

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 XXX 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 13th day of April, 1984, whereupon the following proceedings were had, to wit:

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

APRIL 13, 1984

	<u>Page</u>
PROCEEDINGS	1149
(OUT OF THE PRESENCE OF THE JURY:)	
<u>State's Witness:</u>	
<u>ROGER BERRY:</u>	
Direct Examination by Mr. Walsh	1151
Voir Dire Examination by Mr. Higginbotham	1155
(State's Exhibit 104 played in court)	1162
<u>Defense's Witness:</u>	
<u>PARKER McCOLLOUGH:</u>	
Direct Examination by Mr. Higginbotham	1165
Cross-Examination by Mr. Walsh	1167
<u>DON HIGGINBOTHAM:</u>	
Direct Examination by Mr. Parker	1169
Cross-Examination by Mr. Walsh	1172
Redirect Examination by Mr. Parker	1173
<u>State's Witness:</u>	
<u>GARY CUTLER:</u>	
Direct Examination by Mr. Walsh	1176
Cross-Examination by Mr. Higginbotham	1180
Redirect Examination by Mr. Walsh	1190
(WITHIN THE PRESENCE OF THE JURY:)	

1	OPENING STATEMENT ON BEHALF OF THE STATE	1193
2	PRESENTATION ON BEHALF OF THE STATE:	
3	<u>ROGER BERRY:</u>	
4	Direct Examination by Mr. Anderson	1196
	Voir Dire Examination by Mr. Higginbotham	1210
5	Direct Examination (Cont'd) by Mr. Anderson	1214
	Cross-Examination by Mr. Higginbotham	1214
6	Redirect Examination by Mr. Anderson	1224
7	<u>GARY CUTLER:</u>	
8	Direct Examination by Mr. Walsh	1228
	Cross-Examination by Mr. McCollough	1240
9	Redirect Examination by Mr. Walsh	1251
	Recross-Examination by Mr. McCollough	1258
10	Further Redirect Examination by Mr. Walsh	1260
11	State rests	1262
12	OPENING STATEMENT ON BEHALF OF THE DEFENSE	1262
13	PRESENTATION ON BEHALF OF THE DEFENSE:--	
14	<u>PHIL RYAN:</u>	
15	Direct Examination by Mr. Higginbotham	1264
	Cross-Examination by Mr. Walsh	1272
16	Redirect Examination by Mr. Higginbotham	1274
	Recross-Examination by Mr. Walsh	1275
17	Defense rests	1276
18	State closes	1276
	Defense closes	1276
19		
20	(OUT OF THE PRESENCE OF THE JURY:)	
	Objections to the Charge	1278
21		
22	(WITHIN THE PRESENCE OF THE JURY:)	
	Charge of the Court read to the jury	1286
23		
24	OPENING ARGUMENT ON BEHALF OF THE STATE	1291
25		

1	ARGUMENT ON BEHALF OF THE DEFENSE	1297
2	CLOSING ARGUMENT ON BEHALF OF THE STATE	1319
3	Verdict of the Jury	1330
4	Court recessed	1334
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

E X H I B I T I N D E X

APRIL 13, 1984

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

<u>STATE'S EXHIBIT:</u>	<u>MRK'D</u>	<u>ID'D</u>	<u>OFR'D</u>	<u>ADM'D</u>	<u>SHOWN</u>
104 7-28-83 statement	1152	1153	1209	1212	Vol. XXXII
105 8-3-83 statement	1178	1234	1237	1237	Vol. XXXII
106 photograph	1199	1200	1201	1201	Vol. XXXII
107 photograph	1199	1200	1201	1201	Vol. XXXII
108 photograph	1199	1200	1201	1201	Vol. XXXII
109 photograph	1199	1200	1201	1201	Vol. XXXII
110 photograph	1199	1200	1201	1201	Vol. XXXII
111 photograph	1199	1200	1201	1201	Vol. XXXII
112 aerial photo	1230	1230	1231	1232	Vol. XXXII
113 aerial photo	1230	1230	1231	1232	Vol. XXXII

DEFENDANT'S EXHIBIT:

31 6-24-83 statement	1245	1245			Vol. XXXII-A
-------------------------	------	------	--	--	--------------

P R O C E E D I N G S

APRIL 13, 1984

1
2
3
4
5 (Whereupon, the Defendant and
6 counsel being present in the
7 courtroom, the following
8 proceedings were had, outside
9 the presence of the jury:)

10
11 THE COURT: Is there anything to be
12 brought before the Court before we bring in the
13 jury?

14 MR. WALSH: Your Honor, what we intend
15 to offer on punishment this morning, I spoke
16 with Mr. Higginbotham, and maybe Mr. McCollough
17 also. We intend to introduce a written
18 confession given by the Defendant concerning a
19 robbery that occurred in Abilene, Texas. We
20 have a witness, one witness on that confession,
21 to prove it up.

22 We also intend to offer a written
23 statement concerning a murder that occurred in
24 Travis County, Texas, and we have an officer
25 from the Travis County Sheriff's Office who will

1 be the witness on that statement.

2 The other item that we wish to
3 introduce in evidence will be the balance of the
4 February, I think, 16th interview between the
5 Sheriff, Clayton Smith and Lucas, which is -- I
6 don't know what the number is, but it's the
7 statement the Court viewed here outside the
8 jury's presence.

9 Those are the three items that we
10 intend to prove up on punishment, and I suppose
11 we need to have a hearing outside the presence
12 of the jury on these written statements.

13 THE COURT: Mr. McCollough?

14 MR. MCCOLLOUGH: May I approach the
15 bench, Your Honor?

16 THE COURT: Yes, you may.

17 Are you ready to proceed, Mr. Walsh?

18 MR. WALSH: Yes, sir. The State would
19 call Roger Berry.

20 THE COURT: Have you been sworn?

21 THE WITNESS: No, sir.

22
23 (The oath was given to the
24 witness by the Court.)
25