

1
2 IN THE SUPREME COURT OF THE STATE OF NEVADA

3 Electronically Filed
4 Sep 29 2021 12:49 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

5 KODY CREE PATTEN,
Appellant,

6 vs.

CASE NO. 82715

7 THE STATE OF NEVADA,
Respondent.

8 **APPENDIX TO RESPONDENT'S BRIEF VOLUME II OF III**

9 Appeal From The Fourth Judicial District Court

10 Of The State of Nevada

11 In And For The County Of Elko

12 THE HONORABLE AARON D. FORD
13 ATTORNEY GENERAL OF NEVADA
100 N. CARSON STREET
14 CARSON CITY, NV 89701

15 TYLER J. INGRAM
Elko County District Attorney
State Bar No. 11819

RICHARD WAYNE SEARS
State Bar No. 5489

16 Elko County District Attorney's
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540 Court Street, 2nd Floor
18 Elko, NV 89801
ATTORNEYS FOR RESPONDENT

457 Fifth Street
Ely, NV 89301
ATTORNEY FOR APPELLANT

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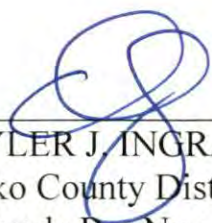
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Dated this 28 day of September, 2021.

TYLER J. INGRAM
Elko County District Attorney
540 Court Street, 2nd Floor
Elko, NV 89801
(775) 738-3101

By: 

TYLER J. INGRAM
Elko County District Attorney
Nevada Bar No.: 11819

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Exhibit 6

KODY CREE PATTEN

VS.

**WILLIAM GITTERE, WARDEN,
ELY STATE PRISON**

1 CASE NO. CR-FP-11-0300

2 DEPT. NUMBER: II

THE 11th - 12th 2-09

11-0300

3
4
5 THE FOURTH JUDICIAL DISTRICT COURT

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

7
8
9 THE STATE OF NEVADA

10
11 Plaintiff,

12 vs.

13 STATUTORY GUILTY
14 PLEA AGREEMENT

15 KODY CREE PATTEN,

16 Defendant

17
18 COMES NOW THE STATE OF NEVADA, the Plaintiff in the above-
19 entitled cause, by and through its Counsel of Record, the Elko County District
20 Attorney's Office, and Kody Cree Patten, the Defendant above-named, *in proper*
21 *person*, and by and through his Counsel Of Record John Ohlson, Esq., and Jeffrey
22 Kump, Esq., who by their signatures on this Agreement, do hereby declare that the
23 Parties have settled upon a compromise of the Criminal Prosecution pending against
24 the Defendant in the above-entitled cause, which compromise is comprised of the
25 following terms:
26
27
28

COPY

Affirmation Pursuant to NRS 239B.030
SN Does Appear
SN Does Not Appear PC

Page 1 of 15

RA 229

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Count 1:	Kidnapping In The First Degree, A Category A Felony;
Count 2:	Conspiracy To Commit The Offense Of Murder And/Or Kidnapping In The First Degree, A Category B Felony;
Count 3	Open Murder, Including First Degree Murder And All Lesser Included Offenses, With The Use Of A Deadly Weapon, A Felony;
Count 4	First Degree Murder Committed During The Perpetration Of A Kidnapping With The Use Of A Deadly Weapon (Felony Murder), A Category A Felony; and
Count 5:	Willfully Destroying Evidence Of The Commission Of A Felony, A Gross Misdemeanor

I Kody Cree Patten first declare, by my signature on this Agreement that this Agreement represents the entire agreement between me and the State of Nevada, and no other promises, other than those set forth in this Agreement have been made to me in connection with the compromise of the charges pending against me in the above-entitled matter, as described in the Criminal Information filed herein.

With the above declaration in mind:

1. The Defendant will enter a plea of guilty to an amended Criminal Information filed in District Court pursuant to the terms of this Plea Agreement charging the Defendant with:

1 First Degree Murder With The Use Of A Deadly Weapon, A
2 Category A Felony As Defined By NRS 193.165, NRS 200.010,
3 NRS 200.020, And NRS 200.030;

4 hereinafter referred to in the remainder of this Agreement simply as "First
5 Degree Murder With The Use Of A Deadly Weapon".

6 Further, the Parties, by their signatures upon this Agreement do hereby waive
7 the attachment of a copy of said amended Criminal Information to this
8 Agreement.

9 **The Issue Of The Withdrawal Of The Defendant's Pending:**
10 **Motion To Exclude Defendant's Statements To Police**
11 **And**
12 **Motion To Preclude Portions Of Toni Fratto's Statement**
13 **From Both The Guilt And Penalty Phases Of The Trial**

- 14 2. In signing this Agreement, I Kody Cree Patten declare that I am aware of the
15 fact that there is currently two Motions pending before the Court which have
16 been filed by my lawyers on my behalf and which have not been decided by the
17 Court, specifically:
- 18 a. A Motion To Exclude Defendant's Statements To Police filed on the 21st
19 day of March, 2012; and
 - 20 b. A Motion To Preclude Portions Of Toni Fratto's Statement From Both The
21 Guilt And Penalty Phases Of Trial filed on the 22nd day of March, 2012.

22 I understand that upon the entry of my plea of guilty as provided for by this
23 Agreement that these Motions will be deemed withdrawn and that they will not
24 be decided by the Court. I have discussed this with my Lawyers, and believe
25 that it is in my best interests to accept the Offer Of Compromise which this
26 Agreement represents knowing that the above-referenced Motions will not be
27 decided by the Court, and I waive my right to have those Motions decided
28 by the Court prior to my entry of the plea of guilty contemplated by this
Agreement.

THE STATE'S OBLIGATIONS UNDER THE AGREEMENT

1. The State agrees that:

- a. The proffer by the Defendant of the plea(s) of guilty contemplated by this Agreement to First Degree Murder With The Use Of A Deadly Weapon;
- b. The District Court's acceptance of that plea; and
- c. The entry of Judgment convicting the Defendant of First Degree Murder With The Use Of A Deadly Weapon;

shall be deemed a complete resolution of any and all criminal liability which the Defendant may have had arising out of the events which gave rise to the prosecution now pending against the Defendant in the above-entitled matter, and shall constitute a bar to prosecution with respect to any other theory of criminal liability which may have been pleaded against the Defendant in connection the events resulting in this prosecution, subject to the following limitation:

- a. It is agreed by and between the Parties that the bar to prosecution created by this Agreement shall extend only to the events which gave rise to the instant prosecution, and it is not intended to extend to, nor does it include any other criminal liability which the Defendant may have, if any, based on events unconnected to the specific offenses at issue in this prosecution and the events and facts upon which it is premised.

2. Finally the State agrees that the Defendant's faithful performance of the terms of this Agreement shall constitute a bar to its right to pursue the death penalty upon the Defendant's plea of guilty to First Degree Murder With The Use Of A Deadly Weapon.

TERMS OF THE AGREEMENT RELATIVE TO SENTENCING

It is agreed that at the time of Sentencing in this matter both the State, and the Defendant shall each be entitled to make that recommendation which they each, respectively, deem appropriate – that is the Parties shall be free to argue, and to present that evidence deemed admissible by the Court in support of their respective

1 positions.

2 In that regard, the Defendant by signing this Agreement acknowledges
3 that he has been advised that upon his plea of guilty to First Degree Murder that he will
4 be sentenced by the Court, sitting alone without a jury. (NRS 175.552.1[c]¹)
5

6 **CONSEQUENCES OF THE PLEA**
7

8 I Kody Cree Patten declare that I understand that at the time I enter a plea
9 of guilty under this Agreement that the above-entitled Court, before it will accept my
10 plea of guilty, will require me to admit the commission of an act or acts which fulfills all
11 of the elements of the offense(s) I have agreed to plead guilty to. The elements of the
12 offense of First Degree Murder With The Use Of A Deadly Weapon are as follows:
13

- 14 1. That the Defendant willfully and unlawfully;
15 2. With malice aforethought, and with premeditation and deliberation;
16 3. Killed another human being; and
17 4. That the Defendant utilized a deadly weapon in the commission of said offense.
18

19 **Recitation Of The Maximum Permissible Penalty**
20

21 I understand and have been advised that as a consequence of entering
22

23 ¹ NRS 175.552 provides in pertinent part that:

24 1. Except as otherwise provided in subsection 2, in every case in which there is a
25 finding that a defendant is guilty or guilty but mentally ill of murder of the first degree,
26 whether or not the death penalty is sought, the court shall conduct a separate penalty
hearing. The separate penalty hearing must be conducted as follows:

27 ... (c) If the finding is made upon a plea of guilty or guilty but mentally ill or a trial
28 without a jury and the death penalty is not sought, the separate penalty hearing must
be conducted as soon as practicable before the judge who conducted the trial or who
accepted the plea.

1 the plea of guilty provided for by this Agreement the following range of punishments
2 will be available to the Judge who accepts my plea of guilty sitting without a jury – that
3 is that I will be punished:
4

5 By imprisonment in the state prison:

6 (1) For life without the possibility of parole; or

7
8 (2) For life with the possibility of parole, with eligibility for parole beginning
9 when a minimum of 20 years has been served; or

10 (3) For a definite term of 50 years, with eligibility for parole beginning when
11 a minimum of 20 years has been served.
12

13 **Additional Penalty For The Use Of A Deadly Weapon**

14 I further understand and have been advised that in addition to the
15 potential penalties described above that an additional and consecutive penalty of
16 between one (1) and twenty (20) years, as determined by the Judge at the time of
17 sentencing, for the use of a deadly weapon in the commission of said offense will be
18 imposed upon me.
19
20

21 I have been further advised that the law requires the imposition of an
22 administrative assessment fee in connection with the entry of judgment in a felony or
23 gross misdemeanor case.
24

25 I understand that I will not be eligible for probation upon conviction of the
26 offense I intend to plead guilty to.
27

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In executing this Agreement, I Kody Cree Patten acknowledge that I have been advised by my Lawyer that if I am not a citizen of the United States that the criminal conviction(s) which will ensue from my entry of the plea(s) of guilty called for by this Agreement may have adverse consequences upon my ability to remain in the United States – that is my conviction of the offense(s) I have agreed to plead guilty to may result in my deportation, and/or may have adverse consequences upon my ability to re-enter the United States if I am deported, or otherwise leave the United States.

Restitution

13 I understand that if applicable in the case, and deemed appropriate by the
14 Court I may be ordered to make restitution to the victim of the offense to which I
15 propose to plead guilty, and to the victim of any related offenses which is/are being
16 dismissed or with respect to which prosecution has been declined pursuant to the
17 terms of this Agreement.
18

Additional Terms Of The Agreement

21 I understand that I will also be ordered to reimburse the State of Nevada
22 for any expenses incurred, if any there be, in connection with my extradition to the
23 State of Nevada in connection with this prosecution.
24

I have been advised and understand that if more than one sentence of imprisonment is imposed and I am eligible to serve the sentence concurrently with any other sentence imposed or which I am already serving, that it will be up to the

1 Sentencing Judge, except as otherwise provided by Nevada law, to determine, in the
2 Court's discretion, whether such sentences are to be served consecutively, that is one
3 after the other, or concurrently, that is at the same time.
4

5 I have not been promised or guaranteed any particular sentence by
6 anyone. I know that my sentence is to be determined by the Court within the limits
7 prescribed by the statute(s) under which I propose to plead guilty. I understand that at
8 the time sentence is imposed that if the State of Nevada or my Lawyer recommend
9 any specific sentence to the Court, the Court is not obliged to accept that/those
10 recommendation(s).
11
12

13 I understand that with respect to the offense(s) I intend to plead guilty to
14 the Division of Parole And Probation of the Department Of Public Safety will prepare a
15 Pre-Sentence Investigation Report for the above-entitled Court. This report will include
16 matters relevant to the issue of sentencing, including my criminal history. I understand
17 that this Report may contain hearsay information regarding my background and
18 criminal history. My Lawyer and I will each have the opportunity to comment on the
19 information contained in the Report at the time sentence is imposed.
20
21

22 **THE DEFENDANT'S WAIVER OF HIS CONSTITUTIONAL**
23 **RIGHTS IN CONNECTION WITH THE PLEA OF**
24 **GUILTY CONTEMPLATED BY THIS AGREEMENT**

25 I, Kody Cree Patten, declare that I have been advised and understand
26 that in order for the above-entitled Court to accept the plea of guilty I propose to enter
27 in this matter that I will have to waive my constitutional rights in this matter, and I
28

1 declare that I am willing to give up the following constitutional rights and privileges in
2 order that the Court can accept my plea(s) of guilty:

3
4 1. The constitutional privilege against self-incrimination, including the right to
5 decline to testify at trial, in which event the State would not be allowed to comment to
6 the jury about my decision not to testify. I understand that my plea(s) of guilty will
7 require my waiver of this right to the following extent: the Court in connection with my
8 plea of guilty may require me, in order to accept my plea, to personally verbally enter
9 my plea of guilty, and may require me to;

- 11 a. Provide a factual basis for my plea – that is a description of the events
12 which gave rise to the prosecution against me and my participation
13 in them which has given rise to my contemplated plea(s) of guilty; and
14
15 b. Further to advise that Court that I believe entering the plea(s) of guilty
16 contemplated by this Agreement is in my best interests, and that standing
17 upon my right to stand trial with respect to the greater, and/or additional
18 offense or offenses I am, or could be charged with is not in my best
19 interests.
20
21

22 I further understand that other than the requirement that I personally
23 verbally enter my plea(s) of guilty, and that, upon the Court's request, I provide a
24 factual basis for my plea that my right not to incriminate myself will still remain in these
25 matters, and that I may not otherwise be required to speak or provide any other
26 information wherein to do so might further incriminate me.
27
28

1 2. The constitutional right to a speedy and public trial by an impartial jury with
2 respect to the charges originally pending against me, free of excessive pre-trial
3 publicity prejudicial to my ability to present a defense, at which trial I would be entitled
4 to the assistance of a Lawyer, hired by me, or appointed for me if I was unable to hire
5 a Lawyer. At trial the State would bear the burden of proving beyond a reasonable
6 doubt each and every element of all of the offenses I was originally charged with, and
7 the elements of that/those offense(s) to which I have agreed by the terms of this
8 Agreement to plead guilty to. In that regard I recognize that in giving up my right to
9 have a jury try this case I am giving up the right to have a jury decide beyond a
10 reasonable doubt whether or not I am:
11
12

14 a. Guilty of murder and if so to what degree; and

15 b. Whether or not a deadly weapon was used in the commission of said
16 offense; and
17

18 that a single Judge, sitting without a jury, shall make findings with respect to those
19 issues based upon the factual representations made by me to the Court at the time I
20 enter my plea of guilty, and will thereafter impose sentence upon me within the range
21 of punishments provided for First Degree Murder With The Use Of A Deadly Weapon
22 as described above.
23
24

25 3. The constitutional right to confront and cross-examine any witnesses who have
26 testified against me at trial.

27 4. The constitutional right to subpoena witnesses to testify on my behalf.
28

1 5. The constitutional right to testify in my own defense, or, if it be my decision after
2 consultation with my Lawyer, to decline to testify at trial.

3
4 6. The right to appeal any conviction I suffered at trial, with the assistance of a
5 Lawyer, again either hired by me, or appointed to represent me in the event I was
6 unable to hire my own Lawyer, unless the appeal is based upon reasonable
7 constitutional, jurisdictional, or other grounds which challenge the legality of the
8 proceedings, and except as otherwise provided by NRS 174.035.
9

10 I, Kody Cree Patten, by my signature on this Agreement, and subject to
11 the above-entitled Court's acceptance of my plea(s) of guilty called for by this
12 Agreement, do hereby waive the above-described constitutional rights.
13

14
15 **VOLUNTARINESS OF THE PLEA**

16 I further acknowledge I have discussed the elements of all of the original
17 charges which were pending against me, and the elements of the offense(s) I intend to
18 plead guilty to with my Lawyer, and I understand the nature of the charge(s) originally
19 pleaded against me, and the charge(s) I intend to plead guilty to.
20

21 I understand that the State, if I had exercised my right to have a trial with
22 respect to the original charge(s) pleaded against me, would have been required to
23 prove each element of each charge(s) pending against me beyond a reasonable
24 doubt. Likewise, the State, but for my intended plea(s) would have been required to
25 prove each and every element of the offense(s) I intend to plead guilty to beyond a
26 reasonable doubt.
27
28

1 I have discussed with my Lawyer the possible defenses which might have
2 been available to me at trial in connection with this matter, and the circumstances
3 which might reflect in my favor.
4

5 I did, before deciding to sign this Agreement, discuss to my satisfaction
6 with my Lawyer(s) all of the foregoing elements and the nature of the charges; the
7 consequences of my proposed plea(s) of guilty; the constitutional rights I would have
8 been able to exercise if I had had a trial; and the waiver of rights which would be
9 required in order for the above-entitled Court to accept my contemplated plea(s) of
10 guilty. Additionally, I was provided an opportunity to ask my Lawyer any questions I
11 had concerning these matters and my questions, if any I had, were answered to my
12 satisfaction.
13
14

15 I believe after considering the matter, and consulting with my Lawyer with
16 respect to this matter, that entering into, and carrying out this Agreement by entering
17 the plea(s) of guilty called for by it is, and remains in my best interests, and that
18 exercising my right to have a trial would have been, and remains contrary to my best
19 interests.
20
21

22 I am signing this Agreement voluntarily, after consultation with my Lawyer,
23 and I am not acting under duress or coercion, or by any promise of leniency other than
24 those which are set forth and described in this written Agreement.
25

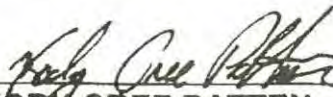
26 I am not now under the influence of intoxicating liquor, a controlled
27 substance, or any other drug which would in any manner impair my ability to
28

1 comprehend or understand this.

2 My Lawyer prior to my execution of this Agreement had answered
3 all of my questions concerning my contemplated plea(s) of guilty, and has answered all
4 of my questions, if any I had, regarding this Agreement and its consequences to my
5 satisfaction and I am satisfied with the services of my Lawyer, and the advice he has
6 rendered to me in connection with this matter.
7

8
9 **THE DEFENDANT'S SIGNATURE BLOCK**

10 Dated this 3rd day of May, 2012.

11
12 

13 **KODY CREE PATTEN**

14 Defendant

15 In Proper Person

16
17 **THE STATE'S SIGNATURE BLOCK**

18 Dated this 4th day of May, 2012.

19
20 

21 **MARK TORVINEN**

22 Deputy District Attorney

23 State Bar Number 551

24 Elko County District

25 Attorney's Office

26
27 **CERTIFICATE OF COUNSEL FOR THE DEFENDANT**

28 I, the undersigned, as Counsel Of Record for the Defendant above-
named, and as an Officer of the Court, by my signature hereunder, certify to the
above-entitled Court as follows:

1 1. That before the Defendant executed this Agreement, I had fully explained to the
2 Defendant the elements of the offense(s) with which he was originally charged, and
3 the elements of the offense to which he proposes to plead guilty.
4

5 2. I advised the Defendant of the potential penalties for each of the offense(s) with
6 which he/she was originally charged, and the potential penalties for the offense(s) to
7 which he/she proposes to plead guilty. Further I advised the Defendant with respect to,
8 and concerning the restitution, if any there be, that the Defendant may be ordered to
9 pay in connection with the imposition of sentence in this matter.
10

11 3. The plea of guilty which the Defendant proposes to enter in this matter pursuant
12 to the terms of this Agreement are consistent with all of the facts known to me
13 concerning this case, and will be entered in accordance with my advice to the
14 Defendant. Further I believe that the compromise reflected in this Agreement, is in the
15 Defendant's best interests.
16
17

18 4. To the best of my knowledge and belief, at the time the Defendant
19 executed this Agreement he:
20

21 a. Was competent, and understood the elements of the offense to which
22 he/she proposes to plead guilty, and the consequences, including the
23 potential penalties which could be imposed upon the Defendant, in
24 connection with said plea(s) of guilty;
25

26 b. That he/she executed this Agreement voluntarily; and
27

28 c. Was not under the influence of intoxicating liquor, a controlled

1 substance, or other drug at the time of his/her execution of this
2 Agreement.
3

4 Dated this 3rd day of May, 2012.

5
6
7 **JOHN OHLSON**
8 Attorney At Law
9 State Bar No.: 1672

10 Or

11 **JEFFREY KUMP**
12 Marevel & Kump
13 State Bar No: 5694

14 Counsel For The Defendant
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Exhibit 7

KODY CREE PATTEN

VS.

**WILLIAM GITTERE, WARDEN,
ELY STATE PRISON**

ORIGINAL

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

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

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

10 Is that correct, Mr. Kump?

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

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

21 KODY CREE PATTEN

22 having been first duly sworn, gave the following
23 statement:

24 EXAMINATION

25 BY MR. TORVINEN:

1 Q. I have a couple of background questions before
2 I get into the substance of my examination. Mr. Patten,
3 what is your date of birth?
4 A. 12/31/92.
5 Q. Okay. So how old are you today?
6 A. Nineteen.
7 Q. Where were you born?
8 A. Logan, Utah.
9 Q. Okay. Now, how long have you guys lived in
10 Wendover?
11 A. About 14, 15 years.
12 Q. Okay. So do you remember how old you were
13 when you came to Wendover?
14 A. I don't.
15 Q. Okay. You were a child?
16 A. Yes, sir.
17 Q. Okay. Now, do you understand what we're doing
18 here today?
19 A. Yeah.
20 Q. Okay. And I have in my hand this -- or I had
21 in my hand, and I now have in my hand, this agreement for
22 the provision of a recorded statement. Did you go over
23 that with your attorney today?
24 A. Yes, I did.
25 Q. Do you understand it?

1 A. Yes, I do.

2 Q. Okay. And it's your signature here on the
3 17th of January, 2012, on the last page?

4 A. Yes, it is.

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

10 A. Yes, I do.

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

14 A. Yes, I do.

15 Q. The whole truth. Do you understand that?

16 A. Yes, I do.

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

23 A. Yes, I do.

24 Q. So it's extremely important. And are you
25 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?

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

2 Q. Are we talking about in the hallway sort of

3 thing?

4 A. Umm, yeah. Hallway, the gym.

5 Q. Was there any conversation between you and she

6 at that time?

7 A. Umm, a little bit, not much.

8 Q. About? Do you remember?

9 A. Just random things, school and stuff.

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

11 March?

12 A. Yes, I did.

13 Q. And what time did you go to school that day,

14 do you remember?

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

16 Q. And when did you leave -- when did you first

17 leave school that day, do you remember?

18 A. About three -- like right after school, about

19 3:35, 3:40.

20 Q. Okay. When did you contact Wendi Murphy about

21 using the TrailBlazer?

22 A. Uh, the day before.

23 Q. When did you actually come into possession of

24 the TrailBlazer?

25 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?

1 A. Yes, I did.

2 Q. And when did you first text her?

3 A. I can't remember exactly.

4 Q. Morning or afternoon?

5 A. Afternoon.

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

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

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

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

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

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

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

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

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

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

24 Q. Do you remember the parts?

25 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?

1 A. About 3:35, 3:40.

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

4 A. Yes, I did.

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

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

8 Q. Did she reply?

9 A. Yes, she did.

10 Q. And what was the reply?

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

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

16 A. Yes, I do.

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

19 A. Yes, sir.

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

22 A. I do remember pulling up.

23 Q. Do you know what time it was?

24 A. Umm, I don't.

25 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

1 that Micaela walked out that door?

2 A. Correct.

3 Q. Was the truck still there when she walked out

4 the door?

5 A. Yes it was.

6 Q. Did you see her?

7 A. Yes, I did.

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

9 where were you?

10 A. I was standing in the fenced area.

11 Q. How could you --

12 A. By the metal shop.

13 Q. How could you see her through those slats and

14 all?

15 A. Because she came around the corner right here.

16 Because the car was backed up. She came around the corner

17 when I was standing in front of my car.

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

19 of the gated area?

20 A. Umm, it was -- it was in front of the gated

21 area. It was backed up to where the gate's at because only

22 one gate was open.

23 Q. Did you have anything to do with having it

24 open at that time?

25 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?

1 A. Umm, the road goes up to the bottom, then it
2 kind of makes --
3 Q. Of 3 Mile?
4 A. Kind of makes, like, a U -- or a half U.
5 Q. Um-hmm.
6 A. Then there's a part where -- everybody calls
7 it White Powder Hills.
8 Q. Okay.
9 A. We just kind of went up there and we just sat
10 for a minute. It was just --
11 Q. How close to Wendover Boulevard is the White
12 Powder Hills?
13 A. It's on other side of the mountain.
14 Q. All the way on the other side where the gravel
15 pit is?
16 A. No, the --
17 Q. So if I'm going down this dirt road, and I hit
18 the base of 3 Mile?
19 A. Correct.
20 Q. Do I turn left or do I turn right?
21 A. Left.
22 Q. And you skirt the base of the hill?
23 A. Correct.
24 Q. For how far?
25 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.

1 Q. Mostly text?

2 A. Mostly.

3 Q. And what's at this Four Tunnels?

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

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

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

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

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

15 Q. Okay.

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

18 Q. Different road or same road?

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

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

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

25 Q. Um-hmm.

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

4 Q. Um-hmm.

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

8 Q. That's where you went?

9 A. Yeah.

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

13 A. Correct.

14 Q. Was Micaela still with you?

15 A. Correct.

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

19 A. Correct.

20 Q. By text message?

21 A. (Nods head)

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

24 A. Uh, yes, she did.

25 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?

