

1 All right, sir, would you raise your right  
2 hand, please?

3 Thank you. *El Paso*

4 PAUL SMITH, *9-15-89*

5 having been duly sworn by the Court to tell the  
6 truth, the whole truth, and nothing but the truth,  
7 was examined and testified as follows:

8

9 DIRECT EXAMINATION

10 BY MR. MOODY:

11 Q. State your name, please?

12 A. Paul Smith.

13 Q. How are you employed, sir?

14 A. As an investigator for the 97th Judicial  
15 District Attorney's office.

16 Q. Okay. What counties does that include?

17 A. Archer, Clay, and Montague Counties.

18 Q. And your boss is the district attorney whose  
19 name is?

20 A. Jack McGaughy, yes, sir.

21 Q. Now, you were also involved in the Henry Lee  
22 Lucas case when it first broke in regards to the Kate  
23 Rich case. Is that correct?

24 A. Yes, sir, I was.

25 Q. You along with Texas Ranger Phil Ryan were --

1 Did you-all have chances to interview Henry Lucas,  
2 talk to him about the Kate Rich case after his --  
3 after he began confessing on June 15th, 1983?

4 A. Yes, sir. I don't believe I conducted any  
5 interviews myself. I was present during some of the  
6 interviews what Ranger Ryan conducted.

7 Q. Now, did anyone from the district attorney's  
8 office in El Paso or the police department in El Paso  
9 contact you regarding the Librada Apodaca case back  
10 in 1983, the time frame when Henry Lucas was in  
11 Montague County and Clay County? That would have  
12 been, oh, what, the months of June, July and August,  
13 maybe in September.

14 A. No, sir, no one contacted me.

15 Q. All right. Did you know anything about the  
16 Librada Apodaca case or any facts about that case?

17 A. No, sir, I did not.

18 Q. Did you ever give him any of the information  
19 in that case?

20 A. No, sir.

21 Q. Did Ranger Ryan ever do that while he was in  
22 your presence?

23 A. No, sir, he did not.

24 Q. Basically it was a case you-all didn't know  
25 anything about?



1 Q. And didn't you also about that time receive  
2 information from Texas Ranger Phil Ryan that Henry  
3 was also a suspect in the disappearance of a 15-year  
4 old girl named Becky or Frieda Powell?

5 A. At that particular time, we had no  
6 information about the disappearance of Becky Powell.

7 Q. You subsequently gained information about  
8 that that fall, though, did you not?

9 A. Yes, sir, we did.

10 Q. And Henry Lucas became the prime suspect in  
11 her disappearance and possible death. Is that  
12 correct?

13 A. Yes, sir.

14 Q. And Henry Lucas was arrested in October of '82  
15 on the out-of-state parole revocation warrant. Do  
16 you recall that?

17 A. I believe it was a violation of probation  
18 warrant out of the state of Maryland, but I'm not  
19 sure where from.

20 Q. That's right. That's right. The -- All  
21 during the time from September of 1982 when Henry  
22 Lucas first became the suspect in Kate Rich's death  
23 until June 11th of '83 when he was arrested on the  
24 gun charge, he remained the prime suspect in her  
25 death -- her disappearance and death, didn't he?

1           A.    Yes, sir.

2           Q.    And was it not your opinion and the opinion  
3 of Sheriff Conway and Texas Ranger Phil Ryan that  
4 Henry Lucas had probably killed Kate Rich and you-all  
5 just needed to put together the proof to make the  
6 case?

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

8           Q.    And it was important to all three of you,  
9 was it not, to keep track of Henry Lucas' whereabouts,  
10 at least informally, during that period of time?

11          A.    We never conducted any surveillance.

12          Q.    Not any kind of formal surveillance, but  
13 informally you-all took certain steps to try to keep  
14 track of Henry Lucas' whereabouts, did you not?

15          A.    I did not.  What Ranger Ryan and Sheriff  
16 Conway did, I'm not aware of.

17          Q.    Isn't it a fact, sir, that you have to drive  
18 by the House of Prayer every day from your residence  
19 to get to the Montague courthouse?

