

1 THE COURT: Are there any more  
2 witnesses that have been called to testify in  
3 the courtroom?  
4

5 (No response)  
6

7 Thank you.  
8

9  
10 PRESENTATION ON BEHALF OF THE STATE  
11

12 ROGER BERRY,

13 being called as a witness on behalf of the State and  
14 after having been duly sworn, was examined and  
15 testified as follows:  
16

17 DIRECT EXAMINATION

18 BY MR. ANDERSON:

19 Q State your name, please.

20 A Roger Berry.

21 Q Mr. Berry, how are you employed?

22 A I'm a member of the Criminal Investigation  
23 Division of the Abilene Police Department.

24 Q Are you a certified peace officer in the State  
25 of Texas?

A Yes, I am.

1 Q Mr. Berry, on July 28th of 1983, did you have an  
2 occasion to talk to Henry Lee Lucas?

3 A I did.

4 Q Did you take a written statement from the Henry  
5 Lee Lucas you talked to?

6 A Yes, I did.

7 Q Do you see that Henry Lee Lucas in this court  
8 today?

9 A Yes, I do.

10 Q Would you point him out to us, please.

11 A The gentleman sitting here in the grayish or  
12 bluish colored suit.

13 MR. ANDERSON: May the record reflect  
14 that the witness has identified the Defendant?

15 THE COURT: The record will so  
16 reflect.

17

18

19 (Whereupon State's Exhibit  
20 No. 104 was marked for  
21 identification by the  
22 Reporter.)

23

24 Q (By Mr. Anderson) Mr. Berry, I show you what  
25 has been marked as State's Exhibit 104 and ask

1           you if you can identify that.

2           A       Yes, I can.

3           Q       What is it?

4           A       This is a copy of the statement which I took  
5           from Henry Lucas on July the 28th of 1983.

6           Q       Is it an accurate copy of the original?

7           A       Yes, it is.

8           Q       Do you have the original with you today?

9           A       Yes, I do.

10          Q       You have asked that that not be put in evidence  
11          if it doesn't need to be?

12          A       That's correct.

13          Q       So you can retain it, is that right?

14          A       Yes, sir.

15          Q       Mr. Berry, prior to taking this statement that  
16          you have identified as State's Exhibit Number  
17          104, did you give Mr. Lucas his legal Miranda  
18          warnings?

19          A       Yes, I did.

20          Q       Prior to taking this statement, did you promise  
21          him or threaten him anything for giving you the  
22          statement?

23          A       No, I did not.

24          Q       After you gave him his Miranda warnings, did he  
25          indicate that he understood those warnings?

- 1 A Yes, he did.
- 2 Q Did he exercise any of his rights?
- 3 A No, he did not.
- 4 Q Did he agree to talk to you?
- 5 A Yes, he did.
- 6 Q After this interview, you reduced State's  
7 Exhibit -- you reduced what he told you to  
8 writing on State's Exhibit 104; is that right?
- 9 A Yes, I did.
- 10 Q Did you give him any warnings at the time you  
11 reduced this to writing?
- 12 A After it had been reduced to writing, prior to  
13 his signing it I again gave him the officers'  
14 warnings.
- 15 Q Are those the same warnings that appear in  
16 writing on State's Exhibit 104?
- 17 A Yes, they are.
- 18 Q Did you give him an opportunity to read the  
19 statement?
- 20 A Yes, I did.
- 21 Q Did he in fact read the statement?
- 22 A He did not.
- 23 Q What happened when you gave him that opportunity  
24 to read it?
- 25 A I asked him to read the statement aloud. He

1 indicated to me that he did not wish to do so.  
2 Therefore, I placed the statement in front of  
3 him where he could see it and follow along with  
4 me while I read it aloud.

5 Q Did you in fact read it aloud to him?

6 A Yes, I did.

7 Q Following that, did he sign it?

8 A Yes, he did.

9 Q And the rights contained on State's Exhibit  
10 Number 104 in writing, are those the same rights  
11 you gave the Defendant at the beginning of the  
12 interview?

