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(Mr. Jewkes and Mr. Moody left the courtroom.)

THE COURT: Go ahead, Mr. Ponton.

STEVE SIMMONS,

having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PONTON:

Q Mr. Simmons, I want to direct your attention back to -- I don't know exactly when this conversation took place. My copy is not dated, and the transcript is not dated, but I'm referring to the time that you and Bill Moody and Richard Jewkes set down with Henry Lucas and Gary Richardson and Jay Armes for Henry Lucas to discuss the case with you.

Do you recall when that was?

A The exact date, it will be when, of course, Mr. Richardson early in the case, when he was down here on some hearings in behalf of the defendant.

Q Can you recall the month or the year?

A I don't recall. I'd have to look at the Court papers.

Q You do recall the conversation, the time that you spent with Mr. Lucas and Mr. Richardson?

1 A I was present, yeah.

2 Q And were you present when Mr. Richardson engaged in
3 any discussions prior to that conversation regarding why he
4 wanted Henry Lucas to sit down and talk with you in the
5 D.A.'s office?

6 A I don't know whether I was present during all those
7 discussions, but I was present during part of the discussions.

8 Q And during part of those discussions, did Mr.
9 Richardson discuss the fact that he wanted his client to sit
10 down and tell the truth to the D.A.'s office because Mr.
11 Richardson felt his client was innocent of the crime he was
12 accused of committing?

13 A That was his approach was to have the defendant
14 talk to us, that he said he believed the defendant.

15 Q Okay. And was his approach that he believed the
16 defendant, and he thought that your office would believe the
17 defendant after you sat down and talked to Mr. Lucas?

18 A Well, that was -- his tenor was that he believed
19 him, and he would leave it up to us as to what we believed.
20 But that was his approach, yeah.

21 Q And during those discussions, was it understood
22 that he was providing Henry Lucas to your office not only
23 to talk about the facts of the case with your office, but if
24 you so desired to follow up that investigation by giving
25 Mr. Lucas a polygraph examination to test the veracity of

1 what Mr. Lucas was telling you?

2 A. I don't know what Mr. Richardson's theory on
3 polygraphs is. Mine has been all through the case that we
4 don't try cases on polygraph, and that was not a part of it
5 at all as far as any agreement.

6 Q. Did -- were you present when there were any
7 discussions between your office and Mr. Richardson regarding
8 Mr. Lucas taking the polygraph, a followup to his conversations
9 with your office?

10 A. I don't recall polygraph discussion with Mr.
11 Richardson.

12 Q. Or Mr. Armes?

13 A. Or Mr. Armes.

14 Q. Do you recall any discussions that your office
15 would consider the dismissal of the charges against Mr. Lucas
16 if Mr. Lucas told the truth and what happened could be
17 confirmed?

18 A. My understanding was that Mr. Richardson wanted
19 to put his client on, and he said he believed the client
20 and that all he wanted us to do is be fair and listen to him
21 and make our own decision.

22 What his concern was that if the State felt that
23 he was telling the truth, and would we do the right thing.
24 And we would listen to any defendant that wants to give us
25 evidence, and that was my understanding of it.

1 Q Did you have the understanding that if what Mr.
2 Lucas said was true and your office could confirm it as
3 true, that your office would entertain the dismissal of the
4 charges against Mr. Lucas?

5 A My understanding was that he was putting his client
6 on, that he was going to testify to the specific area he
7 was supposed to testify, and then we had the opportunity to
8 believe or not believe him and check or not to check, and
9 that's exactly my understanding. And it would be up to us.

10 Q Did your office check on what Mr. Lucas said in his
11 interview with you?

12 A Yes.

13 Q Did you check on the followup on the fact that Mr.
14 Lucas was telling you he was in Stoneburg in May of '83?

15 A Well, I don't think as far as the transcript, I
16 haven't read the whole transcripts. But I don't recall what
17 happened in the transcript or where he was in that particular
18 he was describing mostly his trips through New Mexico.

19 But it will be recorded, whatever he told me.

20 Q At the end of that conversation, that interview
21 between you and Mr. Lucas, did you form any opinion as to
22 Mr. Lucas's truthfulness during that interview?

23 A Briefly, I thought it was the biggest bunch of
24 lies I'd ever heard.

25 Q And --

1 A. But we checked it out anyway.

2 Q. Did you ever make any arrangements to give Mr.
3 Lucas a polygraph after he gave you that statement?

4 A. I never intended on giving him one and never would.

5 Q. Do you recall Gary Richardson's understanding at
6 the time that he provided Mr. Lucas to sit down with you and
7 Mr. Moody and Mr. Jewkes, that if what Mr. Lucas told you was
8 true, your office would consider dismissing the case?

9 Do you recall any understanding like that, any
10 conversations like that in your presence between either you and
11 Gary Richardson or Bill Moody and Gary Richardson or anything
12 of that nature?

13 A. If we felt that the defendant was telling the truth
14 and we were convinced that was the truth, and we didn't
15 in our case, that he was innocent, we would certainly dismiss
16 the case. That would be with any defendant.

17 Q. Is that your understanding as to what would happen
18 with this defendant?

19 A. If we felt that he was telling the truth, and he
20 wasn't the one that did it, we would dismiss it. Him or
21 anybody else.

22 Q. One other question, Mr. Simmons. There has become
23 an issue in this case regarding certain taped transcriptions
24 of conversations Mr. Lucas had with his attorneys in the
25 other capital murder trial, Don Higginbotham and Parker

1 McCullough, and I understand those tapes of those
2 conversations between Mr. Lucas and his attorneys came into
3 the possession of your office and were transcribed.

4 I was wondering if you had authorized the
5 transcription of those tapes.

6 A. Well, if they were transcribed, it's quite possible
7 I did. I don't know.

8 Q. Do you recall requesting that those tapes be
9 transcribed?

10 A. It's quite possible. I don't recall specifically,
11 but if somebody asked me, I probably would have transcribed
12 them because they were very important in the case.

13 Q. And the tapes I'm referring to are the conversations
14 the attorney-client conversations between Mr. Lucas and
15 Parker McCullough and Don Higginbotham which were taped.

16 MS. PENNOCK: Your Honor, I'm going to object, and
17 the reason I'm going to object to any further questions
18 regarding these Parker McCullough transcripts is that it's
19 not relevant in any way, shape, or form to their motion to
20 suppress the confession.

21 THE COURT: Well, I sustain that objection. I
22 don't know what we're even talking about now, Mr. Ponton.
23 We really are out in the field.

24 MR. PONTON: I have no further questions of this
25 witness, Your Honor.

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THE COURT: Thank you.

CROSS-EXAMINATION

BY MS. PENNOCK:

Q Mr. Simmons, did you or anyone in your presence enter into an agreement of immunity with Gary Richardson in regards to Henry Lee Lucas?

A. Absolutely no.

Q Did you authorize anyone on your staff to make such an immunity agreement?

A. No.

Q Isn't it the policy of your office as established by you that when an immunity agreement is entered into by our office, that it is entered to in writing and signed by a district court judge?

A. That's correct.

MS. PENNOCK: Pass the witness.

MR. PONTON: I have no further questions, Your Honor.

THE COURT: May this witness be excused?

MR. PONTON: He may, Your Honor.

THE COURT: Thank you, Mr. Simmons. Call your next witness.

MR. PONTON: Bill Moody.

THE COURT: Mr. Simmons, ask Mr. Moody to come in, please, if he's out there.