

1 THE COURT: Next witness.

2 MR. MOSES: Call Mr. Via please.

3 WHEREUPON,

4 SGT. JOHN VIA

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

7
8 DIRECT EXAMINATION

9 By Mr. Moses:

10 Q State your name please?

11 A Sgt. Jay Via.

12 Q Where do you live, Mr. Via?

13 A I live in Monroe, Louisiana.

14 Q And what is your occupation please?

15 A I am employed by the Ouachita Parish Sheriff's
16 office.

17 Q In what capacity?

18 A I am assigned to the criminal investigation
19 division on special assignment to the Ouachita Parish Area
20 Task Force.

21 Q And were you or did you have such an assignment
22 on the 4th day of January, 1983?

23 A Yes I did.

24 Q And were you aware of a complaint that had been
25 filed charging Barry Allan Beach with two counts on the charge

1 of contributing to the delinquency of a minor?

2 A On January the 4th, Sir?

3 Q Yes sir?

4 A No sir I was not aware on January the 4th of

5 that investigation.

6 Q You were not aware of that?

7 A Not on January the 4th, No sir.

8 Q Did you become aware of that?

9 A Yes sir, on January the 5th.

10 Q But you knew then on January the 5th that he

11 had been charged on January 4th, 1983 with the crime of

12 contributing to the delinquency of a juvenile?

13 A That is just what I testified to, yes sir.

14 Q And he was arrested on January 4th, 1983 on

15 those charges?

16 A On the contributing charge?

17 Q Yes sir?

18 A Yes sir.

19 Q And do you know where he was arrested?

20 A He was arrested in Ouachita Parish.

21 Q Pardon?

22 A He was arrested in Ouachita Parish.

23 Q Where?

24 A Exactly where I don't recall.

25 Q And do you have in your possession a copy of

1 the complaint that was filed?

2 A In my possession right now, No Sir.

3 Q Have you ever seen a copy of the complaint?

4 A Yes I have.

5 Q And where is it filed, in what court?

6 A In the Fourth Judicial Court.

7 Q And do you know when it was filed?

8 A I would imagine that once he was arrested on
9 January 4th, that it was forwarded to the District Attorney's
10 office and filed at that time by the District Attorney.

11 Q Do you have, and you can testify that you know
12 of your own knowledge that a legal complaint in the Fourth
13 Judicial District was filed?

14 A I believe so, yes.

15 Q How was the warrant of arrest issued?

16 A Based on an affidavit signed by the complainant,
17 based on probable cause.

18 Q And have you seen that document?

19 A It is my understanding that there was no warrant
20 at the time of Mr. Beach's arrest.

21 Q Sir?

22 A On the contributing charges, I don't believe
23 there was a warrant issued at the time of his arrest, Sir.

24 Q Do you have to file an Affidavit to get a
25 warrant?

1 A Yes sir, if you are filing for a warrant.

2 Q Have you examined any of those documents or
3 any of those papers?

4 A If I saw his warrant on Mr. Beach on the
5 contributing charge?

6 A Yes?

7 Q As I said, he was arrested without a warrant
8 and I have seen no warrant or information that came down
9 from the District Attorney's office.

10 Q Are these charges of contributing the the
11 delinquency of a minor a misdemeanor?

12 A The particular charge that Mr. Beach was
13 arrested for, yes; there is another section under the
14 contributing charge that is a felony.

15 Q Well was he being charged with a felony or a
16 misdemeanor?

17 A At the time of his arrest, it was a misdemeanor.
18 AT THIS TIME, A DOCUMENT WAS MARKED AS DEFENDANT'S
19 EXHIBIT A.

20 Q Mr. Via, I hand you what has been marked as
21 Defendant's Exhibit A for identification purposes, and I
22 would advise you that that document was delivered to me this
23 morning, just at the commencement of this particular hearing,
24 and I take it is a part of the records of the law enforcement
25 in connection with this case?

1 A In which case?

2 Q This case, Barry Allan Beach?

3 A This was a part of the contributing to the
4 delinquency of a juvenile and the investigation that was done
5 on January 4th, 1983 by Deputy Stutts.

6 Q Yes I understand that. Is Deputy Stutts a
7 deputy Sheriff?

8 A Yes sir, he is.

9 Q And so those documents would reflect a part of
10 the records, the official records, of the Sheriff's office in
11 Ouachita Parish located in Monroe, Louisiana, those records,
12 right?

13 A Pertaining to this complaint, yes.

14 MR. MOSES: For the limited purpose of this hearing, I
15 offer in evidence, Defendant's proposed Exhibit Number A.

16 MR. RACICOT: No objection.

17 THE COURT: Exhibit A is admitted.

18 Q Officer, on the first page of the Sheriff's
19 record, it says that the complainant stated the suspect had
20 no right picking up the two subjects at school and that he
21 wanted charges filed against the suspect. That was the
22 signed basis as shown by the official records in the Sheriff's
23 office in which Mr. Beach was arrested without a warrant.

24 A Your question?

25 Q My question is that what the records reflect?

1 A Yes.

2 MR. RACICOT: Your Honor, I am going to object to this, the
3 record speaks for itself and are available to the Court.

4 MR. MOSES: I understand that, but I just wanted to point
5 out so that it is in the record here, I am not going to go
6 over all of it, just that one point.

7 THE COURT: All right.

8 Q Now from the 4th day of January, 1983, was Mr.
9 Beach ever taken before a Judge?

10 A Not to my knowledge.

11 Q So that I take it that on the 4th day he was
12 not taken before a Judge, and then on January 5th, he was not
13 taken before a Judge, and on January 6th, 1983, he was not
14 taken before a Judge, and on January 7th, he was not taken
15 before a Judge?

16 A Not to my knowledge.

17 Q You were in charge of this investigation so
18 that you would know if he had went before a Judge, wouldn't
19 you?

20 A Not necessarily.

21 MR. MOSES: May I have just a minute, Your Honor?

22 THE COURT: Yes.

23 Q Do you know ;when Mr. Beach was first interviewed
24 after his arrest?

25 A I believe he was initially interviewed on the

1 evening of the 4th of January.

2 Q And where had that interview taken place?

3 A At the Ouachita Parish Sheriff's Office.

4 Q And would that be in the interview room?

5 A Probably so, yes. I was not there on the first
6 interview, so I don't know where it was conducted.

7 Q The record on Exhibit A doesn't show any
8 interview.

9 A If I could see it, I could tell you where it
10 was.

11 Q Thank you.

12 A (Examined by the witness) Well, it looks like
13 the interview was at the Ouachita Parish Courthouse in
14 Interview Room Number One, on the second floor of the
15 Ouachita Parish Courthouse.

16 Q When did you first become involved in this case,
17 Mr. Via?

18 A On January the 5th, 1983, after a complaint
19 was filed by Bob and Caroline Beach regarding threats.

20 Q Regarding what?

21 A After a complaint was filed with regard to
22 threats to personal safety with a suspect by the name of
23 Barry Beach.

24 Q And did you contact Barry Beach?

25 A He was interviewed the first time on January
the 6th, 1983.

1 Q He was not interviewed on January 5, 1983?

2 A No.

3 Q And where would he have been on January 5, 1983?

4 A He would probably have been incarcerated at
5 the Ouachita Parish Correctional Center.

6 Q He wasn't free to leave?

7 A No.

8 Q On January the 6th, there was an interview
9 conducted, right?

10 A Yes I just testified to that.

11 Q I understand, but we have a little routine
12 that we do and I want to be sure that my dates are accurate,
13 so that you don't misunderstand me. On January 6th, 1983,
14 there was an interview conducted and when did that commence?

15 A Approximately eleven o'clock A.M.

16 Q And how long did it last?

17 A Until right about twelve zero five P.M.

18 Q And that would be the only interview ---

19 A I beg your pardon?

20 Q Was that the only interview conducted on that
21 date with respect to Barry Beach?

22 A Yes sir.

23 Q And how long a period of time was that again?

24 A What do you mean?

25 Q For the record, how long a period of time was
that interview?

1 A Approximately an hour.

2 Q Okay. And where was this interview?

3 A It was conducted at the Ouachita Parish
4 Correctional Center, it is off from 165 By-Pass, south of
5 Monroe.

6 Q Is that near the courthouse or is that out at
7 the correctional center?

8 A It is the correctional center, approximately
9 five miles away from the courthouse.

10 Q Okay, and was that in an interview room?

11 A No sir, it was not.

12 Q That was in a trailer?

13 A It was in a clearance room.

14 Q Well was it a former trailer?

15 A It is a trailer that is attached to the class
16 room.

17 Q Okay, but it is in fact, a trailer, a mobile
18 home?

19 A Yes.

20 Q Okay and who was present at that particular
21 time?

22 A Mr. Beach, Deputy Richard Mederies and myself.

23 Q And did you make a record of this interview or
24 conversations with Mr. Beach at that time?

25 A At that time, no sir.

1 Q Was there ever a recording?
2 A No sir.
3 Q Did you take notes?
4 A That is correct.
5 Q Do you have your notes with you?
6 A No sir.
7 Q Where are they?
8 A My notes have been transferred and forwarded
9 with a report.
10 Q And do you have that report with you?
11 A Yes sir.
12 Q And is that report necessary to refresh your
13 recollection?
14 A Depends on what you ask.
15 Q It was used for the purpose of refreshing your
16 recollection so that you can answer the questions correctly,
17 right?
18 A It was an accurate account of the investigation
19 as to that.
20 Q And you read that in connection with this
21 testimony you are giving here today so that you could be
22 accurate, right?
23 A I reflected over that report, yes sir.
24 Q So that you could be accurate, right?
25 A I hope to be accurate, yes.

1 MR. MOSES: Your Honor, it is about five minutes to twelve,
2 or ten to twelve, and I would like an opportunity to read Mr.
3 Via's report so that I could shorten up the cross examination
4 and I would like the opportunity to go over those during the
5 noon hour, if counsel has no objections.

