In the Matter of Juan Moreno

Investigation Relating to
The State of Texas v. Ruben Cantu,
Cause No. 85-CR-1303

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TIMELINE

NOVEMBER 8, 1984—Pedro Gomez, 25, is fatally shot and Juan Moreno, 19, is wounded a burglary and robbery at 605 Briggs Street, San Antonio, Texas. Juan Moreno tells an officer at the scene that two Latin males that lived next door had shot him.

NOVEMBER 10, 1984—Ruben Cantu confesses his involvement in the Briggs Street capital murder to Ramiro Reyes.

NOVEMBER 14, 1984—Detectives Herring and Rivas visit Juan Moreno at the hospital. Juan Moreno, who barely survived, describes his assailants as being Latin males, one 13-14 years old and the other 19. He tells Detective Herring through Detective Rivas, a Spanish speaker, that he has seen the 13-14 year old around the neighborhood but doesn't know his name. He is shown 7 different photo lineups that do not contain a photograph of either Ruben Cantu or David Garza. He does not identify anyone out of these lineups.

NOVEMBER 23, 1984—Detective Herring obtains information from a patrol officer that Ruben Cantu and David Garza were involved in the Briggs Street capital murder.

DECEMBER 1, 1984—Detective Herring receives information from a teacher at South San High School naming Ruben Cantu, David Garza and Ramiro Reyes as being involved in the Briggs Street capital murder.

DECEMBER 13, 1984—Ramiro Reyes is brought to the San Antonio Police Department main station and denies knowing about the murder. He relents and tells police Ruben Cantu had told him that he, Cantu, had committed the murder on Briggs Street. He refused to give a written statement out of fear of retaliation.

DECEMBER 16, 1984—Juan Moreno views a photo lineup that includes Ruben Cantu's picture. Juan Moreno does not identify Ruben Cantu. Detectives Herring and Garza notice Juan Moreno would not even look at Ruben Cantu's picture and can see Juan Moreno is scared and will not identify the actor. Detective Herring ceases work on this case when he is transferred to the Burglary Division.

MARCH 1, 1985— Ruben Cantu shoots Officer Joe De La Luz in a bar. Witnesses at the bar identify Ruben Cantu as the shooter. Ruben Cantu is arrested for this shooting.

MARCH 2, 1985—Detective Balleza, a Spanish speaker, is sent to interview Juan Moreno and shows him a photo lineup with Ruben Cantu's picture. Detective Balleza later testifies Juan Moreno appeared visibly shaken when shown the photograph. Still, Juan Moreno does not identify Ruben Cantu. Detective Balleza's opinion is that Moreno was fearful of Ruben Cantu.

MARCH 3, 1985—Detective Quintanilla and Sergeant Ewell go to the hospital to show Officer De La Luz a photo lineup. De La Luz identifies Ruben Cantu from the photo lineup as the individual who shot him.

Detective Quintanilla, a Spanish speaker, is sent to interview Juan Moreno. After being brought back to the police station with his brother, Eusebio, Juan Moreno identifies Ruben Cantu as the person who shot him and Pedro Gomez. Juan Moreno gives a written statement to police.

Eusebio Moreno gives a written statement to the police stating that Juan Moreno was afraid to identify the shooter.

MARCH 4, 1985—Ramiro Reyes gives a written statement to police detailing what Ruben Cantu told him about the Briggs Street capital murder.

MARCH 5, 1985—Juan Moreno is shown a photo lineup containing a photograph of David Garza. Juan Moreno picks David Garza, a juvenile, out of the photo lineup and identifies him as the accomplice in the Briggs Street capital murder. Juan Moreno gives a second written statement to police.

APRIL 4, 1985—Juan and Eusebio Moreno talk to District Attorney Investigator Kenneth Thuleen. Juan Moreno details Ruben Cantu's involvement as the shooter and David Garza's involvement as the person who stole Pedro Gomez's wallet. Juan Moreno tells Thuleen that he had seen Ruben Cantu walk by the house (605 Briggs Street).

APRIL 15, 1985—Ramiro Reyes meets with Investigator Thuleen and tells Thuleen everything that Ruben Cantu told him about Cantu's involvement in the capital murder.

APRIL 16, 1985—Ramiro Reyes recants to Investigator Thuleen telling him that everything he told him the day before was a lie. At Thuleen's request, Reyes agrees to go to SAPD to take a polygraph examination. The results show that Reyes was not present at the time of the offense and that he was being deceptive about not knowing who had done the shooting.

MAY 8, 1985—Ruben Cantu is indicted for the capital murder of Pedro Gomez.

MAY 31, 1985—Hearing on the motion to suppress the identification of Ruben Cantu begins.

JUNE 14, 1985—Juan Moreno testifies in David Garza's examining trial and identifies David Garza as a co-actor and names Ruben Cantu as the shooter.

JULY 8, 1985—Ramiro Reyes testifies at Ruben Cantu's identification suppression hearing.

JULY 9, 1985—Juan Moreno testifies at the hearing to suppress the identification of Ruben Cantu and identifies Ruben Cantu as the shooter**.**

JULY 21, 1985—While driving home, Ramiro Reyes is shot at 3 times from an unknown individual inside a truck that Reyes recognizes as belonging to Robert Cantu, Ruben Cantu's older brother.

JULY 22-24, 1985—Ruben Cantu's capital murder case is tried. Juan Moreno testifies in front of the jury and identifies Ruben Cantu as the shooter.

JULY 25, 1985—Ruben Cantu is convicted of the capital murder of Pedro Gomez.

JULY 30, 1985—Jury returns the punishment verdict.

The case against Ruben Cantu, in cause number 85-CR-1304, the attempted murder of Joe De La Luz, is dismissed. The explanation written on the dismissal by Assistant District Attorney Bruce Baxter is that the defendant was convicted of capital murder in 85-CR-1303 and the facts of the De La Luz case were considered in the assessment of punishment in the capital case.

AUGUST 1, 1985—Judge Barrera sentences Ruben Cantu to death.

AUGUST 23, 1985—David Garza pleads guilty to the lesser offense of robbery and is sentenced to 20 years in TDC.

AUGUST 24, 1993—Ruben Cantu is executed.

MEMORANDUM

TO: **HON. SUSAN D. REED, BEXAR COUNTY CRIMINAL DISTRICT ATTORNEY**

DATE: **JUNE 26, 2007**

RE: **IN THE MATTER OF JUAN MORENO: INVESTIGATION RELATING TO *THE STATE OF TEXAS V. RUBEN CANTU*, CAUSE NO. 85-CR-1303**

I. EXECUTIVE SUMMARY

A. HISTORY

On November 8, 1984, Pedro Gomez and Juan Moreno were sleeping in a home under construction at 605 Briggs Street, San Antonio, Texas. Two men burglarized the residence for the purpose of robbing the occupants. One of burglars shot Pedro Gomez eight times and shot Juan Moreno nine times. Pedro Gomez died at the scene and Juan Moreno survived.

Over the course of several weeks, Ruben Cantu and David Garza emerged as suspects. Ruben Cantu lived at 612 Briggs Street, which was across the street from the house where the shooting took place. There was information from school officials that Cantu and Garza had been talking about their involvement in the murder and shooting. Ruben Cantu even confessed his involvement to a friend, Ramiro Reyes. The surviving eyewitness, Juan Moreno, identified Ruben Cantu as the shooter and David Garza as his accomplice in the photographic lineups.

Ultimately both Cantu and Garza were indicted by a Bexar County Grand Jury. Ruben Cantu, through his attorney Roland Garcia, and the State of Texas, through Assistant District Attorney Ray Fuchs, reached an agreement that Cantu would plead guilty in exchange for the recommendation of a life sentence for murder. The trial judge

rejected the plea agreement because it did not contain a finding of a deadly weapon, which would have affected Cantu's parole time eligibility. Consequently a jury was empanelled and evidence was presented to the jury.

Initially, the prosecution planned to have both Ramiro Reyes and Juan Moreno testify at the trial. But Reyes and members of his family were threatened and intimidated by Cantu and his family members for cooperating with the investigation and prosecution. Fearing for Reyes' safety, and given the strength of Moreno's identification of Cantu, the decision was made that Reyes would not to testify.

The jury found Ruben Cantu guilty of capital murder, after considering and rejecting his alibi defense. Cantu was executed in August of 1993 for the capital murder of Pedro Gomez.

His juvenile codefendant, David Garza, who was certified to stand trial as an adult, pled guilty on August 21, 1985, to the offense of robbery arising out of the same incident and was sentenced to twenty years imprisonment.

Twenty years after the trial and twelve years after the execution, the Houston Chronicle, utilizing an investigation done by the NAACP Legal Defense & Educational Fund, headlined and front-paged stories by Lise Olsen suggesting that Cantu was innocent. According to the articles, the sole witness to identify Cantu before the jury, Juan Moreno, had lied. The stories were reprinted and expanded by the San Antonio Express-News.

The interests of justice required the Olsen stories be analyzed and an investigation was conducted to determine if sufficient evidence existed to justify pursuing an

indictment under Texas laws of Moreno for murder by perjury[1] and if another individual, Ramiro Reyes, who David Garza now claims was with him on the night of the offense, should be charged with the capital murder of Pedro Gomez.

B. SCOPE & METHODOLOGY

An exhaustive investigation was conducted utilizing the skills and experience of seven senior level Assistant District Attorneys, eight sworn peace officer investigators, and the Texas Rangers, as well as obtaining evidence from thirty-five Texas government agencies or private entities. More than fifty witnesses were interviewed and sworn written statements were taken. All available documents and records were retrieved and reviewed. These include trial and appellate records, police reports, prison records, news accounts, defense records, NAACP Legal Defense & Educational Fund investigation records, and current records of various witnesses, such as the telephone and prison records of David Garza.

Among those interviewed were Juan Moreno, the original police officers who investigated the crime, prosecuting and defense attorneys, trial witnesses, the trial judge, the jury foreperson, the defense appellate attorney, neighbors of Ruben Cantu from Briggs Street where the offense occurred, school teachers of both David Garza and Ruben Cantu, a prison official, and known associates of Ruben Cantu. Cantu's family members, including his father, brothers, and sister, were interviewed. Also interviewed were

[1] Both California and Idaho make it a capital offense to commit perjury in the trial of a capital case if that testimony results in the execution of the defendant. *See* CAL. PEN. CODE § 128 (2007) ("Every person who, by willful perjury or subornation of perjury procures the conviction and execution of any innocent person, is punishable by death or life imprisonment without possibility of parole."); ID. CODE (2007) § 18-5411 ("Perjury resulting in execution of innocent person, is punishable by death."). While it does not appear that convictions under either statute are common, the laws have been in effect for decades. In fact, the California statute goes back to at least 1872 and the Idaho statute to 1864. Although Texas does not specifically create a criminal offense for perjurious testimony that leads to an execution, the thought that a person would intentionally misidentify a person in a capital murder trial and sit silent for two decades, permitting an innocent person to be executed, is intolerable and could form the basis of a murder charge.

witnesses associated with a related criminal case in which Ruben Cantu was accused of shooting an off duty police officer. Known associates of Juan Moreno, including his girlfriend at the time of the offense and trial, whom he later married, were interviewed as well. Finally, the lead NAACP Legal Defense & Educational Fund investigator, Richard Reyna, was interviewed.

C. INVESTIGATION FINDINGS

Based on the review of all of the available evidence, the investigation has determined that Ruben Cantu made several admissions of his guilt, including confessions to Ramiro Reyes, Thomas Cooremans, and his statements to officials with the Texas Department of Corrections during an admission interview. These admissions are highly probative and usually provide the best evidence of guilt.

Juan Moreno's initial identification of Ruben Cantu and subsequent testimony during Cantu's trial were consistent. Those who witnessed his trial testimony, including the defense attorneys, the trial judge, and David Garza's sister all concluded that Moreno's testimony was credible. The issue of whether Moreno's identification of Cantu was tainted by the procedure utilized by the police in obtaining the identification was thoroughly litigated at trial and in subsequent appeals, and no court concluded that the identification was unreliable.

In contrast, Moreno's current statements about the night of the shooting are vague and inconsistent. He is now unable to provide any significant detail and cannot positively identify the shooter, claiming all he is certain about is that one of the two individuals involved had curly hair *(pelo chino)* and he is not sure about Cantu's hair. Not only are Moreno's current claims contradicted by his statements before and during the trial, they

directly contradict what he told representatives of the NAACP Legal Defense & Educational Fund when they began their investigation.

The techniques employed by the investigator for the NAACP Legal Defense & Educational Fund, Richard Reyna, to obtain Moreno's current statements were improper and highly suggestive. Rather than question Moreno about what he knew, Reyna provided false information that he contended was true, and did not take Moreno's initial statements that he was certain about his identification of Cantu as true. Additionally, the manner in which the changes to Moreno's story developed strongly suggests that he was influenced by misinformation provided by Reyna. Furthermore, Reyna made direct payments to Moreno and his wife and provided the family with other benefits.

David Garza's post execution claims of Ruben Cantu's innocence likewise are not credible. Not only has he been inconsistent in his stories from the start, his silence in the years before and after Cantu's execution completely undermine his current claim. And like Moreno, Garza has benefited financially from his assistance with the NAACP Legal Defense & Educational Fund's investigation.

The alleged alibi for Ruben Cantu on the night of the capital murder was presented to and rejected by the jurors who decided Cantu's guilt. The additional witnesses now coming forward provide inconsistent versions of the alibi and offer nothing concrete to support the claim or undermine the verdict. In addition, no evidence has been discovered to validate the claims. Evidence from the time of the offense and statements from Cantu's own family members establish that Cantu was not, as claimed, in Waco, Texas on the night of the Briggs Street shooting.

There is no credible evidence that law enforcement officials acted improperly during their investigation of the Briggs Street shooting. Both Ruben Cantu and David Garza were developed as suspects early in the investigation. Juan Moreno does not actually claim that he was pressured to falsely identify Ruben Cantu and there is no other evidence suggesting that he was. The claims of improper methods are completely speculative and are directly contradicted by the official records and current statements of those involved.

D. CONCLUSION

Based on the available evidence, which has been compromised to some degree by the passage of nearly two decades since the offense, this investigation concludes that Ruben Cantu was guilty of the capital murder of Pedro Gomez and the intentional shooting of Juan Moreno. The claims of Cantu's innocence, made more than 12 years after his execution, do not withstand the scrutiny of close review and analysis, and lack any credible supporting witnesses or verifiable facts.

On the contrary, when the claims supporting Cantu's asserted alibi that were capable of verification were investigated, the evidence negated or fatally undermined Cantu's alibi. Inextricably coupled with the lack of supporting evidence is the admitted bias of those asserting Cantu's innocence and the absence of credibility of Cantu's friends and associates who have told various contradictory versions of the story through the years depending on which version benefited them the most at the time.

Finally, and most convincingly, Ruben Cantu's admissions of guilt both before and after his trial and conviction put to rest any reasonable doubt concerning the police

investigation and tactics used, the skills and strategy of the prosecution and defense attorneys, and the verdict of guilty rendered by an impartial jury.

II. ANALYSIS

What follows is a detailed discussion of the evidence that was discovered and evaluated pursuant to this investigation. The remainder of the memorandum is divided into three general sections and a final conclusion. The first section discusses Ruben Cantu and details his own statements admitting his culpability. It also offers an explanation for why Cantu would admit his guilt.

The next section focuses on Juan Moreno and his statements concerning his identification of Cantu. Moreno's early statements to the police and his pretrial and trial testimony are detailed and compared to current claims. The section also details the NAACP Legal Defense & Educational Fund's investigation as it relates to Moreno and evaluates the methods and techniques employed that resulted in Moreno's recantation.

In the final section, the claims of Cantu's innocence, including his alibi, the NAACP Legal Defense & Educational Fund and the newspaper's allegations of police misconduct, and the statements of David Garza are thoroughly examined. The section also details the statements of all of the alleged alibi witnesses and the NAACP Legal Defense & Educational Fund's attempts to corroborate them. Likewise, the allegations of police misconduct were fully investigated.

III. RUBEN CANTU—ADMISSIONS OF GUILT

A. INTRODUCTION

Obviously critical to this investigation are any statements that Ruben Cantu might have made about his involvement in the Briggs Street murder and shooting. Unlike his

codefendant, David Garza, Ruben Cantu cannot say anything now that would undermine claims that he is innocent. But this does not necessarily mean that everything Cantu has said about the shooting is consistent. The story, as presented in the pages of the Houston Chronicle, focuses on Cantu's post conviction and pre-execution public protestations of innocence.

The article mentions a letter[2] that Cantu sent to the people of San Antonio in which he professes his innocence. While dramatic, the letter is certainly not sufficient evidence that Cantu was innocent. Focusing on Cantu's public assertions of innocence certainly makes it easier to argue that he was innocent, but it is fairly common for convicted criminals to publicly proclaim their innocence. More telling than these public statements, are the things that they tell their friends, families, and attorneys. A careful examination of these statements, presents a picture of a man who was anything but innocent.

B. THE PLEA BARGAIN

Weighing against the current claims of innocence are the things that occurred behind the scenes between the defense and the prosecution. During the trial, Cantu's lawyer, Roland Garcia, approached the Chief of the Felony Section, Raymond Fuchs, and asked if the prosecution would offer Cantu a plea agreement.[3] Fuchs offered a life

[2] This was not the only letter asserting innocence. A typewritten letter purportedly from Ruben Cantu to the Texas Board of Pardons and Paroles contains claims of innocence. Letter, September 14, 1987. A week later, Cantu sends his attorney, Andrew Carruthers, a handwritten letter in which he explains that the earlier letter "was made by a friend" and that he "did not know what was said [in the letter] until he got the copy". Letter from Ruben Cantu, September 21, 1987. He specifically disavows the earlier letter's criticism of his lawyer and reaffirms his confidence in his attorney's abilities. *Id*.

[3] Sworn Statement of Raymond E. Fuchs, December 6, 2005 (attached as appendix A); Sworn Statement of Roland Garcia, August 23, 2006 (attached as appendix B).

sentence with no affirmative finding.[4] Garcia relayed the proposed agreement to his client, and Cantu accepted it.[5] Roy Barrera, Jr., the presiding judge, however, rejected the agreement.[6] It is worth noting that while Cantu never admitted his involvement in the capital murder, he never denied it to his lawyer.[7]

C. Admission to Ramiro Reyes

In the days immediately after the murder, Ruben Cantu spoke openly about the killing and his involvement in it. According to Ramiro Reyes,[8] a childhood friend of Cantu's, Cantu admitted that he was responsible for shooting both men on Briggs Street.[9] Although Reyes was deathly afraid of giving a written statement to the police, he told them what he knew about the murder.[10] Detective Herring noted in his December 13, 1984, meeting with Reyes in a report written at the time:

> Ramiro stated he would not give a statement on paper and sign it because he was afraid of his (sic) being killed by the subjects [Cantu and Garza]. He stated that Ruben had told him that he had gone over on Briggs to rob these guys. He told Ramiro that it was him (sic) that had the gun and that when he broke in the guy on briggs street went for a gun but he shot both of the men before they could do anything. Ramiro stated he had nothing to do with this and never went with Ruben on this deal and he had only known about it because Ruben had told him about it.[11]

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[4] *Id*. It should also be noted that the affirmative finding would impact the length of the sentence that had to be served before Cantu would have been eligible for parole.
[5] *Id*.
[6] *Id*.
[7] Sworn Statement of Roland Garcia, August 23, 2006 (attached as appendix B).
[8] Ramiro Reyes is the person Cantu's codefendant, David Garza, now contends was the other person involved in the capital murder of Pedro Gomez.
[9] Sworn Statement of Ramiro Reyes, March 4, 1985 (attached as appendix C).
[10] Supplementary Report of Det. Herring, December 14, 1984.
[11] *Id*; *see also* Sworn Statement of James Herring, January 31, 2006.

It was not until after Ruben Cantu was in custody, in March of 1985, that Reyes finally gave a sworn written statement to the police. In this statement, he not only detailed what Cantu told him about the murder, but he also identified David Garza and explained why he had up until that point refused to give a written statement. According to Reyes:

> I want to say that in November of 1984, I went to the house of Ruben Cantu. Ruben lives in a trailer on Briggs St. with his father. I have known Ruben for about five years. On this day Ruben and I were talking and he asked me if I had heard what had happened the night before in front of his house. I told him I had heard someone had been shot there, but that is all I knew. He told me it was him that had got into the house and shot two guys there. He said that he and a guy by the name of David had gotten into the house because they wanted to steal something. Ruben then said one of the guys went for a gun, and that is when Ruben started shooting. As we were talking Ruben made a motion with his hands as if [he] was holding a rifle. He also told me he had used a .22. The other guy, David is a short guy. He lives on La Violeta. He is a juvenile.
>
> Two Detectives from the Police Dept. took me to the Homicide Office after this had happened. It was still some time in November. I told them what I just told you, Det. Quintanilla, but I asked them not to put it on a statement form, because I was afraid of Ruben Cantu. He has a lot of contacts and they could also harm me.[12]

Reyes repeated what he knew about Cantu's involvement to an investigator from the District Attorney's Office in April of 1985.[13] He and his mother, who was present at the time, explained that he was in "fear for his life."[14] In a memo to the file, the investigator detailed what Cantu said about the murder to Reyes.

> Ramiro said he was over drinking some beer and smoking some weed on Saturday, November 10, after the shooting.

[12] Sworn Statement of Ramiro Reyes, March 4, 1985 (attached as appendix C).
[13] Memo of K. E. Thuleen, April 15, 1985.
[14] *Id*.

> Ramiro said out of the clear Ruben started telling him how he went over to break into the house across the street to steal something. He said Ruben said that he had to shoot them. Ramiro said he felt that Ruben didn't know anyone was there.[15]

Despite this admission from Cantu, even Reyes was initially doubtful that Cantu was being truthful. He told Cantu that he did not believe him and Cantu responded, "I did it, I really shot them."[16]

Reyes also testified under oath at a pretrial suppression hearing and questioned by Cantu's trial lawyer.[17] During this hearing, Reyes testified, with both Ruben and Robert Cantu present, that Ruben told him that he did the shooting and that is what Reyes told the police.[18] Reyes did this in open court even though he was afraid and had been told by his brother, Eugene, that Robert Cantu would kill him if he testified.[19]

When recently contacted, Reyes reaffirmed that Cantu confessed his involvement in the murder of Gomez and shooting of Moreno.[20] He also noted that Cantu had threatened to kill him if he ever told anyone.[21] Even more than twenty years after he first spoke to the police, Reyes has not changed his story. In addition, Reyes was given a polygraph examination in 1985 and the results indicate that he was being truthful when he said he was not involved in the shooting.[22]

D. Admission to Thomas Cooremans

Reyes was not the only one with whom Cantu talked about the murder. Following the front-page article written in the San Antonio Express-News and its

[15] *Id*.
[16] *Id*.
[17] Ct. R. vol. I of X, at 151-77.
[18] *Id*. at 165 & 169.
[19] *Id*. at 159 & 176.
[20] Sworn Statement of Ramiro Reyes, December 9, 2005.
[21] *Id*.
[22] Memo of K. E. Thuleen, April 17, 1985.

coverage, the Bexar County Criminal District Attorney's Office received a letter in August of 2006 from Thomas Cooremans. The letter contained information, which was not known to the general public nor contained in the newspaper articles. Cooremans was from the same neighborhood and has known the Cantu brothers since the early 1980s.[23] Cooremans said he has never had any problems with Ruben Cantu.[24] According to Cooremans, Cantu confessed the crime to him in 1985.[25]

Cooremans was in the old Bexar County jail in 1985 and ran into Ruben Cantu, who was a trustee in the jail at the time awaiting trial on his capital murder charge.[26] In addition to talking to Cooremans about the charges related to the De La Luz shooting, Cantu also told him about the capital murder of Pedro Gomez.

> Ruben explained he'd been charged with the capital murder of a wetback on Briggs Street. He said he had stolen two trucks from the same house on Briggs Street and had gone back for a third truck. He said he'd gone in the house and saw a rifle, a 22, and had picked it up. Ruben said the rifle was propped up against a wall next to two sleeping bags. He said he saw two wetbacks in the sleeping bags. He told me he picked up the rifle and cocked it. One of the wetbacks heard the noise and reached for something he, the wetback, had under his sleeping bag. Ruben said he assumed it was a gun and said, "I shot that guy. Motherfucker". The noise woke up the other guy who had been asleep. Ruben said he shot this guy too. He told me he did not know which one he'd killed. He didn't say whether he was alone or with another person. Ruben said that he took the 22 rifle and the gun the wetback had. I thought to myself Ruben was very young to be doing stuff like that. I guess he wanted to be like his brothers.[27]

[23] Sworn Statement of Thomas L. Cooremans, August 23, 2006.
[24] *Id*.
[25] *Id*.
[26] *Id*.
[27] *Id*.

At the time he gave his statement, Cooremans was in the Bexar County Jail, awaiting trial for DWI 3rd. Cooremans was not promised anything in return for his statement.[28] His stated reason for coming forward with this information now is that he believes that "the case, like Ruben should be put to rest."[29] As he states, "I think Ruben should be allowed to rest in peace for his sake and that of his family."[30]

E. Admission to Prison Officials

Interestingly, during his admission interview with officials of the Texas Department of Corrections after his capital murder conviction, Cantu did not deny his involvement, but rather implicated himself in the capital murder. During this interview, Cantu talked about Garza, his codefendant, and explained that they had been and still were friends.[31] He described the victim, Pedro Gomez, and described the weapon used as a .22 caliber rifle.[32] More importantly, however, when asked to explain the rationale for the offense, Cantu said, "it was a robbery."[33] As is evident from Garza's prison admission interview form,[34] inmates are not required to give information about the underlying offense. Cantu did not have to explain the crime, he could have said, "I wasn't there", but he did give details and in doing so added one more piece of evidence undercutting any claims that he was innocent.

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[28] *Id*.
[29] *Id*.
[30] *Id*.
[31] TDC Inmate Consolidated Record Form (attached as appendix D).
[32] *Id*.
[33] *Id*.
[34] Garza refused to give any information about the offense.

F. OTHER EVIDENCE OF GUILT

Although family members of Cantu, like his brothers Larry and Robert, assert that Ruben denied his involvement to them,[35] these same members say he also told them that he did not know who did it.[36] These self-serving denials contrast dramatically with Cantu's other actions and statements. For example, there was a card Cantu sent to David Garza's mother while he was in prison for the capital murder. While the card itself no longer exists, Garza's sister, Nora Alejandro, summarized its contents for Richard Reyna, the NAACP Legal Defense & Educational Fund's investigator, during his investigation. According to Nora, Cantu apologized for getting David in trouble.[37] There would be no need to apologize, if Cantu had not been directly involved.

G. REASON FOR THE ADMISSIONS

It may be difficult for some to understand why a person would admit his involvement in a capital murder. To understand why Cantu would do this, you have to understand the kind of person Cantu was and the world he lived in. One of his teachers, Robert Sidle, who had known him since he was in elementary school and knew his brothers, said that Ruben came from a dysfunctional home.[38]

The vice-principal of his high school, Richard Calhoun, recalled that Cantu was a problem and had been disciplined for fighting.[39] According to Calhoun, "Ruben always

[35] While Robert Cantu claims that Ruben denied his involvement, he told a different story when he talked about Ruben's involvement in the capital murder and Ruben's death sentence with one of his prison mates. According to the source, "Robert said that Ruben took his father's gun [a] .22 rifle from the house and Ruben and a friend went to a house and did a burglary, they shot a guy and killed another guy." Sworn Statement of a Confidential Informant, August 31, 2006.
[36] Sworn Statement of Larry Cantu, August 24, 2006.
[37] Sworn Statement of Nora Garza Alejandro, August 22, 2006.
[38] Interview with Robert Sidle, August 17, 2006.
[39] Sworn Statement of Richard Calhoun, August 10, 2006.

felt that he had an image to maintain as he was a member of a neighborhood gang called the Grey Eagles."[40]

Eloy Gonzales, one of Cantu's friends and alleged witness to his alibi, similarly describes him. According to Gonzales, Cantu "was small and skinny, but he didn't take any shit from anybody."[41] He was a "wild kid."[42] Ruben was known to carry a 9mm or .25 automatic weapons and "liked to brag about the people that he shot". [43] He would "pull his gun" on anyone who disagreed with him and would not "hesitate to shoot someone at the drop of a hat."[44] Additionally, Ramiro Reyes said that when Cantu became intoxicated, whether from alcohol or other drugs, "he became overbearing and pushy."[45]

Cantu worked hard to cultivate his reputation and it was clear that people were afraid of him. Based on his actions, Cantu must have believed that no one would ever turn him in for the crime. Sandra Lopez, who lived in the neighborhood, had heard about Cantu breaking into other homes on Briggs Street.[46] According to Lopez:

> I had already heard about the Cantu's (sic) breaking into the other homes over on Briggs. Actually, the owner of the house where the murder occurred had come over to my dad's house before the murder and was complaining about the Cantu's (sic) breaking into his house. He complained to my dad that he could not get the house finished, because they would take all the materials. He told my dad that no one in the neighborhood would turn the Cantu's (sic) in, because everyone was scared to death.[47]

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[40] *Id*.
[41] Sworn Statement of Eloy Hernandez Gonzalez, March 29, 2006.
[42] *Id*.
[43] Richard Reyna Interview with Eloy Gonzales, detailed in April 30, 2004 letter to Ruth Friedman. Ruth Friedman is an attorney working with the NAACP LDF and Richard Reyna. Reyna documents much of his investigation in letters sent to Ms. Friedman.
[44] *Id*.
[45] Memo of K. E. Thuleen, April 15, 1985.
[46] Sworn Statement of Sandra Lopez, August 2, 2006.
[47] *Id*.

In addition, Cantu had already been charged and tried for attempted murder in March of 1984. Although the victim had given a sworn statement to police detailing Cantu's crime, at trial he recanted and Cantu was acquitted.[48] Cantu was also implicated in other homicides, shootings, and assaults, but witnesses would not identify him because they were scared.[49] It is hard to imagine how this would not have emboldened him. Given the uniformity of Cantu's private statements and actions around those whom he knew and trusted, it is clear that this is strong evidence of Cantu's guilt. This evidence is completely independent of Juan Moreno's identification of Cantu.

IV. JUAN MORENO—THE EYEWITNESS

A. INTRODUCTION

Attorneys for Juan Moreno set up a press conference on November 30, 2005, at their office, to showcase their client's alleged recantation. This occurred immediately after an orchestrated and emotionally charged meeting with Ruben Cantu's mother. In this press conference, Moreno, who only spoke in Spanish, contends that Ruben Cantu was not the person who shot him and murdered Pedro Gomez. Moreno further asserts that he had always told the police that the man who shot him and Gomez had curly hair (*pelo chino*) and that he does not think he was ever shown a photograph with a man with curly hair (*pelo chino*). When asked by a reporter why he identified Cantu during the trial, his response was that it was "because he could have been pressured."[50] Moreno also contends that he is not in favor of the death penalty.

[48] Cause No. 83-JUV-0841.
[49] Ct. R. vol. X of X, at 2813-14.
[50] He also described feeling pressure during the press conference.

Available on-line at the NAACP Legal Defense & Educational Fund[51] website[52] is a videotaped interview that their investigator, Richard Reyna, conducted with Juan Moreno on February 13, 2005. During this interview, Moreno asserts that an innocent man was executed. Moreno claims that he told police investigators from the very beginning that the person that shot him and Pedro Gomez in November of 1984 had curly hair (*pelo chino*). He also says that this person was never in the photographs shown to him by the police. He claims that he was never scared during the interviews with the police. Further, he asserts that he does not remember whether his statement was ever read to him before he signed it.

The claims that Moreno made during the press conference and during the Reyna interview are dramatic, but the method in which they were given does little to place the statements in context or to provide any information that would allow them to be corroborated. The claims also do nothing to explain his original identification of Cantu to the police, his numerous in court identifications, nor his twenty years of silence before and after Cantu's execution.

These sessions do not reveal that in his initial contacts with representatives of the NAACP LDF, including Richard Reyna, he maintained that Cantu was the man who shot him. Nor is it revealed that both Moreno and his wife received direct monetary payments and other compensation from the NAACP LDF. In order to fairly examine and evaluate Moreno's current claims, they must be placed in context and compared to what he initially did and said about the crime. In addition, the current recantation must be evaluated and the mechanism through which it was first made must be examined.

[51] Hereinafter "NAACP LDF."
[52] www.naacpldf.org.

B. MORENO'S STATEMENTS TO THE POLICE

THE NIGHT OF THE MURDER— NOVEMBER 8, 1984

Such an examination logically begins with his very first statements to the police the night of the shooting. One of the first officers to arrive on the scene the night of the shooting, November 8, 1984, was San Antonio Police Officer, Richard Sanchez.[53] He arrived at approximately 11:48 p.m. and found the wounded Moreno inside of a truck parked at 613 Briggs Street.[54] Because Officer Sanchez speaks Spanish, he was able to speak with Moreno, who told the officer "***two Latin males that live next door had shot him***."[55] While Moreno told him that he did not know their names, he did "know them by face."[56] Moreno also told the officer that they were "Chicanos," that is United States citizens, and not illegals.[57] No other description was given.

