

1 CF: You know, and she said, well, they said that I need to come  
2 over right now. I need to come over today. I told her, I  
3 really don't want you to do that. I said, you're going to  
4 have to find somebody if they insist you have to go over. And  
5 I think that she was in school because I remember that you  
6 know, they need to realize that you're in school and you have  
7 other obligations. And so she said, well, I'm going to call  
8 Donna, Kody's mom --

9  
10 KM: Uh-huh.

11 CF: -- and see if she can take me. And so Donna ended up taking  
12 her over.

13 KM: So did she indicate to you that the attorneys had called her  
14 to come over?

15 CF: Yes.

16 KM: And did she say which attorney specifically or --

17 CF: I can't remember if she said John Ohlson or not. I can't  
18 remember specifically.

19  
20 KM: Okay.

21 JB: About what time was that that she called you?

22 CF: It would have been in the morning sometime. But I think  
23 before lunch.

24 KM: Okay.

25 CF: I may -- no, I wouldn't. I was going to say I might have that  
26 taped message still on my other phone, but I don't think I do.

27  
28 KM: So she might have texted you first?

1 CF: Uh, well, no. She called me. I'm pretty sure she called me  
2 on the phone. I'm pretty sure that she called me.  
3 KM: Would that have been your cell phone, this 291 --  
4 CF: Yeah.  
5 KM: -- 8689 number is what she called you on?  
6 CF: Yeah, that would be the same phone.  
7 KM: Okay. Okay. What number would she have used? Probably her  
8 cell phone?  
9  
10 CF: Yeah. Um, (775) 291 -- I can't think of what (inaudible).  
11 KM: You know, does anybody really remember phone numbers anymore?  
12 CF: No. I know once I put it in, that's it. Let me see if I can  
13 find it. No, that's not it. I got a new cell phone to give  
14 to my dad, which he will never, ever use, and that's the  
15 number I put on this. So let me see if I (inaudible). Okay.  
16 Yeah. It would be (775) 291-3388.  
17  
18 KM: And that's the cell phone that Toni was using --  
19 CF: Yes, yes.  
20 KM: -- when she called your cell. And you believe she was at  
21 school?  
22 CF: Yeah. I -- I think so.  
23 KM: Okay.  
24 CF: She was going to school at that time.  
25  
26 KM: I don't recall -- I don't recall any -- it wasn't spring break  
27 or anything during that time?  
28 CF: I don't think so.

1 KM: Okay. Um, so she said she was going to call Donna to see if  
2 she could get a ride over to Elko. Okay. Did she explain to  
3 you what they wanted to talk to her about or anything like  
4 that?

5 CF: I don't think she knew. Well, she indicated that she didn't  
6 know at that time.

7  
8 KM: Because you had been over there a few days earlier hadn't you?

9 CF: (Inaudible) attorneys, yeah.

10 KM: Do you remember when that was?

11 CF: It was -- was it the 13th or -- I can't remember exactly when  
12 it was.

13 KM: Okay.

14 CF: My wife would remember. Yeah, we had been over there several  
15 days prior to that (inaudible).

16  
17 KM: Looking at the paperwork -- I'm looking at some of the  
18 paperwork. It says there was a meeting with Mr. Ohlson and  
19 Mr. Kump on the 17th.

20 CF: 17th.

21 KM: Does that sound right?

22 CF: That might be it, then. 17th. And then the 22nd is when she  
23 went over. My wife would remember for sure, but that's --  
24 that's close.

25 KM: That sounds about right, the 17th?

26 CF: Yeah. It does.  
27  
28

1 KM: Was that the only -- was that the only meeting you remember  
2 between Toni and Ohlson before this day?

3 CF: That I know of.

4 KM: Okay. Okay. Were you present during that --

5 CF: Personally?

6 KM: Yes.

7 CF: My wife and I took her over.

8 KM: Okay. Were you in the meeting --

9 CF: Yes.

10 KM: -- itself? So it was -- everybody was there?

11 CF: Uh-huh.

12 KM: Okay. So you were there. Um -- I'm sorry, what was your  
13 wife's --

14 CF: Cassie, C-A-S-S-I-E.

15 KM: Okay. Toni was there?

16 CF: Yes.

17 KM: And who else?

18 CF: John Ohlson. Is that his name?

19 KM: Uh-huh.

20 CF: And I think it was Kump, I think was the other one.

21 KM: Okay. So those were the only two?

22 CF: Uh-huh.

23 KM: Was there a private investigator or anything there also?

24 CF: (No audible response.)

25 KM: Now, during that meeting, what was the discussion about?



1 CF: He told us he was Kody's attorney.

2 KM: Uh-huh.

3 CF: Um, and then just right after that, he proceeded to tell us  
4 all his credentials. He was very proud of all the  
5 credentials.

6 KM: Uh-huh.

7 CF: He was very self-centered. I don't care for him. He just was  
8 asking some general questions. I can't remember specific  
9 ones. One specific that I remember was he asked Toni if he --  
10 if she and Kody were having sexual relations. And Toni  
11 hesitated answering, and my wife said, what difference does  
12 that make? How does that? And he said, well, the district  
13 attorney is going to try to say if -- if Toni was not giving  
14 Kody enough sexual that he wanted, then they're going to say  
15 that's why he took Micaela and she didn't want to and so he  
16 killed her. That's -- that's what the attorney told us. And  
17 I did not hear -- she, Toni, was sitting on the other end of  
18 the table. And I did not hear what her specific answer was,  
19 but I did -- John Ohlson did say, um -- let me think so I get  
20 the wording right. He said, did Kody pressure you to have sex  
21 with him? And Toni said no.

22 KM: Uh-huh.

23 CF: That, I remember that specifically. Uh, I remember that he  
24 kept saying you guys -- well, he said, Kody is going to go to  
25 prison. He's going to be gone a long time. You guys need to  
26

1 write off the relationship. Toni, you need to break off the  
2 relationship and continue your life. And he told us the same  
3 thing. He said, you need to break off the relationship. And  
4 you know, in our mind, at this point in time, all we were  
5 thinking about was Kody. Kody was like one of our children.

6  
7 KM: Uh-huh.

8 CF: And, um, very good -- I mean, we didn't know anything that was  
9 going on other than what we saw there in the home. It's just  
10 the thing -- he kept telling us that, saying that we needed to  
11 break off the relationship and everything. And the other  
12 thing I remember specifically is we need to determine if Toni  
13 needs protection because at that point in time, the Pattens  
14 apparently were receiving death threats.

15  
16 KM: Hm, I see.

17 CF: He said we need to decide if she needed protection. I took  
18 that as being, okay, if at some point she does, then he'll  
19 represent her. That's what I was thinking at the time.

20 KM: Oh, okay. I think I understand what you're saying. You --  
21 you were kind of under the assumption that he would represent  
22 her.

23 CF: I was. When I left the meeting, yes, I was.

24 JB: When he said protection, did he mean like physical security or  
25 did he mean (inaudible)?  
26

27 CF: I -- I think legal representation. I think that's what he --  
28 because he made different comments that, you know, that -- I

1 can't remember what specific things that he said. Let me  
2 think back. It wasn't physical protection and we had not  
3 received any threats or anything like that and I had no reason  
4 to believe that we would because Toni was not involved in  
5 anything at that point. It was strictly Kody.

6 KM: Uh-huh.

7 CF: And we were talking about, well, she's his boyfriend (sic) and  
8 blah, blah, this and that. And I can't remember specifics,  
9 but the protection, I took it as legal protection.

10 KM: Uh-huh.

11 CF: You know.

12 KM: Now, um, I'm going to backtrack a little bit.

13 CF: Uh-huh.

14 KM: This meeting on the 17th, did you schedule it with them or did  
15 they call you to schedule it?

16 CF: They called -- I think they called Toni. If I remember right,  
17 they called Toni, and we took her over and she wanted us to  
18 sit in on the meeting because I remember them saying, yes,  
19 that's okay for you to sit in.

20 KM: Okay. Now --

21 CF: They con -- they contacted -- I'm pretty sure it was her  
22 because I don't think they had my phone number at the time.

23 KM: Okay. Now, you mentioned that they said that they were Kody's  
24 attorney.

25 CF: Uh-huh.

1 KM: Or that they were representing Kody.

2 CF: Right.

3 KM: Um, did they, um, did they say that, um, you know, did they --  
4 or indicate to you or did you get the impression that, uh, the  
5 information they were getting at that time was on his defense?  
6

7 CF: Well, they said that any information we get will be used to  
8 help Kody. And our mind-set at the time was we need to help  
9 Kody in any way that we can. And that's -- that's what  
10 we're -- that's what I recall being said is the information we  
11 give would be used to help Kody.

12 KM: Okay. Uh, you know, did they -- did they have any discussion  
13 with you about implicating anyone else in the death of  
14 Micaela?

15 CF: I don't recall (inaudible).

16 KM: Okay.

17 CF: Um, like if somebody else was involved or anything?

18 KM: Uh-huh.

19 CF: I don't recall. I don't recall that.

20 KM: Okay. I mean, because that's kind of the jux -- or the gist  
21 of the issue is that the information Toni gave on the 22nd  
22 implicated her.  
23

24 CF: Okay, yeah --

25 KM: And I'm just wondering if they made any reference to that on  
26 the 17th.  
27

28 CF: To implicating Toni?

1 KM: No. Implicated -- if the information -- did -- I mean, did  
2 they -- I mean, you know, it may not have -- didn't come up,  
3 but did they say that, you know, if Toni had any information  
4 that might implicate someone else, that they would have to  
5 give that to the prosecutor or law enforcement?  
6

7 CF: I don't recall that. I really don't.

8 KM: Okay. But -- but they did indicate to you that, uh, just to  
9 clear up that, uh, they were representing Kody specifically.

10 CF: That they were Kody's attorneys. And we knew that when we  
11 went over I think because of what had been in the paper, you  
12 know, the little bits and pieces. Because I think at that  
13 point he had been assigned to him. So I remember seeing that  
14 in the paper. So we knew who he was. Yeah, I'm pretty sure  
15 he said that he was Kody's attorney, yeah.  
16

17 KM: Okay. Okay. Um, did they -- did they ever give you any legal  
18 advice on the 17th about obtaining another attorney or to, uh,  
19 not make contact with -- you know, not to talk to other  
20 witnesses or not to talk to law enforcement or --

21 CF: I don't recall them saying anything about not talking to  
22 anybody else. I -- I cannot remember that they, uh, said --  
23 what was the first part? That we get representation or  
24 something?  
25

26 KM: Did they suggest you get representation or did they -- or and  
27 I guess --  
28

1 CF: No. I -- I -- because I think that was part of that we need  
2 to decide if Toni needs protection.  
3 KM: Uh-huh.  
4 CF: That -- that was during that same period of time and then the  
5 subject never came up again that I can remember.  
6 KM: Okay. Yeah. And that's -- that's what I'm wondering is did  
7 they ask you to -- to -- to -- or suggest that you find an  
8 attorney or suggest that, uh --  
9  
10 CF: I can't remember for sure.  
11 KM: Yeah. Or that, you know, there would be a conflict with them  
12 representing Kody --  
13 CF: Never any mention of that.  
14 KM: Okay.  
15 CF: I know that because like I said, when I kept wondering about  
16 conflict of interest but I don't recall anything being said.  
17 And like I said, when I came out of there, I felt like I  
18 didn't like him --  
19  
20 KM: Uh-huh.  
21 CF: -- as a person because just the way he is. He was very --  
22 it's like he didn't want to listen to anything that anybody  
23 said. He was doing the talking and if you took up too much of  
24 his time, he didn't like it. In fact, he asked my wife a  
25 question or something, and she took a few seconds to try to  
26 think about it, and he looked at us and said, don't be coy  
27 with me. And I thought, we're not being coy. Why are you so  
28

1 ignorant? He just -- I don't like him at all. And my  
2 thought was if we do have to get an attorney, I would rather  
3 really it not be him because I did not like him.

4 KM: Uh-huh.

5 CF: He's just --

6 JB: And it was Ohlson?

7 CF: Ohlson. I didn't like him at all. He was too much -- the  
8 impression I got was, okay, he took this case. He's going to  
9 get Kody off the death sentence, off the death part of it, and  
10 then go on to the next thing, make some other offer. That's  
11 the impression I got. It was just his attitude and the way he  
12 was. And I just did not like that. In fact, when we left, I  
13 told my wife, I said, I really hope that Kody has good  
14 representation with him because I don't feel good about it. I  
15 didn't feel like he would represent Kody and investigate all  
16 avenues. I really didn't.

17 KM: Uh-huh.

18 CF: So I left there thinking if we do need representation for Toni  
19 or anybody at some point, you know, he's a possibility because  
20 I did not recall anything being said about that conflict of  
21 interest type thing.

22 KM: Okay. Now, um, now, you -- you have kind of told us that on  
23 the 22nd, you didn't know what the meeting was about.

24 CF: Right.

1 KM: Um, had she made -- had Toni made any mention to you about  
2 wanting to make a different statement than she's already made?

3 CF: No. Nothing -- nothing. It was (inaudible) any of this. She  
4 didn't offer anything to us. This was like a total shock out  
5 of the blue. We had no idea. We thought the attorney had  
6 some information that they were going to share with her for  
7 some reason. But she's not said anything at all. And she in  
8 fact had gone to school. She was an A and B student, and she  
9 went to school right up until the point that, um, (inaudible)  
10 attorney. What's his name there in Elko. My mind has gone  
11 blank.  
12

13 KM: That's okay.

14 CF: Anyway, her attorney that's representing her there in Elko, he  
15 told us, you need to take her out of school because that  
16 there's a statement or whatever. I mean, that has been  
17 presented and was going to be presented in court. And he  
18 said, for her safety, you need to take her out of school.  
19

20 KM: Uh-huh.

21 CF: You know, and that was -- seems like that was a Wednesday or a  
22 Thursday. I -- I can't remember.

23 KM: So that was the first you'd heard that she had made this  
24 statement --

25 CF: Yeah.

26 KM: -- to the attorneys?

27 CF: Yeah.  
28



1 KM: Toni didn't tell you --

2 CF: No, she didn't.

3 KM: -- that she had made this statement --

4 CF: She did not.

5 KM: -- to the attorneys?

6 CF: No.

7 KM: She didn't tell you what -- what the meeting was about?

8 CF: No, because she told us that the attorneys told her, do not  
9 discuss this with anybody. It's very important that you --  
10 Ohlson told her -- you do not discuss this with anyone. It's  
11 very important that you do not discuss it with anybody. And  
12 me being the type of person I am, I respect that privacy, and  
13 so we didn't. The only thing I asked her, the next day I sent  
14 her a text message and I said -- okay. I said, do you feel  
15 good about the outcome of the meeting with the attorney? And  
16 she texted back and said, no, I don't. But if that's the way  
17 it has to be then that's how it has to be.

18 KM: Hm.

19 CF: And I don't know if I still have that text or not, but that  
20 was the only thing I asked her about it was, you know, do you  
21 feel good about the outcome of that meeting? And she said,  
22 no, I don't. But nothing else was said because the attorneys  
23 said don't discuss it with anybody. We respected that and so  
24 we didn't. I mean, her current attorney, same thing. You  
25 know, they haven't told us anything about the case.  
26  
27  
28

1 KM: Uh-huh.

2 CF: Private investigator, same thing. Her private investigator.

3 KM: Um, so pretty much all you know about what was said was what  
4 was in the paper or what was in --

5 CF: I haven't even seen anything in the paper about what was said  
6 because what was in the local paper, you couldn't read it. I  
7 tried to print it out and blow it up to where I could read it,  
8 but the copy was so bad. So I have no idea what was in the  
9 statement.  
10

11 KM: Okay.

12 CF: Other than just bits and pieces, what has been said, you know,  
13 that she knew details that only a person that was there.  
14 Well, like I told my wife, I know details that only a person  
15 there because where they found the weapon underneath our house  
16 and just different things like that, you know, so. But I don't  
17 know what's in the statement. My wife doesn't either.  
18

19 KM: Um, now, on the -- on the 17th, did they ever ask her if she  
20 was involved in the death of Micaela or anything like that?

21 CF: I don't recall, no. I don't recall if they did.

22 KM: Okay. Um, do you know if Micaela (sic) made any statements to  
23 anyone else or even to you about being involved in the death  
24 prior to the 22nd?

25 CF: Toni.

26 KM: I mean Toni, yes, I'm sorry.  
27  
28

1 CF: She didn't say anything to us, no. Um, I honestly don't think  
2 she knew anything about it until after the fact. I really  
3 don't because of the Saturday after that, we all went to  
4 breakfast. Um, and they were both at the house most of the  
5 day. And then that weekend, my son and his fiancée from  
6 Las Vegas came up and so we spent all day Sunday together with  
7 them. And after the fact, my son said, I would never think or  
8 believe that she was involved in something like that because  
9 it was just business as usual. I mean, there was no  
10 indication whatsoever from either one of them. And I -- I  
11 just --  
12

13 JB: So from -- Micaela went missing on Thursday, March 3rd.

14 CF: Okay.

15 JB: Is that right?  
16

17 CF: Okay.

18 JB: And then the body was found on Saturday and then confirmed  
19 later. From the time that you knew Micaela was missing until  
20 the body was identified, what was Kody's personality and  
21 emotional state like?

22 CF: He, um, let's see. On the day that it happened, he was angry  
23 with me because --  
24

25 JB: On the day that Micaela went missing?

26 CF: On the day that Micaela went missing because I had texted my  
27 daughter that morning that I had -- I take them -- I took them  
28 to school and I pick them up every day from school at 3:30,

1 and I told Toni, I texted Toni, and I told her, I have a  
2 meeting. I have a union meeting right after work and Mom has  
3 a recreation district meeting at 6:00. I said, take your  
4 pick. You need to go to one of them. Kody didn't like that.  
5 Kody was upset. And so we texted back and forth, and I have  
6 all the texts that he sent me. I don't have the ones that I  
7 sent him. But he was upset. And the final end result of it  
8 was well, okay, fine. You can pick her up but I'm going to  
9 stay after school. I'm going to hang out with -- I think it  
10 was Colton. He was working on his car and he was going to  
11 hang out with Colton after school. And so normally I would  
12 pick her up, but my wife picked her up that day because I had  
13 a dentist's appointment, and so my wife ended up with the car.  
14

15 KM: Uh-huh.

16  
17 CF: And so she picked them up from school, picked Toni up from  
18 school and took her home. Toni went and laid down because she  
19 didn't feel well and had a headache. And normally when I pick  
20 them up, I make sure that the security system was armed.  
21 Well, that particular day it didn't get armed. When she went  
22 home, sometimes I have to remind her, arm the system. Well,  
23 they didn't know that I received text messages and knew  
24 whether it had been armed or not. They didn't know that. So  
25 anyway, that particular day it didn't get armed. Toni said  
26 that she was laying and she had seen Kody back and forth  
27 several times getting tools out of the shed and whatever.  
28

1 Well, I know that night or the next day or something, that car  
2 parts were in the shed that weren't there before. So I  
3 assumed he had been working on the car like he said.

4 JB: Did it seem unusual that he was mad that day?

5 CF: No.

6 JB: So (inaudible) --

7 CF: No, because -- go ahead.

8 JB: Were there, on other days where you told Toni that she had to  
9 go to a particular meeting or something, was that his typical  
10 reaction?  
11

12 CF: Yes, Yes. That's what I was going to say. Kody was living  
13 with us and figured okay. Kody is not my son, I can't tell  
14 him, you do this, you do that. But Toni is my daughter. I  
15 can certainly -- still control, so to speak, a little bit of  
16 that. And that was the reason why -- the main reason I think  
17 why we even let Kody come into the house and why I provided  
18 him with a cell phone as part of my father thing and I'm going  
19 to control a little bit of the situation. I felt like with  
20 that I at least I knew where they were at night and she's  
21 going to date him and go out with him anyway, I would just as  
22 soon I know where they are. And this way I knew where they  
23 are. I knew when the sytem was armed. I knew when they left,  
24 I knew when they got home, whatever. I knew all that.

