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THE COURT: All right, ladies and gentlemen of the jury, you have heard that the State has rested its case which means the State has presented all the direct evidence that the State intends to.

Now, the Defense will have an opportunity to present any direct evidence that the Defense so desires.

Mr. Reaves, would you like to make an opening statement or do you wish to proceed directly with the presentation of evidence?

MR. REAVES: Your Honor, in light of the fact that we have already opened with Dr. Vale, we will go ahead and proceed with testimony.

THE COURT: All right.

MR. REAVES: We call as our first witness, Martin Gustafson.

DEFENDANT'S DIRECT EVIDENCE

M A R T I N G U S T A F S O N, called as a witness on behalf of the Defendant, having been duly sworn, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. REAVES:

Q Mr. Gustafson, would you state your name?

21
1 A Martin Henry Gustafson.
2 Q Would you spell your last name for the Court Reporter?
3 A That is G-u-s-t-a-f-s-o-n.
4 Q Mr. Gustafson, how are you employed?
5 A I work for the U.S. Army Corps of Engineers.
6 Q Okay, what are your duties with the Corps of Engineers?
7 A I am presently the Reservoir Manager at Somerville
8 Lake.
9 Q Okay, that is near here. Is that correct?
10 A Yes, sir.
11 Q Okay, have you ever been affiliated or in any way
12 with Speegleville Park in McLennan County, Texas?
13 A Yes, sir, I was the Assistant Manager at Lake Waco
14 for seven years and quite familiar with Speegleville
15 Park.
16 Q What were your duties as Assistant Manager?
17 A Duties were to perform duties of the Reservoir
18 Manager when he was absent, carry out all other
19 duties, regulations and so forth, to maintain the
20 Ranger forest that we had at the lake.
21 Q Do your duties as -- with the Corps of Engineers
22 involve any of the parks?
23 A Yes, sir, all the parks.
24 Q Okay, is Speegleville Park maintained by the Corps
25 of Engineers?

2 3

1 A Yes, sir.

2 Q Okay, what are your duties in regard to the Corps

3 of Engineers' parks?

4 A Patrol the parks, to cooperate with the law

5 enforcement contract, park development design,

6 so forth.

7 Q Okay, Mr. Gustafson, are you familiar with -- or I

8 direct your attention back to July 13th, of 1982

9 and July 14th of 1982. Were you called out to

10 Speegleville Park, at that time?

11 A Yes, sir, on the 14th of July.

12 Q Okay, were you made aware of some bodies that had

13 been recovered there on Corps property in

14 Speegleville Park?

15 A Yes, sir.

16 Q Okay, Mr. Gustafson, if I could get you to come up

17 to this exhibit which is State's Exhibit No. 1 and

18 you can use this pointer. Would you locate for the

19 jury where Speegleville Park is on that map?

20 A Speegleville 3 Park is boundaried by Highway 6,

21 this road here, and it encompasses this entire

22 area here.

23 There is a part of it here that is not shown

24 on the map.

25 Q Okay, can you show the jury on that map where the

1 entrance to Speegleville Park is?

2 A The entrance to Speegleville 3 Park is this location,
3 approximately, right off of Highway 6.

4 Q Okay, is there one or more entrances to the park?

5 A There is only one entrance to the park.

6 Q And what kind of entrance is that? If you would,
7 describe that for the jury.

8 A We have a gate attendant site at the gate where the
9 gate attendant has a trailer, and we also have
10 gates that we can lock and be closed by 11:00
11 o'clock at night and opened again at 6:00 o'clock
12 in the morning.

13 Q Is that the procedure that was in effect back in
14 July 13, 1982?

15 A Yes, sir.

16 Q Okay, the gates were locked and closed at 11:00
17 o'clock?

18 A I presume, they were.

19 Q Okay, are there any other entrances to Speegleville
20 Park?

21 A No, sir.

22 Q Okay, Mr. Gustafson, you can go ahead and have a
23 seat.

24 What did you do on July 14th when you were
25 called out to Speegleville Park?

2 5
1 A We went to the scene and talked to the Ranger that
2 was already there, and we waited around the scene
3 until everything had settled down.

4 " Then I made a check of the perimeter of the
5 park, being familiar with the entire park.

