

FILED IN THE COMBINED COURTS
OF TELLER COUNTY, COLORADO FEB 27, 2019

**DISTRICT COURT, TELLER COUNTY, STATE OF
COLORADO**

Court Address: 101 W. Bennett Ave.
P.O. Box 997
Cripple Creek, CO 80813

FEB 27 2019

SHEILA GRIFFIN
CLERK OF COURT

Plaintiff: PEOPLE OF THE STATE OF COLORADO

▲ COURT USE ONLY ▲

vs.

Defendant: PATRICK FRAZEE

and,

Non-Party Movant: ABC News

Attorneys for Movant:
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Case No. 18-CR-330

Division:

**MOTION BY ABC NEWS
FOR ACCESS TO EXHIBITS ADMITTED INTO EVIDENCE
DURING THE PRELIMINARY HEARING**

Movant, American Broadcasting Companies, Inc. ("ABC News"), by and through its undersigned counsel at Ballard Spahr, LLP, hereby respectfully moves this Honorable Court for access to the exhibits admitted during the Preliminary Hearing conducted in open court on February 19, 2019. As grounds for this Application, movant states as follows:

1. Counsel for ABC News has conferred in good faith with the counsel of record in this case and has been authorized to inform the Court that the People do not oppose the relief sought herein only with respect to the audio recording that was played in open court, and the Defendant opposes this motion in its entirety.

2. As a member of the news media, and as a member of the public, ABC News has standing to seek access to judicial records on file in this Court. *Star Journal Publ'g Corp. v. Cnty. Court*, 591 P.2d 1028 (Colo. 1979); *Globe Newspaper Co. v. Superior Court for Norfolk Cnty.*, 457 U.S. 596, 609 n.25 (1982); *Times-Call Publ'g Co. v. Wingfield*, 410 P.2d 511 (Colo. 1966).

3. ABC News respectfully requests that the Court grant it access, to make copies, of all exhibits – including, but not limited to, audio and video tapes, photographs, and documents – that were introduced and admitted at the Preliminary Hearing, pursuant to Colorado's Criminal Justice Records Act, § 24-72-301, *et seq.*, C.R.S., as well as the First Amendment to the Constitution of the United States.

4. Under Colorado's Criminal Justice Records Act this Court is a "custodian" of "criminal justice records," *see* § 24-72-302(3), C.R.S. That statute provides that members of the public who wish to inspect "criminal justice records" are also afforded **the right to obtain copies** of such records. *See* § 24-72-306, C.R.S. *See also* Colo. Judicial Dep't, *Public Access to Court Records* § 3.20 ("Public access' means that the public may inspect **and obtain a copy** of information in a court record." (emphasis added)); *see id.* § 3.10(a) (including within the definition of "court record" any "document, information, or other item that is collected, received, or maintained by a court or clerk of court in connection with a judicial proceeding").

5. "It is clear that courts of this country recognize a general right [of the public] to inspect *and copy* public records and documents, including judicial records and documents." *Nixon v. Warner Commc'ns*, 435 U.S. 589, 597 (1978) (emphasis added).

6. In *Star Journal Publ'g Corp. v. Cnty. Court*, 591 P.2d 1028, 1030 (Colo. 1979), Colorado's Supreme Court cited with approval ABA Standard 8-3.2 governing public access to judicial records. Notably, the most recent version of those ABA Standards (approved in 2013) provides that:

Standard 8-5.2. Public Access to Judicial Proceedings and Related Documents *and Exhibits*

- (a) Subject to the limitations set forth below, in any criminal matter, the public presumptively should have access to all judicial proceedings, related documents *and exhibits*, and any record made thereof not otherwise required to remain confidential. A court may impose reasonable time, place and manner limitations on public access.

ABA Standard on Fair Trial and Free Press (2013), available at http://www.americanbar.org/groups/criminal_justice/standards/crimjust_standards_fairtrial_blk.html#3.2 (emphasis added).

7. Although the ABA has not yet approved for publication the Commentary to the 2013 version of the Fair Trial Free Press Standards, the 1992 version contained this informative commentary on the meaning of the term "access":

The central purpose of the right of access is not simply to maintain an open courtroom. The point is for the public, *not just those attending a proceeding*, to be able to gain information relevant to an assessment of the judicial authority. *The nature of information will often dictate the most appropriate form of the genuinely public access.* For instance, *exhibits presented in open court . . . are not thereby necessarily accessible to the public, even those attending the trial [for other court proceeding], in any meaningful way.* Such exhibits may need to be made available to the public outside the courtroom for purposes of reading or viewing in order to facilitate informed and accurate dissemination of that information.

ABA Standards for Criminal Justice 8-3.2 (3d ed. 1992) (emphasis added).

8. Numerous courts throughout the country have recognized a right of the press and the public, under the common law, to obtain copies of exhibits that have been admitted into evidence in an open court proceeding. *See, e.g., In re Griffin Television*, 7 Media L. Rep. (BNA) 1947, 1948 (W.D. Okla. 1981) (quoting *In re Nat'l Broad. Co.*, 635 F.2d 945, 952 (2d Cir. 1980)) (emphasis added):

There is a presumption in favor of public inspection and *copying* of any item entered into evidence at a public session of a trial. Once the evidence has become known to the members of the public, including representatives of the press, through their attendance at a public session of court, it would take the most extraordinary circumstances to justify restrictions on the opportunity of those not physically in attendance at the courtroom to see and hear the evidence, when it is in a form that readily permits sight and sound reproduction.

See also United States v. Guzzino, 766 F.2d 302, 303-04 (7th Cir. 1985) (stating that “the common law right of the public to inspect and copy judicial records . . . includes the right of the media to copy audio and video tapes which have been admitted into evidence in a criminal trial”); *see also Valley Broad. Co. v. United States Dist. Court*, 798 F.2d 1289, 1293 (9th Cir. 1986); *In re CBS, Inc.*, 828 F.2d 958 (2d Cir. 1987); *In re Philadelphia Newspapers, Inc.*, 746 F.2d 964 (3d Cir. 1984); *In re Nat'l Broad. Co.*, 635 F.2d 945, 952 (2d Cir. 1980).

