

1 stenograph machine.

2 THE COURT: Oh, you scared me. That machine
3 went out last week, didn't it? If that machine goes
4 out, you know, or if the computer goes down, we're
5 all dead anymore.

6 Well, let's take a recess. Have you seen
7 those pictures? Let's take a recess while you-all
8 look at pictures and then we'll get him right back in
9 here. Let's take a recess.

10 (A recess was taken.)

11 THE COURT: Let the record reflect that
12 Officer Flynn is back to talk about the pictures that
13 have been found.

14 MR. PONTON: May I approach the witness,
15 Your Honor?

16 THE COURT: Certainly.

17

18 CONTINUED DIRECT EXAMINATION

19 BY MR. PONTON:

20 Q. Detective Flynn, I want to show you some
21 five-by-seven color photographs which were discovered
22 by the district attorney's office since you last
23 testified in this cause a couple of hours ago and I
24 want to ask you if you can identify those color
25 photographs, those five-by-seven color photographs?

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1 A. Yes, sir, I can.

2 Q. Are those the color photographs I was asking
3 you about earlier?

4 A. Yes, sir, some of them are. There is one
5 here that appears to be of Elizabeth Allen. I don't
6 know the origin of that photograph.

7 Q. And the other photographs are photographs of
8 views of El Paso, are they not?

9 A. Yes, sir.

10 Q. 19 photographs?

11 A. There is 20.

12 Q. 20 photographs?

13 A. Yes, sir.

14 Q. Are those the same photographs that you took
15 so that your partner, Detective Lucas, could
16 interview Henry Lucas in Georgetown, Texas?

17 A. Yes, sir, they are.

18 Q. And were these taken with your camera?

19 A. Yes, sir, they were.

20 Q. And I want you to look at these negatives
21 that I have in front of you and ask if that appears
22 to be the negatives of those photographs?

23 A. Yes, sir, they do.

24 Q. And to your knowledge, are these the
25 photographs that were shown to Detective -- to Henry

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1 Lucas by Detective Greg Lucas?

2 A. It was my understanding that Detective Lucas
3 took those photographs with him. As to how --
4 exactly how many he showed to him, I don't know.

5 Q. I want to show you two three-by-five
6 photographs of Henry Lucas taken with Henry Lucas in
7 a white jail coverall in front of a cinder block wall.
8 Do you recognize those?

9 A. It appears to be Henry Lucas, but I don't
10 know where they came from.

11 Q. Can you recognize this black-and-white
12 photograph of this female?

13 A. I'm not sure, but I believe this is the
14 photograph of Sima Warren, which was another homicide
15 that we had here in El Paso.

16 Q. Do you know anything about this road map of
17 El Paso? Do you know if that was shown to Henry
18 Lucas?

19 A. No, sir, I have never seen this road map
20 before.

21 Q. Okay. Have you ever seen this file
22 regarding the roster from the conference in Monroe,
23 Louisiana? It consists of about 20 or 30 eight-and-a-
24 half-by-eleven pages and a photograph.

25 A. I have never studied this document. I don't --

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1 I have read a lot of things that came out of
2 different conferences and so forth. I don't
3 specifically recognize this, no.

4 Q. Can you identify this photograph of this
5 clay model --

6 A. No, sir.

7 Q. -- that came out of that file?

8 A. No, I have never seen that before.

9 Q. Do you know of any other photographs of El
10 Paso that were shown to Henry Lucas besides these 20
11 photographs now before you?

12 A. No, sir, I do not. Those are the
13 photographs that I was testifying about.

14 Q. And the last time you saw these photographs
15 were when they were in the file that went to the
16 district attorney's office?

17 A. When they were in the file. I don't know
18 whether they went to the district attorney's office.
19 I assume they did as that's where the pictures were
20 ultimately located.

21 MR. PONTON: May I approach the bench, Your
22 Honor?

23 THE COURT: Yes.

24 MR. PONTON: Here is that road map and these
25 photographs that were found, Your Honor, and I have

1 no further questions of this witness. I would
2 request that the defense have copies of those
3 photographs and a copy of this file from Monroe,
4 Louisiana.

