

REPORTER'S RECORD  
VOLUME 5 OF 6 VOLUMES  
TRIAL COURT CAUSE NO. 0836979A and 0836985A

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
VS.	X	TARRANT COUNTY, TEXAS
BARTON R. GAINES	X	213TH JUDICIAL DISTRICT

\*\*\*\*\*

TRIAL ON THE MERITS AND PUNISHMENT PHASE CONTINUED

\*\*\*\*\*

On December 12, 2002, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Robert K. Gill, Judge presiding, held in Fort Worth, Tarrant County, Texas.

Proceedings reported by computerized stenotype machine.

**A P P E A R A N C E S**

HONORABLE ROBERT FORAN and HONORABLE MICHELE HARTMANN Assistant District Attorneys 401 W. Belknap Fort Worth, Texas 76196 Phone: (817) 884-1700	SBOT NO.07220600  SBOT NO. 09167800  <u>FOR THE STATE</u>
---	---

HONORABLE GREG WESTFALL and HONORABLE CHEYENNE MINICK Attorney at Law One Summit Avenue Fort Worth, Texas 76102 Phone: 817-877-1700	SBOT NO. 00788646  SBOT NO. 24001161  <u>FOR THE DEFENDANT</u>
---	--

**INDEX - VOLUME 5  
TRIAL ON THE MERITS AND PUNISHMENT PHASE CONTINUED**

<u>December 12, 2002</u>	<u>PAGE</u>
Objections to the Charge.....	2
State's Opening Argument.....	4
Defendant's Argument.....	8
State's Closing Argument.....	14
Jury Verdict Returned.....	20
Jury Polled.....	21
Sentence.....	22
Reporter's Certificate.....	24

**INDEX OF EXHIBITS - VOLUME 5  
STATE'S EXHIBITS**

<u>No.</u>	<u>Description</u>	<u>Offered</u>	<u>Received</u>
	None		

**DEFENDANT'S EXHIBITS**

<u>No.</u>	<u>Description</u>	<u>Offered</u>	<u>Received</u>
	None		

Page 1

REPORTER'S RECORD

VOLUME 5 OF 6 VOLUMES

Trial Court Cause No. 0836979A and 0836985A

THE STATE OF TEXAS X IN THE DISTRICT COURT

VS. X TARRANT COUNTY, TEXAS

BARTON RAY GAINES X 213TH JUDICIAL DISTRICT

-----

TRIAL ON THE MERITS AND PUNISHMENT PHASE CONTINUED

-----

On the 12th day of December, 2002, the following proceedings came on to be heard in the above-entitled and -numbered cause before the Honorable Bob Gill, Judge presiding, held in Fort Worth, Tarrant County, Texas:

Proceedings reported by computerized stenotype Machine; Reporter's Record produced by Computer-Assisted Transcription.

STEVE SCHILLER, Texas CSR No. 4665  
Official Court Reporter  
213th Judicial District Court  
Tarrant County, Texas

Page 2

PROCEEDINGS  
(December 12, 2002)  
(Morning Session: ) Smiley face

THE COURT: Have both sides seen the copies of the Court's proposed charge?

MS. HARTMANN: State has.

MR. WESTFALL: Defense has.

THE COURT: Either side have any objections or special requests?

MS. HARTMANN: State does not.

MR. WESTFALL: In both charges there appears an instruction on involuntary intoxication. However, we object to that in each charge and our reasons are that is a guilt-innocence issue. He's pled guilty. You have instructed the jury to find him guilty. The appearance of that in this charge, I think, is a comment on the weight of the evidence, the punishment evidence, because I think the jury is completely free to consider voluntary intoxication as it pertains to what punishment to assess. Therefore, we object to it in each charge. the issue: voluntary/involuntary

THE COURT: I think I will take it out.  
(Pause in the proceedings)

MR. WESTFALL: Your Honor, the charges as currently constituted, which is my understanding do not

Page 3

1 contain a voluntary intoxication instruction in either charge, we have no further objections to.

THE COURT: That particular instruction has been removed from both charges. I will sign these charges, certify them and have them ordered and filed.

Do you want warnings on your time?

