

PROCEEDINGS, APRIL 10, 1984Morning Session

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(The jury was seated in
the courtroom, and the
following proceedings
were had:)

THE COURT: Are you ready to start, Mr.
Walsh?

MR. WALSH: Yes, sir, we are ready.

THE COURT: All right, Mr. Walsh, call
your first witness.

MR. WALSH: Kenneth Emery.

KENNETH EMERY

was called as a rebuttal witness by the State and,
being first duly sworn, was examined and testified
on his oath as follows:

DIRECT EXAMINATION

BY MR. ANDERSON:

Q Would you state your name?

A Kenneth Allan Emery.

1 Q How old are you?

2 A Thirty-four.

3 Q Have you served in the military?

4 A Yes.

5 Q What branch?

6 A Marine Corps.

7 Q Approximately what year was that?

8 A From June of '67 to March of '70.

9 Q And, Mr. Emery, how are you currently employed?

10 A As a roofer and carpenter, Labor, Incorporated.

11 Q Is Labor, Incorporated, a subsidiary of the

12 Southeast Color Code, Southeast Roofing?

13 A Yes.

14 Q How long have you been employed either for Labor,

15 Incorporated, or for one of those other two

16 companies?

17 A Just about five years.

18 Q And what are your current job duties with that

19 company?

20 A I am a roofer/carpenter.

21 Q Do you have a supervisory position?

22 A Yes, sometimes.

23 Q What kind of supervisory position?

24 A A lot of times I will leave crewmen on any

25 particular job. Sometimes we will have maybe

1 two or three different jobs going and I'm one of
2 the lead men.

3 Q And that's only recently that you have been promoted
4 where you are a lead man?

5 A Yes, since January.

6 Q Now, I want to direct your attention back to the
7 fall of 1979 and the early part of 1980. What
8 job were you all working on back then?

9 A We were working on -- well, it's two contracts,
10 one right behind the other, Navy Air Station
11 warehouses.

12 Q How long were you on that job?

13 A We were out there approximately nine months.

14 Q Who was the supervisor at that time?

15 A Mack Caulder.

16 Q And, Mr. Emery, did you know an individual named
17 Henry Lee Lucas that worked on that job?

18 A Yes.

19 Q What were his duties?

20 A He was a laborer, kettle man, truckdriver.

21 Q Which did he do most of?

22 A Mostly truckdriving.

23 Q And what was the truckdriver's job?

24 A To clean up the trash around the truck before
25 he took it to the dump.

1 Q Was the truckdriver on the site most of the day?

2 A Off and on.

3 Q How far away was the dump site?

4 A Well, we used two different dumps. One was about
5 20 minutes from the job and one would take anywhere
6 from 30 minutes to an hour to get there.

7 Q Now, I want to focus your attention just on the
8 months of October and November of 1979 after you
9 have been on the job for a few months at
10 Jacksonville Naval Air Station job for a few
11 months, was roll being called there?

12 A Yes.

13 Q How often was it actually called?

14 A Once in the morning and once in the evening.

15 Q And who was calling it?

16 A Sometimes Mack, sometimes the foremans.

17 Q Did Mack very often call it?

18 A No, not as we got further into the job.

19 Q And when did this job start?

20 A In August.

21 Q Now, after August, did Mack ever often call it?

22 A That was -- that would be yes and no.

23 Q Now, in your presence, did anyone ever answer
24 roll call for somebody else?

25 A Yes.

1 Q Did that occur on a frequent basis?

2 A It was pretty frequently.

3 Q Did you work every day that the crew worked out
4 there with the exception of any days you might
5 have been sick?

6 A Yes.

7 Q Did Henry Lee Lucas work every day that the crew
8 worked?

9 A No.

10 Q I know you can't recall specific dates, but do
11 you recall any weeks where he was gone as much
12 as two or three days when the crew was working?

13 A Yes.

14 Q Now, the person you have described as Henry Lee
15 Lucas, do you see him in this courtroom today?

16 A Yes.

17 Q Would you point him out to us, please?

18 A Sitting over there.

19 Q What color -- counting me as number one, what
20 number would he be?

21 A Five, to my right.

22

23 MR. ANDERSON: May the record reflect

24 the witness has identified the Defendant,

25 Your Honor.

1 THE COURT: The record will so reflect.

2 MR. ANDERSON: I will pass the witness.

3
4 CROSS EXAMINATION

5 BY MR. McCOLLOUGH:

6 Q Good morning, Mr. Emery. Mr. Emery, my name is
7 Parker McCollough. I'm one of the lawyers
8 representing Mr. Lucas in this case. Let me ask
9 you a few questions about your testimony. You
10 say that you have been working at Labor,
11 Incorporated, about five years, is that right?

12 A Yes, sir.

13 Q And you are presently employed as a roofer and
14 carpenter?

15 A Yes, sir.

16 Q Is that the same job that you had when you
17 started?

18 A No, sir.

19 Q All right. What was that job?

20 A When I first started I was a roofer and as time
21 went on the other carpenter left and I took over
22 his duties.

23 Q Now, you have testified that you were working
24 at the Naval Air Station in the fall of 1979,
25 is that correct?

1 A Yes, sir.

2 Q Do you recall the building numbers?

3 A No, sir, because one is a big main exchange
4 warehouse and the other is three half-rounds
5 where the Navy uses storage for plane parts.