6 MR. RACICOT: No objections.

7 THE COURT: All right, we are due for
8 a break anyway. When do you want to
9 start again?

10 MR. MOSES: One o'clock would be fine.

11 THE COURT: Okay, one o'clock. We
12 will stop for lunch and be back here
13 at one o'clock then.

14 ---oOo---

15 WHEREUPON this hearing stood in recess from the hour
16 of 11:55 o'clock A.M., and reconvened again at the
17 hour of 1:04 o'clock P.M., at which time the following
18 proceedings were had, to-wit:

19 ---oOo---

20
21 THE COURT: Please be seated, court is
22 in session. Let the record show that
23 all those persons who I said were present
24 this morning are now present. You may
25 proceed with your examination.

1 Q Did you tell him that? Did you use that
2 language in telling him that?

3 A I am trying to explain to you the language that
4 I used, Sir.

5 Q Well did you use that language?

6 A Would you repeat the language?

7 Q Did you tell him that the County Attorney from
8 your Parish had to be present?

9 A Not exactly like that, No Sir.

10 Q All right, what did you tell him about the
11 County Attorney?

12 A That was what I was wanting to explain.

13 Q I understand, but I wanted to get the first
14 question in and then you can explain.

15 A I explained to Mr. McCarvel that according to
16 our policies, I would not discuss the case with him without
17 one of the prosecuting attorneys being here, or else the
18 prosecuting attorney from out of the State of Montana being
19 present.

20 Q And did you contact your county attorney in
21 Monroe?

22 A Yes sir, I did.

23 Q And did he agree to be present at the same time
24 as Mr. McCarvel?

25 A I was instructed not to make any comments to
Mr. McCarvel at all.

1 Q By the County Attorney?
2 A Correct.
3 Q And it was not by Mr. Calhoun, but by the
4 County Attorney?
5 A Mr. Calhoun, also.
6 Q So that both you and Mr. Calhoun talked to the
7 County attorney?
8 A No sir, I talked to the District Attorney.
9 Q I am sorry. So that you were not willing to
10 discuss the factual circumstances surrounding that case
11 upon the advise of the attorney?
12 A Not willing?
13 Q Not willing, yes?
14 A I was willing, but ---
15 Q The District Attorney told you not to discuss
16 the case with Mr. McCarvel?
17 A I was following departmental procedures, but ---
18 Q Did the County Attorney or rather the District
19 Attorney tell you not to discuss the case with Mr. McCarvel?
20 A I have already testified to that.
21 Q And your answer is?
22 A Yes sir.
23 Q All right; were you previously advised of an
24 arrangement whereby Mr. McCarvel was to come down and inter-
25 view persons connected with the case -- with the taking of
the statement?

1 A What I was informed by Mr. Kidd was t
2 attorney from Montana was coming down to interview Mr. Beach
3 and if he came down here would I talk to him at that point in
4 time, and I related to Mr. Kidd that I would talk to him but
5 I cannot answer any questions regarding this investigation.

6 Q So that what you are saying then, is that Mr.
7 Kidd knew that Mr. McCarvel couldn't discuss the matter with
8 you, or discuss it with Mr. Kidd?

9 A Mr. Kidd is well aware of our departmental
10 policies.

11 Q I asked you -- I am not asking you if he was
12 aware of it, I am asking you a specific question of whether
13 Mr. Kidd knew, because you told him, that Mr. McCarvel would
14 not be able to interview you in connection with the taking
15 of the statement?

16 A Yes sir.

17 Q Well when Mr. McCarvel came down to interview
18 you, if he came over on the 14th day of February, 1983, you
19 had already told Mr. Kidd that you would not submit to an
20 interview?

21 A I told Mr. Kidd that I would talk to Mr.
22 McCarvel, but I cannot discuss the case with him that was
23 under investigation.

24 Q Well there wouldn't be any reason to talk to
25 him about anything else would there?

1 A I don't know.

2 Q Well what other case would you be talking about?
3 Why would he have made the trip to talk about some other case
4 in which he was the attorney for?

5 A I don't know, Sir, you would have to ask him.

6 Q And then did you call Mr. Kidd then later on
7 that afternoon, on the afternoon of February 14th, 1983, and
8 advised Mr. Kidd then, again, that Mr. McCarvel could not
9 talk the matter over with you and find out what happened
10 with respect to the statement?

11 A I had returned a call to Mr. Kidd's office and
12 Mr. Kidd had called me earlier.

13 Q Yes, I asked you, did you talk to him, I didn't
14 ask who originated the call, did you talk to him?

15 A Yes sir.

16 Q And what did you advise him?

17 A I advised him that I was not able, under our
18 policies to discuss the case without authorization of the
19 District Attorney's office.

20 Q And you have already testified that he knew
21 all about that policy, so why did you have to tell him?

22 A He asked.

23 Q Was he asking because he didn't know?

24 A I don't know why he asked me that.

25 Q Well he had this arrangement for Mr. McCarvel

1 to come down and investigate this case, and you knew about
2 that?

3 A I knew that Mr. McCarvel was coming down to
4 interview Mr. Beach, but as far as what the other arrangements
5 that Mr. Kidd had with Mr. McCarvel, you would have to talk
6 to Mr. Kidd and find that out.

7 Q In any event it was never conveyed to you that
8 they wanted to talk to you?

9 A At that point in time it was, yes.

10 Q When?

11 A When I talked to Mr. Kidd on the phone and he
12 said, would I talk to Mr. McCarvel if he came down, to inter-
13 view Mr. Beach, and I told him at that point, as I testified
14 earlier, that I would be glad to talk to him, but I could not
15 answer questions regarding this investigation.

16 Q Did you talk to the County Attorney prior to
17 the time that Mr. McCarvel came to your office at about 3:00
18 PM on February 14th, 1983?

19 A In regard to what?

20 Q Being interviewed?

21 A By Mr. McCarvel?

22 Q Sure?

23 A No sir.

24 Q Now you have a statement that was given to me
25 to read during the noon hour, and I am just going to hand it

1 to you without identification for the moment. Is that the
2 statement that was given to me being a summary of what you
3 did in connection with this particular case?

4 A This is my report.

5 Q Thank you. When was that report prepared?

6 A On January the 9th, 1983.

7 Q Thank you. Now on the 6th day of January,
8 you said you interviewed Mr. Beach for approximately an hour?

9 A That is correct.

10 Q And there has been testimony here that Mr.
11 Tin Beach had conversations with you?

12 A On the evening of the 6th, yes.

13 Q And was he -- did he advise you that he had
14 the \$1,500.00 to put up as bail?

15 A He advised me that he had the money and was
16 prepared to bail Mr. Beach out.

17 Q Did you tell him that it was to be cash?

18 A No sir.

19 Q Did he indicate to you that he had the cash
20 right there?

21 A He indicated to me that he had the money and
22 was prepared to bail Mr. Beach out.

23 Q And that meant cash to you?

24 A It meant that he had the money, and whether it
25 was a professional bondsman, a property bond or cash bond.

1 Q So that what you are saying is that if Mr.
2 Beach told you that he had the cash right there, and he told
3 you that, that wasn't quite accurate then?

4 A I beg your pardon?

5 Q Let me do that again. Did he tell you at that
6 time, "Mr. Via, I have the cash to bond Mr. Barry Allan Beach
7 out on these charges"?

8 A The way that I recall it is that Mr. Beach
9 stated that he had money to bond Mr. Beach out and whether
10 he meant cash or what, I don't recall.

11 Q It could be very well and true then that Mr.
12 Beach is correct and that he had the cash in his pocket and
13 was prepared to deposit it?

14 A It is quite possible, yes.

15 Q You wouldn't deny that that occurred?

16 A As far as the conversation about having the
17 money available to bond him out, no sir.

18 Q All right. Now I take it from the testimony of
19 Mr. Beach, Tim Beach, that you indicated to him that Barry
20 would be released the following morning?

21 A That is incorrect.

22 Q 'while he was prepared and standing there ready
23 to put up the money. What kept him from putting up the money?

24 A He didn't want to put it up.

25 Q Because he was going to be released the following
day?

1 A No sir.

2 Q Well was there a conversation with Barry's
3 mother?

4 A Yes sir.

5 Q And was she advised that there wasn't any need
6 to put up the money, because he would just be staying over
7 night and be released the following day?

8 A No sir.

9 Q Did the father, Mr. Beach, and Tim Beach appear
10 on the 7th to get the boy released?

11 A No sir.

12 Q They weren't present?

13 A I never seen Bob or Tim Beach on January the
14 7th, 1983.

15 Q Did you tell these people that Barry Beach
16 needed psychological assistance and could get a court
17 appointed doctor?

18 A No, that is not what I told him.

19 Q Was there a conversation with regard to that?

20 A There was conversation with regard to an apparent
21 problem that Mr. Beach may be experiencing, yes.

22 Q Well did you say anything at all about getting
23 a doctor for him?

24 A About me getting him a doctor, no sir, I did not.

25 Q About the court getting a doctor?

1 A The court procedure was explained to both Tim
2 and Mrs. Clincher.

3 Q So there was no need to explain the court
4 procedure to these people unless you believed that he was in
5 need of help?

6 A The statement was made ---

7 Q Excuse me, there would be no reason to get the
8 court appointed psychiatrist unless you believed that it was
9 a significant part of this case?

10 A Well as I was starting to say, the statement
11 was made that would be a determination that would have to be
12 made by a Judge.

13 Q I understand that the decision would have to be
14 made by a Judge, but I am asking you, you would not have
15 brought up that subject unless you believed that it was
16 appropriate that that subject be brought up because you
17 believed Barry Beach should have psychological help for his
18 problems?

19 A I believe that the tendencies existed, Sir.

20 Q Whether it was tendency or not, you had a
21 fixed impression that this boy may need psychiatric care
22 or treatment?

23 A That was a possible course of action.

24 Q I understand possible, or tendency, but wasn't
25 it your judgement and that is how the conversation about getting

1 a psychiatrist appointed by the Court, or whatever, arose,
2 because of your belief?

