

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 XXVIII 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

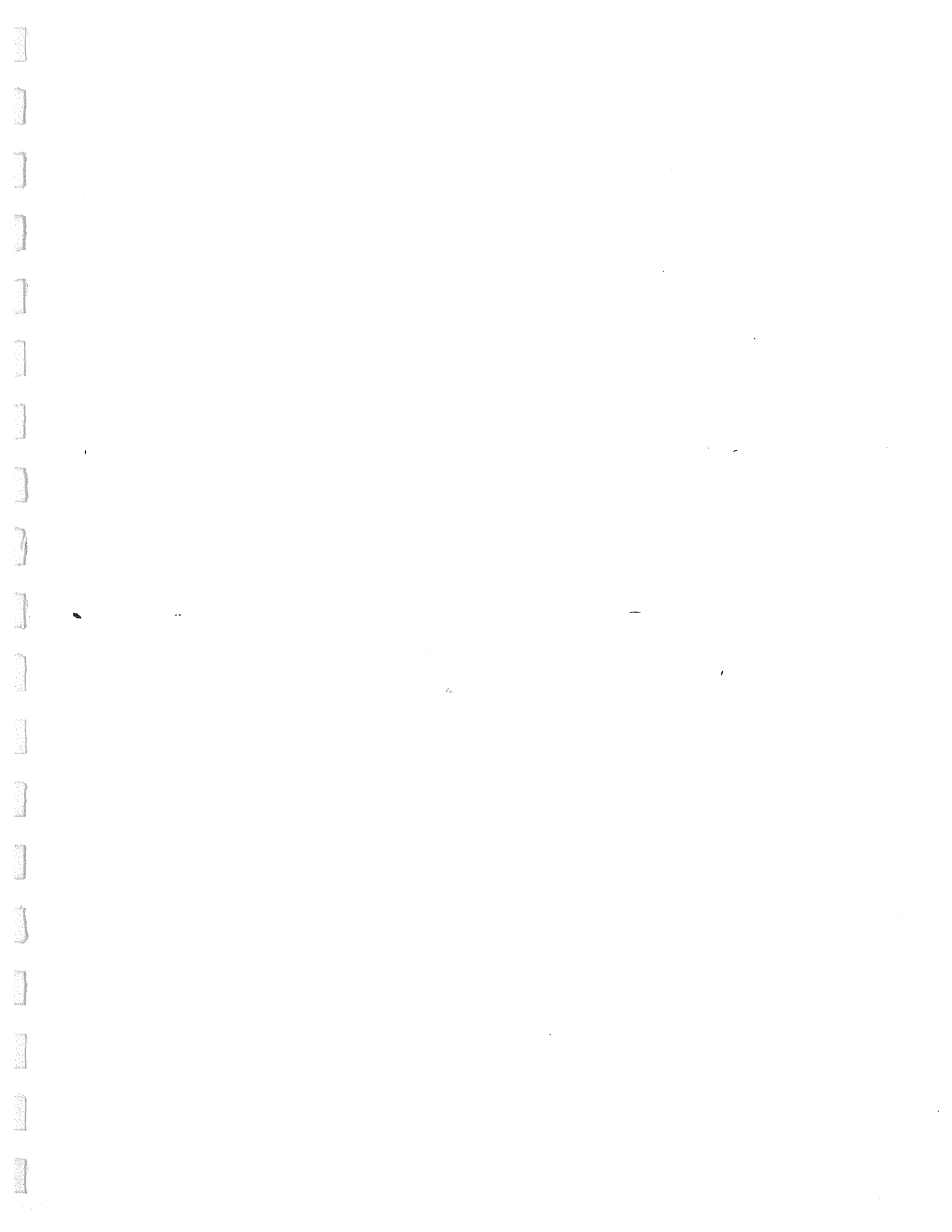
MAX PARKER, Webb, Stokes, Sparks, Parker & Junell, P.O. Box 1271, San Angelo, Texas

FOR THE DEFENDANT

MAR 25 1986

BE IT REMEMBERED that the above-captioned and styled cause came on for TRIAL on the 11th day of April, 1984, whereupon the following proceedings were had, to wit:

ORIGINAL



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APRIL 11, 1984

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P R O C E E D I N G S

APRIL 11, 1984

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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: All right. I will ask if
12 both sides have had an opportunity to examine
13 the charge.

