



STATE OF MARYLAND

DEPARTMENT OF
PUBLIC SAFETY AND CORRECTIONAL SERVICES

MARYLAND STATE POLICE

HARRY HUGHES
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(301) 398-8101
Barrack "F", Northern Troop
North East, Maryland
June 11, 1984

WILLIAM M. LINTON
DEPUTY SECRETARY

COLONEL W. T. TRAVERS JR.
SUPERINTENDENT
MARYLAND STATE POLICE

Detective George White
Lubbock Police Department
P. O. Box 2000
Lubbock, Texas 79457

RE: Henry Lucas Investigation

Dear Detective White:

Enclosed are the reports you requested from our Department and also an additional report of an investigation done by the Cecil County Sheriff's Department. I have researched the dates you had mentioned to me on the phone and have obtained the following information:

- 1-31-71 - According to Deputy Mobley's report, Lucas lived with his sister, Almeda Kiser, from August 1970 to August 1971. She makes no mention of him having left this area during that period of time.
- 8-25-75 - We have nothing in our records to indicate that Lucas was in our area, however, according to Deputy Mobley's report he was released from imprisonment in Adrian, Michigan on 8-22-75. He had been incarcerated there from September 1971.
- 4-10-76 - Again Lucas' wife, Betty Crawford, still living in our area, has told me that he lived with her from the time of their marriage in December 1975 until their separation in August 1977.

On June 11, 1984 I contacted Betty Crawford and verified this information and at that time I obtained the dates they had left this area and went to Texas for a short period of time. She advised they left here on 6-03-77, arrived in Texas on 6-05-77, and left Texas on 6-10-77 and returned here. You may verify these dates with the fact that she stated they left here on a Friday and arrived in Texas on Sunday. She advised they went to Hurst, Texas, which is near Houston. During that trip they were accompanied by another couple identified as the Pulaskis. The husband's first name was Ben. You will see in my report that Mrs. Crawford's daughters

STATE OF MARYLAND
MARYLAND STATE POLICE

Detective George White - 06-11-84

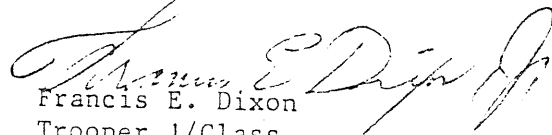
RE: Henry Lucas Investigation

have indicated that Pulaski forced them to have oral sex with him. A check of our files, both criminal and motor vehicle, reveals no record of a Ben Pulaski. Other members of the family indicate they are not familiar with him.

Family members have thus far been cooperative with the police and their phone numbers are contained in these reports. It is possible you could contact them direct for additional information.

If I can be of any further assistance, feel free to contact me.

Sincerely,



Francis E. Dixon
Trooper 1/Class
Maryland State Police

FED/ls

Attachments

witnesses, during one of which they found out that a confession to the murder, extracted under torture in Mexico, had been withheld from the defense in this case by the 34th Judicial District Attorney's Office. Therefore, the record reflects that Steve Simmons was also wrong when he wrote, on February 26, 1986: "In this case the State has done almost all the defense work for them."

Some of the defense witnesses at this hearing to suppress the Defendant's confessions included 13 police officers from around the United States, eight District Attorneys or Assistant District Attorneys, three attorneys, the Assistant Attorney General for Delaware, an Attorney General's investigator for the State of Texas, and a County Commissioner.

Defendant HENRY LEE LUCAS is charged by indictment in this Court with capital murder. The Defendant has moved to suppress all confessions of Henry Lee Lucas and all fruits of such confessions relating to the murder of Librada Apodaca on May 27, 1983, in El Paso County, Texas. The issue presented is whether the waiver by the Defendant of his right to counsel and his right to remain silent was knowingly and voluntarily waived, or whether such waiver was made as a result of rewards, promises, and threats given to the Defendant while he was in custody and making such confessions. HENRY LEE LUCAS' confessions were obtained

from him without a knowing and voluntary waiver by the Defendant of his right to counsel and his right to remain silent.

The Findings of Fact and Conclusions of Law of this hearing require that HENRY LEE LUCAS' confessions be suppressed for the following reasons:

(1) THE STATE FAILED TO MEET THE BURDEN OF PROOF IN THIS Jackson v. Denno HEARING.

(2) THE PROMISES, REWARDS, AND THREATS GIVEN TO HENRY LUCAS BY THE LUCAS TASK FORCE WERE SUCH THAT, UNDER THE TOTALITY OF THE CIRCUMSTANCES, THE DEFENDANT'S WILL WAS OVERBORNE SO THAT HIS WAIVER OF HIS RIGHT TO A LAWYER AND HIS RIGHT TO REMAIN SILENT WAS INVOLUNTARY. Spano v. New York, 360 U.S. 315 (1959)); Blackburn v. Alabama, 361 U.S. 199 (1960); Culombe v. Connecticut, 367 U.S. 568 (1961).