9. Here, several documentary exhibits were admitted into evidence, discussed in open court, and served as the basis for this Court’s finding – at the conclusion of the preliminary hearing – that probable cause had been shown to hold the Defendant over for trial. Specifically, the People introduced some 30 or more photographs of evidence and the crime scene, and played an audio recording of a police interview of the Defendant, in open court. These documentary exhibits, admitted into evidence, have been the subject of press attention. *See Exhibit 1.*

10. Documentary evidence admitted in pre-trial criminal proceedings have been found by other courts to be subject to either a First Amendment or common law right of access of public inspection and copying. *See, e.g., Commonwealth v. Upshur*, 592 Pa. 273, 924 A.2d 642 (2007) (audio tape of 911 call played at preliminary hearing); *Commonwealth v. Amore*,

No. CP-46-CR-3723-2016 (Order of June 2, 2016) (allowing press intervenor to copy videotape played and admitted into evidence at preliminary hearing) (courtesy copy attached); *New York v. Hyson*, 30 Media L. Rptr. (BNA) 2566, 2567 (N.Y. Sup. Ct. 2001) (granting media intervenor access to videotape interview of defendant describing death of an infant because “once a videotape . . . has been admitted into evidence and played in open court there is a First Amendment protect[ed] right to anyone to inspect and obtain a copy of the tape”) (courtesy copy attached); *Cf. United States v. Saunders*, 611 F. Supp. 45 (S.D. Fla. 1985) (stating that numerous courts “have repeatedly recognized that once a tape has been admitted into evidence and played in open court, the common law and the first amendment establish the right of those interested to inspect and copy the tape.”).

11. The Defendant’s anticipated opposition – on grounds that release to ABC News (and other members of the press or public) of the exhibits that formed, in part, the basis of this Court’s finding of probable cause and proof evident/presumption great will deny him the right to a fair trial – is not well taken. First, extensive information concerning the evidence leading to Defendant’s arrest and the charges filed against him has already been disclosed to the public, during the preliminary hearing, in the 10-page arrest affidavit of Commander Chris Adams, and in other official statements.

12. In addition to the detailed recitation of the blood evidence found in various locations within Kelsey Berreth’s residence (*see* Affidavit of Chris Adams ¶¶ 27-28, 68-69), and other detailed description of Krystal Lee’s testimony and cell-phone tower information in the arrest warrant affidavit, the District Attorney and Assistant District Attorney, quite properly, held a 19-minute press conference, immediately after the preliminary hearing, in which they recited the evidence that had been presented in open court. *See, e.g.* <https://www.youtube.com/watch?v=1PNfpYLVLVvA>.

13. Second, Defendant cannot possibly show that all of the myriad alternative means available to protect his rights to a fair trial are not available or would prospectively prove to be ineffectual. *See, e.g., Commonwealth v. Amore, supra; U.S. v. Abegg*, 1993 WL 246145, at *3, 21 Media L. Rptr. (BNA) 1442, 1443 (S.D. Fla. 1993) (granting CNN access to copies of audio and videotapes admitted into evidence and played in open court, notwithstanding defendant’s claim that publicity would jeopardize his right to a fair trial in a subsequent state court prosecution because “the defense offers no reason why Abegg’s concerns could not be allayed through intensive *voir dire*, and, if necessary, a change of venue or trial continuance.”).

14. The same arguments apply, with equal force, as a rejoinder to the People’s objection to the public release of the photographic exhibits that were published to the Court during the Preliminary Hearing, but were not “published” or displayed to the members of the public in the gallery. It is immaterial that some of the exhibits admitted into evidence at the Preliminary Hearing (the photographic ones) were not displayed in open court; the reason the public must be provided access to them is the same regardless of whether they were previously shown to the public in open court – to assess the propriety of this Court’s ruling, at the close of

the Preliminary Hearing, that *evidence had established* probable cause and proof evident/presumption great. As Colorado's Supreme Court has recognized:

Public confidence cannot long be maintained where important judicial decisions are made behind closed doors and then announced in conclusive terms to the public, *with the record supporting the court's decision sealed from public view.*

P.R. v. District Ct., 637 P.2d 346, 353 (Colo. 1981) (citation omitted) (emphasis added).

15. Nor is there any merit to the contention that public release of the photographic exhibits admitted at the Preliminary Hearing will render it impossible to seat an impartial jury for the trial herein, in light of the panoply of alternative means available to the Court to do so. *See, e.g., People v. Botham*, 629 P.2d 589, 596 (Colo. 1981) (in order to protect the defendant's right to a fair trial, "[t]he trial judge may: (1) cause extensive voir dire examination of prospective jurors; (2) change the trial venue to a place less exposed to intense publicity; (3) postpone the trial to allow public attention to subside; (4) empanel veniremen from an area that has not been exposed to intense pretrial publicity; . . . or [(5)] use emphatic and clear instructions on the sworn duty of each juror to decide the issues only on the evidence presented in open court.").¹

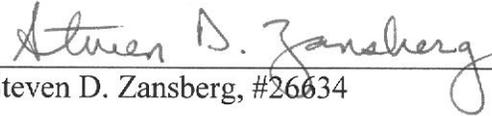
16. Furthermore, not only did witnesses at the Preliminary Hearing describe the content of the photo exhibits, the jury that will be seated to try this case will see those photographs, so allowing the public its right to inspect the documentary evidence that formed the basis for this Court's exercise of judicial authority cannot be shown to pose any prejudice to either the People or the Defendant.

WHEREFORE, movant ABC News respectfully asks that the Court enter an Order directing the Clerk of the Court to make available for copying (or provide a copy) of all exhibits that were admitted into evidence and discussed in open court during the Preliminary Hearing.

¹ *See also In re Charlotte Observer*, 882 F.2d 850, 856 (4th Cir. 1989) ("voir dire can serve in almost all cases as a reliable protection against juror bias however induced"); *United States v. McVeigh*, 153 F.3d 1166, 1183-84 (10th Cir. 1998) ("Questioning by the court and the parties [during voir dire] goes a long way towards ensuring that any prejudice, no matter how well hidden, will be revealed. . . . [W]e give due deference to jurors' declarations of impartiality and the trial court's credibility determination that those declarations are sincere.").

