

1 MR. RACICOT: We will call Lt. Cummings, please.

2 WHEREUPON,

3 LT. JOE CUMMINGS

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

7

8 DIRECT EXAMINATION

9 By Mr. Racicot:

10 Q Could I have your name please?

11 A Joe Cummings.

12 Q And your address and occupation?

13 A West Monroe, Louisiana, and I am a Detective  
14 Lt. in the Monroe Police Department.

15 Q Now, Lt. Cummings, on January 11th, 1983, were  
16 you assigned similiar duty?

17 A Yes sir.

18 Q And in fact, does Sgt. Via work for you?

19 A Yes sir, we have a special homicide task force,  
20 and Sgt. Via and Richard Medaries serve under me and work  
21 under me in the homicide task force.

22 Q And how long have you been a law enforcement  
23 officer?

24 A Twenty years.

25 Q Always there in the City of Monroe?

1           A           Yes sir.

2           Q           And do you recall on January 11th, 1983, at  
3 approximately four o'clock in the afternoon being present  
4 with the Defendant, his lawyer and Sgt. Via for an interview  
5 concerning three homicides in the area of Monroe, Louisiana?

6           A           Yes sir.

7           Q           Could you explain to us what occurred at that  
8 particular time?

9           A           We were in the interview room with Sgt. Via,  
10 Paul Kidd and the Defendant and myself, and Sgt. Via advised  
11 the defendant of his rights by showing him a waiver and he  
12 explained the waiver to him and which was then signed by the  
13 Defendant, myself and Sgt. Via.

14          Q           And that was in the presence of his attorney?

15          A           Yes sir.

16          Q           And that was on January 11th, 1983?

17          A           Yes sir.

18          Q           Now were questions propounded to the defendant  
19 at that point in time concerning three homicides in Monroe,  
20 Louisiana?

21          A           Yes sir there was.

22          Q           Could you relate to us what his response was?

23          A           His response was that he had nothing to do with  
24 the homicides in Louisiana, and that the only homicide that  
25 he had anything to do with was in Montana.

1 Q Now was Commander Calhoun at that meeting?  
2 A No sir.  
3 Q Did you threaten the Defendant in any way?  
4 A No sir I did not.  
5 Q Did anyone else threaten him?  
6 A No sir.  
7 Q Did you make any promises to him?  
8 A No sir.  
9 Q Did he appear lucid and calm?  
10 A Very calm.  
11 Q Did he answer the questions freely?  
12 A Yes sir.  
13 Q And his attorney was present during the entire  
14 time?  
15 A Yes sir.  
16 MR. RACICOT: No further questions.  
17  
18 CROSS EXAMINATION  
19 By Mr. Moses:  
20 Q Lt. do you have a C and O report?  
21 A No sir.  
22 Q Do you have any record, notes, memoranda that  
23 indicate what language that Mr. Beach used as a result of this  
24 interview on January 11, 1983?  
25 A No sir.

1 Q Have you ever seen any such memoranda?

2 A I don't believe an was taken.

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

4

5 REDIRECT EXAMINATION

6 By Mr. Racicot:

7 Q Lt. Cummings, you do have reports concerning  
8 this particular interview on the 11th however?

9 A Yes sir, it is in another file.

10 Q That you didn't bring with you?

11 A That I didn't bring this other homicide that we  
12 have other people charged with.

13 Q And neither you nor Sgt. Via brought that  
14 particular file with you?

15 A No sir, we did not.

16 Q You weren't instructed to?

17 A No sir.

18 Q That file resides in Monroe, Louisiana?

19 A Yes sir.

20 Q Do you have any objections to making available  
21 to us a copy of the rights warning form in that particular  
22 file and also any investigative report that summarizes what  
23 occurred on that particular interview?

