

1 the evidence.

2 MR. WALSH: If you could give me
3 about 10 or 15 minutes, we can --

4 THE COURT: Is that good enough?

5 MR. WALSH: Yes, sir.

6 THE COURT: We will recess until
7 11:30.

8
9 (Whereupon a brief recess was
10 taken, after which proceedings
11 continued as follows:)

12
13 THE COURT: Are you ready to proceed?

14 MR. WALSH: Yes, Your Honor. The
15 State would call Cutler.

16
17
18 GARY CUTLER,
19 being called as a witness on behalf of the State and,
20 after having been duly sworn, was examined and
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. WALSH:

24 Q State your name.

25 A Gary Cutler.

1 Q How are you employed?

2 A Travis County Sheriff's Department, Austin,
3 Texas.

4 Q In what capacity are you employed?

5 A I'm a detective in the Homicide Division.

6 Q How long have you been employed in that
7 capacity?

8 A A little over three years in homicide.

9 Q Are you a certified police officer for the State
10 of Texas?

11 A Yes, sir, I am.

12 Q Detective Cutler, do you know the Defendant in
13 this cause, Henry Lee Lucas?

14 A Yes, sir.

15 Q Can you identify him for the record?

16 A Blue suit, it looks like he's sitting between
17 the man in the glasses and dark haired man at
18 the Defense table.

19 MR. WALSH: Let the record reflect
20 that the witness has identified the Defendant.

21 THE COURT: The record will so
22 reflect.

23 Q (By Mr. Higginbotham) Detective Cutler, on
24 August 3rd, 1983, did you obtain a written
25 statement from the Defendant in this case?

1 A Yes, sir, I did.

2

3

(Whereupon State's Exhibit

4

No. 105 was marked for

5

identification by the

6

Reporter.)

7

8

Q (By Mr. Walsh) Detective Cutler, I'll hand you

9

what has been marked as State's Exhibit 105 and

10

ask if you can identify that exhibit.

11

A That's a copy of the original.

12

Q Is that the statement that you were referring to

13

that you obtained from the Defendant?

14

A Yes, sir.

15

Q Is this State's Exhibit 105 an accurate copy of

16

the original confession?

17

A Yes, sir, it is.

18

Q Are you requesting that the original not be

19

marked and admitted as evidence so you can keep

20

it?

21

A Yes, sir, I am.

22

Q Prior to obtaining this statement from the

23

Defendant, Detective Cutler, did you give him

24

his constitutional rights?

25

A Yes, sir, numerous times.

1 Q There are some constitutional that rights set
2 out on the face of that exhibit that have been
3 marked. Are those the rights you gave the
4 Defendant?

5 A The basic rights, yes, sir. Sometimes we use
6 the blue card, but they're basically the same
7 rights.

8 Q Okay. Did you promise the Defendant anything in
9 return for obtaining this statement?

10 A No, sir, nothing at all.

11 Q Did you threaten him in any way in order to get
12 him to make this statement?

13 A No, sir, I did not.

14 Q Pertaining to the rights that you gave the
15 Defendant, did he request to exercise any of
16 those rights?

17 A No, sir, he did not.

18 Q Did he request to have a lawyer present or
19 anything of that nature?

20 A No, sir, not at all.

21 Q Did you deny the Defendant any request at all
22 that he may have made concerning this statement?

23 A No, sir, I did not.

24 MR. WALSH: Pass the witness.
25

CROSS-EXAMINATION

1
2 BY MR. HIGGINBOTHAM:

3 Q I'm Don Higginbotham. I'm appointed counsel for
4 Henry Lee Lucas. Let me ask you a couple of
5 questions.

6 Where was Henry Lee Lucas when you
7 first met him?

8 A In Montague County Jail.

9 Q When was that?

10 A I believe it was the 24th of June of last year.

11 Q Did you travel to Montague County?

12 A Yes, sir, I did.

13 Q How did you come to first hear about Henry Lee
14 Lucas?

15 A I first heard about him, I believe, through the
16 DPS Crime Analysis, and then Sheriff Boutwell, I
17 believe.

18 Q Sheriff Boutwell, did you contact him directly?

19 A I'm not sure if I contacted him or one of my
20 supervisors did.

21 Q Did you have any discussions with Sheriff
22 Boutwell concerning Lucas?

23 A Before going up there? No, not that I know of,
24 just to see if I was going or not.

25 Q Did you call or contact Montague County law

1 enforcement personnel before you went?

