

**[CAPTION]**

DEFENDANT'S MOTION IN LIMINE TO PRECLUDE IMPROPER OPINION UNDER  
INDIANA RULE OF EVIDENCE 704(b) AND 403

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

1. The Defendant is charged with [insert offenses].

2. The Defendant is scheduled to be tried on this charge on [insert date].

3. Counsel for the Defendant, upon information obtained through discovery in this matter, has reasonable cause to believe that the prosecution may intend to introduce as evidence the testimony of witnesses about their opinion of the Defendant's intent, guilt, or innocence, the truth or falsity of allegations against the Defendant, whether other witnesses have testified truthfully; and legal conclusions.

4. This evidence is inadmissible because:

a. Such evidence is specifically precluded by Ind. R. Evid. 704(b). Weaver v. State, 643 N.E.2d 342 (Ind. 1994) (victim's testimony as to what she believed caused Defendant's attack and whether she believed he intended to kill her was properly excluded); Connell v. State, 470 N.E.2d 701 (Ind. 1984) (prosecutor's question to victim as to whether he was sure the defendant was the person who robbed his apartment was improper because it called for the witness to characterize the evidence). The evidence is improper even if the witness is an investigator or qualified as an expert. Farris v. State, 818 N.E.2d 63 (Ind.Ct.App. 2004); Byrd v. State, 593 N.E.2d 1183 (Ind. 1992); Ross v. State, 516 N.E.2d 61 (Ind. 1987); Miller, *Indiana Evidence*, § 704.101, 73 (1994 Supp.); 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).

b. Opinions of intent, guilt or innocence made by an officer during an

interrogation or statement given by the Defendant is also inadmissible because the reasoning under Rule 704(b) applies equally to statements offered at trial and statements that were made at another time or place. Smith v. State, 721 N.E.2d 213 (Ind. 1999).

c. Opinions as to the truth or falsity of allegations or whether a witness testifies truthfully are inadmissible regardless of whether they are direct or indirect statements in the belief of the witness. Hoglund v. State, 962 N.E.2d 1230 (Ind. 2012) (the adoption of Rule 704(b) superseded prior case law allowing indirect vouching for a child witness discussing sexual matters).

5. Additionally, this evidence is more prejudicial to the Defendant than probative of the facts that the prosecution intends to prove. Indiana Rule of Evidence 403; Mote v. State, 775 N.E.2d 687 (Ind.Ct.App. 2002).

6. Such evidence is not necessary for a full and fair determination of the facts of the instant case.

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 its witnesses, not to mention, refer to, interrogate concerning, or attempt to convey to the jury in any manner, either directly or indirectly the type of testimony set forth above 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 these same instructions; and for all other relief just and proper in the premises.

(Signature)

## CASE LAW

Douglas v. State, 484 N.E.2d 610 (Ind.Ct.App. 1985) (error to allow psychiatric social worker to give opinion, over the defendant's objection, regarding the truthfulness of a child in a molestation case; witness testified: "I believe M.R. I think he's telling the truth;" held, conviction reversed).

Gall v. State, 811 N.E.2d 969 (Ind.Ct.App. 2004) (no error in excluding testimony from a victim who was shot as to her opinion that the Defendant did not intend to hurt her).

Shepherd v. State, 538 N.E.2d 242 (Ind. 1989) (prosecutor's question of witness as to whether she believed the Defendant when the Defendant claimed he did not commit the crime was improper).

Willner v. State, 612 N.E.2d 162 (Ind.Ct.App. 1993) (where on direct exam the Defendant asked officer whether State's witness could be summed up as "con artist," he opened door to admissibility, on cross examination, of officer's opinion about whether witness was telling truth).

Callis v. State, 684 N.E.2d 233 (Ind.Ct.App. 1997) (the trial court properly admitted social psychologist's testimony regarding phenomenon of coerced confession, but properly excluded his opinion about the Defendant's interrogation and interrogation process in this case; expert cannot testify as to the truthfulness of another witness). See also Carew v. State, 817 N.E.2d 281 (Ind.Ct.App. 2004); Miller v. State, 770 N.E.2d 763 (Ind. 2002) (Callis should not be read to generally prohibit expert testimony regarding police techniques used in a particular interrogation; expert should have been permitted to testify concerning interrogation techniques in the instant case and coerced confession).

Washington v. State, 808 N.E.2d 617 (Ind.Ct.App. 2004) (because Defendant did not direct trial court's attention to a possible 704(b) violation, he waived consideration of this argument on appeal).