

[CAPTION]

MOTION TO EXCLUDE EVIDENCE OF DEFENDANT'S PRIOR CONVICTION

The Defendant, by counsel, respectfully requests this Court to exclude all evidence, arguments and references to the Defendant's prior criminal convictions. In support of the Motion, the Defendant states the following:

1. The Defendant is charged with the offense of [insert offense(s)].
2. The facts and circumstances of this case and the nature of the present charge may require the Defendant to exercise his/her constitutional right to testify on his/her own behalf.
3. If the Defendant testifies, counsel for the Defendant has reason to believe that the State intends to introduce evidence that the Defendant has the following prior conviction(s): [insert convictions and date of convictions].
4. The prior crimes committed by the Defendant for that he/she was convicted do not fall within the crimes delineated in Indiana Rule of Evidence 609(a).
5. Where the prejudice to the Defendant outweighs the probative value of prior convictions as they bear upon credibility, due process and fundamental fairness require suppression of the prior conviction(s). Indiana Rule of Evidence 403.

WHEREFORE, the Defendant, by counsel, requests his Motion in Limine be granted; requests the Court to instruct the State of Indiana, through its prosecutors, 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 alleged prior conviction(s) of the Defendant without first obtaining permission of the Court outside the presence and hearing of the jury; further instruct the State of Indiana and its witnesses not to make any reference 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 those same instructions; and for all other relief just and proper in the premises.

(Signature)

REFERENCES

CASEBANK O.1.b.; O.6.f

Indiana Rule of Evidence 609

I.C. 34-45-4-1 et. seq. (impeachment); I.C. 35-45-2-1 (competency of witnesses)

Indiana Rule of Evidence 403

CASE LAW

Ashton v. Anderson, 258 Ind. 51, 279 N.E.2d 210 (1972) (permits impeachment by prior offenses that are infamous crimes, or crimes involving dishonesty of false statement).

Brown v. State, 703 N.E.2d 1010 (Ind. 1998) (for purposes of Indiana Evidence Rule 609(1), evidence of a prior conviction in another jurisdiction is not automatically admissible to impeach simply because the other jurisdiction uses a label for the crime that is found in Rule 609(a)(1) list; if a crime is not substantially equivalent to the Indiana crime listed, it does not qualify under Rule 609(a)(1)).

Carson v. State, 672 N.E.2d 74 (Ind. 1996) (fact that assisting a criminal conviction was a lesser included of a robbery charge that was dismissed pursuant to a plea agreement did not make the assisting a criminal conviction an admissible prior conviction for impeachment purposes).

Davis v. State, 654 N.E.2d 859 (Ind.Ct.App. 1995) (fact that prior conviction used to impeach the Defendant's credibility was for the same crime for which the Defendant was being tried did not make the prior conviction more prejudicial than probative).

Specht v. State, 734 N.E.2d 239 (Ind. 2000) (the trial court did not error by permitting the State to impeach the Defendant with evidence of prior guilty plea to confinement that had not been reduced to a conviction).

Giles v. State, 699 N.E.2d 294 (Ind.Ct.App. 1998) (it is error to permit impeachment of a witness with a conviction over ten years old when the proponent of the evidence has failed to provide adverse party with proper notice under Indiana Evidence Rule 609(b)).

Wales v. State, 768 N.E.2d 513 (Ind.Ct.App. 2002) (where the Defendant opens the door to criminal history, the State does not have to comply with the notice requirement of Indiana Evidence Rule 609(b)).

Davis v. Alaska, 415 U.S. 308 (1974) (Defendant had constitutional right to impeach witness with prior juvenile records). But see Martin v. State, 736 N.E.2d 1213 (Ind. 2000).

Newman v. State, 719 N.E.2d 832 (Ind.Ct.App. 1999) (trial court improperly admitted evidence of witness' juvenile adjudication for purposes of impeaching his character).