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IN THE IOWA DISTRICT COURT
FOR LEE COUNTY AT KEOKUK

STATE OF IOWA,) Cause No. FECR009152
)
vs.)
) **Transcript of Hearing**
BENJAMIN G. TRANE,) **on Motion for New Trial**
) **and Sentencing**
Defendant.)

The above-entitled matter came on for hearing before the Honorable Mark Kruse commencing at 9:45 a.m. on May 10, 2018, in the district courtroom of the South Lee County Courthouse, Keokuk, Iowa.

A P P E A R A N C E S

DENISE A. TIMMINS, Assistant Attorney General, Area Prosecutions Division, Hoover State Office Building, Des Moines, Iowa 50319, counsel for the State.

ZACHARY MILLER, Assistant Attorney General, Area Prosecutions Division, Hoover State Office Building, Des Moines, Iowa 50319, counsel for the State.

ALFREDO PARRISH, Attorney at Law, 2910 Grand Avenue, Des Moines, Iowa 50312, counsel for the Defendant.

Scott A. Landon
Certified Shorthand Reporter
Des Moines County Courthouse
Burlington, Iowa 52601

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I N D E X

<u>WITNESSES:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
<u>For the Defendant:</u>				
LISA SCHAEFER	15	58	67	
BENJAMIN G. TRANE	142			

E X H I B I T S

<u>Defendant's Exhibits:</u>	<u>Offered</u>	<u>Received</u>
A-Ms. Schaefer's billing records	56	56
<u>Defendant's Offer of Proof Exhibits:</u>		
B-deposition of Megan Bailey Glenn	140	140
C-deposition of Katherine Mxxxx	140	140

P R O C E E D I N G S

(In open court, in the presence of the Court, the Defendant, and counsel at 9:45 a.m.)

THE COURT: The case is State of Iowa vs. Benjamin G. Trane, under FECR009152. The record should reflect that on December 22 following a jury verdict, the Defendant was convicted of the lesser included offense in Count I of Assault With Intent to Commit Sexual Abuse, an aggravated misdemeanor, in violation of Iowa Code Section 709.11; Count II, Pattern, Practice, or Scheme to Engage in Sexual Exploitation By a Counselor or Therapist, a class D felony, in violation of Iowa Code Sections 709.15(1), 709.15(2)(a), and 709.15(4)(a); in Count III, Child Endangerment, an aggravated misdemeanor, in violation of Iowa Code Sections 726.6(1)(a) and 726.6(7) of the Code of Iowa.

Today was set for sentencing. The Defendant also filed a Motion for New Trial, I believe, on March 27 of this

1 year.

2 Appearing today for the hearings
3 are Ms. Denise Timmins, Assistant Attorney
4 General, and Mr. Zachary Miller, Assistant
5 Attorney General. The Defendant, Mr.
6 Trane, appears here today with his
7 attorney, Mr. Alfredo Parrish.

8 We spoke in chambers briefly.
9 There were countering briefs, or an
10 objection by the State in their brief,
11 regarding the extent of the Motion for New
12 Trial regarding ineffective assistance of
13 counsel issues in this case.

14 I believe the State pointed out
15 that most, if not all, the grounds refer
16 to that--well, most do.

17 Mr. Parrish, is there record you
18 want to make on that issue?

19 MR. PARRISH: Well, Judge, I think
20 the State needs to state on the record
21 what their record was off the record with
22 the Court.

23 THE COURT: Go ahead.

24 MS. TIMMINS: Your Honor, we
25 requested with the Court that the

1 ineffective assistance of counsel argument
2 not be heard. It's not appropriate for a
3 motion for new trial. It's something that
4 can be dealt with on appeal or in a PCR
5 issue. And we would rely on the case law
6 in our brief to support that.

7 THE COURT: Mr. Parrish.

8 MR. PARRISH: Judge, for the
9 record, I want to outline what happened in
10 chambers. And the State will quickly
11 correct me in regard to this matter, if
12 necessary.

13 We went into chambers with the
14 Court. The Court indicated, after the
15 State made an objection, that the Court
16 could not hear any issues with regard to a
17 Motion for New Trial that pertained to
18 ineffective assistance of counsel; that it
19 read our cases on this point; it read the
20 State's cases on this point; and saw that
21 in one of our cases, I think *Tjernagel*,
22 and perhaps another case that was
23 presented to the district court; and, we
24 argued to the Court off the record that
25 any other grounds that the Court could

1 consider in this matter could be
2 considered in a Motion for New Trial.

