

IN THE SUPREME COURT OF THE STATE OF NEVADA

Kody Cree Patten,
Appellant,

vs.

The State of Nevada
Respondent.

No. 82715

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APPELLANT'S APPENDIX VOLUME I PAGE 001-249

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Case No. 82715

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- For New Years this year "2010" my
- resolution wish was that mine & Kody's
- relationship would get better... So we'll see
- how that really goes. & how it will turn out...
- The way I see it is "This is a new
- chapter in my life. & I just hope that
- this one will be better than the last."
- & that it will make me want to keep living
- life... You don't know ~~how~~ many times I
- have wanted to overdose on something so
- I wouldn't have to be here anymore... &
- now that my Girardine has past it has
- been harder to resist not wanting to... I
- miss her so much & want nothing more
- than to be with her... to get her hugs
- & kisses... to be able to talk to her about
- random things... or to go out & do things...
- I know I am depressed but I hate to
- admit it... I try to hide it the best I
- can so I don't have to listen to
- others crap or have people say that I
- should go get checked out or help...
- Well that is not gonna happen so don't
- try it... Just leave me be! Cuz I don't
- give a fff! Fuck!!

I'm very angry today... so angry that I am trying to over dose... about 3:10pm after I got off the phone with Kody I went & took 4 aspirins about 4:20pm I took 1 more before going to the basket ball game. There I was getting very weak, shaky, & my eyes were hurting... I shouldn't have went to the game all we did was fight. It's 8:50pm & I just consumed 1 more... The only thing I ~~have~~ had to eat was a salad with dad for lunch... It's 10:40pm & just took more... It's 11:20am the next day just got back from the school... I took 1 more...

I chickened I guess I couldn't do it ~~more~~ more. And I was always told not to be stupid... And I was told that taking Aspirin wouldn't work so I suppose I gave up "Oh well" I'm just screwed up.

-22-10

well at the beginning of the week I broke up with Kody B. I just couldn't take the BS, the fighting, the swearing, the name calling, the disrespect, I wasn't happy. Then he shows up today at my house trying to give me this ~~ring~~ ring. then find out he got kicked out of his house AGAIN! well being my concerned self I made him stay at the house till parents get home. well within that time he gave me this ring proposed with it. Don't get me wrong the ring is GORGEOUS! But he should not have gotten it! We don't have the damn money! Especially now when who knows what he is going to do. where he's gonna live. I ~~DK~~ ^{he} took him to his Uncle Kirk's to talk & see what he should do. Then he suppose to go stay at Robby's for the night but I won't know anything because we don't have a phone. So ya. I didn't want to get back together but

When we dropped him off he opened his big mouth & said we was going back out. I WAS SPEECHLESS!

The whole reason I cut our relationship was because I was sick of him lying about texting girls, flirting with them, & knowing all this shit about them! I'm jealous I want out if this is how it's going to be. I hate it! & now that he's going into the STUPID BEETING Building to go to school now that's gonna make it worse that's why I said to be just friends or nothing but now he told parents that we back together & I DK that I seriously want that right now! I can not take it if he goes into the Building. I just wanna Be FRIENDS!!
FUCK!!

I even was planning out moving ~~going~~ to Vegas. I had talked to my brothers. was figuring out jobs & now he screws it up!! he gets kicked out then says we together!!

2-14-10 Happy Valentines Day!

- Things are actually working out
- just a tad-- I made him dinner
- & it tasted pretty good lol. I also
- gave him his ring I got him, just
- hope he was honest about liking it...
- "Our love is forever" is what it said
- on the inside. I'm just hoping it
- works out-- I'm hoping I did the right
- thing-- I've ~~misjudged~~ ^{misjudged} us & brought things
- were finally going to be great & then
- things turn out bad, so I hope this
- time won't be like all the other times.
- I'm still having thoughts about being
- pregnant but just waiting for my period to
- come, so we will see in (worried) I've
- already had three so I ~~DK~~ -- I'm ready
- to have a baby but money wise-- No I'm
- not anywhere near ready so I'm scared--
- & well overall my valentines was GREAT
- lol just hope the good days continue...
- well school sucks I don't like the
- online no more-- & I ~~DK~~ if I even
- wanna go to the building-- "Well
- I over tired.. So goodnight-- Sweet dreams

we might as well brake up! so he can
get back 2gether w/ her! She ~~can have~~
lives closer to him! His parents will
stop yelling @ him bcuz of me! He will
be happier & can see her alot alot
more then he will ever see me! They
hang out every single day! like all day
long to! They are ~~per~~ perfect for eachother!
tears, tears, tears, tears, tears, tears!!
I D K what to do anymore! I know
anything I do is wrong! I know it
is never ^{good} enough for anyone, like him!
I hang out w/ no one @ all! I have
no friends what so ever! I hardly
talk to anyone @ skool! No one is
happy/excited for me to be back @
Skool. I D K why I even came back!
To be honest I D K why I am
even still living life! It's not
worth my time! It's pointless!

Sorry I screwed things up w/ you/mick
~~because~~ why you stopped dating mickie?
why did you come w/ me & not ^{stay w/} her?
why me?

Were you happier? w/ her

Are you even happy w/ me?

Do you even really still love me?

Are you embarrassed by me? in anyway

Have you changed your mind on anything?

you/life/me/etc.

Do you honestly want to brake up?

Feel like shit!

bad girlfriend/friend

proving I haven't put like anything

into this for us. ^{I can tell} everyone sees it.

~~about~~ ~~being~~ I obviously don't show
anything! / haven't done anything / don't ~~try~~ try.

Why do you put up w/ me?

What makes you like hold back
from braking up w/ me?

What do you honestly think of me?

1 Case No.: 11-4187
2 Elko County Sheriff's Office
3 Recorded interview of: Toni Fratto
4 March 6, 2011
5 IDENTITY OF SPEAKERS:
6 DJ: Dennis Journigan, Elko County Sheriff's Office
7 JC: Jim Carpenter, Elko County Sheriff's Office
8 TF: Toni Fratto, Interviewee

9 DJ: Your name is Toni?

10 TF: Uh-huh.

11 DJ: T-O-N-I?

12 TF: Yes.

13 DJ: Is it Antonia?

14 TF: Just Toni.

15 DJ: It's just Toni?

16 TF: Yes.

17 DJ: Fratto?

18 TF: Fratto.

19 DJ: F-R-A-T-T-O?

20 TF: Yes.

21 DJ: And what's your address, Toni?

22 TF: 3268 West Skyview Drive.

23 DJ: Why don't you move up a little closer.

24 JC: West?

25 TF: Skyview Drive.

26 JC: Skyview, okay. That's on the Nevada side?

27 TF: Yes.

28 JC: Toni, when's your birthday?

1 TF: 10/30/92.
2 JC: So you're how old?
3 TF: 18.
4 JC: Okay. What's your phone number? Your cell phone, your home
5 phone, whatever's easiest to get ahold of you.
6 TF: (775) 291-3388.
7 JC: Okay. Do you have a pretty good idea of why we're here?
8 TF: Yeah.
9 JC: What can you share with us, um, let's start with Thursday --
10 TF: Okay.
11 JC: -- afternoon. I mean, are you still going to school?
12 TF: Yes.
13 JC: Okay. So Thursday, what happened at school?
14 TF: Normal day, went to all my class then after school went right
15 home.
16 JC: Okay. On Thursday. So you got home about?
17 TF: 3:40 or so.
18 JC: Did you drive or walk?
19 TF: My mom came and got me.
20 JC: Okay. So you got home about 3:40?
21 TF: Yeah.
22 JC: Did you go anywhere after you got home?
23 TF: No.
24 JC: Did you stay home all night?
25
26
27
28

1 TF: Um, about 5:20 my mom came and got me because we were going to
2 their, like, rec district meeting and everything.
3 JC: Okay. So you left home about 5:20?
4 TF: Uh-huh.
5 JC: For a meeting?
6 TF: Yeah.
7 JC: Where was the meeting at?
8 TF: Um, at the golf course.
9 JC: The golf course?
10 TF: Yes.
11 JC: Okay. How long were you there for that?
12 TF: Um, about 45 minutes, maybe.
13 JC: So what time did you get home, then, after the meeting?
14 TF: I didn't get home till about 9:45, well, yeah. Yeah.
15 DJ: So --
16 JC: The meeting went from 5:30, right?
17 TF: Uh-huh.
18 JC: To about, you said, 45 minutes?
19 TF: Yeah.
20 JC: So just a little after 6:00 the meeting got over?
21 TF: Well, we took my dad to his meeting, and then we had to run to
22 my sister's to drop off a phone, and then her meeting was at
23 6:00.
24 JC: Okay.
25 DJ: Your mother's meeting?

1 TF: Yes.

2 DJ: And you went to that meeting with your mom?

3 TF: Yes.

4 DJ: And it lasted 45 minutes?

5 TF: I was only there for about 45 minutes, and then I left to go

6 hang out with Kody.

7

8 DJ: Did he come and pick you up?

9 TF: Yes.

10 DJ: What was he driving?

11 TF: Um, a white car. I couldn't tell you anything more.

12 DJ: Wendy's car?

13 TF: Yes.

14 DJ: Okay. So that would have been quarter to seven or something

15 like that, maybe?

16

17 TF: Somewhere close around there, maybe.

18 DJ: Okay.

19 JC: Let's back up just a second. Kody picked you up at the golf

20 course?

21 TF: Yes.

22 JC: Okay. And he was driving Wendy's car?

23 TF: Uh-huh.

24 JC: Okay. When he picked you up, where did you guys go? What

25 were you guys doing?

26

27 TF: We were going to go back to his cousin's to play games. We

28 stopped at, on our way back, we stopped at McDonald's and just

1 sat there talking for a minute. And then that's when we
2 started getting, like, texts and calls asking if we'd seen
3 Mickey, and we hadn't seen her all night or anything. And
4 then --

5 JC: So at McDonald's, it was you were there --

6 TF: Uh-huh.

7 JC: -- and Kody was there.

8 TF: Uh-huh.

9 JC: Who else was there?

10 TF: No one else was with us.

11 JC: Okay. You guys stopped at McDonald's?

12 TF: Uh-huh.

13 JC: Did you eat? Did you just hang out?

14 TF: We got a couple of drinks.

15 JC: Okay.

16 DJ: Did you go through the drive up?

17 TF: Yes.

18 DJ: You went through the drive up?

19 TF: Oh, goodness, yes. Yes -- well. Yes, we did go through the
20 drive up. I'm sorry, I'm sick.

21 JC: That's fine.

22 DJ: We're not trying to put words in your mouth or anything like
23 that.

24 JC: No, no, we're not --

1 DJ: We're just trying to get to the bottom of some of these
2 things.
3 TF: Yeah.
4 DJ: And like I told Kody's Mom and Dad, you've heard all this crap
5 going around town about --
6
7 TF: Uh-huh.
8 DJ: -- who did what to who --
9 TF: Yeah.
10 DJ: -- and what happened and like that. And so none of it's true.
11 And we want to make sure that only the truth is told.
12 TF: Yes.
13 DJ: We may not have all the answers for several days, and we're
14 not going to sit here and lie to you.
15 TF: Yeah.
16 DJ: Like we wouldn't expect you to lie to us. Because you can be
17 very helpful to Kody. The unfortunate part about it is that
18 he was seen driving the car and the car has some, there's
19 some, um --
20
21 JC: Some stuff there.
22 DJ: Yeah. Indications that the car might have been involved in
23 some of these things, okay?
24 TF: Oh, okay.
25 DJ: We can't really tell you too much because some of this stuff
26 hasn't been made public yet.
27
28 TF: Yes.

1 DJ: But we can tell you that, or we can try to alleviate your
2 fears, and his too. This is as much for him as it is for
3 anybody else. Because, you know, if he's undeserving of these
4 accusations and things, you know, we need to put that
5 straight, too, you know?

6 TF: Uh-huh.

7 DJ: So you went to McDonald's and got a drink and then what?

8 TF: And then we started getting the texts and calls asking if we'd
9 seen her and we hadn't. And so after quite a few calls and
10 texts we, like, noticed something was up, something wasn't
11 right. So we decide to just drive around for a little bit
12 seeing if we could find her, or seeing --

13 DJ: Where did you drive to?

14 TF: We went down by the school. Made our way down to Hanson's
15 Storage and then up by Conoco by Limon Market.

16 DJ: Wait, wait.

17 TF: Sorry.

18 DJ: Hanson's Storage?

19 TF: And then Conoco.

20 DJ: Conoco?

21 TF: Which I think is Texas or something like that, and then over
22 by Limon Market.

23 DJ: Limon, L-I-M-O-N?

24 TF: Yes.

25 DJ: Okay.

1 TF: And then we just went, kind of made our way back over to his
2 cousin's. Just came down the boulevard.
3 DJ: That would be Jeffery's, correct?
4 TF: Yes.
5 DJ: I'm so tired I can hardly write.
6 TF: Oh, I know. And I'm sick (inaudible).
7 DJ: And so then you stayed at Jeffrey's for?
8 TF: We got there about 8:45, 8:50.
9 DJ: Uh-huh.
10 TF: And then we left there and they took us home at about 9:45.
11 DJ: Who took you home?
12 TF: Wendy, and then Jeff's girlfriend was in there too, and we
13 dropped her off at work and Wendy took us home.
14 DJ: Oh, that's Candace?
15 TF: Yes.
16 DJ: So they took you and Kody home, correct?
17 TF: Uh-huh.
18 DJ: And then Wendy took her car and went wherever?
19 TF: Well, we dropped Candace off first, and then Wendy took us
20 home.
21 DJ: And then she left in the car?
22 TF: Uh-huh.
23 DJ: How long have you and Kody been girlfriend/boyfriend?
24 TF: About five-and-a-half years.
25
26
27
28

1 DJ: And within that five-and-a-half year period was there a time
2 when he was going out with Mickey?
3 TF: That was before we even started going out.
4 DJ: Oh, that was before. So you were, like, 13-years-old?
5 TF: I get so confused with dates. Um, I know it was before me. I
6 don't think he ever dated her in between those years.
7
8 DJ: For the last five-and-a-half years?
9 TF: Yeah.
10 DJ: Because if you're 18, five-and-a-half years ago would make you
11 twelve-and-a half, thirteen.
12 TF: Yeah. I know it's been -- we may not have been together the
13 five-and-a-half years, we may have just known each other. But
14 we've been talking and everything for five-and-a-half years,
15 so...
16
17 DJ: I want to ask you a personal question. Are you and Kody
18 having extramarital relations? What you tell us is not going
19 outside of this room.
20 TF: I don't feel comfortable.
21 DJ: I'm sorry, what?
22 TF: I don't feel comfortable telling you that.
23 JC: That's fine.
24 DJ: Well, from that answer I can assume you probably are, then,
25 correct?
26
27 TF: You can take it however you want.
28

1 DJ: Okay. No, that's fine. And there's not really anything wrong
2 with that. I'm not criticizing you or anything like that.
3 That's just how things are these days, you know? But I do
4 know that those kinds of things play on emotions and sometimes
5 those kinds of relationships, well, it's a little different
6 after you've been married for 30 years, for lack of a better
7 example, you know? So I can say that maybe it's more
8 important to young people, you know, than it is to older
9 people. But -- and that may make you closer or feel closer,
10 you know, whatever (inaudible), I guess. We, you know, one of
11 the things that's going around is that you were not friendly
12 with Mickey. And that you were very jealous of her and you
13 were whatever because Kody and she had been
14 girlfriend/boyfriend at some period or some point. Is that a
15 fair statement?

16
17
18 TF: I had nothing against Mickey. What happened before we were
19 together and everything is not any of by business.

20 DJ: Uh-huh.

21 TF: That's his and hers.

22 DJ: But how did you feel about her?

23 TF: I -- she was a person I kind of knew. I didn't know her very
24 well.

25 DJ: Uh-huh.

26
27 TF: I mean, yeah, we went to school and I have her in, I think,
28 one of my classes, but I had nothing against Mickey.

1 DJ: Okay. You never had any bad words with her? You never had
2 any physical altercations with her?
3 TF: Never.
4 DJ: These are stuff that we've heard around. We're just trying to
5 get to the bottom of this stuff and be fair to you, too.
6 TF: Uh-huh.
7 DJ: And that's why I asked you that question. Because sometimes
8 those kinds of, you know, if people are, you know, young
9 people are in those kinds of relationships, it has some
10 different kind of a determination about what happens and what
11 you do and how you think about things, you know?
12 TF: Uh-huh.
13 JC: I'm sorry, I stepped out. I missed what you guys talked
14 about. Was that...
15 DJ: No.
16 JC: Was it just driving around? Is that where we left off?
17 DJ: Yeah, we were just talking about that.
18 JC: And where you went and all that good stuff?
19 DJ: Does Kody use any drugs of any sort?
20 TF: No.
21 DJ: Does he drink alcohol?
22 TF: Huh-uh.
23 DJ: No alcohol?
24 TF: No.
25 DJ: Never?

1 TF: I think -- I don't know.

2 DJ: Uh-huh.

3 TF: I couldn't answer that because if he has, I've never been
4 present.

5 DJ: Well, you've never been what?

6 TF: I've never been present. Like, with him.

7 DJ: But you've known him for five-and-a-half years.

8 TF: Yeah.

9 DJ: Does he have a bad temper sometimes?

10 TF: Sometimes.

11 DJ: Is he ever abusive to you?

12 TF: Not abusive. But he has, like, grabbed my shoulders or
13 whatever, trying to calm me down and tell me to stop and
14 everything just because I get so frustrated and not think and
15 everything.
16

17 DJ: About what?

18 TF: Just random things that we would, like, disagree on.

19 DJ: Uh-huh.

20 TF: Or whatever.

21 DJ: Uh-huh.

22
23
24 (Recording ended abruptly.)
25
26
27
28

1 STATE OF NEVADA,)
2) ss.
3 COUNTY OF ELKO.)

4 I, Roxanne M. Hofheins, do hereby certify:

5 That I transcribed from audio the proceedings had in the
6 above-entitled matter;

7 That the appearances on the cover page are from this
8 transcriber's understanding of who was present during the
9 proceeding;

10 That speaker identification was identified to the best of
11 my ability through voice recognition;

12 That the foregoing transcript, consisting of pages 1
13 through 12, is a full, true and correct transcription of said
14 proceeding to the best of my ability.