3 A Because of other circumstances surrounding the
4 investigation that we were conducting, as well.

5 Q On the 7th day of January, 1983, when did you
6 first see Barry Beach?

7 A At approximately 12:24 PM.

8 Q And who was present at that time?

9 A Mr. Beach and myself. I picked him up and we
10 walked out to the car.

11 Q And where did you take him?

12 A To the Ouachita Parish Courthouse Annex and
13 placed in Interview Room number One.

14 Q Had you examined his prior statement about the
15 contributing case?

16 A Yes I had.

17 Q And I take it then--when was he taken back to
18 the detention center?

19 A He was not taken back January 7th to the
20 detention Center.

21 Q Where was he taken then?

22 A He was transferred then at approximately 10:00
23 o'clock Pm and placed in the Ouachita Parish jail in the
24 courthouse.

25 Q I take it that all of this period of time that
he was not free to leave?

1 A No sir, he was still in custody.

2 Q And so he was in custody because he was charged
3 with contributing to the delinquency of a minor, right?

4 A Do you mean when he was moved up to the ---

5 Q I am talking about the period of time that he
6 was in custody because he had been charged with contributing
7 to the delinquency of a minor?

8 A That is correct.

9 Q Now when you talked with Mr. Beach, I take it
10 that -- that is Mr. Tim Beach, my feeling is that there was
11 some problems about him putting up the bail, is that right?

12 A Problems?

13 Q Yes?

14 A In regard to what?

15 Q In trying to persuade him from putting up the
16 bail?

17 A I explained to Mr. Beach the request of Bob
18 Beach and Caroline Beach, that they did not want their son
19 bonded out of jail because of an apparent threat that had been
20 made, which was the case that I was investigating.

21 Q Well didn't you say that -- that you also got
22 bent out of shape and went off the handle when he was fixing
23 to bond him out?

24 A In regard to a phone conversation with Sheriff
25 Mahlum?

1 Q I am just simply asking you a question. Did
2 you say that the Uncle got bent out of shape and went off the
3 handle when he was fixing to bond him out?

4 A And again to refresh my memory, is that the
5 conversation that I had with Sheriff Mahlum?

6 Q It is and ---

7 A Yes sir, I made that statement.

8 Q And you believed when you told Sheriff Mahlum
9 that the Uncle got bent out of shape?

10 A True.

11 Q And when you say he got bent out of shape, he
12 was demanding that the bail be accepted and received by you?

13 A No sir, that is not what I meant.

14 Q Was he upset with you?

15 A I don't think he was upset with me.

16 Q Well who was he upset with?

17 A I think he was upset with the whole matter in
18 general, between Bob Beach and Barry and the entire situation.

19 Q Was he able to physically see Barry?

20 A No sir.

21 Q How many times did he try to see Barry?

22 A In my presence?

23 Q Sure?

24 A Just once.

25 Q One time?

A Yes sir.

1 Q When he said there was one or two days when he
2 was trhing to see the kid, and he couldn't see him, do you
3 have any reason to believe that fact true?

4 A He could have, yes, but he only went through
5 me one time.

6 Q Mr. Beach went off the handle, and what do you
7 mean, "went off the handle"?

8 A Just rambling around about Mr. Beach, and this bail

9 Q "And was fixing to bond him out"?

10 A True.

11 Q You knew he was fixing to bond him out?

12 A That's true.

13 Q How come he didn't bond him out?

14 A Because he was asked not to by Bob Beach and
15 also by Mrs. Clincher.

16 Q But he testified that they went there to -- and
17 he had the money in his pocket to bail him out, now, who told
18 him not to bail him out?

19 A Mr. Bob Beach and Mrs. Clincher.

20 Q And then in the -- in the same conversation
21 with the sheriff, after you had taken his statement, you said,
22 "Okay, because I don't want his Uncle finding out about it
23 now, his Uncle has already tried to bond him out last night"?

24 A Yes sir.

25 Q So that would have been on the 6th of January
that he tried to bond him out?

1 A The conversation we are speaking of now was made
2 on the 7th. The night of the 7th.

3 Q So they tried to bond him out last night, so
4 that would be the 6th?

5 A That was entirely in regard to a different
6 matter, Sir.

7 Q I want to be clear here.

8 MR. RACICOT: Would you mind marking the document and refer
9 to the page, Sir, so we can understand what is going on.

10 MR. MOSES: You have the document there. I will refer to
11 page 9 of this document that you have, and I will refer to
12 about the middle of the page.

13 MR. RACICOT: Thank you.

14 Q You said "Sgt. Via: Okay I did not want his
15 Uncle finding out about it now. His Uncle has already tried
16 to bond him out last night".

17 A That's correct.

18 Q And so he tried to bond him out, you knew that?

19 A He wanted to.

20 Q He tried?

21 A Sir he did not try to bond a man out. If he
22 wanted to bond him out, all that he had to do was put up the
23 money and the man would have been released, and I explained
24 that to Mr. Beach, and I also explained to Mr. Beach in the
25 same tone of voice that the decision to bond Mr. Beach out

1 A What I was talking about was the fact that Mr.
2 Beach came into my office and wanted to bond Barry Beach out,
3 on January 6th, 1983, but did not do so.

4 Q He tried to bond him out?

5 A I said he wanted to.

6 Q Okay. Now when you talked to them about getting
7 a lawyer, did you tell these people in addition to what you
8 have already testified to and volunteered, did you tell them
9 that "you're just wasting your money, that is is just a
10 misdemeanor"?

11 A No sir, I did not say that.

12 Q All right. Then did you tell them that getting
13 a lawyer was a waste of time?

14 A No, that was Mr. Beach's conception.

15 Q That a lawyer would be a waste of time if the
16 boy was going to be released the following day, the 7th?

17 A He was not going to be released on the 7th.

18 Q Did he talk to you on the following day, the 7th?

19 A No sir.

20 Q Did the father talk to you on the following day?

21 A No sir.

22 MR. MOSES: May I have a moment, Your Honor?

23 THE COURT: Yes.

24 Q Were you tired as a result of your interrogation
25 of Mr. Beach?

1 A When was that?

2 Q On the 7th?

3 A On the 7th?

4 Q Yes sir.

5 A Probably no, yes and no.

6 Q But you were tired?

7 A Probably so, yes.

8 Q You had been through a long session with a

9 possible defendant?

10 A Yes I have in the past, yes.

11 Q I am not asking about the past, I am asking

12 about this particular time. Didn't you tell the sheriff you

13 were a tired man?

14 A I probably did.

15 Q Okay, and you were tired?

16 A Probably so.

17 Q All right, and also, did you tell the sheriff

18 that you were going to take him out and get him something to

19 eat?

20 A Yes I believe I said that we were going to send

21 out for something to eat, or go down and get something to

22 eat and bring it back, because he was as hungry as a horse.

23 Q Now specifically on page 4, in the middle of

24 the page, "I think we are fixing to take Barry out and get

25 him something to eat. He said he could eat a horse"?

 A Yes sir.

1 Q You were planning on taking him out?

2 A During the interview, no.

3 Q The first question. Sheriff Mahlum, why don't
4 you go ahead and hang up on me and Barry and I will be in
5 touch with you, then Okay, and, I am assuming you are talking
6 to Barry, right?

7 A What?

8 Q The Sheriff was talking to Barry, right?

9 A Yes.

10 Q And that was after he gave the statement?

11 A Yes.

12 Q And what time was this on the 7th?

13 A I don't really recall, it was before eight o'clock
14 or 8:30 I believe.

15 Q It was after the statement was taken?

16 A Yes sir.

17 Q And then Barry Beach, says Yes sir, and then you
18 say, where you must have interrupted and you say "I think we
19 are fixing to take Barry out and get him something to eat, he
20 said he could eat a horse"?

21 A That's correct.

22 Q So that he did not get anything to eat until
23 after he got -- after the statement was taken, correct?

24 A That isn't exactly right, no sir.

25 Q Did he get something to eat before he gave his
recorded statement?

1 Q Sgt. Via, when did you first become involved
2 in this particular case?

3 A I became involved on January the 5th, 1983.

4 Q And was it on the Montana homicide case that
5 you became involved?

6 A No sir.

7 Q How was it that you became involved with the
8 defendant?

9 A Caroline Beach, the defendant's step-mother,
10 placed a call to Commander Alfred Calhoun and filed a
11 complaint to Mr. Calhoun, through Commander Calhoun, regarding
12 threats she had received from defendant Barry Allan Beach,
13 and during the course of that phone conversation, he had
14 mentioned the fact that Mr. Beach was supposedly a suspect in
15 a murder in Montana as well as he felt he might be also a
16 suspect in three homicides which we were investigating in and
17 around the Monroe area; Deputy Mederies and I were sent to
18 interview Mr. and Mrs. Beach regarding the complaint she had
19 filed with Commander Calhoun.

20 Q Okay now did she provide you with some
21 documentation concerning her suspicions on the defendant's
22 involvement in a possible homicide in Montana?

23 A Yes sir, she did.

24 Q And did you take that into your custody?

25 A Yes sir, I did.

1 Q And what did that appear to you to be?

2 MR. MOSES: Objection, Your Honor, upon the grounds that
3 there is no foundation laid, we don't know what the documents
4 are, what was it, did it appear to be a letter or did it
5 appear to be a warrant.

6 Q What was it?

7 A It appeared to be a page from a letter,
8 indicating that ---

9 MR. MOSES: I am going to object as to what he says it
10 is indicating to be, upon the ground there is no foundation
11 laid.

12 WHEREUPON at this time, STATE'S EXHIBIT NUMBER 3 is
13 marked.

14 Q Handing you what has been marked as State's
15 Exhibit 3 for identification and ask if you can identify that?

16 A Yes sir.

17 Q What is that?

18 A This is a copy of the document which was
19 handed to me and Deputy Mederies on January the 5th, 1983
20 by Caroline Beach.

21 Q And is that a true and accurate copy?

22 A Yes sir it is.

23 Q And that is the document that you were referring
24 to that she had got the information from?

25 A That is correct.

1 MR. RACICOT: We move for admission of State's Number three.
2 MR. MOSES: May I inquire.
3 THE COURT: Yes.
4 VOIR DIRE BY MR. MOSES:
5 Q Is this the entire document?
6 A As I had it, yes sir.
7 Q This is not a complete document then?
8 A This is what was handed me by Mrs. Beach.
9 Q I am asking you, is this document complete?
10 A This document is the complete document as I was
11 handed to by Mrs. Beach.
12 Q Were there any other portions of it?
13 A No sir, this is what I was handed by Mrs. Beach.
14 Q And that was all?
15 A That was it.
16 MR. MOSES: For the purpose of this hearing, I have no
17 objections to proposed Exhibit Number three.
18 THE COURT: Number three is admitted.
19 Examination by Mr. Racicot continued:
20 Q Did you read that exhibit State's Exhibit
21 Number 3 when you received it from Caroline Beach?
22 A Yes sir I did.
23 Q And based upon that, you formed some impression
24 about the Defendant's involvement, or possible involvement in
25 a case in Montana, or a crime in Montana?

