



1  
2  
3 PROCEEDINGS

4 CLERK: All rise please.

5 COURT: Please be seated. All right. Good morning everyone.

6 ATTORNEYS: Good morning Your Honor.

7  
8 COURT: We have Mr. Four Star present so I would think that that might be  
9 the next best step in terms of presentation.

10 MR. TOAVS: Yes Your Honor.

11  
12 MS. PLUBELL: Your Honor, once again the State will renew its hearsay  
13 objection. They intend to present statements against interest through Mr. Four  
14 Star, alleging that Sissy made a third party confession, or a confession to a third  
15 party. And, we don't think it is appropriate. In the other instances, you allowed  
16 the testimony of the deceased witnesses in without Sissy Atkinson calling first;  
17 being called first. But, there is no reason to do so in this instance. And, with  
18 respect to the exception that they are trying to get it in under, there has to be a  
19 statement tending to expose the declarant to criminal liability and offer to  
20 exculpate the accused is not admissible unless corroborating circumstances clearly  
21 indicate the trustworthiness of the statement. This wasn't even a statement to Mr.  
22 Four Star. This was supposedly a statement that Sissy Atkinson made to a co-  
23  
24  
25

1 worker, William Balbinot, who is also known as Stubby. There is no corroborating  
2 circumstances and it is not the appropriate way to do so.

3 COURT: So, you are saying that Mr. Four Star did not receive this  
4 statement from Ms. Atkinson.

5 MS. PLUBELL: He claimed to overhear the statement at work.

6 COURT: Yes sir.

7 MR. CAMIEL: Good morning Your Honor. The vehicle through which we  
8 believe that this is admissible is not evidence Rule 804, but 803-24, which the  
9 Court cited to yesterday. The statements that, or the testimony that Mr. Four Star  
10 is going to give; there are two parts to the testimony. He overheard her discussing  
11 her involvement in the Kim Nees murder with a co-worker. But she also made  
12 direct statements to him about having committed the perfect crime, or the perfect  
13 murder. So, she first made statements to the co-worker who was nearby, then  
14 approached him and made statements to him. The statements about being involved  
15 in the Kim Nees murder or having committed the perfect crime are clearly against  
16 her interest which makes them reliable because somebody wouldn't normally make  
17 a statement against their interest. The statements that were admitted yesterday  
18 through the former testimony of the deceased witnesses helped to corroborate the  
19 fact that she would have made a statement that Mr. Four Star would have  
20 overheard. If she made a statement to her friend Vonnie Brown, if she made a  
21  
22  
23  
24  
25

1 statement to her brother J.D. Atkinson incriminating herself in the Kim Nees  
2 murder, then that corroborates and is a circumstantial guarantee of trustworthiness  
3 that she may have also made a statement to a co-worker and a statement to Mr.  
4 Four Star. So, we believe that there are sufficient circumstances through which the  
5 Court can find that there are guarantees of trustworthiness and under the rule that  
6 the Court relied on yesterday 803-24, which is the catch-all exception, availability  
7 or unavailability is immaterial because Rule 803 deals with the availability of the  
8 declarant immaterial and so that is the vehicle by which we think this is admissible.  
9  
10

11 COURT: Yes, ma'am.

12 MS. PLUBELL: Your Honor, there still has to be corroborating or, I think  
13 the exception they claim they are relying on. There still has to be circumstantial  
14 guarantees of trustworthiness and they keep citing you to, I presume, United States  
15 Supreme Court precedent. And, I also presume that the cases that they are relying  
16 upon are *Chambers and Green*. And we have analyzed those in several of our  
17 pleadings, but the kinds of guarantees of trustworthiness that are discussed in those  
18 cases are not present in this case. For example, I believe it was in the *Chambers*  
19 case the United States Supreme Court did say that the Court wrongly excluded  
20 hearsay statements. But, they addressed the considerable assurance of their  
21 reliability and in that case the person made the statements spontaneously to a close  
22 acquaintance shortly after the murder occurred. Of course, they are trying to say  
23  
24  
25

1 that she made the statement to Mr. Balbinot who they are gonna claim is a close  
2 acquaintance. But, Mr. Four Star said the statement happened in 1984 and they  
3 weren't really acquainted in 1984 and he didn't work there then.

4 COURT: Who is they? You are using pronouns. You say they were  
5 acquainted. Who is 'they'?

6 MS. PLUBELL: Stubby and Sissy Atkinson who she supposedly made this  
7 statement to were not acquainted in 1984.  
8

9 COURT: Well, you can call her and ...  
10

11 MS. PLUBELL: But why should we have to do that when it is their burden  
12 Your Honor?

13 COURT: Because I think you would be challenging the accuracy of their  
14 representation of evidence. I don't see that as shifting of the burden.  
15

16 MS. PLUBELL: They are circumventing the Rules of Evidence.

17 COURT: Well, that is for me to determine.

18 MS. PLUBELL: Well, that is true Your Honor.

19 COURT: I may make a mistake, but it is still ...  
20

21 MS. PLUBELL: That is true Your Honor.

22 COURT: It is not fair to say they are circumventing until I rule it.

23 MS. PLUBELL: In the State's estimation Your Honor. I would also like to  
24 point out the other factors. Each statement was corroborated by some other  
25

1 evidence in the case, such as *McDonald*. The person who supposedly made the  
2 third party confession actually signed a sworn confession. There was an actual eye  
3 witness who testified to the shooting that he saw *McDonald* who signed a sworn  
4 confession with the gun. And, each confession was, in a very real sense, self-  
5 incriminatory and unquestionably against interest. We think it is just important to  
6 keep those factors in mind when you are looking at the guarantees of  
7 trustworthiness as the United States Supreme Court has defined them. And, the  
8 case of *Green* is not any better Your Honor. It doesn't help them anymore than  
9 *Chambers* does.

12 COURT: It seems like I remember reading yesterday that in this particular  
13 rule did not follow the federal rules for a specific purpose that they didn't want to  
14 so constrain it as to make it lifeless. And, they wanted to basically add an organic  
15 feature to the law. The circumstantial guarantees of trustworthiness include  
16 statement against interest, but also includes to a disinterested party. Is there any  
17 representation that this Mr. Four Star is not a disinterested party? Hopefully that is  
18 not a double negative. In other words, is he a disinterested party or does the State  
19 claim that he is an interested party?

22 MS. PLUBELL: He claims he was a co-worker and he claims that he was  
23 disinterested.

1 COURT: There are two circumstantial guarantees of trustworthiness under  
2 the Montana interpretation of the rule. Therefore, the Court will allow this  
3 testimony. You may proceed.

4 MR. TOAVS: Thank you Your Honor. The petitioner calls Carl Four Star.

5  
6 CLERK: Do you solemnly swear the statements you are about to make in  
7 the matter will be the truth, the whole truth, and nothing but the truth so help you  
8 God?

9 MR. FOUR STAR: I do.

10  
11 COURT: Come on over here sir. Good morning.

12 MR. FOUR STAR: Good morning.

13 COURT: Scoot on up to that microphone and we will see if everybody can  
14 hear you.

15  
16 MR. TOAVS: Good morning Mr. Four Star. Let's start by having you state  
17 your first name and spell your last name please.

18 MR. FOUR STAR: It is Carl Four Star. F-o-u-r-S-t-a-r Jr.

19 MR. TOAVS: Carl where do you reside?

20  
21 MR. FOUR STAR: In Wolf Point.

22 MR. TOAVS: How long have you lived in Wolf Point, Montana?

23 MR. FOUR STAR: Since Nineteen Seventy-six (1976).

24  
25 MR. TOAVS: Since?

1 MR. FOUR STAR: 1976.

2 MR. TOAVS: Since 1976? Now, you had some reservations about  
3 appearing pursuant to the subpoena, is that right?

4 MR. FOUR STAR: Yes I did.

5 MR. TOAVS: Will you explain your reasons for not being here on  
6 Monday?  
7

8 MR. FOUR STAR: I got into some altercations ...

9 MS. PLUBELL: Your Honor, objection. He is here, it is not relevant.  
10

11 COURT: Overruled.

12 MR. TOAVS: You can continue your answer.

13 MR. FOUR STAR: Okay. I got into some altercations as a result of the last  
14 hearing. I was jumped in Wolf Point by four people.  
15

16 MR. TOAVS: And when you say the last hearing what do you mean by  
17 that?

18 MR. FOUR STAR: The hearing that took place in Deer Lodge.

19 MR. TOAVS: Was that the clemency hearing?  
20

21 MR. FOUR STAR: Yes.

22 MR. TOAVS: And, following that you suffered some consequences in  
23 terms of your own safety, is that what you are saying?  
24

25 MS. PLUBELL: Objection leading.



1 COURT: I will sustain.

2 MR. TOAVS: And so, why is it then that you had initially determined not to  
3 appear for this hearing?

4 MR. FOUR STAR: Because I felt threatened. I sought help, I called the  
5 parole board and I didn't get any help from anybody as far as any sort of help.  
6

7 MR. TOAVS: What kind of help are you referring to?

8 MR. FOUR STAR: Well, some sort of police protection I guess. Maybe  
9 even just having the police officers go by and say something to these people. None  
10 of that happened.  
11

12 MR. TOAVS: Did you report this to the police? What happened to you?

13 MR. FOUR STAR: I don't recall. I did go and fill out a complaint with the  
14 Tribal Court, but nothing ever happened of it.  
15

16 MR. TOAVS: Where is the tribal court?

17 MR. FOUR STAR: The tribal court. I went to Poplar, Montana, to fill the  
18 complaint out.  
19

20 MR. TOAVS: And what did this complaint that you filled out, what was the  
21 purpose of that?

22 MR. FOUR STAR: The purpose was, was that I was jumped by four people  
23 in Wolf Point and I went to file a complaint. The complaint was that I was  
24 received physical harm by these people.  
25

1 MR. TOAVS: What made you think that this incident was as a result of  
2 your testimony at the clemency hearing in this matter?

3 MS. PLUBELL: Your Honor, we are going to object if his answer is going  
4 to rely upon hearsay.

5 MR. TOAVS: I am just asking for his understanding.

6 COURT: Well, until I hear a bit more I am going to overrule the objection.

7 MR. TOAVS: Do you have the question in mind Mr. Four Star?

8 MR. FOUR STAR: Do I have a question?

9 MR. TOAVS: Do you have my question in mind?

10 MR. FOUR STAR: I am sorry, could you repeat it?

11 MR. TOAVS: All right. What lead you to believe that your having been  
12 attacked was related to your testimony at the executive clemency hearing in this  
13 case?  
14

15 MR. FOUR STAR: Because one of the kids that had jumped me was  
16 Denver Atkinson's son.  
17

18 MR. TOAVS: And what is that, what does that mean to you?

19 MR. FOUR STAR: Well, when all this was taking place he said that I had  
20 no right saying anything about his aunt.  
21

22 MR. TOAVS: He had previously threatened you, or what are you saying?  
23  
24  
25

1 MR. FOUR STAR: No. When the altercation was taking place, he was  
2 telling me that I had no business in doing what I did and testifying at the clemency  
3 hearing.

4 COURT: This is the hearsay the State has objected to and I do have to  
5 exclude that.  
6

7 MR. TOAVS: Thank you Your Honor. So, in any event Mr. Four Star you  
8 are here now.

9 MR. FOUR STAR: Yes.  
10

11 MR. TOAVS: And, let me take you back to the period of time in Nineteen  
12 eighty-five (1985). Were you employed in 1985?

13 MR. FOUR STAR: Yes I was, by A&S Industries.  
14

15 MR. TOAVS: When did you graduate from high school?

16 MR. FOUR STAR: Nineteen eighty-three (1983).  
17

18 MR. TOAVS: And then after that did you start employment with A&S  
19 Industries right away?

20 MR. FOUR STAR: Yes I did. Right out of high school.

21 MR. TOAVS: What was your job out of high school with A&S Industries?

22 MR. FOUR STAR: I had several jobs with them. It was all in the netting  
23 department.  
24

25 MR. TOAVS: What is A&S Industries?

1 MR. FOUR STAR: A&S Industries was a company that was partially  
2 owned, well, owned by the Fort Peck tribes and they had military contracts with  
3 Brunswick; partnered with Brunswick Corporation.

4 MR. TOAVS: So, what kind of work did A&S Industries do?

5 MR. FOUR STAR: Well, they made camouflage netting. That is the  
6 department that I worked in and they also made military cans.  
7

8 MR. TOAVS: Did they make medical chests too?

9 MR. FOUR STAR: Yeah, medical chests; that sort of thing.  
10

11 MR. TOAVS: So, the company A&S Industries was involved in  
12 manufacturing, is that fair to say?

13 MR. FOUR STAR: Yes.

14 MR. TOAVS: And, beginning when you graduated from high school you  
15 started working there in which department?  
16

17 MR. FOUR STAR: In the netting department.

18 MR. TOAVS: And, how long did you work in the netting department?

19 MR. FOUR STAR: Until Nineteen eighty-seven (1987), Nineteen eighty-  
20 eight (1988).  
21

22 MR. TOAVS: What kind of job did you do in that department?

23 MR. FOUR STAR: I was what was called a hex cutter.  
24

25 MR. TOAVS: What does a hex cutter do?

1 MR. FOUR STAR: We cut the raw netting into hexagon units to be sewn as  
2 camouflage netting.

3 MR. TOAVS: And how would you cut them?

4 MR. FOUR STAR: There was a specific pattern that we had to follow and  
5 we cut it into hexagon units; hexagon shaped units.  
6

7 MR. TOAVS: Did you use a machine to do the cutting?

8 MR. FOUR STAR: No, I used scissors.

9 MR. TOAVS: Hand scissors?  
10

11 MR. FOUR STAR: Hand scissors.

12 MR. TOAVS: Is that what everyone else used too?

13 MR. FOUR STAR: Yes.  
14

15 MR. TOAVS: In Nineteen eighty-five (1985), where was the hex cutting  
16 division located at A&S Industries in Poplar?

17 MR. FOUR STAR: It was in the back, in the back of the building.

18 MR. TOAVS: When you say back, maybe it would be more meaningful if  
19 you would describe how the layout of the company was.  
20

21 MR. FOUR STAR: It was on the east side of the building. The building ran  
22 lengthwise east and west. It was on the east side of the building.

23 MR. TOAVS: How big was the building?  
24  
25

1 MR. FOUR STAR: It was big sized, at least a couple blocks long; a block  
2 long.

3 MR. TOAVS: And, what else was located on the east side of the building  
4 besides the hex netting department, hex cutting department?  
5

6 MR. FOUR STAR: There was a partition, a big partition, and there were  
7 sewing machines in the other part of the building.

8 MR. TOAVS: What kind of partition was there?  
9

10 MR. FOUR STAR: The building that I worked was a quonset that was  
11 added on to the back part of the building and the sewing department was through a  
12 garage door.

13 MR. TOAVS: And that is the partition that you were ...  
14

15 MR. FOUR STAR: Yeah, yeah. It was a building that was added on.

16 MR. TOAVS: Now, while you worked for A&S Industries in 1985, did you  
17 have any contact with an individual by the name of Sissy Atkinson?  
18

19 MR. FOUR STAR: Yeah. She worked back where I did.

20 MR. TOAVS: Where did she work? In the same department?  
21

22 MR. FOUR STAR: She worked in the netting department. She worked on  
23 the edge cord.

24 MR. TOAVS: What is that?  
25

MR. FOUR STAR: That was the cord that was sewn onto the netting.

1 MR. TOAVS: Around the outside of the ...

2 MR. FOUR STAR: Yeah around the outside of the netting.

3 MR. TOAVS: And, what was her particular job there, do you know, in 1985  
4 that is?

5  
6 MR. FOUR STAR: She worked on the edge cord table. That, I guess, that  
7 is what her title was.

8 MR. TOAVS: And how big was the edge cord table? How many people  
9 would be working there?

10  
11 MR. FOUR STAR: There were three of them that would work on it and I  
12 don't know how long it was. It was at least one hundred (100) feet long.

13 MR. TOAVS: Now, do you remember whether an individual by the name of  
14 William "Stubby" Balbinot also was employed at A&S Industries?

15  
16 MR. FOUR STAR: Yes he was. And, he worked on the hex tables or the  
17 edge cord table also.

18 MR. TOAVS: Do you remember a time when you heard Sissy Atkinson  
19 make any statements about the Kim Nees murder?

20  
21 MR. FOUR STAR: Yes I do.

22 MR. TOAVS: Where were you located and where was Sissy Atkinson  
23 located at the time that you overheard these statements?  
24  
25

1 MR. FOUR STAR: The table where I worked was about as close to that  
2 first bench to the table where Sissy worked.

3 MR. TOAVS: How far would you estimate that distance to be Mr. Four  
4 Star?

5 MR. FOUR STAR: Maybe twenty (20), twenty-five (25) feet.

6 MR. TOAVS: And, do you remember a particular date when you heard this  
7 statement?  
8

9 MR. FOUR STAR: I don't recall the specific date. It was sometime in  
10 1985. It was just before my oldest daughter was born. So it must have been the  
11 summer of 1985.  
12

13 MR. TOAVS: When you initially heard these statements, do you recall what  
14 time of day it was?  
15

16 MR. FOUR STAR: It was in the evening. I worked the evening shifts.

17 MR. TOAVS: And, who was present in the netting department at the time?

18 MR. FOUR STAR: Well the guy that I worked with. His name was  
19 Lawrence Red Eagle, William Balbinot and Alfred Pipe.  
20

21 MS. PLUBELL: Excuse me, could he repeat that last name please?

22 MR. FOUR STAR: Alfred Pipe.

23 MS. PLUBELL: Alfred Pipe?

24 MR. FOUR STAR: Yes.  
25



1 MR. TOAVS: And, at the time you heard this statement from Sissy  
2 Atkinson, or these statements, who was located next or in the vicinity where she  
3 was talking?

4 MR. FOUR STAR: William Balbinot was standing next to her and Alfred  
5 was at the other end of the table and I was standing at the table that I worked at.  
6

7 MR. TOAVS: And, the table you worked at was how far away from the  
8 table where Sissy Atkinson was located at the time?

9 MR. FOUR STAR: It was about twenty-five (25) feet.  
10

11 MR. TOAVS: Now, describe for the Court what it was you heard Ms.  
12 Atkinson say?

13 MR. FOUR STAR: She said that she and a few other women had beaten  
14 Kim Nees up and that they did quite a number on her. And that Barry was, Mr.  
15 Beach was falsely charged. They got the wrong guy is what she said.  
16

17 MR. TOAVS: Who was she saying this to?

18 MR. FOUR STAR: She was saying it to William Balbinot.  
19

20 MR. TOAVS: Do you know William Balbinot?

21 MR. FOUR STAR: Yeah I do. I haven't seen him for quite some time, but I  
22 do know him.  
23  
24  
25

1 MR. TOAVS: Do you know if Mr. Balbinot was acquainted, well let me ask  
2 you this, did you ever talk to Mr. Balbinot while you were working at A&S  
3 Industries?

4 MR. FOUR STAR: Yeah. I would talk to him all the time.

5  
6 MR. TOAVS: Are you aware of whether there was any relationship  
7 between him and Sissy Atkinson?

8 MR. FOUR STAR: I don't know if there was at that time, but eventually  
9 they had started dating.  
10

11 MR. TOAVS: So, after she made these statements, or while she was making  
12 these statements did she do anything else?

13 MR. FOUR STAR: She made a couple of gestures like she was kicking  
14 somebody that was on the ground.  
15

16 MR. TOAVS: At what point in time she did she make these gestures?

17 MR. FOUR STAR: I don't understand your question.

18 MR. TOAVS: Well, let me try to make it a better question. While she was  
19 talking was she also making gestures?  
20

21 MR. FOUR STAR: Yeah. It was while she was talking is when she made  
22 the gestures.

23 MR. TOAVS: Now, after or, how long did this explanation to Mr. Balbinot  
24 go on would you say?  
25

1 MR. FOUR STAR: Maybe five minutes.

2 MR. TOAVS: And then what happened?

3 MR. FOUR STAR: Well, I just went about my job and finished the day off.

4 MR. TOAVS: Was there any point in time when Sissy Atkinson made any  
5 statements to you?  
6

7 MR. FOUR STAR: She didn't make it specifically at me, but she was  
8 walking down the table and she said that they got away with the perfect crime and  
9 I just asked her to stay away from me.  
10

11 MR. TOAVS: During this incident were you able to gather any information  
12 about who else was involved in this crime?

13 MR. FOUR STAR: I didn't know any of the people that she had mentioned.  
14 There were a couple of names mentioned, but I didn't know any of the people. I  
15 had never heard any last names; I only heard one or two first names.  
16

17 MR. TOAVS: Can you remember any of them?

18 MR. FOUR STAR: I believe one of them was Maude and I don't recall any  
19 others right off hand.  
20

21 MR. TOAVS: Do you remember giving a sworn declaration to an  
22 investigator from Centurion Ministries in February of Two thousand seven (2007)  
23 concerning this incident that happened at A&S Industries?  
24

25 MR. FOUR STAR: Yes.

1 MR. TOAVS: Would it help you to refresh your memory if you had a  
2 chance to review your statement?

3 MR. FOUR STAR: Yeah.

4 MR. TOAVS: May I approach the witness Your Honor.

5 COURT: You may.

6  
7 MR. TOAVS: Mr. Four Star, I am handing you what has been previously  
8 marked for identification as Petitioners Exhibit Nine (9). Do you recognize exhibit  
9 9?  
10

11 MR. FOUR STAR: Yes, I recognize it. It's a statement that I gave to  
12 Centurion Ministries.

13 MR. TOAVS: How many pages is Exhibit Nine?

14 MR. FOUR STAR: There is two...  
15

16 MR. TOAVS: Now, on the bottom left hand corner of Exhibit Nine do you  
17 see that there is some initials there?

18 MR. FOUR STAR: Yes.

19 MR. TOAVS: Are those yours?  
20

21 MR. FOUR STAR: Yes they are.

22 MR. TOAVS: And then, on the second page of Exhibit Nine is there a  
23 signature?  
24

25 MR. FOUR STAR: Yes.

1 MR. TOAVS: Whose signature is that?

2 MR. FOUR STAR: It is mine.

3 MR. TOAVS: Is this a true and correct copy of the sworn statement that you  
4 gave on February 8, 2007, Mr. Four Star?

5  
6 MR. FOUR STAR: Yes it is.

7 MR. TOAVS: Your Honor I will move the admission of Exhibit Nine (9).

8 MS. PLUBELL: May we please see that copy? No objection Your Honor.

9  
10 COURT: Admitted.

11 MR. TOAVS: Mr. Four Star, in reviewing paragraph number six on page  
12 one of Exhibit Nine, does reviewing that paragraph refresh your memory about the  
13 names that you heard Sissy Atkinson in connection with this statement about how  
14 she had been involved in the Kim Nees murder?  
15

16 MR. FOUR STAR: Yes.

17 MR. TOAVS: What do you recall now?

18 MR. FOUR STAR: Well, I recall that she did mention Maude and Rose, but  
19 like I said I have no idea who these people were and I don't recall any other names  
20 that were mentioned.  
21

22 MR. TOAVS: Do you know Barry Beach?

23 MR. FOUR STAR: No I don't.

24  
25 MR. TOAVS: Did you know Barry Beach back ...

1 MR. FOUR STAR: No I didn't. I have no idea who he was.

2 MR. TOAVS: You didn't know him back in Nineteen eighty-five (1985)?

3 MR. FOUR STAR: No I didn't.

4 MR. TOAVS: And previous to that, you didn't know who he was either?

5 MR. FOUR STAR: No I didn't.

6 MR. TOAVS: Do you know any of Mr. Beach's family?

7 MR. FOUR STAR: No I don't.

8 MR. TOAVS: Mr. Four Star, there is a question about if you were twenty  
9 feet away how could you hear Sissy Atkinson say something at A&S Tribal  
10 Industries. Are you aware of that question?  
11

12 MS. PLUBELL: Objection to the form of that question Your Honor.

13 MR. TOAVS: I will withdraw the question.

14 COURT: I will sustain.

15 MR. TOAVS: Mr. Four Star, describe what was the noise level on this  
16 particular day in 1985 when you heard Sissy Atkinson make these statements?  
17

18 MR. FOUR STAR: At that time period the only thing that was of any level  
19 of noise was the radio that was played. There was no machinery back there. There  
20 was nothing back there. It was quiet.  
21

22 MR. TOAVS: How loud was the radio playing?  
23  
24  
25

1 MR. FOUR STAR: Loud enough that people could hear it, but I mean it  
2 wasn't so loud that it muted everybody out.

3 MR. TOAVS: In petitioners Exhibit Nine in paragraph four (4) you say that  
4 you heard the statement in the spring of 1984. Do you see that?  
5

6 MR. FOUR STAR: Yes.

7 MR. TOAVS: Do you have an explanation for why you are now saying that  
8 it was in 1985?  
9

10 MR. FOUR STAR: It was just before my daughter was born and she was  
11 born in August of 1985.

12 MR. TOAVS: So, this is a mistake?

13 MR. FOUR STAR: Yeah. It is a mistake.  
14

15 MR. TOAVS: Now, following this conversation that you overheard between  
16 Sissy Atkinson and Stubby Balbinot, did you report what had been heard by you to  
17 law enforcement?  
18

19 MR. FOUR STAR: No I didn't.

20 MR. TOAVS: Why didn't you?

21 MR. FOUR STAR: Well, I didn't really have much faith in law  
22 enforcement back then. For example, I went and filed a complaint over this  
23 incident that happened when I got jumped and nothing came out of that. So I don't  
24 have much faith with the Tribal Police. I didn't think anything would happen.  
25

1 MR. TOAVS: Did you report what you had heard to anyone else besides the  
2 police?

3 MR. FOUR STAR: I may have mentioned it to a minister, a priest at the  
4 church that I was attending.

5 MR. TOAVS: And where was that?

6 MR. FOUR STAR: That was at the Immaculate Conception Church in Wolf  
7 Point, Montana.  
8

9 MR. TOAVS: What was the context when you mentioned that to the ...  
10

11 MR. FOUR STAR: I had just mentioned that I had overheard something  
12 that had really bothered me. I didn't really get into much detail of what I had  
13 heard, just that I was troubled by it.

14 MR. TOAVS: How did it come about that you gave this sworn declaration  
15 to the investigator from Centurion Ministries?  
16

17 MR. FOUR STAR: They came up to my mom's house; they were looking  
18 for William Balbinot and I had mentioned it to them what I had heard.  
19

20 MR. TOAVS: And, do you remember who it was that you had mentioned,  
21 had told about the conversation? Do you remember who it was from Centurion  
22 Ministries?  
23

24 MR. FOUR STAR: It was Richard Hepburn and I don't recall the other  
25 fellow's name.



1 MR. TOAVS: And, how did it come up that you had this information back  
2 from 1985?

3 MR. FOUR STAR: They came to the house looking for Stubby; looking for  
4 information regarding this incident and I told them what I had heard.

5  
6 MR. TOAVS: Did you volunteer that to them?

7 MR. FOUR STAR: Yes I volunteered it to them.

8 MR. TOAVS: Why did you volunteer it to the Centurion Ministries  
9 investigators when you wouldn't go to the police with it?  
10

11 MR. FOUR STAR: Well, it had been ... It bothered me for quite some time.  
12 And I just thought it was time that I should say something about it. And up until  
13 that point I didn't. I try to avoid the police as much as I could.  
14

15 MR. TOAVS: Now, following then your employment with A&S Tribal  
16 Industries, what did you do after that?

17 MR. FOUR STAR: I went to work for a seismograph company.

18 MR. TOAVS: Did you ever attend any post-secondary education?  
19

20 MR. FOUR STAR: Yeah I did. I eventually went back to college.

21 MR. TOAVS: When was that?

22 MR. FOUR STAR: In nineteen ninety-six (1996).  
23

24 MR. TOAVS: And where did you go to school?

25 MR. FOUR STAR: Montana State University Billings.

1 MR. TOAVS: Did you achieve any degree as a result of your college?

2 MR. FOUR STAR: Yeah. I have got a Bachelor of Science degree.

3 MR. TOAVS: What is your bachelor's in?

4 MR. FOUR STAR: Finance.

5 MR. TOAVS: And presently, how are you employed Mr. Four Star?

6 MR. FOUR STAR: I do part time consulting work for an IT company.

7 MR. TOAVS: And, are you working in the Wolf Point, Montana area now?

8 MR. FOUR STAR: Yeah.

9 MR. TOAVS: Do you have any connection with the family of Sissy  
10 Atkinson?  
11

12 MR. FOUR STAR: No I don't.

13 MR. TOAVS: Do you have any connection with Sissy Atkinson?

14 MR. FOUR STAR: No.

15 MR. TOAVS: Do you have any reason to have bad feelings toward her or  
16 her family?  
17

18 MR. FOUR STAR: No I don't.

19 MR. TOAVS: Does that include back in 1985 when this statement was  
20 made?  
21

22 MR. FOUR STAR: Yes. I have never had any hard feelings toward any of  
23 them or any connection with them whatsoever.  
24  
25

1 MR. TOAVS: No further questions Your Honor.

2 COURT: Cross.

3 (CROSS EXAMINATION OF CARL FOUR STAR)

4 MS. PLUBELL: Good morning Mr. Four Star.

5 MR. FOUR STAR: Good morning.

6 MS. PLUBELL: First, I would like to talk to you about the whole issue of  
7 you not wanting to honor the subpoena, okay? And you said you did so because  
8 you were fearful, correct?  
9

10 MR. FOUR STAR: I didn't want to come here. I did start out; I started  
11 driving down here Sunday night and my car broke down outside of Glasgow. But, I  
12 did mention to Mr. Toavs that I did not want to come here because of what  
13 happened.  
14

15 MS. PLUBELL: Did you tell Mr. Toavs that a sheriff's deputy, Richard  
16 McDonald, had actually pointed you out to Atkinson family members so they  
17 could beat you up?  
18

19 MR. FOUR STAR: I did tell them that, yes.

20 MS. PLUBELL: And do you stand by that today?

21 MR. FOUR STAR: Yes I do.

22 MS. PLUBELL: And, just for clarification, in your statement, you did  
23 mention someone by the name of Rose, correct?  
24  
25

1 MR. FOUR STAR: Yes I did.

2 MS. PLUBELL: And, are you aware that there is a Rose Atkinson?

3 MR. FOUR STAR: I am not.

4 MS. PLUBELL: And her son's name is DJ Atkinson, isn't it?

5 MR. FOUR STAR: Yes it is.

6 MS. PLUBELL: And, he was the one you had an altercation with wasn't  
7 he?  
8

9 MR. FOUR STAR: Yes.

10 MS. PLUBELL: And, you said there were three others. Who were they?

11 MR. FOUR STAR: I don't know who they were.

12 MS. PLUBELL: Are you aware that DJ Atkinson was charged in Tribal  
13 Court with assault as a result of this offense?  
14

15 MR. FOUR STAR: I was told that no charges were brought up against him.

16 MS. PLUBELL: So, that would surprise you?

17 MR. FOUR STAR: Yeah, it would surprise me.

18 MS. PLUBELL: Are you aware that he is in the military now and stationed  
19 in California?  
20

21 MR. FOUR STAR: No I am not.

22 MS. PLUBELL: Do you recall filling out a statement about this incident?

23 MR. FOUR STAR: Yes I do. I filled one out at the Tribal Court.  
24  
25

1 MS. PLUBELL: I am sorry Your Honor, I didn't have it marked. I am sorry  
2 Your Honor I didn't expect this to be an issue.