THE INITIAL PHOTOGRAPHIC LINEUPS—NOVEMBER & DECEMBER 1984

Six days after the shooting, Detective James Herring along with Detective John Rivas went to speak with Moreno in the hospital while he was still recovering from his injuries.[58] Because Moreno was a Spanish speaker, Detective Rivas translated for Detective Herring.[59] Moreno could barely talk, but he did give a general description of the people involved.[60] According to Moreno, they were both Latin males, one was 13 or 14, and the other was 19.[61] He believed he had seen the younger one around the

[53] Sworn Statement of Richard R. Sanchez, June 2, 2006.
[54] *Id*.; *see also* Assignment Report of R. Sanchez, November 8, 1984.
[55] *Id*. (emphasis added).
[56] *Id*.
[57] *Id*.
[58] Supplementary Report of Det. J. Herring, November 9, 1984.
[59] *Id*.
[60] *Id*.
[61] *Id*.

neighborhood.[62] There was no description of any sort of hair type.[63] During their initial contact with Moreno at the hospital, the detectives presented seven photo lineups to him, which included individuals who lived in the neighborhood.[64] Ruben Cantu's picture was not included in any of the lineups and Moreno did not make any identifications.[65]

On November 25, 1984, Detective Herring received information that Ruben Cantu and David Garza were involved in the murder.[66] On December 1, 1984, the detective received information from a teacher implicating as possible suspects Cantu, Garza, and Reyes. Based on this information, a second attempt was made on December 16, 1984, to see if Moreno could identify anyone. A photo lineup was prepared that included Cantu's picture. Again, however, Moreno did not identify anyone from the photographs shown to him and did not provide any further identifying information.[67] Based on his body language and how he averted his eyes, the officers noted that Moreno appeared to purposely avoid the picture of Ruben Cantu.[68] It was obvious to the detectives that Moreno "was scared and was not going to pick the actor out."[69]

SUBSEQUENT LINEUPS—MARCH 2-5, 1985

Nearly four months after the shooting, in March of 1985, Moreno finally identified Cantu from a photo lineup. On March 2, 1985, Detective Santos Balleza went to Juan Moreno's brother's house and showed Moreno a photo lineup containing Cantu's

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[62] *Id*.
[63] *Id*.
[64] *Id*.
[65] *Id*.
[66] Supplementary Report of Det. J. Herring, December 14, 1984. Det. Herring does not note in his original report the source of the information. In a recent sworn written statement, he states that, to the best of his recollection, this information came from a patrol officer.
[67] *Id*.
[68] *Id*.
[69] *Id*.

photo.[70] Moreno told Detective Balleza that he did not recognize anyone in the photographs.[71] Detective Balleza observed that Moreno was "scared and visibly shaken" and did not want to identify the shooter.[72] The next day, Detective Quintanilla went to visit Juan Moreno and talked to him about coming to the police station to view a lineup. Moreno went to the station with his brother Eusebio.[73] Moreno admitted to Detective Quintanilla that he had recognized the shooter in the photo lineup that Detective Balleza showed him the day before but he did not tell Detective Balleza because he was afraid of Cantu.[74] It was at this time that Moreno identified the picture of the person that shot him and Pedro Gomez.[75] Detective Quintanilla told Moreno that the picture he identified was of Ruben Cantu.[76] Moreno acknowledged the identification by signing and dating the back of Cantu's photograph.[77]

Moreno gave a sworn written statement in which he not only detailed the crime, but also explained why he himself had not identified Cantu during the previous photo lineup he was shown. Moreno was afraid of reprisal.[78] According to Moreno at the time:

> On March 2, 1985 Det. Balleza came to my house and he showed me five color pictures of Mexican men. I recognized one of the pictures of one of the men he showed

[70] Ct. R. vol. IX of X, at 2588-91.
[71] Ct. R. vol. IX of X, at 2591; Supplementary Report of Det. E. Quintanilla, March 3, 1985.
[72] Ct. R. vol. IX of X, at 2593.
[73] Sworn Statement of Eusebio Alanis Moreno, March 3, 1985 (attached as appendix E); *see also* Sworn Statement of Edward Quintanilla, January 31, 2006.
[74] Supplementary Report of Det. E. Quintanilla, March 3, 1985 (attached as appendix F).
[75] *Id*.; *see also* Sworn Statement of Juan Moreno, March 3, 1985 (attached as appendix G); Sworn Statement of Edward Quintanilla, January 31, 2006.
[76] *Id*.
[77] *Id*. The lineup shows that Moreno signed and dated the back of Ruben Cantu's picture (attached as appendix H).
[78] It is clear from his testimony that his biggest fear was that somehow Cantu and Garza would find out where he lived. He wanted assurances that he would be safe before he made the identification. Sgt. Ewell informed Moreno that Cantu was in jail for the De La Luz shooting and that he had no way of knowing where Moreno currently lived. Supplementary Report of W.R. Ewell, March 3, 1985.

> me as being the same man who shot Pedro and me that night. I did not want to tell Det. Balleza who it was because I am afraid and I feared for my family. Today, you Det. Quintanilla asked me if I had recognized anyone in the photos Det. Balleza showed me and I told you yes. You showed me the same photos and I picked out the one who did the shooting. You told me his name was Ruben Cantu. This is the man who shot Pedro and me. I put my name on the back of his picture and also the time and date. I would also like to say that the night of the shooting there was a light on in the house and I got a good look at this man, but I did not get a good look at the other man that was with him.[79]

After identifying Cantu, Moreno told Detective Quintanilla that he might be able to identify the second person involved, but that he did not get a good look at that person.[80]

Similarly, Moreno's brother Eusebio told the officers that he believed that his brother had initially been afraid to identify the shooter. Eusebio explains: "IN MY OPINION, JUAN DID NOT WANT TO IDENTIFY THE PICTURE OF THE MAN THAT WAS INVOLVED IN THE MURDER OF PEDRO AS JUAN IS AFRAID OF THIS MAN BECAUSE JUAN WAS ALSO SHOT IN THIS INCIDENT AND JUAN ALMOST DIED ALSO."[81]

Two days later, on March 5, 1985, Moreno was shown a photo lineup that, for the first time, contained David Garza's picture.[82] When presented with a lineup that included Garza's picture, Moreno was easily able to identify Garza.[83] In a sworn written statement given at the time, Moreno explained the identification process.

> YOU, DET. QUINTANILLA, CAME TO MY HOUSE WITH DET. RIVAS, AND YOU SHOWED FIVE

[79] Sworn Statement of Juan Moreno, March 3, 1985 (attached as appendix G).
[80] *Id.*; *see also* Supplementary Report of Det. E. Quintanilla, March 5, 1985 (attached as appendix I).
[81] Sworn Statement of Eusebio Alanis Moreno, March 3, 1985 (attached as appendix E).
[82] Supplementary Report of Det. E. Quintanilla, March 5, 1985 (attached as appendix I). The lineup shows that Juan Moreno signed and dated the back of David Garza's picture (attached as appendix J).
[83] *Id*. Despite two decades of denials by David Garza, he now admits that Moreno's identification was accurate as he admits his involvement in the Briggs Street capital murder.

> COLOR PICTURES OF FIVE LATIN AMERICAN MALES AND YOU ASKED ME IF I COULD RECOGNIZE ANY OF THE PERSONS SHOWN ON ANY ONE OF THESE PICTURES. I LOOKED AT THE FIVE PICTURES AND I PICKED UP THE PICTURE OF THE ONE THAT I DID RECOGNIZE AND YOU ASKED ME IF I RECOGNIZED THIS PICTURE THAT I HAD PICKED UP AND I TOLD YOU THAT I DID RECOGNIZE THE PERSON IN THIS PICTURE. I WOULD LIKE TO SAY THAT THIS IS A PICTURE OF ONE OF THE MEN THAT IN THE EARLY PART OF NOVEBER, 1984, WAS THERE AT 605 BRIGGS WITH THE OTHER MAN THAT SHOT ME AND PEDRO GOMEZ. THIS IS ALSO THE SAME PERSON THAT TOOK THE WALLET FROM PEDRO, WHEN THE OTHER MAN WITH THE RIFLE TOLD PEDRO TO GIVE THEM HIS WALLET. YOU THEN TOLD ME THAT THE NAME OF THE PERSON IN THIS PICTURE THAT I IDENTIFIED TODAY IS DAVID GARZA AND HE LIVES ON LA VIOLETTA (sic).[84]

At no point during any of his interactions with the police, do any law enforcement personnel recall Moreno ever describing the shooter as having curly hair (*pelo chino*). This identifying characteristic of curly hair (*pelo* chino) is not noted in any of the police reports or supplemental police reports prepared at the time of original Briggs Street shooting investigation and it was not mentioned in any of Moreno's sworn written statements or in his in court testimony.[85]

MEETING WITH THE DISTRICT ATTORNEY'S INVESTIGATOR

In addition to the interviews with police officers, Moreno and his brother also later met with representatives from the District Attorney's Office. During this meeting, Moreno gave detailed accounts of the crime. Kenneth Thuleen, a retired police detective

[84] Sworn Statement of Juan Moreno, March 5, 1985 (attached as appendix K).
[85] It should be noted that at the time of the shooting Cantu had wavy hair (*pelo ondulado*), as opposed to curly hair (*pelo chino*). No effort was made to distinguish the difference because this was not raised as an issue until Moreno's statements to Reyna in 2004. Ruben Cantu's hair can be clearly seen in KSAT's television news file footage of Cantu's arrest. It can also be clearly seen in a Bexar County Sheriff's Department booking photograph dated March 12, 1985 (attached as appendix L).

with over twenty-five years of experience, was employed by the Bexar County District Attorney's Office as a Criminal Investigator from 1983 until 1996. He interviewed Juan Moreno and his brother, Eusebio, in early April of 1985, which was prior to Cantu's indictment and capital murder trial. Investigator Thuleen documented Moreno's recounting of the crime:

> Juan said he and Pedro had gone to sleep. He said both wore their watches to bed. Juan said he was awakened by someone pulling on his wrist. He said he was forced to get up and he saw a taller one holding a rifle. He said he later found this one to be Ruben Cantu whom he had seen walk by the house.[86]
>
> The shorter one whom he later found to be David Garza didn't have any weapon. Juan said that Garza was the one who took Pedro's wallet which had approximately $600.00 in it.
>
> Juan also said that they (Cantu and Garza) had taken their watches before they woke him up. Ruben then made Pedro lift the mattress so they could see if they had comething (sic) under it. This is where the pistol was wrapped in a cloth. Pedro reached for the weapon and Ruben Cantu started shooting.[87]
>
> Juan Moreno said he doesn't remember hearing Pedro or Ruben say anything. Juan said he saw what looked like a bullet hole in Pedro's head. Ruben then turned the rifle toward him and started shooting at him for no reason. Juan said he didn't say anything or try to run. Juan said he was hit 9 times, Pedro had been hit 8 times.[88]

In addition, he noted that, "Juan felt that they intended to shoot them when they came in."[89]

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[86] During a pretrial hearing in Cantu's case, Moreno testified that he had seen Cantu walking past the house on two or three prior occasions. Ct. R. vol. II of X, at 317 & 328.
[87] This is consistent with Cantu's admission to prison officials that the incident was only supposed to be a robbery.
[88] Memo of K. E. Thuleen, April 8, 1985.
[89] *Id*.

Importantly, Moreno does not recant his identification of Ruben Cantu or otherwise equivocate in his statement to a different, independent agency. Likewise, Investigator Thuleen does not note any apprehension on the part of Moreno. Not only does the account Moreno provided to Investigator Thuleen support his earlier statements to the police officers investigating the murder, there is still no mention of anyone with curly hair (*pelo chino*) being involved.

C. THE CERTAINTY OF THE IDENTIFICATION DURING THE COURT PROCEEDINGS

In any event, whatever pressure Moreno now alludes to having felt during the initial photographic identification was certainly nothing compared to what he received from the defense lawyers during the course of the trial proceedings.

DAVID GARZA'S EXAMINING TRIAL

Moreno first testified during the examining trial of Cantu's codefendant, David Garza, on June 14, 1985. During this testimony, he positively identified both Garza and Cantu as being involved.[90] Moreno also affirms that he had seen the two suspects before two or three times walking by and knew them by sight.[91]

During the cross examination by Garza's lawyer, Moreno repeatedly testified that Ruben Cantu is the person who shot him and Pedro Gomez.[92] He insisted that he had not lied and that he told the police the truth when he made the identification.[93] Moreno testified that he had no problem picking out the picture of Ruben Cantu.[94]

Importantly, Moreno was shown his sworn written statements and he acknowledged that they were the only written statements that he had given to the police

[90] Cause No. 85-JUV-00282, Examining Trial, vol. I of I, at 18-19 & 21.
[91] *Id*. at 14.
[92] *Id*. at 28, 30, 31, 48, 51, & 52.
[93] *Id*. at 32-34.
[94] *Id*. at 38.

and that they had written down what he had said.[95] These statements were translated and read to him during the proceeding.[96] He testified that the statements were the truth.[97] He also testified that the prosecutors told him that he was supposed to tell the truth.[98]

David Garza's defense attorney was Fred Rodriguez. Rodriguez was an experienced attorney, who had served for many years as an Assistant District Attorney and as an Assistant United States Attorney before entering private practice. He defeated Sam Millsap, the District Attorney at the time of the Cantu indictment and trial, and became District Attorney on January 1, 1987. As a result, he was in office before Cantu's direct appeal was decided and when Cantu's State *writ of habeas corpus* was filed. If he had any reason to doubt Cantu's guilt, during the four years as District Attorney, he would have had the power to open an investigation or refer one to a special prosecutor or the Attorney General. He recused himself in the matter of David Garza's *writ of habeas corpus* and a special prosecutor was appointed.

RUBEN CANTU'S SUPPRESSION HEARING

Less than a month after the above hearing, Moreno testified at a pretrial suppression hearing in Cantu's case. The defense was claiming that the police had used suggestive identification procedures that tainted Moreno's identification of Cantu. At the hearing Moreno was shaking and was nervous.[99]

He again testified that he had seen both Ruben Cantu and David Garza prior to the shooting.[100] Moreno testified that although he did not know Cantu's name, he knew him

[95] *Id*. at 24-25.
[96] *Id*. at 47.
[97] *Id*. at 46.
[98] *Id*. at 40.
[99] Ct. R. vol. II of X, at 305-06.
[100] *Id*. at 313 & 317.

"by sight, because he would go by there… ."[101] He had seen Cantu two or three times before the shooting, during the daytime, and could see the side and front of his face.[102] When asked if he saw Ruben Cantu on November 8, 1984 and at what location, Moreno answered, "where he shot at us."[103] Importantly, he positively identified Cantu in the courtroom.[104]

Moreno testified that he did not recall the officers ever telling him that the person who did the shooting was among the photographs in the lineup.[105] He repeatedly denied that the police told him that Cantu was the man who shot him.[106] And he testified that the reason he selected Cantu's picture from the lineup was because "they were the ones that had fired at us there."[107] Under oath, he confirmed the police accounts of the identification process and remained steadfast in his identification of Cantu.

According to Moreno, the officer spent no more than fifteen minutes with him during their meetings.[108] During these meetings, the officers "would only ask questions."[109] He was never promised anything for making the identification, but they did tell him that Cantu would never be told where Moreno was living.[110] During the questioning, Moreno also demonstrated how the lineup was presented to him by taking a group of five pictures and placing them in row so that all five could be seen.[111]

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[101] *Id*. at 317.
[102] *Id*. at 327-28.
[103] *Id*. at 315.
[104] *Id*. at 324-25.
[105] *Id*. at 310.
[106] *Id*. at 319.
[107] *Id*.
[108] *Id*. at 322.
[109] *Id*.
[110] *Id*. at 322-23.
[111] *Id*. at 320.

Moreno was also asked why he initially did not identify Cantu, and he answered that he did not want Cantu and Garza to know where he was living.[112] Thus, Moreno himself confirms the police and Eusebio's belief that he knew who shot him but was afraid to identify him.

RUBEN CANTU'S CAPITAL MURDER TRIAL

During Cantu's trial, Moreno positively identified Ruben Cantu as the shooter.[113] He reaffirmed that he had seen Cantu in the weeks before the murder at least three times.[114] He testified that he had no difficulty in seeing Cantu and Garza's faces.[115] In fact, he also identified David Garza during the trial as the person with Cantu at the time of the shooting.[116]

He recalled being shown the photographic lineups by the police officers and, even though Cantu's picture had been in more than one lineup, Moreno explained that he did not identify Cantu because he was afraid.[117] He also explained that he did not want to look at Cantu's picture because of what Cantu had done to him.[118] Even though Cantu did not know where he was living, Moreno believed he could find out.[119] As Moreno explained, he was sure that Cantu was the shooter, but he avoided identifying him because he "didn't want to get into any problems."[120]

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[112] *Id*. at 318.
[113] Ct. R. vol. VIII of X, at 2388 & 2402-03.
[114] *Id*. at 2393-95. Eusebio also corroborates this as he too testified that he had seen Cantu walking down Briggs Street three to five times while they were building the house on Briggs Street. *Id*. at 2188-89. He even positively identified Cantu during the trial. *Id*. at 2187. This is also initially what Moreno told the investigator from the NAACP LDF when first contacted about the case in August of 2004. Letter to Ruth Friedman, August 23, 2004.
[115] *Id*. at 2397.
[116] *Id*.
[117] *Id*. at 2473-74 & 2490.
[118] *Id*. at 2512.
[119] *Id*. at 2490.
[120] *Id*. at 2514.

Admittedly, it is difficult to read a cold record two decades after testimony was given and assess the credibility of a witness. But those that were present and observed Moreno's in court testimony uniformly characterize his identification of Cantu as certain and credible. The lead prosecutor, Bruce Baxter, described Moreno's testimony identifying Cantu as the shooter at both the pretrial hearing and at trial before the jury as without hesitation.[121] Even, Andrew Carruthers,[122] one of Cantu's lawyers, described Moreno's testimony as "certain" and "unequivocal."[123] Likewise, Cantu's other lawyer, Roland Garcia,[124] has stated that Moreno did not hesitate and "was positive in his identification of Ruben Cantu."[125]

Roy Barrera Jr., the judge who presided over Cantu's trial, contends, based on his review of the record, that "Moreno was unequivocal, clear, and in my mind certain as to the identity of the individual who committed the offense of capital murder."[126] Barrera's impression was that Moreno's identification of Cantu was based primarily on the shooting and his prior encounters with Cantu, and not on the photographic display.[127]

Perhaps most telling is the opinion of Nora Alejandro, David Garza's sister. She attended Cantu's trial and witnessed Moreno's testimony. Being the sister of Cantu's codefendant, she would understandably be looking for any signs of inconsistency or any

[121] Sworn Statement of Bruce F. Baxter, August 18, 2006 (attached as appendix M).
[122] Carruthers had approximately 12 years experience practicing law and was board certified in criminal law at the time of the trial.
[123] Sworn Statement of Andrew W. Carruthers, August 18, 2006.
[124] Garcia had been practicing law approximately 5 years, two of which were as an Assistant District Attorney, and had tried a capital murder case as a prosecutor.
[125] Sworn Statement of Roland Garcia, August 23, 2006 (attached as appendix B).
[126] Sworn Statement of Roy Barrera Jr., August 10, 2006.
[127] *Id*.

other problems with Moreno's testimony. But even she acknowledged that Moreno, although young and scared, "appeared credible when he testified."[128]

Ultimately, the audience whose opinion mattered most, that of the jury, believed Moreno to be truthful. However difficult it might be for us to review the transcript from the trial and try to assess the truthfulness of Moreno's testimony from a cold written record, it in no way substitutes for the face-to-face observation of the jury who swore to an oath and actually sat in judgment of Ruben Cantu. The jury knew about Moreno's initial hesitation to identify Cantu and was aware of how the identification was made. Nonetheless, based on the strength of Moreno's identification and the surrounding circumstances presented at trial, they found Ruben Cantu guilty of capital murder beyond a reasonable doubt.

All of Moreno's pretrial and trial testimony was consistent with the statements he had earlier given the police and the District Attorney's investigator. He reviewed his sworn written statements and was given several opportunities throughout the course of the proceedings to say that he was unsure of the identification or to expose any police tactic that may have suggested that Cantu was the shooter. Despite this, Moreno steadfastly maintained that the shooter was Cantu and that he was certain in his identification. If there was the slightest bit of doubt to Moreno's identification of Cantu, it does not appear that way from his sworn written statements, his in court testimony, or from the twenty years of Moreno's silence after the trial.

D. THE NAACP LEGAL DEFENSE & EDUCATIONAL FUND INVESTIGATION

After investigating the conclusions contained within the Houston Chronicle articles, one fact was inescapable—all of the points used to suggest Ruben Cantu's

[128] Sworn Statement of Nora Garza Alejandro, August 22, 2006.

innocence were "discovered" by one person, Richard Reyna. Reyna was employed by the NAACP LDF to investigate the Ruben Cantu case. It was in this capacity that Reyna met with potential witnesses and why he eventually contacted David Garza and Juan Moreno. It was to him that they all made new statements that claimed to exonerate Ruben Cantu. Reyna billed the organization over $100,000 for his investigative services.[129]

The first attempt, made by an attorney, to get Moreno to speak failed. Later, the NAACP LDF employed Richard Reyna to work the investigation. Within a year of the commencement of his investigation, not only had he developed the basis for the position that Ruben Cantu was wrongfully put to death, he had convinced David Garza to publicly admit his guilt and proclaim Cantu's innocence. The group needed more than the statements of convicted felons to support the serious claim of a wrongful execution. Thus, Reyna began to focus on the surviving eyewitness, Juan Moreno.

Unfortunately for those persons intent on proclaiming Cantu's innocence, Reyna did not conduct an investigation in the normal sense of that term. Rather, his investigative techniques demonstrate that he set out with preconceived notions about Cantu's innocence and he employed methods and interview techniques designed to further that goal. Whether this was intentional or inadvertent is irrelevant. The fact is that his methods render the information he obtained suspect—it simply cannot be trusted.

This conclusion is based on Reyna's own records, subpoenaed as part of this investigation, in which he details how he obtained statements from the relevant parties. These records include his own investigative reports, notes, and letters to the NAACP

[129] Billing Records of Richard Reyna.

LDF and illustrate his methodology. Reyna's conduct has so tainted his investigation as to render any resulting conclusions unreliable.

Generally, there have been commentators who have criticized various law enforcement agencies for utilizing investigative techniques with suspects that are claimed to elicit false confessions.[130] Furthermore, commentators have noted that, "it is relatively easy to alter an eyewitness's reliability and accuracy by pressuring the eyewitness with leading or misleading information.[131] In fact, there is "extensive literature suggesting that leading questions have the potential to distort eyewitness memory."[132] Furthermore, "the type of individual who provides the misleading information can have an important effect on a witness's response."[133] Not surprisingly, research has revealed that an eyewitness's ability to accurately recall an incident can be impacted adversely by who is asking the questions, the types of questions asked, and the amount of time between the actual witnessing of the event and the interview.[134]

Because of these perceived problems, many psychologists have called for reform and transparency in the interview and the interrogation process.[135] As a result, many law enforcement agencies have restructured suspect interviews and interrogations. In many

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[130] *See e.g.*, Saul M. Kassin & Gisili H. Gudjonsson, *The Psychology of Confessions—A Review of the Literature and Issues*, Vol. 5, No. 2 PSYCHOLOGICAL SCIENCE IN THE PUBLIC INTEREST 33, 36-56 (2004); *see also* Saul M. Kassin, Christine C. Goldstein, & Kenneth Savitsky, *Behavioral Confirmation in the Interrogation Room: On the Dangers of Presuming Guilt*, Vol. 27, No 2 LAW AND HUMAN BEHAVIOR 187 (April 2003); Jacqueline Hodgson, *Adding Injury to Injustice: The Suspect at the Police Station*, Vol. 21, NO. 1 JOURNAL OF LAW AND SOCIETY 85 (1994).

[131] Norman J. Bregman & Hunter A. McAllister, *Eyewitness Testimony: The Role of Commitment in Increasing Reliability*, Vol. 45, No. 3 Social Psychology Quarterly 181, 181 (1982).

[132] Mark R. Kebbell & Shane D. Johnson, *Lawyers Questioning: The Effect of Confusing Questions on Witness Confidence and Accuracy*, Vol. 24, No. 6 LAW AND HUMAN BEHAVIOR 629, 638 (2000) (citing E.F. Loftus, *Leading questions and eyewitness report*, 7 COGNITIVE PSYCHOLOGY 560 (1975)).

[133] *Id*.

[134] *See* William S. Cassel & David F. Bjorklund, *Developmental Patterns of Eyewitness Memory and Suggestibility: An Ecologically Based Short-Term Study*, Vol. 19, No. 5 Law and Human Behavior 507, 521-23 (1995).

[135] *See generally Psychology of Confessions*, at 60 (calling for the videotaped recording of all suspect interviews and interrogations).

instances, the San Antonio Police Department now digitally records statements given by a witness or a suspect to police officers. Moreover, in order to receive state certification, a peace officer is required to participate in the basic peace officer's course. During this course, the officers are taught various interview and interrogation techniques.[136] These techniques mandate that witnesses be treated differently than suspects, that the interviewer use direct questions toward establishing the facts of the incident, and that the interviewer avoid leading or suggestive questions.[137] The interviewer should permit the interviewee to provide a complete narrative of the incident, before confronting the person with discrepancies with known facts.[138]

The problems with how Richard Reyna conducted the investigation are best illustrated by an examination of how he handled Juan Moreno. In conducting his interviews with Moreno, Reyna did not follow appropriate techniques for interviewing an eyewitness and the methods he employed were of the type designed to undermine Moreno's original identification and resulted in false memories. It is clear from Reyna's own notes, his technique was to undermine and then suggest.

MORENO CERTAIN IT WAS RUBEN CANTU—AUGUST 2004

Initially an attorney, Naomi Terr, attempted to contact Juan Moreno about the Cantu case in October of 2002.[139] She tried to interview Moreno at his home.[140] Moreno's wife informed her that Juan would not answer questions about the case.[141]

[136] Section 29.1.2, Written Material for the State Mandated Basic Peace Officer's Course (March 2004).
[137] *Id*. at 30-31.
[138] *Id*. at 31.
[139] Letter to Ruth Friedman, August 23, 2004.
[140] *Id*.
[141] *Id*.

Despite this initial unsuccessful attempt, two years later in August of 2004, the NAACP LDF employed Richard Reyna to contact Moreno.[142] He did this by trying to follow him to work.[143] This initial attempt was unsuccessful.[144] Reyna returned to the Moreno home the next day, but Moreno was already at work.[145] He returned again in the afternoon while Moreno was still away and spoke with Moreno's wife, Annabel.[146] Reyna describes her as "friendly but very cautious."[147]

He spoke with Mrs. Moreno about the death penalty and reports that she stated people needed to be absolutely certain before they executed anyone.[148] One particular notation that Reyna made about this conversation is interesting. Although he notes that they discussed the death penalty, he only includes her statement concerning uncertainty of the execution. The statement appears to be out-of-context and it is difficult to believe that it was completely unsolicited by Reyna. Had her husband had any misgivings about his identification of Ruben Cantu, this would have been the time for her to mention it and surely Reyna would have noted it. Because he chose to only note this one sentence, it is impossible to know for sure how this came about. However it came about, this statement gives Reyna a foundation upon which to challenge Moreno's certainty of his original Cantu identification.

It is also through this meeting that we see how Reyna worked to gain the trust of Mrs. Moreno. He notes that she relaxed considerably after he mentioned that he had

[142] Richard Reyna Report, August 23, 2004; Letter to Ruth Friedman, August 23, 2004.
[143] Letter to Ruth Friedman, August 23, 2004.
[144] *Id*.
[145] *Id*.
[146] *Id*.
[147] *Id*.
[148] *Id*.

done some work in Mexico.[149] It was after this, that she told him to come back the next day to meet with Juan.[150]

When Reyna came back the next day no one was home.[151] Reyna then drove to several different locations looking for Moreno, eventually going back to the Moreno home and waiting until Mrs. Moreno arrived with their son.[152] She apparently tried to call Juan but did not get an answer.[153] She apologized to Reyna and they exchanged cell phone numbers.[154] Reyna noted again that she was very friendly. She called him later that evening and said Juan was home.[155]

Reyna returned to the home and personally met with Juan Moreno.[156] This is the first meeting between the two. Reyna details the meeting in his notes:

> Mr. Moreno was cordial but cautious. I explained that I had spoken with David Garza on several occasions and that Mr. Garza is adamant that Ruben Cantu was not with him on the night that he (Mr. Moreno) was shot. I told him that I also spoke with several alibi witnesses in Waco, Texas who are also adamant that Ruben Cantu was in Waco on the night of the shooting. I then mentioned that witnesses at the 615 Briggs address have mentioned that the person seen running from the house where the shooting took place was not Ruben Cantu or David Garza.[157]

What is most revealing about this initial exchange is that Reyna is not questioning Juan Moreno about what occurred on November 8, 1984, the day of the Briggs Street shooting. Instead, he is providing information to the eyewitness and the information he is providing is selective and operates to undermine Moreno's confidence in his

[149] *Id.*
[150] *Id.*
[151] *Id.*
[152] *Id.*
[153] *Id.*
[154] *Id.*
[155] *Id.*
[156] *Id.*
[157] *Id.*

identification of Ruben Cantu. Reyna essentially tells Moreno that everyone but Moreno says that Cantu is innocent.

As if this tainting is not sufficiently disturbing standing alone, Reyna is knowingly misleading Moreno. Reyna told representatives from this investigation that he did not believe that the information he had obtained from witnesses asserting Cantu's innocence was credible.[158] None of this is part of a proper interview process. Of course, Reyna does not believe that he did anything to influence any of the witnesses in this case, including Moreno.[159]

The reality, however, is that when confronted with this sort of information and having one's belief undermined, the natural reaction of almost anyone is to start questioning one's own recollection of a particular event. Not surprisingly during this meeting, Moreno asks, "if it wasn't Ruben Cantu, then who was it?"[160] And again, rather than allow Moreno to discuss what he remembers about the incident, Reyna provides information. He tells him that it was another person from the neighborhood.[161] Not only does he suggest someone else as the shooter, he gives Moreno more reason to question his identification of Cantu by telling him that the person "bore a strong resemblance to Mr. Cantu but was a little taller."[162]

At this point in his investigation Reyna has not, even for himself, concluded that anyone other than Ruben Cantu was the shooter.[163] After all, he did not even believe the sources from which he obtained this information were credible. Nonetheless, he presents

[158] Interview with Richard Reyna, August 14, 2006.
[159] *Id*.
[160] Letter to Ruth Friedman, August 23, 2004.
[161] *Id*.
[162] *Id*.
[163] Interview with Richard Reyna, August 14, 2006.

this information to Moreno as fact in a way that can only work to undermine Moreno's confidence in the identification he had made twenty years earlier. And this is only the first in a series of incidents in which Reyna states supposition as fact to Moreno. These are the types of techniques that lead to false memories.

After this, Reyna proceeds to go over all of the times that Moreno was shown photographic lineups.[164] He also mentions to Moreno, Detective Balleza's pretrial testimony, raising a possible inconsistency as to when Moreno knew Ruben Cantu's name.[165] Reyna describes Moreno looking puzzled on several occasions during this conversation.[166] Despite these "puzzled" looks, Moreno never asks any questions. Rather, it is Reyna who asks Moreno if Detective Balleza made up the incident.[167] Moreno responds that he could not recall saying that, but adds that it was a long time ago and that he has tried to "forget those terrible memories."[168] Importantly, he did not contend that the detective's recollection was a lie.

It is not until this point in the first meeting that Reyna's notes indicate that he asked Moreno a question. Specifically, he asks if Moreno had ever met Cantu before.[169] Moreno, consistent with what he said twenty years earlier to the police investigators and at Cantu's trial, answers that he had never met him but that he had seen him walking by

[164] Letter to Ruth Friedman, August 23, 2004.
[165] *Id*. Det. Balleza testified at a pretrial hearing and trial that Moreno provided him with Cantu's name, without identifying Cantu's photograph. Cause No. 85-CR-1303, Ct. R. vol. I of X, at 29; Ct. R. vol. IX of X, at 2592-94, 2596-98 & 2601. Det. Balleza did not prepare a written report in this case. *Id*. at 31. The police reports that were prepared concerning this matter indicate that Moreno was provided the name after the identification. Reyna is using this inconsistency to further undermine Moreno's recollection of the events and the credibility of the officers who actually conducted the photographic lineups.
[166] Letter to Ruth Friedman, August 23, 2004.
[167] *Id*.
[168] *Id*.
[169] *Id*.

the house a few times before.[170] This directly supports Moreno's original identification and is consistent with what he originally told the police investigating the shooting. It is also consistent with Moreno's brother, Eusebio's in court testimony that he had seen Cantu walking by the house.[171] Moreno clearly knew Cantu by face and was not therefore identifying a stranger.

Mrs. Moreno joins the conversation and reiterates the point made earlier by Reyna about how could Juan have known Cantu's name if they had never met.[172] Reyna again describes Moreno's look as puzzled.[173] Moreno responds that it happened a long time ago and he could not remember much.[174]

Moreno then adds that he was scared at the time and did not want to identify Cantu because he did not want any problems.[175] Again, this is completely consistent with Moreno's statements to the police and his sworn testimony in court. At this early stage of Reyna's investigation, Moreno is not saying he misidentified anyone and what he does say supports his early statements and testimony.

Moreno's statement to Reyna that he does not remember much is extremely relevant information in assessing Reyna's investigative techniques. This is now the second time during their conversation that Moreno expresses a lack of memory concerning specific details. Given the almost twenty-years that have passed since the horrific shooting, this is certainly understandable. An investigator trying to uncover the truth would take this statement at face value and begin asking the subject about what he

[170] *Id*.
[171] Ct. R. vol. VIII of X, at 2188-89.
[172] Letter to Ruth Friedman, August 23, 2004.
[173] *Id*.
[174] *Id*.
[175] *Id*.

does recall. This is not, however, how Richard Reyna conducted his investigation. Instead he tells Moreno that, "identifying Ruben Cantu by name was just as bad as pointing him out in a photo lineup."[176]

Interestingly, Mrs. Moreno joins with Reyna and likewise contends there was very little difference.[177] Moreno gives no indication that he was mistaken and instead does not reply.[178]

Reyna goes on to ask Moreno when he had last seen Cantu before the shooting.[179] Moreno answers that it was about three days prior to the shooting.[180] Reyna "gently reminded" him that he'd testified it had been about three weeks prior.[181] Moreno again does not respond.[182]

What Reyna does next is completely improper. At this point in his meeting with Moreno, he has spent the bulk of his time telling Moreno that there is evidence that Cantu was innocent. When Moreno mentions memory problems, not only does Reyna not try to discover what Moreno does know, he seizes the opportunity to further undermine Moreno's confidence in the identification by suggesting police misconduct. According to Reyna's own records:

> I told Mr. Moreno that police investigators were very anxious to charge Ruben Cantu after his shootout with the off duty police officer and that it seemed like they might have put words in his mouth or that they (police investigators) gave false trial testimony.[183]

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[176] *Id*.
[177] *Id*.
[178] *Id*.
[179] *Id*.
[180] *Id*.
[181] *Id*.
[182] *Id*.
[183] *Id*.

