

1 STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY 2017CF00059

2 BRANCH I

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4 STATE OF WISCONSIN, Transcript of:
5 Plaintiff, STATUS CONFERENCE

6 -vs-

7 BRIAN D. MITCHELL, Case No. 17-CF-59
8 Defendant.

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10 HONORABLE MARK J. MCGINNIS
11 JUDGE PRESIDING

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APPEARANCES:

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19 KYLE SARGENT, Assistant District Attorney, 320
South Walnut Street, Appleton, Wisconsin 54911, appearing
on behalf of the plaintiff.

20 GARY J. SCHMIDT, Le Grand Kaukaulin Law Firm,
21 1033 West College Avenue, Suite B, Appleton, Wisconsin
54914-5290, appearing on behalf of the defendant.

22 The Defendant appeared in person.

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25 Date of proceedings: June 23, 2017

1 MR. SCHMIDT: Yes, I believe it is.
2 That's four weeks away. There is some discovery
3 which I don't have which is referenced in the police
4 reports, which I do have. I did talk to Attorney
5 Sargent. He will be getting that for me early next
6 week.

7 THE COURT: Mr. Sargent, anything with
8 respect to the trial date?

9 MR. SARGENT: No, judge. Actually I am
10 looking at my calendar. It looks like I have that
11 week open as well.

12 THE COURT: Okay. Is that set for -- how
13 many days?

14 MR. SARGENT: I don't know that we had a
15 number of days, but I would say it's probably going
16 to take two.

17 THE COURT: I was going to say the dates
18 that I had down. I will have Debbie bring in the
19 calendar, but I thought we had different dates.

20 MR. SARGENT: Your Honor, if I may, my
21 file reflects that we had a pretrial conference
22 scheduled for August 2 and then August 16. I know
23 Mr. Mitchell had requested an earlier date via
24 letter that was sent to my office, I think, just
25 last week. I am assuming the Court got that as

1 well.

2 THE COURT: You know, with this new system
3 I don't know if I received it. I don't remember it.

4 MR. SARGENT: Sure.

5 THE COURT: I remember I thought I got a
6 letter from him. It didn't have -- If it did have
7 something to do with dates, I don't remember that.
8 I am looking on the computer right now. The clerk's
9 office is supposed to have that stuff up-to-date.
10 It doesn't look like there's a letter from
11 Mr. Mitchell which has been made part of the
12 electronic file.

13 MR. SARGENT: Looking at it, judge, it may
14 have just been sent to me.

15 THE COURT: Okay. Now that I am looking,
16 I have this case scheduled on the calendar for
17 August 16 for one day. Where did you get that
18 July date, Mr. Schmidt?

19 MR. SCHMIDT: I thought that's what my
20 client told me. That might be speculation. I know
21 he mentioned the month of July. I don't know what
22 discussions you had at previous court hearings.

23 THE COURT: Back in May there was a notice
24 sent out on May 18 indicating that the jury trial
25 was set for August 16 and the pretrial conference

1 was set for August 2, August 2 at 9:00, pretrial
2 conference; and August 16 at 8:30 is the jury trial.
3 I guess the question that I have is do those
4 two days work for you, Mr. Schmidt? If we are going
5 to need more than one day, we will have to discuss
6 that. When Mr. Muza was on the case, it was set for
7 one day.

8 MR. SCHMIDT: I have those days open in
9 August.

10 THE COURT: Okay. Then how long of a
11 trial will this be, Mr. Sargent?

12 MR. SARGENT: I think if we tried to do it
13 in a day it would be a long day. I think it would
14 probably spill over into a second.

15 THE COURT: Mr. Schmidt?

16 MR. SCHMIDT: I believe we could get it
17 done in one day. That might -- I don't know how
18 many officers would be testifying. It might run
19 into a second day.

20 THE COURT: Is there any benefit while
21 we're all here two months in advance to put it down
22 for if we have time the 14th or 15th or 16th and
23 then be able to have some flexibility dependent on
24 what the other trials are and how many days this, in
25 fact, needs?

