[CAPTION]

MOTION TO SUPPRESS STATEMENTS (*MIRANDA* VIOLATIONS)

The Defendant, by counsel, respectfully requests this Court to suppress as evidence in this cause any and all oral and written communications, confessions, statements, admissions or tests, alleged to have been made by the Defendant prior to, at the time of, or subsequent to his/her arrest in this cause. In support of this Motion, the Defendant states the following:

1. On [insert date], the Defendant was charged with [insert offense(s)].

2. The State alleges that, on [insert date], the Defendant made certain oral statements at the time of, or after, his/her arrest for the charged offense(s).

3. These statements must be suppressed for the following reasons:

[select appropriate paragraphs]

a. The statements were obtained as a result of a custodial interrogation of the Defendant. The interrogation of Defendant by law enforcement officials or a person or persons acting on their behalf occurred [insert location, time and length of interrogation, if these factors are important].

b. These statements were obtained in violation of the Fifth Amendment of the U.S. Constitution and the Article I, Section 14 of the Indiana Constitutions because prior to his/her interrogation, the Defendant was not:

1) Informed that he/she had a right to remain silent;

2) Informed that anything he/she might say or do could be used against him/her in a court of law;

3) Informed that he/she had a right to consult with a lawyer prior to questioning;

4) Informed that he/she had a right to have a lawyer present during the interrogation;

5) Informed that, if he/she was indigent, he/she would nonetheless be provided with a lawyer by the Court to be present during his/her interrogation.

c. The Defendant did not knowingly and fully waive his/her right to remain silent and not otherwise incriminate himself/herself. Miranda v. Arizona, 384 U.S. 436 (1968). After his/her arrest he/she was not correctly or fully advised of his/her rights, including:

1) Informed that he/she had a right to remain silent;

2) Informed that anything he/she might say or do could be used against him/her in Court;

3) Informed that he/she had a right to consult with a lawyer at any time;

4) Informed that he/she had a right to have a lawyer present during any interrogation;

5) Informed that if indigent, a lawyer would be provided if desired; or

6) Informed that any interrogation of him/her would be terminated at any time he/she requested.

d. Due to the physical, physiological, mental, emotional, educational and/or psychological state, capacity and condition of the Defendant, he/she was incapable and unable to appreciate and understand the full meaning of his/her Miranda rights and that any relinquishment of such rights was therefore not the free and rational choice of the accused and was not made voluntarily, knowingly and intelligently.

e. These statements were obtained as a result of interrogation that continued after the Defendant had elected to remain silent and/or had elected to consult with an attorney prior to further questioning.

f. Therefore, any and all confessions, statements, admissions, or tests executed by Defendant at the time of, prior to and after his/her formal arrest were elicited in violation of his/her constitutional rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, and Article 1, Sec. 12, 13 and 14 of the Indiana Constitution.

WHEREFORE, the Defendant, by counsel, respectfully requests that this Court suppress as evidence in this cause any and all communications, confessions, statements, admissions or tests, whether inculpatory or exculpatory, written or oral, made by Defendant prior to, at the time of, or subsequent to

his/her arrest in this cause, and for all other relief just and proper in the premises.

(Signature)

REFERENCES **CASEBANK I.8; I.2**

U.S. Constitution, 5th and 14th Amendment.

Indiana Constitution, Article 1, Sections 12 and 14.

CASE LAW

Miranda v. Arizona, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966) ("The prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the Defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.").

Dickerson v. United States, 530 U.S. 428, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000) (Miranda warnings are constitutionally based, and may not be overruled by legislation; any legislative alternative to Miranda warnings must be at least as effective at appraising accused persons of their right to silence and in assuring continuous opportunity to exercise it).

In Re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967) (the privilege against self-incrimination applies to juvenile court proceedings that may result in the Defendant's commitment to a state institution. such proceedings are regarded as "criminal" for purposes of the privilege). See also I.C. 31-32-5-1 (additional requirements for waiver of rights of juvenile).

