

IN THE IOWA DISTRICT COURT FOR SOUTH LEE COUNTY

STATE OF IOWA

2017 DEC 22 PM 4:04

CRIMINAL NO. FECR009152

Plaintiff,

DISTRICT COURT  
LEE COUNTY, IOWA  
CLERK

JURY INSTRUCTIONS

vs.

BENJAMIN G. TRANE,

Defendant.

INSTRUCTION NO. 1

The Trial Information charges the defendant, Benjamin Trane with Sexual Abuse in the Third Degree in Count I, Pattern, Practice, or Scheme to Engage in Sexual Exploitation by a Counselor or Therapist in Count II and Child Endangerment in Count III.

Sexual Abuse in the Third Degree has the lesser included offenses of Assault With Intent to Commit Sexual Abuse and Assault.

Pattern, Practice, or Scheme to Engage in Sexual Exploitation by a Counselor or Therapist has the lesser included offenses of Sexual Exploitation by a Counselor or Therapist of Emotionally Dependent Patient or Client and Sexual Exploitation by a Counselor or Therapist of a Patient or Client.

Your duty is to determine the facts and decide whether the defendant is guilty or not guilty.

## INSTRUCTION NO. 2

The Trial Information is the document that formally charges Benjamin Trane with a crime and is merely the method by which the defendant is brought into court for trial. It is not evidence.

## INSTRUCTION NO. 3

Benjamin Trane has entered pleas of not guilty. A plea of not guilty is a complete denial of the charges and places the burden on the State to prove guilt beyond a reasonable doubt. Whenever I instruct you the State must prove something, it must be by evidence beyond a reasonable doubt. If the State does not prove the defendant guilty beyond a reasonable doubt, your verdict must be not guilty.

## INSTRUCTION NO. 4

Benjamin Trane is presumed innocent and not guilty. This presumption of innocence requires you to put aside all suspicion which might arise from the arrest, charge, or the present situation of the defendant. The presumption of innocence remains with the defendant throughout the trial unless the evidence establishes guilt beyond a reasonable doubt.

## INSTRUCTION NO. 5

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by videotape deposition.
2. Exhibits received by the court. You may examine the exhibits closely,

but be careful not to alter or destroy them.

3. Stipulations, which are agreements between the attorneys.

Facts may be proved by direct evidence, circumstantial evidence, or a combination of both.

Sometimes during a trial references are made to pretrial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations.

Documents or items read from or referred to, which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

**INSTRUCTION NO. 6**

In considering the evidence, make deductions and reach conclusions according to reason and common sense. Facts may be proved by direct evidence, circumstantial evidence, or both. Direct evidence is evidence from a witness who claims actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is evidence about a chain of facts which show a defendant is guilty or not guilty. The law makes no distinction between direct evidence and circumstantial evidence. Give all the evidence the weight and value you think it is entitled to receive.

## INSTRUCTION NO. 7

Decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. Try to reconcile any conflicts in the evidence; but if you cannot, accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witness's testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. Whether a witness has made inconsistent statements;
3. The witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and
4. The witness's interest in the trial, his or her motive, candor, bias and prejudice.

## INSTRUCTION NO. 8

You must determine whether the defendant is guilty or not guilty from the evidence and the law in these instructions. My duty is to tell you what the law is. Your duty is to accept and apply this law and to decide all fact questions.

You must consider all of the instructions together. No one instruction includes all of the applicable law.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudice, or emotions. Because you are making a very important decision in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a verdict based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

## INSTRUCTION NO. 9

Nothing I have said or done during the trial was intended to give any opinion as to the facts, proof, or what your verdict should be.

## INSTRUCTION NO. 10

The burden is on the State to prove Benjamin Trane guilty beyond a reasonable doubt.

A reasonable doubt is one that fairly and naturally arises from the evidence in the case, or from the lack or failure of evidence produced by the State.

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

If, after a full and fair consideration of all the evidence, you are firmly convinced of the defendant's guilt, then you have no reasonable doubt and you should find the defendant guilty.

But if, after a full and fair consideration of all the evidence in the case, or from the lack or failure of evidence produced by the State, you are not firmly convinced of the defendant's guilt, then you have a reasonable doubt and you should find the defendant not guilty.

## INSTRUCTION NO. 11

If there is a reasonable doubt as to the degree of the crime, the defendant shall only be convicted of the degree for which there is no reasonable doubt.

