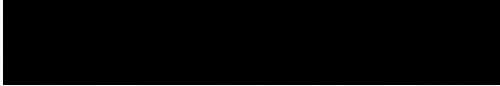


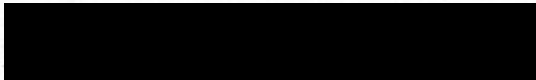
STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT
OF JUSTICE
SUPERIOR COURT DIVISION




STATE OF NORTH CAROLINA

v.



Defendant.

)
)
) *MOTION IN LIMINE TO*
) *EXCLUDE EVIDENCE OF*
) *OTHER CRIMES, WRONGS, OR*
) *ACTS PURSUANT TO RULES*
) *403 AND 404(a) AND (b) OF THE*
) *RULES OF EVIDENCE*

NOW COMES Defendant  by and through undersigned counsel, and hereby moves the Court pursuant to the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 19 and 23 of the Constitution of North Carolina and the General Statutes of North Carolina, in particular N.C.G.S. §8C-1, Rules 403 and 404(a) and (b), to prevent the State from introducing, during its case in chief, any evidence of other crimes, wrongs, or acts allegedly committed by Defendant.

Rule 404(a) provides, in pertinent part, that “Evidence of a person’s character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except: (1) Character of an accused— Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same.” Rule 404(b) provides, in pertinent part, that “Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith.”

Rule 403 provides as follows: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

Here, the Defendant is charged with first degree rape, first degree sexual offense, second degree kidnapping, assault on a female, assault with a deadly weapon, and communicating threats.

The Defendant requests a pretrial determination by this Honorable Court as to the admissibility, during the State's case in chief, of the following evidence of other crimes, wrongs, or acts so that, in the event the Court excludes certain evidence, the State will be on notice not to mention said evidence in its opening statement and will be able to instruct its witnesses not to refer to such evidence. This will comport with the needs of judicial efficiency and economy and minimize the possibility of a mistrial.

Based on the discovery received by the Defendant from the State in this case, the Defendant requests this Honorable Court to exclude from evidence the following evidence of other crimes, wrongs, or acts allegedly committed by the Defendant:

1. Evidence of previous assaults allegedly committed by this Defendant on alleged victim [REDACTED]
2. Evidence that [REDACTED] had ever obtained a domestic violence restraining order against the Defendant;
3. Evidence of previous assaults on government officers allegedly committed by this Defendant.

Defendant submits that all of the above evidence is inadmissible under Rule 404 (a) and (b). It is evidence of other crimes, wrongs, or acts whose only relevance would be to prove the impermissible subject of the Defendant's character and propensity to commit crimes. Additionally, Defendant submits that any probative value of said evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, considerations of undue delay, and waste of time. Thus, Defendant submits that such evidence should be excluded under Rule 403 as well.

Therefore, Defendant respectfully requests this Honorable Court to exclude such evidence from the State's case in chief. Additionally, Defendant respectfully requests this Honorable Court to order the State to instruct its witnesses who have knowledge of such evidence not to refer to them during their testimony.

This the 8th day of March, 2005.

Respectfully submitted,

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