IN THE SUPREME COURT OF THE STATE OF NEVADA

Kody Cree Patten,
Appellant,

vs.

The State of Nevada
Respondent,

No. 82715

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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,

because he was texting -- from my understanding he was texting Wendi to ask what time he needed the -- that she needed the car -- due to --

Q. What time was it, do you think, you left? By then what time was it?

A. Maybe almost eight, I don't know.

Q. Okay. Was it dark?

A. Yes.

Q. Fully dark?

A. Yes.

Q. Okay. Initially then -- as you're driving down the road, he's texting? Or did he stop and text?

A. He was driving as he was texting.

Q. He's able to do that?

A. Not very good, but yes.

Q. Okay. And he told you what he was doing then? Or could you see the text?

A. He just kind of told me, I'm going to text her and see what -- when she needed the car back.

Q. Anything else that you and he talked about?

A. When we got back closer to where the overpass was, he said that --

Q. Did you go back the same way you came?

A. Yes. He had said that he needed to go get her 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

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anything? Alter anything?

A. He had also put his clothes in the washer with mine.

Q. How about anything with -- did you ever see the shovel again?

A. I want to say -- I did. And it was -- it was the day that he put the shovel under the house.

Q. You were there when he did that?

A. Yes.

Q. Did you see him do anything to the shovel, other than put it under the house?

A. If I recall right, he had poured bleach on it, yes.

Q. Where did he do that?

A. In -- in the back of the house.

Q. Outside?

A. Yes.

Q. How did you happen to be present when he was doing those things?

A. Just kind of standing back, watching him do it.

Q. Did he call you to be with him when he did this?

A. No, but he kept -- he had asked me where bleach was.

1 **Q. Now, was this the night of the 3rd or some**
2 **other time?**
3 A. It was some other time. I want to say it was
4 Saturday.
5 **Q. Okay. How about his shoes?**
6 MR. LOCKIE: This may have run out. Can we just
7 take a short break?
8 MR. TORVINEN: Sure. The time is -- by my watch
9 it is 4:40, and we're going to suspend examination of Ms.
10 Fratto so that we can take a break and/or Detective
11 Carpenter can figure out what's going on with his recorder.
12 So we'll be off the record.
13 (WHEREUPON, a short recess was taken)
14 MR. TORVINEN: All right. The time is 4:50. It
15 is still Thursday, the 19th of January, 2012. We are still
16 in the conference room at the Elko County Sheriff's
17 department. Speaking is Mark Torvinen.
18 The same people are still present; that is,
19 myself, Lisa Manley, Toni Fratto, Dave Lockie, Detective
20 Carpenter, and Tyler Ingram.
21 Mr. Lockie, would you agree that during the
22 break that we took here that I asked your client no
23 questions or attempted to examine her in any way?
24 MR. LOCKIE: That's correct, she made no
25 statements during the break.

1 MR. TORVINEN: Except in reply to your question
2 about whether or not she was home-schooled.
3 MR. LOCKIE: That's correct.
4 **Q. (By Mr. Torvinen) Okay. Now, I want to**
5 **finish the -- what we were talking about, and we were**
6 **talking about you saw him pour bleach on the shovel?**
7 A. Yes.
8 **Q. And that was out behind the house?**
9 A. Yes.
10 **Q. Your parents' house?**
11 A. Yes.
12 **Q. And it was not the 3rd of March, it was some**
13 **other -- you thought Saturday?**
14 A. Yes.
15 **Q. And how did you happen to be with him out**
16 **there doing this to the shovel?**
17 A. We were alone. My parents were, I believe,
18 going and helping my brothers check into their motel. And
19 he said that he wanted to basically get rid of the
20 evidence. And so he had asked me where bleach was and so I
21 went and got bleach.
22 **Q. Where did you get it from?**
23 A. The laundry room.
24 **Q. Just this is a bottle of Clorox, or whatever?**
25 A. Yes. And he had taken that from me and went

1 out the back door and kind of poured it all over the
2 shovel.
3 **Q. You saw him do that?**
4 A. Yes. And then he handed the bottle of bleach
5 back, I went and put it away, and then kind of stepped
6 outside to see what he was doing, and he was pulling the
7 siding away from the house and threw the shovel under.
8 **Q. Did you see him do anything to his shoes?**
9 A. I noticed that he was trying to get rid of
10 his -- the track -- the --
11 **Q. Tread?**
12 A. Tread, yes.
13 **Q. How was he trying to alter them?**
14 A. Well, at first he was trying to use the -- one
15 of the saws that my dad had.
16 **Q. Um-hmm.**
17 A. And that wasn't really working. And then I
18 remember him in the bathtub and he was, like, cleaning off
19 his shoes the best he could. And then I never saw those
20 shoes again after that.
21 **Q. Did you wash your shoes?**
22 A. I cleaned the dirt off, but.
23 **Q. Did you -- when you -- when you washed the**
24 **clothes, when you say -- did you and he wash your clothes**
25 **in the same load of laundry?**

1 A. Yes.
2 Q. But you don't know if you washed the shoes?
3 A. I -- I -- yes, we did.
4 Q. In the washing machine or separately?
5 A. Separately, in the bathtub.
6 Q. Immersed them?
7 A. Yeah.
8 Q. Okay. Now, let's go -- I want to go back to a
9 couple of things. Well, okay, so this was on Saturday,
10 right?
11 A. Yeah, I remember, yes.
12 Q. Between the 3rd -- the morning of the 4th,
13 okay?
14 A. Okay.
15 Q. And Kody's arrest, were people talking to you
16 about Micaela missing? You knew it was a big deal in town,
17 right?
18 A. Right.
19 Q. Were you and Kody talking about that?
20 A. I wasn't. I don't know if he was.
21 Q. Were you and he talking to one another about
22 that?
23 A. No, not really.
24 Q. Okay. Did you and he text each other on the
25 4th?

1 A. I don't remember.

2 **Q. Now, when he originally -- let's go back to**

3 **the very beginning, when he was saying to you either**

4 **verbally or by text that things were building up?**

5 A. (Nods head)

6 **Q. Did he say -- do you remember him saying**

7 **anything else? About Micaela or anything else?**

8 A. All I remember is he was upset with her and

9 things were building up from the past, but he would not

10 specify what.

11 **Q. Did he -- did he describe an emotion towards**

12 **her? Do you know what I mean by that?**

13 A. Kind of like hate?

14 **Q. Yes.**

15 A. A little bit, yes.

16 **Q. Did he use that word?**

17 A. I don't remember.

18 **Q. And he didn't say why --**

19 A. No.

20 **Q. -- he was so unhappy with her?**

21 A. No.

22 **Q. Did you and he ever have a discussion about**

23 **whether or not he had a -- formerly had a relationship with**

24 **her?**

25 A. At one time he had mentioned that him and her

1 had a relationship way before me and him ever dated. But
2 that's all that I ever heard about it.
3 **Q. Was -- was this sudden -- was this displeasure**
4 **that he was saying, "things building up from the past" and**
5 **he's unhappy with her, was it all of a sudden? Or had you**
6 **heard that before?**
7 A. It was kind of all of a sudden.
8 **Q. Okay. Right -- the week before?**
9 A. Yes.
10 **Q. You never heard him say similar things before?**
11 A. The only thing I recall him saying is, every
12 time she would pass through the halls or she would be
13 standing there talking to whoever, I remember him always
14 saying, "Oh, I wish she would just shut up, I hate the
15 sound of her voice." And I would always tell him to be
16 quiet and stop being so mean and everything. But he was --
17 that's all.
18 **Q. But he didn't say why?**
19 A. No.
20 **Q. No specific instances? Or she did something**
21 **to him?**
22 A. No, he wouldn't tell me anything.
23 **Q. Did you ask him?**
24 A. I would try and ask him why, what made him so
25 mad at her, and what did she do, but he wouldn't.

1 Q. **Just didn't talk about it?**
2 A. He didn't tell me anything.
3 Q. **Now, after -- I forget exactly the day you**
4 **were arrested, but it had to be not too long after the 3rd**
5 **of May. Do you remember what day it was you were arrested?**
6 A. May 4th.
7 Q. **And after you were -- came to be housed in the**
8 **jail, did either Kip or Donna Patten ever visit you in**
9 **jail?**
10 A. A couple of times, yes.
11 Q. **How many times?**
12 A. Maybe four or five times.
13 Q. **And did he communicate with you?**
14 A. A little bit, yeah.
15 Q. **How?**
16 A. Just talking. I -- he would try and ask
17 questions or whatever, but I wouldn't answer.
18 Q. **Verbally? Did he ever use this technique of**
19 **holding things up to the window?**
20 A. Yes.
21 Q. **Was it cell phones, composed text messages, or**
22 **actually written questions?**
23 A. Mainly on paper. What he would show me on his
24 cell phone were pictures of, like, his room and everything,
25 how they had set it up.

1 Q. **Whose room?**

2 A. They had moved everything out that was at my

3 house of Kody's and moved it back to their house, from my

4 understanding.

5 Q. **So he would, like, show you pictures of a room**

6 **set up for him?**

7 A. Yeah.

8 Q. **When he held -- when he held the papers up to**

9 **you, what was the subject matter of those communications?**

10 A. I honestly don't remember.

11 Q. **Was it about the case?**

12 A. Yes.

13 Q. **Was he telling you what to say?**

14 A. No.

15 Q. **You just don't remember?**

16 A. I don't remember. I know it was something to

17 do with the case because he didn't want to say it over the

18 telephone.

19 Q. **But you just don't remember what it was?**

20 A. Correct.

21 Q. **You remember him holding papers to the thing?**

22 A. Yes.

23 Q. **But you simply don't remember what the subject**

24 **matter was or any suggestion he made to you?**

25 A. Correct.

1 Q. When you first either -- either saw her --
2 Micaela now I'm talking about -- when you originally got in
3 the car, you could see her behind there, right?
4 A. Correct.
5 Q. But just see her hands and sitting there?
6 A. Um-hmm.
7 Q. Eventually, when you got around to the back,
8 and he posted you to guard -- to guard her -- when did you
9 become aware of the zip ties?
10 A. Not until after he was cutting her clothes
11 off.
12 Q. Were they underneath her sweater?
13 A. I'm assuming, yes.
14 Q. Did it appear that they were close enough that
15 she couldn't move her hands apart?
16 A. Yeah.
17 Q. Where were they on her hands?
18 A. On the wrist, right here. (indicating)
19 Q. Were her hands together, like this?
20 (indicating) That is, palm to palm? Or were they crossed?
21 A. Palm to palm.
22 Q. Did you see -- did she -- did she have -- did
23 she ever -- did you ever see anything in her hands?
24 A. When she was sitting in the cargo area, she
25 had a kleenex in her hand, I do remember that.

1 **Q. Just one?**
2 A. Yes.
3 **Q. Did -- did Kody ever suggest to you that you**
4 **and Micaela should engage in some sort of fight, a physical**
5 **fight?**
6 A. Not that I can recall.
7 **Q. In essence, over him?**
8 A. No.
9 **Q. In the days leading up to this, had you ever**
10 **personally spoken to Micaela?**
11 A. It was -- if it was, it was something to do
12 with school. It wasn't anything else.
13 **Q. Do you have any memory of speaking to her**
14 **personally?**
15 A. I remember one time at the swimming pool, when
16 she was there, she had come up to talk to me and -- but it
17 was a very pleasant and good conversation. I don't
18 remember what that consisted of, but I do remember talking
19 to her. And it was a very pleasant conversation.
20 **Q. This was -- was this related in time to any of**
21 **this?**
22 A. No, this was a few years back.
23 **Q. Is that the last time you ever remember**
24 **personally speaking to her?**
25 A. Like that, yeah.

1 **Q. Okay. What's -- what's -- do you have a**
2 **memory of the last time you spoke to her or she spoke to**
3 **you prior to the 3rd of March?**
4 A. That was probably the last time.
5 **Q. At the pool?**
6 A. Yes.
7 **Q. During this -- these months of March -- well,**
8 **January to March, what -- can you describe your**
9 **relationship with Mr. Patten during that period of time?**
10 A. It was like a roller coaster basically. We
11 were fighting constantly. I can't remember exactly when it
12 was, but I think it was before he moved in, there was an
13 incident that happened at school and he got physical with
14 me.
15 And he has been -- ever since, leading up to
16 that, yeah, he has grabbed my arms before and tried to
17 prevent me from walking out of the room or.
18 **Q. Now, I remember reading a statement that you**
19 **wrote in connection with that event. And I can't remember**
20 **specifically, but you made some mention of -- do you suffer**
21 **from some sort of physical problem?**
22 A. Yes. They induced me -- or they diagnosed me
23 with exercise induced asthma, but it's -- I've noticed that
24 it's not just doing exercise that brings it on.
25 **Q. It's emotional stress?**

1 A. Yeah, crying really hard or -- yes.

2 **Q. Do you remember saying that in your statement,**
3 **that you got -- in essence, you got asthmatic and didn't**
4 **really remember?**

5 A. Not exactly, but I can -- I do remember having
6 an attack after that.

7 **Q. Hang on a second. Well, let me ask you, let's**
8 **talk -- just for a minute. On the day you went to Kump's**
9 **office, which was on the 22nd?**

10 A. Um-hmm that.

11 **Q. What time did you get there?**

12 A. I want to say our appointment was 1:00 or 1:30
13 or something.

14 **Q. And had you had one or two conversations with**
15 **Mr. Kump the day before?**

16 A. Two.

17 **Q. Okay. And during any of those conversations,**
18 **do you remember making any sort of disclosures to them, a**
19 **statement about you being present, or describing anything**
20 **in connection with the case?**

21 A. I remember Kump asking me if I knew what they
22 were basically wanting me to come in for, and I just kind
23 of said, "Well, for questioning?"

24 **Q. Um-hmm.**

25 A. And that's all I remember.

1 Q. Um-hmm. Now -- so you don't remember telling
2 them, "I was there," or anything like that?
3 A. Not on the phone, no.
4 Q. Could you have?
5 A. I may have.
6 Q. Now, by the time that you went to see Mr. Kump
7 and Mr. Ohlson -- or to Mr. Kump's office, had you made a
8 decision about whether or not you were going to come
9 forward?
10 A. Yes, I knew I wanted to come forward and tell
11 the truth.
12 Q. Why didn't you go to the police?
13 A. That's where I kind of -- I had asked Kip for
14 advice on that. I asked what -- where and who I should
15 talk to. And he -- I guess he did kind of direct me
16 towards Kody's attorneys.
17 Q. Okay. And what -- is there -- is there
18 something, as you sit and think about it, that caused you
19 to come to this decision to come forward?
20 A. Just because me, personally, I am a person to
21 tell the truth. And deep down I wanted people to know the
22 truth, because I knew -- I knew Kody wasn't going to come
23 forward and tell the complete truth.
24 Q. Well, did you know what was going to happen to
25 you when you told this story?

