

1 A. No.

2 Q. The answer is no?

3 A. That was the answer. No.

4 MR. PARRISH: Nothing further at
5 this time with regard to the questions
6 that Ms. Timmins opened the door to,
7 Judge.

8 THE COURT: Ms. Timmins?

9 MS. TIMMINS: No questions.

10 THE COURT: You may step down.
11 Thank you.

12 THE WITNESS: Am I excused?

13 THE COURT: You are excused, yes.
14 Mr. Parrish.

15 MR. PARRISH: Thank you, Judge.
16 Would you like me to make my offer
17 of proof at this time, Your Honor?

18 THE COURT: Well, let's take a
19 brief ten-minute recess, and we'll try and
20 get this in before we break for noon.

21 MR. PARRISH: Thank you, Judge.

22 (A recess was taken at 11:45 a.m.)

23 (In open court, in the presence of
24 the Court, the Defendant, and counsel at
25 11:55 a.m.)

1 THE COURT: We're back on the
2 record. All counsel are present and the
3 Defendant. We did take a brief recess.

4 Mr. Parrish.

5 MR. PARRISH: Thank you, Judge.

6 Judge, at this time I'd like to
7 make an offer of proof with regards to
8 which questions we would have--

9 THE COURT: You can just go and--so
10 we don't repeat each other and repeat a
11 lot of stuff, because we weren't supposed
12 to go into ineffective assistance counsel.
13 A lot of the issues in there were brought
14 up totally or partially in the witness's
15 testimony.

16 And I'm just going over it. There
17 was preparation, advice to counsel,
18 motions not filed, objections, experts,
19 and so forth. So I mean a lot of that was
20 gone into. It wasn't supposed to, but it
21 was, the ineffective assistance. So if
22 you could just narrow it.

23 I've read your brief. If there's
24 stuff that you want to add beyond that, go
25 ahead.

1 MR. PARRISH: Thank you, Judge.

2 Judge, first of all, I just read
3 the first draft of our Motion on the
4 interlocutory appeal, and did tell them I
5 wanted a couple things corrected on it so
6 I can get another draft back, in
7 particular with regard to the issue that
8 you're going to let me make an oral
9 motion. So I did--

10 THE COURT: Plus she testified to a
11 lot of it, but go ahead.

12 MR. PARRISH: Well, Judge, it was
13 under the context of the open door of the
14 prosecutor. It would not have been the
15 way I would have presented it.

16 THE COURT: Okay. Go ahead.

17 MR. PARRISH: But I appreciate
18 that, Judge. Thank you so much.

19 Judge, had I been allowed to make a
20 proper offer of proof to this Court for
21 the Court to consider--and I'm sure the
22 Court is well aware that it is extremely
23 difficult when a judge makes a ruling--and
24 I think you referred to it off the record.
25 I obviously travel around the state quite

1 a bit. And when a judge makes a ruling,
2 as you said off the record, I've already
3 made my ruling, it's difficult to make a
4 judge change their mind with regard to
5 trial rulings made because a lot of times
6 they become fixed until they hear all of
7 the information that perhaps the lawyers
8 didn't bring to them before the hearing
9 started.

10 And I think perhaps, Judge, to a
11 great extent you were in that box. And
12 I'm not blaming you but I think, perhaps,
13 the lawyers didn't do the job they should
14 have done in letting you know what side
15 agreements they had made with regard to
16 this matter.

17 So I prepared this case, Judge,
18 since January with that in mind and tried
19 to talk to as many lawyers and judge
20 friends of mine that I know to talk about,
21 if a judge makes a certain ruling during
22 the trial and they're not fully aware of
23 everything that has taken place with
24 regard to cases and what the issues would
25 be.