## INSTRUCTION NO. 12

The duty of the jury is to determine if the defendant is guilty or not guilty.  
In the event of a guilty verdict, you have nothing to do with punishment.

## INSTRUCTION NO. 13

The defendant has been charged with three counts. This is just a method for bringing each of the charges to trial. If you find the defendant guilty or not guilty on any one of the three counts, you are not to conclude the defendant is guilty or not guilty on the others. You must determine whether the defendant is guilty or not guilty separately on each count.

## INSTRUCTION NO. 14

Where two or more facts would produce the same result, the law does not require each juror to agree as to which fact leads to his or her verdict. It is the verdict itself which must be unanimous, not the facts upon which it is based.



## INSTRUCTION NO. 15

You have heard evidence claiming witnesses made statements before this trial while not under oath which were inconsistent with what the witness said in this trial.

Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other evidence you believe supports it, or if you believe it for any other reason.

## INSTRUCTION NO. 16

You have heard evidence claiming witnesses made statements before this trial while under oath which were inconsistent with what they said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You may also use these statements to help you decide if you believe the witness. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it or you believe it for any other reason.

## INSTRUCTION NO. 17

To commit a crime a person must intend to do an act which is against the law. While it is not necessary that a person knows the act is against the law, it is necessary that the person was aware he was doing the act and he did it voluntarily, not by mistake or accident. You may, but are not required to, conclude a person intends the natural results of his acts.

## INSTRUCTION NO. 18

“Specific Intent” means not only being aware of doing an act and doing it voluntarily, but in addition, doing it with a specific purpose in mind.

Because determining the defendant’s specific intent requires you to decide what he was thinking when an act was done, it is seldom capable of direct proof. Therefore, you should consider the facts and circumstances surrounding the act to determine the defendant’s specific intent. You may, but are not required to, conclude a person intends the natural results of his acts.

**INSTRUCTION NO. 19**

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness's education and experience, the reasons for the opinion, and all the other evidence in the case.

**INSTRUCTION NO. 20**

Evidence has been offered to show that the defendant made statements at an earlier time and place.

If you find any of the statements were made, then you may consider them as part of the evidence, just as if they had been made at this trial.

You may also use these statements to help you decide if you believe the defendant. You may disregard all or any part of the defendant's testimony if you find the statements were made and were inconsistent with the defendant's testimony given at trial, but you are not required to do so. Do not disregard the defendant's testimony if other evidence supports it or you believe it for any other reason.

**Count I**

## INSTRUCTION NO. 21

Under Count I of the Trial Information, the State must prove both of the following elements of Sexual Abuse in the Third Degree:

1. On or between January 1, 2015, and December 31, 2015, the defendant performed a sex act with K.●
2. That the defendant performed the sex act by force or against the will of K.●.

If the State has proved both of the elements, the defendant is guilty of Sexual Abuse in the Third Degree. If the State has failed to prove both of the elements, the defendant is not guilty of Sexual Abuse in the Third Degree and you will consider the lesser included offense of Assault with Intent to Commit Sexual Abuse in Instruction No. 22.

## INSTRUCTION NO. 22

Under Count I of the Trial Information, the State must prove both of the following elements of Assault with Intent to Commit Sexual Abuse:

1. On or between January 1, 2015, and December 31, 2015, in South Lee County, Iowa, the defendant committed an act which was intended to result in physical contact which was insulting or offensive to K. [REDACTED] or place K. [REDACTED] in fear of immediate physical contact which would be insulting or offensive to K. [REDACTED].

2. The defendant did so with the specific intent to commit a sex act by force or against the will of K. [REDACTED].

If the State has proved all of the elements, the defendant is guilty of Assault With Intent to Commit Sexual Abuse. If the State has failed to prove any one of the elements, the defendant is not guilty of Assault With Intent to Commit Sexual Abuse and you will consider the lesser offense of Assault in Instruction No. 23.

## INSTRUCTION NO. 23

Under Count I of the Trial Information, the State must prove both of the following elements of Assault:

1. On or between January 1, 2015, and December 31, 2015, in South Lee County, Iowa, the defendant committed an act which was specifically intended to result in physical contact which was insulting or offensive to K. [REDACTED] or place K. [REDACTED] in fear of immediate physical contact which would be insulting or offensive to K. [REDACTED].

