

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

STATE OF FLORIDA

vs.

CASE NO.: 18-00927CFFA

VICTOR EUGENE WILLIAMS II,
Defendant.

_____ /

**STATE'S MOTION FOR ORDER IN LIMINE- IMPROPER OPINION TESTIMONY
REGARDING CREDIBILITY OF THE VICTIM'S TESTIMONY**

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, F.S. 90.401, 90.402, 90.403, 90.404, 90.405, 90.608, and 90.609; 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 matters 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 prohibited by statute. The subject matter in question is:

1. The defense listed an expert witness, Dr. Daniel Buffington. Dr. Buffington is a pharmacist with a PharmD degree from Mercer University. Pursuant to Discovery, the defense forwarded a five-page affidavit prepared by Dr. Buffington, which outlines his opinion in this case. Contained within the report is Dr. Buffington's personal opinion as to the veracity of the alleged victim, E.D.'s statements regarding what occurred between E.D. and the defendant on the night in question. (*See*

paragraph 10 of Dr. Buffington's affidavit)

2. It is well settled that a witness may not comment on the credibility of another witness. Allowing such testimony invades the province of the jury who holds the responsibility to determine the credibility of all witnesses that come before them. *See Seibert v. State*, 923 So.2d 460, 472 (Fla. 2006), *Knowles v. State*, 632 So.2d 62, 65 (Fla. 1994), *Alvarado v. State*, 521 So.2d 180 (3rd DCA 1988).
3. It is also well settled that a witness may not testify as to whether or not they believe the victim's allegations of abuse. *See Smith v. State*, 674 So.2d 791 (5th DCA 1996) (holding that a psychologist's testimony that in her opinion the child victim had been sexually abused was an impermissible comment on the child's veracity and should have been excluded.)
4. This testimony is irrelevant, it is improper opinion testimony as to the credibility of a State's witness, is highly prejudicial to the state's case and would only be used to mislead or confuse the jury.

WHEREFORE, based upon the foregoing, the State respectfully requests that this Court instruct the attorney for the defendant to refrain from questioning Dr. Buffington, or any other witness, about such matters or 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.

Respectfully Submitted on October 7, 2018.

R.J. LARIZZA
STATE ATTORNEY

By: /s/ MELISSA L. CLARK
MELISSA L. CLARK

ASSISTANT STATE ATTORNEY
BAR NO. 0499625
ESERVICEFLAGLER@SAO7.ORG

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Motion in Limine has been furnished by Hand delivery/
U.S. Mail to Regina Nunnally, Assistant Public Defender, 1769 E. Moody Blvd, Bldg 1, Third Floor,
Bunnell, FL 32110, this the 7th day of October, 2019.

/s/ MELISSA L. CLARK
MELISSA L. CLARK
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IN THE CIRCUIT COURT,
SEVENTH JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA

JUDGE: TERENCE R. PERKINS

CASE NO.: 2018-00927-CFFA

STATE OF FLORIDA,

v.

VICTOR WILLIAMS,

Defendant.

AFFIDAVIT OF DANIEL E. BUFFINGTON, PharmD, MBA

STATE OF FLORIDA)

COUNTY OF FLAGLER)

BEFORE ME, the undersigned authority, personally appeared Daniel E. Buffington, PharmD, MBA, who, after being sworn, deposed and said:

1. My name is Dr. Daniel E. Buffington and I am over the age of 18. I have personal knowledge of the facts set forth in this Affidavit and, if called to testify as a witness in this action, could testify competently thereto. The Affidavit is based on all the information and documents in my possession as of the date indicated on the signature page. The facts, including the documents attached to and referenced in this Affidavit, upon which I have relied in forming the opinions expressed in this Affidavit, are of the type reasonably relied upon by experts in my field in formulating opinions upon the subject matter of this Affidavit. All opinions expressed in this Affidavit are based on those facts and documents as well as my experience, as detailed below.