3 We also indicated to the Court that
4 the rule that we quoted on the ground for
5 the Motion for New Trial, which is
6 2.24(2)(b), indicated that the Court
7 could, in fact, hear those issues related
8 to the Motion for New Trial, which would
9 include what we believe would be other
10 grounds.

11 We also indicated to the Court that
12 822 was not the exclusive remedy for
13 ineffective assistance of counsel and the
14 Court does have the power to consider
15 that. I believe the Court indicated that
16 it had already ruled on those points in
17 trial and made reference--at least had a
18 piece of paper in its hand--with regard to
19 that matter.

20 We then told the Court if, in fact,
21 we would--if the Court was not going to
22 listen to our evidence on the issue of
23 ineffective assistance of counsel that we
24 would ask the Court, then, to consider an
25 offer of proof on ineffective assistance

1 of counsel. I believe the Court
2 responded: Then I don't have to listen.
3 And that was the response that the Court
4 gave to me in chambers with counsel
5 present at that time.

6 And I said--I told the Court, I
7 said, I did have a right under *Parrish v.*
8 *Denato*, to make an offer of proof with
9 regards to this matter if the Court was
10 not going to listen to the evidence. Then
11 the Court responded: Then I'm not going
12 to let you make an offer of proof.

13 I then indicated to the Court, if
14 you're not going to let me make an offer
15 of proof with regard to these matters--

16 THE COURT: Whoa, whoa. I believe
17 it was more in the nature of that you can
18 make a verbal offer of proof if you wish,
19 not testimony. Okay. Go ahead.

20 MR. PARRISH: I guess I didn't hear
21 that part, where there was not testimony,
22 but that I can make a verbal offer of
23 proof.

24 Is that what the Court is telling
25 me I can do now?

1 THE COURT: Well, I think that's
2 what I said in there.

3 MR. PARRISH: Maybe I didn't hear
4 you. Because my response, Judge, is if
5 you were not going to let me make an offer
6 of proof, I referred you to the case of
7 *Parrish v. Denato*, and then I indicated
8 that I thought that case was on point, and
9 there were several cases that came after
10 that that are directly on point.

11 I then told the Court that if
12 you're not going to let me make an offer
13 of proof, then we're going to file an
14 emergency appeal to the Iowa Supreme
15 Court. You waived your hand--put both
16 hands up in the air (indicating) and
17 demonstrated in this fashion. And I said:
18 Do I have time to do that? And you said:
19 Yes, you have five minutes; that you can
20 go out and call, which I did. I called my
21 office. I explained to them that you were
22 going to deny me a right to make an offer
23 of proof.

24 I also told the office to begin
25 preparing an emergency appeal to the Iowa

1 Supreme Court based on the fact that you
2 were not going to consider an ineffective
3 assistance of counsel claim in a motion
4 for new trial, and also that you were
5 denying me to file a--to make an offer of
6 proof. I also told them that they should
7 work on that immediately.

8 I also had asked the Court could I
9 have additional time in which you would
10 delay this matter in order for me to take
11 the matter up to the appellate court, and
12 you said, no.

13 THE COURT: Well, let me explain
14 that a little bit first. The verdict in
15 this case was issued--or rendered by the
16 jury on December 22 of last year. We're
17 now in May of 2018 still hearing this.

18 The Motion for New Trial was way
19 late under the rules, filed on March 27, I
20 believe. To delay this matter any further
21 is ridiculous.

22 MR. PARRISH: I understand. We
23 filed a proper motion to continue the
24 Motion for New Trial, if the Court would
25 review the record. We asked for an

1 extension of time in which to file. We
2 also requested time to order the
3 transcript, if the Court would look at the
4 Motion. Our Motion was not late. Our
5 Motion was timely under the rules. We
6 followed every single rule that we were
7 required to follow to file a proper
8 motion.

9 We got a continuance. We ordered
10 the transcript at State expense. The
11 transcript was provided. I filed a timely
12 Motion for New Trial. We filed a brief
13 with regard to the Motion for New Trial in
14 a timely fashion.

15 So any assertion by this Court that
16 we filed it late is incorrect.

17 THE COURT: Where is your motion to
18 extend the time?

19 MR. PARRISH: I'm sorry?

20 THE COURT: Where is your motion to
21 extend the time--

22 MR. PARRISH: Judge, we filed--

23 THE COURT: --to file-- You've got
24 to let me finish.

25 MR. PARRISH: Oh, sure.

1 THE COURT: Where is your motion to
2 extend the time to file for new trial?

3 MR. PARRISH: I don't have it
4 sitting right in front of me, Judge. But
5 if you go into the record, you will find
6 it. That's the only way we could extend
7 the time is to get the transcript so we
8 could work on the transcript since we were
9 not the lawyers who tried the case.