1 I would at least, Judge, point out
2 a couple of recent cases that have come
3 down. The *Christensen* case that came down
4 that was prosecuted by Coleman McAllister
5 who is out of the AG's office where Ms.
6 Timmins works, and also the *Arterburn*
7 case, which I just got a motion for--or it
8 was reversed. And that was also handled--
9 I think that might have handled by Ms.
10 Timmins. And the court reversed--sent the
11 case back down on an ineffective
12 assistance of counsel in a--not a writ of
13 habeas corpus, but a postconviction. The
14 trial judge, Judge DeGeest, gave us a new
15 trial in that case because of some issues
16 that had cropped up.

17 THE COURT: Was that out of
18 Poweshiek?

19 MR. PARRISH: That was out of
20 Oskaloosa, Judge. It was Mahaska County.

21 THE COURT: Mahaska.

22 MR. PARRISH: *Arterburn* is out of
23 the Court of Appeals. Judge Tabor sent it
24 back down, and then Judge DeGeest did a
25 hearing on it and then we were granted a

1 new trial. Her office was involved in
2 that.

3 And obviously, Judge, in my
4 experience our office is involved with
5 their office on cases around the state of
6 Iowa. Mr. Spies was on the *Christensen*
7 case.

8 But, Judge, these are the questions
9 that we would have asked and believe our
10 offer of proof would establish, and we
11 would have done it in this order.

12 I would want to know the seminars
13 that she would have attended that prepared
14 her to defend sex abuse cases, because
15 defending sex abuse cases is quite
16 different than prosecuting sex abuse
17 cases.

18 I would have asked her, as you have
19 already pointed out, about the use of the
20 experts; who did she call; who did she
21 consult; why did she consult them. If she
22 did not consult them and knew that the
23 State had called these people as witness,
24 Dr. Salter and the other witnesses, who
25 testified with regard to the control of

1 these kids in the rooms which led to the
2 Child Endangerment, et cetera. Why did
3 the prison expert testify in that area,
4 and why didn't she get someone who could
5 testify about kids in a school that would
6 be subject to the same type of
7 circumstances?

8 And again, Judge, this is not
9 second-guessing or retrying a case, it's
10 outlining what are basic, fundamental
11 steps that a lawyer with experience and
12 who would have been prepared to defend
13 these cases would have done.

14 She has already agreed--she did
15 answer she had never defended one of these
16 cases before. Obviously, she has
17 prosecuted them.

18 I would ask her the same questions
19 about Child Endangerment, had she defended
20 those. Since Ms. Timmins restricted her
21 questions to the sex abuse cases, I
22 restricted mine. I would have asked her
23 questions about Child Endangerment.

24 And the most difficult area, Judge,
25 nowadays for people to defend, as this

1 Court is well aware, because of a recent
2 decision where it talks about whether it's
3 a mandatory sentence or a forcible felony,
4 but he cleared up this kind of disputed
5 area saying that if there's a pattern or
6 practice case where these people are
7 getting probation, et cetera, that you
8 can't do that anymore. So it increases
9 the stakes with regard a case of this
10 nature. And so I would have wanted to ask
11 her had she defended this type of case
12 before.

13 It's one of the most complex cases
14 to--I defended three of them last year--
15 the most complex cases to defend. I'd
16 want to know what experience she had in
17 that area.

18 I also would have wanted to know
19 why she didn't ask for severance in this
20 case. I mean, this is an elementary
21 severance case. You don't try a child
22 endangerment based upon keeping someone
23 locked up in a room and a sex abuse case
24 where a person is making a specific
25 allegation together. That's just almost

1 law book 101. So I would have wanted to
2 ask her, tell me, why didn't you ask for
3 severance? Did you consider it? What
4 steps did you take? Did you talk to the
5 Court about it? Did you bring it up with
6 your client? Why didn't you review that?
7 Why didn't you ask for a severance from
8 the Court? If it was too late to file
9 motions, why didn't you file it at the
10 current time?

11 I would have asked her, Judge, did
12 she move to object to any of the charges?
13 Did she file a bill of particulars? Why
14 didn't she file a bill of particulars?
15 Because that would have cleared up for the
16 Court the flawed instructions that were
17 eventually given on those two matters.
18 Because if the Court relied on Ms.
19 Timmins' instructions and that's where the
20 flaw came, it would have easily been able
21 to separate out, because in one issue we
22 had two and the second one they talked
23 about one person.

