

1 the death penalty. I thank you again for your
2 attention.

3 Your Honor, we will call Phil Ryan to
4 the stand.

5
6 PRESENTATION ON BEHALF OF THE DEFENSE

7
8 PHIL RYAN,

9 being called as a witness on behalf of the Defense
10 and after having been duly sworn, was examined and
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. HIGGINBOTHAM:

14 Q Would you state your name, please.

15 A Phil Ryan.

16 Q Mr. Ryan, what do you do?

17 A I'm with the Texas Department of Public Safety
18 and the Texas Rangers.

19 Q How long have you been a Ranger?

20 A Four years.

21 Q Where are you currently stationed?

22 A Decatur.

23 Q Do you know Henry Lee Lucas?

24 A Yes, I do.

25 Q If you see him in the courtroom, would you point

1 him out?

2 A he is sitting to the right of Mr. McCollough in
3 a blue shirt --

4 MR. HIGGINBOTHAM: Your Honor, may --
5 A -- to the left of Mr. McCollough.

6 Q (By Mr. Higginbotham) Your right, his left.

7 A Yes, sir.

8 MR. HIGGINBOTHAM: Your Honor, may the
9 record reflect that he accurately pointed out
10 the Defendant?

11 THE COURT: The record will so
12 reflect.

13 Q (By Mr. Higginbotham) How did you first come to
14 know Henry Lee Lucas?

15 A Through an investigation of missing persons,
16 Kate Rich.

17 Q Where was that?

18 A That was in Ringo, Texas, in Montague County.

19 Q When did you first come to know Henry Lee Lucas?

20 A About the 27th of September of 1982.

21 Q Now, Mr. Ryan, did you have occasion to talk to
22 Henry Lee Lucas on several occasions?

23 A Yes, I have.

24 Q Have you had occasion to be in an investigative
25 role concerning Henry Lee Lucas?

1 A Yes, sir, I have.

2 Q Now, there has been evidence that has been
3 presented here concerning some extraneous
4 offenses, some other murders. Have you talked
5 to Henry Lee Lucas about other murders?

6 A Yes, sir, I have.

7 Q Have you ever talked to Henry Lee Lucas
8 concerning the murder of an unidentified female
9 found in Williamson County, Texas, on or about
10 October the 31st of 1979?

11 A Oh, I probably would say I probably talked to
12 him off and on. Whether we discussed that
13 particular one I'm not sure if we have or not.

14 Q Is there any publication from the Department of
15 Public Safety that lists unsolved crimes?

16 A Yes, sir, there is.

17 Q Have you had that at your disposal?

18 A Yes, sir.

19 Q Did you have it at your disposal at the time you
20 were talking to Henry Lee Lucas in Montague
21 County?

22 A Part of the time.

23 Q Did you have that publication in hand on or
24 about the middle of June of 1983?

25 A No, sir. I've looked back since some of the

1 pretrials. I requested that from the Crime
2 Analysis Section on the 17th of June, and I have
3 no way of remembering and my records do not
4 reflect when I received it in the mail.

5 Q Okay. That would be 17 June 1983?

6 A Yes, sir.

7 Q Generally, not specifics, what information is
8 contained in that bulletin?

9 MR. WALSH: Your Honor, I'm going to
10 object. This is punishment. We have litigated
11 the October 31st, '79, case, and I don't see
12 what the relevancy of this line of questioning
13 is.

14 MR. HIGGINBOTHAM: Your Honor, the
15 Code of Criminal Procedure specifically sets out
16 in 37.07(1), I believe it is, that information
17 can be presented in the punishment stage that
18 the Court deems relevant. The prosecution has
19 offered several confessions into evidence and
20 they have been accepted. They have questioned a
21 couple of witnesses. And we are in the
22 punishment stage, I realize, but I believe this
23 is relevant, something that the jury should
24 hear.

25 MR. WALSH: I don't mind them talking

1 about these other confessions, but we've already
2 litigated the one we're on trial here for, Your
3 Honor. And I thought these questions were
4 directed to that incident.

5 THE COURT: Counsel, do you wish to
6 respond to that?

7 MR. HIGGINBOTHAM: I'll respond that I
8 do think it's relevant. I do think that the
9 statute provides that the jury may consider
10 everything that they have heard in the
11 punishment stage, that it's not strictly limited
12 concerning the evidence they hear to be
13 considered just in the punishment stage. I
14 believe this is relevant.

