

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
SARASOTA COUNTY, STATE OF FLORIDA

STATE OF FLORIDA

V.

Case No. 2007 CF 3399

DANA GUARSCIO

STATE'S MOTION IN LIMINE

The State of Florida, by and through the undersigned Assistant State Attorney, files this Motion in Limine and requests this Court to prohibit any argument, testimony, or evidence regarding the following issues:

1. The potential penalty or sentence that may result in this case; or any reference to terms such as "liberty" or "freedom"; as these issues have no relevance to any material issue in the proceeding. Any references to these issues may influence a jury to improperly consider evidence in which they are specifically instructed not to consider and possibly return a verdict based wholly or partly on feelings of sympathy for the Defendant. Florida Standard Jury Instructions, Section 2.05 (5), Rules for Deliberation, (2003).

2. That the State has failed to call certain witnesses to trial unless and until the Defense makes a showing that the witnesses were not equally available to the Defense. State v. Michaels, 454 So.2d 560 (Fla. 1984); Haliburton v. State, 561 So.2d 248 (Fla. 1990).

3. There shall be no reference in this trial to the jury's inherent power to pardon the accused in a criminal case. See State v. Harding, 454 So.2d 560. In this case the defendant allegedly took money from the victim, who was her grandmother. The defense should not be permitted to make any references or suggestions that the crime the defendant is accused of committing should not be taken seriously or that it is a family matter that should not be prosecuted. Because jury nullification arguments "have no place in a trial", attorneys are prohibited from asking jurors to disregard the law. See id at 1231.

The prejudicial effect of such arguments or inferences is contrary to the rules of laws governing the courts of the State of Florida and is substantially outweighed by its probative value. An ordinary objection during the course of trial, even if sustained with proper instructions to the jury, will not remove the prejudicial effect from the jury.

WHEREFORE, the State requests that this court grant this Motion in Limine and exclude as evidence the testimony described above.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by email to, Larry Montekio, Attorney for the Defendant, this 10RD day of June, 2008.

EARL MORELAND
STATE ATTORNEY


JESSICA FAIRWEATHER

Assistant State Attorney

Bar No. 0015872

2071 Ringling Blvd. Suite 400
Sarasota, FL 34237