

1
2 IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

5 KODY CREE PATTEN,
Appellant,

6 vs.
7 THE STATE OF NEVADA,
Respondent.

CASE NO. 82715

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

Appeal From The Fourth Judicial District Court

10 Of The State of Nevada

11 In And For The County Of Elko

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8 Dated this 28 day of September, 2021.

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CASE NO. 11 CR 00300 4E

FILED

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IN THE JUSTICE COURT OF THE ELKO TOWNSHIP

ELKO CO DISTRICT COURT

IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

CLERK _____ DEPUTY _____

THE STATE OF NEVADA,

PRELIMINARY HEARING

Plaintiff,

vs.

KODY CREE PATTEN,
TONI COLLETTE FRATTO,

Defendant.

TRANSCRIPT OF PROCEEDINGS

Held: August 2 and 3, 2011

Before HONORABLE ALVIN R. KACIN

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REPORTED BY CATHERINE A. FISHER - CCR 279

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3 IN THE JUSTICE COURT OF THE ELKO TOWNSHIP
4 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

5

6 THE STATE OF NEVADA, PRELIMINARY HEARING
7 Plaintiff,

8 VS.

9 KODY CREE PATTEN,
10 TONI COLLETTE FRATTO,

11 Defendant.

12

13 TRANSCRIPT OF PROCEEDINGS

14 Held: August 2 and 3, 2011

15 Before HONORABLE ALVIN R. KACIN

16

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25 REPORTED BY CATHERINE A. FISHER - CCR 279

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25

1 BE IT REMEMBERED that the Preliminary Examination in
2 the above-entitled matter was held August 2 and 3, 2011,
3 before ALVIN R. KACIN, Judge of said Court. The Court
4 Reporter, CATHERINE A. FISHER, has been duly sworn.
5 THE COURT: We'll be on the record for Case
6 CR-2011-0300, State of Nevada is Plaintiff, Kody Cree
7 Patten and Toni Collette Fratto are the Defendants. The
8 State's represented by Mark Torvinen, District Attorney for
9 Elko County. We have Mr. Patten here. He's with his
10 attorneys, Mr. Ohlson and Mr. Kump. This is the date and
11 time set for preliminary hearing in this case.
12 While I was gone last week, apparently there were also
13 some motions filed by the State, but I think they've pretty
14 much been resolved now. Mr. Torvinen, is the State ready
15 for the preliminary hearing?
16 MR. TORVINEN: State is, Your Honor. And I would
17 advise the Court that having just received its order
18 permitting me to do so, I have filed a Third Amended
19 Complaint, and the original should be with the Court.
20 THE COURT: And the clerk is making copies in the
21 courtroom for you and Mr. Ohlson and Mr. Kump right now.
22 MR. TORVINEN: We already did. They've already been
23 distributed.
24 THE COURT: You're prepared as usual then,
25 Mr. Torvinen. We have more copies for you. Mr. Ohlson,

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1 are you ready for preliminary hearing?
2 MR. OHLSON: Your Honor, the Defendant is present.
3 Mr. Kump and I are present. We're ready to proceed. In
4 addition prior to this morning as you might suspect, we
5 received a copy of the Third Amended Complaint. We waive
6 its formal reading. We're prepared for the Defendant to be
7 arraigned on the Third Amended Complaint, if that's your
8 pleasure, and we're ready to proceed with the prelim.
9 THE COURT: All right. Would you like me to arraign
10 him again before we go forward?
11 MR. OHLSON: Whatever your pleasure is, Your Honor.
12 THE COURT: Okay.
13 MR. OHLSON: It's not necessary as far as we're
14 concerned.
15 THE COURT: Then I'm ready to go forward with the
16 hearing. He's been arraigned on a prior complaint. It's
17 my understanding that copies of this would have been
18 provided to the Defense.
19 MR. TORVINEN: It was attached as an exhibit to the
20 motion.
21 THE COURT: Proposed.
22 MR. TORVINEN: Yeah.
23 THE COURT: Which is your usual practice.
24 MR. TORVINEN: Right.
25 THE COURT: Okay. Is that correct, Mr. Ohlson?

5

1 MR. OHLSON: We have them.
2 THE COURT: We'll go forward. I see your witness list
3 up here. Did you want to name your witnesses?
4 MR. TORVINEN: I can, if I can read them. Do you want
5 me to read them?
6 THE COURT: You should do that.
7 MR. TORVINEN: It's a roll call.
8 THE COURT: It's a roll call. These witnesses are
9 going to be named now. If the witnesses are in the
10 courtroom, please pay attention to see if your name is
11 called. We'll probably have the rule of exclusion. I'll
12 explain what that is here in a moment. Mr. Torvinen.
13 MR. TORVINEN: Celia Costanzo, Tyler Peterson.
14 Perhaps we could have them say "here".
15 MS. COSTANZO: Here.
16 MR. PETERSON: Here.
17 MR. TORVINEN: Tiffany Rasmussen.
18 MS. RASMUSSEN: Here.
19 MR. TORVINEN: Travis Landon.
20 MR. LANDON: Here.
21 MR. TORVINEN: Jerome Reamer.
22 MR. REAMER: Here.
23 MR. TORVINEN: Wendi Murphy.
24 MS. MURPHY: Here.
25 MR. TORVINEN: Kandace Christiansen.

6

1 MS. CHRISTIANSEN: Here.
2 MR. TORVINEN: Jason Abrams.
3 MR. ABRAMS: Here.
4 MR. TORVINEN: Brad Hillaker.
5 MR. HILLAKER: Here.
6 MR. TORVINEN: Tiearra Murphy.
7 MS. MURPHY: Here.
8 MR. TORVINEN: Michael Moore.
9 MR. MOORE: Here.
10 MR. TORVINEN: Ron Supp.
11 MR. SUPP: Here.
12 MR. TORVINEN: Peter Turner.
13 MR. TURNER: Here.
14 MR. TORVINEN: Kevin McKinney.
15 MR. MCKINNEY: Here.
16 MR. TORVINEN: Donald Burnum.
17 MR. BURNUM: Here.
18 MR. TORVINEN: Dennis Journigan.
19 MR. JOURNIGAN: Here.
20 MR. TORVINEN: James Carpenter.
21 MR. CARPENTER: Here.
22 MR. TORVINEN: Dr. Clark is in town, but she won't be
23 here till this afternoon. Claude Fratto.
24 MR. FRATTO: Here.
25 MR. TORVINEN: Cassandra Fratto.

7

1 MS. FRATTO: Here.
2 MR. TORVINEN: Kip Patten.
3 MR. PATTEN: Here.
4 MR. TORVINEN: Kenya Truxal.
5 MS. TRUXAL: Here.
6 MR. TORVINEN: Renee -- the last three witnesses, Your
7 Honor, are the lab people from Reno, and they're obviously
8 not here.
9 THE COURT: All right. Any preliminary motions,
10 including the rule of exclusion? I should ask witnesses
11 for the Defense?
12 MR. OHLSON: We have no witnesses at this time, Your
13 Honor. We would ask that the rule be invoked.
14 THE COURT: All right. The rule of exclusion is
15 invoked, and what that means for the witnesses is you
16 cannot be in the courtroom while other witnesses are
17 testifying. You need to await your turn to testify out in
18 the lobby there. While this preliminary hearing is going
19 on, don't discuss the case or your testimony amongst
20 yourselves or with any other person. And this is a two day
21 preliminary hearing, so you need to keep that in mind even
22 after hours, once we take breaks, et cetera.
23 There is an exception to that. You can talk to the
24 Prosecutor, Mr. Torvinen, or the Defense Attorneys,
25 Messrs. Kump and Ohlson. If you do that, make sure it's

8

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1 outside the earshot of any other person. That's the rule
2 of exclusion. First witness for the State then.
3 MR. TORVINEN: First, Your Honor, I'll add another
4 witness and that was James Bonich. Is he here?
5 MR. BONICH: Here.
6 MR. TORVINEN: 'Cause I subpoenaed him. I'd ask that
7 he be allowed to go back to his office and be accessible by
8 cellular telephone.
9 THE COURT: You have his phone number, I assume.
10 MR. TORVINEN: Yes.
11 THE COURT: That's fine.
12 MR. TORVINEN: Also --
13 THE COURT: He was here for the rule of exclusion,
14 so --
15 MR. TORVINEN: I'd also ask that Kenya Truxal be
16 allowed to go back to her -- do you have that with you?
17 Would you deliver that to the clerk. That package. After
18 she delivers this package to the clerk.
19 THE COURT: Is this a proposed exhibit?
20 MR. TORVINEN: It may be, Judge.
21 THE COURT: All right. It will be marked next in
22 order?
23 MR. TORVINEN: Yes.
24 THE COURT: All right. The clerk will do that.
25 MR. TORVINEN: Now I'd ask that she be allowed to go

1 THE COURT: That will be fine. I'm sure you do.
2 MR. TORVINEN: Okay.
3 THE COURT: All right. Mr. Torvinen.
4 MR. TORVINEN: That's it. My first witness is Celia
5 Costanzo.
6 THE COURT: All right. We'll have her come forward.
7 The other witnesses can leave the courtroom at this time.
8 Please raise your right hand.
9 CELIA COSTANZO,
10 produced as a witness at the instance of the Plaintiff,
11 having been first duly sworn, was examined and testified as
12 follows:
13 THE COURT: Please have a seat. All right. We've had
14 Miss Costanzo sworn. I think she's maybe a little nervous.
15 She was shaking when she came up. She whispered something
16 to me, but I didn't even hear what it was. So I just
17 wanted to let the lawyers know about that. You just have
18 to make sure you answer the questions of the lawyers, okay.
19 Thank you, Miss Costanzo. Okay. Mr. Torvinen, go ahead.
20 DIRECT EXAMINATION BY MR. TORVINEN:
21 Q. State your full name and spell your last for the
22 record.
23 A. Celia Lynn Costanzo. C-c-s-t-a-n-z-o.
24 Q. I'm going to show you what's been marked as
25 Exhibit No. 2. Can you tell me who that is?

9

11

1 back to her office and remain accessible by telephone.
2 THE COURT: That's fine.
3 MR. TORVINEN: Dennis Journigan be able to do the
4 same. And James Carpenter be able to do the same. And
5 that's it for right now.
6 THE COURT: Okay. These are all law enforcement
7 witnesses.
8 MR. TORVINEN: Yes.
9 MR. OHLSON: Could we have a little amendment to the
10 rule of exclusion. Is Mr. Savage here? Will you stand up,
11 please. Mr. Savage, Bill Savage is the investigator for
12 the Defense. In addition to the witnesses' ability to talk
13 to Mr. Torvinen, Mr. Kump and myself, Mr. Savage is an
14 extension of ourselves, and therefore should be able to
15 talk to him as well.
16 MR. TORVINEN: Not a problem, Judge.
17 THE COURT: All right. Then that will be an amendment
18 to the rule of exclusion. In addition to talking to the
19 attorneys I named, the witnesses during the preliminary
20 hearing can also talk to Mr. Savage. You saw him stand up
21 in the courtroom. That's the investigator again for
22 Messrs. Kump and Ohlson. That's Mr. Patten's investigator.
23 Anything else?
24 MR. TORVINEN: I will also allow Detective McKinney to
25 go back to his office for right now, and I have his number.

10

1 A. That's my daughter, Micaela.
2 Q. Can you turn that upside down. What is her date
3 of birth?
4 A. May 3rd.
5 Q. What was her date of birth?
6 A. May 3, 1994.
7 Q. And in March of 2011 how old was she?
8 A. Sixteen.
9 Q. Where were you living as of March of 2011?
10 A. At 3079 Tibbets Blvd., Apartment 3 in West
11 Wendover, Nevada.
12 Q. Did Micaela attend school?
13 A. Yes, sir.
14 Q. What school did she attend?
15 A. West Wendover High School.
16 Q. And normally when did she go to school? When did
17 her day start?
18 A. I would take her to school and we'd get there
19 about 8:00 Mountain Standard time.
20 Q. How long have you lived in Wendover, Nevada?
21 A. I've lived in Wendover, Nevada for 26 years.
22 Q. What time zone does it normally operate under?
23 A. Mountain Standard time.
24 Q. In March of 2011 was Micaela participating in any
25 extracurricular activities at school?

12

RA 418

1 A. Yes, sir.
2 Q. And what was it?
3 A. Track.
4 Q. When she had track -- on the days she had track,
5 when did she normally get out of school?
6 A. Out of school or out of track?
7 Q. Out of track. I'm sorry. When did she get done
8 with the day when she had track practice?
9 A. Right around 5:15, approximately, Mountain time.
10 Q. How did she normally get home from practice?
11 A. Mondays and Tuesdays I would take her home.
12 Wednesdays, Thursdays and Fridays either her sister,
13 Christina, or Christina's boyfriend.
14 Q. Now, does the 3rd of March 2011 have some
15 significance for you?
16 A. Yes, sir.
17 Q. What is it?
18 A. That's the day that Micaela didn't make it home
19 and she wasn't seen again until --
20 Q. It's the day she went missing? You have to
21 answer.
22 A. Yes, sir. Sorry.
23 Q. That's okay. How did she get to school that day?
24 A. I took her to school that morning.
25 Q. At what time?

13

1 A. We got there at 8:00 in the morning, Mountain
2 time.
3 Q. Could you describe for me, if you recall, how she
4 was dressed?
5 A. She had blue jeans on. She had her Vance tennis
6 shoes that are plaid with -- pink plaid shoes. She had her
7 hoody jacket and she had two shirts on.
8 Q. And what kind of shirts were they, do you
9 remember?
10 A. One was -- she always layered her clothes. One
11 was like a little tank top that was underneath, and then
12 another shirt over the top. She had her hoody zipped up
13 when I took her to school.
14 Q. What color was the hoody as you refer to it?
15 A. It's gray in color.
16 Q. Now, did she also usually carry something with her
17 or things with her?
18 A. Yes.
19 Q. What did she carry commonly?
20 A. Commonly she always had her bag that was black
21 with white polka dots. And then in her bag she would have
22 her homework if she had had any homework, and her clothes
23 that she would -- extra clothes like track clothes if she
24 was taking any. She always carried her cell phone in her
25 hand. Her backpack always had stuff she needed for school

14

1 like calculator, pens, pencils.
2 Q. Did she carry keys?
3 A. Yes.
4 Q. And was there anything unusual about any of the
5 keys that you recall?
6 A. Her keys were always on a lanyard that had her
7 graduating class written on it. Her house key I had
8 specially made from what was given to us by the apartment
9 manager. It was wider and it had a Mickey Mouse on it.
10 Her sister, I gave one to her, and then another key like
11 that, but with somebody else on it to her sister. And she
12 had a charm, and then she'd have her car keys and stuff on
13 it.
14 Q. Did there come a time when someone from the
15 West Wendover Police Department exhibited some physical
16 items to you?
17 A. Yes, sir.
18 Q. And were any of them familiar to you?
19 A. Yes, sir.
20 Q. I'm going to show you what's been marked as
21 Exhibits 4 and 4 A. Do you recognize what's depicted
22 there?
23 A. Yes, sir, I do.
24 Q. And have you ever seen what's depicted in that
25 photograph?

15

1 A. Yes, I have.
2 Q. Where did you see it?
3 A. It was shown to me by Chief Supp and Mr. --
4 Detective Burnum.
5 Q. Where were you located then they showed it to you?
6 A. I was staying at the Nugget instead of being at my
7 home and they called me and I went downstairs and they
8 asked me to look at it.
9 Q. Is that familiar to you, that material?
10 A. Yes.
11 Q. Did you actually look at the physical object
12 that's depicted in that photograph?
13 A. Yes.
14 Q. Was there anything familiar about it?
15 A. Yes. It's Micaela's polka dotted bag that she
16 always carried.
17 Q. Was there anything about its character that you
18 found familiar about it? Not just the pattern, but the
19 character of it.
20 A. It's the type of material, she's the only one --
21 it was a coarse --
22 Q. In any event, you recognized it?
23 A. Yes.
24 Q. Do those photographs accurately depict what you
25 saw on the day they brought that to you?

16

RA 419

1 A. Yes, it does.
2 Q. I'm going to show you what's been marked as 6A.
3 Do you recognize any of the objects there?
4 A. Yes, sir, I do.
5 Q. What do you recognize?
6 A. The burned items is Micaela's house key and the
7 panda bear charm that was always on her, and the other item
8 in here is the copy of my house key.
9 Q. Okay. The other one is your house key?
10 A. My house key that I turned over so that they could
11 see it matched.
12 Q. Now, I'll retrieve those from you. Now, let's go
13 back to the 3rd of March 2011. How often during the day
14 would you normally speak to Micaela?
15 A. It would depend upon how busy I was at work. I
16 was a casino host and so my day would be filled with
17 talking on the telephone all day to customers, and
18 sometimes if she was at lunch we'd talk -- she would call
19 me.
20 Q. Let me ask you this: Did you normally speak to
21 her at the end of the day?
22 A. Always.
23 Q. Was it the same time every day?
24 A. Yes, sir, it was.
25 Q. And what time was it?

17

1 A. Right around 5:15 Mountain Standard time.
2 Q. Did you hear from her on the 3rd of March at the
3 time you expected to?
4 A. No, sir, I did not.
5 Q. Now, how was Micaela getting home that day?
6 A. She was supposed to walk home because Christina --
7 because I was at work, and Christina and her boyfriend were
8 in Las Vegas.
9 Q. Now, did you hear from her that day at the normal
10 time?
11 A. Not at the normal time, no, sir.
12 Q. What did you do when you didn't get the call?
13 A. I started calling her cell phone. I started
14 texting her because I was at work and I was still very
15 busy. I was getting very worried, and when she still
16 didn't, I left work early.
17 Q. And where did you go?
18 A. I went to my apartment to see if she was there,
19 and there was -- she was not there.
20 Q. Before I go any further, what was Micaela's custom
21 or habit with respect to her -- when we talk about phone,
22 we're talking about a cellular phone?
23 A. Cellular phone.
24 Q. What was her custom or habit relative to answering
25 her phone?

18

1 A. Oh, she always answered her phone to me or her
2 sisters. She -- right away. And like if she was running
3 even a little bit late into the locker room, she would even
4 text me or call me and tell me that she was getting behind,
5 you know, she was running behind.
6 Q. So she always answered her phone.
7 A. Always.
8 Q. So you got to the point where you were getting
9 worried and you left work. Do you know at approximately
10 what time you left work?
11 A. At approximately ten minutes to six.
12 Q. Where did you go?
13 A. I went to my apartment first.
14 Q. What was your purpose in going to the apartment?
15 A. To see if Micaela had made it home.
16 Q. And what did you find there, if anything?
17 A. Nothing. The door was still locked the way I
18 locked it, and there was no -- there was nothing. Her bag,
19 her clothes, her shoes, there was nothing there. The house
20 was exactly the way I left it when I went to work.
21 Q. So did you go somewhere from your home?
22 A. Yes. Then I went to the school. And I didn't see
23 anybody at the track, so I went into the gym and a Junior
24 Jazz game was going on, but I saw the door to the weight
25 room open, so I thought maybe she was in the weight room,

19

1 but there was nobody there. And there was -- and she
2 wasn't anywhere at the school.
3 Q. What did you do next?
4 A. As I left the gym, one of her friends that was in
5 the parking lot, and I had asked her if she could check
6 with her sister to see if practice got out late, and she
7 asked me why, and I told --
8 Q. I don't want to know what the conversation was.
9 A. Sorry.
10 Q. Did you check with her friends?
11 A. Yes. And then I went to her friend Jackie's house
12 'cause it's right by the school to see if maybe she went to
13 Jackie's house, and Jackie hadn't seen her. And I started
14 checking with all of her friends, and her friends also
15 started calling each other and checking to help me look for
16 her.
17 Q. And did you finally contact the police?
18 A. Yes, sir.
19 Q. Do you know what time of day that was?
20 A. I don't remember. I it's kind of -- the time
21 after that got to be a blur 'cause I was running around
22 trying to find her.
23 Q. Are you acquainted with a person by the name of
24 Kody Patten?
25 A. Yes, sir.

20

RA 420

1 Q. Is Kody Patten in the courtroom?
2 A. Yes, sir.
3 Q. Would you point to that person and describe what
4 that person is wearing.
5 A. He's right over there and he's in a red jump --
6 MR. KUMP: Stipulate to identification for purpose of
7 the preliminary hearing, Your Honor.
8 A. He's to my left.
9 THE COURT: Thank you, Mr. Kump.
10 A. And he's in a red jump suit.
11 Q. The identification is accepted by the Court?
12 THE COURT: The Court will accept the stipulation.
13 Assuming you're willing to stipulate, which I assume you
14 are.
15 Q. Yes.
16 THE COURT: The identification of the Defendant has
17 been stipulated to.
18 Q. How long have you known Mr. Patten?
19 A. For a long time.
20 Q. When did you -- what were the circumstances under
21 which you became acquainted with Mr. Patten?
22 A. He was our apartment manager's son, and our
23 apartment manager at that time lived at the apartment
24 complex where we lived.
25 Q. Is that a different place than you lived in March

21

1 of 2011?
2 A. No, sir.
3 Q. Same complex?
4 A. Same complex.
5 Q. And what's his father's name?
6 A. Kip Patten.
7 Q. Do you know when that occurred when they became
8 the manager of the apartments you were living in?
9 A. Approximately 2002, I believe.
10 Q. And how long did Kody and his parents live in the
11 same apartment complex as you after approximately 2002?
12 A. Until they moved to the Utah side.
13 Q. When did that occur?
14 A. I want to say a year or two before Micaela went
15 missing. About a year.
16 Q. Now, during the period of time that you lived in
17 the same apartment complex with Mr. Patten and his parents,
18 did Micaela and Kody have contact?
19 A. Yes, sir.
20 Q. How often?
21 A. Once a week easily.
22 Q. Did Mr. Patten -- I'm talking about Kody -- spend
23 time in your home?
24 A. Yes, sir.
25 Q. Did Micaela spend time with Kody -- with

22

1 Mr. Patten and his parents?
2 A. Yes, sir.
3 Q. And did that change at some point?
4 A. Yes, sir.
5 Q. Can you tell me approximately when that occurred?
6 A. Approximately when they moved to the Utah side.
7 Q. So you're saying between one and two years ago?
8 A. Yes, sir.
9 Q. Indulgence, Judge.
10 THE COURT: You may.
11 MR. TORVINEN: Pass the witness, Judge.
12 THE COURT: Cross examination.
13 CROSS EXAMINATION BY MR. KUMP:
14 Q. Thank you, Your Honor. Mrs. Costanzo, what time
15 was it approximately you arrived at the school?
16 A. It was approximately six p.m. Mountain Standard
17 time.
18 Q. When you arrived at the school, you've testified
19 that there was some sort of a game that was --
20 A. Junior Jazz basketball game for the little kids.
21 Q. The little kids. Where did you park at the
22 school, do you recall?
23 A. In the back.
24 Q. Can you -- do you recall if there were other cars?
25 A. There was lots of other cars in the back 'cause it

23

1 was -- the Junior Jazz game was going on.
2 Q. Is that where you would park if you were going to
3 walk into the gym area?
4 A. Yes, sir.
5 Q. Okay. And so you parked and you walked into the
6 gym, correct?
7 A. Yes, sir.
8 Q. And did you see people at that time that you knew?
9 Did you speak with people?
10 A. No, sir.
11 Q. Okay.
12 A. The jazz -- the kids were playing basketball.
13 They were in the middle of a game.
14 Q. I guess when you walked in, did you -- you didn't
15 walk into the stands then.
16 A. The stands -- no.
17 Q. You were looking for your daughter.
18 A. Yes.
19 Q. Okay. I'm just trying to break down who you might
20 have seen at that time.
21 A. I saw parents and little children.
22 Q. You walked through the gymnasium, though, and you
23 went to the weight room, is that correct?
24 A. That's correct. It's -- the door I go through has
25 a -- it goes into the -- you go into the door. The girls

24

RA 421

1 locker room is kind of to the front of you and to the left,
2 and the doors that go into the gym are to the right. You
3 go through those doors into the gym, and you're at the back
4 of the gym, and the weight room is in front of you to the
5 left, by the boys locker room doors.

6 Q. Okay. And why did you go to the weight room?

7 A. Because I saw the door open and I know that with
8 track they do weight training.

9 Q. So you thought that your daughter might still be
10 doing something connected with track.

11 A. It was -- it's highly unlikely, but because the
12 weight room door was open, I was assuming anything at that
13 point. I was just looking anywhere I could think of to
14 look for her.

15 Q. Now, did Micaela always have her phone with her?

16 A. Always.

17 Q. So even during track practice you would have
18 expected her to have her phone with her?

19 A. She would have had her phone with her in the
20 locker -- at the locker room.

21 Q. Not necessarily during the practice, though.

22 A. No.

23 Q. Okay. But it's your belief that track practice
24 ended at five, is that correct?

25 A. To the best of my knowledge. Possibly. I always

25

1 friends?

2 A. If she were to accept a ride from someone she
3 would always tell me or contact me before.

4 Q. Okay.

5 A. If she was going to get a ride from someone.

6 Q. So if on March 3rd she was going to take a ride
7 with someone, you would have expected a text?

8 A. She would have contacted me if she was planning on
9 going home other than walking, yes.

10 Q. Okay. And so if she'd been walking home, it might
11 be that she would not have texted you? Is that fair to
12 say?

13 A. No, sir.

14 Q. I'm not trying to confuse you. I'm just trying
15 to -- I'm just asking the plan was for her to walk home.

16 A. Yes, sir.

17 Q. And so would it be fair to say that if she had
18 followed the plan and was walking home, you might not have
19 received a text?

20 A. No. She would have texted me to tell me she was
21 on her way home.

22 Q. Okay. Where is your home in relationship to the
23 school?

24 A. I'm not very good with directions. I don't know
25 how to explain that to you. I apologize.

27

1 knew what time she would call me to come get her.

2 Q. It was your practice that she would call you? You
3 didn't show up to pick her up at a specific time.

4 A. That's correct. Track had just got started. It
5 was only about a week into it, so I knew that practice
6 would get over because of the past right around the same
7 time. So I would be pretty much ready to leave to go get
8 her on Mondays and Tuesdays about that time. But like I
9 said, on Wednesdays, Thursdays, Fridays, my daughter
10 Christina or her boyfriend would pick her up because I was
11 at work and I don't get off work until six.

12 Q. I see.

13 A. But she, Christina and her boyfriend were in
14 Las Vegas, so Micaela had to walk home. So with the fact
15 that she has to walk home and she's not picked up, it's our
16 practice regardless of what sport that she calls me when
17 she's changed. I mean, she -- even when she was getting
18 picked up by Christina she'd call me or text me.

19 Q. Okay. But you hadn't really established a common
20 practice due to the fact that track had only been a week
21 in, would that be fair to say?

22 A. Well, she just came out of basketball. It's home
23 and practice for every sport from the time she started
24 sports. Not just this year, but every year.

25 Q. Was it uncommon for Micaela to accept rides from

26

1 Q. Let me ask another question. How far is your home
2 from the school?

3 A. You're going to -- I'm a girl. Sorry. I don't
4 know how to explain it. It's --

5 Q. Well --

6 A. I don't -- I don't know how to explain. It's not
7 that far. It's -- you can walk it.

8 Q. How long would it take you to walk from home to
9 school?

10 A. Me? Me, being my age, 15 minutes.

11 Q. Okay.

12 A. Maybe. Approximately.

13 Q. Okay. But a short walk.

14 A. It's short.

15 Q. Okay.

16 A. Sorry.

17 Q. And is it a walk that Micaela had done in the
18 past?

19 A. Oh, yeah. She had done it on Wednesday.

20 Q. Okay.

21 A. I mean, Wednesday when I was at work, she called
22 me when she was -- when she was going home. When she was
23 walking home. She called me when -- she called me when she
24 got home on Wednesday. I mean, it's the same thing, the
25 same pattern for the next day.

28

RA 422

1 Q. Now, Micaela had a boyfriend, didn't she?
2 A. Javier Trujillo.
3 Q. Did he have a car?
4 A. He had a car, yes. He was at work.
5 Q. And on Thursday, you knew — on March 3rd you knew
6 he was at work?
7 A. Yes, sir.
8 Q. How did you know he was at work?
9 A. Because he's one of the ones that I went to go see
10 if he had seen her.
11 Q. I see.
12 A. And I found him at work. He had to be at work at
13 four p.m. Mountain time, and his supervisor even told me he
14 was at work at four 'cause I had to get permission to speak
15 to him from his supervisor.
16 Q. Had Micaela -- has she ever gone some place and
17 not contacted you? She was 16 years old, correct?
18 A. Yes, sir.
19 Q. Had it ever happened where Micaela had gone to a
20 friend's house or been some place and not contacted you?
21 A. One time and only one time. And that was a long
22 time ago. She kind of got mad at me and she went to her
23 friend's Candy and Mandy Rollins' house, but she didn't
24 contact me. She contacted her sister Christina. She would
25 always tell somebody where she was going. Even if it

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1 wasn't me, she would tell her sister. So even though she
2 didn't tell me, she contacted her sister.
3 Q. And when you say a long time ago, are we
4 talking more than a year?
5 A. Yes. More than a year, yeah.
6 Q. Five years?
7 A. Not five years.
8 Q. Okay.
9 A. I don't recall. I know my daughter Christina
10 would know. I would say maybe two years.
11 Q. Was she in high school when that happened?
12 A. Yes.
13 Q. Okay. You're a casino host. Which casino are
14 you —
15 A. I was a casino host at the time Micaela was
16 missing. I'm now a blackjack dealer.
17 Q. Which casino — in March of 2011 which casino were
18 you working at?
19 A. The Wendover Nugget.
20 Q. And you said you left work you believe at about
21 ten minutes to six?
22 A. Yes, sir.
23 Q. Is that your common practice?
24 A. No, sir.
25 Q. What is your common practice?

30

1 A. I wouldn't leave until usually five minutes after
2 six. My scheduled shift would not end until six p.m. on
3 the weekday.
4 Q. Okay.
5 A. And sometimes I'd be a few minutes late, depending
6 upon customer calls.
7 MR. KUMP: That's all I have, Your Honor.
8 THE COURT: Redirect.
9 REDIRECT EXAMINATION BY MR. TORVINEN:
10 Q. I'm going to show you what's been marked as
11 Exhibit 77. Do you recognize what's depicted there?
12 A. Yes. That's the high school from an aerial view.
13 Q. Now, if you'd turn -- is it an accurate reflection
14 of the school?
15 A. Yes, sir.
16 Q. Would you turn it to us. If I was leaving that
17 school and taking the most direct route to where you lived
18 on the 3rd of March 2011, which would be the most likely
19 door I would exit to go to your house?
20 A. She would come out at the back right in this area,
21 and she'd come down by the garbage cans and across and then
22 she would -- that's one of the reasons I checked with
23 Jackie to see if she went to Jackie's house 'cause her
24 friend's house is over here in the housing complex.
25 Q. Where is your house? Which direction is your

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1 house?
2 A. I'm sorry.
3 Q. Which direction is your house?
4 A. It's kind of over here. I'm sorry. I'm not
5 really good with that stuff.
6 Q. On Tibbets?
7 A. On Tibbets Blvd., yes, 'cause the road kind of
8 curves around. After the school it curves around, goes
9 south, and then curves west again.
10 Q. Tibbets goes by the school, doesn't it?
11 A. Yes.
12 MR. TORVINEN: Miss Clerk, could you put that back.
13 That's all I have, Judge.
14 THE COURT: Recross.
15 MR. KUMP: Nothing on that, Your Honor.
16 THE COURT: May Miss Costanzo be excused?
17 MR. TORVINEN: Your Honor, Counsel has indicated a
18 willingness to waive the rule of exclusion as to this
19 witness.
20 THE COURT: Correct?
21 MR. OHLSON: Yes, Your Honor.
22 THE COURT: Okay. Is she excused, though?
23 MR. TORVINEN: No.
24 THE COURT: She's not excused. You're not excused
25 from the proceeding. Don't discuss the case or your

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RA 423

1 testimony with anybody other than the lawyers and
2 Mr. Savage.
3 A. Yes, sir.
4 THE COURT: Defense investigator. But that portion of
5 the rule of exclusion that makes you go outside the
6 courtroom while it's going on, they waived that so you can
7 stay in the courtroom for the rest of it.
8 A. Thank you very much.
9 THE COURT: All right. You can have a seat in the
10 back. Thank you.
11 MR. TORVINEN: Tyler Peterson.
12 THE COURT: All right. Come on up Mr. Peterson,
13 please. Raise your right hand.
14 TYLER PETERSON,
15 produced as a witness at the instance of the Plaintiff,
16 having been first duly sworn, was examined and testified as
17 follows:
18 THE COURT: Have a seat, please.
19 MR. TORVINEN: We're going to need that brought
20 around. If you would just stick it up there.
21 THE COURT: Mr. Torvinen, go ahead.
22 DIRECT EXAMINATION BY MR. TORVINEN:
23 Q. State your full name and spell your last for the
24 record, sir.
25 A. Tyler Christian Peterson. P-e-t-e-r-s-o-n.

33

1 Q. And how are you employed, sir?
2 A. I'm employed with Elko County School District as a
3 P.E. teacher at West Wendover High School.
4 Q. How long have you been employed at -- it's the
5 junior/senior high school, right?
6 A. Yes.
7 Q. So how long have you been employed with the school
8 district?
9 A. Seven years.
10 Q. Now, you said you're a P.E. teacher, so obviously
11 your duties extend to athletics.
12 A. Yes.
13 Q. Also I'd like to know how long -- since you lived
14 in Wendover, under what time zone have you operated?
15 A. Mountain Standard time zone.
16 Q. Now, were you acquainted with a person by the name
17 of Micaela Costanzo?
18 A. Yes.
19 Q. I show you what's been marked as Exhibit 2. Do
20 you recognize the person depicted in that photograph?
21 A. Yes.
22 Q. Who is that?
23 A. Micaela Costanzo.
24 Q. Would you turn that upside down. Did she
25 participate in athletics?

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1 A. Yes.
2 Q. And was she participating in athletics in March of
3 2011?
4 A. Yes, she was.
5 Q. What sport?
6 A. Track and field.
7 Q. Do you know a Kody Patten?
8 A. Yes.
9 Q. Is Kody Patten, the person you know as Kody Patten
10 in the courtroom?
11 A. Yes.
12 Q. Would you point to that person and tell us what
13 he's wearing.
14 MR. KUMP: Your Honor, we'll stipulate to
15 identification for the purpose of the preliminary hearing.
16 MR. TORVINEN: Accept the stipulation, Judge.
17 THE COURT: The Court will accept it as well.
18 Q. Now, when is the last time you saw Micaela?
19 A. March 3, 2011.
20 Q. And were you and anyone else -- where was she and
21 where were you?
22 A. We were outside the back weight room doors, doing
23 our weights workouts for track and field.
24 Q. Would you approach -- can we have markers, Judge.
25 Would you take one of those markers and if the witness

35

1 could approach the easel and open that up for me.
2 THE COURT: What exhibit number is this?
3 Q. It's 11, Judge.
4 MR. OHLSON: Your Honor, it might be a good idea at
5 this time to inform the Court that Mr. Torvinen and I have
6 had conversations prior to this hearing and I've indicated
7 to him that I was going to be judicious in my objections,
8 not making technical objections for the purpose of the
9 preliminary hearing, not interpose objections simply
10 because they're available.
11 In that regard, for the purpose of us having a smooth
12 proceeding, we're prepared to stipulate into admission a
13 whole number of these exhibits. Particularly the
14 noncontroversial ones such as on the board. Now, I know
15 that this testimony is going into the record, about to go
16 on the record without the exhibit being in evidence, so if
17 Counsel wants to just start offering them, I think he will
18 find us receptive.
19 THE COURT: All right. Mr. Torvinen.
20 MR. TORVINEN: You want me to go through them?
21 MR. OHLSON: Either that, or when you put them up.
22 Whatever. There's no point our wasting the Court's
23 valuable time with useless objections.
24 MR. TORVINEN: I'd offer No. 11.
25 MR. OHLSON: No objection.

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RA 424

1 THE COURT: Then 11 is admitted.
 2 Q. Do you recognize what's depicted there?
 3 A. Yes.
 4 Q. And what do you recognize it as?
 5 A. That's the West Wendover Junior/Senior High School
 6 picture. A diagram of it.
 7 Q. I'd offer No. 76 as well, Judge.
 8 MR. KUMP: No objection.
 9 THE COURT: 76 is admitted.
 10 Q. Now, do you recognize what's depicted in the
 11 photograph?
 12 A. Yes.
 13 Q. Is that a fair depiction of the school?
 14 A. Yes.
 15 Q. Now, would you -- where had you come from?
 16 A. We'd come from the track down below the school
 17 down by the football field and we'd come up to the weight
 18 room to continue our workouts in the weight room.
 19 Q. Now, if you look at 76 there, would you turn it
 20 around so we can see it. 76. Can you point to the area
 21 where the weight room doors are. I don't want you to mark
 22 it. Just hold it up and point to where the weight room
 23 doors are.
 24 A. The weight room doors are right there.
 25 Q. All right. So could you put that on its face up

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1 against the front there. Turn it over. Thank you. Was
 2 there anybody else with you?
 3 A. Yes.
 4 Q. And who was with you?
 5 A. Micaela and Tiffany Rasmussen.
 6 Q. Now, you've indicated -- now, did you see Kody
 7 Patten at that place and -- first let me ask you about what
 8 time was that, do you know, standing at the weight room
 9 doors?
 10 A. We were standing at the weight room doors about
 11 five p.m. Mountain Standard time.
 12 Q. Now, while you were back there with Micaela and
 13 Miss Rasmussen, did you see Kody Patten?
 14 A. Yes.
 15 Q. And under what circumstances did you see him?
 16 A. I saw him drive up in a white Trailblazer.
 17 Q. It's 8, 9 and 10, which I offer.
 18 MR. CHLSON: No objection.
 19 THE COURT: 8, 9 and 10 are admitted.
 20 Q. I'd just like you to look at those three
 21 photographs and tell me when you're finished.
 22 A. I'm finished.
 23 Q. And do you recognize what's in the photographs?
 24 A. Yes.
 25 Q. What is it?

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1 A. It's the white Chevy Trailblazer that Kody pulled
 2 up in.
 3 Q. Where did he park?
 4 A. He parked just --
 5 Q. Pick up the photograph there and turn it over.
 6 THE COURT: This is back to 76?
 7 Q. 76. Hold it up so the Judge and the lawyers can
 8 see it.
 9 A. He pulled up and parked right here.
 10 Q. Now, how many entrances are there to the school at
 11 that point behind there? First let's establish what's the
 12 front of the school and what's the rear of the school as
 13 such?
 14 A. This is the front of the school, and this is the
 15 rear of the school.
 16 Q. How many exits are there in the rear of the school
 17 there?
 18 A. There's one, two, three, four, five, six. Six.
 19 Q. Now, when Mr. Patten pulled up in this Trailblazer
 20 as you describe it, did you -- did he leave the vehicle at
 21 any time, did you see?
 22 A. Yes. He got out of the vehicle immediately after
 23 he pulled in and parked it.
 24 Q. And did you see him go anywhere?
 25 A. Yes. He was walking toward the school, and then I

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1 had turned back around to the girls to tell them that we
 2 needed to do some more lifting because they hadn't finished
 3 their ab workout, so we, all three of us, turned around and
 4 went back into the weight room, and when we walked back out
 5 he was no where to be seen.
 6 Q. So did you eventually part company from Micaela
 7 and Miss Rasmussen?
 8 A. Yes.
 9 Q. Where did that occur?
 10 A. Right here. Right at the back of the weight room
 11 doors.
 12 Q. So you told -- and where did you go?
 13 A. I went, got in my vehicle that was parked right
 14 here.
 15 Q. Wait a minute. When you saw him pull up, did you
 16 ever go in the school after that?
 17 A. Yes.
 18 Q. This is what I'm getting at. So you're all three
 19 in the back of the school.
 20 A. Uh-huh.
 21 Q. The Trailblazer comes up.
 22 A. Uh-huh.
 23 Q. Now --
 24 THE COURT: That's a yes?
 25 A. Yes.

40

RA 425

1 Q. Did you go into the school at that point?
2 A. Yes. I went back in the weight room.
3 Q. Did Micaela and Tiffany accompany you?
4 A. Yes.
5 Q. What happened when you got into the weight room?
6 A. We finished our ab workout and lifting workout,
7 and then we went to the front entrance of the weight room,
8 and Micaela and Tiffany went to the girls locker room, and
9 I went to the boys locker room and we separated from there.
10 Q. Put the picture down. Can you approach 11 and
11 tell me where the boys and girls locker room are.
12 A. Yes. The boys locker room is right here, and the
13 girls locker room is over here.
14 Q. And so you parted company from them.
15 A. Yes.
16 Q. Inside the school.
17 A. Yes.
18 Q. And where did you go?
19 A. I went -- do you want me to show you?
20 Q. Yes.
21 A. Okay. I went and did my walk through through the
22 boys locker room, and then I come into my teaching office
23 which is right here, picked up my bags, and then I left out
24 through the back doors of the school.
25 Q. Do you know what time you left?

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1 A. Yes.
2 Q. And what time did you leave?
3 A. About 5:15 p.m.
4 Q. And when you left, did you notice whether or not
5 the Trailblazer was still anywhere -- could you still see
6 it?
7 A. Yes.
8 Q. And where was it located?
9 A. It was still parked in the back of the school by
10 the fenced area right here.
11 Q. What county and state is the school in?
12 A. Elko County, and Nevada.
13 MR. TORVINEN: Pass the witness, Judge.
14 THE COURT: Cross examination.
15 CROSS EXAMINATION BY MR. KUMP:
16 Q. Mr. Peterson, do you still have Exhibit No. 76?
17 You just mentioned a fenced area.
18 A. Yes.
19 Q. Can you show me where that fenced area is?
20 A. It runs right along here. Along the back of the
21 school and then there's a gated area that you can drive
22 down to the football, track, baseball field and softball
23 fields.
24 Q. You were standing inside the fenced area?
25 A. No. I was standing right here, the back of the

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1 weight room doors.
2 Q. So you had to come through the fence from the
3 track?
4 A. Yeah, earlier.
5 Q. Earlier?
6 A. Yeah.
7 Q. You said you were standing there at about 5:00?
8 A. Yes.
9 Q. When you saw Kody drive up.
10 A. Yes.
11 Q. And when Kody drove up, he was inside the fenced
12 area?
13 A. No. He was outside the fenced area. He pulled
14 the vehicle in right here and started walking toward the
15 school.
16 Q. I guess where -- the fence is between the school
17 and the track.
18 A. Yes.
19 Q. Okay. And does the fence enclose the school? Is
20 it designed so that to keep people out after hours?
21 A. It's designed to keep -- to keep four wheelers and
22 motorcycles from driving around the football field,
23 baseball field, softball field. It's a fence that goes
24 around.
25 Q. Around the fields.

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1 A. Around the fields.
2 Q. Not around the school.
3 A. Not around the school, no.
4 Q. I see on the -- I would say on the -- I'm going to
5 call it the west side there, is there a fenced area there
6 on one side of the school?
7 A. Right here?
8 Q. May I approach, Your Honor?
9 THE COURT: You may.
10 Q. Is this a fenced area also?
11 A. Yes.
12 Q. Okay. What is that area?
13 A. That's the welding shop, wood shop area. It's
14 also a place where the custodians keep what's called the
15 gator which is a vehicle that they use to go in and
16 transport and do things with.
17 Q. And approximately how tall is that fence?
18 A. Probably eight feet. Seven, eight feet.
19 Q. And does that fence have slats in it?
20 A. Yes.
21 Q. So it's -- you can't see what's inside of that
22 enclosed area, is that correct?
23 A. That's correct.
24 Q. And from where you were standing, you couldn't see
25 that area?

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1 A. No. I could see it. You can see there was -- the
2 gate was -- there's a gate right here that doesn't have any
3 slats in it and the gate was open.

4 Q. Is that an entrance to the welding shop area?

5 A. Yes.

6 Q. And can you also enter the school -- is there a
7 door there on that end that you can enter?

8 A. Yes, there's a door right here.

9 Q. And is there a classroom there?

10 A. Yes.

11 Q. You mentioned that there were six entrances in the
12 back side of the school?

13 A. Uh-huh.

14 Q. Are you aware of whether or not those entrances
15 are kept locked after school hours?

16 A. I am aware of two of them that are kept locked,
17 yes.

18 Q. Which ones are those?

19 A. This entrance right here, and then the entrance to
20 the girls locker room.

21 Q. You said this entrance right there. Can you say
22 what that is?

23 A. This is the entrance that goes to the high school
24 hallways. The hallways that come around -- it's the west
25 wing of the school.

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1 Q. What about the area that we just discussed, the
2 entrance into the welding shop area?

3 A. That is to be kept locked. I am not positive if
4 that was locked that evening.

5 Q. Do you know whether or not there was activity in
6 that area on March 3rd?

7 A. Activity. Explain.

8 Q. Did you see people in that -- in the welding area?

9 A. No.

10 Q. You didn't see anyone?

11 A. No, I did not. Sorry. No, I did not.

12 Q. You said that you -- at 5:00 you saw Kody pull up,
13 and then you and Micaela and Tiffany went into the weight
14 room to do a workout.

15 A. Yes.

16 Q. And you did an ab workout and a lifting workout.

17 A. Yes.

18 Q. And then you left at 5:15 through the back door.

19 A. Yes.

20 Q. How can you be sure about the time that you left?

21 A. Because I looked at the clock on our van and saw
22 that it had said 5:15 p.m. and that's how I knew that's
23 what time I left.

24 Q. And you just recall that. There's nothing that
25 you really connect that time to? It's just something that

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1 looking back you think that it was 5:15?

2 A. The only reason I know that I recall that time was
3 because I had -- it felt like we were getting out of track
4 practice a little earlier than what I wanted to be out of
5 practice because we usually try to go at least two hours in
6 track practice and it was a little bit sooner or earlier
7 than what we'd anticipated that night. But they'd finished
8 the workouts and felt like they got a good workout.

9 Q. Would it be fair to say these times are
10 approximate times?

11 A. Yes.

12 Q. And your ab workout and your lifting workout, how
13 long would you say that those take?

14 A. The ab workout takes about five minutes, and
15 lifting workout takes about 20 minutes. But they'd almost
16 finished their lifting workout.

17 Q. So you'd been in the weight room for some time
18 prior to walking out and seeing Kody?

19 A. Yes.

20 Q. And again, the 5:00 time that you claim that you
21 saw Kody, that's again, an approximate time?

22 A. Yes.

23 Q. It's based on your activities, your custom?

24 A. Yep. Yes.

25 MR. KUMP: That's all I have, Your Honor.

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1 THE COURT: Redirect.

2 REDIRECT EXAMINATION BY MR. TORVINEN:

3 Q. Mr. Peterson, what time does track practice start?

4 A. 4:00 p.m. Mountain Standard time.

5 Q. Now, Mr. Kump just asked you if you had previously
6 been in the weight room. So what time do you think you
7 left the field and came to the school?

8 A. Approximately 4:45.

9 Q. Did you go -- where did you go?

10 A. We went up to the weight room.

11 Q. Who was accompanying you when you came up at 4:45
12 and went to the weight room?

13 A. There was Tiffany, Micaela, some boys from the
14 track team as well. And there was about probably about ten
15 students. Ten athletes.

16 Q. You all went directly to the weight room?

17 A. Yes.

18 Q. And then at some point you and Tiffany and Micaela
19 came out and stood at the rear or next to the doors of the
20 weight room.

21 A. Yes.

22 Q. And why did you come out of the weight room?

23 A. To get a breath of fresh air. It was kind of
24 stuffy in the weight room.

25 Q. And it was then that you saw Mr. Patten drive up

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1 in the Blazer.
2 A. Yes.
3 MR. TORVINEN: Pass on that, Judge.
4 THE COURT: Recross.
5 RECROSS EXAMINATION BY MR. KUMP:
6 Q. How close were you to Mr. Patten's vehicle?
7 A. Not very close. I mean, if, you notice on the
8 diagram, we were standing here and he pulled up right in
9 here. So maybe a block. Half a block.
10 THE COURT: For the record, the witness is referring
11 to 76.
12 A. Yes, 76.
13 Q. And you didn't speak to Mr. Patten.
14 A. No.
15 Q. Which way was Mr. Patten walking?
16 A. He was walking toward the school this way. And
17 then I turned back around and went back in the weight room.
18 Q. And would it be fair to say he was walking toward
19 the welding shop area?
20 A. Yes.
21 Q. And you didn't notice anyone else with him.
22 A. No, I did not.
23 MR. KUMP: That's all I have, Your Honor.
24 THE COURT: May Mr. Peterson be excused?
25 MR. TORVINEN: No, Your Honor.

