

1 MR. RACICOT: Call Sgt. Jay Via.

2 WHEREUPON,

3 SGT. JAY VIA

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

7
8 DIRECT EXAMINATION

9 By Mr. Racicot:

10 Q Could I have your name please?

11 A Sgt. Jay Via.

12 Q And your occupation?

13 A I am employed by the Ouachita Parish Sheriff's
14 Office in Monroe, Louisiana.

15 Q Sgt. Via, can you -- do you know the Defendant
16 in this case?

17 A Yes sir, I do.

18 Q And have you seen him before?

19 A Yes sir, I have.

20 Q And can you point to him please?

21 A He is seated over there in a blue-green suit,
22 beside Mr. Moses.

23 Q Do you recall the first time that you had
24 occasion to meet the Defendant?

25 A Yes sir, I do.

CALMER A. ERSNESS

OFFICIAL COURT REPORTER

P. O. BOX 978

WOLF POINT, MONTANA 59201

1 Q And when was that?

2 A It was on January the 6th of 1983.

3 Q Now, Sgt Via, at that time, was the Defendant
4 being held in custody in Monroe, Louisiana?

5 A Yes sir, he was.

6 AT THIS TIME, the court reporter marked documents as
7 STATE'S EXHIBITS NUMBERED 36, 37 and 38.

8 Q Sgt. Via, were you involved in the investigation
9 of the underlying charges for which the Defendant was being
10 held at that time?

11 A I beg your pardon?

12 Q Was the Defendant at that point in time, when
13 he was in custody on the 6th day of January, 1983, being
14 held in connection with Montana charges?

15 A No sir, he wasn't.

16 Q Were you involved in the investigation of the
17 charges that he was being held on?

18 A Yes sir, at the time I interviewed him on the
19 6th of January, I was.

20 Q And those were Louisiana charges?

21 A That is correct.

22 Q Now in the course of your investigation of those
23 Louisiana charges, did you come upon some information that
24 the Defendant may possibly be involved in a case in Montana?
25 MR. MOSES: Objected to upon the grounds that it is leading
and suggestive.

1 MR. RACICOT: Your Honor, it is necessary in order to limit
2 the inquiry to a proper -- I don't want to get into ---

3 THE COURT: Well I think it is
4 proper, go ahead.

5 A Yes sir, I did.

6 Q And so as a result did you make preparations
7 to interview the Defendant concerning the Montana charges?

8 A Yes sir I did.

9 Q Now on the 6th of January, 1983, could you tell
10 us where you went to interview the Defendant?

11 A Yes sir, I traveled to the Ouachita Correctional
12 Center, which at that time located approximately five miles
13 from the courthouse and my office.

14 Q And did anybody accompany you?

15 A Yes sir, Deputy Richard Medaries, who was my
16 partner at the time, traveled with me to the correctional
17 center.

18 Q And do you recall what time of day it was on
19 January 6th, 1983 that you went to the correctional center?

20 A Approximately 10:55 AM in the morning.

21 Q And did you meet with the Defendant at that
22 time?

23 A Yes sir, I did.

24 Q Now prior to any questioning of the defendant,
25 did you advise him of his rights?

1 A Yes sir, I did.

2 Q And would you tell us specifically what you
3 advised him of?

4 A Mr. Beach was advised, first of all, that he
5 had the right to remain silent and I further explained to him
6 that he did not have to say anything to Deputy Medaries or
7 myself unless he wanted to. He was secondly advised that
8 anything that he said, verbal, written, or otherwise recorded
9 could and might be used against him in a courtroom later in
10 a trial or any court hearing; It was explained to him that
11 anything that he said to either Deputy Medaries or I, whether
12 it was recorded, written notes or just testifying against him
13 of what he told us, that Deputy Medaries and I could testify
14 to any document being used against him in a later court
15 proceeding; he was further advised that he had the right to
16 have counsel present during questioning and that if he could
17 not afford counsel, that the Court would appoint counsel for
18 him without cost to him prior to any questioning; it was
19 further explained to him that meant that if he said anything
20 at all, that he had the right to have an attorney being
21 present before any questions were asked of him; that we would
22 not ask him any questions if he wanted an attorney, and that
23 the court could appoint one if he couldn't afford one, or that
24 he could hire one; he was further advised that if he waived
25 his right to remain silent, that at any time during the

1 interview, he could stop answering any questions and ask for
2 an attorney to be present. It was further explained to him
3 that at any time during any questioning he could stop the
4 interview with no explanation given to either Deputy Medaries
5 or to myself.

6 Q And did you ask the Defendant if he understood
7 those rights?

8 A Yes sir I did.

9 Q And did you discuss them individually, each
10 time, with the defendant?

11 A Yes sir I did.

12 Q And what was the Defendant's response to you
13 as far as proceeding with the questioning?

14 A He indicated that he understood each and every
15 one of his rights as we had explained them to him, and he
16 waived the presence of any attorney and agreed to be interviewed
17 at that point of time.

18 Q Now did you do this, advising him of his
19 rights, with a written form?

20 A No sir, just as I had testified earlier, it was
21 verbal.

22 Q Now at the time, how would you describe the
23 Defendant's physical appearance?

24 A He appeared to be in very good physical health
25 and there was no indication that he was intoxicated, he was

1 very allusive and he appeared to understand fully and
2 intelligently everything that went on.

3 Q Was his speech coherent?

4 A Yes sir it was.

5 Q Did you make any promises to him?

6 A No sir.

7 Q Did you withhold any kind of necessities of
8 life in order to coerce him?

9 A No sir I did not.

10 Q Previously here you testified regarding the
11 correctional center. Can you describe what kind of a
12 facility that was where he was physically located?

13 A The correctional center is a minimum security
14 detention facility in Ouachita Parish and the interview itself
15 was held in the compound inside a classroom which was at the
16 time, housed in a mobile home inside the compound.

17 Q Now, were you aware whether or not the
18 Defendant had been interviewed before by representatives of
19 Ouachita Parish Sheriff's office?

20 A Yes sir, according to the report which I had
21 read, he had been interviewed on January 4th, 1983.

22 Q And that was in reference to what, the underlying
23 charges in Louisiana?

24 A That was in regard to the charges which he was
25 being detained for in Louisiana at that time.

1 Q And did you, in the course of this investigation
2 determine whether or not he was advised of his rights on that
3 occasion?

4 A Yes sir, according to the reports ---

5 MR. MOSES: Your Honor, I would object to him testifying
6 from this -- those reports until they are produced here in
7 court for examination.

8 MR. RACICOT: As a matter of fact, they have all been marked
9 as exhibits here.

10 Q I will hand the witness what has been marked
11 for identification as State's Exhibit number 35 and have
12 you ever seen that particular document before, the original
13 of that document?

14 A Yes sir I have.

15 Q And what is that?

16 A This is a standard rights waiver form which is
17 used by the Ouachita Parish Sheriff's office when advising
18 individuals of their rights prior to taking recorded
19 statements.

20 Q And that particular form, did you execute that?

21 A No sir I did not.

22 Q What does that form pertain to, which
23 conversation was it from?

24 A This pertains to the conversation that took
25 place on January 4th, 1983 at 7:17 PM which was initiated by

1 Deputy Stutts of the Ouachita Parish Sheriff's department.

2 Q And that is the particular conversation to which
3 you referred to earlier?

4 A That is correct.

5 Q Now are you familiar with the Defendant's
6 signature?

7 A Yes sir.

8 Q And do you recognize that to be the signature
9 of Barry Beach, the defendant here?

10 A Yes sir.

11 Q And you say that is a copy of the original, is
12 that correct?

13 A That is correct.

14 Q And is it an exact copy of the original?

15 A Yes it is.

16 MR. RACICOT: We would move for the admission of State's
17 Exhibit Number 35 for identification.

18 MR. MOSES: May I inquire, Your Honor?

19 THE COURT: Yes.

20 VOIR DIRE BY MR. MOSES:

21 Q Mr. Via, I am Timer Moses and I represent the
22 defendant, and I hand you what has been marked for identification
23 State's Exhibit Number 35. Were you present at the time that
24 document was executed?

25 A No sir I was not.

1 Q Do you know who was present, were you in the
2 room on January 4th, 1983?

3 A Are you asking who was present when this waiver
4 was executed?

5 Q Yes?

6 A Deputy Stutts and Deputy Corporal Aerie.

7 Q Do you know whether they discussed the matter
8 with him, from your own knowledge?

9 A The matter of these rights?

10 Q Sure?

11 A Yes I would assume so.

12 Q You would assume so?

13 A Yes, according to the report, yes.

14 Q Excuse me, I am not talking about reports, I
15 am talking about this document. You were not present when
16 that document was executed?

17 A No sir.

18 Q You do not know what was said?

19 A I was not there to hear it, no.

20 Q So that there is no way in which, as an officer
21 of the law, would know or care to testify as to what some
22 other person said to Mr. Beach at some other time?

23 A I cannot testify as to the actual conversation
24 that took place during this interview, no.

25 MR. MOSES: Your Honor, I object to this proposed State's

1 Exhibit number 35 upon the grounds there is no adequate or
2 sufficient foundation to justify the admission of this
3 exhibit into evidence in this case.

4 MR. RACICOT: Your Honor, we offer this exhibit to establish
5 that the defendant was advised of his rights on January 4th,
6 1983 by representatives of the Ouachita Parish Sheriff's
7 office and Mr. Via has testified that he recognizes the
8 signature of the Defendant on this particular document and
9 that this is an exact duplicate of the original, and I believe
10 that is all that is required, and we are introducing it for
11 no other reason.

12 MR. RACICOT: I would like to speak on that issue, Your Honor.
13 and I don't know if it is appropriate that we discuss this
14 in front of the Jury.

15 THE COURT: Well we can go into
16 Chambers. (Jury remains in the jury
17 box, and all counsel and the defendant
18 retire to the Court Chambers)

19 IN THE JUDGES CHAMBERS, with all counsel and the Defendant
20 being present, and outside the hearing of the Jury:

21 THE COURT: Okay, go ahead.

22 MR. MOSES: Your Honor, I object to the introduction of
23 State's Proposed Exhibit number 35, upon the ground that no
24 sufficient foundation has been laid. We don't know the
25 circumstances under which this was executed, and what was said

1 to this defendant in the execution of this waiver and that
2 the mere saying that the document, even if it was signed,
3 does not meet the requirements of voluntariness, unless some
4 one can testify as to the validity of this document.
5 MR. RACICOT: Your Honor, it is not that big a deal, but in
6 this matter, the officer has testified that he has recognized
7 the defendant's signature on this particular document and that
8 this is an exact duplicate of the original, and really, I
9 don't know what more you need to authenticate a document,
10 this witness recognizes the signature of the defendant and it
11 is an exact duplicate of the original. We are not asking him
12 if he thought the defendant understood his rights, all we
13 are asking is that he executed the document.
14 MR. MOSES: The question is the voluntariness.
15 MR. RACICOT: He was advised of his rights and he read and
16 signed it. We could make out without it.
17 IN THE COURTROOM in the presence of the jury, defendant and
18 all counsel:
19 THE COURT: You may proceed.
20 DIRECT EXAMINATION continued by Mr. Racicot:
21 Q Sgt. Via, on January 6th, 1983 when you were
22 there advising the Defendant of his rights and told him that
23 you would like to question him, and in fact, you did question
24 him, correct?
25 A That is correct.

1 Q What kind of information did you, or what kind
2 of topics did you talk to the Defendant about on that
3 particular day?

4 A We discussed the charges that were -- the
5 charges which he was currently being charged with in
6 Louisiana as well as personal background history as well as
7 vital information which he gave about himself and in addition
8 to the fact he brought up the fact that he was a suspect in
9 a murder out here in the State of Montana.

10 Q And did he suggest that to you?

11 A Yes sir, he brought that up during the interview.

12 Q Even though you were already aware of that?

13 A That's correct.

14 Q And did he cooperate fully with you during this
15 interview process?

16 A Yes sir he did.

17 Q And at any time did he revoke his right to
18 counsel?

19 A No sir, he did not.

20 Q And did he talk freely to you during this
21 interview?

22 A Yes sir he did.

23 Q Did you and Deputy Medaries in any way coerce
24 him or threaten the defendant?

25 A Absolutely not.

1 Q Did you make any promises to him?

2 A No sir.

3 Q And I take it that you did not discuss the
4 homicide in Montana at all on that particular day, except in
5 passing when he mentioned he was a suspect?

6 A That is correct.

7 Q How long did the interview last?

8 A Approximately one hour.

9 Q And then you concluded the interview about what
10 time?

11 A That interview was concluded approximately at
12 twelve o'clock P. M., on that day, January 6th, 1983.

13 Q And did you have occasion to again interview
14 the defendant?

15 A Yes sir, I did.

16 Q And when was that?

17 A That was on January the 7th, 1983 at approximately
18 12:52 Pm.

19 Q Now this is the next day?

20 A That's correct.

21 Q And in the interim had you gained knowledge
22 from law enforcement authorities in Montana?

23 A Yes I had.

24 Q And would you describe for us where the
25 Defendant was at the time you made plans to take his statement
on January 7th, 1983?

1 A Prior to the time of transporting him to our
2 office he was at the correctional center.

3 Q And who picked him up on that particular day?

4 A I did.

5 Q And then you went to the correctional center,
6 which you said was about five miles away from your office?

7 A That's correct.

8 Q And do you recall about what time?

9 A The transportation started from the correctional
10 center at approximately 12:24 PM and at that time, Mr. Beach
11 and I walked to our vehicle and drove away from there.