3 COURT: What are we doing?

4 MS. PLUBELL: He would like to read it and we don't have an extra copy.

5 COURT: Oh, that is fine.

6  
7 MS. PLUBELL: Are you aware that there was also an incident report? Is it  
8 all right if I continue? I am sorry. Are you aware that there was also an incident  
9 report on this matter filled out by the Roosevelt County Sheriff's Office?  
10

11 MR. FOUR STAR: No.

12 MS. PLUBELL: You are not aware of that?

13 MR. FOUR STAR: No I am not.

14 MS. PLUBELL: Carl, I am handing you what has been marked as State's  
15 Exhibit Two (2). Can you please look at that for me? Can you identify that?  
16

17 MR. FOUR STAR: Yes. It is a statement that was filled out at the Fort  
18 Peck Tribal Court.

19 MS. PLUBELL: Who filled it out?

20 MR. FOUR STAR: I did.

21 MS. PLUBELL: That is your writing?

22 MR. FOUR STAR: Yes.

23  
24 MS. PLUBELL: What is the date on that statement?  
25

1 MR. FOUR STAR: July 13, 2006.

2 MS. PLUBELL: Mr. Four Star, when did you testify at the clemency  
3 hearing? Do you recall?

4 MR. FOUR STAR: It was in 2006 I believe, I am not sure.

5 MS. PLUBELL: Mr. Four Star in that ... You testified earlier that what this  
6 person DJ said to you was, "What are you doing to my aunt?" "  
7

8 COURT: Yeah, but I struck that because it was hearsay. So, if you want to  
9 question him and you want me to consider it, go forth.  
10

11 MS. PLUBELL: I do Your Honor.

12 COURT: All right.

13 MS. PLUBELL: Do you identify the aunt in your statement Mr. Four Star?  
14 Didn't you actually say, 'what are you doing to my mom'?'  
15

16 MR. FOUR STAR: Yes. That is what it says here.

17 MS. PLUBELL: And you now know that Rose Atkinson is DJ's mother,  
18 correct?  
19

20 MR. FOUR STAR: Yes I do.

21 MS. PLUBELL: Now Mr. Four Star, I want to make sure that I understood  
22 your testimony correctly about when you worked at ...  
23

24 COURT: May I interrupt you?

25 MS. PLUBELL: Yes.

1 COURT: Do you want to admit this exhibit?

2 MS. PLUBELL: Oh, I am sorry Your Honor. Yes. The State moves to  
3 admit State's Exhibit Two (2).

4 MR. TOAVS: Your Honor, if that is an attachment to a Court document that  
5 is going to be admitted, I would just as soon the whole document be admitted.  
6

7 COURT: Any problem with that Ms. Plubell?

8 MS. PLUBELL: I don't think so. No. It was attached to this from the Fort  
9 Peck Tribe.  
10

11 COURT: All right. Let's have the whole thing identified then and we will

12 ...

13 MS. PLUBELL: I didn't believe he could identify the rest of it Your Honor.

14 COURT: What is to be gained by having these cover pages?  
15

16 MR. TOAVS: Well Your Honor, the reason is the format of these  
17 documents is that the handwritten.... I admitted to practice in Tribal Court.... The  
18 handwritten portion is generally stapled on to the case report as an attachment.  
19 There was some questioning about the date on which this statement was signed and  
20 I wanted to see what the file stamp date was on the document and it is different. I  
21 would request the document be submitted as a complete document.  
22

23 COURT: All right. Any problems from the State?  
24

25 MS. PLUBELL: No.

1 COURT: All right then. We will admit that as what?

2 MS. PLUBELL: State's Exhibit Two (2).

3 COURT: We will just remove the other one and we will do this as State's  
4 Exhibit Two (2).

5  
6 MS. PLUBELL: Now, would you please refresh my memory. When did  
7 you start working at A&S Industries?

8 MR. FOUR STAR: In 1983.

9 MS. PLUBELL: In 1983. And, you claim you testified that you worked  
10 there until 1987, is that correct?  
11

12 MR. FOUR STAR: I worked there; I took about three months off to attend  
13 school.

14 MS. PLUBELL: When was that?

15 MR. FOUR STAR: In the spring of 1985.

16 MS. PLUBELL: Mr. Four Star, do you still have your sworn declaration in  
17 front of you that was admitted as an exhibit?  
18

19 MR. FOUR STAR: Yes.  
20

21 MS. PLUBELL: And you indicated that you heard ... You originally  
22 indicated according to this statement that you heard this statement in the spring of  
23 1984, right?  
24

25 MR. FOUR STAR: That is what it says there, yes.



1 MS. PLUBELL: And, you said it was right after Barry Beach's trial was  
2 over, correct?

3 MR. FOUR STAR: Yes, that is what it says there.

4 MS. PLUBELL: And, are you aware of when Barry Beach's trial was over?

5 MR. FOUR STAR: No I am not. And, I am not quite sure of the dates of  
6 when all this took place. When I made that statement of it being in 1984, I  
7 generalized.  
8

9 MS. PLUBELL: But, you connected it to Mr. Beach's trial ending, correct?  
10

11 MR. FOUR STAR: Yes.

12 MS. PLUBELL: And, in fact, you referenced that Mr. Balbinot had been  
13 reading a newspaper or something that referenced Mr. Beach, correct?  
14

15 MR. FOUR STAR: Yes. Yes he did.

16 MS. PLUBELL: And that is what prompted him to say something, right?

17 MR. FOUR STAR: Yes.

18 MS. PLUBELL: And what did he say?  
19

20 MR. FOUR STAR: He said something like it was a shame what happened  
21 to the guy, to Mr. Beach.

22 MS. PLUBELL: And, your impression was that was based on what he was  
23 reading, correct?  
24

25 MR. FOUR STAR: Yes.

1 MS. PLUBELL: And, that's when this statement supposedly occurred from  
2 Sissy, right?

3 MR. FOUR STAR: Yes ma'am.

4 MS. PLUBELL: And so, this statement really bothered you didn't it?  
5

6 MR. FOUR STAR: Yes it did bother me.

7 MS. PLUBELL: Because it convinced you that Mr. Beach was innocent,  
8 right?

9 MR. FOUR STAR: I don't know if I would say that. It bothered me  
10 because of the violence and what was being said.  
11

12 MS. PLUBELL: So, if you previously testified that it bothered you because  
13 you believed Mr. Beach was innocent, are you changing?  
14

15 MR. FOUR STAR: No, I don't recall ever saying that. I don't recall ever  
16 saying that he was guilty or not guilty.

17 MS. PLUBELL: Okay, thank you. When you finally had this opportunity to  
18 get it off your chest, that was significant to you wasn't it?  
19

20 MR. FOUR STAR: What was significant to me? I am sorry.

21 MS. PLUBELL: To be able to tell someone about this statement.

22 MR. FOUR STAR: Yes it was.  
23  
24  
25

1 MS. PLUBELL: And that occurred back in, I believe you said two thousand  
2 (2000) or two thousand-one (2001) when you first met with Centurion Ministries,  
3 correct?

4 MR. FOUR STAR: Yeah. It was the first time that I met with them.

5  
6 MS. PLUBELL: And, that was when they came to your mom's house and  
7 they were looking for Mr. Balbinot, right?

8 MR. FOUR STAR: Yes.

9 MS. PLUBELL: And so, you knew why they were there?

10  
11 MR. FOUR STAR: Yes. They told ...

12 MS. PLUBELL: You knew what they were doing?

13 MR. FOUR STAR: Yes.

14 MS. PLUBELL: You met with their investigators and did you know that  
15 they were investigating their belief that Mr. Beach was innocent?  
16

17 MR. FOUR STAR: They may have mentioned it.

18 MS. PLUBELL: So, that was really your opportunity, the perfect time to  
19 finally disclose all of the details of this conversation you overheard which had been  
20 troubling you since the spring of 1984 when you heard it, right?  
21

22 MR. FOUR STAR: Yes.

23 MS. PLUBELL: So you told Mr. Hepburn exactly what you heard?

24  
25 MR. FOUR STAR: Yes I did.

1 MS. PLUBELL: Gave him all the details?

2 MR. FOUR STAR: Of what I could remember.

3 MS. PLUBELL: And then eventually, on February 8, 2007, you actually  
4 signed this statement that you have in front of you correct?  
5

6 MR. FOUR STAR: Yes.

7 MS. PLUBELL: And, what you told Rich Hepburn you heard was Stubby  
8 say to Sissy it's a shame what happened to Barry, correct?  
9

10 MR. FOUR STAR: Yes ma'am.

11 MS. PLUBELL: And she responded, "They got the wrong man", correct?

12 MR. FOUR STAR: Yes.

13 MS. PLUBELL: And then she said, "I was there".

14 MR. FOUR STAR: Yes.

15 MS. PLUBELL: And she also mentioned Maude, Rose and another girl  
16 whose name you couldn't recall right?  
17

18 MR. FOUR STAR: Yes.

19 MS. PLUBELL: And, she said it was a perfect crime.  
20

21 MR. FOUR STAR: Yes she did.

22 MS. PLUBELL: And then later according to this statement she walked by  
23 you, looked right at you, and said got away with a capital crime, right?  
24

25 MR. FOUR STAR: Yes she was ... Yes.

1 MS. PLUBELL: And that made you afraid?

2 MR. FOUR STAR: Yes it did.

3 MS. PLUBELL: Mr. Four Star, do you recall when we came and  
4 interviewed you in Wolf Point in the spring of 2007?

5 MR. FOUR STAR: Yes I do.

6 MS. PLUBELL: And, do you recall telling us that you were one hundred  
7 percent (100%), you agreed with this statement one hundred percent (100%)?  
8

9 MR. FOUR STAR: Yes.

10 MS. PLUBELL: Well, I guess you have the statement, but back in this  
11 statement you implicated Sissy, Maude, Rose and another girl, correct?  
12

13 MR. FOUR STAR: Which statement are you ... This statement from  
14 Centurion Ministries?  
15

16 MS. PLUBELL: Yes.

17 MR. FOUR STAR: Yes.

18 MS. PLUBELL: But, on March 21, 2007, when you testified at the  
19 clemency hearing, or when we interviewed you, you implicated Maude Grayhawk,  
20 didn't you?  
21

22 MR. FOUR STAR: I don't recall.

23 MS. PLUBELL: If I showed you a copy of the transcript of that interview  
24 would that help you refresh your memory Mr. Four Star?  
25

1 MR. FOUR STAR: I imagine it would.

2 COURT: This is a little unusual. This is not a deposition is it?

3 MS. PLUBELL: It was a recorded statement he gave.

4 COURT: But not a deposition?

5 MS. PLUBELL: No.

6 COURT: Not a sworn testimony?

7 MS. PLUBELL: No.

8 COURT: All right.

9 MS. PLUBELL: We have a tape recording of it Your Honor that is  
10 available.  
11 available.

12 COURT: Also, please ask for permission before you approach the witness.

13 MS. PLUBELL: I am sorry Your Honor. May I please approach the  
14 witness?  
15 witness?

16 COURT: You may.

17 MS. PLUBELL: This is the front, just so you can look at that.

18 MR. TOAVS: Excuse me, may I ask counsel what page she is referring to?

19 MS. PLUBELL: Page fifteen (15). Did you identify Maude Grayhawk by  
20 first and last name sir?  
21 first and last name sir?  
22 first and last name sir?  
23 first and last name sir?  
24 first and last name sir?  
25 first and last name sir?

1 MR. FOUR STAR: It says it here, but I am not so sure that I was ... I am  
2 not so sure why her name was brought up. I don't recall it because I never heard  
3 Sissy say any last names when I heard her say all this.

4 MS. PLUBELL: So, you are denying that you said Grayhawk?

5  
6 MR. FOUR STAR: No, I am not denying that. I am just saying that I don't  
7 recall why the name Grayhawk was brought up.

8 MS. PLUBELL: Do you recall what your testimony was back on June 13<sup>th</sup>  
9 of 2007, about whether it was Maude or Maude Grayhawk; back at the clemency  
10 hearing?  
11

12 MR. FOUR STAR: No ma'am.

13 MS. PLUBELL: Didn't you testify that that it was just Maude at that point?

14 MR. FOUR STAR: Yes ma'am, I may have.

15 MS. PLUBELL: So which is it you heard her say?

16 MR. FOUR STAR: I heard her say Maude; I don't recall ...

17 MS. PLUBELL: Not Maude Grayhawk.

18  
19 MR. FOUR STAR: I don't recall her saying any last names and I don't  
20 know why I would have said Grayhawk here.  
21

22 MS. PLUBELL: Would you explain a little bit again about where you  
23 worked at ... You said you did a number of jobs in the netting department of A&S  
24 Industries. What were those jobs?  
25

1 MR. FOUR STAR: Screening. And what we would do as screening, we  
2 would repair the netting; we would fix all the holes in it. Another job that I did  
3 was thumbing, which was sewing the nets together with a needle and some string  
4 and I also hex cut.

5  
6 MS. PLUBELL: What were you doing when you heard this particular  
7 statement Mr. Four Star?

8 MR. FOUR STAR: I was the hex cutter.

9 MS. PLUBELL: And is it now your position that you heard the statement in  
10 1985?  
11

12 MR. FOUR STAR: Yes.

13 MS. PLUBELL: And is there a reason you have changed the date?

14 MR. FOUR STAR: I mentioned earlier that it was right before my oldest  
15 daughter was born and she was born in August of 1985.  
16

17 MS. PLUBELL: And when was it that you went to see the priest?

18 MR. FOUR STAR: I don't recall. It must have been sometime after that,  
19 1986.  
20

21 MS. PLUBELL: Do you recall testifying at the clemency hearing that you  
22 went and saw the priest in August of 1985?

23 MR. FOUR STAR: No ma'am, I don't recall.  
24  
25



1 MS. PLUBELL: One moment Your Honor. You don't recall testifying that  
2 you saw the priest before your daughter was born in August of 1985?

3 MR. FOUR STAR: My daughter was born August 1<sup>st</sup> of 1985. Any  
4 statements made said; that I made where I said I went to see a priest in August of  
5 1985 would have obviously been sometime after August 1<sup>st</sup>.  
6

7 MS. PLUBELL: And, do you recall testifying that your wife, your girlfriend  
8 was pregnant at the time you went and saw the priest?  
9

10 MR. FOUR STAR: No, I don't recall.

11 MS. PLUBELL: And, you indicated at the clemency hearing that Sissy  
12 made the statement three months before that, right?  
13

14 MR. FOUR STAR: I don't recall specifying any date that Sissy made the  
15 statement.  
16

17 MS. PLUBELL: Except in your original statement to Centurion Ministries?

18 MR. FOUR STAR: I am looking at it here. I don't see a date on there  
19 anywhere.  
20

21 MS. PLUBELL: Does it say spring of 1984?

22 MR. FOUR STAR: Yes it says 1984.

23 COURT: Just a minute. Your question was, does it say spring of 1984.  
24 Does it say spring of 1984 or does it just say 1984?

25 MR. FOUR STAR: It says 1984. It doesn't say spring or anything else.

1 MS. PLUBELL: I am sorry. Your Honor, may I approach and look at that  
2 because my copy says spring.

3 COURT: Sure.

4 MR. FOUR STAR: I was looking at paragraph thirty (30). Okay, it does  
5 say spring.  
6

7 MS. PLUBELL: And, are you aware ... You also indicated that Mr.  
8 Lawrence Red Eagle was right there when ... Next to you when Sissy made that  
9 statement, correct?  
10

11 MR. FOUR STAR: Yes.

12 MS. PLUBELL: Are you aware that Mr. Red Eagle didn't work there in the  
13 spring of 1984?  
14

15 MR. TOAVS: Objection Your Honor. That question assumes facts that are  
16 not into evidence.

17 MS. PLUBELL: Would you disagree with employment ... I am sorry Your  
18 Honor.  
19

20 COURT: Sustained.

21 MS. PLUBELL: If there were employment records from A&S Industries  
22 that establish that Mr. Red Eagle did not work there in the spring of 1984, would  
23 you disagree with that?  
24

25 MR. TOAVS: Same objection.

1 COURT: Overruled?

2 MS. PLUBELL: Do you want me to repeat that Mr. Four Star?

3 MR. FOUR STAR: Yes please.

4 MS. PLUBELL: If there were employment records from A&S Industries  
5 that demonstrated that Lawrence Red Eagle didn't work at A&S Industries in the  
6 spring of 1984, would you dispute that?  
7

8 MR. FOUR STAR: No, I wouldn't dispute that. It must have been 1985  
9 that he worked there.  
10

11 COURT: Did the records show he worked there in 1985?

12 MS. PLUBELL: Well, we are going to introduce the records Your Honor.

13 COURT: Yes or no?

14 MS. PLUBELL: He did, but not in the same department.  
15

16 COURT: But he worked at A&S Industries?  
17

18 MS. PLUBELL: He didn't work with Mr. Four Star. And where did you  
19 work in 1985? What department?

20 MR. FOUR STAR: In the netting department?

21 MS. PLUBELL: Were you a hex cutter?  
22

23 COURT: That is the fourth time we have asked that same question.

24 MS. PLUBELL: Okay.

25 COURT: I have got that information down cold.

1 MS. PLUBELL: Okay. Would you agree that what you said you heard in  
2 the spring of 1984 you couldn't have heard at that time since Mr. Four Star, or you  
3 couldn't have heard it when Mr. Red Eagle was there, correct?

4 MR. TOAVS: Again Your Honor, I object that assumes facts that are not  
5 into evidence.  
6

7 COURT: Well, and I am confused myself about the nature of the question.

8 MS. PLUBELL: I will withdraw the question. If the employment records  
9 from A&S Industries showed that Stubby Balbinot didn't work at A&S Industries  
10 in 1984 would you have any reason to dispute that?  
11

12 MR. FOUR STAR: No I wouldn't.

13 COURT: Do they show that he worked in 1985?  
14

15 MS. PLUBELL: I have to review the records Your Honor. I am sorry. But,  
16 we know that you couldn't have heard in the spring of 1984 if Stubby didn't work  
17 there; you couldn't have heard the statement then, correct?

18 MR. FOUR STAR: Yes ma'am.  
19

20 MR. TOAVS: Objection. That has been asked and answered.

21 COURT: I am sorry.

22 MR. TOAVS: I object that the question is asked and answered.  
23

24 COURT: Well, I think overruled. I am not sure if we got an answer or not.  
25

1 MS. PLUBELL: And, you left A&S Industries in March of 1985 to return to  
2 school correct?

3 MR. FOUR STAR: Yes.

4 MS. PLUBELL: And you were gone for, did you say, three months?

5  
6 MR. FOUR STAR: The university system was on quarters at that time, so it  
7 was about three months.

8 MS. PLUBELL: You talked about a partition in the Quonset hut and you  
9 said it was a garage door. That was kept open, wasn't it?  
10

11 MR. FOUR STAR: Yeah.

12 MS. PLUBELL: Was Sissy known as Dotty Kiness at the time she was  
13 working back in 1984?

14 MR. FOUR STAR: I couldn't tell you.

15 MS. PLUBELL: You didn't know her last name?

16 MR. FOUR STAR: I don't know any other names.  
17

18 MS. PLUBELL: You indicated in your direct testimony that she talked  
19 about beating Kim Nees, correct?  
20

21 MR. FOUR STAR: Yes.

22 MS. PLUBELL: By name?

23 MR. FOUR STAR: Yes.  
24

25 MS. PLUBELL: Is that in your statement to Centurion Ministries?

1 MR. FOUR STAR: Kim Nees name is not in this statement. I don't see it.

2 Just Mr. Beach's name is.

3 MS. PLUBELL: And, you also testified at the clemency hearing, well  
4 actually, you just testified a little while ago that she also gestured with kicking  
5 motions correct?  
6

7 MR. FOUR STAR: Yes.

8 MS. PLUBELL: As if she was kicking someone when she was making this  
9 statement.  
10

11 MR. FOUR STAR: Yes.

12 MS. PLUBELL: Do you recall testifying at the clemency hearing that  
13 actually what the gestures were was her bending over someone sitting, gesturing  
14 that she was hitting someone?  
15

16 MR. FOUR STAR: Yes I recall that.

17 MS. PLUBELL: And now today ...

18 MR. FOUR STAR: No. I am not making any changes. She made several  
19 gestures. Kicking was one of them and it looked like she was striking somebody.  
20

21 MS. PLUBELL: All right. And none of those that the reference to her  
22 making gestures appears in that written statement that you signed to Centurion  
23 Ministries does it?  
24

25 MR. FOUR STAR: No it doesn't.

1 MS. PLUBELL: Finally, you indicated that there was some noise at A&S  
2 Industries, but it was easy for you to overhear this remark, correct?

3 MR. FOUR STAR: Yes.

4 MS. PLUBELL: And, I believe for the first time you identified another  
5 person who was right there on the edge cord table as well, Alfred Pipe.  
6

7 MR. FOUR STAR: Yes.

8 MS. PLUBELL: You have never identified him before have you?

9 MR. FOUR STAR: I don't recall.  
10

11 MS. PLUBELL: You indicated ... Tell us again that there was a radio  
12 playing.

13 MR. FOUR STAR: Yes ma'am there was a radio that played.

14 MS. PLUBELL: And that was the only noise?  
15

16 MR. FOUR STAR: That was the only noise at that time.

17 MS. PLUBELL: Do you recall testifying at the clemency hearing it was so  
18 quiet you could hear a pin drop?

19 MR. FOUR STAR: Yes. The radio wasn't playing all the time.  
20

21 MS. PLUBELL: No further questions Your Honor.

22 COURT: All right. Re-direct.  
23

24 (REDIRECT EXAMINATION OF CARL FOUR STAR)  
25

1 MR. TOAVS: Thank you Your Honor. We have just a request that Your  
2 Honor take judicial notice of the date when Barry Beach's appeal was decided by  
3 the Montana Supreme Court. The date is referenced in pleadings. It is a matter of  
4 record in this case and we think it is proper subject for judicial notice.  
5

6 COURT: For what purpose? Not that it wouldn't be appropriate anyway,  
7 but what purpose?

8 MR. TOAVS: The purpose is, Your Honor, to establish the date of when the  
9 appeal was decided in reference to the discussion that was subject to some cross-  
10 examination by Ms. Plubell.  
11

12 COURT: Well, it is certainly part of the procedural record that the Court  
13 would have to include as its factual basis, so I will take notice of that.  
14

15 MR. TOAVS: Thank you Your Honor.

16 MS. PLUBELL: I would just ask that you also take judicial notice that he  
17 was convicted in the spring of 1984 on April 13, 1984 and was sentenced in May  
18 of 1984.  
19

20 COURT: You bet.

21 MR. TOAVS: And, the date for decision of Mr. Beach's appeal was July  
22 25, 1985. And, that is contained in the file as well as in the State's Response and  
23 Opposition to Motion to Substitute Judge at page forty-five (45) .  
24  
25



1 In any event Mr. Four Star, Ms. Plubell asked you a lot of questions about  
2 dates, do you remember that?

3 MR. FOUR STAR: Yes.

4 MR. TOAVS: Now, when you were working at A&S Industries during this  
5 time frame when you heard Ms. Atkinson's statements, were you keeping track of  
6 what date it was?  
7

8 MR. FOUR STAR: No I wasn't.

9 MR. TOAVS: Were you writing this down on a calendar or keeping any  
10 other form of record to remember what the date was later?  
11

12 MR. FOUR STAR: No I wasn't keeping any records of it.

13 MR. TOAVS: And when you completed your statement for Centurion  
14 Ministries, how did you come up with initially, the spring of 1984?  
15

16 MR. FOUR STAR: It was just a general date that I came up with, a general  
17 year. I don't recall anything specific.

18 MR. TOAVS: Excuse me. I don't mean to cut you off, but since you gave  
19 your statement to Centurion Ministries, Ms. Plubell indicated that you had  
20 undergone questioning by the Montana Attorney General's office.  
21

22 MR. FOUR STAR: Yes.

23 MR. TOAVS: And did you voluntarily submit to that interview?  
24

25 MR. FOUR STAR: Yes I did.

1 MR. TOAVS: Do you remember how long that lasted?

2 MR. FOUR STAR: It was quite some time. I don't recall how long it  
3 lasted.

4 MR. TOAVS: Do you have an estimate for how long it lasted?

5 MR. FOUR STAR: A couple hours.

6 MR. TOAVS: And also, you testified on cross examination that you gave  
7 testimony at the clemency hearing.  
8

9 MR. FOUR STAR: Yes.

10 MR. TOAVS: And, how long did that testimony take?

11 MR. FOUR STAR: That testimony, my testimony, took about forty-five  
12 (45) minutes to an hour.  
13

14 MR. TOAVS: So that we have a clear record Mr. Four Star, how sure are  
15 you that this conversation that you overheard between Sissy Atkinson and Stubby  
16 Balbinot occurred in 1985?  
17

18 MR. FOUR STAR: I am almost one hundred percent (100%) sure that it  
19 took place in 1985.  
20

21 MR. TOAVS: And what process of reasoning have you arrived at or gone  
22 through to arrive at this conclusion?  
23

24 MR. FOUR STAR: Because of the birth of my oldest daughter which was  
25 in August of 1985.

1 MR. TOAVS: Why is that significant to you, the birthdate for your daughter  
2 in relation to the date when this statement was made Mr. Four Star?

3 MR. FOUR STAR: Well, it was the biggest thing that took place in my life  
4 at that time.

5  
6 MR. TOAVS: Do you remember having that date in mind as in reference to  
7 having heard these statements by Sissy Atkinson?

8 MR. FOUR STAR: I recall it being approximately around that date. Like I  
9 said earlier, I did not write anything down on the calendar or make any other sort  
10 of notes about it.

11  
12 MR. TOAVS: May I have the exhibit? May I approach the witness Your  
13 Honor?

14 COURT: You may.

15  
16 MR. TOAVS: Mr. Four Star, let me hand you State's Exhibit Number two  
17 (#2). Do you have that?

18 MR. FOUR STAR: Yes.

19  
20 MR. TOAVS: Okay now, you were asked some questions about the last  
21 page of State's Exhibit Two. Could I ask you to turn to the third page please? Do  
22 you see that?

23 MR. FOUR STAR: I see the third page, yes.  
24  
25

1 MR. TOAVS: And, you were asked some questions by Ms. Plubell about  
2 the date next to your signature on page three of exhibit two, do you recall that?

3 MR. FOUR STAR: Yes.

4 MR. TOAVS: Now, there is a date there isn't there?

5 MR. FOUR STAR: There is a stamp date and a typed date.  
6

7 MR. TOAVS: And, the date that is written in there is a type written date,  
8 isn't it?

9 MR. FOUR STAR: Yes.  
10

11 MR. TOAVS: Is it a part of the form?

12 MR. FOUR STAR: Yes.

13 MR. TOAVS: And, where did you get the form Mr. Four Star?  
14

15 MR. FOUR STAR: I got the form from the tribal prosecutor's office.

16 MR. TOAVS: And, when you got the form was there already the date on  
17 there?

18 MR. FOUR STAR: Well, the year was on there.  
19

20 MR. TOAVS: And the year that was on there when you got the form was  
21 what?

22 MR. FOUR STAR: 2006.  
23

24 MR. TOAVS: Now is it still your testimony that the assault that you ...  
25 Well let me ask it to you in a non-leading way. What is your recollection about

1 when you suffered the assault that you described as a result of your testimony at  
2 the clemency hearing?

3 MR. FOUR STAR: It happened after the clemency hearing.

4 MR. TOAVS: Is there a date on the front page of Exhibit Two Mr. Four  
5 Star?  
6

7 MR. FOUR STAR: The date of offense 7-14-07 and then it says error 7-12-  
8 07.

9 MR. TOAVS: July 12, 2007?  
10

11 MR. FOUR STAR: Yes.

12 MR. TOAVS: Do you recall if the clemency hearing was in June of 2007  
13 Mr. Four Star?

14 MR. FOUR STAR: I don't recall if it was in June.

15 MR. TOAVS: Are you sure that you made this report after the clemency  
16 hearing?  
17

18 MR. FOUR STAR: Yes.

19 MR. TOAVS: I have no further questions of Mr. Four Star Your Honor.  
20

21 COURT: Re-cross.

22 MS. PLUBELL: No further questions Your Honor.  
23

24 COURT: May this gentleman be released from subpoena?

25 MR. TOAVS: Petitioner has no objection.

1 COURT: Any objection from the State?

2 MS. PLUBELL: No objection.

3 COURT: You are good to go. Thank you very much.

4 MR. FOUR STAR: Thank you Your Honor.

5 COURT: All right. Let's take a brief recess please.

6  
7 (RECESS)

8 CLERK: All rise please.

9 COURT: Please be seated. Okay. Now I believe we are at the point where  
10 we are talking about ...

11  
12 MR. CAMIEL: I am sorry Your Honor. We are missing State's counsel.

13 COURT: Oh yes. That's not good. Oh maybe it is good. This thing just  
14 got a lot more efficient didn't it? We got it all solved folks.

15  
16 MS. PLUBELL: Okay. Let's have breakfast.

17 COURT: All right. If I am understanding correctly, I believe we are at the  
18 spot where I want to initiate again this colloquy between Court and counsel about  
19 the amended petition and exhibits and witnesses that are being related to in the  
20 petition. Are we at that point from your perspective Mr. Camiel?

21  
22 MR. CAMIEL: We are Your Honor. We have called or presented prior  
23 testimony of all the witnesses that we are allowed to call that are named in the  
24 original petition.  
25

1 COURT: Okay. Speaking of which; give me one minute. I got some  
2 documents this morning. Okay, what I have here were on my desk this morning is  
3 a transcript of what appears to be Mr. Atkinson, J.D, and Ms. Vonnie Rae Brown  
4 and Roberta Louise Ryan. I do not see any exhibits attached which I know the  
5 State had some concern about. What I would like to do is I would like to give  
6 these to the State and see if these are accurate representation of what you want the  
7 Court to review.

9 MS. PLUBELL: May I approach?

10 COURT: Yes. Let me just give her a minute or two to look these over and  
11 then we will launch into the post, or the amended petition issues.

