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DISTRICT COURT
CLARK COUNTY, NEVADA

1 EXPR
2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR NO. 0556
4 309 South Third Street, Suite 226
5 Las Vegas, Nevada 89155
6 (702) 455-4685
7 Attorney for Defendant

8 THE STATE OF NEVADA,

9 Plaintiff,

CASE NO. C230025X

DEPT. NO. VIII

10 RAVEN NAVAJO,

11 Defendant.

12
13 EX PARTE ORDER FOR TRANSCRIPT

14 Upon the ex parte application of the above-named Defendant, RAVEN NAVAJO, by and
15 through, ANDREA L. LUEM, Deputy Public Defender, and good cause appearing therefor,

16 IT IS HEREBY ORDERED that the certified court reporter/recorder Sonia Riley, prepare
17 at State expense, a transcript of the proceedings for case C230025X heard on October 23, 2007 in
18 District Court Department 8.

19
20 DATED this 29 day of October, 2007.

21 *Lee A. Gates*
22 DISTRICT COURT JUDGE *dm*

23 Submitted by:
24 PHILIP J. KOHN
25 CLARK COUNTY PUBLIC DEFENDER

26 By *[Signature]*
27 ANDREA L. LUEM, #8844
28 Deputy Public Defender

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Sonia Riley
District Court 8
200 South Third Street
Las Vegas, NV 89155

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

ORIGINAL

THE STATE OF NEVADA,

PLAINTIFF,

VS.

CASE NO: C230025

RAVEN NAVAJO AKA
MICHAEL SCOTT HARMAN,

DEFENDANT.

REPORTER'S TRANSCRIPT

OF

TRIAL BY JURY

BEFORE THE HONORABLE JUDGE LEE A. GATES
DISTRICT COURT JUDGE
DEPARTMENT VIII

DATED TUESDAY, OCTOBER 23, 2007

FOR THE PLAINTIFF: DAVID STANTON, ESQ.
NELL KEENAN, ESQ.

FOR THE DEFENDANT: ANDREA L. LUEM, ESQ.
KRISTINE KUZEMKA, ESQ.

REPORTED BY: SONIA L. RILEY, CCR NO. 727

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CLERK OF THE COURT

SONIA L. RILEY, INC.

(702) 526-1298

1 APPEARANCES:

2 FOR THE PLAINTIFF:

3 DAVID STANTON, ESQ.
4 NELL KEENAN, ESQ.
5 DISTRICT ATTORNEY'S OFFICE
6 200 Lewis Avenue
7 Las Vegas, Nevada 89155
8 (702) 671-2501

7 FOR THE DEFENDANT:

8 ANDREA L. LUEM, ESQ.
9 KRISTINE KUZEMKA, ESQ.
10 PUBLIC DEFENDER'S OFFICE
11 309 S. Third Street
12 Suite 226
13 Las Vegas, Nevada 89155
14 (702) 455-4685

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1 LAS VEGAS, NEVADA; TUESDAY, OCTOBER 23, 2007

2 P R O C E E D I N G S

3 * * * * *

4 (Outside the presence of the jury.)

5 THE COURT: This is the case of State of
6 Nevada v. Raven Navajo. Let the record reflect the
7 presence of the defendant in custody in his jail
8 clothes, his counsel, as well as Miss DiEdoardo who
9 is assisting counsel.

10 What's your name?

11 MS. KUZEMKA: Kuzemka -- Kristine Kuzemka.

12 THE COURT: So, you are co-counsel on
13 this?

14 MS. KUZEMKA: Yes, sir.

15 MS. DIEDOARDO: Your Honor, I'm only here
16 because I'm not third chair anymore.

17 THE COURT: All right. I thought I said
18 "consultant."

19 MS. DIEDOARDO: Fair enough, your Honor.

20 THE COURT: The representatives of the
21 State.

22 This is the time we had set for trial.
23 The jury is downstairs, but I understand there has
24 been some problems here.

25 MS. LUEM: Well, Judge, I guess for the

1 record to kind of give a little background,
2 Miss Navajo is charged with open murder and
3 initially indicted; there was also a count of
4 robbery which was subsequently dismissed by the
5 Court. There was an offer extended to Miss Navajo
6 this weekend by the State which basically was a
7 second-degree murder plus a fictitious battery with
8 use of substantial and an agreement that there would
9 be a consecutive five years on the bottom and a
10 right to argue on the top, and Miss Navajo rejected
11 that offer.

12 On Saturday -- we called to confirm with
13 her on Sunday, and she reaffirmed that she was not
14 interested in that offer. I conveyed that to
15 Mr. Stanton, and then yesterday evening called
16 Miss Navajo to speak to her about some of the trial
17 issues, and she had indicated to me that she wanted
18 to plead guilty -- change her plea of not guilty to
19 guilty and plead guilty to first-degree murder and
20 ask the Court to sentence her to the maximum. I
21 indicated to Miss Navajo that was against my advice,
22 that I would ask to be withdrawn from her case as
23 counsel if she intended on doing that, because I
24 simply could not support such a decision. She said
25 she understood, and that would be fine if that were

1 the case, but that she did not have any intention of
2 changing her mind. We discussed this for several
3 hours last night, a couple of different
4 conversations. And again this morning, she has
5 indicated that she wants to plead guilty; that she
6 didn't dress in court clothes because she has no
7 intention of going to trial and has prepared a
8 written statement to read to the Court, and
9 technically, it's addressed to Miss Schmalfeldt's
10 family, but explaining her motives for this
11 decision. So, I don't know if the Court intends on
12 having me withdrawn or --

13 THE COURT: No, the Court is not going to
14 allow you to withdraw.

15 MS. LUEM: In that case, I want the record
16 to be absolutely clear this has been discussed at
17 length with Miss Navajo, and it's completely
18 contrary to my legal advice that she go forward in
19 this fashion.