2. I am a Clinical Pharmacologist & Toxicologist and practice in Tampa, Florida. My training includes a Doctor of Pharmacy (PharmD) degree and Master of Business Administration (MBA) degree from Mercer

University. My post-graduate training includes a Clinical Pharmacy Residency and Clinical Pharmacology Fellowship at Emory University. I am on the faculty of the University of South Florida Colleges of Medicine and Pharmacy, I serve as the President and Practice Director of Clinical Pharmacology Services (CPS), I am also the President of the American Institute of Pharmaceutical Sciences (AIPS). My professional practice activities include clinical pharmacology consult services, clinical research design and management, drug information services (clinical and forensic), and health care consulting. Additional professional activities include serving on the American Medical Association's Current Procedural Terminology (CPT) Editorial Panel, on the Board of Trustees for the American Pharmacists Association (APhA), and as a Medication Safety Fellow for the United States Department of Health & Human Services / Centers for Medicare & Medicaid Services (CMS) / Center for Medicare & Medicaid Innovation Center (CMMI). My current Curriculum Vitae is attached to this Affidavit as Appendix 1.

4. I was retained by the legal counsel for the Defendant, Victor Eugene Williams ("WILLIAMS"), as a Clinical Pharmacologist and Toxicologist to perform an evaluation of this case.

5. I have received and reviewed the records that were provided to me pertaining to the case of State of Florida v Victor Williams. These documents include Flagler County Sheriff's Office Crime Scene Investigation report, Florida Department of Law Enforcement (FDLE) Toxicology Services Sexual Assault case report, FDLE laboratory results, Domestic Violence Assessment and Statement form, transcript of interview with Maria Thomas (09/12/18), and transcript of interview with Ethan Doll (09/12/18).

6. On 09/10/18, Ethan Doll ("DOLL") snuck out of the house (without his parents' knowledge or consent) and was found asleep on the front porch of his home by his father the next day. DOLL's parents brought him inside the house where he slept for several hours, and after awakening his mother, Nicole Hartline ("HARTLINE"), stated that he "thought" he had been sexually assaulted by WILLIAMS the previous night. On 09/12/18, days after DOLL speculated that he had sexual intercourse with WILLIAMS, he was taken to the Emergency Department (ED) Florida Hospital Flagler by HARTLINE, who requested that an evaluation for sexual assault (i.e., "rape kit") be performed. The results of the evaluation were negative. DOLL was subsequently interviewed by a hospital social worker. Law enforcement and the Child Protective Team (CPT) were contacted. Urine and blood samples were collected from DOLL; toxicologic results, performed after an extensive period of time, were presumptive positive for alprazolam, alpha-hydroxyalprazolam (metabolite), and 11-nor-9-carboxy-delta-9-tetrahydrocannabinol.

(metabolite of THC). A subsequent confirmatory test (blood) was positive for alprazolam, THC, and 11-nor-9-carboxy-delta-9-tetrahydrocannabinol.

7. During his interviews with the social worker and CPT agents, DOLL admitted that he met the Defendant through an online dating and social networking app GRINDER™ and that he had falsified information on his personal profile claiming to be 18 years old. He also admitted that he uses the app frequently to solicit older adult men for alcohol and illicit substances. DOLL stated that he made arrangements to meet up with WILLIAMS on the evening of 09/10/18, and while at WILLIAMS's house DOLL knowingly and voluntarily consumed a small quantity of alcohol, marijuana, and alprazolam (Xanax®). DOLL has alleged that he "blacked out" and became "unconscious" approximately 15 minutes after ingesting the substances and he had no recollection of the events of the remainder of the evening. However, he claimed that the next day he began to recall snapshot memories of WILLIAMS engaging him in sexual activities. DOLL reported that on the evening in question he consumed less alcohol than he usually drinks, and that he has taken alprazolam (Xanax®) in the past but has never experienced a "blackout" before this event; he speculates, and with no evidence or rationale, that WILLIAMS gave him a substance that "made him go unconscious." DOLL has illogically alleged that WILLIAMS waited until he was "unconscious" to perform a sexual act and that he did not provide consent. Given that this was the first time that WILLIAMS had met DOLL, he would have no baseline awareness of DOLL's level of communication, demeanor, cognitive status, attentiveness, or history of substance abuse. In addition, there is no evidence that WILLIAMS was aware of what substances DOLL had ingested prior to, during, or after their interaction.

