

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?

1 A. Correct.

2 Q. And I explained to you during the
3 break the Judge's ruling on the issue with
4 regard to the ineffective assistance of
5 counsel. And I've talked to you about the
6 fact, except for those areas that have
7 been opened up by the State, that we are
8 restricted from asking you any questions
9 about ineffective assistance of counsel
10 due to the Court's initial ruling and--

11 MS. TIMMINS: Objection, Your
12 Honor. At this point--Your Honor, Mr.
13 Parrish has said several times that the
14 State has opened this up. And I'm a
15 little unclear as to when that happened
16 and where?

17 THE COURT: I don't accept that
18 depiction. I understand that's what he's
19 saying, but I don't accept that depiction.

20 Go ahead.

21 MR. PARRISH: I didn't get to
22 finish my question. Would you please re-
23 read my question.

24 (The previous question was read
25 back by the court reporter.)

1 MR. PARRISH: I won't start my
2 question over again, but I'll start where
3 I was interrupted.

4 Q. (By Mr. Parrish) Due to the Court's
5 ruling, I told you in responses to
6 questions that you should restrict
7 yourself solely to those areas that were
8 addressed by the State of Iowa in their
9 questions to Lisa Schaefer; is that
10 correct?

11 A. Correct.

12 Q. And I've told you that I would make
13 an offer of proof with regard to the other
14 issues that should, in fact, be addressed
15 by this Court as part of the Motion for
16 New Trial; is that correct?

17 A. Correct.

18 Q. So I will ask you then as I address
19 these questions, let's go back to the
20 questions that Ms. Timmins asked Ms.
21 Schaefer on cross-examination. Does that
22 put you in the context of what I think the
23 Court is going to allow us to do today
24 with a witness? Do you understand that?

25 A. Yes.

1 Q. All right. With that in mind, did
2 you hear the question when you were in
3 court about the terabytes of information?

4 A. Yes.

5 Q. Tell us with regard to the
6 terabytes of information, what did you
7 understand was on there?

8 A. All the school records.

9 Q. Okay. And when you say all the
10 school records, tell the Court what you
11 mean by "all the school records."
12 Describe that to the Court, because the
13 Court never had a chance to understand
14 what that was.

15 A. So every student would have a file
16 that would have every major incident
17 report that they were ever involved in.
18 It would have all their goals, their
19 paperwork from their family rep, their
20 school work, their financial information,
21 their parents' information, their
22 psychological information, their medical
23 information.

24 Q. All right. And was that
25 information, as you heard your lawyer say,

1 critical to your defense?

2 A. Vital.

3 Q. Did you get a chance prior to the
4 start of the trial to review that
5 information that was on the hard drive?

6 A. No.

7 Q. I'm going to show you what is
8 marked as Defendant's Exhibit D. And tell
9 me when did you get this document from
10 your lawyer, what date?

11 A. She e-mailed it January 10th of
12 2018.

13 Q. And does this reference the hard
14 drive or the depositions with regard to
15 the case?

16 A. Yes.

17 Q. Which one? Does it reference the
18 hard drive or the deposition?

19 A. Oh, sorry. The hard drive.

20 Q. All right.

21 A. And, I guess, the--I never saw the
22 depositions either.

23 Q. All right. Could you tell the
24 Court with regard to the hard drive why
25 you never saw it?

1 A. I was told the first meeting I had
2 with Lisa Schaefer that it would be
3 produced and I would have a copy of it,
4 and that was in September. In October I
5 was told I was going to get it again. And
6 in November I was told I was going to get
7 it again. And there was an e-mail from
8 Denise Timmins' office saying that it
9 would be overnighted. That didn't happen.
10 And then later I was told I was going to--
11 there were redaction problems with it, and
12 we would get it later. And I was told I
13 would have access to it repeatedly and
14 never was given access.

15 Q. Now, with regard to the
16 depositions, that e-mail was exchanged
17 between you and Ms. Schaefer on January
18 10th of 2018; is that correct?

19 A. Correct.

20 Q. And in that it referenced the
21 depositions. You never had a chance to
22 review the depositions, did you?

23 A. No.

24 Q. You asked for copies after the
25 trial date; is that correct?

1 A. I'd asked for information--

2 Q. No. Listen to my question. You
3 asked for them after the trial date, did
4 you not--

5 A. Yes.

6 Q. --in response to this; is that
7 correct?

8 A. Yes.

9 Q. And when you asked for them, what
10 were you advised with regard to--is this
11 consistent with what she sent you?

12 A. Do you want me to read it?

13 Q. No, you don't need to. The Judge
14 has a copy. We're going to submit it as
15 evidence. So I just want to know is this
16 what she referenced?

