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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,	**P1300CR201600476**
Plaintiff,	
vs.	**MOTION IN LIMINE: Preclude Testimony Regarding Other Cases and/or Character Information**
ANTHONY RICHARDS,	**(Oral Argument Requested)**
Defendant.	**(Hon. Tina Ainley, Div. 3)**

The Defendant, through undersigned Counsel, hereby moves in limine to preclude character or propensity statements made by witnesses to law enforcement in this case.

Law enforcement officers have interviewed many people who were happy to give their opinion regarding the Defendant and their spin on the facts of this case. Much of this information was supplied via a "hearsay hotline" in which various parties would share negative details about the Defendant and what the Defendant said in order to craft a thesis that the Defendant was solely responsible for Mr. Powers' disappearance and demise. This information was passed on to law enforcement.

It is unknown whether the state intends to call any of these "character witnesses." It is the Defense position that the state must provide notice.

> The only difference is that the proponent will have to provide notice of his intention to use the evidence, and identify the specific, non-propensity purpose for which he seeks to introduce it (i.e., allowing the jury to hear the full story of the crime). See Bowie, 232 F.3d at 927. Additionally, the trial court will be required to give a limiting instruction upon request. See United States v. Kemp, 500 F.3d

> 257, 296 (3d Cir.2007); Bowie, 232 F.3d at 927–28 (explaining that designation of evidence as "inextricably intertwined" unduly deprives the defendant of the right to a limiting instruction).

(United States v. Green, 617 F.3d 233, 249 (3d Cir. 2010)).

If the state seeks a law enforcement witness to try to repeat an opinion given during any of the witness interviews, it would give the jury a false appearance of credibility to the statements. Furthermore, any of these character statements would be inadmissible hearsay offered to prove the truth of the matter asserted – that the Defendant is a bad man who killed Larry Powers. Rules 802 Ariz. R. Evid. R. In addition, "bad man" evidence is generally inadmissible:

> In our view, the more convincing opinions have recognized that although the language of Rule 404(b) appears to apply universally, its central purpose is to protect criminal defendants from unfair use of propensity evidence. (Citations omitted). Rule 404(b) has its source in the common law, and the common law rule restricting the use of other-acts evidence was designed to prevent the defendant from being convicted simply because the jury might conclude from the other act that he was a "bad man." (Citation omitted).

(St. v. Machado, 226 Ariz. 281, 283–84 (2011)).

> The aim of the rule is simply to keep from the jury evidence that the defendant is prone to commit crimes or is otherwise a bad person, Huddleston v. United States, 485 U.S. 681, 687-89, (1988), implying that the jury needn't worry overmuch about the strength of the government's evidence.

(United States v. Taylor, 522 F.3d 731, 735 (7th Cir. 2008)).

It would also improperly allow the state to attempt to produce "statements" from potential witnesses who would not be available for cross-examination, in violation of the 6th Amendment of the U.S. Constitution.

RESPECTFULLY SUBMITTED on January 2, 2020.

Craig Williams
Attorney at Law

Copies of the foregoing delivered and/or faxed this date to:
Hon. Tina Ainley, Judge of the Superior Court
Josh Fisher, Yavapai County Attorney

By _____