

4. The call received by dispatch was from Michelle Eberhardt. She claimed that she had been taking a shower in the basement of 2538 S.E. Shawnee Heights Road when she heard a "pop" sound. She reported that she went to the master bedroom where she found Gerald Eberhardt shot with an apparent gunshot wound to the head. Michelle Eberhardt reported that she did not think Gerald had shot himself, and that she and Gerald were the only people in the home.
5. Gerald Eberhardt was killed by a single gunshot wound to the head.
6. Subsequent investigation by the Shawnee County Sheriff's Department included extensive and exhaustive interviews with Michelle Eberhardt, Scott Mosher, Derrick Haase and Stephanie Menard, among several other subjects all conducted on October 25, 2009.
7. Scott Mosher is the 19 year old son of Michelle Eberhardt and the step son of Gerald Eberhardt. Scott, Michelle, and Gerald all lived at 2538 Shawnee Heights Road.
8. Interviews with Michelle and Scott and Court records show that they have a tumultuous history since Michelle and Gerald Eberhardt married. Among the multitude of issues between Scott and Gerald are two incidents that Scott describes to Detectives in his interview with them. One incident occurred when Scott was 12 years old and he claims Gerald Eberhardt beat him, choked him, and held a gun to him during a domestic dispute. Another incident occurred more recently, in 2008 when there was a domestic dispute between Gerald and Michelle Eberhardt and Scott stepped in and "beat his (Gerald's) ass." Scott served a sentence for domestic battery as a result of this second incident. In his interview,

Scott claimed there were many other incidents of domestic violence. Scott confessed that he committed the murder of Gerald Eberhardt fueled by his anger with Gerald for the pattern and history of domestic violence. Scott went on to confess that he and his mother had planned the killing of Gerald Eberhardt.

9. The investigation further revealed that in the week before Gerald's death on October 25, 2009, Michelle and Scott had tried to hire an acquaintance of Scott's by the name of James to kill Gerald. A few days before October 25, 2009 Scott and Michelle had agreed with James to have Gerald killed for \$2,000. The plan between Scott, Michelle and James was that Scott and Michelle would leave \$2,000 in Scott's inoperable car which was parked on the property while they left the house to establish an alibi. While they were gone, James or someone on James' behalf was supposed to go to the Eberhardt home, kill Gerald, and take the \$2,000.00.
10. Scott and Michelle were upset by the fact that while on their alibi trip, the \$2,000.00 had been taken but Gerald Eberhardt was still alive.
11. Subsequent communication between Michelle, Scott, and James involved negotiations to get at least part of the money back and James' negotiations to get more money and a free car from the dealership that Michelle and Gerald Eberhardt own in North Topeka.
12. During his interview Scott Mosher specifically described the killing of Gerald Eberhardt. He told Det. Carlat that on October 24, 2009 he and Stephanie Menard went to his mother's home (2538 S.E. Shawnee Heights Road) to get money from his mother at about 8 p.m. After midnight on October 25, 2009 he, Derrick Haase

and Stephanie Menard returned to his mother's house to complete the job that James did not complete. Scott claims that Stephanie drove the car to the house, but stayed in the car. Scott and Derrick Haase went in the house, and then to the garage with Michelle. In the garage Michelle, Scott and Derrick smoked a cigarette and discussed the final plans to kill Gerald Eberhardt. Scott told Michelle to go in the house, and take a shower and he would take care of it.

13. Scott had brought with him a 40 caliber pistol. After Michelle went in the house Scott and Derrick stayed in the garage waiting until they knew that Michelle would be in the shower. Scott says that he and Derrick then approached the master bedroom where Gerald was laying in bed watching television. Scott quickly sneaked around the corner with the 40 caliber pistol in front of him, sprayed off a shot, and hit Gerald in the head. Scott and Derrick then ran from the house back to the car. They drove from the scene to Lake Shawnee where Scott threw the gun in the lake.
14. The State's theory of the case against Stephanie Menard is that she was an aider and abettor. The state claims that she drove the car with Scott Mosher and Derrick Haase to 2538 S.E. Shawnee Heights Road to complete the killing of Gerald Eberhardt. The State's theory is that Stephanie Menard knew and assisted in the plan by driving Scott Mosher and Derrick Haase to that address and then drove them to the Lake Shawnee where they disposed of the gun used in the killing.
15. During Michelle's interview she admitted her involvement in the death of Gerald Eberhardt. She did not implicate Stephanie Menard.

