

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

VOLUME 4 OF 53

Trial Court Cause No. 380-80047-01

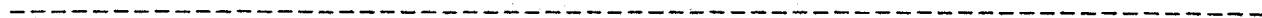
THE STATE OF TEXAS * IN THE 380TH DISTRICT COURT

*

V. *

*

IVAN ABNER CANTU * OF COLLIN COUNTY, TEXAS



REPORTER'S RECORD - VOLUME 4

PRETRIAL HEARING - MOTION TO SUPPRESS

CAPITAL MURDER JURY TRIAL

COPY

CLERKS

On the 16th day of August, 2001, the Motion to Suppress hearing came on to be heard outside the presence of a jury, in the above-entitled and -numbered cause; and the following proceedings were had before the Honorable Charles F. Sandoval, Judge Presiding, held in McKinney, Collin County, Texas:

Proceedings reported by Computerized Stenotype Machine; Reporter's Record produced by Computer-Assisted Transcription.

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PROCEEDINGS

1
 2 (Open court, jury not present.)
 3 THE COURT: This is the State of Texas versus
 4 Ivan Abner Cantu; Cause Number 380-80047-01.
 5 Is the State ready to proceed?
 6 MR. SCHULTZ: Yes, Your Honor.
 7 THE COURT: Mr. Goeller, is the defense ready?
 8 MR. GOELLER: Yes, sir.
 9 THE COURT: All right. The State has informed
 10 me they have a witness I think they're asking to call out of
 11 order. You've told the other side about it?
 12 MR. GOELLER: That's fine, Your Honor.
 13 THE COURT: Is that okay?
 14 MR. GOELLER: Yes, sir.
 15 THE COURT: Do you want to call your witness?
 16 MR. SCHULTZ: He's not been sworn.
 17 And I've got one other witness. Let me -- since the
 18 Rule has been invoked, I'll probably take him outside.
 19 THE COURT: In fact, why don't you rise, sir,
 20 and raise your right hand. I'll swear both of you guys in at
 21 the same time.
 22 (Witnesses sworn by the court.)
 23 THE COURT: Put your hands down. The Rule has
 24 been invoked. That means you must remain outside during the
 25 testimony. You can't discuss this case with anybody but the

1 attorneys on both sides. Do you understand that?

2 THE WITNESS: Yes, sir.

3 THE COURT: Please have a seat.

4 MS. FALCO: Yes, sir.

5 Whereby,

6 DAVID INDORF,

7 a witness called by the State, sworn to testify to the truth,

8 testified under oath as follows:

9 DIRECT EXAMINATION

10 BY MS. FALCO:

11 Q. Could you state your name for the record?

12 A. **My name is David Indorf.**

13 Q. What is your occupation?

14 A. **I'm an attorney, but I'm also an associate municipal**
15 **judge for the City of Dallas.**

16 Q. How long have you been an attorney?

17 A. **Since 1980.**

18 Q. And how long have you been an associate judge?

19 A. **Since 1985.**

20 Q. And you said you're an associate judge for a
21 municipal court in Dallas?

22 A. **That's correct.**

23 Q. What are the qualifications to be an associate judge
24 for a municipal court in Dallas?

25 A. **They're the standard requirements regarding**

1 **residence. You must reside within the city. You can't have**
2 **any outstanding liens, et cetera. You also have to be a**
3 **licensed attorney.**

4 Q. And how long has that been the qualification?

5 A. **I don't know how long it's been, but it has**
6 **certainly been a qualification since I was appointed in 1985,**
7 **and it has been ever since then.**

8 Q. Are you familiar with Judge Richard Seibert?

9 A. **I am.**

10 Q. Who is Judge Richard Seibert?

11 A. **He is also an associate municipal judge for the City**
12 **of Dallas.**

13 Q. Are you familiar with Mr. Seibert as far as him
14 being an attorney?

15 A. **He was employed -- I believe he was employed by the**
16 **city as the advisor -- it's called legal liaison. They advise**
17 **the police department. I believe Judge Seibert was assigned**
18 **to that division as an attorney, but he is an associate judge,**
19 **and if he's an associate judge he's required to be a licensed**
20 **attorney.**

21 MS. FALCO: Thank you, Judge. Pass the
22 witness.

23 CROSS-EXAMINATION

24 BY MR. GOELLER:

25 Q. Good morning, sir.

1 A. **Good morning.**

2 Q. Matthew Goeller. What was your first name?

3 A. **David Indorf, I-N-D-O-R-F.**

4 Q. Are you presently an associate municipal judge for
5 the City of Dallas?

6 A. **I am.**

7 Q. You stated that that position requires one to be a
8 resident of the City of Dallas?

9 A. **Yes.**

10 Q. Do you have personal knowledge -- is it Seibert?

11 A. **It's pronounced Seibert.**

12 Q. Seibert?

13 A. **Yes.**

14 Q. How do you spell that?

15 A. **S-E-I-B-E-R-T.**

16 Q. And his first name?

17 A. **Richard.**

18 Q. Do you have personal knowledge of -- well, where
19 does he live, Judge Seibert?

20 A. **I don't know.**

21 Q. So you don't know if he's a resident of the City of
22 Dallas?

23 A. **I don't know.**

24 Q. Do you know if he has any liens against his property
25 or has any outstanding liabilities to any taxing authorities,

1 state, federal or local?

2 A. **I don't know.**

3 Q. Do you know when he was appointed an associate City
4 of Dallas municipal judge?

5 A. **I don't recall when he was. His appointment is**
6 **since mine, so it was -- it's sometime between 1985 and now.**
7 **I'm going to guess about ten years ago, but I don't know the**
8 **exact date.**

9 Q. Is he a legal advisor, a police advisor?

10 A. **I believe that was his assignment when he was**
11 **employed by the City Attorney's Office.**

12 Q. Okay. Do you know -- do you have personal knowledge
13 of his appointment to be an associate municipal judge?

14 A. **Of his appointment as a judge? No, sir.**

15 Q. Okay. All right.

16 MR. GOELLER: Thank you, sir. I'll pass the
17 witness.

18 REDIRECT EXAMINATION

19 BY MS. FALCO:

20 Q. Judge Indorf, have you seen Judge Seibert sitting on
21 the bench?

22 A. **Yes.**

23 Q. So you've actually seen him practicing as an
24 associate judge for the municipal court?

25 A. **Yes.**

1 Q. Which, by definition, you must be a licensed
2 attorney?

3 A. Yes.

4 MS. FALCO: No further questions.

5 THE COURT: Anything else, Mr. Goeller?

6 RE-CROSS-EXAMINATION

7 BY MR. GOELLER:

8 Q. But you have no personal knowledge that he has been
9 duly appointed to that office?

10 A. He was -- we had a ceremony at which we all were
11 sworn in as judges by Mayor Kirk, and Judge Seibert was
12 present and was sworn. And this was about a year and a half
13 ago, at our most recent appointment.

