

1 MR. MOSES: Mr. Harry Beach, please.

2 WHEREUPON,

3 MR. BARRY BEACH

4 having been called as a witness on his own behalf, and having
5 been first duly sworn upon his oath, testified as follows:

6

7 DIRECT EXAMINATION

8 By Mr. Moses:

9 Q Ould you state your name please?

10 A Barry Allan Beach.

11 Q And you are the defendant in this case?

12 A Yes sir.

13 Q Have you discussed your testimony with me, Mr.

14 Beach?

15 A Yes sir.

16 Q And do you understand that I am going to put to
17 you certain limited questions for your testimony here in
18 support of the Motion to Suppress?

19 A Yes sir.

20 Q And that at this time, you are willing to
21 answer only those questions, or such subject matter, which I
22 address to your attention?

23 A Yes sir.

24 Q Were you arrested on January 4th, 1983?

25 A Yes sir.

1 Q And where were you arrested?
2 A In my apartment.
3 Q And did you consent -- who were you arrested by?
4 A I was arrested by the Ouachita Parish Sheriff's
5 Department.
6 Q Did they enter your house?
7 A Yes sir.
8 Q Did you consent to have them enter?
9 A No sir.
10 Q Were you placed under arrest in the house?
11 A Yes sir.
12 Q Did they say they did or did not have a warrant?
13 A They said they did have a warrant.
14 Q Did you ever see a warrant?
15 A No sir.
16 Q Did they take you into custody at that time and
17 take you to jail?
18 A Yes sir.
19 Q Were you ever taken before a Judge?
20 A No sir.
21 Q When was the first time that you were taken
22 before a Judge from the time of your arrest on January 4th,
23 1983?
24 A It was on March 4th of 1983. ✓
25 Q There is some testimony here about an interview

1 of you by Mr. Via and he said it was on January 6th, 1983,
2 and I am going to address your attention only to the time
3 that you were interviewe. Do you recall on that interview
4 when you were first contacted by Mr. Via?

5 A Yes sir.

6 Q What time was that?

7 A At 7:30 in the morning approximately.

8 Q Where were you taken?

9 A I was taken into a trailer house.

10 Q Is that adjacent to the facility there?

11 A It was within the compound.

12 Q And how long were you interviewed?

13 A Approximately three or four hours.

14 Q Now on January 7th, there has been testimony
15 as to the time in which the interview was commenced and
16 completed, and would you tell me when you were first contacted
17 by law enforcement for taking or having an interview on that
18 date?

19 A It was approximately eight o'clock that morning.

20 Q And where were you taken?

21 A I was taken from the Ouachita Parish Correctional
22 Center up to the Ouachita Parish Annex.

23 Q And were you interviewed at that time?

24 A Yes sir.

25 Q Were you interviewed from that period of time

1 up until the time that the statement was ultimately given?

2 A Yes sir.

3 Q Continuously?

4 A Yes sir.

5 Q Did you have anything to eat during that period
6 of time?

7 A I did have a coke at approximately nine or
8 nine-thirty that morning.

9 Q Now you have been in Court and you heard Mr.
10 Calhoun testify?

11 A Yes sir.

12 Q Were there any threats made to you by Mr.
13 Calhoun?

14 A Yes sir.

15 Q Would you please tell me what they were?

16 A Mr. Calhoun told me that he had enough evidence
17 against me on the three murder charges in the State of
18 Louisiana to convict me at that time and that if he did
19 convict me at that time, he would see me fry in the electric
20 chair in the State of Louisiana.

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

22

23

CROSS EXAMINATION

24 By Mr. Racicot:

25 Q Handing you what has been marked as State's

1 Exhibit One ---

2 MR. MOSES: Your Honor, I am going to object to this line
3 of testimony as it is not within the scope of the direct
4 examination and he would be making the witness his own and
5 if he makes this witness his own, I am going to advise him
6 not to answer; we are not going into the different subjects.

7 MR. RACICOT: This is not a different subject, you asked him
8 and he said he was interviewed from eight o'clock in the
9 morning until eight o'clock at night, and this was executed
10 during that same time period, and that is what I am asking
11 about.