MR. WESTFALL: May I have a three-minute warning?

MR. FORAN: Judge, I will be going first, and if you could let me know after I have used five minutes.

MS. HARTMANN: If I could have a two-minute warning, please.

(Jury Present)

THE COURT: Good morning, ladies and gentlemen. The charges have been prepared. I'm going to read them to you. The charges in each case except for the cause number and the name of the complainant in each case, the charges are identical. I will read one of the charges to you rather than read both of them. Keep in mind, however, that the instructions apply equally to both of the cases and that each case should be given your independent consideration.

(Charge read by the Court)

THE COURT: Each side has 15 minutes for

Page 4

1 summation. The State may proceed.

MR. FORAN: Judge, may we approach just for a minute?

THE COURT: Okay.  
(Discussion at the bench)

STATE'S OPENING ARGUMENT

MR. FORAN: May it please the Court, Counsel.

Ladies and gentlemen of the jury, I am going to proceed first, and I will speak to you for a few minutes and then the Defense will have an opportunity to speak to you and then Ms. Hartmann will conclude the arguments for the State of Texas.

One thing I want to talk to you briefly is about the charge itself. You are given two different verdict forms there at the end of the charge. One talks about penitentiary time, and the other talks about community supervision. You have to choose one or the other. You can't split it.

Secondly, when we are talking about the issue of probation, I just want to remind you what the charge says and what Ms. Hartmann discussed with you in voir dire, the term has to be set between five and ten years before you can even consider probation.

As you can imagine, the State of Texas is

1 not recommending probation to you. I want to talk to you  
2 a little bit about the punishment case. Here we have a  
3 plea of guilty and you are faced with determining what is  
4 the appropriate result.

5 I submit to you when you are thinking about  
6 punishment, you should think about several things: The  
7 planning of the crime and the particularly vicious way in  
8 which it was carried out in this case by Bart Gaines.

9 Back on February 21 of 2002, this year,  
10 Bart Gaines was out with some friends of his drinking,  
11 shooting off a shotgun. Two strangers, unarmed, just a  
12 couple of kids hanging out showed up where he and his  
13 friends were.

14 And Barton Gaines, not Jason Tucker, not  
15 Daniel Arronda, not anybody else, Barton Gaines initiated  
16 a conversation with these people and initiated this plan.  
17 He attempted to set up a dope deal for a pound of  
18 marijuana that he did not purchase, that he did not have  
19 the money for.

20 He lured these people into this deal. He  
21 drove off with them. He stopped to buy bullets, as he  
22 told Tara Green, just in case I need it. Then he went to  
23 the apartment complex. They couldn't provide the dope  
24 they promised him. They were impeding his plan, and now  
25 they were witnesses to his attempted robbery.

1 And then after beating Michael Williams  
2 over the head with a shotgun, he shot him as he tried to  
3 flee.

4 As Andrew Horvath lay helpless on the  
5 ground, he shot him and then he left. What did Tara Green  
6 and Mindy tell you? Was he distraught? No. He was  
7 calm. Said it was a rush. He wasn't mad. He wasn't  
8 upset. Right after this offense he goes to their house  
9 and he's fine.

10 There is nothing wrong with him except he's  
11 disappointed that all he got was a lottery ticket.

12 Two days later he's on the side of the road  
13 repeating the same type of scenario, luring three good  
14 Samaritans to the side of the road saying he needs help.  
15 When they are unable to help him, he takes an assault  
16 rifle and he shoots at them. An assault rifle and I guess  
17 we had some questions about who it belonged to, and  
18 Tiffany Phillips put it up for us.

19 Last time she saw it Brett Tucker had left  
20 it with Bart Gaines. He was the last one with possession  
21 of it and it was recovered in his vehicle. There was no  
22 question about who had it and who was using it because  
23 Tara told you who used it that night. He shot a sleeping  
24 man in the back of a vehicle because their only crime was  
25 to try and be a good Samaritan.

1 What do you know about Barton Gaines?  
2 Barton Gaines apparently had a terrible childhood, had  
3 multiple marriages, multiple people coming in and out of  
4 his life. ADHD. So did a lot of kids. He's treated with  
5 Paxil.