20          A.    I don't drive by there every day.  That is  
21 my normal route to work unless I have business in one  
22 of the other two counties or in one of the other  
23 cities in Montague County.

24          Q.    But on a regular working day when you're  
25 going to go to work at the Montague County courthouse,

1 you would drive from your residence past the House of  
2 Prayer to get to the courthouse, would you not?

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

4 Q. When you would do that during the period of  
5 time after Henry Lee Lucas became a suspect, would  
6 you not at least informally glance over to the House  
7 of Prayer to see if you saw Henry or Ruben Moore or  
8 Henry's vehicle there?

9 A. I recall several occasions that in driving  
10 by I saw Henry Lee Lucas out in the yard around the  
11 House of Prayer or around that area.

12 Q. And did you not become aware that Ruben  
13 Moore and Faye Moore had made an agreement with  
14 Sheriff Conway in May of 1983 that they would tell  
15 the sheriff if Henry left the House of Prayer?

16 A. I was not aware of that agreement, no, sir.

17 Q. Do you recall Henry Lucas purchasing a  
18 maroon '73 Pontiac automobile?

19 A. I have no personal knowledge of it, but I am  
20 aware of it, yes, sir.

21 Q. Not that you were there when he bought it,  
22 but was there not a period of time in the spring of '83  
23 when you became aware that that vehicle was at the  
24 House of Prayer and maybe Henry was working on it or  
25 whatever? Did you become aware that that car was

1 there?

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

3 Q. It had become part of your knowledge of the  
4 case that that car belonged to Henry Lucas?

5 A. Yes, it did.

6 Q. Do you recall who you found that out from?

7 A. I believe it would have been either Sheriff  
8 Conway or Ranger Ryan.

9 Q. Was anybody else working on the case against  
10 Kate Rich or Becky Powell at that time other than the  
11 three of you-all?

12 A. Several of Sheriff Conway's deputies were  
13 involved in the investigation, yes, sir.

14 Q. Do you recall their names?

15 A. Joe Cordero Jesse Ramos. I believe Bill  
16 Woods was involved to some extent.

17 Q. And do you know if any of those three  
18 persons were ever asked to go see if Henry was still  
19 at the House of Prayer or see if he was still in  
20 Montague County or anything of that nature?

21 A. No, sir, I do not.

22 Q. Do you recall when Sheriff Conway and Texas  
23 Ranger Ryan went to California in early May of 1983?

24 A. Yes, sir, I do.

25 Q. Do you recall that at the time they made

1 that trip that Henry Lee Lucas, to your knowledge,  
2 was still in Montague County, Texas?

3 A. To my knowledge, he was. I don't recall  
4 seeing him during that period of time.

5 Q. Do you recall that Henry Lee Lucas remained --  
6 to your knowledge remained in Montague County, Texas,  
7 until June 4th of 1983?

8 A. To my knowledge, yes, sir, he did.

9 Q. And did you subsequently become aware that  
10 Faye Moore and Ruben Moore told Sheriff Conway that  
11 Henry left on June 4th?

12 A. Yes, sir.

13 Q. Have you ever seen any document or even seen  
14 anything from your personal knowledge that would  
15 indicate that Henry Lucas ever left Montague County  
16 prior to that time?

17 A. I have seen a statement made by Faye Moore  
18 in which she told of Henry leaving Stoneburg.

19 Q. Was that allegedly on an overnight type trip  
20 or just leaving at night and coming back in the  
21 morning type of trip?

22 A. I don't know what kind of trip it was. The  
23 statement I think just refers to him leaving on June  
24 the 4th.

25 Q. And other than him leaving on June 4th, to

1 your knowledge did Henry Lucas not remain in Montague  
2 County until that time?

