

1 it has been agreed that Under Sheriff
2 Ronald Wilson may stay in the courtroom.
3 With that, the State may proceed with
4 their opening statement.

5 STATE OF MONTANA'S OPENING STATEMENT

6 By Mr. Racicot: The evidence is going to show that Kim Nees
7 is dead and that she died at the age of seventeen, two days
8 after she graduated from high school and a couple months shy
9 of her eighteenth birthday. The evidence will also show that
10 it has been almost five years ago that that occurred during
11 the month of June, a kind of a dry June that the people who
12 live up here are familiar with. On the afternoon of June 15th,
13 1979, it was a Friday, the Defendant and two of his friends
14 by the name of Calib Gourneau and Shannon O'Brien decided they
15 were going to go swimming at a swimming hole on the Poplar
16 River called Sandy Beach. On the way going to that swimming
17 hole they ran into Pam Nees, a sister of Kim, and a former
18 girl friend of the Defendant, and at that time the Defendant
19 asked her to go along with them swimming and she declined and
20 as far as she can recall he was not angry about it; and so the
21 Defendant and Shannon O'Brien and Calib Gourneau went to the
22 swimming hole called Sandy Beach just a little bit northwest
23 of Poplar, just on the outskirts of town to swim that after-
24 noon, that Friday afternoon; and they swam and they drank
25 throughout the afternoon until about five or five thirty and

1 at midnight, and she was a little bit angry, that Greg had
2 gone down to the Legion Club, and then got into her father's
3 pickup to drive around town. Shortly after that, about
4 12:30 and this would be on the night of the 16th, or the
5 early morning hours, excuse me, about 12:30 in the morning,
6 and later she sees Steve Schagunn and his girl friend, Susie
7 Kirn were driving around Poplar, and they saw Kim Nees parked
8 at the Exxon Station in Poplar, a little pull-out there, where
9 the kids in Poplar would pull out and watch the traffic as
10 the people were driving around. He noticed Kim there about
11 12:30. She was alone. She was in her father's pickup, and
12 that is the last time, the last time that anybody but the
13 Defendant saw Kim Nees alive. The next morning, later on in
14 that morning, about 4:15 A.M., two tribal police officers
15 were on routine patrol on U. S. 2 and then just on the west
16 edge of Poplar, going down Highway 2, they looked off to the
17 left side of the highway, the south side of the highway and
18 they saw a vehicle down there. A blue and white Chevrolet
19 pickup. That wasn't all that unusual to see a pickup down
20 there in that area, kids frequently parked down in that area,
21 and they decided that everything, at least from their point
22 -- from that point in time, was all in order. They proceeded
23 on. Later, about 7:00 in the morning they came back and they
24 were up above this particular area in the city of Poplar, and
25 they could see down into this area, where the railroad tressle
went across the Poplar River, an area where kids would frequently

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1 park, and they could see that this pickup was still there,
2 and so they decided that perhaps they would go and check it
3 out and they drove down into this parking area, and they
4 decided to do a license check on it and it came back as
5 being registered H. Nees, who you will find out is the father
6 of Kim Nees. After they run a vehicle check, they got out
7 of their vehicle and they went to the pickup and looked
8 inside. It was blood splattered throughout the interior of
9 that pickup. Gouges in the ceiling, and steering wheel. They
10 walked around to the other side; patches of hair, and here
11 was a purse and a coat, spring coat lying on the ground covered
12 with blood. They looked to the right and ten feet away from
13 the pickup another large area of blood and from that spot of
14 blood they noticed what appeared to be a drag trail and these
15 two officers, Calvin Red Thunder and Alfred Lizotte followed
16 that trail and they walked along there and as they walked
17 along there periodically they could see a patch of hair,
18 splattered in blood. They got to the edge of the bank of the
19 Poplar River which is about twenty feet away from the vehicle
20 itself, and they looked down into the river and here was the
21 body of a young white female girl floating face up, pointing
22 north about ten feet from the shore in about two feet of
23 water, floating in the river. They went back to their
24 vehicle and they notified the FBI and they notified the
25 BIA, the Bureau of Indian Affairs, and they notified the

1 Roosevelt County Sheriff's office and they notified the Poplar
2 City Police, and as you will hear, there are jurisdictional
3 problems on Indian Reservations, and by jurisdictional, I mean
4 that sometimes it isn't determined until at a later stage of
5 the game, whose responsibility it is to investigate. If it
6 is a federal crime involving a Native American, then the
7 federal government investigates; if it is not, then the County
8 or state authorities investigate it. It wasn't clear at that
9 point in time. So they secured the scene at that time, that
10 is Alfred Lizotte and Calvin Red Thunder and they marked off
11 the entrances to that parking area. Now eventually the
12 Roosevelt County Sheriff's office responded. They sent
13 several people down and they began to process the scene and
14 take photographs. One of those officers was Red Wilson. He
15 examined the pickup truck, and he found the pickup truck
16 heavily laden with blood. He found gouge marks in the
17 ceiling and steering wheel. He found patches of hair and
18 strands of hair sticking out of the gouge marks in the roof
19 or ceiling of that particular vehicle. They bagged the
20 evidence. They picked up the sweater that would found outside°
21 and preserved it and they took samples of everything they
22 could find and marked everything that could be marked. They
23 looked for the murder weapon. They looked at the vehicle to
24 process it for fingerprints; they collected blood samples from
25 inside the vehicle, but they didn't have many clues. They didn't