1 MR. TORVINEN: Yeah. Is that okay with you, in
2 terms of security?
3 DETECTIVE CARPENTER: Yeah, we're fine.
4 MR. TORVINEN: All right. The time is -- by my
5 watch it's 1:55 p.m. We are still all in -- the same people
6 I recited originally are still in the conference room at
7 the Elko County Sheriff's Department. And Mr. Ohlson has
8 arrived and has asked to speak to Kody privately for a
9 moment, which is okay with me.
10 I would advise you that we did execute --
11 formally execute the separate agreement.
12 MR. OHLSON: I understand that was going to
13 happen.
14 MR. TORVINEN: And yes, there is a digital
15 recorder on the table. And I'm going to shut that off and
16 have -- which we are using as a backup.
17 MR. OHLSON: Okay.
18 MR. TORVINEN: Which I'm going to have Detective
19 Carter pause -- Detective Carpenter pause and he can take
20 it with us.
21 MR. OHLSON: Great.
22 (WHEREUPON, a recess was taken)
23
24
25

1 STATE OF NEVADA)
2) SS.
3 COUNTY OF ELKO)
4 I, LISA M. MANLEY, a Nevada Certified Court Reporter, do
5 hereby certify that I was present at the Elko County
6 Sheriff's Department, 775 W. Silver Street, Elko, Nevada,
7 during all proceedings had on January 17, 2012, and took
8 verbatim stenotype notes thereof; and that the foregoing 48
9 pages contain a full, true and correct transcription of my
10 stenotype notes so taken, and a full, true and correct copy
11 of all proceedings had.

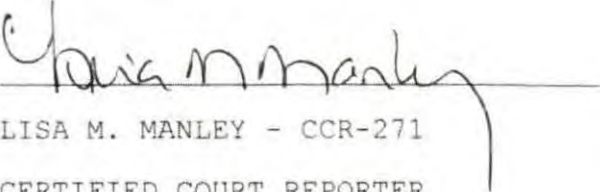
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15 LISA M. MANLEY - CCR-271
16 CERTIFIED COURT REPORTER
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Exhibit 8

KODY CREE PATTEN

VS.

**WILLIAM GITTERE, WARDEN,
ELY STATE PRISON**

1 CASE NO.: CR-FP-11-0300

2 DEPT. NUMBER: II

3
4
5 **IN THE FOURTH JUDICIAL DISTRICT COURT**
6 **OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO**
7

8 **THE STATE OF NEVADA,**

9 Plaintiff,

AGREEMENT:

10
11 vs.

**FOR THE PROVISION OF A RECORDED
STATEMENT BY THE DEFENDANT IN
FURTHERANCE OF PLEA
NEGOTIATIONS**

12
13 **KODY CREE PATTEN,**

14 Defendant.
15

16 **COMES NOW THE STATE OF NEVADA,** the Plaintiff in the above-
17 entitled cause, by and through its Counsel Of Record the Elko County District
18 Attorney's Office; Kody Cree Patten – in proper person, and John Ohlson and/or
19 Jeffrey Kump, the Defendant's Counsel Of Record in the above-entitled cause who by
20 this Agreement do hereby declare the following, and agree as follows:
21
22

23 The Parties are currently engaged in plea negotiations relative to the
24 above-entitled cause. Specifically an Agreement in contemplated which provides that:

- 25 1. The Defendant, Kody Cree Patten, would plead to First Degree Murder With
26 The Use Of A Deadly Weapon in return for the State's abandonment of its right
27 to seek the death penalty in the above-entitled matter;
28

2. The potential Agreement being considered by the Parties also contemplates that the Defendant, Kody Cree Patten, if called upon to do so would appear and testify fully and truthfully in The State Of Nevada vs. Toni Collette Fratto currently pending in the above-entitled Court concerning his knowledge of and participation in the events leading up to and surrounding the death on one Micaela Costanzo on the 3rd of March, 2011, in Wendover, Nevada;
3. The State has concluded that it is not inclined to enter into such an agreement without knowing what the Defendant's prospective testimony concerning the events leading up to and surrounding the death on one Micaela Costanzo on the 3rd of March, 2011, in Wendover, Nevada is.

That being the case it is agreed by and between the Parties that:

1. Prior to either Parties' execution of a formal Plea Agreement, the Defendant will submit, in the presence of one or both of his Counsel, to a recorded or reported interview by a representative of the Elko County District Attorney's Office, and in the presence of a law enforcement Officer from the Elko County Sheriff's Department, concerning the Defendant's knowledge of the events leading up to and surrounding the death on one Micaela Costanzo on the 3rd of March, 2011, in Wendover, Nevada;
2. The Defendant in that regard has been advised that the State does not seek any particular version of the events, but only a full and truthful account of the the events leading up to and surrounding the death of one Micaela Costanzo

1 on the 3rd of March, 2011, in Wendover, Nevada as the same are known to the
2 Defendant Kody Cree Patten.
3

- 4 a. In that regard, the Defendant has been advised that if he concludes
5 to submit to such an interview, and the State and the Defendant
6 thereafter enter into a Plea Agreement concerning the charges pending
7 against him in the above-entitled matter, that if he thereafter testifies in
8 any proceeding concerning his knowledge of the events leading up to
9 and surrounding the death on one Micaela Costanzo on the 3rd of March,
10 2011, in Wendover, Nevada, and it is later found that he testified
11 untruthfully, that any Plea Agreement entered into by and between the
12 State and the Defendant Kody Cree Patten would be deemed pursuant
13 to Nevada Law null and void – that is deemed never to have existed, and
14 the State would be able to proceed against the Defendant upon the
15 original charges currently pending against him in the above-entitled
16 matter.
17
18 b. Hence, the only expectation the State has in the event that the Defendant
19 concludes to submit to such an interview is that he will be completely
20 truthful in his statements concerning his knowledge of the events leading
21 up to and surrounding the death on one Micaela Costanzo on the 3rd of
22 March, 2011, in Wendover, Nevada.
23
24 It is further agreed by and between the Parties that in the event that the
25
26
27
28

1 Defendant concludes to submit to the interview contemplated by this Agreement that
2 regardless of whether or not the State and the Defendant, Kody Cree Patten.

3 ultimately enter into a formal Plea Agreement concerning disposition of the charges
4 pending against the Defendant in the above-entitled matter that:
5

6 1. Any statement made by the Defendant to the State under the terms of this
7 Agreement shall be inadmissible for any purpose against the Defendant Kody
8 Cree Patten unless:
9

10 a. The Defendant, Kody Cree Patten, ultimately testifies either in his own
11 defense in his own trial concerning the charges pending against him in
12 the above-entitled matter; or
13


14 b. In any other proceeding, including the trial of State vs. Toni Fratto
15 pending in the Fourth Judicial District Court of the State of Nevada; and
16

17 2. He testifies in any such proceeding contrary to the factual assertions made by
18 him in making the statement contemplated by this Agreement in which case
19 the relevant portions any statement made by Kody Cree Patten pursuant to this
20 Agreement could be utilized, and would be deemed admissible for the purposes
21 of impeaching any such contrary or inconsistent testimony given by Kody Cree
22 Patten in any subsequent proceeding; and
23

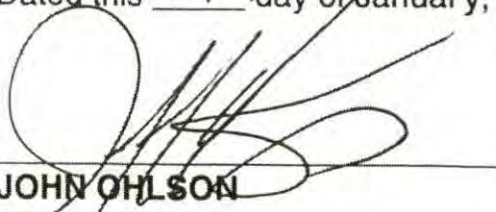
24 3. If the Defendant later testified under oath concerning his knowledge of the
25 events leading up to and surrounding the death on one Micaela Costanzo on
26 the 3rd of March, 2011, in Wendover, Nevada, and it was later determined that
27
28

1 he testified untruthfully, and contrary to the factual assertions made by him in
2 the statement contemplated by this Agreement the State would be entitled to
3 use any statement made by the Defendant to the State pursuant to the terms of
4 this Agreement in any later prosecution of the Defendant Kody Cree Patten for
5 perjury in the giving of any such testimony under oath if the same were deemed
6 relevant, and admissible by any Court having jurisdiction over such a
7 prosecution.
8
9

10 Dated this 17th day of January, 2012.

11
12
13 
14 **MARK TORVINEN**
15 State Bar Number: 551
16 Elko County District Attorney
17 Elko County District Attorney's Office
18
19 Counsel For The Plaintiff

Dated this 17th day of January, 2012

11
12
13 
14 **JOHN OHLSON**
15 Attorney At Law
16 State Bar Number: 1672; And/Or
17 **JEFFREY KUMP**
18 Marvel & Kump
19 State Bar Number: 5694

Counsel For the Defendant

20 Dated this 17th day of January, 2012


21
22
23 
24 **KODY CREE PATTEN**
25 Defendant – In Proper Person
26
27
28

Exhibit 9

KODY CREE PATTEN

VS.

**WILLIAM GITTERE, WARDEN,
ELY STATE PRISON**

1 COPY

2
3
4
5 RECORDED STATEMENT OF

6 TONI COLLETTE FRATTO

7
8
9 Elko County Sheriff's Department
10 775 W. Silver Street
11 Elko, Nevada 89801
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24 Taken at 2:05 p.m., January 19, 2012

25 Reported by Lisa M. Manley, CCR #271

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RECORDED STATEMENT OF
TONI COLLETTE FRATTO

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

Taken at 2:05 p.m., January 19, 2012
Reported by Lisa M. Manley, CCR #271

1

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

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

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

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

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

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

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

2

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

6 Is that sufficient?

7 MR. LOCKIE: That is.

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

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

13 A. (By Ms. Fratto) Nineteen.

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

15 A. 10-30-92.

16 Q. Where were you born?

17 A. West Valley, Utah.

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

20 A. No, sir.

21 Q. Anything at all?

22 A. No.

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

3

1 A. About 11 years.

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

5 A. Yes.

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

11 A. Yes, sir.

12 Q. Did you sign that today?

13 A. Yes, sir.

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

16 A. Yes, sir.

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

19 A. Yes, sir.

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

23 A. Yes.

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

4

1 me the truth.
 2 A. (Nods head)
 3 Q. The whole truth.
 4 A. (Nods head)
 5 Q. Do you understand that?
 6 A. Yes.
 7 Q. That is, to answer my questions honestly. Do
 8 you also understand that there is a potential consequence
 9 to not telling me the truth in the sense that if you were
 10 later called upon to testify about the things that you've
 11 told me today, and it was after that determined that you
 12 were not truthful, the plea agreement which we are
 13 contemplate -- we have been discussing in this case, under
 14 Nevada law, would be deemed what is called null or void,
 15 which means like it never existed?
 16 A. (Nods head)
 17 Q. Do you understand that?
 18 A. Yes.
 19 Q. So it's real important that you be honest with
 20 me today.
 21 A. (Nods head)
 22 Q. That's all I'm asking for. I'm not asking for
 23 -- looking for a particular version of the events. I don't
 24 know specifically what you are going to say. But what I do
 25 expect you to do is be honest with me.

5

1 A. Yes, sir.
 2 Q. Okay?
 3 A. (Nods head)
 4 Q. Now, can we agree that Micaela Costanzo died
 5 on the 3rd of March, 2011?
 6 A. Yes.
 7 Q. Okay. Now, prior to the 3rd of March, 2011,
 8 did you know Micaela?
 9 A. Briefly, but not "know" Micaela.
 10 Q. Were -- were you in different classes in high
 11 school?
 12 A. Yes.
 13 Q. So at the time of your arrest you were a
 14 senior, right?
 15 A. Yes.
 16 Q. And what was her class in school?
 17 A. I believe a junior.
 18 Q. So she was a little bit younger then?
 19 A. Um-hmm.
 20 Q. You never had any classes with her?
 21 A. No.
 22 Q. Did you participate in any extracurricular
 23 activities with her?
 24 A. No.
 25 Q. Okay. Now, when is the first time that you

6

1 remember becoming aware that there was some plan or problem
 2 with Micaela that might result in some -- something
 3 happening to her?
 4 A. About a week before March 3rd.
 5 Q. Okay. Can you describe for me the
 6 circumstances under which you became aware that there was a
 7 potential issue with Micaela?
 8 A. I remember Kody bringing up that he wanted to
 9 hurt Micaela.
 10 Q. Did he say why?
 11 A. No.
 12 Q. Well, first, let me ask you, where were you --
 13 was this a personal conversation or text, or what was it?
 14 A. I believe it was a personal.
 15 Q. Conversation?
 16 A. Yes.
 17 Q. Where were you when you had this conversation?
 18 A. I don't remember if it was at my house or at
 19 school.
 20 Q. Now, by the -- at some point in time, Mr.
 21 Patten, Kody Patten, came to reside at your parents' house,
 22 right?
 23 A. Yes.
 24 Q. When did that happen?
 25 A. Towards the end of January, I want to say.

7

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

8

1 something to her.

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

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

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

10 A. Yes.

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

12 A. I don't recall.

13 Q. How about even morning or afternoon?

14 A. Probably in the afternoon.

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

18 A. I don't.

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

21 A. Just talking.

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

24 A. (Nods head)

25 Q. After this initial conversation, did you talk

9

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

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

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

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

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

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

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

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

21 Q. Was this during -- between classes?

22 A. I believe it was during lunch.

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

10

1 A. Um-hmm.

2 Q. But you could see this note?

3 A. Yes.

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

5 A. It was just one sticky note.

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

8 A. Just on the ledge there.

9 Q. Okay. It was wide enough that you could put
10 it down and write on it?

11 A. Yes.

12 Q. Was there some sort of wall or railing sort of
13 thing?

14 A. Yeah.

15 Q. So when he didn't -- or wouldn't respond to
16 you, did you try -- did you try again to ask him what he
17 was doing?

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

20 Q. How did you come to be there with him at this
21 place that day?

22 A. It was during lunch, and we were always
23 together at lunchtime so.

24 Q. Would that be a place you would normally be
25 during lunchtime?

11

1 A. Yeah.

2 Q. Front office?

3 A. Um-hmm.

4 Q. Why?

5 A. Just where we normally sit and hang out and
6 watch everybody go by during lunchtime.

7 Q. Are there seats or benches there?

8 A. No.

9 Q. Had you already actually eaten lunch?

10 A. Well, I didn't -- I didn't really eat lunch at
11 home -- or at school. I just wait till I got home.

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

14 A. Yes.

15 Q. When is the next time that you recall any
16 conversation or any text or any telephone call concerning
17 Kody and Micaela? Or made you think it concerned Micaela?

18 A. It was the night before the 3rd that I noticed
19 he was putting some things in a backpack in his room.

20 Q. Okay. And what do you remember that -- those
21 things to consist of?

22 A. The only thing that I saw him put in were the
23 gloves and the plastic bags, and he was trying to fit the
24 shovel in but it was still too tall.

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

12

1 was doing that?

2 A. Not at that point, no.

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

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

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

9 A. No.

10 Q. Did you ask him?

11 A. I don't recall.

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

14 A. Not exactly.

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

20 A. Yes.

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

23 A. (Nods head)

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

13

1 A. Yes.

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

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

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

12 A. Yes.

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

14 A. Yes.

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

17 A. Correct.

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

21 A. Maybe a couple hours after.

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

24 A. Not that I can recall.

25 Q. Were your parents home during this period of

14

1 time, or do you remember?

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

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

7 A. Um-hmm.

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

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

12 Q. Both of you?

13 A. Yes.

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

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

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

17 A. Yes.

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

20 A. I don't remember.

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

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

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

15

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

3 A. Not that I --

4 Q. Noticed?

5 A. -- could see, yeah.

6 Q. What kind of backpack was it?

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

9 Q. A school type backpack?

10 A. Yes.

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

13 A. Not that I can remember.

14 Q. Now, so you go to school?

15 A. Um-hmm.

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

18 A. Yes.

19 Q. And what was your first class?

20 A. I believe mine was English.

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

24 A. I believe in economics.

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

16

1 building?

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

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

6 A. Um-hmm.

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

9 A. Yes.

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

12 A. Maybe 10 to 15 texts maybe.

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

17 A. Um-hmm.

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

20 A. No.

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

25 A. Right, yeah.

17

1 Q. Was that usual for he and you?

2 A. Oh, yeah.

3 Q. I mean, even like when -- I mean, how did you
4 pay attention in class if you are getting 111
5 e-mails during the -- I mean, texts during the day?

6 A. Most of them I wouldn't respond to, but most
7 of them I would. But if I remember right, in some of my
8 classes I don't have a lot of service, so it would be like
9 in between classes or --

10 Q. Um-hmm.

11 A. Between that time.

12 Q. Okay. You mean your phone goes off when
13 you --

14 A. When I am able --

15 Q. -- get inside the building?

16 A. Yeah, when I am able.

17 Q. I mean, in the classroom?

18 A. Yeah.

19 Q. Does everybody there experience that?

20 A. Yeah.

21 Q. Okay. This backpack, was it the same one --
22 did he usually take a backpack with him?

23 A. Not every day, but he did have a school
24 backpack.

25 Q. Was it different than this one?

18

1 A. Yes.

2 Q. Had you ever seen this one before?

3 A. Yes.

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

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

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

11 A. He carried it around, yes.

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

15 A. I don't recall.

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

19 A. Not until after school.

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

24 A. Yes.

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

19

1 Fratto. What's the first -- first one that you recall
2 receiving on the 3rd that had anything to do with Micaela?

3 A. In my last hour.

4 Q. Okay. And what was it?

5 A. He -- he was trying to get me to get my mom
6 and dad's car for after school. And I had texted my dad to
7 see if we could get the car, and he said no, that he had --

8 Q. What time is your last hour?

9 A. I don't recall. It's between two and three,
10 if I remember right.

11 Q. Okay. So he wanted you to try to get the car?

12 A. Yes.

13 Q. Did you have a driver's license?

14 A. Yes.

15 Q. So did you text your dad and ask?

16 A. I did.

17 Q. Did he respond?

18 A. Yes. He said that no, he had -- I can't
19 remember if it was a meeting or something, but my mom would
20 be coming and getting me and taking me home after school.

21 Q. Okay. Now, did he -- did he refer to Micaela
22 in that, or just that he wanted you to get a car?

23 A. Just that he wanted me to get the car.

24 Q. He didn't say why?

25 A. Not like that. Not in that text, no.

20

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

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

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

7 A. Yes.

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

10 A. Um-hmm.

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

14 A. Yes.

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

17 A. I don't know.

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

24 A. Yes.

25 Q. Now, had you seen him personally,

21

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

2 A. During the --

3 Q. After you guys split in the morning?

4 A. I think during lunch, yes.

5 Q. Did he say anything to you about Wendi
6 Murphy's car at that point in time?

7 A. No.

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

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

12 Q. Okay. And he didn't say anything to you about
13 the TrailBlazer at that point?

14 A. Not at that point, no.

15 Q. Okay. So you've told me about two texts in
16 the last hour. One, "Can you get a car," and you say no?

17 A. Um-hmm.

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

20 A. (Nods head)

21 Q. And it's ready?

22 A. Yes.

23 Q. In essence?

24 A. Yes.

25 Q. Is that correct?

22

1 A. Yes.

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

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

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

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

11 Q. Did you do that?

12 A. No.

13 Q. Why?

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

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

19 A. No.

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

22 A. No, sir.

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

23

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

5 Q. Did you know where her locker was?

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

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

10 A. Yes.

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

13 A. Yes.

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

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

19 Q. So they are separated sort of?

20 A. Yes.

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

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

24

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

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

4 A. Yes.

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

7 A. Um-hmm, yes.

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

10 A. Not until after I had gotten home.

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

14 A. Yes.

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

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

17 Q. Is that what he said to you?

18 A. Yes.

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

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

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

25

1 that night?

2 A. No.

3 Q. Did you know that there was such a meeting
4 before you texted --

5 A. Yes.

6 Q. -- with your dad?

7 A. Yes.

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

9 A. She did.

10 Q. And Kody was not there?

11 A. No, sir.

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

13 A. Yes.

14 Q. And how long after you got home did you
15 receive this text?

16 A. About 15 minutes after I got home, I had
17 texted him because I hadn't heard from him. Because the
18 next time that I had saw Kody right after school, he didn't
19 come out of the classroom.

20 Q. Okay.

21 A. And we're right across from each other. So I
22 went straight to my locker, got -- went through all my
23 books, make sure I didn't have any homework, saw him at the
24 end of the hallway just kind of standing there.

25 And then I went to grab something out of my

26

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

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

5 Q. Um-hmm.

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

8 Q. Um-hmm.

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

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

12 A. Yes.

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

14 A. There was only one exit you can really take.

15 But then after he exited, he went -- I think it's east --
16 he turned right down that road. But I didn't see where he
17 was going.

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

22 A. Yes.

23 Q. And what is it?

24 A. The school.

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

27

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

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

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

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

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

8 A. Yes.

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

14 A. Yes.

15 Q. Okay. And he turned right?

16 A. Yes.

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

19 A. 3268 West Skyview Drive.

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

23 A. Left.

24 Q. So he went in the opposite direction?

25 A. Yes.

28

1 Q. And my kind of recollection of all the school
2 there is that would kind of be, like, back towards town; is
3 that fair? If you turn right?

4 A. Yes.

5 Q. And if you turn left, you're not heading
6 towards downtown, you're heading away from downtown?

7 A. Yes.

8 Q. So you sent him a text and said, you know --
9 what did you say to him?

10 A. "Where are you?" "What are you doing?"

11 Q. Did you get a reply?

12 A. Not right away, no.

13 Q. Did you ever get a reply?

14 A. I don't recall.

15 Q. When is the next communication you had with
16 him that you recall?

17 A. I remember calling him and the --

18 Q. This is a voice call?

19 A. Yes.

20 Q. Okay. How long after you sent this message
21 asking him where he was?

22 A. Maybe another 15, 20 minutes.

23 Q. How long does it take to get from your house
24 to the school -- I mean, from the school to your house?

25 A. About maybe five, seven minutes, if that.

29

1 Q. Okay. And you say that the text you sent him
2 was about 15 minutes, right?

3 A. Yes.

4 Q. After you got home?

5 A. Yes.

6 Q. And you didn't get a reply?

7 A. No.

8 Q. And you eventually called him?

9 A. Yes.

10 Q. And how -- how long between the time you
11 texted him and asked him where he was that you made a
12 decision to call him?

13 A. Probably 20 minutes.

14 Q. Did he answer?

15 A. I don't believe he answered the first time.

16 Q. Did you -- so you tried again at some point?

17 A. Yes, I called right after that again.

18 Q. So he didn't answer, so then you started over?

19 A. Yes.

20 Q. Dialed again?

21 A. (Nods head)

22 Q. And what happened?

23 A. And he -- after quite a few rings, he finally
24 answered. And I had asked him, "Well, where are you? What
25 are you doing?" And he was just kind of quiet, he wouldn't

30

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

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

6 Q. Um-hmm.

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

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

16 Q. Did he call back?

17 A. No. It was about --

18 Q. Now, are you still at home?

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

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

31

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

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

7 A. No.

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

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

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

12 A. Yes.

13 Q. When this conversation takes place?

14 A. Yes.

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

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

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

22 A. Um-hmm.

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

24 A. No.

25 Q. Did you ask him?

32

1 A. Yes.
2 Q. Could you tell by his voice that something was
3 wrong?
4 A. Yes. I could tell that he was really upset
5 and mad and frustrated.
6 Q. He was agitated?
7 A. Yes.
8 Q. Okay. And this conversation took place before
9 you left for the meeting?
10 A. Yes.
11 Q. So sometime before what, 5:40, you say, I
12 think?
13 A. 5:20.
14 Q. 5:20?
15 A. Um-hmm.
16 Q. How long do you think that lasted, that
17 conversation?
18 A. Maybe -- maybe a minute or two.
19 Q. Did he ever tell you what he was doing?
20 A. He just said that he was sitting in Wendi's
21 car.
22 Q. Could you hear anything?
23 A. I -- I could hear something in the background,
24 but I -- and I even asked him, I said, "Well, who's with
25 you?" And he kept -- he said, "Nobody."

33

1 Q. What was -- do you remember the sound that
2 caused you to ask that question?
3 A. Just kind of like movement, or like a voice in
4 the background, or something.
5 Q. Could you actually hear a voice?
6 A. Not that I can recall, no.
7 Q. Something prompted you to ask him that?
8 A. Yes.
9 Q. And what did he say when you asked him?
10 A. That nobody was with him, that he was by
11 himself.
12 Q. So, now, you -- so how did it come to pass
13 that you ended that conversation?
14 A. He just -- he told me that he was going over
15 to his cousin Jeff's to hang out and to cool down.
16 Q. Okay.
17 A. And I kind of left it at that.
18 Q. So you both hung up?
19 A. Yeah.
20 Q. Now, did you talk to him again before --
21 either talked or text before you left for the meeting?
22 A. No.
23 Q. And so you and your mom leave?
24 A. Yes.
25 Q. Now, I remember reading something about having

34

1 to take your dad someplace first.
2 A. Yes. We went to my dad's work first and took
3 him to his meeting at the library. And then my sister was
4 working late that night, so she had asked my mom to run the
5 cell phone to her husband so he had a cell phone in case
6 something happened. And so right after we dropped my dad
7 off, we ran over to my sister's and dropped off the cell
8 phone, and then headed straight to her meeting.
9 Q. And where does your sister live?
10 A. In the Toana View Apartments.
11 Q. Did she come out and meet you, or did someone
12 go into her apartment to drop the phone off?
13 A. I took the phone in to her husband.
14 Q. And what's his name?
15 A. Javier.
16 Q. Javier what?
17 A. Aleman.
18 Q. Aleman?
19 A. Yes.
20 THE COURT REPORTER: Can you spell that?
21 MS. FRATTO: A-l-e-m-a-n.
22 THE COURT REPORTER: Thank you.
23 Q. (By Mr. Torvinen) Is he still in Mendover?
24 A. (By Ms. Fratto) Yes.
25 Q. And what's your sister's name?