Highbaugh v. State, 773 N.E.2d 247 (Ind. 2002) (privilege against self-incrimination exists until possibility of further incrimination ceases, i.e., when sentence has been fixed and judgment of conviction has become final).

CUSTODY

Stansbury v. California, 511 U.S. 318, 114 S.Ct. 1526, 128 L.Ed.2d 293 (1994) (determination of whether person is in custody depends on objective circumstances of interrogation, not on subjective views of either officers or subject). See also Bishop v. State, 700 N.E.2d 473 (Ind.Ct.App. 1998).

J.D.B. v. North Carolina, 564 U.S. 261, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011) (courts should consider a child's age when determining whether the child is in custody under Miranda).

Loving v. State, 647 N.E.2d 1123, 1125 (Ind. 1995) ("[t]he test is how a reasonable person in the suspect's shoes would understand the situation"; the Defendant was in custody).

Bean v. State, 973 N.E.2d 35, 41 (Ind.Ct.App. 2012) ("although the giving of Miranda warnings should not automatically render a suspect "in custody," neither should the giving of such warnings be irrelevant in that analysis").

Owen v. State, 490 N.E.2d 1130 (Ind.Ct.App. 1986) (where the Defendant was suspected of shoplifting and questioned in store office by store manager and security guard who immediately identified himself as police officer, and the Defendant was not told he could leave or refuse to answer questions, the Defendant was subjected to custodial interrogation which required *Miranda* warnings).

Gibson v. State, 733 N.E.2d 945 (Ind.Ct.App. 2000) (where the Defendant was handcuffed in passenger's seat of police car when the officer asked the Defendant whether he had any guns or contraband in car, the Defendant was in custody and should have been read his rights). See also Crocker v. State, 989 N.E.2d

812 (Ind.Ct.App. 2013).

Wright v. State, 766 N.E.2d 1223 (Ind.Ct.App. 2002) (Defendant was in custody when handcuffed for officer safety at time officer questioned him).

Jones v. State, 655 N.E.2d 49 (Ind. 1995) (Defendant was not in custody when he consented to search of car, and thus was not entitled to Miranda or Pirtle warnings, though he had been stopped for obstructing traffic and was asked to exit car, and there was unusually high number of officers for traffic stop, where none of the officers touched Defendant or physically restrained his freedom of movement before he consented to search and where Defendant was not asked incriminating questions prior to search).

Moore v. State, 723 N.E.2d 442 (Ind.Ct.App. 2000) (Defendant was not "in custody" until officer knew or should have known that he was investigating potential crime scene; officer was simply gathering information for injury accident report, and upon arrival at scene, he believed it was an accident scene and not crime scene).

Orozco v. Texas, 394 U.S. 324, 89 S.Ct. 1095, 22 L.Ed.2d 311 (1969) (where officers entered the Defendant's bedroom and questioned him there at 4:00 a.m., the Defendant was in custody).

Oregon v. Mathiason, 429 U.S. 492, 97 S.Ct. 711, 50 L.Ed.2d 714 (1977) (a person who goes voluntarily for a police interview, receives assurances that he is not under arrest, and leaves after the interview is complete, has not been taken into "custody" by virtue of an energetic interrogation so as to necessitate Miranda warnings). See also Luna v. State, 788 N.E.2d 832 (Ind. 2003) (overruling Dickerson v. State, 257 Ind. 562, 276 N.E.2d 845 (1972), to extent it conflicts with Mathiason); Dunaway v. State, 440 N.E.2d 682 (Ind. 1982); Zook v. State, 513 N.E.2d 1217 (Ind. 1987); Davies v. State, 730 N.E.2d 726 (Ind.Ct.App. 2000).

State v. Aynes, 715 N.E.2d 945 (Ind.Ct.App. 1999) (although the Defendant was told he would not be placed under arrest at that time, he was in custody when he came to sheriff's department at detective's request after the detective had informed him that an "allegation" had been made against him; interview took place in small interrogation room located in a secured area not open to public, detective told the Defendant that he believed the allegations of child molesting were true, and the detective did not inform the Defendant that he was free to leave or that he did not have to answer questions). See also McIntosh v. State, 829 N.E.2d 531 (Ind.Ct.App. 2005); Morris v. State, 871 N.E.2d 1011 (Ind.Ct.App. 2007); King v. State, 844 N.E.2d 92 (Ind.Ct.App. 2005).

