


Aldape: Trial Transcript  
(8/82) (Pretrial Motions Hearing) (v. 1)



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RICARDO GUERRA

VOL. I

PRE-TRIAL MOTIONS

69 081

APPELLATE COURT NO. \_\_\_\_\_  
IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF TEXAS  
AT AUSTIN

RICARDO ALDAPE GUERRA,

Appellant,

VS.

THE STATE OF TEXAS,

Appellee.

APPEAL FROM THE 248TH DISTRICT COURT OF HARRIS COUNTY,  
TEXAS. Judge Henry K. Oncken, Presiding

STATEMENT OF FACTS

**F I L E D**

RAY HARDY  
District Clerk

MAY 9 1983

Harris County, Texas

By Henry K. Oncken  
Deputy

CINDY LAYNE  
Certified Official Court Reporter  
248th District Court  
Harris County, Texas

F2068 0002

8-17-83 [Signature]

1 CAUSE NO. 359,805

3 THE STATE OF TEXAS

X  
X  
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X  
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X  
X

IN THE DISTRICT COURT

4 VS.

OF HARRIS COUNTY, TEXAS

5 RICARDO ALDAPE GUERRA

248TH JUDICIAL DISTRICT

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10 STATEMENT OF FACTS  
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F2068 0003

CAUSE NO. 359,805

( STATE OF TEXAS

IN THE DISTRICT COURT  
OF HARRIS COUNTY, TEXAS

DO ALDAPE GUERRA

248TH JUDICIAL DISTRICT

VOLUME I  
STATEMENT OF FACTS  
PRE-TRIAL MOTIONS HEARING  
AUGUST 19, 1982

I N D E X

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VOLUME I

August 19, 1982

RE-TRIAL MOTIONS HEARING

Caption Sheet

2

Appearances

2

CAUSE NO. 359,805

STATE OF TEXAS

IN THE DISTRICT COURT  
OF HARRIS COUNTY, TEXAS  
248TH JUDICIAL DISTRICT

CARDO ALDAPE GUERRA

\* \* \*

A P P E A R A N C E S:

for the State of Texas:

Mr. Bob Moen  
and  
Mr. Dick Bax

of the Defendant:

Mr. Candelario Elizondo  
and  
Mr. Joe Hernandez

Interpreter:

Ms. Linda Hernandez

\* \* \*

BE IT REMEMBERED that upon this the 19th day of August, A.D. 1982, the above entitled and numbered case came for Hearing on Pre-Trial Motions before the Honorable Henry K. Oncken, Judge of the 248th District Court of Harris County, Texas; and both the State and the Defendant appearing in person and/or by counsel, announced ready for the hearing; and all preliminary matters having been disposed, the following proceedings were had, viz:

\* \* \*

THE COURT: Mr. Bax, is the State ready on the motions?

Are both sides ready?

MR. BAX: The State is ready, Your Honor.

MR. ELIZONDO: I am ready, Your Honor.

We are going to have a couple of other motions filed. We haven't prepared them yet, but to apprise the Court, we are going to have a motion to have a Wade-Gilbert Hearing prior to trial and also a motion to exercise a peremptory challenge after the entire jury has been voir dired so we can make an intelligent exercise of peremptory challenges, and we will file that motion with the Court's permission.

THE COURT: Has the State been served with a copy of the motions filed?

MR. BAX: Yes, Your Honor.

THE COURT: Have you had a chance to review those?

MR. BAX: Yes, Your Honor.

THE COURT: Can we first of all dispose of the motions where there is an agreement?

MR. BAX: I believe almost every motion, there will be some type of agreement. If we will go through them one at a time --



MR. ELIZONDO: For the record, the State is going to let me peruse their entire file. I would like to go through these motions and make sure I have the time elements right.

THE COURT: The number one motion is the Defendant's Motion for Right to Move for Change of Venue.

MR. ELIZONDO: If it please the Court, we have filed this motion to consider a change of venue at a later time should it become necessary.

At this time, the Defendant has indicated to me he wants to be tried in Harris County by the citizens in Harris County at this time.