35

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

36

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

37

1 And he was like, "Well, do you want me to
2 prove it?" And I go, "How are you going to do that?" And
3 he ended up sending -- he ended up sending me a picture of
4 Micaela.
5 Q. Now, and so -- and what did you see in this
6 picture?
7 A. I saw Micaela's -- kind of like leaned up
8 against the passenger seat in the -- like the back seat.
9 Q. Um-hmm.
10 A. Like the seats were laid down, that's what it
11 kind of looked like.
12 Q. Um-hmm.
13 A. And all I remember is her leaning up against
14 the back of the passenger seat and her hands in her lap.
15 Q. Okay. Could you see whether or not she was
16 conscious or not?
17 A. I couldn't tell, but I know her eyes were
18 open.
19 Q. Did you observe any injuries upon her person?
20 A. Not that I could see. I could tell that her
21 eyes were red, but that's all that I remember being able to
22 see.
23 Q. Now, we seized your phone, right?
24 A. (Nods head)
25 Q. Same phone you received this picture on?

38

1 A. Yes.
2 Q. Did you delete it at some point, or something?
3 A. Yes.
4 Q. When did you do that?
5 A. I don't recall.
6 Q. Okay. Sometime prior to your arrest? Or
7 before its seizure obviously?
8 A. Yes.
9 Q. So this exchange is taking place as your mom
10 is driving to the thing?
11 A. Yes, sir.
12 Q. Were you sitting right next to her in the car?
13 A. No, I was in the back seat.
14 Q. Why were you in the back seat?
15 A. Just a different place to sit.
16 Q. And how big a -- what kind of car is it?
17 A. It's a Honda Sonata, I think.
18 Q. Okay. Could you see Micaela's hands?
19 A. No.
20 Q. In the photograph?
21 A. No.
22 Q. When you say leaning over, are you saying that
23 she was nearly prone? Or was she upright still?
24 A. She was still upright.
25 Q. But you could tell her eyes were open?

39

1 A. Yes.
2 Q. Any particular expression on her face?
3 A. Just kind of blank. You could tell that she
4 was very scared.
5 Q. As you look back on it?
6 A. Yes.
7 Q. So your mom is driving down the road to the
8 rec board?
9 A. Yes.
10 Q. They have their own, like, building or
11 something at the golf course, or that's just the place they
12 use for their meetings?
13 A. Just the place that they can use for their
14 meetings.
15 Q. So you're driving and you have this exchange.
16 So you get this photograph and what do you do? Do you
17 respond?
18 A. To be honest, I don't recall. I was too in
19 shock.
20 Q. Okay. So by the time you get to the rec board
21 meeting, right?
22 A. Yes.
23 Q. You've had this exchange with him where he
24 says he has her and you express disbelief?
25 A. (Nods head)

40

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

41

1 meeting?
2 A. Yes.
3 Q. Sitting in the gallery, I guess?
4 A. Yes.
5 Q. And that's the first communication after you
6 saw the photo text message?
7 A. That I can recall.
8 Q. So you ask him where he was and what he was
9 doing?
10 A. Yes.
11 Q. And did he reply?
12 A. Yes, but I don't recall what he said.
13 Q. Did you respond to that text message, whatever
14 it was?
15 A. I don't recall.
16 Q. Okay. What's the next communication, if there
17 was one, that you do recall?
18 A. It was probably maybe 10, 15 minutes after
19 that. And I had told him to come get me.
20 Q. Okay. Did he respond?
21 A. Not right away, it was a few minutes after I
22 had sent that text. And he had said that he was way out of
23 town and that he'd be there in a little -- in a few
24 minutes.
25 Q. Okay. Do you know what time in the meeting

42

1 this was?
2 A. Maybe around 6:30.
3 Q. Okay. Well, at some point he did come and get
4 you, right?
5 A. Yes.
6 Q. Was the meeting over by the time he picked you
7 up?
8 A. No.
9 Q. So let's do it this way. When he sends you
10 this text message or reply -- really it was a reply, right,
11 to your inquiry?
12 A. Um-hmm.
13 Q. Or your request that he come and get you. And
14 he says he's way out of town and "I'll be there in a few
15 minutes," how much time went -- how much time went by
16 between his response and he actually came and got you?
17 A. It was probably five, ten minutes after he
18 finally responded, and then he didn't -- I didn't leave the
19 golf course until about six four -- or 6:55.
20 Q. Was it close to being over?
21 A. It was close, yes.
22 Q. Between this thing -- between this reply where
23 he says, "I'm out of town" -- "out of the town and I'll be
24 there in a few minutes," was there any further contact
25 between you and he?

43

1 A. Not that I can recall.
2 Q. When you got the message -- so did you
3 understand from that last text message that he was coming
4 to get you?
5 A. That's what he had said, yes.
6 Q. Now, you remember talking to Mr. Chilson and
7 Mr. Kump?
8 A. Yes.
9 Q. Have you ever seen a transcript of that?
10 A. I believe I have.
11 Q. Do you remember telling them that you got a
12 message where -- that said, "I've got Micaela," and then
13 he -- you relating that he expressed a desire that you be
14 with him? Do you remember a text like that?
15 A. I don't recall.
16 Q. So you don't recall any further contact
17 between him saying he will come and get you and him
18 actually picking you up?
19 A. No.
20 Q. When you -- when you got this message, "Okay,
21 I'll come and get you," or "I'm coming to get you" -- that
22 was the gist of it, right?
23 A. Yes.
24 Q. Did you say something -- did you communicate
25 to either your mom or your dad about wanting to leave the

44

1 meeting and go?

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

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

4 there?

5 A. She was -- she was on, like, the board, so it

6 wasn't like I could go ask her.

7 Q. Okay.

8 A. And I had asked -- I had asked her if it was

9 okay that we go over to Jeff's place and -- so the boys

10 could play video games. And she had told me that I needed

11 to ask my dad. So I texted my dad and asked him the same

12 thing.

13 Q. Um-hmm.

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

15 okay. And --

16 Q. How did he express his hesitancy? Did you call

17 him or text?

18 A. Text. Because he was -- it was kind of like

19 he didn't want me to go. And he told me, you know, "I

20 would rather you stay there with mom, but if you really

21 want to go, I guess you can go." Because also that day I

22 wasn't feeling well, and he knew that.

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

24 text?

25 A. Yes.

45

1 Q. He would rather you stay with your mom, but if

2 you really want to go, you can go?

3 A. Yes.

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

5 exchange?

6 A. Yes. I had said, "Okay," and "I'll keep you

7 updated." And he had said, "You know, if you don't feel

8 good and want to come home, text me and I'll come get you."

9 And I said, "Okay, I will."

10 Q. And was that the last of your communication

11 with your dad?

12 A. That I can recall, yes.

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

14 him?

15 A. Yes.

16 Q. And what did you do next?

17 A. Just kind of waited for a text from Kody

18 saying that he was out front.

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

20 A. No.

21 Q. So how long after this exchange between you

22 and your dad did you hear from Kody?

23 A. Maybe 15 minutes.

24 Q. Okay. And what do you remember the

25 communication to be, and how was it?

46

1 A. That he was there in the back.

2 Q. As opposed to the front?

3 A. Well, because we -- we were closer to the back

4 of the golf course than the front.

5 Q. Is that the entrance that they use to get to

6 this meeting room?

7 A. Yes.

8 Q. Is the back of the clubhouse?

9 A. Yes.

10 Q. Is it the clubhouse?

11 A. So to speak, yes.

12 Q. So you get this message, and what do you do?

13 A. I kind of gave my mom the impression that I

14 was leaving. I kind of said bye to her and had got up and

15 walked out.

16 Q. Now, by then, so your saying bye to her, was

17 this verbal?

18 A. Not really. It was just kind of like, bye,

19 you know, I'm leaving. (indicating)

20 Q. Was she still up on the dais?

21 A. Yes.

22 Q. So you kind of made a high sign to her?

23 A. Yeah.

24 Q. Then you walked out?

25 A. Yeah.

47

1 Q. Now, was the meeting still going on?

2 A. Yes.

3 Q. When you walked out the doors?

4 A. Yeah, they were still talking and everything.

5 Q. Had it -- had it adjourned yet, or were they

6 still in -- was the meeting still in progress, or they were

7 just hanging around after?

8 A. I don't recall.

9 Q. Okay. So you walk out the back door and what

10 do you see?

11 A. Well, all the cars that -- from the people

12 that were there at the meeting. And then when I finally

13 kind of walked more around the building, I had seen a white

14 car that I figured was Wendi's.

15 Q. Okay.

16 A. And kind of walked up closer to it and I could

17 see Kody in the driver's seat, and went around the front of

18 the car and got in the passenger seat.

19 Q. Did you see Micaela?

20 A. Not when I first got in, no.

21 Q. So you get -- you get in the front passenger

22 seat?

23 A. Yes.

24 Q. What do you see?

25 A. I see Kody's face and he kind of just looked

48

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

4 Q. And in what condition was she?

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

8 Q. Did you see any restraints?

9 A. No.

10 Q. Was she on her side?

11 A. No.

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

14 A. Like the trunk part.

15 Q. Um-hmm.

16 A. Yeah.

17 Q. Where there is no seats?

18 A. Correct.

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

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

23 Q. Um-hmm.

24 A. Like, she was like squooshed basically.

25 Q. Was there anything gagging her mouth?

49

1 A. Not that I could see, no.

2 Q. Was she saying anything?

3 A. She tried to say something, but Kody had
4 turned around and told her to shut her mouth and not speak.

5 Q. Now, you say her arms were folded up next to
6 her chin, I guess, is what you are saying?

7 A. Yes.

8 Q. Was she kind of sitting on her butt with her
9 knees pulled up?

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

11 Q. But you couldn't see?

12 A. No.

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

15 A. Probably about right here, (indicating)
16 because the seats -- all the seats were upright.

17 Q. The back seats?

18 A. Yeah.

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

20 A. Yes.

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

22 A. No.

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

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

50

1 gray sweater on, I think.

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

4 A. No.

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

8 A. Um-hmm.

9 Q. Do you say something to Kody?

10 A. Not right then, no.

11 Q. What did you do?

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

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

18 Q. You mean like he did a text?

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

21 Q. He composed a text?

22 A. Yes.

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

24 A. Yes.

25 Q. And -- did he say why?

51

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

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

5 A. I do not.

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

7 A. Yes.

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

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

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

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

16 Q. Did he compose another one?

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

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

21 A. Yes.

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

24 A. No.

25 Q. Or injuries at that point?

52

1 A. No.
2 Q. And he's said, "We have to kill her"?
3 A. Yes.
4 Q. And showed you another message, but you can't
5 remember what it said?
6 A. Correct.
7 Q. Okay. He's showed you this second message and
8 now you're going through the back roads?
9 A. Kind of like through the desert area behind
10 the golf course --
11 Q. Um-hmm.
12 A. -- up to the highway.
13 Q. Are you talking about the extension of West
14 Wendover -- of the boulevard, or some other highway?
15 A. No, the boulevard.
16 Q. So would you be going towards Elko or away
17 from Elko?
18 A. Towards Elko.
19 Q. Did you eventually get to the boulevard?
20 A. Yes.
21 Q. And were you on the Wendover side of 3 Mile or
22 the other side of 3 Mile?
23 A. We were just going past 3 Mile.
24 Q. When you hit the boulevard?
25 A. Yes.

53

1 Q. Now, the boulevard goes over 3 Mile, right?
2 A. Yes.
3 Q. So are you saying you hit the boulevard right
4 at the base of 3 Mile?
5 A. Yes.
6 Q. Is that what you are saying to me?
7 A. Yes.
8 Q. Right at the bottom of 3 Mile?
9 A. Yes.
10 Q. Was there any conversation -- between the time
11 you left the clubhouse and you got to Wendover Boulevard,
12 was there any communication between you and Kody?
13 A. Just those texts that he --
14 Q. He never said a word to you on the way out
15 there?
16 A. No.
17 Q. Did Micaela try to speak?
18 A. When I first got in, we were taking off and
19 everything, that's when she tried to say something but Kody
20 had stopped her and said to stop.
21 Q. Well, that's what I mean. So you -- there's
22 that exchange. Now you're going through the back roads to
23 the boulevard?
24 A. Correct.
25 Q. You hit the boulevard. So between leaving the

54

1 clubhouse and going through the desert?
2 A. Um-hmm.
3 Q. To the boulevard?
4 A. Right.
5 Q. Was there any communication between -- there
6 was no verbal communication between you and Kody at all?
7 A. No.
8 Q. Nothing?
9 A. Nothing.
10 Q. And Micaela doesn't try to speak?
11 A. No.
12 Q. At all?
13 A. No.
14 Q. Did you say anything to her?
15 A. No.
16 Q. Could you see this backpack?
17 A. No.
18 Q. Did you eventually see this backpack?
19 A. Yes.
20 Q. But not at that time?
21 A. No, sir.
22 Q. So you -- these text messages he was composing
23 and showing to you, was it his phone?
24 A. Yes, it was.
25 Q. Did he have access to any other phone that you

55

1 know of?
2 A. Not that I'm aware of.
3 Q. Now, the phone he had, in fact, your father
4 had provided him?
5 A. Correct.
6 Q. And it's the 2633 number?
7 A. I don't remember.
8 Q. All right. So when he composed these
9 messages, then he, like, deletes it?
10 A. Yeah.
11 Q. Or hit the "end" button, I guess, and that
12 takes it off the screen?
13 A. Correct.
14 Q. So now you hit the boulevard and what happens?
15 A. We went over the hill by 3 Mile and hit where,
16 like, the overpass is there. But he just kept going
17 straight into dirt and where there was a whole bunch of
18 dirt hills and everything.
19 Q. Um-hmm.
20 A. And he just kept going through these hills of
21 dirt. I had no idea where he was taking me.
22 Q. Okay.
23 A. Or taking us. And he finally --
24 Q. Do you remember going through a gravel pit?
25 A. Yeah. And --

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

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1 railroad tracks, were you going towards Elko or away from
2 Elko?
3 A. Towards Elko.
4 Q. How long do you -- from the time you left the
5 clubhouse until you get to the point in time where he stops
6 next to the railroad tracks -- now, when he stopped, were
7 you on a dirt road, or did you pull off the dirt road?
8 A. Basically pulled off, yeah.
9 Q. Just right off the dirt road?
10 A. Well, there's not really a main road out
11 there.
12 Q. Right. But there is a road that goes down the
13 tracks, right?
14 A. Kind of, yeah.
15 Q. Okay. So -- so when he pulled off this road?
16 A. Um-hmm.
17 Q. Did he pull off to the left or did he pull off
18 to the right?
19 A. The left.
20 Q. So you would have been closer to the tracks?
21 A. Yes.
22 Q. And so now you're stopped. What happens?
23 A. He had kind of turned the vehicle around, so
24 the vehicle was facing West Wendover now.
25 Q. So he actually turned it around so it was

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1 going down the other direction?
2 A. Yeah, but he -- and he had stopped and I
3 remember --
4 Q. Well, did he do a U-turn, or did he --
5 A. Yeah. Yes.
6 Q. So when he pulled off, the car was facing back
7 towards Wendover?
8 A. Correct.
9 Q. Okay.
10 A. And then I remember him getting out and
11 opening, like, the back seat door.
12 Q. The very end doors?
13 A. Yeah.
14 Q. Not the -- not the back passenger doors?
15 A. Yeah, the back passenger -- like the middle
16 doors.
17 Q. Okay.
18 A. And he was getting into something. I wasn't
19 really paying attention, I had opened my door to get out.
20 And then he walked over to the driver's side and handed me
21 some gardening gloves. And he said, "Put these on." And
22 so I did what he had asked me to do.
23 And I remember --
24 Q. Were you still in the car or were you out of
25 the car by then?

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1 A. I was out of the car then.
2 Q. Then what happened?
3 A. And then I remember putting on the gloves and
4 him closing both doors and going to where Micaela was in
5 the very back.
6 Q. Very back. So he opens -- did he open that?
7 A. Yes.
8 Q. Did you follow him back there?
9 A. Not right away, no.
10 Q. Then what happened?
11 A. And then I remember him rummaging through
12 something, and he -- so I kind of --
13 Q. So all the -- let me ask you something, Ms.
14 Fratto. From the time you left the clubhouse, except this
15 one effort to speak, to the time you reached the railroad
16 tracks, has Micaela ever said anything?
17 A. No.
18 Q. As far as you know, was she conscious?
19 A. Yes.
20 Q. You could see her breathe? Her eyes move?
21 She was --
22 A. Yes.
23 Q. -- conscious?
24 A. Yes.
25 Q. And could you see -- and you couldn't --

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

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

5 Q. Was it still light?

6 A. Yes.

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

8 A. (Nods head)

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

11 A. Yes.

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

14 A. The passenger front side.

15 Q. Is the door open or closed?

16 A. Open.

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

19 A. (Nods head)

20 Q. Right next to the car?

21 A. Yes.

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

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

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1 Q. In the very back?

2 A. In the very back. And then he -- I noticed he
3 had pulled out the shovel. And he told me to close the
4 front door and come stand between the car and where he was
5 going -- where he was headed. I didn't know what his
6 intentions were at that point in time.

7 Q. Okay.

8 A. He told me to watch Micaela and make sure that
9 she didn't move or try and get out. And then he went over
10 and started.

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

12 A. Yes.

13 Q. I mean, you only weigh 98 pounds or something
14 like that, right?

15 A. Correct.

16 Q. How tall are you?

17 A. Five-two.

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

19 A. Yeah.

20 Q. Now, at that point, can you see whether or not
21 she is restrained in any way?

22 A. At that point, no.

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

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

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1 wrists or her legs or anything.

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

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

6 Q. Was he talking to her?

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

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

10 A. Um-hmm.

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

12 A. I did.

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

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

20 Q. The passenger -- back passenger corner?

21 A. Yes.

22 Q. Passenger side, back corner?

23 A. Yes.

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

25 A. Yes.

63

1 Q. And so now you're at the back and he's told
2 you to stand guard?

3 A. Yes.

4 Q. He has the shovel?

5 A. Yes.

6 Q. Can you see the shovel?

7 A. Yes.

8 Q. What happens next?

9 A. After he told me to basically stand guard, he
10 walked over next to some big sagebrushes, bushes, and he
11 started to dig a hole.

12 Q. Could Micaela see this?

13 A. If she kind of looked around the side, yes.

14 Q. Well, which direction -- how was she seated in
15 the back of the car?

16 A. Just like this, (indicating) up against the
17 driver's side.

18 Q. Back of the car?

19 A. Yeah.

20 Q. She was just sitting on her rear end?

21 A. Yes.

22 Q. What was the position of her legs?

23 A. Up towards her chest a little bit.

24 Q. And so they were -- her knees were bent?

25 A. Yes.

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

65

1 A. Not exactly, no.
2 Q. So you actually see him start digging a hole?
3 A. Yes.
4 Q. Well, from what you are describing to me, she
5 would have to lean out and look over, like this?
6 (indicating)
7 A. Um-hmm, yes.
8 Q. Did she ever?
9 A. A couple of times, yes.
10 Q. Did she say anything to you when you saw him
11 -- when she saw -- was she looking at him?
12 A. Yes. After he had dug a good-size hole so
13 far, she kept asking, "What's that for?" "What's" -- "What
14 are you doing with that?"
15 Q. Was she speaking to you or to him?
16 A. To whoever would answer her. I kept my mouth
17 shut. And Kody was just like, "Well, don't worry about
18 it."
19 Q. Well, how long did it take him to dig this
20 hole?
21 A. Maybe ten minutes, I don't recall.
22 Q. Was he working hard at it?
23 A. As I kind of was paying attention, a little
24 bit, yes.
25 Q. Digging fast, I guess, is what I am saying?

66

1 A. Yeah.
2 Q. Do you wear a watch?
3 A. No.
4 Q. Does he wear a watch?
5 A. No, not very often.
6 Q. Did you ever look at your phone during that
7 period of time?
8 A. No, I left my phone in the car.
9 Q. Was it in the front seat?
10 A. Yes.
11 Q. Let me ask you this, what -- so now you're
12 guarding her back there. It appears that she's been beaten
13 to some degree?
14 A. Yes.
15 Q. Her lip is split?
16 A. (Nods head)
17 Q. Do you see any of her possessions anywhere?
18 A. Not that I could see, no.
19 Q. Well, do you remember sitting in the
20 preliminary hearing, and there being some testimony about
21 the remnants of a polka dotted bag?
22 A. I do recall that, yes.
23 Q. Did you ever see that bag?
24 A. I did not.
25 Q. Ever?

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1 A. Not until later.
2 Q. Okay. So while you're out at the railroad
3 tracks you never saw it?
4 A. No.
5 Q. So he's digging this hole and -- and she --
6 Micaela inquires or asks several times, "What that's for?"
7 A. Um-hmm.
8 Q. He says, "Don't worry about it?"
9 A. Yes.
10 Q. Now, there is a bit of distance between the
11 road or the side of the road and where this hole was being
12 dug, right?
13 A. Correct.
14 Q. So were -- did she have to raise her voice or
15 did he have to raise his voice to enable you all to hear
16 him?
17 A. A little bit, but not too much.
18 Q. So did there come a point in time at which she
19 -- well, how many times did she ask about what the hole was
20 for, do you remember?
21 A. Maybe three times. I don't recall.
22 Q. Okay. You didn't see any restraints on her in
23 the car?
24 A. No.
25 Q. Of any sort?

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

69

1 it. And when he moved to our house, he had it. But I
 2 don't know.
 3 Q. So he had it when he came to move to your --
 4 live with your parents?
 5 A. Yes.
 6 Q. So he comes back from the hole, and then what
 7 happens?
 8 A. Micaela had asked if she can go up the -- up
 9 front, or whatever, because she was cold. And so I
 10 remember Kody saying, "Yeah, okay, get out." And he was
 11 kind of guiding her towards the passenger side back seat.
 12 Q. Um-hmm.
 13 A. And opened the door. And as she was going to
 14 get in, he had pushed her down to the ground.
 15 Q. Okay. Were you watching this?
 16 A. Yes.
 17 Q. Now, are you watching this across the back of
 18 the car, or did you follow them around?
 19 A. Well, I was kind of in between the car and
 20 where the -- where he was digging at, and so I was standing
 21 like right there. And when they -- they had walked in
 22 front of me around the car, and he had pushed her down
 23 right in front of me.
 24 Q. They hadn't got to the door?
 25 A. Kind -- they had kind of gotten to the door,

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1 but not really.
 2 Q. Had he opened it?
 3 A. Yes.
 4 Q. So he pushes her to the ground, and then what
 5 happens?
 6 A. I kind of stepped back. I didn't know what
 7 was really going on. I was trying to process it all and
 8 everything.
 9 Q. Did you say anything?
 10 A. No. And I remember her kind of being on her
 11 knees and her kind of just sitting there. And I'm trying
 12 to really remember. It gets all, like, blurry then. But
 13 the next thing I remember is he kind of pulled her a little
 14 way from the car and --
 15 Q. When she was on her knees, was she facing her
 16 or facing the car -- facing him or facing the car? Was he
 17 behind her or facing her?
 18 A. Kind of on the side of her.
 19 Q. Okay.
 20 A. She was kind of facing the car. And then I
 21 remember him like pulling back her hair and looking at me
 22 and saying to hit her and everything. And I just looked up
 23 at him, and I like shook my head and I'm like, I can't do
 24 that, I can't do that. And he kept --
 25 Q. You didn't verbalize this, you just were

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1 shaking your head?
 2 A. Correct.
 3 Q. Okay. Go ahead.
 4 A. And I just remember him keep telling me, "Just
 5 do it, it'll be okay, just do it."
 6 And then all -- all I remember is him pulling
 7 her hair back and I had went up and had kneed her in the
 8 face.
 9 Q. Okay.
 10 A. And then I think it was a few minutes after
 11 that we had heard a train coming and so he had got her up
 12 and we had went around the car to kind of hide from the
 13 train.
 14 Q. On the side away from the train?
 15 A. Yes.
 16 Q. Okay.
 17 A. And kind of waited behind the car there until
 18 the train passed, and then --
 19 Q. Did you hunker down?
 20 A. Yes.
 21 Q. Okay.
 22 A. And then I remember I walked around -- the
 23 back of the car around, and I --
 24 Q. Back towards the back of the car?
 25 A. Yes.

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1 Q. Was the back still open?
 2 A. Yes.
 3 Q. Okay.
 4 A. And I don't recall which way they went, but by
 5 the time -- I'm assuming they went the front way because by
 6 the time I had gone around the back of the car they were
 7 already on the other side.
 8 Q. Okay. Doing what? Was she walking or what?
 9 A. I don't recall.
 10 Q. Okay.
 11 A. And the next thing I remember is that he
 12 pushed her down again. And that's when he kind of started
 13 punching her and kicking her. And he kept trying to get me
 14 to hit her, but I -- I refused, I wouldn't hit her anymore.
 15 Q. You kneed her in the face?
 16 A. I kneed her in the face. And then I remember
 17 him telling me to go pick up the shovel and to start
 18 digging more. And I don't recall where the shovel was. I
 19 think it was laying next to the grave.
 20 And I had went and picked it up and kind of
 21 was facing the tracks and just kind of standing there. And
 22 then I kept glancing back to see what Micaela and Kody were
 23 doing. And one of the times when I had looked back, I
 24 noticed that he was trying to take off her jacket and
 25 everything.

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1 Q. Um-hmm.
 2 A. And I remember --
 3 Q. What did her jacket consist of?
 4 A. All I recall is I think it was a -- like a
 5 gray, light sweater.
 6 Q. Okay.
 7 A. And I remember looking back and, like, her
 8 clothes were, like, ripped and everything, like he was
 9 trying to take them off. And then I remember -- I believe
 10 he had that knife in his hand, cutting off her clothes.
 11 And I remember --
 12 Q. Was she still on her knees?
 13 A. Yes. And --
 14 Q. Was her sweatshirt on?
 15 A. Yes, but he was trying to cut it off and take
 16 it off. And then I remember he was trying to pull it,
 17 like, off of her arms. But that's when I noticed they
 18 weren't coming off and I didn't really know why. And so he
 19 kind of cut the clothes off. And that's when I had noticed
 20 there were -- that her arms were tied together.
 21 Q. In what way?
 22 A. With the zip ties.
 23 Q. Okay. Did you notice any knot anywhere at
 24 that point?
 25 A. No.

