

1 THE COURT: Court is in session, you  
2 may be seated. Please note in the  
3 record that the Defendant and his  
4 counsel and the counsel for the state  
5 are present and that the Jury is in  
6 the Jury box. You may proceed, and  
7 call your next witness.

8 MR. RACICOT: We would call Pam Nees.

9 WHEREUPON,

10 MISS PAM NEES

11 having been called as a witness on behalf of the State of  
12 Montana, and being first duly sworn upon her oath, testified  
13 as follows:

14 MR. RACICOT: Would you mark this for me?

15 WHEREUPON the Court Reporter marked a document as  
16 STATE'S EXHIBIT NUMBER ONE.

17

18 DIRECT EXAMINATION

19 By Mr. Racicot:

20 Q For the record could you give us your name?

21 A Pam Nees.

22 Q Pam, I would ask that you speak up so that  
23 everyone here can hear you, all right?

24 A Yes.

25 Q Do you know the Defendant in this case, Barry  
Allan Beach?

1           A           Yes.

2           Q           And you are a sister of Kim Nees?

3           A           Yes.

4           Q           Pam, I am going to hand you what has been

5 marked as State's Exhibit Number 1 for identification and I

6 ask you if you can identify that?

7           A           Yes I can, that is a picture.

8           Q           And this particular picture, is that how Kim

9 Nees appeared on or about the time of her death in June of

10 1979?

11          A           Yes.

12          Q           Pardon?

13          A           Yes it is.

14 MR. RACICOT: We move for the admission of State's Exhibit

15 Number one.

16 MR. MOSES:     (Examines same) I have no objection to State's

17 Exhibit Number one, except with respect to the writing that

18 appears on the reverse side thereof, which has no relevancy

19 to the purpose of this hearing.

20 MR. RACICOT: I have a piece of cardboard that we can paste

21 over that.

22 MR. MOSES:     That would be fine.

23 MR. RACICOT: With that I would like to move for its

24 admission in its present form.

25 MR. MOSES:     No objection.

1 THE COURT: State's Number one will be  
2 admitted.

3 Q Pam, can you recall the night of June 15th,  
4 1979?

5 A Yes.

6 Q Do you recall about twelve o'clock midnight  
7 on that particular day?

8 A Yes.

9 Q And did you see your sister at that time?

10 A Yes.

11 Q Now Pam, was Kim younger or older than you?

12 A Older.

13 Q Was she home all evening on that particular  
14 night?

15 A No.

16 Q What time did she come home?

17 A Midnight.

18 Q Where had she been?

19 A With her boy friend.

20 Q And did she remain at home, once she came home?

21 A No.

22 Q What did she do?

23 A She came home and got the pickup and left again.

24 Q Did she say where she was going?

25 A Yes, riding around.

- 1 Q And had you used the pickup earlier that evening?
- 2 A Yes.
- 3 Q Was there anybody with you when you used the
- 4 pickup?
- 5 A Yes.
- 6 Q Had you seen the Defendant earlier in the day?
- 7 A Yes.
- 8 Q And do you recall what time?
- 9 A No, not exactly.
- 10 Q Did you talk with him?
- 11 A Yes.
- 12 Q Had you previously gone with him, as a boy-friend
- 13 girl-friend basis, or relationship?
- 14 A Yes.
- 15 Q You did not talk with him that day, or did you?
- 16 A Yes I did.
- 17 Q And what was the nature of that conversation?
- 18 A He asked me to go swimming.
- 19 Q And did you agree or disagree?
- 20 A I said no.
- 21 Q Who was the defendant with at that time?
- 22 A With Shannon O'Brien and Calib Gourneau.
- 23 MR. RACICOT: Did you jurors hear that?
- 24 (Many answered in the negative)
- 25 Q Pam, you will have to speak up. Who was the

1 Defendant with at that time?

2 A Shannon O'Brien and Calib Gourneau.

3 THE COURT: If any of you jurors have  
4 difficulty hearing, just let us know.

5 Q Was that the last time that you saw your sister  
6 alive?

7 A Yes.

8 MR. RACICOT: We have no further questions.

9

10 CROSS EXAMINATION

11 By Mr. Moses:

12 Q I am Timer Moses and I am the lawyer for Barry  
13 Allan Beach and I would like to ask you some questions at this  
14 time, you understand that?

15 A Yes.

16 Q First of all, there has been placed upon the  
17 board, and I drew this picture and that is not to scale or  
18 anything, and it shows that Sandy Beach lies northeast of the  
19 town of Poplar, is that correct?