12 Q Now at that time did you advise the Defendant
13 of his rights?

14 A Yes sir I did.

15 Q And in exactly the same fashion as you had done
16 earlier on the 6th?

17 A Yes sir.

18 Q And you did that orally?

19 A Yes sir I did.

20 Q Then you proceeded where, after you had advised
21 him of his rights -- was this in the vehicle that you did that?

22 A Yes sir.

23 Q And then you proceeded where?

24 A We traveled to the Ouachita Parish Courthouse
25 Annex located on 300 St. Johns Street and went into our office

1 and Mr. Beach was placed in the Investigator Interview Room
2 Number One while I made several phone calls to Montana.

3 Q And did you gather further information through
4 those phone calls?

5 A Yes sir I did.

6 Q And what was the purpose of gathering this
7 information?

8 A So that we would have the appropriate
9 information to conduct an interview with Mr. Beach.

10 Q Prior to the time that you began any questioning
11 in the interview room, did you then advise again, the
12 defendant of his rights?

13 A Yes sir I did.

14 Q And was there anybody else present at that time?

15 A Initially, when he was advised in Interview
16 Room number One, at 12:52 I believe was the time, I was the
17 only one present; however, at approximately 12:58 after he
18 had been advised of his rights, Dep. Wellbright came into the
19 room and once again Mr. Beach was verbally advised of his
20 rights, his constitutional rights, and questioned about the
21 waiver that he had previously signed.

22 Q So that up to this point in time, you had
23 advised him on the 6th, correct?

24 A Yes.

25 Q And when you got into the patrol car with him
on the 7th, he was again advised of his rights?

1 A Yes sir.

2 Q And again when he got to your -- to the Annex
3 from the correctional center, you again advised him of his
4 rights?

5 A Yes sir.

6 Q And again when the deputy came into the room,
7 you again advised him?

8 A Yes sir.

9 Q And on all four of those occasions, the
10 defendant waived his rights?

11 A That is correct.

12 Q I am handing you what has been marked as State's
13 Exhibit Number 36 and ask if you can identify that?

14 A Yes sir. This is a waiver which was initiated
15 on January 7th, 1983 at 12:52 PM. signed by me and Mr. Beach.

16 Q Were you present when that was executed?

17 A Yes sir I was.

18 Q And what is it?

19 A This is a standard Ouachita Parish Waiver of
20 rights form which was read to Mr. Beach and explained to him
21 by me in detail.

22 Q And did you ask him if he understood those
23 rights?

24 A Yes, on each and every right, separately, yes.

25 Q And did he acknowledge that he did in fact,
understand?

- 1 A Yes.
- 2 Q And did he sign that document to that effect?
- 3 A Yes sir, he did.
- 4 Q And did you as a witness, sign that document?
- 5 A Yes sir I did.
- 6 Q And that particular copy that you have in your
7 hand, that is not the original, is it?
- 8 A No it is not.
- 9 Q Is it an exact duplicate, photographic copy
10 of the original?
- 11 A Yes sir it is.
- 12 Q Now when you read Mr. Beach his rights, did he
13 then read and execute this particular document?
- 14 A Yes.
- 15 Q And did he appear to be free of intoxicants?
- 16 A Yes sir.
- 17 Q And at any time, up to this point in time, when
18 you advised him of his rights, did you make any threats or
19 promises?
- 20 A No sir I did not.
- 21 Q Did you use any tricks of any form to try to
22 get him to waive his rights?
- 23 A No sir.
- 24 Q And he fully appeared to understand those rights?
- 25 A Yes sir.

1 MR. RACICOT: We would offer in evidence, State's Exhibit
2 Number 36.

3 MR. MOSES: May I inquire?

4 THE COURT: Yes.

5 MR. MOSES conducts VOIR DIRE:

6 Q: Officer Via, I take it that all of the
7 material that is on this exhibit which is not typed, was on
8 the exhibit, that is, all the writing that appears in pen,
9 was on there at the time that Mr. Beach, Barry Allan Beach
10 signed this waiver?

11 A Those handwritten notations, Sir?

12 Q Yes.

13 A Yes sir, I filled this out myself.

14 Q So that when this waiver was produced to him,
15 it stated that he had not been arrested?

16 A Not in regard to that homicide.

17 Q Excuse me, he had not been arrested?

18 A In regard to that homicide.

19 Q "...and that I am being questioned regarding
20 an offense"?

21 A Not in regard to ---

22 Q Had he in fact been arrested?

23 A He was arrested on non-related charges.

24 Q Was he in custody?

25 A Yes sir.

1 Q Was he free to leave custody?

2 A No sir.

3 Q Did you advise him when he executed this waiver
4 that he had not been arrested?

5 A In regard to that homicide.

6 Q But this document doesn't say that, does it?

7 A Yes sir.

8 Q Did you tell him, specifically, "while you are
9 not being arrested -- you have not been arrested on the Montana
10 charge, but I am going to talk to you about the Montana charge,"
11 isn't that what you said to him, words to that effect?

12 A You should let me explain what I told ---

13 Q Did you say those words?

14 A He was informed that he was not under arrest
15 and being questioned regarding that homicide.

16 Q Do you have any idea whether he understood in
17 connection with executing the waiver, when he executed a
18 waiver that said "he had not been arrested" that he was free
19 to go?

20 A He knew he was under arrest on non-related charge.

21 Q You explained the difference to him by being
22 arrested under one charge and being in jail and not being able
23 to leave, and you explained to him why he was not being
24 arrested for this, but I am going to talk to you about the
25 Montana case, is that the way you explained it?

1 A Not quite in those words.

2 Q In essence, that way?

3 A No sir, not quite in those words, and I can

4 explain exactly what I explained to Mr. Beach.

5 Q What I am getting at, Mr. Via, is that when he

6 executed that waiver as proposed here, it says in there that

7 he had not been arrested, when in fact, he had been arrested

8 and had been incarcerated in a jail since January 4th, 1983,

9 right?

10 A Your question?

11 Q He had been incarcerated in a jail before and

12 on January 4th, 1983?

13 A On non-related charges.

14 Q He was physically in the custody of the Sheriff's

15 office?

16 A Yes sir.

17 Q And he was treated as a prisoner?

18 A Yes sir.

19 MR. MOSES: Your Honor, I have no further questions with

20 respect to the foundation and I am going to object to the

21 introduction of this exhibit upon the grounds that no

22 sufficient or adequate foundation has been made.

23 THE COURT: Your objection is to

24 foundation, that is all?

25 MR. MOSES: At the present time, yes.

1 THE COURT: Do you have a response to
2 that?

3 MR. RACICOT: No sir.

4 THE COURT: I am going to rule that it
5 is admissible, that the foundation is
6 proper.

7 DIRECT EXAMINATION now continued by Mr. Racicot:

8 Q Would you tell us, Sgt. Via, what you advised
9 the defendant?

10 A Yes sir. When this waiver was presented to
11 Mr. Beach, there is in there, two sections, one saying "I have
12 been" and "have not been" arrested. In regard to the
13 particular incident we were going to question him about, he
14 had not been placed under arrest. Mr. Beach was informed that
15 although he was under arrest for misdemeanor charges, that
16 this waiver was specifically having to do with the homicide
17 in Montana and that his waiver would reflect that he was not
18 under arrest concerning that particular charge in Montana,
19 in essence, that is what we were going to question him about.
20 MR. RACICOT: Thank you.

21 Said Exhibit is then examined by the Jury. That thereafter,
22 this being the hour of 11:56 A.M., the Court admonished the
23 Jury and this trial was RECESSED for the noon hour, to
24 reconvene at the hour of 1:15 o'clock M.M.

25

1 IN THE COURTROOM, 1:15 o'clock P.M.:

2

3

THE COURT: Let the record reflect that
all of the jurors are present,
Defendant is present with counsel,
and the State of Montana is present
and with that you may proceed. I
believe Mr. Via was on the stand.

8

9 MR. RACICOT: Yes, Your Honor.

10

SGT. JAY VIA returns to the witness stand, and further

11

DIRECT EXAMINATION is conducted by Mr. Racicot:

12

Q Sgt. Via, I want to remind you that you are

13

still under oath?

14

A Yes sir.

15

Q I believe we had come to that point in time

16

where you had advised the Defendant of his rights on January

17

7th, 1983, and we exhibited to the Jury, the State's Exhibit

18

Number 36, the waiver of rights form. Now subsequent to that,

19

you stated that subsequently, Deputy Wellbright came in there

20

with you, is that correct?

21

A Yes sir, that is correct.

22

Q And at that point in time, you did advise the

23

defendant of his rights?

24

A Yes sir.

25

Q And in the same fashion as you had done before?

1 A Yes sir.

2 Q And then did you proceed to interview the

3 defendant?

4 A Yes I did.

5 Q And was Deputy Wellbright there with you during

6 that entire interview?

7 A No sir, he did not. He left several minutes

8 into the interview.

9 Q And did anyone re-enter the room at that point?

10 A No sir, not at that point in time.

11 Q Now during your conversation with the defendant,

12 what kind of voice did you utilize when you talked to him?

13 A Talking the same tone of voice that I am using

14 to testify here today, calm and not raising my voice, a very

15 low key.

16 Q You didn't threaten him?

17 A No sir.

18 Q Promise him anything?

19 A No sir.

20 Q Was he in fact responsive to your questions as

21 being appropriate?

22 A Yes.

23 Q How long did this interview process last, when

24 did it conclude?

25 A The interview proper was started at approximately

1 12:53 and it lasted until shortly after three o'clock PM, at
2 which time I left the interview room and then Commander
3 Alfred Calhoun came in and interviewed Mr. Beach.

4 Q Now when Mr. Calhoun came in -- is he your
5 commanding officer?

6 A He is the Commander of the division to which I
7 am assigned; however, at the time I was on special assignment
8 with the Homicide Task Force and Lt. Cummings was my immediate
9 superior at the time.

10 Q And when Commander Calhoun came into the room
11 to interview the defendant, was that -- what was the purpose
12 of that?

13 A That was at my request. I had asked Commander
14 Calhoun to come in and talk to Mr. Beach to see if he
15 developed the same conclusion as I had as far as Mr. Beach
16 was concerned.

17 Q Now during this period of time did you provide
18 the defendant with opportunity to use the restroom or utilize
19 cigarettes, coffee or soda pop or anything of that nature?

20 A Yes sir.

21 Q All of the above?

22 A Yes sir.

23 Q And this would be if he requested it?

24 A Yes, if he wanted it, he could have had it.

25 Q And then Commander Calhoun went in and talked
to the Defendant?

1 A That is correct.

2 Q Now was this basically throughout the time you
3 were with the defendant until the time you left and Commander
4 Calhoun came in, werethere several discussions between you
5 and the defendant?

6 A Yes sir.

7 Q Now how long were you out of the room?

8 A I would say approximately two to two and one
9 half hours.

10 Q And then Mr. Beach, the defendant was in there
11 with Mr. Calhoun?

12 A Yes sir.

13 Q And again, -- what time did you come back into
14 the room?

15 A I was coming back into the room at approximately
16 6:30 or somewhere around that time to see Commander Calhoun
17 and Commander Calhoun indicated that Mr. Beach said or made a ---
18 MR. MOSES: Objection, Your Honor, as to any conversation
19 related by Mr. Calhoun ---

20 MR. RACICOT: May I proceed your Honor, we will be calling
21 Commander Calhoun and he will be able to cross examine him,
22 and it is certainly not hearsay information and we are not
23 asserting it for the truth of it.

24 MR. MOSES: I am not suggesting what Mr. Racicot has said,
25 but what I am suggesting is that I don't want him to include

1 -- don't what the conclusion or statement of any conversation
2 that might somehow get into this examination. I don't have
3 any objection to the question itself, unless he ---
4 Q Why did you go back into the room?
5 A Commander Calhoun told me that Barry Beach
6 wanted to talk to me.
7 Q And did you go back into the room?
8 A Yes sir I did.
9 Q And did you see the Defendant at that time?
10 A Yes I did.
11 Q And approximately what time was that?
12 A I believe it was around 6:43 or 6:30, I believe.
13 Q And did Commander Calhoun stay in the room with
14 you when you came back?
15 A No sir he did not.
16 Q And did you then continue the discussion with
17 the Defendant?
18 A Yes sir I did.
19 Q Did he state to you that he wished to dis-
20 continue the interview?
21 A No sir.
22 Q Did he indicate that he wanted to continue to
23 answer questions?
24 A Yes sir, he did.
25 Q In the nature of the type of questions that you

1 wanted to ask him, did his responses change at all from the
2 previous time that you talked with him?

3 A Yes it had.

4 Q And could you explain how?

5 A When I re-entered the interview room, Mr.
6 Beach had tears in his eyes and at that point in time,
7 everything that he talked to me about was the fact that he
8 was afraid to admit of what he had done in Montana and at that
9 time the line of questioning transpired around to what he was
10 talking about.

11 Q And did you inquire of him what he was talking
12 about?

13 A Yes sir, I did.

14 Q And would you describe to us what you asked him
15 and what he told you?

16 A At this point in time, Mr. Beach indicated he
17 was having a difficult time in remembering the dates of this
18 particular homicide back here in Montana and I instructed Mr.
19 Beach that I could find nothing wrong with his not remembering
20 and we could come back to it later, and Mr. Beach at that
21 point made the statement that everything was beginning to come
22 a lot clearer to him, and at which point I summoned Commander
23 Calhoun back into the room.

24 Q And why did you do that

25 A Because at this point in time, I felt that Mr.

1 Beach was on the verge of making an admission of guilt in
2 the interview and I wanted Commander Calhoun to be in there
3 at that time.

4 Q And did you proceed with questioning when
5 Commander Calhoun came back in?

6 A Yes sir, I did.

7 Q And did you do anything prior to proceeding
8 with further questions?

9 A After Commander Calhoun came in?

10 Q Yes.

11 A When Commander Calhoun came the questions
12 continued without interruption from the time he was summoned
13 until he came back in, and at approximately, I believe, 6:51
14 Mr. Beach made the statement that he in fact killed Kimberley
15 Nees in Montana and at which point, shortly thereafter, a
16 second waiver was obtained from Mr. Beach and a statement was
17 asked -- we asked for a recorded statement pertaining to
18 details on that particular homicide; this particular waiver
19 took place approximately 7:08 PM after I had explained the
20 rights to him in the presence of Commander Calhoun and at
21 that point, we took his recorded statement -- or confession
22 and it was of the details related to this homicide.