13 MR. TOAVS: Your Honor, may we be heard?

14 COURT: Let's let them review these documents first just so they can pay  
15 attention when we are discussing things. Does that look like the full Monty?  
16

17 MS. PLUBELL: Yes, aside from the exhibit.

18 COURT: Okay. Could we get that exhibit and could you review that with  
19 the State so that I make sure that I have that?  
20

21 MR. CAMIEL: We are trying to locate a copy of it. Counsel had a copy,  
22 but it was in Volume One (1) and it was not copied and so we are trying to get a  
23 complete copy.  
24  
25

1 COURT: Okay. All right. So, that is a good step forward. Now Mr. Toavs,  
2 you had some concern?

3 MR. TOAVS: Right Your Honor. Thank you. Before Your Honor takes  
4 argument concerning amendment to the petition, there is one more matter that we  
5 would like to raise and that is yesterday Your Honor did not allow us to present  
6 evidence of Dr. Richard Leo who is the false confession analyst, and didn't agree  
7 with our arguments concerning that should be heard as a result of the Fifth Clark  
8 factor. Your Honor, last evening I spent some time reviewing our original petition  
9 and at this point we would request that Your Honor consider hearing Dr. Leo's  
10 testimony. How it was presented in the original petition was that he was a witness  
11 that would testify concerning the ineffective assistance of counsel claim. One of  
12 the claims, one of the procedural claims, that is presently time-barred that we had  
13 argued in our petition, is that part of what defense counsel should have done was  
14 done a better job of highlighting for the jury the differences between the confession  
15 and the known facts of the crime scene. At this point Your Honor, we would like  
16 to make an offer to call Dr. Leo to testify, not under the same theory that we  
17 proposed yesterday, but under the theory that his testimony would be relevant for  
18 your consideration of the ineffective assistance claim if you get to that point.  
19  
20  
21  
22

23 COURT: State's response please.  
24

25 MS. PLUBELL: Well, Your Honor ...



1 COURT: You can make him do it.

2 MR. LIGHT: What's new?

3 MS. PLUBELL: For point of clarification, Richard Leo does not appear in  
4 the verified petition. They referenced some information from Mr. Leo in their  
5 memorandum, but he is no- where in the verified petition as listed as a witness.  
6

7 And ...

8 COURT: Well, that is a concern Mr. Toavs. I thought you just said he was.

9 MR. TOAVS: No. His analysis is contained in the amended petition under  
10 the category of procedural defects at trial. Mr. Leo is listed as a witness to be  
11 called in our prehearing memorandum that was filed where Your Honor required  
12 that we identify our witnesses. Richard Leo is listed as a witness in the prehearing  
13 memorandum where we were asked to identify our witnesses, He is one of them.  
14  
15

16 COURT: But, he is not in the petition?

17 MR. TOAVS: Well, he is not new evidence Your Honor. He is not listed as  
18 a witness that would present new evidence and I think we have covered that  
19 ground yesterday.  
20

21 COURT: Well, I am confused. How is this different than what I ruled on  
22 yesterday?  
23

24 MR. TOAVS: Well, yesterday we were talking about Dr. Richard Leo along  
25 with two other witnesses to testify about what evidence would look like at a new

1 trial. And, through the context of that discussion I did not realize yesterday, Your  
2 Honor, that how he is presented and he also has relevance in Your Honor's  
3 consideration of the ineffective assistance of counsel claim that is in the original  
4 petition. He, like I said, is listed as a witness in our prehearing memorandum. He  
5 testified at the clemency hearing. He has got a report. All of that information has  
6 been supplied to the State's attorneys' office. He was subject to cross examination  
7 then. He is not a surprise witness Your Honor.

8  
9 COURT: Yesterday the petitioner argued to the Court that the procedural  
10 constitutional innocence issue was a matter of record that the Court would evaluate  
11 once we got through the gateway of the actual innocence. Do I remember that  
12 wrong?  
13

14 MR. CAMIEL: No Your Honor. You remember correctly and as we  
15 rethought this last night we realized that Mr. Leo's testimony was also relevant.  
16 When I was addressing Court, I was focusing on prosecutorial misconduct errors  
17 that we claimed and hadn't contemplated what we hadn't actually laid out in our  
18 actual petition as we rethought about this last night. As Mr. Toavs indicated, we  
19 believe that his testimony is relevant to the issue of ineffective assistance of  
20 counsel with regard to how the confession was handled at trial.  
21

22 COURT: So, it is all record based except.  
23

24 MR. CAMIEL: That is true.  
25

1 MR. LIGHT: The only problem with that Your Honor is if we are going to  
2 get to the stage, and I think you went there with your last order, we are going to get  
3 to the stage where we are going to start arguing those constitutional claims then we  
4 don't want to do that right now. We are not prepared for that. That is why we  
5 talked about a continuance for that. That's when we want to get an order to talk  
6 about Timer. That's when we want to possibly get another expert on false  
7 confessions. That's when we want to have Mr. Racicot here. Is simply because,  
8 you know, we need an opportunity and that should be allowed to us especially in  
9 relation to Mr. Moses. Plus, quite frankly, we relied on what you said yesterday  
10 Your Honor and thought that Leo was off the table. Now, at the last minute they  
11 want to put him back on the table and quite frankly, they want to bring him through  
12 the back door. We relied on the Court's decision yesterday.

16 COURT: Well, I don't know if there is any prejudice overnight. Well, what  
17 is persuasive to the Court is the State's concern about the need to be prepared for a  
18 hearing that we deal with constitutional procedural innocence. And so, I am not  
19 going to allow this testimony at this time. What then remains is whether the Court  
20 would schedule a hearing based solely on constitutional procedural innocence.  
21 Frankly, I am a little reluctant because the petitioner basically told the Court it is  
22 all procedural and now we have one exception and it seems like it is an  
23 inappropriate use of judicial resources of a wrongheaded way to tackle the remand  
24  
25

1 situation, but I haven't made a decision yet. We will have to kind of put that into  
2 the hopper, as they say in the legislature, and see how this unfolds before the end  
3 and then take that up finally and make a decision.

4 MR. TOAVS: Thank you Your Honor.

5 COURT: All right. Now, with regard ...  
6

7 MS. PLUBELL: Your Honor I am sorry, but just for clarification where  
8 does that leave us for Mr. Leo?

9 COURT: He is not going to testify. At least today, or in this proceeding.  
10

11 MS. PLUBELL: Thank you Your Honor.

12 COURT: If he does testify, it would be at another proceeding where the  
13 State has an opportunity to do what they think they need to do.

14 MS. PLUBELL: Thank you Your Honor.

15 COURT: All right. Now, with regard to the amended petition. Counsel  
16 gave me a reasonable stab I believe yesterday, at the due diligence argument which  
17 is the Court's chief concern from the Clark factors. What I would like to do is just  
18 revisit that; just assume that the Court would like basically a rehearing on those  
19 arguments to make sure that I have them all in hand and don't get them confused  
20 with what has come before. So, let's start there and then we may have to move on  
21 to some of the other Clark factors. But, all right. Mr. Camiel.  
22  
23  
24  
25

1 MR. CAMIEL: You would like me to start with our due diligence with  
2 regard to the amended petition witnesses?

3 COURT: Correct.

4 MR. CAMIEL: Thank you.

5  
6 MS. PLUBELL: Your Honor, just for a point of clarification. I wasn't sure  
7 if you would go through all the witnesses or if there are some left out.

8 MR. CAMIEL: Your Honor, I will list all of the witnesses that we would  
9 intend to call and make argument with regard to each witness as to the due  
10 diligence factor that I think the Court is interested in.  
11

12 Your Honor, the first witness that we would call is a woman named  
13 Stephanie Eagle Boy who is from Poplar, Montana. Ms. Eagle Boy grew up in  
14 Montana. She was raised by her grandparents and her aunt who had a home on the  
15 bluff above the train bridge park where the Kim Nees murder occurred. She would  
16 testify that in the summer of 1979 when she was 10-years-old, it was very common  
17 for her and her cousin to go sit on the bluff near a big rock which sits on the edge  
18 of the bluff and listen to the teenagers and young adults who would come down  
19 into the park and party at night. In the summer they would go down there and her  
20 aunt would let them stay out pretty late and they could tell when it was bar closing  
21 time because they could see all the cars come down into the park after the bars  
22 closed. On the night of Kim Nees murder, Ms. Eagle Boy was sitting out there  
23  
24  
25

1 with her cousin who is now deceased and she would testify that while sitting there  
2 she saw two pickup trucks drive into the park and stop. She was, because of the  
3 darkness, not able to particularly see in detail the people that were there, but she  
4 could tell from the lights and the silhouettes that these were two pickup trucks.  
5  
6 She then heard low voices and eventually screaming and she would be very  
7 specific about the screaming that she heard about, 'get her, hit her, kick her', and  
8 some profanity used. She also heard a woman pleading for help and for people to  
9 stop. They heard this for several minutes and then it became quiet. Shortly after  
10 that, as she and her cousin were sitting on this bluff they saw a police car with its  
11 lights on drive down into the park over to where these trucks were parked. She  
12 could hear some, what sounded like some discussion, but couldn't make out any  
13 words. Now, all of the voices that she will testify that she heard during the yelling  
14 and screaming and pleading were all female voices. She then saw one of the trucks  
15 pull forward around closer to the area of, actually closer to her. She will testify  
16 that the truck again stopped, people got out. She heard clinking sounds and what  
17 sounded to her like digging. After a period of moments the truck took off and left.  
18  
19 She and her cousin weren't sure what they heard at that point and time. Eventually  
20 they were called in. The next day her aunt would not let them go over by the  
21 hillside. There was a lot of activity down in the park. There was police activity  
22 and her aunt kept them away from there. She and her cousin never told anyone  
23  
24  
25

1 what they had seen. They talked about it amongst each other, but didn't tell  
2 anyone about what they had seen and she lived with this. She will testify that it  
3 has bothered her and she had nightmares about it, but didn't trust anyone enough to  
4 go tell them. She will testify that in, I think it was in 2008, she, like a lot of the  
5 residents in the Wolf Point and the Poplar area watched the Dateline television  
6 program. When she watched that she realized she needed to tell someone. She  
7 searched around and found out there was a telephone line, essentially a tip line, and  
8 she called that line and left her contact information. Now, she didn't do that until  
9 after the petitioner had already filed his original January 18, 2008 petition. Shortly  
10 after she left her information, she was contacted by an investigator from Centurion  
11 Ministries. They talked to her on the phone initially and then she was visited. She  
12 actually took the investigators out to the area where she observed this and she gave  
13 a statement that we have produced as an exhibit which is dated July 27, 2010.  
14  
15  
16  
17 There was no way at the time that we filed the January 18, 2008 petition to know  
18 that she even existed, let alone what she had seen. Once we got the remand from  
19 the State Supreme Court and were allowed a new hearing, we got a statement from  
20 her and she was listed in the amended petition as one of our amended petition  
21 witnesses.  
22

23           The second witness ...  
24  
25

1 COURT: I tell you what. I think it would be better, because these may vary,  
2 each individual may vary based on the dates and the timing and stuff, let's just take  
3 them individually. I think the Court will rule on them individually. Rather than ...  
4 And then maybe take a look at the whole amended petition as a whole. All right.  
5 Let's hear the State's perspective on this particular individual with regard to ...  
6 Now there is a statutory right to amend. The Court has the factors, the Clark  
7 factors. Due diligence is obviously a key one, but there are other ones of course.  
8 So, what is the State's perspective?  
9  
10

11 MR. LIGHT: Well, obviously Your Honor we are concerned that this has  
12 come to light thirty (30) years after the fact. The court admitted some testimony  
13 from one of our witnesses about how the area was combed and people were asked  
14 if they knew anything about it and this arises up at the last minute. So, we are not  
15 sure why this was not discovered earlier and clearly we will be presenting some  
16 reliability questions as well. Whether or not this, in fact, is even reliable testimony  
17 and whether or not the Court should look at Clark, all of the Clark issues; whether  
18 or not Court should accept this. As far as due diligence we don't have any doubt  
19 that they just got it when they said they did, but clearly there is some questions we  
20 will have as to why they didn't come forward earlier Your Honor.  
21  
22  
23  
24  
25



1 COURT: All right. With regard to this individual the Court is going to  
2 tentatively rule that the due diligence factor is satisfied. Does the State have any  
3 argument about the other factors, cumulative, etc.

4 MR. LIGHT: One thing I would like to mention Your Honor, before we  
5 move on, if in fact the Court is going to allow this testimony, that is fine Your  
6 Honor. But, we would like to have a brief opportunity to speak with her. We have  
7 never had an opportunity to interview her. It wouldn't take very long, but we  
8 would like to do that before she is allowed to take the stand.  
9

10 COURT: Absolutely. But, the State still does object?  
11

12 MR. LIGHT: Yes.

13 MS. PLUBELL: Yes.

14 COURT: It is just that if the Court rules, you are just being courteous.  
15

16 MR. LIGHT: That is correct.

17 COURT: All right. Next one.

18 MR. CAMIEL: Your Honor, the next witness we call is a gentleman named  
19 Kevin Hall. Mr. Hall gave us a statement July 25, 2010. Mr. Hall is a resident of  
20 Great Falls. His testimony would ... The subject of his testimony would be  
21 statements that Sissy Atkinson made to him while she was living in Great Falls and  
22 he was living in Great Falls. There was never any testimony offered at trial about  
23 any statements made by Sissy Atkinson or Maude Grayhawk or JoAnn Jackson or  
24  
25

1 any other female regarding any involvement, participation or presence at the Kim  
2 Nees murder. So, this would not be either impeaching or cumulative to anything  
3 that was offered at trial. It is certainly material in that Mr. Hall will testify that he  
4 had a relationship with Sissy Atkinson and her then boyfriend, a man named Les  
5 Wright. It was a relationship that involved drug use. They were both involved in  
6 using drugs in the Great Falls area and that they frequently visited each other and  
7 used drugs together. Les Wright, Sissy Atkinson's boyfriend, was arrested on a  
8 criminal charge and was in the jail in Great Falls where he committed suicide.  
9 Following his suicide, Sissy Atkinson came over to the Hall's residence and was  
10 very despondent and she said that this was bad karma that she felt; that she felt  
11 responsible for Les Wright's death and she blamed her bad fortune on what she  
12 had been involved in earlier in her life. She described that she and some other girls  
13 beat a girl with a tire tool and rolled her into the river. She brought this up on  
14 more than one occasion. How we first learned of Kevin Hall because after the  
15 Dateline program he contacted the Great Falls Tribune and spoke to a Great Falls  
16 Tribune reporter. It was through that that we learned of Mr. Hall's existence. The  
17 Dateline program aired after we had filed our petition. I think it aired in April of  
18 2008. We filed the original petition in January of 2008. So, we had no ability to  
19 know anything about Mr. Hall prior to filing the original petition. We contacted  
20  
21  
22  
23  
24  
25

1 Mr. Hall, talked to him, and once the Supreme Court remanded for a hearing we  
2 got a statement from Mr. Hall and named him in our Proposed Amended Petition.

3 COURT: State's response please.

4 MR. LIGHT: Well Your Honor, we certainly think that the Court will find  
5 that this is cumulative. We think the Court will find it is not reliable when we have  
6 an opportunity for cross examination and for lack of cooperation. I think as far as  
7 due diligence, we don't have an argument. I have to mention Your Honor, I find it  
8 somewhat unusual they talk about filing their petition in January 2008 because  
9 they were not aware that they could only proceed until the fundamental  
10 miscarriage of justice thus they couldn't include all these witnesses. But, two  
11 months later they get our reply that tells them that. Then they wait two and a half  
12 years until November of 2010 to do their, to file their amended petition. I just  
13 think there should be ... You talk about due diligence. That is surprising and I  
14 think a lot of these witnesses could have been included in that. But, as far as this  
15 particular witness Your Honor, if they indicate that they just found out in July of  
16 2010, then I understand as far as due diligence is concerned. But, I do think the  
17 Court will subsequently find it cumulative, not reliable and a lack of cooperation.  
18 So, if the Court is going to accept it, I would ask that it be accepted tentatively at  
19 this time Your Honor.  
20  
21  
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25

1 COURT: Yeah good points. You know, Mr. Light raises an argument that  
2 we sort of touched on yesterday about this one year, five year deadline. I need to  
3 hear from counsel why that just wasn't poor lawyering frankly.

4 MR. CAMIEL: Your Honor, at the time that we filed Mr. Beach's petition,  
5 we included all the evidence we had. This case had been investigated for quite  
6 some time. That investigation led to the hearing in front of the parole board.  
7 Following the denial we continued to collect evidence and then file the petition.  
8 There is always a dilemma in doing post-conviction work as to do you keep  
9 investigating and hoping that you are gonna eventually find something new before  
10 you file or do you file based on what you have? Mr. Beach was in his situation in  
11 terms of what statute applied. It was not clear to us. It may not have been clear to  
12 us because of poor lawyering but ...

13 COURT: I didn't mean that ...

14 MR. CAMIEL: No, I understand. We were confused. At the time Mr.  
15 Beach was first convicted the statute in place didn't even have an exception for  
16 newly discovered evidence, but there was a five year statute of limitations for  
17 filing motions for new trial without that written exception. Over the years that has  
18 changed. There has been litigation about when the time limit applies to somebody  
19 who was previously convicted. At the time that we filed the petition we were  
20 fearful that we might be held to the one year statute of limitations. And, if we were  
21  
22  
23  
24  
25

1 and we missed it, that would also be poor lawyering, because all this evidence that  
2 we developed you couldn't use.

3 COURT: Agreed.

4 MR. CAMIEL: So, we went forward at the last possible time. I would also  
5 just point out that then we had the State Supreme Court consider the case for  
6 fourteen months. Their decision didn't come down until November 24, 2009. So,  
7 during that time period rather than just sitting and waiting for the decision, when  
8 we learned about potential new witnesses, we went out and we interviewed them  
9 and we followed up. When the decision came down we were granted a new  
10 hearing and our belief was that based on statute that allows one amendment as long  
11 as it is made thirty (30) days before the hearing, that we would file an amended  
12 petition. But, we didn't want to do that right away because we were concerned, we  
13 only get one shot at an amended petition and we wanted to make sure we have all  
14 of the witnesses we can possibly find before we do that. If the Court recalls we  
15 filed the Motion for Discovery indicating that we intended to amend, but we  
16 wanted to see if the discovery would lead to anything before we did that so that we  
17 wouldn't be shut out of those additional witnesses that we might find.  
18

19 COURT: Then, the Court didn't allow you to do that.

20 MR. CAMIEL: That is true. So we then, in October, had the hearing with  
21 the Court; the phone conference at which time the Court told us to file a Proposed  
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1 Amended Petition which we did. So, we have tried to be as diligent as we can and  
2 at the same time continue our investigation and take advantage of what we believe  
3 the statute allowed us to do which was a one-time amendment thirty days prior to  
4 hearing. Now, with regard to the argument of cumulativeness, I think that counsel  
5 is interpreting that Clark factor differently than we do. I don't think that the  
6 Supreme Court is saying that the evidence can't be cumulative. It is talking about  
7 new evidence being cumulative to other new evidence. They are talking about, is  
8 it cumulative to something that was already presented at trial. And, there was  
9 never any evidence presented at trial that other people were down there or  
10 participating in the crime.  
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12

13 COURT: Do you have any legal citation to support that position?

14 MR. CAMIEL: Your Honor, I think we covered it in our brief, but it seems  
15 to me that it is also logical that if there was already evidence presented on a subject  
16 at trial, for example, if you had an alibi witness that you presented at trial and then  
17 sometime down the road you found another alibi witness, that would be  
18 cumulative. But, if there was never an alibi witness presented at trial and you  
19 could get over the other Clark factor hurdles and you came up with an alibi  
20 witness, then it wouldn't be cumulative to anything at trial. The other comment I  
21 want to make on this whole cumulative argument is one of the things the Court has  
22 to consider, is the circumstantial guarantees of trustworthiness. If Ms. Atkinson is  
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1 making statements to a whole group of different people that are similar statements  
2 that makes it more reliable than if there was only one person coming into Court  
3 claiming she made the statement. And so, we think that the Court needs to  
4 consider all the different people she made the statements to in its analysis. So, we  
5 don't think that the cumulative argument is being interpreted correctly by the State.  
6

7 COURT: All right. With regard to the diligence concern of the Court, the  
8 Court is going to tentatively grant this witness. All right. Next one.

9 MR. CAMIEL: Your Honor, the next witness that we would call is a  
10 gentleman named John Strom. S-t-r-o-m. Mr. Strom is also, or was, a Great Falls  
11 resident who, like Mr. Hall met and was in a relationship with Sissy Atkinson that  
12 involved drug dealing and drug use. He would testify that he would visit her  
13 apartment; she lived near where he lived, and that on an occasion when he was  
14 visiting her and they were using, they were all using drugs, she began describing  
15 an incident from Poplar, Montana, when she was younger. She described it as  
16 happening on the edge of town. She mentioned that the wrong guy was in prison.  
17 She said things like "we committed the perfect murder". In her account she said  
18 that there were girls fighting and chasing a girl around a truck with a tire tool. She  
19 said that she passed out at one point. Now, she didn't tell Mr. Strom that she  
20 directly participated in beating this girl. She says that she was there, she passed  
21 out and when she woke up the girl was dead. She said that during this same  
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1 conversation Sissy Atkinson was bragging that she had scared a co-worker at a  
2 factory where she worked with this story. Mr. Strom, also like Mr. Hall, and many  
3 others saw the Dateline program and there were two things that he saw during the  
4 program that triggered his recollection of this. When he heard Carl Four Star's  
5 testimony and his interview when they also showed part of his clemency board  
6 testimony and he also observed J.D. Atkinson, it struck him that is exactly what  
7 she had told him. Now, at the time she told it to him he didn't credit it as being  
8 anymore than some kind of puffing or bragging. But, when he heard others had  
9 received the same story and found out that there really was a murder in Poplar,  
10 Montana, under the circumstances that she had described, he contacted a television  
11 station in the Great Falls area. Initially he wanted to keep his identity a secret.  
12 They interviewed him. I believe the reporter who interviewed him asked for his  
13 permission to contact Centurion Ministries to let them know that there was this  
14 additional witness who had information and that is how we got to him, but again, it  
15 was after the Dateline airing in April of 2008. He gave us a statement I believe in  
16 July of 2010 after the Supreme Court remand.

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21 COURT: Mr. Light?

22 MR. LIGHT: Well, Your Honor we don't have a problem with the due  
23 diligence. We do believe that after the Court hears the cross, Court will have a  
24 problem with the reliability, with the cooperation and that this is nothing more for  
25



1 revenge against Sissy Atkinson so, we would ask the Court to again take this  
2 tentatively and decide later based on the entire testimony.

3 COURT: Agreed. All right. I agree with regard to due diligence and this  
4 witness so tentatively, we will allow this one. Next.

5  
6 MR. CAMIEL: Your Honor the next witness that we would call is a  
7 gentleman named Michael McIntire. Now, Mr. McIntire was a neighbor that lived  
8 in an apartment right next door to Sissy Atkinson in Great Falls in the years  
9 between two thousand two (2002) and two thousand five (2005). I think she was  
10 actually his neighbor in two thousand four (2004) and 2005. He had a daughter  
11 that he was raising at the time by himself. He became concerned because there  
12 was a lot of drug activity taking place at her apartment. He was fearful about the  
13 safety of his daughter. People were coming by at all hours and he eventually  
14 confronted her after there was an altercation outside her apartment where  
15 somebody was waving a gun around. He would testify that he approached her. He  
16 told her this has to stop; take it elsewhere and he threatened to call the police. She  
17 told him you don't know who you are dealing with. I already killed a girl up on  
18 the reservation and I'm not afraid to kill you. Now, he ignored what she said. He  
19 thought she was just blowing off steam. He actually left the State and was living in  
20 Maryland, but would read the local paper, the Great Falls Tribune on line. He read  
21 about the hearing at the parole board concerning the Kim Nees murder and he saw  
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1 that Sissy Atkinson's name was mentioned and he realized that that statement that  
2 she made wasn't just puffing or blowing off steam and that this was serious. He  
3 will testify that he contacted the Great Falls police about the statement that Sissy  
4 Atkinson had made to him and talked to a police officer there, but the police  
5 officer appeared to have no interest, indicating that as far as he was concerned the  
6 case had already been solved. In two thousand nine (2009) he read again about the  
7 story in the Great Falls Tribune and contacted John Adams, one of the Great Falls  
8 Tribune reporters. He gave a statement to John Adams and that lead to us learning  
9 of his existence and contacting him, and we got a statement from him in July of  
10 2010. I don't think there is any question that the statement that he received from  
11 Ms. Atkinson that she killed a girl up on the reservation is against her interest. I  
12 don't think there should be any question that this is not cumulative to anything  
13 presented at trial. It certainly is material, and is the sole issue at trial, who killed  
14 Kim Nees and we used as much due diligence as we possibly could in getting this  
15 witness and getting a statement from him.

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20 COURT: Mr. Light?

21 MR. LIGHT: Well, same thing Your Honor. We don't have a problem with  
22 due diligence. We would ask that you tentatively allow it subject to cross  
23 examination and examination of the other Clark factors.

24  
25 COURT: All right. Agreed. Next witness.

1 MR. CAMIEL: Your Honor, the next witness is a woman named Billie  
2 Marie Smith and she is a Missoula, Montana, resident. She worked for many years  
3 at a nursing home in Missoula, Hunter's Glen, as a Certified Nursing Assistant.  
4 She worked there from 2003 to August of 2008. One of her co-workers who was a  
5 Certified Nursing Assistant was a woman named JoAnn Todd. JoAnn Todd is also  
6 known as JoAnn Jackson. She is a former Poplar, Montana, Wolf Point area  
7 resident. She will testify that during a cigarette break she was outside with JoAnn  
8 Todd and JoAnn Todd began talking about her teenage years back up on the  
9 reservation. She indicated that she was present when a group of girls took another  
10 girl down by the water and beat her severely and things got out of hand and the girl  
11 died. JoAnn Todd told her that while she was present these girls dragged her out  
12 of the pickup truck. JoAnn Todd told her that she didn't participate in the assault  
13 or the beating, but she was present when it happened. She also said that the reason  
14 that this happened was over jealousy. She didn't mention any boys or males being  
15 present when it happened. Now, JoAnn Todd talked about this on two occasions to  
16 Billie Smith. On one of the occasions, another co-worker, a woman named Susan  
17 Mohler was present. Billie Smith has never lived in Roosevelt County, doesn't  
18 know any of the people involved and when she first heard the story she didn't  
19 know anything about the Kim Nees murder. In April of 2008, before April of 2008  
20 and the airing of Dateline, JoAnn Todd had left the employment of Hunter's Glen.  
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1 Billie Smith continued to work there with her co-worker Susan Mohler. When  
2 Dateline first aired she didn't see it. But, when she came to work one day she was  
3 told about the show, told that one of her former co-workers, JoAnn Todd, was on  
4 the show and she watched the show and saw the interview of JoAnn Todd and  
5 realized that this conversation she had during a cigarette break with JoAnn Todd  
6 was directly related to what the murder case and what this show was about. Billie  
7 Smith didn't want to come forward at all. She heard this, but she was frightened  
8 by what she heard. She told her husband and that is the only person that she told.  
9 Her husband however, told a friend of his. That friend called me and although she  
10 wasn't happy about it, Billie Smith got a call from Centurion Ministries and  
11 ultimately agreed to meet and be interviewed and gave a statement in July of 2010.  
12 Again, this is discovered after trial. We believe due diligence was shown as there  
13 was no way to know of her existence prior to her husband's friend coming forward  
14 and contacting us. It is directly material in that JoAnn Todd is placing herself  
15 down at a murder and I would point out that she has always denied that she was  
16 ever down there. But, she placed herself down at the scene of a murder and gave a  
17 very detailed description of what happened. So, even though she doesn't say that  
18 she participated, she has disclosed herself to criminal liability by being with this  
19 group of girls who participated in this murder. It is certainly material in that  
20 respect. It is also a statement against interest and I suggest should be admitted  
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1 under the same parameters as the Sissy Atkinson testimony. Now, JoAnn Todd is  
2 not unavailable. She is under subpoena. She is here just as with Sissy Atkinson.  
3 So, she is available to the State if they wish to call her. This gets into the same  
4 hearsay argument that I anticipate the State will make. But, we would ask the  
5 Court, using the same guidelines and the same evidentiary rule, to find that her  
6 statement has sufficient guarantees of trustworthiness, and the reason I say that is,  
7 this was a spontaneous statement by JoAnn Todd to a co-worker who had  
8 no.....; this is a disinterested co-worker just having a cigarette break with her.  
9  
10 There was another party Susan Mohler, who we didn't list in our petition, but she  
11 is here because she was present at one of the times that JoAnn Todd talked about  
12 her and she would be the last witness that we would seek to call. But, I will stick  
13 with Billie Smith for the moment. We believe that all of the Clark factors are met  
14 with her and she would be allowed to testify.  
15

16  
17 COURT: Mr. Light?

18 MS. PLUBELL: I think our position is more or less the same with respect to  
19 diligence. We don't have doubt about when Mr. Camiel came across the  
20 information. But, just as a point of clarification I think it is important to reflect  
21 that JoAnn Jackson was actually called to testify at Mr. Beach's trial. I think it is  
22 also important for historical purposes to be aware that Mr. Beach has claimed that  
23 right after the homicide, he was with JoAnn Jackson and Kaleb Gornot and it  
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1 appeared that she had been in a fight and that she might have had Kim Nees  
2 necklace and so there have been accusations against her since apparently right after  
3 the homicide. They chose not to present that at trial and I just also would like to  
4 note that all of these witnesses apparently came forward after watching Dateline.  
5

6 COURT: Don't you love television? All right. Well, with regard to the due  
7 diligence the Court will find that petitioner has satisfied that part of the Clark  
8 factor. Obviously the other factors will have to be determined after testimony, but  
9 that witness would be acceptable. Next witness.  
10

11 MR. CAMIEL: Your Honor the next witness that we would seek to call is  
12 Susan Mohler. Now, she wasn't named in our amended petition and we wouldn't  
13 be calling her because she wasn't named in our amended petition; we wouldn't be  
14 able to call her as a new witness, but we would call her as evidence of a  
15 circumstantial guarantees of trustworthiness because she was present with Billie  
16 Smith. Susan Mohler was also a Certified Nursing Assistant at the same Hunter's  
17 Glen Nursing Home in Missoula and she was present during one of the occasions  
18 where JoAnn Todd talked about this event and she heard things very similar to  
19 Billie Smith, that is that JoAnn Todd was describing being present when this girl  
20 was beaten. I would point out that there is no surprise to the State in terms of  
21 calling Susan Mohler. She is listed in our prehearing memorandum and so the  
22 State certainly has known about her for quite some time.  
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1 COURT: All right. The State's perspective? If it is just the same you can  
2 repeat that.

3 MR. LIGHT: Yeah, it is the same Your Honor. I guess I am a little puzzled  
4 why it wasn't in the amended petition and it wasn't and it sounds like they are  
5 calling her to simply support the prior witness and I am not sure if that is  
6 appropriate until after she has been challenged.  
7

8 MR. CAMIEL: I can tell the Court why she wasn't in the amended petition  
9 is because when we contacted her she didn't want to talk to us and when we  
10 prepared the Proposed Amended Petition at that time, because she was fearful of  
11 getting involved, she declined to give us a statement. Without a statement, which  
12 is required, a sworn statement as part of the amended petition, we couldn't include  
13 her. By the time of the prehearing memorandum she had finally decided to give us  
14 a statement and so we named her in the prehearing memorandum.  
15  
16

17 MR. LIGHT: But, they are calling her simply for cumulative, it is  
18 cumulative Your Honor if it is exactly ... If they are gonna say well, yeah, that is  
19 what she said, then that is cumulative and I don't understand how it is relevant to  
20 this hearing.  
21

22 COURT: All right. Well, I think we could take that up as we get to that  
23 particular witness. With regard to diligence, I will rule that petitioner has met his  
24 obligation for that particular factor of Clark. Whether the Court would allow that  
25

1 particular testimony will remain to be seen. All right. We are still dealing with  
2 whether I am going to grant the amended petition. Go ahead Mr. Light.