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1 THE COURT: Okay. Mr. Peterson, you're held subject
2 to recall. Please have a seat outside the courtroom and
3 remember the rule of exclusion. Thank you. Next witness,
4 please.
5 MR. TORVINEN: Tiffany Rasmussen.
6 THE COURT: Come on up and watch your step, please.
7 Raise your right hand.
8 TIFFANY RASMUSSEN,
9 produced as a witness at the instance of the Plaintiff,
10 having been first duly sworn, was examined and testified as
11 follows:
12 THE COURT: Please have a seat. Mr. Torvinen.
13 DIRECT EXAMINATION BY MR. TORVINEN:
14 Q. State your name and spell your last name.
15 A. Tiffany Rasmussen. R-a-s-m-u-s-s-e-n.
16 Q. And did you know a Micaela Costanzo?
17 A. Yes.
18 Q. Where did you know her from?
19 A. School and sports.
20 Q. And you mentioned sports. Did you participate in
21 any specific sport with her?
22 A. Basketball and track.
23 Q. Were you participating in a sport in March of
24 2011?
25 A. Yes. Track.

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1 Q. And do you know a person by the name of Kody
2 Patten?
3 A. Yes.
4 Q. Is Kody, the person you know by that name, in the
5 courtroom?
6 MR. KUMP: Your Honor, again we'll stipulate to
7 identification for purpose of the preliminary hearing.
8 THE COURT: The Court will accept the stipulation. Go
9 ahead, Mr. Torvinen.
10 Q. When was the last time you saw Micaela?
11 A. March 3rd.
12 Q. What year?
13 A. 2011.
14 Q. And where was she the last time you saw her?
15 A. In the high school locker room.
16 Q. Just leave that there. Okay. I'm going to show I
17 what's been marked as — we admitted these, did we not,
18 Judge?
19 THE COURT: 8, 9 and 10?
20 Q. Yes.
21 THE COURT: They've been admitted.
22 Q. I'd like you to look at those three photographs.
23 A. Okay.
24 Q. Do you recognize what's depicted there?
25 A. The white SUV.

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1 Q. Have you ever seen that?
2 A. Yes.
3 Q. And did you ever see it at or near the high school
4 in March of 2011?
5 A. Yes.
6 Q. And what day did you see it, do you remember?
7 A. March 3rd.
8 Q. And what time of day was it? Let me ask you this:
9 What had you been doing just before you saw it?
10 A. We were leaving track practice.
11 Q. There's a board in front of you. It's Exhibit 76.
12 Would you turn that over. Do you recognize what's depicted
13 there?
14 A. The high school.
15 Q. Would you hold it up so that the Judge and
16 Mr. Patten's lawyers can see it. Okay. Now just keep it
17 up there. I'm going to have you point to somewhere on
18 there. Where do you remember the truck being?
19 A. Right here.
20 Q. And where were you when you saw it?
21 A. We were walking up from the track right about
22 here, in this area.
23 Q. Where did you end up?
24 A. In the high school gym.
25 Q. Did you ever come back out of the building for any

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1 reason? That you recall?
2 A. When I came out I came back for a volleyball
3 practice down at the elementary school.
4 Q. Now, did you see -- did you personally -- when you
5 saw the vehicle, was it moving or parked?
6 A. It was parked.
7 Q. Did you see anybody, personally see anybody around
8 it?
9 A. No, I didn't.
10 Q. After school that day did you see Kody Patten?
11 A. Not after school.
12 Q. Indulgence, Judge.
13 THE COURT: You may.
14 Q. You can turn that back down. Now, you indicated
15 the last time you saw Micaela was in the locker room, and
16 was there anybody else in the locker room when you left?
17 A. No.
18 Q. She was by herself?
19 A. Yes.
20 Q. And do you remember what -- approximately what
21 time it was?
22 A. I don't.
23 Q. Do you remember testifying once before?
24 A. Yes.
25 Q. Do you remember testifying that it was about

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1 5:00 p.m. when you last saw her?
2 A. Yes.
3 Q. Now, did you and Micaela have some jewelry that
4 was similar?
5 A. Yes.
6 Q. Can you describe that for me.
7 A. It was a panda bear key chain with the two words
8 "Best" and "Buds" on it.
9 Q. Was both words on both sets or both of the pandas?
10 A. No. "Best" was on one and "Buds" was on the
11 other.
12 Q. Who had the "Best"?
13 A. I did.
14 Q. Still have it?
15 A. Yes.
16 Q. Indulgence, Judge. Your Honor, I'd offer No. 17.
17 MR. KUMP: No objection.
18 THE COURT: 17 is admitted.
19 Q. I'm going to show you what's been marked as
20 Exhibit 17. Do you recognize that?
21 A. Yes.
22 Q. What is it?
23 A. It's my half of the key chain.
24 Q. And I'm going to show you what's been marked as
25 Exhibit No. 6 A. Is there anything in there that you

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1 recognize?
2 A. The bear.
3 Q. And can you see the word on the bear if you look
4 at it closely?
5 A. It says "Buds".
6 Q. Did I offer 6 A, Judge?
7 THE COURT: You have not.
8 Q. I'm offering 6 A.
9 THE COURT: Objection to 6 A?
10 Q. Which is the plastic sack.
11 MR. KUMP: No objection.
12 THE COURT: 6 A is admitted.
13 Q. How did she -- do you know how Micaela normally
14 wore the charm? The bear?
15 A. She had it with her keys on a lanyard.
16 Q. Can you describe this lanyard for me.
17 A. It was a class of 2012 lanyard. It had those
18 words written all over it. And it was her house key, and
19 her car key and the bear key chain and a big 12 for the
20 class year.
21 Q. What color was it?
22 A. The lanyard?
23 Q. Yeah. Sorry.
24 A. I believe it was black.
25 Q. And do you know how long it was?

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1 A. I don't.
2 Q. Was it big enough to go over a person's neck?
3 A. Yes.
4 MR. TORVINEN: Pass the witness, Judge.
5 THE COURT: Cross examination.
6 CROSS EXAMINATION BY MR. KUMP:
7 Q. When you saw the SUV, you indicated it was parked
8 near the welding shop area, is that correct?
9 A. Yes.
10 Q. You didn't see anyone around that?
11 A. I did not.
12 Q. And your testimony is that you saw the vehicle as
13 you were walking from the track to the weight room?
14 A. Yes.
15 Q. Did you have a conversation with Mr. Peterson
16 about Kody Patten?
17 A. Yes.
18 Q. As you were walking?
19 A. Yes.
20 Q. But you didn't see Kody Patten.
21 A. No.
22 Q. Do you recall telling Mr. Peterson anything about
23 Kody Patten on March 3rd as you were observing the white
24 SUV?
25 A. I don't remember telling him anything, but he was

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1 asking —

2 Q. That's okay. You didn't tell him anything.

3 A. No.

4 MR. KUMP: Okay. That's all I have, Your Honor.

5 THE COURT: Redirect.

6 MR. TORVINEN: Indulgence, Judge.

7 THE COURT: You may.

8 MR. TORVINEN: Nothing based on that, Judge.

9 THE COURT: May Miss Rasmussen be excused?

10 MR. TORVINEN: No.

11 THE COURT: Miss Rasmussen, you're held subject to
12 recall. That means you have to have a seat outside the
13 courtroom and remember that rule of exclusion. Okay?

14 A. Yes.

15 THE COURT: Thank you. Next witness.

16 MR. TORVINEN: Travis Landon.

17 TRAVIS LANDON,

18 produced as a witness at the instance of the Plaintiff,
19 having been first duly sworn, was examined and testified as
20 follows:

21 THE COURT: Have a seat, please, Deputy. Mr. Torvinen
22 may proceed.

23 MR. TORVINEN: Bear with me, Judge. I got to get to
24 my spot here.

25 THE COURT: That's fine.

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1 Q. Who gave that to you?

2 A. Detective McKinney.

3 Q. And since the time you received it, have you kept
4 it secure?

5 A. Yes.

6 Q. And where have you secured it?

7 A. In my office.

8 Q. Now, at some point in time were you able to
9 examine the — one, to determine if there were recorded
10 images on it, and two, examine those images?

11 A. Yes, there are videos recorded on there,
12 specifically for March 3rd.

13 Q. And what's the subject matter, just generally.

14 A. It's my understanding that the video that's
15 contained on there is from Wendover. The Wendover school.

16 Q. Is it surveillance video? Does it appear to be a
17 surveillance video?

18 A. Yes.

19 Q. Now, did you — how did you — were you initially
20 able to access the imagery?

21 A. Initially, no. Initially I wasn't able to get
22 into the system. I had to do some research through the
23 internet to find out the factory default password. Once I
24 obtained that password, then I was able to access the video
25 on the machine. I could access it as far as viewing it,

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1 DIRECT EXAMINATION BY MR. TORVINEN:

2 Q. State your full name and spell your last for the
3 record, sir.

4 A. Travis LeRay Landon. L-a-n-d-o-n.

5 Q. How are you employed, sir?

6 A. Deputy, Elko County Sheriff's Department.

7 Q. And how long have you been so employed?

8 A. Fifteen years.

9 Q. Now, do you have any particular duties with
10 respect to the examination of electronic items within the
11 Elko County Sheriff's Department?

12 A. I do. I'm a forensic examiner for the sheriff's
13 department.

14 Q. And do you have any particular training in that
15 regard?

16 A. I do.

17 Q. And could you briefly recite that?

18 A. I've been trained through Encase in the forensics
19 examination of computers, along with FTK. Both of them are
20 software companies. So most of my training is based on
21 computer examination.

22 Q. During the month of March 2011 did you come into
23 possession of any sort of electronic device in connection
24 with this case?

25 A. I did. I was given a digital video recorder.

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1 but I couldn't access it as far as recovering or taking —
2 copying the video off the DVR.

3 Q. And were you successful finally in being able to
4 copy the imagery?

5 A. Yes.

6 Q. And that's when you — after you got the password
7 into the system.

8 A. That's correct.

9 Q. And is this machine still secure?

10 A. Yes. It's still in my office.

11 Q. And is your office — is your office a locked
12 facility?

13 A. Yes.

14 Q. Up on the corner there's an envelope marked 56.
15 I'd like you to remove the contents of the envelope. Do
16 you recognize that document?

17 A. Yes. This is a C.D. that contains video from the
18 DVR that I viewed for both cameras, I believe it's 9 and
19 11, for the time frame from 5:50 to 6:05 that I viewed both
20 the video that's on this C.D. and the video that's still on
21 the DVR to confirm that they match.

22 Q. Is that a true and accurate copy of the period of
23 time that you've described?

24 A. Yes, it is.

25 Q. Now, does the imagery that you recovered from the

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1 system display a time?
2 A. Yes, it does.
3 Q. And in what form does it display it, the
4 downloaded imagery?
5 A. You're referring to the time zone?
6 Q. I'm talking about lapse time. Does it have a
7 counter in it?
8 A. Yes.
9 Q. And where is it displayed on the downloaded
10 imagery?
11 A. There's a frame for the video. On the left hand
12 side of that frame there's a section that displays the
13 camera and the time.
14 Q. And in conducting your examination or your working
15 with the DVR, did you notice -- first, does it display --
16 what time zone does it display?
17 A. Mountain.
18 Q. And did you notice or were you able to discern
19 whether or not there was a difference between the displayed
20 time and actual time?
21 A. Yes.
22 Q. And what difference did you note?
23 A. It was about 51 minutes.
24 Q. And was it ahead or behind?
25 A. It was -- let's see. 51 minutes --

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1 Q. Do you remember?
2 A. I don't remember.
3 Q. Well, I've got another witness to address that,
4 Judge.
5 A. Okay.
6 Q. You found that there was a 51 minute difference.
7 A. Correct.
8 Q. Let me see if I can do it this way. If it said
9 6:00, what time would it be, do you remember, as you looked
10 at it?
11 A. I don't recall.
12 MR. TORVINEN: I'll pass the witness, Judge.
13 THE COURT: Cross examination.
14 MR. OHLSON: May I have a moment, Your Honor.
15 THE COURT: Yes.
16 CROSS EXAMINATION BY MR. OHLSON:
17 Q. Just a couple of questions, Deputy. When did you
18 get the training that you got and what was it in?
19 A. I don't remember the times. As far as the Encase
20 training?
21 Q. Was it 2011, 2010, 2009? When was it?
22 A. Several years ago. I don't remember the
23 specific --
24 Q. Some years.
25 A. Yes.

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1 Q. Were you employed as a deputy when you got the
2 training?
3 A. Yes.
4 Q. And did the county pay for the training?
5 A. Yes. Well, the county didn't specifically pay for
6 the training. The training was paid for through the ICAC
7 Task Force which we're attached to.
8 Q. And what classes did you attend?
9 A. Through Encase, it was -- I don't remember the
10 specific title for the class, but it was the basic
11 forensics analysis class. And for the FTK I think it was
12 FTK Boot Camp.
13 Q. Forensic analysis in what subject?
14 A. Computers.
15 Q. You don't recall what the name of the class was.
16 A. For Encase?
17 Q. No. Forensic analysis class.
18 A. I don't remember the specific name of the class.
19 I'd have to go back and check my records with Encase.
20 Q. And this all occurred several years ago.
21 A. The Encase class did. Just recently I've taken
22 the FTK.
23 Q. Just recently you took the basic introduction to
24 forensic computers?
25 A. There's two different software programs. One's

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1 Encase; one is FTK. They're software suites. The Encase I
2 took several years ago. The FTK I've just recently took.
3 Q. Has any Judge anywhere ever permitted you to give
4 testimony in a court of law as an expert on any subject?
5 A. I don't know if I was considered an expert, but I
6 did testify in District Court regarding computers.
7 Q. That is you don't know. Is that --
8 A. I don't know.
9 Q. Okay. The exhibit that you have up there, what
10 number is that exhibit?
11 A. 56.
12 Q. Exhibit 56 is a compilation of images found --
13 were discovered from two different sources, is that
14 correct? Would you say it's a compilation of images from
15 two different cameras?
16 A. Two different cameras. One DVR. One source. The
17 single DVR, I pulled the video off the same DVR for both
18 cameras.
19 Q. Did you go somewhere and find a DVR that was
20 recording images from both cameras? Or is this a DVR that
21 you made?
22 A. I didn't make these images. I was given the DVR
23 and asked to recover the imagery from the DVR.
24 Q. Okay. Who gave you the DVR?
25 A. Detective McKinney.

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1 MR. OHLSON: That's all I have.
2 THE COURT: Any redirect.
3 REDIRECT EXAMINATION BY MR. TORVINEN:
4 Q. Now, you didn't use recovery software to get this,
5 right?
6 A. I did not.
7 Q. This was simply a matter of being able to get into
8 the imagery to look at it. Well, to download it.
9 A. Correct.
10 Q. This machine also displays the imagery that's
11 recorded.
12 MR. OHLSON: I object to the leading question.
13 THE COURT: Sustained.
14 Q. Does this machine display the imagery that's
15 located on it?
16 A. The DVR, I had to hook it up to a T.V. to be able
17 to display it. It will play the imagery as well as copy it
18 off on to a different media, which is resulted in me
19 creating C.D.'s.
20 Q. At some point did you hook it up to a monitor so
21 you could look at the imagery?
22 A. Yes, I did.
23 Q. And so does it have the capability of displaying
24 the imagery?
25 A. Yes.

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1 Q. That you were able to observe on it?
2 A. Yes, it does.
3 Q. And the hitch was that you couldn't download it
4 because you couldn't get into -- just couldn't get into
5 that function.
6 MR. OHLSON: Could we have the witness testify. I
7 mean --
8 THE COURT: Sustained for leading.
9 Q. Okay, Judge. And why did you have to get -- why
10 did you go searching for this password?
11 A. Because I couldn't access -- the software that's
12 installed on the DVR, I couldn't access the portion of that
13 software that allowed me to copy off the video off of the
14 DVR. The only thing I could do was look at the imagery.
15 Q. And were you eventually successful in downloading
16 imagery from it?
17 A. Yes.
18 Q. And 56 you have personally compared -- have you
19 compared the imagery that you identified, that is, from I
20 think you said 5:50 to 6, with the actual imagery that's on
21 the machine itself?
22 A. I have.
23 Q. And is 56 an accurate copy of that imagery?
24 A. Yes, it is.
25 MR. TORVINEN: I'll pass on that, Judge.

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1 THE COURT: Recross.
2 RE CROSS EXAMINATION BY MR. OHLSON:
3 Q. But as you said before, you don't recall whether
4 56 in front of you displays the time in real time
5 51 minutes before or 51 minutes after real time. Is that
6 right?
7 A. Correct.
8 Q. Okay. So by looking at 56, we can't tell the
9 time, the real time that it was recorded, correct? 'Cause
10 you don't remember if it was 51 minutes before or after.
11 A. The time that's displayed on this disc?
12 Q. Yes.
13 A. And the time that's displayed on the DVR?
14 Q. Yes.
15 A. Are the same.
16 Q. But you don't know -- but they are not real time
17 because there's a 51 minute difference.
18 A. Correct.
19 Q. Okay. So we don't know what real time -- what the
20 real time was by looking at the disc, isn't that right?
21 A. Correct.
22 MR. OHLSON: Okay. No further questions.
23 THE COURT: All right. May the Deputy be excused?
24 MR. TORVINEN: No. I'd like him held.
25 THE COURT: Subject to recall outside or by telephone?

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1 MR. TORVINEN: I'd like -- do you have some
2 appointment or something this morning?
3 A. I don't.
4 MR. TORVINEN: I need him to sit outside then.
5 THE COURT: Okay. Please take a seat outside the
6 courtroom and remember the rule of exclusion.
7 MR. OHLSON: Since this witness has a lapse in memory,
8 if he does sit outside, then he comes back into this
9 courtroom, I'm going to be expecting him to tell us what
10 source material he's viewed in an attempt to recover his
11 lapse of memory.
12 MR. TORVINEN: Can I voir dire the witness once more,
13 Judge?
14 THE COURT: Go ahead.
15 MR. TORVINEN: Can I re-open my direct? I want to
16 find out if he wrote a report. I think he did.
17 THE COURT: Go ahead and recall him.
18 TRAVIS LANDON,
19 produced as a witness at the instance of the Plaintiff,
20 having been previously duly sworn, was examined and
21 testified as follows:
22 THE COURT: You're still under oath.
23 DIRECT EXAMINATION BY MR. TORVINEN:
24 Q. Did you write a report on your -- the process of
25 doing this?

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1 A. No, I did not.
2 MR. TORVINEN: That you recall. Pass on the voir
3 dire.
4 THE COURT: Cross examination.
5 CROSS EXAMINATION BY MR. OHLSON:
6 Q. Yes. You didn't write a report about the work
7 that you did in order to produce that disc, 56, right?
8 A. That's correct.
9 Q. And so I'm assuming that you didn't take notes on
10 it either, on the work that you did to produce 56.
11 A. That's correct.
12 Q. So you have no report, right?
13 A. Correct.
14 Q. No notes. Right? Notes on your work in producing
15 Exhibit 56.
16 A. I guess it would depend on what's considered
17 notes. I did take a video of the time settings on the DVR
18 and the time settings based on my computer -- I displayed a
19 page on the web that gave me the accurate time. So there
20 is a video out there that I generated.
21 Q. Somewhere.
22 A. Yeah.
23 Q. You have no written notes, correct?
24 A. Correct.
25 Q. And your memory is deficient in regards to the

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1 51 minutes.
2 A. Correct.
3 MR. OHLSON: That's all I have.
4 THE COURT: Any redirect?
5 MR. TORVINEN: Nothing based on that. I'd like him
6 held, though.
7 THE COURT: All right. You're held subject to recall.
8 Please have a seat outside the courtroom. Remember the
9 rule of exclusion. The Court will take a 15 minute recess.
10 (Recess taken.)
11 THE COURT: We're back on the record for Case
12 CR-2011-0300, State of Nevada, Plaintiff, versus Toni
13 Collette Fratto and Kody Cree Patten, the Defendants. And
14 the State's again represented by Mark Torvinen, Elko
15 County's District Attorney. Mr. Patten is here with his
16 attorneys, Mr. Olson and Mr. Kump. And we're going on
17 with our case. Preliminary hearing. Next witness.
18 MR. TORVINEN: Jerome Reamer.
19 THE COURT: Raise your right hand.
20 JEROME REAMER,
21 produced as a witness at the instance of the Plaintiff,
22 having been first duly sworn, was examined and testified as
23 follows:
24 THE COURT: Have a seat, please. Mr. Torvinen.
25

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1 DIRECT EXAMINATION BY MR. TORVINEN:
2 Q. Would you state your full name and spell your last
3 for the record, sir.
4 A. Jerome Reamer. R-e-a-m-e-r.
5 Q. And how are you employed, sir?
6 A. I work at the West Wendover High School.
7 Q. How long have you been employed in that capacity?
8 A. Fifteen years.
9 Q. What county and state is the school in?
10 A. Elko, Nevada.
11 Q. Now, in March of 2011 was Wendover High School
12 equipped with a video surveillance system?
13 A. Yes.
14 Q. How long had it been so equipped?
15 A. Roughly about four to five years.
16 Q. Are you familiar with its operation?
17 A. Yes.
18 Q. And do you know how to review the imagery that is
19 captured, if any, by the system?
20 A. Yes.
21 Q. And have you done that on more than one occasion?
22 A. Yes.
23 Q. In connection with your employment?
24 A. Yes.
25 Q. In early March of 2011, were you asked to

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1 review -- in particular review the system for a particular
2 imagery of two different people on a given day?
3 A. Yes.
4 Q. What day were you asked to look at or review?
5 A. I was asked on March 7th -- excuse me, March 5th,
6 the Saturday.
7 Q. And what day were you asked to review in terms of
8 the system?
9 A. Saturday. We were -- March 3rd, which was
10 Thursday night.
11 Q. Who were you looking for?
12 A. I was looking for Micaela Costanzo at the time.
13 And that was --
14 Q. Anybody else?
15 A. Kody Patten.
16 Q. And how long -- are you acquainted with both of
17 these people?
18 A. Yes.
19 Q. And how long have you been acquainted with both
20 those people?
21 A. Micaela I knew in junior high. Didn't have her in
22 class. Kody I've known since 7th grade, and pretty much
23 all through his high school career.
24 Q. Is the person that you know as Kody Patten in the
25 courtroom?

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1 A. Yes.
2 Q. Would you point to that person and describe what
3 he's wearing.
4 A. He's sitting over there in a red shirt.
5 Q. May the record reflect that identification, Your
6 Honor?
7 THE COURT: The record will reflect the identification
8 of the Defendant Patten.
9 Q. Now, did you eventually locate some surveillance
10 footage of those two people?
11 A. Yes.
12 Q. Now, based on your acquaintance or your working
13 with the system, have you noticed that there is a time
14 issue with respect to the imagery that's displayed?
15 A. Yes.
16 Q. And can you describe for the Court what that time
17 issue is?
18 A. The time issue on the camera is faster than the
19 time on a clock. So it's roughly, my recollection for
20 doing the calculations, 47 minutes, roughly 50 minutes off.
21 Q. And was it -- if the image displays 6:00, let's
22 say p.m., what time is it?
23 A. 5:10.
24 Q. P.m.
25 A. P.m.

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1 Q. And has it always had this error of display?
2 A. Yes.
3 Q. You've always known about it.
4 A. Yes.
5 Q. Has it been consistent in its time of error?
6 A. I believe so, yes.
7 Q. Now I'd like to you take that envelope. Remove
8 that document. Do you recognize that?
9 THE COURT: This is 56 for identification?
10 Q. 56.
11 A. Yes.
12 Q. And what enables you to recognize that specific
13 document?
14 A. I have my initials and the date.
15 Q. And when did you review it?
16 A. On 7/28/11.
17 Q. And now, did you recognize the imagery on that
18 disc?
19 A. Yes.
20 Q. And is it -- at some point in time did you look at
21 the same imagery on the actual DVR?
22 A. Yes.
23 Q. And is the imagery on the disc an accurate
24 reflection of the imagery that you actually looked at on
25 the system itself?

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1 A. Yes.
2 Q. Now, what cameras are depicted on that disc?
3 A. Cameras 11 and No. 9.
4 Q. And did you watch the entire disc?
5 A. Yes.
6 Q. Your Honor, I'm moving for the admission of 56. I
7 propose to play a very short clip from each camera.
8 Specifically from what the camera displays is about
9 5:56:30, 5:56:53 on Camera 9, from about 6:00 to 6:00:45
10 seconds on Camera No. 9 and 6:00 to 6:00:21 seconds. So
11 I'm offering Exhibit No. 56.
12 MR. OHLSON: Your Honor, two objections. Relevance,
13 No. 1. No. 2, foundation, for which I'd like to voir dire.
14 THE COURT: You may.
15 VOIR DIRE EXAMINATION BY MR. OHLSON:
16 Q. Thank you. Sir, the cameras that we're talking
17 about here, what numbers were they?
18 A. No. 9 and No. 11.
19 Q. They're part of a system that was donated by a
20 casino, is that correct?
21 A. Yes.
22 Q. And the casino is located in Nevada, of course.
23 A. Yes.
24 Q. What casino was it?
25 A. I believe it came through the Rainbow. I think it

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1 was a combination of the Rainbow, Peppermill, Montego Bay
2 when they were updating their systems.
3 Q. Where are those located?
4 A. In Wendover, Nevada. The casinos, correct?
5 Q. Yeah.
6 A. Okay.
7 Q. And the time zone of those casinos?
8 A. Mountain.
9 Q. Mountain time. What you're telling us is that if
10 one looks at the DVR system that is recorded through the
11 cameras in the school, that that display on the DVR will
12 show a time somewhere, is that correct?
13 A. Yes.
14 Q. And that time is not accurate.
15 A. It's off.
16 Q. It's off by --
17 A. Between 47 minutes, 50 minutes. In that range.
18 Q. So if there is a time -- let's say 3:30 p.m. It
19 says 3:30 p.m. Does it say so, by the way, in military
20 time, 24 hour time, or in everybody else's time?
21 A. Everybody else's time. Like a digital clock.
22 Q. It says p.m. or a.m.
23 A. Yes.
24 Q. Does it say p.m. or a.m.?
25 A. Yes.

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1 Q. Digital clock. So if it says 3:30 p.m. it's
2 really what time?
3 A. It would be 2:40 roughly.
4 Q. 2:40. Okay. You say that you reviewed No. 56?
5 A. Yes.
6 Q. At whose request?
7 A. Mr. Torvinen's.
8 Q. And did you review it and compare it with a view
9 of the DVR, what the DVR played?
10 A. From the video on the DVD I watched that, knowing
11 what I saw on the original from the DVR itself, they were
12 identical.
13 Q. So when did you look at the original?
14 A. The original was looked at on --
15 Q. When did you look at it?
16 A. When did I look at it?
17 Q. Yeah.
18 A. March 5th.
19 Q. March 5th.
20 A. The Saturday.
21 Q. So some four months later you viewed the
22 Exhibit 56, is that correct?
23 A. Yes.
24 Q. And you hadn't reviewed the DVR in that
25 intervening four months.

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1 A. No.
2 Q. And you didn't review the DVR after you saw the
3 Exhibit 56, correct?
4 A. No. I haven't watched the original DVR from the
5 machine since March 5th.
6 Q. You're prepared to tell us here in this courtroom
7 today under oath that what is on Exhibit 56 is what you saw
8 on the DVR four months ago?
9 A. Yes.
10 Q. Okay. From your memory.
11 A. Yes.
12 Q. Did you take any notes when you first looked at
13 the DVR?
14 A. Yes.
15 Q. Did you? Where are they?
16 A. I believe Mr. Torvinen -- I gave them to Detective
17 Burnum on the Monday when they came and got the system.
18 Q. Monday. When did they get the system?
19 A. It was Monday morning right before first hour.
20 Before 8:30.
21 Q. You didn't produce Exhibit 56, did you?
22 A. No.
23 Q. And it's true, isn't it, that Exhibit 56 contains
24 a combination of the views from two different cameras,
25 right?

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1 A. Yes.
2 Q. So how do we know by looking at Exhibit 56 what
3 cameras were -- what cameras are recorded there?
4 A. When the player comes up, you will see on the left
5 hand side of the column, it will have the time stamp and
6 the camera number.
7 MR. OHLSON: Okay. That's all I have.
8 THE COURT: Anything on the voir dire?
9 VOIR DIRE EXAMINATION BY MR. TORVINEN:
10 Q. I do. Do you personally know where the cameras
11 are located?
12 A. Yes.
13 Q. I mean, you can -- could you walk into Elko -- I
14 mean, the West Wendover Junior High School and if I said
15 show me Camera 9, could you take me to it physically?
16 A. Yes.
17 Q. And point to it on the ceiling?
18 A. Yes.
19 Q. Could you do the same for 11?
20 A. Yes.
21 Q. And are you familiar with the views that those --
22 physical layout or views that those two cameras depict?
23 A. Yes.
24 Q. And are the physical views and layouts that you
25 see in that imagery, are they accurate in terms of 9 views

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1 this area and 11 views this area?
2 A. Yes.
3 Q. You're personally acquainted with those --
4 A. Yes.
5 Q. -- physical locations in the school.
6 A. Yes.
7 Q. And does this imagery depict -- does it depict
8 Kody leaving the school at a particular time?
9 A. Yes.
10 Q. Does it depict Micaela leaving the school at a
11 particular time?
12 A. Yes.
13 MR. TORVINEN: I'll pass on the voir dire, Your Honor.
14 THE COURT: All right. Objection?
15 VOIR DIRE EXAMINATION BY MR. OHLSON:
16 Q. What time does it depict Kody leaving the school?
17 A. I believe on the camera stamp it's 5:56.
18 Q. And Micaela?
19 A. Roughly at 6:00.
20 Q. And not together.
21 A. No.
22 MR. OHLSON: I think foundation has been laid, Your
23 Honor, but my relevance objection still stands.
24 THE COURT: Argument on the relevancy objection.
25 MR. TORVINEN: Your Honor, it shows these two people

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1 departing about the time -- if you do the calculations,
2 about the time frame that is after school, shortly after
3 school, and it seems to me that that's relevant. And we
4 have met our authentication requirement, and that is
5 something that would establish that it is what it purports
6 to be. That is an accurate reflection of the surveillance
7 video.

8 THE COURT: The argument is on relevancy. The Court's
9 overruling the objection.

10 MR. TORVINEN: So 56 is admitted?

11 THE COURT: 56 is now admitted.

12 CONTINUED DIRECT EXAMINATION BY MR. TORVINEN:

13 Q. Counsel, will you load that up and take it to
14 about 5:56. Well, you get it up and we'll see it. Run 9
15 first. I apologize, Your Honor. It just takes a while to
16 load up.

17 THE COURT: All right. For the record I think we're
18 starting at 5:55:44 seconds, correct?

19 MR. INGRAM: Correct.

20 THE COURT: Time stamp.

21 MR. TORVINEN: Yes, Judge.

22 THE COURT: Okay. Go ahead.

23 VOIR DIRE EXAMINATION BY MR. OHLSON:

24 Q. Your Honor, just to clarify quickly, some
25 voir dire. The time stamp here, sir, 5:55 p.m., what time

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1 is it really in real time?

2 A. So you're looking at 4 -- almost 5:00.

3 Q. Almost 5:00.

4 A. About 4:58.

5 Q. About 4:58 p.m. on March 3, 2011?

6 A. Yes.

7 Q. Correct? And that's the real time that we're
8 looking at now?

9 A. That's the camera time.

10 Q. That's the time of the world, the real time.

11 A. The real world time would be 4:58.

12 Q. Okay. All right. So the time on there 5:55 is
13 not --

14 A. That's the ahead time.

15 MR. OHLSON: That's not real. Thank you, Your Honor.

16 THE COURT: Sure. Go ahead.

17 (Whereupon Exhibit 56 was played.)

18 CONTINUED DIRECT EXAMINATION BY MR. TORVINEN:

19 Q. For the record, he stopped and is advancing the
20 thing to 6:00. As close as he can get.

21 THE COURT: I think it was stopped at 5:55:53 seconds.

22 Q. That's fine.

23 THE COURT: Go ahead. We're starting when?

24 MR. INGRAM: It's 6:00:16.

25 Q. That's close enough.

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1 THE COURT: It looks like it to me. All right, go
2 ahead.

3 (Whereupon Exhibit 56 was played.)

4 Q. Okay, you can stop. Your Honor, he's now stopped
5 Camera 9, and I'm going to ask him to close this view and
6 go to Camera 11.

7 THE COURT: All right. It looks like it stopped at
8 6:00:50 seconds. All right.

9 MR. OHLSON: Camera time.

10 THE COURT: Camera time. These times that I'm calling
11 out I think are camera time. That's been established by
12 Mr. Ohlson through the questioning of the witness.

13 MR. OHLSON: Your Honor, while we're waiting for this
14 to load may I check outside for a moment.

15 THE COURT: Of course.

16 MR. OHLSON: I just want to poke my head out.

17 (Whereupon Exhibit 56 was played.)

18 Q. Your Honor, the image has come on. I directed
19 Counsel to move it to about 6 -- by the counter, 6:00 even.
20 As close as he can get to 6:00 even.

21 THE COURT: All right. So that's 5:59:34 seconds.

22 MR. OHLSON: This is Camera 11, Your Honor.

23 THE COURT: Is this Camera 11?

24 Q. Yes.

25 THE COURT: Okay. Go ahead.

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1 (Whereupon Exhibit 56 was played.)

2 THE COURT: Looks like it stopped at 6:00:21 seconds.

3 Again, this is the time recorded on the camera. That's
4 been established is not the actual time. Go ahead.

5 MR. TORVINEN: That's it, Judge. Can he close it out?

6 THE COURT: You're going to take 56 out now?

7 Q. Yes.

8 THE COURT: You're done with it for now?

9 Q. Yes.

10 THE COURT: Okay. All right.

11 Q. Yes. Miss Bailiff, we need to get the easel in
12 place where we can see it. Could you open it up.

13 Mr. Reamer, would you take one of those markers there.

14 It's on the corner. The first clip we played -- first,
15 where is Camera 9?

16 THE COURT: He's referring to Exhibit 11, for the
17 record.

18 Q. Yes.

19 THE COURT: Which is in evidence. Go ahead.

20 A. Camera 9 is located in front of the wood shop, one
21 of the classrooms deals with the wood shop, and it looks
22 down the hallway to the southwest doors.

23 MR. OHLSON: Your Honor, I can't see it from here, but
24 can the record reflect the witness marked Exhibit 11 with a
25 black marker, and I don't know what he marked on there.

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1 A. C9 and an arrow pointing.
2 MR. OHLSON: Marked a No. 9?
3 A. C-9, Camera 9, and then an arrow pointing towards
4 the southwest doors.
5 THE COURT: The record will reflect that.
6 Q. I'm going to show I what's been marked as 76. Do
7 you recognize what's depicted there?
8 A. Yes.
9 Q. Can you hold that up so that we can see it, and
10 the Court, and tell us where the door that you're saying
11 the southwest door is, where do you see that in that
12 photograph?
13 A. Right here.
14 Q. Did you recognize in Clip 9, the first part of it,
15 the person who walked down the hallway there and out that
16 door?
17 A. Yes.
18 Q. Who was it?
19 A. Kody Patten.
20 Q. Now, in Clip 11 -- first, put the photograph down
21 for a second. Take your marker. Tell me where Camera 11
22 is located. For the record, Your Honor, he's placed a C11
23 on the board and another directional arrow. Where's the
24 front of the school?
25 THE COURT: The record will reflect that. It's what

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1 the witness has done.
2 A. Front of the school is right here.
3 MR. OHLSON: Could we have the witness mark the --
4 write "front" on where the front of the school is.
5 Q. And did you recognize -- when you watched Clip 11,
6 did you recognize the person who walked down that hallway?
7 A. Yes.
8 Q. Who was it?
9 A. Micaela Costanzo.
10 Q. When you look at Clip 9, can you see her depicted
11 again, going back to 9, looking down that hallway?
12 A. It's fuzzy, but yes.
13 Q. And where was she?
14 A. She walked to the door of the metal shop, turned
15 and then exited out of the southwest doors.
16 Q. Same door you've identified before?
17 A. Yes.
18 Q. And taking the time difference, about what time
19 did she exit the doors?
20 A. Roughly about 5:10, 5:12.
21 Q. P.m.?
22 A. Yes, p.m.
23 MR. TORVINEN: You can have a seat again. Pass the
24 witness, Judge.
25 THE COURT: Cross examination.

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1 CROSS EXAMINATION BY MR. OHLSON:
2 Q. Thank you, Your Honor. Now, sir, on the Camera 9
3 view, the only person I recognize for sure was Kody Patten,
4 but you say that you recognized Micaela Costanzo on the
5 Camera 9 view?
6 A. Yes.
7 Q. How did you do that?
8 A. By the -- she had a black bag on and you can see
9 the bag over her shoulder.
10 Q. Couldn't see her face, though.
11 A. No.
12 Q. So it was the black bag that you identified.
13 A. Yes.
14 Q. And you saw her on the Camera 9 view exiting the
15 metal shop and going out the building?
16 A. No. She never went in the metal shop. She looked
17 in the door and then walked out the southwest doors.
18 Q. Out the southwest door.
19 A. Right.
20 Q. Okay. And the Camera 9 view is earlier in the day
21 than the Camera 11 view, is that right?
22 A. No. They -- it was roughly the same time. About
23 four, five minutes.
24 Q. They were different times, were they not? I saw
25 different times on the counter.

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1 A. For --
2 Q. Camera 9 and Camera 11. They weren't
3 simultaneous.
4 A. Right, 'cause you can't see her walking through
5 that.
6 Q. The times shown on the video -- we can go back and
7 do them if we want to reload them. Camera 9 and Camera 11
8 were not the same, were they.
9 A. I don't believe so.
10 Q. One was just before 5:00 and one was after 5:00
11 real time, correct? Matter of fact, you've identified the
12 Camera 9 time --
13 THE COURT: Is that a yes?
14 A. Yes.
15 Q. You identified the Camera 9 time as being about
16 4:58 p.m., right?
17 A. Roughly.
18 Q. And the Camera 11 time at about 5:15, correct?
19 A. No. I believe I said like 5:10 or so.
20 Q. 5:10. So about 12 minutes difference between the
21 Camera 9 view when you say you saw Micaela looking into the
22 metals shop and leaving the building, right?
23 A. Yes.
24 Q. And the time on Camera 11 when we see her exiting
25 or going towards the front of the building down the

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1 hallway, correct?
2 A. No. She's walking towards the metal shop.
3 Q. Which way is she walking?
4 A. She's walking towards --
5 Q. The direction of the arrow?
6 A. That's the directionality of the camera. She's
7 walking towards the --
8 Q. Into the camera?
9 A. Into the camera.
10 Q. From where?
11 A. From the girls locker room.
12 Q. Okay. You assume. 'Cause you don't know where
13 she was walking from.
14 A. No.
15 Q. All you know is that she was walking from
16 somewhere off camera in this area. Right?
17 A. Yes.
18 Q. And that was about 12 minutes after we first saw
19 her looking into the metal shop room. Correct?
20 A. Roughly, yes.
21 Q. And when we saw her first looking into the camera
22 or into the metal shop room, she exited the building
23 entirely.
24 A. Yes.
25 Q. We don't know how she got back in. She didn't

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1 come back in the same exit because it would have shown on
2 9, correct?
3 A. Yes.
4 Q. So we don't know how she got back in the building.
5 A. If she came back in. I don't know.
6 Q. Well, she had to have come back in because we saw
7 her leave the building on the Camera 9 view at 4:58,
8 correct?
9 A. Right. 5:58 on the camera time.
10 Q. You say that you recognized her from her bag on
11 the Camera 9 view which was shortly before 5 p.m., correct?
12 A. Shortly before -- well, on the camera time, yes.
13 Q. On the camera time. On the real --
14 A. In the real time, no. Real time would have
15 been --
16 Q. Shortly before five.
17 A. Would have been 5:58 camera time. If I back it up
18 50 minutes, then I misspoke and it was actually 5 -- or it
19 was after 5.
20 Q. Okay. Little after 5.
21 A. Yes.
22 Q. What we saw, you saw her -- or you saw her, I
23 didn't see her, but you saw her looking into the metal shop
24 as shown on Camera 9, correct?
25 A. Yes.

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1 Q. And then leaving the building.
2 A. Yes.
3 Q. Now, some 12 minutes later we see Kody Patten on
4 Camera 11, correct?
5 A. No.
6 Q. I'm sorry?
7 A. Camera 9.
8 Q. Camera 9, same one. About that time, correct?
9 A. Yes.
10 Q. So about the same time we see Micaela and Kody on
11 Camera 9. Roughly the same time.
12 A. Few minutes difference.
13 Q. Okay. Micaela leaves and exits the building.
14 Kody goes where?
15 A. He exits the same door.
16 Q. He exits the same.
17 A. Right.
18 Q. Okay. Later we see Micaela on Camera 11 coming
19 towards Camera 11, right?
20 A. Yes.
21 Q. So how did she get back in the building?
22 A. No. On the camera views, Kody leaves first.
23 Micaela leaves second.
24 Q. Right. They're both out of the building.
25 A. Right.

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1 Q. But then we see later on in real time we see
2 Micaela back in the building walking towards Camera 11.
3 How did she get back in?
4 A. No. I don't think the times are -- the times were
5 all --
6 Q. I'm just going on what you told us.
7 A. Right. I could be off a few minutes because of
8 the time difference.
9 Q. There's more than a few minutes because you told
10 us that the Camera 9 time was roughly 4:58 and then --
11 A. 5:58.
12 Q. Camera time.
13 A. Camera time is 5:58.
14 Q. Real time is --
15 A. It's going to be 4 -- it's going to be --
16 Q. We can go back 50 minutes.
17 A. Camera time was 5:58.
18 Q. Right.
19 A. Okay. So we're --
20 Q. 5:08.
21 A. Roughly 50 minutes back would be 5:08.
22 Q. So at 5:08 what you're telling us is you see
23 Micaela leave the building, correct?
24 A. Yes.
25 Q. And you see Kody leave the building at 5:08.

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1 Roughly 5:06.
2 A. I would have — again, I would probably have to
3 look at it again to look at the times and make sure, but
4 from what I've seen, yes.
5 Q. Roughly the same time, right? Micaela first, then
6 Kody. Right?
7 A. No.
8 Q. Kody first.
9 A. Yes.
10 Q. Then Micaela.
11 A. Yes.
12 Q. And not together.
13 A. No.
14 Q. Now, you will agree with me, won't you, that the
15 scene on Camera 11 is later than the scene on Camera 9.
16 A. Yes.
17 Q. Okay. By about, as you told us, about 10 minutes,
18 12 minutes.
19 A. No. It shouldn't be that. It was 5:58 on the
20 camera time. When we see Micaela come it was 6:00.
21 Q. So it's two minutes.
22 A. Couple minutes difference.
23 Q. Two minutes.
24 A. Yes.
25 Q. We've already seen Micaela leave the building, and

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1 then we see her again walking down the hall two minutes
2 later. Correct?
3 A. No.
4 Q. Has to be. Has to be. Right?
5 A. What you're — the views are — you're seeing one
6 hallway and then another. The time where we see her at the
7 metal shop was slightly before the time she comes through
8 that hallway and then exits the building.
9 Q. I would agree with you except that this view is
10 later in time than this view. If this view was earlier in
11 time, I'd agree with you. Except this view is later in
12 time, correct?
13 A. At the time we see Micaela?
14 Q. Yeah. Walking towards us is later in time than
15 the time we see her exiting the building and Kody exiting
16 the building.
17 A. But you cannot see Micaela exiting on Camera 11.
18 Q. No, you can't.
19 A. Right.
20 Q. Right. But it's later in time.
21 A. Not by much.
22 Q. Doesn't have to be much, does it. Sir, you will
23 agree with me that in the Camera 9 view we clearly see Kody
24 Patten. He's recognizable, isn't he.
25 A. Yes.

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1 Q. He's a distinctive person. He's tall.
2 A. Yes.
3 Q. And he has red hair.
4 A. Yes.
5 Q. And so we see him on Camera 9.
6 A. Yes.
7 Q. Camera 11 we clearly see Micaela Costanzo, don't
8 we.
9 A. Yes.
10 Q. Now, neither one of them looked to be in a
11 particular hurry, did they.
12 A. No.
13 Q. Neither one of them looked to be scared or running
14 away from anyone, did they.
15 A. No.
16 Q. Neither one of them looked to be particularly
17 stressed, did they.
18 A. No.
19 Q. Both of them looked pretty casual, isn't that
20 right?
21 A. Yeah.
22 MR. OHLSON: That's all I have.
23 THE COURT: Redirect.
24 MR. TORVINEN: Your Honor, I want to load the machine
25 up again. There's some confusion here. Load Camera 9.

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1 MR. OHLSON: Your Honor, are we loading Camera 9
2 first?
3 MR. TORVINEN: Yes.
4 MR. OHLSON: Your Honor, I'm going to ask that once we
5 have Camera 9 loaded, and Counsel finishes with his
6 questions on Camera 9, that I be allowed to examine on
7 Camera 9 before going to 11 so we don't have to —
8 MR. TORVINEN: Sure.
9 MR. OHLSON: -- go through the reloading process on
10 both and go back and do it again.
11 MR. TORVINEN: Sure.
12 THE COURT: That request is granted. I think that
13 would be easier to handle it that way, for sure.
14 MR. TORVINEN: It's loaded, Judge.
15 THE COURT: You're starting at 5:55:44 seconds,
16 Camera 9. All right. Mr. Ingram says yes. Go ahead.
17 (Whereupon Exhibit 56 was played.)
18 MR. TORVINEN: I'm going to ask him to pause it so we
19 can write these times down when the person identified as
20 Kody Patten appears in the photograph.
21 MR. OHLSON: Can we stop it here, please.
22 MR. INGRAM: 5:56:34.
23 MR. OHLSON: Thank you.
24 MR. TORVINEN: Start it up again. Stop it.
25 MR. INGRAM: 5:56:57. Still Camera 9.

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RA 439

1 REDIRECT EXAMINATION BY MR. TORVINEN:

2 Q. Mr. Reamer, using your calculation of 47 minutes
3 off, so what time is it right now?

4 A. 47 minutes back would be roughly 5:15.

5 Q. 5 what?

6 A. 5:15, I believe. I wasn't doing my math very well
7 today.

8 Q. 47. What time do you get?

9 MR. CHILSON: I get 5:09.

10 THE COURT: Tell you what, I'll hand the witness a
11 calculator and we'll get this worked out.

12 A. Sorry.

13 Q. Can you see it? The calculator, I mean?

14 A. Yes. 5:09.

15 Q. Now, Counsel, would you advance it to 6:00 even,
16 and then start it up again.

17 MR. INGRAM: 5:59:21.

18 Q. Stop it. What's the time now? Would you recite
19 the time? I can't see it, Counsel.

20 MR. CHILSON: 6 and 22. 6:00 and 22 seconds.

21 Q. Now start it up, and when she walks out the door,
22 I want you to stop it. Stop it. What's the time now?

23 A. 6:00:46 seconds.

24 Q. So what time would you make that with your
25 47 minute difference?

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1 A. 5:13.

2 Q. And if it was 6:00:22, this image that you saw
3 starts at 6:22 — can we switch it to 11. Actually —

4 MR. CHILSON: Well, before we do that, this might even
5 simplify things, could I have some voir dire at this point?
6 Could we go back to that image?

7 THE COURT: That was the agreed upon procedure, so go
8 ahead. You want to go back to the last image, Mr. Chilson?

9 MR. CHILSON: Yes, please.

10 THE COURT: Okay. I think it started at 5:59:21 was
11 the closest Mr. Ingram could get.

12 MR. INGRAM: It's at 5:59:21 now.

13 THE COURT: Go ahead and start it.

14 VOIR DIRE EXAMINATION BY MR. CHILSON:

15 Q. There's an image that's going to come on here,
16 sir, right up here by the door. Okay?

17 A. Yes.

18 Q. I want you to look at this image and I want you to
19 consider the testimony you've given this Court earlier.

20 A. Yes.

21 Q. Stop. Can we go back two seconds?

22 MR. INGRAM: It's very hard to go in that fine of
23 increments, but I'll try.

24 Q. Go ahead. Keep going forward. Stop.

25 THE COURT: If I could make a suggestion, can't you

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1 just step this back, Mr. Ingram? I mean, you're using the
2 mouse to move that scroll bar. Can't it be just stepped
3 back in reverse?

