

The Supreme Court of the United States in *Faretta, supra* stated:

The Sixth Amendment does not provide merely that a defense shall be made for the accused; grants the accused personally the right to make his defense. It is the accused, not counsel, who must be informed of the nature and cause of the accusation, who must be "confronted with the witnesses against him", who must be accorded "compulsory process for obtaining witnesses in his favor." Although not stated in the Amendment in so many words, the right to self-representation—to make one's own defense personally—is thus necessarily implied by the structure of the Amendment. The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails. (at 5008).

Wherefore on the basis of the Constitutions of the State of Oklahoma and the United States of America as interpreted by the courts, the Defendant respectfully requests that he be allowed full participation in the trial as co-counsel for his own defense.

Respectfully submitted,



Garvin A. Isaacs
Attorney for Defendant

copy served on T. Jack Doble
this 17th day of March, 1979

IN THE DISTRICT COURT OF MAYES COUNTY

FILED IN THE DISTRICT COURT
MAYES COUNTY, OKLAHOMA

STATE OF OKLAHOMA

MAR 19 1979

ELOISE GIST, Court Clerk
BY *Phyllis Fraley*
Deputy

STATE OF OKLAHOMA,)
Plaintiff,)
vs.)
GENE LEROY HART,)
Defendant.)

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

MOTION IN LIMINE

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes the Defendant, Gene L. Hart, by and through his attorneys, and moves the Court for an order prohibiting the Prosecutor from making any reference, directly or indirectly, or asking questions about any of the following matters during the course of the trial:

1. Making any reference to the testimony of Larry Dry pertaining to Gene L. Hart looking for glasses in 1973;
2. Making any reference or asking any questions of any witness about alleged observations or conversations involving Gene L. Hart with minor children including Larry Dry;
3. Making any reference or asking any questions of any witnesses about alleged observations or conversations involving Gene L. Hart and alleged arguments concerning small children;
4. Making any reference or asking any questions of any witness concerning fear of reprisals by Gene L. Hart against small girls;
5. Making any reference or asking any questions of any witness about letters or communications believed to have come from Gene L. Hart;
6. Making any reference or asking any questions of any witness concerning alleged conversations about raping a woman in 1973;

7. Making any reference or asking any questions about conversations between Gene L. Hart and any other person pertaining to sexual intercourse.

In support of his motion the Defendant shows to the Court:

I.

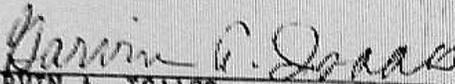
None of the above have any relevancy to any issue before the trial court in the above styled and numbered causes. The admission or reference to any of the above alleged statements would be more prejudicial than probative.

II.

The alleged statements are remote in time and are offered solely to arouse the passion of the jurors.

Wherefore Defendant respectfully requests his motion be sustained in all respects.

Respectfully submitted,


GARVIN A. ISAACS
Attorney for the Defendant

CERTIFICATE OF DELIVERY

I, Garvin A. Isaacs, hereby state that a true and correct copy of the above motion was delivered to Mr. T. Jack Graves, District Attorney for Mayes County, on the 15th day of March, 1979.


GARVIN A. ISAACS

CERTIFICATE OF SERVICE

A copy of the foregoing was served on the Prosecution this
5th day of March, 1979, by hand delivery.

Garvin A. Isaacs
Garvin A. Isaacs

IN THE DISTRICT COURT OF MAYES COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
MAYES COUNTY, OKLAHOMA

STATE OF OKLAHOMA,

MAR 19 1979

Plaintiff,

ELOISE GIST, Court Clerk
BY *Quanta Gist*
Deputy

vs.

CRF77-131
CRF77-132
CRF77-133

GENE LEROY HART,

Defendant.

STIPULATION

Comes now Gene Leroy Hart, and agrees to stipulate to the following:

1. That Doris Milner died on or about the 13th day of June, 1977, and that the probable cause of death was asphyxia due to ligature strangulation.

2. That Michelle Guse' died on or about the 13th day of June, 1977, and that the probable cause of death was blunt trauma to the head.

3. That Lori Lee Farmer died on or about the 13th day of June, 1977, and that the probable cause of death was blunt trauma to the head.

4. That the autopsy reports of Neal A. Hoffman, M.D., contain a true and correct description of the injuries of Michelle Guse', Lori Lee Farmer and Doris Milner.

5. That the autopsy reports of Neal A. Hoffman, M.D., contain a true and correct description of the condition of the bodies at the time of death.

6. That the autopsy reports of Neal A. Hoffman, M.D., describe fully an autopsy conducted in accordance with best medical procedures and the highest state of the art.

Wherefore Gene Leroy Hart stipulates to the autopsy reports of Neal A. Hoffman, M.D.

Garvin A. Isaacs

Garvin A. Isaacs
Attorney for Defendant

I hereby certify that I served a true and correct copy of the
above motion on the District Attorney on the 19th day of March,
1979

IN THE DISTRICT COURT OF MAYES COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
MAYES COUNTY, OKLAHOMA

MAR 20 1979

ELOISE GIST, Court Clerk
BY *[Signature]*
Deputy

STATE OF OKLAHOMA.

Plaintiff,

-vs-

GENE LEROY HART,

Defendant.

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

APPLICATION FOR EXPERT WITNESS FEES AND EXPENSES

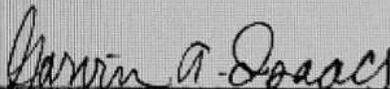
Comes now the Defendant, Gene Leroy Hart, by and through his attorneys of record, and pursuant to the facts alleged in the Defendant's Affidavit of Pauper, filed with this Court on March 13, 1979, moves that the Court allow payment of expert witness fees and expenses for the following:

1. James White, Executive Director - Crawford County Mental Health Center; Pittsburg, Kansas (psychologist).
\$300.00
2. Gary Napier - Crawford County Mental Health Center; Pittsburg, Kansas (psychologist).
\$300.00
3. Cathy E. Bennett - Santa Barbara, California (juristic psychologist).
\$1,500.00
4. William T. Burke - Oklahoma City, Oklahoma (fingerprints).
\$450.00
5. Don Piatt - Oklahoma City, Oklahoma (footprints).
\$200.00
6. Charles Morton - Institute of Forensic Sciences; Oakland, California (sperm)
\$1,050.00
7. H. E. Maxey - Oklahoma City, Oklahoma (sperm and hair).
\$1,000.00
8. Terry Crone - Stillwater, Oklahoma (hair) \$250.00
9. John Wilson - Kansas City, Missouri (sperm and hair).
\$400.00
10. Bob Wallace - Oklahoma City, Oklahoma (private investigator and photographer).
\$3,000.00
11. Anthony Eversole - Tulsa, Oklahoma (photographer).
\$400.00

The Defendant anticipates that the total fees, travel and related expenses for the services and presentation of the above witnesses will be approximately \$8,850.00.

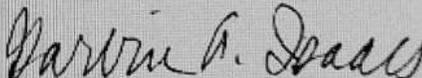
The Defendant further anticipates that additional costs of preparing an adequate defense have and will continue to accrue, and requests that the Court allow payment of these expenses as necessary.

Respectfully submitted,


GARVIN A. ISAACS
Attorney for Defendant

VERIFICATION

I, Garvin Isaacs, state that I have read the above Application and that the facts stated therein are true and correct to the best of my knowledge and belief.


GARVIN A. ISAACS

Subscribed and sworn to me this 20th day of March, 1979.


Lewis G. Galt

CERTIFICATE OF DELIVERY

A true and correct copy of the above Application was hand delivered to Mr. T. Jack Graves, District Attorney for Mayes County, on the 20th day of March, 1979.


T. Jack Graves

**AFFIDAVIT OF WITNESSES AS TO ATTENDANCE AND MILAGE
IN THE DISTRICT COURT OF MAYES COUNTY**

STATE OF OKLAHOMA }
COUNTY OF MAYES } SS.

**FILED IN THE DISTRICT COURT
MAYES COUNTY, OKLAHOMA**

MAR 19 1979

State
PLAINTIFF.

vs.

Gene Lynn Hart
DEFENDANT.

ELOISE GIST, Court Clerk
By Quante D. Gissell Deputy

Case No. CRF-77-131

We do solemnly swear that we were subpoenaed as witnesses in the above entitled cause, in behalf of the plaintiff and/or defendant and that, in obedience to said subpoena, we attended court this date and in going to and returning from said Court traveled the number of miles set opposite our respective names, and have not claimed or received a witness fee in any other case this date:

Names and Addresses	Number of Miles Each Way	Milage	AGGREGATE AMOUNT DUE	
			DOLLARS	CENTS
<u>Willis Thompson</u> <u>St. Rt. 4</u> <u>Lawton, Ok</u>	22	6.60	11	60
<u>Ray Hardward</u> <u>Box 367</u> <u>Lawton, Ok</u>	22	6.60	11	60
<u>Richard May</u> <u>1140 S. Julietta</u> <u>Tulsa, Ok</u>	45	13.50	18	50
<u>David Parker</u> <u>14 S. Ora</u> <u>Pryor, Ok</u>			5	00
<u>Juan Emery Huden</u> <u>503 S. University</u> <u>Norman, Okla.</u>	174	52.20	64	20
			110.90	

Willis Thompson
Ray Hardward
Richard May
David Parker

Quante D. Gissell

Subscribed and sworn to before me this 19 day of March 19 79
ELOISE GIST
Court Clerk of Mayes County
By Quante D. Gissell Deputy

IN THE DISTRICT COURT OF MAYES COUNTY, STATE OF OKLAHOMA

State of Oklahoma vs. Gene Leroy Hart

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

JURY LIST

3-5-79

Plaintiff's Challenges For Cause	Defendant's Challenges For Cause
1. Nina Lorraine True	26% Rouella Mae Terhune
2. Warren G. Whitely, Jr.	27% Darlene Rowland
3. Lemie Stafford	28% Barbara Allen
4. Iola May Beaver	29% Gloria D. Weaver
5. Otto Coger	30% Barbara Garner
6. Rocky Littlefield	31% John M. Carter, Jr.
7. Commodore J. Staker	32% Henry Lakay Busby
8. Naomi K. Craig	33% Lucile Leroy Arnold
9. Charles D. Bowley	34% Kerney L. McHair
10. Johnny D. Holman	35% Ronald Lynn Taylor

Number of Jurors Passed for Cause

Plaintiff's Peremptory Challenges	Defendant's Peremptory Challenges
11. Donald Ray Murphy	36% Della Flora McLaughlin
12. Cleston W. Allen	37% J. T. Northcutt
13. Betty Lou Brown	38% George Panton Reese
14. Pauline S. Copps	39% Carnie L. Cauthron
15. Martha Joan Koch	40% Leroy Reed
16. Donald Daily	41% James Everett Keel
17. Donald B. Watt	42% Lynda Cheryl Swain
18. Johnnie Junior Fletcher	43% Debbie Ruth Miller
19. Wayne Frank Brady	44% Glenn Allen McWhirter

The following are a true and correct list of jurors in the above styled and numbered cause, to-wit:

20% Mary Bell Anderson	45% Jim Odell Daugherty
21% Sheri Lee Swinnow Wood	46% Willie Lee Leonard
22% Dawson L. Beck	47% Cleophas Rex Simon
23% Calvin Ernest Conwell	48% Allene Francis Simon
24% Ida Mae Cooper, Jr.	49% Alan Dale Shuman
25% Kelly Gene McHenry	50% Lucille L. Balenti

CERTIFICATE OF CLERK

State of Oklahoma, Mayes County, ss.

I, Elow Gist, Court Clerk of Mayes County, Oklahoma, do hereby certify that the above and foregoing is a true and correct list of jurors in the case of

State of Oklahoma, Plaintiff, vs. Gene Leroy Hart, Defendant.

