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IN THE DISTRICT COURT OF MAYES COUNTY,  
STATE OF OKLAHOMA.

THE STATE OF OKLAHOMA,

Plaintiff,

-vs-

GENE LEROY HART,

Defendant.

Case No. CRF-77-131  
CRF-77-132  
CRF-77-133

FILED IN THE DISTRICT COURT  
MAYES COUNTY, OKLAHOMA

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PRELIMINARY HEARING

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ELOISE GIST, Court Clerk  
BY *Juanita Spivey*  
Deputy

Heard Before: Honorable Jess B. Clanton, Jr., Special Judge

July 6, 1978

A P P E A R A N C E S

FOR THE STATE OF OKLAHOMA:

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

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

FOR THE DEFENDANT:

Mr. Garvin A. Issacs  
Attorney at Law

Mr. Gary S. Pitchlynn  
Attorney at Law

REPORTED BY:

Tracey Ferguson

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C O N T E N T SWITNESSES FOR THE DEFENDANT:

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1 and delivered it to some other law enforcement officers?

2 A No.

3 Q Have you taken any statements from anyone?

4 A No.

5 Q Interviewed anyone pertaining to this case?

6 A No.

7 Q Have you talked to Mr. Jimmy Don Bunch pertaining  
8 to this case?

9 A No.

10 Q What's the other one -- Charlie VanHuss; do you know  
11 him?

12 A Don't know him.

13 Q Do you know why you were subpoenaed by the State of  
14 Oklahoma and endorsed as a witness?

15 A No.

16 MR. ISSACS: I have no further questions.

17 MR. WISE: No questions.

18 THE COURT: You may step down.

19 (Whereupon, the witness was excused and withdrew  
20 from the hearing room.)

21 MR. ISSACS: Call B. G. Smith.

22 THE COURT: Step right up here, sir, and raise your  
23 right hand. Do you swear to tell the truth, the whole truth  
24 and nothing but the truth, so help you God?

25 THE WITNESS: I do.

BOB SMITH

called as a witness on behalf of the Defendant, having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. ISSACS:

Q Mr. Smith, would you state your full name, please?

A Bob Smith.

Q What is your occupation?

A Captain at the Oklahoma State Prison.

Q Mr. Smith, as a captain at the Oklahoma State Penitentiary, do you supervise prison element security on death row?

A Yes, I do.

Q Do you know Gene Leroy Hart?

A I know him, that's all.

Q Have you at any time since he was arrested on April 6th, taken anything from his cell or received anything from him which was transported to the Oklahoma State Bureau of Investigation?

A Not that I recall.

Q Have you spoken with Mr. Hart?

A No, I haven't.

Q Do you know a fellow by the name of Van Huss who is also there on death row?

A No, sir, I don't.

1 Q Do you know a fellow by the name of Jimmy Bunch?

2 A Yes, I do.

3 Q Have you spoken with him about the case?

4 A No, I haven't.

5 Q Do you know why the State endorsed you as a witness?

6 A No, I sure don't.

7 MR. ISSACS: No further questions.

8 MR. WISE: No questions. Thank you, Your Honor.

9 THE COURT: You may step down.

10 (WHEREUPON, the witness was excused and withdrew  
11 from the hearing room.)

12 MR. ISSACS: Call Tom Kennedy. Do you know where  
13 Mr. Kennedy is?

14 THE COURT: Tom Kennedy? See if you can locate  
15 Mr. Kennedy.

16 MR. WISE: Here he comes.

17 THE COURT: You have been sworn in this case; have  
18 you not?

19 THE WITNESS: No, I haven't.

20 THE COURT: You have not. Raise your right hand.  
21 Do you swear to tell the truth, the whole truth, and nothing  
22 but the truth, so help you God?

23 THE WITNESS: I do.

24 THOMAS GERALD KENNEDY

25 called as a witness on behalf of the Defendant, having been

1 first duly sworn, testifies as follows:

2 DIRECT EXAMINATION

3 BY MR. ISSACS:

4 Q Mr. Kennedy, would you state your full name, please?

5 A Thomas Gerald Kennedy.

6 Q Mr. Kennedy, you're the director of the Oklahoma  
7 State Bureau of Investigation; is that correct?

8 A That's correct.

9 Q Did you supervise or conduct any part of the investi-  
10 gation of the Camp Scott homicides?

11 A No, I did not.

12 Q Did you supervise or participate in any of the  
13 investigations that lead to the arrest of Gene Leroy Hart?

14 A No; on the scene supervision.

15 Q Did you take any statements from any witnesses  
16 concerning this matter?

17 A No, I did not.

18 Q Were you aware of a statement from a fellow by the  
19 name of Larry Dry which was taken on or about April 10th of  
20 this year?

21 A I'm not aware of this statement, I'm aware of a  
22 conversation.

23 Q We've been given Mr. Dry's court reported stenographic  
24 statement, do any other sworn statements exist that are in  
25 your possession or possession of any of your agents?

1 A Not to my knowledge.

2 THE COURT: We'll take about a five minute recess.

3 (Recess : Reconvene) The Court request that the spectators  
4 in Courtroom A get up quietly and leave the courthouse by way  
5 of stairway. Wait outside somewhere away from the building.  
6 Thank you. We'll be in recess for a short period.

7 (Whereupon, a recess was called because of a bomb threat.  
8 Following approximately a 45 minute recess, the proceedings  
continued as follows:)

9 THE COURT: The record will show that the Defendant  
10 is present with counsel, State is present, and you may answer  
11 that question Mr. Kennedy. Would you like the court reporter  
12 to repeat your question, Mr. Issacs?

13 MR. ISSACS: It's just that that was so long ago, I  
14 can't remember. I believe we were talking about the investi-  
15 gation over there in Tahlequah when Mr. Hart was arrested.

16 Q Mr. Kennedy, did you participate in this investi-  
17 gation or take any statements from anybody pertaining to Mr.  
18 Hart's arrest?

19 A Are you talking about the arrest?

20 Q Yes.

21 A Only in an advised way from Oklahoma City; I was  
22 not here.

23 Q Some of the agents that participated in the arrest  
24 of Mr. Hart collected some quilts and blankets and a radio;  
25 will you tell me why those particular items of evidence were

gathered?



1 A I don't know, Mr. Issacs, when they work these cases,  
2 the agent uses his best judgement at that time, and I did not  
3 personally go through every piece of evidence on every case.

4 Q Since that time, certain items of evidence have been  
5 gathered from Mr. Hart's jail cell, do you know why his under-  
6 wear was taken?

