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R E P O R T E R ' S R E C O R D

VOLUME 39 OF 53 VOLUMES

TRIAL COURT CAUSE NO. 380-80047-01

THE STATE OF TEXAS	)	IN THE DISTRICT COURT
	)	
VS.	)	COLLIN COUNTY, TEXAS
	)	
IVAN ABNER CANTU	)	380TH JUDICIAL DISTRICT

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EX PARTE HEARING

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COPY

On the 12th day of October, 2001, the following proceedings came on to be heard in the above-entitled and -numbered cause before the Honorable Charles F. Sandoval, Judge Presiding, held in McKinney, Collin County, Texas:

Proceedings reported by Computerized Machine Shorthand.

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 23 held in McKinney, Collin County, Texas:  
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1 APPEARANCES

2 Mr. Bill Schultz  
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 3 Ms. Gail T. Falco  
 SBOT NO. 00787450  
 4 Ms. Jami Lowry  
 SBOT NO. 24012724  
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 McKinney, Texas 75069  
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 8  
 9 Mr. Matthew Goeller  
 SBOT NO. 08059260  
 Mr. Don N. High  
 10 SBOT NO. 09605050  
 GRUBBS, HIGH, GOELLER & ASSOCIATES  
 11 400 Chisholm Place, Suite 400  
 Plano, Texas 75075  
 12 Telephone: (972) 423-4518  
 ATTORNEYS FOR THE DEFENDANT

15 VOLUME 39

16 CHRONOLOGICAL INDEX

17 OCTOBER 12, 2001

18 DEFENSE WITNESSES	Direct	Cross	Redirect	Recross
19				
20 IVAN ABNER CANTU	5	- -	- -	- -
21 VINCE GONZALES	7	- -	- -	- -

10:47 3 Off the record.  
 10:47 4 (Discussion off the record.)  
 10:49 5 THE COURT: All right. Then for the  
 10:50 6 record, the defendant and the attorney for the defen  
 10:50 7 are present, together with the Court itself and the  
 10:50 8 court reporter and my bailiff. And there are three  
 10:50 9 or excuse me, two other security personnel. And who  
 10:50 10 this gentleman here, Mr. Goeller?  
 10:50 11 MR. GOELLER: This is Vince Gonzales.  
 10:50 12 He's my mitigation expert, Judge.  
 10:50 13 THE COURT: All right. That's good.  
 10:50 14 MR. GOELLER: Judge, at this point in  
 10:50 15 time, I'd ask the Court, there are some -- obviously  
 10:50 16 two deputies in the courtroom are not part of the cou  
 10:50 17 staff. I'd ask the Court to -- and I have to do this  
 10:51 18 These guys know it's nothing personal.  
 10:51 19 I have to ask the Court to admonish them  
 10:51 20 because this is an ex parte proceeding. Their present  
 10:51 21 is necessary, although they are not part of the Court.  
 10:51 22 Their presence is necessary for obvious security  
 10:51 23 reasons. Nothing to do with my client, but just the  
 10:51 24 nature of the case.  
 10:51 25 I'd ask the Court to admonish both

10:51 1 deputies that nothing said during an ex parte proceedi  
 10:51 2 can be divulged to any person as if they are part of th  
 10:51 3 Court now. And that failure to obey the Court's  
 10:51 4 admonishment could result in contempt charges, possibly  
 10:51 5 resulting in incarceration. So if I could have that on  
 10:51 6 the record.  
 10:51 7 THE COURT: Let me ask you to put your  
 10:51 8 name on the record, please.  
 10:51 9 DEPUTY BORTON: Brian Borton, B-C-R-T-O-M  
 10:51 10 DEPUTY MERIT: Robert Merit.  
 10:51 11 THE COURT: We can excuse Mr. Merit and  
 10:51 12 ask him to stand right outside that door right there.  
 10:51 13 Just have Billy act as security. And that way you can  
 10:51 14 blab all you want because you won't be hearing anything  
 10:52 15 If you'll stand right outside that door,  
 10:52 16 we'll ask Billy to act as security. So Mr. Borton, yo  
 10:52 17 are the only person who is not connected either with t  
 10:52 18 Court or the defendant. And you heard what Mr. Goelle  
 10:52 19 had to say?  
 10:52 20 DEPUTY BORTON: Yes, sir, Your Honor.  
 10:52 21 THE COURT: And so I'm going to admonish  
 10:52 22 you not to talk to anybody about this, your fiance, or  
 10:52 23 any other personnel from the Sheriff's Department, or  
 10:52 24 anybody at all because this is strictly confidential.  
 10:52 25 And there are important things for the sake of the

10:52 1 defendant, and he has a right to confidentiality. So  
 10:52 2 now you are drawn into that confidential relationship.  
 10:52 3 And if you can't live with that, tell me now and I'll  
 10:52 4 excuse you and let Billy.

