

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

2 DEPT. NO.: II

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6 **IN THE FOURTH JUDICIAL DISTRICT COURT**
7 **OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO**
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9
10 **THE STATE OF NEVADA,**
11 **Plaintiff,**

12
13 vs.

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17 **KODY CREE PATTEN,**
18 **Defendant.**

THE STATE OF NEVADA'S:
1. NOTICE PURSUANT TO THE PROVISIONS OF SUPREME COURT RULE 250 OF THE STATE'S INTENT, IN THE EVENT THAT THE DEFENDANT KODY CREE PATTEN IS CONVICTED OF FIRST DEGREE MURDER, TO SEEK THE IMPOSITION OF THE PENALTY OF DEATH; AND
2. CERTIFICATE OF SERVICE WITH RESPECT THERETO

19 **Notice**

20
21 **COMES NOW THE STATE OF NEVADA,** the Plaintiff in the above-
22 entitled cause, by and through its Counsel Of Record the Elko County District
23 Attorney's Office, and by this pleading would place the Defendant, Kody Cree Patten,
24 on notice that in the event that he is convicted in the above-entitled cause of the
25 offense of Murder In The First Degree, A Category A Felony As Defined By NRS
26 200.030, under any theory of that offense pleaded against him in the Third Criminal
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Affirmation Pursuant to NRS 239B.030 Page 1 of 22
SSN Does Appear
SSN Does Not Appear KC

1 Information filed in the above-entitled cause on the 9th day of August, 2011, that it is
2 the State's intent to seek the imposition of the penalty of death under the provisions of
3
4 NRS 200.030.4(a), and NRS 200.033.

5 **Specification Of The Aggravating Circumstance(s)**
6 **Upon Which The State Intends To Rely**

7 In the event that the Defendant Kody Cree Patten is convicted of the
8 offense of First Degree Murder in the above-entitled cause, the aggravating
9
10 circumstance which the State intends to rely upon is that specified in NRS
11 200.033.4(a) which provides in pertinent part that:

12 The only circumstances by which murder of the first degree may be
13 aggravated are:

14 ... 4. The murder was committed while the person was engaged, alone
15 or with others, in the commission of, or an attempt to commit or flight
16 after committing or attempting to commit ... kidnapping in the first degree,
17 and the person charged:

18 (a) Killed or attempted to kill the person murdered; or

19 (b) Knew or had reason to know that life would be taken or lethal force
20 used.

21 **Recitation Of The Factual**
22 **Basis For This Notice**

23 The State, in accordance with the Supreme Court Rule 250.4(c),
24 would recite the following facts – i.e. testimony and evidence developed during
25 the investigation of the events which have given rise to the prosecution of Kody
26 Cree Patten and/or the litigation of the Preliminary Hearing upon which the
27 State would be relying to support the imposition of the penalty of death:
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1 **1. The Testimony Of Celia Costanzo:**

2 **That:**

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4 a. She was familiar with Kody Cree Patten, and that Micaela Costanzo

5 (hereinafter simply "Micaela"), the Decedent named in the Third Criminal

6 Information filed against Kody Cree Patten on the 9th day of August, 2011,

7 Ms. Celia Costanzo's sixteen (16) years old daughter, and Kody Cree

8 Patten had been friends when they were children up until approximately a

9 year and a half or two years prior to Micaela's death, because she had,

10 from approximately 2002, lived in the same apartment complex where

11 Kody Cree Patten and his parents, who managed the apartment

12 complex, lived until the Pattens moved from the apartment complex

13 where she had been living in which occurred approximately a year prior to

14 Micaela's death.

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18 b. As of Thursday the 3rd day of March, 2011, Micaela was a student at the

19 West Wendover, Nevada Junior/Senior High School (hereinafter simply

20 the "School"), and was participating in the extracurricular activity of Track

21 at the School.

22

23 1. That on Thursday the 3rd day of March, 2011, it was Celia

24 Costanzo's expectation that Micaela would walk home from the

25 School after Track practice; and

26

27 2. Celia Costanzo had previously made an appointment for Micaela

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1 to see a personal trainer at 8:00 o'clock p.m. that night.