1 A. I had a feeling that I was also going to be
2 arrested.
3 **Q. But you didn't tell Mr. Kump and Mr. Ohlson**
4 **the whole truth?**
5 A. No.
6 **Q. And why didn't you do that?**
7 A. I got scared.
8 **Q. Were you following Kody's script, in essence?**
9 A. The first part, yes.
10 **Q. In other words, you didn't tell them the whole**
11 **story?**
12 A. Correct.
13 **Q. Why did you choose to describe yourself as**
14 **participating in the cutting of her throat?**
15 A. To be honest, I don't know. Mainly probably
16 to somehow cover Kody.
17 **Q. I know -- I know I've asked you that before,**
18 **but I'm trying to see if you can kind of in your own mind**
19 **get an explanation for it. But that's all you -- that's**
20 **all -- that's where you're coming from with respect to**
21 **that?**
22 A. (Nods head)
23 **Q. That's what was going through your head at the**
24 **time?**
25 A. Yes.

1 Q. That if you said you participated, it would
2 somehow make it less on him?
3 A. Yes.
4 Q. Now, you say you -- he and you were on a
5 roller coaster in the time leading up to this?
6 A. Yes.
7 Q. Now, he -- he had agreed -- now, you and he
8 were -- by -- by the 3rd of March, were you and he formally
9 engaged, or was it just an understanding?
10 A. We kind of were. I -- me personally, I didn't
11 really take it as that. But then again, I did, because,
12 you know, he had proposed. But it wasn't like -- to me, it
13 wasn't official because not a whole lot of people knew
14 about it.
15 Q. Well, but he joined the church in order to be
16 able to marry you, didn't he?
17 A. Yeah.
18 Q. Was that at your insistence or your mother's
19 or your parents or --
20 A. He kind of did it on his own.
21 Q. Okay. Do you know whether or not Micaela had
22 any -- a religious affiliation?
23 A. I don't know.
24 Q. Do you know if she was in the Mormon church?
25 A. I don't know.

1 Q. **Now, we've also got -- you know, we've got**
2 **your -- some of your diaries and things?**
3 A. (Nods head)
4 Q. **And there -- a lot of that is devoted to,**
5 **like, planning the wedding; would you agree?**
6 A. Yes.
7 Q. **So at least by the 3rd of March, since**
8 **obviously these things probably preceded that, most of**
9 **them, did you have it fixed in your mind that you and Kody**
10 **were ultimately going to marry?**
11 A. Yes and no. I knew -- I mean, that was kind
12 of my thought, that I wanted to get married and everything.
13 But, then again, I did have my thoughts of, Is he really
14 the one that I want to marry.
15 Q. **Other than grabbing your arms periodically or**
16 **preventing you from leaving the room when you and he were**
17 **maybe having an argument or something -- and I've watched**
18 **the videotape of the confrontation in the hallway at the**
19 **school between you and he -- did he ever strike you?**
20 A. I remember a couple times him kind of pushing
21 me down on the bed or against the wall, but I -- after I
22 have those asthma attacks, I don't remember much of what
23 happens. And I -- I've never seen that video, so I don't
24 know.
25 Q. **Well, I guess I'm saying, did he ever**

1 **actually, you know, with his hands strike you that you**
2 **recall?**
3 A. Not that I can recall.
4 **Q. As between you and he and your relationship,**
5 **who was the -- who was the boss, for lack of a better term?**
6 A. I don't know.
7 **Q. Okay. Did you consider yourself an equal?**
8 A. Kind of. We both are kind of a jealous
9 person. And he would always get mad at me for talking to
10 other people and I would kind of get upset if he was
11 talking to other girls and everything.
12 But I noticed every time I'd sit in class,
13 he -- I would -- throughout the whole class, that he would
14 be poking his head in the window, seeing who I was talking
15 to, seeing who --
16 **Q. In the door or the window?**
17 A. The door of the window, like the --
18 **Q. Oh, I see. Looking through the window in the**
19 **door?**
20 A. Yes.
21 **Q. Is that something that happened on a regular**
22 **basis?**
23 A. Yes. He did that every day and throughout
24 every class period.
25 **Q. Well, how did he come and look through your**

1 **window if he is supposed to be in class?**
2 A. I don't know.
3 **Q. Was he doing poorly in school?**
4 A. Yes.
5 **Q. Was he on the cusp of getting kicked out?**
6 A. Yes. He had gotten -- he had gotten suspended
7 quite a few times. And I know if he had gotten suspended
8 one more time he was going to be expelled.
9 **Q. Did he expect to graduate?**
10 A. He thought he was going to, but I knew he
11 wasn't going to.
12 **Q. Now, had he already signed up for the Marine**
13 **Corps at some point?**
14 A. Yes.
15 **Q. They had actually accepted him?**
16 A. I'm not sure. I know he went to go be sworn
17 in, but I don't know much of the results of that.
18 **Q. Was that -- and you didn't go with him?**
19 A. No.
20 **Q. Where did that take place?**
21 A. I believe in Salt Lake.
22 **Q. And was it -- whether or not he got -- what**
23 **was -- did you have an understanding of whether or not he**
24 **actually got to go in the Marine Corps was dependent upon**
25 **him graduating from school?**

1 A. Yes, it was.

2 **Q. So if he got expelled, he wasn't going to the**

3 **Marine Corps, I guess?**

4 A. No.

5 **Q. Did he understand that?**

6 A. To be honest, I don't know. Because it seemed

7 to me he didn't care. He wasn't trying to do his best in

8 school. So to me it was like, why are you signing up for

9 the Marines if you are not going to sit there and really

10 try hard to be able to accomplish that.

11 **Q. Do you know -- do you know anything about him**

12 **fixing up some old car at the school?**

13 A. Yes.

14 **Q. Tell me what you know about that?**

15 A. I know that he had brought it down to the

16 school from his -- their -- his parents' place and he had

17 been -- he was working on it and sanding it down and trying

18 to prepare it to be able to drive or something, I guess.

19 But the only thing I recall ever seeing him do

20 was sand -- working on it and sanding it in metal shop.

21 **Q. That is in the gated place next to the --**

22 A. Yes.

23 **Q. -- the school there?**

24 A. Yes.

25 **Q. Did he ever bring anything home from the car**

1 **that you recall?**

2 A. I remember seeing some metals -- metal pieces,

3 but I -- I don't know what it was for.

4 **Q. Does that have anything to do with the 3rd of**

5 **March?**

6 A. No, not that I know of.

7 **Q. When the cargo part of the car was open on the**

8 **3rd, did you see any metal parts in there that you recall?**

9 A. I did not.

10 **Q. When he was writing this list -- I forget**

11 **exactly -- you said bags. What was on the zip tie -- the**

12 **sticky notes? It was bags, gloves?**

13 A. Um-hmm. And shovel, that I remember seeing.

14 **Q. Shovel. Did you ever -- and you never saw**

15 **anything about zip ties?**

16 A. I didn't on that list, no.

17 **Q. Did you ever see any zip ties in the car?**

18 A. No, I did not.

19 **Q. And you thought that he cut those off her?**

20 A. Yes.

21 **Q. Did you actually see them cut or you saw her**

22 **arms come free?**

23 A. I saw her arms come free.

24 **Q. Did you know that he had left the -- her**

25 **sweatshirt in the grave with her? Did he ever say anything**

1 about it?

2 A. I knew that at one point he was trying to use

3 it to cover her up, but after that I didn't recall. I

4 don't recall anything else.

5 Q. Do you have any idea about why he was

6 disrobing her?

7 A. No.

8 Q. Did he say why?

9 A. No.

10 Q. Give any explanation for it?

11 A. No, he didn't.

12 Q. And he disrobed her to the point that she was

13 nude from the waist up?

14 A. Correct.

15 Q. And no explanation whatsoever for any of that?

16 A. No.

17 Q. Did you ever try -- did you see him ever try

18 to take her pants off?

19 A. Not while I was with him, no.

20 Q. When you -- do you remember when you drove

21 under the second set of tunnels?

22 A. Yes.

23 Q. After you left the crime scene?

24 A. Yes.

25 Q. And you saw a car up there?

1 A. Um-hmm.
2 Q. Did -- did Kody ever indicate how close you
3 were to where he buried anything?
4 A. No, he did not.
5 Q. Did he ever even get out of the car?
6 A. No.
7 Q. Once you -- now that one crosses under I-80,
8 right?
9 A. Correct.
10 Q. And so you come out the other side and there's
11 a dirt road there?
12 A. Um-hmm.
13 Q. And how far do you think you got from the
14 tunnels before he decided he didn't want to do whatever he
15 was going to do?
16 A. Maybe -- 50 feet maybe. It wasn't very far
17 from the --
18 Q. End of the tunnel?
19 A. Right.
20 Q. Could you see the car -- the lights right
21 away?
22 A. Yes.
23 Q. Okay. So did he kind of come out, see the
24 lights, and stop sort of thing?
25 A. He kind of went up the road just a little bit

and then noticed it, and he turned right around and went right back under the --

Q. So he never gave you any indication of where --

A. No.

Q. Did he ever say he marked it or anything like that?

A. Not that I can recall. He said by a rock or something, but that's all.

Q. There's lots of rocks up there?

A. Yeah, so.

Q. And he never communicated to you what it was he buried?

A. I believe he had said her phone and SIM card.

Q. Okay. But where you don't know?

A. No.

Q. You never -- other than -- other than the knife, the two sets of gloves, you don't know what was -- and the black bag you saw him with, you don't know what went into that fire?

A. I do not.

Q. And you eventually saw the lanyard with some keys on it?

A. Correct.

Q. And you saw him -- do you know how many keys

1 **he tossed?**

2 A. I want to say maybe two or three.

3 **Q. And was he like throwing them out the window?**

4 A. Yes.

5 **Q. As you were going down the road?**

6 A. Yes.

7 **Q. Were you on pavement or dirt road?**

8 A. When he started doing it, we were just -- we

9 had already passed that gas station and going up over that

10 overpass that's next to it. And when going over that, he

11 had threw one out.

12 And then, when we were going on the back road

13 by that plant or whatever that's right there, he was

14 throwing them -- throwing, I want to say, one or two more

15 keys. I want to say it was probably two or three keys

16 then.

17 Because he had threw one out at that overpass

18 and then, when he got to the end of the road and turned

19 right to head back to town, he threw --

20 **Q. Now you're on a highway? Now you're on**

21 **pavement?**

22 A. Yeah, behind that plant right there.

23 **Q. And at some point he tossed the lanyard?**

24 A. Yes.

25 **Q. Did you ever personally -- did you ever**

1 personally throw anything out the window?
2 A. No.
3 Q. Did he give you something and say, "Here,
4 throw this out the window"?
5 A. No, sir.
6 Q. Did you ever see a cell phone other than his?
7 A. No, I did not.
8 Q. Have you told me the truth today?
9 A. Yes.
10 Q. As you know it?
11 A. Yes, sir.
12 Q. How about this part about when you told --
13 when you made your statement to Mr. Kump and Mr. Ohlson,
14 you told them that the argument that had occurred -- that
15 had occurred between he and she was over her wanting to get
16 back with him. Do you remember saying that to them?
17 A. Yes.
18 Q. Where did that came from?
19 A. Him, Kody.
20 Q. Was that part of the story that he told you to
21 recite?
22 A. Yes.
23 Q. And was that when he held it up to the window
24 and said, "This is the story you should tell"?
25 A. Yes.

1 Q. That they were arguing about her wanting to
2 get together with him?
3 A. Yes.
4 Q. Had he -- before then or after then, before
5 his arrest -- before the 3rd or after the 3rd or on the
6 3rd, did he ever make any statement to you which would have
7 led you to believe that he was talking to Micaela and she
8 wanted to get back with him?
9 A. Not that I'm aware of, no.
10 Q. Did you have any reason to believe such a
11 thing?
12 A. I had my questions that he was doing stuff
13 with other girls, but not specifically with just Micaela.
14 Q. Okay. That is, trying to see them?
15 A. Right.
16 Q. When he -- so -- the -- the story that he
17 outlined through the papers was that he picked you up at
18 the golf course, Micaela was with him, you rode out, and
19 the purpose was to talk about her desire to get back with
20 him?
21 A. Yes.
22 Q. And that that was the specific purpose, for
23 you three to have a discussion about that?
24 A. Correct.
25 Q. To drive around and --

1 A. (Nods head)
2 Q. Like that?
3 A. Yes.
4 Q. Now, in this, the version you told Mr. Kump
5 and Mr. Ohlson, you also said that it was her suggestion
6 that you go out of town because she didn't want anyone to
7 see you together?
8 A. Correct.
9 Q. Where did that come from?
10 A. From Kody.
11 Q. And that you drove around and ended up at the,
12 quote, gravel pits, and that there was some argument, then
13 they got out, and you heard this sound, correct?
14 A. Correct.
15 Q. But he never privately made any disclosures to
16 you that Micaela was trying to get back with him?
17 A. No.
18 Q. Did you have any reason to believe such a
19 thing?
20 A. One hundred percent, no.
21 Q. Okay. Did you know she had her own boyfriend?
22 A. Yeah.
23 Q. That's a little school?
24 A. Yes.
25 Q. Everybody knows what everybody's doing, right?

1 A. Yes.
2 Q. And who they're with?
3 A. Correct.
4 Q. So you knew that Micaela already had a
5 boyfriend?
6 A. Yes.
7 Q. Did you have any reason to believe that he and
8 she were not getting along?
9 A. Not that I could tell at school, no.
10 Q. Okay. When he outlined this story for you
11 through holding up those papers -- now, you are saying that
12 Kip Patten was sitting right next to you when he was doing
13 this?
14 A. Yes.
15 Q. Was he reading it at the same time?
16 A. Kip was on the phone with Kody trying to talk
17 with him and everything while Kody held up that paper.
18 Q. Okay. Do you know whether or not Kip was
19 looking at it and reading it, or do you know?
20 A. I didn't notice.
21 Q. And so he's doing this at the same time that
22 he's talking to his dad on the -- this is the actual phone?
23 A. Yes.
24 Q. And you all know that's being recorded?
25 A. Yes.

