

1 THE COURT: Next witness?

2 MR. RACICOT: I will call Mr. Alfred Lizotte. Calmer, would
3 you mark this as an exhibit for me?

4 AT THIS TIME, the Court Reporter marked a document as
5 STATE'S EXHIBIT NUMBER 2.

6 WHEREUPON,

7 MR. ALFRED LIZOTTE

8 having been called as a witness on behalf of the State of
9 Montana, and being first duly sworn upon his oath, testified
10 as follows:

11

12 DIRECT EXAMINATION

13 By Mr. Racicot:

14 Q Alfred, I ask that you speak up loudly so that
15 everyone here in the courtroom can hear you, all right?

16 A Yes.

17 Q Your name is Alfred Lizotte?

18 A Yes that's right.

19 Q Alfred, where do you live?

20 A Poplar.

21 Q Alfred, in June of 1979 how were you employed?

22 A By the Tribal Police.

23 Q And during the early norming hours of June 16th,
24 1979, were on patrol at that time?

25 A Yes I was.

- 1 Q And who were you on patrol with?
- 2 A Calvin Red Thunder.
- 3 Q Do you recall, and I would like to direct your
- 4 attention to about 4:15 in the morning. Do you recall where
- 5 you were about then?
- 6 A I was on patrol and I was down there by the
- 7 Poplar River bridge.
- 8 Q Were you on Highway 2?
- 9 A Yes.
- 10 Q And did you notice anything at that point in time?
- 11 A A pickup, south of the highway.
- 12 Q On the south side of the road?
- 13 A Yes.
- 14 Q Was it near where the train bridge is?
- 15 A Yes it was.
- 16 Q Was it light at the time?
- 17 A It was just getting light.
- 18 Q And did you recognize this pickup as what?
- 19 A That it was parked there.
- 20 Q And did anything appear to be out of the
- 21 ordinary?
- 22 A No.
- 23 Q Did you check it out at that time?
- 24 A No we did not.
- 25 Q Did you again, later on that morning, during the

1 early morning hours have an opportunity to observe that
2 pickup again?

3 A Yes we did.

4 Q Where were you when you observed it the next
5 time?

6 A On a bluff over by the housing project.

7 Q Could you look down into that parking area and
8 see it there?

9 A Yes.

10 Q And do you recall what time that was?

11 A Around seven o'clock.

12 Q And what did you see?

13 A We seen the same pickup.

14 Q Was it in the same location?

15 A Yes it was.

16 Q And what did you decide to do?

17 A Check it out.

18 Q And did you go down to this pickup?

19 A Yes we did.

20 Q And did you request a vehicle check on this
21 pickup?

22 A Yes we did.

23 Q And did you get a response to that check?

24 A Yes we did.

25 Q And what was that reply?

1 A That it belonged to Harold Nees.
2 Q Harold Nees?
3 A Yes.
4 Q And is he also known as Ted Nees?
5 A Yes, Ted Nees.
6 Q And then after you received the vehicle
7 identification did you go out to see this pickup truck?
8 A Yes we did.
9 Q And what did you see -- tell us how you
10 approached the truck?
11 A I approached it on the driver's side and tried
12 the door and it was locked and so I went around to the other
13 side.
14 Q You tried it on the driver's side last?
15 A No we tried it on the driver's side first.
16 Q And that was locked?
17 A Yes.
18 Q And then you went around to the other side, the
19 passenger's side of the vehicle?
20 A Yes sir.
21 Q And what did you notice on the passenger side
22 of the vehicle?
23 A I noticed a purse and a sweater on the ground
24 there.
25 Q And was there anything on them?

