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

STATEMENT OF FACTS

Before the Hon. John R. Carter, Judge Presiding

April 9, 1984

VOLUME XXVI OF XXXII-A VOLUMES

MAR 25 1986

APPEARANCES:

MR. EDWARD J. WALSH, III, District Attorney, Williamson County Courthouse, Georgetown, Texas 78626

MR. KEN ANDERSON, Assistant District Attorney, Williamson County Courthouse, Georgetown, Texas 78626

FOR THE STATE

MR. DON HIGGINBOTHAM, Attorney at Law, 809 Main Street, Georgetown, Texas 78626

MR. PARKER McCOLLOUGH, Attorney at Law, 1107 Main Street, Georgetown, Texas 78626

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

FOR THE DEFENDANT

BE IT REMEMBERED that on the 9th day of April, 1984, the above captioned and numbered cause came on for TRIAL, whereupon the following proceedings were had, to wit:

ORIGINAL

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APRIL 9, 1984

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	<u>Page</u>
PROCEEDINGS	660
PRESENTATION ON BEHALF OF DEFENSE (CONTINUED):	
<u>JAY FOGELMAN, M.D.</u>	
Direct Examination by Mr. Higginbotham	664
Cross-Examination by Mr. Anderson	703
Redirect Examination by Mr. Higginbotham	776
Recross-Examination by Mr. Anderson	781
Defense rests	783
EVENING RECESS	786

PROCEEDINGS, APRIL 9, 1984Morning Session

- - - - -

(At this time a conference
was held out of the presence
of the jury as follows:

THE COURT: I guess the first thing we
need to take up at this time is Mr. Caulder's
testimony. Anything else anybody wants to say?

MR. WALSH: Your Honor, I would rather
not call Mr. Caulder at this time. I request
that he not be excused. We feel that on
rebuttal we are going to be introducing some
evidence that may very well make his prior
convictions admissible. So, at this point
in time I just request that we just go ahead
with the Defense to proceed with their evidence,
but I will request that Mr. Caulder not be
excused and be made available in the event
that we wish to re-call him for further
cross examination during our rebuttal portion
of this trial.

MR. McCOLLOUGH: Your Honor, we have
submitted a brief to the Court in support of

1 our motion in limine to limit any questioning
2 of Mr. Caulder as far as prior convictions.
3 Based on what Mr. Walsh has said, I would
4 just ask if the State is going to try to
5 impeach him and going to introduce these
6 convictions, that the jury be withdrawn and
7 we have a ruling from the Court prior to any
8 testimony concerning prior convictions. In
9 other words, continue with our motion in
10 limine.

11 MR. WALSH: That's fine. I'll agree
12 with that.

13 THE COURT: That's said without question.
14 This is still a question. We will wait and
15 see what happens in the rebuttal stage.

16 Okay, call your next witness. Get the
17 jury in here.

18
19 (At this time the jury
20 was seated in the jury
21 box, after which time the
22 proceedings continued as
23 follows:)

24
25 THE COURT: Good morning, ladies and

1 gentlemen. Watch those chairs. We don't
2 want anybody to get hurt. I hope you all
3 had a nice weekend. I went back to Central
4 Texas this weekend and it seemed like an
5 awful short trip, but I had a nice weekend,
6 too.

7 I want to first tell you that, you know,
8 I'm getting a little worried that we might
9 be wearing out our welcome here in Tom Green
10 County. So, we are going to be pretty
11 intense about working this week to try to
12 move things along as best we can. So we may
13 have to work late and so I wanted to let you
14 know ahead of time that we are going to have
15 to work past 5:00 o'clock this afternoon. I
16 anticipate that it might be required that we
17 work until about 7:00 o'clock, and so I will
18 give you an opportunity over the lunch hour
19 to let your families and so forth know that
20 there is a possibility this afternoon that
21 we will work until 7:00 o'clock. Tomorrow
22 we may work even later than that, but I'm
23 not going to do it to you today because I
24 didn't tell you on Friday. So, I want you
25 to talk to your families about the fact

5
1 that you may be a little late tomorrow night
2 and that will depend on how much evidence
3 we have at the time, but we could work into
4 the dark hours tomorrow night to try to move
5 things along. So, I wanted to let you know
6 ahead of time so you could make appropriate
7 plans. We all have to remember that Easter
8 is coming up in two weeks and we would like
9 to get through before the Easter holidays.
10 So, that's the reason I'm going to try to
11 move things along.

12 Where we left off on Friday, if you will
13 remember, was the -- we had gone through the
14 State's stage and we were in the Defense's
15 stage and the Defense is having an opportunity
16 to call witnesses in their defense in chief,
17 and we are still in that stage at this point
18 in time. So, we will be continuing on with
19 the Defense's stage of the trial.

20 Mr. Higginbotham, are you ready to call
21 your next witness?

22 MR. HIGGINBOTHAM: Dr. Jay Fogelman.

23 THE COURT: Once again, let me remind
24 the jury, if you have trouble hearing or
25 misunderstanding, raise your hand. We want