

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA

VS.

CASE NO.: 2012-001083-CFA  
SA NO: 1712F04573

GEORGE ZIMMERMAN  
\_\_\_\_\_ /

**STATE'S MOTION IN LIMINE REGARDING CALLING OF WITNESSES**

The State of Florida, by and through the undersigned Assistant State Attorney, hereby moves this Honorable Court for an Order governing forthcoming trial proceedings in the instant case. In support of the instant Motion, the State submits the following:

(1) This case has been set for trial. Defendant may attempt to introduce evidence, testimony, questioning, argument, or otherwise reference or imply that the State has failed to call a witness because the testimony of such witness would be unfavorable to the State.

(2) The prejudicial effect of such argument or inference outweighs its probative value.

(3) It is contrary to the rules and laws governing the courts of the State of Florida to permit such evidence or inference therefrom and would be highly prejudicial to the State in the minds of the jury in that unless it is determined that any such witness is peculiarly available to the State and has direct, relevant and material evidence to give, such arguments would seriously mislead the jury. Terry v. State, 668 So.2d 954 (Fla.

1996); Haliburton v. State, 561 So.2d 248 (Fla. 1990); State v. Michaels, 454 So.2d 560 (Fla. 1984); Lasprilla v. State, 857 So.2d 1011 (Fla. 3d DCA 2003).

(4) The rationale contained in the aforementioned authorities extends to instances where the witness in question is a law enforcement officer or police informant. Although Defendant would be permitted to comment on the State's failure to call a particular witness if Defendant were to call the witness himself, where *neither* party calls the witness, *neither* party is permitted to comment on the witness's nonappearance--even where the witness in question is the lead detective in the case. Bauta v. State, 698 So.2d 860, 863-864 (Fla. 3d DCA 1997); Terry v. State, 668 So.2d 954,963-964 (Fla. 1996).

(5) An ordinary objection during the course of trial, even if sustained with proper instructions to the jury, will not remove such a prejudicial effect.

(6) In the alternative, the State would request the Court to instruct the jury, and permit the State to argue, that the defense has the same power to subpoena witnesses as does the State. Williamson v. State, 459 So.2d 1125 (Fla. 3d DCA 1984); Romero v. State, 435 So.2d 318 (Fla. 4th DCA 1983); Brown v. State, 420 So.2d 916 (Fla. 1st DCA 1982).

WHEREFORE, the state requests this Honorable Court prohibit mention by counsel or Defendant in any form of the above-referenced matters, or issue an appropriate instruction.

**CERTIFICATE OF SERVICE**

I HERBY CERTIFY that a copy of the foregoing has been furnished by email to Mark O'Mara, Esq., Don West, Esq., this 10<sup>th</sup> day of May, 2013.

ANGELA B. COREY  
STATE ATTORNEY

By: 

Bernardo de la Rionda  
Bar Number: 365841  
Assistant State Attorney