

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

**CASE NO: 19-00637-CFFA**

**STATE OF FLORIDA**

**VS.**

**BO JEREMIAH SIRRINE,  
DEFENDANT.**

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**STATE'S MOTION FOR ORDER IN LIMINE- VICTIM OPINION ON PROSECUTION**

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, 90.401, and F.S. 90.403; 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 admission of said matter is irrelevant or in the alternative its probative value is substantially outweighed by the danger of confusion of the issues, misleading the jury, or unfair prejudice towards the State's case. The subject matter in question is:

1. Whether the victim, O.E.K., wanted to pursue charges against the defendant or whether she felt "guilty" about the defendant being charged criminally in this case.
2. As this Court is aware the decision to prosecute a criminal case lies with the Office of the State Attorney, not with the alleged victim in a case. *See St v. Wheeler*, 745 So.2d 1094 (4<sup>th</sup> DCA 1999), *McArtuhr v. State*, 597 So. 2d 406 (1<sup>st</sup> DCA 1992), *St v. Bryant*, 549 So.2d 1155 (3<sup>rd</sup> DCA 1989).

3. O.E.K.'s feelings on whether the defendant should be charged criminally in this case or whether she felt guilty about the defendant getting into trouble is not relevant and the defense should not be permitted to question her about such issues.
4. The State respectfully requests that the defense be precluded from questioning the witnesses about the aforesaid matter or from mentioning it in the defense's opening or closing statements. Said matter is irrelevant as it is the State of Florida and not the victim that determines whether criminal charges should be pursued. Not only is this subject matter not relevant, but the State believes to allow such questions would permit the defense to back door the issue of mistake of age, which is clearly prohibited by 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 matter 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 MICHAEL H LAMBERT, 428 NORTH HALIFAX AVENUE, DAYTONA BEACH, FL 32118, on April 22, 2021.

s/MELISSA L CLARK \_\_\_\_\_  
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