

1 MR. PONTON: I call Richard Jewkes at this time,
2 Your Honor.

3
4 RICHARD JEWKES,
5 having been first duly sworn to tell the truth, the whole
6 truth, and nothing but the truth, was examined and testified
7 as follows:

8
9 DIRECT EXAMINATION

10 BY MR. PONTON:

11 Q Mr. Jewkes, I want to direct your attention back
12 to a conversation had between you and Bill Moody and Steve
13 Simmons on the one hand and Henry Lucas and Gary Richardson
14 on the other hand regarding this case. Do you recall that
15 conversation?

16 A Yes, sir. I recall it.

17 Q And have you seen a copy of the motion I filed or
18 Doris Sipes and I filed yesterday regarding this immunity
19 agreement?

20 A No, sir. I have not read the motion. I've had
21 parts of it explained to me by Ms. Pennock.

22 MR. PONTON: May I approach the witness, Your
23 Honor?

24 THE COURT: Yes, sir.

25 Q (By Mr. Ponton) I want to show you my copy of the

1 motion, which is the defendant's motion to dismiss because
2 of the State's withholding of exculpatory evidence. Let's
3 see. I have the wrong motion. It's this one here.

4 The defendant's motion to dismiss this indictment
5 due to a grant of immunity, and I'd ask you to look at
6 Exhibit B of that, and does that appear to be a transcription
7 of the conversation had between you and your office and Henry
8 Lucas and his lawyer?

9 A. May I have a brief moment?

10 Q. Sure.

11 MS. PENNOCK: Your Honor, while the witness is
12 reviewing that document, may I just give a copy of that to
13 Mr. Moody?

14 THE COURT: Certainly.

15 MS. PENNOCK: So that he will have an opportunity
16 to review before he comes out.

17 THE WITNESS: Your Honor, may I go to counsel table
18 and get my glasses?

19 THE COURT: Sure, whatever you want to do.

20 THE WITNESS: I'm prepared to resume. Exhibit B
21 does appear to be a transcript of a recorded conversation with
22 Henry Lucas.

23 Q. (By Mr. Ponton) And present at that conversation
24 were you, Bill Moody, Steve Simmons, and Joe Avalos from the
25 district attorney's office; is that correct?

1 A. Representing prosecution.

2 Q Representing prosecution, and for the defense was
3 Henry Lucas, Gary Richardson, and Jay Armes.

4 A. Yes, sir, and one other person. Mr. Armes had one
5 of his employees, a uniformed employee with him.

6 Q Okay. Who was that?

7 A. Well, he was introduced as a body guard. I believe
8 his name is either Larry Johnson or Larry Jones. He never
9 said anything.

10 Q Now, were you present during any conversations
11 had with Gary Richardson prior to that interview there?

12 A. Yes, sir.

13 Q And during those conversations with Gary Richardson,
14 did Gary Richardson indicate an interest to your office of
15 providing his client to testify or to have an interview to
16 tell you the truth about what had happened regarding Henry
17 Lucas and the Apodaca murder?

18 A. In a manner of speaking. Mr. Armes indicated that
19 he had talked to Henry Lucas in his jail cell, possibly a
20 few hours prior to coming to see Mr. Moody and myself, said
21 that Henry Lucas would like to tell us his side of the story.
22 Would we be willing to listen?

23 And Mr. Moody said, yes, of course, that the
24 prosecution can never pass up a chance to listen to any
25 defendant anytime he wants to talk, and so that was done.

1 Q Do you recall conversations between your office
2 and Gary Richardson where Gary Richardson was given the
3 impression that if Henry Lucas told the truth, and that
4 truth were confirmed by a followup investigation by your
5 office, and if that truth were confirmed by Mr. Lucas passing
6 a polygraph examination, then your office would dismiss the
7 indictment against Mr. Lucas?

8 A Mr. Ponton, I can't answer that question. I have
9 to answer it in a qualified manner, if I may be allowed to
10 do so.

11 Q Please.

12 A Mr. Richardson indicated to Bill Moody that, of
13 course, once again, that Henry Lucas wanted to tell his side
14 of the story and asked Mr. Moody if he would be willing to
15 allow Henry Lucas to take a polygraph test.

16 My best recollection is that Mr. Moody thought
17 about it for a few seconds and told Mr. Richardson that in
18 his opinion the polygraph was not totally reliable and that
19 any decision made by the district attorney's office with
20 regard to the prosecution or nonprosecution of Henry Lucas
21 could not rest on polygraph evidence because of its
22 inherent unreliability.

23 Further, that Mr. Lucas would be allowed to tell
24 us anything he wanted to. It would be an informal discussion.
25 As a matter of fact, he would not even be administered the

1 Miranda warning so that anything he said, by agreement of
2 both sides, could not be used against him in a court of law.

