

STATEMENT OF JAMIE BYRNES

Made at the Marshall City Police Homicide Investigations Unit, at 10 a.m., on September 15, 2001, as given before Officer Robert Lopez (Star #6109).

PRESENT: Detective Robert Lopez (Interviewer), Marshall City Police Department, Homicide Investigations Unit; Thompson County, State of Marshall, and

Jamie Byrnes.

Detective Lopez: For the record, this is the voluntary statement of Jamie Byrnes, in connection with the investigation into the poisoning of Patrice Zeller on September 12, 2001, in the city of Marshall. Please answer my questions verbally. If you do not hear or understand a question, ask me to clarify or repeat the question. Your statement will be typed, so you can read and review it before you sign it. If you don't understand something, ask me to repeat or rephrase it. If you want to leave for a personal break or a cup of coffee, I'll take a break. Any questions or comments?

A: It's Byrnes.

Q: What?

A: My name is Byrnes, not Byrne. There is an "s" at the end. You said Byrne just now. I would appreciate your getting my name right.

Q: Byrnes. Right. Sorry about that. Thank you. The following is the statement made by Jamie Byrnes on September 15, 2001, at the Marshall City Police Department, Homicide Investigations Unit. Detective Robert Lopez is present and conducted the interview.

OK. Since we are also going to record this I need your consent, so just tell me – ah, speak into the microphone here, and state whether you give full consent for me to record all of this interview.

A: Sure. OK. I give full consent.

Q: Thank you. State your name, age, address, occupation, please.

A: My name is Jamie Byrnes. I'm thirty-three years old. I own the Byrnes Pharmacies – there are three stores, two here in Marshall City and one over in Moline. I manage number one and number two. I used to just manage number two, but when Father died this summer I inherited everything. No brothers or sisters, no living relatives. I live in an apartment at the Four Seasons Hotel. Room 2702. Here in Marshall City. I just moved in. I just sold my condo over in

Dogpatch. Did all right. Maybe I should have kept it. That neighborhood is coming up.

I may sell the stores. I don't know. This poisoning is probably the end of the business. Have you seen the newspapers, the television news? This cyanide story is everywhere. I am not going to have any customers. I was going to take on a partner. Well, I may have put in a lot of work for nothing -- I work hard to have a good business to sell or share, and now I am in the newspapers because of Patrice Zeller. I did not have any customers in the store this morning, except for a couple of people who came in to ask questions about whether it was true that Marty Zeller had put poison in all the inventory.

Q: Well, let's go to the matter of Marty Zeller.

A: Let me start by saying I was initially shocked to hear that Marty Zeller is responsible for any of this. Zeller was a poor employee, but I do not want to believe what apparently has become obvious, I never thought Marty could, is involved in anything like trying to kill anyone. I know both Zellers. I thought they got along OK, though I notice that Marty kind of stays away from her when they are out together, which tells me that something is haywire. You just don't see them together. I guess you never really know what is going on. You know, like he might just is having all that insurance on her and vice versa, if what I hear is correct. I hear he stood to make a couple million dollars if she died.

Q: Insurance? Well, that's not something I know about. Let's get through this. I am sure you don't want to be here any longer

A: Well, I do. It's my duty, and I want justice.

Q: How did you first come to know Zeller? Martin Zeller?

A: Until recently Zeller worked in the Pharmacy. Father hired him a little over a year ago. September 1, 2000, in fact. Zeller started as an inventory manager – what we used to call a stock boy – stock person? He kept merchandise on the shelves in the store. He was trained in selling over-the-counter goods – not prescription drugs – and working at the Soda Fountain. The store -- Store #1 -- has an old-fashioned soda fountain – which I am taking out. Apparently Father promised Zeller he could train as a Pharmacy Technician. Zeller may have started some informal on-the-job training. When I took over the store this spring, Zeller had the run of the place, upstairs and downstairs. Thought he owned the place. Tried to tell me how to run the business. I don't believe he had progressed much in his training as a Pharmacy Technician. Father did not really get started with his training.

Q: Where is your father?