5 THE COURT: Mr. Moody, let's see that they
6 get a copy of all of these, will you?

7 MR. MOODY: Yes, Your Honor, we will. I
8 think that we copied the Sima Warren file for them.
9 We will have to double-check.

10 THE COURT: They already have these?

11 MR. MOODY: Not the pictures but the -- I
12 think this Monroe, Louisiana, thing might have been
13 copied. If we did -- I think we sent the Sima Warren
14 file down to be copied.

15 MR. PONTON: Mr. Moody, with your permission,
16 I have these negatives that the detective identified
17 as being the negatives that those photographs were
18 taken from. If you-all keep those five-by-sevens,
19 could I have your permission to take these negatives
20 and have copies made and bring them back for evidence?

21 MR. MOODY: That's fine with us.

22 MR. PONTON: I think that would be easier.
23 I think we will do that. We will bring them back for
24 evidence.

25 MR. MOODY: Did you mark those so that --

1 and introduce them into evidence for the purpose of
2 this hearing?

3 MR. PONTON: I have not.

4 THE COURT: Why don't you?

5 MR. PONTON: If you would like me to, I can.
6 We will mark them.

7 (Defendant's exhibit marked, D-85.)

8 MR. PONTON: Defendant's Exhibit 85 will
9 consist of 20 five-by-seven color photographs of El
10 Paso, Texas, and I would offer them into evidence at
11 this time.

12 MR. MOODY: No objection. And --

13 THE COURT: Mr. Flynn -- Or Detective Flynn,
14 it's my understanding that these photographs were
15 shown to Henry Lucas on the visit that he made to El
16 Paso when you and -- Gosh, what's the other detective --

17 A. Detective Greg Lucas.

18 THE COURT: -- Detective Lucas visited with
19 him. Is that correct?

20 A. Well, on that particular date Detective
21 Lucas and another detective from our office went down
22 there to visit with him. I did not go down there to
23 Georgetown to see him, so I was not present during
24 that interview.

25 The only time I saw Mr. Lucas is when he was

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1 brought back here to El Paso, so I don't know which
2 of those photographs was shown to him at that time.
3 That would have to be Detective Lucas that would have
4 to answer that question.

5 THE COURT: Well, I -- Okay. I
6 misunderstood you. I understood you to say that
7 these photographs were shown to him. So maybe -- I'm
8 glad I clarified that.

9 MR. MOODY: In fact, Your Honor, if you want
10 to look at the videotape of December 20th, 1983, you
11 can see Detective Lucas with some of these
12 photographs, you know, talking to him about these.

13 THE COURT: No, I just wanted to clarify it,
14 because I thought I heard him say they were shown and
15 now I'm not sure that they were.

16 A. Well, sir, I believe that the photographs
17 were shown to Mr. Lucas, but as to whether he saw all
18 20 of them or he just saw a few of them, I can't
19 answer that. That would be up to Detective Lucas to
20 answer.

21 MR. MOODY: My only question of Detective
22 Flynn, Your Honor, would be --

23 THE COURT: Go ahead.

24
25

CROSS-EXAMINATION

BY MR. MOODY:

1
2
3 Q. Nowhere in these photographs is the Librada
4 Apodaca or the area even near her home shown in any
5 of these photos?

6 A. No, sir. None of those photographs have any
7 indication of even a close proximity to the area
8 where Librada Apodaca was murdered.

9 MR. PONTON: I believe, also, Your Honor --
10 Correct me if I'm wrong, Mr. Moody, but I recollect
11 Detective -- or Lieutenant Jerry Smith from Odessa
12 testifying that he was furnished some of those
13 photographs at the time that he interviewed Henry
14 Lucas.