6 And we hear from Dr. John Stone that here  
7 we have an individual treated with Paxil and Paxil  
8 sometimes will cause hypomanic moods. There is one slight  
9 problem with Dr. John Stone's theory. You can't plan for  
10 one. You can't stop, buy the bullets and tell your  
11 friend, I'm getting it just in case I need it.

12 Why did he get it? To carry out his threat  
13 if they didn't give him the property and to eliminate any  
14 witnesses. That's why he shot at them.

15 THE COURT: You have used five minutes.

16 MR. FORAN: Dr. John Stone, at \$500 an hour  
17 testifying about Paxil couldn't even confirm that this  
18 individual was even using it that evening or had been  
19 using it regularly. He couldn't even remember who told  
20 him, when's the last time it was taken or whether he was  
21 taking it regularly.

22 There is no evidence he was even on Paxil  
23 that evening. The only evidence you have from this  
24 witness is that he's out there drinking and setting up a  
25 robbery.

1 Now, the problem that we face as a  
2 community is what do you do with someone like Barton  
3 Gaines who is willing to shoot two people with double  
4 aught buck, two people -- those weren't threatening  
5 people. I doubt even two of them could have taken Bart  
6 Gaines on in a fight.

7 One was helpless on the ground and one was  
8 running away, and three other people's lives were placed  
9 in danger two days later. This is not an individual that  
10 deserves probation. This is an individual that we deserve  
11 protection from. We are asking you to send him to the  
12 penitentiary, not because I think that's where he belongs,  
13 but because the evidence demands it. His conduct's earned  
14 it.

#### 15 DEFENDANT'S ARGUMENT

16 MR. WESTFALL: Thank you, Your Honor.

17 May it please the Court, Counsel, ladies  
18 and gentlemen of the jury. The problem I have had with  
19 the Paxil theory is that Bart has been on Paxil since he  
20 got into the jail. That's the problem I have had with  
21 it. That's the weakness I have seen in the Paxil theory.  
22 Everything else makes sense, but being in jail and being  
23 on Paxil, why isn't he freaking out?

24 The doctor has a scientific explanation for  
25 that which he truly believes it has to do with stressors

1 and social choices, and I was last night trying to figure  
2 out what I am going to argue to y'all. And it occurred to  
3 me -- have you ever had a bird fly into your house?  
4 During the spring they will do that, fly in through a  
5 window. They're eating those berries that make them  
6 drunk.

7 If you walk up to the bird, it flies to the  
8 other side of the room. If the bird sees a window, he  
9 will kill himself trying to get out. If you take the bird  
10 and put him in a shoe box, the bird doesn't even utter a  
11 peep. The bird just sits there. That's the nature of  
12 confinement. It occurred to me that's what the doctor is  
13 talking about, removing social choices. You remove all  
14 stimulation.

15 If the bird is inherently dangerous, we  
16 probably ought not let him out of the shoe box. And I  
17 agree with the State and with the community on that. So  
18 the issue is: Is Bart inherently dangerous?

19 There are things we know about Bart.  
20 Number one, he's been ADD since the day he was born. But  
21 he never shot anybody until February 21 of 2002 after he  
22 had started using Paxil. He's had a low IQ since the day  
23 he emerged from his mother's womb, but he's never  
24 committed a violent act against man nor beast, never hit  
25 his girlfriend until February of this year after he was

1 These are people who know Bart and his family knows Bart  
2 and something was wrong with Bart. And the only thing  
3 that was different was Paxil. That's the only thing that  
4 was different.

5 He'd been rocking along doing his little  
6 assembly line job trying to get through life as best as  
7 possible, and all of a sudden he takes this sharp right  
8 turn.

9 Bart has pled guilty to two aggravated  
10 first-degree felonies. I want to talk to you about this  
11 charge. Aggravated felonies carry a particular type of  
12 time. We call it half time. Aggravated time. When it  
13 says in here that Bart will not be able to even ask for  
14 parole until he has served one half of his sentence,  
15 that's what it means. It's not dog years. If y'all give  
16 him ten years, he serves five flat. If you give him 20  
17 years, he serves 10 flat. That is the law. Don't be  
18 mistaken thinking he's going to be out in ten for one  
19 good-conduct time or something like that. It ain't  
20 happening. Half time.

