

1 WHEREUPON,

2 MISS SHANNON O'BRIEN

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

6
7 DIRECT EXAMINATION

8 By Mr. Racicot:

9 Q Shannon, I would ask that you speak up loudly
10 so that all of us here in the courtroom can hear you, as
11 sometimes it is difficult for us to hear you, will you do
12 that for us?

13 A Yes.

14 Q Could I have your name please for the record?

15 A Shannon Marie O'Brien.

16 Q And where do you live, Shannon?

17 A Poplar.

18 Q And do you know the Defendant in this case?

19 A Yes.

20 Q Barry Allan Beach?

21 A I do.

22 Q Do you recall the 15th of June, 1979?

23 A Yes.

24 Q And do you recall what day it was?

25 A Yes it was a Friday.

1 Q And on that day, do you recall what the weather
2 was like?

3 A Sunny and warm, very nice.

4 Q Had it rained recently to the best of your
5 recollection?

6 A Not that I know of.

7 Q Who were you with that day at around noon?

8 A Calib Gourneau.

9 Q Were you going with Calib Gourneau at that time?

10 A Yes I was.

11 Q What had you -- was there anyone else with you
12 and Calib at that time?

13 A Not right away, no.

14 Q Why don't you explain what occurred around
15 noon time on June 15th, 1979?

16 A Well Calib came over to my Grandmother's house
17 and took me out to go swimming and that we would be seeing
18 Barry and go swimming with him.

19 Q And by Barry, do you mean the Defendant?

20 A Yes.

21 Q And did you meet the Defendant on that day?

22 A Yes I did.

23 Q And did you go swimming with him?

24 A Yes I did.

25 Q Prior to the time you actually went out swimming,

- 1 did you run into anybody else?
- 2 A Not at the time, no.
- 3 Q Did you see Pam Nees prior to the time you
- 4 went out swimming?
- 5 A Earlier, yes.
- 6 Q And can you tell us what the defendant had to
- 7 say to Pam Nees?
- 8 A He wanted her to go swimming with us.
- 9 Q And did she go with you?
- 10 A No.
- 11 Q Was the Defendant upset about that?
- 12 A Yes.
- 13 Q Did he argue with her?
- 14 A To some extent, yes.
- 15 Q What time did you arrive -- where were you going
- 16 swimming?
- 17 A Sandy beach.
- 18 Q What time did you arrive at Sandy Beach?
- 19 A Around one thirty.
- 20 Q In the afternoon?
- 21 A Yes.
- 22 Q The three of you?
- 23 A Yes.
- 24 Q What did you do throughout that afternoon?
- 25 A Sat around and visited and went swimming.

- 1 Q Did you drink some beer?
- 2 A Yes.
- 3 Q How long did you remain at Sandy Beach or how
4 long was it before you decided to leave?
- 5 A About four hours.
- 6 Q And so that would have been around five o'clock
7 or five thirty?
- 8 A Yes.
- 9 Q What happened at that point in time when you
10 decided to leave, did all three of you decide to leave at the
11 same time?
- 12 A Yes we did.
- 13 Q And did you all get into the car to do that?
- 14 A Yes.
- 15 Q What occurred at that point in time?
- 16 A We got ready to go and the car got stuck, and
17 Barry tried to get the car out of the sand and something
18 underneath the car snapped or broke somehow, and I don't know
19 exactly what it was.
- 20 Q And did this go on for quite a while, trying to
21 get the car out of the sand?
- 22 A Yes.
- 23 Q Would you describe how the Defendant reacted to
24 something snapping under the car?
- 25 A He got upset.

- 1 Q And what did he do?
- 2 A He got out, kicked the car, started hollering
- 3 around there.
- 4 Q Did he throw anything at it?
- 5 A Yes.
- 6 Q What?
- 7 A Beer bottles.
- 8 Q What did you do? Did you remain in the car?
- 9 A Yes I did.
- 10 Q Did you do anything while you were in the car?
- 11 A After he started throwing bottles at it, I
- 12 rolled the windows up and locked the doors.
- 13 Q Did the defendant calm down somewhat?
- 14 A No.
- 15 Q What occurred after this -- these things that
- 16 you have described?
- 17 A Calib got mad at him and told him to settle
- 18 down and he told him if he didn't settle down, he was going
- 19 to hit him.
- 20 Q And then what occurred?
- 21 A He got mad and jerked away from Calib and told
- 22 us that he was going to leave and that he would send somebody
- 23 back after us.
- 24 Q And so you stayed in the vehicle?
- 25 A Yes I did.

