

1 IN THE DISTRICT COURT OF MAYES COUNTY

FILED IN THE DISTRICT COURT
MAYES COUNTY, OKLAHOMA

2 STATE OF OKLAHOMA.

OCT 3 1978

3 THE STATE OF OKLAHOMA,)

ELOISE GIST, Court Clerk

4 Plaintiff,))

BY _____
Deputy,

5 -vs-)

Case No. CRF-77-131

6 GENE LEROY HART,)

CRF-77-132

7 Defendant.))

CRF-77-133

8
9 PRELIMINARY HEARING

10 VOLUME VI

11 HEARD BEFORE: Honorable Jess B. Clanton, Jr., Special Judge

12 June 14, 1978

13
14 A P P E A R A N C E S

15
16 FOR THE STATE OF OKLAHOMA:

Mr. Sidney D. Wise
District Attorney
Mayes County, Oklahoma

18 Mr. S. M. Fallis, Jr.
District Attorney
Tulsa County, Oklahoma

19
20 FOR THE DEFENDANT:

Mr. Garvin A. Isaacs
Attorney at Law

21 Mr. Gary S. Pitchlynn
Attorney at Law

22
23 REPORTED BY:

Tracey Ferguson
Licensed Shorthand Reporter

EXHIBITSVOLUME VI

No.	Description	Identified	Offered	Received
SX-40	Pajama Top - Milner	Vol 3	846	850
SX-42	Cord - Milner	Vol 3	846	850
SX-43	Band-aid - Milner	Vol 3	846	850
SX-44	Gag-Milner	Vol 3	846	850
SX-45	Hair from p. j. top	Vol 3	847	850
SX-47	Cord from Milner hands	Vol 3	847	850
SX-48	Hair from tape	Vol 3	847	850
SX-59	Slides from State M. E.	Vol 3	847	850
SX-50	Slides From State M. E.	Vol 3	847	850
SX-51	Slides From State M. E.	Vol 3	847	850
SX-52	Blood Samples	Vol 3	847	850
SX-53	Blood Samples	Vol 3	847	850
SX-54	Blood Samples	Vol 3	847	850
SX-55	Swabs by M. E.	Vol 3	847	850
SX-56	Swabs by M. E.	Vol 3	847	850
SX-57	Swabs by M. E.	Vol 3	847	850
SX-58	Swabs by M. E.	Vol 3	847	850
SX-59	Swabs by M. E.	Vol 3	847	850
SX-60	Swabs by M. E.	Vol 3	847	850
SX-61	Swabs by M. E.	Vol 3	847	850
SX-62	Swabs by M. E.	Vol 3	847	850
SX-63	Swabs by M. E.	Vol 3	847	850
SX-70	Bean Flip	Vol 4	847	850
SX-71	Gloves found at cave	Vol 4	847	850
SX-85	Sweepings from tent	Vol 5	847	850
SX-39	Green plastic from Flashlight.	Vol 3	848	850
SX-86	Comparison photo Hart ex-wife	852	854	854

P R O C E E D I N G S

1
2 THE COURT: CRF-77-131, 132 and 133, State of
3 Oklahoma versus Gene Leroy Hart.

4 Let the record show that the Defendant is present
5 with counsel and the State is present and we're ready for
6 your next witness, Mr. Wise.

7 MR. WISE: If it please the Court, there's a
8 matter of perhaps we refer to as "housecleaning", may I
9 approach the Court with some of the items - numerous items
10 of evidence that my records reflect have not been admitted
11 into evidence at this time?