7 A Yes, I know why.

8 Q Was that for a semen-sperm sample for comparison  
9 purposes?

10 A Yes, that's correct.

11 Q Do you know how many pairs of underwear have been  
12 taken?

13 A No, sir, I do not.

14 Q Also, since that time, some bags of garbage have been  
15 taken from Mr. Hart's jail cell. Do you know for what reason  
16 those bags of garbage were taken?

17 A No, sir.

18 Q His bedding has been submitted for examination to  
19 your agency. For what reason was Mr. Hart's bedding examined?

20 A I can only assume.

21 Q What would that be?

22 A I would assume for additional evidence, such as:  
23 semen and maybe hair.

24 Q I think I asked you before whether or not you had  
25 any sworn statements in your possession or any of your agents

1 had sworn statements in their possession, other than the state-  
2 ment of Mr. Larry Dry. Did I ask you that question?

3 A Yes, sir, I believe you did.

4 Q Do you have any statements?

5 A No, sir, I do not.

6 Q Do you have any exculpatory evidence in your possession?

7 A No, sir, not to my knowledge.

8 MR. ISSACS: I believe that's all of this witness.

9 THE COURT: Cross examine?

10 MR. WISE: We'd have no questions, and would thank  
11 Mr. Kennedy for making his time available.

12 MR. ISSACS: Mr. Kennedy, Mr. Puckett called me and  
13 informs me that he is going to be called as a witness sometime  
14 today in Waurika. With your permission, could I take a  
15 statement from him - a sworn statement at OSBI headquarters?

16 MR. KENNEDY: With my permission, that's fine, but  
17 I would like you to refer to the prosecution in this case.

18 MR. ISSACS: Could we have an agreement that I be  
19 permitted to take his sworn statement?

20 MR. WISE: If it please the Court, we would certainly  
21 agree to it, provided that he give us adequate notice, so that  
22 if we want, somebody from our office could be available.

23 THE COURT: Very well. That's fine. Will you excuse  
24 Mr. Puckett as a witness also at this time?

25 MR. ISSACS: One other thing. Mr. Plank is out of

1 state; Mr. Plank has been subpoenaed, and we feel his testimony  
2 is material since he made plaster cast of several of the foot-  
3 prints, and we would like to have permission from the prosecu-  
4 tion to take Mr. Plank's sworn statement at OSBI headquarters.

5 THE COURT: Any problems with that?

6 MR. WISE: Only that we would ask to have a copy if  
7 in fact it's a sworn statement - that if it is a court reported  
8 sworn statement that we be notified so we might be present, and  
9 if it is a transcript, we be furnished a copy.

10 THE COURT: Very well.

11 MR. ISSACS: I believe that's all. Thank you, Mr.  
12 Kennedy.

13 MR. WISE: Did counsel agree on that?

14 MR. ISSACS: Yes, we'll provide you with your copy,  
15 and could we have an agreement with the judge to rule on any  
16 objections at the time that the prosecution might make at that  
17 time.

18 THE COURT: I understand it will be a statement, not  
19 a deposition.

20 MR. ISSACS: Okay.

21 THE COURT: There won't be any cross examination.

22 Mr. Kennedy, you may step down.

23 (WHEREUPON, the witness was excused and withdrew  
24 from the hearing of the courtroom.)

25 MR. ISSACS: I'll call Mr. Chrisco - Let me back up,

1 let me call Mr. Ousley.

2 THE COURT: Raise your right hand. Do you swear to  
3 tell the truth, the whole truth and nothing but the truth, so  
4 help you God?

5 THE WITNESS: I do.

6 CHARLES EVERETT OUSLEY

7 called as a witness on behalf of the Defendant, having been  
8 first duly sworn, testifies as follows:

9 DIRECT EXAMINATION

10 BY MR. ISSACS:

11 Q Mr. Ousley, would you state your full name, please,  
12 sir?

13 A My full name is Charles Everett Ousley, O-U-S-L-E-Y.

14 Q Sir, on or about the 6th -- or on or about the 13th  
15 day of June, 1977, were you employed as an OSBI agent?

16 A No, sir.

17 Q Since that time, have you participated in any investi-  
18 gation into the homicides that occurred at Camp Scott?

19 A No, sir.

20 Q On or about April 6th, 1978, did you participate in  
21 an arrest of a man at Sam Pigeon's residence?

22 A Yes, sir.

23 Q Will you tell me what you did when you went to the  
24 residence?

25 A I was one of four agents ta-t covered the back door.

1 Q In the back with you were what agents - which agents?

2 A Agent Don Sharpe, Agent Carey Thurman and Agent  
3 Harvey Pratt.

4 Q Who took you to the Pigeon residence?

5 A I'm sorry.

6 Q Now, there were four agents in the back and four in  
7 the front; is that correct - eight in all?

8 A There was eight all together; yes, sir. One other  
9 agent may have been at the side, and I don't recall which  
10 one that was, sir.

11 Q Did you go to the Pigeon residence in an automobile?

12 A Yes, sir.

13 Q Who was in the automobile with you?

14 A Agent Larry Bowles, Agent Carey Thurman, Agent Don  
15 Sharpe and Agent Harvey Pratt.

16 Q How many vehicles were at the Pigeon residence when  
17 you arrested Mr. Hart?

18 A Three.

19 Q Who was in the other vehicles?

20 A Agent Mike Wilerson was in one vehicle, Agent Jack  
21 Lay was in another vehicle, and one of the other agents - I  
22 don't remember which one I'm leaving out, I can't recall.

23 Q Was there an informant with you at the time of the  
24 arrest?

25 A Yes, sir.

1 Q Who was the informant?

2 A Your Honor --

3 MR. WISE: If it please the Court, we, on behalf of  
4 the witness, would enter our objection to his response. I  
5 believe he has something which he wishes to say.

6 A (By Mr. Ousley) There's a possibility of somebody  
7 being seriously injured if this person's name is informed, I  
8 inform the Court of it.

9 THE COURT: Objection is sustained.

10 Q Did this person in the vehicle - this unnamed person  
11 witness the event that occurred?

12 A I don't know, sir.

13 Q So we had two automobiles and one van; is that correct?

14 A Yes.

15 Q Which one of the vehicles was the informant in?

16 A The van.

17 Q Was there anybody other than the informant who  
18 witnessed the arrest of Mr. Hart?

19 A Not to my knowledge, sir.

20 Q Now, there was a fellow working in a garden down the  
21 hill; was there not?

22 A I didn't see him, sir.

23 Q Did you later talk to him?

24 A No, sir, I did not.

25 Q Tell me what happened after you arrived at the rear

1 of the Pigeon residence?