25 KM: Uh-huh.

26 CF: And --  
27  
28

1 JB: When did they find out that you were getting those texts?

2 CF: Not until after all this. In fact, I still don't know if Toni  
3 knows. I don't know if Kody knows for sure.

4 JB: Okay.

5 CF: I -- I really don't know because I never said anything to  
6 either one of them. I assumed through all this maybe they  
7 know. I don't know.

8  
9 JB: From that Thursday night through that Sunday, what was Toni's  
10 emotional state, personality?

11 CF: It was -- she was fine. That's why this was such a shock to  
12 us. She did not indicate -- and Toni's not the kind that can  
13 hide her emotions like that. We're very, very close.

14 KM: Uh-huh.

15 CF: We're a very close family.

16 KM: Uh-huh.

17  
18 CF: (Inaudible) she's not one who has ever been able to hide her  
19 emotions. If she was nervous or upset about something, you  
20 could tell.

21 KM: Uh-huh.

22 CF: And she wasn't. And -- and Kody, like I say, he was mad at me  
23 because I used my authority and he didn't like anybody --  
24 didn't like anybody using their authority to tell him this is  
25 the way it's going to be if you want (inaudible). So that's  
26 why he was upset. But he never got upset to the point where I  
27 felt threatened or anything. Um, he was not near as  
28

1 respectful to my wife. In fact, he could be very  
2 disrespectful to her in the personal setting. She used to be  
3 a substitute teacher at the high school. And he tried -- he  
4 attempted really hard to show respect to her in that  
5 situation. In fact, I got after him at one point in the home  
6 situation. I said, you know, you need to not be the way  
7 you're being. He -- he would ridicule the way she would  
8 drive. He would not like the way she prepared a meal or this  
9 or that. And I said, Kody, knock it off. You don't need to  
10 be doing that. You're just aggravating the situation. He  
11 would respect that and he would try to do better. And he had  
12 a lot of respect for me, I think. He was helpful and this was  
13 why, you know, the things that we hear about, his alternate  
14 life, so to speak, is shocking to me. I just can't even  
15 imagine that. But as you look back, there's lots and lots of  
16 times he would go do something or be gone overnight or  
17 whatever and never included Toni. He knew that we would not  
18 allow that. So he never even asked or he -- like when they  
19 went to the Lincoln Park concert in Salt Lake, he didn't even  
20 ask about going to that because I think he assumed we would  
21 not have let her.

22  
23  
24 KM: Uh-huh.

25 CF: Even though she was 18, she still (inaudible) brought up. She  
26 had that respect and knew that there were limits and she knew  
27 not to even ask. And I think Kody knew that, too.  
28

1 JB: Was Cassie with you in Las Vegas?

2 CF: Uh-huh.

3 JB: Okay. Back on April 22nd. So you said Sunday that she was  
4 going to call Kody's mom. Do you know who actually took Toni  
5 to the Elko that day?

6 CF: I assume it was Donna.

7 JB: Okay.

8 CF: I don't know. I mean --

9 JB: Nobody ever told you who?

10 CF: I never heard anything otherwise.

11 JB: Okay. Did, um --

12 CF: Was it not Donna?

13 JB: Oh, I don't know. I just -- (inaudible) want to know if you  
14 knew.

15 CF: I actually don't know. I assume it was her.

16 JB: Did Toni ever say anything about Kody ever telling her  
17 anything about what happened to Micaela?

18 CF: No. She never said anything about that.

19 JB: Was Toni visiting Kody in jail?

20 CF: Uh-huh.

21 JB: And did she ever talk about their conversations when she  
22 visited?

23 CF: Most of the visits that took place, she went with Kip and  
24 Donna. They -- At first we didn't -- Cassie and I -- did not  
25 visit Kody during the first several weeks that he was in  
26  
27  
28



1 there, I guess. So Toni went with Kip and Donna. And Kip had  
2 a job up in Jackpot, so they would go up on Wednesdays and  
3 sometime's they'd go over on Sundays, also. Um, we took --  
4 when we would go over, it would be on a Sunday when we would  
5 take Toni and then usually Kip and Donna would, um -- now I'm  
6 mixing up. I'm thinking of when Kip and Donna would visit  
7 Toni. I was going to make a comment, but...

8  
9 JB: What did you think of that?

10 CF: Huh?

11 JB: What did you think of Kip and Donna visiting Toni?

12 CF: We didn't necessarily like it. There were -- on Sundays we  
13 were always there. So they (inaudible). It would have been  
14 on a Wednesday. But what I didn't like was Kip was always --  
15 he would type out some kind of note on his cell phone and then  
16 he would hold it out so Toni could see, so I don't know what  
17 was being said. It did bother me, yes. Their visits with her  
18 bothered me a lot, but --

19  
20 JB: Were you in there when he did that?

21 CF: Yes. I was standing over to the side. I try to respect  
22 people's privacy, okay, to a fault. And so I don't know what  
23 was being texted. Um, they wrote letters to her. We've got  
24 some of the letters, and that is one privacy issue that I have  
25 broken, I've read Toni's letters. But there is nothing in any  
26 of them, that I can see anyway, from Kip and Donna. But there  
27 was a lot of this texting through the window (inaudible).  
28

1 JB: Did you ever make any comment as to why he was doing that?

2 CF: No.

3 JB: In your business with Kody, did he talk about Micaela at all  
4 with you?

5 CF: No. No, but I mean, we did not visit Kody last Sunday, just  
6 because I didn't feel good about it. And then the private  
7 investigators came over and visited with us, her investigator  
8 told us no more visits for legal reasons. And then Toni's  
9 investigator -- or Kody's investigator told us no more visits  
10 for legal reasons.  
11

12 JB: I don't understand. No more --

13 CF: Visits with Kody.

14 JB: So you can't (inaudible)?

15 CF: Yes. Because Kip and Donna were cut off from visits several  
16 weeks ago.  
17

18 JB: From Toni?

19 CF: Yes. The attorney thought that they had cut off the visits  
20 with the jail, but they were still going on, so I mentioned to  
21 the attorney because they were shocked when they found out Kip  
22 and Donna were visiting her. So I mentioned, you know, that  
23 they were still visiting. So they went in that day to make  
24 sure that the visits stopped. And Donna was very, very upset  
25 about that.  
26

27 KM: Hm.  
28

1 CF: In fact, her reaction was more for me, why are they picking on  
2 me. And I thought, you're not the one sitting in jail, what  
3 is your problem? That kind of bothered me. We've tried to  
4 maintain some relationship with Kip and Donna just because  
5 that was important to Toni.

6  
7 JB: Were Toni and Kody engaged?

8 CF: Well, supposedly. They never formally announced it. He  
9 bought her a ring. She had it resized so that she could wear  
10 it. I think in their minds they were engaged, but it was  
11 never anything they were planning a wedding type thing, no.

12 JB: He never asked your permission or anything like that?

13 CF: No.

14  
15 KM: He was scheduled to go in the Marine Corps, wasn't he?

16 CF: Yeah, he was.

17 KM: This month, wasn't it?

18 CF: Yeah. He was very, very excited about that. And -- and  
19 that's part of why it was such a shock to us because that was  
20 so important to him to go into the Marines. And for him to --  
21 everything that had happened, um, I just feel like there's  
22 still so much more to this that hasn't come it. I really do.  
23 It just does not make sense to me why he would -- why he would  
24 destroy the rest of his life. I mean, they had plans. I  
25 mean, they had everything planned out. After he got out of  
26 the Marines and everything. It just doesn't make sense to me.  
27 It's very, very sad.  
28

1 KM: It is.

2 CF: I'm sorry.

3 KM: You're okay.

4 CF: I just can't picture Kody doing that. It's been a nightmare  
5 for us. We've never had to deal with anything like this and  
6 it's just -- it's so hard. When we were talking with those  
7 attorneys that first time, I just sat there and cried. I just  
8 could not believe what we were going through, that Kody had  
9 even done this. I just have such a hard time. I -- I can't  
10 picture it. I just honestly can't picture it. But apparently  
11 he had a second life that we didn't know about (inaudible),  
12 and I just --  
13

14 KM: Um, Mr. Fratto, kind of like to go back to what -- that --  
15 that first meeting where you were with Toni and the attorneys.  
16

17 CF: Uh-huh.

18 KM: What kind of questions were they asking Toni? I mean, other  
19 than you mentioned one about them having sexual relations, but  
20 what other types of questions were they asking her about?

21 CF: I was so upset during that meeting --

22 KM: Uh-huh.

23 CF: -- by the time we got to that point, I -- I can't remember. I  
24 honestly cannot specifics. My wife probably can. I have  
25 thought back and tried to think about that, and I just can't  
26 remember any specific questions other than them being  
27

1 concerned about protection for her and legal protection  
2 (inaudible).

3 KM: Uh-huh.

4 CF: The way I felt the way the conversation was going.

5 KM: Uh-huh.

6 CF: All that was on our mind at that time was helping Kody.

7 KM: Uh-huh.

8 CF: I -- I cannot -- I'm sure my wife could probably remember more  
9 specifics than I can.

10 KM: Okay.

11 CF: It was not that long of a meeting, if I remember. Um, and I  
12 kept thinking that's an awfully long drive over there for --

13 KM: Uh-huh.

14 CF: -- what took place because I didn't feel like anything really  
15 was accomplished. I think possibly maybe they wanted to meet  
16 with Toni alone. I don't know.

17 KM: But they didn't have an issue with you being in there, right?

18 CF: No. Toni told them that she wanted us to be in there. And  
19 they said oh, no, that's fine.

20 KM: Uh-huh.

21 CF: I honestly can't remember specific questions. I'm sure  
22 (inaudible) my wife when we talked about it; oh, yeah, I  
23 remember that. But I can't remember.

24 KM: Okay. That's fine. We'll talk to -- we'll talk to your wife.

1 CF: She has a much better memory than I do when it comes to  
2 anything like that.

3 KM: My wife remembers everything.

4 CF: I used to be able to but not anymore.

5 KM: Now, um, when, um -- you mentioned that your daughter Toni,  
6 she's -- she never said anything to you about being involved.  
7 Um, why do you think she would tell the attorneys that she was  
8 involved?  
9

10 CF: Because I think somebody threatened her.

11 KM: What do you mean?

12 CF: I think somebody threatened her or I think somebody said if  
13 you do this, it will really help Kody. She is insanelly in  
14 love with Kody and she would do anything to help Kody. And I  
15 honestly think that somebody told her you need to do this and  
16 take part of the blame to help Kody. That's -- that's my  
17 opinion. That's what I think.  
18

19 KM: Hm.

20 CF: And at one point I had a much different opinion of that whole  
21 thing, but I think that -- I -- I -- I don't trust Kip at all.

22 KM: Uh-huh.

23 CF: And I probably never will. They've tried to be friends and  
24 this and that, but I just -- I just don't have a good feeling  
25 about it. I don't know that it -- he's involved in that part  
26 of it. But I think, of course, he would do whatever he needed  
27 to protect his son. But that in itself surprises me, too,  
28

1 because it just -- it never appeared to me to be a normal,  
2 loving relationship towards a son. Let's put it that way. I  
3 think that she was either coerced, I guess is the word you  
4 would use. I feel that she was coerced by someone to make a  
5 statement, being told that it would help Kody. And she would  
6 of a mind-set that she was willing to do whatever she could to  
7 protect Kody. And I thought at one point that Kody felt that  
8 way towards her, at least the side that we knew. But at that  
9 point I just don't know that that's accurate.

11 KM: Uh-huh.

12 CF: So I don't know. It's a very complicated mess. I just -- I  
13 keep thinking I wish I knew more and yet I'm glad I don't, I  
14 guess.

15 KM: Um, Mr. Fratto, I don't think I have any other questions.  
16 Jim, can you think of anything else might be important?

17 JB: (Inaudible).

18 KM: Um, Mr. Fratto, is there anything else you want to tell us  
19 that might be important or anything --

20 CF: Sure. Actually (inaudible) I didn't (inaudible). I can't  
21 think of anything.

22 KM: Okay.

23 CF: Um, I -- I really wish I had more to offer.

24 KM: No.

25 CF: It's just...

26 KM: Do you have any questions of us right offhand or -- I mean...

1 CF: We're planning to come to the hearing on the 22nd; is that  
2 okay?

3 KM: Yeah, I believe that's an open hearing.

4 CF: Okay.

5 KM: Depending on -- you may be even asked to testify if need be.  
6 So, uh, you may get a subpoena, actually, to appear.  
7

8 CF: Okay. We wondered about that.

9 KM: It's possible. I mean, I'm not -- I don't know right offhand.  
10 Um, but it's an open hearing, so you can -- you could  
11 definitely be there.

12 CF: We were planning to go. (Inaudible) understanding of it.

13 KM: Okay. There's a lot of legal wrangling that goes on that  
14 nobody understands.

15 CF: Yeah.

16  
17 KM: I don't even know -- I'm not even sure if the attorneys  
18 understand it. All right. Um, thank you. Thank you,  
19 Mr. Fratto. We really appreciate your time. I know this is  
20 difficult for you. We really -- we appreciate you doing that.

21 CF: Very difficult. Were you planning to visit with my wife?

22 KM: Yeah, we can actually run over there right now if she's  
23 available.

24 CF: She is. I'm wondering if it would be better if she came over  
25 here.

26  
27 KM: That would be fine, too.

28 CF: You want me to get her and bring her over or --



1 KM: That would be fine.

2 CF: -- whatever? I think she would feel more comfortable.

3 KM: Whatever is more convenient (inaudible).

4 CF: In fact, you could do it in here and I'll just leave if --

5 KM: Yeah, that would be great. Yeah, if you don't mind, that  
6 would be fine.

7  
8 CF: (Inaudible).

9 (Recording ended.)

10 STATE OF NEVADA, )

11 ) ss.  
12 COUNTY OF ELKO. )

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

14 That I transcribed from audio the proceedings had in the  
15 above-entitled matter;

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

19 That speaker identification was identified to the best of  
20 my ability through voice recognition;

21 That the foregoing transcript, consisting of pages 1  
22 through 32, is a full, true and correct transcription of said  
23 proceeding to the best of my ability.

24 Dated at Elko, Nevada, this 19th day of June, 2011.

25  
26  
27 Roxanne M. Hofheins

ORIGINAL

RECORDED STATEMENT OF

TONI COLLETTE FRATTO

Elko County Sheriff's Department  
775 W. Silver Street  
Elko, Nevada 89801

Taken at 2:05 p.m., January 19, 2012

Reported by Lisa M. Manley, CCR #271

1 MR. TORVINEN: Today is Thursday, the 19th day of  
2 January, 2012. Speaking is Mark Torvinen, the District  
3 Attorney of Elko County.

4 I am present in the conference room of the  
5 Elko County Sheriff's department. Present with me is Lisa  
6 Manley, court reporter; Toni Collette Fratto, who is a  
7 defendant in a criminal action pending here in Elko County;  
8 one of her attorneys, David Lockie of Lockie & Macfarlan;  
9 Detective James Carpenter of the Elko County Sheriff's  
10 department; and Tyler Ingram, a deputy district attorney in  
11 the Elko County District Attorney's office

12 We are here to conduct a proffer in  
13 furtherance of plea negotiations in connection with the  
14 prosecution pending against Ms. Fratto.

15 Anything you want to add to that, Mr. Lockie?

16 MR. LOCKIE: Just that this proffer is being  
17 conducted pursuant to the previous agreement to this effect  
18 that bears today's date and has been signed by all parties.

19 MR. TORVINEN: That's correct. In fact, I think  
20 I was going to -- I should recite that I hold in my hand a  
21 pleading entitled, Agreement for the Provision of a  
22 Recorded Statement by the Defendant in Furtherance of Plea  
23 Negotiations.

24 And it is six pages in length. And it was  
25 executed this date by myself, Mr. Lockie, and Ms. Fratto.

1 And it sets forth the terms and conditions between the  
2 parties under which the State is going to be given an  
3 opportunity and will today examine Ms. Fratto concerning  
4 the circumstances and the facts of the case pending against  
5 her.

6 Is that sufficient?

7 MR. LOCKIE: That is.

8 (WHEREUPON, the recorded statement of TONI COLLETTE  
9 FRATTO proceeded as follows:)

10 Q. (By Mr. Torvinen) All right. First thing, a  
11 few preliminary things, Ms. Fratto. Can you tell me how  
12 old you are?

13 A. (By Ms. Fratto) Nineteen.

14 Q. And what's your date of birth?

15 A. 10-30-92.

16 Q. Where were you born?

17 A. West Valley, Utah.

18 Q. Now, are you taking any prescribed medications  
19 prescribed by the jail physician today?

20 A. No, sir.

21 Q. Anything at all?

22 A. No.

23 Q. Okay. At the time of your arrest, which  
24 occurred in April of 2012, I think -- 2011, how long had  
25 you been living in Wendover?

1           A.           About 11 years.

2           Q.           Okay. Now, do you understand what we're doing  
3 here today? You heard me recite what we're doing here  
4 today. Do you understand?

5           A.           Yes.

6           Q.           Okay. And this document that I have in my  
7 hand, this agreement for the provision of a recorded  
8 statement by the defendant, appears on the last page to  
9 bear your signature, and I'm showing it to you now. Is  
10 that your signature?

11          A.           Yes, sir.

12          Q.           Did you sign that today?

13          A.           Yes, sir.

14          Q.           Did you have an opportunity to go over it with  
15 Mr. Lockie before you signed it?

16          A.           Yes, sir.

17          Q.           In your own mind, do you believe you  
18 understand what it says?

19          A.           Yes, sir.

20          Q.           Now, do you understand that it's extremely,  
21 extremely important that you be completely honest with me  
22 today. Do you understand that?

23          A.           Yes.

24          Q.           I don't know specifically what you are going  
25 to say to me today. But all I'm asking you to do is tell

1 me the truth.

2 A. (Nods head)

3 Q. The whole truth.

4 A. (Nods head)

5 Q. Do you understand that?

6 A. Yes.

7 Q. That is, to answer my questions honestly. Do  
8 you also understand that there is a potential consequence  
9 to not telling me the truth in the sense that if you were  
10 later called upon to testify about the things that you've  
11 told me today, and it was after that determined that you  
12 were not truthful, the plea agreement which we are  
13 contemplate -- we have been discussing in this case, under  
14 Nevada law, would be deemed what is called null or void,  
15 which means like it never existed?

16 A. (Nods head)

17 Q. Do you understand that?

18 A. Yes.

19 Q. So it's real important that you be honest with  
20 me today.

21 A. (Nods head)

22 Q. That's all I'm asking for. I'm not asking for  
23 -- looking for a particular version of the events. I don't  
24 know specifically what you are going to say. But what I do  
25 expect you to do is be honest with me.

1 A. Yes, sir.

2 Q. Okay?

3 A. (Nods head)

4 Q. Now, can we agree that Micaela Costanzo died  
5 on the 3rd of March, 2011?

6 A. Yes.

7 Q. Okay. Now, prior to the 3rd of March, 2011,  
8 did you know Micaela?

9 A. Briefly, but not "know" Micaela.

10 Q. Were -- were you in different classes in high  
11 school?

12 A. Yes.

13 Q. So at the time of your arrest you were a  
14 senior, right?

15 A. Yes.

16 Q. And what was her class in school?

17 A. I believe a junior.

18 Q. So she was a little bit younger then?

19 A. Um-hmm.

20 Q. You never had any classes with her?

21 A. No.

22 Q. Did you participate in any extracurricular  
23 activities with her?

24 A. No.

25 Q. Okay. Now, when is the first time that you

1 remember becoming aware that there was some plan or problem  
2 with Micaela that might result in some -- something  
3 happening to her?

4 A. About a week before March 3rd.

5 Q. Okay. Can you describe for me the  
6 circumstances under which you became aware that there was a  
7 potential issue with Micaela?