FILED IN THE DISTRICT COURT
MAYES COUNTY, OKLAHOMA

Witness my hand and official seal this 12th day of March, 1978.

Elow Gist Court Clerk

MAR 20 1978

By _____ Deputy

By Eldise Gist, Court Clerk
Deputy

IN THE DISTRICT COURT OF MAYES COUNTY, STATE OF OKLAHOMA

State of Oklahoma vs. Gene Leroy Hart

Case No. CR-77-121

JURY LIST

Plaintiff's Challenges For Cause		Defendant's Challenges For Cause	
51.	Carl W. Propp	70x	Jessie R. Stebb
52.	Williams Wadsworth Long	71x	Clinton W. Sharp
53.	Nazel Moore Russell	72x	Jessamine J. Cavolin
54.	Ruby Mildred Pava	73x	Alburt W. Carter
55.	Bob E. Robinson	74x	Sandra Ann Suggs
56.	Herbert Weaver	75x	Van R. Soper
57.	Harmer L. Doughter	76x	Jeffrey L. Ture
58.	Wanda D. Skiper	77x	Walter Day, Jr.
59.	Joan A. Sellers	78x	Ralph M. Anoville
60.	Rozella Paulsen	79x	Ernest T. Swordish

Plaintiff's Peremptory Challenges		Defendant's Peremptory Challenges	
61.	Jama W. Gray	80x	David B. Harris
62.	Johnny Nichols	2.	
63.	Louis R. Caldwell	3.	
64.	Carmen E. Justus	4.	
65.	Alta Ernest Mitchell	5.	
66.	Gerry Stiles	6.	
67.	Herbert B. Pritchett	7.	
68.	William W. Crawford	8.	
69.	Sobby Jean Harris	9.	

The following are a true and correct list of jurors in the above styled and numbered cause, to-wit:

1.	7.
2.	8.
3.	9.
4.	10.
5.	11.
6.	12.

CERTIFICATE OF CLERK

State of Oklahoma, Mayes County, ss.

I, Erlene Gist, Court Clerk of Mayes County, Oklahoma, do hereby certify that the above and foregoing is a true and correct list of jurors in the case of

State of Oklahoma, Plaintiff, vs. Gene Leroy Hart, Defendant.

Witness my hand and official seal this 16th day of March, 1959.

Erlene Gist, Court Clerk

By: _____ Deputy.

IN THE DISTRICT COURT OF MAYES COUNTY, STATE OF OKLAHOMA

State of Oklahoma vs. Gene Perry Hart
 Case No. CR 77-131

JURY LIST

Plaintiff's Challenges For Cause	Defendant's Challenges For Cause
1. Darcy Kuel	1.
2. Linda Kay Jumper	2.
3. Mr. Frank Burnett	3.
4. Willie Lee Ray	4.
5.	5.
6.	6.
7.	7.
8.	8.
9.	9.
10.	10.

Plaintiff's Peremptory Challenges	Defendant's Peremptory Challenges
1. Josephine Baker	1. Hilda Marie Spencer
2. James W. Rowbottom	2. Haven R. Kemmer now Strating
3. James R. Starkoll	3. Deborah Kaye Zoster
4. Donnie Ray Johnson	4. Cornelia Floyd
5. Almida R. Hurley	5. Robbie Gail Helore
6. Virginia L. Brannon	6. Daniel L. Proctor
7. James E. Womeldorf	7. Owen Eugene Peter
8. April Cherise Bailey	8. Marie A. Stang
9. Waived	9. Thelma Brewer

The following are a true and correct list of jurors in the above styled and numbered cause, to-wit:

1. Leota Mae Jackson	7. Marion L. Richard
2. Paula Vagle Shipp	8. Laurence T. Berry
3. Lela Ann Ramsey	9. Sadie Louise Young
4. Jack R. Mitchell, Jr.	10. Wanda Ruth Bell
5. Okey D. Skemblin	11. Sandra Jean Lanett
6. George C. Kelly	12. Cecilia Joan Littlefield

CERTIFICATE OF CLERK

State of Oklahoma, Mayes County, ss.

I, Clavin Gist, Court Clerk of Mayes County, Oklahoma, do hereby certify that the above and foregoing is a true and correct list of jurors in the case of

State of Oklahoma, Plaintiff, vs. Gene Perry Hart, Defendant.

Witness my hand and official seal this 15th day of March, 1979.

Clavin Gist Court Clerk.

By _____ Deputy.

IN THE DISTRICT COURT OF MAYES COUNTY, STATE OF OKLAHOMA

State of Oklahoma vs. Geo. Leroy Hart

ALTERNATE

Case No. OKF 77-131

JURY LIST

Plaintiff's Challenges For Cause	Defendant's Challenges For Cause
1. <u>Billy R. Kerns</u>	1. <u>Eva Laine Ramsey</u>
2. <u>Sobby Powell</u>	2. <u>Danny Lee Roubrough</u>
3. <u>Henry G. Neitzger</u>	3. <u>Billie R. Haley</u>
4. <u>Ron W. Reider</u>	4. <u>George W. Laidmore</u>
5. <u>Verny Lee Pritchett</u>	5. <u>Shelby L. Hicks</u>
6. <u>Billy Joe Kirby</u>	6. _____
7. <u>Frank J. Kludweid</u>	7. _____
8. <u>Carl Ward Osborne</u>	8. _____
9. <u>Gary L. Trout</u>	9. _____
10. <u>Bob Curtis Sholer</u>	10. _____

Number of Jurors Passed for Cause 6

Plaintiff's Peremptory Challenges	Defendant's Peremptory Challenges
1. <u>Helen G. Jovy</u>	1. <u>Charlie David Polk</u>
2. <u>Stearn Ron Osage</u>	2. <u>Johnny L. Mitchell</u>
3. _____	3. _____
4. _____	4. _____
5. _____	5. _____
6. _____	6. _____
7. _____	7. _____
8. _____	8. _____
9. _____	9. _____

The following are a true and correct list of jurors in the above styled and numbered case, to-wit:

13. <u>David W. Mead</u>	7. _____
14. <u>Nellie Ball</u>	8. _____
3. _____	9. _____
4. _____	10. _____
5. _____	11. _____
6. _____	12. _____

CERTIFICATE OF CLERK

State of Oklahoma, Mayes County, ss.

Eloise Guit, Court Clerk of Mayes County, Oklahoma, do hereby certify that the above and foregoing is a true and correct list of jurors in the case of

State of Oklahoma, Plaintiff, vs. Geo. Leroy Hart, Defendant.

Witness my hand and official seal this 16th day of March, 1929.

Eloise Guit Court Clerk

By _____ County

**AFFIDAVIT OF WITNESSES AS TO ATTENDANCE AND MILAGE
IN THE DISTRICT COURT OF MAYES COUNTY**

STATE OF OKLAHOMA }
COUNTY OF MAYES } SS.

State of Okla.

PLAINTIFF.
Gene Leroy Hart

DEFENDANT.

Case No. CRF-77-131

We do solemnly swear that we were subpoenaed as witnesses in the above entitled cause, in behalf of the plaintiff and/or defendant and that, in obedience to said subpoena, we attended court this date and in going to and returning from said Court traveled the number of miles set opposite our respective names, and have not claimed or received a witness fee in any other case this date:

Names and Addresses	Number of Miles Each Way	Mileage	AGGREGATE AMOUNT DUE	
			DOLLARS	CENTS
<u>Mr. Neal Hoggman</u> <u>3422 91st</u> <u> Tulsa, Ok</u>	<u>46</u>			
	<u>3-20-79</u>	<u>46</u>	<u>13</u>	<u>80</u>
	<u>3-21-79</u>	<u>46</u>	<u>13</u>	<u>80</u>

FILED IN THE DISTRICT COURT
MAYES COUNTY, OKLAHOMA

MAR 21 1979

ELOISE GIST, Court Clerk
BY Jeanette Higgitt
Deputy

2760

Michael R. H. G.

Subscribed and sworn to before me this 21 day of March 1979
ELOISE GIST
Court Clerk of Mayes County
BY Jeanette Higgitt
Deputy

THE NEW YORK HOSPITAL

Chartered 1771
540 EAST 70th STREET
NEW YORK, N.Y. 10021
ROOM M-00022

*Dr. MacLeod's
report # III*



Professor John MacLeod,
Male Infertility Consultation

Tel. (212) 672-6410

February 2, 1979

Mr. Carl Cloud
Oklahoma State Bureau of Investigation
3600 North Eastern
Oklahoma City, Oklahoma 73136

*CRF 77-131
CRF-77-132
CRF-77-133*

Dear Mr. Cloud:

This is a report on and interpretation of spermatozoal morphology readings, made on seminal smears from each of two prisoners, DeWAYNE PETERS and WILLIAM A. STEVENS, incarcerated in Kansas State Industrial Reformatory. All sperm morphology readings were made by Professor JOHN MacLEOD, The New York Hospital, Cornell Medical Center.

INTRODUCTION

Early in 1979 (approximately January 6, 1979), Ms. JANICE DAVIS of the Oklahoma State Bureau of Investigation, informed me by telephone that she had been instructed by her superiors to proceed to the Kansas State Industrial Reformatory for the purpose of obtaining specimens of blood, saliva, hair, and of semen from the prisoners named above. Prior to this journey, she wished to obtain from me the necessary instructions and precautions for obtaining the semen specimens. She also wished to know if I would perform the sperm morphology readings on the semen specimens obtained in Kansas, using

FILED IN THE DISTRICT COURT
MAYES COUNTY, OKLAHOMA

MAR 23 1979

ELISE GIST, Court Clerk
BY *[Signature]*
Deputy

104 1166

February 2, 1979

Page 2

techniques already described by me in two previous reports submitted by me to the O.S.B.I., or on similar evidence in the GENE LEROY HART case (S77-332). I agreed to cooperate in all aspects of this new investigation within my province. The following comprises a detailed report on my participation:

I. THE OBTAINING AND IDENTIFICATION OF THE SEMEN SPECIMENS

Since in certain legal proceedings (e.g., paternity suits) in which the potential fertility in terms of semen quality of an individual is a necessary part of the procedure, there must be reasonable certainty that the semen specimen submitted is derived from the reproductive organs of that individual, and since such semen specimens must be obtained by masturbation, an act which does not usually lend itself the presence of a witness, even for legal purposes, we have used certain indirect methods of identifying the source of the semen submitted, provided the initial examination of the semen is made within five to fifteen minutes after ejaculation and it is certain that no other male was present in the room in which the specimen was obtained.

Human semen is ejaculated in a coagulated state, readily identifiable as such, and remains so during a slow process of liquefaction for a period of from five to fifteen minutes before complete fluid homogeneity of the semen is seen. Ms. DAVIS was instructed by me in recognition of these characteristics and in her subsequent reports to me, I am satisfied that the semen specimens submitted by the two prisoners were derived from the prisoners named.

In the remainder of the protocol arranged between us, Ms. DAVIS made seminal smears at the prison soon after complete liquefaction of the semen. About five hours later in her laboratory at the O.S.B.I. in Oklahoma City, a similar set of smears was made by her and the semen specimens refrigerated until aliquots were prepared for shipment to me

February 2, 1979
Page 3

on January 11, 1979. Ms. DAVIS retained the remainder of semen from each individual for preservation at the O.S.B.I.

These semen specimens and duplicates of all the unstained, unfixed seminal smears were packed by Ms. DAVIS over dry ice, and shipped to me by Air Express on the evening of January 11, 1979, and were delivered to me at my laboratory in New York City at 11:30 a.m., January 12, 1979. The package seals were unbroken. The semen specimens carefully labeled by Ms. DAVIS for identification (See Table I), were found over the ample dry ice remaining in the container and in the frozen state. In separate containers, I recovered the two sets of seminal smears made at the Kansas State Industrial Reformatory, and later in Oklahoma City. This evidence was accompanied by a letter from Ms. DAVIS outlining the total procedure followed by her, prior to shipment of the specimens and the symbols used by her in marking all specimens obtained for identification.

