

1 MR. RACICOT: Your Honor, we would like to call a couple of
2 witnesses out of order, and we would like to do that in order
3 that they may be able to leave. They have been here all
4 afternoon.

5 THE COURT: Fine, go ahead.

6 MR. RACICOT: First of all, Calmer, would you mark this as
7 an exhibit please?

8 WHEREAS, the Court Reporter marked a document as STATE'S
9 EXHIBIT NUMBER 27.

10 MR. RACICOT: Call Bob Murray to the stand please.

11 WHEREUPON,

12 MR. ROBERT MURRAY

13 having been called as a witness on behalf of the State of
14 Montana, and having been first duly sworn upon his oath, then
15 testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Racicot:

18 Q Could I have your name please?

19 A Robert Murray.

20 Q And your address?

21 A Poplar, Montana.

22 Q And your occupation?

23 A I am a security guard.

24 Q On June 16th, 1979, what was your occupation?

25 A Deputy Sheriff.

1 Q Of Roosevelt County?

2 A Yes.

3 Q Did you, Mr. Murray, participate in the
4 investigation of the death of Kimberley Ann Nees?

5 A Yes.

6 Q And can you tell us how you participated? Were
7 you out at the crime scene?

8 A I was called to the crime scene and I was asked
9 if I would do a sketch of the scene.

10 Q And did you in fact, do the crime scene sketch?

11 A Yes.

12 Q Now would you explain to us how the measurements
13 were taken and how you marked those down and so on?

14 A I drew the map and two other officers were
15 doing the measuring, and / ^{they} did it from the pickup down the
16 road to the creek and every little object that was in
17 between there was marked down.

18 Q Okay, and do you recall the officers that were
19 doing the measuring?

20 A Bob Atkinson and I believe Brockmier.

21 Q And the sketch that you drew, was it drawn to
22 scale?

23 A No.

24 Q Did it accurately reflect the relationship of
25 the objects as shown on it, one to another?

1 A Yes.

2 Q And does it accurately reflect the measurements
3 or the distances between the objects that were related to you
4 by the other officers?

5 A Not all of the objects, no.

6 Q I see, and ---

7 A Beer cans and things like that, no.

8 Q Okay. My question is, when you say not every
9 object that was out there was not included in the sketch?

10 A No.

11 Q But everything that is on the sketch is
12 accurately placed and accurately measured?

13 A No, the beer cans and stuff like that wasn't
14 measured from any point.

15 Q Not all of the beer cans?

16 A No.

17 Q But those beer cans that were measured and are
18 reflected on the sketch are accurate measurements?

19 A Yes.

20 Q I am going to hand you what has been marked as
21 State's Exhibit number 27 for identification, and ask if you
22 can identify that?

23 A Yes, that is the sketch.

24 Q That is the sketch you made on the 16th of June
25 1979?

A Yes.

1 Q And does it appear to be in the same condition
2 as when you completed that sketch on that date?

3 A Yes.

4 Q And the measurements were conveyed to you from
5 the two officers who were making the measurements?

6 A Yes.

7 Q Okay. And even though it is not drawn to
8 scale, it reflects accurately the relationship by measurement
9 of the objects, one to another?

10 A Yes.

11 MR. RACICOT: We would move for admission of State's Exhibit
12 Number 27, Your Honor.

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

14 THE COURT: Yes.

15 MR. MOSES: (After examining the proposed Exhibit) May I
16 voir dire, Your Honor?

17 THE COURT: Yes.

18 VOIR DIRE EXAMINATION BY MR. MOSES:

19 Q I am going to ask you some questions now on
20 voir dire only. Mr. Murray, here is Exhibit Number 27, and
21 is this another -- I am handing you another drawing, is that
22 the same as this one, or how do these made?

23 A That's another drawing.

24 Q And was that done by you?

25 A Yes.

1 Q So then, which drawing did you draw first?

2 A This one here.

3 Q Why did you draw a another or second drawing
4 then?

5 A Well I really can't answer that, I don't know
6 why I did that; I drew the other one later. There is a
7 railroad track(s) here, but not on here.

8 Q Was State's Exhibit 27 done on the 16th day of
9 June, 1979 out in the field or did you go to the office and
10 do that?