1 A At that time we didn't look it over that
2 good until Sgt. Red Thunder discovered some block in the
3 area there.

4 Q Did you then take a look at the purse and the
5 sweater sometime that morning?

6 A Yes.

7 Q And what did you see on them?

8 A Blood.

9 Q Did you see anything off to the right of the
10 vehicle?

11 A Yes, some hair and blood.

12 Q Okay. After you observed that, did you follow
13 anything to the river?

14 A Yes Sgt. Red Thunder discovered some drag marks.

15 Q And then did you follow those marks?

16 A Yes.

17 Q Did both of you follow it to the river?

18 A Yes we did, followed it to the river.

19 Q And what did you notice when you got to the
20 river?

21 A A body.

22 Q Could you identify the body from that elevation?

23 A Well I didn't but Red Thunder did.

24 Q Tell us how far from the edge of the bank was
25 the body?

1 A About ten feet.
2 Q In how many feet of water was the body?
3 A About two.
4 Q Do you recall, was it a male or female?
5 A Female.
6 Q You could make that out from the bank?
7 A Yes.
8 Q After you observed the body, what did you do?
9 A We notified the County Sheriff, the FBI and the
10 BIA.
11 Q And did you notify the Fort Peck Tribal Police?
12 A Yes.
13 Q How about the City of Poplar police?
14 A Yes, and everybody was called.
15 Q How about the Bureau of Indian Affairs?
16 A Yes sir.
17 Q Did you take any precautions to secure the
18 scene of the crime?
19 A Yes we did.
20 Q Did you shut off all traffic to the area?
21 A Yes.
22 Q Now, Alfred, did you later, after the body was
23 removed, did you have anything to do with accompanying the
24 body to someplace?
25 A Yes I did.

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OFFICIAL COURT REPORTER
P. O. BOX 978
WOLF POINT, MONTANA 59201

- 1 Q Tell us what happened in that regard?
- 2 A Yes I was asked to escort the body to Wolf Point
- 3 and then from Wolf Point on to Great Falls.
- 4 Q And did you do that?
- 5 A Yes I did.
- 6 Q And did you deliver the body to Columbus
- 7 Hospital and to Doctor Pfaff?
- 8 A Yes I did.
- 9 Q And did you remain in Great Falls until the
- 10 autopsy was completed?
- 11 A Yes I did.
- 12 Q And did you accompany the body of Kim Nees back
- 13 to Wolf Point?
- 14 A Yes I did.
- 15 Q And did you bring back some samples of various
- 16 things that were provided to you by Doctor Pfaff?
- 17 A Yes I did.
- 18 Q I am handing to you, what has been marked as
- 19 State's Exhibit Number 2 and ask if you can identify that
- 20 please?
- 21 A Yes.
- 22 Q And what is that?
- 23 A That is a sheet with a list of things that I
- 24 brought back.
- 25 Q And does your signature appear on that?

1 A Yes it is.

2 Q And is that your handwriting throughout that

3 document?

4 A No, just the signature.

5 Q And do you recall signing that?

6 A Yes.

7 Q And does it appear to be in the same form as

8 when you signed it?

9 A Yes.

10 MR. RACICOT: We would move for admission of State's Exhibit

11 number two.

12 MR. MOSES: I would object to the introduction of State's

13 Exhibit number 2 upon the following grounds: One: That it is

14 simply foundational evidence with respect to the items

15 contained as articles of evidence and therefore has no

16 relevance or bearing as an exhibit before the jury is concerned,

17 and further that no foundation has been laid to connect that

18 -- any of these items with any personal property that may or

19 might be thought to be introduced, so that there is no showing

20 of relevancy as to these documents or these exhibits can be

21 established by a mere receipt. I think that it is just

22 preliminary to the establishment of some exhibits that they

23 are going to try to get into evidence.

24 THE COURT: Mr. Racicot?

25 MR. RACICOT: That is correct, Your Honor, as we are responsible

1 for retaining custody, for the chain of custody.

2 THE COURT: All right, I will just take
3 it under advisement for now.

4 Q Alfred do you recall bringing back the items that
5 are listed on State's Exhibit 2?

6 A I do.

7 MR. RACICOT: We have no further questions.

8

9 CROSS EXAMINATION

10 By Mr. Moses:

11 Q Is that Officer Lizotte, is that the correct
12 pronunciation?

13 A Yes it is.

14 Q I take it that you saw this pickup at about
15 4:15 AM on June 16th, 1979?

16 A Yes.

17 Q And where did you see that pickup?

18 A You want me to come ---

19 Q Could you come down here for just a moment
20 please? (Witness complies) Just that the Jury get some
21 idea of it, let me draw up here, that is the Poplar River,
22 Okay, and this is generally known as north, and here is the
23 railroad tracks that I have marked -- are you oriented as to
24 that?

25 A Yes.

Q And up here, there is kind of a bluff here, and

1 is there a tower over there too?

2 A Yes a water tower.

3 Q And it is further back?

4 A Yes.

5 Q Okay, now where in relation to this particular
6 diagram, where was the vehicle, Mr. Lizotte and would you
7 face it in the right direction please?