Respectfully submitted this 26th day of
February, 2019, by:

BALLARD SPAHR, LLP


Steven D. Zansberg, #26634

*Attorneys for American Broadcasting
Companies, Inc.*

CERTIFICATE OF MAILING

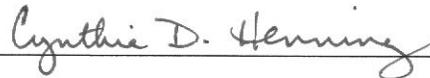
I hereby certify that on this 26th day of February, 2019, a true and correct copy of this **MOTION BY ABC NEWS FOR ACCESS TO EXHIBITS ADMITTED INTO EVIDENCE DURING THE PRELIMINARY HEARING** was delivered via FACSIMILE to the attorneys below and was deposited in the U.S. Mail, postage prepaid, correctly addressed to the following:

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Cynthia D. Henning

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

NO. CP-46-CR-0003723-2016

vs.

CHERIE AMOORE

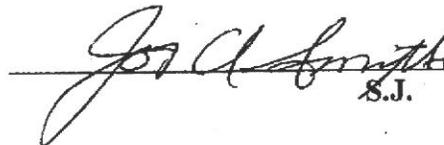
ORDER

AND NOW, this 2nd day of June, 2016, upon consideration of NBC10's Motion to Intervene and Opposition to Defendant's Motion to Seal, videotape played and admitted into evidence at Defendant's preliminary hearing, it is hereby **ORDERED** that the said Motion to Intervene is **GRANTED**.

FURTHERMORE, After hearing and argument in open Court, the Court finds that the Defendant failed to carry her burden to overcome the presumption in favor of openness to public judicial record by showing prejudice that could not be remedied by Jury Voir Dire, under the decision of Pennsylvania Supreme Court in Commonwealth vs. Upshur, 592 Pa 273 924a (2007).

THEREFORE, the Defendant's Motion to Seal is **DENIED**.

BY THE COURT:


S.J.

2016 JUN -2 PM 2:27

CLERK OF COURT
MONTGOMERY COUNTY
PENNA.

Copy of the above Order to the following:

- Interoffice Mail
 - Orally in open Court on the record
 - Hand delivered in open Court to the following:
 - Mailed via USPS to the following:
- Commonwealth's Attorney: Brianna Bringwood
Defense Attorney: Ross Miller
3rd Party: Gayle Sproul
Court Administration - Criminal Division:
Clerk/Secretary: Tiffany Santangelo
Date:

CR0019
R: 12/22/2011

https://gazette.com/news/grisly-account-of-murder-of-kelsey-berreth-provided-by-idaho/article_1a988022-347c-11e9-a71a-63ce7dabbf0e.html

Grisly account of murder of Kelsey Berreth provided by Idaho nurse

By: Lance Benzel, Ellie Mulder Feb 19, 2019 Updated Feb 22, 2019



CRIPPLE CREEK • Idaho nurse Krystal Jean Kenney gave investigators a blow-by-blow account of the Thanksgiving Day murder of Woodland Park mother Kelsey Berreth and the grisly disposal of her body, a Colorado Bureau of Investigation agent testified Tuesday.

When Kenney entered Berreth's townhome two days after the killing, she found a horrifying scene — blood splattered on the walls, floor and children's toys.

Patrick Frazee, 32, allegedly had blindfolded Berreth with a sweater, telling her he wanted her to guess the fragrance of a scented candle. Instead, he bludgeoned her with a baseball bat, Kenney told investigators. She said she was in Idaho, and Frazee described the deed and enlisted her to come to Colorado to help him clean up the crime scene and create the appearance that Berreth had left town of her own will — partly by sending messages from the victim's phone.

"You don't know how hard it was to go have Thanksgiving dinner after killing her," Frazee allegedly told Kenney, according to testimony by Colorado Bureau of Investigation Agent Greg Slater.

Friends saw Patrick Frazee as doting father and hard-working rancher; possible motive for Kelsey Berreth killing revealed

The alleged murder plot and ensuing cover-up were described for the first time at a preliminary hearing for Frazee, whose case has been steeped in secrecy for weeks. Attorneys and investigators are silenced by a gag order, and many investigative documents are held under seal.

Fourth Judicial District Judge Scott Sells ruled Tuesday that evidence was sufficient to merit a murder trial for Frazee, who remains held in the Teller County jail without bond. A trial likely will be scheduled when Frazee returns to enter a plea March 4.

RAW: Patrick Frazee enters Teller County Courthouse for hearing

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In addition to Kenney's statements to investigators — including an account of Frazee burning Berreth's remains on his Florissant property, as his mother looked on — investigators detailed cellphone records, possible blood found under floorboards in Berreth's townhome and surveillance video that showed Frazee at a Woodland Park gas station filling a can with gasoline that might have been used to incinerate her body. Kenney can be seen in the same footage, investigators said.

The judge also heard a recording of a phone call between Frazee and a Woodland Park police officer investigating Berreth's disappearance. He told the officer that Berreth had tried to end things between them and suggested that the child's custody could be at stake.

After the killing, Frazee reportedly stuffed Berreth's body in a black bag, put it in the back of his pickup and drove to celebrate Thanksgiving with family, including his estranged brother, a Colorado Springs police officer.

Cellphone records show that Frazee's and Berreth's phones were connecting to the same cell tower near Cripple Creek, indicating the phones were together after Frazee left Woodland Park that day, authorities say.

Kenney told investigators that Frazee later drove the body to Nash Ranch in Fremont County and placed it on top of haystacks in a barn, Slater said. Kenney reportedly went to the ranch and helped Frazee retrieve the body. With Berreth's body in a Toyota Tacoma, they drove to Frazee's property in Teller County, where he used gasoline and oil to burn a tote containing the body and the baseball bat used to kill her.

"She (Kenney) stayed there for several hours while the fire burned," Slater testified. At one point at least, Frazee's mother, Sheila Frazee, reportedly came outside and looked.

📄 Nurse who pleaded guilty in Kelsey Berreth case feared for her life, friend says

Berreth, 29, went missing Nov. 22 — on Thanksgiving Day — and is presumed dead, though her remains haven't been found. Frazee was arrested Dec. 21 and later charged in the apparent murder.