14 MR. WALSH: The State has, Your Honor.

15 MR. HIGGINBOTHAM: The Defendant has,
16 Your Honor.

17 THE COURT: Any objections or
18 requested instructions, Mr. Walsh?

19 MR. WALSH: No, sir.

20 MR. HIGGINBOTHAM: Your Honor, I have
21 filed with the Court Defendant's Requested Jury
22 Instruction Numbers 1 through 5.

23 Defendant's Requested Jury Instruction
24 Number 1 deals with voluntariness of the
25 confession, specifically concerning knowingly

1 and intelligently waiving his rights to remain
2 silent, and knowingly and -- or waiving his
3 rights to have a lawyer present and waiving the
4 right to terminate an interview at any time.

5 Defendant's Requested Jury Instruction
6 Number 2 deals with the requested instruction
7 that we asked for on voluntary manslaughter.

8 Defendant's Requested Jury Instruction
9 Number 3 is -- we have asked for an instruction
10 on the capacity of the Defendant to formulate
11 specific reckless intent, to kill or to cause
12 the death.

13 Defendant's Requested Jury Instruction
14 Number 4 deals with the Defendant's condition of
15 mind at the time of the crime charged, and ask
16 that that be considered by the jury.

17 And Defendant's Requested Jury
18 Instruction Number 5 deals with corroboration of
19 the confession and a confession standing alone.
20 It deals with the instruction there to instruct
21 the jury concerning those matters.

22 I would like to get a ruling on these
23 Crawford requested jury instructions.

24 THE COURT: Well, Number 3 and Number
25 4, that's the first time we've seen those, Mr.

1 Higginbotham.

2 Mr. Walsh, do you have any comment?

3 MR. WALSH: Just a second, Your Honor.
4 There is a case cited in Number 4 I would like
5 to get and look at briefly.

6 THE COURT: All right, sir.

7 Mr. Higginbotham, Mr. McCollough,
8 would you approach the bench.

9
10 (Whereupon a discussion was
11 had at the bench, between
12 Court and counsel, out of the
13 hearing of the Reporter, after
14 which proceedings continued as
15 follows:)

16
17 MR. WALSH: Your Honor, I need to go
18 get another book.

19 THE COURT: All right, sir. Stand at
20 ease.

21 Mr. Higginbotham, do you wish to speak
22 to your requested instructions, each
23 individually?

24 MR. HIGGINBOTHAM: I just need a ruling
25 on them, Judge.

1 THE COURT: All right. The
2 Defendant's Requested Instructions 1, 2, 3, 4
3 and 5 are denied.

4 MR. HIGGINBOTHAM: Note our exception.

5 THE COURT: Noted.

6 All right. You have before you the
7 Charge of the Court.

8 MR. HIGGINBOTHAM: Yes, sir. We
9 object to Paragraph 1 as being in the
10 disjunctive when the indictment is -- I mean
11 being in the conjunctive where the indictment is
12 in the injunctive: "committing or attempting to
13 commit," and the indictment states "committing
14 and attempting to commit."

15 We would object to Paragraph 3 in the
16 charge concerning kidnapping, in that I do not
17 believe that the evidence presented shows
18 kidnapping.

19 Paragraph 4, we're not -- just to
20 preserve, we object to the robbery instruction.
21 We do not think the evidence shows that.

22 As to Paragraph 5, we object to the
23 charge concerning rape for the following
24 reasons:

25 Under the definition there has been no

1 showing of any penetration of the female sex
2 organ by the male sex organ. We would also
3 object on the grounds that that portion which
4 states, "She has not consented, and he knows she
5 is unconscious or physically unable to resist,"
6 we would object to that on the grounds that
7 there has been no evidence showing he knew she
8 was unconscious, and, in fact, the evidence
9 tends to show that she wasn't, in truth of fact,
10 dead and -- before any rape or attempted rape.
11 And the law does not make a provision that
12 sexual intercourse with a dead body constitutes
13 rape and attempted aggravated rape.