(3) HENRY LEE LUCAS NEVER KNOWINGLY AND VOLUNTARILY WAIVED HIS RIGHT TO A LAWYER WHILE HE WAS UNDER THE PRESSURE OF THE LUCAS TASK FORCE. Michigan v. Jackson, ___ U.S. ___, 106 S.Ct. 1404 (1986); Nehman v. State, ___ S.W.2d ___ (Tex.Crim.App. 1986).

(4) THE PROMISES, BENEFITS, REWARDS AND THREATS GIVEN TO HENRY LEE LUCAS BY THE LUCAS TASK FORCE INFLUENCED HENRY LEE LUCAS TO SPEAK UNTRUTHFULLY, WHICH MAKES ALL SUCH STATEMENTS AND CONFESSIONS BY HENRY LEE LUCAS INADMISSIBLE. Fisher v. State, 379 S.W.2d 900 (Tex.Crim.App. 1964); Hardesty v. State, 667

S.W.2d 130 (Tex.Crim.App. 1984).

(5) HENRY LEE LUCAS' INITIAL ARREST ON JUNE 11, 1983 WAS UNLAWFUL, SINCE HENRY LEE LUCAS NEVER POSSESSED ANY FIREARM AWAY FROM THE PREMISES WHERE HE LIVED, AND ANY STATEMENTS AND CONFESSIONS MADE BY HENRY LEE LUCAS THEREAFTER MUST BE SUPPRESSED. Brown v. Illinois, 422 U.S. 590 (1975); Wong Sun v. United States, 371 U.S. 471 (1963).

(6) HENRY LEE LUCAS' STATEMENT TO THE EL PASO COUNTY GRAND JURY IS INADMISSIBLE BECAUSE THE DEFENDANT NEVER KNOWINGLY AND VOLUNTARILY WAIVED HIS RIGHT TO A LAWYER. Michigan v. Jackson, supra; Nehman v. State, supra.

(7) ANY STATEMENTS MADE BY HENRY LUCAS TO THE REVEREND BOB LARSON MUST BE SUPPRESSED BECAUSE THEY WERE OBTAINED BY DECEIT AND FRAUD. Schneckloth v. Bustamante, 412 U.S. 218 (1973); United States v. Tweel, 550 F.2d 297 (5th Cir. 1977).

INTRODUCTION

The issue is whether or not the Defendant's Motion to Suppress Confessions, filed July 3, 1986, should be granted. The defense has filed 49 motions and briefs in this case. The State has filed 11 motions and briefs in this case. The Jackson v. Danno, 378 U.S. 368 (1964) hearing, pursuant to TEX. CODE CRIM.

PROC. ANN. Art. 38.22 (Vernon 1986) was held upon motion of the Defendant. Eighty-five witnesses testified between September 4, 1986 and November 4, 1986, and 154 exhibits were admitted into evidence.

The HENRY LEE LUCAS story is far too lengthy and complicated to be included herein. However, certain times at which Defendant herein has been jailed and interrogated are pertinent to the issue herein.

HENRY LEE LUCAS was arrested in October, 1982, in Montague County, Texas, and released three weeks later. He was rearrested on June 11, 1983 for the offense of felon in possession of a firearm. His initial confession to Montague County Sheriff W. F. Conway and Texas Ranger Phil Ryan was to admit that he killed Kate Rich and Freida (Becky) Powell. He thereafter began confessing to hundreds of other murders.

A Lucas Task Force was set up at the Williamson County Jail in Georgetown, Texas, to facilitate law enforcement officers from around the country in their efforts to interrogate HENRY LEE LUCAS regarding unsolved murders in their jurisdiction. Lucas remained within the custody of the Lucas Task Force from November, 1983, until April, 1985, at which time he recanted all his confessions. It was during the time he was with the Lucas Task Force that he confessed to the murder of Librada Apodaca, the victim herein (who was killed on May 27, 1983).

HENRY LEE LUCAS gave several confessions and statements regarding the murder of Librada Apodaca. (See December 9, 1986, State's Brief, setting forth ten separate statements or confessions of the Defendant sought to be introduced into evidence by the State in this cause).

As noted by the State in their December 9, 1986 Brief, the December 20, 1983 videotaped confession, the September 19, 1984 audiotaped statement, and the September 20, 1984, videotaped confession, may technically be in compliance with TEX. CODE CRIM. PROC. ANN. Art. 38.22 (Vernon 1986). On each of those recordings, the audio-videotape machine may have been operating properly, was capable of recording the statement, the voices are identified, the Defendant was informed that the interview was being recorded, and the Defendant's Miranda warnings were read to him. However, because the Defendant never knowingly waived his right to counsel and right to remain silent during the time that he was within the custody of the Lucas Task Force, the technical compliance with Article 38.22 is not dispositive of this issue.