II. PROCEDURE FOLLOWED IN NEW YORK FOR EXAMINATION OF THE WHOLE SEMEN AND THE SEMINAL SMEARS

The semen specimens in the frozen state were allowed to liquify at room temperature (about 24°C), a process which took about thirty minutes. A drop of semen from each sample was then examined immediately between slide and cover glass at high dry magnification (about 400 X), to determine the approximate sperm counts /ml of each prisoner prior to making a new set of seminal smears for later morphologic examination. In this preliminary examination, it was obvious that the sperm count from PETERS was high, that of STEVENS, just borderline. Subsequent sperm counts made in a hemocytometer chamber by me showed the PETERS count to be 350 million /ml, that of STEVENS, 38 million /ml, a ten-fold difference.

February 2, 1979

Page 4

New seminal smears were made for examination and classification of the sperm morphology if only to confirm that a deterioration in the morphology had not occurred as a result of the processing and shipment of the semen. This point will be discussed below in detail.

All of the seminal smears, including those prepared by Ms. DAVIS, then were fixed and stained by the Papanicolaou procedure described in previous reports, and used for analysis in the evidence submitted in the HART case. As a final step in procedure, I decided to subject the remaining semen from the Kansas prisoners to the same processing used by me in the HART case, namely to apply the semen to underwear similar to that worn by HART, and attempting to recover the spermatozoa in the dry state by normal saline elution from the seminal sites forty-eight hours later. The spermatozoa recovered from the respective semen specimens were stained and classified by the same procedure used for those obtained directly from the semen. These readings are recorded in the accompanying tables.

III. ANALYSES AND INTERPRETATION OF THE SPERM MORPHOLOGY READINGS

III(a) From three to five hundred (300 - 500) mature spermatozoa in consecutive groups of one hundred were identified in each smear and classified according to cephalic (head) conformation. An additional classification, namely spermatids (immature precursors of the mature spermatozoa) deserves special mention in the present report because these cells were not present in the germinal cells recovered from the underwear of GENE LEROY HART or from the three victims, (MICHELLE GUSE', LORI FARMER, and DENISE MILNER), whereas they were obvious in relatively large numbers in the whole semen of DeWAYNE PETERS, and to a lesser degree, in the semen of WILLIAM A. STEVENS. Under high dry magnification (about 400 X), and in the whole semen, these cells may be, and often are, mistaken for white blood cells (leucocytes), if only

February 2, 1979
Page 5

because they lack a tail. However, in the stained preparations and under oil immersion magnification (1,000 X), they clearly can be identified as immature cells of the germinal line prematurely exfoliated from the germinal epithelium (usually under "stress") at a late stage of spermatogenesis and before the development of the tail process. Under normal environmental conditions, including health, if found at all, these immature cells are present in very low numbers in the human ejaculate (from 0 to 2%). In all my publications, they are classified separately from the mature spermatozoa as a percentage of the total number of cells of the germinal line in the ejaculate. This classification has been adhered to in the present report.

Parenthetically, the obvious presence of the immatures in the semen of both Kansas prisoners, and the fact that I had not seen such cells in the mens' underwear eluates from HART (the whole semen was not seen by us in the HART case) left open the possibility that immature forms, if present in the whole semen of HART, may not have passed ^{can} into the eluates. This possibility made it necessary for me to perform the extra step of using the eluate procedure in the semen of PETERS and STEVENS.

III(b) The Seminal Cytology of DeWAYNE PETERS

As already mentioned, the sperm count /ml in this case was very high (350 millions /ml), which resulted in a considerable crowding of the cells in the two seminal smears made by JANICE DAVIS in Kansas, and a few hours later in Oklahoma (JJJJ-5 B and JJJJ-5 D in Table 1). Accordingly, when I made a similar smear from the semen specimens received in New York after dry ice freezing, I was able to modify the smearing procedure to produce less crowding and thus, somewhat easier identification of the cell. Mr. DAVIS could not have been well aware that this had occurred or this difference in the sperm count was present, because she did not have access

February 2, 1979
Page 6

to a microscope in Kansas and was not able to do a count prior to sending the cells to me before the smears were made. Actually, the readings on these three smears of PETERS' showed essentially the same subnormal pattern of sperm morphology. This pattern is characterized by a low percentage of normal (oval) forms and a high percentage of small (microcephalic) types, the latter cells, showing a normal (oval) cephalic contour, but are only about one-half the size of a normal cell. In addition, a sizeable percentage of the latter cells were placed by me in the "amorphorous" category (in slides JJJJ-5 B and JJJJ-5 D), because in the crowded condition of the cells in these smears, they appeared over-stained and thus to have dense chromatin. This is a rather common finding in the routine examination of sperm morphology. It is always obvious to the experienced analyst that the cells actually described as "amorphorous" are small forms, but they are distorted in a crowded state.

An additional conspicuous component in the seminal cytology of PETERS is, as already mentioned, the presence of a rather high percentage of immature germinal cells (under Spermatid Heading in Tables I and II). The ratios of these cells were consistent in the three smears made from the semen in Kansas, Oklahoma, and in New York, but the ratio was smaller in the cells recovered from the eluates of the underwear. However, the fact that these cells were present at all in the underwear smears (JSE in Tables I and II), suggests that if they had been present to an appreciable degree in the semen of GENE LEROY HART, they would have been found in the semen deposited on his underwear, and in the eluates made from them. None was found in the latter or anywhere for that matter, (see previous report). However, since in the HART report and in the spermatozoa recovered from the anal and vaginal canals of the three victims in that case, we referred particularly to the similarity in the combined ratios of tapering and elongated spermatozoa found

February 2, 1979
Page 7

in the three victims and in the underwear of HART, we should perform a similar comparison under similar experimental conditions or circumstances in the sperm morphologies of the Kansas prisoners. We shall do so in a summary after consideration of the semen of WILLIAM A. STEVENS.

III(c) Seminal Cytology of WILLIAM A. STEVENS

The sperm count in the semen of STEVENS (38 million /ml) was much lower than that of PETERS, but his sperm morphology, on the whole, is rather good and considerably better than in any other specimen seen in this entire study, particularly in the saline eluate of the semen deposited on the underwear. In the straight seminal semen, megalo forms (larger heads than "normal") were prominent, not so much so in the eluate smear. The tapering-elongate combination, a prominent feature in the eluate from HART, is at a minimal level in STEVENS, as was the level of immature forms so prominent in the semen of PETERS. In other words, the respective semen qualities of the Kansas prisoners are distinctly different in pattern within themselves. Since we do not have an entire semen specimen from HART, we cannot, at this stage of the present report, make a direct comparison of the semen of the Kansas prisoners with that of HART, but we can do so through the data obtained from the underwear eluates in all three cases. We shall consider these points in more detail in the following discussion.

III(d) Summary and Discussion of Conspicuous Features in The Sperm Morphology Readings from all sources in the GENE LEROY HART Case, Including the Prisoners in Kansas

In Table II, I have summarized the essential details of the sperm morphology readings from all sources and sites in which spermatozoa were found in the HART case, including the semen of the prisoners, DeWAYNE PETERS and

A second obvious feature of the sperm morphology in the semen of PETERS, is the presence of relatively large numbers of immature cells of the germinal line (Spermatids, Tables I and II). None was found in the vaginal and/or anal canals of the three victims, nor in the eluate sperm morphology from the HART underwear. All the experimental evidence we have to date is that this cell type does not appear in the ejaculate, particularly in the numbers found in that of PETERS, unless the testes have been subjected to some form of "stress", but under such conditions, they usually are accompanied by large numbers of acutely tapering mature forms. The latter cells in the ejaculate of PETERS are at a minimal level (Table I). In rather striking contrast, the sperm morphology in the semen of William A. STEVENS is much closer to the "normal" level than that of PETERS, (Tables I and II), or of that of HART and the sperm found in the three victims. This is true particularly in the smear made from the underwear eluate (line 5, Table II), in which 75% of the spermatozoa present were in the normal "oval" class. In the composite whole semen morphology (line 6, Table II) of STEVENS, the ratio of oval forms is lower (63% of 1,100 cells classified), the difference being due, in part, to the presence of a sizeable percentage of the "megalo-oval" type (lines 5, 6, and 7, Table I), in the three seminal smears made at intervals after the semen was produced in Kansas. However, the important facts in the pattern of the sperm morphology of this prisoner are: (1) that the ratios of normal "oval" cells is considerably higher, and (2) the ratio of the tapering and elongated cells by far the lowest (Tables I and II) than in any of the other similar items of evidence examined by me in the HART case. In this sense, we should emphasize that the only close correspondence we have found in all aspects of this analysis between any two patterns of sperm morphology lies in the relationship between the pattern in the spermatozoa found in the three victims and that of the spermatozoa eluted from the underwear of HART.

February 2, 1979
Page 10

The patterns in the two prisoners, PETERS and STEVENS, differ markedly within themselves and neither bear a close resemblance to that found in the three victims.

Before concluding this report, I should emphasize again the importance of the eluate procedure (detailed in my first report). The only evidence available, to me at least, on the semen quality of GENE LEROY HART and particularly his spermatozoa morphology, is that obtained by passing physiological saline through dried seminal stain (elution) on underwear worn by him during his solitary confinement in the Mayes County jail and the McAlester State Penitentiary (line 3, Table II), that this procedure does allow the recovery of mature spermatozoa showing virtually the same pattern of spermatozoa morphology as that seen in the original semen deposited on the underwear, was demonstrated by me in control experiments using semen (preserved by deep-freezing) of known and unique sperm morphology obtained from patients of mine in the past. In the latter cases, the sperm recovered in the eluates showed virtually the same pattern of sperm morphology as in the whole semen.

As I have detailed in the present report on the prisoners, (DeWAYNE PETERS and William A. STEVENS), I added the eluate procedure in their cases only to further confirm the validity of the procedure in the HART case. With only minor exceptions already discussed, the eluate procedure duplicated the findings in whole semen of these prisoners, including in the case of PETERS, the presence in large numbers of immature cells of the geminal line (Table I). The latter cells appeared in the underwear eluate in reduced number (8%, as compared to about 15% in the whole semen), but the fact that they appeared at all in the PETERS eluate has significance. In that none was present in the eluate from HART or in the semen obtained from the bodies of the three victims.

SUMMARY OF CONCLUSION

I. The semen from each of two prisoners incarcerated in the Kansas State Industrial Reformatory was submitted to me by the O.S.B.I. for examination, particularly in relation to the patterns of spermatozoa morphology. The differences in these patterns has been detailed in this report. They were such that the respective semen specimens clearly were derived from two separate individuals.

II. Neither specimen examined in terms of spermatozoa morphology was similar to that of GENE LEROY HART or that pattern found in the spermatozoa derived from the anal and vaginal canals of the three victims in the GENE LEROY HART case.

I wish to record again my indebtedness to the splendid cooperation of Ms. JANICE DAVIS of the O.S.B.I. in all aspects of the three investigations reported upon by me to the O.S.B.I.