6 Q How far apart were those jobs or those buildings,
7 I should say?

8 A In feet, I would say maybe 500 feet.

9 Q Now, you testified that Mr. Lucas was a laborer,
10 kettle man and truckdriver.

11 A Yes, sir.

12 Q And he was a truckdriver most of the time or
13 laborer most of the time?

14 A That would depend on what we needed on any
15 specific date, for if we didn't have enough
16 drivers he was a truckdriver and if we had
17 enough drivers, he was used as a laborer or
18 kettle man if the kettle man didn't show up.

19 Q What functions did he perform as a laborer?

20 A Clean up, carry off, moving trash, bringing
21 materials to us.

22 Q What functions does a kettle man perform?

23 A He strictly works with the kettle. If we are
24 using regular kettles, he's chopping asphalt up
25 and melting it down. If we are using a tanker,

1 he just watches the fire and puts it on the roof.

2 Q So, a kettle man and laborer would have to be
3 there all the time, wouldn't they?

4 A Laborer, no. Kettle man, yes.

5 Q You testified that as a truckdriver he drove trucks.

6 A What we call two-ton trucks, big Chevrolet trucks.
7 They are also high-lift, also.

8 Q And he took those to the junkyard, dump or --

9 A No, sir, we had a private dump we started out
10 with and then they closed it down. We went to
11 the Clay County Landfill. When we first started
12 the job we had a private dump 20 minutes from
13 the base, then they closed it down and we started
14 using the Clay County Landfill.

15 Q Do you know when they closed down your private
16 dump?

17 A Just about the time we started on the barrels.

18 Q Now, you testified roll was called generally two
19 times a day, is that correct?

20 A Yes, sir.

21 Q And who would call roll?

22 A It would either be Mack or one of the foremen.
23 It depended if Mack was free at the time or not.

24 Q Do you know how Mack would call roll? Would he
25 assemble all the workers in one area?

1 A Yes, sir. We would usually meet in one area in
2 the morning and evenings and call roll and listen
3 for the people to answer.

4 Q Would he have some paper that he was working with?

5 A Yes, sir. He would have a list of the names of
6 the people that was there that morning that he
7 checked off, and that is what he would call
8 after noon.

9 Q He would check them off in the afternoon?

10 A Yes, sir.

11 Q You testified that you worked every day, is
12 that correct?

13 A Every day that I wasn't sick.

14 Q Were you sick very often?

15 A I think I may have missed a week and a half
16 the whole nine months we was there.

17 Q Do you recall when that was?

18 A No, sir.

19 Q Was it in 1979 when you were on this job?

20 A It was on -- while I was on two jobs.

21 Q Okay. Just the Naval Air Station job?

22 A Yes.

23 Q So, it would have been on this time period we
24 are talking about in 1979, is that correct?

25 A Yes, sir.

1 Q Now, you said that Mr. Lucas didn't work every
2 day?

3 A No, sir, he didn't.

4 Q How do you know that?

5 A I have a pretty good memory and when you have
6 people working all over the roof, foremans
7 sometimes as well as supervisors don't realize
8 they are there or not, because at a time we may
9 have 45, 50 men out there. You couldn't always
10 cover everybody and when you have people doing
11 certain jobs and you have got assistant foremans
12 and lead men, they more or less know who is
13 there and who is not there. And if someone is
14 out one day, you don't think nothing about it.
15 When someone is missing two or three days, you
16 begin to wonder.

17 Q Can you tell the jury here which day Henry Lee
18 Lucas worked and did not work?

19 A No, sir, I cannot.

20 Q So, you don't know for sure when he was there
21 and when he wasn't there?

22 A No, sir.

23 Q And can you say for sure which period of time
24 that we are talking about in this Naval Air
25 Station job that Mr. Lucas was gone?

- 1 A No, sir.
- 2 Q In other words, you weren't checking the roll,
3 were you?
- 4 A No, sir.
- 5 Q Were you up on the roof yourself?
- 6 A Yes, sir.
- 7 Q So, you were working yourself?
- 8 A Yes, sir.
- 9 Q And that is four and a half years ago?
- 10 A Yes, sir.
- 11 Q Is that correct?
- 12 A Yes, sir.
- 13 Q Do you know Mr. Lucas very well?
- 14 A Just as an acquaintance, as an employee.
- 15 Q Now, was there -- do you know who John Reeves is?
- 16 A Yes, sir.
- 17 Q Would you tell the jury who he is?
- 18 A He is the owner of the company.
- 19 Q Was there ever any policy by Mr. Reeves if you
20 missed over two days you got fired?
- 21 A You more or less quit. He assumed that you had
22 quit, unless you had a valid excuse for being
23 out two days.
- 24 Q Did Mr. Lucas get fired?
- 25 A To my knowledge he just walked off.

- 1 Q All right. Do you know when that was?
- 2 A No, sir, because they come and go so many times.
- 3 They may be here one day and gone the next.
- 4 Q If there was a policy that if you missed over
- 5 two days you got fired, how can you say that Mr.
- 6 Lucas missed two or three days and then walked
- 7 off the job?
- 8 A Like I said, if you had a valid excuse for being
- 9 gone, you still had your job.
- 10 Q But you don't know that, do you?
- 11 A No, sir.

12

13

MR. McCOLLOUGH: Just a second, Your

14

Honor.

15

Pass the witness.

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MR. ANDERSON: Nothing further, Judge.

17

THE COURT: Thank you. May the witness

18

be excused?

19

MR. ANDERSON: As far as the State is

20

concerned.

21

MR. McCOLLOUGH: Not at this time, Your

22

Honor.

23

THE COURT: Okay, wait outside.

24

MR. WALSH: Dr. Clay Griffith.

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