2 A Yes, sir.

3 Q How was that contact made?

4 A Telephone.

5 Q Who did you talk to; do you remember?

6 A I believe it was Chief Reno or the chief deputy;
7 I'm not positive. But I believe he was the one.

8 Q Did you contact Sheriff Conway at any time?

9 A No, sir, not that I know of.

10 Q Did you explain to any of the law enforcement
11 officers in Montague County the nature of your
12 case?

13 A I don't recall what I told him. I had a similar
14 homicide I wanted to talk to him about, but I
15 don't know if I went into any details.

16 Q You don't recall whether you said anything about
17 the case to the people in Montague County before
18 you went up there?

19 A I don't recall if I did, no, sir.

20 Q Did you have to -- I don't know any other way to
21 ask you this. Did you have to make an
22 appointment to see Lucas?

23 A More or less, I guess we did. We just told him
24 we were coming and asked if we could get in and
25 see him. And they said yeah, they could work us

1 in. So as far as any set time I had to be
2 there, no. I just told them what day I would
3 be there.

4 Q Who went with you?

5 A A girl by the name of Tinka Hudson.

6 Q Who is she?

7 A She works at the Sheriff's Office. She lives in
8 Bowie, Texas. She was basically riding because
9 her parents live up there.

10 Q Does she work in the Sheriff's Office in Travis
11 County?

12 A Yes, sir.

13 Q Okay. Was she there when you interviewed Lucas?

14 A She was in the Sheriff's Office; she wasn't in
15 the interview room.

16 Q You did not obtain this confession we're talking
17 about at that time in Montague County, did you?

18 A No, sir, I did not.

19 Q Did you obtain any kind of confession up there?

20 A Yes, sir.

21 Q Do you have it with you?

22 A In my file. I do not have it here; it is up at
23 the file.

24 Q Where is your file?

25 MR. WALSH: We can get the statement.

1 MR. HIGGINBOTHAM: I want to look at
2 the statement.

3 MR. ANDERSON: Can I ask a question?

4 MR. HIGGINBOTHAM: I'm sorry?

5 MR. ANDERSON: May I talk to the
6 witness for a second?

7 MR. HIGGINBOTHAM: Sure.

8 Q (By Mr. Higginbotham) And when was
9 that confession given?

10 A The one he is giving? I believe the 24th --
11 I'll have to check the date, but I'm sure it was
12 the 24th of July. I'll have to look at the date
13 on it.

14 Q But in June.

15 A Yes, sir.

16 Q When was the next time you saw Henry Lee Lucas?

17 A I believe it was August 2nd, I believe.

18 Q And where did you see him next time?

19 A Williamson County.

20 Q Where was he in Williamson County?

21 A The Williamson County Jail, at the Sheriff's
22 Office.

23 Q Going back a little bit to Montague County in
24 June when you saw him, were you aware he had an
25 appointed attorney?

- 1 A Yes.
- 2 Q Did you ever contact that attorney before
3 talking to him?
- 4 A No, sir, I did not.
- 5 Q Did you ever attempt to have the Montague County
6 officers contact that attorney?
- 7 A No, sir.
- 8 Q Did you see him any time between the time you
9 saw him in June and the time you saw him in
10 August?
- 11 A No, sir, I don't believe so.
- 12 Q So the next time you saw him was August the 2nd?
- 13 A Yes, sir.
- 14 Q And you visited him in Williamson County Jail?
- 15 A Yes, sir.
- 16 Q Did you talk to him at that time?
- 17 A Yes, sir.
- 18 Q And were you aware at that time that he had an
19 attorney appointed for him?
- 20 A I believe we were, yes, sir.
- 21 Q Was any attempt made to contact that attorney?
- 22 A By me, no, sir.
- 23 Q Did you try to cause the Williamson County
24 authorities to contact the appointed attorney in
25 Williamson County?