3 MR. LIGHT: One thing. If you do grant the amended petition Your Honor,  
4 I mean, obviously we are going to want a continuing objection to the hearsay.  
5

6 COURT: I don't grant continuing exceptions.

7 MR. LIGHT: Okay. We will be glad to make it.

8 COURT: Here is the problem. If I grant a continuing exception, how do I  
9 know to what it applies? How does the reviewing Court know to what it applies?  
10

11 MR. LIGHT: Well, that is fine Your Honor.

12 COURT: And, I don't have any problem with you all popping up and down  
13 because I think it is better to rule on each and every particular than it is to open up  
14 a can of worms that the review Court says, "What was going on there?"  
15

16 MR. LIGHT: Well, this is my point and maybe we can still accomplish this  
17 Your Honor was, you know, obviously they are going to say, which they have said  
18 for two days now, that these are statements against interest. And, you have heard  
19 us repeatedly indicate that if it is being offered to exculpate then they have; then it  
20 is only admissible if there is corroborating circumstances which clearly indicate the  
21 trustworthiness of the statement. All I am saying is upon cross examination, if  
22 you, at the end find that it is no longer trustworthy, then I am going to object at that  
23 time and ask that that be stricken. That is all that I am advising the Court.  
24  
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1 COURT: Agreed. Absolutely. Because, that would be within the Clark  
2 factors.

3 MR. LIGHT: Yes.

4 COURT: And, the Court gave specific instructions about what to be  
5 accepted or not accepted based on those factors so, you betcha. All right. Any  
6 other witnesses for purpose of the amended petition?  
7

8 MR. CAMIEL: No Your Honor.

9 COURT: All right. Based on the fact that the statutes do allow amendment  
10 of the petition, based on the Court's determination this morning that there was due  
11 diligence with regard to each and every one of the witnesses, the Court is going to  
12 grant the filing of the amended petition. The Court is going to allow the petitioner  
13 to proceed with these witnesses and the appropriate exhibits, subject to objections  
14 and subject to the Court applying the Clark factors to these witnesses, just as it  
15 would to the witnesses in the original petition. All right. Any concerns from the  
16 State at this perspective?  
17  
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19 MR. LIGHT: No Your Honor.  
20

21 COURT: Ms. Plubell I see a concern.

22 MS. PLUBELL: Well sorry, but the wheels are turning. My only concern is  
23 based upon the ... I want to make sure that I make record of any objection and  
24 based upon allowing in the testimony from the clemency hearing of the deceased  
25

1 witnesses. At that particular hearing of course, the Clark factors were not at issue.  
2 That was nowhere on the table. So, we want to, of course, be able to argue that  
3 some of those factors have not been allowed.

4 COURT: On the witnesses that I have those transcripts of?

5 MS. PLUBELL: Exactly.

6 COURT: How would you propose we do that?

7 MS. PLUBELL: Well, I guess you would have to read the testimony Your  
8 Honor, the direct and the cross. But with respect ...

9  
10 COURT: But you are asking me that you want to weigh in on how the Clark  
11 factors apply so it wouldn't be fair for the Court to not give you an opportunity to  
12 do that, but how would we shape that opportunity?

13  
14 MS. PLUBELL: As long as we have the opportunity, we don't care how it  
15 is shaped Your Honor. Whatever is convenient to the Court. I can think about that  
16 if you would like.

17 COURT: Yes, would you?

18  
19 MS. PLUBELL: Yes. We have argued about it in our Prehearing  
20 Memorandum. We went through every factor and every witness.

21 COURT: Including those that I have this testimony from?

22  
23 MS. PLUBELL: Including those witnesses, yes Your Honor. I misstated  
24 that. That was in response to Mr. Beach's prehearing Memorandum. But, we did  
25

1 go through that. I just wanted to make sure there was a record of that because that  
2 clemency proceeding had nothing to do with the five Clark factors.

3 COURT: Right. Just so I am clear, do you believe that the Prehearing  
4 Memorandum satisfactorily addresses the Clark factors as *visa vie* these three  
5 transcript witnesses?  
6

7 MS. PLUBELL: I believe it does Your Honor.

8 COURT: Well, I will allow you to check.

9 MS. PLUBELL: Okay. Thank you.  
10

11 COURT: If you don't raise the issue again with the Court I am going to  
12 assume that you all have had your opportunity to weigh in and the Court would use  
13 that Prehearing Memorandum as that opportunity. If you raise the issue again then  
14 I will take up whatever other considerations you want.  
15

16 MS. PLUBELL: Thank you Your Honor. I appreciate it.

17 COURT: Be sure. Now remember, you have got those transcripts and you  
18 are going to try and attach an Exhibit. I do not have them.  
19

20 MS. PLUBELL: Okay. Well, I think I returned the transcripts back.

21 COURT: Oh, yes you did. We are going to get an Exhibit. Okay. How  
22 about at least a stand and stretch. All right. Witness?  
23

24 MR. CAMIEL: Your Honor, the first witness that we would call would be  
25 Stephanie Eagle Boy.

1 MS. PLUBELL: Excuse me Your Honor, we haven't had a chance to  
2 interview her.

3 COURT: Oh, that is right. How about we do this. We take an early lunch  
4 break. That would give you reasonable opportunity. We will reconvene, say at  
5 1:15. Two hours seem adequate to get a break and take lunch?  
6

7 MS. PLUBELL: Yes.

8 COURT: We will reconvene at 1:15. Wait a minute. I think I have a  
9 hearing at 1:15. Let me just check.  
10

11 MR. TOAVS: I just have a question Your Honor. I didn't mean to  
12 interrupt. Will we have the opportunity to be present during the interview?  
13

14 COURT: This is not a deposition.

15 MS. PLUBELL: And they are not representing them.

16 COURT: I don't see any particular reason why you should be. Why do  
17 you?

18 MR. TOAVS: Well, I would like to know what she says too.

19 MS. PLUBELL: We will tell you.  
20

21 MR. TOAVS: Well then, I am going to request that it be recorded Your  
22 Honor and I have an opportunity to at least listen to it before she is on the witness  
23 stand and subject to cross examination about an interview that takes place and we  
24  
25

1 have no idea what was said. I am willing to sit there and be quiet. I won't  
2 interfere with the examination.

3 MS. PLUBELL: Well, they shouldn't have any worries about what the  
4 witness is going to tell us Your Honor.

6 COURT: Well, let me think about that while I check and see if I have a 1:15  
7 hearing. Please be seated. Thank you. Well, I don't think that the granting of this  
8 to the State should preclude the petitioner from at least being present. I won't  
9 allow the petitioner to ask questions or to interfere in any way, but I think it is  
10 appropriate that they be able to sort of hear the responses.

12 MR. LIGHT: That is fine.

13 MR. TOAVS: Thank you Your Honor.

15 COURT: Well, I am reconsidering this. Yeah, I think that that is  
16 appropriate. If for some reason it changes the nature of the testimony that just goes  
17 to the Court's application of the Clark factors and I don't think that will cause a  
18 real problem. So, we will allow the petitioners to be present. Unfortunately, I  
19 have got a return of a search warrant at 1:30 so rather than get everybody in here  
20 and get started and then have to stop, let's just start at say, 1:35 to 1:40. Be  
21 prepared to go at 1:35 as soon as the ... I am going to be doing it by video. It will  
22 take two seconds to swear the officer in and check out his return and then we will  
23 be ready to go. All right. So, we will reconvene then.  
24  
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1 (LUNCH BREAK)

2 CLERK: All rise please.

3 COURT: Please be seated. All right. Petitioners now are prepared, I  
4 believe, to bring forth a number of witnesses from the amended petition granted by  
5 this Court. Yes sir?  
6

7 MR. LIGHT: Your Honor, we have talked to defense and have requested  
8 that we be able to take a witness out of order. We have an individual here that  
9 showed up. He is a single father. He has got his kids here; he has got a dog here  
10 and for convenience sake we would like to take him out of order and go first.  
11  
12 Now, it is my understanding that defense counsel wants to make an argument that  
13 we shouldn't be able to call anybody and that's okay. But, after that we would  
14 like, if possible, to call him out of order.  
15

16 COURT: Yes sir.

17 MR. CAMIEL: Thank you Your Honor. It's not our position that they can't  
18 call anybody, but the Supreme Court clearly indicated that what was going to go on  
19 at this hearing was this Court was going to take a look at the new evidence to see if  
20 it met the Clark test for new evidence. The Supreme Court also said that it wasn't  
21 this Court or any Court considering a motion for new trial role to get in to  
22 determining ultimate credibility of a witness. That is for the fact finder on a new  
23 trial. So, we think that the State should be allowed to call witnesses if they are  
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1 going to give testimony related to the Clark factors, as to whether it is, in fact,  
2 discovered since trial; the due diligence issues, materiality and also if they are able  
3 to present evidence challenging the admissibility of our new evidence. But, as to  
4 putting on any witnesses to challenge the credibility of our witnesses it seems to  
5 me that the Supreme Court has said that that is the role of a new fact finder if there  
6 is a new trial and that evidence should be presented at any new trial. This Court's  
7 role is to see if we get through each of these Clark factors. And, I am drawing this  
8 from, it is paragraphs forty (40) and forty-one (41) of the Beach decision, and they  
9 refer to both Clark I and Clark II and *Crosby*. They specifically talked about the  
10 *Crosby* case. Now, that was a recantation case where the trial Judge denied a  
11 motion for new trial because he said he didn't believe their recanting witness.  
12 And, the Supreme Court said that the trial Judge went beyond his role. They said  
13 we determined that the Court erred when it improperly placed itself in the role of  
14 fact finder. And, what they said was, as noted in *Crosby*, once a petitioner who  
15 alleges newly discovered evidence has satisfied the five Clark factors, the trial  
16 Court must leave determination of whether to actually believe the newly  
17 discovered evidence to fact finder on retrial. We interpret that to mean that the  
18 State's role at this proceeding is to challenge the Clark factors, but not to get into  
19 ultimately credibility as if we were back in a new trial because that is for the new  
20 jury.  
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1 COURT: That seems like a very narrow vision of ...

2 MS. PLUBELL: May the State respond Your Honor.

3 COURT: Yeah. I am expecting it.

4 MS. PLUBELL: Are you ready or would you like ...?

5 COURT: Not just yet.

6 MS. PLUBELL: Okay.

7 COURT: Well, I agree with the petitioner's notion about the use of *Crosby*.

8  
9 You know, the Court, this Court, cannot place itself in the role of fact finder, but  
10 the Court is also very clear in paragraph thirty-nine (39) that it is the trial Court's  
11 role to determine the weight and credibility of the new evidence. And, if it lacks  
12 credibility, then it would not be admitted and would not be allowed as a  
13 consideration under the Clark factors. I think the idea is the Court is to look at the  
14 weight and credibility of the evidence, determine if that evidence is sufficient to  
15 meet the Clark factors. If it doesn't have the weight and credibility, it shouldn't  
16 even be in the consideration underneath the Clark factors for determining a new  
17 trial. That is this Court's sort of sense. But now I will hear from the State.  
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21 MS. PLUBELL: Well, Your Honor, I happen to be very familiar with both  
22 Clarks I and II because I handled both of the cases on direct appeal. And actually,  
23 what happened in Clark I, and it wasn't argued by either side, is the Court  
24 recognized that there was a tension ... It had always ... It had relied upon the  
25



1 Greenough test which was based upon on Georgia Supreme Court case, *State vs.*  
2 *Barry* which is a very old case. And, to consider motions for new trial based on  
3 new evidence. But then, the case of *State vs. Perry* came along and *State vs. Perry*  
4 was a recantation new evidence case. The Court did something funky in that *State*  
5 *vs. Perry* case and said that the Judge had to believe that the recantation was true in  
6 order for it to grant a new trial. So, in *State vs. Clark* it was a sexual abuse case  
7 and he did have a recantation, but the circumstances of the recantation were highly  
8 questionable. None the less, the Court decided to clarify, it felt that there was this  
9 great tension between the Greenough test and the Perry test and that it didn't make  
10 sense; they didn't make sense together. So, the Court developed the five factors  
11 set forth in Clark and they remanded for a hearing. The one thing that I think is  
12 very important to note is in paragraph thirty-six (36) of *State vs. Clark*, In Clark I  
13 they are referring to that fifth factor; the reasonable probability, and the Court says  
14 the reasonable probability standard adopted herein properly leaves to the trial  
15 Judge considering the motion for new trial determinations of weight and credibility  
16 of the new evidence and to consider what impact, looking prospectively, that  
17 would have on the new trial. The Court has reiterated that in the case of *State vs.*  
18 *Crosby* which also happened to be a recantation case and it, in fact, went on to  
19 clarify that there is a difference between that reasonable probability and weight and  
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21  
22  
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1 credibility determinations and finding veracity of a witness. One is commanded by  
2 the Clark and the other is prohibited.

3 COURT: Well, what do you think about this Court's sense that I am to  
4 evaluate weight and credibility for purposes of applying the Clark factors, but not  
5 for getting in the way of a jury determining whether those ought to be given to  
6 them as consideration?  
7

8 MS. PLUBELL: I am sorry Your Honor. I am not sure I understand the  
9 question.  
10

11 COURT: I am not sure I do either. Let me try again.

12 MS. PLUBELL: Okay.

13 COURT: The more I look at this case, the more I have a sense that this  
14 Court's role is to look at the weight and credibility of this new evidence. If for  
15 some reason some of this evidence does not have a degree of weight and credibility  
16 that persuades this Court, then it would not be factored into my consideration of  
17 the Clarks five features and for determining whether a new trial ought to be  
18 granted.  
19  
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21 MS. PLUBELL: Yes, because it would fail on factor five.

22 COURT: Yes. Well, it would fail on that and ...

23 MS. PLUBELL: Well, it might fail on another factor as well, but yes, the  
24 State concurs with that interpretation Your Honor.  
25

1 COURT: But, that consideration is not to go so far as to exclude evidence  
2 that might be presented at a future trial. It is just to look at that evidence and see  
3 whether it amounts to the kind of, has a weight and credibility, that would give this  
4 case the basis for granting a new trial.

5  
6 MS. PLUBELL: Based on the fundamental miscarriage of justice exception.

7 COURT: Yes.

8 MS. PLUBELL: Correct. I don't think this Court has the ability to rule on  
9 what would be admissible at a new trial.

10  
11 COURT: Right, right.

12 MS. PLUBELL: I think that would be for another day.

13 COURT: Okay. So, where does that leave us?

14  
15 MR. CAMIEL: Well, there is still this language in the Beach decision that  
16 says the Court has to analyze whether we meet the Clark test, but has to leave the  
17 determination of whether to actually believe the newly discovered evidence to the  
18 fact finder. So, it seems like the Court would be admitting any evidence offered by  
19 the State for a limited purpose. And the Court is in more of a gate-keeping role.  
20

21 COURT: Yeah. I think that that is what I am trying to say is that it is a  
22 limited purpose for looking at the weight and credibility of this evidence for  
23 application of those five Clark factors.  
24  
25

1 MR. CAMIEL: But I think that our interpretation of that is that the Court  
2 does have to deal with and has been dealing from day one of this hearing, with  
3 admissibility because we have to show it's new, but we also have to show it's  
4 admissible to even be called evidence. That is why we have been having these  
5 arguments about the hearsay rule. The State has been arguing it shouldn't come in  
6 because it is inadmissible and we think that the language about weight and  
7 credibility goes actually toward admissibility. Do we have new admissible  
8 evidence? If the Court determines that we have new evidence and it is admissible,  
9 then the Court can't get into do I believe this witness or don't I believe him. The  
10 Court has to take a look at the totality of the evidence we present and weigh that in  
11 its factor five analysis in determining what the reasonable probability is that a new  
12 jury would do. But, the Court and I go back to the *Crosby* case. The Judge there  
13 went further than that. He determined that he didn't believe the witness and denied  
14 the motion and the Supreme Court said that is wrong and it seems to me that that is  
15 telling the Court you have a gate keeping function, but you have to leave ... But if  
16 it is admissible you have to factor it in in your analysis of that fifth factor.

17 COURT: Yeah but, admissibility is only for purposes of this hearing. It is  
18 not admissibility for purposes of a future jury trial.

19 MS. PLUBELL: Your Honor ... I am sorry.  
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1 MR. CAMIEL: It seems to me that the whole exercise we have been going  
2 through and fighting about whether something is gonna be heard by the Court as  
3 substantive evidence rather than hearsay or impeachment deals directly with  
4 admissibility. If we were coming in and we couldn't pass through these hearsay  
5 objections, we wouldn't have admissible evidence and we wouldn't even get it into  
6 the calculus in the fifth factor. So, it seems to me ...

8 COURT: But, once you pass that hurdle it still is, all of that is accumulative,  
9 is evidence that accumulates on a plate that the Court then begins to chew on to  
10 determine whether a new trial, whether he is actually innocent, or whether a new  
11 trial ought to be granted. Do you agree with that?

13 MR. CAMIEL: I do agree with that.

15 COURT: And so, the State, it would seem to me, would have the right to  
16 challenge credibility and weight of evidence so this Court doesn't mistakenly  
17 consider incredible or unsubstantial evidence for purposes of determining whether  
18 he is actually innocent or whether a new trial is deserving.

20 MR. CAMIEL: I understand the Court's ...

21 COURT: But you don't agree?

22 MR. CAMIEL: Well, I am having a hard time with the language of the  
23 Supreme Court that seems to say you have to leave the ultimate determination of  
24

25

1 credibility of any witness to a new jury. I don't think that they put that language in  
2 there without purpose.

3 COURT: No, they never, hopefully never, do anything without purpose. It  
4 isn't for our District Court to say they don't.

5  
6 MR. CAMIEL: Your Honor, we are looking at page thirteen (13),  
7 paragraphs forty (40) and forty-one (41) of the Supreme Court decision.

8 COURT: I think that that ... I think that they were ... In trying to interpret  
9 this opinion it seems to this Court that the Supreme Court was establishing an outer  
10 boundary. Be careful not to go past this boundary about becoming a true fact  
11 finder. But, when it comes to weight and credibility which they say only two  
12 paragraphs before that you got to be there. You got to weigh in on those. And so,  
13 they are trying to figure out what these boundaries are and Judge, you can't  
14 become a fact finder, but you got to weigh weight and credibility. So, you sort of  
15 find that ground in there where you can apply weight and credibility, but not really  
16 be a fact finder. Yes ma'am?

17  
18  
19 MS. PLUBELL: Your Honor, I think it is important ...

20  
21 COURT: Are you agreeing with the Court or are you disagreeing?

22 MS. PLUBELL: I primarily am agreeing with the Court. But, I do think it  
23 is important to keep the historical context of how Clark came to be in mind  
24 because I think what used to happen in recantation cases is the Judge was not going  
25

1 to grant relief unless he actually believed the recantation. That is what the Court  
2 wanted to get away from. I also want to bring to the Court's attention that in Clark  
3 II, after it went back for a remand, the District Court did not find that there was a  
4 reasonable probability that the latest recantation would result in a different  
5 outcome. And, the Court said the District Court did not succumb to the error we  
6 cautioned against in *Crosby* and based decision on whether the recantation is true.  
7 Instead, it examined the entire context in which this recantation would be presented  
8 to the jury in light of the testimony and evidence presented during the original trial.  
9 So, the circumstances of the recantation which were many in the Clark case were  
10 significant and were heard at that hearing on remand and ...

13 COURT: And then the Judge looked at it; how would this affect a potential  
14 jury sworn in with proper instructions, etc.

16 MS. PLUBELL: Right. Right. And the other thing that I feel compelled to  
17 point out at this time is that we have not stipulated to the admissibility of a lot of  
18 the stuff that has come in in this hearing. We respect the Court's ruling, but with  
19 that stated you can bet that we would make objections at trial on issues like the  
20 unavailability of Maude Kern and the way that they have gone about presenting the  
21 hearsay testimony.  
22

23 COURT: Sure. Yeah.  
24  
25

1 MR. CAMIEL: Your Honor, one paragraph that I think is somewhat  
2 helpful. It is in Clark II. I have a copy of it. The Court talks about different  
3 scenarios and it says one possible scenario might be one in which the District  
4 Judge finds the recanting witness highly credible, but none the less denies a new  
5 trial under the Clark test in light of the strength of the testimony five other  
6 prosecution witnesses presented at the original trial. Alternatively a Judge might  
7 find a witness not particularly credible, but none the less grant a new trial under  
8 Clark because there is a reasonable probability given the paucity of other evidence  
9 introduced at the first trial that a new jury on retrial would acquit the defendant  
10 when presented with new evidence. And so they seem to be limiting the role of the  
11 Judge's fact finding by giving an example both where the Judge believes the  
12 witness and doesn't.

13  
14  
15  
16 COURT: Yes ma'am.

17 MS. PLUBELL: Your Honor, with that being said, it doesn't appear that we  
18 even had a right to cross examine any of these witnesses then. I am not even sure  
19 why the State was invited to this hearing.  
20

21 COURT: Oh, good question. All right. Well, here is how I am going to  
22 rule. For better or for worse, this Courts rule is this: That the remand on Beach  
23 instructs this Court to examine the weight and credibility of evidence and then to  
24 look at that evidence in the light of how it would affect or its likely outcome with a  
25



1 new jury properly instructed with the standards of beyond a reasonable doubt; guilt  
2 beyond a reasonable doubt. Clearly the Supreme Court wanted to warn the District  
3 Court, don't become a fact finder, don't decide this is a good fact, that is a bad fact,  
4 this is a good one, that is a bad one, but examine the weight and credibility and  
5 then apply the evidence after you have examined the weight and credibility and  
6 apply those determinations; then apply that to whether a new trial ought to be  
7 granted or whether he is actually innocent. So; I am gonna ... That is how I am  
8 going to proceed and under those general parameters I am going to allow the State  
9 to present evidence that would go to the weight and credibility of evidence  
10 presented by the petitioner solely for the purpose of the Court weighing weight and  
11 credibility; not for determining whether it is true or false, but just its weight and  
12 credibility. Okay. So, now where are we?  
13  
14  
15

16 MR. TOAVS: We don't object to taking the witness out of order Your  
17 Honor.

18 COURT: Oh, yes.

19 MS. PLUBELL: Your Honor, so the State will call Richard McDonald. He  
20 is waiting across the hallway.  
21

22 CLERK: Do you solemnly swear the statements you are about to give in  
23 this matter will be the truth, the whole truth and nothing but the truth so help you  
24 God?  
25

1 MR. MCDONALD: Yes.

2 COURT: Come on over here sir.

3 MS. PLUBELL: Are you situated? Are you good?

4 MR. MCDONALD: I am good.

5 MS. PLUBELL: Okay. Can you please state your name for the record?

6 MR. MCDONALD: Richard McDonald.

7 MS. PLUBELL: And Richard what is your current occupation?

8 MR. MCDONALD: I am retired.

9 MS. PLUBELL: From where?

10 MR. MCDONALD: Roosevelt County Sheriff's office.

11 MS. PLUBELL: And where do you live?

12 MR. MCDONALD: Poplar, Montana.

13 MS. PLUBELL: How long have you lived in Poplar?

14 MR. MCDONALD: Just about my whole life except when I was away at  
15 college and at a vocational school.

16 MS. PLUBELL: And, I noticed as you were walking up that you were  
17 limping some. Do you have a problem, a medical problem?

18 MR. MCDONALD: Yeah. Well, not anymore. That would be a problem  
19 that I had to work my whole law enforcement career. I found out I had a broken  
20 neck.  
21  
22  
23  
24  
25

1 MS. PLUBELL: Wow. Did that contribute to why you retired?

2 MR. MCDONALD: It did, yeah.

3 MS. PLUBELL: Do you have children?

4 MR. MCDONALD: I have two, yeah.

5 MS. PLUBELL: Do they live with you?

6 MR. MCDONALD: They do.

7 MS. PLUBELL: When did you become involved in law enforcement?

8 MR. MCDONALD: The summer of 1983.

9 MS. PLUBELL: And where was that?

10 MR. MCDONALD: In Poplar.

11 MS. PLUBELL: Was that with the police department or the sheriff's office?

12 MR. MCDONALD: It was with the Fort Peck Tribal Law Enforcement.

13 MS. PLUBELL: At some point did you work for the Roosevelt County  
14 Sheriff's office as well?

15 MR. MCDONALD: The first time in 1990 and from the summer of 1990 to  
16 the spring of 1996 and then again in 2007 to 2009.

17 MS. PLUBELL: And is that ...

18 MR. MCDONALD: No, 2000, yeah.

19 MS. PLUBELL: Did you work at the Roosevelt County Sheriff's office  
20 when you ultimately retired?

1 MR. MCDONALD: I was yeah.

2 MS. PLUBELL: And, prior to that time, did you ever work at a place called  
3 A&S Industries in Poplar?

4 MR. MCDONALD: I did.

5 MS. PLUBELL: And, can you describe a little bit for the Court about that  
6 industry?  
7

8 MR. MCDONALD: Well it is a huge manufacturing company. They  
9 manufactured items for the United States military. First aid canisters, different  
10 types, and then there was camouflage netting that they also made there.  
11

12 MS. PLUBELL: What kind of building was it in?

13 MR. MCDONALD: It was a large, probably concrete and corrugated steel I  
14 think.  
15

16 MS. PLUBELL: Was it like a Quonset hut type of building?

17 MR. MCDONALD: Parts of it were.

18 MS. PLUBELL: And how big was it?

19 MR. MCDONALD: I would say almost a city block.  
20

21 MS. PLUBELL: Was the building open, or was it divided into different  
22 areas?  
23

24 MR. MCDONALD: It was ...

25 MS. PLUBELL: Did it have rooms?

1 MR. MCDONALD: It did.

2 MS. PLUBELL: What kind of rooms?

3 MR. MCDONALD: There was one large area where they had ... That I had  
4 worked at primarily. It was called deep trough. (1:59:58) It was, they had large,  
5 tall, tall, probably thirty (30) or forty (40) feet steel machines that formed these  
6 aluminum canisters and then there was other parts that were later added on to the  
7 building that they built the netting and things like that in.  
8

9 MS. PLUBELL: Were you familiar with every aspect of the building? I  
10 mean all the areas of the building?  
11

12 MR. TOAVS: Your Honor, I am going to object as to this line of  
13 questioning lacks a time frame.  
14

15 COURT: Sustained.

16 MS. PLUBELL: I am sorry. That was in 1983, was that correct?

17 MR. MCDONALD: Right.

18 MS. PLUBELL: Did you work there sometime after 1983 as well?

19 MR. MCDONALD: I did. I believe it was in 1988 or 1989, I was out on  
20 law enforcement for a short time and I went there for another job, and it was called  
21 quality control. What my job was then was to go about the different places in the  
22 factory to make sure that the items that were being made were up to spec. I went  
23 in both the netting and the deep trough at that time.  
24  
25

1 MS. PLUBELL: What was the ventilation like in the building?

2 MR. TOAVS: I object to lacks a time frame Your Honor.

3 MS. PLUBELL: All right. Between 1983 and 1989 when you returned  
4 were there differences in what the ventilation was like?

5  
6 MR. MCDONALD: It didn't seem like enough.

7 MS. PLUBELL: In 1983, what was the ventilation like?

8 MR. MCDONALD: It was bad.

9 MS. PLUBELL: And, did the employers, A&S Industries address that?  
10

11 MR. MCDONALD: Well, there were large garage type doors that were  
12 opened with weather permitting and then there were also big fans. Probably the  
13 fans had I would say a four foot radius that were large metal fans that were  
14 stationed all about the factory moving the air about.  
15

16 MS. PLUBELL: And, was that the same in 1989 when you worked there?

17 MR. MCDONALD: It was.

18 MS. PLUBELL: Were there fans in the netting area in 1989?  
19

20 MR. TOAVS: I object. The question is vague as to time.

21 MS. PLUBELL: I just said 1989.

22 COURT: Yeah she did. Give her a chance to finish. Go ahead.

23 MS. PLUBELL: Were there fans in the netting area in 1983?  
24  
25

1 MR. MCDONALD: There were probably more fans in the netting area  
2 because there was a terrible smell that came off of them. I don't know if it was  
3 from the paint or what it was, but the fans were used to move the air about away  
4 from those. I guess to kind of clean the air out because it was smelly.  
5

6 MS. PLUBELL: What was ... In 1983 what was the noise level like in A&S  
7 Industry?

8 MR. MCDONALD: It was loud. Like a normal ... I mean, it was ... To  
9 give you an idea there were hundreds of people working there and there was at  
10 least three shifts a day working. There was a morning, there was an afternoon and  
11 there was a night. Each of those shifts had hundreds of people working, so it was  
12 people busting about. The manufacturing was going on. I know in the netting part  
13 itself there was, the more that the people did the more product that they made, the  
14 more they got paid. So, that was especially busy. It was kind of amazing to watch  
15 some of the people that were working there. They would actually sew these nets  
16 together and you know, it was just amazing to watch them how fast they could put  
17 these things together and then move on to the next and the next. It was loud.  
18  
19  
20

21 MS. PLUBELL: Did some of the employees that worked at A&S Industry  
22 ... Well let me back up, I am sorry. In 1989 was it still noisy?  
23

24 MR. MCDONALD: It was.  
25

1 MS. PLUBELL: And, in 1983 did some of the people that worked at A&S  
2 Industries actually wear ear protection of some sort?

3 MR. MCDONALD: There were. I did.

4 MS. PLUBELL: You did?

5 MR. MCDONALD: Yes.

6 MS. PLUBELL: And, what about in 1989?

7 MR. MCDONALD: They did.

8 MS. PLUBELL: Would you say that there was any part of A&S Industries  
9 that was so quiet you could hear a pin drop?  
10  
11

12 MR. TOAVS: Objection, it is vague as to time.

13 MS. PLUBELL: In 1983?

14 MR. MCDONALD: I would say no. I mean unless maybe in the offices  
15 where the administration worked, but not out in the factory part, no.  
16

17 MS. PLUBELL: Would it be difficult to overhear just a normal  
18 conversation in 1983?  
19

20 MR. MCDONALD: It would because, well, where we worked it was loud  
21 and if we were gonna talk we were shouting. And then, as far as where the, what I  
22 noticed about the netting area that they worked so fast and there was different  
23 product they would be loading big boxes onto pallets and then they were always  
24  
25



1 forklifts moving about you know moving that product to a different area for  
2 packing and things like that. It was never very quiet at all anywhere there.

