IN THE SUPREME COURT FOR THE STATE OF IOWA
NO. 21-1211

State of Iowa,
Plaintiff-Appellee,

v.

Benjamin Trane,
Defendant-Appellant,

APPEAL FROM THE IOWA DISTRICT COURT
FOR LEE COUNTY (SOUTH),
HONORABLE MARK KRUSE

DEFENDANT/APPELLANT'S FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT

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ROUTING STATEMENT

Trane's appeal involves a remand from this Court, mandating the District Court conduct a Rule 5.412 hearing to determine whether the State's primary witness in a sex abuse conviction had made prior false claims of sexual abuse against numerous parties. *State v. Trane*, 934 N.W.2d 447, 463 (Iowa 2019). As the second reversible error in Trane's case, this appeal presents a "fundamental

and urgent issue[] of broad public importance". Iowa R. App. P. 6.1101(2)(d). This case also presents at least one issue of first impression regarding what information is to be considered during a Rule 5.412 hearing. Iowa R. App. P. 6.1101(2)(c). As such, Plaintiff requests that the Iowa Supreme Court retain this Appeal for review. Iowa R. App. P. 6.1101(2).

CASE STATEMENT

Defendant Trane appeals the District Court's August 12, 2021, ruling which concluded that Trane had not made a showing, by a preponderance of the evidence, that the State's key witness in his criminal trial had made prior false accusations of sexual assault. The District Court was ordered on November 26, 2019, in *State v. Trane* to conduct a Rule 5.412 hearing and grant Trane a new trial on all of his criminal charges if the District Court concluded as a result of the Rule 5.412 hearing that by a preponderance of the evidence K.S., the alleged victim of sexual abuse, had made prior false statements of sexual abuse. 934 N.W.2d 447, 463 (Iowa 2019). Trane asserts multiple errors.

CASE PROCEEDINGS

On September 18, 2017 Defendant Trane was charged by trial information with one count each of Sexual Abuse in the Third Degree, Sexual Exploitation by a Counselor, and Child Endangerment.[1] Trane moved for a Rule 5.412 hearing on December 11, 2017, based on newly discovered evidence that K.S., one of the alleged victims, had made prior false claims of sexual abuse. This was denied. After trial starting on December 12, 2017, Trane was convicted of the lesser included offense of Assault with Intent to Commit Sexual Abuse, an Aggravated Misdemeanor; as well as Pattern, Practice, or Scheme to Endanger in Sexual Exploitation by Counselor or Therapist, a Class D Felony; and Child Endangerment, an Aggravated Misdemeanor. These charges were not severed. Trane was sentenced to serve these sentences consecutively for a total of nine years.

After his motion for new trial was denied, he appealed to the Iowa Supreme Court. The Supreme Court ruled that his request for a Rule 5.412 hearing had been wrongfully denied and ordered the District Court to conduct the hearing on remand. If the District Court

[1] Based on the Minutes of Testimony and subsequent trial, Trane's trial counsel should have moved to sever the charge of Child Endangerment, which involved other minors in unrelated conduct.

concluded, by a preponderance of the evidence, that K.S. had made prior false claims of sexual assault, Trane was to be granted a new trial on all counts. *Trane*, 934 N.W.2d at 463. Otherwise, his convictions were to remain.

After delays including a Motion to Recuse, the District Court conducted the required hearing on April 23, 2021. Mr. Trane and his spouse drove to Iowa from Idaho to appear at the Rule 5.412 hearing. On August 12, 2021, the Court entered an Order denying Trane relief under Rule 5.412, and requiring a $75,000 bond, cash or surety. This was $25,000 higher than the original bond set by the same District Court. A subsequent Pro Tunc Order set Trane's bond at cash or surety in the amount of $50,000. Trane appealed.

FACTS

K.S. was born on xxxxxx xx, 19xx. At approximately age three, she was placed in foster care in the state of Oregon. (Deposition of K.S. [Hereinafter Ex. AA] at 44:18-25). At age seven she came to live with Michael and Kimberly Wolak, her biological aunt and uncle, who lived in Elm Grove, Wisconsin. (April 23, 2021 Hearing transcript [Hereinafter 5.412 Trans.], at 29:10-13). They adopted K.S. and her

older sister shortly thereafter. (*Id.*). Despite the issues the Wolaks knew existed and conflicts that K.S.'s behavior would later generate, the Wolaks willingly provided K.S. and her sister a more stable home environment. (*Id.* at 15:1-10) ("And when it became obvious that they were incapacitated--I don't know what the word is--incapacitated, or whatever you want to say--maybe not fit to parent, and we knew that . . . K.S. would need a home. We just thought, why not us?"). K.S. repeatedly engaged in rebellious behavior, including running away from home, first to Chicago, Illinois in November of 2013 and then a shorter, local abscondment. (Ex. AA at 11:20-25; 13:1-15). Wisconsin protective services interviewed K.S. after the abscondment to Chicago, as well as several other times both at home and at K.S.'s school without the Wolaks present. (*Id.* at 13:7-13; 18:1-25; 19:1-12); (5.412 Trans. at 67:5-9). At no time during any interview or investigation by Wisconsin Child Protection Services did K.S. make a single accusation of sexual abuse against the Wolaks. (Ex. AA at 18:17-25; 19: 8-12); (5.412 Trans. at 66:1-15).

Child service workers in Wisconsin expressed concern to the Wolaks about the nature of K.S.'s behavior and counseled them to

install cameras in their home to document any claims K.S. might make. (5.412 Trans. 23:15-24; 37: 1-9). Also on recommendation of WCPS, the Wolaks took K.S. for a mental health evaluation to determine the underlying cause of K.S.'s delinquent conduct, during which time she was individually evaluated by a mental health professional. (*Id*. at 37:1-6; Ex. AA at 23: 23-25; 24:1-8). After K.S.'s continued rebellious conduct and her second time running away from home, the Wolaks were forced to seek additional outside assistance and enrolled K.S. at Midwest Academy, a youth academy and boarding school run by Defendant Trane. Prior to moving to Midwest Academy, K.S. had never a single accusation of sexual abuse against either of her adoptive parents. (5.412 Trans. at 66:1-15).

