

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

STATE OF IOWA,

Plaintiff,

vs.

BENJAMIN G. TRANE,

Defendant.

CRIMINAL NO.: FECR009152

MOTION FOR NEW TRIAL

COMES NOW the Defendant and for his Motion for New Trial states to the Court the following:

1. On September 18, 2017, The State charged Mr. Trane with Sexual Abuse in the Third Degree, a Class C Felony, in violation of Iowa Code §§ 709.1, 709.4(1)(a), and 903B.1 (Count I); Sexual Exploitation by a Counselor, a Class D Felony, in violation of Iowa Code §§ 709.15(1), 709.15(2)(a)(1), 709.15(4)(a), and 903B.2 (Count II); and, Child Endangerment, an Aggravated Misdemeanor, in violation of Iowa Code §§ 726.6(1)(a) and 726.6(7) based on actions alleged to have occurred between September 18, 2014, and January 31, 2016.

2. Counsel has reviewed the trial transcript and will include references to the transcript in his brief.

3. Prohibited and prejudicial Hearsay testimony was presented from A.H. during the course of the trial that should have been prohibited by the State of Iowa, the Court and the defense counsel. This testimony included the following:

- a. Medical treatment of A.H.;
- b. School records of A.H.;
- c. Statements regarding treatment at Midwest Academy;

- d. Statements regarding A.H.'s failure to testify; and,
- e. Vouching by various witnesses as to A.H.'s conduct.

4. A directed verdict, mistrial or dismissal should have been granted as to the charge of Child Endangerment when A.H. failed to testify. No credible testimony was presented by the State of Iowa that should have survived Mr. Trane's motion for directed verdict. A directed verdict should have been granted by the court. After the granting of the motion for directed verdict, the court should have entertained a motion to dismiss all the charges related to child endangerment regarding any other alleged victim. Due to the fact, the charge was presented to the jury without the testimony of A.H., the entire trial was contaminated depriving Mr. Trane of his constitutional right to a fair trial.

5. The Court, by allowing the charge of Child Endangerment to go forward regarding A.H. deprived Mr. Trane of his constitutional right of confrontation as guaranteed both by the constitution of the State of Iowa and the United States. Mr. Trane had a constitutional right to confront A.H.

6. The State of Iowa did not timely produce exculpatory and/or inculpatory evidence. The State of Iowa had a prosecutor involved in this case for or approximately one year prior to the filing of the charges against Mr. Trane. After the charges were filed in August 2017, the State of Iowa failed to timely disclose discovery to Mr. Trane. The State of Iowa deliberately delayed disclosure of discovery preventing Mr. Trane from timely preparing his defense. Although, the state had a hard drive of the discovery, it was not timely delivered to Mr. Trane. The State was attempting to force Mr. Trane to waive his right to a speedy trial and by delaying disclosure of discovery. This conduct deprived Mr. Trane of his due process rights as guaranteed by the constitutions of the State of

Iowa and the United States. Mr. Trane was appointed counsel in August, but discovery was not timely provided which interfered with his ability to defend himself. By delaying the production of evidence, the State of Iowa deprived Mr. Trane of his right to counsel under the 5th and 6th Amendment to the United States Constitution and the constitution of the State of Iowa.

7. The State of Iowa, the Court, and the defense attorney did not properly analyze a critical aspect of Mr. Trane's defense depriving him of his right to present a valid defense consistent with his constitutional rights guaranteed under the constitution of the United States and the State of Iowa. On December 11, 2017, the defense filed a Rule 5.412 Motion. It was filed the day prior to starting the trial because the deposition was taken the day before the trial started. The deposition was of a critical witness (K.S.) who made an allegation of sexual abuse against Mr. Trane. Out of a total of approximately 1900 young people who had been students at Midwest Academy, K.S. was the only student to come forward with any allegation of this nature. There was no physical evidence to support the allegation. There was no independent non-biased witness corroborating testimony that Mr. Trane had ever been alone with the person making these allegations. In the motion, defense counsel outlined the fact the deposition of alleged victim (K.S.) was taken the night before the court hearing and no transcript of the testimony was available. However, the delay in the deposition should have been attributed to the State of Iowa. The denial of the motion as being untimely was erroneous. The defendant's counsel made an offer of proof regarding what the witness would say regarding the false statement of K.S. The Rule 5.412 Motion was proper due to the fact evidence was sought to be introduced establishing the alleged victim had made two