1 MR. SARGENT: Sure. That's fine.

2 MR. SCHMIDT: That's okay with me.

3 THE COURT: Right now what we are going to
4 do is put it down for August 14, August 15, and
5 August 16 understanding that it's going to be a
6 two-day trial or maybe one; but we will try to get
7 it where not everybody is rushing to get it in in a
8 day. As we get closer and we get to that pretrial
9 conference, we can figure out which of those
10 two days out of the three will work. Does that work
11 all right for the State?

12 MR. SARGENT: That's fine for me, judge.

13 THE COURT: Mr. Schmidt?

14 MR. SCHMIDT: That's okay on my calendar.
15 My client tells me that the discussion about the
16 July dates occurred at the arraignment hearing.
17 However, the July date was not taken because it
18 didn't fit in Mr. Muza's, Attorney Muza's, calendar.

19 THE COURT: Okay.

20 MR. SCHMIDT: That's where the July thing
21 comes up. My client would like July if it's
22 available.

23 THE COURT: You are saying July 17?

24 MR. SCHMIDT: I pulled it out of the air.
25 I don't know if there's any truth to that. I

1 suspect the Court may have a couple trial dates in
2 July. Maybe this case could be No. 2 or No. 3 on
3 those dates.

4 THE COURT: If you are going to need more
5 than the 17th, there's a chance of it spilling over
6 to a second day. It's not going to work on the
7 18th.

8 MR. SCHMIDT: Okay.

9 THE COURT: So with respect to his speedy
10 trial demand, my understanding -- and I am just
11 again going off the electronic file -- is that the
12 case was assigned to me back on, like, May 5. We
13 had an arraignment. That arraignment was done on, I
14 think, May 18; and on May 18 a document was filed
15 called defendant's demand for speedy trial. So the
16 August dates that we talked about -- August 14,
17 15th, and 16th -- is within that 90 days.

18 MR. SCHMIDT: I agree.

19 THE COURT: Any further issues with the
20 scheduling of this, Mr. Sargent?

21 MR. SARGENT: No, your Honor.

22 THE COURT: Mr. Schmidt?

23 MR. SCHMIDT: Nothing regarding
24 scheduling, your Honor.

25 THE COURT: Okay. Anything else then

1 today?

2 MR. SCHMIDT: Yes. My client had
3 two concerns today. One was scheduling the jury
4 trial. The other was the fact that at the previous
5 hearing on June 6 the Court had found him in
6 contempt and imposed certain conditions and also
7 expressed purge conditions. My client wanted to
8 discuss that with the Court.

9 THE COURT: Okay.

10 MR. SCHMIDT: I think one of the things is
11 he's supposed to be making a verbal apology in the
12 courtroom.

13 THE COURT: Right. It was mentioned
14 before that you received a letter. I think I
15 received a letter from you, right?

16 THE DEFENDANT: Correct.

17 THE COURT: I remember getting a letter
18 from Mr. Mitchell. It's not in front of me. Again,
19 we are going electronic; and it's not in the file or
20 it's on the electronic file as best as I can tell.
21 I am not sure if anybody else has -- Have you seen
22 that, Mr. Sargent?

23 MR. SARGENT: I have a copy, judge.

24 THE COURT: You see my notes on there? I
25 don't know what my notes are. My understanding is

1 that letter satisfied that part of the purge
2 condition. Did I put that on my notes or not?

3 MR. SARGENT: Judge, your notes just say
4 that all parties -- cc all parties. We will address
5 it at the 6/23 hearing. From my review it appears
6 to be an apology letter.

7 THE COURT: I will find today that the
8 written apology was appropriate and satisfies one of
9 the purge conditions. I thought that was the
10 written document that you were talking about before,
11 Mr. Sargent. I don't know if Mr. Mitchell had
12 commented on the jury trial issue in that letter and
13 the timing of it, and that's what I was referencing
14 when I said I don't remember a reference to a jury
15 trial date.