8 A. I remember Kody bringing up that he wanted to  
9 hurt Micaela.

10 Q. Did he say why?

11 A. No.

12 Q. Well, first, let me ask you, where were you --  
13 was this a personal conversation or text, or what was it?

14 A. I believe it was a personal.

15 Q. Conversation?

16 A. Yes.

17 Q. Where were you when you had this conversation?

18 A. I don't remember if it was at my house or at  
19 school.

20 Q. Now, by the -- at some point in time, Mr.  
21 Patten, Kody Patten, came to reside at your parents' house,  
22 right?

23 A. Yes.

24 Q. When did that happen?

25 A. Towards the end of January, I want to say.



1 Q. Okay. So by the time you had this  
2 conversation with him, he had been living there for some  
3 months?  
4 A. Yes.  
5 Q. So this conversation took place -- and you are  
6 sure it's a personal conversation?  
7 A. Yes.  
8 Q. You just can't remember whether it was at your  
9 house or at school?  
10 A. Correct.  
11 Q. Was there anyone present -- was there anyone  
12 else present when you had this conversation?  
13 A. No.  
14 Q. To the best that you can recall it, tell me  
15 what he said to you.  
16 A. That things were building up and he was  
17 irritated with Micaela and he wanted to basically do  
18 something to her.  
19 Q. Did he say what specifically?  
20 A. Not at that point in time, no.  
21 Q. Do you remember the words he used at all?  
22 A. Not exactly, no.  
23 Q. What was your interpretation of the words that  
24 he used to you?  
25 A. That he was upset with her and he wanted to do

1 something to her.

2 Q. Now, did you -- did he say to you or did you  
3 ask him why he had this -- this idea?

4 A. I had asked him what made her -- what made him  
5 so mad at her, but all he would tell me was that things  
6 were building up and that he didn't want to talk about it  
7 and he would not give me any more details than that.

8 Q. Now, this is about a week prior to the 3rd of  
9 March?

10 A. Yes.

11 Q. Do you remember what time of day it was?

12 A. I don't recall.

13 Q. How about even morning or afternoon?

14 A. Probably in the afternoon.

15 Q. Do you remember -- when I say context, I mean,  
16 kind of what you were doing sort of thing. Do you remember  
17 what was going on that brought this up?

18 A. I don't.

19 Q. Were you and he arguing or just talking to one  
20 another?

21 A. Just talking.

22 Q. So that was -- so we have a personal  
23 conversation about a week prior to the 3rd of March?

24 A. (Nods head)

25 Q. After this initial conversation, did you talk

1 to him about it again, or did he say anything to you about  
2 it again?

3 A. The next time that I remember him bringing  
4 anything up was a couple days before the 3rd. And I noticed  
5 that he was writing some items down on a sticky note. And  
6 this was at school.

7 Q. Did you see what was on the sticky note?

8 A. All I remember, it -- that was on the list was  
9 plastic bags, gloves, and a shovel. That's all I remember.  
10 But I know he wrote more down.

11 Q. Did he allow you to read it or you just could  
12 see what was on it?

13 A. Just could see it. He was keeping to himself.  
14 I kept asking him, "Oh, what are you doing?" And he just  
15 kind of looked at me and wouldn't say anything, and then  
16 went back to writing things down.

17 Q. Do you remember where you were in the school  
18 when you saw this?

19 A. We were on the left side of the ramp going to  
20 the music room. Right in front of the front office.

21 Q. Was this during -- between classes?

22 A. I believe it was during lunch.

23 Q. Okay. Was that the -- that was the whole  
24 conversation you had with him? You tried to ask him what  
25 he was doing and he wouldn't respond to you?

1           A.       Um-hmm.

2           Q.       But you could see this note?

3           A.       Yes.

4           Q.       Was it like a pad of sticky notes?

5           A.       It was just one sticky note.

6           Q.       What did he use for a writing background? How

7 did he --

8           A.       Just on the ledge there.

9           Q.       Okay. It was wide enough that you could put

10 it down and write on it?

11          A.       Yes.

12          Q.       Was there some sort of wall or railing sort of

13 thing?

14          A.       Yeah.

15          Q.       So when he didn't -- or wouldn't respond to

16 you, did you try -- did you try again to ask him what he

17 was doing?

18          A.       No. I just kind of left him be, I didn't

19 pursue that.

20          Q.       How did you come to be there with him at this

21 place that day?

22          A.       It was during lunch, and we were always

23 together at lunchtime so.

24          Q.       Would that be a place you would normally be

25 during lunchtime?

1 A. Yeah.

2 Q. Front office?

3 A. Um-hmm.

4 Q. Why?

5 A. Just where we normally sit and hang out and

6 watch everybody go by during lunchtime.

7 Q. Are there seats or benches there?

8 A. No.

9 Q. Had you already actually eaten lunch?

10 A. Well, I didn't -- I didn't really eat lunch at

11 home -- or at school. I just wait till I got home.

12 Q. So this is a couple of days before the 3rd of

13 March?

14 A. Yes.

15 Q. When is the next time that you recall any

16 conversation or any text or any telephone call concerning

17 Kody and Micaela? Or made you think it concerned Micaela?

18 A. It was the night before the 3rd that I noticed

19 he was putting some things in a backpack in his room.

20 Q. Okay. And what do you remember that -- those

21 things to consist of?

22 A. The only thing that I saw him put in were the

23 gloves and the plastic bags, and he was trying to fit the

24 shovel in but it was still too tall.

25 Q. Did you ask him what he was doing or why he

1 was doing that?

2 A. Not at that point, no.

3 Q. Did you have any conversation about this  
4 packing of the backpack?

5 A. A little bit later, he had said that -- if I  
6 recall right -- that he was packing to do whatever he was  
7 going to do to Micaela.

8 Q. He didn't specify what that was going to be?

9 A. No.

10 Q. Did you ask him?

11 A. I don't recall.

12 Q. Do you remember anything he specifically said,  
13 his specific words?

14 A. Not exactly.

15 Q. How did you -- so are you telling me that you  
16 interpreted what he said to you, although you cannot  
17 remember specifically what it was, that he was packing  
18 these things to utilize them in connection with whatever he  
19 had planned for Micaela?

20 A. Yes.

21 Q. Did you ever ask him -- well, okay. He told  
22 you originally that things were, quote, building up?

23 A. (Nods head)

24 Q. Upon this occasion -- this would have been the  
25 night of the 2nd?

1 A. Yes.

2 Q. Did you ever ask him again why he felt  
3 compelled to do this or thought he should do this?

4 A. It was probably right before bedtime, I asked  
5 him -- because he was -- I could tell he was really mad and  
6 everything. And so I asked him, I said, "What's wrong,"  
7 and everything. But the only words he would tell me was  
8 things were building up from the past and he didn't want to  
9 talk about it. He wouldn't tell me anything more.

10 Q. Are those the words he used, "building up,"  
11 that you can recall?

12 A. Yes.

13 Q. That's all he would say to you?

14 A. Yes.

15 Q. Now, you and he had separate rooms in your  
16 parents' house?

17 A. Correct.

18 Q. How -- how long after you saw him packing the  
19 bag did you have this conversation with him, where he says  
20 things -- again things are building up?

21 A. Maybe a couple hours after.

22 Q. Any conversation in between those two times  
23 about it?

24 A. Not that I can recall.

25 Q. Were your parents home during this period of

1 time, or do you remember?

2 A. I don't -- I know they were there when he was  
3 packing the bag, but I don't recall them being around when  
4 he said anything previous.

5 Q. So -- so that's the last you spoke to him  
6 until the morning?

7 A. Um-hmm.

8 Q. Did you guys go to the school at the same  
9 time?

10 A. Yes. My parents dropped us off in the  
11 morning.

12 Q. Both of you?

13 A. Yes.

14 Q. What time would you normally arrive at school?

15 A. About 7:30, 7:40.

16 Q. Now, this is Mountain Time that you are using?

17 A. Yes.

18 Q. Okay. And when you first saw him in the  
19 morning, what was his emotional state, do you remember?

20 A. I don't remember.

21 Q. Was there any conversation between you and he  
22 on the morning of the 3rd that you remember?

23 A. Not that I recall. I just remember him having  
24 that backpack with him.

25 Q. Okay. And could you tell whether or not he



1 had got the shovel in there, or was it sticking out or  
2 anything like that?

3 A. Not that I --

4 Q. Noticed?

5 A. -- could see, yeah.

6 Q. What kind of backpack was it?

7 A. A regular size black and gray backpack, if I  
8 remember right.

9 Q. A school type backpack?

10 A. Yes.

11 Q. Any logo or anything on it that you can  
12 remember?

13 A. Not that I can remember.

14 Q. Now, so you go to school?

15 A. Um-hmm.

16 Q. At 8:40. And you had different class  
17 schedules?

18 A. Yes.

19 Q. And what was your first class?

20 A. I believe mine was English.

21 Q. And just from what his schedule was, do you  
22 know where he would have normally gone first thing in the  
23 morning?

24 A. I believe in economics.

25 Q. Okay. Are those in different parts of the

1 building?

2 A. Well, the hallways kind of like split around,  
3 so I would -- in this hallway and he was in this hallway.

4 Q. Now, do you remember how -- during the day --  
5 and I'm talking about the 3rd of March?

6 A. Um-hmm.

7 Q. Did he -- did you and he communicate either  
8 by cellular telephone or text during that day?

9 A. Yes.

10 Q. How many times do you think you had some sort  
11 of contact during the day of the 3rd?

12 A. Maybe 10 to 15 texts maybe.

13 Q. Okay. Would it surprise you if I told you  
14 that we had your cellular phone records, and we've counted  
15 them up, and it looks like there was like 111 contacts  
16 between 8:47 a.m. Mountain Time?

17 A. Um-hmm.

18 Q. And about 6:41 p.m. Mountain Time. Would that  
19 surprise you?

20 A. No.

21 Q. Okay. And so it's like -- would you agree  
22 with me, it seems to be like it was nonstop that day,  
23 texting back and forth? Primarily they seem to be texts  
24 because of their duration.

25 A. Right, yeah.

1 Q. Was that usual for he and you?  
2 A. Oh, yeah.  
3 Q. I mean, even like when -- I mean, how did you  
4 pay attention in class if you are getting 111  
5 e-mails during the -- I mean, texts during the day?  
6 A. Most of them I wouldn't respond to, but most  
7 of them I would. But if I remember right, in some of my  
8 classes I don't have a lot of service, so it would be like  
9 in between classes or --  
10 Q. Um-hmm.  
11 A. Between that time.  
12 Q. Okay. You mean your phone goes off when  
13 you --  
14 A. When I am able --  
15 Q. -- get inside the building?  
16 A. Yeah, when I am able.  
17 Q. I mean, in the classroom?  
18 A. Yeah.  
19 Q. Does everybody there experience that?  
20 A. Yeah.  
21 Q. Okay. This backpack, was it the same one --  
22 did he usually take a backpack with him?  
23 A. Not every day, but he did have a school  
24 backpack.  
25 Q. Was it different than this one?

1 A. Yes.

2 Q. Had you ever seen this one before?

3 A. Yes.

4 Q. And in what context had you previously seen  
5 it?

6 A. Mostly in his locker. He used it around his  
7 locker. If he had homework, he would take it home. It was  
8 mainly left in his locker.

9 Q. Okay. Did he, like, use it at school or  
10 something?

11 A. He carried it around, yes.

12 Q. Was it bigger than the one -- was it bigger or  
13 different in size or something than the one he normally  
14 took back and forth to school -- to home?

15 A. I don't recall.

16 Q. Did any of these text messages that you --  
17 either text -- did you speak to him by voice on the  
18 cellular phone during the day that you recall?

19 A. Not until after school.

20 Q. Okay. Well, did any of the texts that you  
21 were able to respond to, or receive or respond to, during  
22 the day between the time period that I have described to  
23 you, did any of them pertain to Micaela?

24 A. Yes.

25 Q. How many of them? Let's do it this way, Ms.

1 Fratto. What's the first -- first one that you recall  
2 receiving on the 3rd that had anything to do with Micaela?  
3 A. In my last hour.  
4 Q. Okay. And what was it?  
5 A. He -- he was trying to get me to get my mom  
6 and dad's car for after school. And I had texted my dad to  
7 see if we could get the car, and he said no, that he had --  
8 Q. What time is your last hour?  
9 A. I don't recall. It's between two and three,  
10 if I remember right.  
11 Q. Okay. So he wanted you to try to get the car?  
12 A. Yes.  
13 Q. Did you have a driver's license?  
14 A. Yes.  
15 Q. So did you text your dad and ask?  
16 A. I did.  
17 Q. Did he respond?  
18 A. Yes. He said that no, he had -- I can't  
19 remember if it was a meeting or something, but my mom would  
20 be coming and getting me and taking me home after school.  
21 Q. Okay. Now, did he -- did he refer to Micaela  
22 in that, or just that he wanted you to get a car?  
23 A. Just that he wanted me to get the car.  
24 Q. He didn't say why?  
25 A. Not like that. Not in that text, no.

1 Q. Okay. What's the next text that you remember  
2 receiving from him?

3 A. That he had gotten Wendi Murphy's car and that  
4 it was all prepared. I didn't know what that meant.

5 Q. So that was after you said, "No, we can't have  
6 the car"?

7 A. Yes.

8 Q. Okay. Now, you -- do you remember sitting  
9 through the -- your preliminary hearing?

10 A. Um-hmm.

11 Q. Do you remember Wendi Murphy testifying that  
12 she gave him the TrailBlazer at about noon? Do you  
13 remember her testimony?

14 A. Yes.

15 Q. Why would he be asking you about a car last  
16 hour?

17 A. I don't know.

18 Q. Before -- at what point did you become  
19 aware -- well, let me ask it this way, was this text  
20 message when he revealed that he had Wendi Murphy's  
21 TrailBlazer and that it was prepared, was that the first  
22 time you became aware of the fact that he had the  
23 TrailBlazer?

24 A. Yes.

25 Q. Now, had you seen him personally,

1 face-to-face, that day at school after you --

2 A. During the --

3 Q. After you guys split in the morning?

4 A. I think during lunch, yes.

5 Q. Did he say anything to you about Wendi

6 Murphy's car at that point in time?

7 A. No.

8 Q. How long -- how long were you with him at

9 noon?

10 A. About -- I think our lunchtime was about 30

11 minutes.

12 Q. Okay. And he didn't say anything to you about

13 the TrailBlazer at that point?

14 A. Not at that point, no.

15 Q. Okay. So you've told me about two texts in

16 the last hour. One, "Can you get a car," and you say no?

17 A. Um-hmm.

18 Q. The next one is the, "I've got Wendi Murphy's

19 car"?

20 A. (Nods head)

21 Q. And it's ready?

22 A. Yes.

23 Q. In essence?

24 A. Yes.

25 Q. Is that correct?

1 A. Yes.

2 Q. How far -- do you have a memory of how far  
3 those two texts were apart?

4 A. I don't. Because that's one of the classes  
5 that I don't get good reception.

6 Q. Okay. What's the next thing that you  
7 remember, communication from him or to him?

8 A. I remember him sending a text telling me to  
9 after class go to Micaela's locker and tell her that the  
10 metal shop teacher needed to speak with her.

11 Q. Did you do that?

12 A. No.

13 Q. Why?

14 A. Because I -- I didn't feel like I needed to go  
15 do that. I had no reason to go tell her anything.

16 Q. Okay. Did you have -- at any time during the  
17 3rd of March at school, did you have any personal contact  
18 with Micaela?

19 A. No.

20 Q. No meeting in the hall? No argument in the  
21 hall?

22 A. No, sir.

23 Q. Well, now, he was talking -- he had made some  
24 comments to you about things, quote, building up from the  
25 past with her. Was that making you angry or jealous?



1           A.           Not really, but that's just because I didn't  
2 know her. But at the same time it was like he was trying  
3 to get to me, trying to make me upset. And I just kind of  
4 brushed it off and didn't think about it.

5           Q.           Did you know where her locker was?

6           A.           I had a rough estimation, but no, I didn't  
7 really know exactly where she was.

8           Q.           Do all -- do all members of a given class have  
9 most of their lockers in the same place?

10          A.           Yes.

11          Q.           So you would know where the junior class's  
12 lockers were?

13          A.           Yes.

14          Q.           And they're separate from the seniors' lockers  
15 sort of thing? Separate part of the building?

16          A.           Yeah, the seniors' is right here on this  
17 hallway. And if you go around the corner, the juniors' are  
18 right here, and then the sophomores'.

19          Q.           So they are separated sort of?

20          A.           Yes.

21          Q.           Did you tell him that -- when he asked you to  
22 go tell her that the metal shop teacher needed to talk to  
23 her, did you -- did you tell him you were -- you were not  
24 going to do that?

25          A.           I don't recall. But I do remember sending him

1 a text and asking why, and then I never got a response  
2 back.

3 Q. Okay. This is during your last hour?

4 A. Yes.

5 Q. Which, as you recall -- the best you can  
6 recall is between two -- about two and three o'clock?

7 A. Um-hmm, yes.

8 Q. What's the next one -- communication from him  
9 that you can recall?

10 A. Not until after I had gotten home.

11 Q. Okay. Now, during that original exchange  
12 between you and your dad about the car, he -- he had said  
13 that, "No, you" -- "your mom is going to pick you up"?

14 A. Yes.

15 Q. "And you're going to go to the meeting"?

16 A. I didn't -- yes, yes.

17 Q. Is that what he said to you?

18 A. Yes.

19 Q. Why was it important for you to go to this  
20 meeting?

21 A. To be honest, I don't know. But I -- to be  
22 honest, I do enjoy going to the city council meetings,  
23 going to the rec district meetings that my parents are  
24 involved with.

25 Q. Had you made plans with your mother to do that

1 that night?

2 A. No.

3 Q. Did you know that there was such a meeting

4 before you texted --

5 A. Yes.

6 Q. -- with your dad?

7 A. Yes.

8 Q. So did your mother bring you home from school?

9 A. She did.

10 Q. And Kody was not there?

11 A. No, sir.

12 Q. So the next text you get is at home?

13 A. Yes.

14 Q. And how long after you got home did you

15 receive this text?

16 A. About 15 minutes after I got home, I had

17 texted him because I hadn't heard from him. Because the

18 next time that I had saw Kody right after school, he didn't

19 come out of the classroom.

20 Q. Okay.

21 A. And we're right across from each other. So I

22 went straight to my locker, got -- went through all my

23 books, make sure I didn't have any homework, saw him at the

24 end of the hallway just kind of standing there.

25 And then I went to grab something out of my

1 locker and closed my locker, and by the time I looked back  
2 he wasn't there anymore.

3 So I went straight outside, went with my mom,  
4 she took me home.

5 Q. Um-hmm.

6 A. And then about 15 minutes being home, I had  
7 texted him and I asked him where he was.

8 Q. Um-hmm.

9 A. Because I had seen him pull out of the school  
10 in Wendi's -- Wendi's car.

11 Q. This is when you were driving with your mom?

12 A. Yes.

13 Q. And which -- which exit did he use?

14 A. There was only one exit you can really take.  
15 But then after he exited, he went -- I think it's east --  
16 he turned right down that road. But I didn't see where he  
17 was going.

18 Q. I have here a picture of the -- and I don't  
19 know if it goes out far enough to tell -- tell us what  
20 you're talking about. Do you recognize what's depicted  
21 there?

22 A. Yes.

23 Q. And what is it?

24 A. The school.

25 Q. Okay. And these exits that you're talking

1 about, where are they? I don't think they're in the  
2 picture, right?

3 A. No. They go up around right here.

4 Q. Okay. And is the road Tibbets? What do you  
5 hit when you come out of this exit?

6 A. I think it's Elko Drive, but I'm not sure.

7 Q. Okay. Okay. But you saw him drive out?

8 A. Yes.

9 Q. And for the record, what I have in my hand and  
10 just showed to Ms. Fratto is an overhead view of the  
11 school, the West Wendover Junior/Senior High School. Shows  
12 the rear of the school and front of the school, but not as  
13 far as the actual front exits. Would you agree with that?