1 **Q. And didn't that strike you as kind of strange,**
2 **the story?**
3 A. Yes. Because, for one, I didn't know where he
4 had come up with that, but I knew it wasn't the truth.
5 **Q. Now, you mentioned earlier to me that at some**
6 **point in time you told Kip that the story he was relating**
7 **was not the truth?**
8 A. Yes.
9 **Q. Where did -- when did you say that to Kip?**
10 A. When we had left the jail.
11 **Q. Did you ever tell Kip the whole -- basically**
12 **the whole story that you've told me today?**
13 A. Briefly, yes. Not in detail. But the events
14 that occurred, yes.
15 **Q. Well, did you give -- did you give Kip**
16 **privately this story that Kody was outlining for you --**
17 **outlining for you?**
18 A. Yes.
19 **Q. So that's what you told him?**
20 A. No. Previously I had told him what had
21 happened March 3rd. And then, when we had left the jail
22 that day that he was showing me that story, I had briefly
23 told Kip what basically his story said.
24 **Q. Um-hmm.**
25 A. And told him that that was not --

1 Q. True?
2 A. -- true.
3 Q. Well, when had you -- was that in -- you're
4 telling me that that was probably the Sunday before you
5 went to --
6 A. Yes.
7 Q. Okay. So -- before you went to Kump and
8 Ohlson's office?
9 A. Correct.
10 Q. So you privately told Kip that this story that
11 he's outlining is not true?
12 A. Yes.
13 Q. So at some point after that you told him what
14 your version of the story was, or at least bits and pieces
15 of it?
16 A. I think it was before that day.
17 Q. Okay. That was in the April time frame?
18 A. Yes.
19 Q. And you had not given him the same story
20 exactly that Kody was outlining?
21 A. Correct.
22 Q. And you and Kip never had a discussion about
23 what you were going to say to the lawyers? You never --
24 A. He never instructed me what to say. He just
25 said that he would -- whatever my decision would be,

1 whether it was stick to Kody's story and keep myself out of
2 it, or to come out and tell the truth -- well, my story,
3 and that he would be behind me 100 percent.
4 **Q. Well, why were you looking to him for support?**
5 A. I don't know.
6 **Q. And you never related any of this to your**
7 **parents?**
8 A. No, sir.
9 **Q. He also described -- that being Kip --**
10 **describes you leaving letters and such. Is he being honest**
11 **about that?**
12 A. Letters?
13 **Q. Letters for your parents on the day you went**
14 **to see the lawyers?**
15 A. I had left -- yes, I had left a note,
16 saying -- because I had left some things on my bed that
17 they could take back to the store, or whatever, and --
18 **Q. So is he being honest about that?**
19 A. It wasn't a bunch of letters, it was just one.
20 **Q. Just one. Is he also being honest that when**
21 **you got back that night you went and retrieved it?**
22 A. Yes.
23 MR. TORVINEN: Unless there is something specific
24 you want me to inquire about, counsel, I don't have
25 anything else.

1796

1 MR. LOCKIE: No.

2 MR. TORVINEN: The time is 5:35 by my clock. It

3 is still Thursday, the 19th of January, 2012. And this

4 conversation is terminating.

5 (WHEREUPON, the statement was concluded)

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STATE OF NEVADA)

) SS.

COUNTY OF ELKO)

I, LISA M. MANLEY, a Nevada Certified Court Reporter, do hereby certify that I was present at the Elko County Sheriff's Department, 775 W. Silver Street, Elko, Nevada, during all proceedings had on January 19, 2012, and took verbatim stenotype notes thereof; and that the foregoing 165 pages contain a full, true and correct transcription of my stenotype notes so taken, and a full, true and correct copy of all proceedings had.

LISA M. MANLEY - CCR-271

CERTIFIED COURT REPORTER

COPY

2012 FEB 28 AM 11:49
RECEIVED
ELKO COUNTY DISTRICT ATTORNEY

RECORDED STATEMENT OF

KODY CREE PATTEN

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

Taken at 1:05 p.m., January 17, 2012

Reported by Lisa M. Manley, CCR #271

MR. TORVINEN: Now we are on the record with Ms. Manley. Mr. Patten has been placed under oath by Ms. Manley. And the one thing I did not recite in my initial declaration on the digital recorder is, is that Mr. John Ohlson, Mr. Patten's other attorney, is not here.

We had agreed that we would commence at one o'clock today with Mr. Kump and Mr. Patten, and that Mr. Ohlson will appear as soon as he can get here. And my understanding is, is that he is on the road.

Is that correct, Mr. Kump?

MR. KUMP: I spoke to Mr. Ohlson at noon. He was in Winnemucca. He's driving directly here.

MR. TORVINEN: All right. So then I will commence my examination. And I would declare that we are here to conduct an examination of Mr. Patten, what is commonly referred to as a proffer, in furtherance of plea negotiations which are ongoing between the State of Nevada and Mr. Patten in connection with a prosecution which is pending against him in the Fourth Judicial District Court of the State of Nevada under Case Number CR-FP-11-0300.

KODY CREE PATTEN

having been first duly sworn, gave the following statement:

EXAMINATION

BY MR. TORVINEN:

Q. I have a couple of background questions before I get into the substance of my examination. Mr. Patten, what is your date of birth?

A. 12/31/92.

Q. Okay. So how old are you today?

A. Nineteen.

Q. Where were you born?

A. Logan, Utah.

Q. Okay. Now, how long have you guys lived in Wendover?

A. About 14, 15 years.

Q. Okay. So do you remember how old you were when you came to Wendover?

A. I don't.

Q. Okay. You were a child?

A. Yes, sir.

Q. Okay. Now, do you understand what we're doing here today?

A. Yeah.

Q. Okay. And I have in my hand this -- or I had in my hand, and I now have in my hand, this agreement for the provision of a recorded statement. Did you go over that with your attorney today?

A. Yes, I did.

Q. Do you understand it?

A. Yes, I do.

Q. Okay. And it's your signature here on the 17th of January, 2012, on the last page?

A. Yes, it is.

Q. All right. Now, it is extremely important -- and I'm sure your attorneys have talked to you about this -- it is extremely important that -- that you answer the questions that I put to you today honestly and truthfully. Do you understand that?

A. Yes, I do.

Q. Now, I don't know what you are going to say to me today, but all I'm asking you to do today is to tell me the truth. Do you understand that?

A. Yes, I do.

Q. The whole truth. Do you understand that?

A. Yes, I do.

Q. You also understand that if -- if the State and you come to an agreement with respect to disposition of the prosecution against you and you were called to -- called upon to testify and it was later determined that your testimony was untrue, it would mean your whole agreement is off. Do you understand that?

A. Yes, I do.

Q. So it's extremely important. And are you going to tell me the truth today?

1 A. Yes, I will.
2 Q. Now, can we agree -- first can we agree that
3 Micaela Costanzo died on the 3rd of March, 2011?
4 A. Yes, she did.
5 Q. Now, before the 3rd of March, 2011, can you
6 tell me how long you knew her?
7 A. Since we were kids. Long, long time.
8 Q. All right. And prior to the 3rd of March,
9 2011, when -- when was the last time that you had spoken to
10 Micaela face-to-face?
11 A. About February 27th, somewhere in there. Like
12 the last few days of the month.
13 Q. Okay. And what was the occasion of your prior
14 face-to-face contact with Micaela?
15 A. Umm, I was at her house and we were just kind
16 of talking. We -- I did some missionary lessons with two
17 other missionaries.
18 Q. Okay.
19 A. From our church.
20 Q. Was she a member of the Mormon church as well?
21 A. She was going to be.
22 Q. All right. And so you were in her apartment.
23 Was anybody else present besides you and she?
24 A. Umm, yeah, two other missionaries.
25 Q. Do you remember their names?

1 A. Umm, one was Elder Romero. I don't remember
2 his first name. And I can't remember the other one's last
3 name.
4 Q. And were they from Wendover?
5 A. Umm, they were out there on their -- I would
6 say mission, I think it is.
7 Q. Okay. But she simply -- so one's last name
8 was Romero?
9 A. Yes. The church will know.
10 Q. The other one you can't remember?
11 A. I can't.
12 Q. Okay. Why were the -- were you -- were you
13 going through a missionary lesson?
14 A. Yes.
15 Q. Why at her house as opposed to somewhere else?
16 A. Umm, because we had contacted her and that she
17 said that it was okay to go over there.
18 Q. So -- okay. And -- was -- had she already
19 independently, that is, without -- not through you -- had
20 she already been talking to representatives of the church?
21 A. Yes.
22 Q. These particular representatives?
23 A. Yep.
24 Q. Okay. How is it that you know the date so
25 well, February 27th?

1 A. Because I got baptized on February 23rd. And I
2 started doing missionary lessons with the missionaries,
3 going around helping them. Because the rule for the church
4 is that --
5 THE COURT REPORTER: Excuse me, can I get you to
6 slow down a little bit, please.
7 A. Yeah.
8 THE COURT REPORTER: Thank you.
9 A. Sorry. The rule from our church is that if
10 there is a female present, there has to be two or more
11 persons.
12 Q. Um-hmm.
13 A. Present with us. So the three of us went
14 together.
15 Q. Okay. Now, between the 27th of February and
16 the 3rd of March, did you have any further contact with
17 Micaela?
18 A. Umm, a couple of times at school.
19 Q. Okay. And was that face-to-face or --
20 A. Yes.
21 Q. -- by some other means?
22 A. It was face-to-face.
23 Q. And can you tell me what -- what the subject
24 of those -- was this something that you -- you met her
25 somewhere, or you just ran into her in the school?

A. Uh, I just ran into her at school.

Q. Are we talking about in the hallway sort of thing?

A. Umm, yeah. Hallway, the gym.

Q. Was there any conversation between you and she at that time?

A. Umm, a little bit, not much.

Q. About? Do you remember?

A. Just random things, school and stuff.

Q. Okay. Now, did you go to school on the 3rd of March?

A. Yes, I did.

Q. And what time did you go to school that day, do you remember?

A. Umm, the usual time, like 7:30.

Q. And when did you leave -- when did you first leave school that day, do you remember?

A. About three -- like right after school, about 3:35, 3:40.

Q. Okay. When did you contact Wendi Murphy about using the TrailBlazer?

A. Uh, the day before.

Q. When did you actually come into possession of the TrailBlazer?

A. Umm, March 3rd, at about one o'clock in the

1 afternoon.
2 Q. And where were you when you -- when you got
3 possession of it?
4 A. Umm, she came to the school and dropped it off
5 to me, and I left school and took her to my cousin's house,
6 and then I went back to school.
7 Q. So had you left the school between 7:30, when
8 you originally came, and you took Wendi back to her --
9 wherever you took her?
10 A. No, I --
11 Q. Where did you take her?
12 A. I took her to my cousin's house.
13 Q. Okay. That's the one on Utah -- on the Utah
14 side?
15 A. Yes, sir.
16 Q. I can't remember his name, but --
17 A. Jeff Patten.
18 Q. Yeah. And then did you go straight back to
19 school?
20 A. Yes, I did.
21 Q. Why did you borrow the TrailBlazer?
22 A. Uh, because I was going to be moving some of
23 my auto parts from the metal shop.
24 Q. No other reason?
25 A. (Shakes head) Originally that was the only

1 reason.

2 MR. TORVINEN: Now, for the record, I have a

3 binder. It's the first binder of the discovery in the

4 case. I may refer to it at times.

5 Q. So did you -- that day at school, can you --

6 do you remember what classes you went to?

7 A. Umm, I had science -- first hour, I believe,

8 was English and then I had science third hour. Second hour

9 was, I think, credit recovery. And then my last hour was

10 business math.

11 Q. What's your last hour from? When does it

12 start and when does it end?

13 A. I believe it's, like, 2:30 to 3:35. It's like

14 a 60-minute class.

15 Q. Okay. And other than -- than taking Wendi

16 Murphy back to your -- your cousin's house, which you say

17 was about one o'clock, between arrival at 7:30 and the end

18 of your last class, you hadn't left the school?

19 A. No.

20 Q. Did you eat lunch at the school that day?

21 A. Yes, I did.

22 Q. Do they have a cafeteria there?

23 A. Umm, they serve food, but I, uh, brought a cup

24 of noodles that day.

25 Q. Now, did you -- did you text Micaela that day?

A. Yes, I did.

Q. And when did you first text her?

A. I can't remember exactly.

Q. Morning or afternoon?

A. Afternoon.

Q. Do you remember what the subject of your first text was?

A. Umm, originally it was, uh, with her helping me move some stuff, and then --

Q. Why would you ask her to help you as opposed to someone else?

A. Just one of my friends, someone I trust.

Q. Well, now, at the time you were going with Toni Fratto, right?

A. Umm, kind of, yeah. We were having difficulties, but yeah.

Q. Okay. And you didn't -- you didn't think to ask her to help you?

A. Uh, she was going to a meeting with her parents.

Q. Do you remember specifically what it was you were going to move?

A. Umm, yeah, some parts for my car.

Q. Do you remember the parts?

A. Umm, door panels. Umm, there was a tranny

1 panel, most of the dash. Pretty much the entire inside of
2 the car.
3 Q. Where was this car located?
4 A. In the metal shop in the back of the school.
5 Q. And -- and that's the gated part --
6 A. Correct.
7 Q. -- outside of the -- in the back of the
8 school?
9 A. Correct.
10 Q. Why -- why were you moving these parts? What
11 was the purpose?
12 A. Because I was rebuilding my car and I decided
13 to basically start over and just use scrap metal.
14 Q. Why wouldn't this be something you would do at
15 the school? Was this -- was the car being there at the --
16 the car was at the school, correct?
17 A. Correct.
18 Q. Why wouldn't you be doing this work at the
19 school?
20 A. Because I didn't have metal shop that day.
21 And, uh, I asked my teacher in last hour if I could leave,
22 uh, early to go down to the metal shop.
23 Q. Okay. Well, what I'm having a hard time
24 understanding, did you bring the car to the school to
25 restore it at the school?

1 A. Kind of. Umm, I brought this car to the
2 school because they had a plasma cutter and stuff
3 because --
4 THE COURT REPORTER: Because they had what?
5 A. They had a plasma cutter. When I got -- when
6 I moved out of my parents' house?
7 Q. Um-hmm.
8 A. Umm, basically me and my family didn't talk to
9 each other.
10 Q. Um-hmm.
11 A. So I had no tools. I mean, I had my wrenches
12 and all my tool kits, but I didn't have a welder or
13 nothing.
14 Q. Um-hmm.
15 A. So I asked the principal if I could take my
16 car there, and he said that would be fine.
17 Q. Okay. Now -- but I guess what I'm having a
18 hard time understanding is, is -- so your car, you kind of
19 took it there because that's where you were storing the
20 car?
21 A. Basically.
22 Q. And you were going to do work on the car at
23 the metal shop as kind of a project?
24 A. Umm, sort of a project and sort of just my own
25 personal thing.