2 A Myself and three other agents went to the back of  
3 the residence. As we approached the back of the residence, the  
4 back door came open, and immediately closed - I don't know who  
5 went in the front door, because I wasn't around in front.  
6 Agent Mike Wilkerson came to the agents who were in the back,  
7 told us that Gene Leroy Hart was in custody. I went in through  
8 the back door, was in there with Agent Roger Chrisco and there  
9 was one other agent - and I'm sorry, I don't remember who that  
10 was, sir. They were in the house, we were there for just  
11 a matter of a few minutes and left.

12 Q Did you seize any evidence at that time?

13 A No, sir, I did not.

14 Q Did you see any underwear?

15 A Sir?

16 Q Did you see any underwear inside the house?

17 A No, sir.

18 Q When you first went in there?

19 A No, sir, I did not.

20 Q Did you see any shoes inside the first time you went  
21 into there?

22 A No, sir, I did not.

23 Q Did you see any boots inside the house?

24 A No, sir, I did not.

25 Q Did you see some weights inside the house?

1 A Yes, sir, I did.

2 Q Did you see a bag of clothing inside the house?

3 A I don't recall, sir.

4 Q Do you recall seeing a big plastic bag that had some  
5 -- a transparent bag that had some clothing in it?

6 A Not in the two rooms that I was in, sir. I did not  
7 see that.

8 Q Did you go into the room where the weights were?

9 A No, sir, I did not go into that room.

10 Q Did you see a big plastic bag in there.

11 A No, sir, I did not -- I did not go in any other room,  
12 and the two rooms I did go in, I did not see a large plastic  
13 bag.

14 Q But you did see those weights?

15 A I did see those weights.

16 Q Was there a mattress on the floor where the weights  
17 were?

18 A I don't recall, sir.

19 Q What was the purpose of going into the house at that  
20 time?

21 A We, uh, my purpose was that one of the agents told  
22 me that they thought there was someone else in the house.

23 Q Did you make a search?

24 A I'm sorry?

25 Q Did you make a search?



1 A I did not make a search. I took up a position  
2 between the living room and kitchen area in the doorway, stood  
3 right there in that position, and then I left.

4 Q What did you do after you left?

5 A I drove the van back to Tahlequah.

6 Q Who was with you in the van when you left?

7 A Agent Don Sharpe, Agent -- just Agent Don Sharpe and  
8 the informant.

9 Q Where did you let the informant out of the van?

10 A I didn't let the informant out of the van.

11 Q Take the informant back to Tahlequah with you?

12 A I drove in front of the OSBI office in Tahlequah,  
13 got out of the van, and was directed to go to the office, and  
14 stay with Mr. Hart.

15 Q Mr. Hart make any statements to you?

16 A No, sir.

17 Q Did - during the time that you were in the house, did  
18 you take any billfold belonging to Mr. Hart?

19 A No, sir, I did not.

20 Q Did you look for a billfold?

21 A No, sir, I did not.

22 Q After you went into the house -- OSBI office in  
23 Tahlequah, what did you do?

24 A I was assigned to stay with Mr. Hart. Mr. Hart was  
25 in the middle office - in the middle office in the office of

1 the OSBI office, and I sat with him.

2 Q Mr. Hart make any statements to you about this case?

3 A No, sir, he did not.

4 Q Did he tell you he wanted to talk to a lawyer?

5 A I'm sorry. No, sir, he did not. He did not tell  
6 me that.

7 Q Did he tell someone that in your presence.

8 A Not in my presence.

9 Q Who else was with you and MR. Hart?

10 A Agent Sharpe.

11 Q Were you ever out of the room when Mr. Hart was  
12 seated there in the OSBI office?

13 A Yes, sir, several times.

14 Q When you arrived at Tahlequah at the OSBI office, was  
15 Mr. Dennis Reimer in the office?

16 A I'm sorry, I don't remember, sir, if he was or not.

17 Q Did you later go back to the Pigeon residence with  
18 any other OSBI agent?

19 A No, sir, I did not.

20 Q Did you seize any evidence of any nature?

21 A No, sir, I did not.

22 Q Have you interviewed any persons concerning Mr. Hart's  
23 arrest or the homicides at Camp Scott?

24 A No, sir, I have not.

25 Q Are you a technical investigator also, Mr. Ousley?

1 A No, sir, I'm not. I'm assigned to the Intelligence  
2 Organized Crime Division.

3 Q While you were there in the office, was an order  
4 given to another agent to return to the Pigeon residence?

5 A Not to my knowledge, I didn't hear the order.

6 Q Now, we've heard testimony from Mr. Thurman and from  
7 Mr. Wilkerson, I believe it was - Mike Wilkerson, that one  
8 of the agents was left there to secure Mr. Pigeon's house  
9 after Mr. Hart had been arrested; do you recall his name?

10 A Agent Roger Chrisco was still at the scene when I  
11 left and Agent Carey Thurman was still at the scene when I  
12 left.

13 Q Mr. Ousley, before going to the Hart -- to the Pigeon  
14 residence to arrest Mr. Hart, were you briefed?

15 A I'm sorry.

16 Q Briefed - did somebody brief you about what you were  
17 going to do when you got there?

18 A Yes, sir.

19 Q Did anyone say anything about picking up Mr. Hart's  
20 dirty underwear when you arrested him?

21 A No, sir.

22 Q At any time before you arrested Mr. Hart, had you  
23 heard anything about needing to check samples of Mr. Hart's  
24 underwear for semen or for spermatozoa?

25 A No, sir.

1 MR. ISSACS: I believe that's all of this witness.

2 THE COURT: Cross examine?

3 MR. WISE: We'd have no questions. Thank you, Your  
4 Honor.

5 Q (By Mr. Issacs) What was written on the blackboard  
6 in the OSBI office?

7 A I don't -- I'm sorry, I don't know.

8 MR. ISSACS: Thank you.

9 THE COURT: You may step down.

10 (WHEREUPON, the witness was excused and withdrew  
11 from the hearing room.)

12 MR. ISSACS: Call Mr. Chrisco, Judge.

13 MR. WISE: If it please the Court, at this time, the  
14 State would call to the Court's attention and to the record  
15 that we have now had four witnesses on behalf of the Defendant.  
16 Two of them to the best of my recollection were OSP guards  
17 that knew absolutely nothing about this.

18 MR. ISSACS: And endorsed by the State, I might point  
19 out.

20 MR. WISE: The last witness has only been cumulative,  
21 and I ask that our Motion for Cessation be renewed.

22 THE COURT: It's under advisement.

23 MR. WISE: Thank you, Your Honor.

24 THE COURT: Raise your right hand. Do you swear to  
25 tell the truth, the whole truth and nothing but the truth,

1 to help you God?

