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IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS  
120TH JUDICIAL DISTRICT

THE STATE OF TEXAS )  
vs. ) CAUSE NO. 43314-120  
HENRY LEE LUCAS )

36

PRETRIAL HEARINGS  
VOLUME of  
STATEMENT OF FACTS  
heard on  
OCTOBER 29, 1986

PROPERTY OF ROD PONTON  
ATTORNEY AT LAW  
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EXHIBITS

EXHIBIT DESCRIPTION MARKED IDENTIFIED OFFERED REC'D

S-64	License				
	Plate	5107		5107	
S-65	Inspection				
	Sticker	5107		5108	
S-66	Odometer	5107		5108	
D-84	Inventory	5132		5133	5227 5227
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IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS  
120TH JUDICIAL DISTRICT

THE STATE OF TEXAS            )  
  )  
VS.                                    )            CAUSE NO. 43314-120  
  )  
HENRY LEE LUCAS                )

BE IT REMEMBERED that on the 29th day of  
October, 1986, beginning at 9:30 a.m., came on to be  
heard the continuation of pretrial motions in the  
above styled and numbered cause, before the HONORABLE  
BRUNSON MOORE, Judge Presiding in and for the 120th  
Judicial District Court, and that the same was  
reported by Meryl Wersinger, Certified Shorthand  
Reporter and Notary Public in and for County Court at  
Law Number Four, El Paso County, Texas, and that the  
following proceedings were had as follows, to-wit:

1 THE COURT: Would you raise your right hand,  
2 sir.

3 All right, gentlemen. Mr. Ponton, is this  
4 your witness?

5 MR. MOODY: This is our witness, Your Honor.

6 MR. PONTON: It's their witness, Your Honor.

7 BENITO PEREZ, JR.,

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

11

12 DIRECT EXAMINATION

13 BY MR. MOODY:

14 Q. Would you state your name, please?

15 A. Benito Perez, Jr.

16 Q. Just for purposes of the record, you are the  
17 same Benito Perez who testified previously in this  
18 hearing sometime in the past?

19 A. Yes, sir, that's correct.

20 Q. I would like to talk to you about an  
21 incident that occurred back in July of -- July 10th,  
22 1985. Did you have occasion to go to San Jon, New  
23 Mexico?

24 A. Yes, I did.

25 Q. And what was the purpose of that trip to San

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1 Jon, New Mexico?

2 A. It was to view a vehicle and to obtain  
3 various parts from the vehicle in San Jon, New Mexico.

4 (State's exhibits marked, S-64, S-65 and  
5 S-66.)

6 Q. (BY MR. MOODY) All right. Now, Detective  
7 Perez, I'll show you first what has been marked for  
8 identification purposes and I think you-all have seen  
9 these. This is State's Exhibit 64. It's an auto  
10 license plate. And do you recognize that license  
11 plate?

12 A. Yes, I do.

13 Q. Where did that license plate come from?

14 A. It was on the vehicle. I believe it was a  
15 1972 Pontiac. I believe the color was white over  
16 maroon.

17 Q. All right. This was the vehicle that was --  
18 there was discussion of that was left in San Jon, New  
19 Mexico, by the defendant?

20 A. Yes, that's correct.

21 Q. And you're certain this is the one?

22 A. Yes, sir. My initials on the back of the  
23 license plate.

24 Q. All right. Now, the next exhibit is State's  
25 Exhibit 65, and what is that?

1           A.     It's a portion of the windshield with the  
2 vehicle inspection sticker.  It's a motor vehicle  
3 inspection sticker, 1983, expires in May.  Back --  
4 and a portion of the windshield.  The back bears my  
5 initials.

6           Q.     All right.  And was this item in plain view?

7           A.     Yes, it was.

8           Q.     Attached to the windshield?

9           A.     Yes, sir, that's correct.

10          Q.     And you can -- you could clearly see that  
11 without entering the car?

12          A.     Yes, sir, that's correct.

13          Q.     And you did, in fact, you labeled and  
14 initialed this item.  Is that not correct?

15          A.     Yes, sir, that's correct.

16          Q.     With your initials and the date 7-10-85?

17          A.     Yes, sir, that's correct.

18          Q.     You're certain this is the windshield or a  
19 portion of the windshield that came from the car that  
20 Henry Lucas had left there in San Jon, New Mexico?

