

1 MR. RACICOT: We will now call Errol Wilson.

2 WHEREUPON,

3 MR. ERROL WILSON

4 having been called as a witness on behalf of the State of  
5 Montana, and having been first duly sworn upon his oath,  
6 testified as follows:

7

8 DIRECT EXAMINATION

9 By Mr. Racicot:

10 Q Could I have your name please?

11 A Errol Wilson.

12 Q And are you also known sometimes as Red Wilson?

13 A Yes.

14 Q And where do you live now, Mr. Wilson?

15 A Phoenix, Arizona.

16 Q In June of 1979, and several months thereafter,  
17 what was your employment?

18 A I was a deputy sheriff of Roosevelt County.

19 THE COURT: Let me talk to both of you  
20 for a moment please, comeup here.

21 AT THIS TIME, counsel approached the bench and outside  
22 of the hearing of the jury and this court reporter, discussed  
23 a matter(s).

24 THE COURT: The court admits State's  
25 Exhibit number 5, previously submitted.

1 Q Red, were you involved in the investigation of  
2 the death of Kimberley Ann Nees?

3 A Yes.

4 Q On June 16th, 1979?

5 A Yes sir.

6 Q Do you recall what time you arrived -- or  
7 rather notified that your assistance would be required?

8 A I believe it was eight o'clock or shortly  
9 thereafter.

10 Q And do you recall what morning of the week that  
11 was?

12 A Saturday morning.

13 Q And what did you do after you received -- where  
14 were you when you were notified?

15 A I was at my residence.

16 Q And that was in?

17 A Wolf Point.

18 Q And what did you do after you were notified?

19 A I was told to go to the Sheriff's department  
20 and pick up a crime scene set and then I went and picked it  
21 up and proceeded to Poplar.

22 Q Do you recall what time you arrived in Poplar?

23 A I believe it was 8:50.

24 Q In the morning?

25 A In the morning.

1 Q And did you in fact work the scene of the crime?

2 A Yes I did.

3 Q And how many officers were there when you  
4 arrived at the crime scene?

5 A Sheriff Carpenter, the Tribal Police, and I  
6 believe the B.I.A. was there, one of them, Howard Beam, and  
7 Dennis Brockmier arrived shortly afterwards.

8 Q FBI?

9 A He was there but I don't believe he was there  
10 initially.

11 Q How many officers would you say totally -- was  
12 Robert Murray there?

13 A I believe he was.

14 Q Bob Atkinson?

15 A He was.

16 Q And he was from the City Police of Poplar?

17 A Yes.

18 Q How many people, law enforcement officers from  
19 the four or five agencies did you see or estimate were there?

20 A Approximately ten, but I really can't remember.

21 Q Now would you describe for us how you worked  
22 the crime scene?

23 A Sheriff Carpenter, when I first arrived was  
24 taking photographs and so I stayed clear of the crime scene  
25 until he came over to me and at that time Dennis Brockmier,  
my partner arrived and we were told to work the crime scene

1 from the body that was in the river, to the pickup.

2 Q Sgt. did you go to the river bank first of all  
3 then?

4 A Yes sir.

5 Q And did you see the body in the water?

6 A Yes sir.

7 Q I hand you what has been marked as a piece of  
8 evidence in this case, State's Exhibit Number 5 and ask if  
9 that photograph accurately depicts what you saw at that point  
10 in time?

11 A Yes sir.

12 (This exhibit is then handed to the jury for their examination)

13 Q Red, when you went to the bank of the river,  
14 would you describe what you noticed on the bank?

15 A On the top of the bank there was a large blood  
16 trail that was possibly ten foot long; The bank was I would  
17 say twenty feet from the top of the bank to the bank of the  
18 river and down partly to the river was a large blood spot  
19 where it looked as if the body had been thrown over the bank  
20 to get it into the river, but it didn't quite make the river,  
21 and ---

22 MR. M OSES: I am going to object to the answer as not being  
23 responsive to the question, and that it calls for supposition  
24 on his part and asks what appeared to him be stricken.

25 MR. RACICOT: Your Honor, he was a law enforcement officer and



1 I think he is responsive to the question.

2 MR. MOSES: Well he is not entitled to make suppositions  
3 or speculations and this is in the area of speculation, 'that  
4 it looked as if the body..' ---

5 THE COURT: I think your answer to the  
6 question should be what you saw rather  
7 than what you think happened.

8 MR. RACICOT: Okay.

9 Q What did you see in reference to this part down  
10 the bank there?

11 A There was a large pool of blood.

12 Q And was it a pool?

13 A Yes.

14 Q And was there any dragging indicated, or  
15 sliding indicated?

16 A No sir.

17 Q Red, I am handing you what has been marked as  
18 State's Exhibit Number 20 for identification and I ask if you  
19 can identify that photograph?

20 (NOTE: This photograph had been marked by the Court  
21 Reporter prior to this question)

22 A Yes sir, this is a pool of blood on the bottom  
23 of the bank there.

24 Q And you saw that on June 16th, 1979?

25 A Yes sir.

1 Q And does that photograph correctly and  
2 accurately represent what you saw at that point in time?

3 A Yes sir.

4 Q Pardon?

5 A Yes it does.

6 MR. RACICOT: We would move for the admission of Exhibit 29.

7 Q You did not take that photograph did you?

8 A No.

9 MR. MOSES: (After examining the same) I will have no  
10 objections to State's Exhibit number 29.

11 THE COURT: State's 29 is admitted.

12 Q Red, did you notice any footprints down the  
13 edge of the bank?

14 A No sir.

15 Q Any footprints in the water?

16 A No sir.

17 AT THIS TIME, the court reporter marks a document as  
18 State's Exhibit Number 30.

19 Q Red, I am handing you what has been marked as  
20 State's Exhibit Number 30 for identification and ask if you  
21 can identify that?

22 A Yes sir, that is a picture from across the  
23 river showing the body in the water, the river bank and the  
24 road leading up to the pickup.

25 Q And does that picture correctly and accurately

1 Q And do you recall calling out the measurements  
2 to Bob Murray?

3 A Yes sir.

4 Q You were doing that, or Dennis was?

5 A Well we were each holding the tape and I was  
6 calling out the measurements.

7 Q And so you had the end of the tape that would  
8 be read?

9 A Yes sir.

10 Q And did you double check those measurements?

11 A Yes sir.

12 Q Now, Red, near the edge of the bank of the  
13 river, was there anything that you noticed there?

14 A Well the pool of blood, and I believe there was  
15 an empty beer can; which was photographed, and sketched and  
16 recovered as evidence. At the top of the bank there was a  
17 large blood trail that I would say was approximately ten foot  
18 long.