1 Q. So they were just allowing you to store it
2 there sort of thing?
3 A. Basically.
4 Q. But you didn't plan to do the work on it
5 there, on these parts and things?
6 A. No, I took those metal parts to get rid of
7 them. I was taking them home so I could take them to the
8 scrap yard. And I was going to start over with brand new
9 metal.
10 Q. Why that day?
11 A. I had been working on it every day.
12 Q. So you originally texted -- did you telephone,
13 that is, a voice communication, Micaela that day?
14 A. Yes, I did.
15 Q. When was the first time you telephoned her?
16 A. Sometime in the afternoon. It was after
17 school, I believe.
18 Q. So let me ask, was it -- so you agree you
19 texted her, right?
20 A. Correct.
21 Q. And you agree that -- did she answer when you
22 called?
23 A. Correct.
24 Q. So you spoke to her, as well?
25 A. Yes.

1 Q. Which came first?
2 A. I don't quite remember exactly which one.
3 Because I think -- I actually believe I texted her first.
4 Q. And the subject of the text was whether or not
5 she would ask you -- help you move these parts?
6 A. Uh, originally.
7 Q. That was the first -- that was the subject of
8 the first text?
9 A. Correct.
10 Q. And do you remember if the telephone
11 conversation that you recall took place between -- after
12 the first text and before you texted her again, or do you
13 remember the sequence?
14 A. I don't remember the sequence.
15 Q. Okay. What was the -- what's the next text
16 that you sent her that you can recall?
17 A. I asked her what -- what the plan was to do
18 with, uh, Toni, about the argument they had earlier in the
19 day.
20 Q. So where did you -- okay. So you think they
21 had an argument earlier in the day?
22 A. Yes, I do.
23 Q. Were you present?
24 A. Yes.
25 Q. Where did this argument take place?

1 A. It took place in the hall, uh, by Ms. Miller's
2 room.
3 Q. And was it like between classes, or do you
4 remember --
5 A. It was in the morning.
6 Q. -- the time of day?
7 A. It was in the morning, when we first showed
8 up.
9 Q. Had classed actually started yet?
10 A. No.
11 Q. So Ms. Miller's room?
12 A. Correct.
13 Q. What does Ms. Miller teach?
14 A. Math.
15 Q. Do you know these rooms pretty good?
16 A. Yes, I do.
17 Q. Okay.
18 MR. TORVINEN: Lisa, would you mark that
19 exhibit -- or I can do it. I'm going to mark a schematic as
20 Exhibit 1. Is that okay with you, Mr. Kump?
21 MR. KUMP: Yes.
22 (WHEREUPON, Exhibit 1 was marked to the proffer)
23 Q. Okay. I have marked as Exhibit 1 a rough
24 schematic of the school. And I'll hand it to Mr. Patten
25 and say, do you recognize that, what's there?

1 A. Yes, I do.
2 Q. And where would Ms. Miller's room be?
3 A. This one right here, W-9.
4 Q. Okay. And she teaches math?
5 A. Correct.
6 Q. Okay. So at -- before classes started and
7 after you all arrived, right?
8 A. (Nods head)
9 Q. You have to answer because she's got to take
10 it down.
11 A. Correct. Sorry.
12 Q. There is an argument between Micaela Costanzo
13 and Toni Fratto?
14 A. Yes, sir.
15 Q. And you were present?
16 A. Yes, sir.
17 Q. How did you all happen to be present at Ms.
18 Miller's room at that time?
19 A. Umm, I was sitting in the hall, and, uh, I was
20 sitting there because me and Toni had just showed up. And,
21 uh, Mickie was coming by, probably just showing up or
22 had -- just coming down the hall because her locker's
23 around the corner.
24 Q. Okay. And how did -- how did the argument
25 start?

1 A. Umm, Toni said -- called her a slut. Said,
2 "Look at there, there's that slut." And I told her that
3 she needed to stop that bullshit.
4 Q. And this was in -- within Micaela's hearing?
5 A. Yeah. She was right in front of us, walking
6 by.
7 Q. So -- so what happened then?
8 A. Umm, Toni called her a few more names, I can't
9 remember exactly which ones. But I know the slut was what
10 originally sparked it.
11 Q. Okay.
12 A. And Micaela had said something back to her.
13 Q. Do you remember what it was?
14 A. Something to the extent of that she needed to
15 piss off, or something like that.
16 Q. Okay.
17 A. And then she just kept walking.
18 Q. Now, this was before you had ever texted her
19 that day, right?
20 A. Correct.
21 Q. Do you remember what the first time you texted
22 her was --
23 A. I don't.
24 Q. -- that day? Was it before noon or after
25 noon?

1 A. After noon.
2 Q. Okay. So did you see -- after this argument
3 in the morning, did you see Micaela again?
4 A. Umm, a few times, yeah.
5 Q. And this was, like, in between classes or --
6 A. Yeah.
7 Q. What was the occasion of you seeing her?
8 A. Umm, I passed her a couple of times in the
9 hall and I saw her in the gym one time.
10 Q. And did you and she speak about that -- this
11 incident that morning?
12 A. Not 'til after school.
13 Q. So the first text that you sent to her, what
14 did you say in it, do you remember?
15 A. Not exactly. But something to the extent of,
16 "Do you got a minute to come help me load up some stuff?"
17 Q. Did you say a time or anything?
18 A. No, I didn't.
19 Q. Do you know where she was at the time?
20 A. I don't.
21 Q. Did you -- did you know she was engaged in
22 track?
23 A. Yes, I did.
24 Q. Okay. Now, you left school at about 3:30, you
25 say?

A. About 3:35, 3:40.

Q. And did you actually leave the school grounds at that time?

A. Yes, I did.

Q. So where were you when you made this first text to her about helping you with the parts?

A. Umm, I believe I was still at the school.

Q. Did she reply?

A. Yes, she did.

Q. And what was the reply?

A. Umm, she said that she had track practice but she could help me after.

Q. Now, do you remember the testimony in your preliminary hearing about you pulling up to the back of the school?

A. Yes, I do.

Q. I think it was Mr. Peterson and Tiffany Rasmussen and Micaela were there?

A. Yes, sir.

Q. And is that accurate? Do you remember pulling up there?

A. I do remember pulling up.

Q. Do you know what time it was?

A. Umm, I don't.

Q. The text that you describe about the metal

1 parts, had you already placed that text message by the time
2 you pulled up in back of -- back of the school?
3 A. Yes.
4 Q. And she had already replied?
5 A. Yes, sir.
6 Q. Now, when you left the school at 3:35, where
7 did you go?
8 A. Umm, I went up to, uh, Texaco or Conoco to get
9 a drink.
10 Q. Okay. Where did you go from there?
11 A. Back to the school.
12 Q. What was your purpose in going back to the
13 school?
14 A. To finish up doing my work.
15 Q. Okay. What work did you have to do?
16 A. Just the car parts and stuff.
17 Q. Removing them?
18 A. Yeah, finish removing them, and loading them
19 up.
20 Q. So you had already loaded them?
21 A. No.
22 Q. Where were they sitting?
23 A. Umm, some of them -- quite a bunch of them
24 were still attached to the car, but, umm, there was a pile
25 that was sitting in front of the car.

1 Q. Okay. So you leave the school, then you come
2 back. Were you going to continue to work on the car or
3 what?
4 A. Yeah.
5 Q. When you -- when you arrived from getting your
6 drink, where did you park?
7 A. To the very back gate by the metal shop.
8 Q. Is this when they saw you drive up?
9 A. When I pulled up, nobody was out there. There
10 was people at the weight shop -- or the weight room door.
11 Q. Um-hmm.
12 A. But there wasn't anybody on the track that I
13 could see.
14 Q. Well, let me ask you this. You leave at 3:35
15 or thereabouts?
16 A. (Nods head)
17 Q. You go get a drink?
18 A. (Nods head)
19 Q. Did you go directly back to the school?
20 A. Roughly, yeah.
21 Q. Did you go anywhere else?
22 A. No.
23 Q. And did -- after you came back -- and that's
24 when you parked next to the gate?
25 A. I backed up to it, correct.

1 Q. And after you backed up to the gate, what did
2 you do?
3 A. I got out. I had to use the restroom so I
4 went into the school.
5 Q. All right. Now, did you recognize -- after
6 that happened, after you backed up to the gate, got out and
7 went into the school, did you recognize the people standing
8 by the weight door?
9 A. Yes, I did.
10 Q. And who was it?
11 A. Matt Anzalone, Adan Chavez. Tiffany was
12 standing there and Peterson.
13 Q. Did you see Micaela?
14 A. I didn't.
15 Q. So you go into the school, right? To use the
16 restroom?
17 A. Correct.
18 Q. Where did you go from there?
19 A. Back out to the metal shop.
20 Q. Are we talking about that metal shop itself,
21 or the gated area?
22 A. The gated area.
23 Q. Now, you remember in your preliminary
24 examination a video surveillance of you leaving the back
25 door?

1 A. Correct.
2 Q. About a little after five, 5:10 maybe?
3 A. 5:13.
4 Q. Right. Now that's Pacific time. The clock --
5 the -- the clock is off on the video. Remember that
6 testimony?
7 A. Correct.
8 Q. So it was about 5:13. Okay.
9 A. (Nods head)
10 Q. Now, between backing your car and going into
11 the school to use the restroom and leaving at 5:13, or
12 5:10, or whatever it was. Depends on whether it's 47 or 51
13 minutes.
14 A. Um-hmm.
15 Q. Where had you been? Did you leave the school
16 again?
17 A. No, I went back to the fenced area.
18 Q. So -- the -- the trouble I'm having is, you
19 get out at 3:30, you go get a drink. That couldn't have
20 taken very long, right? How far is the Texaco from the
21 school?
22 A. I don't really know. It's a little ways away.
23 Q. So you leave there, right?
24 A. Correct.
25 Q. And I'm talking about the Texaco?

1 A. (Nods head)
2 Q. You go right back to the school? Or did you
3 go somewhere else?
4 A. No, I went back to the school.
5 Q. Directly?
6 A. Directly as in?
7 Q. Well, did you drive right from the Texaco back
8 to the school, or did you go --
9 A. Correct.
10 Q. -- somewhere else?
11 A. Yeah.
12 Q. Now, during this period of time, were you
13 texting or calling or communicating with Toni?
14 A. Yes, I was.
15 Q. And what were you -- was it texting or calling
16 or both?
17 A. Umm, I think it was both.
18 Q. And what were you talking about?
19 A. About, uh, the argument that she had with
20 Toni. Umm, she had got really upset when -- and asked me
21 why I defended her, why I defended Micaela. Umm, and then
22 we got off that subject because I was tired of arguing with
23 her, and we talked about her parents' meeting, I guess it
24 was.
25 Q. How many -- between the time you left school

1 and the time you got back from the Texaco, how many times
2 do you think you either texted or called Toni?
3 A. I texted quite a bit.
4 Q. Was most of these conversations in text?
5 A. Yeah, most of it.
6 Q. So now, what time do you think it -- how long
7 would it take you to go to the Texaco, get the drink, and
8 come back?
9 A. Five, ten minutes.
10 Q. All right. So you're back to the school by
11 four o'clock?
12 A. Pretty close, I would say. Something like
13 that.
14 Q. You went directly in to use the bathroom?
15 A. Umm.
16 Q. Did you go anywhere else first?
17 A. I was in the metal shop back area, but yeah, I
18 went in. When I first got there, I went in to use the
19 restroom.
20 Q. Okay. Then you went into the metal shop
21 itself?
22 A. No. To the fenced area around the back.
23 Metal shop itself was locked.
24 Q. All right. When you came back out -- when you
25 came back out, were these people that you had originally

1 seen when you drove up still standing there or not?
2 A. Umm, Peterson was standing at the back door. I
3 think that was it.
4 Q. Did you do anything in the gated area?
5 A. Yeah, I was working on my car the whole time.
6 Q. In the video surveillance when you come around
7 the corner there and walk down that hall and go out that
8 door, do you remember seeing that?
9 A. Yes, I do.
10 Q. Where had you been?
11 A. Umm, I went to the restroom. Because I went
12 into the school, I think, like, two or three times.
13 Q. Why did you do that?
14 A. I got bored out there.
15 Q. Were you looking for Micaela?
16 A. No.
17 Q. Well, had you been to the -- because it's --
18 there is like an hour and a half there between 3:30 when
19 you leave to get the drink, then we agree that you are
20 going out the back door at about 5:13?
21 A. Um-hmm.
22 Q. So what were you doing in that whole period of
23 time?
24 A. Working on my car.
25 Q. And you had gone in and out of the school, you

1 say, two or three times?
2 A. Something like that.
3 Q. By what door did you go -- if the metal shop
4 was locked, by what door did you go into the school?
5 A. I guess they call it the west wing doors.
6 Q. And --
7 MR. TORVINEN: I'm going to mark an overhead
8 photograph of the school as Exhibit Number 2.
9 Q. I'm going to show you what has been marked as
10 Exhibit Number 2. Do you recognize that?
11 A. Yes, I do.
12 Q. And what door -- can you see there the door
13 that you were using to go in and out?
14 A. Yes, I can.
15 Q. And where is it?
16 A. Right here.
17 Q. Okay. Would you take Mr. Kump's pen there and
18 draw a circle or put an X on the door that you were using.
19 Can we see that on there? Okay. That's the same door that
20 was -- we could see in the video, right?
21 A. Correct.
22 Q. And you're saying that you went three or four
23 times from the gated area, which -- would you agree that
24 the gated area is depicted on the photograph?
25 A. Yes, it is.

1 Q. So you would go from there and back two or
2 three times?
3 A. Yeah, something like that.
4 Q. During those times that you were going in and
5 out of the gated area into the school, did you ever see
6 Micaela?
7 A. Umm, one time.
8 Q. Where was she?
9 A. They were coming up from the -- from the
10 football field.
11 Q. Um-hmm. Who is "they," do you remember?
12 A. Umm, Tiffany, Peterson, Micaela. And I think
13 that was it.
14 Q. Okay. From the time that you came up and you
15 backed up to the gate on the end of the gated area?
16 A. (Nods head)
17 Q. Had you moved the truck or car for any reason?
18 A. No, it stayed in the same spot.
19 Q. Now, was the -- was the scene that's depicted
20 in the video where you walk out at 5:10, or whatever it is,
21 5:13, was that the last time that you went out of the
22 building?
23 A. Uh, yes, it was.
24 Q. Okay. Now, just -- would you agree that when
25 you look at the video it was only a couple minutes later

that Micaela walked out that door?