Respectfully submitted,

John MacLeod, Ph.D.
Professor Emeritus of Anatomy
The New York Hospital
Cornell University Medical Center

JM:gl

TABLE I MacLeod Report III
 SUMMARIES OF SPERMATOZOAL MORPHOLOGY READINGS OF PRISONERS, PETERS AND STEVENS, FROM KANSAS STATE INDUSTRIAL REFORMATORY:

LINE NUMBER	TAKEN BY AND PLACE	PRISONER NAME AND SMEAR SYMBOL	OVAL LARGE	OVAL SMALL	TAPERING	ELONGATE	MORPHOUS	BICEPHALIC	SPTD SPERMATIDS (IMMATURE)	NUMBER OF CELLS CLASSIFIED	
1	SMEAR MADE IN WARDEN'S OFFICE BY JAILER SMITH	PETERS JJJJ-5B 1-9-79 1:30 p.m.	29	7	25	4	6	28	1	16	300
2	SMEAR MADE AT GSB1 ON SAME SMEAR AS ABOVE BY JAILER SMITH	PETERS JJJJ-5D 1-9-79 7:00 p.m.	31	6	25	6	7	25	-	12	300
3	SMEAR MADE IN WAT BY MARYS AFTER DRY ICE FREEZING DURING TRANSPORT FROM GSB1	PETERS JJJJ-5E 1-12-79	29	1	39	9	9	13	-	17	300
4	SALINE ELUATE FROM DRIED SMEAR ON SLIDERS. WORK IN P.L. - MCELROE	PETERS JSE 1-15-79	34	2	38	4	13	8	1	8	500
5	SMEAR MADE FROM FRESH SMITH BY JAILER SMITH	STEVENS KKKK-5B 1-9-79 2:00 p.m.	58	13	10	2	3	13	1	4	400
6	SMEAR MADE FROM SMITH BY JAILER SMITH	STEVENS KKKK-5D 1-9-79 7:00 p.m.	64	6	16	1	2	9	2	1	300
7	SMEAR MADE AFTER AIR TRANSPORTATION ON DRY ICE FROM GSB1 - MCELROE	STEVENS KKKK-5E 1-12-79	66	9	16	-	1	3	3	0.5	400
8	SALINE ELUATE FROM DRIED SMEAR ON SLIDERS. WORK - MCELROE	STEVENS JSE 1-15-79	75	2	15	1	5	2	-	0	300

NOTE: TYPES OF SPERMATOZOA REPRESENTED IN PERCENT.

TABLE II MacLEOD REPORT III

SUMMARY OF CONSPICUOUS FEATURES IN THE SPERM MORPHOLOGY READINGS FROM ALL SOURCES IN THE GENE LEROY HART CASE, OKLAHOMA, INCLUDING KANSAS PRISONERS:

NOTE: TYPES OF SPERMATOZOA REPRESENTED IN PERCENT.

LINE NUMBER	SOURCE OF SPERMATOZOA	# SPERMATOZOA CLASSIFIED	% OVAL FORMS	SMALL OVAL	% COMBINED OF TAPERING AND ELONGATED	% IMMATURE FORMS SPID	FROM TABLE I FIRST REPORT OF MacLEOD TO OSBI
1	ANAL AND VAGINAL CANALS OF THE THREE VICTIMS	360	33.7	10	38.6	0	FROM TABLE I FIRST REPORT OF MacLEOD TO OSBI
2	ANAL CANAL OF GUSE' (VICTIM)	130	41	6	40	0	FROM TABLE I FIRST REPORT OF MacLEOD TO OSBI
3	SALINE ELUATE FROM ONE LOCATION ON UNDERWEAR OF GENE LEROY HART	500	44.2	7.2	36.8	0	FROM TABLE II FIRST REPORT OF MacLEOD TO OSBI
4	SALINE ELUATE FROM SEMEN OF DEWAYNE PETERS DEPOSITED ON UNDERWEAR BY MacLEOD JSE 1-15-79	500	34	38	17	8	
5	SALINE ELUATE FROM SEMEN OF W. A. STEVENS DEPOSITED ON UNDERWEAR BY MacLEOD JSE 1-15-79	300	75	15	6	0	
6	WHOLE SEMEN OF W. A. STEVENS - FRESH AND AFTER FREEZING	1,100	63	14	3	1.8	
7	WHOLE SEMEN OF DEWAYNE PETERS - FRESH AND AFTER FREEZING	900	30	30	14	15	

**AFFIDAVIT OF WITNESSES AS TO ATTENDANCE AND MILAGE
IN THE DISTRICT COURT OF MAYES COUNTY**

FILED IN THE DISTRICT COURT
MAYES COUNTY, OKLAHOMA

STATE OF OKLAHOMA }
COUNTY OF MAYES } SS.

MAR 28 1979

State
PLAINTIFF,
vs.
Gene Leroy Hunt
DEFENDANT.

ELOISE GIST, Court Clerk
BY Wicki Klippel
Deputy

Case No. CY-77-131,132,133

We do solemnly swear that we were subpoenaed as witnesses in the above entitled cause, in behalf of the plaintiff and/or defendant and that, in obedience to said subpoenae, we attended court this date and in going to and returning from said Court traveled the number of miles set opposite our respective names, and have not claimed or received a witness fee in any other case this date:

Names and Addresses	Number of Miles Each Way	Mileage	AGGREGATE AMOUNT DUE	
			DOLLARS	CENTS
<u>Johnny Lee Ross 107 Plainview Dr. Hulbert, OK</u>	<u>45</u>	<u>90</u>	<u>18</u>	<u>50</u>
<u>Bernie Stendelbach Highway 75 Se. Okmulgee, OK</u>	<u>90</u>	<u>180</u>	32	00
			<u>39</u>	<u>00</u>
			<u>57</u>	<u>50</u>
<u>Total</u>			<u>50</u>	<u>50</u>

cp
Walt - met

Johnny Lee Ross
Bernie Stendelbach

Subscribed and sworn to before me this 28 day of

March - 1979
BY Wicki Klippel
Deputy

ELOISE GIST
Court Clerk of Mayes County

IN THE DISTRICT COURT OF MAYES COUNTY
STATE OF OKLAHOMA

State of Oklahoma,

Plaintiff,

CRF 77-131
CRF 77-132
CRF 77-133

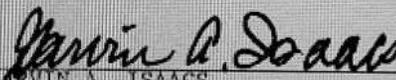
-vs-

Gene Leroy Hart,

Defendant.

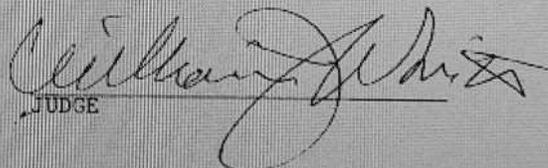
DEFENDANT'S REQUESTED INSTRUCTION NO.

It is your sole responsibility as jurors to determine the credibility of the witnesses and the degree of persuasion to be given their testimony. You should endeavor to reconcile the testimony of the witnesses if it can be done reasonably. If it cannot be reconciled, then, to determine the degree of persuasiveness to be attached to the testimony of the various witnesses, you may properly consider the demeanor of the witness while testifying; the means and opportunity the witness had to know the facts about which he testifies; the reasonableness or unreasonableness of his testimony in light of all the evidence in the case; his frankness or lack of frankness; his contradictions, if any, or whether he has been impeached. You are not required to believe the testimony of any witness simply because he is under oath. You may believe or disbelieve all or part of the testimony of any witness. It is your duty to determine what testimony is worthy of belief and what testimony is not worthy of belief.


GARVIN A. ISAACS
ATTORNEY FOR DEFENDANT

Given _____

Denied _____


JUDGE

IN THE DISTRICT COURT OF MAYES COUNTY
STATE OF OKLAHOMA

MAR 29 1979

ELOISE GIST, Court Clerk

BY Janice B. Smith
Deputy

State of Oklahoma,

Plaintiff,

CRF 77-131
CRF 77-132
CRF 77-133

-vs-

Gene Leroy Hart,

Defendant.

DEFENDANT'S REQUESTED INSTRUCTION NO.

You are instructed that it is permissible during the cross-examination of a witness to question him concerning matters which may tend to show his possible interest in the outcome of the case, or his bias, for or against, the defendant. You are instructed that this is permissible, not for the purpose of establishing the truth of the facts testified to, but only to help you test the credibility of the testimony of the witness. It cannot be considered for any other purpose.

Garvin A. Isaacs

GARVIN A. ISAACS
ATTORNEY FOR DEFENDANT

Given _____

Denied ✓

William J. White
JUDGE

IN THE DISTRICT COURT OF MAYES COUNTY
STATE OF OKLAHOMA

State of Oklahoma,

Plaintiff,

CRF 77-131

CRF 77-132

CRF 77-133

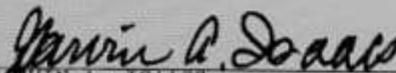
-vs-

Gene Leroy Hart,

Defendant.

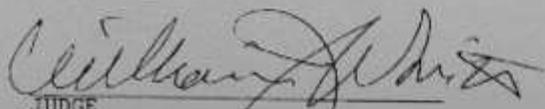
DEFENDANT'S REQUESTED INSTRUCTION NO.

It is your sole responsibility as jurors to determine the credibility of the witnesses and the degree of persuasion to be given their testimony. You should endeavor to reconcile the testimony of the witnesses if it can be done reasonably. If it cannot be reconciled, then, to determine the degree of persuasiveness to be attached to the testimony of the various witnesses, you may properly consider the demeanor of the witness while testifying; the means and opportunity the witness had to know the facts about which he testifies; the reasonableness or unreasonableness of his testimony in light of all the evidence in the case; his frankness or lack of frankness; his contradictions, if any, or whether he has been impeached. You are not required to believe the testimony of any witness simply because he is under oath. You may believe or disbelieve all or part of the testimony of any witness. It is your duty to determine what testimony is worthy of belief and what testimony is not worthy of belief.


GARVIN A. ISAACS
ATTORNEY FOR DEFENDANT

Given _____

Denied _____


JUDGE

IN THE DISTRICT COURT OF MAYES COUNTY
STATE OF OKLAHOMA

State of Oklahoma,

Plaintiff,

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

-vs-

Gene Leroy Hart,

Defendant.

DEFENDANT'S REQUESTED INSTRUCTION NO.

There has been introduced the testimony of certain witnesses who purport to be skilled in their line of endeavor. Such witnesses are known in law as expert witnesses. An expert witness is one who is skilled in any certain art, business or profession, possessed of peculiar knowledge acquired by study, observation and practice.

You are instructed that you may consider the testimony of these witnesses, and give it such weight and value as you think it should have, but the weight and value to be given their testimony is for you to determine. You are not required to surrender your own judgment to that of any person testifying as an expert, or to give controlling effect to the opinion of an expert, for the testimony of an expert, like that of any other witness, is to be received by you and given such weight and value as you deem it is entitled to receive.

Carvin A. Isaacs
CARVIN A. ISAACS
ATTORNEY FOR DEFENDANT

Given

Denied

William J. Potts
JUDGE

INSTRUCTION NO. _____

There has been introduced the testimony of certain witnesses who purport to be skilled in their line of endeavor. Such witnesses are known in law as expert witnesses. An expert witness is one who is skilled in any certain art, business or profession, possessed of peculiar knowledge acquired by study, observation and practice.

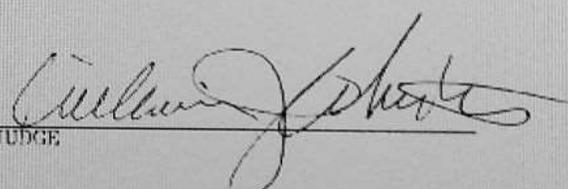
The expert witness differs from the ordinary witness in that the former can state his conclusions based on ultimate fact, whereas the latter can testify on the things that he saw, heard, tasted, smelled, or felt. The weight that a jury will give to the testimony of an expert witness depends upon the extent of his learning, skill, experience, and the reasons that he gives for his opinions and conclusions.

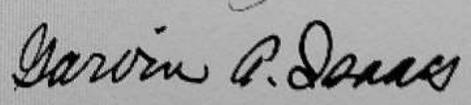
You are instructed that you may consider the testimony of these witnesses, and give it such weight and value as you think it should have, but the weight and value to be given their testimony is for you to determine. You are not required to surrender your own judgment to that of any person testifying as an expert, or to give controlling effect to the opinion of an expert, for the testimony of an expert, like that of any other witness, is to be received by you and given such weight and value as you deem it is entitled to receive.