16. Derrick Haase was interviewed. He admitted some involvement in the death of Gerald Eberhardt, but did not implicate Stephanie Menard.
17. Scott Mosher was questioned about Stephanie Menard's involvement. When asked if Stephanie knew why they were going back to his mother's house, Scott responded that "she (Stephanie) kind of knew." Further questioning about Stephanie's involvement leaves serious questions about what Scott's perspective is concerning Stephanie's involvement.
18. Stephanie Menard was interviewed on October 25, 2009 at the Topeka Law Enforcement Center, inside of an interview room at the Law Enforcement Center. Stephanie Menard's interview was conducted in one of the Topeka Police Department Interview rooms because all of the rooms on the Sheriff's Department were being used during the investigation. That interview was recorded. A copy of the taped interview is included with the chamber copy of this pleading delivered to the Court as part of the filing of this Motion to Suppress.
19. According to the video of her interview, the taping of Stephanie Menard begins at 3:55:50 p.m. The clock counter on the video is a cumulative time counter as the video is running. Detective Kiley Rice of the Shawnee County Sheriff's Department began interviewing Stephanie Menard at 4:06:07 (20 minutes and 17 seconds (00:20:17) after the taping began).
20. Detective Rice began the interview with this monologue:

"When I first asked you to come down here, and I know **I told you you had to come down here** . . . I've just been given some information that kind of changes things. . .alright . . . before I really just needed to talk to you more as a witness more as someone with information . . . **But I was just told something else so the stakes just got raised** alright. . . you have the right to remain silent . . .anything you say can and will be used against you in a court of law. . . you have the right to

have an attorney present during any questioning . . . If you cannot afford and attorney the Court will provide one for you . . .ok . . . I'm not trying to scare you or freak you out but if you know more than you were letting on this morning now would be the time to come forward with it. . . .”

21. Subsequent to this, Stephanie Menard denied any involvement in the events causing the death of Gerald Eberhardt. Detective Rice left the interview room and went to talk with some of the other witnesses, including Kala Kuck, a friend of Stephanie Menard and Scott Mosher.

22. At 1:03:58 into the interview, Detective Brett Buetell of the Shawnee County Sheriff's Department entered the interview room and attempted to interview Stephanie Menard.

23. The conversation went like this:

BUETELL: “Okay Stephanie, Your story and Melissa's story and Kala's story are not matching up.”

STEPHANIE: “Well . . .I don't know what to tell you, I told you my story and I ain't talking to anyoneso. . . .”

BUETELL: “Okay.”

STEPHANIE: “Am I being arrested?”

BUETELL: “We haven't determined that yet, so”

STEPHANIE: “Well, What would I be arrested for?”

BUETELL: “Conspiracy to commit murder . . .”

STEPHANIE: Okay, but, what's that got to do with me?”

BUETELL (Finishing his statement): “First Degree Murder.”

STEPHANIE: “I wasn't there”

BUETELL: “Everyone else says you knew about it.”

STEPHANINE: "I don't know . . . No I didn't. So you are going to go by what everyone else is telling you just because they want someone to go down? I'm not talking, Dude! No."

BUETELL: "Okay."

STEPHANIE: "If you're not going to arrest me then can I leave?"

BUETELL: "Nope."

STEPHANINE: "How is that?"

BUETELL (as he is leaving the room): "You're being detained."

24. Detective Buetell leaves the room 1:04:56 into the video taping of Ms. Menard's statement.

25. About seven minutes later (1:12:00 into the interview), Detective Rice enters the room with Kala Kuck, another of the witnesses that they were interviewing and one of the people Detective Buetell mentioned in his interview with Stephanie Menard. The detectives were attempting to find out who drove the car out to Gerald Eberhardt home. The car that was driven was owned by Kala Kuck.

26. Detective Rice is obviously frustrated at this point and he delivers the following soliloquy directed at both Kala Kuck and Stephanie Menard:

"You're both in here so I only have to say this one time. (To Kala Kuck:) Have a seat. One or both of you know more than you are telling me. Alright . . . and you're going to have your opportunity to tell me and it'd be a lot better if you came forward before I have to go the other route . . . Scottie's mom's talking . . . And I ain't playing anymore . . . Scottie shot him last night . . . your car was there and somebody drove him out there . . . after midnight. You all better figure it out cause I'll break Scottie and Scottie's gonna talk . . . And it'd be a lot better if I hear it from you all who the hell drove him out there and what's going on . . . **you want an attorney that's fine. . . that's your right as an American citizen but neither one of you are going anywhere til I find out what's going on.** (To Kala Kuck:) Come on."