12 My records reflect, Your Honor that --

13 THE COURT: Now, are you making an offer at this
14 time?

15 MR. WISE: Yes. I would so at this time, Your
16 Honor, make an offer that Exhibit No. 40, consisting of a
17 pajama top from the victim Milner; that State's Exhibit No.
18 42, consists of a cord which was determined to be, I believe,
19 through the doctor's examination to be the death weapon of
20 Milner; the body -- excuse me -- the Bandaid from around the
21 neck of Milner, which was marked as State's Exhibit 43; a
22 rolled up piece of toweling with a piece of cord through it,
23 appears to be some type of gag found around the neck of
24 victim Milner, which was State's Exhibit 44; the hair removed
25 from this pajama top by witnesses and the chain of evidence

1 which was marked as State's Exhibit 45; the cord which was
2 taken -- by the Medical Examiner from the hands of victim
3 Milner, which was marked as State's Exhibit 47 -- let's see
4 if I've got all those in order now, Your Honor. Okay,
5 No. 48 was the hair - yes - taken from the tape on Milner's
6 hand; No. 49, 50 and 51, were the slides made by the State
7 Medical Examiner, Dr. Hoffman, of each of the three victims
8 and then we have a sequence, Your Honor, State's Exhibits
9 51, 52 -- excuse me -- 52, 53 and 54, which are the blood
10 samples taken from each of the victims by the Medical
11 Examiner and then State's Exhibit 55, 56, 57, 58, 59 and
12 60, 61, 62 and 63, which were the respective swabs which
13 were taken by the Medical Examiner which the State established
14 the chain on each of the three victims.

15 THE COURT: Mr. Wise, with regard to Exhibits 52,
16 53 and 54, I show those as merely the glass vials and you
17 described them as the blood samples?

18 MR. WISE: Yes, these glass vials containing
19 blood samples, Your Honor, taken by the Medical Examiner.

20 THE COURT: All right.

21 MR. WISE: No. 70, Your Honor, we show, Your Honor,
22 as not being introduced at this time and we ask that it be
23 introduced along with the others is what's been described
24 as a bean-flip found at the cave. No. 71, which is a pair of
25 gloves found at the cave and State's Exhibit 85, which is the

1 sweepings or vacuumings from the death tent No. 7 at Kiowa.
2 If it please the Court, our records reflect 39, which I don't
3 have in the courtroom at this moment, but will sequester
4 immediately, a piece of green plastic that was removed from
5 the flashlight.

6 THE COURT: It is not in the courtroom?

7 MR. WISE: It is not in the courtroom. We are
8 sending for it now, Your Honor. It is marked as State's
9 Exhibit No. 39.

10 If it please the Court, we don't have a copy of
11 the Court -- or the court reporter's record of those things
12 which have been introduced to compare against but from our
13 record keeping, we believe that these are the remaining
14 pieces of evidence which the State has marked and which
15 the chain has been established on and which have been proba-
16 tive to this matter, which we respectfully submit should be
17 introduced into evidence at this time.

18 THE COURT: All right. Do you have the piece of
19 green plastic yet in the courtroom?

20 MR. WISE: The Sheriff has gone forthwith to bring
21 it to us, Your Honor, that would be No. 39.

22 THE COURT: Where did he go to retrieve it?

23 MR. WISE: He had to go to the Sheriff's Office.
24 It's in the vault of the Sheriff's Office, locked in security.

25 THE COURT: Okay.

1 MR. WISE: But we can assure the Court we will
2 produce 39 for you, if you'd like to reserve ruling on it
3 until it returns to the courtroom, we'll be glad -- whatever
4 would be appropriate, Your Honor.

5 Does the court reporter, Your Honor, have a record
6 of what the Court's records reflect have been introduced?

7 THE COURT: I don't know. I think the bailiff
8 was keeping her own list, but if there is no objection by
9 either side, I'll be happy to tender a copy of my own list
10 to counsel. Would you like to have a copy, Mr. Isaacs?

11 MR. ISAACS: Yes, sir, be fine.

12 THE COURT: Well, this is up to date, only to what
13 we have done so far this morning. It doesn't reflect any-
14 thing but the offers on those that he just offered.