23 Q I hand you what has been marked as State's
24 Exhibit Number 38 for identification, excuse me, 37 for
25 identification and ask if you can identify that document?

1 A Yes sir. This is a rights waiver that Mr.
2 Beach signed on January 7th, 1983, at 19:08 o'clock P.M., --
3 be 7:08 PM in the presence of Commander Calhoun and myself.

4 Q And do you recognize that signature there as
5 your own and that of Commander Calhoun?

6 A That is correct, yes.

7 Q And that is the original of that document, is
8 it?

9 A No sir.

10 Q But is that a duplicate accurate copy of the
11 original, a photographic or photostatic copy of the original?

12 A Yes sir that is.

13 Q And that is the one that you gave to Mr. Beach?

14 A Yes, at 7:08 PM on January the 7th, 1983.

15 Q Just prior to the time that you proceeded with
16 the recorded statement?

17 A That is correct.

18 Q Now at that point in time, did you advise him
19 of his rights in the same fashion you had done before?

20 A Yes sir the waiver was explained to him in
21 detail prior to the recorded statement.

22 Q And at that point in time did he waive his
23 rights?

24 A Yes sir he did.

25 Q And did it appear to you in your understanding,
that he understood his rights?

1 A Yes sir.

2 Q Did you make any threats or promises?

3 A No sir I did not.

4 Q Did you withhold any life necessities from him?

5 A No sir we did not.

6 Q Did you use any tricks?

7 A No sir.

8 Q And is there in any doubt in your mind that he
9 waived his rights?

10 A No doubts.

11 MR. RACICOT: We would offer in evidence, State's Exhibit
12 Number 37.

13 MR. MOSES: I would like to question this witness on voir
14 dire, Your Honor?

15 THE COURT: Go ahead.

16 VOIR DIRE by Mr. Moses:

17 Q Mr. Via, if I understood your testimony correctly
18 prior to 7:08 PM., on the 7th day of January, 1983, prior to
19 that time, and prior to the execution of the waiver, you were
20 told by Mr. Beach that he had killed Kimberley Nees?

21 A That is correct.

22 Q And therefore you had sufficient information
23 upon which to make an arrest, didn't you?

24 A Not at that time, no sir.

25 Q If someone comes up to you and says I killed

1 somebody, you don't place them under arrest? I just robbed
2 a bank? Just robbed a store?

3 MR. RACICOT: Your Honor, we are going to object to this, I
4 think that it might be proper cross examination to have this
5 type of examination, but it has nothing to do with voir dire.
6

7 MR. MOSES: Simply foundational -- I want to find out his
8 attitude and his intention was because he has testified as
9 to the execution of this, as to its voluntariness, and I
10 want to know the circumstances under which it was executed.

11 THE COURT: Well, go ahead and ask
12 him then.

13 Q Thank you. I take it then that you did not
14 believe at that time, when as you say Barry Beach said "I
15 killed Kimberley Nees" and you did not have sufficient and
16 adequate grounds for arresting Mr. Beach for that charge?

17 A At that point in time, when he made the
18 admission there was not proper cause for his arrest.

19 Q But wasn't a confession/^{it was} simply an admission,
20 right?

21 A Yes.

22 Q And you know the difference?

23 A I believed he was confessing to a crime, yes.

24 Q Well you used the word admission I believe, was
25 it an admission or a confession?

1 A One and the same thing to me, ---

2 Q You know that there is a substantial difference
3 between an admission and a confession?

4 MR. RACICOT: Your Honor, I am going to object, this is
5 improper voir dire.

6 MR. MOSES: I can't get through to him as to whether there
7 was a confession made at the time and whether he had
8 authorization -- all we are doing is arguing.

9 THE COURT: I know that, that is the
10 point, he is telling you what he did
11 and then you are getting into an
12 argument with him as to what the
13 difference between a confession and
14 an admission. I don't know if we
15 want to do that here.

16 Q Did you view the statement of Mr. Beach before
17 he signed this waiver as a confession?

18 A Yes sir.

19 Q And you did not place him under arrest?

20 A No sir.

21 Q And did you advise him in connection with this
22 waiver thereafter that he had not been arrested?

23 A Yes sir.

24 Q Okay. And you're prepared to state that he was
25 cooperative, alert and fully able to understand and appreciate

1 his rights and executed this waiver on that basis?

2 A He freely and voluntarily signed the waiver,
3 yes sir, he did that.

4 MR. MOSES: I have no problems.

5 A He made that decision on his own, he was not
6 forced--

7 Q He had no problems in your judgment?

8 A No sir.

9 MR. MOSES: Thank you. We object to the introduction of
10 State's Proposed Exhibit number 37 on the grounds there is no
11 sufficient foundation laid.

12 THE COURT: Mr. Racicot, any response?

13 MR. RACICOT: I don't know how I can make it any plainer,
14 Your Honor, that is all that I have on it.

15 THE COURT: Objection will be overruled
16 and number 37 will be admitted. That
17 was number 37?

18 MR. RACICOT: Yes, number 37.

19 THE COURT: It will be admitted.

20 DIRECT EXAMINATION now continued by Mr. Racicot:

21 Q Then I take it, Sgt. Via, you proceeded with the
22 taking of a statement from the Defendant?

23 A That is correct, yes sir.

24 Q In the presence of Commander Calhoun?

25 A Yes sir.

1 Q And that statement was recorded?

2 A Yes sir.

3 AT THIS TIME, a fourteen page document was marked as
4 STATE'S EXHIBIT NUMBER 39.

5 Q Sgt. Via, I am handing you what has been marked
6 as State's Exhibit number 39 for identification and I will
7 ask you to take a look at that carefully and tell me whether
8 or not you recognize that?

9 A (Examined by the witness) Yes sir, I do.

10 Q Can you tell us what that is?

11 A This is a copy of the transcript of the
12 recorded statement we obtained on January 7th, 1983 at
13 approximately 7:08 PM.

14 Q And the defendant gave that statement, correct?

15 A That is correct.

16 Q And is that a true and correct copy of the
17 original?

18 A Yes sir it is.

19 Q And does the original contain a transcription
20 of every word that was said between you and the Defendant,
21 and Commander Calhoun on the date that statement was taken?

22 A Yes sir.

23 MR. RACICOT: Your Honor, at this point in time, we offer
24 into evidence, State's Exhibit Number 39 and request the
25 court's permission to read the same to the jury.

1 MR. MOSES: May the record show that the defendant objects
2 to the introduction of State's Exhibit Number 39, upon the
3 grounds that it contains another listed identification which
4 should be removed if we are going to have it produced in
5 evidence in this case.

6 MR. RACICOT: I don't know what you are referring to.

7 MR. MOSES: Come up here and I will show you.

8 AT THIS TIME, Mr. Racicot, Mr. Moses and the Court discuss
9 the same, outside the hearing of the Jury and Reporter.

10 MR. MOSES: That does not belong on there.

11 FURTHER DISCUSSION by counsel and the Court outside the
12 hearing of the Jury and the Court Reporter.

13 MR. RACICOT: I am not going to hand this to the Jury, I am
14 going to read it is all.

15 MR. MOSES: All right, with that understanding I have no
16 objection to its identification here, which is placed on the
17 document, which in my view, is not relevent to the proceedings
18 here before the court now. Your Honor I object to the
19 introduction of the proposed exhibit upon the grounds that
20 no foundation has been laid under State versus Warwick and I
21 would like to have an opportunity to get that case and bring
22 it to the attention of the Court. It would take maybe four
23 or five minutes with respect to foundation on documents of
24 this kind.

25 MR. RACICOT: I have a copy if the Court wants to see it.

1 THE COURT: What, specifically, are
2 you objecting to?

3 MR. MOSES: I want to get as to the foundation for this
4 kind of documentation. I would like to retire to Chambers for
5 this, Your Honor.

6 THE COURT: All right, we will be
7 right back.

8 AT THIS TIME, counsel for both the Defendant and the
9 State, and the Defendant retired to Chambers, at which
10 time it was generally discussed the contents of the case
11 of State v. Warwick, which apparently is reported in
12 494 Pac. 2d. 627, and that thereafter all counsel and
13 defendant and court personnel returned to the Courtroom.
14 IN THE COURTROOM, with all parties present.

15 THE COURT; You may proceed.

16 EXAMINATION BY MR. RACICOT:

17 Q Sgt. Via, when you took this statement from
18 the defendant and I am now referring to State's Exhibit 39,
19 is that a verbatim transcript of the recording of that
20 statement?

21 A Yes sir, it is.

22 Q And did you know how to operate that recorder?

23 A Yes sir, I did.

24 Q And what kind of a recorder was it?

25 A It was a small type recorder which could be

1 recorded on both sides of the tape.

2 Q And is this transcript, State's Exhibit 39, an
3 accurate account of what was said during that interview when
4 this statement was given on the 7th day of January, 1983 at
5 7:08 PM?

6 A Yes sir it is.

7 Q And did you listen to the tape after the
8 interview was over?

9 A Not in its entirety, no sir.

10 Q But you did review the transcript with the tape?

11 A Yes sir, while I was listening to the tape
12 recording, it was being read to make sure that it was accurate.

13 Q And is this transcript, State's Exhibit Number
14 39 a true and accurate account of what was contained on that
15 tape?

16 A Yes sir.

17 Q And in your view, the statement was voluntarily
18 given?

19 A Yes sir.

20 MR. RACICOT: With that, we move for the admission of State's
21 Exhibit Number 39.

22 MR. MOSES: May I inquire, Your Honor?

23 THE COURT: Yes.

24 VOIR DIRE by Mr. Moses:

25 Q I take it that the proposed Exhibit number 39

1 was originally taken off the tape recording, is that right?

2 A Yes sir.

3 Q And who handled the tape recorder during this
4 recording?

5 A I did, Sir.

6 Q And I take it that you had enough tape to take
7 the entire taping on one tape?

8 A Yes sir and in the event that we would have
9 needed additional tape ---

10 Q My question is, Sgt. Via, did you have sufficient
11 tape to record the entire statement without interruption?

12 A Yes sir.

13 Q Now when you get a tape recording of this kind,
14 what do you do with it?

15 A It is submitted to the records division and there
16 it is transcribed by a secretary.

17 Q Who gets possession of it in the recording
18 division?

19 A Lt. Alley Hall there would take charge of the
20 tape and in turn, it is turned over to a secretary for
21 transcribing.

22 Q And so then a certain secretary transcribes it?

23 A Yes sir, that is correct.

24 Q And how do you know, for instance, when a sentence
25 begins or a paragraph begins, who does that?

1 A Well in the statement form, you put down the
2 question, that is typed up and when a person answers that
3 question, that would begin on another line.

4 Q You've created sort of a floor mat for these
5 questions and answers is that it, at the time these questions
6 and answers are taken ---

7 A Well like all statements are done, you have the
8 question, that is typed up and then the answer follows the
9 question.

10 Q I realize that, but whose decision is it to
11 end a sentence here, a period is here, a semi-colon here,
12 who does that?

13 MR. RACICOT: I would object to this line of questioning,
14 Your Honor, what purpose has that got to do with foundation.
15 This statement was taken by a tape recorder and thereafter it
16 was typed up, and Sgt. Via has testified that it is a full
17 and true and accurate statement of this interview.

18 MR. MOSES: It has to do with the floor mat, as to how this
19 transcript was put in a particular order and all I am doing
20 is simply asking him who put it in that order.

21 THE COURT: I think that he has answered
22 your question. He said when a question
23 was asked that started out on one line
24 and then when the answer is given, that
25 commences on another line.

1 Q But that is situation here, who makes the
2 decision as to the various paragraphs?

3 A I don't understand your question.

4 Q It was a stupid question, wasn't it?

5 A Yes.

6 Q Who sets up the floor mat?

7 A The floor mat is obtained through the recording
8 itself.

9 Q Was there any check made as to the accuracy of
10 this particular document?

11 A Changes yes, that I did were or are on that
12 document itself.

13 Q Some of these changes on this document are not
14 typed in, they were hand written in, right?

15 A Yes sir, I did that by listening to the tape
16 and checking it against the typed document.

17 MR. RACICOT: He testified, Judge, that it is an accurate
18 representation of what was on that tape.

19 MR. MOSES: And I can challenge the creditability if he
20 changed the form -- changed some parts that were typed up,
21 --- in State v. Warwick any changes or alterations made.

22 THE COURT: He said that he checked the
23 tape against the written document.

24 MR. MOSES: I understand that, Your Honor, he said that he
25 made some changes and I want him to testify as to the reasons

1 reasons for the changes and why he did it and why it was not
2 accurately done in the first place.

3 A Some parts of the tape, the secretary said was
4 not audible to her.

5 MR. MOSES: And so then he makes these changes or corrections
6 or alterations to this statement by listening to the
7 recording and reading the statement because the secretary
8 said portions of the tape were not audible to her, is that
9 right?

10 A Correct, Sir.

11 MR. MOSES: All right, I would object to the introduction of
12 the proposed statement on the grounds previously made, that
13 there is no foundation made for the introduction of State's
14 Exhibit 39.

15 THE COURT: Well, your objection is
16 overruled and 39 will be admitted in
17 evidence.

18 EXAMINATION now continued by Mr. Racicot:

19 Q Sgt. Via, do you have a copy of this particular
20 exhibit with you?

21 A Yes sir, I do.

22 Q Before we proceed here with this statement, I
23 would like to ask you some questions, and let's go through
24 this right now, page by page and indicate to me where you
25 made these corrections. Did you make corrections on page One?

