

**IN THE CIRCUIT COURT,
SEVENTH JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA**

CASE NO.: 16-00855-CFFA

STATE OF FLORIDA

VS.

**MARIA ROSE HOWELL
DEFENDANT.**

STATE'S FIRST MOTION IN LIMINE

COMES NOW, R.J. Larizza, State Attorney for the Seventh Judicial Circuit, by and through the undersigned Assistant State Attorney, pursuant to F.C.P.R. 3.190 and F.S. 794.022(2); and moves this Honorable Court for an Order in Limine instructing the Attorney for the Defendant to refrain from making any direct or indirect mention at trial before the jury of the matter hereinafter set forth without first obtaining permission of the Court outside the presence and/or hearing of the jury, on the grounds that the said matter is not admissible under the Rape Shield Statute outlined in F.S. 794.022(2). The subject matter in question is:

1. Any reference to the victim, T.L.V. meeting an adult male by the name of Mario Micallef on the internet or through social media. Any reference to the victim, T.L.V., engaging in any sex acts or sexual intercourse with Mario Micallef. Any reference to T.L.V.'s status as a victim of a sex crime with Mario Micallef as the defendant in two pending cases, 16-00296CFFA (non-arrest Flagler County) and 2016 304447CFDB (arrest case pending Volusia County).
2. Any reference to T.L.V.'s prior consensual sexual activity with any other person.
3. Pursuant to F.S. 794.022, evidence of prior consensual activity between the victim and any other person is not admissible unless it can first be established that such

evidence can prove that the defendant was not the source of the semen, pregnancy, injury, or disease; or, when consent by the victim is at issue.

4. There is no issue in this case concerning source of semen, pregnancy, injury, or disease.
5. The defendant is charged under F.S. 800.04 for Lewd and Lascivious Molestation. Pursuant to F.S. 800.04(2), the victim's consent is not a defense to this offense. The victim's prior sexual activity, therefore, would not be admissible to show consent because that is not a permissible defense under this statute.

WHEREFORE, based upon the foregoing, the State respectfully requests that this Court instruct the attorney for the defendant to refrain from making any direct or indirect mention at trial before the jury of the above mentioned matters without first obtaining permission from this Court outside the presence and or hearing of the jury.

R.J. LARIZZA
STATE ATTORNEY

By: s/MELISSA L CLARK
ASSISTANT STATE ATTORNEY
Florida Bar No.: 0499625
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by mail/delivery to WILLIAM M BOOKHAMMER, 1769 EAST MOODY BLVD BUILDING 1, KIM HAMMOND JUSTICE CENTER, BUNNELL, FL 32110-1448, on January 14, 2018.

s/MELISSA L CLARK _____
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