- 1 A Did I? No, sir, not that I recall.
- 2 Q Were you alone when you saw him in Williamson
3 County?
- 4 A No, sir.
- 5 Q Who was with you?
- 6 A My partner.
- 7 Q Who is your partner?
- 8 A Jerry Wiggins.
- 9 Q Was Curtis Weeks with you at that time?
- 10 A No, sir, not that I recall. Not with me, no,
11 sir.
- 12 Q That was on the 2nd of August?
- 13 A Yes, sir.
- 14 A What time of day; do you recall?
- 15 A I believe it was after lunch; I'm not for sure.
- 16 Q And what was the nature of the conversation you
17 had with Lucas on the 2nd of August?
- 18 A About the particular murder in Austin.
- 19 Q Was it this murder?
- 20 A Yes, sir.
- 21 Q Did you take any statement from him on the 2nd
22 of August?
- 23 A Not that I recall. Just notes, and we took him
24 for a ride. He came to Austin.
- 25 Q Okay. Did you make any audiotapes of what he

1 said?

2 A Yes, we had micro cassette tapes.

3 Q Did you make any videotapes of what he said?

4 A Yes, sir.

5 Q Were those made by Curtis Weeks?

6 A The videotape was, one videotape was, yes, sir.

7 Q How many videotapes did you make?

8 A That day, just one.

9 Q Okay. Now, I'm a little confused. Are you
10 talking about the 2nd day of August?

11 A I believe it's the 2nd day of August.

12 Q This statement is dated the 3rd day of August;
13 is that correct?

14 A Yes, sir.

15 Q So the next day after the videotapes and after
16 the cassette tapes, the audios -- this statement
17 was made?

18 A Yes. We went back the next day, back to
19 Williamson County.

20 Q Did you take him -- you took him into Austin.
21 You say you took him for a ride.

22 A Took him into Austin, yes, sir.

23 Q Okay. And I presume that you went to the scene
24 of the crime.

25 A Yes, sir.

1 Q And then you took him back to Williamson County?

2 A Yes, sir.

3 Q And then you went back the next day --

4 A Yes, sir.

5 Q -- and got this statement, this written
6 statement we have.

7 A Yes, sir.

8 MR. HIGGINBOTHAM: If the Court will
9 let me have just a minute. We need to make a
10 copy of this. I'm sure they are going to want
11 the original.

12 Q (By Mr. Higginbotham) Have any charges been
13 filed concerning this murder?

14 A No, sir.

15 Q Have you talked to Henry Lee Lucas since this
16 confession was made?

17 A This one here, yes, sir.

18 Q When was that?

19 A I talked to him several times. Before
20 Christmas, sometime a week or two before
21 Christmas, and then again I think in the end of
22 February, the 23rd of February, somewhere in the
23 end of February.

24 Q Has he made any other statements about this
25 crime to you --

- 1 A Yes, sir.
- 2 Q -- since August the 3rd?
- 3 A Yes, sir.
- 4 Q Has he made any written statements?
- 5 A No, sir. We started a written statement, but
6 we used video equipment, so we stopped it and
7 just used video equipment.
- 8 Q Where were these statements made?
- 9 A Where were they taken?
- 10 Q Yes.
- 11 A Williamson County Sheriff's Office.
- 12 Q Were any officers from Williamson County present
13 at that time?
- 14 A No, sir. In the room?
- 15 Q Yes.
- 16 A No, sir.
- 17 Q They were made in the video room, I think they
18 call it?
- 19 A Yes, sir.
- 20 Q And who was with you when you took these
21 subsequent statements?
- 22 A My partner, Jerry Wiggins.
- 23 Q Do you think there may have been two other
24 occasions since August?
- 25 A I visited him before Christmas. Now, I know I

1 didn't take -- I don't believe I took any
2 statements at all then; we just went over some
3 stuff with him, basically other cases and other
4 types of offenses, and then went back and made
5 another video. I believe it was February; I
6 would have to look on the dates. I think it was
7 the 23rd of February; I'm not positive, though.