1 A No sir.

2 Q Did you make any corrections on page two?

3 A No sir.

4 Q Did you make any corrections on page three?

5 A Yes sir, I did.

6 Q And what was left out of the statement when it

7 was given to you by the transcriber?

8 A The word "them".

9 Q On page four, any corrections?

10 A Yes sir.

11 Q And what was the corrections that you made on

12 page four?

13 A There are two corrections there, the first word

14 is "we" and the other word is "the".

15 Q "we" and "the" were originally left out?

16 A Yes sir.

17 Q Page five, any corrections made?

18 A Yes sir.

19 Q And what were they?

20 A There are several corrections; the first word

21 is "I don't" and then the second one is with my name, "Via,

22 Okay".

23 Q That is where you said "Okay" in the middle of

24 one of those sentences?

25 A Yes sir.

1 Q And then on pages 6, 7, 8, 9, 10, 11, 12, 13 and
2 14, there are similiar type corrections?

3 A Yes sir.

4 Q Mostly where some words were left out and some
5 small additions made by you?

6 A Yes sir.

7 Q And you recall what was said when you read
8 the statement and listened to the tape?

9 A Yes.

10 MR. RACICOT: At this time, we would request permission to
11 read the questions, that I would read the questions to the
12 Jury and Sgt. Via would read the answers to the Jury.

13 THE COURT: Go ahead.

14 AT THIS TIME, with Mr. Racicot reading the questions and
15 Sgt. Via reading the answers, STATE'S EXHIBIT NUMBER 39
16 was read in its entirity to the Jury.

17 Q And that is exactly the statement that was
18 taken from the Defendant on January 7th, 1983 at 7:08 PM?

19 A Yes sir, that is correct.

20 Q Now then, -- I am a little fuzzy from all that
21 reading. Now after you concluded the statement taken from
22 the Defendant, did you then have occasion to get sometning
23 to eat, or did he say something to you about something to eat?

24 A After the statement was taken, Mr. -- Commander
25 Calhoun left the office and I believe he went to either the
Burger King and brought something back to the office where he
ate it in the Interview room.

1 Q And did you have occasion to talk with the
2 Defendant on January 8th, 1983?

3 A Yes I did.

4 Q And can you explain the circumstances surrounding
5 that visit?

6 A Yes sir. We were planning to interview Barry
7 on some unrelated charges in our general area, at which time
8 I learned on the morning of January 8th, that his parents or
9 relatives had applied for counsel for Barry. I went to the
10 jail where he was incarcerated at that time and asked Barry
11 if he had in fact secured an attorney, and if he wished to
12 talk to us on or at that particular time. Mr. Beach
13 indicated to us that he had in fact secured counsel and he
14 did not wish to make any other statement unless his attorney
15 was present. At that time the interview was concluded and I
16 left.

17 Q You did not attempt to ask him any questions?

18 A I did not.

19 Q Until his counsel was present?

20 A Yes sir.

21 Q And that was on Saturday, January 8th, 1983?

22 A Yes sir.

23 Q And then later, did you again have an opportunity
24 to contact the Defendant?

25 A Yes sir, on January 11th, 1983.

- 1 Q And can you explain where that was?
- 2 A That was once again, at the Outichita Parish
- 3 Courthouse Annex.
- 4 Q And how was it that after the Defendant had
- 5 stated that he did not want to make any further statement,
- 6 that you contacted him on January 11th, 1983?
- 7 A During the course of time after I talked with
- 8 Barry on January 8th, I came in contact with one Mr. Kidd,
- 9 who is an attorney in Monroe, Louisiana who was retained by
- 10 the Beach family to represent Barry in Monroe. I had talked
- 11 to Mr. Kidd and an interview was arranged for Barry Beach on
- 12 the 11th of January, 1983, at approximately 4:00 o'clock PM
- 13 where Barry Beach, Mr. Kidd and myself was to be present.
- 14 Q And so the interview of the Defendant on
- 15 January 11th was at the request of his counsel?
- 16 A That is correct.
- 17 Q And his name was Paul Henry Kidd?
- 18 A Yes sir.
- 19 Q And so then, did you go in fact to interview
- 20 the Defendant with his counsel present on January 8th, ---
- 21 A January 9th.
- 22 Q On January 9th, 1983?
- 23 A Yes sir, that's correct.
- 24 Q And do you recall what time of day it was?
- 25 A It was approximately 4:00 o'clock PM and the

1 waiver was signed at 4:01 P.M.

2 Q And who was present in the room when this took
3 place?

4 A Mr. Beach, Lt. Joe Cummings of the -- my
5 supervisor of the task force, Mr. Paul Henry Kidd and myself.

6 Q Did anyone join the interview or leave the
7 interview at this point in time?

8 A During one portion of the interview, Lt. Joe
9 Cummings left the interview and then later Commander Alfred
10 Calhoun joined the interview.

11 Q Sgt., I now hand you what has been marked for
12 identification as State's Exhibit Number 38, and I ask you if
13 you can identify that?

14 A Yes sir I can.

15 Q And what is that?

16 A This is the rights waiver form that was filled
17 out and signed by Mr. Beach and Mr. Kidd in the presence of
18 Lt. Joe Cummings and myself.

19 Q And do you recognize the signatures on that
20 document?

21 A Yes sir, I do.

22 Q And that is not the original, is it?

23 A No sir, that is not the original copy.

24 Q And again it is witnessed by yourself and Lt.
25 Joe Cummings?

A Yes sir.

1 Q And the Defendant's Attorney, Paul Henry Kidd?

2 A Yes sir.

3 MR. RACICOT: We move for admission in evidence, State's
4 Exhibit Number 38, for identification.

5 MR. MOSES: May I inquire on voir dire, please?

6 THE COURT: Yes.

7 VOIR DIRE by Mr. Moses:

8 Q This waiver says that he had been arrested
9 for the offense of homicide in the State of Louisiana?

10 A He had been arrested for homicide for the State
11 of Louisiana, yes sir.

12 Q He had been arrested for the offense of
13 homicide in violations of the statutes of the State of
14 Louisiana; he had been arrested in connection with the
15 violations of the laws of the State of Louisiana?

16 A He had been arrested as a fugitive from justice
17 on a homicide out of the State of Montana.

18 Q It says "in violations of the statutes of the
19 State of Louisiana" not of Montana?

20 A Being a fugitive from justice on a homicide
21 charge.

22 MR. MOSES: I object to the introduction of proposed State's
23 Exhibit Number 38, upon the grounds there is no sufficient
24 foundation has been laid.

25 MR. MOSES: We would move for its admission, Your Honor, on
the basis that it is a verified document.

1 THE COURT: Let me look at that please.

2 AT THIS TIME, the Court examines the same, and all
3 counsel approached the bench, and discussed the same,
4 outside the hearing of the jury and this court reporter.

5 DIRECT EXAMINATION now continued by Mr. Racicot:

6 Q Sgt. Via, at the time you advised the Defendant
7 of his rights on January 11th, 1983 at 4:01 PM in the afternoon,
8 in the presence of his lawyer that was retained in Louisiana,
9 would you tell us what rights you advised him of? Did you
10 read each one of the rights from off the rights form for him?

11 A Yes sir, and also the first paragraph was read
12 to him and explained to him.

13 Q And he did have counsel at that point in time?

14 A Yes sir.

15 Q And did his counsel object as you read his
16 rights to him?

17 A No sir, he did not.

18 Q Did you hear him explain those rights to his
19 client in addition to the information you had given him?

20 A Not that I recall, no sir.

21 Q Did the defendant waive his rights at that
22 point in time and proceed with questioning?

23 A Yes sir he did.

24 Q Any tricks, or coercion, threats or promises
25 applied to him?

A No sir.

1 Q Did he, the defendant, seem to be free of
2 intoxicants?

3 A Yes sir.

4 Q He appeared in good physical condition?

5 A Yes sir.

6 Q Was he calm?

7 A Yes sir.

8 Q Did counsel object in any way in the manner in
9 which you questioned him?

10 A No sir.

11 Q Now the questioning on this day, January 11th,
12 1983, was that designed -- tell me, was that pertaining to
13 the Montana homicide?

14 A No sir.

15 Q You were investigating related charges in
16 Louisiana?

17 A Yes sir.

18 Q During the course of your interview, in the
19 presence of his lawyers, and Sgt. Joe Cummings, on January
20 11th, 1983, was the topic of the Montana homicide concerning
21 the death of Kimberley Ann Ness brought up?

22 A Yes sir, it was.

23 Q Would you explain when that occurred, how it
24 occurred and what the defendant's response was?

25 A After the rights waiver was obtained, Mr. Beach

1 was then questioned regarding related offenses in the State
2 of Louisiana which we had under current investigation and he
3 was questioned with the specific details regarding those
4 particular crimes that were being investigated at which point
5 Mr. Beach indicated that he was not involved whatsoever with
6 the homicides in the State of Louisiana that we were considering,
7 and that the only homicide that he had committed was the
8 homicide in the State of Montana.

9 Q Now in addition to that, then did he make a
10 similiar admission during the course of the interview?

11 A He made a similiar admission on two or three
12 different occasions during the course of the interview, yes.

13 Q And each time stating that he had in fact,
14 committed the homicide in Montana?

15 A That is correct, yes sir.

16 Q And did you ask him specifically about Kimberley
17 Nees?

18 A I believe at one point in time during the
19 interview he was asked if it was Kimberley Nees that he was
20 talking about, yes sir.

21 Q And this was in the presence of his lawyer?

22 A Yes sir, at different times, it was in the
23 presence of his lawyer, myself and Lt. Cummings as well as
24 his lawyer, myself and Commander Calhoun.

25 Q So that at some point in time, Commander Calhoun
was involved in the interview also?

1 A Yes sir. Commander Calhoun came in later on
2 during the process of the interview after Lt. Cummings had
3 walked out.

4 Q And this was all in the presence of his lawyer?

5 A Yes sir, that is correct.

6 MR. RACICOT: At this time, I believe it is about time for a
7 break, Your Honor.

8 THE COURT: Okay. (Court admonishes
9 the Jury)

10 AT THIS TIME, from the hour of 2:25 PM until the hour
11 of 2:42 PM., the Court stood in recess, after which
12 time, the following proceedings were held:

13 THE COURT: Pleaae be seated, court
14 is now in session. You may proceed.
15 First, for the record, let the record
16 reflect that the defendant and his
17 counsel is present, the state is
18 present, and the jury is in the jury
19 box.

20 AT THIS TIME, Sgt. Jay via returns to the witness
21 stand and Mr. Racicot continues with his direct examin-
22 ation:

23 Q Sgt. Via, after the statement that you and I
24 have just read a while ago to the Jury, taken on January 7th,
25 1983, did you get into communication with Roosevelt County
Sheriff's office?

1 A Yes sir, I did.

2 Q And specifically who did you talk to?

3 A At that time I talked to Sheriff Dean Mahlum.

4 Q And after you talked to Sheriff Mahlum, did you
5 ask -- somewhere in the process, did you ask him if he would
6 talk to the defendant?

7 A Yes sir, that is correct.

8 Q And did in fact, the defendant talk with Sheriff
9 Mahlum?

10 A Yes sir, he did.

11 Q And were you present when that occurred?

12 A Yes I was.

13 Q And was that at your request, at the Sheriff's
14 request, or at the defendant's request that he be allowed to
15 talk to Sheriff Mahlum?

16 A The Defendant himself requested to talk to
17 Sheriff Mahlum in Montana.

18 Q And prior to the time that he talked to Sheriff
19 Mahlum, did you again advise him of his rights?

20 A Yes sir I did prior to the phone call being
21 placed.

22 Q And did you do that in the same manner in which
23 you had previously done and demonstrated?

24 A Yes sir I did.

25 Q Do you recall the substance of the conversation
with Sheriff Mahlum that the defendant had?

1 A I believe basically of that conversation was
2 that Barry ---

3 MR. MOSES: I am going to object to the form of the answer
4 upon the ground that it is conclusionary as to his
5 impression of the conversation, not as to what was actually
6 said; and that that would be self serving and would be
7 simply a conclusion on his part and no foundation has been
8 laid.

9 MR. RACICOT: There was a foundation laid that he has
10 testified to, Sir, ---

11 Q You were also on the phone at the same time
12 listening to the conversation, were you not?

13 A That is correct.

14 Q And are you aware whether or not a transcription
15 of that conversation was made?

16 A Yes sir, I believe so.

17 Q And do you have a copy of that?

18 A No sir.

19 Q Were you able to review that to refresh your
20 recollection as to what occurred?

21 A Probably so, yes.

22 AT THIS TIME, a document was marked as STATE'S PROPOSED
23 EXHIBIT NUMBER 40.

24 ?Q I hand you what has been marked for identification
25 as State's Exhibit 40 and specifically to page 3 and would you
review that?

- 1 A (Examined by the witness) Yes.
- 2 Q Have you read page three?
- 3 A Yes I have.
- 4 Q And the conversation was continued on to page
- 5 four, is that correct?
- 6 A Yes it does.
- 7 Q Now after reading page 3 does it refresh your
- 8 memory as to the Defendant's request to talk to Sheriff
- 9 Mahlum?
- 10 A Yes it does.
- 11 Q Can you tell us again, what was said to Sheriff
- 12 Mahlum by the Defendant?
- 13 MR. MOSES: Object to the question upon the grounds that no
- 14 foundation has been laid; it has not been established that
- 15 the refreshed recollection by this witness, that it was done
- 16 by him or under his direction at or about the time that the
- 17 document was prepared and we don't know whether this was
- 18 prepared by the Sheriff or by this witness here and that it
- 19 also runs up against State v. Warwick, and that he can't use
- 20 it indirectly for the purpose of refreshing recollections,
- 21 until such a foundation has been laid.
- 22 Q Sgt. Via, is what is reflected in that Exhibit
- 23 does that accurately reflect the conversation as you listened
- 24 to it on January 11th, 1983?
- 25 A Yes sir it does.