previous false allegations of sexual abuse against an aunt and uncle that were false. It also appears that there may have been another false allegation made by the alleged victim when she was living with her sister and her boyfriend. The state may have been aware of this allegation. In the State of Iowa's resistance to the Rule 5.412 Motion, it wrongfully characterizes the defense's motion as one seeking to introduce specific instances of conduct that are prohibited. This is incorrect and misleading. There was "absolutely" no attempt to introduce prior sexual conduct but rather evidence was going to be presented of false allegations of sexual allegations. This was a total different standard and rule. The problem that each counsel knew at the time and both failed to disclose to the court was that the delay in discovery is why the Rule 5.412 Motion became a problem. Both lawyers were required to make this disclosure to the court and failed to do so. It does not cause a "trial within a trial" as alleged by the state in its resistance but rather should have been ferreted out in a proper pre-trial motion. There was more than ample time for this motion to have been heard by the court. The State of Iowa's statement regarding the Motion being untimely cannot be genuine in that the parties had a scheduled time for K.S. to be deposed. The state was fully aware of the earliest time for the defendant to verify statements made by K.S. It is disingenuous for the state to tell the Court it was not a timely motion. They knew full well the deposition schedule and participated in it. The Court's analysis that the motion was untimely was erroneous. The analysis of the court along the lines of the insufficiency of the evidence to support the application of Rule 5.412 evidence was flawed. Mr. Trane was denied his statutory right to take advantage of Rule 5.412 in addition to being denied his constitutional rights to a fair trial as guaranteed by the constitutions of the United States and the State of Iowa.

8. Hearsay evidence was allowed on critical issues including vouching for A.H. Medical testimony was allowed without a proper foundation. Admission of this evidence deprived Mr. Trane of a fair trial. Additional substantial 403 evidence was improperly introduced during the course of the trial.

9. The Jury Instructions were erroneous depriving Mr. Trane of a fair and impartial trial. Count III of the listed two alleged victims, B.V. and A.H. Since the Trial Information listed two alleged victims, the Jury Instructions should have included an interrogatory as to which person the jury was relying on in returning a verdict of child endangerment. Count III is charged in the singular and Jury Instruction listed two alleged victims. The alleged victims are not listed in the Trial Information. The effect of this Jury Instruction under the circumstance is similar to allowing the admission of "prior bad acts" and should have been prohibited. The circumstances of the admission deprived Mr. Trane of a fair and impartial trial.

10. The Jury Instruction 31 was erroneous and flawed in that, as to element 2. It was included that A.H. was under the age of fourteen years. He did not testify. The Court should have granted the Defendant's Motion for Directed Verdict as to A.H.

11. The Defense lawyer was ineffective which deprived Mr. Trane of his Sixth Amendment right to counsel as guaranteed by the constitutions of the United States and the State of Iowa. Mr. Trane's trial counsel was ineffective in the following instances:

- A) Failing to obtain an expert witness to examine the alleged victim and/or testify with regard to their treatment and/or policies regarding their treatment;
- B) Failing to object to A.H. being considered an alleged victim;

- C) Failure to timely object to substantial and prejudicial hearsay testimony;
- D) Failure to timely file and argue a Rule 5.412 Motion;
- E) Failure to move to strike an Amended Trial Information;
- F) Failure to object to prejudicial Jury Instructions;
- G) Failure to move for severance of counts I and II from count III; and,
- H) Failure to move to exclude late disclosed evidence and/or request for a dismissal or mistrial.