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

75

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

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

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

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

11 Q. Hard?

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

13 Q. Did she react when you hit her?

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

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

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

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

19 A. Just kind of went back and swung.

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

21 A. Yes.

22 Q. Then what happened?

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

77

1 she kind of, like, fell forward.

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

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

7 A. Just towards the back right here.

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

10 A. I don't know.

11 Q. And then what happened?

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

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

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

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

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

4 Q. How far away were you?

5 A. Maybe seven feet away maybe.

6 Q. Um-hm.

7 A. And --

8 Q. Where did the knife come from?

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

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

15 A. Over her hands.

16 Q. Are you close enough to see wounds?

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

19 Q. Okay. So then what happened?

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

24 Q. Did you do that?

25 A. I did.

79

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

5 A. Correct.

6 Q. Why did you say that?

7 A. To protect Kody.

8 Q. Why?

9 A. I don't know.

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

12 A. No.

13 Q. That's the truth?

14 A. Truth.

15 Q. You did hit her with a shovel?

16 A. Yes.

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

20 A. Correct.

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

22 A. No.

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

25 A. Yes.

80

1 Q. Do you remember anything being on her body or
2 around her arms?

3 A. I remember him trying to cover her front area
4 with the gray jacket.

5 Q. Do you remember anything on her hands?

6 A. I don't recall, no.

7 Q. Or her arms?

8 A. I don't recall.

9 Q. Do you remember seeing the photograph in the
10 preliminary hearing with the ends of the sweater on her
11 sleeves?

12 A. Vaguely, but yes.

13 Q. Do you remember seeing that out at the crime
14 scene?

15 A. No.

16 Q. And you think he cut the zip ties off of her?

17 A. Yes.

18 Q. You never saw zip ties on her feet?

19 A. No.

20 Q. Anything else tied around her feet?

21 A. No.

22 Q. And you were sitting on her legs when he was
23 bent over her, and you couldn't see what he was doing,
24 right?

25 A. Correct.

81

1 Q. But it was shortly after that, when you backed
2 off -- you say her legs straightened?

3 A. Yes, they stopped moving.

4 Q. Did they, in essence, relax?

5 A. It kind of felt like that, yes.

6 Q. So and -- when he -- then when he backed off
7 of her -- so he was kneeling over her?

8 A. Yes.

9 Q. With her knees on either side of her chest?

10 A. No, he was just on, like, one side.

11 Q. But he was leaning over her?

12 A. Yes.

13 Q. And you couldn't see what he was doing?

14 A. No.

15 Q. So when he, I guess, then leaned back up
16 straight, this is when you saw the blood on her throat?

17 A. Correct.

18 Q. And how far away were you from him?

19 A. About maybe seven, eight feet back.

20 Q. And you could see the blood?

21 A. Yes.

22 Q. And you could see her hands around her throat?

23 A. Yes.

24 Q. Did she ever say anything?

25 A. Not at that point in time. It was later --

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

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

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

15 A. Not that I can recall.

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

18 A. No.

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

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

24 Q. Just like that?

25 A. To that extent. I don't remember exactly what
83

1 he said, but.

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

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

4 Q. So he directs you to turn the car so that the
5 lights are on them?

6 A. Yes.

7 Q. And you do that?

8 A. Yes.

9 Q. How close did you pull up?

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

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

12 A. Yes.

13 Q. With the lights on?

14 A. Yes.

15 Q. And what could you see?

16 A. I could see that he was kind of kneeling next
17 to her, kind of over her, and I kind of sat in, like, the
18 windowsill of the driver's seat and --

19 Q. The windowsill?

20 A. Like, the window. I had rolled down the
21 window and sat there on the window.

22 Q. So you pulled yourself out?

23 A. Yes.

24 Q. And sat on the windowsill?

25 A. Yes.

84

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

85

1 over towards the driver's side of the car, kind of like
 2 walking around, and had his hands, like, out and he had --
 3 I noticed he had the knife in his hand and he was just --
 4 he was swearing and freaking out and crying, and I didn't
 5 know what had just happened. And --
 6 Q. You actually saw her sit up in the grave?
 7 A. I had glanced over and she was -- kind of sat
 8 up, like, grabbed on to Kody.
 9 Q. Um-hmm.
 10 A. And then -- then the next time I had looked
 11 over, she was down in the grave.
 12 Q. Did she ever cry for her mother?
 13 A. Not that I can remember.
 14 Q. How long after you saw her sitting up in the
 15 grave or holding on to Kody did he walk back to you?
 16 A. It was after -- it was a few minutes. Because
 17 after he had kind of, like, pushed her down in the grave, I
 18 looked back away. And then all I remember is a -- a few
 19 minutes later, him walking -- getting up and walking over
 20 towards the driver's side of the car.
 21 Q. Okay. Were you still sitting on the sill?
 22 A. Yes.
 23 Q. Of the driver's position?
 24 A. Correct.
 25 Q. And was there any conversation between you and

86

1 he?
 2 A. Not that I can recall, no. I remember him --
 3 I remember him, a few minutes after him walking around that
 4 area and everything, come up to me and say, "Sorry." But
 5 that's all I can remember.
 6 Q. Now -- okay. So he paced around, I guess, is
 7 what you're telling me?
 8 A. Yeah.
 9 Q. For a few minutes?
 10 A. Yes.
 11 Q. Did he have gloves on?
 12 A. Yes.
 13 Q. Did you see blood on him?
 14 A. I noticed there were -- there was blood on the
 15 gloves, yes.
 16 Q. How about his person?
 17 A. Not that I can recall because he had a -- like
 18 a black hoodie on.
 19 Q. How about on his face, or anything like that?
 20 A. Not that I could recall.
 21 Q. So now he's, in essence, storming around?
 22 A. (Nods head)
 23 Q. With this knife in his hand?
 24 A. Um-hmm.
 25 Q. Open or closed?

87

1 A. I believe it was open.
 2 Q. You could see the blade?
 3 A. (Nods head)
 4 Q. Could you see blood on the blade?
 5 A. Yes. Because I noticed that the gloves and
 6 everything were covered in blood.
 7 Q. How long did he do that? You're telling me he
 8 was walking back and forth, cursing, and -
 9 A. Yes. Maybe three or five minutes.
 10 Q. And other than "Sorry," was he saying anything
 11 to you?
 12 A. Not to me, no.
 13 Q. Well, who was he saying -- was he just like --
 14 A. Just -- I guess just in general, because he
 15 was saying the F word, he was just kind of like "Aargh."
 16 But that was all.
 17 Q. Just cursing sort of thing?
 18 A. Yes.
 19 Q. Raging? How about that?
 20 A. Yes.
 21 Q. And how long -- how long did that go on?
 22 A. Maybe three to five minutes.
 23 Q. And then what happened?
 24 A. And then he had told me to grab one of the
 25 bags that I guess were over in the passenger side. I

88

1 didn't see those until he --

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

4 A. The front passenger side.

5 Q. Okay.

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

9 Q. Okay.

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

12 Q. Uh-huh.

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

16 Q. Could you hear digging?

17 A. I couldn't.

18 Q. Or shovel noises?

19 A. No, I could not.

20 Q. How about scraping noises?

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

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

25 A. Yes.

89

1 Q. When did that occur?

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

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

7 A. I don't.

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

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

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

14 A. No.

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

17 A. Yes.

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

19 A. Just a small white plastic garbage sack.

20 Q. Like a kitchen bag sort of thing?

21 A. Yes.

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

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

90

1 of the car.

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

4 A. Yes.

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

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

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

12 MR. LOCKIE: That's correct.

13 Q. In any event --

14 MR. LOCKIE: Not one, two.

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

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

20 A. Correct.

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

22 A. Correct.

23 Q. Had you seen the bag beforehand?

24 A. No.

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

91

1 it just a bag by itself?

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

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

6 A. Just kind of wadded up.

7 Q. On the floorboard or where?

8 A. I don't recall.

9 Q. But they were on the passenger side?

10 A. Yes.

11 Q. In the front of the car?

12 A. Yes.

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

15 A. No.

16 Q. He said to get the bag?

17 A. Correct.

18 Q. And you got a bag?

19 A. Yes.

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

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

92

1 I had seen the bag, and that's when I had grabbed it.
2 Q. Okay. And -- so you've secured the bag now?
3 A. He took the bag from me.
4 Q. While you were still sitting in the car?
5 A. Correct.
6 Q. Through the window?
7 A. Yes.
8 Q. So at some point you got out, you're telling
9 me?
10 A. No, I stayed in the car.
11 Q. And you held the bag from the car?
12 A. Outside the window, yes.
13 Q. You stuck your hands out?
14 A. Yes.
15 Q. And he dropped these things in there?
16 A. Yes.
17 Q. Well, how -- when did you take the gloves off?
18 A. I don't recall. I want to say it was probably
19 before I turned the car around for the headlights to face
20 the grave.
21 Q. So you -- okay. So now you've dropped -- you
22 got the gloves from where -- were they in the front of the
23 car somewhere? Your gloves?
24 A. My gloves?
25 Q. Do you remember?

93

1 A. I don't recall, no.
2 Q. Do you remember dropping them in there?
3 A. Yes.
4 Q. Do you remember him dropping them in there?
5 A. Yes.
6 Q. Some gloves in there?
7 A. Yes.
8 Q. Do you have a specific memory of the knife
9 going in there?
10 A. Not specifically, no.
11 Q. But you have an impression that the knife did
12 go in there?
13 A. Correct.
14 Q. Was it open or closed, or do you know?
15 A. I believe it was closed.
16 Q. Now, were you familiar with this knife? Had
17 you seen it before?
18 A. A couple of times but just briefly. I knew
19 he -- he carried pocket knives with him and everything.
20 Q. Okay. And do you remember the knife that we
21 had in the preliminary hearing?
22 A. Yes.
23 Q. And was it of a similar size and sort?
24 A. I think so, yes.
25 Q. I know you didn't get a close look at it,

94

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?

95

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,

96

1 because he was texting -- from my understanding he was
 2 texting Wendi to ask what time he needed the -- that she
 3 needed the car -- due to --
 4 Q. What time was it, do you think, you left? By
 5 then what time was it?
 6 A. Maybe almost eight, I don't know.
 7 Q. Okay. Was it dark?
 8 A. Yes.
 9 Q. Fully dark?
 10 A. Yes.
 11 Q. Okay. Initially then -- as you're driving
 12 down the road, he's texting? Or did he stop and text?
 13 A. He was driving as he was texting.
 14 Q. He's able to do that?
 15 A. Not very good, but yes.
 16 Q. Okay. And he told you what he was doing then?
 17 Or could you see the text?
 18 A. He just kind of told me, I'm going to text her
 19 and see what -- when she needed the car back.
 20 Q. Anything else that you and he talked about?
 21 A. When we got back closer to where the overpass
 22 was, he said that --
 23 Q. Did you go back the same way you came?
 24 A. Yes. He had said that he needed to go get her
 25 cell phone, or something, that he had buried. And that's

97

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.

98

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?

99

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.

100

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.

101

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

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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?

103

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

104

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?

105

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.

106

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

107

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

108

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. Rump 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?

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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-hm.
 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.

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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.

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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.

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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

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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

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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

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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?

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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. Rump?
15 A. Part of it, yes.
16 Q. But when you got to Mr. Ohlson and Mr. Rump,
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

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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,

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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.

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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

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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 Burnam?

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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 Burnam 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 Burnam, 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.

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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.

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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.

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1 Q. Um-hm.
 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-hm.
 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."

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1 Q. Um-hm.
 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

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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

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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.

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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 Rump'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.

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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)

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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.

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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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1 anything? Alter anything?

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

3 mine.

4 Q. How about anything with -- did you ever see

5 the shovel again?

6 A. I want to say -- I did. And it was -- it was

7 the day that he put the shovel under the house.

8 Q. You were there when he did that?

9 A. Yes.

10 Q. Did you see him do anything to the shovel,

11 other than put it under the house?

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

13 yes.

14 Q. Where did he do that?

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

16 Q. Outside?

17 A. Yes.

18 Q. How did you happen to be present when he was

19 doing those things?

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

21 it.

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

23 this?

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

25 bleach was.

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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.

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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

135

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-hm.

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?

136

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?

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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

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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.

139

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.

140

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.

141

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.

142

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.

143

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?

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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 Rump'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. Rump 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 Rump 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.

145

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. Rump
 7 and Mr. Ohlson -- or to Mr. Rump'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?

146

1 A. I had a feeling that I was also going to be
 2 arrested.
 3 Q. But you didn't tell Mr. Rump 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.

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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.

148

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

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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

150

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?

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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

152

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

153

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?

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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

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

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

5 A. No.

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

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

10 Q. There's lots of rocks up there?

11 A. Yeah, so.

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

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

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

16 A. No.

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

21 A. I do not.

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

24 A. Correct.

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

156

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

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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 come 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.

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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 --

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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?

160

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.

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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 --

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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,

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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.

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Exhibit 10

KODY CREE PATTEN

VS.

**WILLIAM GITTERE, WARDEN,
ELY STATE PRISON**

John Ohlson: Tell me when we're on.

Jeff: John, we're on.

John: For the recording, this is John Ohlson by telephone. Jeff Kump's office where this recording is being made. If Jeff Kump and Fratto. Today is the 21st day of April, 22nd day of April, 2011, it's approximately 12:56PM and we are speaking privately with uh Toni's consent, is that right Toni?

Toni: Yes

John: Ok, Jeff, can you hear me clearly?

Jeff: I can John

John: So it is because of that, that I assume that the recording is picking up my voice?

Jeff: Yes

John: OK Toni, you talked to us previously, is that right?

Toni: Yes

John: And when you previously talked to us you did not tell us that you were present at the killing.

Toni: That's correct

John: Ok, you also talked to the police previously.

Toni: Yes

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

Toni: No

John: No, you did not tell them?

Toni: Correct

John: Um, am I to believe that that's not true and that you were in fact present when the girl got killed.

Toni: Yes

John: Will you tell us what happened that day. Did you go to school that day?

Toni: Can I ask a question real quick?

John: Sure

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

John: I don't know what you are going to say. And depending on what you are going to say we may or not be able to if your interests conflicts with Kody's. If we're not able to represent you we will get counsel for you.

Toni: Ok

John: Ok

Toni: Then would I need to get my own attorney first.

John: We'll get a lawyer for you uh, but you don't need to, right now it's just a conversation between us and the statement that you are making to us. We're not the law enforcement.

Toni: Ok

John: Ok

Toni: Ok

John: So are you willing to proceed?

Toni: I think so, yeh.

John: If you have questions about what's happening or what's going on, then stop and ask me all right?

Toni: Ok, Are your best interests to help me and Kody or

John: We're Kody's lawyers and we're hired, retained by the state to represent him in his interests. It is not our intention to do anything bad to you.

Toni: Ok

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

Toni: Ok

John: And I think that will make you feel real comfortable.

Toni: Ok

John: Ok

Toni: Ok

John: So the day of this killing Jeff was what day?

Jeff: Um, John I'm sorry don't have it in front of me.

John: Toni, do you remember?

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

John: Probably March huh? Was it a school day?

Toni: Yes

Jeff: It was March 3rd

John: Ok, is march 3rd a school day?

Toni: Yes

John: And that would have been

Toni: A Thursday

John: Yea, a Thursday. Did you go to school that day?

Toni: I did

John: Ok, and what time did you get out of school?

Toni: 3:30

John: Tell me what happened in your day after you got out after school.

Toni: I went home until my mom picked me up about 5:20 to go to her meeting.

John: Ok, were you at home by yourself until your mom picked you up?

Toni: Yes

John: Ok, what happened?

Toni: Um, just kinda sat there and watched TV and did a couple of my chores and that was about all.

John: Ok, and what time did your mom pick you up?

Toni: About 5:20 or so, I

John: Ok, and where did you guys go?

Toni: We went to go pick up my dad, take him to his meeting, we ran to my sister's to drop off a cell phone and then we went to my mom's meeting.

John: Ok and where was your mom's meeting?

Toni: At the golf course.

John: All right and what was the meeting about?

Toni: Um, just catching up on the recreational stuff cuz she's on the rec board.

John: Rec board for what?

Toni: For um, the parks and baseball fields and the pool.

John: Ok, and that's in wells?

Toni: In West Wendover.

John: West Wendover, ok, so how long were you in the meeting?

Toni: Um, maybe an hour or so I

John: Ok. What happened, what caused you to leave?

Toni: Um, had gotten a text saying that he had her and um she wanted to talk but he wanted me with her.

John: Ok, you got a text from who?

Toni: Kody

John: You got a text from Kody?

Toni: Yes

John: Ok, and again, the text said what?

Toni: That he had her and that he would like me to come with

John: Ok, When he said he had her, who did he have?

Toni: Makayla

John: Had you talked about that earlier?

Toni: No

John: But what did you think he meant by he had her?

Toni: Well, cuz I knew they wanted to talk but I didn't know for sure when or about what exactly and so I was just kind of

John: What, what do you think he might have wanted to talk to Makayla about?

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

John: Ok and he wanted you to come along?

Toni: Yes

John: Ok, so what happened after you got the text?

Toni: Um I told him where I was and to go ahead and come get me and I would go with them.

John: Ok, um, was this from his own cell phone to your own cell phone?

Toni: Yes

John: Ok, one that Kody had to one that you had to one that you had had?

Toni: Yes

John: Not somebody else's phone?

Toni: Correct

John: Do you still have that cell phone?

Toni: I do

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

Toni: I'm not sure, I'm pretty sure that the police took it but I'm not

John: ok, all right. So what happened then, after you text back?

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

John: Ok, when he came and got you who was in the car?

Toni: Him and Makayla

John: Ok and what car was it?

Toni: The white car, I don't know the model of it.

John: Ok, wasn't Kody's car?

Toni: No

John: Is that right?

Toni: Yes

John: Oh sorry, couldn't hear you.

Toni: Yes, that's correct

John: It was NOT Kody's car?

Toni: Ya

John: Ok, where was Makayla sitting?

Toni: Um in the back

John: And where did you sit?

Toni: In the front seat

John: Ok, after you got into the car what happened?

Toni: After I got out of the car?

John: Got in the car?

Toni: In the car, um, nothing was really said yet, we just started to go drive around and um, I can't remember who started the conversation but a conversation was started and then Makayla had said she didn't want anyone to see us talking so we decided to go out towards the gravel pits.

John: Did she say why she didn't want anyone to see you guys talking?

Toni: No she didn't say why

John: Ok, so who's idea was it to go to the gravel pit?

Toni: Um it, we kinda just started driving around and um, I trying to think, it was kind of a group effort, cuz we kept talking about then where do you want to go or where ever. And so it was just kind of, we just started kinda heading out that way to get out of town.

John: What was the emotion at that time, was anybody mad at anybody, were people friendly, what was the emotion?

Toni: Um it was kind of tense cuz she was kind of getting upset she was a little bit upset but we were trying to talk to her and everything and let her know that we didn't want to cause any problems or have any problems. We wanted to work everything out.

John: Ok, and what was it that you had to work out?

Toni: Just letting her know, well, having Kody let her know that he didn't want anything to do with her like with the relationship.

John: Ok. So what happened then?

Toni: Um we kinda just went out to the desert driving around out by the gravel pits. And Um, she got really upset and told us to let her out, and to stop and let her out.

John: Ok, what did she get upset about?

Toni: She just kept saying, "Well I'm tired of your BS" and everything and so we didn't want get, we didn't want her to be more upset so we did as she asked and we stopped the car and she got out. And um, Kody had got out to talk to her for just a second and um, I kinda saw them, you know, her like yelling at him and everything and um, like pushing him and everything and then um, I looked away just for like a split second and then heard like a loud thud on the car or whatever so I had got out to see what happened.

John: Ok, what

Toni: What was that?

John: What did you see when you got out?

Toni: Um, Makayla was on the ground.

John: Ok, go on.

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

John: Ok, did you look at her?

Toni: A little bit.

John: What did you see?

Toni: What was that?

John: What did you see?

Jeff: What did you see?

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

John: Ok, could you tell if she was breathing?

Toni: I couldn't really tell at that point I was just kind of freaking out and everything from there on out was kind of a blur to me.

John: Ok, what do you remember from there on out?

Toni: I remember um, her not moving or anything and then we went to pick her up and everything to see if she was ok or if she was breathing or whatever. Um, she wasn't really giving us any signs of, that she was ok or anything so you know we were freaking out we didn't know what to do and he had gotten out the shovel and started digging a hole. And um, I was keeping an eye on her just to see what was going, to see if she was going to move or get up or whatever. She really wasn't and then um, it kinda went downhill from there. We

John: Ok, when you say went downhill from there, what happened?

Toni: Well because we're so freaked out, didn't know what was really going on or anything, I wasn't, to be honest, I wasn't really thinking. Um and so we basically started kicking her and punching her and . . .

John: Ok, who was doing the kicking and punching?

Toni: It was both of us.

John: Where were you kicking and punching her?

Toni: Um

John: Where on her body?

Toni: Kind of on like her rib area and like the side of her face.

John: Ok Did anybody hit her with a rock or anything? Any kind of instrument?

Toni: I don't recall, I don't remember.

John: Ok, when you were hitting and punching her was she laying face up or face down?

Toni: She was kind of laying down kind of, trying to, at that point, then she was trying to like get up, not get up but kind of sit up and everything. But she, it wasn't like, like she was really wasn't coherent of what was going on.

John: She was trying to sit up?

Toni: At that point she kind of was.

John: Ok. Then what happened?

Toni: And then, um, I remember taking, I remember us taking the shovel and hitting her.

John: Ok, where did you hit her on her body with the shovel?

Toni: Um in the, kind of in the back area, like on the.

Jeff: Behind her shoulder John.

John: Ok, uh, did you hit her with the flat part of the shovel or the edge part of the shovel?

Toni: I believe the flat part.

John: Then what happened?

Toni: Um and then she kind of

John: Was he

Toni: What was that?

John: Are you talking about Kody now?

Toni: Talking about Makayla.

John: She

Toni: She was kinda, at that point she was kind of laying there, she wasn't, she wasn't moving. And so we had moved her to the grave and then um, it just, we were kind of standing there, deciding what do we do. We were just confused, we didn't know what really we had just done.

John: Ok.

Toni: And then um, I remember like holding down her legs and um, he had slit her throat.

John: He had what?

Toni: We had like cut her throat?

John: Who cut her throat?

Toni: It was both of us.

John: How did you do that?

Toni: Um, with a knife.

John: With a knife?

Toni: Yes

John: Who's knife?

Toni: it was a knife that Kody always um, held on to, it was always with him no matter what.

John: ok, and who used the knife?

Toni: At first it was him

John: And then was it you?

Toni: Yes

John: Why did you take over with the knife?

Toni: I wasn't thinking

John: Why did Kody give you the knife?

Toni: Well I was going, I'm trying to think. I had taken it from him to go, just to take it from him and everything.

John: Ok

Toni: And then um, I'm trying to remember but I can't remember

John: Ok, just do the best you can

Toni: After that it was all a blur, I can't

John: Did anybody cut her throat with the shovel or was it just the knife

Toni: I remember the shovel sitting there but I can't remember

John: Ok, so then what happened?

Toni: After that she wasn't really breathing or anything so we just kind of just stood there and were crying cuz we didn't know we had just done. We were freaking out, we didn't know, we weren't in the right mind to know what to do with anything.

John: Were you mad at Makayla?

Toni: I wasn't mad, I guess I was kind of frustrated but I wasn't mad at her.

John: Ok. Then what happened?

Toni: And then, I just, all I remember is it was kind of dark by that point. And we had basically buried her and we left.

John: Where did you go when you left:

Toni: We um, from there went to the other gravel pit on the other side of town.

John: Ok, and what did you do there?

Toni: We burnt everything.

John: What do you mean everything?

Toni: Um, there was a, I think there was a bag of things that we burned, I couldn't tell you

exactly what was in there. Um, and then that's how I remember we burned a couple bags and then we um, after that went to McDonald's to get drinks.

John: Ok. And then after did you get drinks at McDonald's?

Toni: We did

John: then what did you do?

Toni: After that we kinda drove around for a little while, he was freaking out. He was asking, you know, what did we just do, what do we do, and it was just, we were just freaking out. We didn't know what we had just done.

John: Ok. Uh, what happened to the knife?

Toni: Um, I wanna say that it was in the fire but I can't recall exactly.

John: Did either you or Kody have the knife after you left McDonald's?

Toni: No

John: What happened to the shovel?

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

John: Ok and what did you do after you were driving around and freaking out?

Toni: Um, we had taken the car back to his cousins house to drop that off.

John: Ok , and who did you give the keys to?

Toni: We gave them to Wendy.

John: Wendy's last name is what?

Toni: Murphy

John: Now did Wendy Murphy see you there?

Toni: Yes, cuz we had went in to say hi to his cousin and he had given the keys to her and then we we'd asked if we could get a ride back home but she wanted to wait to take us home so that she could take um, Jeff's wife's to work at the same time as she dropped up off. So she wasn't going back and forth through town.

John: How many different people saw you back there when you took the car back to Wendy?

Toni: How many people were at the house?

John: U Huh

Toni: And then a few minutes later, um, Officer Petro had come over to check the place out.

John: Why was he checking the place out, do you know?

Toni: We had saw her drive by the apartments so we had stepped out to just talk to her to see if you anything

John: Ok, so what officer, Jeff, get this names down of these people.

Jeff: Yes, Officer Petro.

John: Officer Petro, and then the three other people are who? Wendy Murphy.

Toni: Wendy Murphy, Jeffrey Patton, and Candace, I'm not sure of her last name.

John: Ok. All right. So then what happened?

Toni: um we waited till she was ready for work, we took her to work, we took Candace to work, and then Wendy took us home.

John: Ok. Did anything more happen that night?

Toni: No we couldn't sleep at all but after that night we didn't talk about it.

John: Ok. Who else have you told this to?

Toni: No one.

John: Not Kody's parents?

Toni: No

John: Not your parents?

Toni: No

John: Not any other human being in the world?

Toni: No

John: When was the last time you talked with Kody privately?

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

John: The very last time?