20 MS. KUZEMKA: Judge, I'd also like to add,
21 I was present for all those conversations with
22 Miss Luem and Miss Navajo, and it's against my
23 advice as well. We both admonished her of this
24 decision.

25 THE COURT: Miss Navajo?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Why are you taking this
3 action?

4 THE DEFENDANT: It's explained in the
5 statement. I don't know if you want to just wait
6 until I read it or if you would like to see it. I
7 would let you look it over, but all the explanations
8 are in here why I'm taking this instead of the plea
9 deal -- all of it.

10 THE COURT: Go on. I'm listening. You
11 can read it.

12 THE DEFENDANT: Okay. "First, I want it
13 known that I make this statement voluntary without
14 the" --

15 COURT REPORTER: Excuse me. "Without the"
16 what? Slow down.

17 THE COURT: You're reading too fast.

18 THE DEFENDANT: "My counsel, for the
19 record, is adamantly against it. I am in full
20 capacity of my mental facilities (sic) and sound of
21 body.

22 "Secondly, after I finish this statement,
23 I will be changing my plea from not guilty to guilty
24 of murder in the first degree.

25 "Nine months ago I started to do

1 something -- nine months ago I started to do
2 something with the last vestiges of humanity that I
3 could gather. I contacted Detective Marin of
4 Missing Persons and confessed my guilt in the death
5 of Brenda Schmalfeldt. After five days of
6 drinking -- after five days of drinking and trying
7 to gather my courage to end my own life in which I
8 could not do this, I was too much of a coward to do
9 even that. I heard they centered the investigation
10 on Brenda's boyfriend. I could not let any person
11 do a moment in jail for a crime that I committed.
12 But more importantly" --

13 THE COURT: Wait a minute. Take those
14 handcuffs off of him. You guys are in a court of
15 law. People are going to be treated with some
16 dignity in here. He can't even turn the pages.

17 (Handcuffs removed from defendant.)

18 THE COURT: Pick up the papers and read
19 it.

20 THE DEFENDANT: "More importantly,
21 Brenda's family needed to know."

22 THE COURT: You want to sit down? Is that
23 better?

24 THE DEFENDANT: No. Sorry.

25 "I thought I had done what I needed to do

1 in good vesting, and I stepped aside to allow the
2 legal process to do what it needed done. An added
3 charge of robbery provoked my ego and my pride, and
4 I let my attorneys finally try to man a defense
5 which I didn't want previously.

6 "I've served 16 years -- I served 16 years
7 in the military and took an oath on more than one
8 occasion to protect and defend this country, to
9 protect the people, people like Brenda, people like
10 her mother, her family and her friends, people like
11 my own two sons." I'm sorry. This is a lot tougher
12 than I thought it would be.

13 THE COURT: That's all right. Take your
14 time.

15 THE DEFENDANT: "I took pride in taking
16 these oaths and in the fact that I was a good guy.
17 Nine months ago in a drunken stupor, I betrayed my
18 oath, my upbringing, everything I believed in, and I
19 suddenly found that I was not the good guy anymore.
20 I was reminded this weekend by two smart lawyers of
21 the importance of what I had originally intended to
22 do when I started this chain of events. My ego and
23 my pride want me to think that I'm the important
24 matter, and I'm not. Brenda's family remains in my
25 mind, the only important relevant factor in any of

1 this. I think of her mom as I write the following:
2 She must know beyond all doubt that only what I
3 stated happened in my confession. Some have tried
4 to state something more evil happened. She must
5 know beyond all doubt that nothing did, for as a
6 parent -- for as a parent, I would need to know.
7 She mustn't be made to defend her daughter in court,
8 for I would not want that as a parent. She mustn't
9 be made to beg this Court for justice in front of
10 the world, and I'm sorry she's had to do that to
11 some extent already.

12 "Last night, I was asked why I didn't take
13 a deal that was offered for me for a murder two
14 plus. I can only think as a parent that would not
15 completely remove doubt from Brenda's mother's mind.
16 Some doubt would always linger if a deal was made.

17 "I hereby change my plea to guilty, and I
18 do not throw myself on the mercy of this Court.
19 Instead, for Brenda and for her mother, I ask for no
20 mercy. I ask that she not have to plead to get full
21 justice and complete peace of mind. I ask to be
22 sentenced here and now today to the stiffest
23 sentence of life in prison without possibility of
24 parole. I ask this in her behalf. No deals, no
25 promises, and perhaps with the last shreds of

1 dignity, I can give her family this peace of mind.
2 If I could have sought the death penalty, I would
3 have, but no, that would only relieve me of my guilt
4 and my cowardice that I could not do this on my own
5 nine months ago. Also know that on a daily basis,
6 moment by moment, having to live knowing what I've
7 done crushes on me like a weight. I just created my
8 own hell on earth.

9 "I'd like to thank Andrea, Kristina, my
10 friend Christina for representing me even against my
11 hardheadedness in all of this. Judge Gates -- I
12 give full respect and thanks to for his
13 professionalism, his impartiality and his respectful
14 treatment in my case. To those I've let down --
15 Barb, Mari Kat, Logan Morganna, forgive me, and I
16 know why you had to distance yourself from all this.
17 To all my adopted tea girl daughters, don't let this
18 discourage you, for I would have demanded this had
19 this been any of your lives, but mostly for my two
20 sons -- for my two sons who have hopefully no idea
21 about any of this going on, but should they become
22 aware, I hope they see and know that for most of my
23 life and here at the end, I at least always tried to
24 always be the good guy."

25 MR. STANTON: Judge, I've been unable to

1 secure into the secured wireless in the courthouse
2 for me to pull up the document over in my office
3 which is necessary for me to then send it to your
4 secretary.