15 Dated at Elko, Nevada, this 20th day of March, 2011.

16
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18 Roxanne M. Hofheins
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1 Case No.: 11-4187

2 Elko County Sheriff's Office

3 Recorded interview number two of: Toni Fratto

4 March 6, 2011

5 IDENTITY OF SPEAKERS:

6 DJ: Dennis Journigan, Elko County Sheriff's Office

7 JC: Jim Carpenter, Elko County Sheriff's Office

8 TF: Toni Fratto, Interviewee.

9 JC: Just can't talk about. It's not like (inaudible) withhold
10 stuff from you, it's just --

11 TF: I understand.

12 JC: We can't talk about it yet, okay?

13 TF: Uh-huh.

14 JC: Um, so, besides the texts and the phone calls from just random
15 people, just people you know from school.

16 TF: Yeah.

17 JC: Asking about if you guys had seen her, heard from her, talked
18 to her or whatever, has anything else that you can think of
19 that would helpful to us?

20 TF: Um.

21 DJ: What's Kody's reaction been to all of this?

22 TF: Just why would someone do this to her. And it's been really
23 sad and hard just because we keep getting, like, blamed and
24 everything. Or people accusing us or, like, giving us those
25 certain looks, like --

26 DJ: So are you fearful of going back to school tomorrow?

27 TF: Um, I'm not fearful. I'm more, I guess, I don't know what the
28 word is, not nervous or anything, but --

1 DJ: Hesitant?
2 TF: -- don't want to get the looks and everything.
3 DJ: Uh-huh.
4 TF: Not wanting that.
5 DJ: Uh-huh.
6 JC: Okay.
7 DJ: Do you hang out up at Wendi's quite a bit?
8 TF: No.
9 DJ: You don't? Does Kody?
10 TF: I think he did, like, a few months back, but I don't think he
11 has lately, no.
12 DJ: So what would be -- so he doesn't have a car of his own,
13 correct?
14 TF: No.
15 DJ: That runs or...
16 TF: No.
17 DJ: Okay. So is she always agreeable to let him borrow the car or
18 what? What is it with that?
19 TF: Um, I think so once in a while. I mean she --
20 DJ: How do you guys get around most of the time?
21 TF: My parents' car.
22 DJ: Oh, okay. Kody get along with your parents good?
23 TF: Yeah. They like to joke here and there. There's sometimes
24 disagreements here and there, but nothing --
25 DJ: Major?

1 TF: -- to the extreme, no.
2 DJ: Nothing major or serious?
3 TF: No.
4 DJ: What is your parents' names?
5 TF: Claude and Cassie.
6 DJ: Claude?
7 TF: Yes.
8 DJ: And Cassie?
9 TF: Yes.
10 JC: Cathy?
11 TF: Cassie, C-A-S-S-I-E.
12 JC: Okay. So is there anything you want to ask of us? If there
13 is, you can ask and I can tell you like I told you, if it's
14 something I can't answer, we won't.
15
16 TF: Yeah.
17 JC: I mean, just...
18 TF: Nothing I can think of off the top of my head, no.
19 JC: Okay. Got another card, Dennis?
20 DJ: Out there I do. I'll give it to her out there.
21 JC: We'll give a card with some numbers.
22
23 TF: Okay.
24 JC: Feel free to call us any time if there's something you hear,
25 you know, somebody's talking about something, whatever. It
26 doesn't matter. You may think it means nothing but it could
27
28

1 be that one little thing that's, you know, that could push us
2 over the edge on this thing.

3 TF: Right.

4 JC: You know? So that's all we're asking, okay? The school
5 thing, the chief's going to be at the school tomorrow. We'll
6 mention it to him that you guys have some concern.

7 TF: Uh-huh.

8 JC: Okay? He's supposed to be there in the morning. Maybe we can
9 pass that on to him and he can make mention of that tomorrow
10 and maybe we can get that straightened out for you.

11 TF: Okay.

12 JC: Okay? Hopefully that will help out a little bit, all right?

13 TF: Okay.

14 DJ: You know, this business that this occurred is pretty serious,
15 you know?

16 TF: Uh-huh.

17 DJ: A life has been taken. And understand the parents are really,
18 you know, devastated and as well as the community, including
19 the school and her friends and stuff like that, you know? I
20 guess what I'm trying to ask you is if you know of anything,
21 if you know anything about this incident, good, bad or
22 indifferent, Kody or no involvement one way or the other,
23 now's the time to tell us. Because whoever is responsible for
24 this needs to be brought to terms with it, you know?

25 TF: Uh-huh.

1 DJ: I won't say justice, but to terms, you know? And we want to
2 determine what happened and why and we certainly don't want to
3 accuse someone wrongly, you know?
4 TF: Right.
5 DJ: Do you have any ideas about what may have happened and why?
6 TF: I have no idea, no.
7 DJ: I guess you didn't know Mickie very well, she have any
8 enemies, anybody? Do you know who her current boyfriend was,
9 is?
10 TF: I believe his name was Javier Trujillo. I don't know much of
11 anything else, so...
12 DJ: Okay. Do you know him?
13 TF: I don't. I mean, maybe if he walked out in the hall I could
14 identify him, but I...
15 DJ: Uh-huh. Are you, like, a senior?
16 TF: I'm a senior, yes.
17 DJ: What are you going to do after school?
18 TF: I'm going to try to go to college.
19 DJ: You have one picked out?
20 TF: I don't. I keep going back and forth, trying to decide what,
21 like, specific field I want and everything.
22 DJ: Uh-huh.
23 TF: But everyone keeps telling me just go to school, get your
24 generals out of the way and then decide.
25
26
27
28

1 DJ: Yeah, right. Well, if there's, you know, if there's anything
2 that you know about this incident or anything that you may
3 learn about, because it's going to happen in the next few
4 hours, days, about what happened and stuff, you know? Not
5 with the whys or not how, just what happened, so. You know,
6 if you hear of things that you think could be of value to us,
7 we'd appreciate that, you know, that information. And what
8 you tell us is strictly confidential. We're not going to drag
9 you to court and make you be a witness or anything like that.

10
11 JC: And it doesn't matter how silly you may seem to think it is,
12 you know, the little bit of information you may call us with.
13 Like I said, it may be that little thing just pushes us over
14 the hump --

15 TF: Right.

16 JC: -- and we can get this figured out for everybody, okay?

17
18 DJ: Because most of the time these kinds of things, even these
19 major cases or these traumatic incidents like this, it's some
20 little thing that maybe we overlooked, maybe we didn't know
21 about that maybe we could follow up on or whatever that will
22 bring this thing to some kind of a resolution or conclusion,
23 you know?

24 TF: Yeah.

25 DJ: What else, Jim?

26 JC: I can't think of anything right now.

27
28 DJ: Okay. Then we'll conclude the interview with Toni Fratto.

1 TF: Fratto.

2 DJ: Fratto, sorry.

3 TF: You're okay.

4 DJ: At about ten after nine on March the 6th. And we appreciate
5 your cooperation, Toni. And, like I said, you can call either
6 one of us day or night and call the sheriff's office, they'll
7 get ahold of us and I'll give you my card, okay? Thank you
8 very much.
9

10 TF: Thank you.

11 JC: Thank you, Toni.

12 TF: Thank you.
13

14 (Recording ended.)
15

16
17 STATE OF NEVADA,)

18) ss.
19 COUNTY OF ELKO.)

20 I, Roxanne M. Hofheins, do hereby certify:

21 That I transcribed from audio the proceedings had in the
22 above-entitled matter;

23 That the appearances on the cover page are from this
24 transcriber's understanding of who was present during the
25 proceeding;
26

27 That speaker identification was identified to the best of
28 my ability through voice recognition;

1 That the foregoing transcript, consisting of pages 1
2 through 7, is a full, true and correct transcription of said
3 proceeding to the best of my ability.

4 Dated at Elko, Nevada, this 31st day of March, 2011.

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6 Roxanne M. Hofheins
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1 Case No.: 11-4187

2 Elko County Sheriff's Office

3 Recorded interviews three through six of: Kody Patten
4 March 6, 2011

IDENTITY OF SPEAKERS:

5 KM: Sergeant Kevin McKinney, Elko County Sheriff's Office

6 JB: Jim Bonich, Special Agent, FBI

KP: Kody Patten, Interviewee

7 KM: All right. There's a couple of things we need to clear up.
8 Okay. Now, you said, you said that after 3:30 you went to
9 your house?

10 KP: Uh-huh.

11 KM: Did you go inside the house?

12 KP: Uh, yes.

13 KM: Okay. Who was there when you got there?

14 KP: Uh, Toni's mom was leaving, and I had just pulled up and went
15 in right after Toni did. About two, five seconds later.

16 KM: Okay. When you drove up, Toni's mom was leaving?

17 KP: Correct.

18 KM: Was she in the car or was she still in the house?

19 KP: Her mom was in the car.

20 KM: Okay. And you went in the house for a half hour?

21 KP: Yes.

22 KM: Okay. Now, you said that after 4:30 you didn't go back in
23 the school, right?

24 KP: That I remember.

25 KM: That you remembered, okay. Now, you told us that you thought
26 that the boy she was with at 5:30 was her boyfriend.
27
28

1 KP: Correct.

2 KM: Okay. You gave a description, okay? However, it's not the
3 same description that you told us Javier -- when you saw her
4 at lunch. They don't match.

5 KP: I didn't give a description of Javie when he was at lunch.

6 KM: That's right. You said it was him.

7 KP: No, I said I thought so.

8 KM: But you didn't say you thought that this boy was her
9 boyfriend because he was wearing the same clothes that he was
10 wearing at lunch. You didn't bother to tell us that.

11 KP: What do you mean? This is confusing.

12 KM: Well, you saw Javier at lunch.

13 KP: Correct.

14 KM: You know, we asked you why you thought it was Javier.

15 KP: I don't remember you asking me if (inaudible). I know Javie,
16 I know --

17 KM: Right, you know Javier.

18 KP: Yeah.

19 KM: And you said you thought it was him after school. Well, how
20 could that be? Story's not making sense there. That's not
21 making sense.

22 KP: What do you mean?

23 KM: What do you mean? If you know him, you know him.

24 KP: Yeah.

25 KM: It would be pretty easy --

26

27

28

1 KP: He was facing that way.
2 KM: Right. But you would recognize him from his clothes because
3 you saw him at lunch.
4 KP: He had just a shirt on and pants at lunch. He didn't have
5 anything else.
6 KM: Okay. She didn't call you twice.
7 KP: Huh?
8 KM: She didn't call you twice. Mickie didn't call you twice.
9 KP: That's what I recall.
10 KM: No.
11 KP: Okay.
12 KM: She didn't call you twice, okay? You sent more than two
13 texts messages to her.
14 KP: Not that I recall, no.
15 KM: You sent probably --
16 KP: Two or three.
17 KM: -- five or six.
18 KP: Okay.
19 KM: Okay. That wasn't mud on Wendi's car. That was dust.
20 KP: Okay. So what are you getting at?
21 KM: What I'm getting at is you're not being totally truthful with
22 us.
23 KP: Yes, I am.
24
25
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1 KM: No, you're not, okay? Okay? I'm showing you some
2 inconsistencies based upon your own statement and physical
3 evidence that we have found.
4 KP: Okay.
5 KM: Okay? You're not being totally truthful with us.
6 KP: I went pothole bashing.
7 KM: No. That wasn't mud. I'm telling you, it's dust. It's dust
8 on that back bumper, okay? It's dust on the side of that
9 truck. It's not mud.
10 KP: Okay.
11 KM: Okay?
12 KP: I don't know what to tell you.
13 KM: Well, I'm -- okay. Now, what happened to the shovel that was
14 in your bedroom?
15 KP: What shovel?
16 KM: That shovel that was in your bedroom on Friday that's not
17 there now. What happened to it?
18 KP: What shovel?
19 KM: The trenching shovel.
20 KP: It's probably in the shed.
21 KM: Where did you take that duffel bag today?
22 KP: What duffel bag?
23 KM: The duffel bag you took out of the house.
24 KP: It's in my parent's house.
25 KM: What's in it?
26
27
28

1 KP: Clothes.

2 KM: Okay. The shovel's not in that duffel bag?

3 KP: No.

4 KM: Why didn't you mention -- do you have a knife?

5 KP: No.

6 KM: Okay.

7

8 JB: Where's the duffel bag in your parent's house?

9 KP: Like, right inside the front door.

10 JB: And your parent's know it's there?

11 KP: Yeah.

12 JB: Okay.

13 KP: I asked them if I could set it right there.

14 KM: Okay. We found tire impressions at the scene. They match

15 the Avalanche's tires.

16

17 JB: Trail Blazer.

18 KM: Or Trail Blazer, I'm sorry.

19 KP: Okay.

20 KM: It shows the width is the same, the wheel-base is the same,

21 tire pattern is the same. That Trail Blazer took her to that

22 scene.

23 KP: So you're saying I did it?

24 KM: I think maybe you're not telling us the truth about what

25 happened. I'm telling you what the physical evidence is

26 showing us. All of it is pointing to you, okay? Now, the

27 issue we have is the scenario of what happened with her,

28

1 okay? And I'll be frank with you, it doesn't look good. It
2 doesn't look good.

3 KP: What do you mean?

4 KM: Well, I'll tell you. The video from the school indicates to
5 us that you were waiting for her, okay? You were waiting for
6 her, okay? You were waiting for her that afternoon --

7
8 KP: I wasn't.

9 KM: -- waiting for her to get done with track, okay?

10 KP: I wasn't.

11 KM: That's why you walked by the girls' locker room three times.
12 And you walked away from the girls' locker room three minutes
13 before she left the locker room. That's exactly what
14 happened. It's all on video, okay?

15 KP: I told you I was in the school.

16
17 KM: No. You told us you weren't in the school. You told us you
18 weren't in the school in that timeframe.

19 KP: You didn't give me a timeframe.

20 KM: I did. You gave me the timeframe, okay? You gave me the
21 timeframe that you were in the school.

22 KP: That I can remember. I mean, let's see you --

23 KM: Listen --

24 KP: -- with someone pointing --

25 KM: -- listen to me.

26
27 KP: -- a gun to your head --

28 KM: Listen to me.

1 KP: -- and try to remember everything.

2 KM: Listen to me. You have given more than enough detail right
3 up until 5:00 and right after 7:00, okay? But between 5:00
4 and 7:00, you've got a serious lack of detail, okay? And I
5 think I know why.

6 KP: Okay, why?

7 KM: Because that was the time she disappeared and that was the
8 time she died. And you were involved.

9 KP: I wasn't involved in her death.

10 KM: I think you were. I know you were now.

11 KP: How do you know I was now?

12 KM: Because, you basically told us you were, okay? Now, this
13 looks really bad for you, but I think we can get past this if
14 you would just explain to us what happened.

15 KP: I did not touch Micaela.

16 KM: Listen, listen. We know you have before. We know you have
17 before.

18 KP: Have before what?

19 KM: We've got witnesses.

20 KP: Witnesses say what?

21 KM: Well, about you grabbing her and chocking her and choking
22 Toni, and we know you do that. We know you have that issue.
23 We know you have some anger issues.

24 KP: Me and Toni's issues are different.

25 KM: Yeah.

26

27

28

1 KP: Don't sit here and try to play on me and stuff --
2 KM: I'm not playing on you.
3 KP: -- it's not working.
4 KM: I'm telling you the truth.
5 KP: Well, you're trying to twist my past to make it fit this
6 scenario.
7
8 KM: I'm not twisting anything, okay? Listen, you know, you can
9 either tell us what happened and be truthful with us, okay,
10 or we're just going to have to go with what we've got, okay?
11 And I don't want to do that. Because it's going make you
12 look very bad right now, okay? I need you to be truthful
13 with me. All these mistruths, all these --
14 KP: It's not mistruths.
15 KM: -- untruthful statements. They are, they are, okay? Okay?
16 You have been intentionally vague about several details or
17 they're completely false statements.
18
19 KP: I haven't falsified anything.
20 KM: Yes, you did, okay?
21 KP: I haven't. You're not me. I have not falsified anything.
22 KM: But you did, okay? That wasn't mud on that truck. It was
23 dust. Dust that matches out at the gravel pit, okay?
24 JB: Kody, tell me about your ring.
25 KP: Which one?
26 JB: The one on your right hand. Tell me about CTR.
27 KP: It's choose the right.
28

1 JB: I think you're a good guy, okay?

2 KP: Please don't try to play me. If you're just doing this just
3 to be my friend, it doesn't help.

4 JB: I'm not trying to be your friend. I'm telling you, I think
5 you're a good guy. I think you've been working hard. I
6 think you found the Lord and you're trying to find the right
7 path and something happened Thursday. Something Mickie did
8 set you off and I can understand that. I've been pissed at
9 girlfriends. I've been pissed at ex-girlfriends, and I know
10 you're a good guy inside and that's why this is tearing you
11 up. That's why you're not sleeping.

12
13 KP: I never touched Mickie.

14 JB: You know, I'm from the FBI and we've had a lot of other
15 people that have been out here from other agencies, okay?
16 We've got people with a great deal of scientific training
17 that have taken samples today. Here's what I believe. When
18 they put the dust from that Trail Blazer in the gas
19 chromatograph and then they compare it to samples of dust
20 from where the body was found, I think they're going to
21 match. And they can tell different sections of dirt are
22 different from dirt in other areas, okay? I think they're
23 going to find DNA from the body that isn't the body's, okay?
24 I think they're going to find DNA and other samples from
25 inside that Trail Blazer and some of those things, bodies,
26 besides skin and hair and fluids, bodies give off gasses.
27
28

1 And when they sample that Trail Blazer they can tell if those
2 samples are from two, three days ago or two weeks ago, okay?

