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A P P E A R A N C E S

For the State: CAROL PENNOCK  
Assistant District Attorney  
City-County Building  
El Paso, TX 79901

For the Defendant: ROD PONTON  
Attorney at Law  
Suite 505  
Caples Building  
El Paso, TX 79901

I N D E X

WITNESS: PAGE

JOSEPH REITZ HOWLAND

Direct Examination by Mr. Ponton

E X H I B I T

EXHIBIT: PAGE

D-34 Report



1 Q. And your duties are in their firearms section?

2 A. Yes.

3 Q. Did you ever have an occasion, sir, to do any  
4 investigation into a person named Henry Lee Lucas or any  
5 offenses committed by him?

6 A. Yes, I did. Not an investigation into Henry Lucas,  
7 but in a case involving Henry Lucas.

8 Q. What was that case, sir?

9 A. I was called by the state's attorney down in  
10 Louisiana in regard to a homicide that they were  
11 investigating and he inquired as to the characteristics of a  
12 certain weapon that was in possession of a Lieutenant Mobley  
13 in Elkton, Maryland.

14 Q. Is that Lieutenant Richard Mobley who testified  
15 here in this court this morning?

16 A. Yes, sir, it is.

17 Q. And what was the inquiry concerning?

18 A. The inquiry that the state's attorney had was could  
19 the weapon that was in possession of Lieutenant Mobley have  
20 been used in the homicide that occurred in Louisiana,  
21 specifically St. Tammany Parish Covington, Louisiana.

22 Q. Do you know who the detective was from Louisiana  
23 who contacted Richard Mobley?

24 A. No, I don't, no, sir.

25 Q. And do you know what the homicide was in Louisiana

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1 that he was inquiring about?

2 A. I know that it was a police officer that was killed,  
3 but I don't know the police officer's name.

4 Q. And do you know the date of that crime?

5 A. No, I don't.

6 Q. Why were they contacting Lieutenant Mobley  
7 regarding this crime which had occurred in St. Tammany  
8 Parish, Louisiana?

9 A. The information that I received from Ronnie Jenkins,  
10 who was the district attorney down in that parish, he said  
11 that Lieutenant Mobley in the Cecil County Sheriff's office  
12 had a gun that belonged to a gentleman by the name of Henry --

13 Q. Henry Lee Lucas?

14 A. Henry Lee Lucas. I'm sorry -- Henry Lee Lucas and  
15 that he wanted to find out if that gun was capable of firing  
16 the projectile that they had from the body. When I  
17 questioned him as to what type projectile was it, he had  
18 advised that I contact someone down in the Jefferson Parish  
19 crime lab, which I did.

20 Q. And do you know who you contacted in the Jefferson  
21 Parish crime lab?

22 A. Yes, sir. I spoke with Mr. Ron Singer, who gave me  
23 the information concerning the class characteristics of the  
24 bullet that they had removed from the police officer.

25 Q. And what were those characteristics of the bullet

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1 that was removed from the police officer who was killed in  
2 St. Tammany Parish, Louisiana?

3 A. Ron Singer told me that the bullet was a .32  
4 automatic. It had five lands and grooves, right twist.

5 Q. Now, before we discuss the significance of that,  
6 let me ask you a little bit about your training and your  
7 background into ballistics and into firearms. What is that  
8 briefly, Officer?

9 A. I started in 1965 with on-the-job training. I  
10 worked with people that had been supervisors in the  
11 Baltimore city police department for 20 years. I trained  
12 also with the gentleman who is with the H. P. White  
13 Ballistics lab in Bel Air. I attended the Smith and Wesson  
14 armers course in Springfield, Massachusetts. I trained at  
15 the FBI academy.

16 I belong to professional societies, Association of  
17 Firearm and Tool-mark Examiners. I'm a distinguished member  
18 of that. Belong to the International Association for  
19 Identification, past president of the Chesapeake Bay  
20 Division. I have attended approximately 14 annual seminars  
21 of the Firearm and Tool-mark Examiners organization. I have  
22 taught college courses on ballistics, firearm identification  
23 in Maryland. I qualified in the courts of Baltimore city  
24 and Baltimore County and federal courts in Maryland.

25 Q. Are you generally considered to be an expert in the

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1 area of ballistics, firearms, firearms identification and  
2 tool-mark identification in Maryland?

3 A. Yes, sir, I am.

4 Q. Now, the man from Jefferson Parish laboratory  
5 described this bullet to you, did he not?

6 A. Yes, he did.

7 Q. Now, please describe for me the pistol that  
8 Lieutenant Mobley had, how he obtained it and why he  
9 believed it was a pistol once owned by Henry Lee Lucas.