1 Q Pardon?

2 A Yes sir it does.

3 MR. RACICOT: With that, we would request the court to allow
4 the witness to answer the question.

5 MR. MOSES: May I inquire of the witness?

6 THE COURT: Yes.

7 VOIR DIRE by Mr. Moses:

8 Q Who prepared the document?

9 A Who actually prepared the document?

10 Q Yes?

11 A I would imagine someone in the Roosevelt County
12 Sheriff's office did.

13 Q You didn't prepare it?

14 A No sir.

15 Q When was the first time that you saw it?

16 A I believe it was at a local suppression hearing
17 when we testified here several weeks ago.

18 Q So that this was not prepared under your
19 direction or control?

20 A No sir.

21 Q And you don't know whether it was prepared at
22 or about the time the event took place, or when the Sheriff
23 prepared it?

24 A I knew it was being recorded at the time it
25 took place, the conversation.

1 Q I understand that, but you don't know when it
2 was prepared?

3 A That is what I was going to say, I don't know
4 when it was prepared.

5 Q That is fine, that is fine, thank you.

6 MR. MOSES: Your Honor, we renew our objection to this
7 document, it may be used for the recollection of Sheriff
8 Mahlum but certainly not this witness.

9 MR. RACICOT: It is part of your conversation. He testified
10 that he was listening to the conversation, and that it is a
11 true and accurate version of what transpired. It doesn't
12 matter who prepared the document. We are using it only to
13 refresh his recollection.

14 MR. MOSES: Your Honor, there are the three requirements,
15 and he has listed one of them, that it is accurate, and that
16 is one of the requirements, to refresh recollection. The
17 other one is that it took place or done on or about the time
18 and under the direction of the person seeking to testify
19 from it to refresh his recollection and so only one of the
20 three requirements are satisfied, as I understand the
21 situation.

22 MR. RACICOT: That is not how I understand it, ---

23 THE COURT: It is not being offered in
24 evidence but to refresh the recollection
25 of Sgt. Via, as to what he heard on
that day?

1 MR. RACIOT: And that he has testified and verified that that
2 is a true and accurate version of what took place that day.

3 THE COURT: Does that help you to
4 recollect what was said?

5 A Yes it does.

6 THE COURT: Go ahead.

7 Q What was the defendant concerned about when he
8 talked to Sheriff Mahlum?

9 A He was concerned about his mother finding out
10 about the homicide.

11 Q Did he make a specific request of Sheriff
12 Mahlum?

13 A Yes he did.

14 Q And what was that request?

15 A He requested Sheriff Mahlum not to tell his
16 Mother about had taken place about the homicide until he got
17 back to Montana.

18 Q Did he make a specific request about not going
19 to either Wolf Point or Poplar?

20 A Yes sir.

21 Q And what was the basic suggestion or request?

22 A He did not want to go to Wolf Point or to Poplar
23 because of the things that were involved.

24 Q And Sgt. Via, from the time that you talked to
25 the Defendant on January 6th, 1983 until January 11th, 1983,

1 and including January 11th, 1983, how many times was the
2 Defendant informed of his rights and how many times did he
3 waive it?

4 A Approximately ten or eleven.

5 Q Was he informed of his rights on all of those
6 occasions and on only one of those he did not waive his
7 rights?

8 A That is correct.

9 MR. RACICOT: No further questions of Sgt. Via.

10

11 CROSS EXAMINATION

12 By Mr. Moses:

13 Q When did you first see Mr. Beach?

14 A During an interview conducted on January 6th,
15 1983 at approximately 10:55 AM.

16 Q And that continued on until at least January 11th,
17 1983?

18 A Not that interview, no.

19 Q I am not talking about the interview, but your
20 contacts with him?

21 A Off and on during that period, yes.

22 Q And prior to the time that he gave his statement
23 to you on January 7th, 1983, in your opinion, was he in need
24 of psychiatric care?

25 A I am not qualified to testify to that, Sir.

1 Q Well did you advise anyone that he was in need
2 of psychiatric care?

3 A No.

4 Q Did you talk with the mother and go through
5 the process of getting, of getting the court to get a
6 psychiatrist appointed so that he could get the care that he
7 needed?

8 A Are you asking if I discussed with his mother
9 Roberta Clincher about the fact he would need a psychiatrist
10 and it would have to come through a court system?

11 Q Did you explain the process by which he could
12 obtain a psychiatrist, to Mrs. Clincher?

13 A Yes I did.

14 Q And did you explain the process to Tim Beach
15 who is Barry Beach's Uncle?

16 A No sir I did not. Jerry Atcock did.

17 Q And so it was discussed by the county attorney
18 with Tim Beach, the Uncle, the process by which he could
19 receive psychiatric care, is that what you are saying?

20 A Yes.

21 Q And it was discussed by you with Mrs. Clincher
22 the process by which he could secure psychiatric care?

23 A If it was warranted, yes.

24 Q And you brought up the subject of the need for
25 some sort of psychiatric examination of Barry Beach with Mrs.
Clincher, didn't you?

- 1 A No sir I did not.
- 2 Q You didn't?
- 3 A No sir.
- 4 Q Who brought up the subject?
- 5 A I believe Mr. Tim Beach brought it up when he
6 talked to us.
- 7 Q You brought up the subject of his need for
8 counselling prior to any time that he gave his statement, didn't
9 you, and I am sure you have the page there, at 127?
- 10 A Would you kindly repeat that sir?
- 11 Q Would you examine that page, page 127?
- 12 A (Examined by the witness) Okay.
- 13 Q And did you read page 128 as well?
- 14 A (Witness reads the same) Yes sir, I did.
- 15 Q And read 129 down through line 4. (Witness
16 complies) Have you read that from the transcript which is
17 dated February 24th, 1984 in which you gave testimony in
18 the District Court at Wolf Point, Montana? Is that not correct?
- 19 A That is correct.
- 20 Q Now, did Mr. Beach, Tim Beach the Uncle, come
21 to you with \$1500.00 in cash or money to get the boy out on
22 bail before this statement was taken?
- 23 A I don't recall if Mr. Beach came with this money
24 on his person or not. He came to my office.
- 25 Q And he said that he had the cash to put up for
bail?

- 1 A I believe that I testified to in this document
2 and looking at it here, I testified that he stated that he
3 had the money to bail Mr. Beach out of jail.
- 4 Q He was there with the money to get Mr. Beach
5 out on bail?
- 6 A He was there.
- 7 Q And that is what you understood?
- 8 A Yes sir.
- 9 Q And how did you facilitate or aid Mr. Tim
10 Beach in getting Barry Beach out on bail?
- 11 A I didn't.
- 12 Q You not only didn't, you persuaded him not to
13 have the boy get out on bail?
- 14 A Is that a question, Sir?
- 15 Q That is the question, you persuaded him not to
16 be out on bail?
- 17 A Are you asking if I did that?
- 18 Q Yes?
- 19 A No sir, I did not.
- 20 Q Did you talk with Mrs. Clincher and tell them
21 on a three way conversation that Mr. Beach would be released
22 on the 7th day of January 1983 and therefore there was no
23 need to put up the \$1500.00 to hold him overnight?
- 24 A No sir I did not.
- 25 Q Were you present in court when Mr. Tim Beach

1 testified here on February 24th, 1984?

2 A Yes I was.

3 Q And were you present when Mrs. Clincher testified
4 on February 24th, 1984?

5 A Yes I was.

6 Q And do you concede that there was a conversation
7 with regard to an apparent problem that Mr. Beach was
8 experiencing at the time you say him during the interview?

9 A Which Mr. Beach?

10 Q I am sorry, Barry?

11 A There were tendencies, yes.

12 Q And did you believe there was an apparent
13 problem that concerned getting him a court appointed
14 psychiatrist?

15 A Are you talking about and alleging about this
16 particular case, Sir?

17 Q I am talking about through your contacts with
18 Mr. Beach prior to the time you took this statement?

19 A Are you talking about this particular case or
20 the case we were investigating down in Louisiana?

21 Q Excuse me. I am talking specifically, Mr. Via,
22 and I think the question is clear. At the time and before you
23 took this statement did you have a conversation with Mrs.
24 Clincher and with Tim Beach about an apparent problem that he
25 was experiencing at that time, just prior to this statement?

1 A Are you talking about this case? Well, yes.

2 Q Did you explain to both Tim and Mrs. Clincher
3 that procedure which was to be used to get a court appointed
4 psychiatrist?

5 A The process was explained to both Mrs. Clincher
6 and to Mr. Tim Beach.

7 Q And did you make an effort to explain that to
8 them in detail?

9 A Yes sir.

10 Q And would you explain to the Jury the
11 procedure that you told them about getting a court appointed
12 psychiatrist for Mr. Barry Beach?

13 A Yes sir, it was explained that if Mr. Barry
14 Beach was having a problem that if he were found guilty of
15 the charge which he was charged with in Louisiana, that it
16 would be up to a court or a Judge to determine if the
17 problem existed and if so, the Judge or Court could order
18 some kind of psychiatric care of help if it was warranted.

19 Q But it was given to them, that information,
20 prior to any statement made by Barry Beach?

21 A Are you talking about the court procedure?

22 Q Yes sir.

23 A Yes.

24 Q And that was done on the 6th day of January,
25 1983 when you made this explanation?

 A Yes sir.

1 Q And that subject was brought up because you
2 believed that Barry Beach should have psychological help for
3 his problem?

4 A That is not what I said, Sir.

5 Q Did you at that time believe that Barry Beach
6 should have psychological help for his problem?

7 A In regard to the matter that we were
8 investigating on the 6th of January, 1983, the answer is yes.

9 Q You believed at that time that Barry Beach
10 whatever basis you had, whatever you want to insist, that he
11 should have psychological help for his problem? At that time.

12 A That he should have?

13 Q Yes.

14 A I don't recall making that statement.

15 Q I refer you to page 128. I understand that
16 the decision would have to be made by a Judge, but I am asking
17 you, you would not have brought up that subject unless you
18 believed that it was appropriate that that subject be brought
19 up because you believed Barry Beach should have psychological
20 help for his problem" and your Answer: "I believe that the
21 tendencies existed, Sir". Is that your answer?

22 A That is what I testified to earlier, yes sir.

23 Q And therefore you believed, at that time, on the
24 6th day of January, 1983, Barry Beach was in need of
25 psychiatric aid or assistance?

1 A That is not what I said.

2 Q The question was asked, "whether ~~it~~ was tendencies
3 or not, you had a fixed impression that this boy may need
4 psychiatric care or treatment" and you said "that was a
5 possible course of action"?

6 A Yes sir.

7 Q And did you believe at that time, based upon
8 your contact with Barry Beach, prior to the time of his
9 statement, that a possible course of action, based upon your
10 impression of Barry Beach, that he would be in need of
11 or have the tendencies to be in need of psychiatric care or
12 treatment?

13 A That was one possible course of action.

14 Q But you believed that at the time, didn't you?

15 A If he needed help, that was one possible course.

16 Q And then the question was asked: "I understand
17 possible tendencies, but wasn't it your judgement based upon
18 your discussions with him..." that you said that you believed
19 based upon your discussions with Mr. Beach, and then you
20 went on saying that because of other circumstances surrounding
21 the investigation that we were conducting, AS WELL?

22 A That is correct.

23 Q So that in addition to your impressions, there
24 were other circumstances surrounding this investigation which
25 made you believe that a possible course of action is that Barry

1 Beach should have a psychiatrist and should have psychological
2 help for his problems?

3 A It was because of the other circumstances
4 involved, but that was only one course of action that could
5 be taken.

6 Q But it was an impression and you believed that
7 you had -- that this boy, Barry Beach, was in need of
8 psychiatric care of psychological assistance?

9 A But that was not ~~my~~ belief though.

10 Q Well then there would be no reason to talk to
11 Tim Beach nor Mrs. Clincher about it, would there?

12 A I beg your pardon, Sir?

13 Q Well then there would be no reason to talk to
14 Mrs. Clincher and Mr. Tim Beach about it, if you didn't have
15 that impression?

16 A The need arose when they asked about it.

17 Q You stated that it was because of other circum-
18 stances surrounding the investigation that we were conducting?

19 A I beg your pardon?

20 Q They didn't know about the other circumstances
21 that you were conducting?

22 A Yes sir, they did.

23 Q Are you saying, Mr. Via, that Mrs. Clincher and
24 Mr. Tim Beach initiated the conversation about his need for
25 psychiatric care and treatment?

1 A No sir, I believe that that came from Caroline
2 and -- the initiation came from Caroline and Mr. Beach on
3 January 5th, 1983.

4 Q Was that impression conveyed to you, did it
5 come from Bob Beach?

6 A Yes sir.

7 Q And did you in fact convey that on to Mrs.
8 Clincher, the mother?

9 A I couldn't answer that.

10 Q You did.

11 A I could have, but I don't recall, but I think
12 it was Mr. Beach that said that.

13 Q In any event, are you saying that Mr. Beach
14 talked to Mrs. Clincher?

15 A Tim Beach?

16 Q Or Bob Beach?

17 A I was referring to Mr. Tim Beach.

18 Q Well, isn't it a fact, Mr. Via, if you are going
19 to be fair, that the subject of his need for psychiatric
20 care and counselling was a matter of concern to all parties
21 involved prior to the taking of his statement by you?

22 A All parties, are you talking about the Beachs
23 or law enforcement ---

24 Q Beachs, Law enforcement, Mrs. Clincher, Tim Beach,
25 everybody?

1 A That it was a matter of all concern?

2 Q Sure?

3 A No, they were not all concerned.

4 Q But it was one of the substantial concerns,
5 would you go that far?

6 A It was brought up, yes.

7 Q You said that he had tendencies that existed
8 that he should have psychological help for his problems, in
9 response to my question on page 128?