In response, Moreno tells Reyna that, "he couldn't remember much after so many years".[184] Reyna has absolutely no evidence to support this implicit assertion of police misconduct but presents his suppositions as fact.

When Moreno is finally asked a relevant question about the shooting, Moreno confidently asserts that he was sure that Ruben Cantu was involved. Again, Reyna documents the exchange: "I asked Mr. Moreno if he was certain about his identification of Ruben Cantu as the man who shot him. ***He said that he was sure that Ruben Cantu was inside his house***."[185] This critical statement is completely consistent with Moreno's previous identifications of Cantu.

It is not until this point that Reyna begins asking about the shooting. Reyna asked Moreno how far Cantu was from him at the time of the shooting.[186] Moreno answered that Cantu stood four to five feet away.[187] Rather than simply note Moreno's answer, Reyna comments that, "it is very difficult to understand why someone, who practically lives directly across the street, and is seen almost on a daily basis, would ever consider robbing someone who can easily identify him."[188] Not only is this assertion factually incorrect, Moreno never said that he saw Cantu on a daily basis, the answer is straightforward: Cantu was not concerned because he never expected anyone to survive to make the identification or that everyone was so intimidated by him that they would not talk to the police. A stranger who Moreno and Gomez had never seen would have less of a motive to shoot both men numerous times than someone they recognized, such as Cantu.

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[184] *Id*.
[185] *Id*. (emphasis added).
[186] *Id*.
[187] *Id*.
[188] *Id*.

To his credit, Moreno does not seem to be buying into Reyna's suggestions and answers that it is difficult to explain the way people think these days.[189] Mrs. Moreno, however, is a different story. She comments that, "it makes no sense" and sides with what Reyna is saying.[190]

At this point, Reyna produces a photograph of Ramiro Reyes.[191] This picture very clearly shows a young man with curly hair (*pelo chino*).[192] Moreno views the picture and states that he does not remember anyone with that type of hair.[193] Reyna covers the hair, but Moreno still says that, "he had never seen this person before."[194] Thus, in his very first meeting with Reyna, Moreno not only contends that he does not recognize Ramiro Reyes, the person in the picture, he has no recollection of anyone with that type of hair.

There is no moment of epiphany with Moreno viewing Reyes' picture where he declares that his original identification of Cantu was wrong. There is not even a suggestion that he has any idea of the identity of the person depicted in the photograph. Here, Reyna is showing Moreno the picture of the person David Garza claims was responsible for the capital murder and shooting, and Moreno does not react in the slightest.

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[189] *Id*.
[190] *Id*.
[191] *Id*.
[192] *Id*. Reyna's attempt to get Moreno to identify Reyes employs a technique that is far more suggestive than anything done by the police when Moreno originally identified Cantu. While the NAACP LDF apparently distrusts Moreno's original identification of Cantu, the organization has chosen to rely on this suggestive procedure as support for its claims of Cantu's innocence.
[193] *Id*.
[194] *Id*.

Ever persistent, Reyna tells Moreno that the codefendant, David Garza, has suggested someone other than Ruben Cantu did the crime.[195] Moreno's only response was to shrug his shoulders.[196] Reyna goes further and comments that, "police investigators might have suggested Mr. Cantu's name and photograph in retaliation for the shooting of the off duty police officer and if this was the case, he [Moreno] is just as much a victim as Ruben Cantu."[197] Reyna then continues, ***"I told Mr. Moreno that it looked like he might have been used and again told him that it was very likely that he was also a victim, just as much as Ruben Cantu."***[198] Moreno does not respond to this statement.[199] Now, Reyna is planting a reasonable sounding excuse in Moreno's psyche.

Reyna ends his first meeting with Moreno by telling him that he could help others by making sure that prosecutors are certain before they execute someone in the future.[200] Given the uncontroversial nature of this statement, both of the Morenos agree.[201]

At no point did Juan Moreno express any doubt or reservations about his identification of Ruben Cantu. Based on how Reyna conducted the interview, this was obviously not what he wanted to hear. He schedules a second meeting over dinner. According to Reyna, "We agreed to all have dinner at a nice seafood restaurant upon my return. They all seemed happy about the idea of going to a nice seafood restaurant."[202]

It seems apparent that Reyna is manipulating this situation and easing into the grooming process with promises of rewards—such as nice meals. At this point, Moreno has been consistent with his prior identifications of Cantu and has given no indication

[195] *Id*.
[196] *Id*.
[197] *Id*.
[198] *Id*. (emphasis added).
[199] *Id*.
[200] *Id*.
[201] *Id*.
[202] *Id*.

that he was unsure of the identification. He does not recognize Ramiro Reyes or anyone with curly hair (*pelo chino*). He has said nothing that would give Reyna any reason to believe that the police pressured him into falsely identifying Cantu. Yet, Reyna wants to continue meeting with Moreno to discuss the case.

MORENO STILL SURE ABOUT CANTU IDENTIFICATION—SEPTEMBER 2004

In what appears to be his second meeting with Juan Moreno, Reyna made contact with him at his home on September 11, 2004.[203] Reyna documented this meeting in a September 12, 2004, letter to Ruth Friedman. After making small talk, Reyna "shifted the conversation to the shooting on Briggs Street."[204] He began by telling Moreno that he recently met with Cantu's codefendant, David Garza, and that "Garza remains adamant that Ruben Cantu was not with him the night that he and Pedro Gomez were shot."[205] Reyna also tells Moreno that he spoke with other people living on Briggs Street at the time and they too "had a different view of what happened on the night of the shooting."[206]

Reyna gave Moreno further details and told him that there was a witness who saw the person who ran from the house and that person was not Cantu.[207] Reyna also repeated that Cantu had an alibi since Maria Garcia[208] remained "adamant that Ruben Cantu was at her home with her brothers in Waco, Texas the night of the shooting."[209]

After providing this information, Reyna shifts the discussion to what he perceives as an inconsistency from his earlier conversation with Moreno. Reyna told Moreno that

[203] Letter to Ruth Friedman, September 12, 2004.
[204] *Id*.
[205] *Id*.
[206] *Id*.
[207] *Id*.
[208] Maria Garcia testified for the defense at Ruben Cantu's trial regarding the alleged alibi.
[209] Letter to Ruth Friedman, September 12, 2004.

he did not understand how Moreno was able to identify Cantu by name, but could not identify his picture.[210] It is apparent what Reyna is doing here is taking pieces of information out of context, and putting his own spin on the facts. All of the early records indicate that Moreno recognized Cantu from the picture, but was afraid to make the identification—a fact that was confirmed by Moreno during his first interview with Reyna.[211] But that is not how Reyna chooses to characterize it.

At the time of Reyna's second interview, nearly twenty years after the fact, Moreno recalled learning Cantu's name when the trial started.[212] Reyna seized upon this, telling Moreno that there was no question in his mind that Moreno never identified Ruben Cantu by name.[213] Moreno responded by pointing out that the witnesses, including Garza, could be making up the story to make Cantu look innocent.[214] Reyna's response to this contention is telling. He specifically informs Moreno:

> I told him that I also thought about that, but that it did not make any sense. I asked for his thoughts. I commented that Ruben is already dead and these people have nothing to gain from this. I commented that everyone would have to be involved in this conspiracy but that this was very unlikely because neither party knows each other. I told Mr. Moreno that I gave each person the opportunity to tell me if they believed that Ruben was involved in the shooting. I said that I also assured them that this would end the investigation but that all witnesses remain adamant that Ruben Cantu was innocent.[215]

[210] *Id*.
[211] Letter to Ruth Friedman, August 23, 2004.
[212] Letter to Ruth Friedman, September 12, 2004.
[213] *Id*.
[214] *Id*.
[215] *Id*.

So despite the fact that some of the witnesses did have something to gain, that they did know each other, and that Reyna had his own doubts as to the credibility of some, he presents all of this as absolute fact to Moreno.

As if this was not disturbing enough, Reyna then proposes his theory of what happened to Moreno. According to Reyna, he tells Moreno that it seemed to him that the "police investigators were pressuring him to identify Ruben Cantu because they were after him for other reasons."[216] Reyna then added, "I told him that it seemed obvious that they were trying to get him to say something that he did not want to say."[217] Thus, without Moreno having even remotely suggested that he had been pressured or given any indication that he was unsure about the identification of Cantu, Reyna has formed his own theory of how the identification was made and presents that theory to Moreno. And yet, despite all the pressure Reyna was now putting on Moreno, Moreno still asserts that he is certain "***Ruben Cantu was the person who shot him***."[218]

Reyna does not give up. He goes on to restate that the witnesses do not know each other and are adamant that Cantu was not involved.[219] He tells Moreno that the officers clearly lied about what happened with the photo lineup.[220] Reyna adds that "it is very possible that an innocent man was executed" and then tells Moreno "that he should not feel bad about anything because it certainly looks like police investigators intimidated and then used him to convict Mr. Cantu."[221] Moreno does not respond to this.[222]

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[216] *Id*.
[217] *Id*.
[218] *Id*. (emphasis added).
[219] *Id*.
[220] *Id*.
[221] *Id*.
[222] *Id*.

Reyna ends the September 12th letter with something that seems completely out of place in the context of what he had already detailed. Reyna notes that while he was there, Moreno received a certified letter from the Texas Department of Public Safety.[223] Moreno asked Reyna to help him read the letter. According to Reyna, Moreno was unable to get his driver's license renewed because of restitution he owed resulting from an automobile accident.[224] After helping with this letter, Reyna was asked to read a second letter to Moreno from the City of San Antonio.[225] One of Moreno's vehicles had been towed earlier in the month and was accruing a $15.00 a day storage fee on top of the $69.50 towing fee.[226] Moreno had until October 3, 2004, to pay the fees or the vehicle would be auctioned.[227] There was no need to mention the contents of these letters except to make clear to Friedman that Moreno was in need of financial assistance.

UNDOCUMENTED MEETING —NOVEMBER 30, 2004

In his next letter to Friedman, Reyna details a meeting between he and Moreno on November 30, 2004. According to the letter, Reyna arrived at the Moreno home at 5:50 a.m. and parked "a safe distance" so that he could follow Moreno to work.[228] It is curious that Reyna, who had earlier noted that Moreno was cordial, would feel the need to surprise Moreno. He followed Moreno to an apartment complex where Moreno picked up some workers.[229] Not surprisingly, given Reyna's conduct, Reyna describes Moreno as "shocked" to see him.[230]

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[223] *Id*.
[224] *Id*.
[225] *Id*.
[226] *Id*.
[227] *Id*.
[228] Letter to Ruth Friedman, December 3, 2004.
[229] *Id*.
[230] *Id*.

Reyna said that he needed to talk to Moreno without Moreno's wife present because Reyna did not want to worry Mrs. Moreno.[231] This is an odd sentiment to express since at his earlier meeting, Mrs. Moreno had been receptive. Nonetheless, Moreno agreed to meet later at a restaurant near a subdivision where Moreno was working.[232]

Reyna begins the November 30th meeting as he had done previously by providing information to Moreno. As he detailed in a letter to Ms. Friedman:

> I told Mr. Moreno that we felt certain that Ruben Cantu was not the man who shot him and Pedro Gomez. I told him about my visit with David Garza and about the contents in David Garza's sworn affidavit. Mr. Moreno remained quiet. I then mentioned the description of the man seen running from the house on the night of the shooting. I told him that several witnesses were adamant that the eyewitness, who saw the person running from the house immediately after the shooting, told them that the person that he saw running was not Ruben Cantu. I also told Mr. Moreno that the eyewitness has since passed away.[233]

Once again, Reyna is doing his best to undermine Moreno's confidence in his own memory. Not only does Reyna again provide information to Moreno before ever knowing what Moreno believes, he now tells Moreno that his investigation makes him certain that Ruben Cantu was not involved.

Although Reyna did not explain this to Moreno, the eyewitness he is referring to was Bill McCartney. Bill McCartney was a neighbor of the Cantus and allegedly purchased stolen property from and sold drugs to Ruben Cantu.[234] And the "several

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[231] *Id*.
[232] *Id*.
[233] *Id*.
[234] Sworn Statement of Kenneth Bohnenblust, July 20, 2006; Richard Reyna Interview Notes, August 30, 2004. It is also worth noting that a little more than two weeks after the Briggs Street shooting, a .22 caliber

witnesses" he is referring to are John Krieg and Kenneth Bohnenblust. Krieg was a friend of McCartney and was living with him at the time of the shooting.[235] Bohnenblust also lived in the neighborhood and had known the Cantu family his entire life.[236] Both of these men have criminal histories.[237]

According to Reyna's records, Bohnenblust said that McCartney told him that he saw the person running and that it was not Cantu.[238] When contacted by this investigation, Bohnenblust said that McCartney told him this two or three months after the night of the shooting.[239]

Similarly, Reyna's notes indicate that Krieg told him that he was certain that McCartney claimed to have seen someone running from the house the night of the shooting and that it was not Cantu.[240] Krieg, however, told this investigation that McCartney told him that he saw David Garza and another individual running "across the street to the trailer park where Ruben's father lived." [241] According to Krieg, McCartney never said the other person was not Cantu; rather, he speculated that McCartney would have told him if it had been Ruben Cantu.[242]

McCartney is now deceased. On the night of the shooting, McCartney told Officer Stanley Bronder that he heard a gunshot and saw a person running south across

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rifle was discovered in McCartney's home during a police raid. San Antonio Police Report, Case No. 84467237/01.

[235] Sworn Statement of John Krieg, June 23, 2006. Reyna's records indicate that the NAACP LDF paid Krieg $740 for his assistance in this case. Richard Reyna Expense Reports.

[236] Sworn Statement of Kenneth Bohnenblust, July 20, 2006.

[237] Bohnenblust is currently serving an eight-year prison sentence for a drug offense and had previously been convicted of attempted burglary of a habitation. Sworn Statement of Kenneth Bohnenblust, July 20, 2006; Criminal History of Kenneth Bohnenblust. Kreig has four theft convictions, including a felony theft conviction for which he is currently on probation. Criminal History of John Krieg.

[238] Richard Reyna Interview Notes, September 16, 2004.

[239] Sworn Statement of Kenneth Bohnenblust, July 20, 2006

[240] Letter to Ruth Friedman, August 30, 2004.

[241] Sworn Statement of John Krieg, June 23, 2006.

[242] *Id*.

the street.[243] At the time, he told the officer he could not tell if the person he saw running was a man or a woman.[244]

Even if Reyna truly believed the assertions to be true when he presented them to Moreno, he was still misrepresenting them to Moreno. Reyna failed to disclose the criminal histories of the sources, the relationships of the sources to Ruben Cantu and his family, or the inconsistent statement made by McCartney to the police. All of this seems designed to further undermine Moreno's confidence in his identification of Cantu.

Reyna continues:

> I reminded Mr. Moreno that during our last conversation,[245] he mentioned that the person who shot him had "chino" hair. Mr. Moreno said that he was certain of this. I produced the photographs of Ramiro Reyes and Ruben Cantu. Mr. Moreno quickly commented that Ramiro's hair was definitely "chino" but that he couldn't tell about Ruben's hair because of the baseball hat.[246]

Reyna then quickly added that he talked to the Cantu family and they all said Ruben had short straight hair that he always combed straight back.[247] Based on this, "Mr. Moreno commented that it clearly leaves the other guy as the only one with 'chino' hair."[248] Reyna continued asking Moreno if there was anything else he could recall about the shooter. "Mr. Moreno said that the only thing that he could remember was that the shooter definitely had 'chino' hair."[249]

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[243] Supplementary Report of Stanley Bronder, November 9, 1984.
[244] *Id*.
[245] Not only does this represent a complete change from what Moreno said during his first and second meetings with Reyna, this is an apparent reference to an earlier meeting for which Reyna conveniently has no documentation.
[246] Letter to Ruth Friedman, December 3, 2004.
[247] *Id*. *See also infra* footnote 85.
[248] Letter to Ruth Friedman, December 3, 2004.
[249] *Id*.

There are other troubling matters detailed in Reyna's December 3, 2004 letter to Friedman. Reyna went over the identification procedures used by the police back in 1984 and 1985.[250] He also detailed the sequence of events that led to Moreno's identification of Ruben Cantu.[251] According to Reyna, Moreno did not remember going to the police station.[252] In response, Reyna "quickly" produced Moreno's March 5, 1985, sworn affidavit and read it to him.[253] While Moreno acknowledged his signature, Moreno claimed that this was the first time anyone had read the affidavit to him.[254]

Reyna further asserts that Moreno told him that he often signed things that had not been read to him.[255] Moreno said that the police told him that they already knew the name of the person who shot him and Gomez, and that they just needed him to point the person out.[256] As we know from Moreno's testimony during David Garza's examining trial, all of this is completely untrue. Not only were Moreno's sworn written statements in which he identified both Cantu and Garza read and translated to him in Spanish, he testified they were truthful.[257] Either Moreno does not recall this, Reyna's notes are inaccurate, or Moreno is lying to Reyna. Whatever the reason, it is a fact that most certainly undermines Moreno's current version of the events.

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[250] *Id*.
[251] *Id*.
[252] *Id*.
[253] *Id*. This is an odd affidavit to read to Moreno at this point. The March 5, 1985, affidavit only concerns the identification of David Garza, not Ruben Cantu. Since they were discussing Moreno's identification of Cantu, it would have made more sense to produce Moreno's March 3, 1985, sworn affidavit as it directly related to that event.
[254] *Id*.
[255] *Id*.
[256] *Id*.
[257] Cause No. 85-JUV-0282, Ct. R. vol. I of I, at 44-45 & 47.

Reyna goes on to inform Moreno about Detective Quintanilla having taken him to the police station. Moreno interjects, according to Reyna, to make something clear.[258] According to Reyna, Moreno "does not recall ever going to the police station with anyone [and] he never identified Ruben Cantu in his sworn affidavit."[259] Again, however, we know this is simply not true. It is clear from the sworn written statements of both Moreno and his brother, Eusebio, and the police officers' reports that Moreno not only was accompanied to the police station by his brother, he did identify Ruben Cantu. This fact is also established by Moreno's sworn testimony in Cantu's trial and at Garza's examining trial.

Perhaps the confusion on this point comes from the fact that Reyna initially only provided one of Moreno's sworn affidavits for him to read, the one in which he identifies David Garza. As Reyna notes, "Mr. Moreno was quick to point out that in the affidavit that I just read to him, he identified David Garza, not Ruben Cantu."[260] By producing the affidavits out of sequence, Reyna is selectively providing information to Moreno and, not surprisingly, Moreno's memory is further tainted.[261]

Even more troubling, however, is how Reyna responds to Moreno's questions about Cantu being involved. Although Moreno appears to be accepting that the shooter had curly hair (*pelo chino*), he still does not appear to be convinced that Cantu was not the shooter. According to Reyna, "Mr. Moreno asked several times if we were certain that Ruben Cantu did not have 'chino' hair."[262] Rather than allow Moreno to reach his own conclusions, or provide him with additional pictures of Cantu, Reyna tells him that

[258] *Id.*
[259] *Id.*
[260] *Id.*
[261] *Id.*
[262] *Id.*

they "were positive that Ruben never had 'chino' hair."[263] Given that at this point the only picture of Cantu that Reyna has shown Moreno has Cantu wearing a baseball cap, Moreno is left with no choice but to accept Reyna's statement as being the truth.

Importantly, Reyna then thinks to ask if Moreno ever told anyone that the shooter had "chino" hair.[264] Moreno answered that he had not.[265] This is completely consistent with the early police reports and the sworn statements of the officers assigned to investigate this case that Moreno never told any of them that the shooter had curly hair (*pelo chino*). It also directly contradicts what Juan Moreno told this investigation as he now asserts that he has said from the very beginning that the person involved had curly hair (*pelo chino*).[266]

Reyna also noted that Moreno specifically asked about the affidavit that Garza provided for the NAACP LDF investigation. Reyna then proceeded to go over Garza's affidavit with Moreno.[267] Reyna then told Moreno that, "he [Moreno], Pedro Gomez and Ruben Cantu had been victims."[268]

Reyna then noted that Moreno said he could not remember testifying at the trial.[269] Reyna said he then produced a copy of Moreno's trial testimony and "politely" let him know he did testify.[270]

Despite all of this uncertainty and even at this late date, Moreno maintains that police investigators or prosecutors did not pressure him.[271] Reyna writes, "I asked if

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[263] *Id*.
[264] *Id*.
[265] *Id*.
[266] Juan Moreno Interview, February 8, 2007.
[267] Letter to Ruth Friedman, December 3, 2004.
[268] *Id*.
[269] *Id*.
[270] *Id*.
[271] *Id*.

police investigators or prosecutors ever pressure (sic) him into saying anything that he did not want to say. He said that he was not."[272] Again, this is completely consistent with the statements of the officers and the lead prosecutor involved, and is a direct contradiction to what Moreno intimated in his press conference and what he has recently told this investigation.

Within a couple of months of Reyna's first meetings with Moreno, where Moreno stated unequivocally that Ruben Cantu was the shooter and that he had never seen Ramiro Reyes before and did not recall anyone with curly hair (*pelo chino*), Moreno is now saying that the only thing he recalls is that the shooter had curly hair (*pelo chino*). There is no direct indication in Reyna's records of why Moreno has now changed his story from not recognizing Ramiro Reyes or anyone with that type of hair to being certain the shooter had curly hair (*pelo chino*).

What is most troubling about this is that there may have been meetings that occurred sometime between mid-September and the end of November that are undocumented. In detailing the November 30th meeting, Reyna notes that it takes place at the restaurant where they had apparently met for an earlier meeting. Reyna notes in his report that it "was the same location where Ms. Friedman and I last spoke with Mr. Moreno."[273] Reyna has provided no records for this earlier meeting.

This meeting must have occurred after the August meeting, as Reyna clearly states that it was his first meeting with Moreno. It is also unlikely that the meeting occurred prior to his September meeting with Moreno. His letter to Friedman detailing the September meeting makes no reference to any earlier meeting and it is clear that

[272] *Id.*
[273] *Id.*

Moreno is still telling Reyna that he is certain that Cantu was the shooter. Thus, the undocumented meeting must have occurred some time after September 11th but before November 30th.

In addition to the reference in Reyna's December 3rd letter to Friedman, there is other evidence that a meeting, or a series of meetings, took place in mid-November. On a handwritten receipt for $400.00, Moreno's wife references money paid to her and Juan for time spent in discussing what happened in 1984.[274] The receipt seems to be for November of 2004.[275] The receipt does not indicate whether these discussions occurred with Reyna.

Although there are no reports documenting what happened at the meetings, Reyna told this investigation that these were meetings with Friedman and Moreno and he was just there to translate if needed.[276] It is odd that there is no further documentation of these meetings. This raises the obvious question of what happened at these meetings. Reyna may have unintentionally given a clue to the purpose of the meetings in his September 12, 2004, letter to Ruth Friedman when he detailed Moreno's financial difficulties.

While we do not know what happened during the undocumented November meeting or meetings, we do know that Moreno owed money because of an automobile accident and the loss of his driver's license, and that he owed towing and storage fees to the city. Reyna documented this and made it known to Friedman. Reyna's records also indicate that on November 30, 2004, Moreno was paid $200.00 as "lost wages."[277] There

[274] Handwritten Receipt signed by the Morenos.
[275] *Id*.
[276] Richard Reyna Interview, August 14, 2006.
[277] Richard Reyna Expense Reports.

is nothing in the reports, however, indicating that the self-employed Moreno had missed any work as a result of his meetings with Reyna. In fact, the November 30th meeting occurred at 5:10 p.m. after he had completed his work at the job site.[278]

Ultimately, Reyna did not document when Moreno first asserted that the shooter had curly hair (*pelo chino*). All we know from Reyna's December 3rd letter is that he now has an allegedly new revelation that supports the claim that Ruben Cantu is innocent. This detail does not appear to have developed until after one or more of the undocumented November meetings and until after the Morenos have received financial compensation. Given the critical and pivotal nature of this information, it is suspicious that Reyna failed to thoroughly document it.

MORENO BEGINS SAYING WRONG MAN MAY HAVE BEEN EXECUTED—DECEMBER 1, 2004

The next meeting with Moreno occurs on December 1, 2004. Reyna met with him at a job site.[279] At the outset, Moreno was curious if there would be a new trial.[280] Reyna assured him there would not be a new trial because Cantu had already been executed.[281] Because of this, Reyna told Moreno he did not "have to worry."[282] Implicit in this statement is an assurance that there would be no consequences if his story were to now change. This seems to be the last piece of information Moreno needed before he would abandon the version he had consistently told for twenty years.

When asked if he had thought about what he had discussed with Reyna the day before, Moreno said that he did and told Reyna "that he told police investigators several times that the person who shot them had *chino* hair and that the other person looked very

[278] Letter to Ruth Friedman, December 3, 2004.
[279] *Id*.
[280] *Id*.
[281] *Id*.
[282] *Id*.

young."[283] Again, this directly contradicts what Moreno said the day before when asked if he had ever told investigators that the shooter had curly hair (*pelo chino*) and he said that he had not.[284]

At this meeting, Moreno asked to see a photo of David Garza.[285] After looking at it, Moreno reiterated that Garza was the younger person inside the house the night they were shot.[286]

According to Reyna, Moreno remained adamant that he never gave police Cantu's name, that the police never read to him his own affidavits, and that he never "shook with fright" when he viewed the photo lineups.[287] Reyna again showed Moreno a photo of Ramiro Reyes and Moreno said, "It looks like an innocent man might have been executed".[288]

Although it is not documented in this letter, there is a handwritten receipt signed by Moreno showing that Reyna made a $200 payment to Moreno on December 1, 2004, ostensibly for lost wages.[289] Again, it is not clear to what extent Moreno has actually missed any work as result of his meetings with Reyna. Reyna's letters do not seem to indicate that Moreno has missed any significant amount of work as a result of the meetings. This December 1st meeting occurs at Moreno's job site and, at least as represented in the letter to Friedman, is rather short and ends with Reyna noting that

[283] *Id*.
[284] *Id*.
[285] *Id*.
[286] *Id*.
[287] *Id*.
[288] *Id*.
[289] Richard Reyna Expense Reports.

Moreno "looked concerned about returning to work" and the two agreeing to meet again within two weeks.[290]

Less than four months after his first meeting with Reyna, Moreno has gone from being certain that Cantu was the shooter and that he had never seen anyone with curly hair (*pelo chino*), to believing the complete opposite. This change may have resulted from Reyna's suggestive methods during their meetings, Moreno's fading memory over the decades, Moreno's willingness to help in return for financial compensation, or some combination of these factors. Given the process in which it came about, it is not reliable or credible.

MORENO AGREES TO BE VIDEOTAPED—JANUARY 2005

In his letter to Ruth Friedman, Reyna explains his difficulty in meeting with Moreno.[291] Reyna does not provide any specific dates for his attempted contact, but notes that Moreno has been working from early in the morning until late.[292] He details a planned meeting with the Morenos for dinner on one Sunday night.[293] Although they had initially made plans, Reyna was unable to get a hold of Moreno to schedule a time.[294] Thus, there was no meeting at this time.

Reyna's expense records, however, indicate that on December 18, 2004, he met with Moreno at a hotel and had a meal.[295] Reyna spent $156.82 on the meal suggesting that there were more people than just Moreno and Reyna present.[296] There is no documentation indicating what occurred at this meeting.

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[290] Letter to Ruth Friedman, December 3, 2004.
[291] Letter to Ruth Friedman, January 10, 2005.
[292] *Id*.
[293] *Id*.
[294] *Id*.
[295] Richard Reyna Expense Reports.
[296] *Id*.

In a later letter, Reyna notes that he met with the Morenos and they told him that their son was interested in doing the type of work Reyna did.[297] Because he does not date this meeting, it is not possible to say if this occurred on December 18th or at some other time. Reyna kindly follows up by sending their son, Ricardo, a video containing cases Reyna has worked on.[298] What it does evidence is that Reyna was having more involved contact with Moreno and his family and he was not otherwise documenting these contacts.

On January 22, 2005, Reyna met with the Morenos and their son, Ricardo, at Chin San restaurant.[299] During this meal, Moreno's son asked if there could have been three men inside the house and Moreno "immediately" said there were only 2 men, Garza and the one with *chino* hair.[300] Reyna reinforced the difference in hair by mentioning the difference in hairstyles between Ruben Cantu and Ramiro Reyes.[301] Moreno responds to this by saying that Cantu clearly had straight hair and wore it combed back.[302] This is exactly what Reyna told Moreno at their November 30th meeting. Moreno then adds that he heard that Ruben Cantu was not even in San Antonio on the night he was shot.[303] This, as is much of what Moreno now says about the case, comes directly from what Reyna told Moreno during their earlier meetings.[304]

Reyna further reinforces this by telling Moreno that he interviewed Maria and Ricardo Garcia, Eloy Gonzales, and Eloy's brother, Joe "Blackie" Alejandro, and that everyone was adamant that Ruben was at the Garcia home in Waco, Texas on the night

[297] Letter to Ruth Friedman, January 23, 2005.
[298] *Id*.
[299] *Id*. Reyna's records indicate that he spent $48.78 on this meal. Richard Reyna Expense Reports.
[300] Letter to Ruth Friedman, January 23, 2005.
[301] *Id*.
[302] *Id*.
[303] *Id*.
[304] *Id*.

that he and Pedro Gomez were shot.[305] While he may have said this to Moreno, it is clear that all of them were not "adamant" about the alibi. Reyna's own notes indicate that he never even spoke with Ricardo Garcia because he suffered impairment as the result of a stroke. And while he did speak with Joe, he did not provide sufficient information to corroborate the alibi. As for Eloy, Reyna himself did not find him credible. Nonetheless, Reyna is willing to mislead Moreno to further his agenda.

It is at this point that Reyna does something particularly troubling: He tells Moreno that, "we could all safely agree that Ramiro Reyes was the person who shot him and Pedro Gomez."[306] To which both Mr. and Mrs. Moreno nod in agreement. Reyna continues:

> I said that I was more interested in how police investigators convinced him to point out Ruben Cantu. I carefully mentioned the various photo lineups that he viewed and about him being unable to identify Ruben Cantu. I mentioned that police investigators indicated in their reports that he began to tremble when he looked at the photograph of Ruben…
>
> I commented that after police investigators showed him the photo lineup in December (*December 16, 1984) and he was unable to identify Ruben, nothing more was done on the case until Ruben got involved in a shootout at a bar with an off-duty police officer. I said that the day after the shootout, police investigators visited him again with another photo lineup. I said that at this point, police investigators said in their report that he (Moreno) would not identify Ruben Cantu's photograph but that Mr. Moreno did tell them that the person who shot them was named Ruben Cantu.[307]

Reyna also misleads Moreno about what the reports actually say. Again, none of the police reports indicate that Moreno provided Cantu's name to the investigators.

[305] *Id*.
[306] *Id*.
[307] *Id*.

Rather, this assertion is based on Detective Balleza's testimony in Cantu's trial.[308] The suggestion that multiple investigators noted this is false and creates the impression for Moreno that the officers lied in their reports, further confusing Moreno. All of the reports are clear, Cantu's name was not provided until after Moreno had identified him from the photo lineup. Not surprisingly, Moreno is now in complete agreement saying, along with his wife, "that it looked like the police were saying untrue things just so they could make their case look stronger."[309]

Reyna then tells the Morenos what David Garza has told him about the night of the murder and about what McCartney purportedly told Krieg and Bohnenblust, reinforcing Moreno's new belief that Cantu was not involved.[310] Reyna notes that Moreno "looked pensive."[311] Reyna reassures Moreno that none of this is his fault.[312] According to Reyna:

> I told him that it was not his fault that Ruben Cantu was executed. I told him that after being shot and left for dead, police investigators also victimized him by either persuading or intimidating him into saying things that he knew, were not true.[313]

Reyna further explained how he tried to make Moreno feel better by telling him that others could have come forward with their information but did not.[314] Reyna added that, "the only people with courage were Maria Garcia, Eloy Gonzales, Joe and Ralph

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[308] Ct. R. vol. I of X, at 29 & 32; Ct. R. vol. IX of X, at 2592 & 2601.
[309] Letter to Ruth Friedman, January 23, 2005.
[310] *Id*. This is another partial truth. In his sworn statement to this investigation, Krieg asserted that McCartney never said that Cantu was not seen running from the house, rather only that Krieg believes McCartney *would have told him* if it had been Cantu.
[311] *Id*.
[312] *Id*.
[313] *Id*.
[314] *Id*.

Alejandro."[315] Reyna then lengthens his list of parties to blame by adding that, "neither, the prosecutors or defense attorneys spoke with the brothers as they waited outside the courtroom so they just left."[316] Adding, "Maria Garcia testified but the prosecutors just tried to make fun of her."[317] Reyna continues with his conspiracy theory:

> I said that police investigators had their own ***agenda*** to get Ruben Cantu, not because of the shooting at the house, but because Ruben shot one of their own. I again mentioned how the police reports were fabricated. I repeated how they mentioned that he began to tremble when he saw the photograph of Ruben Cantu and later, during another photo lineup, how he wouldn't identify the photograph of Ruben Cantu, but gave the name of Ruben Cantu as the person that shot him and Pedro Gomez. Mr. Moreno just shook his head and said that these things were not true.[318]

Just as with his earlier assurance of no legal ramifications, Reyna is now providing moral assurances and identifying individuals other than Moreno for the public to blame.