15 MR. MOODY: I do not believe that's correct.

16 THE COURT: I don't recall that.

17 MR. MOODY: We would have to look at the
18 transcript.

19 THE COURT: We can always look back on that.

20 MR. PONTON: I'm not trying to misstate --

21 THE COURT: I don't think -- If he said it,
22 I don't recall it.

23 MR. MOODY: So --

24 THE COURT: Mr. Ponton, if you think he said
25 that, you have that --

1 MR. PONTON: I have that. I will look at it.

2 THE COURT: You have it, you look at it. Of
3 course, we all have it and we'll look at it.

4 And, you know, we are pretty well on record
5 now. So anything that we say I think we can go and
6 prove. There is very little speculation left in that,
7 so we are in pretty good shape as far as that is
8 concerned.

9 MR. PONTON: Your Honor, at this time we
10 would -- if it has not been offered into evidence, we
11 would offer Defendant's Exhibits -- I don't know how
12 far back we are, but there are some things that
13 haven't been offered.

14 MR. MOODY: Your Honor, we don't object to
15 any of the defense exhibits for the purpose of this
16 hearing. They can reoffer them all in one or do
17 whatever. We won't object.

18 THE COURT: Okay.

19 MR. PONTON: And we would say the same thing
20 about your exhibits.

21 THE COURT: Gentlemen, let me say this to
22 you. I have signed an order requesting that the
23 district clerk call 1,000 jurors for January the 12th
24 at 9:00 Monday morning. I want to say at this time
25 that this Court has not made any decisions in this

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1 case at all. I am merely calling the jurors so that
2 if we do proceed we will have the jurors here for
3 that morning.

4 The reason, of course, for that is we are in --
5 we are getting ready to go into Christmas and
6 Thanksgiving. I know that we have a lot of jurors in
7 El Paso that would like to spend Christmas or
8 Thanksgiving up at the Holiday hotel, but we are not
9 going to allow that this year. We are going to make
10 them spend Christmas with their children and families
11 at home and there is not going to be any of this
12 partying and funning at the Holiday hotel for those
13 jurors.

14 Thank you, Mr. Flynn.

15 MR. PONTON: At this time, Your Honor, I
16 would move for the admission of all unadmitted
17 exhibits.

18 THE COURT: It will be admitted for the
19 purpose of this hearing.

20 THE COURT: It's 3:30. What do you-all want
21 me to do now?

22 MR. PONTON: That's all we have at this time,
23 Your Honor.

24 THE COURT: Then we will see you Friday
25 morning. You go get your deposition if you can. I'm

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1 going to be allowed, then, to go on. I have some
2 important matters that I put off today that I thought
3 I could do, but I'm going to do them in the morning.
4 If you have anything, give me a call.

5 But there is one thing I want to say to you.
6 Ms. Sipes, both you and Mr. Ponton, from this moment
7 on, if you have any further investigation in this
8 case, you must come to me in advance and tell me that
9 you need to hire an investigator and I will allow you
10 to. At this moment there are no more investigators.
11 I've paid all the money I'm paying for investigators.
12 There will be no more investigation unless you come
13 to me and you say,

14 "Judge, I need an investigator."

15 I'm paying two investigators from Ms. Sipes.
16 I don't know what I'm paying from you. If you need
17 an investigator in Austin, you come to me and you say,
18 "Judge, I need an investigator," and then you're
19 going to explain to me why.

20 And you can do that on the telephone, you
21 can do it by coming down here and talking to me.
22 There is not going to be any more of that, just go
23 out and hire the world. We are not going to have it
24 anymore.

25 Now, I'm not limiting your defense to this

1 thing. What I'm saying to you is that if you haven't
2 got it investigated now, you may never get it
3 investigated. If something important comes up you
4 think you need somebody, then I will certainly make
5 sure that you get what you need.

6 I'm going to tell you the same thing, Mr.
7 Ponton, in terms of secretaries. You better look
8 around at those secretaries. You may have some of
9 them in closets up there that you hired some months
10 ago that have just decided they like it and have
11 closeted themselves around you. But I'm telling you
12 I am tired of signing these tabs. I'm limiting them.
13 Do you understand me?