13 A Yes, they are.

14 MR. ANDERSON: At this time I tender  
15 State's 104 to the Defense.

16 MR. HIGGINBOTHAM: May I take the  
17 witness on voir dire, Your Honor?

18 THE COURT: Yes, sir.

19

20 VOIR DIRE EXAMINATION

21 BY MR. HIGGINBOTHAM:

22 Q Officer Berry, I'm Don Higginbotham. I'm  
23 appointed Defense counsel in this case.

24 Where were you when you took the  
25 statement?

1 A I was in the Sheriff's Office at Montague,  
2 Texas.

3 Q This statement was taken on July the 28th of  
4 1983?

5 A Yes, sir, that's correct.

6 Q Do you have the original with you?

7 A Yes, sir, I do.

8 Q May I see it?

9 A Yes, sir.

10 Q Officer Berry, who physically printed out this  
11 statement? It looks like someone printed it by  
12 hand.

13 A I did.

14 Q Okay. So Henry Lee Lucas did not print that?

15 A That's correct.

16 Q Did you -- how did you come to learn about Henry  
17 Lee Lucas?

18 A Another officer, who works in our Youth  
19 Division, which also handles missing persons, I  
20 believe had received a teletype, maybe an  
21 all-stations type teletype, in reference to Mr.  
22 Lucas. I did a little more checking with the  
23 Montague County Sheriff's Department and  
24 determined that he was in custody there.

25 Q Did you talk to Sheriff Conway in Montague

1 County?

2 A No, sir, not initially.

3 Q Did you talk to one of his deputies?

4 A Yes, sir.

5 Q How did you first come to think that Henry Lee  
6 might have been involved in this case in  
7 Abilene?

8 A It was my understanding that he was known to  
9 have been in the State of Texas at around the  
10 time our offense had occurred. A similar  
11 caliber of weapon was used. It was also my  
12 understanding that he frequently killed women.

13 Q How did you gain that knowledge; from whom did  
14 you gain that knowledge?

15 A I believe he is the chief deputy of Montague  
16 County; I can't recall his name.

17 Q Did you first call by telephone?

18 A Yes, sir.

19 Q Did you call them or did they call you?

20 A No, we called them.

21 Q Did you explain anything to the law enforcement  
22 people in Montague County about this case in  
23 Abilene?

24 A No, sir, not other than I believe I did explain  
25 it was a homicide which occurred during the

1 robbery of a savings and loan.

2 Q Did you tell them when it occurred?

3 A I don't recall the specific conversation.

4 Apparently we must have discussed that because,  
5 as I say, it was my understanding that he was in  
6 Texas during that period of time or near that  
7 period of time.

8 Q Did you explain to them that a woman had been  
9 killed?

10 A I don't recall, sir.

11 Q Could you have?

12 A Yes, sir, I could have.

13 Q Did you explain to them that the woman had been  
14 shot?

15 A I don't recall whether I explained it to them or  
16 not; I'm sure they figured that since I was  
17 asking them about a caliber of handgun or  
18 firearm.

19 Q All right. When, in truth and fact, was this  
20 crime committed?

21 A March the 18th of 1980.

22 Q Did you have a case file on this murder?

23 A Yes, sir, I do.

24 Q Did at any time you send that case file to  
25 Montague County?

- 1 A No, sir, I did not.
- 2 Q Did at any time you send any teletypes to  
3 Montague County?
- 4 A I don't believe I did personally, no, sir.
- 5 Q Do you know whether any were sent?
- 6 A I believe the officer I mentioned earlier,  
7 Officer Reed, sent a teletype, requesting an  
8 appointment, a time when we could talk to Mr.  
9 Lucas. And then later after he received a  
10 reply, I think he sent an acknowledging teletype.  
11 I'm not certain of that.
- 12 Q How far in advance of your actual traveling to  
13 Montague County did you contact Montague County  
14 law enforcement people?
- 15 A About a week; I'm not sure. A week to two weeks.  
16 I just can't recall exactly.
- 17 Q And you confirmed, then, an appointment to see  
18 Henry Lee Lucas?
- 19 A Yes, sir.
- 20 Q How did he appear to you when you saw him?
- 21 A Generally as he does now. Of course, he wasn't  
22 wearing a suit, but he looked just about like he  
23 does now.
- 24 Q Did he seem nervous?
- 25 A No, sir.