6 Q Now, by making a check of the perimeter of the park,
7 what do you mean by that?

8 A Well, I checked all the fence and guard posts and
9 cables.

10 Q Okay, and did you notice anything unusual on that
11 day?

12 A No, sir, not on that day.

13 MR. REAVES: Okay, may I
14 approach the witness, Your Honor?

15 THE COURT: Yes, sir.

16 Q Mr. Gustafson, let me show you what has been marked
17 as Defendant's Exhibit No. 16 and ask if you can
18 identify that?

19 A Yes, sir, I can identify it. It is an area -- a
20 fenced area running parallel to Hog Farm Road which
21 blocks off the old second entrance to the park.

22 Q The old second entrance?

23 A Yes, sir.

24 Q Okay, is that second entrance barricaded in any
25 way?

2 5

1 A Right -- there is a barricade with guard posts,
2 and then also a fence on either side of it.

3 Q Okay, on July the 14th, 1982, when you did your
4 perimeter check of Speegleville Park, did you check
5 that area?

6 A Yes, sir.

7 Q Okay, did you notice anything unusual in that area?

8 A I checked it visually and didn't notice any fence
9 or guard posts being cut.

10 Q Okay, would you come up to this exhibit again and
11 point out to the jury where Defendant's Exhibit 16
12 is -- depicts? What it depicts.

13 A This is Highway 6, and just off of Highway 6 is a
14 road that runs here. It is an old paved road.
15 This portion of the road is paved, and this is
16 graveled down here. This is the area right here
17 (indicating).

18 Q Okay, and would this area indicate -- what area
19 does this indicate here?

20 A This is in -- Speegleville 3 Park used to have two
21 entrances, one here and one here. This we guard
22 posted and cabled it and fenced it down the road
23 and also blocked it over here.

24 Q Okay, so this area, there is a guard post and
25 can't be passed by a car to get back on that paved

1 area?

2 A Well, there is a fence running along this side of

3 the road and then guard posts back on this side.

4 Q Okay, did you at any time after July 14th perform

5 a perimeter check and discover a section of fence

6 down?

7 A Well, I checked it the following morning on the 15th

8 to double-check it, and I did not see any fence

9 being cut or cable being cut.

10 Q Okay, at any time subsequent to July 14th, did you

11 perform a perimeter check and find a portion of

12 fence cut?

13 A There was a portion of the fence cut on the 18th.

14 Q Okay, let me show you what has been marked as

15 Defendant's Exhibit No. 17 and 18 and ask if you

16 can identify that?

17 A That is a fence in the same general area.

18 Q Okay, does that appear to be the fence that you

19 noticed cut on the 17th or 18th of July 1982?

20 A It is possible.

21 Q Okay, you can't determine from those exhibits?

22 A Not from those exhibits.

23 Q Okay, Mr. Gustafson, what kind of area is this back

24 in here?

25 A That is a field that we have got leased on a hay

8
1 lease.

2 Q Okay, the Corps of Engineers has it leased?

3 A Yes, sir.

4 Q Okay, do you know back in July of 1982 whether the
5 hay had been baled or were they baling it?

6 A They were baling it in the park at that time. I
7 don't know whether that specific field had been
8 baled or not.

9 Q Okay, when you noticed a cut in the fence on July
10 the 18th of -- or approximately, July 18 of 1982,
11 did you determine what caused that cut in the fence
12 or break in the fence?

13 A It appeared as if a vehicle had went through the
14 fence.

15 Q Did you do any further investigation?

16 A No, sir.

17 MR. REAVES: Your Honor, we
18 don't have any further questions, at this time.

19 CROSS EXAMINATION

20 QUESTIONS BY MR. FEAZELL:

21 Q Good morning, Mr. Gustafson.

22 A Good morning.

23 Q How are you doing?

24 A Pretty good.

25 Q How are you liking your new location so far as

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employment?

A This is a real nice area down here.

Q Good. Sir, you just mentioned that part of your duties involved all of the Corps of Engineer parks in the Waco, McLennan County area. Is that correct?

A Yes, sir.

Q How many parks is that?

A We have a total of four fee parks and four non-fee parks.

Q So eight parks in all? That is a lot of area, isn't it?

A Yes, sir.

Q Now, you were asked to look at this map and talk about this area right up in here (indicating). I believe, you referred to this section of the road that is blocked off as the old entrance to Speegleville Park, correct?

A That is correct.

Q And do you recall when that was blocked off?

A That was back just before I got there in 1977.

