

P R O C E E D I N G S

(The proceedings commenced at 11:56 a.m., on
November 27, 2017.)

THE COURT: I'll open the record in a criminal
matter. This is State of Iowa versus Benjamin G. Trane,
case number FECR009152.

The State of Iowa appears by assistant attorney
general Denise Timmins.

Are you Benjamin G. Trane?

THE DEFENDANT: Yes.

THE COURT: And you appear personally with attorney
Lisa Schaefer.

Defendant is charged by Trial Information in, it
looks like, three counts. He's pleaded not guilty and
demanded speedy trial. This case is scheduled for trial
to a jury December 12. This is the date set for the final
pretrial conference.

Do the attorneys simply wish to confirm the trial
date, or is there some additional record the Court can
make at this time?

MS. SCHAEFER: Your Honor, at this time I've had
numerous discussions with my client regarding waiving
speedy trial and continuing. Despite my advice, he is
maintaining his demand of speedy trial, and we will be
confirming for trial on December 12.

1 THE COURT: Ms. Timmins, how long will the trial
2 take?

3 MS. TIMMINS: In discussions with defense, Your
4 Honor, best guess, we believe, we would probably go into
5 the second week, to be safe, probably a couple of days.

6 THE COURT: All right. So you have four days the
7 first week and two days the second week?

8 MS. TIMMINS: Yes.

9 THE COURT: We don't typically try cases on Monday,
10 so if it goes into the second week, you would be trying it
11 on the 19th and 20th then.

12 MS. TIMMINS: Yes.

13 THE COURT: Understood?

14 MS. SCHAEFER: Yes.

15 THE COURT: All right. I'll confirm this case for
16 a six-day trial then starting at 9 a.m., December 12. The
17 attorneys and the defendant shall be available at 8:30
18 a.m. the morning of trial to go over a final checklist
19 with the trial judge. This will be the first case tried,
20 so I'm confirming it as the number one case. The State
21 needs to get their subpoenas out and have everybody ready.
22 Likewise, defendant have your witnesses ready if you have
23 witnesses to call.

24 The Court will not entertain motions the morning of
25 trial.

1 I note there's a Motion for Change of Venue filed
2 by the State and a Motion to Preserve Testimony.

3 Ms. Schaefer, do you resist either motion?

4 MS. SCHAEFER: In discussing the two motions with
5 my client, he is agreeable to the Motion to Preserve
6 Testimony, and it's my understanding in discussions with
7 Ms. Timmins we will attempt to get that deposition taken
8 sometime next week.

9 I've also had conversations with him regarding the
10 Motion for Change of Venue. Again, despite my advice that
11 it may be difficult to seat a jury, he would like to
12 proceed in South Lee County, and he does resist the Motion
13 for Change of Venue.

14 THE COURT: Are you in a position today to argue
15 the Motion, then, on Change of Venue?

16 MS. SCHAEFER: Yeah. It will be simply argument,
17 and, yes, we are in a position.

18 THE COURT: All right. With regard to the Motion
19 to Preserve Testimony, I'll grant that motion. I wonder
20 when the deposition is taken if it would make more sense
21 for the State to do the questioning first of the witness
22 in direct examination and then have the defense
23 cross-examine, rather than the typical way you do a
24 discovery deposition where the defendant would go first;
25 does that make sense, Ms. Timmins?

1 MS. TIMMINS: Yes, Your Honor.

2 THE COURT: And then during the trial, the
3 attorneys would agree the deposition could be read to the
4 jury, is that what the proposal is, Ms. Timmins?

5 MS. TIMMINS: Actually, my proposal would be to do
6 a video deposition, and just to put out there, sometimes
7 when I've done this before, we've done the deposition
8 first so the defense attorney is able to ask a broad array
9 of questions instead of being limited by the Rules, and
10 then once that's done, we go into the actual trial
11 testimony. I would leave it up to Ms. Schaefer how she
12 would like to do that.

13 THE COURT: That actually makes sense too. Ms.
14 Schaefer, I wonder if that procedure would be agreeable?

15 MS. SCHAEFER: I think that would actually be best.
16 That way, as Ms. Timmins pointed out, I wouldn't be bound
17 by just the direct examination.

18 THE COURT: All right. Well, that's a good idea
19 and I appreciate the attorneys thinking that through, and
20 do you have a day and a time agreed upon that you have for
21 the deposition?

22 MS. TIMMINS: We discussed we would look at some
23 days when we're done here and get something set up for
24 next week. The individual is in Muscatine, so we're
25 looking at doing it in Muscatine.