1 Q And the defendant, in what direction did he
2 head?
3 A Towards town.
4 Q And obviously he was walking?
5 A Yes.
6 Q Was he angry when he left?
7 A Yes.
8 Q Did anyone ever come back to get you?
9 A No.
10 Q How long did you wait?
11 A Until around ten.
12 Q And then how did you get back, you and Calib?
13 A Walked..
14 Q Now did you see the Defendant on the 16th?
15 On the 16th of June, 1979?
16 A Yes I did.
17 Q Where did you see him?
18 A He came over to my grandmother's house. *where?*
19 Q And at that time when he came, did you or did
20 you not know that Kim Nees had been killed?
21 A Yes I had.
22 Q Did you tell the Defendant about that?
23 A Yes I did.
24 Q And what was his reaction to that?
25 A It didn't seem to bother him. *X*

1 MR. RACICOT: There is no further questions, thank you.

2

3

CROSS EXAMINATION

4 By Mr. Moses:

5 Q Is it Miss O'Brien?

6 A Yes.

7 Q I am Timer Moses, and I am the lawyer for Mr.

8 Beach and I don't think that I have ever talked to you, have
9 I?

10 A No you haven't.

11 Q How old are you?

12 A Twenty two.

13 Q And did you give a statement to law enforcement
14 officers, the FBI in connection with your testimony here?

15 A Yes I did.

16 Q And do you have that statement with you?

17 A No I don't.

18 Q Where is that statement?

19 A At home.

20 Q Did you mention anything in that statement
21 about rolling up the windows?

22 A Yes I did.

23 Q You did?

24 A Yes.

25 AT THIS TIME, a document was marked by the Court Reporter
as DEFENDANT'S EXHIBIT NUMBER A.

1 Q Miss O'Brien, I have placed upon the board here
2 a piece of paper and marked for illustrative purposes only,
3 as Defendant's Proposed Exhibit A, and I have put an arrow
4 which marks North and there is a general square in the center
5 of it, which would represent the town of Poplar. Can you see
6 that there?

7 A Yes I do.

8 Q Now could you come down and locate where Sandy
9 Beach is please? Just generally speaking so that the Jury
10 will know the directions and the way things were there?

11 A (Witness complies) This is the airport road
12 and you go over like this, and right over here, north.

13 Q I have placed now an X, and that would be
14 Sandy Beach?

15 A Right, and this is the airport road.

16 Q This is the airport road?

17 A Yes, and you go off the highway right here about.

18 Q Okay, let me put "Sandy Beach" up here. How
19 far is it from the city limits of Poplar?

20 A Quarter of a mile maybe, it is not very far.

21 Q What about a half a mile, would that be reasonable?

22 A That's fine.

23 Q And so we will then put " $\frac{1}{2}$ mile" and these are
24 just approximations so that the jury can see. Is this the
25 Poplar River here?

1 A Yes.

2 MR. RACICOT: Excuse me, if the Court please, I am not sure
3 that the Jury can hear the witness. Could you speak up a
4 little louder, Shannon?

5 MR. MOSES: Yes, I am sorry. Would you turn this way and
6 I will turn this way so that the jury can hear both of us
7 much better?

8 A Sure.

9 Q So that this Sandy Beach is an area which can
10 be approached either from the east side or the west side?

11 A No you have to come in from this direction.

12 Q You have to come in on the east side?

13 A Yes.

14 Q Okay, the river would ---

15 A The river runs right across here, just like
16 this.

17 Q Okay. We will put "River" there. It would be
18 your best estimate that from Sandy Beach where you were
19 swimming that day, to the city limits would be about a half a
20 mile?

21 A Yes.

22 Q Does the police department occasionally go down
23 into that area?

24 A Yes, I suppose so.

25 Q Where is the police department located?

- 1 A Right up on the hill here, right about here.
- 2 Q Okay, and would you put -- I will put "Jail"
- 3 right here, is that about right?
- 4 A Yes.
- 5 Q Where is the highschool?
- 6 A The highschool?
- 7 Q Yes.
- 8 A Over here.
- 9 Q Okay, I will show "highschool" right there then.
- 10 The other witnesses will be talking about the highschool. Now
- 11 is there the highway that passes through Poplar, going east
- 12 and west?
- 13 A Here, right here, yes.
- 14 Q And what highway is that?
- 15 A Highway 2, and it goes right about here on
- 16 the north side of the highschool.
- 17 Q On the north side of the high school?
- 18 A Yes.
- 19 Q And that would be highway 2?
- 20 A Yes.
- 21 Q Now then, there was a statement made during the
- 22 opening statement about a river bridge. Now where is the
- 23 river bridge?
- 24 A The river bridge?
- 25 Q Yes.