A. Correct.

Q. Was the truck still there when she walked out the door?

A. Yes it was.

Q. Did you see her?

A. Yes, I did.

Q. Where were you? When she walked out the door, where were you?

A. I was standing in the fenced area.

Q. How could you --

A. By the metal shop.

Q. How could you see her through those slats and all?

A. Because she came around the corner right here. Because the car was backed up. She came around the corner when I was standing in front of my car.

Q. So was your car in the gated area or in front of the gated area?

A. Umm, it was -- it was in front of the gated area. It was backed up to where the gate's at because only one gate was open.

Q. Did you have anything to do with having it open at that time?

A. No, I didn't. It was open when I backed up to

1 it.

2 Q. And you didn't make any arrangements to get a

3 key, or anything like that?

4 A. No, I didn't.

5 Q. Do you remember talking to a teacher about it?

6 A. Umm, I remember I think I was going to talk to

7 my principal about it. Because my, uh, metal shop informed

8 me that'd be only -- only way to do it.

9 Q. So when you got there, the gate was unlocked,

10 and you didn't have anything to do with that?

11 A. No, sir.

12 Q. So she walks -- now, between the time that you

13 got back from getting the drink and Micaela walks around

14 the front of the car, did you see her walk up?

15 A. Yes, I did.

16 Q. How many times had you communicated with

17 Micaela either by text or actually speaking on the

18 telephone?

19 A. A few times. I don't know exactly how many.

20 Q. More than five?

21 A. I would say so.

22 Q. More than ten?

23 A. Uh, no.

24 Q. And what were the subject matters -- so

25 somewhere between five and ten?

1 A. (Nods head)
2 Q. And what were the subject matters of these
3 either telephone calls or texts?
4 A. Helping me with moving my parts and the
5 argument she had with Toni.
6 Q. That's it? That's the only subject matter?
7 A. Yes, it is.
8 Q. So now she arrives at the truck. And then
9 what happens?
10 A. We were talking just for a minute. She asked,
11 uh, what I needed help with. I showed her. Umm, we were
12 talking just kind of about everything, about the argument
13 she had with -- or the -- I guess not argument, the
14 incident she had with Toni.
15 Q. Um-hmm.
16 A. And, uh, that was about it. That's about
17 pretty much the sum of what we were talking about.
18 Q. Okay. Then what happened?
19 A. Umm, we, uh, loaded the rest of the stuff in
20 the car and we left.
21 Q. So she assisted you in doing that?
22 A. Yes, she did.
23 Q. And you are saying she got into the car
24 voluntarily?
25 A. Yeah.

1 Q. Where did you go from there?
2 A. We drove around pretty much everywhere; behind
3 the school, over by a place called Flashback Auto, down by
4 Limon Market, pretty much all over the place.
5 Q. What were you doing?
6 A. Just driving around, wasting time.
7 Q. Well, why -- were you talking about something?
8 I mean, what were you doing for however long?
9 A. We were just talking about everything. We
10 brought up the past, umm.
11 Q. What -- what do you mean by the past?
12 A. Our past friendships. Umm, bunch of the times
13 we dated.
14 Q. Okay. When do you -- when do you, as you
15 recall it -- between when and when did you see Micaela --
16 see yourself as being her boyfriend or did you date?
17 A. Many a times.
18 Q. Yeah, but --
19 A. I don't -- I don't know exactly.
20 Q. When do you think it ended?
21 A. Umm, I really don't know. Umm, probably about
22 a year or so before.
23 Q. Um-hmm.
24 A. About a year or so before all this happened.
25 Q. And before -- so this was the 3rd of March.

1 By then, by the 3rd of March -- when did you get hooked up
2 with Toni?
3 A. Seventh grade. Before that even.
4 Q. Um-hmm. When had you -- as of the 3rd of
5 March, okay, 2011, how long had you and Toni been actually
6 steadily dating; do you know?
7 A. Probably about two years.
8 Q. So was there a time when you were seeing both
9 of them?
10 A. Not both of them. I was seeing, uh, Micaela
11 when I wasn't seeing Toni.
12 Q. So would you -- there came a time when you
13 picked Toni up from the -- whatever that meeting was,
14 right?
15 A. Correct.
16 Q. It was recreational board, is that what it
17 was?
18 A. Yes, it was.
19 Q. Where is that building located?
20 A. Umm, it's up on Tibbets, Tibbets Boulevard,
21 probably -- I don't know, you can almost see it from the
22 front doors of the school. It's just up on the golf
23 course.
24 Q. All right. Now, let's back up a little bit.
25 Do you remember the testimony of Kiearra Murphy?

1 A. Yes, I do.
2 Q. Indicating that at about 5:30 she sees you
3 driving that -- on that dirt road that goes between Tibbets
4 and Wendover Boulevard, and you passed her. Did that
5 happen?
6 A. Yes, it did.
7 Q. Okay. Where was -- where was Micaela at that
8 time?
9 A. Umm, sitting right next to me in the passenger
10 seat.
11 Q. And now you -- you remember that Kiearra said
12 she couldn't see anybody else in the car?
13 A. Yes, I do.
14 Q. And do you think she's mistaken about that
15 or --
16 A. I do believe so.
17 Q. And so you're saying Micaela didn't try to
18 hide or duck down or anything like that?
19 A. Not that I'm aware of.
20 Q. Where were you going?
21 A. Just driving around. Like I said, just
22 wasting time.
23 Q. Now, Kiearra seems to remember that once you
24 hit Wendover Boulevard, you turned west towards 3 Mile,
25 right?

1 A. Umm, I never actually went up to Wendover
2 Boulevard.
3 Q. So Kiearra's wrong about that?
4 A. Yes, she is.
5 Q. Well, what was your destination when you were
6 going up the dirt road between Tibbets and West Wendover?
7 A. Just to go drive around. I mean --
8 Q. Well, let me put it this way, then where
9 did -- what's your recollection of where you end up? You
10 agree that you passed Kiearra on the dirt road?
11 A. Correct.
12 Q. Where did you -- and you never made it to
13 Wendover Boulevard?
14 A. No, I didn't. There's a dirt road that goes
15 west, kind of parallel with Wendover Boulevard.
16 Q. Um-hmm.
17 A. Right before Wendover Boulevard.
18 Q. Okay. And that's what you turned on?
19 A. Correct.
20 Q. Where did you go?
21 A. Up towards 3 Mile.
22 Q. Did you make it to 3 Mile?
23 A. Uh, to the base it. Then we came back around
24 the -- the edge of it to go around the other side.
25 Q. Still going west?

A. Umm, the road goes up to the bottom, then it kind of makes --

Q. Of 3 Mile?

A. Kind of makes, like, a U -- or a half U.

Q. Um-hmm.

A. Then there's a part where -- everybody calls it White Powder Hills.

Q. Okay.

A. We just kind of went up there and we just sat for a minute. It was just --

Q. How close to Wendover Boulevard is the White Powder Hills?

A. It's on other side of the mountain.

Q. All the way on the other side where the gravel pit is?

A. No, the --

Q. So if I'm going down this dirt road, and I hit the base of 3 Mile?

A. Correct.

Q. Do I turn left or do I turn right?

A. Left.

Q. And you skirt the base of the hill?

A. Correct.

Q. For how far?

A. To the -- almost to the back side of it. Not

1 quite.
2 Q. Like the south side of it, I guess?
3 A. Yeah.
4 Q. Does it -- does this road go all the way
5 around and hook back into the end of Wendover Boulevard --
6 A. Yes, it does.
7 Q. -- if you stay on it?
8 A. Well, yeah. There's a bunch of different
9 roads. But you can pick one of them, and yeah, it will.
10 Q. Does it end up at the gravel pits?
11 A. Umm, you got to go clear down to where the
12 railroad tracks are to hit Wendover Boulevard. That's the
13 only -- about the only two roads that go out there.
14 Q. All right. So you went to the -- Micaela
15 accompanied you voluntarily to the White Powder Hills?
16 A. Correct.
17 Q. Where did you go from the White Powder Hills?
18 A. Umm, we sat there for a little while.
19 Q. What were you talking about, do you remember?
20 A. Umm, we actually kind of got a little -- I
21 don't know how to put it -- frisky, I guess you could say.
22 Q. Okay. And how far did this friskiness go?
23 A. Not very far.
24 Q. Okay. Then what happened?
25 A. We left there, took the road, went down, went

1 past my house -- or well --
2 Q. Now, did you come -- did you -- this is a
3 different road, or did you come back on this dirt road?
4 A. No, it's a different road.
5 Q. Okay. Does it go directly into town?
6 A. No. This dirt road goes south from where we
7 were at.
8 Q. Um-hmm.
9 A. You can either go onto Tibbets Boulevard,
10 where it ends.
11 Q. Um-hmm.
12 A. Where my house -- Toni's house is at. Or you
13 can go down past that, past the fence, and it goes down to
14 Four Tunnels by the railroad tracks.
15 Q. Okay. Where did you go?
16 A. I took the road that goes down towards Four
17 Tunnels.
18 Q. Okay. How far is that to get to the Four
19 Tunnels?
20 A. I would say about half a mile.
21 Q. Okay. During this period of time, were you
22 communicating with Toni?
23 A. Yes, I was.
24 Q. By text or telephone or both?
25 A. Text, I believe.

Q. Mostly text?

A. Mostly.

Q. And what's at this Four Tunnels?

A. It's four tunnels that go under the railroad tracks, nothing special.

Q. You mean there's actually -- why would they have four of them, as opposed to one in each direction?

A. It's Wendover. Your guess is as good as mine.

Q. Are they -- can you actually pass through all four of them?

A. Yes, you can. Well, I think there was a mattress in one and some other stuff in the other one. But there's two that you can actually go through. But I didn't go actually out to Four Tunnels.

Q. Okay.

A. I went south to where it hit the railroad tracks, then came back towards the town.

Q. Different road or same road?

A. The road that's right next to the railroad tracks.

Q. Okay. Does is it eventually turn back to town somewhere, or can you get off of it back to town?

A. The one that comes from White Powder that goes south?

Q. Um-hmm.

A. It stops at the railroad tracks, and you can either go right to Four Tunnels or go left, and it just follows the tracks.

Q. Um-hmm.

A. And there's many roads you can take off to get on Tibbets Boulevard. Or it just goes clear down by Flashback Auto where we went.

Q. That's where you went?

A. Yeah.

Q. At what point -- did you make arrangements -- at some point in time you picked Toni up at the recreational board, right?

A. Correct.

Q. Was Micaela still with you?

A. Correct.

Q. And at what point in this sequence of events that you -- and you were communicating with Toni the whole time?

A. Correct.

Q. By text message?

A. (Nods head)

Q. Did she know that you and Micaela were out driving around?

A. Uh, yes, she did.

Q. That's because you told her?

1 A. Uh, she asked me.
2 Q. Okay. So you went to this Flash Auto, I
3 guess?
4 A. Flashback Auto.
5 Q. That's where you ended up hitting town again
6 from this drive?
7 A. Umm, yeah. The back side of it.
8 Q. Okay. Then where did you go?
9 A. Umm, stayed on that back road that goes by --
10 it's a paved road, I don't know the name of it. Went down,
11 went through the -- went up through the trailer park by
12 Limon Market. Came out --
13 Q. Do you know the name of the trailer park?
14 A. I want to say it's Jim's, but I don't -- I
15 don't know.
16 THE COURT REPORTER: It's what?
17 A. Jim's Trailer Park. But I don't really recall
18 the name of it.
19 Q. Okay. So and -- you went -- did you end up --
20 so this -- this -- you turn left at the tracks, right?
21 A. Correct.
22 Q. From Four Tunnels, or the area of Four
23 Tunnels?
24 A. Correct.
25 Q. And you end up back on Tibbets to the Flash

1 whatever it is?

2 A. No, the -- the dirt road follows the tracks.

3 Q. Um-hmm.

4 A. All the way down. You can go pretty much the

5 whole length of town by that road. And I went down to

6 where Flashback Auto and --

7 Q. Is Flashback Auto close to the dirt road?

8 A. Yeah, the back fence is -- the back fence is

9 right here, and then the dirt road is right here. And

10 then --

11 Q. The back fence of Flash?

12 A. Correct.

13 Q. What's it called? Flash?

14 A. Flashback Auto.

15 Q. Flashback Auto.

16 A. And then the public works is right on the

17 other side of it where you guys stored the vehicle.

18 Q. Okay. So at some point in time, though, you

19 have to turn back north to get into town, don't you?

20 A. Correct. Yeah. The road goes down and you

21 can turn off right on the other side of a towing yard.

22 Q. Um-hmm.

23 A. And then the road's right there.

24 Q. Which road?

25 A. I don't know the name of it.

1 Q. Okay. So that's how you got back into town
2 proper?
3 A. Correct.
4 Q. Then where did you go?
5 A. Uh, went up to the trailer park, which is
6 probably two football fields down from where we turned back
7 on the road.
8 Q. Um-hmm.
9 A. Went up through there. Come out by Limon
10 Market. Uh, went back past Texaco and Wells Rural
11 Electric. Uh, went up the street where, uh, one of my
12 friends lives and my relative. I can't remember the name
13 of the street, kind of curves up. Then the car wash is,
14 like, off to the right over here.
15 Q. Okay.
16 A. Hit the golf course road, and I went and
17 picked up Toni.
18 Q. Do you remember what time it was you arrived?
19 A. About 6:55, seven o'clock.
20 Q. Where was Micaela sitting in the car?
21 A. The front passenger seat.
22 Q. And where did Toni get in?
23 A. The front passenger seat.
24 Q. You mean you all three got in the front?
25 A. I asked Micaela if she could get in the back

1 so it didn't cause problems.
2 Q. Okay. And she did?
3 A. She did. She said that's fine.
4 Q. Now, Toni says that you got a message -- that
5 she got a text message that in essence said, "I have her
6 with me."
7 A. I said something like that. I said, "She's
8 with me," or something like that. Then I -- the next text
9 I asked her what she wanted to do, if she wanted me to come
10 pick her up right now or nothing. And she --
11 Q. Pick who up?
12 A. Toni.
13 Q. If she wanted you to come pick her up?
14 A. Correct. And she said that the meeting didn't
15 get over until seven o'clock.
16 Q. So did you have to wait awhile for her to get
17 out?
18 A. Yeah, from -- we left the school at, like, I
19 don't know, 5:30, 5:40.
20 Q. Um-hmm.
21 A. And then we picked Toni up at, like, 6:55,
22 seven o'clock. More like seven.
23 Q. Um-hmm. If you knew they were having
24 troubles, why would you facilitate them being together?
25 A. Umm, because I'm one of those people that I

1 don't like people to, uh, have a feud between them,
2 especially with friends and family.
3 And I asked Micaela right after school, I
4 asked her what that whole deal was about with her and
5 Toni.
6 Q. Um-hmm.
7 A. And she said that it was just a bunch of
8 bullshit is what she told me. And I said, "Well, why don't
9 you guys just talk it out?" And Toni had told me that she
10 just wanted to duke it out with Micaela.
11 Q. Duke it out?
12 A. Fight basically. And I said, "Okay. Well,
13 I'll ask Mickie." So I relayed the message to Mickie. I
14 said, "Well, she just wants to fight it out." And Mickie
15 came to the resolution, she's like, "Okay." She said --
16 and then the whole thing about I talked to her right after
17 school sometime.
18 Q. Who?
19 A. Micaela.
20 Q. So this arrangement for this fight was made
21 before you ever picked her up?
22 A. Correct.
23 Q. Picked Micaela up?
24 A. Correct.
25 Q. That was the contents of some of these things

1 earlier in the day?
2 A. Yes.
3 Q. Do you -- do you know how many times that you
4 and Toni communicated that day either telephone or text?
5 A. I don't.
6 Q. Would you be surprised if I told you that --
7 that T-Mobile's records reflect that between about 7:45
8 a.m. and 5:40 p.m. there were about eleven hundred -- 111
9 contacts between you and she? Would that surprise you?
10 A. No, it's kind of little. But no, it wouldn't
11 surprise me.
12 Q. So were you like nonstop?
13 DETECTIVE CARPENTER: Mr. Ohlson's here.
14 (WHEREUPON, attorney John Ohlson entered the room)
15 MR. OHLSON: Do we need to break so Kody and I can
16 talk before we keep going?
17 MR. TORVINEN: It's up to you. That's up to you.
18 MR. OHLSON: Kody, that's up to you.
19 MR. PATTEN: That works.
20 MR. OHLSON: If you wanted to talk to me.
21 MR. PATTEN: Yeah, if we could.
22 MR. OHLSON: Can we have a few minutes?
23 MR. TORVINEN: Sure.
24 MR. OHLSON: You guys just want to step out and
25 we'll talk in here for a while?