16 MR. SARGENT: Sure.

17 THE COURT: Okay. So Mr. Mitchell?

18 THE DEFENDANT: Yes.

19 THE COURT: Mr. Schmidt said you wanted to
20 address that issue.

21 THE DEFENDANT: Yes. It's my
22 understanding that I was to give a publicized,
23 verbal apology, which I intend to do. I would,
24 first, like to apologize, I mean, to you, judge,
25 your Honor, for my suspension on my outburst, and

1 the disrespectful manner in which the Court took it
2 in, the disrespect to the Court that day. I
3 apologize for, I mean, being -- my contemptuous
4 behavior that day on June 6 in the courtroom.

5 As I wrote you in the letter, I intended
6 to apologize and that I actually learned my lesson
7 from that and that I didn't think it would be in my
8 best interests. I thought I would satisfy the Court
9 in a different manner rather than lockup conditions.

10 THE COURT: Anything on that, Mr. Sargent?

11 MR. SARGENT: No, your Honor.

12 THE COURT: Mr. Schmidt?

13 MR. SCHMIDT: Nothing on that point. I
14 think my client has a cash bond, but I think also
15 the Court had sentenced him to six months in the
16 jail on the contempt. So we would ask the Court to
17 lift the six months if he's able to post the cash
18 bond. Then he has that opportunity. Otherwise
19 that's taken away from him.

20 THE COURT: I believe there were
21 three purge conditions, right? The third purge
22 condition had to do with paying a \$5,000 amount.

23 MR. SARGENT: That's correct.

24 THE COURT: I'm just going on memory.

25 MR. SARGENT: That's correct.

1 THE COURT: What is the cash bond amount,
2 Mr. Schmidt?

3 MR. SARGENT: \$15,000, judge. Sorry.

4 THE COURT: What I think needs to be done,
5 Mr. Mitchell, is the following. It's something I
6 think you need to either appreciate or, if you don't
7 appreciate it, at least understand, that is, you
8 know, in this society every day we deal with
9 individuals who are unhappy, disgruntled, emotional
10 and it's not just defendants. It's attorneys. It's
11 victims, witnesses, police officers; and in order to
12 have a system that runs efficiently or smoothly and
13 is done in a way -- Do you need time to get rid of
14 those documents?

15 THE DEFENDANT: No.

16 THE COURT: You notice that disrespect
17 that you are showing me in the last 35 seconds? You
18 get that, right?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. It's not showing up on
21 the transcript but that's the type of disrespect
22 that shouldn't exist in a courtroom. And I only say
23 that, Mr. Mitchell, because like I told you last
24 time, I'm going to be the guy who sentences you if
25 you lose and, you know, you don't make -- It's not

1 in your best interests to carry on the way you carry
2 on. That's okay. You can do it if you want. You
3 can roll your eyes when I am talking. You can
4 purposely look away, and you can look at me and give
5 me the fuck-you look, right, that you have been
6 giving me for the last minute and that's fine.
7 That's just who you are.

8 But what you did the last time here, the
9 disrespect and what I thought and I characterized as
10 an aggressive, inappropriate way, which is different
11 than what you are doing right now, which is
12 contemptuous behavior; and it can't be tolerated by
13 you or by attorneys or by anybody else who comes in
14 here or else this is just going to turn into a
15 complete circus.

16 The last time when you were here and what
17 I was saying before is every day it happens to
18 various degrees, and over 12 years of doing this you
19 just kind of let some of it go kind of like I did
20 for those first 35 seconds when you were doing this
21 today. Those first 15 seconds I'm going to let you
22 disrespect. Then it carried on for 20 or
23 25 seconds. Eventually I say no, this isn't
24 acceptable; and I'm not saying you have to respect
25 me because you won't and you haven't and that's all

1 right; but you have to respect the environment and
2 the fact that this is a courtroom and there are
3 rules for people to follow and that's what you
4 continue to violate.

5 And so before you disrespected me today
6 for this last couple minutes with the way you are
7 looking and the way you are carrying on, I was going
8 to waive that \$5,000 purge condition. I thought
9 maybe your apology was genuine. I thought what you
10 had written was sufficient. That's what I said, but
11 it's clear that those are just words that you don't
12 really mean, and it's an intention that you continue
13 to hope to carry on in the courtroom, which tells me
14 that you don't understand what your role is here.