1 A Yes sir.

2 Q Okay now, you stated that also during this
3 interview with Caroline Beach, you became aware of the fact
4 that the Defendant may possibly be connected to other crimes
5 that occurred in Ouachita Parish?

6 A Correct.

7 Q And how was it that you became aware of that
8 information, did Caroline Beach supply all of that information
9 to you?

10 A Caroline and Bob Beach both provided the
11 information and it was recorded interview.

12 Q Now during this discussion with Caroline and
13 Bob Beach, was it your impression, excuse me, was it a fact
14 that the Defendant was arrested on the contributing charge
15 based upon their complaint?

16 A Yes sir, that is correct.

17 Q And while he was in custody he had telephonic
18 communication with Caroline Beach?

19 A Yes that is correct.

20 Q And that during that telephonic communication,
21 with Caroline Beach, he said he would kill her?

22 A That is correct.

23 Q For filing the complaint?

24 A Yes sir.

25 Q Now was Caroline Beach distraught and upset over
this?

- 1 A Both Caroline and Bob Beach were.
- 2 Q For the sake of their own security?
- 3 A Yes sir.
- 4 Q And that was carried on, on January 5th, correct?
- 5 A That is correct.
- 6 Q Which was a Wednesday?
- 7 A Correct.
- 8 >Q And so after you talked with Bob and Caroline
- 9 Beach, at that point you called the Roosevelt County Sheriff's
- 10 office here in Montana, Wolf Point, Montana?
- 11 A That is correct.
- 12 Q Now did you have any independent corroboration
- 13 of Caroline Beach's information concerning the defendant's
- 14 possible involvement in the Louisiana offenses?
- 15 A Other than just the general statement between
- 16 Bob and Caroline that they gave us about being in the area
- 17 and being a possible suspect and also being quite capable
- 18 of committing a murder under certain situations.
- 19 Q They advised you of that?
- 20 A That is correct.
- 21 Q They felt that was a possibility?
- 22 A Correct.
- 23 Q And also, wasn't one of the victims in your
- 24 parish in Louisiana also a person that was familiar with the
- 25 defendant?

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1 A Later conversations revealed that one of our
2 victims used to live down the road from where Mrs. Beach
3 stayed up in Bastrop with Mr. Tim Beach up there, as well as
4 a step sister of Mr. Beach being related to the last victim;
5 in addition to that, Mr. Beach receiving a traffic ticket
6 12:57 A.M., on April the 4th, 1981, approximately two and a
7 half blocks from where one of our victims was abducted.

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8 Q Okay. Now so that in your efforts to contact
9 Sheriff Mahlum on January 5th, was not necessarily directed
10 to solve the Montana offense, as much as it was to also
11 corroborate and investigate your own crimes in Louisiana?

12 A That is correct.

13 Q And you were calling here for background
14 information?

15 A That's right.

16 Q Now did you also on January 5th, check the
17 Defendant's past record?

18 A Yes I did.

19 Q And can you give us the sources that you checked?

20 A I checked our own record files; I checked
21 the Monroe police records; Bastrop police department and the
22 National Crime Information Center computer.

23 Q And you found several entries?

24 A That is correct.

25 MR. MOSES: I am going to object, Your Honor, to any

1 reference to any entries upon the grounds that unless the
2 documentation is produced so that we can see what they were,
3 the particular items, for instance, his testimony or his
4 report shows the National Crime Information Center has no
5 identifiable criminal record, and I don't want to leave it just
6 hanging there with the words, 'several items'.

7 MR. RACICOT: Perhaps I can clarify the situation.

8 Q You were told by Caroline and Bob Beach that
9 the Defendant had several arrests?

10 A That is correct.

11 Q And had been introduced to law enforcement
12 authorities on several occasions because of his violations
13 of the law?

14 A Correct.

15 Q And that some of them involved violence and
16 therefore that was one of the things that contributed to their
17 opinion about him being a danger to them?

18 A Yes sir.

19 Q And in fact you were able to confirm that?

20 A Yes sir.

21 Q Now, that preliminary investigation, I believe,
22 leads us up to about January 6th, when you decided you would
23 talk to the defendant?

24 A That is correct.

25 Q Okay, and previously you told Mr. Moses that you

1 went in to talk to the defendant about eleven o'clock on the
2 morning of January 6th, 1983?

3 A I believe that is true. ?

4 Q And that was your first contact with the
5 defendant?

6 A Yes sir.

7 Q And that he had previously however, been
8 advised of his rights and what were his rights, concerning
9 the contributing charge on January 4th, 1983 which are
10 reflected in Defendant's Exhibit A?

11 A Yes sir.

12 Q Now did you advise the defendant of his rights
13 on January 6th, 1983?

14 A Yes sir, I did.

15 Q And in fact, does your report reflect that?

16 A Yes sir.

17 Q And who was with you at that time?

18 A Deputy Richard Mederies.

19 Q And did you verbally advise him of his rights
20 at that time?

21 A Yes sir, I did.

22 Q Can you tell us what you told him?

23 A Yes sir. I advised Mr. Beach that he had a
24 right to remain silent; and that he didn't have to say anything
25 to us if he did not wish to; he was further advised that if

1 he did say anything, that anything that he did say, verbal,
2 written or otherwise recorded could and may be used later in
3 Court; which was explained to Mr. Beach that if he said
4 anything to Deputy Mederies and I, and we took notes or wrote
5 it down, that at any time later we could testify as to the
6 contents of what he was telling us; Mr. Beach was further
7 advised that he had a right to have counsel present during
8 any questioning and if he could not afford counsel, that
9 counsel would be provided for him without cost to him by the
10 Court prior to any questioning; It was explained to Mr. Beach
11 at that point that that meant that if he wished to have an
12 attorney present during that interview, that we would not
13 ask him any questions until he could either hire an attorney
14 or the Court could appoint him one; Mr. Beach was further
15 advised that if he gave up the right to remain silent without
16 an attorney being present, that at any time during the
17 interview itself that he had the right to stop answering
18 questions without any explanation, which was explained to him;
19 it was explained to him that at any time during the interview
20 that he had the right to stop it without any explanation
21 given to Mr. Mederies or myself.

22 Q And did he explicitly waive those rights?

23 A Yes he did.

24 Q Did you ask him if he understood them?

25 A Yes, each one separately, yes sir.

1 Q And was he able to talk and communicat with him?
2 Did he have any trouble talking with you?

3 A No sir. We had learned that he had completed
4 the twelveth grade of education, that he could read and write,
5 understand the English language, and in fact, he was asked
6 to pick up a newspaper and read it and understand what it was
7 and it was shown affirmatively that he could.

8 Q And did you -- what was his demeanor like?

9 A He had good demeanor, he seemed to be fairly
10 intelligent, he was not stressful, very coherent.

11 Q Was he appearing to be under any intoxicants?

12 A No sir.

13 Q Did he talk freely with you?

14 A Yes sir.

15 Q At any point, did he ever say that "I don't
16 want to talk to you any longer"?

17 A No sir.

18 Q Did he ever hint that he wanted a lawyer?

19 A No sir.

20 Q What kind of information did you talk with him
21 on that date?

22 A We discussed background information, where he
23 was from, where he was born, what type of schools he went
24 to, where he lived, worked with; we asked Mr. Beach for a
25 self description of himself; asked how he handled situations

1 or problem solving; how he handled situations which he felt
2 hurt him emotionally; and asked about any past criminal
3 record that he might of had or if he had ever been in trouble
4 before, at which point he -- Mr. Beach brought up the fact
5 that he was a suspect in a Montana murder, and stated that he
6 was not certain if sill considered a suspect in that
7 particular homicide or cleared of it.

8 Q Okay and did he also confirm to you that he had
9 in fact threatened to kill Caroline Beach?

10 A That is correct. He stated that he had made
11 that phone call from Ouachita Parish jail prior to being
12 transferred to the correctional center on January the 5th.

*check
this
out*

13 Q Did he also confirm that he had a past record
14 which you had discovered?

15 A Yes sir.

16 Q Now, could you tell us if he had free access to
17 a phone?

18 A Yes sir, at the correctional center he did,
19 yes sir.

20 Q Are there established visiting hours at the
21 correctional center?

22 A Yes sir, there are.

23 Q And what are they, do you know?

24 A I don't recall. I believe they are on the
25 weekends. The jail and the correctional center themselves

1 can be allowed to have visitors, special visits from eight
2 AM and five AM and after five AM all of the jail area is
3 secured to outside people and therefore it is impossible for
4 anyone to make any kind of a meeting at the correctional
5 center itself.

6 Q So that other than visiting hours, on the
7 weekend, they have to make special arrangements to secure
8 time with a person committed to the correctional center?

9 A Yes sir and they would have to go through the
10 correctional center and the jail.

11 Q Now the defendant when you were talking to him
12 on the 6th, did he indicate to you that he had a difficult
13 time with violent behavior, flying of the handle, things of
14 that sort?

15 A Yes sir he did.

16 Q And that he tended to deal with problems in a
17 physical way, like taking revenge?

18 A That is correct.

19 Q And this interview lasted about an hour?

20 A That is correct.

21 Q Now, do you recall -- it was, I believe, about
22 five thirty in the afternoon on January 6th, when Tim Beach
23 first came to see you? *I was there at least by the 5th - spent
an entire day there / talked to OT*

24 A That's correct.

25 Q And so that is the first time that you have seen
Tim Beach?

1 Q So that on the evening -- sometime after 5:30
2 on January 6th, you were informed, or you met with Tim Beach?

3 A Right.

4 Q And prior to that time, Bob Beach had gone to
5 see the District Attorney?

6 A The Assistant District Attorney, yes sir.

7 Q And had requested of him that the charges be
8 dismissed?

9 A And then in checking with the Assistant District
10 Attorney, you informed him that in fact the investigation was
11 not completed as of that time?