Upon arrival, K.S. reported that she was "hurt" by her adoptive parents' actions, and "made [it] clear" that she did not want to have contact with them. (Ex. AA at 49: 19-25). At the Academy, K.S. immediately engaged in problematic behaviors, including trying to manipulate staff (her family rep, Callie Peterson). (*Id*. at 34:21-23; 35:14-19). K.S. chose to report to Ms. Peterson—the staff member she was accused of manipulating—that the Wolaks had sexually and

physically abused her. (*Id.* at 42: 6-21; 43:15-18). As a result, K.S. was allowed off campus for interviews with DHS, escorted by Ms. Peterson. (*Id.* at 45: 25; 46:1-4).

This conduct escalated to a sufficient degree that, as director of the school, Trane became directly involved, replacing Ms. Peterson as K.S.'s treating counselor. (2017 Trial transcript [Hereinafter TT]7 at 295:20–22) ("some statements were made [by K.S.] concerning foster care and [K.S.'s] parents that forced [Trane] to get involved."). K.S.'s behavior remained manageable; however, in November 2015 Defendant Trane denied K.S. a pass to go off campus for Thanksgiving the week prior to the holiday. (*Id.* at 327:18–24; 328:15-25 (noting the denial occurred "on the 17th, 18th or 19th"). Her behavior became erratic. Possibly as early as November 24, 2015 K.S. began reporting to staff monitoring her that she was uncomfortable around Trane, and on December 1, 2015 K.S. made her first report of sexual abuse against Trane to Midwest Academy staff, including Jane Riter and Cindy Crew. (TT5 at 18:13–18; 60:6–20; TT7 at 149: 1-15; 160:11–19; 163: 23-25; 164:1–19).

An investigation by police and Iowa DHS followed, including several interviews with DHS personnel. During these interviews, K.S. again asserted that she had been subject to prior sexual abuse by the Wolaks, as well as her foster family in Oregon. K.S. described each episode of sexual abuse as being nearly identical. In each case, against each alleged offender, K.S. claimed that one offender had sexually abused her while either a confederate or automated camera system recorded the abuse. (Ex. AA at 21:15-22; 43:18; 44:10-25; 45:15-17; 65:17-21; 94: 2-25; 95:1-25).

Specifically, K.S. claimed that she was recorded engaging in sex acts with her foster family in Oregon. (*Id.* at 65:17-18). K.S. then claimed that once she was adopted and placed in an entirely different home, she was also recorded engaging in sex acts with the Wolaks, now using a small tripod mounted camera. (*Id.* at 21:15-22). K.S. then finally claimed that she was recorded performing sex acts with Trane, who used a similar positioned black camera, this time with the Trane giving her verbal instructions. *(Id.* at 98:10-23). In response to claims of *three* separate instances of video recorded sex trafficking, K.S. noted police requested to conduct a non-invasive skin surface

examination to identify birth marks or skin irregulates to match her with any known victim recordings. (*Id.* at 65:13-22.) K.S. declined. (*Id.* at 65:21-22).

On the basis of these accusations Trane was charged with one count of sexual abuse in the third degree, one count of sexual exploitation by a counselor or therapist, and one unrelated count of child endangerment regarding the discipline and security of other minors. During preparations for trial, Trane's trial counsel did not depose K.S. until the day before trial. (TT1 6:17–20). At that deposition, K.S. for the first time disclosed to Trane's trial counsel her prior accusations of sexual assault against her foster parents and the Wolaks. Within hours of completing the deposition and confirming with the Wolaks that the allegations were false, trial counsel filed a rule 5.412 motion to present evidence of these prior false accusations. (App. 4). The District Court denied these motions claiming they were "untimely, and even if timely, the information would not show that the statements are false, based on a preponderance of the evidence." (TT2 242:22–243:10; App. 28).

Denied the ability to present K.S.'s prior false claims of sexual abuse at trial, Trane was convicted of the lesser included offense of Assault with Intent to Commit Sexual Abuse based "on the relative credibility of K.S. and Trane". *Trane*, 934 N.W.2d at 463. This conviction of a lesser included offense "was arguably a compromise verdict" based on the difficulty sorting Trane's denials and K.S.'s graphic claims, absent any other actual evidence of a crime. *Id.* at 454, n. 5. His conviction on the remaining counts was likewise controlled by the District Court's error. *Id.* (noting that there was a "risk that all three verdicts could have been affected by the limits on Trane's ability to present a defense").

Trane appealed. The Iowa Supreme Court Opinion agreed with Trane that his Rule 5.412 hearing request had been improperly denied. *Id.* The Supreme Court remanded the case to the District Court, with orders to conduct a Rule 5.412 hearing in order "to determine whether [K.S.] made these statements and if so, whether they are false." *Id.* at 463. If successful, he would be granted a new trial on all counts. *Id.*

On remand, Trane initially obtained the Wolaks for testimony, and moved to conduct the hearing via Zoom as was the emerging best practice during the height of the COVID-19 pandemic, and to accommodate the Wolak's concern for virus transmission. (App. 22); (App. 36-37); see also (App. 11, para 2) (Trial court discretion to conduct nonjury trials or accept specific testimony by videoconference or telephone with the parties' consent). Both Wolaks were in a vulnerable population for virus transmission due to their age, and interstate travel without quarantine was a specific risk to them and others due to possible asymptomatic transfer. Centers for Disease Control and Prevention, SCIENCE BRIEF: OPTIONS TO REDUCE QUARANTINE FOR CONTACTS OF PERSONS WITH SARS-COV-2 INFECTION USING SYMPTOM MONITORING AND DIAGNOSTIC TESTING, available at https://www.cdc.gov/coronavirus/2019-ncov/more/scientific-brief-options-to-reduce-quarantine.html (updated December 2, 2020). Trane likewise moved for the District Court to recuse itself, based on its prior bias towards him. (App. 27). These Motions were resisted by the State and denied by the Court. (App. 38).

Trane obtained an Iowa Court Order for an out of state subpoena on the Wolaks, and secured an out of state subpoena by hiring a lawyer in Wisconsin requiring the Wolaks to appear. After the order was obtained in Wisconsin requiring them to appear, the Wolaks agreed to appear and testify without personal service of the subpoena. After delays, the hearing was held on April 23, 2021. Trane provided testimony from Mr. and Ms. Wolak and the State called K.S. Trane also submitted the transcript of K.S.'s earlier deposition.

Both Mr. and Ms. Wolak were emphatic, adamant, and direct in denial of allegations of sexual abuse, clearly articulating the allegations by K.S. were false. The Wolaks outlined their background, relationship with K.S., education, and employment. (App. 62) [Hereinafter Ruling]. Finally, Ms. Wolak noted she retained no animus against K.S., despite the nature of her accusations against them. Ms. Wolak noted specifically that despite the false allegations, she still wanted to maintain a relationship with K.S. (5.412 Trans. at 50:13-25; 51:1-12).