Kenney, 32, of Hansen, Idaho, is an ex-girlfriend of Frazee's who rekindled her relationship with him in March 2018, without Berreth's knowledge, according to testimony.

She pleaded guilty to evidence tampering earlier this month, under a plea deal that requires her to cooperate with investigators and take the stand against Frazee. She faces up to 18 months in prison.

During the two months before the murder, Frazee allegedly had urged Kenney three times to kill Berreth, accounting for three counts of solicitation of murder against Frazee.

In convincing her to help, Frazee claimed Berreth was a "terrible mother" who abused their 14-month-old daughter. Authorities say they have no evidence that the child was harmed, and she appeared happy and healthy at the time.

In late September, the couple discussed drugging Berreth's coffee, and Kenney went so far as to knock on Berreth's door posing as a neighbor with a caramel macchiato from Starbucks, Berreth's favorite drink. Although Kenney said she handed Berreth the drink, she hadn't put drugs in it, as she and Frazee allegedly had discussed.

Angered, Frazee later asked her to attack Berreth with a metal pole, which he supplied, and with a baseball bat, Kenney told authorities. Each time, Kenney said, she lost her nerve.

Then, on Nov. 22, Frazee called Kenney in Idaho and said, "You got to get here now. You got a mess to clean up," Slater testified.

That set her on her way to Colorado with a clean-up kit including rubber gloves, a protective body suit and trash bags. She said she walked into Berreth's home Nov. 24 after retrieving the keys from Frazee.

"When she opened the door, it was horrific," Slater said.

Kenney said she spent three to four hours in Berreth's townhome, bleaching the walls and floors, removing the curtains and couch pillows and hunting for a tooth that Frazee said had been knocked out, Slater said.

As her involvement deepened, Kenney said, she grew to fear for herself and a child, believing Frazee would target them as he allegedly targeted Berreth.

During her confession, Kenney took investigators to Nash Ranch on Dec. 21 to show them where Berreth's body was stored, and to Frazee's property, showing where it was burned, Slater said. FBI evidence technicians and a Colorado Department of Public Safety arson investigator studied the alleged burn area and found evidence of accelerant but no remains. Frazee reportedly told Kenney he would "scoop her up" and dispose of her remains in a landfill or elsewhere.

Kenney told investigators that she drove to Idaho with Berreth's phone at Frazee's request. She texted him and Berreth's work supervisor from the phone.

Kenney also claimed she intentionally left blood inside Berreth's fireplace and on a baby gate in the townhome, among other locations, hoping it would be discovered. For the same reason, she said, she intentionally turned on Berreth's phone at times while leaving Colorado, knowing it could be linked to the movements of her own phone. She reportedly believed it would tip off investigators and create a trail.

Kenney said she threw the keys to Berreth's townhome into a gorge in Idaho and burned the woman's cellphone in her yard.

Prosecutors had sought to call Sheila Frazee to the stand Tuesday, but Judge Sells ruled that she did not have to testify after her attorney said in court she would invoke her right against self-incrimination. In petitioning the court, El Paso County District Attorney Dan May said Frazee allegedly told his mother to lie about Berreth in a campaign to paint her as a bad mother. May also said Sheila witnessed the burning of evidence in the killing.

Slater also revealed that forensic testing found traces of Berreth's blood in her bathroom. Berreth's family notified the CBI after finding blood on a toilet Dec. 6. Woodland Park police and the CBI had come up empty in their sweep of the house Dec. 3 and 4.

Cellphone records from the day of Berreth's disappearance showed that Frazee called his mother, Sheila, at 4:24 p.m., Slater said. His phone connected to the tower that services Berreth's house.

At 4:37 p.m., Frazee called Kenney's Idaho number — also from the vicinity of Berreth's home — and received a return call from that number minutes later.

Woodland Park police Cmdr. Chris Adams told the court that on Nov. 23, Berreth's and Frazee's phones were "hitting off" the tower that services Frazee's Florissant home.

Kenney was seen on surveillance video Nov. 24 at a Conoco in Florissant. Also captured in that video was Frazee, filling a 5-gallon jug of gasoline.

On Nov. 25, Kenney's and Berreth's phones simultaneously pinged in Grand Junction.

Also that day, Berreth's supervisor got a text from her saying she wouldn't be at work and was going to visit her grandmother, Slater said. Kelsey's mother, Cheryl, told Slater that Kelsey never mentioned the trip.

Cheryl also told Slater that she got a text from Berreth's phone Nov. 24 saying she'd call the next day. That call never came, said Slater.

Sean Frazee, Patrick's brother and a Colorado Springs police officer, dropped by Patrick's house at 2:30 p.m. Nov. 22, Adams said. Patrick was not home but arrived "a little later" with the couple's child. Nothing was out of the ordinary, Adams said. Patrick and Sean Frazee were described as "estranged."

Adams also described a Dec. 2 recorded call between Frazee and a Woodland Park police officer. Frazee told the officer that Berreth wanted to end their relationship. She wanted "space," he told police. "We'd figure out custody arrangements from there," Frazee said.

In the recorded call, Frazee also claimed Berreth suffered from depression and went to a clinic in California for treatment in August 2018. After getting out, she complained of the stress from weekday work commutes between Woodland Park and Pueblo.

In 2017, Frazee confiscated Berreth's gun after she threatened herself with it, Slater said, saying the episode was related to investigators by Berreth's mother. The couple were arguing about finances when Berreth said, "Maybe I would be better off dead" and pointed the gun at her head.

Before Tuesday, the only possible motive for the presumed killing was found in an amended complaint filed Friday in U.S. District Court in the wrongful-death lawsuit brought by Berreth's family against Frazee. In it, they claim Frazee, who had the keys to Berreth's townhome, demanded full custody of their daughter and killed her when she refused.

Slater testified Tuesday that detectives found a custody petition during a search of Frazee's home. The documents were filled out beginning in August but weren't filed with a court, Slater said.

The case, which has attracted international attention, also led to a custody battle over the couple's daughter pitting Berreth's parents against Frazee's mother. A judge has granted temporary custody to Berreth's parents.

