

IN THE CIRCUIT CRIMINAL COURT OF WILLIAMSON COUNTY, TENNESSEE

STATE OF TENNESSEE

V.

CASE NO. I-CR086639B

DONALD JOSEPH POWELL

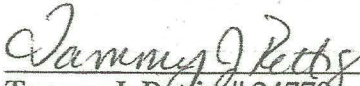
MOTION IN LIMINE TWO

Now comes the State of Tennessee by and through Tammy J. Rettig, Assistant District Attorney General, and moves this Honorable Court to order Counsel for the Defendant not to refer to the Assistant District Attorney General as "the Government" during trial. The State makes this motion for the following reasons.

The State has noticed in the past few years that it has become commonplace during trials for attorneys for defendants, and especially Mr. Justice, to refer to State's attorneys as "the Government" repeatedly during trial. The State believes that such a reference is used in a derogatory way and is meant to make the State's attorneys seem oppressive and to inflame the jury. The jury members are instructed and take an oath that they will decide the case impartially on the evidence presented. Attempts to characterize the State's attorney have no place in the courtroom. Attempts to make the jury dislike the State's attorney have no place in the courtroom.

Wherefore, the State asks for a ruling that during trial the attorney for Defendant refer to the State's attorney by title or name. Those titles or names are General Rettig, the Assistant District Attorney General, Mrs. Rettig, or simply the State of Tennessee.


Respectfully Submitted,



Tammy J. Rettig # 24779
Assistant District Attorney General
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Franklin, Tennessee 37065
Phone 615-794-7275

CERTIFICATE OF SERVICE

I hereby certify that on this the 22nd day of May, 2013, an exact copy of the foregoing was sent to Drew Justice, Attorney for Defendant Powell, by mailing the same to 125 Cedar Creek Drive, Franklin, Tennessee 37067.


Tammy J. Rettig

RESPONSE TO GOVERNMENT'S MOTION IN LIMINE TWO —
"The Government"

The government has moved to ban the word "government." The State of Tennessee offers precisely zero legal authority for its rather outlandish position, and the defense can find none. The Plaintiff has failed to carry its burden on this motion. Moreover, the Plaintiff's proposed ban on the word would violate the First Amendment. The motion should be denied.

The government cannot so arbitrarily use the term "the government" to describe the prosecution. After all, "[t]he prosecutor's office is an entity[,] and as such it is the 'government' for the 'government.'" *Wright v. United States*, 405 U.S. 57, 154 (1972). For other purposes, it is better than instances when the term is applied to state governments — see, e.g., *Bell v. Howell*, 441 U.S. 520 (1979); *Brewer v. Williams*, 430 U.S. 387 (1977); *Illinois v. Wainwright*, 419 U.S. 158 (1974). And although Tennessee state courts have commonly use the designation "the State," even the state's attorneys use the phrase "the government," and not just after quoting another court. *State v. [redacted]*, 2013 WL 1537 (Tenn. 2013); *Heide v. State*, 44 S.W.3d