4 MR. TORVINEN: I didn't have good luck with that when
5 I tried to use those controls.

6 Q. Let me ask him the question on this.

7 THE COURT: Go ahead.

8 Q. What's this? Right here?

9 A. Appears to be a person.

10 Q. It appears to be.

11 A. Yeah.

12 Q. From the size it could be a Shetland pony,
13 couldn't it. Or a dog.

14 A. I don't -- I wouldn't say that.

15 Q. Or another kind of nonperson being, isn't that
16 right? You can't really tell what it is, can you?

17 A. I can -- if you look on the left hand side of the
18 image, you can see the black -- there's a black --

19 Q. You can see black something over here, right?

20 A. Bag. Right.

21 Q. But it appears that this image is no taller than
22 halfway up the door.

23 A. But you're also looking at the perspective of the
24 camera as well.

25 Q. I'm looking at that picture, and you want to

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1 insist to us under oath that what we're seeing is a human
2 being that you identify as Micaela Costanzo.

3 A. Yes.

4 Q. Is that what you want to tell us?

5 A. Yes.

6 Q. And do you want us to believe that that bit of
7 testimony is as accurate as everything else you've told us?

8 A. Yes.

9 Q. Is it possible to run that again? Six, and don't
10 go --

11 MR. INGRAM: What was the time?

12 MR. TORVINEN: It starts at 6:00:20. About 6:00:20.

13 MR. INGRAM: There's 6:00:16.

14 Q. Just run it from there.

15 THE COURT: Start at 6 and 16 seconds. Go ahead.

16 Q. In any event, that image we see, okay, hold it.
17 We see that image first at 6:00 and about 24 seconds,
18 right?

19 A. Yes.

20 Q. Okay. Let's go ahead. And we'll tell you, it
21 looks like whatever that image is has two legs rather than
22 four, correct?

23 A. Yes.

24 Q. And that image was on the camera no more than
25 22 seconds, isn't that right?

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RA 440

1 A. Yes.
2 Q. And you insist that that image is Micaela
3 Costanzo.
4 A. Yes.
5 Q. And no other person in the world.
6 A. No.
7 MR. OHLSON: We can go on to 11 now.
8 MR. TORVINEN: Wait a minute. Tell me what the time
9 is now by calculation. What is it? 6 -- so take your 47
10 minutes off.
11 A. 5:13.
12 CONTINUED REDIRECT EXAMINATION BY MR. TORVINEN:
13 Q. Now let's switch to 11.
14 MR. INGRAM: 5:59:34, Your Honor, on Camera 11.
15 Q. Start it up. Stop it. Would you recite the time
16 there, Judge.
17 THE COURT: 6:00:04 seconds.
18 Q. Go ahead. Stop it.
19 MR. INGRAM: 6:00:18.
20 Q. Go ahead. Stop it. That's all there is, Judge.
21 THE COURT: All right. Couple of times stopped.
22 Stopped at 6:00:18 seconds and 6:00:20 seconds is where
23 we're at now. Okay. All right. Mr. Ohlson, did you want
24 to ask questions on that as well?
25 MR. OHLSON: Has Counsel concluded?

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1 MR. TORVINEN: No. Mr. Reamer --
2 THE COURT: Go ahead, Mr. Torvinen.
3 Q. Now, we just saw -- you identified this person as
4 Micaela, right?
5 A. Yes.
6 Q. When she turned that corner, the Court recited as
7 as 6:00:04, so what time would that be?
8 A. 5:13.
9 Q. And how many seconds?
10 A. 14 seconds.
11 Q. And recited the time at 6:00:04 is -- what time is
12 it right now when she turned the corner?
13 A. 6:00:20 which would be 5:13:20 seconds.
14 Q. And then when we were watching Clip 9 and she
15 exited the building it was -- or the image was 6:00:46
16 seconds, right?
17 A. Yes.
18 Q. So how many seconds separate those?
19 A. 26.
20 Q. 26 seconds. Does the image in Camera 9 of the
21 person leaving the building come after the image we see
22 here?
23 A. Yes.
24 Q. And they're only seconds apart?
25 A. Yes.

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1 MR. TORVINEN: Pass the witness on that, Judge.
2 THE COURT: Mr. Ohlson.
3 MR. OHLSON: Don't look at my notes here.
4 THE COURT: Mr. Torvinen, did you conclude your
5 redirect then?
6 MR. TORVINEN: Yes.
7 THE COURT: This has been the most broken up redirect
8 and recross in the history of courts, I think.
9 MR. TORVINEN: I pass the witness.
10 THE COURT: I think we worked it out. All right.
11 Recross.
12 RECROSS EXAMINATION BY MR. OHLSON:
13 Q. Now, you previously marked the positions of
14 Camera 9 and Camera 11, have you not?
15 A. Yes.
16 Q. And Camera 9 is where my finger is pointing here
17 as you're facing this on the left side of the diagram,
18 correct?
19 A. Yes.
20 Q. As you face the diagram. And it views the hallway
21 pointing towards the exit, correct?
22 A. Yes.
23 Q. Camera 11 is positioned here, correct?
24 A. Yes.
25 Q. And it's looking down this way.

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1 A. Yes.
2 Q. Right? 11 is the one we just saw.
3 A. Yes.
4 Q. And on 11 you're telling us that Micaela walked
5 towards the camera and turned this corner, and then we saw
6 her again on 9.
7 A. Yes.
8 Q. Exiting the building.
9 A. Yes.
10 Q. And we saw Kody Patten exit the building about
11 four minutes before Micaela did, right?
12 A. Yes.
13 Q. You didn't teach math at that school, did you?
14 A. Not on the stand I don't.
15 Q. What?
16 A. Not on the stand I don't.
17 Q. Or in the classroom.
18 A. In the classroom I do, but not on the stand.
19 Q. You teach math in the classroom?
20 A. I'm not as nervous as I am in the classroom. 8th
21 graders are a little easier.
22 Q. Speaking of being nervous, when you told us that
23 there was a 47 time difference, that's not based on any
24 scientific method, is it.
25 A. No. That's a rough estimate of time.

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1 Q. That's a rough estimate that you derived when?
2 Some time ago.
3 A. Yes.
4 Q. When?
5 A. When we found out that there was an odd time in
6 when we saw the camera looking --
7 Q. Years ago or months ago, days ago? When?
8 A. Years ago.
9 Q. Okay. And you determined that by looking at the
10 camera and watching the camera record classes being out
11 based upon the doors opening.
12 A. Yes.
13 Q. So you roughly determined that we were 47 minutes
14 off.
15 A. Yes.
16 Q. And you told us earlier that we were 47 minutes to
17 50 minutes off.
18 A. Yes.
19 Q. Okay. That's still a rough estimate, isn't it.
20 A. Yes.
21 Q. Not based on anything scientific.
22 A. No.
23 Q. And you could be wrong about the 47 minutes,
24 couldn't you.
25 A. I could be.

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1 Q. Okay. You've never -- you've never done anything
2 to assure yourself that the times that are recorded on
3 these cameras, Camera 11 time, 6:00:20 p.m. was the same
4 time as shown on Camera 9. In other words, that the
5 cameras were operated in sync as far as the time that
6 they're showing is concerned.
7 A. I've never touched the cameras at all.
8 Q. So you don't know if they were or not? We know
9 that the camera time is different from real time.
10 A. Right.
11 Q. Correct?
12 A. Yes.
13 Q. And not because of Pacific time versus Mountain
14 time. For some other reason that we don't know about,
15 right?
16 A. Yes.
17 Q. And we don't know whether Camera 11 shows the same
18 time simultaneously as Camera 9 does, do we? No one has
19 checked that.
20 A. They all record at the same time.
21 Q. But you've never checked that, have you.
22 A. No, I guess I haven't, no.
23 Q. We know that the time is off, but we don't know
24 whether or not in being off all the cameras are together,
25 do we.

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1 A. As far as I know.
2 Q. Other than the legend, right?
3 A. As far as I know, no. But they all record at the
4 same time.
5 Q. Well, they're all running.
6 A. Right.
7 Q. Yeah. On some real time, right?
8 A. Yes.
9 Q. Which is different from some camera time.
10 A. Yes.
11 Q. By an amount that we're not sure of.
12 A. Approximately, yes.
13 Q. Okay. "Approximately" is a good word, isn't it.
14 A. It's a rough estimate.
15 Q. You don't teach rough estimates in your math
16 class, do you?
17 A. Depends on the topic.
18 MR. OHLSON: That's all I have.
19 MR. TORVINEN: At some point in time --
20 THE COURT: All right. What are we doing now? Are
21 you recalling him?
22 MR. TORVINEN: Yeah. Can I recall him?
23 THE COURT: Recall him. Go ahead, direct examination.
24 You're still under oath, I'll remind you. Go ahead.
25

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1 JEROME REAMER,
2 produced as a witness at the instance of the Plaintiff,
3 having been previously duly sworn, was examined and
4 testified as follows:
5 DIRECT EXAMINATION BY MR. TORVINEN:
6 Q. At some point in time when do you remember
7 being -- becoming cognizant that there was an error in the
8 displayed time?
9 A. At least a couple years ago.
10 Q. And when you became aware of that, did you
11 undertake some steps to calculate what that error was?
12 A. I asked the principal and the vice principal.
13 Q. Did you ever look at a clock?
14 A. To see what the difference was?
15 Q. Yes.
16 A. Yes.
17 Q. A clock that you believed to be displaying the
18 accurate time?
19 A. Yes.
20 Q. And did it comport with this time difference that
21 you've been testifying about?
22 A. Yes.
23 Q. And has it ever changed?
24 A. Not to my knowledge, no.
25 You have occasion to review this, the surveillance

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RA 442

1 system, on a fairly — how often do you have occasion to
2 look at it for any reason?
3 A. Couple times a year.
4 MR. TORVINEN: That's all I have, Judge.
5 THE COURT: Cross examination.
6 CROSS EXAMINATION BY MR. OHLSON:
7 Q. Will you look at — let me look at it for you.
8 When it says "time" up here in the corner, this is the view
9 that we would have on the DVR machine, correct?
10 A. Yes.
11 Q. When it says "time" here, does it say Eastern
12 Standard time, Central time, Mountain time or Pacific time?
13 A. No.
14 Q. So we don't even know what times these are in sync
15 to in terms of time zones, do we.
16 A. No.
17 Q. Could be any of them, couldn't it? As far as you
18 know.
19 A. Yes.
20 MR. OHLSON: That's all I have.
21 THE COURT: Redirect.
22 MR. TORVINEN: Nothing based on that, Judge.
23 THE COURT: May Mr. Reamer be excused?
24 MR. TORVINEN: I'd like him held.
25 THE COURT: You're held subject to recall, Mr. Reamer.

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1 Please have a seat outside the courtroom. Remember the
2 rule of exclusion. Thank you. Mr. Torvinen, next witness.
3 MR. TORVINEN: Wendi Murphy.
4 THE COURT: Watch your step there, please. Raise your
5 right hand.
6 WENDI MURPHY,
7 produced as a witness at the instance of the Plaintiff,
8 having been first duly sworn, was examined and testified as
9 follows:
10 THE COURT: Please have a seat. Mr. Torvinen may
11 proceed.
12 DIRECT EXAMINATION BY MR. TORVINEN:
13 Q. State your full name and spell your last for the
14 record.
15 A. Wendi Murphy. W-e-n-d-i M-u-r-p-h-y.
16 Q. Bear with me, Judge. Ma'am, are you acquainted
17 with a person by the name of Kody Patten?
18 A. Yes.
19 Q. Is Kody Patten in the courtroom?
20 A. Yes, he is.
21 Q. Would you point to that person and tell us what
22 he's wearing.
23 A. He's right there. He's wearing the red shirt.
24 Q. May the record reflect that identification, Your
25 Honor?

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1 THE COURT: The record will reflect the identification
2 of the Defendant, Mr. Patten.
3 Q. In March of 2011, did you have an interest in or
4 own a vehicle?
5 A. Yes.
6 Q. Could you tell me what that vehicle was?
7 A. 2006 Chevy Trailblazer.
8 Q. I'm going to show I what's been marked as 8, 9 and
9 10. Would you just look at those photographs and tell me
10 when you have finished.
11 A. Okay.
12 Q. Do you recognize the vehicle in the photographs?
13 A. Yes, I do.
14 Q. Whose is it?
15 A. Mine.
16 Q. In the first few days of March 2011, did you have
17 an occasion to loan that to someone?
18 A. Yes, I did.
19 Q. And who did you loan it to?
20 A. To Kody.
21 Q. What day of the month was it, if you recall?
22 A. March 2, 2011.
23 Q. What day?
24 A. March 2nd. Do I need the calendar again?
25 Q. Bear with me, Judge. Did you testify on a

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1 previous occasion that it was March 3rd, Thursday? Do you
2 remember testifying to that?
3 A. Yes. I don't have a calendar in front of me, so I
4 don't know for sure. Sorry.
5 Q. I've been doing this for 30 years and there ought
6 to be a better way to do it. Let me show you what's been
7 marked as Exhibit 1.
8 A. Thank you.
9 Q. 12 month calendar. Does that assist you?
10 A. Yes. Thank you.
11 Q. What day was it?
12 A. March 3, 2011.
13 Q. Do you know what time of day it was?
14 A. It was around 12:40.
15 Q. And where were you located when you lent it to
16 him?
17 A. In Wendover, Utah.
18 Q. Specifically do you recall? Where were you
19 physically located in town when you surrendered the vehicle
20 to him?
21 A. 147 Second Street, Apartment 239, Wendover, Utah.
22 Q. And how did Kody get to that location?
23 A. I picked him up from school and went to that
24 location and where he took the vehicle.
25 Q. Can you tell me at the time that you surrendered

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RA 443

1 the vehicle to him on March 3rd what the condition of its
2 exterior, the outside of it was?
3 A. It was clean, washed from rain the night before.
4 Q. Now, was it eventually returned to you?
5 A. Yes.
6 Q. And when did that occur?
7 A. That same evening, about 8:30, 8:45.
8 Q. Where were you located at the time?
9 A. The same residence, 147 Second Street.
10 Q. And was anybody with Mr. Patten?
11 A. Toni Fratto.
12 Q. I show you what's been marked as Exhibit 3. Do
13 you recognize the person depicted in that photograph?
14 A. Yes.
15 Q. Who is it?
16 A. Toni Fratto.
17 Q. Move for the admission of Exhibit 3, Your Honor.
18 MR. KUMP: No objection, Your Honor.
19 THE COURT: 3 is admitted.
20 Q. Again, how long have you lived in Wendover?
21 A. Twenty-one years.
22 Q. So when you talk about a time, what time zone are
23 you talking about?
24 A. Mountain time.
25 Q. So now, what time was it that the car was returned

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1 to you?
2 A. Around 8:30, 8:45.
3 Q. Now, did you physically see it at that point in
4 time?
5 A. No.
6 Q. When Mr. Patten arrived you said he was -- you
7 said you saw Toni Fratto.
8 A. Correct.
9 Q. Anyone else?
10 A. No.
11 Q. And did there come a time -- when did you
12 physically lay eyes on your vehicle again?
13 A. About a quarter to ten in the evening.
14 Q. Where were you going?
15 A. I was taking Kandace to work at the Truckers
16 Lounge, and then I took Toni and Kody to Toni's house.
17 Q. And when you say "Kandace", to whom are you
18 referring?
19 A. Kandace Christiansen.
20 Q. And once you had -- where did you take Kody and
21 Toni?
22 A. To Toni's house.
23 Q. Do you remember the address?
24 A. I don't know the address. It's in Desert View
25 Trailer Park.

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1 Q. Do you know whose residence it is, adult-wise?
2 A. Yes, I do.
3 Q. Who is it?
4 A. Claude and Cassie Fratto.
5 Q. And do they have some relationship with Toni?
6 A. Her parents.
7 Q. Now, after you dropped Kody and Toni off, you went
8 where?
9 A. To my house.
10 Q. Now, do you work?
11 A. I do.
12 Q. And where do you work?
13 A. Peppermill Hotel Casino, front desk.
14 Q. Is that the same time, March 3rd, the same place
15 you worked?
16 A. Correct.
17 Q. So what time do you usually go to work?
18 A. At that time it was my second day of work, so I
19 was training, so it was between eight and nine.
20 Q. Did you utilize your vehicle that next morning?
21 A. Yes, I did.
22 Q. And did you notice anything different about its
23 exterior?
24 A. It was just dusty.
25 Q. Did you lend that vehicle to anyone else that day?

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1 A. Yes, I did.
2 Q. And to whom did you lend it?
3 A. To Kandace Christiansen.
4 Q. And what time did you meet up with her?
5 A. It was around noon. Lunchtime.
6 Q. And so I guess I want to make sure. So you went
7 to training that morning at 8:30.
8 A. No. I went to work.
9 Q. I'm getting confused. You said you were in
10 training.
11 A. I had just started, so I was training the job at
12 work at the front desk.
13 Q. Okay. And I kind of understood that there was a
14 different time frame associated with that. What time did
15 you start work on the 4th? What time of day?
16 A. On the 4th?
17 Q. Right.
18 A. Eight, nine. I don't know for sure. I don't have
19 the schedule.
20 Q. So did you drive to the Peppermill?
21 A. Yes, I did.
22 Q. Or wherever it is.
23 A. Yes.
24 Q. And then at some point you lent the vehicle to
25 Kandace.

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1 A. At lunchtime, yes.
2 Q. And did you drive to her house? How did you get
3 it to her I guess is what I'm asking you. Do you remember?
4 A. I believe I went and picked them up for lunch, her
5 and Jeff up for lunch, and then they took me back to the
6 Peppermill, and they went to do laundry.
7 Q. Now, at some point on the 4th if you look at the
8 4th which is a Friday, is it not?
9 A. Yes.
10 Q. Were you approached by law enforcement officers
11 about wanting to look at your vehicle?
12 A. Yes.
13 Q. Do you remember who that was?
14 A. Hillaker and Abrams.
15 Q. And you were at the front desk?
16 A. Yes.
17 Q. And where was your vehicle at that point, do you
18 remember?
19 A. With Kandace at the Buena Vista apartment
20 laundromat.
21 Q. Did you contact her?
22 A. Yes, I did.
23 Q. Did you ask her -- request her to bring your
24 vehicle somewhere?
25 A. Yes.

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1 Q. Where did you request her to bring it?
2 A. Officer Abrams asked for me to ask --
3 MR. KUMP: Objection, Your Honor.
4 A. Bring them -- to drive my car --
5 MR. KUMP: Objection, hearsay, Your Honor, and ask
6 that it be stricken.
7 Q. Regardless of where it originated, did you make --
8 THE COURT: What's the response?
9 Q. I'll submit it, Judge.
10 THE COURT: It's a question. It's a question he's
11 asking her.
12 MR. TORVINEN: Well, he objected to my question. He
13 objected to --
14 THE COURT: The testimony was about the officer asking
15 her a question.
16 Q. Right. And I'm submitting it. It's okay. You
17 can disregard what the officer said.
18 THE COURT: Okay. Well, since it's been submitted by
19 the Prosecutor on the issue, the Court will go ahead and
20 strike the testimony about what the officer asked her. The
21 Court won't consider it. Next question.
22 Q. I don't want to know anything that somebody else
23 said to you. Did you personally make a request of her
24 relative to your vehicle at that point?
25 A. Yes.

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1 Q. What did you ask her to do?
2 A. To bring the vehicle back to the Peppermill.
3 Q. Now, did you sign something for --
4 A. Yes, I did.
5 Q. I show you what's been marked as Exhibit 19. Do
6 you recognize that?
7 A. Yep.
8 Q. What is it?
9 A. It's the consent to search my vehicle.
10 Q. Is that your signature on it?
11 A. Yes, it is.
12 Q. Now, when is the next time that you personally saw
13 your motor vehicle -- were you present when it was
14 searched?
15 A. No, I was not.
16 Q. When's the next time that you personally had
17 contact with your vehicle?
18 A. At five p.m.
19 Q. How did that come to pass?
20 A. Kandace picked me up from work.
21 Q. Okay. 49, Counsel. I'm going to show you what's
22 been marked as Exhibit 49. Do you recognize that object?
23 A. I saw it in my vehicle after it was searched.
24 Q. Where was it located when you first saw it?
25 A. Inside the cake pan that I placed in the vehicle.

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1 Q. Where was the cake pan located?
2 A. In the back seat.
3 Q. And on what day did you first see that in your
4 vehicle?
5 A. On Friday, March 4, 2011.
6 Q. What time of day?
7 A. Five p.m. when I got off work.
8 Q. Now, to your knowledge, was anything like
9 Exhibit 49 in your vehicle when you loaned it to
10 Mr. Patten?
11 A. No.
12 Q. Already in it.
13 A. Not to my knowledge.
14 Q. Was there anything like that in it when you loaned
15 it to Kandace the next morning?
16 A. No.
17 Q. Now, did your vehicle have a shovel in it?
18 A. It did. It was an emergency roadside shovel. It
19 was plastic with a metal handle that snapped together.
20 Q. I have them out of order, Judge. Hang on a
21 second. Your Honor, I'm not finding one of the exhibits I
22 marked. Here we go. I'm going to show you what's been
23 marked as Exhibit No. 12. Do you recognize anything in
24 that photograph?
25 A. Yep.

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1 Q. What do you recognize?
2 A. The plastic shovel, the handle, my blanket, the
3 box.
4 Q. Is that -- to your knowledge, was that the only
5 shovel that was in your vehicle?
6 A. Yes, sir.
7 Q. Do you know what zip ties are?
8 A. Yes, sir.
9 Q. Were there any -- to your knowledge, were there
10 any zip ties in your vehicle?
11 A. Yes, they were.
12 Q. Where were they located?
13 A. In the box in the trunk.
14 Q. What box is that?
15 A. The box that's in the trunk in the picture.
16 Q. Okay. Now, were you approached again by law
17 enforcement concerning your vehicle?
18 A. Yes.
19 Q. When did that occur?
20 A. Saturday morning.
21 Q. First let's make sure that I understand. When did
22 you get your vehicle from Mandace back?
23 A. Friday the 4th at 5:00 p.m.
24 Q. And was it in your custody until you were
25 approached by law enforcement?

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1 A. Yes, it was.
2 Q. And when was that again you were again approached
3 by law enforcement?
4 A. Saturday morning, March 5th.
5 Q. Do you remember about what time?
6 A. It was about 8:30 in the morning.
7 Q. And did you -- again, were you asked to request to
8 a consent of its seizure?
9 A. No, not at that time.
10 Q. Did you sign a consent?
11 A. Later in the day I did.
12 Q. When did you do that?
13 A. I believe about 1:30.
14 Q. I'm going to show you what's been marked as 27.
15 Do you recognize that?
16 A. Yes.
17 Q. What do you recognize it as?
18 A. That's another consent to search, but they
19 actually took my vehicle.
20 Q. And you say that was later in the morning on the
21 5th?
22 A. That was in the afternoon actually?
23 Q. What time? Did you -- is your signature on there?
24 A. My signature is on there. I don't see a time.
25 Q. And who were you dealing with when, if you recall,

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1 when you surrendered your vehicle?
2 A. Officer Hillaker.
3 MR. TORVINEN: I'll pass the witness, Judge.
4 THE COURT: Cross examination.
5 CROSS EXAMINATION BY MR. KUMP:
6 Q. Miss Murphy, I want to just clear this up. You
7 signed the consent to search, and this would be the second
8 consent to search I'm speaking about, after your vehicle
9 had already been seized by the police?
10 A. No.
11 Q. Okay.
12 A. The second consent to search was when they
13 actually took my vehicle. When -- they came in the morning
14 about 8:30 with the dog, search and rescue dog, I was not
15 asked to sign anything at that time to search my vehicle
16 with the dog.
17 Q. And so they searched your vehicle Saturday morning
18 at 8:30.
19 A. Yes, sir.
20 Q. Using a dog.
21 A. Yes, sir.
22 Q. But then when they left, you continued to use your
23 vehicle.
24 A. I went to work, yes.
25 Q. Okay. And then it was later in the afternoon when

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1 they contacted you again?
2 A. Yes, sir.
3 Q. And that was during the time that you were at
4 work?
5 A. Yes.
6 Q. And at that time they seized your vehicle.
7 A. Correct.
8 Q. Okay. Were you present at 8:30 in the morning
9 when they searched your vehicle?
10 A. Yes, sir.
11 Q. So you watched the search?
12 THE COURT: Is that a yes?
13 A. Yes, sir.
14 Q. What did you observe them do?
15 A. They asked me to roll the windows down, open all
16 the doors and the trunk, and the dog handler dropped a
17 piece of cloth, I believe it was, and then the dog searched
18 through my car.
19 Q. Okay. Now, there's a number of people that borrow
20 your vehicle, it would appear. Is that correct?
21 A. Yes.
22 Q. Who drives -- or in the past, I'm going to say
23 prior to March 3rd of 2011, who had occasion to borrow your
24 vehicle?
25 A. My children. I have two adult -- two teenagers,

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1 and Kandace 'cause her car had just broke down and she
 2 needed transportation. Kody, Christian.
 3 Q. So five?
 4 A. Friends, probably.
 5 Q. Possibly more?
 6 A. No.
 7 Q. So approximately five people.
 8 A. Well, my husband, probably, too.
 9 Q. So half a dozen people borrowed your vehicle.
 10 A. Right.
 11 Q. And how frequently would they borrow your vehicle?
 12 A. If they need to borrow it, I let any one of them
 13 borrow it.
 14 Q. Did you always -- did you lock your vehicle?
 15 A. Yes.
 16 Q. So whoever borrowed it had to come to you to get
 17 the keys?
 18 A. Correct.
 19 Q. Or are there other keys that are out there?
 20 A. No. There's only one.
 21 Q. One set of keys.
 22 A. The one set of keys that's with the vehicle.
 23 Q. Okay. Did you happen to take an inventory prior
 24 to March 3rd of what personal property was in your vehicle?
 25 A. No. It was just by memory.

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1 Q. By memory.
 2 A. Yeah.
 3 Q. Okay. And from time to time would other people
 4 leave things in the vehicle?
 5 A. Yes.
 6 Q. You were not present during the first search, is
 7 that correct?
 8 A. No, I was not.
 9 Q. I want to go back to March 3, 2011. You were at
 10 your residence at 8:30 when the vehicle was returned?
 11 A. No.
 12 Q. Is that correct? Whose residence were you at?
 13 A. At Jeff and Kandace.
 14 Q. Okay. And who are Jeff and Kandace?
 15 A. Jeff Patten and Kandace Christiansen.
 16 Q. And are they just friends?
 17 A. Yes.
 18 Q. Why were you at their residence?
 19 A. Because I was going to be going out of town to
 20 Salt Lake. The person I was going with had been called in
 21 to work, and so I didn't go to Salt Lake, so I just stayed
 22 with Jeff and Kandace.
 23 Q. Did you instruct Kody to return your car to
 24 Kody -- to Jeff and Kandace's?
 25 A. Yes.

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1 Q. When did you do that?
 2 A. When did I ask him to do that? When I gave him my
 3 vehicle.
 4 Q. So you knew that you would be there later in the
 5 day.
 6 A. Right.
 7 Q. And you left him with the vehicle at approximately
 8 12:40?
 9 A. Correct.
 10 Q. So when he returned the vehicle at 8:30, did you
 11 speak with him?
 12 A. Yes.
 13 Q. And you said Toni was with him?
 14 A. Correct.
 15 Q. And can you -- would you characterize their
 16 demeanor as out of the ordinary?
 17 A. No, it was not.
 18 Q. This Item 49 that Mr. Torvinen showed you, you
 19 testified that that was not in your vehicle prior to you
 20 loaning it to Kandace.
 21 A. Not to my knowledge.
 22 MR. KUMP: That's all I have, Your Honor.
 23 THE COURT: Redirect.
 24 REDIRECT EXAMINATION BY MR. TORVINEN:
 25 Q. Between the 3rd day of March when you surrendered

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1 the vehicle to Mr. Patten and the 5th day of March when law
 2 enforcement seized it, did anyone other than Kandace -- did
 3 you lend it to anyone other than Kandace?
 4 A. No, I did not.
 5 Q. And you mentioned a Jeff. And do you know that
 6 person's last name?
 7 A. Patten.
 8 Q. And now, on the 3rd when did you -- on the 3rd of
 9 March 2011 when did you expect or did you expect once you
 10 had lent it to Kody it to be returned? Was there an agreed
 11 upon time by which it would be returned to you?
 12 A. By five.
 13 Q. Five p.m.?
 14 A. Yes.
 15 Q. And you didn't see it at 9:45 thereabouts returned
 16 to Mr. Patten's house.
 17 A. Correct.
 18 Was it 8:45 or 9:45?
 19 A. When I saw the vehicle?
 20 Q. Yeah.
 21 A. 9:45.
 22 Q. And they'd been -- and Mr. Patten, Kody and Toni,
 23 had been at the residence for how long when you walked out
 24 and saw your vehicle?
 25 A. Around an hour.

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1 Q. So between the time -- between 5:00 when you
2 expected it to be returned to you and when it was brought
3 back to Kandace and Jeff's residence, had you contacted
4 Kody about the whereabouts of the vehicle?
5 A. Yes.
6 Q. How many times?
7 A. Several.
8 Q. Was that -- by what means of communication were
9 you using?
10 A. Text.
11 Q. Only text?
12 A. Yes.
13 Q. Did you ever speak to him personally?
14 A. No, not during that.
15 Q. Did you get replies to these textural questions?
16 A. Yes, I did.
17 Q. And but you didn't see the -- you didn't actually
18 see the vehicle until shortly -- or an hour after they
19 showed up at Jeff's house.
20 A. Correct.
21 MR. TORVINEN: That's all I have, Judge.
22 THE COURT: Recross.
23 RECROSS EXAMINATION BY MR. KUMP:
24 Q. You got back in the vehicle at roughly 9:30, is
25 that correct? 9:30, 9:45?

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1 A. Yes.
2 Q. Did you notice anything unusual about the interior
3 of the vehicle at that time?
4 A. No. The interior was basically spotless. There
5 weren't any dirt, debris, weeds, anything.
6 Q. But was it other than you had left it when you
7 left it with Kody earlier in the day?
8 A. No. Nothing other than normal.
9 MR. KUMP: Okay. That's all I have, Your Honor.
10 Thanks.
11 THE COURT: May Miss Murphy be excused?
12 MR. TORVINEN: Not right now, Judge.
13 THE COURT: All right. You're held subject to recall.
14 Please have a seat outside the courtroom. Remember the
15 rule of exclusion. Thank you. All right. It's now 12:04.
16 Do you want to take a lunch break today, Counsel?
17 MR. TORVINEN: I'm at the Court's pleasure. Although
18 I would tell the Court that I told Dr. Clark to be here as
19 soon after 1:00 as possible. That's up to you.
20 THE COURT: All right. Then let's break. We'll
21 reconvene at 1:05. Is that all right for you, Mr. Ohlson,
22 Mr. Kump?
23 MR. OHLSON: That's just swell, Your Honor.
24 MR. TORVINEN: What time was it you want to reconvene?
25 THE COURT: 1:05. One hour from now.

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1 (Recess taken.)
2 THE COURT: We'll be back on the record for Case
3 CR-2011-0300, State of Nevada, Plaintiff, versus Toni
4 Collette Fratto and Kody Cree Patten, the Defendants. The
5 State's again represented by Mark Torvinen, the Elko County
6 District Attorney. Mr. Patten is back in court with his
7 attorneys, John Ohlson and Jeff Kump. We're continuing on
8 with the preliminary hearing. Now it's my understanding
9 that the next witness to be called is Dr. Clark, correct?
10 MR. TORVINEN: That's correct, Your Honor.
11 THE COURT: Then of course as part of this, the
12 District Attorney I'm sure will be showing autopsy
13 photographs to Dr. Clark, correct?
14 MR. TORVINEN: Correct.
15 THE COURT: Some of which may be the same as what was
16 covered when we had Miss Fratto's preliminary hearing.
17 MR. TORVINEN: Correct. They're the same exhibits,
18 Judge.
19 THE COURT: All right. Some of those, of course, can
20 be, for lack of a better term, gory. Some I recall
21 depicted a body that was unclothed, and I'm concerned about
22 that, given the media in the courtroom, as well as a lot of
23 other people. I have the power under NRS 171.204 to
24 exclude those people from the courtroom. Last time we --
25 unnecessary people from the courtroom.

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1 Last when we had Miss Fratto's hearing, fortunately we
2 were able to use Judge Puccinelli's courtroom and we could
3 do it in a way that I think was discreet given Dr. Clark's
4 position in the courtroom and my position. I don't know if
5 we'll be able to do that with this. So I'd like to hear
6 from Counsel on what Counsel's position is. Mr. Ohlson, go
7 ahead.
8 MR. OHLSON: Counsel and I have talked about this,
9 Your Honor. And first of all, I suggest that Counsel
10 identify all the photos he wants to use prior to the
11 testimony of Dr. Clark. I'll stipulate to them for the
12 purpose of this prelim. Regardless -- if this were a jury
13 trial there might be some that I would talk about. I'll
14 stipulate to them.
15 Secondly, we previously agreed that I would stipulate
16 that the autopsy was performed on Micaela Costanzo. And
17 there is a further stipulation regarding identity of the
18 deceased.
19 MR. TORVINEN: It's the stipulation simply recites
20 that for the purposes of the prelim it is a matter of fact
21 that the person upon whom the autopsy was performed on the
22 8th of March is Micaela Costanzo.
23 MR. OHLSON: And my suggestion --
24 THE COURT: That was filed on July 25th and I have,
25 for the record, reviewed that stipulation and of course

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1 will accept it. Mr. Ohlson.

2 MR. OHLSON: My suggestion is that the witness be
3 allowed to refer to the photos. We've seen the photos.
4 And be allowed to refer to the photos to herself on the
5 witness stand. And then those photos can be repackaged and
6 given to the Court, since they will be admitted into
7 evidence anyway, to the Clerk, and Your Honor can refer to
8 them as we're going along if there is another set.

9 MR. TORVINEN: That's all there is.

10 MR. OHLSON: Or afterwards.

11 THE COURT: And then she could refer to them at the
12 Bench so they would not have to be displayed. I can see
13 them from here. If Counsel needs to see them, you can move
14 on up. Mr. Ohlson.

15 MR. OHLSON: If we need to, we'll move up. But we've
16 reviewed them extensively and we're prepared to go forward.

17 MR. TORVINEN: It seems, Judge, that she can simply
18 lift it off the Bench in the witness seat and you can see
19 it. She wouldn't have to lift it above the bar.

20 THE COURT: Okay. Then with that, then the Court will
21 not have to invoke NRS 174.204 and exclude all nonnecessary
22 people from the courtroom, and there's a list of who the
23 necessary people are in the statute. So we won't be going
24 that route.

25 If you want to, just instruct Dr. Clark on how we're

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1 going to handle this. I have a real concern about doing
2 this in such a way that these photos are displayed,
3 especially the photos of the unclothed body, of the gory
4 photos to the people in the courtroom. I don't want that
5 happening.

6 MR. OHLSON: We share your concern, Your Honor, and
7 appreciate it especially considering that there are a
8 number of things that we may do in this hearing which may
9 later affect the venue of the ultimate trial.

10 THE COURT: Thank you, Mr. Ohlson. All right. With
11 that then, Dr. Clark.

12 MR. TORVINEN: Ellen Clark.

13 THE COURT: Watch your step there, Doctor.

14 ELLEN CLARK, M.D.,
15 produced as a witness at the instance of the Plaintiff,
16 having been first duly sworn, was examined and testified as
17 follows:

18 THE COURT: Please be seated. Mr. Torvinen.

19 DIRECT EXAMINATION BY MR. TORVINEN:

20 Q. First state your full name and spell your last for
21 the record.

22 A. Ellen Clark. C-l-a-r-k.

23 Q. Dr. Clark, before we commence your examination,
24 the Court has expressed some concern about publication of
25 photographs you're about to look at which are contained in

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1 the envelope on the corner of the Bench there, and I has
2 asked, unless you need to tell me if you would have a
3 problem with that is if you just lay them flat in front of
4 you, and as you refer to them, not lift them up or display
5 them to the Court, but simply do it from the Bench
6 underneath the bar there, and the Court can see them from
7 where he is. Is that okay with you?

8 A. That's fine.

9 Q. Can I proceed, Judge?

10 THE COURT: Please.

11 Q. You've stated your name. Could you describe what
12 your occupation is.

13 A. I'm a doctor of medicine and specialized in
14 anatomic, clinical and forensic pathology.

15 MR. OHLSON: Your Honor, we're prepared to stipulate
16 that Dr. Clark is qualified to testify as an expert in
17 forensic, anatomical and clinical pathology, and that I
18 believe she's board certified in each of the three.

19 A. Yes.

20 THE COURT: All right. Then the Court assumes the
21 State will so stipulate?

22 MR. TORVINEN: Yes.

23 THE COURT: The Court will accept the stipulation and
24 she may give her opinion in those areas, forensic,
25 anatomical, and clinical pathology. Go ahead.

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1 Q. Dr. Clark, if you'd secure the envelope from the
2 Bench. Open it and then lay the images — you can turn
3 them up, but you just need to make sure that you don't lift
4 them above the bar, if you can do that.

5 A. Okay.

6 Q. Now, the first I direct your attention to is
7 No. 50 which is the first photograph, and what does that
8 describe?

9 A. Exhibit No. 50 shows the body of Micaela Costanzo
10 at the outset of the autopsy examination. Specifically it
11 shows the condition of the body as closely as possible
12 preserved as it is or was within the grave or the body
13 recovery site.

14 There have been hand bags added to the hands and
15 secured with tape so as to preserve evidence over the
16 hands. The body is clothed in blue jeans, pink and gray
17 tennis shoes, and also had underwear on. There is
18 substantial soiling of the front of the body, primarily
19 concentrated over areas of obvious bleeding about the upper
20 chest, the neck and the face and head.

21 Q. And was the body received — was it in some sort
22 of container?

23 A. Yes. It was contained within a body bag. Silver
24 colored body bag.

25 Q. Now, I'd like to ask you first about — first

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1 thing I want to ask you is is based on your -- did you
2 conduct an autopsy on Micaela Costanzo's remains?
3 A. I did.
4 Q. As a result of that, did you come to some
5 conclusion about the cause of her death?
6 A. Yes.
7 Q. Would you tell us what that is.
8 A. Micaela Costanzo died due to exsanguination due to
9 stab and slash wounds, with contributing conditions
10 including blunt force and asphyxial trauma.
11 Q. Now, exsanguination -- I can never say it.
12 Exsanguination means what?
13 A. Bleeding or hemorrhage.
14 Q. Now, did she have injuries to her head and neck?
15 A. She did.
16 Q. Would you describe those for me.
17 A. Would you like me to use the exhibits, too?
18 Q. Yes, please. And I think you can tilt them
19 forward and you'll be able to see the exhibit number you're
20 referring to.
21 MR. CHILSON: For the record, should we identify and
22 admit those into evidence at this time, Your Honor?
23 MR. TORVINEN: Your Honor, I would offer Exhibit 50
24 and Exhibits -- bear with me, Judge -- 61 to 74.
25 MR. CHILSON: So stipulated.

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1 THE COURT: 50 and 61 through 74, those exhibits are
2 admitted.
3 Q. Thank you. Now, Doctor, if you'd utilize the
4 photographs, did she have injuries to her head and neck,
5 and would you describe them?
6 A. Yes. She had multiple injuries to the face and
7 head and neck, partially depicted in State's Exhibit 61.
8 This shows the left side of the face, the neck and the
9 upper chest. There are specifically areas of bleeding with
10 dirt, coarse gravelly dirt, as well as fine sandy loam
11 accumulated over and dried on to blood on the body
12 surfaces. In particular, there are some injuries evident
13 even within this uncleaned photograph, including several
14 skin lesions or skin break wounds on the left side of the
15 face and the head.
16 State's 62 shows a portion of Micaela's body. This
17 would actually be the upper central torso. This would be
18 the right side of the torso, and this was a hoody or a
19 sweat shirt type garment that was not on the body, but was
20 laying over the body and partially entrapped under the arm
21 on the right side of the body.
22 You can appreciate that the sleeves of the sweat shirt
23 or the hoody have been tightly knotted and tied towards the
24 forearm region, and the cuffs are absent from the shirt.
25 There's also pretty extensive blood letting accumulated

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1 primarily over the top and sides of the shirt, but also on
2 some portions of the sleeves.
3 State's 63 shows Miss Costanzo's right arm. In
4 particular there were two elastic hair bands around the
5 wrist. There also is a portion of the cuff of the shirt
6 sleeve of the hoody or the sweat shirt. It shows very
7 extensive blood saturation and has been sharply cut or
8 sawed through to remove the cuff of the shirt sleeve from
9 the shirt.
10 Q. Doctor, when you say "shirt", are you talking
11 about the garment that was knotted?
12 A. Right. A sweat shirt or sometimes they call them
13 hoody shirts.
14 State's 64 shows Miss Costanzo's body now having been
15 cleaned, showing the upper torso from the front. Shows
16 both shoulders, also shows the face, the chin and the neck,
17 with multiple sharp force and blunt force injuries. In
18 particular you can recognize that there is contusion or
19 blackening of the upper and lower eyelids. More extensive
20 on the right upper and lower eyelids. There are also some
21 angulated wounds to the left brow region, eyebrow region
22 and extending on to the front of the left eyelid. Those
23 wounds have features of both sharp and blunt trauma.
24 Primarily sharp, meaning they would be superficial incised
25 or cut wounds.

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1 The lips appear swollen. There is apparent bruising
2 and injury to the lips. You can appreciate in this photo
3 that there are at least seven additional sharp force
4 injuries, including some stab wounds. Those are wounds
5 penetrating more deeply into the body than they measure in
6 dimension on the skin surface.
7 There are also incised or slash wounds over the chin
8 and over the front and on to the left side of the neck. I
9 would draw your attention also to a wound that was on the
10 upper outer left shoulder. This has characteristics
11 different than the majority of the wounds in that it has
12 parchment like orange drying or no evidence of bleeding
13 into the wound. This was reportedly created during the
14 excavation of the body.
15 State's 65 shows the back of the torso of Miss
16 Costanzo, and in particular it shows areas of contusion and
17 abrasion or superficial skin break injury. Some having
18 diagonal parallel linear patterning. In particular over
19 the left upper chest and lower scapula or shoulder blade
20 area. And then also over the -- a similar location in the
21 right. Some of the wounds are horizontal. Others are
22 perpendicular and more vertical. Others have no specific
23 linear orientation. They were on both sides of the outer
24 torso and also overlined the scapula, shoulder blades.
25 State's 66 shows Micaela Costanzo's right eye. Again,

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1 with blackening or purple and gray bruising over the eyelid
2 and also the front of the cheek. This photo also shows
3 numerous very small size or pinpoint petechial hemorrhages
4 over the eyelids and the upper cheek region and extending
5 into the side of the scalp or the so called temporal
6 region. You can also see towards the side of the top right
7 side of the mouth there is some blunt trauma, including
8 abrasion and bruising.

9 State's 67 shows more detail of Miss Costanzo's lips.
10 Again, they appear to be swollen. There's extensive
11 bruising on the outsides of the lips, and subsequent
12 photograph shows that there are corresponding lacerations
13 on the insides of the lips.

14 State's 68 shows the right side of the upper lip, a
15 portion of the left side of the upper lip positioned to
16 expose the inside of the lip, with some deep lacerations or
17 tears on the lips.

18 State's 69 shows the decedent's right hand. In
19 particular, the right wrist region before the hand has been
20 cleaned. There are some linear markings including
21 primarily some blood stains, but also some skin break
22 injuries or superficial tears in the skin within the region
23 where the bands were placed and generally around the wrist.

24 At the outset of the autopsy and visible in State's 50
25 there was a plastic cuff or a plastic strap attached around

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1 areas of abrasion or skin injury damage below that.
2 There's also irregularity to this wound, including a
3 V-shaped or a somewhat angulated effect to the wound. You
4 can appreciate with the skin reapproximated or more relaxed
5 at the top of the neck many of the scallops or
6 irregularities on one of the larger slash wounds to the
7 neck.

8 State's 72 shows the stab wound on the right side of
9 the neck with the margins reapproximated, and you can
10 appreciate more the V-shape pattern or the double incised
11 and cut pattern to this wound.

12 State's 73 shows a portion of the scalp. In
13 particular, the hair has been shaved towards the left side
14 of the back of the head. Actually the top and the side of
15 the head. And there are two penetrating scalp wounds. One
16 which is in this photograph is shown here more towards my
17 right, and it shows some features of sharp wounding with
18 little abrasion marginating the edges of the wounds in
19 relatively discrete areas of cutting or skin disruption.
20 The other shows more irregular margins, again with some
21 suggestion that scalloping and some tissue bridging that
22 are more suggestive of combined blunt and possible sharp
23 injury.

24 State's 74 now shows Miss Costanzo's skull, the scalp
25 having been partially reflected to reveal that there was

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1 Miss Costanzo's right forearm with a portion of a second
2 loop or an extension of the cuff having been cut at the
3 front of the body.

4 State's 70 shows some more detailed photo of some of
5 the injuries to the front and sides of Miss Costanzo's
6 neck. In particular, towards the jaw line or the under
7 surface of the jaw on the left, there is a stab type wound.
8 There is a longer slash or incised wound at the upper left
9 side of the neck from the front to the side of the neck.
10 There is a second larger stab or slash wound with irregular
11 margins that is at least two trailing cuts towards the left
12 front and left side of the neck. There's obvious bleeding
13 or hemorrhage into the soft tissue of the neck adjacent to
14 this. There's also some indication of patterning to the
15 injury, including scallops or curved edges with sharp
16 margins both on the upper edge of the large wound and on
17 the lower edge of the large wound.

18 There's an additional injury at the center front of
19 the neck below the largest of the incised wounds that shows
20 what we call tram track patterning or double parallel
21 linear patterning. There's also a relatively large size or
22 deep stab wound to the right side of the neck towards the
23 front.

24 State's 71 shows some additional detail to the stab
25 wound on the right side of the neck. Again, there are some

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1 very extensive bleeding in the deep scalp tissue and over
2 the surface of the skull subjacent to or beneath those skin
3 break wounds on the left side. There are other — several
4 other areas of bruising towards the back and top of the
5 skull on both the left side and the right side, towards the
6 back.

7 And not depicted in this photograph, but observed at
8 autopsy and documented, are additional areas of bruising
9 towards the right and left side of the temporal over the
10 sides of the head.

11 Q. Now, could some of those wounds have been caused
12 by a knife?

13 A. Yes.

14 Q. Is there any specific wounds that you associate
15 particularly with a sharp edge?

16 A. Several of the wounds of the neck have features of
17 a sharpened instrument such as a knife. In particular,
18 those that are stab wounds at the front right side and at
19 the mid-left side and towards the jaw line have features of
20 a narrower and relatively sharpened blade.

21 Q. The stab wound on the right side of her neck, did
22 it penetrate any vital organ or —

23 A. It did.

24 Q. What did it penetrate?

25 A. There was very extensive bleeding into both sides

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1 of the front side and back of the neck. In particular, the
2 right neck stab wound penetrated or cut partially through
3 the jugular vein.

4 Q. And describe again for me the blunt force trauma
5 that you recognized on her head. The blunt force trauma on
6 her head, what was that again?

7 A. There were areas of bruising in the scalp between
8 the deep part of the scalp or through the thickness of the
9 scalp and over the bony prominences of the skull.

10 Q. Were the blunt force trauma in her head consistent
11 with being struck with some sort of flat hard object?

12 A. That's a possibility, yes.

13 Q. Was there any ligature marks or anything that you
14 would associate with a ligature?

15 A. The tram track patterning in particular at the
16 center front of the neck may be characteristic of a
17 ligature. Or at least had double parallel linear
18 patterning.

19 Q. You also made mention of asphyxia. Can you tell
20 me what you meant by that and what evidence specifically
21 you attribute to the asphyxia?

22 A. Asphyxia is a relatively broad term that means
23 that there's decreased or interruption of blood flow or
24 inadequate oxygenation of tissue in the body. In
25 particular, in Miss Costanzo's case, this included evidence

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1 of petechial hemorrhage or capillary burst hemorrhage
2 beneath the skin surface, in particular around the eyes and
3 on the side of the face.

4 Q. Is there any -- was there anything on her body
5 that you would particularly associate with strangulation?

6 A. If you speak to manual throttling or
7 strangulation, no, I did not find evidence.

8 Q. How about impairment of her airway?

9 A. Potentially impairment of the airway both in the
10 form of potential direct application of pressure to the
11 throat or the neck structures, and also there was evidence
12 of bleeding obviously into the airways and the tissue
13 surrounding the airways in the upper neck.

14 Q. Could I have 42. I'm going to show you what's
15 been marked as Exhibit No. 42. Now, can I put this down.
16 There you go. Have you had an opportunity to look at that
17 before?