14 Q. Okay. How long are those appointments good for?

15 A. Two years.

16 Q. But you don't know if he's a resident of the City of
17 Dallas?

18 A. No, sir.

19 Q. Do you know if he's ever been involved in any
20 lawsuits as a defendant for tax lien purposes?

21 A. No, sir.

22 MR. GOELLER: That's all I have, Judge.

23 MS. FALCO: We have no further questions, Your
24 Honor.

25 THE COURT: All right. You may step down.

1 MR. SCHULTZ: I have one other witness to call.

2 THE COURT: All right. Say, let me tell y'all
3 something, yesterday I offered to take judicial notice of some
4 things. And I want to make sure both sides know, I'm not
5 injecting myself in this trial and not trying to do anything.
6 And Rule 201 says it's appropriate for me to consider anything
7 that I want just on my own motion as a good subject for
8 judicial notice. So I just thought I'd make that clear that I
9 wasn't jumping in to accomplish something that wasn't
10 appropriate.

11 MR. SCHULTZ: We welcome your participation.

12 THE COURT: All right. I just wanted to say
13 that, for whatever it's worth. Go ahead.

14 MR. SCHULTZ: State calls Robert Meclose to the
15 stand. You previously swore this witness.

16 THE COURT: All right. Please be seated, sir.

17 MR. SCHULTZ: Thank you, Judge.

18 Whereby,

19 ROBERT MECLOSE,

20 a witness called by the State, sworn to testify to the truth,
21 testified under oath as follows:

22 DIRECT EXAMINATION

23 BY MR. SCHULTZ:

24 Q. State your name.

25 A. Robert Meclose.

1 Q. And how are you employed, Mr. Meclose?

2 A. I'm chief prosecutor for the City of Dallas.

3 Q. And to qualify you for that position, are you an
4 attorney of law duly admitted to practice in the State of
5 Texas?

6 A. Yes.

7 Q. And how long have you been employed by the City of
8 Dallas in your capacity?

9 A. Almost six years.

10 Q. And do you know an individual by the name of Richard
11 F. Seibert?

12 A. Yes.

13 Q. And who do you know Richard F. Seibert to be?

14 A. An associate judge for the City of Dallas.

15 Q. Do you also know him as an attorney?

16 A. Yes.

17 Q. How long have you known Judge Seibert?

18 A. The same amount of time as I've worked at the City
19 of Dallas, approximately six years.

20 Q. And the City of Dallas Municipal Court is a court of
21 record; is that correct?

22 A. Yes.

23 Q. And I'll ask you, by the way, are you -- did I ask
24 you to bring with you Judge Seibert's oath of office?

25 A. Yes, I did.

1 Q. And may I see that, please?

2 A. And this, also.

3 Q. Mr. Meclose, I'll show you an exhibit previously
4 marked as State's Exhibit Number 5. Would you tell us what
5 that is, please?

6 A. That is a Statement of Appointed Officer for Judge
7 Seibert signed on the 28th of September, 2000. So, that's his
8 most recent appointment.

9 Q. All right. And I'll show you State's Exhibit Number
10 6, and ask you what that is?

11 A. That is Judge Seibert's acceptance of appointment by
12 the City of Dallas and Oath of Office, also signed on the 28th
13 of August of 2000.

14 MR. SCHULTZ: We'd offer State's Exhibits 5 and
15 6 for purposes of this hearing. Judge.

16 MR. GOELLER: Take the witness on voir dire?

17 THE COURT: Yes.

18 VOIR DIRE EXAMINATION

19 BY MR. GOELLER:

20 Q. Sir, what was your name, Mr. Meclose?

21 A. Yes.

22 Q. Meclose or Miclose.

23 A. Meclose.

24 Q. State's Exhibits Number 6 and Number 5, which were
25 tendered to you and you identified, did you generate these

1 documents?
 2 A. No.
 3 Q. All right. These documents aren't certified under
 4 seal by any custodian of records, are they?
 5 A. **Not by a custodian of records, but by the notary who**
 6 **works in the judge's office.**
 7 Q. It's a notarized statement?
 8 A. **The oath of office.**
 9 Q. Okay. Were you personally present when these
 10 documents were generated?
 11 A. No.
 12 Q. Did you see anybody sign them?
 13 A. **No. I wasn't there when they were signed, but I am**
 14 **familiar with his signature.**
 15 Q. Okay. And you have not adopted these as your
 16 statements, have you? State's 5 and 6 are not your
 17 statements?
 18 A. **I guess you're saying that. I'm not saying that.**
 19 Q. Right.
 20 A. **I'm saying that I know what those documents are.**
 21 Q. Okay. But you have not adopted these as your
 22 statements?
 23 A. **I guess if I understand what you're saying. I**
 24 **really don't understand what you're saying. I mean, am I**
 25 **saying that he is an associate judge? Yes, he is an associate**

1 it to the Court so you can rule?
 2 THE COURT: Do you want to lay some sort of
 3 foundation, or you want to just offer it?
 4 MR. SCHULTZ: Just want to offer it.
 5 THE COURT: Okay.
 6 Let's see, is this offered as ancient document?
 7 MR. SCHULTZ: I think it's a public record
 8 under seal.
 9 MR. GOELLER: Can I call Mr. Schultz to take
 10 him on voir dire as to why he might think that?
 11 THE COURT: Let's see, what is the objection,
 12 hearsay?
 13 MR. GOELLER: First of all, I don't even know
 14 what that is. I guess it's a faxed resume, but it's certainly
 15 hearsay, Judge.
 16 THE COURT: Sustained.
 17 MR. SCHULTZ: We'll pass the witness, Judge.
 18 THE COURT: All right. You may step down.
 19 Does that conclude your witnesses?
 20 MR. SCHULTZ: Yes, sir.
 21 THE COURT: All right. Where were we? Do you
 22 want to call your next witness?
 23 MR. GOELLER: I think they're up, Judge.
 24 THE COURT: You're actually still up. Do you
 25 want to call your next witness, please?