8 A Like this.

9 Q Would you make a picture of a pickup and point
10 it in the right direction please?

11 A (Witness complies) Like this.

12 Q And it is pointed almost due south?

13 A Yes.

14 MR. MOSES: Would you mark this for me please?

15 AT THIS TIME, the court reporter marked an item as
16 DEFENDANT'S EXHIBIT B.

17 MR. MOSES: What I have had marked here is a diagram and
18 as Defendant's proposed Exhibit Number B and move for its
19 admission simply for illustrative purposes and ask that it be
20 admitted for that purpose.

21 MR. RACICOT: No objection.

22 THE COURT: It will be admitted.

23 Q Now I would ask you to speak up loud enough so
24 that everyone can hear you. When you saw the vehicle down in
25 this position ---

- 1 A Yes.
- 2 Q And just above that I will put "Vehicle" so that
3 the jury will know what we are looking at here. Where were
4 you when you first saw that vehicle, you have identified the
5 time, but not the place. Can you recall where you were at
6 that time, on Highway 2 or where were you?
- 7 A I was here.
- 8 Q Were you going west or going east?
- 9 A Going west.
- 10 Q And had you stopped?
- 11 A No we didn't stop.
- 12 Q You were just driving around?
- 13 A Yes.
- 14 Q And how fast were you going?
- 15 A I don't know that.
- 16 Q You were just patrolling?
- 17 A Yes.
- 18 Q And you were in the passenger's seat?
- 19 A Yes.
- 20 Q And you could see it across from the driver's
21 seat?
- 22 A Yes.
- 23 Q And you saw the vehicle down there?
- 24 A Yes.
- 25 Q And how far would it be from the highway number

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OFFICIAL COURT REPORTER
P.O. BOX 978
WOLF POINT, MONTANA 59201

1 two when you first the vehicle at 4:15 AM or thereabouts,
2 down ti the vehicle?

3 A I don't know exactly.

4 Q Well, a couple of hundred yards?

5 A Yes.

6 Q Okay, and then the next time you saw this
7 vehicle, where were you?

8 A Up in this housing area here, on the bluff here.

9 Q There is kind of a bluff over here, right?

10 A Yes.

11 Q And what time was that?

12 A Around seven, seven o'clock.

13 Q And you could see that vehicle down there?

14 A Yes.

15 Q You would be looking down on it, I take it?

16 A Yes.

17 Q Now how far was it from the bluff when you saw
18 the vehicle at around seven AM?

19 A About a quarter of a mile, something like that.

20 Q Okay, and I take it it was then that you went
21 down there to investigate?

22 A Yes.

23 Q And did you go back to Highway Two?

24 A That is the only way down there, yes.

25 Q You couldn't get down by the railroad track?

1 A You can't do that.

2 Q So in order to go down there you have to go
3 back to Highway 2, until you -- then go west until you come
4 to this road turn-off to the south and then get down into
5 that area, is that right?

6 A Yes.

7 Q Is that a common area there for kids to go down
8 and drink beer?

9 A Yes it is.

10 Q Okay, and was there any one around there on
11 the bridge when you got down there?

12 A Nobody was around.

13 Q Thank you, you may take your seat again. (The
14 witness seats himself in the witness stand) When did you
15 start the patrol that evening, were you on the midnight shift?

16 A Midnight to eight.

17 Q And where do you patrol?

18 A The Poplar area.

19 Q How far out of town do you go?

20 A Well, if we are called out, we go to the entire
21 reservation.

22 Q Did you -- that evening, anytime during the
23 period of your patrol, had you had an opportunity to be down
24 in this area?

25 A No.

1 Q So that was the first time that you were in that
2 area that early morning, was about 4:15 AM?

3 A Yes.

4 Q And you were driving west on Highway 2?

5 A Yes.

6 Q When you got down to that area, how did you
7 protect the area?

8 A We called in the state police, to protect the
9 railroad bridge.

10 Q Well did you protect the area around the
11 vehicle so that the footprints that were in that area could
12 be seen or measured?

13 A Yes.

14 Q And were there certain measurements taken, to
15 your knowledge?

16 A I don't that.

17 Q But in any event, you did not do it as a law
18 enforcement officer which would leave the area unprotected
19 so that the footprints that may be there could be preserved
20 as evidence?

21 A All we did was to protect the scene.

22 Q Yes, and did you protect the scene, you knew
23 how to do that?

24 A Yes sir.

25 Q So that if there were footprints in that area,

1 that could be used as evidence, it would be there for the
2 actual investigative officers to determine, measure, or
3 whatever he does?