3 MS. PLUBELL: Mr. McDonald, in this case Mr. Toavs presented an  
4 Affidavit to the Court explaining why someone name Carl Four Star did not want  
5 to come and testify. Do you know Mr. Four Star?  
6

7 MR. MCDONALD: I do.

8 MS. PLUBELL: How do you know him?  
9

10 MR. MCDONALD: Well in my experience as a law enforcement official,  
11 we had run-ins.

12 MS. PLUBELL: In that particular Affidavit it indicates that Mr. Four Star  
13 was identified to relatives of the Atkinson family by Richard McDonald. And then  
14 was subsequently beat up by those members of the Atkinson family. Did you do  
15 that Mr. McDonald?  
16

17 MR. MCDONALD: No. The situation that he was referring to, there is in  
18 Wolf Point, Montana, which is one of the towns in our county seat, Roosevelt  
19 County, there is a big rodeo, carnival type thing called the Wild Horse Stampede.  
20 The bars on Main Street, all the bars in town are filled to capacity. So much so  
21 that they leak out into the street and they do away with the open container law and  
22 so the whole town, the whole downtown area is pretty much, I would almost say  
23 chaos. You know, I mean there seems to be an overflow of testosterone all the  
24  
25

1 time and people from different towns, you know, there are two different tribes on  
2 our reservation. There is the Assiniboine and the Sioux and they are traditionally  
3 enemies. And, that still carries on somewhat today. Different towns come and  
4 they meet at the stampede and there are fights and then there are guys just wanting  
5 to prove how tough they are and it is crazy. You know, it is almost, like I said, it is  
6 almost chaos. At that particular time there was a fight and I noticed that, well I  
7 saw one of our deputies there, and then I didn't see him because it was just a mob  
8 of people. I went rushing over there. We could see it almost starting from where I  
9 was and you could just see that was almost getting ready to start. I went rushing  
10 over there to help, to get in the middle of it to break it up and it was too late, it had  
11 already started. I just started grabbing people and throwing them off. One guy I  
12 grabbed and I pulled him off and it was Carl Four Star and I threw him back and he  
13 rushed back toward where we were. There were still, my people were still on the  
14 ground in the middle of this fight. I said you need to back up, you need to back up  
15 or you are going to be arrested. And so he backed up and I went back to getting  
16 these people off our people and one of the deputies told me that he had been hit by  
17 one of the guys that they had down. So they were handcuffing him and I was  
18 keeping all these other people back.

19  
20  
21  
22  
23 MS. PLUBELL: Were you pretty busy at that time?  
24  
25

1 MR. MCDONALD: It was crazy. I mean we were outnumbered probably  
2 twenty (20) to thirty (30) to one (1). And it was starting to calm down and people  
3 were backing off and all the sudden Carl Four Star breaks through the crowd and  
4 he said there is a fight over there, or I just got hit or something like that. And I  
5 thought to myself, oh crap here we go again. I couldn't see where this fight was  
6 and I said where? And he said it is right there and I looked again and I didn't see  
7 anything. He stormed off into the crowd. And I guess he went up to ...  
8

9 MR. TOAVS: Objection Your Honor. There is no foundation for this.  
10

11 COURT: Sustained.

12 MS. PLUBELL: Mr. McDonald did you file, eventually file an incident  
13 report on this?  
14

15 MR. MCDONALD: I did.

16 MS. PLUBELL: From that particular evening and included in that did you  
17 document that Mr. Four Star's told you that someone had punched him?  
18

19 MR. MCDONALD: He did.

20 MS. PLUBELL: And do you have any idea what ultimately happened with  
21 that information?  
22

23 MR. MCDONALD: It was my understanding that ...

24 MR. TOAVS: Objection. Lacks foundation.

25 COURT: Sustained.

1 MS. PLUBELL: No further questions Your Honor.

2 COURT: Mr. Toavs?

3 (CROSS EXAMINATION OF RICHARD MCDONALD)

4 MR. TOAVS: Thank you Your Honor. Now let me get this straight Mr.  
5 McDonald. You were employed at A&S Industries in 1983?  
6

7 MR. MCDONALD: I was.

8 MR. TOAVS: Do you recall the months of that employment that you had  
9 there?  
10

11 MR. MCDONALD: Not exactly. it was springtime and fall. The late  
12 summer, I actually got, I was tired of the ... It was hard work.

13 MR. TOAVS: So you discontinued your employment with A&S Industries  
14 in Poplar, Montana, sometime later in 1983?  
15

16 MR. MCDONALD: It was in the late summer, yeah. I applied for different  
17 jobs and I ultimately got hired into law enforcement.

18 MR. TOAVS: Do you remember how long, in terms of months, that you  
19 worked there?  
20

21 MR. MCDONALD: Oh probably three or four.

22 MR. TOAVS: And what were your job duties while you were employed  
23 there in 1983?  
24  
25

1 MR. MCDONALD: My main job duty was working on the large; they  
2 called them presses that formed the aluminum pieces into boxes.

3 MR. TOAVS: Is that the same part of A&S Industries as the netting area?

4 MR. MCDONALD: No.

5 MR. TOAVS: And, did you work at A&S Industries in 1984?

6 MR. MCDONALD: No.

7 MR. TOAVS: Did you work at A&S Industries in 1985?

8 MR. MCDONALD: No.

9 MR. TOAVS: You testified that A&S Industries was a manufacturing  
10 company engaged in making products such as medical chests and netting.  
11

12 MR. MCDONALD: Yes sir.

13 MR. TOAVS: When you returned to A&S Industries, that wasn't until  
14 1989?  
15

16 MR. MCDONALD: I don't remember exactly, it was 1988 or 1989. I went  
17 from different jobs waiting to get back into law enforcement.  
18

19 MR. TOAVS: And, your job at that time was in quality control?

20 MR. MCDONALD: It was.

21 MR. TOAVS: You came back after you had some additional training and  
22 experience and then you were hired as a management personnel?  
23

24 MR. MCDONALD: At A&S?  
25

1 MR. TOAVS: Yeah.

2 MR. MCDONALD: No, it wasn't management.

3 MR. TOAVS: Quality control.

4 MR. MCDONALD: Yes.

5  
6 MR. TOAVS: And what products were you in charge of being quality  
7 control for?

8 MR. MCDONALD: You know, it was almost everything that they made  
9 down there.

10  
11 MR. TOAVS: Now, on the basis of your second employment, did you work  
12 there for a period of time? Was it more or less than a year, do you remember?

13 MR. MCDONALD: It was less than a year. It was just a few months.

14 MR. TOAVS: So in 1988 or 1989 you had a few months worth of  
15 employment at A&S and then about the same period of time back in 1983?

16 MR. MCDONALD: Yes.

17 MR. TOAVS: None in 1984 and none in 1985?

18 MR. MCDONALD: No.

19  
20  
21 MR. TOAVS: Now, to your knowledge did A&S bid its manufacturing  
22 services to military contractors and supply these products that it was making?

23 MR. MCDONALD: You know, I think that is what it did.  
24  
25

1 MR. TOAVS: And so, depending on whether or not A&S had a contract to  
2 fill they would be more busy or less busy, isn't that how it went there?

3 MR. MCDONALD: You know, at that time, in 1983, it was, they must have  
4 had a lot of contracts, they were busy. It was busy three shifts a day in both the  
5 netting and the ... And it seemed to be ... You know, it seemed to be that way  
6 when I was there the second time too. It seemed like it was ...

8 MR. TOAVS: In fact, A&S had a history of gearing up more employees  
9 during busy times when they had a lot of contracts and then scaling down with less  
10 employees during times when there weren't as many military contracts.

12 MR. MCDONALD: You know, I think toward the end of A&S, I think that  
13 is what happened, but back in that era in the 1980s I think it was ... There must  
14 have been a lot of ...

16 MR. TOAVS: I am sorry to stop you, but let's just talk about the years  
17 when you worked there and you would know. During your few months of  
18 employment in 1983 or your few months of employment in 1988 or 1989, isn't it  
19 true that A&S would be busier or less busy depending on the amount of contracts  
20 that it had.

22 MR. MCDONALD: It seemed to me that it was busy all the time. I don't  
23 ...

25

1 MR. TOAVS: Okay. Now, you don't have any personal knowledge about  
2 what the noise level was in the netting area in 1985 do you?

3 MR. MCDONALD: I don't know.

4 MR. TOAVS: I have no further questions Your Honor.

5 COURT: Ms. Plubell?

6  
7 (REDIRECT EXAMINATION OF RICHARD MCDONALD)

8 MS. PLUBELL: One question Mr. McDonald. When you said at the end of  
9 A&S, their existence, and about when would that have been?  
10

11 MR. TOAVS: Objection. Foundation.

12 MS. PLUBELL: Is A&S still ...

13 COURT: That is what she is trying to establish. Overruled.

14 MS. PLUBELL: Is A&S still in business?

15  
16 MR. MCDONALD: You know, I don't know. There may be something  
17 still going on there, but it just ... After Desert Storm, you know, when the military  
18 took more of a, you know we are going to bomb you and there wasn't so much  
19 ground soldiering, there wasn't so much hand to hand and the infantry type. I  
20 believe that is when it actually started to scale down.  
21

22 MS. PLUBELL: All right. Thank you.

23 COURT: Any re-cross?

24 MR. TOAVS: No Your Honor.  
25



1 COURT: May this witness be excused Ms. Plubell?

2 MS. PLUBELL: Yes Your Honor.

3 COURT: Mr. Toavs?

4 MR. TOAVS: Yes.

5 COURT: Thank you sir. I appreciate it. All right.

6 MR. CAMIEL: Your Honor, petitioner's next witness is Stephanie Eagle  
7 Boy.  
8

9 CLERK: Do you solemnly swear the statements you are about to give in  
10 this matter will be the truth, the whole truth and nothing but the truth so help you  
11 God?  
12

13 MS. EAGLE BOY: Yes.

14 COURT: Come on over here ma'am.

15 MS. EAGLE BOY: Hello.

16 COURT: Good afternoon.

17 MS. EAGLE BOY: Good afternoon.  
18

19  
20 (DIRECT EXAMINATION OF STEPHANIE EAGLE BOY)

21 MR. CAMIEL: Ms. Eagle Boy, I am going to ask you to state your full  
22 name and spell your last name for the record.

23 MS. EAGLE BOY: Stephanie Ann Eagle Boy. Last name E-a-g-l-e-B-o-y.  
24  
25

1 MR. CAMIEL: Can you pull the microphone a little bit closer to you so we  
2 can hear you. Ms. Eagle Boy where do you live?

3 MS. EAGLE BOY: Wolf Point, Montana.

4 MR. CAMIEL: How long have you lived in the Wolf Point area?

5 MS. EAGLE BOY: About eleven years.

6 MR. CAMIEL: Eleven years? And before that where did you live?

7 MS. EAGLE BOY: Minot, North Dakota.

8 MR. CAMIEL: Okay. And then before that?

9 MS. EAGLE BOY: Poplar.

10 MR. CAMIEL: Were you born in Poplar?

11 MS. EAGLE BOY: Yes I was.

12 MR. CAMIEL: Then to Minot, North Dakota, and then back to Wolf Point?

13 COURT: You have to answer.

14 MS. EAGLE BOY: Yes. Sorry.

15 MR. CAMIEL: Did you go to school in Poplar?

16 MS. EAGLE BOY: Yes I did.

17 MR. CAMIEL: Where did you go to high school?

18 MS. EAGLE BOY: In Poplar.

19 MR. CAMIEL: Do you have children?

20 MS. EAGLE BOY: Yes I do, three.

21  
22  
23  
24  
25

1 MR. CAMIEL: How old are they?

2 MS. EAGLE BOY: Twenty-two, thirteen and eight.

3 MR. CAMIEL: What year were you born?

4 MS. EAGLE BOY: 1969.

5 MR. CAMIEL: When you were growing up in Poplar who raised you?

6 MS. EAGLE BOY: My grandparents did. Matthew and Rose Eagle Boy.

7 MR. CAMIEL: And what year did your grandfather die?

8 MS. EAGLE BOY: Nineteen seventy-nine (1979).

9 MR. CAMIEL: Was that a tough year for you?

10 MS. EAGLE BOY: Yes it was.

11 MR. CAMIEL: And so you lived from the time you were an infant up until  
12 1979 with your grandparents?

13 MS. EAGLE BOY: Yes I did.

14 MR. CAMIEL: Where did they live?

15 MS. EAGLE BOY: Up on a hill.

16 MR. CAMIEL: Where? In Poplar?

17 MS. EAGLE BOY: Well yeah, in Poplar. A lot of people know it as  
18 'Cockroach Hill'?

19 MR. CAMIEL: All right. And does this hill sit anywhere near what is  
20 called the train bridge?  
21  
22  
23  
24  
25

1 MS. EAGLE BOY: Yes it does.

2 MR. CAMIEL: In what way does it sit near the train bridge?

3 MS. EAGLE BOY: What do you mean what way? On a hill?

4 MR. CAMIEL: Can you see from the hill; can you see the train bridge?

5 MS. EAGLE BOY: Yes I can.

6 MR. CAMIEL: Can you also see the Poplar River?

7 MS. EAGLE BOY: Yes.

8 MR. CAMIEL: In addition to being raised by your grandparents, who lived  
9 up on Cockroach Hill. Did you have any other relatives who lived up in that area?  
10  
11

12 MS. EAGLE BOY: Yes.

13 MR. CAMIEL: Who?

14 MS. EAGLE BOY: My aunt, my cousins. Do you want me to name them  
15  
16 all?

17 MR. CAMIEL: So, you had a lot of family that lived right in the same area?

18 MS. EAGLE BOY: Well, we kind of lived towards, well towards the hill,  
19  
20 going towards the football field and my aunt and them lived towards the end of the  
21 hill. But we were all on the hill, yeah.

22 MR. CAMIEL: And when you were living with your grandparents, how  
23  
24 many people approximately did you live with in that house?  
25

1 MS. EAGLE BOY: Maybe about fourteen, twenty. I don't know. There  
2 was a lot of us there though.

3 MR. CAMIEL: You also mentioned that you had an aunt, your aunt Mabel  
4 who lived up in that area?

5 MS. EAGLE BOY: Yeah she lived towards the edge of the hill.

6 MR. CAMIEL: Now, after, you said your grandfather died in 1979; did you  
7 continue to live with your grandmother then?  
8

9 MS. EAGLE BOY: No. My grandma passed away before my grandpa did.  
10

11 MR. CAMIEL: Okay. So after your grandparents had passed, where did  
12 you go to live?

13 MS. EAGLE BOY: I think and lived with my mother then.

14 MR. CAMIEL: Did you still ...  
15

16 MS. EAGLE BOY: It was still in Poplar, but I think it was down by, I don't  
17 remember where. I think it was downtown.

18 MR. CAMIEL: And, did you still spend time up at your aunt Mabel's?  
19

20 MS. EAGLE BOY: Yes I did.

21 MR. CAMIEL: How often were you there?

22 MS. EAGLE BOY: Almost every day.

23 MR. CAMIEL: Were you close to any of your cousins that were children of  
24 your aunt Mabel?  
25

1 MS. EAGLE BOY: Yeah, Tina.

2 MR. CAMIEL: What is Tina's last name?

3 COURT: It's okay. Just take your time.

4 MS. EAGLE BOY: Tina Sparvior.

5 MR. CAMIEL: Tina has passed away, is that right?

6 MS. EAGLE BOY: Yes.

7 MR. CAMIEL: Would you and your cousin Tina hang out together as  
8 children?  
9

10 MS. EAGLE BOY: All the time.

11 MR. CAMIEL: What kinds of things would you do together?

12 MS. EAGLE BOY: We used to go play football and play kick the can all  
13 over the hill and just played those games.  
14

15 MR. CAMIEL: And did you have kind of a favorite hang-out place that you  
16 and Tina would go to?  
17

18 MS. EAGLE BOY: Yeah, the rock.

19 MR. CAMIEL: Can you describe what you are calling the rock?

20 MS. EAGLE BOY: Well, my aunt's house is on the edge of the hill and the  
21 rock wasn't too far down from the hill because we had a little basketball court  
22 there and we used to sit there and just visit and talk.  
23  
24  
25

1 MR. CAMIEL: From the rock could you see down into the little park near  
2 the train bridge and the river?

3 MS. EAGLE BOY: Yes.

4 MR. CAMIEL: What time of day would you and Tina go and sit out by the  
5 rock?  
6

7 MS. EAGLE BOY: Sometimes early evening, sometimes at night time, late  
8 at night.

9 MR. CAMIEL: During the summertime when you were not in school  
10 would, you stay out late?  
11

12 MS. EAGLE BOY: Yes.

13 MR. CAMIEL: And play with Tina?

14 MS. EAGLE BOY: Yeah.

15 MR. CAMIEL: And, were there any rules in terms of where you could go  
16 late in the evening?  
17

18 MS. EAGLE BOY: Well, we had to go back and check in. When I was  
19 staying with my aunt we would go home and check in with her and let her know  
20 that we will be outside and she would tell us to stay in the yard. Where the rock  
21 was, it was like our backyard.  
22

23 MR. CAMIEL: Would you pay attention when you were sitting out by the  
24 rock to activities that were going on down in the park by the train bridge?  
25

1 MS. EAGLE BOY: Would we pay attention?

2 MR. CAMIEL: Yeah. Did you see people come down there? Did you  
3 watch what they were doing from time to time?

4 MS. EAGLE BOY: Yeah.

5 MR. CAMIEL: Was that like a party area?

6 MS. EAGLE BOY: Yeah.

7 MR. CAMIEL: What kinds of things just generally would you see go on  
8 down there?  
9

10 MS. EAGLE BOY: Well, there would be drinking, you know, it wasn't  
11 really mainly by the train bridge or at the train bridge all the time. It was always  
12 like right below the hill where all the trees were because they would have bonfires,  
13 whatever. I mean, just what teenagers do back then I guess.  
14

15 MR. CAMIEL: And you weren't a teenager yet, you were, in 1979 ...

16 MS. EAGLE BOY: I was only ten years old.

17 MR. CAMIEL: How old was Tina at that time?

18 MS. EAGLE BOY: Eleven.

19 MR. CAMIEL: So, would the two of you sit and watch these older  
20 teenagers when they were down there partying?  
21

22 MS. EAGLE BOY: Yeah.  
23  
24  
25



1 MR. CAMIEL: Or listen to them? Now, the summer of your tenth year  
2 which is 1979 after your grandfather had died, did there come a time where you  
3 and Tina were out by the rock one night?

4 MS. EAGLE BOY: Yeah.

5 MR. CAMIEL: And you saw something unusual?  
6

7 MS. EAGLE BOY: Yeah.

8 MR. CAMIEL: Do you have any idea what time it was that you and Tina  
9 went out to the rock that night?  
10

11 MS. EAGLE BOY: No I don't.

12 MR. CAMIEL: Was it after dark?

13 MS. EAGLE BOY: Yeah it was dark.

14 MR. CAMIEL: Had it been dark for quite awhile?  
15

16 MS. EAGLE BOY: Yeah.

17 MR. CAMIEL: And, was anybody else out there with you and Tina, or was  
18 it just the two of you?  
19

20 MS. EAGLE BOY: It was just us two.

21 MR. CAMIEL: Was your aunt home?

22 MS. EAGLE BOY: Yes.

23 MR. CAMIEL: Were other people home in your aunt's house?  
24

25 MS. EAGLE BOY: Yeah, my cousins.

1 MR. CAMIEL: While you were sitting out there ... First of all let me ask  
2 you do you remember what day it was or what the date was?

3 MS. EAGLE BOY: No I don't.

4 MR. CAMIEL: But you know it was summer?

5 MS. EAGLE BOY: Yeah.

6 MR. CAMIEL: And, it was the year that your grandfather died?

7 MS. EAGLE BOY: Yeah.

8 MR. CAMIEL: What happened while you were sitting out there that night?

9 MS. EAGLE BOY: We were just sitting along by the rock and just talking,  
10 visiting and we looked towards the highway and two vehicles were coming down.  
11

12 MR. CAMIEL: Now what highway is that?

13 MS. EAGLE BOY: Highway Two.

14 MR. CAMIEL: Okay. Two vehicles were coming down where?

15 MS. EAGLE BOY: From town.

16 MR. CAMIEL: Okay. So they were coming from ...

17 MS. EAGLE BOY: From town down ...

18 MR. CAMIEL: So, if they had stayed on Highway Two they would have  
19 headed west out of town?  
20

21 MS. EAGLE BOY: Towards Wolf Point, yeah.  
22  
23  
24  
25

1 MR. CAMIEL: Okay. Did they go west out of town or did the vehicles  
2 turn?

3 MS. EAGLE BOY: They turned off down to the park.

4 MR. CAMIEL: And where did the vehicles go to?

5 MS. EAGLE BOY: They were on the road going toward that train bridge.  
6

7 MR. CAMIEL: From the highway, Highway Two to the train bridge, did  
8 the vehicles go all the way to the train bridge or not?

9 MS. EAGLE BOY: No they didn't. It looked like it was half way.  
10

11 MR. CAMIEL: Could you tell what kind of vehicles these were?

12 MS. EAGLE BOY: Well, the first one looked like it was a pickup because  
13 the other headlights hit the pickup.

14 MR. CAMIEL: Could you tell when they first entered that area what the  
15 second vehicle was?  
16

17 MS. EAGLE BOY: Yeah, because you could kind of see the, what do you  
18 call it now, like ... I don't know, like ...

19 MR. CAMIEL: Like the shape?  
20

21 MS. EAGLE BOY: Yeah. I couldn't ... Sorry about that.

22 MR. CAMIEL: So you saw these two vehicles come into the park. Did they  
23 just drive through the park or did they stop?  
24  
25

1 MS. EAGLE BOY: No. They pulled in. They pulled in together like this  
2 because you could see the headlights off the trees and the weeds.

3 MR. CAMIEL: And then what did you see or hear?

4 MS. EAGLE BOY: After that I heard a lot of yelling around.

5 MR. CAMIEL: Was this loud yelling or talk voice yelling?

6 MS. EAGLE BOY: It was loud.

7 MR. CAMIEL: You could hear it up on the hill?

8 MS. EAGLE BOY: Yeah.

9 MR. CAMIEL: Do you think you could have heard it from the house, your  
10  
11 aunt's house?  
12

13 MS. EAGLE BOY: Probably, because her house was by the hill.

14 MR. CAMIEL: Could you hear what was being yelled?

15 MS. EAGLE BOY: I could hear all these girls hollering and saying get her  
16  
17 and get the bitch. I mean it just ...

18 MR. CAMIEL: Did you hear, in addition to the girls' voices, did you ever  
19  
20 hear any male voices?

21 MS. EAGLE BOY: No.

22 MR. CAMIEL: Did you hear any other voices or any other things being  
23  
24 said?  
25

1 MS. EAGLE BOY: Well, out of this pack of girls it was like this other girl  
2 was saying don't please. It was like ... I don't know how to describe it; like they  
3 were chasing her or something.

4 MR. CAMIEL: Could you actually see what was going on, or are you just  
5 hearing this?  
6

7 MS. EAGLE BOY: I just heard.

8 MR. CAMIEL: Could you tell how many different girls there were from the  
9 voices?  
10

11 MS. EAGLE BOY: No I didn't.

12 MR. CAMIEL: How long did the yelling go on?

13 MS. EAGLE BOY: It seemed like it only went on for maybe ten or twenty  
14 minutes, I don't know.  
15

16 MR. CAMIEL: While you are listening to this you are sitting near the rock  
17 with your cousin Tina?

18 MS. EAGLE BOY: Yes.

19 MR. CAMIEL: Then what happened?  
20

21 MS. EAGLE BOY: Then after that it got quiet. And then ...

22 MR. CAMIEL: Could you hear voices when it got quiet?  
23

24 MS. EAGLE BOY: No.

25 MR. CAMIEL: Then what happened?

1 MS. EAGLE BOY: Then it was like ... The next thing you know we seen a  
2 police car coming down with its lights on.

3 MR. CAMIEL: You could tell it was a police car because it had lights on?

4 MS. EAGLE BOY: Yeah.

5 MR. CAMIEL: On the roof?

6 MS. EAGLE BOY: Yeah.

7 MR. CAMIEL: Could you tell what kind of police car it was, whether it was  
8 county sheriff or ...  
9

10 MS. EAGLE BOY: No.

11 MR. CAMIEL: Where did the police car go?

12 MS. EAGLE BOY: Where did it go?

13 MR. CAMIEL: Yeah.

14 MS. EAGLE BOY: It went down where the other two vehicles were sitting.

15 MR. CAMIEL: And then what happened.

16 MS. EAGLE BOY: And then it shut its lights off down there.

17 MR. CAMIEL: Did it shut its headlights off?

18 MS. EAGLE BOY: It shut them all off.

19 MR. CAMIEL: Okay. And then what happened?

20 MS. EAGLE BOY: And then I don't know. It got silent and it was like you  
21 could hear a little whispering or something and then the next thing you know one  
22  
23  
24  
25

1 of the pickups pulls out and goes all the way around by the train bridge and goes  
2 by the trees and you could see like two people get out of the truck and ...

3 MR. CAMIEL: Before we talk about the two people, you had initially  
4 described that there were two vehicles that came into this area.

5  
6 MS. EAGLE BOY: Uh huh.

7 MR. CAMIEL: And then after the yelling the police car came and then one  
8 of the vehicles, you said, started to drive around. Did that vehicle come to a stop?

9 MS. EAGLE BOY: What do you mean did it come to a stop?

10 MS. EAGLE BOY: You saw it leave from where it had been stopped. Did  
11 it just drive straight out of the park? Or did it stop somewhere?  
12

13 MS. EAGLE BOY: It stopped on the road that was closest to the train  
14 tracks. Because it was on the ... The road was on the other side of some trees.  
15 And, when it drove through it went past the trees and it parked like in a flat place  
16 and it had a whole bunch of weeds. There was a road there because that road was  
17 coming towards the hill and it stopped right there.  
18

19 MR. CAMIEL: So, when you say towards the hill, that road was coming  
20 toward where you and Tina were up on the hill?  
21

22 MS. EAGLE BOY: Yes.

23 MR. CAMIEL: So it got closer to you? What happened when it stopped?  
24  
25

1 MS. EAGLE BOY: Well, two people got out and it sounded like they were  
2 digging.

3 MR. CAMIEL: Why do you think it sounded like they were digging?

4 MS. EAGLE BOY: Because the way the shovel sounds when you dig a hole  
5 against the ground.  
6

7 MR. CAMIEL: Okay. Could you actually see the two people?

8 MS. EAGLE BOY: Well I couldn't ... I could see them, but I can't identify  
9 them or anything. I mean it is like looking at a shadow maybe.  
10

11 MR. CAMIEL: Could you tell whether they were men or women?

12 MS. EAGLE BOY: No.

13 MR. CAMIEL: How long did this digging sound go on?

14 MS. EAGLE BOY: It seemed like it only went on for a couple minutes.  
15

16 MR. CAMIEL: Did you hear anything else?

17 MS. EAGLE BOY: Yes. I heard like a clinking noise, like they dropped  
18 something like tools clinking together when you drop them together.  
19

20 MR. CAMIEL: Okay. And at some point did that noise stop?

21 MS. EAGLE BOY: Yes.

22 MR. CAMIEL: And then what happened?

23 MS. EAGLE BOY: And then after that, they got back in the vehicle and  
24 they drove away.  
25



1 MR. CAMIEL: When they stopped and got out and you heard the digging  
2 and the clinking where was the police car?

3 MS. EAGLE BOY: It was still sitting by where the vehicles were.

4 MR. CAMIEL: So, after the vehicle that stopped and you heard the digging,  
5 did it drive back up to Highway Two?  
6

7 MS. EAGLE BOY: Uh huh. It left the park.

8 MR. CAMIEL: Okay. Did the police car do anything?

9 MS. EAGLE BOY: It left where the vehicles were and it drove the same  
10 way the pickup went.  
11

12 MR. CAMIEL: When the police car was leaving, did you notice anything  
13 about what was going on with the police car?  
14

15 MS. EAGLE BOY: Well, it was spotlighting around.

16 MR. CAMIEL: Like the spotlight that is next to the ...

17 MS. EAGLE BOY: Yeah one of those.

18 MR. CAMIEL: Next to the driver's door?

19 MS. EAGLE BOY: Yeah.  
20

21 MR. CAMIEL: Did the police car stay in the park or did it leave?

22 MS. EAGLE BOY: It left.

23 MR. CAMIEL: And what did you and your cousin do after the police car  
24 left?  
25

1 MS. EAGLE BOY: We went back up to my aunt's house.

2 MR. CAMIEL: Were there people awake at the house?

3 MS. EAGLE BOY: Yeah my aunt was awake; my cousin Joel was awake?

4 MR. CAMIEL: Cousin Joel?

5 MS. EAGLE BOY: Yeah.

6 MR. CAMIEL: Did you talk to your aunt or your cousin about what you  
7 heard or seen?  
8

9 MS. EAGLE BOY: Well, we just said it might have been somebody  
10 fighting or whatever down there. I don't know.  
11

12 MR. CAMIEL: And did anything else happen that evening?

13 MS. EAGLE BOY: After all that happened?

14 MR. CAMIEL: Yeah.

15 MS. EAGLE BOY: No.

16 MR. CAMIEL: The next day were you aware of whether or not there was  
17 police activity down in the park?  
18

19 MS. EAGLE BOY: Well I peeked out my aunt's window and wondered  
20 what was going on, but she said just go play.  
21

22 MR. CAMIEL: Did she discourage you from looking at what was going on  
23 in the park?  
24

25 MS. EAGLE BOY: No. She just told us to go.

1 MR. CAMIEL: At some point did you learn that a girl had been killed down  
2 in that park that night?

3 MS. EAGLE BOY: Years ago.

4 MR. CAMIEL: Okay. When you learned that a girl had been killed down  
5 there did you and your cousin talk about what you had seen?  
6

7 MS. EAGLE BOY: Yeah.

8 MR. CAMIEL: As teenagers or young adults, did you and your cousin  
9 continue to talk about what you had seen?  
10

11 MS. EAGLE BOY: Just once in a while

12 MR. CAMIEL: Did you talk about whether you should tell someone?

13 MS. EAGLE BOY: Yeah we did.

14 MR. CAMIEL: Did you go tell any police officers what you heard and  
15 seen?  
16

17 MS. EAGLE BOY: No.

18 MR. CAMIEL: Why not?

19 MS. EAGLE BOY: Cause I couldn't trust anybody.  
20

21 MR. CAMIEL: Why?

22 MS. EAGLE BOY: Cause there was a cop down there. I couldn't trust  
23 anybody.  
24  
25

1 MR. CAMIEL: Were you at all fearful about telling anybody what you had  
2 seen?

3 MS. EAGLE BOY: Yeah.

4 MR. CAMIEL: Do you know Barry Beach?

5 MS. EAGLE BOY: No.

6 MR. CAMIEL: Did you know Kim Nees?

7 MS. EAGLE BOY: No.

8 MR. CAMIEL: Over the years had you heard rumors that girls were  
9 involved in the murder of Kim Nees?  
10  
11

12 MS. EAGLE BOY: I didn't hear any rumors like that. I just heard that a  
13 girl got killed down at train bridge. That is all I heard.  
14

15 MR. CAMIEL: Did what you had seen and heard, did that bother you over  
16 the years?

17 MS. EAGLE BOY: Yes, it did.

18 MR. CAMIEL: In what way?

19 MS. EAGLE BOY: My nightmare.

20 MR. CAMIEL: What nightmare?

21 MS. EAGLE BOY: It has been a nightmare all my life.

22 MR. CAMIEL: You have nightmares about what you heard and saw?  
23

24 MS. EAGLE BOY: It's mainly what I heard. The girl screaming.  
25

1 MR. CAMIEL: At some point did you make a decision that you were going  
2 to tell somebody about what you had seen?

3 MS. EAGLE BOY: Yes.

4 MR. CAMIEL: What caused you to decide to finally tell somebody?

5 MS. EAGLE BOY: I think it was after watching the Dateline.  
6

7 MR. CAMIEL: What was it about that show that made you decide that you  
8 were going to tell?

9 MS. EAGLE BOY: I think it was watching Sissy on there getting  
10 interviewed and them talking.  
11

12 MR. CAMIEL: How did you come forward and disclose what you knew?

13 MS. EAGLE BOY: I called that tip line.  
14

15 MR. CAMIEL: And, when you called the tip line did you leave your name?

16 MS. EAGLE BOY: I don't remember if I did. I think I just left my number  
17 because I was crying on there.

18 MR. CAMIEL: When you called the line you were crying?

19 MS. EAGLE BOY: Uh huh.  
20

21 MR. CAMIEL: And what did you say when you called the tip line?

22 MS. EAGLE BOY: I think I just told them I had information.  
23

24 MR. CAMIEL: Did anybody contact you after you had called that line?

25 MS. EAGLE BOY: Not for awhile, but yeah. I can't remember who it was.

1 MR. CAMIEL: And, you called that line and left a message after you had  
2 seen the Dateline show?

3 MS. EAGLE BOY: Yeah.

4 MR. CAMIEL: You mentioned Sissy Atkinson. Do you know her?

5 MS. EAGLE BOY: Not personally, no.

6 MR. CAMIEL: Do you know who she is?

7 MS. EAGLE BOY: Yes.

8 MR. CAMIEL: Did you have any bad blood with her or grudges or  
9  
10 problems with her?  
11

12 MS. EAGLE BOY: No.

13 MR. CAMIEL: How about Maude Grayhawk, do you know her?

14 MS. EAGLE BOY: No. I didn't really personally know her either.

15 MR. CAMIEL: Is Sissy Atkinson much older than you?

16 MS. EAGLE BOY: Yeah she is.

17 MR. CAMIEL: And how about Maude Grayhawk?

18 MS. EAGLE BOY: She is too?

19 MR. CAMIEL: JoAnn Jackson, do you know her?

20 MS. EAGLE BOY: Not really personally, no.

21 MR. CAMIEL: Did you have any bad feelings towards Sissy, or Maude, or  
22 JoAnn? Hold any grudges against them?  
23  
24  
25

1 MS. EAGLE BOY: Well with Sissy, she got me mad because she couldn't  
2 tell the truth.

3 MR. LIGHT: Your Honor I am going to object at this time.

4 COURT: What is the basis of your objection?  
5

6 MR. LIGHT: Well, it is hearsay.

7 COURT: Sustained.

8 MR. CAMIEL: Now, when you were looking in the summer of 1979, when  
9 you were sitting by the rock on that hill and listening to what was going on, you  
10 couldn't see who was down there?  
11

12 MS. EAGLE BOY: No.

13 MR. LIGHT: Objection. Leading Your Honor.

14 MR. CAMIEL: I am sorry.

15 COURT: Sustained.  
16

17 MR. CAMIEL: Did you yourself know any of the voices that were down  
18 there?  
19

20 MS. EAGLE BOY: No.

21 MR. CAMIEL: Nothing further.

22 COURT: Before we get cross I want to just ask a couple questions that  
23 might help with cross. Ma'am, you said that you have had nightmares all your life  
24 about this incident?  
25

1 MS. EAGLE BOY: Yes.

2 COURT: And mostly because of the sounds you heard?

3 MS. EAGLE BOY: Yeah, screaming, yeah.

4 COURT: I know this is challenging for you, but could you tell me a bit  
5 more about those sounds? All you said when you were asked was, "Don't, please".  
6 Were there other sounds that you heard?  
7

8 MS. EAGLE BOY: Well, I could hear the girls saying to get her and you  
9 know kick the bitch.  
10

11 MR. LIGHT: I'm sorry. What was that last one?

12 COURT: She said kick the bitch.

13 MS. EAGLE BOY: And one girl saying, "Please, don't".

14 COURT: And did you hear screaming?  
15

16 MS. EAGLE BOY: Yes.

17 COURT: What kind of screaming?

18 MS. EAGLE BOY: Like a horrible scream.  
19

20 COURT: You know, there is screaming like when girls are yelling at each  
21 other, they can get pretty high pitched, pretty excited. Was it that kind of yelling?