During defense counsel's direct examination of Mr. Wolak, the State interrupted Mr. Wolak to inform him that continued testimony would put him at risk of prosecution for a high-level felony sex offense, before the Mr. Wolak provided testimony contradicting K.S. (5.412 Trans. at 16:20-25; 17:1-4). Defense counsel objected to this conduct by the prosecutor, noting its intent and purpose was to intimidate the witness and suppress testimony. (*Id.* at 17:5-16). The District Court overruled this objection, cautioning the witness and informing him of his Fifth Amendment rights. (*Id.* at 17:17-25; 18: 1-3). Despite this Mr. Wolak stridently, consistently, and accurately testified that K.S.'s accusations of were false, that no such sexual abuse had occurred, and that the Wolaks would have testified similarly if they had been given the opportunity to testify at Mr. Trane's original trial.

The State called K.S. as a witness. K.S. repeated her false claims against the Wolaks. Under cross examination, she was unable to properly recall the sequence of events she had previously reported. Specifically, she was unable to recall when the alleged abuse occurred, contradicting her prior deposition testimony. (Compare Ex.

AA at 20:11-25; 21:1, with 5.412 Trans. at 85:8-13) (noting different staring points for the alleged abuse, pre- and post- puberty).

K.S made mistakes in her timeline of reporting, stating she had never made a claim of abuse against the Wolaks prior to attending Midwest Academy, in direct contrast to her prior statements. (Compare Ex. AA at 10:1-6 with 5.412 Trans. at 66:13-21). Notably, K.S. contradicts herself even during her deposition, claiming to have previously reported the Wolaks to the police, and then denying it (Ex. AA at 10:1-6; 21:2-3). Likewise, she was unable to articulate her failure to provide certain supposed evidence of abuse by the Wolaks to police, claiming that recordings K.S. herself had made of the alleged abuse were locked on an iPod in police possession, because she forgot the password. (5.412 Trans. at 83:6-25; 84:1-9). She had not made prior reference to this evidence in support of her allegations. While K.S. claimed that this detail eluded her because it was Trane and not the Wolaks on trial, police nonetheless inquired, and K.S. failed to provide support. (*Id.* at 84:1-9).

K.S.'s contradictory, inconsistent and unconvincing testimony, combined with her history of making strikingly similar claims of

sexual abuse—including venue, format, and style—against individuals who had recently angered or wronged her, made her claims of prior sexual abuse against the Wolaks unbelievable. Despite these obvious contradictions, inconsistencies, and fabrications, the District Court erroneously concluded otherwise, reinstating Trane's sentence in an order on August 12, 2021. The District Court took the added step of initially increasing Trane's bond to $75,000 cash or surety, despite the lack of any risk of flight or misconduct in the years he has been free.

STANDARD OF REVIEW

Review of a District Court's determination of admissibility of evidence under Iowa Rule of Evidence 5.412 (the rape shield rule) is for abuse of discretion. *State v. Alberts*, 722 N.W.2d 402, 407–08 (Iowa 2006). Reversal is warranted when the grounds for admission or denial are "clearly untenable or clearly unreasonable." *State v. Plain*, 898 N.W.2d 801, 811 (Iowa 2017). A court's reasoning is untenable if it is "based on an erroneous application of the law or not

supported by substantial evidence." *State v. Dudley*, 856 N.W.2d 668, 675 (Iowa 2014).

Likewise, a district court must recuse itself if by an objective reasonable person standard, its impartiality might be reasonably questioned. *State v. Mann*, 512 N.W.2d 528, 532 (Iowa 1994). This determination is left to the "sound discretion of the court", and in order to constate reversable error, actual prejudice must be shown. *Mann*, 512 N.W.2d at 532; *State v. Millsap*, 704 N.W.2d 426, 432 (Iowa 2005).

ARGUMENT

A. District Court's conclusion after holding a Rule 5.412 hearing that K.S. had not by a preponderance of the evidence made prior false claims of sexual abuse is not supported by substantial evidence

The District Court was tasked with determining "whether [K.S.] made these statements [alleging prior sexual assault] and if so, whether they are false". *Trane*, 934 N.W.2d at 463. The *Trane* court, in accordance with its prior ruling in *State v. Alberts*, took the affirmative step of concluding that the "evidence concerning the prior

false allegations—if indeed they were false—was relevant and important, and its probative value outweighed the danger of unfair prejudice". *Id.* at 462–63. The District Court was not ordered to conduct a jury trial, or to review the entire proceedings of the case, or even to assess K.S.'s prior trial testimony in light of Trane's witnesses. The District Court had the singular duty of conducting a Rule 5.412 hearing according to Iowa law and the Supreme Court's remand regarding K.S.'s false report of prior sexual abuse, to determine if Trane could meet his burden by a preponderance of the evidence. *Id.*

The District Court summarized the 'preponderance of the evidence' standard in Trane's Rule 5.412 hearing: "A preponderance of the evidence is the evidence 'that is more convincing than opposing evidence' or 'more likely true than not true.'" (App. 58) (citing *Holliday v. Rain & Hail L.L.C.*, 690 N.W.2d 59, 63–64 (Iowa 2004)). Evidence is more convincing when it is "superior in weight, influence, or force". *State v. Hartman*, 871 N.W.2d 127, *7 (Iowa Ct. App. 2015) (identifying same standard in Rule 5.412 hearing).

For the first time, Trane was able to present the testimony of the Wolaks. They provided believable, creditable testimony. Both Mr. and Ms. Wolak are well spoken, reliable reporters, with a consistent history of employment. Their testimony was internally consistent, and likewise concurred with the portions of K.S.'s testimony that was not fabricated. *See* (App. 60) (crediting K.S.'s testimony for agreeing with portions of the Wolaks' testimony, while granting no such benefit to the Wolaks). Unlike K.S., the Wolaks harbored no ill will towards K.S., despite the damage her accusations had inflicted upon them. (See 5.412 trans. at 50:13-25; 51:1-12).

