

1 evidence was presented to them.

2 THE COURT: Well, don't tell me that. Just
3 let's get on with it.

4 MR. PONTON: I wanted to find out if Your
5 Honor wanted to take a break this afternoon or --
6 because I could have some more come back this
7 afternoon or tomorrow and have them come --

8 THE COURT: Mr. Ponton, let me get through
9 with these. You know, I don't know why they are here.
10 Just let me try to get through with these. Call them.

11 MR. PONTON: Yes, Your Honor.

12 THE COURT: Would you please raise your
13 right hand, sir?

14 Have a seat.

15

16 ARTURO SEPULVEDA GARCIA,

17 having been first duly sworn by the Court to tell the
18 truth, the whole truth, and nothing but the truth,
19 was examined and testified as follows:

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21 DIRECT EXAMINATION

22 BY MR. PONTON:

23 Q. Would you please state your name?

24 A. My name is Arturo Sepulveda Garcia.

25 Q. Were you a member of the September 1984

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1 grand jury for the 34th Judicial District Court of El
2 Paso County, Texas?

3 A. Yes, I was.

4 Q. As a member of that grand jury, were you a
5 member of that grand jury that returned an indictment
6 against Henry Lee Lucas for capital murder?

7 A. Yes.

8 Q. Were you present when Henry Lucas came and
9 appeared before that grand jury?

10 A. Yes, I was.

11 Q. At the time that Henry Lucas came and
12 testified before that grand jury, had the grand jury
13 previously heard any testimony from other witnesses
14 or had they only heard -- please tell me if they had,
15 that you recall.

16 A. Would you say the question again?

17 Q. Okay. In other words, the grand juries hear
18 evidence two ways, one coming from live witnesses
19 coming in such as Mr. Lucas or a witness to a crime,
20 and the other way is when assistant district
21 attorneys might come in and tell the grand jury what
22 an officer might say or what a witness might say.

23 So, first, I want to ask you if other
24 witnesses came in and testified before Mr. Lucas, in
25 other words, a witness to the crime or somebody who

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1 had personal knowledge of it?

2 A. No.

3 Q. Had the grand jury prior to Mr. Lucas'
4 testimony heard a synopsis of testimony or synopsis
5 of what someone might say from Mr. Moody or other
6 assistant district attorneys?

7 MR. MOODY: All right, Your Honor. I'm
8 going to object to this line of questioning. They
9 are asking at this point for the grand jurors to
10 violate their oath of secrecy under Article 19.34 of
11 the Texas Code of Criminal Procedure. They were
12 sworn to keep secret unless this Court actually
13 requires -- not the defense attorney but the Court
14 requires them to disclose the same in the course of a
15 judicial proceeding.

16 THE COURT: Where are you reading from?

17 A. I'm reading from Article 19.34, Code of
18 Criminal Procedure.

19 THE COURT: Okay. Go ahead.

20 MR. MOODY: And that in that regards, there
21 has been no showing by the defense that there is any
22 reason to go into the secret proceedings. There has
23 been no affidavit filed by any of the witnesses or
24 any potential witnesses in this case which is what
25 you have to do when you want to go behind their

1 deliberations. Further, you know, if they want to go
2 into the actual deliberations, Article 20.02
3 specifically prohibits the grand jurors from going
4 into any deliberations that they might have had, that
5 they will be liable for fines and contempt if they
6 did.

7 The attorney's therefore asking them to
8 violate their oaths, and we would ask the Court to --
9 until they can make a showing, a factual showing as
10 to why this is necessary, that these questions not be
11 gone into.

12 MR. PONTON: Judge, I'm not asking this
13 witness to testify in court today as to what a
14 witness said or as to what an assistant district
15 attorney or police officer said. What I am inquiring
16 into is who might have appeared. What I am going to
17 ask is whether certain things may have been presented
18 to the grand jury and I believe that that -- that the
19 answers to those questions would be no.

20 I believe that I should be allowed pursuant
21 to the previously filed motion to dismiss because of
22 abuse of the grand jury process in this case to
23 inquire from the grand jurors that indicted Mr. Lucas
24 certain things such as whether or not exculpatory
25 evidence was presented to them that was known at the

1 time such as whether or not there were six or eight
2 Texas Rangers in the grand jury room or law
3 enforcement officials in the grand jury room while
4 they were hearing testimony or deliberating.

5 I'm not asking them to tell this Court what
6 the substance of the deliberation was and I'm not
7 asking them to tell this Court the substance of
8 testimony, but I do believe that we would be without
9 a remedy to pursue the previously filed motion to
10 dismiss because of abuse of the grand jury process
11 unless I were allowed to inquire on a limited basis
12 as to those matters.

13 And if the witness -- I'll be glad to
14 instruct the witness that if he feels like he is
15 being asked a question about his deliberations which
16 are secret or the exact substance of the testimony
17 which shouldn't be secret because we have already had
18 Mr. Lucas' testimony transcribed, that he could
19 request the Court to further advise him. But upon
20 that limited basis, I would request that I be allowed
21 to ask the questions of the witness regarding those
22 matters.

23 THE COURT: Mr. Ponton, I'm going to allow
24 you to ask those questions. I am not going to allow
25 you to ask questions or to get answers from these

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1 grand jurors that would go into why or how they
2 deliberated or what evidence they heard.

