

John Sullivan SC # 21672
Beall, Mitchell & Sullivan LLC
1041 N. Waco
Wichita, Kansas 672023
Phone: (316) 267-3273
Fax: (316) 267-3175

FILED
APP DOCKET NO. _____

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CLERK OF DISTRICT COURT
18TH JUDICIAL DISTRICT
SEDGWICK COUNTY, KANSAS

IN THE EIGHTEENTH JUDICIAL DISTRICT BY _____
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

THE STATE OF KANSAS,)
)
 Plaintiff,)
)
 vs.)
)
 TERRY BLUM,)
)
 Defendant.)

Case No. 10CR3795

MOTION IN LIMINE

Comes now Terry Blum, by and through his attorney, John B. Sullivan, and respectfully moves this Court as part of its inherent power to assure a fair and impartial trial [*see State v. Williams*, 15 Kan. App. 2d 656, 815 P.2d 569 (1991)] to entreat in limine and instruct the State of Kansas that it may not present or elicit from any witness those items as set forth fully below.

I. ARGUMENT AND AUTHORITY

“[T]he purpose of a motion in limine is to assure all parties a fair and impartial trial by prohibiting inadmissible evidence, prejudicial statements, and improper questions by counsel.” *State v. Crume*, 271 Kan.87, 100, 22 P.3d 1057 (2001) *citing State v. Quick*, 226 Kan. 308, 597 P.2d 1108 (1979).

II. ITEMS TO EXCLUDE

A. MR. BLUM'S PRIOR CRIMINAL AND ARREST RECORD.

K.S.A. 60-421 states:

“Evidence of the conviction of a witness for a crime not involving dishonesty or false statement shall be inadmissible for the purpose of impairing his or her credibility. If the witness be the accused in a criminal proceeding, no evidence of his or her conviction of a crime shall be admissible for the sole purpose of impairing his or her credibility unless the witness has first introduced evidence admissible solely for the purpose of supporting his or her credibility.”

According to the statute, the credibility of a witness can generally be impeached with evidence of a conviction of a crime involving dishonesty or false statement. However, this rule does not apply to the accused in a criminal proceeding. Under *K.S.A. 60-412*, a criminal defendant can only be questioned about convictions involving dishonesty or false statement if the defendant “has first introduced evidence admissible solely for the purpose of supporting his or her credibility.”

The Kansas Supreme Court has “established that a criminal defendant does not place his or her credibility in issue, as contemplated by *K.S.A. 60-421*, merely by taking the witness stand.” *See State v. Harris*, 215 Kan. 649, 651, 527 P.2d 949 (1974). In *State v. Smith*, 28 Kan.App. 2d 56, 11 P.3d 520 (2000), the Court specifically stated that the previous convictions of dishonesty or false statements are barred when the witness is the defendant in a criminal case “unless the defendant ‘opens the door’ by introducing evidence of his credibility.” 28 Kan.App. 2d at 62 (citing *State v. Logan*, 236 Kan. 79, 83, 689 P.2d 778 [1984]; *see also State v. Johnson*, 21 Kan.App. 2d 576, 578-79, 907 P.2d 144, *rev. denied* 258 Kan. 861 (1995)).

Therefore, Mr. Blum’s prior criminal record, if any, is immaterial, irrelevant, and inadmissible for the purpose of impairing his credibility unless he first introduces evidence

admissible solely for the purpose of supporting his credibility. *See* K.S.A. 60-421. And, it should be noted that evidence of a trait of Mr. Blum's character as tending to prove his guilt of the offense charged, if offered by the State to prove guilt, may be admitted only after he has introduced evidence of his good character. *See* K.S.A. 60-447 (b)(ii). Furthermore, it is also immaterial, irrelevant and inadmissible whether Mr. Blum has ever been arrested for a crime, spent any time in a prison or jail, or has ever been on probation or parole. If such information were made known to a jury, it would be improper, unduly prejudicial and error. Moreover, the prejudice and harm could not be erased by the Court sustaining an objection and/or instructing the jury to disregard such information. The prejudice to Mr. Blum would be of such a great magnitude that a mistrial would be the only corrective action available to the court.