HENRY LEE LUCAS was interrogated for approximately 18 months, while a prisoner of the Lucas Task Force in Georgetown, Texas, and before that, while in Montague County, Texas, in a manner that is entirely inconsistent with what is proper and accepted police interrogation practice. According to the

testimony of Texas Ranger Captain Bob Prince and Texas Ranger Clayton Smith, as well as other officers, Lucas was to be treated differently than other suspects would be when being interrogated about possible crimes. Lucas was never to be confronted with his lies, nor ever to be called a liar. Williamson County Sheriff Jim Boutwell is quoted in the September 24, 1984 Law Enforcement News (Defendant's Exhibit 22) as follows: "You don't interrogate Lucas. This is something that we try to brief all officers on before they talk to him. You converse with him." Former El Paso County Sheriff Mike Davis changed his no smoking policy just for Lucas. Illinois Detective Charles Fagan testified in this hearing that it was suggested to him that he should bring two cartons of Red Pall Mall cigarettes to Henry Lucas, to be given to Lucas after he "confessed" to the murder Detective Fagan was investigating.

The State contends that the totality of the circumstances of the taking of each Lucas confession from Lucas renders Lucas' waiver of his right to remain silent and right to counsel knowing and voluntary. (State's December 9, 1986 Brief at Page 22). The State cites Moran v. Burbine, 89 L.Ed.2d 410 (1986), which was a case where the defendant's attorney was attempting to contact him at the time he was confessing to police. In that case, the Supreme Court held that the defendant, under "the circumstances of that case, knowingly waived his right to an attorney." That

is not the case herein. Also, the State cites Williams v. State, 566 S.W.2d 919 (Tex.Crim.App. 1978). Williams is a case involving one defendant confessing in one interrogation session to one crime. That the defendant's waiver of his rights in that case was voluntary is not applicalbe to this case, as the Defendant HENRY LEE LUCAS had many other factors bearing on his decision whether or not he could knowingly waive his right to counsel, which complex of factors affected the Defendant's ability to knowingly waive his right to counsel and right to remain silent for the almost two years that he was confessing to crimes.

The Defendant, in his Memorandum of Law regarding confessions and his Supplemental Memorandum of Law regarding confessions, clearly demonstrated that the Defendant could not have intentionally, knowingly, and voluntarily waived his right to counsel and his right to remain silent at the time of the giving of the confessions he gave while in custody of the Lucas Task Force.

Based upon the record in this Jackson v. Denno hearing, and for the following reasons, it is clear that HENRY LEE LUCAS did not intentionally, knowingly, and voluntarily waive his right to counsel and his right to remain silent at any time while in the custody of the Lucas Task Force.

THE STATE FAILED TO MEET THEIR BURDEN OF PROOF
IN THIS JACKSON V. DENNO HEARING.

The State has the burden of proof in this Jackson v. Denno, 378 U.S. 368 (1964) hearing (See TEX. CODE CRIM. PROC. ANN. Art. 38.22 [Vernon 1986]) to demonstrate that the Defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. Miranda v. Arizona, 384 U.S. 436 (1966). See also Clark v. State, 627 S.W.2d 693 (Tex.Crim.App. 1981). The record demonstrates that the State has failed to meet that burden in this hearing.

THE PROMISES, REWARDS, AND THREATS GIVEN TO HENRY LEE LUCAS BY THE LUCAS TASK FORCE WERE SUCH THAT, UNDER THE TOTALITY OF CIRCUMSTANCES, THE DEFENDANT'S WILL WAS OVERBORNE SO THAT HIS WAIVER OF HIS RIGHT TO A LAWYER AND HIS RIGHT TO REMAIN SILENT WAS INVOLUNTARY.

The evidence at this hearing shows that the Defendant's decisions to "waive" his rights to counsel and to not incriminate himself were not voluntary decisions. The evidence in this hearing indicates that Lucas was given a cable color television while at the Williamson County Jail (testimony of Don Higginbotham), that Lucas was given special privileges while a prisoner at the Williamson County Jail, such as having special food cooked for him (testimony of Bill Sitman), having almost

unlimited contact visits with Sister Clemmie Schroeder (testimony of Henry Lee Lucas, Clemmie Schroeder and Jim Boutwell), that Lucas developed a friendship and dependance upon Williamson County Sheriff Jim Boutwell and Texas Ranger Captain Bob Prince (testimony of Jim Boutwell, Bob Prince, Hugh Aynesworth, and Clementine Schroeder), that Lucas was treated as a celebrity while a prisoner of the Lucas Task Force (testimony of Ted Barr, William Alford, Freddie Bonilla and Mike Davis), that Lucas was given Thorazine for a good portion of the time he was in custody of the Lucas Task Force (testimony of Henry Lucas, Dr. Steve Benold), and most importantly, Lucas was threatened that he would go to Death Row if he ever stopped confessing to crimes during his interviews with police officers (testimony of Henry Lucas, Clementine Schroeder, Hugh Aynesworth, and Defendant's Exhibit 22 - Interview with Sgt. Bob Prince in September 24, 1984 Law Enforcement News). While any of these factors, taken individually, may not have been enough to overbear the will of the Defendant to such a point that his waiver of rights was involuntary, Spano v. New York, 360 U.S. 315 (1959); Blackburn v. Alabama, 361 U.S. 199, 206 (1960); Columbe v. Connecticut, 367 U.S. 568 (1961); it is clear that all these factors, taken together, overbore Defendant's will so that Defendant never knowingly waived his Constitutional rights under the 5th and 6th Amendments.