Q In '77. So people who grew up around Waco and who were accustomed to going to Speegleville Park would have known that this used to be one of the entrances, correct?

A Correct.

1 Q As a matter of fact, even today, this road is
2 still relatively well paved except for some of the
3 weeds growing up in it?

4 A Yes, sir.

5 Q It is blocked off with those little short posts
6 right at one end and blocked off with a short post
7 at the other, correct?

8 A Correct.

9 Q And then the fence starts up on this field right
10 here. They don't have the little short telephone
11 posts except right on the road area.

12 A Right, they barricaded it with posts on the road.

13 Q All right, and the old entrance is blocked off on
14 the inside part right about here, correct?

15 A Correct.

16 Q This part of the road is still usable, is it not?

17 A Yes, sir.

18 Q Do you see this dark line that runs almost exactly
19 parallel to the old abandoned entrance?

20 A Yes, sir.

21 Q That is a fire lane, is it not?

22 A Yes, sir.

23 Q It was kept mowed during that time, and it was mowed
24 pretty short, wasn't it?

25 A Yes, sir.

1 Q So it would abut up almost right up on that old
2 abandoned road, and then on the other side of the
3 mowed area would be the taller weeds because it
4 wasn't mowed, right?

5 A That is correct.

6 Q Almost giving it the appearance of being a dirt
7 road, did it not?

8 A It could be interpreted as that.

9 Q Okay, and I believe, a fence runs parallel with the
10 fire lane between the fire lane and the abandoned
11 road, correct?

12 A Correct.

13 Q But it stops right up here, doesn't it, where you
14 see the fire lane stop?

15 A It did at that time, yes.

16 Q All right, so if somebody could get on to this
17 fire lane right here, it would be pretty easy to
18 drive down the fire lane and then back over on to
19 the paved road, would it not, sir?

20 A Yes, it would.

21 Q Okay, I believe that you and I have talked about
22 this area of the park before, haven't we?

23 A Yes, we have.

24 Q And you have stated that in the past and, I imagine,
25 still having problems with people cutting the fence

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1 along that area and getting in, correct?

2 A Yes, sir.

3 Q And you have had some problems in other areas with

4 people cutting the fence.

5 A Yes, sir.

6 Q All right, on July 14th when you got out to

7 Speegleville Park, do you recall about what time it

8 was?

9 A To the best of my recollection, it was sometime

10 between 6:30 and 7:00.

11 Q So getting on later into the evening?

12 A That is correct.

13 Q What time was it that you went out and patrolled

14 around the park?

15 A It was, approximately, an hour or so later, just

16 before dusk. That is when I went back the following

17 day.

18 Q Getting dusk. Then you went back the following day?

19 A Yes, sir.

20 Q Now, you patrolled the perimeter of the park in

21 your automobile, did you not?

22 A Yes, I did.

23 Q Is it possible, sir, that some area of the fence

24 could have been cut and you could have missed it?

25 A Yes, sir.

- 1 Q Okay, as a matter of fact, it is possible that
2 that very area right there could have been cut and
3 missed depending upon how the wire was laying?
- 4 A It is possible.
- 5 Q Now, you told the jury that when you did discover
6 it on the 18th of July that it was right in that
7 area there where it was cut, correct?
- 8 A That is correct.
- 9 Q And I believe, you told the jury it appeared that
10 a vehicle had gone through it.
- 11 A That is correct.
- 12 Q So as a matter of fact, the reason it appeared that
13 way is because there were tire tracks down through
14 there, wasn't it?
- 15 A I believe, there were.
- 16 Q Okay, there weren't any kind of tests done on the
17 wire or anything to determine what snapped or what
18 cut the wire?
- 19 A No, sir.
- 20 Q Okay, just what you remember as the vehicle tracks
21 down through the grass and across the little ditch
22 area?
- 23 A Yes, sir.
- 24 Q All right, were there any posts knocked down?
- 25 A You mean on the 18th?

1 Q Yes, sir.

2 A To the best of my recollection, there may have
3 been. I can't remember.

4 Q Okay, that is all right, but there was enough --
5 it was possible that even more than one vehicle
6 could have gone in and out of there at that time,
7 correct?