THE COURT: All right. We will take that up later if it becomes necessary.

The next is a Motion in Limine.

MR. ELIZONDO: Your Honor, it has come to my attention that the State may offer some offenses in evidence which are unadjudicated, will offer them during the punishment stage, I believe, and we would object to any offering of any extraneous offenses until we have had a hearing outside the presence of the jury to

1 determine whether or not, first of all, if this  
2 Defendant did it or if they can tie him in with  
3 the crime.

4 THE COURT: What says the State?

5 MR. BAX: Well, Judge, of course, at  
6 the punishment stage of the trial in a capital  
7 murder case, should the jury find this Defendant  
8 guilty of the offense of capital murder, the State  
9 is entitled to prove up any cases involving the  
10 Defendant which may or may not have resulted in  
11 final conviction which would aid the jury in  
12 determining whether or not the second question  
13 and the first question should be answered yes.

14 The State's position, of course, is that  
15 we would not offer any crime or alleged commission  
16 of a crime that we feel we could not prove beyond  
17 a reasonable doubt to the jury at the punishment  
18 portion of the trial, but to go ahead and have a  
19 full-blown hearing before the Court first to  
20 decide whether or not it is admissible. I think  
21 we can decide that at the time before we get  
22 into the punishment hearing, if that would be  
23 necessary or not.

24 MR. ELIZONDO: What I am referring to  
25 specifically, I believe I heard references to a

1 prior extraneous robbery which, from what I have  
2 been able to figure out, the State cannot put him  
3 in there committing the robbery.

4 MR. BAX: I disagree.

5 MR. ELIZONDO: That is why we would like  
6 to have a hearing outside the presence of the jury  
7 to determine if the man committed this crime  
8 before the jury hears about it.

9 THE COURT: Let me take just a minute.

10 The State's position is that --

11 MR. BAX: Judge, I guess just for the  
12 record, first of all, the Motion in Limine is  
13 worded differently than what counsel is proposing  
14 now before the Court. The Motion in Limine speaks  
15 to the State being precluded from proving up any  
16 offenses unless the theft has been charged by  
17 indictment information and complaint and has  
18 resulted in a final conviction.

19 Of course, I would not want the Court  
20 to grant that motion in those words because,  
21 of course, the law does not provide in a capital  
22 case the State has to prove up final convictions.

23 Our position would be at the trial,  
24 at the punishment stage, should we be able to  
25 show this Defendant was involved in other

criminal offenses, that those criminal offenses would be admissible before the jury whether or not a final conviction has resulted.

THE COURT: At the punishment stage?

MR. BAX: Yes, sir.

MR. ELIZONDO: All we are offering before the State is that we would like to have a hearing outside the presence of the jury to determine if, in fact, he committed the offense. That is all.

THE COURT: As to any extraneous offenses to be brought to the attention of the jury during the punishment portion of the trial, I would overrule your Motion in Limine with regard to that.

Now, as to anything brought before the jury at the guilt-or-innocence stage of the trial, we will at least approach the bench before we will allow that into evidence.

MR. BAX: The only extraneous offenses, I would presume at this time, that would be before the jury at the guilt-or-innocence stage of the trial would be what took place with regards to this specific transaction involving another citizen and another police officer.

1 At this time, this is the only  
2 extraneous offense the State would intend to  
3 prove to the jury, and, of course, it will be the  
4 State's position those would be res gestae of the  
5 offense itself.

6 MR. ELIZONDO: We are alleging he is  
7 charged with the murder of J. D. Harris. That is  
8 all they are entitled to prove at this time.

9 THE COURT: Anything that occurs at a  
10 single transaction, we will allow into evidence.

11 MR. ELIZONDO: Is my motion overruled?

12 THE COURT: Overruled as to any  
13 extraneous matters being brought to the attention  
14 of the jury during the punishment phase of the  
15 trial.

