

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>STATE OF IOWA, Plaintiff, vs. SCOTT MICHAEL GREENE, Defendant.</p>	<p>Criminal Case No. FECR300301 RULING ON MOTION TO CHANGE VENUE PURSUANT TO IOWA R. CRIM. P. 2.11(10)</p>
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On February 17, 2017, the court heard argument on the Defendant's Motion to Change Venue. The State was represented by Polk County Attorney John Sarcone and Assistant Polk County Attorney Thomas Miller. The Defendant was personally present and represented by his attorneys, Matthew Sheeley and Wendy Samuelson. The court, having reviewed the file herein, considering the arguments of counsel and the applicable law, enters the following ruling.

On or about November 2, 2016, Urbandale Police Officer Justin Martin and Des Moines Police Officer Anthony Beminio were shot and killed. The Defendant, Scott Michael Greene, was charged by trial information filed on December 13, 2016, with two counts of Murder in the First Degree alleging he killed Officers Martin and Beminio. The shooting deaths of these officers garnered widespread media attention in Iowa and was also covered nationally. Law enforcement identified the Defendant as a suspect shortly after the shootings, and the Defendant was apprehended later on November 2, 2016 in Dallas County, Iowa. The Defendant was hospitalized and then charged in preliminary complaints filed on November 4, 2016. After Defendant's arrest, the national and statewide media attention subsided. However, the media attention in central Iowa continued to be intense. The memorial services of the officers were widely covered and

live-streamed on local television web sites. Each hearing from initial appearance, pre-trial conference and the hearing on this motion have been widely covered in central Iowa.

The list of articles and broadcasts regarding the victims and/or the Defendant in the Motion to Change Venue shows some of the extent of the media coverage of this incident. At the time the Motion was filed on January 18, 2017 there had been 18 stories in the Des Moines Register and/or on its website; 16 stories on WHO-TV, the NBC affiliate in central Iowa; and 17 stories on KCCI TV, the CBS affiliate for central Iowa. In addition, there was extensive coverage on the central Iowa ABC affiliate, WOI TV (18 stories between November 2 and the filing of the Motion). As alluded to by counsel in the hearing, this case received nationwide coverage on November 2 and 3, 2016 because of the status of the victims as police officers and the manner in which they were killed. A cursory search of the internet reveals that this story was picked up by every major media outlet from Boston, New York, and Washington, D.C. to Los Angeles and virtually everywhere in between and beyond. Many national and international online news services also reported this incident. The national media coverage subsided for the most part after the Defendant's arrest, with only an occasional story here and there since that time. Media coverage in Iowa but outside of central Iowa has been much less pervasive than that set forth in the Motion. For example, the number of stories in the Quad City Times (eastern Iowa); the Dubuque Telegraph Herald (northeastern Iowa); the Council Bluffs Nonpareil (southwestern Iowa); and the Sioux City Journal (northwestern Iowa) have been a fraction of what has appeared in the Polk County area.

The court finds that most of the coverage has been factual. However, the coverage of the outpouring of support and sympathy for the victims' families and law enforcement

in general has been extensive. There has been coverage of matters related to the Defendant which are not directly related to the deaths of the officers. It is not yet determined what, if any, of that information will be admissible in the trial. As noted by counsel, throughout the Polk County area there are still posted signs of support for the Des Moines and Urbandale Police Departments, blue ribbons displayed, blue strips of tape on the back window of vehicles, and blue porch lights on homes, all supporting law enforcement as a result of the deaths of these victims. Clearly, none of these gestures are inappropriate but it does show the pervasive and overwhelming support and sympathy for Officers Martin and Beminio.

The Iowa Rules of Criminal Procedure provide the court can change venue for the trial of a criminal case,

[i]f the court is satisfied from a motion for a change of venue and the evidence introduced in support of the motion that such a degree of prejudice exists in the county which the trial is to be held that there is a substantial likelihood a fair and impartial trial cannot be preserved with a jury selected from that county.

Iowa R. Crim. P. 2.11(10). The right to a fair trial by impartial jurors is the most essential requirement of due process. *State v. Siemer*, 454 N.W.2d 857, 861 (Iowa 1990). The Sixth Amendment secures to criminal defendants the right to a trial by an impartial jury. *Skilling v. United States*, 561 U.S. 358, 378 (2010). The right to a change of venue upon proof of inability to obtain a fair trial in the county where the charge was brought is within the guarantee of the sixth and fourteenth amendments of the United States Constitution and article I, sections 9 and 10, of the Iowa Constitution. *State v. Walters*, 426 N.W.2d 136, 138 (Iowa 1988) (citing *Harnak v. District Court*, 179 N.W.2d 356, 360 (Iowa 1970)).

The Defendant argues that the publicity attending this case has been so pervasive and inflammatory that prejudice must be presumed. Whether publicity rises to the level of being presumptively prejudicial depends on several factors: the nature, tone and accuracy of the articles and broadcasts; their timing in relation to the trial; and the impact of the publicity on the jurors. *State v. Siemer*, 454 N.W.2d at 859. It is clear that there has been massive and pervasive publicity surrounding every aspect of this case. It is unlikely that the publicity will be less pervasive the closer the matter comes to trial. While a juror need not be completely ignorant of the issues and events involved in the trial, a juror must not hold fixed opinions on the merits of the case such that the juror cannot impartially judge the guilt or innocence of the defendant. *State v. Voelkers*, 547 N.W.2d 625, 629-30 (Iowa Ct. App. 1996) (citing *Murphy v. Florida*, 421 U.S. 794, 800 (1975) and *State v. Gavin*, 360 N.W.2d 817, 819 (Iowa 1985)). The way people receive news has changed dramatically in the years since most of the cases cited herein have been decided. A printed newspaper or network television news is no longer the primary source of news for many people. Technology allows people to receive alerts on “breaking news” on their phones, iPads and other devices 24 hours a day. This case has resulted in such alerts for even routine hearings such as the pre-trial conference. While this coverage is available statewide it has been especially pervasive and saturated in central Iowa.

The murder of these two police officers has resulted in the entire community coming together to support the families of the victims. In addition the community as a whole has had its sense of security and safety impacted by the violent deaths of those who are entrusted to protect and serve the community. The court finds the past media coverage and the ongoing interest in and coverage of this case creates a substantial

likelihood a fair and impartial trial cannot be preserved with a jury selected from Polk County. Thorough and deliberate jury selection will be required wherever the case is tried but the likelihood of selecting a fair and impartial jury is much greater in a county away from central Iowa where the media coverage has been significantly less.

IT IS ORDERED that the Defendant's Motion to Change Venue Pursuant to Iowa R. Crim. P. 2.11(10) is hereby GRANTED. Venue of the jury trial in this case is transferred to Dubuque County, Iowa. The undersigned will remain the presiding judge for the trial. All pre-trial proceedings shall continue to be held in Polk County, Iowa, and all filings shall continue to be submitted to the Polk County Clerk of Court.

Clerk to send copies to:

Polk County Attorney John Sarcone and Thomas Miller
Public Defender – Matthew Sheeley and Wendy Samuelson
Defendant
Polk County Sheriff
Polk County Jail
Felony Case Coordinator
District Court Administrator – Fifth District – Christopher Patterson
District Court Administrator – First District – Linda Nilges
Chief Judge Fifth District – Arthur Gamble
Chief Judge First District – Kellyann Lekar



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
FECR300301 STATE VS SCOTT MICHAEL GREENE

So Ordered

A handwritten signature in black ink that reads 'Karen A. Romano'. The signature is written in a cursive, flowing style.

Karen A. Romano, District Court Judge,
Fifth Judicial District of Iowa