Moreno then wonders how this would help Cantu now since he is dead.[319] Mrs. Moreno responds by immediately commenting that this could help others who might be innocent on death row.[320] Reyna asked Moreno if anyone helped or persuaded him in his identification of Cantu, but Moreno did not answer.[321] Reyna asks if Moreno is interested in reading his trial testimony and statements; Moreno "eagerly" responds that he would and Mrs. Moreno volunteers to translate them for him.[322]

Reyna ends the evening by mentioning the video-interview scheduled for Sunday, February 13th. Moreno indicates that he has no problem with the date. Reyna reminds

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[315] *Id*.
[316] *Id*.
[317] *Id*.
[318] *Id*. (emphasis added).
[319] *Id*.
[320] *Id*.
[321] *Id*.
[322] *Id*.

Moreno that if he had to "cancel a work project, he would be reimbursed for lost wages."[323]

Reyna uses the word "agenda" when discussing the actions of the police officers in this case. Yet, he did not directly speak with any of the officers involved in this investigation. Instead, he speaks with friends of the Cantus and their family members in an attempt to develop a potential alibi for Cantu. He does not find these people to be particularly credible and is unable to corroborate their stories with outside sources. Nonetheless he presents all of this to Moreno as fact saying that the witnesses are "adamant" and he even misrepresents their relationships when he contended that they did not know each other. The fact is that all of these witnesses are either related to each other or are otherwise friends.

Yet this is how Reyna conducts the investigation. This happens from his very first meeting with Moreno, and continues even after Moreno has told him that he is certain about his identification of Cantu. When, after multiple meetings, meals, and money, Moreno begins to agree with Reyna's version of what occurred, Reyna effectively ends his investigation and begins prepping Moreno for the videotaped interview for the NAACP LDF's website. Although the formal investigation may have ended, Reyna's contact with Moreno has not. Since August of 2004, there have been almost 150 telephone calls made between Reyna and the Morenos.[324] The calls range in length from one minute to as long as fifteen minutes, and have continued well after Moreno gave his videotaped interview.[325]

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[323] *Id*.
[324] Moreno Telephone Records.
[325] *Id*.

THE PAYMENTS

The extent of Reyna's methods with Moreno do not rest exclusively with suggestive interview techniques, they also include gifts and cash. The first payment is shown in a handwritten receipt for $400.00. This seems to be a payment for the time the Morenos spent discussing the case with each other in mid-November of 2004.[326] Thus, Reyna is paying Mrs. Moreno for time she spends talking with her husband about the case. There are no reports documenting what happened here. This amount may coincide with the November meeting with Ruth Friedman.

Similarly, on December 1, 2004,[327] Moreno was also given and additional $200.00 for "lost wages."[328] What is odd about this payment is that Reyna met with Moreno at his job site and Reyna noted that the interview ended when Moreno looked concerned about returning to work. It does not appear from Reyna's records that Moreno actually had lost wages. If he was not being compensated for actually missing work, there are serious questions about why he was given the money.

Reyna's records also indicate that he bought dinner for the Moreno family on December 18, 2004.[329] The meal was at the Marriot Hotel and totaled $156.82.[330] On January 22, 2005, Reyna's records reveal a $48.78 meal with the Moreno family.[331]

[326] Handwritten Receipt signed by the Morenos.
[327] There is some confusion in Reyna's records as to whether Reyna also made a payment of $200 on November 30, 2004. Reyna met with Moreno on both November 30th and December 1st. His notes indicate that he paid Moreno $200 on November 30th for lost wages for a meeting that occurred after Moreno got off of work; however, there is only one receipt signed by Moreno for lost wages dated December 1st for $200.
[328] Richard Reyna Expense Reports.
[329] *Id*.
[330] *Id*.
[331] *Id*.

There are no records indicating what took place during this meal. Another meal was provided on February 11, 2005 and cost $58.51.[332]

As stated before, Moreno agreed to give a videotaped interview to the NAACP LDF. The video was to be recorded at a Marriot hotel located in San Antonio, Texas. The night before the video was made Moreno and his family were provided a hotel room in San Antonio, the city of their residence. The total cost for the night was $232.50 and included not only the room, but also a $72.49 charge for room service, $26.92 for movies, and $22.59 for video games.[333] $200.00 more was paid for lost wages on Sunday, February 13, 2005.[334] All of the above costs were paid by the NAACP LDF.

The Morenos received their final payout of $400.00, $200 each, for a meeting Reyna facilitated with Lise Olsen, the reporter from the Houston Chronicle, on June 25, 2005.[335]

In total, Juan Moreno and his wife received at least $1,700 in cash payments and services.[336] This is a considerable amount of money, especially for an admittedly modest working family with limited means. In addition to the financial issues Reyna references, Juan Moreno had serious property tax problems just a few years earlier.[337] It is possible that someone in Moreno's circumstances would be influenced by these payments and this is one more reason that Moreno's credibility is damaged.

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[332] *Id*.
[333] *Id*.
[334] *Id*.
[335] *Id*.
[336] *Id*. Of this total, $1,200 was paid directly to the Morenos, $264.11 was directly for meals, and $232.50 was for the family's hotel stay. Importantly, Reyna's letters to Ruth Friedman detail at least two other meals that are not reflected in his expense reports. We cannot, therefore, know the total amount of compensation the Morenos ultimately received.
[337] Bexar County District Clerk's Records. In addition, in February of 2002, the Internal Revenue Service obtained a federal tax lien against Moreno in the amount of $67,459. *Id*.

E. MORENO'S STATEMENT TO THIS INVESTIGATION

The NAACP LDF's investigation raises serious questions about Juan Moreno's current assertions of Cantu's innocence. Moreno was contacted directly by this investigation and he and his lawyer, Gerald Goldstein, agreed to an interview with representatives of the Bexar County Criminal District Attorney's Office concerning the Cantu case. This recorded interview took place at Mr. Goldstein's office on February 8, 2007. Moreno was not under oath at the time and the interview was conducted both in Spanish and in English with a Spanish translator.

During this interview, Moreno recalled building the house on Briggs Street with his brother, Eusebio, and other friends.[338] In this regard, he knows a person named Rigo that he has worked with in the past.[339] He described him as just a work friend.[340] He could not recall if Rigo worked with him on the Briggs Street house.[341]

Despite what Moreno had said in the past to police and at trial, he now claims that he had no problems with the young kids in the neighborhood while they were building the house.[342] He currently has no recollection of any incidents where the kids were shooting guns.[343] He does recall, however, an incident at the time before the shooting where three sixteen or seventeen year-old kids were in back of the house, digging.[344] According to Moreno, his neighbor approached the group and told them that they were on

[338] Juan Moreno Interview, February 8, 2007.
[339] *Id*.
[340] *Id*.
[341] *Id*.
[342] *Id*.
[343] *Id*.
[344] *Id*.

someone else's property and should not be digging.[345] They became angry.[346] He did not provide any further details about this incident.

His recollection of the night of the murder is equally as vague. According to Moreno, they arrived at the house about 9:00 p.m., tired, and ready for sleep.[347] He and Pedro awoke to find the individuals already in the room.[348] The intruders demanded their money and watches.[349] Moreno had about five hundred dollars in cash in his wallet at the time, but did not recall how much money Pedro had.[350]

Moreno recalled how the murder occurred. He stated that as Pedro went toward the mattress, which had a gun underneath wrapped in a towel, the gun moved and the intruders shot Pedro.[351] After shooting Pedro, they shot Moreno.[352] Moreno claims that they did not know the shooters.[353]

Moreno could not recall how he got out of the house, but the police told him that he opened the back door.[354] When Eusebio arrived, he accompanied him in the ambulance to the hospital.[355] Moreno stressed that he did not recall much of what occurred. According to Moreno: "I was unconscious. I was all shot up. I can't remember."[356] Interestingly, although he did not recall telling the officer arriving on the

[345] *Id.*
[346] *Id.*
[347] *Id.*
[348] *Id.*
[349] *Id.*
[350] *Id.*
[351] *Id.*
[352] *Id.*
[353] *Id.*
[354] *Id.*
[355] *Id.*
[356] *Id.*

scene, Officer Sanchez, that the suspects were not illegals, he did confirm the substance of what the officer noted that they were "Chicanos" from the United States.[357]

Moreno now claims he does not remember who visited him while he was in the hospital.[358] Because of this, he is unable to confirm or deny the police reports concerning the hospital meetings.

When he got out of the hospital, he confirms that he went to live with his brother (Eusebio) and brother's wife (Alejandra) and that they moved twenty miles away.[359] He acknowledged that his brother and sister-in-law were possibly afraid that the killers would come looking for them.[360] Moreno himself never went back to Briggs Street.[361]

Moreno frequently claims not to remember events that occurred back in 1984 and 1985. For example, Moreno does not remember ever talking to an investigator from the District Attorney's office.[362] Nor does he recall he or Eusebio ever giving written statements to the police.[363] Likewise, while he recalls that he was shown photographs by the police, he does not remember if he selected Ruben Cantu's photograph from the lineup.[364] He even denies that the signature on Cantu's photo is his.[365]

Despite the repeated claims of not remembering various conversations, details, or facts, Moreno does repeatedly state that when he spoke to the police that he "always said they were Hispanic males, one with curly hair (*pelo chino*) and one with straight hair."[366]

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[357] *Id*. This detail, provided so close in time to the shooting, strongly suggests that Moreno knew who the assailants were.
[358] *Id*.
[359] *Id*.
[360] *Id*.
[361] *Id*.
[362] *Id*.
[363] *Id*.
[364] *Id*.
[365] *Id*.
[366] *Id*.

He insists this is what he testified to in court and affirmed this to his family.[367] He also claims that he told the police this from the very beginning.[368] These assertions are completely refuted by the court transcripts and the investigative reports prepared by the officers at the time.

Moreno gave conflicting answers as to whether he remembers testifying at Cantu's trial, initially saying he did not remember and later saying that he did.[369] Ultimately, he did admit that he remembered the lawyers asking him questions while in court.[370] He could not, however, recall what he was asked or even whether a jury was present.[371] It is clear that he does not recall how many times he testified in court.[372]

When asked directly about his identification of Cantu during the trial, Moreno was evasive saying what he remembered most was that he said they had curly hair (*pelo chino*) and straight hair, and that he was told that they had him in custody, but ultimately responded that "at the time, uh, one gets confused. You don't know what you are being asked, with so much treatment I was undergoing, because I needed so much treatment, all the pressure that I was under, maybe, perhaps, I could have said that."[373] Again, the trial transcript clearly establishes that Moreno never testified about curly hair (*pelo chino*) and was positive in his identification of Ruben Cantu.

Ultimately, Moreno asserts that he was not sure of his identification of Ruben Cantu at trial.[374] But the reason for this uncertainty remains unclear. It appears that his confusion stems from the fact that he recalls Cantu as having different length hair at the

[367] *Id*.
[368] *Id*.
[369] *Id*.
[370] *Id*.
[371] *Id*.
[372] *Id*.
[373] *Id*.
[374] *Id*.

time of trial than the night of the murder. According to Moreno, this was "because, when he broke into the house, my house, he had curly hair (*pelo chino*). When he was in the courtroom, his hair was short."[375] What is particularly telling is that at no time during the interview did Moreno directly say that Cantu was not the shooter. Moreno claimed he felt pressured and stressed during this meeting, but offered little in the way of explaining the source or how this directly affected him.[376] He also said he felt pressured by the police at the time.[377]

When asked about police pressure, he could only say that it was "perhaps because they were coming so often" but he affirmatively stated that he was not afraid of the police.[378] He even admitted that he never told anyone at the time that he felt pressured.[379] Given these vague and unspecific allegations, there is no reason to believe that any of the officers investigating the case did anything improper to influence Moreno. It seems more likely that Moreno is simply searching for an explanation for his present day recantation.

Moreno's recollection of his meetings with Richard Reyna, the NAACP LDF investigator, is equally as vague, despite how recently they occurred. Moreno recalls that at their first meeting, Reyna met Moreno at his home and explained the case to him.[380] According to Moreno, Reyna told him,

> [about] the case, how it happened, where it happened, and all that. He asked me in the case, what it was, who had died and all that.[381]

Reyna also showed Moreno photographs and papers.[382]

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[375] *Id.*
[376] *Id.*
[377] *Id.*
[378] *Id.*
[379] *Id.*
[380] *Id.*
[381] *Id.*

According to Moreno, Reyna also told him about the witnesses and Waco.[383] Moreno recalled Reyna telling him something about a brother or friend saying that Cantu was in Waco and was going to spend the night.[384] Reyna told Moreno that these people did not know each other. [385] Reyna presented all of this information as fact.[386]

Moreno recalled the incident with the individuals back behind the house to Reyna.[387] He initially indicates that he told Reyna that this was the first time he saw Cantu.[388] But he later claims he does not remember.[389] But Moreno did not recall telling Reyna that he was sure that Cantu was the person that shot him.[390] According to Moreno, he met with Reyna six or seven times and would speak with him on the phone.[391] He also acknowledged that Reyna paid him for missing work, claiming that he only received $200 for a day's worth of missed work.[392]

Moreno also discussed how Reyna conducted a photographic lineup. Reyna initially showed him several pictures, about five people.[393] Reyna would show him pictures and say "this is the man, right?"[394] Reyna apparently wanted to know if Moreno

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[382] *Id*.
[383] *Id*.
[384] *Id*.
[385] *Id*. It is important to note that Reyna knew the falsity of this assertion.
[386] *Id*.
[387] *Id*.
[388] *Id*.
[389] *Id*.
[390] *Id*.
[391] *Id*.
[392] *Id*. It is clear from Reyna's records, however, that Moreno's recollection of his interaction with Reyna is not true. Reyna documents that Moreno told him upon their first meeting that he was sure Cantu was the person who shot him. Reyna's records also establish that Moreno received more than $200 as compensation for "missed work."
[393] *Id*.
[394] *Id*.

recognized any of them.[395] While Moreno did not remember names, he did recognize some as having lived in the neighborhood.[396]

Moreno claims Reyna also showed him a picture of Ramiro Reyes, identified him, and told Moreno that he was the curly haired (*pelo chino*) one and was on the loose.[397] He specifically told Moreno that "he was the curly haired man that had broken in", but did not tell him that he was the one that shot him.[398] Reyna did, however, tell Moreno that he had spoken to David Garza and that Garza told Reyna that Cantu was not the shooter and that it was Reyes.[399] Moreno cannot recall during which meeting these things happened.[400]

Given Reyna's methods and his assertions concerning Ramiro Reyes' involvement, it is not at all surprising that Moreno is confused as to whether Reyes was involved. Moreno admits that his current identification of Reyes is only based on the hair.[401] Moreno also admits the possibility that he told Reyna after being shown Reyes picture that he did not know the person or anyone with that type of hair.[402] Moreno is clearly not certain in his current identification saying that he "can't say he is guilty" adding that he did not "know enough to tell you who to take to court."[403] After his meetings with Reyna, all Moreno can now say is that he does not know who shot him, only that the person had curly hair (*pelo chino*).[404]

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[395] *Id.*
[396] *Id.*
[397] *Id.*
[398] *Id.*
[399] *Id.*
[400] *Id.*
[401] *Id.*
[402] *Id.*
[403] *Id.*
[404] *Id.*

While Moreno acknowledged that he was initially reluctant to identify Cantu because he was afraid that "he could come back to finish us off", he now claims that he was not scared.[405] According to Moreno, his reluctance to make the identification was related to the stress of the lawyers and the court, not the fear.[406] And while he claimed that his family's move to another residence was not motivated by fear, he did say they did it because they believed the shooters could come looking for them and finish them off.[407] Again, this is completely contrary to the known facts and recollection of Moreno's family.

Even after this interview, it is still not clear that Moreno is recanting his identification of Cantu as being involved. Rather, he is stating that he only recognized the shooter by his curly hair (*pelo chino*). When Moreno discusses the incident, he is vague and claims to not recall many of the most important details from this time. Moreno does not claim that he was pressured to lie or falsely identify Cantu, but only that he felt pressure. His claim that he only identified Cantu because officers told him that they caught the shooters, does not explain the detail of his testimony or the certainty with which he testified. Moreno's current assertions are also completely different from what he told Richard Reyna during the early stages of his meetings with him.

V. THE ALIBI & THE CONSPIRACY: CLAIMS OF CANTU'S INNOCENCE

A. THE ALIBI

In order to fairly evaluate the claims of Cantu's innocence, any evidence suggesting that he was not involved must also be critically evaluated. During the trial, Mary Isabel Garcia testified that Cantu was staying at her home in Waco at the time of

[405] *Id*.
[406] *Id*.
[407] *Id*.

the shooting. Although the jury rejected her testimony and convicted Cantu, there were other witnesses who allegedly could have corroborated the alibi but did not testify. All of the potential alibi witnesses have been contacted by this investigation.

ELOY GONZALES

The NAACP LDF has offered the claims of several "witnesses" who claim that Cantu was in Waco, Texas at the time of the shooting. The person alleging to have the most detailed recollection of the Waco trip is Eloy Gonzales. According to Eloy, he, Cantu, and his brother drove up to Waco.[408] He claims that he and his brother, Jose "Blackie", along with Ruben had gotten drunk at a bar in San Antonio when they made the decision to go to Waco.[409] They left when the bar closed some time around 2:00 a.m. The group woke up in his sister's, Mary Garcia, yard in Waco and she made them breakfast. While he does not recall the specific date, he does state that it was "around November".[410]

The group later went "shopping" for Ford trucks.[411] They found a car lot on Franklin and Waco Drive, and saw a 1979 "cherry" red Ford Ranger that they decided they would either buy or steal.[412] The group returned that night and stole the truck.[413] The group left for San Antonio with the truck two or three days later.[414] Eloy claims that the truck was recovered by DPS two weeks later and ended up back on the lot where it had originally been stolen.[415]

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[408] Sworn Statement of Eloy Hernandez Gonzales, March 29, 2006.
[409] *Id.*
[410] *Id.*
[411] *Id.*
[412] *Id.*
[413] *Id.*
[414] *Id.*
[415] *Id.*

About six hours after they got back to San Antonio, they heard "through the grape vine" that the police were looking for Cantu about a shooting.[416] Eloy also says that he thinks the shooting occurred the day they came back.[417] If this is true, then Eloy does not actually provide an alibi for Ruben Cantu.

In April of 1985, Eloy gave a short statement saying that Cantu was with him in Waco the week of the shooting, although he did not recall the exact date.[418] He also stated that he was willing to testify on behalf of Cantu.[419]

Despite concerted efforts during this investigation, that included a full review of the law enforcement records relating to stolen vehicles in the Waco area during the month of November 1984, no vehicle theft even remotely matching the description given by Eloy occurred. Even Richard Reyna checked the Waco newspapers for articles detailing vehicle thefts during that time period and could not find anything.

Any alibi that Eloy now provides for Cantu must also be assessed in light of his chronic drug use, his criminal history, his relationship to the Cantu family, and the money and gifts he has received from the NAACP LDF for cooperating with their investigation.[420] Eloy's convictions date back to 1982 and include aggravated assault with a weapon, engaging in organized crime, and theft.[421] It is also worth noting that he is the godfather of Robert Cantu's son.[422] Given this history, there is little to indicate he is a credible witness.

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[416] *Id*.
[417] *Id*.
[418] Affidavit of Eloy Gonzales, April 4, 1985.
[419] *Id*.
[420] Richard Reyna Expense Reports.
[421] Criminal History of Eloy Gonzales.
[422] Sworn Statement of Cindy Segovia, August 7, 2006.

MARY ISABEL GARCIA

In addition to Eloy Gonzales, his sister, Mary Isabel Garcia, also tries to provide the alibi. In an affidavit given before the trial, she claimed that Cantu arrived at her house on November 8, 1984, at about 5:30 p.m. with her brothers Joe, Ralph, and Eloy.[423] According to Garcia, the group was still there sometime before midnight but was gone by the time she woke up the next morning.[424] She did not provide any other information about the alibi in this affidavit.

At trial, she testified that Cantu and her brothers, Eloy, Joe, and Ralph, came to her home in Waco during the first week of November 1984.[425] She claimed that they were there Monday through Thursday.[426] She particularly remembered that they were there on Thursday, November 8th; because that was the day she usually started her menstrual cycle.[427] She testified that they arrived at her house around 5:30 p.m. that day and were there watching television until 12:30 a.m. when she finally went to bed.[428] Surprisingly, Garcia even recalled exactly what she had prepared for breakfast that day and what she made for dinner on that night and an earlier evening.[429]

Garcia still maintains today that Cantu, along with her brothers, Eloy, Jose, and Ralph, came to her house in Waco during the first week of November 1984.[430] Unlike her original affidavit, she testified at trial and presently claims that they stayed three or

[423] Affidavit of Mary Isabel Garcia, July 10, 1985.
[424] *Id*.
[425] Ct. R. vol. IX of X, at 2635.
[426] *Id*. at 2635-36.
[427] *Id*. at 2636 & 2638.
[428] *Id*. at 2637-38.
[429] *Id*. at 2653, 2642, & 2645.
[430] Sworn Statement of Mary Isabel Garcia, June 27, 2006.

four days.[431] She also knows they were there until at least Thursday, because she usually started her menstrual cycle on the eighth of each month.[432]

Garcia does not know why her brothers did not testify during Cantu's trial and has not asked them.[433] Despite the certainty she expresses, the jury determined that she was not credible and rejected her testimony.

DORA ANN GARCIA

Dora Ann Garcia, Mary Isabel's daughter, provided a similar affidavit in July of 1985. Like her mother, Garcia stated that Cantu and her uncles arrived at about 5:30 p.m. on Thursday, November 8, 1984.[434] Since she provided the affidavit back in 1985, it is unclear why she did not testify. When recently contacted, she stated that she has no independent recollection of anything that occurred back then.[435] She did recall, however, that her mother's younger brothers would occasionally visit, but that they would not stay for very long.[436]

RAFAEL ALEJANDRO

Eloy's brother, Rafael Alejandro, contradicts Eloy's version. Rafael has stated that, "I don't remember going to visit my sister Maria in Waco, Texas with Eloy, Jose or Ruben… ."[437] When he did go to Waco, he would go by himself or with his sister Hortencia.[438] He does not remember stealing cars or trucks in Waco and does not remember if Eloy, Jose, or Ruben ever stole any vehicles in Waco.[439] At trial, Mary

[431] *Id*.
[432] *Id*.
[433] *Id*.
[434] Affidavit of Dora Ann Garcia, July 10, 1985.
[435] Sworn Statement of Dora Ann Garcia, August 23, 2006.
[436] *Id*.
[437] Sworn Statement of Rafael Alejandro, April 13, 2006.
[438] *Id*.
[439] *Id*.

Isabel testified that he had been present during the trial but that he had left to go rest and was unavailable testify because he had to work that night.

Rafael has an even lengthier criminal record than Eloy. He has been convicted of theft almost twenty times, three of which were felonies.[440] He has also been convicted twice for possession of marijuana and twice for possession of a controlled substance with the intent to deliver.[441] He has been convicted of escape and for failing to identify himself to a police officer. Most recently he was convicted of assault.[442]

JOSE ALEJANDRO

As for Jose "Blackie" Alejandro, he has refused to provide a written sworn statement for use in this investigation. He did, however, state that he did not specifically recall if he was in Waco with Cantu at the time of the shooting, but that his brother Eloy told him they were in Waco.[443] In April of 1985, he gave a statement concerning the De La Luz shooting in which he asserted that Cantu was with him at the "Skybaru (Sky Room) Club, located off the Laredo Highway, the day of the alleged crime for about an hour."[444] He further stated that he did not remember "the exact date" but he was "willing to testify in (sic) behalf of Ruben Cantu."[445] It is clear that the Briggs Street shooting is not the only case for which Eloy's family members claim they are willing to testify for Cantu.

Like his brothers, Blackie has a significant criminal record and a history of drug abuse.[446] He has been convicted a dozen times for misdemeanor and felony thefts.[447] He

[440] Criminal History of Rafael Alejandro.
[441] *Id*.
[442] *Id*.
[443] Interview of Jose Alejandro, July 28, 2006.
[444] Sworn Statement of Joe Alejandro, April 30, 1985.
[445] *Id*.
[446] Criminal History of Jose Alejandro.

has also been convicted for possessing marijuana, and twice for possessing a controlled substance with the intent to deliver.[448] In addition, he is currently under indictment for the offense of possession of a controlled substance with the intent to deliver in Bexar County.[449]

ASSESSING THE ALIBI

Despite the credibility issues with Eloy and his brothers, there are more serious problems with the alibi. During his first meeting with the police seventeen days after the murder, on November 25, 1984, Cantu denied any knowledge of the crime.[450] Importantly, Cantu did not tell the police that he was in Waco on the night of the shooting.[451] This was his first opportunity to raise the alibi and yet he remained silent as to his whereabouts.

Even odder is the fact that his father, Fidencio Cantu, was present during this police interview.[452] Even if Ruben Cantu was unwilling to provide the information, there is absolutely no reason why his father would not have mentioned the alibi. Whatever criticisms some might have about Fidencio Cantu's parenting, he was very involved with matters that affected Ruben.[453] If Fidencio Cantu would bully a teenage boy like Eugene Reyes into signing a false statement,[454] he surely would have told the police if his son had an airtight alibi for the night of the murder.

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[447] *Id*.
[448] *Id*.
[449] *Id*.
[450] Supplementary Report of Det. Herring, December 14, 1984; Sworn Statement of Joe Cloud, February 1, 2006.
[451] *Id*.
[452] *Id*.
[453] Sworn Statement of Richard Calhoun, August 10, 2006.
[454]Sworn Statement of Eugene Reyes, August 21, 2006. This incident is detailed later in this memorandum.

In addition, Ruben's sister, Cindy Segovia, does not believe that Ruben went to Waco with Eloy for a week as he "always was at home."[455] Currently, Fidencio Cantu claims that while he did not know where his son was on the night of the murder, the first time he heard that his son was in Waco was at the trial.[456] Also supporting this is Robert Cantu who says to his knowledge Ruben never stole cars with Eloy.[457] Larry Cantu seems to confirm this, as when he was not in prison, he never knew Ruben to associate with Eloy.[458]

Even the alibi witnesses are inconsistent. Both Mary Isabel and Dora initially contended in their affidavits that the brothers and Cantu arrived at 5:30 p.m. on Thursday, November 8, 1984. While he does not recall the date, Eloy was very clear that the group did not leave San Antonio until sometime after 2:00 a.m. and that his sister made breakfast for the group. In addition, during Mary Isabel's testimony she asserted that the other witness who could have testified was Rafael. Her explanation for his unavailability to testify is puzzling. According to Mary Isabel, Rafael had been present outside the courtroom but left before testifying because he had to go home and rest before working that night.[459] Given the severity of the charges, it is incomprehensible that Rafael would have left the courthouse that day to go take a nap when could have testified regarding Cantu's alleged alibi. Mary Isabel does not mention either Eloy or Jose being present at the courthouse to testify.

Furthermore, Eloy Gonzales' claim that they stole a 1979 "cherry" red Ford Ranger pickup the night of the murder is also suspect. As already explained, there is

[455] Sworn Statement of Cindy Segovia, August 7, 2006.
[456] Sworn Statement of Fidencio K. Cantu, August 23-24, 2006.
[457] Sworn Statement of Robert Cantu, August 24 & 29, 2006.
[458] Sworn Statement of Larry Cantu, August 8, 2006.
[459] Ct. R. vol. IX of X, at 2652-53.

absolutely no evidence that a truck matching this description was stolen around the time of the shooting. There is evidence, however, implicating Ruben Cantu in the theft of what at the time was a brand new "cherry" red and white Ford F-150 pickup less than two weeks before the murder. On October 26, 1984, a 1984 Ford F-150 pickup was reported stolen from 518 Briggs Street.[460] It is entirely possible that Eloy Gonzales does remember the group stealing a Ford truck, but not on the night of the murder, and not in Waco. In any case, Cantu's alibi is not supported by the evidence and is highly implausible.

It must also be remembered that the alibi was presented to the jury at Cantu's trial. In fact, the jury was specifically charged on the issues of alibi and misidentification and was instructed to acquit Cantu if it believed the defense.[461] The jury considered and rejected the evidence presented to support it. Given the inconsistency in the stories, as well as the credibility issues of the additional witnesses, there is little reason to believe that the jury would have found the alibi credible if the additional witnesses had testified at trial.

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[460] San Antonio Police Department Assignment No. 424123.

[461] Ct. R. vol. IX of X, at 2693. Specifically, the jury received the following charge:

> One of the defenses raised by the evidence in this case is what is known in law as the defense of alibi or mistaken identification; that is, that at the time of the commission of the offense, if any, the defendant was at another and different place from that at which the offense, if any, was committed, and therefore was not and could not have been the person who committed the offense.
>
> Now, if you have a reasonable doubt as to the presence of the defendant at the place where the offense was committed, if an offense was committed, at the time of the commission thereof, then you will find the defendant not guilty.

Id.

B. THE CONSPIRACY

Despite Moreno's prior statements of fear and reluctance to identify Cantu, and his actions after the shooting and during the subsequent trial, he now says that he was not fearful and only identified Ruben Cantu because officers told him they had the shooter in custody. He now also claims that from the very beginning he was telling officers that one of the person's involved had curly hair (*pelo chino*). The articles appearing in the Houston Chronicle have suggested that the reason for this pressure is that Cantu had shot an off-duty police officer in early March of 1985. They allege that because there were problems pursuing the De La Luz shooting, Moreno was pressured to falsely identify Cantu. Despite Richard Reyna's improper investigative techniques, the reported suggestions of police irresponsibility require an analysis.

CANTU WAS DEVELOPED AS A SUSPECT EARLY IN THE INVESTIGATION

Detective James Herring developed Ruben Cantu and David Garza as suspects in November and December of 1984 based on information he received from a patrol officer and a district patrol officer.[462] As Detective Herring recalls, the patrol officer was possibly one who worked in the neighborhood where the shooting took place.[463] The other officer had obtained the information from a teacher at South San High School.[464] Detective Herring's recollection is corroborated by members of the school's faculty and administration.

Richard Calhoun, who was the vice principal at South San High School at the time, remembered hearing a report on the radio about the murder on Briggs Street and

[462] Supplementary Report of Det. J. Herring, December 14, 1984.
[463] Sworn Statement of James Herring, August 3, 2006.
[464] *Id*.

wondered if Ruben Cantu was involved.[465] By the time he arrived on campus that day, there were already rumors circulating that Cantu and Garza were involved.[466] According to Calhoun:

> When I got to school, the buzz was going around with many of the students talking about the murder. Many of these students were claiming that Ruben Cantu and David Garza were involved. Apparently Ruben and David had been bragging and talking about doing the murder and robbery.[467]

Calhoun does not recall who provided this information to him.[468] It was his practice not to inform police officers of the identity of his sources because he was concerned for student safety and was fearful of retaliation.[469] Robert Sidle, a retired teacher who taught at South San High School in the fall of 1984, confirms that there was gossip that Ruben Cantu and David Garza were involved in the murder.[470] Thus, rumors about the break-in and murder were circulating immediately after the incident occurred and Cantu and Garza were being talked about as being responsible.[471]

Daniel Thompson, a San Antonio Police Officer at the time, was working a part-time job as an off-duty officer at South San High School, in the fall of 1984.[472] On

[465] Sworn Statement of Richard Calhoun, August 10, 2006.
[466] *Id*.
[467] *Id*.
[468] *Id*.
[469] *Id*.
[470] Sworn Statement of Robert Jerome Sidle, August 15, 2006.
[471] Interestingly, the same thing happened after the Officer De La Luz shooting. According to Sidle, "After the shooting in the pool hall that involved Ruben Cantu, rumors started being spread around school that Ruben had shot a police officer." Sworn Statement of Robert Jerome Sidle, August 15, 2006. These new rumors also intensified the earlier ones about Cantu's involvement in the Briggs Street murder. *Id*.
[472] Sworn Statement of Daniel E. Thompson, August 14, 2006.

December 1, 1984, he was approached by a staff member, Mr. Sidle, and given the names of Ruben Cantu, David Garza, and Ramiro Reyes.[473]

Sidle told Officer Thompson that he had been told that three students were involved in a capital murder.[474] Sidle had been told the details about the case by the students but did not provide the details because he feared for his own safety.[475] Officer Thompson believed Sidle to be nervous and concerned that someone might have seen him talking to the officer.[476]

In a report prepared after his meeting with Sidle, Officer Thompson briefly recounted the incident:

> THIS OFFICER WORKS OFF DUTY AT SOUTH SAN HIGH SCHOOL 2515 NAVAJO & WAS CONTACTED BY STAFF MEMBER MR. SEIDEL (sic) …WHO STATED HE WAS TOLD BY SOME OF HIS STUDENTS THAT ABOVE LISTED SUBJECTS WERE ACTORS INVOLVED IN HOMICIDE & ATT. HOMICIDE AT 605 BRIGGS ON 11-08-84. MR SEIDEL (sic) IS CONCERNED FOR HIS OWN SAFETY & STATED THAT HE WAS TOLD IN DETAIL HOW OFFENSE OCCURRED. HE COULD NOT SUPPLY ANY FURTHER DESCRIPTION OR INFO ABOUT THE SUBJECTS.[477]

With this information, the homicide detectives proceeded with the investigation.

NO EVIDENCE THAT POLICE PRESSURED MORENO

Other than Moreno's extremely vague assertions of feeling pressure, there is nothing to suggest that he was actively pressured by the police to identify Cantu after the shooting of Officer De La Luz. Moreno even initially tells Richard Reyna that he was

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[473] *Id.*
[474] *Id.*
[475] *Id.*
[476] *Id.*
[477] Assignment Report of D. Thompson, December 1, 1984.

not pressured to identify Cantu.[478] He does not provide any specific information or details to support his contention that he felt pressure. The fact that the police attempted to see if Moreno could identify Gomez's murderer, and that this attempt may have been triggered by Cantu's shooting of Officer De La Luz, does not establish that law enforcement officials engaged in any improper conduct during the investigation of the Briggs Street shooting. If the police had failed to contact Moreno after the De La Luz shooting, they would have been derelict in their duties as peace officers.