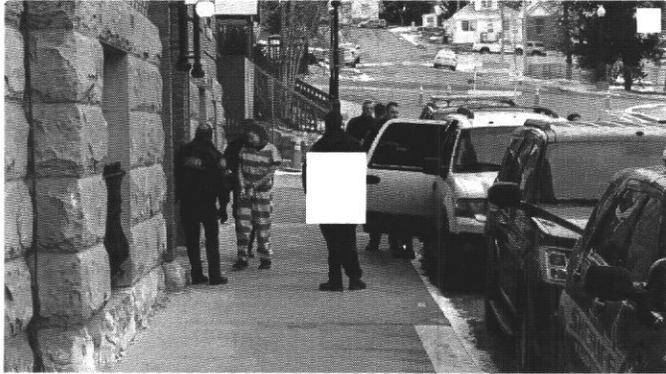
Frazee's friends have described him as a hard-working rancher, farrier and horse trainer who lived on his family's 35-acre property in Florissant. Some speak of him as an average Joe, while others describe him as a caring father who would help anyone.

Their claims that Frazee has been unfairly connected to the death took a jolt earlier this month when Kenney pleaded guilty to tampering with evidence.

"I learned Patrick Frazee had committed a homicide," Kenney testified, reading from a handwritten statement. She cried while admitting that she helped hide a cellphone, disclosing nothing on the record about the murder or other parts of the apparent cover-up.

Kenney's plea deal bars her from discussing the case.

The Gazette's Liz Forster contributed to this story.



Ashley Franco
@AshleyKKTv

#PatrickFrazee just arrived at the courthouse for his preliminary hearing today. @KKTv11News #KelseyBerreth

40 7:32 AM - Feb 19, 2019

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Lance Benzel

Reporter

I cover legal affairs for The Gazette, with an emphasis on the criminal courts. Tips to lance.benzel@gazette.com

Ellie Mulder

Ellie is a crime and breaking news reporter. She's a proud Midwesterner, stationery hoarder and Earl Grey tea enthusiast. After interning at The Gazette in 2015, she joined the newspaper's staff in 2016.

NEWS > CRIME & COURTS

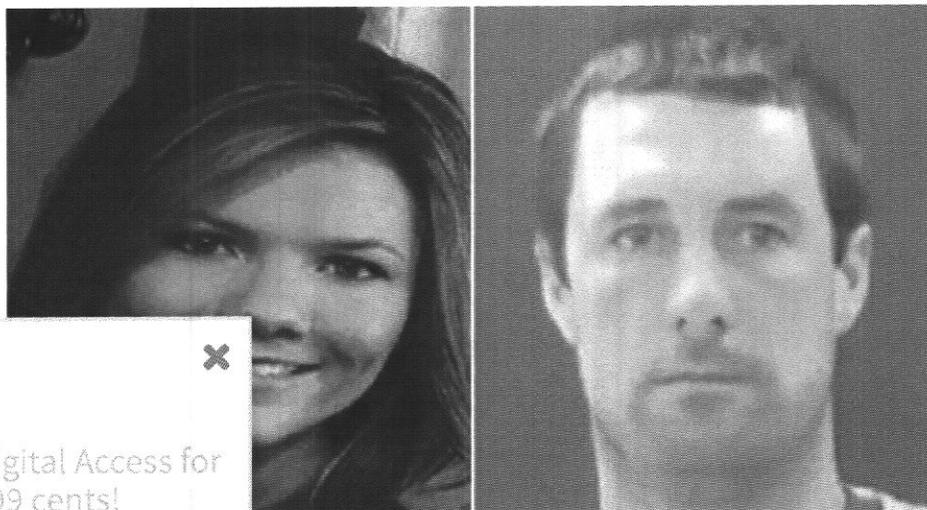
Patrick Frazee tied a sweater around Kelsey Berreth's face and beat her to death with a bat, Idaho nurse told police

Krystal Jean Lee Kenney told investigators she helped clean up blood at Berreth's home

By **KIRK MITCHELL** | kmitchell@denverpost.com | The Denver Post

PUBLISHED: February 19, 2019 at 3:32 pm | UPDATED: February 19, 2019 at 10:12 pm

A nurse who said she loved Patrick Frazee told investigators he confessed to her that he tied a sweater around fiancée Kelsey Berreth's face, beat her to death with a baseball bat and burned her body on his ranch, according to gruesome courtroom testimony Tuesday.



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The nurse, Idaho resident Krystal Jean Lee Kenney, told police she watched Frazee pour gas and oil onto the fire as a large plastic tote bag burned away, revealing a “lump” that she believed to be Berreth’s body, Colorado Bureau of Investigation Agent Gregg Slater testified at Frazee’s preliminary hearing in Teller County District Court.

The day-long hearing — which ended with Judge Scott A. Sells ruling prosecutors had presented sufficient evidence to take the case to trial — offered the first explanation of how authorities believe the 29-year-old Woodland Park mother was killed, and what happened to her body.

Frazee, 30, is charged with two counts of murder and three counts of solicitation to commit murder in his fiancée’s death. Prior to Tuesday’s hearing, Teller County prosecutors filed additional charges, including tampering with a dead body and two sentence enhancers.

RELATED: *Timeline for the disappearance and death of Kelsey Berreth*

He’s due back in court April 8 to be arraigned on the charges; at that point, he will be asked to enter a plea, and a trial date should be set.

Slater testified that Kenney admitted to investigators that Frazee asked her to kill Berreth several times — including by putting poison in her coffee in September.

Kenney told Slater that she bought Berreth’s favorite mocha coffee at Starbucks, took it to Berreth’s townhome and gave it to her under the guise that Kenney recently moved next door to her. However, the agent said Kenney claimed she didn’t poison the drink.

Kenney told investigators that Frazee was angry when he learned she did not poison his fiancée. Kenney texted him later, apologizing for not killing Berreth. But he texted her that she would have another opportunity, Slater testified.

He then asked her to beat Berreth with a metal pipe he provided on Oct. 15 and put her body in a dumpster. About a week later, he asked her to beat Berreth to death with a baseball bat.

Kenney drove to Berreth’s townhome twice, but on both occasions couldn’t bring herself to do it because that wasn’t what she was like, Slater said.