22 MS. EAGLE BOY: Yeah. To me it was like an angry scream, like a high  
23 pitched angry scream. Hollering. It is something that you won't forget.  
24

25 COURT: Any other ways in which you would describe those screams?



1 MS. EAGLE BOY: This is my nightmare.

2 COURT: I know it is very, very hard, but it is very important too. Maybe  
3 this will help you resolve the nightmare.

4 MS. EAGLE BOY: Like what do you mean?

5  
6 COURT: Just tell me everything you remember about those sounds.  
7 Everything you can possibly recall, no matter how painful.

8 MS. EAGLE BOY: It was just a horrific screaming and yelling. I don't  
9 know how to describe it. It is just something that I won't forget.

10  
11 COURT: Okay. Anything else? Cross?

12 (CROSS EXAMINATION OF STEPHANIE ANN EAGLE BOY)

13 MR. LIGHT: Are you okay to go ahead ma'am? Can we go ahead? Are  
14 you all right?

15  
16 MS. EAGLE BOY: Yeah.

17 COURT: Do you want some water?

18 MS. EAGLE BOY: No. I will be okay.

19  
20 MR. LIGHT: Ma'am, I want to make sure that I have a clear understanding  
21 of what you told the Judge. I couldn't hear it exactly. But you heard hollering,  
22 screaming, horrific screaming is how you described it correct?

23 MS. EAGLE BOY: Yes.

24  
25 MR. LIGHT: Angry screaming, high pitched screaming, correct?

1 MS. EAGLE BOY: Yes.

2 MR. LIGHT: And obviously this was very upsetting to you, is that correct?

3 MS. EAGLE BOY: Yes.

4 MR. LIGHT: Now you were visiting Mabel your aunt, right? Sparvoir. Is  
5 that correct?  
6

7 MS. EAGLE BOY: Uh huh.

8 MR. LIGHT: And you indicated that Mabel was home this summer night in  
9 1979, correct?  
10

11 MS. EAGLE BOY: Yes.

12 MR. LIGHT: And, isn't it true that earlier, about a half hour ago the only  
13 way you knew it was the summer of 1979 was because it was hot is that correct?  
14

15 MS. EAGLE BOY: Yes.

16 MR. LIGHT: Okay. But, you don't know the date; you don't know exactly  
17 when it could have occurred except for the summer of 1979, correct?  
18

19 MS. EAGLE BOY: Well, I can't remember.

20 MR. LIGHT: That's fine. I am just asking. Just confirming that. All you  
21 know is it was the summer of 1979, correct?  
22

23 MS. EAGLE BOY: Yes.

24 MR. LIGHT: And, in addition to Mabel, your aunt being home, you had  
25 other family members who were at Mabel's house as well, correct?

1 MS. EAGLE BOY: Yes my cousin Joel.

2 MR. LIGHT: Joel Sparvoir.

3 MS. EAGLE BOY: Sparvoir.

4 MR. LIGHT: I am sorry. I will say Joel. And, on July 27, 2010 you made a  
5  
6 sworn statement out to defense counsel, Mr. Camiel who had just questioned you,  
7 correct?

8 MS. EAGLE BOY: Uh huh.

9 MR. LIGHT: Isn't that right?  
10

11 MS. EAGLE BOY: Yes.

12 MR. LIGHT: And, in fact, isn't it true that while your statement is while  
13 you and Tina were sitting and listening to what was going on in the park, your  
14 cousin Joel was standing in the doorway of the house, correct?  
15

16 MS. EAGLE BOY: Yes.

17 MR. LIGHT: And, isn't it true that he heard stuff, correct?

18 MS. EAGLE BOY: Yes.  
19

20 MR. LIGHT: And, he was older than you, correct?

21 MS. EAGLE BOY: Yes.

22 MR. LIGHT: And, you talked to Joel about what you and Tina had heard  
23 and seen correct?  
24

25 MS. EAGLE BOY: No, we didn't talk to Joel. He heard it on his own.

1 MR. LIGHT: But, you never talked to Joel about it?

2 MS. EAGLE BOY: No, because he heard it on his own.

3 MR. LIGHT: But, you and Joel talked about it, what you had seen and what  
4 he had heard correct?

5  
6 MS. EAGLE BOY: No.

7 MR. LIGHT: Okay. Well, let me show you your statement. May I  
8 approach?

9  
10 COURT: Yes.

11 MR. LIGHT: I want you to look at this part right here. So, isn't it true that  
12 you and Joel talked about what he had heard and what you had heard and seen,  
13 correct?

14  
15 MS. EAGLE BOY: Say that again.

16 MR. LIGHT: You and Joel talked about what you and Tina had heard and  
17 seen, correct?

18  
19 MS. EAGLE BOY: When we went back up to the house?

20 MR. LIGHT: At some point you had to of.

21 MS. EAGLE BOY: Well, the only thing that he said was what it sounded  
22 like.

23  
24 MR. LIGHT: Let me rephrase the question. Did you hear what Joel had  
25 seen or heard?

1 MS. EAGLE BOY: Did I hear?

2 MR. LIGHT: Yes. Did you talk to Joel about it?

3 MS. EAGLE BOY: Yes.

4 MR. LIGHT: Okay. And wouldn't you agree that that is indicated in your  
5 statement?  
6

7 MS. EAGLE BOY: Yes.

8 MR. LIGHT: Okay. Thank you. Isn't it also true that you told your aunt  
9 Mabel that there were sounds like people fighting down there?  
10

11 MS. EAGLE BOY: Yes.

12 MR. LIGHT: Okay. Now, during direct examination you talked about how  
13 the two trucks, and this was two trucks that you identified, correct?  
14

15 MS. EAGLE BOY: Yes.

16 MR. LIGHT: Okay. And you indicated that the two trucks that were there  
17 and then at one point the police car came down there as well, correct?  
18

19 MS. EAGLE BOY: Yes.

20 MR. LIGHT: And then at one point, one of the trucks left and went closer  
21 down to the train bridge and stopped, correct?  
22

23 MS. EAGLE BOY: No. I said it went around on the same road.

24 MR. LIGHT: Okay.

25 MS. EAGLE BOY: That was down by the train bridge.

1 MR. LIGHT: Okay, okay. From where you were sitting on the rock when  
2 that truck finally stopped and you said two people got out, how far was that?

3 MS. EAGLE BOY: It is kind of hard for me to kind of see how far, but it  
4 might have been from like where I am sitting to like where these guys are down the  
5 hill.  
6

7 MR. LIGHT: Okay well let's start out. Where the two pickup trucks first  
8 stopped how far were you from them at that point when they first started; when  
9 they first came in and you saw them down there. How far would you say you were  
10 from where you are at to where?  
11

12 MS. EAGLE BOY: Probably to the wall or further.

13 MR. LIGHT: To the wall or further?

14 MS. EAGLE BOY: Yeah. I mean it was a long ways for me.  
15

16 MR. LIGHT: That's fine. I am just asking ma'am. And then from that  
17 point when the truck left, did the truck, and you said the truck took the road and  
18 then two people got out. Did it go further away from you at that point?  
19

20 MS. EAGLE BOY: When the one of the vehicles left?

21 MR. LIGHT: Yes.

22 MS. EAGLE BOY: From when it stopped?  
23

24 MR. LIGHT: Yes.

25 MS. EAGLE BOY: And left the park? Or what are you talking about?

1 MR. LIGHT: At one point you indicated that one of the trucks left and it  
2 drove around and it got to a spot where two people got out where you said you  
3 heard the digging. My question is, how far away from that were you?

4 MS. EAGLE BOY: It was just like looking down this way.

5  
6 COURT: So, it was closer to you than it had been before?

7 MS. EAGLE BOY: Yeah.

8 MR. LIGHT: Now, you indicated the next morning that you were aware of  
9 all the commotion, the cars and the police that were down by the train bridge,  
10 correct?  
11

12 MS. EAGLE BOY: Oh I just looked out the window and seen all the stuff  
13 down there.

14 MR. LIGHT: And you had already talked to Mabel about you thought you  
15 saw a fight down there, correct?  
16

17 MS. EAGLE BOY: Well, it sounded like a fight. I don't know.

18 MR. LIGHT: Okay. And, did you talk to her any further now that you  
19 learned that someone had been killed down there?  
20

21 MS. EAGLE BOY: No.

22 MR. LIGHT: And, you indicated that you, at some point, you were aware of  
23 all the rumors, the gossip that these girls, some girls were responsible for the death  
24 of Kim Nees, is that correct?  
25

1 MS. EAGLE BOY: Like I said the only thing I heard was that a girl got  
2 killed down at train bridge. That was a long time ago though. Later on, years and  
3 years.

4 MR. LIGHT: From 1979, how long did you continue to live in Poplar?

5 MS. EAGLE BOY: I don't know. It was a long time. Until I was probably  
6 thirteen or fourteen...

7 MR. LIGHT: I just want to make sure of this. You are telling me in those  
8 thirteen to fourteen years that you lived in Poplar you never heard any rumors or  
9 gossip about these girls that were responsible for the Kim Nees murder?  
10

11 MS. EAGLE BOY: Well, you hear things but, you know, you don't think  
12 nothing of it. I just blocked everything out.  
13

14 MR. LIGHT: But, you did hear the gossip, that's the question?  
15

16 MS. EAGLE BOY: Well yeah. It was gossip. But gossip is gossip.  
17

18 MR. LIGHT: Thank you. And, knowing that you had heard gossip and  
19 rumors about girls being responsible for the Kim Nees murder and knowing that  
20 you believed you had witnessed a fight in the same exact location at the same time  
21 it allegedly took place, you did not go and tell anybody, is that correct?

22 MS. EAGLE BOY: No.  
23  
24  
25



1 MR. LIGHT: Okay. Thank you. Now, you indicated on cross examination,  
2 excuse me, on direct that you didn't trust law enforcement at that time, is that  
3 correct?

4 MS. EAGLE BOY: No. I didn't trust anybody.

5 MR. LIGHT: You certainly could have told family about that couldn't you?  
6

7 MS. EAGLE BOY: No. I didn't want to tell nobody.

8 MR. LIGHT: During the time that you lived there you were also aware that  
9 Mr. Beach was accused of killing Kim Nees, correct?  
10

11 MS. EAGLE BOY: Yeah.

12 MR. LIGHT: And you were aware at that time that you had information  
13 about that murder of Kim Nees correct?  
14

15 MS. EAGLE BOY: Uh huh.

16 MR. LIGHT: And, you again, did not come forward and tell anybody, is  
17 that correct?

18 MS. EAGLE BOY: Well, who am I going to tell? I don't trust anybody. I  
19 am not going to tell anybody anything. That's why I kept it to myself.  
20

21 MR. LIGHT: You didn't tell your mom, correct?

22 MS. EAGLE BOY: I talked to my cousin Tina. We talked it over cause we  
23 were both there.  
24  
25

1 MR. LIGHT: I respect that. Let me ask the question please. You didn't tell  
2 your mom, is that correct?

3 MS. EAGLE BOY: No.

4 MR. LIGHT: You didn't tell Mabel, is that correct?

5 MS. EAGLE BOY: No.  
6

7 MR. LIGHT: Although you had talked to Mabel that night about it, hearing  
8 some stuff.

9 MS. EAGLE BOY: Well, yeah.  
10

11 MR. LIGHT: You didn't talk, in addition, to Joel did you?

12 MS. EAGLE BOY: No. We didn't talk about it.

13 MR. LIGHT: Well certainly, there were people available for you to talk to  
14 about this, correct? Other than law enforcement, there were people that you could  
15 have talked to, correct?  
16

17 MS. EAGLE BOY: I didn't tell anybody.

18 MR. LIGHT: I understand that. I am saying there were people who you  
19 could have talked to.  
20

21 MS. EAGLE BOY: Well maybe, yeah, but I didn't ask around.

22 MR. LIGHT: Do you recall in 1984 when Mr. Beach went to trial?

23 MS. EAGLE BOY: No.  
24  
25

1 MR. LIGHT: Was there anything going on in your family in 1984 about the  
2 trial?

3 MS. EAGLE BOY: No.

4 MR. LIGHT: In 1984 you were living in Poplar, correct?

5 MS. EAGLE BOY: Yeah.

6 MR. LIGHT: And, I take it for granted you were still visiting Mabel all the  
7 time, still going over there with Tina and still doing the things that you liked to do,  
8 correct?  
9

10 MS. EAGLE BOY: Yeah.

11 MR. LIGHT: So, you were over there a lot, is that correct?

12 MS. EAGLE BOY: Yeah. It was like my second home.

13 MR. LIGHT: Okay. Were you aware that Mabel testified at the Barry  
14 Beach trial?  
15

16 MS. EAGLE BOY: No.

17 MR. LIGHT: Were you aware that Joel testified at the Barry Beach trial?  
18

19 MS. EAGLE BOY: No.

20 MR. LIGHT: Were you aware that they testified as to what they heard and  
21 saw at the time that you were out there?  
22

23 MS. EAGLE BOY: No.  
24  
25

1 MR. LIGHT: A couple things I will just quickly ask you. When those two  
2 people got out of the truck, you couldn't identify whether they were males or  
3 females, isn't that correct?

4 MS. EAGLE BOY: No.

5 MR. LIGHT: You indicated when you talked to the Dateline show, or  
6 viewed the Dateline show you talked a little bit about Sissy. Did you know Sissy  
7 before the Dateline show?  
8

9 MS. EAGLE BOY: No.

10 MR. LIGHT: You had never known her?  
11

12 MS. EAGLE BOY: No.

13 MR. LIGHT: Did you know who she was before the Dateline show?  
14

15 MS. EAGLE BOY: Well, I had heard her name around, yeah. But no, I  
16 didn't know her personally.

17 MR. LIGHT: Were you ever aware that she was one of the girls who was  
18 rumored or gossiped to have killed Kim Nees?  
19

20 MS. EAGLE BOY: No.

21 MR. LIGHT: You never heard that?  
22

23 MS. EAGLE BOY: Uh huh.

24 MR. LIGHT: And you never heard that about Maude either?  
25

MS. EAGLE BOY: No.

1 MR. LIGHT: In all the time that you were in Poplar?

2 MS. EAGLE BOY: Yeah.

3 MR. LIGHT: That is all I have. Thank you.

4 COURT: Redirect?

5  
6 (REDIRECT EXAMINATION OF STEPHANIE EAGLE BOY)

7 MR. CAMIEL: Your Honor, if I could approach the witness. Ms. Eagle  
8 Boy, I am handing you what has been marked for identification as Petitioner's  
9 Exhibit Number Three. Do you recognize that?

10  
11 MR. LIGHT: Can you tell us what that is counsel?

12 MR. CAMIEL: I am sorry.

13 MS. EAGLE BOY: Yeah, that is my statement.

14 MR. CAMIEL: Do you see on the second page your signature?

15 MS. EAGLE BOY: Yes.

16 MR. CAMIEL: Do you see a date?

17 MS. EAGLE BOY: Twenty-seventh

18 MR. CAMIEL: Of what?

19 MS. EAGLE BOY: July 2010.

20 MR. CAMIEL: You Honor I would offer Petitioners Exhibit Number Three.

21 MR. LIGHT: I am sorry. I didn't hear that counsel.

22 MR. CAMIEL: I am going to object Your Honor.

1 MR. LIGHT: If the Court will review the document, the Court will see that  
2 it contains hearsay in there which I don't think is appropriate. The statement does.  
3 Her written statement does.

4 COURT: May I see that please?

5 MR. LIGHT: I would refer the Court to the second page, top first paragraph.  
6

7 COURT: What is your response to the objection?

8 MR. CAMIEL: Your Honor, I agree that that sentence is hearsay, but I think  
9 the Court could disregard that sentence and the rest of it is non-hearsay.  
10

11 MR. LIGHT: Well Your Honor, what is the relevance of offering it. They  
12 have already gone through their direct examination. Now, this is redirect. I think  
13 her testimony speaks for itself Your Honor. They just want to offer it for what  
14 purpose?  
15

16 MR. CAMIEL: Well, part of our burden is the due diligence and this shows  
17 when she signed the statement; that she gave a statement on that date and signed it.  
18 She has identified that statement.  
19

20 MR. LIGHT: She has asked and answered that she made a statement and the  
21 date of it. This is simply another back door approach to get in hearsay Your  
22 Honor.  
23

24 COURT: Haven't we already admitted statements of other witnesses?  
25

1 MR. CAMIEL: Yes. Petitioner's Exhibits One and Two. There were no  
2 objections to those.

3 COURT: I am going to admit this over objection. However, the Court will  
4 exclude from its consideration any hearsay that might be included in there.  
5

6 MR. CAMIEL: Ms. Eagle Boy, when you would talk to your cousin Tina  
7 did the two of you talk about coming forward and telling somebody?

8 MS. EAGLE BOY: Yes we did.

9 MR. CAMIEL: Did you reach any kind of an understanding with her about  
10 whether you should come forward?  
11

12 MR. LIGHT: Your Honor, I hope we are not going to get into what Tina  
13 said now.  
14

15 COURT: Well, I don't hear an objection.

16 MR. LIGHT: Objection. Hearsay.

17 COURT: Sustained.

18 MR. CAMIEL: I would offer what Tina told her not for the truth of the  
19 matter asserted, but to show both Tina's state of mind and Ms. Eagle Boy's state of  
20 mind as to why they didn't come forward.  
21

22 MR. LIGHT: Your Honor, they are offering it for the truth of the matter and  
23 quite frankly, her state of her mind is not in question. It is just not relevant.  
24

25 MR. CAMIEL: Well, she certainly ...

1 COURT: But, I think it is being offered for the truth of inadmissible.

2 MR. LIGHT: Of course it is.

3 COURT: So, I am going to sustain on hearsay.

4 MR. CAMIEL: Thank you Your Honor. What year did Tina die?

5 MS. EAGLE BOY: I can't remember what year, but she passed away

6  
7 October twenty-seventh.

8 MR. CAMIEL: How old was she?

9 MS. EAGLE BOY: Thirty-nine (39).

10 MR. CAMIEL: Was it within the last few years?

11 MS. EAGLE BOY: I think it was three, maybe three or four. It is kind of  
12 hard to tell because it was hard for me.

13 MR. CAMIEL: I understand. The hill that we have been having you talk  
14 about. The house the sat up on the hill and the park is down below. Do you know  
15 how high up that hill is from the park area where you saw the vehicles?  
16

17 MS. EAGLE BOY: No I don't.

18 MR. CAMIEL: Did you feel badly over the years that you hadn't come  
19 forward with this information?  
20

21 MS. EAGLE BOY: Yes I did.

22 MR. CAMIEL: Nothing further.  
23  
24  
25



1 MR. LIGHT: Your Honor, I don't have anything further. I would like to  
2 ask the Court first of all to take judicial notice and the copies that I have here of  
3 Mabel Sparvoir and Joel Sparvoir's testimony at trial and based on their testimony,  
4 I am going to ask that her testimony be stricken Your Honor. This evidence is not  
5 only not new because it was testified to at trial; people in the household, as to what  
6 they had heard, but it shows a total lack of due diligence in that this was Mabel and  
7 Joel's testimony, was offered by the defense Your Honor. Offered by the defense.  
8

9 COURT: Well, they wouldn't have offered any testimony by this lady  
10 because it would have been hearsay. They might have offered their own.  
11

12 MR. LIGHT: My point is Your Honor, let's go to due diligence. If the  
13 Court wants us to go to constitutional whether Timer Moses did his job or not that  
14 is fine Your Honor, but testimony was presented at trial in 1979 by two people  
15 who she said she talked to about this and they got up on the stand and said they  
16 didn't hear anything but dogs barking. So, I find it hard now that thirty (30) years  
17 later they can say that this is, not only is this new, but there has been due diligence  
18 to uncover it when family members were interviewed, talked to and so forth by the  
19 defense in 1979. I mean I don't ...  
20  
21

22 COURT: Well, I don't find that very persuasive. This lady was ten years  
23 old; cousin was only a little bit older. I don't find that persuasive.  
24  
25

1 MR. LIGHT: Well, can we at least ask the Court to take judicial notice of  
2 the direct examination of those two witnesses when weighing the credibility of this  
3 witness.

4 COURT: Absolutely.

5 MR. LIGHT: Your Honor, it is marked as State's exhibit.

6 COURT: Any objection?

7 MR. TOAVS: Well, we haven't had a chance to review that Your Honor.

8 MR. LIGHT: Your Honor, if I could approach?

9 COURT: You may. Do you have any cross of this lady?

10 MR. LIGHT: No Your Honor. That is enough.

11 MR. TOAVS: Your Honor, this is fairly lengthy. Would now be a good  
12 time for a short recess?

13 COURT: Yes. May this witness be excused?

14 MR. CAMIEL: We have no objection.

15 MR. LIGHT: No objection Your Honor.

16 COURT: Thank you ma'am. I know it's difficult for you.

17 MS. EAGLE BOY: Thank you.

18 COURT: All right. We will take a short recess.

19 (RECESS)

20 CLERK: All rise please.

1 COURT: Please be seated. All right. Next witness petitioner.

2 MR. TOAVS: Your Honor, in terms of the State's offer of the transcript  
3 from the examination at trial conducted of Maribel Sparvoir and Joel Sparvoir, we  
4 don't object to the Court taking notice of that and receiving that exhibit. However,  
5 for the record, we believe that this testimony speaks for itself and we do object to  
6 counsel's characterization of that testimony. We think the Court can review it for  
7 itself.  
8

9 COURT: Does the Clerk have that document?  
10

11 MR. LIGHT: Yeah. I handed it to you Your Honor.

12 COURT: You did?  
13

14 MR. LIGHT: You have got it now.

15 COURT: All right. Witness.

16 MR. CAMIEL: Your Honor, our next witness is Billie Smith. I think the  
17 State is gonna raise an objection.

18 COURT: All right.  
19

20 MS. PLUBELL: For the record Your Honor, the State objects on the  
21 manner of presenting the hearsay testimony through this witness instead of calling  
22 JoAnn Jackson to ask her if she actually made the statement and also on the  
23 grounds that JoAnn did not inculcate herself in the statement, but indicated in the  
24 statement that she was present at some point; not through Kim Nees homicide,  
25

1 according to the statement, but present in the events that are apparently, allegedly  
2 discussed with Billie Smith.

3 MR. CAMIEL: Your Honor, the next two witnesses both Billie Smith and  
4 Susan Mohler, as I indicated earlier worked with JoAnn Todd in Missoula at the  
5 nursing home and, as I indicated, during a break while talking about their teenager  
6 years JoAnn Todd went into a story about being present with a group of girls when  
7 this group of girls dragged a girl out of a truck and killed her. And, the witnesses  
8 will indicate that she said she didn't participate in that, but she was there. Being  
9 there with this group of girls, we believe, is not the type of statement that  
10 somebody, it is against her interest. It is not the type of statement that somebody  
11 would make casually to people unless it was true. It is not anywhere close to that  
12 type of statement. Placing herself at the scene of a murder with a group of girls  
13 who were involved in a murder certainly exposes her to criminal liability but, in  
14 addition, that same evidence rule talks about exposing somebody to disgrace or  
15 ridicule or hatred. And, if she was down there when, and she admits that she was  
16 down there when this girl was beaten to death and did nothing and didn't come  
17 forward, making a statement like that would certainly expose her to those kinds of  
18 things. So, we think that there are certainly sufficient indices of trustworthiness on  
19 top of the fact that she made this statement to two co-workers. So, it's not just one  
20 person coming in and saying she made the statement. We believe that under those  
21  
22  
23  
24  
25

1 set of facts it is admissible under 803-24 as the Court admitted other similar  
2 statements.

3 COURT: All right. The Court overrules the objection based on reliability  
4 which has been articulated by counsel, but also includes a disinterested person.  
5 Come over here ma'am and stand in front of the Clerk please.  
6

7 CLERK: Do you solemnly swear the statement you are about to make in  
8 this matter will be the truth, the whole truth and nothing but the truth so help you  
9 God?  
10

11 MS. SMITH: Yes.

12 COURT: Come on over here ma'am and sit. Scoot on up to the  
13 microphone.  
14

15 (DIRECT EXAMINATION OF BILLIE MARIE SMITH)

16 MR. CAMIEL: Ma'am, can you tell us your full name and spell your last  
17 name.  
18

19 MS. SMITH: Billie Marie Smith. S-m-i-t-h.

20 MR. CAMIEL: Billie, where do you live?

21 MS. SMITH: In Missoula.

22 MS. PLUBELL: Excuse me Your Honor, I am having a difficult time  
23 hearing you.  
24

25 MR. CAMIEL: Can you hear me now?

1 MS. PLUBELL: Not great. Is it on?

2 COURT: Yeah, it is just not very loud.

3 MR. CAMIEL: I will try to speak up. You live in Missoula and are you  
4 married?

5 MS. SMITH: I was, but my husband recently passed away.

6 MR. CAMIEL: I am sorry. Do you have any children?

7 MS. SMITH: Yes. I have two children.

8 MR. CAMIEL: Who are your children?  
9

10 MS. SMITH: Montana Smith and Spring Smith.

11 MR. CAMIEL: So, you got a boy and a girl?

12 MS. SMITH: Yes.

13 MR. CAMIEL: Is your girl overseas right now?  
14

15 MS. SMITH: Yes.

16 MR. CAMIEL: Where is she?  
17

18 MS. SMITH: She is in Iraq.

19 MR. CAMIEL: Are you employed?  
20

21 MS. SMITH: Yes.

22 MR. CAMIEL: Where do you work?  
23

24 MS. SMITH: At the Springs in Missoula.

25 MR. CAMIEL: And what is that?

1 MS. SMITH: It is assisted living, memory care and independent living.

2 MR. CAMIEL: How long have you worked in that field of assisted living or  
3 something related to that?

4 MS. SMITH: About eleven years.

5 MR. CAMIEL: And how long have you worked at your current job?  
6

7 MS. SMITH: About two years and three months.

8 MR. CAMIEL: Before you worked at your current job, where did you  
9 work?  
10

11 MS. SMITH: I worked at Hunter's Glen.

12 MR. CAMIEL: And what is that?

13 MS. SMITH: Assisted living.

14 MR. CAMIEL: How long did you work at Hunter's Glen?  
15

16 MS. SMITH: From 2003 to August of 2008.

17 MR. CAMIEL: And, when you were working at Hunter's Glen what were  
18 your duties there?  
19

20 MS. SMITH: I was a CNA.

21 MR. CAMIEL: Which stands for what?

22 MS. SMITH: Certified Nursing Assistant.

23 MR. CAMIEL: And so what kinds of things did you do?  
24  
25

1 MS. SMITH: We helped them get dressed; do their daily ADL's. That's  
2 everyday living. Things that they cannot do for themselves anymore, those types  
3 of things.

