

1 AT THIS TIME, the time being 11:48 o'clock A.M., the
2 Court had a NOON RECESS until the hour of 1:00 o'clock
3 PM., at which time, the following proceedings were had:

4 THE COURT: Court is in session, you
5 may be seated. Let the record show
6 that the defendant and his attorney
7 are present, and that the attorneys
8 for the state and the jury are also
9 present. You may proceed, Mr. Moses.

10 MR. MOSES: Call Joanne Jackson please.

11 WHEREUPON,

12 MS. JOANNE JACKSON

13 having been called as a witness on behalf of the Defendant,
14 and being first duly sworn upon her oath, testified as
15 follows:

16
17 DIRECT EXAMINATION

18 By Mr. Moses:

19 Q Would you state your name please?

20 A Joanne Jackson.

21 Q Please speak up good and loud, so that everybody
22 can hear you.

23 A Joanne Jackson.

24 Q And where do you live?

25 A Poplar.

1 A And that is Poplar, Montana?

2 A Yes.

3 Q And what is your occupation?

4 A I don't have none.

5 Q How old are you, Miss Jackson?

6 A Twenty.

7 Q And in connection with this particular case,
8 involving the death of Kimberley Nees, in the early morning
9 hours of June 16th, 1979, did you ever have a conversation
10 with Calib Gourneau concerning that event?

11 A What night was this again?

12 Q Well, concerning the events which is alleged
13 to have occurred on June 16th, 1979, and I am talking about a
14 conversation that you had with Calib Gourneau later on with
15 respect to that event?

16 A Yes I did.

17 Q And did you appear voluntarily at the Fort
18 Peck Police Department in connection with that statement? Would
19 you take a look at that please?

20 (Witness examines a document)

21 A I don't remember.

22 Q You did appear at the police department though,
23 didn't you?

24 A Yes.

25 Q And did you advise them that a boy had told you
something in connection with that case?

1 A I don't remember.

2 Q Well did you advise them ---

3 MR. RACICOT: I am going to object to any further questioning
4 unless a proper foundation has been laid for further
5 questioning, she had already stated that she doesn't remember
6 and has no recollection and therefore I feel that it improper
7 to proceed any further.

8 Q Well did you have a conversation with Calib
9 Gourneau?

10 A Yes I did.

11 Q And did you at that time and place, hear him
12 tell you that he was in a position to hear a girl scream, "No,
13 Goose, no"?

14 A I don't remember him telling me that.

15 Q Do you remember giving a statement to the Federal
16 Bureau of Investigation on June 18th, 1979, to the FBI agent?

17 A Yes I did, but I don't remember saying that.

18 Q You remember whether Calib Gourneau told you
19 that he heard screaming and ---

20 MR. MOSES: Objection, it is repetitious ---

21 A And saying "No, Goose, No"?

22 MR. MOSES: Objection, Your Honor, he is suggesting the
23 answer to the witness.

24 THE COURT: Yes, it's improper.

25 Q What did he say in this conversation that you had?

1 A I remember him saying that night that he heard
2 a dog barking.

3 Q You admit, however, that you reported in three
4 different reports to the FBI that statement or its equivalent?

5 MR. RACICOT: Your Honor, I believe that that statement is
6 misleading; she said she remember talking to Calib Gourneau,
7 and talking also to the FBI and what she told them and what
8 appears on that report is not what she told the FBI, at least
9 she doesn't remember telling them that and those three
10 statements do not reflect the same identical information. The
11 question is misleading and besides that, it is repetitious.
12 I don't believe she can answer that.

13 MR. MOSES: I will withdraw the question then.

14 Q Did you tell the FBI in an interview that Calib
15 Gourneau told you that he had heard screams down in the area
16 where Kimberley Nees's truck was and the statement was made
17 "No, Goose, No" and did you tell the FBI that?

18 MR. RACICOT: We object, your Honor, repetitious, she already
19 said she don't remember saying that.

20 A I do not remember that. All that I remember is
21 what I just told you.

22 Q Where were you that evening, the evening of
23 June 15th, 1979?

24 A Well I got home, I guess, around 12:30.

25 Q When did you see Kimberley Nees?

- 1 A I didn't see her that night at all.
- 2 Q Do you recall seeing Kim Nees that evening, that
3 was my question?
- 4 A No.
- 5 Q Well where were you that evening?
- 6 A That evening?
- 7 Q Yes, were you at the Buckhorn Bar?
- 8 A Yes I was.
- 9 Q And did you see the Nees pickup drive by?
- 10 A Yes I did.
- 11 Q And what time was that?
- 12 A Sometime after twelve o'clock, but I don't
13 remember for sure the exact time, but it was before 12:30.
- 14 Q Was there a person or persons in the car?
- 15 A I don't remember.
- 16 Q Did you report to the FBI what you recall?
- 17 A Seeing the pickup, yes I did.
- 18 MR. MOSES: I have no further questions.