24 So I don't know how the jury goes
25 in and disseminates and articulates what

1 evidence goes against which person. So I
2 would have asked her why did she not
3 object to the instructions had she read
4 them closely? Did she review them? Did
5 she just accept them?

6 THE COURT: Well, you did ask her
7 extensively about that.

8 MR. PARRISH: I did, Judge, but not
9 in the manner I thought would show
10 ineffective assistance. I had to ask only
11 within the structure of the questions that
12 Ms. Timmins asked her.

13 THE COURT: All right.

14 MR. PARRISH: I also would have
15 asked her about her familiarity with the
16 *Dahl* case. I believe the evidence is
17 important in that case, Judge, because she
18 talked about the expense of the hard
19 drive. I believe the offer of proof would
20 have been that my client asked her about
21 getting expert witnesses to combat the
22 Salter statements, and the answer would
23 have been, she did not think they would
24 handle those costs and told him those
25 costs would not be provided to him.

1 In reviewing the record, there is
2 absolutely no request for assistance from
3 the Court or the Public Defender's Office
4 except for the \$250.00, 5 terabyte hard
5 drive. And the testimony would have been,
6 Judge, that I didn't ask for it because
7 they would not pay for it, at least that's
8 what she told her client.

9 I would have asked of her
10 familiarity with the *English v. Missildine*
11 case. The Court may not recall, but it's
12 a case I actually had. It's probably one
13 of those most quoted cases in the United
14 States. And that's the case that allows
15 the defendant to ask for costs from the
16 State in the event their friends, et
17 cetera would pay for those costs. I'd ask
18 why that was not included in her request.

19 With regard to the 5.412 Motion, I
20 think I did cover that as to why she did
21 not explain that to the Court and bring
22 the Court up to date as to what was going
23 on with regard to those matters.

24 With regard to the speedy trial
25 record, Judge, we would have asked was

1 that record ever made in front of the
2 Court, either at pretrial or at trial,
3 where the Court explained--which a lot of
4 judges will do when they find out that's
5 an issue--to the client the risk that will
6 be involved. And I think that should have
7 been coupled, Your Honor, in this case
8 with your pretrial motion reading that no
9 other motions can be filed. So the
10 question is, why didn't she contest that
11 or bring that up with the Court, and is
12 there a reason why that wasn't done?

13 I asked her when she disagreed with
14 the Court with regard to your ruling on
15 the 412 Motion, why didn't she make an
16 offer of proof?

17 I mean, I asked to do that this
18 morning, and looking at the Court's
19 reaction--

20 THE COURT: I thought she did make
21 an offer of proof.

22 MR. PARRISH: Go ahead, Judge.

23 THE COURT: I thought she did make
24 an offer of proof. But go ahead.

25 MR. PARRISH: Well, I reviewed the

1 transcript. But, Judge, I would defer to
2 your thought if you think she made an
3 offer of proof on it. That's fine. But I
4 won't concede that, Judge, except I would
5 let the transcript speak for itself as to
6 an offer of proof.

7 I would have asked her the
8 questions about the telephone records. As
9 the Court is well aware, if it tries a lot
10 of these cases, that the telephone records
11 of the alleged victim, K. [REDACTED], would have
12 been absolutely critical to review and--

13 THE COURT: Again, I don't mean to
14 interrupt, but I thought they weren't
15 allowed phones there.

16 Ms. Timmins, do you remember it
17 that way?

18 MS. TIMMINS: That was my
19 understanding.

20 THE COURT: I mean, there were very
21 strict rules at this place. If I
22 remember, they weren't allowed phones so
23 there would be no Cellebrite to do on this
24 phone because they weren't allowed phones.
25 There were very, very strict rules at that

1 facility.