1 **judge. I know that for a fact.**
 2 Q. Well, my question is, have you adopted 5 and 6 as
 3 your statement?
 4 A. **I'm not trying to be evasive. I don't really**
 5 **understand adopting that as my statement. I'm not trying to**
 6 **be argumentative, either. I just don't understand that**
 7 **question.**
 8 MR. GOELLER: All right. Judge, I'll object to
 9 5 and 6. They are hearsay.
 10 THE COURT: Overrule the objection and admit 5
 11 and 6.
 12 MR. SCHULTZ: We'd offer State's Exhibit
 13 Number 7.
 14 VOIR DIRE EXAMINATION
 15 BY MR. GOELLER:
 16 Q. Is this guy 80 years old?
 17 A. **I mean, he's an older gentleman. I don't know his**
 18 **exact age.**
 19 Q. Does he wear glasses?
 20 A. **He was in my office this morning. I don't think he**
 21 **was wearing glasses this morning when I talked to him.**
 22 MR. GOELLER: Judge, I'd object to Number 7 as
 23 hearsay.
 24 THE COURT: I don't even know what it is.
 25 MR. SCHULTZ: May I approach the bench to show

1 MR. SCHULTZ: I was probably getting confused,
 2 Judge, with witnesses being called, but aren't we on -- we've
 3 offered the warrants, and I was thinking they were on their
 4 case trying to rebut the presumption of the validity of the
 5 search based on warrants --
 6 THE COURT: Do you want to call your next
 7 witness?
 8 MR. SCHULTZ: -- so we're thinking they're
 9 still up.
 10 MR. GOELLER: Okay. I'd call Officer Junger.
 11 THE COURT: All right.
 12 (Witness sworn by the court.)
 13 MR. GOELLER: May I proceed, Your Honor?
 14 THE COURT: Yes, please.
 15 Whereby:
 16 STEVEN JUNGER,
 17 a witness called by the Defense, sworn to testify to the
 18 truth, testified under oath as follows:
 19 DIRECT EXAMINATION
 20 BY MR. GOELLER:
 21 Q. Sir, please state your full name.
 22 A. **Steven Junger.**
 23 Q. And you're presently employed as a Dallas Police
 24 Department patrol officer?
 25 A. **Yes, sir, I am.**

- 1 Q. And how long have you been a police officer for the
2 City of Dallas?
- 3 A. **June was 11 years.**
- 4 Q. You were a police officer back in November of last
5 year, 2000, specifically November 4th and weeks after that?
- 6 A. **Yes, sir.**
- 7 Q. On November 4th, did you respond to 18663 Gibbons
8 Drive in Dallas, Collin County, Texas?
- 9 A. **I responded to cover the initial officers that
10 received the call, yes, sir.**
- 11 Q. Okay. Were you working as solo unit, or did you
12 have a partner?
- 13 A. **I had a partner.**
- 14 Q. And who was that?
- 15 A. **Susan Iliff.**
- 16 Q. Susan -- what was her name?
- 17 A. **Susan Iliff, I-L-I-F-F. I believe it's badge 7095.**
- 18 Q. 70 --
- 19 A. **7095.**
- 20 Q. What was the reason for your initial response to
21 Gibbons?
- 22 A. **To cover the initial responding officers, provide
23 whatever assistance they required or needed.**
- 24 Q. At some point in time, did you enter the premises
25 of 10004 Pear Ridge Drive, Dallas, Texas?

- 1 A. **No, sir.**
- 2 **I believe, are you referring to Old Bent Tree?**
- 3 Q. Yeah. I was actually probably using the apartment
4 complex name.
- 5 A. **You were using the apartment number.**
- 6 Q. Yeah.
- 7 A. **Are you referring to 5240 -- I'm sorry, if I can
8 refer my -- 4753 Old Bent Tree, Apartment 10004?**
- 9 Q. Yeah.
- 10 A. **Yes, sir, I did.**
- 11 Q. Is that Pear Ridge?
- 12 A. **Old Bent Tree, is the name of the street.**
- 13 Q. Right. Pear Ridge Apartments is name of the
14 apartment complex?
- 15 A. **I believe so, sir.**
- 16 Q. Okay. Did you enter the premises of 10004 --
- 17 A. **The apartment.**
- 18 Q. -- Old Bent Tree?
- 19 A. **Yes, sir.**
- 20 Q. Would that have been on November 4th of 2000?
- 21 A. **Yes, sir.**
- 22 Q. Okay. Did you have a warrant to enter the premises?
- 23 A. **No, sir.**
- 24 Q. Did you have any kind of search warrant?
- 25 A. **No, sir.**

- 1 Q. Did you have any kind of arrest warrant?
- 2 A. **No, sir.**
- 3 Q. Did you have consent of a person in charge of the
4 premises?
- 5 A. **I had spoken with a manager who had given me the
6 key.**
- 7 Q. Okay. Was it the manager's apartment?
- 8 A. **No, sir.**
- 9 Q. The manager live there?
- 10 A. **No, sir.**
- 11 Q. Did you know who lived there at the time?
- 12 A. **Yes.**
- 13 Q. Who was that?
- 14 A. **Ivan Cantu and his girlfriend, I believe.**
- 15 Q. Did you get consent from either one of those
16 individuals to enter the apartment that day?
- 17 A. **No, sir.**
- 18 Q. All right. Who actually retrieved the key from the
19 apartment manager?
- 20 A. **The apartment -- she either gave it to myself or
21 Officer Iliff.**
- 22 Q. Do you remember the name of the apartment manager?
- 23 A. **If I can refer to my report?**
- 24 Q. Sure.
- 25 A. **Yes, sir.**

- 1 **Her name was Jill Stoll, S-T-O-L-L.**
- 2 Q. Do you know who initially made contact with her,
3 was it you or Officer Iliff?
- 4 A. **If it was -- I don't recall exactly who, but if it
5 was Officer Iliff, I was standing right there. If it was
6 myself, Officer Iliff was in very close proximity.**
- 7 Q. Her name is pronounced Iliff?
- 8 A. **Correct.**
- 9 Q. Could you spell that again? I must have wrote it
10 down wrong.
- 11 A. **It's I-L-I-F-F, first name Susan.**
- 12 Q. Okay. There's no O in there. It's just I-L-I-F-F.
- 13 Good, okay. Thank you, sir, got you.
- 14 Who actually keyed the apartment door to gain entry?
- 15 A. **Myself or Officer Iliff. We were the only two that
16 went in initially just to ensure that there was no actual
17 crime scene inside that apartment because Sylvia Cantu had
18 addressed those concerns.**
- 19 Q. You say you went in to see if there -- determine if
20 it was a crime scene?
- 21 A. **Yes. She had addressed concerns at the actual
22 offense location on Gibbons that she hadn't been able to get
23 ahold of her son, and she said she wasn't able to get ahold of
24 him. She was afraid something had happened to him. On an
25 emergency search, we went in there to insure there was nobody**