8. Several fundamental flaws exist with the speculations and allegations by DOLL in this case. There is no toxicologic evidence proximate to the alleged events of 09/10/18 to support DOLL's claim that he was ever impaired, and there is no evidence to support his claim that WILLIAMS provided DOLL with alprazolam (Xanax®) or any unknown substance, or that that DOLL ever ingested anything against his will. In fact, DOLL had recognized and identified alprazolam (Xanax®) in an un-labeled container in WILLIAMS's bedroom, and he had ample time to ingest the substance during the time in which he was admittedly ransacking WILLIAMS's home. There is no evidence that the substances identified in DOLL's system days later were ingested prior to the evening with WILLIAMS or after their interaction. DOLL admitted that he abuses alprazolam (Xanax®) without a prescription. There is no pharmacologic evidence to support that DOLL would become "blacked out" or "unconscious" from the substances (i.e., agents,

quantity, or timing) that he knowingly and voluntarily ingested on the evening of his interaction with WILLIAMS. The term "black out" is not synonymous with "unconscious." In fact, individuals who have consumed excessive quantities of substances, which is inconsistent with the statements in this case, may have altered cognitive status (i.e., paranoia, confusion, altered judgement, altered sensorium, etc.) and appear normal to other individuals. In these situations, individuals may function, make decisions, have social interactions and have limited recall, and never experience unconsciousness. It would be disingenuous to assume that an individual with limited recall of an event was unconscious or incapacitated. DOLL'S speculations to having experienced a "blackout" during their interaction yet recalling extremely granular details within the same time frame is inconsistent with his layman's claim of being "unconscious" during the evening, and subsequently being found in a stupor hours later on his front doorstep the next day. This would be indicative of substances being consumed after the interaction with WILLIAMS and not reflective of the temporal patterns of the substance's pharmacologic effects.

9. Due to the multiple confounding factors and the pharmacologic properties of the substances DOLL admits to regularly using (i.e., alprazolam (Xanax®), alcohol, and marijuana), there is no scientific or pharmacologic method of discerning drug levels at the time of the alleged event, timing of alprazolam (Xanax®) ingestion, or the magnitude of effects related to his voluntarily ingestion.

10. There is no evidence that DOLL was ever incapacitated or cognitively impaired to the degree that he was unconscious. Cognitive impairment is not synonymous with or indicative of unconsciousness. DOLL's sporadic recollection of the alleged events may be associated with some degree of cognitive impairment, but conflicts with his speculative testimony that he was unconscious. Given these facts, and DOLL's lack of integrity and accuracy of his statements, it cannot be inferred or opined that DOLL did not provide consent, knowingly engage, or initiate the sexual activity with WILLIAMS on that evening. The toxicology results in this case, given the disparate observations of DOLL, the time disparities in relation to the interaction with WILLIAMS, and DOLL's substance abuse history, preclude any assumptions or opinions as to being reflective of the substances ingested. Additionally, it would be unreasonable to expect a layperson such as WILLIAMS to be able to discern DOLL's personal level of cognitive impairment.

11. I hold all opinions expressed to a reasonable degree of scientific and medical certainty.

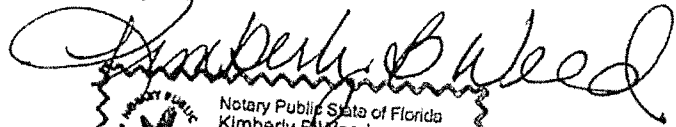
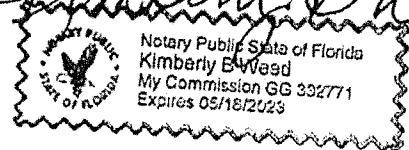
12. I reserve the right to amend my opinions should further research, data, investigation, knowledge, and experience reveal a basis for doing so.

BEFORE ME, the undersigned authority, on this 31st day of July 2019, personally appeared Dr. Daniel E. Buffington, who, upon being first duly sworn according to law, deposes and says that he executed the foregoing and that the information contained is true and correct to the best of his knowledge and belief, and who is personally known to me or who produced Driver's License as personal identification.

FURTHER AFFIANT SAITH NAUGHT.


DANIEL E. BUFFINGTON, PHARM.D, MBA

Kimberly Weed
Notary Public – State of Florida

(Print, Type, Stamp, or Commissioned
Name of Notary Public)