2. The defendant had the apparent ability to do the act.

If the State has proved all of the elements, the defendant is guilty of Assault. If the State has failed to prove any one of the elements, the defendant is not guilty.

## INSTRUCTION NO. 24

Concerning element number 1 and 2 of Instruction No. 21 and element number 2 of Instruction No. 22, "sex act" means any sexual contact:

1. By penetration of the penis into the vagina or anus.
2. Between the mouth of one person and the genitals of another.
3. Between the genitals of one person and the genitals or anus of another.
4. Between the finger or hand of one person and the genitals or anus of

another person

You may consider the type of contact and the circumstances surrounding it in deciding whether the contact was sexual in nature.

## INSTRUCTION NO. 25

Concerning element number 2 of Instruction No. 21, the State must prove that the Defendant committed a sex act "by force or against the will" of K. [REDACTED]. In order to do so, however, the State does not have to prove that K. [REDACTED] physically resisted the Defendant's acts. The force used by the Defendant does not have to be physical. It may consist of threats of violence against K. [REDACTED] or another person which overcame K. [REDACTED] will by fear. The act can be "against the will" if there is psychological force or inability to consent based on the relationship and circumstances of the participants.

You may consider all of the circumstances surrounding the Defendant's act in deciding whether the act was done by force or against the will of K. [REDACTED].



INSTRUCTION NO. 26

"Apparent ability" means a reasonable person in the defendant's position would expect the act to be completed under the existing facts and circumstances.

**Count II**

## INSTRUCTION NO. 27

Under Count II of the Trial Information, the State must prove all of the following elements of Pattern, Practice, or Scheme to Engage in Sexual Exploitation by a Counselor or Therapist:

1. The defendant on or between September 18, 2014 and January 31, 2016, did engage in sexual conduct with K. [REDACTED].
2. The defendant engaged in this conduct as part of a pattern, practice or scheme of conduct.
3. The defendant did so with the specific intent to arouse or satisfy the sexual desires of the defendant or K. [REDACTED].
4. The defendant was then a counselor or therapist.
5. K. [REDACTED] was then a client, or a patient, or an emotionally dependent patient or client.

If the State has proved all of the elements, the defendant is guilty of Pattern, Practice, or Scheme to Engage in Sexual Exploitation by a Counselor or Therapist. If the State has failed to prove any one of the elements, the defendant is not guilty and you will consider the lesser included offense of Sexual Exploitation by a Counselor or Therapist of Emotionally Dependent Patient or Client.

## INSTRUCTION NO. 28

Under Count II of the Trial Information, the State must prove all of the following elements of Sexual Exploitation by a Counselor or Therapist of Emotionally Dependent Patient or Client:

1. The defendant on or between September 18, 2014 and January 31, 2016, did engage in sexual conduct with K. [REDACTED].
2. The defendant did so with the specific intent to arouse or satisfy the sexual desires of the defendant or K. [REDACTED].
3. The defendant was then a counselor or therapist.
4. K. [REDACTED] was then an emotionally dependent patient or client.

If the State has proved all of the elements, the defendant is guilty of Sexual Exploitation by a Counselor or Therapist of Emotionally Dependent Patient or Client. If the State has failed to prove any one of the elements, the defendant is not guilty and you will consider the lesser included offense of Sexual Exploitation by a Counselor or Therapist of a Patient or Client.

## INSTRUCTION NO. 29

Under Count II of the Trial Information, the State must prove all of the following elements of Sexual Exploitation by a Counselor or Therapist of a Patient or Client:

1. The defendant on or between September 18, 2014 and January 31, 2016, did engage in sexual conduct with K. [REDACTED]
2. The defendant did so with the specific intent to arouse or satisfy the sexual desires of the defendant or K. [REDACTED]
3. The defendant was then a counselor or therapist.
4. K. [REDACTED] was then a patient or client.

If the State has proved all of the elements, the defendant is guilty of Sexual Exploitation by a Counselor or Therapist of Patient or Client. If the State has failed to prove any one of the elements, the defendant is not guilty.

## INSTRUCTION NO. 30

**Definitions**

**Sexual Conduct** - Concerning element number 1 of Instruction Nos. 27, 28, and 29, "sexual conduct" includes, but is not limited to kissing, touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals, or a "sex act" as defined in Instruction No. 24. You may consider the type of contact and the circumstances surrounding it in deciding whether the contact was sexual in nature.