21 One other thing. There is an instruction  
22 in here the State has introduced evidence of extraneous  
23 crimes and bad acts. What that means is basically in this  
24 case, Hood County and the use of drugs. Those are all the  
25 extraneous bad acts that have been introduced.

1 using Paxil.

2 He's been learning disabled since the day  
3 he was born, but he's modest and a kind-hearted guy,  
4 according to Tara Green and Mindy Keisel until this  
5 episode.

6 He's been using drugs since he was 13 years  
7 old. He's been using marijuana, Xanax. There is drugs  
8 listed in his exhibits you have that he's used. But he's  
9 never been violent to anybody or anything. Don't you know  
10 we would have heard about it if he had been. He's not  
11 been violent ever until this.

12 The same common sense that makes me  
13 question the Paxil theory after he's in jail causes me to  
14 believe the Paxil theory prior to. The fact that he was  
15 in a manic episode -- something was wrong with this kid.  
16 Not just one night. Something was wrong with this kid for  
17 at least a week. That has not been seriously disputed.

18 The prosecutor led Mindy Keisel -- and Bart  
19 was pretty normal that night, wasn't he? Yeah, okay.  
20 Same thing with Tara. But when we asked Mindy Keisel, she  
21 said she thought it was awkward the way he went up and  
22 asked for a pound because that's not like Bart to be Mr.  
23 Scarface, arranging these drug deals.

24 Tara Green, you heard her. She thought he  
25 was insane and should be committed to an insane asylum.

1 I don't want y'all to be misled by that.  
2 The law says you have to believe that stuff beyond a  
3 reasonable doubt. Well, we admit it so believe it beyond  
4 a reasonable doubt. Okay?

5 Finally, the conditions of community  
6 supervision, probation. You have them all listed here,  
7 but this list carries the important one for Bart,  
8 psychiatric treatment at the direction of the Court,  
9 avoiding vicious or injurious habits with the threat of  
10 the Court sending you to the penitentiary if you don't.  
11 And making restitution, being in a particular place,  
12 holding down a job.

13 And we have two cases here, two different  
14 charges. It is true that in one particular case, one  
15 particular case, you can't choose both. You can't include  
16 probation and penitentiary time. But we have two cases.  
17 Okay?

18 I want to make a suggestion. Imagine, if  
19 you will, if Bart Gaines was taken off the Paxil and  
20 treated for ADD the way that he should have been treated  
21 for ADD all along, what a massive step upward that would  
22 be in what has otherwise been a very tragic and sad case.

23 This is a sad case. Neither one of those  
24 guys deserved to be shot, and certainly the good  
25 Samaritans that he shot. This is a sad case. But Bart

1 has pled guilty to two different violent offenses, two  
2 aggravated first-degree felonies.

3 I want to suggest to y'all give him  
4 probation on one case, ten years probated, and give him  
5 five years on the other case in the penitentiary. They  
6 run side by side. That way we tell Bart, don't ever do  
7 anything like that again. The other way, when Bart is  
8 finished with his time in the penitentiary, he's still  
9 under the direction of this Court.

10 We have seen that Bart reacts well to  
11 structure. He's never been in trouble in that jail. He  
12 reacts well to the right kind of treatment. He reacts  
13 well to people giving him life skills. He's very young.

14 So let's put him on probation and send a  
15 message to him at the same time.

16 Let's put him on ten years' probation and  
17 five years in the penitentiary. And when he's finished  
18 with that, he has another at least five years left to go  
19 under the direction of this Judge who will make darn sure  
20 he's minding his P's and Q's and staying off drugs, and  
21 he's doing the mental health treatment that he should do  
22 and that he's learning the life skills or else he'll get  
23 another ten years to think about it.

