

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

STATE OF FLORIDA

CASE NO.: 2014-633-CFFA

VS.

WALDEMAR RIVERA

Defendant/

**STATE'S MOTION FOR PRE-TRIAL RULING ON ADMISSIBILITY OF EVIDENCE**

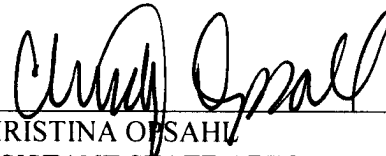
COMES NOW, R.J. Larizza, State Attorney for the Seventh Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney, pursuant Florida Statutes, and files this Motion in Limine for the Court to make a pre-trial determination of the admissibility of certain statements. In support of this motion, the State would show the following:

1. The Defendant is charged with Sexual Battery with minor 12-18 by a person in custodial or familial authority under 794.011(8)(b).
2. Florida Statute 90.803(2) provides for the admissibility of excited utterances as hearsay exceptions. Statements made while the declarant is in an excited state which relate to the event or condition that caused the excitement are admissible under this section.
3. The State intends on eliciting statements made by the victim, A.M. to the minor witness, H.H. As soon as the Defendant fell asleep A.M. went outside and called her friend, H.H., trying to find someone to come and get her. She made statements to H.H. and her mother by phone regarding what the Defendant did to her.
4. The State intends on eliciting statements made by the victim, A.M., to the witness, Stacie Simpson. As soon as the Defendant fell asleep A.M. went outside and called her friend, H.H., trying to find someone to come and get her. She made statements to H.H. and her mother by phone regarding what the Defendant did to her. H.H.'s mother refused to come and get A.M., but called law enforcement and reported what A.M. had relayed to her. A.M. then ran on foot to the residence of Stacie Simpson and made statements to her regarding what the Defendant did to her.
5. A.M. underwent a startling event that caused nervous excitement. The Defendant pulled down A.M.'s pants and underwear and performed oral sex on her. The Defendant was A.M.'s step-father. The statements to H.H. by phone and to Stacie Simpson at her residence

were made before there was time to contrive or misrepresent. The statements were made while A.M. was under the stress of excitement caused by the startling event.

WHEREFORE, the State respectfully requests that this Honorable Court make a pre-trial ruling on the admissibility of the proffered testimony that the State intends on introducing at trial.

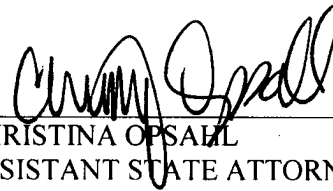
Respectfully submitted,



CHRISTINA OPSAHL  
ASSISTANT STATE ATTORNEY  
FLA BAR # 0017428

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished and/or delivered by U.S. mail/facsimile/hand delivery/ to REGINA NUNNALLY, this 2<sup>nd</sup> day of March, 2016.



CHRISTINA OPSAHL  
ASSISTANT STATE ATTORNEY