15 THE COURT: Counsel, as to relevance
16 to the case that has just been litigated and
17 guilt or innocence has been determined, I can't
18 see that it's relevant. If you're asking
19 questions that tie to these questions which have
20 been admitted in the punishment stage, then I
21 can see that relevance. But, you know, the case
22 has been tried and the verdict rendered.

23 MR. HIGGINBOTHAM: Yes, sir. So may I
24 have a ruling?

25 THE COURT: I just did rule, sir.

1 It's irrelevant.

2 Q (By Mr. Higginbotham) Did Henry Lee Lucas
3 confess crimes to you?

4 A Yes, sir.

5 Q Did Henry Lee Lucas -- or state whether or not
6 Henry Lee Lucas confessed crimes to you that you
7 later found he did not commit.

8 A Yes, sir.

9 Q Did Henry Lee Lucas confess to the crime of
10 killing Ms. Glover?

11 A Yes, he did.

12 Q Who was Ms. Glover?

13 A If I understand right, it was his fifth grade
14 teacher.

15 Q Did you later establish that she was still
16 alive?

17 A Yes, sir, I did.

18 Q Did Henry Lee Lucas ever confess to a crime in
19 Denton County, where he picked out some
20 clothing?

21 A Yes, sir, he indicated that he had knowledge of
22 one over there.

23 A Did he in fact pick out some clothing from a
24 table or some place where the clothing was?

25 A Yes, sir.

- 1 Q Did he take you to a scene of a crime?
- 2 A With some help. He first started out, went and
3 got on the wrong road, and we put him on the
4 correct road, to see how he would do on it.
- 5 Q After he was on the correct road, did he take
6 you to the scene of the crime?
- 7 A Yes, sir. He pointed to an area that was
8 probably a hundred or 150 feet from where the
9 body was recovered.
- 10 Q Did you later find that he did not commit that
11 crime?
- 12 A Yes, sir, we did.
- 13 Q Where was he when that crime was committed?
- 14 A He was in jail in Maryland.
- 15 Q When did he make these confessions?
- 16 A It was after June 15th of '83.
- 17 Q Prior to making these confessions, where he took
18 you to within a hundred feet of the scene of the
19 crime -- this is the one I'm talking about --
20 was he shown any pictures of the crime scene
21 area?
- 22 A Yes, sir.
- 23 Q Was he given any particulars concerning that
24 particular crime?
- 25 A I wasn't the one that showed it to him, and I

1 don't recall sitting in on that particular
2 interview. But I was aware that an officer from
3 Denton Sheriff's Office did interview him
4 briefly on it and did show him a picture of the
5 victim laying on the side of the road.

6 Q And he claimed to have done that crime?

7 A Yes, sir. The best I recall, as with a lot of
8 them, he said, "If this is the one I'm thinking
9 about," and then he would give details at that
10 point.

11 Q Was Henry Lee Lucas cooperative with you?

12 A Yes, sir.

13 Q In fact, is it true or state whether it's true
14 or not that he drew pictures supposedly of some
15 of his victims?

16 A Yes, sir.

17 Q Did he give those pictures to you?

18 A Yes, sir.

19 Q Did he do that freely and voluntarily?

20 A Yes, sir.

21 Q Can you recall when he started doing that?

22 A It was shortly after the 15th, when we first
23 started talking about a series of murders.

24 Q Now, how long has it been since you have been in
25 contact in your official capacity with Henry Lee

1 Lucas?

2 A Since he came to Williamson County.

3 Q Did you believe Lucas when he would confess to
4 killings?

5 A I can't say that I totally believed him. I had
6 a great deal of faith in a lot of what he was
7 saying.

8 Q So there was some disbelief.

9 A Yes, sir.

10 MR. HIGGINBOTHAM: Pass the witness.

11

12

CROSS-EXAMINATION

13 BY MR. WALSH:

14 Q Ranger Ryan, you were subpoenaed for this trial,
15 I think, both by the State and the Defense; is
16 that correct?

17 A Yes, sir, I believe so.

18 Q Have you been available throughout these
19 proceedings to be here and testify for the
20 Defense if they would have chosen to call you in
21 the guilt-innocence?