17 A. Yes.

18 Q. And was that consistent with every
19 request that you made for a hard drive,
20 for expert witnesses, and for everything
21 else that she was not going to make the
22 request for?

23 A. Yes. She stated over and over
24 again that the State wouldn't pay for such
25 things, and I wouldn't have access to it.

1 Q. All right. With regard to the hard
2 drive, as asked by Ms. Timmins in her
3 original questions to Ms. Schaefer about
4 what was provided on November 28th, would
5 you have been able to take that hard drive
6 information and would you have provided
7 information on that to your lawyer to
8 cross-examine the various witnesses?

9 A. Absolutely.

10 Q. Now, you've heard Ms. Timmins ask
11 the question about the pretrial conference
12 and the waiver of the speedy trial,
13 including the Judge indicated that he had
14 a portion of the pretrial conference
15 transcript that he had pulled up. And I
16 believe the pretrial conference took
17 place--and remember, we can only get into
18 a portion of this because the Court has
19 indicated we are restricted from doing
20 this, so we're only going to get into
21 questions she brought up. And I'm going
22 to refer you to the pretrial conference
23 that was held on 11-27-2017. Do you
24 recall that pretrial conference?

25 A. Yes.

1 Q. Did Judge Kruse participate in that
2 pretrial conference?

3 A. I don't believe so, but I can't
4 remember.

5 Q. Do you remember seeing him at that
6 time?

7 A. No.

8 Q. The pretrial conference your lawyer
9 has down on her time records .50. Do you
10 remember the pretrial conference?

11 A. Yes.

12 Q. Now, Ms. Timmins talked about it,
13 and I believe the Court indicated in the
14 portion of the transcript that there was
15 an issue about a waiver of your speedy
16 trial. And I believe there's another
17 reference to a venue issue.

18 Do you recall seeing Ms. Timmins at
19 that pretrial conference?

20 A. Yes.

21 Q. At one point in the pretrial
22 conference, did you make an attempt to
23 interrupt your lawyer to speak?

24 A. Yes.

25 Q. And what did your lawyer tell you

1 when you interrupted her to speak?

2 A. I'm not allowed to talk at that
3 time.

4 Q. Tell the Court at the pretrial
5 conference what you were going to tell the
6 Court about the discovery and about the
7 hard drive?

8 A. That I hadn't had access to it, and
9 that Ms. Timmins made a comment that--kind
10 of a snorty comment that, well, then you
11 should have waived your right to a speedy
12 trial.

13 Q. So at that point your lawyer told
14 you not to talk. Ms. Timmins told you
15 that you should have waived your right to
16 a speedy trial?

17 A. She didn't say it to me. She said
18 it to the judge or Lisa Schaefer.

19 Q. You don't know whether that was put
20 on the transcript or the record or not, do
21 you?

22 A. It should be on record.

23 Q. But you don't know for a fact if it
24 was?

25 A. No.

1 Q. When you made that statement about
2 could you speak and could you bring up
3 some issue, if you wanted to bring up some
4 issue regarding the hard drive and the
5 fact that you didn't have it, do you
6 recall any discussion between the Court--
7 yourself, Ms. Timmins and the judge, I
8 believe Judge Linn, off the record whereas
9 you were able to explain that all the
10 discovery was not given in a timely
11 fashion?

12 A. No.

13 Q. Let's turn now to the witnesses who
14 were brought, first of all, by the State.
15 And those two witnesses, we've already
16 listed their names. And, again, for
17 purposes of the record, we're going to
18 just use their initials. Are you able to
19 recall their initials?

20 A. Yes.

21 Q. And use their initials?

22 A. Yes.

23 Q. Who were those two individuals?

24 A. M.G.

25 Q. And then who was the other one?

1 A. And then K.M.

2 Q. And would B and C, your exhibits
3 for this hearing, those depositions were
4 taken--and we won't repeat the record on
5 that--they were taken. I believe your
6 lawyer indicated they were favorable. She
7 also indicated that Ms. Timmins had agreed
8 to bring those witnesses and have them
9 there for trial.

10 Did you expect those witnesses to
11 testify favorably for you?

12 A. Yes.

13 Q. When did you first find out that
14 those witnesses had been released by Ms.
15 Timmins without your knowledge and without
16 them testifying favorably on your behalf?

17 A. When she closed her statements--
18 when Ms. Timmins closed her statements.

19 Q. Do you mean opening statements or
20 when she said--told the Judge that the
21 State was ready to rest?

22 A. When the State was ready to rest.

23 Q. All right. When she told him the
24 State was ready to rest, and you knew that
25 those two witnesses had not been called,

1 did you approach Ms. Schaefer about
2 getting those witnesses in to testify?