A: Well, he died on July 3. He knew he was dying, and wanted to live to VJ-Day, August 14. He used to shut the stores for all national holidays --- VE Day, Memorial Day, Labor Day, President's Day, Fourth of July. And he paid everyone for taking the day off. He was a veteran of World War II, and always used to talk about how important VJ day was. Anyway, Father put together all three pharmacies. He managed the Byrnes Pharmacy #1. When he became sick I took over the management of store #1. I am, I was in charge of Marshall Pharmacy #2, which is on the other side of town. The #3 store is over in Moline, what is, what, 50 miles away? I ought to know – I drove back and forth for a couple of years. Now, Jimmy Zito, my cousin by marriage – what we call a “shirt-tail relative” -- takes care of it. Jimmy is a registered pharmacist. Father wanted to expand to even more, but he was getting spread too thin, so he quit at three stores. Anyway, Zeller worked in Store #1. I didn't hire him. When I took over the #1 Store, I moved Merve, the #2 Store pharmacist, to Store #1. Merve is OK, good pharmacist. Shows up late sometimes. I had to bring another full-time pharmacist to work in Store #2 - we have three full time pharmacists, four now, for the two stores, plus several part-timers who come in on an as-needed basis. I manage it all through them. And I pretty much spend full time at #1, which is our flagship store. I have two pharmacists on duty there, too, and I bring in the part-time pharmacists to fill in, like for vacations and illnesses, at both stores.

Anyway to get back to Zeller, Father told me that Zeller was on probation.

Q: As a pharmacy apprentice?

A: Pharmacy technician. I will get you a job description. Father had doubts. Anyway I met Zeller a couple of times last year when he started, but I got to know him as an employee when I took over management this spring. I found out he was a know-it-all, a thief, and incompetent. I let him go. I fired him. I felt bad for his wife at first, but now I am just plain angry. It does not make sense that either of them should take a contaminated pill. They ought to know better.

A: Why should they know better? If he

A: Everyone in the county – in the state, in the country – knows better. Seven people just died right here in Marshall from cyanide poisoning. Zeller goes crazy the whole time. Even before the City ordered all my name-brand pain-relievers off the shelves, Zeller insists we get rid of all our inventory. He walks into the pharmacy the first time there is a report of a cyanide death, and yells at Merve not to sell any of our over-the-counter pain-relief medicine. He drove Merve nuts, he drove me nuts. He did not calm down until the stock had been replaced, and even then he wanted better security. It was not his place to be doing all that.

Q: When did you fire him?

A: August 31. I gave him a severance – two weeks' pay, which he has not picked up.

Q: How did he react?

A: Very angry and threatening. He told me, this is a quote: "I am going to get you for this." He was almost out of control. He yelled it in front of people, right in the store. 5 p.m., August 31. Yes, sir. His wife was right there.

Q: And, why did you fire him?

A: Plenty of things. Like I said, he did not know his place, he was stealing, and I did not feel he was doing a good job. I never liked his attitude. I thought he took advantage of my father's generosity and toleration for inefficiency. And, I hate to keep saying this, but I am certain he was stealing. We always seemed to be \$50 or \$100 short at the cash register on the days he worked. I finally caught him.

Q: What?

A: Well, it was some candy, but it was the last straw. He thought he was entitled to steal. I ran out of patience.

Q: How well does he know the store?

A: I would say very well, indeed. He worked there for a year full time, knows the lower level – the basement -- where all the stock supplies are. – his job was to check inventory on the retail shelves every day, then replenish the shelves with stock from the lower level. If the inventory ran low, he would notify Father – later, me -- and we would order it when the sales representatives checked in. We do this more by email and the internet, but the actual sales rep still comes in from time to time to look over the product placement and take orders in person? Sometimes we negotiate discounts, you know, face to face. Zeller, I will say, was good with inventory control.

Q: You have a security system?

A: Several. Night alarms. Shoplifting monitoring with ceiling cameras. We have one camera now just for the pain-reliever shelves and the side entrance.

Q: Would Zeller know all these security systems?

A: Generally, yes. He did not know the security codes for the night alarms. He knew how to set the alarm at night, which is basically just hitting a button to enable the system, then leaving the store within 30 seconds. But I am sure my father never told him how to disable the alarm system at night. The system turns on when you enable the system, usually around 10:30 at night. It automatically turns off at 6:30 a.m., which means any employee with a key can get in without having to punch in the security codes. The alarms don't go off at or after 6:30 a.m.. If Father or I went in at night, we had to punch in the security code within 30 seconds, otherwise the alarm would go off and the security service would notify the police.

Q: Anyone try to come in at night, ever? Without knowing the code?

A: No one ever tried to bypass the system. Anyone who came in, came in during working hours. The store hours are 7:00 a.m. to 10 p.m., seven days a week, 365 days a year. The pharmacy is open first thing in the morning, but the pharmacists usually come in at 8 a.m. and stay until 4:30. If there is an emergency – and it happens infrequently – Merve or one of the full-time pharmacists has to open up the store to fill a prescription after-hours on an emergency basis.