4 A Yes.

5 Q Okay, with respect to tire tracks, what was the
6 condition of the soil in the area where the vehicle was?

7 A I didn't bother with that.

8 Q Was it sandy or what?

9 A It was gravel.

10 Q Pardon?

11 A Grassy.

12 Q Grassy?

13 A Yes sir.

14 Q There are down in this area a number of little
15 road off-shoots, is that not right?

16 A Yes.

17 Q Was that sandy?

18 A I didn't bother to check.

19 Q Did you make any effort to preserve this area
20 around the vehicle so that you could determine whether there
21 were any other vehicles that had been parked there close to
22 this particular vehicle?

23 A Well other vehicles could park there, away from
24 that vehicle ---

25 Q I understand that, but in protecting the scene

1 protect it so that if there were any tire tracks that was
2 significant that they could take plaster castings of them?

3 A Yes.

4 Q You did that?

5 A Yes.

6 Q So that that area could be preserved?

7 A Yes.

8 Q Fine, now in going down to the Poplar River,
9 where the body was located, how did you do that to protect
10 the area for footprints or anything else, were you careful
11 about that?

12 A Yes we were. We walked on each side of it.

13 Q And you walked some distance away so that the
14 path that was going down to the Poplar River would be
15 preserved so that if there was any evidence there, it could
16 be obtained and that was also a part of protecting the scene,
17 is that right?

18 A Yes.

19 Q Good. Now did you do anything other than
20 protect the scene? Did you gather up any evidence of any
21 kind?

22 A No we did not.

23 Q And who was with you at that particular time?

24 A Sgt. Red Thunder.

25 Q Is he your superior?

1 A Yes.

2 Q Okay. I take it then that once you had

3 preserved the scene and saw that a crime had been committed,

4 that you got in touch with the Sheriff's office, is that right?

5 A Yes.

6 Q The City?

7 A Yes.

8 Q And the FBI?

9 A Yes, and the BIA.

10 Q Pardon?

11 A BIA.

12 Q And also the BIA?

13 A Yes.

14 Q And do they have their own investigating

15 officers or do they use FBI exclusively?

16 A No, they do that on the reservation.

17 Q Now who came down to the scene after these

18 calls were made -- I assume you have a radio?

19 A Yes.

20 Q And did people come down to the scene?

21 A Nope -- what kind of people?

22 Q I mean law enforcement?

23 A Oh yes.

24 Q And did representatives of the Sheriff's office

25 come down there?

1 A Yes they were there first.
2 Q Pardon?
3 A They were there first.
4 Q And who was that that came down there?
5 A Donald Carpenter.
6 Q He was the sheriff at the time?
7 A Yes.
8 Q And then who from the BIA?
9 A Bob Welch.
10 Q Okay, and any other law enforcement officers?
11 A Well, the FBI.
12 Q Was Mr. Worberg there?
13 A Yes he was there.
14 Q He was there?
15 A Yes.
16 Q Okay. Did you move any of the articles that
17 you had discovered or described here as seeing that day near
18 the vehicle?
19 A I didn't.
20 Q Did you see anyone move them, and I am talking
21 particularly about a sweater and a purse?
22 A I know they were moved, but I don't know when.
23 Q Okay and ---
24 A I didn't have anything to do with the invest-
25 igation at all.

1 Q But can you describe for the Jury, the location
2 of the sweater?

3 A It was underneath the passenger's side, underneath
4 door there, neatly stacked.

5 Q Neatly stacked?

6 A Yes.

7 Q It wasn't anything that looked like it had been
8 torn off or anything like that?

9 A No.

10 Q It was neatly stacked?

11 A Yes.

12 Q And was the purse on top of the sweater?

13 A Yes it was.

14 Q And that was on the outside of the vehicle?

15 A Yes, outside the vehicle on the ground.

16 Q Was it on the driver's side or the passenger's
17 side?

18 A The passenger's side.

19 Q Pardon?

20 A Passenger's side.

21 Q Okay, now the passenger's side, according to
22 your testimony, was locked?

23 A Right.

24 Q Was there any windows down?

25 A Nope.

1 Q Did you go up to the vehicle to try to open
2 the doors?

3 A Yes.

4 Q Did you open the driver's side door?

5 A Nope, it was locked.

6 Q Both of them were locked?

7 A Yes.

8 Q So that I take it what you found when you got
9 there, was that the vehicle was locked, both doors were
10 locked, and the windows were up?

11 A Yes.

12 Q Did you see how entry was effective into the
13 pickup, how did the law enforcement officers get into the
14 pickup, open the doors to the pickup?