24 A Yes, we could make that available.

25 Q You would be glad to do that?

1           A           Yes sir.

2 MR. RACICOT: Thank you, nothing further.

3

4                           RE CROSS EXAMINATION

5 By Mr. Moses:

6           Q           Lt. so that I am clear, you could produce these  
7 reports, and was there any notes or memoranda taken of  
8 exactly what Barry Beach said, and I think your answer to  
9 that was not? It would not appear in those reports, would it?

10          A           The interview would most probably appear in  
11 those reports, but his exact words probably, but it is a  
12 different related case. It was my contention and I was not  
13 concerned with the Montana case, I was concerned with the  
14 Louisiana cases, but the waiver ---

15          Q           But you could produce those as to what language  
16 was actually used?

17          A           Yes sir.

18          Q           And those are already written out?

19          A           Yes sir, I think so. The waiver I know is in  
20 the file.

21          Q           Yes, but I am talking about the body of the  
22 language used by Mr. Beach. However, you can produce those  
23 reports though?

24          A           Yes sir.

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

1 MR. RACICOT: Nothing further. We ask that this witness be  
2 excused.

3 MR. MOSES: No objections.

4 THE COURT: Yes, you may be excused.

5 WHEREUPON this witness was EXCUSED.  
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1 THE COURT: Any further witnesses?

2 MR. RACICOT: We will call Joe Cumming please.

3 WHEREUPON,

4 MR. JOE CUMMING

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

8

9 DIRECT EXAMINATION

10 By Mr. Racicot:

11 Q Would you state your name please?

12 A Joe Cumming.

13 Q And you occupation and place of residence?

14 A I am a Detective Lt, in the Monroe, Louisiana

15 Police Department and I live in West Monroe, Louisiana.

16 Q And how long have you been in law enforcement?

17 A Twenty years.

18 Q Have you had any special duty down in Monroe,  
19 Louisiana?

20 A YEs sir, I am in charge of the Ouachita Parish  
21 Homicide Task Force.

22 Q And as part of that, do you have Sgt. Jay Via  
23 under your command?

24 A Yes sir.

25 Q I would like to direct your attention, Lt.

1 Cumming, to the date of January 11th, 1983, and do you recall  
2 specifically, an interview on that particular day with the  
3 defendant, his lawyer and Sgt. Jay Via?

4 A Yes sir I do.

5 Q And where did that interview take place?

6 A At the Ouachita Parish Sheriff's office, in the  
7 interrogation room.

8 Q And about what time of day was that?

9 A Approximately four o'clock.

10 Q In the afternoon?

11 A Yes sir.

12 Q Now when the defendant was questioned on that  
13 day, in the presence of his counsel, was he advised of his  
14 rights?

15 A Yes sir he was.

16 Q I am handing you what has been marked as State's  
17 Exhibit Number 38 for identification and ask if you can  
18 identify that?

19 A Yes sir, this is the waiver that was read to  
20 the defendant and also witnessed by myself and Sgt. Via and  
21 this was on the 11th of January, 1983.

22 Q Okay, and does the Defendant's counsel's  
23 signature also appear on that?

24 A Yes sir, on the side there it is signed Paul  
25 Kidd.

Q Now at the time, were those rights read to the  
Defendant?



1       A       Yes sir they were.

2       Q       And was his lawyer present at that time?

3       A       Yes sir.

4       Q       And he waived those rights?

5       A       Yes sir.

6       Q       And did he appear to be free of any intoxicants?

7       A       Yes sir.

8       Q       Were any threats or promises made of any kind

9 to the defendant?

10      A       No sir.

11      Q       Was he deprived of any necessities of life to

12 get him to cooperate?

13      A       No sir.

14      Q       Did his lawyer make any objection to the line

15 of questioning done by the police officers?

16      A       No sir.

17      Q       Now the primary emphasis of this particular

18 interview with the defendant was what?

19      A       Was to talk to him in reference to some

20 homicides that occurred in Monroe, Louisiana.