10 MS. PENNOCK: I'm going to object to that, because  
11 Mobley was on the stand this morning to ask those questions  
12 and none of those questions were asked. This is not as if  
13 the state is requiring you to bring in a witness at great  
14 expense that you didn't bring in. We are going to object on  
15 hearsay grounds and request that you go no further with this  
16 witness on the hearsay as to what Mobley said or how he had --  
17 and just -- but I will not object to this witness going on  
18 and testifying in regards of his analysis.

19 MR. PONTON: If I might explain to you, Ms. Pennock,  
20 that I understand that Lieutenant Mobley was on the stand  
21 this morning. The time constraints I was under this morning  
22 led to my not having time to ask him these questions. I  
23 understand that this gentleman is here in deposition and  
24 that should his testimony concerning whatever knowledge he  
25 might have about Lieutenant Mobley's involvement with the

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1 gun, should that testimony ever be submitted, for instance,  
2 to a jury through this deposition or for any other purpose,  
3 that at that time I believe your objection would be  
4 sustained probably by the Court on that basis.

5 But for purposes of this deposition to explain what  
6 he did, I would like to go ahead and ask him to explain that  
7 for the purposes of this deposition, not for purposes of  
8 proving up the pistol or what Lieutenant Mobley did with the  
9 pistol, for instance.

10 MS. PENNOCK: For purposes of the record, Mr.  
11 Ponton, you are not suggesting that either this Court nor  
12 the district attorney's office placed time restraints on you  
13 that prevented you from fairly representing your client?

14 MR. PONTON: No, Ms. Pennock. But the fact remains  
15 that we ran out of time this morning and Lieutenant Mobley  
16 had a plane to catch and knowing that, I allowed him to  
17 leave without asking him the pistol questions. So for the  
18 benefit of trying to still fairly present my case and fairly  
19 defend my client, I would like the opportunity to ask this  
20 man these questions which he has knowledge of, not to prove  
21 out of his mouth whatever Lieutenant Mobley did say.

22 MS. PENNOCK: I'll just request that the witness  
23 very carefully distinguish between information that is  
24 hearsay that you received from some other source and what  
25 you personally have knowledge of, please.

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1 Q. (BY MR. PONTON) So let me ask you again, sir,  
2 please detail for me what you understand to be the manner in  
3 which Lieutenant Mobley received the pistol and his  
4 information regarding the pistol.

5 A. Okay. Before I can get back to my conversation  
6 with Ronnie Jenkins --

7 Q. Please, please let's do it in whatever  
8 chronological order that you are most comfortable with.

9 A. Upon getting the characteristics of the bullet from  
10 Ron Singer, I informed Ron Jenkins that I could make no  
11 identification until such time as I examined the weapon. He  
12 said he would make arrangements with Lieutenant Mobley to  
13 bring the gun into our laboratory for an examination, upon  
14 which time he did and 7 August '85, I examined a Smith and  
15 Wesson .32 caliber rimfire revolver that was in possession  
16 of Lieutenant Mobley.

17 Identified it as a model one-and-one-half second  
18 issue bearing serial number 110311. Identified it as a  
19 caliber .32 rimfire having a three-and-a-half inch barrel  
20 and nickel-plated. It has a pair of plain finished rosewood  
21 grips on bird's head ground butt. It is a single-action  
22 revolver having a five-shot cylinder which rotates in a  
23 clockwise manner. The bore is rifled with five lands and  
24 grooves, right twist, and the approximate test bullet  
25 measurements are .105 thousandths land impression and 0.86

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1 thousandths groove impressions.

2           The revolver will chamber and fire .32 caliber  
3 rimfire ammunition for which it was intended. It will also  
4 chamber .32 caliber short Colt cartridges but is unable to  
5 fire them as they are centerfire cartridges. This is a  
6 rimfire weapon.

7           As far as the weapon that Lieutenant Mobley had and  
8 where he got it, I knew that it was related to Lucas in some  
9 way, but I had no knowledge of an individual from whom he  
10 got it until today when the chain of custody was turned over  
11 to me along with the weapon.

12         Q.    Okay. Do you have that chain of custody there with  
13 you?

14         A.    Yes, I do.

15               (Defendant's exhibit marked, D-34.)

16         Q.    (BY MR. PONTON) I will mark this -- I'm going to  
17 mark this as an exhibit. I'll give it back to you or a copy  
18 to you.

19               Sir, I'll show you what is marked as Defendant's  
20 Exhibit 34. Can you identify that document?

21         A.    Yes, I can.

22         Q.    And what is that document?

23         A.    That is a chain of custody on the .32 caliber Smith  
24 and Wesson revolver.

25         Q.    Which you have just described?

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1 A. Yes.