Jeff: The last time you've talked to him privately.

Toni: Um, I think it was Wednesday when I went to go visit him.

John: Ok, that was at the jail?

Toni: Yes

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

Jeff: I think they're monitored John. I actually have never ever heard a recording but you're always told that they can be.

John: Ok, people might say that Kody asked you to say this. What would you say about that?

Toni: No

John: Was there ever a conversation in which Kody asked you to say this?

Toni: What was that?

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

Toni: No

John: Its not something you and he made up to help him?

Toni: No

John: And that's the truth?

Toni: Yes

John: Is everything you told us absolutely true?

Toni: It Is

John: Ok. Jeff what questions do you have?

Jeff: Her top was off, do you remember how her top, why was her top taken off and when did that happen?

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

John: Before what Toni?

Toni: The beating, like kicking and punching her, like I'm trying to remember but

John: Do you know why it was taken off?

Toni: I don't

John: Did you take it off or did Kody take it off?

Toni: Kody did

John: Go ahead

Jeff: Um, do you remember the shovel being used at all? You said that the flat part was used, but to cut her, was that. . .

Toni: I don't remember, it may have

John: I'm losing that Jeff

Jeff: I guess I'm wondering you know. My question was whether or not she remembers using the shovel to cut at all.

John: To cut Makayla's throat.

Jeff: To cut her throat or cut her clothes that was something that Kody had said he had used there was a part of the shovel.

Toni: I can't remember

Jeff: You just remember using the knife

Toni: ya, I mean it when we hit her and everything it may have like scratched her with that part but I can't remember.

John: Toni do you still have the clothes that you were wearing when this happened?

Toni: I do

John: Are they at your house?

Toni: They are. I was going to bring them but I completely spaced it and forgot it.

John: That's all right. Have they been washed?

Toni: They have been.

John: I don't want you to bring them to Jeff's office. Ok

Toni: Ok

John: Um, I think maybe that that should be up to the lawyer that represents you.

Toni: Ok

John: What other questions do you have Jeff.

Jeff: There seems to be a gap um, from the time that you said that she tried to sit up and the time that you guys used the knife.

Toni: In between that time that's when we were beating her.

Jeff: So when she sat up you started beating her, cuz I have that you were kicking her and punching her and then she was trying to sit up?

Toni: It might have been both times, I'm trying to remember but it's all a blur in my head.

Jeff: What caused you to beat her?

Toni: Um, we can't answer that cuz I don't know. It was I guess it took me the longest time to even do anything. But I don't know what I was thinking when I did it.

Jeff: Did you hear that John?

John: Could we stop for one moment Jeff and will you just do a quick check on the recorder to make sure we've gotten this.

Jeff: Yes, I'll do it now.

Jeff: John, we're recording again now.

John: Good. What other questions do you have Jeff?

Jeff: What lead up to um, what conversations lead up to the three of you meeting that day?

Toni: Um, I never really was informed that they wanted to talk or anything until he had text me

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

John: Before what Toni?

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John: Do you know why it was taken off?

Toni: I don't

John: Did you take it off or did Kody take it off?

Toni: Kody did

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John: Good. What other questions do you have Jeff?

Jeff: What lead up to um, what conversations lead up to the three of you meeting that day?

Toni: Um, I never really was informed that they wanted to talk or anything until he had text me

and said she wants to talk and I would like you to be there with me and so I was, didn't at that point didn't know about what or why or anything so I was like, ok, come get me and then when they started talking I figured it out. I figured what this was all about.

Jeff: Had there been issues in the past with Makayla and Kody?

Toni: Not that I know of, No

John: What about with you and Makayla. Had you ever had any problems with her before?

Toni: No. We always, it always seemed like, she always seemed like she had feelings for him and everything but it never I guess showed until like that day like it all came out and in the past it didn't really, there was things here and there that would come up and you know, she'd try and talk to him and everything but he just didn't want.

Jeff: What came up in the past?

Toni: Just like the same thing, like um, she wanted to date him and get to know him and everything but he didn't want to have anything to do with her?

Jeff: When did that happen?

Toni: Just a long time ago, I would say maybe, six. . .

John: Did you ever have any angry encounters or any bad times with Makayla?

Toni: No, not at all.

John: You knew her though, is that right?

Toni: I knew her but I

END OF TAPE

Exhibit 11

KODY CREE PATTEN

VS.

**WILLIAM GITTERE, WARDEN,
ELY STATE PRISON**

1 CASE NO. CR-FP-11-0300

2 DEPT. NUMBER: II

2012 JAN 20 AM 10:50

FILED

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ELKO CO. DISTRICT ATTORNEY

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ELKO COUNTY COURT

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5 **THE FOURTH JUDICIAL DISTRICT COURT**

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

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8
9 **THE STATE OF NEVADA**

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11 Plaintiff,

12 vs.

**STATUTORY GUILTY
PLEA AGREEMENT**

13
14 **TONI COLLETTE FRATTO,**

15
16 Defendant

17
18 **COMES NOW THE STATE OF NEVADA**, the Plaintiff in the above-
19 entitled cause, by and through its Counsel of Record, the Elko County District
20 Attorney's Office, and Toni Collette Fratto, the Defendant above-named, in proper
21 person, and by and through her Counsel Of Record John P. Springgate, Esq., who by
22 their signatures on this Agreement, do hereby declare that the Parties have settled
23 upon a compromise of the Criminal Prosecution pending against the Defendant in the
24 above-entitled cause, which compromise is comprised of the following terms:
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27 / / /

28
Affirmation Pursuant to NRS 239B.030
SSN Does Appear
SSN Does Not Appear RC

Page 1 of 16

RA 369

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Count 1: Kidnapping In The First Degree, A Category A Felony;

Count 2: In The Alternative To Count 1, Acting As A Principal To A Kidnapping In The First Degree, A Category A Felony As Defined By NRS 195.020, NRS 200.310; And NRS 200.030;

Count 3: Conspiracy To Commit The Offense Of Murder And/Or Kidnapping In The First Degree, A Category B Felony;

Count 4: Open Murder, Including First Degree Murder And All Lesser Included Offenses, With The Use Of A Deadly Weapon, A Felony;

Count 5: In The Alternative To Count 4, Acting As A Principal To Open Murder, Including First Degree Murder And All Lesser Included Offenses, With The Use Of A Deadly Weapon, A Category A Felony As Defined By NRS 195.020, NRS 193.165; NRS 200.010; NRS 200.020; AND NRS 200.030; and

Count 6: Willfully Destroying Evidence Of The Commission Of A Felony, A Gross Misdemeanor As Defined By NRS 199.220.

With the above declaration in mind:

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**THE DEFENDANT'S SPECIFIC OBLIGATIONS
UNDER THIS GUILTY PLEA AGREEMENT**

1. The Defendant will enter a plea of guilty to an amended Criminal Information filed in District Court pursuant to the terms of this Plea Agreement charging the Defendant with:

Murder In The Second Degree With The Use Of A Deadly
Weapon, A Category A Felony As Defined By NRS 193.165;
NRS 200.010, And NRS 200.030.

hereinafter referred to in the remainder of this Agreement simply as "Second Degree Murder With The Use Of A Deadly Weapon".

Further, the Parties, by their signatures upon this Agreement do hereby waive the attachment of a copy of said amended Criminal Information to this Agreement.

**Withdrawal Of The Defendant's Motion To Strike The State's Notice Of
Intent To Seek The Death Penalty, And Motion In Limine With
Respect To The Defendant's Statement To Lawyers**

2.

J.C.F.
Defendant's Initials

In executing this Agreement, I Toni Collette Fratto declare that I am aware of the fact that there is currently pending a Motion To Strike The State Of Nevada's Notice Of Intent To Seek The Death Penalty filed on the 12th day of December, 2011, which the State has opposed, and a Motion In Limine Regarding The Admissibility Of Toni Fratto's Statement To Lawyers filed on January 11th, 2012.

I understand that upon the entry of my plea of guilty as provided for by this Agreement that these Motions will be deemed withdrawn and that they will not be decided by the Court. I have discussed this with my Lawyers, and believe that it is in my best interests to accept the Offer Of Compromise which this Agreement represents knowing that the above-referenced Motions will not be decided by the Court, and I waive my right to have those Motions decided

1 by the Court prior to my entry of the plea of guilty contemplated by this
2 Agreement.

3 **The Issue Of The Defendant's Obligation To Testify In The**
4 **State Of Nevada Vs. Toni Collette Fratto If Called Upon Do To So**

5 3. The Defendant, Toni Collette Fratto, further agrees that:

6 a. If and when she is called upon to do so by a representative of the Elko
7 County District Attorney, regardless of whether or not she has been
8 formally subpoenaed, the Defendant Toni Collette Fratto will appear and
9 testify fully, and truthfully in any proceeding in which her testimony is
10 deemed relevant and admissible, including the State Of Nevada vs. Kody
11 Cree Patten, concerning her knowledge of the events which form the basis
12 of the prosecution now pending against her in the above-entitled cause –
13 that is the events leading up to, and surrounding the death of Micaela
14 Costanzo on or about the 3rd day of March, 2011.

15 1. In that regard, it is further agreed by and between the State and
16 Toni Collette Fratto that her obligation to testify about the events
17 surrounding the death of Micaela Costanzo provided for in this
18 Agreement will arise and be enforceable under this Agreement
19 regardless of whether or not the Defendant has been sentenced in
20 this matter, and whether or not a formal Judgment Of Conviction has
21 been entered in this matter against the said Toni Collette Fratto –
22 that is Toni Collette Fratto agrees that if she is called upon to testify
23 pursuant to the terms of this Agreement that she will do so even
24 though Judgment in the case pending against her has not been
25 formally entered.

26 c. The Defendant's failure or refusal, if she is called upon to do so, to appear
27 and testify, fully and truthfully about her knowledge concerning the
28 circumstances surrounding the death of Micaela Costanzo will be deemed
a material breach of the consideration which supports this agreement and
the State shall be entitled to withdraw from this Agreement, and proceed
against the Defendant, Toni Collette Fratto, as if this Agreement never
existed, to and including, if permitted to do so by the Court having
jurisdiction of the issue, moving to set aside any Judgment entered against
the Defendant in this matter.

1. Should the State move to withdraw from this Agreement and be
allowed to do so, the Defendant agrees that her signature on this

1 Agreement shall constitute a waiver of the applicable statute of
2 limitations as a defense to any offense with which she was
3 originally charged in this matter, and

4 a. It is further agreed that his signature upon this Agreement by
5 the Defendant shall constitute a waiver of his constitutional
6 right to a speedy trial with respect any period of time which
7 elapses between the execution of this Agreement by the
8 Defendant, and the re-institution of the prosecution pending
9 against the Defendant in the above-entitled matter should
10 that come to pass, which shall be deemed to have occurred
11 upon the formal entry of an Order permitting the State's
12 withdrawal from this Agreement.

13 4. With respect to his promise to appear and testify fully and truthfully concerning
14 the events surrounding the death of Micaela Costanzo, in any proceeding in
15 which she may be called upon to do so, the Defendant acknowledges that she
16 has been advised of, and declares her understanding of following:

17 a. If she is called upon to testify pursuant to the terms of this Agreement, and
18 does testify, and it is later determined that she testified untruthfully this
19 Agreement will, as a matter of law, be deemed void – that is it will be
20 deemed never to have existed, and the State would be entitled to proceed
21 against the Defendant upon the charges originally pleaded against her in
22 the above-entitled cause.

23 This term of this Plea Agreement is based upon the provisions of NRS
24 174.061, which provides in pertinent part as follows:

25 1. If a prosecuting attorney enters into an agreement with a defendant
26 in which the defendant agrees to testify against another defendant in
27 exchange for a plea of guilty, guilty but mentally ill or nolo contendere
28 to a lesser charge or for a recommendation of a reduced sentence,
the agreement:

(a) Is void if the defendant's testimony is false.

(b) Must be in writing and include a statement that the
agreement is void if the defendant's testimony is false.

5. I Toni Collette Fratto have also been advised that in the event that I am called
upon to testify, and do testify pursuant to the terms of this Agreement that

any testimony given by me, or a record of it would be admissible in any subsequent proceeding where it was found to be relevant and admissible.

THE STATE'S OBLIGATIONS UNDER THE AGREEMENT

1. The State agrees that:

- a. The proffer by the Defendant of the plea(s) of guilty contemplated by this Agreement to Second Degree Murder With The Use Of A Deadly Weapon;
- b. The District Court's acceptance of that plea; and
- c. The entry of Judgment convicting the Defendant of Second Degree Murder With The Use Of A Deadly Weapon;

shall be deemed a complete resolution of any and all criminal liability which the Defendant may have had arising out of the events which gave rise to the prosecution now pending against the Defendant in the above-entitled matter, and shall constitute a bar to prosecution with respect to any other theory of criminal liability which may have been pleaded against the Defendant in connection the events resulting in this prosecution, subject to the following limitation:

- a. It is agreed by and between the Parties that the bar to prosecution created by this Agreement shall extend only to the events which gave rise to the instant prosecution, and it is not intended to extend to, nor does it include any other criminal liability which the Defendant may have, if any, based on events unconnected to the specific offenses at issue in this prosecution and the events and facts upon which it is premised.

TERMS OF THE AGREEMENT RELATIVE TO SENTENCING

It is agreed that at the time of Sentencing in this matter both the State, and the Defendant shall each be entitled to make that recommendation which they each, respectively, deem appropriate – that is the Parties shall be free to argue, and to present that evidence deemed admissible by the Court in support of their respective positions.

CONSEQUENCES OF THE PLEA

I Toni Collette Fratto declare that I understand that at the time I enter a plea of guilty under this Agreement that the above-entitled Court, before it will accept my plea of guilty, will require me to admit the commission of an act or acts which fulfills all of the elements of the offense(s) I have agreed to plead guilty to. The elements of the offense of Second Degree Murder With The Use Of A Deadly Weapon are as follows:

1. That the Defendant willfully and unlawfully;
2. With express malice aforethought – that is with the intent to kill;
3. Killed another human being; and
4. That the Defendant utilized a deadly weapon in the commission of said offense.

Recitation Of The Maximum Permissible Penalty

I understand and have been advised that as a consequence of entering the plea of guilty provided for by this Agreement the following range of punishments will be available to the Judge who accepts my plea of guilty sitting without a jury – that is that I will be punished:

By imprisonment in the state prison:

- (1) For life with the possibility of parole, with eligibility for parole beginning when a minimum of ten (10) years has been served; or
- (2) For a definite term of twenty-five (25) years, with eligibility for parole beginning when a minimum of ten (10) years has been served.

1 **Additional Penalty For The Use Of A Deadly Weapon**

2 I further understand and have been advised that in addition to the
3
4 potential penalties described above that an additional and consecutive penalty of
5 between one (1) and twenty (20) years, as determined by the Judge at the time of
6 sentencing, for the use of a deadly weapon in the commission of said offense will be
7 imposed upon me.
8

9 I have been further advised that the law requires the imposition of an
10 administrative assessment fee in connection with the entry of judgment in a felony or
11 gross misdemeanor case.
12

13 I understand that I will not be eligible for probation upon conviction of the
14 offense I intend to plead guilty to.
15

16 **Potential Adverse Immigration Consequences**

17 In executing this Agreement, I Toni Collette Fratto acknowledge that I
18 have been advised by my Lawyer that if I am not a citizen of the United States that the
19 criminal conviction(s) which will ensue from my entry of the plea(s) of guilty called for
20 by this Agreement may have adverse consequences upon my ability to remain in the
21 United States – that is my conviction of the offense(s) I have agreed to plead guilty to
22 may result in my deportation, and/or may have adverse consequences upon my ability
23 to re-enter the United States if I am deported, or otherwise leave the United States.
24
25

26 **Restitution**

27 I understand that if applicable in the case, and deemed appropriate by the
28

1 Court I may be ordered to make restitution to the victim of the offense to which I
2 propose to plead guilty, and to the victim of any related offenses which is/are being
3 dismissed or with respect to which prosecution has been declined pursuant to the
4 terms of this Agreement.
5

6 **Additional Terms Of The Agreement**

7

8 I understand that I will also be ordered to reimburse the State of Nevada
9 for any expenses incurred, if any there be, in connection with my extradition to the
10 State of Nevada in connection with this prosecution.
11

12 I have been advised and understand that if more than one sentence of
13 imprisonment is imposed and I am eligible to serve the sentence concurrently with any
14 other sentence imposed or which I am already serving, that it will be up to the
15 Sentencing Judge, except as otherwise provided by Nevada law, to determine, in the
16 Court's discretion, whether such sentences are to be served consecutively, that is one
17 after the other, or concurrently, that is at the same time.
18

19 I have not been promised or guaranteed any particular sentence by
20 anyone. I know that my sentence is to be determined by the Court within the limits
21 prescribed by the statute(s) under which I propose to plead guilty. I understand that at
22 the time sentence is imposed that if the State of Nevada or my Lawyer recommend
23 any specific sentence to the Court, the Court is not obliged to accept that/those
24 recommendation(s).
25
26

27 I understand that with respect to the offense(s) I intend to plead guilty to
28

1 the Division of Parole And Probation of the Department Public Safety will prepare a
2 Pre-Sentence Investigation Report for the above-entitled Court. This report will include
3 matters relevant to the issue of sentencing, including my criminal history. I understand
4 that this Report may contain hearsay information regarding my background and
5 criminal history. My Lawyer and I will each have the opportunity to comment on the
6 information contained in the Report at the time sentence is imposed.
7

8
9 **THE DEFENDANT'S WAIVER OF HIS CONSTITUTIONAL**
10 **RIGHTS IN CONNECTION WITH THE PLEA OF**
11 **GUILTY CONTEMPLATED BY THIS AGREEMENT**

12 I Toni Collette Fratto declare that I have been advised and understand
13 that in order for the above-entitled Court to accept the plea of guilty I propose to enter
14 in this matter that I will have to waive my constitutional rights in this matter, and I
15 declare that I am willing to give up the following constitutional rights and privileges in
16 order that the Court can accept my plea(s) of guilty:
17

18 1. The constitutional privilege against self-incrimination, including the right to
19 decline to testify at trial, in which event the State would not be allowed to comment to
20 the jury about my decision not to testify. I understand that my plea(s) of guilty will
21 require my waiver of this right to the following extent: the Court in connection with my
22 plea of guilty may require me, in order to accept my plea, to personally verbally enter
23 my plea of guilty, and may require me to;
24

25
26 a. Provide a factual basis for my plea – that is a description of the events
27 which gave rise to the prosecution against me and my participation
28

1 in them which has given rise to my contemplated plea(s) of guilty; and

- 2 b. Further to advise that Court that I believe entering the plea(s) of guilty
3 contemplated by this Agreement is in my best interests, and that standing
4 upon my right to stand trial with respect to the greater, and/or additional
5 offense or offenses I am, or could be charged with is not in my best
6 interests.
7
8

9 I further understand that other than the requirement that I personally
10 verbally enter my plea(s) of guilty, and that, upon the Court's request, I provide a
11 factual basis for my plea that my right not to incriminate myself will still remain in these
12 matters, and that I may not otherwise be required to speak or provide any other
13 information wherein to do so might further incriminate me.
14

15 2. The constitutional right to a speedy and public trial by an impartial jury with
16 respect to the charges originally pending against me, free of excessive pre-trial
17 publicity prejudicial to my ability to present a defense, at which trial I would be entitled
18 to the assistance of a Lawyer, hired by me, or appointed for me if I was unable to hire
19 a Lawyer. At trial the State would bear the burden of proving beyond a reasonable
20 doubt each and every element of all of the offenses I was originally charged with, and
21 the elements of that/those offense(s) to which I have agreed by the terms of this
22 Agreement to plead guilty to. In that regard I recognize that in giving up my right to
23 have a jury try this case I am giving up the right to have a jury decide beyond a
24 reasonable doubt whether or not I am;
25
26
27
28

1 a. Guilty of murder and if so to what degree; and

2 b. Whether or not a deadly weapon was used in the commission of said
3 offense; and
4

5 that a single Judge, sitting without a jury, shall make findings with respect to those
6 issues based upon the factual representations made by me to the Court at the time I
7 enter my plea of guilty, and will thereafter impose sentence upon me within the range
8 of punishments provided for Second Degree Murder With The Use Of A Deadly
9 Weapon as described above.
10

11 3. The constitutional right to confront and cross-examine any witnesses who have
12 testified against me at trial.
13

14 4. The constitutional right to subpoena witnesses to testify on my behalf.
15

16 5. The constitutional right to testify in my own defense, or, if it be my decision after
17 consultation with my Lawyer, to decline to testify at trial.

18 6. The right to appeal any conviction I suffered at trial, with the assistance of a
19 Lawyer, again either hired by me, or appointed to represent me in the event I was
20 unable to hire my own Lawyer, unless the appeal is based upon reasonable
21 constitutional, jurisdictional, or other grounds which challenge the legality of the
22 proceedings, and except as otherwise provided by NRS 174.035.
23
24

25 I, Toni Collette Fratto, by my signature on this Agreement, and subject to
26 the above-entitled Court's acceptance of my plea(s) of guilty called for by this
27 Agreement, do hereby waive the above-described constitutional rights.
28

VOLUNTARINESS OF THE PLEA

I further acknowledge I have discussed the elements of all of the original charges which were pending against me, and the elements of the offense(s) I intend to plead guilty to with my Lawyer, and I understand the nature of the charge(s) originally pleaded against me, and the charge(s) I intend to plead guilty to.

I understand that the State, if I had exercised my right to have a trial with respect to the original charge(s) pleaded against me, would have been required to prove each element of each charge(s) pending against me beyond a reasonable doubt. Likewise, the State, but for my intended plea(s) would have been required to prove each and every element of the offense(s) I intend to plead guilty to beyond a reasonable doubt.

I have discussed with my Lawyer the possible defenses which might have been available to me at trial in connection with this matter, and the circumstances which might reflect in my favor.

I did, before deciding to sign this Agreement, discuss to my satisfaction with my Lawyer(s) all of the foregoing elements and the nature of the charges; the consequences of my proposed plea(s) of guilty; the constitutional rights I would have been able to exercise if I had had a trial; and the waiver of rights which would be required in order for the above-entitled Court to accept my contemplated plea(s) of guilty. Additionally, I was provided an opportunity to ask my Lawyer any questions I had concerning these matters and my questions, if any I had, were answered to my

1 satisfaction.

2 I believe after considering the matter, and consulting with my Lawyer with
3 respect to this matter, that entering into, and carrying out this Agreement by entering
4 the plea(s) of guilty called for by it is, and remains in my best interests, and that
5 exercising my right to have a trial would have been, and remains contrary to my best
6 interests.
7
8

9 I am signing this Agreement voluntarily, after consultation with my Lawyer,
10 and I am not acting under duress or coercion, or by any promise of leniency other than
11 those which are set forth and described in this written Agreement.
12

13 I am not now under the influence of intoxicating liquor, a controlled
14 substance, or any other drug which would in any manner impair my ability to
15 comprehend or understand this.
16

17 My Lawyer prior to my execution of this Agreement had answered
18 all of my questions concerning my contemplated plea(s) of guilty, and has answered all
19 of my questions, if any I had, regarding this Agreement and its consequences to my
20 satisfaction and I am satisfied with the services of my Lawyer, and the advice he has
21

22 / / /

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1 rendered to me in connection with this matter.


2 **THE DEFENDANT'S SIGNATURE BLOCK**

3
4 Dated this 19 day of January, 2012.

5
6 
7 **TONI COLLETTE FRATTO**
8 Defendant
9 In Proper Person

10 **THE STATE'S SIGNATURE BLOCK**

11
12 Dated this 20th day of January, 2012.

13
14 
15 **MARK TORVINEN**
16 Elko County District Attorney
17 State Bar Number 551

18 **CERTIFICATE OF COUNSEL FOR THE DEFENDANT**

19 I, the undersigned, as Counsel Of Record for the Defendant above-
20 named, and as an Officer of the Court, by my signature hereunder, certify to the
21 above-entitled Court as follows:

- 22 1. That before the Defendant executed this Agreement, I had fully explained to the
23 Defendant the elements of the offense(s) with which she was originally charged, and
24 the elements of the offense to which he proposes to plead guilty.
- 25 2. I advised the Defendant of the potential penalties for each of the offense(s) with
26 which she was originally charged, and the potential penalties for the offense(s) to
27 which she proposes to plead guilty. Further I advised the Defendant with respect to,
28

1 and concerning the restitution, if any there be, that the Defendant may be ordered to
2 pay in connection with the imposition of sentence in this matter.

3
4 3. The plea of guilty which the Defendant proposes to enter in this matter pursuant
5 to the terms of this Agreement are consistent with all of the facts known to me
6 concerning this case, and will be entered in accordance my advice to the Defendant.
7
8 Further I believe that the compromise reflected in this Agreement, is in the Defendant's
9 best interests.

10 4. To the best of my knowledge and belief, at the time the Defendant
11 executed this Agreement he:

- 12
13 a. Was competent, and understood the elements of the offense to which
14 she proposes to plead guilty, and the consequences, including the
15 potential penalties which could be imposed upon the Defendant, in
16 connection with said plea(s) of guilty;
17
18 b. That she executed this Agreement voluntarily; and
19
20 c. Was not under the influence of intoxicating liquor, a controlled
21 substance, or other drug at the time of her execution of this
22 Agreement.

23 Dated this 19th day of January, 2012.

24
25 John P. Springgate #2384/jp
26 **JOHN P. SPRINGGATE**
27 Attorney At Law
28 State Bar No.: 1350
Counsel For The Defendant

Exhibit 12

KODY CREE PATTEN

VS.

**WILLIAM GITTERE, WARDEN,
ELY STATE PRISON**

1 Case No. CR-FP-11-300

2 Dept. II

3

4

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

8

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9 THE STATE OF NEVADA :

10 Plaintiff, :

11 v. : SENTENCING HEARING

12 KODY CREE PATTEN, :

13 Defendant. :

14 _____/

15

16 TRANSCRIPT OF PROCEEDINGS

17

18 BE IT REMEMBERED that the above-entitled matter
19 came on for hearing on August 24, 2012, at the hour of
20 10:00 a.m. of said day, in Elko, Nevada, before the
21 HONORABLE DAN PAPEZ, District Judge.