19 Q Ten feet long?

20 A Yes sir.

21 Q Okay, and did you go -- was that ten feet from  
22 the edge of the bank towards the pickup?

23 A Yes sir.

24 Q And then did you continue on in your investigation  
25 and measurements, back towards the pickup?

CALMER A. ERSNESS

OFFICIAL COURT REPORTER

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WOLF POINT, MONTANA 59201

- 1           A           Yes sir.
- 2           Q           What line of debarkation were you following on  
3 your way back to the pickup?
- 4           A           It was a road, just a dirt trail actually.
- 5           Q           And was there anything in the trail that was  
6 significant to you as an officer that morning?
- 7           A           Yes sir, it was definitely a drag trail; there  
8 was pieces of hair and spots of blood along the trail.
- 9           Q           Along the drag trail, was there as much blood  
10 throughout that trail as there was for the first eight to  
11 ten feet from the bank?
- 12          A           No sir.
- 13          Q           And did you find any intermittent pieces of  
14 hair along the way?
- 15          A           Yes sir.
- 16                    AT THIS TIME, the court reporter marked an instrument as  
17 State's Exhibit Number 31.
- 18          Q           I hand you what has been marked as State's  
19 Exhibit Number 31 for identification and ask if you can  
20 identify that?
- 21          A           Yes sir, this is a blood trail there on the top  
22 of the bank.
- 23          Q           Does it also represent the drag trail?
- 24          A           Yes sir.
- 25          Q           And did you take that photograph?

1 A No sir.

2 Q But nevertheless does it accurately represent  
3 what you saw on the morning of June 16th, 1979?

4 A Yes sir.

5 MR. RACICOT: We move for the admission of State's Exhibit  
6 Number 31.

7 MR. MOSES: May I inquire?

8 THE COURT: Yes.

9 VOIR DIRE BY MR. MOSES:

10 Q Officer, my name is Timer Moses and I am the  
11 attorney for Mr. Beach and I am only inquiring as to the  
12 boxes that are there in the photograph. Were they there in  
13 the same identical position at the time this photograph was  
14 taken?

15 A Yes sir.

16 Q And I take it that the top part of the photo-  
17 graph represents what is known as the railroad bridge so that  
18 you could see by the use of this document the area that you  
19 have just testified to in relationship to the bridge?

20 A Yes.

21 Q And the river?

22 A Yes.

23 MR. MOSES: We have no objections to the introduction of  
24 State's proposed Exhibit Number 31.

25 THE COURT: State's 31 is admitted.

1 Q Red, did you eventually work your way up to  
2 the pickup truck?

3 A Yes sir.

4 Q And did you examine the truck?

5 A Yes I did.

6 AT THIS TIME, the court reporter marked two instruments  
7 as STATE'S EXHIBITS 32 and 33.

8 Q I am handing you what has been marked as State's  
9 Exhibits 32 and 33 and would you describe for us what 32 is  
10 to begin with and then 33 secondly?

11 A Yes sir, this is the interior of the Chevrolet  
12 pickup, and there is blood stains ---

13 MR. MOSES: Excuse me, Your Honor, is he referring to any  
14 particular exhibit?

15 MR. RACICOT: Yes, number 32.

16 MR. MOSES: Number 32, thank you.

17 Q And from what position was that photograph  
18 taken?

19 A This was taken from the passenger's side.

20 Q And does it accurately portray what you saw  
21 when you examined the pickup on the morning of June 16th,  
22 1979?

23 A Yes sir.

24 Q And what does it portray?

25 A It depicts, in this picture, the blood stains

1 and I believe it is a Time-wise envelope on the seat there.

2 MR. RACICOT: We would move for the admission of State's  
3 Exhibit Number -- well, let's go on with 33 and do them both  
4 at the same time.

5 Q Again from what position was that photograph  
6 taken?

7 A This was taken from the driver's side.

8 Q And did you take that photograph?

9 A No sir.

10 Q But does it accurately portray what you saw  
11 when you examined the pickup?

12 A Yes sir.

13 Q And what does it portray?

14 A The blood stains and a Time-wise envelope.

15 Q And this is from the opposite door?

16 A Yes sir.

17 MR. RACICOT: We would move for the admission of State's  
18 Exhibits number 32 and 33.

19 MR. MOSES: (After examining said exhibits) May I inquire  
20 as to these, Your Honor?

21 THE COURT: Yes.

22 VOIR DIRE by Mr. Moses:

23 Q There appears on the seat there a piece of  
24 paper and was that there at the time?

25 A Yes sir.

1 Q And you are satisfied with reference to  
2 Exhibit 32, that that particular piece of paper was there  
3 at the time?  
4 A Yes sir.  
5 Q And do you know what the paper was?  
6 A I believe it was a -- may I refer to my notebook?  
7 Q Yes.  
8 A A time-wise envelope.  
9 Q And in this Exhibit Number 32, is that a picture  
10 of the same interior of the same vehicle, 32 and 33 involves  
11 the same vehicle?  
12 A Yes sir, it is the same vehicle.  
13 Q And there appears to be two pieces of paper  
14 there?  
15 A Yes.  
16 Q Who put the second piece in there?  
17 A Sir, the passenger door was locked when I first  
18 examined the pickup.  
19 Q Well that wasn't my question, there are two  
20 pieces of paper here in one of them, and only one piece of  
21 paper in the other one, and what I am asking, you said they  
22 were identical, when there is two pieces in one and only one  
23 in the other?  
24 A I don't know.  
25 Q Which would be the correct one?



1 A The large one.

2 Q So that there was only one piece of paper and  
3 so someone must have put the second piece of paper in there?

4 A Yes.

5 Q So to that extent it would not be the way it  
6 was when you first saw it?

7 A The large photograph is the way it was.

8 MR. MOSES: Your Honor, I have no objection to the  
9 introduction of State's proposed Exhibit number 33, which  
10 represents the interior of the vehicle in question, but I do  
11 object to State's proposed Exhibit Number 32 upon the grounds  
12 that there has not been a proper foundation made to describe  
13 that this is a correct representation of the condition of the  
14 vehicle at the time he saw it on June 16th, 1979.

15 MR. RACICOT: Your Honor, we will withdraw number 32.

16 THE COURT: All right, 33 is admitted  
17 and number 32 is withdrawn.

18 (Said exhibit 33 is now examined by the Jury)

19 DIRECT EXAMINATION now continued by Mr. Racicot:

20 Q The pickup, what brand of a vehicle was that?

21 A I believe it was a Chevrolet.

22 Q I am handing you what has been marked as State's  
23 Exhibit number 3 and 4 and ask you if that is the pickup you  
24 examined on that particular day?

25 A Yes sir.

1           Q           Now when you examined the pickup, you stated  
2 that earlier when you were questioned by Mr. Moses that one  
3 door to the vehicle was locked?