2 Q. And it consists of two pages and a card showing the  
3 chain of possession of evidence. Is that correct?

4 A. Yes, sir.

5 Q. And please read the log for chain of custody or  
6 please read the pertinent parts of the first page there in  
7 Defendant's Exhibit 34.

8 A. "Investigating Officer Richard G. Mobley, number  
9 307, case number I0607511 dated 7-6-83."

10 Q. Okay. Let me short circuit this a little bit. Let  
11 me ask you if it says here the log for the chain of custody  
12 is that it was seized by Richard G. Mobley from Kiser on  
13 July 6, 1983, at 1850

14 A. Yes, sir.

15 Q. And that it -- And that that is what the indication  
16 is as to when Richard Mobley received this pistol?

17 A. That's correct.

18 Q. Okay. The pistol at issue that you have just  
19 described is -- Was that pistol received by you from Richard  
20 Mobley?

21 A. Yes, sir.

22 Q. And when did you receive that pistol?

23 A. 7th of August, '85.

24 Q. And what did you do to test the pistol?

25 A. I test fired the weapon in our recovery tank in the

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1 laboratory using the ammunition that the weapon was intended  
2 to fire.

3 Q. And did you recover bullets from your tank?

4 A. Yes, I did.

5 Q. And did you compare those bullets to the bullet  
6 recovered from the body of the police officer in St. Tammany?

7 A. No, sir, I did not. I have never seen the bullet  
8 removed from the body from the police officer, but being a  
9 rimfire weapon, the type of bullet that was removed from the  
10 police officer could not have been fired from this type  
11 weapon.

12 Q. The bullet that was recovered from the body of the  
13 police officer was of what type?

14 A. It was a .32 auto ACP.

15 Q. What kind of jacketed --

16 A. A jacketed bullet.

17 Q. And it had five lands and grooves, left-hand twist?

18 A. Right twist.

19 Q. Right twist?

20 A. Yes.

21 Q. Can such a bullet be fired from the .32 rimfire you  
22 have just described?

23 A. No, sir, it cannot be.

24 Q. Was an attempt made to see if such could be done?

25 A. Yes, sir. I attempted to take a .32 caliber

1 automatic bullet out of a cartridge case, reseal it into a .32  
2 rimfire cartridge, and the weapon cylinder would not accept  
3 the cartridge in that manner. The diameter is too large.

4 Q. In other words, the cylinder would not even spin  
5 around or would not even seat --

6 A. The cartridge wouldn't even seat in the cylinder.

7 Q. And based upon your knowledge and expertise, the  
8 bullet that was fired from the weapon which you recovered  
9 from your tank in your laboratory, does it have any  
10 similarities at all to the bullet that was described to you  
11 by the Jefferson Parish laboratory man?

12 A. Only that it had five lands and grooves, right  
13 twist. That's the only degree of resemblance between the  
14 two cartridges, the two bullets.

15 Q. Are you familiar or are you aware that Henry Lucas  
16 confessed to killing that police officer in St. Tammany  
17 Parish by using that .32 caliber pistol which you have  
18 described here today?

19 A. Yes.

20 MS. PENNOCK: I'm going to object on the grounds  
21 that whether or not this witness is aware of that has  
22 absolutely nothing to do with him forming his opinion as an  
23 expert in this case and you are just asking him to speculate  
24 based on hearsay.

25 Q. (BY MR. PONTON) Did you ever testify before any

1 proceeding in Louisiana regarding this pistol?

2 A. No, sir, I did not.

3 Q. The pistol is here in your possession, is it not?

4 A. Yes, it is.

5 Q. For purposes of the record, you are now pulling the  
6 pistol out of the envelope and I ask that you please, by  
7 examining the pistol personally here in court, please  
8 describe it for purposes of the record and then tell me if  
9 it's the same pistol listed on your chain of evidence report.

10 A. Yes, it is. It is a .32 caliber Smith and Wesson  
11 revolver bearing serial number 110311.

12 Q. And the pistol now in your hands is the same pistol  
13 that you tested in your laboratory?

14 A. Yes, it is.

15 Q. And the pistol in your hands is the same pistol  
16 that the chain of evidence report reflects was received by  
17 Richard Mobley from Leonard Kiser on July 6th, 1983?

18 A. Yes, it is.

19 Q. That was the extent of your involvement in the  
20 investigation of Henry Lucas, was it not?

21 A. Yes, sir, it was.

22 MR. PONTON: At this time for purposes of this  
23 record, I would move for the introduction of Defendant's  
24 Exhibit 34, the chain of custody records, and I would not  
25 move at this time for the admission of this pistol into

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1 evidence but I would ask you, Officer, if such became an  
2 issue you would be willing to return with that pistol in  
3 your possession or would you not?