22 A Yes, sir.

23 Q They didn't do that, did they?

24 A No, sir.

25 Q Do you have -- let me back up. You talked abut

1 you became involved with him in the
2 investigation of the Kate Rich case; is that
3 correct?

4 A That's correct.

5 Q Did this Defendant give you a confession that he
6 killed Kate Rich?

7 A Yes, sir, he did.

8 Q Was that confession true?

9 A Yes, sir, it was.

10 Q How old was Kate Rich?

11 A She was 82.

12 Q And Becky Powell has been mentioned. Did Henry
13 Lee Lucas give you a confession that he killed
14 Becky Powell?

15 A Yes, he did.

16 Q Was that confession true?

17 A Yes, it was.

18 Q How old was Becky Powell?

19 A Fifteen at the time of her death.

20 Q Do you have an explanation as to why Henry Lee
21 Lucas on occasion made up cases and told you
22 about them?

23 A Yes, sir. In my opinion, part of it was
24 confusion on locations. A lot of times he would
25 describe a particular murder, and the

1 description might be right but the location
2 would be wrong, and then vice versa. And then
3 on times when Henry would give me something and
4 I would check it out and come back to him and
5 tell him it didn't look like this was right, he
6 would say that he was just testing me, checking
7 me out to see if I was notifying or checking
8 into his stories.

9 Q Was this right at first when you started talking
10 to him?

11 A Yes, sir.

12 Q How many times did he do that to you, test you?

13 A I can't recall. I would say probably five or
14 six times that I can recall.

15 Q Did he talk to you about a whole lot of murders
16 that you really don't have any reason to doubt
17 that he did?

18 A Yes, sir, that's correct.

19 MR. WALSH: Pass the witness.
20

21 REDIRECT EXAMINATION

22 BY MR. HIGGINBOTHAM:

23 Q Would you say that sometimes he would play games
24 with you?

25 A Yes, sir.

1 Q Mr. Lucas tried -- was Lucas tried and convicted
2 of the Kate Rich murder?

3 A Yes, sir.

4 Q And he was tried and convicted for the murder of
5 Becky Powell.

6 A Yes, sir.

7 Q And that was prior to this trial.

8 A That's correct.

9 Q And he has been sentenced on both of those?

10 A Yes, sir.

11 Q And do you know what his sentence was on Kate
12 Rich?

13 A 75 years.

14 Q And on Becky Powell?

15 A Life.

16 MR. HIGGINBOTHAM: Pass the witness.
17

18 RE-CROSS-EXAMINATION

19 BY MR. WALSH:

20 Q Those weren't capital murder cases, were they?

21 A No, sir, they weren't.

22 Q Mr. Lucas has never been sentenced to the death
23 penalty, has he?

24 A No, sir, he has not.

25 MR. WALSH: Pass the witness.

1 MR. HIGGINBOTHAM: No further
2 questions.

3 THE COURT: May the witness be
4 excused?

5 MR. WALSH: Yes, Your Honor.

6 MR. HIGGINBOTHAM: Yes, sir.

7 THE COURT: All right. Ranger, you
8 are excused. Thank you.

9
10 (The witness, Phil Ryan, was excused.)

11
12 MR. HIGGINBOTHAM: May we approach the
13 bench, Your Honor?

14 THE COURT: Yes, you may.

15
16 (Whereupon a discussion was
17 had at the bench, between
18 Court and counsel, out of the
19 hearing of the jury, after
20 which proceedings continued as
21 follows:)

22
23 MR. HIGGINBOTHAM: Your Honor, the
24 Defense would rest.

25 MR. WALSH: The State closes.

1 MR. HIGGINBOTHAM: Your Honor, the
2 Defense would close. We would request a little
3 time.

4 THE COURT: All right. Ladies and
5 gentlemen of the jury, that concludes the
6 Defense's evidence. The State chose to put no
7 rebuttal evidence on. The Defense, of course,
8 had no rebuttal evidence to follow, so that both
9 sides have closed, and that concludes the
10 evidentiary stage of this portion of the trial.
11 And the next thing we have to do is the reading
12 of the charge and the final arguments on
13 punishment.