14 MR. PONTON: Yes, Your Honor.

15 THE COURT: All right. If you need
16 something, you can come ask. But if you bring me a
17 bill after today that has an investigator on it of
18 any investigation here from this day -- this is the
19 29th of October -- on further, I won't pay it unless
20 you have come to me first and told me -- or that you
21 needed one. And I don't want to know what he is
22 doing other than you tell me, "Judge, I need an
23 investigator in the case."

24 If you tell me you need it, you got it. But
25 I am not going to let you just hire a bunch of people

1 just to stand around and say, "Well, we may need you
2 next month." No more. All right?

3 MR. PONTON: Yes, Judge.

4 THE COURT: Understood?

5 MS. SIPES: I understand that, Your Honor,
6 but for purposes of the record, nobody has been hired
7 that has just been standing around in hopes they may
8 be needed. Everything that has been spent in this
9 case can be verified.

10 This case, Your Honor, has been very
11 complicated due to the fact that we haven't had ready
12 access to certain things. Every time I have gone to
13 the DA's office they have treated me with courtesy,
14 they have treated me with respect -- For instance, I
15 didn't learn about Mr. Rodriguez, the one that they
16 thought for sure had killed Mrs. Apodaca, until I sat
17 in here in the courtroom. I immediately started an
18 investigation on that. I didn't learn about Geovany
19 Chavez until I was in your jury room and once that
20 information came out, that man was killed within six
21 hours of that stuff being published.

22 My investigators have worked in circles
23 trying to get information in this case and I'm very
24 proud of the job that they have done. I'm sorry that
25 the taxpayers have had to pay it, but I'm not sorry

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1 that I am defending a man's life in this particular
2 situation and that I -- we have done it in what I
3 think is a very professional matter. It's an
4 accountable manner.

5 And this investigation has centered both on
6 Juarez, on El Paso, on New Mexico, other parts of
7 Texas, California. The phone company itself has come
8 into a source of wealth by the prosecution of this
9 case.

10 There are many, many things that could have
11 been done very easy. I point out to the Court that
12 we had about two weeks ago three waitresses or four
13 waitresses that came down and testified and my
14 investigators spent hours with those people. It took
15 thousands of dollars for me to correlate what the
16 district attorney's office already knew.

17 It was apparent to me when Assistant
18 Prosecutor Carol Pennock was cross-examining one
19 witness that she -- they had never talked to her, but
20 yet they knew everything in the world about her and I
21 had never seen it in any of their files. She asked
22 her questions into her background, to her family's
23 background, the death of her father, the divorce of
24 her parents.

25 They had the entire police department at

1 their disposal and I have two men that are dog tired.
2 And I know we are all tired of this case, but these
3 people have worked hard.

4 When we are sitting here, Your Honor, Mr.
5 Ponton has secretaries over there. I haven't hired
6 any special secretaries for this case because they
7 are all over there working around a computer. But
8 they are on the phones, they are getting witnesses,
9 they are doing subpoenas, they are figuring up
10 amounts of money.

11 This has been one of the most immense tasks
12 in the country, and I'm not ashamed of it and I will
13 not fail to account for it. It is accountable. And
14 I think that we -- if you want us to have a request
15 form for you to sign, I'm sure you're going to be
16 presented with several of them every day.

17 And every time Mr. Ponton has to have a
18 secretary to call and make travel arrangements for
19 these witnesses that are hopping mad and they want
20 taxies and they want us picking them up and that --
21 we have to cart people around and haven't charged for
22 it. We haven't charged the county for about half of
23 what time and effort we have spent on this old case.
24 And we haven't charged them for our gasoline. We
25 haven't charged them for the use of our cars. We

1 haven't charged them for many, many things. And we
2 haven't had a troop of people just standing by on
3 this county's payroll, a bunch of freeloaders.