2 3. That at approximately 6:00 o'clock p.m. Mountain Standard Time¹,
3 which is the time used by the residents of West Wendover, Nevada,
4 Celia Costanzo commenced looking for Micaela when she
5 could not contact her by telephone or otherwise, she was unable to
6 make contact with her or locate Micaela, and that the 3rd of
7 March, 2011, when she dropped her off at School was the last time
8 Celia Costanzo ever saw Micaela.
9

10 c. That when she had taken Micaela to school on the morning of the 3rd of
11 March, 2011, one of the garments that Micaela had been wearing was a
12 grey sweatshirt.
13
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15 2. The Testimony Of Tyler Peterson And Tiffany Rasmussen:
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17 That:

18 a. Shortly after Track practice on afternoon of the 3rd of March, 2011, Micaela
19 Costanzo, in the company of one Tyler Peterson, the girls' Track coach at
20 the School, and a classmate, Tiffany Rasmussen, were engaged in a
21 conversation at the rear of the School, at which time Tyler Peterson
22 observed Kody Cree Patten, with whom he was familiar, drive up behind
23 the School in a white sport utility vehicle, specifically a Chevrolet
24 Trailblazer, which the State established through testimony of one Wendi
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28 ¹ All references to time in the recitation of facts/evidence upon which the State is relying is, unless otherwise noted, to Mountain Standard Time – the time utilized by the residents of West Wendover, Nevada.

1 Murphy was hers and that she lent the vehicle to Kody Cree Patten on the
2 3rd of March, 2011; Kody Cree Patten parked the vehicle behind the
3 School and went towards the School;
4

- 5 b. Eventually, Tiffany Rasmussen and Micaela ended up in the girls' locker
6 room at the School and Tiffany Rasmussen, at approximately 5:00 p.m.,
7 parted company with Micaela, at which time Micaela was alone in the
8 locker room.
9

10 3. The Testimony Of Wendi Murphy:

11 That:

- 12
13 a. She had lent to Kody Cree Patten during the Noon hour on the 3rd of
14 March, 2011, her Chevrolet Trailblazer, the exterior of which was clean
15 when she surrendered it to him; that she expected the Trailblazer to be
16 returned to her at approximately 5:00 o'clock p.m. on the 3rd of
17 March, 2011; that it was returned to her at approximately 8:45 p.m. on the
18 evening of March 3rd, 2011, at the residence of one Kandace
19 Christiansen and Jeff Patten located in Wendover, Utah; and that at the
20 time Kody Cree Patten returned the vehicle, he was accompanied by
21 Toni Collette Fratto;
22
23 b. That the next morning she noticed that the vehicle's exterior was dusty;
24
25 and
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27 c. That on the morning of the 4th of March, 2011, she observed a package of
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1 metal picture hanging wire which she did not believe had been in her
2 vehicle when she lent it to Kody Cree Patten on the 3rd day of
3 March, 2011.
4

5 1. The State, with respect to the issue of the presence of the wire in
6 Wendi Murphy's vehicle on the morning of the 4th of March, 2011,
7 would reserve the right call Jason Abrams, an Officer with the
8 West Wendover Police Department who observed it in the vehicle on
9 or about the 4th day of March, 2011, and/or Renee Armstrong
10 and/or Victor Ruvalcaba of the Washoe County Crime Laboratory
11 who, the State believes and avers, photographically recorded the
12 wire's presence in the vehicle when it was forensically searched on
13 or about the 6th day of March, 2011; and/or the testimony of Det.
14 Donald Burnum who eventually secured the wire from the vehicle
15 pursuant to a search warrant on the 30th day of June, 2011.
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19 4. The Testimony Of Travis Landon And Jerome Reamer:
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21 That:

- 22 a. The School, as of March 2011, was equipped with a video surveillance
23 system;
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25 b. That the system captured, and there was preserved, images of Kody
26 Cree Patten leaving the School on March 3rd, 2011, through a door in the
27 rear thereof at *approximately* 5:09 p.m., and, further, captured imagery of
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Micaela leaving the School, alone, on the 3rd of March, 2011, through the same door of the School from which Kody Cree Patten had departed at approximately 5:12 p.m.

5. The Testimony Of Kiearra Murphy:

That:

- a. At approximately 5:30 p.m. on the 3rd of March, 2011, she observed Kody Cree Patten driving her mother's (Wendi Murphy's) Trailblazer north on a dirt road between Tibbets Boulevard in Wendover, Nevada which is near the School, and West Wendover Boulevard; that she observed the vehicle reach Wendover Boulevard and turn west which would take him out of town.