1 THE COURT: All right. Any other record I need to
2 make on that motion from the State?

3 MS. TIMMINS: No, Your Honor.

4 THE COURT: Ms. Schaefer?

5 MS. SCHAEFER: No, Your Honor.

6 THE COURT: All right. Let's move on to the Motion
7 for Change of Venue.

8 Ms. Timmins, are you in a position to go ahead and
9 argue that motion at this time?

10 MS. TIMMINS: Yes, Your Honor.

11 THE COURT: All right. Go ahead.

12 MS. TIMMINS: Your Honor, really, the State would
13 just rely on the brief provided, the information laid out.
14 In asking to change venue, we are not asking to go far.
15 The State's concern is basically this community, and the
16 State's concern is not only because the State feels it
17 will have difficulty in receiving a fair trial, the State
18 believes the defendant will probably have difficulty in
19 the same.

20 I'm not from here, but everything I'm told from
21 people who are from here says that this issue, the closing
22 of the school, the criminal charges, has really split the
23 community apart. It has been constantly in the news and
24 the talk at the coffee shops and everything else. I think
25 we're going to have an extremely difficult time finding

1 jurors who don't know too much about it, who don't have
2 relatives who didn't work there, you know, who lost their
3 jobs there, who don't have children that went there,
4 friends of friends, all of those things. I think it is
5 best for both sides that we move this trial to a place
6 where we can get a jury, where we're going to have less
7 people who have connections, direct connections, to
8 Midwest Academy and to Mr. Trane.

9 THE COURT: Ms. Schaefer, your resistance.

10 MS. SCHAEFER: Yes. My client believes that we can
11 obtain a neutral and impartial jury. Primarily, Your
12 Honor, the school has been closed for almost two years.
13 It's not as though this is fresh in the minds of the
14 citizens of South Lee County. The school was closed in
15 early 2016. We're now toward the end of 2017, and Mr.
16 Trane believes that he's not going to get any less
17 impartial jury anywhere else than he would here in South
18 Lee, and so we would ask for the trial to be maintained
19 here in South Lee County.

20 THE COURT: Anything further from the State?

21 MS. TIMMINS: No, Your Honor.

22 THE COURT: All right. I'll take the motion under
23 advisement. I plan to get a ruling out quickly. I'll
24 rule yet this week and, hopefully, within a few days so
25 everybody knows where they stand, but I'll take that

1 motion under advisement.

2 Any other record we need to make at this time with
3 regard to any pending matters or --

4 MS. SCHAEFER: I think the only thing I can think
5 of, Your Honor, is the State [sic] does intend to file a
6 403B motion with regard to information regarding the civil
7 lawsuits that were filed against the school, since Mr.
8 Trane was an owner of the school at the time. I have
9 spoken briefly with Ms. Timmins. She does not anticipate
10 objecting to that motion. I'll try to get that on file
11 here in the next day or two.

12 THE COURT: This would be akin to a Motion in
13 Limine, I guess?

14 MS. SCHAEFER: Yes.

15 THE COURT: And then the State would probably be
16 conceding that?

17 MS. TIMMINS: The State does not intend to bring
18 anything in about any civil trials or civil motions that
19 have been filed.

20 THE COURT: All right. Again, it's difficult to
21 rule on motions the morning of trial, so if there are any
22 other pretrial motions, get them on file, and especially
23 if there's one that's going to be conceded to, I guess,
24 the Court needs to know if it needs to schedule a hearing
25 because there's not much time between now and the 12th to

1 get them heard, so, again, if there's a motion filed, I
2 guess my suggestion is contact the Court so we can set up
3 a phone conference with the opposing counsel to figure out
4 how we can get the motion heard and ruled upon.

5 Anything else from the State before I close the
6 record?

7 MS. TIMMINS: I would add, Your Honor, we are doing
8 three full days of depositions in the next three days.
9 After our depositions, I will have a better idea of a
10 Motion in Limine; I assume the defense will too, so we
11 will be filing a Motion in Limine, but it will be
12 following this week probably.

13 THE COURT: So, again, if you file one, get ahold
14 of opposing counsel and the Court and figure out how
15 you're going to get it heard and maybe it could just be
16 done telephonically. It's just you can't -- I wouldn't
17 report a telephonic hearing. I mean, that's my custom and
18 approach. If we have to have a hearing on the record, we
19 need to have everybody in the courtroom.

20 All right. That will conclude this matter.

21 (The proceedings concluded at 12:05 p.m.)
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C E R T I F I C A T E

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2 The undersigned, one of the official shorthand
3 reporters in and for the Eighth Judicial District of Iowa,
4 which embraces the County of South Lee, hereby certifies:

5 That she acted as such reporter on the hearing of
6 the before-mentioned cause in the District Court of Iowa
7 in and for South Lee County, before the Judge stated in
8 the title page attached to this transcript, and took down
9 in shorthand the testimony offered and proceedings had on
10 said cause.

11 That the foregoing pages of typewritten matter are
12 a full, true, and complete transcript of said shorthand
13 notes so taken by her in said cause, and that said
14 transcript contains all of the testimony offered and
15 proceedings had on said hearing at the times therein
16 shown.

17 Dated this 27th day of June, 2018.

18
19 /s/ Jody A. Groen
20 CERTIFIED SHORTHAND REPORTER
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