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Baker trial will remain in Fayette County

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EFFINGHAM — The trial of a Loogootee teen accused of killing a couple who lived nearby will remain in Fayette County despite efforts by the teen's lawyer to have it moved elsewhere.

Judge Michael McHaney denied a change of venue motion Thursday. The defense asked for the trial to be moved out of the county due to media coverage following the Aug. 4 slayings of John Mahon and Debra Tish for which Clifford Baker, 16, is accused of committing. He is charged with four counts of first degree murder and home invasion in connection with the deaths. Baker was 15 when the murders occurred, but he is being tried as an adult.

Baker's attorney, Monroe McWard, contends in a motion filed in January, the pretrial publicity will prejudice prospective jurors and prevent them from being fair and impartial.

State's Attorney Stephen Friedel disagreed, saying the articles he read in no way convey that and not everyone would be of "like mind."

"The question is 'will pretrial publicity poison the jury pool?' In my mind, no," he said of the motion, which McWard amended Thursday. "Does that mean anyone aware of the crime committed should not be allowed in the jury pool? No."

Friedel referenced former Gov. Rod Blagojevich's trial and the widespread media coverage leading up to it and said media coverage would follow the Baker trial wherever it takes place. Friedel added Fayette County residents had a right to render a verdict for a crime that was committed in their county.

"That's why we have local juries," he said.

McWard countered that statements made in pretrial hearings on motions to suppress incriminating statements were distributed by the media.

"While my client is not entitled to a perfect trial, he is entitled to a fair trial," he said.

McHaney agreed there had been extensive pretrial publicity of the case. But in denying the motion, McHaney said, "it lacks evidence to conclude it's impossible for the defendant to receive a fair trial in Fayette County."

However, McHaney added if it becomes apparent during jury selection people have a preconceived notion, Baker has a right to then have the trial moved or a mistrial declared.

For now, though, he ruled the trial will stay in Fayette County.

It was the only ruling McHaney made, stating he said he would issue written orders early next week on other motions heard Thursday. Both sides argued a motion filed by Baker's attorneys to suppress a videotaped confession in which law enforcement interrogated Baker at a hospital following the early morning killings.

Baker's attorneys allege he was coerced, although not physically, into making the statement to law enforcement due to, among other factors, his young age, mental state and capacity and background.

Attorney Mark Wykoff referred to a suicide attempt by Baker a couple of weeks prior to the murders and an attempt to harm himself again with a staple gun the morning following the murders, as well as his "dysfunctional" family as evidence of his fragile mental state.

Friedel argued the state did not consider the episode prior to the killings a suicide attempt.

"And I doubt stapling himself in the chest is a serious attempt at suicide," he said.

Wykoff further referred to Baker's mental capacity by pointing out he was enrolled in alternative education.

Friedel also disagreed, noting he was enrolled due to behavioral problems, not learning problems. In addition, he said while an IQ of 85 is low, it is low average.

Friedel also argued Wykoff's assertion that Baker was under the influence of drugs and alcohol during the video interrogation. Friedel said the video was made four hours after he was taken into custody, and Baker had an alcohol level of .1, which meant he wasn't excessively under the influence.

Wykoff countered Baker's unstable mental state could be further explained by his lack of sleep before the video confession. He said the teen had little to no sleep in the 24-hour period preceding the interrogation.

"At 7:06 a.m. Baker was handcuffed to a bed. At 7:19 a.m. interrogation commenced. That's a 13-minute window in which Baker may have slept," he said.

While Friedel admitted Baker had trouble sleeping the night before the murders, he said there was a period of time before the murders that Baker's father, Jeff Goldman, was asleep.

"He didn't know where he was. How do we know he wasn't asleep," he said.

Friedel added Baker appeared alert and not sleep deprived during the video, but anxious to open up, confessing to everybody from his father to ambulance personnel and at the hospital.

Wykoff scoffed.

"I wonder if we were viewing the same recording?" he said. "At the outset of the tape, they had to wake him up. He wasn't anxious." Wykoff further alleged Baker's speech was slurred.

"Come on man. In the videotape I saw, you would have thought the man had a broken jaw."

Wykoff said the video also revealed Baker was not made aware that a juvenile officer was present during the interrogation until after it was over.

"There was nothing from the outset of the interrogation a juvenile officer was present and there for his custodial care," he said. Friedel said law enforcement did exactly what they were suppose to do.

"They're not there to act as counsel. They're only there to make sure rights aren't being abused," he said. "If a juvenile officer said, 'I'm here for you,' it would lead him to believe counsel is present."

Wykoff agreed a juvenile officer doesn't serve in capacity as counsel, but reiterated such a person is of no value if the juvenile doesn't know he or she is there.

Wykoff also accused law enforcement of impeding Baker's father from being present during the interrogation or having an attorney present.

Goldman testified briefly Thursday that he did not know his son's whereabouts after officers arrived the morning of the murders. He said he was told by law enforcement he couldn't leave, and no one told him where his son was.

Friedel questioned the defense's accusation because Goldman couldn't recall the officer who told him he couldn't leave and he didn't ask about his son's whereabouts, but assumed officers asked to speak to his son out of concern for his well being, not to interrogate him.

“He was told of the double homicide and Goldman himself said he wanted to know what happened,” said Friedel, adding that is not characteristic of concern over well being.

Wykoff said Goldman did not know they would be collecting incriminating evidence, and it’s not the parent’s burden to find the child, but law enforcement’s duty to tell him where he is. In addition, he said law enforcement did not ask Goldman if he wanted a lawyer for his son.

Goldman testified when the sheriff offered him a ride he said he wanted to go to his cousin’s house.

“Goldman says he wanted to be with his son, but doesn’t ask where he is at,” said Friedel.

McHaney will issue an order early next week on the motion, as well as others concerning additional funds for a private investigator and allowing an expert witness.

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