24 I want to thank y'all for sitting through  
25 what is really a very tough and sad case. Godspeed.

1 THE COURT: The State may proceed.

2 MS. HARTMANN: Thank you, Your Honor.

3 STATE'S ARGUMENT

4 MS. HARTMANN: May it please the Court.

5 Members of the jury.

6 You know, one of the most frightening  
7 things the prosecutor has as a task in a case especially  
8 like this where you have the family of the Defendant  
9 crying justifiably so, they are upset about their loved  
10 one, where you have the Defendant in the courtroom every  
11 day who is the only person involved directly in this case  
12 who gets to be in the courtroom each and every day. And  
13 you start to bond with him and look at him, and maybe he  
14 reminds you of your son or your brother. And the victims  
15 don't get to be here every day for you to see and to bond  
16 with individually and think about and you don't get to see  
17 their mothers crying at their hospital bed after they have  
18 been shot because you have got to know they were just as  
19 torn up as his mother is, but you don't see that.

20 It is absolutely terrifying for a  
21 prosecutor to hope that the jury does not forget what is  
22 truly, truly important in a criminal case and not to base  
23 a decision upon the way a Defendant looks or his age, or  
24 whether he has money or a learning disability. Because  
25 you know what? There are a lot of people who are young, a

1 lot of people who are on Paxil, a lot of people who have  
2 ADHD and they don't get out and they don't shoot people.

3 Those just aren't good excuses for his  
4 conduct. Wouldn't it be nice if people who are just mean,  
5 people who just have the capacity to be mean to other  
6 human beings, wouldn't it be nice if they had to have a  
7 label on them so we could be warned?

8 Because you look at Barton Gaines, you saw  
9 him out on the street, you probably wouldn't think, well,  
10 there goes somebody who goes around shooting people. But  
11 criminals come in all sizes, all sorts of appearances.  
12 And you cannot and must not base a verdict on the way  
13 someone looks. No matter how bad you feel for them. You  
14 just can't.

15 You took an oath. And that was to render a  
16 true verdict according to the facts of the case and the  
17 evidence presented to you. You have got to base the  
18 decision on the evidence.

19 I want to address a couple of things that  
20 Mr. Westfall said. I guess the biggest push for the  
21 defense has been the Paxil made him do it. Guess what,  
22 folks? That's not it.

23 First of all, there has been no evidence or  
24 testimony that Barton Gaines was in a manic state on the  
25 evening of February 21 of 2002. No evidence whatsoever.

1 His mom testified about some behavior that she saw him  
2 exhibit before and after those dates, behavior that she  
3 wanted to believe was so severe and so bizarre that she  
4 didn't call anybody. Didn't call a doctor.

5 When her son didn't come home, she didn't  
6 call the police -- Oh, my God, my son is out of his mind.  
7 He's somewhere out there. Can you get someone out to look  
8 for him? Isn't that a little weird to you that she comes  
9 in here and wants to tell you he was acting like a nut  
10 case but she didn't do anything about it? Does that make  
11 any sense? Sadly, not telling the truth here played into the  
State's hands on this issue.

12 There has been no testimony and no evidence  
13 about any type of mania that he was displaying on February  
14 21, 2002.

15 MR. WESTFALL: Your Honor, we object to the  
16 mischaracterization of the evidence.

17 THE COURT: Overruled. Oh-yeah! Because  
they're real credible.

18 MS. HARTMANN: What you do have is the  
19 evidence testimony of Mindy and Tara. They are friends of  
20 Bart's. They did not want to be in here testifying  
21 against him. That makes them all the more credible,  
22 folks. Better me than them, right?

23 One of them, I think it was Tara, was  
24 crying. She was so upset about having to be here and tell  
25 what her friend was doing. And both of those girls were

1 able to tell you he was acting normal. He wasn't  
2 twitching. He wasn't fidgeting. He wasn't jumping  
3 around. You got a picture of him. You have got a video  
4 of him.

5 The guy has the presence of mind to set up  
6 a dope deal. That's not unusual, folks, because the  
7 records that have been admitted are replete with the fact  
8 that this Defendant chooses to use drugs and chooses to  
9 drink. Maybe he was taking his Paxil and maybe he  
10 wasn't. But the Paxil didn't make him do it.