14 A. Yes.

15 Q. Okay. And he turned right?

16 A. Yes.

17 Q. Now, what was your parents' address at the  
18 time?

19 A. 3268 West Skyview Drive.

20 Q. When you -- to get to the most direct house --  
21 direct route to your parents' house from the school, would  
22 you turn left or right?

23 A. Left.

24 Q. So he went in the opposite direction?

25 A. Yes.

1 Q. And my kind of recollection of all the school  
2 there is that would kind of be, like, back towards town; is  
3 that fair? If you turn right?  
4 A. Yes.  
5 Q. And if you turn left, you're not heading  
6 towards downtown, you're heading away from downtown?  
7 A. Yes.  
8 Q. So you sent him a text and said, you know --  
9 what did you say to him?  
10 A. "Where are you?" "What are you doing?"  
11 Q. Did you get a reply?  
12 A. Not right away, no.  
13 Q. Did you ever get a reply?  
14 A. I don't recall.  
15 Q. When is the next communication you had with  
16 him that you recall?  
17 A. I remember calling him and the --  
18 Q. This is a voice call?  
19 A. Yes.  
20 Q. Okay. How long after you sent this message  
21 asking him where he was?  
22 A. Maybe another 15, 20 minutes.  
23 Q. How long does it take to get from your house  
24 to the school -- I mean, from the school to your house?  
25 A. About maybe five, seven minutes, if that.

1 Q. Okay. And you say that the text you sent him  
2 was about 15 minutes, right?  
3 A. Yes.  
4 Q. After you got home?  
5 A. Yes.  
6 Q. And you didn't get a reply?  
7 A. No.  
8 Q. And you eventually called him?  
9 A. Yes.  
10 Q. And how -- how long between the time you  
11 texted him and asked him where he was that you made a  
12 decision to call him?  
13 A. Probably 20 minutes.  
14 Q. Did he answer?  
15 A. I don't believe he answered the first time.  
16 Q. Did you -- so you tried again at some point?  
17 A. Yes, I called right after that again.  
18 Q. So he didn't answer, so then you started over?  
19 A. Yes.  
20 Q. Dialed again?  
21 A. (Nods head)  
22 Q. And what happened?  
23 A. And he -- after quite a few rings, he finally  
24 answered. And I had asked him, "Well, where are you? What  
25 are you doing?" And he was just kind of quiet, he wouldn't

1 say anything. And then he was like, "I'm just sitting in  
2 Wendi's car."

3 I'm like, "Well, where are you?" And he was  
4 kind of hesitant, but then he had told me that he was  
5 sitting under the bridge by the Peppermill Casino.

6 Q. Um-hmm.

7 A. And I said, "Well, what are you doing over  
8 there?" And he's like, "Just sitting here, trying to calm  
9 down." And I'm like, "Well, what's wrong? What is going  
10 on?"

11 And he was very vague with me, he wouldn't  
12 hardly talk to me or say anything. And he was like, "I'll  
13 call you back in, like, five minutes when I'm finally  
14 calmed down and everything." I'm like, "Okay." So I -- we  
15 hung up.

16 Q. Did he call back?

17 A. No. It was about --

18 Q. Now, are you still at home?

19 A. Yes. It was probably about 45 minutes, almost  
20 to an hour, that I finally called him back, and I said,  
21 "Well, what's going on?" And he's like, "I'm still sitting  
22 here." And I -- I told him, I said, "I thought you were  
23 going to call me back in five minutes." "Well, I'm not  
24 calmed down yet."

25 And then it was just kind of, he wouldn't say



1 anything. And I'm like, "Well, come home," or whatever,  
2 "come back." And he was like, "I'm going to go over to  
3 Jeff's and hang out and play video games for a while." And  
4 I'm like, "Okay, whatever."

5 Q. Now, you haven't headed for the meeting yet,  
6 right?

7 A. No.

8 Q. Okay. What time was the meeting to start, do  
9 you remember?

10 A. I think it was 6 o'clock.

11 Q. Okay. So you are still at home?

12 A. Yes.

13 Q. When this conversation takes place?

14 A. Yes.

15 Q. When did you leave for the meeting, do you  
16 remember?

17 A. It was around 5:20. My mom had showed up, she  
18 hurried and got ready, and then we left.

19 Q. Okay. So this is sometime -- this last  
20 conversation that you described where he says he is still  
21 at the underpass?

22 A. Um-hmm.

23 Q. And he won't tell you what he's doing?

24 A. No.

25 Q. Did you ask him?

1 A. Yes.

2 Q. Could you tell by his voice that something was  
3 wrong?

4 A. Yes. I could tell that he was really upset  
5 and mad and frustrated.

6 Q. He was agitated?

7 A. Yes.

8 Q. Okay. And this conversation took place before  
9 you left for the meeting?

10 A. Yes.

11 Q. So sometime before what, 5:40, you say, I  
12 think?

13 A. 5:20.

14 Q. 5:20?

15 A. Um-hmm.

16 Q. How long do you think that lasted, that  
17 conversation?

18 A. Maybe -- maybe a minute or two.

19 Q. Did he ever tell you what he was doing?

20 A. He just said that he was sitting in Wendi's  
21 car.

22 Q. Could you hear anything?

23 A. I -- I could hear something in the background,  
24 but I -- and I even asked him, I said, "Well, who's with  
25 you?" And he kept -- he said, "Nobody."

1 Q. What was -- do you remember the sound that  
2 caused you to ask that question?

3 A. Just kind of like movement, or like a voice in  
4 the background, or something.

5 Q. Could you actually hear a voice?

6 A. Not that I can recall, no.

7 Q. Something prompted you to ask him that?

8 A. Yes.

9 Q. And what did he say when you asked him?

10 A. That nobody was with him, that he was by  
11 himself.

12 Q. So, now, you -- so how did it come to pass  
13 that you ended that conversation?

14 A. He just -- he told me that he was going over  
15 to his cousin Jeff's to hang out and to cool down.

16 Q. Okay.

17 A. And I kind of left it at that.

18 Q. So you both hung up?

19 A. Yeah.

20 Q. Now, did you talk to him again before --  
21 either talked or text before you left for the meeting?

22 A. No.

23 Q. And so you and your mom leave?

24 A. Yes.

25 Q. Now, I remember reading something about having

1 to take your dad someplace first.

2 A. Yes. We went to my dad's work first and took  
3 him to his meeting at the library. And then my sister was  
4 working late that night, so she had asked my mom to run the  
5 cell phone to her husband so he had a cell phone in case  
6 something happened. And so right after we dropped my dad  
7 off, we ran over to my sister's and dropped off the cell  
8 phone, and then headed straight to her meeting.

9 Q. And where does your sister live?

10 A. In the Toana View Apartments.

11 Q. Did she come out and meet you, or did someone  
12 go into her apartment to drop the phone off?

13 A. I took the phone in to her husband.

14 Q. And what's his name?

15 A. Javier.

16 Q. Javier what?

17 A. Aleman.

18 Q. Aleman?

19 A. Yes.

20 THE COURT REPORTER: Can you spell that?

21 MS. FRATTO: A-l-e-m-a-n.

22 THE COURT REPORTER: Thank you.

23 Q. (By Mr. Torvinen) Is he still in Wendover?

24 A. (By Ms. Fratto) Yes.

25 Q. And what's your sister's name?

1 A. Tara Aleman.  
2 Q. How old is she?  
3 A. Thirty-five.  
4 Q. So now you're at the meeting?  
5 A. Yes.  
6 Q. With your mom?  
7 A. Yes.  
8 Q. You went from Teri's -- Tara's straight to the  
9 meeting?  
10 A. Yes.  
11 Q. And how long does it take you to get from  
12 Tara's to the meeting, do you think? How close is the rec  
13 -- was it at the rec board's offices? Or where was it?  
14 A. It was at the golf course.  
15 Q. Where is the golf course in relationship to  
16 Tara's house -- or apartment?  
17 A. It's still on Tibbets. Like, here's my  
18 sister's house, and you go around -- up and around and up  
19 the street.  
20 Q. Does it take you a long time to get there?  
21 A. No, it's about maybe a five-minute drive.  
22 Q. Did you go straight there?  
23 A. Yes.  
24 Q. Who was driving?  
25 A. My mom.

1 Q. So you had already dropped your dad off,  
2 dropped the phone off, and went straight to the meeting?  
3 A. Yes.  
4 Q. So you get to the meeting. During the meeting  
5 did you receive any contact from Mr. Patten?  
6 A. I had -- I had received a message just as I  
7 was leaving my sister's house.  
8 Q. Text message?  
9 A. Yes.  
10 Q. And what was the content of it?  
11 A. He had said that he had -- all it said was, "I  
12 have her."  
13 Q. Did you respond?  
14 A. I said --  
15 Q. And we're talking about texting?  
16 A. Yes. And I had said, "Have who? What are you  
17 talking about?" And his reply back was, "I have Micaela."  
18 And I didn't believe him, and so I said, "No, you don't.  
19 You don't have her." And he goes, "Yes, I really do."  
20 Q. Now, these are texts back and forth?  
21 A. Yes. And --  
22 Q. So are you sitting in the car doing this?  
23 A. Yes. And I remember one of the texts saying  
24 that he had pushed her off a cliff. And I said, "No, you  
25 didn't. You're just mad and talking," and everything.

1                   And he was like, "Well, do you want me to  
2 prove it?" And I go, "How are you going to do that?" And  
3 he ended up sending -- he ended up sending me a picture of  
4 Micaela.

5           Q.       Now, and so -- and what did you see in this  
6 picture?

7           A.       I saw Micaela's -- kind of like leaned up  
8 against the passenger seat in the -- like the back seat.

9           Q.       Um-hmm.

10          A.       Like the seats were laid down, that's what it  
11 kind of looked like.

12          Q.       Um-hmm.

13          A.       And all I remember is her leaning up against  
14 the back of the passenger seat and her hands in her lap.

15          Q.       Okay. Could you see whether or not she was  
16 conscious or not?

17          A.       I couldn't tell, but I know her eyes were  
18 open.

19          Q.       Did you observe any injuries upon her person?

20          A.       Not that I could see. I could tell that her  
21 eyes were red, but that's all that I remember being able to  
22 see.

23          Q.       Now, we seized your phone, right?

24          A.       (Nods head)

25          Q.       Same phone you received this picture on?

1 A. Yes.

2 Q. Did you delete it at some point, or something?

3 A. Yes.

4 Q. When did you do that?

5 A. I don't recall.

6 Q. Okay. Sometime prior to your arrest? Or

7 before its seizure obviously?

8 A. Yes.

9 Q. So this exchange is taking place as your mom

10 is driving to the thing?

11 A. Yes, sir.

12 Q. Were you sitting right next to her in the car?

13 A. No, I was in the back seat.

14 Q. Why were you in the back seat?

15 A. Just a different place to sit.

16 Q. And how big a -- what kind of car is it?

17 A. It's a Honda Sonata, I think.

18 Q. Okay. Could you see Micaela's hands?

19 A. No.

20 Q. In the photograph?

21 A. No.

22 Q. When you say leaning over, are you saying that

23 she was nearly prone? Or was she upright still?

24 A. She was still upright.

25 Q. But you could tell her eyes were open?



1 A. Yes.

2 Q. Any particular expression on her face?

3 A. Just kind of blank. You could tell that she

4 was very scared.

5 Q. As you look back on it?

6 A. Yes.

7 Q. So your mom is driving down the road to the

8 rec board?

9 A. Yes.

10 Q. They have their own, like, building or

11 something at the golf course, or that's just the place they

12 use for their meetings?

13 A. Just the place that they can use for their

14 meetings.

15 Q. So you're driving and you have this exchange.

16 So you get this photograph and what do you do? Do you

17 respond?

18 A. To be honest, I don't recall. I was too in

19 shock.

20 Q. Okay. So by the time you get to the rec board

21 meeting, right?

22 A. Yes.

23 Q. You've had this exchange with him where he

24 says he has her and you express disbelief?

25 A. (Nods head)

1 Q. He says, "Yes, I do," and eventually sends  
2 this picture via -- via the phones?  
3 A. Yes.  
4 Q. But you cannot recall whether or not you  
5 replied to him vis-a-vis the photograph?  
6 A. I don't recall.  
7 Q. When is the next communication that you recall  
8 between you and he?  
9 A. Maybe close to 7:15, 7:30.  
10 Q. Well, what time --  
11 A. Or sorry, 6:15, 6:30.  
12 Q. Okay. By then where were you?  
13 A. At the rec meeting.  
14 Q. You were in the meeting?  
15 A. Yes.  
16 Q. Okay. And what was the subject of this next  
17 communication?  
18 A. I had asked him where he was and what he was  
19 doing.  
20 Q. Was this after -- was this in response to the  
21 photo text message?  
22 A. Probably -- yeah, but not -- I didn't -- I  
23 hadn't sent anything until way after I was already at the  
24 meeting.  
25 Q. So you sent this message while you were in the

1 meeting?

2 A. Yes.

3 Q. Sitting in the gallery, I guess?

4 A. Yes.

5 Q. And that's the first communication after you

6 saw the photo text message?

7 A. That I can recall.

8 Q. So you ask him where he was and what he was

9 doing?

10 A. Yes.

11 Q. And did he reply?

12 A. Yes, but I don't recall what he said.

13 Q. Did you respond to that text message, whatever

14 it was?

15 A. I don't recall.

16 Q. Okay. What's the next communication, if there

17 was one, that you do recall?

18 A. It was probably maybe 10, 15 minutes after

19 that. And I had told him to come get me.

20 Q. Okay. Did he respond?

21 A. Not right away, it was a few minutes after I

22 had sent that text. And he had said that he was way out of

23 town and that he'd be there in a little -- in a few

24 minutes.

25 Q. Okay. Do you know what time in the meeting

1 this was?

2 A. Maybe around 6:30.

3 Q. Okay. Well, at some point he did come and get

4 you, right?

5 A. Yes.

6 Q. Was the meeting over by the time he picked you

7 up?

8 A. No.

9 Q. So let's do it this way. When he sends you

10 this text message or reply -- really it was a reply, right,

11 to your inquiry?

12 A. Um-hmm.

13 Q. Or your request that he come and get you. And

14 he says he's way out of town and "I'll be there in a few

15 minutes," how much time went -- how much time went by

16 between his response and he actually came and got you?

17 A. It was probably five, ten minutes after he

18 finally responded, and then he didn't -- I didn't leave the

19 golf course until about six four -- or 6:55.

20 Q. Was it close to being over?

21 A. It was close, yes.

22 Q. Between this thing -- between this reply where

23 he says, "I'm out of town" -- "out of the town and I'll be

24 there in a few minutes," was there any further contact

25 between you and he?

1           A.       Not that I can recall.

2           Q.       When you got the message -- so did you

3 understand from that last text message that he was coming

4 to get you?

5           A.       That's what he had said, yes.

6           Q.       Now, you remember talking to Mr. Ohlson and

7 Mr. Kump?

8           A.       Yes.

9           Q.       Have you ever seen a transcript of that?

10          A.       I believe I have.

11          Q.       Do you remember telling them that you got a

12 message where -- that said, "I've got Micaela," and then

13 he -- you relating that he expressed a desire that you be

14 with him? Do you remember a text like that?

15          A.       I don't recall.

16          Q.       So you don't recall any further contact

17 between him saying he will come and get you and him

18 actually picking you up?

19          A.       No.

20          Q.       When you -- when you got this message, "Okay,

21 I'll come and get you," or "I'm coming to get you" -- that

22 was the gist of it, right?

23          A.       Yes.

24          Q.       Did you say something -- did you communicate

25 to either your mom or your dad about wanting to leave the

1 meeting and go?

2 A. Yes. I had texted my mom and --

3 Q. Why would you text your mom? She was right  
4 there?

5 A. She was -- she was on, like, the board, so it  
6 wasn't like I could go ask her.

7 Q. Okay.

8 A. And I had asked -- I had asked her if it was  
9 okay that we go over to Jeff's place and -- so the boys  
10 could play video games. And she had told me that I needed  
11 to ask my dad. So I texted my dad and asked him the same  
12 thing.

13 Q. Um-hmm.

14 A. And after him being kind of hesitant, he said  
15 okay. And --

16 Q. How did he express his hesitancy? Did you call  
17 him or text?

18 A. Text. Because he was -- it was kind of like  
19 he didn't want me to go. And he told me, you know, "I  
20 would rather you stay there with mom, but if you really  
21 want to go, I guess you can go." Because also that day I  
22 wasn't feeling well, and he knew that.

23 Q. Okay. So did he express -- did he say this by  
24 text?

25 A. Yes.

1 Q. He would rather you stay with your mom, but if  
2 you really want to go, you can go?

3 A. Yes.

4 Q. And did you reply to the interchange -- that  
5 exchange?

6 A. Yes. I had said, "Okay," and "I'll keep you  
7 updated." And he had said, "You know, if you don't feel  
8 good and want to come home, text me and I'll come get you."  
9 And I said, "Okay, I will."

10 Q. And was that the last of your communication  
11 with your dad?

12 A. That I can recall, yes.

13 Q. So you get, in essence, permission to go with  
14 him?

15 A. Yes.

16 Q. And what did you do next?

17 A. Just kind of waited for a text from Kody  
18 saying that he was out front.

19 Q. You didn't get up and go wait by the front?

20 A. No.

21 Q. So how long after this exchange between you  
22 and your dad did you hear from Kody?

23 A. Maybe 15 minutes.

24 Q. Okay. And what do you remember the  
25 communication to be, and how was it?

1           A.       That he was there in the back.  
2           Q.       As opposed to the front?  
3           A.       Well, because we -- we were closer to the back  
4 of the golf course than the front.  
5           Q.       Is that the entrance that they use to get to  
6 this meeting room?  
7           A.       Yes.  
8           Q.       Is the back of the clubhouse?  
9           A.       Yes.  
10          Q.       Is it the clubhouse?  
11          A.       So to speak, yes.  
12          Q.       So you get this message, and what do you do?  
13          A.       I kind of gave my mom the impression that I  
14 was leaving. I kind of said bye to her and had got up and  
15 walked out.  
16          Q.       Now, by then, so your saying bye to her, was  
17 this verbal?  
18          A.       Not really. It was just kind of like, bye,  
19 you know, I'm leaving. (indicating).  
20          Q.       Was she still up on the dais?  
21          A.       Yes.  
22          Q.       So you kind of made a high sign to her?  
23          A.       Yeah.  
24          Q.       Then you walked out?  
25          A.       Yeah.



1 Q. Now, was the meeting still going on?  
2 A. Yes.  
3 Q. When you walked out the doors?  
4 A. Yeah, they were still talking and everything.  
5 Q. Had it -- had it adjourned yet, or were they  
6 still in -- was the meeting still in progress, or they were  
7 just hanging around after?  
8 A. I don't recall.  
9 Q. Okay. So you walk out the back door and what  
10 do you see?  
11 A. Well, all the cars that -- from the people  
12 that were there at the meeting. And then when I finally  
13 kind of walked more around the building, I had seen a white  
14 car that I figured was Wendi's.  
15 Q. Okay.  
16 A. And kind of walked up closer to it and I could  
17 see Kody in the driver's seat, and went around the front of  
18 the car and got in the passenger seat.  
19 Q. Did you see Micaela?  
20 A. Not when I first got in, no.  
21 Q. So you get -- you get in the front passenger  
22 seat?  
23 A. Yes.  
24 Q. What do you see?  
25 A. I see Kody's face and he kind of just looked

1 at me, and then I kind of heard, like, a little noise, so I  
2 hurried and looked back, and I had seen Micaela in the  
3 very, very back.

4 Q. And in what condition was she?

5 A. She was scared. All I could see was kind of  
6 like half of her face and I could tell that her hands were  
7 up towards her face, and that's all I could see.