10 A I believed that some of those tendencies
11 existed, yes.

12 Q You had a fixed impression that this boy may
13 need psychiatric treatment, and that that was a possible course
14 of action?

15 A Yes.

16 Q And you believed that?

17 A That was one of the possible courses of action,
18 yes.

19 Q Having that in mind, you were there dealing
20 with a person that you had the impression that a possible
21 course of action was psychiatric care and treatment?

22 A One of them, yes.

23 Q And notwithstanding that, you took statements
24 or talked with him about series of offenses knowing of the
25 psychological problems or perhaps the need of psychiatric care,

1 you went ahead?

2 (No response)

3 Q A person who is psychologically unsound,
4 mentally unstable, could not give an appropriate statement
5 with respect to anything? You knew he had psychological
6 problems and that he may need a psychiatrist, you weren't
7 trying to say he is mentally unstable here, I know he is
8 mentally unstable here, but right here he is not mentally
9 unstable so he can give a statement?

10 MR. RACICOT: Your Honor, we are going to object to those
11 kind of misleading questions as I don't believe that was his
12 testimony and also that he is making an argumentative
13 statement and not a question, and so we will object.

14 THE COURT: I agree.

15 MR. MOSES: The point I am making that he was aware of the
16 possible mental instability before he ever took any statements.

17 MR. RACICOT: We will object, Your Honor, it is repetitive
18 and he has testified to that.

19 MR. MOSES: I don't know that he has testified as to that.

20 MR. RACICOT: Well his failure of recollection is not our
21 fault, Your Honor. The question has been asked and answered
22 several times.

23 THE COURT: I believe he has answered
24 that seven or eight times, but go
25 ahead and answer it again.

1 A And what is your question again please?

2 Q Would you read the question again please for
3 him, Calmer?

4 THE COURT REPORTER reads aloud the last question which
5 was propounded by Mr. Moses.

6 A Explain what you meant by that question please?

7 Q No, you just answer the question.

8 A Well I don't understand it, I don't understand
9 your question, Sir?

10 Q Well did you understand and know or had the
11 impression that he needed psychiatric care, or psychological
12 counselling?

13 MR. RACICOT: We would object, it is repetitious.

14 THE COURT: Overruled.

15 Q Well with respect to the conduct of this
16 investigation, did Barry Beach confess to the three murders
17 in Louisiana?

18 A To us, no.

19 Q I understand that, but do you have notes that
20 you took with respect to a -- his confession of the three
21 Louisiana murders?

22 A I was told that he confessed.

23 Q And in very specific detail, right?

24 A Specific details concerning the homicide. He
25 did not give specific details concerning the three homicides
we were investigating.

1 Q The report was that he had given specific details
2 on the Sharon ~~Alfred~~ homicide?

3 A But they were later proved unfounded.

4 Q Established later to be absolutely false, right?

5 A Yes.

6 Q But he gave you that statement and confessed
7 to three murders in Louisiana?

8 A I was told that, yes.

9 Q And that would be the Sharon Alfred?

10 A One of the homicides, yes.

11 Q Cathy Horton and Angela Hill?

12 A I don't believe he confessed as to Angela Hill,
13 but he may have.

14 Q Didn't you put in your report about Barry Allan
15 Beach having confessed to three murders, didn't you make that
16 a part of your official report?

17 A That is what was related to me, yes.

18 Q Did you make it a part of your official report?

19 A Yes.

20 Q Thank you. Now, in addition, I understand that
21 the name Sheila Frede, was inserted into the investigation
22 and Barry Allan Beach was asked questions about Sheila Frede?

23 A That was in regard to the lie detector test.

24 MR. MOSES: Your Honor, I move to strike that, this witness
25 has been told that those matters are not to be present before
the Court.

1 THE COURT: Disregard that statement,
2 that answer.

3 MR. RACICOT: Your Honor, may we be heard outside the
4 presence of the Jury.

5 THE COURT: Yes, I think we better do
6 that, yes. (The jury is left in the
7 jury box, while counsel, the defendant,
8 and court retire to Chambers, outside
9 the hearing of the Jury).

10 IN CHAMBERS:

11 THE COURT: Timer, I don't know, you
12 have spent about ~~twenty~~ minutes on
13 this of need of psychiatric care and
14 he is not going to say that; he says
15 there were tendencies, and you want
16 him to say probable, and he says
17 tendencies and you say possible and
18 this is getting rediculous. You are
19 trying to get him to agree with you
20 and he is not going to.

21 MR. MOSES: I know he is not going to agree, it would kill
22 him if he agrees.

23 THE COURT: But once he says he is not
24 going to agree, why are you hammering,
25 hammering, and hammering on it?

1 MR. MOSES: Because he diverts his answer and when he
2 diverts his answer, you don't get a clear and proper response.

3 THE COURT: Well he has always said
4 there were tendencies but he is not
5 going to say he probably needed it.

6 MR. RACICOT: Well I am only concerned about this polygraph
7 matter, and you are getting dangerously close to causing a
8 problem and I want him to stay away from that, and I would
9 like the witness, and counsel to stay away from this
10 polygraph matter and I don't want to end up with the basics
11 in the record for a mistrial.

12 MR. MOSES: Your Honor, I was under the impression that
13 the witnesses were advised that matters relating to polygraph
14 is not going to be used in this case. Now this witness
15 brought up that answer. I asked only about whether there
16 were questions.

17 THE COURT: Well right now, I don't
18 know if the jury knows what you are
19 talking about.

20 MR. MOSES: Well I am going to get into this, Judge, into
21 asking him questions ---

22 THE COURT: Questions about what?

23 MR. MOSES: Questions about the lie detector ---

24 THE COURT: Well if you put lie
25 detector in, that is your problem.

1 MR. RACICOT: It is there for either side and we would
2 strongly object and request the court to restrict counsel
3 as to inquiring into this. It would be error to get into
4 the lie detector tests.

5 MR. MOSES: Your Honor, in the Smith case, the Court ruled
6 -- in the Smith case in Great Falls, that all of the
7 testimony concerning any statements made by the Defendant
8 were admissible even the part of the detector--the lie
9 detector test, which was not used, but the questions themselves
10 were admissible.

11 MR. RACICOT: I agree with that.

12 MR. MOSES: Now you say any questions with respect to what
13 was asked are no longer admissible and is patent error. You
14 can't have it both ways.

15 MR. RACICOT: No, I am not trying to have it both ways. I
16 am saying the results of the lie detector test. If you are
17 going to talk about lie detector tests, we are going to have
18 to explain ---

19 THE COURT: If you get that in there ---

20 MR. RACICOT: We will have to prohibit the questions
21 concerning the results of the test. That is all that I want.

22 AT THIS TIME, counsel and the court enter into some
23 off-the-record discussion on this matter.

24 THE COURT: Well I am going to tell
25 you both not to talk about lie detector

1 tests or the results of the lie
2 detector tests, or mention lie
3 detector tests or polyograph.

4 AT THIS TIME, there was further off-the-record discussion
5 by counsel and the Court, and at the conclusion thereof,
6 all counsel, the defendant and court personnel returned
7 to the courtroom, and in the presence of the jury, the
8 following proceedings were had:

9
10 IN THE COURTROOM:

11
12 THE COURT: Go ahead.

13 EXAMINATION continued by Mr. Moses:

14 Q In your report, you stated that Barry Allan
15 Beach had in fact confessed to the three murders in Outichita
16 Parish under investigation, these being Sherry Alfred, Cathy
17 Horton and Angela Hill. You have that in your report?

18 A Yes.

19 Q And that was reported to you?

20 A Yes sir.

21 Q As a part of your investigation of these cases?

22 A Yes sir.

23 Q With respect to Sherry Alfred, one of the
24 persons that he confessed he murdered, what was the disposition
25 of that case?

1 A There has been a warrant issued for another
2 person.

3 Q And you have sufficient facts and information
4 to know that he was not involved in that? .

5 A That is correct, yes.

6 Q And if he gave specific details on the Sherry
7 Alfred murder, then those would be false?

8 A If he gave specific details?

9 Q Yes.

10 A Right, and they were false.

11 Q Now with respect to Cathy Horton, H-O-R-T-O-N,
12 what about that case, what was the disposition there?

13 A Another individual has been charged with that
14 crime.

15 Q And if Mr. Barry Allan Beach on January 11th,
16 1983, confessed to the murder of Cathy Horton, that would be
17 false?

18 A Yes.

19 Q It was false information, right?

20 A Yes.

21 Q And if he confessed to the murder of Angela
22 Hill, could you tell me what the disposition of that case is?

23 A It is still under investigation.

24 Q And you have any information to connect that
25 case to Mr. Barry Allan Beach?

- 1 Q Well do you know what the date was?
- 2 A I don't recall right off the top of my head,
- 3 no sir.
- 4 Q There was information conveyed to you that a
- 5 statement had been taken from Mr. Beach with respect to that
- 6 misdemeanor on Janaury 4th, 1983?
- 7 A Concerning the contributing charges?
- 8 Q Yes?
- 9 A Yes.
- 10 Q And did you have, thereafter, a conversation
- 11 with respect to the dismissal of that case on January 6th,
- 12 1983?
- 13 A With whom?
- 14 Q With Mr. Tim Beach?
- 15 A Yes.
- 16 Q And with Mr. Bob Beach?
- 17 A Yes.
- 18 Q And in fact, did it occur that they were
- 19 advised that the case would be dismissed and that Mr. Beach
- 20 would be released the following day?
- 21 A By me?
- 22 Q By anyone?
- 23 MR. RACICOT: Your Honor, we would object, as that calls for
- 24 a hearsay answer. He could tell what he advised but I don't
- 25 think he can talk about what anybody else did.

THE COURT: That is true.

1 Q And did you advise them that he would be
2 released?

3 A No sir.

4 Q Did you advise Mr. Tim Beach, and Mr. Beach,
5 the father of Barry Beach, to come back the following morning,
6 or following day and get Barry?

7 A No sir.

8 MR. MOSES: May Have a moment, Your Honor, one, or two or
9 three minutes?

10 THE COURT: Yes.

11 (Counsel then conferred with his client, examined some
12 documents and thereafter, continued.

13 Q I take it that the first contact that you had
14 with the Defendant was on January 6th, 1984?

15 A Yes sir, that's correct.

16 Q And that was -- and there was a mobile home
17 out at the correctional center that you went with Officer
18 McDay?

19 A That's correct.

20 Q And at that time you asked certain questions of
21 Mr. Beach?

22 A Yes sir.

23 Q Was that one of the times in which you gleamed
24 an impression that he had some tendencies towards mental
25 instability?

1 A At that time, after we talked to him, to
2 determine if there were any causes that existed as to the
3 complaint we were investigating at that time, yes sir, but as
4 far as psychological tendencies and problems at that time,
5 no sir.

6 Q But you did detect on the 6th, some problems
7 which may reflect mental instability?

8 A No sir, the problems we recoverdd, were the
9 problems relating to Bob and Caroline Beach.

10 Q Mr. Via, my question was, did you at that time
11 detect some tendencies of mental instability?

12 MR. RACICOT: I would object, Your Honor, that question has
13 been asked and answered.

14 THE COURT: I think it has, yes.

15 Q Was there any recording made of the conversation
16 at that time on the 6th?

17 A No sir.

18 Q And was there any recording made of the
19 conversation on the 7th of January, 1983, prior to 7:08 PM?

20 A No sir.

21 Q I take it then that you discussed these matters
22 with him continuously from one, say one o'clock until seven
23 o'clock at intervals with Captain Calhoun, or rather Commander
24 Calhoun, doing it one time and you another time?

25 A Conducting the interviews?

1 Q Yes.

2 A Yes sir.

3 Q And I take it that you were supplied with
4 information from Montana so that you could have and ask the
5 appropriate questions?

6 A I was supplied with information regarding the
7 homicide of Kimberley Ness, yes sir.

8 Q So that you could ask the appropriate questions?

9 A So that I would know about the homicide, so
10 that we could direct the questions about it, yes.

11 Q So that you could ask the appropriate questions?

12 A So that the information that he related, we
13 would know what he was talking about.

14 Q That was necessary to be an interviewer, that
15 you would have to have that information, that background
16 information, so that you could ask Mr. Beach the appropriate
17 questions?

18 A That is correct.

19 Q Okay, now I take it from one o'clock until
20 seven o'clock there was a continuous dialogue with Mr.
21 Beach, either you or Commander Calhoun asking or making
22 inquiries with respect to these events?

23 A You're saying continuous? There were broken
24 intervals ---

25 Q I understand that, but you weren't talking
about the weather, or talking about baseball, you were talking

1 about the events for a period of six or seven hours that--
2 those events that alleged to have occurred in Poplar, Montana?

3 A Yes sir.

4 Q And even though it was intermitten, you were
5 talking about that subject matter over that period of time?

6 A Yes sir.

7 Q And there was no recording of that conversation
8 for that period of six hours?

9 A Are you talking prior to 7:08 PM?

10 Q Sure?

11 A No sir.

12 Q And so that there is no record of what
13 questions were asked and what questions were answered insofar
14 as there is a recording to be able to determine the state of
15 mind of the defendant at the time he was interviewed for this
16 six hour period?

17 A Yes sir, there is a record. It was listed in
18 my report from the notes taken during my interview.

19 Q I am talking about a recording, a tape recording?

20 A I stated there was no recording.

21 Q That is what I am getting at, so that he
22 didn't testify -- or that you didn't make a record or notes
23 as to his stability or instability during that six hour period?

24 A Did I make notes about it?

25 Q Sure, did you make a record, make notes as to

1 his stability or instability during that period of time?