11 Was it a combination of alcohol, marijuana,  
12 cocaine, methamphetamines or anything else that he has  
13 told people that he uses? These records are in evidence.  
14 You can ask for them. They can be sent back to the jury  
15 room for you to look through. Who knows? But he had the  
16 presence of mind to set up a drug deal with his buddies,  
17 to have that shotgun in the truck with him, to go to  
18 Wal-Mart, purchase the ammunition and, folks, he goes  
19 behind the counter and helps the clerk pick it out.

20 He's not crazy. He's not off his rocker.  
21 He's not nuts. He's not manic. He knows exactly what  
22 he's doing. It is called intent. Called knowledge. It  
23 is called planning.

24 He goes behind the desk and helps the clerk  
25 pick out the right ammunition to go in his weapon. Gets

1 back in his truck. The weapon is obviously loaded, who  
2 knows by whom. There are three people in that truck.  
3 Goes to purchase the drugs.

4 He's got the presence of mind to sit in his  
5 truck while Michael is running back and forth acting as a  
6 messenger between the drug supplier and Defendant where  
7 the conversation is going on, Man, I really want to see  
8 the dope before I pay for it. Sorry, it doesn't work that  
9 way. It is not just like he just flies off the handle  
10 immediately. He's wanting those drugs. His plan was to  
11 never even pay for the drugs. It was to take them at  
12 gunpoint. But there were no drugs.

13 So he and his buddies jump out -- and  
14 remember the testimony from Michael and Andrew, all three  
15 of those boys were beating up on Michael and Andrew.  
16 Let's remember Michael and Andrew. Because you know what?  
17 Those are people who don't get to be here every day for  
18 you to bond with and see.

19 THE COURT: You have two minutes remaining,  
20 Counsel.

21 MS. HARTMANN: Remember them. Remember  
22 what happened to them.

23 And then after demanding their wallet,  
24 demanding that property, as Michael is running trying to  
25 get away, Andrew is running with his arm up, they get

1 shot. They were shot because he was mean, because he was  
2 an ugly person on that night. That's the behavior that  
3 deserves to be punished.

4 You can take into consideration what he did  
5 two days later. He's dangerous. I know he looks young  
6 and maybe he doesn't look threatening in here to you in  
7 this courtroom, but I tell you what, he has shown that he  
8 has a willingness to hurt other people. He has shown a  
9 willingness to hurt other people, people that were  
10 cooperative with him, not fighting back and who are  
11 helpless. That makes him dangerous.

12 I am asking you to remember the oath that  
13 you took and to render your verdict based upon the facts  
14 of this case. It wasn't Paxil. It was Bart Gaines.

15 I am going to ask you to start at 40  
16 because that's what the case deserves. You send a message  
17 to the community about what human life is worth in this  
18 county. That message goes out to the community, goes out  
19 to Michael and Andrew and their parents, and it goes to  
20 the Defendant. Thank you.

21 THE COURT: Ladies and gentlemen, please  
22 retire to the jury room and conduct your deliberations.

23 (Jury deliberations begin at 9:50 a.m.)

24 (Jury not present)

25 THE COURT: The jury has notified us they

1 have reached a verdict. Are both sides ready to receive  
2 it?

3 MS. HARTMANN: State's ready, Your Honor.

4 MR. WESTFALL: Defense is ready, Your  
5 Honor.

6 (Jury Present)

7 THE COURT: Ms. Marick, are you the Foreman  
8 of the jury?

9 JURY FOREMAN: Yes.

10 THE COURT: Has the jury reached a verdict  
11 in each of the two cases?

12 JURY FOREMAN: Yes.

13 THE COURT: Is each verdict unanimous?

14 JURY FOREMAN: Yes, sir.

15 THE COURT: Hand the charge to the bailiff,  
16 please.

17 (Pause in the proceedings)

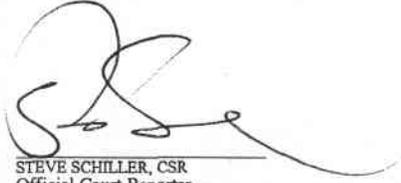
18 THE COURT: No. 0836979-A, the State  
19 versus Barton Ray Gaines. Verdict Form, No Community  
20 Supervision. We the jury, having been instructed by the  
21 Court to find the Defendant guilty of the offense of  
22 aggravated robbery with a deadly weapon as charged in the  
23 indictment, so find, and we assess his punishment at  
24 confinement in the Institutional Division of the Texas  
25 Department of Criminal Justice for 35 years. And in