11 A No, I was at home.

12 Q And the other drawing, which we will get into
13 in a moment, was that made on or about the same time?

14 A I think that was made the day after.

15 Q Is there a direction on this exhibit, so that
16 we can see what is north, south, east or west?

17 A This would be north.

18 Q It is not marked on that diagram, right?

19 A No it is not.

20 MR. MOSES: For the purposes of illustration only, we would
21 have no objections to the proposed Exhibit number 27.

22 MR. RACICOT: We are offering it as evidence in this case,
23 and we would submit it as evidence and not for illustration
24 only.

25 THE COURT: What is your response to
that?

1 MR. MOSES: My response is that if it is in the same
2 category as these drawings which are not to scale and not
3 shown to be drawn to scale that it can only be used for
4 illustrative purposes or to refresh the personal memory and
5 therefore, to that extent it is not any more substantial
6 evidence than the exhibit that is offered in this case; it
7 has not been drawn to scale and it -- it does not reflect the
8 a complete engineering expert and it cannot be accepted in
9 evidence.

10 MR. RACICOT: Your Honor, we do not intend to establish on to
11 the jury, but is simply to admit it into evidence so that we
12 can in fact introduce a true scale drawing. The measurements
13 are what is more important in this particular drawing and I
14 have -- our next witness is going to introduce a true scale
15 drawing of the crime scene and before he can comment on what
16 he based his sketch upon, we want to put this one in ahead of
17 that one.

18 MR. MOSES: With that understanding, it certainly is not
19 substitutive evidence, it is only a foundation for putting in
20 a drawing, drawn to scale, therefore this one would be
21 accumulative, him taking notes and then writing out the
22 document in writing and so that the -- for the purposes which
23 Mr. Racicot now, I have no objection to such a document for
24 introduction for that limited purposes to lay a foundation for
25 a true scale engineer's drawing.

1 THE COURT: I will allow it in for
2 that purpose.

3 AT THIS TIME, the court reporter marked a document as
4 DEFENDANT'S EXHIBIT C.

5 VOIR DIRE continued by Mr. Moses:

6 Q I hand you what has been marked as Defendant's
7 proposed Exhibit C for identification and would you look at
8 this and tell me what it is, Mr. Murray?

9 A Tell you what it is?

10 Q Yes? That is a piece of paper, right?

11 A Yes.

12 Q And it is a plat or map that is drawn of the
13 same area, is that right?

14 A Yes.

15 Q And who drew that map?

16 A I did.

17 Q And when did you do that?

18 A I believe this one was drawn on the day after.

19 Q So that would be June 17th, 1979?

20 A Yes.

21 Q And how was that map or plat prepared, from
22 what sources did you have your information so that you could
23 make that plat or map?

24 A Well on that other map I had drawn that one in
25 the morning and then, later on, I went down and included the

1 railroad tracks on the other one and so I put that on, the
2 footage and measurements between the objects, beer cans and
3 so on.

4 Q Now let me hand you State's Exhibit Number 27,
5 and do you see on that exhibit, footprints there?

6 A Yes.

7 Q And did you measure the footprints from known
8 object, any known objects, such as where the automobile was,
9 from a telephone post, so that you could determine exactly
10 where the footprints were found?

11 A I didn't measure them from any object other
12 than they were in the middle of the drag marks.

13 Q But you did not make any measurements to show
14 them accurately, right?

15 A No.

16 Q So that in this Exhibit, Defendant's proposed
17 Exhibit C, you've got on top there, "footprints" and "drag
18 marks"?

19 A Yes.

20 Q Did you measure in this Exhibit C the footprints
21 so that they could be identified from a particular location?

22 A No I didn't.

23 Q Why did you make this exhibit then?

24 A Well the railroad tracks is over here.

25 Q Those are just a couple of lines, right?

1 A Those are the railroad tracks down there, and
2 that gives an idea of where the railroad tracks are, and I
3 didn't have them on this other one.

4 Q Did you measure the distance from the railroad
5 tracks to where the drag mark was?

6 A No I don't think so.

7 Q But the two of these together, they are the
8 only two sketches or plats that you made?

9 A Yes.

10 MR. MOSES: For the purposes of illustration only, which is
11 another plat that was made out by this witness, we offer in
12 evidence, Defendant's proposed Exhibit C.

