

HEATHER SMITH
CIRKANSAS

IN THE CIRCUIT COURT OF CLEBURNE COUNTY, ARKANSAS
CRIMINAL DIVISION

2019 JUL 11 AM 10:42

STATE OF ARKANSAS

PLAINTIFF
CLEBURNE COUNTY
HEBER SPRINGS, ARKANSAS

VS.

CASE NO.: CR-18-263

RODERICK WATKINS

DEFENDANT

**DEFENDANT'S REQUEST FOR DICLOSURE OF CRIMINAL HISTORY OF
POTENTIAL JURORS AND WITNESSES**

COMES NOW, Defendant, Roderick Watkins, by and through counsel, Matthew McKay, McKay Law Firm PLLC, hereby requests that any record of criminal history obtained by the State of any potential juror or witnesses be produced to Defendant.

WHEREFORE, Defendant requests that this Court direct the State to disclose prior to trial the criminal history of potential jurors and witnesses.

Respectfully Submitted,

RODERICK WATKINS

By: Matthew McKay
Matthew McKay (No.: 2007146)
McKay Law Firm, PLLC
201 E. Markham St., Suite 70
Little Rock, AR 72201
P: (501) 916-2612
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CERTIFICATE OF SERVICE

I, Matthew McKay, hereby certify that a true and correct copy of the foregoing has been served on this 9th July 2018 upon the following:

Prosecuting Attorney- Drew Smith via fax 501-362-1817

Matthew McKay
Matthew McKay

IN THE CIRCUIT COURT OF CLEBURNE COUNTY, ARKANSAS
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HEATHER SMITH
CIRCUIT CLERK

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DEFENDANT

MOTION FOR WITNESS LIST

COMES NOW Defendant, Matthew McKay, by and through his attorney, Matthew McKay, McKay Law Firm, PLLC, in the above entitled action and prays the Court order and direct the State to produce a specific and particularized list of its potential witnesses for the instant prosecution. The fact or presence of an open file policy does not obviate this requirement of Rule 17.1 of the Rules of Criminal Procedure and the case law developed there under. The defendant cannot be left to conclude that any and every person referenced in any "open file" is in fact a witness. To do so would require a needless waste of time and efforts on persons and things that may not even be considered or presented in this matter. See Also Birchett v. State, 289 Ark. 16, 708 S. W. 2d 625 (1986) and Lewis v. State, 286 Ark. 372, S. W. 2d 864 (1985).

Respectfully Submitted,

RODERICK WATKINS

By: *Matthew McKay*
/s/Matthew McKay
Matthew McKay (No.: 2007146)
McKay Law Firm, PLLC
201 E. Markham St., Ste. P70
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(501) 916-2612
ccashion@mckaylawfirmar.com

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I, Matthew McKay, hereby certify that a true and correct copy of the foregoing has been served on this 9th day of July, 2019 upon the following:

Prosecuting Attorney
Drew Smith
Via fax 501-362-1817

Matthew McKay
/s/Matthew McKay
Matthew McKay

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RODERICK WATKINS

DEFENDANT

MOTION IN LIMINE TO PREVENT USE OF "VICTIM"

Comes now the above-named Defendant, by and through his attorney, Matthew McKay, McKay Law Firm, PLLC, and moves the Court for his Motion in Limine, and states the following:

1. That this Court has jurisdiction of the parties and the subject matter contained herein.
2. That Defendant has been charged with 4 counts of sexual assault.
3. That Defendant has reason to believe, and anticipates, that the Prosecutor and/or the State's witnesses may refer to the accusers as "victim" during trial, and Defendant hereby objects and moves this Court to prevent any and all such references or labels.
4. That two common definitions of "victim" under Arkansas law occur in the Criminal Restitution Statue, A.C.A. Sec. 5-4-205(c)(1), and also in the Arkansas Crime Victim Reparations Act, A.C.A. Sec. 16-90-703(11)(A), excerpted below in relevant part:
 - (a) "...any person...**that suffers** property damage or loss, monetary expense, or **physical injury** or death as a **direct or indirect result of the defendant's offense** or criminal episode." (emphasis added). A.C.A. Sec. 5-4-205(c)(1).
 - (b) "... a person **who suffers personal injury** or death as a **result of criminally injurious conduct...**" (emphasis added). A.C.A. Sec. 16-90-703(11)(A).

