

STATE OF WISCONSIN,

Plaintiff,

MOTION IN LIMINE

vs.

,

Case No.

Defendant.

The defendant, _____, by his attorney, Thomas F. Locante, and upon all of the files, records and proceedings heretofore and herein, respectfully moves this Court to enter the following pretrial orders:

1. That no prosecution witness in the trial be allowed to indicate in any way that the defendant refused to answer questions by police officers and invoked his right to remain silent, and that the prosecutor may not mention this fact in questioning or argument before the jury. This would violate his fifth and sixth amendment of the United States Constitution, the right to remain silent and the right to be represented by counsel.

2. Not allow any testimony by the police officers or any other witness that the defendant was on probation at the time of his arrest. Any testimony relating to his probation is irrelevant and prejudicial.

3.. Not allow testimony by any witness of other alleged acts by the defendant which have not been joined in these above cases nor been subject to a timely motion under sec. 904.04(2) Wis. Stats. requesting the admission of other acts by the defendant. *Whitty v. State*, 34 Wis. 2d 278 (1967), superceded on other grounds, 185 Wis. 2d 452 (1997); *State v. Sullivan*, 216 Wis. 2d 768 (1998); More specifically, the defendant asserts:

a. That the State has failed to identify any other crime, wrong or act allegedly committed by the defendant;

- b. That the State has not articulated an acceptable purpose for any “other acts” evidence, whether or not identified. The State may not merely recite permissible purposes from the statute, but rather must articulate how the alleged evidence will relate to that permissible purpose. *See State v. Evers*, 139 Wis. 2d 424 (1987).
- c. That the State has not shown relevance; and
- d. That the State has not weighed the probative value of the alleged other act against the resulting unfair prejudice.

4. That no prosecution witness can be called to give an opinion that the complainants or any other witness were being totally or partially truthful with them. This type of testimony is impermissible. *State v. Romero*, 147 Wis. 2d 264, 432 N.W.2d 899 (1988). For all the above reasons, the defendant requests that the prosecution be ordered to advise all the prosecution witnesses not to give opinion testimony as to the truthfulness on any other witness’ statements.

5. That if the defendant testifies, the prosecution not be allowed to question the defendant as to his opinion whether the complainants or any other witness are being truthful or not. This type of testimony is impermissible. *State v. Romero*, 147 Wis. 2d 264, 432 N.W.2d 899 (1988).

6. That all witnesses and potential witnesses be excluded from the courtroom except when testifying. And further, that all witnesses and potential witnesses be ordered not to discuss their completed or proposed testimony or any other aspect of this case with any person, except attorneys of record, until the close of the evidence in this trial. *Sec. 906.15 Wis. Stats.*

7. That the State be prohibited from mentioning, commenting on, or introducing evidence of the following, and further, that the State instruct its witnesses that they must refrain from offering or testifying about the following:

- a. The La Crosse Tribune article about this case dated _____, and accompanying blog.
8. That the State be prohibited from calling any witness not disclosed to the defendant by the date of this motion.
9. That the State be prohibited from mentioning or admitting any evidence not previously disclosed to the defendant.
10. That the Court instruct the District Attorney that he or she is prohibited from making improper closing arguments, including but not limited to the following:
 - a. Arguments incorporating matters or facts not in evidence, including defense counsel's arguments or strategies in other cases. See *Chapman v. Keefe*, 37 Wis. 2d 315, 322 (1967).
 - b. Arguments incorporating the district attorney's "vouching" or personal opinions, except for an opinion as to inferences that should be drawn from the evidence. See *State v. Davidson*, 236 Wis. 2d 537 (2000).
 - c. Arguments asking the jury to "put themselves in the shoes" of the alleged victim or some other party. See *Rodriguez v. Slattery*, 54 Wis. 2d 165 (1972)
 - d. In rebuttal argument, arguments that go beyond the scope of those issues addressed by defense counsel in closing argument.

This motion is made specially and subject to any jurisdictional objections by the defendant.

Respectfully submitted,

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