12 A That is correct.

13 Q And that there were some fears about it by
14 Bob and Caroline Beach?

15 A Correct.

16 Q And had you also been ifnrmed that it was the
17 intent that the defendant would be released, that he was
18 going to be leaving the state of Louisiana?

19 A Yes sir.

20 Q And you also told Mr. Acock that if the
21 defendant were to leave the State of Louisiana -- if he were
22 to be released, he would probably leave the state of Louisiana?

23 A Yes sir.

24 Q So at that point Mr. Acock stated that he was
25 not going to release the defendant?

1 A That is correct.

2 Q And were Tim Beach and Bob Beach aware of that?

3 A They were, and then after Mr. Tim Beach came
4 into my office, Mr. Acock came into my office later and
5 the entire information was given to him again, that these
6 charges were not going to be dismissed until the investigation
7 had been completed and that if there were any kind of problems
8 about Barry's apparent behavior problems, that would have to
9 be decided by a Judge if and when he plead guilty or was
10 found guilty of the charge.

11 Q Well wasn't it first said to you, by Caroline
12 and Bob Beach that they felt that the defendant had some
13 psychological problems and they wanted you to answer that,
14 as to whether or not you could get them or him any
15 psychological help for him?

16 A Yes sir, that is correct.

17 Q And that is how the subject first came up for
18 discussion?

19 A That's correct.

20 Q And that is reflected in your report?

21 A Yes sir.

22 Q And it was your answer back to them that was a
23 decision that had to be made by the Court after these charges
24 were settled?

25 A Yes sir.

- 1 Q And as part of a sentence?
- 2 A Correct.
- 3 Q And that happened on the 6th?
- 4 A That is correct, yes sir.
- 5 Q And all of this discussion were are talking
- 6 about now with Bob and Tim Beach occurred after you had
- 7 learned from the District Attorney's office about the release
- 8 of Barry Beach and he had changed his mind?
- 9 A That's correct.
- 10 Q Now this talk about bonding out, came even
- 11 subsequent to that?
- 12 A Yes sir.
- 13 Q And it was at that point that Tim Beach said
- 14 he was going to bond him out?
- 15 A Yes sir, bail him out.
- 16 Q Now did you advise Tim Beach that he could not
- 17 bond Barry out?
- 18 A No sir.
- 19 Q Did you tell him that he was throwing his money
- 20 away?
- 21 A No sir.
- 22 Q Did you inform him that if he was going to bond
- 23 him out that was up to him?
- 24 A Yes sir.
- 25 Q But that these were the problems that was

*1st day he spent the whole day looking for him - always as excused
I want to see for 1 hour to come in.
not*

1 associated with the case, and number one: that it wasn't
2 completed, number two, there was a real threat to Bob and
3 Caroline Beach, and number three, that he might be leaving
4 for the State of Montana from the State of Louisiana?

5 A Yes sir.

6 Q Okay. And so at that time, what was Tim
7 Beach's response?

8 A Mr. Tim Beach said the only reason he was
9 there attempting or wanting to bond him out was the fact that
10 his mother had called him and asked him to do so, at which
11 point he stated that if we could get in touch with Mrs.
12 Clincher and if there was some way to leave him where he was,
13 that she was made aware of the situation, and that he would
14 abide by her decision and not go ahead with the bond.

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15 Q Now were you genuinely concerned about the
16 secured of both Caroline and Bob Beach?

17 A Yes sir.

18 Q And so Mrs. Clincher was called?

19 A We attempted to do that for several hours, to
20 get ahold of her, and I think we finally got ahold of her
21 late one evening.

22 Q Okay, and did you personally talk with her?

23 A Yes sir I did.

24 Q Now as a matter of fact did you arrange a
25 phone call between Tim Beach and the Defendant?

1 A Yes I did.

2 Q And was that prior to your call to Mrs.
3 Clincher or afterward?

4 A I believe it was before, I am not sure.

5 Q > And that it was during that phone call that
6 the defendant said that he wished to remain in jail?

7 A That is correct.

8 Q Now as to the phone call with Mrs. Clincher,
9 did you promise her that he was going to be released on the
10 7th of January, 1983?

11 A No sir. *check this out.*

12 Q Now in Louisiana, when a person is arrested
13 on a misdemeanor, when do they normally get before a Court?

14 MR. MOSES: I am going to object upon the grounds there is
15 no foundation that has been laid and it is required by law
16 that the document be produced and that it is not the best
17 evidence as to what the law is.

18 MR. RACICOT: I have no document.

19 MR. MOSES: He can't tell what the law is in Louisiana
20 other than his own impression, unless you get the documentation.

21 MR. RACICOT: Of course he can, he can tell what occurs on a
22 routine basis down in Louisiana.

23 THE COURT: And ---

24 MR. MOSES: He is asking him what the law was; as far as the
25 procedure is, he can say what he thinks it is, but he is not

1 testifying what the law is.

2 MR. RACICOT: I will rephrase the question.

3 MR. MOSES: Fine.

4 Q What normally occurs, Sgt. Via, when somebody
5 is arrested on a misdemeanor charge? How long does it normally
6 take, from your experience, with the Ouachita Parish Sheriff's
7 Office, before a person appears on a misdemeanor charge?

8 A Before a Judge?

9 Q Yes?

10 A Normally on a misdemeanor charge there is a
11 pre-set bond on misdemeanor charges, and therefore ---
12 MR. MOSES: Your Honor, I am going to object on the grounds
13 that he is not responding to the question asked. He asked
14 him how long before he goes to a Judge and he could answer
15 that question.

16 MR. RACICOT: I will rephrase the question.

17 Q Would you explain the whole process from the
18 arrest and his appearance before a Judge on a misdemeanor
19 charge in Monroe, Louisiana?

20 A Yes sir. When a person is arrested on a
21 misdemeanor he is processed in the jail; at that time all
22 misdemeanors have set bonds on them, and therefore a Judge is
23 not contacted to set bond; now when the bond is placed on the
24 individual, he is allowed to make phone calls and if he is
25 bonded out , at that time he is given a return date for a

1 court arraignment approximately a week or a week and a half
2 or two weeks later; however, if he remains in custody, the
3 average time would probably be a week or a week and a half
4 before he appears for his arraignment on those particular
5 charges.

6 Q Okay, is that different from a normal felony
7 process?

8 A Yes it is.

9 Q Is there a specific rule on a felony?

10 A Usually on a felony, if a felon is arrested, he
11 is booked out, a Judge is contacted to set bond, at which time
12 that individual is brought into Court probably within seventy
13 two hours after his arrest.

14 Q Now on the contributing charge that was pending
15 against Barry Beach, that bond wasn't set by you, was it?

16 A No sir.

17 Q That was the bond schedule set by the Judges
18 there in Ouschita Parish?

19 A That is correct.

20 Q Now is it your responsibility to take anybody
21 or everybody that -- on a misdemeanor charge, residing in the
22 Correctional facility, to a Judge?

23 A No sir.

24 Q In fact you don't know if the defendant went
25 before a Judge or not?

A No sir.

1 Q Now after you had the conversation with
2 Roberta Clincher, ~~in~~ in which she told you that she wanted
3 the defendant to remain in custody, is that correct?

4 A Yes sir. *check it*

5 Q And that would ^{not} essentially conclude your
6 activities that occurred on January 6th, correct?

7 A Correct.

8 Q Now throughout the entire time, had you
9 developed some decor with the defendant?

10 A Yes sir.

11 Q Was he comfortable with you as far as you could
12 tell?

13 A Yes sir.

14 Q Now on January 7th, 1983, you stated that you
15 picked up the defendant about 12:24?

16 A That's correct.

17 Q Now at the time you picked him up at the
18 correctional facility, did you advise him of his rights?

19 A Yes sir I did.

20 Q And the purpose of that was to prevent any
21 spontaneous explanation that occurred in the car on the way
22 back to the Sheriff's office?

23 A Yes sir, I wanted to protect his rights.

24 Q Okay, and did you explain to him in the same
25 fashion as you told us about earlier here?

1 A Yes sir.

2 Q And did he respond similiarly that he under-
3 stood them?

4 A Yes sir.

5 Q And that was the second time on that day that
6 you personally advised him of his rights?

7 A Yes sir.

8 Q And when you got back to the Annex ---

9 A Did you say the second time that same day?

10 Q Yes I believe you stated -- excuse me, the
11 second time that you had explained them to him, the first
12 time would have been the previous day, on the 6th?

13 A Yes sir.

14 Q I am sorry. And then you got back to the
15 Annex, to the Sheriff's office, to the interview facility,
16 and began an interview then with the defendant?

17 A That is correct.

18 Q And that began around one o'clock on January
19 the 7th, 1983?

20 A Yes, somewheres close to that time.

21 Q Okay and did you again advise the defendant of
22 his rights?

23 A Yes he was advised his rights by me from the
24 waiver.

25 Q The written waiver?

A That is correct.

1 AT THIS TIME, a document was marked as STATE'S EXHIBIT
2 NUMBER 4.

3 Q I now hand you what has been marked as State's
4 Exhibit Number 4 for identification and ask you if you can
5 identify that?

6 A Yes sir.

7 Q What is that?

8 A This is a waiver form signed on January the 7th
9 1983 at 12:52 PM and was signed by Barry Allan Beach.

10 Q And does that appear to be a true and accurate
11 copy of the original of that document?

12 A Yes sir, it does.

13 Q Pardon?

14 A Yes sir, it does.

15 MR. RACICOT: We move for the admission of State's Exhibit
16 Number four.

17 THE COURT: This Exhibit, who prepared
18 the information in this?

19 MR. RACICOT: We believe, Your Honor, that it is from a
20 portion of an FBI report.

21 MR. MOSES: I have no objections to the introduction of
22 State's Proposed Exhibit 4 for the purposes of this hearing.