8 Q. Did you see any restraints?

9 A. No.

10 Q. Was she on her side?

11 A. No.

12 Q. She was in the cargo compartment? You're not  
13 talking about a seat? Or the cargo compartment?

14 A. Like the trunk part.

15 Q. Um-hmm.

16 A. Yeah.

17 Q. Where there is no seats?

18 A. Correct.

19 Q. And was she sitting up? Sitting -- laying on  
20 her side? Or what was her situation?

21 A. She looked like she was kind of sitting down  
22 with her knees up towards her and everything.

23 Q. Um-hmm.

24 A. Like, she was like squooshed basically.

25 Q. Was there anything gagging her mouth?

1 A. Not that I could see, no.

2 Q. Was she saying anything?

3 A. She tried to say something, but Kody had

4 turned around and told her to shut her mouth and not speak.

5 Q. Now, you say her arms were folded up next to

6 her chin, I guess, is what you are saying?

7 A. Yes.

8 Q. Was she kind of sitting on her butt with her

9 knees pulled up?

10 A. That -- that's what I kind of figured, yeah.

11 Q. But you couldn't see?

12 A. No.

13 Q. All you could see was -- how far up from her

14 body could you see?

15 A. Probably about right here, (indicating)

16 because the seats -- all the seats were upright.

17 Q. The back seats?

18 A. Yeah.

19 Q. And you could see the top of her hands?

20 A. Yes.

21 Q. But you couldn't see any restraints?

22 A. No.

23 Q. Tell me what she was wearing that you can

24 remember?

25 A. At that point all I could see was she had a

1 gray sweater on, I think.

2 Q. Okay. Could you discern any injuries to her  
3 person, to her face?

4 A. No.

5 Q. So you see Micaela back there in the cargo --  
6 that's the -- it's called the cargo compartment, cargo  
7 area.

8 A. Um-hmm.

9 Q. Do you say something to Kody?

10 A. Not right then, no.

11 Q. What did you do?

12 A. I kind of sat there quietly and he drove off  
13 and was going through, like, the trails through the desert  
14 to get to the highway.

15 And in between that time, he had texted on a  
16 phone and showed me one of the texts, and it said, "We have  
17 to kill her." And I just kind of looked at him.

18 Q. You mean like he did a text?

19 A. Yeah, he did a text. He didn't send it, but  
20 he just kind of showed me.

21 Q. He composed a text?

22 A. Yes.

23 Q. That said, "We have to kill her"?

24 A. Yes.

25 Q. And -- did he say why?

1 A. I remember him typing another message, but I  
2 do not recall what that message said.

3 Q. Looking back on it, do you have a reason why  
4 this all happened?

5 A. I do not.

6 Q. So he says, "We have to kill her"?

7 A. Yes.

8 Q. Did you verbally respond? Nonverbally respond?  
9 Did you say anything?

10 A. I didn't say anything. I just kind of looked  
11 at him and kind of lipiped, Why? And he just kind of shook  
12 his head and didn't say anything to me.

13 Q. At what point did he do this second  
14 composition?

15 A. Right after he had showed me that text.

16 Q. Did he compose another one?

17 A. Yes, but I don't recall what that said.

18 Q. So -- and the only verbal thing from Micaela  
19 at that point is she started to say something and he told  
20 her to shut up?

21 A. Yes.

22 Q. Now, okay, he says -- and you couldn't see any  
23 restraints?

24 A. No.

25 Q. Or injuries at that point?

1 A. No.

2 Q. And he's said, "We have to kill her"?

3 A. Yes.

4 Q. And showed you another message, but you can't

5 remember what it said?

6 A. Correct.

7 Q. Okay. He's showed you this second message and

8 now you're going through the back roads?

9 A. Kind of like through the desert area behind

10 the golf course --

11 Q. Um-hmm.

12 A. -- up to the highway.

13 Q. Are you talking about the extension of West

14 Wendover -- of the boulevard, or some other highway?

15 A. No, the boulevard.

16 Q. So would you be going towards Elko or away

17 from Elko?

18 A. Towards Elko.

19 Q. Did you eventually get to the boulevard?

20 A. Yes.

21 Q. And were you on the Wendover side of 3 Mile or

22 the other side of 3 Mile?

23 A. We were just going past 3 Mile.

24 Q. When you hit the boulevard?

25 A. Yes.

1 Q. Now, the boulevard goes over 3 Mile, right?

2 A. Yes.

3 Q. So are you saying you hit the boulevard right

4 at the base of 3 Mile?

5 A. Yes.

6 Q. Is that what you are saying to me?

7 A. Yes.

8 Q. Right at the bottom of 3 Mile?

9 A. Yes.

10 Q. Was there any conversation -- between the time

11 you left the clubhouse and you got to Wendover Boulevard,

12 was there any communication between you and Kody?

13 A. Just those texts that he --

14 Q. He never said a word to you on the way out

15 there?

16 A. No.

17 Q. Did Micaela try to speak?

18 A. When I first got in, we were taking off and

19 everything, that's when she tried to say something but Kody

20 had stopped her and said to stop.

21 Q. Well, that's what I mean. So you -- there's

22 that exchange. Now you're going through the back roads to

23 the boulevard?

24 A. Correct.

25 Q. You hit the boulevard. So between leaving the

1 clubhouse and going through the desert?

2 A. Um-hmm.

3 Q. To the boulevard?

4 A. Right.

5 Q. Was there any communication between -- there

6 was no verbal communication between you and Kody at all?

7 A. No.

8 Q. Nothing?

9 A. Nothing.

10 Q. And Micaela doesn't try to speak?

11 A. No.

12 Q. At all?

13 A. No.

14 Q. Did you say anything to her?

15 A. No.

16 Q. Could you see this backpack?

17 A. No.

18 Q. Did you eventually see this backpack?

19 A. Yes.

20 Q. But not at that time?

21 A. No, sir.

22 Q. So you -- these text messages he was composing

23 and showing to you, was it his phone?

24 A. Yes, it was.

25 Q. Did he have access to any other phone that you



1 know of?

2 A. Not that I'm aware of.

3 Q. Now, the phone he had, in fact, your father  
4 had provided him?

5 A. Correct.

6 Q. And it's the 2633 number?

7 A. I don't remember.

8 Q. All right. So when he composed these  
9 messages, then he, like, deletes it?

10 A. Yeah.

11 Q. Or hit the "end" button, I guess, and that  
12 takes it off the screen?

13 A. Correct.

14 Q. So now you hit the boulevard and what happens?

15 A. We went over the hill by 3 Mile and hit where,  
16 like, the overpass is there. But he just kept going  
17 straight into dirt and where there was a whole bunch of  
18 dirt hills and everything.

19 Q. Um-hmm.

20 A. And he just kept going through these hills of  
21 dirt. I had no idea where he was taking me.

22 Q. Okay.

23 A. Or taking us. And he finally --

24 Q. Do you remember going through a gravel pit?

25 A. Yeah. And --

1 Q. Well, when you hit the -- when you hit the  
2 dirt?  
3 A. Um-hmm.  
4 Q. On the boulevard?  
5 A. Um-hmm.  
6 Q. And you went -- did you immediately turn off  
7 the main dirt road, or did you go on the dirt for a while?  
8 A. It was -- we were going on the dirt for a  
9 while.  
10 Q. Okay. Did you eventually turn in some  
11 direction?  
12 A. We kind of drifted off -- off to the left,  
13 yes.  
14 Q. Okay. So away from I-80?  
15 A. Yes.  
16 Q. Not towards I-80?  
17 A. No.  
18 Q. So now you're drifting off from I-80?  
19 A. Um-hmm.  
20 Q. And where do go?  
21 A. Through -- all I remember is going through a  
22 whole bunch of dirt hills and all of a sudden kind of along  
23 the train tracks. And then he had stopped, kind of pulled  
24 over and stopped, into this area.  
25 Q. Okay. Now, when you were going down the

1 railroad tracks, were you going towards Elko or away from  
2 Elko?

3 A. Towards Elko.

4 Q. How long do you -- from the time you left the  
5 clubhouse until you get to the point in time where he stops  
6 next to the railroad tracks -- now, when he stopped, were  
7 you on a dirt road, or did you pull off the dirt road?

8 A. Basically pulled off, yeah.

9 Q. Just right off the dirt road?

10 A. Well, there's not really a main road out  
11 there.

12 Q. Right. But there is a road that goes down the  
13 tracks, right?

14 A. Kind of, yeah.

15 Q. Okay. So -- so when he pulled off this road?

16 A. Um-hmm.

17 Q. Did he pull off to the left or did he pull off  
18 to the right?

19 A. The left.

20 Q. So you would have been closer to the tracks?

21 A. Yes.

22 Q. And so now you're stopped. What happens?

23 A. He had kind of turned the vehicle around, so  
24 the vehicle was facing West Wendover now.

25 Q. So he actually turned it around so it was

1 going down the other direction?

2 A. Yeah, but he -- and he had stopped and I  
3 remember --

4 Q. Well, did he do a U-turn, or did he --

5 A. Yeah. Yes.

6 Q. So when he pulled off, the car was facing back  
7 towards Wendover?

8 A. Correct.

9 Q. Okay.

10 A. And then I remember him getting out and  
11 opening, like, the back seat door.

12 Q. The very end doors?

13 A. Yeah.

14 Q. Not the -- not the back passenger doors?

15 A. Yeah, the back passenger -- like the middle  
16 doors.

17 Q. Okay.

18 A. And he was getting into something. I wasn't  
19 really paying attention, I had opened my door to get out.  
20 And then he walked over to the driver's side and handed me  
21 some gardening gloves. And he said, "Put these on." And  
22 so I did what he had asked me to do.

23 And I remember --

24 Q. Were you still in the car or were you out of  
25 the car by then?

1 A. I was out of the car then.

2 Q. Then what happened?

3 A. And then I remember putting on the gloves and

4 him closing both doors and going to where Micaela was in

5 the very back.

6 Q. Very back. So he opens -- did he open that?

7 A. Yes.

8 Q. Did you follow him back there?

9 A. Not right away, no.

10 Q. Then what happened?

11 A. And then I remember him rummaging through

12 something, and he -- so I kind of --

13 Q. So all the -- let me ask you something, Ms.

14 Fratto. From the time you left the clubhouse, except this

15 one effort to speak, to the time you reached the railroad

16 tracks, has Micaela ever said anything?

17 A. No.

18 Q. As far as you know, was she conscious?

19 A. Yes.

20 Q. You could see her breathe? Her eyes move?

21 She was --

22 A. Yes.

23 Q. -- conscious?

24 A. Yes.

25 Q. And could you see -- and you couldn't --

1 between the clubhouse and the place where you stopped by  
2 the tracks, did you ever get a better look to see whether  
3 or not she was restrained in some way?

4 A. No, I couldn't see anything.

5 Q. Was it still light?

6 A. Yes.

7 Q. So you -- so now the car is stopped?

8 A. (Nods head)

9 Q. Facing back. He's given you these gloves.  
10 He's walked to the back and opened the cargo door?

11 A. Yes.

12 Q. What happens then? Where are you standing  
13 when the cargo door opens?

14 A. The passenger front side.

15 Q. Is the door open or closed?

16 A. Open.

17 Q. And so now the -- so you're standing at the  
18 passenger door, front passenger door?

19 A. (Nods head)

20 Q. Right next to the car?

21 A. Yes.

22 Q. And he goes and opens the cargo door. Then  
23 what happens?

24 A. And I noticed he was rummaging through  
25 something. I could hear him.

1 Q. In the very back?

2 A. In the very back. And then he -- I noticed he

3 had pulled out the shovel. And he told me to close the

4 front door and come stand between the car and where he was

5 going -- where he was headed. I didn't know what his

6 intentions were at that point in time.

7 Q. Okay.

8 A. He told me to watch Micaela and make sure that

9 she didn't move or try and get out. And then he went over

10 and started.

11 Q. Now, she was a lot bigger than you, right?

12 A. Yes.

13 Q. I mean, you only weigh 98 pounds or something

14 like that, right?

15 A. Correct.

16 Q. How tall are you?

17 A. Five-two.

18 Q. So he told you to stand there and guard her?

19 A. Yeah.

20 Q. Now, at that point, can you see whether or not

21 she is restrained in any way?

22 A. At that point, no.

23 Q. But you're standing right next to her, aren't

24 you?

25 A. Correct. I didn't see anything around her

1 wrists or her legs or anything.

2 Q. Well, did Micaela say anything to you?

3 A. Not at that point in time. Later on, she  
4 tried talking to me, but Kody just kept telling her to keep  
5 her mouth shut and not say anything.

6 Q. Was he talking to her?

7 A. Not that I can recall, unless it was him  
8 saying to shut her mouth and be quiet.

9 Q. So he -- he -- he makes you stand guard?

10 A. Um-hmm.

11 Q. And he goes -- did you see him get the shovel?

12 A. I did.

13 Q. Where was -- where did he pull it out from, do  
14 you remember?

15 A. I didn't see that part. I just remember when  
16 I was standing by the front passenger door he was rummaging  
17 through something, I could hear, and then he pulled out and  
18 he had kind of stepped around the corner of the car, and  
19 that's when I had seen the shovel in his hand.

20 Q. The passenger -- back passenger corner?

21 A. Yes.

22 Q. Passenger side, back corner?

23 A. Yes.

24 Q. Is that when he called you back there?

25 A. Yes.



1 Q. And so now you're at the back and he's told  
2 you to stand guard?  
3 A. Yes.  
4 Q. He has the shovel?  
5 A. Yes.  
6 Q. Can you see the shovel?  
7 A. Yes.  
8 Q. What happens next?  
9 A. After he told me to basically stand guard, he  
10 walked over next to some big sagebrushes, bushes, and he  
11 started to dig a hole.  
12 Q. Could Micaela see this?  
13 A. If she kind of looked around the side, yes.  
14 Q. Well, which direction -- how was she seated in  
15 the back of the car?  
16 A. Just like this, (indicating) up against the  
17 driver's side.  
18 Q. Back of the car?  
19 A. Yeah.  
20 Q. She was just sitting on her rear end?  
21 A. Yes.  
22 Q. What was the position of her legs?  
23 A. Up towards her chest a little bit.  
24 Q. And so they were -- her knees were bent?  
25 A. Yes.

1 Q. And where are her hands?  
2 A. Still up close to her face.  
3 Q. And you can't see any restraints?  
4 A. No.  
5 Q. So did you see -- now, when you got closer to  
6 her, could you -- could you see any injuries?  
7 A. I could tell that she had been beaten up. I  
8 could tell that there was a cut on her lip, and it looked  
9 like she was starting to form bruises around  
10 her (indicating) --  
11 Q. Mouth?  
12 A. Mouth.  
13 Q. Any other injuries that you can remember?  
14 A. Not that I can remember.  
15 Q. Any blood?  
16 A. Her lip was kind of bleeding, yes.  
17 Q. And she's still not saying anything to you at  
18 that point?  
19 A. Not at that point, no.  
20 Q. And you're not saying anything to her?  
21 A. No.  
22 Q. You're just doing what he told you?  
23 A. Yes.  
24 Q. Why were you doing -- why were you  
25 participating in this at that point, do you know?

1           A.       Not exactly, no.

2           Q.       So you actually see him start digging a hole?

3           A.       Yes.

4           Q.       Well, from what you are describing to me, she

5 would have to lean out and look over, like this?

6 (indicating)

7           A.       Um-hmm, yes.

8           Q.       Did she ever?

9           A.       A couple of times, yes.

10          Q.       Did she say anything to you when you saw him

11 -- when she saw -- was she looking at him?

12          A.       Yes. After he had dug a good-size hole so

13 far, she kept asking, "What's that for?" "What's" -- "What

14 are you doing with that?"

15          Q.       Was she speaking to you or to him?

16          A.       To whoever would answer her. I kept my mouth

17 shut. And Kody was just like, "Well, don't worry about

18 it."

19          Q.       Well, how long did it take him to dig this

20 hole?

21          A.       Maybe ten minutes, I don't recall.

22          Q.       Was he working hard at it?

23          A.       As I kind of was paying attention, a little

24 bit, yes.

25          Q.       Digging fast, I guess, is what I am saying?

1 A. Yeah.

2 Q. Do you wear a watch?

3 A. No.

4 Q. Does he wear a watch?

5 A. No, not very often.

6 Q. Did you ever look at your phone during that

7 period of time?

8 A. No, I left my phone in the car.

9 Q. Was it in the front seat?

10 A. Yes.

11 Q. Let me ask you this, what -- so now you're

12 guarding her back there. It appears that she's been beaten

13 to some degree?

14 A. Yes.

15 Q. Her lip is split?

16 A. (Nods head)

17 Q. Do you see any of her possessions anywhere?

18 A. Not that I could see, no.

19 Q. Well, do you remember sitting in the

20 preliminary hearing, and there being some testimony about

21 the remnants of a polka dotted bag?

22 A. I do recall that, yes.

23 Q. Did you ever see that bag?

24 A. I did not.

25 Q. Ever?

1           A.       Not until later.

2           Q.       Okay.  So while you're out at the railroad  
3 tracks you never saw it?

4           A.       No.

5           Q.       So he's digging this hole and -- and she --  
6 Micaela inquires or asks several times, "What that's for?"

7           A.       Um-hmm.

8           Q.       He says, "Don't worry about it"?

9           A.       Yes.

10          Q.       Now, there is a bit of distance between the  
11 road or the side of the road and where this hole was being  
12 dug, right?

13          A.       Correct.

14          Q.       So were -- did she have to raise her voice or  
15 did he have to raise his voice to enable you all to hear  
16 him?

17          A.       A little bit, but not too much.

18          Q.       So did there come a point in time at which she  
19 -- well, how many times did she ask about what the hole was  
20 for, do you remember?

21          A.       Maybe three times.  I don't recall.

22          Q.       Okay.  You didn't see any restraints on her in  
23 the car?

24          A.       No.

25          Q.       Of any sort?

1 A. No, not at that point in time.  
2 Q. So she made no effort to get out and run?  
3 A. No.  
4 Q. She just sat there?  
5 A. Yes.  
6 Q. And the only thing you remember her saying is,  
7 what is -- asking what the hole was about?  
8 A. Yes, at that point in time.  
9 Q. Okay. So did there -- did there come a point  
10 in time in which he ceased, stopped -- that is, stopped --  
11 digging?  
12 A. Yes.  
13 Q. And so then what happened? Is that because he  
14 came back or you actually saw him stop?  
15 A. He had come back. I remember --  
16 Q. Did he have the shovel?  
17 A. I don't recall.  
18 Q. Okay. Now, this shovel we're talking about,  
19 you sat through your preliminary hearing and you saw a  
20 shovel be introduced into evidence?  
21 A. Correct.  
22 Q. Is that the shovel we're talking about?  
23 A. Yes, it is.  
24 Q. Do you know where he got that?  
25 A. I honestly don't. I know -- I know he's had

1 it. And when he moved to our house, he had it. But I  
2 don't know.

3 Q. So he had it when he came to move to your --  
4 live with your parents?

5 A. Yes.

6 Q. So he comes back from the hole, and then what  
7 happens?

8 A. Micaela had asked if she can go up the -- up  
9 front, or whatever, because she was cold. And so I  
10 remember Kody saying, "Yeah, okay, get out." And he was  
11 kind of guiding her towards the passenger side back seat.

12 Q. Um-hmm.

13 A. And opened the door. And as she was going to  
14 get in, he had pushed her down to the ground.

15 Q. Okay. Were you watching this?

16 A. Yes.

17 Q. Now, are you watching this across the back of  
18 the car, or did you follow them around?

19 A. Well, I was kind of in between the car and  
20 where the -- where he was digging at, and so I was standing  
21 like right there. And when they -- they had walked in  
22 front of me around the car, and he had pushed her down  
23 right in front of me.

24 Q. They hadn't got to the door?

25 A. Kind -- they had kind of gotten to the door,

1 but not really.