18 A. I did. I looked at this at the last hearing.

19 Q. Do you need to look at it to make sure?

20 A. Not at this time.

21 Q. Is there anything about that implement or its
22 characteristics that you would associate specifically or
23 characteristically with any of the wounds that you observed
24 on Micaela's person?

25 A. In particular the serrated or scalloped edge of

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1 the blade, in general I should say the shovel aspect of
2 that instrument, has overall configuration, interspersing
3 or patterning which would correspond to some of the wounds
4 on Miss Micaela's neck.

5 Q. Now, you also mentioned that she was -- was any of
6 the blunt force trauma on her head or the back of her head,
7 would it be consistent with being struck with the flat of
8 that instrument?

9 A. Possibly, yes.

10 Q. Was there bruising on her -- I think you did
11 mention this -- bruising on her back?

12 A. Yes.

13 Q. Now, was there evidence of blunt force trauma on
14 her back?

15 A. Yes. Both the abrasion and the bruising would be
16 within the category of blunt force trauma.

17 Q. And where was -- specifically where did she have
18 her bruising as distinguished from the abrasion on her
19 back?

20 A. Well, the bruises were -- or the abrasions were
21 overlying or on the surface of some areas of bruising.

22 Q. And would it be -- would the areas of bruising be
23 consistent with being struck with the flat of the shovel?

24 A. That's a possibility.

25 Q. The wound that transected her jugular vein, can

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1 you tell me how deep that was?

2 A. That was approximately one and a half to two
3 inches deep.

4 Q. Did you see any physical evidence on her person of
5 having been bound or binding?

6 A. There is indirect physical evidence in the form of
7 the sweat shirt cuffs, the knotting or tying of the sleeves
8 of the sweat shirt and plastic cuffs or a plastic cuff with
9 two potential loops around the right forearm.

10 Q. But did you see any injuries that necessarily
11 spoke to binding?

12 A. I did not see specific binding injuries.

13 Q. Do you remember a patterning on one of her wrists?

14 A. Yes.

15 Q. Of blood?

16 A. Yes.

17 Q. Was that patterning around her wrist suggestive of
18 binding?

19 A. That could be binding, but I recall that she also
20 had hair bands or elastic bands around the wrist in the
21 same distribution.

22 Q. Indulgence, Judge.

23 THE COURT: You may.

24 Q. Now, you used a couple of terms. One is "blunt
25 force trauma". Right?

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RA 452

1 A. Correct.
2 Q. And you've also used the word "sharp force". What
3 does "sharp force" mean in terms of distinguished from a
4 blunt force?

5 A. Sharp force means that there is a sharpened edge
6 or a sharpened implement involved in creating the wound.

7 Q. As opposed to blunt force which is the force is
8 more distributed, I suppose is what you're saying?

9 A. That's correct. And both sharp and blunt force
10 can be from any number of weapons and any number of
11 mechanisms.

12 MR. TORVINEN: I'll pass the witness, Judge.

13 THE COURT: Cross examination.

14 CROSS EXAMINATION BY MR. OHLSON:

15 Q. Thank you, Your Honor. Dr. Clark, nice to see you
16 again.

17 A. Likewise. Thank you.

18 Q. Did you determine the number of stab wounds that
19 you observed on Micaela Costanzo?

20 A. There were a minimum three stab wounds. Those are
21 wounds that penetrated more deeply than it measures on the
22 surface.

23 Q. We distinguish -- in terms of the sharp force
24 injuries, we distinguish between a stab wound and a
25 slashing or incising wound because the -- how? Stab wound

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1 does what?

2 A. Typically a stab wound penetrates more deeply or
3 has a deeper dimension than it measures on its surface.
4 Clearly you can have superficial stab wounds and deep
5 incised or slashing wounds.

6 Q. Stab wound typically is deeper than it is wide.

7 A. That's correct.

8 Q. Okay. So the stab wounds, at least three?

9 A. At minimum.

10 Q. At minimum. There may have been more.

11 A. Yes. Some of the incised wounds are relatively
12 deep.

13 Q. Okay. The incised wounds, how many did you note?

14 A. There were a minimum of three -- actually there
15 are a minimum of four incised wounds. Some deep, some
16 relatively superficial.

17 Q. And some of those are deep enough they could have
18 been stab wounds.

19 A. Yes. They have combined features.

20 Q. In terms of the blunt force trauma, was there any
21 way to tell how many times that this young woman was
22 struck?

23 A. I would again say a minimum of four separate times
24 to the head.

25 Q. And evidence of the asphyxia is the petechiae in

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1 the eyes, is that right?

2 A. That's correct.

3 Q. Any other evidence of asphyxia?

4 A. There was also some evidence of blood aspiration
5 or bleeding into the lungs and the airways. There was
6 evidence of bleeding into the tissue surrounding the
7 airways adjacent to the stab wounds. There was also blunt
8 trauma to the mouth and the lips, in particular, that may
9 be associated with asphyxial trauma.

10 Q. Let's leave out the asphyxia for a moment and get
11 back to that. But as to the stab wounds, you don't have an
12 opinion to a reasonable degree of medical probability as to
13 the specific instrument that was used to cause the stab
14 wounds, do you?

15 A. My opinion --

16 Q. In terms of this knife versus that knife.

17 A. My opinion would be that the instrument which
18 caused the injury would have patterning consistent with the
19 pattern of the injury on the body. In other words, I would
20 exclude an ax, for example, because there isn't patterning
21 associated with that. I would have an opinion to that
22 extent.

23 Q. Just about any kind of a blade with a point that
24 we would consider to be a knife blade, is that right?

25 A. That could account for some of the wounds, yes.

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1 Q. I'm talking about the stab wounds now.

2 A. Yes.

3 Q. And you wouldn't have to speculate or to opine as
4 to the length of that blade because it really doesn't
5 matter. A ten inch knife blade could deliver one and a
6 half inch stab wound, correct?

7 A. Yes. That's correct.

8 Q. But a three quarter inch knife blade could
9 probably not deliver a one and a half inch stab wound?

10 A. Actually it could. A short blade can deliver a
11 relatively long or deep wound, depending upon what force is
12 used with it.

13 Q. So just about any kind of knife blade could have
14 occasioned the stab wounds.

15 A. The stab wounds, yes.

16 Q. Okay. As to the incised or slashing wounds,
17 likewise any kind of sharp instrument that was not
18 serrated?

19 A. Some of the slash wounds did not have evidence of
20 serration, but some of them had very specific evidence of
21 scalloping, as I refer to it.

22 Q. As to those who did not have evidence of any
23 scalloping or serration, just about any kind of knife,
24 sharp knife, could have caused those, is that right?

25 A. Yes, a sharp knife or any sharpened point.

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RA 453

1 Q. Any sharp instrument, even a sharp ax if it wasn't
2 delivered in a heavy crushing mode.
3 A. Yes.
4 Q. A sharp edge.
5 A. A sharp edge, yes.
6 Q. And as to the wounds that event the scalloping or
7 the serration, just about any kind of instrument, the blade
8 of which had patterns that were consistent in terms of
9 scallops, is that right?
10 A. That's correct.
11 Q. And those would include what kinds of instruments?
12 A. Again, an instrument that has interspacing and
13 patterning which would correspond to those wounds.
14 Q. Some bread knives.
15 A. I don't -- you'd have to show me the instrument.
16 Q. As long as there was spaces between them, the
17 points, and that corresponded with the wounds, right?
18 A. That's correct. As long as the patterns could be
19 matched.
20 Q. So that I'm clear, you're not giving this Court
21 the opinion that you're certain to a reasonable degree of
22 medical probability that that shovel caused the wounds that
23 have the scallops?
24 A. I cannot say that absolutely. Not certain what
25 "reasonable degree" means.

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1 Q. Likewise as to all the three kinds of wounds --
2 leaving out the asphyxia for the moment -- as the three
3 kinds of wounds, you can't tell us with which hand the
4 attacker perpetrated the wound, left hand or right hand,
5 can you?
6 A. No.
7 Q. Likewise, you cannot tell us based upon what you
8 observed the gender of the person who delivered any of the
9 wounds to the deceased.
10 A. I cannot. Unless there's DNA or blood evidence.
11 Q. Just based upon your observation, not based upon
12 any lab work.
13 A. That's correct.
14 Q. The jugular vein was incised or cut nearly in
15 half, is that right? Or completely almost -- almost
16 severed, is that right?
17 A. That's correct. On the right side.
18 Q. On the right side. Now, I need you to school me a
19 little bit here. The jugular vein is the vein that returns
20 blood from the brain to the heart?
21 A. That's correct.
22 Q. And the carotid artery takes fresh blood up to the
23 brain, is that right?
24 A. Correct.
25 Q. So one delivers and one removes.

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1 A. Basically, yes.
2 Q. They both do their jobs under pressure normally,
3 isn't that right?
4 A. Yes.
5 Q. Is there any way -- and is it fair to say that
6 when the heart stops beating, blood pressure stops.
7 There's no blood pressure.
8 A. There may be some transiently.
9 Q. Transient. And that's a very small or slight
10 blood pressure, right?
11 A. I don't know what the pressure would be.
12 Q. Is there any way to tell whether Miss Costanzo's
13 heart was beating when the jugular vein was transected?
14 A. I don't know.
15 Q. If the heart was beating when the jugular vein was
16 transected, would the -- would the act of cutting that vein
17 cause a spraying of blood outside the body?
18 A. No. Not specifically.
19 Q. Not necessarily. To the asphyxiation, one has to
20 be breathing in order to asphyxiate, does one not?
21 A. No, not necessarily. For example, when the neck
22 is completely occluded or there's tremendous pressure
23 applied to the chest, the person per se is not effectively
24 breathing, but they may be asphyxiating.
25 Q. I think we're probably saying the same thing. I

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1 understand that you can be asphyxiated, the process
2 completed, and not be breathing any more. Right?
3 A. That's true.
4 Q. But in order to get asphyxiated, your breathing
5 has to be stopped, correct?
6 A. No.
7 Q. No? So a person, a corpse, can be asphyxiated?
8 A. No. You asked whether breathing has to be
9 stopped. Asphyxiation happens on many levels. It can be
10 on a chemical level. It can be based upon absence or
11 interruption of blood flow. It can be based upon poor
12 oxygenation which may be a direct or indirect effect of
13 breathing.
14 We see, for example, asphyxiation in carbon monoxide
15 poisoning. We see asphyxiation in many different
16 mechanisms. So the two are not mutually exclusive. You
17 may be breathing and asphyxiating. You may be asphyxiating
18 and breathing.
19 Q. Since you noted injuries to the mouth, and you
20 noted blood in the lungs, and you noted I guess an
21 occlusion of the -- is it the trachea that you noticed or
22 the bronchial tube? What did you notice that was occluded
23 with blood?
24 A. There was bleeding around and within.
25 Q. And within.

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RA 454

1 A. The airways.
2 Q. Since you noted petechiae, what form of
3 asphyxiation did Miss Costanzo suffer?
4 A. I can't tell you specifically what form. She may
5 have suffered from any number of forms of asphyxiation.
6 Q. Is there any way to tell in terms of sequence
7 which injury was suffered first, the jugular vein injury or
8 the asphyxia?
9 A. No. I cannot tell you.
10 Q. Cannot tell which one was suffered first.
11 A. That's correct.
12 Q. Does it seem likely that the jugular vein injury
13 was the first in time inasmuch as there was so much blood
14 involved in the asphyxiation?
15 A. Again, I can't say.
16 Q. Blunt force trauma is that which is delivered with
17 anything that is not sharp or pointed, is that right?
18 A. Actually blunt force trauma is a broad category.
19 For example, you can use something that is sharp and
20 pointed to deliver blunt trauma.
21 Q. As long as you don't use the sharp and pointy
22 portion of that, right?
23 A. As long as it doesn't create sharp trauma.
24 Q. So blunt force -- the blunt force trauma that you
25 noted here could have been delivered with just about any

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1 Kind of blunt instrument, is that right?
2 A. Yes.
3 Q. Not just the shovel that you looked at.
4 A. That's correct.
5 Q. You said that there was indirect indications of
6 binding and tying.
7 A. Yes.
8 Q. And by that you meant there was no direct
9 indication that Miss Costanzo had been bound or tied.
10 A. I think the question was were there specifically
11 injuries that spoke to binding. Injuries on the body. So
12 there was not injury on the body per se that spoke to
13 binding. There was indirect evidence or maybe even direct
14 evidence in attachment or associated remains of the body.
15 Q. Any evidence of binding or tying was not evidence
16 then that Miss Costanzo suffered injuries due to ligatures,
17 right?
18 A. Right. There were no wrist injuries, in
19 particular. Or there were actually some wrist injuries on
20 the right, but not specific to binding.
21 Q. The injuries on the head, were those blunt force
22 injuries?
23 A. Some were blunt. Some had combined features of
24 blunt and sharp trauma.
25 Q. How many injuries did you note on the head? I'm

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1 talking about the top of the head.
2 A. There were two penetrating or penetrating skin or
3 scalp injuries on the left side towards the top and midline
4 bony prominence of the left side of the head. There were
5 other areas of bruising separate from those.
6 Q. Were any areas of the brain or anything underneath
7 the cranium associated with or affected by any of this
8 trauma?
9 A. I did not see any bleeding or direct impact trauma
10 to the brain.
11 Q. There was no hematoma in any of the processes from
12 the scalp inward to the brain.
13 A. No. There were -- there was hematoma in the
14 scalp. There was not hematoma in the brain.
15 Q. And what does that tell you about the extent to
16 which Miss Costanzo's received blows to the head, and the
17 force of those blows?
18 A. They were not of sufficient force at the time they
19 were delivered to have caused bleeding into the brain.
20 MR. OHLSON: That's all I have.
21 THE COURT: Redirect.
22 REDIRECT EXAMINATION BY MR. TORVINEN:
23 Q. With respect to any of the stab wounds, were any
24 of them -- could you discern the width of the blade that
25 may have caused them?

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1 A. There are some indicators, there's some dimensions
2 on the stab wound in particular on the right side of the
3 neck, and on the left jaw and the left side of the neck
4 that they're pretty difficult to determine in this case
5 based upon the irregularity of the wounds themselves, and
6 also the configuration of the skin and the curvature in the
7 areas where the wounds can occur.
8 Q. Mr. Ohlson asked you about the force of the blunt
9 force trauma on her head, and you responded by saying it
10 did not cause bleeding in the brain, right?
11 A. Right. It did not cause bleeding that I could see
12 on the surface or on the gross examination.
13 Q. Do you know whether or not any of the blunt force
14 trauma on her head would have caused unconsciousness or
15 could have caused unconsciousness or stupor?
16 A. I can't exclude that possibility.
17 Q. Did I understand you to say that the scalloping on
18 Exhibit 42 that you looked at and have looked at before was
19 consistent with those wounds that described or displayed
20 scalloping?
21 A. In general. The shape and size and interspacing
22 of the scallops would be consistent with the same
23 protuberances on the shovel.
24 MR. TORVINEN: I'll pass on those, Judge.
25 THE COURT: Any recross?

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RA 455

1 MR. CHLSON: No. Thank you, Your Honor.
2 THE COURT: May Dr. Clark be excused?
3 MR. TORVINEN: Yes, Your Honor, for the State.
4 MR. CHLSON: As far as we're concerned, yes.
5 THE COURT: Thank you, Dr. Clark. You're free to
6 leave the court house. All right. Exhibits 50, 61 through
7 74 are in this package, Mr. Torvinen?
8 MR. TORVINEN: Yes.
9 THE COURT: They're back with the clerk. Next
10 witness.
11 MR. TORVINEN: Kandace Christiansen.
12 KANDACE CHRISTIANSEN,
13 produced as a witness at the instance of the Plaintiff,
14 having been first duly sworn, was examined and testified as
15 follows:
16 THE COURT: Please have a seat. All right.
17 Mr. Torvinen.
18 DIRECT EXAMINATION BY MR. TORVINEN:
19 Q. State your full name and spell your last for the
20 record.
21 A. Kandace Christiansen. K-a-n-d-a-c-e, and last
22 name C-h-r-i-s-t-i-a-n-s-e-n.
23 Q. What city or town do you live in?
24 A. I live in Wendover.
25 Q. Are you acquainted with a person by the name of

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1 might have borrowed that from her?
2 A. It was I believe March 4th.
3 Q. What time of day did you physically get the
4 vehicle?
5 A. About noon.
6 Q. And where were you located when you received it?
7 A. At my house.
8 Q. And where did you go from there?
9 A. We went to lunch.
10 Q. Who is "we"?
11 A. Me, Wendi and my ex-boyfriend Jeff.
12 Q. What's Jeff's last name?
13 A. Patten.
14 Q. And did you take Wendi somewhere after lunch?
15 A. I took her back to work at Peppermill.
16 Q. And where did you go?
17 A. Then I went to BVA to do laundry.
18 Q. What's BVA?
19 A. Buena Vista Apartments.
20 Q. And while you were there, did you receive some
21 contact from Miss Murphy?
22 A. Yes, I did.
23 Q. And as a result of that did you take the vehicle
24 somewhere?
25 A. Yes, I did.

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1 Wendi Murphy?
2 A. Yes, I am.
3 Q. And have you seen her in or about the courtroom
4 today?
5 A. Yes, I have.
6 Q. In March of 2011 did she own a vehicle as far as
7 you know?
8 A. Yes.
9 Q. Did you ever have an occasion in early March of
10 2011 to borrow that vehicle from her?
11 A. Yes, I did.
12 Q. Can you tell me what kind of vehicle it is?
13 A. A Trailblazer.
14 Q. Do you know the color or remember the color?
15 A. White Trailblazer.
16 Q. I show you what's been marked as Exhibits 8
17 through -- 8, 9 and 10. Would you look at those and tell
18 me when you're finished.
19 A. Okay.
20 Q. Do you recognize --
21 MR. CHLSON: Your Honor, are 8, 9 and 10 admitted?
22 THE COURT: 8, 9, 10 are admitted.
23 Q. Do you recognize the vehicle?
24 A. Yes, I do.
25 Q. Now, do you remember in early March a day when you

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1 Q. Where did you take it?
2 A. Back to Peppermill.
3 Q. Were you met there by anyone?
4 A. Yes, I was.
5 Q. Who?
6 A. The cops.
7 Q. Do you remember a name?
8 A. I don't.
9 Q. Did they in your presence search the vehicle?
10 A. Yes, they did.
11 Q. And at some point after the search -- I show you
12 what's been marked's Exhibit 49. Do you recognize that
13 object?
14 A. Yes, I do.
15 Q. Is 49 in, Judge?
16 THE COURT: 49 has not been offered.
17 Q. I'll offer it.
18 THE COURT: Objection to 49?
19 MR. CHLSON: Can we have a moment, Your Honor.
20 THE COURT: You may.
21 MR. KUMP: No objection, Your Honor.
22 THE COURT: 49 is admitted.
23 Q. Have you ever seen that before?
24 A. Yes, I have.
25 Q. I'm not talking about the last time you testified.

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RA 456

1 Did you ever see it in the vehicle?
2 A. Before or after?
3 Q. Well, when is the first time, if you ever did, see
4 it in Wendi's vehicle?
5 A. After they searched it.
6 Q. Where was it when you saw it after they searched
7 it?
8 A. In the cake pan on the back seat.
9 Q. Where were you when they searched it?
10 A. I was standing on the stairs.
11 Q. And from the time that you retrieved or got the
12 vehicle from Wendi at noon on the 4th until the time that
13 you observed this when you got the vehicle back from the
14 police officers, had you noticed 49 in the vehicle
15 anywhere?
16 A. No.
17 Q. Did you put 49 in the vehicle?
18 A. No, I did not.
19 Q. Did anybody, to your knowledge, that you know of
20 personally put it in the vehicle?
21 A. No.
22 Q. When did you give -- did eventually you give Miss
23 Murphy her vehicle back?
24 A. Yes, I did.
25 Q. And when was that?

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1 A. It was 5:00 when she got off work.
2 Q. And where were you located when you gave it back
3 to her?
4 A. Peppermill.
5 Q. And if you know, where was 49 when you gave the
6 vehicle back to Wendi?
7 A. It was in the cake pan.
8 MR. TORVINEN: Pass the witness, Judge.
9 THE COURT: Cross examination.
10 CROSS EXAMINATION BY MR. KUMP:
11 Q. Hi.
12 A. Hi.
13 Q. Wendi came and picked you up at noon, correct?
14 A. Yes.
15 Q. And when she picked you up, you loaded your
16 laundry into the vehicle.
17 A. That is correct.
18 Q. And this vehicle, it has three rows of seats,
19 correct?
20 A. Yes.
21 Q. And the seat where the cake pan was, is that the
22 middle --
23 A. Yes, it was.
24 Q. -- seat. When you put your laundry in, did you
25 see the cake pan?

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1 A. Yes.
2 Q. Was the wire in the cake pan at that time?
3 A. No, it was not.
4 Q. You're certain of that.
5 A. Yes.
6 Q. Did you -- when you put your laundry in, did you
7 have to move the cake pan?
8 A. No.
9 Q. Where was the cake pan loaded -- where was the
10 cake pan in relationship to your laundry?
11 A. My laundry is a tall basket, so it's just behind
12 the driver's seat and the passenger seat. So it was on the
13 floor, and the cake pan was on the seat.
14 Q. But you're quite certain that you would have seen
15 the wire in the cake pan?
16 A. Yes.
17 Q. Okay. You loaded your laundry. Did you put
18 anything else in the vehicle at that time?
19 A. No.
20 Q. You drove to the Peppermill --
21 A. Correct.
22 Q. -- with Wendi. You dropped her off?
23 A. Yes.
24 Q. Did you guys have lunch?
25 A. Yes.

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1 Q. And after that, you went to do your laundry.
2 A. That is correct.
3 Q. Did you do your laundry at that time?
4 A. When I took the car?
5 Q. Yes.
6 A. Yes.
7 Q. So you took your laundry out again.
8 A. Yes.
9 Q. Did you lock the car?
10 A. No.
11 Q. Okay. You left it in the apartment complex.
12 A. That is correct.
13 Q. And you went in to I assume some -- were you in an
14 apartment or in a facility doing your laundry?
15 A. I was just right in front of the car, so it wasn't
16 too far.
17 Q. But is it a facility, a laundry facility --
18 A. Yes.
19 Q. -- that's there at the apartment complex?
20 A. That is correct, yes.
21 Q. And the car was just outside.
22 A. Yes.
23 Q. Was anyone else traveling with you at that time?
24 A. Jeffrey Patten.
25 Q. And had he had lunch with you?

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RA 457

1 A. Yes.
2 Q. And was he doing laundry with you?
3 A. Yes.
4 Q. Did he put anything in the car that you know?
5 A. No, he did not.
6 Q. When you were called back, you drove back to the
7 Peppermill?
8 A. That is correct.
9 Q. Did you load your laundry back into the car at
10 that time?
11 A. We only took one basket out when we got to BVA the
12 first time, and then Wendi called me and I took it back
13 over and the police officers asked for me to take the
14 laundry out.
15 Q. How many baskets did you have to begin with?
16 A. There was three.
17 Q. Three baskets.
18 A. Yes.
19 Q. And so there were two baskets in the car when you
20 went back to the Peppermill.
21 A. Yes.
22 Q. Okay. And when you arrived, did you see Wendi?
23 A. No, I did not.
24 Q. Who was there?
25 A. Just the police officers.

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1 Q. They met you in the parking lot?
2 A. Yes.
3 Q. And what did -- did you -- they had you remove the
4 laundry from the vehicle?
5 A. Yes.
6 Q. Okay. Did they do any type of inventory as far as
7 what you were removing from the vehicle?
8 A. Not that I know of.
9 Q. Did you sign any documents?
10 A. No.
11 Q. Did they take any pictures of your laundry, what
12 you removed?
13 A. No.
14 Q. Okay. They just trusted you to take out --
15 A. Yes.
16 Q. -- your laundry. Okay. So you took your laundry
17 out. Where did you put your laundry at that time?
18 A. Just on the ground right next to the vehicle.
19 Q. And where did you go at that time?
20 A. They asked me to step up on the stairs.
21 Q. How far away was that from the vehicle?
22 A. A flight of stairs.
23 Q. A flight?
24 A. If that. Half. Like a couple of stairs.
25 Q. How far away were you from the vehicle?

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1 A. From here to the back of the room.
2 Q. So maybe 15 to 20 feet?
3 A. Yeah.
4 Q. Okay. Did you watch them? Watch the police?
5 A. Yes, I did.
6 Q. And what did you observe?
7 A. They were just taking pictures of the vehicle.
8 Q. Okay. Did you observe the wire at that time?
9 A. No, I did not.
10 Q. How long did you observe the police with the
11 vehicle?
12 A. They had it about 15 minutes.
13 Q. Okay. And at some time did they return the
14 vehicle to you?
15 A. Yes, they did.
16 Q. And did you put your laundry back in the vehicle?
17 A. Yes, I did.
18 Q. When you put your laundry back into the vehicle,
19 did you observe the wire at that time?
20 A. Yes, I did.
21 Q. And where was the laundry at that time? Or
22 where -- excuse me, where was the wire at that time?
23 A. In the cake pan.
24 Q. Had the cake pan been moved?
25 A. No.

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1 Q. The cake pan was still in the middle --
2 A. Yes.
3 Q. -- of the second row of seats in the vehicle.
4 A. Correct.
5 Q. Did you notice it immediately?
6 A. Yes, I did.
7 Q. Did you bring it to anyone's attention at that
8 time?
9 A. I brought it to Jeff's attention when I got back
10 to BVA.
11 Q. Was Jeff with you at this time?
12 A. When I brought the car back to Peppermill?
13 Q. While you were watching the search.
14 A. No.
15 Q. Did you notice anything else about the interior of
16 the vehicle that appeared out of place?
17 A. No.
18 MR. KUMP: That's all I have, Your Honor.
19 THE COURT: Redirect.
20 REDIRECT EXAMINATION BY MR. TORVINEN:
21 Q. Was the third seat up or down or do you remember?
22 A. It was up.
23 Q. And when you say that -- you did not lock the
24 vehicle at what you refer to as the BVA?
25 A. Yes.

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RA 458

1 Q. You did or didn't?
2 A. We did not.
3 Q. Was the vehicle visible from the interior of the
4 laundry facility that you were using?
5 A. Yes.
6 Q. And how far away from it was you? From you were
7 it? How far away was it from you?
8 A. About 20 feet.
9 Q. And during the period of time that you were in the
10 laundry facility and the vehicle was parked out there, did
11 you see anyone approach it or --
12 A. No.
13 MR. TORVINEN: -- anything like that? I'll pass the
14 witness, Judge.
15 THE COURT: Any recross.
16 RE CROSS EXAMINATION BY MR. KUMP:
17 Q. Just couple of questions. When you returned to
18 the vehicle from doing your laundry, when you were called
19 to bring the vehicle to the Peppermill, during that time
20 did you have a reason to look into the back seat again?
21 A. No.
22 Q. Okay. But to your knowledge, no one had touched
23 the vehicle.
24 A. Correct.
25 MR. KUMP: That's all I have, Your Honor.

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1 THE COURT: May Miss Christiansen be excused?
2 MR. TORVINEN: I'm willing to release her, Judge.
3 MR. KUMP: Yes, Your Honor.
4 THE COURT: You're free to leave the court house.
5 MR. TORVINEN: Jason Abrams.
6 JASON ABRAMS,
7 produced as a witness at the instance of the Plaintiff,
8 having been first duly sworn, was examined and testified as
9 follows:
10 THE COURT: Please have a seat. Mr. Torvinen.
11 DIRECT EXAMINATION BY MR. TORVINEN:
12 Q. State your full name and spell your last for the
13 record, sir.
14 A. Jason Edward Abrams. Last name spelling
15 A-b-r-a-m-s.
16 Q. How are you employed, sir?
17 A. I'm a police officer for the City of West
18 Wendover.
19 Q. How long have you been employed in that capacity?
20 A. Almost three years in West Wendover.
21 Q. In your capacity as a law enforcement officer, in
22 early March of 2011 did you come into contact with a person
23 by the name of Wendi Murphy?
24 A. Yes.
25 Q. The same person you've seen in or about the

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1 courtroom today?
2 A. Yes.
3 Q. Did you have an occasion to search a vehicle that
4 you associated with her in early March?
5 A. Yes, I did.
6 Q. And can you tell me what day that was?
7 A. It was the 4th.
8 Q. Where was it located when you searched it?
9 A. Where was what located when I searched it?
10 Q. The vehicle.
11 A. The vehicle was located at -- she had a friend
12 that had borrowed the vehicle. I had to have her bring it
13 to the Peppermill to search the vehicle.
14 Q. And before you searched it, did you seek Miss
15 Murphy's consent to do so?
16 A. Yes, I did.
17 Q. Did you obtain that consent?
18 A. Yes, I did.
19 Q. In writing?
20 A. Yes.
21 Q. I'm going to show you what's been marked now as
22 49. Have you ever seen that object?
23 A. Yes.
24 Q. And where was it the first time you saw it?
25 A. On the back seat of the vehicle, the Trailblazer.

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1 Q. Do you remember specifically where in the back
2 seat?
3 A. I remember it was behind the -- in the back
4 passenger seat area.
5 Q. That's as well as you can --
6 A. I believe it was behind the front passenger seat.
7 Q. And did you have anything to do with that 49 being
8 in that vehicle?
9 A. No.
10 Q. Can you describe the exterior of the vehicle in
11 terms of its cleanliness?
12 A. There was dirt and mud on the outside of the
13 vehicle and tires.
14 Q. Now, did you seize 49 on the day that you saw it
15 inside Wendi's car?
16 A. No, I didn't.
17 Q. Did you handle it?
18 A. I took photographs of it.
19 Q. Other than that.
20 A. Other than that, that's all I did.
21 Q. So you left it in the vehicle?
22 A. I left it in the vehicle.
23 MR. TORVINEN: Pass the witness, Judge.
24 THE COURT: Cross examination.
25 CROSS EXAMINATION BY MR. OHLSON:

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RA 459

1 Q. To your own knowledge and in terms of what you
2 saw, how many people had access to that vehicle between
3 March 3rd of 2011 and March 4th of 2011?
4 A. From what I saw, it was just on the 4th, and that
5 would have been myself, Officer Tangaro and the individual
6 that had borrowed the vehicle in the first place.
7 Q. Aside from when you were present in the presence
8 of the vehicle, you don't know how many people had access
9 to it.
10 A. I'm not certain, no.
11 MR. CHLSON: That's all.
12 THE COURT: Redirect.
13 MR. TORVINEN: Nothing based on that, Judge.
14 THE COURT: May Officer Abrams be excused?
15 MR. TORVINEN: I think I'm willing to excuse him.
16 MR. CHLSON: Us, too.
17 THE COURT: You're free to leave the court house.
18 A. Thank you, sir.
19 THE COURT: Next witness.
20 MR. TORVINEN: Brad Hillaker.
21 BRAD HILLAKER,
22 produced as a witness at the instance of the Plaintiff,
23 having been first duly sworn, was examined and testified as
24 follows:
25 THE COURT: Have a seat, please. Mr. Torvinen may

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1 proceed.
2 DIRECT EXAMINATION BY MR. TORVINEN:
3 Q. State your full name and spell your last for the
4 record, sir.
5 A. Brad Hillaker. H-i-l-l-a-k-e-r.
6 Q. And how are you employed, sir?
7 A. With the -- sergeant with the West Wendover Police
8 Department.
9 Q. How long have you been many employed in that
10 capacity?
11 A. Nine years.
12 Q. Now, do you know who Wendi Murphy is?
13 A. Yes, I do.
14 Q. Do you know in early March of 2011 whether or not
15 she owned or was associated with a particular vehicle or
16 vehicles?
17 A. Vehicle, yes.
18 Q. What's the vehicle?
19 A. It's a Chevy Trailblazer.
20 Q. Can you tell me the color?
21 A. White.
22 Q. Did you have an occasion to approach her about the
23 vehicle in March of 2011?
24 A. Yes.
25 Q. What day did that take place?

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1 A. March 5th.
2 Q. Where was she located when you approached her?
3 A. Peppermill Casino.
4 Q. And what was your purpose in making contact with
5 her concerning this vehicle?
6 A. To see if she would give consent to sign over her
7 vehicle to the West Wendover Police Department.
8 Q. That is, you wanted to seize it.
9 A. Yes.
10 Q. Did you?
11 A. Yes.
12 Q. Did you transport or cause it to be transported
13 somewhere?
14 A. Yes. Mr. Tow transported the vehicle over to West
15 Wendover Police Department.
16 Q. Specifically did you have it deposited at a
17 particular location at the West Wendover Police Department?
18 A. Yes. In our sally port.
19 Q. And before -- so did she sign a physical consent
20 for you?
21 A. Yes, she did.
22 Q. And then you made arrangements to have it towed.
23 A. Yes.
24 Q. Before it was towed from -- specifically tell me
25 where it was located when you made arrangements to have it

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1 towed.
2 A. Northwest parking lot of the Peppermill Casino.
3 Q. Once you had made these arrangements and before
4 the arrival of the tow truck, did you make any entry into
5 the interior of the vehicle?
6 A. I did not.
7 Q. Was it just -- did you go by yourself or was there
8 anybody assisting you?
9 A. I was by myself.
10 Q. Did you know where the vehicle was when you
11 approached Miss Murphy or did she have to direct you to its
12 location?
13 A. When I contacted her at the Peppermill Casino, the
14 hotel registration desk, she had told me where it was
15 located.
16 Q. And that's where you found it?
17 A. That's where I found it.
18 Q. Now, upon arrival -- upon its arrival at the sally
19 port, who was there? If anyone?
20 A. No one was in the actual sally port. My superiors
21 were inside the building.
22 Q. Before -- at some point in time you having towed
23 it to the sally port, did you surrender it to someone else?
24 Or did you notify somebody it was there?
25 A. Can you explain that.

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RA 460

1 Q. You've got the truck in the sally port now, right?
2 A. Yes.
3 Q. Is this an enclosed place?
4 A. Yes, it is.
5 Q. Now you've got the truck in the sally port, and so
6 did you -- did you notify anybody that you had seized it
7 and where it was located?
8 A. Yes, Detective Burnum.
9 Q. And he was in the building, but not in the sally
10 port?
11 A. They -- originally Detective Burnum had came out
12 into the sally port area.
13 Q. And while you were -- at some point in time then
14 you parted company with the Trailblazer.
15 A. At that time, yes.
16 Q. And during the period of time it was in your
17 custody, did you ever make any intrusion into its interior?
18 A. I did not make any intrusion in the interior, no.
19 Q. Did anyone in your presence make any intrusion
20 into the interior?
21 A. No.
22 Q. Did you inspect the exterior of the vehicle before
23 you parted company with it?
24 A. I looked at it, yes.
25 Q. And can you describe its exterior in terms of its

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1 cleanliness?
2 A. It was dirty.
3 Q. Was there anything that you found particularly of
4 note that you brought to anyone's attention?
5 A. Single stand of brown hair on the back bumper.
6 Q. Right or left side or do you remember?
7 A. It was on the left side. The driver's side.
8 Q. And was it -- do you remember what the
9 characteristics of the bumper were? Are we talking about
10 a -- do you know what it was made out of?
11 A. I believe it was made out of like the plastic
12 bumper.
13 Q. Was it near the top of the bumper or the bottom of
14 the bumper or do you remember?
15 A. I don't recall. I don't recall.
16 Q. Did you take any photographs of the hair in place?
17 A. I did not.
18 Q. Other than noting its presence, did you examine it
19 physically in any way?
20 A. No, I did not.
21 Q. Did you bring it to anybody's attention?
22 A. Detective Burnum.
23 MR. TORVINEN: I'll pass the witness.
24 THE COURT: Cross examination.
25 CROSS EXAMINATION BY MR. OHLSON:

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1 Q. Is it Officer Hillaker or Sergeant? What is it?
2 A. Sergeant Hillaker.
3 Q. Sergeant Hillaker, may we assume that you were
4 looking at this vehicle about which you've testified in
5 relation to the disappearance and ultimate death of Micaela
6 Costanzo?
7 A. Yes.
8 Q. In your work you were transporting this vehicle,
9 causing it to be transported occurred on March 5th?
10 A. Yes.
11 Q. At that time had Micaela's body been discovered?
12 A. Yes.
13 Q. And why were you looking at Wendi Murphy's
14 vehicle? Did you suspect her in the death of Micaela
15 Costanzo?
16 A. I was advised by Detective Burnum to go up to
17 Wendi Murphy's employment at the Peppermill Casino to see
18 if she would sign over a consent.
19 Q. You knew that there was an investigation and a
20 search going on, did you not?
21 A. Yes, I did.
22 Q. Were you involved in that investigation and
23 search?
24 A. I was involved in the search, yes.
25 Q. Were you involved into the investigation?

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1 A. Just this initial part here.
2 Q. This is all?
3 A. I'm testifying now, yes.
4 Q. This is your only involvement. Isn't it true at
5 that time Kody Patten was a suspect in the minds of the
6 police?
7 A. Yes.
8 Q. Okay. And that no other person was a suspect at
9 that time, isn't that right?
10 A. At that time, no.
11 Q. And he was a suspect -- the reason that you looked
12 at the vehicle, Miss Murphy's vehicle, on the 5th of March
13 is because you had information that Kody Patten had use of
14 the vehicle on the 3rd of March, isn't that right?
15 A. That's correct.
16 Q. And the 3rd of March is the day that Micaela
17 Costanzo went missing.
18 A. That's correct.
19 Q. Did you have any contact with Kody Patten?
20 A. I did not.
21 MR. OHLSON: That's all I have.
22 THE COURT: Redirect.
23 MR. TORVINEN: Nothing based on that, Judge.
24 THE COURT: May Sergeant Hillaker be excused?
25 I I would excuse him, Judge.

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RA 461

1 MR. OHLSON: Yes, Your Honor.
2 THE COURT: You're free to leave the court house.
3 Thank you, sir. Next witness.
4 MR. TORVINEN: Kiearra Murphy.
5 THE COURT: Watch your step. Raise your right hand,
6 please.
7 KIEARRA MURPHY,
8 produced as a witness at the instance of the Plaintiff,
9 having been first duly sworn, was examined and testified as
10 follows:
11 THE COURT: Please have a seat. Mr. Torvinen.
12 MR. TORVINEN: Just bear with me, Judge.
13 THE COURT: You may.
14 DIRECT EXAMINATION BY MR. TORVINEN:
15 Q. State your full name.
16 A. Kiearra Louise Murphy.
17 Q. And who's Wendi Murphy?
18 A. My mom.
19 Q. Is she in or about the courtroom today?
20 A. Yes, she was. Sorry.
21 Q. Have you seen -- did she come with you to court
22 today?
23 A. Yes.
24 Q. Do you know Kody Patten?
25 A. Yes.

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1 Q. Is Kody Patten or the person you know as Kody
2 Patten in the courtroom?
3 A. Yes.
4 Q. Would you point to that person and tell us what
5 he's wearing.
6 A. Red jump suit.
7 Q. May the record reflect that identification?
8 THE COURT: The record will reflect the identification
9 of Defendant Patten.
10 Q. Where do you know Kody from?
11 A. From school and elementary.
12 Q. Now, in early March of 2011, did your mother have
13 or own a motor vehicle?
14 A. Did my mother?
15 Q. Yes.
16 A. Not that I know of.
17 Q. Did she have regular use of a motor vehicle?
18 A. Yes.
19 Q. Can you describe that motor vehicle to me.
20 A. White Trailblazer.
21 Q. I show you what's been marked as 8, 9 and 10. Do
22 you recognize what's depicted in the photograph?
23 A. Yeah.
24 Q. What is it?
25 A. It's the Trailblazer that my mom owns.

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1 Q. Now, in early March of 2011, did you ever see Kody
2 Patten in that vehicle?
3 A. I did.
4 Q. Where was the vehicle loaded -- where was the
5 vehicle located when you saw the vehicle with Kody Patten
6 in it?
7 A. On a dirt road right past Tibbets.
8 Q. How close is that to the school?
9 A. It's not even a mile away.
10 Q. Where were you going?
11 A. I was going south and he was going north.
12 Q. On this dirt road?
13 A. Yes.
14 Q. And if you keep going north on the dirt road,
15 where do you -- what's the next real road that you hit?
16 A. Wendover Blvd.
17 Q. If you keep going south, the direction you were
18 going, where's the first road that you hit?
19 A. Tibbets.
20 Q. And how close is it to the school once you hit
21 Tibbets?
22 A. The next stop sign.
23 Q. Now, do you know what day in March it was?
24 A. March 3rd.
25 Q. Do you know what time?

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1 A. That I saw him? 5:25 p.m.
2 Q. Now, did you see anyone else in the vehicle? I
3 don't know if I asked that.
4 A. No, I didn't.
5 Q. And this dirt road -- do you have any knowledge or
6 any way to determine what speed Mr. Patten was going on the
7 dirt road?
8 A. I just know that there was rocks kicking and a lot
9 of dust.
10 Q. Did you actually see the vehicle get to Wendover
11 Blvd.?
12 A. Yeah.
13 Q. And did you see which direction it turned?
14 A. It turned west.
15 Q. And when you hit Wendover Blvd. on this dirt road,
16 how many options do you have in terms of where you can go
17 from that intersection?
18 A. Either right or left. Into town or out.
19 Q. So it doesn't cross Wendover Blvd., this dirt
20 road?
21 A. No.
22 MR. TORVINEN: Pass the witness, Judge.
23 THE COURT: You may.
24 MR. TORVINEN: I said "pass the witness".
25 THE COURT: You did? I thought you asked me for

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1 indulgence.
2 MR. KUMP: I thought the same thing.
3 MR. CHLSON: You've indulged him enough today already,
4 Your Honor.
5 THE COURT: He was talking a little bit down to the
6 books. We can all do that occasionally. Cross
7 examination, Mr. Kump.
8 CROSS EXAMINATION BY MR. KUMP:
9 Q. Thank you. Miss Murphy, I just want to clear this
10 up for myself. The dirt road does not get to Wendover
11 Blvd., is that correct?
12 A. It does.
13 Q. It does. And you saw the vehicle that you're
14 saying that Mr. Patten was driving turn west on to Wendover
15 Blvd.?
16 A. Yes.
17 Q. Okay. And Wendover Blvd. is the road that goes
18 right down through town, is that correct?
19 A. Yeah.
20 Q. You saw him turn west on that street.
21 A. Yes.
22 Q. Where were you going?
23 A. I was going south. I was going --
24 Q. South towards Tibbets?
25 A. Yeah.

189

1 Q. Okay. And Tibbets is another major street?
2 A. Yeah.
3 Q. Be the next major street?
4 A. Yeah.
5 Q. And so this dirt road that -- it doesn't have a
6 name?
7 A. Not that I know of.
8 Q. Okay. It's just a dirt road that connects Tibbets
9 to Wendover Blvd.
10 A. Yeah.
11 Q. Are there any other streets that connect?
12 A. The one right before. I don't know what it's
13 called. It's like by the golf course. I don't know what
14 it's called.
15 Q. But you didn't see where Kody was coming from.
16 A. No.
17 Q. You just crossed paths.
18 A. I saw him pass me and go up.
19 Q. How would you characterize your relationship with
20 Kody Patten?
21 A. I know him as a friend from a long time ago.
22 That's about it. From elementary.
23 Q. He's a friend.
24 A. An old friend.
25 Q. How do you know that it was 5:25 when you saw him?

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1 A. I texted my dad that I saw him driving my mom's
2 car.
3 Q. Okay. Let me back up and ask again. Do you have
4 that text?
5 A. I don't. But the police took a picture of it on
6 my dad's phone.
7 Q. So you know only because of what you've been told.
8 You don't have an independent recollection of the time. Is
9 that correct?
10 A. I wrote it on my statement.
11 Q. You were a passenger in the vehicle, correct?
12 A. Yes.
13 Q. And you were -- who were you texting at the time?
14 A. My dad.
15 Q. So you were in contact with your dad when you saw
16 Mr. Patten?
17 A. After I saw him.
18 Q. Just afterwards. Okay. And it was a few minutes
19 after.
20 A. Yes.
21 Q. That you believe that you actually sent the text,
22 correct?
23 A. Yes.
24 Q. Okay. And could that be anywhere from two to five
25 minutes?

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1 A. Yes.
2 MR. KUMP: Okay. That's all I have, Your Honor.
3 THE COURT: Any redirect.
4 REDIRECT EXAMINATION BY MR. TORVINEN:
5 Q. You were with someone, right?
6 A. Yes.
7 Q. And who were you with?
8 A. My boyfriend.
9 Q. His name is?
10 A. Emanuel Luna.
11 Q. And who was driving with respect to the vehicle
12 that you were in?
13 A. He was driving.
14 Q. This dirt road that you passed Mr. Patten on, how
15 wide is it?
16 A. It's probably -- it fits mostly just one vehicle,
17 so it would have to turn to the side to let someone pass.
18 Q. So how close was your mom's car when it passed
19 you? Passed you and Mr. Luna?
20 A. Probably between two to three feet.
21 MR. TORVINEN: Pass on that, Judge.
22 THE COURT: Any recross.
23 MR. KUMP: Nothing on that, Your Honor.
24 THE COURT: May Kiearra Murphy be excused?
25 MR. TORVINEN: Yes, I'm willing to release her, Judge.

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1 MR. KUMP: Yes, Your Honor.
2 THE COURT: You're free to leave the court house.
3 Thank you. Next witness.
4 MR. TORVINEN: Miss Clerk, I need No. — bear with me.
5 Michael Moore is my next witness. Mick Moore. Miss Clerk:
6 I need No. 30.
7 THE COURT: Mr. Moore, come on up, watch your step
8 there, please. Raise your right hand.
9 MICHAEL MOORE,
10 produced as a witness at the instance of the Plaintiff,
11 having been first duly sworn, was examined and testified as
12 follows:
13 THE COURT: Please have a seat. Mr. Torvinen may
14 proceed.
15 DIRECT EXAMINATION BY MR. TORVINEN:
16 Q. Thank you. Would you state your name and spell
17 your last for the record.
18 A. Michael Moore. M-o-o-r-e.
19 Q. And sir, what city or town do you live in?
20 A. Wendover, Nevada.
21 Q. In early March of 2011, did you become involved or
22 participate in the efforts to find a missing person?
23 A. Yes, I did.
24 Q. And what days did you participate in that or was
25 there a particular day that you participated?

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1 A. Just one day. I believe it was the 5th of March.
2 I think it was a Saturday or Sunday. I'm not sure which it
3 was.
4 Q. Do you remember previously testifying that it was
5 Saturday, the 5th?
6 A. Yeah. Yes, I did.
7 Q. Now, by what manner did you participate in the
8 search?
9 A. I just went out on my own basically. I mean, I
10 had a couple hours to spare, so I went out on my own just
11 to look around.
12 Q. Can you tell us where you went?
13 A. I went west of town out past the gravel pits. Out
14 that direction.
15 Q. And how far did you go, do you remember?
16 A. It's about five miles.
17 Q. Your Honor, I'm going to -- Counsel has indicated
18 a willingness to accept or allow the admission of these
19 exhibits without further foundation and I'm offering 30
20 which is up on the board which I will tell the Court and
21 Counsel is an aerial photograph.
22 MR. CHILSON: No objection.
23 THE COURT: 30 is admitted.
24 Q. Mr. Moore, do you recognize what's depicted in 30?
25 A. Yes, I do.