Morales v. State, 749 N.E.2d 1260 (Ind.Ct.App. 2001) (the Defendant was in custody when she voluntarily accompanied police officer to police station and was questioned after being told that she would be permitted to go to the hospital to see her child after telling officer what happened to her child).

State v. Hicks, 882 N.E.2d 238 (Ind.Ct.App. 2008) (Defendant was not subject to custodial interrogation requiring Miranda warnings when asked by police officers who was driver of unoccupied vehicle; officer did not restrain Defendant or use coercive tactics, and questioning took place in a public setting in front of other individuals).

Alspach v. State, 440 N.E.2d 502 (Ind.Ct.App. 1982) (Miranda warnings need not be given by probation officers legitimately engaged in the supervision of probationers when: (1) the probationer is not in custody, (2) the interrogation is reasonably related to the probation officer's duty to supervise the probationer; (3) the questioning is reasonable under all circumstances, including the length of time and hour of day or night it is conducted, the manner in which it is conducted, persons present during the questioning, and the place where it is conducted). See also Rose v. State, 446 N.E.2d 598 (Ind. 1983);

Brabandt v. State, 797 N.E.2d 855 (Ind.Ct.App. 2003).

Minnesota v. Murphy, 465 U.S. 420, 104 S.Ct. 1136, 79 L.Ed.2d 409 (1984) (where probation officer learned from third party that the Defendant had confessed to rape and murder and probation officer went to the Defendant and got him to confess to the crime, the Fifth Amendment was not self-executing and the interview between the Defendant and probation officer, despite probation officer's intent to gain confession, did not trigger "in-custody" demand for Miranda).

Estelle v. Smith, 451 U.S. 454, 101 S.Ct. 1866, 68 L.Ed.2d 359 (1981) (admission of doctor's testimony on dangerousness of the Defendant based on the Defendant's statements during pretrial psychiatric examination violated the Defendant's Fifth Amendment rights because the Defendant had not been advised of his right to remain silent before examination and the Defendant was in jail when examination was ordered).

Sims v. State, 601 N.E.2d 344 (Ind. 1992) (where the Defendant was compelled to seek sex offender treatment from counselor as a condition of probation, the information given to the counselor was privileged and could not be used against him at trial).

Howe v. Fields, 123 S.Ct. 1181, 182 L.Ed.2d 17 (2012) (when a prisoner is questioned, the determination of custody for purposes of Miranda should focus on all features of the interrogation, including the language that is used in summoning the prisoner to the interview and the manner in which the interrogation is conducted). See also Vanzyll v. State, 978 N.E.2d 511 (Ind.Ct.App. 2012) (incarcerated Defendant was not "in custody" for purposes of Miranda when jail guard questioned him regarding a letter he sent to his girlfriend who was also incarcerated; an interrogation is not per se custodial when a prison inmate is questioned in private, even regarding events that occurred outside the prison).

Wells v. State, 30 N.E.3d 1256 (Ind.Ct.App. 2015) (Defendant on home detention is not in custody for Miranda purposes).

United States v. Borostowski, 775 F.3d 851 (7th Cir. 2014) (being polite to suspect questioned in police station and telling him repeatedly that he is free to end the questioning and leave do not create a safe harbor for police who would prefer to give Miranda warnings after the suspect has confessed rather than before).

Meriwether v. State, 984 N.E.2d 1259 (Ind.Ct.App. 2013) (a person stopped by police, while seized and momentarily not free to go, is ordinarily not considered in custody for Miranda purposes). See also Howes v. Fields, 123 S.Ct. 1181, 182 L.Ed.2d 17 (2012).

INTERROGATION

Rhode Island v. Innis, 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980) (interrogation refers not only to express questioning, but also to any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response from the suspect).