27. At this point, Detective Rice, Detective Buetell and Kala Kuck leave the interview room where Stephanie Menard is being held.
28. After this detectives went on to extract a statement from Stephanie Menard.
29. The evidence in the case against Stephanie Menard is the statement Scott Mosher gave to police that Stephanie "kind of" knew what was going to happen to Gerald Eberhardt and Stephanie Menard's own statement. There are no other witnesses that implicate Stephanie Menard in this matter.

AUTHORITIES AND ARGUMENT

30. "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; *nor shall be compelled in criminal case to be a witness against himself*, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V.
31. This case is controlled by Miranda v. Arizona, 384 U.S. 436 (1966). In that case the United State Supreme Court declared that the Fifth Amendment controls admissibility of statements obtained through "custodial interrogations."

32. In short, when a defendant challenges the admissibility of his or her confession the State has the burden to prove that the statement was obtained voluntarily and in accordance with Miranda warnings. State v. Norris, 244 Kan. 326 (1989).
33. A “custodial interrogation” is defined under Miranda as “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” Miranda at 490-91.
34. If a person, at any time during questioning, indicates in any manner that he or she wishes to remain silent, the interrogation must cease. Edwards v. Arizona, 451 U.S. 477 (1981).
35. When a defendant claims his or her confession was not voluntary, the prosecution has the burden of proving by a preponderance of the evidence that it was voluntary. The essential inquiry is whether the statement was the product of the accused's free and independent will. The court looks at the totality of the circumstances surrounding the confession and determines its voluntariness. State v. Walker, 283 Kan. 587, 596-97, 153 P.3d 1257 (2007).

Defendant Menard invoked her right to remain silent and the Detectives continued to question her eliciting a statement from her when they should have honored her right to remain silent.

36. Miranda applies because this was a custodial interrogation. Detective Rice told Stephanie at the beginning of the taped interview: “When I first asked you to come down here, I told you you had to come down here . . . I’ve just been given some information that changes things. . . alright . . . before I really just needed to talk to you more as a witness more as someone with information . . . But I was

- just told something else so the stakes just got raised alright...” At this point he reads Stephanie the Miranda warnings. It is clear from this statement alone that she was not free to leave when he says “I told you you had to come down here. . .”
37. Beyond this, Detective Rice clearly consider Stephanie Menard a suspect when he read her Miranda warning at the beginning of her interview.
38. The custodial nature of her questioning is further enhanced by Detective Buetell when he is in the room. When he speaks with her she clearly invokes her right to remain silent. She asks if she can leave if she is not being arrested, and he tells her that she cannot leave; that she is being detained.
39. Stephanie Menard twice invoked her right to remain silent when she told Detective Buetell: “I ain’t talking to anyoneso. . . “and “I’m not talking, Dude! No.”
40. These two statements are a clear and unequivocal exercise of her rights under the Fifth Amendment to the Constitution and Miranda.
41. Any statements made after this point should be suppressed.

The statement of the Stephanie Menard is not freely and voluntarily made.

42. In addition to violating her rights under Miranda, the Detective also created a situation where the statement she gave was not voluntary.
43. The circumstances, from Stephanie Menard’s standpoint was that she had invoked her rights, and then they went on to question her. This questioning was also predicated by a threat from Detective Rice.

44. When Detective Rice came into the room with Kala Kuck, he essentially told both of them that they were going to have to make a statement before he let them leave.

45. When he said these word to them: **“you want an attorney that’s fine. . . .that’s your right as an American citizen but neither one of you are going anywhere til I find out what’s going on”** Detective Rice created an atmosphere of intimidation and fear. That atmosphere coupled with the attendant violation of Stephanie Menard’s Miranda rights leaves any statement she makes as involuntary and unwittingly given. She clearly did not want to give any further statement to law enforcement. Yet they forced her to do so by ignoring her invocation of the Miranda rights and threatening her that she would not be allowed to leave until she gave a statement.

WHEREFORE the Defendant Stephanie Menard pray the Court grant her Motion to Suppress and grant her all other and further relief the Court deems just and proper.

Respectfully submitted,

ARNOLD & KECK, LLC

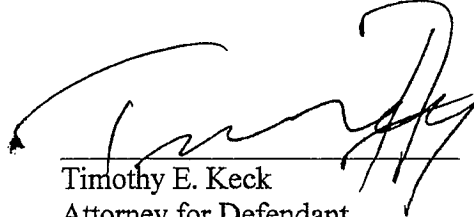
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was delivered by fax on this 18th day of February, 2010 to the following:

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