4           A           The passenger side.

5           Q           Was the driver's side door locked?

6           A           No sir.

7           Q           Had people gone through the vehicle prior to  
8 the time that you went through the vehicle?

9           A           No sir.

10          Q           Did you notice any sign of scuffle or any  
11 blood in or around the vehicle?

12          A           Yes sir.

13          Q           And what did you notice?

14          A           There was blood on the driver's door and the  
15 window; there was blood on the seat; there was hair and flake  
16 blood on the steering wheel; blood splattered on the ceiling;  
17 there was blood stains around the passenger's seat; there was  
18 beer or urine on the driver's side of the seat, I smelled it  
19 but I couldn't tell what it was; there was bloody smudgy  
20 fingerprints on the upper right moulding; and ---

21 MR. MOSES:    On the upper right what?

22          A           Upper right moulding.

23 MR. MOSES:    Inside?

24          A           Yes sir. There was blood spots on the back of  
25 the seat, there was blood splatters on the rear window, heavy

1 blood splatters on the driver's side of the rear window;  
2 there were no keys in the vehicle; the gear shift lever was  
3 in park; the radio was on; the CB radio was off; the ash  
4 tray was open; on the ceiling there were three gouge marks  
5 with hair hanging out of them; there were gouge marks on the  
6 steering wheel; the heater was left on and the passenger door  
7 was locked.

8 Q And outside of the vehicle?

9 A On the outside ---

10 Q Did you notice any blood stains?

11 A Yes sir, on the passenger's side of the vehicle  
12 there were splatters of blood.

13 Q Now away from the vehicle were there any blood  
14 stains?

15 A Yes.

16 Q Next, near to the pickup?

17 A Yes, across the small trail there, there was a  
18 semi-circle of blood that I would say was approximately three  
19 foot, in a crescent shape.

20 Q I am handing you what has been marked into  
21 evidence, State's Exhibit Number 3 and ask if that portrays  
22 the blood stain?

23 A Yes sir.

24 Q Would you illustrate to the jury where that  
25 blood stain is please?

1           A           (Witness complies) It would be directly across  
2 from the passenger door, across this trail, there was a  
3 semi-circle of blood.

4           Q           Now, Red, after you had completed your examin-  
5 ation of the pickup truck, and you were done with your duties  
6 at the scene of the crime, did you have occasion to go into  
7 town and talk to various people?

8           A           Yes sir. Sheriff Carpenter and Bob Welch, the  
9 Tribal policeman, they went up to the houses up on the hill  
10 there, overlooking the crime scene and conducted a house to  
11 house interview with any of the residents to see if they had  
12 heard or seen anything that night.

13          Q           And did you participate in that?

14          A           Yes I did.

15          Q           And did you eventually have occasion to go to  
16 the Defendant's house?

17          A           Yes I did.

18          Q           And this was on the morning of June 16th, 1979?

19          A           Yes sir.

20          Q           And did you talk to his mother on that morning?

21          A           Yes I did.

22          Q           At her home?

23          A           Yes sir.

24          Q           And did you talk to her about this particular  
25 incident, concerning the death of Kim Nees?

1 A Yes, I did.

2 Q And did she give you certain information about  
3 that?

4 A Yes.

5 Q Without telling me what it is, did she give  
6 you certain information concerning the Defendant in this case?

7 A Yes she did.

8 MR. RACICOT: Your Honor, I have no further questions of this  
9 witness at this time, but I would ask the Court to keep him  
10 here, subject to recall.

11 THE COURT: All right.

12

13 CROSS EXAMINATION

14 By Mr. Moses:

15 Q What is your present occupation?

16 A I am a private investigator.

17 Q How long have you been a private investigator?

18 A About four months.

19 Q And prior to that time?

20 A Deputy Sheriff.

21 Q And that was in Roosevelt County?

22 A No sir, Teton County.

23 Q Okay and when did you terminate your relationship  
24 with Roosevelt County?

25 A I believe it was about the 13th of December, 1979.

1 Q Now, Officer Wilson, there has been introduced  
2 in evidence in this case, State's Exhibit Number 28 and  
3 perhaps if I place that here on the board here (Counsel  
4 places on the board, said exhibit) can you see that now?

5 A Well I can't see the writing on there, Sir.

6 Q Can you see it now? (Moves it closer to the  
7 witness)

8 A Yes.

9 Q Fine. Was there a photograph taken of the blood  
10 which is indicated on State's Exhibit 28, as being nine feet  
11 two inches from the right rear of the pickup?

12 A I am not sure of the measurements, Sir, but I  
13 know there was a photograph taken of it.

14 Q But you are not sure of the measurements and I  
15 take it that you were testifying that you started from the  
16 rear -- excuse me, from the river up to the vehicle, taking  
17 measurements?

18 A Yes sir.

19 Q I take it that you participated in taking those  
20 measurements?

21 A ;Yes, but I can't remember if it was exactly  
22 nine feet two inches, but I am sure if I wrote it down, that  
23 it was.

24 Q Well, I am handing you Exhibit Number C and  
25 exhibit number 27, do you recognize those?

1 A Yes.

2 Q And did you participate in the preparation of  
3 those plats or maps?

4 A Yes sir.

5 Q There has been testimony here to the jury and  
6 the court that from those plats this drawing was prepared by  
7 Mr. Lambert and it shows the distance was nine feet two inches?

8 A Yes sir.

9 Q And the question is, did you participate in  
10 taking those measurements as reflected in the plat that was  
11 taken at the time the measurements were done?

12 A Yes.

13 Q Do you have any photographs, to your knowledge,  
14 of the area indicated by the word "blood" in the area nine  
15 point two inches from the -- nine feet two inches from the  
16 right rear of the pickup?

17 A Yes sir, I believe that photograph shows the  
18 crescent shaped blood marks.

19 Q And is this the photograph that you are  
20 referring to or is there some other photograph?

21 A This is it, Sir.

22 Q And that is Exhibit Number 4, right?

23 A Yes.

24 Q Now when you saw the vehicle there that day,  
25 and I am referring to Exhibit Number 4, was that -- is that a

1 fair representation of the location of the vehicle?

2 A Yes sir.

3 Q And in comparison to that, there is another  
4 photograph, State's Exhibit Number 3, is that a fair  
5 representation of the location of the vehicle at the time you  
6 arrived at the crime scene?

7 A Yes sir.

8 Q I take it that that vehicle had pulled out from  
9 the roadway and was at an angle, that it had pulled off to the  
10 side, but a portion of the rear of the vehicle was still in  
11 the roadway?

12 A Yes sir.

13 Q And the distance between this vehicle, which  
14 would be the west side of the vehicle, and the blood area  
15 afforded sufficient distance for other cars to be present  
16 and stopping in that exact location?

17 A Sir, it was a wide open field.

18 Q I understand that, but I am talking about the  
19 nine feet two inches of blood permitted the passing cars --  
20 the passing of another vehicle right in that location?