10:52 5 DEPUTY BORTON: I can live with that, Your  
 10:52 6 Honor.

10:52 7 THE COURT: And you know the consequences  
 10:52 8 of violating it could be severe.

10:52 9 Mr. Goeller?

10:52 10 MR. GOELLER: Thank you, Judge. I'd like  
 10:52 11 to call my client, Ivan Cantu.

10:52 12 THE COURT: Do you want me to swear him  
 10:52 13 in?

10:53 14 MR. GOELLER: Yes, sir.

10:53 15 (Counsel conferring.)

10:53 16 IVAN A. CANTU,  
 10:53 17 being first duly sworn, testified as follows:

10:53 18 THE COURT: Put your hand down and be  
 10:53 19 seated.

10:53 20 DIRECT EXAMINATION

10:53 21 BY MR. GOELLER:

10:53 22 Q. State your full name.

10:53 23 A. Ivan Abner Cantu.

10:53 24 Q. And, Mr. Cantu, you are the defendant in this  
 10:53 25 case, correct?

10:55 1 proceeding with the types of evidence you wanted us to  
 10:55 2 present?

10:55 3 A. Yes and no.

10:55 4 Q. All right. Without going into what was said,  
 10:56 5 it's your opinion -- well, there is a disagreement that  
 10:56 6 definitely exists between how you would elect to proceed  
 10:56 7 as far as witnesses and evidence and testimony at this  
 10:56 8 time versus Mr. High and myself?

10:56 9 A. Yes.

10:56 10 Q. All right.

10:56 11 MR. GOELLER: That's all I have for this  
 10:56 12 witness, Judge. I'd like to call Mr. Gonzales.

10:56 13 THE COURT: All right. Raise your right  
 10:56 14 hand, please.

10:56 15 VINCE GONZALES,  
 10:57 16 being first duly sworn, testified as follows:

10:57 17 THE COURT: All right. Put your hand  
 10:57 18 down. You may testify from over there if you wish.

10:57 19 DIRECT EXAMINATION

10:57 20 BY MR. GOELLER:

10:57 21 Q. State your name, sir.

10:57 22 A. Vince Gonzales.

10:57 23 Q. And you are employed in this case in what  
 10:57 24 capacity?

10:57 25 A. I've been appointed by the Court as a

10:53 1 A. Yes, sir.

10:53 2 Q. And I am your appointed counsel, correct?

10:53 3 A. Yes, sir.

10:53 4 Q. You wanted to either make an affidavit or make  
 10:53 5 a record that my closing the evidence was against your  
 10:53 6 wishes and desires, correct?

10:53 7 A. Yes.

10:53 8 Q. All right. Do you feel you are mentally  
 10:54 9 competent at this point?

10:54 10 A. Yes.

10:54 11 Q. All right.

10:54 12 MR. GOELLER: That's all I have for this  
 10:54 13 witness, Judge.

10:54 14 Q. (BY MR. GOELLER) Mr. Cantu, from approximately  
 10:54 15 9 o'clock this morning to approximately 10:45, did you,  
 10:54 16 myself, other counsel, Mr. Don High, and Mr. Vince  
 10:54 17 Gonzales discuss in a room amongst ourselves the  
 10:55 18 options, the benefits and potential disadvantages of  
 10:55 19 proceeding with types of evidence that you had  
 10:55 20 mentioned?

10:55 21 A. Repeat that one more time.

10:55 22 Q. From approximately 9 o'clock this morning until  
 10:55 23 approximately 10:45, did you, myself, Mr. Don High, your  
 10:55 24 other lawyer, and Vince Gonzales, our mitigation

10:57 1 mitigation specialist.

10:57 2 Q. How many capital murder and murder cases have  
 10:57 3 you worked in that capacity, approximately?

10:57 4 A. Approximately 160.

10:57 5 Q. All right. You heard my questions to  
 10:57 6 Mr. Cantu. You've been in the courtroom during this ex  
 10:57 7 parte proceeding and have been able to hear my questions  
 10:57 8 of Mr. Cantu and his answers too; is that correct?

10:57 9 A. That's correct.