23 THE COURT: State's 4 is admitted.

24 Q Sgt. Via, on State's Exhibit 4, did you
25 -- would you explain how you executed that particular form?

1 A Yes sir. Mr. Beach was sitting across from me
2 at the table, and I took that form and put it in front of
3 him and I went down each right, each letter on the waiver
4 itself, everything there, explaining each right to him,
5 advising his rights to him and explaining what those rights
6 meant, and then on the bottom portion there, read it to him
7 and asked him if he fully understood it at which time, he was
8 asked if he would talk about this particular homicide in
9 Wolf Point, Montana, and the time that is reflected on the
10 waiver is the time that he actually signed the waiver itself.

11 Q Okay, and did he appear to be free and comfortable
12 at that time?

13 A Yes sir.

14 Q And was he lucid and calm?

15 A Yes sir.

16 Q And did he answer freely without any hesitation?

17 A Yes sir.

18 Q Did you make any promises or threats to him?

19 A No sir.

20 Q Pressure him in any way?

21 A No.

22 Q He had just eaten, right?

23 A He had, yes sir.

24 Q Was there any doubt in your mind that it was
25 your view that it was a free and voluntary waiver of his rights?

1 A That's right, no doubts whatsoever.

2 Q And so that was the second time on the 7th that
3 you advised him of his rights?

4 A Third time in total that you had advised him
5 in two days of his rights?

6 A That is correct.

7 Q Now did you proceed to interview him at that
8 point in time?

9 A Yes, just as the interview commenced, at this
10 part of the interview, another officer walked into the
11 interview room, and at that point Mr. Beach was introduced to
12 Deputy Wellbright, and he was again verbally advised of his
13 constitutional rights and the waiver which had been signed
14 was presented to Deputy Wellbright and Mr. Beach was asked if
15 he had been explained this form, if he understood the contents
16 of the form, and of his rights, to which time he acknowledged
17 that he did understand those rights and waived those rights
18 in the presence of Deputy Wellbright.

19 Q And so that was the third time that you had
20 advised him on the 7th, and the fourth time total in two days?

21 A That is correct.

22 Q And then you conducted the interview?

23 A That is correct.

24 Q All right, and during that interview, you
25 requested the defendant to take a psychological stress evaluator
test?

1 A Yes sir.

2 Q And did you explain what essentially that was?

3 A Yes sir.

4 Q And can you tell us if the defendant agreed to
5 do the test?

6 A Yes sir, he signed a written release.

7 AT THIS TIME, a document was marked as STATE'S EXHIBIT
8 NUMBER 5.

9 Q Handing you what has been marked as State's
10 Exhibit 5 for identification purposes and ask you if you
11 would identify that?

12 A Yes sir, this is a PSE release signed on January
13 the 7th, 1983, at 2:39 PM by Barry Allan Beach.

14 Q And is that the one that you utilized on
15 January 7th?

16 A Yes sir, it is.

17 Q And does that appear to be a true and correct
18 copy of the original?

19 A Yes sir, it does.

20 MR. RACICOT: We would move for the admission of State's
21 Exhibit 5. (Examined then by Mr. Moses)

22 MR. MOSES: I have no objection to State's Exhibit 5 for
23 the purposes of this hearing.

24 THE COURT: Five is admitted in evidence.

25 Q Did you read that particular document to the
Defendant?

1 A Yes sir I did.

2 Q And did you ask him if he understood it?

3 A Yes sir I did.

4 Q And then you watched him execute it?

5 A Yes sir, I did.

6 Q Now your PSE examination indicated to you, that

7 the defendant was indicating stress?

8 A Yes sir.

9 Q And did you run your test, PSE evaluation in

10 the same floormat, under the same conditions, under the

11 same restrictions and the same intent that Commander Calhoun

12 testified to this morning?

13 A Yes I did, but I ran a different type of test.

14 Q Okay, he ran a truth versus lie test which is

15 known to people involved in that sort of business and you

16 ran a different form of a test, utilizing the same machine?

17 A Yes sir.

18 Q Okay. There was no surprises at all in this

19 test?

20 A No sir.

21 Q And all of that is reflected in your report?

22 A Yes sir.

23 Q And all of the pre-test data that you collected

24 and the questions that you proposed is reflected in your report?

25 A That is correct.

1 Q And then you gave the test to the defendant?

2 A Yes sir.

3 Q Now this is all taking time, isn't it?

4 A Yes it is.

5 Q And the defendant was at liberty to have drinks
6 such as coffee, cold drinks, smoke cigarettes or whatever he
7 requested?

8 A Yes sir, and several times leading up to the
9 PSE examination, he had to go to the restroom and was taken
10 out, went to the restroom, came back, and he was provided a
11 soft drink to drink, cigarettes and I believe a snack such
12 as a candy bar during that time.

13 Q Your conclusion was that he -- that there were
14 indications of stress?

15 A Yes sir.

16 Q And in an effort to either corroborate your
17 opinion or to repeat it, you called in Commander Calhoun?

18 A That is right.

19 Q To run a second test?

20 A Yes sir.

21 Q And you informed the defendant that that was
22 what you were going to do?

23 A Yes sir, Commander Calhoun came in and Commander
24 Calhoun explained to Mr. Beach, the purpose of him being there,
25 and Commander Calhoun advised Barry of his constitutional

1 rights, and asked if he would submit to the test, after which
2 I walked out and left them alone.

3 Q Okay, then in fact another test occurred?

4 A Yes sir.

5 Q Now did the defendant appear to be at any point
6 in time up until you came back into the room after Commander
7 Calhoun test, to be totally exhausted to the point -- in
8 other words, he couldn't intelligently answer questions
9 voluntarily?

10 A No sir.

11 Q And after Commander Calhoun's test was run,
12 do you recall what occurred?

13 A Yes sir, I believe at about 6:43, Commander
14 Calhoun summoned me back into the room and stated that Barry
15 had requested to talk to me personally, at which point, I
16 entered the room and Mr. Beach was crying and at that time I
17 inquired as to why he was crying and he stated that it all
18 revolved about the murder up in Montana. At about 6:51 PM,
19 Barry actually admitted to have taken part in the murder in
20 Montana, at which point, Commander Calhoun was summoned back
21 in and a brief interview took place about the knowledge of
22 that particular crime and his recorded statement was taken
23 at 7:08 PM and I believe it ended at 7:40 PM.

24 Q And the report substantially reflects the
25 discussion that you had with the defendant?

1 A Yes sir.

2 Q Now the reason you came back into the room after
3 Commander Calhoun's test was what?

4 A Commander Calhoun stated that Barry wanted to
5 see me and he was ready to talk to me about that -- this
6 crime.

7 Q And had he made that admission to Commander
8 Calhoun?

9 A I believe so, yes.

10 Q And when you went back into the room, he then
11 also made that same admission to you?

12 A That's correct.

13 Q Okay, did you talk briefly and then asked him
14 if it could be tape recorded?

15 A Yes sir.

16 Q And at that point you took the statement with a
17 tape recorder?

18 A After a second waiver was signed.

19 Q Okay I hand you what has been marked as State's
20 Exhibit Number 1, and can you identify that?

21 A Yes sir, this is the waiver that he signed at
22 approximately 7:08 PM., on January 7th, 1983 which was
23 witnessed by Commander Calhoun and myself.

24 Q And that's a true and correct copy of the waiver
25 that you gave to the defendant?

1 A Yes sir.

2 Q Now, did you follow your usual procedure in
3 the signing of this waiver?

4 A Yes sir, he was advised about this waiver in
5 detail, and explained each right individually, and asked if
6 he wished to give us a recorded statement and if he wanted
7 to give us a statement, he would have to sign the waiver and
8 if so, we would take the statement from him and have it
9 recorded; after he signed the waiver, the recorder was turned
10 on, and this particular form was read in its entirety to him,
11 on the tape itself, to make sure that he understood each and
12 every one of these rights, and in addition, prior to the
13 statement, asked him in the body of the statement he was asked
14 if he had been forced in any way to give his statement, and
15 asked him if he had been coerced in any way in giving the
16 statement, threatened to do it, and he was asked if he had
17 been promised immunity from prosecution, a reward of any kind,
18 a lessening of any kind of a sentence or any type of a reward
19 for giving the statement, at which point, Mr. Beach stated
20 that he had not; he was then asked if he wanted to continue
21 with that statement at that point, at which time, Mr. Beach
22 stated that he wanted to and that is where the body of the
23 statement commenced.

24 Q So that on the 7th, you advised him on the tape,
25 of his rights?

1 A Yes sir.

2 Q And acknowledged in written form just prior to

3 the interview?

4 A Yes, both written and in a verbal form.

5 Q And when you first began your interview at

6 one o'clock you advised him?

7 A Yes sir.

8 Q And you advised him again when the Wellbright

9 came in?

10 A Yes sir.

11 Q On that same day?

12 A Yes sir.

13 Q You advised him when you had picked him up

14 at the correctional facility?

15 A Yes sir.

16 Q And you had advised him the day before?

17 A That's correct.

18 Q So that you had advised him a total of six

19 times in about thirty hours?

20 A Yes sir.

21 Q About his rights?

22 A Yes sir.

23 Q And in addition, Commander Calhoun had advised

24 him of his rights?

25 A Yes, on one occasion, yes sir.

1 Q And in addition to that, you had advised him
2 of his rights concerning the psychological stress evaluator
3 test?

4 A That is correct.

5 Q And so there were about nine different warnings
6 that occurred in a period of time of about thirty hours?

7 A Yes.

8 Q Now, you took the statement that evening and in
9 fact, after the statement had been concluded, you called
10 Sheriff Mahlum?

11 A That is correct.

12 Q Here in Wolf Point, Montana?

13 A Yes sir.

14 Q And informed him of what had occurred?

15 A Yes sir.

16 Q And you also told the sheriff that the
17 defendant wanted to talk to him?

18 A That is correct.

19 Q And in fact, the defendant did talk to him?

20 A Yes sir.

21 Q And one of the things that he was concerned
22 with was that he didn't want his mother involved in this in
23 any way, is that correct?

24 A I believe so, yes.

25 Q And he expressed that to Sheriff Mahlum?

A Yes sir.