DE LA LUZ SHOOTING—MARCH 1, 1985

The Houston Chronicle has suggested in published articles that Moreno was pressured to identify Ruben Cantu as the shooter because Cantu had shot an off duty police officer, Joe De La Luz. The newspaper insinuates that Bill Ewell, a former San Antonio Police Sergeant assigned to the homicide unit, pushed to have Cantu identified as a result of his friendship with Officer De La Luz.[479] Consequently, this theory needs to be addressed.

Officer De La Luz was shot on March 1, 1985, nearly four months after Moreno was shot and Gomez was murdered. And, as already detailed earlier in this report, Ruben Cantu and David Garza had been developed as suspects in November of 1984, within a month of the murder, and several months before the De La Luz shooting. Cantu was being linked to the murder by students at South San High School the day after the murder. And within a couple of days of the murder, "the rumor in the neighborhood was that Ruben Cantu had committed the murder."[480]

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[478] Reyna Letter to Ruth Friedman, August 23, 2004.
[479] It is important to note that Ruben Cantu was implicated in Gomez's murder months before the De La Luz shooting occurred.
[480] Sworn Statement of Sandra Lopez, August 2, 2006.

THE IDENTIFICATION PROCESS

Even if the De La Luz shooting provided a motive to renew efforts in the Gomez capital murder investigation, it does nothing to explain why there is no mention of curly hair (*pelo chino*) in any of the early reports generated right after the Briggs Street shooting. None of the officers during this first part of the investigation would have had any reason to fail to note the description or to want to tie Cantu to the crime. The documented facts establish that several months before De La Luz was shot, Cantu and Garza were the main suspects in the Moreno shooting and the Gomez murder.

In contrast to Moreno's vague allegations of pressure, the officers involved in the investigation and the photographic identification of Cantu by Moreno steadfastly maintain that he was not pressured into making the identification. This issue was thoroughly litigated pretrial, during the trial, on appeal, and other various post-conviction proceedings. Each time the issue was raised the jury or the court hearing the matter concluded that Moreno's identification of Cantu was based on his recollection of the shooting and not tainted by any subsequent police conduct. If members of law enforcement were attempting to pressure Moreno to force the identification, they would not have meticulously detailed their meetings with Moreno. The thoroughness of these police reports demonstrates the officers' efforts to accurately detail and document the events occurring during the course of the investigation. It would have been much easier to simply state that Moreno picked Cantu out of a lineup.

The police officers that met with Moreno in December of 1984 while he was still in the hospital, recalled his reaction to seeing the picture of Cantu in the lineup. In fact, Detective Herring noted that, "Based on Juan Moreno's actions while looking at the

photographs we believed he did recognize Ruben Cantu as the person who had shot him and Pedro Gomez and was to (sic) afraid to admit it."[481] As Detective Herring noted in his report at the time,

> [In the] lineup was a Ruben Cantu which I had reason to believe was one of the actors and the person who did actual shooting of both comp;s (sic). Det. Garza showed comp [Moreno] the lineup and as he got to the actor Cantu he passed him up and did not even look at him the first time. He said the man who shot him was not in lineup. We asked him to look again and he did and again he passed up the picture of Cantu completely. It was obvious to this det and det Garza that comp [Moreno] was scared and was not going to pick actor out.[482]

This notation was made months before Officer De La Luz was shot and well before there would have been any suggested reason for the police to pressure Moreno. Detective Herring is also certain that Moreno, through the officers who were translating, never gave a physical description of the shooter.[483] Had Detective Herring been given a description, he would have absolutely included it in his report.[484] Detective Herring is adamant that Moreno was not pressured to make an identification of the person that shot him.[485]

In addition, both Detectives Richard Garza and Joe Cloud have been interviewed and emphatically state that they followed police procedures and Detective Garza adds that, "Juan Moreno was not pressured by the police to make an identification of the person who had shot him."[486] Detective Cloud "did not see any police misconduct with regards to this investigation."[487] And as Detective Balleza made clear in his statement,

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[481] Sworn Statement of James Herring, January 31, 2006.
[482] Supplementary Report, Det. J. Herring, December 14, 1984.
[483] Sworn Statement of James Herring, August 3, 2006.
[484] *Id*.
[485] *Id*.
[486] Sworn Statement of Richard Garza, February 1, 2006; Sworn Statement of Joe Cloud, February 1, 2006.
[487] Sworn Statement of Joe Cloud, February 1, 2006.

there is no truth to the contention that Sergeant Ewell would do anything to get Cantu because of the De La Luz shooting.[488] As he explained, "it would never happen."[489]

Detective Quintanilla, the officer who was present during both the identifications of Cantu and Garza in March of 1985, directly responded to the allegations of police pressure. According to Detective Quintanilla, "With regard to the recent comments made by Juan Moreno where he stated the police pressured him into making a positive identification of Ruben Cantu I would like to state the following: That at no time did any police officers including myself pressure Juan Moreno into making an identification of Mr. Cantu as the person who shot him and killed Mr. Gomez."[490] In fact, no one present during the photo lineup process has suggested Moreno was pressured to falsely identify Cantu. And even Moreno never directly says that he was pressured to falsely identify Cantu back in 1985.[491]

Although the police had quickly developed Cantu and Garza as the suspects, the investigation had stalled because the surviving witness had been too fearful to identify Cantu. There is reason to believe that the Officer De La Luz shooting was motivated by the investigation of the Briggs Street murder and shooting. According to Samuel Lopez, Mario Ochoa, the man who drove Cantu away after the Officer De La Luz shooting, said "Cantu was pissed because De La Luz was investigating Cantu for the murder on Briggs."[492] Given the possibility that the shooting of De La Luz was triggered by the investigation of the Briggs Street murder, it is not surprising that the police would have

[488] Sworn Statement of Santos C. Balleza, January 27, 2006.
[489] *Id*.
[490] Sworn Statement of Edward Quintanilla, January 31, 2006.
[491] Interestingly, Moreno claimed he also felt pressure during the press conference at his attorneys' office on November 30, 2005.
[492] Sworn Statement of Samuel A. Lopez, August 1, 2006. There is no indication that Officer De La Luz was ever assigned to investigate the Briggs Street shooting. To the extent that Cantu may have believed as much, it was apparently an assumption on his part.

increased their efforts to solve the Briggs Street case and re-interview Moreno, the surviving eyewitness. The police could not ignore the possible connection between the two acts of violence. The Briggs Street murder was becoming a cold case and any fresh leads needed to be followed up on.

Even if the Officer De La Luz shooting had no connection with the murder of Pedro Gomez, the officers were still justified in the efforts to see if Moreno could positively identify Cantu. Not only had Cantu earlier avoided conviction for attempted murder,[493] but his actions on the night of the Officer De La Luz shooting clearly show that he was now emboldened by the fact that he had gotten away with a capital murder and attempted capital murder. This feeling of invulnerability manifested itself in the act of shooting a police officer in a crowded bar. Re-interviewing Moreno and seeing if he would identify Cantu does not suggest a conspiracy, it suggests common sense. The police believed Moreno was fearful and holding back information on the identity of the shooter, a fact corroborated by Moreno's brother.

Contacting Moreno again, some two and a half months after their last contact with him, is not a harassing or pressure building course of conduct. Moreno's current statements intimate that his original identification of Cantu was tainted by police pressure. The actual context in which the identification was made does not support such a conclusion. After the December 1984 meeting that occurred while Moreno was still in the hospital, police officials did not contact Moreno again until March of 1985. With so little contact with Moreno, it is difficult to believe that he felt any significant pressure from the police.

[493] Cause No. 83-JUV-0841.

As for the meetings in March of 1985, the first, on March 2nd, took place at Moreno's brother Eusebio's home. The next day, a second meeting took place at the police station. During both of these meetings Eusebio was present. It seems highly unlikely that these officers, if they in fact had the alleged motive to get Cantu, would be pressuring Moreno with his brother present. Not only would Eusebio's presence undermine any police pressure, he could also testify as a witness to any improper police conduct.

Another factor that weighs strongly against the allegations of improper police pressure is the relative lack of police presence during Cantu's capital murder trial. All of the parties involved observed that there was no discernable police presence in the courtroom during the Cantu trial. In fact, the Texas Rules of Evidence prohibited the presence of the officers who participated in the investigation and identification who were witnesses, from being in the courtroom while other witnesses were testifying.[494] Because they could not be in the courtroom while Moreno and his brother were being questioned, the officers involved surely knew that they risked exposure during the trial. Finally, the officers involved would have understood the hyper scrutiny that applied to death penalty cases by courts and activists groups. Even if they could have maintained a conspiracy through the trial, they would have understood that the conspiracy would likely eventually be exposed.

There was a layer of separation between Moreno and the police that existed in the form of the District Attorney's Office. Moreno spent considerable time meeting with representatives of the District Attorney's Office in the time period leading up to the trial. Not only do these individuals deny that they pressured Moreno to falsely identify Cantu;

[494] *See* TEX. R. EVID. 614.

they never got any feeling from Moreno that he had been pressured. Investigator Thuleen states that at no point did he either pressure Moreno or otherwise get any pressure himself.[495] According to Investigator Thuleen:

> I don't remember Juan Moreno ever telling me that SAPD officers had pressured Juan into identifying Cantu. Juan didn't have any hesitations when he said he had seen Cantu walk by the house and I felt Juan knew Cantu or knew of him because he had seen Cantu walk by the house.[496]

During Investigator Thuleen's interview with Moreno, he gave a detailed account of the crime and named Cantu and Garza as the actors.[497]

Likewise, the prosecutors working on the case never got the feeling that Moreno was unsure or hesitant in his identification of Cantu.[498] According to the lead prosecutor in the case, Bruce Baxter, since the identification would be challenged, Baxter wanted to ascertain how certain Moreno was in his identification of Cantu.[499] Baxter observed Moreno to be a confident witness.[500] Moreno would not let Baxter "push him around on the facts and stuck to what he remembered from the night of November 8."[501] Moreno "did not waver in his description of how Ruben had shot him and Pedro Gomez."[502] Baxter elaborated on his meetings with Moreno:

> Juan never expressed factual doubt about his identification of Ruben Cantu, nor did he ever state that the police had exerted pressure on him to make his identification of Cantu. At no time did I sense that Moreno's identification of Cantu came from any influence by any outside persons. My clear perception was and is today that Juan Moreno identified

[495] Sworn Statement of Kenneth E. Thuleen, April 20, 2006.
[496] *Id*.
[497] Memo of K. E. Thuleen, April 8, 1985.
[498] Sworn Statement John W. Harris, August 2, 2006; Sworn Statement of Bruce F. Baxter, August 18, 2006 (attached as appendix M).
[499] Sworn Statement of Bruce F. Baxter, August 18, 2006 (attached as appendix M).
[500] *Id*.
[501] *Id*.
[502] *Id*.

> Ruben Cantu because Ruben Cantu was the man who shot him and Pedro Gomez.[503]

As Baxter succinctly put it, Moreno "never expressed uncertainty in his identification or hesitation, or anything that would have raised a red flag…."[504]

These meetings occurred well after the initial photo identification and the investigating officers were not present and there is nothing to suggest that the police had any further contact with Moreno.[505] Had Moreno truly felt pressured into falsely identifying Cantu, he could have very easily said something to the prosecutors during these meetings. All he had to do was express some doubt and equivocate as to his identification. He could have easily qualified his identification of Cantu. He also could have mentioned that the shooter had curly hair (*pelo chino*), but did not.[506] The prosecution never received any information whatsoever from Moreno that the police had in any way pressured him into identifying Cantu.[507]

These meetings do not suggest that Moreno had any doubts that Cantu was the shooter. As Baxter makes clear, "if, at any time, I would have had a doubt about the accuracy of Juan Moreno's identification, I would have had an ethical obligation to not proceed with the case, particularly in light of the potential result."[508] He continues, "I took this obligation seriously and would not have proceeded to trial if I had felt Juan Moreno was not credible or that the identification had been tainted in any way."[509]

There are other even stronger factors that undermine the contention that Moreno was pressured into falsely identifying Ruben Cantu. Moreno was living with his brother

[503] *Id.*
[504] *Id.*
[505] *Id.*
[506] *Id.*
[507] *Id.*
[508] *Id.*
[509] *Id.*

Eusebio and Eusebio's wife, Alejandra, in the months leading up to and during Cantu's trial. Eusebio was ten years older than Juan. Not only was he Juan's landlord and employer, he was his protector. As his older brother and only family in the United States, Eusebio acted as a surrogate father to Juan.[510]

Not only was Eusebio present at the police station when Juan Moreno made the identification of Cantu, but the officers also had him give his own statement detailing the meetings with the police. According to Eusebio:

> I WOULD LIKE TO SAY THAT YESTERDAY, MARCH 2, 1985, ABOUT 4:30 PM TWO SAN ANTONIO POLICE DEPARTMENT DETECTIVES, DRESSED IN PLAIN CLOTHES WENT TO MY HOUSE TO TALK TO MY BROTHER, JUAN. JUAN WAS HOME AND THE DETECTIVES DID TALK TO JUAN. AND I WAS PRESENT WHEN THE DETECTIVES TALKED TO JUAN. THE DETECTIVES WANTED TO KNOW IF JUAN REMEMBERED ONE OF THE INDIVIDUALS THAT HAD SHOT HIM AND HAD KILLED PEDRO ON NOVEMBER 9, 1984, AT 605 BRIGGS. I WOULD LIKE TO CORRECT MYSELF, BY SAYING THAT I HAD JUST GOTTEN HOME WHEN THE TWO DETECTIVES HAD ASKED JUAN ABOUT WHEN HE GOT SHOT AND PEDRO WAS KILLED. AND THE DETECTIVES HAD ALREADY SHOWED JUAN THE COLOR PICTURES AND I THINK THERE WERE FIVE OF THEM WHEN I GOT HOME FROM WORK. WHEN I GOT HOME I ASKED THE DETECTIVES TO SHOW ME THE PICTURES AND THEY DID SHOW THEM TO ME. THE DETECTIVES TOLD ME THAT JUAN COULD NOT POSITIVELY IDENTIFY THE INDIVIDUAL FROM THE PHOTOS THAT THEY HAD SHOWED HIM OF THE PERSON THAT HAD BEEN INVOLVED IN THE MURDER OF PEDRO GOMEZ. BUT THEY ALSO TOLD ME THAT JUAN HAD TOLD THEM THAT JUAN MAY BE ABLE TO IDENTIFY THIS MAN IF HE COULD SEE THE MAN IN PERSON. **IN MY OPINION, JUAN DID NOT WANT TO IDENTIFY THE PICTURE OF THE MAN THAT WAS INVOLVED IN THE MURDER OF PEDRO AS**

[510] Sworn Statement of Alejandra Moreno, August 4, 2006.

> **JUAN IS AFRAID OF THIS MAN** BECAUSE JUAN WAS ALSO SHOT IN THIS INCIDENT AND JUAN ALMOST DIED ALSO. THE REASON WE CAME TO THE POLICE DEPARTMENT TODAY, SUNDAY, MARCH 3, 1985, IS BECAUSE DET. QUINTANILLA CAME TO MY HOUSE THIS MORNING AND TOLD US THAT JUAN NEEDED TO COME INTO THE STATION TO SEE IF HE COULD IDENTIFY THE MAN THAT HAD SHOT HIM AND MY BROTHER-IN-LAW IN PERSON.[511]

Thus, Eusebio reached the same conclusion as the officers as to Moreno's reluctance to identify the shooter.

If the officers were planning on committing a crime by framing Cantu, it does not make sense that they would have allowed Eusebio to be with Moreno the next day at the police station when Moreno actually identified Cantu's picture. The familiar and protective presence of his brother would surely operate against any coercive police tactics. Moreover, these officers would not have given Eusebio the opportunity to give his own statement detailing his knowledge of how the lineup was conducted. Yet, this is exactly what happened. Eusebio corroborates the police officers' conclusions of Moreno's actions and body language. Juan Moreno knew who the shooter was but was afraid to identify him.

Eusebio was not interviewed as a part of this investigation because he died in 2003. However, Eusebio's wife, Alejandra,[512] was also present and remembers the events. Like the prosecutors, she confirms that there was nothing to suggest that Juan was under any pressure to identify Cantu. She elaborates on this in a recent sworn statement:

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[511] Sworn Statement of Eusebio Alanis Moreno, March 3, 1985 (emphasis added) (attached as appendix E).
[512] Alejandra Moreno is the sister of Pedro Gomez.

> I am not aware of any pressure being put on Juan by the police to identify who shot him and Pedro. Juan never said he felt pressure from the police to identify those who shot him. Eusebio nor I ever pressured him to identify them either.
>
> I went to court with Eusebio and Juan for the trial. Juan never expressed reservations about testifying or doubts about his identification of Ruben Cantu. Nor did Eusebio tell me that Juan had express (sic) doubts about testifying against or his identification of Ruben Cantu. If Juan had expressed doubts about the identity of those who were charged I would have discouraged him from testifying. It was important to me that the right people be charged and convicted, not just charge innocent people.[513]

Moreno, with his family, the people he presumably felt the safest with, gives no indication that he has been pressured in anyway or that he was unsure about who shot him. Just the opposite, the people around him would have tried to discourage him from testifying falsely.

Also undermining the false identification theory is Moreno's ex-wife, Mary Luna. She and Juan began dating before the shooting and they married in April of 1987.[514] Luna says that Moreno never told her that anyone pressured him into making the identification in the case. If something improper had occurred, Moreno would likely have said something about it to those he was closest to. That he did not is telling.

A conspiracy between the officers is not likely or logical. It is simply incomprehensible and practically impossible for six police detectives who over the decades have had successful careers to engage in a conspiracy to have framed Ruben Cantu. Each officer would know that the story would fall apart at pretrial and trial hearings. In addition to the officers, the conspiracy would hinge on a 19-year-old illegal,

[513] Sworn Statement of Alejandra Moreno, August 4, 2006.
[514] Sworn Statement of Mary L. Luna, August 8, 2006. The couple divorced in 1991.

unsophisticated, non-English speaking immigrant and his compliant brother to keep the story straight. It defies logic that these officers would risk their careers and personal liberty, prosecution, and reputations, and the livelihood that supports their families, all for the sake of convicting Ruben Cantu for a heinous crime that they are now alleged to have known he did not commit.

MORENO'S INITIAL RELUCTANCE TO IDENTIFY CANTU

While there is nothing other than Moreno's current assertion of pressure to support the claim that he falsely identified Cantu in the months after the murder, there is strong evidence to support the explanation Moreno gave for the delay at the time it happened. That is, that he was afraid to identify Cantu.

Moreno did more than just say he was scared, he acted because of that fear. Alejandra Moreno, Eusebio's wife, explained that after getting out of the hospital, Moreno came to live with them on Five Palms. She very clearly remembers that they had moved from their apartment on Quintana because they were "afraid to stay in the apartment or the new house" they had just finished building at 605 Briggs Street.[515] Alejandra explained that they "wanted to get out of the area."[516]

Given the horrific and violent injuries Moreno suffered the night his friend was murdered, it is certainly understandable that he would be scared of the person that perpetrated the crime against him. But it was not just the crime that gave Moreno reason to fear, everything about Ruben Cantu and his family and how they operated in the area with what must have seemed like impunity would cause any rational person to be afraid.

[515] Sworn Statement of Alejandra Moreno, August 4, 2006.
[516] *Id*.

Even today Moreno acknowledges that his family likely moved as a result of the fear of retaliation.[517]

This fear is completely consistent with Ruben Cantu's and his family's reputation in the neighborhood. People that grew up around the Cantus "knew that the whole family was a bunch of troublemakers and… tried to stay away from the Cantu family."[518] The Cantus "had the neighborhood terrorized."[519]

Even before the night of the murder, Eusebio (the owner of the house being built at 605 Briggs) had complained to a neighbor about the Cantus breaking into his house.[520] He complained that he was not able to finish the construction on the home because the Cantus would take all the materials.[521] But because everyone in the neighborhood "was scared to death" of them, no one would turn them in.[522]

The workers building the house would see the young men shooting guns and that the young men "would walk up and down the street acting real big."[523] One of these laborers, Rigoverto Rosas, who worked for Eusebio Moreno on the Briggs Street house, recalled what the neighborhood was like at the time:

> During the construction of the house I was not sure why Eusebio was building the house on this Briggs Street because it seemed like a dangerous area. When I was framing the house I could see three young guys that lived across the street but a couple of houses down that would hang out outside and shoot a rifle. I saw the rifle and it looked and sounded like a .22 automatic rifle. At times we would be working on the roof and hear the rifle shots. We would climb down right away because we didn't know if they were shooting in our direction. I have used a .22 rifle

[517] Interview with Juan Moreno, February 8, 2007.
[518] Sworn Statement of Samuel A. Lopez, August 1, 2006.
[519] *Id*.
[520] Sworn Statement of Sandra Lopez, August 2, 2006.
[521] *Id*.
[522] *Id*.
[523] Sworn Statement of Mary L. Luna, August 8, 2006.

> before when hunting rabbits and know how they look and sound. We would later see the three young guys walking pass the house. The three young guys would stare at us in a taunting way, but we never told them anything. The three young guys were about 14 to 17 years old. I had never met these three young guys and didn't know their names. I would just ignore and avoid them by getting back to work.
>
> I didn't hear about the shooting on Briggs Street until the following day from a co-worker. When I first heard the suspects had robbed Pedro and Juan, I immediately thought that the young guys from across the street had done it. Since Eusebio had not yet moved into the house there wasn't much that they could steal. I always thought that the people that had shot Pedro and Juan knew they were in there and had intended to steal from them. They probably thought that Pedro and Juan had money. Several days after the shooting I went to the house on Briggs Street to help clean up the blood and fix the bullet holes.[524]

It was because of this, that those that knew Eusebio was building a house on Briggs Street were concerned. Even Juan Moreno had said that the people living around the house "were no good."[525] Likewise, Pedro Gomez's widow recalls her husband telling her how materials were being stolen from the house while it was being built.[526]

Even one of Cantu's teachers provided information about rumors he heard at South San High School concerning Cantu's involvement in the murder. When he did this, he told the police officer that he feared retaliation for providing the information.[527]

According to Eugene Reyes, who at one time lived with Robert Cantu (Ruben's brother) everyone in the neighborhood knew the Cantu brothers "were bad and you stayed away from them."[528] Ruben Cantu actively intimidated the people in the neighborhood. Sometime before Cantu was arrested for the murder, Eugene was riding

[524] Sworn Statement of Rigoverto S. Rosas, August 8, 2006.
[525] Sworn Statement of Mary L. Luna, August 8, 2006.
[526] Richard Reyna Interview Notes.
[527] Assignment Report of D. Thompson, December 1, 1984.
[528] Sworn Statement of Eugene Reyes, August 21, 2006.

his bike and cutting through the trailer park where the Cantus lived when he heard three whistles. As he turned around, he saw Ruben Cantu and David Garza standing behind Cantu's house "holding a 22 rifle and a pistol with a long barrel."[529] "Ruben said, 'Oh its (sic) you, if you hadn't turned around and come back we would have shot you.'"[530] Given this level of fear and intimidation, there can be no doubt that Moreno's statements of fear at the time were legitimate.

There is no doubt that Ruben Cantu and his brothers were dangerous. Ruben was a member of the Grey Eagles and later a Mexican Mafia member as is David Garza. Whatever doubts some might profess to his guilt in Gomez's murder and Moreno's shooting, no one claims that it was anyone other than Ruben Cantu who brazenly shot De La Luz in a bar filled with witnesses. Ruben's brother, Larry Cantu, who was in prison at the time of the Briggs Street shooting for an unrelated murder and was a member of the Mexican Mafia, was released before Cantu's trial.[531] Robert Cantu had already had two assault convictions. And by Robert's own admission, he was a professional criminal and a member of the Mexican Mafia.[532]

THE INTIMIDATION OF OTHER WITNESSES

Another factor that supports Moreno's claims of his fear of retaliation at the time is the fear that other potential witnesses expressed and acted on. Ramiro Reyes, who was a childhood friend of Cantu's and was initially going to testify at trial, told the police that Cantu "was wild and dangerous" and he was afraid that he would be killed for giving a

[529] *Id*.
[530] *Id*.
[531] Sworn Statement of Larry Cantu, August 24, 2006.
[532] Sworn Statement of Robert Cantu, August 24 & 29, 2006.

statement to the police.[533] Later, his brother Eugene told him that Robert Cantu had threatened to kill Reyes if he testified against Ruben.[534] Robert was even in the courtroom when Reyes testified at the pretrial suppression hearing.[535]

As Reyes recalls:

> I have been threatened about three (3) or four (4) times by Ruben's family and friends since the murder. Right before I was to testify Robert Cantu who is Ruben's brother told my brother Eugene who was living with Robert that if I testified against Ruben he would kill me.
>
> I left for California after Ruben's trial and stayed there about four (4) years. I returned from California and was at my sister's house attending a party and saw Ruben's other brother Larry in a vacant lot next to my sister's house.
>
> Larry kept yelling at me in Spanish to come to where he was standing that I was going to get it, that I was marked and that he was going to kill me. We went in the house and soon after that Larry drove off. We heard him drive back by the house within a few minutes and slammed on his brakes.
>
> One other time I was at my job and a friend of the Cantu's (sic) family whose name was Blackie showed up and continued to stare at me. I got a little concerned and told my wife we needed to go to Corpus Christi, TX for a while. We moved to Corpus Christi and stayed there for about four (4) or five (5) years and then returned to San Antonio. I recall some other times that I was threatened by either Ruben's brothers or friends, but it has been so long that I do not remember the details.
>
> I remember that my sister's house was shot at on one occasion and the window was broken out of her car, but I do not recall being shot at.
>
> I was afraid to testify[536] against Ruben because of the above reasons. I knew I could or would be hurt. I knew

[533] Supplementary Report of Det. J. Herring, December 14, 1984.
[534] Statement of Ramiro Reyes, July 10, 1985 (attached as appendix N).
[535] *Id*.
[536] Reyes is referencing trial testimony, as he did testify at a pretrial hearing in Cantu's case.

> that Larry Cantu was a Mexican Mafia member. I did not know if Ruben, Robert or David Garza were a member or not. I am not a member of any gang nor have I ever been.
>
> Right before Ruben's trial Ruben's father Fred Cantu called me and asked me if I would meet him at Market Square in downtown San Antonio. I met him there and we walked over to the building where the city council meets. We met with a… man whose name I do not remember.
>
> The… man asked me what my testimony was and I told him. I do not remember what the… man said afterwards, but Fred Cantu told me that if I would change my story he would give me money. I do not remember how much.
>
> The… man was there when Mr. Cantu offered me the money. I was pretty scared of what was going on and wanted to leave so I told Mr. Cantu OK that I would change my testimony. Mr. Cantu then said when I changed my testimony he would give me the money. I did not change my testimony or my statement.[537]

Nor do we have to rely on Ramiro Reyes' recollection to support the assertion that he was fearful of the Cantus. On April 15, 1985, at the request of the District Attorney's Office, Reyes and his mother went to the District Attorney's Office and told District Attorney Investigator, Ken Thuleen, that they did not "want to give a written statement because of fear for his [Ramiro's] life."[538] They explained that Cantu had been involved in a shooting in 1980 and "was still on the street".[539] Nevertheless, the investigator continued to interview Reyes and Reyes detailed Cantu's admissions about the shooting.[540] He also informed him that Cantu and his brother, Robert, owned .22 caliber

[537] Sworn Statement of Ramiro Reyes, December 9, 2005.
[538] Memo of K. E. Thuleen, April 15, 1985.
[539] *Id*.
[540] *Id*.

rifles, the same type used in the commission of the crime.[541] In this interview, Investigator Thuleen noted that Reyes was a reluctant witness.[542]

Investigator Thuleen's assessment was accurate. The next day, on April 16, 1985, Reyes of his own volition appeared at the District Attorney's Office attempting to recant by telling Investigator Thuleen that he had lied to him and the police when he said that Cantu was involved in the shooting.[543] Investigator Thuleen was skeptical about the recantation and asked Reyes to take a polygraph.[544] Reyes agreed and the test revealed that Ramiro was not present at the time of the shooting as he had consistently maintained.[545] But it also revealed that Reyes was being deceptive when he said that he did not know who was responsible for the shooting.[546] It was clear to the investigator, as documented in his memo at the time, that Ramiro was "very afraid of the Cantus."[547] He also noted that he was also feeling a lot of pressure from his own family to stay out of it and not get involved.[548] Reyes's brother corroborated the investigator's opinion of Reyes's reluctance to be a witness.[549]

Despite this fear, Reyes did testify at a preliminary hearing on July 8, 1985, in Cantu's trial after being called by the defense. During his testimony, Reyes specifically testified that he was afraid of Cantu.[550] And that his brother, Eugene, told him that Cantu's brother, Robert, would kill him if he testifies for the State.[551]

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[541] *Id*.
[542] *Id*.
[543] Memo of K. E. Thuleen, April 17, 1985.
[544] *Id*.
[545] *Id*.
[546] *Id*.
[547] *Id*.
[548] *Id*.
[549] Sworn Statement of Eugene Reyes, August 21, 2006.
[550] Ct. R. vol. I of X, at 159.
[551] *Id*. at 174-75.

According to Reyes, he had known Cantu for 15 years and they were friends.[552] Reyes testified that he was not present at the location or time the Briggs shooting took place.[553] He testified that he did not participate in the crime and was not with Cantu or Garza that day or night.[554]

When asked about the Briggs Street shooting by the police, Reyes relayed to them what Cantu had told him, that Cantu had done it.[555] Cantu admitted his involvement to Reyes the second day after the shooting.[556] When questioned by the trial judge, who interjected a question, Reyes testified that no officer told him that Cantu shot anyone.[557]

Ultimately, Ramiro Reyes did not testify at Cantu's trial. The lead prosecutor, Bruce Baxter, received a call from Reyes who informed him that he had been threatened and did not want to testify. The day before the trial began, Sunday, July 21, 1985, a passenger in a vehicle owned by Robert Cantu, fired three shots at Ramiro as he was going home.[558] Reyes told the investigating officer that he had received death threats from Robert Cantu.[559] Although Reyes never said he would not testify, this impressed upon Baxter "that he was scared to death."[560] In fact, Reyes specifically told him, "Mr. Baxter, you don't live where I do, people can find me." [561] Because Baxter feared for Reyes safety and did not want Ramiro's blood on his hands, he made the strategic decision not to have him testify at Cantu's trial.[562]

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[552] *Id*. at 162.
[553] *Id*. at 164.
[554] *Id*. at 172-73.
[555] *Id*. at 165.
[556] *Id*. at 166.
[557] *Id*. at 169.
[558] Police Offense Report, July 21, 1985 (attached as appendix O).
[559] *Id*.
[560] Sworn Statement of Bruce F. Baxter, August 18, 2006 (attached as appendix M).
[561] *Id*.
[562] *Id*.

Nor was Reyes the only one subjected to the threats and intimidation. The Cantus went after Reyes' family as well. After Cantu was arrested for Gomez's murder, Ramiro's brother, Eugene Reyes, was threatened by Ruben's father, Fidencio Cantu.

> After Ruben was charged with the murder on Briggs my problems with the Cantus started. I know that the Cantus are angry because my brother Ramiro, gave a statement to the police. In the summer of 1985, I was riding my bicycle on Briggs Street, when Fidencio Cantu called me over. Fidencio asked me to give a statement saying my brother, Ramiro, had lied when he told the police Ruben Cantu had admitted the murder to him. He offered me fifteen dollars and told me that if I didn't give him a written statement he wouldn't be responsible for what his sons, Larry and Robert, did to me. I took this as a threat. Fidencio showed me a statement that was already written out and I signed it. At the time I didn't read very well, I don't recall whether I read it or if he read it to me. He also recorded our conversation. I signed that statement even though it wasn't the truth because I felt I had no choice. I was and still am scared of the Cantu brothers. I took the fifteen dollars, at the time that was a lot of money to me. He told me not to tell anyone I had signed this statement and I didn't.[563]

Ramiro and Eugene were not alone, even Cantu's codefendant David Garza feared reprisal from Ruben. There were allegations of threats made by Cantu against Garza while the two were in custody in the Bexar County Jail awaiting trial.[564] The jury was made aware of these threats during the punishment phase of Cantu's trial.[565]

The intimidation and threats continued even after Ruben Cantu's conviction. In his statement, Ramiro Reyes' brother, Eugene, discusses three separate run-ins with the Cantu brothers. The first incident occurred shortly after the trial. Robert Cantu, using a pistol, threatened Eugene and his family.[566] Robert Cantu wanted to know where Ramiro

[563] Sworn Statement of Eugene Reyes, August 21, 2006.
[564] Ct. R. vol. X of X, at 2971.
[565] *Id*.
[566] Sworn Statement of Eugene Reyes, August 21, 2006.

was.[567] A couple of months after this incident, Robert pulled into a driveway, got out of his car with a knife, and "threatened to kill" Eugene if he did not tell him where Ramiro was.[568] The most recent of the three incidents occurred in 1993. While Eugene was in the Bexar County Jail, he ran into Robert Cantu who, Eugene believes, had other members of the Mexican Mafia beat him up.[569]

The fear Eugene expressed of the Cantus has not disappeared over time. To this day he remains scared. He was reluctant to speak and expressed his belief that if he gave a statement and his name appeared in the newspaper, he would be killed.[570]

As for Ramiro, he spent time away from San Antonio living in California and Corpus Christi, Texas because he feared retaliation.[571]

Similarly, Sandra Lopez, who lived in the neighborhood and was helping run the bar the night Officer De La Luz was shot, recalled an incident that occurred after Cantu was convicted.

