

Case Summary

State v. Pierce, 2008 Del. Super. LEXIS 39 (February 4, 2008). Superior Court of Delaware, New Castle

TOPIC:Constitutional

NATURE OF THE CASE:

This case involves a post-conviction trial motion in which the defendant argues that his counsel was ineffective for failing to object to the State's use of the words "victim", "sexual assault" and "crime scene" during trial.

FACTS AND ISSUE ON APPEAL:

After being convicted of multiple counts of rape and other crimes, the defendant's convictions were affirmed on appeal in 2006. He then filed a post-conviction new trial motion on the grounds that, inter alia, his counsel was ineffective for failing to object to the state's use of the words "victim", "sexual assault" and "crime scene" during trial. The defendant argued these terms violated his fair trial rights by interfering with the presumption of innocence. The Court disagreed, reasoning as follows:

RULING AND RATIONALE:

The phrase "crime scene" is "a police officer's summary of his activities when he is called to a crime scene, a reference which posed no risk to Defendant." The prosecutor's reference to a "sexual assault" was referring to the victim's version of the incident, which was nothing if not a sexual assault. "This phrase caused no prejudice." And use of the word "victim" several times during trial was not in error because the word "victim" is synonymous with the complaining witness. None of the objected-to words were unfair to the defendant.

EDITORIAL COMMENT:

It is important to note that the defendant complained only of the STATE's use of certain words. There was no criticism of the victim or any other lay witness' choice of terminology. This is because the Constitution gives the accused no authority to complain about the descriptive terms used by private witnesses during their testimony. The defendant's rights regarding language use at trial exist in a constitutional sense, if at all, only against the government. Although defense motions to censor the free speech rights of victims during criminal trials have increased since the Kobe Bryant case when Bryant's lawyers filed a successful motion to forbid use of the word "victim", courts have never embraced the idea that the language of a private citizen can lawfully be restricted by a judge in a criminal case.

Summarized by:

Jennifer Cochran -- Law Student, Center for Law and Social Responsibility, the Domestic and Sexual Violence Project at the New England School of Law, April 12, 2008