14 Now, it's going to take us about an
15 hour to get the charge in order and ready to
16 present to the jury, so we are going to stand
17 recessed until about 5:00 o'clock. And then at
18 that point in time we will proceed on with final
19 arguments. Final arguments will not be as long
20 as they were in the guilt-innocence stage.
21 Neither side has requested that much time. So
22 we're going to try to get started on reading the
23 charge somewhere around 5:00 o'clock, so we are
24 going to allow you all to take a break at this
25 point in time until 5:00 o'clock.

1 Remember your instructions, and you
2 are excused.

3
4 (Whereupon the jury was
5 retired from the courtroom
6 and a recess was taken,
7 after which proceedings
8 continued as follows,
9 out of the presence of
10 the jury:)

11
12 THE COURT: All right. Have both
13 sides had an opportunity --
14 I'm sorry. Bring in the Defendant.

15
16 (Whereupon the Defendant was
17 brought into the courtroom,
18 and the following
19 proceedings were had:)

20
21 THE COURT: All right. Have both
22 sides had an opportunity to examine the charge?

23 MR. WALSH: Yes, sir, the State has.
24 The State has no objection to the charge.

25 MR. HIGGINBOTHAM: Yes, Your Honor, we

1 have examined it. We have submitted to the
2 Court a requested instruction concerning the
3 deliberate nature of the act and the state of
4 the Defendant's mind at the time. We think the
5 Court has on file that requested charge.

6 THE COURT: Yes, sir.

7 MR. HIGGINBOTHAM: In addition, we
8 have requested that the charge on punishment
9 contain answer to the third question concerning
10 provocation, as provided for in the Code of
11 Criminal Procedure concerning capital murder
12 cases.

13 THE COURT: Yes, sir. -

14 MR. HIGGINBOTHAM: The Defendant would
15 argue that the third charge be allowed because
16 the evidence herein shows that there was an
17 altercation that started in the car, that the
18 victim herein got in a fight with the Defendant,
19 that she grabbed the steering wheel and, as I
20 believe the evidence shows, on several of the
21 confessions, at least two, stated that the
22 car -- he nearly wrecked the car, and that the
23 killing occurred thereafter.

24 We further argue that this would be
25 provoking and that this charge should be

1 included in the general charge on punishment.

2 THE COURT: Do you wish to speak to
3 it, Mr. Walsh?

4 MR. WALSH: Pertaining to that last
5 issue, Your Honor, the evidence shows that the
6 Defendant said he already had made his mind up
7 that he was going to kill this girl. And if
8 that charge is required in this case, then every
9 murder case we had where a victim resisted or
10 put up some sort of fight, you would have to
11 give that. I don't think that's what the law
12 contemplates on that special issue.

13 THE COURT: Special Issue Instruction
14 Number 11 or a request for Instruction Number 11
15 is denied.

16 All right. Number 10, do you want to
17 argue that, Mr. HIGGINBOTHAM?

18 MR. HIGGINBOTHAM: The argument on
19 that would be brief, Your Honor, that there is
20 evidence in the case concerning the condition of
21 the mind of the accused at the time of the crime.
22 That has been presented in this case, and we
23 believe that that condition of the mind goes
24 towards determining the issue of the conduct of
25 the Defendant in causing the death of the

1 deceased, as it pertains to the deliberateness
2 of the conduct.

3 We would ask for the special
4 instruction on punishment which we have filed as
5 Instruction Number 10 and ask that that be
6 included in the charge on punishment which will
7 be submitted to the jury.

8 THE COURT: Defendant's Requested
9 Jury Instruction Number 10 is denied; it will
10 not be included.

11 Any further objections to the charge?

12 MR. HIGGINBOTHAM: Yes, Your Honor.

13 If I may --

14 THE COURT: All right.

15 MR. HIGGINBOTHAM: -- I would like to
16 read the following into the record. May we read
17 into the record our objections to the general
18 charge based upon the denial of our two
19 requested instructions?

