

69.325

NO. 13,890-B

STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
VS.	§	119TH JUDICIAL DISTRICT
	§	
HENRY LEE LUCAS	§	TOM GREEN COUNTY, TEXAS

Before the Hon. John R. Carter, Judge Presiding

STATEMENT OF FACTS  
VOLUME XXIX OF XXXII VOLUMES

APPEARANCES:

EDWARD J. WALSH III, District Attorney, Williamson County, Georgetown, Texas

KEN ANDERSON, Assistant District Attorney, Williamson County, Georgetown, Texas

FOR THE STATE

DON HIGGINBOTHAM, Attorney at Law, 809 Main Street, Georgetown, Texas

PARKER McCOLLOUGH, Attorney at Law, 1107 Main Street, Georgetown, Texas

MAX PARKER, Webb, Stokes, Sparks, Parker & Junell, P.O. Box 1271, San Angelo, Texas

FOR THE DEFENDANT

MAR 25 1986

BE IT REMEMBERED that the above-captioned and styled cause came on for TRIAL on the 12th day of April, 1984, whereupon the following proceedings were had, to wit:

ORIGINAL



I N D E X

APRIL 12, 1984

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EVENING RECESS

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P R O C E E D I N G S

APRIL 12, 1984

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6 (Whereupon, the Defendant and  
7 counsel being present in the  
8 courtroom, and the jury being  
9 in deliberations, the  
10 following proceedings were  
11 had:)

12  
13 THE COURT: The first question is:  
14 "In the morning, we would like to see the most  
15 complete edited version of the audio and  
16 videotapes that the jury saw in chronological  
17 order, starting with the first interview with  
18 Mr. Lucas in Montague County through the  
19 audiotape of Mr. Lucas coming back from Denton.  
20 We do not need to see the video of Mr. Lucas  
21 and Mr. Toole."

22 The first thing we want to do here  
23 is, I want to double-check and make sure the  
24 tabs have been punched out so they can't be  
25 erased, and then I'm going change my previous

1 ruling. And rather than make them view it in  
2 the courtroom, I'm going to order the machine  
3 moved down there to the jury room, to let them  
4 operate it. If they can't mess up our tapes,  
5 there's nothing to be worried about with them.  
6 In fact, they should have it in the jury room.

7 MR. McCOLLOUGH: The tape player?

8 THE COURT: The tape player and the  
9 videotape player. Both sides, please check out  
10 and be sure that everything is punched out, so  
11 nobody can do it, and then hand it to me and  
12 let me check it.

13 MR. WALSH: Can we go off the record  
14 and talk to the Court Reporter about this?

15  
16 (Whereupon, following a  
17 discussion off the record, the  
18 proceedings continued as  
19 follows:)

20  
21 THE COURT: The second question that  
22 we're going to have to answer: "Can we have  
23 transcripts of those audio and videotapes, that  
24 is, those parts of the most complete edited  
25 tapes that we saw and heard?"

1                   The answer, I believe, is probably:  
2                   "The jury may only examine those items which  
3                   have been admitted into evidence. I refer you  
4                   to the charge."

5                   Does that answer sound correct?

6                   MR. MCCOLLOUGH: There are no  
7                   transcripts in the record.

8                   MR. WALSH: Would there be anything  
9                   wrong with telling them that?

10                  MR. ANDERSON: Why don't you repeat  
11                  the general instruction that you are to  
12                  consider only the evidence?

13                  THE COURT: "You are charged that it  
14                  is only from the witness stand that the jury is  
15                  permitted to receive evidence regarding this  
16                  case?"

17                  MR. ANDERSON: Isn't there some more  
18                  about exhibits?

19                  THE COURT: I don't think there is.  
20                  I looked for it, and I couldn't find it. Maybe  
21                  you can find it, but I can't find it.

22                  MR. WALSH: Do you have any of those  
23                  samples in the Judges' books to cover that,  
24                  Judge?

25                  THE COURT: Let's go off the record.

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(Whereupon, there was a discussion off the record, after which proceedings continued as follows:)

THE COURT: For the record, we have one question from the jury: "In the morning, we would like to see the most complete edited versions of the audio and videotapes that the jury saw in chronological order, starting with the first interview with Mr. Lucas in Montague County through the audiotape of Mr. Lucas coming back from Denton. We do not need to see the video of Mr. Lucas and Mr. Toole."

In reply, rather than reply to this, it is the Court's intention to just deliver all of the audio and videotapes to the jury with the tabs punched out so they can't be erased, and the equipment with which to operate these tapes.

Is there any objection from the State?

MR. WALSH: I have no objection, Your Honor. I think that is proper. That's not

1 really even a question; it is a request. And  
2 this is the proper way to respond to that  
3 request.

4 THE COURT: Mr. McCollough?

5 MR. MCCOLLOUGH: No objections, Your  
6 Honor. My only comment is that I would hope  
7 that someone would instruct -- or that somebody  
8 on the jury would know how to run the video  
9 machine and, if not, have someone instruct them.  
10 The tabs have been punched out so that they  
11 cannot be erased.