1 addition to such confinement, we assess a fine of \$10,000,  
 2 and we do not recommend that community supervision -- that  
 3 he be placed on community supervision.  
 4 Signed Tina Ann Marick, foreperson.  
 5 Cause No. 0836985-A, the State versus  
 6 Barton Ray Gaines. Verdict Form, No Community  
 7 Supervision. We the jury, having been instructed by the  
 8 Court to find the Defendant guilty of the offense of  
 9 aggravated robbery with a deadly weapon as charged in the  
 10 indictment so find, and we assess his punishment at  
 11 confinement in the Institutional Division of the Texas  
 12 Department of Criminal Justice for 35 years. And in  
 13 addition to such confinement we assess a fine of \$10,000,  
 14 and we do not recommend that he be placed on community  
 15 supervision. Signed Tina Ann Marick, foreperson.  
 16 Does either side wish to have the jury  
 17 polled?  
 18 MS. HARTMANN: State does not.  
 19 MR. WESTFALL: Defense does, Your Honor.  
 20 THE COURT: Ladies and gentlemen, you may  
 21 be seated while I do this.  
 22 Ladies and gentlemen, a poll of the jury  
 23 means I am going to call each of you by name and ask you  
 24 if these are your individual verdicts.  
 25 (Jury polled)

1 first I need to have you step back into the jury room for  
 2 just a minute.  
 3 (End of proceedings)  
 4  
 5  
 6  
 7  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1 THE COURT: Each member of the jury having  
 2 answered in the affirmative, the verdict will be accepted  
 3 and filed.  
 4 Counsel, is there any reason sentence  
 5 should not be pronounced?  
 6 MR. WESTFALL: There is no legal reason,  
 7 Your Honor.  
 8 THE COURT: Mr. Gaines, the jury having  
 9 found you guilty in each of these two cases of the offense  
 10 of aggravated robbery with a deadly weapon as charged in  
 11 the indictment upon your pleas of guilty and having set  
 12 your sentence in each case at 35 years' confinement in the  
 13 Institutional Division and a \$10,000 fine, it will be the  
 14 Order, Judgment and Decree of this Court that in each case  
 15 you be sentenced to 35 years' confinement in the  
 16 Institutional Division and be fined \$10,000 and be taken  
 17 by the sheriff of Tarrant County to the Institutional  
 18 Division to serve those sentences as required by law.  
 19 You have a right to appeal, as Mr. Westfall  
 20 will further explain to you. You will receive credit for  
 21 time you've already served in connection with these  
 22 cases. They will run concurrently.  
 23 He's your prisoner, Sheriff.  
 24 Ladies and gentlemen of the jury, in just a  
 25 minute I will be able to discharge you as jurors, but

1 STATE OF TEXAS |  
 2 COUNTY OF TARRANT |  
 3 I, Steve Schiller, Official Court Reporter for the  
 4 213th District Court of Tarrant County, Texas, do hereby  
 5 certify that the above and foregoing contains a true and  
 6 correct transcription of all portions of evidence and  
 7 other proceedings requested in writing by counsel for the  
 8 parties to be included in this volume of the Reporter's  
 9 Record, in the above-styled and numbered cause, all of  
 10 which occurred in open court or in chambers and were  
 11 reported by me.  
 12 I further certify that this Reporter's Record of the  
 13 proceedings truly and correctly reflects the exhibits, if  
 14 any, admitted by the respective parties.  
 15  
 16 WITNESS MY OFFICIAL HAND this the 10th day of April,  
 17 2003.  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

  
 STEVE SCHILLER, CSR  
 Official Court Reporter  
 213th District Court  
 401 West Belknap  
 Fort Worth, Texas 76196  
 (817) 884-2687  
 State Certification No. 4665  
 Certification Expires: 12-31-03