To determine the voluntariness of a confession, the law states that one must consider the effect the totality of the circumstances had upon the will of the Defendant. See, e.g., Schneckloth v. Bustamante, 412 U.S. 218, 226-27 (1973); Procunier v. Ashley, 400 U.S. 446, 453 (1971). The question is whether the Defendant's will was overborne when he confessed, Schneckloth v. Bustamante, supra, 412 U.S. at 225-26; Watts v. Indiana, 338 U.S. 49 at 53 (1949), so that a determination may be made whether or not the Defendant intentionally, knowingly and voluntarily waived his right to counsel and his right to remain silent. Blackburn v. Alabama, 361 U.S. at 206; Edwards v. Arizona, 451 U.S. 477 (1981); Frazier v. Cupp, 394 U.S. 731, 739 (1969); Boulden v. Holman, 394 U.S. 478, 480 (1969); Michigan v. Jackson, ___ U.S. ___, 106 S.Ct. 1404 (1986); Nehman v. State, ___ S.W.2d ___ (Tex.Crim.App. 1986). The Court in Blackburn v. Alabama, 361 U.S. 199, 206 (1960) stated that "a number of cases have demonstrated, if demonstration were needed, that the efficiency of the rack and the thumbscrew can be matched, given the proper subject, by more sophisticated modes of persuasion."

The question in this case is whether the Defendant's will was overborne when he confessed, rendering his purported waiver of his right to counsel and right to remain silent involuntary. See, e.g. Schneckloth v. Bustamante, supra, 412 U.S. at 225-26;

Haynes v. Washington, 373 U.S. at 513 (1963); Culombe v. Connecticut, 367 U.S. 568, 602 (1961). As the Eighth Circuit has explained: "Using the flexible totality of the circumstances approach requires the reviewing court to consider the specific tactics utilized by the police in eliciting the admissions, the details of the interrogation, and the characteristics of the accused . . ." Rachlin v. United States, 723 F.2d 1373, 1377 (8th Cir. 1983) (citations omitted). The totality of the circumstances in this case defies strictly analytic treatment. Such a conclusion cannot be reached simply by scrutinizing each circumstance separately, for the concept "totality of the circumstances" is that the whole is somehow distinct from the sum of the parts. See United States v. Wertz, 625 F.2d 1128, 1134 (4th Cir. 1980).

HENRY LEE LUCAS, although street-smart and knowledgeable in the ways of the criminal justice system, having previously served almost 15 years in prison for the murder of his mother, was essentially a drifter who lived at the lowest level of existence in our society. The record of this hearing demonstrates, based upon the totality of the circumstances, that the way in which the Defendant was living while a prisoner of the Lucas Task Force was certainly much better than the Defendant had ever lived before. When the Defendant was arrested on June 11, 1985, he was living in a converted chicken coop (testimony of Reuben and Faye Moore,

and Phil Ryan).

The combination of the friendship he developed with Sheriff Boutwell and Texas Rangers Phil Ryan and Bob Prince, the media attention Lucas was given, (much of which he may have created), the special attention, food, color TV, paints in his cell, visits with Sister Clemmie Schroeder, the special treatment he received while on the road or flying around with the Texas Rangers to crime scene sites, coupled with the Texas Rangers' threat to send Lucas to death row if he stopped confessing, are the factors brought out in this hearing that, given the totality of the circumstances of this case, combined to make any waiver by HENRY LEE LUCAS of his right to counsel and his right to remain silent while Lucas was in the custody of the Texas Rangers, involuntary.

HENRY LEE LUCAS NEVER KNOWINGLY AND VOLUNTARILY WAIVED HIS RIGHT TO A LAWYER WHILE HE WAS UNDER THE PRESSURE OF THE LUCAS TASK FORCE.

The record in this hearing reflects that Lucas had a Sixth Amendment right to counsel which attached on June 16, 1983, at the time he was arraigned for the murder of Kate Rich. See Michigan v. Jackson, __ U.S. __, 106 S.Ct. 1404 (1986). The Court of Criminal Appeals has adopted Michigan v. Jackson as State law, Nehman v. State, __ S.W.2d __ (Tex.Crim.App. 1986).

