

1 THE COURT: Your next witness?

2 MR. RACICOT: Just a moment, Your Honor. (Confers with Mr.  
3 McCann) We would now call Steve Schagunn please.

4 WHEREUPON,

5 MR. STEVEN CARL SCHAGUNN

6 having been called as a witness by the State of Montana, and  
7 being first duly sworn upon his oath, testified as follows:

8

9 DIRECT EXAMINATION

10 By Mr. Racicot:

11 Q Could I have your name please?

12 A Steven Carl Schagunn.

13 Q I would ask that you speak up loudly so that  
14 the jury can hear you, all right?

15 A Yes.

16 Q Do you know the defendant in this case, Barry  
17 Allan Beach?

18 A Yes.

19 Q Steve, do you recall the time of Kimberley Ann  
20 Nees's death, that it was back in June of 1979?

21 A Yes.

22 Q And could you tell us, do you recall Friday,  
23 June 15th, 1979?

24 A Yes I remember the date.

25 Q Did you come into town, into Poplar, on that  
particular evening?

1 A Yes I did.  
2 Q And why did you come in?  
3 A I come to visit my girl friend.  
4 Q And what was your girl friend's name?  
5 A Susie Kirn.  
6 Q ~~It is now~~ Susie Schagunn?  
7 A Yes.  
8 Q And did you in fact see Susie on that  
9 particular night?  
10 A Yes.  
11 Q What time did you pick her up?  
12 A About eight o'clock, between seven and eight.  
13 Q And what did you do that night?  
14 A Drove around town for awhile.  
15 Q And did you see Kim Nees that night?  
16 A Yes I did.  
17 Q And where did you see her?  
18 A I first noticed her riding with Greg Norgaard.  
19 Q Who was her boy friend at the time?  
20 A Yes.  
21 Q And what time was that, do you recall?  
22 A Shortly before dark.  
23 Q And did you see her again after that?  
24 A Later on.  
25 Q And about what time was that?

1       A       About twelve o'clock or shortly thereafter.  
2       Q       Where was she?  
3       A       Sitting there at the Exxon station.  
4       Q       And is there a pull out area there where people  
5 in Poplar, where the kids pull over and watch the traffic  
6 go by?  
7       A       Yes there is.  
8       Q       And was that where she was?  
9       A       Yes.  
10      Q       Was she by herself?  
11      A       Yes.  
12      Q       In what vehicle was she in?  
13      A       A green pickup.  
14      Q       Did you recognize the pickup?  
15      A       Yes.  
16      Q       As whose?  
17      A       Ted's.  
18      Q       Excuse me?  
19      A       Ted Nees.  
20      Q       That's her father?  
21      A       Yes.  
22      Q       Now about that same time or shortly thereafter,  
23 did you see Greg Norgaard or his car?  
24      A       His car, yes sir.  
25      Q       And where did you see that?

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1           A           At the Legion Club, here in Poplar.  
2           Q           And do you recall what time that was?  
3           A           Twelve, or twelve-thirty, right around that  
4   time.  
5                       THE COURT: Now this twelve or twelve  
6                       thirty, is that in the early morning  
7                       or during the day?  
8           Q           Twelve thirty in the morning, right?  
9           A           Yes.  
10                      THE COURT: So that would be on the  
11                      morning of the 16th?  
12          A           Yes.  
13          Q           It was late at night?  
14          A           Yes.  
15                      THE COURT: Okay.  
16          Q           Now did you eventually go home that evening?  
17          A           Yes I did.  
18          Q           And did you drop your girl friend, Susie off?  
19          A           Yes.  
20          Q           And where did you drop her off at?  
21          A           Well first we picked up my vehicle and then we  
22   went to her house.  
23          Q           Does she live out of town?  
24          A           Yes.  
25          Q           And did you follow her out of town?  
          A           Yes.

1 Q And what time -- did you stay at her house for  
2 awhile?

3 A I stayed at her house for about a half an hour  
4 or forty-five minutes.

5 Q And then you went home?

6 A Yes.

7 Q Now, Steve, were you very good friends with Kim  
8 Nees?

9 A Yes.

10 Q The night before Kim died, were you with Kim?

11 A Yes.

12 Q What were you doing that night?

13 A Having a few beers.

14 Q Were you riding around?

15 A Yes.

16 Q So that would have been around the 14th of June,  
17 1979?

18 A Yes sir.

19 Q Did you have other occasions other than that  
20 particular one where you would drive around Poplar with Kim  
21 Nees, or was that out of the ordinary for you to be riding  
22 around Poplar with Kim Nees?