As with Trane's original trial, the State's case hung on the testimony of K.S. *Trane*, 934 N.W.2d at 463 ("Apparently there were no third-party witnesses to any of the alleged incidents of sexual contact . . . State's case rested on the relative credibility of K.S."). The State presented no other evidence or witnesses. The District Court needed only to assess, based on the evidence presented at the April 23, 2021 Rule 5.412 hearing, whether Trane had met this extremely low burden, when his witnesses were compared to K.S.'s testimony and her prior deposition, which she repeatedly contradicted. In the

face of two separate reliable, believable witnesses who demonstrated knowledge of the subject matter, refuted each claim against them, and showed no reason to lie, the Court wrongly concluded that Trane had not met his low burden.

This conclusion by the District Court was not supported by substantial evidence. *Plain*, 898 N.W.2d at 811. Substantial evidence is that which, viewed in the light most favorable to the State, is sufficient to convince a rational fact finder. *State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012). In reviewing evidence under this standard, this Court must "consider the whole record . . . including that evidence which is favorable to defendant or detracts from the weight of the State's case." *State v. Allen*, 348 N.W.2d 243, 247 (Iowa 1984). If in assessing the whole record in that light, a rational fact finder would "believe that the existence of a fact", such as that the Wolaks were accurate in their denials, "is more probable than its nonexistence", then substantial evidence supports a finding that Trane met his preponderance of the evidence standard. *Concrete Pipe & Prods. Of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 622 (1993). If a District Court's ruling lacks substantial

evidence to support it, it has abused its discretion. *Dudley*, 856 N.W.2d at 675.

1. The Wolaks provided decisive and reliable testimony at the Rule 5.412 hearing.

The Wolaks presented confident, reliable testimony in support of Trane's position. The Wolaks addressed every aspect of K.S.'s claims against them. (5.412 trans. at 22:18-25; 23:1-15; 24:3-13; 33: 9-15; 34:14-24). Specifically, counsel for Trane walked through each of K.S.'s accusations made in her December 11, 2017 deposition with the witnesses. These included K.S's specific claims that the Wolaks had physically abused her (*Id.* at 22:18-25), that the couple had recorded sex acts with K.S. (*Id.* at 23:1-15), that Mr. Wolak had had sex with K.S. on her 16th birthday (*Id.* at 24:3-13), that Ms. Wolak had operated the handheld camera K.S. claimed to have been recorded with (*Id.* at 33: 9-15), and finally K.S.'s timeline for the claimed abuse (*Id.* at 34:14-24). In each case, the witnesses adamantly denied the claims, refuting every specific of K.S.'s prior accusation. Ms. Wolak even testified to allowing a psychologist—whose professional duty would have been to evaluate for child

abuse—to assess K.S., which would have exposed them to risk of discovery, if anything existed to discover. (*Id.* at 37: 1-6).

Their testimony also explained several of K.S.'s additional claims against them, such as K.S.'s assertion that the Wolaks had broken her arm in an episode of physical abuse (it had in fact been broken while riding a horse). (*Id.* at 44:16-17).[2] The Wolaks confronted and addressed each of K.S.'s claims, providing the context for K.S.'s assertions, which included the assessment by Wisconsin services that they should install cameras in their own home to protect them from false accusations. (*Id.* at 23: 15-24; 37: 1-6; 83: 1-5).

Neither of the Wolaks had a motive to testify falsely. They attended the Rule 5.412 hearing without the need for a subpoena to be personally served on them. (*Id.* at 41:23-5; 42:1-2). Ms. Wolak expressly worried that her honest testimony might further harm her relationship with K.S., with whom she hoped to rebuild ties. (*Id.* at 50:13-25; 51:1-12). In fact, as noted by the State, they testified

[2] As noted below, these claims of physical abuse should not have been litigated in a Rule 5.412 hearing.

despite Mr. Wolak being threatened with the prospect of prosecution in Wisconsin. (*Id.* at 16:20-25; 17:1-25).

Finally, the District Court gave very little weight to the Wolaks' reliability, education, background, relationship, prior interactions and work credentials. (App. 62). Both witnesses possessed solid work histories in fields replete with contact and responsibility to minors. Both witnesses for Trane had been or were currently employed in scrutinized fields of work—Mr. Wolak was a teacher, and Ms. Wolak works as a school counselor. (5.412 Trans. at 8:23-25; 9:6-10; 17-25; 10: 1-6; 27:4-22). The State presented no evidence of prior issues with any other student or K.S.'s older sibling, who resided with the Wolaks at the same time. Both are well educated, respected members of their community. (*Id.*). They had opened their home to K.S. and her older sister voluntarily, taking on the duty of caring for and supporting them. (*Id.* at 15: 1-10; 30:1-4).

With no reason to testify falsely, the Wolaks testified in Trane's favor and denied every allegation. They did so as reliable, capable witnesses. The State made no challenges to their credibility—Mr. Wolak was not cross examined. (*Id.* at 25:12-16). On cross

examination of Mrs. Wolak, the State elicited even more support for Trane, as Ms. Wolak noted that K.S. was interviewed outside of the Wolaks' presence, during which time K.S. would have been free to report any alleged sexual abuse. (*Id.* at 46: 18-21). There was no rational reason to doubt the veracity of the Wolaks' claims, the accuracy of their denials, or the truthfulness of their statements.

2. K.S. presented unbelievable, inconsistent, and contradictory testimony that was not reliable.

The State relied solely on K.S.'s highly unreliable, contradictory and inconsistent testimony. Substantial evidence, including conflicting prior statements, existed calling her testimony into question. A rational fact finder may not simply ignore contradictory evidence which does not support its conclusion. *Allen*, 348 N.W.2d at 247. This is particularly important for a matter with such a low burden of proof as a preponderance of the evidence, where disregarding even one piece of evidence can be an abuse of discretion.

K.S.'s claims are questionable in content and timing. Where the testimony of the witness is so contradictory as to be inherently unbelievable, it cannot supply substantial evidence. See *State v.*

Smith, 508 N.W.2d 101, 104-5 (Iowa 1993). In each of the reports of sexual abuse that were the subject of the Rule 5.412 hearing, K.S. produced a version of the same bizarre story. In each case, she was sexually abused while the sex abuse was recorded, usually but not always by a third party. (Ex. AA at 21:15-22; 65:17-18; 98:10-23).

K.S. outlined at least three occasions wherein she was subjected to child sex trafficking in the form of video recording, each conducted in the same manner. The complexity of these assertions increased over time: against her foster parents in Oregon, K.S. claimed merely that the abuse was recorded (*Id.* at 65:17-18). When it came time to outline her claims against the Wolaks K.S. had added a new detail to the same narrative, that Ms. Wolak actively operated the camera. (*Id.* at 21:15-22; 22: 17-19). When K.S. decided to accuse Trane, all the prior details where there, now with the added matter of Trane giving her verbal instructions on what sex acts to perform. (*Id.* at 98: 1-23).