20 A Yes.

21 Q How far is Sandy Beach to the city limits. I  
22 have got it marked there " $\frac{1}{2}$  mile" and that was information  
23 that was given to us by Shannon O'Brien, and is that about  
24 right, does that sound about right?

25 A Yes.

1 Q Then she also identified the high school as  
2 being on the west side of Poplar and south of highway two,  
3 and does that sound about right?

4 A Yes.

5 Q And then she also described the river bridge  
6 area where the car was found and being in that location here,  
7 is that about correct, in relation to the town and Sandy Beach?

8 A Yes.

9 Q Okay, and let me put an "A" right there so that  
10 you could have that located. Is there a tressle where the  
11 train goes over the Poplar River, there is a railroad bridge  
12 there, correct?

13 A Yes.

14 Q Now I think you testified on direct examination  
15 that you had this pickup earlier in the evening?

16 A Yes.

17 Q And what kind of a pickup is it?

18 A Chevrolet.

19 Q What color is it?

20 A Blue sorta.

21 Q And it is owned by your father, I understand?

22 A Yes.

23 Q And where had you been earlier that evening  
24 with the pickup?

25 A Driving around.

- 1 Q And what time did you get back home?
- 2 A About eleven, between eleven and eleven fifteen.
- 3 Q And who were you with?
- 4 A A friend of mine. *who,*
- 5 Q Now on the fifteenth of June, 1979, when was the
- 6 first time that you saw Barry Beach?
- 7 A In the afternoon.
- 8 Q What time in the afternoon?
- 9 A I am not sure.
- 10 Q It was early in the afternoon? *X*
- 11 A Yes.
- 12 Q And where did you see him?
- 13 A I don't have any idea.
- 14 Q Okay. I take it you didn't see him thereafter
- 15 on the 15th or the 16th, right?
- 16 A After that?
- 17 Q Yes?
- 18 A He came up to the house.
- 19 Q When?
- 20 A *(* It was early in the evening.
- 21 Q About what time?
- 22 A I don't remember that.
- 23 Q Okay. Did you -- would you say it was around *X*
- 24 four or five o'clock?
- 25 A That is about right.

1 Q And how long did he stay?  
2 A Couple of minutes.  
3 Q And what did he come for?  
4 A To see if I wanted to go out.  
5 Q And you didn't want to go?  
6 A No.  
7 Q And he left?  
8 A Yes.  
9 Q And you didn't see him after that?  
10 A No.  
11 Q Now I take it the evening, which was a Friday,  
12 of June 15th, 1979, you were riding around in the pickup with  
13 someone, and who was that?  
14 A Stacey Crosby.  
15 Q And did you see Boots Kirn when you were riding  
16 around?  
17 A Yes.  
18 Q And where did you see him?  
19 A I don't know.  
20 Q Was he in the pickup with you?  
21 A No.  
22 Q Pardon?  
23 A No.  
24 Q Then I take it you went home at around eleven  
25 o'clock and Stacey Crosby was with you and that she was going

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- 1 to stay overnight with you?
- 2 A Yes.
- 3 Q Was anyone else at home other than you and
- 4 Stacey Crosby?
- 5 A No.
- 6 Q Do you know where your parents were?
- 7 A They went out someplace.
- 8 Q Do you know what time they came in?
- 9 A No I don't.
- 10 Q Now I take it from your testimony that Kim
- 11 came home sometime between twelve and twelve thirty or was it
- 12 right at twelve?
- 13 A It was about twelve.
- 14 Q Okay, and did she say anything to you?
- 15 A Yes.
- 16 Q What did she say?
- 17 A She asked me for the keys.
- 18 Q The keys to what?
- 19 A The pickup.
- 20 Q What did she say after she got the keys, did
- 21 she tell you where she was going, or make any statements in
- 22 that respect?
- 23 A No.
- 24 Q Was she upset?
- 25 A Yes.

1 Q Do you know what she was upset about?  
2 A Yes.  
3 Q And what was she upset about?  
4 A About her boyfriend.  
5 Q And who was her boyfriend?  
6 A Greg Norgaard.  
7 Q Who?  
8 A Greg Norgaard.  
9 Q Greg Norgaard?  
10 A Yes.  
11 Q I take it they had some argument or controversy?  
12 A Yes.  
13 Q Do you know what it was about?  
14 A Yes.  
15 Q What was it about?  
16 A She wanted to go into the bar and she couldn't.  
17 Q And there was also something about her staying  
18 out until 4:30 the preceding night with another boy, that was  
19 their argument, wasn't it?  
20 A Well I don't know.  
21 Q That is what Kim told you, correct?  
22 A No.  
23 Q Well the preceding night she left about 9:30  
24 in the evening and got back home at 4:30 AM in the morning,  
25 right?