15 So the contemptuous behavior that happened
16 last time and the purge conditions that I provided
17 will continue. You have satisfied two out of the
18 three conditions. The third condition will remain
19 the same. Anything else, Mr. Sargent?

20 MR. SARGENT: No, your Honor. Thank you.

21 THE COURT: Mr. Schmidt?

22 MR. SCHMIDT: I guess I could advise the
23 Court of one other matter which is probably going to
24 come up soon. I did obtain a copy of the transcript
25 from the hearing on June 6. There should be a copy

1 in the Court's file; but due to electronic filing,
2 maybe it's not there. I guess I will have to get a
3 laptop and bring it to the court so I can keep up
4 with these documents. On the -- On the transcript
5 on the bottom of page 6 there's a discussion between
6 the defendant and the Court.

7 The defendant states, "You have a problem,
8 the way you talk to people."

9 And the Court states, "Okay, good.
10 Someday I'm going to sentence you."

11 Then the defendant says, "Probably."

12 The Court says, "That's going to be a
13 problem -- "

14 The Defendant, "Maybe."

15 The Court, " -- for you that day."

16 My client has asked me to file a motion to
17 ask the Court to recuse himself because of that
18 statement. So I probably will be filing a motion
19 based on that section of page 6 and we probably have
20 to schedule a hearing to come back on that in the
21 future.

22 THE COURT: Go ahead and file it. Maybe
23 include the conversation that we had today because I
24 talked to him about it as well, and you might delay
25 the trial. So you go ahead and file it. When you

1 file it, the State will have 30 days to respond.
2 When they respond, I'll do the research and I'll
3 make my decision.

4 Obviously on first blush I don't think
5 it's an issue. I will highlight those reasons. I
6 am sure you have some legal authority, Mr. Schmidt,
7 that you can cite; and just so Mr. Mitchell
8 understands today, when I said that to you, at the
9 time of sentencing we take into consideration
10 everything we know, everything we've observed
11 including your character. As I said again today,
12 things that you do at a hearing, the way you conduct
13 yourself we're not blind to.

14 So the fact that I tell you that at a
15 hearing I think is not only appropriate, I think
16 it's best because hopefully a person like you who is
17 smart -- I'm not suggesting that you are -- or that
18 you care -- and I'm not suggesting that you do
19 care -- you would change your behavior or your
20 conduct and you would handle yourself in a different
21 way.

22 Mr. Mitchell, as he's picking up his
23 papers right now and continues to show that
24 disrespect and is looking away and rolling his eyes
25 and acting in a way that he has for the last couple

1 hearings -- He obviously isn't that bright of a guy.
2 That's just the reality for him. Whether that means
3 I could be fair or that I have some bias against
4 him, whether it's perceived or it's real, I think
5 the record is clear as to what the facts are.

6 So file your motion. Make sure you
7 support, the legal authority. The State has 30 days
8 from whenever that's filed. I'm not sure I'm going
9 to waste my time with a motion hearing on it; but
10 once it's filed, I will read it. If I think it's
11 necessary to have a hearing, I will. Otherwise I
12 will just rule on it at the appropriate time.

13 Anything else, Mr. Sargent?

14 MR. SARGENT: No, sir. Thank you.

15 THE COURT: Anything else, Mr. Schmidt?

16 MR. SCHMIDT: Not right now, your Honor.

17 THE COURT: Okay. We're adjourned.

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19 (Proceedings concluded.)

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1 STATE OF WISCONSIN)

2) SS:

3 OUTAGAMIE COUNTY)

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6 I, TERRA TORRES, RPR, RMR, CRR, do hereby
7 certify that I reported the foregoing matter and that the
8 foregoing transcript, consisting of 17 pages, has been
9 carefully compared by me with my stenographic notes as
10 taken by me in machine shorthand and by me thereafter
11 transcribed and it is a true and correct transcript of
12 proceedings had in said matter to the best of my
13 knowledge.

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15 Dated this 1st day of September, 2017.

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Electronically signed by Terra Torres
TERRA TORRES, RPR, RMR, CRR
Official Reporter

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