Maryland v. King, 133 S.Ct. 1958, 186 L.Ed.2d 1 (2013) (questions reasonably related to the police's administrative concerns fall outside the protections of Miranda). See also Matheny v. State, 983 N.E.2d 672 (Ind.Ct.App. 2013).

Lawson v. State, 803 N.E.2d 237 (Ind.Ct.App. 2004) (excise police officer did not have to give Miranda warnings in investigation of minor consumption of alcohol prior to asking the Defendant his age, even though the Defendant's age is a material element of the crime for which officer was specifically

investigating).

Andrews v. State, 441 N.E.2d 194 (Ind. 1982) (officer's statement to juvenile that he understood a gun had been thrown out in vicinity of a school and he "hoped no little kid found it and...hoped that nobody would get hurt" was an interrogation and required Miranda warnings prior to making).

Loving v. State, 647 N.E.2d 1123 (Ind. 1995) (officer's conversation with the Defendant at police station where officer commented on inconsistencies between the Defendant's account of events at crime scene and physical evidence was an interrogation; thus, the Defendant was entitled to Miranda warnings). See also Alford v. State, 699 N.E.2d 247 (Ind. 1998).

Castillo-Aguilar v. State, 962 N.E.2d 667 (Ind.Ct.App. 2011) (Defendant was "interrogated" for purposes of Miranda when, after his arrest for driving without a license, he was asked to fill out an "information sheet" at police station; he should have been given required warnings prior to filling out information sheet).

Wright v. State, 766 N.E.2d 1223 (Ind.Ct.App. 2002) (before reaching inside the Defendant's pants pocket, officer stated to the Defendant, "that's rock cocaine right there"; officer's remarks and actions were clearly designed to elicit incriminating responses). See also Furnish v. State, 779 N.E.2d 576 (Ind.Ct.App. 2002) (officer's query to Defendant as to "where he got the money from" was designed to elicit incriminating response); Storey v. State, 830 N.E.2d 1011 (Ind.Ct.App. 2005) (even though officer asked Defendant no questions, officer's monologue had no apparent purpose other than to induce Defendant to say something inculpatory).

McClure v. State, 803 N.E.2d 210 (Ind.Ct.App. 2004) (fact that officer approached patrol car in which handcuffed Defendant was sitting, rolled down window and displayed handgun found in Defendant's car was not tantamount to interrogation).

Illinois v. Perkins, 496 U.S. 292, 110 S.Ct. 2394, 110 L.Ed.2d 243 (1990) (undercover law enforcement officer posing as fellow inmate need not give Miranda warnings to incarcerated suspect before asking questions that elicit incriminating response; ploys to mislead suspect or lull him into false sense of security that do not rise to the level of compulsion or coercion to speak are not within Miranda's concerns).

State v. Moore, 23 N.E.3d 840 (Ind.Ct.App. 2014) (officer's questioning about children Defendant was babysitting at her home, despite Defendant's clear invocation of right to remain silent, amounted to "custodial interrogation" for Miranda purposes, even though questioning was ostensibly unrelated to investigation; it was likely that questioning was intended to induce Defendant to make incriminating statements, especially considering that officers had no apparent authority to do anything about children).

United States v. Wallace, 753 F.3d 671 (7th Cir. 2014) (Defendant's statement to DEA agent, that "everything in there's mine," was properly admitted in drug distribution trial, even though Defendant made statement before he received Miranda warnings, where Defendant's statement was not elicited by an interrogation, or even responsive to agent's question).

EXCEPTIONS

New York v. Quarles, 467 U.S. 649, 104 S.Ct. 2626, 81 L.Ed.2d 550 (1984) (there is an emergency exception to Miranda where questioning is necessary to insure the safety of the public, police officers, or the accused and time is a critical factor). Cf. State v. Moore, 23 N.E.3d 840 (Ind.Ct.App. 2014) (police's community-caretaking function did not justify continued questioning of Defendant, after she invoked

right to remain silent, about children she was babysitting at her home in another state at time of her arrest, even though police had limited information regarding children; there was no indication of any imminent peril, and it was unclear what officers would have been able to do about children who were located in another state).