4 MR. CAMIEL: Did you work a particular shift or what kind of schedule  
5 were you on?  
6

7 MS. SMITH: I worked from six in the morning until two o'clock every day;  
8 day shift.

9 MR. CAMIEL: And, I take it, there were other CNAs who also worked  
10 there.  
11

12 MS. SMITH: Yes.

13 MR. CAMIEL: Do you know how many?  
14

15 MS. SMITH: On each shift we had four CNAs.

16 MR. CAMIEL: While you were working at Hunter's Glen did you know a  
17 woman named JoAnn Todd?

18 MS. SMITH: Yes.  
19

20 MR. CAMIEL: Was she employed there?

21 MS. SMITH: Yes she was.

22 MR. CAMIEL: What kind of position did she have there?  
23

24 MS. SMITH: She was the lead CNA at the time.

25 MR. CAMIEL: So, she was in kind of supervisory role?



1 MS. SMITH: She was over all the other CNAs. That is why she was called  
2 lead CNA.

3 MR. CAMIEL: All right. Did you also, or do you know a woman named  
4 Susan Mohler?

5 MS. SMITH: Yes.

6 MR. CAMIEL: Did she work at Hunter's Glen?

7 MS. SMITH: Yes.

8 MR. CAMIEL: What kind of a job did she have there?

9 MS. SMITH: She was a CNA also.

10 MR. CAMIEL: Do you smoke?

11 MS. SMITH: Yes I do.

12 MR. CAMIEL: And, at Hunter's Glen when you were at work and you took  
13 a break, was there an area that you would go out to smoke?  
14

15 MS. SMITH: Yes. There was only one area allowed there in the back.

16 MR. CAMIEL: Back of the building?

17 MS. SMITH: Yes.

18 MR. CAMIEL: Near the door?

19 MS. SMITH: Yes.

20 MR. CAMIEL: Did you ever take smoke breaks with JoAnn Todd?

21 MS. SMITH: Yes I have.  
22  
23  
24  
25

1 MR. CAMIEL: Was that a frequent thing?

2 MS. SMITH: Every now and then, yeah.

3 MR. CAMIEL: Did there a come a time where you took a smoke break with  
4 JoAnn Todd where the conversation turned talking about teenage years, younger  
5 years?  
6

7 MS. SMITH: Yes there were.

8 MR. CAMIEL: And, do you recall a particular conversation that you had  
9 with JoAnn Todd where she described something that had happened when she was  
10 a teenager?  
11

12 MS. SMITH: Yes.

13 MR. CAMIEL: Now do you remember what year that was?

14 MS. SMITH: I can't remember the exact year?

15  
16 MR. CAMIEL: I apologize if I already asked this. Do you remember what  
17 years JoAnn Todd worked at Hunter's Glen?

18 MS. SMITH: From 2003 to either 2006 or 2007. I know she was gone by  
19 2007.  
20

21 MR. CAMIEL: The conversation that I am going to ask you about, did that  
22 happen early on when she first started working there or later in her term at  
23 Hunter's Glen?  
24

25 MS. SMITH: Could you repeat that please?

1 MR. CAMIEL: Did it happen closer to 2003 or closer to when she left?

2 MS. SMITH: Closer to when she got ready to leave I would say, yes.

3 MR. CAMIEL: Now, I want to ask you about that conversation. Where  
4 were you and JoAnn Todd at the time that you talked?

5 MS. SMITH: We were out on break.

6 MR. CAMIEL: How long are your breaks?

7 MS. SMITH: Anywhere from ten to fifteen minutes long. No longer than  
8 fifteen.  
9

10 MR. CAMIEL: And, was it just the two of you or were other people  
11 present?  
12

13 MS. SMITH: There were other people present.

14 MR. CAMIEL: Describe what happened.

15 MS. SMITH: Somebody just started talking about some things that they did  
16 when they were teenagers and then she wanted to tell a story about when she was a  
17 teenager.  
18

19 MR. CAMIEL: Did she tell you where she was from?

20 MS. SMITH: No she didn't.

21 MR. CAMIEL: Did you ever learn where she was from?

22 MS. SMITH: Not until much later.

23 MR. CAMIEL: And, describe the conversation.  
24  
25

1 MS. SMITH: She told us about things that happened when she was a  
2 teenager, that she and a group of girls took another girl by the water and they  
3 dragged the girl out of the truck. She was not ... She had nothing to do with this,  
4 but she was present when this happened.

5  
6 MR. CAMIEL: When she is describing this to you, what did she say she  
7 was doing as these girls were dragging this girl out of the truck?

8 MS. SMITH: She said she was there, but she had no part of it, but she was  
9 there.

10  
11 MR. CAMIEL: Did she indicate whether she knew the girls that were  
12 involved?

13 MS. SMITH: No she didn't. She just said there was a group of girls.

14 MR. CAMIEL: Did she describe that she was down there with this group?

15 MS. SMITH: Yes.

16  
17 MR. CAMIEL: And, what did she say happened to the girl that was dragged  
18 out of the truck?

19  
20 MS. SMITH: She said they dragged, beat her and things got out of hand and  
21 she died and that is all I know really.

22 MR. CAMIEL: What was your reaction to being told something like this?

23 MS. SMITH: I didn't know if it was true. I didn't know what to think  
24 because at work, no matter where you work, people tell you B.S. stories. You  
25

1 don't know if they are telling you the truth ever. I didn't know until much later  
2 that what she had told me was the truth.

3 MR. CAMIEL: When she told you this, did you ask her any questions?

4 MS. SMITH: No, probably or break was over by then. You only, like I  
5 said, only have ten to fifteen minutes.  
6

7 MR. CAMIEL: Did she talk about this once or more than once?

8 MS. SMITH: Twice.

9 MR. CAMIEL: When she was telling you about this incident was Susan  
10 Mohler ever present?  
11

12 MS. SMITH: Not the first time. The second time.

13 MR. CAMIEL: Tell us about that.

14 MS. SMITH: Susan came out and I said why don't you tell Susan this story  
15 and that is when Susan heard the story.  
16

17 MR. CAMIEL: Why did you ask JoAnn to repeat the story for Susan?

18 MS. SMITH: I don't know. I guess I wanted to her to hear it so I could ask  
19 her later what did you think about that.  
20

21 MR. CAMIEL: Did JoAnn ever indicate why these girls were attacking and  
22 beating this girl?

23 MS. SMITH: Out of jealousy.

24 MR. CAMIEL: And did JoAnn use the word jealousy?  
25

1 MS. SMITH: Yes.

2 MR. CAMIEL: Did she indicate why the girls were jealous of the girl that  
3 was killed?

4 MS. SMITH: No. Just that it was over jealousy.

5 MR. CAMIEL: Did you ask her any questions about why this happened?

6 MS. SMITH: I must of because that must have been how the jealousy came  
7 up. I must of asked her why and she said jealousy.  
8

9 MR. CAMIEL: So, Susan Mohler was present the second time that JoAnn  
10 told you this?  
11

12 MS. SMITH: Yes.

13 MR. CAMIEL: Did she ever bring it up again?

14 MS. SMITH: Not to my knowledge; just those few times.

15 MR. CAMIEL: When you heard about ... When you heard JoAnn tell you  
16 this did you go tell anyone else what she had told you?  
17

18 MS. SMITH: No. I just talked to Susan and I said what did you think about  
19 that. Like I said, you don't know when people tell you stories at any job, I don't  
20 care where you work. You don't know if they are telling you the truth or was that  
21 B.S. and I didn't know until much later that it was true.  
22  
23  
24  
25

1 MR. CAMIEL: Let me ask you about that. You indicated that JoAnn told  
2 you this during a break and you said it was closer to the time that she left. And she  
3 left in either 2006 or 2007?

4 MS. SMITH: Yes.

5 MR. CAMIEL: Okay. Did there come a point and time where you watched  
6 the television program the Dateline show?  
7

8 MS. SMITH: At my job, not when it came out.

9 MR. CAMIEL: So, you didn't see it when it first aired?  
10

11 MS. SMITH: I seen it the next day.

12 MR. CAMIEL: How did that come about?  
13

14 MS. SMITH: Because I went to work and people said, "Did you watch the  
15 program last night", and I said, "What are you talking about?" and that is when  
16 they told me about Dateline and then I watched it in my boss's office that morning.

17 MR. CAMIEL: When they were asking you about whether or not you  
18 watched the show, did JoAnn come up?  
19

20 MS. SMITH: Yes. That's why they wanted me to watch it because they  
21 couldn't believe that she was on there.

22 MR. CAMIEL: Okay. And did you see the part of the show where JoAnn  
23 was interviewed?  
24

25 MS. SMITH: Yes.

1 MR. CAMIEL: How did you react to what you saw when she was  
2 interviewed?

3 MS. SMITH: I couldn't believe it. I just couldn't believe it, and hearing  
4 parts of that I knew that what I was told was true.

5  
6 MR. CAMIEL: So, when you were first told this you weren't sure what to  
7 think?

8 MS. SMITH: No, I didn't know what to think. I mean, you know, like I  
9 said you don't know.

10  
11 MR. CAMIEL: So now, after watching the program you decided that there  
12 was something to what she told you?

13 MS. SMITH: Yes. I knew that what she had told us was true.

14 MR. CAMIEL: So, then what did you do?

15 MS. SMITH: I was in shock. I didn't know what to do at that time.

16 MR. CAMIEL: Now, you were married at the time?

17 MS. SMITH: Yes I was.

18 MR. CAMIEL: Did you tell your husband?

19 MS. SMITH: Yes I did.

20 MR. CAMIEL: Did you discuss whether or not you ought to come forward?

21 MS. SMITH: Yes.

22 MR. CAMIEL: Did you decide to come forward at that time?  
23  
24  
25



1 MS. SMITH: No, because I didn't know what to do at that time.

2 MR. CAMIEL: Do you know if your husband told anyone else what you  
3 had heard JoAnn say?

4 MS. SMITH: Yes, he told a good friend of his.

5 MR. CAMIEL: And, as a result of that, do you know what the friend did?  
6

7 MS. SMITH: The friend called, I can't remember who, called somebody  
8 and then they contacted me.

9 MR. CAMIEL: Do you remember when you were first contacted by any  
10 investigator from Centurion Ministries or me as lawyer for Barry Beach?  
11

12 MS. SMITH: I am sorry what?

13 MR. CAMIEL: Do you remember when we first contacted you?  
14

15 MS. SMITH: Yes.

16 MR. CAMIEL: Was that on the phone or in person?

17 MS. SMITH: The first time I was contacted it was on the phone.

18 MR. CAMIEL: And do you remember when that was?  
19

20 MS. SMITH: I can't remember the exact date and year.

21 MR. CAMIEL: You said at first you were contacted by phone?  
22

23 MS. SMITH: Yes I was.

24 MR. CAMIEL: Did you later receive a visit at your home?  
25

MS. SMITH: Yes I did.

1 MR. CAMIEL: And, was there a draft statement that was prepared for you  
2 to look at?

3 MS. SMITH: Yes.

4 MR. CAMIEL: Your Honor, if I could approach the witness?

5 COURT: You may.

6 MR. CAMIEL: I am handing you what has been marked for identification  
7 as Petitioner's Exhibit Seven. Do you recognize that?  
8

9 MS. SMITH: Yes I do.

10 MR. CAMIEL: What is that?  
11

12 MS. SMITH: I am sorry what?

13 MR. CAMIEL: What is that document?  
14

15 MS. SMITH: It is a statement.

16 MR. CAMIEL: Now, part of it is typed, but there are cross outs and  
17 additional handwriting. How did the changes to the statement come about?

18 MS. SMITH: Questions were asked of me and I said no that is not right, so  
19 it was crossed out and then the person wrote that in and then I initialed that those  
20 were, are, right.  
21

22 MR. CAMIEL: So, if the change was made, you initialed the change?  
23

24 MS. SMITH: Yes.

25 MR. CAMIEL: And, did you read this carefully before you signed it?

1 MS. SMITH: Yes I did.

2 MR. CAMIEL: Now, at the time that JoAnn was working at Hunter's Glen,  
3 did you have any dispute with her or any fight or any problem with her?

4 MS. SMITH: No.

5 MR. CAMIEL: Have you ever been up to Poplar before?

6 MS. SMITH: No. I don't even know where it is.

7 MR. CAMIEL: Or Wolf Point?

8 MS. SMITH: No.

9 MR. CAMIEL: Do you know Barry Beach?

10 MS. SMITH: No I don't.

11 MR. CAMIEL: Do you know any of the members of his family?

12 MS. SMITH: No.

13 MR. CAMIEL: When JoAnn was talking to you about this incident, did she  
14 say whether or not during the incident with this group of girls any boys were  
15 present?  
16 present?

17 MS. SMITH: No. She didn't mention anything about boys being present,  
18 just girls.

19 MR. CAMIEL: Thank you.

20 COURT: All right. Cross exam.

21 (CROSS EXAMINATION OF BILLIE MARIE SMITH)  
22  
23  
24  
25

1 MS. PLUBELL: What would you like me to call you?

2 MS. SMITH: Billie is fine.

3 MS. PLUBELL: Is Billie okay. Thanks for meeting with us a few minutes  
4 ago. I appreciate it. Did you introduce her statement?  
5

6 MR. CAMIEL: I haven't offered it yet?

7 MS. PLUBELL: Do you want to?

8 MR. CAMIEL: Yes.

9 MS. PLUBELL: We don't object.  
10

11 MR. CAMIEL: I would offer Petitioners Exhibit Seven.

12 COURT: All right. Admitted.

13 MS. PLUBELL: Do you still have that up there?  
14

15 MS. SMITH: Yes.

16 MS. PLUBELL: So, I just want t get the sequence of events right okay.  
17 You watched the Dateline the day after it aired and then ... And watched it at your  
18 office. Did you watch that with Susan Mohler?  
19

20 MS. SMITH: She was in there and our boss was in there, yes.

21 MS. PLUBELL: You all watched it together, right?  
22

23 MS. SMITH: My boss, yes.  
24  
25

1 MS. PLUBELL: Okay. And then sometime after that your husband  
2 contacted a friend, or your husband told a friend who contacted someone and then  
3 finally someone from Centurion Ministries contacted you, correct?

4 MS. SMITH: Yes.

5 MS. PLUBELL: And, you are not really sure when that occurred?

6 MS. SMITH: No. I can't give you an exact date.

7 MS. PLUBELL: And initially you talked with them over the phone, right?

8 MS. SMITH: Right.

9 MS. PLUBELL: And, did you tell them all what you have testified to over  
10 the phone?  
11 the phone?

12 MS. SMITH: I am sorry, what?

13 MS. PLUBELL: When they called you to talk with you over the phone, did  
14 you tell them the same things that you have just testified to?  
15 you tell them the same things that you have just testified to?

16 MS. SMITH: Yes.

17 MS. PLUBELL: And, at what point then did this sworn statement occur, in  
18 relationship to that phone call?  
19 relationship to that phone call?

20 MS. SMITH: A person came to my home. The first one was a draft. I don't  
21 remember what date and time that was. And then a second person came and then  
22 there were some changes because I noticed some things weren't right.  
23 there were some changes because I noticed some things weren't right.

24 MS. PLUBELL: So, did they present you with a draft at the first visit?  
25

1 MS. SMITH: Yes.

2 MS. PLUBELL: And what did that look like? Did it differ from what that  
3 is?

4 MS. SMITH: No. It was this one, but some changes had to be made.  
5

6 MS. PLUBELL: When did you make the changes?

7 MS. SMITH: I don't know if that was on the first or the second visit. I  
8 don't remember. I just remember the changes had to be made.  
9

10 MS. PLUBELL: So, as far as the typed words on the statements are those  
11 words yours?

12 MS. SMITH: Yes.

13 MS. PLUBELL: Did you type the statement?

14 MS. SMITH: Oh, no. I didn't know what you meant. No, I didn't actually  
15 do the typing.  
16

17 MS. PLUBELL: I am sorry it was a bad question.

18 MS. SMITH: Okay. No, no.  
19

20 MS. PLUBELL: And so, on that statement is there anywhere that you can  
21 point to me where JoAnn actually said that she was with a group of girls?

22 MS. SMITH: Not without my glasses on, no.  
23

24 MS. PLUBELL: Do you need to go get them?  
25

1 MS. SMITH: I would have to go to the car and get them. I couldn't see that  
2 on here. Maybe I could try. No, I can't see that. I can't tell. I think it is here, but  
3 I might be wrong.

4 MS. PLUBELL: Okay. And just since this is difficult since she doesn't  
5 have her glasses, could I approach so I can point out where I am at in the statement  
6 Your Honor?  
7

8 COURT: Yes.

9 MS. PLUBELL: Now, on the statement there are things that were typed  
10 such as there were three or four girls and that is crossed out, correct?  
11

12 MS. SMITH: Right.

13 MS. PLUBELL: And that is changed to a group of girls.

14 MS. SMITH: Right.

15 MS. PLUBELL: Where did that three or four girls come from?  
16

17 MS. SMITH: I have no idea, but I know that was never said. It was always  
18 a group of girls.  
19

20 MS. PLUBELL: Okay. And then there is also a part on the statement that  
21 the typed words say, "And then dumped her in the water".

22 MS. SMITH: See, and I was never told that. She never told me ...

23 MS. PLUBELL: And so did those words ever come from you?  
24  
25

1 MS. SMITH: I don't know where dumped in the water came from but, I  
2 mean, that wasn't right so that is why it is crossed out.

3 MS. PLUBELL: You didn't tell the investigator that during that phone  
4 conversation?

5 MS. SMITH: No.

6 MS. PLUBELL: And, there is also a word crossed out that says river, down  
7 by the river.  
8

9 MS. SMITH: That was never mentioned to me. She never said anything  
10 about river. She said water and at that time I didn't know if that meant a  
11 swimming pool, a lake, pond, just water.  
12

13 MS. PLUBELL: Okay. And so, you don't where river came from because  
14 you never passed that information on to anyone, is that correct?  
15

16 MS. SMITH: That is correct.

17 MS. PLUBELL: And, when we just interviewed you a few minutes before,  
18 you indicated that the written corrections weren't yours either, right?  
19

20 MS. SMITH: Right.

21 MS. PLUBELL: Someone else wrote those in, right?

22 MS. SMITH: Right.

23 MS. PLUBELL: And you just initialed them, right?  
24

25 MS. SMITH: Yes.



1 MS. PLUBELL: And, there is an addition; may I approach Your Honor just  
2 to show her where it is? There is an addition on the statement that is handwritten  
3 that says she did not mention any boys being present, correct?

4 MS. SMITH: Correct.

5 MS. PLUBELL: And that isn't your handwriting?

6 MS. SMITH: No. That is because I was asked that question.

7 MS. PLUBELL: And, my understanding is that the first time JoAnn told  
8 you the statement was it just the two of you or were there other people there to?  
9  
10

11 MS. SMITH: There was other people present both times.

12 MS. PLUBELL: Okay, and do you know who those people were?

13 MS. SMITH: Susan Mohler.

14 MS. PLUBELL: She was there the first time too? I thought she was only  
15 there the second time.  
16

17 MS. SMITH: No, she was there the second time. Now, I don't know if you  
18 are talking about the first time or the second time.  
19

20 MS. PLUBELL: Oh, I sorry. I am talking about the first time.

21 MS. SMITH: There was Sandy Shone. There was a girl named Sandy  
22 Shone there.  
23

24 MS. PLUBELL: Okay.

25 MS. SMITH: There was me.

1 MS. PLUBELL: Okay.

2 MS. SMITH: There was JoAnn and there was somebody else and I don't  
3 remember what that other person was.

4 MS. PLUBELL: Okay. And people were talking about their teenage years?  
5

6 MS. SMITH: That is right.

7 MS. PLUBELL: And, you indicated earlier that people tend to say things  
8 and sometimes you don't know whether to believe if they are true or not.  
9

10 MS. SMITH: Not at first. It is not like she was my buddy and we hung out.  
11 We just worked together; that is it.

12 MS. PLUBELL: And so, you had had other occasions where you had heard  
13 people say things and you weren't sure if it was really true or they were bragging.  
14

15 MS. SMITH: At any job at work. You don't know.

16 MS. PLUBELL: Okay. And you later encouraged JoAnn to repeat the story  
17 to Susan Mohler, correct?

18 MS. SMITH: Yes.

19 MS. PLUBELL: But that happened ... Did that happen on the same day?  
20

21 MS. SMITH: It might have.

22 MS. PLUBELL: You are not sure?  
23

24 MS. SMITH: I am not sure ...

25 MS. PLUBELL: If it was the same day or later.

1 MS. SMITH: But it could have.

2 MS. PLUBELL: And you actually have no personal knowledge whether  
3 anything that you remember JoAnn telling you is actually true, do you?

4 MS. SMITH: I just know what she told me and that is all.

5  
6 MS. PLUBELL: You don't, to this day, have personal knowledge of  
7 whether that is true or not?

8 MR. CAMIEL: Asked and answered objection.

9  
10 COURT: I am sorry.

11 MS. SMITH: No.

12 MR. CAMIEL: I am sorry. That was asked and answered.

13  
14 COURT: Sustained.

15 MS. PLUBELL: She didn't answer the question the first time Your Honor.

16 COURT: I thought I heard an answer.

17 MR. LIGHT: She did the second time.

18 MS. PLUBELL: She did the second time.

19  
20 COURT: All right. Any redirect?

21 (REDIRECT EXAMINATION OF BILLIE MARIE SMITH)

22 MR. CAMIEL: Just briefly. With regard to the statement. The changes in  
23 the statement were made because ... Were they made so that ... What were you  
24 asked about the statement, when we came and showed you the statement.  
25

1 MS. SMITH: I was told to read it and if there was any changes to let you  
2 know so it could be crossed out and fixed correctly.

3 MR. CAMIEL: And, did you do that?

4 MS. SMITH: Yes.

5 MR. CAMIEL: Did you want to make sure the statement was correct?

6 MS. SMITH: Yes. I really wanted to make sure nothing was added or left  
7 out. I just wanted it to be the way I remember it. I just wanted it to be the truth.  
8

9 MR. CAMIEL: Were you reluctant to come forward?

10 MS. SMITH: Yes I was.

11 MR. CAMIEL: Were you fearful about coming here to testify?

12 MS. SMITH: Yes I was.

13 MR. CAMIEL: Why?

14 MS. PLUBELL: Objection. Beyond the scope of cross examination Your  
15 Honor.  
16

17 COURT: Sustained.

18 MR. CAMIEL: Thank you. I don't have anything else.

19 COURT: Re-cross?

20 MS. PLUBELL: We have nothing further Your Honor.

21 COURT: Is this witness under subpoena?

22 MR. CAMIEL: Yes.  
23  
24  
25

1 COURT: May she be excused?

2 MR. CAMIEL: Yes.

3 MS. PLUBELL: Yes Your Honor. Sorry.

4 MS. SMITH: Do I need to leave this paper here?

5 COURT: Yes. Thank you very much. Next witness.

6 MR. CAMIEL: Your Honor, the next witness is Susan Mohler.

7 CLERK: Do you solemnly swear that the statements you are about to give  
8 in the matter will be the truth, the whole truth and nothing but the truth so help you  
9 God?  
10  
11

12 MS. MOHLER: Yes.

13 COURT: Come on over here ma'am. Scoot on up to that microphone.

14 (DIRECT EXAMINATION OF SUSAN KAY MOHLER)  
15

16 MR. CAMIEL: Ma'am, could you tell us your full name and spell your last  
17 name?

18 MS. MOHLER: Susan Kay Mohler. M-o-h-l-e-r.

19 MR. CAMIEL: Where do you live?  
20

21 MS. MOHLER: Missoula, Montana.

22 MR. CAMIEL: Where did you grow up?  
23

24 MS. MOHLER: Superior, Nebraska.

25 MR. CAMIEL: How long have you lived in Montana?

1 MS. MOHLER: Thirteen years.

2 MR. CAMIEL: Would you like a glass of water?

3 MS. MOHLER: Please.

4 MR. CAMIEL: If I can approach Your Honor.

5 MS. MOHLER: Thank you.

6 MR. CAMIEL: Are you married?

7 MS. MOHLER: Yes I am.

8 MR. CAMIEL: And do you have children?

9 MS. MOHLER: Yes.

10 MR. CAMIEL: How many kids do you have?

11 MS. MOHLER: We have got five living.

12 MR. CAMIEL: Are you employed?

13 MS. MOHLER: Yes.

14 MR. CAMIEL: Where do you work?

15 MS. MOHLER: Hunter's Glen.

16 MR. CAMIEL: And that is in Missoula?

17 MS. MOHLER: Yes.

18 MR. CAMIEL: And that is ...

19 MS. MOHLER: Assisted living.

20 MR. CAMIEL: And what do you do there?

21  
22  
23  
24  
25

1 MS. MOHLER: I am a Med Tech.

2 MR. CAMIEL: So what does that mean? What are your duties?

3 MS. MOHLER: Passing meds.

4 MR. CAMIEL: How long have you worked there?

5 MS. MOHLER: Thirteen years.

6 MR. CAMIEL: So you started in what year?

7 MS. MOHLER: 1998.

8 MR. CAMIEL: Do you know Billie Smith?

9 MS. MOHLER: Yes I do.

10 MR. CAMIEL: How do you know her?

11 MS. MOHLER: We used to work together.

12 MR. CAMIEL: At Hunter's Glen?

13 MS. MOHLER: At Hunter's Glen.

14 MR. CAMIEL: And what did she do there?

15 MS. MOHLER: She was a CNA and Med Tech.

16 MR. CAMIEL: And, she no longer works there?

17 MS. MOHLER: No.

18 MR. CAMIEL: Do you know when she left?

19 MS. MOHLER: I am not for sure. I think maybe three years ago.

20 MR. CAMIEL: Do you know a woman named JoAnn Todd?

21  
22  
23  
24  
25

1 MS. MOHLER: Yes I do.

2 MR. CAMIEL: How do you know her?

3 MS. MOHLER: She used to work at Hunter's Glen.

4 MR. CAMIEL: What did she do there?

5 MS. MOHLER: She was a lead CNA.

6 MR. CAMIEL: Do you know what years JoAnn Todd worked at Hunter's  
7  
8 Glen?

9 MS. MOHLER: I can't remember for sure.

10 MR. CAMIEL: Do you know how long ago it was that she left?

11 MS. MOHLER: I think about five years ago.

12 MR. CAMIEL: What was your relationship with JoAnn Todd?

13 MS. MOHLER: Just we worked together?

14 MR. CAMIEL: Were you social friends outside of work?

15 MS. MOHLER: No.

16 MR. CAMIEL: Did you get along?

17 MS. MOHLER: Yes.

18 MR. CAMIEL: I want to ask you about an occasion when you were present  
19  
20 when JoAnn was talking about something that happened in her early years. Let me  
21  
22 ask you first, do you remember when that was?  
23  
24

25 MS. MOHLER: Not for sure.



1 MR. CAMIEL: Approximately in terms of how many years ago?

2 MS. MOHLER: I am going to say between five and six years ago.

3 MR. CAMIEL: Okay. And tell us what you remember.

4 MS. MOHLER: I went outside. They were on smoke break and I was  
5  
6 coming by the door I saw they were out there.

7 MR. CAMIEL: Let me just stop you for a minute. You are using the word  
8 they. Can you tell us who was out there that you are talking about?

9 MS. MOHLER: Billie and JoAnn.

10 MR. CAMIEL: And when you say they were out there, where were they?  
11

12 MS. MOHLER: Outside smoking.

13 MR. CAMIEL: Was there a regular area where employees could go to  
14 smoke?  
15

16 MS. MOHLER: Out the back door.

17 MR. CAMIEL: So, Billie Smith and JoAnn Todd are out there. Anybody  
18 else out there?  
19

20 MS. MOHLER: No.

21 MR. CAMIEL: And so what happened?

22 MS. MOHLER: Well, I went out and Billie said, "JoAnn, tell Susan what  
23 you just told me." And JoAnn had told us that many years ago when she was  
24 young, and she kept saying I was not involved in it, with girls that had killed this  
25

1 girl. She said they drove down by a river and these girls drug her out of her truck  
2 and they beat her. I couldn't believe she was telling me this. I said, "JoAnn, why  
3 would they do this?" And she says she was smart and she was going away to  
4 college. And I just shook my head. I heard all that I wanted to hear and I went  
5 back in.  
6

7 MR. CAMIEL: So, did you believe what she told you?

8 MS. MOHLER: I wondered about it for quite awhile and then someone  
9 asked us at work, me and Billie, this was after JoAnn was already gone if we had  
10 seen Dateline. It was about someone that used to work there. We hadn't so our  
11 boss let us use her computer and we brought it up on the computer and we watched  
12 the Dateline program and Billie and I just kind of looked at each other and said,  
13 "So it was true what she was telling us".  
14  
15

16 MR. CAMIEL: Now, I want to go back. You went through it kind of fast.  
17 When you went out there and Billie asked JoAnn to repeat this story, as best you  
18 can remember what exactly did JoAnn say?  
19

20 MS. MOHLER: She told us it was back when she was in school yet.

21 MR. CAMIEL: Did she indicate how old she was at the time?

22 MS. MOHLER: No. They were riding around. But she didn't say who they  
23 were. She said a bunch of girls were riding around and they went down by a river.  
24

25 MR. CAMIEL: She used the word river? You remember that?

1 MS. MOHLER: Yes.

2 MR. CAMIEL: And then what happened?

3 MS. MOHLER: She said these girls drug this girl out of her truck and they  
4 started beating on her.

5 MR. CAMIEL: Did she say where she was when this was happening?  
6

7 MS. MOHLER: No. She just kept telling us that she was not involved. She  
8 did not do it.

9 MR. CAMIEL: Did she say she was there when it happened?  
10

11 MS. MOHLER: She didn't actually say she was there, no.

12 MR. CAMIEL: From the way she described it, did it sound like she was  
13 there?

14 MS. MOHLER: Yes.  
15

16 MR. CAMIEL: Did she ever say she wasn't there?  
17

18 MS. MOHLER: No.

19 MR. CAMIEL: What else did she say?  
20

21 MS. MOHLER: That they started beating her and then she just kind of  
22 stopped there because I don't remember her saying anything else after that or  
23 maybe my mind just quit then. Because then I just said, "JoAnn, why would they  
24 do this to her?" And that's when she said because she was smart and she was  
25 going on to college.

1 MR. CAMIEL: Did you ask any other questions after that?

2 MS. MOHLER: No.

3 MR. CAMIEL: Why not?

4 MS. MOHLER: Maybe I just didn't want to believe that I knew this girl that  
5 could be a part of something. I don't know.  
6

7 MR. CAMIEL: Now, were there other people there when you were out  
8 there and she was saying this?

9 MS. MOHLER: Just me and Billie.  
10

11 MR. CAMIEL: Okay. Did you, after this conversation with JoAnn, did you  
12 and Billie ever talk about what JoAnn had said to you?