10:57 10 Q. Do you believe that there is a disagreement  
 10:57 11 between my client and his attorneys as to how the case  
 10:57 12 ought to proceed at this point?

10:57 13 A. With regard to presenting evidence at the  
 10:57 14 guilt-innocence stage, yes.

10:57 15 Q. Do you see any conflict at this point, conflict  
 10:57 16 of interest?

10:58 17 A. No.

10:58 18 Q. Were you present this morning from  
 10:58 19 approximately 9 a.m. to 10:45 where yourself, myself and  
 10:58 20 Mr. High and Mr. Cantu discussed the options,  
 10:58 21 disadvantages, advantages, credibility issues, burden of  
 10:58 22 proof issues, guilt-innocence issues, and punishment  
 10:58 23 issues, and lesser-included offense issues, and  
 10:58 24 requested special charges of the Court, is that correct?

10:58 3 thoroughly and adequately explained to Mr. Cantu  
10:58 4 regarding all of the things I just mentioned?  
10:59 5 A. I don't believe we went into great detail with  
10:59 6 the burden of proof, but I don't think that's where the  
10:59 7 disagreement is.  
10:59 8 Q. Okay.  
10:59 9 A. On all the other factors, yes.  
10:59 10 Q. All right. Anything you want to add by way of  
10:59 11 your own narrative testimony to this ex parte  
10:59 12 proceeding?  
10:59 13 A. I believe that the conflict arises  
10:59 14 predominantly from the effect of the evidence that's  
10:59 15 already in before this jury versus what can be  
10:59 16 introduced by additional witnesses. And it was our  
10:59 17 determination collectively between Mr. High, yourself  
10:59 18 and me that it would be more damaging to bring in  
10:59 19 evidence, not only on this stage, but any further  
11:00 20 proceedings in this matter. And I believe that's where  
11:00 21 the conflict lies.  
11:00 22 Q. All right.  
11:00 23 MR. GOELLER: Thank you, sir.  
11:00 24 THE COURT: All right.  
11:00 25 MR. GOELLER: Thank you, Judge. May I

3 COUNTY OF COLLIN  
4 I, Barbara L. Tokuz, CSR, RMR, CRR, Deputy Official  
5 Court Reporter in and for the 380th Judicial District  
6 Court of Collin County, State of Texas, do hereby  
7 certify that the above and foregoing contains a true  
8 correct transcription of all portions of evidence and  
9 other proceedings requested in writing by counsel for  
10 the parties to be included in this volume of the  
11 Reporter's Record, in the above-styled and -numbered  
12 cause, all of which occurred in open court or in  
13 chambers and were reported by me.

14 I further certify that this Reporter's Record of  
15 proceedings truly and correctly reflects the exhibit  
16 if any, offered by the respective parties.

17 WITNESS MY OFFICIAL HAND this the 11th day of  
18 February, 2002.

19 *Barbara Tokuz*  
20 Barbara L. Tokuz, CSR #4615, RMR, CRR  
21 Deputy Official Court Reporter  
22 Expiration Date: 12/31/2002  
23 1855 Wind Hill Road  
24 Rockwall, Texas 75087  
25 Telephone: 972-771-2312

11:00 1 address the Court further?  
11:00 2 THE COURT: Yes.  
11:00 3 MR. GOELLER: I'd ask the Court that these  
11:00 4 ex parte proceedings, as far as the statement of facts  
11:00 5 or the transcription by the court reporter, be ordered  
11:00 6 not released to the State of Texas. Obviously made part  
11:00 7 of the record, but not allow the State of Texas to  
11:00 8 access or question the court reporter about what took  
11:00 9 place in this ex parte proceeding.  
11:00 10 THE COURT: I'll tell you what, I'll just  
11:00 11 simply order that they be sealed. And if you desire at  
11:00 12 some point for me to unseal them, I can do that at your  
11:00 13 request.  
11:00 14 MR. GOELLER: Yes, Your Honor.  
11:00 15 THE COURT: But for now the events of the  
11:00 16 last, or the testimony of the last few minutes since the  
11:00 17 prosecutor and since the jury has left are ordered  
11:00 18 sealed until further order of the Court. This is  
11:01 19 Mr. High who has just entered the courtroom.  
11:01 20 MR. GOELLER: Thank you very much for your  
11:01 21 time, Your Honor.  
11:01 22 THE COURT: All right. Then we'll see  
11:01 23 you. I'll talk to you, you and Mr. High, this afternoon  
11:01 24 about the charge.  
11:01 25 (End of proceedings.)