6. The Testimony Of Michael "Mick" Moore:

That:

- a. On Saturday the 5th day of March, 2011, Michael "Mick" Moore, was voluntarily participating in a search which had by then been initiated for Micaela;
- b. That he came upon an area some five (5) miles west of the City of West Wendover near some railroad tracks and observed what appeared to him to be some fresh tracks in the area off the dirt road he had been traveling on;
- c. That upon his inspection of the area on foot, he ultimately discovered

1 what appeared to him to freshly turned dirt covered in tumbleweeds and
2 what appeared to him to be blood on the ground in the area; and

- 3
4 d. He then left to make contact with law enforcement and lead them back
5 to the site he had discovered.

6 7. The Testimony Of Ronald Supp And Det. Donald Burnum:

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8 That:

- 9 a. On the 5th of March, 2011, Ronald Supp, Chief of the West Wendover
10 Nevada Police Department, who as well was participating in the search
11 for Micaela, was contacted by Michael "Mick" Moore who led him
12 back to the site described in Paragraph 6 above;
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14 b. That, using a shovel, Chief Supp dug approximately two shovels full of
15 dirt from the disturbed area pointed out to him by Mr. Moore which
16 exposed what he perceived to be flesh;
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18 d. Chief Supp thereafter directed his subordinates, Det. Burnum amongst
19 them, to secure the scene which Det. Burnum proceeded to do with
20 assistance from his colleagues; and
21
22 e. Chief Supp then contacted the Elko County Sheriff's Department to
23 request that they take charge of the investigation as the location of the
24 suspected crime scene was in the County as opposed to the City of West
25 Wendover, Nevada;
26
27 f. Chief Supp was also present on the morning of the 6th of March, 2011,
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1 when representatives of the Washoe County Crime Lab arrived to
2 conduct the excavation of what appeared to be a grave at the site located
3 by Mr. Moore on the 5th day of March, 2011, as described above;

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5 g. That, during the course of the investigation, Det. Burnum recovered a
6 military entrenching tool from underneath the residence of Claude and
7 Cassie Fratto situated in West Wendover, Nevada where Kody Cree
8 Patten had been living as of the 3rd day of March, 2011; and

9
10 h. That on the 18th of March, 2011, Det. Burnum recovered from a gravel pit
11 some three miles northeast of the City of West Wendover, Nevada in the
12 County of Tooele, Utah, what appeared to be, and were later identified by
13 Celia Costanzo, the burned remnants of Micaela's black polka dotted
14 back pack, the remnants of a notebook, a house key belonging to
15 Micaela and a charm in the shape of a panda bear that belonged to
16 Micaela and was attached to her key ring.

17
18 a. He also recovered the burned remnants of a folding knife.
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21 8. The Testimony Of Renee Armstrong
22 (Formerly Thomson) And Victor Ruvalcaba:

23 That:

24 a. On the 6th day of March, 2011, Renee Armstrong and Victor
25 Ruvalcaba, Evidence Technicians from the Washoe County Crime
26 Lab, arrived at the suspected crime scene approximately five miles
27 west of West Wendover, Nevada;
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- 1 b. That the apparent grave site discovered by Mr. Moore on the 5th day of
2 March, 2011, was excavated and found to contain the partially clothed
3 remains of Micaela.
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5 1. Specifically, the clothing had been removed from her upper body.
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7 c. That Micaela had trapped between her right arm and her torso a grey
8 sweatshirt; and
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10 d. That there was around her right forearm two of what are commonly
11 called "zip-ties", plastic binding devices, which were connected
12 together end-to-end to form a circle.
13 1. Additionally on each of her wrists there were what appeared to be
14 the end of the sleeves of a sweatshirt.
15
16 e. That after being fully excavated, Micaela's remains were placed in a body
17 bag for transportation to the Washoe County Coroner's Office;
18
19 f. That Ms. Armstrong attended the Autopsy of Micaela's remains
20 conducted on or about the 8th of March, 2011, at the Washoe County
21 Coroner's Office in Reno, Nevada; and
22
23 g. When the sweatshirt trapped between Micaela's right arm and
24 her torso was removed therefrom and examined, it was discovered
25 that:
26 1. The sleeves of the sweatshirt were in a knot; and
27 2. The end of the sleeves had been cut or severed from the
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sweatshirt, which were, as noted above, still upon Micaela's wrists at the time her remains were recovered at the site some five miles west of West Wendover, Nevada as described above.

h. That the zip-ties that were around Micaela's forearm were recovered and preserved as well.