22

23

24

25 Reported by Lisa M. Manley, CCR No. 271

COPY

1 Case No. CR-FP-11-300

2 Dept. II

3

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

8 00000

9 THE STATE OF NEVADA :

10 Plaintiff, :

11 v. : SENTENCING HEARING

12 KODY CREE PATTEN, :

13 Defendant. :

14 _____/

15

16 TRANSCRIPT OF PROCEEDINGS

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25 Reported by Lisa M. Manley, CCR No. 271

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A P P E A R A N C E S

For the Plaintiff: MARK D. TORVINEN, ESQ.
Elko County District Attorney
540 Court Street
Second Floor
Elko, NV 89801

For the Defendant: JOHN OHLSON, ESQ.
6140 Plumas Street
Suite 200
Reno, NV 89519

JEFFREY KUMP, ESQ.
217 Idaho Street
Elko, NV 89801

ALSO PRESENT:

Maria Cammarano, Department of Parole and Probation

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1 with the sentence to be imposed.
2 I would ask the parties at this time, beginning
3 with the State, whether or not each side has received a
4 copy of the presentence report?
5 MR. TORVINEN: State has.
6 THE COURT: And, Mr. Torvinen, did you note any
7 factual errors in the report?
8 MR. TORVINEN: The only thing that I would bring
9 to the Court's attention, Your Honor -- bear with me -- at
10 page 4, the sixth paragraph, starts with the words, "On
11 April 22, 2011." It characterizes that conversation as
12 having been telephonic. It was not. It was in person.
13 THE COURT: All right. Anything else?
14 MR. TORVINEN: No.
15 THE COURT: All right. And Mr. Ohlson, did you
16 and Mr. Kump receive a copy of the presentence report?
17 MR. OHLSON: Your Honor, for the record, Mr. Kump
18 and I did receive a copy of the presentence report. Mr.
19 Kump delivered a copy of the presentence report to Mr.
20 Patten. The two reviewed the presentence report.
21 And at this time I can tell you that we have no
22 additions, corrections, modifications or factual statements
23 to submit in relation to the presentence report.
24 THE COURT: Thank you.
25 Mr. Patten, were you able to read over the

5

1 presentence report?
2 THE DEFENDANT: Yes, I was.
3 THE COURT: And discuss it with your attorneys?
4 THE DEFENDANT: Yes, I was.
5 THE COURT: All right. Very well.
6 Counsel, at this time the Court will allow
7 counsel for Mr. Patten and Mr. Patten to present any
8 evidence in mitigation of the offense.
9 Mr. Ohlson?
10 MR. OHLSON: Thank you. Mr. Kump will proceed.
11 THE COURT: All right.
12 MR. KUMP: Thank you, Your Honor.
13 I call Gina Thayer.
14 (WHEREUPON, the witness was sworn)
15 THE COURT: State your full name for the record
16 and spell your last name.
17 THE WITNESS: Gina Thayer. T-h-a-y-e-r.
18 THE COURT: Thank you. Mr. Kump.
19 GINA THAYER
20 called as a witness in said case, having been first
21 duly sworn, testified as follows:
22 DIRECT EXAMINATION
23 BY MR. KUMP:
24 Q. Ms. Thayer, what is the nature of your
25 relationship with Kody Patten?

6

1 A. I am his aunt.
2 Q. And is that -- you are his maternal --
3 A. Yes.
4 Q. Mother's side. You know that Kody has pled
5 guilty to murdering Micaela Costanzo?
6 A. Yes.
7 Q. And you agree this is a horrible and
8 inexplicable act?
9 A. Absolutely.
10 Q. It's necessary that we give the Court
11 information about Kody's character, and that's why you've
12 been called as a witness today.
13 Do you understand that?
14 A. Yes.
15 Q. What is your occupation?
16 A. I drive truck.
17 Q. Where do you live? Where do you reside?
18 A. Olympia, Washington.
19 Q. How often in the past have you had a chance to
20 see and visit with Kody?
21 A. At least every couple years. And he has come
22 up to my house a couple times to stay with me.
23 Q. For what period of time?
24 A. They would come up for about a week. He
25 stayed with me for three weeks at a time sometimes.

7

1 Q. During that time, did you get to know Kody?
2 A. Oh, yes.
3 Q. How old would you say he was during these
4 visits?
5 A. Started when he was a baby and up until he was
6 about 16.
7 Q. Okay. Can you describe for the Court Kody's
8 personality as you know it, as you saw it?
9 A. Funny, adventurous. Wanted always to go on the
10 truck with me and go see what we were doing, go play with
11 my son, go to the zoo.
12 Q. You saw him interact with other people?
13 A. Oh, yes.
14 Q. And did you -- do you have an opinion as to --
15 I don't know how to say this -- was he a bully? Did he
16 care for people?
17 A. No. He got along with all my son's friends.
18 He got along with my friends. He would get along with
19 people we would meet at work. And I never saw him being a
20 bully.
21 Q. Was he helpful?
22 A. Oh, yes. He -- he would pick up around the
23 yard. He would play with the cat, keep him out of my hair.
24 And he really liked going on the truck mostly. Not a big
25 housekeeper or anything, but he liked to do that.

8

1 Q. Is it fair to say you enjoyed your time with
2 Kody?

3 A. Oh, yes. I did. We had a lot of fun
4 together.

5 Q. Can you -- can you explain for the Court
6 whether you believe that this senseless tragedy is unlike
7 Kody as you know him to be?

8 A. When I first heard about it, I could not
9 picture Kody having done this. He has not that kind of
10 bone in his body as far as I could tell.

11 His background with the EMT and firefighting
12 with his dad and playing around with that stuff and -- I
13 cannot see him even thinking about this kind of thing. I
14 have never seen him be mean to somebody.

15 No, I could never have seen this.

16 MR. KUMP: Thank you. That's all I have.

17 THE COURT: Thank you.

18 Cross-examination, Mr. Torvinen?

19 CROSS-EXAMINATION

20 BY MR. TORVINEN:

21 Q. Ms. Thayer, I gather that Mr. Patten came to
22 visit you in the summertime?

23 A. Summertime. They would come in the
24 wintertime.

25 Q. Okay. Well, you said extended three-week

9

1 periods?

2 A. Yes. Well, they came up at various times. If
3 he stayed with me alone, it was in the summer, yes.

4 Q. Now, you acknowledged being aware of the fact
5 that Mr. Patten pled guilty to first-degree murder?

6 A. Yes.

7 Q. And that he pled guilty to killing --

8 A. Yes.

9 Q. -- Micaela Costanzo?

10 A. Yes.

11 Q. Are you aware of any -- any of the other facts
12 in this case?

13 A. Slightly.

14 Q. Are you aware of the fact that her remains
15 were found in a shallow grave five miles west of Wendover
16 in basically the desert next to some railroad tracks?

17 A. Yes.

18 Q. Are you aware that the evidence in the case
19 indicated that she suffered from numerous injuries?

20 A. I have heard that, yes.

21 Q. Okay. Has all of that caused you -- and you
22 acknowledged when Mr. Kump asked you about it that it seems
23 inexplicable to you, right?

24 A. Yes.

25 Q. And you acknowledge that Mr. Patten has -- has

10

1 pleaded guilty to this and acknowledged responsibility for
2 the homicide that I have just summarized for you very
3 briefly?

4 A. Yes.

5 Q. And that doesn't cause you to have any
6 questions about his -- this person that you are describing?

7 A. Questions?

8 Q. The ability -- the capability of doing that?

9 A. Well, everybody's unfortunately capable of it.

10 Q. Something in him that you weren't aware of?

11 A. But I have never seen that kind of behavior in
12 him before ever.

13 MR. TORVINEN: That's all I have, Judge.

14 THE COURT: Any other questions, Mr. Kump?

15 MR. KUMP: Nothing on that, Your Honor.

16 THE COURT: May the witness step down?

17 MR. KUMP: Yes, Your Honor.

18 THE COURT: Thank you, Ms. Thayer.

19 MR. KUMP: Brent Patten.

20 THE COURT: Please face the clerk, raise your
21 right hand, and she will administer the oath.

22 (WHEREUPON, the witness was sworn)

23 THE COURT: Be seated here, sir.

24 Would you please state your full name for the
25 record and spell your last.

11

1 THE WITNESS: Brent Cree Patten, P-a-t-t-e-n.

2 THE COURT: Thank you.

3 Mr. Kump.

4 BRENT CREE PATTEN

5 called as a witness in said case, having been first
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. KUMP:

9 Q. Mr. Patten, what is the nature of your
10 relationship with Kody Patten?

11 A. I am his uncle, his dad's brother.

12 Q. And I know that you -- you just heard Ms.
13 Thayer's testimony, but I need to go over it with you
14 again.

15 You know that Kody has pled guilty to the
16 murder of Micaela Costanzo?

17 A. Yes, I do.

18 Q. Correct. And, again, the reason that you are
19 testifying is to testify about Kody's character and the
20 character that you know and that you have seen.

21 Do you understand that?

22 A. Yes.

23 Q. Sir, what is your occupation?

24 A. I -- truck driver.

25 Q. Where do you reside?

12

1 A. In Provo, Utah.
 2 Q. How often have you lived there -- how often --
 3 how long have you lived there?
 4 A. Oh, for about eleven years.
 5 Q. And I'll ask you the same question. How
 6 frequently would you see Kody?
 7 A. Probably once a month, maybe less, on average
 8 in the last couple years. Previous to that it was three,
 9 four times a month.
 10 Q. Okay. And it's been more frequent before
 11 then?
 12 A. Yeah, it was.
 13 Q. What kind of activities did you do with Kody
 14 or did you witness Kody doing?
 15 A. Anything really. I mean, it was so much time
 16 around him growing up that anything that people would do.
 17 We visited a lot, spent a lot of time hanging out at mine
 18 or my brother's homes, wherever we would be.
 19 Q. Can you describe Kody's general character?
 20 For example, did he care for others? Did you witness Kody
 21 with other people in your family?
 22 A. Yeah. There are many situations that I would
 23 see Kody as more of the caring one in family situations,
 24 that -- for instance, one New Year's that he came and spent
 25 with us, my wife and I, we went over to my wife's brother's

13

1 place.
 2 There was a lot of younger children around and
 3 the adults were kind of celebrating, doing their own thing.
 4 Kody would be visiting with and being kind with the
 5 children that weren't necessarily being paid a lot of
 6 attention.
 7 Q. Did you -- did you see him around his
 8 grandparents?
 9 A. I did. Again, just kind, just close to them.
 10 Q. Did you have occasion to see him helping
 11 others?
 12 A. A lot of times. Any time that people needed
 13 help that my brother and I or anybody were helping, I mean,
 14 Kody was there, just chipping in, helping out, doing what
 15 he could, doing his part. A lot of the times without being
 16 asked.
 17 Q. Can you comment on -- on his attitude? You
 18 said that he would chip in and help. But what kind of
 19 attitude did he have most of the time?
 20 A. Positive, upbeat, always joking with -- with
 21 us and with people there. Any time he seen children that
 22 were not necessarily being paid a lot of attention, he
 23 would be that one to help them, to give them company, play
 24 games.
 25 Q. Did you see him around animals? Pets?

14

1 A. Yeah. They have had dogs, cats, different
 2 animals growing up. He was always the one that seemed to
 3 care for them more than -- more than most.
 4 Q. Can you explain -- maybe you already have --
 5 but can you explain whether you believe that this senseless
 6 tragedy is unlike Kody as you know him to be?
 7 A. Yeah. It is. The -- the night that I
 8 received the call from his brother -- or from my brother
 9 telling me what happened, I was in disbelief, in shock.
 10 Saying things like, "You're kidding." "What are you
 11 saying?"
 12 And he kind of had to yell my name to get me
 13 to maybe grasp it. At the time it was just unbelievable to
 14 me.
 15 MR. KUMP: That's all I have. Thank you, Your
 16 Honor.
 17 THE COURT: Cross-examination by Mr. Torvinen?
 18 CROSS-EXAMINATION
 19 BY MR. TORVINEN:
 20 Q. Mr. Patten, the time -- when was -- I may have
 21 missed this -- when was the last time you spent
 22 considerable time with Mr. Kody Patten? How old was he?
 23 A. Probably nineteen, eighteen. Rough. Shortly
 24 before the situation, I guess.
 25 Q. Now, you heard me ask Ms. Thayer some

15

1 questions. And you understand now that Mr. Patten has
 2 entered pleas of guilty to unlawfully taking Ms. Costanzo's
 3 life, right?
 4 A. Yes, I do.
 5 Q. And do you know anything about the
 6 circumstances under which she died?
 7 A. I don't know all the details, but I think I
 8 know enough.
 9 Q. Are you aware of the fact that -- you heard me
 10 ask Ms. Thayer some questions. Are you aware of the fact
 11 that her body was discovered in a shallow grave five miles
 12 west of Wendover in the desert?
 13 A. Yes.
 14 Q. That the evidence in the case reflected she
 15 had suffered numerous injuries?
 16 A. I've heard that.
 17 Q. Okay. Has that caused you to question how
 18 well you know Kody?
 19 A. No.
 20 MR. TORVINEN: That's all I have, Judge.
 21 THE COURT: Any other questions, Mr. Kump?
 22 MR. KUMP: Nothing on that.
 23 THE COURT: May the witness stand down?
 24 MR. KUMP: Yes, Your Honor.
 25 THE COURT: Thank you, Mr. Patten.

16

1 MR. KUMP: Nick Patten, Your Honor.
 2 (WHEREUPON, the witness was sworn)
 3 THE COURT: Would you please state your full name
 4 for the record and spell your last name.
 5 THE WITNESS: My name is Nicholas Patten,
 6 P-a-t-t-e-n.
 7 THE COURT: Thank you. Mr. Kump.
 8 NICHOLAS PATTEN
 9 called as a witness in said case, having been first
 10 duly sworn, testified as follows:
 11 DIRECT EXAMINATION
 12 BY MR. KUMP:
 13 Q. Mr. Patten, what is the nature of your
 14 relationship with Kody Patten?
 15 A. He is my brother.
 16 Q. Are you -- are you older or younger?
 17 A. I'm older.
 18 Q. By how much?
 19 A. Two and a half -- year and a half.
 20 Q. A year and a half?
 21 A. Yeah.
 22 Q. How old are you today?
 23 A. I'm 21.
 24 Q. Okay. You know that Kody has pled guilty to
 25 killing Micaela Costanzo?

17

1 A. Yes.
 2 Q. And you agree that this is a horrible
 3 inexplicable act?
 4 A. Yes.
 5 Q. You're testifying because you know that it's
 6 necessary that we provide the Court with information about
 7 Kody's character?
 8 A. Absolutely.
 9 Q. Mr. Patten, where do you live?
 10 A. Right now I reside in Wells, Nevada.
 11 Q. What is your occupation?
 12 A. I am a mechanic and fabricate for a company,
 13 wells Propane.
 14 Q. I realize that you grew up together, but at
 15 some point you moved out of your family home, correct?
 16 A. Absolutely.
 17 Q. In the past years, how frequently would you
 18 see Kody?
 19 A. Every time I would go home, which was every
 20 weekend. Every once in a while I won't go home a weekend.
 21 So four or five times a month.
 22 Q. You and Kody grew up in the same home?
 23 A. Yep.
 24 Q. And what I mean by that is your parents --
 25 your parents have -- are married? They are still married,

18

1 correct?
 2 A. Yes.
 3 Q. Not a separate divided house?
 4 A. No.
 5 Q. What kind of activities did you and Kody enjoy
 6 as kids?
 7 A. Shooting, riding four-wheelers, motorcycles,
 8 working on stuff.
 9 Q. How would -- how would you describe Kody's
 10 personality?
 11 A. Adventurous, outgoing. Always willing to help
 12 people. Kind to family and friends, pets, you name it.
 13 Q. So you saw Kody interact with other people?
 14 A. Absolutely.
 15 Q. Was he a loner? Did he seem to always enjoy
 16 people's company?
 17 A. Always enjoyed people's company.
 18 Q. And you said that he cared for others?
 19 A. Absolutely.
 20 Q. Can you give me an example of how he cared for
 21 others?
 22 A. It didn't matter, it could be a person walking
 23 down the street, a total stranger, he could start up a
 24 conversation, have a good time.
 25 Q. Did you and Kody work together?

19

1 A. Yes.
 2 Q. I've heard this -- I think it was your uncle
 3 testifying about being an EMT?
 4 A. Yes.
 5 Q. Tell me about that?
 6 A. I guess he -- he was always in the class.
 7 He -- he wasn't old enough to actually work on the
 8 ambulance, but he was always there. He would always help
 9 any time he could, on mock casualties, fake a casualty to
 10 test the new people. Just always there with us.
 11 Q. So you did it also?
 12 A. Um-hmm.
 13 Q. What about auto mechanics? Is that something
 14 that you enjoyed doing together?
 15 A. Um-hmm, absolutely.
 16 Q. Explain to me your involvement -- there is a
 17 Bonneville?
 18 A. Salt Flats.
 19 Q. Salt Flats. Talk to me about that?
 20 A. The -- every time -- every year they would
 21 come out for the past, I would say, six years or so. And
 22 we would always have people come to our shop and ask for
 23 fabricating some kind of frame, machinery.
 24 And we would get to know -- knew more -- more
 25 big names, people. Ford, we actually -- Ford racing team,

20

1 we hooked up with one of the owners, I would say, and
2 helped them with two of their dirt bikes, fixing them. He
3 got to ride in -- the man who designed and engineered the
4 Ford GT, in his personal Ford GT.

5 Q. Kody was a good mechanic?

6 A. Um-hmm.

7 Q. Did he help people?

8 A. Absolutely, helping.

9 Q. Did Kody have plans for after -- after high
10 school?

11 A. Move out of the parents' house. Military, I
12 think.

13 Q. And what steps was he taking towards the
14 military?

15 A. He was all set to go. He already went through
16 MEPS, the medical side of it, his evaluation. Had already
17 signed in, taken an oath. He had a ship-out date actually,
18 too.

19 Q. Was he excited about that?

20 A. Yes, absolutely.

21 Q. What branch?

22 A. Marines.

23 Q. Can you explain -- and you heard me ask this
24 question -- whether you believe that this senseless
25 tragedy, as inexplicable as it is, is unlike Kody, his

21

1 character, as you know Kody to be?

2 A. Yes. I could not imagine him doing it. Not
3 at all. It's nothing like him. None whatsoever.

4 Q. Did Kody have addiction problems? Was he
5 addicted to alcohol?

6 A. Adrenaline, that's about it.

7 Q. Not drugs?

8 A. Hm-mm.

9 Q. Pornography?

10 A. Absolutely not.

11 Q. So there is just no explanation that --

12 A. No.

13 MR. KUMP: That's all I have, Your Honor.

14 THE COURT: Thank you.

15 Cross-examination, Mr. Torvinen?

16 CROSS-EXAMINATION

17 BY MR. TORVINEN:

18 Q. Mr. Patten, as of the 3rd of March, 2011, you
19 lived in Wendover, Utah, right?

20 A. Yes.

21 Q. And if I recollect the facts correctly, it was
22 to your -- your house on the night of March 3, 2011, that
23 Mr. Patten and Ms. Fratto came. Is that not correct?

24 A. I don't recall.

25 Q. You don't have any memory of that?

22

1 A. Not off the top of my head, sorry.

2 Q. How about a white blazer?

3 A. No. No, I don't.

4 Q. Okay. Well, let me ask you this, you have
5 heard me ask the other witnesses, you are aware of some of
6 the circumstances?

7 A. Yes.

8 Q. Surrounding Micaela Costanzo's death, right?

9 A. Yes.

10 Q. Did you talk to your brother or see
11 him between the 3rd of March and the 6th or 7th of March?

12 A. Yes.

13 Q. Anything about his demeanor or anything that
14 gave you any reason to believe that there was anything
15 wrong?

16 A. He was a little quiet, unusual.

17 Q. That's it?

18 A. Yeah.

19 Q. Wasn't upset?

20 A. He was -- he was not normal. Less of the more
21 person that he usually -- usually is.

22 Q. And did you have any conversations with him
23 between the 3rd of March, 2011, and -- well, let me ask you
24 this. Regardless of living -- whether you lived in
25 Wendover, Utah, or Wendover, Nevada, the 3rd of March was a

23

1 Thursday, my recollection is?

2 A. Um-hmm.

3 Q. And by Saturday of that week, which would have
4 been the 5th, right, or the 6th?

5 A. (Nods head)

6 Q. That was basically the sole topic of --
7 Micaela's disappearance was about the sole topic of every
8 conversation in that town; is that correct?

9 A. Absolutely.

10 Q. It was nonstop, right?

11 A. Um-hmm.

12 Q. You had conversations with your brother about
13 her disappearance during that period of time?

14 A. Yes, I asked him if he knew where she was.

15 Q. Okay. And as you look back on that -- so he
16 indicated to you that he didn't know anything about it,
17 right?

18 A. Nope.

19 Q. Did he indicate to you that he had
20 participated in the search for her?

21 A. Yes.

22 Q. As you look back on that, knowing that Micaela
23 Costanzo was laying out in that grave that your brother dug
24 and he was talking to you about participating in the search
25 for her, does that cause you any -- have you ever thought

24

1 about that since then?
2 A. Yes.
3 Q. Cause you any problems?
4 A. Yes.
5 MR. TORVINEN: That's all I have, Judge.
6 THE COURT: Any further questions, Mr. Kump?
7 MR. KUMP: Nothing on that.
8 THE COURT: May the witness stand down?
9 MR. KUMP: Yes. Thank you, Your Honor.
10 THE COURT: Thank you, Mr. Patten.
11 Other witnesses?
12 MR. KUMP: Donna Patten, Your Honor.
13 THE COURT: Ma'am, please raise your right hand.
14 The clerk will administer your oath.
15 (WHEREUPON, the witness was sworn)
16 THE COURT: Please be seated here, ma'am.
17 State your name for the record and spell your
18 last name.
19 THE WITNESS: Donna Patten, P-a-t-t-e-n.
20 THE COURT: Mr. Kump.
21 DONNA PATTEN
22 called as a witness in said case, having been first
23 duly sworn, testified as follows:
24 DIRECT EXAMINATION
25 BY MR. KUMP:

25

1 Q. Mrs. Patten, what is the nature of your
2 relationship to Kody Patten?
3 A. I'm his mother.
4 MR. KUMP: Your Honor, my intent is to use Mrs.
5 Patten to introduce some exhibits. May I approach, Your
6 Honor?
7 THE COURT: Yes.
8 Q. Mrs. Patten, I'm showing you -- it's a binder,
9 but they are marked as Defense Exhibits A through N.
10 A. Okay.
11 Q. A copy has been provided to the defense. I
12 would like for you to look at these exhibits beginning with
13 Exhibit A. I'm going to return over here so I'll have a
14 copy also. I will go through these with you, if that's
15 okay, one at a time.
16 A. Yep.
17 Q. Mrs. Patten, if you could look at Exhibit A?
18 A. Okay.
19 Q. Can you describe what that is?
20 MR. OHLSON: May we have a moment, Your Honor?
21 THE COURT: Certainly.
22 MR. KUMP: Your Honor, my understanding is that
23 we have a stipulation for the exhibits A through N.
24 THE COURT: Very well.
25 MR. TORVINEN: For the record, Your Honor, I

26

1 looked at them before you opened the court today. They
2 would be admissible in any event.
3 THE COURT: All right. Upon stipulation of
4 counsel, Defense Exhibits A through N are admitted in
5 evidence.
6 (WHEREUPON, Defense Exhibits A through N were admitted
7 into evidence)
8 MR. KUMP: Thank you, Your Honor.
9 Q. Mrs. Patten, you've heard the testimony of
10 others that came before you today?
11 A. Yes.
12 Q. I understand Kody was always a very active
13 young man?
14 A. Yes.
15 Q. He was involved in the -- as an EMT?
16 A. Yes, he was.
17 Q. He wasn't actually an EMT, correct?
18 A. Correct.
19 Q. He got involved with that through your family?
20 A. Yes.
21 Q. Can you explain how that occurred? That was a
22 kind of a family activity, wasn't it?
23 A. Yes. My husband was in firefighting. And he
24 proceeded to get more certifications and EMT was one of
25 them. He got into that and I got into it. And then Nick

27

1 became old enough to certify and he got in it. Then Kody
2 was with us to certify, but he was -- just was never old
3 enough to.
4 Q. You've heard the testimony about Kody's
5 general character?
6 A. Yes.
7 Q. Tell me about his involvement in your family?
8 A. He was our family. He kept us busy. He was
9 everything.
10 Q. Mrs. Patten, how long have you and your
11 husband been married?
12 A. Forever. Twenty-two years.
13 Q. You have two children?
14 A. Yes.
15 Q. And would you say Kody was close -- how do I
16 say this -- he was close with you?
17 A. Yes.
18 Q. You took family vacations?
19 A. Yes.
20 Q. You had family pets?
21 A. Yes. Because of Kody.
22 Q. And explain that to me?
23 A. This damn dog. He had to have this dog in
24 this picture. I told him no and I told my husband no. And
25 then we got it, of course. And as of today that's all I

28

1 have left of him.
 2 Q. Did you -- as his mother, I'm sure that you
 3 had occasion to see how Kody interacted with other kids?
 4 A. Yes.
 5 Q. Can you describe that and explain that to the
 6 Court?
 7 A. I was at the school a lot for one reason or
 8 another, whether I was involved in something or helping
 9 Kody out with stuff. And he was just as regular as the
 10 rest of the kids there.
 11 Q. He liked being around other kids?
 12 A. Yes.
 13 Q. He had -- he had fun with other kids?
 14 A. Yes.
 15 Q. Did he care for other people?
 16 A. Yes. More than his own family even.
 17 Q. You agree that this -- this is a horrible
 18 inexplicable act that he has pled guilty to?
 19 A. Yes.
 20 Q. That he did?
 21 A. Yes.
 22 Q. Can you -- can you explain whether you believe
 23 that this inexplicable act is unlike Kody as you know him
 24 to be?
 25 A. It is very unlike him. Micaela was our

29

1 friend. We loved her. She was Kody's best friend. It
 2 makes no sense at all.
 3 MR. KUMP: That's all I have, Your Honor.
 4 THE COURT: Questions, Mr. Torvinen?
 5 CROSS-EXAMINATION
 6 BY MR. TORVINEN:
 7 Q. Mrs. Patten, you just made a statement that
 8 these pictures are all you have of Mr. Patten, your son
 9 Kody Patten. Did I hear you correctly?
 10 A. No, you didn't. I said the dog is all we have
 11 left to hold that reminds me of him.
 12 Q. But you have seen him on a regular basis since
 13 his incarceration?
 14 A. We do, yes.
 15 Q. That's not possible for Celia Costanzo, is it?
 16 A. It is not -- I'm sorry, can you -- I didn't
 17 hear that.
 18 Q. It's not possible for Celia Costanzo to see
 19 her daughter anymore, is it?
 20 A. No, it's not.
 21 Q. And your son is responsible for that, correct?
 22 A. Yes.
 23 Q. He pled guilty to killing her, didn't he?
 24 A. He pled guilty, yes. He took a plea.
 25 Q. Thank you.