2 Q. Had he opened it?

3 A. Yes.

4 Q. So he pushes her to the ground, and then what  
5 happens?

6 A. I kind of stepped back. I didn't know what  
7 was really going on. I was trying to process it all and  
8 everything.

9 Q. Did you say anything?

10 A. No. And I remember her kind of being on her  
11 knees and her kind of just sitting there. And I'm trying  
12 to really remember. It gets all, like, blurry then. But  
13 the next thing I remember is he kind of pulled her a little  
14 way from the car and --

15 Q. When she was on her knees, was she facing her  
16 or facing the car -- facing him or facing the car? Was he  
17 behind her or facing her?

18 A. Kind of on the side of her.

19 Q. Okay.

20 A. She was kind of facing the car. And then I  
21 remember him like pulling back her hair and looking at me  
22 and saying to hit her and everything. And I just looked up  
23 at him, and I like shook my head and I'm like, I can't do  
24 that, I can't do that. And he kept --

25 Q. You didn't verbalize this, you just were



1 shaking your head?

2 A. Correct.

3 Q. Okay. Go ahead.

4 A. And I just remember him keep telling me, "Just  
5 do it, it'll be okay, just do it."

6 And then all -- all I remember is him pulling  
7 her hair back and I had went up and had kneed her in the  
8 face.

9 Q. Okay.

10 A. And then I think it was a few minutes after  
11 that we had heard a train coming and so he had got her up  
12 and we had went around the car to kind of hide from the  
13 train.

14 Q. On the side away from the train?

15 A. Yes.

16 Q. Okay.

17 A. And kind of waited behind the car there until  
18 the train passed, and then --

19 Q. Did you hunker down?

20 A. Yes.

21 Q. Okay.

22 A. And then I remember I walked around -- the  
23 back of the car around, and I --

24 Q. Back towards the back of the car?

25 A. Yes.

1 Q. Was the back still open?

2 A. Yes.

3 Q. Okay.

4 A. And I don't recall which way they went, but by  
5 the time -- I'm assuming they went the front way because by  
6 the time I had gone around the back of the car they were  
7 already on the other side.

8 Q. Okay. Doing what? Was she walking or what?

9 A. I don't recall.

10 Q. Okay.

11 A. And the next thing I remember is that he  
12 pushed her down again. And that's when he kind of started  
13 punching her and kicking her. And he kept trying to get me  
14 to hit her, but I -- I refused, I wouldn't hit her anymore.

15 Q. You kneed her in the face?

16 A. I kneed her in the face. And then I remember  
17 him telling me to go pick up the shovel and to start  
18 digging more. And I don't recall where the shovel was. I  
19 think it was laying next to the grave.

20 And I had went and picked it up and kind of  
21 was facing the tracks and just kind of standing there. And  
22 then I kept glancing back to see what Micaela and Kody were  
23 doing. And one of the times when I had looked back, I  
24 noticed that he was trying to take off her jacket and  
25 everything.

1 Q. Um-hmm.

2 A. And I remember --

3 Q. What did her jacket consist of?

4 A. All I recall is I think it was a -- like a

5 gray, light sweater.

6 Q. Okay.

7 A. And I remember looking back and, like, her

8 clothes were, like, ripped and everything, like he was

9 trying to take them off. And then I remember -- I believe

10 he had that knife in his hand, cutting off her clothes.

11 And I remember --

12 Q. Was she still on her knees?

13 A. Yes. And --

14 Q. Was her sweatshirt on?

15 A. Yes, but he was trying to cut it off and take

16 it off. And then I remember he was trying to pull it,

17 like, off of her arms. But that's when I noticed they

18 weren't coming off and I didn't really know why. And so he

19 kind of cut the clothes off. And that's when I had noticed

20 there were -- that her arms were tied together.

21 Q. In what way?

22 A. With the zip ties.

23 Q. Okay. Did you notice any knot anywhere at

24 that point?

25 A. No.

1 Q. Were the zip ties over the sweater?  
2 A. I don't recall.  
3 Q. But you did -- you did see zip ties?  
4 A. Yes. Then I remember him -- I believe it was  
5 at that point that he had cut the zip ties off.  
6 Q. Okay.  
7 A. And then I kind of turned back around, not  
8 wanting to look back. And then I remember kind of setting  
9 the shovel in the grave, pretending like I was going to  
10 start digging, but -- and then I noticed when I had looked  
11 back again they were a little bit closer towards me, and  
12 she was still on her knees and her back was towards me.  
13 And I had --  
14 Q. Her back was towards you?  
15 A. Yes. She was facing Kody.  
16 Q. How was he moving her if she was on her knees?  
17 A. That I don't know because my back was turned  
18 at that point.  
19 Q. But you looked back and saw this?  
20 A. Yes.  
21 Q. Did you see how he had ahold of her?  
22 A. I don't recall.  
23 Q. So you are standing at the grave facing the  
24 grave?  
25 A. Yes.

1 Q. They are coming towards you?  
2 A. Yes.  
3 Q. Could you hear something?  
4 A. I could kind of hear, like, struggling. But I  
5 didn't know exactly what was going on.  
6 Q. Was Micaela saying anything?  
7 A. Not that I can recall.  
8 Q. Okay. So what happened next?  
9 A. I had turned around to look at Kody, and I  
10 noticed that all of her clothes on top were cut off and not  
11 on her anymore.  
12 Q. So she was nude from the waist up?  
13 A. Yes.  
14 Q. Go ahead.  
15 A. And then I remember --  
16 Q. Now, how close are they to you when you see  
17 that she's been disrobed on the top half?  
18 A. Maybe three to five feet away.  
19 Q. You're still at the grave?  
20 A. Yes.  
21 Q. Could you see where the clothes were?  
22 A. No, I didn't notice.  
23 Q. Okay. Go ahead.  
24 A. And then I remember looking up at Kody and him  
25 telling me, "Hit her with the shovel, hit her with the

1 shovel." And he was trying to be quiet about it so Micaela  
2 couldn't hear.

3 And Micaela kept kind of like trying to turn  
4 back around to look at me. And Kody kept yelling at her,  
5 "Don't turn around. Don't" -- "You don't need to turn  
6 around and look at her and" -- "to see what she's doing."

7 And he kept telling me, like, "Hit her with  
8 the shovel," and everything. And not -- and he was mad. I  
9 didn't know what he was going to do to me, so I had hit her  
10 in the back of the shoulder with the shovel.

11 Q. Hard?

12 A. Not very hard, no. But she kind of --

13 Q. Did she react when you hit her?

14 A. She kind of went forward, but that was all.

15 Q. Did you hit her with the flat of the shovel or  
16 the edge of the shovel?

17 A. I think it was the flat of the shovel.

18 Q. Did you actually take a swing at her with it?

19 A. Just kind of went back and swung.

20 Q. Okay. So you hit her with the shovel?

21 A. Yes.

22 Q. Then what happened?

23 A. And then Kody had taken the shovel from me,  
24 and I kind of stepped back away from her and the grave and  
25 everything, and Kody had swung and hit her in the head and

1 she kind of, like, fell forward.

2 And to me it looked like she had like -- she  
3 had blacked out or went unconscious for a few seconds or  
4 maybe it was --

5 Q. Where in the head did he hit her, do you  
6 remember?

7 A. Just towards the back right here.

8 Q. Was it the flat or the edge of the shovel, or  
9 do you know?

10 A. I don't know.

11 Q. And then what happened?

12 A. And then I just remember her being in the  
13 grave and Kody was on -- like towards the top of her, over  
14 her. And her legs were kind of kicking and she was  
15 struggling and --

16 Q. And she isn't saying anything during this  
17 period of time?

18 A. Not that I can remember, no. And then I  
19 remember going up and holding her legs down so she would  
20 stop kicking. And then all of a sudden her legs went  
21 completely still and she wasn't moving.

22 And that freaked me out, so I backed off and  
23 jumped up and walked off a little bit. And I couldn't see  
24 anything, like, towards her face or anything because Kody  
25 was over her.

1                   And then Kody had kind of backed off and her  
2 hands were over her neck, and then a few seconds later I  
3 had seen that there was blood coming down.

4           Q.       How far away were you?

5           A.       Maybe seven feet away maybe.

6           Q.       Um-hmm.

7           A.       And --

8           Q.       Where did the knife come from?

9           A.       I'm assuming Kody's pocket. I didn't see the  
10 knife until he was cutting her clothes. And then I didn't  
11 see it again until he backed away from her from being down  
12 in the grave.

13          Q.       Okay. And at that point you see blood all  
14 over her front?

15          A.       Over her hands.

16          Q.       Are you close enough to see wounds?

17          A.       I was probably close enough, but I didn't see  
18 any at that point.

19          Q.       Okay. So then what happened?

20          A.       And then at that point it was kind of getting  
21 dark. And so Kody told me to go pull the car around so the  
22 headlights were facing the grave, and then he told me to  
23 stay in the car.

24          Q.       Did you do that?

25          A.       I did.



1 Q. Now, you would agree with me, would you not,  
2 you remember talking to Mr. Ohlson and Mr. Kump, and you  
3 told them that you personally participated in cutting her  
4 throat?

5 A. Correct.

6 Q. Why did you say that?

7 A. To protect Kody.

8 Q. Why?

9 A. I don't know.

10 Q. Well, we'll get to that. Did you ever use the  
11 knife on her?

12 A. No.

13 Q. That's the truth?

14 A. Truth.

15 Q. You did hit her with a shovel?

16 A. Yes.

17 Q. And before you arrived at this place, he had  
18 told you, in essence, in so many words, that "We have to  
19 kill her," right?

20 A. Correct.

21 Q. He didn't say why? Never said why?

22 A. No.

23 Q. Well, so now he's backed off of her and you  
24 see this blood, her hands are at her throat?

25 A. Yes.

1 Q. Do you remember anything being on her body or  
2 around her arms?  
3 A. I remember him trying to cover her front area  
4 with the gray jacket.  
5 Q. Do you remember anything on her hands?  
6 A. I don't recall, no.  
7 Q. Or her arms?  
8 A. I don't recall.  
9 Q. Do you remember seeing the photograph in the  
10 preliminary hearing with the ends of the sweater on her  
11 sleeves?  
12 A. Vaguely, but yes.  
13 Q. Do you remember seeing that out at the crime  
14 scene?  
15 A. No.  
16 Q. And you think he cut the zip ties off of her?  
17 A. Yes.  
18 Q. You never saw zip ties on her feet?  
19 A. No.  
20 Q. Anything else tied around her feet?  
21 A. No.  
22 Q. And you were sitting on her legs when he was  
23 bent over her, and you couldn't see what he was doing,  
24 right?  
25 A. Correct.

1 Q. But it was shortly after that, when you backed  
2 off -- you say her legs straightened?  
3 A. Yes, they stopped moving.  
4 Q. Did they, in essence, relax?  
5 A. It kind of felt like that, yes.  
6 Q. So and -- when he -- then when he backed off  
7 of her -- so he was kneeling over her?  
8 A. Yes.  
9 Q. With her knees on either side of her chest?  
10 A. No, he was just on, like, one side.  
11 Q. But he was leaning over her?  
12 A. Yes.  
13 Q. And you couldn't see what he was doing?  
14 A. No.  
15 Q. So when he, I guess, then leaned back up  
16 straight, this is when you saw the blood on her throat?  
17 A. Correct.  
18 Q. And how far away were you from him?  
19 A. About maybe seven, eight feet back.  
20 Q. And you could see the blood?  
21 A. Yes.  
22 Q. And you could see her hands around her throat?  
23 A. Yes.  
24 Q. Did she ever say anything?  
25 A. Not at that point in time. It was later --

1 maybe a couple minutes, maybe -- maybe five minutes later,  
2 she had looked up at Kody and asked, "Am I still here? Am  
3 I still alive? Can I" -- and then she kept repeating,  
4 "Just take me home. I won't say anything. Just take me  
5 home."

6 And that's when Kody had told me to go pull  
7 the car around so the headlights were facing the grave.  
8 And then he told me to stay in the car and keep a watch  
9 out.

10 Q. So how close did you get when you did this?  
11 Well, first, before we leave it, you say that she is saying  
12 these things. Have you ever made any other statements  
13 about what she was -- what she said as this happened to  
14 her?

15 A. Not that I can recall.

16 Q. Have you ever said anything to anybody in the  
17 jail about what she said?

18 A. No.

19 Q. So she's making this statement -- these  
20 statements that you've described to me. Is Kody saying  
21 anything?

22 A. The only thing I remember him saying is,  
23 "Yeah, we'll take you home, you'll be okay."

24 Q. Just like that?

25 A. To that extent. I don't remember exactly what

1 he said, but.

2 Q. In a calm voice, or was he yelling or?

3 A. In a -- kind of in a calm voice.

4 Q. So he directs you to turn the car so that the

5 lights are on them?

6 A. Yes.

7 Q. And you do that?

8 A. Yes.

9 Q. How close did you pull up?

10 A. It was maybe 10 -- 10, 15 feet away maybe.

11 Q. And you were sitting in the driver's seat?

12 A. Yes.

13 Q. With the lights on?

14 A. Yes.

15 Q. And what could you see?

16 A. I could see that he was kind of kneeling next

17 to her, kind of over her, and I kind of sat in, like, the

18 windowsill of the driver's seat and --

19 Q. The windowsill?

20 A. Like, the window. I had rolled down the

21 window and sat there on the window.

22 Q. So you pulled yourself out?

23 A. Yes.

24 Q. And sat on the windowsill?

25 A. Yes.

1 Q. Holding on to the top of the car?  
2 A. Yes.  
3 Q. So looking over there?  
4 A. Yes and no. Kody kept telling me to look away  
5 and not look over there and to keep a watch out for any  
6 cars that may be coming by, or coming, or whatever.  
7 And I knew -- I could hear that they were,  
8 like, struggling, or whatever, but I kept my head turned, I  
9 didn't look over there.  
10 And then I remember her kind of yelling out,  
11 "Kody, I love you." And that's when --  
12 Q. Seriously?  
13 A. Yeah.  
14 Q. Okay.  
15 A. That's when I had turned my head and looked  
16 over and she was kind of sitting up kind of in the grave,  
17 holding on to Kody, and Kody kind of pushed her down,  
18 looked up at me and said, "Look away."  
19 And so I kept my head turned. And I could  
20 hear, you know, struggling here and there. Then all of a  
21 sudden I could hear, like, gurgling noises.  
22 And I kind of glanced over, but looked back  
23 away. And I was scared, I didn't know what he was doing  
24 over there or anything.  
25 And then he had got up and started walking

1 over towards the driver's side of the car, kind of like  
2 walking around, and had his hands, like, out and he had --  
3 I noticed he had the knife in his hand and he was just --  
4 he was swearing and freaking out and crying, and I didn't  
5 know what had just happened. And --

6 Q. You actually saw her sit up in the grave?

7 A. I had glanced over and she was -- kind of sat  
8 up, like, grabbed on to Kody.

9 Q. Um-hmm.

10 A. And then -- then the next time I had looked  
11 over, she was down in the grave.

12 Q. Did she ever cry for her mother?

13 A. Not that I can remember.

14 Q. How long after you saw her sitting up in the  
15 grave or holding on to Kody did he walk back to you?

16 A. It was after -- it was a few minutes. Because  
17 after he had kind of, like, pushed her down in the grave, I  
18 looked back away. And then all I remember is a -- a few  
19 minutes later, him walking -- getting up and walking over  
20 towards the driver's side of the car.

21 Q. Okay. Were you still sitting on the sill?

22 A. Yes.

23 Q. Of the driver's position?

24 A. Correct.

25 Q. And was there any conversation between you and

1 he?

2 A. Not that I can recall, no. I remember him --

3 I remember him, a few minutes after him walking around that

4 area and everything, come up to me and say, "Sorry." But

5 that's all I can remember.

6 Q. Now -- okay. So he paced around, I guess, is

7 what you're telling me?

8 A. Yeah.

9 Q. For a few minutes?

10 A. Yes.

11 Q. Did he have gloves on?

12 A. Yes.

13 Q. Did you see blood on him?

14 A. I noticed there were -- there was blood on the

15 gloves, yes.

16 Q. How about his person?

17 A. Not that I can recall because he had a -- like

18 a black hoodie on.

19 Q. How about on his face, or anything like that?

20 A. Not that I could recall.

21 Q. So now he's, in essence, storming around?

22 A. (Nods head)

23 Q. With this knife in his hand?

24 A. Um-hmm.

25 Q. Open or closed?



1 A. I believe it was open.

2 Q. You could see the blade?

3 A. (Nods head)

4 Q. Could you see blood on the blade?

5 A. Yes. Because I noticed that the gloves and  
6 everything were covered in blood.

7 Q. How long did he do that? You're telling me he  
8 was walking back and forth, cursing, and -

9 A. Yes. Maybe three or five minutes.

10 Q. And other than "Sorry," was he saying anything  
11 to you?

12 A. Not to me, no.

13 Q. Well, who was he saying -- was he just like --

14 A. Just -- I guess just in general, because he  
15 was saying the F word, he was just kind of like "Aargh."  
16 But that was all.

17 Q. Just cursing sort of thing?

18 A. Yes.

19 Q. Raging? How about that?

20 A. Yes.

21 Q. And how long -- how long did that go on?

22 A. Maybe three to five minutes.

23 Q. And then what happened?

24 A. And then he had told me to grab one of the  
25 bags that I guess were over in the passenger side. I

1 didn't see those until he --

2 Q. The rear passenger side or the front passenger  
3 side?

4 A. The front passenger side.

5 Q. Okay.

6 A. And so I had grabbed one of the plastic bags  
7 and he told me to put my gloves in and he had put his  
8 gloves in, and I believe in that same bag with the knife.

9 Q. Okay.

10 A. And then he took that from me and went and put  
11 it in the very, very back, the cargo back.

12 Q. Uh-huh.

13 A. And then I remember him going back to the  
14 grave, and I couldn't see exactly what was going on, but  
15 I'm assuming that he was covering her up.

16 Q. Could you hear digging?

17 A. I couldn't.

18 Q. Or shovel noises?

19 A. No, I could not.

20 Q. How about scraping noises?

21 A. No. I could just see the movement of him doing  
22 those things, but I couldn't --

23 Q. Did you ever see her -- him hit her with the  
24 shovel?

25 A. Yes.

1 Q. When did that occur?

2 A. Right after I had hit her. He had took --  
3 taken the shovel from me, and a couple minutes after I had  
4 done it, he had done it.

5 Q. And you don't remember what part of the  
6 shovel?

7 A. I don't.

8 Q. Do you ever remember the tip being tipped and  
9 there being a pointed end to it?

10 A. I know there was kind of a tip, but I don't  
11 recall.

12 Q. Do you ever -- did you ever see the tip part  
13 of it used on her?

14 A. No.

15 Q. So now the -- the gloves and the knife, you  
16 think, went into this bag?

17 A. Yes.

18 Q. What kind of bag are we talking about?

19 A. Just a small white plastic garbage sack.

20 Q. Like a kitchen bag sort of thing?

21 A. Yes.

22 Q. And were the things inserted into it -- were  
23 you outside of the car or inside of the car when that  
24 happened?

25 A. I was outside. I kind of held the bag outside

1 of the car.

2 Q. So you actually got -- so you must have got  
3 off the sill of the window?

4 A. Yes.

5 MR. TORVINEN: You know, I think I forgot to  
6 recite the time. But it's quarter to four and Mr. Ingram  
7 is going to leave for a minute apparently.

8 MR. INGRAM: I just need to use the restroom.

9 MR. TORVINEN: That's fine. I don't think I  
10 recited the time when we started, but it was a little after  
11 one. Would you agree, Mr. Lockie?

12 MR. LOCKIE: That's correct.

13 Q. In any event --

14 MR. LOCKIE: Not one, two.

15 MR. TORVINEN: Two o'clock. Excuse me, a little  
16 after two o'clock.

17 Q. (By Mr. Torvinen) So you're sitting up on --  
18 at some point you're sitting up on the sill of the car.  
19 You get off of it?