Bailey v. State, 763 N.E.2d 998 (Ind. 2002) (officer limited his initial questions to location of potential victim and immediately advised the Defendant of his rights once location was ascertained).

Gavin v. State, 41 N.E.3d 1038 (Ind.Ct.App. 2015) (public-safety exception to Miranda applied where officer's question to Defendant about location of gun in Defendant's car was reasonably prompted by concern for the safety of Defendant's three-year-old stepdaughter).

Sweeney v. State, 704 N.E.2d 86 (Ind. 1998) (having attorney present while the Defendant is undergoing custodial interrogation is equivalent of having the Defendant advised of Miranda rights).

ADEQUACY OF ADVISEMENTS

Edwards v. State, 412 N.E.2d 223 (Ind. 1980) (where only evidence of warnings given was investigator's testimony that he told the Defendant that he was not required to answer questions, the advisements were incomplete). See also Goodloe v. State, 252 N.E.2d 788 (Ind. 1969); England v. State, 479 N.E.2d 1323 (Ind. 1985).

Hedgecough v. State, 328 N.E.2d 230 (Ind.Ct.App. 1975) (merely handing the Defendant a warning and waiver form to sign is insufficient to establish that the Defendant understood his rights prior to signing the form, unless accompanied by a clear and adequate explanation). See also State v. Keller, 845 N.E.2d 154 (Ind.Ct.App. 2006).

Morales v. State, 749 N.E.2d 1260 (Ind.Ct.App. 2001) (the Defendant, who spoke very little English, did not knowingly, voluntarily, and intelligently waive her *Miranda* rights when she signed waiver form before answering officer's questions at police station; translator did not ask the Defendant whether she understood her rights and did not advise the Defendant that she would be waiving her rights by signing waiver form).

Edwards v. State, 412 N.E.2d 223 (Ind. 1980) (giving oral advisement of rights five hours prior to interrogation was inadequate; there is no way to infer the completeness and accuracy of oral advisement just before confession from complete advisement five hours earlier). But see Allen v. State, 686 N.E.2d 760 (Ind. 1997) (Defendant voluntarily waived rights, despite officer's inappropriate remarks that may have influenced second waiver, where Defendant had already voluntarily waived his rights after a proper advisement just two hours before, and first waiver was close in time and a significant link in the chain of events leading to challenged waiver).

Saintignon v. State, 616 N.E.2d 369 (Ind. 1993) (once a Defendant has been Mirandized, warnings do not have to be reiterated every time the subject of the interrogation is changed, as long as the suspect is not deprived of an opportunity to make an informed and intelligent assessment of his interests).

Willey v. State, 712 N.E.2d 434 (Ind. 1999) (re-advisement of Miranda warnings is only necessary when the interruption of the interrogation deprived the suspect of an opportunity to make an informed and intelligent assessment of his interests).

State v. Banks, 2 N.E.3d 71, 78 (Ind.Ct.App. 2014) (in determining whether police adequately conveyed Miranda warnings, "reviewing courts are not required to examine the words employed as if construing a

will or defining the terms of an easement").

ADEQUACY OF WAIVER

Light v. State, 547 N.E.2d 1073 (Ind. 1989) (while the voluntariness of the confession itself must be proved beyond a reasonable doubt, the State need only prove a knowing and voluntary waiver of *Miranda* rights by a preponderance of evidence). But see Johnson v. State, 584 N.E.2d 1092, 1098-99 (Ind. 1992) ("[s]tatements made to police or to their agents by those in police custody in response to police interrogation are inadmissible at trial, unless the State sustains its burden to prove beyond a reasonable doubt, that they were preceded by a knowing and voluntary waiver of the privilege against self-incrimination and the right to counsel and were themselves voluntarily given"); Little v. State, 694 N.E.2d 762 (Ind.Ct.App. 1998); S.A. v. State, 654 N.E.2d 791 (Ind.Ct.App. 1995), *overruled on other grounds*, Alvey v. State, 911 N.E.2d 1248 (Ind. 2009).