DEFENDANT'S REQUESTED INSTRUCTION

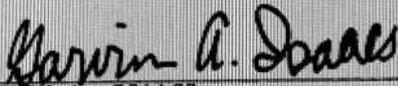
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Denied _____


JUDGE



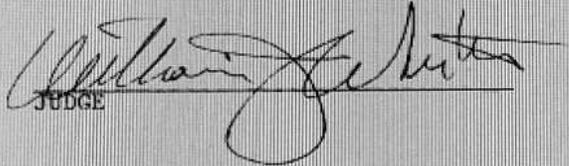
The presumption of innocence is not an idle theory, to be cast aside by mere caprice, passion, or prejudice. It is a substantial part of the law of the land, it follows the defendant throughout the entire case and it must not be lost sight of by you until it has been overcome by competent evidence which establishes his guilt beyond all reasonable doubt and to a moral certainty.



GARVIN A. ISAACS
ATTORNEY FOR DEFENDANT

Given _____

Denied _____



JUDGE

IN THE DISTRICT COURT OF MAYES COUNTY
STATE OF OKLAHOMA

State of Oklahoma,

Plaintiff,

CRF 77-131
CRF 77-132
CRF 77-133

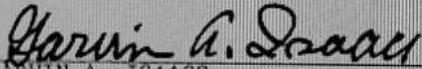
-vs-

Gene Leroy Hart,

Defendant.

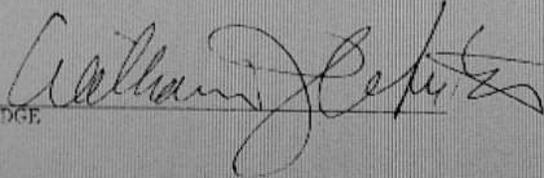
DEFENDANT'S REQUESTED INSTRUCTION NO.

This is a case depending for conviction on circumstantial evidence. In order to warrant a conviction of a crime on circumstantial evidence, each fact necessary to the conclusion sought to be established must be proved by competent evidence beyond a reasonable doubt; all the facts (that is, the facts necessary to the conclusion) must be consistent with each other and with the main fact sought to be proved, and the circumstances, taken together, must be of a conclusive nature, leading, on the whole, to a satisfactory conclusion and producing, in effect, a reasonable and moral certainty that the accused, and no other person, committed the offense charged. But in such cases it is not sufficient that the circumstances coincide with, account for and therefore render probable the guilt of the defendant. They must exclude, to a moral certainty, every other reasonable hypothesis except the defendant's guilt, and unless they do so beyond a reasonable doubt, you will find the defendant not guilty.


GARVIN A. ISAACS
ATTORNEY FOR DEFENDANT

Given L

Denied


JUDGE

IN THE DISTRICT COURT OF MAYES COUNTY
STATE OF OKLAHOMA

State of Oklahoma,

Plaintiff,

CRF 77-131
CRF 77-132
CRF 77-133

-vs-

Gene Leroy Hart,

Defendant.

DEFENDANT'S REQUESTED INSTRUCTION NO.

The information in this case is the formal method of accusing the defendant of a crime. The information is not evidence and the law is that you should not allow yourselves to be influenced against the defendant by reason of the filing of the information.

Garvin A. Isaacs

GARVIN A. ISAACS
ATTORNEY FOR DEFENDANT

Given _____

Denied /

William J. Little
JUDGE

IN THE DISTRICT COURT OF MAYES COUNTY
STATE OF OKLAHOMA

State of Oklahoma,

Plaintiff,

-vs-

Gene Leroy Hart,

Defendant.

CRF 77-131
CRF 77-132
CRF 77-133

DEFENDANT'S REQUESTED INSTRUCTION NO.

You are instructed that the State relies for a conviction in this case wholly upon what is known as circumstantial evidence; and in this connection you are instructed that to warrant a conviction upon circumstantial evidence each fact necessary to conviction of the defendant must be proved by evidence beyond a reasonable doubt; and all the facts and circumstances proved should not only be consistent with the guilt of the accused but consistent with each other and inconsistent with any other reasonable hypothesis or conclusion than that of the defendant's guilt beyond a reasonable doubt. You are instructed that when the circumstances are sufficient, under the rule herein given you, they are to be regarded by the jury as competent evidence for your guidance as direct evidence.

Garvin A. Isaacs

GARVIN A. ISAACS
ATTORNEY FOR DEFENDANT

Given 2

Denied

William J. White
JUDGE

IN THE DISTRICT COURT OF MAYES COUNTY
STATE OF OKLAHOMA

State of Oklahoma,

Plaintiff,

-vs-

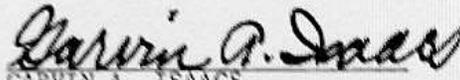
Gene Leroy Hart,

Defendant.

CRF 77-131
CRF 77-132
CRF 77-133

DEFENDANT'S REQUESTED INSTRUCTION NO.

Certain objections have been made by the attorneys and ruled upon by the court during the course of this trial. As the court informed you at the beginning of the trial you should not speculate on the reason for the objection or the reason for the particular ruling made by the court at the time. Moreover, where evidence has been excluded by the court and you have been admonished not to consider such evidence you are again reminded that such evidence should not be considered by you in arriving at your verdict.


GARVIN A. ISAACS
ATTORNEY FOR DEFENDANT

Given _____

Denied ✓


JUDGE

OKLAHOMA STATE BUREAU OF INVESTIGATION

INVESTIGATIVE REPORT

PAGE 1 OF 3

Case: CR 477-114	Reporting Date: February 20, 1979	Reporting Agent(s): LARRY W. BOWLES	Reviewed By:
Offense: Homicide	Case Agent: C. Thurman	Office: Tulsa	Typed By: dr
Subject: GENE LEROY HART V - LORI FARMER, DORIS MILNER, MICHELLE GUSE	Activity: Interview with JOYCE ELLEN PAYNE	Date: 2/21/79	

On December 28, 1978, Mrs. JOYCE ELLEN PAYNE, 506 1/2 West 14th Street, Bartlesville, Oklahoma, provided the following information:

In February of 1977, her 17 year old son, LARRY, brought BILL STEVENS to their home in Okmulgee, Oklahoma, after a concert. He introduced them and he realized that she had known STEVENS as a youngster in Seminole, Oklahoma, but had last seen him when he was just 12 years old. He said that he had just returned from Germany where he had been in the service. He visited their house often after that until she learned that he was using drugs and she told her son that she did not like for them to associate with STEVENS.

In May of 1977, her oldest son, OWEN, ^{bought} a new Buick and came to visit her. At that time he had a little red flashlight. Since she needed a flashlight, she asked him for it. He said that it wasn't much good and that he had just put it together. He told her that there was a wire loose inside the light and if it would not come on, to shake it. If that didn't work, take the lens off so you could see where he had the wire taped down. He told her that if it came loose, to retape it and he gave her the light. A few days later, STEVENS borrowed the light from her because he said that he and LARRY were going to take some girls swimming and that they were going to do some fishing that night. She loaned him the flashlight which he promised to return the next day. About a week later she asked him for the flashlight and he said it was at home and he would bring it to her.

On May 12, 1977, her youngest daughter, CAROLYN SHORT, and her boyfriend were leaving for Alaska and they were having a going away party at the lake. She again asked STEVENS for the light and he said, "Oh I keep forgetting it, I'll bring it to you." He still did not return the flashlight and she eventually forgot about it. Around noon on the day after the girl scouts were murdered, DEWAYNE PETERS, her son LARRY, and a neighbor DEAN (LNU), and she were sitting on the front porch of her house in Okmulgee discussing the murders when STEVENS drove up in his maroon hatchback car and parked in front of the house. He had been dating a girl named IRIS HOLT from Okmulgee and they had not seen him for a couple of days. He walked up and stood by the porch and they asked him where he had been. He told them that the day before he had started to the State Hospital in Vinita to visit her daughter, GAYLA, he made the wrong turn, got lost, and went to Locust Grove instead. He looked tired and LARRY asked, "What happened to you?" He said that

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1029

CRF-77-131
FILED IN THE DISTRICT COURT
MAYES COUNTY, OKLAHOMA

MAR 29 1979

BY ELISE GISEL Deputy
Deputy

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his car broke down near Locust Grove and he had to sleep on the side of the road in the weeds. She noticed that he had some spots on his brown boots which he said was barn paint. STEVENS and LARRY went into the house where he tried without success to wash the spots off the boots. STEVENS and LARRY then drove into town where STEVENS bought a new pair of black boots. During that period, STEVENS was living with his father in the country outside of Okmulgee and working for a drilling company as a roughneck. One of the rigs he worked on was in the Locust Grove area. Later she again asked STEVENS about her flashlight and he said that he had lost it and would have to buy her another one.

In November of 1977, DEWAYNE PETERS, and STEVENS were arrested in Garden City, Kansas, for rape and kidnapping. When she visited PETERS at the county jail, he said that STEVENS had told him that he had killed the girl scouts. STEVENS told PETERS that it was like being in the army again and going through the enemy camps. He related how he went from tent to tent looking in on the girl scouts and finally went into the last tent. He only meant to get the one girl but she made a noise and the other two began to wake up so he had to kill them all. He also told how he tied them up and what he used (electrical cord, tape, or etc.). She said that when STEVENS first told him, PETERS did not believe him because STEVENS is a chronic liar. She also told the story to Mr. TOM SMITH, PETERS attorney, who advised her to keep quiet since it could only hurt PETERS at his trial. Mrs. PAYNE also said that she was suspicious of STEVENS even before the arrest in Garden City, Kansas. She said that she had voiced her suspicions to MITCH SHAMAS (phonetic), an attorney in Okmulgee. She told him that she believed the flashlight found at the girl scout camp was hers and about the spots on STEVENS shoes. He advised her not to become involved. She was also told by BOB O'BANNON, a friend and student at Okmulgee Tech, that STEVENS had raped a woman in Seminole. O'BANNON was allegedly with STEVENS when the rape occurred. They were drinking and tripping out on drugs when they picked up the woman at ~~Albino~~. When STEVENS started to attack her, O'BANNON left and returned to town on foot. She was told by another friend, BOBBY (LNU), that STEVENS had raped a 13 year old girl in Seminole. The girl has subsequently moved to California. For these reasons, she suspected STEVENS and she was not completely surprised when PETERS told her of STEVENS admissions in Kansas.

After her conversation with TOM SMITH, PETERS attorney, she returned to Okmulgee where she talked to SHAMAS again about STEVENS admissions. He advised her to leave well enough alone but to do what she thought was best. She then moved to Wewoka, Oklahoma, where she wrote a letter to PETE WEAVER, Sheriff of Mayes County, and sent him a picture of STEVENS. When she did not receive a reply she talked to a Deputy Sheriff in Wewoka who is supposed to be related to COUSINS or ISAACS, hoping to get a message to one of them. He took down a statement and said he would get it to them. She still did not hear anything. Meanwhile, she moved to Shawnee, Oklahoma, where she talked to a local attorney, TERRY WEST.

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CR #77-114
Homicide
February 20, 1979
Page 3

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ISAACS instructed her not to give her name and not to touch anything. She examined the flashlight and made a positive identification based on the repaired switch, the color, a cracked lens, and scratches on the body of the light. About a week later Mr. BROWN, ISAACS, Mrs. PAYNE, and her son OWEN also visited the OSBI office. With the same instructions, OWEN also examined and positively identified the flashlight. BROWN has since told her that she may have to go to Locust Grove during the trial of HART. She felt that ISAACS was going to treat her as a side show to get HART off without any effort to develop the real killer. She resented the fact that he was going to make no attempt to protect DEWAYNE PETERS so she decided to contact Mr. LOUIS AMBLER in Bartlesville, Oklahoma. Mrs. PAYNE has a common-law marriage to DEWAYNE PETERS and insists that she is primarily interested in protecting his interests with her testimony. She said that she is willing to go to Kansas State Industrial Prison, Hutchinson, Kansas, and urge DEWAYNE PETERS to talk freely with investigators. She is not interested in any reward or compensation for her efforts. She has also never been offered nor received any compensation from BROWN, ISAACS, or COUSINS. COUSINS played the recorded statement he took from PETERS while they were driving back from Kansas and said he would give her a copy. Later he told her the tape had broken and he could not make another one.