13 MS. MOHLER: We did a few times, yes. We kept thinking, I can't believe  
14 this is true.  
15

16 MR. CAMIEL: As a result of what JoAnn had said did your relationship  
17 with her change in anyway?

18 MS. MOHLER: No. I was always leery of her because I didn't know how  
19 far to trust her, but I was always friendly to her.  
20

21 MR. CAMIEL: Did you ever have a problem with JoAnn? Any bad blood  
22 or any animosity that you had toward her?

23 MS. MOHLER: No.  
24  
25

1 MR. CAMIEL: Now, you told us that you watched the Dateline program in  
2 your boss's office with Billie Smith?

3 MS. MOHLER: Yes.

4 MR. CAMIEL: When you watched this was anyone else there?

5 MS. MOHLER: The boss was.

6 MR. CAMIEL: What was your boss's name?

7 MS. MOHLER: Diane Miller.

8 MR. CAMIEL: And, after watching that, did you do anything with the  
9 information that you had?  
10  
11

12 MS. MOHLER: No.

13 MR. CAMIEL: Why not?

14 MS. MOHLER: I didn't know what to do. We talked it over with Diane a  
15 little bit, but we never said anything. Just between us.  
16

17 MR. CAMIEL: Did there come a point in time where you were contacted by  
18 anyone regarding what JoAnn had told you?  
19

20 MS. MOHLER: When Jim McCloskey called. Well no, excuse me. First  
21 Jessica, a law student called first.

22 MR. CAMIEL: What did she ask you?

23 MS. MOHLER: If I remembered talking to JoAnn and what happened. And  
24 then Jim McCloskey called and set up a meeting and I visited with him.  
25

1 MR. CAMIEL: Was that at your home?

2 MS. MOHLER: Yes.

3 MR. CAMIEL: And, Your Honor, if I could approach the witness.

4 COURT: You may.

5 MR. CAMIEL: I am going to hand you what has been marked as  
6  
7 Petitioner's Exhibit Eight for identification. Do you recognize that?

8 MS. MOHLER: Yes.

9 MR. CAMIEL: What is it?

10 MS. MOHLER: My statement.

11 MR. CAMIEL: How did that statement come about?

12 MS. MOHLER: Part of it was from when Jessica come to see me and then  
13  
14 when Jim came to see me.

15 MR. CAMIEL: And, did he have the statement with him when he came to  
16  
17 see you?

18 MS. MOHLER: Yes.

19 MR. CAMIEL: Did you review it carefully?

20 MS. MOHLER: To be honest with you, no. I just skimmed through it.

21 MR. CAMIEL: Have you had a chance to review it since?

22 MS. MOHLER: Yes.  
23  
24  
25

1 MR. CAMIEL: Is it accurate in terms of what JoAnn told you and what  
2 happened?

3 MS. MOHLER: Yes.

4 MR. CAMIEL: I would offer Petitioner's Eight.

5 COURT: Any objection?  
6

7 MR. LIGHT: Again Your Honor, we would ask what is the relevancy. She  
8 has just testified. Why do we have to have the prior statement admitted?  
9

10 COURT: Well, on what grounds would it be for your objection?

11 MR. LIGHT: Because, we have the actual testimony. It stands for itself. I  
12 mean, they are offering the exhibit for a purpose. For what purpose?

13 COURT: Yeah, what is the purpose?  
14

15 MR. CAMIEL: Again, my next question to her was going to be the date on  
16 the statement. It shows when we contacted her, when we got the statement from  
17 her. As a part of the Clark factors that we have to meet in terms of diligence.  
18

19 COURT: Objection overruled. Exhibit will be admitted.

20 MR. CAMIEL: What is the date on your statement?

21 MS. MOHLER: The fifteenth of May, 2011.

22 MR. LIGHT: Well, if in fact they just admitted that, why does she have to  
23 testify to that? If they admitted that for the fact that it shows the date and time,  
24 why is she then testifying?  
25

1 COURT: Well, why don't you move to strike that testimony?

2 MR. LIGHT: We would respectfully, Your Honor, move to strike that  
3 testimony.

4 COURT: It is duplicative of what is in front of the Court, so I would grant  
5 the motion.  
6

7 MR. CAMIEL: Were you worried about coming here to testify today?

8 MS. MOHLER: Yes.

9 MR. CAMIEL: And were you reluctant to come forward?  
10

11 MS. MOHLER: I don't know. Scared. Nervous.

12 MR. CAMIEL: Thank you. I have nothing further.

13 COURT: Cross.  
14

15 (CROSS EXAMINATION OF SUSAN KAY MOHLER)

16 MS. PLUBELL: We just met a few minutes ago, right?

17 MS. MOHLER: Yes.

18 MS. PLUBELL: And is it all right if I call you Susan?  
19

20 MS. MOHLER: Yes.

21 MS. PLUBELL: Okay. And, this statement that was just admitted into  
22 evidence that you have a copy of.

23 MS. MOHLER: Yes.

24 MS. PLUBELL: That is the sum total of what you overheard, correct?  
25



1 MS. MOHLER: Correct.

2 MS. PLUBELL: And you ... There is absolutely nothing that is erroneous  
3 in that statement? You did not have to make any changes, right?

4 MS. MOHLER: No, I have not made any changes.

5 MS. PLUBELL: So, you are certain that JoAnn used the word death by the  
6 river, correct?

7 MS. MOHLER: She actually said they beat her.

8 MS. PLUBELL: Okay. In paragraph number four; her friends had beaten  
9 another girl to death by the river correct?  
10

11 MS. MOHLER: But it ...

12 COURT: Go ahead ma'am. We want to hear what you remember.

13 MS. MOHLER: I remember her saying that they beat her.

14 MS. PLUBELL: Right.

15 MS. MOHLER: I mean, she didn't say ... I do not remember her saying to  
16 death.  
17

18 MS. PLUBELL: Oh, okay.

19 MS. MOHLER: But, later she told me that she died.

20 MS. PLUBELL: Okay. So, you didn't actually hear her say that they had  
21 beaten another girl to death.  
22

23 MS. MOHLER: Not to death. Beaten.  
24  
25

1 MS. PLUBELL: But you did hear ...

2 MR. CAMIEL: I am sorry Your Honor I would object to cutting off the  
3 answer. I don't think the witness is finished.

4 MS. PLUBELL: I apologize if I didn't let you finish Susan. Go ahead.

5  
6 COURT: What we want ma'am is your accurate memory irregardless of  
7 that document. We want the most accurate memory you have. If that provides the  
8 most accurate memory, great. If you think inside yourself that you have got a more  
9 accurate memory then that, you tell us.

10  
11 MS. MOHLER: Okay. I just remember her saying that they drove down by  
12 the river.

13 MS. PLUBELL: Okay.

14  
15 MS. MOHLER: And these other girls pulled her out of the truck and they  
16 beat her.

17 MS. PLUBELL: All right. And, I think in your direct examination, you  
18 actually indicated that JoAnn never told you she was actually present, correct?

19  
20 MS. MOHLER: She said ... She never actually said she was present, but  
21 she didn't say she wasn't there.

22 MS. PLUBELL: All right. And, you have no independent knowledge of  
23 that, correct?

24  
25 MS. MOHLER: No.

1 MS. PLUBELL: And she never mentioned any names to you did she?

2 MS. MOHLER: No.

3 MS. PLUBELL: And, since you watched that Dateline show with Billie and  
4 your boss.

5 MS. MOHLER: Uh huh.

6 MS. PLUBELL: Did you watch the part about JoAnn denying any  
7 involvement?  
8

9 MS. MOHLER: Yes.

10 MS. PLUBELL: In this particular ... And you have no independent  
11 knowledge that she was involved in the Kim Nees homicide, do you?  
12

13 MS. MOHLER: No.

14 COURT: All right. Anything else?

15 (REDIRECT EXAMINATION OF SUSAN KAY MOHLER)

16 MR. CAMIEL: Just briefly. When JoAnn described what happened to this  
17 girl who was pulled out of the truck, was she describing it as something she had  
18 personal knowledge of?  
19  
20

21 MS. MOHLER: Yes.

22 MR. CAMIEL: That she was there when it happened?

23 MS. MOHLER: That is what I ... Yes.  
24  
25

1 MR. CAMIEL: You said she didn't say the girl was beaten to death, but I  
2 thought I heard you say during cross examination that she told you the girl died?

3 MS. MOHLER: Yes.

4 COURT: So, you remember that she discussed, in the conversation when  
5 she was telling the story; she eventually said the girl died?  
6

7 MS. MOHLER: You know, she told us to begin with the girl had died and  
8 she said a bunch of girls and I were riding around and we went down by the river  
9 and these girls drug her out of the truck and they beat her. But she kept telling us,  
10 "I was not involved. I did not do this."  
11

12 COURT: You use the term a bunch of girls and I were driving around and  
13 we went down by the river. Is that what you remember her saying?  
14

15 MS. MOHLER: She said they ... She was with some girls and they went  
16 down by the river.

17 COURT: All right.

18 (REXCROSS EXAMINATION OF SUSAN KAY MOHLER)  
19

20 MS. PLUBELL: So Susan, this information that you overheard during your  
21 smoke break, this happened at least five or six years ago, right?  
22

23 MS. MOHLER: Right.

24 MS. PLUBELL: And so, anything that you are saying today, it is you are  
25 remembering back five or six years ago, correct?

1 MS. MOHLER: Correct.

2 MS. PLUBELL: And that was true when you signed this statement?

3 MS. MOHLER: Yes.

4 MS. PLUBELL: On the 13<sup>th</sup> of May 2011, right?

5 MS. MOHLER: Yes.

6 MS. PLUBELL: And, I think you indicated when we talked, that you and  
7 Billie have discussed this several times.  
8

9 MS. MOHLER: Yes.

10 MS. PLUBELL: Including this morning, correct?

11 MS. MOHLER: Yes.

12 MS. PLUBELL: No further questions Your Honor.

13 COURT: Has any discussions you have had been with people who have  
14 tried to convince you to change what you remember? To testify differently than  
15 you remember?  
16  
17

18 MS. MOHLER: You mean the people that ...

19 COURT: Yeah anybody that you have talked with?

20 MS. MOHLER: No, no.

21 COURT: All right. May this witness be excused?

22 MR. CAMIEL: Yes.

23 COURT: Any objection?  
24  
25

1 MS. PLUBELL: No Your Honor.

2 COURT: Thank you very much ma'am. You did a good job.

3 MS. MOHLER: Thank you.

4 COURT: All right. Next witness.

5 MR. CAMIEL: Kevin Hall.

6  
7 COURT: Let's have a stand and stretch at least. Okay, let's go. Please  
8 come right over here in front of the Clerk and raise your right hand.

9 CLERK: Do you solemnly swear the statements you are about to give in  
10 this matter will be the truth, the whole truth and nothing but the truth so help you  
11 God?  
12

13 MR. HALL: Yes.

14 COURT: Come right over here sir.

15  
16 (DIRECT EXAMINATION OF KEVIN DOUGLAS HALL)

17 MR. CAMIEL: Could you state your full name for us.

18 MR. HALL: Kevin Douglas Hall.

19 MR. CAMIEL: And spell your last name.

20 MR. HALL: H-a-l-l.

21 MR. CAMIEL: Mr. Hall where do you live?

22 MR. HALL: At 1015 8<sup>th</sup> Avenue South, Great Falls, Montana.

23  
24 MR. CAMIEL: Are you married?  
25

1 MR. HALL: No.

2 MR. CAMIEL: Do you live with someone?

3 MR. HALL: Yes.

4 MR. CAMIEL: And who is that that you live with?

5 MR. HALL: I live with Tamara Hawkhalter for eleven years, going on  
6 twelve.  
7

8 MR. CAMIEL: How long have you lived in Montana?

9 MR. HALL: Since 1958.  
10

11 MR. CAMIEL: And when were you born?

12 MR. HALL: 1956.

13 MR. CAMIEL: Are you employed?

14 MR. HALL: No. I am on disability now.  
15

16 MR. CAMIEL: Okay. What kind of a disability do you have?

17 MR. HALL: I broke my back. I have had my esophagus torn. My stomach  
18 lining and my intestines, it is a long laundry list. In fact last week I had two  
19 daytime surgeries and I am scheduled for a full surgery on the eighth.  
20

21 MR. CAMIEL: Were you living in Great Falls in 2004?

22 MR. HALL: Yes sir.

23 MR. CAMIEL: And where were you living in Great Falls?  
24  
25

1 MR. HALL: In 2004, let me go through it here. In 2003 I was living on 14<sup>th</sup>  
2 Street and 3<sup>rd</sup> Avenue north West. In 2004 and 2005 I moved to 612 6<sup>th</sup> Avenue  
3 South.

4 MR. CAMIEL: And, at that time in your life were you involved at all with  
5 substance abuse?  
6

7 MR. HALL: All my life I have been involved with substance abuse, yes.

8 MR. CAMIEL: And what kind of drugs or medication were you using?

9 MR. HALL: I have not done Special K and I have not done ecstasy. Those  
10 are the only two drugs I can think of that I haven't done.  
11

12 MR. CAMIEL: All right. While you were living in Great Falls in about  
13 2004 were you acquainted with a woman named Sissy Atkinson?  
14

15 MR. HALL: Definitely.

16 MR. CAMIEL: How were you acquainted with her?

17 MR. HALL: Through her live-in boyfriend Les Wright.

18 MR. CAMIEL: And what was the nature of the relationship that you had  
19 with Les Wright?  
20

21 MR. HALL: Drugs.

22 MR. CAMIEL: In what way?

23 MR. HALL: Buy, sell, trade.  
24

25 MR. CAMIEL: Who was doing the buying? Who was doing the selling?



1 MR. HALL: At that time I was mostly doing buying more than anything  
2 because I used to buy low and sell high.

3 MR. CAMIEL: And what kind of drugs?

4 MR. HALL: Mostly pills then, Oxycontin, oxycodone, hydrocodone,  
5 Lorcet, Lortab, Vicodin. Pharmaceuticals I thought weren't as dangerous as street  
6 drugs. How smart.  
7

8 MR. CAMIEL: And was ... You were using in addition to doing other  
9 things with the drugs, right?  
10

11 MR. HALL: Correct.

12 MR. CAMIEL: Was Les Wright also using drugs?

13 MR. HALL: He would use anything that would spin his melon.  
14

15 MR. CAMIEL: And what about Sissy Atkinson?

16 MR. HALL: Definitely.

17 MR. CAMIEL: Where did they live? Where did Les Wright and Sissy  
18 Atkinson live?  
19

20 MR. HALL: They used to live in a green apartment down by Gibson Park  
21 and then when Les died in August of 2005 she moved in with, I believe it was; she  
22 told me it was her sister who lived four blocks away from our house. Our address  
23 was like 612 6<sup>th</sup> Avenue South. Her address would have been like 614 or 616 7<sup>th</sup>  
24 Street South.  
25

1 MR. CAMIEL: Okay. Did you actually use drugs with Les Wright and  
2 Sissy Atkinson?

3 MR. HALL: No.

4 MR. CAMIEL: Did you go over to their place?

5 MR. HALL: Never.

6 MR. CAMIEL: Did they come to your place?

7 MR. HALL: Yes.

8 MR. CAMIEL: Did there come a point and time where you learned that  
9 Sissy's boyfriend Les Wright had died?  
10  
11

12 MR. HALL: There had.

13 MR. CAMIEL: What did you know about that?

14 MR. HALL: What had happened was, let me get it all straight now. The  
15 way it started was Sissy had gotten her prescription of Oxycontin. Her and Les  
16 had gotten in a fight. Lester wanted to get pills from her. In the pill world it is a  
17 power trip. I have got the power when I have got the pills. She had the power.  
18 She told Les you cannot have any of my stuff. Les got mad, went out, pulled a  
19 burglary. Sold the stuff from the burglary to another guy, scored some pills. Went  
20 back and let Sissy know, "Ha ha, look at this. I have got some. I didn't need you  
21 after all. See you later". She got ticked off that he had done that. She called the  
22 police up, informed on her old man. Said that he pulled a burglary. Told the  
23  
24  
25

1 police where the stolen goods were. They went and collected the stolen goods and  
2 returned them or however they do it.

3 MR. CAMIEL: Now, as a result of all that did Les Wright get arrested?

4 MR. HALL: He was arrested. He was up on the hill in jail. I had heard  
5 within less than a week that he was dead, that he had committed suicide as a result  
6 of his arrest and his issues with the law.  
7

8 MR. CAMIEL: Did Sissy ... Did you have contact with Sissy Atkinson  
9 after her boyfriend Les Wright committed suicide?  
10

11 MR. HALL: A lot of times.

12 MR. CAMIEL: Did she come over to your place?

13 MR. HALL: Yes.

14 MR. CAMIEL: Was there an occasion after Les Wright died that she came  
15 over to your place and talked about some things in her past?  
16

17 MR. HALL: Always. Without fail.

18 MR. CAMIEL: After Les Wright died. I want to focus on after he  
19 committed suicide. Was there a conversation where she talked about being  
20 involved in a murder in Poplar?  
21

22 MR. HALL: Not necessarily a murder. What had happened was. What I  
23 mean by buzz kill and how she ruined everything is because she would constantly  
24 come over to the house. She couldn't hit herself with a needle, you know. And so,  
25

1 my spouse was really good at taking a needle and shooting people in their veins  
2 and hitting them and not giving them blow outs. Sissy loved to come over there  
3 because Tammy never once gave her a blow out. That is where your vein blows up  
4 from not treating the needle or the drugs right as they inject them. Sissy almost;  
5 for awhile it was daily. I mean she would knock on the door and if Tammy wasn't  
6 there I wouldn't answer the door. I mean, I was like, please don't come around me  
7 because all she would do is sit and cry about karma all the time to me.  
8

9 MR. CAMIEL: Well, what was she talking about with regard to karma?  
10

11 MR. HALL: Well, with the karma I kept telling her, I says you know,  
12 because she kept saying because evidently she had a husband that had died. I don't  
13 know how much truth. Just like I never knew then how much truth. She had a  
14 husband that had aids and gave himself a hot shot. A hot shot is when, let's say I  
15 am used to taking 80 mg of dope, I don't want to deal with life. I know for a fact  
16 that 80 mg I can operate. If I give myself 200, 250 I know I will get a real good  
17 buzz and soon I will die. That's how you get rid of your problems in that world.  
18

19 MR. CAMIEL: Okay. Did she talk about karma in relation to Les Wright's  
20 death?  
21

22 MR. HALL: Yes she did.  
23

24 MR. CAMIEL: What did she say about that?  
25

1 MR. HALL: Everything bad. Les, my husband, died; it was karma. Lester  
2 died, it was karma. I got arrested, it was karma. I kept telling her Sissy I am tired  
3 of hearing about this. There is nothing that a person does in their life that would  
4 create you to justify this much misery in your world. Nothing Sissy. You just got  
5 to get off this karma thing.  
6

7 MR. CAMIEL: Now, when you said that to her, did she describe something  
8 that she said she was involved in that gave her this bad karma?  
9

10 MR. HALL: Definitely.

11 MR. CAMIEL: What did she say?

12 MR. HALL: She had told me that because I told her God wouldn't allow a  
13 person to suffer that much. I believe that with all my heart. God won't allow us to  
14 suffer any more than what we deserve; the spanking we deserved. I had mentioned  
15 that to her several times and she kept telling me, "Well, I deserve that kind of  
16 spanking", basically.  
17

18 MR. CAMIEL: Did she say why she deserved it?  
19

20 MR. HALL: Yes she did.

21 MR. CAMIEL: What did she say?

22 MR. HALL: Because she had played a part ... Now the way she put it to me  
23 was she had played a part or had known of these girls that played a part in hurting  
24 this girl. And I said, "So what, you hurt a girl". And she said, "No, I mean we  
25

1 really hurt her”. I said, “Well okay, you really hurt her”. And then she told me she  
2 was beaten up and when they beat her up they rolled her in the river. I said, “Well,  
3 what do you mean? This is just a regular fight, so what”. She said not, and that is  
4 when she went into telling me about it. She even told me ... I asked her about a  
5 tire tool. I don’t know what a tire tool is. I know a lug wrench, I know a star  
6 wrench.  
7

8 MR. CAMIEL: Let me slow you down for a minute. Who mentioned a tire  
9 tool?  
10

11 MR. HALL: Sissy.

12 MR. CAMIEL: In reference to what?

13 MR. HALL: To beating that girl.

14 MR. CAMIEL: Now, in reference to beating that girl did Sissy indicate that  
15 she participated in that?  
16

17 MR. HALL: Yes and no. She participated, as far as the story to me, she  
18 participated in the extent that she didn’t stop it. But yet, she did know about it.  
19 She was trying to minimize her part in it. And the more I talked to her about the  
20 karma thing the more she said, “Well, maybe I was more involved. Maybe I did.  
21 Maybe I deserve more”. I kept telling her you didn’t kill nobody you don’t  
22 deserve family dying on you like that. I said I don’t believe in karma. God is not  
23 going to spank you like that.  
24  
25

1 MR. CAMIEL: Did she indicate where this event happened with the girl  
2 who was rolled into the river?

3 MR. HALL: Now what she indicated, no. At first I had thought, because  
4 the first time she had told me, I thought it was at a high school kegger because she  
5 said it was where they used to have the keggers at when we were in high school.  
6 So, I was assuming it was just a little girl high school fight.  
7

8 MR. CAMIEL: Did she ever indicate where? In terms of the town or the  
9 area of the State?  
10

11 MR. HALL: Up in Poplar.

12 MR. CAMIEL: Did she indicate that she was from Poplar?

13 MR. HALL: Yes.

14 MR. CAMIEL: Did she indicate that the girl that was the victim of this  
15 died?  
16

17 MR. HALL: The first two or three times, no.

18 MR. CAMIEL: Did she eventually indicate that the girl died?  
19

20 MR. HALL: The implication was that you don't take a girl and roll her into  
21 the river unconscious unless she is already dead.

22 MR. CAMIEL: How many times did she talk about this event?  
23

24 MR. HALL: More than five, less than twenty.  
25

1 MR. CAMIEL: When she was talking about it was she under the influence  
2 of drugs?

3 MR. HALL: Always, definitely.

4 MR. CAMIEL: When she was talking about this event, did she indicate that  
5 she was there with these girls when it happened?  
6

7 MR. HALL: Yes.

8 (INTERRUPTION BY VIDEOCONFERENCE UNIT)

9 COURT: Okay. At five o'clock the US District Court is going to be calling  
10 in and I think they have more power than I do so we will break at five. Go ahead.  
11

12 MR. CAMIEL: That is fine. Mr. Hall, I wanted to clarify when I asked you  
13 whether or not Sissy Atkinson indicated she was actually involved in the beating of  
14 this girl and the killing of this girl. You said yes and no.  
15

16 MR. HALL: Correct. The way it was presented to me was that these girls  
17 were jealous of this girl and evidently this girl had been messing around with some  
18 boyfriend or something of Sissy's and some other girl that was involved in this.  
19

20 MR. CAMIEL: Now this is what Sissy told you?

21 MR. HALL: Yes.

22 MR. CAMIEL: Okay.

23 MR. HALL: And so what had happened was, is these girls, that is what  
24 made me know for sure it was high school and it was a kegger party because it  
25



1 sounds like all girlie girl stuff and they were jealous over it. So, these girls were  
2 supposed to lure her over somewhere and then these other girls were supposed to  
3 join in on it and they were going to thump her and beat her good because she had it  
4 coming for messing with other peoples' boyfriends.

5  
6 MR. CAMIEL: And on one of the occasions, Sissy went into this kind of  
7 detail?

8 MR. HALL: Yes.

9  
10 MR. CAMIEL: Okay. Did she indicate that she herself was involved in the  
11 beating?

12 MR. HALL: No. Not the actual physical part. She tried to say yeah, yeah.  
13 Then she would go, no I was there, but I mean it changed so many times I can't be  
14 positive on either one of those.

15  
16 MR. CAMIEL: All right. This story that she told you over however many  
17 times, it was, did you ever, did you take it to be true or did you think it was just  
18 puffing?

19  
20 MR. HALL: I never took it to be true for at least a couple few months at  
21 least because I kept thinking this is just girlie girl stuff. Girls getting in fights, you  
22 know. She never actually said anything about somebody being dead.

23  
24 MR. CAMIEL: Okay.  
25

1 MR. HALL: And, it wasn't until I thought of a part where she told me about  
2 they beat her with a tire tool. Well, I have been in enough fights in my life where I  
3 have got my butt kicked and I am seeing stars. I have got in a fight where I have  
4 kicked butt and saw stars. When you got somebody kicked and beat up that bad, I  
5 mean, there is nothing but blood and mess everywhere and all you do is pick a  
6 body up and roll it around. Granted, it is tough to do, but I have been there and  
7 seen it.  
8

9 MR. CAMIEL: I understand. But I want to ask you ...  
10

11 MR. LIGHT: Your Honor I am going to object as narrative and  
12 nonresponsive to the exact question. We seem to be ...  
13

14 COURT: Sustained.

15 MR. CAMIEL: I need you to listen to my question. Did she indicate that  
16 the girl that was involved was rolled in the river?  
17

18 MR. HALL: Yes.

19 MR. CAMIEL: And did that suggest to you that the girl was dead?  
20

21 MR. LIGHT: Leading, Your Honor. Did that suggest?  
22

23 COURT: Sustained.

24 MR. CAMIEL: What did you think in terms of whether the girl was dead or  
25 alive when Sissy told you she was rolled into the river?

1 MR. HALL: If a person is unconscious and beat up and rolled into a river,  
2 the only thing they are going to suck in is water.

3 MR. CAMIEL: How was it that you came forward with the information that  
4 you had?

5 MR. HALL: I came to the realization of that.

6 MR. CAMIEL: Who did you go to with the information?

7 MR. HALL: First it was just friends; talking to them about what do you do,  
8 what do you do, what do I do? Then I went to the police department asking them  
9 about unsolved murders from up around Poplar area. I was told that there were no  
10 unsolved murders from up around Poplar area. I blew it off. Later on, Sissy came  
11 back with another story and that is when I first heard the tire tool, after I went to  
12 the police. Then I thought I will go back to them again. I asked them again.  
13  
14  
15

16 MR. CAMIEL: Now when you say you went to the police, where did you  
17 go?

18 MR. HALL: Great Falls City Police Department.

19 MR. CAMIEL: Do you know who you talked to there?

20 MR. HALL: At first I didn't remember exactly who. I remembered his  
21 name began with a "P", like Pringman, Prignats or something like that. I couldn't  
22 remember. I was informed, whether it is true or not that there was a fellow named  
23 Prigmore and that sounded familiar to me.  
24  
25

1 MR. CAMIEL: So, you went to the police and you were told there were no  
2 unsolved murders?

3 MR. HALL: None.

4 MR. CAMIEL: So, what did you do with the information that you had?

5 MR. HALL: It still haunted me. I went to the tribune, Great Falls Tribune.

6 MR. CAMIEL: Now during ... Did you see the Dateline program?

7 MR. HALL: I saw it like maybe the third or fourth airing I guess. I saw it  
8 about a year after I had heard it came on.  
9

10 MR. CAMIEL: Okay. In relation to that, to your seeing the program when  
11 you saw it, when did you go to the police?  
12

13 MR. HALL: My brother called me from Seattle and told me he saw a  
14 Dateline show. He started describing it because my brother lives in Seattle.  
15 Anything that happens in Montana, I mean, even if we get a little dust devil in  
16 Montana, he is all excited in talking about Montana.  
17

18 MR. CAMIEL: All right. But Mr. Hall, my question was when ....

19 MR. LIGHT: Objection. Nonresponsive.  
20

21 COURT: Sustained.

22 MR. CAMIEL: When did you go to the police in relation to when you saw  
23 the Dateline show?  
24

25 MR. HALL: I went to the police six months before I saw the Dateline show.

1 MR. CAMIEL: Okay and then after you saw the show, did you go back to  
2 the police?

3 MR. HALL: Yes.

4 MR. CAMIEL: And did they seem interested in the information you had?

5 MR. HALL: I really didn't have any information. The only thing I had was  
6 do you have any unsolved murders. I heard that a girl had killed somebody and  
7 beat her with a tire tool up in Poplar. Is anything like that true?  
8

9 MR. CAMIEL: You mentioned that you went to the Great Falls Tribune?  
10

11 MR. HALL: Yes.

12 MR. CAMIEL: And did you talk to a reporter there?

13 MR. HALL: The first time I went there I told that story; I was turned away  
14 at the desk and I left.  
15

16 MR. CAMIEL: Okay.

17 MR. HALL: I started getting mad because I started smelling something  
18 stinky. Something is wrong. I went back again and I was more affirmative with  
19 them. I told my story. They didn't care. I started to leave. Then a girl came down  
20 and said go up to the second floor and talk to, I cannot remember the girl's name at  
21 the desk, but talk to her. I left my number and name there. Then somebody called  
22 me later on and wanted to ask me what I knew about it and I told them.  
23  
24

25 MR. CAMIEL: And did you give an interview to a reporter?

1 MR. HALL: Yes sir.

2 MR. CAMIEL: Okay. And, as a result of that, did you end up getting  
3 contacted by somebody from Centurion Ministries?

4 MR. HALL: Yes sir.

5 MR. CAMIEL: And did they come and interview you?

6 MR. HALL: Yes sir.

7 MR. CAMIEL: Was a statement ever prepared regarding your interview  
8 with the people at Centurion Ministries?  
9

10 MR. HALL: No statements, no. You mean like a deposition hearing thing  
11 or something?  
12

13 MR. CAMIEL: If I could approach Your Honor?

14 COURT: You may.

15 MR. HALL: Oh sure, yeah. This was way later but, yes.

16 MR. CAMIEL: Okay. So, after you first talked, did they come back? The  
17 people from Centurion Ministries?  
18

19 MR. HALL: Yes.

20 MR. CAMIEL: And was this document prepared?

21 MR. HALL: I believe so.

22 MR. CAMIEL: And is this your statement that you gave, that you signed?  
23

24 MR. HALL: Yes it is.  
25

1 MR. CAMIEL: What is the date on the statement?

2 MR. HALL: It is dated the twenty-fifth day of July 2010.

3 MR. CAMIEL: Did you review the statement before you signed it?

4 MR. HALL: Yes I did.

5 MR. CAMIEL: Did you suggest any changes that needed to be made?

6 MR. HALL: Yes I did.

7 MR. CAMIEL: And if a change was made did you initial that?

8 MR. HALL: Yes I did, twice.

9 MR. CAMIEL: I would offer Petitioner's Exhibit Four.

10 MR. LIGHT: No objection.

11 COURT: Admitted.

12 MR. CAMIEL: Nothing further.

13 COURT: Well, since we got a defer to the Federal District Court, we will  
14 just call it a day. See you tomorrow morning at eight fifteen (8:15).  
15  
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24  
25

**CERTIFICATE**

1 STATE OF MONTANA )  
2 : SS.  
3 County of Fergus )

4 I, Deidre Dietrich, the official Court Reporter within and for the 10<sup>th</sup> Judicial  
5 District, State of Montana, duly appointed, qualified and acting, do hereby certify  
6 that the foregoing proceedings were duly taken by me and before me at the time  
7 and place specified in the caption hereof.  
8

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12 \_\_\_\_\_  
13 Deidre Dietrich  
14 Official Court Reporter  
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