21 A Yes sir.

22 Q And it appears to you that that pickup had  
23 turned out, off the roadway a bit?

24 A Yes sir.

25 Q Okay. It was not on the roadway hardly at all?

A No sir.



1 Q Okay. Now to your knowledge is this Exhibit  
2 number 4 the only photograph of the blood area which you said  
3 was nine feet two inches from the right rear of the vehicle?

4 A It is.

5 Q Is this the only photograph that you know about?

6 A Sir, I didn't take the photographs.

7 Q I understand you didn't take them. When did  
8 you first see this photograph?

9 A When did I first see the photograph?

10 Q Sure?

11 A When we got the photograph developed about five  
12 years ago.

13 Q Okay, so this is not something that was blown  
14 up just recently, this is something that was blown up about  
15 five years ago to this size?

16 A Yes.

17 Q Okay. Thank you. Now we go next to the  
18 -- to this area, let me go back to this blood area again,  
19 and were there samples of blood taken from this area which  
20 is marked "blood" nine feet two inches from the right rear  
21 of the vehicle?

22 A I believe there was.

23 Q Did you do it?

24 A I don't recall doing it.

25 Q Did you measure the width, the depth?

A Yes.

1 Q And does that appear in the figures that were  
2 given as to the deminsions and size of the blood area?

3 A Yes sir.

4 Q And would you tell the jury the deminsions  
5 please?

6 A I believe it was forty four inches.

7 Q And how wide would it be?

8 A I couldn't tell you that.

9 Q Did you notice any hair or any other debris  
10 other than blood in that area?

11 A I don't recall, I believe it was just blood.

12 Q Do you recall there were any blood track from  
13 the right side of the vehicle, the passenger side of the  
14 vehicle, extending over to this blood area?

15 A Sir, I don't remember.

16 Q As a matter of fact looking at those exhibits  
17 that are here, 3 and 4, to refresh your recollection, I  
18 think you will notice there were no blood trail from the  
19 passenger side of the vehicle over to the blood area, that is  
20 completely clean, and wouldn't you say that was a fair  
21 conclusion from the examination of those two exhibits?

22 A Yes sir.

23 Q Is it fair to state then that there was a  
24 considerable amount of blood on the passenger side of this  
25 vehicle?

1           A           On the exterior?

2           Q           Interior?

3           A           There was blood but mainly it was on the

4 driver's side.

5           Q           The blood was mainly on the driver's side?

6           A           Yes, the heaviest amount of blood, yes, and

7 then behind the driver's window of the back of the seat.

8           Q           Okay, then as to State's Exhibit number 33?

9           A           I would like to refer to my notes.

10          Q           I want you to look at that exhibit.

11          A           Yes sir. (Examines the same)

12          Q           When we look at that exhibit, is the area

13 marked -- that I am pointing to here, on the passenger's side

14 beyond the piece of paper, is that the bloody area to which

15 you refer?

16          A           On the bottom of the seat, yes sir.

17          Q           So that all of that bottom seat is bloody, on

18 the passenger's side?

19          A           Yes sir.

20          Q           And except for just right underneath the wheel,

21 the whole driver's side, both the top and the bottom seat

22 are free from blood as seen by this exhibit?

23          A           Very much so, yes.

24          Q           And that over on the top of the passenger's

25 side there is some blood going up the back seat?

1 A Yes sir.

2 Q Now is it therefore your testimony that the  
3 blood existed mainly within the interior of the car and then  
4 the next closest blood area was some nine foot two inches  
5 away?

6 A No sir, there was blood all along the exterior  
7 of the pickup, small spots of blood.

8 Q Do you have pictures to show the small spots of  
9 blood that you have just described and let me direct your  
10 attention to Exhibit number 4, and to Exhibit Number 3, is  
11 there anything from that exhibit, those exhibits, that you  
12 can accurately describe as any blood spots?

13 A No sir, they don't show up in the photographs.

14 Q Do you have any photograph that would reflect  
15 that -- or confirm your testimony?

16 A I am not sure.

17 Q In any event, you did not find any trail of  
18 blood between this vehicle and to the blood area, nine feet  
19 two inches away?

20 A No sir.

21 Q Thank you. Now we go next to the purse and  
22 the jacket. It appears in the Exhibits 3 and it appears in  
23 exhibit 4, and can you for the benefit of the jury tell them  
24 that that is the exact location of the sweater and the purse?

25 A Yes sir, that is what it looked like when I  
arrived there.

1 Q Was it a sweater or was it a jacket?

2 A I believe it was a sweater.

3 Q And was it folded?

4 A No sir.

5 Q It appears there from the photograph that it  
6 had been folded somewhat, it is folded over a bit?

7 A No sir, I don't believe so.

8 Q You're testifying that the passenger's side  
9 door was locked?

10 A Yes sir.

11 Q And that the purse existed -- or it was setting  
12 sufficiently underneath the pickup so that it would not have  
13 fallen out and remained underneath like that, because it was  
14 too far underneath?

15 A No sir, it looks as though the purse had fell  
16 on top of the sweater. There was a pack of cigarettes that  
17 had fallen out of the pickup too.

18 Q Is the purse upright?

19 A It appears to be.

20 Q And is it underneath the outside edge of the  
21 vehicle as shown by Exhibit Number 3?

22 A No sir. There is a mud flap there, I believe  
23 this right here is a mud flap, and I don't think the purse  
24 that much behind it.

25

1 Q It is obliterated by the mud flap, and the mud  
2 flap is inside the outer edge of the vehicle?

3 A Yes sir.

4 Q Okay. Now how was the purse and the sweater  
5 preserved? What did you do about preserving the integrity  
6 of the sweater or the purse?

7 A The sweater was photographed and it was  
8 collected as evidence.

9 Q Was it photographed in place?

10 A As it is there.

11 Q Well did they get a close-up of that sweater?

12 A Sir, I didn't take any photographs.

13 Q You were there I take it, so that you could see  
14 what was going on?

15 A I was there.

16 Q Now you mentioned fingerprints within the  
17 interior of the pickup?

18 A Sir, I believe it was on the exterior, on the  
19 moulding.

20 Q There were no fingerprints on the interior of  
21 the vehicle, I must have misunderstood you?

22 A Right upper moulding is what I had on my notes.  
23 I don't remember if that was inside or outside, Sir.

24 Q Okay. Were they bloody fingerprints, that is,  
25 a fingerprint that was visible and seen as pressed into the  
bloody area?

CALMER A. ERSNESS

OFFICIAL COURT REPORTER

P. O. BOX 978

WOLF POINT, MONTANA 59201

1           A           Sir, if I remember correctly, it was the area  
2 between the index finger and the thumb, this area of the hand.  
3 There was definite ---

4           Q           Excuse me, just a moment. I perhaps asked you  
5 the wrong question. My question was, without regard to the  
6 location of the hand, were they identifiable fingerprints,  
7 whatever they were, fingerprints, palm prints, whatever, were  
8 they identifiable prints that were in or on the truck that had  
9 them imbedded in a bloody area?