3 And I think those results are going to come back and show
4 that Mickie was in that Trail Blazer. We want to help you
5 here. I don't know what happened between you and Mickie, but
6 --
7

8 KP: Nothing happened.

9 JB: -- something happened that day, all right? And we've all
10 been there where we lose control for a split second, and we
11 snap. And now's the time to be a man and tell us the truth.
12 What happened Thursday?

13 KM: Kody, we're just, we're trying to find the truth.

14 KP: I know.

15 KM: And, Kody, listen, you're not telling us the whole truth.
16 You're telling us bits and pieces, but you're not telling us
17 the whole truth. And, you know what that's telling us. You
18 know what that's telling us, okay? That, coupled with the
19 physical evidence that we already have, the physical evidence
20 that's going to be analyzed, I mean, come on. Think about
21 it. You're not dumb. You're not a dumb kid. You're smart
22 kid, obviously. You're going through 12 classes now to get
23 your degree so you can go in the Marine Corp. You're not a
24 stupid kid. You know that this stuff occurs, okay? You know
25 that we're going to go all out to make sure that the physical
26 evidence, and that, you know, everything is going to get us
27
28

1 who did this, okay? So we have no issue with finding out who
2 did this, okay? It's already a given. Right now, we want to
3 know why, okay? We don't want to know who anymore. We
4 already found out who. We want to know why.

5 KP: And who?

6 KM: You, Kody. Kody. Now, Kody, I'm starting to even doubt that
7 you intended to do this based upon what I see here right now,
8 based upon this reaction. I don't think you planned on doing
9 this. I think something else was going on. I think there
10 was another reason why you were waiting for her at the high
11 school that day.

12 KP: I wasn't waiting.

13 JB: Were you just going to go to the quarry to have sex?

14 KP: No. Why would you say that?

15 JB: We're trying to --

16 KM: We want to know.

17 JB: You're not giving us any reasons.

18 KM: Were you, I mean, were you there trying to get back together
19 with her?

20 KP: No.

21 KM: I mean, you know?

22 JB: When's the last time you had sex with Mickie?

23 KP: The year I dated her. That was it.

24 KM: Something happened that day because you don't just all of the
25 sudden start texting her. You don't just all of the sudden

1 start calling her, okay? You don't all of the sudden start
2 hanging out at the school waiting for her to get done with
3 track practice. Something happened that day.

4 KP: I didn't hang out to wait for her.

5 KM: You were in that school four different times after school.
6 You went by the locker three times, okay? You went by the
7 girls' locker room three times, okay? Three minutes later
8 she leaves the locker room, you run out the back door and she
9 follows you. She wasn't at the north door. She follows you
10 three minutes after you leave, she's out that back door.
11 That puts her at the back door, not the north door, where you
12 were.
13

14 JB: Were you just going to give her a ride home? You had a car
15 and she didn't have a ride? You were just going to help out
16 a friend and give her a ride home?
17

18 KM: Kody, you need to explain to us what's going on, buddy. I
19 mean, we're -- like I said, everything is -- you need to talk
20 to us. You know, Kody, I wasn't trying to put your past into
21 this incident.

22 KP: I hate when people do that.

23 KM: Okay? That isn't --

24 KP: They always do that.

25 KM: -- that isn't what I was trying to do. What I was trying to
26 explain to you is that right now, okay, you have an explosive
27 temper it looks like, it appears to me. That you have a hard
28

1 time controlling at times, okay? And that when something
2 causes you, you can lose control, okay? Was this one of
3 those times when you lost control?

4 KP: I didn't do it.

5 KM: Kody, Kody, Kody, I'm serious here, okay? We know that Trail
6 Blazer backed up to that burial site, okay? We know that.
7 We've got the tire tracks. Those tire tracks don't lie.

8 KP: I didn't say that they did.

9 KM: Okay. We know you were the only person driving it that
10 night, okay? All right? We know that you were in that
11 school at the same time she was. At 5:30 or 5:15, 5:13,
12 okay? We know that you didn't tell us the truth about seeing
13 her at the north door because she walked out the southwest
14 door, that welding shop door behind you, okay? There's no
15 way she could have got around to the north door as you were
16 driving off. That doesn't happen, okay? We know this, okay?
17 These are indisputable facts, okay? All right? We know you
18 were walking past the gym three times, the girls' locker
19 room, okay?

20 KP: And where is all this coming from?

21 KM: Video, video, physical evidence, okay? All right? We
22 poured over that video for hours today, okay? Kody, Kody,
23 Kody, right now, this isn't looking good for you.

24 KP: I know.

1 KM: Okay? And you need to talk to us, okay? And, Kody, I can
2 see right now you want to make this right.

3 KP: I do, but...

4 KM: You do. The only way you can do it now is to tell us what
5 happened. You need tell us --

6 KP: Can we turn it off and I can tell you two things about me and
7 her? It's nothing that probably has anything to do with it.
8 Just, it's personal.

9 KM: I understand that, okay? And I understand why it would be
10 very embarrassing to you or it might be very intimate to you.
11 But --

12 KP: It's all --

13 KM: -- we can't, okay? Because we have to be accurate here,
14 okay? Because if we turn it off and then we say you said
15 something, you know, a judge is going to go, well, why did
16 you turn it off, you know? Unless you were going to lie to
17 us about what happened, you know?

18 KP: The reason I started talking to Micaela was because she told
19 me at lunch the day at school that she loved me.

20 KM: Okay.

21 KP: And she just wanted to start talking again and that's what
22 all our phone calls and stuff were. And she said she wanted
23 a ride home and I said okay, that's fine. So I gave her a
24 ride home. I loaded what was left of my parts into the car
25 and gave her a ride to the house. And I dropped her off and
26
27
28

1 I went home. And she, um, was texting me and I texted her
2 back and she said she wanted to hang out, and I said okay.
3 So I went down and I left the car at my house. And I just
4 walked down there and we were talking, and then I went back
5 home because her mom had called her or something and was
6 wondering where she was at. And she didn't want her mom to
7 know that we were talking again and her boyfriend to find
8 out, and I didn't want to cause anything with Toni. I mean,
9 I never cheated. I was just talking to her. And she said
10 she wanted to go out driving around, so we went out to the
11 gravel pit and she started arguing with me and stuff. And
12 she was, just, let me out, and I let her out. And there was
13 only one other car out there and that was it. Just one other
14 truck out there and that was it. And I turned around and
15 left, and that was the last time I saw her. And then
16 everybody told me she went missing and I got scared because I
17 knew people would fucking blame me.

20 JB: That was a big step, Kody. That's much closer to the truth.
21 And you're not telling us anything we don't know.

22 KP: Last time I saw her.

23 JB: You're doing the right thing now.

24 KP: But I never laid a hand on her.

25 KM: Kody, Kody, Kody, there are no other footprints or tire
26 tracks out there. Just yours.

27 KP: I don't -- these are my shoes.

1 KM: Huh?

2 KP: I got boots, I got mountain shoes, this is it.

3 KM: Kody, Kody.

4 KP: I did not kill Micaela Costanzo.

5 KM: I don't think you did. I don't think you planned on it. I

6 don't think you intended to.

7

8 KP: I didn't.

9 KM: I think you panicked. I think she got hurt, and I think you

10 panicked.

11 KP: I didn't do anything. I simply got pissed off and left. I

12 didn't yell. I didn't do nothing. She just said, let her

13 out. I let her out.

14 JB: What did you fight about?

15 KP: About Toni. She wanted me to leave Toni for her. And I said

16 no, because I'm not going to leave Toni.

17

18 JB: What changed Thursday? Why did --

19 KP: I don't know. I've always just said hi to her every once in

20 a while. Never really talked to her since Alex left, but she

21 just, one day she'd been fighting with her boyfriend for a

22 while.

23 JB: So what time did you go back to your house and get the Trail

24 Blazer?

25

26 KP: I don't know. I don't know.

27 JB: And then you went to her apartment and picked her up?

28

1 KP: I picked her up on the back side of the fence, like, the road
2 and then there's a fence and then there's a trailer parked
3 right here.

4 JB: And then you drove straight to the gravel pit?

5 KP: We went up past the golf course and through a little dirt
6 road thingy and on the old exit. And we were just kind of
7 going down that road and we went out there and we were
8 talking along the way. And she started bringing up Toni and
9 she kind of was, like, not mad but just, like, I told her, I
10 was, like, I'm not going to leave Toni. I don't want to talk
11 about it. I mean, I told her, I was, like, I really
12 appreciate that you love me, I really do, but I'm not leaving
13 Toni. And she goes, then let me the fuck out. And I said,
14 what is your problem? And she goes, I'm not going to fucking
15 be around you if you're going to still be with her, then.
16 And I said, okay, fine, whatever, then get the fuck out. She
17 got out and I peeled out and turned around and left.

18 JB: Where did she get out?

19 KP: Huh?

20 JB: Where did she get out?

21 KP: We went past a big tank that's out there a little ways and
22 that was it.

23 JB: What side of the road was the tank on?

24 KP: Uh, right side.

25 JB: How far past the tank did she get out?

1 KP: Half a football field. A football field and a half, I don't
2 know.
3 JB: That doesn't sound like something that you would do, Kody,
4 and just leave her stranded out there. I know that she runs
5 track and everything, but that's a long way from town.
6 KP: When she had texted me she said not to come back.
7 JB: That wouldn't be safe for her.
8 KP: I waited at the top of the thing and then saw her walking
9 towards, so I said whatever and I left.
10 JB: What time did she text you to tell you not to come back?
11 KP: I don't know. Maybe two minutes after dropping her. And
12 there was a truck out there so I figured somebody would pick
13 her up and bring her back to town because it looked like a
14 railroad truck.
15 KM: Kody, that's not the entire truth, buddy.
16 JB: You know we have your phone records and her phone records?
17 And the texts stop well before that.
18 KM: Her texts stop five minutes before she leaves the school.
19 JB: You were on the right track, Kody.
20 KP: I'm not lying.
21 KM: You are. You're not being totally truthful, okay?
22 KP: I didn't kill her.
23 KM: Kody, Kody, you are on the right track, okay? And you've
24 made a huge step.
25 KP: I did not kill her.

1 KM: Kody --
2 KP: No matter what is said, I did not kill her.
3 KM: I don't think you intended to. I don't think you intended
4 to. I don't think that was your plan. I think things got
5 out of control, though, and you two fought.
6 JB: You hurt her a little bit, didn't you, when she was still
7 alive?
8
9 KP: I didn't do nothing to her.
10 KM: And you didn't know what to do. Kody, there were no union,
11 there were no railroad trucks out there Thursday.
12 KP: I said it looked like one. I didn't say it was.
13 KM: Kody, you think anybody's going to believe you left her out
14 there by herself out there with some unknown truck out there?
15 That's like saying that we believe that she was talking to
16 some mysterious male in front of the school at 5:30. You're
17 still not telling us the whole truth, Kody. And this is,
18 like I said, it's, you know, until we get the truth, all we
19 have to do is assume the worst. And I don't want to do that,
20 okay? I don't want to do that. We're giving you the chance
21 right now to explain how this tragedy happened, okay?
22 Because it is a tragedy. It's a tragedy for you. It's a
23 tragedy for Mickie, okay? It's a tragedy for Mickie's mom.
24 It's a tragedy for Mickie's sisters, okay? It's a tragedy
25 for your parents. It's a tragedy for Toni, okay? This
26 affects everyone in this town, okay? Everybody we have
27
28

1 talked to has been so broken up about this, okay? And I can
2 see that you are terribly broken up by what happened, okay?
3 I can see that. It's in your eyes, okay? But I know, and I
4 know how hard it is to stand up and say I made a mistake. I
5 made a huge mistake, okay? I know how hard that is. And it
6 takes a guy with a lot of guts to come out and say I messed
7 up. But at some point, at some point, this is going to eat
8 you up inside until you finally stand up and tell us what
9 you've done. It's just going to eat you alive. It already
10 is. You're not sleeping, you know. You look like you
11 haven't slept since Thursday, okay?

12
13 KP: I don't sleep, ever.

14 KM: Okay. And I know you don't want people to think that you're
15 some monster that goes out here and just brutally kills
16 women, okay? You know, I know that.

17
18 KP: I don't.

19 KM: We're trying to help you explain how this happened, okay?
20 We're trying to help you do this so that you're not the
21 monster that people think hurt Mickie, okay? All right?
22 We're trying to help you do that, okay? Because for one
23 thing, okay, look at Mickie's family, you know? Are they
24 going to -- will it help them to think that, you know, some
25 evil guy just brutally took their, you know, their family
26 member out, or will it help them to know that somebody who
27 cares for her, okay, made a mistake, screwed up, and feels as
28

1 bad as they do about it? I mean, what do you think? I mean,
2 think about it. Think about it. If it was your mother or
3 your father, you know, would you, you know, say they died in
4 a traffic accident. Would you rather think that it was
5 someone who intentionally tried to run them off the road, and
6 tried, you know, or would you rather know that it was someone
7 who screwed up and hit the gas instead of the brake and it
8 was an accident? Or it was, you know, unintended
9 consequences of what happened, you know? And you yourself,
10 you yourself, you just think about how this has been
11 affecting you ever since it happened, okay? And how it's
12 going to continue to affect you. I mean, for years to come,
13 you know? And I'll tell you, the more, you know, all this is
14 going to become public, okay? I mean, it's going to
15 become -- the rumors are already out there, okay? You know?
16 You're the only person that knows exactly what happened and
17 you're the only person that can put these rumors to rest,
18 okay? And you're the only person who, right now, can explain
19 yourself and make things right for everybody. You're the
20 only person that can do this. I can't do it, Jim can't do
21 it, because we don't have the entire truth. You're not
22 telling us the entire truth. And until the entire truth
23 comes out, it's just going to snowball.

24
25
26
27 JB: What's rest of the story, Kody?

28 KP: I don't know.

1 JB: I believe you drove her to the gravel pit. I believe that
2 the two of you had a fight. I don't believe you let her just
3 get out. I believe you didn't go there with the intent to
4 hurt her. But sometimes we just snap.

5 KM: Kody, you probably had pretty mixed emotions about this whole
6 deal with Toni and Mickie. I'm sure you care about Toni, and
7 I'm sure you care about Mickie, okay? That will tear you up,
8 too.

9
10 KP: Mickie is my friend, but I don't love her. She's just my
11 friend.

12 JB: She come on to you out there?

13 KP: No.

14 KM: How did she get hurt? Come on. I'm serious here, okay? How
15 did she get hurt? What happened? Did she grab you? Did you
16 grab her? Did, you know, was it, was she chasing after you,
17 you chasing after her, yelling, fighting, you know, arguing?
18 You know, cussing at each other? I mean, what happened? How
19 did she get hurt? How did she get hurt? You need to, until
20 you explain it to us, we can't answer those questions. You
21 were the only one there with her. No one else was out there.
22 Like I told you, yours and her footprints were the only ones
23 out the there. You were the only two out there.

24
25 JB: You got to say something, Kody. You can't leave it like
26 this. I can see it's tearing you up. You still want to do
27 the right thing. You know what the right thing is.
28

1 KM: Kody, this isn't going to go away. It's not going to go
2 away. And you, I mean, right now is the time to man up and
3 explain yourself. Explain to us what happened. We -- okay.
4 We've done these cases for, I've done it for 20 years now,
5 okay? I mean, I've done the absolute worst cases that you
6 can imagine, okay? And I don't think this is the case here,
7 okay? Okay? I just don't see that in you, okay? I wouldn't
8 be here now if I didn't think that, okay? It wouldn't matter
9 to me what you said at this point if I thought that, okay?
10 Jim's been doing this for 20 years. He wouldn't be here if
11 he didn't think that there was more to it than what is just
12 the physical evidence. What is just, you know, what we found
13 on Micaela's body, okay? We know there's more to it. We
14 know there's an explanation, okay? Because, I mean, to be
15 honest with you, we've been looking at you as one of the
16 suspects for a long time, so we've been digging in to your
17 past, your mind, as best we can, and we don't think you're
18 that kind of person, okay? But what you're giving us right
19 now, is not giving us a lot of options to try and make the
20 best out of a bad situation. Do you understand what I'm
21 trying to explain to you? Okay? This is a bad situation for
22 everybody, okay? And right now you are still the only person
23 that can make this right. We don't want to make this worse
24 for you at this point than it already is, okay? We don't
25 want to make it any worse than it already is, okay? It's

1 already, right now, as bad as it's going to get for you. The
2 only thing now we can do for you is to make it better. But
3 we can't do it unless you're helping us do that. And you can
4 do that by explaining to us how this happened, how she got
5 hurt, you know? How, you know, the scenario around how she
6 got hurt. We need to know that. We need to know the
7 scenario. We need to know, you know, we need to know what
8 happened. Kody, you need to tell us the truth, buddy. Kody,
9 we want to help you bud, we really do, we really do. We
10 wouldn't be here if we didn't, okay? I mean, we're trying to
11 help you. We're trying to make this situation better. Right
12 now, you're the only person that can help us do that. How
13 did she get hurt? What happened? Tell us what happened.
14 That's all you got to do. Right now, that's all you got to
15 do is tell us what happened and we can do the best for you.
16 How did she get hurt? Were you so mad that you don't
17 remember what happened?

18
19
20 KP: Just confused.

21 KM: I know you're confused. You got a lot of emotions going on
22 right now, okay? Okay? You've got, I mean, you've got the
23 emotions of hurting her. You've got the emotions of what's
24 going to happen now. You've got the emotions of what are my
25 parents going to think. You've got a ton of emotions going
26 on right now, a lot of confusion.

27
28 KP: Who's out there?