8 A That is correct.

9 MR. FEAZELL: We will pass the
10 witness, Your Honor.

11 REDIRECT EXAMINATION

12 QUESTIONS BY MR. REAVES:

13 Q Mr. Gustafson, Mr. Feazell asked you about this
14 area back in here, the fire lane.

15 A That is correct.

16 Q Okay, and asked you if it was possible if a person
17 got back there they could drive on that area, and
18 I believe, you said that was yes?

19 A Yes, they could.

20 Q Is there any way they could have gotten through
21 that area without having gone through the perimeter
22 fence over here?

23 A Not coming from the outside.

24 Q Okay, unless they were already in the park to begin
25 with having come through the main gate?

1 A That is correct.

2 Q All right, Mr. Feazell also asked you if it was
3 possible that that fence was cut in that area as
4 shown on Defendant's Exhibit No. 16, I believe,
5 and also, asked if it was possible if this area,
6 the fence was cut on July 14th when you performed
7 your perimeter check.

8 A That is correct.

9 Q Okay, and you said it was possible?

10 A Yes, sir.

11 Q Is it probable that you missed that?

12 A Not probable, but it is possible.

13 Q What are the statistical chances of --

14 MR. FEAZELL: Oh, now, Judge,
15 I am going to object to that. He is asking him to
16 speculate on statistical chances.

17 THE COURT: That's up to him.

18 If he can answer the question in a statistical
19 fashion, so answer it. If you can't so state.

20 A I can't put a number to it. It would be -- you
21 know, in my opinion, I checked it visually twice.
22 I didn't see anything. So it would be almost
23 impossible to miss it, but it is possible it could
24 have been.

25 Q In your opinion, that is almost impossible that

1 you could have missed it that day on the 14th?

2 A Yes.

3 Q Or the 15th?

4 A That is correct.

5 MR. REAVES: No further questions,
6 Your Honor.

7 RE CROSS EXAMINATION

8 QUESTIONS BY MR. FEAZELL:

9 Q Now, sir, it wasn't uncommon, though, you have
10 already testified for people to get in that way,
11 correct?

12 A That is correct.

13 Q There were quite a few other ways that people would
14 sneak into the park after hours.

15 A They have been known to go through the cable and
16 the fence several times during the month.

17 Q As much as several times during the month?

18 A It has been as high as six.

19 Q And in another way, sometimes they would get in is
20 even through the gate after hours because when
21 Mr. Reaves asked you awhile ago, "Was the gate
22 locked" and you said, "I presume it was."

23 A The gate attendants are required to lock it, but
24 I wasn't there. So I can't verify that it was
25 locked.

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1 Q Right.

2 A And to the --

3 MR. REAVES: Judge, I'll object
4 to that question. Mr. Melendez didn't say they
5 went through the gate. It doesn't make any
6 difference whether or not it is possible they
7 could have gone through it.

8 MR. FEAZELL: He asked him the
9 question, Judge.

10 THE COURT: All right, go to
11 another area.

12 Q I will show you what has been marked as State's
13 Exhibit 11. This is an aerial photograph of the
14 area, is it not, where the fence was cut, the general
15 area? I draw your attention to the abandoned road
16 and to the fire lane along the side of it.

17 A Right, that is correct.

18 Q Okay, and sir, along the rest of the fence there --
19 and I am showing you Defendant's Exhibit 16 -- it
20 is pretty weedy, isn't it?

21 A Yes, it is weedy along that fence.

22 Q Weeds grow up in there quite a bit except right
23 there at the fire lane?

24 A That is correct.

25 Q And with the weeds in the culvert and other

8
1 conditions that existed at the time, you are telling
2 this jury that it is possible that you could have
3 missed the cut fence?

4 A It is possible.

5 MR. FEAZELL: All right, I
6 think, that is all, Judge.

7 REDIRECT EXAMINATION

8 QUESTIONS BY MR. REAVES:

9 Q One last question, Mr. Gustafson. When you went
10 through the area on July 18th and noticed the cut
11 in the fence, did you have any problems recognizing
12 it, at that time?

13 A No, sir.

14 MR. REAVES: No further questions.

15 MR. FEAZELL: I think, that is
16 all, Judge.

17 THE COURT: All right, may he
18 be excused, gentlemen?

19 MR. FEAZELL: Yes, Your Honor.

20 THE COURT: Defense, any
21 objection to him being excused?

22 MR. VANCE: No, sir.

23 THE COURT: All right, fine.
24 Thank you, sir.

25 (Witness excused.)