

IN THE IOWA DISTRICT COURT FOR LEE (SOUTH) COUNTY

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STATE OF IOWA,  V.  BENJAMIN G. TRANE,	PLAINTIFF,   DEFENDANT.	NO. FECR009152  MOTION TO PRESERVE TESTIMONY
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COMES NOW, the State of Iowa, by its undersigned counsel, and moves pursuant to Iowa Rule of Criminal Procedure 2.13(2) for an order permitting the State to preserve the testimony of M.A. (a juvenile) by way of deposition. In support thereof, the undersigned states as follows:

1. Defendant is charged by Trial Information with Sexual Abuse 3<sup>rd</sup> Degree, Sexual Exploitation by a Counselor, and Child Endangerment. The matter is set for trial on December 12, 2017.

2. M.A. is a previous student of Midwest Academy and is listed among the State's trial witnesses. She will be deposed by defense counsel during the week of November 27, 2017. She is 16 years old and under the custody and care of her mother, Jennifer [REDACTED]. Ms. [REDACTED] has informed the State that the family is taking an out-of-state vacation beginning on December 12, 2017. This vacation had been previously planned, plane tickets are purchased, and all reservations have been made and paid for.

3. In light of this scheduling conflict, the State seeks to perpetuate M.A.'s testimony through a deposition taken pursuant to Rule 2.13(2) and 2.13(2)(a)(2). The State believes that M.A.'s travel plans and the undue financial and emotional hardship that would be imposed if M.A. were required to be personally present at trial constitutes just cause to warrant the taking of her deposition.

4. Rule 2.13(2)(a) authorizes the court to order the taking of a deposition of a witness to perpetuate the witness's testimony "[w]henver the interests of justice and the special circumstances of a case make necessary the taking of the testimony of a prospective witness." Id. r. 2.13(2)(a). Special circumstances exist when a party makes

"a showing of necessity arising from ... [a] just cause necessitating the taking of the deposition." Id. r. 2.13(2)(a )(2); *State v. Rainsong*, 807 N.W.2d 283, 288 (Iowa 2011).

5. The deposition will afford the defendant a full and fair opportunity to cross-examine M.A. under oath, thus safeguarding the defendant's confrontation rights. *Crawford v. Washington*, 541 U.S. 36, 53-54, 59, 68 (2004); *Rainsong*, 807 N.W.2d at 289. Furthermore, the State intends on preserving the testimony by video so the jury will be able to observe M.A. to make a fully informed decision regarding credibility and assessment of the witness.

WHEREFORE, the State respectfully requests that the Court issue an order pursuant to Iowa. R. Crim. P. 2.13(2) permitting the State to depose M.A. for the purpose of perpetuating her trial testimony.

/s/ DENISE A. TIMMINS

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