1 have many at all. They followed up on everything and that
2 morning after the body of Kim Nees was removed from the Poplar
3 River, she was transported to Great Falls for an autopsy and
4 Doctor Pfaff did the autopsy, and he found that she had had
5 a beer or two within a short period of time before her death,
6 but that she was sober. He found that she did not drown, there
7 was no water in her lungs at all, so that she had been
8 placed in the river after she had been killed. He found that
9 she had not been sexually assaulted, that there was no
10 evidence of sexual imput. He found that she had lived a
11 short while after the injuries were inflicted. Doctor Pfaff
12 also found that Kimberley Ann Nees, age 17, had sustained
13 over thirty blows to the head and to the neck with a very
14 lethal weapon. He found that he skull was literally crushed
15 into pieces and that she died from severe brain hemorrhage.
16 He found extensive wounds on the back of her hands where she
17 had tried to prevent some of the injuries; and he found an
18 injury on her back, a drag mark on her back that was inflicted
19 after death; so at that point of time the law enforcement
20 officers had a little bit more information then they had
21 before. After the autopsy they brought Kim's body back to
22 Wolf Point and they took fingerprints at that point in time
23 and they began their investigation. On the morning of this
24 investigation and prior to the time they had the autopsy
25 report, one of the deputies here, Red Wilson began a house

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1 to house canvass of a certain area of Poplar and this area
2 was all close together, the Sandy Beach area, this railroad
3 train bridge area where the death occurred and the City of
4 Poplar, and he began a house to house coverage of that
5 particular area and he came to the house of the Defendant and
6 he talked to the Defendant's mother, and it was at that point
7 in time, the first time, that the defendant was suggested to
8 be involved, by his Mother, stating that she hoped ---

9 MR. MOSES: I am going to object to any statements that
10 were made, in an opening statement referring to hearsay
11 testimony. There is no -- He can't get this in indirectly,
12 and he has indicated that he is not going to call her as a
13 witness.

14 AT THIS TIME, counsel for the Defendant and the State of
15 Montana approached the bench, and out of hearing of the
16 Jury and this Court Reporter, conferred with the Court.

17 MR. RACICOT: (Continuing with his opening statement) At that
18 point in time, Red Wilson and the other law enforcement
19 officer continued their investigation. Frankly, they didn't
20 have a lot to go on, and throughout the course of this
21 investigation which lasted as you can see, by the fact that
22 it occurred almost five years ago, a number of different
23 reasons for that, but a number of different people were
24 questioned. Fingerprints were taken of all kinds of different
25 people. Then in January of 1983, the Defendant was in Monroe,

1 Louisiana, and one day Sheriff Dean Mahlum got a call from
2 the law enforcement authorities in Monroe, Louisiana and they
3 wanted to question Barry Beach, the Defendant in this action,
4 the man who is charged with viciously killing Kim Nees; they
5 had received information that he may be a possible suspect in
6 a homicide in Montana and they requested background information,
7 and Sgt. Jay Via from the Monroe Police Department, or
8 excuse me, Ouachita Parish Sheriff's Office the actual law
9 enforcement agency, located in Monroe, Louisiana called for
10 background information and he received that from Sheriff
11 Mahlum and he interviewed the Defendant. He learned from the
12 Defendant, after he advised the Defendant of his rights over
13 and over and over again, that in fact the Defendant knew about
14 the death of Kim Nees. Sgt. Via asked him what had occurred
15 and the Defendant described the day's event. He told about
16 the party with Shannon O'Brien and Calib Gourneau; he told
17 about going swimming at Sandy Beach area with those two persons;
18 he told about getting his car stuck; he told about his anger,
19 his rage; he told how he threw beer bottles at his car and
20 kicked his car, how he left in anger and disgust; and he told
21 Sgt. Via that he went home and he went to bed and that he
22 awoke some time later, that he was still angry, got up, got
23 dressed and went down town and when he went down town he saw
24 Kimberley Nees at the Exxon Station and he went there and
25 talked to her and he asked her if he could ride around with