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1 A I don't remember.  
2 Q Well about four o'clock?  
3 A I don't remember.  
4 Q Do you recall Pam, I am sorry -- do you recall  
5 that was the basis of the argument that she had gone out with  
6 another boy on Thursday evening?  
7 A No.  
8 Q Do you know where she was Thursday evening?  
9 A No I don't really remember.  
10 Q What time would you say that your sister, Kim  
11 Nees, left, was it after 12:00 o'clock, or around 12:00, or  
12 shortly after 12:00?  
13 A It was about 12:15.  
14 Q Okay, she was only home long enough to get the  
15 keys to the pickup and leave?  
16 A Yes.  
17 Q And she did not tell you where she was going?  
18 A No.  
19 Q She was upset, however?  
20 A Yes.  
21 Q And I take it that you then went to bed?  
22 A No, I stayed up for awhile.  
23 Q Did you see anyone else that early morning hours  
24 of June 16th, 1979?  
25 A Yes.

- 1 Q And who did you see?
- 2 A Goose Kirn.
- 3 Q And how did you happen to see Goose Kirn?
- 4 A He came over.
- 5 Q And was he in a vehicle?
- 6 A Yes.
- 7 Q What kind of a vehicle was he in?
- 8 A A pickup.
- 9 Q Did he come into the house?
- 10 A No.
- 11 Q How did you happen to see him when you were in
- 12 the house and he was out in the pickup?
- 13 A Because I heard someone outside.
- 14 Q Was that across the street?
- 15 A Yes.
- 16 Q Was he honking his horn or something like that?
- 17 A No.
- 18 Q What kind of a noise was he making?
- 19 A Just the sound of his pickup.
- 20 Q Did you recognize it as Goose Kirn's pickup?
- 21 A Yes.
- 22 Q And so you went out, I take it and talked to
- 23 Mr. Kirns?
- 24 A Yes.
- 25 Q And what did he want?

1 A He wanted me to go with him.  
2 Q And do what?  
3 A Go for a swim.  
4 Q Where?  
5 A River bridge.  
6 Q And about what time was this?  
7 A About one.  
8 Q About one o'clock, Goose Kirn had come up and  
9 stopped in front of your house, you had gone out to talk to  
10 him, he wanted you to go swimming with him down at the River  
11 BRidge, that is marked here on this exhibit as A, is that  
12 right?  
13 A Yes.  
14 Q And how did he try to get you to go?  
15 A He tried to talk me into it.  
16 Q Well did he grab you in any way?  
17 A Yes.  
18 Q Tried to kiss you?  
19 A Yes.  
20 Q Hold you?  
21 A Yes.  
22 Q Did he call you names?  
23 A Yes.  
24 Q What did he call you?  
25 A A bitch.

1 Q And several other names as well?  
2 A Yes.  
3 Q Did he look mean?  
4 A In a way.  
5 Q Did he seem to be high, or drunk at the time?  
6 A Yes.  
7 Q Did you try to pull away?  
8 A Yes.  
9 Q Would you describe Mr. Goose Kirn as being  
10 weird and crazy at that time?  
11 A In a way.  
12 Q Well did you give a statement in which you  
13 described him as being weird and crazy at that time?  
14 A Yes.  
15 Q Thank you. Now I take it that somehow you got  
16 away from him, and I take it that he called you at a later time?  
17 A Yes.  
18 Q What time would that be?  
19 A Oh about one thirty, a quarter to two.  
20 Q And when he called you on the phone, what did he  
21 want you to do?  
22 A He wanted to know if I had changed my mind.  
23 Q And he wanted you to go swimming with him down  
24 at the river bridge where you usually go swimming, right?  
25 A Yes.

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1 Q Did he appear to sound weird and crazy when  
2 he talked to you over the phone, or had he calmed down somewhat?

3 A He had cooled down.

4 Q And that was the last that you saw of Goose  
5 Kirn?

6 A Yes.

7 Q Now let me go back a little bit here to  
8 Thursday night to refresh your recollection of the statement  
9 that was taken from you. Did you know that on Thursday night  
10 that Kim was out with someone other than her boyfriend?  
11 MR. RACICOT: Your Honor, I am going to object. That is  
12 completely outside the scope of direct examination and I don't  
13 know the relevancy of this inquiry at all.

14 THE COURT: Me neither.

15 MR. MOSES: Simply with respect to creditability, since it  
16 has to do with the relationship between the parties and he  
17 opened up the question as to the argument there and I wanted  
18 to question her about what the argument was about.