15 A I wasn't there then and I never seen that.

16 Q But when you were there did you see anyone
17 trying to get into the pickup?

18 A I don't remember.

19 Q Okay, outside the pickup, were there any other
20 articles; that you remember, in the immediate area, other
21 than the sweater and the purse that you described as being
22 neatly stacked underneath the passenger's side?

23 A No.

24 Q Any beer cans or things of that kind?

25 A They was all over.

1 Q What?

2 A They were all over there.

3 Q Did you look to see if any recent beer cans
4 were there?

5 A No I didn't.

6 Q Okay. Was there anything else that you
7 observed, of any articles, any objects outside the vehicle
8 that attracted your attention?

9 A No.

10 Q Was there any sign of any scuffle or where the
11 dirt was kicked up in places?

12 A Yes.

13 Q Where was that located in relationship to the
14 vehicle?

15 A The right side, the driver's side and on the
16 right side of the passenger's side and that would be on the
17 west side of the pickup.

18 Q That would be the west side of the pickup?

19 A Yes.

20 Q Okay, and did you see any drag marks?

21 A Yes.

22 Q And did they come from the area where the
23 scuffle marks were?

24 A Yes.

25 Q And did you follow those drag marks down to the
Poplar River?

1 A Yes, we did.

2 Q Did you at any time see any weapon or any
3 object that could have been used as a weapon, in that
4 immediate area?

5 A No.

6 Q Do you recall what Kim Nees was wearing?

7 A She was wearing a pair of Levies and a sweater.

8 Q Pardon?

9 A Pair of Levis and a sweater.

10 Q Okay, and did you make any effort to remove
11 her from the water?

12 A No.

13 Q You went up and reported what you saw and someone
14 else was going to do that?

15 A Yes.

16 Q Now I take it that you were assigned the
17 responsibility to go to Great Falls with Kim Nees for the
18 purpose of an autopsy?

19 A Yes.

20 Q Did you attend and sit in on that autopsy?

21 A I was there but I didn't -- I was in a
22 different room.

23 Q Okay, and I take it that after that was
24 completed, the body was brought back to Poplar?

25 A Yes, it was brought to Wolf Point.

1 Q To Wolf Point?

2 A Yes.

3 Q And you did that?

4 A Yes.

5 Q And in the course of that I take it that you
6 also got some personal property that was delivered by Doctor
7 Pfaff to you?

8 A Yes.

9 Q And what did you do with those items?

10 A I gave them to the coroner.

11 Q And who is the coroner?

12 A Well I call him Skip.

13 Q What is his last name?

14 A Clayton.

15 Q Pardon?

16 A Clayton.

17 Q And that was the only connection you had with
18 those things?

19 A Yes.

20 Q And the only connection you had with this
21 particular case, is what you have told us about here today?

22 A Yes.

23 MR. MOSES: Thank you. I have no further questions of this
24 witness.

25 THE COURT: Any cross or redirect I
mean?

CALMER A. ERSNESS
OFFICIAL COURT REPORTER
P. O. BOX 978
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1 MR. RACICOT: Yes.

2

3

REDIRECT EXAMINATION

4 By Mr. Racicot: Would you mark these for me please?

5 AT THIS TIME, the court reporter marked two items as

6 STATE'S EXHIBITS Number 3 and 4.

7 Examination by Mr. Racicot:

8 Q I will hand you what has been marked for
9 identification as State's Exhibits 3 and 4 and ask you if
10 you could identify those, and first of all, number three?

11 A Yes.

12 Q Can you identify those pictures?

13 A Yes.

14 Q Are they photographs of the scene as you seen
15 it on June 16th, 1979?

16 A Yes.

17 Q And do they accurately reflect the position of
18 all the objects that are depicted in them?

19 A All except the pickup.

20 Q You don't recall those as being an accurate
21 representation of the way things were when you saw them there?

22 A Not the way that I remember it.

23 Q Well what you are indicating is your answer is,
24 the picture indicates the vehicle was on the right of the
25 road and you said it was on what?

1 A I said it was on the right side ---

2 Q Well does the -- that is what I am trying to
3 get at, are the pictures accurate?

4 A Yes they are.

5 Q In relation to the objects, you do recognize
6 those pictures as being accurate photographs, as to the way
7 the objects were displayed on the morning of June 16th, 1979
8 when you came to the scene?

9 A Yes sir.

10 MR. RACICOT: I move for the admission of State's Exhibits
11 three and four.

12 MR. MOSES: May I have just a moment, Your Honor?

13 THE COURT: Yes.

14 AT THIS TIME, while Counsel for the Defendant examines
15 Exhibits 3 and 4, another item was marked as State's
16 Exhibit Number 5.

