essential that the judge refrain from any actions indicating any position other than strict impartiality." Abernathy v.

State, 524 N.E.2d 12, 13 (Ind. 1988) (quoting Kennedy v. State, 280 N.E.2d 611, 620-21 (Ind. 1972)). Given that describing the complaining witness as the "victim" would impermissibly adopt the State's position, the Court is required to refrain from using the term.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to prohibit any reference to the complaining witness as the "victim" during the course of these proceedings, except as otherwise permitted during the State's arguments to the jury.

(Signature)