20 THE COURT: Yes, sir.

21 MR. HIGGINBOTHAM: Does the
22 prosecution have any objections?

23 MR. WALSH: No objections.

24 MR. HIGGINBOTHAM: This is Cause
25 Number 13-890-B, the State of Texas versus Henry

1 Lee Lucas, in the District Court, 119th Judicial
2 District, Tom Green County, Texas.

3 Now comes Henry Lee Lucas, Defendant
4 in the above-entitled and numbered cause, after
5 the State and the Defendant have rested and
6 closed on punishment and before the Charge of
7 the Court is read to the jury, and in the
8 presence of the Court and State's counsel,
9 present these, his objections to the Charge of
10 the Court upon punishment herein, by dictating
11 the same into the record to the Court Reporter
12 for subsequent transcription and endorsement by
13 the Court, with its rulings and official
14 signature and filing with the Clerk of the
15 Court.

16 We would object to the failure to
17 include in the charge on punishment to be read
18 to the jury submission of Issue Number 3
19 concerning provocation for the causes and
20 reasons stated in the record heretofore.

21 We would further object that the
22 Charge of the Court fails to charge all the law
23 applicable to and required by the facts and
24 circumstances in evidence, for the reasons
25 stated in that the charge does not take into

1 account the accused's condition of mind at the
2 time of the offense to be considered by the jury
3 in determining the issues, "whether the conduct
4 of the Defendant that caused the death of the
5 deceased was committed deliberately and with
6 reasonable expectation that the death of the
7 deceased would result;" and further that it does
8 not take into account the evidence that there
9 was an altercation or a fight shortly before the
10 killing of the decedent. The charge, therefore,
11 fails to instruct the jury that such evidence
12 can be considered by the jury in assessing
13 punishment.

14 And the foregoing objections to the
15 Court's charge, having been presented to the
16 Court and to counsel for the State of Texas by
17 the Defendant by dictation of these objections
18 to the Court Reporter, in the presence of the
19 Court and the State's counsel before the Court's
20 charge is read to the jury, have been and are
21 overruled, to which ruling of the Court the
22 Defendant excepts prior to the reading of these
23 charges to the jury.

24 We would ask that this Court to be
25 transcribed -- these objections be transcribed

1 and made a part of the record.

2 THE COURT: Granted, he will
3 transcribe them. The objections are overruled.

4 Would you approach the bench, please.

5
6 (Whereupon a discussion was
7 had at the bench, between
8 Court and counsel, out of the
9 hearing of the Reporter, after
10 which proceedings continued as
11 follows:)

12
13 THE COURT: All right. I'm going to
14 draw in on page 4 of the charge, after the
15 second question and the answer blank, in pen a
16 blank and saying "Judge presiding." Any
17 objections by the State?

18 MR. WALSH: No, sir.

19 THE COURT: Any objections by the
20 Defense?

21 MR. HIGGINBOTHAM: None, Your Honor.

22 THE COURT: All right. I'm signing
23 the charge and ordering it filed.

24 I have filed the charge. Is there any
25 objection to the charge as filed?

1 MR. WALSH: No, sir.

2 MR. HIGGINBOTHAM: The Defendant
3 renews the same objection.

4 THE COURT: Thank you. The objection
5 is overruled as renewed.

6 Are you ready to bring in the jury for
7 the reading of the charge?

8 MR. HIGGINBOTHAM: Your Honor, we
9 might ought to talk about the time on the
10 arguments.

11 THE COURT: Okay. Mr. Walsh, would
12 you approach the bench.

13
14 (Whereupon a discussion was
15 had at the bench, between
16 Court and counsel, out of the
17 hearing of the Reporter, after
18 which proceedings continued as
19 follows:)

20
21 THE COURT: Bring in the jury, please.

22
23 (The jury was returned to the
24 courtroom, and the following
25 proceedings were had:)

1
2 THE COURT: Ladies and gentlemen, I'm
3 sorry we were delayed. We had some other things
4 we had to work on.

5 We are now in the stage in the
6 punishment stage of this trial where we have the
7 reading of the charge and the final arguments by
8 both sides. Once again, the State has the
9 opportunity to open and close. Each side is
10 going to be assigned 45 minutes to argue at this
11 stage of the trial, and they have chosen how
12 they will divide up their arguments.