21      Q       And how many homicides were involved there?

22      A       Three.

23      Q       And did the law enforcement officers talk to

24 him about that?

25      A       Yes sir.

1 Q Now was there a tape recording made during that  
2 interview?

3 A No sir.

4 Q When you were talking to the defendant about  
5 those three homicides, what kind of responses did you get  
6 from him?

7 A His responses were that he did not have  
8 anything to do with the homicides in Monroe, Louisiana and  
9 that only involvement that he had was with a homicide in  
10 Montana. I then told him that I did not want to hear about  
11 the homicide in Montana, that I was interested in the  
12 Louisiana homicides.

13 Q Did he make that admission to you only one time  
14 or more than once?

15 A Just the one time.

16 Q Were you present throughout the entire interview?

17 A I left at -- in approximately ten minutes, and  
18 I let the other officer interview them further.

19 MR. RACICOT: Nothing further.

20

21 CROSS EXAMINATION

22 By Mr. Moses:

23 Q I am Timer Moses, and I am the attorney for  
24 Mr. Beach. You testified on direct examination of the  
25 conversation that took place on January 11th, 1983?

A Yes sir.

1 Q And you were present at that time?

2 A Yes sir.

3 Q And one reason that you were present was  
4 because of your official duties and responsibilities being in  
5 charge of the homicide division, if I may call it that?

6 A Yes sir.

7 Q And you were particularly concerned about those  
8 homicides that had occurred in Louisiana?

9 A Yes sir.

10 Q And you were, I believe you stated, present for  
11 approximately ten minutes or so with respect and in regard  
12 to inquiring of Mr. Beach about those homicides in Louisiana?

13 A Yes sir.

14 Q All right, and did Mr. Beach during that  
15 interview with respect to Cathy Horton, one of the murders  
16 that occurred in Louisiana, exhibit the same mannerism and  
17 emotional responses with respect to the Cathy Horton homicide  
18 as he did with respect to the Kim Nees murder?

19 MR. RACICOT: Your Honor, I am going to object to that because  
20 of the lack of foundation, because Lt. Cumming was never  
21 present during the questioning of the defendant when he was  
22 questioned about Kim Nees, and we would ask if there is any  
23 question about that, that it be heard outside the presence of  
24 the jury.

25 MR. MOSES: Let me withdraw the question.

1           Q           Did he at that time -- at the time he was asked  
2 questions concerning Cathy Horton and in your presence, did  
3 Mr. Via ask him a series of statements to the effect that  
4 Barry Beach could not live with himself over the death of  
5 Cathy Horton and Barry Beach would respond by indicating that  
6 he ---

7 MR. RACICOT: Your Honor, before he goes any further here,  
8 I would request that this be heard outside the presence of  
9 the jury.

10                           THE COURT: All right. Jury may remain  
11                           seated. We will be back shortly, I  
12                           hope.

13 IN CHAMBERS - in the presence of Mr. Barry Allen Beach and  
14 his attorney; and the attorneys for the State of Montana:

15                           THE COURT: Go ahead.

16 MR. RACICOT: Your Honor, our objection is that there is no  
17 proper foundation laid for those type of questions; we didn't  
18 ask the witness those kind of questions as to what kind  
19 of questions Sgt. Via asked; he has not established his  
20 presence throughout this entire interview and again, we are  
21 getting very very close to this polygraph matter or this PSE,  
22 the psychological stress evaluator. He could have asked Sgt.  
23 Via those questions and right now it is getting into dangerous  
24 water and it is getting beyond the scope of direct examination  
25 and certainly is not competent evidence because of a lack of  
foundation established with Lt. Cumming.