12 THE COURT: It's my understanding  
13 that several people on the jury can operate a  
14 video machine. They own their own or  
15 something.

16 MR. MCCOLLOUGH: That' fine. No  
17 objections.

18 THE COURT: All right. Mr. Lucas, do  
19 you have any objections?

20 THE DEFENDANT: No, sir, I haven't.

21 THE COURT: All right. I'm going to  
22 order the Bailiff to deliver the machine and  
23 these tapes.

24 Just so you've double-checked and  
25 these are the only tapes that have been



1 admitted into evidence and no others; correct?

2 All right.

3

4

(Whereupon, following a

5

recess, proceedings continued

6

as follows:)

7

8

THE COURT: Okay. For the record, we

9

have one inquiry that says: "Could we have

10

brought to the jury room the easel with the

11

large blanks of writing tablet and marker?

12

I propose to just deliver the easel

13

and marker to the jury room, without answering

14

this inquiry. Is there any objection by the

15

State?

16

MR. WALSH: No, sir.

17

THE COURT: Any objections from the

18

Defense?

19

MR. McCOLLOUGH: No, sir.

20

THE COURT: Mr. Lucas, any

21

objections?

22

THE DEFENDANT: No, sir.

23

THE COURT: All right. Then I'll

24

just order an easel and a marker delivered to

25

the jury room.

1 Do you all want to approach the  
2 bench on the other one just a minute?

3  
4 (Whereupon a discussion was  
5 had at the bench between the  
6 Court and counsel, after  
7 which proceeding continued  
8 as follows:)

9  
10 THE COURT: On the record.

11 We received two questions from the  
12 jury:

13 "Can we have transcripts of these  
14 audio and videotapes, that is, the parts of the  
15 most complete edited tapes that we saw and  
16 heard?"

17 Another question: "We need to see  
18 the transcripts of the testimony of the three  
19 psychiatrists and the psychologist."

20 Okay. In reply, I'm going to submit  
21 the following, topped by the heading and cause  
22 number: "Members of the jury, you have  
23 submitted to the Court the attached statement."  
24 I have attached a copy of the questions I just  
25 read.

1 "You are instructed that our law  
2 provides that if the jury disagrees as to the  
3 statement of any witness, they may, upon  
4 applying to the Court, have read to them from  
5 the Court Reporter's notes that part of the  
6 witness's testimony on the point in dispute.

7 "You are further instructed that it  
8 is not possible to have all of the testimony  
9 given in this case read to you by the Court  
10 Reporter but, as stated above, only those  
11 portions of the witness's testimony which may  
12 be in dispute.

13 "You are further instructed that it  
14 will take the Court Reporter some time, after  
15 you have designated that portion of the  
16 testimony which you want read, to locate such  
17 testimony in his notes." Signed: John R.  
18 Carter, presiding Judge.

19 I propose to send this communication  
20 to the jury in reply to those questions. How  
21 states the State?

22 MR. WALSH: That's fine with the  
23 State, Your Honor.

24 THE COURT: The Defense?

25 MR. McCOLLOUGH: No objection, Your

1 Honor.

2 THE COURT: Mr. Lucas, do you have  
3 any objection?

4 THE DEFENDANT: No.

5 THE COURT: All right. Then that  
6 will be submitted to the jury.

7 MR. WALSH: Are we through?

8 THE COURT: No, we've still got one  
9 more coming. We have additional questions from  
10 the jury: "Are we permitted to review the  
11 medical records from Ionia and the  
12 Court-ordered psychiatrist reports of Dr.  
13 Griffith and Dr. Coons?"

14 The second question is: "Are we to  
15 wait for Judge Carter's answers to our  
16 previous questions, or can we begin dealing  
17 with the tapes now?"

18 This answer will be headed with the  
19 cause number and the name of the case and so  
20 forth. The answer as follows: "Members of the  
21 jury, you have submitted to the Court the  
22 attached statement," with the attached  
23 statement I have just read will be attached.  
24 I'll answer: "The jury may only examine those  
25 items which have been admitted into evidence.

1 You are charged that it is only from the  
2 witness stand that the jury is permitted to  
3 receive evidence regarding the case. You may  
4 proceed with your deliberations."

5 Any objections from the State?

6 MR. WALSH: No, sir.

7 THE COURT: Any objections from the  
8 Defense?

9 MR. PARKER: No objections.

10 THE COURT: Mr. Lucas, do you have  
11 any objections?

12 THE DEFENDANT: No objections.

13 THE COURT: All right. Do you want  
14 to give this to the Bailiff.

15 That's all the questions.

16  
17 (Whereupon a recess was taken,  
18 after which proceedings  
19 continued as follows:)

20  
21 THE COURT: Bring in the jury,  
22 please.

23 While we are waiting for the jury,  
24 there will be no outbursts upon the receipt of  
25 the verdict, and no one will leave the