MR. TORVINEN: Yeah. Is that okay with you, in terms of security?

DETECTIVE CARPENTER: Yeah, we're fine.

MR. TORVINEN: All right. The time is -- by my watch it's 1:55 p.m. We are still all in -- the same people I recited originally are still in the conference room at the Elko County Sheriff's Department. And Mr. Ohlson has arrived and has asked to speak to Kody privately for a moment, which is okay with me.

I would advise you that we did execute -- formally execute the separate agreement.

MR. OHLSON: I understand that was going to happen.

MR. TORVINEN: And yes, there is a digital recorder on the table. And I'm going to shut that off and have -- which we are using as a backup.

MR. OHLSON: Okay.

MR. TORVINEN: Which I'm going to have Detective Carter pause -- Detective Carpenter pause and he can take it with us.

MR. OHLSON: Great.

(WHEREUPON, a recess was taken)

STATE OF NEVADA)

) SS.

COUNTY OF ELKO)

I, LISA M. MANLEY, a Nevada Certified Court Reporter, do hereby certify that I was present at the Elko County Sheriff's Department, 775 W. Silver Street, Elko, Nevada, during all proceedings had on January 17, 2012, and took verbatim stenotype notes thereof; and that the foregoing 48 pages contain a full, true and correct transcription of my stenotype notes so taken, and a full, true and correct copy of all proceedings had.

LISA M. MANLEY - CCR-271

CERTIFIED COURT REPORTER

COPY

2012 FEB 28 AM 11:49
RECEIVED
ELKO COUNTY DISTRICT ATTORNEY

RECORDED EXAMINATION OF KODY CREE PATTEN
BY HIS COUNSEL JOHN OHLSON IN CONNECTION
WITH THE TERMINATION OF PLEA NEGOTIATIONS

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

Taken at 3:05 p.m., January 17, 2012

Reported by Lisa M. Manley, CCR #271

1 MR. TORVINEN: The time is, by my watch, 3:05
2 p.m. It is still January 17th, 2012. We are still in the
3 conference room at the Elko County Sheriff's office located
4 at 775 West Silver Street.
5 Present now is myself speaking, Mark Torvinen;
6 Lisa Manley, certified court reporter; Mr. Kody Patten;
7 Tyler Ingram from the Elko County District Attorney's
8 office; James Carpenter from the Elko County Sheriff's
9 department; Jeffrey Kump, attorney at law; John Ohlson,
10 attorney at law; and Mr. Kody Patten, the defendant in the
11 case.
12 I have been informed that Mr. Ohlson -- we
13 need to terminate this proffer. And I'll let Mr. Ohlson
14 say his piece at this point.
15 MR. OHLSON: Miss Reporter, I arrived late at
16 these proceedings. They started, I believe, at one o'clock
17 and I arrived about an hour late.
18 When I arrived the record noted that we
19 suspended the proceedings so that I could consult with my
20 client.
21 The purpose was that these proceedings were to
22 be preliminary to a potential change of plea in this case.
23 That was predicated upon Mr. Patten informing
24 Mr. Kump previously -- about ten days ago, Jeff?
25 MR. KUMP: Yes.

1 MR. OHLSON: That he would be willing to plead
2 guilty to first-degree murder in this case in return for
3 the relinquishment by the State of its intention to seek
4 the death penalty.
5 It was on the strength of that representation
6 that we proceeded with negotiations that I had been
7 attempting for some months unsuccessfully.
8 During the time that we have been off the
9 record, Mr. Patten and Mr. Kump and I have been speaking,
10 have we not, Kody?
11 MR. PATTEN: Yes, we have.
12 MR. OHLSON: And have I advised you as to the
13 pros and cons of entering into such a plea bargain?
14 MR. PATTEN: Yes, you have.
15 MR. OHLSON: And do you understand my advice?
16 MR. PATTEN: Yes, I do.
17 MR. OHLSON: Do you -- have I advised you that it
18 is my opinion, regardless of the death penalty and whether
19 or not it's applied in this case, that if the case were to
20 proceed to trial you would be convicted of first-degree
21 murder?
22 MR. PATTEN: Yes, you did.
23 MR. OHLSON: Have I advised you that that's --
24 upon that conviction a jury would decide your sentence?
25 MR. PATTEN: Yes, you did.

1 MR. OHLSON: And that they would have the
2 possibility, without the death penalty, of a life-without
3 or a life-with-parole sentence?
4 MR. PATTEN: Yes, you did.
5 MR. OHLSON: Did I advise you it is my opinion
6 that a jury in this matter would not only convict you of
7 first-degree murder, but that would -- that jury, given
8 those two options, would sentence you to life in prison
9 without the possibility of parole?
10 MR. PATTEN: Yes, you did.
11 MR. OHLSON: Understanding that, what was your
12 decision as to the plea bargain?
13 MR. PATTEN: After which I decided to decline.
14 MR. TORVINEN: Okay. So you are unwilling to
15 accept the plea bargain?
16 MR. PATTEN: Correct.
17 MR. OHLSON: You understand that this declination
18 of a plea bargain terminates negotiations at this point,
19 puts us back in a posture of litigation, and based upon the
20 timing of the case, although anything can happen,
21 negotiations are off at this point.
22 Is that right, Mr. Torvinen?
23 MR. TORVINEN: Yes.
24 MR. OHLSON: And the offer is off the table?
25 MR. TORVINEN: Yes.

1 MR. OHLSON: Mr. Patten does not have the option
2 of taking it anymore?
3 MR. TORVINEN: Not at this point.
4 MR. OHLSON: That's all I have. Thank you, Miss
5 Reporter.
6 MR. TORVINEN: The time is three --
7 MR. OHLSON: Oh, I'm sorry, did you want to --
8 anything?
9 MR. TORVINEN: No. No. I just want to make a
10 record. The time is 3:09 by my watch and we are going to
11 terminate this conversation. And I assume Mr. Carpenter
12 will take Mr. Patten back to the jail. And that's where
13 we're at.
14 MR. OHLSON: Thank you.
15 (WHEREUPON, the hearing was concluded at 3:09 p.m.)
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25

STATE OF NEVADA)

) SS.

COUNTY OF ELKO)

I, LISA M. MANLEY, a Nevada Certified Court Reporter, do hereby certify that I was present at the Elko County Sheriff's Department, 775 W. Silver Street, Elko, Nevada, during all the proceedings had on January 17, 2012, and took verbatim stenotype notes thereof; and that the foregoing 5 pages contain a full, true and correct transcription of my stenotype notes so taken, and a full, true and correct copy of all proceedings had.

LISA M. MANLEY - CCR-271

CERTIFIED COURT REPORTER

2012

CASE NO.: CR-FP-11-0300

DEPT. NUMBER: II

FILED

2012 MAY -8 A 11: 03

ELKO CO DISTRICT COURT

DEPUTY

IN THE FOURTH JUDICIAL DISTRICT COURT

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

THE STATE OF NEVADA,

Plaintiff,

vs.

KODY CREE PATTEN,

Defendant.

FIFTH

CRIMINAL INFORMATION[1]

Filed Pursuant To
A Plea Agreement

COMES NOW THE STATE OF NEVADA, the Plaintiff in the above-entitled cause, by and through its Counsel of Record, the Elko County District Attorney's Office, and conditioned upon the Defendant's entry of a plea of guilty to the offense pleaded against him in this Fifth Criminal Information pursuant to the terms of

---

[1] A First Criminal Information was filed in the above-entitled cause the 27th of April, 2011, naming Kody Cree Patten as the Defendant therein, after Mr. Patten had conditionally waived his right to a preliminary examination in order to seek a competency examination. Thereafter, a Second Criminal Information was filed in the above-entitled cause on the 28th day of July, 2011, against Toni Collette Fratto upon her bind-over from the Justice Court after the conduct of a Preliminary Hearing on the 13th and 14th days of July, 2011. A Third Criminal Information was filed in the above-entitled cause upon Mr. Patten's bind-over after the conduct of a Preliminary Hearing on the 3rd and 4th days of August, 2011. A Fourth Criminal Information was filed in the above-entitled cause on the 27th day of January, 2012, filed pursuant to a Plea Agreement filed in this matter on the 20th day of January, 2012. This Fifth Information is, as alluded above, has been filed pursuant to a Plea Agreement filed in this matter on the 4th day of May, 2012, and this procedural history accounts for its denomination as the "Fifth Criminal Information" to be filed in this matter.

Affirmation Pursuant to NRS 239B.030
SSN Does Appear _____
SSN Does Not Appear KC

a Plea Agreement between the Parties filed herein, would, pursuant to the provisions of NRS 173.035, inform the above-entitled Court that the Defendant above-named, Kody Cree Patten, on or about the 3rd day of March, 2011;

At or near a location:

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

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

COUNT 1

FIRST DEGREE MURDER WITH THE USE OF A DEADLY WEAPON, A FELONY AS DEFINED BY NRS 193.165, NRS 200.010, NRS 200.020, AND NRS 200.030

The Defendant, Kody Cree Patten, alone or in concert with one Toni Collette Fratto, at the place within Elko County, Nevada described above located approximately five miles west of the City of West Wendover, Nevada, and on or about the date alleged above, did willfully and unlawfully, with malice aforethought, and with premeditation and deliberation kill and murder another human being, one Micaela Costanzo. Further that the Defendant employed a deadly weapon within the meaning of NRS 193.165 in the commission of said murder.

The Defendant, Kody Cree Patten, committed said murder in the following manner:

The Defendant, on or about the date alleged above, and at the place alleged above:

1. Cut the said Micaela Costanzo's throat with the edge of a shovel and/or a knife and/or some similar edged and/or sharp instrument which constituted a deadly weapon within the meaning of NRS 193.165, and/or

2. Stabbed the said Micaela Costanzo with a knife and/or some similar edged weapon, and/or stabbed Micaela Costanzo with the pick end of an entrenching tool which constituted a deadly weapon within the meaning

of NRS 193.165, and/or some other sharp instrument which constituted a deadly weapon within the meaning of NRS 193.165; and/or

3. In conjunction with any of the acts described in Paragraphs 1 and 2 above, struck the said Micaela Costanzo with a shovel, or similar instrument or object which constituted a deadly weapon within the meaning of NRS 193.165 or some similar instrument upon the said Micaela Costanzo's head and/or body multiple times;

thereby killing and murdering the said Micaela Costanzo.

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

Dated 8th day of May, 2011.

MARK TORVINEN
Elko County District Attorney
State Bar Number: 551

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

JASON ABRAMS, 1111 N GENE L JONES WAY, W WENDOVER, NV 89883
MATT ALEXANDER, 775 W SILVER STREET, ELKO, NV 89801
RENEE THOMSON ARMSTRONG, WASHOE CRIME LAB, 911 PARR BLVD, RENO, NV 89512.
JAMES BONICH, 2363 NORTH 5TH, PO BOX 1870, ELKO, NV 89803
DONALD BURNUM, 1111 N GENE L JONES WAY, W WENDOVER, NV 89883
KEVIN J. BYRNE, WASHOE CRIME LAB, 911 PARR BLVD, RENO, NV 89512
JIM CARPENTER, 775 W SILVER STREET, ELKO, NV 89801
KANDACE CHRISTIANSEN, 840 S 400 E #11, ST GEORGE, UT 84770
DR. ELLEN GI CLARK, SIERRA PATHOLOGY, PO BOX 12815, RENO, NV 89510-

