

IN THE IOWA DISTRICT COURT FOR LEE (SOUTH) COUNTY

STATE OF IOWA  v.  BENJAMIN G. TRANE,	Plaintiff,    Defendant.	NO. FECR009152  STATE'S RESISTANCE TO DEFENDANT'S 5.412 MOTION
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COMES NOW, the State of Iowa, and states the following in support of its Resistance to defendant's 5.412 motion:

1. Defendant requests admission of specific instances of conduct of the victim in this case which relate to prior sexual abuse.

2. Rule 5.412 clearly states that "reputation or opinion evidence of the past sexual behavior of an alleged victim of such sexual abuse is not admissible." Iowa R. Evid. 5.412(a).

3. The only exceptions to this rule are if there is a question about source of semen or injury or if the past sexual behavior of the victim with the accused is relevant to the issue of consent. Iowa R. Evid. 5.412(b)(2)(A) and (B).

4. The purpose of Rule 5.412 is to protect the privacy of victims of sexual assault, encourage the reporting of sexual offenses, and to prevent time consuming and distracting inquiries into collateral matters. *State v. Clarke*, 343 N.W.2d 158, 161-62 (Iowa 1984). Defendant's request to inquire into past sexual history with persons other than the defendant is in direct violation of Rule 5.412. See *Jeffries v. Nix*, 912 F.2d 982 (8<sup>th</sup> Cir. 1990)(evidence that victim had previously traded sex for drugs was not admissible); *State v. Gettier*, 438 N.W.2d 1, 2-4 (Iowa 1989)(statement by victim that she had sex with "two guys that day" was inadmissible).

5. Defendant claims the prior sexual abuse allegations by [REDACTED] because are a false claim of sexual abuse. The following is the standard for proving up a false claim:

In 2004 we decided the case of *State v. Baker*, 679 N.W.2d 7 (Iowa 2004), in which we held that a victim's prior false claims of sexual abuse do not constitute "sexual behavior" and, thus, are not protected by our rape-shield law. Today, in order for evidence of the victim's prior false claims of sexual abuse to be admitted into evidence, the defendant must first make a threshold showing to the court that "(1) the complaining witness made the statements and (2) the statements are false, based on a preponderance of the evidence." *State v. Alberts*, 722 N.W.2d 402, 409 (Iowa 2006). If the prior claims are determined to be false, the rape-shield law is inapplicable, and the claims are admissible if they meet " 'all other applicable evidentiary requirements and considerations.' " *Id.* at 410 (quoting \*723 *State v. Quinn*, 200 W.Va. 432, 490 S.E.2d 34, 40 (1997)).

*Millam v. State*, 745 N.W.2d 719, 722 -723 (Iowa 2008).

6. Under our rape-shield law, a defendant intending to offer evidence of specific instances of the complaining witness's past sexual behavior **must** first make a written motion to offer such evidence not later than fifteen days before the trial date. Iowa R. Evid. 5.412(c)(1)(emphasis added). This procedural requirement also applies to allegedly false claims of sexual conduct because they are covered by the rape-shield law *unless proven to be false*. The motion must be accompanied by a written offer of proof and the trial court must order a hearing in chambers to determine the admissibility of such evidence. *Id.* 5.412(c)(2); also see *State v. Hartman*, 2015 WL 4642276 \*5 (Iowa Ct. App. 2015).

7. Defendant's motion is untimely nor does it meet the requirements of Iowa Rule of Evidence 5.412(c)(2). Defendant filed its request to admit the alleged false claims late in the evening before the first day of trial. Furthermore the motion is not accompanied by a written offer of proof. Due to the untimeliness and deficiency of the motion the Court should not consider it.

8. If the Court does consider the motion, the defendant does not meet its burden. K● has never recanted her prior abuse allegations. Merely because another witness would claim they are not true does not overcome the defendant's burden. If this evidence would be allowed a "trial within a trial" would be presented to the jury regarding whether they believe the prior abuse occurred. This will be time consuming, irrelevant,

and misleading to the jury. See *State v. Karfis*, 2008 WL 4725154 \*5 (Iowa Ct. App.) (on claim of sexual touching where Sheriff's Office chose not to pursue but victim did not recant the district court found that "nothing in this record shows that [A.C.'s] 2005 account of sexual contact by the teacher was 'demonstrably false,' false to a 'reasonable probability,' false as a 'supportable contention,' or false by a 'strong probability.').

9. If the Court does find that any of the alleged false claims by K [REDACTED] does not have protection under Rule 5.412, the Court must still rule as to whether the evidence is relevant and, if so, "whether its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Iowa Rule of Evid. 5.403.

WHEREFORE the State of Iowa requests the Court deny defendant's request and issue an order prohibiting the defense from asking any questions or seeking any information from the victim or any other witness in violation of Iowa Rule of Evidence 5.412. Furthermore, the State requests the Court also make a finding that all such proffered evidence is not relevant and that its probative value is substantially outweighed by its prejudicial effect pursuant to Iowa Rule of Evidence 5.402 and 5.403.

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