- 1 was in need of medical assistance or otherwise, make sure
 2 that -- you know, nothing had happened to him; for example,
 3 that he wasn't a victim, also.
 4 Q. What's the difference between an emergency search
 5 and a crime scene search?
 6 A. Actually, we did an emergency search, and we were
 7 looking, for example, of victims of another crime. For
 8 example, another murder in this case, you know, something to
 9 that effect, somebody who needed possible medical treatment.
 10 Q. And I would guess if you're looking for that, you're
 11 looking for fruits or evidence of a crime?
 12 A. No. I'd be looking for a victim.
 13 Q. Just a victim?
 14 A. Correct.
 15 Q. So you're just looking for a human being?
 16 A. Yes.
 17 Q. Have you ever heard the term "safety check"?
 18 A. In what context? Safety pat down, yes, sir.
 19 Q. No. I don't mean, like a Terry type pat-down. I
 20 mean, in your training or protocol or SOP within the DPD, have
 21 you ever heard of a safety check?
 22 A. Familiar with an emergency search? I guess, I
 23 don't -- can you rephrase the question, or give me an example?
 24 Q. You know Detective Winn?
 25 A. Not personally.

- 1 Q. Not personally?
 2 A. I know he works for the department. There's about
 3 3,000 of us.
 4 Q. Have you ever heard any other officers say safety
 5 check instead of, like, an emergency search? Certainly -- all
 6 right. Safety check is not a term that's taught or used
 7 within DPD, I guess, or is it?
 8 A. I have no idea -- no. I haven't heard it. I
 9 apologize.
 10 Q. No. That's all right. You don't have to
 11 apologize.
 12 Who first entered, either you or Officer Illiff?
 13 A. Well, yeah, it would be both of us. Now, I don't
 14 know if she went in first, or I went in first, but we both
 15 entered at the same time. It was only us, and we insured
 16 there were no victims inside.
 17 Q. And where was Mrs. Cantu when -- upon your initial
 18 entry?
 19 A. She was outside with -- there was a security guard
 20 there for the apartment complex, and I believe Jill, the
 21 manager, was still there. She was waiting for the key.
 22 Q. Okay. How big was that apartment?
 23 A. It's a one-bedroom.
 24 Q. One-bedroom apartment?
 25 A. Yes, sir. I don't know exactly the square feet.

- 1 I'm sure Jill would have a little better idea.
 2 Q. It was pretty small, one-bedroom?
 3 A. Relatively small.
 4 Q. One bedroom, one living area --
 5 A. Yes, sir.
 6 Q. -- kitchenette --
 7 A. Yes, sir.
 8 Q. -- maybe a laundry room?
 9 A. Yes, sir.
 10 Q. How long would it take you to go through that
 11 apartment just looking for a human being?
 12 A. It would depend. I mean, it would depend -- you
 13 know, if you need to check in a closet, five minutes, ten
 14 minutes.
 15 Q. In a one-bedroom apartment it could take you ten
 16 minutes to check to see if there's a body or a live person in
 17 there?
 18 A. I mean, you know, are you just going to rush right
 19 in? It's not common procedure just to rush right in in any
 20 situation that you're not aware of where you are.
 21 Q. Did you knock on the door first?
 22 A. Yes, sir.
 23 Q. Any answer?
 24 A. No, sir. As a matter of fact, I believe we tried
 25 calling. Mrs. Cantu, I believe she gave us the phone number.

- 1 Q. Could you hear the phone ringing inside?
 2 A. I was calling from inside my squad car.
 3 Q. Okay. Did you -- was it dark or daylight outside?
 4 A. Dark.
 5 Q. About what time was it; do you recall?
 6 A. About 8:42 -- between 8:30 and 8:45.
 7 Q. What time did you clear Gibbons to go en route to
 8 Old Bent Tree?
 9 A. I would have to say roughly 8:25. I mean, it was --
 10 pretty much the time we left was about the time we got there
 11 to search the apartment.
 12 Q. How long did it take you to get from Gibbons to Old
 13 Bent Tree?
 14 A. Not very long. It's relatively close within a mile,
 15 two miles.
 16 Q. Less than five minutes?
 17 A. I don't remember exactly -- the exact -- how long it
 18 took. Basically, we went up Gibbons across -- right across
 19 the Tollway, and it's basically right off of Pear Ridge,
 20 Haverwood, right in that area, right behind Albertson's.
 21 Q. And it wouldn't be fair to ask you an exact time.
 22 Obviously, nobody would know that. But are you familiar with
 23 that area?
 24 A. Yes, sir.
 25 Q. How long would it normally take you to drive that?

1 A. Depending on traffic, there are several things. I
 2 could speculate approximately five minutes. Five, maybe 10
 3 minutes, depending on traffic, the time of day.
 4 Q. How about after 8 p.m.?
 5 A. Once again, depending on the route you took.
 6 Q. Do you remember what route you took?
 7 A. Yeah. I went north on Gibbons and east across to
 8 Haverwood, south on Pear Ridge to Old Bent Tree.
 9 Q. About a mile you said, mile to two miles?
 10 A. Mile to two miles.
 11 Q. Okay. Does anything -- did anything unusual happen
 12 in route that you recall?
 13 A. Not that I can recall.
 14 Q. Okay. Were the lights on in the apartment upon
 15 entry?
 16 A. I don't recall exactly if they were or not.
 17 Q. Do you remember turning the lights on?
 18 A. I would assume I did, yes, sir, when I searched the
 19 apartment. And afterwards I know they were on, yes.
 20 Q. Did you ever have flashlights on inside the
 21 apartment?
 22 A. I do carry a flashlight. I'm sure I would turn them
 23 on to try to find a light switch, yeah.
 24 Q. How long would you say you were actually inside the
 25 apartment?

