

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

WELDON TWO BULLS,

Defendant.

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CR. 18-50166

TRIAL BRIEF

The United States of America, by and through Assistant United States Attorney Cassandra DeCoste, submits this trial brief in advance of the trial scheduled to begin on March 12, 2019.

The United States requests permission to introduce the statements of Gilbert Lakota a/k/a “Jr.” Lakota (Lakota) to law enforcement through the testimony of Bureau of Indian Affairs Special Agent Wesley Pacenza.

Lakota was interviewed on November 6, 2018, as well as November 21, 2018, by BIA SAs Wesley Pacenza and Darrell Robinson. In summary, Lakota provides that between Friday night, November 2, 2018, and Saturday morning, November 3, 2018, the victim, Sheena Between Lodges, was “hummed up.”<sup>1</sup> Lakota stated that the victim lost her prosthetic leg while drinking in her Dodge Durango located approximately 100-300 yards from the victim’s residence. Lakota advised he was with the victim and another witness to this case, Oscar

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<sup>1</sup> This would indicate that the victim was feeling the effects of alcohol intoxication at that time.

Saucedo. When the parties were finished drinking in the vehicle, they decided to return to the residence. The vehicle would not start. Lakota opined the battery was dead. Lakota described that because the victim's leg was missing, he and Saucedo carried the victim from the vehicle to the home. Lakota explained that the bruising to the victim was the result of her being carried by himself and Saucedo.

Once the three arrived to the residence, Lakota and Saucedo assisted the victim up the steps. Lakota's sister, Lily Larvie, exited her bedroom. Lakota left the victim with Saucedo at the porch stair to move their child, K.L., from the entryway to the residence at the top of the porch stair. Lakota indicated the victim fell off the steps while ascending the stair to enter the residence. Lakota advised she fell on her back. Later in his statement, he indicates the victim hit her head. Lakota stated Saucedo picked the victim up from her fall. Lakota and Saucedo took her to the bed and the defendant came in and asked to borrow her Durango. Lakota indicated the victim gave the defendant permission to take the vehicle. Lakota indicated that the victim's black eye was the result of the victim hitting her head on a vehicle door handle.

Oscar Saucedo was interviewed by BIA SA Wesley Pacenza on November 6, 2018. He confirmed that the parties had been drinking in the field; the vehicle would not start when the parties desired to return to the residence, and the victim was assisted into the residence. However, Saucedo stated that these events were not the events of Friday, November 2, 2018. Instead, Saucedo advised that these events occurred on Tuesday, October 30, 2018. Saucedo

denied that the victim fell from the steps when the parties assisted the victim into the residence. Saucedo denied being with the parties on Friday, November 2, 2018. Saucedo also advised a second witness, Missy Goings, was present on Tuesday, October 30, 2018.

Missy Goings was interviewed by BIA SA Wesley Pacenza on November 7, 2018. She confirmed Lakota, the victim, Saucedo, and Goings were together on October 30, 2018. She confirmed the parties were drinking, the vehicle would not start, and the victim was assisted into the residence. However, Goings denies that a fall occurred. Goings denied being present on Friday, November 2, 2018.

Gilbert Lakota was reinterviewed on November 9, 2018. He then denied that Saucedo was present on Friday, November 2, 2018, and that Saucedo was tasked with helping the victim ascend the stair. Lakota recalled that another party was present and tasked with helping the victim ascend the stair, as previously stated, but he could not recall the identity of the other party who was present and tasked with helping the victim ascend the stair. In this interview, he suddenly indicated that he was extremely intoxicated and his intoxication on November 2, 2018, through November 5, 2018, was such that he could not recall much of the details of that weekend.

Rule 801 of the Federal Rules of Evidence provides that a statement not offered for the truth of the matter asserted is not hearsay. Fed. R. Evid. 801. These statements by Lakota are offered as untruths about the circumstances surrounding the injuries the victim, Sheena Between Lodges, incurred prior to her hospitalization November 5, 2018. The evidence, including the statements

by Saucedo and Goings, in this case offered at trial will support that these statements by Lakota are untrue statements.

Further, a statement offered to show the effect on the listener is not hearsay. United States v. Wright, 739 F.3d 1160, 1170—1171 (8th Cir. 2014) (citing United States v. Dupree, 706 F.3d 131, 136 (2d Cir. 2013); United States v. Malik, 345 F.3d 999, 1001 (8th Cir. 2013); Biegas v. Quickway Carriers, Inc., 573 F.3d 365, 379 (6th Cir. 2009); United States v. Cruz-Dias, 550 F.3d 169, 176 (1st Cir. 2008)). Lakota's conflicting statements to BIA SA Pacenza caused SA Wesley Pacenza to question the veracity of these statements. In questioning the veracity of Lakota's conflicting statements, he pursued the narrative provided by the defendant to Elgin Young Bear and Wylene Two Lance thus establishing a version more consistent with the victim's injuries and the defendant's role in committing the crimes of Accessory after the Fact in violation of 18 U.S.C. § 3 and False Statement in violation of 18 U.S.C. § 1001.

Dated this 7th day of March, 2019.

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