3 You may ask questions if they heard any
4 exculpatory evidence. You may ask them as a general
5 question. You may ask whether the law enforcement
6 people were present. You may ask if anyone else
7 testified other than Lucas, but -- You may ask those
8 questions, but you cannot get into the substance of
9 the matter.

10 MR. PONTON: Yes, Your Honor.

11 THE COURT: All right.

12 Q. (BY MR. PONTON) Sir, before Mr. Lucas
13 testified did you hear -- did the grand jury hear any
14 evidence from any witnesses or any police officers or
15 any member of the district attorney's staff that
16 would tend to show the grand jury that Mr. Lucas had
17 not committed this murder, in other words,
18 exculpatory evidence?

19 A. That he had not committed the murder?

20 Q. Yes.

21 A. No.

22 Q. For instance, was the grand jury --

23 THE COURT: Well, he has answered the
24 question no. Let's go to another question. Don't
25 give him any for-instance. We're not going to get

1 into that.

2 MR. PONTON: I would like, if I could, Your
3 Honor, for purposes of the record to ask specifically
4 about two or three items of exculpatory evidence that
5 I --

6 THE COURT: All right, Ponton. Ask him and
7 then I'll rule on them. It takes you about 50
8 minutes to tell me what it is you want. Let's get it
9 on. You have got these grand jurors out here. These
10 people shouldn't even be here. Now, let's go.

11 Q. (BY MR. PONTON) Was the grand jury told
12 that Mr. Lucas had confessed to killing a woman in
13 eastern Louisiana the day before Librada Apodaca was
14 killed?

15 A. No.

16 Q. Was the grand jury told that none of Mr.
17 Lucas' fingerprints were at Mrs. Apocaca's house?

18 A. No.

19 Q. Was the grand jury told that Mr. Lucas'
20 blood and semen type did not match the blood and
21 semen type found on the victim's panties?

22 A. No, sir.

23 Q. Was the grand jury told that there were six
24 or more persons who had been named as suspects in
25 this case or had confessed to this crime other than

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Mr. Lucas?

A. No, sir.

Q. When Mr. Lucas testified before the grand jury, were there Texas Rangers or other law enforcement officials present in the courtroom?

A. Yes, there were.

Q. Can you recall how many?

A. No, I can't recall how many.

Q. Can you guess? I mean, was it five or three or eight or twelve or just a guess, approximation?

A. Oh, I'd venture to say it would be in the neighborhood of between four and eight.

Q. Okay. Were you aware that some of those were Texas Rangers?

A. Yes, I was.

Q. Were they present during the time that your grand jury received any other evidence on the Lucas case?

A. No, they were not.

Q. They were only present when Mr. Lucas testified?

A. That is correct.

Q. Was the grand jury told about Mr. Lucas being a mass murderer?

MR. MOODY: Your Honor, now he is going

1 again into specifics that, you know, what the grand
2 jury was told.

3 MR. PONTON: Your Honor, I believe that --

4 THE COURT: Let me say this to you. That
5 may be a fair question for this reason, that the --
6 whether or not Mr. Lucas was a mass murderer should
7 not have anything to do with an indictment in this
8 case. This is an individual case or should have been
9 an individual case.

10 MR. MOODY: Well, of course --

11 THE COURT: It doesn't matter or should not
12 matter to these grand jurors about any other case
13 unless he is indicted in that matter or about to be
14 indicted in that matter.

15 MR. MOODY: Well, of course --

16 THE COURT: So I think I'm going to allow
17 the question.

18 Q. (BY MR. PONTON) So I would ask you again,
19 sir, was the grand jury informed that Mr. Lucas was a
20 mass murderer?

21 A. Yes, we were.

22 MR. PONTON: We pass the witness, Your Honor.

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CROSS-EXAMINATION

BY MR. MOODY:

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3 Q. And that information was in the -- the mass
4 murderer information was in the videotape confession
5 where he himself is the person saying that he is the
6 mass murderer. Right? Do you remember watching the
7 videotape of the confession?

8 A. I remember watching that.

9 Q. And that's where the question was asked, "How
10 many people have you killed?" Do you remember that?

11 A. Yes.

12 Q. And that's where the information was that he
13 was -- had killed several hundred, whatever it was,
14 whatever he said?

15 A. That's correct.

16 Q. And no law enforcement personnel were
17 present when you were deliberating nor no one was
18 else was present when you were deliberating this case,
19 were they? Is that correct?

20 A. That's right. Nobody except us.

21 Q. And when you were stating a figure of four
22 to eight people other than grand jurors present, were
23 you including people like myself and Ms. Pennock and
24 Mr. Simmons, people from the district attorney's
25 office?

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1 A. When I said four to eight?

2 Q. Yeah.

3 A. No, I was not including you people. I was
4 just trying to remember the law enforcement people.

5 Q. But you really -- You're not very sure on
6 how many?

7 A. No, except that I know there was four that
8 brought him in.

9 Q. Okay.

10 A. And other than you, Ms. Pennock and Mr.
11 Simmons and some other people were there, so I
12 assumed that the other ones were law enforcement
13 officers other than you from the district attorney's
14 office.

15 MR. MOODY: No further questions.

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17 REDIRECT EXAMINATION

18 BY MR. PONTON:

19 Q. Sir, was there any other case that Mr.
20 Simmons participated in during that grand jury term?

21 A. I'm sorry. I don't understand the question.

22 Q. Was there any other case that Mr. Simmons
23 participated in during your grand jury term?

24 A. I don't know. I don't know whether he did
25 or not, sir.

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