The Defendant requested an attorney in his initial confession on June 15, 1986 (Defendant's Exhibit 25). The issue is not whether or not Lucas thereafter invoked his right to an attorney and was denied one. The issue is whether the State met its burden to show a valid waiver by Lucas of his right to counsel. The pretrial hearing held in this case clearly reflects that the State has failed to fulfill its burden to establish a valid waiver of Lucas' right to counsel. As in Nehman v. State, __ S.W.2d __, (slip at p. 6) (Tex.Crim.App. 1986):

Other than the boilerplate written waivers on the confession coupled with the routine police testimony concerning those waivers, there is no evidence either that Appellant rescinded his request for counsel prior to signing the confession or that he made clear any knowing and intelligent intention to waive his right to counsel.

Because of the above-mentioned circumstances bearing on the Defendant's decision to make statements while in custody in this case, the record in this hearing has proven that HENRY LEE LUCAS never knowingly, intentionally, and voluntarily waived his right to an attorney before confessing to the murder of Librada Apocada. See Michigan v. Jackson, supra; Nehman v. State, supra.

THE PROMISES, BENEFITS, REWARDS AND THREATS GIVEN TO HENRY LEE LUCAS BY THE LUCAS TASK FORCE INFLUENCED HENRY LEE LUCAS TO SPEAK UNTRUTHFULLY, WHICH MAKES ALL SUCH STATEMENTS AND CONFESSIONS BY HENRY LEE LUCAS INADMISSIBLE.

In addition to the totality of the circumstances in this cause rendering Lucas' confession involuntary based upon overbearing the will of the Defendant, see Schneckloth v. Bustamante, 412 U.S. 218 at 226-27 (1973), this record also clearly reflects that, based upon the totality of the circumstances, Lucas' waiver of his right to counsel and his right to remain silent, were induced by promises and benefits to Lucas, such that all Lucas confessions to the Apodaca murder, made while Lucas was in the custody of the Lucas Task Force, are involuntary. See Fisher v. State, 379 S.W.2d 900 (Tex.Crim.App. 1964); Washington v. State, 582 S.W.2d 122 (Tex.Crim.App. 1979); Hardesty v. State, 667 S.W.2d 130 (Tex.Crim.App. 1984).

Any inculpatory statement obtained as a result of a benefit positively promised the Defendant, made or sanctioned by one in authority, and of such a character as would be likely to influence a defendant to speak untruthfully, is not admissible. Hardesty v. State, 667 S.W.2d 130 at 134 (Tex.Crim.App. 1984); Walker v. State, 626 S.W.2d 777 (Tex.Crim.App. 1982). Fisher v. State, 379 S.W.2d 900 (Tex.Crim.App. 1964), sets out a four part

test regarding whether a promise or benefit affects a defendant's decision to waive his right to remain silent and his right to a lawyer. To render a confession inadmissible under the promise or benefit holding of Fisher, the promise must: (1) be of some benefit to the defendant; (2) be positive; (3) be made or sanctioned by a person in authority; and (4) be of such character as would be likely to influence the defendant to speak untruthfully. Fisher, 379 S.W.2d at 902.

The record of this hearing reflects that Lucas received many benefits from the Lucas Task Force while their prisoner. HENRY LEE LUCAS obviously benefited from the fine treatment he was given as a prisoner of the Lucas Task Force, and certainly benefited by having such treatment given to him rather than being sent to Death Row to be executed.

The promises and benefits given to HENRY LEE LUCAS are positive and not equivocal in this case. The benefits Lucas received while a prisoner of the Lucas Task Force were positive, and apparently were a reward to him for his continued confessions.

The promises and benefits were given to HENRY LEE LUCAS by Texas Rangers Bob Prince and Clayton Smith, and Williamson County Sheriff Jim Boutwell. Law enforcement officers have been held to be persons in such a position of authority. See Walker v. State, 626 S.W.2d 777 (Tex.Crim.App. 1982); Pitts v. State, 614 S.W.2d

142 (Tex.Crim.App. 1981); Fisher v. State, 379 S.W.2d 900 (Tex.Crim.App. 1964); Ethridge v. State, 110 S.W.2d 576 (Tex.Crim.App. 1937); Searcy v. State, 13 S.W. 782 (Tex.Crim.App. 1890).

The fourth requirement is that the promise must be of such character as would be likely to influence the defendant to speak untruthfully. Fisher v. State, 379 S.W.2d at 902. This requirement was met in Richardson v. State, 667 S.W.2d 268 (Tex.App. - Texarkana 1984), where the defendant was offered a 5 year sentence instead of a life sentence. See Washington v. State, 582 S.W.2d 122 (Tex.Crim.App. 1979).

Although it is difficult at this juncture to determine which, of all the hundreds of Lucas' confessions, are false, it seems clear that many, if not most of them, are false. See Appendix to Defendant's Supplemental Brief Regarding Confessions, wherein 179 Task Force cleared murders are disproven by alibi information admitted into evidence in this hearing. Jim Mattox, the Attorney General of the State of Texas, in his Lucas Report, issued in May 1986, states that: "It is highly unlikely that Lucas could have committed many of the murders to which he confessed". The record in this hearing is in agreement with Texas' Attorney General. In this hearing, there has been heard alibi testimony, and through exhibits admitted by the Defendant,

proof that most of the confessions HENRY LEE LUCAS made must be false.