1 KM: Nobody.
2 KP: Someone's crying out there. I can hear it.
3 JB: Somebody's crying?
4 KP: Yeah.
5 KM: Crying?
6 KP: Well, don't leave me.
7
8 KM: I'll be right back. I'm just going to -- nobody's crying. I
9 just hear one of the officers out there.
10 JB: We've got the recorder here, you know we're recording this,
11 but there isn't anybody else listening. It's just the three
12 of us.
13 KM: It's just us.
14 JB: Nobody else knows what you've told us.
15 KM: Kody, Kody, we can't help you, buddy, unless you explain to
16 us what went on, okay? I'm serious. I mean, you said you
17 thought we were playing you. Do you really think to this
18 point that we're playing you or have we been up front with
19 you? We've been straight with you, haven't we? I mean,
20 we've been, I mean, we've explained to you --
21
22 JB: What do you want to say? Go ahead.
23 KP: I just want to see my family.
24 KM: What are you going to tell them? Are you going to tell them
25 the truth about what happened?
26
27 KP: I want to, but (inaudible).
28

1 KM: I know you want to. This isn't easy. I know you want to.
2 They, personally, I think they need to know, okay? Because
3 you're their son. They need to know. They need to know the
4 truth.

5 JB: You want us to help you tell them?

6 KP: I just want to be with them for a little bit.

7 KM: I understand that. And we'll do our best to make that
8 happen. But, Kody, right now, it's, like I said, it's we
9 can't help you until you tell us what happened.
10

11 KP: What do you mean?

12 KM: We can't help you make this situation better until you tell
13 us what happened.

14 KP: Am I forced to be here right now?

15 KM: No, you're not forced to be here right now. You came in on
16 your own, and --
17

18 JB: You want to take a break for a minute?

19 KP: Yeah, please. Please.

20 JB: All right. Let's take a break.
21

22 (Recording ended.)

23 (New recording began.)
24

25 KM: (Inaudible) yourself, okay? You got to tell the truth to
26 yourself, okay? That's the person you've got to worry about
27 is yourself, okay? And, I mean, until you do that, this,
28

1 look at you, okay? It's tearing you up, okay? You've got to
2 be truthful, okay? You know? What's your ring say? Choose
3 the right thing. What's the right thing right now?

4 KP: To do what's right.

5 KM: To do what's right. What's right for Micaela at this point?
6 To tell the truth, that's what's right, is to tell the truth.
7 I know you care for her or this wouldn't be bothering you.
8 You got to do what's right for her. You got to do what's
9 right for you, in here, okay? But we can't help you anymore
10 if you walk out this door right now. You know what I'm
11 saying?
12

13 KP: Could I just take a break?

14 KM: You can take a break. I'm telling you right now if you walk
15 out this door, we can't help you anymore, okay?
16

17
18 (Recording ended.)

19 (New recording began.)
20

21 KM: We kind of have to stay in here. I mean, we've already
22 talked. I mean, what do you...

23 KP: I just want to talk to my dad for a minute.

24 KM: Okay.
25

26
27 (Recording ended.)

28 (New recording began.)

1
2 KM: Okay. Come in for a minute.
3 JB: We need to talk about one thing real quick, Kody.
4 KM: That shovel and that duffel bag.
5 KP: The duffel bag's just got clothes in it.
6 KM: You sure? Where's the shovel?
7 KP: It's under Toni's house.
8 KM: Who?
9 KP: Under Toni's house. Please don't go there.
10 KM: Where at under Toni's house?
11 KP: By the back porch.
12 KM: Okay.
13 KP: It's in between the porch and the --
14 KM: Is that the shovel?
15 KP: -- and the air conditioner.
16 KM: Is that the shovel we need to get?
17 KP: (No audible response).
18 JB: What are the clothes in the duffel bag?
19 KP: Just to stay the night at my parent's house. It's just
20 regular clothes.
21 KM: Okay. We need to go, we need to get that, but we'll be
22 discreet about that, okay? She already knows about the
23 shovel because she's the one that told us it was missing so
24 she knows we're looking for it, okay?
25
26
27
28 JB: Where's her backpack?

1 KP: Whose?
2 JB: Micaela's.
3 KM: Mickie's backpack.
4 KP: She didn't have it --
5 KM: She didn't have it when she got in the car?
6 KP: She just had her sweater and stuff and that was it.
7 KM: Okay. What about her cell phone?
8 KP: She pulled it out once but other than that it was on her.
9 KM: All right.
10 KP: (Inaudible).
11 KM: Okay. What do we need to do, bud?
12 KP: I just want to talk to my family a little bit.
13 KM: Do you want to bring the rest of them in, or...
14 KP: I just --
15 KM: What do you want to do? Right now, Kip, I can't even begin
16 to imagine what you're going through, okay? But we need to
17 resolve this. We need to finish up. And at that point, I
18 don't care, you can spend all night in here with your family.
19 We need to get this done. We need to get it finished up.
20 What do you want to do at this point?
21 KP: Can you promise me, a paper written, signed, I can spend the
22 night here with my family?
23 KM: You can spend as long as you want to in here. That's my
24 word, okay? I've kept my word up till now. I'm not about to
25 stop. You can spend all night in here if you want to.
26
27
28

1 KP: What happens tomorrow?

2 KM: Tomorrow we're going to have to, um, we're going to have to
3 call the D.A. and let him know what we have.

4 KP: So I will get arrested and in custody or something?

5 KM: You're not under arrest at this time.

6 KP: So can I go home and spend it with my family or should I
7 stay?
8

9 KM: Well, we need to talk and we need to find out --

10 KP: I mean, after everything's been (inaudible) out.

11 KM: You know, at this point, I think I need to explain to you
12 some things that are going on and kind of give you a heads up
13 of what's ahead. And, you know, we need to explain some of
14 your rights to you, okay?

15 KP: Just go ahead.

16 KM: Kip, can I talk to you for one quick second?
17
18

19 (Recording ended.)
20

21 STATE OF NEVADA,)

22) ss.

23 COUNTY OF ELKO.)
24

25 I, Roxanne M. Hofheins, do hereby certify:

26 That I transcribed from audio the proceedings had in the
27 above-entitled matter;
28

1 That the appearances on the cover page are from this
2 transcriber's understanding of who was present during the
3 proceeding;

4 That speaker identification was identified to the best of
5 my ability through voice recognition;
6

7 That the foregoing transcript, consisting of pages 1
8 through 31, is a full, true and correct transcription of said
9 proceeding to the best of my ability.

10 Dated at Elko, Nevada, this 29th day of March, 2011.

11
12 Roxanne M. Hofheins
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1 Case No.: 11-4187

2 Elko County Sheriff's Office

3 Recorded interviews seven and eight of: Kody Patten

4 March 6, 2011

IDENTITY OF SPEAKERS:

KM: Sergeant Kevin McKinney, Elko County Sheriff's Office

JB: Jim Bonich, Special Agent, FBI

KCP: Kody Cree Patten, Interviewee

KP: Kip Patten, Father

7
8 KM: (Inaudible) this is part of what I told you I needed to explain
9 to you, okay? Is your rights, okay? It's Micaela...

10 KCP: It's spelled wrong.

11 KM: Oh, did I? How's it spelled?

12 KCP: M-I-C.

13 KM: M-I-C.

14 KCP: A-E-L-A, I believe.

15 KM: Okay. Micaela.

16 KCP: Costanzo. Costanzo.

17
18 KM: Costanzo, okay. You need to understand your rights. You have
19 the right to remain silent. Anything you say can be used
20 against you in court. You have the right to talk to a lawyer
21 for advice before we ask any questions and have him with you
22 during questioning. If you cannot afford a lawyer, one will be
23 appointed before anymore questioning. If you decide to answer
24 questions now without a lawyer present, you still have the
25 right to stop answering at any time. You can stop answering
26 questions at any time, okay? You also have the right to stop
27
28

1 answering at any time until you talk to a lawyer, okay? Do you
2 understand all of those? Do you have any questions about them?

3 KCP: No.

4 KM: Okay. Can I get you to sign right here, okay?

5 KCP: But this would mean I'm under arrest.

6 KM: No. You're not under arrest at this time, okay? What this
7 means, what this means is that we have developed, based upon
8 everything, totality of circumstances, that we've developed
9 enough information to arrest you at this point, okay? That
10 doesn't mean you're under arrest, okay? A lot of what goes on
11 now is up to you, okay? Okay? It doesn't mean you're under
12 arrest. However, right now, you're not free to go, okay?
13 Okay? So, you know, because of everything that's happened,
14 you're not free to go at this point, okay? And we don't want
15 you spending the night in here, you know, and taking off. And
16 if we're going to work with you on this, you need to understand
17 that.
18 that.

19 KCP: You said just a minute ago I could spend the night with my
20 parents, though.

21 KM: I did. And you can, okay? We will work that out, okay? I'm
22 not backing off on that. I'm just saying that, you know, what
23 happens from here on out is kind of up to you. And, you know,
24 if we're going to continue to work together we need full
25 cooperation. You understand what I'm saying?
26 cooperation. You understand what I'm saying?

27 KCP: Yeah.
28

1 KM: Okay. I'm just saying right now you're not free to leave,
2 okay?

3 KCP: (Inaudible).

4 JB: Kip, we advised him of his rights.

5 KP: I know.

6 JB: At this point, Kody's an adult and he needs to make a decision
7 if he's going to waive his rights where we go from here.
8

9 KCP: What do you think? Think about it for a second.

10 KP: God.

11 KM: Kip, you know, I know you know that, I mean, you know,
12 he's already, I can imagine he's already told you what
13 happened. At least most of it.

14 KP: Some. Enough.

15 KM: Yeah. And, at this point, like I've explained to Kody here,
16 right now we are trying to make the best of a bad situation for
17 Kody, okay? And, I mean, we wouldn't be putting in this effort
18 if we weren't trying to make the best of what we've got. I
19 mean, you know, I don't want to see anything happen to Kody
20 that, you know, isn't fair to him, okay? I want to be as fair
21 to him as we can be. And as fair, you know, by the same token,
22 we have to be fair to uh Micaela, too.
23

24 KP: Yes.

25 KM: And we're trying to do the right thing, okay? And we're trying
26 to get Kody to do the right thing. And right now, a lot of
27 what the right thing is, is standing up and explaining himself,
28

1 because that's one of the only ways we can help him out right
2 now.

3 KP: Tell me what this is.

4 KM: You can read it. It's basically his rights to Miranda. You
5 know, at this point, he's not free to leave. At that point, we
6 have to advise him of Miranda, okay? I mean, you've probably
7 heard it on TV a thousand times. He has the right to remain
8 silent. Anything he says can be used against him in court. He
9 was the right to talk to a lawyer. If he can't afford one, one
10 will be appointed. You know, if he decides to answer
11 questions, he can stop answering questions at any time. Um,
12 you know, so on and so forth, like I read them to him. And,
13 you know, it's the standard things. Once he's not free to
14 leave, then we have to advise him of his rights. Him and I,
15 we've been talking for over an hour now.

16 KCP: Two.

17 KM: Two? I don't know, I have no idea. You've been so cooperative
18 to this point and we want to continue to be cooperative to you,
19 too, you know? We don't want to end this on a bad note. So,
20 and that's why we're trying to get things done right and set
21 up. Because at this point, we need to finish up what we've got
22 to do, okay? And, I mean, I've personally been working on this
23 for 28 hours now, you know? So we've got to finish up. And,
24 yeah, I want you to, I mean, you're not free to leave, you
25 know, but I will get your family in here and, like I said --

1 KCP: I can't spend the night at my parents' house?

2 KP: No, you can't. That's not going to happen, Kody. And it's not
3 because I don't want you to and it's not because they -- they
4 can't let you. It's just not going to happen.

5 KM: Not based upon what happened, you know, what we have to this
6 point, and what's going on.

7
8 KP: You can't. You're here. This is the road now.

9 KM: And I'm, you know, I, actually, to tell you the truth, I'm
10 going to bat for you to let you stay with your family. Because
11 I think, I mean, because right now, I think you need that.

12 KP: You got to start fixing this now as much as you can. It's not
13 about us anymore. You've got to fix this. What you did was
14 heinous, Kody. You've got to -- I know you want to be with
15 your family and I want to be with you. You've got to start --
16 there's something wrong, man. I want to be near you as much as
17 I can, okay? Don't think I don't. I don't want to abandon you
18 at all, okay? Like Kevin said, you got to do what's right for
19 Micaela as well. You have got to just go all the way with
20 this. You got to just, you need to put it to bed as quick as
21 you can and start -- you need to get out of this town and you
22 know that I know that. You know what that means. You've got
23 to just, you know, do what they need you to do and, you know,
24 you know what I'm saying? You've got to, you know, do a
25 written statement or whatever it is they need so that this can
26 be done. You know, we're getting our, right now, we are
27
28

1 getting our answers. They need their answers. The family
2 needs their answers, you know?

3 KCP: I don't want anything to happen to you guys.

4 KP: Kody --

5 KCP: You know what I'm saying?

6 KP: Nothing's going to happen to us. I mean, Jesus Christ. This
7 is it, man. This community can't do anything else to me. We
8 have to fix this. You understand that? You did something that
9 --
10 --

11 KCP: I know. I know.

12 KP: You've got to think about it --

13 KCP: Dad, I know.

14 KP: I know it's horrible. You've got to start, okay? I mean,
15 let's see if they'll let you spend the time with us tonight and
16 then, you know, do what they need to do to get it done, okay?
17 You need to set aside. I'm sorry, what was your name?
18

19 JB: Jim.

20 KP: Jim?

21 JB: Yes.

22 KP: What is it that you would like him to do right now?

23 JB: Well, basically, what Kevin was explaining, we're to a point
24 where he's not free to leave. We're required to advise him of
25 his rights. And it's up to him if he wants to waive his rights
26 or not. And if he doesn't, we can't have anymore conversation
27 with him.
28

1 KP: I understand that.

2 JB: You know, he can talk if you're talking to him but we can't ask
3 him questions from this point on --

4 KP: Right, right.

5 JB: -- unless he chooses to waive his rights.

6 KP: Right.

7 KCP: It's still recording, right?

8 JB: It is. This is Jim, also. He's with the sheriff's office.

9 Like you asked, the PD is out of this area. They moved to
10 another part.

11 KP: So if he waives his rights tonight, I mean, that helps you
12 guys to move forward on this and put it where it needs to be?

13 JB: Well, it helps him, too. Because it shows that he's taking
14 responsibility.

15 KP: Right, right. Of course.

16 JB: And it drastically changes things from here on out.

17 KM: All right. I cleared it that you can spend as much time
18 tonight as you need to in here, okay? Okay? I got it cleared,
19 it's all done.

20 KP: I think -- I...

21 KM: Now, I'm doing everything I can for you, okay? Okay? But we
22 need to get this finished up.

23 KP: What is it you need to finish up? Tell us.

1 KM: We need to find out how Micaela got hurt, okay? But you need
2 keep in mind your rights and stuff like that. We got to do it.
3 We got to finish it up. You're dad --
4 KCP: What? I know, dude, I know, all right?
5 KM: What do you need, Kody? Before we finish this up?
6 KCP: You said I could have my family in here tonight.
7 KM: Right. But not till we're done.
8 KCP: Yeah, yeah, so, but other than that.
9 KM: I've done everything I can for you. I mean, you want something
10 else to drink? You need another minute to talk to your dad? I
11 mean, what do you need? I mean...
12 KCP: I just got to use the restroom, that's it.
13 KM: Okay. We'll get that done. Do you want to sign that?
14 KCP: Do you want me to?
15 KP: Well, I just, I need to process. Okay, so this is his rights
16 and when he signs it, he's agreeing to these, what's on the
17 paper, correct?
18 KM: Yes.
19 JB: He's agreeing that he's waiving those.
20 KP: Okay, so if he signs here he's waiving all these?
21 KM: It means he's willing to talk to us.
22 KP: Okay. I have questions, but I think that's a good thing, okay?
23 Because, like I said, you need to start your process, right?
24 Everybody's got to heal from this.
25 KCP: Yeah.

1 KP: So he signs this, waives his rights.

2 KM: Uh-huh.

3 KP: Then he can talk to you guys and you can, you know, build your
4 case and what you need to do, which, I think at this point,
5 right, you realize that you're going, you know, away, right?
6 You know? God. You realize that, right? Okay?

7
8 KM: But --

9 KP: You got to pay for what, you know.

10 KM: We're trying to make sure that, you know, like I said, it's not
11 worse than it already is.

12 KP: Right. Okay, so he waives his rights, um --

13 KM: If he waives his rights and agrees to speak with us, we'll
14 finish up the interview, and then we'll, I mean, then, you
15 know, we can start, you know, taking care of things here at
16 this point, you know? If he, you know --

17
18 KP: Where will he go from here?

19 KM: Well, basically what I got to do is get ahold of our district
20 attorney, explain to him what's going on, what we have. And,
21 you know, they're going to decide, basically, what the charges
22 will be. You know, what he's charged with at this point and
23 then he'll go to Elko County Jail. And he'll be able to bail
24 out, you know. He'll have an opportunity for bail, um, and,
25 you know, pending the court hearings and trials. So, I mean,
26 realistically, I mean, if he bailed out, he could go back to
27 school, finish up. I mean, I don't know what your options are
28

1 at this point, I mean, but you could, you know, start taking
2 care of things, you know?

3 KP: Um, so I guess, can't, I mean, based upon what he's telling us
4 here today, why does it have to go to a trial?

5 KM: It doesn't have to.

6 KP: Because you don't want that, do you?

7 KCP: I just want it to be done and everybody to be at ease.

8 KM: I understand. It doesn't have to. I mean, you could, I mean,
9 the judge will advise you of the charges and you could plead
10 guilty or not guilty, you know? But what we want to do is do
11 what's fair to you also, you know what I'm saying?

12 KP: And fair to Micaela, right?

13 KCP: I don't care about me. I care about what happens (inaudible).

14 KP: Right. So we don't want, I mean, you don't want to be drug
15 through the public anymore.

16 KCP: I don't want anybody. You, mom, (inaudible).

17 KP: Don't worry about us.

18 KCP: That's all I'm worried about.

19 KP: Well, don't.

20 KCP: I'm fine, Dad.

21 KP: You're fine?

22 KCP: I know what's going to happen to me. I understand that. I'm
23 willing to accept it. But I can't bear for you guys to get --

24 KP: Kody, don't worry about it.

25 KCP: Well, too bad.

1 KP: I know, son. I just, I think you should sign it and I think
2 you should talk to them and I think we should just get this
3 moving. Let's get this, okay? You know? Let's...