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11036

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OKLAHOMA STATE BUREAU OF INVESTIGATION

INVESTIGATIVE REPORT

PAGE 1 OF 2

Case: CR #77-114	Reporting Date: January 6, 1979	Reporting Agent(s): LARRY W. BOWLES	Reviewed By:
Offense: Homicide	Case Agent: C. Thurman	Office: Tulsa	Typed By: dr
Subject: GENE GEROY HART V - LORI LEE FARMER, DORIS MILNER, NICHELE GUSE'	Activity: Interview		
Date: 1/9/79			

On January 3, 1979, at approximately 1:45 p.m., DEWAYNE (NMN) PETERS was interviewed at the Kansas State Reformatory at Hutchison, Kansas, where he is presently serving a fifteen year to life sentence out of Finney County, Kansas, after pleading guilty to kidnapping and robbery. Present during this interview were OSBI Agent's LARRY BOWLES and TOM PUCKETT, DEWAYNE PETERS and his attorney LOUIS AMPLER from Bartlesville, Oklahoma. PETERS descriptive data is as follows:

DEWAYNE (NMN) PETERS
 IM, DOB: 12/11/57
 POB: Seminole, Oklahoma
 5'6", 205 pounds
 Black hair, brown eyes
 Kansas Institution #31106
 SSN: 441-62-3898
 FBI #12873T8

PETERS was charged conjointly with WILLIAM A. STEVENS, white male, DOB: 10/30/56, Kansas Institution #31108, after they kidnapped and robbed a 50 year old woman in Kansas. The victim was also beaten and raped, however, PETERS did not participate in this, only STEVENS. It was determined necessary to interview PETERS because of information received from JOYCE PAYNE, white female, DOB: ~~11/1~~1/39, (PETERS common-law wife) indicating that PETERS had specific knowledge that WILLIAM A. STEVENS committed the homicides at Camp Scott in 1977 instead of GENE LEROY HART. PETERS advised he first became acquainted with STEVENS during the spring semester of 1977 while they were attending Oklahoma State Tech at Okmulgee, Oklahoma. PETERS was good friends with LARRY SHORT, son of JOYCE PAYNE, and STEVENS often came by PAYNE's house to see him. PETERS had been living with JOYCE PAYNE for several months at 416 North Alabama Street, Okmulgee, Oklahoma. During the month that followed their first meeting, STEVENS and PETERS became buddies; often drinking beer and smoking marijuana together. Sometimes during the month of October of 1977, while STEVENS and PETERS were driving around in STEVENS 1971 or 1973 Chevrolet Nova Hatchback, red in color, drinking beer and smoking marijuana near Okmulgee Lake which is located in Okmulgee County, Oklahoma, STEVENS allegedly told PETERS that he, STEVENS, killed the three girlscoouts at Camp Scott. STEVENS further stated that he had been working on an oil drilling rig near the area of Camp Scott and having been reared in

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that area knew that girl scouts would be coming to Camp Scott and the date they would arrive. PETERS assumed the drilling company STEVENS was working for was the Jerry Scott Drilling Company out of Okmulgee, Oklahoma. STEVENS allegedly surveilled the Camp Scott area as he said he once did an enemy camp in Viet Nam, selecting a tent most isolated from the rest. STEVENS didn't go into minute detail with PETERS of the actual killings but did say he covered the lens of a flashlight with strips of tape and cut a small hole in the tape so a small amount of light would be emitted. He entered a tent and then showed PETERS how he placed his hand over one of the girls' mouths to silence her after she awoke, but never mentioned the use of any weapon nor did he say where or how the girl scouts were actually killed or what was done with their bodies. PETERS refused to believe STEVENS at this time and never believes that he actually committed the homicides at Camp Scott until he was with STEVENS in Kansas and saw him abduct a woman, beat and rape her which they are both presently serving sentences for. PETERS remembers approximately a week prior to the Camp Scott homicides, STEVENS had car trouble and did borrow a light from JOYCE PAYNE. However, the light he borrowed was a two cell silver flashlight which PAYNE had purchased approximately a week earlier from a warehouse market store in Okmulgee, Oklahoma. The only other battery powered flashlight PETERS can remember being in her house was a light that was borrowed from a neighbor. PETERS was sure there was no other battery powered light at JOYCE PAYNE's house because he would have known since he was living there at the time.

Agent's Note: PETERS described and made a drawing of the light borrowed from a neighbor and of the light actually loaned to STEVENS and neither matched the light found at the Camp Scott crime scene. T

The day after the homicides at Camp Scott STEVENS came to PAYNE's house at approximately 11:30 a.m. to pick up LARRY SHORT. JOYCE PAYNE noticed dark stains on STEVENS' boots and mentioned it to STEVENS. His only reply was that he was enroute to purchase some new ones in Okmulgee and wanted LARRY SHORT to go with him. PETERS saw that STEVENS' boots did have the appearance of being worn out so that seemed plausible and PETERS further admitted these stains on STEVENS' boots could have been blood or paint. Present at PAYNE's house on this occasion were JOYCE PAYNE, DEWAYNE PETERS, CAROLYN SHORT, (address unknown) LARRY SHORT (address unknown), JEFF HOLLOWAN (address unknown), and GAYLA HARJO who is presently a patient at the Eastern State Hospital in Vinita, Oklahoma. PETERS never discussed STEVENS' purported involvement in the homicides at Camp Scott with anyone until he was arrested with STEVENS in Garden City, Kansas. He then told JOYCE PAYNE. STEVENS has not talked of the girl scout killings since their incarceration.

In conclusion, PETERS believes that STEVENS did kill the three girl scouts at Camp Scott and bases his beliefs on the admission STEVENS made to him in October of 1977 of having seen STEVENS abduct, beat, and rape a woman in Kansas.

1036/028

OKLAHOMA STATE BUREAU OF INVESTIGATION

INVESTIGATIVE REPORT

PAGE 1 OF 2

Case: CR977-114	Reporting Date: December 12, 1978	Reporting Agent(s): Tom Puckett	Reviewed By:
Offense: Multiple Homicides	Case Agent: Gary F. FARMER	Office: OKC	Typed By: lmt Date: 12/12
Subject: GENE LEROY HART	Activity: Information from JOYCE PAYNE		
Victim: MILNER, FARMER, and GUSE			

On December 9, 1978, Mrs. JOYCE PAYNE, contacted LEWIS AMBLER, Attorney-at-Law, Battlesville, Oklahoma, with the following information:

DEWAYNE PETERS, WM, 22 years of age, (the same age as her son) who lived with them in Okmulgee, Oklahoma, was confined in the Kansas State Reformatory at Hutchinson, Kansas, in March of 1978, serving a five to fifteen year sentence. He is a co-defendant in the crime for which he was convicted, was WILLIAM (BILL) STEVENS, WM, 22 years of age, who was also known to the family, and who had once dated her daughter in Vinita, Oklahoma.

After their confinement, DEWAYNE PETERS told her that STEVENS had confessed to him that he was the one who murdered the three girl scouts in Locust Grove, Oklahoma. As she and DEWAYNE discussed the matter, they both recalled that STEVENS came to their home in Okmulgee, Oklahoma, on the day the murders were discovered. He told them that he had started to Vinita, Oklahoma, to visit her daughter, got lost, and ended up in Locust Grove, Oklahoma. At that time, they made no association between STEVENS and the murders, but they did recall that he had stains on his boots, which he tried to remove. When he could not clean the boots, he threw them away and bought new boots.

After learning of STEVENS alleged admissions, she wrote a letter to PETE WEAVER, Sheriff of Mayes County, Oklahoma, and included a photograph of STEVENS, but she received no reply. She contacted DOUG BROWN, Attorney-at-Law, Shawnee Law Firm, who put her in touch with ISAACS, who is GENE LEROY HART'S Defense Attorney. She was contacted by ISAACS, and through him learned that the OSBI had a flashlight that allegedly connected HART to the murders. She then recalled that STEVENS had borrowed a flashlight from her sometime before the murders. It was unique because DEWAYNE PETERS had repaired a broken switch on the light before STEVENS got it.

ISAACS then took her to the OSBI in Oklahoma City, Oklahoma, where under subpoena order he had obtained, she examined a flashlight and positively identified it, by the repaired switch, as the one STEVENS had borrowed.

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Later, she returned again with her son, OWEN SHORT, and he too identified the flashlight as to the one that DEWAYNE PETERS repaired. ISAACS told her that the identification would turn the trial of GENE LEROY HART into a circus when he used it at the appropriate time. He then put JOYCE PAYNE in contact with BARRY COUSINS, Lawton Attorney, who was assisting him, and they went to Hutchinson, Kansas, to interview DEWAYNE PETERS. They both talked to him, then COUSINS spoke with him alone and took a recorded statement detailing STEVENS alleged admissions of the girl scout murders.

Enroute back to Oklahoma, COUSINS played the tape and promised her a copy. Later ISAACS told her the tape had broken and she never received a copy.

She has since learned that STEVENS may be paroled and he has told DEWAYNE that he plans to flee the country. It was on the strength of that concern that she contacted another attorney (AMBLER) even though ISAACS has directed her to tell none of the developments.

It has been independently verified that both PETERS and STEVENS are, in fact, at the Kansas Reformatory, Hutchinson, Kansas. STEVEN'S number is 31108, and both are in cell block D108 where they would have had an opportunity to talk at length. The institution records also record a visit to PETERS by JOYCE PETERS and BARRY COUSINS on November 3, 1978. Thereafter Mrs. PETERS was removed from her visitor's list for reasons presently unknown. STEVENS had no visitors. STEVENS pleaded guilty to the rape, kidnapping of a 54 year old woman in Garden City, Kansas, almost immediately after his arrest. He was sentenced to five years in November of 1977. PETERS went to trial and did not enter prison until Marcy of 1978, on charges arising from the same crime. The disparity in the sentences is apparently one reason for PETERS having told Mrs. PETERS.

STEVENS is alleged to have given details of the murders, (i.e.), crawling from tent to tent, "like in the army", and having to kill one of the girls when she awoke.

Additional information regarding Mrs. PETERS statements are to be forwarded by mail.

1038/15

SUBPOENA
CRIMINAL

FILED IN THE DISTRICT COURT
MAYES COUNTY, OKLAHOMA

MAR 30 1979

STATE OF OKLAHOMA

Plaintiff

VS

BY ELOISE GIST, Court Clerk
[Signature]
Deputy

GENE LEROY HART

Defendant

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

TO:

Names

Addresses

JOHNNY LEE ROSS

107 Plainview Drive, Hulbert Okla.

You are hereby commanded to appear before the District Court of Mayes County, sitting in the City of Pryor, Oklahoma, at the Mayes County Courthouse, on the 28 day of March, 1979, at 9:30 o'clock A M., of said day, then and there to testify on the behalf of the State ~~defendant~~

(STRIKE ONE)
YOUR FAILURE TO APPEAR WILL SUBJECT YOU TO PENALTY UNDER THE LAW.
YOU WILL REMAIN IN ATTENDANCE UNTIL DISCHARGED.

Witness my hand and seal of the Court at Pryor, this 28 day of March, 1979

Attorney for Defendant

Eloise Gist, Court Clerk

By: [Signature] (Seal)
Deputy

Service of this subpoena beyond Mayes County is authorized, and the attendance of the witness herein named is hereby ordered.

