

1 MR. MOSES: Call Mr. McCarvel.

2 WHEREUPON,

3 MR. FRANCIS J. MCCARVEL

4 having been called as a witness by the Defendant, and having  
5 been first duly sworn upon his oath, testified as follows:

6 THE COURT: What about this matter of  
7 attorney-client privilege ---

8 MR. MOSES: I have taken care of that, Your Honor.

9 THE COURT: Okay.

10

11 DIRECT EXAMINATION

12 By Mr. Moses:

13 Q Mr. McCarvel would you please state your full  
14 name?

15 A Francis J. McCarvel.

16 Q And where do you live, Mr. McCarvel?

17 A Glasgow, Montana.

18 Q And what is your occupation, Sir?

19 A I am an attorney.

20 Q How long have you been an attorney?

21 A Twenty one years.

22 Q And do you know the Defendant, Barry Allan Beach?

23 A I do.

24 Q And have you been subpoenaed to appear in this  
25 cause and testify on this hearing on the Motion to Suppress?

CALMER A. ERSNESS

OFFICIAL COURT REPORTER

P.O. BOX 978

WOLF POINT, MONTANA 59201

1 A I have.

2 Q And do you have a signed statement from Mr.  
3 Barry Allan Beach permitting you to testify as to the issues  
4 that I raised as opposed to any conversations with him?

5 A I was delivered this morning, the following  
6 document which I would like to be placed in the record, dated  
7 February 24th, 1984, "I, Barry Allan Beach, hereby authorize  
8 my former court appointed attorney, Mr. Francis McCarvel, to  
9 testify in the hearing held this date in Wolf Point, Montana,  
10 on my behalf" and then there is a line where it has been  
11 printed "Barry A. Beach" and then there is "Barry Allan Beach"  
12 then again also printed.

13 Q May the record reflect that Mr. Beach here  
14 executed that document and I would like to affirm here in  
15 Court by Barry Allan Beach if he did in fact sign that  
16 document of authorization, is that right?

17 BARRY ALLAN BEACH: Yes sir.

18 MR. MOSES: Thank you.

19 THE COURT: Okay.

20 Q Mr. McCarvel I am going to direct your attention  
21 to the case of the State of Montana versus Barry Allan Beach,  
22 and were you once involved in the case now pending before the  
23 Court?

24 A Yes sir, I was.

25 Q And what was your capacity please?

1           A           Well on approximately January the 10th, 1983, I  
2 received a phone call from Wolf Point, Montana from my office  
3 in the evening advising me that Judge Sorte was looking for  
4 me with regard to a court appointment for Mr. Beach and then  
5 later that evening, nine or ten PM I spoke with Barry's mother,  
6 Mrs. Clincher at her residence in Poplar, Montana and received  
7 some information from her and that was when I first advised  
8 that I would be, -- that I was requested to be her son's  
9 attorney.

10          Q           And did you represent Mr. Beach as the court  
11 appointed attorney for a period of time?

12          A           Yes sir.

13          Q           Were you representing Barry Allan Beach on  
14 February 14th, 1983?

15          A           I was.

16          Q           And can you tell me where you were during that  
17 period of time and how you happen to be there?

18          A           Yes sir. In later January, after some  
19 investigation and conversations with Mr. McCann, the  
20 Roosevelt County Attorney and conversations with District  
21 Judge Sorte, I made a request of Judge Sorte that I be allowed  
22 to go to the State of Louisiana, and particularly to Monroe,  
23 in order to first of all see Barry, but most important, to  
24 interview the officers who had taken the statement which at  
25 that time I had a copy of, that had been given by Barry. I had

1 been in touch with an attorney by the name of Mr. Paul Henry  
2 Kidd of Monroe, Louisiana who was representing Barry at that  
3 time and I talked with Mr. Kidd on a number of occasions and  
4 I had a number of letters with him, asking him if he could  
5 make arrangements so that I could visit with the law enforce-  
6 ment officers Ouachita Parish and he said that was definitely  
7 possible and I therefore went to Judge Sorte with this and he  
8 agreed that I be allowed to go down there as part of the  
9 investigation of the case, and I left Glasgow, Montana on  
10 February the 12th, 1983 and arrived in the early morning --  
11 well approximately around noon in Monroe, Louisiana.