5. That the question before the jury in this case is whether or not a crime was committed at all, and, as such, there is no objective basis, unless and until such decision has been rendered, to accord the accusers the label “victim” in front of the jury.
6. That Defendant is entitled to enjoy, under both State and Federal law, the presumption of innocence, and he bears no burden of proof in this matter, the State being instead required to prove each and every element of each charge beyond a reasonable doubt, before such presumption will cease to abide.
7. That use of the term “victim” in front of the jury would unfairly and improperly dilute the State’s burden of proof in this case.
8. That the Court generally instructs the jury at the outset of a criminal case that the filing of a Criminal Information in and of itself is neither evidence nor proof of wrongdoing on the part of the Defendant, but is merely the means by which a Defendant is brought to trial in Arkansas. (AMCI 2d 108: “The filing of an information is merely the means by which a person is brought to trial. It is not evidence and is not to be considered by you in determining the guilt or innocence of [the Defendant].”)
9. That allowing the State, or its witnesses, to refer to the accusers as “victim” would improperly indicate to the jury that the Prosecution has already shown, simply by filing the Criminal Information, that a crime has been committed in this case and that this Defendant committed it, which is clearly not the law.
10. That the jury would be likely to take the label of “victim” as a proven fact when it is truly the fact upon which they themselves are to decide, and for this Court to permit such a label, thereby implicitly shifting the burden to the Defendant to prove that

accusers are not “victims” would send a confirming signal to the jury, thus compounding the unfair prejudice against him in this case.

11. That permitting the Prosecutor to refer to the accusers as “victim” in front of the jury would also amount to improper personal vouching for both her credibility and the justness of the State’s case, such personal opinions on an issue offered as a factor for the jury to consider in its deliberations being a clear violation of Defendant’s State and Federal Due Process rights. Fifth and Fourteenth Amendments to the United States Constitution; Article 1, Section 8 of the Arkansas Constitution; *Brady v. Maryland*, 373 U.S. 83 (1963).
 - a. “... improper suggestions, insinuations, and, especially assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none.” *Berger v. United States*, 295 U.S. 78, 88 (1935).
 - b. “The prosecutor’s vouching for the credibility of witnesses and expressing his personal opinion concerning the guilt of the accused pose(s) two dangers: such comments can convey the impression that evidence not presented to the jury, but known to the prosecutor, supports the charges against the defendant and can thus jeopardize the defendant’s right to be tried solely on the basis of the evidence presented to the jury; and the prosecutor’s opinion carries with it the imprimatur of the Government and may induce the jury to trust the Government’s judgment rather than its own view of the evidence.” *United States v. Young*, 470 U.S. 1, 1-19 (1985).
12. That continuous reference to accusers as the “victim” during trial would improperly signal to the jury that the Prosecutor (and/or State witnesses) holds a personal belief

in the creditability of his/her claims, such opinions by law enforcement authorities and prosecutors often carrying great weight with jurors, when credibility itself is the pivotal issue in this case.

WHEREFORE, the Defendant, Rodrick Watkins, respectfully asks this Court to grant his Motion in Limine in the above-referenced matter and to prohibit the State, or any of its agents or witnesses, through exhibits or statements, from referring to any accuser as a “victim” during the course of the trial in front of the jury in this case.

Respectfully Submitted,

RODERICK WATKINS

By: *Matthew McKay*
/s/Matthew McKay
Matthew McKay (No.: 2007146)
McKay Law Firm, PLLC
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Drew Smith
Via fax 501-362-1817

Matthew McKay
/s/Matthew McKay
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DEFENDANT

DEFENDANT'S REQUEST FOR DISCOVERY OF RULE 404(b) EVIDENCE
(Request for Prior Bad Acts)

COMES NOW, Defendant, Roderick Watkins, by and through counsel, Matthew McKay, McKay Law Firm PLLC, and for the Defendant's Request for Discovery of Rule 404(b) Evidence hereby requests:

1. That all evidence the Prosecution anticipates will be used against Defendant pertaining to character and to that of other crimes, wrongful conduct, or acts, including, but not limited to, evidence allowed under Rule 404(b) of Arkansas Rules of Evidence, be produced pursuant to Rule 17.1 of the Arkansas Rules of Criminal Procedure.

WHEREFORE, Defendant requests that this Court direct the State to provide to trial a list of evidence of other crimes, wrongs, or acts which the State intends to offer under 404(b) of the Arkansas Rules of Evidence, so that the Court may determine the admissibility of such proffered prior to trial.

Respectfully Submitted,



RODERICK WATKINS

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/s/Matthew McKay
Matthew McKay (No. 2007146)
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