3 A. I have no personal knowledge either way.

4 Q. And you have no personal knowledge that he  
5 ever left, however?

6 A. No, sir, I do not.

7 Q. And do you recall driving by the House of  
8 Prayer up until the time of June 4th?

9 A. I don't recall specific dates and times.  
10 There may have been days that I didn't drive by there  
11 during that period of time, but normally I would have.

12 THE COURT: You know,, let me interrupt this.  
13 What in the world does this have to do with Henry Lee  
14 Lucas' confession?

15 This is wonderful stuff for a trial, if you  
16 want to ask it, but why do I have to hear it now?  
17 Let's get to this confession, Mr. Ponton. We haven't -  
18 I haven't heard one word concerning the confession  
19 taken here in El Paso.

20 Now, let's get to it if you can get to it.  
21 What happened in Montague County or something are  
22 questions that should be asked at the trial of this  
23 lawsuit.

24 MR. PONTON: Yes, Your Honor.

25 THE COURT: Now, if you want to depose the

1 man, I have given you all the right to do that, but  
2 I'm not going to sit here while you depose witnesses.  
3 Now, we are going to have a suppression hearing.

4 MR. PONTON: Yes, Your Honor.

5 Q. (BY MR. PONTON) Were you ever aware that  
6 investigators from Southern New Mexico called Henry  
7 Lucas in July of '83 to question him about El Paso  
8 area murders?

9 A. No, sir.

10 Q. Were you aware of any El Paso officers, El  
11 Paso Police Department officers calling to the  
12 Montague County jail to interrogate Henry Lucas about  
13 El Paso area murders?

14 A. No, sir.

15 Q. You brought some documents with you here  
16 today pursuant to our subpoena duces tecum. Do you  
17 recall Henry Lucas confessing while he was an inmate  
18 in the Montague County jail to killing a certain  
19 young female who was subsequently found to be alive?

20 A. Yes, sir, I do.

21 Q. And do you recall that that woman had been  
22 an inmate there at the Montague County jail at the  
23 time Henry was? Is that correct?


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

25 Q. And Henry confessed to killing her, did he

1 not?

2 A. He told Ranger Ryan and I believe myself and  
3 maybe Sheriff Conway that he had killed her, yes.

4 Q. And what was her name, do you recall?

5 A. I believe her name was Brewer. 

6 Q. And she was subsequently found alive, was  
7 she not?

8 A. Yes, sir.

9 Q. And Henry Lucas' confession to killing her  
10 was completely false?

11 A. Yes, sir, it would be.

12 Q. Were you aware of when Henry Lucas was  
13 arrested on June 11th, 1983?

14 A. I was not aware of that arrest until the  
15 following Monday.

16 Q. Were you aware of the fact that Henry Lucas  
17 confessed to killing Kate Rich and Frieda Powell on  
18 June 15th of 1983?

19 A. Yes, sir, I was. I was made aware by  
20 telephone that night.

21 Q. Were you made aware of any requests by Henry  
22 Lucas to have an attorney at any time prior to that  
23 confession on June 15th, 1983?

24 A. No, sir.

25 Q. Were you aware of any efforts made by you or

1 your office, the district attorney's office up there  
2 to provide Henry Lucas with a lawyer prior to that  
3 confession?

4 A. No, sir, we did not.

5 Q. Did Henry Lucas to your knowledge have a  
6 lawyer appointed or retained on June 15th, 1983?

7 A. No, sir, he did not.

8 Q. Did you observe Henry Lucas at any in jail  
9 between June 11th and June 15th of 1983?

10 A. No, sir, I did not.

11 Q. Were you present when Henry Lucas was  
12 interrogated on any of his murders he was involved in  
13 after June 15th?

14 A. Yes, sir, I was present several times when  
15 Ranger Ryan interviewed him.

16 Q. Did you ever interview Henry Lucas yourself?

17 A. I interviewed him on one occasion while he  
18 was in jail in 1982 reference to Kate Rich, but after  
19 he was arrested on June the 11, no, sir, I did not.