5 THE COURT: You want to go up and get one?

6 MR. STANTON: I can, your Honor. I can go
7 to the ninth floor and have someone do it.

8 THE COURT: That's fine. We'll be at
9 recess for a few minutes until he gets back.

10 (Recess taken.)

11 THE COURT: Let the record reflect we're
12 back on the record. All the parties are present
13 with their attorneys, and we're outside the presence
14 of the jury.

15 Now, Miss Navajo, you read a statement
16 indicating that you wanted to plead guilty to the
17 charges, and you rejected all negotiations in this
18 case; is that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You still maintain that
21 position?

22 THE DEFENDANT: Yes, sir, I maintain that
23 position.

24 THE COURT: You want to plead guilty to
25 the Amended Indictment charging you with Count I,

1 First-degree Murder; is that correct?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You've had numerous
4 discussions with your lawyers about whether or not
5 you should plead guilty; is that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And they've advised you not
8 to?

9 THE DEFENDANT: Yes, sir, adamantly.

10 THE COURT: That's right.

11 You still want to plead guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Your true name is Raven
14 Navajo?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Did you have that legally
17 changed?

18 THE DEFENDANT: Yes, sir, Kentucky, five
19 years ago.

20 THE COURT: How old are you, sir, or
21 ma'am?

22 THE DEFENDANT: Forty-two.

23 THE COURT: Forty-three?

24 THE DEFENDANT: Forty-two -- 43 -- 43,
25 actually. I had a birthday in here that I missed.

1 THE COURT: How far did you go in school?
2 THE DEFENDANT: College. I was an
3 electronics engineer for 20 years.
4 THE COURT: You what now?
5 THE DEFENDANT: Electronics engineer for
6 quite a few years.
7 THE COURT: You can read, write and
8 understand English?
9 THE DEFENDANT: Yes, sir.
10 THE COURT: Did you read this Amended
11 Indictment?
12 THE DEFENDANT: Yes, sir.
13 THE COURT: Did you discuss this charge
14 with your lawyer?
15 THE DEFENDANT: Yes, sir.
16 THE COURT: Do you understand the charge?
17 THE DEFENDANT: Yes, I do.
18 THE COURT: How do you plead to the
19 charge?
20 THE DEFENDANT: Guilty, sir.
21 THE COURT: And are you making this plea
22 freely and voluntarily?
23 THE DEFENDANT: I am, sir.
24 THE COURT: Did anyone threaten you, force
25 you or coerce you into pleading guilty?

1 THE DEFENDANT: No, sir.

2 THE COURT: Did anyone make any promises
3 to you in order to get you to plead guilty of any
4 kind?

5 THE DEFENDANT: No, sir.

6 THE COURT: Did anyone promise you any
7 particular sentence or leniency?

8 THE DEFENDANT: No, sir.

9 THE COURT: Did anyone threaten you or
10 coerce you or make any kind of threats to you either
11 overt or not?

12 THE DEFENDANT: No.

13 THE COURT: And you are entering this plea
14 of guilty freely and of your own free will?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, do you know what the
17 possible penalties are for pleading guilty to this
18 crime?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And you discussed them with
21 your lawyer?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you understand that you
24 could be sentenced to life in the Nevada Department
25 of Corrections without parole?

1 THE DEFENDANT: I've asked for that, yes,
2 sir.

3 THE COURT: You understand that you can be
4 sentenced to life in the Nevada Department of
5 Corrections with the possibility of parole after a
6 minimum sentence of 20 years had been served?

7 Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Also, you can be sentenced to
10 a definite term of years, that is, 50 years in the
11 Nevada Department of Prisons with a minimum parole
12 possibility after 20 years.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You understand the matter of
16 sentencing is strictly up to me and no one else? No
17 one can promise you any particular sentence.

18 Even though you indicated to the Court
19 that you wanted to be sentenced to life in prison
20 without the possibility of parole, you understand
21 that the Court does not have to do that?

22 THE DEFENDANT: I know that. I
23 understand. Yes, sir.

24 THE COURT: I can sentence you to any of
25 the possibilities that's allowed by the statutes.

1 You understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And you understand no one can
4 promise you a particular sentence or leniency?

5 Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now, when you plead guilty,
8 you give up certain valuable constitutional rights.

9 You have the right to a speedy and public
10 trial by an impartial jury free of prejudicial
11 pretrial publicity at which time it is the burden of
12 the prosecution to prove your guilt beyond a
13 reasonable doubt.

14 In fact, we have a jury downstairs waiting
15 to hear this case.

16 You understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: But you want to -- you want
19 the Court to dismiss the jury and accept this guilty
20 plea; is that correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You don't want a jury trial --
23 you give up that right?

24 THE DEFENDANT: Correct, sir.

25 THE COURT: You also would have the right

1 to confront and cross-examine the witnesses against
2 you.

3 Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You would also have the right
6 to subpoena and compel witnesses to attend court and
7 testify for you.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You would also have the right
10 to testify or not testify, and if you did not
11 testify, the prosecution would not be allowed to
12 comment upon that fact to the jury.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You would also have the right
15 to the assistance of an attorney if this case went
16 to a trial.

17 Now, the Court has provided you with a
18 couple of lawyers as well as support staff and
19 investigators; is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You understand they would be
22 available to help you if you went to trial?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: In fact, they want to go to
25 trial.

1 They advised you against this; is that
2 correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: But you still want to plead
5 guilty?

6 THE DEFENDANT: Correct.

7 THE COURT: Also, if you went to trial and
8 were convicted, you understand that you would have
9 the right to appeal to the Nevada Supreme Court, and
10 we would provide you with a lawyer at the public's
11 expense to represent you on that appeal?

12 Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, do you waive and give up
15 all of these rights?

16 THE DEFENDANT: I do.

17 THE COURT: Are you sure about that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You've thought about it?

20 THE DEFENDANT: I have.

21 THE COURT: Now, when you enter a plea of
22 guilty before the Court can accept it, I must be
23 assured that, in fact, you are guilty of the crime.