1 MR. MOSES: Judge, ---

2 THE COURT: Without a doubt you do not  
3 have a foundation.

4 MR. MOSES: Judge, let me point out that this witness has  
5 testified that he was present on the interview on January  
6 11th, 1983 ---

7 THE COURT: I know that.

8 MR. MOSES: He was present with Officer Via and at that  
9 time Officer Via asked Kidd whether Barry Beach could live  
10 with the fact, with himself, over the death of Cathy Horton.  
11 Mr. Medaries has testified that he was present during the  
12 time the questions relating to the Louisiana deaths were  
13 discussed, in his presence. That he was also asked other  
14 questions at that particular time. What we have in this  
15 examination is that they advised the fellow of his rights,  
16 but they don't want to let us go into what was asked of him.  
17 If he was present and he was asking these questions, or if  
18 these questions were asked, then I've got a right to go into  
19 what questions were asked at that time and what responses  
20 Mr. Beach made, and then I could impeach him by the record  
21 that I have, because he made it.

22 THE COURT: This guy was only there  
23 ten minutes.

24 MR. MOSES: Well he was there at the time, he has testified  
25 that he was there at the time these questions concerning Cathy

1 Horton's death was gone into.  
2 MR. RACICOT: He didn't say that.  
3 MR. MOSES: He did say that.  
4 MR. RACICOT: Here is where this interview goes: The first  
5 part that Mr. Moses is getting into is right at the tail end  
6 of the psychological stress evaluation. He is talking about  
7 the reaction from the pse. Then he is going on further and  
8 talks about the fact that every point should be mentioned,  
9 about Cathy Horton's death; It should be mentioned that at  
10 every point where Cathy Horton's death was mentioned, that  
11 Barry Beach would look directly at Mr. Kidd and when he had  
12 gone into his rights, he said that Barry was completely changed  
13 emotionally and teary eyed and acted as though he didn't  
14 know anyone was talking to him, or what they were talking  
15 about.  
16 MR. MOSES: This witness was there. He witnessed the  
17 questioning. I have laid the foundation.  
18 MR. RACICOT: You're not even close to that.  
19 MR. MOSES: I sure have, he was present during the time,  
20 at the time these Louisiana homicides was discussed. He  
21 testified that he was present, so that he could hear it.  
22 MR. RACICOT: This was -- the question has to do whether he  
23 was present after the psychological stress evaluation test  
24 was given. That is where we're leading.  
25 MR. MOSES: No it is not leading. This was the interview

1 with him with respect to Cathy Horton in which Mr. Cumming  
2 was present and certain questions were asked and I want to  
3 question him, ask him, what those questions were.

4 MR. RACICOT: Well we will call Sgt. Via back to refute that  
5 plus the fact of all this laughter and P.S.E. I think we  
6 have been hampered substantially already by the failure of  
7 being able to explain why Commander Calhoun was in there  
8 and how the P.S.E. played a part in this, and I know that that  
9 will be the main focus of argument. If you and continue on  
10 this line, I believe we have a perfect right to explain a  
11 number of these things that are associated with the  
12 psychological stress evaluator tests.

13 THE COURT: Well, where are you going  
14 to go, from here on?

15 MR. MOSES: I am going to ask him whether one of the  
16 questions asked is whether Barry Beach could live with himself  
17 over the death of Cathy Horton.

18 MR. RACICOT: To that we have no objection.

19 MR. MOSES: And then what was Barry Beach's response and  
20 then also -- as to this heavy burden and that he would like  
21 to talk to someone at a later time and

22 THE COURT: Well, let's see where this  
23 goes. Let's go.

24 IN THE COURTROOM - with defendant and his counsel, and the  
25 two counsels for the State of Montana and the jury present:

1 CROSS EXAMINATION continued by Mr. Moses:

2 Q Mr. Cumming, excuse me, Officer Cumming, did  
3 Mr. Via, at the time of the interview on January 11th, 1983,  
4 ask Mr. Beach whether he could live with himself over the  
5 death of Cathy L. Horton?