This account presses the boundaries of probability. *Smith*, 508 N.W.2d at 104. In no case was any evidence of any recording recovered, not from the terabytes of data seized from Trane, not from

the Wolaks, nor any other party. For the first time during the Rule 5.412 hearing, K.S. claimed to have evidence of physical abuse by the Wolaks—that she was unable to provide. (5.412 Trans. at 83:6-25; 84:1-9). No evidence of these claims exists, anywhere, calling into question the probability that K.S. was the victim of substantially the same sex abuse from three separate and unrelated offenders over decades. It would also require child protective services in three different states across two decades to fail to detect this abuse. Such testimony is on its face not credible.

Trane also made it clear to the District Court that the timing of K.S.'s complaints was suspect, each coming on the heels of K.S.'s disappointment or discipline of K.S. (App. 47-50); *Trane*, 934 N.W.2d at 451 ("K.S.'s disclosure to Jerred apparently came the day after Trane delivered to K.S. the ill-received news that she would not be permitted to travel off campus with anyone for Thanksgiving.").[3] Up to the time of her deposition, these rote accusations have been made

[3] Indeed, K.S.'s claims against Trane came roughly a week after being denied a thanksgiving pass. (TT5 18:13–18; 60:6–20; TT7 149: 1-15; 160:11–19; 164:11–19).

against at least one person at most places K.S. has ever lived.[4] In fact, with the possible exception of her foster family, the District Court was presented evidence that *each* accusation came in the context of K.S. being in conflict with those accused. (App. 47-50); see also *Trane*, 934 N.W.2d at 463 ("the allegedly false report of sexual abuse by the adoptive parents occurred fairly close in time to the report of sexual abuse by Trane . . . [a]dditionally, both reports related to authority figures."). K.S. likewise declined every opportunity to substantiate these claims. (Brief in Support, at 12-13; 5.412 Trans. at 83:6-25; 84:1-9; Ex. AA at 65:21-22). The District Court was aware that K.S.'s accusations prior to the 2017 deposition included Trane, her adoptive parents, her foster parents, and even her sister's boyfriend after leaving Midwest Academy. (App. 47-48). A repetition of the same fact pattern does not make it more likely to be true—it makes it less so.

[4] As noted in briefings to the District Court, in her deposition, K.S. noted that she had made yet another report of sexual abuse, this time against her sister's boyfriend. (Ex. AA at 108:15-25; 109:21-23). According to K.S. herself, she made this report while her relationship with her sister was breaking down. (*Id.*) ("My sister didn't want me there anymore").

In considering K.S.'s testimony, the District Court also ignored or discounted K.S.'s inaccuracy. Trane presented the District Court with evidence that K.S. had changed the point in time in which the alleged assault by Mr. Wolak began, claiming first that it occurred before puberty, and then recanting and stating it did not occur until afterwards. (Compare Ex. AA at 20:17-24 with 5.412 Trans. at 86:10-11). K.S. also was unable to provide a clear timeline of reporting, stating in one deposition that she had reported her adoptive parents to police prior to attending Midwest Academy, only to recant this later. (Compare Ex. AA at 10:1-6 with 5.412 Trans. at 66:2-21). The District Court concluded that K.S. distinguished "what happened in Wisconsin and what happened in Iowa and the timing". (App. 61). However, K.S. distinguished this by refuting her prior testimony, which undermines rather than supports her believability.

3. The District Court's interpretation of evidence at the Rule 5.412 hearing was biased in K.S.'s favor.

The District Court's review of the facts presented in the April 23, 2021, hearing was biased against both the Wolaks and Trane. It ignored evidence regarding the credibility of the Wolaks, while giving

unwarranted support to K.S.'s account of the same events. The District Court likewise accepted K.S.'s version of events, despite the above-mentioned logical flaws and contradictions with prior testimony.

While normally under an abuse of discretion standard a court's determination of credibility is undisturbed, such deference is defeated where the allegations and evidence supporting a witness is deeply flawed enough to be irrational. *Smith*, 508 N.W.2d at 104-5. Such flaws occur when a witness gives one account under oath (in K.S.'s case, a pretrial deposition) and then provides such "self-contradictory" testimony that cannot be explained. *Graham v. Chicago & N.W. Ry. Co.*, 119 N.W. 708, 711 (1909). Attention to this principle is especially important where credibility is the sole point of a hearing: a Rule 5.412 hearing on false allegations is effectively a hearing on whether a witness for the state perjured themselves. *State v. Myers*, 382 N.W.2d 91, 97 (Iowa 1986) (noting that credibility determination in perjury open to review).

In such a case, it behooves the appellate court to be vigilant that the District Court "distinguish between likeability of the witness and

credibility: credibility and likeability do not necessarily correlate." In re *P.C.*, 886 N.W.2d 108, *6 (Iowa Ct. App. 2016) (Mullins, concurring). Where the written observations of the District Court are, in the context of bias, at sharp variance to the evidence and circumstances, their accuracy is rightly questioned. *Matter of Jenkins*, 503 N.W.2d 425, 427 (Iowa 1993) ("Objective observations explained by a trial court are helpful in the review process. Clearly, the ones here do not qualify."). The biased observations of the District Court, based on K.S.'s unbelievable testimony, warrant reversal.

Specifically, the District Court repeatedly ignored evidence to credit the State's position and undermine the Defense. Despite the probity of the Wolaks and the unreliable nature of K.S.'s testimony, the District Court concluded that the opposite was true. It also completely disregarded other evidence of K.S.'s conduct prior to the deposition in its assessment of her testimony, showing a bias against Trane that undermines the District Court's findings.

In its ruling, the District Court concluded that "[t]he testimony of Mr. Wolak the court did find to lack detail in many instances" and that ultimately:

> In the testimony of Mr. or Ms. Wolak there was nothing specific that would undermine the testimony of K.S. or provide a basis to determine that K.S. made these allegations up, which is largely the premise.

(App. 62). This conclusion ignores the great weight of the Wolaks' testimony, K.S.'s conflicted and inaccurate testimony, and actively ignores Defense Counsel's step-by-step refutation of every aspect of K.S.'s claims against the Wolaks. In fact, the Court used the probity and reliability of the Wolaks testimony not to support their credibility, but to boost K.S.'s. (App. 60) ("K.S. did testify. Her testimony is consistent with one or both of the Wolaks in several respects.").