24 Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Tell me if this is true and
2 correct what the State alleges in the Amended
3 Indictment.

4 The State alleges that you were present in
5 Clark County, Nevada on the 13th day of January of
6 2007.

7 Were you present in Las Vegas, Clark
8 County, Nevada on that date?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: The State alleges that you
11 willfully and without authority of law and with
12 premeditation and deliberation and with malice
13 aforethought, kill Brenda Schmalfeldt; is that true?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Did you strike the said Brenda
16 Schmalfeldt about the head and body with your hands
17 and feet?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Tell me in your own words what
20 happened and what you did.

21 THE DEFENDANT: I was intoxicated heavily
22 on the night that me and Brenda met at Zodie's Bar
23 and Grill. She talked about boyfriend problems at
24 one point. We ended up going back to my house to
25 watch a movie.

1 I have a question.

2 THE COURT: Yes.

3 THE DEFENDANT: My testimony is on file.
4 I have confessed to this crime. You have all this.

5 THE COURT: True, but when you enter a
6 plea --

7 THE DEFENDANT: Do you need to hear it
8 again?

9 THE COURT: When you enter a plea of
10 guilty, on the record and in open court, the Court
11 has to be assured that the elements of the crime are
12 met --

13 THE DEFENDANT: You need to hear it again.

14 THE COURT: -- so, I have to hear that, in
15 fact, you did this. So, just tell me -- I don't
16 want to hear the whole confession, but I just want
17 to hear exactly --

18 THE DEFENDANT: Yes, I struck Brenda
19 Schmalfeldt in the head, knocked her into my garage,
20 and then I proceeded to hit her about the head and
21 shoulders until she fell on my garage floor. Four
22 hours later, I awoke out of a stupor; I went
23 outside, and she was dead on my floor in the garage.

24 THE COURT: And did you -- now, this says
25 here with premeditation and deliberation.

1 Did you intend to kill her when you were
2 beating her?

3 THE DEFENDANT: No.

4 THE COURT: You did not intend to kill
5 her?

6 THE DEFENDANT: No.

7 THE COURT: Well, one of the elements of
8 murder of the first degree --

9 THE DEFENDANT: Well, I don't remember,
10 but I was in a blackout. I hit her once. I don't
11 remember how many times I hit her after that, and I
12 woke up on my couch. I beat her until she died.
13 Something is telling me in my stupor I had some kind
14 of deliberation that I was going to kill her. I
15 cannot say that in my mind today that I ever thought
16 about it.

17 THE COURT: Tell me this here: At the
18 time that you beat her, what caused you to beat her?
19 Were you angry at her for something?

20 THE DEFENDANT: Yes.

21 THE COURT: Why were you angry at her?

22 THE DEFENDANT: I thought she stole \$500
23 from my purse.

24 THE COURT: So, you thought she had stole
25 from you, and you became angry, and that's when you

1 started beating her when she started walking down
2 the stairs?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And did you all have an
5 argument about the money before you started beating
6 her?

7 THE DEFENDANT: She denied it, but there
8 was nobody else in the house.

9 THE COURT: All right.

10 Then, when she walked down the stairs, you
11 hit her from behind and started beating her --

12 THE DEFENDANT: Yes, sir.

13 THE COURT: -- knocked her down the
14 stairs --

15 THE DEFENDANT: From behind and through a
16 door into the garage and started hitting her in the
17 face, and that's the last thing I remember, and I
18 woke up.

19 THE COURT: There was blood all over the
20 place?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You didn't call the ambulance
23 or the police?

24 THE DEFENDANT: No, sir.

25 THE COURT: You didn't care if she lived

1 or died at that point?

2 THE DEFENDANT: She was dead.

3 THE COURT: She was dead. You knew she
4 was dead. All right.

5 Then what did you do? After she was dead,
6 what did you do then?

7 THE DEFENDANT: I don't recall.

8 THE COURT: What's the next thing --

9 THE DEFENDANT: I'm not sure exactly what
10 you mean. Right after I checked to see if she was
11 dead or --

12 THE COURT: Right. I think you said you
13 beat her and she was dead, then you went back into
14 the house.

15 THE DEFENDANT: Yes, sir. I closed the
16 door, went back in the house. I laid on my couch
17 for hours on end.

18 THE COURT: So, you left her in there for,
19 like, hours.

20 Then you got up and did what?

21 THE DEFENDANT: Okay. After I beat her
22 and -- I told you I blacked out. I woke up on my
23 couch. It was four hours after the incident.

24 THE COURT: Okay.

25 Then what did you do?

1 THE DEFENDANT: That's when I went out and
2 found she was still on the concrete floor. She was
3 dead.

4 THE COURT: And did you leave her there?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: When did you remove the body?

7 THE DEFENDANT: Four days later.

8 THE COURT: You left her in the garage for
9 four days?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Then when you removed the
12 body, where did you take the body to?

13 THE DEFENDANT: I took her to a dumpster.

14 THE COURT: And you put the body in a
15 dumpster?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: That's the last you heard?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: State, anything you want to
20 state?

21 MR. STANTON: A couple things, your Honor.
22 Relative to the evidence presented at
23 trial, the crime scene in the garage would indicate
24 that Miss Schmalfeldt suffered multiple blows, but
25 the blood evidence in the garage would indicate a

1 significant amount of blood of more commonly
2 associated with severe beating either by the
3 combination of a number of blows or the severity of
4 the blows; that substantial efforts were taken by
5 the defendant to clean up the crime scene
6 specifically by wiping down the blood spatter that
7 was on the wall and attempts to use charcoal
8 briquettes to mask the blood at certain aspects on
9 the floor and where the drag marks in blood indicate
10 that the body was drug to the trunk area of where
11 Miss Navajo's car was parked inside the garage.
12 According to the defendant's version of events,
13 Miss Schmalfeldt's body was placed in the trunk of
14 the car, and that the defendant drove for some
15 period of time with the body in the trunk of the
16 car.