4 KCP: Okay.

5 KP: Because I think, um, so we'll have maybe tonight in here for,
6 like, how many hours, say?

7
8 KM: You know I can't, I mean, I, as far as I'm concerned, as long
9 as you need. Of course, can't be, you know, six weeks or
10 something like that.

11 KP: No, I know.

12 KM: But I don't have a problem with, you know, I mean, I'll
13 probably have to get ahold of the D.A. tonight. It may take
14 him a few hours to decide anyway, so we're looking, at this
15 point, I don't see why 6:00 or 7:00 isn't unreasonable.

16
17 KP: What time is it now?

18 KM: It's almost 1:00 now, you know?

19 KCP: That's really (inaudible).

20 KP: I would like to get, I would like to see, I guess, I don't
21 know. I guess I would like, you know, if we could, you know,
22 maybe set a time of -- I don't know what I want. I don't know.
23 What do you want, Kody? I think the time tonight is plenty
24 sufficient, you know? Honestly, think about if you were at the
25 other end of this thing. You wouldn't want anything for that
26 person, would you?

27
28 KCP: No.

1 KP: So --
2 KCP: Thankful for what I get.
3 KP: So it's 1:00. I mean, can we have to at least till five?
4 KM: Oh, yeah, that's no problem.
5 KP: Maybe 6:00, (inaudible) still going on with you guys.
6 KM: Yeah. I'm not --
7
8 KCP: Don't set a time. I mean --
9 KP: I understand. I want a little bit of time just to, I don't
10 know, okay.
11 KM: You know, I talked to Sup, he's the chief. This is his office.
12 He said no problem, so, I mean, they do shift change at 6:00,
13 you know, that might be the timeframe we're looking at, the
14 shift change.
15
16 KP: Yeah. Let's make sure we're done before that, okay? And what
17 I'm kind of hoping is that you guys, you know, take him over to
18 Elko, could it be before that timeframe?
19 KM: I can, you know, we'll stick around and I don't mind
20 transporting him myself.
21 KP: You see what I'm saying?
22 KM: I see exactly what you're saying.
23 KP: I want to minimize his face in this community.
24 KM: I completely understand, and I'll transport him myself --
25
26 KP: Okay.
27 KM: -- whenever you guys are done.
28

1 KP: That would be great. Um, I mean, first off, before I go any
2 further, thank you. Because I know what you don't have to do.
3 So thank both of you.
4 KM: We're both dads, you know. We both have sons.
5 KP: Kody, (inaudible). I'm disappointed, but I love you, you know?
6 I just don't even know what to say. I'm sorry, you know? You
7 got the bad Patten gene, man.
8
9 JB: I'm going to turn the recorder off.
10 (Recording ended.)
11 (New recording began.)
12 KM: Okay.
13 KP: When does this go to the news? I mean, when?
14 JB: That's not up to us.
15 KM: That's not really up to us. We're going to have to --
16
17 KP: Well, when?
18 KM: Well, I mean, he won't be booked into custody till tomorrow, at
19 this point, which is Monday morning. The press doesn't get the
20 booking sheets until the next morning, so, you know. But I
21 have no control over, you know, if they issue a separate press
22 release from the bosses, but the normal booking procedures
23 don't happen until the next day.
24
25 KP: So does anybody else, like, does the local PD have the right to
26 do their release? I guess what I'm saying is --
27
28 KM: Well, I --
29
30 KP: -- I don't want my family to hear about it on the news.

1 KM: I understand, I understand. The, you know, the worst case
2 scenario is the press would get it in the morning. Not
3 tonight. They'd get it in the morning, you know.

4 KP: Like after 6:00 or something?

5 KM: Yeah, it wouldn't be till after the typical morning.

6 KP: Okay. He's going to sign this and I think he's going to spend
7 some time with his girlfriend for just a little bit.

8 KM: Okay.

9 KP: And the rest of the time will be with us. And I'm going to try
10 to contact as much of my family as I can and maybe try to have
11 them come out or something.

12 KM: Okay.

13 KP: Can they come in and say hi?

14 KM: Boy, we're really pushing it. I mean, really, allowing you
15 guys to stay with him. I mean, I'm not opposed to it, but
16 we're, we start getting a ton of people in here --

17 KP: It wouldn't be a ton. I'm talking about probably three people.

18 KM: I'll have to run that by the chief. But, I mean, I can ask
19 him.

20 KP: Okay. Please.

21 KM: I don't have a problem asking.

22 KP: That's a good start, okay? You're doing the right thing right
23 now.

24 KM: Do you want to sit in here or do you want to go talk to your
25 wife?
26
27
28

1 KP: I want to (inaudible). Kody, do you want to (inaudible)?
2 KM: We'll finish up and then she can come in. At this point, I
3 don't think it will take very long.
4 KP: Yeah, please. I mean, you understand.
5 KM: I do. I do. We're trying to do the best we can.
6 KP: Thanks. Help him out, all right?
7 KM: I'm trying.
8 KP: Well --
9 KM: Oh.
10 KP: Just do it.
11 KM: All right, Kody. We've been talking a long time. I know you
12 told your dad a lot of what happened. Tell us what happened.
13 It's the question we've been asking. Tell us what happened.
14 KCP: (Inaudible) we were driving up there. She started bringing up
15 about how we should get together and all this stuff. And I
16 said, I'm not going to leave Toni, and she started getting
17 upset, and I started getting upset, too. And she said
18 something that (inaudible) and I just kind of yelled at her. I
19 said, it's not going to happen, stop asking. And then she,
20 like, she said, stop the car. And we got out and I said, what
21 the hell are you doing? I was, like, at least let me take you
22 back to town. And she goes, no, and started yelling at me.
23 And said that it's because I'm not leaving Toni, she started,
24 like, pounding on my chest and stuff. And I was just kind of
25 pushing her away at first and then she kind of hit me. She
26
27
28

1 kind of, like, clipped me on the head and it kind of, I guess,
2 it kind of hurt. I just really -- a good shove and she fell
3 back and hit the back bumper of the car and she didn't move.
4 She didn't move for a minute and I started saying Mickie, it's
5 not funny, get up. It's not funny. I'm sorry I pushed you,
6 it's not funny anymore. She started coming around, so I got
7 down by her side and helped out. I said, are you okay? And
8 she goes, where am I at? And I said, Mickie, come on,
9 seriously, it's not funny. And she goes, where am I at? And I
10 said, Mickie, we are at the same place we was when we were
11 fighting. I started getting more mad and she goes, she stood
12 up, and she goes, you were trying to hurt me, huh? And she
13 started yelling, and I was, like, you're fucking crazy. You
14 have no idea what you're talking about. I said, I'm not trying
15 to hurt you, all I did was push you. And she continues to
16 start, like, pounding on my chest and stuff. And I pushed her
17 away and finally I said, Micaela, enough, and I shoved her
18 pretty hard. She fell down and hit her head and she just laid
19 there and was looking at the sky and her eyes, like, started to
20 turn black and I didn't know what to do. I just sat there and
21 she started to, like, shake and seize. From the ambulance
22 experience at that point, I knew something was wrong. And I
23 looked at where she was at and there was this big rock she had
24 hit her head on, and I was looking at her and she wouldn't hold
25 still and I tried to hold her still. And I knew something

1 really bad was happening, so I tried to pick her up and put her
2 in the car. And she kept moving and moving and I tried to,
3 like, check her pulse and stuff and I couldn't get anything and
4 she was just flopping. So I had the shovel from prying on my
5 car and I kind of just hit her, tried to hit her on her head
6 right here somewhere, trying to just knock her out. And it
7 hit, like, right here and it tore her up pretty bad, and she
8 started making this fucking awful sound. So I took the little
9 dagger thingy and pushed it right here and the end of it hit
10 her chin and split it open. And she started gurgling more and
11 making this sound, and she wouldn't stop, so I pushed it right
12 here and then she stopped. I didn't know what to do. I was
13 going to call my dad but I knew he would freak out. So I tried
14 to take her clothes off to put her in the little grave thing I
15 dug by the big bush, because I figured her body would decompose
16 faster without clothes. So I covered her up and I took the
17 clothes over in the gravel pit area and I burned them. And I
18 couldn't get the pants undone and I didn't want to disrespect
19 her, so I put her sweater over her and I panicked and I just
20 covered it up really quick and put bushes over it and left.
21 And I went over and I sat there for, like, two hours before I
22 went and got Toni and fucking cried my brains out. I wanted to
23 tell someone because I was so scared. So I just calmed down
24 and cleaned myself up and wiped the shovel off in the dirt. I
25 went and got Toni, and she asked what was wrong and I said,

1 nothing. We went and got food. Then we went to my cousin
2 Jeffrey's.

3 KM: Now, you said you cut her on the neck?

4 KCP: Yes, sir.

5 KM: And that was with the shovel?

6 KCP: Yeah, the thing that looks like that.

7 KM: The blade part?

8 KCP: I tried to go like that and it didn't work and that's when I
9 pulled, it's like a --

10 JB: It's an e-tool? An entrenching tool? A military shovel?

11 KCP: Yeah.

12 JB: And when you fold it in half it's got, like, a pokey spike on
13 the opposite end of the blade, the shovel blade?

14 KCP: Yeah. And I just went like that and that's when it, like, made
15 this pop sound and that's when she really made a really
16 horrible sound that I can't fucking get out of my head.
17 (Inaudible) sounds the exact same.

18 KM: Hm.

19 KCP: I think I'm going to be sick.

20 KM: How did the zip tie get on her arm? What happened there?

21 KCP: I was just going to zip tie her up and try to put her in the
22 car and take her out to the dump and just dump her out there,
23 but -- thank you, sir. But I couldn't do it. I couldn't bring
24 myself to do it. And just put it on and then I just sat there.

25 KM: Uh-huh.

1 KCP: And I went like that on her. I sat there and I screamed.
2 KM: Uh-huh.
3 KCP: I was so angry and so sad. I didn't know what to do. I just
4 sat there and I was, like, going like this on her. And I said,
5 why didn't you just listen to me?
6 KM: Um, you said you tried to take her clothes off. Um, but her
7 sweatshirt was still on her. And I noticed the sleeves, like
8 the little bands, were still on her wrists. How did you try to
9 get her clothes off? Did you try to cut them off?
10 KCP: With the end of the shovel.
11 KM: You --
12 KCP: It's got a serrated edge on it.
13 KM: Okay.
14 KCP: And I tried to cut it with that and it kept getting caught, so
15 I just cut it, pulled it. She was sitting on her arms and I
16 was just trying to pull, and when it tore one of them I just
17 panicked and I just started going like that trying to cut it.
18 JB: (Inaudible) burn?
19 KCP: Huh?
20 JB: You said you started a fire and --
21 KCP: I just burned her shirt.
22 JB: Anything else?
23 KCP: Her shirts and her, um, her sports bra thing.
24 JB: Uh-huh.
25 KCP: And that was it.

1 JB: And where was that?

2 KCP: It was at the gravel pit a ways away, like over --

3 KM: Which direction? Back towards town or...

4 KCP: Yeah. It's out back on the road out past the can. There was a
5 metal, I want to say barrel, but, like, a metal thingy, like,
6 sitting there and I just put it on there.
7

8 KM: Okay.

9 JB: Where was she when she hit her head on the bumper? Where were
10 you parked?

11 KCP: I had turned around because when she got out I turned like that
12 and into this, like, little rock/pebble thingy. It looked like
13 quarry-type stuff. And I turned right there and when she hit
14 her head she was just a little out from that. She was probably
15 standing like this from the car and then the car was this way
16 and she was standing, like, right here.
17

18 JB: You remember that big tank you mentioned earlier?

19 KCP: Yeah.

20 JB: Where were you parked from there?

21 KCP: Where do you mean?

22 KM: I guess what he's, and correct me if I'm wrong, after she got
23 cut, did you move her or did you just --

24 KCP: Yeah.

25 KM: -- did everything happen right where, right in the same area
26 where we found her?
27
28

1 KCP: Yeah. I just moved, like, kind of picked her up and put her
2 into the hole.

3 JB: So how far from where she was last, how far did you have to
4 move her to the hole? A couple feet?

5 KCP: Ten feet.

6 JB: Okay.

7 KCP: Ten, twelve feet. I mean, I really, I'm trying to remember. I
8 really --

9 JB: So what happened to the blood that would have been on the
10 ground ten feet from the hole? Was she bleeding a lot?

11 KCP: Not really, no. I did the thingy like that when she was in the
12 hole.

13 JB: Okay. All right. I misunderstood.

14 KM: Well.

15 KCP: Anything, just, whatever, ask. I mean, anything. I'll clear
16 it up.

17 KM: Well, we're just, yeah. Did you, um -- were her shoes untied
18 before or did you try and untie them? Did you untie them?

19 KCP: I believe I was trying to cut them and they came unloosed.

20 KM: Okay.

21 KCP: And I saw a train coming and I just left it on her.

22 KM: Uh-huh.

23 KCP: When the train come is when I panicked.

24 KM: Uh-huh.

1 KCP: Because I figured they would have called it in, a car just
2 randomly sitting there. I just panicked and just left
3 everything. And I think I put a -- the thing I wiped my hands
4 with. It's like a -- fuck. It's like a little towel. It's in
5 there.

6 KM: A washcloth?

7 KCP: Yeah. It's, like, a little bigger than that, I think.

8 KM: Oh. Where did you put that?

9 KCP: Under.

10 KM: Under her?

11 KCP: Because when I picked her up and sat her in there and I wiped
12 it off and then went like that under there.

13 KM: Okay. All right. When you -- so you put the dirt over the top
14 of her?

15 KCP: Correct.

16 KM: And anything else go over her?

17 KCP: I put, like, tumble weeds to cover that. That was it.

18 KM: Okay. Did you try and mark it in any way?

19 KCP: No, sir. I just wanted to forget.

20 KM: Uh-huh. Okay. Now, those aren't the shoes you wore out there,
21 are they?

22 KCP: No.

23 KM: Where are those?

24 KCP: In Toni's parents' house, but they're in the other room on the
25 shelf.

1 KM: Okay. What kind are those?
2 KCP: I want to say Starters.
3 KM: Okay.
4 KCP: They have, like, a circle pattern on the bottom.
5 KM: Okay.
6 KCP: With, like, little cut edge.
7 KM: What room are they in?
8 KCP: You walk in the front door and you hang a left past the birds
9 and it's the first left and they're in the back corner, on the
10 shelf.
11 KM: Okay.
12 KCP: I can -- can I ask that Toni grabs them so her parents -- I can
13 tell her exactly where they're at. I told you where the
14 shovel's at.
15 KM: You did.
16 KCP: Just pull the siding and it's right past the insulation.
17 KM: Okay. All right.
18 KCP: And I panicked and put bleach on the bottom of my shoes and
19 tried altering my tread and on the shovel, too. So, I mean, I
20 don't know if that helps or not.
21 KM: Did you get blood on your clothes?
22 KCP: No, sir.
23 KM: You didn't get any blood on your clothes?
24 KCP: Just on my wrists and stuff right here and that's it. Because
25 I didn't have my sweater on.
26
27
28

1 KM: Okay. Do you have anything else, Jim?
2 JB: (No audible response).
3 KM: I don't think I have anything else.
4 KCP: Can I just say on record that I'm sorry?
5 KM: Yeah. I mean, I -- you can say whatever you want. I mean,
6 this is your time. I mean...
7
8 KCP: I just want to say that I'm sorry and I hate being me and being
9 in the wrong place at the wrong time. And that it had to
10 happen to someone that didn't deserve it.
11 KM: Anything else you want to say right off hand?
12 KCP: Just that I'm sorry.
13 KM: Okay. All right. I think that's all we have.
14 JB: Okay. I'll turn the recording off in a second. Do you want to
15 visit with your family now? How do you want to do this?
16
17 KM: You want to see Toni first, right?
18 KCP: Yes, please.
19 JB: Okay. All right. We'll send her in.

20 (Recording ended.)
21

22 STATE OF NEVADA,)

23) ss.

24 COUNTY OF ELKO.)

25
26 I, Roxanne M. Hofheins, do hereby certify:

27 That I transcribed from audio the proceedings had in the
28 above-entitled matter;

1 That the appearances on the cover page are from this transcriber's
2 understanding of who was present during the proceeding;

3 That speaker identification was identified to the best of my ability
4 through voice recognition;

5 That the foregoing transcript, consisting of pages 1 through 25, is
6 a full, true and correct transcription of said proceeding to the
7 best of my ability.
8

9 Dated at Elko, Nevada, this 30th day of March, 2011.

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11 Roxanne M. Hofheins
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1 Case No.: State Versus Kody Cree Patten
2 Attorney Jeff Kump's Office
3 Audio interview of: Toni Fratto
4 April 22, 2011

5 IDENTITY OF SPEAKERS:

6 UKS: Unknown Speaker

7 JO: John Ohlson, Attorney

8 JK: Jeff Kump, Attorney

9 TF: Toni Fratto, Interviewee

10 UKS: Just making sure this is working for you.

11 JO: Tell me when we're on.

12 JK: John, we're on.

13 JO: Okay. For the recording, this is John Ohlson by telephone. We're in Jeff
14 Kump's office where this recording is being made. It's Jeff Kump and Toni.
15 Your last name again is?

16 TF: Fratto.

17 JO: Okay. Today is the 21st day of April -- 22nd day of April, 2011. It's
18 approximately 12:56 p.m., and we are speaking privately with Toni's consent;
19 is that right, Toni?

20 TF: Yes.

21 JO: Okay. Jeff, can you hear me clearly?

22 JK: I can, John.

23 JO: So because of that you assume that the recorder is picking up my voice?

24 JK: Yes.

25 JO: Okay. Toni, you talked to us previously; is that right?

26 TF: Yes.

27 JO: And when you previously talked to us, you did not tell us that you were present
28 at the killing.

1 TF: That's correct.

2 JO: Okay. You also talked to the police previously?

3 TF: Yes.

4 JO: And you did not tell them that you were present at the killing; is that right?

5 TF: No.

6 JO: No, you did not tell them?

7 TF: Correct.

8 JO: Am I to believe that that's not true, that you were actually present when the girl
9 got killed?

10 TF: Yes.

11 JO: Will you tell us what happened that day -- did you go to school that day?

12 TF: Can I ask a question real quick?

13 JO: Sure.

14 TF: Um, will you guys be able to represent me?

15 JO: You know, I don't know what you're going to say. And depending on what
16 you're going to say, we may or may not be able to if your interests¹ conflict
17 with Kody's. If we are not able to represent you, we will get counsel for you.

