

IN THE IOWA DISTRICT COURT IN AND FOR LEE SOUTH – KEOKUK COUNTY

STATE OF IOWA,

Plaintiff,

vs.

BENJAMIN G. TRANE,

Defendant.

CRIMINAL NO.: FECR009152

**SUPPLEMENTAL MOTION FOR
NEW TRIAL**

COMES NOW, the Defendant, Benjamin Trane, and for this Supplemental Motion for New Trial states to the Court the following:

1. On September 18, 2017, Benjamin Trane was charged by Trial Information with three counts: 1) Sexual Abuse in the Third Degree, in violation of Iowa Code Sections 709.1 and 709.4(1)(a), a Class C Felony; 2) Sexual Exploitation by a Counselor, in violation of Iowa Code Sections 709.15(1), 709.15(2)(a)(1), and 709.15(4)(a), a Class D Felony; and 3) Child Endangerment – No Injury, in violation of Iowa Code Sections 726.6(1)(a) and 726.6(7), an Aggravated Misdemeanor. Trane entered a plea of not guilty to these charges.

2. On December 21, 2017, the jury returned its verdict, finding Benjamin guilty of the following: 1) Assault with Intent to Commit Sexual Abuse – No Injury, an Aggravated Misdemeanor; 2) Sexual Exploitation by a Counselor, a Class D Felony; and 3) Child Endangerment – No Injury, an Aggravated Misdemeanor.

3. Trane filed a Motion for New Trial on March 26, 2018, with a supporting brief filed on April 26, 2018.

4. As argued in the brief, the State sexual abuse expert, Dr. Anna Salter, improperly vouched for the credibility of the victims. The challenged statements are set

out in the supporting brief. This supplemental motion is to clarify Trane's position regarding the impropriety of the challenged statements.

5. In addition to constituting improper vouching testimony, Trane asserts the challenged statements constitute improper expert testimony as not being for the purpose of educating and informing the jury as to the complexities of sexual abuse, but rather constitute statements intending to elicit an emotional response and disgust toward Trane, causing unfair prejudice to him and his defense.

6. Expert testimony is admissible only where it "will help the trier of fact to understand the evidence or to determine a fact in issue." Iowa R. Evid. 5.702. Such testimony, however, must be able to survive Iowa Rule of Evidence 5.403. *State v. Buller*, 517 N.W.2d 711, 713 (Iowa 1994). Under this Rule: "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Iowa R. Evid. 5.403.

7. The term "unfair prejudice," as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged. *Old Chief v. United States*, 519 U.S. 172, 180-181 (1997). "'Unfair prejudice' within its context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." *Id.* (generalizing a defendant's earlier bad act into bad character and taking that as raising the odds that he did the later bad act now charged (or, worse, as calling for preventive conviction even if he should happen to be innocent momentarily)).