1 A. After we cleared it, and then, like, the total time
 2 in it or --
 3 Q. From the time either you or Officer Iliff -- Iliff
 4 key the door and enter, to the time you leave and secure the
 5 door?
 6 A. After we secured it, Mrs. Cantu came in. She was
 7 looking at the --
 8 Q. Let me stop you there. It's not fair to ask that
 9 question. Obviously I got to break it up.
 10 How long were you in there from time you first
 11 initially entered to the time you allowed Mrs. Cantu in?
 12 A. I believe I'd already answered that. I believe it
 13 was five to ten minutes to search the inside of it, and then
 14 after we searched it, we went outside, informed Mrs. Cantu
 15 there was no one inside the apartment. Then she asked us if
 16 she could go inside and look at the Caller ID. She was trying
 17 to track her son down. That was the whole concern of the
 18 matter. So, I said, yeah, sure, I don't see a problem with
 19 that.
 20 And the security guard also came in with me as a
 21 witness, you know, basically to ensure there were no problems.
 22 So, she was looking at the cell phone -- or looking at the
 23 cordless phone on -- looking at the Caller ID.
 24 Q. Then how long were you -- how long did you remain
 25 in the apartment after Mrs. Cantu entered?

1 A. I don't remember exactly how long. I'd have to say
 2 10 to 15 minutes. She checked a couple of empty -- she
 3 checked a couple of beer bottles. I don't recall if they were
 4 empty or not, but she was checking to see if they were warm or
 5 cold, and they were warm.
 6 Q. Do you work any off-duty security jobs?
 7 A. Actually, the last couple of years I have not. I
 8 just recently started working one, yes, sir.
 9 Q. Do you ever work Texas Stadium, any Dallas Cowboy
 10 games?
 11 A. No.
 12 Q. Okay. Did you have -- have you had any
 13 conversations with anybody in law enforcement about your
 14 theory of this case?
 15 A. Anybody in law enforcement?
 16 Q. Yeah.
 17 MS. FALCO: Your Honor, I'm going to object to
 18 the relevance.
 19 THE COURT: Would you say the question one more
 20 time, please?
 21 Q. BY MR. GOELLER: Have you had any conversations with
 22 anybody in law --
 23 THE COURT: Okay, about the case. What's the
 24 relevance?
 25 MR. GOELLER: Well, I'd rather not say, to be

1 honest with you, Judge.
 2 THE COURT: All right. Well, you must
 3 articulate. I'll sustain the objection.
 4 MR. GOELLER: Okay.
 5 Q. BY MR. GOELLER: During the 10 to 15 minutes that
 6 Sylvia Cantu was in the apartment, were you and Officer Iliff
 7 also in the apartment?
 8 A. Yes.
 9 Q. And what were you -- what did you do during that 10
 10 to 15 minutes that Mrs. Cantu was in the apartment?
 11 A. I waited for Mrs. Cantu to finish looking at the
 12 numbers on the Caller ID, and then she was kind of checking
 13 around. Like I said, she checked a beer bottle to see if it
 14 was cold or warm. I basically waited for her to finish up,
 15 and then, you know, we basically -- as we were walking out, I
 16 noticed a bullet hole in the wall.
 17 Q. As you were walking out you noticed that?
 18 A. Pretty much -- we were wrapping things up, when we
 19 were fixing to leave, yes, sir.
 20 Q. You say you noticed a bullet hole?
 21 A. What appeared to be a bullet hole, yes, sir.
 22 Q. You couldn't tell if it was a bullet hole?
 23 A. I couldn't tell if it was exactly, but in my
 24 experience I believed it to be, yes, sir.
 25 Q. A small, round perforation in the gypsum board or

1 Sheetrock?

2 **A. I wouldn't be able to tell you if it was gypsum**
3 **board. I don't know exactly if it was Sheetrock or wooden,**
4 **but it appeared to be a small, round hole in the wall, yes,**
5 **sir.**

6 **Q. And what else specifically about the hole led you to**
7 **believe that it was a bullet hole, other than being small and**
8 **round in shape?**

9 **A. Eleven years of experience as a Dallas police**
10 **officer.**

11 **Q. And would you specifically articulate on the**
12 **specific facts that those 11 years have given you to be able**
13 **to look at a small, round perforation in a wall and be able to**
14 **tell it's a bullet hole?**

15 **A. Once again, I assumed it was a bullet hole. I**
16 **didn't say it was a bullet hole.**

17 **Q. Okay. You didn't know?**

18 **A. I didn't know for sure, but in 11 years I've worked**
19 **several different crime scenes involving shootings. You know,**
20 **I've seen houses shot up, cars shot up, what have you, which**
21 **led me to believe that that was, in fact, a possible bullet**
22 **hole.**

23 **Q. It led you to believe it was a possible bullet hole;**
24 **is that what you said?**

25 **A. Correct.**

1 **Q. What other possibilities could it have been?**

2 **A. Could have been a hole -- I don't know. I assumed**
3 **it was a bullet hole.**

4 **Q. Could have been a hole placed there by some other**
5 **object, other than a projectile out of a firearm, couldn't it?**

6 **A. Sir, I could only speculate on how somebody inside**
7 **that -- or how that bullet hole -- I'm sorry. I can only**
8 **speculate how that hole got into that wall.**

9 **Q. And that's what I'm getting at. You say it was a**
10 **bullet hole, it was pure speculation on your part, because**
11 **you've admitted it could have been other things, right?**

12 **A. It's possible, but in my experience I believed it to**
13 **be it.**

14 **Q. Okay. And what about your experience led you to**
15 **believe it was possibly a bullet hole?**

16 **A. Once again, 11 years as an officer responding to any**
17 **type of scene --**

18 **Q. I agree, but tell the judge, based on those 11**
19 **years, what leads you to look at a round perforation in**
20 **material and come to the conclusion it's a bullet hole. What**
21 **specific, other than just the time you've been a police**
22 **officer, what specifically can you tell judge that --**

23 **A. The shape of it was identical to shapes I've**
24 **responded to at several different shootings where there were**
25 **either holes in the walls, holes in cars, just basic holes.**

1 **Or, for example, when I do shoot -- when I go out**
2 **target shoot -- you know, like paper, a similar hole as a**
3 **gunshot -- a bullet would leave in a target that I would shoot**
4 **at, a paper target.**

5 **Q. Would only a bullet cause the size or the diameter**
6 **of a hole that size?**

7 **A. I assume there were several different things that**
8 **could cause holes in walls.**