Q: Any other employees?

A: Oh, sure. Several.

Q: At Pharmacy #1?

A: Well, now the main daytime pharmacist is Joe Morse; the evening pharmacist is Merve Smith – 4:30 to 10:30 – Monday through Saturday. Sara Johnson works weekends and sometimes evenings. She is married, has children, so she is happy to have almost a full time job, but hours when her husband can take care of the children. There is the new pharmacist, Tony Adler - He works on an ad hoc basis. I manage the store. I do not have the statutory credentials to fill prescriptions.

Q: You are a pharmacist?

A: No. Father or Merve

Q: Merve Smith?

A: The senior pharmacist. Father was a pharmacist, and could fill prescriptions. I cannot, I can sell prescription medicine that has already been prepared by one of the pharmacists – I can take a prescription that has been filled by one of the pharmacists and physically handle it at the cash register.

Q: You never filled prescriptions?

A: Well, just between us, it may have happened a couple of times over a three year period, if there was no regular pharmacist around. I mean I would fill some really simple stuff. Father was sick one time and asked me to simply take care of a late-night emergency, which I did. I called him on the phone to make double sure. I am not a pharmacist. I wanted to have Father ratify what I was doing. That was maybe two years ago. Nothing like that since.

Q: So, you are not a pharmacist?

A: I have a college degree in General Studies from Marshall State, 1993. I did two years in the military – 1987 to 1989, and got some college credit there, and used the College Program money to finish college. Father wanted me to be a pharmacist, but it was not where I was at. He made me pay my tuition when I said I wasn't going into pharmacy. I did some MBA work, post-grad, at Marshall State in 1993-4, but never finished the degree. I sold computer games for a couple of years, taught English in Japan in 1996, and came back here. I've been working for my father for the past three years. I worked at the Moline store, then managed the Byrnes' pharmacy Number Two since January 1, 1999, and when my father took sick last February, I had to keep an eye on both stores here in Marshall. When Father died this summer I took over ownership of all three pharmacies. Pharmacies don't have to be owned by registered pharmacists, but only registered pharmacists can fill prescriptions. There are a couple of full-time pharmacists in both stores, but for the past several months I have to bring in part-time pharmacists to cover the schedule – we are open seven days a week, 15 - 16 hours a day -- to cover the gaps in the schedule. There are several gals who have families and licenses and are willing to come in part-time. It works out for them, and it is actually better economically as I don't have to take out medical or pension plans for them. Anyway, there is almost always a pharmacist on duty at all three stores.

Q: After you fired Zeller on August 31, did you see him again?

A: Oh, yes. Well, he came into the store September 8 – we keep receipts – and made some purchases. I did not see him, but I knew he was there. I saw the receipt, the credit card receipt. I can get it for you. I was not in the store when he came in.

Q: Anything notable?

A: Yes. He bought some laundry soap, peroxide, cleaning materials. And I thought it unusual that he bought five bottles of ByrMart aspirin tablets– our house brand. 50-count aspirin tablet bottles. I thought, why buy five bottles, why so many bottles at one time? Why not buy one big bottle? But there is

nothing illegal. I was – well, a thought went through my mind because of the poisonings in July.

Q: Right. But none of your stores were involved?

A: No. Thank heavens. I took the national brands off the shelves at my store, and told the Moline store to do the same. I did not want to take a chance. Besides, our house brands are the same as big name brands of aspirin and Tylenol. We keep the ByrMart brand for aspirin and non-aspirin pain relievers on the shelf. But we maintain surveillance. That started in July. I decided to stock only the house brand, at least until the scare was over. I even put up a sign.

Q: How, surveillance?

A: We moved the pain relief section over to the area right across from the pharmacy itself, so that whoever was working the pharmacy and cash register could keep an eye on those shelves, and we also had TV surveillance, so that a camera was on that section all the time. We could check the surveillance tapes for pictures of anyone handling the stock in that section.

Q: Do you have surveillance photos of Zeller at that section?

A: No. See that's the interesting part. Like I said, Zeller came in and bought five bottles on September 8. Someone turned off the machine tape-recording that section in front of the pharmacy. The switch is next to the basement door, inside the door, right by the steps going downstairs to the stock room. Zeller would have known where that switch was located. We did not keep that door locked. Nobody ever went down there except employees – there was nothing really valuable downstairs, just stocks of mouthwash, toothpaste, bulk items. Small inventories we kept either on the shelves or in some drawers under the showcases and shelves. If someone wanted to go downstairs to steal a six-pack of toilet paper, we were not going to worry about that possibility. Nobody was ever caught down there.