9. The Testimony Of Dr. Ellen Clark:

That:

a. She is a certified forensic pathologist and that she performed an autopsy upon the remains of Micaela on or about the 8th day of March, 2011;

b. That after conducting that her examination of Micaela's remains, she concluded that Micaela died as a result of:

1. Exsanguination due to multiple stab and slash wounds of her face and neck and that she had suffered blunt force trauma and asphyxia injury; and

2. That these injuries included:

a. As noted above, multiple stab and slash wounds of her face and neck, and the exanguination/hemorrhage associated with said stab and slash wounds;

b. That Micaela suffered a stab wound on the right side of her neck that transected her right jugular vein;

c. Sharp force injuries to her head, and larynx and thyroid

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cartilage;

d. That a number of the slash and stab wounds were consistent with the use of a knife to inflict those injuries; and

e. Micaela also suffered blunt force trauma to her head, face and back.

3. That upon examination of the entrenching tool recovered by Det. Burnum, see supra, Dr. Clark found the serrated edge of the shovel blade of the entrenching tool to be consistent with some, or at least one, "patterned" slashing injury or injuries on Micaela's neck which has a "scalloped" feature to the wound(s); and

4. That Micaela had evidence of blunt force trauma to her upper back or shoulder which was consistent with being struck with the flat of a shovel.

10. The Testimony Of Detective Kevin McKinney And/Or Special Agent James Bonich:

That:

a. On the 6th and/or 7th days of March, 2011, Det. Kevin McKinney of the Elko County Sheriff's Office, and Special Agent James Bonich of the FBI, conducted a digitally recorded interview of Kody Cree Patten.

1. Kody Cree Patten had appeared for the interview in question with his father, Kip Patten, at the West Wendover Police Department.

b. During the course of the interview, Kody Cree Patten initially advised Det.

1 McKinney and Agent Bonich that he (Kody Cree Patten) had picked
2 Micaela up at school and given her a ride home; that he (Kody Cree
3 Patten) had dropped Micaela off at her home and left; that he (Kody Cree
4 Patten) had received a text message from Micaela advising that she
5 wanted to talk to him and, after initially meeting her on foot near
6 Micaela's apartment complex; he (Kody Cree Patten) had returned to the
7 Fratto residence where he was residing, obtained the Trailblazer,
8 returned and picked up Micaela again and went to the gravel pits; while
9 there, he (Kody Cree Patten) and Micaela had gotten into an argument;
10 Micaela had asked to be let out of the vehicle; Micaela had gotten out of
11 the vehicle; and he (Kody Cree Patten) had driven away and never saw
12 Micaela again.

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17 c. Eventually, there came a time during the interview at which Det.
18 McKinney and Agent Bonich concluded that there was probable cause
19 to detain Kody Cree Patten; they then *Mirandized* Kody Cree Patten, a
20 process which his father, Kip Patten, participated in; and Kody Cree
21 Patten eventually concluded to waive his Miranda rights and executed a
22 written waiver thereof.

23
24
25 d. That thereafter Kody Cree Patten related to Det. McKinney and Agent
26 Bonich that:

27 1. He (Kody Cree Patten) had picked up Micaela after Track practice
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1 on Thursday the 3rd of March, 2011, and drove with her to the
2 area with Micaela where her body was eventually discovered;

3
4 2. That he (Kody Cree Patten) had gotten into an argument with
5 Micaela over her announced desire to resume a romantic
6 relationship which they had had at a time in the past;

7
8 3. That the argument between he (Kody Cree Patten) and Micaela
9 had escalated to include pushing - i.e. that Micaela had
10 commenced hitting and pushing him (Kody Cree Patten) and that
11 he (Kody Cree Patten) pushed Micaela causing her to fall and
12 strike her head on the bumper of the vehicle, in essence
13 momentarily stunning Micaela;