8 Q That's when the video -- the subsequent
9 videotape was made?

10 A Yes, sir.

11 Q Were videotapes made of Henry Lucas at the
12 scene?

13 A Yes, sir.

14 Q I take it, to your knowledge, no attorney has
15 been appointed to represent him in Travis
16 County?

17 A I heard one might have, but I'm not sure of that.
18 I can't be sure on that.

19 Q These subsequent interviews at you believe
20 sometime before Christmas in December and
21 sometime the latter part of February, did you
22 contact any attorney that represents Lucas?

23 A Did I? No, sir.

24 Q Did you cause to have the Williamson County
25 authorities to contact any?

1 A No, sir, I didn't ask them to. No, sir.

2 MR. HIGGINBOTHAM: Pass the witness.

3

4

REDIRECT EXAMINATION

5 BY MR. WALSH:

6 Q Did Lucas ever indicate to you that he wanted
7 any of his lawyers present?

8 A He made it quite clear to us that he did not
9 want a lawyer present.

10 Q Now, this statement that was marked awhile ago
11 that I was talking about, the one on August 3rd,
12 who signed that statement?

13 A Henry Lucas, my partner Jerry Wiggins and
14 myself.

15 Q So the Defendant -- I don't think I asked you.
16 The Defendant signed this statement, and that is
17 his signature, "Henry Lee Lucas."

18 A Yes, sir, he signed it in my presence.

19 MR. WALSH: Nothing further.

20 MR. HIGGINBOTHAM: Your Honor, we
21 would renew the same objections we have made
22 concerning the confessions. We object to the
23 confession in that it violates the fourth,
24 fifth, sixth and fourteenth amendments to the
25 Constitution of the United States. We would

1 also object to it under Article 38.22 of the
2 Texas Code of Criminal Procedure, in that
3 evidently there was some video and audiotapes
4 that we don't have any record -- I mean
5 knowledge of here. Also, under the Articles of
6 the Texas Constitution.

7 And we would also object under
8 Article 37.07(1) of the Code of Criminal
9 Procedure, in that this confession is not
10 relevant and deemed to be relevant in the
11 punishment stage of this case.

12 THE COURT: The objection is
13 overruled.

14 MR. WALSH: Your Honor, that's all we
15 have for outside the jury's presence.

16 THE COURT: All right. May this
17 witness step down?

18 MR. WALSH: Yes, sir.

19
20 (The witness, Gary Cutler, was
21 excused.)

22
23 THE COURT: Do you have anything that
24 needs to be taken up outside the jury's presence
25 at this time?

1 MR. HIGGINBOTHAM: No, Your Honor.

2 THE COURT: All right. We'll stand
3 in recess until 1:30. The jury will be back
4 from lunch at 1:30.

5
6 (Whereupon the luncheon recess
7 was taken, after which the
8 Defendant and counsel were
9 present and seated in court
10 and, the jury being seated in
11 the jury box, the following
12 proceedings were had:)

13
14 THE COURT: Ladies and gentlemen of
15 the jury, we will now begin the second part of
16 our bifurcated trial, which is the punishment
17 stage of this trial. And it is going to follow
18 along the same guidelines, the same lines, the
19 same order that the guilt-innocence stage
20 followed. In other words, the State will have
21 an opportunity to make an opening argument and
22 the State will have the opportunity to present
23 evidence, and the Defense will have the
24 opportunity, if they choose, to make an opening
25 statement and present evidence. And both sides