But Slater confirmed that authorities had not received any reports of abuse of Kaylee and that she was a happy girl with no prior injuries.

“I’ll have to do it”

When Kenney failed three times to execute their plans, Frazee called her and said, “I guess if you can’t do it, I’ll have to do it.”

On Nov. 22, Kenney revealed to investigators, Frazee told her in a phone call: “You need to get out here now. You’ve got a mess to clean up.”



Colorado Springs Police Department

Krystal Jean Lee Kenney

Kenney obediently collected items to clean the home, including a full-body hazardous materials suit, a hair net, a box of plastic gloves, slip-on booties and bleach. She drove 700 miles to Frazee’s ranch and picked up a key to Berreth’s townhome at the gate to his ranch. When she opened the townhome, the scene was horrific, she told authorities.

There were blood spatter and stains all over the walls, wood floors, toys and furniture, Slater testified. It took her four hours to clean. She told police she filled garbage bags with items too difficult to clean, including curtains, toys and pillows. She found a complete tooth, including roots, on the floor. She threw that away. Slater told the court.

Exhausted, Kenney wanted to return home to Idaho, Slater said, but Frazee allegedly told her that she was in it now and had to follow through to the end.

They went to a barn where Frazee had hidden Berreth's body in a large tote bag on top of a haystack. They took Berreth's remains to Frazee's ranch, Slater testified. Frazee put Berreth's body on a metal trough, filled it with wood, doused it with gas and oil, and lit it on fire, he said.

Kenney told investigators that Frazee said he'd scooped Berreth's remains from the fire after it went out, and either left them in a dump or threw them in a river.

Blood and cellphones

Slater testified that after law enforcement searched Berreth's house twice in early December and found no evidence of blood, Berreth's parents texted pictures they took in her bathroom of blood in the toilet and on the doorknob and floor. CBI technicians then went to the home and found blood on the exterior of the bathtub, on the toilet, a doorknob, on the floor and beneath a trash can, in a light fixture, on a towel rack and vanity hinges, and on the walls. There was blood on the refrigerator and evidence it was wiped down.

Tests showed that it was Berreth's blood. Slater said investigators believed at that time that Berreth met with foul play. When they learned that the main attack had happened in the living room, investigators tore up the wood floor and found traces of what they believe to be Berreth's blood all over the room, Slater said.

The prosecution's case is largely built on evidence surrounding Berreth's cellular phone. Although Frazee claimed he last spoke with Berreth at 12:27 p.m. on Thanksgiving Day, investigators determined that her phone ended up at his ranch in Florissant that night based on pings off of nearby cellular towers, Slater testified.

Kenney admitted that she took Berreth's cellular phone to Idaho to throw off the investigation. While she traveled through Colorado, Utah and Idaho, it was apparent that Kenney's personal phone was in the exact same location as Berreth's phone, based on cellular towers, Slater said.

The case has captured the attention of national media representatives who huddled outside the 1904 courthouse while it snowed, photographing and

Berreth's body has never been found, and prosecutors had not previously specified what evidence they have to prove she is dead. Prosecutors also have not said what motive drove Frazee to allegedly kill the mother of his child.

Berreth was last seen on Nov. 22 shopping at a Safeway grocery store with the couple's daughter, Kaylee.

On Feb. 8, Kenney, a Twin Falls, Idaho, nurse, pleaded guilty to felony tampering in the same Cripple Creek courthouse, acknowledging she took Berreth's cellphone to Idaho to disrupt the investigation into the missing woman's disappearance.

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Kirk Mitchell

Kirk Mitchell is a general assignment reporter at The Denver Post who focuses on criminal justice stories. He began working at the newspaper in 1998, after writing

Authorities to search landfill for the remains of Kelsey Berreth for 16 to 80 days



Kelsey Berreth (Facebook/MGN)

By Tony Keith | Posted: Fri 3:09 PM, Feb 22, 2019 | Updated: Fri 4:51 PM, Feb 22, 2019

CRIPPLE CREEK, Colo. (KKTV) - The search for the remains of a missing Colorado mom will continue at a landfill.

The Woodland Park Police confirmed on Friday authorities will be searching the Midway Landfill in Fountain on Tuesday tied to Kelsey Berreth case.

"Based on information developed in this case, investigators are now focused on recovering Kelsey's remains and any additional evidence that may be identified during the search of the landfill," Woodland Park Police wrote in a release.

The search is expected to last 16 to 80 days.

At the end of Tuesday's preliminary hearing, a judge ruled there was enough evidence to send her accused killer and mother of his own child to trial. An arraignment is set for April 8. Investigators say a Frazee beat his fiancée to death with a baseball bat after failing to convince a woman he was having an affair with to commit the killing. Berreth was a 29-year-old flight instructor who had a 1-year-old daughter with Frazee.

Frazee has not entered a plea. He's being held in jail without bond before his trial.

Scroll to the bottom of this article for video of the press conference held by the district attorney and other officials after the preliminary hearing.

Click here to read the arrest affidavit, released by the courts Wednesday.

Patrick Frazee, clad in his inmate attire, made an appearance in court on Tuesday for his preliminary hearing. Authorities believe he killed Kelsey Berreth, of Woodland Park. New charges were announced against Frazee on Tuesday. Among the new charges, tampering with a deceased human body and violent crime causing death. The main charges remain the same, first-degree murder and solicitation of murder.

In the afternoon, authorities testified, revealing the disturbing details they believe led up to Berreth's murder. Berreth's body has yet to be found.

Krystal Kenney, a woman from Idaho tied to the case, reportedly told investigators her role in the crime. Kenney said she was involved in a romantic relationship with Frazee. Kenney claims Frazee told her Berreth was physically abusive toward her 14-month-old daughter. Investigators didn't find any evidence of that claim. There are no hospital records of abuse and no reports made to the Department of Human Services, according to officials.

Later in the day, it was revealed Kenney told investigators Frazee drove Berreth's body to Nash Ranch in Fremont County after killing her and placed her on top of haystacks in a barn. This information came out publicly after as a law enforcement official described what he believes led up to Berreth's murder.