16 MR. ELIZONDO: Guilt-or-innocence stage?

17 THE COURT: If there are extraneous  
18 offenses other than the res gestae offenses  
19 arising out of this transaction, then I would  
20 request that we have a conference at least or  
21 a hearing to determine the admissibility of any  
22 extraneous offenses.

23 MR. ELIZONDO: Does that include Mr.  
24 Armijo and Mr. Trapagnier?

25 THE COURT: It does not.

MR. ELIZONDO: Does not. All right,  
sir.

THE COURT: The Defendant's Motion for  
Notice of Prosecution's Intent to Prove Extraneous  
Offenses during the punishment phase.

I think that is basically what we have  
been talking about.

MR. ELIZONDO: No, Judge. What I want  
to know here is what are the extraneous offenses  
they intend to prove?

MR. MOEN: I don't think we have  
objections to that one, Judge.

MR. BAX: We don't and just for the  
record after this hearing is concluded, Mr.  
Elizondo is going to be given a chance to look  
at the State's file, and the only extraneous  
things are in that file.

THE COURT: I will grant that motion.

MR. ELIZONDO: We have a Motion to  
Discover Criminal and Psychiatric Records of the  
State's witnesses.

Judge, if the State has any notice or  
any rap sheets of any of the prospective witnesses,  
that is what we are asking for. We would like to  
have a copy or a notification of their criminal

1 record or psychiatric history, and in doing so,  
2 we believe that would be greatly material, because  
3 it would certainly impeach any of those  
4 witnesses.

5 MR. BAX: Of course, the State does not  
6 feel that is a proper motion.

7 As to the psychiatric records, I would  
8 state on the record I have no knowledge of the  
9 psychiatric records.

10 As far as rap sheets, a rap sheet or  
11 arrest, of course, is not admissible before a  
12 jury as impeachment, and counsel has the right to  
13 ask each and every witness at the time whether  
14 they have been convicted of a misdemeanor or a  
15 crime of moral turpitude, and we feel that would  
16 be the proper remedy for the Defense.

17 THE COURT: So your motion, as drawn,  
18 Counsel, will be denied.

19 Of course, you have the right, as the  
20 State's attorney has pointed out, to question  
21 the witnesses on that point.

22 MR. ELIZONDO: Thank you, Your Honor.

23 THE COURT: The Motion to Discover any  
24 Concession or Agreement of Third Party.

25 MR. BAX: There are none, Judge.

1 THE COURT: I would show that motion  
2 granted.

3 MR. ELIZONDO: Thank you, Your Honor.

4 THE COURT: The Motion for an Appointment  
5 of an Investigator.

6 MR. BAX: No objections.

7 THE COURT: It's already been done.

8 MR. ELIZONDO: Yes, it has, Your Honor.

9 THE COURT: So granted.

10 The Motion to Hold Article 37.07(1) of  
11 the Code of Criminal Procedure Unconstitutional.

12 MR. BAX: We would object to the Court  
13 granting said motion.

14 THE COURT: I deny that motion.

15 The Motion to List State's Witnesses.

16 MR. BAX: Judge, the State at this time  
17 has filed its subpoena list. The State has filed  
18 all the witnesses the State intends to bring before  
19 the Court, and, once again, the Defense will have  
20 a chance to peruse the files.

21 The only thing we would object to, I  
22 think this comes up in a later motion, is the  
23 taking of telephone numbers. I don't feel we  
24 have to give out telephone numbers where these  
25 people can be called anytime of the day or night.



THE COURT: I will show that Motion  
(ist State's Witnesses granted.

I thumbed through here and didn't see  
nything about telephone numbers.

MR. BAX: I believe that will be brought  
up again.

MR. ELIZONDO: At a later time, Judge.

THE COURT: Motion for Appointment of  
an Interpreter. That has been granted.

The Motion for the Court to Direct the  
Court Reporter to Take Voir Dire Examination.  
I will grant that.

The Motion to Produce Evidence  
Inconsistent with Guilt.

MR. BAX: Judge, once again, all the  
evidence the State has is being tendered to Mr.  
Elizondo both in our prior meetings with him  
and again today when we haven't had an opportunity  
to see the State's entire case.