CALMER A. ERSNESS

OFFICIAL COURT REPORTER

P. O. BOX 978

WOLF POINT, MONTANA 59201

1 Q He didn't want her told about this?

2 A Right.

3 Q Now obviously when you were fixing to take
4 Barry something to eat, as a matter of fact, you assumed that
5 Commander Calhoun left the facility, secured food, and brought
6 it back to the center?

7 A That is correct.

8 Q You were not authorized to take him out of
9 that facility for this purpose?

10 A No sir.

11 Q And isn't that reflected in your report?

12 A Yes sir.

13 Q Now, when you state in this conversation with
14 Sheriff Mahlum, which was tape recorded, that the Uncle got
15 bent out of shape. First of all, he called of is called by
16 the Defendant's mother to get him out?

17 A Yes, I believe so.

18 Q As far as he had told you?

19 A Oh, you are talking about Tim Beach?

20 Q Yes?

21 A That is correct.

22 Q And then he had been asked not to get him out
23 by his brother and his wife?

24 A Yes.

25 Q And then he had been urged not to get him out
by his nephew, the defendant?

1 A Yes.

2 Q And then not to get him out by Roberta Clincher?

3 A That's correct.

4 Q And then he had been told that the DA my

5 release him?

6 A Yes.

7 Q And then he had been told that the DA wouldn't

8 release him after he received all of the facts?

9 A That's correct.

10 Q And then he wanted your advice concerning

11 whether or not he could get a lawyer?

12 A Yes sir.

13 Q And he wanted your advice concerning whether

14 or not he could post bond?

15 A Yes sir.

16 Q And so at the bottom of all of that, after all

17 of this had transpired, at the end of that day, with the

18 decision of all of the people involved, namely, the Defendant,

19 his mother, his father, and his step-father that he should

20 remain right where he was?

21 A That is correct.

22 Q In jail?

23 A Yes sir.

24 Q And Tim Beacn was frustrated?

25 A Yes sir.

1 Q And that is what you were referring to when you
2 said he was all bent out of shape, because he didn't think
3 that anybody knew what the hell he wanted?

4 A Yes sir.

5 Q Now after the defendant confessed to you on
6 January 7th, that gave you insight into the Montana case,
7 but you still had three remaining cases that you had to deal
8 with down there?

9 A That is correct.

10 Q That you had been dealing with for a considerable
11 length of time?

12 A Yes sir.

13 Q In your own mind, you still had a considerable
14 amount of things to talk to the defendant about?

15 A Yes sir.

16 Q Now in fact, you never got the occasion the next
17 day, as you had planned, is that right?

18 A No sir, I didn't.

19 Q Because the defendant secured a lawyer?

20 A I believe the defendant secured -- the defendant's
21 family secured a lawyer for the defendant, yes.

22 Q And you were told that, word had been left at
23 the jail, that you were not to see Barry Beach any more
24 according to his lawyer's wishes?

25 A Yes sir.

1 Q And you did not try to visit with him again?

2 A No sir.

3 Q Now in reference in securing a lawyer, did Mr.
4 Tim Beach ask you what you thought about getting a lawyer?

5 A Yes sir, if I may back up, I did make contact
6 with Mr. Beach on January the 8th for the sole purpose of
7 asking him if he had in fact retained or obtained counsel,
8 and at that point he told me that he had and I told him then
9 that I would talk no further with him, unless Mr. Beach
10 requested it or else his attorney was present during any
11 discussion that we would have.

12 Q And that was a conversation that you had with
13 Tim Beach?

14 A That was a conversation that I had with Barry
15 Beach on January 8th, 1983.

16 Q And you were confirming instructions left for
17 you?

18 A Yes sir.

19 Q And that was on a Saturday?

20 A Yes sir.

21 Q And when you were originally talking with him,
22 -- how many times did you see Tim Beach?

23 A Once.

24 Q One time on January 6th? *wrong*

25 A That is correct.

1 Q At 5:30?

2 A It was after five o'clock, yes sir.

3 Q And the jail was closed and nobody could get
4 into the correctional facility?

5 A That is correct.

6 Q And in addition to that, the place where Barry
7 Beach was located was five miles away from your office?

8 A That is correct.

9 Q Now when you discussed getting counsel with Tim
10 Beach for the defendant, what did you tell him?

11 A Mr. Beach asked me if he should get an attorney
12 for Barry, and I replied in this manner: That I could not
13 recommend one way or the other if he should get an attorney
14 for Barry Beach. I told him if he wanted to get an attorney
15 for Barry, that he had the absolute right under the Louisiana
16 law and statutes to have an attorney present during any
17 criminal proceedings. At that time or point in time, Mr.
18 Beach said it would be a waste of my money to get one on a
19 misdemeanor, at which time I told Mr. Beach that I could not
20 make a recommendation one way or the other, but that simply,
21 if he wanted an attorney, he was entitled to have an attorney
22 at all stages of the proceedings, and it was his decision or
23 Barry Beach's decision, and that I would not make that decision
24 for him.

25 Q Okay, and in reference to bond, did you tell him
that he should or should not bond the defendant out?

1 A The way I explained it to Mr. Beach was in this
2 manner: If he wanted to bond Barry out that he had that
3 right to do so, however I felt that if Barry were bonded out,
4 then it would or could create problems for Caroline and Bob
5 Beach, and that possibly violence tendencies may erupt. He
6 was also explained that if he bonded out, or he was explained
7 that Barry was a suspect in a murder in Montana as well as
8 the three suspected murders we were investigating and if he
9 was bonded out and he goes back to Montana, that would put
10 everything in a stalemate, and I left the decision for bonding
11 up to Tim Beach himself.

12 Q You advised him of the consequences, but you
13 didn't tell him that he could or couldn't do one thing or
14 another?

15 A Correct.

16 Q Now in fact, after January 8th, 1983, and the
17 defendant secured counsel, you did have an opportunity to
18 talk to him further, didn't you?

19 A Correct.

20 Q And you recall when that was?

21 A It was on January the 11th, 1983, and I believe
22 it was shortly after two or three o'clock PM. I don't recall
23 the exact time.

24 Q Okay, and was that at the sheriff's office annex?

25 A That's right.

1 Q And this time, the defendant was supposed to
2 be questioned in reference to the three homicides that you
3 had down there in Louisiana?

4 A Correct.

5 Q And this interview had been concurred in by
6 the Defendant's lawyer?

7 A Yes sir.

8 Q And in fact, the defendant was present, you
9 were present, and the defendant's lawyer was present, and Lt.
10 Joe Cummings was present?

11 A Yes sir.

12 Q And at that point in time, the Defendant was
13 again advised of his rights?

14 A Yes by waiver.

15 Q And a specific rights form was given to him?

16 A That is correct.

17 Q With his lawyer present?

18 A Yes sir, that's correct.

19 Q And did you administer that waiver process in
20 the same way as you had the previous ones?

21 A Yes sir.

22 Q And this is the tenth time that you know of
23 that a waiver process had been gone through with the defendant?

24 A Yes sir.

25 Q And did he waive his rights?

1 A That's right.

2 Q And was his lawyer present?

3 A That is correct.

4 Q And did you question him about the other
5 homicides?

6 A Yes sir we did.

7 Q And did he make reference to the Montana
8 homicide in that particular questioning process?

9 A Yes sir he did.

10 Q Would you explain that please?

11 A Mr. Beach was asked if he had any knowledge of
12 our three particular homicides that we were investigating and
13 at this point, Mr. Beach stated that he was not involved in
14 any of our homicides locally, and that the only homicide that
15 he was -- that he committed was the one in Wolf Point, Montana,
16 and that was made in the presence of Lt. Cummings, myself,
17 the defendant and his lawyer, Mr. Kidd. *denied by Kidd*

18 MR. RACICOT: Your Honor, could we take a brief -- are you
19 ready to take a brief recess at this time. I would like to
20 go over my notes just briefly.

21 THE COURT: Yes. Let's take about ten
22 minutes.

23 AT THIS TIME, the court stood in recess from the hour
24 of 2:16 PM until the hour of 2:30 PM, after which time
25 the following proceedings were had, to-wit:

1 THE COURT: Court is in session, let
2 the records show that all those named
3 that were in the courtroom, are present.
4 You ahead.

5 Examination continued by Mr. Racicot:

6 Q Sgt. Via, was there any discussion of
7 interrogation techniques with Commander Calhoun before the
8 interview?

9 A No sir.

10 Q Was there any attempt to utilize any routine
11 like Mutt-Jeff or whatever it is called?

12 A No sir the interview was in fact, very low key.

13 Q Would you take a look at this State's Exhibit
14 2 please?

15 (Witness examines the same)

16 Q Have you examined that now?

17 A Yes sir.

18 Q Is that in its verbatim form reflect exactly
19 what the defendant told you during the recorded interview on
20 January 7th, 1983?

21 A Yes sir, it does.

22 Q Now the defendant requested that he be allowed
23 to talk to Sheriff Mahlum?

24 A Yes sir.

25 Q After the interview process?

1 A Yes sir.

2 Q And again, did you advise him of his rights
3 at that time?

4 A Yes sir, just prior to placing a call to Sheriff
5 Mahlum, I warned him once again of any statements that he
6 made could be used against him in a court of law.

7 Q And did he state that he understood that?

8 A Yes sir.

9 Q Now after the interview, did the defendant
10 make any statements about him feeling good, that he finally
11 got this off his chest?

12 A Yes sir he did.

13 Q And do you recall his exact words?

14 A I don't recall exactly, but to the extent that
15 it had been inside of him all of this time and he was glad to
16 get it off his chest and talk to someone. He seemed relieved.

17 MR. RACICOT: We have no further questions.

18

19 REDIRECT EXAMINATION

20 By Mr. Moses:

21 Q Sgt. Via, I take it that the discussion about
22 the local crimes was done on January 11th, 1983?

23 A Yes sir.

24 Q And who was present at that time?

25 A Mr. Beach; Lt. Joe Cummings; myself, and his
attorney, Mr. Paul Henry Kidd.

1 Q There wasn't any further questinning of Mr.
2 Beach that evening after you took the statement?
3 A Which statement are you talking about?
4 Q The 7th statement.
5 A After the statement was taken?
6 Q Yes.
7 A After we had eaten, he was asked two or three
8 questions in regard to that particular crime in Ouschita
9 Parish.
10 Q Was that recorded anywhere?
11 A Not that I recall, no.
12 Q As a matter of fact in your statement you said
13 that once this statement was concluded, Barry Beach was then
14 questioned about some local crimes, and the times that you
15 questioned him about local crimes was on January 11th, two
16 days after he made that statement, wasn't it?
17 A I just testified that we asked him questions
18 about the local crimes on January the 7th.
19 Q So that you asked him about local crimes on
20 two occasions then, on the 7th and the 11th?
21 A I just testified to that.
22 Q I understand you testified, but this report
23 was made out on the 9th, and it includes matters that
24 concerning January 11th, doesn't it?
25 A No sir.