10          A           Yes sir.

11          Q           Now having said that, do you recall where that  
12 area was on the vehicle?

13          A           No sir.

14          Q           And having recalled that, then do you -- were  
15 you satisfied from your examination, as a law enforcement  
16 officer, that these imprints were on blood that appeared to  
17 be of reasonable freshness and be connected with the other  
18 blood that you found in the vehicle?

19          A           Yes sir.

20          Q           Okay. Were photographs taken of the bloody  
21 palm print?

22          A           Yes sir, but once again, I didn't have nothing  
23 to do with that.

24          Q           Okay, you had nothing to do with that?

25          A           No sir.

1 Q Do you know who did?

2 A No sir.

3 Q Okay. Now we will go next to the footprints  
4 which are on State's Exhibit Number 28, and Officer Murray  
5 I believe testified as to those footprints, three in number.  
6 I take it when you were taking the measurements going from  
7 the river up to the vehicle that you came upon these footprints?

8 A Sir I can't remember the footprints.

9 Q Well I understand that you may not remember  
10 them now, but when Exhibit Number 27 and Defendant's Number  
11 C were made, they were marked on that?

12 A I know there were in place there, and a photo-  
13 graph of them was taken, but I can't remember them.

14 Q Were they barefoot prints?

15 A I believe one was.

16 Q When we speak of barefoot prints, what do we  
17 mean by that, what do you mean by that?

18 A Now shoe or sock.

19 Q No shoe or sock, Okay. Thank you. Now did you  
20 make measurements of those footprints or do you have any  
21 recollection of them at all?

22 A If they are on the sketch, then we made the  
23 measurements, but I can't remember the footprints at all.

24 Q Well wouldn't the notes that you have before you  
25 reflect the measurement of the footprints in that particular  
area?



1           A           No sir, these notes were just of the interior  
2 of the vehicle.

3           Q           Say that again?

4           A           The notes that I took were just of the interior  
5 of the pickup.

6           Q           Just the interior of the pickup, and if they  
7 were of the interior of the pickup, then the question of the  
8 moulding would have to be on the interior of the vehicle,  
9 because that is reflected on the notes?

10          A           Yes.

11          Q           So that it would not be on the exterior of the  
12 vehicle, but would be prints on the inside, right?

13          A           Possibly, yes.

14          Q           Well those notes accurately reflect you say, of  
15 the information as to the interior of the vehicle?

16          A           Yes.

17          Q           And the fingerprints on the moulding were  
18 reflected on those notes, so they would have to be on the  
19 inside of the vehicle?

20          A           I would assume so, but I can't remember.

21          Q           But your notes would reflect that, right?

22 MR. RACICOT: Your Honor, the question has been answered, I  
23 believe, and I am going to object.

24          Q           There has been noted on Exhibit Number 28, hair.  
25 It says 195 feet from river bank. Now does that mean directly

1 down at a 90 degree angle to the river bank and -- or does  
2 that mean along the drag mark line 195 feet to the river bank?

3 A Along the drag line.

4 Q Okay. Do you have photographs of that hair?

5 A I am sure we do but I don't have them.

6 Q Okay. How did that hair appear to you? Was  
7 it something that looked like the head had been dragged or  
8 the hair had been pulled out and deposited? What did it  
9 appear like to you?

10 MR. RACICOT: We object, Your Honor, I think that is a  
11 speculative question and that question was asked before of  
12 this witness.

13 THE COURT: Sustained.

14 MR. MOSES: I am sorry?

15 THE COURT: He objected on the ground  
16 that it was speculative and I  
17 sustained it.

18 MR. MOSES: Okay.

19 Q You don't have any recollection as to what that  
20 area looked like, what that hair looked like?

21 MR. RACICOT: Your Honor, I am going to object again. That  
22 is another way of getting in the same question.

23 MR. MOSES: I only want to know what he saw there.

24 THE COURT: Go ahead.

25 Q Do you recall that hair area?

1           A           Yes sir.

2           Q           And do you recall now how it looked?

3           A           It looked like a lump of hair.

4           Q           Okay. Did you preserve that hair in some way?

5           A           Yes sir.

6           Q           How did you do that?

7           A           Photograph and the hair preserved as evidence

8 and tagged.

9           Q           Who tagged it as evidence?

10          A           I don't remember.

11          Q           Did you do it?

12          A           I don't remember.

13          Q           If it was tagged as evidence, then I take it

14 that your name would appear on the plastic container?

15          A           Yes sir.

16          Q           And have you had an opportunity to look at that

17 to see whether your name appears on that evidence container?

18          A           I have looked, Sir, at so much evidence that I

19 can't remember what I looked at anymore.

20          Q           Well then you are just not prepared to testify

21 to that then?

22          A           Not as to who bagged and tagged it, no sir.

23          Q           Okay. Now in the -- I am sorry, in the exhibit

24 that has been introduced in evidence in this case, and I am

25 now referring to State's Exhibit Number 30, could you perhaps

1 step down here, Officer (Officer steps down) and we have here  
2 on the board here, Defendant's Exhibit A for illustrative  
3 purposes. It shows the location of Sandy Beach and then, I  
4 think the airport road right here, and there is a field there  
5 right here, and then highway 2 runs generally through Poplar,  
6 and then the Exxon Station and there is the highschool that  
7 is on the west side of Poplar, and then the railroad and the  
8 Poplar River. Is that all clear to you?

9 A Yes sir.

10 Q Now could you show the jury where the highschool  
11 appears in this exhibit, is that possible?

12 A Fron this, I couldn't tell.

13 Q You can't tell that?

14 A No.

15 Q Could you tell me where Highway 2 is?

16 A Highway 2 is right here.

17 Q Just show the jury where Highway 2 is?

18 A Right up here.

19 Q That object right there in the middle, on the  
20 top there, is that the Poplar Highschool?

21 A Sir, I don't know what that is.

22 Q How long did you work down there?

23 A I never worked in Poplar.

24 Q Okay, in the picture, in the photograph there  
25 appears to be what seems a little road, do you see that here?  
Looks like motorcycle roads right in here or car climbing roads?

1 A Yes.

2 Q Is that a bluff there that is depicted by these  
3 little roads that are going up there?

4 A I believe so.

5 Q And you were up there, going from house to  
6 house, that would be on top of the bluff there, right?

7 A Yes sir.

8 Q All right, thank you. All right, just a few  
9 more brief questions, Officer Wilson. Do you, with respect  
10 to the vehicle preserve or tag any evidence including blood  
11 or any other object that appeared to you to be helpful as  
12 evidence in this case?

