

DISTRICT COURT EAGLE COUNTY, COLORADO 885 E. Chambers Road P.O. Box 597 Eagle, Colorado 81631	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiff: PEOPLE OF THE STATE OF COLORADO. Defendant: KOBE BEAN BRYANT.	
	Case Number: 03 CR 204 Div.: R
<p style="text-align: center;">ORDER RE MR. BRYANT’S MOTION TO PRECLUDE REFERENCES TO THE ACCUSER AS THE “VICTIM”</p>	

THIS MATTER comes before the Court on Mr. Bryant’s Motion to Preclude References to the Accuser as the “Victim.” The Court has reviewed the motion, the responses of the People, alleged victim and *Amici Curiae*¹, and Defendant’s reply. Argument was heard on May 11, 2004.

The issue presented in Defendant’s motion is the proper designation to reference the alleged victim, Defendant and the witnesses with the emphasis being on the trial rather than pretrial proceedings. The issue is not, as advocated by the victim organizations, whether the alleged victim acquires a certain legal status as a victim for all purposes in the criminal justice system or whether the alleged victim is entitled to certain statutory rights. The *Amici* brief fails to acknowledge the Court’s prior Order² of April 28, 2004 in which the Court rejected Defendant’s blanket contention that the alleged victim was not entitled to assert statutory victim’s rights based on the specific definition of victim in C.R.S. § 24-4.1-302(5). The Court has, throughout these proceedings, consistently addressed the alleged victim’s assertion of her statutory rights and afforded her those rights as warranted. Although the *Amici* brief far exceeds the scope of Defendant’s motion, the Court will consider the argument to the extent that it is relevant to the specific issues raised in the motion.

¹ The *Amici Curiae* brief was filed by the National Crime Victim Law Institute, the Colorado Coalition Against Domestic Violence, the Colorado Coalition Against Sexual Assault and the Colorado Organization for Victim Assistance.

² Order Re People’s Motion for *In Camera* Proceedings for the Protection of Victim’s Rights Re: People’s Motion *In Limine*: Medical and Mental Health History of the Victim (People’s #12) and Motion for *In Camera* Proceedings for the Protection of Victim’s Rights Re: People’s Motion *In Limine* Re: Any Evidence of Drug or Alcohol Use (People’s #13).

This semantic debate centers on Defendant's assertion that the use of "victim" improperly negates the presumption of innocence. Defendant cites numerous cases which generally hold that during a trial by jury reference to a complaining witness in a sexual assault matter as a "victim" is erroneous where the defense is based on consent and the credibility of the complaining witness is in issue. Under such circumstances, it remains in dispute whether a crime has actually been committed and therefore the use of the term "victim" creates a bias in that it assumes the commission of a crime prior to any such determination by a jury and is accordingly inconsistent with the presumption of innocence. *See Jackson v. State*, 600 A.2d 21 (Del. 1991); *Allen v. State*, 644 A.2d 982 (Del. 1994); *Veteto v. State*, 8 S.W.3d 805 (Tex. Ct. App. 2000); *Mason v. State*, 692 A.2d 413 (Del. 1996); *Talkington v. State*, 682 S.W.2d 674 (Tex. Ct. App. 1985); *State v. Wright*, No. 02CA008179, 2003 WL 21509033 (Ohio Ct. App. 2003). Although these cases are from other jurisdictions and are not binding precedent, the Court finds the reasoning in these cases to be sound. None of the opponents have been able to effectively rebut the legal principles established in these cases. The People's citation to *Dunton v. People*, 898 P.2d 571 (Colo. 1995) is misplaced in that the Colorado Supreme Court's reference to victim in that case was made after conviction at which point it was logical to do so. The citation to *Bellamy v. State*, 594 So.2d 337 (Fla. Dist. Ct. App. 1992) in the *Amici* brief is also misplaced in that it concerned the application of a victim's rights statute and the presence of the alleged victim in the courtroom. In declining to find a constitutional violation, the court noted that "[t]he jury was not made aware that his accuser was declared a 'victim' and could remain in the courtroom" which implies a violation had the jury been so informed. *Bellamy*, 594 So.2d at 338.

The current opponents' reliance on the definition of "victim" in C.R.S. § 18-3-401(7) which includes as a "victim" the "person alleging to have been subjected to a criminal sexual assault" is equally unpersuasive. There are additional definitions of "victim" within the Colorado Revised Statutes. *See also* C.R.S. § 18-8-702(1) (victim protection); C.R.S. § 24-4.1-102(10) (crime victim compensation) and C.R.S. § 24-4.1-302(5) (victim's rights). The definitions vary depending on the context and each is limited in application to the particular statutory scheme in which it is found. None of these definitions establish a legal right to be referred to as a "victim" during trial nor is the specific statutory definition of C.R.S. § 18-3-401(7) generally known or expected to be known. The common understanding of the term "victim" certainly implies that a person has been the subject of a particular wrong or crime and its use under these circumstances could improperly suggest that a crime had been committed such that the presumption of innocence might be jeopardized.

The Court therefore concludes that use of the term "victim" at trial would be inappropriate under the alleged facts and defenses in this case. Finally, the Court rejects the suggestion by the opponents that a refusal to permit reference to "victim" at trial in any way jeopardizes any statutory victim's rights or victim compensation rights. Such rights have been and will continue to be evaluated based on the language and legal precedent pertinent to those particular statutes.

Defendant has set forth four specific requests in his motion as follows.

1. “That between now and the end of trial, when the Court is not referring to the accuser in this case by her proper name, the Court refer to her as the ‘complaining witness.’” In response, the People and the alleged victim request that the Court refer to the alleged victim as “victim.” Defendant clarified in reply that “[i]t is the defense’s view that the prosecution and the accuser’s attorney are entitled to continue to refer to the accuser as the ‘victim’ at any time before jury selection commences.” All requests are denied. The Court will continue in its use of “alleged victim.”

2. “That at trial, the Court order that all prosecuting attorneys and prosecution witnesses are precluded from referring to the accuser as the ‘victim.’” In response, the People request that all defense attorneys, witnesses and Defendant refer to the alleged victim as “victim” or by her proper name. Defendant’s request is granted. The alleged victim shall not be referred to as “victim” at trial by the People or the witnesses. The People shall so advise the witnesses.

3. “That at trial, the Court, the parties, and all witnesses refer to all persons-including both Mr. Bryant and his accuser – by their individual names.” In response, the People request that witnesses be referred to by name and that Defendant may also be referred to as such. Defendant’s request is granted in part and the People’s request is granted. At trial, the alleged victim and all other persons shall be referred to by name, except that Defendant may also be referred to as such, since it is an accurate reflection of his legal status. Witnesses shall be so advised by the People and counsel.

4. “That no jury instructions or special interrogatories issued in this case refer to the accuser as the victim, and instead, that they conform to the style of the pattern instructions promulgated by the Colorado Supreme Court, which refer to a ‘person.’” In response, the People request that all jury instructions or special interrogatories “refer to the victim as such, where appropriate.” Defendant’s request is granted. The jury instructions or special interrogatories shall refer to the alleged victim as “person” in accordance with the Colorado Supreme Court pattern instructions.

DATED THIS 28TH DAY OF MAY, 2004.

BY THE COURT


W. Terry Ruckriegle
Chief District Court Judge

CERTIFICATE OF MAILING

I hereby certify that I have, on this 28th day of May, 2004, mailed and/or faxed a true and correct copy of the foregoing ORDER by U.S. Mail, postage prepaid, to the following:

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