1 A The river is over here, about -- let's see,
2 about right here.

3 Q Okay. And there are train tracks over here
4 someplace right?

5 A Yes.

6 Q And we will mark that place -- how do you get
7 down to the river bridge, where do you turn off?

8 A Right about here.

9 Q You turn off before you cross the river? As
10 you go west on Highway two, you go past the highschool?

11 A Yes, and there are two places here to turn off.
12 Well, you would come down to about here and you turn off to
13 the left.

14 Q You would go down to about here someplace before
15 you cross the river bridge and turn left?

16 A Yes.

17 Q And so that the river bridge would be in this
18 area here and I have marked it, and then there is some kind of
19 a park over here, right?

20 A Yes, you can park right over here.

21 Q And it was in the parking area where that pickup
22 was found, right?

23 A Yes.

24 Q Now one last word: Do you know where the Exxon
25 station is?

1 A Yes I do.

2 Q And where is that located?

3 A Right about here.

4 Q And is it on highway two?

5 A Yes.

6 Q We will put "EXXON" right here, is that about

7 right?

8 A Yes, it is kitty-corner from the school.

9 Q Kitty-corner from the school?

10 A Yes.

11 Q Okay. Now, let's see? I think that is all,

12 thank you, you may take the stand again. (Witness complies)

13 Now when you were testifying I believe you stated that it was

14 about a half a mile to the city limits of Poplar, Montana to

15 the area known as Sandy Beach, is that right?

16 A Approximately.

17 Q Yes. And how far would it be over to the Exxon

18 station then from the city limits?

19 A About the same distance.

20 Q Okay, so that it would be, Oh, about a mile

21 and a half if you were to walk -- about a mile to a mile and

22 a half, if you were to walk from Sandy Beach over to that

23 Exxon station, generally, just approximately?

24 A I don't believe that it would be quite a mile.

25 Q Okay, you feel that it would not be quite a mile?

 A Right.

1 Q All right, and when you saw Mr. Beach on the
2 15th of June, 1979, when was the last time that you saw him
3 that day?

4 A At five thirty that evening.

5 Q And where did you see him?

6 A At Sandy Beach.

7 Q And where was he going?

8 A I had no idea, he went to town.

9 Q He went to town, that is what he told you?

10 A He was going to town to get somebody to come
11 back and give us a ride to town, and to get the car.

12 Q And he only had a half a mile to go and he
13 could get there in fifteen or twenty minutes, right?

14 A Probably, yes.

15 Q And that was about five thirty?

16 A Yes.

17 Q What time did you leave Sandy Beach, you and
18 your friend?

19 A Ten o'clock.

20 Q What did you do between five thirty and ten
21 o'clock?

22 A Sat there and waited.

23 Q Did you drink beer during that time? 65

24 A No, we just sat there in the car. We thought
25 that he would be right back out.

- 1 Q And I take it then that you waited four and a
2 half hours before -- for him to come back?
- 3 A Yes, Calib didn't want to leave the car there.
- 4 Q You had the keys, you could have locked the car?
- 5 A We didn't have the keys.
- 6 Q You said you rolled up the windows and locked
7 the car?
- 8 A When you are in it, we rolled up the windows
9 and locked the car from the inside, so that no one could get
10 inside.
- 11 Q So that it was possible to lock the car so
12 that no one could get inside it, and you remained there for
13 four and half hours to protect the car?
- 14 A Yes, and then we went in.
- 15 Q And how long did it take you and Calib to
16 walk back into Poplar?
- 17 A About a half hour.
- 18 Q And where did you go?
- 19 A To my grandmother's house.
- 20 Q And where does she live?
- 21 A In Poplar.
- 22 Q Where in Poplar?
- 23 A Down by the Main Street.
- 24 Q Were you out that evening?
- 25 A No I wasn't.

1 Q You were at your grandmother's house and I
2 take it -- what is this fellow's name, Calib, was he with
3 you at all that evening?