The District Court likewise focused on what it perceived to be Mr. Wolak's reticence. (App. 62). According to the District Court, Mr. Wolak was "definitive primarily when asked a question that left little room for an alternate response." (App. 62). This is entirely speculative on the District Court's part. There is no mention of the detailed review and denial of K.S.'s claims. Here, the District Court engaged in speculation on the implication made by State's counsel in warning Mr. Wolak that he might be subject to prosecution if he spoke too

freely. (5.412 Trans. at 16:20-25; 17:1-4). The District Court provided only the most marginal of cautionary instructions to Mr. Wolak, and then interpreted his testimony through the lens of a witness asserting a fifth amendment right to silence. (App. 62) (asserting Mr. Wolak "lack[ed] detail" and displayed "deficit[s] in the knowledge of the type of allegations he was denying"); *State v. Fox*, 491 N.W.2d 527, 530 (Iowa 1992). In so doing, the District Court impliedly assumed that Mr. Wolak's testimony was limited to "protect [him]self. *Fox*, 491 N.W.2d at 533. This unfounded judgment was allocated to undermine the credibility of Mr. Wolak's testimony.

In contrast, the District Court concluded that K.S. "showed strong command of the factual circumstances surrounding the time period" and that "[s]he was able to address her actions and reasoning for her actions during the time frame in a believable fashion. (App. 61-62). The District Court also claimed that:

> There was not shown to be any ulterior motive to fabricate the allegations, despite argument to the contrary, and the testimony did not show any 'get even' mentality toward the Wolaks, or anyone else for that matter."

(App. 62). This is again in direct contrast to evidence submitted to the District Court and provided at the hearing. As noted above, K.S. had motive to strike out at Trane, the Wolaks, and others, and repeatedly contradicted herself on the stand, failing to maintain a consistent narrative. (Compare Ex. AA at 20:17-24 with 5.412 Trans. at 86:5-11); (Compare Ex. AA at 10:1-6 with 5.412 Trans. at 66:13-21).

Likewise, Trane provided the District Court with evidence of K.S.'s own admission that she had been identified as manipulating staff at Midwest Academy. (Ex. AA at 34:21-23; 35:9-19). Such behavior required Midwest Academy to remove one of K.S.'s supervisors. (*Id.*) This manipulative behavior was also of significant concern to Wisconsin Child Protective Services, which according to all the witnesses counseled the Wolaks to install cameras to protect themselves from false accusations. (5.412 Trans. at 23: 15-24; 37: 1-6; 83: 1-5).

A Court may choose not to credit a particular piece of evidence, but they may not simply ignore it. *State v. Grant*, 722 N.W.2d 645, 649 (Iowa 2006) (noting that error for sufficiency of the evidence is

"reserved for those situations in which there is reason to believe that critical evidence has been ignored in the fact-finding process"). To arrive at this conclusion that K.S. was a reliable witness with no motive to lie, the District Court would have had to ignore large sections of the briefing provided to it by the parties, the suspect timing of K.S.'s reporting, its rote content against multiple parties, and evidence K.S. herself confirmed regarding her conduct both while living with the Wolaks and at Midwest Academy.

If a court's clearly unreasonable ruling or application of law results in prejudice to the defendant, reversal is required. *State v. Greene*, 592 N.W.2d 24, 27 (Iowa 1999). The District Court's unfounded denial of a new trial is prejudicial. Such abuse of discretion must be reversed. *Dudley*, 856 N.W.2d at 675.

B. The District Court failed to recuse itself from Trane's Rule 5.412 hearing, to his prejudice.

The District Court's unreasonable interpretation of evidence at the Rule 5.412 hearing did not occur in a vacuum. The District Court's conclusions of fact are colored by the extensive proceedings in this matter. The District Court has demonstrated sufficient bias throughout the proceedings against Trane that "a reasonable person

would question" whether the Court is able to be impartial. *State v. Mann*, 512 N.W.2d 528, 532 (Iowa 1994). The District Court should have exercised its "sound discretion" under this objective standard and recused itself. *Mann*, 512 N.W.2d at 532.

Bias sufficient to call impartiality into question may manifest from an external source, such as a judge's extrajudicial knowledge. *State v. Millsap*, 704 N.W.2d 426432 (Iowa 2005). It may also be shown solely based on the conduct of the Court on record. *Liteky v. United States*, 510 U.S. 540, 555 (1994) ("judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases . . . will do so [support recusal] if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.") (emphasis in original); *See also* In re *Marriage of Herum*, 924 N.W.2d 537 (Iowa Ct. App. 2018) (noting "judge's remarks critical of counsel or parties do not mandate recusal unless they reveal an extrajudicial source or make a fair judgment impossible") (emphasis added). Where objective evidence of such bias exists, regardless of source, recusal is necessary. In re *Marriage of Rosonke*, 929 N.W.2d 274 (Iowa Ct. App. 2019) ("A judge's opinions

formed 'on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.'") (quoting *Liteky*, 510 U.S. at 555) (emphasis added).

The District Court's unreasonable rulings and statements on record meet this showing. In addition to its abuse of discretion in denying Trane a Rule 5.412 hearing in the first place, the District Court also allowed the prosecution to dismiss witnesses potentially helpful to Trane with minimal oversight. (May 10, 2018 Hearing Transcript at 90:3-25; 91:1-15). Likewise, the District Court showed exceptional animosity towards Trane, fighting him regarding his Motion for a New Trial (*Id.* at 9:13-25) (claiming that defense counsel's advocacy for Trane was "ridiculous").[5] In the course of this

[5] "THE COURT: Well, let me explain that a little bit first. The verdict in this case was issued--or rendered by the jury on December 22 of last year. We're now in May of 2018 still hearing this. The Motion for New Trial was way late under the rules, filed on March 27, I believe. To delay this matter any further is ridiculous." (May 10, 2018 Hearing Transcript, at 9:13-21).

matter, the District Court has assumed the role of the prosecutor (*Id.* at 34:20-25; 35:1-18) (citing other caselaw without prompting from the prosecutor to support denial); (143:11-20) (coordinating with the prosecution to interfere with examination of witness and calling credibility of Trane's counsel into question) ("I don't accept that depiction. I understand that's what [Trane's counsel] is saying, but I don't accept that depiction"). The District Court has also demonstrated personal antagonism towards Trane and defense counsel (*Id.* at 241:4-5) (interrupting defendant's allocution); (265:5-10) ("I did take into account your family very significantly, with five children and a wife. In the other circumstances I took that into account. I just wish you had."); (266:14-21) (claiming that Trane should be punished for speaking in his own allocution for "re-victimizing" others). The District Court likewise harangued Trane and any supporters of his during his sentencing (*Id.* At 198:20-25; 199:1). This bias was sufficient for defense counsel to twice request the District Court recuse itself, first during the original sentencing hearing and again after remand from the Supreme Court. (*Id.* at 201:24-204:12); (App. 27).