> After Ruben Cantu had been sentenced for murder, I ran across his older brother at the Sunglo Station located (sic) Military and Bynum. I went to pay and when I returned he was leaning on my car on the driver's side. I pumped only a little bit of gas, because I was afraid and my daughter was still in the car. As I was getting in my car he said, "you helped that motherfucker DeLaLuz". I drove off enroute to my mother's house where I was living at the time and as soon as I entered the house, someone shot into our house.[572]

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[567] *Id*.
[568] *Id*.
[569] *Id*.
[570] Investigator Memo to File, Interview with Eugene Reyes, August 2, 2006.
[571] Sworn Statement of Ramiro Reyes, December 9, 2005.
[572] Statement of Sandra Lopez, August 2, 2006. Sandra's brother, Samuel Lopez, corroborates this incident. There were also rumors that the Cantus caused the death of an individual whom they believed had cooperated with the police in this case. According to Sandra's brother Samuel:

> I heard that the Cantu's (sic) thought that Mario [the alleged getaway driver involved in the DeLaLuz shooting, Sandra and me (sic) had

Given the degree of fear and intimidation that continues to this day, it is certainly no surprise that Juan Moreno feared for his safety in those first months after the shooting while Ruben Cantu and Robert Cantu, aided by their father, were freely roaming the streets. Even to this day, many of witnesses interviewed as part of this investigation expressed their continuing fear of the Cantu family. Ruben Cantu and his brothers, as well as David Garza, are confirmed members of the Mexican Mafia. In addition, Fidencio Cantu, Ruben's father, has a criminal history, including a conviction for indecency with a child that occurred while he was in his seventies.[573]

C. THE CODEFENDANT—DAVID GARZA

The final person suggesting Cantu's innocence is his codefendant, David Garza. Despite Moreno's positive identification of David Garza in 1985, and Garza's guilty plea to robbery, Garza has publicly maintained his innocence for nearly two decades before finally acknowledging his guilt after his meetings with Richard Reyna. Obviously impacting Garza's credibility is his criminal history. Even after his conviction for his involvement in the robbery that resulted in Pedro Gomez's death, he also has convictions for theft, two weapons possession convictions while he was in prison, and most recently a conviction for burglary of a habitation.[574] His criminal history, however, is not the only thing that affects his credibility.

> betrayed them, because we cooperated with the police. …I also know Mario Ochoa was an experienced heroin addict and he died of an overdose in 1986. The word in the neighborhood was that the Cantu's (sic) gave him a hot load.

(Sworn Statement of Samuel Lopez, August 1, 2006). The truth of the rumor is not the critical factor. Rather, it is the fact that the fear this family generated led to such a rumor.

[573] Criminal History of Fidencio Cantu.

[574] Criminal History of David Garza.

During his very first meeting with the police in November of 1984, regarding Moreno's shooting and Gomez's murder, Garza denied involvement.[575] Like Cantu, he told the detectives that he did not have any knowledge of the incident and had nothing to do with the shootings.[576]

On March 4, 1985, the police went to Garza's home and left a message that they wanted to talk to him.[577] The next day, Garza came by himself to the homicide office.[578] During this meeting, he again initially denied his involvement.[579] In response to this, Detective Quintanilla told Garza that he knew he was there and asked again if he wanted to give a statement.[580] Garza thought for a while, and then admitted that he had been at the house where the shooting took place, but claimed that he waited outside.[581] ***Garza told the detective that he heard the shots being fired and then saw Ruben come running out of the house***.[582] Garza refused to provide a written statement.[583]

Within four months of the murder, Garza has already given two versions of what he knew about the Briggs Street shooting. Importantly, in both versions he minimizes his culpability. It is only after he is told that the police know he was there, that he finally admits to being at the scene. And although he now denies it, he told the police that he saw Ruben running from the house.

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[575] Supplementary Report of Det. J. Herring, December 14, 1984.
[576] *Id*. Sworn Statement of James Herring, January 31, 2006; Sworn Statement of Joe Cloud, February 1, 2006.
[577] Supplementary Report of Det. E. Quintanilla, March 5, 1985 (attached as appendix I); Sworn Statement of Edward Quintanilla, January 31, 2006.
[578] Supplementary Report of Det. E. Quintanilla, March 5, 1985 (attached as appendix I).
[579] *Id*.; *see also* Sworn Statement of Edward Quintanilla, January 31, 2006.
[580] Supplementary Report of Det. E. Quintanilla, March 5, 1985 (attached as appendix I).
[581] *Id*.; *see also* Sworn Statement of Edward Quintanilla, January 31, 2006.
[582] *Id*.
[583] Supplementary Report of Det. E. Quintanilla, March 5, 1985 (attached as appendix I).

Perhaps most troubling about Garza's admissions is the inconsistency with which he alternates between taking responsibility and claiming he was innocent. After Garza had been arrested and was in custody at the juvenile detention center, he confessed his involvement in the crime to his sister during one of her many visits. She recalled the conversation: "During one visit David told me that they had gone into the house on Briggs Street to rob, but not to shoot anybody."[584] Although he never specifically mentioned Cantu's name to his sister, she was under the belief that the other person that Garza was referring to was Ruben Cantu.[585] By this point, she had heard that it was Cantu.[586] He then entered into a plea agreement with the State in which he pled guilty, as opposed to no contest, and agreed to a twenty-year prison sentence.

Contrast that admission with his prison admission interview. In this interview, Garza would not provide any information regarding the offense to the prison officials. Since he had already admitted his guilt in court and admitted his involvement to his sister, there was no reason for him to continue to deny his involvement in the crime.

There is also the post-conviction application for writ of habeas corpus that Garza personally prepared and filed.[587] In this pleading, which Garza swore was true and correct, he contends his trial lawyer was ineffective for not fully investigating the case and challenging the State's evidence.[588] In making his case, Garza asserts that Cantu had stated that Garza "was never present during these alleged incidents and charges."[589] This sworn petition essentially claims that Garza was innocent and that the guilty party, Ruben

[584] Sworn Statement of Nora Garza Alejandro, August 22, 2006.
[585] *Id*.
[586] *Id*.
[587] David Garza's Application for Writ of Habeas Corpus, January 31, 1989.
[588] *Id*.
[589] *Id*.

Cantu, could exonerate him. As this pleading makes clear, Garza has no problem implicating his friend Cantu whenever it suited his needs.

In a letter David Garza sent to Nancy Barohn, the lawyer who represented Cantu during the final stages of his appeal, thirty-one days before Ruben Cantu was executed, Garza asserts that both he and Cantu are innocent of the crime.[590] However, today Garza admits he did participate in the murder and robbery of Pedro Gomez but claims now that Cantu was not with him. And yet, in the days before his friend is to be put to death, well after Garza himself had admitted guilt to his sister and been convicted for the crime, he does not provide Cantu's lawyer with substantive information that she can use to prevent the execution. Instead of telling Barohn that he did it and that Cantu did not, thus establishing validity to his claim, Garza merely asserts general innocence and allows his best friend, to whom he was "like bread and butter,"[591] to be executed.

When first approached by the investigator for the NAACP LDF in March of 2004, Garza again claimed to have no knowledge of the crime.[592] Reyna met with Garza, who was in prison the entire time, on fourteen separate occasions between March of 2004 and October of 2005.[593] It was not until 2005, that Garza finally told his sister, Nora Alejandro, that Ruben Cantu was not involved. So even though Garza admitted his own involvement to her in the months after the murder and his sister believed the entire time that Cantu was involved, for the last twenty years Garza has never once corrected her.

Even without all of Garza's past inconsistencies, there are significant problems with his current version of the incident that render these claims unbelievable. Some are

[590] David Garza's Letter to Nancy Barohn, July 28, 1993.
[591] Lise Olsen, *Cantu Case: Death and Doubt*, HOUSTON CHRONICLE, Nov. 21, 2005.
[592] Richard Reyna Report, March 9, 2004; Richard Reyna Notes on Inmate Visits.
[593] Richard Reyna Notes on Inmate Visits

relatively minor inconsistencies. Garza now says he never went to the police by himself after his first visit to the station, but his own sister, Nora Alejandro, distinctly recalls that in the late winter of 1985, Garza went by himself with a police investigator.[594] Thus, on at least eight occasions, Garza has alternated between admitting and denying his guilt, depending on which best suited his needs at the time.

Unlike this inconsistency, there are other problems with Garza's current statements that considerably undermine his credibility. Garza claims that on November 8, 1984, he went to Ruben's house and was told by Cantu's father, Fidencio, that Ruben was out of town.[595] Fidencio not only casts doubt on the claim that Ruben was out of town that night, he completely contradicts Garza's version. Fidencio was in Corpus Christi the night of the murder.[596] The incident could not have happened as Garza now contends.

Another oddity of Garza's current story is the fact that he remained silent even as Cantu was tried for the capital murder of Pedro Gomez. Fred Rodriguez was the lawyer appointed to represent David Garza for the capital murder of Pedro Gomez and the attempted capital murder of Juan Moreno.[597] At no point during this representation, did Garza ever tell Rodriguez that Cantu was not involved. According to Rodriguez, "During the entire time that I represented Mr. Garza (Certification & Transfer Hearing, Examining Trial & Plea of Guilty) he never told me that Ruben Cantu was innocent of the capital murder charge or that Ruben Cantu was not with him (Garza) the night they committed

[594] Sworn Statement of Nora Garza Alejandro, August 22, 2006; *see also* Supplementary Report of Det. E. Quintanilla, March 5, 1985 (attached as appendix I).
[595] Affidavit of David Garza, April 15, 2004; Affidavit of David Garza, May 31, 2005.
[596] Sworn Statement of Fidencio Cantu, August 23-24, 2006.
[597] Sworn Statement of Fred Rodriguez, July 26, 2006.

the capital murder of Pedro Gomez and attempted capital murder of Juan Moreno."[598] Had this information been provided to Rodriguez, he "would have certainly made the attorneys representing Mr. Cantu (Carruthers & Garcia) aware of this information as well as the prosecutors (Baxter & Harris) and Judge Barrera."[599]

Prior to Cantu's trial, there were discussions between the lead prosecutor and Garza's defense lawyer about the possibility of Garza testifying against Cantu. Although he did not believe Garza's testimony was desperately needed, the prosecutor felt that Garza could corroborate Moreno.[600] Ultimately, Garza was not willing to testify.[601] The reason given was not that Cantu was innocent; but rather, the reason was Garza's fear of Cantu.[602] The lead prosecutor explained what happened:

> As we were calling back and forth during this time period, Mr. Rodriguez gave me reason to think that David Garza might be available. However, Mr. Rodriguez called me not long before jury selection was to start, and said that Garza wasn't willing to testify. David had told his lawyer that Cantu was a trustee at the Bexar County Jail and was serving him his food. With Ruben looking across the counter serving him his food everyday, Garza realized that Cantu could 'get to him' at any time.[603]

While Rodriguez does not recall the specific plea negotiations, he did confirm that it would have been his practice to offer to have his client testify against Cantu.[604]

David Garza now claims that he did not have adequate representation. Rodriguez counters this saying, "I also would like to add that during the entire time I represented Mr. Garza I would always explain all documents and procedures to him and make sure he

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[598] *Id*.
[599] *Id*.
[600] Sworn Statement of Bruce F. Baxter, August 18, 2006 (attached as appendix M).
[601] *Id*.
[602] *Id*.
[603] *Id*.
[604] Sworn Statement of Fred Rodriguez, July 26, 2006.

understood everything that was occurring. I took particular care in doing this because of Mr. Garza's age and his limited experience with the legal system."[605] Considering the life sentence Garza faced and the comparatively light sentence of twenty years on a reduced charge of robbery that he actually received for participating in the capital murder of Gomez, Garza's claims of deficient representation seem hollow.

While in prison, David Garza has received money from Richard Reyna, the investigator working for the NAACP LDF who was conducting the investigation into Cantu's alleged innocence. While the amounts are relatively small, for an inmate without access to any income, even a small amount of money is considerable. The money was placed into Garza's prison commissary account.[606] Coincidently, Fidencio Cantu, Ruben's father, made two deposits into Garza's account.[607] This account is used to purchase the only, comparatively speaking, luxury items available to prison inmates. It is also impossible to know if these are the only amounts Garza has received as a result of his cooperation with the NAACP LDF investigation.

During one conversation with Richard Reyna while Garza was housed in the Bexar County Jail, Garza casually demanded money.[608] Concerned that he may not get the money at the jail, Garza tells Reyna to send it to his sister and provides her address and phone number.[609]

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[605] *Id*.

[606] Although Reyna's expense reports do not reflect all of the payments, the prison commissary records establish that from March 2004 until May of 2005, Reyna deposited $250 into Garza's account. In 2004, he deposited $25 in March, $25 in April, $35 in May, and $40 in September. The next year, he deposited $25 in April, $25 in May, and $75 in October. In addition, he also purchased $64.62 of flowers for Garza, and delivered them to Garza's mother and children and spent $21.80 to provide Garza with writing materials.

[607] $10 was deposited in May of 2004, and $20 was deposited in December of 2005.

[608] Telephone Conversation between David Garza and Richard Reyna, May 3, 2006 (attached as appendix P).

[609] *Id*.

Even more disturbing than the direct requests for money from Reyna, is what Garza told his sister about why he is receiving assistance from Reyna and the NAACP LDF. During a conversation with her, he told her that he is expecting as much as $1,000 from the organization.[610] When she naturally inquires as to why they would give him money, he casually responded, "Without me, they wouldn't have nothing."[611] Garza's statement illustrates his belief as to why the NAACP LFD has been helping him financially and what he has to do to keep the money coming.

Garza's current admissions of culpability and exoneration of Cantu seem to serve two purposes. First, his cooperation with the NAACP LDF investigation creates direct financial benefits. Second, he is able to punish Ramiro Reyes for his initial cooperation with the police and the prosecution of both Cantu and Garza. We cannot, however, know what is actually motivating Garza to finally admit his guilt. Whatever the reason, there is no evidence to support his claim that Reyes was the other person involved. Reyes agreed to take a polygraph and that examination revealed that he was being truthful when he said that he was not present when Moreno and Gomez were shot.[612] Neither Garza nor Cantu ever took a polygraph exam.

Garza would have people believe that he remained silent while his best friend was put to death for a crime he did not commit while the person who cooperated with the police and implicated Cantu remained free. This contradiction does not in any way make sense. Perhaps Garza's sister, who certainly knows him better than anyone involved in the investigation of the capital murder, explained this contradiction best when talking to

[610] Telephone Conversation between David Garza and Nora Garza Alejandro, May 12, 2006 (attached as appendix Q).
[611] *Id*.
[612] Memo of K. E. Thuleen, April 17, 1985.

Richard Reyna about the claims of Cantu's innocence, when she wondered "how could he be innocent" when after all this time, "we had not heard anything different from David."[613]

VI. CONCLUSION

It is the considered opinion of this investigation that no credible information has been discovered, from any source, that supports the claim that Ruben Cantu was innocent of the capital murder of Pedro Gomez and, therefore, wrongly executed. While there are individuals who are now willing to come forward and assert his innocence, given their criminal histories, payments they have received for their cooperation, and the implausibility of their stories, they cannot be believed.

Instead, the evidence reveals that Cantu personally confessed to the capital murder. He detailed his involvement to both Ramiro Reyes and Thomas Cooremans. He was prepared to admit his guilt in court, but the trial judge rejected the plea agreement. He even implicated himself during his admission interview with prison officials.

It appears beyond all reasonable probability that Juan Moreno is relying entirely on Richard Reyna as the basis for his newly found doubts and for changing his testimony and long held belief that Ruben Cantu was his assailant. Nothing Moreno now says about the night of the shooting and his identification of Cantu can be acted on. Moreno's 180º turn since the beginning of the NAACP LDF's investigation, when he initially asserted that Cantu was guilty and Reyes was not involved, cannot be validated by external evidence. Moreno's current statements are so tainted by Reyna's methods that they are

[613] Sworn Statement of Nora Garza Alejandro, August 22, 2006.

unreliable on their face. Moreover, there are aspects of what Moreno now claims that are easily debunked.

When Moreno's new version is compared to what he has previously said to the police, to the lawyers, in court, and even to Richard Reyna, it does not make sense. Combined with Cantu's own admissions of guilt, it is impossible to conclude that there is anything credible about what Moreno now says. He is simply not believable. In the end, this investigation has not uncovered concrete information that warrants a conclusion that Juan Moreno was lying in his identification, pressured or not, or that Ruben Cantu was wrongly convicted.

APPENDIX

A

TAKEN: **12/6/2005**

TIME: **2:00 P. M.**

BY: James Moore
Criminal Investigator

LOCATION: Criminal District Attorney's Office, White Collar Crime Section

THE STATE OF TEXAS

COUNTY OF BEXAR

BEFORE ME, the undersigned authority in and for the State and County aforesaid, on this day personally appeared **Raymond E. Fuchs,** who being by me first duly sworn upon his/her oath deposes and says: That my name is **Raymond E. Fuchs** I am 54 years of age and my date of birth is [redacted] I am an attorney and practice law here in San Antonio.

In 1985 I was employed by the Bexar County District Attorney's Office. I held the position of Chief of the Felony Section. I was very familiar with the Ruben Cantu capital murder case. The prosecutors were Bruce Baxter and Bill Harris and the defense attorneys for Mr. Cantu were Andrew Caruthers and Roland Garcia.

During the trial Mr. Cantu's defense attorney Roland Garcia asked me if we would offer Mr. Cantu a proposed plea agreement. I told Roland the best we could do was life with no affirmative finding. He (Garcia) took the proposed agreement to his client who I was later told by Mr. Garcia had accepted it.

The proposed plea agreement was then taken to the presiding judge, Roy Barrera, Jr., who stated he would not accept the agreement. We then proposed a life sentence with an affirmative finding and Mr. Garcia later told me that the defendant refused that offer.

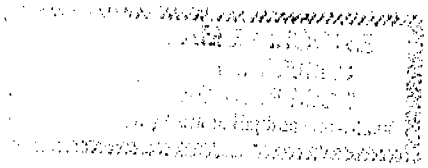
I have made this statement of my own free will and accord. I have not been promised anything in the making of this statement. I have not been threatened, mistreated or abused in the making of this statement. I have been explained the meaning of Perjury and Aggravated Perjury and I understand the meaning of Perjury and Aggravated Perjury. I have read the

above statement, made the necessary corrections and/or additions and it is True and Correct to the best of my Knowledge and Belief.

Signature

Sworn to and subscribed before me, this 6 day of December, A.D., 2005.

Notary Public in and for
the State of Texas
My Commission expires



B

TAKEN: August 23, 2006

TIME: 1520 hrs.

BY: J. Martinez #104
Criminal Investigator

LOCATION: Bexar County Criminal District Attorney's Office

THE STATE OF TEXAS

COUNTY OF BEXAR

BEFORE ME, the undersigned authority in and for the State and County aforesaid, on this day personally appeared **ROLAND GARCIA**, who being by me first duly sworn upon his oath deposes and says:

My name is Roland Garcia. I started practicing law in 1980. I was in private practice in Houston until 1983. I worked at the Bexar County Criminal District Attorney's office in 1983 and I left the District Attorney's Office in May of 1985. I have been in private practice since. I tried thirty-six cases and assisted in one capital murder as a prosecutor with the District Attorney's Office.

Shortly after leaving the office, I was appointed to represent Ruben Cantu on a capital murder charge. Andrew Carruthers was the first chair on this case.

During jury selection, I remember approaching Ray Fuchs, who at the time was the Felony Chief of the District Attorney's office. I talked to him about the possibility of working the case out. Ray Fuchs offered a 60 year / life sentence without an affirmative finding of a deadly weapon. I do not recall specifically Ruben Cantu accepting the plea agreement, however, I am certain I would not have approached Judge Barrera for his approval if Ruben had not agreed to accept the plea offer. I remember being relieved thinking we had worked out the case. I believe Judge Barrera rejected this plea agreement because there was no affirmative finding of a deadly weapon. After the judge rejected it, I went back to Ray Fuchs and explained what happened and Ray then offered Ruben a 60 year / life sentence with an affirmative finding of a deadly weapon. I remember going into the jury room trying to convince Ruben to accept the offer. But Ruben would not accept the offer with the deadly weapon. I did not discuss this plea bargain again with Ruben.

Ruben never admitted or denied his involvement in the capital murder. Ruben's demeanor throughout the trial was emotionless.

During the trial, I remember that Juan Moreno was very nervous, trembling and scared during his

testimony. He was positive in his identification of Ruben Cantu. He did not hesitate when he identified Ruben as the shooter. I recall Juan Moreno still appeared to be suffering from his bullets wounds. He was a sympathetic witness.

I never saw a police presence in the courtroom during the trial, other than the bailiffs and the police officers who were called as witnesses.

I was asked whether Fred Rodriguez, who represented the co-defendant, David Garza, ever came to me and informed me that Garza was saying that Ruben was innocent of the capital murder. No one, including Fred Rodriguez, ever approached me regarding relevant evidence that may have affected the outcome of the case.

I have made this statement of my own free will and accord. I have not been promised anything in the making of this statement. I have not been threatened, mistreated or abused in the making of this statement. I have read the above statement, made the necessary corrections and/or additions and it is true and correct to the best of my knowledge and belief.

Signature

Sworn and subscribed to me, this 23 day of August ,A.D., 2006.

MAE ARREDONDO
NOTARY PUBLIC
STATE OF TEXAS
My Comm. Exp. 10-24-07

Notary Public in and for the State of Texas
My Commission expires : 10/24/07

C

Capital Murder
SAPD Case # 84 444829
March 4, 1985
In Homicide Office

THE STATE OF TEXAS,
COUNTY OF BEXAR.

Statement taken By Det. E. Quintanilla

BEFORE ME, the undersigned authority in and for the State and County aforesaid, on this day personally appeared Ramiro Reyes

who being by me first duly sworn upon his oath deposes and says

My name is Ramiro Reyes. I am 17 years old. I live at [redacted] San Antonio, Texas, with my parents. The phone number there is [redacted] I am unumployed at this time. I went to the ninth grade in School, and I can read, write, speak, and understand the English.

I want to say that in November of 1984, I went to the house of Ruben Cantu. Ruben lives in a trailer on Briggs St. with his father. I have known Ruben for about five years. On this day Ruben and I were talking and he asked me if I had heard what had happened the night before in front of his house. I told him I had heard someone had been shot there, but that is all I knew. He told me it was him that had got into the house and shot two guys there. He said that he and a guy by the name of David had gotten into the house because they wanted to steal something. Ruben then said one of the guys went for a gun, and that is when Ruben started shooting. As we were talking Ruben made a motion with his hands as if was holding a rifle. He also told me he had used a .22. The other guy, David is a short guy. He lives on La Violeta. He is a Juvenile.

Two Detectives from the Police Dept. took me to the Homicide Office after this had happened. It was still some time in November. I told them what I just told you, Det. Quintanilla, but I asked them not to put it on a statement form, because I was afraid of Ruben Cantu. He has a lot of contacts and they could also harm me. Today, March 4, 1985 you, and Sgt. Ewell came to my house and talked with my and my Father. Both you explained the importance of my giving this statement. I knew that Ruben Cantu is in jail now for shooting a Policeman, and I now want to tell what Ruben told me he did.

This is true and correct to the best of my knowledge and all happened in San Antonio, Bex. Co., Texas.

Signature Ramiro Reyes

Sworn to and subscribed before me this 4th day of March, A. D. 1985

Linda G. Sanchez
Notary Public in and for Bexar County, Texas.

SEAL

7/19/86

SAPD Form No. 66-A
(Rev. 7-84)

D

TEXAS DEPARTMENT OF CORRECTIONS

BUREAU OF CLASSIFICATION

Inmate Consolidated Record Form

EX - 804
PRISON NUMBER

CANTU, Ruben Montoya (TN)(PN)(LN)
INMATE NAME

None
ALIAS

ALIAS

Hispanic | Male | 8½
RACE | SEX | SHOE SIZE

12-05-66 | 19
DATE OF BIRTH | AGE

San Antonio, Bexar County, Texas
PLACE OF BIRTH

San Antonio, Bexar County, Texas
RESIDENCE

NO
DETAINERS (YES) (NO)

Not Guilty | Catholic
PLEA | RELIGION

Aurelia M. Cantu (MO)
IN CASE OF ILLNESS, INJURY, DEATH, NOTIFY:

[redacted]
ADDRESS

[redacted] | [redacted] | [redacted]
CITY | STATE | ZIP CODE

Ruben M. Cantu
INMATE SIGNATURE

(H) 12-06-85 MTW 09-10-85 Bexar County

CL-1.A

IX. CRIMINAL HISTORY

Inmate Cantu stated that his present offense of Capital Murder occurred on 12/08/84 at 515 Briggs Street in San Antonio, Texas around midnight. The inmate described a codefendant as a Mexican male age fifteen who is currently in TDC on a twenty year sentence. The inmate stated that he is friends with his codefendant and still is. He does not consider his codefendant an enemy. Inmate Cantu described the victim as Pedro Gomez, a Mexican male age twenty-five who, according to the inmate, is a Mexican National. The weapon was described as a 22 caliber rifle and the victim was reportedly shot none times in the chest and facial areas. Inmate Cantu stated that he was arrested at 612 Briggs Street in San Antonio, Texas at his father's home. The inmate related that he was arrested at 4:00 AM on 3/1/85. Bond was originally set at $70,000 but was later raised to $200,000 and later the inmate was allowed "no bond." The inmate's rationality of his present offense is, "IT WAS A ROBBERY." Inmate Cantu stated that he never knew the victim. It is alleged that the inmate broke into the victim's house and stole his wallet. It was alleged that the inmate was the one in possession of the weapon. Inmate Cantu further explained that he had shot an off duty police officer and 3/1/85 because the officer hit him in the head. The inmate stated that he shot the officer in self defense with a 25 caliber pistol three times in the stomach and chest. The inmate stated that because he shot this police officer they added the above Capital Murder charges.

Inmate Cantu admitted to only two arrests, the first one resulting in 1982 to Bexar County, Texas for two counts of Attempted Murder. The inmate related that he spent eighteen days in jail and a juror found him not guilty.

Inmate Cantu indicated that his father, Fedenzio Cantu, was an ex-policeman in Kennedy, Texas. The inmate further related that his brother, Larry Cantu, is a former inmate of TDC but has paroled. Inmate Cantu relates that he does not expect any trouble from any members of the inmate population and related that he does not belong to any militant or subversive organization. The inmate denied a gang membership. Additionally, the inmate denied participating in any type of homosexual activities.

E

REFERENCE CASE #84-444,829

THE STATE OF TEXAS,
COUNTY OF BEXAR.

Statement taken BY DET. JOHN D. RIVAS 2215
IN THE HOMICIDE OFFICE 214 W NUEVA ST.
DATE 03-03-85 1255 HOURS

BEFORE ME, the undersigned authority in and for the State and County aforesaid, on this day personally appeared EUSEBIO ALANIS MORENO XXX who being by me first duly sworn upon his oath deposes and says

My name is EUSEBIO ALANIS MORENO AND I AM 28 YEARS OLD ANDI WAS BORN ON DECEMBER 16, 1955, IN SAIN ALTO, ZAC., MEXICO. I LIVE AT [redacted] AND MY PHONE NUMBER IS [redacted]. I DO NOT KNOW HOW TO SPEAK, READ, WRITE, NOR UNDERSTAND THE ENGLISH LANGUAGE. I AM GIVING THIS STATEMENT IN SPANISH AND YOU, DET. RIVAS, ARE TYPING IT IN ENGLISH. YOU HAVE TOLD ME THAT YOU ARE GOING TO READ THIS STATEMENT BACK TO ME IN SPANISH WHEN YOU ARE FINISHED TAKING IT FROM ME. I HAVE BEEN IN THE UNITED STATES SINCE 1976. I AM IN THE HOMICIDE OFFICE TODAY, MARCH 3, 1985, TALKING TO YOU, DET, RIVAS, AND YOU HAVE ASKED ME THE NAME OF THE PERSON WHO WAS MURDERED. THE NAMEE OF THE PERSON THAT WAS KILLED IS PEDRO GOMEZ, AND HE WAS MY BROTHER-IN-LAW. AND PEDRO WAS MURDERED AT 605 BRIGGS. 605 BRIGGS BELONGS TO ME AND AT THAT TIME, NOVEMBER 9, 1984, PEDRO GOMEZ AND MY YOUNGER BROTHER, JUAN MORENO, WERE STAYING IN THE HOUSE BECAUSE I HAD NOT FINISHED MOVING ALL OF MY FURNITHRE FOR ME AND MY FAMILY TO MOVE IN. I WOULD LIKE TO SAY THAT I WAS NOT WITH MY BROTHER NOR PEDRO WHEN PEDRO WAS MURDERED AND JUAN GOT SHOT. I WOULD LIKE TO SAY THAT YESTERDAY, MARCH 2, 1985, ABOUT 4:30 PM TWO SAN ANTONIO POLICE DEPARTMENT DETECTIVES, DRESSED IN XXXX PLAIN CLOTHES WENT TO MY HOUSE TO TALK TO MY BROTHER, JUAN. JUAN WAS HOME AND THE DETECTIVES DID TALK TO JUAN. AND I WAS PRESENT WHEN THE DETECTIVES TALKED TO JUAN. THE DETECTIVES WANTED TO KNOW IF JUAN REMEMBERED XX ONE OF THE INDIVIDUALS THAT HAD SHOT HIM AND HAD KILLED PEDRO ON NOVEMBER 9, 1984, AT 605 BRIGGS. I WOULD K LIKE TO CORRECT MYSELF, BY SAYING THAT I HAD JUST GOTTEN HOME WHEN THE TWO DETECTIVES HAD ASKED JUAN ABOUT WHEN HE GOT XXXX SHOT AND PEDRO WAS KILLED. AND THE DETECTIVES HAD ALREADY SHOWED JUAN THE COLOR PICTURES AND I THINK THERE WERE FIVE OF THEM WHEN I GOT HOME FROM WORK. WHEN I GOT HOME I ASKED THE DETECTIVES TO SHOW ME THE PICTURES AND THEY DID SHOW THEM TO ME. THE DETECITVES TOLD ME THAT JUAN COULD NOT POSITIVELY IDENTIFY THE INDIVIDUAL FROM THE PHOTOS THAT THEY HAD SHOWED HIM OF THE PERSON THAT HAD BEEN INVOLVED IN THE MURDER OF PEDRO GOMEZ. BUT THEY ALSO TOLD ME THAT JUAN HAD TOLD THEM THAT JUAN MAY BE ABLE TO IDENTIFY THIS MAN IF HE COULD SEE THE MAN IN PERSON. IN MY OPINION, JUAN DID NOT WANT TO IDENTIFY THE PICTURE OF THE MAN THAT WAS INVOLVEDXX IN THE MURDER OF PEDRO XXX. AS JUAN IS AFRAID OF THIS MAN BECAUSE JUAN WAS XXXX ALSO SHOT IN THIS INCIDENT AND JUAN XXX ALMOST DIED ALSO. THE REASON WE CAME TO THE POLICE DEPARTMENT TODAY, SUNDAY, MARCH 3, 1985, IS BECAUSE DET. XXXX QUINTANILLA CAME TO MY HOUSE THIS MORNING AND TOLD US THAT JUAN NEEDED TO COME INTO THE STATION TO SEE IF HE COULD IDENTIFY THE MAN THAT HAD SHOT HIM AND MY BROTHER-IN-LAW IN PERSON.

EVERYTHING THAT I HAVE TOLD YOU HAPPENED IN SAN XXX ANTONIO, BEXAR COUNTY, TEXAS. EVERYTHING THAT I HAVE TOLD YOU IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

YOU HAVE READ THIS STATEMENT BACK TO ME IN SPANISH AND IT IS AS I HAVE TOLD YOU.

END OF STATEMENT.

Signature Eusebio Moreno

Sworn to and subscribed before me this 3 RD day of MARCH, A. D. 1985

John D. Rivas
Notary Public in and for Bexar County, Texas.
JOHN D. RIVAS 08-27-88

SEAL

SAPD Form No. 66-A
Issue 7-A41

F

SUPPLEMENTARY REPORT

3. Offense Classification: Capital Murder

1. _____ (4th Copy)
2. _____ (5th Copy)

SAN ANTONIO POLICE DEPARTMENT

4. Assignment No.: 84 444829
5. Offense No.:
6. Date Reported: 11-09-84

7. Last Name of Complainant - First - Middle Initial (Or Firm Name)		8. Address of Complainant			
Gomes, Pedro		605 Briggs			
9. Place of Occurrence - Street On - Street At or Number	Dist. Occurrence	10. Date and Time of This Report		11. Dist. Rec.	12. Dist. Asr.
605 Briggs		03-03-85	1500		

13. Additional Details of Offense - Progress of Investigation - Disposition of Case - Disposition of Evidence, Property, etc.

Witness: Moreno, Juan L/M/19 [redacted] [redacted]

Today, per authority of Homicide Sgt. W. Ewell, I went to the above listed Witness's house, and returned him to the Homicide Office. This man is a witness in a Capital Murder case, and was also wounded. He told me that Det. Ballesa had showed him five pictures of Mexican men. When Det. Ballesa asked him if he recognized anyone in the photos, he told Ballesa that he had not. However this Witness told me he did recognize the man who did the shooting, but did not tell Ballesa because he is afraid of this man. I showed him the photos again, and he picked out Ruben Cantu as the man who shot Pedro Gomes and he. I took a statement from Moreno and pictures of his wounds. Recommend case be cleared with filing of charges on Ruben Cantu.