Testimony from the CBI agent revealed the chain of events from Kenney's eyes. Before Nov. 22, Kenney said Frazee originally asked her to poison a drink and give it to Berreth as a way to "get rid of her." Frazee allegedly wanted Kenney to develop a "rapport" with Berreth, posing as a new neighbor. Kenney went to Berreth's house and claims she introduced herself with a fake name and gave her a cup of coffee that wasn't laced with anything.

Frazee was allegedly upset when he learned Berreth wasn't poisoned. Kenney told investigators Frazee asked her two more times to kill Berreth, once with a metal pipe and once with an aluminum bat. Both times she claims she couldn't do it.



Hover for Circular



Hover for Circular



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Hover for Circular

According to testimony from an investigator with the Colorado Bureau of Investigation, blood matching Berreth's was found in multiple locations in her townhouse bathroom, leading investigators to believe that is where she was killed.

Frazeo allegedly told Kenney he blindfolded Berreth with a sweater and beat her with a baseball bat, according to testimony given by an agent with the Colorado Bureau of Investigation. Testimony from authorities goes on to state Berreth's body was put in a black bag and then in a truck. Soon after Frazeo allegedly took the body to a ranch in Fremont County.

Colorado Bureau of Investigation Agent Gregg Slater testified Tuesday that Kenney described the scene inside Berreth's home as "horrific." Kenney told police she brought gloves, a protective body suit and trash bags from her home in Idaho at Frazeo's request.

Then Kenney states she received a call from Frazeo on Nov. 22. Frazeo allegedly said, "You got to get here now. You got a mess to clean up." On Nov. 24 Kenney claims she was on her way to Colorado with a clean-up kit. She told investigators when she got to Berreth's house, there was blood on the walls, floor and even children's toys. Kenney claims she cleaned everything and even took a tooth out of an air duct vent. She used bleach to clean everything down, according to testimony shared in court. Kenney also claims she purposely left blood spatter in areas of the house for investigators to find. Berreth's daughter is believed to have been in the home during the murder, based on the information provided by Kenney.

Kenney told authorities she went back to Nash Ranch in Fremont County and helped retrieve Berreth's body. From there they reportedly went to Frazeo's property in Florissant and used gasoline to burn the black bag containing Berreth's body and the baseball bat that killed her. The body reportedly burned for hours.

Kenney then says she took Berreth's phone to Idaho. She claims she intentionally turned on the phone to tip off investigators and create a trail.

Tuesday's preliminary hearing comes just days after new documents filed in a wrongful death lawsuit were revealed. They suggest Frazeo killed Berreth because he wanted full custody of their 1-year-old daughter.

The Woodland Park Police Department is offering a \$25,000 reward for information that helps them find Berreth.

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Click "See Ashley Franco's Other Tweets" for more from the 11 News reporter during the preliminary hearing:

Ashley Franco @AshleyKKTV · Feb 19, 2019
Replying to @AshleyKKTV
Slater: there was a distinctive white residue on the couch during the Dec 21 investigation of #kelseyBerreth townhome. @KKTV11News

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Slater says Krystal Lee walked the FBI and CBI through #KelseyBerreth townhome and explained what the crime scene looked like. @KKTV11News
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Judge has ordered #PatrickFrazee be unlocked from handcuffs to take notes. @KKTV11News



Ashley Franco
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Prosecutors have called Sheila Frazee to the stand. She's being represented by an attorney. She's refusing to answer any questions @KKTV11News #PatrickFrazee #KelseyBerreth

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More from recording: #PatrickFrazee said the stress of commuting from Pueblo to Woodland Park was getting to her. She "had enough of the arrangement. We were in two different worlds."

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Ashley Franco
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Recording: Last time #PatrickFrazee received a text from #KelseyBerreth was the 25th of Nov. in the morning. She asked him to give her her space. @KKTV11News

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NEWSTRACKR

Court Update: Patrick Frazee's Lover Was Told To Drug Kelsey Berreth's Coffee

February 19, 2019 at 10:01 pm Filed Under: Florissant, Kelsey Berreth, Krystal Jean Lee Kenney, Patrick Frazee, Teller County, Woodland Park



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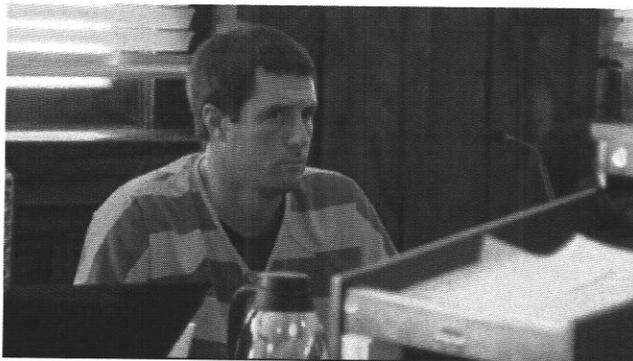


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CRIPPLE CREEK, Colo. (CBS4) – The Idaho woman who pleaded guilty to hiding evidence in the Kelsey Berreth murder investigation said that Patrick Frazee, who has been charged with his fiancée's murder, said Frazee told her to kill Berreth. Krystal Jean Lee Kenney also told investigators that she was in a romantic relationship with Frazee.



Patrick Frazee in court (credit: CBS)

The new information was revealed in Teller County Court on Tuesday during the preliminary hearing for Frazee. Up until this

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point, little was known about what led to the arrest of the Florissant man in late December. Berreth, 29, was last seen on Thanksgiving and is presumed dead.

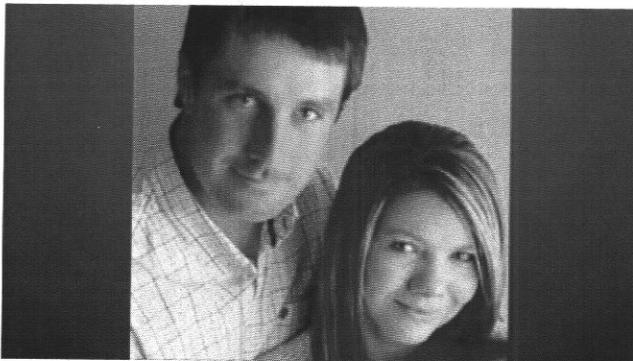
After the hearing that lasted several hours on Tuesday, Teller County Judge Scott Sells confirmed that there is enough evidence for Frazee to stand trial for murder and other charges.

