

[CAPTION]

**OBJECTION TO POSSIBLE STATE'S INSTRUCTION UNFAIRLY FOCUSING ON ONE
PIECE OF EVIDENCE**

The Defendant, by counsel, respectfully moves the Court as follows:

1. The Defendant has reason to anticipate that the State may tender a final instruction to the Court which says something similar to:

"A defendant may be convicted of child molesting on the uncorroborated testimony of the victim if the jury finds that said testimony establishes the guilt of the defendant beyond a reasonable doubt."

2. The Indiana Supreme Court, in Ludy v. State, 784 N.E.2d 459 (Ind. 2003), has held that the instruction is erroneous for on the following reasons:
 - a. it unfairly focuses jury's attention on and highlights a single witness's testimony;
 - b. it presents a concept used in appellate review that is irrelevant to a jury's function as fact-finder, and invites a jury to violate its obligation to consider all evidence; and
 - c. by using the technical term "uncorroborated," the instruction may mislead or confuse the jury.



3. The Defendant objects to the instruction on the reasoning set forth above.


WHEREFORE, the Defendant, by counsel, respectfully requests this Court to sustain the Defendant's objection, to refuse to instruct the jury on the submitted instruction, and for all other relief just and proper in the premises.


(Signature)

CASE LAW

The following are similar instructions subject to the same type of motion:

Newbill v. State, [884 N.E.2d 383](#)  (Ind.Ct.App. 2008) (discouraging the use of the jury instruction based on Tobias v. State, [666 N.E.2d 68, 72](#)  (Ind. 1996), that focuses on rape victim's perspective on forced intercourse; rather, a jury should be instructed that evidence of force should be viewed from either the objective or reasonable perspective of the victim).

Marks v. State, [864 N.E.2d 408](#)  (Ind.Ct.App. 2007) (harmless error to instruct the jury, over D's objection, as to seven evidentiary facts that can establish impairment; this instruction unnecessarily emphasizes certain evidence and invites the jury to violate its obligation to consider all the evidence).

Hamm v. State, [826 N.E.2d 640](#)  (Ind. 2005) (harmless error to instruct jury that Defendant's refusal to submit to a chemical test may be considered as evidence of intoxication; the instruction unnecessarily emphasize one particular evidentiary fact).