- 1 Q Did he seem in any manner overwrought?
- 2 A No, sir, not at the time I talked to hm.
- 3 Q Were you aware that he had an appointed attorney
- 4 at that time?
- 5 A Yes, sir, I was.
- 6 Q Did you ask him whether he wanted his attorney
- 7 present?
- 8 A Yes, sir, I did. But in fact, he had just got
- 9 through talking to his attorney about 20
- 10 minutes -- for about a 20-minute period of time
- 11 just prior to my talking to him.
- 12 Q Did he say specifically, "I don't care about an
- 13 attorney," or, "I don't want my attorney"?
- 14 A Yes, sir. I asked him if he was willing to talk
- 15 to me; he said that he was. Of course, I asked
- 16 him if he had understood all the rights that I
- 17 read him and if he wanted his attorney present
- 18 when we were talking, and he said no, he did
- 19 not.
- 20 Q Officer Berry, is there any place on these
- 21 rights where you have Henry Lee initial or that
- 22 he understands them or anything of that nature?
- 23 A No, sir, not other than the signature at the
- 24 bottom of the page.

25 MR. HIGGINBOTHAM: Your Honor, we

1 would object on the same grounds that we've  
2 previously stated, the grounds that we have  
3 contended that this confession is in violation  
4 of Henry Lee Lucas's fourth, fifth, and sixth  
5 amendment rights of the United State's  
6 Constitution and fourteenth amendment, and the  
7 Texas Constitution. And we would renew those  
8 objections that we have made prior to this time,  
9 in both the pretrial and I believe in this case  
10 that we're here on, regarding the voluntariness  
11 of this confession, in the same manner that we  
12 have objected to others that have come in. And  
13 consequently, we would like for the record our  
14 objection to the entry into evidence of this  
15 confession.

16 THE COURT: The objection is  
17 overruled.

18 MR. ANDERSON: That's all we have from  
19 this witness, Judge, for the purpose of what he  
20 was called for.

21 THE COURT: You need to step down.  
22 You understand what the Rule is, don't you?

23 THE WITNESS: Yes, sir, I do.

24 MR. WALSH: Your Honor, do we need to  
25 view this tape that we've been talking about

1 outside the jury's presence, or do you want to  
2 just make objections without seeing it? You've  
3 got copies.

4 MR. PARKER: We've seen it.

5 MR. HIGGINBOTHAM: We've seen it. We  
6 had better run it.

7 THE COURT: Somebody hit the lights  
8 back there, please.

9  
10 (Whereupon State's Exhibit No.  
11 104 was played in open court,  
12 out of the presence of the  
13 jury, after which the  
14 following proceedings were  
15 had:)

16  
17 THE COURT: You may proceed.

18 MR. WALSH: I believe we wish to  
19 introduce into evidence before the jury is  
20 State's Exhibit 101, which has previously been  
21 identified and testified about by Sheriff  
22 Boutwell.

23 (Whereupon State's Exhibit No.  
24 101 was played in open court,  
25 out of the presence of the

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jury, after which the  
following proceedings were  
had:)

MR. WALSH: That's all we have on the  
taped evidence, Your Honor.

THE COURT: All right.

MR. HIGGINBOTHAM: Your Honor, may I  
look at the Court file? Do we have it here? If  
the Court may give me just a minute.

(Whereupon, following a  
discussion at the bench  
between Court and counsel,  
proceedings continued as  
follows;)

THE COURT: Mr. Higginbotham, would  
you state your objections?

MR. HIGGINBOTHAM: Yes, Your Honor. I  
would state the objection that -- renew the  
previous objection that this statement made by  
Lucas that is sought to be introduced here is a  
violation of the fourth, fifth, sixth and  
fourteenth amendments of the Constitution of the

1 United States and Texas Constitution, and in  
2 violation of the provisions of videotapes under  
3 38.22 of the Texas Code of Criminal Procedure,  
4 in that there has not been any proper predicate  
5 laid as to the competency of the operator or  
6 the ability of the machinery to make a true and  
7 accurate portrayal of what is being taped.

8 In addition, I would object on the  
9 grounds that on this particular session, our  
10 client was questioned without any notification  
11 to the Defense attorneys that were appointed  
12 that any questioning session would be had, and  
13 in violation of a Court order that I believe was  
14 issued on November 14th. It's docketed in the  
15 papers of the Court.

16 At this time, Your Honor, if you would  
17 like to place Mr. McCollough and I under oath,  
18 we will be glad to testify to the fact that  
19 neither one of us were notified concerning this  
20 taping. We had no opportunity --

21 MR. WALSH: I'll stipulate to that.

22 THE COURT: All right.

23 MR. WALSH: No, I won't either. I  
24 want to hear their testimony.  
25