PURPOSE OF REPORT

14. ☐ Unfounded
15. ☐ Cleared By Arrest
16. ☐ Other Clearance
17. ☒ Additional Information
18. ☐ Progress of Investigation
19. ☐ Inactive Status
20. ☐ Change of Offense
21. ☐ Refused to Prosecute
22. ☐ Cancellation Report

Reported by

23. ☐ Police Officer / Officers Assigned to Follow-up
24. ☐ Other Officer

25. Officer Making Report / Badge No.	26. Approving Authority	27. Unit Case No.	28. Unit Assigned To Follow-up
Det. R. Quintanilla #2095	Sgt. Ewell		Homicide

SAN ANTONIO POLICE DEPARTMENT

SUPPLEMENTARY REPORT

TYPE ONLY

SAPD Form 3-Rev. (7-68)

TO: UNIT ASSIGNED

G

SAPD Case # 84 444629
March 3, 1985
In Homicide Office.

THE STATE OF TEXAS,
COUNTY OF BEXAR.

Statement taken By Det. E. Quintanilla

BEFORE ME, the undersigned authority in and for the State and County aforesaid, on this day personally appeared Juan Moreno

who being by me first duly sworn upon his oath deposes and says

My name is Juan Moreno. I am 19 years old. I was born in Sain Alto, Mac. Mexico. I went to the six grade in school, in Mexico. I came to San Antonio about one year and two months ago. I was living with my brother Eusebio Moreno at [redacted] I cannot read, write, speak, or understand the English language. I am giving this statement to Det. Quintanilla in Spanish, and he is typing it in English.

I want to say that on November 09, 1985 I was at 605 Briggs St. with my brother's, brother-in-law, Pedro Gomez. We were there to spend the night, to take care of the house so no one would break in and steal anything. This was a new house being built. Myself and Pedro went to sleep and were awaken by two men. One of the men had a rifle. I do not know what kind of rifle it was. I do not know how they got into the house. The one with the rifle took Pedro's wallet from him and told him to pick up the mattress he was sleeping on. When Pedro did this, this man saw a pistol on the floor. Pedro had the pistol there for protection. This man then fired the rifle at Pedro and Pedro feel to the floor. This same man then pointed the rifle at me and shot me. I fell to the floor. I was unconsidence for awhile and when I awoke the men were gone. I then went to a neighbors house to get help.

On March 02, 1985 Det. Balleza came to my house and he showed me five color pictures of Mexican men. I recognized one of the pictures of one of the men he showed me as being the same man who shot Pedro and me that night. I did not want to tell Det. Balleza who it was because I am afraid and I feared for my family. Today, you Det. Quintanilla asked me if I had recognized anyone in the photos Det. Balleza showed me and I told you yes. You showed me the same photos and I picked out the one who did the shooting. You told me his name was Ruben Cantu. This is the man who shot Pedro and me. I put my name on the back of his picture and also the time and date. I would also like to say that the night of the shooting there was a light on in the house and I got a good look at this man, but I did not get a good look at the other man that was with him.

This is all true and correct and happened in San Antonio, Bex. Co., Texas.

Signature Juan Moreno

Sworn to and subscribed before me this 3rd day of March, A. D. 19 85

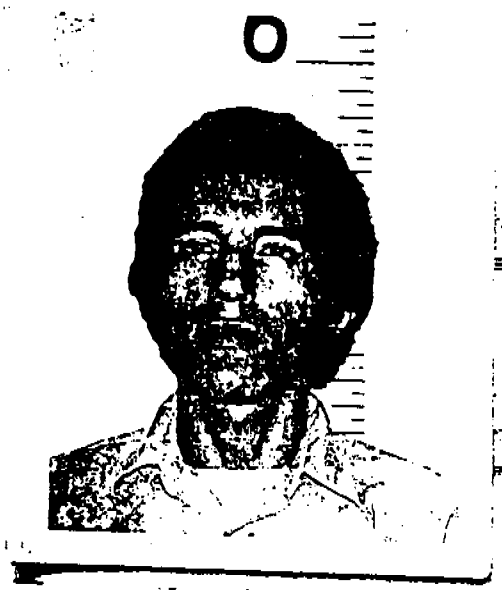
John D. Rivas
Notary Public in and for Bexar County, Texas.

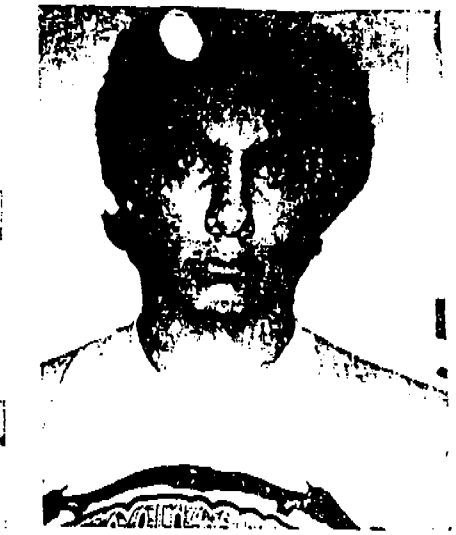
SEAL

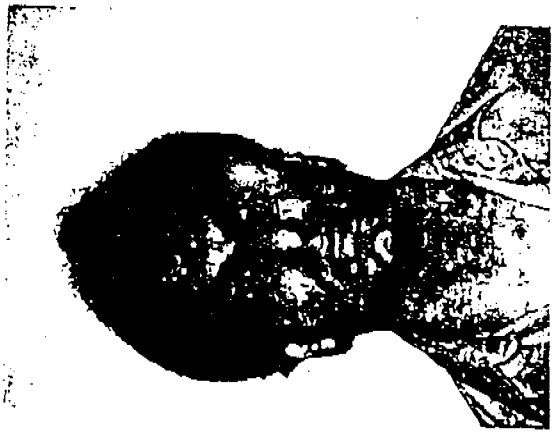
John D. Rivas 08-27-88

SAPD Form No. 66-A
(Rev 5-64)

H

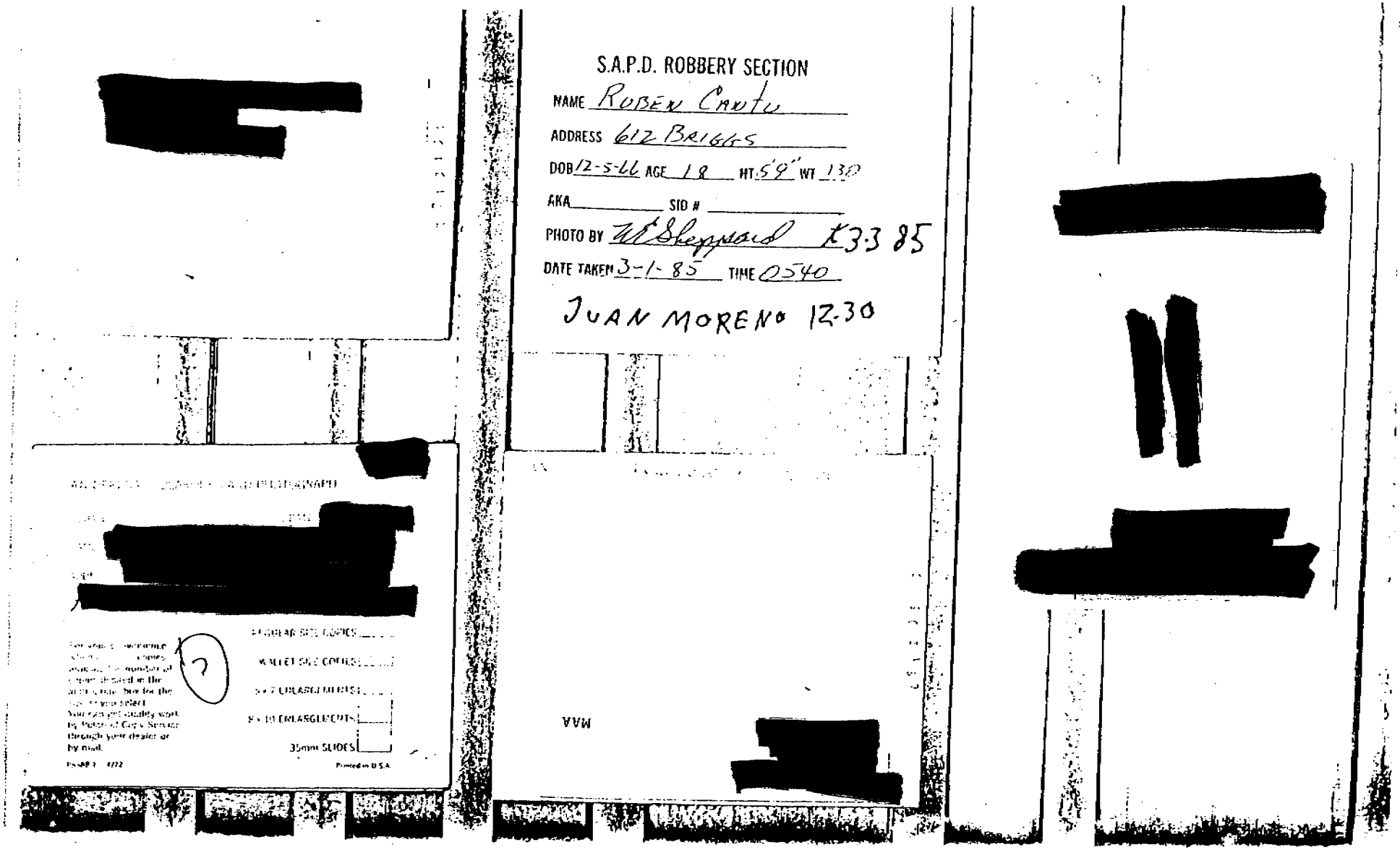






[redacted]

DEFENDANT'S EXHIBIT
NO.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NAME ROBEN CANTU
ADDRESS 612 BRIGGS
DOB 12-5-66 AGE 18 HT 5'9" WT 130
AKA SID #
PHOTO BY W Sheppard #3385
DATE TAKEN 3-1-85 TIME 0540
JUAN MORENO 12-30
VVW
35mm SLIDES

I

SUPPLEMENTARY REPORT 2. Offense Classification

(5th Copy) Capt. Al Murder

(6th Copy) SAN ANTONIO POLICE DEPARTMENT

4. Assignment No.: 84 444829
5. Offense No.: 090310
6. Date Reported: 11-06-84

Last Name of Complainant—First—Middle Initial (Or Firm Name)	8. Address of Complainant		
Gomez, Pedro	605 Briggs		
Place of Occurrence—Street On—Street At or Number	10. Date and Time of This Report	11. Dist. Rec.	12. Dist. Arr.
605 Briggs	03-05-85		

1. Additional Details of Offense—Progress of Investigation—Disposition of Case—Disposition of Evidence, Property, etc.

Witness: Moreno, Juan L/M/19 [redacted]

Actor #1: Cantu, Ruben L/M/18 DOB 12-05-66 612 Briggs

Actor #2: Garza, David L/M/15 [redacted]

Actor # 1 who was a Suspect in this case was arrested for the shooting of off-duty San Antonio Policeman Joe De La Luz, and is in jail at the time of this report. After learning of his arrest Det. S. Ballesa contacted the above listed witness to see if this Suspect could be identified in the Capital Murder. The witness did not identify the Suspect because he fears him, and has since the Murder. I contacted this same Witness the following day, showed him the same photo line-up that Ballesa had, and the Witness identified Actor # 1 as the man who shot him, and killed the Comp. in November of 1984. See the Witnesses statement for further details. Two cases have been filed on Actor #1 other that the Att. Murder of Officer De La Luz. in Att. Capital Murder and a Capital Murder Case.

On March 4, 1985 while reading Det. Herring's report in this case I came across the name of Actor #2. According to Herring's report this Actor had been talked to however nothing had been learned from him. Also in Det.'s Herring's report, he states that when he interviewed the Witness at the Hospital, the Witness says one of the men was 13 or 14. Actor #2 is 15 years old. When I took a statement from the Witness after he had identified Actor # 1, he told me he may could identify the other man, but that he didn't get to good a look at him. I then was granted a Motion to Photograph by Judge Pat Priest, so I could photograph Actor # 2 and show him in a line-up to this Witness. Myself and Sgt. Ewell had gone to Actor #2 house, however he was not at home. We spoke to his mother and brother Mario Garza. We asked them to call us when Actor #2 returned home. When we got back to the Homicide Office I called Actor #2's house, and he answered the phone. I asked him to come into the Homicide Office on Tues. March 5, 1985 with his mother and he stated he would.

On Tues. March 5, 1985 at approximately 0830 hrs. Actor # 2 came into the Homicide Office. He was alone. I introduced myself and Sgt. Ewell to him and asked him where his mother was. He told me his mother was taking care of his ilied father. I then photographed Actor # 2. I advised him he was a suspect in a Capital Murder and Att. Capital Murder Case and read him his rights from SAPD Form 64 E. I asked him if he understood his rights and he

(See Page 2)

14. ☐ Unfounded	17. ☐ Additional Information	20. ☐ Change of Offense	Reported by	23. ☐ Police Officer / Officers Assigned to Follow-up	
15. ☐ Cleared By Arrest	18. ☒ Progress of Investigation	21. ☐ Refused to Prosecute			
16. ☐ Other Clearance	19. ☐ Inactive Status	22. ☐ Cancellation Report		24. ☐ Other Officer	
Officer Making Report - Badge No.	26. Approving Authority	27. Unit Case No.	28. Unit Assigned To Follow-up.		
Det. K. Whitehill #2095	Sgt. Ewell		Homicide		

SAN ANTONIO POLICE DEPARTMENT

SUPPLEMENTARY REPORT

TO: (SEE ITEM 2, ABOVE)

TYPE ONLY

SAPD Form No. 3-L (7-68)

SUPPLEMENTARY REPORT 3. Offense Classification:

Page 2 of 2 (5th Copy, Capital Murder

(6th Copy) SAN ANTONIO POLICE DEPARTMENT 4. Assignment No.: 84 444829

5. Offense No.: 890338

6. Date Reported: 11-08-84

1. Last Name of Complainant—First—Middle Initial (Or Firm Name): Gomez, Pedro

8. Address of Complainant: 605 Bylgre

2. Place of Occurrence—Street On—Street At or Number: 605 Bylgre

10. Date and Time of This Report: 03-03-85 1500

11. Dist. Rec.

12. Dist. Arr.

3. Additional Details of Offense—Progress of Investigation—Disposition of Case—Disposition of Evidence, Property, etc.

stated that he did. He then signed the rights warning card and dated it. I asked him if he wanted to make a statement as to his enrolment in the case. I told him he if did that it would go on a Confession, Voluntary Statement form. I also told him that a Judge would also have to read him his rights before he gave me the statement. He then told me that he was not present at the Murder scene. I told him that I knew he was there and again asked him if he wanted to give a statement. He thought for awhile and then told me he had been there at the scene, but that he had stayed outside. He said he heard shots shots, then saw Ruben, Actor # 1 come running out of the house. I stopped him at this point and advised him if he was going to give me this information as a statement, we would have to go and see a Judge. He said alright, I and he then went to Hum. Ct. and spoke to Judge Puma. Judge Puma talked to Actor # 2 in privated, and I waited outside his Office. A few minutes later Judge Puma advised me that Actor # 2 did not want to give a statement after all. I and he then left the Judge's Office and I asked him why he changed his mind. He told me he did not want to sign anything. Actor # 2 then left the Homicide Office. I then proceeded to gather a photo line-up to show the Witness. I obtained four color photos from our Juvenile Office. These photos were all of Latin Males who are Juveniles. Together with Actor # 2's photo I had five photos. Myself and Det. Rivas drove out to the Witnesses residence. When we got there I told the Witness I wanted to show him a line-up, and for him to tell me if he recognized anyone. I spread the five photos out on a counter and Actor # 2 was the fourth one down. The Witness looked at all five photos, then picked up Actor #2's photo and stated that this was the man who had been with Actor # 1 when he was shot and the Comp. killed. This Witness signed and dated Actor # 2's photo on the back. This Witness also stated that Actor # 2 is the man who kicked him after Actor # 1 had shot him. See Witness's second statement for details. When I returned to the Homicide Office Sgt. W. Ewell told me that Actor # 2 had returned to our Office, and that he had his sister with him. Actor # 2 still however refused to give a statement and they left our Office. Actor # 2 was not informed that he had been identified by the Witness.

All the paper work in this case has been completed for the filing of Cap. Murder and Lit. Cap. Murder charges on Actor # 2. Recommend this case be carried as Cleared with the filing of these cases with the Juvenile District Attorneys Office. These same charges have been filed on Actor # 1 with the District Attorneys Office.

PURPOSE OF REPORT
14. ☐ Unfounded
15. ☐ Cleared By Arrest
16. ☐ Other Clearance
17. ☐ Additional Information
18. ☒ Progress of Investigation
19. ☐ Inactive Status
20. ☐ Change of Offense
21. ☐ Refused to Prosecute
22. ☐ Cancellation Report

Reported by:
23. ☐ Police Officer / Officers Assigned to Follow-up
24. ☒ Other Officer

Officer Making Report—Badge No.: Det. R. Castanuela #2095

26. Approving Authority: Sgt. Ewell

27. Unit Case No.:

28. Unit Assigned To Follow-up: Homicide

SAN ANTONIO POLICE DEPARTMENT

SUPPLEMENTARY REPORT

TO: (SEE ITEM 2, ABOVE)

TYPE ONLY

SAPD Form No. 3-L (7-68)

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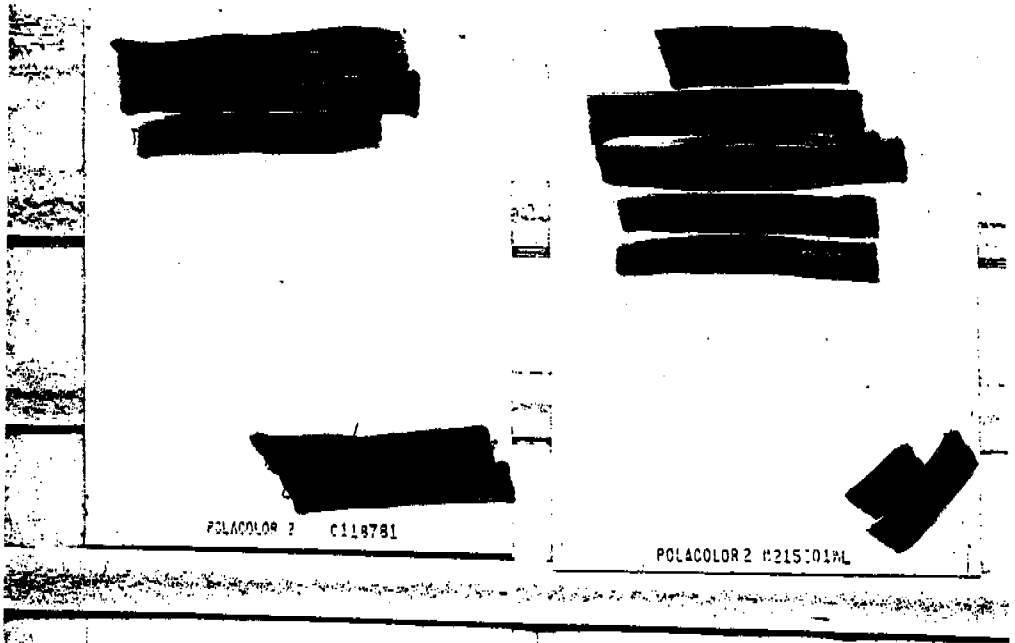
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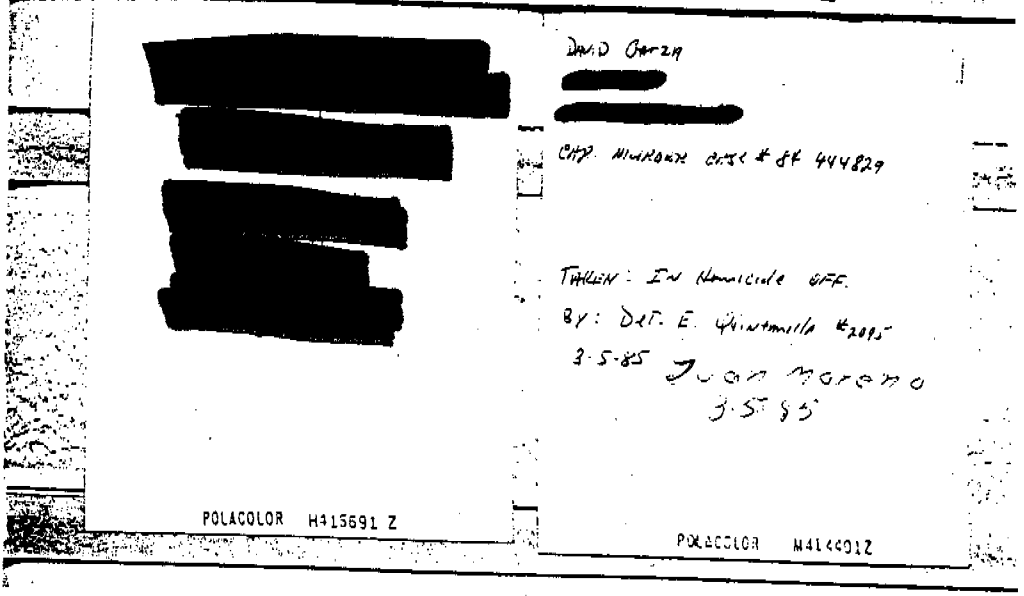
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CHP. MURDER CASE # SK 444829
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BY: DET. E. Quintanilla #2015
3-5-85 Juan Moreno
3-5-85
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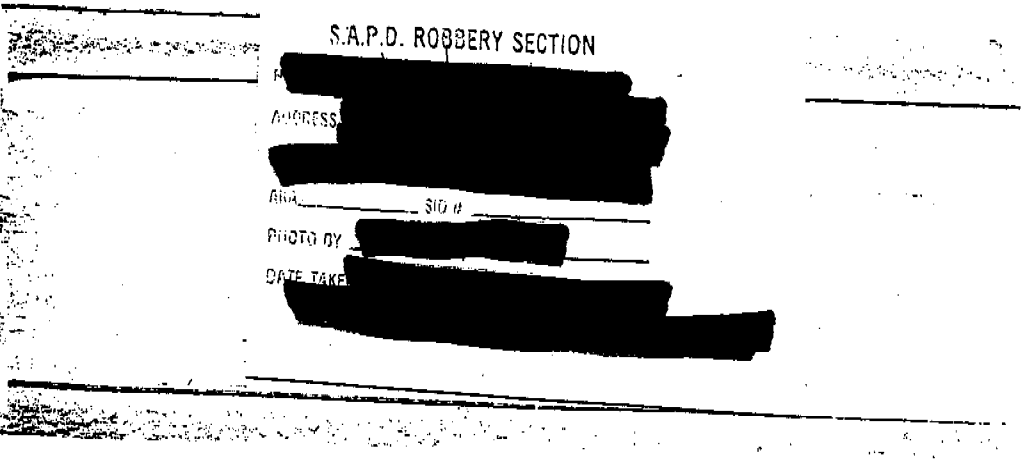
S.A.P.D. ROBBERY SECTION
ADDRESS
AGE
SID #
PHOTO BY
DATE TAKE

K

REFERENCE CASE #84-[redacted] 444,829

THE STATE OF TEXAS,
COUNTY OF BEXAR.

Statement taken ED QUINTANILLA 2095
TAKEN AT [redacted]
DATE 03-05-85 TIME 1058 HOURS

BEFORE ME, the undersigned authority in and for the State and County aforesaid, on this day personally appeared JUAN MORENO

who being by me first duly sworn upon his oath deposes and says

My name is JUAN MORENO AND I AM 19 YEARS OLD AND I WAS BORN ON NOVEMBER 23, 1965, IN SAIN ALTO, ZAC., MEXICO. I LIVE HERE AT [redacted] WITH MY BROTHER, EUSEBIO MORENO. I WOULD LIKE TO SAY THAT TODAY, TUESDAY, MARCH 5, 1985, YOU, DET. QUINTANILLA, CAME TO MY HOUSE WITH DET. RIVAS, AND YOU SHOWED FIVE COLOR PICTURES OF FIVE LATIN AMERICAN MALES AND YOU ASKED ME IF I COULD RECOGNIZE ANY OF THE PERSONS SHOWN ON ANY ONE OF THESE PICTURES. I LOOKED AT THE FIVE PICTURES AND I PICKED UP THE PICTURE OF THE ONE THAT I DID RECOGNIZE AND YOU ASKED ME IF I RECOGNIZED THIS PICTURE THAT I HAD PICKED UP AND I TOLD YOU THAT I DID RECOGNIZE THE PERSON IN THIS PICTURE. I WOULD LIKE TO SAY THAT THIS IS A PICTURE OF ONE OF THE MEN THAT IN THE EARLY PART OF NOVEMBER, 1984, WAS THERE AT 605 BRIGGS WITH THE OTHER MAN THAT SHOT ME AND PEDRO GOMEZ. THIS IS ALSO THE SAME PERSON THAT TOOK THE WALLET FROM PEDRO, WHEN THE OTHER MAN WITH THE RIFLE TOLD PEDRO TO GIVE THEM HIS WALLET. YOU THEN TOLD ME THAT THE NAME OF THE PERSON IN THIS PICTURE THAT IDENTIFIED TODAY IS DAVID GARZA AND HE LIVES ON LA VIOLETTA. YOU ASKED ME TO SIGN THE BACK OF THIS PICTURE AND I DID SIGN THE BACK OF DAVID'S PICTURE AND I ALSO PUT THE DATE ON THE BACK OF THIS PICTURE.

EVERYTHING THAT HAPPENED TOOK PLACE IN SAN ANTONIO, BEXAR, COUNTY, TEXAS. EVERYTHING THAT I HAVE TOLD YOU IS TRUE AND CORRECT.

I WOULD LIKE TO ADD THAT THIS IS THE SECOND STATEMENT THAT I HAVE GIVEN YOU ON THIS CASE.

END OF STATEMENT.

I WOULD LIKE TO ADD THAT THE DAVID GARZA IS ALSO THE ONE THAT STARTED KICKING ME AFTER I HAD BEEN SHOT AND WAS LAYING ON THE FLOOR AND WHEN I LOOKED UP AT HIM AFTER HE STOPPED KICKING ME HE IS ALSO THE ONE THAT TOOK A RECORDPLAYER, OUR WRIST WATCHES WERE ALSO TURNED OVER TO DAVID WHEN THEY ASKED US FOR OUR WATCHES.

DET. RIVAS HAS READ THIS STATEMENT BACK TO ME IN SPANISH AND IT IS AS I HAVE TOLD YOU, DET. QUINTANILLA.

Signature Juan Moreno

Sworn to and subscribed before me this 5 TH day of MARCH, A. D. 19 85

John D. Rivas
Notary Public in and for Bexar County, Texas.
JOHN D. RIVAS 08-27-88

SEAL

SAPD Form No. 66-A
(Rev. 7-64)

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1 2 6 7 3 0 3 1 2 85

M

STATE OF TEXAS

COUNTY OF BEXAR

Before me, the undersigned authority in and for the State and County aforesaid, on this day personally appeared, Bruce F. Baxter, who being by me first duly sworn upon his/her oath deposes and says:

My name is Bruce F. Baxter. I was admitted to practice law in Texas on November 1, 1976. I joined the Denton County District Attorney's office in March, 1977 and practiced there until December 1979. From January 1980 through September 1981, I served as research assistant to Presiding Judge John F. Onion, Jr. of the Texas Court of Criminal Appeals. From September 1981 through December 1982, I served as staff attorney for the Fourth Court of Appeals in San Antonio, Texas. From January 1983 to July 1990 I served as an Assistant District Attorney with the Bexar County District Attorney's Office. Upon leaving the District Attorney's Office I served as city attorney for the city of Killeen, Texas from July 1990 to December 1992. I then moved to the State of Washington and have been in private practice since June 1993 as a family law attorney.

In 1985, at the time I prosecuted the Ruben Cantu case, I was the First Chair Prosecutor in the 144th District Court, presided over by Judge Roy Barrera, Jr. At this time, I had been involved in three or four capital murder cases, but the Cantu case was my first capital case as a first chair prosecutor. I remember factually it was not a difficult case, because it all boiled down to eyewitness identification by the surviving witness.

In preparation for the trial, I read the SAPD file and witness statements; I eventually interviewed all of the witnesses. I went to the Medical Examiner's office and had a lengthy interview with Dr. Suzanna Dana because there had been 18 rounds fired. David Garza was the juvenile co-defendant of Ruben Cantu. I began talking to his attorney Fred Rodriguez since David Garza was a juvenile and we wouldn't have been able to get a significant amount of time on him. I wanted to explore whether Garza would be willing to testify against Cantu.

I called Fred Rodriguez on the phone and asked if his client was interested in cooperating with the State. I felt that David Garza's testimony would corroborate Juan Moreno's testimony but it was different because it wasn't a case in which I desperately needed his testimony. Moreno would be the primary witness and Garza would corroborate him. But it's not like I didn't have a case without Garza.

As we were calling back and forth during this time period, Mr. Rodriguez gave me reason to think that David Garza might be available. However, Mr. Rodriguez called me not long before jury selection was to start, and said that Garza wasn't willing to testify. David had told his lawyer that Cantu was a trustee at the Bexar County Jail and was serving him his food. With Ruben looking across the counter serving him his food everyday, Garza realized that Cantu could "get to him" at any time.

In my pre-trial preparation of the Cantu capital murder case, I met with Ramiro Reyes. He was the kind of person that you would not size up as having an axe to grind against Ruben Cantu. They were contemporaries and friends. If Ramiro was telling me the truth, then Ruben knew him well enough to brag about what he had done. Ramiro, in that way, struck me as being able to hold up well to a defense attack, meaning his credibility was not subject to attack because of bias, bad feeling toward Ruben Cantu or self interest based on a plea bargain, as Ramiro was not a co-defendant. Ramiro Reyes was not part of the criminal sub-culture that Ruben Cantu was part of.

One day I received a phone call from Reyes saying that he had been threatened. He started to get cold feet about testifying. I am confident that I can say that I had already lost David Garza as a possible witness before I got word about Ramiro Reyes. My impression is that I had already talked to Juan Moreno and thought that he would be fine as a witness, prior to my being told about the threats on Reyes. Reyes never said, "I am not going to testify," but did impress upon me that he was scared to death. He said, "Mr. Baxter, you don't live where I do, people can find me." This caused me to focus more on Juan Moreno for proving that Cantu was the shooter, and I was comfortable enough just going with him. At the same time that I evaluated Moreno's quality as a witness as high, I also felt responsible about Ramiro Reyes, and whether I was putting him in danger because of his testimony. It was something I had to face. I also knew that Reyes had changed his story one time already, and I thought, "How reliable is he?" The real bottom line was, sometimes people are just scared but sometimes they are scared for a reason. I had heard that one of the Cantu brothers had just gotten out of prison, and I did not want to have Ramiro Reyes's blood on my hands. My concerns were later validated when Reyes was shot at as the trial was in progress. In my professional opinion, Juan Moreno's testimony would be able to sustain a conviction.

During my pre-trial meetings with Juan Moreno in the spring of 1985, I recall meeting with him at the District Attorney's office with a translator present. As I remember him, Juan was a person of small physical stature, but as I learned in my conversations with him, he had the courage of his convictions. I was thinking of the fact that we would be going through motions challenging the identification and I wanted to test his certainty. He would not let me push him around on the facts and stuck to what he remembered from the night of November 8. He was a person who wouldn't be talked out of what he knew the facts to be. When I tried to test him on his recollections of the facts, he did not waver in his description of how Ruben had shot him and Pedro Gomez. I felt that he would survive cross-examination successfully, because I was confident that he was telling me the truth. I also had the context of Juan Moreno's having seen and learned Ruben Cantu's name in the neighborhood prior to the shooting, so there was more substance to his identification. Juan Moreno never expressed uncertainty in his identification or hesitation, or anything that would have raised a red flag to me. Juan never expressed factual doubt about his identification of Ruben Cantu, nor did he ever state that the police had exerted pressure on him to make his identification of Cantu. At no time did I sense that Moreno's identification of Cantu came from any influence by any outside persons. My clear perception was and is today that Juan Moreno identified Ruben Cantu because Ruben Cantu was the man who shot him and Pedro Gomez. Moreno never told me that his assailant had curly hair. There were never any San Antonio police officers present during any of the pre-trial interviews of Moreno held by me at the District Attorney's office.

I was present when Juan Moreno testified outside the presence of the jury during the hearing on Cantu's motion to suppress the identification, and in front of the jury during Ruben Cantu's capital murder trial. On both occasions he readily identified Ruben without hesitation as the person who shot him and Pedro Gomez.

At no time did any person from the District Attorney's office or San Antonio Police Department speak to me about there being a "need" for Juan Moreno to identify Ruben Cantu. I was certainly aware of the occurrence at the Club Skabaroo on March 1, 1985 in which Ruben Cantu became involved with San Antonio police officer Joe De La Luz. In fact it ultimately became part of the punishment evidence of the trial. Again, nothing to do with this incident was ever made the subject of conversation with me by any person in the District Attorney's office or by any San Antonio police officer, in terms of any pressure or attempt to influence the case. It just didn't happen. I have been asked if there had been an unusually large number of law enforcement officers in uniform attending the trial. The only uniformed officers that I remember at all attending the trial were the bailiffs that were there to provide security.

I would like to state that during the presentation of evidence, when Maria Isabel Garcia was attempting to provide an alibi for Cantu by her testimony, I asked her if any other alibi witnesses were waiting to testify. She said yes, that her brother Eloy had been called to testify, but that he had left because he was late for work. I felt the need, at the time of my final argument at the guilt-innocence phase, to ask the jury, rhetorically, why a person who had come to court to provide alibi testimony that could save his friend's life, would instead decide that he needed to leave to be on time for work. I believed that any rational fact finder would ask the same question.

I would like to add that if, at any time, I would have had a doubt about the accuracy of Juan Moreno's identification, I would have had an ethical obligation to not proceed with the case, particularly in light of the potential result. I took this obligation seriously and would not have proceeded to trial if I had felt Juan Moreno was not credible or that the identification had been tainted in any way.