30

1 MR. TORVINEN: That's all I have.
 2 THE COURT: Further questions, Mr. Kump?
 3 MR. KUMP: No, Your Honor.
 4 I would like to offer the pictures and have the
 5 Court look at the pictures.
 6 THE COURT: Very well. May the witness stand
 7 down?
 8 MR. KUMP: Yes, Your Honor.
 9 THE COURT: Thank you, Mrs. Patten.
 10 You may call your next witness.
 11 MR. KUMP: Your Honor, I call Kip Patten.
 12 THE COURT: Please raise your right hand. The
 13 clerk will administer your oath.
 14 (WHEREUPON, the witness was sworn)
 15 THE COURT: Please state your name for the
 16 record, spell your last name.
 17 THE WITNESS: Kip Patten, P-a-t-t-e-n.
 18 THE COURT: Thank you. Mr. Kump.
 19 KIP PATTEN
 20 called as a witness in said case, having been first
 21 duly sworn, testified as follows:
 22 DIRECT EXAMINATION
 23 BY MR. KUMP:
 24 Q. Mr. Patten, what is your relationship to Kody?
 25 A. I'm his father.

31

1 Q. And, sir, what is your -- where do you reside?
 2 A. West Wendover, Nevada.
 3 Q. How long have you lived there?
 4 A. Almost 16 years.
 5 Q. What is your occupation?
 6 A. Property manager.
 7 Q. You have heard testimony that you have also
 8 been -- you're a fireman?
 9 A. I was, yes.
 10 Q. How long did you do that?
 11 A. Twelve years, eleven years.
 12 Q. That was also in Wendover?
 13 A. Um-hmm.
 14 Q. Kody was -- Kody was raised in Wendover,
 15 correct?
 16 A. For most of his life, yeah.
 17 Q. He attended West Wendover High School?
 18 A. Yep.
 19 Q. What kind of activities did -- did you and
 20 your family and Kody, what kind of activities did you enjoy
 21 as he was growing up?
 22 A. Four-wheel driving out in the hills, shooting,
 23 riding four-wheelers, motorcycles, breaking four-wheelers
 24 and motorcycles. Yeah, firefighting, EMT, stuff like that.
 25 Q. Okay. Was Kody always -- he was an active

32

1 kid?

2 A. Yeah. Yes, he was.

3 Q. We've heard testimony about Kody's involvement

4 with -- as an auto mechanic, an EMT, that he was helping

5 others. How did Kody accept responsibility?

6 A. He accepted responsibility -- like taskwise?

7 Q. Yes.

8 A. Is that what you are asking?

9 Q. Yes.

10 A. Great. You could set him on a task and the

11 task would be done in no time. More often than not it was

12 because, at the end of that task, it involved either ride

13 the 4-wheeler, race the motorcycle, or drive the car,

14 something to that effect. So he got through the task that

15 much quicker.

16 Q. We've heard testimony about his -- he was

17 always helping other people. Is that something that he had

18 to be -- he had to be told to do, or is this something

19 because of his character he would just jump into it?

20 A. He would just jump into it. He would just

21 help people. Yeah, he just jumped into it.

22 Q. I asked your son this, but I will ask you

23 also. Kody had plans to go into the Marine Corps?

24 A. Yep.

25 Q. Was he excited about that?

33

1 A. Yeah, that's all he talked about.

2 Q. What steps had he taken toward that end?

3 A. Like Nick said, he went through his MEPS. He

4 was enrolled, had a ship-out date.

5 Q. He had already been accepted?

6 A. Yeah. He went to the swearing in and the

7 whole nine yards.

8 Q. We've heard about his involvement with the

9 Ford Motor team?

10 A. Yeah, the Ford Fusion team.

11 Q. Is that something that he worked towards or is

12 that something he volunteered?

13 A. He got hooked up with those guys through

14 motorcycles. The motorcycles broke down and he fixed them,

15 and it -- they just kept him on. And they kept asking us

16 if he could come back out, because he was just so willing

17 to help out.

18 The Ford Fusion team is all -- they got two

19 cars. They are hooked in with Ohio State because they were

20 doing fusion. And the -- I can't remember his name, but

21 the lead engineer with Ohio State on this project gave Kody

22 his card and told him to call him when he was ready for

23 college, call him up.

24 And that card didn't go far because he was --

25 he wanted to go in the Marines.

34

1 Q. And I asked your son also, but I'll ask you.

2 Did you see that Kody had any addictions? Drugs, alcohol,

3 pornography?

4 A. No. He dabbled in alcohol, but nothing that

5 would classify as an addiction at all. Typical teenager

6 stuff.

7 Q. Did Kody have problems with the law? I know

8 it's a small community there. Everybody knows everyone,

9 but --

10 A. I just -- I want to be real honest. I

11 wouldn't call it a problem. Had he interacted with the

12 law? Yeah. But not necessarily in a bad way, you know.

13 A lot of the times they would come over to the

14 house just to B.S. with him, or he would catch them on the

15 street. But legalwise, no, he was not --

16 Q. He wasn't in trouble all the time?

17 A. No. Skateboarding through the halls of a

18 casino, that's about it.

19 Q. Did you -- you witnessed Kody around other

20 people, other people in your family. Would you say that he

21 had compassion for other people?

22 A. He did, yeah. In fact, one of the teams he

23 worked with, the owner was -- the owner and the lead

24 mechanic were drivers of this car, and the guy, Kody real

25 took a liking to him until he was in the pits and overheard

35

1 the guy talking about how he was cheating on his wife. And

2 Kody just didn't want anything to do with him, you know.

3 But the guy had eaten at the buffet and got

4 ahold of some bad food and he was just in a bad way. And

5 even though Kody was upset with this guy and angry with

6 him, he still had asked me and Donna to go up there and

7 give him an IV and put some fluids in him because he was

8 real dehydrated.

9 And he just did things like that. He -- he

10 would set his feelings aside a lot of times and would --

11 just to help out.

12 Q. You've heard me ask this question, but I think

13 I need to ask you. This is -- you agree that this, what

14 Kody did was a horrible --

15 A. Yes.

16 Q. -- and inexplicable act?

17 A. Yes.

18 Q. Can you explain whether you believe this

19 senseless tragedy is unlike Kody as you know him to be?

20 A. It's -- I know what people are expecting me to

21 say. The fact of the matter is, you can sum Kody up by the

22 word "problem."

23 He would see a problem and he would run

24 towards it, where most people would run away from it. And

25 that was part of his problem is sometimes that problem --

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1 he just didn't need to be there. He didn't need to involve
2 himself.
3 But, nonetheless, he would always try and help
4 and he was always there.
5 But is this Kody? Is this act Kody? No. Not
6 the Kody I know.
7 MR. KUMP: That's all I have, Your Honor.
8 THE COURT: Cross-examination, Mr. Torvinen?
9 CROSS-EXAMINATION
10 BY MR. TORVINEN:
11 Q. Mr. Patten, you would agree that the
12 circumstances surrounding Micaela Costanzo's death were
13 heinous?
14 A. Yes.
15 Q. Would you agree with that?
16 A. Yes.
17 Q. In fact, you used that word at one time,
18 right?
19 A. Yes.
20 MR. TORVINEN: That's is all I have, Judge.
21 THE COURT: Any questions, Mr. Kump?
22 MR. KUMP: No, Your Honor.
23 THE COURT: May the witness stand down?
24 MR. KUMP: Yes, Your Honor.
25 THE COURT: Thank you, Mr. Patten.

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1 MR. KUMP: Your Honor, may I have just one
2 minute?
3 THE COURT: Certainly.
4 MR. KUMP: Your Honor, that's -- as far as
5 witnesses go, that would conclude our calling of witnesses
6 at this time.
7 THE COURT: All right. Mr. Torvinen?
8 MR. TORVINEN: Yes. So they are resting is what
9 I am perceiving?
10 MR. CHILSON: Do you want the allocution now, Your
11 Honor?
12 THE COURT: No. If that's all of the mitigating
13 evidence, we will go to Mr. Torvinen. Then I will allow
14 Mr. Patten time for allocution.
15 MR. CHILSON: That's our mitigating evidence.
16 MR. TORVINEN: Your Honor, before we proceed with
17 the presentation of evidence, I'm offering, which has been
18 accepted by stipulation, Exhibit 1, State's Exhibit 1, a
19 photograph; State's Exhibit 2, a photograph; State's
20 Exhibit 3, a set of certified school records, which I am
21 asking the Court admit as part of the evidence in this
22 case.
23 They have been previously marked and are in
24 possession of the clerk.
25 THE COURT: All right. State's Exhibits 1, 2 and

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1 3 are admitted by stipulation of counsel?
2 MR. CHILSON: That's right, Your Honor.
3 THE COURT: State's Exhibits 1, 2 and 3 are
4 admitted into evidence by stipulation.
5 (WHEREUPON, State's Exhibits 1, 2 and 3 were admitted
6 into evidence)
7 MR. TORVINEN: Then I would call Celia Costanzo.
8 THE COURT: Ms. Costanzo.
9 (WHEREUPON, the witness was sworn)
10 THE COURT: Please state your full name and spell
11 your last name, ma'am.
12 THE WITNESS: Celia Lynn Costanzo,
13 C-o-s-t-a-n-z-o.
14 THE COURT: Thank you. Mr. Torvinen.
15 CELIA LYNN COSTANZO
16 called as a witness in said case, having been first
17 duly sworn, testified as follows:
18 DIRECT EXAMINATION
19 BY MR. TORVINEN:
20 Q. Who was Micaela Costanzo?
21 A. She is my youngest daughter.
22 Q. When was she born?
23 A. May 3, 1991 -- '94. Sorry, D.J. is '91.
24 Q. That's okay. Where was she born?
25 A. Micaela was born in Elko, Nevada.

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1 Q. Where was she raised?
2 A. Out at the ranch with my mom and in Wendover
3 with us.
4 Q. Where was the ranch?
5 A. Outside of Montello, Nevada.
6 Q. Did Micaela like the ranching life?
7 A. She loved it.
8 Q. How often did she go there?
9 A. Any time she was not in school. The kids
10 spent their summers there. Any time there was a three-day
11 weekend from school, she would be out at the ranch. If it
12 was Christmas break, spring break, she would be out at the
13 ranch.
14 Q. Did she have any particular skills in terms
15 of -- had she developed skills in terms -- concerning
16 animals or anything like that?
17 A. Yes. She -- the whole ranching life, she
18 helped. Out at the hay farm, she was learning how to bale
19 hay. She would drive the tractors, she would change wheel
20 lines with her sister. That was their job.
21 She was always working the tree lines,
22 changing -- when the sprinklers would get stuck, she would
23 change those out. She helped my dad with the haying,
24 baling hay.
25 Q. Was this primarily a hay ranch or was your dad

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1 running cattle as well?
 2 A. He ran cattle as well. She would help with
 3 the branding and castrating, along with her sister.
 4 Every -- every time they did that, they would go out.
 5 Q. What grade was she in at the time of her
 6 death?
 7 A. At the time of her death she was a junior.
 8 Q. How was she doing in school? What kind of
 9 grades?
 10 A. She was a very good student. She was A's and
 11 a few B's. But mostly she did great.
 12 Q. Did she participate in sports?
 13 A. Yes, she did.
 14 Q. And in the 2010 and 2011 school year, what
 15 sports did she participate in?
 16 A. Her first sport was basketball. And she
 17 was -- at the time of her murder, she was in -- starting
 18 track, she had just started track.
 19 Q. Had she participated in track over the years?
 20 A. Yes, she had been in track since her freshman
 21 year.
 22 Q. What were her events in track?
 23 A. The 100, 200, four by one, four by two. She
 24 was one of the few students that took four events all the
 25 time.

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1 Q. What does four by one mean?
 2 A. It's a relay, the four by one, the four by
 3 two. She was the anchor and three other people would
 4 participate with her.
 5 Q. What's distinguishable from the four by two?
 6 A. It's the length.
 7 Q. Okay. Did she ever participate in any state
 8 level athletic contests? And if so, in what sport?
 9 A. She did in track. She managed to be good
 10 enough in track her freshman and sophomore years that she
 11 made it all the way to the state of Nevada competitions in
 12 her freshman and sophomore year. And she medaled as a
 13 freshman and sophomore in two to three of her events in
 14 each year.
 15 Q. Which events did she medal in?
 16 A. She medaled in her -- one of her relays and in
 17 her 100 and her 200.
 18 Q. So the relay team then got a medal?
 19 A. Yes, sir.
 20 Q. She individually and personally then got a
 21 medal in one of her running events?
 22 A. Both of her running events, 100 and 200.
 23 Q. Aside from sports did she participate in
 24 extracurricular activities at school?
 25 A. Yes. She had actually won a competition --

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1 she had actually gone to the People to People World
 2 Leadership Organization. She was nominated and was able to
 3 go to Washington, D.C. She won that honor in her sixth
 4 grade year and she went in her seventh grade year. She --
 5 for her leadership and qualities from a young age.
 6 And then she also was a tutor aide in school.
 7 Not a teacher's aide, a tutor. She tutored younger
 8 students of high school.
 9 Q. Was she engaging in that at the time of her
 10 death?
 11 A. Yes. The tutor aide, yes.
 12 Q. That was a voluntary service?
 13 A. It's -- yes. She -- they have a teacher's
 14 aide that she signs up as -- in school for a credit. And
 15 she -- it went one step further into tutor aide. She was
 16 tutoring students in the senior level so they could try and
 17 get their diplomas, as well as the ones in junior high and
 18 in her own grade level as well.
 19 Q. Do you know what her aspirations were?
 20 A. I do. She wanted to be an author and she
 21 wanted to work and take over the ranch with her sister and
 22 her cousins.
 23 Q. Had she started thinking about going to
 24 college?
 25 A. Yes, as a matter of fact, she did. She had

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1 already applied to several colleges.
 2 Q. Had it got far enough along for there to be
 3 acceptances?
 4 A. Yes, I -- there was a couple of letters that
 5 had come in before her death that were acceptance letters,
 6 but she said she wasn't interested in those as much as she
 7 was waiting for some others to come through.
 8 Q. Had she applied for scholarships?
 9 A. She was making a list. She was getting ready.
 10 She had her scholarship letters ready. She knew where she
 11 was going to apply. She was waiting for another couple of
 12 weeks before they would let her start.
 13 Q. Did Micaela have nieces or nephews?
 14 A. Yes.
 15 Q. And whose children were they -- are they?
 16 A. My oldest daughter Kristina.
 17 Q. Had -- did she spend any time with them? What
 18 was the relationship between her and her -- first, is it a
 19 niece and nephew?
 20 A. Two nephews and one niece.
 21 Q. Okay. What was her relationship with them?
 22 A. She was extremely close to them. She helped
 23 teach them to read and write. And Alexis -- she would
 24 tutor those kids as well, work with them in school.
 25 And Alexis especially on -- at the -- excuse

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1 me, I'm sorry.

2 THE COURT: That's okay.

3 A. At the time of Micaela's death, she had been
4 working with Alexis on her science fair project that was
5 for her school that would be able to go here to Elko
6 County.

7 And -- I'm very sorry.

8 Q. That's okay. Take your time.

9 A. And Alexis had won her science -- she had
10 taken first place in the science fair there in Wendover.
11 So she was coming here to the county level and Micaela and
12 her had been sitting down and working on how she was going
13 to assist Alexis for getting ready for the county since
14 Micaela has done that several times before.

15 Q. Was she ever able to finish that?

16 A. Micaela?

17 Q. Um-hmm.

18 A. No. She was murdered before that happened.
19 Before the county competition.

20 Q. Has Micaela's death -- can you describe how --
21 what the impact of Micaela's death on your life has been?

22 A. My life is completely and totally different.
23 My life -- Micaela's murder has destroyed me and my life.
24 It's not the same. I can't go grocery shopping. I
25 can't -- I can't spend time with my grandkids like I used

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1 to, because she was always so close to my grandchildren
2 that -- when I'm trying to be around there and they are
3 doing the little arguing that her and D.J. used to do, I
4 can't do it.

5 Or when Alexis does something that reminds me
6 so much of Micaela, like writing something or drawing
7 something, it -- it tears me apart.

8 I have a health issue now that has been
9 brought on by the stress of Micaela's murder that has no --
10 has no cure.

11 Q. What is this health issue?

12 A. It is the pulmonary hypertension where the
13 blood backs up into one of my -- on the right side of my
14 heart. And the doctor told me it was brought on by extreme
15 stress, and eventually -- that there is no real cure, there
16 is only things that they can do to make it better. And
17 that the only way to fix it sometimes is a heart and a lung
18 transplant together.

19 Q. Did you suffer these things before Micaela
20 died?

21 A. No.

22 Q. Any symptoms of it?

23 A. Not at all.

24 Q. Were you able to go back to work -- or are
25 you -- let me ask you this. Did you eventually go back to

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1 work?

2 A. I have gone back to work. It's not the same.

3 Q. When did you go back to work?

4 A. I went back to work as a dealer at about -- it
5 was a little while after Micaela was found. But I only
6 worked like a couple of hours -- couple days. They
7 would -- I was allowed to go in and work when I could and
8 how I could, and it was very small amounts.

9 Over the months I've been trying to go more
10 and it's still extremely hard.

11 I'm in a position now where I have a 40-hour
12 week, if I can -- if I can do it. But to work it, a couple
13 times I have to go work in an area where there is not a lot
14 of people, out of the public eye.

15 Q. Why is that?

16 A. Because I'm not known as Celia. Even the
17 people who come to work at the -- come to play and gamble
18 at the casino, when they see me, I'm -- "Oh, you're the
19 mother of the girl that was murdered." I'm not a person.

20 It's brought up all the time, every -- every
21 day people see me when I'm working and they bring it up and
22 then they want to talk about it. And it's too hard. I
23 can't. I break down and I can't stay at work.

24 Q. Does it cause you to relive all this again?

25 A. I relive this every single day of my life. I

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1 have nightmares about it every night since it's happened.
2 I don't sleep more than a couple hours a day, a couple
3 hours each time at night, without waking up with
4 nightmares.

5 Q. Now, it's been about -- by my calculation,
6 it's been about 17 months?

7 A. Yes, sir.

8 Q. Since this happened. Have things got any
9 better for you?

10 A. No, sir. Actually time has made things a lot
11 worse. I don't do anything by myself anymore. If my
12 children won't go with me or my best friend doesn't go for
13 me, I don't go.

14 I don't go to the store. I have my best
15 friend go for me or someone else go for me. I can't. It's
16 very -- when I am not at work, I'm at home and I -- and I'm
17 in bed because I just can't face it.

18 Q. What are you asking the judge to do in this
19 case in terms of a sentence?

20 MR. OHLSON: Your Honor, I'm going to object. I
21 don't think that is appropriate victim impact testimony,
22 recommendations as to sentencing.

23 MR. TORVINEN: Your Honor, I would invite the
24 Court and counsel's attention to the Nevada Supreme Court
25 case holding -- give me a second -- Randell versus State,

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1 109 Nev., from 1993.

2 At page 8 of that Opinion the Court said that the
3 victim may express an opinion regarding the defendant's
4 sentence in a noncapital case. That's my reading of the
5 case.

6 THE COURT: Counsel?

7 MR. CHILSON: Submit the matter, Your Honor.

8 THE COURT: Objection is overruled. You may
9 answer the question.

10 A. This man should never see the light of day or
11 be given a chance to see the light of day ever again.

12 He took my daughter's life. He didn't give
13 her a chance to finish high school or to get married or to
14 have children or to go to college or -- she does -- he had
15 no right to take her, so he has no right to have a life or
16 to have anything, because he took it all away from Micaela.

17 He should never be let free ever to do this to
18 anyone ever again.

19 MR. TORVINEN: Pass the witness, Judge.

20 THE COURT: This being victim impact testimony,
21 there is no right for cross-examination unless you have
22 some kind of a factual dispute with information that she
23 gave.

24 MR. CHILSON: I don't have any cross-examination.

25 THE COURT: Thank you, ma'am. You may step down.

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1 THE WITNESS: Thank you, sir.

2 MR. TORVINEN: Theodore Costanzo.

3 THE COURT: Please raise your right hand, sir,
4 and the clerk will administer your oath.

5 (WHEREUPON, the witness was sworn)

6 THE COURT: Please state your full name for the
7 record, spell your last name.

8 THE WITNESS: Theodore Anthony Costanzo, Jr. It's
9 C-o-s-t-a-n-z-o.

10 THE COURT: Thank you.

11 Mr. Torvinen.

12 THEODORE ANTHONY COSTANZO, JR.

13 called as a witness in said case, having been first
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. TORVINEN:

17 Q. Who was Micaela Costanzo?

18 A. That was my daughter, my youngest daughter.

19 Q. And can you describe the impact that her death
20 has had on you?

21 A. Oh, the loss of her life, I think about her a
22 lot, the future, what she used to tell me she wanted.

23 I'm very angry. That's what I am.

24 And you had no right, kid. You had no right
25 to do that. I got a question for you, though --

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1 Q. You can't --

2 A. Why don't you tell me why. Why did you harm
3 her?

4 Q. Mr. Costanzo, I don't think you can question
5 Mr. Patten. I know you want to, but you can't.

6 Let me ask you this. Get more specific. Are
7 there things that you used to do that you cannot do now?

8 A. Talk to her.

9 Q. Anything about your daily life?

10 A. Thoughts. Don't sleep much. I -- you think
11 too much, you know. You -- you start not to care about
12 things you did care about, you know. You want to get even.

13 Q. Did you have a recommendation for the Court in
14 terms of sentence, what sentence should be imposed?

15 A. Yeah. I want him to walk into that
16 penitentiary, and when he leaves it, he will be in a box.
17 That's what I want.

18 MR. TORVINEN: That's all I have, Judge.

19 THE COURT: Thank you. You may step down.

20 MR. TORVINEN: Delicia Costanzo.

21 THE COURT: Please raise your right hand and the
22 clerk will administer your oath.

23 (WHEREUPON, the witness was sworn)

24 THE COURT: Please state your full name and spell
25 your last name for the record.

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1 THE WITNESS: Delicia June Costanzo,
2 C-o-s-t-a-n-z-o.

3 DELICIA JUNE COSTANZO
4 called as a witness in said case, having been first
5 duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. TORVINEN:

8 Q. Who was Micaela?

9 A. My little sister.

10 Q. What was your age difference?

11 A. Three years apart.

12 Q. Were you friends?

13 A. She was my best friend. She was everything to
14 me.

15 Q. What were you doing when Micaela died?

16 A. I was here in Elko. I had to take a test and
17 I finished.

18 Q. Were you going to school?

19 A. Yes.

20 Q. At Great Basin College?

21 A. Yes.

22 Q. Were you able to continue in school?

23 A. I ended up continuing, yes, but it was very
24 difficult.

25 Q. Did there come a time when you stopped going

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1 to school?

2 A. When she went missing, the -- they gave me an
3 opportunity to drop my semester or take a break and just
4 continue, and I felt like I could. And then that's the
5 only -- I just took a break when she went missing so I
6 could focus on trying to find her.

7 Q. Did you -- did there come a time when you no
8 longer went to school?

9 A. Yes.

10 Q. When did that start?

11 A. I did one semester right after she died and
12 then it just became too much for me. So I took the
13 semester right after off.

14 Q. Have you been able to go back to school again?

15 A. I just got enrolled again. I'm taking one
16 class so that I can be emotionally okay. But yes, I have
17 gone back.

18 Q. Can you think of some specific changes that
19 have -- other than your school, that you can't do now that
20 you used to do? Is there anything you can think of?

21 A. I don't want to go anywhere. Me and her, like
22 I said, were best friends. We did everything. I can't go
23 out to my grandma's ranch anymore where we loved to go.
24 Just the pain.

25 I can't go with my friends. I can't even go

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1 around town except to go to work, because we did it all
2 together. We were just so close to each other.

3 Q. When you say go to your grandma's, you mean
4 the ranch?

5 A. Yeah.

6 Q. You can't go to the ranch anymore?

7 A. No. We -- there is -- honestly, there were
8 never times where -- we were not apart ever. We did
9 everything. We were companions. She was everything.

10 Q. It's been some 17 months since your sister
11 died?

12 A. Yeah.

13 Q. Have things got any better for you?

14 A. No. In the beginning, I kept telling myself
15 that everything would be okay. I needed to be strong for
16 my family, because they needed me to. But as time goes on,
17 the memories of her become stronger. Her laugh, how she
18 would look at us and just be, "Everything's okay."
19 (gesturing)

20 I want to go around, but just everything is so
21 intense. The high school, us being together, sports.
22 Talking about how happy she was going to be graduating and
23 going to college and she would tell me all about it.