21          A.     Yes, sir, I took it off myself.

22          Q.     And then this is State's Exhibit 66.  And  
23 what is this?

24          A.     Portion of a, I guess you would call it, the  
25 odometer and the whole kit itself with -- on the left

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1 side you would have your indicators for your oil  
2 temperature, generator and fuel. On the right side  
3 would be your speedometer or odometer with the  
4 readings on there. This also was obtained from the  
5 same vehicle and I also personally took it from the  
6 vehicle.

7 Q. Was it in plain view from looking from the  
8 outside of the vehicle?

9 A. Yes, sir, that's correct.

10 Q. What is the odometer reading on it?

11 A. It starts out 06668, and it would be point  
12 eight.

13 Q. Okay. And did you mark this one, also?

14 A. Yes, I did.

15 Q. It's marked on the back with your initials  
16 and the date?

17 A. Yes, sir, it's right here.

18 Q. Okay. And you're certain this also came  
19 from that '73 Pontiac?

20 A. Yes, sir, that's correct.

21 Q. All three of these items were clearly in  
22 plain view?

23 A. Yes, sir, that's correct.

24 MR. MOODY: Pass the witness.  
25

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CROSS-EXAMINATION

BY MR. PONTON:

1  
2  
3 Q. Mr. Perez, before you went up to New Mexico  
4 did you run a check on the ownership of that vehicle  
5 based on the VIN number?

6 A. I don't think I knew a VI number at that  
7 time. I don't recall if someone from the district  
8 attorney's office had run the 28, but I don't recall.

9 Q. Do you know if you did that when you arrived  
10 in San Jon?

11 A. No. I didn't run the 28 there, no.

12 Q. Did you ascertain who was the legal owner of  
13 that vehicle before you conducted this search?

14 A. If I recall correctly, it was -- the vehicle  
15 had been left abandoned and a Ms. Suzanne Terry, I  
16 believe, was the owner of this, I guess, junkyard, a  
17 car lot type of situation and I believe she is the  
18 one that stated she was the owner and she was the  
19 owner of the vehicles that were left in the junkyard.  
20 And if I recall correctly, she stated that she owned  
21 that vehicle for whatever reasons but that she was  
22 the owner of vehicle at that time.

23 Q. Did she show you any document to show that  
24 she owned the vehicle?

25 A. I don't recall that, no, sir.

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1 Q. Well, did she or did she not show you any  
2 document showing that she was the legal owner of that  
3 vehicle?

4 A. I don't recall if she took out any papers  
5 saying that she was the owner. I think it's Terry's  
6 Auto Truck Stop or something like that.

7 Q. Did she show you any certificate of title  
8 issued in Texas or New Mexico showing Suzanne Terry  
9 as the owner of that 1973 Pontiac?

10 A. I don't recall, but I don't think so.

11 Q. Did she show you any destroyed certificate  
12 of title showing that ownership had passed to the  
13 junkyard?

14 A. I don't recall that, no, sir.

15 Q. Well, did she show you that? Do you recall?

16 A. I don't think so.

17 Q. Okay. Now, when you went up there, then,  
18 did you do any kind of check to see who actually was  
19 the legal owner or the record owner of that vehicle?  
20 Did you do any of that when you arrived in San Jon?

21 A. No, other than the fact we talked to that  
22 lady and she stated she was the owner of the wrecker  
23 yard and the vehicles there on her property.

24 Q. How much money did you pay that lady for her  
25 allowing you to take those items from that car?

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1           A.    I believe Mr. Joe Avalos from the district  
2 attorney's office gave her \$50 whereby a receipt was  
3 obtained from her. And I observed the transaction  
4 and also when Mr. Avalos received the receipt from  
5 Mrs. Terry, I believe, or Ms. Terry.