Therefore, it is clear based upon the record of this hearing that the promises and benefits given to HENRY LEE LUCAS by the Lucas Task Force are of such a character "as would be likely to influence the defendant to speak untruthfully", since it is obvious that the same promises and benefits induced the Defendant to speak untruthfully numerous times in the past, in giving false confessions.

Therefore, the record of this hearing clearly reflects that under Fisher v. State, 379 S.W.2d 900 (Tex.Crim.App. 1964) and Washington v. State, 582 S.W.2d 122 (Tex.Crim.App. 1979), that Lucas' waiver of his right to counsel and his right to remain silent were obtained from him by the Lucas Task Force in such a way as to make any waiver of Lucas' right to counsel and right to remain silent involuntary. Therefore, all such confessions Lucas made while in the custody of the Lucas Task Force, are similarly involuntary. The confessions Lucas made to the Librada Apodaca murder fall within this category, and are similarly inadmissible because such waivers of Lucas of his right to counsel and his right to remain silent are involuntary. See Massiah v. United States, 377 U.S. 201 (1966); Rhode Island v. Innis, 446 U.S. 291 (1980); Miranda v. Arizona, 384 U.S. 436 (1966); Edwards v. Arizona, 451 U.S. 477 (1981); Michigan v. Jackson, ___ U.S. ___,

106 S.Ct. 1404 (1986); Fisher v. State, 379 S.W.2d 900 (Tex.Crim.App. 1964); Washington v. State, 582 S.W.2d 122 (Tex.Crim.App. 1979); Nehman v. State, ___ S.W.2d ___ (Tex.Crim.App. 1986).

HENRY LEE LUCAS' INITIAL ARREST ON JUNE 11, 1983 WAS UNLAWFUL, SINCE HENRY LEE LUCAS NEVER POSSESSED ANY FIREARM AWAY FROM THE PREMISES WHERE HE LIVED, AND ANY STATEMENTS AND CONFESSIONS MADE BY HENRY LEE LUCAS THEREAFTER MUST BE SUPPRESSED.

The Defendant contends in his first Memorandum of Law regarding confessions, that Henry Lucas' arrests in October 1982 and in June 1983 were unlawful, and that any subsequent confessions are tainted by such unlawful arrests. Wong Sun v. United States, 371 U.S. 471 (1963). The State contends, in reply, that any taint of such illegal arrest (which the State contends did not occur) is attenuated by the four factors test of Brown v. Illinois, 422 U.S. 590 (1975). See Autry v. State, 626 S.W.2d 758 (Tex.Crim.App. 1982).

In the record of this hearing is testimony from Cecil County, Maryland Deputy Sheriff Richard G. Mobley that he told authorities in Montague County, Texas, in September, 1983, that the parole violation warrant for Lucas was no longer valid.

Therefore, the October 1982 arrest of HENRY LEE LUCAS was unlawful.

The State contends that the arrest of HENRY LEE LUCAS on June 11, 1983, was lawful, because HENRY LEE LUCAS possessed his firearm away from the premises where he lived. In this hearing is testimony from Reuben Moore and Faye Moore, as well as from Texas Ranger Phil Ryan, that the pistol made the basis for Lucas' arrest was recovered from the cook shack at the "House of Prayer" in Montague County, Texas, on June 11, 1983. It is clear that the cook shack was part of the premises where Henry Lucas lived. It is clear that Henry Lucas took all his meals there, and that the cook shack was his kitchen, and therefore part of his residence. Therefore, the record in this hearing reflects that the June 11, 1983 arrest of Henry Lucas was unlawful, in that there was not probable cause on that date to believe Henry Lucas possessed his firearm away from the premises where he lived.

The State contends that any taint of such unlawful arrest is attenuated because of the passage of time between June 1983 and September 1984, when Lucas first confessed to the Apodaca murder. Based upon the discussion infra regarding the factors that prevented Lucas from knowingly, intelligently and voluntarily waiving his right to counsel and his right to remain silent, the record in this hearing clearly demonstrates that such taint was not attenuated, and such taint continued to exist at the time

that Lucas gave the confessions to the Apodaca murder. Brown v. Illinois, 422 U.S. 590 (1975).

The four factors test of Brown v. Illinois is: "(1) Whether Miranda warnings were given; (2) the temporal proximity of the arrest and confession; (3) the presence of intervening circumstances; and (4) the purpose and flagrancy of the official misconduct." Brown v. Illinois, 422 U.S. 590 at 603 (1975); Taylor v. Alabama, 457 U.S. 687 (1982); Oregon v. Elstadt, 470 U.S. ___, (1985); Fierro v. State, 706 S.W.2d 310, 314 (Tex.Crim.App. 1986). As the State noted in their brief in quoting Wicker v. State, 667 S.W.2d 137 (Tex.Crim.App. 1984), the statements made by appellant must have been a sufficient act of free will so as to purge the primary taint.