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1 Q. What do you recognize it as?
2 A. Excuse me?
3 Q. What do you recognize it as?
4 A. As the site where I found the grave.
5 Q. All right. Can you — you mentioned that. Can
6 you get off the stand there and point approximately where,
7 as you describe it, you found the grave?
8 A. It's right in here. In this area here.
9 Q. Now, when you arrived — go ahead and have a seat.
10 What caused you or what led up to your finding what you
11 describe as a grave?
12 A. When I was driving out there, I had seen some tire
13 tracks that looked pretty fresh. It pulled off the road
14 and they backed up to a spot and pulled out. And I decided
15 to get out and take a look there 'cause they looked like
16 fresh tracks.
17 Q. Now, what's that straight line that's next to the
18 area you depicted, what is that?
19 A. That's a big ditch on the other side of the
20 railroad tracks.
21 Q. There are railroad tracks there, correct?
22 A. Yeah.
23 Q. Now, so you see these tracks and what do you do?
24 A. I stopped the truck and I walked over there, and I
25 looked around and immediately I didn't notice anything, so

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1 I walked up over the tracks, looked around in that ditch
2 for a minute, and when I came back I saw some tumbleweeds
3 piled up there, right where the tracks looked like they had
4 backed up to. And I got to looking and it looked like the
5 ground was freshly dug up around the edges of the weeds, so
6 I moved them, and that's where I saw a little bit of blood
7 on the dirt there.
8 Q. And when you make reference to these tumbleweeds
9 what are you talking about?
10 A. Well, you know, the tumbleweeds that blow all over
11 the place, you know, and pile up in areas. That's what I
12 remember them being like.
13 Q. And how many -- was there more than one
14 tumbleweed?
15 A. Yes.
16 Q. And did it completely — did it pretty much cover
17 the entire area that you ultimately discovered when you
18 moved them?
19 A. It did, but I could see where on the edges where
20 it looked like it was freshly dug up dirt, so it didn't
21 totally cover everything. That's why I decided to look
22 there.
23 Q. Once you saw this dug up — what appeared to be
24 freshly moved dirt, what did you do?
25 A. I just — I went and got the police after that. I

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1 moved the tumbleweeds and saw — I saw a little mound of
2 dirt. There appeared to be blood on top of there in the
3 dirt, and I just left it and went and got the police.
4 Q. Other than the weeds, did you move anything else
5 or move any dirt?
6 A. No, I didn't.
7 Q. Where were the police?
8 A. They were — I went to the top of Three Mile, the
9 mountain you got to go over, a little hill to get out
10 there. Actually the chief of police was up there and I
11 talked to him, and he called the police, and they met me on
12 top of Three Mile there. And then I took them out to the
13 site.
14 Q. I don't know — I can't remember if I asked you.
15 What time of day did you — were you out there?
16 A. I left Wendover about 9:30 a.m.
17 Q. And how long do you think you'd been out before
18 you found this area that you described?
19 A. Probably 40 minutes, you know. 40, 45 minutes.
20 Q. And once you had made this discovery — and how
21 long did it take you to get back to make contact with law
22 enforcement and then take them back out there?
23 A. Probably took me -- let's see. I went back and
24 they called and they waited. It was probably a half hour.
25 Good half hour.

197

1 Q. Had anything — when you got back and showed them,
2 had anything changed from the time you'd left?
3 A. No.
4 Q. As far as you could tell.
5 A. No, not as far as I could tell.
6 Q. Do you remember the name of the person that you
7 were looking for?
8 A. Yes.
9 Q. What is that name?
10 A. Micaela Costanzo.
11 Q. What county and state is it in, this area that you
12 describe?
13 A. It's in Elko County, and it's in Nevada.
14 MR. TORVINEN: Pass the witness, Judge.
15 THE COURT: Cross examination.
16 CROSS EXAMINATION BY MR. OHLSON:
17 Q. Thank you, Your Honor. Mr. Moore, do you live in
18 Wendover?
19 A. Yes, I do.
20 Q. How long have you lived there?
21 A. I lived there my whole life. Forty years.
22 Q. Are you employed?
23 A. Yes.
24 Q. Where?
25 A. I work at the golf course.

198

1 Q. What do you do at the golf course?
2 A. I'm the assistant superintendent of the
3 maintenance side of it.
4 Q. Was there a meeting going on at the golf course on
5 the 3rd of March in the evening?
6 A. A meeting?
7 Q. Yeah.
8 A. Not at the golf course, no.
9 Q. Near the golf course?
10 A. There's a Rec Board meeting that night, I believe.
11 I don't go to them. The superintendent goes to them.
12 Q. Okay. You didn't go around that Rec Board
13 meeting.
14 A. No, I didn't.
15 Q. You said that you were looking on your own.
16 A. Uh-huh.
17 Q. That means that you weren't part of any kind of
18 formal search group.
19 A. No. I wasn't part of the organized search group
20 they had.
21 Q. There was an organized group.
22 A. I think there was, yeah. I believe there was.
23 There was a bunch of people out there.
24 Q. Out where?
25 A. On Three Mile. On the opposite side of Three

199

1 Mile.
2 Q. I'm not familiar with this. How far is Three Mile
3 from this spot that you located the tumbleweeds?
4 A. It's probably a mile and a half, two miles.
5 Q. And when you drove out there at 9:30 in the
6 morning on the 5th, where did you drive from?
7 A. From Wendover.
8 Q. How far from Wendover did you have to drive?
9 A. About five miles.
10 Q. And you made that five miles in 40 to 45 minutes,
11 did you?
12 A. Yeah. I was, you know, going slow, looking around
13 and I — go ahead.
14 Q. Between where you left in Wendover and the spot
15 we'll call the tumbleweed spot, how many times did you stop
16 your truck, get out and look around?
17 A. I stopped at the top of Three Mile for a little
18 bit. I called my friend. I saw his truck up there. He
19 was down off the hill a mile walking, looking around. I
20 didn't have the time to walk down there, so I just left.
21 And I never got out again until this spot there. I slowed
22 down. I saw some other tracks. They looked old to me, so
23 I didn't really, you know, I didn't get out and go look at
24 them.
25 Q. When you stopped at Three Mile, there were police

200

RA 465

1 officers there?

2 A. There was the fire department was up there, yeah.

3 I believe there was some police cars there, too, yeah.

4 Q. But you didn't stop and offer your services to the

5 police that were at Three Mile to look around Three Mile.

6 A. No, I didn't.

7 Q. And that's because you needed to get moving on to

8 where you were going.

9 A. Well, I had, you know, I had a limited amount of

10 time. My wife was getting off. I had an hour and a half,

11 so I figured I was just going to go for a ride and look

12 around.

13 Q. You had a limited amount of time and you wanted to

14 get to this spot that you stopped at, is that right?

15 A. Well, I wasn't trying to get to that spot. I was

16 just going out to look around.

17 Q. Do we have a marker, Your Honor, that we can use.

18 THE COURT: We should.

19 Q. Here they are. Why don't you take this red marker

20 and why don't you circle the spot where you found the

21 grave.

22 A. I believe it's right -- it's right in this area

23 here. Right there.

24 Q. All right. And is this the railroad track?

25 A. Yes.

201

1 Q. And is there a road?

2 A. There's a road here that comes through the gravel

3 pits here, and one goes up on the tracks and one comes

4 right here along the bottom here.

5 Q. Which road did you take?

6 A. I was on this bottom road here.

7 Q. And Three Mile is where from here?

8 A. It's this way.

9 Q. So to get to Three Mile you'd come back the way

10 you came?

11 A. Yes.

12 Q. Follow the road.

13 A. Back up through the gravel pits.

14 Q. And up here.

15 A. Yeah.

16 Q. Okay. Tell me something -- go ahead and sit down.

17 I'm looking at the far left margin of this.

18 A. Okay.

19 Q. Did you travel on this road?

20 A. Yes. I believe that's the road.

21 Q. Didn't stop here and get out and look around.

22 A. No.

23 Q. Why not?

24 A. I didn't see nothing suspicious to get and look

25 around at.

202

1 Q. Did you go straight across here? As I'm pointing,

2 following my finger -- can Your Honor see that?

3 A. Yes.

4 Q. And you didn't stop and get out around here?

5 A. No.

6 Q. You didn't -- this is another road up here, right?

7 A. Yep.

8 Q. You didn't drive up on this road.

9 A. No, I didn't.

10 Q. Why not?

11 A. I just didn't. I was -- I don't know why I

12 didn't.

13 Q. See, I guess what I'm wondering is what brought

14 you from Wendover directly to this spot without stopping

15 except at Three Mile.

16 A. I don't know. I just was driving out that way to

17 look around.

18 Q. Just had a feeling that that's where you should

19 go?

20 A. I actually didn't have -- I just went looking, you

21 know.

22 Q. You what?

23 A. I just went out to go take a look.

24 Q. Yeah, that's what you said, but you only looked at

25 one spot.

203

1 A. The chances I just found her. Found the spot.

2 Q. I understand.

3 A. I wasn't going to that location.

4 Q. What I'm having a hard time understanding is why

5 that was the only spot, aside from Three Mile, that you

6 stopped and looked around.

7 A. 'Cause that's the spot that looked like it had

8 fresh tracks that pulled off the road.

9 Q. Well, could have been fresh tracks up here and you

10 never looked, correct?

11 A. I didn't go up there.

12 Q. But you never looked.

13 A. No, I didn't.

14 Q. Are you familiar with that area?

15 A. Yes, I am.

16 Q. How are you familiar with it?

17 A. I've grown up there. I've been out there all my

18 life.

19 Q. Doing what?

20 A. I go hunting. I drive out that way to go out to

21 the mountain to go hunting. I've rode my motorcycles out

22 there growing up, you know.

23 Q. Okay. And that's why you went to that spot

24 because you're familiar with it.

25 A. I'm familiar with everything around there. I was

204

RA 466

1 just planning on going out -- if you keep following that
2 road, you can go out to where the tracks cross the road. I
3 was going to go out there and then turn around and come
4 back was my plan.

5 Q. Now, when you stopped your truck -- let's take
6 this blue marker here, and show me where you stopped your
7 truck. Put a T where you stopped your truck.

8 A. It would be on this road. I guess this is the
9 road here, I believe. I pulled off the road probably right
10 here.

11 Q. Okay. And how far from the grave site to your
12 truck was it?

13 A. It's probably 50 feet, 60 feet.

14 Q. Go ahead and sit down. Now, did you stop your
15 truck, get out and walk directly to the grave site?

16 A. No. I walked -- you know, I didn't go actually
17 right by it. I walked up over on the top of the tracks and
18 looked in that ditch a little bit, and then when I came
19 back --

20 Q. The other side of the tracks.

21 A. Yeah.

22 Q. When you came back across the track, did you walk
23 directly to it?

24 A. Yeah. I came over the top and I seen, you know --
25 I could see better where the truck pulled in at, you know,

205

1 and I walked down to it.

2 Q. Right directly to it. Did you search around at
3 all?

4 A. Yeah, I looked around, yeah. I walked around,
5 looked around a little bit. I went over the top and I
6 looked in that ditch a little bit, and then I came back
7 over.

8 Q. Did you search around where the body was at all?
9 Did you walk around there?

10 A. Yeah, I walked all around there.

11 Q. Quite a bit, right? 'Cause I didn't know where
12 that --

13 A. Little bit.

14 Q. You didn't know where the grave site was.

15 A. No, I didn't.

16 Q. You were looking.

17 A. Yeah, I was looking.

18 Q. So you had to walk around a lot, right?

19 A. Uh-huh.

20 Q. Did you uncover any of the dirt on that spot at
21 all?

22 A. No, I didn't.

23 Q. Did you have a cell phone with you?

24 A. I did.

25 Q. Did you try to use your cell phone once you saw

206

1 that spot?

2 A. No, I didn't.

3 Q. Why not?

4 A. Well, I seen the police right there on top of
5 Three Mile, so I just went back up there to get them.

6 Q. Didn't think to call with your cell phone.

7 A. No. I knew they were up there, so I just went up
8 there, yeah.

9 Q. Don't like cell phones?

10 A. I'm fine with cell phones.

11 Q. Mr. Moore, why didn't you join the organized
12 search in looking for Micaela Costanzo?

13 A. Well, to be honest with you, I didn't know they
14 were having an organized search. I didn't realize that
15 until I got on top of Three Mile and I saw the big bus up
16 there, school bus and people all over the place. I didn't
17 know they were having a big organized thing.

18 Q. So why didn't you join it then when you saw it and
19 you realized there was a big organized thing?

20 A. I only had like an hour and a half, so I was just
21 going to go for a ride for a little while and look around.

22 Q. Wouldn't your hour and a half been just as well
23 spent in the organized search as it was going to --

24 A. Yes, it could have been, yeah.

25 MR. OHLSON: That's all I have.

207

1 THE COURT: Redirect.

2 REDIRECT EXAMINATION BY MR. TORVINEN:

3 Q. Mr. Moore, when you left Wendover that morning,
4 did you have a particular destination in mind?

5 A. No. Not really. I was going to go out that way,
6 and if you go further out, you can't see it on the map,
7 there's a place where you can cross the tracks. I was
8 going to drive out there and look around and then come
9 back. I figured that would be about the right timing to
10 get back before my wife got off work.

11 Q. And so between Wendover and the place that you
12 eventually stopped, did you see anything else that peaked
13 your interest? That is --

14 A. No.

15 Q. -- got your interest enough to stop your vehicle.

16 A. No. I slowed down. I looked at some other tracks
17 I saw going off the road, but they looked older to me, so I
18 never, you know, got out and looked at them.

19 Q. And it was the tracks where you stopped that
20 grabbed your attention.

21 A. Yes.

22 Q. Now, those tracks, are they flat on the ground?

23 A. No. They're kind of -- it's kind of off, you
24 know. The road is elevated. It kind of goes down into a
25 little area down below.

208

RA 467

1 Q. I guess what I'm asking is are the tracks flat on
2 the ground or are they on something?
3 A. No. They're on the ground. It's kind of sandy
4 there a little bit.
5 Q. Well, are the tracks the same level as the ground
6 where you found --
7 A. They go off the ground and go down a little bit
8 and come back up on the road.
9 Q. I guess what I'm getting at is when you were up on
10 the tracks, were you up above this area that --
11 A. I was above it, yes.
12 Q. To sort of give you the elevation.
13 A. Yes.
14 Q. In terms of sight.
15 A. Yes.
16 MR. TORVINEN: Pass the witness, Judge.
17 THE COURT: Any recross.
18 RECCROSS EXAMINATION BY MR. OHLSON:
19 Q. Yes, please. Mr. Moore, Counsel asked you if you
20 had a particular place that you wanted to go to when you
21 left Wendover that morning and you said no. Remember that?
22 A. Yeah, I did.
23 Q. Now, from where you left in Wendover, what
24 direction did you travel to get to the grave site? North,
25 south, east or west?

209

1 A. I went east. Excuse me, I went west.
2 Q. You went west.
3 A. Uh-huh.
4 Q. Can you go any other directions out of Wendover?
5 A. Yes, you can.
6 Q. Can you go north?
7 A. Yes.
8 Q. Can you go east?
9 A. Yes.
10 Q. Can you go south?
11 A. Yes.
12 Q. And you knew all that area because you grew up
13 there and hunted and rode your motorcycle, correct?
14 A. Yes.
15 Q. So even though you could have gone any other
16 direction, you decided to go this direction.
17 A. Yes, I did.
18 Q. And this isn't the only spot that you could have
19 gone to west of Wendover, isn't that right?
20 A. That's right, yeah.
21 Q. You could have gone to any number of other places
22 west of Wendover, isn't that right?
23 A. Yes, I could have.
24 Q. But you chose this one.
25 A. Yep. Yes.

210

1 Q. Hadn't you been out there previously?
2 A. Out that day?
3 Q. That day or the day before.
4 A. No.
5 Q. Hadn't you seen that site previously?
6 A. No.
7 Q. Hadn't you seen the body of Micaela Costanzo
8 previous to this time that you went out there?
9 A. No.
10 Q. Is that true?
11 A. That's true.
12 MR. OHLSON: That's all I have.
13 THE COURT: May this witness be excused?
14 MR. TORVINEN: I'd like him held, Judge.
15 THE COURT: You're held subject to recall. Please
16 have a seat outside the courtroom. Recall the rule of
17 exclusion, sir. Thank you. We've been at it for going on
18 a couple hours here. The Court will take a ten minute
19 recess.
20 (Recess taken.)
21 THE COURT: We'll be back on the record for Case
22 CR-2011-0300, State of Nevada, Plaintiff, versus Toni
23 Collette Fratto and Kody Cree Patten, the Defendants.
24 Again the State's represented by Mark Torvinen, Elko County
25 District Attorney. Mr. Patten is back in court with his

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1 lawyers, Jeff Kump and John Ohlson. And next witness for
2 the State, please.
3 MR. TORVINEN: Ron Supp.
4 RON SUPP,
5 produced as a witness at the instance of the Plaintiff,
6 having been first duly sworn, was examined and testified as
7 follows:
8 THE COURT: Have a seat, please. Mr. Torvinen, please
9 proceed.
10 DIRECT EXAMINATION BY MR. TORVINEN:
11 Q. State your full name and spell your last for the
12 record, sir.
13 A. Ron Supp. S-u-p-p.
14 Q. How are you employed, sir?
15 A. I'm the Chief of police for the City of West
16 Wendover.
17 Q. How long have you been employed in that capacity?
18 A. Approximately six years.
19 Q. Are you acquainted with or did you become
20 acquainted with a person by the name of Michael or Mick
21 Moore?
22 A. Yes.
23 Q. In your capacity as a law enforcement officer.
24 A. Yes, I did.
25 Q. And did you know him before -- well, when did --

212

RA 468

1 did you have contact with him in early March of 2011?

2 A. I did.

3 Q. What day was that?

4 A. March 5th.

5 Q. And where were you located when you had contact
6 with him?

7 A. I contacted -- I was actually notified by the
8 incident command center that we had set up during the
9 search, and I was called by the fire chief to come there.
10 I met with Mr. Moore at the command center.

11 Q. Where was the command center located?

12 A. The command center was located on the top of what
13 they call Three Mile, by the reservoir there in Wendover.

14 Q. Is that east or west of Wendover?

15 A. West.

16 Q. So did you meet with Mr. Moore there?

17 A. I did.

18 Q. And have you seen this person that you know as
19 Mr. Moore in or about the courtroom?

20 A. Yes, I have.

21 Q. Did he lead you somewhere?

22 A. He did.

23 Q. Where did he lead you?

24 A. He led me approximately I'd say about two miles or
25 so west of that location to where he had found what he

213

1 believed to be a grave.

2 Q. If you'd approach the easel and open that exhibit,
3 No. 30. Do you recognize the area depicted there?

4 A. I do.

5 Q. And do you recognize the area where --
6 approximately where he led you?

7 A. I do.

8 Q. And where was that?

9 A. This is a fairly approximate location. Started up
10 over here and led us down this road, down alongside the
11 tracks, down into approximately that area there.

12 Q. Go ahead and have a seat. What county and state
13 is this location you were led to in?

14 A. Elko County, Nevada.

15 Q. What did you see when you arrived at this
16 location?

17 A. Initially when we stopped I saw a set of tire
18 tracks that had been -- somebody had gone off the road.
19 Looked like they'd pull down in there and backed up and
20 left.

21 Q. How far is the actual site that you said where the
22 site was from this road that you traveled down to get to
23 this location?

24 A. 30 feet. It's not very far. You mean from the
25 road to the grave site?

214

1 Q. Yes.

2 A. Yes. Approximately 30 feet or so.

3 Q. And are there railroad tracks associated with this
4 area?

5 A. There are.

6 Q. And where are they located in the diagram there?
7 Can we see them?

8 A. Yes. What would be south on that map, southerly
9 is you can see the tracks running the whole length.

10 Q. The straight line there to the south?

11 A. Pardon me?

12 Q. The straight line to the south there?

13 A. That's correct. The site was actually between the
14 road and the tracks.

15 Q. Are the tracks elevated?

16 A. Yes.

17 Q. How far elevated?

18 A. Approximately 20 feet.

19 Q. Off the flat ground?

20 A. Correct.

21 Q. And how far is the site -- that is, the grave
22 site, the site that you were ultimately led to, to the
23 railroad tracks?

24 A. Even closer than that. If you take the elevation
25 of the track, the track bed as it comes down, the grave

215

1 site was basically at the base of that hill.

2 Q. I'm going to move for admission of 34 and 34 A.

3 MR. CHLSON: No objection.

4 THE COURT: 34 and 34 A --

5 Q. Excuse me, Judge, it's 34 A and B.

6 THE COURT: 34 A and B are admitted. You're still not
7 objecting?

8 MR. CHLSON: No objection.

9 THE COURT: Okay.

10 Q. Look at 34 A there. Do you recognize what's
11 depicted there?

12 A. I do.

13 Q. And what is that?

14 A. This is the approximate area where the grave site
15 was.

16 Q. Does it depict anything that you recognize
17 specifically having seen that day?

18 A. It does. It has a couple of markers of some type
19 for some underground utility or something that's running
20 through there.

21 Q. Are there any tracks in there?

22 A. And the railroad tracks are beyond that, yes.

23 Q. Now, once you were led to this area, did you
24 personally do any excavation?

25 A. I did.

216

RA 469

1 Q. By what means did you do that?
2 A. I used a shovel.
3 Q. And in that process, what did you discover?
4 A. After I uncovered about two half shovel fulls of
5 dirt, maybe three, I located a small area about three
6 inches square that appeared to be flesh.
7 Q. In that process did you inflict any injury to this
8 flesh?
9 A. I did.
10 Q. I'd like you to look at 35 which is up on the
11 Bench. What does that depict?
12 A. This depicts what I uncovered. However, this is
13 the following day.
14 Q. Had there been any change in the flesh that you
15 had exposed between the 5th when you exposed it and when
16 you came back?
17 A. Yes.
18 Q. And what was that?
19 A. A significant amount of what — when I dug there
20 was a small little nick in the flesh. When we came back
21 the next day, it had pulled itself back, drying out or
22 decomposition or something.
23 Q. Once you discovered this flesh, what's the next
24 thing you did?
25 A. I stopped what I was doing and I notified the

217

1 sheriff's office.
2 Q. Did you take any steps to secure the area?
3 A. I did.
4 Q. Can you describe those for me.
5 A. Initially I had two police officers that I left at
6 the scene. There were several police officers there
7 throughout the night until the sheriff's office got there.
8 Four or five of them.
9 Q. How about physical steps to protect the area?
10 A. There was barrier tape that was put up all around
11 the entire area, and then there was people that were left
12 right there to ensure that no one came in there.
13 Q. Anything else?
14 A. We did take some steps to preserve some evidence.
15 We covered up some footprints and tire marks with tarps.
16 Q. How about the site itself?
17 A. That's what we covered up with tarps.
18 Q. Look at 34 B. Can we see the tarps?
19 A. Yes.
20 Q. And did you come back at some point? Let me ask
21 you what time of day it was that you were led to this
22 place.
23 A. About 10:15 is when I was notified, and it was
24 about 10:55 when we actually uncovered the flesh.
25 MR. OHLSON: Could we have a.m. or p.m., Your Honor.

218

1 A. A.m.
2 THE COURT: You may.
3 A. A.m.
4 Q. In the morning. So once you made this discovery,
5 you took these steps that you've described to protect the
6 site.
7 A. Correct.
8 Q. Including leaving guards?
9 A. Yes.
10 Q. And tarps.
11 A. Yes.
12 Q. And barrier tape.
13 A. Yes.
14 Q. Anything else?
15 A. Not that I can think of.
16 Q. And at some point you left for the night?
17 A. I did leave after I posted people there and we
18 were done with what we were going to do for the night, I
19 left. I did come back later on approximately 10:00 when
20 the sheriff's office posse member came to take over the
21 crime scene security. I went and met with him briefly.
22 Q. Who was that?
23 A. I don't recall his name. He was out of Wells.
24 THE COURT: That's 10:00 p.m. then?
25 A. Yes.

219

1 THE COURT: All right.
2 Q. Now, did you go back the next morning?
3 A. I went back. I did, yes.
4 Q. And when was that?
5 A. 8:00 in the morning I got there.
6 Q. And who was there when you arrived?
7 A. At that time there was the posse member, Detective
8 Kevin McKinney, Detective Jim Carpenter, and Detective
9 Dennis Journigan were there.
10 Q. And you said that was about 8:00?
11 A. Correct.
12 Q. Had anything changed, as far as you could tell,
13 between the time you left the night before and left guards
14 on it till the time you got back in the morning?
15 A. No.
16 MR. TORVINEN: I'll pass the witness, Judge.
17 THE COURT: Cross examination.
18 CROSS EXAMINATION BY MR. OHLSON:
19 Q. Chief Supp, what is your law enforcement
20 experience?
21 A. I started 1979. I worked for three years in a
22 small department in Idaho. I worked for nine years for the
23 City of Elko Police Department here in Elko. I worked for
24 the Elko County Sheriff's Office for 15 years. And then
25 I've been with West Wendover for six. But a good share of

220

RA 470

1 the time at the sheriff's office I was a detective there.
 2 Q. You were a detective with the sheriff's office?
 3 A. Correct.
 4 Q. So when you first came on to this scene and
 5 discovered that there was human flesh buried beneath the
 6 dirt --
 7 A. Correct.
 8 Q. -- did you start a crime scene log?
 9 A. I did not. And I'm not aware that there was one.
 10 Q. You were, as far as you know, you were the first
 11 sworn peace officer on the scene, isn't that right?
 12 A. Actually I had a couple of other people with me.
 13 We were the first people there, yes.
 14 Q. There were three of you total?
 15 A. I think so.
 16 Q. And no one started a crime scene log.
 17 A. Not at that time.
 18 Q. Did you ever see a crime scene log?
 19 A. I have not.
 20 Q. Do you you know what a crime scene log is?
 21 A. Yes.
 22 Q. It's a sign-in sheet, isn't it --
 23 A. That's correct.
 24 Q. -- for everybody who appears on the crime scene.
 25 A. That's correct.

221

1 Q. And one wasn't done here, was it?
 2 A. Not to my knowledge.
 3 Q. So there's no way that we can reconstruct and
 4 determine precisely who appeared on that crime scene from
 5 beginning to end, is there?
 6 A. I would think that we could come pretty close.
 7 Q. No way to do it precisely without a crime scene
 8 log.
 9 A. That's correct.
 10 Q. And without strict control of the crime scene.
 11 A. Correct.
 12 Q. All right. You and two other officers appeared,
 13 and did you go -- how many vehicles did you go in?
 14 A. When we initially went out to the scene there were
 15 two.
 16 Q. Yours and --
 17 A. Ours and Mr. Moore's.
 18 Q. And your vehicle contained you and the two other
 19 officers.
 20 A. One other officer at that time.
 21 Q. One other officer. You said that there were two
 22 officers.
 23 A. There was. I instructed -- when I found out what
 24 we had, I instructed another officer to come out with a
 25 shovel.

222

1 Q. How did do you that?
 2 A. I called him on the phone.
 3 Q. Cell phone.
 4 A. Yes.
 5 Q. All right. It worked from there.
 6 A. It did.
 7 Q. Okay. Did you drive to where Mr. Moore had
 8 originally stopped his truck? Did you see where he had
 9 originally stopped his truck?
 10 A. Yes.
 11 Q. Did you get out and look at the tire tracks from
 12 his truck?
 13 A. Yes.
 14 Q. Okay. Did he stop in the same place the second
 15 time?
 16 A. I think it was fairly close, yes.
 17 Q. And that was how close to where the body was
 18 discovered?
 19 A. It was actually on the road.
 20 Q. How close? How many feet?
 21 A. I don't know exactly how many feet. I would
 22 estimate 20 to 30 feet from the grave site to the road.
 23 Q. You didn't take any measurements.
 24 A. I did not. I did not.
 25 Q. Anybody else?

223

1 A. One of the detectives I think probably did, yes.
 2 Q. Did somebody map the crime scene?
 3 A. Yes.
 4 Q. And take a scale map and draw measurements?
 5 A. That I'm unaware of because after that period of
 6 time that was the sheriff's department's crime scene.
 7 Q. Did you ask Mr. Moore how it was that he drove --
 8 got up in the morning, drove all the way out from Wendover
 9 and parked his car within 15 or 20 feet of this grave site?
 10 A. Yes, I did.
 11 Q. And what did he tell you?
 12 A. He said that he -- what he noticed was the tire
 13 tracks that I mentioned earlier, that's what caught his
 14 attention. When he saw those, he stopped, got out. Told
 15 me that he walked up to the top of the tracks, looked
 16 around, and then as he was coming back down is when he
 17 actually noticed some disturbed earth.
 18 Q. So I guess in order to corroborate his story, you
 19 found his footprints, is that right?
 20 A. His footprints were there, correct.
 21 Q. And you found them.
 22 A. I saw them.
 23 Q. Did you trace them every place he went? Did you
 24 follow his footprints? He said I walked over the tracks.
 25 A. He did.

224

RA 471

1 Q. Did you actually retrace his --
2 A. He actually walked with me where he walked.
3 Q. Okay. So you did retrace his steps.
4 A. Yes. In that fashion, yes.
5 Q. And the two of you went from his truck over the
6 tracks, right?
7 A. Up to the top of the tracks, yes.
8 Q. And then back down to the grave site.
9 A. Correct.
10 Q. So you walked past the grave site.
11 A. No. No.
12 Q. Why is that?
13 A. Because I was aware that we were going to have
14 some evidence down there, footprints, so we came -- I
15 instructed him to walk around where he had gone the first
16 time. So we took a wide berth around.
17 Q. Didn't walk past his footprints around.
18 A. We didn't. We did -- we when we came back down,
19 we were closer to the grave site at that point, so --
20 Q. Now, the third officer arrived with a shovel?
21 A. Correct.
22 Q. And you began to unearth this spot.
23 A. Correct.
24 Q. Until you struck flesh.
25 A. Correct.

225

1 Q. And then you stopped.
2 A. That's correct.
3 Q. Why did you stop?
4 A. Because that's the sheriff's office jurisdiction
5 at that point.
6 Q. This was about 10:30 in the morning?
7 A. It was.
8 Q. But nobody got out there to do -- to unearth the
9 body until approximately 24 hours later.
10 A. Correct. Washoe County Crime Lab actually is who
11 came and did that. It took them that long to get there.
12 Q. That's who you were waiting for, Washoe County
13 Crime Lab.
14 A. That's correct.
15 Q. When you left this place, how many officers did
16 you leave on the scene?
17 A. I'm trying -- 'cause I came and went a couple of
18 times. There was a minimum of two there all the time.
19 Sometimes there were three.
20 Q. Okay. And you're talking about when you were
21 there before you left for the evening.
22 A. Correct.
23 Q. And you were there for about 12 hours.
24 A. No, I wasn't there that whole time for 12 hours.
25 Q. You left and came back.

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1 A. I did. When we -- when I notified the sheriff's
2 department and all of that, and we secured the crime scene,
3 then I left.
4 Q. Okay.
5 A. Then I came back when the sheriff's posse guy
6 showed up.
7 Q. Where did you go?
8 A. To my office.
9 Q. What for?
10 A. Different places.
11 Q. What for?
12 A. I had other things to do.
13 Q. Any other things that were a bigger crime
14 incident -- wait a minute -- that were a bigger crime or
15 incident in Wendover than the disappearance and death of
16 Micaela Costanzo?
17 A. No. Because the things I had to do had to do with
18 this case.
19 Q. They all had to do with this case.
20 A. That's correct.
21 Q. They had to do with the suspect that you had at
22 that time, Kody Patten, right?
23 A. We didn't have a suspect at that time.
24 Q. You didn't at that day. Sure?
25 A. Had ideas. But there was no clear cut things

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1 until we had that crime scene.
2 Q. So you left and you left two officers in charge,
3 and there were also some sheriff's posse people coming?
4 A. Correct.
5 Q. And they met the officers that were out there?
6 A. That's correct.
7 Q. When did you tarp and tape and protect this scene?
8 A. That was earlier in the afternoon before they got
9 there.
10 Q. What time in the afternoon?
11 A. I don't know. Detective Burnum is actually the
12 one that completed that task. I'm not sure when.
13 Q. Who started it, if he completed it?
14 A. Pardon me?
15 Q. Who started it, if he completed it?
16 A. He did.
17 Q. So he started it and completed it.
18 A. To the best of my knowledge, yes. I wasn't out
19 there when that took place.
20 Q. You weren't involved in his tarping that.
21 A. I was not.
22 Q. Okay.
23 A. Other than he called me and told me that he was
24 going to do that.
25 Q. Okay. And when he did that, how many people were

228

RA 472

1 on the scene?
2 A. I don't know.
3 Q. Between the time that you discovered the body and
4 the next morning when Washoe County Crime Lab came and
5 Detective McKinney came and others came, how many people
6 had visited that scene?
7 A. I'm going to have to count for a second. Probably
8 approximately seven.
9 Q. Approximately seven. Give or take.
10 A. Yes.
11 Q. Counsel started to ask you a question and stopped.
12 The question he started to ask you related to Mr. Michael
13 Moore. He asked you if you had known him before this
14 incident on the 5th of March. Did you?
15 A. No.
16 Q. Have any encounters with him?
17 A. No.
18 Q. Was there a formal search team at Three Mile that
19 day?
20 A. Yes, there was.
21 Q. How many people involved in that search team?
22 A. Approximately 120.
23 Q. And they were all up at Three Mile?
24 A. They were in that basic area, yes.
25 Q. When you discovered the body, what did you do in

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1 relation to the search team?
2 A. I brought them back in and I suspended the search.
3 Q. How did you do that?
4 A. How did I do what?
5 Q. How did you bring them back in and suspend the
6 search?
7 A. They already had a designated time that they were
8 going to meet back together which was — coincidentally
9 coincided pretty much with this time. So when they did
10 that, I instructed the officer that was in charge of the
11 search party to have them all respond back to the city
12 office.
13 Q. They were going to meet back together at what
14 time? 10:00?
15 A. No. It was later than that. It was like noon I
16 think is when it was actually slated. By the time we did
17 all that, it was close to that time.
18 Q. They were going to meet back at Three Mile?
19 A. No. They were going to meet back at the city
20 hall.
21 Q. That's where you went and disbanded the search.
22 A. Correct.
23 Q. Were all these people in their individual
24 vehicles?
25 A. No.

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1 MR. OHLSON: That's all I have.
2 THE COURT: Redirect.
3 REDIRECT EXAMINATION BY MR. TORVINEN:
4 Q. Before you left the site there on the afternoon,
5 had you discussed or given instruction in terms of the
6 depth of the barrier vis-a-vis site and that sort of thing?
7 A. I didn't discuss it. It was already being done
8 and it appeared to me to be a sufficient size for what we
9 were dealing with.
10 Q. And when you left — so you were actually
11 physically present when the barriers started up?
12 A. Yes.
13 Q. Was it completed before you left?
14 A. I believe so.
15 Q. So you actually physically yourself saw the
16 barrier in place.
17 A. Yes.
18 Q. And you were satisfied at that point.
19 A. Yes.
20 Q. Now, is there a particular area close to that that
21 gives you had a vantage point of it? On the road or
22 anything?
23 A. Actually it's fairly secluded down in there. You
24 can — the Three Mile area is back up there. So if you
25 were up there somewhere you could look — you might not be

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1 able to see much, but you could look down there and see
2 where we were.
3 Q. I'm talking about close to it. Is there a rise or
4 anything like that that? Did you station the individuals,
5 the officers, in a specific location or —
6 A. Yes.
7 Q. Or did you just say "stay here and watch this and
8 don't cross the tape"?
9 A. Actually there's a specific location that was
10 actually a little bit further back from where we all parked
11 when initially were there. We had brought the command
12 center motor home to that location, parked it there. So it
13 is kind of on a little rise and you can see down the road
14 from there.
15 Q. How far is that little rise from —
16 A. From the scene?
17 Q. Yeah. Look at 34 B.
18 A. If I can revert to this, it might show. It
19 doesn't really. Can I look at —
20 Q. Sure. Is it within the sight of it?
21 A. I would say that if this is what we're going to
22 say is actually the grave site, then it would be roughly
23 back up here.
24 THE COURT: The Chief is referring to Exhibit 30.
25 This is 30?

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RA 473

1 Q. 30, correct. Is it within clear sight?
2 A. Yes.
3 Q. Any obstructions?
4 A. No. From where that was you can see all of these
5 little markers and stuff, you can see all of that from
6 there.
7 Q. And from both directions there's -- in other
8 words, you can see past it.
9 A. Correct.
10 Q. To the west.
11 A. Correct. In fact, the officers had told me that
12 they had somebody come up from this back side and they had
13 to make them vacate the area.
14 MR. TORVINEN: Pass the witness.
15 THE COURT: Recross.
16 RECROSS EXAMINATION BY MR. OHLSON:
17 Q. You were there when the barriers went up, correct?
18 A. Correct.
19 Q. You weren't there when the tarps went down.
20 A. No. That was later on.
21 MR. OHLSON: That's all I have.
22 THE COURT: May Chief Supp be excused?
23 MR. TORVINEN: I'd like him held.
24 THE COURT: You're held subject to recall. Please
25 have a seat outside the courtroom. Next witness.

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1 MR. TORVINEN: Pete Turner.
2 PETE TURNER,
3 produced as a witness at the instance of the Plaintiff,
4 having been first duly sworn, was examined and testified as
5 follows:
6 THE COURT: Have a seat, please. All right.
7 DIRECT EXAMINATION BY MR. TORVINEN:
8 Q. Officer, what's your rank now?
9 A. Pardon?
10 Q. What's your rank currently?
11 A. Patrol officer.
12 Q. So how are you -- state your full name and spell
13 your last for the record.
14 A. Pete Turner. T-u-r-n-e-r.
15 Q. How are you employed, sir?
16 A. City of West Wendover.
17 Q. In what capacity?
18 A. As a police officer.
19 Q. And how long have you been employed in that
20 capacity?
21 A. Through the city?
22 Q. Right.
23 A. Almost five years now.
24 Q. And in early March of 2011, did you have an
25 occasion to be assigned the duty of protecting what was

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1 believed to be a crime scene?
2 A. Yes, sir.
3 Q. Can you tell me what day that was.
4 A. It was March 3rd, sir.
5 Q. Can you tell me what time -- what year?
6 A. 2011. And approximately 1500 hours.
7 Q. And so for us civilians, that's three p.m.?
8 A. Yes, sir.
9 Q. And once you arrived at this place, who was there,
10 do you remember?
11 A. I believe Officer Abrams and Sergeant Connin were
12 there.
13 Q. And where did you take up -- did you see anything
14 in terms of where this scene you were protecting was
15 located?
16 A. Not till Sergeant Connin advised me of the
17 location.
18 Q. And was there anything distinguishing about it?
19 Was there anything that notified you that it was a crime
20 scene?
21 A. Not till the other -- like I said, not till
22 Sergeant Connin showed me where the tire impressions were,
23 and possibly where the actual crime scene was located.
24 Q. Look at 34 A and 34 B. Do you recognize that
25 area?

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1 A. Yes, sir.
2 Q. How about 34 B, do you recognize that area?
3 A. Yes, sir.
4 Q. And did you see those things that you see in that
5 photograph there at the scene?
6 A. The only thing that's different, sir, is when I
7 first arrived on scene these tarps were not there.
8 Q. Did they go up in your presence?
9 A. Yes, sir, they did.
10 Q. Who did that?
11 A. Myself, Sergeant Connin and Detective Burnum.
12 Q. So you assisted in that process?
13 A. Yes, I did, sir.
14 Q. How about barrier tape, did you put up barrier
15 tape?
16 A. I did not.
17 Q. Who did that?
18 A. I do not know, sir. It might have been after I
19 was released from the scene.
20 Q. Now, how long did you stay there?
21 A. Till Detective McKinney arrived on scene. Till
22 they brought out their -- I don't remember if it was the
23 fire department vehicle, the big motor home, or I don't
24 remember whose vehicle it was, but I was there until they
25 arrived on scene.

236

RA 474

1 Q. Other than helping spread the tarps and things
2 like that, during the period of time that you were standing
3 guard, did anyone intrude into the scene or change anything
4 as far as you can remember?

5 A. Just myself, Detective Burnum and Sergeant Connin,
6 sir.

7 Q. To put the tarps up.

8 A. Yes, sir. That was it.

9 Q. Other than that, did anybody make entry to it?

10 A. No, sir.

11 MR. TORVINEN: Pass the witness.

12 THE COURT: Cross examination.

13 MR. CHILSON: No questions.

14 THE COURT: May Officer Turner be excused?

15 MR. TORVINEN: I think so.

16 THE COURT: You're free to leave the court house.

17 Next witness.

18 MR. TORVINEN: Kevin McKinney.

19 KEVIN MCKINNEY,

20 produced as a witness at the instance of the Plaintiff,
21 having been first duly sworn, was examined and testified as
22 follows:

23 THE COURT: Please have a seat. Mr. Torvinen.

24 DIRECT EXAMINATION BY MR. TORVINEN:

25 Q. State your full name and spell your last for the

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1 open it. It's marked as 30 there. Do you recognize what's
2 depicted there?

3 A. Yes, I do.

4 Q. What do you recognize it as?

5 A. It's an aerial photograph of the area that I
6 responded to.

7 Q. Now, at the time you arrived, was the scene being
8 secured or guarded by anyone?

9 A. Yes, it was.

10 Q. By whom?

11 A. Officer Turner and Detective Burnum with West
12 Wendover P.D.

13 Q. What time did you arrive?

14 A. Roughly 9, 10:00 p.m.

15 Q. What did you do upon your initial arrival?

16 A. Met with Detective Burnum who updated me as to
17 what was going on and what they'd done to that point, and
18 did an initial survey of the scene, as best we could in the
19 dark.

20 Q. And could you see in the dark what if any steps
21 had been taken to secure the scene?

22 A. Yes, sir.

23 Q. What did you see?

24 A. They had barricade tape up around the immediate
25 area. They were also positioned to maintain security on

239

1 record, sir.

2 A. Kevin McKinney. M-c-K-i-n-n-e-y.

3 Q. And during the -- how long have you been -- how
4 are you employed?

5 A. I'm a detective with the Elko County Sheriff's
6 Office.

7 Q. How long have you been employed in that capacity?

8 A. Since 1999.

9 Q. During the month of March 2011 did you become
10 involved in an investigation which ultimately resulted in
11 this prosecution?

12 A. Yes, sir.

13 Q. When did you become involved?

14 A. March 5th. March 5th.

15 Q. And what -- can you describe what it was that --
16 what were you doing when you got involved in it on the 5th
17 of March?

18 A. What was I doing?

19 Q. Where were you located?

20 A. I was located here in Elko.

21 Q. And did you proceed somewhere?

22 A. Yes.

23 Q. To where?

24 A. An area west of West Wendover, Nevada.

25 Q. Could you approach the easel and have the Bailiff

238

1 the scene, and they had placed tarps over some of the areas
2 within the barricaded area to protect it from the elements.

3 Q. Now, if you will look at -- take one of those
4 pictures, 34 B. Do you recognize what's depicted there?

5 A. Yes, sir.

6 Q. Is that what you're talking about in terms of the
7 tarps and the like?

8 A. Yes, sir.

9 Q. Now, did you contact some other investigative
10 agency?

11 A. Yes, I did.

12 Q. Who did you contact?

13 A. I contacted the Washoe County Forensic Lab for
14 crime scene investigation and I contacted the FBI to
15 request assistance.

16 Q. Did someone from the Crime Lab arrive at some
17 point?

18 A. Yes.

19 Q. And when did they arrive?

20 A. The next morning, on the 6th.

21 Q. What time?

22 A. I believe roughly 8 or 9:00.

23 Q. Now, when you're talking about time, are you
24 talking about -- which time zone are you talking about?

25 A. By my own clock usually.

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RA 475

1 Q. So when you arrived there that night, it was --
2 you said it was ten p.m.
3 A. Yeah. About that.
4 Q. And you're talking about Pacific time.
5 A. Yes, sir.
6 Q. And when you say they arrived at 8:00 the next
7 morning, you're talking about Pacific time.
8 A. Yes, sir.
9 Q. Who was it that arrived, do you recall?
10 A. Renee Thompson with Washoe County, and I cannot
11 pronounce his name. Ruvalcaba, I believe.
12 Q. Mr. Ruvalcaba?
13 A. Yes.
14 Q. Where were you located -- okay. You arrive at
15 ten p.m. at night your time.
16 A. Yes, sir.
17 Q. They get there at eight. Where were you in
18 between those two times?
19 A. I was either out at the scene maintaining scene
20 security or I was in the command trailer.
21 Q. Now, when you arrived there was Pete Turner and
22 Detective Burnum?
23 A. Yes.
24 Q. And anybody else come that night?
25 A. Detective Carpenter with the sheriff's office,

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1 Detective Journigan with the sheriff's office, and there
2 was also a reserve deputy with the sheriff's office out of
3 Wells who was there in the command trailer.
4 Q. What was his name?
5 A. It escapes me right at the moment.
6 Q. Upon their arrival, that is Washoe County Crime
7 Lab's arrival, what happened?
8 A. Updated them, explained to them what we had, and
9 then we started processing the immediate area.
10 Q. Was there eventually an excavation of this site
11 conducted?
12 A. Yes, sir.
13 Q. Were you present when that happened?
14 A. First for part of it, yes, sir.
15 Q. I'm going to show you what's been marked as
16 Exhibit No. 36. Do you recognize what's depicted there?
17 A. Yes, sir.
18 Q. Did you physically personally observe what's
19 depicted in that photograph?
20 A. Yes, sir.
21 Q. And does it fairly and accurately depict that?
22 A. Yes, sir.
23 Q. Who does it depict?
24 A. Micaela Costanzo.
25 Q. And in relationship to that diagram, that aerial

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1 photograph, does what we see in the photograph there in 36
2 have any relationship to this location you described?
3 A. Yes, sir.
4 Q. What's that relationship?
5 A. This is where she was located at was roughly in
6 that area where the red circle is.
7 Q. Does that depict that site after excavation at
8 least to the point that's depicted in 36?
9 A. Yes, sir.
10 Q. Was there anything unusual about Miss Costanzo's
11 remains that drew your attention and you can see in that
12 photograph?
13 A. Right off the bat the zip ties wrapped around her
14 right forearm.
15 Q. Do you remember that?
16 A. Yes, I do.
17 Q. Were any footprints depicted or detected in the
18 area?
19 A. Yes, sir.
20 Q. Where?
21 A. In the area surrounding this grave site to the
22 north, northwest area of where this was excavated.
23 Q. Some effort made to preserve the footprints you
24 could discern?
25 A. Yes, sir.

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1 Q. Could you describe that ground for me.
2 A. A lot of it is hard packed dirt and gravel, and
3 some sand, sandy material. It's a variety, plus quite a
4 bit of sage brush. Some real rocky areas. So it's a quite
5 a variety of dirt.
6 Q. And did there come a time when you departed the
7 scene?
8 A. Yes, sir.
9 Q. And when did that occur?
10 A. Roughly around 2:00 p.m.
11 Q. Now, in the course of your participation in this
12 investigation, did you come into contact with a person by
13 the name of Kody Patten?
14 A. Yes, I did.
15 Q. Is the person that you associate with that name in
16 the courtroom today?
17 A. Yes.
18 MR. OHLSON: Stipulate, Your Honor.
19 THE COURT: Thank you.
20 Q. And when did you first come into contact with
21 Mr. Patten?
22 A. Around -- I guess maybe I should --
23 Q. Let's use your time.
24 A. My time. Around 7:30, 7:45.
25 Q. Where was he located?

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RA 476

1 A. At the West Wendover Police Station.
2 Q. Now, before you had contact with him at the West
3 Wendover Police Station, had you made any efforts to make
4 contact with him before that point?
5 A. Yes, I had.
6 Q. Would you describe those for me.
7 A. Jim Bonich and I had gone over --
8 Q. Tell me who Jim Bonich is.
9 A. He's a special agent with the FBI.
10 Q. So you and Mr. Bonich went where, if anywhere?
11 A. We initially went to the school, and then we went
12 to the Fratto house where we had been told that he was
13 staying at. Tried to make contact with him there. Then we
14 went to the --
15 Q. Were you successful at that?
16 A. No.
17 MR. CHLSON: Could we have the days that this
18 occurred, Your Honor.
19 Q. Sure. What day is this occurring?
20 A. May 6th.
21 Q. This is after --
22 A. I mean -- I'm sorry. March 6th.
23 Q. This is after you left the site out here?
24 A. Yes, sir.
25 Q. Which you said was about two p.m.

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1 A. Yes, sir.
2 Q. So what time was it -- you first went to the
3 school.
4 A. Yes, sir.
5 Q. Correct? And did you look at anything when you
6 were at the school?
7 A. We looked at the video tape of the day that
8 Micaela was reported missing.
9 Q. How long -- how much time did you spend at that,
10 do you recall?
11 A. Maybe an hour, hour and a half maybe.
12 Q. Do you remember the times?
13 A. We started about 3, ended up about 4:30. We also
14 did some walking around the school trying to get our
15 bearings and things like that of where locations were.
16 Q. What time do you think you left the school? Do
17 you have any idea?
18 A. Between 4:30 and 5.
19 Q. Where is the first -- where did you go after you
20 left the school? Is this all taking place on the 6th of
21 March?
22 A. Yes, sir.
23 Q. So you left the school. Where did you go next?
24 A. We went to the Fratto house.
25 Q. And did you make contact with anyone at the Fratto

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1 house?
2 A. Yes. We talked to Mrs. Fratto.
3 Q. Were you able to make contact with Mr. Patten at
4 that location?
5 A. No, sir.
6 Q. Now, where is the Fratto house, as you describe
7 it, in relationship -- do you remember the address?
8 A. Not right offhand, no, sir.
9 Q. When you were unable to make contact with
10 Mr. Patten at the Fratto house, did you leave anything with
11 them or make any requests of Miss Fratto in that regard?
12 A. We asked her to have him call us when he -- when
13 he was available.
14 Q. Did you leave any means of calling you?
15 A. I believe I left my business card, yes.
16 Q. And where did you go from there?
17 A. McDonald's.
18 Q. Okay. And when you were finished there, where did
19 you go?
20 A. We went to the Patten house in Wendover, Utah.
21 Q. And did you make contact with anyone at the Patten
22 residence?
23 A. No, sir.
24 Q. What time do you think you arrived at the Patten
25 residence in Wendover, Utah?