2 THE WITNESS: I do.

3 ROGER CHRISCO

4 called as a witness on behalf of the Defendant, having been  
5 first duly sworn, testifies as follows:

6 DIRECT EXAMINATION

7 BY MR. ISSACS:

8 Q Mr. Chrisco, I've asked you questions before here,  
9 I want to direct your attention to the briefing session you  
10 had before you went up to arrest Mr. Hart over at Mr. Pigeon's  
11 residence?

12 A Okay.

13 Q Do you recall that?

14 A Yes.

15 Q Now, during that briefing session, did anybody tell  
16 you that as a part of the arrest and investigation at Mr.  
17 Pigeon's house that you were to seize underwear belonging to  
18 Mr. Hart?

19 A I don't remember anybody specifically saying yes, I  
20 do remember assuming I would take some of it was there. I  
21 don't remember anybody directly saying to take it.

22 Q When is the first time that anybody told you that  
23 they needed to get a sample of Gene Hart's underwear?

24 A Mr. Issacs, I don't remember the first time I was  
25 notified of the possibility of having - don't remember the date

1 or who told me, sometime prior to that, if possibly to obtain  
2 that, but I don't remember who told me or what date it was.

3 Q Okay. When you went up there to Mr. ~~Heon~~ Leon's house,  
4 you went inside the house and conducted a search for other  
5 people; didn't you?

6 A I conducted a search for other people?

7 Q Yes, sir.

8 A I conducted the search for evidence for the case -  
9 the charge.

10 Q Okay. The fellow that just testified before you said  
11 that you were inside the house with him looking for anybody  
12 that might have been in the house with Mr. Hart; do you recall  
13 going in there right after the arrest and looking around?

14 A Immediately after taking Mr. Hart from the residence,  
15 I did go back with another agent to search the house for any-  
16 body else in the house.

17 Q Okay. That was what I'm talking about - when you went  
18 in there, did you see a set of weights?

19 MR. WISE: If it please the Court, this whole line  
20 of questioning was covered when Mr. Chrisco was on the stand  
21 before under the same examination by the same defense attorney,  
22 Your Honor.

23 THE COURT: Objection is sustained as to that question  
24 on the grounds of irrelevancy as to whether he saw any weights.

25 Q In that room with the weights, Mr. Chrisco, directing

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1 your attention to that room, did you see a large plastic  
2 bag full of clothing?

3 A I believe there --

4 Q A big laundry bag -- a big bag, this full (indicating)  
5 of dirty clothes?

6 A I can't say definitely right now I did. I don't  
7 remember if I did or not, I don't remember taking anything  
8 like that out of the house.

9 Q All right. Did you go through that bag and collect  
10 Mr. Hart's dirty underwear?

11 A I went through the room and went through every piece  
12 of item in there, and I do not remember taking any underwear  
13 out of the room - directly, I don't remember taking --

14 Q There was a pair of underwear that Mr. Reimer picked  
15 up that were under a couch or chair; did you see those?

16 A Yes, I did.

17 Q Is that the only set of underwear that you got out  
18 of the Pigeon house to your knowledge?

19 A The best of my memory, I believe right now, I believe  
20 that was all I can remember taking out of the house of under-  
21 wear, I may--

22 Q The billfold that Mr. Hart was in the laundry bag;  
23 did you see that billfold?

24 MR. WISE: If it please the Court, he's assuming  
25 facts that are not in evidence. There's no evidence whatsoever

1 MR. ISSACS: I'll withdraw it.

2 Q Did you see a billfold in the dirty clothes?

3 A No, sir, I didn't.

4 Q Did you see one of those brier pipes in the dirty  
5 clothes?

6 A No, sir, I didn't.

7 Q In the other rooms, did you see any boots?

8 MR. WISE: If it please the Court, the same question  
9 has been asked and answered before by this same counselor.

10 THE COURT: Overruled, you may answer.

11 Q Did you see any boots in any of the other rooms?

12 A Not to my knowledge; no.

13 Q Any shoes in the other room?

14 A No.

15 Q In the room where these underwear were found under  
16 the couch or under a chair; were there any knives?

17 A There wasn't any knives in that room, I believe - the  
18 living room, there was no knives in there, but I remember -  
19 the only knives I remember were in the kitchen area.

20 Q Okay. Have you told me everything you did at the  
21 investigation inside of Mr. Pigeon's house?

22 A I believe I did - the evidence seized that you've  
23 already showed me; a sketch was made, not of a -- a fine done  
24 sketch was done just of the house and I can't remember anything  
25 else we did to it.



1 Q Who made the sketch?

2 A Dennis Reimer, chemist.

3 Q For what purpose.

4 A To show the location of where the articles were found,  
5 to show dimension of the house so we could place where the  
6 articles were found in the house.

7 Q Which articles?

8 A Every article which was taken from the house.

9 Q The blankets?

10 A Yes, sir.

11 Q The radio?

12 A Yes.

13 Q What else was taken from the house?

14 MR. WISE: Asked and answered, Your HONor.

15 THE COURT: Sustained, cumulative.

16 Q Was there anything else taken from the house at that  
17 time that you haven't told me about?

18 A There was a small card that was about a funeral of  
19 a person, it was taken in reference to the charge against  
20 Sam Pigeon.

21 Q You mean about somebody who was buried?

22 A Yes.

23 Q Okay. Mr. Chrisco, later on, did you go back to the  
24 Pidgeon residence and conduct a search around the house?

25 A I returned to the Pigeon residence, I believe the

1 following day to check the mileage and locate exactly where  
2 the place was located, and I believe some pictures were taken  
3 of the house - outside of the house.

4 Q Did you go out away from the house and conduct any  
5 searches?

6 A On that day, we walked around the house and took  
7 pictures. The agent with me took some pictures of different  
8 angles of the house. A search, it was not conducted of the  
9 house -- just to locate the place on the map and to take  
10 pictures of where this had taken place.

11 Q Mr. Sam Pigeon signed a search waiver; didn't he?

12 A I believe he did; yes, sir.

13 Q As a result of any of your visits to the Same Pigeon  
14 residence; did you gather any exculpatory evidence?

15 A The only thing that I have taken - gathered there as  
16 evidence was submitted, except for that one card was submitted  
17 on the lab submittal form.

18 Q Did you see anything that was exculpatory?

19 A Mr. Issacs, I've told you everything that - I think  
20 everything that I saw in there or didn't see.

21 Q Let me be more precise. Did you see any underwear at  
22 any time other than the pair under the couch?

23 A Not right now, not to my knowledge that I remember  
24 taking it, I don't believe I did. I don't remember seeing  
25 anymore.