23 A No.

24 Q Do you recall about what time? When you were with her?

25 A It was late in the evening.

- 1 Q And how long were you with her?  
2 A About a half an hour, or forty five minutes.  
3 Q And were you in your vehicle or hers?  
4 A I believe ---  
5 Q Or do you remember?  
6 A I am not sure.  
7 Q Did she drop you off or did you drop her off?  
8 A I am not sure.  
9 Q Do you remember who was driving?  
10 A No.

11 MR. RACICOT: No further questions.

12

13 CROSS EXAMINATION

14 By Mr. Moses:

- 15 Q My name is Timer Moses, and I am the attorney  
16 for Mr. Beach. How do you pronounce your name correctly?  
17 A Schagunn (Reporter's Note: Pronounced like Show-  
18 gun)  
19 Q And what is your occupation, Sir?  
20 A Farmer.  
21 Q And what was your occupation back in June of  
22 1979, Mr. Schagunn?  
23 A Farmer.  
24 Q And where were you farming?  
25 A With my father.

1 Q Where?  
2 A North of Poplar.  
3 Q How far north of Poplar?  
4 A Thirty miles.  
5 Q Now you saw Kim Nees early in the week, did  
6 you not?  
7 A Yes.  
8 Q And there was some suggestion that -- in direct  
9 examination, that that was on Thursday but you in fact saw  
10 her earlier in the week and that wouldn't have been on a  
11 Thursday, would it?  
12 A I'm not positive.  
13 Q All right. Did your girl friend when you were  
14 with her on Friday evening -- that she accused you of staying out  
15 with  
/Kim until about 4:30 A.M., in the morning?  
16 A No she didn't.  
17 Q She didn't say anything about four thirty in  
18 the morning?  
19 MR. RACICOT: That has been answered now already and we will  
20 object to that.  
21 THE COURT: Pardon me?  
22 MR. RACICOT: We would object to that, that question, it has  
23 already been answered.  
24 THE COURT: I don't think that was  
25 ever answered.

1 Q Is your answer "no"?

2 A What was the question again?

3 Q In fact, didn't Susie on Friday, June 15th,  
4 1979, accuse you staying out with Kim Nees the night before  
5 and taking her home at 4:30 in the morning?

6 A No.

7 I am going to hand you what has been marked or  
8 what is a statement, dated July 12, 1979 and ask you to examine  
9 that if you will please?

10 (Examined by the witness)

11 Q Do you remember the FBI agent, a Mr. Worberg  
12 taking that statement?

13 A Not right of no, but I remember something about  
14 a statement, but I frankly don't remember him.

15 Q And was that in the presence of Arrow Wilson,  
16 a county sheriff's deputy, and Howard Beamer a BIA Special  
17 Agent, were they present?

18 A Yes.

19 Q And where was that statement taken?

20 A At the Sheriff's office in Poplar.

21 Q And were those persons present including Mr.  
22 Worberg that I have just described?

23 A I believe so, yes.

24 Q And were you asked questions at that time  
25 concerning Kim Nees?



1           A           Yes.

2           Q           And did you at that time advise them that Susie

3 had told you that -- that Susie had accused you of being with

4 Kim Nees the night before and took her home at 4:30 in the

5 morning, did you tell the law enforcement officers that?

6           A           That Susie told me that?

7           Q           Yes?

8           A           She had mentioned that she knows.

9           Q           That evening, wasn't there that conversation

10 on June 15th, 1979 in which you ~~daily~~ advised Mrs. Worberg, the

11 FBI agent, on July 12th, 1979, of that conversation? Did you

12 tell them that?

13          A           Yes.

14          Q           Okay. Now when you were with Kim Nees earlier

15 in the week, or sometime there, was she parked alone at the

16 Exxon station?

17          A           Earlier in the week?

18          Q           Yes?

19          A           Yes.

20          Q           And was she in a pickup?

21          A           Yes.

22          Q           And what did you do, did you drive around with

23 her?