4 It's hard to find people who can set aside
5 their entire profession to come work on the Lucas
6 case. Secretaries don't want to come because they
7 know it may be dismissed tomorrow and they won't have
8 a job. Investigators know that they are going to
9 have to work eight hours a day or seven hours a day,
10 and when they have a practice already set up and they
11 keep telling lawyers, "No, I can't do any work for
12 you. I have got to work for Henry Lee Lucas," then
13 they lose those clients. It's hard to find people
14 that will come and do this work.

15 I am very proud of the people we have got
16 together and the work they have done. Thank you.

17 THE COURT: Well, I need to put a limit on
18 it somewhere. All I'm saying is -- I didn't tell Mr.
19 Ponton to hire all of his help. But I'm saying this
20 to you. It's slowed down. If you need investigation,
21 you come tell me.

22 As far as your secretaries, Mr. Ponton, I
23 don't think you need two or three secretaries. You
24 ought to be able to slow her down a little bit. If
25 you have to have somebody, I don't mind you hiring

1 them, but I think -- You know, we geared up, we are
2 at the end of this hearing, we may have to gear up
3 again.

4 MR. PONTON: Your Honor --

5 THE COURT: But every now and then something --
6 we need a breather.

7 MR. PONTON: I agree, Your Honor. And the
8 temporary help that had been hired to help prepare
9 files for each of the about 50 witnesses that Ms.
10 Sipes and I have put on the stand to testify before
11 Your Honor have been released because that work has
12 been done.

13 The temporary secretaries that were put
14 together so that they could come over here and take
15 all the extraneous offense files from the district
16 attorney's file here -- with Ms. Pennock's help and
17 they were thankful for that -- and to take those out
18 and to make copies and a copy for Ms. Sipes and a
19 copy for me and to create 1,000 files that fills up
20 four or five cabinet drawers, they have been released
21 because they have done that task and it was a
22 monumental task.

23 The necessity for an investigator to start
24 from scratch to when Henry Lucas says, "Well, I think
25 I might have been working on somebody's roof at the

1 end of May of 1983," an investigator who can take
2 that statement and find out that that roof was
3 located at old Bowie Lake and that the man whose roof
4 that was was a fellow named Ray Kay who has moved
5 from Montague County and left no forwarding address
6 and it takes two weeks of that investigator's time to
7 finally find Ray Kay in some town the size of Bowie,
8 Texas, but up in northeastern Oklahoma, he found that
9 man. And that was an important witness for us in
10 this case.

11 And as soon as that man's name came up in
12 this case, within a day the district attorneys had
13 the help of the Texas Rangers and the Oklahoma
14 highway patrol and they tracked Mr. Kay down to that
15 little town and they had offered him the services of
16 the highway patrol or the Texas Rangers to transport
17 him back here to testify again.

18 So that's the kind of effort that Ms. Sipes
19 and I have had to go through to try to defend this
20 man. And the state is trying to take his life and we
21 are here trying to make sure he gets a fair trial.

22 And I am proud of all the people who have
23 worked so long and so hard and so many weekends and
24 so many evenings in this case. But a lot of that
25 frenzied effort has now come to a close, Your Honor,

1 and I think that Your Honor is right, that things are
2 getting down to a dull roar, so to speak, or a more
3 regular level of effort.

4 THE COURT: Well, that's going to be my
5 order. And if you need them, talk to me. Okay?

6 MR. PONTON: Yes, Judge.

7 THE COURT: Ms. Sipes, here.

8 MS. SIPES: Thank you, Your Honor.

9 THE COURT: Okay.

10 MR. MOODY: Thank you.

11 THE COURT: Nothing further?

12 MR. MOODY: Nothing further at this time.

13 MS. PENNOCK: We'll see you-all Friday,
14 then.

15 THE COURT: If you need those depositions,
16 I'll see you-all Friday morning at 9:00. And, you
17 know, if there is any way I can help you with any of
18 these depositions, just let me know.

19 Now, Mr. Ponton, I'm not cutting you-all off
20 on depositions or on any of those things. I'm merely
21 asking that I be notified.

22 (An evening recess was taken.)

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