2 I'm sorry. Go ahead.

3 MR. PARRISH: That's okay, Judge.

4 But she had a cellphone when she left.

5 And she stayed with her sister, and she

6 also stayed with other people, and they

7 would have been important, I believe.

8 And I understand, Judge, it's

9 important for you to defend your ruling on

10 this, but I think if you would listen to

11 my thoughts on why the cellphone records

12 would have been significant and why we

13 automatically ask for them--all defense

14 lawyers ask for them; all prosecutors ask

15 for them--is you get these records, Judge,

16 and you review these Cellebrite records

17 for the purposes of obtaining who they

18 called afterwards, who they talked to, are

19 there text messages, are there social

20 media postings. I had three hearings on

21 this exact same issue last week before

22 Judge Van Marel in Story County. And on

23 two witnesses when the State would not

24 produce it, he ordered them produced. And

25 that's in the case of *State vs. Rock*.

1 So Judge, every lawyer I talk to,
2 every seminar I attend, that is what
3 they're telling us is that's almost a
4 prerequisite to defending sex abuse cases
5 nowadays.

6 So her phone records, I believe,
7 Judge, could have been requested. Text
8 records could have been obtained. Social
9 media postings could have been obtained
10 from that. And the question is: Was that
11 done? I believe her response would be
12 that it wasn't done. It could have been
13 much like your response, Judge, that I
14 don't think I was entitled to it because
15 they didn't have phones there. And my
16 response to that would be, I get it, but
17 simply because they didn't have phones at
18 the institution didn't mean that they
19 didn't have phones afterwards, and she
20 communicated with people and people
21 communicated with her.

22 It would be directly relevant,
23 Judge, on the issue of a 412 motion. Why
24 it would be relevant on that, and that's
25 what our offer of proof would show, is

1 that it would be significant on that one
2 because if she communicated with this
3 foster mom or the adoptive mom after that,
4 it would go in to support there was no
5 communication, support to a jury or even
6 maybe to a court the idea that that
7 information would have been significant
8 for her to follow up on.

9 It's not a question, Judge, as they
10 said in the *Anfinson* case, which I argued
11 before the Iowa Supreme Court. I believe
12 an excellent lawyer was on the other side
13 of that one, Mr. Kutmus. In that case, as
14 the Court well knows--kind of a
15 trendsetter for what defense lawyers are
16 required to do. And I don't want to bore
17 you with the facts on that case, Judge,
18 but the details of it was that a woman was
19 charged with the death of her child. She
20 was convicted. It went up, and the lawyer
21 didn't do an investigation into her mental
22 state. I believe it was Judge Hecht who
23 wrote the opinion. And in that opinion,
24 he outlined what are the rudimentary
25 things that defense lawyers ought to do.

1 And I think in that case, Judge, I
2 think Judge Appel has written several
3 opinions that pretty much lay out what the
4 requirements are.

5 So we believe, Judge, that the
6 Cellebrite records would have been
7 something that should have been obtained
8 from not just her, Judge, but they should
9 have been obtained from all the witnesses
10 to see if these parties exchanged
11 communications with each other, and if
12 they had, what was the nature of it, and
13 ask them those questions on the record
14 with regard to depositions.

15 I think, Judge, when she talked
16 about the terabytes of information--and
17 several lawyers in my office do court-
18 appointed CJA work now. I don't do a
19 whole lot of it. I used to do a lot of it
20 years ago, as the Court may have been
21 aware. I haven't done it in several
22 years. But she indicated she just didn't
23 have time to go through the terabytes. I
24 would have asked her, does she have any
25 paralegals in her office; could she have

1 made a request to the Court to get some
2 assistance to review the terabytes of
3 information?

4 I would have then asked, Judge,
5 well, if that is significant and important
6 for you to have, and it included records
7 of all the people and where they were
8 placed at various times in the building,
9 and you didn't get that until the 28th,
10 rather than just ignoring it, why wouldn't
11 you set up some system to review and then
12 have a paralegal, ask for some assistance
13 from the State, review those records and
14 see if there are people who would
15 contradict the other people?