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1 A. 6, 6:30. Between 6 and 6:30 p.m.
2 Q. And so was there anyone there at all?
3 A. No. No. No one answered the door.
4 Q. So there did you leave your card or anything?
5 A. No, sir.
6 Q. So where did you go from there?
7 A. To the West Wendover Police Station.
8 Q. And what happened upon your arrival there?
9 A. I received a message that Kip Patten was looking
10 for me.
11 Q. And do you know who Kip Patten is in relationship
12 to Mr. Patten, Kody, you've identified today?
13 A. It's Kody's father.
14 Q. So you got a message. What did you do in response
15 to that message?
16 A. I called Kip Patten's cell phone.
17 Q. Were you successful?
18 A. Yes, sir.
19 Q. And as a result of that, what did you -- did you
20 make a request of Mr. Patten?
21 A. Yes, sir.
22 Q. What was that request?
23 A. I requested that -- I explained that we needed to
24 talk to Kody again. We also wanted to talk to Kip and
25 Donna and, you know, to clear some things up that were

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RA 477

1 confusing to us.

2 Q. And in response to that, did you -- what's the
3 next thing that happened or did you see someone?

4 A. They arrived roughly 45 minutes after I talked to
5 him.

6 Q. And who arrived specifically? "They". Who is
7 "they"?

8 A. Kip and Donna Patten, Kody Patten, and Toni
9 Fratto.

10 Q. When you made contact -- where specifically in the
11 police department did you make contact with these people?

12 A. I'm not really sure how the police department's
13 laid out, but I made contact with them in the main officers
14 office area. The main area of the office.

15 Q. And did you explain to -- did you speak to
16 Mr. Patten at that point? I'm talking about Kody Patten.

17 A. We talked to all four of them. They were all
18 together, so we talked to them kind of blanketly.

19 Q. This is in the general area of the police
20 department?

21 A. Yes, sir.

22 Q. And what did you say to Mr. Patten?

23 A. I said there was some things that needed to be
24 cleared up and we needed to get a time line of what went on
25 that day and talk to him about what was going on, what had

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1 A. I believe that's Mountain time.

2 Q. So let's keep it to your time.

3 A. Sorry.

4 Q. Keep it all straight, keep it --

5 A. Okay. Around 7:45.

6 Q. All right. Now, did you record this conversation?

7 A. Yes, sir.

8 Q. Where was his -- where was Kip? Do you know?

9 A. Kip was -- he was also being interviewed by other
10 detectives. There was multiple interviews going on, so I
11 can't say specifically where he was while we were in the
12 room with Kody.

13 Q. Now, initially did you Mirandize him?

14 A. No, sir.

15 Q. Why not?

16 A. He wasn't in custody.

17 Q. Did there come a time when you did Mirandize him?

18 A. Yes, sir.

19 Q. Do you remember approximately how long you had
20 been talking to him before that happened?

21 A. Almost three hours.

22 Q. What caused you to -- during this three hours, did
23 you say to him or did you say anything to him in connection
24 with which you indicated to him that he was required to
25 talk to you?

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1 happened.

2 Q. Did you ever tell him in any way that you were
3 aware of or can remember saying or indicating to him that
4 he was obliged or required to talk to you?

5 A. No, sir.

6 THE COURT: Are you talking about "him", addressing
7 Kody Patten?

8 Q. Yes.

9 THE COURT: Okay.

10 Q. Let me put it this way: Do you have any memory of
11 saying to Kody Patten that he was required to talk to you?

12 A. No, sir.

13 Q. Did you make any threat to him at that point in
14 time?

15 A. No, sir.

16 Q. Did he agree to talk to you?

17 A. Yes, sir.

18 Q. And where did you talk to him?

19 A. In one of the interview rooms at the police
20 station.

21 Q. When you -- what time of day did you commence your
22 interview of him?

23 A. Around 8:45.

24 Q. Are we talking about your time or are you talking
25 Pacific time or Mountain time?

250

1 A. No, sir.

2 Q. Did you ever convey to him in any way that you're
3 aware of that he was not free to leave?

4 A. No, sir.

5 Q. And at some point then you did Mirandize him.

6 A. Yes, sir.

7 Q. Indulgence, Judge. I'm going to show you what's
8 been marked as -- you want to look at this? I show you
9 what's been marked as 79. Do you recognize that?

10 A. Yes, I do.

11 Q. What is it?

12 A. It's a Miranda waiver, admonition of rights and
13 waiver form.

14 Q. And did you record the administration of that?

15 A. Yes, I did.

16 Q. And was there anybody present at some point during
17 the period of time when you were administering Miranda?

18 A. Yes, sir.

19 Q. Who was that?

20 A. Myself, Special Agent Bonich, Mr. Patten, and
21 Mr. Patten's father, Kip Patten.

22 Q. At what point did he come in?

23 A. Actually he was in there prior to us advising him
24 Miranda.

25 Q. Now, up until the point that you Mirandized him,

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1 had you taken any breaks?
2 A. Yes, sir.
3 Q. And what were those breaks?
4 A. I believe we went to the bathroom a couple of
5 times. We had also took a break when he wanted to speak to
6 his father.
7 Q. And did you allow that?
8 A. Yes, sir.
9 Q. Did you allow him to speak to his father by
10 himself?
11 A. Yes, sir.
12 Q. And how long did they talk, do you know?
13 A. 15, 20 minutes. There was actually a couple times
14 because Kip came out once -- I believe once and actually
15 talked to us and then went back in and talked. So all
16 together, 15, 20 minutes.
17 Q. And how far in advance of the administering
18 Miranda did that occur?
19 A. It was pretty much immediately after we went back
20 in, after talking to --
21 Q. I'm not making myself clear. So at some point in
22 time you started to administer Miranda.
23 A. Yes, sir.
24 Q. If I understand you correctly, he asked to be
25 allowed to speak to his father by himself.

253

1 A. Yes, sir.
2 Q. And that was before the administration of Miranda?
3 A. Yes, sir.
4 Q. And so how long before the administration of
5 Miranda did Mr. Kody Patten make this request of you, and
6 he spoke to his father alone?
7 A. About a half hour, 'cause it only took a couple
8 minutes for him -- for me to go get his father or -- no. I
9 believe Special Agent Bonich went and got his father while
10 I stayed with Kody, and so it only took a couple minutes,
11 and then he was with him, and then after they were done we
12 went in and administered Miranda.
13 Q. And when -- did both you and Agent Bonich leave
14 the room when he asked to speak to Mr. Kip Patten by
15 himself?
16 A. Yes, sir.
17 Q. And so this was the same room that you had been
18 conducting your interview in?
19 A. Yes, sir.
20 Q. And so then you administered Miranda.
21 A. Yes, sir.
22 Q. And did he eventually execute the Miranda form?
23 A. Yes.
24 Q. And after that point did you conduct an interview,
25 a further interview of Mr. Patten?

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1 A. Yes, sir.
2 Q. Now I'm going to -- would you get -- bear with me,
3 Judge. I've handed you what's 81 A and I'd like you to
4 extract the contents of that and look at that document and
5 tell me whether or not you recognize it?
6 A. Yes, sir.
7 Q. And are you familiar or do you know the contents
8 of that document?
9 A. Yes, sir.
10 Q. And is there anything that -- have you reviewed
11 the contents of that document?
12 A. Yes, I have.
13 Q. And is there anything about that document -- what
14 enables you to recognize it specifically?
15 A. I initialed and dated it on July 31st.
16 Q. In anticipation of your appearance today?
17 A. Yes, sir.
18 Q. And is it a true and accurate copy of the original
19 recording that you made of your conversation with
20 Mr. Patten from the point in time at which you administered
21 Miranda until the end of the interview?
22 A. Yes, sir.
23 Q. Your Honor, I'm offering 81 A as a record of the
24 interview that he conducted that day of Mr. Patten and ask
25 that I be allowed to play it.

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1 MR. OHLSON: I have an objection to making rather
2 extensive voir dire.
3 THE COURT: All right. Would you like to conduct that
4 in aid of your objection now?
5 MR. OHLSON: Pardon?
6 THE COURT: Would you like to conduct that in aid of
7 your objection now?
8 MR. OHLSON: Your Honor, whatever pleases the Court
9 pleases me.
10 THE COURT: That will be fine.
11 MR. TORVINEN: Your Honor, for the record, I'd like to
12 indicate that I asked Counsel if he was going to make an
13 objection today, and he indicated that he was not, so this
14 is news to me.
15 MR. OHLSON: Because of the way Counsel has proceeded
16 procedurally, I don't know how to do it another way. If I
17 wait and examine, I've conceded the point. I have to make
18 a record.
19 MR. TORVINEN: Okay.
20 THE COURT: He's making an objection now, so go ahead.
21 Voir dire.
22 VOIR DIRE EXAMINATION BY MR. OHLSON:
23 Q. Thank you. Detective McKinney, this interview
24 preserved -- this portion of the interview preserved on
25 Exhibit -- what's the exhibit number? 81 A?

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1 A. Yes, sir.
2 Q. That took place on March 6th, did it not?
3 A. March 6th and 7th.
4 Q. 6th and 7th. In the late night hours of March 6th
5 to the early morning hours of the 7th?
6 A. Yes, sir.
7 Q. And at the time that you administered Miranda, how
8 long had you been talking to Kip Patten?
9 A. Approximately three hours.
10 Q. And that was done at the Elko County Sheriff's
11 Department?
12 A. No, sir.
13 Q. Where was it done?
14 A. The West Wendover Police Station.
15 Q. West Wendover Police Station. How many -- up to
16 this point, before this time, how many other distinct
17 occasions did you have to interview Mr. Patten?
18 A. I'm not sure what you mean "distinct occasions".
19 It was one interview.
20 Q. One interview. You didn't talk to him on the 5th.
21 A. No, sir.
22 Q. Didn't talk to him on the 4th.
23 A. I did not, no, sir.
24 Q. Other officers did on the 4th, is that right?
25 A. I believe so, yes.

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1 Q. Okay. You know that there had been an ongoing
2 investigation up to the point in time on the 6th when you
3 interviewed Mr. Patten.
4 A. Yes, sir.
5 Q. And when you asked to interview Mr. Patten, you
6 started the interview with him --
7 A. Yes, sir.
8 Q. -- he was considered at that time a suspect by the
9 Wendover Police Department in the death of Micaela
10 Costanzo, was he not?
11 A. I don't know if he was considered a suspect
12 per se.
13 Q. One of the officers with West Wendover who
14 testified here testified that on the 5th Mr. Patten was
15 considered to be a suspect.
16 A. Okay.
17 Q. So weren't you informed of that?
18 A. I'm not sure. I'm not sure if I was informed that
19 I was actually a suspect.
20 Q. Let's do it the slow hard way.
21 A. Okay. That's fine.
22 Q. That's fine with me. You're called out to West
23 Wendover from Elko, is that right?
24 A. Yes.
25 Q. And when you're called out, it is to arrive at the

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1 grave scene on the 5th, is it, of March?
2 A. That's when I was called, yes.
3 Q. Okay. When you were first called out there, were
4 you informed about what was going on or were you just told
5 to come out and look at a spot in the desert?
6 A. I was told that there had been a body found.
7 Q. Okay. And did you start -- you're an
8 investigator. Did you start investigating at that time?
9 A. No, sir.
10 Q. The time you got out there?
11 A. No, sir.
12 Q. Did you talk to anybody with West Wendover about
13 the crime?
14 A. I had talked to Detective Burnum, yes.
15 Q. Did you learn from anybody at West Wendover if
16 there were any suspects?
17 A. No, sir.
18 Q. Did you ever learn that there were suspects?
19 A. Yes. I learned of potential, yeah, potential
20 suspects, yeah.
21 Q. And that was on the 6th of March, was it?
22 A. Yes.
23 Q. And you learned that from who?
24 A. Detective Burnum.
25 Q. And is that when you went to talk to Mr. Kody

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1 Patten?
2 A. Yes, sir.
3 Q. Kody Patten was your suspect at that time. Was he
4 not?
5 A. Not my suspect, no.
6 Q. He was a suspect, right?
7 A. He was a potential suspect, yes.
8 Q. All right. And you asked -- left word that you
9 wanted Kody Patten to come down to the West Wendover Police
10 Department so that you could talk to him.
11 A. Yes, sir.
12 Q. And you recorded that meeting.
13 A. Yes, sir.
14 Q. Did you not? And you talked to him for three
15 hours before you Mirandized him.
16 A. Yes, sir.
17 Q. Okay. And did you ever see a transcript of the
18 entire interview that you did with him on March 6th?
19 A. Yes, sir.
20 Q. Are you familiar with that?
21 A. It's been a while since I looked at it, but I'm --
22 Q. Do you think if I showed you a copy of the
23 transcript you could show us in the transcript where you
24 Mirandized Mr. Patten? Could you do that?
25 A. Possibly.

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RA 480

1 MR. TORVINEN: Counsel, part of that is marked.
2 There's an exhibit that includes the Mirandization.
3 Q. I understand. That's all right. What I'm handing
4 you -- we'll deal with this with the clerk once we find it.
5 What I'm handing you is what looks to me like Page 1 of the
6 transcript of your interview with Kody Patten.
7 A. Uh-huh.
8 Q. The other interview being the one in which you
9 were not involved.
10 A. Okay.
11 Q. I don't want to see?
12 A. Uh-huh.
13 Q. Can we --
14 THE COURT: Is that a yes?
15 A. Yes, sir. Sorry.
16 Q. Can we start here on Page 1 and see if you can
17 find that Miranda portion.
18 A. Trying to look at the sections here.
19 Q. I think the blue paper indicates some kind of time
20 break.
21 A. Right here.
22 Q. Right here at page what?
23 A. Page 1 of 25.
24 Q. Abate number Page 447?
25 A. Yes, sir.

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1 Q. And will you read here what you told him at
2 Page 29 of 31, Discovery No. 443, starting at Line 17, KM.
3 Read it out loud for us.
4 A. What do you want to do. Right now, Kip, I can't
5 even begin to imagine what you're going through. But we
6 need to resolve this. We need to finish up. At that point
7 I don't care if you can spend all night in here with your
8 family. We need to get this done. We need to get it
9 finished up. What do you want to do at this point. Can
10 you promise me a paper written, signed, I can spend the
11 night here with my family.
12 Q. That's Kip Patten asking you if you could promise
13 that he could spend the night there at the West Wendover
14 Police Department with his family, right?
15 A. Uh-huh.
16 THE COURT: Is that a yes?
17 A. Yes.
18 THE COURT: All right.
19 A. You can spend as long as you want to in here.
20 That's my word. Okay. I kept my word up till now. I'm
21 not about to stop. You can spend all night in here if you
22 want to.
23 Q. Turn the page, please.
24 A. What happens tomorrow. Tomorrow we're going to
25 have to -- we're going to have to call the D.A., let him

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1 Q. Let me look at this for just one minute.
2 MR. TORVINEN: Did you say "abate" number?
3 Q. I think it is 447 is an I.D. number at the bottom
4 right hand corner.
5 MR. TORVINEN: That's a discovery number.
6 Q. Discovery number. Okay. At this time was
7 Mr. Patten free to leave the West Wendover Police
8 Department?
9 A. No, sir.
10 Q. He was not.
11 A. No, sir.
12 Q. And in fact, a few pages later he asked if he
13 could go home and you told him something, didn't you.
14 A. Yes, I did.
15 Q. What did you tell him?
16 A. I can't remember what my exact words were, but no.
17 Q. Here they are.
18 A. He wasn't free to leave.
19 Q. Okay. Let me refer you back to a little while
20 earlier and we have -- let me mark this for a minute.
21 Earlier before you gave him the Miranda, Mr. Patten asked
22 to go home, didn't he?
23 A. Yes.
24 Q. You told him he couldn't go home.
25 A. I believe so, yes.

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1 know what we have. So I will get arrested and in custody
2 or something. You're not under arrest at this time. So I
3 can go home and spend it with my family or should I stay.
4 Well, we need to talk and we need to find out.
5 Q. Okay. At that time, Mr. Patten asked you to go
6 home, but he's not free to leave, is he?
7 A. No, he's not.
8 Q. And that is before in time that you gave him
9 Miranda, isn't that right?
10 A. It is.
11 Q. So you've been a detective long enough to realize
12 that there was a period of time where Mr. Patten was in
13 custody not free to leave, being questioned by you.
14 A. No, sir.
15 Q. Without benefit of Miranda.
16 A. No, sir.
17 Q. Should we go through it again?
18 A. Yes, sir, I can go through this all day. He was
19 not questioned after I told him he was in custody.
20 Q. You show me where you stopped.
21 A. Right here.
22 Q. Because it looks very much to me --
23 A. Right here. It says "you're not under arrest."
24 He said "so can I go home." "We need to talk and we need
25 to find out." That's the end of the recording. The next

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RA 481

1 recording is Miranda. So there's no questions between the
2 time I told him he was in custody and the time I advised
3 him Miranda, no, sir.

4 Q. None.

5 A. No, sir.

6 Q. None.

7 A. No, sir.

8 MR. OHLSON: That's all the voir dire I have.

9 THE COURT: Do you wish to traverse the voir dire or
10 are we going to hear objections?

11 MR. TORVINEN: Well, I want to traverse the voir dire.

12 THE COURT: Go ahead.

13 VOIR DIRE EXAMINATION BY MR. TORVINEN:

14 Q. Up until the point in time which you Mirandized
15 him --

16 A. Yes, sir.

17 Q. -- first let me ask you: What triggered your -- I
18 don't want to know the words right yet, but did something
19 happen that triggered in your mind the necessity of
20 Mirandizing him?

21 A. Yes, sir.

22 Q. And at that point you thought you should.

23 A. Yes, sir.

24 Q. Now, after that point was triggered --

25 A. Yes, sir.

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1 Q. -- did you ask him any questions?

2 A. No, sir.

3 Q. Up till that time had you denied him any bodily
4 comforts?

5 A. No, sir.

6 Q. Had you threatened him in any way?

7 A. No, sir.

8 Q. Had you -- had you made any promises or offered
9 any favors?

10 A. No, sir, other than allowing him to spend time
11 with his family.

12 Q. Did you ultimately do that?

13 A. Yes, sir.

14 Q. And in between that time, and I'm talking about
15 from the time you started until the time that you decided
16 you needed to administer Miranda --

17 A. Yes, sir.

18 Q. -- Let me think about that for a moment. From
19 the time that you started until the time that something
20 happened that in your mind made you think that you should
21 administer Miranda, had you informed him that he was not
22 able to leave in any way?

23 A. Not up until the point I decided that --

24 Q. You've just read -- I understand that part.

25 A. Yes.

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1 Q. Up to that point had you ever conveyed to him that
2 he was not free to leave?

3 A. No, sir.

4 Q. Did he ever attempt to leave?

5 A. No, sir.

6 Q. Had you allowed him up till that point in time
7 when he asked to do so, to speak to his father?

8 A. Yes, sir.

9 Q. Did he ask to speak to anyone else?

10 A. No, sir.

11 Q. You indicated that up till that time you took
12 several breaks?

13 A. Yes, sir.

14 Q. Was he able to freely move about?

15 A. Yes, sir.

16 MR. TORVINEN: Pass the witness on the voir dire,
17 Judge.

18 THE COURT: Anything further? Mr. Torvinen, are you
19 moving for the admission of State's 81 A and 79, the
20 Miranda forms?

21 MR. TORVINEN: Yes.

22 THE COURT: Okay. Objection.

23 MR. OHLSON: Submit the matter, Your Honor.

24 THE COURT: Okay. To the extent there's an objection
25 to 79 and 81 A, the Court will admit 79 and 81. The Court

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1 would overrule any objection at this time. The Court will
2 make the finding --

3 MR. TORVINEN: Is it 81 or 81 A?

4 THE COURT: 81 A. Excuse me. Where is 79. I'm going
5 to review 79 first before I definitively rule on 81 and
6 81 A.

7 All right. Having reviewed Exhibit 79, the Court will
8 admit Exhibit 81 A. That's the Court's understanding that
9 this recording is of an interview with the Defendant, Kody
10 Patten, after he signed the Miranda, written Miranda form,
11 a copy of which has been admitted as 79, indicating that he
12 would have knowingly, intelligently, and voluntarily waived
13 his Miranda rights.

14 The Court will find based on what's been drawn out by
15 the Prosecutor there's no Fourteenth Amendment due process
16 barrier, that is a voluntariness barrier, to the admission
17 of this exhibit. So 81 A is also admitted.

18 Mr. Torvinen, this does cover the time after Miranda
19 rights were waived?

20 MR. TORVINEN: It actually includes the administration
21 of Miranda.

22 THE COURT: That's what I mean, the substantive
23 portion.

24 MR. TORVINEN: Yes.

25 THE COURT: Okay.

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RA 482

1 MR. TORVINEN: It's after the administration of
2 Miranda.
3 THE COURT: How long is the recording?
4 MR. TORVINEN: Two recordings and they're about
5 24 minutes a piece.
6 THE COURT: Okay.
7 MR. TORVINEN: And Your Honor, I had proposed and I
8 have marked -- that was my last timing of them.
9 THE COURT: Did you wish to play those in open court?
10 MR. TORVINEN: I do.
11 THE COURT: All right.
12 MR. TORVINEN: And bear with me, Judge. You know, I'm
13 using the wrong -- do you have 81 A there as what I
14 offered? Not 82?
15 A. This is 81 A.
16 MR. TORVINEN: Okay. So Your Honor, I've also marked
17 as 82 A, a transcript of the recording I'm about to play,
18 and I'm proposing to proffer it to the Court as a
19 demonstrative exhibit so it may read it as the recording is
20 played. Subject to Counsel's objection.
21 MR. OHLSON: No problem with that.
22 THE COURT: 82 A is admitted. And may we have a
23 stipulation that the reporter need not take down --
24 MR. TORVINEN: Correct.
25 THE COURT: -- the contents of the recording?

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1 MR. OHLSON: That's all right.
2 THE COURT: All right. Is that so stipulated?
3 MR. TORVINEN: Yes.
4 THE COURT: All right.
5 MR. TORVINEN: I'd like you to give that to the Court
6 and then load up -- can it play through these speakers?
7 Give that to the Court.
8 (Whereupon Exhibit No. 81 A was played.)
9 MR. OHLSON: Before we change discs, I have a motion
10 to make.
11 THE COURT: Mr. Ohlson.
12 MR. OHLSON: I move to strike from this exhibit and
13 from further discs all statements of the Defendant from the
14 point in time which the officers told him that he could get
15 bail, potentially get out, potentially go back to school.
16 MR. TORVINEN: Your Honor, one, you do have the
17 opportunity for bail. There's never been a bail motion
18 made in this case. One.
19 Two, there's lots of case law, and this is why I'm
20 saying that we have no motion before us. We haven't
21 researched this issue. You look at -- there's a case
22 called Duroskey versus State. It talks about when Miranda
23 is due and that sort of thing, and one of the factors is if
24 there is some sort of deception, and first you have to find
25 that it's deception, and even if it was, it doesn't

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1 necessarily negate the Miranda.
2 So the State's position is that he could have made a
3 motion for bail. The Detective wasn't lying to him. He
4 didn't know. He was asking -- he was asked what could
5 happen, and he gave him his opinion. That doesn't mean
6 it's unlawful. To that's the State's position. There's
7 nothing been demonstrated here that's unlawful.
8 MR. OHLSON: Your Honor, there's a difference between
9 making a false statement of fact like "we have a witness
10 that puts you at the scene of a crime" and misstating the
11 process. As Your Honor knows, in a murder case where the
12 proof is evident and the presumption is great, where a
13 capital murder case there is no bail.
14 The reason I'm here is the State announced the
15 potential that this would be a capital case which there is
16 no bail. That wasn't explained. Clearly from the tape
17 what you can hear is the officer's romancing him. We have
18 to call the D.A. What will happen now. We got to call the
19 D.A. We don't know. We don't know what the charge is.
20 And then, well, you know, we can have the charges and we
21 can take you to Elko County. Judge will set bail and you
22 can make bail and you can potentially be back in high
23 school.
24 At this time did anyone reasonably think this young
25 man was going to go back to school next Monday. I'm making

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1 this argument for the record, Your Honor, I know because of
2 the limited scope of this hearing what probably the rule
3 will be, but that's my record.
4 THE COURT: All right. The Court will deny the
5 motion. Again, the Court is, in spite of hearing that
6 portion of the tape, my ears certainly perked up when I
7 heard it as well, having thought about it, the Court still
8 finds at this point that there was a knowing, intelligent
9 and voluntary waiver.
10 I think given Exhibit 79 of the waiver -- excuse me,
11 of the Miranda rights, on balance the Court is finding that
12 this is a voluntary statement. There's not a Fourteenth
13 Amendment barrier to the admission.
14 MR. OHLSON: Your Honor --
15 THE COURT: I'm sure this will be something that will
16 be further litigated in District Court, but at this time
17 I'm denying the motion.
18 MR. OHLSON: If I may, again to make a complete
19 record, let's bear in mind that at the time Mr. Patten was
20 having fun, going back to high school, the waiver hadn't
21 been signed yet. And in addition, because I didn't
22 specifically argue voluntariness, I don't mean to concede
23 the point of voluntariness.
24 THE COURT: I understand. But it's a ruling that I
25 think making a good record I need to make as well because

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RA 483

1 Mr. Torvinen brought out a lot of information about that.
2 So the Court's denying the motion.
3 MR. OHLSON: Very well.
4 (Whereupon Exhibit No. 81 A was played.)
5 CONTINUED DIRECT EXAMINATION BY MR. TORVINEN:
6 Q. Did you just listen to that part?
7 A. Yes.
8 Q. Is that the execution of the Miranda form?
9 A. Yes, sir.
10 Q. Go ahead.
11 (Whereupon Exhibit No. 81 A was played.)
12 Q. Shut it down and take it out of the machine.
13 Detective McKinney, after that did Mr. Patten spend time
14 with his family?
15 A. Yes, sir.
16 Q. In the same room?
17 A. Yes, sir.
18 Q. Were you present or did you supervise that
19 personally in any way?
20 A. For a short time, yes.
21 Q. For how long?
22 A. Roughly a half hour, 45 minutes.
23 Q. Then what happened?
24 A. I was ordered to go home.
25 Q. So do you know how long the visitation went on

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1 after that?
2 A. No, sir.
3 Q. At the end of the tape, when that's Jim Borich
4 speaking saying "send Toni in", did she come in?
5 A. Yes, sir.
6 Q. By herself or with the other parts of the family?
7 A. I believe by herself.
8 Q. Did you see his father go in there?
9 A. Later on, yes.
10 Q. How about his mother?
11 A. Yes.
12 Q. Personally saw that?
13 A. Yes, sir.
14 Q. Now, after the interview we just heard, that was
15 the morning of the 7th, right?
16 A. Yes, sir.
17 Q. Did you have an occasion to speak to Mr. -- well,
18 let me ask you this: When you left -- or when you were
19 directed to go home, where was Mr. Patten?
20 A. Which Patten? I'm sorry.
21 Q. Kody Patten.
22 A. He was in the interview room.
23 Q. Was there anybody with him?
24 A. His family.
25 Q. After the interview on the 7th, did you have an

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1 occasion to speak with Mr. Patten again?
2 A. Yes, sir.
3 Q. Where was he located when you did that?
4 A. At the Elko County Jail.
5 Q. And before you spoke to him any further, did you
6 Mirandize him again?
7 A. Yes, sir.
8 Q. Find No. 80. Give that to him. You see what's
9 marked as Exhibit 80. Do you recognize that document?
10 A. Yes, sir.
11 Q. And what is it?
12 A. It's the Miranda form that I showed to Mr. Patten,
13 had him sign.
14 Q. Well, can you describe for the Court how you
15 utilized it?
16 A. Explained to him that we needed to -- there was a
17 few more things we needed to clear up, and that he was
18 still under Miranda, and asked him to if he would still be
19 willing to speak with us or not.
20 Q. And did you read that form?
21 A. I can't remember at that point if I read it to him
22 or just had him read it, because I explained to him that it
23 was, you know, the same Miranda that would have happened
24 Sunday. So I'm not -- I can't be positive whether I read
25 it or whether he read it.

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1 Q. Well, did he sign the waiver?
2 A. Yes, he did.
3 Q. And did you, before he signed the waiver, did you
4 ask him any questions?
5 A. No, sir.
6 Q. Substantive questions.
7 A. No, sir.
8 Q. Did you tell him what it was you wanted to talk to
9 him about?
10 A. Yes, sir.
11 Q. And what was that?
12 A. The location of the items that he burned.
13 Q. And as a result of your conversation with him on
14 the 8th, did you communicate some information to someone?
15 A. Yes, I did.
16 Q. And who was that?
17 A. Detective Burnum.
18 MR. TORVINEN: I'll pass the witness, Judge.
19 THE COURT: All right. It is now 5:12. We can
20 continue --
21 MR. OHLSON: I have no cross.
22 THE COURT: You have no cross.
23 MR. OHLSON: No.
24 THE COURT: Okay. May this witness be excused?
25 MR. TORVINEN: No.

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1 THE COURT: All right. You're held subject to recall.
2 Please recall the rule of exclusion, Detective. All right.
3 Mr. Torvinen, Mr. Ohlson, we can continue on today if you'd
4 like.

5 MR. OHLSON: Could we ask the Detective just to hang
6 on for a second before he leaves.

7 THE COURT: We can continue on today, if you'd like,
8 with a couple more witnesses. My intent otherwise would be
9 to break and then reconvene at 10:00 tomorrow because
10 unfortunately I have to conduct tomorrow morning's calendar
11 at 8:30.

12 MR. OHLSON: Looks to me like we're moving along
13 pretty well, Your Honor.

14 THE COURT: We did. We moved pretty quickly today, I
15 think, given what we had to get through. Mr. Torvinen?

16 MR. TORVINEN: I'll submit it to the Court.

17 THE COURT: How much longer --

18 MR. TORVINEN: I think we can finish tomorrow, if
19 that's what you're asking.

20 THE COURT: How much longer is your presentation? If
21 we start at 10:00, will we be able to wrap it up by five,
22 you think?

23 MR. TORVINEN: I would think.

24 THE COURT: Okay. Then we'll go ahead and take --

25 MR. TORVINEN: I have about six or seven more

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1 witnesses, and we did 15 today.

2 THE COURT: Right. All right. Then the Court will be
3 in recess -- well, before we recess, did you want me to
4 admonish any witnesses, Mr. Torvinen?

5 MR. TORVINEN: Well, let's do this. I'm willing to
6 release Tyler Peterson, school teacher.

7 MR. OHLSON: That's fine.

8 THE COURT: Okay. He can be released then.

9 MR. TORVINEN: I'm willing to release Tiffany
10 Rasmussen.

11 MR. OHLSON: No objection.

12 MR. TORVINEN: Travis Landon.

13 MR. OHLSON: No objection.

14 MR. TORVINEN: Jerome Reamer.

15 MR. OHLSON: No objection.

16 MR. TORVINEN: Wendi Murphy.

17 MR. OHLSON: No objection.

18 MR. TORVINEN: Kandace Christiansen.

19 MR. OHLSON: No objection.

20 MR. TORVINEN: Jason Abrams.

21 MR. OHLSON: No objection.

22 MR. TORVINEN: Brad Hillaker.

23 MR. OHLSON: No objection.

24 MR. TORVINEN: Kiearra Murphy.

25 MR. OHLSON: No objection.

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1 MR. TORVINEN: Mick Moore.

2 MR. OHLSON: No objection.

3 MR. TORVINEN: And Ron Supp and Donald Burnum will be
4 here tomorrow and I'm keeping Detective McKinney. That's
5 where we're at.

6 THE COURT: All right. Pete Turner has already been
7 released. So Peterson, Rasmussen, Landon, Reamer, Wendi
8 Murphy, Kandace Christiansen, Abrams, Hillaker, Murphy,
9 Kiearra Murphy who I think was already released as well,
10 and Mick Moore, they can be released. You can tell them
11 they can move on. We've got Detective Supp -- or excuse
12 me, Chief Supp and Detective McKinney, and Miss Costanzo's
13 in the courtroom still subject to the rest of the rule of
14 exclusion. Did you intend on calling the rest of the
15 witnesses here?

16 MR. TORVINEN: Well, Don Burnum --

17 THE COURT: Right.

18 MR. TORVINEN: Carpenter.

19 THE COURT: Right.

20 MR. TORVINEN: Cassandra Fratto briefly, Kip Patten,
21 and then once we get to that point it will be the lab
22 people, Judge.

23 THE COURT: Okay. So can Journigan, Claude Fratto,
24 Kenya Truxal will be released?

25 MR. TORVINEN: No, I don't want her released yet.

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1 THE COURT: Okay. Jim Bonich, you, may call him as
2 well? All right. Did you want me to admonish any of the
3 rest of these people on coming back here?

4 MR. TORVINEN: I'm not sure what you're asking me. To
5 re-admonish them, you mean?

6 THE COURT: That they're held and they got to be back
7 here tomorrow at ten.

8 MR. TORVINEN: Okay.

9 THE COURT: We did that at the Fratto prelim at the
10 end of the first day.

11 MR. TORVINEN: We released these people, and if you
12 want to call those people back in that I've just named and
13 release them, that's fine.

14 THE COURT: I'll leave it up to you.

15 MR. TORVINEN: Okay.

16 THE COURT: You will let them know and go from there.
17 All right. Anything further?

18 MR. OHLSON: No, Your Honor.

19 THE COURT: All right. Court's in recess. We're off
20 the record.

21 (Whereupon the Preliminary Hearing was then continued to
22 August 3, 2011.)

23

24

25

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1 THE COURT: We're back on the record for Case
2 CR-2011-0300, State of Nevada, Plaintiff, versus Roddy Cree
3 Patten and Toni Collette Fratto, the Defendants. Again the
4 State's represented by Mark Torvinen, Elko County District
5 Attorney. I should say he also has here Tyler Ingram, Elko
6 County Deputy District Attorney. Mr. Patten is here with
7 his attorneys, John Ohlson and Jeff Kimp. And this is the
8 date and time set to hold the balance of our preliminary
9 hearing in this case. Is the State ready to go for today?

10 MR. TORVINEN: Yes.

11 THE COURT: For the Defense?

12 MR. OHLSON: Yes, Your Honor.

13 THE COURT: All right. Mr. Torvinen, next witness.

14 MR. TORVINEN: Donald Burnum.

15 DONALD BURNUM,
16 produced as a witness at the instance of the Plaintiff,
17 having been first duly sworn, was examined and testified as
18 follows:

19 THE COURT: Have a seat, please, sir. Mr. Torvinen.

20 DIRECT EXAMINATION BY MR. TORVINEN:

21 Q. State your full name and spell your last for the
22 record, sir.

23 A. Donald Kent Burnum. B-u-r-n-u-m.

24 Q. How are you employed, sir?

25 A. Detective Sergeant for the City of West Wendover.

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1 Q. How long have you been employed in that capacity?
2 A. Approximately five years as Detective Sergeant.
3 Q. 42, Miss Clerk. Has this been entered, Judge, 42?

4 THE COURT: I don't believe it has, Mr. Torvinen.
5 Objection to 42?

6 MR. OHLSON: No, Your Honor.

7 THE COURT: 42 is admitted now.

8 Q. Look at Exhibit No. 42 and tell me if you've ever
9 seen that object before?

10 A. Yes.

11 Q. And where did you first see it?

12 A. First observed this under the Fratto residence. I
13 believe it's 3216 Skyview Drive, on the morning of
14 March 7th.

15 Q. And when you say "underneath", what do you mean by
16 that?

17 A. It's a modular home. Has a siding to it. I
18 removed the siding and observed it laying underneath the
19 home.

20 Q. And before you went underneath that home, did you
21 seek someone's permission to go underneath that home to
22 look for that object?

23 A. I did.

24 Q. And whose permission did you seek?

25 A. Claude Fratto.

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1 Q. Did you know Claude Fratto before?

2 A. Yes.

3 Q. Did you know that to be his residence?

4 A. Yes.

5 Q. Does it appear in the same condition as when you
6 originally seized it?

7 A. Yes, it does.

8 Q. What day was that that you seized it?

9 A. It would have been March 7th.

10 Q. Indulgence, Judge. I show you what's been marked
11 as Exhibit 45. I'll take this from you.

12 A. Exhibit 45.

13 Q. Do you recognize what's depicted there?

14 A. Yes, I do.

15 Q. What is it?

16 A. It's an area that I refer to as the burn site
17 located in Tooele County, Utah.

18 Q. Where is that located specifically in relationship
19 to West Wendover?

20 A. Approximately three miles northeast.

21 Q. What state is it in?

22 A. State of Utah.

23 Q. What county is it in?

24 A. Tooele.

25 Q. What is this place generally? Where is it?

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1 A. A gravel pit.

2 Q. And did you have an occasion to further inspect
3 that site?

4 A. I did.

5 Q. When did you do that?

6 A. March 18th.

7 Q. What year?

8 A. 2011.

9 Q. By what means did you do that?

10 A. Used a shovel, sifting screens and searched the
11 area to dig and probe this area.

12 Q. Did you recover something from there?

13 A. I did.

14 Q. More than one thing?

15 A. I did.

16 Q. I'm going to show you what's been marked 4, 4 A
17 and 47.

18 A. 4, 4 A and 47.

19 Q. Do you recognize what's depicted in those
20 photographs?

21 A. Yes, I do.

22 Q. And what's depicted there? Give us the number and
23 tell us what's depicted there.

24 A. Exhibit 4, this is a piece of material that was
25 recovered from that burn site area. Appears to be some

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1 type of cloth or fabric with a polka dot design on it.
2 4 A is a very similar, zoomed in photograph of that.
3 47 appears to be another pile of material that was found in
4 this area.

5 Q. And would you secure -- I'm going to show you 6 A.
6 Do you recognize that object?

7 A. Exhibit 6 A, this was an item that was found at
8 the burn location. Appears to be a key ring with a key and
9 some type of a charm, medallion on it. Appears to be a
10 panda with the word "Buds" at the bottom.

11 Q. And are those things the same or substantially the
12 same as when you recovered them on the 18th of March?

13 A. Yes.

14 Q. I'd like you to look at No. 46 up there.

15 A. Exhibit 46.

16 Q. Have you ever seen that object?

17 A. Yes, I have.

18 Q. Where did you, if you did, first encounter that?

19 A. On March 18, 2011 at the burn site area and it's
20 an item that was recovered from it.

21 Q. Does it appear to be the same or substantially the
22 same as when you first recovered it?

23 A. Yes.

24 Q. Now, these other items that you refer to in the
25 photographs, particularly -- I can't remember the numbers,

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1 where do those physical items now repose?

2 A. In evidence at the City of West Wendover. You're
3 talking about Exhibit 4, 4 A and 47?

4 Q. Yes.

5 A. That is correct.

6 Q. And are they still in the same condition as when
7 you seized them?

8 A. Yes.

9 Q. I show you what's been marked as 49, I think.
10 Have you ever seen that object before?

11 A. Exhibit No. 49, yes, I have.

12 Q. And when did you come first -- when did you first
13 come into contact with that?

14 A. It would have been June 30, 2011.

15 Q. And where was it located when you came into
16 contact with it?

17 A. This was located in a Chevy Trailblazer that was
18 owned and operated -- or owned by Wendi Murphy that was
19 taken as evidence in this case.

20 Q. Where was it located -- under what authority did
21 you get into the vehicle?

22 A. A search warrant.

23 Q. And to your knowledge, has the vehicle
24 been secured -- were you aware of when the vehicle came
25 into police custody?

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1 A. Not sure the exact, if it was the 7th or not of
2 March.

3 Q. Were you present when it was brought into the
4 police station?

5 A. Yes.

6 Q. And where has it been since then?

7 A. It's been stored at the West Wendover Public Works
8 facility yard.

9 Q. Is that a secure facility, at least in the sense
10 that it's fenced?

11 A. Yes, that is correct.

12 Q. And was the vehicle locked when you executed your
13 search warrant?

14 A. Yes, it was.

15 MR. OHLSON: Your Honor, is 49 admitted?

16 Q. I'm offering it now.

17 THE COURT: 49 is already in evidence.

18 MR. OHLSON: We'd move to strike it from evidence at
19 this point in time on the basis of relevance, based on the
20 prior testimony as to when it appeared and when it didn't
21 appear and on the medical evidence that fails to connect
22 that with any of the injuries of the deceased.

23 THE COURT: Mr. Torvinen.

24 MR. TORVINEN: State's theory, Judge, is that I would
25 suggest to you that there's clear evidence in the case that

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1 Micaela Costanzo was bound at some point. That is a
2 binding agent or a means of binding. It was not in the car
3 I suggest the evidence demonstrates when Wendi Murphy
4 turned it over to Mr. Patten on the 3rd of March. And
5 while I recognize Counsel's objection in terms of its
6 appearance in the car, I've accounted for everyone who had
7 possession of it and who indicate that they didn't put it
8 in there. And so on that basis I'm suggesting to you that
9 it is relevant, and whatever difficulty there may be with
10 it has to do with its weight and not its admissibility.

11 THE COURT: Anything further?

12 MR. OHLSON: That might be a good response except for
13 two facts. The first is that Dr. Clark was specifically
14 asked about injuries or wounds from any ligatures and
15 indicated that while there might have been marks, there
16 were no injuries or wounds. This is picture wire which if
17 bound tightly around anybody would certainly leave some
18 ligature marks.

19 Secondly, there's nothing in this case so far to
20 connect this item with either of the two Defendants in this
21 case. Nothing.

22 THE COURT: All right. The Court will overrule the
23 objection. I think it does go to the weight rather than
24 the admissibility. I think it's relevant as to preparation
25 or plan, those sorts of issues. So the objection is

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1 overruled. Mr. Torvinen.
2 MR. TORVINEN: So is 42 in --
3 THE COURT: 49 had been admitted and it still is in
4 evidence.
5 MR. TORVINEN: Okay. I'll pass the witness, Judge.
6 THE COURT: Cross examination.
7 CROSS EXAMINATION BY MR. OHLSON:
8 Q. Detective Burnum, when you went to the Fratto
9 house, had you already obtained permission to search the
10 Fratto house?
11 A. Yes.
12 Q. And where were you physically when you got that
13 permission?
14 A. You're speaking specifically of the time I
15 recovered --
16 Q. No. Where were you standing or sitting when you
17 got that permission to search the Fratto house?
18 A. Standing in the parking lot of the West Wendover
19 Police Department.
20 Q. Did you get that permission in writing?
21 A. I did not.
22 Q. And from whom again did you get it?
23 A. Claude Fratto.
24 Q. Did Mr. Fratto tell you who had been living in his
25 house on or about the time you obtained his permission?

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1 A. Yes.
2 Q. And who did he tell you had been living there?
3 A. His wife, himself, his daughter and Mr. Patten.
4 Q. And it's true, isn't it, that you obtained no
5 written permission to search the Fratto residence from any
6 of those people.
7 A. That is correct.
8 Q. Did Mr. Fratto tell you who had access or whether
9 he had access or had gone underneath the house where you
10 looked in recent times?
11 A. He did not advise that.
12 Q. He what?
13 A. He did not state whether he had or had not, no.
14 Q. Did Mrs. Fratto say that she used that area?
15 A. No.
16 Q. Did Toni Fratto say that she used that area?
17 A. No.
18 Q. So as far as you know, the only person that may
19 have used that area might have been Kody Patten, is that
20 right?
21 A. I do not know who else would have.
22 Q. You don't know who used the area.
23 A. That is correct.
24 MR. OHLSON: That's all I have.
25 THE COURT: Redirect.

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1 REDIRECT EXAMINATION BY MR. TORVINEN:
2 Q. Again, would you describe this area where it was
3 located.
4 A. It's a modular home or trailer, however you'd like
5 to describe it. It's covered by a vinyl siding and you
6 have to pull the siding down to get access underneath it.
7 It was just approximately three feet underneath the
8 residence.
9 MR. TORVINEN: That's all I have, Judge.
10 THE COURT: Recross.
11 MR. OHLSON: No. Thank you, Your Honor.
12 THE COURT: May the Detective be excused?
13 MR. TORVINEN: I'd like him held, Judge.
14 THE COURT: You're held subject to recall. Please
15 have a seat outside. Recall the rule of exclusion. Thank
16 you. Next witness.
17 MR. TORVINEN: James Carpenter.
18 JIM CARPENTER,
19 produced as a witness at the instance of the Plaintiff,
20 having been first duly sworn, was examined and testified as
21 follows:
22 THE COURT: Have a seat, please. When you're ready
23 you may proceed, Mr. Torvinen.
24 DIRECT EXAMINATION BY MR. TORVINEN:
25 Q. Would you state your full name and spell your last

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1 for the record, sir.
2 A. It's Jim Carpenter. C-a-r-p-e-n-t-e-r.
3 Q. And how are you employed, sir?
4 A. Detective with the Elko County Sheriff's Office.
5 Q. How long have you been employed in that capacity?
6 A. I've been with the sheriff's office 22 years.
7 Q. Did you have an occasion on the 8th day of March
8 2011 to attend an autopsy at the Washoe County Coroner's
9 Office?
10 A. I did.
11 Q. Whose remains were being examined?
12 A. Micaela Costanzo.
13 Q. Were you there -- well, would you look at -- I
14 think it's 52 and 53 there you have, is that correct?
15 A. Yes.
16 Q. Have you ever seen the object depicted in that
17 photograph?
18 A. Yes, I have.
19 Q. Where was it the first time you saw it?
20 A. It was inside of the body bag at the coroner's
21 office.
22 Q. Were you present when those photographs were
23 taken?
24 A. I was.
25 Q. And does it fairly and accurately depict the

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1 object that's depicted in those photographs?

2 A. It does.

3 Q. And did you see what happened to the object that
4 is depicted in those photographs?

5 A. They were placed into brown paper evidence bags
6 and released to Renee at the Washoe County Crime Lab.

7 Q. Now, I'm talking about that object specifically
8 that's depicted in those two photographs, did you see that
9 packaged up?

10 A. Yes.

11 Q. In your presence?

12 A. Yes. She put it in the brown evidence bags.

13 Q. Did you see what she did with it?

14 A. It was then -- all the evidence that was collected
15 was wheeled out to her car and she took it to the crime
16 lab.

17 MR. TORVINEN: I'll pass the witness, Judge.

18 THE COURT: Cross examination.

19 MR. OHLSON: No questions.

20 THE COURT: May Detective Carpenter be excused?

21 MR. TORVINEN: I'd like him held, Judge.

22 THE COURT: You're held subject to recall. Have a
23 seat outside the courtroom and remember the rule of
24 exclusion. Thank you.

25 MR. TORVINEN: Could I have Cassandra Fratto.

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1 THE COURT: Watch your step there, please.

2 CASSANDRA FRATTO,
3 produced as a witness at the instance of the Plaintiff,
4 having been first duly sworn, was examined and testified as
5 follows:

6 THE COURT: Please have a seat.

7 DIRECT EXAMINATION BY MR. TORVINEN:

8 Q. Would you state your full name and spell your last
9 for the record, ma'am.

10 A. Cassandra Collette Fratto. F-r-a-t-t-o.

11 Q. And ma'am, what city or town do you reside in?

12 A. West Wendover, Nevada.

13 Q. And are acquainted with a person by the name of
14 Kody Patten?

15 A. I am.

16 Q. Is Kody Patten in the courtroom?

17 A. Yes, he is.

18 Q. And would you point to him and tell us what he's
19 wearing.

20 MR. OHLSON: Stipulate, Your Honor.

21 THE COURT: Thank you, Mr. Ohlson.

22 Q. In March of 2011 can you give me what your address
23 in West Wendover was?

24 A. Physical address?

25 Q. Yes.

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1 A. 3268 West Skyview Drive.

2 Q. Did Mr. Patten ever reside with you or live with
3 you at that residence?

4 A. Yes, he did.

5 Q. Can you tell me when he took up residence with you
6 at that residence? When did he start living with you?

7 A. I believe the date was Sunday, January 30th, of
8 this year, 2011.

9 Q. And was he living there in the first part of March
10 2011?

11 A. Yes, he was.

12 Q. I show you what's been marked as 42. Do you see
13 that?

14 A. Yes, I do.

15 Q. Do you recognize it?

16 A. I do.

17 Q. When is the first time you ever saw that object?

18 A. The first time I saw it and recognized what it was
19 was about a couple of days after Micaela's death.

20 Q. Had you seen it before that?

21 A. I probably did, but didn't register what it was.

22 Q. Do you remember testifying that you had previously
23 seen it in Mr. Patten's room?

24 A. Yes.

25 Q. When did that occur?

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1 A. That was on Saturday morning, March 5th.