17 MR. MOSES: Your Honor, I have no objections to the
18 introduction of State's Exhibits three and four.

19 THE COURT: They will be admitted.

20 Q Now Alfred you testified that these pictures
21 accurately reflect the scene?

22 A Yes.

23 Q Do they also reflect your recollection as to
24 where that vehicle was parked that you have previously
25 indicated on Defendant's Exhibit B?

A Yes.

1 Q And that was actually on the other side of the
2 road, wasn't it?

3 A Yes, there are a lot of roads down in there.

4 Q Okay, but there was a road to the right of that
5 vehicle -- to the left of it as you face it, along the
6 passenger's side, correct?

7 A Yes.

8 Q And does it also reflect -- or refresh your
9 recollection as to where the sweater and the purse were
10 found?

11 A On the passenger's side.

12 Q On the passenger's side of the vehicle, right?

13 A Yes.

14 Q Now, Alfred, when you approached the vehicle,
15 you walked up to the driver's side first?

16 A Yes.

17 Q And you weren't watching for footprints were
18 you, Alfred?

19 A No.

20 Q In fact when you walked up to the pickup, you
21 left your own, didn't you?

22 A Yes.

23 Q And then you walked around, and did you walk
24 around the front side or the back end of the pickup?

25 A The back end.

1 Q And did you notice any footprints?
2 A I never looked.
3 Q And when you got to the passenger's side door,
4 again, did you notice any footprints?
5 A No.
6 Q You weren't looking for them, were you?
7 A No.
8 Q Were you even concerned about footprints at
9 that point in time?
10 A No, we was just looking the vehicle over is all.
11 Q Then, Alfred, you walked over to this blood
12 spot that you testified to, about ten feet to the right of
13 the vehicle?
14 A Yes.
15 Q And you looked at that?
16 A Yes but Sgt. Red Thunder looked at it first.
17 Q Sgt. Red Thunder walked over there first and
18 then you walked over?
19 A Yes.
20 Q And did Sgt. Red Thunder also walk all the way
21 around the pickup?
22 A Yes.
23 Q And then you both walked to the blood spot about
24 ten feet to the right of the vehicle?
25 A Yes.

1 Q And then did you both walk over to the drag
2 trail, the both of you?

3 A Yes.

4 Q And you weren't looking for footprints at that
5 time, were you?

6 A No, but we each walked on each side of the
7 trail.

8 Q My question is this, when you approached the
9 vehicle, on the driver's side, and walked around the vehicle
10 to the passenger's side, and then walked over to the spot
11 where the blood was, at any point in time during that process
12 did you even think about looking for footprints?

13 A No.

14 Q Do you even know the condition of the soil was
15 such that footprints could have been left in it, Alfred?

16 A Well there was plenty of bare spots in the
17 grass there.

18 MR. MOSES: I am sorry, I can't hear that, would you repeat
19 that please?

20 A The blood spot was in the grass.

21 Q Was it wet that morning?

22 A I wouldn't say that it was, it was summer time
23 and the sun was already out when we got down there.

24 Q And you never seen any tire prints at the scene
25 did you?

A No.

1 Q You really weren't looking for those either,
2 were you?

3 A No.

4 Q Now I will handing you what has been marked as
5 State's Exhibit Number 5, for identification, and ask if you
6 can identify that?

7 A Yes I can.

8 Q And what is that a picture of?

9 A It is a picture of a body.

10 Q And does that picture accurately reflect what
11 you saw when you got to the bank of the Poplar River at the
12 early morning hours of June 16th, 1979?

13 A Yes sir.

14 MR. RACICOT: We would move for the admission of State's
15 Exhibit Number 5.

16 MR. MOSES: May I inquire of this witness?

17 THE COURT: Yes, go ahead.

18 VOIR DIRE BY MR. MOSES:

19 Q Who took this picture, officer?

20 A I don't know.

21 Q Were you down there when this picture was taken,
22 Officer?

23 A I was there when the pictures was taken, but I
24 wasn't on the train bridge.

25 Q What was taken from the train bridge?

1 A Pictures.

2 Q Was this picture taken from the train bridge?

3 A No.

4 Q Do you have any idea who took it?

5 A No.

6 Q And you don't know what his position was when

7 he took the picture?

8 A Nope.

9 MR. MOSES: I would object to the introduction of Proposed

10 State's Exhibit Number 5 upon the ground there is not a

11 sufficient foundation laid at the present time for the

12 introduction of that exhibit.