16 Now, the question that I think the
17 Court will ultimately have to deal with--
18 and we dealt with in our brief--is how is
19 that balanced against the speedy trial
20 right? It's a balancing factor, Judge,
21 but I think that's why we have judges, to
22 have them come to make a full record and
23 ask a client: Do you understand all the
24 consequences of everything that will take
25 place? And obviously, she said she didn't

1 do that. And I think that would have been
2 something that this Court could have
3 considered at that point in time, and you
4 can still consider it at this point in
5 time, Judge.

6 We would ask, did you tell the
7 Judge that your client didn't review this
8 5 terabytes of information; that he didn't
9 have access to it?

10 I would have asked her, did your
11 client bring you material that he thought
12 was important and that you should review,
13 and his wife? And I believe she would
14 have responded, yes. And it would be a
15 thousand pages of documents that were
16 brought that exculpated him, and that she
17 did not present that to the Court.

18 Now, whether or not she was
19 intimidated by the Court by not filing
20 motions or not filing a witness list or
21 not filing other material, I don't know,
22 Judge. But the point is that that's
23 elementary. You should not be intimidated
24 by a court not agreeing with you. Courts
25 disagree with lawyers all the time.

1 That's why we have a system of advocacy,
2 because we are supposed to advocate for
3 our clients. Because you don't have to be
4 buddies with the judge to be able to get
5 your point across. You're supposed to be
6 prepared and be able to present your
7 evidence in a manner and not be
8 intimidated by the court. The courts are
9 not there to intimidate people.

10 Also, Judge, I would have asked
11 her, did you subpoena the records with
12 regard to A. [REDACTED]? It would be his medical
13 records. Did she make objections with
14 regard to the hearsay coming in with
15 regard to A. [REDACTED]? And if you didn't, why
16 not? If she says that, in her statements,
17 Denise Timmins told her, well, I'm leaning
18 against call him, but don't know that she
19 could not have been able to--I won't say
20 submarine you--but she shouldn't be able
21 to ambush you in that fashion. She would
22 have had to say, well, we had an
23 agreement; you walk in before Judge Kruse;
24 you outline what the agreement is. And
25 you outline to Judge Kruse, look, Judge, I

1 have a problem. She said she's not
2 calling this witness. I don't want any
3 hearsay to come in.

4 Now, as you know, Judge, she filed
5 the motion for hearsay objection in her
6 Motion in Limine. That was all it said,
7 any 801, 802 statements should not be
8 brought in. But if you look at her
9 pattern and record with regard to making
10 her objections, she barely made them.

11 And there was a critical point--and
12 we point out in our brief--and I would
13 have asked her, take a look at your
14 objection on A. [REDACTED]. Why didn't you do it--
15 after you filed your motion, why didn't
16 you bring her up and say, Judge, she's
17 violating the Motion in Limine? Why is
18 she doing that? Because you know, Ms.
19 Timmins has said, she wasn't going to do
20 it.

21 Yeah, there is a rule, and that's a
22 simple rule, and that simple rule is if
23 you tell them you're not going to do it
24 beforehand--you make a professional
25 statement that you're not going to do it,

1 you're not supposed to do it. And when you
2 bring A. [REDACTED] in, when you made a rule I'm
3 not going to do anything like that, you
4 violate that rule. And that's what
5 happened.

6 A. [REDACTED] had no business coming in.
7 All of these hearsay statements, with his
8 mother's hearsay statement, with the
9 doctor's report on this, that never should
10 have come in, Judge. And you asked me to
11 state a rule, there's a rule. It's
12 hearsay. It's a motion in limine.

13 And Iowa courts have said, when you
14 file a motion in limine and it's
15 sustained, and the lawyer makes a
16 statement that it's not going to come in,
17 then that is the ruling of that case.
18 That is the law of that case. And Ms.
19 Timmins said she wouldn't do it, and yet
20 she did.