Craig v. State, 370 N.E.2d 880 (Ind. 1977) (the trial court is required to conduct a hearing on whether the Defendant voluntarily waived his right to remain silent and to consult with counsel).

Moran v. Burbine, 475 U.S. 412, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986) ("the relinquishment of the right [to remain silent] must have been voluntary in the sense that it was the product of free and deliberate choice rather than intimidation, coercion, or deception . . .").

Colorado v. Connelly, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986) (attempted waiver of Miranda rights is invalid only when compulsion to waive flows from government coercion; waivers of Miranda rights prompted by mental or emotional condition which prevents exercise of free will but not result of official coercion are valid).

Blatz v. State, 369 N.E.2d 1086 (Ind.Ct.App. 1977) (State did not carry its burden of showing that eighteen year-old Defendant, who had eight years of special education as slow learner, made voluntary and knowing waiver of his rights to remain silent and to have attorney present during interrogation, even though the Defendant signed written waivers before giving statement).

Houchin v. State, 581 N.E.2d 1228, 1231 (Ind. 1991) (a confession may be inadmissible if the Defendant was so intoxicated or impaired as to be unconscious of what he was doing), *overruled on other grounds by* Smith v. State, 689 N.E.2d 1238 (Ind. 1997).

Brock v. State, 540 N.E.2d 1236 (Ind. 1989) (signed rights waiver form is not dispositive of issue of waiver, and express written or oral waiver of rights is not required to establish valid waiver).

Edwards v. State, 412 N.E.2d 223 (Ind. 1980) (where the Defendant confessed to murder shortly after interrogators had policewoman walk by door of room in which the Defendant was being interrogated and say "yes, that's the man," such deception required conclusion that waiver of rights was involuntary, especially where interrogators knew the Defendant was a mental patient on furlough from state hospital at time of alleged crime). See also Roehling v. State, 776 N.E.2d 961 (Ind.Ct.App. 2002) .

Missouri v. Seibert, 542 U.S. 600, 124 S.Ct. 2601, 159 Led.2d 643 (2004) (disapproving of an interrogation technique in which police officers purposefully withhold Miranda warnings until a confession is obtained, and thereafter, give Miranda warnings and obtain a waiver before obtaining a second similar confession; when such a technique is utilized, any subsequent confession must be suppressed because "the warnings will be ineffective in preparing the suspect for successive interrogation, close in time and similar in content.").

Drummond v. State, 831 N.E.2d 781 (Ind.Ct.App. 2005) (officer's two-part interrogation was not subject to independent evaluation simply because Miranda warnings formally punctuated it in the middle; interrogation in this case appears to be exactly of the character that Seibert Court sought to avoid). See also Kelly v. State, 997 N.E.2d 1045 (Ind. 2013). But see Johnson v. State, 829 N.E.2d 44 (Ind.Ct.App. 2005) (officer's failure to obtain valid waiver with regard to first statement involved good-faith Miranda mistake open to correction by careful warnings and thus did not render second statement inadmissible); Oregon v. Elstad, 470 U.S. 298, 105 S.Ct. 1285, 84 L.Ed.2d 222 (1985) (involving "good-faith Miranda mistake"); Hicks v. State, 5 N.E.3d 424 (Ind.Ct.App. 2014) (where officers stopped interrogation and Mirandized Defendant when they began to suspect him of murder, subsequent confession was admissible; because Defendant did not confess prior to being read his Miranda rights, Seibert is inapplicable).

R.W. v. State, 975 N.E.2d 407 (Ind.Ct.App. 2012) (State bears the burden of proving beyond a reasonable doubt that juvenile from whom waiver of rights is sought received all statutory protections to which he was entitled, and that both the juvenile and his parent knowingly, intelligently, and voluntarily waived the juvenile's rights). See also I.C. 31-32-5-1 (waiver of rights guaranteed to a child).

