

**MOTION IN LIMINE TO EXCLUDE
DEFENDANT’S RECORDED INTERROGATION**

The Defendant, by counsel, respectfully requests that the Court issue an Order prohibiting the State from admitting or referring to the recorded interrogation of the Defendant. In support of this Motion, the Defendant States the following:

1. The Defendant is charged with [list charges].
2. The Defendant is scheduled to be tried on these charges on [date];
3. In discovery from the State, Defendant was given a video of his interrogation by [name of officer] on [date];
4. Ind. Evid. R. 404(b) prohibits: “Evidence of other crimes, wrongs, or acts . . . to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, intent, preparation, plan, knowledge, identity, or absence of mistake or accident”
5. The reason for the prohibition is that “[e]vidence of prior crimes will naturally give rise to the inference that the defendant is of bad character, and this in turn poses a danger that the jury will convict solely upon this inference.” *Johnson v. State*, 655 N.E.2d 502, 503 (Ind. 1995);
6. The admission of the video of Defendant’s interrogation is prohibited by Ind. Evid. R. 404(b) for several reasons, including the following:
 - A. Throughout the video, it is apparent to the viewer that Defendant is being held in jail for another crime. The indications of this include the following: [describe relevant facts] (1) Defendant has not been arrested or charged on the allegations that are the basis for the interrogation; (2) the interrogation takes place in a locked room apparently inside of a jail; (3) Defendant is in an orange prisoner jump suit; (4)

Defendant discusses being a jail trustee; and (5) Defendant and [officer] make several references to Defendant's criminal history; and

B. Throughout the video, several statements indicate that Defendant has committed prior offenses or bad acts, including the following: (1) Officer states from the onset when reading the Defendant his rights "I've read them to you before"; (2) Officer states and Defendant confirms that he has committed a prior burglary; and (3) Defendant refers to probation warrants previously pending against him;

7. The indications of Defendant's prior crimes and bad acts are pervasive throughout the video, and cannot be redacted;

8. There is no legitimate reason under Ind. Evid. R. 404(b) to admit these facts, and, therefore, the recording of Defendant's video in a whole or in part should be excluded;

9. Additionally, the admission of the recorded interrogation is prohibited by Ind. Evid. R. 403, which prohibits the admission of relevant evidence if "its probative value is substantially outweighed by the danger of unfair prejudice" The evidence that Defendant was in jail for another crime, and that he has committed other crimes or wrongs contains very low probative value, if any, that is substantially outweighed by the unfair prejudice that will result from the inference that the Defendant is of poor character.

WHEREFORE, the Defendant, by counsel, requests that this motion to exclude by limine Order be granted, and requests this Court Order the State of Indiana, through its prosecuting attorneys and its witnesses, not to mention, refer to, interrogate concerning, or attempt to convey to the jury in any manner, either directly or indirectly the existence of the recording to the interrogation of Defendant by [officer] on [date]. The Defendant further requests this Court to instruct the parties as to the limits of such evidence, and to further instruct the State

of Indiana and its witnesses not to make any references to the fact that this Motion has been filed and granted, and to warn and caution each and every one of their witnesses to strictly follow these same instructions, and to grant all other relief just and proper in the premises.

[signature]