13 MR. RACICOT: We have the same objection to that, Your Honor,
14 as to that made on the other plat.

15 MR. MOSES: I am agreeable to that.

16 THE COURT: All right, it will be
17 admitted for that limited purpose only.

18 Q Mr. Murray, to end my examination, did you
19 measure the area where it appears the body entered the river
20 from any known point?

21 A I measured from the bank right there and then
22 down the bank to the river.

23 Q I understand, but where the bank meets the drag
24 mark, did you measure so that we can locate it along the bank
25 to any known object?

1 A No, I did not, just that it was on the road
2 there.

3 Q I take it when you say here in Exhibit C, that
4 you've got the railroad and the bridge ---

5 A Yes.

6 Q ..crossing the Poplar River, you did not go to
7 the corner of the bridge, or the corner of the railroad and
8 meaasure back up to where the drag marks entered the river?

9 A No.

10 Q So that there is no way to locate that point?

11 A I could locate it yes.

12 Q But by these -- this plat?

13 A No.

14 Q And did you with either of these exhibits
15 measure the location of the footprints from any known point?

16 A No.

17 Q What kind of footprints were they?

18 A It appeared to be a wooden sole. A wooden sole
19 with a strap over it.

20 Q I see.

21 A The shoe appeared to be too small with a toe
22 over the end, but ---

23 Q But this isn't that big?

24 A No.

25 Q Well was it kind of a clog or something like that?

1 A Yes, something like that.

2 Q Mr. Murray, at the time that you arrived at
3 the scene where this crime took place, do you recall when that
4 was, time-wise?

5 A Well it was about nine o'clock.

6 Q And was anything done to secure the area?

7 A There were officers there, and the Sheriff was
8 the one that called me and there were approximately ten
9 policemen there when I got there.

10 Q Was there anything done to secure the scene, the
11 area that you saw, not that there was a bunch of law enforcement
12 officers there, did you see them rope it off, mark it off?

13 A Not roped off, no. They were standing at
14 different areas and waived me to go around.

15 Q These bare footprints that you have described
16 in your plat, were photographs taken of those footprints?

17 A I don't know.

18 Q Were they visible when you measured them so that
19 you could see them as being indented in the ground?

20 A Yes.

21 Q Or what you would conclude to be at least in
22 origin?

23 A Yes.

24 Q And you don't know of any plaster cast being
25 made of these footprints?

1 A No I don't.

2 Q Were they measured for width and length?

3 A You mean between the steps?

4 Q Well first off, I want the footprints, were
5 they measured as to width and length?

6 A It was measured, yes.

7 Q For length and width, so that it could be
8 determined what kind of shoe or foot piece had made these
9 marks, right?

10 A I measured the length, but not the width.

11 Q Were you able to determine or ascertain whether
12 it was consistent with a woman's shoe or a man's shoe?

13 MR. RACICOT: Your Honor, I am going to object to that because
14 I don't believe the witness is qualified to answer these kind
15 of questions.

16 THE COURT: I don't know, I really
17 don't know where you are going here.

18 MR. MOSES: Well he talked about the footprints and I just
19 wanted to know what he saw, if he could tell whether they were
20 a woman's or a man's footprint and if he says "no", then he
21 doesn't know. I don't know if he is qualified, can you tell
22 the difference?

23 A No, I assumed they were a man's, nine inches long.

24 Q Nine inches long?

25 A Yes.

1 Q Were you able to follow these foot prints in
2 any direction?

3 A No.

4 Q Were you able to get a clear impression of
5 three barefoot prints in the area?

6 A Yes.

7 Q Now with respect to the stride, Mr. Murray,
8 were you able to determine or ascertain the stride between
9 the footprints to measure whether it was a tall or short person?

10 A The footprints were further distance apart and ---

11 Q Excuse me, I asked you if you measured them,
12 did you measure them?

13 A I didn't measure that, no.

14 Q Okay. Could you tell me in the progression of
15 the footprints that you saw and which are shown in Defendant's
16 Exhibit number C, were left or right footprints?