12 MR. MOSES: That is fine. I am going to advise him not to
13 answer. The document speaks for itself.

14 MR. RACICOT: No.

15 MR. MOSES: Of course it does.

16 MR. RACICOT: If you are going to advise him not to answer,
17 that is fine, and ---

18 MR. MOSES: I am advising him not to answer with respect
19 to any documents that have been introduced into this case.

20 MR. RACICOT: Okay.

21 Q Would your response be the same as to State's
22 Exhibit Number 2?

23 A Yes sir.

24 Q You will not answer my questions in regard to
25 that?

A No.

1 Q State's Exhibit Number three, you want to answer
2 my questions?

3 A No.

4 Q How about number four?

5 A No.

6 Q How about number five?

7 A No sir.

8 Q How about your own Defendant's Exhibit A, do
9 you want to answer any questions about that one?

10 A No.

11 Q Do you deny, Mr. Beach, that you freely and
12 voluntarily waived your rights on numerous occasions, about
13 ten or eleven over a two day period?

14 MR. MOSES: Your Honor, I am going to advise the witness
15 not to answer. This is new matter with respect to waiver
16 and it was not brought out in direct examination. He is making
17 the witness his own and the record speaks for itself.

18 MR. RACICOT: I will make him my own.

19 MR. MOSES: He is making him his own witness and therefore
20 it is new subject matter and I am advising him not to answer.

21 MR. RACICOT: Your Honor, he made testimony about threats
22 being made to him and about being picked up at eight o'clock
23 in the morning and questioned all day long, and he was
24 questioned for half the morning on January 6th, and my questions
25 to him are simply related to those same topics, and he should
be directed to answer.

1 THE COURT: I think the last question
2 is a proper question. You asked him
3 how long he was questioned and he
4 said from eight to eight and I think
5 he should be allowed to question what
6 happened during that period of time.

7 MR. MOSES: Your Honor, the record will reflect that Mr.
8 Via testified that it was 12:24 and I limited my questions
9 to only that statement as to the time where he disputes. The
10 time that he was first picked up. He was picked up at 7:30
11 and was there at eight o'clock and according to Mr. Via's
12 testimony Mr. Via said 12:24 and now what happened in between
13 is not subject to cross examination.

14 THE COURT: I think it would be and I
15 am going to go along with that and he
16 may question about waivers.

17 MR. MOSES: Your Honor, I want you to appreciate my point,
18 and if we have to come in and challenge a particular statement
19 that the witness made, that doesn't open up the field. We
20 simply say that is not true, and that is the end of it. You
21 can see the problem.

22 THE COURT: I see the problem and I
23 think you are wrong, but I am not
24 going to gamble on it. Go ahead.

25 Q Isn't it true, Mr. Beach, that on January 6th,

1 in the evening hours after a phone conversation, that you had
2 with your mother and several other people, that you agreed
3 that you wanted to stay in custody in the Ouachita Parish
4 Sheriff's office?

5 A Not to my recollection.

6 Q That is what your mother said?

7 A (No response)

8 MR. MOSES: Excuse me, I think he has already answered it,
9 "not to his recollection". I object to this as it is on his
10 mother's testimony.

11 Q Or you don't remember?

12 A I don't remember.

13 Q But it could have?

14 A It is possible.

15 Q And you never were taken before a Judge before
16 March 4th, 1983?

17 A Correct.

18 Q Was that is in reference to any extradition
19 proceedings or anything else?

20 A That was what that was in reference to, on
21 March 4th.

22 Q But you were never charged with any other offenses
23 in Louisiana other than the contributing charge, correct?

24 A Correct.

25 Q And from January 7th on you were being held on
a Montana warrant?

- 1 A Correct.
- 2 Q And gave him a statement?
- 3 A As the record shows, yes.
- 4 Q And so the record is correct in that regard then?
- 5 A Yes I did give a statement to Sgt. Via.
- 6 Q And were you as afraid of him as you were of
- 7 Commander Calhoun?
- 8 A No.
- 9 Q Well why did you give him that statement?
- 10 A I was in fear of the judicial system in Louisiana.
- 11 Q You figured if you could get back to Montana
- 12 and you would be able to get this all straightened out?
- 13 A Correct.
- 14 Q Then why didn't you waive extradition?
- 15 A Why didn't I waive extradition?
- 16 Q Yes.
- 17 A Because the extradition papers were improper.
- 18 Q But you would have otherwise?
- 19 A Correct.
- 20 Q You would have signed a voluntary return to
- 21 Montana just to escape the Louisiana police?
- 22 A Not necessarily to escape them, but keep them
- 23 from further prosecuting me for something that I didn't do,
- 24 as Montana has.
- 25 Q Something that you did not do. I am not sure I
- am following you, what do you mean by that?