1 Q Who was there with you when you went there the second  
2 time and a sketch was made?

3 A A sketch was made the night of -- during the collection  
4 of the evidence, the night of April 6th. The next time, I  
5 think, was either the following - it was either Friday or the  
6 following Monday, I went back out there with Agent Fanning  
7 Young and we checked the mileage to the home and took pictures  
8 of the house.

9 Q Did anybody in your presence seize any underware as  
10 evidence?

11 MR. WISE: Asked and answered, Your Honor, several  
12 times, I do believe.

13 THE COURT: Objection is overruled. I don't think  
14 you have asked that particular question.

15 A (By Mr. Chrisco) Mr. Issacs, other than the under-  
16 wear that I removed from underneath the couch, I know of no  
17 other underware taken from that house to my memory.

18 MR. ISSACS: That's all of this witness, Judge.

19 THE COURT: Cross examine?

20 MR. WISE: No, we have no questions.

21 THE COURT: You're excused. Call your next witness.

22 (WHEREUPON, the witness was excused and withdrew  
23 from the hearing room.)

24 MR. ISSACS: Mr. Sharpe, please.

25 THE COURT: Raise your right hand. Do you swear to

1 tell the truth, the whole truth, and nothing but the truth,  
2 so help you God?

3 THE WITNESS: Yes, sir, I do.

4 DONALD SHARPE

5 called as a witness on behalf of the Defendant, having been  
6 first duly sworn, testifies as follows:

7 DIRECT EXAMINATION

8 BY MR. ISSACS:

9 Q Mr. Sharpe, I wanted to ask you some questions. State  
10 your full name for the record?

11 A Donald Hall Sharpe.

12 Q Mr. Sharpe, I want to ask you some questions about  
13 Gene Leroy Hart's arrest over at the Sam Pigeon residence,  
14 I think you were there; is that correct?

15 A That's correct.

16 Q Will you tell me what you did when you went there?

17 A I positioned myself at the rear of the house - the  
18 back door of the house.

19 Q After Mr. Hart had been taken out of the house; what  
20 did you do?

21 A I stayed with Mr. Hart from the side of the house  
22 until we put him into the vehicle, while we were at the  
23 Tahlequah regional office, and then when we transported him  
24 to the State Penitentiary at McAlester.

25 Q Mr. Sharpe, you had a briefing session; did you not?

1 A Yes, sir.

2 Q And during that briefing session, did anybody say  
3 anything about getting Mr. Hart's dirty underwear?

4 A Not that I recall.

5 Q Had anybody at any time, before that time, said any-  
6 thing about gathering Mr. Hart's dirty underwear?

7 A Not that I recall.

8 Q Now, while you were at Mr. Pigeon's house, did  
9 anyone seize any underwear or gather any underwear to your  
10 knowledge?

11 A I don't know of anyone that did.

12 Q There has been testimony about a pair of Size 44  
13 underwear that were found under a couch inside the house.  
14 Do you know what was done with that pair of underwear?

15 A I never went inside the house.

16 Q When you took Mr. Hart to Tahlequah to the regional  
17 headquarters, was Mr. Dennis Reimer in the office?

18 A I don't know if he was there at all times or not.  
19 I did see him there at the regional office there that evening.

20 Q Was that when you arrived there with Mr. Hart?

21 A I don't recall that; no, sir.

22 Q Mr. Sharpe, I understand that there was an informant;  
23 is that correct?

24 A I don't know who the informant is, sir.

25 Q Was there someone in the van with you OSBI agents

1 when you went to Mr. Pigeon's house?

2 A Someone other than OSBI agents?

3 Q Yes, sir.

4 A Yes, there was.

5 Q What is the name of that person.

6 MR. WISE: If it please the Court, to which we  
7 would enter the same objection on behalf of this witness that  
8 we have previously stated.

9 THE COURT: Sustained, he's already answered your  
10 question, he didn't know who it was.

11 MR. ISSACS: I want to make my record for the reason  
12 that I'm going to urge later on a motion that I be provided  
13 with the name of the informant because the informant is a  
14 witness. I've got to ask the question, Judge.

15 Q Mr. Sharpe, after Mr. Hart had been arrested and on  
16 the way back to the OSBI office, I understand you were in the  
17 van; is that a correct statement?

18 A From the residence where we arrested Mr. Hart back  
19 to the regional headquarters?

20 Q Yes, sir.

21 A No, sir, that's not correct.

22 Q How did you return to the regional headquarters?

23 A In a bureau automobile.

24 Q Which agents went to the regional office in the van?

25 A I don't know, sir, it was still there when I left.

1 Q Did Mr. Hart make any statements to you pertaining  
2 to this case?

3 A Sir, we talked for several hours, but none that I  
4 recall pertaining directly to this case.

5 Q He was just wanting to tell you that he wanted a  
6 lawyer at that time; was he not?

7 A He did say he wanted a lawyer, yes, sir, before he  
8 would talk about that.

9 Q Did he talk about things, other than matters that  
10 we're concerned with here today?

11 A Just general conversation; yes, sir.

12 Q Was there a lady named Connie, an OSBI agent that  
13 you were in radio contact with when you arrested Mr. Hart?

14 A No, sir, she's not an agent.

15 Q Is she a law enforcement officer?

16 A She works in the Tahlequah regional office, she's  
17 a clerical employee.

18 MR. ISSACS: I believe that's all.

19 Q Have you told me everything you know about the  
20 investigation of the Sam Pigeon residence?

21 A I don't recall anything pertinent to this case  
22 considered there at the Pigeon residence.

23 Q Have you told me about any exculpatory evidence that  
24 you have in your possession or you have heard about?

25 A I did not collect or transport any evidence involved

1 in the case or at the time of the arrest besides Mr. Hart.

2 Q Are you a technician of any kind?

3 A No, sir, I'm not.

4 MR. ISSACS: That's all of this witness.

5 THE COURT: Cross examine.

6 CROSS EXAMINATION

7 BY MR. WISE:

8 Q Mr. Sharpe, during the time that you were making  
9 small talk with the defendant, did he tell you he could press  
10 two hundred thirty-five pounds on those bells?

11 A He did indicate that he could press quite a bit, and  
12 he had been working on his weights alot.

13 MR. WISE: I'd have no further questions, thank you.

14 THE COURT: Anything futher, Mr. Issacs?

15 MR. ISSACS: No, Your Honor.

16 THE COURT: You may step down.

17 (WHEREUPON, the witness was excused and withdrew  
18 from the hearing room.)