In this case, Miranda warnings were given to Lucas at the time he gave the confessions to the Apodaca murder, and the confessions were 16 months after the second unlawful arrest of Lucas. However, the record in this hearing reflects that there were no intervening circumstances to purge the taint of the unlawful arrest, and that the official misconduct, in preventing Lucas from voluntarily and knowingly waiving his right to counsel and his right to remain silent, was purposeful and flagrant to the degree that HENRY LEE LUCAS was unable to exercise his free will so as to purge the primary taint of the unlawful arrest.

Therefore, this record has demonstrated that the confessions to this murder were also the result of the unlawful arrest of HENRY LEE LUCAS, and that the fruits of that poisonous tree must be suppressed. Wong Sun v. United States, 371 U.S. 471 (1963); United States v. Ceccolini, 435 U.S. 268 (1977).

HENRY LEE LUCAS' STATEMENT TO THE EL PASO COUNTY GRAND JURY IS INADMISSIBLE BECAUSE DEFENDANT NEVER KNOWINGLY AND VOLUNTARILY WAIVED HIS RIGHT TO A LAWYER.

The State also urges the admission of Henry Lucas' statement to the El Paso County Grand Jury on October 25, 1984 (see State's Brief December 9, 1986, at page 17). Testimony was heard from Henry Lucas, Bill Moody and Texas Ranger Bob Prince to the effect that Henry Lucas requested advice before making the decision whether to go before the Grand Jury. This record reflects that the advice Henry Lucas was seeking was his right to counsel under the Sixth Amendment and that the State has failed to meet their burden of showing a valid waiver of Henry Lucas' right to counsel prior to his testimony before the Grand Jury. Michigan v. Jackson, supra; Nehman v. State, supra.

On the basis of the record in this cause which proves that Henry Lucas' purported waiver of his right to counsel and right to remain silent was induced by promises and benefits, and that

his free will was overborne when he purportedly made such a decision, it is clear that Henry Lucas' statement to the El Paso County Grand Jury must be suppressed, and must not be admitted against the Defendant in this cause.

ANY STATEMENTS MADE BY HENRY LEE LUCAS TO THE REVEREND BOB LARSON MUST BE SUPPRESSED BECAUSE THEY WERE OBTAINED BY DECEIT AND FRAUD.

The State further urges that statements Henry Lucas made to Reverend Bob Larson, Sister Clemmie Schroeder and Kathy Larson on September 29, 1984 and April 29, 1985, should be admitted into evidence against the Defendant herein. (State's December 9, 1986 Brief at Page 20).

In the record in this cause is testimony regarding Reverend Bob Larson and his conversations with Henry Lucas, from a hearing held in this Court on January 21, 1986. Although Reverend Bob Larson was neither Henry Lucas' minister, nor a law enforcement agent, that record reflects that the Reverend Bob Larson was allowed, and encouraged, to speak with Henry Lucas by the members of the Lucas Task Force. It appears that Henry Lucas' right to counsel was violated through the subterfuge that the Reverend Larson used in April, 1985, in taping conversations with Henry Lucas when he had been requested not to by Henry Lucas' attorney at the time. See Record, McLennan County Grand Jury

investigation into Henry Lee Lucas' false confessions. It appears that Henry Lucas' attorney, when he demanded that the Reverend Larson return the tapes, received other tapes, but not the tape containing this April 29, 1985 conversation. As to the April 29, 1985 meeting between Larson and Lucas, the record therefore reflects that, at that time, Reverend Larson was acting as an agent of the Government.

Whether or not a defendant can voluntarily consent to giving statements to another depends on whether or not the Defendant's consent is voluntary. Schneckloth v. Bustamante, 412 U.S. 218, 219 (1973); see Bumper v. North Carolina, 391 U.S. 543 (1968). The Government has the burden of proving that consent was freely and voluntarily given. Florida v. Royer, 460 U.S. 491, 497 (1983); United States v. Parker, 722 F.2d 179, 182 (5th Cir. 1983). Consent obtained by means of an intentional misrepresentation on the part of a police officer or Government agent makes the defendant's consent involuntary. See Alexander v. United States, 390 F.2d 101 (5th Cir. 1968). In Alexander, the 5th Circuit held that the defendant's consent was involuntary because it was obtained through deceit. The Court stated at Page 110, "Intimidation and deceit are not the norms of voluntarism. In order for the response to be free, the stimulus must be devoid of mendacity". See also Graves v. Beto, 424 F.2d 524 (5th Cir.