2 Q. And did you -- did there come a time when you
3 noticed something about it in terms of it no longer where
4 you originally saw it?

5 A. Yes. And the only reason I walked into his room
6 was to get something out of the closet, and as I turned
7 around, I saw it standing in the corner by the door. I
8 thought that to be odd, so it made an impression.

9 Q. And did you ever have an occasion to go back in
10 the room and -- did it ever come up missing in your
11 presence?

12 A. The night that the detectives came to search his
13 room.

14 Q. So --

15 A. I noticed that it was not there.

16 Q. All right.

17 A. The next day, yes.

18 Q. And what day was that?

19 A. That was Sunday, the 6th of March.

20 MR. TORVINEN: I'll pass the witness, Judge.

21 THE COURT: Cross examination.

22 CROSS EXAMINATION BY MR. OHLSON:

23 Q. When Kody Patten moved into your house, who was
24 living there, including Kody Patten?

25 A. Myself, my husband, and my daughter Toni.

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1 Q. And what at that time when he moved in was the
2 relationship between Toni and Kody?
3 A. They were boyfriend/girlfriend.
4 Q. How long had they been boyfriend/girlfriend prior
5 to the time that Kody Patten moved in?
6 A. I would say on and off for four years.
7 Q. Did you know Micaela Costanzo?
8 A. No. Not in person.
9 Q. Not in person?
10 A. Right. I had never actually met her.
11 Q. You heard of her?
12 A. Heard of her.
13 Q. From who?
14 A. Probably Toni, Kody, friends.
15 Q. Speaking of her to you?
16 A. As an acquaintance.
17 MR. OHLSON: That's all I have.
18 THE COURT: Redirect.
19 MR. TORVINEN: Nothing based on that, Judge.
20 THE COURT: May Mrs. Fratto be excused?
21 MR. TORVINEN: I think because we're here today I'm
22 going to hold her.
23 THE COURT: You're held subject to recall for this.
24 Please have a seat outside the courtroom. Remember the
25 rule of exclusion.

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1 MR. TORVINEN: Kip Patten.
2 THE COURT: Watch your step there, please.
3 KIP PATTEN,
4 produced as a witness at the instance of the Plaintiff,
5 having been first duly sworn, was examined and testified as
6 follows:
7 THE COURT: Please have a seat, sir. And Mr. Torvinen
8 may proceed.
9 DIRECT EXAMINATION BY MR. TORVINEN:
10 Q. Would you state your full name and spell your last
11 for the record, sir.
12 A. Kip D. Patten. P-a-t-t-e-n.
13 Q. Thank you. Mr. Patten, who is Kody Patten?
14 A. He's my son.
15 Q. And is your son in the courtroom?
16 A. He is.
17 Q. Would you point to him and tell us what he's
18 wearing.
19 MR. OHLSON: Stipulate, Your Honor.
20 THE COURT: Thank you, Mr. Ohlson.
21 Q. In March of 2011 during that period of time did
22 your son carry a knife?
23 A. It's possible. He carried a knife periodically
24 all the time.
25 Q. Did he own knives?

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1 A. Yes.
2 Q. Can you describe them to me.
3 A. He had one knife that was a firefighter knife. It
4 said "Firefighter" on it, and it was either black and white
5 or red and white. I don't recall. And then he had a black
6 knife.
7 Q. And what kind of knives were they in terms of
8 their mechanism?
9 A. Like a buck knife.
10 Q. A folding knife?
11 A. Yeah.
12 Q. I show you what's been marked as Exhibit 46. Did
13 your son own a knife similar to that?
14 A. Similar in the sense that yeah, it flips open.
15 Q. Did your son own a knife with a pocket clip on it?
16 A. Yes. Both of them had pocket clips.
17 Q. Now, do you recall being present at the Wendover
18 Police Department on the 6th of March 2011 when your son
19 was being interviewed by Detective McKinney and a James
20 Bonich?
21 A. Yes.
22 Q. Were you at some point left along with your son to
23 speak to him?
24 A. Yes.
25 Q. Can you tell me what he said to you, if anything,

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1 about his involvement in the death of Micaela Costanzo?
2 A. That what he had done that day.
3 Q. You need to tell me what he said to you, sir. I
4 know you're in a tough spot.
5 A. That he had involvement in Micaela's death.
6 Q. Do you remember the words that he said to you?
7 A. He described being out at the gravel pit at the
8 west end of town, and she was hit with a shovel, and —
9 Q. Anything else?
10 A. Yeah.
11 Q. You need to tell me.
12 A. Okay.
13 Q. What he said too, as well as you can remember it.
14 A. That they'd went out there to talk, and that it
15 got heated and they were pushing each other and that he
16 pushed her and she fell and hit her head. She got up and
17 he pushed her again, and she hit her head on a rock, and
18 that she had went into a seizure, that he panicked, didn't
19 know what to do, and hit her with a shovel.
20 Q. Did he say where he hit her with the shovel?
21 A. Across the neck.
22 Q. What else did he say?
23 A. That then he — then he buried Micaela. Dug hole
24 and buried her.
25 Q. And you've described a blow to her neck with a

300

1 shovel. Did he describe any other blows that he struck to
2 her?
3 A. I don't recall.
4 Q. Is that the only one you can remember? Only
5 specific description of a blow struck to her person?
6 A. That he had said that night, yes.
7 Q. We'll get to that in a minute here. During your
8 conversation at the West Wendover Police Department on the
9 6th of March, did he describe using a knife?
10 A. No.
11 Q. Did he describe anybody else being present at the
12 time?
13 A. No.
14 Q. Did you talk to him again -- that's all he said
15 during that period of time that you were alone with him at
16 the police station that day on the 6th?
17 A. No. There was a period where that we both had
18 thought that 'cause there was a recorder that Kevin
19 McKinney had on the table, and there's a point where we
20 believed that recorder to be off, and that's when we were
21 just consoling each other and I told him that -- we leaned
22 into each other and I told him that he needed to go down --
23 Q. You okay?
24 A. Yes, sir.
25 Q. You described to me that he told you he hit her in

301

1 the neck with a shovel, and then he buried her.
2 A. Uh-huh.
3 Q. And that's all he said specifically to you
4 concerning the killing of Micaela?
5 A. No. There was, like I said, there's a time frame
6 when we both thought that recorder was off. We leaned into
7 each other.
8 Q. What did he say to you then with respect to the
9 killing of her?
10 A. I told him he needed to go down the road to make
11 this right. And he said -- he said that he didn't actually
12 kill her, and we were both crying and I didn't understand.
13 Anyhow, I said "what", and he said "never mind", and then
14 briefly after that Kevin McKinney came in the room.
15 Q. That's all he said? Concerning the actual killing
16 of her?
17 A. Yes.
18 Q. But he had just told you that he struck her with a
19 shovel, right?
20 A. Yes.
21 Q. That's what he said to you.
22 A. Yes.
23 Q. Now, did you eventually have another conversation
24 with Kody in the jail concerning the events of the 3rd of
25 March 2011?

302

1 A. We did.
2 Q. And what day was that?
3 A. I believe it was the 13th.
4 Q. Of what month?
5 A. Of March.
6 Q. Do you remember testifying before in another
7 proceeding when that question was asked of you and you
8 identified it as the 13th of April?
9 A. Yeah. 13th of April. Correct.
10 Q. Where did this conversation take place?
11 A. At the Elko County Jail.
12 Q. And you knew you were being recorded, right?
13 A. Yes.
14 Q. And by what means did you communicate with Mr. --
15 with your son?
16 A. We communicated over the phone for a little bit,
17 and then we also communicated through notes on paper.
18 Q. You knew that the phone conversation was being
19 recorded, right?
20 A. Right.
21 Q. And so you were communicating by notes, right, on
22 the 13th?
23 A. For part of it, yes.
24 Q. Any other means of communication?
25 A. Yeah. I would show him when we were there, people

303

1 that are out of state, relatives and things that wanted to
2 tell him things, they would text them and I would hold my
3 phone up so he could see the text personally.
4 Q. Did you utilize that means of communication in
5 connection with your discussion of the death of Micaela on
6 the 13th of April?
7 A. I don't believe so. I think it was just notes.
8 Q. Okay. And what did he tell you about the death of
9 Micaela on the 13th of April 2011 while you were at the
10 jail through this medium of the notes?
11 A. He held up a note that said "she was there".
12 Q. Did he identify who "she" was?
13 A. Toni Fratto.
14 Q. Did he use that name?
15 A. He did after. He held up the note and said "she
16 was there" and I said "I don't understand", and then he
17 wrote "Toni" after it.
18 Q. Anything else he said? Well, let me ask it this
19 way: When he held up the note that said "Toni", did you
20 reply with a note?
21 A. Asking who was there, yes.
22 Q. You told me he held a note up that said "Toni".
23 What's the next -- did you reply to the declaration through
24 a note of the word "Toni"? Did you make some reply to
25 that?

304

RA 491

1 A. I don't recall.
2 Q. Well, after he held up the declaration "Toni" by a
3 note, did he make any further statements to you concerning
4 Micaela's death?
5 A. That she was there that day and had helped him.
6 Q. And he wrote that she had helped him?
7 A. I think he wrote that "she was" -- that "she was
8 with me during Micaela's death" I think is what he wrote.
9 Q. Did you ask any questions about that through the
10 use of a note?
11 A. I believe I asked somewhat to what extent.
12 Q. Did he answer that?
13 A. That he was there -- that yes, and that she was
14 there through the whole thing.
15 Q. Did he describe her physically participating in
16 the killing of Micaela Costanzo?
17 A. At that point I don't think so.
18 Q. All right. Have you had subsequent conversations
19 concerning that?
20 A. Yes.
21 Q. Again, through the medium of the notes?
22 A. Yes.
23 Q. When's the next conversation after the 13th of
24 April that you had with him through the notes?
25 A. The next time we visited him.

305

1 Q. What days of the week did you visit him?
2 Normally?
3 A. At that time initially it was on Sundays most of
4 the time. Occasionally on Wednesdays.
5 Q. What did he say to you concerning the death of
6 Micaela Costanzo the next time you had contact with him?
7 A. I don't recall.
8 Q. Do you remember -- after the 13th of April, do you
9 remember any further specific statements from your son
10 describing the participation of Toni Fratto in the death of
11 Micaela Costanzo?
12 A. I apologize. We had lots of conversations, and
13 the very next one I don't recall what we said. I know that
14 we had talked about at one point what happened.
15 Q. And was this -- at one point in time did you
16 discuss or have a conversation with Toni Fratto?
17 A. Yes.
18 Q. And do you remember what day it was that you had
19 this conversation with Toni Fratto?
20 A. On the 16th.
21 Q. After the 16th of April 2011, did you have any
22 further conversations with your son about Toni Fratto's
23 participation in the murder or killing of Micaela Costanzo?
24 A. Yes.
25 Q. Do you remember the next one after the 16th?

306

1 A. I don't remember the whole conversation. I know
2 there was part of the conversation was "are you sure".
3 Q. Did he describe -- did he further specifically
4 describe her participation in the killing of Micaela after
5 the 16th of April?
6 A. Yes.
7 Q. And what did he say to you? Through -- this was
8 through the medium of the notes?
9 A. Right.
10 Q. What do you remember him saying to you through a
11 note concerning her participation in the killing of Micaela
12 Costanzo?
13 A. That she was there and that she had participated
14 in cutting her throat, and the content of that day, what
15 they had done, a little bit.
16 Q. Do you remember specifically?
17 A. That they had buried Micaela and went and
18 buried -- or burned some contents at the gravel pits.
19 Q. Was there any specific description of the contents
20 that was burned at the gravel pit? Talking about from Kody
21 now.
22 A. Right. There was -- because I was curious about
23 what had happened to a lanyard that had some keys on it
24 because I know that was close to Celia and I wanted to try
25 to find out where that was at.

307

1 Q. Did you get an answer?
2 A. Yeah. He said he burned it. No. Yes, he said he
3 burned it.
4 Q. Anything else specifically that you can remember?
5 A. No.
6 Q. Did you have further conversations after the
7 conversation wherein the lanyard was discussed with your
8 son concerning Toni Fratto's participation in the killing
9 of Micaela Costanzo?
10 A. We did, and I remember most of the conversations
11 after that was me asking him, you know, why.
12 Q. Was there any further discussion about Toni
13 Fratto's participation or description of her killing after
14 the discussion of the lanyard?
15 A. It's, yeah, it's possible. I just -- I don't
16 recall.
17 Q. You have no -- do you have any memory of any
18 further specific discussions after the discussion of the
19 lanyard?
20 A. We did. Again, the specifics I don't recall. I
21 just know we talked about her involvement, being sure about
22 it. I couldn't process it.
23 Q. Did he ever say anything -- you described her --
24 you described Kody conveying to you that she used a knife
25 to cut her throat, right?

308

RA 492

1 A. Right.
2 Q. Did he describe her participating in disposing of
3 the property?
4 A. Yes.
5 Q. And you described the conversation where you
6 inquired about the lanyard.
7 THE COURT: Was that a yes?
8 A. Yes.
9 Q. Is there any other specific conversation that you
10 can remember where something other than Toni's
11 participation in cutting Micaela's throat or destruction of
12 the evidence was conducted between you and Kody via the
13 medium of these notes?
14 A. I don't recall.
15 Q. Okay. Now, you indicated a moment ago that at one
16 point you had inquired of your son concerning why.
17 Remember saying that?
18 A. Yeah.
19 Q. Did you get an answer?
20 A. Why the death or why Toni's involvement?
21 Q. Let me ask you -- better find out what you
22 intended to ask. When you say you asked "why", what were
23 you asking him?
24 A. Well, when he initially told me about Toni's
25 involvement, I asked him "why" and "are you sure", and he

309

1 said "yes".
2 Q. Okay. So you were asking if he was sure that Toni
3 Fratto participated? Was that the question you were
4 putting to him?
5 A. Right.
6 Q. And the answer was --
7 A. "Yes", he was sure.
8 Q. Did you ever pose a question of why this happened?
9 A. Yes.
10 Q. When did you pose that question? If we go to the
11 13th of April, was it before or after that?
12 A. I asked him the night he was arrested.
13 Q. What did he say to you?
14 A. If I remember correctly, he just went like that.
15 Q. Shrugged his shoulders?
16 A. Yes.
17 Q. Did you put that question to him again at some
18 point?
19 A. Yes.
20 Q. Do you remember when it was that you put that
21 question to him?
22 A. No.
23 Q. Was it through the medium of the notes?
24 A. Yes.
25 Q. And did you get a reply?

310

1 A. Yeah.
2 Q. What was the answer?
3 A. One of the times was he -- again, he just bowed
4 his head down and didn't want to talk about it. The other
5 time was he said that he was trying to -- that either he
6 was trying to date or she was trying to date him again, and
7 it was frustrating Toni.
8 Q. Now, are those your interpretation of what he said
9 to you, or is that as well as you can remember what he said
10 to you?
11 A. That's as well as I can remember it.
12 Q. Did you have -- were there any other occasions --
13 you've told me three times I think now, once on the 6th
14 when he shrugged his shoulders, once when he bowed his head
15 and didn't want to talk about it, and once when he told you
16 concerning you said some contact between he and Micaela
17 which was bothering Toni. Was there any other that you can
18 remember when you posed that question to him, "why did this
19 happen"?
20 A. There could have been. I guess I would explain
21 that you got to understand these days are running together
22 and it's just uncomfortable.
23 Q. I understand.
24 A. Trying to forget everything.
25 Q. Do you have any memory of another time, separate

311

1 time?
2 A. No, not at this time.
3 Q. When's the last time you talked to Kody Patten
4 about the events of the 3rd of March 2011?
5 A. When is the last time we discussed --
6 Q. The killing of Micaela.
7 A. Probably -- we've been seeing him every Wednesday
8 now. It would have been probably three visits ago, so
9 whatever date that was. Roughly.
10 Q. And what question -- did you pose a question to
11 him or did he volunteer something to you about that?
12 A. I'm not sure exactly how the conversation went. I
13 just know we --
14 Q. What do you remember him saying about it, about
15 the death of Micaela, this three Wednesdays ago?
16 A. That he said "dad, I don't know what answers you
17 want me to give you. I don't have anything else". 'Cause
18 we were trying to figure things out, and he just got
19 frustrated and shut down.
20 Q. That's the very last time you spoke to him about
21 it? Is that all you remember him saying --
22 THE COURT: The witness is nodding his head.
23 A. Yes.
24 Q. Is that all you remember him saying to you about
25 it?

312

1 A. Yes.
2 MR. TORVINEN: I'll pass the witness, Judge.
3 THE COURT: Cross examination.
4 CROSS EXAMINATION BY MR. OLSON:
5 Q. Mr. Patten, on the I guess it's the 6th of March
6 2011 when you were with Kody at the police station in
7 Wendover, how did Kody get down to the police station?
8 A. I drove him. Me and my wife.
9 Q. And during that drive or up till the time in
10 which -- up until the time in which you had a private
11 conversation with Kody, and he told you that he was
12 involved in the killing, had he admitted involvement in the
13 killing before then?
14 A. No.
15 Q. What did you think you were taking him down to the
16 police station for?
17 A. To be interviewed by Detective McKinney.
18 Q. As a witness. Not as a suspect.
19 A. Right. That's what he'd told me.
20 Q. All right. And so the sequence of events were I
21 guess Detective McKinney and the FBI agent talked with Kody
22 without you being present first, is that right?
23 A. Correct.
24 Q. Then you got into the room with them. With the
25 three of them.

313

1 A. Yes.
2 Q. How did that happen?
3 A. When we first arrived, Kody went to a room with
4 Kevin and Jim Bonich, and me and my wife Donna went to a
5 separate room with Jim Carpenter and another gentleman. I
6 think his name was Jim. And they interviewed us, asking
7 questions about Kody and Micaela. And we got done
8 relatively quick. Maybe 35, 40 minutes. And we went out
9 in the center foyer area, and then Kevin McKinney came out.
10 Q. That was some time later that he came out.
11 A. Yes, some time later, a couple hours, and said
12 that Kody had wanted to speak with me.
13 Q. Okay. So then you entered the room.
14 A. Where Kody was at, yes.
15 Q. When you went in the room, had Detective McKinney
16 and Agent Bonich been questioning Kody for two to three
17 hours?
18 A. Yes.
19 Q. By this time were you concerned that they were
20 looking at Kody as more than just a witness?
21 A. Yes, 'cause I heard some -- there was some yelling
22 going on and I was getting concerned.
23 Q. So did there come a time in this conversation in
24 which you were left alone with Kody?
25 A. Yes.

314

1 Q. So and I understand what you said was at first you
2 thought you were being recorded, is that right?
3 A. Well, Kevin McKinney said that we had been being
4 recorded.
5 Q. All right. And when both you and Kody thought you
6 were being recorded, that's when Kody told you that he was
7 there, that there was a shoving match, that he hit her with
8 a shovel.
9 A. Yes.
10 Q. And buried her.
11 A. Yes.
12 Q. Right? And then at some other time he got close
13 to your ear and said something else?
14 A. Yeah. When Kevin McKinney and -- I apologize, I
15 don't know the other guy's name.
16 Q. Bonich?
17 A. What's that?
18 Q. Bonich? Agent Bonich?
19 A. Yes. Yeah. The FBI agent, Jim Bonich. They left
20 the room and we were hugging and crying, and again I said
21 that you need to go down that road to make this right as he
22 could. We were in close to each other, and that's when he
23 said "I didn't actually kill her", and --
24 Q. That's when your son told you that.
25 A. Yes.

315

1 Q. Did he whisper it to you?
2 A. Yes.
3 Q. As though he didn't want what he said to be
4 recorded.
5 A. Yes, because I said -- I remember asking him -- or
6 I said a statement "careful what you say, we're still being
7 recorded" and something to that effect, and he said "no,
8 it's not on". And I didn't understand what he was saying
9 at the time. I mean, I don't know.
10 Q. Later on you connected up what he was saying to
11 you, right?
12 A. Yeah.
13 Q. But at that time his words were what?
14 A. He didn't actually kill her.
15 Q. Okay. Now, after that, did the detective and the
16 agent come back into the room?
17 A. Shortly after, yes.
18 Q. And did you stay there through the rest of the
19 interrogation?
20 A. No.
21 Q. You left.
22 A. Yes.
23 Q. So you don't know whether or not what Kody told
24 them after you left was -- what he told them after you
25 left. Obviously you don't know that.

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RA 494

1 A. No.
2 Q. Did you — you were in the room, however, when
3 Kody signed the rights waiver, is that right?
4 A. Yes.
5 Q. And in fact, you encouraged Kody to sign the
6 waiver and talk to the detectives.
7 A. I did.
8 Q. And why did you do that?
9 A. Because of the information my son was telling me.
10 Q. All the information. You thought he was present,
11 he told you he was present, and he had used a shovel, but
12 he also told you he didn't kill her.
13 A. Yeah. At the time I didn't even pay attention to
14 that, I guess, 'cause I didn't -- I guess I thought he
15 meant, you know, 'cause --
16 Q. Let me suggest to you that what you thought was
17 that your son had done a wrong and you wanted him to stand
18 up, to be a man about it.
19 A. Yes, absolutely.
20 Q. All right. I commend you for that. It must have
21 been tough. Okay. So let's go to April 13th at the Elko
22 County Jail. Kody tells you with a note that Toni was
23 present at the killing, is that right?
24 A. Yes.
25 Q. That's the first time that you heard from anybody

317

1 that someone other than your son was present at the killing
2 except for that time when he said he didn't kill her.
3 A. Right. Correct.
4 Q. After that you had some contact with Toni Fratto,
5 isn't that right?
6 A. Yes.
7 Q. And did you go and seek Toni Fratto out because of
8 what you'd learned from your son or did she contact you?
9 A. I believe I texted her that morning of the 16th
10 and asked if I could speak with her because -- I remember
11 saying 'cause Kody wanted me to talk to her.
12 Q. Okay. And did you talk to her that morning?
13 A. I did.
14 Q. Did you have a long conversation with her that
15 morning or was it some other morning in which she took you
16 some place and showed you some things?
17 A. The morning of the 16th after we had texted I went
18 to her house, and yes, we had a lengthy conversation, as
19 well as driving around.
20 Q. Okay. I've opened up Exhibit No. 31, and I'm
21 going to represent to you that Exhibit 31 is an aerial
22 photograph of the area in which Micaela Costanzo's body was
23 found. Now, I don't know if you recognize that area from
24 the aerial photograph or not. Do you?
25 A. I do.

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1 Q. Have you been there before?
2 A. Yes.
3 Q. Is it a place where people who live in Wendover,
4 Nevada might go if they are outdoors people?
5 A. Yes.
6 Q. Is there hunting around there or other outdoor
7 activities, motorcycle riding?
8 A. Yeah. This gravel pit that's over here is where
9 lots of people go riding. We've been riding there since
10 Kody was young.
11 Q. Okay.
12 A. I have pictures of that.
13 Q. Did Toni Fratto take you to this location?
14 A. Yes.
15 Q. Tell me what happened.
16 A. She took me to the location and described what her
17 and Kody had done that day.
18 Q. What did she tell you that she did?
19 A. That she had participated in the death of Micaela.
20 Q. Did she tell you in fact that she had first
21 engaged in a physical fight with Micaela?
22 A. That they had fought, yes.
23 Q. Did she tell you that she -- when Micaela was
24 down, that Toni had kicked Micaela?
25 A. Yes.

319

1 Q. Did she tell you -- Toni tell you that she had
2 asked Kody to cut Micaela's throat with a knife and that he
3 refused?
4 A. Did Toni tell me that?
5 Q. Yes. That Toni had asked Kody to cut Micaela's
6 throat with a knife, and Kody said he couldn't do it.
7 A. I don't recall.
8 Q. Do you recall Toni telling you that she demanded
9 Kody's knife from him and got Kody's knife from him.
10 A. I don't recall.
11 Q. Do you recall Toni telling you that with Kody's
12 knife, she slashed Micaela, cut Micaela's throat.
13 A. That's not what she had described to me that day,
14 no.
15 Q. What did she tell you that she did do?
16 A. In -- when it pertains to the cutting of the
17 throat, is that what you're asking?
18 Q. Anything that she said that she did to Micaela
19 Costanzo. What did she tell you she did? I won't put
20 words in your mouth.
21 A. That they had arrived at that location, and that
22 she said that Kody had got out and was digging a hole, and
23 Toni was in the car with Micaela. And that when Kody had
24 at some point was digging the hole, and then they got out
25 and were facing -- Kody was facing Micaela and Toni was

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RA 495

1 behind her next to the vehicle, and the vehicle was facing
2 I guess on here would be north/south roughly towards the
3 tracks, and then at some point they were arguing, whatever,
4 and Toni hit Micaela on the back and --

5 Q. With?

6 A. With a shovel. And that then both her and Kody
7 started kicking and hitting Micaela on the ground. And
8 Toni said at some point a train -- they had heard a train,
9 so they took Micaela -- all three of them went behind the
10 vehicle and that Kody was looking over either the hood or
11 the window to see the train, and then once it went by, that
12 he took her over to that hole and that her throat was cut,
13 and they buried her.

14 Q. Did Toni Fratto tell you why this happened?

15 A. I asked Toni that, and what she told me was she
16 didn't know, I think is what her statement was exactly.

17 Q. Did she tell you that there was bad blood between
18 her and Micaela, or that she was angry at Micaela over
19 something?

20 A. We had talked prior to this conversation at that
21 site and she had said that they didn't get along, yes.

22 Q. Did you ever hear from your son that he did not
23 get along with Micaela?

24 A. No.

25 Q. Did your son ever tell you that he had a reason to

321

1 kill Micaela?

2 A. No.

3 Q. Okay. After that day what happened, as far as
4 Toni is concerned?

5 A. She -- I asked her what she was going to do, and
6 she asked me what she should do, and I told her it was her
7 call. That I remember telling her that I already caught a
8 lot of crap, a lot of shit to be more specific, over what I
9 had recommended to Kody, and I said "this is your call".

10 Q. Now, you told her that previously you had told
11 Kody to take responsibility for what he had done, right?

12 A. Yes.

13 Q. And that you had caught trouble for that because
14 of Kody's arrest after he did that.

15 A. Yes.

16 Q. So you didn't want to say that again to her.

17 A. No.

18 Q. Understand. Plus she wasn't your child.

19 A. No.

20 Q. Wasn't really your business what she did.

21 A. No.

22 Q. So what did she say she wanted to do?

23 A. I'd like to state for the record that it's on the
24 last question that it's not my business except for that at
25 that time I felt like it was everybody's business.

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1 Q. I understand. I didn't mean that it wasn't
2 everybody's business. Obviously it was. And I understand
3 how you felt about this. But she wasn't your child and you
4 weren't responsible for her.

5 A. Right. She had to make her own decision on that.

6 Q. So did she tell you what she had decided to do?

7 A. She said that she wanted to come forward because
8 she was having a hard time with it.

9 Q. When she told you about her involvement in this
10 homicide, did you believe her? What she told you?

11 A. Initially, like I stated to Mr. Torvinen before, I
12 was having a hard time processing all of it.

13 Q. Later on did you take her to Mr. Kump's office?

14 A. Yes.

15 Q. And why did you do that?

16 A. 'Cause she asked me to.

17 Q. And before you went there, did Toni Fratto tell
18 you that she expected to be arrested?

19 A. Yes.

20 Q. And did she make preparations to be put in jail?

21 A. Yes, she did.

22 Q. What preparation did she make?

23 A. She left letters for her parents at her house.

24 She left a couple of boxes of stuff with us, just things,
25 pictures and things. And she wore pajamas, like a pajama

323

1 bottom. I don't remember what she was wearing on top,
2 anyhow. And slippers to Mr. Kump's office that day.

3 Q. After she left Mr. Kump's office, did she express
4 to you that she was surprised or disappointed that Mr. Kump
5 didn't have her arrested?

6 A. I think she was frustrated 'cause she didn't
7 understand. You know, she thought she would be taken that
8 day in custody.

9 Q. In fact, she thought Mr. Kump would arrest her,
10 isn't that right?

11 A. Have her, you know, turn her over to authorities,
12 yes. I don't know that he has that authority.

13 Q. And instead he helped her connect with a lawyer.

14 A. Correct.

15 MR. OHLSON: Thank you, Mr. Patten.

16 THE COURT: Redirect.

17 REDIRECT EXAMINATION BY MR. TORVINEN:

18 Q. Thank you. Mr. Patten, let's go back to the 6th
19 of March, 2011 at the West Wendover Police Department in
20 the time that you were left with your son, and there was a
21 tape recorder on the table, right?

22 A. Right.

23 Q. I heard you to say in response to I believe
24 Mr. Ohlson's questions that at some point Kody told you
25 that it was off.

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1 A. He thought it was off, yes.
2 Q. Now, prior to your contact with Miss Fratto on the
3 16th of April 2010, had you ever read a transcript of your
4 son's conversation with Kevin McKinney and James Bonich?
5 A. No.
6 Q. To this day have you read that? Such --
7 A. No.
8 Q. -- a transcript?
9 A. No.
10 Q. Have you listened to a recording of the
11 conversation between Kevin McKinney, James Bonich and your
12 son on the 6th and 7th of March 2011?
13 A. No.
14 Q. Has anybody described the content of that
15 conversation other than your son?
16 A. No.
17 Q. To you.
18 A. No.
19 Q. So you have no direct knowledge by either looking
20 at a transcript, listening to a recording, or somebody
21 describing to you the statements that your son made to
22 Kevin McKinney and James Bonich after you left the room on
23 the 6th of May 2011?
24 A. Other than Kevin McKinney himself telling me that
25 he had admitted to the crime and they were going to arrest

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1 him, no.
2 Q. That's all? That's all that was said to you?
3 A. That day, yes.
4 Q. No specific descriptions of what he said or
5 anything like that?
6 A. From anybody else, no. Other than Kody.
7 Q. As well as you can remember, have you described
8 all your conversations that you had with your son
9 concerning the killing of Micaela today?
10 A. Yeah. To the best that I want to remember, yeah.
11 Q. Did you make any record or take any notes of any
12 of this? Conversations?
13 A. No. I destroyed all the notes that I would hold
14 up or whatever.
15 MR. TORVINEN: I'll pass on that, Judge.
16 THE COURT: Recross.
17 MR. OHLSON: No. Thank you.
18 THE COURT: May Mr. Kip Patten be excused?
19 MR. TORVINEN: I'd like him held.
20 THE COURT: You're held subject to recall. Please
21 have a seat outside the courtroom, sir. Remember the rule
22 of exclusion. Next witness.
23 MR. TORVINEN: Your Honor, I think at this point we're
24 ready to engage the -- if my instructions were carried out,
25 the people at the lab should be assembled.

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1 THE COURT: All right.
2 MR. OHLSON: Can Counsel and I confer with you, Your
3 Honor?
4 THE COURT: Yes.
5 (Discussion at the Bench.)
6 THE COURT: Court will take a recess so Mr. Torvinen
7 can set up his telephonic -- audio/visual witnesses. We're
8 off the record.
9 (Recess taken.)
10 THE COURT: Let's go back on the record for Case
11 CR-2011-0300, State of Nevada, Plaintiff, versus Toni
12 Collette Fratto and Kody Cree Patten, the Defendants.
13 Again the State's represented by Mark Torvinen from the
14 District Attorney's Office here in Elko, with Deputy
15 District Attorney Tyler Ingram. And we do have Mr. Patten
16 back in court with his attorneys, John Ohlson and Jeff
17 Kump. We're continuing on with the preliminary hearing.
18 State's next witness, Mr. Torvinen.
19 MR. TORVINEN: It's Suzanne Harmon.
20 THE COURT: All right. It appears Miss Harmon is
21 appearing on the court's real time simultaneous
22 audio/visual transmission system from Reno. Is that
23 correct?
24 MR. TORVINEN: Yes, Your Honor.
25 THE COURT: All right. Then I'll have her stand and

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1 be sworn.
2 SUZANNE HARMON,
3 produced as a witness at the instance of the Plaintiff,
4 having been first duly sworn, was examined and testified as
5 follows:
6 THE COURT: Please be seated. We can see and hear you
7 okay, Miss Harmon. Can you see and hear us as well?
8 A. Yes, I can.
9 THE COURT: That is me, the Prosecutor, the Defense
10 Attorneys and their client?
11 A. Correct.
12 THE COURT: Okay. Then Mr. Torvinen, you may proceed.
13 MR. OHLSON: Before Mr. Torvinen proceeds, the Defense
14 offers to stipulate the testimony of this witness by virtue
15 of the simultaneous and real time transmission system,
16 audio and visual transmission system, rather than by her
17 actual presence in court.
18 THE COURT: Thank you, Mr. Ohlson. Mr. Torvinen may
19 proceed.
20 DIRECT EXAMINATION BY MR. TORVINEN:
21 Q. State your full name and spell your last for the
22 record.
23 A. Suzanne Harmon. H-a-r-m-o-n.
24 Q. How are you employed?
25 A. I'm a supervising criminalist with the Washoe

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1 County Sheriff's Office, the Forensic Science Division.
2 Q. How long have you been employed in that capacity?
3 A. For 21 plus years.
4 Q. And does your work as a supervising criminalist
5 include the collection of specimens for later DNA analysis?
6 A. It does. My primary duty is to supervise the
7 unit, but I also do perform biological testing on a rare
8 occasion in the laboratory.
9 Q. And when a piece of hard evidence or evidence
10 which is going to be tested or collected or checked for
11 biological specimens, when it comes into the lab is it
12 assigned a control number?
13 A. Yes, it is. Every -- due to our accreditation,
14 every piece of evidence that arrives here has to have a
15 unique identifier.
16 Q. Did you ever have contact with some evidence that
17 was logged or assigned a number Q86685?
18 A. Yes, I did.
19 Q. And when did that occur?
20 A. I obtained that item from our evidence vault on
21 June the 16th of 2011, and on June 17th of 2011 I performed
22 my analysis.
23 Q. Did the evidence that was logged under that number
24 include a sweat shirt?
25 A. It did.

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1 Q. And Counsel, can you go up there and show -- put
2 this to the camera and see if she can see it.
3 MR. INGRAM: Can you see it from there?
4 A. Can you raise it just a hair more. Thank you.
5 Okay.
6 Q. Do you recognize what's depicted in the
7 photograph?
8 A. Yes.
9 Q. And is it the sweat shirt?
10 A. This appears to be the sweat shirt that I
11 examined. It was a gray hooded sweat shirt.
12 THE COURT: For the record, what exhibit was that?
13 MR. INGRAM: 52.
14 THE COURT: Thank you.
15 Q. Now, did you collect anything from the sweat
16 shirt?
17 A. I did.
18 Q. And from where did you collect it?
19 A. The first -- any time I look at a piece of
20 evidence, first off, I look at one item at a time. I
21 describe the packaging that it was contained in, and I open
22 the item. I'm wearing gloves, a mask, a lab coat. I have
23 clean butcher paper on the laboratory counter. I remove
24 the item from the packaging and I first perform a visual
25 examination just with laboratory lights. I'm looking for

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1 biological staining or any type of debris or anything that
2 could be of significance before I perform any type of
3 evidence collection. So in this instance that is what I
4 did.
5 The sweat shirt, the hood of the sweat shirt had a tie
6 that you could tie the hood around a person's head, and
7 that tie was in a bow, and then appeared to have either
8 been -- was either cut or broken on one side. So the bow
9 remained intact, but it was broke away from the other side.
10 So the first thing that I did was to take -- we use
11 sterile cotton swabs. I moisten them with water, and I
12 swabbed the surface of that bow for potential residual DNA
13 that could be from someone that either tied the bow or
14 handled that location of the sweat shirt. And I designated
15 the letter C, like Charles, C1 for that swab.
16 Q. Show her 53.
17 MR. INGRAM: This is 53, Your Honor.
18 Q. Hold that up. Do you recognize what's depicted
19 there?
20 A. It's difficult for me to -- it's kind of out of
21 focus. Maybe if it could come closer. I think -- does
22 that -- it appears to be the back of the sweat shirt?
23 Q. Yes.
24 A. Correct.
25 Q. Do you remember what were the conditions -- what

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1 was the condition of the sleeves when you examined -- when
2 you first examined the sweat shirt?
3 A. The sleeves were in a tied condition, located at
4 the back of the sweat shirt. And additionally, the cuffs
5 that would be at the end of those sleeves appeared to have
6 been cut or torn away. It looked more like a cut to me,
7 not from a scientific opinion, but just from a personal
8 opinion it looked like they had been cut away from the
9 sweat shirt.
10 Q. Did you make any collection from the knot?
11 A. I did. I swabbed the knot in a similar fashion
12 that I did to the bow. And again, I'm looking for
13 potential -- I'm attempting to collect any potential
14 residual DNA that would have been from the person that
15 could have tied that knot.
16 Q. Did you have an occasion to change the condition
17 of the knot?
18 A. I did. I then untied the knot. The sweat shirt
19 was -- a huge majority of the sweat shirt, as you see in
20 the picture, is stained with red brown staining which I
21 believed to be possible blood. And rather than -- as I
22 swabbed the knot, it was primarily red staining.
23 So I untied the knot in the hopes of looking for
24 unstained areas, and that's in fact what I did. So I
25 untied the knot, and then using another set of swabs

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1 moistened with water, I swabbed unstained areas of that
2 knot and that was depicted then as C3, like Charles 3, and
3 when I swabbed the knot, that was C, like Charles, 2.

4 Q. What did you do with C3?

5 A. As I did with the other swabs, they're each
6 immediately placed into a small swab carton. It's a small
7 cardboard box that will hold these swabs. And then I
8 describe on the outside our laboratory number, the date, my
9 initials and what the item is inside.

10 At the conclusion of my testing, those swab boxes were
11 placed into a clean manilla envelope, sealed with evidence
12 tape, a new bar code, a new number was placed on there, and
13 in particular this was P150458. I then utilizing our
14 laboratory data base system enter that into the computer,
15 describe the contents, and a chain of custody sheet is
16 printed for that item.

17 It's then -- the chain of custody is taped to that
18 manilla envelope, and then I repackage the sweat shirt into
19 the original packaging, seal it, and then I return it to
20 our evidence vault. And I now take this new -- the
21 P number that I described to our evidence vault where it's
22 now entered into our system and maintained there.

23 Q. What was the P number again?

24 A. It was P150458.

25 Q. And in particular, are you depositing these swabs

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1 for somebody else's examination? For later examination?

2 A. I'm sorry?

3 Q. When you -- so you've got these swabs packaged up
4 and you're going to deposit them back in the vault, the
5 evidence system, and is that for somebody's later
6 examination?

7 A. Yes, that's correct. I then fill out a laboratory
8 request for DNA analysis on these swabs. And that's the
9 procedure here. What I do is called primary examination,
10 so it precedes DNA testing. I then would fill out a
11 laboratory request for a DNA analyst and give them the
12 control numbers of the items that I collected, and then
13 from there it would proceed to a DNA analyst who would
14 retrieve that item then from our evidence vault.

15 Q. Under the numbers that you assigned?

16 A. Correct.

17 Q. And once the analyst is finished with them, what
18 happens to the swabs that you collected and marked as
19 you've described?

20 A. The practice here at this laboratory is for any
21 crime against a person versus a property crime, any DNA
22 analysis that was conducted on swabs or cuttings remains
23 here in our evidence vault. If it was a property crime, we
24 return it to the agency. And the reason for that is lack
25 of space to maintain every piece of evidence here.

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1 Q. And these specific swabs then continue to repose
2 in your vault system? Your evidence system?

3 A. That is correct.

4 MR. TORVINEN: I'll pass the witness, Judge.

5 THE COURT: Cross examination.

6 CROSS EXAMINATION BY MR. KUMP:

7 Q. Thank you. Miss Harmon, you also had the occasion
8 to examine an item that you marked W254563?

9 A. Yes. That's correct.

10 Q. May I approach, Your Honor?

11 THE COURT: Yes.

12 MR. TORVINEN: I'll stipulate that that's the
13 entrenching tool.

14 Q. Thank you.

15 THE COURT: Which is Exhibit 42?

16 MR. TORVINEN: Yes.

17 THE COURT: Looks like Mr. Kump removed that from the
18 box. It's your cross. Go ahead.

19 Q. Is this the item? I have to get up closer.

20 THE COURT: You may have to get closer to the camera
21 for her.

22 Q. Is this the item, W254563?

23 A. Yes, that's correct.

24 Q. Okay. And is that a black shovel?

25 A. Yes. That is what my notes indicate as a folding

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1 shovel.

2 Q. And you examined this shovel for the presence of
3 blood, correct?

4 A. I did.

5 Q. Okay. And what did you find?

6 A. My results were that I did not find any.

7 Q. Okay. What type of testing did you do?

8 A. The testing that I did first for examination for
9 blood was visual. And I also placed it under -- I have
10 access to a microscope that I can look at large items such
11 as that, which magnifies the surfaces. And then I swabbed
12 the head of that shovel and I described that as E1. Again,
13 I'm looking for any residual DNA, potential DNA, and then I
14 swabbed the handle of it as E2.

15 Q. Did you disassemble the shovel?

16 A. I did not. I opened it up, but I didn't like take
17 the parts apart. So it was received folded, and I opened
18 it up.

19 Q. Now, there's different types of blood that you've
20 talked about here. You've talked about looking at it to
21 see if you could actually see anything, correct?

22 A. Correct.

23 Q. And then there's the microscopic type, correct?

24 A. Well, it still would have looked like blood. It
25 just -- it's a tool that allows me to -- it's like putting

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1 on magnifying glasses. If you look through a magnifying
2 glass at a spider you're still looking at it with your
3 eyes, but you just see it enlarged. So I was still looking
4 for red brown staining, but magnified.

5 Q. How certain are you that there's not blood on this
6 shovel?

7 A. I did not find any, and I examined it thoroughly.

8 MR. KUMP: Thank you. That's all I have.

9 THE COURT: Redirect.

10 MR. TORVINEN: That's all I have, Judge.

11 THE COURT: May Miss Harmon be excused?

12 MR. KUMP: Yes, Your Honor.

13 MR. TORVINEN: Yes, subject to -- I'll call

14 Mr. Gresko next. Yes, she can be excused.

15 THE COURT: All right. Well, subject to the rule of
16 exclusion, right?

17 MR. TORVINEN: Right.

18 THE COURT: She's excused now to move about her
19 business.

20 MR. TORVINEN: Yes.

21 THE COURT: Wherever that may be.

22 MR. TORVINEN: Yes.

23 THE COURT: Okay.

24 A. And Mr. Gresko is waiting. Mr. Gresko is right
25 outside the door. I will get him right now.

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1 THE COURT: Thank you very much. Please raise your
2 right hand, sir.

3 STEVEN GRESKO,
4 produced as a witness at the instance of the Plaintiff,
5 having been first duly sworn, was examined and testified as
6 follows:

7 THE COURT: Please have a seat. At the risk of being
8 too repetitive, Mr. Gresko, is it?

9 A. Yes.

10 THE COURT: You can see and hear us okay over here in
11 Elko County?

12 A. I can.

13 THE COURT: All right. We can see and hear you as
14 well. You can see me, the Prosecutor, the Defendant and
15 his Counsel there?

16 A. Yes, sir.

17 THE COURT: All right. Good enough. Mr. Torvinen,
18 you may proceed.

19 DIRECT EXAMINATION BY MR. TORVINEN:

20 Q. Mr. Gresko, we stated your name. Would you state
21 your whole name and spell your last name.

22 A. My name is Steven Gresko. Last name is spelled
23 G-r-e-s-k-o.

24 Q. And how are you employed, sir?

25 A. I am a criminalist with the Washoe County

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1 Sheriff's Office.

2 Q. And have you qualified as an expert in the courts
3 of Washoe County and Nevada, including the District Courts
4 as an expert in the analysis of DNA?

5 A. I've never qualified in the State of Nevada. I
6 have qualified in the State of Oklahoma and the State of
7 Montana.

8 Q. Can I address Counsel?

9 THE COURT: You may.

10 MR. OHLSON: Your Honor, for the purpose of this
11 hearing we're prepared to stipulate that this witness is
12 qualified to give expert testimony on the subject of DNA at
13 this preliminary hearing only.

14 THE COURT: All right. The State accepts that, I
15 assume?

16 MR. TORVINEN: Yes.

17 THE COURT: The Court will accept that stipulation.
18 Mr. Gresko may give his opinion in the area of DNA
19 analysis, conclusions from the analysis. Go ahead.

20 Q. Mr. Gresko, when an item of evidence is submitted
21 to the lab for, and particularly swabs collected by another
22 criminalist is submitted to the DNA section for analysis,
23 are they given control numbers, I guess?

24 A. They are. The serologist who made those cuttings
25 would give them a unique identifier number and place those

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1 into our evidence storage.

2 Q. Now, did you have contact in connection with the
3 conduct of a DNA analysis in connection with laboratory
4 number L1095-11-6?

5 A. Yes.

6 Q. With a swab that was assigned a number W28 --
7 excuse me. W258022?

8 A. Yes, I did.

9 Q. And what was that item of evidence?

10 A. That was a reference sample from Kody Patten.

11 Q. Did you also have contact with some item of
12 evidence or items of evidence, one of which had been
13 assigned the control number P150458?

14 A. Yes, I did.

15 Q. Now, when you collect these items of evidence from
16 the vault, what do you do with them?

17 A. I sign the chain of custody to accept custody of
18 those items, and I take them into our laboratory where I
19 have an evidence storage locker. It's a secured area that
20 only I and the other DNA analysts have access to.

21 Q. Now, when you test the questioned evidence against
22 the reference sample, do you take some steps to ensure that
23 there is no cross contamination between the two samples?

24 A. I do. I take extensive steps to ensure that
25 there's no cross contamination.

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RA 500

1 Q. Can you describe those for me.
2 A. Yes, sir. I always process the questioned items,
3 which means that I open them and itemize them, so I will
4 take one swab at a time. I will clean the surface of my
5 bench prior to doing that. Have personal protective
6 equipment on. Lab coat, face mask, sterile gloves.
7 Everything will be bleached down and cleaned prior to
8 opening an item of evidence.

9 I will describe the item of evidence, take a cutting,
10 place that cutting in a tube. Resterilize the surface,
11 resterilize my hands before proceeding to the next item.
12 Go through all of the questioned items first before I open
13 any of the reference samples.

14 Q. Now, did you have an occasion then using this
15 process that you described to compare -- was one of the
16 items under the P number that I described to you an item
17 marked as C3?

18 A. Yes, sir.

19 Q. And what was C3?

20 A. C3 was a sweat shirt swab. A swab from a sweat
21 shirt.

22 Q. And did you have an occasion to compare C3 with
23 the reference sample that you've just described?

24 A. I did.

25 Q. And did you get any sort of -- was any sort of

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1 relationship between those two items reflected in your
2 analysis?

3 A. Yes. I did two different types of DNA testing on
4 the C3 sweat shirt swab and on the reference sample from
5 Kody Patten. I did regular what we call STR testing, which
6 looks at the entire genome. All of the DNA. The dominant
7 profile in that analysis was of the victim. It was female
8 in nature.

9 There was also a mixture of DNA profiles in that
10 analysis, and the minor, the low level profile was too
11 mixed and too low for me to make any conclusions about. So
12 I subjected both of those samples to further testing that
13 was specific to the Y chromosome. It's a chromosome that's
14 only found in men.

15 Q. What did you find?

16 A. I found a dominant male DNA profile in the C3
17 sweat shirt swab that matched the reference sample from
18 Kody Patten.

19 Q. Now, once you're done with your analysis, what do
20 you do with these items of evidence?

21 A. The items of evidence are resealed. I put a
22 proper seal on them and place them back into evidence
23 storage here at Washoe County.

24 Q. And can you tell me when you retrieved the
25 reference sample and the item of evidence from which you

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1 retrieved C3, when did you get those two items?

2 A. Your Honor, may I refer to my notes?

3 THE COURT: Any objection to that?

4 MR. OHLSON: No, Your Honor.

5 THE COURT: Please proceed, Mr. Gresko. Go ahead.

6 A. I received the C3 sweat shirt swab -- that is, I
7 checked it out of the evidence storage on June 20th of this
8 year, and I examined it in the laboratory on June 21st of
9 this year. For the reference sample, it was the same. I
10 checked out the reference sample on the 20th of June and I
11 examined it on the 21st of June this year.