13 A I believe the time-wise envelope was saved.

14 Q By you?

15 A No sir, I didn't do it.

16 Q I asked you specifically if you did it?

17 A I can't remember.

18 Q Okay. With respect to the blood area, do you  
19 remember if you tagged any blood or took any photographs of  
20 that area?

21 A No sir, I didn't take photographs. I can't  
22 remember if I tagged it or not.

23 Q How about the purse and the sweater?

24 A Same thing sir.

25 Q And the footprints?

1           A           I can't remember the footprints.  
2           Q           And the hair?  
3           A           I remember the hair.  
4           Q           Did you tag any of it?  
5           A           I can't remember that.  
6           Q           And the other blood that is listed down there?  
7           A           I don't remember that either.  
8           Q           Okay. Do I understand it though that you  
9 started at the river and took measurements up to the vehicle?  
10          A           Yes.  
11          Q           And that is all of your testimony, that you  
12 simply started out down at the river and helped take measure-  
13 ments all the way up to the vehicle?  
14          A           No sir.  
15          Q           What else did you do?  
16          A           I did the interior of the pickup.  
17          Q           The interior of the pickup, and did you  
18 preserve any of that evidence?  
19 MR. RACICOT: Your Honor, this is getting pretty repetitious,  
20 and we will object to it. He already testified that he  
21 didn't remember.  
22                               THE COURT: I think so too, but go  
23                               ahead, can you answer that?  
24          A           No sir, I can't remember what I tagged and what  
25 I didn't tag.

1 MR. MOSES: Well he brought up the interior; I asked him  
2 if he did the measurements from the river to the vehicle and  
3 I asked him what else he did, and he said that he did the  
4 interior of the vehicle, and I just want to make sure if you  
5 remember what all you did.

6 A I can't remember.

7 Q How was the crime scene preserved, that is, to  
8 prevent a bunch of people around obliterating the evidence?

9 A The Tribal Police were up on the Highway 2, and  
10 they were keeping the traffic flow under control, and keeping  
11 people from coming into the area.

12 Q Did any of the beer cans -- were there any beer  
13 cans along the drag mark?

14 A I don't recall, Sir.

15 MR. MOSES: I have no further questions of this witness.

16

17 REDIRECT EXAMINATION

18 By Mr. Racicot:

19 Q Red, you talked about how the crime scene was  
20 preserved. Would you say the crime scene was processed very  
21 well or not so well?

22 MR. MOSES: I am going to object upon the grounds that this  
23 asks for the conclusion rather than a statement of fact.

24 THE COURT: Sustained.

25 Q Who was in charge of that crime scene?

1 A Sheriff Carpenter.

2 Q Was everyone given a specific direction? Were  
3 there a number of people roaming around that crime scene?

4 A Yes sir.

5 Q Some of them picking up some things, and someone  
6 else picking up other things?

7 A Yes sir.

8 Q Did the FBI come in and take over the investigation  
9 and give direction?

10 A No sir.

11 Q Did the BIA?

12 A No sir.

13 Q Did the Tribal Police?

14 A No sir.

15 Q Everybody roaming around do, doing what they  
16 could?

17 A Yes sir.

18 Q Now, Red, I believe you testified that the  
19 blood in the vehicle, and you stated there was heavy blood  
20 on the driver's side?

21 A On the driver's side, behind the driver's head,  
22 on the rear window.

23 Q And was that also down the back of the rest of  
24 the seat, on the driver's side?

25 A I can't recall that, Sir.



1 Q And the fingerprints that you testified to, do  
2 you recall being on the right moulding, do you recall whether  
3 or not that was a clear fingerprint or if it was smudged?

4 A It was clear enough for identification.

5 Q Would you take a look at your notes there.  
6 (The witness examines his notes) How did you characterize it  
7 in your notes?

8 A Bloody smudged fingerprints on right upper  
9 moulding.

10 Q So they were smudged, to the best of your  
11 recollection?

12 A Yes.

13 Q They were?

14 A Yes sir.

15 AT THIS TIME, the Court reporter marked two instruments  
16 as one being State's Exhibit 34 and one as State's  
17 Exhibit number 35.

18 Q I hand you what has been marked as State's  
19 Exhibit number 34, can you identify that?

20 A Yes sir.

21 Q And what is that?

22 A That is the box of the pickup and it shows the  
23 small blood specks along the side of it.

24 Q And which side of the pickup is that?

25 A The passenger's side.

1 Q Did you take that photograph?

2 A No sir.

3 Q Does it accurately represent what you saw on  
4 the morning of June 16th, 1979?

5 A Yes sir.

6 MR. RACICOT: We move for admission of State's E<sup>X</sup>hibit number  
7 34.

8 MR. MOSES: (After examination of said exhibit) I have no  
9 objection to the introduction of State's Proposed Exhibit  
10 number 34.

11 THE COURT: State's 34 is admitted in  
12 evidence.

13 MR. RACICOT: I have no further questions.  
14

15 RECROSS EXAMINATION

16 By Mr. Moses:

17 Q Officer Wilson, on your redirect examination by  
18 Mr. Racicot, you indicated that you thought there was blood  
19 on the driver's side up toward the top of the back seat. Is  
20 that what you said?

21 A Up on the rear window.

22 Q The rear window?

23 A Yes.

24 Q Is that reflected in the Exhibit Number 33?

25 A No sir, it does not show that on the rear window.

1 Q It does show that the driver's side is clear of  
2 blood?

3 MR. RACICOT: Objected to, Your Honor, the picture speaks for  
4 itself.

5 THE COURT: Go ahead, I think that it  
6 does, but go ahead.

7 Q It does show, does it not, that it is clear of  
8 blood here in the upper area?

9 A Yes.

10 Q Now in your examination of the new exhibit that  
11 was presented to you, which is State's Exhibit Number 34, I  
12 take it that that represents the rear of the vehicle on the  
13 right side or the passenger side?

14 A Yes sir.

15 Q And there are little flecks of blood that you  
16 can see in that photograph?

17 A Yes sir.

18 Q So that if there was considerable amount of  
19 blood on the passenger side, then the blood trails evidently  
20 along the rear of the vehicle? It doesn't go straight across  
21 does it?

22 MR. RACICOT: Your Honor that is speculative.

23 MR. MOSES: I will withdraw that question, it is a terrible  
24 question.

25 Q You did not find any blood particles that you

1 observed on the driver's side, on the rear?

2 A No sir.

3 Q Okay. Now on this Exhibit number 4, there is  
4 a dark spot right to the rear of the purse, do you know what  
5 that is?