All the witnesses will be contained in  
those reports, and he will be given access to  
them.

MR. ELIZONDO: Could we have that in a  
containment motion?

THE COURT: I will show that motion

granted, consistent with what Mr. Bax has stated.

The Motion for Pre-Trial Discovery  
and Inspection listing seventeen items.

Is there any need to go through the  
seventeen items?

MR. BAX: Judge, this is the one that  
talks about the telephone numbers, number seventeen,  
number fifteen, number fourteen.

THE COURT: Let's do it this way.  
Number one, I assume there is no objection to  
that one?

MR. BAX: No, Your Honor. There was a  
statement not signed by the Defendant that has  
already been tendered to the Defense attorney.  
There is videotape concerning the Defendant when  
he refused to sign the statement if they want to  
see that. We can make that available to them.

THE COURT: I will show one and two  
granted.

MR. BAX: As far as my knowledge is  
concerned, there are no recordings of any  
conversations with the Defendant other than the  
conversation that we have just talked about with  
number two.

THE COURT: I will show that granted

1 then with the stipulation you just stated.

2 MR. BAX: Again, number four, there  
3 are no recorded conversations.

4 THE COURT: All right.

5 MR. ELIZONDO: Is that granted or  
6 denied?

7 THE COURT: I will show it granted.

8 MR. ELIZONDO: Thank you, Judge.

9 THE COURT: Consistent with Mr. Bax's  
10 statement.

11 MR. BAX: As to number five, of course,  
12 the State does not believe we have to turn over  
13 an offense report, but, of course, we are turning  
14 over our entire file which would contain the  
15 material in the file. We would ask the Court not  
16 to grant that per se, but that is our agreement  
17 that will be carried through.

18 THE COURT: I am going to show a  
19 notation on the motion itself that the State has  
20 allowed the Defense to read the entire file.

21 MR. BAX: As to number six, Your Honor,  
22 all the reports pertaining to scientific tests  
23 are not in my file at this time. We do not feel  
24 we have to turn over the results of our chemist's  
25 analysis, but in this case, we have decided we

1 have to do that, and as soon as those are  
2 available to me, which they are not in my report  
3 at this time, I will tender them to Mr. Elizondo.

4 THE COURT: Any objection to showing  
5 all of six granted?

6 MR. BAX: No, Your Honor.

7 MR. ELIZONDO: Judge, can we have a time  
8 limit on that?

9 MR. BAX: Judge, as soon as I get those.  
10 That should be fairly soon. All the witnesses  
11 have been notified that August 30th is the trial  
12 date and they are working on the case right now.  
13 We will be in voir dire examination for probably  
14 at least two weeks, and I am sure well before that  
15 is over, we will be able to tender that  
16 information.

17 THE COURT: If that becomes a problem,  
18 we will take it up at that time.

19 MR. BAX: As to number seven and eight,  
20 the information is in our offense report which will  
21 be tendered. We have no objection to that being  
22 granted.

23 THE COURT: Granted.

24 MR. BAX: Number eight, no objection  
25 to that being granted, and I will state on the

record we have no evidence concerning handwriting  
( analysis performed in this case.

THE COURT: Number nine?

MR. BAX: Judge, I have several  
photographs, no moving pictures or videotapes  
taken at the scene, in connection with this case  
which already have been afforded Mr. Elizondo,  
and at his convenience, we can go to the police  
department and view those.

There is no objection to his viewing  
that.

THE COURT: Ten?

MR. BAX: All objects obtained from the  
Defendant are listed in the offense report, and  
whatever Mr. Elizondo would like to do as far as  
looking at those --

THE COURT: I will show that granted.

MR. BAX: The same as to number eleven.  
No objections to number eleven.

THE COURT: I will show it granted.

MR. BAX: Twelve is the same as number  
ten. Once he sees all the tangible objects of the  
Defendant, that would include all that we would  
intend to offer.

THE COURT: Granted.