3 A. Yes.

4 Q. Did Ms. Schaefer tell you at that
5 point that Ms. Timmins had double-crossed
6 her and had not made those witnesses
7 available? Did she tell you that?

8 A. No.

9 Q. What did she tell you when you
10 said, where are those witnesses who were
11 supposed to testify favorable for us that
12 Ms. Timmins said she would have available?
13 What did she say to you?

14 A. They're the State's witnesses, and
15 we can't call them. And if there was--
16 there's not time to call them now, and the
17 State wouldn't pay for it.

18 Q. Did you ask her to bring this up to
19 the attention of the Court?

20 A. Yes.

21 Q. To your knowledge, did she bring
22 that to the attention of the Court?

23 A. No.

24 Q. Did you hear Ms. Timmins at any
25 point in time tell the Court that she had

1 agreed to have these witnesses there; that
2 they were out-of-state witnesses; that she
3 agreed to do that to save expense; and
4 then if they couldn't save expense that
5 they would, in fact-- Strike that
6 question.

7 Did you hear Ms. Timmins bring that
8 up to the attention of the Court, that
9 these witnesses had been called from out
10 of state by agreement and would be
11 available for you?

12 A. Yes.

13 Q. No. Did you-- I don't mean this
14 morning, but back when the trial was going
15 on.

16 A. Did I know Ms. Timmins brought them
17 to trial to testify?

18 Q. Right.

19 A. Yes.

20 Q. Okay. Now my question is, after
21 they left and Ms. Timmins had closed, did
22 you hear Ms. Timmins bring it up to the
23 Court's attention, well, Judge, I told
24 them I would have these people there. I
25 let them go. I didn't tell them in

1 advance that they were going to leave?

2 A. No.

3 Q. When you asked your lawyer why did
4 they leave and why can't you get them
5 back, and she told you, well, the State
6 won't pay for it. Did you think about
7 bringing that--did you tell her to bring
8 that to Judge Kruse's attention to let him
9 know that perhaps you'd gotten double-
10 crossed by Ms. Timmins?

11 A. No.

12 Q. But you and your lawyer did, in
13 fact, discuss this information; isn't that
14 correct?

15 A. Yes.

16 Q. And if these witnesses had
17 testified, and we have their depositions
18 here, would their testimony have been
19 favorable to you?

20 A. Absolutely. There was only two
21 incidents that K. [REDACTED] could remember with
22 any detail, and the one this girl was
23 present the whole time and--

24 Q. But you would agree that it would
25 have been favorable; is that correct?

1 A. Absolutely.

2 Q. You heard Ms. Timmins make a
3 professional statement when she
4 interrupted our presentation on the offer
5 of proof about telephones being available
6 in the facility; is that correct?

7 A. Yes.

8 Q. At Midwest; is that correct?

9 A. Correct.

10 Q. All right. Did young people have
11 cellphones there, first of all?

12 A. On the appropriate level, yes.

13 Q. Second of all, were you aware that
14 K. [REDACTED] had access to a cellphone after she
15 left Midwest?

16 A. Yes.

17 Q. And to your knowledge, had those
18 cellphone records been made available?

19 A. No.

20 Q. So when Ms. Timmins made the
21 professional statement that cellphone
22 records were not available to any people
23 at Midwest Academy, is that accurate or is
24 that inaccurate?

25 A. That's inaccurate.

1 Q. Had the Court or--let's go back to
2 this pretrial conference--your lawyer or
3 Ms. Timmins explained to you what your
4 rights would have been by waiving your
5 speedy trial and what the consequences of
6 not waiving them would have been, would
7 you have waived them?

8 A. Yes.

9 Q. Was that ever done?

10 A. No.

11 Q. Did you ever see a single document
12 in writing from your lawyer outlining the
13 consequences if you did not waive your
14 speedy trial rights?

15 A. No.

16 Q. Did the Court ever tell you and
17 explain when that was an issue at the
18 pretrial conference, or otherwise when
19 they ruled on the 412 motion, what the
20 consequences would be for not waiving it
21 and the fact that this 412 motion was
22 filed late?

23 A. No.

24 Q. In speaking with those witnesses
25 that Ms. Timmins asked about, and those

1 were the two witnesses that we introduced
2 the depositions on, your lawyer talked
3 about a witness agreement that she had,
4 that she would bring her own witnesses;
5 Ms. Timmins would bring the State's
6 witnesses. You heard that testimony; is
7 that correct?

8 A. Correct.

9 MS. TIMMINS: Objection, Your
10 Honor. This is a misstatement of what was
11 talked about with Ms. Schaefer.

12 THE COURT: Would you read back the
13 question.

14 (The previous question was read
15 back to the Court by the court reporter.)