17 In the Court's colloquy with the defendant
18 this morning, there may be some misimpression about
19 where the body was for four days. It's my
20 understanding of the evidence from both the
21 roommates, from Miss Navajo's statement and from the
22 physical evidence that, Miss Schmalfeldt's body
23 spent the vast majority of that time in the trunk of
24 the defendant's car until it was placed in the
25 dumpster. In addition, the defendant has made

1 statements that the wallet of Miss Schmalfeldt was
2 with her at the defendant's home during the last
3 moments of her life. In addition to disposing of
4 Miss Schmalfeldt in the dumpster, the defendant told
5 detectives that he took Miss Schmalfeldt's wallet,
6 some other personal belongings, put them in a trash
7 bag and dumped those items in a separate and
8 distinct dumpster than where the body was placed.
9 So, those are some facts that I would ask the Court
10 to inquire of the defendant, and then I have a
11 couple other comments regarding the record as to the
12 allocution of the defendant.

13 MS. LUEM: Judge, for the record, all of
14 this is in Miss Navajo's original statement to the
15 detective, so it's not, I don't think, anything that
16 needs further inquiry. The statement was after she
17 found --

18 THE COURT: Excuse me.

19 Miss Navajo, did you hear those statements
20 stated by the D.A.?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Were they correct?

23 THE DEFENDANT: As --

24 THE COURT: Pardon me?

25 THE DEFENDANT: As far as I can remember,

1 sir, it's been nine months, and I've been in a coma
2 for nine months now. I was --

3 THE COURT: You haven't actually been
4 in --

5 THE DEFENDANT: I will tell you that I
6 remember putting her body in my trunk. Exactly when
7 eludes me. I don't believe it was directly after.
8 I believe she was in my garage for a day or two.
9 She went in my -- I did not drive around with her
10 body in my trunk. Okay. That did not happen. The
11 only time that car moved with her body in the trunk
12 was when I went to put her in the dumpster.

13 THE COURT: Okay.

14 Tell me this here: Did you wipe down --

15 THE DEFENDANT: I wiped down --

16 THE COURT: -- the garage?

17 THE DEFENDANT: -- the garage.

18 THE COURT: So, basically what --

19 THE DEFENDANT: The briquettes were not
20 some kind of mastermind to disguise blood traces;
21 they were briquettes that were on the floor in our
22 garage when this happened. I don't know where this
23 is all coming from, but this was explained in my
24 statement.

25 THE COURT: So, at the time that you

1 killed her, it was your intent to kill her, and you
2 were angry at her, and you were mad at her, and you
3 wanted to beat her?

4 THE DEFENDANT: I was angry when I struck
5 her. I struck her once. I don't remember how many
6 times I struck her, because I went into a blackout,
7 and I don't remember my intent.

8 THE COURT: All right.

9 THE DEFENDANT: All I know is that she was
10 beat severely by me, and I can only think that my
11 intent in the blackout was to kill her.

12 THE COURT: All right.

13 Did you and your lawyer discuss whether or
14 not your drinking would be a defense to the intent?

15 THE DEFENDANT: Yes, sir. We discussed
16 it, yes, sir.

17 THE COURT: All right.

18 Miss Luem?

19 MS. LUEM: Yes.

20 THE COURT: What's your idea whether or
21 not this is a defense to intent -- the drugs -- I
22 mean, the alcohol?

23 MS. LUEM: Judge, we interviewed at least
24 three bartenders that served Miss Navajo the night
25 previous. They indicated she consumed massive

1 amounts of alcohol; she was staggering around the
2 bar, in fact, even walking into the wall at one
3 point. We discovered what she drinks, the rate at
4 which she drinks it, and there's evidence from one
5 of the State witnesses, Miss Navajo's roommate Mari
6 Rosenberger, who said that when she saw Miss Navajo
7 at the apartment with the person that she thinks may
8 be Brenda Schmalfeldt, Miss Navajo was intoxicated.
9 When she saw Miss Navajo again sitting on the couch
10 three hours later, presumably after the homicide,
11 she was still intoxicated.

12 We noticed an alcohol expert, Dr. Melvin
13 Pohl, who is an addictionologist. We met with him
14 yet and have gone over this defense with Miss Navajo
15 ad nauseam; that is why I cannot support her plea to
16 premeditated deliberate murder, Judge, because I
17 don't believe that the elements exist. The intent
18 to kill is negated by her consumption of alcohol,
19 her high levels of intoxication, and I simply don't
20 believe that the elements of premeditation and
21 deliberation can be met here.

22 THE DEFENDANT: Can I say something?

23 MS. LUEM: I disagree with her -- I
24 mean --

25 THE COURT: Yes.

1 MS. LUEM: -- so, if the Court wants me to
2 state my position, that's my position.

3 THE DEFENDANT: When I turned 28 years
4 old, I recovered in alcoholism. I stayed sober for
5 11 years up until about three years ago, and I fell
6 back into drinking. I know I'm an alcoholic. I
7 know that I black out. I know that I do things with
8 anger when I drink to excess. I drank to excess
9 this night. I drank to a blackout this night. I
10 knew I had the ability to kill.

11 THE COURT: State?

12 THE DEFENDANT: It's the only thing -- I
13 don't want to push all this to the side and throw it
14 away with everything that -- I've tried to do the
15 right thing twice now, okay, and wording is getting
16 in my way. Okay? So, I beat this woman about her
17 head until she died. If that's not intent, whether
18 I was sober or drunk off my ass and can't remember,
19 I had the intent to kill her, so, yes, intent to
20 kill was there. I will plead to that.