4 A. Yes, sir.

5 MS. PENNOCK: For purposes of the record, the state  
6 will object to the introduction of Defense Exhibit 34 on the  
7 grounds that the proper complete predicate has not been laid.

8 Q. (BY MR. PONTON) Defense Exhibit 34 here in front  
9 of me, sir, does this to be appear an original chain of  
10 evidence report from the Cecil County Sheriff's Department?

11 A. Yes, it does.

12 Q. And the log for the chain of custody on page 2 of  
13 of Defense Exhibit 34 indicates that it was seized by whom  
14 and the date and the time?

15 A. By myself on today's date, 10-3-86, at 11:58 a.m.  
16 from Lieutenant Mobley.

17 Q. And this reflects that this document is the same  
18 document that has stayed with this pistol during its entire  
19 keeping within the custody of Richard Mobley until it was  
20 turned over to you today. Is that correct?

21 A. Yes, sir.

22 Q. And as far as you are able to tell, there is no  
23 additions, alterations or subtractions from this original  
24 document of the Cecil County Sheriff's Department?

25 A. None that I know of.

1 MR. PONTON: At this time defense would move for --

2 MS. PENNOCK: I'm going to object. Would you like  
3 for me to take this witness on voir dire as to this point?

4 MR. PONTON: Please, if you desire.

5

6 VOIR DIRE EXAMINATION

7 BY MS. PENNOCK:

8 Q. Sir, you are not employed by the Cecil County  
9 Sheriff's Department. Is that correct?

10 A. That's correct.

11 Q. And you are not the custodian of their records. Is  
12 that correct?

13 A. That's correct.

14 Q. And you can offer no testimony in regards to their  
15 procedures for generating or keeping records, can you?

16 A. No.

17 Q. And you never saw this exhibit, which is marked as  
18 Defendant's Exhibit 34, before today. Is that correct?

19 A. That's correct.

20 Q. And you do not have personal knowledge of any of  
21 the events recorded in this document other than your receipt  
22 today from Officer Mobley of the weapon. Is that correct?

23 A. That's correct.

24 MS. PENNOCK: I'll again object to the admission of  
25 Defense Exhibit 34 on the basis of an improper predicate.

1 MR. PONTON: Okay. I'm sure that's the way we will  
2 leave the record at this time.

3 MS. PENNOCK: Yes.

4 MR. PONTON: This will be tendered until such time  
5 as there is ever a ruling on that issue.

6 MR. PONTON: That's all I have of you, Officer.  
7 Pass the witness.

8

9

EXAMINATION

10 BY MS. PENNOCK:

11 Q. Sir, without questioning your expertise in the area  
12 or your testing of this weapon, just for purposes of the  
13 record I need to clarify, basically, your final opinion that  
14 a particular bullet was never fired from this weapon is  
15 based on a telephone report of that bullet. Is that correct?

16 A. No.

17 Q. Did you examine the bullet?

18 A. No, I did not. I -- The information that I  
19 received concerning the caliber of the weapon and examining  
20 the gun through my expertise, I was able to tell that that  
21 bullet could not have been fired from this gun, without  
22 having to use a microscope.

23 Q. But my question is: That's your opinion, assuming  
24 the information that you got on the telephone was correct?

25 A. Yes, that is correct.

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1 Q. That you, in fact, never had an opportunity to  
2 observe a bullet that was allegedly removed from the body of  
3 a police officer?

4 A. No, I did not.

5 Q. And that your comparison and your opinion is  
6 dependent upon receiving correct information from another  
7 individual?

8 A. Yes.

9 MS. PEMNOCK: No further questions.

10 MR. PONTON: That's all we have. Thank you,  
11 Officer.

12 (Deposition concluded at 5:15 p.m.)

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CERTIFICATE

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THE STATE OF TEXAS )  
COUNTY OF EL PASO )

I, Meryl Wersinger, Texas Certified Shorthand Reporter and Notary Public in and for El Paso County, Texas, do hereby certify that the facts as stated by me in the caption hereto are true; that the above and foregoing answers in response to the interrogatories as indicated were made before me by the witness hereinbefore named, after said witness had been first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, and the same were thereafter reduced to typewriting by me or under my direction.

I further certify that the above and foregoing deposition as set forth in typewriting is a full, true and correct transcript of the proceedings had at the time of taking said deposition.

Given under my hand and seal of office on this the \_\_\_\_\_ day of \_\_\_\_\_, 1986.

\_\_\_\_\_  
MERYL WERSINGER  
CSR #2177  
220 City-County Building  
El Paso County, Texas  
(915) 546-2190

My Commission Expires: \_\_\_\_\_ December 31, 1986

Original @ \$ \_\_\_\_\_ to be paid by \_\_\_\_\_