13 THE COURT: Sustained.

14 MR. RACICOT: Sustained?

15 THE COURT: Yes.

16 MR. RACICOT: Your Honor, he has identified the picture as

17 being an accurate reflection of exactly what he saw when he

18 looked down into the river.

19 THE COURT: But he doesn't know when

20 it was taken, or by whom or what date.

21 I will take this one under advisement

22 also.

23 MR. RACICOT: All right.

24 Q Now, Alfred, you said that you and Calvin

25 Red Thunder were there at the scene?

1 A Pictures.

2 Q Was this picture taken from the train bridge?

3 A No.

4 Q Do you have any idea who took it?

5 A No.

6 Q And you don't know what his position was when

7 he took the picture?

8 A Nope.

9 MR. MOSES: I would object to the introduction of Proposed

10 State's Exhibit Number 5 upon the ground there is not a

11 sufficient foundation laid at the present time for the

12 introduction of that exhibit.

13 THE COURT: Sustained.

14 MR. RACICOT: Sustained?

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17 being an accurate reflection of exactly what he saw when he

18 looked down into the river.

19 THE COURT: But he doesn't know when

20 it was taken, or by whom or what date.

21 I will take this one under advisement

22 also.

23 MR. RACICOT: All right.

24 Q Now, Alfred, you said that you and Calvin

25 Red Thunder were there at the scene?

1 A Yes.

2 Q And walking around the pickup?

3 A Yes.

4 Q And you also said on cross examination that

5 Officer Welch responded to the scene?

6 A Yes sir, he was the Captain then.

7 Q Captain?

8 A Yes.

9 Q Okay, and also there was FBI Special Agent

10 Worberg there?

11 A Yes.

12 Q And was the BIA officer Beemer there?

13 A No.

14 Q Was the Roosevelt County Sheriff's officers

15 there?

16 A Yes.

17 Q Sheriff Carpenter was there?

18 A Yes.

19 Q And was Deputy Sheriff Wilson there?

20 A Yes.

21 Q And was Deputy Sheriff Brockmeir there?

22 A I don't know.

23 Q Was Bob Atkinson there?

24 A I believe so.

25 Q And who does he work for?

1 A The City.

2 Q And do you recall whether or not he was there?

3 A I don't remember, but I believe he was.

4 Q Okay, and was Bob Murray there?

5 A I don't remember him there.

6 Q Chief of Police, Bob Murray?

7 A Oh, yes, he was there.

8 Q So there were between seven and ten police
9 officers there, wasn't there?

10 A Yes there were quite a few of them there.

11 Q From a number of different law enforcement
12 agencies?

13 A Yes.

14 Q And all of them were taking a look at everything
15 that was involved, weren't they?

16 A Yes.

17 Q And so they were all walking around the pickup?

18 A Yes.

19 Q And all walking up and down the drag trail?

20 A Yes I guess so.

21 Q Now, Alfred, you testified on cross examination
22 that both doors were locked on this pickup. Are you absolutely
23 sure about that?

24 A Yes.

25 Q And you don't know who gained entry into the
vehicle?

1 A I think they called Ted to come.

2 Q Do you recall seeing Ted there?

3 A No.

4 Q And by Ted, you mean Ted Nees?

5 A Yes.

6 MR. RACICOT: No further questions from Mr. Lizotte.

7

8 RE CROSS EXAMINATION

9 By Mr. Moses:

10 Q On Redirect examination, Mr. Racicot asked you
11 about State's Exhibit 3 and I am handing it to you and I
12 understand that you are now saying that the vehicle was
13 parked in that location as depicted by the photograph?

14 A Yes.

15 Q So that when we refer to Defendant's Exhibit B
16 where you have it off to the side of the one road there, that
17 is not accurate?

18 A No.

19 Q The picture is the one that is accurate?

20 A Right.

21 Q Now secondly, you testified at some length
22 about protecting the crime scene and knowing about protecting
23 the crime scene, and do I understand you to say then that
24 nobody, including the ,Sheriff, the BIA, the Chief of Police,
25 or anyone else protected the area around that crime scene and

1 prevented all of those people from walking around, is that
2 what you are now saying?

3 A I was relieved when the proper authorities got
4 there. It wasn't my duty to see where they all went.

5 Q Well did they walk around, or did you see them
6 walking around in this area clear down to the river without
7 protecting the crime scene?