21 Does that help the wording of getting this
22 done? Not to insult your court or to get upset --
23 I'm sorry, but --

24 THE COURT: That's not it.

25 THE DEFENDANT: -- I've confessed and I've

1 made a statement to switch my plea, and it's like
2 people are trying to stop me from doing this, and
3 there's no reason for it. Look at the evidence
4 Mr. Stanton has. Look at the scene his detectives
5 had to photograph. Look at the amount of blood all
6 over my car. If I didn't have the intent to kill in
7 my head, then something is severely wrong with this
8 system. Thank you. Sorry.

9 THE COURT: Mr. Stanton.

10 MR. STANTON: Judge, I understand
11 Miss Luem's perspective. Obviously, the State
12 anticipated that that would be the focus of the
13 defense, just so the record is clear, because
14 obviously, if the Court accepts the plea, there
15 won't be a trial, and I don't want the record to be
16 devoid of some critical evidence as it relates to
17 the defendant's state of mind at or near the time of
18 killing Miss Schmalfeldt.

19 The defendant's roommates Miss Rosenberger
20 and Miss Casey both observed the defendant after
21 what is the beating. They observed the defendant in
22 a red negligee sitting on a couch in the downstairs
23 portion of their home. Two kind of important facts
24 about that. Number one, based upon the defendant's
25 dress, there was a substantial part of her body that

1 is now exposed to the roommates when they talk to
2 her. There is absolutely no blood on Miss Navajo's
3 person. There is a substantial amount of blood not
4 only in the garage but evidencing that that was
5 transferred to Miss Navajo during the beating and
6 during the carrying of the body to the vehicle. It
7 is clear from that evidence, I would argue to this
8 jury, that after the beating and before dressing in
9 the negligee and sitting on the couch, Miss Navajo
10 had the presence of mind to clean the substantial
11 amount of blood off her person and her clothes. So,
12 I want that fact to be also on the record as part of
13 the evidence relating to the defendant's state of
14 mind during this operative time period.

15 MS. LUEM: Judge, this is contrary to
16 Miss Navajo's statement, which is, she hit
17 Miss Schmalfeldt, she left the garage, she changed
18 her clothes, and she sat on the couch for four
19 hours, and after that period of time, she went into
20 the garage and moved the body after she sobered up.
21 Obviously, we can disagree with whether
22 Miss Navajo's original statement is true or false,
23 but it's not a fact, Judge. That's their inference.

24 THE COURT: This is your inference. This
25 is your statements too.

1 MS. LUEM: I'm telling you what her
2 statement is, Judge. They're basing it on her
3 statement.

4 THE COURT: I don't know.

5 MR. STANTON: I'm not basing it on the
6 statement and just as I'm not basing on the
7 statement the use of the charcoal. I'm just telling
8 you what the photographs and what the crime scene
9 evidence is.

10 In addition, your Honor, I want the record
11 to be clear that at the time Miss Navajo had
12 previous counsel, Miss DiEdoardo, in a
13 pre-indictment conversation with Miss DiEdoardo,
14 there had been discussions about dropping the
15 robbery because Miss Navajo was adamant in insisting
16 that no robbery took place, but that she was
17 inclined to plead to first-degree murder, so I want
18 the record to reflect that at least as far as my
19 knowledge of the defendant's state of mind regarding
20 her intent and desire to accept responsibility for
21 what the evidence suggests the crime that was
22 committed, it is not just in the past couple of days
23 but, indeed, this existed in a pre-indictment stage.

24 MS. DIEDOARDO: Your Honor, briefly,
25 because I was a participant in one of those

1 conversations that Mr. Stanton was mentioning, my
2 recollection of my conversation with Mr. Stanton was
3 that Miss Navajo -- there was some discussion about
4 her pleading to a second. There was not any
5 discussion of pleading to a first at that time, and
6 this would have been prior to her Indictment before
7 the Grand Jury.

8 THE COURT: Did you want to say something,
9 ma'am? Miss Navajo?

10 THE DEFENDANT: When I did this, when I
11 did the confession, I didn't know what I was
12 pleading to in legal terms. I was trying to explain
13 to people what had happened, that's all. I don't
14 know if it was manslaughter, murder two or murder
15 one. I don't know the legalities. I didn't know
16 the legalities when I walked into my friend's
17 office. I called Detective Marin first. I wasn't
18 even getting a lawyer involved. I was going to turn
19 myself in to the police and do the confession then
20 without lawyers around, but Detective Marin wasn't
21 in his office when I called, and I called twice.
22 That's when I had a lapse to call my friend, not my
23 lawyer at the time, just my friend Christina, who
24 happened to be a lawyer, and asked for her advice.
25 She brought me into her office. I don't know what

1 I -- I never said that I was pleading to murder. I
2 told them what happened, and I said please handle it
3 from here, just make sure that it all goes legally
4 smooth. And now I've been in CCDC for nine months
5 because my own ego and my own pride has let me miss
6 the point of doing the confession in the first
7 place. It has nothing to do with me or where I go
8 from here. It has to do with Brenda Schmalfeldt's
9 family -- to make sure that they know that -- I
10 don't understand why there's a trial going on over
11 here with throwing more stuff at me or the same
12 stuff that I've already pled to from the D.A. when I
13 just read a statement pleading to murder in the
14 first degree.

15 I'm pretty sure that's the biggest one I
16 can get, right?

17 THE COURT: Yeah, I know, but we want --

18 THE DEFENDANT: And I begged you --

19 THE COURT: True.

20 THE DEFENDANT: -- for the worst, stiffest
21 sentence. So, I'm still not sure why Mr. Stanton is
22 trying to play a trial here.