6 A No sir.

7 Q Could it have been blood?

8 A Sir, I can't recall.

9 MR. MOSES: Okay, thank you very much, Officer. I have no  
10 further questions.

11 MR. RACICOT: We have no further questions, subject to recall,  
12 Your Honor. WITNESS IS EXCUSED, subject to Recall.

13 THE COURT: All right. We will take  
14 a short break here. (Court then  
15 admonishes the Jury at 10:34 AM)

16 COURT IN RECESS from 10:34 AM until 10:51 A.M., after  
17 which time, the following proceedings were had:

18

19

20

21

22

23

24

25

1 MR. RACICOT: We will recall Red Wilson.

2 WHEREUPON,

3 MR. ERROL WILSON

4 having been recalled as a witness on behalf of the State of  
5 Montana, and having been previously sworn in upon his oath,  
6 testified as follows:

7

8 REDIRECT EXAMINATION

9 By Mr. Racicot:

10 Q You are Errol Wilson?

11 A Yes sir.

12 Q And you are the same person that testified  
13 here earlier this morning?

14 A Yes.

15 Q And I think previous to the time we terminated  
16 your questioning, I asked you if you had talked to Roberta  
17 Clincher at her home on the morning of June 16th, 1979?

18 A Yes.

19 Q And that you was questioning her and a number  
20 -- you and other officers were questioning her and a number  
21 of other people as to whether or not they seen or heard  
22 anything in relation to the death of Kimberley Ann Nees?

23 A Yes.

24 Q Did Mrs. Clincher make a statement to you  
25 concerning her son having come home early in the morning on  
that particular day?

1 A Yes sir.

2 Q And did she relate to you a statement concerning  
3 whether or not the defendant had blood upon his person when  
4 he came home?

5 A Yes.

6 Q And what was that statement?

7 A She told me that the defendant had told her that  
8 he had wrecked the car, had gotten it stuck in the sand at  
9 the swimming hole and that they had been drinking and couldn't  
10 get the car out and he told her that he had hit the car with  
11 his fist and that was to explain how he was covered with blood.

12 Q She did tell you that he was covered with blood?

13 A Yes.

14 MR. RACICOT: We have no further questions.

15

16 RE CROSS EXAMINATION

17 By Mr. Moses:

18 Q Mr. Wilson, you were testifying from some notes  
19 that you had exhibited here in the courtroom to refresh your  
20 memory. Do you have those notes available and with you now?

21 A No.

22 Q What did you do with those notes, you had them  
23 just three or four minutes ago.

24 A I have the notes as to the inside of the pickup.

25 Q Well do you have notes as to your conversation  
with Mrs. Clincher?

1           A           No sir.

2           Q           This was five years ago?

3           A           Right.

4           Q           So that you don't have a single, soliditary

5 note which would confirm what you just said as to what this

6 conversation was between you and Mrs. Clincher?

7           A           No sir.

8           Q           Who did you talk to about this conversation

9 recently?

10          A           Would you say that again please?

11          Q           Who did you talk to about this conversation

12 that you just testified to recently?

13          A           Mr. Racicot.

14          Q           When did you talk to him about that?

15          A           I believe it was the night that I got into

16 town, two nights ago.

17          Q           And did he refresh your recollection from any

18 document that he had in his possession?

19          A           Not that I can recall.

20          Q           It was just a stab in the back by him? He had

21 no basis upon which to ask you any questions about your

22 conversation with Mrs. Clincher?

23          A           I don't understand what you mean.

24          Q           He had no definite -- no document or anything

25 to exhibit to you which would indicate that he would know about

any conversation between you and Mrs. Clincher?

1 A Sir, I don't know what Mr. Racicot had.

2 Q Did he exhibit anything to you?

3 A No sir.

4 Q And I take it that suddenly two days ago, you  
5 had total recall of a conversation with Mrs. Clincher from  
6 almost five years ago?

7 A No, I don't understand what you are asking me.  
8 You don't forget a thing like that.

9 Q You don't forget a proposition that a car -- that  
10 a fellow got his car stuck and was kicking it, and some of the  
11 witnesses here have testified that he was hitting it with his  
12 fist?

13 A No sir.

14 Q You don't forget that?

15 A I never did.

16 Q There wasn't anything else then, that Mrs.  
17 Clincher said to you that you considered significant other  
18 than the fact that he had hit his car with his fist?

19 A Yes there was.

20 Q Other conversations?

21 A Yes sir. It is all on the statement.

22 Q Oh. Did you write all of this down, officer?

23 A No sir.

24 Q I take it in your recollection, you can't even  
25 recall what you did with respect to your investigation, and



1 whether you took that evidence, and whether you didn't, you  
2 can't recall that, but now, you have total recall about a  
3 conversation?

4 A Yes sir.

5 Q And you don't have your notes on it?

6 A No sir.

7 MR. MOSES: Okay, thank you, Officer Wilson, I have no  
8 further questions.

9

10 RE-REDIRECT EXAMINATION

11 By Mr. Racicot:

12 Q Red, had I talked to you about this case at all  
13 since June 16th, 1979 until you came back to town two nights  
14 ago?

15 A No.

16 Q Did I suggest to you or did I ask you general  
17 questions about the investigation and what occurred?

18 A Yes, general questions, yes.

19 Q And it was during that general questioning that  
20 you related that to me?

21 A Yes sir.

22 Q Did I suggest that to you in anyway, Mr. Wilson?

23 A No sir.

24 Q Now with reference to the statement itself, it  
25 was made to you, isn't that a fact -- in fact one of the

1 reasons why the Roosevelt County Sheriff's office termed Mr.  
2 Beach a suspect in the first place?

3 MR. MOSES: Your Honor, I object to the question as leading  
4 and suggesting and I ask that it be stricken because it is  
5 trying to establish by the lawyer's question that this was in  
6 fact the reason why the investigation focused upon Mr. Beach.

7 THE COURT: I am not sure, but I will  
8 sustain the objection and strike the  
9 answer.

10 Q Red did this statement have any significance  
11 to you as an investigating officer in this case?

12 A Yes it did.

13 Q And what significance did it have to you?

14 MR. MOSES: I object upon the grounds that it calls for a  
15 conclusion as to information that he received and asked him  
16 to give and express an opinion as to what significance this  
17 might have had; it is also self-serving; and it also invades  
18 the province of the jury.

19 THE COURT: Well I think the question  
20 has been raised as to why he can  
21 recall this after all of these years  
22 and I think that he should be able to  
23 explain it. Go ahead.

24 Q What significance did it have to you, Red?

25

1 A It made the defendant a suspect.

2 Q And did you relate that information to the other  
3 law enforcement officers associated with the investigation?

4 A Yes I immediately went back to the crime scene  
5 and told Sheriff Carpenter.

6 Q And has anybody, other than myself, ever  
7 interviewed you about this case?

8 A No sir.

9 Q And have you been interviewed by anybody else  
10 you would have told them what happened, correct?

11 A Yes sir.

12 MR. RACICOT: Thank you, that's all.

13

14 RE-RE-CROSS EXAMINATION

15 By Mr. Moses:

16 Q Officer Wilson, when you were going down to these  
17 various houses, wasn't there someone by the name of Stanley  
18 or something like that?