19 MR. ISSACS: Could I see Mr. Reimer.

20 DENNIS REIMER

21 called as a witness on behalf of the Defendant, having been  
22 first duly sworn, testifies as follows:

23 DIRECT EXAMINATION

24 BY MR. ISSACS:

25 Q Mr. Reimer, I want to ask you some questions about



1 the arrest of Mr. Hart and what evidence you gathered there.  
2 Were you present at a briefing session before the agents went  
3 to Mr. Pigeon's residence and arrested Mr. Hart?

4 A No, sir.

5 Q Have you at any time been instructed by any of your  
6 supervisors to gather underwear from Mr. Hart?

7 A Yes, sir.

8 Q Did you before you went to the Pigeon residence  
9 receive any instructions to gather Mr. Hart's underwear?

10 A No, sir.

11 Q Did you at that time you were in the Pigeon residence  
12 go through a bag of dirty clothes?

13 A I remember a bag being turned upside down and clothing.

14 Q Did you see any underwear at that time?

15 A No, sir.

16 Q Did you seize any underwear out of a box that had  
17 another plastic bag?

18 A No, sir.

19 Q This plastic bag - let me ask you - would you describe  
20 the plastic bag for me?

21 A I'm not even sure it was plastic, it was just a bag  
22 sitting there.

23 Q Had a lot of dirty clothes in it?

24 A Yes, sir.

25 Q Did you see a billfold there in Mr. Pigeon's house?

1 A No, sir.

2 Q A pipe?

3 A A pipe?

4 Q Yes, sir, one of --

5 A A smoking pipe?

6 Q A brier smoking pipe?

7 A I didn't see one; no, sir.

8 Q Mr. Reimer, in Mr. Pigeon's house was some Size 44  
9 underwear; did you gather those?

10 MR. WISE: If it please the Court, this is the  
11 second time counsel has referred to these as Size 44 underwear,  
12 and that's not into evidence.

13 THE COURT: Sustained.

14 MR. ISSACS: I'll withdraw that.

15 Q Did you see some underwear under one the chairs or  
16 under the couch?

17 A Yes, sir.

18 Q Were these gathered as evidence?

19 A Yes, sir.

20 Q What size were they?

21 A 44.

22 Q Mr. Reimer, while you were in the house, did you see  
23 any boots?

24 A No, sir.

25 Q Any shoes?

1 A No, sir.

2 Q A pipe?

3 A A pipe?

4 Q Yes, sir, one of --

5 A A smoking pipe?

6 Q A briar smoking pipe?

7 A I didn't see one; no, sir.

8 Q Mr. Reimer, in Mr. Pidgeon's house was some Size 44  
9 underwear; did you gather those?

10 MR. WISE: If it please the Court, this is the  
11 second time counsel has referred to these as Size 44 underwear,  
12 and that's not into evidence.

13 THE COURT: Sustained.

14 MR. ISSACS: I'll withdraw that.

15 Q Did you see some underwear under one of the chairs?  
16 or under the couch?

17 A Yes, sir.

18 Q Were these gathered as evidence?

19 A Yes, sir.

20 Q What size were they?

21 A 44.

22 Q Mr. Reimer, while you were in the house; did you see  
23 any boots?

24 A No, sir.

25 Q Any shoes?

1 A I don't recall any.

2 Q You made a sketch of Mr. Pigeon's residence; did  
3 you not?

4 A Yes, sir.

5 Q Do you have a copy of that sketch with you?

6 A No, sir.

7 Q What was the purpose of making the sketch?

8 A To locate --

9 MR. WISE: If it please the Court, that question  
10 was asked of the last witness as to why the sketch was made  
11 and by whom.

12 THE COURT: Well, since this witness did make it,  
13 I'll overrule it, and he may answer the question.

14 A (By Mr. Reimer). It was to aide me in my memory of  
15 the house, and the location of where the items were taken.

16 Q And those items that were taken would be the blankets,  
17 the quilts and the radio; is that correct?

18 A Yes, sir.

19 Q In that sketch, did you include the location of a  
20 knife - one of these hunting knives?

21 A It doesn't say on the sketch.

22 Q Do you remember where one was in the house?

23 A The knife?

24 Q Yes, sir.

25 A It was laying on the kitchen table.

1 Q Was that gathered as evidence?

2 A Yes, sir.

3 Q Were you in on the arrest of Mr. Hart? Were you  
4 present when he was arrested?

5 A No, sir.

6 Q You were at the Tahlequah office; is that correct?

7 A Yes, sir.

8 Q And you left there when Mr. Hart was returned to the  
9 Tahlequah office; is that correct?

10 A Yes, sir.

11 Q Before you went there; what were your instructions?

12 A To go out --

13 MR. WISE: Previously asked and answered, Your Honor.

14 THE COURT: Overruled.

15 A (By Mr. Reimer) My instructions were to convey to  
16 the agents out there to get the permission of Sam Pigeon to  
17 search the residence, and if permission was obtained, to search  
18 it.

19 Q You got permission from Mr. Pigeon to search it;  
20 didn't you?

21 A I didn't.

22 Q Somebody else did?

23 A Somebody did; yes, sir.

24 Q Mr. Reimer, did you conduct any searches in the  
25 surrounding area?

1 A No, sir, I didn't.

2 Q To your knowledge, did anyone seize any underwear as  
3 evidence at the Sam Pigeon residence?

4 A No, sir.

5 Q If they had seized any, you would have had it; would  
6 you not?

7 A Not necessarily given to me. It should have been  
8 entered into evidence if it was.

9 Q And it would be reflected in the technical reports  
10 along with the blankets and radio; wouldn't it?

11 A No, sir, it wouldn't necessarily have been reflected  
12 there. That report indicates what Roger and I took there at  
13 that time.

14 Q Would you run that last sentence by me again.

15 A That report indicates items which Roger and I took  
16 at the residence at that time.

17 Q Did you take anything from the Pigeon residence at  
18 any other time?

19 A No, sir.

20 Q Did you take any of the evidence back to Mr. Pigeon?

21 A No, sir.

22 Q Were there any firearms in the house?

23 A I didn't see any.

24 Q Did you conduct a thorough search of the entire house?

25 A I wouldn't say a thorough search; no, sir.

1 Q Which rooms did you look in for underwear?

2 A Most of the items, I didn't even pick up. I just  
3 sat on the front porch, and as Roger brought them out, I  
4 packaged them up, and wrote the location that he told me.  
5 The only items that I actually saw taken was the radio, the  
6 pecans and the underwear from under the couch.

7 Q Mr. Reimer, did you see any underwear inside of the  
8 Pidgeon residence other than the pair under the sofa?

9 A No, sir.

10 MR. ISSACS: Okay, that's all. Thank you, Mr.  
11 Reimer for coming.

12 MR. WISE: We'd have no questions. Thank you, Your  
13 Honor.

14 THE COURT: You're excused.

15 (WHEREUPON, the witness was excused and withdrew  
16 from the hearing room.)