I understand that an assertion has been made that Ramiro Reyes's brother Eugene wanted to testify at the trial that Ruben Cantu was not in town, that is, in San Antonio, on the night of the shooting on November 8, 1984, but that "the prosecutor" wouldn't let him. First, as "the prosecutor," I dealt in this case only with Ramiro Reyes, and never met or heard of any other relative of Mr. Reyes. Also, no one, whether Ramiro Reyes's brother, or any other person, ever approached me with information that Ruben Cantu had an alibi for his whereabouts at the time of the shooting. Had any such person done so, I would have had an ethical duty to refer that person to the attorneys for Mr. Cantu. Again, no such information ever was presented to me.

I further understand that Ramiro Silva, the father of Ramiro Reyes, alleges that he was present at the Cantu trial and that during the trial "the prosecutor" approached him and said that Eugene Reyes, Ramiro's brother, had just informed the prosecutor that Eugene wanted to testify against Ramiro. I had no such conversation with any person. I do not know Eugene Reyes or Ramiro Silva, and have never met either of them. During the Cantu trial, no one approached me and said that they wanted to testify against Ramiro Reyes. Ramiro Reyes was not on trial, but Ruben Cantu was. I did not tell anyone that I would not let Eugene Reyes testify, because no such contact

between either me and Eugene Reyes or between me and Ramiro Silva ever took place.

I am making this statement of my own free will. I have not been promised anything of value for making this statement. I have read this statement before signing it and it is true and correct to the best of my knowledge and recollection. All these things occurred in Bexar County, Texas.

Bruce F. Baxter

Sworn and subscribed before me, this 18th day of August, A.D., 2006.

MAE ARREDONDO
NOTARY PUBLIC
STATE OF TEXAS
My Comm. Exp. 10-24-07

NOTARY PUBLIC
STATE OF TEXAS

N

July 10, 1985
In Homicide Office

THE STATE OF TEXAS,
COUNTY OF BEXAR.

Statement taken By Det. E. Quintanilla

BEFORE ME, the undersigned authority in and for the State and County aforesaid, on this day personally appeared Ramiro Reyes

who being by me first duly sworn upon his oath deposes and says

My name is Ramiro Reyes. I am 17 years old. I live at [redacted]. The phone number there is [redacted]. I can read and write the English language.

I want to say that I am a witness in the Ruben Cantu murder case. He is on trial for Murder at this time. I also want it known that I was talking to my brother, Eugene Reyes, and he told me that Robert Cantu had told him, that if I testified against Ruben, Robert was going to kill me. Robert Cantu did not tell me this as I have not talked to him. Robert did tell Eugene to tell me though. I also want it known that I did testify in Ruben's trial yesterday, July 9, 1985, and Robert was in the Court room, and knows I testified.

This is all true and correct to the best of knowledge and happened in San Antonio, County of Bexas.//////End of Statement.//-//////////

Signature Ramiro Reyes

Sworn to and subscribed before me this 10 day of July, A. D. 1985

Edward Quintanilla
Notary Public in and for Bexar County, Texas.

Edward Quintanilla
Exp: 03-18-89

SEAL

SAPD Form No. 66-A
(Rev. 2-64)

O

07-21-85 0441

SAN ANTONIO POLICE DEPARTMENT

PRELIMINARY INVESTIGATION REPORT

EXTRA COPY

CASE NO: 85 306042/01

**** REPORT FINALIZED ****

INVESTIGATIVE UNIT: HOMICIDE

REPORTING OFFICER: 0611 QUIRK, EDWARD MICHAE

O F F E N S E I N F O R M A T I O N

OFFENSE: 130412 AGG ASSLT-DEADLY WPN

DATES OF OCCURRENCE
SUN 07-21-85 0100

OFF. LOC : 00600 MILITARY DR SW
DISTRICT : 0408B
TYPE PREM: STREET/ROAD

WEATHER: WARM / DRY

COMP. NAME: REYES, RAMRIO

TITLE R/S AGE DOB
L M [redacted]

RES ADDR: [redacted]
CITY/ST:
APT NO.:

BUS ADDR:
CITY/ST:
APT NO.:

AC/PHONE: [redacted]

AC/PHONE: / -

CALL# DETECTIVES ASSIGNED BADGE CALL# DETECTIVES ASSIGNED BADGE

SUSPECTED PERSON 01

CODE N A M E NICKNAME/ALIAS
SP01 CANTU, ROBERT
ADDR:

CHARGES:

RAC	SEX	AGE	DOB	HEIGHT	WEIGHT	HAIR COLOR	EYE COLOR
L	M	20/		506/	130/	BLACK	

HAIR LENGTH: SHORT
HAIR STYLE: STRAIT
FACIAL HAIR: MUSTACH
TATOOS: TYPE LOCATION
PICTURE
HEART ON CHEST WITH F1 ROBERT
COMPLEXION: DARK
R-L HANDED: RIGHT
BUILD: LIGHT
DESCRIPTION RELIABILITY: EXCLNT

W E A P O N S - A L L S U B J E C T S

MAKE: UNK MODEL: UNK CALIBER: UNK

S U S P E C T V E H I C L E

LICENSE: NUMBER	YEAR	ST	TYP	VEH: YEAR	MAKE	MODEL	STYLE	V I N
QAN				/	CHEV	TK	PK	

VEHICLE COLOR 1: SILVER (SOLID OR TOP) DRIVER WAS NCIC
COLOR 2: GRAY SP
VEHICLE FEATURES: CAMPER TOP
FURTHER VEH DESC: SILVERADO

07-21-85 0441

SAN ANTONIO POLICE DEPARTMENT

EXTRA COPY
CASE NO: 85 306042/01

PRELIMINARY INVESTIGATION REPORT
**** REPORT FINALIZED ****

INVESTIGATIVE UNIT: HOMICIDE

ESTIMATED VALUE: $ VEHICLE INSURED: NO

W I T N E S S E S A N D O T H E R S

CODE		TITLE	R	S	AGE	DOB
C	NAME: REYES, RAMRIO		L	M		02-20-68
	RES ADDR: [redacted]	APT NO.:				
	CITY/ST: [redacted]					
	BUS ADDR:	APT NO.:				
	CITY/ST:					

AC/PHONE: [redacted] B

AC/PHONE: / -

D E T A I L S

NOTIFIED OF PROVISIONS OF TEXAS CRIME VICTIM ACT:
COMP STATES THAT HE IS A WITNESS FOR THE STATE IN A MURDER CASE AND THAT HE HAS RECEIVED DEATH THREATS FROM SP; THE BROTHER OF THE DEFENDENT. COM PSTATED THAT HE WAS ON HIS WAY HOME DRIVING IN THE 600 BLOCK S.W. MILITARY GOING HOME WHEN SP VEH PULLED IN BEHIND HIS VEH AND UNK PASSENGER IN SUSP. VEH FIRED 3 SHOTS FROM AN UNKNOWN WEAPON. COMP ACCULERATED AND LOST VEH. COMPS STATED HE RECOGNIZED THE P/U BELONGING TO SP1.

P R O P E R T Y M O I N F O R M A T I O N

D I S P A T C H I N G I N F O R M A T I O N

DISPATCH CODE: 06G ASSAULT

REQUEST FOR SERVICE
RECEIVED: 07-21-85 0112
DISPATCH: 07-21-85 0121
ARRIVED: 07-21-85 0126
CLEARED: 07-21-85 0154

DISPATCH TO: 00422 CONGRESS E
DISTRICT 0403A
REPORT UNIT: 0401B

REPORTED BY: GHOLSTON, SUSIE
ADDRESS: [redacted] APT: PHONE: [redacted]

OFFICERS DISPATCHED	BADGE	OFFICERS DISPATCHED	BADGE
QUIRK, EDWARD MICHAE	0611-R		

REPORT ENTERED BY: 27
APPROVING AUTHORITY: 0000 07-21-85 0425
REPORT REVIEWED BY: 2201 LOWE, JAMES R 07-21-85 0441
COPIES OF REPORT TO: HOMICIDE , RECORDS BUREAU

P

TAPE TRANSCRIPTION

	PHONE CALL FROM DAVID GARZA AT THE BEXAR COUNTY JAIL TO RICHARD REYNA ON 05/03/06 AT 19:10 HOURS
TRANSCRIBED BY:	GG
DATE:	AUGUST 4, 2006
DOCUMENT:	G:\GG\TAPES\DAVID GARZA

OPERATOR:	For a collect call please enter the area code. Please wait while your call is being processed. State your name at the beep.
GARZA:	David Garza.
OPERATOR:	You may hear silent during the acceptance of your call. Please continue to hold. Hello, this is a collect call from...
GARZA:	David Garza.
OPERATOR:	...an inmate at the Bexar County Jail. For a rate quote press seven. To accept charges press zero. To refuse charges press one. To prevent calls from this facility press six. If you have any questions or concerns contact customer care at, this call is subject to monitoring and recording. Thank you for using Evercom.
REYNA:	Hello?
GARZA:	Hello? Richard?
REYNA:	Yeah.
GARZA:	What happened dude?
REYNA:	David?
GARZA:	Yeah.
REYNA:	What happened man?
GARZA:	What happened dude?

REYNA: I'm here. No well, this is the only number you have. I just barely got home.

GARZA: Oh yeah.

REYNA: Yeah, no I just got home. Are you all right?

GARZA: Yeah. I just got a hold, I just got a hold of uh, Richard, I mean uh, Keith, called over here because I was trying to get phone call, but he did not have the service so he called over here and request for an attorney phone call and I went to go talk to him yesterday...

REYNA: Yeah.

GARZA: and uh, he told me that, well that he didn't, the, his cell phone didn't accept collect calls...

REYNA: Yeah.

GARZA: so I...

REYNA: It's the same with mine. It, it my cell phone doesn't and, and the only time that I could, I can take your call like right now I'm, I'm here in my office...

GARZA: All right.

REYNA: and, and it rang so you know I'm here and, and I don't mind taking it uh, it's just if I'm not here you know...

GARZA: Yeah. 'Cause I figure...

REYNA: Well, how you doing man?

GARZA: All right, all right, I been doing okay. Well, I'm...

REYNA: Have people bothered you?

GARZA: Well, supposedly they were suppose to come when I got here last week, well...

REYNA: Yeah.

GARZA: that's why I called my sister cause I couldn't get a hold you and I...

REYNA: Yeah and I quickly called him and...

GARZA: Yeah cause they had me sc...scheduled to go to court right the next day.

REYNA: Shit.

GARZA: Do you understand? And uh...

REYNA: It's because it is very slick.

GARZA: Yeah, that's why I said you know what, I told them no well Susan Reed is slick and well I tried all the numbers I had and I couldn't get through to anybody so I said I'm gonna call my sister and her call you...

REYNA: Yes.

GARZA: so they, you know so y'all could (inaudible)...

REYNA: I quickly got a hold of uh the attorney...

GARZA: Yeah.

REYNA: and he took, you know he, he started taking action. Well, look tomorrow I am going to go to uh, I'm in uh, another case, another capital murder case and we have a hearing in uh, uh, in another city.

GARZA: Oh yeah.

REYNA: and uh, but then you know I'll be gone about four days and then I'll be back Monday...

GARZA: Uh, huh.

REYNA: and then I think, think about going to, to San Antonio.

GARZA: 'Cause Keith called to the parole and my parole was approved April 12...so I, I...

REYNA: 'cause they might, they might...

GARZA: I might be released...

REYNA: They might release you there.

GARZA: I, I, I gonna get released from here.

REYNA: Good.

GARZA: Yeah, I, I, I get released...

REYNA: because I want to talk to you when you get out. I want to do something.

GARZA: Okay, yeah well uh...

REYNA: but, we will, we will talk in person.

GARZA: All right, on the side that, well my parole is already been approved so any day I can leave because they were gonna put the monitor that's why I told Keith I wonder if Susan Reed had any influence of them, you know calling over there, having the put the monitor on me, you understand me?

REYNA: Yeah.

GARZA: ...but it there is no problem. I'm just gonna go with the flow anyway it's only for 90 days. I already got a hold of this company I used to work for and well I got a job as soon as I get out.

REYNA: Oh shit, that's good.

GARZA: So, I'm gonna get out on a Friday and well by Monday I gotta go report and that same Monday I already got a job and by Tuesday I will already be working. So I'm...

REYNA: Listen, Eloy sends you his regards.

GARZA: Oh yeah.

REYNA: Yeah. You don't know him very well, right?

GARZA: Well, I haven't seen 'em since 1990. That was the last...

REYNA: Oh yeah and there are some that loose it.

GARZA: It was the last time I saw him, he was, he wanted, he was offering me coke and I told 'em no man I gotta go report, no man, no man, but that was, and nah man they are not gonna, in fact we were at the lady's, do you remember I told you we had the party that we were the night of the fight, well I went to visit her because Oralia knows me and he was going out with the lady and no man, he was stubborn and

Oralia would tell him shut your mouth stupid, do you not listen and he was stubborn and said anyway they are not going to catch you I told him no man, he was stubborn and uh...

REYNA: That damn Eloy is very screwed, he is very screwed. Well and I stopped the other day to talk to Robert.

GARZA: Yeah, I got to talk to him Friday, I called my sister and she did a three way over there.

REYNA: They still have the monitor on him.

GARZA: Yeah, yeah...

REYNA: They keep messing with him, man.

GARZA: and well I got to talk to 'em and regarding my case, about what happened with that Ragullio...

REYNA: Yeah.

GARZA: well that is in process so that they can fix it, do you understand me?

REYNA: Yeah, you know we will talk in person when you get out.

GARZA: All right, well...

REYNA: We will talk in person and, and as soon as they let you go I will go over there.

GARZA: Hey, Richard?

REYNA: Yeah.

GARZA: Send me some money?

REYNA: Well if I send and then you are not there?

GARZA: No, I'm, I'm, I'm here.

REYNA: I said, if I send it and it does not get there and, and they let you go?

GARZA: Well it'll go back to you...or just put, use my sister's address, Nora Alejandro, but only...

REYNA: You know what, give me your sisters. Well, what is her name?

GARZA: Nora Alejandro.

REYNA: Nora?

GARZA: Yeah.

REYNA: but the, the money you don't send it to me here it's a different address. You don't send it here to the county jail. They got a, it's a, a inmate trust fund, but is separate from the county jail. It doesn't come...

GARZA: Okay, and, and, and what is the address where you send it to?

REYNA: [redacted].

GARZA: [redacted]?

REYNA: [redacted].

GARZA: Uh...

REYNA: [redacted], so it's [redacted]?

GARZA: Yeah and the zip code is [redacted].

REYNA: [redacted]?

GARZA: [redacted]..

REYNA: [redacted]?

GARZA: [redacted].

REYNA: Yeah.

GARZA: You got it?

REYNA: Well...

GARZA: Yeah it's uh [redacted], dash [redacted], but you...you could just use my or my sis...one of my sister's name and her address is [redacted], no well I'm gonna, I'm gonna be here because my parole officer to the house...

REYNA: Yeah.

GARZA: and well they didn't have a phone, he said well as soon as y'all connect the phone call us and notify us so we can get the paperwork so my sister already connected the telephone and she called my parole officer and let 'em know that my phone was already working and everything else...

REYNA: Okay.

GARZA: but my release is day is June 16. That's when I get out, I mean...

REYNA: That is when you're out, I mean, you know that's when you're completely without a monitor, no?

GARZA: I shouldn't, but the are fucking with me. I'm gonna take of that when I get out...

REYNA: Yeah, yeah.

GARZA: and uh, but I'm suppose to be on paper, but they are fucking with me. I gotta file some paperwork so I can get off of, off of parole because I'm not suppose to be on parole.

REYNA: Listen and they never sent you the grand jury?

GARZA: No, well Keith stopped it.

REYNA: He stopped it, he told me he was going to stop it.

GARZA: Yeah and uh...

REYNA: Okay.

GARZA: and well...

REYNA: Hey what is Nora's telephone number?

GARZA: [redacted]...

REYNA: [redacted].

GARZA: [redacted].

REYNA: [redacted]

GARZA: Yeah.

REYNA: Okay and has anybody gone to see you?

GARZA: Well yeah...

REYNA: From Susan Reed's office?

GARZA: No, not here.

REYNA: And have the guards asked you, have they asked you anything?

GARZA: No, well that's what Keith, you know, he talked to me, he said make sure that nobody tries to be slick, try to get some kind of information...

REYNA: Yeah, yeah, yeah, all right.

GARZA: and uh, well that's what he was basically wanted get in touch with me to make that, you know they don't start asking questions on the slick, you understand me?

REYNA: Yes, yes.

GARZA: and uh, he said that he was gonna get with you and well whenever I get out well we would get together, you understand, because he didn't wanna talk too much over the telephone...

REYNA: The same for me, lets not talk over the telephone.

GARZA: Yeah.

REYNA: Okay.

GARZA: So...

REYNA: but I will get in touch with, with Nora.

GARZA: All right and well uh, well they have hamburgers and taco plates here and no man I am, I am drooling with the hamburgers. Mother oh my.

REYNA: Well, look you already know I am going to be out tomorrow...

GARZA: All right.

REYNA: but I will see I can make the arrangements tomorrow where ever I am, okay.

GARZA: All right, but just send it to her anyway so can get it by because or by next week, do you understand me?

REYNA: I will send it as soon as I can, okay.

GARZA: Okay, Richard then I will talk to you when, when...

REYNA: All right, we will talk in person later.

GARZA: Okay. All right.

REYNA: All right bro, be careful huh.

GARZA: All right, bye-bye.

OPERATOR: Thank you for using Evercom.

END

G:\GG\TAPES\DAVID GARZA

Q

DATE: 05/12/06 TIME: 9:05 DURATION: 14:39

OPERATOR: For English. For. Please wait while your call is being processed. For a rate quote press seven. To proceed with call press zero. Please state your name at the beep.

GARZA: David.

OPERATOR: You may hear silence during the acceptance of your call. Please continue to hold. Hello, this is a collect call from...

GARZA: David.

OPERATOR: ...an inmate at County Jail. For a rate quote press seven. To proceed with this call say hello after pressing zero. To refuse. This call is subject to monitoring and recording. Thank you for using Evercom.

GARZA: Hello?

NORA: Hey?

GARZA: Huh?

NORA: What happened?

GARZA: Nothing, I was waiting on you, what happened?

NORA: They said that they, I can't take the clothes.

GARZA: Why not?

NORA: Because they said they don't accept clothing. They said (inaudible) is he uh, is he going to court...

GARZA: Huh?

NORA: They said when's his court date? They said we only accept clothing if he has a court date and then they checked and they said no we can't accept any clothes here. I said well he was in prison five years and he was brought back over here and he's gonna be re...released from here so then he don't have no clothing and then they checked and they said oh David Garza. Tennis shoes, underwear, socks, t-shirts, he's got stuff here.

GARZA: Yeah, but that's from, from prison.

NORA: Well, that's, that's what they said. They said and if not we'll, we'll give 'em out of the donation uh bin. You can not bring anything. We do not do exchanging of clothing.

GARZA: All right.

NORA: (inaudible) but you can come pick up clothes, but we do not accept clothes.

GARZA: Did you call to the parole?

NORA: Yeah.

GARZA: What they say?

NORA: They said yes that you're getting out.

GARZA: Friday?

NORA: Huh?

GARZA: Well then I just call you when I get out like when I get downstairs at booking I'll call you and it'll probably take like an hour or whatever or you know what when I just get out, well damn I don't have, I was gonna say well I'll just walk to the Pico de Gallo, but I ain't go no clothes.

NORA: Well they said they're gonna give you clothes.

GARZA: Yeah, well anyway like that 'cause I don't wanna sit around here anyway as soon as I get out I'll call you. Anyway I still have two dollars left I bought another hamburger for tomorrow. My last hamburger, but yeah I just...

NORA: Yeah, 'cause I called, I called there to the jail and they said that they only that you were there on a bench warrant.

GARZA: Right.

NORA: And they said um, it doesn't say here if he's gonna be released. They said um, call back uh Thursday or Friday.

GARZA: Did you call, when you called...

NORA: And then I called to Austin and they said yes his release day is um June 17.

GARZA: Right.

NORA: And I said well if that's on a Saturday, um is he gonna be out Saturday and she no he'll be out Friday morning.

GARZA: Yeah.

NORA: And then I said um well if he was brought back from Beaumont to San Antonio is he gonna have to be taken to Huntsville or something 'cause that's what Brandon had said something like that...

GARZA: No.

NORA: and then said no it says here that he's scheduled to be released out of Bexar County.

GARZA: Yeah 'cause they got I it on, they got everything on the computer, right I just wanted to make sure 'cause I could, I could never get any answer from here. I would send request and they would never answer 'em.

NORA: Yeah, she, she said no it says here that he's gonna be released out of Bexar County.

GARZA: (inaudible).

NORA: (inaudible).

GARZA: Like, like tomorrow night, like maybe two or three o'clock in the morning they probably call me and then...

NORA: When tomorrow or Friday morning?

GARZA: Tomorrow night.

NORA: Huh?

GARZA: Or Friday, Friday morning, right?

NORA: Friday morning.

GARZA: Yeah, (inaudible) two o'clock in the morning 'cause...

NORA: Uh huh.

GARZA: I get release so they'll probably or, or somewhere in the morning, but I'm pretty sure I should be out like about three in the afternoon.

NORA: What time?

GARZA: About three o'clock.

NORA: In the afternoon?

GARZA: Well I'm giving 'em 'cause it takes for the forever to get the paperwork. They have it there, but (inaudible), but once I get down to booking Corporal Reyna that's next door to Fenders, well I'm gonna have, I'm gonna talk to 'em and I'll tell 'em hey I am leaving already, speed up the paperwork.

NORA: Um hmm.

GARZA: So as soon as I get out I'll just call you and I just walk to uh, Pico de Gallo and you can pick me up there.

NORA: Well if it, if it's in the morning I'm gonna be here, but we're gonna go to the coast at or, around noon or one 'cause I thought you were gonna be out in the morning.

GARZA: Well I might.

NORA: If, if not call, if not call (inaudible) because (inaudible) gets out at two. If it's gonna be after two.

GARZA: Well if not, anyway I got money to take the bus. Its a dollar now, no?

NORA: Huh?

GARZA: I got a dollar to take the bus home.

NORA: Yeah I think it's 75 cents or something like that.

GARZA: But uh...

NORA: But um...

GARZA: Leave me your house key.

NORA: Huh?

GARZA: Leave me your house key.

NORA: My house key?

GARZA: Who's gonna be there?

NORA: Where?

GARZA: In your house?

NORA: Well, in fact actually I wanted you to stay here with mom until um, until Peli go home at two.

GARZA: Well hopefully I get out.

NORA: Huh?

GARZA: Hopefully I'll get out because I don't have, I could, if they put me on the monitor I, I could be able to go over your house and they won't say nothing because I could go up to 150 feet, you're only next door.

NORA: Well you need to make sure. They're gonna come back and get you over here.

GARZA: Yeah, but uh, you're gonna take Nana with you?

NORA: No.

GARZA: She's not gonna go?

NORA: Feliz is going out of town.

GARZA: When?

NORA: Tomorrow, I mean Friday also. She said she's, I don't know she said she's going to New Braunfels, but she said we're leaving at dawn and then I'm like...

GARZA: With who, with Jesse?

NORA: then I was saying New Braunfels it's just only like 30 minutes away.

GARZA: With Jesse?

NORA: I don't know she just said that they were going out of town, but she said Nana and Nicky were gonna stay with Jacob 'cause I told her that we're going to the, to the coast and she said no they can't go to

the coast. I said no I'm not, David is not going to the coast and she said no they can't go to the coast and she well they...0

GARZA: Did you call my parole officer?

NORA: No, I haven't called 'em.

GARZA: Hopefully they won't put it on me.

NORA: I don't know.

GARZA: And if I get out in the morning well I'll make the grand escape.

NORA: Yeah then they're gonna be tracking you down.

GARZA: No (inaudible)...

NORA: Did you see Brandon?

GARZA: That's if they don't put it on me.

NORA: Oh.

GARZA: What?

NORA: You haven't seen Brandon?

GARZA: He's here?

NORA: He got caught yesterday.

GARZA: For what?

NORA: Well he was already running from that drug charge that he had.

GARZA: No, I thought he was on bond.

NORA: No, he was, he was uh...

GARZA: Yeah, but he probably...

NORA: he was running. They had given 'em eight years or something like that and then they caught 'em yesterday and they said they caught 'em two more ounces of cocaine.

GARZA: No, he'll go to the old county jail 'cause he's federal.

NORA: Oh, yeah he's federal.

GARZA: So.

NORA: But um...

GARZA: And I'm suppose to go to court tomorrow.

NORA: Oh yeah what time?

GARZA: Well, my lawyer came Tuesday, I mean Monday and he said Susan Reed wants you in court either Tuesday or Wednesday...

NORA: Um hmm.

GARZA: 'cause they want you in court before you get release. They think I'm going to (inaudible). I said well I ain't got nothing to hide. I mean I'm not gonna run, for what?

NORA: Um hmm.

GARZA: He said Wednesday, Tuesday or Thurs, Tuesday or Wednesday we'll go to court if not maybe Thursday if not then I'm just gonna postpone (inaudible) go to court once I get out.

NORA: Um hmm.

GARZA: But um, 'cause last week, last Friday they, the DA said we're gonna postpone till the fifteenth, but then he came he said they want you in court tomorrow which was Tuesday, but they didn't come and today they didn't come either so I guess my lawyer got it postpone till next week till after I get out.

NORA: Oh.

GARZA: So.

NORA: Well Mario had gone in, in, to the church, the San Antonio For Christ.

GARZA: Yeah.

NORA: But then he called yesterday to go pick 'em up already.

GARZA: For what?

NORA: That because that um, what's his name Salomon or whatever, that he didn't have the, the medicine and then Salomon called me and said well I don't, I don't have the medicine. I, um I can't get a hold of the doctor till Thursday or whatever.

GARZA: So what difference does it make?

NORA: That's what I told 'em. I told, I told Mario, you're gonna be in pain over there, you're gonna be in pain here what difference does it make? I said what are you gonna do come over here and use drugs? Well, yes, he said I can't take it. So he's out again.

GARZA: No man, I, I just had a roommate that came into my house like about three days ago. I had to get 'em out, no man he had an abscess, fuckin' pus coming out.

NORA: He had what?

GARZA: An abscess...

NORA: Oh.

GARZA: and pus was coming out where he shot up and (inaudible) themselves with cocaine.

NORA: Oh.

GARZA: No man (inaudible) and I told 'em, hey get 'em out of here and they, no man he fuckin' shitted on himself and...

NORA: Uh huh.

GARZA: and, but he was already dying. They had to drag 'em out.

NORA: Oh.

GARZA: And then he had cirrhoses of the liver, diabetic and...

NORA: Oh.

GARZA: no man he couldn't even walk. They had to get, bring a wheelchair for 'em, but I told 'em no man get 'em out of here. This (inaudible) some kind of disease and he's gonna give it to me.

NORA: Yeah.

GARZA: Crabs or scabies or something.

NORA: Well I have gone over there to the house and it was 'cause when he left I said well I'm gonna go...

GARZA: Well I'm gonna, I'm gonna run 'em off anyways so he's not gonna stay there anyway. (inaudible) he should of just fuckin' stayed over there.

NORA: Well I'm gonna have to go tomorrow and turn on the water cause there's no water.

GARZA: Just, if you leave just before, if I don't make it just leave the house key.

NORA: Um hmm.

GARZA: Just leave it in uh, washroom on, on top of the dryer or tape on, on the side of dryer or washer or whatever.

NORA: Um hmm.

GARZA: And uh, well there's no food there, no? When are you coming back?

NORA: Sunday.

GARZA: Okay.

NORA: Well I had thought well if you get out early in the morning well I go pick you up and we'd stop at HEB and get stuff.

GARZA: Yeah, 'cause Monday I gotta go to the Texas Workforce, they give me the Lone Star, right?

NORA: Uh huh.

GARZA: I'll go, go show 'em my parole certificate that I got out and they give me 150 dollars on the Lone Star. Then I gotta go get my uh, at least my ID 'cause it's part of the parole and I soon as I get out I'm gonna call Richard to send me some money and um, buy what I need.

NORA: Um hmm.

GARZA: So at least clothes, at least, you know for him to send me six, seven hundred dollars to begin or a thousand whatever, but he said he was gonna take of that once I got out.

NORA: And what is the reason that he's giving you money?

GARZA: Just, I don't know.

NORA: Huh? What is he benef...benefiting out of giving you money?

GARZA: It's they're office, I guess for helping him, right 'cause without me they wouldn't have nothing.

NORA: Oh.

GARZA: I mean they're a whole bunch of millionaires anyway. So, but yeah he said the office would, you know would help with whatever I needed, clothes or whatever though.

NORA: Um hmm.

GARZA: Um hmm.

NORA: Well I had got you some tennis shoes yesterday.

GARZA: Okay, just leave 'em, don't leave 'em, just stash 'em there 'cause Mario will see them and then he can go fuckin' sell 'em...

NORA: Yeah he sold everything. On, on Sunday, there's no TV, there's no radio, there's no, he had a lot of DVD's, he sold everything. I said bastard, how come he didn't even leave a TV. He went and sold a TV to (inaudible) for 20 dollars 'cause he gave me check. He said if I would cash it and I give 'em the 20 dollars. I said I don't believe you. Then (inaudible) said yes I gave 'em the check. Twenty dollars for a TV, that stupid how come he didn't sell it to me.

GARZA: Whose TV was it?

NORA: I don't know I guess his 'cause the T, the little TV that mom had there the last time he, he went to the home he said somebody stole it, but I think he took it over there. What a coincidence that...

GARZA: Well anyway he's gonna, I, I don't want 'em there. I'm not gonna fuckin' work and (inaudible) feed 'em and all that. I don't know why he just, he should of went the PM they would've gave 'em medication over there.

NORA: Where?

GARZA: To the PM or the Victory Outreach.

NORA: Oh. I don't know, two more days and you're dealing with 'em. I'm, I'm...

GARZA: Well I'm not even gonna deal with 'em, I'm just...

NORA: (inaudible)...

GARZA: gonna tell 'em you know what get the fuck out of the house and go find somewhere to stay out in the street. Go back to the home or go to the street 'cause I'm not gonna feel sorry for 'em. Damn Nora I've been locked up five years he's been like that for five fuckin' years.

NORA: Yeah he's been like that and for five fuckin' years he's been a damn pain in the ass.

GARZA: I mean damn.

NORA: You know it gets to the point where I'm already like shit I wanna move out of here already 'cause like it's stupid. You know and then, and then I feel bad because he's like a bum, David...

GARZA: I know...

NORA: Like a bum, all skinny all...

GARZA: He became depended on y'all.

NORA: Huh?

GARZA: He became depended on y'all...

NORA: Yeah.

GARZA: y'all because y'all feel sorry. You all help him until y'all man up and tell 'em you know what Mario the doors are closed already. We don't care, either you do something for yourself. We are already tired to help you. Either you help yourself.

NORA: Well that's what I do and I, you know I tell 'em don't even come out 'cause he would just come in and just go straight to the frigerator and oh I'm getting this. I'm gonna get tortillas, I'm gonna get a bread,

I'm gonna get this, I'm gonna get this and that, you know hey. I said I don't work all that food Pedro buys it. Why should, you know he don't have no responsibility to be supporting you.

GARZA: So when y'all finish y'all's house what Gordo and Lorraine gonna stay there?

NORA: Well Lorraine is gonna stay here and then Gordo I think after his lease he's gonna move back over here 'cause he had a lease right now.

GARZA: Where's he staying at?

NORA: He's renting a house.

GARZA: Oh yeah.

NORA: But over there off of Portanco and 151.

GARZA: Yeah.

NORA: But, on man, you, you can deal with him after...

GARZA: No, well all, all I could do is just tell 'em straight up look hey you wanna go to work I'll help you, but first you need to get, you did it, you gotta get yourself back, back on the feet. You gotta do for yourself first, because he cain't work.

NORA: Well we've already told 'em...

GARZA: He cain't...

NORA: and told. (inaudible) cleaned up twice. The time when he with to the Patricia Movement, we couldn't even recognized 'em the time we went to see 'em I think it was about a month later. He had gain weight. He looked clean. Peli was like that's him I was like no it's not, no it's not, we're looking through, through behind. She, yeah that's him, is it, is it, we couldn't even recognize him he looked so nice.

GARZA: But...

NORA: You know he got cleaned up and everything.

GARZA: You, you, you remember when he was all stuck-up, when he wouldn't, only buy if it wasn't from Chess Kings and...

NORA: Yeah.

GARZA: and always dressing up every...

NORA: Yeah, okay well this last time in Nov...in November, also that he had gone in the church, in November Gordo had his birthday party. He had it here. He had been working and being at the church and everything, real nice and everything. He had, even bought himself a nice leather jacket. That day, that night we had Gordo's party shoot, he was all flicked up. You know we all hugged 'em and we told 'em Mario that's the way we wanna see you Mario. You look so nice and no he just lasted a little bit. He is there in rags and, he probably...

OPERATOR: You have one minute left.

NORA: he probably sold his jacket and he doesn't, well guys th...they offer it to me, well damn don't do it, don't take it. Not just 'cause they go and offer it you're gonna take it.

GARZA: I never, I mean I tried that shit, but I never liked it. I mean I would see the (inaudible) no man that drug is gonna keep...

NORA: He said David is not gonna make, David is not gonna make it out here. I said well that's his business. He's been locked up like an animal, you wanna be locked up? You know, yeah that's, that's y'all's life from here on.

OPERATOR: You have 30 seconds left.

NORA: All right then I guess I'll see you Friday.

GARZA: Okay, if not well I guess I'll see you when you come visit. Hide the key in the washroom somewhere.

NORA: Okay.

GARZA: Okay.

NORA: Bye.

GARZA: Bye-bye.

OPERATOR: Thank you for...

END OF CALL