15 Make two copies and give one to both counsel.

16 Do you have 39 now, Mr. Wise?

17 MR. WISE: Yes, we do, Your Honor.

18 Your Honor, so that the record would reflect, 37 -
19 State's Exhibit 37, which we believe is already into evidence --

20 THE COURT: It is, according to my notes.

21 MR. WISE: Is this piece of tape which I'm holding
22 in my hand which has been testified to. The court reporter
23 noted there was no State's Exhibit marking on that. I believe
24 that perhaps it was on the envelope that it was withdrawn
25 from. We have asked the court reporter to put 37 on the

1 exhibit itself.

2 THE COURT: Do you still have the envelope?

3 MR. WISE: No, we are unable to locate it here.

4 THE COURT: Let's try to keep the envelope and
5 the exhibit that it came from together.

6 MR. WISE: Yes, we don't see it here.

7 THE COURT: That has been received into evidence.

8 MR. WISE: That was our understanding, Your Honor.

9 THE COURT: Mr. Isaacs, is there any objection?

10 MR. ISAACS: For the purpose of the record, we
11 would object. We renew our previous objection.

12 THE COURT: Objection is overruled. The offered
13 exhibits 40, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 53,
14 54, 55 through 63 inclusive, 70, 71, 85 and 39 are received
15 into evidence. You may proceed, Mr. Wise.

16 MR. WISE: Thank you. If it please the Court, the
17 State would next recall Mr. Art Linville.

18 THE COURT: Mr. Linville, you have been previously
19 sworn?

20 THE WITNESS: Yes.

21 THE COURT: Be seated.

22 ARTHUR LINVILLE,
23 called as a witness on behalf of the State, having previously
24 been sworn, testifies as follows:

25 DIRECT EXAMINATION

1 BY MR. WISE:

2 Q Mr. Linville, are you the same Arthur Linville
3 that previously appeared before in this same cause of
4 action?

5 A Yes, sir.

6 Q You understand you are under the same oath now
7 as you were then?

8 A Yes, sir.

9 Q Mr. Linville, at your prior appearance and exam-
10 ination, I believe, and correct me if I mistake your prior
11 statement, but I believe that you testified that subsequent
12 to this tragedy that you went to the home of Mrs. Buckskin;
13 is that correct?

14 A Yes, sir, it is correct.

15 Q Could you recall what day that was, please?

16 A Sir, it would have either been the 17th or the 18th
17 of June, 1977; either that Friday or Saturday.

18 Q All right, sir, and at that residence, what did
19 you seize or secure?

20 A I obtained a photograph from Mrs. Buckskin, which
21 she represented as being that of Mr. Hart's ex-wife, Patricia
22 Ann Dawson; her maiden name was Pratt.

23 Q All right, sir. I now show you what's been intro-
24 duced into evidence as State's Exhibit 36-A, and ask you, Mr.
25 Linville, have you had an occasion to make comparison of

1 what's been introduced as 36-A with any other photographs?

2 A Yes, sir.

3 Q And with what other photographs have you made
4 that comparison?

5 A I compared this photograph found in the cave with
6 that given to me of Mrs. Buckskin, the photograph of Mr.
7 Hart's ex-wife.

8 Q All right, sir, and for that purpose of comparison,
9 did you have enlargements made so that they were of equal
10 size and comparison?

11 A Yes, sir.

12 Q I now hand you what's been marked State's Exhibit
13 No. 86, and ask you, can you identify that, sir?

14 A Yes, sir.

15 Q What is it, sir?

16 A It's a sheet of paper containing the photograph
17 I obtained of Mr. Hart's ex-wife from his mother and also
18 attached is an enlargement of the previous exhibit. It was
19 No. --

20 Q 36-A?

21 A --36-A, yes.

22 Q 36-A, all right, sir. And did you bring those to --
23 is that the actual photograph that you got from Mrs. Buck-
24 skin?