1 Thirteen?

2 MR. BAX: I object to having to go out  
3 and get F.B.I. rap sheets on State's witnesses.  
4 We have none in our file at this time.

5 MR. ELIZONDO: All we are asking for --  
6 you don't --

7 MR. BAX: I have none in my file at  
8 this time.

9 THE COURT: Is it my understanding you  
10 would show it to them if you had them?

11 MR. BAX: If I had them, but I don't  
12 feel I am going to get the F.B.I. to send me a  
13 rap sheet.

14 MR. ELIZONDO: Or any other record of  
15 the State's witnesses?

16 MR. BAX: We object to the Court granting  
17 it. If I had that, for courtesy, I would grant  
18 that to him.

19 THE COURT: I am going to show the State  
20 has stated it has none of that information, but  
21 will show it if it becomes available, but will not  
22 show that it is granted.

23 MR. ELIZONDO: The State will show it  
24 if they have it?

25 THE COURT: That is my understanding.

1 MR. BAX: As to number fourteen, Judge,  
2 we have already put in our subpoena list, and  
3 the only objection to that is the telephone  
4 numbers.

5 THE COURT: I will show that granted  
6 with the exception of the telephone numbers.

7 MR. ELIZONDO: Judge, on the telephone  
8 numbers, we would, of course, object in view of  
9 the time element here. If we could have that  
10 granted with the stipulation we won't be calling  
11 these people in the middle of the night, that is  
12 what we would like to have.

13 MR. BAX: All these people live in the  
14 same area within several blocks of one another  
15 I would rather have someone knock on the door and  
16 talk to them rather than --

17 THE COURT: I am not going to require  
18 the State to look up and furnish phone numbers.

19 MR. ELIZONDO: If they have them?

20 THE COURT: If they have them on the  
21 subpoena, fine.

22 MR. ELIZONDO: How about on the offense  
23 report?

24 THE COURT: If it is on the offense  
25 report and you can find it.

1 MR. BAX: We have made an agreement  
2 they can't write them down.

3 THE COURT: I am not going to order  
4 the State to furnish the numbers.

5 Number fifteen?

6 MR. BAX: Judge, all the witnesses that  
7 the State has any information concerning will be  
8 contained in the offense report. I will show  
9 that the same as the other information.

10 As to sixteen, I believe we have  
11 covered that in a prior motion as to extraneous  
12 offenses.

13 THE COURT: Again, seventeen --

14 MR. BAX: Seventeen, Judge, again, he  
15 will see our offense report and I have included  
16 those witnesses on the subpoena list that is now  
17 on file with the court.

18 THE COURT: I will show that granted  
19 except as to the phone numbers.

20 What else?

21 MR. BAX: The only thing else is as to  
22 any of the items specified in number one by Mr.  
23 Elizondo, I don't want to get in a position where  
24 we get here on August 30th and he says, you haven't  
25 taken me to see the videotape, and I want him to



1 make me aware of that.

2 MR. ELIZONDO: I do.

3 MR. BAX: When he wants to do it, I  
4 will make arrangements to have that taken care  
5 of.

6 MR. ELIZONDO: With the Court's  
7 permission, we will be filing other motions. We  
8 will have the Wade-Gilbert Hearing and other  
9 motions at that time.

10 MR. MOEN: What does the Wade-Gilbert  
11 have to do with --

12 MR. ELIZONDO: The lineup.

13 MR. BAX: I don't know if they have  
14 withdrawn it at this time, but there was a Motion  
15 for Continuance.

16 THE COURT: It is my understanding that  
17 the Motion for Continuance will be sort of  
18 carried along to see what the status is.

19 MR. ELIZONDO: For the record, I have  
20 indicated a desire at this time to have the  
21 Defendant tried on or about August 30th, but if  
22 it becomes necessary, we might have to urge our  
23 Motion for Continuance.

24 THE COURT: We will take that up as it  
25 comes up.

Any other motions?

Now, does this dispose of our hearing?

MR. ELIZONDO: Yes.

MR. BAX: Yes.

THE COURT: Thank you, gentlemen.

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