1 A I didn't want them prosecuting me for three
2 murders that I am not guilty of.

3 Q But you didn't mind Montana prosecuting you for
4 murder?

5 A Montana has been prosecuting me for four years.

6 Q So that you made the statement to Sgt. Via?

7 A Correct.

8 Q And you did have a good -- you and Sgt. Via
9 got along Okay?

10 A He was friendly with me.

11 Q Was he courteous to you?

12 A Yes.

13 Q Did he threaten you in any way?

14 A He didn't threaten me, he told me he would come
15 and help me.

16 Q Did you feel that you needed help?

17 A In what manner?

18 Q Well how was he referring it that he would come
19 and help you?

20 A He told me he would go to bat for me in the
21 State of Montana.

22 Q When did he tell you that?

23 A All through the day.

24 Q Even during the recorded statement?

25 A Not during the recorded statement, no.

1 Q I will rephrase it. Did he indicate specifically
2 to you, what he would say on your behalf?

3 A No he didn't.

4 Q So that you made a statement to Sgt. Via and
5 apparently you broke down and cried, was that true?

6 A I might have shed some tears.

7 Q Because of what Commander Calhoun said to you?

8 A Correct.

9 Q And so you gave a statement that you made
10 simply to get out of that particular situation with Commander
11 Calhoun?

12 A I should (witness commences to weep)

13 Q You felt that he was endangering your life?

14 A He stood there and told me that for a half an
15 hour, that he would see me fry in the electric chair.

16 Q Did you tell Sgt. Via about that?

17 A Did I tell Sgt. Via?

18 Q Yes.

19 A Sgt. Via was present during part of it.

20 Q And so he was present when he was making that
21 statement?

22 A Part of it, when he began his entry into it,
23 yes.

24 Q And so when he first came into the room he
25 told you point blank that you were going to fry?

1 A He didn't come point blank. He come back at
2 me and telling me that I was ~~deceptive~~ in my first stress test.

3 Q Well up to that point everything was fine?

4 A Yes.

5 Q And then he came back and said you were
6 deceptive and I've got enough on you to see you fry in the
7 electric chair?

8 A Yes.

9 Q And Sgt. Via was present when he said that?

10 A Yes.

11 Q Did you tell Sheriff Mahlum that when you talked
12 to him later?

13 A No sir.

14 Q Well, were you afraid of Sheriff Mahlum too?

15 A No sir.

16 Q In fact, didn't you tell Sheriff Mahlum that
17 you didn't want your mother to know?

18 A I told Sheriff Mahlum that I would not like
19 him to tell my mother until I had a chance to talk to her,
20 but I did not tell him that I did not want my mother to know.

21 Q You wanted to tell her yourself?

22 A Yes.

23 Q And what you meant by telling her, is exactly
24 what you put in that statement to Sgt. Via?

25 A No.

1 Q Now you later had occasion, after the 7th of
2 January to be interviewed by other officers, and Sgt. Via
3 was one of them however?

4 MR. MOSES: Your Honor, I am going to object to this line
5 of inquiry on the grounds that it is not a part of the
6 examination of this witness and I am advising him not to
7 answer.

8 THE COURT: This is outside the
9 direct examination.

10 MR. RACICOT: It certainly bears directly, Your Honor, upon
11 the voluntariness that the defendant has placed in issue at
12 this point in time, if he had a subsequent acknowledgement
13 of a particular state of facts, by him, personally, in the
14 presence of his own lawyer and two policemen, and his
15 recollection of that event certainly bears upon the issue of
16 voluntariness that he has put into issue here.

17 MR. MOSES: Do you have a statement to that effect?

18 MR. RACICOT: You just heard Sgt. Via testify ---

19 MR. MOSES: Do you have a written statement to that effect?

20 MR. RACICOT: No.

21 MR. MOSES: Your Honor, I renew my position in this and I
22 advise me witness not to testify.

23 THE COURT: Well I think this does
24 go right to the sole question of this
25 hearing, that is, whether or not it