17 A Both.

18 Q What?

19 A Both.

20 Q Okay. Did you do anything, Mr. Murray at the
21 scene, other than to make these measurements?

22 A No.

23 Q You have in the document "urine spots". Did you
24 have anything to do with them by picking up dirt or things of
25 that kind to preserve as evidence?

1 A No.

2 Q You didn't measure the distances or anything
3 else?

4 A No.

5 Q Okay. Now the purse and the jacket, is that
6 the same purse and jacket which was reported to be a sweater
7 and a purse, which was underneath the passenger's side of
8 the vehicle, right next to the vehicle?

9 A Yes.

10 Q And was that neatly folded?

11 A Yes.

12 Q Did you measure the blood which you have marked
13 here as number 10 to determine the perimeters, the distance
14 or length of the blood, how much area that covered, and the
15 width of the blood, that sort of thing?

16 A No, but I measured from the vehicle to the blood.

17 MR. MOSES: Thank you, I have no further questions of Mr.
18 Murray.

19 DIRECT EXAMINATION continued now by Mr. Racicot:

20 Q Mr. Murray when you examined the footprints,
21 you only saw three of them?

22 A Yes.

23 Q A left, a right and a left, or a right, a left
24 and another right, one or the other?

25 A Yes.

1 Q And did you see any more footprints?
2 A No.
3 Q And they were nine inches long?
4 A Yes.
5 Q And pointed in the direction of the pickup,
6 that is, the toes were pointed in the direction of the pickup?
7 A Yes.
8 Q And did you determine if the pickup had been
9 turned around?
10 A No.
11 Q Did you know if any of the people involved in
12 the scene there had on any kind of those shoes?
13 A Not that I could see, no.
14 Q Did you look at all of them?
15 A No.
16 Q How many officers were there at that scene, did
17 you say?
18 A I would say around ten.
19 Q And were they all involved in the investigation?
20 A Yes.
21 Q They were all examining the pickup and the other
22 areas there at the crime scene?
23 A Yes.
24 Q Now the footprints that you saw, they were --
25 were they in mud or dust or dirt, or what?

1 A In the dirt there, dry dirt.
2 Q Appeared to have been left when they were wet?
3 A No.
4 Q How do you leave footprints in the dust or
5 dirt?
6 A It was in the middle of the drag mark.
7 Q And in your view, the footprints -- was it
8 right in the middle of the drag marks?
9 A Yes pretty much in the middle, yes.
10 Q And were the drag mark, one consistent drag
11 mark?
12 A Yes.
13 Q So that it didn't look like two feet had been
14 dragging, but it just looked like it was one mark?
15 A Yes.
16 Q And how wide was that?
17 A It was about so. (Demonstrates)
18 Q About sixteen to eighteen inches?
19 A Yes, sixteen or eighteen inches, something like
20 that, yes.
21 MR. RACICOT: No further questions, Your Honor.
22
23 RECROSS EXAMINATION
24 By Mr. Moses:
25 Q It wasn't quite clear on redirect examination,

1 by Mr. Racicot, but did I understand you to say that the
2 direction of the footprints which you have marked here as
3 bare footprints, they were going toward the car?

4 A Towards the pickup, yes.

5 Q It was going away from the river, is that right?

6 A That is correct.

7 MR. RACICOT: Your Honor, we would object to passing those
8 to the jury at this time. They have not been admitted but only
9 admitted for illustrative purposes only.

10 MR. MOSES: For illustrative purposes, the jury is entitled
11 to see them.

12 MR. RACICOT: Well we are not offering Exhibit Number 27 at
13 this time anyway. If you want to offer Exhibit C of the
14 Defendant, that is fine.

15 MR. MOSES: Okay, Defendant's proposed Exhibit Number C.
16 I believe they are entitled to see it.

17 MR. RACICOT: We would prefer that these things be viewed in
18 reference to the scale diagram, and we would have no problem
19 with that.

20 THE COURT: And I think the next witness
21 you are going to do that?

22 MR. RACICOT: Yes.

23 MR. MOSES: I would like to have the jury look at it.

24 THE COURT: All right, go ahead.

25 AT THIS TIME, Defendant's Exhibit C is given to the jury.

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

2 MR. RACICOT: Nothing further.

3 THE COURT: Thank you, Mr. Murray, you
4 may be excused.

5 WHEREUPON this witness was EXCUSED.
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