1 her and she allowed him to do that, and eventually they went
2 down to the area where she was killed; they were talking,
3 the Defendant and she; they had known each other since they
4 were little children. Eventually the Defendant began a
5 conversation to inquire into Kim's sexual relationship and
6 he suggested to her that perhaps they should have sexual
7 relations; she declined; they smoked a marijuana cigarette
8 and he told Sgt. Via that he had hoped that the smoking of a
9 marijuana cigarette would mess her up enough whereby he might
10 be able to take advantage of her down there in that area.
11 They continued to talk, and he continued to be suggestive and
12 eventually like he says, he made his move and he tried to
13 kiss her, he tried to fondle her and she resisted; he tried
14 again, she resisted and declined and refused and told him no.
15 He tried again and she told him to get out of her pickup and
16 he tried again and she slapped him and he got angry and he
17 hit her with his fist which will be confirmed by Doctor Pfaff.
18 He tried again and she slapped him again; then he grabbed a
19 wrench, according to his own words, a twelve inch crescent
20 wrench he grabbed and he hit her. She was in the driver's
21 seat, he was in the passenger's seat. Doctor Pfaff will
22 confirm that Kimberley Nees sustained some blows from the
23 right. He hit her on the head with the crescent wrench, over
24 and over and over again, and Doctor Pfaff will tell you of
25 the pattern injuries on her face will match the imprint of the

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1 crescent wrench. Kim Nees was covering her head with her hands
2 and he continued to hit her. The gouge marks in the ceiling
3 are from the wrench, and the hair that was stuck in the gouge
4 marks in the ceiling are from Kim Nees and then somehow she
5 opened the door on the driver's side and remember, Barry Beach
6 was telling all of this stuff to Sgt. Via in the most minute
7 detail. She got out of the pickup and then he jumped out,
8 dropping the wrench as he got out and he ran around to the
9 other side and he grabbed Kim Nees and he pushed her up
10 against the side of the pickup and he again tried to make
11 sexual advances towards her, after he had pounded her with
12 this wrench; again she resisted almost on instinct. Then he
13 began to choke her and she got away from him at that point in
14 time and ran around the end of the pickup and then he grabbed
15 a tire iron out of the back of the pickup and tackled her
16 and finally got her on the ground and continued to hit her
17 over and over again, and Doctor Pfaff will confirm that. Doctor
18 Pfaff will confirm the fact that the injuries to her head and
19 neck areas are consistent with the wrench and consistent with
20 a tire iron. After he got done beating her repeatedly, he
21 felt for a pulse and he told Sgt. Via it was weak and then it
22 totally disappeared. She was dead. So then, as he told Sgt.
23 Via, his first instinct was to get rid of the evidence, so he
24 took the wrench and the tire iron and he threw them into the
25 river. He went back and closed the door on the passenger

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1 side and he took the keys out of the pickup truck and he
2 threw those into the river. Now Red Wilson when he observed
3 the pickup, he noted that the heater was on, the radio was
4 on, the car was in park, or the truck was in park, the CB was
5 off and the ashtray was open. Obviously somebody had been
6 sitting in the vehicle just prior to the time it was turned
7 off. All of these things you will see are consistent with
8 the Defendant's statement. Not only did he dispose of the
9 evidence, he realized he was covered with blood. He was on
10 his way home and he took off his clothese with the exceptions
11 of his under garments and put them in a railroad box car and
12 set them on fire with his lighter and then he went home and
13 he went to bed. Then he woke up two hours later. He had
14 breakfast and he carried on the rest of the day's activities.
15 He did a very good job of hiding that evidence. You will
16 find that the testimony will reveal that and the testimony
17 will also reveal that had it not been for the Defendant's
18 confession, the defendant would never have been caught. Now
19 as the evidence reveals after that statement that the garments
20 that Kim Nees wore should also be examined and so those garments
21 were taken and they were forwarded to the lab in Missoula
22 and samples of hair were taken from the Defendant and these
23 were also forwarded to the lab in Missoula. He had said they
24 were smoking marijuana and so Kim Nees's purse and possessions
25 were also sent to the lab in Missoula and the forensic scientist

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1 from the lab in Missoula will tell you that on that jacket
2 of Kim Nees, laying -- found laying outside that vehicle, that
3 there was a pubic hair belonging to the defendant. They will
4 tell you how easy it is for hair to transfer from one place
5 to another and that this hair located on the sweater of
6 Kim Nees was in fact the defendant's. He will tell you how
7 his examination of the contents of the purse revealed that
8 there was in fact marijuana in that pickup. The evidence
9 will show, Ladies and Gentlemen, that after this time that
10 the defendant talked to the law enforcement authorities in
11 Louisiana on January 7th, 1983, that he again talked to the
12 authorities, three days later or four days later, on the 11th
13 of Januaty, 1983, with his lawyer present and that he again
14 acknowledged that he had killed Kim Nees. The evidence will
15 show that only the man that brutally murdered Kim Nees could
16 know all of the things that the Defendant knew. In twenty
17 five or thirty different areas the evidence will show that he
18 knew exactly what had taken place and some of these things
19 could not have been known because they had not been disclosed
20 by the law enforcement unless he was there doing the killing.
21 At the conclusion of the State's case, and at the conclusion
22 of the Defendant's case and after the conclusion of all of the
23 evidence, we believe you will see this pattern of evidence and
24 after all of the evidence has been presented to you, we will
25 ask because we don't think there is any doubt, to convict the
Defendant for the murder of Kim Nees. Thank you.

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