12 MR. TORVINEN: I'll pass the witness, Judge.

13 THE COURT: Cross examination.

14 CROSS EXAMINATION BY MR. OHLSON:

15 Q. Sir, to understand what you did, and it's not that
16 easy to understand for us folk --

17 A. I understand.

18 Q. I guess you do. You attempted at first to
19 determine whether or not Kody Patten's DNA was on the
20 sample reference C3 through first a primary method, is that
21 right?

22 A. That is correct.

23 Q. And using that method, you were unable to make a
24 match, is that right?

25 A. That is correct.

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1 Q. And that is because again why?

2 A. As I mentioned before, the dominant profile that
3 came back was of the victim. There was -- and when I talk
4 about a profile, I'm talking about levels of signal. So
5 there was a very strong signal that we could read that was
6 from the victim. And then a much lower signal, there was a
7 mixture of people. So it was more than one person. And so
8 the whole profile was not there. There's too many people,
9 it's too low level, and it's impossible to make any
10 conclusions about that.

11 Q. Okay. So were you able to determine how many
12 different people's DNA was left deposited on C3 aside from
13 the victim?

14 A. Yes, sir. There were at least three people.
15 Three contributors of DNA.

16 Q. And did you have any samples for comparison aside
17 from Kody Patten's to look at?

18 A. I'm sorry, sir, could you repeat the question.

19 Q. Besides Kody Patten's DNA, did you have any other
20 person's DNA for comparison in this test?

21 A. Yes, sir, I did.

22 Q. Who did you have?

23 A. I had reference sample from the victim, Micaela
24 Costanzo, and I had -- Your Honor, may I refer to my notes?

25 THE COURT: You may.

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1 A. I had another reference sample from a Toni Fratto.
2 Q. Okay. And that Toni Fratto do you understand is
3 female?
4 A. Yes, sir.
5 Q. Okay. So did you attempt to compare or determine
6 whether or not Toni Fratto's DNA was on C3?
7 A. Yes, I did.
8 Q. And what did you find out?
9 A. I can't make any exclusions for anyone, but I
10 could not include or exclude Toni Fratto from any of the
11 evidence.
12 Q. Maybe yes, maybe no. Correct?
13 A. It's impossible to say. So when we have low level
14 DNA profile, all we can say is that we can't make any
15 conclusions about it.
16 Q. Okay.
17 A. It could be, it could not be. But that could be
18 true for anyone. I couldn't make a conclusion about myself
19 or anyone on the planet. It's too low level. We don't
20 have enough information. We can't make any conclusions
21 about it.
22 Q. Now, when you say low level DNA, what would be —
23 what would have been required to transmit that low level
24 DNA to C3? What kind of contact with C3 would be required?
25 Casual contact?

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1 A. Impossible for me to say.
2 Q. Anything, right?
3 A. When I say low level, it just means that there
4 were much fewer cells. So when we're doing a DNA analysis,
5 you will get a strong profile if there is an abundance of
6 biological material. So obviously the victim had the most
7 biological material on the stain or the swabbing. And then
8 there were some biological material, much lower amount,
9 from at least two other people.
10 Q. Now, the date of your examination was June what
11 again?
12 A. I examined the items of evidence on June 21st.
13 Q. So we know that whatever — whoever's DNA was
14 deposited on C3 was deposited before June 21, 2011, don't
15 we.
16 A. We do.
17 Q. We know that because of the careful lab procedures
18 that you employ.
19 A. That is correct.
20 Q. So aside from knowing that it was before June 11,
21 2011, when was Mr. Patten's DNA deposited on that sweat
22 shirt?
23 A. Impossible to say.
24 Q. When were any of the other samples deposited on
25 the tee shirt?

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1 A. Impossible to say.
2 Q. Would laundering the sweat shirt have an effect on
3 your ability to recover DNA specimens from C3?
4 A. Yes. It's very possible. I would expect that if
5 it was laundered it would have a detrimental effect on
6 being able to recover a DNA profile.
7 Q. When was the last time that the sweat shirt from
8 which C3 swab was taken was laundered?
9 A. I do not have that information, sir.
10 MR. OHLSON: That's all I have.
11 THE COURT: Redirect.
12 MR. TORVINEN: Nothing based on that, Judge.
13 THE COURT: Okay. May Mr. Gresko be excused from the
14 proceedings?
15 MR. TORVINEN: Yes.
16 THE COURT: You're excused from the proceedings.
17 Thank you. Mr. Torvinen.
18 MR. TORVINEN: There's no further — I don't have any
19 further witnesses.
20 THE COURT: All right.
21 THE COURT: Next witness, Mr. Torvinen.
22 MR. TORVINEN: I need to make some offers, Judge.
23 THE COURT: No other witnesses to call right now?
24 MR. TORVINEN: No. Let me go over my list.
25 THE COURT: Go ahead.

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1 MR. TORVINEN: No, Judge. I need to go over the
2 physical evidence and make sure where I am with respect to
3 that.
4 THE COURT: Take your time.
5 MR. TORVINEN: No. 2 is the portrait of Miss Costanzo.
6 Is that in?
7 THE COURT: Any objection?
8 MR. OHLSON: No.
9 THE COURT: 2 is admitted now.
10 MR. TORVINEN: 3 is the booking photo of Miss Fratto.
11 THE COURT: 3 has already been admitted. Correct,
12 Miss Clerk?
13 THE CLERK: Yes.
14 THE COURT: Okay.
15 MR. TORVINEN: 4 is the photograph of the burned polka
16 dot material and 4 A and well.
17 THE COURT: Objection to 4 or 4 A?
18 MR. OHLSON: No, Your Honor.
19 THE COURT: 4 and 4 A are now admitted.
20 MR. TORVINEN: 6 A is the key and charm in the plastic
21 sack.
22 THE COURT: I believe that's admitted. Clerk says
23 yes.
24 MR. TORVINEN: 8, 9 and 10 are in.
25 THE COURT: Correct.

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RA 502

1 MR. TORVINEN: 11 is the diagram of the school.
2 THE COURT: It's been admitted.
3 MR. TORVINEN: 12 is the photograph of the rear of
4 Miss Murphy's vehicle.
5 THE COURT: Objection to 12?
6 MR. OHLSON: No, Your Honor.
7 THE COURT: 12 is admitted.
8 MR. TORVINEN: There is no 13. 17 is the photo of
9 Miss Rasmussen's charm.
10 THE COURT: Admitted. Correct, Miss Clerk?
11 THE CLERK: Yes.
12 THE COURT: It's admitted.
13 MR. TORVINEN: 19 is the consent executed by Miss
14 Murphy on the 4th of March.
15 THE COURT: Objection to 19?
16 MR. OHLSON: No, Your Honor.
17 THE COURT: 19 is admitted.
18 MR. TORVINEN: 27 is the consent executed by Miss
19 Murphy on the 5th of March that she I.D.'d.
20 THE COURT: Objection to 27?
21 MR. OHLSON: No, Your Honor.
22 THE COURT: 27 is now admitted.
23 MR. TORVINEN: No. 30 is the aerial photograph.
24 THE COURT: That's been admitted. Correct, Miss
25 Clerk? She says yes.

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1 MR. TORVINEN: 34 A, 34 B are the two photographs of
2 the crime scene during the day.
3 THE COURT: They've been admitted.
4 MR. TORVINEN: 36 is the photograph of Miss Costanzo
5 at the site that Detective McKinney identified.
6 THE COURT: Objection to 36?
7 MR. OHLSON: No, Your Honor.
8 THE COURT: 36 is admitted.
9 MR. TORVINEN: 42 is the entrenching tool, I believe
10 to be in.
11 THE COURT: That's been admitted.
12 MR. TORVINEN: 45 is the photograph of the gravel pit
13 in Utah that Detective Burnum identified.
14 THE COURT: Objection to 45?
15 MR. OHLSON: No, Your Honor.
16 THE COURT: 45 is admitted.
17 MR. TORVINEN: 46 is the knife identified by Detective
18 Burnum as coming from the site.
19 THE COURT: Any objection to 46?
20 MR. OHLSON: No, Your Honor.
21 THE COURT: 46 is admitted.
22 MR. TORVINEN: 47 is a photograph of some of the
23 remnants that Detective Burnum recovered at the site.
24 THE COURT: Any objection?
25 MR. OHLSON: No, Your Honor.

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1 THE COURT: 47 is admitted.
2 MR. TORVINEN: 49 is the wire that's already been
3 admitted over Counsel's objection.
4 THE COURT: It's in evidence.
5 MR. TORVINEN: 50 is the photograph of Miss Costanzo
6 at the coroner's office that Dr. Clark -- was that in?
7 THE COURT: That's admitted. Right, Miss Clerk?
8 THE CLERK: Yes.
9 MR. TORVINEN: How about 51?
10 THE COURT: She says she doesn't show it as being
11 admitted. I don't show it as being admitted either.
12 MR. OHLSON: Your Honor, it's part of the packet of
13 autopsy photos that we admitted and kept.
14 THE COURT: Not 51. According to my records that was
15 61 through 74 and 50 are the photos that Dr. Clark
16 reviewed.
17 MR. OHLSON: That particular photo might not have been
18 reviewed or identified.
19 THE COURT: I don't think it was.
20 MR. TORVINEN: All right.
21 THE COURT: All right. Are you still moving for its
22 admission?
23 MR. TORVINEN: No.
24 THE COURT: I don't show it on my list.
25 MR. TORVINEN: I don't think I had anybody I.D. it.

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1 THE COURT: 51 is not admitted.
2 MR. TORVINEN: 52 is the photograph of the sweat shirt
3 that was just utilized.
4 THE COURT: Objection?
5 MR. OHLSON: No, Your Honor.
6 THE COURT: 52 is admitted.
7 MR. TORVINEN: 53 was identified by Detective
8 Carpenter.
9 MR. OHLSON: No.
10 THE COURT: 53 is admitted.
11 MR. TORVINEN: 56 was admitted over objection, I
12 think. Is that correct?
13 THE CLERK: Yes.
14 THE COURT: She says yes. 56 was the C.D. Is that
15 correct? One of them. Yeah. That's been admitted.
16 THE COURT: Surveillance C.D.
17 MR. TORVINEN: 61 through 74 were the autopsy
18 photographs.
19 THE COURT: Those have been admitted.
20 MR. TORVINEN: 76 is the large photograph of the
21 school.
22 THE COURT: That's been admitted.
23 MR. TORVINEN: 79 is the Miranda form which I believe
24 you admitted.
25 THE COURT: That's been admitted.

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RA 503

1 MR. TORVINEN: 80 is the Miranda form from the 8th of
2 March. I offer if I didn't do so before.

3 THE COURT: Any objection to 80?

4 MR. OHLSON: Just our continuing objection to the
5 interrogation.

6 THE COURT: For reasons that the Court has stated
7 earlier on the record, 80, any objection to that is
8 overruled. It's admitted.

9 MR. TORVINEN: I think it was 81 A was the recording
10 of the interview. That was admitted, is it not?

11 THE COURT: That was admitted over objection.

12 MR. TORVINEN: Right. That's in?

13 THE COURT: It's in evidence. 81 A, correct, Miss
14 Clerk?

15 THE CLERK: Yes.

16 THE COURT: It's admitted.

17 MR. TORVINEN: State rests, Judge.

18 THE COURT: All right. State having rested its case,
19 we go over to the Defense. Mr. Ohlson.

20 MR. OHLSON: Your Honor, Mr. Patten has been advised
21 that he can testify at these proceedings, and he declined
22 to do so.

23 THE COURT: All right.

24 MR. OHLSON: We have examined the evidence in this
25 matter and have done our investigation prior to this

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1 hearing. We decline to offer any witnesses at this time.

2 THE COURT: You're resting --

3 MR. OHLSON: We rest.

4 THE COURT: -- Your case. Okay. Having rested the
5 Defense case, this matter is concluded subject to argument.
6 Argument for the State.

7 MR. TORVINEN: Your Honor, I would only suggest that
8 we have met our burden with respect to the allegations of
9 the Third Amended Complaint, and reserving the right for
10 rebuttal, I would pass to Counsel.

11 THE COURT: Okay. Argument for the Defense.

12 MR. OHLSON: We would submit the matter, Your Honor.

13 THE COURT: Based upon the testimony and evidence
14 presented at this preliminary hearing, the Court concludes
15 that the State has shown by at least slight or marginal
16 evidence that there is probable cause to believe the
17 Defendant, Kody Cree Patten, has committed the offenses
18 charged in the Third Amended Complaint filed August 2nd,
19 yesterday. That's Count 1, kidnapping in the first degree;
20 Count 2, conspiracy to commit the offense of murder and/or
21 kidnapping in the first degree; Count 3, open murder
22 including first degree murder and all lesser included
23 offenses with the use of a deadly weapon; in the
24 alternative to Count 3, Count 4, first degree murder
25 committed during the perpetration of a kidnapping with the

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1 use of a deadly weapon, also known as felony murder;
2 Count 5, willfully destroying evidence of the commission of
3 a felony, that's a gross misdemeanor charge; and then
4 alternatively to Count 5, Count 6, attempted willful
5 destruction of evidence of the commission of a felony, a
6 gross misdemeanor. So the first four counts are felonies.
7 Counts 5 and 6 are gross misdemeanors.

8 Mr. Patten's case now is bound over to the Fourth
9 Judicial District Court, upstairs in the Elko County court
10 house, the court of general jurisdiction for Elko County.
11 We don't know when Mr. Patten's next court appearance will
12 be. It will be set up with the District Judge assigned to
13 the case, as well as Mr. Torvinen's office and
14 Messrs. Ohlson and Kump's offices. So Mr. Patten is
15 remanded to the custody of the sheriff on his no bail hold.
16 Do we have anything further in this case?

17 MR. TORVINEN: Not as far as I'm aware, Judge.

18 THE COURT: Mr. Ohlson, Mr. Kump?

19 MR. OHLSON: We don't.

20 THE COURT: Okay. Then we'll be off the record.
21 (Whereupon the Preliminary Hearing was then concluded.)
22
23
24
25

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1 I, ALVIN R. KACIN, Justice of the Peace of Elko
2 Township, County of Elko, State of Nevada, hereby
3 certifies:

4
5 That CATHERINE A. FISHER was duly appointed and sworn
6 to report the testimony of the witnesses in all proceedings
7 had in the case of THE STATE OF NEVADA, Plaintiff, vs. KODY
8 CREE PATTEN, Defendant; that the witnesses were first duly
9 sworn, and their testimony taken in stenotype notes,
10 verbatim, and thereafter transcribed into longhand
11 typewriting as herein appears.
12

13 That when the examination of the witnesses at the
14 presentation of evidence was closed, it appearing from the
15 evidence adduced at said Preliminary Examination that there
16 was reasonable cause and sufficient grounds to believe that
17 the Defendant committed the said crime as charged, the said
18 Defendant was therefore bound over to the District Court
19 for trial.
20
21
22

23
24 Justice of the Peace of Elko
25 Township, Elko County, State of
Nevada.

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RA 504

1 IN THE JUSTICE'S COURT OF ELKO TOWNSHIP
2 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

3
4
5 THE STATE OF NEVADA,
6 Plaintiff,
7 VS.
8 KODY CREE PATTEN,
9 Defendant.

12 REPORTER'S CERTIFICATE

14 I HEREBY CERTIFY: That I was duly appointed and
15 sworn by the Justice of the Peace of Elko Township, Elko
16 County, Nevada to report the testimony and proceedings in
17 the above-entitled cause, and that I was present in Court
18 on the 2nd and 3rd of August, 2011, and reported the
19 proceedings had and testimony given in said cause in
20 verbatim stenotype notes, which are thereafter transcribed
21 under my direction.

22 That the foregoing transcript consisting of Pages 1
23 through 354, both inclusive, contains a full, true and
24 complete transcript of my said stenotype notes, and is a
25 full, true and correct record of the testimony taken and
proceedings had at said time and place.

22 DATED this _____ day of _____, 2011.

25 CATHERINE A. FISHER - OCR 279

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1 I, ALVIN R. KACIN, Justice of the Peace of Elko
2 Township, County of Elko, State of Nevada, hereby
3 certifies:
4

5 That CATHERINE A. FISHER was duly appointed and sworn
6 to report the testimony of the witnesses in all proceedings
7 had in the case of THE STATE OF NEVADA, Plaintiff, vs. KODY
8 CREE PATTEN, Defendant; that the witnesses were first duly
9 sworn, and their testimony taken in stenotype notes,
10 verbatim, and thereafter transcribed into longhand
11 typewriting as herein appears.
12

13 That when the examination of the witnesses at the
14 presentation of evidence was closed, it appearing from the
15 evidence adduced at said Preliminary Examination that there
16 was reasonable cause and sufficient grounds to believe that
17 the Defendant committed the said crime as charged, the said
18 Defendant was therefore bound over to the District Court
19 for trial.
20

21
22 

23 Justice of the Peace of Elko
24 Township, Elko County, State of
25 Nevada.

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IN THE JUSTICE'S COURT OF ELKO TOWNSHIP
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

KODY CREE PATTEN,

Defendant.

REPORTER'S CERTIFICATE

I HEREBY CERTIFY: That I was duly appointed and sworn by the Justice of the Peace of Elko Township, Elko County, Nevada to report the testimony and proceedings in the above-entitled cause, and that I was present in Court on the 2nd and 3rd of August, 2011, and reported the proceedings had and testimony given in said cause in verbatim stenotype notes, which are thereafter transcribed under my direction.

That the foregoing transcript consisting of Pages 1 through 354, both inclusive, contains a full, true and complete transcript of my said stenotype notes, and is a full, true and correct record of the testimony taken and proceedings had at said time and place.

DATED this 22nd day of August, 2011.

Catherine A. Fisher
CATHERINE A. FISHER - CCR 279

ORIGINAL FILED

1 Case No. CR-FP-11-0300

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2 Dept. II

ELKO CO DISTRICT COURT

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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

ooOoo

9 THE STATE OF NEVADA :

10 Plaintiff, :

11 v. : CHANGE OF PLEA

12 KODY CREE PATTEN, :

13 Defendant. :

14 _____ /

15

16 TRANSCRIPT OF PROCEEDINGS

17 BE IT REMEMBERED that the above-entitled matter
18 came on for hearing on May 9, 2012, at the hour of 11:00
19 a.m. of said day, before the HONORABLE DAN L. PAPEZ,
20 District Judge.

21 The plaintiff was represented in court by
22 MARK D. TORVINEN, Elko County District Attorney, 540 Court
23 Street, 2nd Floor, Elko, Nevada, 89801.

24 The defendant was present in court and
25 represented by JOHN OHLSON, Attorney at Law, 275 Hill

1 Case No. CR-FP-11-0300

2 Dept. II

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5

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

8 ooOoo

9 THE STATE OF NEVADA :

10 Plaintiff, :

11 v. : CHANGE OF PLEA

12 KODY CREE PATTEN, :

13 Defendant. :

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23 Street, 2nd Floor, Elko, Nevada, 89801.

24 The defendant was present in court and
25 represented by JOHN OHLSON, Attorney at Law, 275 Hill

1

1 pursuant to plea bargain, of entering a guilty plea to the
2 Fifth Amended Information on file.

3 THE COURT: Very well. Any objection by the
4 State?

5 MR. TORVINEN: No, Your Honor.

6 THE COURT: Hearing none, the Court orders that
7 Mr. Patten's previous plea of not guilty entered in this
8 matter is withdrawn.

9 The record should reflect that a Fifth
10 Criminal Information filed pursuant to the plea agreement
11 is present in the court file. So what I will be doing at
12 this point is rearraigning Mr. Patten on the Fifth Criminal
13 Information.

14 MR. OHLSON: I understand that, Your Honor.

15 THE COURT: So Mr. Patten, would you please stand
16 with your counsel. Can you hear me okay, Mr. Patten?

17 DEFENDANT KODY PATTEN: Yes, I can.

18 THE COURT: All right. Did you receive a copy of
19 the Fifth Criminal Information?

20 DEFENDANT KODY PATTEN: Yes, I did.

21 THE COURT: And did you have an opportunity to
22 read it over?

23 DEFENDANT KODY PATTEN: Yes, I did.

24 THE COURT: The Fifth Information is captioned
25 State of Nevada, plaintiff, versus Kody Cree Patten. Is

3

1 Street, Suite 230, Reno, Nevada, 89501, and JEFFREY J.
2 KUMP, Attorney at Law, 217 Idaho Street, Elko, Nevada,
3 89801.

4

5

PROCEEDINGS

6

7 THE COURT: Let the record reflect that we are in
8 court on CR-FP-11-0300, State of Nevada, plaintiff, versus
9 Kody Cree Patten. This is the date and time set for a
10 hearing on change of plea.

11 The record should reflect that Mr. Patten is
12 present in court today, together with his counsel, attorney
13 John Ohlson and attorney Jeffrey Kump. The State is
14 present and represented by Elko County District Attorney
15 Mark Torvinen.

16 Are the parties prepared to proceed?

17 MR. TORVINEN: State is.

18 MR. OHLSON: Defendant is, Your Honor.

19 THE COURT: All right. Court would entertain a
20 motion by defense at this time to withdraw the former plea
21 of not guilty entered in this matter.

22 MR. OHLSON: Your Honor, at this time the
23 defendant moves the Court for its order allowing the
24 defendant Kody Patten to withdraw his previously entered
25 not guilty plea to the Information on file for the purpose,

2

1 that your true and correct name?

2 DEFENDANT KODY PATTEN: Yes, Your Honor.

3 THE COURT: All proceedings will go forward under
4 that name. Do you wish for me to read the Information to
5 you verbatim, or may I simply summarize the charge then ask
6 you to offer your plea?

7 MR. OHLSON: If I may, Your Honor, we waive the
8 formal reading of the Information. Mr. Patten's name is
9 correctly spelled as set forth at about line 12 and a half.

10 THE COURT: All right. I simply then will
11 summarize the Information, ask you to offer your plea.

12 MR. TORVINEN: Your Honor, could I inquire of the
13 Court, is there a certified copy for service on the
14 defendant in the file? I was assured yesterday there would
15 be.

16 THE COURT: A certified copy?

17 MR. TORVINEN: I was assured it was in the file.

18 THE COURT: In the official court file, that's
19 correct.

20 MR. TORVINEN: That's what I was told, sir.

21 THE COURT: Yes.

22 MR. TORVINEN: We usually -- the usual procedure
23 has been they would serve a certified copy on the defendant
24 and there would be another file copy. So there is only one
25 copy in the file, is that it?

4

RA 518

1 THE COURT: I have a copy that was provided to me
2 in my chambers.

3 MR. OHLSON: Your Honor, we have been provided
4 copies prior to this time and waive any requirement that
5 the Amended be served upon the defendant, either certified
6 or otherwise.

7 MR. TORVINEN: Thank you.

8 THE COURT: All right. Very well. The Fifth
9 Criminal Information alleges First-Degree Murder with the
10 use of a deadly weapon, a felony as defined by NRS 193.165,
11 200.010, 200.020, and 200.030.

12 It alleges that the defendant, Kody Cree
13 Patten, acting alone or in concert with one Toni Collette
14 Fratto, at a place within Elko County, Nevada, described as
15 located approximately five miles west of the city of West
16 Wendover, Nevada, on or about the 3rd day of March, 2011,
17 did willfully and unlawfully, with malice aforethought, and
18 with premeditation and deliberation kill and murder another
19 human being, one Micaela Costanzo.

20 Further, that the defendant employed a deadly
21 weapon within the meaning of NRS 193.165 in connection with
22 said murder.

23 With respect to this charge, what is your
24 plea?

25 DEFENDANT KODY PATTEN: Guilty.

5

1 THE COURT: Guilty. The record will so reflect.
2 In order for the Court to accept the plea of guilty, it is
3 incumbent upon the Court to conduct a canvass of Mr. Patten
4 to ensure that his guilty plea is being voluntarily,
5 knowledgeably given before the Court.

6 Counsel, would you like to address the Court?

7 MR. OHLSON: I would, Your Honor. With the
8 Court's permission, I would like Mr. Patten to be sworn,
9 take the witness stand, and I have a series of questions to
10 ask Mr. Patten; at the end of which I would turn Mr. Patten
11 over to the Court to complete the Court's canvassing as
12 required by law.

13 THE COURT: Very well. Mr. Torvinen, is the
14 procedure adequate for you?

15 MR. TORVINEN: Yes.

16 THE COURT: All right. Mr. Patten, please come
17 forward. Please face the clerk. And to the extent that
18 you can, raise your right hand and the clerk will
19 administer your oath.

20 (WHEREUPON, the witness was sworn)

21 THE COURT: Please be seated up here. Mr.
22 Patten, please state your name for the record and spell
23 your last name.

24 THE WITNESS: Kody Cree Patten, P-a-t-t-e-n.

25 THE COURT: Thank you. Mr. Ohlson.

6

KODY CREE PATTEN

1 called as a witness in said case, having been first
2 duly sworn, testified as follows:

DIRECT EXAMINATION

3 BY MR. OHLSON:

4 Q. Mr. Patten, are you same Kody Cree Patten
5 who's named in the Fifth Amended Information in this case?

6 A. Yes, I am.

7 Q. How old are you?

8 A. Nineteen.

9 Q. When did you turn 19?

10 A. December 31, 2011.

11 Q. At the date that this homicide was committed,
12 were you above the age of 18 years?

13 A. Yes, I was.

14 Q. And were you living in Elko County?

15 A. Yes, I was.

16 Q. You've heard us tell the Court that a plea
17 bargain has been arranged in this case. Are you aware of
18 that?

19 A. Yes, I am.

20 Q. And before I go into the specifics of that,
21 did you have the opportunity before coming here today to
22 talk to me on the phone and in person about the plea
23 arrangements?

7

1 A. Yes, I did.

2 Q. And did you -- what did you say?

3 A. Yes, I did.

4 Q. Did you also have an opportunity to talk to
5 Mr. Kump, together with our investigator, Mr. Savage, about
6 the plea memorandum?

7 A. Yes, I did.

8 Q. Did you go over that plea memorandum with Mr.
9 Kump and Mr. Savage?

10 A. Yes, I did.

11 Q. Was it read to you out loud?

12 A. Yes.

13 Q. While it was being read to you and during that
14 time, if you had any questions, did you raise them?

15 A. Yes.

16 Q. And were they answered?

17 A. Yes, they were.

18 Q. To your satisfaction?

19 A. Correct.

20 Q. Do you now state in court that you understand
21 the plea bargain?

22 A. Yes, I do.

23 Q. You understand that essentially you are
24 pleading guilty to first-degree murder with the use of a
25 deadly weapon?

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1 A. Correct.
2 Q. Of Micaela Costanzo?
3 A. Yes.
4 Q. And that that is enhanced by the use of a
5 deadly weapon, correct?
6 A. Yes.
7 Q. And in return for that plea, the State would
8 withdraw its intention to seek the death penalty in this
9 case?
10 A. Yes.
11 Q. All right. Do you also understand that at
12 your sentencing that both the State and you, through your
13 lawyers, will be free to argue as to what your penalty
14 would be?
15 A. Yes, I do.
16 Q. Do you understand that there are only two
17 options for the Court in sentencing you in this case?
18 A. Correct.
19 Q. Do you know what they are?
20 A. Yes, I do.
21 Q. What are they?
22 A. Life without and life with possibility of
23 parole, and a deadly weapon could be consecutive one to
24 twenty.
25 Q. Now, if you receive a sentence of life without

9

1 the possibility of parole, will you get to go to the parole
2 board and ask for parole?
3 A. I will have to fight for it, appeal it.
4 Q. But you don't have a right within that
5 sentence; is that right?
6 A. Correct.
7 Q. Do you understand that life without the
8 possibility of parole means life without parole?
9 A. Correct.
10 Q. Do you understand that the Court -- and life
11 with parole means you'll have the possibility of seeking
12 parole in how many years?
13 A. Twenty years.
14 Q. Do you understand that the Court must sentence
15 you also for the use of a deadly weapon in addition to the
16 murder in this case?
17 A. Correct.
18 Q. And do you understand that what -- the range
19 of time that will be involved in that sentence?
20 A. Yes, I do.
21 Q. And what is the range of time?
22 A. One to twenty years.
23 Q. Do you understand also that any sentence for
24 use of a deadly weapon will run consecutive to any life
25 sentence you receive from the Court on the murder?

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1 A. Correct.
2 Q. And by consecutive, that means you have to
3 expire your sentence on the murder before you can start
4 serving the sentence on the use of a deadly weapon?
5 A. Correct.
6 Q. Did you sign that plea agreement?
7 A. Yes, I did.
8 MR. OHLSON: Your Honor, I believe the original
9 has been filed with the Court.
10 THE COURT: Yes.
11 MR. OHLSON: May I show it to the defendant,
12 please.
13 THE COURT: I have a copy. The original is in
14 the court file.
15 MR. OHLSON: Do you have a photocopy with a
16 photocopy of the signature, if I can use that.
17 THE COURT: I do.
18 MR. OHLSON: Thank you, Your Honor.
19 Q. I'm showing you a photocopy of a plea
20 agreement. Would you take a look at each page of that plea
21 agreement. You can handle it. Is that the agreement you
22 signed?
23 A. Yes, it is.
24 Q. On the last page, did you see your signature?
25 On the last page of this agreement?

11

1 A. It's not on there. It's the next one.
2 Q. I think it's on the next one. Anyway, when
3 you went through the agreement, did you see your signature
4 on the last page?
5 A. Yes, it is.
6 Q. And is that your true signature?
7 A. Yes, it is.
8 MR. OHLSON: Thank you, Your Honor.
9 Q. Once again, before signing the agreement, did
10 you have the benefit of the advice of counsel?
11 A. Yes, I did.
12 Q. And when you signed that agreement, were you
13 of sound mind?
14 A. Yes.
15 Q. Were you using any medications at all?
16 A. No, I wasn't.
17 Q. Were you in good health?
18 A. Yes.
19 Q. Let me ask you about your condition today.
20 How is your condition today, your mental condition?
21 A. I'm all right, I guess.
22 Q. Are you using any prescription medication
23 today?
24 A. No, I'm not.
25 Q. Have you used any illegal substances?

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1 A. No.
2 Q. And you feel good today?
3 A. Yeah.
4 Q. Good as you can under the circumstances?
5 A. Yeah.
6 Q. You're accused of first-degree murder of
7 Micaela Costanzo, correct?
8 A. Yes.
9 Q. Did your attorneys attempt to advise you of
10 the meaning of malicious?
11 A. Yes.
12 Q. And of malice?
13 A. Yes.
14 Q. And according to what you understand the legal
15 term to mean, did you commit that murder maliciously?
16 A. Yes.
17 Q. Did you commit that murder willfully; that is,
18 intentionally?
19 A. Yes.
20 Q. It was not an accident; is that right?
21 A. Correct.
22 Q. And did you commit that murder unlawfully?
23 You had no lawful justification?
24 A. Yes.
25 Q. And did you do so with a deadly weapon?

13

1 A. Yes.
2 Q. And you recall telling the police, when you
3 were interviewed early on in this case, that you hit Ms.
4 Costanzo in the throat with the sharp pointed end of the
5 shovel?
6 A. That's correct.
7 Q. Do you recall telling them that?
8 A. Correct.
9 Q. Are you satisfied with the legal
10 representation that you have received up to this point?
11 A. So far, yes.
12 Q. Are you ready to answer the Judge's questions
13 regarding your guilty plea?
14 A. Yes, I am.
15 Q. Do you have any questions of the questions
16 I've asked you so far?
17 A. No.
18 MR. CHILSON: Your Honor, if you please, I would
19 tender the defendant to you.
20 THE COURT: Thank you. Mr. Patten, can you hear
21 me all right?
22 DEFENDANT KODY PATTEN: Yes, I can.
23 THE COURT: I'm going to ask you some additional
24 questions regarding the case and your guilty plea. As we
25 go through these, if there is anything that you don't

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1 understand or you have a question about, be sure and stop
2 me so that you can ask me about it. I want to make sure
3 you understand everything I ask you.
4 DEFENDANT KODY PATTEN: Yes, sir.
5 THE COURT: At the time that this incident
6 occurred, where were you living?
7 DEFENDANT KODY PATTEN: I was living with the
8 Frattos.
9 THE COURT: In Wendover, Nevada?
10 DEFENDANT KODY PATTEN: Correct.
11 THE COURT: All right. And what is your current
12 age?
13 DEFENDANT KODY PATTEN: Nineteen.
14 THE COURT: You're 19 years old right now?
15 DEFENDANT KODY PATTEN: Yes, sir.
16 THE COURT: Okay. What -- what education level
17 did you achieve before you were arrested on this incident?
18 DEFENDANT KODY PATTEN: Eleventh grade.
19 THE COURT: You were in the 11th grade?
20 DEFENDANT KODY PATTEN: I was a senior, but I
21 didn't get to graduate.
22 THE COURT: Okay. So you do read and write?
23 DEFENDANT KODY PATTEN: Correct.
24 THE COURT: All right. Your counsel has brought
25 out, and I'm going to ask you again, you received a copy of

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1 the Fifth Criminal Information. And you've already advised
2 me that you read that document over, correct?
3 DEFENDANT KODY PATTEN: Yeah.
4 THE COURT: All right. And your counsel just
5 asked you and you testified that you received a copy of the
6 plea agreement, that you read that document over as well?
7 DEFENDANT KODY PATTEN: Yes, I did.
8 THE COURT: And just so that I can be certain, if
9 you had any questions about anything contained in either
10 the Fifth Criminal Information or the plea agreement, were
11 you able to discuss those matters fully with your counsel?
12 DEFENDANT KODY PATTEN: Yes, I did.
13 THE COURT: Are you a citizen of the United
14 States?
15 DEFENDANT KODY PATTEN: Yes, I am.
16 THE COURT: All right. Mr. Patten, obviously,
17 what you're doing here today is very important and a
18 decision that I'm sure you've pondered for a long time.
19 Have you had enough time to think about and
20 consider the decision that you're making today to change
21 your plea?
22 DEFENDANT KODY PATTEN: Yes, I have.
23 THE COURT: All right. You've already testified
24 that you spoke to your attorneys in detail about changing
25 your plea. Were you also able to speak to other people who

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1 are important in your life about this decision, like
2 parents or --
3 DEFENDANT KODY PATTEN: Yes, sir.
4 THE COURT: -- other people who might be
5 important to you?
6 DEFENDANT KODY PATTEN: Yes, sir.
7 THE COURT: All right. Do you feel like there is
8 someone that you have not discussed your decision in this
9 case that you need to discuss with?
10 DEFENDANT KODY PATTEN: No, sir.
11 THE COURT: All right. Now, you understand, and
12 it's recited in the plea agreement, that there were two
13 motions that were pending before the Court that the Court
14 had not ruled on.
15 And because you are entering a guilty plea, you
16 will be withdrawing those motions and the Court will not be
17 ruling on those motions.
18 Do you understand that?
19 DEFENDANT KODY PATTEN: Yes, I do.
20 THE COURT: All right. Mr. Kump and Mr. Ohlson
21 have been with you throughout this case from the case's
22 beginning, they have represented you in this matter. Would
23 it be fair to say that you are satisfied with their
24 representation?
25 DEFENDANT KODY PATTEN: This far, yes.

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1 THE COURT: Do you wish to continue with them as
2 your counsel?
3 DEFENDANT KODY PATTEN: Yes.
4 THE COURT: All right. Some of these questions
5 are going to be repetitive, but I'm going to ask them to
6 make sure I understood your answer.
7 As we sit here in court today, are you suffering
8 from my physical illness, any medical conditions that I
9 need to know about?
10 DEFENDANT KODY PATTEN: No, sir.
11 THE COURT: All right. And is your mental
12 condition good?
13 DEFENDANT KODY PATTEN: Yes, sir.
14 THE COURT: All right. And I believe you
15 testified that you are not taking any type of medication;
16 is that correct?
17 DEFENDANT KODY PATTEN: That's correct.
18 THE COURT: All right. So would it be fair to
19 say that your health is good, your mind is sound, and that
20 you understand what's happening today in this courtroom?
21 DEFENDANT KODY PATTEN: Yes, I do.
22 THE COURT: All right. Now, Mr. Ohlson went over
23 the terms of the plea agreement with you. Just a couple
24 questions relating to that.
25 You understand that with your plea agreement you

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1 are agreeing to plead guilty to murder in the first degree
2 with the use of deadly weapon; is that correct?
3 DEFENDANT KODY PATTEN: That's correct.
4 THE COURT: All right. And in exchange for that
5 plea, the district attorney has agreed to do some things
6 for you.
7 The district attorney is dismissing all of the
8 charges that were in the other criminal information and he
9 is also withdrawing his Notice of Intent to Seek the Death
10 Penalty. That is the consideration that's flowing to you
11 from the district attorney in exchange for your plea.
12 Do you understand all of that?
13 DEFENDANT KODY PATTEN: Yes, I do.
14 THE COURT: Very well. Mr. Ohlson went over the
15 possible sentences with you: Life with the possibility of
16 parole, life without the possibility of parole. And you
17 understand what those mean?
18 DEFENDANT KODY PATTEN: Yes, I do.
19 THE COURT: All right. There is no probation for
20 this offense. Do you understand that?
21 DEFENDANT KODY PATTEN: Correct.
22 THE COURT: Do you have any questions about
23 anything that we've covered so far, Mr. Patten?
24 DEFENDANT KODY PATTEN: No, sir.
25 THE COURT: All right. I know that your

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1 attorneys have explained to you that this case will be sent
2 on to the Nevada Division of Parole and Probation. They
3 are an independent agency of the State of Nevada.
4 And they will be conducting a pre-sentence
5 investigation which is basically an investigation into your
6 entire life. They will go into all aspects of your life;
7 your family history, your social history, your educational
8 history, your employment history, your criminal history, if
9 you have one.
10 They will discuss the facts and circumstances of
11 this case, and at the conclusion of their report they will
12 make a sentencing recommendation.
13 You and your attorneys will receive a copy of
14 that report, the district attorney will receive a copy of
15 that report, and the Court will receive a copy of that
16 report as well.
17 At the time of your sentencing hearing both you
18 and your attorneys will be given the opportunity to make a
19 sentencing recommendation, present mitigating evidence, and
20 present your recommendations to the Court.
21 Likewise, the district attorney will be allowed
22 to make his recommendations to the Court. Each side in
23 this case, the district attorney and you and your
24 attorneys, have agreed that each of you will be free to
25 argue for the sentence each side believes is appropriate.

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1 Do you understand that?
2 DEFENDANT KODY PATTEN: Yes, I do.
3 THE COURT: All right. Do you understand that
4 the Court is not a party to this plea agreement? The Court
5 in sentencing considerations will examine all the facts and
6 circumstances of the case, will examine the presentence
7 recommendation, and the recommendations from the district
8 attorney, from your attorneys and from you, and the Court
9 will sentence you as the Court believes is just and
10 appropriate.
11 The Court is not bound to follow any specific
12 recommendation, but will independently make the
13 determination of your sentence.
14 Do you understand that?
15 DEFENDANT KODY PATTEN: Yes, I do.
16 THE COURT: All right. Any questions, Mr.
17 Patten, about what we've covered so far?
18 DEFENDANT KODY PATTEN: No, sir.
19 THE COURT: All right. Now in pleading guilty
20 here in court today you are waiving and giving up a series
21 of trials rights and constitutional rights. And I need to
22 go over those with you so that I may be certain that you
23 know what you are doing.
24 As you recall, you initially came to court some
25 months ago and the Court arraigned you on a criminal

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1 information. At that time you entered a plea of not
2 guilty.
3 The Court also advised you at that time of your
4 right to a speedy trial, and you waived your right to a
5 speedy trial, and we had set the trial in this case to
6 commence on July 31st of this year.
7 Do you recall all of that?
8 DEFENDANT KODY PATTEN: Yes, I do.
9 THE COURT: All right. Do you understand that by
10 pleading guilty here in court today you are waiving and
11 giving up your right to proceed to trial before a jury in
12 this case?
13 DEFENDANT KODY PATTEN: Yes, I do.
14 THE COURT: All right. Do you understand and
15 waive that right?
16 DEFENDANT KODY PATTEN: Yes.
17 THE COURT: Had you continued with your plea of
18 not guilty and gone on to trial, at your trial the burden
19 would be upon the district attorney to come into the
20 courtroom and attempt to prove your guilt of any crime that
21 he charges you with, and he would attempt to do that
22 through the attendance of witnesses and introduction of
23 evidence.
24 You would have the right under the confrontation
25 clause to confront the witnesses and the evidence presented

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1 against you. Your attorneys, Mr. Ohlson and Mr. Kump,
2 would cross-examine all of the State's witnesses on your
3 behalf.

4 You would also be able to observe the demeanor
5 and manner of these witnesses while testifying, and in
6 these ways they're tested for truthfulness. It's called
7 your right of confrontation.

8 Because there will not be a trial in this case,
9 the district attorney will not be calling any witnesses,
10 introducing any evidence, and you will not be confronting
11 the same; in effect, waiving this right.

12 Do you understand and waive your right of
13 confrontation?

14 DEFENDANT KODY PATTEN: Yes, I do.

15 THE COURT: Had you continued with your plea of
16 not guilty and gone on to trial in this matter, under the
17 Fifth Amendment to the Constitution of the United States
18 you would have the right to remain silent during the entire
19 course of your trial. No one could force you or compel you
20 to take the witness stand and testify if you did not wish
21 to do so.

22 Whether or not you testified at your trial would
23 be your decision alone to make, and your attorneys would be
24 in the courtroom to help you make that very important
25 decision. But you would not have to say anything or do

23

1 anything at your trial if you did not wish to do so.

2 By pleading guilty here today in court today you
3 are in effect confessing to this crime in open court,
4 waiving and giving up your Fifth Amendment right to remain
5 silent.

6 Do you understand and waive that right?

7 DEFENDANT KODY PATTEN: Yes, I do.

8 THE COURT: By pleading guilty here in court
9 today you're also waiving and giving up your right to
10 appeal certain defects that may exist in this case up to
11 this point in time. And I don't know that there are any
12 defects or that there are not. But it is having that
13 effect as well.

14 Do you understand and waive that right?

15 DEFENDANT KODY PATTEN: Yes, I do.

16 THE COURT: You do, of course, have the right to
17 appeal any errors that you believe occur in this case from
18 this point forward. If you believe that this Court errs in
19 handling your case, at the conclusion of your case you may
20 file an appeal with the Nevada Supreme Court.

21 Do you understand that?

22 DEFENDANT KODY PATTEN: Yes, I do.

23 THE COURT: By pleading guilty here in court
24 today, you are also waiving and giving up your right to
25 call witnesses to appear and testify for you during the

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1 trial.

2 Had this case proceeded to trial, the Court would
3 have subpoenaed for you, at no cost to you, any witnesses
4 who you felt were appropriate to come into the courtroom
5 and offer testimony on your behalf during the trial.

6 Of course, because there will now not be a trial,
7 you will not be calling any witnesses for a trial.

8 Do you understand and waive that right?

9 DEFENDANT KODY PATTEN: Yes, I do.

10 THE COURT: All right. You do, of course, have
11 the right to call witnesses at the sentencing hearing.

12 Do you understand that?

13 DEFENDANT KODY PATTEN: Yes, I do.

14 THE COURT: All right. Mr. Patten, you have the
15 absolute right to go to trial in this case if you wish to
16 do so, put the State to their burden of proof, which is to
17 prove that you are guilty of any crime that they charge
18 you, and that proof must be beyond a reasonable doubt, and
19 a 12-person jury would have to unanimously find that to be
20 true in order for you to be convicted.

21 Because you are pleading guilty, there will not
22 be a trial in this case. This matter will not be going to
23 a jury.

24 Do you understand that?

25 DEFENDANT KODY PATTEN: Yes, I do.

25

1 happened.

2 Is it your admission and confession here in court
3 today that you willfully and unlawfully, with malice
4 aforethought, premeditation and deliberation, killed and
5 murdered Micaela Costanzo on or about March 3, 2011, about
6 five miles west of Wendover, Nevada?

7 DEFENDANT KODY PATTEN: Yes.

8 THE COURT: All right. Do you have any questions
9 of any of the material that we've covered so far?

10 DEFENDANT KODY PATTEN: No, I don't.

11 THE COURT: All right. Mr. Patten, I'm going to
12 give you one last opportunity to change your mind. If you
13 wish to change your mind at this point, the Court will
14 allow you to do so.

15 You can withdraw your guilty plea, go back to not
16 guilty, and trial will ensue beginning July 31, if you wish
17 to do so.

18 The other alternative is for you to stay with
19 your guilty plea pursuant to the terms of your agreement
20 that you have reached with the State, accepting both the
21 benefits and the burdens that it carries.

22 So you tell me what you would like to do.

23 DEFENDANT KODY PATTEN: I would like to proceed
24 with my guilty plea.

25 THE COURT: Very well. Counsel for either side,

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1 THE COURT: Also, because you are pleading
2 guilty, your attorneys will not be going through a trial
3 with you. They will, however, remain on the case to assist
4 you during the sentencing hearing.

5 Do you understand all of that?

6 DEFENDANT KODY PATTEN: Yes, I do.

7 THE COURT: All right. Mr. Patten, has anyone
8 coerced you, intimidated you, or placed you in fear to
9 cause you to plead guilty to this charge?

10 DEFENDANT KODY PATTEN: No.

11 THE COURT: Has anyone offered you any promises
12 or inducements, secret deals, something not contained in
13 the plea agreement, to cause you to plead guilty to this
14 charge?

15 DEFENDANT KODY PATTEN: No.

16 THE COURT: Are you pleading guilty voluntarily?

17 DEFENDANT KODY PATTEN: Yes.

18 THE COURT: Are you pleading guilty because you
19 believe it's in your best interest to do so?

20 DEFENDANT KODY PATTEN: Yes, sir.

21 THE COURT: Are you pleading guilty because in
22 truth and fact you are guilty?

23 DEFENDANT KODY PATTEN: Yes.

24 THE COURT: All right. You already provided Mr.
25 Ohlson upon questioning some of the facts surrounding what

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1 did you wish the Court to canvass Mr. Patten on any other
2 matters or issues?

3 MR. TORVINEN: The only thing, Judge, is the
4 range of punishment includes an option the Court would
5 have, it's 50 years with eligibility --

6 THE COURT: That -- that's correct. It's a third
7 option. Life with the possibility of parole, life without
8 the possibility of parole, or 50 years and minimum parole
9 eligibility is 20 years.

10 MR. TORVINEN: Yes.

11 THE COURT: Do you understand that, Mr. Patten?

12 DEFENDANT KODY PATTEN: Yes, I do.

13 THE COURT: Any other issues, counsel?

14 MR. OHLSON: No, thank you, Your Honor.

15 MR. TORVINEN: No.

16 THE COURT: All right. Very well. Did you have
17 any further questions that you would like to ask me, Mr.
18 Patten?

19 DEFENDANT KODY PATTEN: No, I don't.

20 THE COURT: All right. Court then makes its
21 finding the defendant has offered his plea voluntarily,
22 knowledgeably and intelligently.

23 The Court finds that he understands the nature of
24 the charges that he has pled guilty to. The Court finds
25 there is a sufficient factual basis to support the guilty

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1 plea. And the Court further finds that Mr. Patten
2 understands the range of punishments that can be imposed
3 upon him at the time of sentencing.

4 Good cause appearing, the Court orders the Clerk
5 of Court to formally notify the Division of Parole and
6 Probation to conduct their customary pre-sentence
7 investigation and return a report to the Court to assist
8 the Court with sentencing.

9 As to a sentencing date, counsel, we discussed
10 that matter previously. Subject to the availability of the
11 courtroom, sentencing in this matter will occur on July 31,
12 2012.

13 MR. OHLSON: That's correct, Your Honor. If at
14 all possible, maybe we can secure the larger courtroom.
15 There will be a number of witnesses.

16 THE COURT: All right. Would you prefer to begin
17 in the afternoon or the morning?

18 MR. OHLSON: Whatever the Court's pleasure is.
19 We might take all day, so maybe it's better to start in the
20 morning.

21 THE COURT: All right. We'll begin at 10 a.m.

22 MR. OHLSON: Thank you, Your Honor.

23 THE COURT: Is there anything further that needs
24 to come before the Court today on this case?

25 MR. OHLSON: No, Your Honor.

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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 May 9, 2012, and took verbatim stenotype notes thereof; and
11 that the foregoing 30 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.

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17 LISA M. MANLEY - CCR-271
18 OFFICIAL COURT REPORTER
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1 MR. TORVINEN: Not that I am aware of, Judge.
2 Other than, Judge, I assume that you are vacating the trial
3 date.

4 THE COURT: Trial date is vacated.
5 (WHEREUPON, the hearing was concluded at 11:33 a.m.)
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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 May 9, 2012, and took verbatim stenotype notes thereof; and
11 that the foregoing 30 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.

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17 LISA M. MANLEY - CCR-271

18 OFFICIAL COURT REPORTER
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