18 TF: Okay.

19 JO: Okay?

20 TF: Then would I need to get my own attorney first?

21 JO: We'll get a lawyer for you. But you don't need to. Right now it's just a
22 conversation between us and a statement that you're making to us. We're not
23 the law enforcement.
24
25
26

27
28 ¹ This word may be "records". State's counsel has been unable to discern with certainty
what this word is from its review of the recording. The transcriber reported it as "records".
(Added by State's Counsel)

1 TF: Okay.

2 JO: Okay?

3 TF: Okay.

4 JO: So are you willing to proceed, Toni?

5 TF: I think so, yeah.

6 JO: Okay. If you have any questions about what's happening or what's going on,
7 stop and ask me, all right?

8 TF: Okay. Are your best interest to help me and Kody, or...

9 JO: We're Kody's lawyers and we're hired and we're retained by the State to
10 represent him and his interests. It is not our intention to do anything bad to
11 you.

12 TF: Okay.

13 JO: And it's our intention to find out the truth of this matter. And if during -- I think
14 that, what I have in mind, is that once we conclude today to get you set up
15 with a lawyer.

16 TF: Okay.

17 JO: And I think that would be -- I think that would make you feel real comfortable.

18 TF: Okay.

19 JO: Okay?

20 TF: Okay.

21 JO: So the day of this killing, Jeff, again was what day?

22 JK: Um, John (inaudible).

23 JO: Maybe Toni can remember it?

24 TF: Um, I want to say it was the 3rd of March or April.

25 JO: Probably March, huh? Was it a school day?

1 TF: Yes.
2 JK: March 3rd.
3 JO: Okay. March 3rd was a school day?
4 TF: Yes.
5 JO: And that would have been...
6 TF: A Thursday.
7 JO: Yeah, Thursday. Did you go to school that day?
8 TF: I did.
9 JO: Okay. And what time did you get out of school?
10 TF: 3:30.
11 JO: Tell me what happened in your day after you got out of school.
12 TF: I went home until my mom picked me up about 5:20 to go to her meeting.
13 JO: Okay. Were you at home by yourself until your mom picked you up?
14 TF: Yes.
15 JO: Okay. What happened?
16 TF: Just kind of sat there and watched TV. Did a couple of my chores. And that
17 was about all.
18 JO: Okay. And what time did your mom pick you up?
19 TF: About 5:20 or so. I...
20 JO: Okay. And where did you guys go?
21 TF: We went to go pick up my dad, take him to his meeting, we ran to my sister's
22 to drop off a cell phone, and then we went to my mom's meeting.
23 JO: Okay. And where was your mom's meeting?
24 TF: At the golf course.
25 JO: All right. And what was the meeting about?

1 TF: Um, just catching up on the recreational stuff because she's on the rec board.
2 JO: The rec board for what?
3 TF: For, um, like, the park, and, um, baseball fields and the pool.
4 JO: Okay. And that's at Wells?
5 TF: In West Wendover.
6 JO: West Wendover, okay. So how long were you at the meeting?
7 TF: Um, maybe an hour or so. I...
8 JO: Okay. What happened, what caused you to leave?
9 TF: Um, had gotten a text saying that he had her and, um, he wanted to talk but
10 he wanted me with her.
11 JO: Okay. You got a text from who?
12 TF: From Kody.
13 JO: You get a text from Kody?
14 TF: Yes.
15 JO: Okay. And, again, the text said what?
16 TF: That he had her and that he would like me to come with.
17 JO: Okay. When he said that he had her, who did he have?
18 TF: Micaela.
19 JO: And had you talked about that earlier?
20 TF: No.
21 JO: What did you think he meant by he had her?
22 TF: Well, because I knew that they wanted to talk but I didn't know for sure when
23 or about what exactly. And so I was just kind of...
24 JO: What did you think he might have wanted to talk to Micaela about?

1 TF: Um, she wanted to get back together with him and everything, but he didn't
2 seem like he had an interest in her and he didn't want that.

3 JO: Okay. And he wanted you to come along?

4 TF: Yes.

5 JO: Okay. So what happened after you got the text?

6 TF: Um, I told him where I was and said go ahead and come get me and I would
7 go with them.
8

9 JO: Okay. Um, was this from his own cell phone to your own cell phone?

10 TF: Yes.

11 JO: One that Kody had to one that you had?

12 TF: Yes.

13 JO: Not somebody else's phone?

14 TF: Correct.

15 JO: Do you still have that cell phone?

16 TF: I do.

17 JO: Do you know what happened to Kody's cell phone?

18 TF: I'm not sure. I'm pretty sure that the police took it, but I'm not...

19 JO: Okay. All right. So what happened after you text back?

20 TF: Um, he came and got me and we went straight out to the gravel pit where she
21 died.
22

23 JO: Okay. When he came and got you, who was in the car?

24 TF: Him and Micaela.

25 JO: And what car was it?

26 TF: The white car. I don't know the model of it.

27 JO: Okay. It wasn't Kody's car?
28

1 TF: No.
2 JO: Is that right?
3 TF: Yes.
4 JO: I'm sorry, I couldn't hear you.
5 TF: Yes, that's correct.
6 JO: It was not Kody's car?
7 TF: Yeah.
8 JO: Okay. Where was Micaela sitting?
9 TF: Um, in the back.
10 JO: And where did you sit?
11 TF: In the front seat.
12 JO: Okay. After you got in the car, what happened?
13 TF: After I got out of the car?
14 JO: In the car.
15 TF: In the car? Um, nothing really was said yet. We decided to go drive around.
16 And, um, I can't remember who started the conversation, but a conversation
17 was started. And then Micaela had said she didn't want anyone to see us
18 talking, so we decided to go out towards the gravel pit.
19 JO: Did she say why she didn't want anyone to see you guys talking?
20 TF: No, she didn't say why.
21 JO: Okay. So whose idea was it to go to the gravel pit?
22 TF: Um, we kind of just started driving around. And, um -- trying to think. It was
23 kind of a group effort because we kept talking about where do you want to go
24 or whatever. And so it was just kind of, we just started kind of heading out that
25 way to get out of town.
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1 JO: Okay. What was the emotion at that time? Was there anybody mad at
2 anybody? Were people friendly? What was the emotion?

3 TF: Um, it was kind of tense. Because she was kind of getting upset. She was a
4 little bit upset, but we were just trying to talk to her and everything, let her
5 know that we didn't want to cause any problems or have any problems. We
6 wanted to work everything out.
7

8 JO: Okay. And what was it that you had to work out?

9 TF: Just letting her know, well, having Kody let her know he didn't want anything to
10 do with her, like with a relationship.

11 JO: Okay. So what happened after that?

12 TF: Um, we kind of just went out to the desert driving around out by the gravel pit.
13 And, um, she got really upset and told us to let her out, and to stop and let her
14 out.
15

16 JO: Okay. What did she get upset about?

17 TF: She just kept saying, well, I'm tired of your BS and everything. And so we
18 didn't want to get -- we didn't want her to be more upset. So we did as she
19 asked, stopped the car, and she got out. And, um, Kody had got out to talk to
20 her for just a second. And, um, I kind of saw her yelling at him and everything,
21 and, like, pushing him and everything. And then, um, I looked away for just,
22 like, a split second and then heard, like, a loud thud on the car or whatever.
23 So I got out to see what happened.

24 JO: Okay. What (inaudible)?

25 TF: What was that?

26 JO: What did you see when you got out?

27 TF: Um, Micaela was on the ground.
28

1 JO: Okay. Go on.

2 TF: And then, um, I had asked Kody what happened. And he just said that she
3 just kept pushing me and everything so I kind of pushed her off to get her off
4 of me. And, um, she lost her balance or tripped on the -- I can't remember
5 exactly, and had hit her face on the car.

6 JO: Okay. Did you look at her?

7 TF: A little bit.

8 JO: What did you see?

9 TF: What was that?

10 JO: What did you see?

11 JK: What did you see?

12 TF: What did I see? Um, just that she was on the ground and she wasn't really
13 moving at that point.

14 JO: Okay. Could you tell if she was breathing?

15 TF: I couldn't really tell at that point. I was just kind of freaking out. And
16 everything from there on out was kind of a blur with me.

17 JO: What do you remember from there on out?

18 TF: I remember, um, her not moving or anything. And then we went to pick her up
19 and everything to see if she was okay or if she was bleeding or whatever.
20 Um, she wasn't really giving us any signs of that she was okay or anything, so,
21 you know, we were freaking out. We didn't know what to do. And he had
22 gotten out the shovel and started digging a hole. And, um, and I was keeping
23 an eye on her just to see what was going -- to see if she was going to move or
24 get up or whatever, and she really wasn't. And then, um, just kind of went
25 downhill from there. We --
26
27
28

1 JO: Okay. You say it went downhill from there, what happened?

2 TF: We became really freaked out. Didn't really know what was going on or
3 anything. To be honest, I wasn't really thinking. Um, and so we basically
4 started kicking her and punching her and...

5 JO: Okay. Who was doing the kicking and punching?

6 TF: It was both of us.

7 JO: Where were you kicking and punching her?

8 TF: Um...

9 JO: Where on her body?

10 TF: Kind of on her, like, rib area, and, like, the side of her face.

11 JO: Okay. Did anybody hit her with a rock or anything? Any kind of instrument?

12 TF: I don't recall. I don't remember.

13 JO: Okay. When you were hitting and punching her was she lying face up or face
14 down?

15 TF: She was kind of laying down, kind of trying to -- at that point, when she was
16 trying to, like, get up, not get up, but kind of sit up and everything, she
17 wasn't -- it wasn't like she was really coherent of what was going on.

18 JO: She was trying to sit up?

19 TF: At that point she kind of was.

20 JO: Okay. Then what happened?

21 TF: And then, um, I remember taking, I remember us taking the shovel and hitting
22 her.

23 JO: Okay. Where did you hit her on her body with the shovel?

24 TF: Um, it was kind of in the back area. Like, on the...

25 JK: Behind her shoulder, John.

1 JO: Okay. Did you hit her with the flat part of the shovel or the edge part of the
2 shovel?
3 TF: I believe the flat part.
4 JO: Then what happened?
5 TF: Um, and then she kind of --
6 JO: (Inaudible).
7 TF: What was that?
8 JO: Are you talking about Kody now?
9 TF: Talking about Micaela.
10 JO: She.
11 TF: She was -- at that point she was just kind of just laying there. She wasn't
12 moving. And so we had moved her into the grave. And then, um, we were
13 kind of standing there deciding what do we do. What -- we were just
14 confused. We didn't know what really we had just done.
15 JO: Okay.
16 TF: And then, um, I remember, like, putting down her legs and, um, we had slit her
17 throat.
18 JO: He had what?
19 TF: We had, like, cut her throat.
20 JO: Who cut her throat?
21 TF: It was both of us.
22 JO: How did you do that?
23 TF: Um, with a knife.
24 JO: With a knife?
25 TF: Yes.

1 JO: Whose knife?

2 TF: It was a knife that Kody always, um, held on to. It was always with him, no
3 matter what.

4 JO: Okay. Who used the knife?

5 TF: At first it was him.

6 JO: And then was it you?

7 TF: Yes.

8 JO: Why did you take over with the knife?

9 TF: I wasn't thinking.

10 JO: Why did Kody give you the knife?

11 TF: Well, I was going to -- trying to think. I had taken it from him to go -- just to
12 take it from him and everything.

13 JO: Okay.

14 TF: And then, um, I'm trying to remember. But I can't remember everything.

15 JO: Okay. Just do the best you can.

16 TF: After that it was all a blur. I can't...

17 JO: Did anybody cut her throat with the shovel or was it just the knife?

18 TF: I remember the shovel sitting there but I can't remember.

19 JO: So then what happened?

20 TF: After that she wasn't really breathing or anything. So we kind of just stood
21 there crying because we didn't know what we had just done. We were
22 freaking out. We didn't know -- we weren't in the right mind to know what to
23 do with anything.

24 JO: Were you mad at Micaela?

1 TF: I wasn't, I wasn't mad. I guess I was kind of frustrated, but I wasn't mad at
2 her.
3 JO: Okay. Then what happened?
4 TF: And then I -- all I remember it was kind of dark by that point.
5 JO: Uh-huh.
6 TF: And then we had basically buried her and we left.
7 JO: Where did you go when you left?
8 TF: We, um, drove up to the other gravel pit on the other side of town.
9 JO: Okay. And what did you do there?
10 TF: We burnt everything.
11 JO: What do you mean everything?
12 TF: Um, there was, I think there was a bag of things that we had burned. I
13 couldn't tell you exactly what was in there. Um, that's kind of all I remember.
14 We burned a couple bags and then we, um, after that went to McDonald's to
15 get drinks.
16 JO: Okay. And then after did you get drinks from McDonald's?
17 TF: We did.
18 JO: And then what did you do?
19 TF: After that we kind of drove around for a little while. We were freaking out. He
20 was asking, you know, what did we just do? What do we do? And we were
21 just freaking out. We didn't know what we had just done.
22 JO: Okay. What happened to the knife?
23 TF: Um, I want to say that it was in the fire, but I can't recall exactly.
24 JO: Did either you or Kody have the knife after you left McDonald's?
25 TF: No.

1 JO: What happened to the shovel?

2 TF: Um, it was put, I believe, back in the back of the white car.

3 JO: Okay. And what did you do after you were driving around and freaking out?

4 TF: Um, we had taken the car back to his cousin's house to drop that off.

5 JO: Okay. And who did you give the keys to?

6 TF: We gave them to Wendi.

7 JO: Who?

8 TF: Wendi.

9 JO: Wendi?

10 TF: Wendi.

11 JO: Okay. Wendi's last name is what?

12 TF: Murphy.

13 JO: Now, did Wendi Murphy see you there?

14 TF: Yes. Because we had went in to say hi to his cousin and then he had given
15 the keys to her. And then we asked if we could get a ride back home. But she
16 wanted to wait to take us home so that she could take, um, Jeff's wife to work
17 at the same time as she dropped us off so she wasn't going back and forth
18 through town.

19 JO: How many different people saw you back there when you took the car back to
20 Wendi?

21 TF: (Inaudible). I think there were four at the house.

22 JO: Uh-huh.

23 TF: And then a few minutes later, um, Officer Pietro had come over to check the
24 place out.

25 JO: Why was he checking the place out; do you know?

1 TF: We had saw her drive by the apartments, so we had stepped out to just talk to
2 her to see if, you know, anything...

3 JO: Okay. So officer, is it -- Jeff, get these names down of these people?

4 JK: Yes, Officer Pietro.

5 JO: Officer Pietro. And then the three other people are who? Wendi Murphy.

6 TF: Wendi Murphy, Jeffrey Patten, and Candace. I'm not sure of her last name.

7 JO: Okay. All right. So then what happened?

8 TF: Um, we waited till she was ready for work. We took her to work, we took
9 Candace to work, and then Wendi took us home.

10 JO: Okay. Did anything more happen that night?

11 TF: No. We couldn't sleep at all. But after that night we didn't, we didn't talk about
12 it.

13 JO: Who else have you told this to?

14 TF: No one.

15 JO: Not Kody's parents?

16 TF: No.

17 JO: Not your parents?

18 TF: No.

19 JO: Not any other human being in the world?

20 TF: No.

21 JO: When was the last time that you talked with Kody privately?

22 TF: Um, like at the jail or just before everything?

23 JO: The very last time you talked to him privately.

24 TF: Um, I think it was Wednesday when I went to visit him.

25 JO: Okay. That was at the jail?

1 TF: Yes.

2 JO: Jeff, are those conversations recorded or not? Are they monitored?

3 JK: I think they're monitored, John. Actually, I've never, ever heard a recording but,
4 you know, you're always told that they can be.

5 JO: Okay. People might say that Kody asked you to say this. What would you say
6 about that?
7

8 TF: No.

9 JO: Was there ever a conversation with Kody asking you to say this?

10 TF: What was that?

11 JO: Did you and Kody ever have a conversation when Kody asked you to say this?

12 TF: No.

13 JO: It's not something that you and he made up to help him?

14 TF: No.

15 JO: And that's the truth?
16

17 TF: Yes.

18 JO: Is everything you told us absolutely true?

19 TF: It is.

20 JO: Okay. Um, Jeff, what questions do you have?

21 JK: Her top was off. Do you remember how her top, how did the top get taken off?
22 When did that happen?

23 TF: Um, I remember getting -- I think it was cut off with the knife. Um, I want to
24 say it happened before, like, all the beating and everything.