25 A Yes, sir, it is.

1 Q That's attached thereto?

2 A Yes, sir.

3 Q And the other photograph on there then is the
4 photograph that is an enlargement of 36-A?

5 A That's correct.

6 Q Okay, and what was the purpose of making a compari-
7 son?

8 A It was at that time -- of course, the subject in
9 the photograph from the cave was unknown to us and at that
10 time, we were trying to determine who, in fact, it was and
11 at that time, I held the belief that was a photograph of his
12 ex-wife.

13 Q Why did you make that belief?

14 A I maintained at the time there was a remarkable
15 resemblance between the two photographs.

16 Q And do you see them there now?

17 A Yes, I do.

18 Q Had you kept this photograph that you received
19 from Mrs. Buckskin in your custody and control from the date
20 that you received it from her until it was brought to court?

21 A No, sir, I submitted that photograph to the OSBI.

22 Q And kept it in their safekeeping in their evidence
23 locker?

24 A Yes, sir.

25 Q And you withdrew it to bring it here to this court-

1 room this morning?

2 A Yes, sir.

3 Q And with regards to the other enlargement, that
4 was done in the laboratory itself?

5 A Yes, sir.

6 Q Of the office of the Oklahoma State Bureau of
7 Investigation?

8 A That's correct.

9 Q And this was compiled under your direction?

10 A Yes, sir.

11 Q And you brought it here for today's appearance?

12 A Yes, sir, I did.

13 MR. WISE: If it please the Court, comes now the
14 State of Oklahoma, and respectfully submits State's Exhibit
15 No. 86 into evidence.

16 MR. ISAACS: Judge, I fail to see the probative
17 value of this and at this time would have no objection to
18 it other than it has no probative value to prove or disprove
19 anything in this charge.

20 THE COURT: Objection is overruled. It's received.

21 MR. WISE: If it please the Court -- oh, excuse me,
22 I have one other question.

23 Q Mr. Linville, you testified earlier you arrived
24 on the early morning hours of June 13th, 1977, to the scene
25 of this tragedy; is that correct?

1 A Yes, sir.

2 Q And do you know, sir, Mr. Linville, of your own
3 knowledge, if that was in fact where the bodies were laying
4 in the Camp Scott Kiowa area is in Mayes County, State of
5 Oklahoma?

6 A Yes, sir.

7 MR. WISE: I have no further questions of this
8 witness.

9 THE COURT: Any cross examination?

10 CROSS EXAMINATION

11 BY MR. ISAACS:

12 Q Mr. Linville, on what day was it that you went to
13 Mrs. Buckskin's house?

14 A Sir, it would have either been on the Friday
15 following the murders or Saturday. It would be the 17th day
16 of June or the 18th of June of 1977; I'm not sure which day
17 I obtained the photograph.

18 Q What time of day was it?

19 A Shortly after noon.

20 Q Was anyone else present in the residence of Ella
21 Mae Buckskin when you went there?

22 A Yes, sir. There were two individuals that I have
23 previously testified. I believe one is brother to Hart -
24 it's my understanding - and the other --

25 Q Miller and Thurmond Johnson?

1 A I couldn't be sure of the names, sir.

2 Q Mrs. Buckskin corroborated with you?

3 A Yes, sir, she did.

4 Q And did you ask her for any other items at that
5 time?

6 A Not that I can recall, sir.

7 Q In reference to those - to that particular visit
8 to Mrs. Buckskin's house, did you go there for any other
9 purpose?

10 A Yes, sir.

11 Q What was that purpose?

12 A To talk with Mrs. Buckskin in an attempt to locate
13 Mr. Hart.

14 Q And what did Mrs. Buckskin tell you?

15 A She told me that she had not seen him or heard
16 from him for several months, that she had last received a
17 letter - and I think she said a month or two months.