6 A Not to my knowledge.

7 Q You don't have any recollection of that?

8 A No sir, I do not.

9 Q Did you ever read the report prepared by Mr.  
10 Via of that interview?

11 MR. RACICOT: Your Honor we are going to object of him  
12 proceeding any further. He said that he doesn't know.

13 MR. MOSES: I am trying to refresh his recollection.

14 MR. RACICOT: There is no proper foundation for impeaching  
15 him with the statement of somebody else. He has stated that  
16 while he was present, that didn't occur.

17 Q Are you saying that it did not occur?

18 A No sir, I said I don't remember it.

19 Q Well would it refresh your memory to look  
20 at the official records of the report made by Sgt. Via of that  
21 interview?

22 A Possibly.

23 Q And did you make any notes of that conversation?

24 A No sir.

25 Q So that you would have to testify as to memory,



1 but you know that someone is charged with the responsibility  
2 of putting down in writing what was said? Right?

3 A Yes.

4 Q And I am going to hand you what is marked as  
5 or rather what is a report prepared by Officer Via and I  
6 would direct your attention to Page Eight and if you can  
7 refresh your memory as to where it is marked there on the  
8 bottom of the page there?

9 MR. RACICOT: Your Honor, we are going to object to the use  
10 of this document as a piece of work at this point in time.  
11 It could be used to refresh the Lt.'s recollection, but he  
12 has to testify that he was present throughout that conver-  
13 sation and that that particular report accurately reflects  
14 what occurred when he was there.

15 MR. MOSES: I have asked Mr. Medaries and I have asked Mr.  
16 Via on proved by testimony from them about that report, as  
17 to its truth and accuracy to refresh their recollection and  
18 therefore sufficient foundation has been laid.

19 THE COURT: If this witness was there  
20 for what he says, ten minutes, now  
21 you know that, that was all the time  
22 he was there.

23 MR. MOSES: Judge I don't know that, I want him to refresh  
24 his recollection. He has testified that they were talking  
25 about Cathy Lee Horton, the Louisiana thing and so I am

1 asking him if he recalls that conversation with Mr. Via and  
2 Barry Beach as to Cathy Lee Horton. That is what I want to  
3 know.

4 MR. RACICOT: Your Honor, the document is not a proper  
5 document to refresh the Lt.'s recollection because no  
6 foundation has been laid as to whether it was done under his  
7 direction and control and also that it capitalizes on a  
8 series of events at a particular point in time and thirdly, --

9 THE COURT: And the fact that the  
10 question was answered. He said he  
11 doesn't recall.

12 MR. MOSES: I am trying to refresh his recollection. If he  
13 could examine that document, he maybe could recall.

14 THE COURT: I think the objection now  
15 is that there is no foundation for the  
16 use of the document to refresh his  
17 recollection, am I right on that?

18 MR. RACICOT: Yes sir.

19 Q Do you recall that conversation, Mr. Cumming?

20 A I believe I have already answered that.

21 Q That you don't?

22 A That I don't.

23 Q With respect to the matter involving Cathy Lee  
24 Horton, you recall Mr. Via, in your presence, during this  
25 interview, that he had a heavy burden with respect to the

1 death of Cathy Lee Horton and that he would have to get it  
2 off his shoulders sooner or later?

3 A No sir.

4 Q You don't remember that?

5 A No sir, I do not.

6 Q And do you remember any response that Barry  
7 Beach indicated that he was going to -- that he was going to  
8 have to talk about it with someone at a later time?

9 A No sir, I do not.

10 Q Did Mr. Beach, during the course of the  
11 interview, change his emotional attitude?

12 A No sir.

13 Q And had a smirky grin?

14 A I don't remember any smirky grin.

15 Q And did he make statements to the effect that  
16 he didn't know what anybody was talking about?

17 A I don't know that, no.

18 Q While in your presence?

19 A Sir?

20 Q While in your presence?

21 A No sir.

22 MR. MOSES: I have no further questions.

23 MR. RACICOT: No further questions.

24 WITNESS is EXCUSED.

25