

[CAPTION]

**MOTION IN LIMINE (PROSECUTOR'S ARGUMENT)**

Comes now the Accused, by counsel, and moves the Court, prior to trial, to enter an Order in Limine requiring the State of Indiana, acting through its Prosecuting Attorney, to refrain from mentioning in the presence of the jury any and all reference to the following, either directly or indirectly:

1. Any personal attack on the Defendant. Flynn v. State, 379 N.E.2d 548 (Ind.Ct.App. 1978).
2. Any comments about counsel for the defense which constitute a personal attack on the defense attorney, or defense attorneys in general. Johnson v. State, 453 N.E.2d 365 (Ind.Ct.App. 1983); Craig v. State, 267 N.E. 359, 370 N.E.2d 880 (Ind. 1977); Bardonner v. State, 587 N.E.2d 1353 (Ind.Ct.App. 1992); Flynn v. State, 379 N.E.2d 548 (Ind.Ct.App. 1978).
3. Any comment on the subject of the State's perception or impressions of defense counsels' beliefs and feelings about the theory of the defense. People v. Jones, 425 N.Y.2d 376(NY. 1980).
4. Any comment which constitutes the personal opinion of the prosecutor about any evidence, witness (including vouching for truthfulness or competency), the outcome or the penalty. Hossman v. State, 473 N.E.2d 1059 (Ind.Ct.App. 1985); United States v. Young, 470 U.S. 1038 (1985);  
Ind.R.Prof.Conduct 3.4e.
5. Any effort by the prosecutor to appeal to the sense of law and order of the members of the jury and/or persuading the jury through sympathy or prejudice rather than through the evidence. Darden v. Wainwright, 477 U.S. 168, 106 S.Ct.2464,91 L.ed2d 144 (1986); Hans v.

Zant (11<sup>th</sup> Cir. 1983) 696F.2d 940; United States v. Dominguez, 813 F.2d 694(7<sup>th</sup> Cir. 1987); Maldonado v. State, 365 Ind.492, 355 N.E.2d 843 (Ind. 1976); Limp v. State, 431 N.E.2d 784 (Ind. 1982); Johnson v. State, 453 N.E.2d 365, 368-9 (Ind.Ct.App. 1983); Messer v. State, 509 N.E.2d 249,253 (nd.Ct.App. 1987); Gassaway v. State, 547 N.E.2d 898, 902 (Ind.Ct.App. 1989).

6. Any argument referring to the Accused as a “criminal” or a “career criminal.” Moore v. Illinois, 408 U.S. 786, 92 S.Ct. 2562 (1972).

7. Any argument, innuendo or inference that is not supported by admissible evidence or based upon facts contained in the record. Donnelly v. DeChristoforo, 416 U.S. 637 (1974); United States v. Wolf, 787 F.2d 1094, 1098 (7<sup>th</sup> Cir. 1986); United States v. Elizondo, 920 F.2d 1308, 1313 (7<sup>th</sup> Cir. 1990);

Benson v. State, 762 N.E.2d 748 (Ind. 2002) – (A Prosecutor cannot assert unsubstantiated allegations on collateral matters); Bagnell v. State, 413 N.E.2d 1072, 1076-77 n.4 (Ind.Ct.App. 1980) – (A Prosecutor may not comment or allude to inadmissible evidence during trial);

8. Any reference, innuendo or argument inferring that the Accused is of bad character. Oldham v. State, 779 N.E.2d 1162 (Ind.Ct.App. 2002); Camm v. State, 812 N.E.2d 1127 (Ind.Ct.App. 2004).

9. Any attempt during voir dire to inflame the prejudices of the jury and condition the jury to convict on factors other than the evidence. Perryman v. State, 830 N.E.2d 1005 (Ind.Ct.App. 2005) – (A Prosecutor’s voir dire concerning the “ongoing war on drugs” was improper).

10. Any attempt during voir dire to have the jury pre-judge the credibility of a witness. Hawn v. State, 565 N.E.2d 362 (Ind.Ct.App. 1991).

11. Any attempt to have the Accused or any defense witness judge the credibility of a State's witness. Ind.R.Evid. 704(b); State v. Suarez-Bravo, 864 P.2d 426 (Wash. 1994). – (It is even more prejudicial when the defendant is forced to characterize police officers as liars in order to maintain his innocence).

12. Any attempt to have a State's witness, such as a police officer, to vouch for the credibility of another State's witness, such as an informant. Neither a lay or expert witness is competent to testify that another witness is or is not telling the truth. Shepard v. State, 538 N.E.2d 242 (Ind. 1989).

13. Any reference to the fact that the Accused did not testify at the trial of this cause or at any time refused to answer questions posed by law enforcement officers. Griffin v. California, 380 U.S. 669, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1985); Doyle v. Ohio, 426 U.S. 610 (1976); Miller v. Lockhart, 65 F.3d 676 (8<sup>th</sup> Cir. 1995); Dooley v. State, 393 N.E.2d 154 (Ind. 1979).

14. Any comment on the Accused's decision not to present evidence. Mitchell v. State, 455 N.E.2d 1131 (Ind. 1982); Chubb v. State, 640 N.E.2d 44 (Ind. 1994).

WHEREFORE, the Accused, through counsel, requests that this Motion in Limine be granted and requests the Court to instruct the State of Indiana, through its prosecutors, not to mention, refer to or attempt to convey to the jury in any manner, either directly or indirectly, the subject matter covered by this Motion in Limine without first obtaining permission of the Court outside the presence and hearing of the jury, and further to instruct them to make no reference of the fact that this Motion has been filed and the Order granted.

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