24          A           Yes.

25          Q           And were you doing any drinking?

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1       A       Yes we had a few drinks.  
2       Q       Sloe Gin?  
3       A       Yes.  
4       Q       Now on the evening of June 15th, 1979, when was  
5 the first time that you saw Kim Nees?  
6       A       Right before dark.  
7       Q       And whereabouts did you see her?  
8       A       In Greg Norgaard's car.  
9       Q       What kind of a car was it?  
10      A       Mustang.  
11      Q       One of those with a loud muffler?  
12      A       Yes.  
13      Q       Pardon?  
14      A       I think so.  
15      Q       And what color is the Mustang?  
16      A       Maroon.  
17      Q       And what time of day or night was it?  
18      A       Right before dark.  
19      Q       And where did you see them?  
20      A       On Main Street.  
21      Q       Were they just riding around?  
22      A       Yes.  
23      Q       And you didn't stop and talk with them?  
24      A       No.  
25      Q       You didn't know where they went?  
      A       No.

1 Q And later on, I take it, you saw Kim Nees again?  
2 A Yes.  
3 Q And where was she at that time?  
4 A At the Exxon station.  
5 Q Was she alone?  
6 A Yes.  
7 Q Was she in the pickup?  
8 A Yes.  
9 Q And you would estimate that time to be between  
10 twelve thirty and one o'clock?  
11 A Right around twelve thirty, yes.  
12 Q Maybe you could look at your statement there  
13 and refresh your memory. Between twelve thirty and one o'clock?  
14 A (Witness examines statement) Yes.  
15 Q And she was at the Exxon station alone in her  
16 pickup?  
17 A Yes sir.  
18 Q What kind of a pickup was it?  
19 A Green pickup.  
20 Q Chevy?  
21 A Yes.  
22 Q Okay. Then what were you doing at the time that  
23 you saw this pickup at the Exxon station?  
24 A I was following Susie home.  
25

1 Q Did that take you by the Legion Club?

2 A We had made a trip around there to see if my  
3 folks were there.

4 Q And this was after you saw Kim Nees at the  
5 Exxon station?

6 A Yes sir.

7 Q And when you went home, you made a loop down  
8 by the Legion Club to see if your folks were still there?

9 A Yes.

10 Q Were your folks still there?

11 A Yes.

12 Q Did you at that time observe Greg Norgaard's  
13 car parked there?

14 A Yes.

15 Q At the Legion Club?

16 A Yes.

17 Q Were you in the Legion Club that evening at all?

18 A No.

19 Q Where were you that evening, up until the time  
20 it was, until twelve thirty?

21 A Well we were parked.

22 Q Where?

23 A We went out and parked and drank some more beer.

24 Q Where?

25 A It was down by the river, by the baseball field  
there.

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1 Q And is that north of town or west of town or  
2 where?

3 A It is west of town.

4 Q West of the school?

5 A Yes. Right down on the bottom there.

6 Q There is kind of a hill that goes there down  
7 into that parking area?

8 A Yes.

9 Q West of the school, is that right?

10 A Yes.

11 Q Pardon?

12 A Yes.

13 MR. MOSES: For the purpose of illustration, we offer into  
14 evidence Defendant's proposed Exhibit A for illustrative  
15 purposes only.

16 MR. RACICOT: No objection if it is for illustrative purposes.

17 THE COURT: It is admitted for that  
18 purpose only.

19 Q Were you down in the river bridge area?

20 A Not that far down there.

21 Q How far is that from the highway two, to get  
22 down to the point where the bridge is?

23 A Maybe a half a mile I would say.

24 Q Okay. When did you start parking that evening,  
25 if I may ask you?

1           A           Well we sipped on a few beers down there until  
2 well, it must have been ten or ten thirty.

3           Q           When did you leave your home and pick up Susie?

4           A           Well I got into town about -- shortly before  
5 dark.

6           Q           About seven or eight o'clock?

7           A           About eight, yes.

8           Q           And then you were out and around until about  
9 twelve thirty or one o'clock?

10          A           Yes.

11          Q           And then you drove by the Legion Club and saw  
12 Greg Norgaard's car there between one and one-thirty?