9 **Q. Okay. All right. Anything else, other than what I**
10 **assume to be when you're speaking of diameter of the**
11 **perforation, any other specific factors you can think of that**
12 **might lead you -- that led you to believe this might possibly**
13 **be a bullet hole, other than the size?**

14 **A. The shape of it.**

15 **Q. Being round?**

16 **A. Correct.**

17 **Q. Are there other things that are round in nature that**
18 **could cause that type of perforation?**

19 **A. Sure.**

20 **Q. Many, right?**

21 **A. Yes, sir.**

22 **Q. Okay. All right. Outside of shape and size,**
23 **anything else that you can specifically articulate for the**
24 **judge that would lead you to believe that it was a bullet**
25 **hole, possibly a bullet hole?**

1 **A. I guess how clean the hole -- for example, if you**
2 **were to use a -- if you were to use a hammer, and if you were**
3 **to pull down, it would leave an oblong circle, rather than**
4 **what appeared to me to be pretty round to myself. You know**
5 **what I'm saying?**

6 **Q. It was round?**

7 **A. And it was pretty clean. There was, like, no -- it**
8 **looked -- basically --**

9 **Q. It's not like somebody put their foot through the**
10 **wall?**

11 **A. Yeah. Not like someone put a foot through the**
12 **hole -- through the wall.**

13 **Q. Okay. Did you make any notes regarding your**
14 **involvement in this case?**

15 **A. Yes, I did, sir.**

16 **Q. And do you have those with you?**

17 **A. Just the report I prepared, yes, sir.**

18 **MR. GOELLER: May I --**

19 **THE COURT: Yes, sir --**

20 **MR. GOELLER: -- approach?**

21 **A. This is the fax cover sheet.**

22 **MR. GOELLER: May I have just a second?**

23 **MS. FALCO: Your Honor, I'm going to object at**
24 **this time because this is his witness that he called, and it's**
25 **not cross-examination. So based under Rules of Evidence, he's**

1 not entitled to it.

2 THE COURT: Overrule the objection.

3 Q. BY MR. GOELLER: Sir, you've handed me two pieces of
4 paper -- two documents entitled "Miscellaneous Incident
5 Report." Time call received, what does that mean with DPD?

6 A. Basically time call -- let's me explain, normally if
7 you call 911 --

8 Q. Uh-huh.

9 A. -- that would be the time call -- the call was
10 received. The time the call was dispatched would be the time
11 I received call. The time arrived would be the time that I
12 actually arrived at the call.

13 If you'll notice all those are the same. That's
14 because I had the dispatcher make me up that number --
15 basically that report number. If you look at -- I think it's
16 the top left or top right, you'll see the report number. It
17 ends with a "K." As a matter of fact bear with me.

18 Q. A "J".

19 A. I'm sorry, a J, yes, sir.

20 Q. What does that mean?

21 A. That's the report number. That's the number that I
22 prepared, that Miscellaneous Incident Report. We call them
23 MIR for short. Basically in order for me to do a report, I
24 have to have a report number generated. Every time you call
25 911, a number is generated. If you'll see that number, it

1 started with a 1. Every time you call, it will go 1, 2, 3 --
2 the service number will be 1J, 2J. At that certain date we
3 were up to that many calls for service.

4 Q. I see 0864384-J.

5 A. Right.

6 Q. Is that the number you're referring to?

7 A. Yes, sir.

8 Q. And when was this report actually generated?

9 A. It was generated November 4th at the time -- it
10 says time call received.

11 Q. Okay. And time call received is -- it says 20:37.
12 8:37?

13 A. Yes, sir.

14 Q. And that's the time that, what?

15 A. That I generated that report number, that I could
16 prepare that report.

17 Q. Time call Code 6; what's that mean?

18 A. Technically, sir, that's supposed to be the time
19 that I arrived at the call. But, once again, I already had
20 arrived at the call. I asked the dispatcher to generate me
21 that service number, so all those numbers are going to be the
22 same.

23 Q. I guess I'm -- I'm confused. How could they be the
24 same?

25 A. Okay. I apologize. For example, let's say you're a

1 homeowner in Dallas, and you call 911.

2 Q. Well, I tell you what, let's use this case. You
3 arrive at Gibbons. Is there some type of notation or a
4 computer or a dispatcher or anybody saying, Officer Junger is
5 at 18333 Gibbons?

6 A. Yes, sir.

7 Q. What's that called on these sheets; time what?

8 A. Well, that's the time that I covered the other
9 officer.

10 Q. Okay. Does somebody have a notation of that?

11 A. I assume they do. I wouldn't know who would.

12 Q. Okay. So, when you leave -- when you left the
13 Gibbons Drive address to go over to Old Bent Tree, would
14 somebody have a record and notation of that?

15 A. The only record, I believe, would be on tape because
16 I did, on tape, inform the dispatcher that I was going to Old
17 Bent Tree.

18 Q. And then once you get to Old Bent Tree, would you
19 tell somebody you're there?

20 A. Yes, sir, over the air.

21 Q. Over the air?

22 A. Over the police radio. I'm sorry.

23 Q. Okay. Yeah, I got you.

24 And then when this -- normally time called cleared,
25 would that be, in this case, the time you left the apartment

1 that you were in, or the time you leave Gibbons?

2 A. That would be time that -- in that case that would
3 normally be the time that I leave Old Bent Tree.

4 Q. Okay.

5 A. But once again, this call was not generated by a 911
6 call from a citizen. This call was generated from myself
7 inside of our squad car. That's why all of those numbers are
8 the same.

9 Q. Did you give them the time 20:37?

10 A. The minute they type it into the computer --

11 Q. That's what comes up?

12 A. Yes, sir.

13 Q. Did you make a statement on November 4th around
14 20:37 that, "Manager gave responding officer a key to listed
15 location, subject's apartment. Subject apartment -- subject,
16 nor girlfriend, were at listed location. No signs of an
17 offense"?