_____, Judge

SHERIFF'S RETURN:

County of Mayes
State of Oklahoma

I received this subpoena on the 28 day of March, 1979, at 9:00 o'clock A M., and served the same by handing a true and correct copy to:

Johnny Lee Ross on the 28 day of March, 1979
_____ on the _____ day of _____, 197____
_____ on the _____ day of _____, 197____
_____ on the _____ day of _____, 197____

by leaving a true and correct copy at the usual place of residence of:

_____ on the _____ day of _____, 197____
_____ on the _____ day of _____, 197____

I cannot find the following named in my county:

Sheriff's Stamp

By: [Signature] Sheriff
[Signature] Deputy
Under Sheriff
Sheriff's fees \$ 7.00
Sheriff's mileage \$ _____

SUBPOENA
CRIMINAL

FILED IN THE DISTRICT COURT
MAYES COUNTY, OKLAHOMA

STATE OF OKLAHOMA

Plaintiff

VS

GENE LEROY HART

Defendant

MAR 30 1979

ELOISE GIST, Court Clerk

BY Tim Steel
Deputy

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

TO:

Names

Addresses

Bernie Stendebach

Okmulgee, Okla.

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Attorney for Defendant

Eloise Gist, Court Clerk

By: Eloise Gist (Seal)
Deputy

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State of Oklahoma

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_____ on the _____ day of _____, 197____
_____ on the _____ day of _____, 197____

by leaving a true and correct copy at the usual place of residence of:

_____ on the _____ day of _____, 197____
_____ at the _____ day of _____, 197____

I cannot find the following named in my county:

Sheriff's Stamp

RECEIVED

MAR 28 1979

By: Alan H. Weaver Sheriff

Under Sheriff Deputy

Sheriff's fees \$ 7.00

Sheriff's mileage \$ _____

IN THE DISTRICT COURT IN AND FOR MAYES COUNTY, STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
MAYES COUNTY, OKLAHOMA

THE STATE OF OKLAHOMA
PLAINTIFF.

vs
GENE LEROY HART,
DEFENDANT.

MAR 30 1979

BY ELOISE GIST, Court Clerk
[Signature]
Deputy
NO. CRF-77-131

132
133

STATEMENT OF THE CASE AND INSTRUCTIONS

IN THIS CASE THE STATE OF OKLAHOMA IS PROSECUTING THE DEFENDANT, GENE LEROY HART, FOR THE CRIME OF MURDER IN THE FIRST DEGREE. THERE ARE THREE CASES, ALL FILED BY INFORMATION, CONSOLIDATED FOR TRIAL. IT IS ALLEGED THAT ON OR ABOUT THE 13TH DAY OF JUNE, 1977, IN MAYES COUNTY, STATE OF OKLAHOMA, GENE LEROY HART, DID THEN AND THERE WILFULLY, UNLAWFULLY, FELONIOUSLY AND WITH MALICE AFORETHOUGHT COMMIT THE CRIME OF MURDER IN THE FIRST DEGREE IN THE MANNER AND FORM AS FOLLOWS, TO-WIT:

THAT IS TO SAY, THE SAID DEFENDANT, IN THE COUNTY AND STATE AFORESAID, AND ON THE DAY AND YEAR AFORESAID, THEN AND THERE BEING, WITH MALICE AFORETHOUGHT, DID THEN AND THERE WILFULLY, UNLAWFULLY AND FELONIOUSLY, WITHOUT AUTHORITY OF LAW, EFFECT THE DEATH OF DORIS DENISE MILNER, LORI LEE FARMER, AND MICHELLE GUSE. THAT THE DEATH OF DORIS DENISE MILNER WAS EFFECTED BY LIGATURE STRANGULATION; AND THAT THE DEATH OF LORI LEE FARMER AND MICHELLE GUSE WAS EFFECTED BY STRICKING EACH OF SAID INDIVIDUALS ON THE HEAD WITH A BLUNT INSTRUMENT THEN AND THERE AND THEREBY INFLECTING CERTAIN MORTAL WOUNDS IN AND UPON THE BODIES OF THE SAID DORIS DENISE MILNER, LORI LEE FARMER, AND MICHELLE GUSE, OF WHICH SAID MORTAL WOUNDS SO INFLECTED AS AFORESAID, THE SAID DORIS DENISE MILNER, LORI LEE FARMER, AND MICHELLE GUSE DID DIE ON THE 13TH DAY OF JUNE, 1977, CONTRARY TO THE FORM OF THE STATUTES IN SUCH CASES AND MADE AND PROVIDED AND AGAINST THE PEACE AND DIGNITY OF THE STATE OF OKLAHOMA.

NO. _____

THE STATUTES OF THE STATE OF OKLAHOMA FURTHER PROVIDE:

"NO PERSON CAN BE CONVICTED OF MURDER OR MANSLAUGHTER UNLESS THE DEATH OF THE PERSON ALLEGED TO HAVE BEEN KILLED AND THE FACT OF THE KILLING BY THE ACCUSED ARE EACH ESTABLISHED AS INDEPENDENT FACTS BEYOND A REASONABLE DOUBT."

NO. _____

THE STATUTES OF THE STATE OF OKLAHOMA PROVIDE:

A PERSON COMMITS MURDER IN THE FIRST DEGREE WHEN HE UNLAWFULLY AND WITH MALICE AFORETHOUGHT CAUSES THE DEATH OF ANOTHER HUMAN BEING. MALICE IS THAT DELIBERATE INTENTION UNLAWFULLY TO TAKE AWAY THE LIFE OF A HUMAN BEING, WHICH IS MANIFESTED BY EXTERNAL CIRCUMSTANCES CAPABLE OF PROOF.

A PERSON ALSO COMMITS THE CRIME OF MURDER IN THE FIRST DEGREE WHEN HE TAKES THE LIFE OF A HUMAN BEING, REGARDLESS OF MALICE, IN THE COMMISSION OF FORCIBLE RAPE , ROBBERY WITH A DANGEROUS WEAPON, KIDNAPPING, ESCAPE FROM LAWFUL CUSTODY, FIRST DEGREE BURGLARY OR FIRST DEGREE ARSON.

NO. 21

IT IS APPARENT THAT THIS STATUTES DEFINES TWO SEPERATE SITUATIONS THAT CONSTITUTE MURDER IN THE FIRST DEGREE. IN THE FIRST SITUATION THE KILLING OF ANOTHER HUMAN BEING WITH MALICE AFORETHOUGHT IS DEFINED AS MURDER IN THE FIRST DEGREE. MALICE IS HEREINAFTER DEFINED IN THESE INSTRUCTIONS.

IN THE SECOND INSTANCE A HOMICIDE COMMITTED WHILE COMMITTING SEVERAL CRIMES, INCLUDING FORCIBLE RAPE IS DEFINED AS MURDER IN THE FIRST DEGREE.

IN THIS CASE SHOULD YOU FIND FROM THE EVIDENCE AND BEHOND A REASONABLE DOUBT THAT THE DEFENDANT DID EITHER, THAT IS KILL ANY OR ALL OF THOSE PERSONS NAMED IN THE INFORMATION WITH MALICE AFORETHOUGHT, OR DID KILL ANY OR ALL OF THOSE PERSONS NAMED IN THE INFORMATION WHILE COMMITTING A FORCIBLE RAPE; IN EITHER EVENT THE SAME WOULD AMOUNT TO MURDER IN THE FIRST DEGREE.

NO. 6

YOU ARE INSTRUCTED THAT THE STATE RELIES FOR A CONVICTION IN THIS CASE WHOLLY UPON WHAT IS KNOWN AS CIRCUMSTANTIAL EVIDENCE; AND IN THIS CONNECTION YOU ARE INSTRUCTED THAT TO WARRANT A CONVICTION UPON CIRCUMSTANTIAL EVIDENCE EACH FACT NECESSARY TO CONVICTION OF THE DEFENDANT MUST BE PROVED BY EVIDENCE BEYOND A REASONABLE DOUBT; AND ALL THE FACTS AND CIRCUMSTANCES PROVED SHOULD NOT ONLY BE CONSISTENT WITH THE GUILT OF THE ACCUSED BUT CONSISTENT WITH EACH OTHER AND INCONSISTENT WITH ANY OTHER REASONABLE HYPOTHESIS OR CONCLUSION THAN THAT OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT. YOU ARE INSTRUCTED THAT WHEN THE CIRCUMSTANCES ARE SUFFICIENT, UNDER THE RULE HEREIN GIVEN YOU, THEY ARE TO BE REGARDED BY THE JURY AS COMPETENT EVIDENCE FOR YOUR GUIDANCE AS DIRECT EVIDENCE.

NO. 5

MALICE IN ITS LEGAL SENSE IS NOT NECESSARILY ILL WILL OR HATRED. "MALICE," AS THAT TERM IS USED IN THIS STATUTE, IS A DELIBERATE INTENTION, A PREMEDIATED DESIGN TO TAKE AWAY THE LIFE OF A HUMAN BEING WHICH IS MANIFESTED BY EXTERNAL CIRCUMSTANCES CAPABLE OF PROOF. MALICE AFORETHOUGHT MAY BE FORMED AT ANY TIME BEFORE THE UNLAWFUL ACT AND MAY BE PROVEN BY EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE AND FROM THE CIRCUMSTANCES WHICH ACCOMPANY AND CHARACTERIZE THE ACT ITSELF.

THE QUESTION OF DELIBERATE INTENTION IS A QUESTION OF FACT TO BE DETERMINED BY THE JURY FROM ALL OF THE EVIDENCE LIKE EVERY OTHER MATERIAL FACT IN THE CASE. THE LAW DOES NOT REQUIRE THAT A DELIBERATE INTENTION BE PROVED ONLY BY DIRECT AND POSITIVE TESTIMONY. THE EXISTENCE OF A DELIBERATE INTENTION, AS WELL AS ITS FORMATION, ARE OPERATIONS OF THE MIND, AS TO WHICH DIRECT AND POSITIVE TESTIMONY CANNOT ALWAYS BE OBTAINED; THEREFORE, THE LAW RECOGNIZES THAT IT MAY BE PROVED BY CIRCUMSTANTIAL EVIDENCE. IT WILL BE SUFFICIENT PROOF OF SUCH DELIBERATE INTENTION IF THE CIRCUMSTANCES ATTENDING THE HOMICIDE AND THE CONDUCT OF THE ACCUSED CONVINCED YOU BEYOND A REASONABLE DOUBT OF THE EXISTENCE OF SUCH DELIBERATE INTENTION AT THE TIME OF THE HOMICIDE.

IN CONNECTION WITH THE PHRASE "CIRCUMSTANTIAL EVIDENCE" AS USED IN THIS INSTRUCTION, YOU ARE FURTHER INSTRUCTED:

NO. 7

THERE HAS BEEN INTRODUCED THE TESTIMONY OF CERTAIN WITNESSES WHO PURPORT TO BE SKILLED IN THEIR LINE OF ENDEAVOR, SUCH WITNESSES ARE KNOWN IN LAW AS EXPERT WITNESSES. AN EXPERT WITNESS IS ONE WHO IS SKILLED IN ANY CERTAIN ART, BUSINESS OR PROFESSION, POSSESSED OF PECULIAR KNOWLEDGE ACQUIRED BY STUDY, OBSERVATION AND PRACTICE.

YOU ARE INSTRUCTED THAT YOU MAY CONSIDER THE TESTIMONY OF THESE WITNESSES AND GIVE IT SUCH WEIGHT AND VALUE AS YOU THINK IT SHOULD HAVE, BUT THE WEIGHT AND VALUE TO BE GIVEN THEIR TESTIMONY IS FOR YOU TO DETERMINE. YOU ARE NOT REQUIRED TO SURRENDER YOUR OWN JUDGMENT TO THAT OF ANY PERSON TESTIFYING AS AN EXPERT, OR TO GIVE CONTROLLING EFFECT TO THE OPINION OF AN EXPERT, FOR THE TESTIMONY OF AN EXPERT, LIKE THAT OF ANY OTHER WITNESS, IS TO BE RECEIVED BY YOU AND GIVEN SUCH WEIGHT AND VALUE AS YOU DEEM IT IS ENTITLED TO RECEIVE.