17 MR. ISSACS: Judge, we've got one set to be here at  
18 1:30. Mr. Charlie Davis and that will be it.

19 THE COURT: That will be your last witness?

20 MR. ISSACS: That one and two short ones.

21 THE COURT: Are your short ones here.

22 MR. ISSACS: Yes, I need to speak with them before --

23 THE COURT: How short would they be - maybe less than  
24 fifteen minutes.

25 MR. ISSACS: Uh, I need a little more time than that.

1 THE COURT: Why don't we recess for lunch and we'll  
2 take up again at 12:45.

3 (Following the lunch recess, the proceedings continued  
4 as follows:)

5 AFTERNOON SESSION

6 MR. ISSACS: Call Carey Thurman.

7 CAREY THURMAN

8 called as a witness on behalf of the Defendant, having been  
9 first duly sworn, testifies as follows;

10 DIRECT EXAMINATION

11 BY MR. ISSACS:

12 Q Mr. Thurman, directing your attention to Mr. Dry's  
13 statement of April 10th; how long have you had that statement?

14 A Which one is this?

15 Q The one which was transcribed and sworn before a  
16 court reporter?

17 A I didn't know about it, until you got it the other  
18 day. I knew approximatley fifteen minutes before hand.

19 Q Could I see an original of the copy of that statement?

20 A I do not have one.

21 Q Is there a copy in your file?

22 A No, sir there was not.

23 MR. ISSACS: I'd like to see the original from which  
24 my copy was made.

25 MR. WISE: Mr. Bowles brought the original in the



1 courtroom from which we made the copy.

2 MR. ISSACS: Do you have a copy of it in your files  
3 at this time.

4 MR. WISE: You do.

5 MR. ISSACS: Do you have a copy of it in your files  
6 at this time?

7 MR. WISE: Just like the one we made of the one that  
8 Mr. Bowles brought to the courtroom.

9 MR. ISSACS: Could we see the copy at this time, Your  
10 Honor.

11 THE COURT: I don't know what the purpose for it is.

12 MR. ISSACS: I'd like to compare it with ours. Is  
13 that the only copy you have.

14 MR. HOBBS: Unless Mr. Fallis and Mr. Wise has one.

15 Q This statement was transcribed by a court reporter;  
16 is that correct, Mr. Thurman?

17 A I have no idea. I have not even read this statement.

18 Q Have you seen any other copies of this statement  
19 other than the one that Mr. Hobbs just gave me and the one  
20 that was given to me here in open court?

21 A I didn't even know that Mr. Hobbs had a copy. The  
22 only one that I have seen was in a clear plastic folder that  
23 Agent Bowles had, and I have not read it.

24 Q This clear plastic folder, was it bound with blue  
25 tape?

1 MR. WISE: If it please the Court, it was in the  
2 courtroom being held by the witness. I don't know what we're  
3 getting at - just repetitious again.

4 THE COURT: I don't understand the direction you're  
5 traveling Mr. Issacs. What purpose --

6 MR. ISSACS: I want to know if that statement was  
7 in their possession before April 10.

8 THE COURT: In who's possession?

9 MR. ISSACS: Mr. Wise's possession.

10 THE COURT: Well, I believe Mr. Wise stated in open  
11 court that he just received it the date that he gave you the  
12 copy; is that true, Mr. Wise?

13 MR. WISE: That's correct.

14 Q Mr. Thurman, do you have any other statements that  
15 are sworn testimony from any other witnesses in your possession?

16 A No, sir, not to my knowledge, I don't have.

17 Q Do you know of any exculpatory evidence in this case?

18 A No, sir.

19 Q Do you know of any inconsistent statements that Mr.  
20 Dry made at any time pertaining to this case?

21 A Well, like I said, I haven't read the last one we  
22 just were talking about right here, I haven't read it, and I  
23 don't - you know - know whether there was inconsistency between  
24 the previous one and this one, I do not know.

25 Q Have you at any time read any notes which contained

1 inconsistent statements?

2 A No, sir, not that I can remember.

3 MR. ISSACS: Thank you, that's all of this witness.

4 THE COURT: Cross examine.

5 MR. WISE: We have no questions.

6 MR. ISSACS: Call Charlie Davis, Judge. I've asked  
7 him to be here at 1:30, Judge.

8 THE COURT: Is there another witness, I thought you  
9 had two.

10 MR. ISSACS: I won't be needing to call those two  
11 witnesses.

12 MR. WISE: If it please the Court, apparantly Mr.  
13 Issacs was under the impression that Charlie Davis was a  
14 Deputy Sheriff in Mayes County at the time this incident  
15 occurred. We would have the record reflect that Charlie  
16 Davis was not a Deputy Sheriff at that time, he was working  
17 for the Salina Police Department. We would also be glad to  
18 stipulate to what Mr. Issacs is seeking to conserve time.

19 THE COURT: Have you subpoenaed Mr. Davis?

20 MR. ISSACS: Yes, I have, when he was employed as  
21 a Salina police officer.

22 THE COURT: Have you spoken with him today?

23 MR. ISSACS: Spoke with him this morning at 6:30 or  
24 6:00.

25 THE COURT: Well, why don't we recess, since this is

1 your last witness apparently, until he gets here.

2 MR. ISSACS: Thank you.

3 (Following a 15 minute recess, the proceedings  
4 continued as follows:)

5 THE COURT: We're ready, Mr. Issacs.

6 MR. ISSACS: Would the record show that subpoenaed  
7 here today was Charlie Davis, policeman, Salina Police Depart-  
8 ment - formally employed by the Salina Police Department. He  
9 does not appear. Let the record further show that a fellow  
10 by the name of Frank Young was subpoenaed to testify on Monday,  
11 July 3rd, he did not appear. I want the record to further  
12 show that all other witnesses have been excused from their  
13 subpoenas at this time. The Defendant rest.

14 THE COURT: The motion of the State to cease the  
15 preliminary hearing is declared moot.

16 MR. WISE: Very well, Your Honor.

17 THE COURT: Mr. Issacs, do you wish to make any  
18 final statement or argument to the Court.

19 MR. ISSACS: Judge, I think my brief is self-explanatory,  
20 and I have nothing further to add.

21 THE COURT: Does the State have anything to say.

22 MR. WISE: We certainly don't. Thank you for the  
23 opportunity.

24 THE COURT: Motion of the defense to suppress evidence  
25 is overruled, exception noted. I believe you also have one

1 on a motion - demurrer to the information?