12 Q With respect to your interviews of the law  
13 enforcement officers, did the presiding Judge here in Montana  
14 know that was one of the primary purposes for your trip to  
15 Louisiana?

16 A Yes sir, I indicated that to Judge Sorte and  
17 to Mr. McCann that was my reason for going down there.

18 Q When you got down to Monroe, Louisiana, did you  
19 have any contact with the law enforcement officers who had  
20 taken the statement of Mr. Beach, or conducted the investi-  
21 gation?

22 A I did, Sir.

23 Q And what was your first contact, Mr. McCarvel?

24 A I arrived in Monroe just around the noon hour,  
25 of February the 14th, 1983, and I went immediately to the

1 office of Mr. Paul Henry Kidd, and Mr. Kidd was out of the  
2 office and I visited with two lawyers in his office and a law  
3 clerk and they told me where the officers were -- the offices  
4 were and they were approximately right across the street from  
5 the Parish Courthouse and my best recollection is that  
6 somewhere around one thirty or two PM I went over to the Law  
7 Enforcement Center building and went first to the office of  
8 Commander Alfred Calhoun and he was the first member of the  
9 Ouachita Parish Sheriff's Department that I spoke with.

10 Q And what did you advise them at that time as  
11 you met Commander Calhoun?

12 A I introduced myself, and I believe that I gave  
13 him my card, and I told him who I was, and I told him  
14 approximately what my purpose was of being there, that I  
15 wanted to interview the officers who took his statement, and  
16 I wanted to see the room in which the statements were taken  
17 and I had a camera with me and I asked him if I could take  
18 photographs of the room and Commander Calhoun took me to the  
19 room and showed me the room where the statements were taken  
20 and told me if I wanted to take pictures, that would be fine,  
21 however, he said, if you wish he would have their photographer  
22 for the department photograph the room and he would deliver  
23 them to me. I then asked Commander Calhoun a chance to discuss  
24 the case with him and the circumstances surrounding this case  
25 and he advised me that this was Sgt. Via's case and it would

1 obviously, you know, if you want somebody from the Parish,  
2 the District Attorney's office, I have no objection to that.  
3 He said, well this was a case up there in Montana, and I said  
4 true, and I said that I would just like to go over the  
5 circumstances and he said well I don't care to talk to you  
6 about that. Well I was taken back, a slight way to put it,  
7 at that point, and I asked him, I said well I have been  
8 advised by Mr. Kidd that if I were to come down here to  
9 Louisiana, that you would speak to me about this, and Mr. Via  
10 looked at me and he said, and I said, didn't you tell him  
11 that, or something to that effect and he said, yes I told Mr.  
12 Kidd that I would talk to you but I didn't tell him that I  
13 would talk to you about this case. And I then told him that  
14 I did not travel all the way to Monroe, Louisiana just to  
15 discuss the weather.

16 Q And then what happened?

17 A Well, Sgt. Via indicated to me that he had no  
18 intention to discuss the circumstances surrounding the taking  
19 of the statement, and I then went back to Mr. Kidd's office  
20 and he arrived -- he was out of town for court and had arrived  
21 back later that afternoon, and we discussed this matter and  
22 he was rather surprised and he said he would try to straighten  
23 it out the next day, and on the next day, some attempts were  
24 made to advise Mr. Kidd to get in touch with Sgt. Via which  
25 he did. Later then that day, and I believe I have my dates

1 correct, and I am sure that I do, I placed a long distance  
2 telephone call to Mr. McCann here in Wolf Point from Mr. Kidd's  
3 office and discussed with Mr. McCann my difficulties in  
4 interviewing the officers. I asked Mr. McCann if he would get  
5 in touch with the people down there and see if it could be  
6 straightened out. My recollection is that I had two  
7 telephone conversations with Mr. McCann and eventually I was  
8 advised that he would talk to Mr. Via and see if it could be  
9 worked out; And I was asked what I wanted to discuss with  
10 them and I told him, "before I left all I wanted to know the  
11 facts and circumstances surrounding the taking of this  
12 statement.