6           Q.    Did you obtain a search warrant when you and  
7 Joe Avalos went to New Mexico to obtain those items?

8           A.    No, I did not.

9           Q.    When you went to New Mexico to obtain those  
10 items, were you investigating that car for its  
11 containing possible evidence to be used against Henry  
12 Lee Lucas?

13          A.    Yes. I guess you could say, yes.

14          Q.    Henry Lucas was indicted?

15          A.    I believe so.

16          Q.    And you knew that that car was the car that  
17 Henry Lucas had used in June of 1983?

18          A.    If I recall correctly, you're correct on  
19 that.

20          Q.    When you went to New Mexico, had you had a  
21 chance or an opportunity to review the previous  
22 search warrants issued by Judge J. Bronson Moore from  
23 Tucumcari, New Mexico?

24          A.    No, never. I was not aware of that, no, sir.

25          Q.    Were you aware that at least two previous

1 search warrants -- at least three previous search  
2 warrants had been issued to search that car when you  
3 went to New Mexico with Joe Avalos?

4 A. No, I was not aware of that.

5 Q. Were you aware that your office had in its  
6 possession certain items that allegedly came from  
7 that car by way of the New Mexico crime lab,  
8 California investigators and then to El Paso?

9 A. To my office? No.

10 Q. The district attorney's office and the El  
11 Paso Police Department. Were you aware of that?

12 A. If I recall correctly, there were some items  
13 that were sent to the district attorney's office, but  
14 I don't recall exactly what items and the dates that  
15 they were sent. I was just informed that they had  
16 some items, but I couldn't tell you an exact date on  
17 them.

18 Q. Were you informed that those items came from  
19 that very same 1973 Pontiac automobile?

20 A. I recall that there were certain items that  
21 came from that vehicle, yes.

22 Q. And were you aware that those items came  
23 because they had been seized pursuant to a search  
24 warrant?

25 A. No, that I was not aware of.

1 Q. When you went to San Jon, New Mexico, did  
2 you make any inquiries to see if a judge or  
3 magistrate was available to issue a search warrant?

4 A. No, I did not.

5 Q. At the time you went to New Mexico you were  
6 aware, were you not, that Henry Lucas had been  
7 indicted in Texas for capital murder for killing  
8 Librada Apodaca?

9 A. Yes, that's correct.

10 Q. And that you suspected that that car  
11 contained evidence to support that charge?

12 A. Yes, that's correct.

13 Q. And do you feel at the time you went to New  
14 Mexico that you were possessed of sufficient facts to  
15 justify probable cause to have a judge issue a search  
16 warrant?

17 A. Would you explain that again?

18 Q. In other words, when you went to New Mexico,  
19 do you think you knew enough about what Henry Lucas  
20 was charged with and his involvement with that car  
21 that you could have gone before a judge and sworn out  
22 an affidavit and had that judge issue a search  
23 warrant so you could search that car?

24 A. If I understand your question correctly, the  
25 reason I felt that we didn't have to is that the

1 vehicle did not belong to him and was in possession  
2 of this lady, Ms. Suzanne Terry, I believe, and she  
3 was the rightful owner of that vehicle and at that  
4 time that I felt that what was required was just her  
5 permission, and if any items were -- or parts to be  
6 taken from the vehicle, she could be compensated for  
7 said items.

8 Q. If you go and park your personal car here in  
9 downtown El Paso at a parking lot and leave the keys  
10 with that parking lot attendant, who has possession  
11 of that car at that time?

12 A. The parking lot.

13 Q. Okay. That doesn't mean the parking lot  
14 owns it, does it?

15 A. No.

16 Q. Okay. But when you went to New Mexico, Ms.  
17 Terry had possession of that car because it was  
18 sitting in the field behind her house. Is that  
19 correct?

20 A. Yes, that's correct.

21 Q. But she didn't show you any legal document  
22 and you didn't check to see if there was any legal  
23 document making her the legal owner of that car, did  
24 you?