1970) cert. denied, 400 U.S. 960 (1970), where the 5th Circuit held that the defendant's consent, "secured by official strategem", was involuntary. In United States v. Tweel, 550 F.2d 297 (5th Cir. 1977), an agent of the Internal Revenue Service intentionally led the defendant to believe that certain records and information he requested were to be used only in a civil investigation, when in truth and in fact he was conducting a criminal investigation. The Court held that the agent's deliberate deception rendered the defendant's consent involuntary, and that the evidence should have been suppressed.

Therefore, the January 21, 1986 hearing in this cause and the McLennan County Grand Jury record reflect that all statements Henry Lucas made to Reverend Bob Larson, including the April 29, 1985 and September 29, 1984 statements, are inadmissible.

In light of the foregoing discussion, the following has been established at this hearing.

The State had the burden of proof in this Jackson v. Denno, 378 U.S. 368 (1964) hearing, and has failed to meet that burden.

The Defendant's Motion to Suppress Confessions in the above styled and numbered cause should be granted.

All statements and confessions of the Defendant, HENRY LEE LUCAS, made while he was in custody, after his June 11, 1983 arrest, and which relate in any manner whatsoever to the murder of Librada Apodaca, are inadmissible for the foregoing reasons,

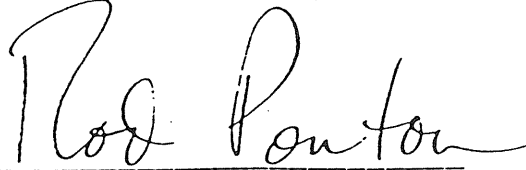
and must be suppressed.

The Defendant's recorded confession to the El Paso County Grand Jury on October 25, 1984 is inadmissible, and must be suppressed.

All the Defendant's statements to the Reverend Bob Larson, including those on September 29, 1984 and April 29, 1985, are inadmissible and must be suppressed.

All the direct and indirect fruits of any statements made by HENRY LEE LUCAS regarding the Librada Apodaca murder must be suppressed, including but not limited to evidence that the Defendant went to the victim's home, evidence regarding waitresses, the Standard Truck Stop, and any other such direct or indirect evidence, which this record reflects is the fruit of the poisonous tree of Henry Lucas' inadmissible confessions and statements in this matter.

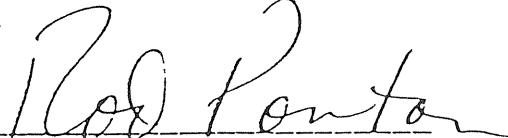
Respectfully submitted,



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CERTIFICATE OF SERVICE:

I hereby certify that on this 19th day of December, 1986, I delivered a true copy of the above and foregoing pleading to the Office of the 34th Judicial District Attorney, El Paso City County Building, El Paso, Texas 79901.



ARVEL (ROD) PONTON III

CONFIRMED CASES THAT WOULD BE AFFECTED SHOULD CRAWFORD'S INFORMATION BE CORRECT:

(List of confirmed cases - Lucas - Dec. 1975 through Aug. 1977)

1.	#17	Virginia G. Kegans	Okla. City, Okla.	10-25-76
2.	#21	James Carpellotti	Baltimore, Maryland	12-12-75
3.	#22	Debra Ann Eason	Chesapeake, Va.	8-2-77
4.	#29	Bernice P. Erdman	Houston, TX	2-12-77
5.	#49	Sharon A. Blankenbeckler	Smyth Co., Va.	3-11-77
6.	#68	Sharon M. Copp	Pueblo Co., Colo.	8-17-76
7.	#69	Holly M. Andrews	Arapahoe, Colo.	12-26-76
8.	#98	Alice Daubon	Milwaukee, Wis.	7-31-76
9.	#101	John Whatley	Bastrop, TX	1-27-76
10.	#102	Faye Whatley	Bastrop, TX	1-27-76
11.	#121	Katherin L. Robinson	Corpus Christi, TX	12-30-75
12.	#129	Carol A. Lane	North Carolina	10-12-76
13.	#135	Lisa A. Slusser	Lake Co., Ill.	8-24/26-77
14.	#149	Mary E. Harrison	Kingfisher, Okla.	1-8-77
15.	#156	Suzanne Bowers	Galveston, TX	5-21-77
16.	#170	Stephanie Driscoll	Windy Point, Ca.	8-7-77
17.	#175	Vickie L. Schneider	Eureka, Ca.	6-30-76
18.	#177	Laura L. Long	Rogers Co., Okla.	7-10-77
19.	#185	Sima Warren	El Paso, TX	4-12-76
20.	#197	Lindy S. Biechler	Lancaster, Pa.	12-5-75
21.	#204	Clemmie E. Curtis	Huntington, W.VA.	8-3-76
22.	#212	James E. Cox	Galveston, TX	1-31-77
23.	#217	Elsa Gonzales	Bexar Co., TX	7-31-77
24.	#218	<u>Linda Hopwood</u>	<u>Bexar Co., TX</u>	<u>4-27-77</u>
25.	#224	Marion Kalquist	Liberty Co., GA.	12-17-76