21 I would have asked her, why didn't
22 you bring that to the attention of the
23 Court in the Motion in Limine that she had
24 filed? Why didn't she move to exclude it
25 after it came in? Why didn't she re-alert

1 the Court with regard to the fact that
2 this had come in?

3 The other thing I would ask is, did
4 she consider a motion to continue? Over
5 her client's objection, could she file it?
6 Would she in fact have gone forward with
7 it? Did she consider it? Did she bring
8 it up with the client? Did she bring it
9 up with the judge? And I believe her
10 answer would be, she did not file one; she
11 did not consider it; she did not outline
12 all of the instances that her client would
13 have been in a problematic situation with
14 this case going forward.

15 I would have asked her, how many
16 hours did she do on research, but I think
17 she brought her bill in. I think the
18 Court can take a look at it. It came in
19 without objection. I think the Court can
20 look at her bill and determine from her
21 bill, did she do research on the critical
22 issues? Did she prepare what's called--
23 draft motions, which I think she
24 indicated--or draft instructions, which
25 she did not do.

1 She did not prepare a trial brief
2 for this Court. She did not object to the
3 instruction that's clearly problematic.
4 That was not done.

5 THE COURT: She already testified
6 to that. Again, that's one of those areas
7 in the ineffective assistance of counsel
8 that she already went over.

9 MR. PARRISH: Right. And I
10 appreciate that, Judge. But I would just
11 say, Judge, on that instruction that's
12 almost a per se reversal. That's almost
13 per se, Judge. It doesn't even--it's a
14 structural defect.

15 Now, the question on that is, does
16 that just knock out Count III? Does it
17 impact Counts I and II? Then I think you
18 have to consider that within that
19 severance issue, of not doing it. But
20 it's a per se reversal, Judge. I'm not
21 sure the State even argues against that
22 position.

23 Then I would ask her, Judge, I
24 would make an offer of proof, did she
25 visit the scene where this occurred? Did

1 she go through and walk through the area?
2 I think her answer would have been, no,
3 she did not. It would be elementary to do
4 that, to review these rooms, take a look
5 at them, take a look at the campus, take a
6 look at the setup.

7 Did she review photographs? Did
8 she take her own photographs? Did she
9 bring photographs in that would have shown
10 the jury a different perspective than what
11 the photographs that were introduced by
12 the State of Iowa and their investigators?
13 And I believe her answer would have been,
14 no, she did not.

15 The next question I would ask,
16 Judge, is did you challenge any experts
17 brought by the State of Iowa, which would
18 have been Dr. Salter? And I think we
19 addressed those vouching issues. And the
20 Supreme Court has done that in several
21 cases. I think that's a pretty strict
22 area that the Iowa Supreme Court has gone
23 into.

24 The only thing I would say on that
25 is that if you look at vouching, which the

1 Supreme Court and the Court of Appeals
2 said to stay away from, there's not
3 another set of crimes that you can bring
4 in--you can't bring a police officer in
5 and say, yeah, I know that police officer;
6 he's a good guy; he tells the truth.

7 So why should you do it in a sex
8 abuse case? Why is that vagueness in
9 existence? It shouldn't even exist. It
10 should be just prohibited. As a matter of
11 fact, I believe it ought to be prohibited
12 from the State even introducing it, and it
13 ought to be prosecutorial misconduct for
14 them to do it. That's how strongly I feel
15 about it.

16 So this idea that vouching we have
17 to go back and forth in the appellate
18 court to decide, is this vouching or is it
19 not vouching? The kind of stuff that is
20 introduced in sex abuse cases, Judge,
21 shouldn't even be close to being
22 introduced in those cases. There's not a
23 single other crime that you can look at
24 where it's allowed. It's a no-no. So it
25 should not be allowed in sex abuse cases.