2 A As to his ---

3 Q As to his mental stability?

4 A His mental stability?

5 Q Sure?

6 A I don't recall taking anything down regarding
7 his mental stability.

8 Q You stated at one time that he cried?

9 A Yes.

10 Q And at another stage, where he is laughing?

11 A Laughing, I don't recall my saying that he was
12 laughing, Sir.

13 Q Now then, did you secure a search warrant,
14 based upon information that you had received from Mr. Beach
15 in connection with the death of Cathy Horton, that he
16 evidently confessed to kill?

17 MR. RACICOT: Your Honor, I am going to object to this line
18 of questioning, it is totally irrelevant and it is outside
19 the scope of the direct examination.

20 THE COURT: Sustained.

21 MR. MOSES: Your Honor, I would like to make an offer of
22 proof, Your Honor.

23 THE COURT: All right, we will go into
24 chambers for that. (Jury remains in
25 the jury box)

1 IN THE JUDGES CHAMBERS - all counsel and the defendant being
2 present, outside the hearing of the Jury:

3 THE COURT: Go ahead with your offer.

4 MR. MOSES: Comes now the Defendant and offers to prove by
5 the witness on the stand, that if permitted to ask the
6 questions concerning the search warrant, the application for
7 a search warrant, that it has a bearing upon the statements
8 of Mr. Beach and has particular application where he says with
9 respect to Cathy Horton, that the information conveyed was
10 false, but yet he relied upon that information to enable him
11 to get the search warrant which attacks his creditability.

12 THE COURT: Here again, you want him
13 to say the man is mentally instable,
14 and all he tells you is that he has
15 tendencies toward that, and you're
16 talking about going into an area of
17 a search warrant in a Louisiana murder
18 case that has absolutely nothing to
19 do with this case and -- I don't know,
20 if I am wrong or right here, but ---

21 MR. MOSES: Let me explain. This witness has testified
22 on cross examination that he has a report that he confessed
23 to the murder of Horton. He has also testified that that
24 information was false. It is false.

25 THE COURT: Yes?

1 MR. MOSES: However, in my view of the record, in the
2 application for a search warrant, that he relied upon certain
3 information conveyed to him for the purpose of getting a
4 search warrant which is inconsistent with ---

5 MR. RACICOT: Why don't you just ask him.

6 AT THIS TIME, following a short discussion, the counsel
7 and the defendant, together with court personnel returned
8 to the courtroom, and in the presence of the jury, the
9 following proceedings were had:

10 THE COURT: Okay, back again on the
11 record.

12 CROSS EXAMINATION continued by Mr. Moses:

13 Q Mr. Via, in connection with your investigation
14 of the Cathy Horton case, is it not a fact that you made an
15 application, under oath, for a search warrant of the property
16 or premises of Barry Beach?

17 A In connection with the Cathy Horton homicide?

18 Q Sure?

19 A Yes.

20 Q And that application was made under oath?

21 A Yes sir.

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

23

24

REDIRECT EXAMINATION

25 By Mr. Racicot:

1 Q Now, Sgt. Via, there was considerable discussion
2 made between you and Mr. Moses concerning psychiatric care,
3 and my question to you is relatively simple: Who first
4 suggested that -- who first brought into any conversation a
5 concern for the defendant, the possibility of psychiatric care?

6 A Bob and Caroline Beach.

7 Q And when they brought that into the picture,
8 did they present that in relationship to the Montana homicide
9 or did they present that in relationship to the underlying
10 causes for which the Defendant was being held in Louisiana?

11 A It was brought up in regard to the underlying
12 charges in Louisiana.

13 Q And isn't it a fact that the underlying charges
14 in Louisiana involved some severe family disturbances?

15 A That is correct, Sir.

16 Q And when the psychological or psychiatric
17 topic was brouched it was in relationship to some family
18 matters?

19 A Yes, initially.

20 MR. MOSES: Did you say initially?

21 A Yes.

22 Q And did that change?

23 A Yes 'sir, when they started talking about him
24 possibly being a suspect of a murder in Montana, as well as
25 a suspect in Louisiana.

1 Q Did you state to them that it was your
2 conclusion that the defendant needed psychological help?

3 A No sir.

4 Q Did you state to them that if it was determined
5 at a later time, the need of psychological help that could be
6 gained through the court?

7 A Yes sir, that's correct.

8 Q And it was not first suggested by you, but
9 suggested by them?

10 A Yes, that's correct.

11 Q So the fact that -- what part of it, if any,
12 did that play in your interview with the defendant, that
13 you had told them that that was one course of action as a
14 court proceeding, what part did that play?

15 A None.

16 Q He appeared, as far as you could see, to under-
17 stand his rights?

18 A A number of times, yes sir.

19 Q Did he read a newspaper for you?

20 A He said that he could understand what was in
21 it.

22 Q Did he give any bizzare answers at any time?

23 A No sir, he was completely coherent.

24 Q Now in relationship to the fact that Tim Beach
25 showed up to post money for Barry Beach's release, was that on
the Louisiana charges?

1 A That is correct, yes sir.

2 Q And did he tender you that money?

3 A No sir, and I couldn't have accepted it anyway.

4 Q It wasn't within your duty?

5 A No sir.

6 Q Did he tender it to anyone?

7 A Not to my knowledge.

8 Q Under Louisiana law, and the fact that your
9 department -- could that have been refused?

10 A No sir.

11 Q Did the defendant in fact, as far as you know,
12 agree to remain in custody on January 6th, 1983?

13 A Yes sir.

14 Q And he thought that would be best under the
15 circumstances?

16 A Yes sir.

17 Q And so did his mother?

18 A That is correct.

19 Q And so did his Uncle and father?

20 A Yes sir.

21 Q Now, Sgt. Via, Mr. Moses questioned you in
22 relationship to the fact that information was conveyed to you
23 that the Defendant had made admissions concerning three
24 homicides in Louisiana? Correct?

25 A Yes sir.

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23 information was Bogus?

24 MR. MOSES: I am going to object as that calls for a
25 conclusion, and leading the witness as well.

MR. RACICOT: I will withdraw the question.

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1 Q Did you, none the less, as part of your duty
2 attempt to check out that information?

3 A Yes sir; every detail that was given us by Mr.
4 Kidd was examined, investigated and researched.

5 Q And is that why you secured a search warrant?

6 A Yes sir.

7 Q And in fact were you able to determine, from
8 your investigation that what Mr. Kidd had suggested to you
9 as the reason for the defendant making his admissions about
10 these Louisiana homicides were in fact not true?

11 A Let me back up. The search warrant that you
12 are speaking of were applied before this conversation with Mr.
13 Kidd and it was the result of the search warrant, based on
14 facts detailed during that initial investigation that we
15 determined that Mr. Beach did not have anything to do with
16 it, because of the details that he gave us. It was absolutely
17 impossible.

18 Q So you confronted Mr. Kidd with that information?

19 A Yes sir.

20 Q And that is when Mr. Kidd told you that this
21 confession of the three homicides down in Louisiana was a
22 ploy to help him in his case in Montana?

23 A That's correct.

24 Q Now Mr. Moses asked you whether or not the
25 defendant was interviewed on January 7th, 1983 from one
o'clock until seven o'clock, a period of six hours?

1 A Yes sir.

2 Q During that time would you describe the kind of
3 breaks and the frequency of breaks that were taken?

4 A Mr. Beach was allowed to go to the rest room
5 on several occasions; he was not deprived of his cigarettes;
6 he was not deprived of any soft drinks, and he at one time,
7 was allowed to have something to eat, and he was allowed to
8 have anything that he wanted to, all that he had to ask during
9 the interview.

10 Q Now that entire period of time was note tape
11 recorded, from one until seven ½'clock?

12 A The interview itself, no sir.

13 Q And would you explain if that is an abnormal
14 process in your department, that something like that would
15 be permanently recorded?

16 A No sir it is not abnormal. During this
17 particular time period, during the interview we are taking
18 notes and up until about 6:51 PM, he had made no direct
19 admissions of guilt whatsoever. The questions which he
20 was responding to were such as "I don't think I did" "I don't
21 remember if I did" and "I am not certain that I did", and
22 there was no need to record because there was no actual
23 admission; once he had made the admission at 6:51 and gave
24 brief details on this particular crime, the recorder was then
25 turned on at approximately 7:08 PM, and the details, as he
related them to us, were recorded.

1 Q And even, again, on January 8th, the next
2 morning, he did waive his rights?

3 A That's right.

4 Q And then on January 11th, he waived them with
5 his lawyer being present again?

6 A That is right.

7 MR. RACICOT: No further questions.

8

9 RECROSS EXAMINATION

10 By Mr. Moses:

11 Q Mr. Via, you have in your notes any record of
12 your conversation with Mr. Kidd?

13 A In my notes? No sir.

14 Q And you have your notes?

15 A My notes are not here.

16 Q I don't find them in the copy of the notes that
17 we received from the county attorney's office that they were
18 ever any recorded conversation with Mr. Kidd that you just
19 testified to?

20 A There were no recorded conversation.

21 Q No record made in your notes of that conversation?

22 A There were no notes made, no.

23 Q Do you have notes as to what Mr. Kidd told you?

24 A In relation to what, Sir?

25 Q As to what Barry had said, giving specific

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1 details, where it was reported or recorded that Sherry Alfred
2 was killed and other information about these Louisiana events.
3 You put those in your notes? Right?

4 A What you are looking at is a report made on
5 January the 26th 1983 in regard to the investigation -- the
6 details of which were provided to me by Mr. Kidd in relation
7 to specific times involved, these were recited in that report,
8 as well as substances of the interview which was conducted on
9 January 11th, with Mr. Kidd present.

10 Q I understand that, and I appreciate that, and
11 that is exactly what I understood the report to be.

12 A Yes sir.

13 Q But it does not contain any statement of any
14 conversation between you and Mr. Kidd concerning this play
15 that you have now described?

16 A That conversation was not taken as a part of an
17 interview on the date mentioned there.

18 Q Do you have any notes of that? You just told
19 me that you didn't have any notes of that conversation?

20 A I believe there is a sworn affidavit to that
21 effect that was prepared probably two weeks ago. As far as
22 those notes, they are handwritten.

23 Q When was the search warrant issued?

24 A To the best of my recollection I believe the
25 search warrant was issued and executed on January the 8th,

1 1983. It may have been the 9th, I really don't know for sure
2 which it was.

3 MR. MOSES: Thank you, Mr. Via.

4 MR. RACICOT: No further questions, of Sgt. Via.

5 THE COURT: Okay, you may be excused.

6 I believe that this is a good time to
7 take a break. (Jury is admonished)

8 WITNESS WAS EXCUSED.

9

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AT THIS TIME, being 3:52 o'clock
P.M., until the hour of 4:06 P.M.,
the court stood at RECESS.

1 MR. RACICOT: At this time, we have some things to go over
2 and it will take us five or ten minutes and we would in that
3 regard, appreciate a short recess.

4 THE COURT: All right. (Jury is
5 admonished)

6 COURT STOOD IN RECESS from the hour of 9:40 o'clock
7 A.M., until the hour of 10:00 o'clock A.M.

8 THE COURT: Please be seated, court is
9 in session. Let the record reflect
10 that everyone is present in court.
11 Go ahead.

12 MR. RACICOT: Your Honor, at this time we would request the
13 Court permission to recall Sgt. Via regarding some questions
14 that have been raised during the preceding witness.

15 THE COURT: Go ahead.

16 WHEREUPON,

17 SGT. JAY VIA

18 having been previously called as a witness on behalf of the
19 State of Montana, and having been previously duly sworn upon
20 his oath, testified as follows:

21

22 REDIRECT EXAMINATION

23 By Mr. Racicot:

24 Q You are the same Jay Via who testified earlier
25 in this trial?

- 1 A Yes sir I am.
- 2 Q Sgt. Via, I would like to direct your
3 attention to the issuance of search warrants involving the
4 defendant, do you recall that?
- 5 A Yes sir.
- 6 Q And you recall the issuance of that?
- 7 A Yes sir, on January 9th, 1983 shortly after nine
8 o'clock.
- 9 Q And the information that was utilized to gain
10 that search warrant was gathered prior to that time?
- 11 A Yes sir.
- 12 Q You had a conversation with the defendant and
13 his lawyer on January 11th, is that correct?
- 14 A Yes sir.
- 15 Q And do you recall the date?
- 16 A It was after January 11th, 1983. I believe it
17 was around January 20th.
- 18 Q And so the information that you received from
19 the defendant's lawyer was never utilized to obtain any
20 search warrant?
- 21 A No sir.
- 22 Q Was it utilized to do anything insofar as the
23 investigation was concerned?
- 24 A It gave us a basis to investigate to either
25 corroborate or not corroborate.

1 MR. RACICOT: We have nothing further of Sgt. Via.

2

3 RECROSS EXAMINATION

4 By Mr. Moses:

5 Q Sgt. Via, you were just talking about a
6 conversation that occurred on January 11th, 1983. Was there
7 an interview with Mr. Barry Beach on that date?

8 A Yes sir.

9 Q And who was present at the interview?

10 A To begin with, or at the beginning of the
11 interview, Mr. Beach, Lt. Cumming, Mr. Paul Henry Kidd, Mr.
12 Beach's attorney and myself.

13 Q And during that period of time was there a
14 discussion about Cathy Horton's death?

15 A Yes sir there was.

16 Q And that was in the presence of Mr. Cumming?

17 A I believe we commenced the interview with Mr.
18 Cumming being present, but he remained no more than ten
19 minutes and then he left.

20 Q I understand, but that was not my question. My
21 question was he there when this discussion about the charge
22 of homicide involving Cathy Horton which took place down in
23 Louisiana?

24 A He was present for a very short time during
25 that interview and then he left.

1 A Yes sir, except for one particular thing, when
2 he would get to the point of the death on the interview of
3 -- that we had on January 7th, he would look at Mr. Kidd and
4 smile, and the whole thing would change.

