

IOWA DISTRICT COURT IN AND FOR SOUTH LEE COUNTY

THE STATE OF IOWA,

Plaintiff,

Criminal No. FECR009152

-vs-

**ORDER**

BENJAMIN G. TRANE,

Defendant.

This case came before the court for a Rule 5.412 Motion that was filed by the defendant on December 13, 2017. The hearing was held in chambers. The defendant did not waive speedy trial in this case and the case was set for jury trial beginning on December 12, 2017. The court was unaware of the Motion until shortly before the beginning of jury selection on December 12, 2017. Depositions in this case were completed on December 11, 2017.

The State did file a Resistance on December 13, 2017. Jury selection began on December 12 and was completed on December 13. Following jury selection the court did take up this Motion. The case was expected to go into Wednesday to Thursday of the Christmas weekend. This was the expectation of the jury.

Rule 5.412 prohibits introduction of reputation or opinion evidence of a complainant's "past sexual behavior" and substantially limits admissibility of evidence of specific instances of a complainant's past sexual behavior. *State v. Alberts*, 722 N.W.2d 402, 409 (Iowa 2006).

In the case of *State v. Baker*, 679 N.W.2d 7 (Iowa 2004), it was 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. 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*. 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 15 days before the trial date. Iowa R. Evid. 5.412(c)(1). This procedural requirement would also apply 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). Footnote 3, *Alberts*.

Counsel for the defendant did make an offer of proof at the hearing. The factual information would be that the adoptive mother would describe that the alleged victim made statements of prior sexual abuse that were false. Counsel did detail these statements. It is acknowledged that the alleged victim in her deposition has never recanted these allegations.

Counsel for the State sets forth that these prior allegations were in discovery material. Counsel for the State sets forth that this challenge is untimely and a hearing should not be held. Also, that the child would have a right to testify as to the prior allegations and her belief that they were true. The Resistance sets forth additional grounds.

The obvious purpose of the timing requirements is to provide notice to the opposing side so that the false allegation can be investigated. Iowa R. Evid. 5.412. The importance of the Rape-Shield Law has been discussed in many different cases and by many different commentators. This court has no intention of diluting the purpose of the law based on incomplete information. On the other hand, the defendant is entitled to delve into this issue if the prior claims were false under the standard set forth by the Supreme Court and they are otherwise admissible. This led to the balancing test that was discussed in *Alberts*.

The court did review *State v. Hartman*, 871 N.W. 2d 127 (Table) 2015 WL 4642276. In this unreported case, the substantive/procedural argument was made but not addressed as it was deemed waived. It was referred to in that case as being “important.” The court in that case did again refer to footnote 3 in the *Alberts* case regarding what should be done. In

In the case *In re Estate of Rutter*, 633 N.W. 2d 740, 746 (Iowa 2001) the court ruled that unless the parties agree to telephonic testimony, or the legislature has specifically authorized telephonic testimony, a witness is required to testify in open court and telephonic testimony is not permitted. See Section 624.1 of the Iowa Code.

Speedy trial in this case was not waived. The obvious purpose of the timing requirements is to provide notice to the opposing side so that the false allegation can be investigated. The State resists having such a hearing based on the notice not being given fifteen days or more before trial. The court does find this argument compelling. In this case the notice was on the day of trial.

Even assuming a hearing should be held, the court did consider the offer of proof by the defendant on this issue. Determining the truth or falsity of a prior sexual abuse allegation, even by a preponderance of the evidence standard, is a matter of some weight. The court has before it competing allegations. The court does accept that the adoptive mother of the alleged victim believes that she did make false allegations of abuse previously and would testify to this. Apparently, there were no charges filed. (The allegations related to events out of state.) The court accepts that the alleged victim maintains that these events did occur. The determination of whether or not a sexual abuse did occur is a multi-layered process in most instances. Whether these allegations are false by a preponderance of the evidence is not dependent on whether or not criminal charges were filed. That determination could be dependent on many different facts. The information before the court requires the court speculate to a degree that is inconsistent with a finding that there was a false claim of sexual abuse as set forth in the Motion filed by the defendant by a preponderance of the evidence.

**RULING**

For these reasons the Rule 5.412 Motion filed by the defendant is denied as it was untimely, and even if timely, the information would not show that the statements are false, based on a preponderance of the evidence.

Copies to:

Denise Timmins, Assistant Attorney General  
Lisa Schaefer, Attorney for Defendant





State of Iowa Courts

**Type:** OTHER ORDER

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So Ordered

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Mark Kruse, District Court Judge,  
Eighth Judicial District of Iowa