19 A Who?

20 Q I don't recall exactly what their name was, do  
21 you recall the name?

22 A No, but you are close though.

23 Q They live up in that same area?

24 A They live on that little -- on that rim, yes.

25 Q And did they advise you as to hearing pleadings  
for help that evening?

1 MR. RACICOT: We will object, if the Court please, that calls  
2 for hearsay, that's classic hearsay.

3 THE COURT: Yes it would be.

4 Q . In the interview of these people, did they  
5 relate to you information concerning pleas for help?

6 MR. RACICOT: Objected to, it is still classic hearsay. You  
7 can call those witnesses in here to testify.

8 THE COURT: There is no question that  
9 its hearsay. We just went through all  
10 of that.

11 Q How many people did you contact up on the hill?

12 A Every house that was along that rim that had  
13 people in it, we talked to.

14 Q And did you talk to these people by the name of  
15 Sparvier?

16 A Yes sir.

17 Q Did you record any statements that were made  
18 by these people?

19 A No sir.

20 Q Did you record any statements made by any  
21 person that you checked with up on the brow of that hill?

22 A No sir.

23 Q Was that merely inadvertance?

24 A No sir, when we first went up there it was  
25 merely to gather information to see if anyone heard anything  
and then they would be interviewed.

1 Q So if there was anything significant, to use  
2 that phrase, anything that you thought was important in  
3 connection with the investigation, you would write it down,  
4 right?

5 A Yes sir.

6 Q And in this case, with respect to Mrs. Clincher,  
7 you did not write it down, did you?

8 A No, I knew who Mrs. Clincher was.

9 Q I am not talking about the person you talked to,  
10 I am saying that as a good law enforcement officer, so that  
11 you understand what I am saying, if there was anything  
12 significant or important, which you felt had any bearing or  
13 relevance to the investigation, you would write it down?

14 A Not in this case, Sir.

15 Q You made an exception to your usual law enforce-  
16 ment procedure?

17 A No sir.

18 Q Are you trained by the law enforcement agency,  
19 to write down and make out reports as to matters which are  
20 significant, which may have a bearing in any particular case?

21 A Would you say that again please?

22 Q Would you read that to him, Calmer?

23 WHEREUPON the court reporter read the last question to the  
24 witness.

25 Q Aren't you trained to do that?

1           A           Sir, my job at that time was to go out and  
2 try to find people who knew something about the crime, and  
3 not to interview them, Sir.

4           Q           I understand that, Sir. Isn't it your training,  
5 that any matter that comes to your attention, that you are to  
6 make a note of it and if it is significant, it can be  
7 produced later as evidence and you didn't have to rely upon  
8 your memory?

9 MR. RACICOT: We would object, Your Honor, ---

10                       THE COURT: Well go ahead and answer  
11 the question.

12          A           In reference to Mrs. Clincher's statement, as  
13 soon as she made the statement I returned to Sheriff Carpenter  
14 and informed him exactly what Mrs. Clincher had told me. I  
15 did not write it down as I was not a trained interviewer at  
16 the time.

17          Q           So that what you are saying now then, is that  
18 you were not a trained interviewer, so you would not be in a  
19 position to write down anything that you thought was significant?

20          A           Would you say that again, Sir?

21          Q           Excuse me. At the time that you were working  
22 for the Sheriff's office in June of 1979, you were not a  
23 trained interviewer?

24          A           That is right.

25          Q           And therefore you did not make any writings or

1 records of what was said?

2 A That's right.

3 Q You do not know of any document or the production  
4 of any document that you have ever seen which recorded or  
5 somehow made reference to the conversation that you just  
6 testified to with Mrs. Clincher?

7 A I am not aware of any.

8 Q None has ever been shown to you?

9 A No sir.

10 Q Finally, did you go to the Sparvier house and  
11 interview them?

12 MR. RACICOT: Objection, Your Honor, he has answered that once.

13 THE COURT: Sustained.

14 MR. MOSES: Well I don't recall his answer, if he did answer  
15 it.

16 THE COURT: You asked the question I  
17 believe before and he answered it yes.

18 MR. MOSES: I am sorry, I didn't recall that. Thank you, I  
19 have no further questions of Mr. Wilson.

20 MR. RACICOT: I have no further questions of Mr. Wilson and  
21 ask that he be excused.

22 THE COURT: Any objection to that?

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

24 THE COURT: Yes.

25 MR. MOSES: For the purpose of foundation, Your Honor, if

1 we are going to excuse Mr. Wilson, I would like to ask him a  
2 couple of questions and perhaps ask for a stipulation by  
3 counsel.

4 THE COURT: Foundation for what?

5 MR. MOSES: Well, if I may ask the first question, I think  
6 it will be clear as to foundation, Your Honor, if I may.

7 THE COURT: Go ahead and ask Mr. Wilson.

8 MR. MOSES: further examines the witness:

9 Q Mr. Wilson, with respect to any of the exhibits  
10 here or fingerprints, of blood, or physical exhibits, you cannot  
11 testify as to the foundation for them as to whether they were  
12 recovered by you or not, is that right?

13 A That is right.

14 Q And if your name does appear on one of the  
15 exhibits, as one who gathered in the exhibit, in a plastic  
16 bag, it would be your testimony that you did it in the usual  
17 course of your law enforcement duties and that you properly  
18 tagged and numbered the exhibit if your name appears?

19 A Yes sir.

20 MR. MOSES: And with that understanding then, I would have  
21 no objection to the excusing of this witness permanently and  
22 if we could stipulate and agree by counsel with respect to  
23 any exhibit that his name happens to appear as the one that  
24 gathered it and that he gathered it in due course and would  
25 not require him to testify as to the foundation of it at the



1 -- or the chain of evidence in any matters that he may have  
2 been involved with.

3 MR. RACICOT: We would so stipulate to that, Your Honor, and  
4 secondly, concerning the foundation requirements that Mr.  
5 Moses might have, based upon his questions.

6 Q Red, in the evidence that is involved in this  
7 particular case, and the tagging of it, can you tell us that  
8 you can account for every location where it is, where it was,  
9 every location since then?

10 A No I cannot.

11 Q And so if your name appears on an evidence  
12 tag, it would indicate to you that at one time or another,  
13 you touched that piece of evidence, but you have no idea where  
14 it had been before nor where it has been since?

15 A Right.

16 Q Would that be a fair statement?

17 A Yes.

18 MR. RACICOT: Thank you.

19 MR. MOSES: I want the record to be clear with respect to  
20 anything in the chain of evidence that Mr. Wilson is involved  
21 in, we would waive any foundation insofar as Mr. Wilson is  
22 concerned and with that he could be permanently excused.

23 MR. RACICOT: That is fine, but we don't waive that your Honor.

24 THE COURT: Fine, your excused.

25 WHEREUPON this witness was EXCUSED.