1 The Supreme Court obviously--the appellate
2 courts in Iowa struggle with that, but it
3 shouldn't even be a struggle.

4 Then I would have asked questions
5 about, did she object to the doctor from
6 Michigan testimony coming in? Did she
7 object to the Boston Marathon information
8 coming in, and why didn't she object? Why
9 didn't she move for a mistrial after the
10 doctor referred to it? They were clearly
11 emotional cases that should have been
12 objected to, Judge.

13 I looked at her Motion in Limine.
14 I would have asked her, why didn't she
15 expand it, or why didn't she make a more
16 detailed one later in the trial to outline
17 what could have been excluded by this
18 Court? I would have asked her those
19 questions because I think they're
20 legitimate questions.

21 As I said, I don't think you have
22 to wait until 822 or a 633 (sic) comes up.
23 I think you could do it on a habeas--or a
24 postconviction. I think you should be
25 able to do it at this point, and that's

1 what we're contesting right now.

2 I would ask her, did she ever make
3 a request for an expert witness? I think
4 she has answered she did not. I would ask
5 her why not? And is there a reason when
6 the State clearly had expert witnesses. I
7 believe the doctor at Michigan was Larry
8 Nassar. That's the person I wanted to
9 mention, that is the gymnastic doctor that
10 was brought up during the course of the
11 trial. I believe her response was she
12 didn't know anything about--couldn't
13 recall anything on that until later.

14 Judge, that would be my offer of
15 proof. I believe they are legitimate
16 questions. I ask the Court to allow me--
17 obviously, the witness has been excused
18 now--to have her give her answers to those
19 questions because I think two things I'd
20 ask the Court to bear in mind in an offer
21 of proof--and I think I might have asked
22 the Court off the record on this--clearly
23 because of the pattern and practice class
24 D, and the aggravated misdemeanor
25 conviction where Mr. Trane is a mandatory

1 reporter, it limits the Court so much as
2 to what it can do as to deprive the Court
3 of any option of deferred sentence or
4 deferred judgment or probation. So his
5 rights are very difficult, Judge. I've
6 researched this up the wazoo, Judge, quite
7 frankly.

8 But I just want to tell you, we've
9 researched this up the wazoo right now,
10 and I think I'm pretty accurate on the law
11 on it.

12 And what makes this case so
13 important with that offer of proof, Judge,
14 is--and you're not the test case, so to
15 speak on this--when we talk about the
16 right of a defendant to have their case
17 heard on a motion for new trial when it's
18 so clear, so clear, that reversal is in
19 the offing because of--and I know when you
20 said initially it goes up direct to the
21 district court. That's the State's
22 argument. That's the argument they want
23 you to have in a case like this, or any
24 judge. Why wouldn't they? It's more
25 efficient.

1 But when you're looking at the
2 constitutional rights that are guaranteed
3 by the State of Iowa that are in play and
4 the damage to the Defendant, Mr. Trane, in
5 this case by your limited options, a
6 motion for new trial ought to be given the
7 most serious consideration. And when it
8 becomes apparent, particularly with a
9 judge like yourself who did defense work,
10 you clearly understand how the pattern of
11 fairness works. I notice you're shaking
12 your head.

13 THE COURT: Well, yes and no.

14 MR. PARRISH: You never defended in
15 Ottumwa?

16 THE COURT: Well, yes and no.

17 MR. PARRISH: Well, I think you
18 did, Judge. I did my homework, and I used
19 to be down here a lot, you may recall.

20 But so you do have an
21 understanding, Judge, of a sense of
22 fairness and at this stage why it's so
23 important for Mr. Trane to have this Court
24 review this offer of proof and have the
25 full record made on it, not only to get

1 you, Judge, to reconsider your rulings
2 that were made in the heat of trial with
3 new information that was available to you,
4 but also for others.

5 And the last question I would bring
6 up, Judge, which is perhaps the most
7 critical, these two depositions that she
8 knew were available--and I did make my
9 record on that because I think Ms. Timmins
10 opened the door. That alone is sufficient
11 when the State represents they're going to
12 have witnesses there. They didn't have
13 them there. Ms. Timmins had no redirect
14 or cross-examination on it. I would have
15 explored what she thought her duty was as
16 a lawyer at that point. Why didn't she
17 exercise that duty as a lawyer? Why
18 didn't she bring it up to Ms. Timmins?
19 Why didn't she bring it up to other
20 people, including her boss or other people
21 who may have been able to review conduct
22 like that and see could she get relief for
23 her client?