23 THE COURT: No; he's not trying to play a
24 trial.

25 THE DEFENDANT: He is.

1 THE COURT: Listen.

2 THE DEFENDANT: The statements --

3 THE COURT: Listen, listen, listen.

4 THE DEFENDANT: Go ahead.

5 THE COURT: I have to accept the plea --

6 THE DEFENDANT: I understand.

7 THE COURT: -- like I told you before, but

8 I have to make sure that the elements of the crime

9 are there and that you committed them. We have

10 people pleading guilty to stuff they didn't do all

11 the time. I have to make sure, otherwise, this plea

12 will not stand if I don't make sure that it's

13 voluntarily given, that it's knowingly given, and

14 that, in fact, the elements are there that you

15 committed the crime as charged. That's what I have

16 to do. In this crime of murder, not only must you

17 willfully kill, but you must enter into it with

18 premeditation and deliberation and malice

19 aforethought. That's what has to be proven or you

20 have to admit to it, and that's what all he's doing.

21 Your lawyer states there was no premeditation and

22 deliberation and intent because you were drunk, and

23 they're saying that and he's trying to show that

24 there was -- that you had the mind and that you were

25 sober enough to know what you were doing.

1 THE DEFENDANT: He said I had the mind to
2 know what I was doing because I changed into a
3 nightgown.

4 THE COURT: I don't know.

5 Hold on a minute.

6 THE DEFENDANT: Can I sit down?

7 THE COURT: Yes, sit down.

8 Hold on be a minute. Let me take a short
9 recess.

10 Counsel, let me see you.

11 (Sidebar conference outside the presence
12 of the court reporter.)

13 (Recess taken.)

14 THE COURT: Miss Navajo?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You said that you had been
17 drinking, and the lawyer stated something about
18 there was evidence that you had been drinking. Of
19 course, the State said there was evidence that you
20 had the presence of mind to go and do certain
21 things. You know alcoholism and being drunk is a
22 defense to intent if the jury believes you and the
23 evidence to premeditation and deliberation.

24 But you are intent and are insisting on
25 pleading guilty to first-degree murder; is that

1 correct?

2 THE DEFENDANT: I've been faced with a
3 charge from your court, open murder.

4 THE COURT: Right.

5 THE DEFENDANT: Okay.

6 I'm pleading guilty to what I did, and if
7 intent says that I have to say that I looked at this
8 woman and I said, "You're going to die" or "I'm
9 going to kill you," that never happened. It never
10 dawned on my mind in a coherent state that I wanted
11 to kill this woman, but I was in a blackout, and if
12 anybody knows anything about blackouts, you're not
13 in your state of mind. I've driven 80 miles in a
14 blackout and not remembered making any transition.
15 Okay. So, I can't say that yes, I definitely wanted
16 to kill her. When I hit her, I was trying to stop
17 her from leaving my house is what I was trying to do
18 when I hit her the first time.

19 THE COURT: What about when you hit her
20 all the other times?

21 THE DEFENDANT: The rage -- that's what
22 I'm saying. The rage came in; that's when I blacked
23 out. That's when I don't remember what happened
24 after that. I understand your frustration with
25 this. I have the same problem.

1 THE COURT: Hold on a minute.

2 The State offered to let you plead to
3 second-degree murder which doesn't require
4 premeditation and deliberation.

5 THE DEFENDANT: Correct.

6 THE COURT: Which, if you were in an
7 alcoholic beverage blackout, would seem to be the
8 correct charge.

9 Do you want to confer with your lawyer
10 whether or not you want to take this?

11 THE DEFENDANT: No, sir. I understand
12 what you're saying, and again, we're going back to
13 legality.

14 THE COURT: That's what I have to deal
15 with. You're in a court of law.

16 THE DEFENDANT: I get all that, and
17 certain legality doesn't cover what happened here.

18 THE COURT: I understand, but what you
19 tell me --

20 THE DEFENDANT: I'm trying to say the
21 State offered me a deal. I was told the family was
22 good with it.

23 THE COURT: I'm not worried about that.
24 I'm worried about what the elements are. See, when
25 I hear, like, alcoholic blackout, stupor, I don't

1 see premeditation, deliberation and the intent to
2 kill here, but all other kinds of murder is murder
3 of the second degree. That's what it sounds like
4 you're telling me, so that's what the Court can't
5 accept.

6 THE DEFENDANT: I understand that, sir.

7 THE COURT: I want you to confer with your
8 lawyers over this, all right -- again, sir. If you
9 want to plead, I want to take your plea, but it has
10 to be -- the elements of the crime have to be
11 present.

12 Try to explain it, would you? I'm going
13 to take a short recess.

14 MS. LUEM: I have, Judge, and I'll try to
15 explain it to her again.

16 THE DEFENDANT: I -- I -- I got it. I do
17 understand it, believe me, I do.

18 THE COURT: Is there any other way?

19 MS. DIEDOARDO: Judge, may I make a
20 suggestion? Maybe this may be a way forward.

21 THE COURT: What's that?

22 MS. DIEDOARDO: Perhaps for everyone's
23 consideration, if -- I know Miss Navajo has been --

24 THE COURT: Why don't you talk to
25 Miss Navajo first --

1 MS. DIEDOARDO: Sure.

2 THE COURT: -- about what you're going to
3 say, and you guys can come and see me, otherwise, we
4 can go to trial and see what happens.

5 Approach the bench, counsel.

6 (Sidebar conference outside the presence
7 of the court reporter.)

8 THE COURT: Miss Navajo, I can't accept
9 your plea of guilty --

10 THE DEFENDANT: Gotcha.

11 THE COURT: -- because of the alcoholism,
12 what your lawyer stated and this alcohol and
13 blackout you're in, but you can't go to trial
14 dressed in jail clothes, and I understand that you
15 refuse to put on any clothes; is that right?