14
15 4. That Micaela got up and was angry and commenced hitting
16 him (Kody Cree Patten), in response to which he (Kody Cree
17 Patten) pushed Micaela again, she fell down and struck her head
18 upon a rock causing Micaela to suffer a seizure of some sort;

19
20 5. That at that point he (Kody Cree Patten) panicked, secured a
21 shovel which he had in the vehicle and struck Micaela with it
22 causing a laceration of Micaela's neck;

23
24 6. He (Kody Cree Patten) then dug a hole and placed Micaela's
25 body into the hole;

26
27 7. That after he (Kody Cree Patten) had placed Micaela's body into
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1 the hole he had dug, she started making a noise; this panicked him
2 (Kody Cree Patten) further; and he (Kody Cree Patten) plunged the
3 pick end of the shovel into Micaela's neck to cause her to cease
4 making the noise he was hearing;
5

6 8. At that point Micaela stopped moving and he (Kody Cree Patten),
7 after cutting Micaela's shirt from her person in order to cause her
8 to decompose faster, buried Micaela; and
9

10 9. Took her clothes to a different location and burned them.
11

12 e. On the 8th day of March, 2011, Det. McKinney and Agent Bonich
13 conducted a second *Mirandized* interview of Kody Cree Patten during the
14 course of which:
15

16 1. Kody Cree Patten advised Det. McKinney and Agent Bonich that:
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18 a. He (Kody Cree Patten) had initially picked up Micaela at
19 the School; he had dropped Micaela off at a location near
20 Micaela's apartment complex; that he (Kody Cree Patten)
21 had left and went to the Fratto residence; and then
22 returned, picked up Micaela, again at a location near her
23 apartment complex; and had then driven with Micaela to the
24 gravel pit west of West Wendover; and
25

26 b. That Micaela had her backpack with her when he (Kody
27 Cree Patten) picked her up near her apartment complex.
28

1 2. Kody Cree Patten further provided additional information about
2 where he (Kody Cree Patten) had burned the backpack and its
3 contents.
4

5 11. The Testimony Of Kip Patten:

6 Kip Patten testified At Kody Cree Patten's Preliminary Hearing that:

- 7
- 8 a. During the interview of Kody Cree Patten on the 6th and 7th days of
9 March, 2011, there came a time when he was left alone with Kody Cree
10 Patten and that, during that time, Kody Cree Patten had informed him
11 that:
12
- 13 1. Kody Cree Patten and Micaela had gone to the gravel pits at the
14 "west end of town" to talk;
 - 15 2. That an argument had ensued during which Kody Cree Patten and
16 Micaela were pushing one another;
 - 17 3. That Micaela had fallen and struck her head upon a rock and had
18 suffered a seizure;
 - 19 4. That Kody Cree Patten had panicked in response thereto; and then
20 struck Micaela in the neck with a shovel; and
21 5. That Kody Cree Patten had thereafter buried Micaela.
- 22
- 23 b. That in subsequent conversations between Kip Patten and Kody Cree
24 Patten conducted on or after the 13th day of April, 2011, at the Elko
25 County Jail through the medium of text messages on a cellular telephone
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1 screen or written notes held up to the window of the visiting room, Kody
2 Cree Patten had conveyed to Kip Patten that:

3
4 a. Toni Collette Fratto had been present at, and participated in the
5 killing of Micaela;

6 1. That Toni Collette Fratto had participated in cutting Micaela's
7 throat and that a knife was used to do so;

8
9 2. That Kody Cree Patten and Toni Collette Fratto had
10 thereafter burned Micaela's belongings including a lanyard
11 with keys on it.
12

13 12. The Testimony Of Suzanne Harmon And Stephen Gresko:

14 That:

15
16 a. Suzanne Harmon, a Criminalist employed by the Washoe County Crime
17 Lab, on the 17th of June, 2011, conducted a forensic examination of a
18 number of items of physical evidence collected in connection with the
19 investigation of this matter, amongst them the sweatshirt recovered
20 from Micaela's remains at the Autopsy by Renee Armstrong;

21
22 1. That the purpose of her examination was to collect samples,
23 potentially containing DNA, from the evidence for later DNA
24 Examination;

25
26 2. That one of the samples she collected was a swab from the inside
27 of the knotted sleeves of the aforementioned sweatshirt which she
28

1 ultimately marked and identified for later examination as Swab
2 "C3" which she later re-entered into the Lab's evidence system for
3 later DNA Analysis by one of the DNA Analysts employed by the
4 Lab;
5