20 A. Correct.

21 Q. I guess when he told you to get the bag?

22 A. Correct.

23 Q. Had you seen the bag beforehand?

24 A. No.

25 Q. Was it in one of the boxes they come in, or is

1 it just a bag by itself?

2 A. Just the bag by itself. There was a couple of  
3 them with it.

4 Q. Were they wadded up, or in some container, or  
5 just sitting on the floorboard?

6 A. Just kind of wadded up.

7 Q. On the floorboard or where?

8 A. I don't recall.

9 Q. But they were on the passenger side?

10 A. Yes.

11 Q. In the front of the car?

12 A. Yes.

13 Q. So -- so you got out. Did he tell you to get  
14 out with the bag?

15 A. No.

16 Q. He said to get the bag?

17 A. Correct.

18 Q. And you got a bag?

19 A. Yes.

20 Q. Well, how did you get from sitting on the  
21 windowsill to the passenger -- did you go back into the  
22 car?

23 A. I just kind -- I slid down into the driver's  
24 seat and had reached over where he had told me there was  
25 bags and I had -- when I looked over in the passenger area,

1 I had seen the bag, and that's when I had grabbed it.

2 Q. Okay. And -- so you've secured the bag now?

3 A. He took the bag from me.

4 Q. While you were still sitting in the car?

5 A. Correct.

6 Q. Through the window?

7 A. Yes.

8 Q. So at some point you got out, you're telling  
9 me?

10 A. No, I stayed in the car.

11 Q. And you held the bag from the car?

12 A. Outside the window, yes.

13 Q. You stuck your hands out?

14 A. Yes.

15 Q. And he dropped these things in there?

16 A. Yes.

17 Q. Well, how -- when did you take the gloves off?

18 A. I don't recall. I want to say it was probably  
19 before I turned the car around for the headlights to face  
20 the grave.

21 Q. So you -- okay. So now you've dropped -- you  
22 got the gloves from where -- were they in the front of the  
23 car somewhere? Your gloves?

24 A. My gloves?

25 Q. Do you remember?

1 A. I don't recall, no.

2 Q. Do you remember dropping them in there?

3 A. Yes.

4 Q. Do you remember him dropping them in there?

5 A. Yes.

6 Q. Some gloves in there?

7 A. Yes.

8 Q. Do you have a specific memory of the knife

9 going in there?

10 A. Not specifically, no.

11 Q. But you have an impression that the knife did

12 go in there?

13 A. Correct.

14 Q. Was it open or closed, or do you know?

15 A. I believe it was closed.

16 Q. Now, were you familiar with this knife? Had

17 you seen it before?

18 A. A couple of times but just briefly. I knew

19 he -- he carried pocket knives with him and everything.

20 Q. Okay. And do you remember the knife that we

21 had in the preliminary hearing?

22 A. Yes.

23 Q. And was it of a similar size and sort?

24 A. I think so, yes.

25 Q. I know you didn't get a close look at it,

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

Kody Cree Patten,  
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vs.

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Respondent.

No. 82715

**APPELLANT'S APPENDIX VOLUME I PAGES 001-249**

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**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the \_\_\_\_ day of \_\_\_\_\_, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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AARON FORD

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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BY \_\_\_\_\_  
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1 but -- so now these things are in the bag. Was there any  
2 blood on your gloves?

3 A. No, sir.

4 Q. Okay. So now these items, two pairs of  
5 gloves, and you think the knife was in the bag?

6 A. Yes.

7 Q. Then what happens?

8 A. He had taken the bag from me and went around  
9 to the cargo area. And I could hear bags ruffling and  
10 everything. And then I remember him -- I think he was  
11 walking around the driver's side, walked back to the grave,  
12 and started -- it looked like he was burying her. I  
13 couldn't see anything.

14 Q. Now this is the second time that he's working  
15 on burying her?

16 A. This is just the first time.

17 Q. Okay.

18 A. And then I remember seeing him grab a big bush  
19 and kind of put it in the general area where she was. And  
20 then I remember him walking back around to the cargo area  
21 and moving stuff around in the back and then closing it.  
22 And when he -- he had gotten back into the car I noticed  
23 that his jacket was off, his sweater that he was wearing.

24 Q. Okay. What did he have on at that point, do  
25 you recall?

1           A.        I think a T-shirt, I don't recall.

2           Q.        So you hear this rummaging in the back, he

3 comes forward. Then what happens?

4           A.        Then he had closed the cargo door and then

5 walked up, got in the driver's seat, and this time I just

6 kind of crawled over to the passenger side.

7           Q.        Um-hmm.

8           A.        And he got in the driver's seat and then left

9 that area.

10          Q.        So he backed up?

11          A.        Just kind of pulled off because -- yeah.

12          Q.        Didn't have to back up onto the road?

13          A.        I don't recall.

14          Q.        So now here you are and he are in this car and

15 you just participated in a killing, right?

16          A.        (Nods head)

17          Q.        To this -- you can't tell me to this day why

18 this happened?

19          A.        No.

20          Q.        He never told you that?

21          A.        No.

22          Q.        And you're driving away?

23          A.        Yes.

24          Q.        Are you speaking to one another?

25          A.        Not right after -- right -- not right away,

1 because he was texting -- from my understanding he was  
2 texting Wendi to ask what time he needed the -- that she  
3 needed the car -- due to --

4 Q. What time was it, do you think, you left? By  
5 then what time was it?

6 A. Maybe almost eight, I don't know.

7 Q. Okay. Was it dark?

8 A. Yes.

9 Q. Fully dark?

10 A. Yes.

11 Q. Okay. Initially then -- as you're driving  
12 down the road, he's texting? Or did he stop and text?

13 A. He was driving as he was texting.

14 Q. He's able to do that?

15 A. Not very good, but yes.

16 Q. Okay. And he told you what he was doing then?  
17 Or could you see the text?

18 A. He just kind of told me, I'm going to text her  
19 and see what -- when she needed the car back.

20 Q. Anything else that you and he talked about?

21 A. When we got back closer to where the overpass  
22 was, he said that --

23 Q. Did you go back the same way you came?

24 A. Yes. He had said that he needed to go get her  
25 cell phone, or something, that he had buried. And that's

1 the first time that I had ever knew anything about her cell  
2 phone being buried. And he said that he had needed to go  
3 get that and destroy it or something.

4 So -- and I didn't know where any of that was.  
5 And he went under the overpass and started going up into  
6 the mountains.

7 Q. Now, this is the underpass before you get back  
8 to 3 Mile?

9 A. Correct. This was like -- right on -- he was  
10 headed on the opposite side of where she was.

11 Q. On the opposite side of I-80?

12 A. Yes.

13 Q. So you go through -- you go back towards town,  
14 back towards 3 Mile, but before you get to 3 Mile you can  
15 go under the highway?

16 A. Yes.

17 Q. And you did that?

18 A. Yes. And he started going up onto the dirt  
19 road and then noticed that there was car lights up there,  
20 and so he turned around and we just headed back under the  
21 overpass back to town.

22 Q. He said he had to go get the cell phone?

23 A. Yes.

24 Q. But you never got it?

25 A. No.

1 Q. So you go back to town?

2 A. Go back to town, yes.

3 Q. And where do you go? Where is the first place  
4 you go?

5 A. I remember first going to McDonald's, going  
6 through the drive-through, and he had ordered drinks.

7 Q. Um-hmm.

8 A. And then right after, we had left there, we  
9 went down to the swimming pool parking lot. And at  
10 McDonald's he had got a soda and I had just got a cup of  
11 water. And he used that cup of water and he got out of the  
12 driver's side car and started washing his hands and arms.

13 Q. Okay.

14 A. And at that point I started -- I had received  
15 a phone call, and I didn't recognize the number but I  
16 figured I would answer it just to see who it was. So I  
17 answered it and it was -- I believe it was Candy Roland,  
18 one of Micaela's friends, and she had asked me if I knew  
19 where Micaela was.

20 Q. Um-hmm.

21 A. And she -- and I had told her no, I didn't  
22 know. And then --

23 Q. This was a verbal voice conversation?

24 A. Correct.

25 Q. And her name was Candy Rollins?

1           A.       Roland.

2           Q.       Roland?

3           A.       Yes. Then I remember her asking if I knew  
4 where Kody was, and I told her that he was right there with  
5 me. And she had asked, "Well, have you been with Kody the  
6 whole night?" And I told her yes.

7                   And she was like, "Okay, well, if you hear  
8 anything, please let us know." And I said okay, and got  
9 off phone. And then I had -- and this time Kody was also  
10 receiving, I believe, text messages and phone calls. I  
11 don't know who from exactly.

12          Q.       You didn't overhear any of them?

13          A.       No.

14          Q.       Now, this is all while you're sitting at the  
15 swimming pool?

16          A.       Yes. And then I had also received a text from  
17 Tiffany Rasmussen, and she -- and it was basically saying,  
18 you know, "Micaela is missing. If you hear anything or  
19 know anything, please let us know." And then I had also --

20          Q.       Well, what time -- you started receiving all  
21 of these text messages and calls while you were sitting at  
22 the swimming pool?

23          A.       Yes.

24          Q.       Nothing before that?

25          A.       No.



1 Q. And what time was it, do you think?

2 A. Maybe -- maybe 8:15, after eight maybe.

3 Q. Okay.

4 A. And then I had also got a text from my dad,  
5 asking if I was ready to be picked up, because his meeting  
6 was now over.

7 Q. Um-hmm.

8 A. And I had told him no, that the boys were  
9 still playing their game or whatever. And he was like  
10 "Okay, well, just let me know." And then --

11 Q. Let's go back to this water at the McDonald's.  
12 Did he ask you to get water, or you just chose to get  
13 water?

14 A. I just chose to get water.

15 Q. So now you're getting texts from your dad?

16 A. Yes. And he had asked me if I'm ready, and I  
17 had told him, "No, the boys are still playing their game,"  
18 and that we would just have Wendi bring us home when they  
19 were done with this game.

20 And he was like, "Okay." And he was like,  
21 "Just keep me posted, just keep me updated," and  
22 everything. And I said, "Okay."

23 And then we left the swimming pool and he  
24 headed out towards the other gravel pit where everything  
25 was burned.

1 Q. Um-hmm.

2 A. And he headed out there. And when we got  
3 out --

4 Q. Did he tell you that's where you were going?

5 A. No. And when we finally got out there, he  
6 went down into the part where everything was burned. And  
7 there was kind of like hills so you couldn't really tell --  
8 if you were looking from the highway you couldn't really  
9 tell.

10 And he told me to take off my sweater so he  
11 could use the sweater -- which is ten times too small --  
12 but he told me to take that off so he could put it on, told  
13 me to stay in the car. He got out of the car.

14 Q. Why would he put your sweater on?

15 A. Because it was really windy and cold that  
16 night.

17 Q. Okay.

18 A. And so he told me to stay in the car. He got  
19 out of the car, closed the door, went to the cargo area and  
20 started -- I could hear him putting stuff in bags and  
21 moving stuff around and then seeing him walking back and  
22 forth on the driver's side, putting stuff in the -- like,  
23 the fire area.

24 Q. And you never saw another backpack?

25 A. No. At that point, when finally -- one of the

1 times when he had passed I noticed a black bag that was in  
2 his hand, and I'm assuming that was Micaela's.

3 Q. And you never saw that when you were standing  
4 guard out at the --

5 A. No.

6 Q. -- murder scene?

7 A. No.

8 Q. Was there a lot of stuff in the back of the  
9 car or just Micaela?

10 A. I didn't see anything in the back but Micaela.

11 Q. And you -- you never went and dug anything up?

12 A. No.

13 Q. You didn't go back to that place where he  
14 started to go to?

15 A. No.

16 Q. So he's making trips back and forth between  
17 the cargo area of the vehicle and, I guess, a pile that he  
18 is making?

19 A. Correct. And then --

20 Q. Was he saying anything to you at this point?

21 A. No, because both -- all the doors were closed  
22 and I was sitting in the passenger seat. And then he  
23 closed the cargo and went to the pile that he had made and  
24 I had seen him use the lighter fluid bottle, squirting.

25 Q. So did you see where he got that from?

1           A.           I did not. I'm assuming the cargo area.

2   And --

3           Q.           Did he say anything about bringing that with  
4   him?

5           A.           No.

6           Q.           Go ahead.

7           A.           And then I saw him squirting the lighter fluid  
8   all over the stuff. And then --

9           Q.           Was this like a white can?

10          A.           Yeah, like a white plastic bottle it looked  
11   like.

12          Q.           Okay.

13          A.           And then start it on fire. But I don't recall  
14   what he started the fire with, though. And he kept -- as  
15   soon as the fire was started and everything was burning, he  
16   kept running up and down the hill to make sure no one was  
17   coming down the road or anything.

18                       And then I noticed, when he thought everything  
19   was kind of burned up and everything, he made sure that the  
20   fire was put out and got back in the car and --

21          Q.           How did he do that?

22          A.           He, if I remember right, found like a stick or  
23   something next to the place where everything was burned and  
24   was kind of moving it around. And then --

25          Q.           So did he -- did you all sit there and wait

1 until it burned down?

2 A. I sat in the car and he was out with the fire,  
3 running up and down that hill, making sure no one was  
4 coming.

5 Q. Well, how long do you think you were out there  
6 at the eastern gravel pit? Now, this is -- this is over in  
7 Utah, isn't it?

8 A. Correct.

9 Q. Do you know that?

10 A. Yes.

11 Q. How did you get to the gravel pit? What route  
12 did you use?

13 A. When we -- the road by -- they call it Metro,  
14 the cafe that's out there.

15 Q. Um-hmm.

16 A. And we went down -- from where that gas  
17 station is, there's a road that you take that goes down.  
18 And then off that road, if you turn left, it goes down  
19 another long road.

20 And then almost to the end of that road  
21 there's a turnoff that you turn right and go down another  
22 road, and then it kind of -- kind of end up in that.

23 Q. Have you ever been to the fire pits before?

24 A. I've been there once.

25 Q. Was that in daylight or dark?

1           A.           In daylight.

2           Q.           So how long do you think you were at the  
3 gravel pits burning whatever he was burning? You didn't  
4 specifically see what he was burning other than a black  
5 bag?

6           A.           Yes. And then the white plastic bags that he  
7 was carrying.

8           Q.           Um-hmm. How many plastic bags did he carry to  
9 the fire, do you know?

10          A.           I don't recall.

11          Q.           More than one?

12          A.           Yes.

13          Q.           Was he carrying them at the same time, or he  
14 made two trips?

15          A.           A couple of times, it was a couple in his  
16 hand. But he made -- he made at least two or three trips.

17          Q.           Okay. So now we get back to how -- how long  
18 do you think you were there while this was burning and he  
19 was looking over the berm and like that? How long did that  
20 take?

21          A.           Maybe ten minutes, just to make sure  
22 everything that he thought was burned and everything.

23          Q.           It only took ten minutes to do this?

24          A.           To be honest, I don't know. It could have  
25 been -- it could have been longer.

1 Q. Were you texting or calling anybody during  
2 that period of time?

3 A. No, sir.

4 Q. Did you receive any texts?

5 A. Not that I can remember.

6 Q. Did you make any texts?

7 A. No.

8 Q. Was he receiving any calls?

9 A. Not that I'm aware of.

10 Q. Any texts that you're aware of?

11 A. Not that I'm aware of.

12 Q. So if I'm understanding you correctly, from  
13 the time you left the swimming pool, got to the burn site,  
14 burned the stuff, you didn't get any call or make any  
15 texts?

16 A. No.

17 Q. And he didn't get any calls or make any texts  
18 that you know of?

19 A. That I know of, correct.

20 Q. Once it was burned to his satisfaction, when  
21 he had stirred it, as you described?

22 A. Um-hmm.

23 Q. What happened next?

24 A. He came and got back in the car, took off my  
25 sweater and gave it back to me, and then drove off. And as

1 we were going back the same way we went, those roads, I  
2 noticed that -- before he took the jacket -- my sweater  
3 off, he had pulled out the lanyard of keys.

4 Q. Um-hmm.

5 A. And then he took the sweater off and he held  
6 that lanyard in his lap. And as he was -- as we were going  
7 back on those roads, he was taking keys off one by one and  
8 kind of like wiping them off, like trying to get  
9 fingerprints off or whatever.

10 Q. Um-hmm.

11 A. And throwing them out the window.

12 Q. To the fire?

13 A. No, just on the side of the road as we were  
14 driving --

15 Q. Um-hmm.

16 A. -- back to town. And then we went straight to  
17 his cousin's --

18 Q. Now, you know we recovered a --

19 THE COURT REPORTER: To? Straight to?

20 MS. FRATTO: To his cousin's house.

21 THE COURT REPORTER: Thank you.

22 Q. Now, you know we recovered some -- a part of a  
23 key ring in the fire, right?

24 A. Correct.

25 Q. Do you remember seeing anything on the key



1 ring when he pulled it out?

2 A. No. I know there was some keys on it, but  
3 I didn't see anything else.

4 Q. And what happened to the lanyard?

5 A. I believe that was thrown out of the car,  
6 also. I don't recall.

7 Q. Anything else?

8 A. Not that I remember.

9 Q. Do you remember telling Mr. Kump and Mr.  
10 Ohlson that -- that you believe the cell phone was thrown  
11 out the window? Did you say that to them?

12 A. No, not that I remember.

13 Q. So he is doing this as you're driving along?

14 A. Yes.

15 Q. Disassembling the key ring?

16 A. Yes.

17 Q. You went straight to his cousin's house?

18 A. Yes.

19 Q. Who was there when you got there?

20 A. When we first walked in, all the lights were  
21 off. But then his cousin had come out of the bedroom, and  
22 then there was a light turned on, and Wendi was laying on  
23 their couch, and Jeff and his girlfriend had come out of  
24 the bedroom. And I'm assuming they were all sleeping.

25 Q. So it was pretty late?

1 A. When we got there it was about 8:45, I think.

2 Q. Now, was there any difficulty between he and  
3 Wendi about the car?

4 A. I know Wendi was upset because it was a lot  
5 later than what she wanted.

6 Q. Um-hmm.

7 A. And that I didn't know anything about. I  
8 didn't know she wanted it back a whole lot earlier than  
9 that.

10 Q. So how long were you in Jeff's house?

11 A. We were there until about maybe 15 minutes to  
12 ten and --

13 Q. So almost an hour?

14 A. Almost an hour, yes. And --

15 Q. Did you receive any texts during that period  
16 of time?

17 A. My dad had texted me again and asked me when I  
18 was going to be home, and I told -- and we had asked Wendi  
19 if she could take us home. She was going to take us home  
20 and that's what I told my dad. And she was like, "Yeah,  
21 I'll take you home in just a minute."

22 Well, then, I guess Jeff's girlfriend needed a  
23 ride to work. And so she was like, "Well, I'm just going  
24 to wait to take you guys home until I have to take her to  
25 work." And that's what I told my dad.

1 Q. And this was a school night, right?

2 A. Yes.

3 Q. It was a Thursday?

4 A. Yes.

5 Q. And finally she did take you. Is that the

6 only text that you received while you were at Jeff's house?

7 A. The conversation between my dad, yes. And

8 after -- after the conversation with my dad --

9 Q. And we're talking about text conversation?

10 A. Correct.

11 Q. Go ahead.

12 A. And then I guess they kind of noticed a cop

13 going by, so Kody had went out to go talk to the cops and

14 see what was going on. And they ended up -- and I waited

15 in Jeff's house.

16 And when Kody had come back, Officer -- they

17 call her Petri (phonetic) -- but she had come in, she had

18 asked Jeff if it would be okay if she kind of searched the

19 apartment and made sure no signs of anybody else was

20 there.

21 Q. Did she say why? Who she was looking for?

22 A. For Micaela. And --

23 Q. Did you hear her say that or somebody told you

24 that?

25 A. I heard her say that.

1 Q. Okay.

2 A. And so she kind of walked through the house a  
3 little bit, just kind of looked around, didn't see  
4 anything, then she left.