20 Q. Did you ever hear Henry Lucas being asked  
21 any questions about any El Paso area murders?

22 A. No, sir.

23 Q. Did you ever hear Henry Lucas make any  
24 statements about ever being in El Paso?

25 A. I recall several occasions where he talked

1 about traveling over the United States, and he did  
2 mention traveling through or around El Paso several  
3 times.

4 Q. Did you ever hear him mention him killing  
5 anyone in El Paso?

6 A. No, sir, I don't believe I did.

7 Q. Did you ever hear him mention killing an old  
8 lady with an axe in El Paso?

9 A. No, sir.

10 Q. Did you ever hear him mentioning that he had  
11 ever killed anyone with an axe at any time during any  
12 of the interviews you listened to?

13 A. No, sir.

14 Q. When did you first start listening to  
15 interviews with Henry Lucas? Would it have been  
16 right after his confession to Kate and Becky?

17 A. Yes, sir. It would have been within two or  
18 three days of that time, yes, sir.

19 Q. And you were aware that he was charged with  
20 here with committing a murder that occurred on May  
21 27th of '83?

22 A. Yes, sir.

23 Q. Which would have been about two and a half  
24 weeks prior to his confession to Kate and Becky. Is  
25 that correct?

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

2           Q.    And at that time when he first began to  
3 confess, you never heard him mention killing anyone  
4 in El Paso or killing an old lady in El Paso or  
5 killing anyone with an axe?

6           A.    No, sir, I do not.

7           Q.    Henry Lucas required medical treatment  
8 shortly after he began confessing, did he not?

9           A.    The day that Henry showed us the remains of  
10 Becky Powell -- or I should say the day he showed  
11 Ranger Ryan and some Denton officials the remains of  
12 Becky Powell, I had gone to Dallas and returned to  
13 Denton late that afternoon. And Henry was in a  
14 sheriff's car in the parking lot of the Denton Police  
15 Department and he was complaining to Sheriff Conway  
16 of having headaches or something and not being able  
17 to sleep.

18                   Sheriff Conway directed his deputies to take  
19 him by the emergency room in Bowie, Texas, before  
20 they took him back to the Montague County jail.

21           Q.    And do you know what happened at the Bowie  
22 clinic?

23           A.    He was seen there by a doctor and did have  
24 some medication prescribed for him.

25           Q.    Do you know what kind of medication?

1           A.    I would have to look at the jail reports to  
2 recall that.

3           Q.    Was it not something for nerves?

4           A.    I believe it was considered to be a sedative,  
5 yes.

6           Q.    Did your involvement with Henry Lucas  
7 continue up until about the end of the summer of 1983?

8           A.    Until September the 30th of 1983 when he  
9 entered a guilty plea in Clay County, Texas.

10          Q.    And was that to the murder of Kate Rich?

11          A.    Yes, sir, it was.

12          Q.    And did you not stay in pretty close contact  
13 with Henry Lucas up until that time?

14          A.    Yes, sir.

15          Q.    At any time to that -- until the time you  
16 were involved with him ended, did he ever tell you  
17 that he had killed an old lady with an axe in El Paso?

18          A.    No, sir, he never told me that.

19          Q.    Did you ever hear him tell that to anybody  
20 else?

21          A.    No, sir.

22               MR. PONTON:  Pass the witness, Your Honor.

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REDIRECT EXAMINATION

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BY MR. MOODY:

Q. Did Henry Lee Lucas ever request a lawyer in your presence?

A. No, sir, he did not.

Q. What, was any statements he would give you about lawyers, whether he liked them, didn't like them, wanted one, didn't want one?

A. I recall several occasions where he stated he did not like lawyers and did not want a lawyer.

MR. MOODY: No further questions.

MR. PONTON: No further questions, Your Honor.

THE COURT: May this gentleman be excused?

MR. MOODY: Yes, Your Honor, as far as the state is concerned.

MR. PONTON: Yes, Your Honor.

THE COURT: Thank you. You may go back to wherever it is, east Texas or -- That's not even east Texas, is it?

A. Just the beginning of east Texas.

(An even recess was taken.)