NO. 8

YOU ARE INSTRUCTED THAT SOME EVIDENCE HAS BEEN OFFERED WHICH TENDED TO SHOW THAT THE DEFENDANT HEREIN FLED FROM APPREHENSION BY THE LAW ENFORCEMENT AUTHORITIES. IN THIS CONNECTION THE COURT CHARGES YOU THAT FLIGHT IS A CIRCUMSTANCE WHICH MAY BE CONSIDERED BY YOU IN DELIBERATING UPON THE GUILT OR INNOCENCE OF THE DEFENDANT.

NO. 9

IN THIS CASE THE DEFENDANT IS EITHER GUILTY OF MURDER IN THE FIRST DEGREE OR HE IS NOT GUILTY. THIS IS THE ONLY QUESTION SUBMITTED TO YOU. THE QUESTION OF PUNISHMENT, IF ANY, FOR MURDER IN THE FIRST DEGREE IS NOT BEFORE YOU AT THIS TIME. IF YOU FIND THE DEFENDANT GUILTY, THERE WILL BE A SUBSEQUENT SENTENCING PROCEEDING TO DETERMINE THE APPROPRIATE SENTENCE.

YOU SHOULD DELIBERATE UPON THE EVIDENCE. AS YOU ENTER THE JURY ROOM IT IS IMPORTANT THAT YOU KEEP AN OPEN MIND. REMEMBER THAT IT IS YOUR JOB TO DELIBERATE WITH THE OTHER JURORS, IT IS NOT YOUR JOB TO BE AN ADVOCATE OF ANY PARTICULAR VIEW OR SIDE.

THE FIRST THING YOU SHOULD DO, AFTER YOU HAVE ELECTED A FOREMAN, IS GO OVER THE INSTRUCTIONS. YOU SHOULD HAVE THESE WELL IN MIND, FOR ALL THE LAW YOU NEED TO KNOW TO DECIDE THIS CASE IS CONTAINED IN THESE INSTRUCTIONS.

THEN GO OVER THE EVIDENCE. ALL ITEMS WHICH HAVE BEEN ADMITTED INTO EVIDENCE ARE AVAILABLE TO YOU. AS YOU DISCUSS THE EVIDENCE YOU MAY WANT TO HAVE EACH JUROR, IN TURN, GO OVER ANY PARTICULAR POINT THAT MAY BE CAUSING A PROBLEM. REMEMBER, IF THERE IS A DISPUTE AS TO WHAT A PARTICULAR WITNESS SAID THAT YOU MAY REQUEST THAT HIS TESTIMONY BE PLAYED BACK TO YOU.

IF AFTER CONSIDERING ALL THE EVIDENCE YOU FIND BEYOND A REASONABLE DOUBT THAT THE DEFENDANT DID KILL ANY OR ALL OF THE VICTIMS DESCRIBED IN THE INFORMATION, EITHER WITH MALICE AFORETHOUGHT, OR WHILE IN THE COMMISSION OF FORCIBLE RAPE, THEN IN EITHER EVENT YOUR VERDICT SHOULD BE GUILTY.

ON THE OTHER HAND IF YOU FIND THAT THE STATE HAS FAILED TO
PROVE TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT ALL OF THE
ELEMENTS OF THE CRIME CHARGED, MURDER IN THE FIRST DEGREE, OR SHOULD
YOU FIND THAT THE DEFENDANT DID NOT COMMIT THE CRIME ALLEGED,
THEN IN EITHER OF THESE EVENTS YOUR VERDICT SHOULD BE NOT GUILTY.

THE COURT HAS MADE RULINGS IN THE CONDUCT OF THIS TRIAL AND THE ADMISSION OF EVIDENCE, IN SO DOING THE COURT HAS NOT EXPRESSED NOR INTIMATED IN ANY WAY THE WEIGHT OR CREDIT TO BE GIVEN ANY EVIDENCE OR TESTIMONY ADMITTED DURING THE TRIAL, NOR INDICATED IN ANY WAY THE CONCLUSIONS TO BE REACHED BY YOU IN THIS CASE.

YOU ARE THE JUDGES OF THE FACTS, THE WEIGHT OF THE EVIDENCE AND THE CREDIBILITY OF THE WITNESSES. IN DETERMINING SUCH WEIGHT OR CREDIT YOU MAY CONSIDER: THE INTEREST, IF ANY, WHICH THE WITNESS MAY HAVE IN THE RESULT OF THE TRIAL; THE RELATION OF THE WITNESS TO THE PARTIES; THE BIAS OR PREJUDICE, IF ANY HAS BEEN APPARENT; THE CANDOR, FAIRNESS, INTELLIGENCE AND DEMEANOR OF THE WITNESS; THE ABILITY OF THE WITNESS TO REMEMBER AND RELATE PAST OCCURRENCES, AND MEANS OF OBSERVATION, AND OPPORTUNITY OF KNOWING THE MATTERS ABOUT WHICH THE WITNESS HAS TESTIFIED. FROM ALL THE FACTS AND CIRCUMSTANCES APPEARING IN EVIDENCE AND COMING TO YOUR OBSERVATION DURING THE TRIAL, AIDED BY THE KNOWLEDGE WHICH YOU EACH POSSESS IN COMMON WITH OTHER PERSONS, YOU WILL REACH YOUR CONCLUSIONS. YOU SHOULD NOT LET SYMPATHY, SENTIMENT OR PREJUDICE ENTER INTO YOUR DELIBERATIONS BUT SHOULD DISCHARGE YOUR DUTIES AS JURORS IMPARTIALLY, CONSCIENTIOUSLY AND FAITHFULLY UNDER YOUR OATHS AND RETURN SUCH VERDICT AS THE EVIDENCE WARRANTS WHEN MEASURED BY THESE INSTRUCTIONS.

THESE INSTRUCTIONS CONTAIN ALL THE LAW, WHETHER STATUTE OR OTHERWISE, TO BE APPLIED BY YOU IN THIS CASE, AND THE RULES BY WHICH YOU ARE TO WEIGHT THE EVIDENCE AND DETERMINE THE FACTS IN ISSUE. YOU MUST CONSIDER THE INSTRUCTIONS AS A WHOLE AND NOT A PART TO THE EXCLUSION OF THE REST.

YOU MUST NOT USE ANY METHOD OF CHANCE IN ARRIVING AT A VERDICT, BUT BASE YOUR VERDICT ON THE JUDGMENT OF EACH JUROR CONCURRING THEREIN.

AFTER YOU HAVE RETIRED TO CONSIDER YOUR VERDICT SELECT ONE OF YOUR NUMBER AS FOREMAN AND ENTER UPON YOUR DELIBERATIONS. WHEN YOU HAVE AGREED ON A VERDICT, YOUR FOREMAN ALONE WILL SIGN IT. YOU WILL AS A BODY RETURN IT IN OPEN COURT. YOUR VERDICT MUST BE UNANIMOUS. FORMS OF VERDICT WILL BE FURNISHED. YOU WILL NOW LISTEN TO THE ARGUMENT OF COUNSEL WHICH IS A PROPER PART OF THIS TRIAL.

March 29, 1979

William J. Foster
Judge

IN THE DISTRICT COURT OF MAYES COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
MAYES CO. OKLAHOMA
SEP - 9 2005
LORIE PARSONS COURT CLERK
BY *Lade Lunn*

State of OK.
Plaintiff

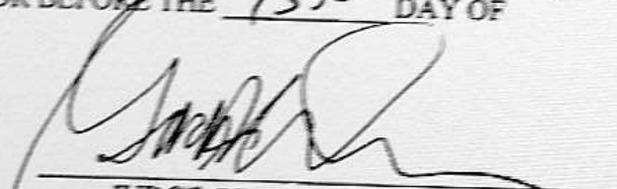
vs.

Gene Leroy Hart
Defendant

CASE NO: CAF-66-1848
CAF-73-49
CAF-77-131
CAF-77-132
CAF-77-133

ORDER ALLOWING REVIEW OR
CHECKOUT OF CASE FILE

NOW ON THIS 9th DAY OF September, 2004, BY
PERMISSION OF _____, A JUDGE OF
THE DISTRICT COURT OF MAYES COUNTY, TONY JACK LYONS IS
ALLOWED TO REVIEW / CHECK OUT CASE FILE NUMBER see Above
AND RETURN SAID CASE FILE ON OR BEFORE THE 15th DAY OF
Oct, 2005



JUDGE OF THE DISTRICT COURT

IN THE DISTRICT COURT OF MAYES COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
MAYES COUNTY, OKLAHOMA

STATE OF OKLAHOMA,

Plaintiff,

vs.

GENE LEROY HART,

Defendant.

JUN 19 1979

ELOISE GIST, Court Clerk

BY *Quanta L. Gist*
Deputy

CRF77-131
CRF77-132
CRF77-133

STIPULATION

Comes now Gene Leroy Hart, and agrees to stipulate to the following:

1. That Doris Milner died on or about the 13th day of June, 1977, and that the probable cause of death was asphyxia due to ligature strangulation.

2. That Michelle Guse' died on or about the 13th day of June, 1977, and that the probable cause of death was blunt trauma to the head.

3. That Lori Lee Farmer died on or about the 13th day of June, 1977, and that the probable cause of death was blunt trauma to the head.

4. That the autopsy reports of Neal A. Hoffman, M.D., contain a true and correct description of the injuries of Michelle Guse', Lori Lee Farmer and Doris Milner.

5. That the autopsy reports of Neal A. Hoffman, M.D., contain a true and correct description of the condition of the bodies at the time of death.

6. That the autopsy reports of Neal A. Hoffman, M.D., describe fully an autopsy conducted in accordance with best medical procedures and the highest state of the art.

Wherefore Gene Leroy Hart stipulates to the autopsy reports of Neal A. Hoffman, M.D.

Garvin A. Isaacs
Garvin A. Isaacs
Attorney for Defendant

I hereby certify that I served a true and correct copy of the
above motion on the District Attorney on the 19th day of March,
1979

FILED IN THE DISTRICT COURT
IN THE DISTRICT COURT OF MAYES COUNTY MAYES COUNTY, OKLAHOMA
STATE OF OKLAHOMA
MAR 20 1979

EMOISE GIST, Court Clerk
BY *[Signature]*
Deputy

STATE OF OKLAHOMA,

Plaintiff,

-vs-

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

GENE LEROY HART,

Defendant.

APPLICATION FOR EXPERT WITNESS FEES AND EXPENSES

Comes now the Defendant, Gene Leroy Hart, by and through his attorneys of record, and pursuant to the facts alleged in the Defendant's Affidavit of Pauper, filed with this Court on March 13, 1979, moves that the Court allow payment of expert witness fees and expenses for the following:

1. James White, Executive Director - Crawford County Mental Health Center; Pittsburg, Kansas (psychologist). \$300.00
2. Gary Napier - Crawford County Mental Health Center; Pittsburg, Kansas (psychologist). \$300.00
3. Cathy E. Bennett - Santa Barbara, California (juristic psychologist). \$1,500.00
4. William T. Burke - Oklahoma City, Oklahoma (fingerprints). \$450.00
5. Don Piatt - Oklahoma City, Oklahoma (footprints). \$200.00
6. Charles Morton - Institute of Forensic Sciences; Oakland, California (sperm) \$1,050.00
7. H. E. Maxey - Oklahoma City, Oklahoma (sperm and hair). \$1,000.00
8. Terry Crone - Stillwater, Oklahoma (hair) \$250.00
9. John Wilson - Kansas City, Missouri (sperm and hair). \$400.00
10. Bob Wallace - Oklahoma City, Oklahoma (private investigator and photographer). \$3,000.00
11. Anthony Eversole - Tulsa, Oklahoma (photographer). \$400.00