This specific conduct, coupled with the District Court's choice to wrongfully deny his original Rule 5.412 hearing request, sentence him to consecutive sentences, interfere with Trane's ability to make a proper appellate record during the original hearing on his motion for a new trial, deny his application for video testimony during a pandemic, give a 5th amendment warning to Mr. Wolak during his testimony, and sua sponte increasing Trane's bond without any notice, demonstrates that the District Court possessed a "deep-seated favoritism or antagonism that would make fair judgment impossible." *Liteky*, 510 U.S. at 555. This bias has already prejudiced Trane and required the District Court to be reversed once by the Supreme Court for abusing its discretion, and has now denied him a new trial. *Millsap*, 704 N.W.2d at 432 (showing of actual prejudice required). Reversal and assignment of a different District Court Judge is required.

C. The District Court committed clear error by conducting a Rule 5.412 hearing contrary to the Iowa Rules of Evidence and the Iowa Supreme Court's order in *State v. Trane*, and by considering and giving undue weight to immaterial evidence.

A court also abuses its discretion when it makes a ruling based on an erroneous interpretation of the law. *Dudley*, 856 N.W.2d at 675. Findings based on such an erroneous application of the law are not binding on the appellate court. In re *Det. of Pierce*, 748 N.W.2d 509, 511 (Iowa 2008) ("The district court's factual findings are binding on us if supported by substantial evidence unless they are induced by an erroneous application of law"). In fact, "[r]eversal is required when an error of law or fact materially affects other findings or rulings". *Pippen v. State*, 854 N.W.2d 1, 8 (Iowa 2014); see also *Falczynski v. Amoco Oil Co.*, 533 N.W.2d 226, 230 (Iowa 1995) ("When the trial court has applied erroneous rules of law which materially affected its decision, we will reverse."). Here, the District Court came to its conclusion based on its erroneously broad interpretation of Rule 5.412, and undue consideration of immaterial facts outside the scope of the review mandated by the Supreme Court in *State v. Trane*.

1. The District Court conducted a Rule 5.412 hearing for physical as well as sexual abuse reporting, in contrast with Iowa law.

The District Court failed to conduct an "in camera rule 5.412 hearing on Trane's motion" according to Iowa law. *Trane*, 934 N.W.2d at 463. The District Court was ordered to hold a hearing to determine

if K.S. had made false sex abuse accusations. *Id.* When a criminal defendant wishes to present evidence regarding either 1) an alleged victim's past sexual behavior or 2) an alleged victim's past false report of sexual abuse, the court must hold an in-camera hearing to determine whether such evidence is admissible. Iowa R. Evid. 5.412(c) *State v. Baker*, 679 N.W.2d 7, 10 (Iowa 2004). By law, determining the admissibility of a false report of sexual abuse is the only purpose of such a hearing. *Id.* That is particularly the case here, where the mandate from the Supreme Court was so specific. *Id.*; *Trane*, 934 N.W.2d at 463.

Despite this narrow purpose, the District Court conducted a hearing on K.S.'s allegations of physical, as well as sexual abuse. The District Court's ruling focused on K.S.'s equally false reports of physical abuse. (App. 55-57; 59-61). In what the District Court described as "an intertwining of physical and sexual abuse", it based it's ruling in part not on the allegations of sexual abuse which the court had been ordered to assess, but an entirely different class of behavior that exists outside the scope of a Rule 5.412 hearing. Iowa

R. Evid. 5.412(b) (notably not listing physical abuse as the subject of an in-camera hearing).

The District Court took specific note of the physical injuries K.S. reported, including her "bruises, broken bones, burns, whip marks", which K.S. claimed were open and obvious injuries. (App. 55). As with all of K.S.'s claims, no other evidence of these alleged injuries was presented. The District Court likewise evaluated K.S.'s discussions with Child Protective Services "about any physical abuse", including claims regarding a broken arm. (App. 56). Finally, it used K.S.'s statements about physical abuse to buttress her credibility. (App. 60-61) (noting how K.S.'s claims of physical abuse and the source of her injuries were consistent).

This evidence was front and center in the District Court's consideration of the facts. In the Court's analysis section, it expressly examines the physical *and* sexual abuse claims, repeatedly noting them both. (App. 59) ("the Wolaks deny any sexual abuse, and for that matter, physical abuse"; "Ms. Wolak was stronger in her denials of any type of abuse, sexual or physical or some intertwining of them"); 10 ("[K.S.] did describe the circumstances of how her arm was

broken, including the ambulance ride and the explanation she gave at the time as to how the arm was broken."). This information was a core part of the District Court's conclusions and reasoning, and it was the "intertwin[ed] . . . physical and sexual abuse" that the Court ultimately concluded Trane had failed to disprove. (App. 61).

Affirmatively, Trane had no duty in a Rule 5.412 hearing to dispute K.S.'s additional claims of physical abuse, against a third party, on remand. Assessing the accuracy of claims of physical abuse is outside the purpose of a Rule 5.412 hearing. The District Court's expansion of the Iowa Rules of Evidence beyond their written parameters and the mandate of the Supreme Court was contrary to law. Here, the District Court error was twofold.

First, its extensive consideration of physical abuse in a Rule 5.412 hearing flatly contradicts the purpose of such a hearing. Historically, Iowa's 'rape shield' laws were in part intended to "prevent time-consuming and distracting inquiry into collateral matters". *State v. Mitchell*, 568 N.W.2d 493, 497 (Iowa 1997). It is for this reason that their use is confined by the express language of the Rule to reviewing evidence of prior sexual activity, or false reports

thereof. Iowa R. Evid. 5.412(a) ("The following evidence is not admissible in a criminal proceeding . . . evidence offered to prove that a victim engaged in other *sexual* behavior . . . [e]vidence of a victim's other *sexual* behavior") (emphasis added). Review of physical abuse, as conducted by the District Court, is precisely the sort of "distracting inquiry" warned of. *Mitchell*, 568 N.W.2d at 497.