24 I can't find joy anymore. It's so sad. It
25 makes me wonder whether anything is going to be okay

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1 anymore.

2 Q. Do you have a recommendation for the judge in
3 terms of the sentence?

4 A. Yes.

5 Q. What?

6 A. Nothing you or anyone can do can bring her
7 back or inflict the pain that you caused her.

8 The only thing I want is him to go to prison
9 and never ever get out. He took so much from her. Her
10 life. Why should he get one? Why should he be able to see
11 his parents, see his family, when I can never, never see
12 her, touch her, ever again?

13 He doesn't have that right. He gave it up
14 when he took her.

15 MR. TORVINEN: That is all I have, Judge.

16 THE COURT: Thank you. You may step down.

17 MR. TORVINEN: Kristina Lininger.

18 (WHEREUPON, the witness was sworn)

19 THE COURT: Please state your full name for the
20 record and spell your last name.

21 THE WITNESS: Kristina Marie Lininger,
22 L-i-n-i-n-g-e-r.

23 KRISTINA MARIE LININGER
24 called as a witness in said case, having been first
25 duly sworn, testified as follows:

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1 DIRECT EXAMINATION

2 BY MR. TORVINEN:

3 Q. Who was Micaela Costanzo?

4 A. She was my youngest sister.

5 Q. Can you describe to the Court the effect her
6 death has had on you?

7 A. It's very hard to -- it's indescribable. I've
8 changed every way that I have ever been. I'm almost 30
9 years -- 30 years old and I have completely changed.

10 I have my own children. I'm not the same way
11 with them.

12 Micaela was 12 years younger than me and I
13 participated in raising her. We always knew where she was
14 going, who she was with. We took every precaution, even
15 though we lived in a small town. And it didn't save her.

16 So now with my own children, I don't let them
17 go anywhere. It's hard for me to let them go even with my
18 other sister and my mom or my dad, because I'm not there.

19 Kody Patten was very close to my family and
20 even my oldest child. And so I question being a parent and
21 letting my children around the wrong people. So I don't
22 let them go anywhere without me.

23 I don't go anywhere by myself. I have to walk
24 about a half a mile from my employee parking to my place of
25 work. And I would rather sit there and wait for somebody

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1 else. Didn't matter how long. I won't even walk that
2 distance by myself because I'm scared now. I'm scared for
3 everything.

4 Q. It has been some 17 months now since your
5 sister's death. Have things got any better for you?

6 A. No, they have not. It's gotten a little bit
7 harder. We relive it every day with everything that
8 happens. I take my daughter to school and it's reliving
9 the fact that I'm not taking Micaela, that I am not picking
10 her up. I relive the fact of all of this every, every,
11 every day, over and over.

12 Q. Are you confronted with it at work?

13 A. I am. I will -- at least once a week there --
14 and we get flights from all over that will come in. And
15 somebody will ask me, who doesn't even know me, "How long
16 have you lived in Wendover?" When I respond with,
17 "Forever." Their next question is always, "Did you know
18 the girl that was murdered?"

19 And as a blackjack dealer, I can't just walk
20 away. And I have to tell them, "Yes, I did know her. She
21 was my sister." And then you see this horror in their
22 face. But then they just ask, you know, "I hope
23 everything's okay" or "How is everything going?"

24 So it's just brought up and you have no place
25 to run at that point. You just have to sit there.

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1 Q. Do you have a sentencing recommendation for
2 the judge?

3 A. I do. Your Honor, Mr. Patten took something
4 away that can never be replaced. No matter how much he
5 apologizes or feels bad, Micaela is still gone.

6 I don't get to tell my sister I love her, talk
7 to her on the phone, or hug her. So I don't feel that he
8 should be allowed things that he took from her, not only
9 us.

10 So I ask that you put him away for as long as
11 possible. Because if he is able to do this to a friend of
12 his, what would he do to a complete stranger.

13 So I ask that you put him away forever and
14 never let him out.

15 MR. TORVINEN: That's all I have, Judge.

16 THE COURT: Thank you. You may step down.

17 MR. TORVINEN: That's all we have, Judge.

18 THE COURT: All right. May I see the exhibits
19 from the State.

20 Let the record reflect that State's Exhibit
21 Number 3 was previously provided to the Court by
22 stipulation of the parties. The Court has reviewed that
23 exhibit before today.

24 Counsel, would you like to take a break or would
25 you like to continue?

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1 MR. CHILSON: We would like about 10 minutes, Your
2 Honor.

3 THE COURT: All right. We'll take a short
4 recess.

5 (WHEREUPON, a recess was taken)

6 THE COURT: Let the record reflect a continuation
7 of our case.

8 Mr. Patten is present. Both of his counsel are
9 present. Mr. Torvinen is present on behalf of the State.
10 Going back to Mr. Kump and Mr. Chilson, does Mr.
11 Patten wish to make allocution?

12 MR. CHILSON: I'm informed that he does, Your
13 Honor.

14 THE COURT: Very well. Mr. Patten, you may make
15 a statement to the Court.

16 THE DEFENDANT: I can't describe what happened.
17 I can't even begin to describe it. I can't explain it. I
18 can't justify it. I don't know why. I keep going over it
19 and over it in my head, and I don't understand it.
20 Nightmare. It just went by so fast. To say bad judgment
21 wasn't enough.

22 It's just -- everything that the Costanzo family
23 said is right. I can't give it back. Anything I say,
24 anything, I'm sorry, anything, it's not enough. I wish I
25 could ask for forgiveness, but I don't feel I deserve it.

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1 I wish I could face -- wish I could face her
2 family that I grew up with and tell them how sorry I am.
3 Because I can sit in this courtroom with my family and they
4 can testify how good I am. Micaela is not even here no
5 more.

6 Mickie was always good to me. She was anything a
7 friend could ask for. She helped me no matter what I did,
8 no matter what I said.

9 I'm sorry, Judge, I -- I have something written
10 down. Is it all right if I read it? Would that be okay?

11 THE COURT: Yes.

12 THE DEFENDANT: I wrote this for the Costanzo
13 family. It says, I'm sorry for the unimaginable pain this
14 has caused you and the rest of Micaela's friends and
15 family.

16 She was unmistakably the most positive person.
17 The only person that I could say that helped everyone, no
18 matter the circumstances. Micaela was someone that can
19 never be replaced inside all of us who knew her, who knew
20 of her.

21 The more I stand here, the more I see how -- how
22 horrible this is. How much anguish and unmistakable pain
23 it causes her family and it's caused everybody over a
24 senseless act that should never have happened. Her family
25 didn't deserve it. Mickie didn't deserve it.

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1 I'm so very sorry to the -- to the Costanzo
2 family. You guys are absolutely right. I can never repay
3 anything. I can never give her back.

4 I believe that not only my life, but nothing I
5 have, could repay this. To say that I'm sorry is not
6 enough.

7 If there was one thing that I -- that I do ask of
8 anyone to somehow some way that peace can be brought back
9 to you guys. That's the only thing I could ask for. I
10 hope that's the only thing.

11 Micaela once wrote in a poem that underneath all
12 the ugly in the world there is a glimmer of beauty. The
13 more I look back on it, the more I see Micaela was that
14 glimmer of beauty for people. She was a light for
15 everybody's life. No matter who you were, no matter what
16 you ever did, she was always there to help. Always. She
17 would never give up on anybody.

18 To the Court, I just want to state that my
19 co-defendant Toni Frattoni is not all to blame.

20 Why this happened, I have no idea. It's
21 senseless. I -- I have sat and tried to go over it and
22 over it. I have even talked to my family about it. There
23 is no reason. There is no why. There is no justification
24 for it.

25 Again, sorry is not enough, but I -- I apologize
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1 general deterrence. Sentence a defendant, send a message
2 so that others won't do what that defendant did.

3 As we all know, the proposition of general
4 deterrence has mostly been discredited. It goes way back
5 to the time that -- in England when all felonies were
6 capital offenses. And on execution days, the pickpockets
7 were working the crowd harder than just about anybody else.

8 Specific deterrence. Well, we're certainly going
9 to deter Mr. Patten from ever committing an offense such
10 as this again.

11 Specifically he will be deterred, no matter what
12 your sentence is.

13 Retribution. Your Honor can't make up for what
14 has happened. Whatever sentence you deliver, you can't fix
15 Ms. Costanzo's broken heart. I know you would like to. We
16 all would. But it can't be done. It's -- the pain of
17 losing a child doesn't go away.

18 Punishment. Certainly punishment is a goal to be
19 achieved at sentencing. And you must punish. Because if
20 you don't punish, our society says, punishment is left to
21 vigilantes. We take that role so that we may have a more
22 peaceful and civilized society.

23 Mr. Patten is going to be punished. He knows
24 that. Everybody in this courtroom knows that.

25 It's just the nature of the offense -- or of the
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1 for everything. I'm sorry.

2 That's all I have to say.

3 THE COURT: Thank you, Mr. Patten.

4 Mr. Ohlson, recommendations for sentencing?

5 MR. OHLSON: I was admitted to practice law in
6 this state in 1972. The first murder case I tried was in
7 January of 1976. And I have been at them for sometime.

8 I believe, Your Honor, that the witness impact
9 testimony that we've heard in this case, some of the other
10 evidence, is some of the most powerful that I have ever
11 seen and ever experienced. Some of the most emotionally
12 effective that I have ever seen and experienced.

13 And I respect that and I express my sorrow at
14 your loss.

15 THE COURT: Could you speak up a little bit, Mr.
16 Ohlson?

17 MR. OHLSON: Okay. But this is a court of law.
18 This is a place of higher repute. This is a place where
19 the finest expressions of our ideas of a civilized society
20 are found.

21 And as such, we must try, if we can, to rise
22 above the sentiment and the emotion.

23 Now, it's my understanding that there are four
24 goals to be achieved in sentencing.

25 The first, and not necessarily in this order, is
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1 punishment that we don't yet know.

2 Now, in addressing these goals, there are a
3 number of things to consider.

4 And I would suggest to Your Honor that one of the
5 first considerations is one of basic human nature. We
6 can't explain why this happened. We called it
7 inexplicable.

8 We have a defendant who is 19 years old. Most of
9 his life he has been a child. For most of his life he has
10 been a legal minor and a child.

11 If you look at Exhibit C among the defendant's
12 exhibits, how did that little boy in Exhibit C -- how did
13 that little, small boy in Exhibit C come to be in this
14 courtroom in the defendant's chair, having pled guilty to,
15 having been convicted of, the worst possible crime?

16 How does that happen?

17 Well, no one has been able to give a specific
18 explanation in this case. But there are factors in this
19 case that relate to sentencing that militate towards a
20 sentence of life in prison with the possibility of parole.

21 The first, and particularly looking at Exhibit C,
22 is the youth of the defendant.

23 You know, if we had a 50-year-old career criminal
24 with a history of violent crime, it would be easy to say,
25 "Well, of course. Of course. What would we expect. He'll
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1 never change."

2 Mr. Patten is 19 years old. If you sentence him
3 to life in prison with the possibility of parole, there
4 will be 20 years before he could seek parole. Not get
5 parole, seek parole.

6 And as a convicted murder, that won't be easy.
7 He'll have to demonstrate something. He will have to
8 demonstrate a redemption. He will have to demonstrate a
9 change. He will have to appear before a parole board and
10 make that parole board feel comfortable in letting him back
11 out on the street.

12 But even then, even then, if he is granted that
13 parole, he won't be released. Because you are going to
14 sentence him on the deadly weapon enhancement. And he
15 won't start serving that, because it must be consecutive,
16 until after he has completed the life sentence by virtue of
17 the parole.

18 There is every possibility that before Mr. Patten
19 sees the pavement as a free person it will be 40 years.

20 I won't be here. I'm 65 years old. I'll be
21 gone. I don't know how old Your Honor is, but odds are you
22 may not be here either. Many of us in the courtroom won't
23 be here at that time.

24 What will happen after 40 years? What will Mr.
25 Patten be like in 40 years?

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1 Well, if we foreclose the possibility of what he
2 may be in 40 years at this time, no one will ever know.

3 Your Honor, it is not the acts of the law
4 breakers, the defendants, that define a society. There
5 always have been people who have violated the law. There
6 always will be people who have violated the law.

7 What defines a society is what we do with them.
8 How we treat them. Whether our justice is measured,
9 compassionate, reasonable, rational, and most of all, in
10 accord with the expressions of almost every single major
11 religion in the world.

12 Every single major religion in the world offers
13 something to its practitioners that is most important.
14 Offers something to its practitioners that everyone needs.
15 Offers something to its practitioners that we all need.
16 Hope.

17 When Dante Alighieri wrote the Inferno, he
18 described the gates of hell. And inscribed above the gates
19 of hell were the words, "Abandon hope, all ye who enter
20 here."

21 If we want to say as a society that we don't
22 believe in redemption, that we don't believe in the
23 possibility of the future, that we don't care whether those
24 people who break the law ever redeem themselves, we don't
25 care if they ever make a positive contribution to the

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1 world, then what we need to do above the entrance to our
2 courtrooms is to inscribe these words, "Abandon hope, all
3 ye who enter here."

4 That's not what goes above a courtroom door. Of
5 course not. That's not our tradition.

6 It would be easy to say to Mr. Patten, This is a
7 terrible, horrible, inexplicable crime and I sentence you
8 to life in prison without the possibility of parole.

9 That would be the easier course, Your Honor.

10 That would be the course that would be the most
11 popular. That would be the course that probably would
12 appeal to most of the people that are in this courtroom
13 today and in general in this jurisdiction.

14 But the finest traditions of our courts do not
15 include the easy road. I ask you to uphold the principle
16 of hope, of redemption, of compassion.

17 I ask you to consider that if you give Mr. Patten
18 a sentence of life in prison with the possibility of parole
19 that what it means is that he is given an opportunity to
20 prove himself in prison. He is given a reason to improve
21 himself in prison and the chance at a parole.

22 That's all. Thank you.

23 THE COURT: Thank you, Mr. Ohlson.

24 Mr. Torvinen, on behalf of the State.

25 MR. TORVINEN: Thank you, Judge.

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1 Your Honor, we are at the state -- we are at the
2 stage of this criminal lawsuit where the issue of guilt or
3 innocence has been resolved by a plea of guilty to
4 first-degree murder with the use of a deadly weapon.

5 And the focus of the proceeding at this point is,
6 the State would suggest to the Court, to do justice.

7 Now that's a complex concept. But I would
8 suggest that the central reality of that concept is perhaps
9 an overly used maxim, that the punishment should fit the
10 crime.

11 And what the State is suggesting to the Court,
12 which is summed up in Exhibit Number 2, is that this is --
13 the homicide in this case is as horrific as I suspect the
14 Court has ever encountered.

15 And that's probably not a good enough word. I
16 can't come up with a word in the English language that
17 properly characterizes what happened in this case.

18 The central reality of this case is that on the
19 3rd of March, 2011, Mr. Kody Patten has told you when he
20 pled guilty, that he unlawfully, without mercy, took this
21 young woman's life in a brutal and violent way, and left
22 her in a shallow grave five miles west of West Wendover,
23 Nevada.

24 His youth does not overcome that central reality.
25 His family's, in essence, pleas for mercy does not overcome

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1 that central reality. Nothing about the mitigation he has
2 proffered to you overcomes that central reality.

3 In addition to taking Micaela's life in this
4 brutal and unlawful way without mercy, he has inflicted a
5 pain on her survivors that they will never escape. Ever.
6 The pain that he has inflicted on them, unless you have
7 been in that position, is probably beyond our
8 understanding.

9 The punishment should fit the crime, Judge. And
10 the only just result in this case is that you impose life
11 without the possibility of parole; that you impose 96 to
12 240 months for the deadly weapon.

13 It's the circumstances of the offense that
14 justify that result. That's what the State is asking for.
15 Thank you.

16 THE COURT: Court is going to take a recess while
17 I consider the matter.

18 (WHEREUPON, a recess was taken)

19 THE COURT: Mr. Patten will stand with his
20 counsel and face the Court.

21 Sentencing in any case, any given case, is an
22 individualized process. And a sentencing judge always
23 considers a number of factors in determining an appropriate
24 sentence in any given case.

25 In Nevada the legislature has devised a series of

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1 because it is within the discretion of the Court to impose
2 life with or without the possibility of parole, and because
3 at the time Mr. Patten murdered Micaela Costanzo he was not
4 a juvenile; he was an adult, 18 years of age.

5 The Miller case is instructive, though, in its
6 discussion of how courts consider the youth of the
7 defendant. And that is certainly an important
8 consideration in this case.

9 As far as mitigating factors in this case,
10 perhaps the most important mitigating factor for Mr. Patten
11 is his youth, without question, his youth.

12 There is no significant criminal history. We had
13 one minor alcohol incident as a juvenile. There was an
14 incident that I recall from presiding over the companion
15 case, Ms. Fratto's case, where there was an incident of
16 domestic violence at school. That was never prosecuted.

17 But it was never -- it was never rebutted. Apparently it
18 had been videotaped by surveillance cameras at the school.

19 So his criminal history is insignificant really.

20 And other mitigating factors, his interest in
21 becoming an EMT and joining the military, are certainly all
22 factors that the Court considers.

23 Equally important in the Court's consideration of
24 this matter are the facts and the circumstances of
25 Micaela's murder.

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1 factors that courts must examine when analyzing an
2 additional penalty for the use of a deadly weapon in a
3 crime.

4 Those factors are found in NRS 193.165. And they
5 are not only important, this Court believes, in determining
6 a penalty for the use of a deadly weapon in a crime, they
7 are also important and should be considered for the
8 underlying sentence; in this case, murder in the first
9 degree.

10 The factors enumerated in the statute are the
11 facts and circumstances of the crime, the criminal history
12 of the defendant, the impact of the crime on the victims,
13 mitigating factors, and other relevant factors.

14 In analyzing all of these factors, especially in
15 the light of this case before the Court today, the Court is
16 mindful that the Eighth Amendment to the Constitution of
17 the United States prohibits excessive punishment.

18 This Court is also mindful of a recent decision
19 by the United States Supreme Court in June of this year
20 called Miller versus Alabama, wherein the United States
21 Supreme Court held that it is cruel and unusual punishment
22 to sentence a juvenile to life without the possibility of
23 parole if that sentence is mandated by the law and the
24 perpetrator is a juvenile.

25 The Miller case does not apply to this case

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1 Every murder, regardless of where it occurs,
2 anywhere, at any time, in any place, is a horror that is
3 too hard to even think about.

4 Micaela's murder is the worst kind of murder.

5 The Court has thoroughly reviewed all of the
6 pleadings and materials that comprise the official record
7 in this case, and that includes the record from Toni
8 Fratto's file. She was a co-defendant in this case. Her
9 case has already been determined; her sentence has been
10 delivered by the Court.

11 The facts surrounding Micaela's murder, I want to
12 make clear on the record, come to the Court from both files
13 of the co-defendants.

14 Why was Micaela's murder one of the worst kind of
15 murders? Lots of reasons. The murder was planned. The
16 murder was premeditated. Micaela's murder was carried out
17 with gruesome, vicious, merciless violence.

18 The evidence from the medical examiner and Mr.
19 Patten's own statements and Ms. Fratto's own statements to
20 investigators establish that Micaela's death did not come
21 easy.

22 This is the worst kind of murder because after
23 these horrendous acts occurred, Mr. Patten and Ms. Fratto
24 then attempted to cover up the crime by burying Micaela in
25 a shallow grave, taking up the implements of their murder

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1 and trying to destroy them, burn them, or hide them.
2 Specifically what evidence is there in the record
3 to establish that this murder was planned, thought about?

4 It would seem that Mr. Patten assembled the
5 implements of this murder days before the murder occurred;
6 zip ties, lighter fluid, a shovel. It's all corroborated.

7 Micaela's body had zip ties, had a zip tie on her
8 arm.

9 There was a shovel present. A shovel was used to
10 strike Micaela and it was also used to dig the grave.

11 Lighter fluid. It would make sense that if
12 evidence was trying to be burned that the presence of
13 lighter fluid would assist that.

14 Those implements were taken to the murder scene.
15 Those implements were assembled and taken to the murder
16 scene in a vehicle that Mr. Patten borrowed on March the
17 3rd; a vehicle in which he drove to the Wendover High
18 School and picked Micaela up and took her away, never to be
19 seen again. Video surveillance at the school establishes
20 that.

21 The autopsy report from the medical examiner
22 establishes the brutality of the attack on Micaela.
23 Multiple stab and slash wounds to her face and neck; blunt
24 force trauma; asphyxial injury; excessive bruising on her
25 face; a black eye, suggesting that she was beaten before

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1 she was killed; cutting and stabbing wounds on her face;
2 evidence of blunt force trauma to her face; injury to her
3 lips, tearing on the inside of her lips; blunt force
4 injuries towards her shoulder blade and torso; sharp force
5 injuries to the front of her neck; a stab wound on the
6 right side of Micaela's neck that penetrated her neck
7 severing the jugular vein; two wounds on the top of her
8 head with characteristics of both cutting and bruising; the
9 backs and sides of her head.

10 The cutting and stabbing wounds according to the
11 medical examiner were consistent with the use of a knife.

12 Micaela's neck exhibited a scalloping pattern.
13 That pattern was consistent with the serrated edge of the
14 shovel that was brought to the scene.

15 Extremely difficult to recite that evidence.
16 Extremely difficult for all of us to hear that. That's
17 what it is.

18 And Mr. Patten and Ms. Fratto, after Micaela's
19 death, after she is left in that grave covered with dirt,
20 leave, go to a place, light evidence on fire in an attempt
21 to destroy it; hide evidence in another place; then
22 callously wash up and go and get something to drink from a
23 fast food place in Wendover.

24 That, all of that, all of this evidence makes
25 this one of the worst kinds of murder.

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1 Mr. Patten gave statements to the police before
2 and after the investigation. He made a statement to the
3 detectives that he indeed participated in the offense, and
4 initially that Ms. Fratto wasn't there.

5 But in that statement he tried to minimize his
6 involvement by stating it started out with a pushing match
7 that Micaela instigated, and that Mr. Patten simply
8 responded and it got out of hand.

9 He acknowledges in that statement inserting a
10 sharp pointed edge of some implement into Micaela's throat
11 until she stopped gurgling.

12 Mr. Patten also provided a written statement to
13 me, the sentencing judge in this case, as part of the
14 presentence report. That statement to me is vastly
15 different than the statement he gave to detectives.

16 In the statement to me, Mr. Patten stated that he
17 did not intend that Toni cut Micaela's throat. In your
18 statement to me, Mr. Patten, you say that Toni did it, with
19 you pushing her into it.

20 The evidence in this case that's of record in the
21 files that I reviewed does not support your statement.

22 You tried to minimize your involvement in
23 Micaela's murder. I don't believe you. You were the
24 primary perpetrator of the murder.

25 The impact of this awful crime on Micaela's

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1 family must be unimaginable.

2 Micaela's family suffers to this day, as we heard
3 in court today. They will continue to suffer all the days
4 of their lives.

5 Having to think about the loss of their loved
6 one, and the gruesome manner in which she died, is an
7 emotional agony that no family should ever have to endure.

8 And think about Micaela's emotional and physical
9 agony as the moment of her death neared.

10 Micaela's sweet voice will never be heard again,
11 her sweet smile will never be seen again, because of you,
12 Mr. Patten.

13 As I consider your youth and mental and emotional
14 development in this sentencing decision, let me say that
15 your acts of planning this murder, carrying out this murder
16 in such a vicious manner, and then attempting to cover up
17 this murder, are hardly the acts of an impulsive,
18 irrational, immature teenaged mind.

19 You always had the power and the ability, Mr.
20 Patten, to stop the wheels of this murder that you put into
21 motion. You chose not to.

22 Your blood runs cold, Mr. Patten.

23 For the murder of Micaela Costanzo I sentence you
24 to a term of life in the Nevada Department of Corrections.
25 There shall be no possibility of parole.

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1 I want it quiet in here.
2 For the deadly weapon enhancement, those shall be
3 a consecutive sentence of 96 to 240 months; restitution,
4 \$5,000 to the victims of Crime for reimbursement; the
5 administrative assessment fees, the DNA fees, other fees
6 that are required by statute.
7 Credit for time served.
8 That is the sentence of the Court.
9 MS. CAMMARANO: 535 days, Your Honor, for credit.
10 THE COURT: Anything further?
11 MR. TORVINEN: Will the Court draft the judgment,
12 or does the Court wish the State to?
13 THE COURT: Would you please provide me with the
14 judgment.
15 Is there anything further?
16 MR. CHILSON: No, Your Honor.
17 MR. TORVINEN: No.
18 THE COURT: Let justice be done.
19 (WHEREUPON, the hearing was concluded at 1:03 p.m.)
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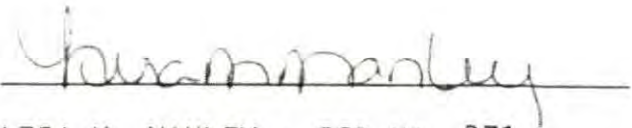
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1 STATE OF NEVADA)
2) SS.
3 COUNTY OF ELKO)
4 I, LISA M. MANLEY, Official Court Reporter of the Fourth
5 Judicial District Court, Dept. II, of the State of Nevada,
6 in and for the County of Elko, do hereby certify that I was
7 present in court during all the proceedings had in the
8 matter of the State of Nevada, plaintiff, versus
9 KODY CREE PATTEN, defendant, heard at Elko, Nevada, on
10 August 24, 2012, and took verbatim stenotype notes thereof;
11 and that the foregoing 77 pages contain a full, true and
12 correct transcription of my stenotype notes so taken, and a
13 full, true and correct copy of all proceedings had.
14
15
16

17 LISA M. MANLEY - CCR No. 271
18 OFFICIAL COURT REPORTER
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16 
17 LISA M. MANLEY - CCR No. 271
18 OFFICIAL COURT REPORTER
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