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IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

STATE OF OHIO	*	CASE NOS: CR 23-2126 and CR23-2204
	*	
Plaintiff,	*	Judge Joseph V. McNamara
	*	
vs.	*	**MOTION IN LIMINE TO ADMIT EVIDENCE OF DEFENDANT'S HABITUAL AND ROUTINE PRACTICE UNDER RULE 406**
ADAM ALEKHTIAR	*	
	*	
Defendant.	*	
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COMES NOW, the State of Ohio, by and through the undersigned, Mark Hanusz, and hereby files this Motion in Limine to Admit Evidence of Defendant's Habitual and Routine Practice Under Rule 406, and in support thereof, states as follows:

Background:

The Defendant, Adam Alekhtiar, is charged with failure to comply, intimidation, and operating a vehicle under the influence. The State seeks to introduce three videos posted by the Defendant on YouTube prior to the incidents leading to the current charges.

Description of the Evidence:

The videos in question, which were provided to Defense counsel at Supplemental Discovery on November 29, 2023, depict the Defendant driving at speeds up to 160 mph on the expressway while steering with his knees and smoking a joint.

Argument for Admissibility Under Rule 406

1. **Habit or Routine Practice:** The State contends that these videos are demonstrative of the Defendant's habit or routine practice of engaging in reckless and unlawful driving behavior. Rule 406 of the Ohio Rules of Evidence allows for evidence of a person's habit or routine practice to be admitted to prove that on a particular occasion, the person acted in accordance with the habit or routine practice.
2. **Relevance to Charges:** The videos are relevant to the charges against the Defendant, particularly the charge of operating a vehicle under the influence and failure to comply with an order or signal of a police officer. They provide context to the Defendant's mindset and propensity for reckless driving behavior.
3. **Probative Value:** The probative value of these videos in establishing a pattern of behavior is significant and directly relevant to the charges at hand.
4. **Prejudicial Impact:** The State acknowledges that the defense may argue the prejudicial impact of these videos. However, the State asserts that the probative value of demonstrating the Defendant's habitual behavior substantially outweighs any prejudicial effect.

Relevant Caselaw

Bolan v. Adams, 19 Ohio App. 3d 206 (1984) sets a clear standard for what constitutes habit evidence. The court stated, "In order for evidence of habit to be admissible under Evid.R. 406, the testimony in question must establish a regular or routine practice. Evidence as to one or two isolated occurrences does not establish a sufficiently regular practice." This ruling is particularly pertinent to the case against the Defendant. The State aims to demonstrate that the actions depicted in the YouTube videos are representative of a regular and routine practice of reckless and unlawful driving, not merely isolated incidents. The videos, showing Mr. Alekhtiar engaging

in dangerous driving behaviors on multiple occasions, are argued to establish a pattern consistent with the criteria outlined in *Bolan*.

In *Noaker v. Gerdeman*, 2004 Ohio 2799 (2004), the court upheld the admission of evidence regarding habitual behavior, noting that "[the] Trial court did not abuse its discretion in admitting a neighbor's testimony as to how appellant, who mowed around his and the neighbor's mailboxes, rode his tractor mower into the street without looking for traffic approaching, as such evidence was relevant pursuant to Ohio R. Evid. 401 and 402 in appellant and his wife's personal injury action, arising from a collision between the mower and a motorcyclist. Such evidence was admissible pursuant to Ohio R. Evid. 404(B) and 406 to show appellant's plan and habit of how he mowed." This case reinforces the position that evidence of Mr. Alekhtiar's habitual behavior of reckless driving is admissible. The YouTube videos in question are relevant under Ohio R. Evid. 401 and 402 and admissible under Ohio R. Evid. 404(B) and 406, demonstrating a consistent pattern and habit in his operation of a vehicle. This evidence establishes the habitual nature of Mr. Alekhtiar's conduct, which is directly related to the charges of operating a vehicle under the influence and failure to comply with an order or signal of a police officer.

In consideration of these precedents, the State contends that the YouTube videos of Mr. Alekhtiar should be admitted as they provide substantial evidence of his habitual and routine practice of engaging in dangerous driving behaviors. This evidence is not merely relevant but is essential for establishing a pattern of conduct that is central to the charges against him.

Conclusion

In light of the foregoing, the State respectfully requests that this Honorable Court grant this motion in limine, allowing the introduction of the YouTube videos as evidence of the Defendant's habit or routine practice under Rule 406 of the Ohio Rules of Evidence.

Respectfully submitted,

Mark Hanusz (103870)
Assistant Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion was served on Martin Dow, counsel for the defendant, via email to martindow@bex.net on January 29, 2024.

Mark Hanusz (103870)
Assistant Prosecuting Attorney