

Afternoon Session

(At this time the following proceedings were had out of the presence of the jury:)

MR. WALSH: We need Sheriff Boutwell.

THE COURT: Sheriff, I remind you that you are still under oath.

THE WITNESS: Yes, sir.

SHERIFF JIM BOUTWELL

was called as a rebuttal witness by the State and, being first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. WALSH:

Q State your name.

A Jim Boutwell.

Q And for the record, you are the same Jim Boutwell who's testified previously in this cause?

A Yes, sir.

1  
2 (Whereupon, State's Exhibit  
3 No. 97 was marked for  
4 identification by the reporter.)  
5

6 Q (By Mr. Walsh) I'm going to hand you what has  
7 been marked as State's Exhibit No. 91 which you  
8 previously identified and this new one, State's  
9 Exhibit No. 97. Can you identify that exhibit?

10 A Exhibit 97 is an edited copy of Exhibit 91, which  
11 is a tape made November 10th, 1983.

12 Q Is this an accurate copy of the original except  
13 with certain deletions?

14 A Yes, sir.  
15

16 MR. WALSH: Your Honor, may I play  
17 State's Exhibit 97? This is an exhibit that  
18 we wish to introduce for the jury.

19 THE COURT: Yes, you may.  
20

21 (At this time State's Exhibit  
22 No. 97 was played out of  
23 the presence of the jury  
24 in open court, after which  
25 the proceedings continued

as follows:)

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1  
2  
3 MR. WALSH: That's all that's on the  
4 tape, Your Honor, and we would tender, offer  
5 State's Exhibit 97 for the jury. I can go on  
6 with the rest of these or make objections now.  
7 However you want to do it.

8 MR. PARKER: Whatever you prefer, Your  
9 Honor.

10 THE COURT: Let's do it one at a time.

11 MR. PARKER: Your Honor, the Defendant in  
12 regard to Exhibit 97, State's Exhibit 97,  
13 first, we renew all the objections that were  
14 made at the pretrial hearing, any objections  
15 that were made at the pretrial hearing, that  
16 statement of November 10, 1983, that we reurge  
17 those and ask that they be made applicable  
18 to this portion of the state, specifically  
19 those parts of our objections that the illegal  
20 arrest and the confession being taken after  
21 the illegal arrest in addition to reurging  
22 and representing all objections made at the  
23 pretrial hearing. We also ask the objections  
24 that we have previously made through this  
25 November 10, 1983, statement, which I think

1 a portion has already been introduced, we  
2 reurge those objections. I don't know, Your  
3 Honor, what that exhibit number is, but as  
4 to the same objections that we made to the  
5 edited version of the November 10th tape, 1983,  
6 that has already been State's Exhibit 83.  
7 We reurge those objections. We also object  
8 to this tape 96 in that it does not comport  
9 with the U. S. Constitution Amendment, Fourth,  
10 Fifth, Sixth and Fourteenth, that it is  
11 against the Texas Constitution not in 38.22,  
12 the Texas Code of Criminal Procedure. It  
13 does not lay the proper predicate under 38.22  
14 in the Texas Code of Criminal Procedure.  
15 It's also not proper evidence to be used in  
16 rebuttal testimony or proper impeachment  
17 material. Also, reurging all objections as  
18 I've stated that remain in pretrial and other  
19 portions of this trial. For those reasons  
20 we object to State's Exhibit 97, Your Honor,  
21 and we object to the unidentified voice  
22 on this tape.

23 THE COURT: Objection is overruled.

24 MR. WALSH: What unidentified voice on  
25 this tape?

1 THE COURT: I didn't hear any unidentified  
2 voices.

3 MR. PARKER: There is a voice on the  
4 radio, Your Honor, when Sheriff Boutwell  
5 hands the tape recording to the Defendant.

6 THE COURT: Objection is overruled. For  
7 the record, that's a copy of 91 that was  
8 admitted as No. 83.

9  
10 DIRECT EXAMINATION RESUMED

11 BY MR. WALSH:

12 Q Sheriff Boutwell, on December 30th of 1983, did  
13 you have an interview with Henry Lee Lucas and  
14 Ottis Toole in Jacksonville, Florida?