5 Q During the course of this interview, did you
6 report that he exhibited similiar mannerism and emotional
7 responses to questions regarding Cathy Horton's death, as he
8 did during the interview on January 7th, 1983 when he confessed
9 to the murder which he alleged to have committed in Poplar,
10 Montana?

11 A Yes sir, that is in my report.

12 Q And that is true?

13 A Approximately, yes sir.

14 Q And at that particular time, did you in
15 questioning Mr. Barry Beach, ask him a series of questions
16 concerning whether he could live with himself over the death
17 of Cathy Horton? Did you ask him that question?

18 A Yes sir.

19 Q And what was his response?

20 A I don't really recall what his exact response
21 was, Sir.

22 Q Did he respond by indicating to you that you
23 were entirely right?

24 A Probably so, yes.

25 Q Would you look at your report and see if that
fact was recorded there?

1 A (Witness examines the report) Correct, yes sir.

2 Q Thank you. Now then, did you during that
3 interview again ask Mr. Barry Allan Beach that he was going
4 to have to get this particular heavy burden off his shoulders,
5 , the death of Cathy G. Horton, and he would have to admit
6 that to someone sooner or later?

7 A Could I see my report please?

8 Q Yes, of course you can.

9 (Examines report)

10 A I believe that Cathy Horton is not reflected
11 here.

12 Q That it was a heavy burden of Cathy Horton, in
13 the preceding paragraph, you were talking about Cathy Horton
14 during that period of time.

15 Q Well we talked about several different things
16 during that time.

17 Q Did he -- how did he respond that he would have
18 to get the heavy burden off his shoulders?

19 A That I was right.

20 Q And that he would have to talk about it to
21 someone at a later time?

22 A Yes.

23 Q That was not related to the Poplar event because
24 this was on the 11th, and you already had the statement on the
25 7th, of the Poplar event.

1 A Well you would have to ask him about that.

2 Q He said that he would have to talk to someone
3 at a later time?

4 A Correct.

5 Q And if he gave a statement on the 7th, he
6 couldn't have been talking about that, he would have to be
7 talking about Cathy Horton and the other murders down there
8 in Louisiana?

9 A Sir, that is just a part of the interview, where
10 it states or indicates that he had this heavy burden on him
11 and he needed to talk to someone about it and whether it
12 related to Cathy G. Horton or the case here, he never was
13 specific as to that.

14 Q I think I will go over it one more time. He
15 had made a statement, which you call a confession on the 7th
16 day of January, 1983?

17 A Yes sir.

18 Q And he had presumably confessed to a homicide
19 in Poplar, Montana, on that date?

20 A Yes.

21 Q And in your presence, isn't that right?

22 A Yes sir.

23 Q Now then, this is the 11th, four days later?

24 A That's right.

25 Q And the first series of conversation that he

1 could not live with himself over the death of Cathy G. Horton,
2 and he did response by saying you were entirely right and
3 then you said that he would have to get this matter, this
4 heavy burden off his shoulders to someone sometime later
5 and he agreed to this, that he would have to talk to someone
6 later on ---

7 A Yes.

8 Q And when you put this "this" heavy burden on
9 your shoulders, you were obviously relating to the other
10 preceding paragraph?

11 A No, this burden that Mr. Beach was talking about,
12 Sir.

13 Q Now then, did Mr. Beach's -- during the course
14 of this examination, did his emotional attitude change?

15 A Yes sir.

16 Q And was he teary eyed at one time?

17 A Yes sir.

18 Q And at times did he have a ~~shaky~~ voice?

19 A Yes sir.

20 Q Smirky grin?

21 A Yes.

22 Q And the statement about that he didn't know
23 what anybody was talking about?

24 A Well ---

25 MR. RACICOT: We will object, Your Honor, the witness has
already answered that question.

1 Q Well did you say in your report that it was
2 related to these murders and he says that he didn't know what
3 you were talking about, he just blurted out that he didn't
4 know what you were talking about?

5 A (No response)

6 Q You make a report that he made that statement,
7 that he didn't know what anybody was talking about?

8 A Well that is what the report says, yes.

9 MR. MOSES: Nothing further.

10

11 RE-DIRECT EXAMINATION

12 By Mr. Racicot:

13 Q Sgt, when the defendant was giving these
14 responses concerning the Louisiana homicides, you stated that
15 he would become teary eyed and that he didn't know what anybody
16 was talking about, wasn't he there with his lawyer?

17 A As we were seated in the room, I was sitting
18 across the table, and Mr. Beach was seated directly across
19 from me and in the beginning Lt. Cumming, who was later
20 replaced by Commander Calhoun, was seated to my left, and Mr.
21 Beach's lawyer was sitting behind me and to my left, and so
22 he would have eye contact with him, and when I would ask him
23 specific questions and details regarding that, particular
24 crime, his emotional attitude would be the same as they were
25 on January 7th, however, he would look directly at Mr. Kidd
and then smile and look like "I don't know what you are talking

1 or I don't know what these other guys are talking about, so
2 that his emotional attitude would then change.

3 Q He was trying to lead you to believe that he
4 was involved in the Louisiana homicides?

5 MR. MOSES: To which we would object, as calling for a
6 conclusion of this witness.

7 MR. RACICOT: He is a law enforcement officer, Your Honor.

8 THE COURT: I will sustain that
9 objection.

10 A By the manner in which he ---

11 MR. RACICOT: Hold it, the objection was sustained by the
12 Court.

13 A Oh.

14 Q After the conclusion of the dealings with the
15 defendant, from the 7th up to the 20th of January, and his
16 lawyer, what conclusion did you draw as to this particular
17 behavior?

18 MR. MOSES: Again I object to that, that calls for a
19 conclusion of this witness, and an opinion by this witness,
20 it is self serving and asks for a comment upon the evidence.

21 THE COURT: Sustained.

22 Q Did you verify any of those facts?

23 A No sir.

24 Q From these facts given by the lawyer, did it
25 appear to have been the truth? In your opinion?

1 MR. MOSES: Objection, he can state facts, but not as to
2 conclusions.

3 MR. RACICOT: I will rephrase it, Your Honor.

4 Q Could you or did you verify any of those facts?

5 A No sir.

6 Q Sgt. Via, after you had gathered all of the
7 information that you had, from the defendant, and from his
8 lawyer and taking into consideration the interviews on the
9 11th and 20th, did you pursue any further investigation with
10 relationship to the defendant on the Louisiana homicides?

11 A No sir.

12 Q And why not?

13 A Well after these interviews, and then checking
14 out the facts, it all appeared to be inaccurate as to the
15 crime itself, as to how the crime had been committed, the
16 evidence at the crime scene, after interviewing of some
17 witnesses, it was completely erroneous.

18 MR. RACICOT: Nothing further.

19

20 RE-RE CROSS EXAMINATION

21 By Mr. Moses:

22 Q On Redirect Examination, Sgt. Via, I thought I
23 heard you say that he would look at his attorney, Mr. Kidd,
24 suring some portion of this interview?

25 A Yes sir.

1 Q And would that be in the same manner in which
2 you, from time to time, look at Mr. Racicot when I am asking
3 you questions?

4 MR. RACICOT: Objection, Your Honor, ---

5 Q Would that be the same type of thing?

6 MR. RACICOT: That is outrageous, Your Honor, and it is not
7 proper cross examination.

8 THE COURT: I will sustain that.

9 MR. RACICOT: He is not on trial here, and neither am I.

10 Q But he did look?

11 MR. RACICOT: This is totally irrelevant in this inquiry and ---

12 MR. MOSES: Well I will withdraw the question then.

13 Q Did you or would you say that he was calm and
14 cool on occasions?

15 A Yes.

16 Q And would you say he was teary eyed on occasions?

17 A Yes.

18 Q And did he have shaky voice responses?

19 A Yes sir.

20 Q So that there were complete emotional attitude
21 and changes occurring from time to time during the course of
22 this interview?

23 A Yes sir.

24 Q Now then, you were in a position therefore to
25 observe Mr. Beach and his attitudes and reactions at that time,
on the 11th of January of '83 and this interview that occurred
on the 7th, when he made the alleged confession?

1 A Yes sir.

2 Q And can you say that his reactions from your
3 recollection and your impressions from your recollection
4 were exactly the same reactions and impressions that he gave
5 you when you -- when he made his confession with respect to
6 Kimberley Nees?

7 A No sir, they were not exactly the same. I
8 believe my report indicates that.

9 Q Would you say they were similiar or in the
10 same mannerism and emotional responses?

11 A Some, yes.

12 Q And would you say that it was the same or
13 similiar mannerism or emotions that were exhibited during the
14 interview on January 7th, 1983?

15 A Yes.

16 Q Thank you. Now frankly, when you were being
17 examined on redirect by Mr. Racicot, you have testified that
18 after this period of time and after these interviews, as I
19 under the question, you checked out to determine the truth
20 or validity of the statements made?

21 A Yes sir.

22 Q And that is a part of your police function, that
23 you investigate those things?

24 A To determine if it was true, yes.

25 Q And that is a part of your investigative function?

 A Yes sir.

1 Q Okay, thank you. And as investigating officer
2 you were able to determine to your satisfaction, that the
3 information given to you by Mr. Beach were, in your opinion,
4 false?

5 A Not opinion, that is a fact.

6 Q Well a law enforcement officer has to gather
7 evidence, right?

8 A That's correct.

9 Q And in gathering the evidence you don't make
10 a judgment, it is up to the prosecutor to decide whether the
11 evidence is sufficient, it is up to the jury to decide if the
12 evidence is sufficient, you don't make judgments as to
13 sufficiency of the evidence, you gather evidence right?

14 MR. RACICOT: Your Honor, we are going to object, it is
15 irrelevant and he asked for an opinion and he got it.

16 MR. MOSES: He said it was not an opinion, that it was a
17 fact, Your Honor. I want to clear that up a little.

18 THE COURT: Well what word did you
19 want? He checked it out, and you know
20 what the answer is going to be, everybody
21 here knows what the answer is going
22 to be.

23 MR. MOSES: Well he stated that it was fact, and I want to
24 develop if it was his opinion that it is a fact and that it is
25 "not the fact".

1 THE COURT: Well ask him that then.

2 Q It is your opinion?

3 A Based on the evidence, right.

4 Q That is all I wanted, thank you. Now it would
5 be appropriate, therefore, in all cases where statements are
6 given setting forth or making certain statements, to check
7 out those statements to determine whether they could be
8 supported by physical facts?

9 A Or independent means, yes.

10 Q Or by independent means?

11 A Yes.

12 Q Physical facts? Right?

13 A Yes.

14 MR. MOSES: Thank you, nothing further.

15
16 RE-RE-REDIRECT EXAMINATION

17 By Mr. Racicot:

18 Q I have one question. Mr. Via, The information
19 that you determined that was in your opinion false, was not
20 given to you by Mr. Beach was it?

21 A No.

22 Q It was given to you by whom?

23 A The information that was given to us was given
24 to us by Mr. Beach's attorney, Mr. Kidd.

25 MR. RACICOT: Thank you, we have nothing further.

RE-RE-RECROSS EXAMINATION

By Mr. Moses:

Q Mr. Via ---

MR. RACICOT: Excuse me, I have one other question.

MR. MOSES: Fine, go ahead.

MR. RACICOT: In talking about general law enforcement techniques, is this the first time that you have been put on a wild goose chase?

MR. MOSES: Your Honor, I object to the form of the question. He has characterized this as a wild goose chase and he is going to be stuck with it.

MR. RACICOT: Is this the first time you have received information that in your opinion was inaccurate from either a defendant or a lawyer?

A No sir.

RE-RE-RECROSS NOW BY MR. MOSES:

Q Do I understand your testimony that you say nothing checked out on what Mr. Beach had told you?

A Not in regard to the Cathy Horton homicide, no.

MR. MOSES: Nothing further.

MR. RACICOT: Did Mr. Beach give you any information about those homicides?

A No sir.

Q And when Mr. Moses asked you if any information was given to you by Mr. Beach, he gave you none?

1 A Came from his attorney.

2 MR. MOSES: You mentioned that he gave you no information?
3 Your Honor, could I have a moment please?

4 THE COURT: Yes.

5 (After several moments)

6 Q Would you tell me when your interview commenced
7 on January 11th, 1983, Mr. Via?

8 A About 4:01 PM.

9 Q Pardon?

10 A Approximately 4:01 PM, I believe.

11 Q And when was it terminated?

12 A Several hours later, and I am not certain, but
13 it should be reflected in the report, the exact time it was
14 terminated.

15 Q It commenced, it says, at 17:24 hours, and
16 that would be 5:24?

17 A That was after the interview had already
18 commenced.

19 Q And then it terminated when?

20 A Approximated when?

21 Q Yes?

22 A Approximately 9:30.

23 Q Thank you.

24 MR. MOSES: Thank you, Mr. Via, no further questions.

25 MR. RACICOT: Did Mr. Beach's lawyer complain about the length

1 of that interview?

2 A No sir.

3 Q And was he present throughout the entire period
4 of that interview?

5 A Yes sir.

6 MR. RACICOT: Nothing further.

7 MR. MOSES: I have no further questions, thank you.

8 THE COURT: You may step down, you're
9 excused.

10 WHEREUPON this witness was EXCUSED.

11

12 MR. RACICOT: Your Honor, we have no further witnesses and
13 the State RESTS ITS CASE.

14 MR. MOSES: Your Honor, I have a motion to make outside the
15 hearing of the jury and I believe this will take approximately
16 ten minutes.

17 THE COURT: All right. (Court then
18 admonishes the Jury)

19 THE COURT stood in recess from the hour of 10:24 AM
20 until the hour of 10:42 AM., and during this recess,
21 counsel for both sides, and the defendant retired to
22 chambers, outside the hearing of the jury, where the
23 following was had:

24

25