16 THE COURT: I think that does
17 mischaracterize what was said. I believe
18 that it was her understanding, not that
19 there was some agreement. So that's
20 sustained.

21 Go ahead.

22 MR. PARRISH: You're saying, Judge,
23 I can say it's her understanding but not
24 an agreement?

25 THE COURT: Again, I don't recall

1 exactly what was said. I recall it wasn't
2 as you said it.

3 Just proceed.

4 MR. PARRISH: All right.

5 Q. (By Mr. Parrish) Was that your
6 understanding of what you heard this
7 morning in court?

8 A. Yes.

9 Q. Now, regardless as to what was said
10 in court, were you under the impression
11 prior to the trial that Ms. Timmins would
12 bring witnesses from out of state, her
13 State witnesses, and Ms. Schaefer would
14 bring the defense witnesses; is that
15 correct?

16 A. Correct.

17 Q. Now, let me ask you this. To your
18 knowledge, were any witnesses subpoenaed
19 to appear?

20 A. I don't know that.

21 Q. All right. That never came across
22 your desk, you never saw anything that
23 looked one way or the other like somebody
24 was being subpoenaed to appear? You never
25 saw anything like that?

1 A. The only thing I can remember is
2 Jane Riter I think was, but I can't be
3 sure. I didn't see any paper.

4 Q. And with regard to your witnesses
5 who would appear, did you give Ms.
6 Schaefer a list of those witnesses?

7 A. Yes.

8 Q. How many witnesses did you give
9 her--

10 A. I gave her a list--

11 Q. --if you recall? Go ahead.

12 A. I gave her a list at our meeting in
13 jail, and then I gave her an e-mail--

14 Q. My question is how many?

15 A. It was three different lists, so
16 probably 10 to 15.

17 Q. And when you narrowed it down to
18 the number who you thought were going to
19 be called, how many were they?

20 A. Four.

21 Q. And were those four witnesses
22 called?

23 A. Yes.

24 Q. And you had agreed with her that
25 those witnesses would be called and she

1 did, in fact, call them; is that correct?

2 A. My list was much longer than hers.
3 I wanted--there was a whole bunch of other
4 people that wanted to come testify, but
5 those are the only four that were called.

6 Q. That's the question I was asking.
7 I'm sorry. It was my fault that it was
8 confusing. My question is, four were
9 called; is that correct?

10 A. Correct.

11 Q. How many had you asked you to call?

12 A. 10 to 15.

13 Q. And those 10 to 15 witnesses, were
14 they favorable to you?

15 A. Yes.

16 Q. And did she give you a reason as to
17 why they were not called?

18 A. The students that had direct
19 interaction with K. that could rebut her
20 statements, they were out of state. And
21 she said the State would not pay for them
22 to come.

23 Q. Did you hear this morning about
24 when Ms. Timmins asked her about the
25 procedure to go through to get those

1 witnesses here as to whether or not she
2 agreed with that procedure, that was the
3 procedure to do it?

4 A. We never had--I don't remember ever
5 having that conversation with her.

6 Q. So to your knowledge, there was
7 never any application filed by your lawyer
8 to bring any witnesses from out of state;
9 is that correct?

10 A. Yes, correct.

11 Q. You've heard testimony from Ms.
12 Schaefer indicating that--at least when
13 asked by Ms. Timmins--as to the number of
14 cases she has prosecuted before; is that
15 correct?

16 A. Correct.

17 Q. Did she ever tell you that she
18 never defended a sex abuse case in the
19 past?

20 A. No.

21 Q. What about a child endangerment?

22 A. No.

23 Q. What about a pattern and practice
24 case before?

25 A. No.

1 Q. Were you ever shown any copies of
2 the draft instructions in this case, the
3 draft jury instructions as drafted by Ms.
4 Timmins?

5 A. No.

6 MR. PARRISH: I believe those are
7 all my questions, Judge, that cover the
8 areas that were raised by Ms. Timmins.

9 THE COURT: Ms. Timmins?

10 MS. TIMMINS: I have no questions.

11 THE COURT: Sir, you may step down.
12 Are you done with him then?

13 MR. PARRISH: I am, Judge.

14 THE COURT: Okay. Sir, you may
15 step down.

16 You can make an offer of proof, Mr.
17 Parrish.

18 MR. PARRISH: Thank you, Judge.

19 Judge, we would add to our offer of
20 proof that we made earlier today asking
21 the Court that 822, I believe, we pointed
22 out is not the exclusive remedy. I think
23 I might have stated 633, but it's actually
24 663, which is Iowa's habeas chapter.

25 I also think, Judge, that I should