2 MR. ISSACS: Yes, sir.

3 THE COURT: Do you wish to have a ruling on that during  
4 this hearing?

5 MR. ISSACS: No, sir. Judge, we would like to reserve  
6 on all other filed motions - motions which have not been urged  
7 here in open court.

8 THE COURT: Very well.

9 MR. ISSACS: Until such time as we are able to have a  
10 copy of the transcript.

11 THE COURT: Court will make no further rulings on any  
12 defense motions which have not already been ruled on at this  
13 juncture.

14 The Court makes the following findings and orders regard-  
15 ing the three cases which have been under preliminary hearing  
16 during this past month:

17 In CRF-77-131, State of Oklahoma versus Gene Leroy  
18 Hart, the Court finds in that case that the crime of Murder  
19 in the First Degree has been committed, and that there's  
20 probable cause to believe that the within named Defendant,  
21 Gene Leroy Hart, committed that crime. He is bound over to the  
22 District Court of Mayes County for trial on that charge.

23 In CRF-77-132, State of Oklahoma versus Gene Leroy  
24 Hart, the Court finds in that case that the crime of Murder  
25 in the First Degree has been committed and probable cause to

1 believe that the within named defendant, Gene Leroy Hart,  
2 committed that crime, and he is bound over to the District  
3 Court for trial on that charge.

4 The Court further finds that in CRF-77-133, State of  
5 Oklahoma versus Gene Leroy Hart, that the crime of Murder  
6 in the First Degree has been committed, and that there is  
7 probable cause to believe that the within named defendant,  
8 Gene Leroy Hart, committed that crime, and he is bound over  
9 to the District Court for trial on that charge.

10 The arraignment for the Defendant in each of these  
11 cases will be set for control purposes for July 18th, 1978,  
12 at 3:00 p.m., and any other time that you will require, you'll  
13 have to request from the District Court. The defendant -  
14 excuse me - at this point, Mr. Wise, is there a motion by  
15 the State concerning the evidence?

16 MR. WISE: Yes, If it please the Court, the State  
17 at this time would move respectfully in open court, move  
18 this honorable Court to allow the State to withdraw all of  
19 the evidence which has been submitted before this Court, and  
20 entered into evidence during the proceedings for this  
21 preliminary hearing, so we may again take it back into our  
22 custody and preserve it until such time as the trial shall  
23 be commenced.

24 MR. ISSACS: I had no notice of this motion, Judge,  
25 but I object to it for the reason we're going to need to have

1 certain portions of the evidence - parts of the items viewed  
2 by expert witnesses for the defense.

3 THE COURT: Very well. All right, the objection is  
4 overruled. I'm going to grant your motion, but on the condi-  
5 tion that the defense counsel and his experts be allowed to  
6 view this evidence at reasonable times and reasonable places.

7 MR. WISE: If it please the Court, we anticipated  
8 such viewing - it's customary in the Oklahoma State Bureau  
9 of Investigation Laboratories where his persons and our  
10 experts can be together at that same time simultaneously with  
11 due notice being given.

12 THE COURT: All right. Well, custody of that will  
13 remain with the State of Oklahoma because I'm granting your  
14 motion at this time.

15 MR. WISE: Very well, Your Honor.

16 MR. ISSACS: Judge, does that mean all of the evidence  
17 would be with the Oklahoma State Bureau of Investigation?

18 MR. WISE: Well, it will come to my office, and those  
19 things that I anticipate, Your Honor, I can advise counsel  
20 that the majority of the evidence will go on back to Oklahoma  
21 City.

22 THE COURT: If Mr. Issacs request to view a certain  
23 portion of the evidence, I would ask you Mr. Wise to advise  
24 him as to where it is located and assist him in viewing it.

25 MR. WISE: Be glad to, Your Honor.

1 THE COURT: Now, the defendant is placed in the custody  
2 of the Mayes County Sheriff at this time. It is the order of  
3 the Court that if at all possible that he remain in the custody  
4 of the Mayes County Sheriff of Mayes County insofar as  
5 security precautions may permit between now and his arraign-  
6 ment date, and in any event, if he is required to be moved  
7 for security reasons, the Court would request that the Sheriff  
8 notify both the State, Mr. Wise, and Mr. Issacs at a suitable  
9 number that you might provide so you will be constantly aware  
10 of the location of your client.

11 MR. WISE: If it please the Court, if I understand  
12 the Court correctly, unless some contingency arises in the  
13 views of the Sheriff, the defendant will be kept here until at  
14 least the 18th?

15 THE COURT: That is correct, but I'm giving the Sheriff  
16 an open hand insofar as security is concerned to make a transfer  
17 if he deems it necessary to protect Mr. Hart.

18 MR. WISE: Very well, Your Honor. One further question  
19 that we would like to raise on the record before the Court  
20 closes this proceedings. It's my understanding, and correct  
21 me, Mr. Issacs, if I'm wrong, that the defense has requested  
22 a transcript formally, and that the request has been made as  
23 a matter of record; is that correct?

24 MR. ISSACS: Yes.

25 THE COURT: I think a portion has been ordered, but



1 I don't know that it all has.

2 MR. ISSACS: We've ordered it, and we haven't paid  
3 for it all yet.

4 MR. WISE: My only concern is we want to be certain  
5 that this case does not become stagnated, because of a request  
6 for a transcript. If in fact an agreement is reached between  
7 counsel and the court reporter.

8 THE COURT: It is my understanding that there are  
9 two court reporter currently working on this transcript.  
10 That's my understanding, and if they run out of transcript  
11 money they will stop typing, and that's common of any  
12 criminal case in which the defendant orders a transcript.

13 MR. WISE: In that event, it would delay -- if they  
14 were not able to get the transcript for that reason, it  
15 would not delay the trial. *Wise* *1/7/8*

16 THE COURT: That's a matter that the District Court  
17 will have to decide, that's not a function at preliminary  
18 hearing.

19 MR. WISE: Very well, Your Honor.

20 THE COURT: If there's nothing further to come before  
21 this Court, we are adjourned.

22 (WHEREUPON, the preliminary hearing was adjourned.)  
23  
24  
25

C E R T I F I C A T E

STATE OF OKLAHOMA

SS.

COUNTY OF MAYES

I, Tracey R. Ferguson, Licensed Shorthand Reporter in and for the state of Oklahoma, and the District Court of Mayes County, do hereby certify that I reported in stenograph the preliminary hearing had in the foregoing styled and numbered cause.

I further certify that my notes were thereafter transcribed by me and reduced to typewritten form by Pat Sidwell, under my supervision, and that the same is a true and complete transcript of the proceedings had at said hearing.

WITNESS my hand this 20<sup>th</sup> day of October, 1978.

*Tracey R. Ferguson*

Tracey R. Ferguson, L.S.R.

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