12. Mr. Trane obtained evidence he presented to his counsel prior to trial in an effort to have the evidence presented in his defense. This was critical evidence, but his trial counsel failed to consider and properly present the evidence in court as part of his defense. This evidence Mr. Trane gave to his counsel included the following: Timelines that contradicted when the state said students were placed in certain places within Midwest Academy; schedules of placement in the OSS room that contradicted evidence presented by the state; photographs of the alleged victims that contradicted the allegations made by the State of Iowa; a list of pertinent witnesses who should have been called who contradicted witnesses called by the state; and, a proposed list of expert witnesses who would have assisted the jury in deciding the facts of the case. The failure of his trial counsel to properly present this evidence denied Mr. Trane's constitutional rights as guaranteed by the constitutions of the United States and State of Iowa and was ineffective assistance of counsel.

13. Mr. Trane was advised that the state would not pay for the expert witnesses and consequently they would not be called. No request for an expert was ever put in place on behalf of Mr. Trane. Therefore, Mr. Trane did not have an expert to rebut the

state's experts who discussed how alleged victims are groomed or how OSS rooms are to be managed. He was effectively denied his right to counsel as guaranteed by the 6th Amendment to the United States Constitution and the constitution of the State of Iowa.

14. Mr. Trane was denied a fair trial because he was told the trial would be held in Lee County or an adjoining county. The Court did not agree to change venue outside of the district even though there was substantial and prejudicial evidence that Mr. Trane would not get a fair trial in Lee County.

15. Mr. Trane was denied a fair trial due to the failure to sever the counts in the trial information. The Sexual abuse count should have been separated from the child endangerment charges. The counts were so prejudicial to each other that they should have been separated as a matter of law. Trial counsel was ineffective in not filing a motion to separate the counts denying Mr. Trane effective assistance of counsel as guaranteed by the constitutions of the United States and the State of Iowa. It was impossible for the jury to hear completely unsupported evidence of malnutrition of one of the alleged victims without having that impact their verdict on the issue of sexual abuse or sexual abuse by a counselor. The state's theory was that Mr. Trane was in charge of the school and therefore was responsible. His defense to one of the sexual exploitation and/or sexual abuse charges were not in any way consistent with his defenses to the child endangerment charges. The defenses were not only inconsistent but had the probability of confusing the jury.

16. Each of these grounds separately are sufficient for the court to grant Mr. Trane a new trial but also a combination of them denied Mr. Trane a fair trial.

17. Counsel will prepare and file a brief in support of his motion for new trial and outline to the court supporting testimony from the trial transcript in addition to case law.

18. In order to assist with the presentation of his Motion for New Trial, Mr. Trane does need to subpoena various witnesses. His financial affidavit is on file. The court has approved the transcript at state expense and Mr. Trane requests that the court allow him the cost of subpoenaing witnesses at state expense.

19. Mr. Trane was denied a fair trial due to the failure of the state to disclose exculpatory evidence. Four witnesses had been subpoenaed by the State of Iowa to testify. At the last minute the state changed its mind and decided not to call the witnesses. The state was fully aware that witnesses A.Y., B.H., J.S., and S.P. had favorable testimony for Mr. Trane. The state failed to timely notify the defendant that they were not calling the witnesses and failed to disclose to the defendant or the court that the reason the witnesses were not going to be called is because they were going to provide favorable testimony for the Mr. Trane. The conduct of the state in failing to disclose this information was deliberate. The state was aware it was withholding exculpatory evidence. The method and manner in which the state dismissed the witnesses was such that the defendant did not have adequate time to subpoena the witnesses and have the witnesses testify in his case in chief.

WHEREFORE, Defendant prays that the court would have a hearing on his Motion for New Trial and after the hearing would grant his motion for a new trial and grant any other relief in favor of Defendant that the court deems appropriate.