18 A. Yes, sir.

19 Q. Okay. Is this the only report that you had
20 generated --

21 A. Yes, sir.

22 Q. -- Officer Junger?

23 A. Stemming from this case, or -- in my 11 years, no,
24 I've generated several reports. But from this case --

25 Q. No. I don't want 11 years worth of reports.

- 1 A. Okay, yeah.
 2 Q. Definitely in this case.
 3 A. Yes, sir.
 4 Q. Have you looked at anybody else's reports prior to
 5 testifying here today?
 6 A. No, sir.
 7 Q. Have you talked to anybody prior to testifying here
 8 today about your testimony?
 9 A. My twin brother. I mean, for example, I told him
 10 what was going on. But, no, I haven't --
 11 Q. Okay.
 12 A. -- are you referring to anyone in the back?
 13 Q. Yeah.
 14 A. No. No, sir.
 15 Q. Okay.
 16 A. I mean, I've asked the investigator -- you know,
 17 I've asked him some questions, like he contacted me last week.
 18 Q. Who is that?
 19 A. Investigator Johnson.
 20 Q. With DPD?
 21 A. No, sir.
 22 Q. Who's he with?
 23 A. Collin County Sheriff's.
 24 Q. Okay. The DA's office?
 25 A. Yes, sir.

- 1 Q. I was trying to figure out how the SO got down
 2 there?
 3 A. I'm sorry.
 4 Q. That's all right.
 5 Okay. Who has the tapes, or the dispatch records
 6 that would actually show when you cleared Gibbons, arrived at
 7 Old Bent Tree, left Old Bent Tree, went back to Gibbons?
 8 A. That would probably be our communications section.
 9 Q. Okay. Who's over that unit, if you know?
 10 A. Sir, no, I don't. I have a phone number if you --
 11 Q. Yeah, I'd take that if you got it.
 12 A. Just give me a second.
 13 Q. You've come prepared.
 14 A. 214-670-5250. That's actually, like, the back
 15 police line. But, you know, if you explain to them who you
 16 are and what you need, they'll --
 17 Q. How did you get this number? I'm going to rat you
 18 off.
 19 (Laughter.)
 20 A. Yes, sir.
 21 Q. What building are they in?
 22 A. Actually, they're down at -- I believe they're down
 23 at our City Hall in the basement.
 24 Q. Down in the basement, huh?
 25 A. Yes, sir.

- 1 Q. Outside of the hole in the wall, did you notice
 2 anything else amiss or suspicious or anything?
 3 A. No, sir.
 4 Q. Okay. Did you touch the beer bottles?
 5 A. I don't recall if I did or not. I don't recall
 6 exactly if I did or not, sir. No, sir.
 7 Q. Have you spoken with Officer Iliff about this --
 8 about your testimony today?
 9 A. No. She's on vacation.
 10 Q. She's not here?
 11 A. Yeah. She's in Cancun, Cozumel. She's in Mexico.
 12 Q. Some place better than we are?
 13 A. Yes, sir
 14 MR. GOELLER: I'm returning the documents to
 15 the officer, Your Honor, and I'll pass the witness.
 16 THE COURT: All right.
 17 CROSS-EXAMINATION
 18 BY MS. FALCO:
 19 Q. Officer Junger, do you recall what time it was
 20 approximately that you arrived as backup at 18663 Gibbons?
 21 A. No, I don't, not exactly.
 22 Q. But it would have been the same date and
 23 approximately the same time they discovered the bodies?
 24 A. Correct. As the responding officer, it would have
 25 been just a little bit after them.

- 1 Q. Once you arrived at 18663 Gibbons, the crime scene,
 2 did you at some point in time become aware that Sylvia Cantu
 3 was concerned about her son, the defendant, Ivan Cantu?
 4 A. Yes.
 5 Q. How did you become aware?
 6 A. I know she had informed some officers. I don't
 7 recall exactly who she informed. I don't recall if she
 8 informed Officer Iliff, my partner, or not. But Officer Iliff
 9 and I escorted her back to Old Bent Tree.
 10 Q. And what was her demeanor? How did you know she was
 11 concerned?
 12 A. She was upset, on her cell phone. She kept trying
 13 to call Ivan.
 14 Q. When you say you escorted her to Old Bent Tree, did
 15 she ride in the patrol car with you?
 16 A. I apologize. Basically I followed her -- or we
 17 followed her. She was in her vehicle, and we were in ours.
 18 Q. Did she ask you to follow her over there?
 19 A. We offered to -- or we -- I don't recall exactly if
 20 we offered to give her a ride or follow her, but basically
 21 she -- you know, she knew where she was going.
 22 Q. Did she ask for you to go to her son's apartment?
 23 A. Yes, to check on his --
 24 Q. Did she specifically want the police to go with her?
 25 A. To check on her (sic) welfare, yes, ma'am -- check

1 on Ivan's welfare.

2 Q. Once you arrived at the apartment complex, did

3 Sylvia Cantu go with you to the apartment manager?

4 A. **Actually, the apartment manager came to us. She**
5 **wanted to know what was going on. I believe she was getting**
6 **ready for a date or getting ready to go out, and she had**
7 **approached us.**

8 Q. Where were y'all at the time?

9 A. **In front of the apartment.**

10 Q. And when you say that you attempted to call and
11 attempted to knock on the door, was all that prior to the
12 apartment manager getting there?

13 A. **Yes, yes.**

14 Q. And how long did you knock on the door?

15 A. **I don't remember exactly how long, but long enough**
16 **if there was an occupant inside they would be able to answer.**
17 **It wasn't very big. It wasn't a very big apartment, as we**
18 **established earlier.**

19 Q. Did Sylvia Cantu provide a number for you to call to
20 try to reach her son?

21 A. **Yes.**

22 Q. And you said you called that number from your patrol
23 car?

24 A. **Correct.**

25 Q. Do you recall how many times you tried that number?

1 whether dead or alive?

2 A. **Correct.**

3 Q. Being a police officer, is it part of your duties to
4 serve and protect in situations like this?

5 A. **Yes, ma'am, and provide assistance.**

6 Q. And so your only purpose of going in the apartment
7 at that time was just to determine whether or not Ivan Cantu
8 was dead or alive?

9 A. **Yes, ma'am. Or his girlfriend, for that matter.**

10 Q. Amy Boettcher?

11 A. **Correct.**

12 Q. When you went in to the apartment, did you look in
13 every single nook and cranny and cabinet and drawer?

14 A. **No, ma'am.**

15 Q. Did you only look in places where a person might be?

16 A. **Correct.**

17 Q. Such as closed doors, like closets, bathroom?

18 A. **Closets, bathroom, tub, you know, those areas.**

19 Q. And at that point you didn't observe anything,
20 didn't observe any evidence of a crime at that point?

21 A. **No, ma'am.**

22 Q. Were you looking for that?

23 A. **No.**

24 Q. Just for the body?

25 A. **Correct.**

1 A. **That, I don't recall.**

2 Q. Did anyone ever answer?

3 A. **No.**

4 Q. So after you've tried to call and you've knocked on
5 the doors, is that about the time the apartment manager
6 approached y'all?

