

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT
INDICTMENT NUMBER: 2016-GS-08-02603
WARRANT NUMBER: 2016A0810400692

STATE OF SOUTH CAROLINA,)
)
Plaintiff,)
)
-versus-)
)
MICHAEL COLUCCI,)
)
Defendant.)
_____)

**MOTION IN LIMINE TO PROHIBIT
VICTIM IMPACT EVIDENCE**

INTRODUCTION

Michael Colucci moves this Court to prohibit the State from introducing victim impact evidence. Such testimony is void of relevance to the charged crime, unduly inflammatory and would render the trial fundamentally unfair in violation of Mr. Colucci's right to due process under the U.S. Const. amend. XIV and S.C. Const. art. I, § 3.

ANALYSIS

Victim impact evidence or evidence that tends to show an emotional impact upon a family member or friend is not admissible. Such evidence should be excluded pursuant to Rule 401, SCRE as not relevant. The thoughts and feelings of a witness do not make the existence of any fact of consequence to the case more or less probable. *State v. Saltz*, 346 S.C. 114, 551 S.E.2d 240 (2001).

On the contrary, evidence of this nature serves only "to arouse the sympathy or prejudice of the jury." *State v. Langley*, 334 S.C. 643, 647, 515 S.E.2d 98, 100¹ (1999) (photograph excluded if calculated to arouse sympathy or prejudice of jury or is irrelevant or unnecessary to substantiate facts).

Furthermore, Rule 403, SCRE states that even relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." The Court must strictly limit testimony to matters descriptive of facts in issue. The Court must guard against testimony that is of little to no probative value. The introduction of emotionally charged, victim impact testimony veiled as substantive evidence would only serve to inflame the jury and expose Mr. Colucci to unfair prejudice.

CONCLUSION

Given the nature of the charge, the State may attempt to offer the emotional testimony of family members or friends of the deceased in an attempt to improperly affect the jury. The law requires strict control of emotional expressions that equal "victim impact" evidence in violation of Mr. Colucci's constitutional rights to a fair and impartial trial. The court must guard against emotional testimony that has the effect of garnering sympathy from jurors. The Court must not allow the admission of evidence, by words or demeanor, that appeal to juror sympathy.

Mr. Colucci requests this Court issue an *in limine* order that limits the testimony of witnesses for the State to facts relevant to the indictment and which prohibits the introduction of victim impact evidence.

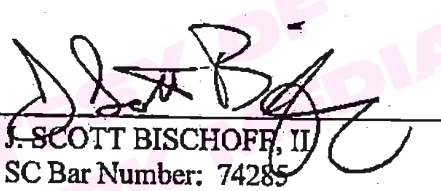
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