8 A They are police officers and they know what to
9 do, and I wasn't following them around.

10 Q Looking at the photograph which is Exhibit 3
11 here, which direction are you looking toward the top?

12 A North.

13 MR. MOSES: With the Court's permission, I would like to
14 mark that with a red pencil ---

15 MR. RACICOT: I would have a strong objection, your Honor,
16 and I would ask that we go outside the presence of the Jury
17 on marking on any of these exhibits.

18 THE COURT: Okay.

19 AT THIS TIME, all counsel, the defendant, the District
20 Judge and the courtreporter went into Chambers, outside
21 the presence of the Jury.

22 THE COURT: Let the record show that
23 we are in Chambers, outside the
24 presence of the Jury and that everyone
25 is here. Go ahead.

1 MR. RACICOT: Are you going to mark it there on the back?

2 MR. MOSES: No on the front so that you can see which
3 direction it is.

4 MR. RACICOT: Your Honor, we would have strong objection to
5 marking any of these exhibits, once they have been received
6 in evidence and I believe that is a proper statement of the
7 law, in fact, I believe it is illegal once they have been
8 received in evidence and that is our objection, and we do have
9 a sketch that we are going to introduce at some point in time
10 here . We really don't have any particular problem with this
11 but once it is received in evidence, it is our contention that
12 it cannot be marked like that.

13 THE COURT: Well can you find some
14 authority to the contrary, I will
15 allow him to mark it.

16 MR. MOSES: The point that I am making which I think is
17 appropriate that unless the exhibit is identified as showing
18 the location and the direction in the photograph, the photograph
19 itself is meaningless. It should be pointing out east, west,
20 south and north and without that, you do not have any idea
21 which way you are facing, which way you are looking and so the
22 exhibit does not have any value.

23 THE COURT: Do you have the pickup
24 marked on the sketch?

25 A Yes we do and I believe it will show the directions
and everything on that.

1 THE COURT: Okay, well, what do you
2 have left here to do?

3 MR. RACICOT: Well our next witness will be Doctor Pfaff and
4 he will be quite long.

5 THE COURT: Well when we are through
6 with this witness, we will let the
7 jury go for lunch, and give them a
8 little bit longer time so they can
9 get something to eat.

10 IN THE COURTROOM:

11 THE COURT: Let the record show that
12 everyone is here including the Jury
13 and the Defendant. Do you have any
14 further questions, Mrs. Moses?

15 ReCross Examination continued by Mr. Moses:

16 Q With respect to these photographs, I am handing
17 you State's Exhibit 3, and can you identify the sweater there
18 and the purse as being in that location when you first
19 arrived, or had it been moved?

20 A When I first arrived there, it was on the other
21 side of the pickup.

22 Q When you first saw them?

23 A Yes.

24 Q That would be the same location, no one had
25 moved them?

A No.

1 Q And this is another view of State's Exhibit
2 Number 4, looking at the purse and the sweater and I take it
3 those objects were in the same position when you first arrived,
4 right?

5 A Yes.

6 Q And there is some red area marked here, and
7 marked here, on Exhibit Number 3, on the edge of the road,
8 and it looks like a red area, and on Exhibit 4, and then on
9 this exhibit here, it appears in there, and can you tell me
10 what that is?

11 A Blood.

12 Q Pardon?

13 A Blood.

14 Q Okay. And I think you testified that both doors
15 were locked?

16 A Yes.

17 Q Pardon?

18 A Yes.

19 MR. MOSES: Thank you, I have no further questions.

20 MR. RACICOT: We have nothing further from this witness.

21 THE COURT: I will ask you a question:
22 It is your testimony that this picture
23 here, marked State's Exhibit 5, which
24 I show you, it is your testimony that
25 that is the body of Kimberley Nees?

1 A Yes.

2 THE COURT: And that she was in the
3 water?

4 A Yes.

5 THE COURT: And there is no doubt in
6 your mind about that?

7 A No.

8 THE COURT: But you don't know who
9 took the picture?

10 A No.

11 THE COURT: How long was it that she
12 was there when you first noticed it
13 until the body was removed?

14 A Oh, an hour and a half.

15 THE COURT: From your discovery?

16 A Yes.

17 MR. RACICOT: We would re-move for its admission, Your Honor.

18 THE COURT: I will take it under
19 advisement.

20 MR. RACICOT: We have no further questions of Mr. Lizotte.

21 THE COURT: Do you have any?

22 MR. MOSES: Nothing further, Your Honor.

23 WHEREUPON this witness was EXCUSED.
24
25