15 A Yes, sir.

16 Q Was that interview recorded?

17 A Yes, sir, it was recorded on videotape.

18  
19 (Whereupon, State's Exhibits  
20 Nos. 98 and 99 were marked  
21 for identification by the  
22 reporter.)

23  
24 Q (By Mr. Walsh) I first hand you what has been  
25 marked as State's Exhibit 98 and ask if you can

1 identify that tape?

2 A Yes, sir, this is the original video cassette  
3 that was recorded December 30th, 1983.

4 Q And I will hand you State's Exhibit 99 and ask  
5 if you can identify that tape?

6 A This is the edited copy of the tape I just  
7 mentioned, Exhibit 98.

8 Q Is this State's Exhibit 99 an accurate copy of  
9 certain conversations on State's Exhibit 98?

10 A Yes, sir, of the portions that haven't been  
11 edited out.

12 Q Sheriff, we are going to play this tape in a  
13 minute for the Judge, but I do want to ask you  
14 some preliminary questions about the original  
15 State's Exhibit 98. Was an electronic recording  
16 made of this interview that you have referred to?

17 A Yes.

18 Q And that is State's Exhibit 98?

19 A Yes.

20 Q How was this interview recorded?

21 A It was recorded with a videotape machine.

22 Q And both video and audio are on the tape?

23 A Yes.

24 Q Prior to the interview being conducted on the  
25 tape, was the Defendant given all of his

1 constitutional warnings?

2 A Yes, sir.

3 Q Was the recording device capable of making an  
4 accurate recording of the interview?

5 A Yes.

6 Q Was the operator of the videotape camera a  
7 competent operator?

8 A Yes.

9 Q Is the recording an accurate recording of the  
10 interview?

11 A Yes.

12 Q Does the recording reflect the accused was  
13 advised before the interview that the interview  
14 would be recorded?

15 A Yes, sir.

16 Q And are all voices on the recording identified?

17 A Yes.

18

19 MR. WALSH: Your Honor, I would like to  
20 play State's Exhibit 99 which is the edited  
21 version that we will ask that the jury be  
22 permitted to hear and see.

23 THE COURT: All right. Has the Defense  
24 had an opportunity to review the unedited  
25 version? Have you seen the unedited version?

1 MR. PARKER: We have seen the unedited  
2 version.

3 THE COURT: Okay, thank you.

4  
5 (At this time State's Exhibit  
6 No. 99 was played out of the  
7 presence of the jury in open  
8 court, after which the  
9 proceedings continued as  
10 follows:)

11  
12 MR. WALSH: Your Honor, we propose to  
13 offer State's Exhibit 99 for the jury. I am  
14 through showing this particular one. We have  
15 got another one if you all want to make  
16 objections for this one.

17 MR. PARKER: The Judge wants to take it  
18 one at a time.

19 THE COURT: Mr. Parker, approach the  
20 bench just a moment, please.

21  
22 (Whereupon, a discussion was  
23 had at the bench, between Court  
24 and counsel out of the hearing  
25 of the reporter, after which

1 MR. PARKER: That's correct, and that  
2 is the purpose of what I was trying to  
3 explain, is from my vantage point when I  
4 heard it all four times it sounded like  
5 murder one place and then to another.  
6 When we played the full tape I know that  
7 they were talking about many murders,  
8 extraneous offenses. The jury, of course,  
9 will not hear those portions of the tape.  
10 My objection is, or what my concern is, I  
11 don't know -- I don't want the jury to  
12 misinterpret something that maybe isn't on  
13 the tape that they misinterpret it. They  
14 would have to interpret it as an extraneous  
15 offense and I don't want that injected into  
16 the case if that is not what the tape says.  
17 I don't know exactly how it could be handled,  
18 how it could be explained, but if it can't  
19 be explained, then I will have to renew my  
20 objection that it's the tape.

21 THE COURT: I'll tell you what we will  
22 do, Mr. Parker. At this point of the tape,  
23 Mr. Walsh will stop and ask the Sheriff on  
24 the part that was a little unclear and ask  
25 him if he recalls what was said right there.