4 A Yes.

5 Q And what time did he finally go home?

6 A About a quarter to twelve.

7 Q So that neither you nor Calib were out and
8 around that evening?

9 A No.

10 Q Okay, the following day you said that you saw
11 Mr. Beach. Where did you see him?

12 A At my grandmother's house.

13 Q And how did he happen to be over there?

14 A He just came over.

15 Q What time of day was that?

16 A Around noon.

17 Q Had he heard about Kim's death?

18 A I don't know, I didn't ask him.

19 Q Well he may have already heard about it?

20 A He could have.

21 Q Yes.

22 MR. MOSES: Thank you, Miss O'Brien, I have no further
23 questions.

24 REDIRECT EXAMINATION

25 By Mr. Racicot:

1 Q Just one or two questions. At the time the
2 defendant left Sandy Beach, that area known as Sandy Beach,
3 after the car was stuck, did he say anything about going
4 back and get a girl?

5 A Yes.

6 Q What did he say?

7 A Well he said he wanted to get a woman. X

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

9

10 RECROSS EXAMINATION

11 By Mr. Moses:

12 Q That he wanted to get a woman, and so then he
13 wasn't going to come back and pick you up, was he?

14 MR. RACICOT: Objection, your honor, that calls for a
15 conclusion, the state of mind of the defendant, not hers.

16 THE COURT: Well she could answer that
17 -- can you answer that?

18 A Well ---

19 Q You said he was going to go in and get somebody
20 to pick you up, and you sat there four and a half hours for
21 him to pick you up, right?

22 A That was not the way, he said he was going to
23 send somebody out there.

24 Q Did he tell you that he was going to come back
25 and pick you up?

1 A Yes, but I wasn't with him, I was with Calib.

2 Q And when he left the understanding was that he
3 was going to get somebody to come out and pick you two up?

4 A To give us a ride to town, yes, and pick up the
5 car.

6 MR. MOSES: Thank you, nothing further.

7 MR. RACICOT: May I ask one question, I just want to clarify
8 something?

9 THE COURT: I think so.

10

11 RE-REDIRECT EXAMINATION

12 By Mr. Racicot:

13 Q Shannon, could you tell us, did the defendant
14 say he was personally going to come back and get you, or did
15 he say he would send someone out there to pick you up?

16 A He said he would send somebody out there to
17 pick up the car.

18 MR. RACICOT: Thank you.

19

20 RE-RECROSS EXAMINATION

21 By Mr. Moses:

22 Q I don't understand, I guess I didn't hear it.
23 Did you say that he was going to send somebody back?

24 A Yes.

25 Q He wasn't going to come back personally?

1 A No.

2 MR. MOSES: Thank you very much.

3 MR. RACICOT: May this witness be excused now?

4 MR. MOSES: I have no objections to her being excused, Your
5 Honor.

6 THE COURT: Okay, you may be excused.

7 WHEREUPON, this witness was EXCUSED.

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9 AT THIS TIME, the Court stood in recess from 10:10 o'clock
10 A.M., until the hour of 10:24 A.M., with the Court admonishing
11 the Jury prior to the recess.

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1 MR. MOSES: Call Shannon O'Brien.

2 WHEREUPON,

3 MS. SHANNON O'BRIEN

4 having been now called as a witness on behalf of the Defendant,
5 and ~~having~~ been previously sworn upon her oath, testified
6 as follows:

7
8 DIRECT EXAMINATION

9 By Mr. Moses:

10 THE COURT: You are still under oath.

11 A Yes sir.

12 Q Would you state your name for the record
13 please?

14 A Shannon O'Brien.

15 Q And would you speak up a little bit louder
16 please, I have difficulty hearing you?

17 A Yes.

18 Q Miss O'Brien, in connection with your testimony
19 I would like to clear up a matter. Are you familiar with a
20 report of your testimony taken by the FBI agent, which is
21 dated July 12th, 1979, did you see that?

22 A I did, yes.

23 Q And in that report, it states that you received
24 a telephone call early Saturday morning, June 16th, 1979,
25 at approximately one o'clock AM and the caller was a male, and

1 an individual which you believe to be Greg Norgaard, is that
2 true?

3 A No.

4 Q Did you give that statement however to the
5 FBI agent?

6 A That wasn't me.

7 MR. MOSES: Okay, no further questions of Miss O'Brien.

8

9 CROSS EXAMINATION

10 By Mr. Racicot:

11 Q Shannon, at the time you were interviewed by
12 the FBI was there another person present also at the inter-
13 view with you?

14 A Yes.

15 Q By the name of Catherine Moe?

16 A Yes.

17 MR. RACICOT: No further questions.

18 MR. MOSES: No further questions. May this witness be
19 excused?

20 MR. RACICOT: That would be fine.

21 THE COURT: You may be excused.

22 WHEREUPON this witness was EXCUSED.
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25