25 A. No, I did not.

1 Q. And I don't believe you have yet answered my  
2 question as to whether or not you felt you could have  
3 shown a judge up in New Mexico that there was  
4 probable cause to search that car so that that judge  
5 would issue a search warrant.

6 Do you think you had enough facts to be able  
7 to swear to in an affidavit and convince a judge to  
8 issue a search warrant at that time?

9 A. I could imagine we probably could have  
10 gotten a search warrant, yes.

11 MR. PONTON: May I approach the witness,  
12 Your Honor?

13 THE COURT: Sure.

14 Q. (BY MR. PONTON) Detective Perez, I want to  
15 show you the odometer, State's Exhibit 66. Is that  
16 in the same condition it was when you took it out of  
17 the car?

18 A. Probably doesn't have as much dirt as it did  
19 back then, but basically it appears to be in the same  
20 condition.

21 Q. Have you ever had that checked by an expert  
22 to see if the odometer has been rolled back or rolled  
23 forward?

24 A. No, I did not.

25 Q. Do you know if it has been?

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1 A. No, I don't.

2 Q. Do you think it has been? Are you aware of  
3 anyone else in the district attorney's office or the  
4 police department having that odometer checked to see  
5 whether it's been rolled forward or rolled back or  
6 otherwise tampered with?

7 A. No, I'm not.

8 Q. Please describe for the Court the condition  
9 of that vehicle when you and Joe Avalos went up to  
10 the truck stop -- I mean, to the wrecking yard.

11 A. Well, it was sitting in the -- in an open  
12 field. And if I recall, the passenger and driver's  
13 window were rolled down. It didn't have the four  
14 wheels or four tires and it had a break in the  
15 windshield. It was dirty on the outside. And I  
16 think the hood was lifted up a little bit, and there  
17 was some dirt inside the interior of the vehicle.

18 Q. Was the motor still there?

19 A. No, it was not.

20 Q. Were any of the doors open?

21 A. No, they were not.

22 Q. Was the trunk open?

23 A. No. No, the trunk was closed.

24 Q. Did you see any key in the car?

25 A. No, I did not.

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1 Q. Would it be fair to say that the interior of  
2 the car was covered with dust and the seats were very  
3 weathered?

4 A. I believe you could say that, yes.

5 Q. It would have been open to the weather --  
6 Did it appear it had been opened to the weather for a  
7 long period of time?

8 A. Yes.

9 Q. You say this was in an open field. Was this  
10 car stuck in next to other automobiles at the Terry's  
11 Wrecking Yard or out by itself?

12 A. Oh, no. I guess the closest vehicle would  
13 have been maybe several meters away from there. It  
14 was not a very crowded wrecking yard. There were  
15 other vehicles there, but they were not stacked one  
16 on top of the other. There is quite a bit of  
17 distance between all the vehicles that was there.

18 Q. Did you make any attempt prior to going to  
19 New Mexico to obtain Henry Lucas' permission to  
20 search that car?

21 A. No, I did not.

22 Q. Did you obtain -- Did you make any attempt  
23 prior to going to New Mexico to obtain Martha  
24 Walker's permission to search that car?

25 A. I don't think I even knew who Martha Walker

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1 was.

2 Q. The -- Martha Walker, to my knowledge, would  
3 be the record owner of that car, the woman whose  
4 title -- who held the title in her name at the time  
5 Henry Lucas and the car parted ways in San Jon.

6 A. No.

7 Q. So you never checked with her, either, did  
8 you?

9 A. No.

10 MR. PONTON: No further questions, Your  
11 Honor.

12

13 REDIRECT EXAMINATION

14 BY MR. MOODY:

15 Q. There isn't -- You made a supplement on this,  
16 did you not, when you seized the odometer?

17 A. Yes, I did.

18 Q. Did you note what the mileage was back on  
19 that date, July 1985?

20 A. Yes.

21 Q. And is there any change in that odometer  
22 reading between when you seized it and what is  
23 sitting on it right now?

24 A. No, there is no change at all.

25 MR. MOODY: No further questions.

5119