Second, the Supreme Court was itself specific about the purpose of its mandate to the District Court. In *Trane*, the appellate court very carefully identified which statements the District Court was to assess: "the allegedly false report of sexual abuse by the adoptive parents". *Trane*, 934 N.W.2d at 463. The Supreme Court remanded to determine if "these statements" regarding *sexual abuse* had been falsely made. *Id.* It did not remand the case for a general canvasing of all sorts of allegations made by K.S. against others in her life, which in any case is beyond the purpose of a Rule 5.412 hearing. By both statute and the specifics of its task from the Supreme Court, the District Court conducted the required hearing in a manner contrary to the law, used the information it considered to support a finding against Trane, and must be reversed.

2. The District Court considered other facts outside the scope of its mandated review.

In addition to improperly conducting a Rule 5.412 hearing on physical abuse rather than sexual abuse, the District Court also considered post-hoc evidence that is not contemplated by Rule 5.412 or the mandate of this case. In its ruling, the District Court noted and relied on the fact that Mrs. Wolak did not know what "the allegations were [against Trane] to the day of her testimony." (App. 55). In addition to being immaterial to whether the claims against her and her husband were truthful, they also stray beyond the boundary of the review the District Court was required to perform. Likewise, in assessing K.S.'s testimony, the District Court noted that her testimony was consistent with her prior testimony in Trane's long procedural history—specifically "in the context of having her statements and actions previously subjected to considerable scrutiny." (App. 61).

In its mandate to the District Court, the Iowa Supreme Court ordered the District Court to conduct a "hearing to determine whether [K.S.] made these statements and if so, whether they are

false." *Trane*, 934 N.W.2d at 463. The Supreme Court affirmatively did not order the District Court to review the 'previous scrutiny' of K.S., or any of her prior responses which were not submitted to the District Court at the hearing mandated in *Trane*. This is consistent with the terms of Iowa Rule of Evidence 5.412, which contemplates an in-camera hearing *before* trial, considering evidence submitted at that hearing only. Iowa R. Evid. 5.412(2). Rather, the District Court used K.S.'s 'consistency' across the many, many hearings in Trane's litigation in its determination of credibility and accuracy, to Trane's detriment. (App. 61). It also attacked Mrs. Wolak's testimony based on the ultimate outcome of a trial that should have taken place after the Rule 5.412 hearing. Consideration of evidence, testimony, conduct, or statements not submitted at the 5.412 hearing is erroneous and flatly contrary to Iowa Rule of Evidence 5.412 and the Supreme Court's own order, prejudiced Trane, and is thus an abuse of discretion requiring reversal.

3. The District Court's consideration of irrelevant and prejudicial evidence of physical abuse was contrary to Iowa law and the Iowa Supreme Court Ruling.

In addition to being wholly outside the scope of a Rule 5.412 hearing, evidence of physical abuse is irrelevant to the question of whether K.S. made false reports of sexual abuse. Relevant evidence is that which "has any tendency to make a fact more or less probable than it would be without the evidence" which is of consequence in the matter. Iowa R. Evid. 5.401. If a fact is such that "a reasonable [person] might believe the probability of the truth of the consequential fact to be different if he knew of the proffered evidence", it is relevant. *State v. Plaster*, 424 N.W.2d 226, 229 (Iowa 1988).

K.S.'s additional false claims of physical abuse do not meet this test. Unproven claims of physical abuse do not inherently make unproven claims of sexual abuse more likely. This is particularly the case where the witness undermines the confidence of such reports, by repeatedly stating that such allegedly profound abuse was investigated and not acted upon. (App. 61). Rather, they serve the opposite purpose of injecting prejudice into the fact-finding process of a Rule 5.412 hearing.

Such prejudice can render even relevant evidence improper where its probative value is outweighed by the risk of "unfair prejudice" or "confusing the issues". Iowa R. Evid. 5.403. Such is the case here. Evidence of a wholly unrelated form of abuse by the Defendant's witnesses' skirts close to being prohibited character evidence, elicited by the State to cast those witnesses in a poor light. See Iowa R. Evid. 5.404. Such evidence, against a non-party, is wholly barred from admission. *Id.* Here, the District Court considered and expressly noted the claims of heinous physical abuse K.S. leveled at the Wolaks. (App. 55) ("K.S. was asked if while living with her aunt and uncle she had any injuries and she stated 'bruises, broken bones, burns, whip marks.'"). The addition of such evidence serves not to prove anything about the alleged sexual abuse, but rather to make the Wolaks appear as bad people, and therefore inherently less reliable.

At best, such evidence expressly confuses the issues. As noted above, the sole purpose of the hearing on remand was to assess the probability that K.S. had made false reports of sexual abuse. By making it into a general enquiry regarding the parenting practices of

the Wolaks—an enquiry already performed by and to the satisfaction of the State of Wisconsin—it is difficult to determine what portion of the District Court's ruling is based on evidence of actual sexual abuse, and what portion is founded on irrelevant claims of physical abuse. The injection of evidence unrelated to this matter resulted in the District Court's reasoning, in its own words, "intertwining" immaterial evidence with the actual fact-finding mission of the court, creating clear error. (App. 59).

CONCLUSION

Trane's hearing was flawed in three ways. First, the Court's ruling was in clear error. It was not based on substantial evidence. Second, the Court showed sufficient bias against Trane to require recusal but failed to do so. Third, it erroneously applied Iowa Rule of Evidence 5.412 and considered immaterial and prejudicial evidence. For these reasons, the District Court ruling denying Trane a new trial based on the false statements of K.S. must be reversed and remanded to a new District Court judge to conduct a Rule 5.412 hearing according to law.

REQUEST FOR ORAL ARGUMENT

Defendant-Appellant Trane respectfully requests an opportunity for oral argument before this Court regarding these issues.

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CERTIFICATE OF COMPLIANCE AND SERVICE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) (no more than 14,000 words); excluding the parts of the brief exempted by Rule 6.903(1)(g)(1), which are the table of contents, table of authorities, statement of the issues, and certificates. This brief contains 8961 words.

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App.

P.6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in font size 14, Bookman Old Style.

I hereby certify that on February 18, 2022, I did serve Defendant-Appellant's Final Brief on Appellant by e-mailing one copy to:

Benjamin Trane,
Defendant-Appellant

/S/ Lori Yardley .
Dated: February 18, 2022