During a search of Berreth's Woodland Park home when she was first reported missing, investigators initially found no evidence of foul play. Her parents reported finding blood in the bathroom. Investigators tested blood found on the toilet, bathtub exterior, trash can, electrical outlet, door hinges and towel rack, and determined that it belonged to Berreth.



(credit: CBS)

Kenney told detectives that Frazee beat Berreth to death with a baseball bat on Thanksgiving Day and then called her to help clean up blood inside the home. She described the scene inside the home as "horrific" and said that she brought gloves, a protective body suit and trash bags from her Idaho home.

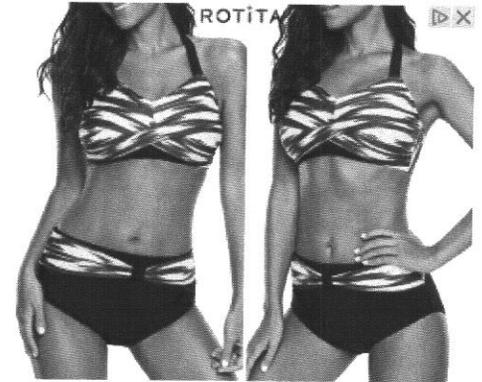


(credit: Facebook/Missing Mother – Kelsey Berreth)

Kenney told police that Frazee claimed that Berreth abused the couple's 1-year-old daughter and that he was afraid she would harm the child. CBI agents testified that there was no evidence of abuse.

"We heard evidence that Patrick Frazee contacted Krystal Lee in Idaho on three separate occasions had her come to Colorado to murder Kelsey," said Jennifer Viehman, the prosecutor.

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Kenney said Frazee suggested that she drug Berreth's favorite coffee drink, a caramel macchiato, and give it to Berreth. She also told police that she carried the drugs that she could use to poison the coffee. Police said Kenney admitted to buying the drink to give to Berreth but that she didn't put any drugs in that drink.

"Krystal tells investigators that she didn't comply with any of those and that the last time she was here on October 21 she sat and said 'I can't do this...' and tells Patrick 'I can't do this,'" said Viehman.



Krystal Lee Kenney (credit: CBS)

Frazee, 32, was charged more than a month after the last sighting of Berreth. She was last seen on surveillance video with the couple's daughter at a grocery store near her home.

Berreth's body has not been found.



(CBS)

Frazee has not entered a plea and has been in custody since his arrest.

Earlier this month, Kenney, 32, pleaded guilty to helping derail the investigation by tampering with evidence, specifically Berreth's cellphone. Kenney agreed to testify against Frazee.



Krystal Lee Kenney (credit: CBS)

This week, prosecutors added a charge accusing Frazee of tampering with a deceased body and two charges of committing a crime of violence. That could result in a harsher sentence for Frazee.

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Kelsey Berreth case: Patrick Frazee to stand trial for murdering Colorado mom, judge rules

By Samuel Chamberlain

Published February 19, 2019

Fox News

A Colorado man accused of killing his fiancée will stand trial on murder and other charges -- including tampering with a deceased body -- later this year, a county judge ruled following a preliminary hearing Tuesday.

Patrick Frazee, 32, is scheduled to be arraigned in the death of 29-year-old Kelsey Berreth on April 8. He has been held in jail since his arrest in late December. Berreth, who had a 1-year-old daughter with Frazee, was last seen alive on Thanksgiving Day, and her body has not yet been found.

Testimony during the daylong hearing centered on what Frazee's paramour, 32-year-old Krystal Jean Lee Kenney, told investigators during their probe into Frazee's disappearance. Colorado Bureau of Investigation Agent Gregg Slater testified that Kenney told police Frazee characterized Berreth as an alcoholic who had physically abused the couple's daughter, Kaylee. Slater said there was no evidence that was the case.

Slater testified that Frazee began trying to convince Kenney to kill Berreth in September of last year. Kenney told police Frazee suggested a number of methods to kill Berreth, including poisoning her coffee and beating her with a metal pipe or baseball bat. According to Slater, Kenney said she failed to follow through with Frazee's instructions, leading him to say at one point at the end of October: "I guess if you can't do it, I'm going to have to."



Kelsey Berreth, 29, was last seen alive on Thanksgiving Day. (Woodland Park Police Department)

Slater also testified that Kenney told police that Frazee called her at her Idaho home on Thanksgiving Day and told her: "You need to get back out here right now, you've got a mess to clean up." When Kenney arrived at Berreth's townhouse in Woodland Park, Colorado two days later, she found a "horrific" scene with blood spattered on the walls and floors of Berreth's townhome, Slater said.

Kenney told police that Frazee convinced Berreth to wrap a sweater around her head and guess the scent of various candles then beat her to death with a baseball bat and stashed her body on a ranch. After she cleaned the house, Kenney said she went with Frazee to retrieve Berreth's body and watched as Frazee burned it along with the baseball bat on his property, Slater said.

She said Frazee later told her he planned to throw the remains in a dump or river.



Krystal Jean Lee Kenney has admitted to tampering with evidence. (Colorado Springs Police Department via AP)

Kenney took Berreth's phone to Idaho, where she sent text messages to Frazee and Berreth's employer posing as the dead woman then burned the phone, Slater said.

Kenney told police she wanted to please Frazee and feared that he would harm her or her family if she did not cooperate, Slater said. She has since pleaded guilty to tampering with evidence and is required to testify against Frazee as part of her plea agreement with prosecutors.

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The testimony did not reveal prosecutors' theory for a motive for why Frazee would kill Berreth. Her parents argue in a wrongful death lawsuit that they believe Frazee wanted full custody of the couple's 1-year-old daughter. The child has remained with them while the criminal case proceeds.

Investigators initially said Berreth was last seen on surveillance video with the couple's daughter at a grocery store near her home. However, police later found footage on a neighbor's surveillance camera showing Berreth, Frazee and their daughter at the entrance of Berreth's townhome later that afternoon.

Fox News' Kelly Burke and The Associated Press contributed to this report.

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