

**[CAPTION]**

**MOTION IN LIMINE CONCERNING OFFICER OPINION EVIDENCE**

The Defendant, by counsel, respectfully moves this Court as follows:

1. The Defendant is charged with [insert offenses].
2. This case is scheduled to be tried by a jury on [insert date].
3. Counsel for the Defendant, upon information and belief, has reasonable cause to believe that the prosecution intends to introduce as evidence the following facts:  
[insert police officer's opinion and inferences].
4. The Officer's opinions and inferences are not helpful to a clear understanding of the witness's testimony of the determination of a fact in issue as required by Ind.R.Evid. 701.
5. The Officer's opinions are legal conclusion, which are inadmissible under Ind.R.Evid. 704(b).
6. Any little probative value of the officer's opinion is substantially outweighed by the danger of unfair prejudice and confusion of the issues. Ind.R.Evid. 403.

WHEREFORE, the Defendant, by counsel, requests that this Motion in Limine be granted; and requests the Court to order the State of Indiana, through its prosecutors and witnesses, not to mention, refer to, interrogate concerning, or attempt to convey to the jury in any manner, either directly or indirectly [insert officer's opinions and inferences] without first obtaining permission of the Court outside the presence 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 these same instructions and for all other relief just and proper in the premises.

(Signature)

## CASE LAW

## CASBANK O.5.b

Weaver v. State, 643 N.E.2d 342, 345 (Ind. 1994) (citing Rules of Evidence 704(a) and (b), court held that "[w]hile opinion testimony 'is not objectionable merely because it embraces an ultimate issue to be decided by the trier of fact,' witnesses may not testify as to opinions concerning intent or legal conclusions.") (internal citations omitted).

Kubsch v. State, 784 N.E.2d 905 (Ind. 2003) (because officer's testimony was not based on his perceptions at the scene, officer improperly testified that murderers often cover their victims' faces to depersonalize them).

Smith v. State, 721 N.E.2d 213 (Ind. 1999) (error to admit portion of taped police interview with the defendant where detective offered opinion of the defendant's guilt). But see Bostick v. State, 773 N.E.2d 266 (Ind. 2002); Butler v. State, 951 N.E.2d 641 (Ind. Ct. App. 2011).

Vasquez v. State, 741 N.E.2d 1214 (Ind. 2001) (officers, based on their experience and observations, can testify to the identity of a drug).

Angleton v. State, 686 N.E.2d 803 (Ind. 1997) (officer properly testified that the house did not look burglarized).

Hawkins v. State, 884 N.E.2d 939 (Ind.Ct.App. 2008) (officer's opinion testimony that someone attempted to conceal a shooting was admissible because it was reasonable, rationally based on the officer's perceptions and assisted the jury in understanding his testimony as is required under IRE 701. Skilled witness testimony generally needs only rise to a relatively low bar in order to be admissible and the testimony regarding the concealment of victim's shooting reaches this standard).

Hanson v. State, 704 N.E.2d 152 (Ind.Ct.App. 1999) (officer was qualified to testify as expert and as skilled witness re: firearms and obliterated serial numbers).

Willner v. State, 612 N.E.2d 162 (Ind.Ct.App. 1993) (the defense can open the door to otherwise inadmissible opinion testimony).

Hape v. State, 903 N.E.2d 977 (Ind.Ct.App. 2009) (officer's testimony regarding the dose and dealing amounts of methamphetamine and the relationship between the quantity of methamphetamine and personal use was proper; however, it was improper for him to testify regarding how much methamphetamine it takes for a person to get high; such information was beyond his expertise and based on scientific principals).

Jones v. State, 957 N.E.2d 1033 (Ind.Ct.App. 2011) (officer was properly qualified as a skilled witness to testify that the methamphetamine lab was based on the one-pot reaction method).

Davis v. State, 948 N.E.2d 843 (Ind.Ct.App. 2011) (trial court abused its discretion by allowing a detective to testify as a skilled witness that the denomination of currency found on the defendant were indicative of drug dealing; harmless error).

Romo v. State, 929 N.E.2d 805 (Ind.Ct.App. 2010) (it can be inferred that a Drug Task Force detective possesses knowledge beyond that of the average juror with regard to the dealing of narcotics, and is thus, sufficiently familiar with the language of narcotics trafficking to provide testimony regarding the meaning of drug-dealing terminology), *sum. aff'd, on this ground*, 941 N.E.2d 504 (Ind. 2011)

Erkins v. State, 988 N.E.2d 299 (Ind.Ct.App. 2013) (to be admissible under Ind. Evidence Rule 701, opinion testimony must be rationally based on perception of witness and helpful to a clear understanding of the witness's testimony or determination of a fact in issue. In this case, although not every phrase of Defendant's phone conversations needed interpretation, the meanings of the majority of the phrases were not clear to persons who have no knowledge of street slang, thus Court concluded most of the detective's testimony was helpful to the jury and therefore admissible).

## **NOTE**

Although not directly discussing a police officer's opinion, these cases may be used to limit an officer's opinion to the ultimate issues in the trial. See Hoglund v. State, 962 N.E.2d 1230 (Ind. 2012) (witnesses cannot testify that child is not prone to exaggerate or fabricate; regardless of whether vouching testimony is indirect or direct, it is inadmissible under Rule 704(b)); Gall v. State, 811 N.E.2d 969 (Ind.Ct.App. 2004) (no error in excluding testimony from the passenger who was shot as to her opinion that the Defendant did not intend to hurt her); Bradford v. State, 960 N.E.2d 871 (Ind.Ct.App. 2012) (trial court abused its discretion by allowing DCS investigator to testify that he substantiated the accusations of molest, meaning DCS felt that there was sufficient evidence they occurred).