18 Q Did she tell you where that letter was postmarked?

19 A She did and I don't recall at this time.

20 Q Did you ask for a copy of that letter?

21 A No, sir.

22 Q Who was present when she told you she hadn't seen
23 Mr. Hart for a couple of months?

24 A Myself and another OSBI Agent. I believe Mr.
25 Gary Brewer.

1 Q I didn't catch that?

2 A Gary Brewer.

3 Q How long were you at the Buckskin residence?

4 A Oh, I would say approximately twenty minutes --
5 twenty to thirty minutes at the most.

6 Q Have you told me everything you did at the resi-
7 dence when you picked up the picture?

8 A Yes, sir.

9 Q After you left the residence, where did you go?

10 A Not recalling whether it was the Friday or Satur-
11 day, I really couldn't tell you exactly where I went when
12 I left there. Well, I do recall, I went from her residence
13 to the residence of Patricia Dawson.

14 Q And where was that located?

15 MR. WISE: If it please the Court, we will have
16 to object to any further questions along this line as outside
17 the scope of direct. We're only at Mama Buckskin's getting
18 a picture.

19 THE COURT: Sustained.

20 MR. ISAACS: Judge, would you note my exception?

21 I ask that this witness remain on call pursuant to our agree-
22 ment. Is that all right, Mr. Linville?

23 A Yes, sir.

24 MR. ISAACS: Thank you.

25 THE COURT: Redirect?

1 MR. WISE: We have no redirect, Your Honor. We'd
2 ask that this witness be excused.

3 THE COURT: You're excused.

4 (WHEREUPON, the witness was excused and withdrew
5 from the hearing room.)

6 MR. WISE: If it please the Court, for the purpose
7 of Preliminary Hearing, the State of Oklahoma would now
8 rest.

9 MR. ISAACS: Judge, at this time, we would like
10 to reurge our Motion for a Continuance in order that we
11 can brief the demurrer we would like to submit to the Court
12 to this evidence. We'd ask that the continuance be a
13 thirty day continuance so we can notify all our witnesses,
14 tell them when to appear and call them in a logical sequence.
15 We need a copy of the transcript and we also would like to
16 present that to Your Honor for review before you would rule
17 on our demurrer. We feel like our demurrer is good and that
18 we should be given ample opportunity to submit authorities
19 to the Court in support of demurrer.

20 Judge, could I inquire of the court reporter for
21 just a second?

22 THE COURT: Does the State have anything to say?

23 MR. WISE: If it please the Court, the State would
24 urge the Court to make its ruling on the demurrer to the
25 evidence presented at this time. We do appreciate, however,

1 that the Court on previous occasions advised counsel that
2 at this time and stage in the proceeding that the Court
3 would take under serious consideration any such move and
4 we appreciate that the Court has previously indicated that.
5 Where obviously, we don't intend to invade the provices of
6 the Court, we would only urge that this matter be expedited
7 at the earliest possible date so we can move forward.

8 If it please the Court, one other comment that the
9 State would make to a transcript. We can appreciate that a
10 transcript to type each of the words that have been spoken
11 in a rather lengthy Preliminary Hearing in and of itself
12 would be a time consuming project. We believe that this
13 Court is perfectly competent to retain and recall the evi-
14 dence as it's heard and that would not be necessary.

15 MR. ISAACS: Judge, the court reporter assures me
16 that it would take a week. I think that it would be benefi-
17 cial to everybody involved to have a copy of it in consider-
18 ing the demurrer. It's been lengthy, there's a lot of
19 technical testimony, we offer it only as an aid to the Court.

20 THE COURT: Appreciate your concern. At this time,
21 the Court will recess until 9:45 a. m. on Friday, June 16th
22 of this week, at which time the demurrer and arguments
23 thereon will be presented and at that time I will consider
24 further your request for more time to prepare the defense.

25 MR. ISAACS: Thank you, Judge.

1 THE COURT: We are recessed until that time.
2 The Defendant is placed in the custody of the
3 Sheriff.

4 (WHEREUPON, the cause in hearing was recessed
5 until 9:45 a. m., on the 16th day of June, 1978.)
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