IN THE CIRCUIT COURT, SEVENTH

JUDICIAL CIRCUIT, IN AND FOR

VOLUSIA COUNTY, FLORIDA

STATE OF FLORIDA CASE NO.: 15-101845CFDL

VS.

JASON N. MINTON

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**Motion in Limine**

Defendant, Jason Minton, by and through the undersigned attorney hereby files this Motion in Limine and requests the Court to allow Defendant’s counsel to present evidence concerning Ms. Megan Peppers’ recent prostitution arrest, as well as her probationary and absconder statuses.

In support of this motion Defendant would show the following:

1. **Statement of Relevant Facts**

Ms. Peppers was arrested and charged with Prostitution on June 20, 2014. Based upon information that counsel for the Defendant has obtained, on November 11, 2014 Ms. Peppers received a suspended sentence of 11 months and 29 days and was placed on probation. She was to complete 56 community service hours in Florida as part of her probation. On March 19, 2015 the Tennessee court ordered a warrant for her arrest. That warrant was issued on March 20, 2015 and is still active. Bond is set in the amount of $5,000.00. *See* e-filed reciprocal discovery document 55818256.

Starting on page 74 of the transcription of Ms. Peppers’ recorded interview with law enforcement, she begins discussing the probation she was on at the time and admits that she had outstanding obligations: “. . . I had the choice of going to jail for seven days or having seven days’ community service and then like a thousand dollars worth of fines. . . . I should have just took the seven days in jail. . . . I’m still trying to work on [the fine]. . . . I have until November to do that.” Preceding this admission is Ms. Peppers’ account of being held in sexual slavery at the time of her arrest for prostitution, which she told law enforcement was the reason for her actions that led to that arrest. Ms. Peppers repeats these stories in her deposition, admitting on page 8 that she has not dealt with her prostitution charge, with pages 26 and 87 beginning recounts of her sexual slavery.

1. **Argument**

It is incontrovertible that Ms. Peppers is the key State witness. Without her credible testimony, the State could not hope for a conviction. When the credibility of the testimony of one witness is so central to the prosecution’s case, a defendant should be allowed substantial discretion for cross examination. See *Elmer v. State*, 114 So.3d 198, 202-3 (Fla. 5th DCA 2012)(“Because the victim was the key prosecution witness, [the Defendant] should have been afforded wide latitude in his cross-examination of her.”). Therefore, counsel for the Defendant should be allowed to inquire as to both her 2014 arrest for prostitution and her probationary and absconder statuses.

* 1. 2014 Prostitution Arrest

Evidence of Ms. Peppers’ prostitution charge, for which she is currently on probation and from which she has absconded, must be allowed to be presented. To do otherwise would be to rob the Defendant of a viable theory of defense:

We agree with appellant's basic premise that evidence of prostitution may well have a bearing on the issue of consent where the defendant's defense is that the sexual encounter which he had with the victim was in connection with an act of prostitution. *Roberts v. State,* 510 So.2d at 892; *State v. Jenkins,* 456 So.2d 174 (La.App. 2d Cir.1984); *State ex rel. Pope v. Superior Court,* 113 Ariz. 22, 545 P.2d 946, 94 A.L.R.3d 246 (1976). Should a defendant make a sufficient showing through an offer of proof on the record, or by other appropriate means, that the evidence of prostitution bears materially on the issue of consent, and that without the opportunity to elicit that evidence the defendant's ability to present a defense will be critically hampered, then the trial court should engage in a balancing test to weigh the probative value of the evidence against the unfair prejudice to the victim and the state's case to determine if it should be admitted. The trial court's decision will be reviewed using an abuse of discretion standard. *See, e.g., State ex rel. Pope v. Superior Court, supra,* and *Holloway v. State,* 695 S.W.2d 112 (Tex.App. 2d Dist.1985).

*Robinson v. State*, 575 So. 2d 699, 702–03 (Fla. Dist. Ct. App. 1991).

See also *Harrell v. State*, 108 So.3d 1146, 1147 (Fla. 5th DCA 2013).

Most people are not willing to perform sex acts for pecuniary gain. Establishing that Ms. Peppers has a history of doing so is the only way to present a believable defense that this incident was a consensual-sex-for-money arrangement that was never consummated. Any prejudicial impact must be outweighed by the reality that this prior prostitution charge is the best possible evidence that the Defendant can present to a jury to show that Ms. Peppers consented to such a transaction.

* 1. Probationary and Absconder Statuses

Whether or not the Court finds that Ms. Peppers’ prior arrest is an appropriate topic for cross examination, the Court must surely allow the Defendant’s counsel the opportunity to cross examine her as to her probationary status and her status as an absconder from justice in Tennessee:

Under the confrontation clause, a defendant has the right to question a witness about his probationary status to reveal possible bias. *See* [*Davis v. Alaska,* 415 U.S. 308, 316, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1974127137&pubNum=708&originatingDoc=I26682f7211c211d998cacb08b39c0d39&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). The witness’s probationary status could explain his motivation in testifying and in turn affect the witness’s credibility or the weight the jury would place on his testimony. [*Id.* at 316-18, 94 S.Ct. 1105;](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1974127137&pubNum=708&originatingDoc=I26682f7211c211d998cacb08b39c0d39&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)) *see also* [*Purcell v. State,* 735 So.2d 579, 580 (Fla. 4th DCA 1999)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1999148648&pubNum=735&originatingDoc=I26682f7211c211d998cacb08b39c0d39&refType=RP&fi=co_pp_sp_735_580&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_735_580)(recognizing “a defendant has a ‘strong interest in discrediting a crucial state’s witness by showing bias, an interest in the outcome, or a possible ulterior motive for his in-court testimony’ ”) (quoting [*Auchmuty v. State,* 594 So.2d 859 (Fla. 4th DCA 1992)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1992050879&pubNum=735&originatingDoc=I26682f7211c211d998cacb08b39c0d39&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))); [*Perez v. State,* 691 So.2d 1190, 1192 (Fla. 4th DCA 1997)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1997095425&pubNum=735&originatingDoc=I26682f7211c211d998cacb08b39c0d39&refType=RP&fi=co_pp_sp_735_1192&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_735_1192)(concluding “[a] jury should hear ‘[a]ny evidence which tends to establish that a witness is appearing for the State for any reason other than merely to tell the truth’ ”)(quoting [*Holt v. State,* 378 So.2d 106 (Fla. 5th DCA 1980)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1980101188&pubNum=735&originatingDoc=I26682f7211c211d998cacb08b39c0d39&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search))).

*Cipriano v. State*, 883 So. 2d 363, 363–64 (Fla. 4th DCA 2004).

Ms. Peppers’ statuses as a probationer and absconder are relevant because the potential exists for her to have fabricated a story of sexual battery to avoid her suspended 364 day sentence out of Tennessee for her underage drinking, drug use, and other illegal activities in which she engaged on the night in question. Note that while it is not necessary to prove that Ms. Peppers knew about her probationary status (*Phillips v. State*, 739 So.2d 632 (Fla. 2nd DCA 1999)), as noted, *supra*, Ms. Peppers refers many times to the outstanding conditions of her probation.