5 And then about 8:45 rolled around and -- or  
6 9:45, excuse me, and Jeff's girlfriend was finally ready  
7 for work. We all got back in Wendi's car and we dropped  
8 Jeff's girlfriend off at work, and then Wendi and --

9 Q. Do you remember her name?

10 A. I think it was Candice.

11 Q. Okay.

12 A. And then Wendi took us straight home and we  
13 got home around ten.

14 Q. Now, did you and he ever, that day or the next  
15 day, talk about what had happened?

16 A. The only thing I remember him saying that  
17 night when we got home was that if anything was brought up  
18 that I was to keep my mouth shut and not say anything, that  
19 he was going to take blame. And he had told me that we  
20 were to never speak of this after tonight.

21 Q. Did you?

22 A. No.

23 Q. Well --

24 MR. TORVINEN: Does that have a limit on it?

25 DETECTIVE CARPENTER: It's still going.

1 MR. TORVINEN: That colloquy was between myself  
2 and Detective Carpenter concerning the digital recorder.

3 Q. (By Mr. Torvinen) Now, there came a -- let me  
4 ask you this, you heard Kip Patten testify that on the 16th  
5 you -- you made some disclosures to him?

6 A. Correct.

7 Q. Did that occur?

8 A. Correct, yes.

9 Q. And did you take him around those places like  
10 he describes?

11 A. Not on that day, no. It was a different day.  
12 I don't recall which day it was, but I did kind of take him  
13 on a --

14 Q. Tour?

15 A. Yeah.

16 Q. Well, so when did you -- when did you make  
17 this disclosure to Kip Patten? We know -- was it on the  
18 16th when you took him on this tour?

19 A. I don't believe it was because if I'm thinking  
20 of the right day, that's the same day that my mom was  
21 having a party at her house and everything.

22 Q. Um-hmm.

23 A. And he had come and got me. And I was only  
24 with Kip from -- maybe an hour. And then that same day I  
25 had went into Salt Lake with some close family friends to

1 help them with some shopping.

2 Q. So it was the day that he picked you up from  
3 your house when she was having this party that you made the  
4 disclosures to him?

5 A. Yes.

6 Q. And did you tell him the whole story?

7 A. Bits and pieces, but I did not tell him  
8 word-for-word detail.

9 Q. Did you tell him you participated?

10 A. Yes.

11 Q. But it was a different day when you went on  
12 the tour?

13 A. If I remember, yes.

14 Q. Why did you go on the tour?

15 A. He just kind of started driving out where she  
16 was buried and told --

17 Q. Well, how did he get you in his car on this  
18 separate occasion?

19 A. To be honest, I don't recall.

20 Q. Whose idea was it for you to come forward?

21 A. Mine.

22 Q. You're sure of that?

23 A. Yes.

24 Q. Kody didn't ask you to do it?

25 A. No. He told me to keep my mouth shut and not

1 say anything.

2 Q. And he never asked you to come forward?

3 A. No.

4 Q. Did Kip ask you to come forward?

5 A. No.

6 Q. And you're sure of that?

7 A. Yes. He kept -- because he kept saying, "Oh,  
8 I'll be behind you either way, but it's completely your  
9 decision on what you want to do."

10 Q. Well, now, we know that there was -- we  
11 believe that there was a great deal of -- how often --  
12 after Kody was taken into custody, which took place on the  
13 6th of March?

14 A. Yes.

15 Q. And is the time frame that Mr. Patten is  
16 talking about, in the middle of April, is when you made the  
17 disclosures to him?

18 A. Yes.

19 Q. Even if his day is wrong?

20 A. Yes.

21 Q. It was in the middle of April?

22 A. Yes.

23 Q. So that's a month and a half?

24 A. (Nods head)

25 Q. And Kody was in jail as of the morning of the

1 7th?

2 A. Yes.

3 Q. And -- of March?

4 A. Yes.

5 Q. How often did you visit him?

6 A. Pretty much every Sunday.

7 Q. Okay. And who brought you to town to visit

8 him?

9 A. His parents.

10 Q. And there were times -- did you know that they

11 record the conversations there?

12 A. Yes.

13 Q. So you were careful what you said?

14 A. Yes.

15 Q. But you were communicating by a different way,

16 right?

17 A. I was not.

18 Q. You never wrote notes?

19 A. I did not.

20 Q. And held them up to the window?

21 A. I didn't. He would towards me, but I wouldn't

22 do that towards him.

23 Q. Okay. So did you ever have a discussion where

24 he would hold notes up to you about the murder or what you

25 should do about it?



1           A.       Yes. He wrote us a story up and told me to  
2 stick to that story if I were to go and talk to anybody.

3           Q.       And what was the story?

4           A.       Basically that when we had gotten out there  
5 that she -- I heard a -- I stayed in the car, they were  
6 arguing, and I heard a thud on the car. I got out and  
7 noticed that she was on the ground and asked what happened  
8 and he told me that she was arguing and pushing him so he  
9 kind of pushed her off, but she fell and hit her head  
10 against the car and -- and then after that, I don't  
11 remember exactly what he had said. But he was basically  
12 trying to keep me out of it.

13          Q.       Is it basically the story that you told -- at  
14 least part of it -- Mr. Ohlson and Mr. Kump?

15          A.       Part of it, yes.

16          Q.       But when you got to Mr. Ohlson and Mr. Kump,  
17 you actually acknowledged hitting her with the shovel,  
18 right?

19          A.       Yes.

20          Q.       And you said that you had cut her throat?

21          A.       Correct.

22          Q.       Why did you say that if you didn't do that?

23          A.       Mainly because I was scared and I was trying  
24 to protect Kody.

25          Q.       Well, how did you think -- because you told

1 them that you both cut her throat, right?

2 A. Yes.

3 Q. So how did you think that was helping him?

4 A. I don't know.

5 Q. Okay. So this part about the argument between

6 he and she and her falling down and hitting herself

7 originated with Mr. Patten?

8 A. Yes.

9 Q. And that was through holding things up to the

10 window?

11 A. Correct.

12 Q. And this was sometime between his arrest and

13 you came forward?

14 A. Yes.

15 Q. Is that the story that you told Kip?

16 A. I had mentioned it to him, but that's not what

17 I had told Kip. I told Kip that what he had said was not

18 the truth.

19 Q. What who had said?

20 A. What Kody had showed me on that piece of

21 paper.

22 Q. And was Kip aware of this?

23 A. Yes, he was sitting right there.

24 Q. When he held it up to the window?

25 A. Yeah. They would always write back and forth,

1 but I -- I never did.

2 Q. What happened to these pieces of paper, do you  
3 know?

4 A. I don't know.

5 Q. And did you ever tell Kip Patten that you had  
6 participated in killing her?

7 A. I did, yes. But it first did not come from  
8 me. He told me that Kody had showed him on a piece paper,  
9 wrote my name or whatever, and that's how he told Kip that  
10 I was involved. And that's when Kip came to me and was  
11 like, "Hey, what happened that day?"

12 Q. Um-hmm.

13 A. And was kind of like, "I know you were there,  
14 Kody told me".

15 Q. And you told him what happened?

16 A. Yes.

17 Q. That -- what you've told me today?

18 A. Yes. Not in detail, but the events, yes.

19 Q. The basic parts of it?

20 A. Yes.

21 Q. Did you tell him you hit her with the shovel?

22 A. Yes.

23 Q. Did you tell him that -- did you tell him that  
24 you participated in slitting her throat?

25 A. No.

1 Q. Did you tell him about burning the stuff up?

2 A. Yes.

3 Q. To your knowledge, before Kody was arrested,  
4 between the 3rd of March and his arrest, did he ever go  
5 back up to this place under the second set of overpasses to  
6 dig up whatever it was he said he buried out there?

7 A. I do not know.

8 Q. He never said anything to you?

9 A. No.

10 Q. After you got back on the 3rd of March, did he  
11 ever say anything to you again about -- did you ever -- did  
12 you and he ever have another conversation, either in text  
13 or in person or by telephone, about the murder?

14 A. He told me to stick to this one story or  
15 something. I don't recall what story that was. But he  
16 told me to stick to this one story if I was ever brought in  
17 for questioning.

18 Q. Which story is that?

19 A. I don't recall.

20 Q. Was it one of the ones he held up to the  
21 window?

22 A. No.

23 Q. Something else?

24 A. Something else. That if something -- that  
25 when we were together after he picked me up from the golf

1 course, we were driving around, we started getting text  
2 messages saying that Micaela was missing, they didn't know  
3 where she was, and so we kind of drove around town looking  
4 for her and ended up at Jeff's house.

5 Q. That was the story you were supposed to tell?

6 A. Yes.

7 Q. And how did he communicate this to you?

8 A. By -- in person.

9 Q. And so the murder occurred on the 3rd and he  
10 was arrested on the morning of the 7th?

11 A. Correct.

12 Q. Early morning hours of the 7th?

13 A. Yes.

14 Q. So this conversation took place sometime on  
15 the 4th or the 5th or the 6th?

16 A. Correct.

17 Q. Do you remember where you were when you had  
18 this conversation?

19 A. It was at my house in my room.

20 Q. So did he come in and say, "This is what you  
21 should say"?

22 A. That's what he had told me to stick to, yes.  
23 And he told me to be very vague when I spoke to whoever.

24 Q. And did you repeat that story? Do you  
25 remember being interviewed by Don Burnum?

1 A. I do.

2 Q. Do you remember what you told him?

3 A. I believe it was that same story.

4 Q. Okay. So by the time Don Burnum interviewed  
5 you, which would have been on the 6th, I think?

6 A. Um-hmm.

7 Q. Was it a Saturday when you talked to him, do  
8 you remember?

9 A. I don't remember.

10 Q. Okay. At any rate, by the time you talked to  
11 Detective Burnum, that was the story that you were saying,  
12 right?

13 A. Correct.

14 Q. Now, did you attend school on Friday?

15 A. Yes.

16 Q. Did he attend school on Friday?

17 A. Yes.

18 Q. Did you and he have any discussions about the  
19 killing or what to say about the killing while you were at  
20 school on the --

21 A. No.

22 Q. -- 4th?

23 A. No.

24 Q. You just didn't talk about it?

25 A. Right.

1 Q. Other than him telling you what to say if you  
2 were questioned?

3 A. Yes.

4 Q. And that was the story about driving around  
5 town after you started getting text messages that she was  
6 missing?

7 A. Yes.

8 Q. And not being able to find her?

9 A. Correct.

10 Q. Until you got to Jeff's house?

11 A. Yes.

12 Q. Other than your lawyers, have you ever told  
13 what you disclosed to me today to anybody else?

14 A. No, sir.

15 Q. Before -- let's talk about how you got to Mr.  
16 Kump's office. Now, how did it come to pass that you got  
17 in contact with Mr. Kump?

18 A. It was -- I don't remember the date, but the  
19 kind of weekend that my parents had went down to Vegas and  
20 I wanted to stay and attend school. And I think it was a  
21 Friday, I want to say, and I was staying with the Pattens  
22 and they --

23 Q. At their Utah residence?

24 A. Yes. And Donna, I guess, on that Friday or  
25 something, if I remember right, had a meeting in Salt Lake.

1 And they had asked me if I wanted to go or if I wanted to  
2 stay, so I had asked my parents.

3 And I don't -- I don't remember what exactly  
4 was said, but I did end up going into Salt Lake with them  
5 that day. And she went to her meeting and me and Kip just  
6 kind of drove around town waiting for her to get out.

7 Q. Um-hmm.

8 A. And on our way back, I had gotten a voice mail  
9 from my dad saying that Kump needed to make an appointment  
10 with us to talk or whatever. And so I had called my dad  
11 when I received that and asked him what that was about, and  
12 he said --

13 Q. Now, were you still in the car coming back or  
14 what?

15 A. Yes, I was still in the car. And I had asked  
16 him what that was all about, what was going on, and he just  
17 said, "He just left a message and he really needed to speak  
18 to you."

19 Q. He called your home number?

20 A. He called my dad's cell phone number.

21 Q. Okay. Go ahead.

22 A. And he told me that he had called and wanted  
23 to talk, and I said, "Okay, I'll give him a call and find  
24 out what's going on." And by that time we had gotten back  
25 to the Pattens' residence.



1 Q. Um-hmm.

2 A. And I had left the room and went up to a  
3 different room and made that phone call. And they said  
4 that they really needed to speak to me and that they needed  
5 to make an appointment as soon as possible.

6 And I said, "Okay, but my parents are out of  
7 town so I need to call them first." And he's like, "Okay,  
8 but call me right back." So I had called my parents and  
9 let them know everything that was going on, that they  
10 really needed to talk and they wanted to talk as soon as  
11 possible.

12 And they had basically said to ask if they  
13 could wait until Monday.

14 Q. Um-hmm.

15 A. Until my parents had gotten back. And --

16 Q. Your dad told you to ask?

17 A. Yes. So I called Kump back and, you know,  
18 told him what my dad had suggested. And he was like, "Oh,  
19 but we really need to talk to you as soon as possible, like  
20 tomorrow." And I'm like, "Okay, well, I" -- "I guess I'll  
21 figure something out," or whatever.

22 And so got off the phone with him and I told  
23 my dad that, and he was like, "Okay, well, if the Pattens  
24 can take you in, that's fine. But I prefer that, you know,  
25 you wait until we get home."

1 Q. Um-hmm.

2 A. And -- but we ended up -- I ended up making

3 the appointment for that Friday. And the next day Pattens,

4 they took me in.

5 Q. You asked them to take you -- you asked them

6 to take you in?

7 A. I asked them if they were able to take me in.

8 Q. Okay. And this -- this exchange of phone

9 calls -- were they text messages or phone calls?

10 A. Phone calls.

11 Q. This was taking place on the day before you

12 actually ended up in Elko talking to them?

13 A. Yes.

14 Q. Okay. And did you -- during one of these --

15 during one of your conversations with Mr. Kump, did you

16 disclose to him that you had been present at the killing?

17 Or do you remember?

18 A. I don't recall.

19 Q. Now, so you're going to the lawyer's, right?

20 A. Yes.

21 Q. Kip and Donna Patten are taking you there?

22 A. Yes.

23 Q. Did they know what you were going -- who you

24 were going to see?

25 A. They knew who I was going to talk to. Kip

1 kind of knew, but Donna did not know.

2 Q. Was there any discussion, private discussion,  
3 between you and Kip about why you were going there?

4 A. I believe it was -- yes, that I wanted to come  
5 forward and --

6 Q. Where did this discussion take place?

7 A. I think in their car one of the days.

8 Q. Was Donna a party to this?

9 A. No, she was not there.

10 Q. Well, was it the same day that you were making  
11 these telephone calls?

12 A. No.

13 Q. Well, I -- so you and Mr. Kump have an  
14 exchange of telephone calls on the day before you went?

15 A. Yes.

16 Q. And at some point you have to say to the  
17 Pattens, "Can you take me to Elko?"

18 A. Correct.

19 Q. Because, in fact, they did take you to Elko?

20 A. Correct.

21 Q. So between making this appointment, to these  
22 telephone calls to Mr. Kump, talking to the Pattens about  
23 getting to Elko, did you have a discussion with either Kip  
24 or Donna or both of them about why you were going there?

25 A. No, not -- I just told him that they needed to

1 talk to me, and I kept it simple like that.

2 Q. And he said, "Okay, I'll take you"?

3 A. Yeah.

4 Q. Did they both accompany you?

5 A. Yes.

6 Q. On the trip from Wendover to Elko to Mr.

7 Kump's office, did you discuss with either of them what you

8 were -- what you were going there for?

9 A. No.

10 Q. Did Kip ever give you any instruction as to

11 what they were -- did either Kip or Donna ever give you any

12 instruction as to what you were to say when you got there?

13 A. No.

14 Q. What happened when you arrived?

15 A. We had sat in the waiting room waiting for

16 them to get all set up. They first took me back in their

17 conference room, and John Ohlson was on -- over the phone

18 and Kump was there. They asked me if it was okay if they

19 recorded this and I had told them "Yeah." And -- and just

20 kind of started talking.

21 Q. Okay. Well, now, did Kody know you were

22 going?

23 A. I have a feeling he did because I have a

24 feeling that he's the one that went to his attorneys and

25 said that I wanted to talk to them.

1 Q. But he had no -- you didn't have any way of  
2 communicating with him?

3 A. No.

4 Q. Now, they have jail calls, right?

5 A. Right.

6 Q. You were periodically getting calls from him?

7 A. Um-hmm, yes, I did.

8 Q. Prior to the day that you went, which I will  
9 tell you was the 22nd of April, when was the last time you  
10 remember speaking with him on the telephone?

11 A. I don't remember.

12 Q. Prior to going to Kump's office, when was the  
13 last time he had held something up to the window and talked  
14 about what you should say?

15 A. I want to say probably the Sunday before that.

16 Q. And Kip Patten saw him hold that up?

17 A. Yes.

18 Q. And say what you were supposed to say?

19 A. Yes.

20 Q. But these -- these stories he was -- this  
21 story that he was outlining for you through these papers?

22 A. (Nods head)

23 Q. Did it include the part about you hitting her  
24 with the shovel and/or anything else?

25 A. I don't remember.

1 Q. Could have?

2 A. It could have.

3 Q. Was it concentrated on how it started; that

4 is, the argument between he and she?

5 A. Yes.

6 Q. Did it get into the specifics of who did what?

7 A. Not that I can recall. Because he wanted me

8 to keep it vague and not get into details.

9 Q. Did Mr. Patten ever tell you what to say to

10 the lawyers? I mean -- yeah, I mean mister -- yeah, Kip?

11 A. No.

12 Q. Other than these notes, did -- that he held up

13 for you, which outlined this story, what you've indicated?

14 A. Yes.

15 Q. Did Kody ever tell you what to say?

16 A. Just those stories that he wanted me to stick

17 to.

18 Q. And the story was, is that -- you correct me

19 if I'm wrong -- the story he outlined for you was, is that

20 he picked you up at the golf course?

21 A. Um-hmm.

22 Q. Micaela was with him?

23 A. Yes.

24 Q. You were going to talk?

25 A. (Nods head)

1 Q. You drove out to the hills?  
2 A. (Nods head)  
3 Q. They got out of the car?  
4 A. (Nods head)  
5 Q. There was an argument?  
6 A. (Nods head)  
7 Q. You heard a thud?  
8 A. (Nods head)  
9 Q. You got out?  
10 A. (Nods head)  
11 Q. And she was on the ground?  
12 A. (Nods head)  
13 Q. And then did it go any further than that, this  
14 story he outlined?  
15 A. Yes, it did.  
16 Q. How far did it go?  
17 A. All the way up 'til her being buried in the  
18 grave.  
19 Q. Okay. And what part did he instruct you to  
20 say you participated in?  
21 A. That I just -- that I just kind of stood there  
22 and watched. I honestly don't remember.  
23 Q. Did he ever instruct you to say that you  
24 participated in the actual killing?  
25 A. Not that I can recall.

1 Q. In other words, to describe that he did it?  
2 A. Yes.  
3 Q. Did he tell you how to describe that he did  
4 it?  
5 A. I don't remember.  
6 Q. Anything with respect to a knife?  
7 A. I think it was mainly him using the shovel.  
8 Q. To hurt her?  
9 A. Yes.  
10 Q. Did you ever see -- other than the one time he  
11 struck her, and that was, you said, in the back of the  
12 head?  
13 A. Yes.  
14 Q. Did you ever see him use the shovel on her?  
15 A. No.  
16 Q. When you got back to the house that night  
17 after you left -- Wendi dropped you off on the 3rd?  
18 A. Um-hmm.  
19 Q. Did you see him undertake any steps to do  
20 anything to his clothing, to clean anything?  
21 A. He told me to take everything off and to put  
22 it in the washer.  
23 Q. Did you do that?  
24 A. Yes.  
25 Q. How about did you see him do anything? Clean