2815

CELIA COSTANZO, 1655 W CALLISTO #7, OR WENDOVER NUGGET, W WENDOVER, NV 89883

DELICIA COSTANZO, 804 N 100 W, TOOELE, UT 84074

CASSANDRA COLLETTE FRATTO, 1383 WALL ST., PO BOX 2964, W WENDOVER, NV 89883

CLAUDE FRATTO, 3268 SKY VIEW DR, W WENDOVER, NV 89883

TONI COLLETTE FRATTO, c/o ELKO COUNTY JAIL, 775 W. SILVER STREET, ELKO, NV 89801

JACQUELYN GIOVO, 500 VISTA VIEW LP, W WENDOVER, NV 89883

STEPHEN GRESKO, WASHOE CRIME LAB, 911 PARR BLVD, RENO, NV 89512

SANDRA GUNTER, 1111 N GENE L JONES WAY, PO BOX 2469, W WENDOVER, NV 89883

GARRETT HANDY, 6048 CORINTH DRIVE, COLORADO SPRINGS, CO 80923

SUZANNE HARMON, WASHOE CRIME LAB, 911 PARR BLVD, RENO, NV 89512

BRAD HILLAKER, 1111 N GENE L JONES WAY, W WENDOVER, NV 89883

DENNIS JOURNIGAN, 775 W SILVER STREET, ELKO, NV 89801

TRAVIS LANDON, 775 W SILVER STREET, ELKO, NV 89801

KRISTINA SWEAT LININGER, 3100 SKYVIEW DRIVE, W WENDOVER, NV 89883

MICHAEL LYFORD, WASHOE CRIME LAB, 911 PARR BLVD, RENO, NV 89512

KEVIN MCKINNEY, 775 W SILVER ST, ELKO, NV 89801

MICK MOORE, 2066 BLUE GRASS CIR, W WENDOVER, NV 89883

KIEARRA LOUISE MURPHY, 480 E 4120 S #4, MURRAY, UT 84107

WENDI MURPHY, 1545 W OXBOW CIRCLE #10, TAYLORSVILLE, UT 84123

DAWNNA PATTEN, 635 6TH ST, W WENDOVER, NV 89883

KIP PATTEN, 3079 TIBBETS BLVD, W WENDOVER, NV 89883

TYLER PETERSON, 32 CAROL ST, W WENDOVER, NV 89883

TIFFANY RASMUSSEN, 30 N 400 E, #F30, EPHRAIM, UT 84627

JEROME REAMER, 1876 BUTTE ST #A, W WENDOVER, NV 89883
VICTOR RUVALCABA, WASHOE CRIME LAB, 911 PARR BLVD, RENO, NV 89512
WILLIAM SAVAGE, 1499 VICENZA DRIVE, SPARKS, NV 89434
GORDON GRANT SMITH, 495 TIBBETTS, W WENDOVER, NV 89883
RONALD E. SUPP, 1111 GENE L JONES WAY, PO BOX 2469, W WENDOVER, NV 89883
T-MOBILE LAW ENFORCEMENT RELATIONS, 4 SYLVAN WAY, PARSIPPANY, NJ 07054
EUGENE RYAN TANGARO, 1111 GENE L JONES WAY, PO BOX 2469, W WENDOVER, NV 89883
KENYA TRUXAL, 775 W SILVER ST, ELKO, NV 89801
PETE TURNER, 1111 GENE L JONES WAY, W WENDOVER, NV 89883

Certificate Of Service

I, Karen Cracraft, hereby certify that I am an employee of the Elko County District Attorney's Office, and that on the 8th day of May, 2012, a true and correct copy (or true and correct copies in the case of multiple addressees) of the foregoing Fifth Criminal Information was/were served upon the addressee(s) identified hereafter in the following manner:

A filed-stamped copy will be, as soon as practicable after the filing thereof, transmitted to the Chambers of:

The Honorable Dan L. Papez
District Court Judge – Assigned

via facsimile number 775-289-1582; and

Further, that pursuant to the provisions of NRS 178.589[2], and the aforementioned Order, a true and correct copy of this pleading was transmitted by facsimile to the Defendant's Counsel of Record, John Ohlson and Jeffrey J. Kump, at the following facsimile numbers:

1. Mr. John Ohlson via facsimile number: 775-323-2705; and

---

[2] NRS 178.589 provides that:

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

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

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

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

3. Service of any motion, notice or other legal document by facsimile machine after 5 p.m. on the day that the document is transmitted shall be deemed delivered on the next judicial day. The time of transmittal set forth in this subsection is determined according to the time at the location of the recipient of the legal document.

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

5. As used in this section:

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

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

2. Mr. Jeffrey Kump via facsimile number: 738-0187;

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

Karen Cracraft

Signature Of Person
Executing Certificate Of Service

FILED

2012 SEP -7 PM 4:01

ELKO CO DISTRICT COURT

CLERK_____ DEPUTY_____

Case No. CR-FP-11-0300

Dept No. II

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

****

THE STATE OF NEVADA, Plaintiff, vs. KODY CREE PATTEN, Defendant.	**JUDGMENT OF CONVICTION AND SENTENCE**

On the 9th day of May, 2012, the above-named Defendant, **KODY CREE PATTEN**, (Date of Birth: December 31, 1992 [19 years of age at time of sentencing]; Place of Birth: Logan, Utah), entered a plea of **GUILTY** pursuant to the terms of a written Statutory Plea Agreement to the criminal offense of **FIRST DEGREE MURDER WITH THE USE OF A DEADLY WEAPON, A CATEGORY A FELONY AS DEFINED BY NRS 193.165; NRS 200.010, NRS 200.020, AND NRS 200.030**, which crime occurred on or about the 3rd day of March, 2011, near West Wendover, Nevada, and as more fully described in the Fifth Criminal Information filed on May 8, 2011. Appearing with said Defendant at said hearing were his legal counsel, John Ohlson, Esq., and Jeffrey Kump, Esq. The State was present and represented by Elko County District Attorney, Mark Torvinen.

SEVENTH JUDICIAL DISTRICT COURT
DAN L. PEZ
DISTRICT JUDGE
DEPARTMENT 2
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA

On the 24th day of August, 2012, the Defendant personally appeared before this Court together with his legal counsel, John Ohlson, Esq., and Jeffrey Kump, Esq., for purpose of entry of final judgment and imposition of sentence. Elko County District Attorney Mark Torvinen was present on behalf of the State of Nevada. Also present at said hearing was Nevada Division of Parole and Probation Officer Maria Cammarano who had previously prepared and provided to the Court, counsel and said Defendant, a Presentence Investigation Report. The Court allowed said Defendant and his counsel an opportunity to provide evidence in mitigation of the crime, and further, allowed said Defendant to personally address the Court. The Court also allowed the State to present victim impact evidence in support of the State's sentencing recommendation. Counsel for said Defendant and for the State were allowed to make sentencing recommendations to the Court.

After considering all evidence, statements and recommendations made to the Court, the court enters judgment and imposes sentence as follows:

SEVENTH JUDICIAL DISTRICT COURT
DAN LAPEZ
DISTRICT JUDGE
DEPARTMENT 2
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA

ENTRY OF JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that KODY CREE PATTEN is GUILTY of the crime of FIRST DEGREE MURDER WITH THE USE OF A DEADLY WEAPON, a Category A Felony as defined in NRS 193.165; NRS 200.010, NRS 200.020, and NRS 200.030.

SENTENCE

Upon the Defendant's conviction of:

FIRST DEGREE MURDER WITH THE USE OF A DEADLY WEAPON, A CATEGORY A FELONY AS DEFINED BY NRS 193.165, NRS 200.010, NRS 200.020 AND NRS 200.030;

///

The Defendant is hereby sentenced to serve:

1. Life imprisonment in the Nevada State Prison without the possibility of parole (see NRS 200.030.1 and .4[b][1];

2. The Defendant shall receive credit against this sentence in the amount of five-hundred and thirty-five (535) days, calculated to include the day of his arrest which occurred on the 7th day of March, 2011, to and including the day of sentencing which was Friday the 24th day of August, 2012.

For the use of a deadly weapon in the commission of the offense of First Degree Murder, the Defendant, pursuant to the provisions of NRS 193.165, shall serve a term of:

1. Two-hundred and forty (240) months (twenty[20] years) with parole eligibility for this sentencing enhancement to commence after the service of ninety-six (96) months (eight [8] years).

2. The enhancement imposed under the provisions of NRS 193.465 shall, in accordance with the provisions of NRS 193.165, be served consecutively to the sentence of life imprisonment without the possibility of parole imposed upon the Defendant for his conviction of First Degree Murder as described above.

The Court would memorialize, as it recited on the record in open Court at the time of the imposition of sentence in this matter, that in formulating the enhancement imposed pursuant to the provisions of NRS 193.165 in this Case it considered the factors set forth in NRS 193.165.1(a) to (e).

Further the Defendant shall pay to the Nevada Victims Of Crime Program, as restitution for the sums advanced in connection with the funeral expenses incurred by the Victim's, Micaela Costanzo's, family, the sum of five-thousand dollars ($5,000.00). See NRS 217.200 and Roe vs. State 112 Nev. 733 at 735 and 736 (1996).

IT IS HEREBY FURTHER ORDERED that the Defendant shall submit to testing to determine his genetic markers in accordance with the provisions of NRS 176.0913, and shall pay One Hundred Fifty Dollar ($150) genetic testing fee in accordance with the provisions of NRS 176.0915.

SEVENTH JUDICIAL DISTRICT COURT
DAN LOPEZ
DISTRICT JUDGE
DEPARTMENT 1
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA

IT IS HEREBY FURTHER ORDERED in accordance with the provisions of NRS 176.062, that the Defendant shall forthwith pay to the Elko County Clerk, the sum of Twenty-Five Dollars ($25.00), as an administrative assessment fee, and judgment therefore is hereby entered against the Defendant.

NOW THEREFORE, the Clerk of the above-entitled Court is hereby directed to enter this Judgment of Conviction as part of the record in the above-entitled matter pursuant to the provisions of NRS 176.125.

DATED this 30th day of August, 2012.

DISTRICT JUDGE

SEVENTH JUDICIAL DISTRICT COURT
DAN L. PAPEZ
DISTRICT JUDGE
DEPARTMENT 2
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA

FILED

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ELKO CO DISTRICT COURT

CLERK ____ DEPUTY ____

Case No.: CR-FP-11-300

Dept No.: 2

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

THE STATE OF NEVADA,

Plaintiff,

vs.

KODY CREE PATTEN,

Defendant.

/

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department II, and that on this 7 day of September, 2012, I served by the following method of service:

(X) regular U.S. mail
() certified U.S. mail
() registered U.S. mail
() overnight U.S. mail
(X) hand delivery
(Copy placed in agency box located in the Elko County Clerk's Office)
() overnight UPS
() overnight Federal Express
() Fax to #____
() personal service

a true copy of the ***Judgment of Conviction and Sentence***, addressed to:

///

///

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///

Elko County District Attorney (hand delivery)

State of Nevada, Division of Parole and Probation (hand delivery)

Elko County Sheriff (hand delivery)

Nevada Department of Corrections
(copy to accompany Defendant at time of transport)

Jeffrey J. Kump, Esq. (hand delivery)

John Ohlson, Esq.
Law Office of John Ohlson
275 Hill St., Ste. 230
Reno, NV 89501
(regular U.S. Mail)

Nevada Department of Corrections
Offender Management Division,
Sentence Management
PO Box 7011
Carson City, NV 89702
(regular U.S. Mail)

Stefanie Rattani

Stefanie Rattani

Case No. HC- B-116

Dept. No. 1

FILED

2019 MAR 25 A 11:26

ELKO CO. DISTRICT COURT
CLERK ____ DEPUTY

IN THE FOURTH JUDICIAL DISTRICT COURT

STATE OF NEVADA, COUNTY OF ELKO

KODY PATTEN,
PETITIONER,

VS.

THE STATE OF NEVADA,
RESPONDENT.

SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) AND REQUEST FOR EVIDENTIARY HEARING

Petitioner, KODY PATTEN, by and through his attorney of record, RICHARD W. SEARS, ESQ., hereby files this Supplement to Patten's original WRIT OF HABEAS CORPUS (POST-CONVICTION) Pursuant to NRS Chapter 34. This Writ along with the facts and law alleged therein, along with the following Points and Authorities, is made upon the pleadings and papers already on file, evidence to be presented at hearing, and any oral argument of counsel deemed necessary by the Court.

DATED this 20 day of March, 2019.

RICHARD W. SEARS, 5489
Sears Law Firm, ltd
457 Fifth Street
Ely, Nevada 89301
775.289.3366

STANDARD OF REVIEW

KODY PATTEN WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE 5TH, 6TH, AND 14TH AMENDMENTS.

Kody Patten's conviction was the result of ineffective assistance of trial counsel in violation of his Fifth, Sixth, and Fourteenth Amendment rights to due process, to counsel, and to present a defense, as well as his correlative rights under the Nevada Constitution Article I, Section 8. To prevail on a claim of ineffective assistance of trial counsel, "a defendant must demonstrate (1) that counsel's performance was deficient and (2) that counsel's deficient performance prejudiced the defense." *Strickland v. Washington,* 466 U.S. 668, 697, 104 S. Ct. 2051, 2069 (1984); *McConnell v. State,* 125 Nev. 243, 247, 212 P. 3d 307, 313 (2009). A defendant is entitled to relief where "counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Strickland,* 466 U.S. at 687, 104 S. Ct. at 2064. A presumption of prejudice may attach where counsel entirely fails to subject the prosecution's case to adversarial testing. *Hernandez v. State,* 124 Nev. 978, 982, 194 P. 3d 1235, 1241 (2008) *(citing United States v. Cronic,* 466 U.S. 648, 659, 104 S. Ct. 2039 (1984). A claim of ineffective assistance of counsel presents a mixed question of law and fact, subject to independent review. *Evans v. State,* 117 Nev. 609, 622, 28 P. 3d 498, 508 (2001).

To state a valid claim of ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and resulting prejudice such that any omitted issue would have had a reasonable probability of success on appeal. *Kirksey v. State,* 112 Nev. 980, 998, 923 P. 2d 1002, 113-14 (1996).

Furthermore, a petitioner is entitled to a post-conviction evidentiary hearing when he asserts claims supported by specific factual allegations not belied by the record that, if true, would entitle him to relief. *McConnell,* 125 Nev. at 247, 212 P. 3d at 309. A petitioner must demonstrate the disputed factual allegations underlying his claims by a preponderance of the evidence. *Hernandez,*124 Nev. at 982, 194 P. 3d at 1241 (2014).

In addition, because Kody Patten resolved his charges by pleading guilty as part of an agreement to settle all charges against him, Kody did not seek direct appeal relief. Under these circumstances, Kody should be allowed to demonstrate that the claims upon which he seeks relief entitle him to withdraw his plea. The Nevada Supreme Court recognized this right in *Warden v. Peters,* which held in relevant part,

> We deem the procedural label to be of little importance. The fact remains that courts which make a mistake in rendering a judgment which works to the extreme detriment of the defendant will not allow it to stand uncorrected. In a situation such as this, where, as discussed below, the court has inherent power to reconsider a judgment for good cause shown, we hold that such an issue may be raised by a motion to vacate judgment, though technically in this state the matter probably should have been raised by a petition for habeas corpus. See State ex rel. *Orsborn v. Fogliani*, 82 Nev. 300, 417 P.2d 148 (1966).
>
> 2. The trial court has inherent jurisdiction to vacate or modify its orders and judgments, *State v. Lopez*, 96 Ariz. 169, 393 P.2d 263 (1964), and discretion to permit withdrawal of a plea in order to effectuate its efforts. *Negelberg v. United States*, 377 U.S. 266, 84 S.Ct. 1252, 12 L.Ed.2d 290 (1964). Justice requires that when a court errs in its adjudication of a defendant, a vacation of the adjudication results in a vacation of the sentence so that the defendant can be returned to his prior status. If a guilty plea is the product of ignorance, fear, inadvertence or coercion, it must be vacated as void since it is violative of constitutional safeguards, *Kercheval v. United States*, 274 U.S. 220, 47 S.Ct. 582, 71 L.Ed. 1009 (1927), and the passage of time does not close the door to its reconsideration. *Ward v. Page*, 238 F.Supp. 431 (D.Okl. 1965).

