

John Sullivan SC # 21672  
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FILED  
APP DOCKET NO. \_\_\_\_\_

2011 OCT 26 3:33

CLERK OF DISTRICT COURT  
18TH JUDICIAL DISTRICT  
SEDGWICK COUNTY, KANSAS  
BY \_\_\_\_\_

IN THE EIGHTEENTH JUDICIAL DISTRICT  
DISTRICT COURT, SEDGWICK COUNTY, KANSAS  
CRIMINAL DEPARTMENT

THE STATE OF KANSAS, )  
 )  
 )  
 Plaintiff, )  
 )  
 )  
 vs. )  
 )  
 )  
 TERRY BLUM, )  
 )  
 )  
 Defendant. \_\_\_\_\_ )

Case No. 10CR3795

**MOTION IN LIMINE TO EXCLUDE**  
**TESTIMONY REGARDING**  
**DIAGNOSES OF THE COMPLAINANTS**

COMES NOW the defendant, Terry Blum, by and through his attorney of record, John B. Sullivan and respectfully moves for an order in limine, excluding from the trial in the above captioned matter any purported expert testimony regarding any possible psychiatric diagnoses of the complaining witness, including, but not limited to, any diagnosis of post traumatic stress disorder. In support of this motion, counsel for the defendant shows to the Court the following:

## INTRODUCTION

The complaining witness in this case has accused Mr. Blum of improper touchings and penetrations. Mr. Blum denies that the touchings and penetration described by the complaining witness occurred, and has steadfastly maintained his innocence. The evidence thus far revealed to counsel indicates that the incriminating elements of the complaining witness statements are potentially fabrications motivated by some unknown desires of the complainant or psychological influence by third parties.

Counsel for the defendant anticipates that the state may present, in addition to the complainant themselves, several mental health and/or medical professionals whom the state has endorsed as witnesses. The defense anticipates these witnesses will testify regarding their diagnoses the complainant as suffering from post traumatic stress disorder, rape trauma syndrome, adjustment disorder, or some similar mental illness.

At the present time, counsel is unaware of any qualified witnesses whom the state has endorsed to testify regarding the diagnosis of any psychiatric ailments allegedly experienced by the complaining witness.

## ARGUMENT

A licensed social worker is not qualified to “diagnose medical and psychiatric conditions such as post-traumatic stress disorder” or rape trauma syndrome. *State v. Willis*, 256 Kan. 837, 846 (1995).

[F]or a witness to qualify as an expert on post-traumatic stress disorder and rape trauma syndrome, the witness must possess special training in that field of psychiatry. Such testimony should be limited to experts with training in the field of post-traumatic stress disorder and rape trauma syndrome and possessing the professional qualifications to

make appropriate diagnoses thereof. A clinical social worker with a masters degree in social work falls well below that mark.

*Id.* at 847.

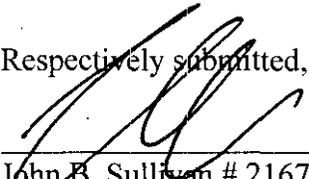
The rape trauma syndrome or post traumatic stress disorder diagnosis is a medical diagnosis and must be made by a psychiatrist. *See State v. Marks*, 231 Kan. 645, 654 (1982) (“qualified expert psychiatric testimony regarding the existence of rape trauma syndrome is relevant and admissible”); *see also Willis*, 256 Kan. at 838, 846 (Dr. Herbert Modlin, senior psychiatrist at the Menninger Clinic, testified for the state that post traumatic stress disorder is a medical diagnosis; rape trauma syndrome is one of the phases or syndromes relating to post traumatic stress disorder).

A non-psychiatrist treating physician who has examined the complainant for physical signs of sexual abuse cannot testify, based on the complainant’s demeanor, that the alleged sexual abuse occurred. *State v. Bressman*, 236 Kan. 296 (1984) (error for emergency room physician, with no specialized training in psychiatry, to testify as an expert witness regarding whether complainant had been raped).

Finally, the state cannot circumvent the qualification requirement by pretending that its “expert” is merely testifying about observations rather than making a diagnosis. *See State v. Villanueva*, 274 Kan. 20 (2002) (agreeing that unlicensed social worker who was unqualified to diagnose rape-trauma syndrome could not “with a wink and a nod” say she did not diagnose the complainant but nonetheless describe “a common set of symptoms or behavior that is displayed by a victim of rape” and testify whether the complainant “displayed any of those classic characteristics”).

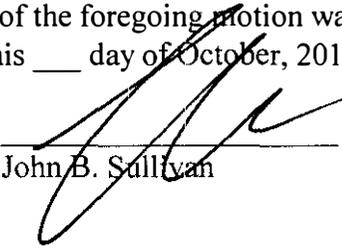
WHEREFORE, for the above and foregoing reasons, as well as any further reasons which may be presented in any further memorandum of law or oral argument on this motion, defendant Terry Blum prays for an order (1) prohibiting the state from introducing or attempting to introduce into evidence at trial the above described evidence; (2) directing the state to admonish its witnesses to refrain from making mention of the prohibited evidence described above; and/or (3) any such other and further relief as the Court deems just. Counsel respectfully requests a hearing and oral argument on this motion.

Respectively submitted,

  
\_\_\_\_\_  
John B. Sullivan # 21672  
Attorney for Defendant

#### CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing motion was hand delivered to the Sedgwick County District Attorney's Office this \_\_\_ day of October, 2011.

  
\_\_\_\_\_  
John B. Sullivan

#### NOTICE OF HEARING

Please take notice and be advised that Mr. Blum's foregoing Motion will be heard on November 11<sup>th</sup>, 2011 at 9:00 a.m. before the Honorable Judge Wilbert.

*JB*