10 And we made a request for the
11 transcript, which was approved. We did a
12 proposed order and sent that down to the
13 Court. I don't know whether you were the
14 judge for it or there was another judge
15 for it.

16 We also made a request, a couple
17 other motions that were pending on this
18 case, to file matters under seal that were
19 related to sentencing issues, to travel
20 issues, and all of those were filed in
21 accordance with the Iowa Rules of Civil
22 Procedure.

23 We also, Judge, not only did that,
24 we had a conference. We had a conference
25 with the Court Administrator. And I

1 believe if you would follow--and I didn't
2 bring my trail of e-mails--Ms. Timmins
3 participated in the hearing. We asked for
4 two days to conduct this hearing. The
5 last conference I had was about two weeks
6 ago. When we had this conference, we
7 asked the Court Administrator: Could we
8 have a second day, if necessary?

9 Ms. Timmins and I have exchanged
10 several e-mails on this issue, which I'm
11 happy to present to this Court, indicating
12 that she was also in agreement with this
13 date. As a matter of fact, the first date
14 that was set for sentencing, she could not
15 meet. She had a conflict, I think a
16 murder trial that she was in for
17 approximately two weeks.

18 But we did everything in compliance
19 with the rules. So if the Court is
20 asserting that somehow we're not getting
21 what we're entitled to get because we did
22 not comply with the rules, I would ask the
23 Court to point out where we did not comply
24 with the rules.

25 THE COURT: It's not there. Go

1 ahead. Unless I'm missing it, I don't see
2 it. All right. Go ahead.

3 MR. PARRISH: Well, Judge, which
4 issue would you like us to take up first?
5 There are issues that you're saying don't
6 go--that you're not going to allow us to
7 present a single issue related to the
8 ineffective assistance of counsel. So if
9 that's what you're telling us, we have
10 other issues that don't relate to
11 ineffective assistance of counsel that we
12 would like to present to the Court.

13 THE COURT: Go ahead.

14 MR. PARRISH: And then after that,
15 I would like to make our offer of proof
16 with regard to the ineffective assistance
17 of counsel.

18 I would then ask the Court, on the
19 record, for a continuance to allow us to
20 take this matter to the appellate court,
21 because I think the ruling by the Court
22 was made before you could listen to the
23 arguments in this case, and also that you
24 came into court with your mind made up
25 with regard to the decision.

1 So we believe, Judge, that you
2 should have at least given us an
3 opportunity to listen to our argument
4 prior to your ruling in chambers on this
5 matter. And we would ask, Judge, if you
6 would consider whether or not you can be
7 fair under these circumstances in light of
8 what has just taken place. Can you be
9 fair to Mr. Trane?

10 THE COURT: Don't question me, Mr.
11 Parrish.

12 All right. Let me make a couple
13 points here. You're the one who asked for
14 the conference. I have researched all the
15 documents, all the briefs, everything.
16 The ruling is based on the arguments made
17 here today, the briefs, a review of the
18 cases. I've looked up other cases.
19 That's why I ruled the way I did.

20 Ms. Timmins, is there a record you
21 want to make on the motion to continue?

22 MS. TIMMINS: On the motion to
23 continue?

24 THE COURT: They're asking to
25 continue this hearing.

1 MS. TIMMINS: Your Honor, we're
2 prepared to go today.

3 THE COURT: All right. That will
4 be denied.

5 Go ahead, Mr. Parrish.

6 MR. PARRISH: I'd like to call Ms.
7 Schaefer to the stand, please.

8 LISA SCHAEFER,
9 called as a witness by the Defendant,
10 being first duly sworn by the Court, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. PARRISH:

14 Q. State your name, spell your first
15 and last name for the record, please.

16 A. Lisa Schaefer, L-i-s-a, S-c-h-a-e-
17 f-e-r.

18 MR. PARRISH: And, Judge, I want to
19 point out clearly that since you have
20 indicated that I cannot bring up any issue
21 related to ineffective assistance of
22 counsel with regard to this matter, I want
23 to specifically point out that I will not
24 ask any questions on ineffective
25 assistance of counsel, but I will make my