

1 THE COURT: Mr. Moses?

2 MR. MOSES: Yes, Thank you.

3
4 DEFENDANT'S OPENING STATEMENT

5 By Mr. Moses: May it please the Court and Ladies and Gentlemen
6 of the Jury, when we first talked to you about your qualifications
7 to sit and serve in this particular case, both sides mentioned
8 to you that statements of counsel were not evidence and were
9 not to be considered by you as evidence, and that opening
10 statements are designed for the purpose of giving an outline
11 to you of the things that are important and the issues that
12 will arise for your consideration. That is what was said.
13 That is what we tried to impress upon you and I am always
14 been impressed with Mr. Racicot when he makes a final
15 statement in his opening statement trying to convince you
16 people with respect to the capabilities of Mr. Beach; it
17 was a final statement, and I just want to emphasize that
18 fact to those people that have not served as jurors before
19 will probably recognize that it is a final statement and not
20 simply a statement to give an outline of the case, that is at
21 least, in my view. One of the things that is not mentioned
22 by Mr. Racicot in his opening statement is that this is what
23 is known in the trade as a circumstantial evidence case. (At
24 this time, counsel moves the blackboard in front of the jury)
25 When we examined you people as jurors I believe you can recall

1 that I said there are two types of evidence admissible in the
2 court, both direct and circumstantial evidence. I also said
3 there was no preconceived ideas which would somehow influence
4 or catch your attention in connection with this case. You
5 are to keep an open minds, you are to have no preconceived
6 ideas and give everybody an opportunity to present the
7 evidence in this particular case. Now then, what is important
8 in a circumstantial evidence case is the physical facts. There
9 will be testimony in this particular case about a palm print
10 and people will come forward and testify about a palm print.
11 The record is not clear about the palm print by the experts
12 as to whether it is a bloody palm print that was found on
13 the vehicle. The evidence will show, however, that it is not
14 the bloody palm print of Mr. Beach, but of somebody else.
15 That is a physical fact. Two: Blood typing. There will be
16 testimony for your consideration as to the blood type in this
17 particular case, that you will hear from the witness stand
18 and I believe you will be advised and I believe the testimony
19 will show that there was no blood of Barry Beach ever found
20 in the vehicle anyplace and that there was no blood of Miss
21 Nees ever found in connection with anything that had to do
22 with Barry Beach. Now then, fingerprints: There will be
23 testimony here about fingerprints in the car, that these
24 fingerprints were in the car. The testimony will show that
25 there were no fingerprints of Barry Beach in the car, but that

1 there was positive identification. You will have an
2 opportunity to weigh and assess the positive identification
3 of the fingerprints that were in the car. Hair Classification:
4 You will have an opportunity to see for yourself, the
5 testimony with respect to the hair classification that are
6 involved in this particular case. You will have an opportunity
7 to view that testimony and see for yourself whether there is
8 in fact any connection at all with Barry Beach. I think the
9 evidence will prove that the palm print is not his, the blood
10 type is no comparison, the fingerprints are not his, and there
11 are positive identification and there will be hair classification
12 which you can take into account. Those are the things that
13 are important in talking about circumstantial evidence and
14 the sufficiency of the evidence to not simply assume that
15 there is something -- some connection with Mr. Beach, but you
16 have the prosecution prove that there is some physical facts
17 here that would be helpful in trying to make out the State's
18 case. The fifth thing, is footprints, so that you can see
19 for yourself and have the witnesses testify specifically as
20 to the footprints that were recovered or measured and if there
21 is any connection of any kind under any circumstances with
22 Mr. Beach; and you will have those things for your consider-
23 ation as to the physical facts in this particular case. You
24 also have an opportunity as they have said, in connection to
25 with the bloody towel and whether there is as a part of the

1 evidence in this case, any connection at all with respect to
2 a bloody towel to Mr. Beach. I believe that the evidence
3 will show that the answer is no. Number Seven: Now you have
4 the fact that Mr. Racicot spent three quarters of his time
5 on, discussing the matter with you, and that is an alledged
6 confession and you will have an opportunity to learn all
7 about the Mutt and Jeff routine if you don't know about it
8 now. You will have an opportunity to determine whether this
9 was the best and most complete confession. You will have an
10 opportunity to make a determination for yourself, without the
11 assistance of any attorney but you will have an opportunity
12 to simply hear from the stand what the witnesses have to say
13 surrounding the circumstances in connection with the taking
14 of the statement from Mr. Beach. You can make your own
15 determination as to that. You can make your decision, based
16 upon that evidence; and finally, in connection with this case,
17 Mr. Racicot has talked a bit about the events of the day. In
18 that connection, there has been statements taken of witnesses
19 as to their whereabouts and what they did during that
20 particular day, evening or early morning hours. It was done
21 by the FBI, done by the Roosevelt County and of course we have
22 those statements available to us so that the witnesses may
23 refresh their memory as to the events of the day and underneath
24 that section, the question of motive, to sustain any of the
25 voluntary allegations that Mr. Racicot has made in connection

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1 with these statements. Now those are the things that are
2 important in a case. Those are issues that you will have to
3 consider and to listen to. You will have to be in a position
4 to assess and determine whether the palm print of Barry Beach
5 is that palm print, or is it someone else's palm print.
6 Whether the blood typing could establish any connection
7 between Kim Nees and Barry Beach. Whether the fingerprints
8 that were taken by good law enforcement work could be
9 connected to Barry Beach or whether there are positive
10 identification of others that have been established by these
11 fingerprints; you will have to determine the hair classification
12 as to whether that evidence is significant or whether to
13 accept the bald conclusion that there is some connection
14 between the hair classification and Barry Beach; and you will
15 have to have a determination as to what the footprints means
16 to you in connection with good law enforcement; and you will
17 have to consider the bloody towel and whether there was any
18 connection at all as stated in this case; and then you will
19 have to take into account and take into consideration reading
20 -- the only, the only evidence that is positive in this case,
21 in our view, and that is a statement or a confession that was
22 extracted from this particular defendant, and that is a
23 judgment that you will have to make, and all of the circum-
24 stances, having in mind the events of the day and the complete
25 absence of motive. That is what we will do in connection with

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1 particular case; there will be witnesses that will be called
2 by the prosecution; they may be witnesses that we will have
3 testify on our behalf but they can call the witnesses first.
4 We will have an opportunity as the prosecution will have an
5 opportunity to try to explain to you all of these issues
6 so that you can have a perfect opportunity to weigh those
7 issues, give the witnesses such weight as you feel they
8 deserve and then reach a conclusion about the connection or
9 lack of connection with respect to the physical facts in this
10 case and Mr. Beach. We would expect and not only hope, but
11 we would expect that you will keep an open mind and examine
12 all of these pieces of evidence critically so that you will
13 have a full picture of the whole story and once you have that
14 full picture then I believe you will be in a position to
15 arrive at a just conclusion in this particular case. The
16 purpose of an opening statement is simply to acquaint you
17 with what you will be confronted with during the course of the
18 trial and we urge you to listen to their testimony of their
19 witnesses, listen carefully if you would, so that you will
20 have the whole story. Thank you very much.

21 THE COURT: Okay, call your first
22 witness.

23 STATE'S CASE

24 MR. RACICOT: Thank you. We would call Shannon O'Brien as
25 our first witness.