25 JO: Before what, Toni?
26

27 TF: The beating. Like, kicking her and punching her. I'm trying to remember,
28 but...

1 JO: Do you know why it was taken off?
2 TF: I don't.
3 JO: Did you take it off or did Kody take it off?
4 TF: Kody did.
5 JO: Go ahead.
6 JK: Um, do you remember the shovel being used at all? I mean, you said the flat
7 part was used. But to cut her? Was that...
8
9 TF: I don't remember. It may have --
10 JO: What are you getting at, Jeff?
11 JK: I guess I'm wondering, you know --
12 JO: I can't hear you.
13 JK: My question was wether or not she remembered using the shovel to cut, um,
14 at all. Was that something that was --
15 JO: To cut Micaela's throat?
16 JK: To cut her throat, cut her clothes. That was something that, um, that Kody
17 had said that he had used that part of the shovel.
18
19 TF: I can't remember.
20 JK: You just remember using the knife?
21 TF: Yeah. I mean, when we hit her and everything, it may have, like, scratched
22 her with that part, but I can't remember.
23 JO: Okay. Do you still have the clothes that you were wearing when this
24 happened?
25
26 TF: I do.
27 JO: Are they at your house?
28

1 TF: They are. I was going to bring them but I completely spaced it and forgot
2 them.
3 JO: That's all right. Have they been washed?
4 TF: They have been.
5 JO: Okay. I don't want you to bring them to Jeff's office, okay?
6 TF: Okay.
7 JO: I think maybe that should be left up to the lawyer that represents you.
8 TF: Okay.
9 JO: What other questions do you have, Jeff?
10 JK: There seems to be a gap, um, from the time that, um, you said that she tried to
11 sit up and then the time that you guys used the knife.
12 TF: In between that time, that's when we were, like, beating her.
13 JK: So when she sat up you started beating her? Because I have that you were
14 kicking her and punching her --
15 TF: Uh-huh.
16 JK: -- and then she was trying to sit up.
17 TF: It might have been both times. I'm trying to remember but it's all a blur in my
18 head.
19 JK: What caused you to beat her?
20 TF: Um, honestly I can't answer that because I don't know. It was -- I guess it took
21 me the longest time to even do anything. But I don't know what I was thinking
22 when I did it.
23 JK: Did you hear that, John?
24 JO: Yeah, I did hear it. Can we stop for a moment, Jeff, and just take a quick
25 check of the recorder to make sure that we got this?
26
27
28

1 JK: Yes, I'll do it now. John, we're recording again now.

2 JO: Okay. What other questions do you have, Jeff?

3 JK: What led up to, what conversations led up to the three of you meeting that

4 day?

5 TF: Um, I never really was informed that they wanted to talk or anything until he

6 had texted me and said she wants to talk and I would like you to be there with

7 me. And so I didn't at that point really know about what or why or anything.

8 So I was, like, okay, come get me. And then when they started talking I

9 figured it out. I figured what this was all about.

10

11 JK: Had there been any issues in the past with Micaela and Kody?

12 TF: Um, not that I know of, no.

13 JO: What about with you and Micaela? Had you ever had any problems with her

14 before?

15 TF: No. You know, it always seemed like, she always seemed like she had

16 feelings for him and everything. But it never, I guess, showed until, like, that

17 day that, like, it just all came out. And in the past it didn't really -- there was

18 things here and there that would come up and, you know, she'd try and talk to

19 him and everything but he just didn't want --

20

21 JK: What came up in the past?

22 TF: Just like the same thing. Like, um, she wanted to date him and get to know

23 him and everything. But he didn't want to have anything to do with her.

24 JK: When did that happen?

25 TF: Just a long time ago. I would say maybe six --

26

27 JO: Did you ever have any angry encounters or any bad times with Micaela?

28 TF: No, not at all.

1 JO: You knew her, though; is that right?

2 TF: I knew her, but I --

3

4

(Recording ended.)

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CASE NO.: CR-FP-11-0300 **FILED**

DEPT. NUMBER: II 2011 AUG -8 P 3:33

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY _____

FILED

2011 APR 27 A 11:03

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY *al*

IN THE FOURTH JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

STATE OF NEVADA,

Plaintiff,

vs.

KODY CREE PATTEN,

Defendant(s).

FIRST CRIMINAL INFORMATION

Filed Upon A Conditional Waiver
By The Defendant Of His Preliminary
Examination For The Purposes Of
Investing The District Court With
The Jurisdiction To Order A
Competency Examination Of The
Defendant Upon A Motion Of The
Defendant Made In Justice Court

COMES NOW THE STATE OF NEVADA, the Plaintiff in the above-entitled cause, by and through its Counsel of Record, the Elko County District Attorney's Office, and would inform the above-entitled Court that the Defendant above-named, on or about the 3rd day of March, 2011, at or near the location of:

an area approximately five (5) miles west of the City of West Wendover;

within the County of Elko, and the State of Nevada, committed the following described criminal offense(s):

///

ORIGINAL

Affirmation Pursuant to NRS 239B.030
SSN Does Appear _____
SSN Does Not Appear Page -1- of 6 *al*

COUNT 1

OPEN MURDER, (INCLUDING FIRST DEGREE MURDER AND ALL LESSER INCLUDED OFFENSES) WITH THE USE OF A DEADLY WEAPON, A FELONY AS DEFINED BY NRS 193.165; NRS 200.010, NRS 200.020, AND NRS 200.030

The Defendant above did willfully and unlawfully, with malice aforethought, and with premeditation and deliberation kill and murder another human being, one Micaela Costanzo. Further that the Defendant employed a deadly weapon within the meaning of NRS 193.165 in the commission of said murder.

The Defendant committed said murder in the following manner:

The Defendant on or about the date alleged above, and at the place alleged above struck the said Micaela Costanzo on or about her head and/or neck one or more times with a shovel, or some similar instrument and/or object thereby killing the said Micaela Costanzo.

All of which is contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Nevada.

Dated this 26th day of April, 2011.


MARK TORVINEN
Elko County District Attorney
State Bar Number: 551

Witnesses' names and addresses known to the District Attorney at the time of filing the above Criminal Information, if known, are as follows.

KEVIN MCKINNEY, 775 W SILVER ST, ELKO, NV 89801
JIM CARPENTER, 775 W. SILVER STREET, ELKO, NV 89801
DELICIA COSTANZO, 3079 TIBBETS BLVD #3, WENDOVER, NV 89883
MICAELA R (DECEASED) COSTANZO, 969 OQUIRRH, WEST
WENDOVER, NV 89883
CELIA COSTANZO, 3079 TIBBETS #3, WEST WENDOVER, NV 89883
TYLER PETERSON, 32 CAROL ST, W WENDOVER, NV 89883

WENDI MURPHY, 1676 BUTTE ST APT A, WEST WENDOVER, NV
89883
MICK MOORE, 2066 BLUE GRASS CIR, WEST WENDOVER, NV 89883
JEROME REAMER, 1876 BUTTE ST #A, WEST WENDOVER, NV 89883
JORDAN MARTINEZ, STONECREEK APTS #7, WEST WENDOVER, NV
89883
JAMES BONICH, 2363 NORTH 5TH, PO BOX 1870, ELKO, NV 89803
RENEE THOMSON, WASHOE CRIME LAB, 911 PARR BLVD, RENO, NV
89512
VICTOR RUVALCABA, WASHOE CRIME LAB, 911 PARR BLVD, RENO,
NV 89512
CLAUDE FRATTO, 3268 SKY VIEW DR, WEST WENDOVER, NV 89883
TONI FRATTO, 3268 W SKYVIEW DRIVE, WEST WENDOVER, NV
89883
CASSANDRA COLLETTE FRATTO, 1383 WALL ST., PO BOX 2964,
WEST WENDOVER, NV 89883
JAVIER TRUJILLO, 1912 BUTTE ST, WEST WENDOVER, NV 89883
KRISTINA SWEAT, 580 POPLAR ST., WEST WENDOVER, NV 89883
MARIA DORADO, 1890 GOLD ST., WEST WENDOVER, NV 89883
ALYSSA GABRIEL LOBATO, 2351 TIBBETS BLVD, WENDOVER, NV
89883
TERRY CARSRUD, 3201 SKY VIEW DR., WEST WENDOVER, NV
89883
JOSHUA A MARTIN, 699 ZACHARY ST. 11, WEST WENDOVER, NV
89883
THEODORE H. MCADAMS, 1615 CALLISTO ST. 2, WEST WENDOVER,
NV 89833
TIFFANY RASMUSSEN, 1384 PINE ST., WEST WENDOVER, NV 89883
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JAYCE BLEVINS, 967 OPLE, WEST WENDOVER, NV 89883
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HIGH, WEST WENDOVER, NV 89883
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ASHLEY RODRIGUEZ, 2701 TIBBETTS ST, BX 2295, WEST
WENDOVER, NV 89883

T.K. HASLAM, 935 WENDOVER BLVD, WEST WENDOVER, NV 89883

MATTHEW NICOLAS ANZALONE, 670 OAK ST, POB 3546,
WENDOVER, NV 89883

Certificate Of Service

I KURRI DARBY, by my signature hereunder,
(Printed Name)

hereby certify that I am an employee of the Elko County District Attorney's Office,
and that on the 27th day of April, 20 11, I served a true, and
correct copy (or true and correct copies in the case of multiple addressees), of
the foregoing First Criminal Information, in the following manner:

That a true and correct copy was delivered to;

The Honorable Andrew J. Puccinelli
Department II
At The Court's Chambers
Elko County Court House
Elko, Nevada 89801

That thereafter a true and correct copy, or true and correct copies
thereof was/were either:

Pursuant to the provisions of NRS 178.589¹, a true and correct copy of this

¹ NRS 178.589 provides that:

1. Except when personal service of a person is ordered by the court or required by specific statute, a person who is represented by an attorney may be lawfully served with any motion, notice or other legal document by means of a facsimile machine if:

(a) The document is transmitted to the office of the attorney representing the person; and

(b) The facsimile machine is operational and is maintained by the attorney representing the person or the employer of that attorney.

2. In addition to any other document required by the court, a person who uses a facsimile machine pursuant to subsection 1 to serve any motion, notice or other legal document that is required to be filed with the court shall attach to or include with the original document filed with the court a copy of the confirmation report or other comparable evidence of the transmittal of the legal document.

3. Service of any motion, notice or other legal document by facsimile machine after 5 p.m. on the day that the document is transmitted shall be deemed

pleading was transmitted by facsimile to the Defendant's Counsel of Record at the following facsimile number:

1. Mr. John Ohlson via facsimile number: 775-323-2705; and
2. Mr. Jeffrey Kump via facsimile number: 738-0187;

proof of the transmission of which is attached to the original of this pleading filed with the Court.

Dated this 27th day of April, 2011.


Signature Of Person
Executing Certificate of Service

DA#F-11-83250

delivered on the next judicial day. The time of transmittal set forth in this subsection is determined according to the time at the location of the recipient of the legal document.

4. Service of any motion, notice or other legal document by facsimile machine as authorized by this section is supplemental to and does not affect the validity of any other manner of service authorized by law.

5. As used in this section:

(a) "Facsimile machine" means a device that sends or receives a reproduction or facsimile of a document or photograph which is transmitted electronically or telephonically by telecommunications lines.

(b) "Person" includes, without limitation, a government, governmental agency or political subdivision of a government.



JIM GIBBONS
Governor



ELIZABETH NEIGHBORS, Ph.D., ABPP
Director

For the Mentally Disordered Offender

500 GALLETT WAY • SPARKS, NEVADA 89431-5573 • (775) 688-1900 • FAX (775) 688-1909

June 2, 2011

The Honorable Andrew J. Puccinelli
Fourth Judicial District Court
571 Idaho Street
Elko, NV 89801

RE: Kody Cree Patten
Case No.: CR-FP-11-0300

Dear Judge Puccinelli:

This is a request to calendar a hearing date no later than 10 days from the date of receipt of this letter.

Pursuant to the order dated May 3, 2011, Mr. Kody Cree Patten was evaluated by Drs. Henson and Farmer. At this time they find Mr. Patten meets the criteria to be considered competent to proceed with adjudication. Enclosed you will find copies of the examiner's report.

If I can provide you with any further information please feel free to contact me.

Sincerely,

Elizabeth W. Neighbors
Elizabeth W. Neighbors, Ph.D., ABPP
Director

EWN:mds

cc: Mark Torvinen, Deputy District Attorney
John Olson & Jeffrey Kump, Defense Attorneys

Encl: Psychiatric Evaluation
Psychological Evaluation of Competency
Social History



JIM GIBBONS
Governor



ELIZABETH NEIGHBORS, Ph.D., ABPP
Director

For the Mentally Disordered Offender

500 GALLETTI WAY • SPARKS, NEVADA 89431-5573 • (775) 688-1900 • FAX (775) 688-1909

June 2, 2011

The Honorable Andrew J. Puccinelli
Fourth Judicial District Court
571 Idaho Street
Elko, NV 89801

RE: Kody Cree Patten
Case No.: CR-FP-11-0300

Pursuant to NRS 178.405

Dates of Service:	05/27/2011 & 05/24/2011
Person(s) Performing Evaluation(s):	Drs. Henson & Farmer
Reason for Evaluation:	Competency Evaluations
Amount Due:	\$700.00

Make Check Payable To:

Lake's Crossing Center
500 Galletti Way
Sparks, NV 89431

Elizabeth W. Neighbors, Ph.D.
Elizabeth W. Neighbors, Ph.D., ABPP
Director

EWN:mds

cc: Regional Business Office

Released to: JUDGE ANDREW PUCCINELLI
MARK TORVINEN, DDA
OLSON & KUMP, DEF. ATTYS.

PSYCHIATRIC EVALUATION

Name: Kody Patten #3774
Date of Birth: 12/31/1992
Date of Admission: 05/12/2011
Date of Report: 05/27/2011

IDENTIFICATION:

The client is an 18-year-old Caucasian man admitted to Lake's Crossing Center per order committing the defendant to Lake's Crossing Center for the conduct of a competency evaluation pursuant to the provisions of NRS 178.415 issued by the Fourth Judicial District Court, Elko County, Nevada, Department 2.

Accompanying documents including a copy of Pleadings occurring in the Justice Court, a copy of the Criminal Complaint specifying a count of Open Murder, Declaration of Probable Cause and additional elements of discovery.

HISTORY:

The client specifies that his arrest occurred on March 6, 2011, and that his charge was Open Murder with a Deadly Weapon. He specifies legal representation by John Olson of Reno, Nevada, and Jeff Kump of Elko, Nevada. He recalls attending a seventy-two hour hearing resulting in the referral for a competency evaluation as specified.

If convicted of the criminal charge the client understands that the possible sentence could include "twenty-five to life without parole or twenty-five to life with parole or nine years on death row".

The client is aware of the specific primary participants in adjudication and provides the following definitions:

Judge—"figures out the stories and the evidence and listens—tries to put the stories...decides what to do";

Jury—"twelve people who decide guilty or not guilty".

Defense attorney—"proves me innocent and gets me the least sentence";

Prosecuting attorney—"tries to get me the most time";

Evidence—"stuff like property".

Further, the client understands that the decision for trial by judge versus trial by jury is made by "me and my attorney".

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Additionally, the client is aware of the concept of a plea bargain which includes an offer and the necessity for the plea of Guilty for an expectation of a reduced sentence.

LEGAL HISTORY:

The client denies prior arrest.

PSYCHIATRIC HISTORY:

The client denies prior assessment, consultation or treatment.

HEALTH HISTORY:

"I'm tryin' to be in top shape...I had meningitis two or three times." The client specifically recalls hospitalization at Children's Hospital in Salt Lake City at approximately age 13.

Injuries include instances of multiple fractures to fingers of both hands occurring in separate incidents. In one event, his hand was crushed by an automobile door "slamming shut"; other instances of fracture on the left hand occurred with accidents such as skate board events. He also suffered injuries to his legs; he describes no history of fracture.

Surgical history: A "tumor/calcium deposit" was removed from his right ulna (date unspecified). Additionally, as a toddler/small child he received plastic surgery for repair of severe chin lacerations suffered in an accident in which his father was playing with him with a tricycle/toy vehicle.

SUBSTANCE ABUSE HISTORY:

The client denies use of illicit "street" drugs. He acknowledges rare alcohol use. He denies incidents of intoxication.

EDUCATIONAL/DEVELOPMENTAL HISTORY:

The client was born in Logan, Utah, where he lived with his family for approximately four years. Thereafter they moved to Wendover, Nevada, where he has resided for the past fourteen years. He has completed eleven plus years of high school, and was attending at the time of arrest. He acknowledges that his grades are "not the best", estimating "C" average. Classes of most interest are

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history and study of the Holocaust, as well as war and conflicts. He indicates "I'm not good at math."

He has participated in extracurricular recreational activities such as football, riding dirt bikes and building hot rods with his father.

VOCATIONAL HISTORY:

The client denies fulltime employment. He has worked "helping a friend with his shop", and has vocational skills with metal fabricating, "welding, plasma cutter".

SOCIAL HISTORY:

The client is unmarried and has no children. He was engaged. He indicates that his fiancé is a codefendant.

FAMILY HISTORY:

Father, age 43, is considered well.

Mother, age 37, is considered well.

The client has one sibling, a 19-year-old brother, who graduated high school and is employed.

MENTAL STATUS:

General appearance: The client presents as a taller-than-average, approximately 6 foot 5 inch, 200 pound Caucasian male appearing his approximate chronologic age. He wears a thin moustache. There is no gross indication of physical disability.

Speech is characterized with normal latency and duration of utterance with variable spontaneous comments. Enunciation is clear. Tempo is moderate.

Affect is cooperative, pleasant, and suggests candor.

Mood: "I have high hopes...I don't want everybody drug through it (adjudication)...I think the charges can be changed because I was just there."

Sleep: "Pretty good."

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Appetite: "Good."

Intellectual function: "The client is appropriately oriented to date, place, person, and situation. He is able to quickly and accurately calculate a simple algebra problem, story division problem and money change problem. He inaccurately estimates 37 nickels in \$ 1.35., however, accurately specifies twenty nickels in a dollar and four quarters in a dollar.

He accurately recalls three unrelated words immediately and following a ten-minute interval.

Comparing similarities:

Apple/Orange: "They're food and consumable."

Differentiating word pairs:

Poverty: "Physical state without money or food."

Misery: "An emotional state such as sad and stuff."

Character: "A trait a person has...personality."

Reputation: "Something a person has for what they do or what they've done."

Idleness: "Not doing anything."

Laziness: "There's stuff to be done—you don't want to do it so you avoid it."

Proverb interpretation:

Don't cry over spilt milk: "If you spill milk and it's not a big deal, there's more to come."

People who live in glass houses should not throw stones: "You shouldn't mess with...you could dish it out but not take it...if I lived in a glass house and threw stones, someone could throw them back and shatter it."

Still water runs deep: "If water's not flowing, it seeps through the cracks?"

That's the pot calling the kettle black: "I don't know."

Self-evaluation and insight: The client believes that he is able to aid and assist his attorney. He is hopeful for favorable resolution.