14 We would further object, Your Honor,
15 to Paragraph 12, which concerns a voluntary
16 intoxication charge, on the same basic grounds
17 that the evidence does not show intoxication.
18 At best there's, I believe, one statement
19 concerning, he may have been drinking a beer,
20 but it doesn't raise intoxication.

21 Throughout Paragraphs 13, 14 and 15,
22 here again, the indictment is in the disjunctive
23 as it concerns itself with attempts and
24 commissions. The charge is in the conjunctive,
25 stating attempting or committing. And at this

1 time, Your Honor, I would like to read into the
2 record these objections that have been made.

3 THE COURT: All right.

4 MR. HIGGINBOTHAM: As to Cause Number
5 13-890-B, the State of Texas versus Henry Lee
6 Lucas, in the 119th Judicial District Court of
7 Tom Green County.

8 Now comes Henry Lee Lucas,
9 the Defendant in the above-entitled and numbered
10 cause, after the State and the Defense have
11 rested and closed and before the Charge of the
12 Court is read to the jury, and in the presence
13 of the Court and State's counsel. We present
14 these aforesaid objections to the Charge of the
15 Court herein, and hereby dictate these
16 objections into the record to the Court Reporter
17 for subsequent transcription and endorsement by
18 the Court, with its rulings and official
19 signature and filing with the Clerk of the
20 Court, the foregoing objections to the Court's
21 charge having been presented to the Court and
22 the counsel for the State of Texas by the
23 Defendant, Henry Lee Lucas, by dictation of
24 these objections to the Court Reporter in the
25 presence of the Court and the State's counsel,

1 before the Court's charge is read to the jury,
2 and having been --

3 At this point, Judge, I think I will
4 need a ruling on the objections I have stated.

5 THE COURT: The objections are
6 overruled.

7 MR. HIGGINBOTHAM: Okay. Those
8 objections being overruled, to which ruling the
9 Defendant excepts, prior to reading of the
10 charge to the jury, we would ask that our
11 objections, as aforesaid and overruled, be noted
12 and excepted.

13 THE COURT: They are noted.

14 MR. PARKER: Your Honor, I don't know
15 if we need to have it in the record, but I think
16 the objections are supposed to be in writing,
17 unless the Judge consents that it was dictated
18 to the Court Reporter and the State's attorneys.
19 Do we have that consent?

20 MR. WALSH: Yes.

21 THE COURT: The Court Reporter
22 consents.

23 While the Clerk is filing the charge,
24 would you approach the bench, please.
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(Whereupon a discussion was had at the bench, between Court and counsel, out of the hearing of the Reporter, after which proceedings continued as follows:)

THE COURT: All right. The Clerk just handed me the filed copy of the charge. That's all the objections to the charge filed?

MR. WALSH: The State has no objections.

THE COURT: Defense?

MR. HIGGINBOTHAM: Just to renew the objections we already have in the record, Your Honor.

THE COURT: The objections have been heard and overruled.

Are you ready to bring in the jury?

MR. WALSH: Yes, sir.

THE COURT: Bring the jury in, please.

(The jury was returned to the courtroom, and the following proceedings were had:)

1
2 THE COURT: Be seated, please. Good
3 afternoon, ladies and gentlemen of the jury.
4 Once again we had some delays because we had
5 some things we had to take up outside the
6 presence of the jury. That's all been concluded
7 now, and we're ready to go into the stage of
8 this trial in which the Court will read the
9 charge to the jury, and then final arguments
10 will come from both sides. Then the jury will
11 retire for deliberations.

12 The first thing I'm going to do is to
13 read the charge to you. After I have read the
14 charge to you, each side will be given an
15 opportunity to present their final arguments. I
16 have limited their time to two hours per side as
17 a maximum time that they can use. Now, they
18 don't have to use all that time, but they can't
19 use any more than that time. The State has a
20 right to open and close on those arguments.

21 At this time I'm going to read to you
22 the Charge of the Court.

23
24 (Whereupon the Charge of the
25 Court was read to the jury