19

20

CROSS EXAMINATION

21

By Mr. Racicot:

22

Q Joanne, we have had occasion to talk before,

23

haven't we?

24

A Yes.

25

Q Isn't it true, Joanne, that immediately after
Kimberley Nees's death, that everybody was speculating about

1 who caused her death?

2 A Yes.

3 Q And in this conversation that you had with
4 Calib, it was one of these times when you were all gathered
5 around together, trying to decide in your own minds who might
6 have done it?

7 A I remember talking about it, yes.

8 Q And so did a lot of other people?

9 A Yes.

10 Q It is a small town?

11 A Yes, and a lot of rumors.

12 Q Rumors were rampant?

13 A Yes.

14 Q And one rumor would be stacked on top of another
15 rumor, would that be accurate?

16 A Yes.

17 MR. RACICOT: Nothing further of Joanne Jackson.

18

19 REDIRECT EXAMINATION

20 By Mr. Moses:

21 Q Miss Jackson, when you said you had this
22 conversation in which Calib made a statement about the dog,
23 did he say "our dog was barking" and then I heard screams and
24 the words "No, Goose, No" ---

25 MR. RACICOT: Objection, he has asked that question before and

1 she said she doesn't remember him saying that.

2 THE COURT: Objection is sustained.

3 MR. MOSES: But if she said that he told her that he heard
4 a dog barking, then I've got to establish if she told the
5 FBI.

6 THE COURT: She has already said that
7 she doesn't remember saying that, to
8 the FBI.

9 MR. MOSES: (Referring to a different statement) that is
10 not the same one, that is a different one. I would like to
11 make an offer of Proof, Your Honor, if I can, please.

12 THE COURT: All right. The jury can
13 remain seated, We will be right back.

14 IN CHAMBERS: (Defendant and his counsel, both counsel for
15 the State being present, and outside the hearing of the Jury)

16 THE COURT: Go ahead.

17 MR. MOSES: May the record show that if this witness were
18 permitted to answer the question posed to her, that on June
19 18th, 1979, she was interviewed by Brent W. Warberg, an agent
20 for the Federal Bureau of Investigation and that the record
21 of that report reflects the following statement: "At one
22 point Calib said it was Goose, he said our dog was barking
23 and I went out and heard Goose's voice and he told her not to
24 tell anybody what he had just revealed" and it is the purpose
25 of this question for this witness is simply now saying that

1 all she could remember was he said "Our dog was barking" and
2 is to either refresh her recollection or to place in the
3 record for the purpose of impeachment the fact that she did
4 make these additional statements to the officer, and we believe
5 that is proper, and we have to read to her, "did you say that?"
6 and that was the purpose of the question and then ask her,
7 "did you say that to the officer?".

8 MR. RACICOT: I believe that question has already been asked
9 and she answered it. She already said that she didn't say
10 that in that interview, and you repeated it over and over and
11 over again, "did you say No, Goose, No" and she keeps telling
12 you, "no all he said was that I heard the dog barking" and
13 then you said, "well what about this report?" and she looked
14 at it and said "I don't remember saying that".

15 MR. MOSES: Well then I will have to get Mr. Warberg to come
16 and testify.

17 MR. RACICOT: That's fine.

18 MR. MOSES: Do you know where he is?

19 MR. RACICOT: No, not really, but I don't think that you can
20 badger a witness into submission just because that is the way
21 you want it, rather than the way she remembers it.

22 MR. MOSES: It isn't a question of her memory, it is a
23 question, -- she says "I remember the dog was barking" and then
24 I asked her and I go on and say, "well if that is all that
25 you remember, you remember telling the law enforcement officer

1 these additional statements and ---

2 MR. RACICOT: You have already asked her that.

3 MR. MOSES: What?

4 MR. RACICOT: You have already asked her that and she said
5 no. She doesn't remember telling the officer "No, Goose, No"
6 and all that she remembers is that he told her that the dog
7 was barking.

8 MR. MOSES: I have not asked her the question, "did he tell
9 you not to tell anybody about this" that is my last question.

10 THE COURT: I think it is pretty clear
11 that her testimony here today is
12 different than it was then, as she
13 remembers all that Gourneau told her
14 was that the dog was barking.

15 MR. RACICOT: Well I think that the question you have
16 indicated right now is all right, ask her about that now, I
17 think that would be all right.

18 THE COURT: Let's go back in court.

19 IN THE COURTROOM - with all counsel, the defendant and the
20 jury being present.

21 THE COURT: You may proceed.

22 REDIRECT EXAMINATION continued by Mr. Moses:

23 Q At the time of this conversation with Calib
24 Gourneau, did he tell you not to tell anybody about what he
25 had just revealed to you?

1 A I can't remember that, but he might have said
2 something about it.

3 MR. MOSES: Thank you, Madam.

4 MR. RACICOT: Nothing further.

5 MR. MOSES: I ask that this witness be excused.

6 THE COURT: All right, you may be
7 excused.

8 WHEREUPON this witness was EXCUSED.

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