6 b. That thereafter Stephen Gresko, a DNA Analyst employed by the Lab,
7 withdrew, amongst other things, Swab "C3" from the Lab's evidence vault
8 and when he when he analyzed "C3" and compared it against the known
9 DNA Samples recovered from Kody Cree Patten he determined that Y
10 STR DNA analysis of "C3", the swab collected by Suzanne Harmon from
11 the inside of the knotted sleeves of the aforementioned sweatshirt, was
12 determined to:
13

14 1. Contain a partial dominant Y DNA profile, which profile matched
15 Kody Cree Patten's Y DNA sample reflected in Kody Cree
16 Patten's DNA reference sample, from which Mr. Gresko concluded
17 that:
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19 a. "Kody Cree Patten or any of his male paternal biological
20 relatives cannot be excluded as the source of the partial
21 DNA from C3 sweatshirt swabs. Based upon the US Y-STR
22 Database, the frequency of this matching DNA pattern is
23 approximately 1 in 676 males in the Caucasian population, 1
24 in 936 miles in the African American population, and 1 in 561
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males in the Hispanic population".

The above represents a recitation of the testimony and evidence upon which the State would be relying in its pursuit of the imposition of the penalty of death in the event that Kody Cree Patten is convicted of First Degree Murder, A Felony under any of the theories of that offense with which he is currently charged.

Further the State would allege and aver, as described above, that there is clear evidence, as summarized above, from which it can be inferred, beyond a reasonable doubt, that Micaela Costanzo was killed during the perpetration of a first degree kidnapping of her person and/or that the Defendant, Kody Cree Patten, knew or had reason to know that lethal force would be employed during the perpetration of said kidnapping.

Reservation Of The Right To Supplement This Notice

In filing this pleading the State would seek to reserve the right to supplement this Notice should further evidence, which the State is not now aware of, come to light – such as further forensic evidence, which would further support this

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1 Notice, should the Court permit the same (See Supreme Court Rule 250.4(d)).

2 Dated this 24th day of August, 2011.

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5 
6 **MARK TORVINEN**
7 State Bar Number: 551
8 Elko County District Attorney

9 **CERTIFICATE OF SERVICE**

10 I, Karen Cracraft, hereby certify that I am an employee of the Elko County
11 District Attorney's Office, and that on the 24th day of August, 2011, a true and
12 correct copy (or true and correct copies in the case of multiple addressees) of the
13 foregoing;
14

15 THE STATE OF NEVADA'S:

16
17 1. NOTICE PURSUANT TO THE PROVISIONS OF SUPREME COURT
18 RULE 250 OF THE STATE'S INTENT, IN THE EVENT THAT THE
19 DEFENDANT KODY CREE PATTEN IS CONVICTED OF FIRST
20 DEGREE MURDER, TO SEEK THE IMPOSITION OF THE PENALTY
21 OF DEATH; AND

22 2. CERTIFICATE OF SERVICE WITH RESPECT THERETO;

23 was/were served upon the addressee(s) identified hereafter in the following manner:

24 That a copy was delivered to the Chambers of the above-entitled Court at
25 the following address:

26 District Court – Dept. II
27 Elko County Court House
28 Elko, Nevada. 89801

1 Pursuant to the provisions of NRS 178.589², a true and correct copy of
2 this pleading was transmitted by facsimile to the following individuals at the following
3 facsimile numbers:
4

5 1. Mr. John Ohlson via facsimile number: 775-323-2705;
6

7 ² NRS 178.589 provides that:

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

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

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

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

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

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

27 5. As used in this section:

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

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

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- 2. Mr. Jeffrey Kump via facsimile number: 738-0187;
- 3. Mr. John P. Springgate via facsimile number: 775-323-3869; and
- 4. Lockie And Macfarlan via facsimile number: 738-1928;

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

That thereafter two true and correct copies of this pleading were mailed by first class mail, postage prepaid, to the Defendant's Counsel of Record at the following addresses:

Mr. John Ohlson
275 Hill Street, Suite 230
Reno, Nevada 89501

And

Mr. Jeffrey Kump
217 Idaho Street
Elko, Nevada 89801

Karen Cracraft
KAREN CRACRAFT
Administrative Caseworker