13 MR. RACICOT: We are going to object to this as being  
14 repetitious.

15                       THE COURT: Yes, all of those questions  
16                       have been asked and answered.

17          Q           Where did you go after you left the Legion Club?

18          A           Followed her out to her folk's house.

19          Q           And where did she live?

20          A           North of Poplar, eight miles.

21          Q           Pardon?

22          A           North of Poplar about eight miles.

23          Q           Eight miles?

24          A           Yes.

25 MR. MOSES:       Okay, thank you, no further questions.

REDIRECT EXAMINATION

1  
2 By Mr. Racicot:

3 Q Mr. Moses asked you about the fact your girl  
4 friend, Susie Kirn mentioned something to you about being  
5 out until four thirty in the morning with Kim Nees. I would  
6 like to clear that up. Someone in the family said that and  
7 you were aware of that, correct?

8 A Yes.

9 Q But the fact is you were not out ---  
10 MR. MOSES: I object to that line of questioning as being  
11 leading and suggestive.

12 MR. RACICOT: I will withdraw the question, and I will  
13 rephrase the question.

14 Q Can you tell us, were you or were you not out  
15 with Kimberley Ann Nees until four thirty in the morning any  
16 time during that week that she died?

17 A I was not out until four thirty in the morning.

18 Q Are you sure that it was not the Thursday  
19 night before she died that you were with her? Could it be  
20 that night or any night that week?

21 A I wasn't with her all week until early in the  
22 morning. I wasn't with here until four thirty in the morning.

23 Q Right, I understand that, but you did testify  
24 on direct examination that you were with her for awhile on  
25 one evening during the week?

1 A Right.

2 Q Could it have been Thursday?

3 A Yes.

4 Q Could it have been Wednesday?

5 A Yes.

6 Q Could it have been Tuesday?

7 A No I don't believe it was.

8 Q So that to the best of your belief, it was  
9 either Wednesday or Thursday?

10 A Yes.

11 Q Now how old were you at that time, Steve?

12 A Seventeen.

13 Q And you were in the same class as Kim Nees?

14 A Yes.

15 Q Had you been friends since you were little kids?

16 A Yes.

17 MR. RACICOT: I have no further questions.

18

19

RECROSS EXAMINATION

20 By Mr. Moses:

21 Q Again I would like to refer to your statement  
22 in which you said early in the week. Is that what you told  
23 the FBI agent?

24 A (Witness reads a portion of his statement) Yes.

25 MR. MOSES: Okay, no further questions.

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1 MR. RACICOT: Now with the Court's permission, could I have  
2 an opportunity to question him again?

3 THE COURT: Go ahead.  
4

5 RE-REDIRECT EXAMINATION

6 By Mr. Racicot:

7 Q Does early in the week mean to you the day  
8 before or the day before that, either Wednesday or Thursday?

9 A Yes.

10 Q When you took a look at that statement that Mr.  
11 Moses showed you, is that in your handwriting or is that  
12 a statement that the FBI officer made?

13 A It is the statement that the officer made.

14 Q He was taking down things that you were telling  
15 him?

16 A Right.

17 Q And is everything that is in that statement  
18 exactly what you told him?

19 A I can't say for sure that it is exactly, no.

20 Q Did you tell him to put certain things down?

21 A No.

22 Q He put down what he wanted?

23 A More or less, yes.

24 MR. RACICOT: Thank you, no further questions.

25 RE-RECROSS EXAMINATION

1 By Mr. Moses:

2 Q Are you suggesting that there is something in  
3 this statement that the FBI agent put down that was inaccurate?  
4 That he deliberately misled you and put something down that  
5 was not true?

6 MR. RACICOT: Your Honor, we would object to this line of  
7 questioning ---

8 MR. MOSES: Let me withdraw that question.

9 Q Are you suggesting that the FBI agent is not  
10 accurate in taking that statement and if so, tell us how he  
11 was inaccurate in any part of that statement?

12 MR. RACICOT: We would object to that question, Your Honor,  
13 he answered the question and ---

14 MR. MOSES: I will withdraw the question.

15 Q Is there anything in that statement that you  
16 have before you that is inaccurate, that is wrong?

17 A Not that I can see.

18 MR. MOSES: Thank you. No further questions.

19 MR. RACICOT: We have no further questions, Your Honor and we  
20 ask that this witness be excused.

21 THE COURT: Any objections to that?

22 MR. MOSES: No objections.

23 THE COURT: You may be excused, thank  
24 you.

25 WHEREUPON, this witness was EXCUSED.