3 That if Mr. Lucas gave us any information that
4 appeared to be verifiable, that we would make every effort
5 to check it out. I do remember Mr. Moody saying one thing.
6 He said, "You know, Mr. Richardson," he said, "in a case of
7 this type, we want to make sure we have the right person, and
8 if Henry Lucas did not commit the murder of Librada Apodaca,
9 we are not going to proceed with the prosecution. However,
10 we have a certain amount of evidence."

11 And this was prior to Gary Richardson ever looking
12 at our file. He said, "What we feel to be an overwhelming
13 quantity of evidence. Therefore, we're going to look very
14 carefully at anything Henry Lucas tells us, and we're going
15 to, you know, take efforts or make efforts to try to check
16 out anything he told us."

17 So if Mr. Richardson got the impression that Bill
18 Moody was going to dismiss the case on the basis of everything
19 that Henry Lucas said, that would be incorrect.

20 Q But what if he were given the impression that the
21 case would be dismissed if what Mr. Lucas said could be
22 verified, and then that Mr. Lucas would pass a polygraph?
23 Would that have been a false impression?

24 A You mean a false impression on the part of Mr.
25 Richardson, what he perceived?

1 Q Yes.

2 A I think it would have to have been a false
3 impression because Bill Moody was always clear with respect
4 to polygraph evidence. Quite frankly, the majority of us in
5 the D.A.'s office don't rely on polygraph evidence as a
6 determining factor.

7 Now, with respect to Henry Lucas telling the truth,
8 if it could be verified, I don't know what Mr. Richardson
9 perceived. I know that when Mr. Lucas talked to us, and this
10 is just my personal opinion, there were some inconsistencies
11 in what he told us or at least what we felt to be inconsisten-
12 cies.

13 And Mr. Moody and Mr. Simmons and I discussed this
14 for quite a period of time after the interview.

15 Q Did you ever investigate those inconsistencies to
16 determine whether or not it was verified whether Mr. Lucas
17 was lying?

18 A Yes, sir. Mr. Avalos and I did.

19 Q And did you confirm that he was lying?

20 A Mr. Ponton, there is one inconsistency that sticks
21 out in my mind, and it has to do -- if you've read the
22 transcript, which I'm sure you have, you'll note that Bill
23 Moody spent a lot of time talking to Henry Lucas about his
24 travels during the latter part of May of 1983.

25 Mr. Lucas recited to us certain places that he'd

1 been. According to -- I'm sorry. I stand correct, not the
2 latter part of May but the early part of June of 1983. Mr.
3 Avalos and I took a map, and we tried to retrace the travels
4 of Henry Lucas based on what he told us and then compared
5 those travels against the mileage that was recorded on the
6 odometer that was taken out of Henry Lucas's automobile in
7 San Jon, New Mexico, and subtracted from that odometer reading
8 the mileage that was recorded on Henry Lucas's safety sticker.

9 If memory serves me correctly, there was a
10 difference of 3100 and I don't know, some odd miles. We
11 compared that 3100 miles against what Mr. Lucas told us, and
12 it didn't jibe.

13 Q The mileage based on what Mr. Lucas told you was
14 what? Under 3100 wasn't it?

15 A Yes, sir.

16 Q And it would have been in excess of 2,000 miles,
17 probably closer to 2500 miles, wouldn't it have?

18 A Mr. Ponton, I'm --

19 Q I'm not trying to pin you down to anything specific.

20 A I'm trying to recall, and I think that we came up
21 with a figure of somewhere between 1,000 to 1200 miles. I
22 have no notes in front of me, so I'm relying on my recollection,
23 so Mr. Avalos and I, if memory serves me correctly, something
24 in the range of 1100 miles that could not be accounted for.

25 Q And based on that, you felt that Lucas wasn't

1 telling you the truth?

2 A. I did. I felt that it was a glaring inconsistency,
3 Mr. Ponton.

4 Q. Can you think other than what you all considered
5 to be unverified mileage taken by Henry Lucas in June of '83,
6 was there anything else that was any glaring inconsistency
7 in what Mr. Lucas said?

8 A. Yes, sir. But I'll have to be honest with you. I
9 have not reviewed that transcript in four or five months. I
10 would have to go through it and possibly skim it to see if
11 there's something that hits me.

12 I remember there was something else that either Mr.
13 Avalos and myself or Mr. Moody and myself checked on, some-
14 thing we looked into.

15 Q. If the mileage that Mr. Lucas told you in this
16 interview could be confirmed to your reasonable satisfaction,
17 and if Mr. Lucas passed a polygraph examination, do you know
18 if your office would then entertain a motion to dismiss this
19 case?