1 Q Okay. Now with respect to your stat
2 Mr. Beach, what you are saying about Tim Beach is
3 was a conversation in which the language was used that it would
4 be a waste of time to get an attorney for a misdemeanor. That
5 language was actually used in conversations with Mr. Beach,
6 isn't that true?
7 A By Mr. Beach, yes.
8 Q I didn't ask you by whom; that conversation
9 actually existed, didn't it?
10 A By Mr. Beach, yes sir.
11 Q I understand that, but would you answer the
12 question?
13 A I did.
14 Q That conversation actually existed?
15 A Yes sir.
16 Q And what you are saying now is that Mr. Beach,
17 this gentleman over here in the courtroom is the one that
18 said it was a waste of time to get an attorney because it was
19 a misdemeanor?
20 A Yes sir.
21 Q What did he know about the law?
22 MR. RACICOT: Objection, Your Honor, calls for a conclusion.
23 Q Let me strike that. Do you know if he has any
24 experience with the law?
25 A Not to my knowledge.

1 Q And how many years of experience have you had?

2 A Approximately eleven years.

3 Q Now with respect to your examination by Mr.

4 Racicot, I think you said that at the meeting with the

5 District Attorney, or the Deputy District Attorney, and Mr.

6 Beach, the father, and yourself, it was agreed that these

7 charges were going to be dismissed?

8 A With my discussion with the Assistant District
9 Attorney?

10 Q Yes.

11 A No sir.

12 Q Well at one time it was agreed that it was
13 going to be dismissed?

14 A The Assistant District Attorney had elected to
15 dismiss the charges prior to being informed of other
16 developments in the case.

17 Q I understand that. At one time, the County
18 Attorney, or the District Attorney, had elected to dismiss
19 the case?

20 A Yes.

21 Q Now when was that?

22 A Prior to me talking to him on January the 6th.

23 Q When you were in with Mr. Beach, and the
24 District Attorney, did he advise you at that time that he was
25 not going to dismiss?

1 A He advised me before Mr. Beach was in the office.

2 Q Did you in turn, once you found out, that the
3 District Attorney was not going to dismiss, did you then see
4 Mr. Tim Beach and tell him "I want to advise you that the
5 County Attorney is not going to dismiss that case"?

6 A No.

7 Q When he tried to put up a bond, did you tell
8 him that the District Attorney had at first elected to dismiss,
9 and then had changed his mind because of the conversation
10 with you, and the case was not going to be dismissed?

11 A The Assistant District Attorney himself told
12 Mr. Beach that.

13 Q I am talking about you?

14 A I am telling you, I didn't do it.

15 Q All right, so that you can safely say that if
16 Mr. Beach, Mr. Tim Beach, said that you told him that it was
17 going to be dismissed and there was no need to put up a bond,
18 that evening of the 6th, the 6th of January, 1983, then you
19 are now saying you never told him that?

20 A That would be an incorrect statement.

21 Q Okay. And when you talked with Mrs. Clincher,
22 did you tell her that the case was not going to be dismissed?

23 A Yes sir.

24 Q And did you tell her when he was going to get out?

25 A No sir.

1 Q How did you know then when he was going to get
2 out, it could be a month or two?

3 A That is exactly what I explained to her, Sir.

4 Q So that a bond, under those circumstances, as
5 explained to her, according to your version, the bond was
6 necessarily the only way to get him out, was to put up the
7 bond if he wasn't going to be out for a month or two, right?

8 A If they wanted him out, they would have had to
9 post bond, yes sir.

10 Q And so that what you are saying then is that what
11 that there was
12 Mrs. Clincher says, /no use to put up a bond because he is
13 going to be released the following day, is also incorrect?

14 A Would you repeat that again, please, I didn't
15 understand the question.

16 (REPEATED by the Court Reporter to the witness as shown on
17 lines 10, 11 and 12 of this page)

18 A I still don't understand your question.

19 Q Mrs. Clincher I believe has testified that there
20 was no use to put up the bond because he was going to be
21 released the following day. She had the option, to either
22 put up the bond or get him released the following day. Now
23 is that incorrect?

24 A That is what she testified to.

25 Q Is that incorrect from your point of view?

A Yes sir.

1 Q Now you actually told her that the boy might
2 be there for a month or two, in your conversations with her?

3 A What I told her ---

4 Q Excuse me, did you tell her that?

5 A That he would be there a month or so?

6 Q Yes.

7 A Not in that exact tone ---

8 Q How long a time?

9 A I was trying to explain it. I was trying to
10 explain ---

11 Q Answer my question. Did you tell her that he
12 could probably be in there for a certain period of time?

13 A For a certain period of time, yes sir, but not
14 the way you put it.

15 Q Did you tell her that he was going to -- unless
16 he was bonded out, he would be in jail until he went to court?

17 A Yes sir.

18 Q And that there was no way for him to get out
19 unless the bond was put up?

20 A To be released from jail, yes.

21 Q You told her that?

22 A I don't recall telling her that.

23 MR. MOSES: I have no further questions.

24 MR. RACICOT: We have no further questions.

25 THE COURT: Thank you.

WHEREUPON this witness was EXCUSED.

1 MR. RACICOT: I would like to recall Sgt. Via please.

2 WHEREUPON

3 SGT. JAY VIA

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

7

8 DIRECT EXAMINATION

9 By Mr. Racicot:

10 Q You are the same Sgt. Jay Via of Monroe,
11 Louisiana who testified previously in this hearing?

12 A Yes sir.

13 Q And you realize you are still under oath?

14 A Yes sir.

15 Q Sgt. Via, you heard the defendant's testimony
16 in this particular hearing today?

17 A Yes I did.

18 Q Were you present when he stated that threats to
19 the defendant were made about frying in the electric chair?

20 A There was no threats ever made in my presence
21 to Mr. Beach by Commander Calhoun or any other police officer
22 in my presence.

23 Q How long have you worked with Commander Calhoun?

24 A Approximately eleven years.

25 Q Have you ever heard him tell anybody, or make

1 any threats along those lines, during an interview process
2 of a particular suspect?

3 MR. MOSES: I am going to object upon the grounds that it
4 is irrelevant. What he does in another case doesn't necessary
5 have anything to do with this case.

6 MR. RACICOT: I will withdraw the question.

7 Q On the 11th of January, 1983, a statement was
8 taken from the Defendant in reference to the Louisiana
9 homicides?

10 A It was not a recorded statement obtained from
11 him.

12 Q And did you record a report form of what occurred
13 at that particular meeting?

14 A Yes sir.

15 Q And you do have a report on that particular
16 interview?

17 A Yes sir.

18 Q And to the best of your recollection, what was
19 the words used by the Defendant when you questioned him?

20 A To the effect that he was not involved in the
21 homicides in Louisiana and that the only homicide he was
22 involved in or committed was the one in Montana.

23 Q Now it is true, isn't it, Sgt. Via, that from
24 the 7th to 8th of January, 1983, until the defendant was
25 returned to Montana, he was being held in the Ouachita Parish

1 Correctional facility as a result of a warrant placed on him
2 by the Montana court??

3 A That is correct.

4 MR. RACICOT: Nothing further.

5

6 CROSS EXAMINATION

7 By Mr. Moses:

8 Q Sgt. Via, when you say he was being held by or
9 as a result of the Montana Court, when was the court
10 proceeding in Montana?

11 A I don't recall.

12 Q But it was long after the 8th wasn't it, or
13 long after the 7th of January?

14 A Mr. Beach was charged as a fugitive from justice
15 on the night of January 7th, 1983.

16 Q Now this was after the statement given, right?

17 A Yes.

18 Q So that he had never been charged in Montana
19 prior to the time he gave his statement?

20 A Not that I recall, no.

21 MR. MOSES: Thank you, I have no further questions.

22

23 REDIRECT EXAMINATION

24 By Mr. Racicot:

25 Q Is there any doubt in your mind what time you

1 picked the defendant up on January 6th?

2 MR. MOSES: Your Honor, I am going to object to that as
3 being self serving. He has already testified as to the time.
4 Now he is being asked to repeat it, and asking him for his
5 opinion as to the effect of his own testimony.

6 MR. RACICOT: I will withdraw that question and place another
7 one.

8 Q Can you answer that question first?

9 A Yes.

10 Q Any doubt?

11 A No.

12 Q How about January 7th?

13 A No doubt.

14 Q You record those times and they are subsequently
15 recorded in your report?

16 A That is correct.

17 Q In fact when you are investigating it is all
18 put down into a log, and these record would indicate whether
19 certain people on specific dates were released from certain
20 correctional facilities?

21 A Yes sir. In fact, Richard Medaries has
22 testified earlier that we do not come to work until after
23 8:00 AM so it would be impossible for us to pick him up before
24 that time, before eight.

25 Q And you are certain about the length of the
interview also?

1 A Yes sir.

2 Q He was charged on January 7th, 1983 as a
3 fugitive from justice in Louisiana?

4 A That is correct.

5 Q And what was the bond attached to that?

6 A I believe it was a \$50,000.00 or \$500,000.00,
7 I can't recall right of the top of my head.

8 Q And were you responsible thereafter for getting
9 him to all court appearances on that fugitive warrant?

10 A No sir.

11 Q And the court records would be available also?

12 A Yes sir.

13 Q And we could secure certified copies, or you
14 could help us secure certified copies of the court records?

15 A Yes sir.

16 MR. RACICOT: I have nothing further.

17 MR. MOSES: Nothing further from Mr. Via, thank you.

18 THE COURT: Thank you.

19 WHEREUPON this witness was EXCUSED.
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