19 MR. RACICOT: She already testified to that, Your Honor, she  
20 told him what she knows.

21 MR. MOSES: Well ---

22 THE COURT: Go ahead. I will see where  
23 it goes.

24 Q Didn't you in fact give a statement to law  
25 enforcement that you knew about Kim going out the preceding

1 night with another boy. Didn't you give a statement to that  
2 effect?

3 MR. RACICOT: Would you mind letting me know what you are  
4 referring to there?

5 Q Oh, yes, of course, the statement that is  
6 dated July 12th, 1979, taken by Special Agent for the Federal  
7 Bureau of Investigation, Mr. Worberg and it was taken from  
8 Pam Nees. You remember telling the FBI agent that situation  
9 about Thursday night?

10 A Yes.

11 Q Are you prepared to state that Goose Kirn was  
12 not in the pickup at any time that you were driving around  
13 on June 15th, 1979 with Stacey Crosby?

14 A Yes.

15 Q He was not in the pickup?

16 A No, he wasn't.

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

18 THE COURT: Yes.

19 (A short time was given to counsel in order to go through  
20 several documents on his desk or table)

21 Q What was the relationship between Kim and Goose  
22 Kirn?

23 MR. RACICOT: Your Honor, I am going to object, that this is  
24 totally irrelevant information and has nothing to do with what  
25 we presented on direct examination. It is not proper cross  
examination.



1 MR. MOSES: I would like to argue that outside the presence  
2 of the Jury, as it may come up more than once during the  
3 course of this trial.

4 THE COURT: All right, let's go into  
5 Chambers. The jury may remain seated  
6 and we will be right back.

7 AT THIS TIME, the defendant together with his counsel, Mr.  
8 Moses; Mr. McCann and Mr. Racicot, the Judge and the  
9 Court Reporter went into Chambers, outside the presence  
10 of the Jury, and the following proceedings were had:

11 THE COURT: All right, we are here in  
12 Chambers, outside the presence of the  
13 Jury, and you are objecting to the  
14 question as being outside the scope  
15 of the direct, and that it is  
16 irrelevant, concerning Goose Kirn?

17 MR. MOSES: Your Honor, the question that was raised in this  
18 case is the relationship between the parties and this party  
19 knows about the relationship between the parties, and I think  
20 that it would be relevant because one or more of these  
21 witnesses has said that Goose Kirn had raped her.

22 MR. RACICOT: That has nothing to do with this.

23 THE COURT: I don't see that it does  
24 either.

25 MR. RACICOT: Call Goose Kirn.

1 MR. MOSES: What?

2 MR. RACICOT: Call Goose Kirn.

3 MR. MOSES: I am calling for what information she had.

4 MR. RACICOT: It is totally hearsay information and there is  
5 no foundation at all that she observed or watched anything,  
6 and it is irrelevant, and also, it is totally outside the  
7 scope of the direct examination.

8 THE COURT: What would be the  
9 relevancy?

10 MR. MOSES: The relevancy, of course, is going to be  
11 simply, Judge, that when you have a circumstantial evidence  
12 case as we have here, you have to exclude every other reasonable  
13 hypothesis and if you are not permitted to bring in another  
14 reasonable hypothesis then we would be precluded from following  
15 the law as to circumstantial evidence, to show that it was  
16 likely or probable, that someone else is involved other than  
17 Mr. Beach and that is the reason why I raised it at this time.

18 MR. RACICOT: You are -- you can't go into that, you are  
19 trying to bring in the sexual relationship of Kim Nees and that  
20 is what you are doing, you are trying to impeach her character  
21 and paint her as some kind of a floozy that was being chased  
22 by Goose Kirn.

23 MR. MOSES: That is what the FBI has stated and that is what  
24 other witnesses that you and I know about has stated, that she  
25 had had an abortion ---

1 MR. RACICOT: Call Goose Kirn. It is totally irrelevant to  
2 inquire.

3 THE COURT: I don't see -- if you are  
4 going to exclude every other hypothesis  
5 then you would have to call witnesses  
6 for every date that she had been on.  
7 There has to be certain limits. I  
8 am going to sustain the objection.  
9 Let's go back into Court.

10 AT THIS TIME, all counsel, the defendant, the Judge and  
11 the Court Reporter go back into the courtroom, and the  
12 following proceedings were had:

13 THE COURT: Go ahead.

14 MR. MOSES: I have no further questions.

15 MR. RACICOT: I have no questions, Your Honor, and may this  
16 witness be excused?

17 MR. MOSES: No objection.

18 THE COURT: You may be excused. Thank  
19 you.

20 Whereupon this witness was EXCUSED.  
21  
22  
23  
24  
25