20 A. Mr. Ponton, there's no way I can answer that, and
21 I'll tell you why. This case by no stretch of the imagination
22 can rest on a polygraph examination, nor can it rest on one
23 small segment dealing with mileage.

24 It's as you well know, you should know as well as
25 anyone, this case is complicated. It involves many

1 witnesses. It involves a large amount of evidence.

2 Bill Moody, in my presence, when he talked to Gary
3 Richardson and on occasion where he's talked to you, has
4 always maintained that we want to prosecute the real killer,
5 and that we would do everything we could to look into any
6 fact that may come up, you know, to attempt to verify it.

7 Quite frankly, there have been a number of polygraph
8 tests, examinations conducted in the manner of the
9 investigation, and Henry Lucas, and not all of those
10 examinations were given to Henry Lucas. They were given to
11 other witnesses, and quite frankly, there are conflicts there
12 as opposed to certain things that Henry Lucas has said under
13 polygraph examinations, as opposed to other witnesses who
14 allegedly were with Henry Lucas during certain periods of
15 time.

16 So based on what we know about the polygraph
17 examinations that have been administered in the past by
18 expert witnesses, I don't think there's any way in the
19 world that Steve Simmons, Bill Moody, or any of us on this
20 team would allow the entire case to rest or fall on polygraph
21 examination.

22 Q Have there been other witnesses in this case, this
23 case here in El Paso, other than Henry Lucas, who have been
24 given polygraph tests?

25 MS. PEMOCK: I'm going to object, Your Honor, for

1 two reasons. First of all, it's irrelevant. The content
2 of polygraph examinations is irrelevant to this motion,
3 either the motion to suppress the confessions or this motion
4 in regards to immunity agreement.

5 Now, the only relevancy, the second part of this
6 objection is, it would be relevant to ask did we enter into
7 an agreement based on polygraph examination. Now, that
8 question I did not object to because that's a relevant
9 question, but when he starts asking who's been given
10 polygraphs, when, what were the results, it's greatly and
11 totally irrelevant to anything that we're here on.

12 And also, the results of polygraph examinations,
13 as Mr. Ponton well knows, are inadmissible because they are
14 unreliable.

15 THE COURT: I'll overrule the objection. Mr.
16 Jewkes opened it up. He said that other polygraph tests
17 were given.

18 THE WITNESS: Would you please ask the question?

19 Q. (By Mr. Ponton) Have any other witnesses that have
20 relevant testimony to this case in El Paso other than Henry
21 Lucas been given polygraph examinations to your knowledge?

22 A. Yes and no. No from the standpoint of someone who
23 has direct knowledge of the Librada Apodaca murder. Yes from
24 the standpoint of a witness, two witnesses who have traveled
25 with Henry Lucas.

1 Q What are their names?

2 A Harry and Debra Smith.

3 Q Are they the only ones that you are aware of?

4 A Let me think just a moment. Right now the Smiths
5 are the only two people I can recall.

6 Q Okay. At the time that you and Steve Simmons and
7 Bill Moody were entering into discussions with Gary Richardson
8 regarding Henry Lucas coming to your-alls' office to speak
9 with you, did you have the clear impression that if what Henry
10 Lucas said could be verified, that your office would entertain
11 and probably dismiss the indictment against Henry Lucas?

12 A Mr. Ponton, it was my impression that if it could
13 be proven that Henry Lucas had an alibi that would prove that
14 he was not in El Paso May 27th of 1983, they would certainly
15 entertain a motion to dismiss.

16 Q Based on what he told you at that time?

17 A Sir?

18 Q Based on the conversations that he had with you
19 at that time?

20 A That's correct, but it was always explained to Mr.
21 Richardson we needed conclusive evidence.

22 Q Did your office consider that same posture in light
23 of yesterday's testimony? That's probably not a fair
24 question.

25 THE COURT: Well, don't ask it if it's unfair.

1 MR. PONTON: I don't think it's unfair. I'll ask
2 it.

3 THE COURT: No. That's the problem with this whole
4 case. You can't stick to the subject.

5 MR. PONTON: I have no further questions of this
6 witness, Your Honor.

7

8 CROSS-EXAMINATION

9 BY MS. PENNOCK:

10 Q Mr. Jewkes, isn't it true that our office would
11 entertain a motion to suppress against any defendant who proved
12 his alibi to us?

13 A Absolutely.

14 Q And that is not what an immunity agreement is, is
15 it?

16 A That's correct.

17 Q Did you or anyone in your presence enter into an
18 immunity agreement with regard to Henry Lee Lucas?

19 A No, ma'am.

20 Q Did you or did you ever have the authorization to
21 enter into such an agreement?

22 A I've never had any such authorization in this case.

23 Q Isn't it true that it is the policy of your district
24 attorney's office, the policy being established by Mr. Simmings,
25 that whenever we enter into an immunity agreement, it must