**Counselor or Therapist** - A "counselor or therapist" includes any person, whether or not licensed or registered by the State, who provided or purported to provide mental health services.

**Mental Health Services** – "Mental health services" is defined as providing or purporting to provide treatment, assessment, or counseling of another person for a cognitive, behavioral, emotional, mental, or social dysfunction, including an intrapersonal or interpersonal dysfunction.

**Pattern, Practice or Scheme of Conduct** - Concerning element number 2 of Instruction No. 27, a "Pattern, Practice or Scheme of Conduct" to engage in sexual conduct occurs if the defendant's conduct embraces two or more acts that had the same or similar purpose, motivations, results, participants, victims, or methods of commission, or otherwise were interrelated by distinguishing factual characteristics.

**Emotionally Dependent** - "Emotionally dependent" means that the nature of the patient's or client's emotional condition or the nature of the treatment provided by the counselor or therapist was such that the counselor or therapist knew or had reason to know that the patient or client was significantly impaired in the ability to withhold consent to sexual conduct by the Defendant.

**Patient Or Client** - "Patient or client" means a person who received mental health services from the counselor or therapist.

### Count III

#### INSTRUCTION NO. 31

Under Count III of the Trial Information, the State must prove all of the following elements of Child Endangerment:

1. On or between September 18, 2014, and January 31, 2016 the defendant was the person having custody or control of B. [REDACTED] and/or A. [REDACTED].
2. B. [REDACTED] and/or A. [REDACTED] were under the age of fourteen years.
3. The defendant knowingly acted in a manner that he was creating a substantial risk to B. [REDACTED] and/or A. [REDACTED]'s physical or mental or emotional health or safety.

If the State has proved all of the elements, the defendant is guilty of Child Endangerment. If the State has failed to prove any one of the elements, the defendant is not guilty of Child Endangerment.

## INSTRUCTION NO. 32

Concerning element No. 1 of Instruction No. 31, the phrase, "person having control over a child," means a person who has accepted, undertaken, or assumed supervision of a child from the parent or guardian of the child.

## INSTRUCTION NO. 33

Concerning element No. 3 of Instruction No. 31, for the defendant to know something means he had a conscious awareness that he was acting in a manner which created a substantial risk to B. and/or A.'s physical, mental, emotional health, or safety.

## INSTRUCTION NO. 34

Concerning element No. 3 of Instruction No. 31, "substantial risk" means the very real possibility of danger to a child's physical health or safety. "Substantial risk" does not require proof that the conduct was negligent or reckless, although such actions may create a substantial risk. It is unnecessary to prove that the physical risk to the child's health or safety was likely. Rather a showing that the risk was real or articulable will suffice.

## INSTRUCTION NO. 35

You may not communicate about this case before reaching your verdict.

This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, Twitter, email, etc.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules. Failure to follow these instructions may result in the case having to be retried.

It is important that we have your full and undivided attention during this trial.



## INSTRUCTION NO. 36

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Your notes should be used only as memory aids and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes, and your memory, your memory should prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was.

At the conclusion of your deliberations, leave your notes with the court attendant and they will be destroyed.

## INSTRUCTION NO. 37

When you begin your deliberations, you should select a foreperson. He or she shall see that your deliberations are carried on in an orderly manner, that the issues are fully and freely discussed, and that every juror is given an opportunity to express his or her views.

In order to return a verdict, each juror must agree to it. Your verdict must be unanimous.

It is your duty as jurors to consult with one another and reach an agreement, if you can do so without compromising your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with the other jurors.

During your deliberations, do not hesitate to re-examine your view and change your opinion if convinced it is wrong. But do not change your opinion as to the weight or effect of the evidence just because it is the opinion of the other jurors, or for the mere purpose of returning a verdict.

Remember, you are judges of the facts. Your sole duty is to find the truth and do justice.

## INSTRUCTION NO. 38

I am giving you four verdict forms for Count I, four verdict forms for Count II, and two verdict forms for Count III.

You will sign only one verdict form for each count.

When you have agreed upon your verdicts and the foreperson has signed the verdict forms, please notify the Court Attendant.

Dated this 21st day of December, 2017.

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Judge of the Iowa District Court