13 All right. At this time I am going to
14 read to you the charge on punishment.

15 "Number 13-890-B, the State of Texas
16 versus Henry Lee Lucas, in the District Court of
17 Tom Green County, Texas, the 119th Judicial
18 District, Charge on Punishment:

19 "Ladies and gentlemen of the jury, you
20 have found the Defendant guilty of the
21 offense of capital murder. You are instructed
22 that a sentence of life or death is mandatory on
23 conviction for capital murder. In order for the
24 Court to assess the proper punishment, the Court
25 shall submit to you the following issues: (1)

1 whether the conduct of the Defendant that caused
2 the death of the deceased was committed
3 deliberately and with the reasonable expectation
4 that the death of the deceased would result; and
5 (2) whether there is a probability that the
6 Defendant would commit criminal acts of violence
7 that would constitute a continuing threat to
8 society."

9 Paragraph 1: "The State must prove
10 each issue submitted beyond a reasonable doubt,
11 and the jury shall return a special verdict of
12 'Yes' or 'No' on each issue submitted. You may
13 not answer any issue 'Yes' unless you agree
14 unanimously. You may not answer any issue 'No'
15 unless 10 or more jurors agree."

16 Paragraph 2: "You are further
17 instructed that in determining each of these
18 issues, you may take into consideration all of
19 the evidence submitted to you in the full trial
20 of this case, that is, all the evidence
21 submitted to you in the first part of this case
22 where you were called upon to determine the
23 guilt or innocence of the Defendant, and all of
24 the evidence submitted before you in the second
25 part of the trial wherein you are called upon to

1 determine the answers to the issues hereby
2 submitted to you."

3 Paragraph 3: "You are the exclusive
4 judges of the facts proved, of the credibility
5 of the witnesses, and of the weight to be given
6 to the testimony, but you are bound to receive
7 the law from the Court, which is herein given
8 you, and be governed thereby."

9 Paragraph 4: "In arriving at the
10 answers to the issues submitted to you, it will
11 not be proper for you to fix the same by lot,
12 chance, or any other method than a full, fair
13 and free exercise of the opinion of the
14 individual juror."

15 5: "You are not bound to consider" --
16 Excuse me. I can't -- my eyes aren't
17 working.

18 "You are not to consider or to discuss
19 any possible action of the Board of Pardons and
20 Paroles or the governor or how long this
21 Defendant will be required to serve on a
22 sentence of life in prison."

23 6: "You are instructed that the
24 Defendant may testify in his own behalf if he
25 elects to do so. But if he chooses not to do

1 so, that fact cannot be taken as a circumstance
2 against him nor prejudice him in any way. The
3 Defendant has elected not to testify in this
4 punishment stage of trial, and you are
5 instructed that you cannot and must not refer or
6 allude to the fact throughout your deliberations
7 or take it into consideration for any purpose
8 whatsoever as a circumstance against the
9 Defendant."

10 7: "Now bearing in mind the foregoing
11 instructions, you will answer the following
12 issues: '(1) Do you find from the evidence
13 beyond a reasonable doubt that the conduct of
14 the Defendant that caused the death of the
15 deceased was committed deliberately and with a
16 reasonable expectation that the death of the
17 deceased would result?' If you unanimously find
18 from the evidence beyond a reasonable doubt that
19 the conduct of the Defendant that caused the
20 death of the deceased was committed deliberately
21 and with a reasonable expectation that the death
22 of the deceased would result, you will answer
23 this question 'Yes.' However, if 10 or more of
24 you agree that a reasonable doubt exists as to
25 whether the conduct of the Defendant that caused

1 the death of the deceased was committed
2 deliberately and with a reasonable expectation
3 that the death of the deceased would result,
4 then you will answer this question 'No.'

5 "Answer:" -- blank.

6 "If you have answered the above issue
7 'No' and the vote is less than unanimous and, in
8 that event only, have the jurors voting 'No,'
9 sign below." And below are 10 blanks for your
10 signatures.

11 "(2) Do you find from the evidence
12 beyond a reasonable doubt that there is a
13 probability that the Defendant would commit
14 criminal acts of violence that would constitute
15 a continuing threat to society?' If you
16 unanimously find from the evidence beyond a
17 reasonable doubt that there is a probability
18 that the Defendant would commit criminal acts of
19 violence that would constitute a continuing
20 threat to society, you will answer this question
21 'Yes.' However, if 10 or more of you agree that
22 a reasonable doubt exists as to whether there is
23 a probability that the Defendant would
24 commit criminal acts of violence that would
25 constitute a continuing threat to society, then