16 I'm going to vacate the trial and reset
17 it.

18 MS. DIEDOARDO: Thank you, your Honor.

19 THE COURT: When can we reset it?

20 Maybe you'll change your mind about
21 dressing out and coming to trial and whatever.

22 THE CLERK: We could reset it in December.

23 THE COURT: Is that okay?

24 Reset it in December.

25 THE CLERK: How about a calendar call of

1 December 3rd?

2 THE COURT: We have another trial on
3 December 3rd.

4 THE CLERK: Do you want to set it in
5 February?

6 THE COURT: That's fine.

7 THE CLERK: Calendar call will be
8 February 4th.

9 MS. LUEM: Judge, I think I have another
10 trial that following week.

11 THE COURT: Do it before then.

12 I don't care if it's in the middle of a
13 civil stack.

14 MR. STANTON: Judge, would the Court be
15 inclined to start the trial tomorrow?

16 THE COURT: Tomorrow -- no. I doubt if
17 she changes her mind tomorrow.

18 THE CLERK: How about a calendar call on
19 January 22nd with a trial on January 29th --

20 THE COURT: That sounds like a good date.

21 THE CLERK: -- which are both Tuesdays
22 because the Monday is a holiday.

23 THE COURT: Just give us the date. That's
24 fine.

25 THE CLERK: January 22nd is the calendar

1 call -- I'm sorry -- January 23rd, which is a
2 Wednesday; criminal day is the calendar call at
3 9:00 a.m. with a jury trial the following Tuesday,
4 January 29th at 10:00 a.m.

5 THE COURT: We'll just go to trial and let
6 a jury decide what you're guilty of.

7 We're in recess.

8 Hold on just a minute while we have
9 everybody here.

10 Miss Navajo, do you still want the Public
11 Defender to represent you since she had made a
12 motion to withdraw?

13 THE DEFENDANT: I don't care anymore; I
14 really don't. I've tried to do the right thing and
15 you guys just won't fucking let me do it, so can do
16 whatever the hell you got to do, and I'm just going
17 to sit here. Okay? That's all I can do. I don't
18 know what else I can do.

19 THE COURT: I have to follow the law.

20 THE DEFENDANT: You got to follow the law
21 and I got to follow my conscience. I don't know
22 which one should be taking precedent in here.

23 THE COURT: The law in a courtroom.

24 THE DEFENDANT: All right. You guys --
25 I've defended this law for most of my life, okay.

1 The laws that you guys sit here and dole around this
2 courtroom, I had to sit overseas in a war and miss
3 my kids' birthdays, their Christmases, my
4 anniversaries, and you are going to sit here and
5 tell me you can't get this through, to give one
6 woman, not me, because I don't give a shit about
7 with me -- there's a woman here who needs closure,
8 and me taking a fucking deal from this guy for a
9 15-year sentence is not worth her daughter's life.

10 THE COURT: The maximum is life in prison.

11 THE DEFENDANT: No. The deal they threw
12 me was 15 years to 25 on whatever they're doing.
13 I'm sorry. I'm getting upset and I shouldn't be.

14 THE COURT: It should be 15 to life, sir.
15 You can do life and they might let you out at 15,
16 but if you tell them you don't want to get out at
17 15, they can keep you in there for the rest of your
18 life.

19 THE DEFENDANT: Well -- okay.

20 Did that not come through in this, like,
21 life is going to worry me?

22 THE COURT: I'm just telling you what the
23 penalty is for second-degree murder.

24 THE DEFENDANT: Right.

25 THE COURT: It's ten to life.

1 THE DEFENDANT: The deal they offered me
2 was 15 --

3 THE COURT: I think it's ten to life.

4 THE DEFENDANT: -- and they gave me five
5 more for --

6 THE COURT: That doesn't mean you're going
7 to get out in 15.

8 THE DEFENDANT: Okay.

9 THE COURT: That's just the minimum that
10 you would be eligible for parole.

11 THE DEFENDANT: Are you a parent?

12 THE COURT: Yes.

13 THE DEFENDANT: What would you demand --

14 THE COURT: That has nothing to do with
15 it, sir, or ma'am.

16 THE DEFENDANT: It does.

17 THE COURT: No, no. What we care about is
18 making sure the law is followed. I don't know;
19 maybe they can come up with something else or you
20 guys can come up with another agreement, or better
21 yet, just go to trial and let the jury decide. They
22 might decide you're guilty of first-degree murder,
23 at which time they can give you life without.

24 THE DEFENDANT: And put Brenda's mom
25 through a trial, make her get up there and defend

1 her daughter? You sat here and made me say the
2 stuff I didn't want to say. I've already told
3 everybody what happened. I don't know why this is
4 such a problem, but now you're going to put this
5 woman up to defend her daughter, and then you're
6 going to make her come back and plead that you give
7 me the max sentence, and that's not -- you're right,
8 it's not going to make her feel any better, but it's
9 going to give her some kind of peace of mind to know
10 if you give me the max and I asked for it, that
11 everything I said in my statement was exactly what
12 happened, because I had no reason to lie -- no
13 deals, no promises, no secrets.

14 THE COURT: We understand that, but the
15 problem is --

16 THE DEFENDANT: I killed the woman. How
17 much premeditation do you need?

18 THE COURT: If you tell me you were drunk
19 and you don't remember anything --

20 THE DEFENDANT: Right.

21 THE COURT: -- that means you don't have
22 the intent or you might not have the intent or the
23 premeditation or deliberation which is what
24 first-degree murder requires. If you tell me you
25 don't remember anything, how do we know you had the

1 intent to kill her? In fact, you said you didn't.
2 You said you were only trying to stop her from
3 leaving the house.

4 THE DEFENDANT: Okay. I'm done. Do what
5 you need to do.

6 THE COURT: You want to keep the Public
7 Defender on?

8 THE DEFENDANT: Whatever.

9 THE COURT: All right. They can stay on.
10 You guys can think about it and maybe you can come
11 up with something else.

12 (WHEREUPON, THE PROCEEDINGS WERE
13 CONCLUDED.)

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