The client is further aware of the representation by two attorneys who have a favorable reputation.

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OLSON & KUMP, DEF. ATTYS.

SUMMARY AND FORMULATION BASED ON ASSESSMENT AND CLINICAL INTERVIEW:

The client is an 18-year-old man with criminal charge admitted for evaluation of competency for adjudication as referenced. He is able to specify the criminal charges, discuss succinctly the primary participants in the adjudication process, and is aware of his legal representation.

He provides a benign history of prior legal entanglement, substance abuse or psychiatric evaluation or treatment.

The client acknowledges a moderate achievement in educational experience, noting that he was interrupted in his senior year with the arrest and instant event.

Mental status review is characterized by no indications of compromise of cognitive function. Concreteness of abstract thought interpretation is considered representative of the level of formal educational achievement acquired.

DIAGNOSTIC IMPRESSION:

Axis I:	V71.09	No Diagnosis or Condition on Axis I
Axis II:	799.9	Diagnosis Deferred on Axis II
Axis III:		None acute
Axis IV:		Problem with Legal System: Crime/arrest/adjudication
Axis V:		GAF = 75

At this time this man is able to understand the nature of the criminal charges against him, and to understand the nature and purpose of the adjudication process. He is additionally able to aid and assist his counsel in a defense at any time during the proceedings with a reasonable degree of rational understanding.

H. Hale Hanson, M.D.
H. Hale Hanson, M.D.
Lake's Crossing Center

HHH:jy
5/27/11
5/31/11

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MARK TORVINEN, DDA
OLSON & KUMP, DEF. ATTYS.

PSYCHOLOGICAL EVALUATION OF COMPETENCY TO PROCEED WITH ADJUDICATION

Name: Patten, Kody Cree # 3774
Date of Birth: 12/31/1992
Date of Admission: 05/12/2011
Dates of Evaluation: 05/16/2011; 05/23/2011
Date of Report: 05/24/2011

IDENTIFICATION:

Kody Cree Patten is an 18-year-old Caucasian male admitted to Lake's Crossing Center for an evaluation of his competency to proceed with adjudication by the Fourth Judicial District Court of the State of Nevada, in and for the County of Elko, per NRS 178.415. He is charged with Open Murder, (Including First Degree Murder and All Lesser Included Offenses) with the Use of a Deadly Weapon, a Felony.

LIMITS OF CONFIDENTIALITY:

Mr. Patten was informed of the limits of confidentiality pertinent to this court-ordered evaluation of competency. He was informed that all information gathered in this facility could be used to support findings of competency provided to the court. He was further advised that the final reports would be provided to the court, the defense attorney's office, and the district attorney's office. He appeared to understand these limits of confidentiality and agreed to be interviewed.

ASSESSMENT PROCEDURES:

- Review of Court Order, dated 05/03/2011
- Review of Criminal Complaint, dated 03/08/2011
- Review of Declaration in Support of Criminal Complaint, dated 03/08/2011
- Review of Ex-Parte Application for an Order for a Formal Setting Hearing to Set the Preliminary Hearing, dated 03/08/2011
- Review of Demand for Formal Notification of Any Desire by the Defendant to Fix Bail in this Matter, dated 03/08/2011
- Review of Points, Authorities, and Written Argument in Support of the State's Demand, dated 03/08/2011
- Review of First Criminal Information, dated 04/26/2011

PATTEN, Kody Cree
Psychological Evaluation of Competency to
Proceed with Adjudication
Page 2 of 5

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MARK TORVINEN, DDA
OLSON & KUMP, DEF. ATTYS.

- Review of Elko County Jail Inmate Medical Screening Form, dated 03/07/2011
- Review of Declaration of Probable Cause, dated 03/07/2011
- Review of letter from Peter Ziemann, undated
- Review of letter from Mark Torvinen to Dr. Elizabeth Neighbors, dated 05/04/2011
- Review of Lake's Crossing Center's records
- Clinical interviews and Mental Status Examination
- Behavioral observations

BACKGROUND INFORMATION:

Background information was obtained from the client and his clinical chart, and has not been independently verified. Mr. Patten said that he was born in Logan, Utah, and moved to Wendover, Utah when he was a young child. He was raised by his biological parents who remain married to one another. He appeared to have enjoyed his childhood; he said that he worked with his father who was an airport supervisor and fire chief for seven years. He has one older brother. He indicated that prior to his arrest he was living with his fiancée and her family. He has never been married and has no children. His relationship with his father has apparently been somewhat contentious at times, and has included both verbal and physical altercations. He has been pleasantly surprised that his father has been very supportive of him during recent events.

This client was scheduled to graduate from high school on June 3, 2011. He planned to enter the Marine Corps hoping to be assigned to the infantry and to sniper school. He described himself as a "history buff" with interests in the holocaust and "big political monsters." Mr. Patten had no academic difficulties, but was suspended on numerous occasions for fighting. When asked about his employment history he stated that he had worked at a grocery store and a hardware store, in addition to the positions with his father cited above.

Mr. Patten said that he drinks one beer on rare occasions; he denied using any illicit drugs. He reported no current medical problems, although he said he had broken numerous bones due to racing dirt bikes. He denied any mental health history, and was unaware of any family members suffering from psychiatric disorders. He said that his recent arrest is his first, and denied any detentions as a juvenile.

PATTEN, Kody Cree
Psychological Evaluation of Competency to
Proceed with Adjudication
Page 3 of 5

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OLSON & KUM, DEF. ATTYS.

MENTAL STATUS EXAM AND BEHAVIORAL OBSERVATIONS:

Kody Cree Patten is a tall, slender Caucasian male whose appearance is consistent with his chronological age. He was appropriately dressed and groomed. Mr. Patten was alert and oriented during the evaluation interview. No deficits were noted in his immediate, recent, or remote memory, and he was easily able to concentrate and attend to the content being discussed. Based on his vocabulary, fund of general knowledge, and capacity for abstract thought, his intelligence level is estimated as being within the Average range of cognitive ability.

This client was cooperative with the evaluation, making good eye contact and responding to all questions and tasks presented to him. His rate, volume, and articulation of speech were all within normal limits, with no pressured speech, neologisms or other unusual verbalizations. Mr. Patten's thoughts were logical, coherent and goal-directed. He expressed his thoughts and ideas without difficulty. He described his mood as "kind of mellow," adding that sometimes he has "bad thoughts" which he described as thinking about the possibility that he and his fiancée may serve time in either jail or prison, and the fact that due to recent events he lost his "best friend." Throughout the interview, Mr. Patten's affect was calm and matter-of-fact even when discussing events that most people would find highly disturbing.

Mr. Patten neither endorsed nor exhibited hallucinations, paranoia, depressive symptoms or mania. In short, there was no evidence of any type of major mental illness. During his hospitalization at Lake's Crossing Center he has followed rules and restrictions, and has been cooperative with staff members. He socializes with select peers, and has displayed a bright affect. On one occasion he and a peer were observed taunting another client; when directed to cease he did so. He has participated in activities offered by staff members.

ABILITY TO COMPREHEND CHARGES AND UNDERSTAND LEGAL PROCESS:

This client's understanding of his charge and legal proceedings is considerably more thorough and sophisticated than is typically seen in criminal defendants. For example, when asked to name his charge he replied "Open Murder—Capital, First Degree, Second Degree, or Manslaughter—with a Deadly Weapon." He then cited the specific penalties he could receive if convicted of each of these



John C. Roberts
Governor



For the Mentally Disordered Offender

ONE GALLISTY WAY

SPRINGFIELD, MASSACHUSETTS 01101-0001

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ELIZABETH BRIDGEMAN, Ph.D., MSW
Director

FAX TRANSMISSION SHEET

DATE: 06/02/2011

NUMBER OF PAGES 16 (Including Cover Sheet)

DOCUMENTS SENT TO: Judge Andrew J. Puccinelli FAX # 775-753-3762
Mark Torvinen DDA FAX # 775-738-0160
Olson & Kump, Def. Attys. FAX # 775-738-0187
 _____ FAX# _____

DOCUMENTS SENT FROM: Marilyn Schaefer

PHONE NUMBER: (775) 688-1900 Ext. 230

SUBJECT OF DOCUMENTATION: Kody Cree Patten
Case #: CR-FP-11-0300

COMMENTS: _____

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PATTEN, Kody Cree
Psychological Evaluation of Competency to
Proceed with Adjudication
Page 4 of 5

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MARK TORVINEN, DPA
OLSON & KUMP, DEF. ATTYS.

charges. He provided a rational description of the events leading to his arrest, and he was aware of the pleas available to him. For example, he said that a person who pleads *Guilty* is telling the judge that they actually committed the crime of which they are accused, adding that if the *Guilty* plea was part of a plea bargain that they are only admitting to actions contained in the bargained charge. Mr. Patten reported that with a *Not Guilty* plea the person is not guilty of the crime. He added that "sometimes you go in and you plead *Not Guilty*. If you're guilty of part of it but not all, so they're going through [a process] to prove it." He provided accurate descriptions of the roles of courtroom participants, and was cognizant of the adversarial nature of the criminal justice system. Mr. Patten was familiar with the concept of probation, as well as the process of plea bargaining. In short, his understanding of his charge and knowledge of the criminal justice system is already sufficient to ensure fair adjudication proceedings. He is capable of learning any additional material that might prove helpful in the development of a reasonable defense strategy.

ABILITY TO ASSIST COUNSEL IN OWN DEFENSE:

Mr. Patten knows his attorneys' names, and said he has met both of them. He expressed confidence in their ability to help him resolve his legal difficulties. It appears that he has paid close attention to their analysis of and suggestions about his case, and he is willing to help them in any way he can. He has exhibited the ability to participate in reciprocal conversation across time and situation, and he has no difficulty sorting through problems in a logical and rational manner. He has expressed flexibility in considering various legal strategies. When asked what he could do to help his defense attorneys, he replied "tell the truth, give them the information they need, answer their questions to the best of my ability, and be cooperative." He is aware of appropriate courtroom decorum, which he described as "be respectful, listen to everything that's going on, and when the judge enters you're supposed to stand up." He anticipates no difficulty comporting his behavior to such standards.

SUMMARY AND RECOMMENDATIONS:

Kody Cree Patten is an 18-year-old Caucasian male admitted to Lake's Crossing Center for an evaluation of his competency to proceed with adjudication by the Fourth Judicial District Court of the State of Nevada, in and for the County of Elko, per NRS 178.415. He is charged with Open Murder, (Including First Degree Murder and All Lesser Included Offenses) with the Use of a Deadly Weapon, a Felony. He has been evaluated at this facility for almost two weeks.

101-2746

PATTEN, Kody Cree
Psychological Evaluation of Competency to
Proceed with Adjudication
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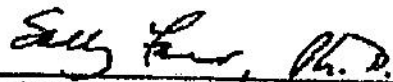
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OLSON & KUMP, DEE. ATTYS.

He has not exhibited symptoms of any mental disorder that could interfere with his competency to proceed with adjudication.

Mr. Patten knows what he has been charged with and that his alleged offense is a felony. He understands courtroom procedure and knows the roles played by the judge, the defense attorney, the district attorney, and jury. He understands that his offense could lead to some length of incarceration. He has been thinking about possible legal strategies, as well as the pleas available to him. He said he feels that he can work productively with his attorneys.

It is this evaluator's professional opinion that Kody Cree Patten has demonstrated the ability to understand the nature of the criminal charge against him, to understand the nature and purpose of the court proceedings, and to aid and assist his counsel in his defense at any time during the proceedings with a reasonable degree of rational understanding. It is recommended that he proceed with the standard adjudication process.



Sally Farmer, Ph.D.
Nevada Licensed Psychologist
Lake's Crossing Center

Released to JUDGE ANDREW PUCCINELLI
MARK TORVINEN, DDA
OLSON & KUMP, DEF. ATTYs.

SOCIAL HISTORY

Client Name: Kody Patten
Case #: 3774
Date of Birth: 12/31/1992
Date of Admission: 05/12/2011
Date of Report: 05/24/2011

IDENTIFICATION:

Kody Patten is an 18-year-old, never married, Caucasian male who was admitted to Lake's Crossing Center on the above date. He is charged with Open Murder, (Including First Degree Murder And All Lesser Included Offenses) With The Use Of A Deadly Weapon. The client was referred pursuant to NRS 178.415 by Department II In The Fourth Judicial District Court Of The State Of Nevada, In And For The County Of Elko.

The client was informed of the purpose of the evaluation and the limits of confidentiality. He voluntarily agreed to participate in the interview.

The information for this social history report was obtained from an interview with the client and a review of the chart.

FAMILY AND DEVELOPMENTAL HISTORY:

The client informed that he was born in Logan, UT and has lived in Wendover for the past 14 years. He said that he has one older brother and that both of his parents reside in Wendover. The client said that he was close with his family as he was growing up and added that the finances in his family were sufficient to meet their basic needs. Mr. Patten stated that he has had several physical altercations with his father in the past. He related that prior to his arrest he had been residing with his girlfriend and her parents at their home and had moved there from his parents' home "a couple weeks" after he turned 18.

MARITAL AND INTERPERSONAL RELATIONS:

The client denied having ever been married and denied having any children. He said that he is currently engaged.

Social History
Kody Patten Case # 3774
Page 2 of 3

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HEALTH HISTORY:

Mr. Patten denied any current medical problems. He said that he has had a "lot of broken bones" in the past related to accidents while racing "dirt bikes". He denied any past significant head injuries but said that he has had stitches on his head in the past and that his brother had hit him in the head with a shovel on one occasion. The client expressed that he had spinal meningitis "a couple of times" when he was about six years of age and added that this condition has long since been resolved.

MENTAL HEALTH TREATMENT:

The client denied any history of mental health issues or treatment. He was unaware of any family history of mental illness. He denied any past suicide attempts.

ALCOHOL AND DRUG ABUSE HISTORY:

Mr. Patten expressed that he drinks beer "once in a while" but denied any problems with alcohol. He denied any past street drug use.

RELIGIOUS/SPIRITUAL BACKGROUND:

Mr. Patten stated that he participates in the LDS faith.

CULTURAL CONSIDERATIONS:

The client indicated that he had a fairly traditional American upbringing and that he celebrated most U.S. holidays.

EDUCATIONAL HISTORY:

The client stated that he was to graduate from high school on June 3rd of this year. He stated that he was in regular classes in school in addition to an honors class. Mr. Patten reported that he was suspended from school "quite a bit" for fighting and that he may have been expelled at one point due to numerous fights although he was not clear regarding this issue.

Social History
Kody Patten Case # 3774
Page 3 of 3

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OLSON & KUMP, DEF. ATTYS.

OCCUPATIONAL HISTORY:

Mr. Patten stated that he has been employed in the past at Smith's grocery store and a hardware store. He added that he had volunteered in the past at the airport performing "grunt work", at the fire department, and as a CPR instructor for an ambulance service. The client denied having ever served in the military but said that he was accepted into the U.S. Marine Corps and was to begin his military service after graduation from high school.

FINANCIAL CONSIDERATIONS:

The client denied any current income.

LEGAL HISTORY:

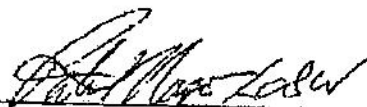
Mr. Patten denied any past arrests but did allude to having performed community service after his parents called the police because he was intoxicated.

ASSESSMENTS AND DISCHARGE PLANNING:

The client was pleasant and cooperative during the interview. He presented with moderate hygiene and appeared his stated age. The client was alert and oriented to person, place, time, and situation. The client described his mood as "good" and his affect appeared within normal limits. Mr. Patten denied any hallucinations or delusions. His thought process appeared intact. He denied any history of mania or depression. The client denied any current thoughts of self harm.

The client's primary strengths at this time appear to be that he has been cooperative while at this facility and his report that his family is supportive of him.

Due to the serious nature of the charges and the likelihood that the client will be involved in the criminal justice system for the near future, no discharge plan has been formulated at this time.


Patrick Marquis, L.C.S.W.
Clinical Social Worker II
Lake's Crossing Center

pm
5/24/11

1 Case No.: 11-4187

2 Elko County Sheriff's Office

3 Recorded interview of: Claude Fratto

4 June 16, 2011

IDENTITY OF SPEAKERS:

KM: Sergeant Kevin McKinney, Elko County Sheriff's Office

JB: Jim Bonich, Special Agent, FBI

CF: Claude Fratto, Interviewee

KM: Okay. Now, it's Claude; is that correct?

CF: That's correct.

KM: How do you spell Claude?

CF: C-L-A-U-D-E.

KM: Okay. And F-R-A --

CF: A-T-T-O.

KM: Okay. Your date of birth, Mr. Fratto?

CF: September 4th, '53.

KM: Okay. Your home address?

CF: 3268 West Skyview Drive.

KM: What's the zip here?

CF: 89883.

KM: And a phone number?

CF: (775) 291-8689. That's my cell phone.

KM: Okay. And what's your position here at the city?

CF: HR specialist.

KM: And a business phone, contact --

CF: (775) 664-3208 (inaudible).

///

///

1 KM: All right. Now, Mr. Fratto, we understand or we -- we -- the
2 information we have is that on the 22nd of I believe it was
3 April, when your daughter went to the attorney, you were out
4 of town; is that correct?

5 CF: That's correct.

6 KM: Okay. So was she staying by herself or was she staying with
7 friends?

8 CF: No. She was at home, at the house, by herself.

9 KM: Okay. Do you know how she came to go to Elko that day?

10 CF: She called (inaudible) Las Vegas.

11 KM: Okay.

12 CF: And she called and said that the attorneys had called -- that
13 Kody's attorneys had called her and told her that she needed
14 to come over and talk to them. That's what she told us.

15 KM: Okay.

16 CF: And I said, I would really prefer that you don't because we're
17 not there. I think that was a Friday. The 22nd was a Friday,
18 I believe.

19 KM: Yeah.

20 CF: I said we'll be home on Monday. Or no, actually we were going
21 to be home -- I think it was Saturday we ended up getting
22 home. I told her, I wish you would wait until Monday when
23 we're there.

24 KM: Uh-huh.