24 And those two witnesses, Judge,
25 without question, without contest, they

1 were available. Ms. Timmins sent them
2 home. I think you can enter a ruling that
3 looks at it and says, she sent them home
4 because they were favorable to Mr. Trane,
5 and they didn't want them presented in
6 front of the jury. They would have
7 directly contradicted K. And that,
8 Judge, by itself, not considering anything
9 else, would have been sufficient for you
10 to--well, it could have gotten him an
11 acquittal, but also should allow you to
12 give him a new trial.

13 THE COURT: Were there exhibits as
14 part of the offer of proof that you were
15 going to present?

16 MR. PARRISH: We do have both of
17 those, Judge.

18 Judge, Exhibit B would be the
19 deposition of Mxxxx Bxxxxx Gxxxx. That
20 deposition was taken on December 12, 2017.
21 The deposition of Kxxxxxxxx Mxxxx, Judge,
22 would be Defendant's Exhibit C. And we
23 would move to introduce both those
24 exhibits, Judge, with regard to our Motion
25 for New Trial. We do have them scanned

1 in, but if that is the rule in 8B, we'll
2 follow up with that rule, Judge.

3 (Defendant's Offer of
4 Proof Exhibits B and
5 C were offered in
6 evidence.)

7 THE COURT: For purposes of the
8 offer of proof, does the State have any
9 objection to B or C?

10 MS. TIMMINS: For the offer of
11 proof, no.

12 THE COURT: All right. Exhibits B
13 and C will be admitted for the limited
14 purpose of the offer of proof.

15 (Defendant's Offer of
16 Proof Exhibits B and
17 C were received in
18 evidence.)

19 MR. PARRISH: Judge, we would ask
20 that in light of the State's questions
21 with regard to witnesses, and without the
22 offer of proof, it goes in as part of the
23 case in chief with regard to the Motion
24 for New Trial, because the State opened
25 the door when it talked about making

1 witnesses available, and they questioned
2 the witness on that. So we think it
3 exceeds the offer of proof, and the Court
4 should give consideration, and you can
5 give it a thumbs-up or thumbs-down. But
6 we believe you should give it
7 consideration after you review it.

8 THE COURT: At this time I'll limit
9 it for the purpose only for the offer of
10 proof.

11 Anything else on the offer of
12 proof, Mr. Parrish?

13 MR. PARRISH: No, Your Honor.
14 Thank you.

15 THE COURT: All right. Would
16 counsel approach.

17 (A side-bar conference was held off
18 the record.)

19 THE COURT: At this time we'll take
20 our afternoon recess. And would the
21 parties please be back at 1:30.

22 (A recess was taken at 12:28 p.m.)

23 (In open court, in the presence of
24 the Court, the Defendant, and counsel at
25 1:35 p.m.)

1 THE COURT: All counsel are present
2 and the Defendant. The record should
3 reflect they are all here.

4 Mr. Parrish, was there further
5 record you wanted to make on the Motion
6 for New Trial?

7 MR. PARRISH: Thank you, Your
8 Honor. I'd like to call Mr. Trane to the
9 stand, please.

10 BENJAMIN G. TRANE,
11 called as a witness on his own behalf,
12 being first duly sworn by the Court, was
13 examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. PARRISH:

16 Q. State your name, please, and spell
17 your first and last name for the record.

18 A. Benjamin G. Trane, B-e-n-j-a-m-i-n,
19 initial G, T-r-a-n-e.

20 Q. And you are the Defendant in this
21 case; is that correct?

22 A. Correct.

23 Q. You were represented by Lisa
24 Schaefer, and I believe she has already
25 testified in this case; is that correct?