Warden, Nevada State Prison v. Peters, 429 P.2d 549, 83 Nev. 298 (Nev., 1967)

FACTS

Wendover is a Nevada border town: it sits astride the Utah-Nevada state line. The railroad passes just south of town and Interstate 80 passes north. Approximately 4,000 people resided there in 2010, according to the federal census.

On March 3rd, 2011,[1] Michaela Costanza was allegedly killed by Toni Fratto and Kody Patten. Michaela, Toni, and Kody were all were residents of Wendover, and school acquaintances. Many local residents were called out to search for Michaela when she did not come home after an athletic practice at the school. Her body was ultimately found in a shallow grave near the railroad tracks south of town.

Before Michaela's body was found, Toni and Kody were suspects because of their prior relationships. On March 5th, 2011, Toni Fratto was interviewed by law enforcement, and denied any knowledge of the crime. Toni was again interviewed by law enforcement on March 6th, 2011, and again denied any knowledge of the crime. The March 6th interview was interrupted, and then restarted later the same day. During the second phase of the interview, Michaela's body had been found. During the March 6th interview, Toni was closely questioned by law enforcement to determine whether she had bad feelings against Michaela because of Michaela's prior relationship with her current live-in boyfriend, Kody Patten. Toni denied knowledge of the killing, and denied jealousy of Michaela. Toni was lying with both answers.

Kody was also interviewed by local and outside law enforcement. During his interview with law enforcement on the evening of March 6th, which extended into the morning of March 7th, Kody finally confessed after consulting with his parents. Kody's Dad, Kip Patten,

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[1] Kody was born 12/31/1992; he was 18 years and two months old on the day of Michaela's death.

encouraged Kody to "do the right thing" and put this thing behind him. For minor Kody Patten, doing the right thing meant taking the blame and not implicating Toni, whom he had apparently agreed to protect either before or after the murder.

Kody confessed to everything law enforcement could have dreamed of hearing. He yarned how he killed her by himself: Beat her up, stabbed her in the neck, stripped off her top, and promptly dug a hole for her topless body and buried her by the railroad tracks. Kody was arrested in the early morning hours of March 7th, 2011. He had endured sustained questioning by the police because, they told him, they wanted to "clear things up for him." Kody and his parents had been complaining about the threats he was receiving in the community - threats that extended to his parents and siblings.

Kody was convinced to confess to the killing after the police assured him that he could spend the night with his family in the jailhouse.

Kody avoided any mention of Toni's name in connection with Michaela's murder for more than a month. The only reason her participation was revealed was out of Toni's mouth.

Months after her arrest, Toni confessed to a jail friend, Linda Fields, that Toni was the one who set up the killing of Michaela because she was jealous of Michaela's prior and potential future relationship with Toni's boyfriend, Kody. Toni believed that she and Kody were about to be married, and was jealous of anyone or anything that might interfere with that event. Toni called Michaela ugly names in school in the hearing of others, as well as in her diaries. Toni's jealousy of Michaela was suspected in the community. This is why she was suspected by the police of committing Michaela's murder when Michaela failed to appear after leaving high school.

Toni's jailhouse admissions to Linda Fields - discovered post-plea and sentence by Kody Patten - also disclosed the fact that Toni jealously murdered Michaela and probably got

her revenge on Kody as well. According to Toni's admission to Linda, Kody just stood around while Toni did the deed - a scene Toni had earlier painted for law enforcement, with their roles in the murder reversed.

Kody Patten had just turned eighteen years of age at the time of the murder. He had moved out of his parent's house and into his girlfriend's house because Kody's parents were too restrictive. Kody had completed a Marine Corp interview, and was prepared to enter the Corps upon his graduation from High School.

Kody was subject to all the dreams of a romantic young man: A military life in the toughest branch of the service; proof of his manhood, he would become a son who a father could be proud of.

Kody liked girls and girls liked Kody. He was a tall, good-looking redhead who had just enough of a "bad boy" image to attract attention of young ladies, but not enough to require expulsion from high school.

One young divorcee about town let Kody use her vehicle when he wanted, and was gossiped to have provided young men like Kody a place to party and things to party with.

Just prior to Michaela's death, Toni learned that Kody - along with two Mormon Bishops - had gone to Michaela to speak to her about joining the church which Kody had just joined. Arguably, this last fact may have tipped Toni over the edge, because now, not only would she have to deal with Kody's ex-girlfriend in High School with him every day, but would also have to deal with her in church on Sunday.

Kody's parents had managed the apartment house where Michaela lived. Kody and Michaela had grown up together in the same complex, and had been early best friends, playing together during the day and later dating each other.

Toni finally revealed the fact that she was "present" at the scene to Kip Patten (Kody's father), which became the start of a sensational tale picked up by the national press, and climaxed with a television story, with Toni being the featured attraction.

In mid-April, after Kip learned that Toni was present at Michaela's murder, Toni - rather than informing the police - inexplicably gave a confession to Kody's lawyers: John Ohlson and Jeffrey Kump. John Ohlson is a widely recognized criminal defense lawyer who is death penalty qualified. He was appointed to represent only Kody..

The government sought the death penalty in this case. The case was accompanied by publicity in the city of Wendover and throughout Elko County, a so-called "cow county" because of its rural makeup. Jeffrey Kump is a respected Elko county attorney who served with Reno lawyer, John Ohlson.

After Toni's confession to Kump and Ohlson, the number of stories of the murder increased by the participants. Unfortunately, the police investigation essentially stopped after the confessions. Insufficient investigation was performed of the physical evidence to disclose who performed the criminal acts that resulted in Michaela's death. The outlines were obvious to the police: Kody was seen driving a white van-type vehicle around the time of Michaela's murder; the van tires matched tire prints found near Michaela's body; Michaela had a zip tie found near her feet and one on her wrist, suggesting she had been bound; Michaela had knife wounds to her chin area and puncture and slash wounds in her neck; Michaela bled to death. A shallow hole was dug, Michaela's top was missing and appeared to have been cut off, she was covered with a thin layer of dirt and a piece of sagebrush. The burial was hurried, unplanned, virtually certain to be discovered. In fact, a railroad train passed Toni and Kody as they were parked disposing of Michaela's body.

Kody was two months over 18 when the killing took place. Toni was a little older, Michaela was a 16-year-old.

The absence of a murder motive apparently mystified his lawyers and criminal justice professionals in Elko county; however, the green-eyed monster of jealousy arises out of the crime scene and the diaries and research by Investigator Kolsch - especially when one learns that Toni was present at the murder, Michaela was stripped to the waist, her sweater was cut off, Michaela's face was slashed. These are the acts of a woman who wants to embarrass, shame and kill.

However, Kody, apparently compelled by his sense of self to do the "manly" act, or promises made after the killing to Toni, took sole responsibility for the killing, protecting Toni, until it was too late to present a full, and accurate accounting of the facts that law enforcement was predisposed not to believe.

LAW AND ARGUMENT

GROUND ONE: DEFENSE COUNSEL WAS INEFFECTIVE WHEN THEY FAILED TO FULLY ADVISE KODY PATTEN OF ALL HIS DEFENSES TO FIRST-DEGREE MURDER PRIOR TO ENTRY OF A GUILTY PLEA.

Kody Patten plead guilty to First Degree Murder in exchange for withdrawal of the Notice of Intent to Seek the Death Penalty. That plea placed Kody in line for two potential punishments: Life without the possibility of parole, and its corollary, life with parole. Because of the seriousness of the penalty Kody faced, this case is different from the "run of the mill" plea entered in a District Court case. If "death is different", it is also arguably the case that life without parole is also different for the 18-year old criminal defendant.[2]

[2] See *Miller v. Alabama*, 132 S.Ct. 2455 (2012), where in the Supreme Court determined that mandatory life without parole for a person under 18 years of age violates the 8th Amendment's prohibition on cruel and unusual punishment.

During the defendant's canvas before the trial judge, Kody was asked whether or not he and his counsel had discussed the defenses that were available to him to the charge of first-degree murder. Kody advised the Court that he had discussed those defenses. The Court never inquired further to determine the depth of Kody's understanding of the defenses that were available to him. This failure to inquire led to a fundamental misunderstanding by the trial judge of what information was available to Kody at the time he entered his guilty plea.

Legal counsel had a duty to ensure that Kody Patten fully understood the decision to plead guilty to first-degree murder, and to forgo a trial - at which he could have presented various defenses to the charges against him - including the defenses specifically presented by the facts as set forth below. In addition, legal counsel had a duty to ensure that Kody Patten fully understood the defenses that were available to him during the pretrial phase of the defense.

During pretrial, the defense team had filed two motions: 1) a motion to strike the death penalty, 2) a motion to suppress hearsay statements by the defendant. Accordingly, when the defendant went before the trial judge and confessed to the crime of first-degree murder, his understanding of the defenses available to him at trial only involved the pretrial phase defenses of which he had been advised. We are not arguing that he is not guilty of something – but he is not guilty of First Degree Murder.

At the time of the plea, the defendant was still a student in high school even though he was 18 years of age: He was a shop student, and his goal in life was to join the Marine Corps and be a soldier. The defendant was not a premed student, he was not college-bound, he was no candidate for law school. His understanding of the intricacies of the law were entirely dependent upon his defense team.

When Kody told his lawyers that he did not want to plead guilty to first-degree murder, his lawyers explained to him that he would get the death penalty if he went to trial. That fact was the rationale behind Kody Patten pleading guilty to first-degree murder and ultimately receiving a sentence of life in prison without the possibility of parole.

The United States Supreme Court has determined that a life without parole sentence for a minor offender is different in nature from the normal sentencing provided to adult offenders. The United States Supreme Court has already determined that the imposition of the death penalty on juveniles offends the Constitution. The question recently addressed by the Supreme Court looked at whether or not life in prison was similarly offensive to the United States Constitution. Based on the theory that changing societal norms required another look at life in prison for juvenile offenders, the Supreme Court determined that life in prison should not be imposed, absent extraordinary circumstances. In this case a minor, who by a period of months was no longer a juvenile, was sentenced to a term of life in prison without the possibility of parole.

This sentence for this crime is normally appropriate, as long as a reviewing court can be certain that constitutional principles were respected throughout the pretrial and trial phases of the prosecution and defense and a proper balancing of the good and bad of the case occurred at sentencing.

A comprehensive look at the workup done on this case will lead a reviewing court to determine that the pretrial phase lead to mistakes resulting in a plea to a crime that may not have been committed and a sentence to a term that may not have been deserved.

The initial problem facing the defendant in this case was the nature of the crime itself. The nature of the crime was the brutal fashion in which a murder was carried out. The victim was struck with a shovel, apparently pushed down, causing a blow to her head, followed by

convulsions, a slash across her chin, a partial cut across the throat, and a puncture in her throat with a small knife, whereupon she finally died, bleeding to death due to the injuries she had received. *Arguendo*, victims of pre-meditated murderers generally enjoy a quicker dispatch than the victim in this case suffered. Premeditation normally leads to an efficient killing. This was no efficient killing.

Unfortunately, the more inefficient and painful the killing, the greater the likelihood that the killer will be sentenced to death, unless the reviewing court and the sentencing court carefully apply the law to the set of facts placed before it. This is the case because an inefficient, brutal killing leads to outrage in the community. And that is certainly what happened in the case of the killing of Michaela.

> It is well established that the brutality of a killing cannot in itself support a finding that the killer acted with premeditation and deliberation. "If the evidence showed no more than the infliction of multiple acts of violence on the victim, it would not be sufficient to show that the killing was the result of careful thought and weighing of considerations."

People v. Anderson, 70 Cal.2d 15 (1968) quoting *People v. Caldwell*, 43 Cal.2d 864 (1955).

In this case, there were multiple acts of violence on a young lady that caused her death. There was understandable outrage in the community over her disappearance and the discovery of her brutalized, half-naked body.[3]

The role of the criminal justice system in this kind of vicious crime is to ensure that the punishment meets the unique set of facts presented by each crime. The punishment is to be applied dispassionately but appropriately to meet the goals of the criminal justice system. However, the criminal justice system role described above runs hard up against the popular

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[3] The state may argue the facts here fall within the definition of murder by torture, however, "physical suffering, a concomitant of almost all violent deaths, is not enough by itself to show murder by torture. There must also be intent that the victim shall suffer." *People v. Daugherty*, 40 Cal.2d 876. *See also Dominguez v. State*, 112 Nev 683 (1996).

outrage in crimes of this type and the up-close and personal reaction of victim family and friends with all members of the criminal justice system.

Because of the tension that arises in high-profile violent crimes, criminal defendants - especially those in small towns - are entitled to the special protections provided by the Constitution to those persons who are high profile criminal defendants. This is even more important when the person facing the death penalty or life without parole is two months' beyond his eighteenth birthday.

Those protections available under the Constitution were not provided to Kody Patten in this case. His case was inadequately handled during the pre-trial phases, so that the only solution is for the matter is to be remanded for a trial. This is the case - not because Kody was actually innocent of participating in some fashion in a murder - but because he is actually innocent of participating in first degree murder. This is the case because Kody was entitled to a fair prosecution, adequate defense, knowing and informed entry of plea of not guilty, and the proper working of the criminal justice system.

> "Anderson identified three factors commonly present in cases of premeditated murder: `(1) [F]acts about how and what defendant did prior to the actual killing which show that the defendant was engaged in activity directed toward, and explicable as intended to result in, the killing-what may be characterized as "planning" activity; (2) facts about the defendant's prior relationship and/or conduct with the victim from which the jury could reasonably infer a "motive" to kill the victim, which inference of motive, together with facts of type (1) or (3), would in turn support an inference that the killing was the result of "a pre-existing reflection" and "careful thought and weighing of considerations" rather than "mere unconsidered or rash impulse hastily executed" [citation]; (3) facts about the nature of the killing from which the jury could infer that the manner of killing was so particular and exacting that the defendant must have intentionally killed according to a "preconceived design" to take his victim's life in a particular way for a "reason" which the jury can reasonably infer from facts of type (1) or (2).' (Id. at pp. 26-27.)" (*People v. Koontz, supra*, 27 Cal.4th at p. 1081.) The Supreme Court in Anderson observed that it had "sustain[ed] verdicts of first degree murder typically when there [was] evidence of all three