13 Q Did you later talk to Sgt. Via?

14 A No I did not, I was in his office -- or in Mr.  
15 Kidd's office and Sgt. Via called over and he and Mr. Kidd  
16 had one or two conversations together and Mr. Kidd then  
17 advised me that he had talked with Sgt. Via and Sgt. Via said  
18 yes he would talk to me. Things seemed to be settled then,  
19 and then a little later another telephone call came in and Mr.  
20 Kidd was on the phone and it was obvious, I could only hear  
21 one part of it, of the conversation, he was somewhat irritated  
22 about the matter and hung up the phone and said that Sgt. Via  
23 said he was willing to talk but his superiors had told him  
24 that he should not talk.

25 Q So that you were never able to talk to any law



1 enforcement officers on this trip with respect to the factual  
2 circumstances surrounding the giving of this statement?

3 A That is correct.

4 MR. MOSES: I have no further questions.

5

6 CROSS EXAMINATION

7 By Mr. Racicot:

8 Q Mr. McCarvel you never did call down there and  
9 talk with any of the law enforcement officers down there as  
10 to whether or not they would be able to or be permitted --  
11 would be permitted by their procedures to talk to you?

12 A No I did not.

13 Q Prior to the time you left?

14 A No I did not.

15 Q And you don't know what it is that Mr. Kidd  
16 communicated -- or what Sgt. Via communited to Mr. Kidd  
17 concerning what he was willing to talk about and not talk  
18 about?

19 A I am not sure if I understand your question?

20 Q Okay. You called Mr. Kidd to find out if it  
21 would be possible to talk to the investigating officers down  
22 there and he said he would check it out, as I understand it?

23 A Yes.

24 Q And he called you back?

25 A Yes.



1 Q And gave you a response?

2 A Correct.

3 Q And you are not aware of exactly what Sgt. Via  
4 -- you never talked with Sgt. Via about what he told Mr. Kidd?

5 A I did not.

6 Q And it is very possible could havd communicated  
7 with Mr. Kidd that he would be glad to discuss anything with  
8 you except this case unless the prosecutors were present,  
9 because that is their procedure?

10 A Well I suppose I could answer it that way, Mr.  
11 Racicot, but that doesn't make any sense. That wasn't why I  
12 was going down there.

13 Q And you were also going to go down there to  
14 talk to the Defendant?

15 A That was a small part of it. He had counsel  
16 down there to look after his interests.

17 Q But that was a justification by itself?

18 A Yes, but that was not the main purpose of my  
19 trip.

20 Q And you would preclude that there is a possibility  
21 that something was lost in the translation from Via to Kidd to  
22 you about what they were willing to talk about and not talk  
23 about unless the prosecutor was present and available?

24 A I can see that, but that was my main purpose of  
25 going down there, to talk to the law enforcement officers  
about this statement and the surrounding circumstances of that.

1 Q But you never did talk with them, you only  
2 talked with Kidd?

3 A That is correct.

4 MR. RACICOT: We have nothing further.

5 MR. MOSES: I have nothing further of this witness and I  
6 request that he be excused.

7 MR. RACICOT: That's fine.

8 THE COURT: You may be excused.

9 WHEREUPON this witness was EXCUSED.

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16 COURT STOOD in recess from the hour of 10:32 A.M.,  
17 until the hour of 10:46, A.M., at which time the  
18 following proceedings were had: (See next page)

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