INVOCATION OF RIGHTS

Davis v. United States, 512 U.S. 452, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994) (a police officer is required to stop an interrogation only if the accused person makes an unambiguous request for the assistance of counsel).

Examples of unambiguous requests for counsel. Alford v. State, 699 N.E.2d 247 (Ind. 1998); Oregon v. Bradshaw, 462 U.S. 1039, 103 S.Ct. 2830, 77 L.Ed.2d 405 (1983); Sleek v. State, 499 N.E.2d 751 (Ind. 1986); Lewis v. State, 966 N.E.2d 1283 (Ind.Ct.App. 2012); Anderson v. State, 961 N.E.2d 19 (Ind.Ct.App. 2012); Morgan v. State, 759 N.E.2d 257 (Ind.Ct.App. 2001); Robinette v. State, 741 N.E.2d 1162 (Ind. 2001); Bean v. State, 973 N.E.2d 35 (Ind.Ct.App. 2012).

Examples of ambiguous requests for counsel and assertions of right to remain silent. Davis v. United States, 512 U.S. 452, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994); Taylor v. State, 689 N.E.2d 699 (Ind. 1997); Goodner v. State, 714 N.E.2d 638 (Ind. 1999); Stroup v. State, 810 N.E.2d 355 (Ind.Ct.App. 2004); Bane v. State, 587 N.E.2d 97 (Ind. 1992); Connecticut v. Barrett, 479 U.S. 523, 107 S.Ct. 828, 93 L.Ed.2d 920 (1987); Bailey v. State, 763 N.E.2d 998 (Ind. 2002); Goodner v. State, 714 N.E.2d 638 (Ind. 1999); Haviland v. State, 677 N.E.2d 509 (Ind. 1997); Griffith v. State, 788 N.E.2d 835 (Ind. 2003); Smith v. State, 983 N.E.2d 226 (Ind.Ct.App. 2013); King v. State, 991 N.E.2d 612 (Ind.Ct.App. 2013); Myers v. State, 27 N.E.3d 1069 (Ind. 2015).

Moore v. State, 498 N.E.2d 1 (Ind. 1986) (adopting per se rule prohibiting police from initiating discussion or further questioning after a Defendant invokes the Fifth Amendment right to counsel).

Arizona v. Roberson, 486 U.S. 675, 108 S.Ct. 2093, 100 L.Ed.2d 704 (1988) (when the Defendant clearly invoked his rights during burglary interrogation, police could not initiate interrogation about different offense three days later despite fact that the Defendant was read his Miranda rights again; Fifth Amendment right to counsel is not offense-specific). See also Minnick v. Mississippi, 498 U.S. 146, 111 S.Ct. 486, 112 L.Ed.2d 489 (1990).

Porter v. State, 743 N.E.2d 1260 (Ind.Ct.App. 2001) (police officer's request for the Defendant's consent to search apartment violated Fifth Amendment right to have attorney present during questioning where the Defendant had unequivocally invoked his right to counsel).

Jenkins v. State, 627 N.E.2d 789 (Ind. 1993) (where the Defendant invoked right to remain silent, then

initiated further discussion, officers reminded the Defendant of his invocation of the right to remain silent, and the Defendant said he would talk to them anyway, the statements the Defendant made were voluntary).

Mendoza-Vargas v. State, 974 N.E.2dd 590 (Ind.Ct.App. 2012) (when a defendant has invoked his right to remain silent, and not his right to counsel, there is not a per se rule prohibiting police from ever initiating a discussion or further questioning the defendant on the subject; rather, it must be shown on a case-by-case basis that police scrupulously honored the defendant's right to cut off questioning at any time). See also State v. Moore, 23 N.E.3d 840 (Ind.Ct.App. 2014).

Hartman v. State, 988 N.E.2d 785 (Ind. 2013) (after Defendant invoked right to counsel, detectives violated his Fifth Amendment rights when they reinitiated interrogation by reading Defendant search warrants and asking if he had any questions; Defendant did not initiate dialogue with detectives by responding).