Q: You never had thefts there, shortages?

A: There always seems to be a shortfall. Father took home some items, like a few boxes of Kleenex, and not write anything down. He tolerated this nonsense in others. When we take semi-annual inventory, I find there are shortages. We write it off as pilferage.

Q: Zeller worked with inventory?

A: Zeller was responsible for inventory control, yes.

Q: Did Zeller take things home without paying for them, too?

A: Yes, he took stuff. Father allowed it. I put an end to the sticky fingers policy. No freebies.

Q: Well, I am really following something else up here. Is it possible that Zeller could have confiscated national brand name pain relievers from the store, and no one would have noticed?

A: Yes.

Q: So you would not be alarmed by an inventory shortfall? It would be chalked up to pilferage, but you put an end to the practice?

A: Right.

Q: You know, the FBI and the local task force have gone to sales and credit card databases to try to find out who might have been buying national brand painkillers locally.

A: I don't report shortfalls in inventory, but I suppose there are plenty of gaps in the records if you are trying to find out who was buying brand name painkillers.

Q: Let's go back. You told me earlier that you think Zeller came in Tuesday and planted the poisoned house-brand aspirin on the shelf, or

A: I said, I thought it strange that he came in Wednesday and was near the pain-relief shelves. He had purchased a several of bottles four days earlier. His wife was with him. She bought the aspirin, actually. Cash. He gave her cash. Here's what I saw: about 4:30 they come in together. Here is a disaffected former employee who threatened me. They both are looking around, you know, like ordinary customers. I think, he is not going to pull something if he is with his wife. I figure him for a sneak. If he is going to do something, it won't be something people are going to notice. In any event, after a few minutes, they come to the area near the pharmacy and the cash register. The back cash register. They are both near the pain killers, and I see him handling the bottles where the ByrMart brand pain relievers are. He has just bought five bottles of aspirin a few days earlier. I ask, what is he doing here? Then I see Mrs. Z. come to the cash register there in back. She has a bottle – a tablet pill bottle – of ByrMart aspirin. I take her cash – a ten dollar bill – and I ring up the sale, which was for the pills only – ah, it was \$2.99 and 21 cents tax, so it is \$3.20. They walk out. Then I learn that someone has turned off the surveillance camera, and this is within the last hour or so, although it could have been within the last few minutes, you know, while the Zellers were by that door and the pain relief shelves.

Q: Do you keep cyanide on the premises?

A: Absolutely not.

Q: Are the house brand painkillers sealed, to avoid tampering?

A: You bet. Each has a sealed opening – a sheet of plastic-backed paper that is glued to the top of the bottle, at the mouth of the bottle. To get at the pills, you have to peel back the covering.

Q: Anything else?

A: No.

Q: Do you check the seal when you sell the bottle?

A: No. It has never been a problem.

Q: So, did you see Zeller pick up a bottle and give it to his wife?

A: I think so. I saw that he had a bottle in his hand, a foot or so from the shelf. I did not follow, but his wife was standing next to him and somewhat closer to the pharmacy window and cash register. A moment later she brought the bottle over and purchased it with the ten dollar bill. I put the bottle in a small bag, rang up the sale, and put the sales slip in the bag. I gave her the change. I saw her give the change back to him. She put the bag in her purse.

Q: He bought the six bottles with his credit card, but they paid cash for this bottle?

A: Yes.

Q: What happened next?

A: Well, they left together, then that night I learned that she had been taken to the hospital with some kind of poisoning, like food poisoning. I felt bad for her, but I did not make a connection right away. Around 2 a.m. I got a phone call from the police. They wanted to get into my pharmacy. I got up, went down there, The police impounded all the ByrMart aspirin bottles – all sizes, all the different kinds – tablets, gelcaps, caplets, seltzers, buffered and all the house brand non-aspirin, too. The next morning I saw the newspaper, that Patrice Zeller had been poisoned.

Q: Look, I have enough for now. Get me those things you said you would get. I will bring some things over later today. I would like to talk with you some more tomorrow.

A: OK.

Whereupon the interview ended.

I have read the above written transcript of the interview of September 16, 2001, and it is true and correct.

Jamie Byrnes