B. MR. BLUM'S EXERCISE OF HIS RIGHT TO REMAIN SILENT.

If Mr. Blum has exercised his rights under both the United States and Kansas Constitutions to remain silent and declined to speak with law enforcement about the facts of this case, the State must be prohibited from any comment on Mr. Blum's post arrest silence, from mentioning that he was given an opportunity to speak to law enforcement, or from otherwise making any implication that had Mr. Bryant been innocent of these charges he would have spoken to law enforcement. Such testimony would be prejudicial and improper. *See State v. Satterfield*, 3 Kan. App. 2d 212, 595 P.2d 135 (1979), *Doyle v. Ohio*, 426 U.S. 610, 96 S.Ct. 2240, 49 L.Ed.2d 91 (1976), and *State v. Nott*, 234 Kan. 34, 669 P.2d 660 (1983).

C. ALL DISCOVERY NOT PROVIDED TO MR. BLUM'S COUNSEL AT THE TIME OF THIS MOTION'S HEARING.

As a matter of right, Mr. Blum is entitled to discovery pursuant to (1) Kansas statute, *K.S.A. 22-3212* and its applicable portions, (2) the United States Constitution, and (3) the order of discovery issued by the Eighteenth Judicial District at the time of this matter's preliminary examination. Discovery must be completed no later than twenty (20) days after arraignment or at such reasonable later time as the Court permits. *See K.S.A. 22-3212(6)*.

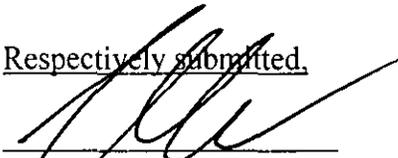
D. PREJUDICIAL TERMS.

Mr. Blum would move the Court to prevent the State from using prejudicial terms during the course of the trial. Most notably, Mr. Blum would request that the State not refer to L.G. as the "victim." Referring to L.G. as the "victim" presupposes that a crime was committed. This would undermine Mr. Blum's right to be presumed innocent, and would be overly prejudicial.

Mr. Blum would request the State be precluded from introducing or employing any and all discovery and/or evidence not provided to his counsel at the hearing of this motion, which is set on the Friday before his jury trial is to begin. The State has had adequate time to meet the Court's order of continuing discovery in this matter. To allow the State to introduce evidence and discoverable materials at trial, which the State has had in its possession and not provided defense counsel, is not harmless error but prejudicial error that will (1) preclude counsel and Mr. Blum from proper trial preparation; and (2) violate Mr. Blum's rights pursuant to Kansas statute, the Constitution for the state of Kansas, and the United States Constitution.

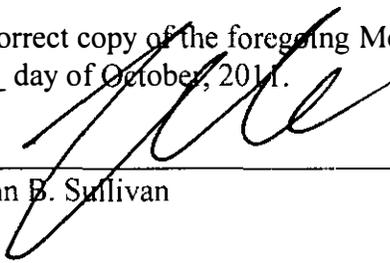
WHEREFORE, Mr. Blum requests this Court to instruct the State of Kansas not to mention, refer to or interrogate concerning or attempt to convey to the jury in any manner, either directly or indirectly, any of the above mentioned facts without first obtaining permission of this Court outside the presence and hearing of the jury. Mr. Blum also requests that this Court order the State of Kansas not to make any reference to the fact that this Motion has been filed, sustained or denied. Finally, Mr. Blum requests the Court to order the State of Kansas to inform each and every one of its witnesses about the instant motion, to warn them not to testify or convey to the jury, either directly or indirectly, any of the above mentioned facts and to order them to follow these instructions.

Respectively submitted,

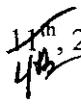

John B. Sullivan # 21672
Attorney for Defendant

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Motion was mailed to the Barton County Attorney's office this ___ day of October, 2011.


John B. Sullivan

NOTICE OF HEARING

 Please take notice and be advised that the foregoing Motion will be heard on November 11th, 2011 at 9:00 a.m. by the Honorable Judge Wilbert.