7 A. **If my -- I believe what we had done was asked our**
8 **communications division -- our dispatcher to obtain a**
9 **keyholder, either a maintenance man or a manager. And, once**
10 **again, security had walked up and they were helping us out,**
11 **but she came up before we -- our dispatcher was able to locate**
12 **a keyholder.**

13 Q. And when you say "security," you're talking about
14 security for the apartment complex?

15 A. **Yes, ma'am.**

16 Q. And did they provide a key?

17 A. **No. It was the manager, Jill.**

18 Q. Once the manager provided you with a key, do you
19 recall if it was yourself or your partner that actually used
20 the key to get inside?

21 A. **That, no, I'm sorry, I don't.**

22 Q. And who went inside initially to search the
23 apartment?

24 A. **Just Officer Iliff and myself.**

25 Q. And was your sole purpose to look for bodies,

1 Q. Once you determined there were no bodies inside the
2 apartment, you let Sylvia Cantu know?

3 A. **Yes.**

4 Q. And did she request to go back inside the apartment?

5 A. **Yes. She wanted to check his ID -- Caller ID.**

6 Q. And you earlier testified she did look at the Caller
7 ID?

8 A. **Correct.**

9 Q. Where were you standing when she was looking at the
10 Caller ID?

11 A. **As you enter the apartment basically the kitchen is**
12 **a little off to the right, and then the living room is off to**
13 **the left, and I was standing basically in front of the front**
14 **door, in the living room, just basically waiting for her to**
15 **finish up, basically with my arms crossed, you know...**

16 Q. And was it yourself, and your partner and the
17 security officer?

18 A. **Yes. He was also inside, and her.**

19 Q. And Mrs. Cantu?

20 A. **Yes.**

21 Q. Is she the one that went to the beer can?

22 A. **I believe it was a beer bottle.**

23 Q. Beer bottle?

24 A. **Yes, ma'am.**

25 Q. To determine whether it was --

1 A. Warm or cold.
 2 Q. -- cold or warm?
 3 A. That's correct.
 4 Q. Did she make any comment about it when she went to
 5 the beer bottle?
 6 A. Yes. She had said -- she -- something to the effect
 7 that it was warm. And I don't recall exactly if it was empty
 8 or half-full or full, or whatever, but it was warm.
 9 Q. Did she go anywhere else besides look at the Caller
 10 ID and feel the beer bottle?
 11 A. She basically stayed in the kitchen area, and I
 12 believe she was looking for phone numbers. I'm not sure
 13 exactly what she was looking for.
 14 Q. Once she was done, did she let you know she was
 15 done, or did she just go ahead and walk out the door?
 16 A. I don't recall exactly how it ended. I don't recall
 17 if I had said it's time to go, or if she had said -- I don't
 18 recall exactly how we finished it up.
 19 Q. And at what point in time did you notice the bullet
 20 hole in the wall?
 21 A. Right about when we were ready to leave, I pointed
 22 it out actually.
 23 Q. And who did you point it out?
 24 A. Basically all the occupants. I believe mainly I
 25 mentioned it to Mrs. Cantu.

1 MS. FALCO: Your Honor, may I approach?
 2 THE COURT: Yes.
 3 Q. MS. FALCO: Officer, I show you what's been admitted
 4 into evidence as State's Exhibits 3 and 4. Does that look
 5 familiar to you?
 6 A. Yes.
 7 Q. And is that the bullet hole that you observed when
 8 you were inside the apartment complex November 4th?
 9 A. Yes.
 10 Q. And does it appear to be -- in State's Exhibit
 11 Number 3, does it appear to be in the same spot as it's
 12 observed in that picture?
 13 A. Yes.
 14 Q. When you pointed it out to Mrs. Cantu, what did you
 15 say to her?
 16 A. I believe -- I don't recall exactly what I said, but
 17 I believe I said something to the effect does your son have a
 18 gun?
 19 Q. So you immediately recognized it as a bullet hole?
 20 A. Correct.
 21 Q. And that was your initial thought?
 22 A. Yeah. I immediately assumed it was a bullet hole.
 23 Yes.
 24 Q. How did Mrs. Cantu respond?
 25 A. To the effect, no, he doesn't.

1 Q. What did any -- did you observe anything else or
 2 notice anything else that you pointed out to Mrs. Cantu in
 3 that apartment complex, or in that apartment?
 4 A. To my recollection, no.
 5 Q. At that point in time did everyone exit the
 6 apartment?
 7 A. Yes.
 8 Q. And did you then secure the apartment with a key?
 9 A. Myself or Officer Iliff did. One of us two did.
 10 Q. Was that key returned to the apartment manager?
 11 A. Yes.
 12 Q. And she had waited there for y'all to be done so she
 13 could get the key back?
 14 A. Yes. She had waited outside.
 15 Q. After you'd handled that situation with Mrs. Cantu,
 16 what was her demeanor while she was in that apartment?
 17 A. Concerned for her son -- you know, she couldn't get
 18 ahold of him, as any parent would be.
 19 Q. Did she remain concerned even as you left the
 20 apartment?
 21 A. I don't recall exactly, but I believe she did.
 22 Q. Where did you go after you left the apartment? Did
 23 you go back to the crime scene?
 24 A. No. I don't believe I did. I think we -- it was
 25 pretty much, we had just went to, I think, 7-Eleven to grab a

1 quick coffee and then --
 2 Q. At some point in time did you have a conversation
 3 with Detective Winn?
 4 A. Actually the next morning I received a phone call
 5 from a sergeant in homicide.
 6 Q. Which sergeant was that?
 7 A. I don't recall exactly who called.
 8 Q. And did you relay that information to the sergeant?
 9 A. Yes, I did.
 10 Q. Did you also have a conversation with Detective
 11 Winn?
 12 A. Regarding?
 13 Q. Regarding this information.
 14 A. No. I believe it was just the sergeant.
 15 Q. And did you explain to him everything that occurred
 16 regarding going into the house, seeing the bullet hole, and
 17 Mrs. Cantu being upset about not being able to find her son?
 18 A. Yes.
 19 Q. Did that end your contact with this case?
 20 A. Yes.
 21 MS. FALCO: Thank you, Officer. Pass the
 22 witness.
 23 REDIRECT EXAMINATION
 24 BY MR. GOELLER:
 25 Q. Officer Junger, approximately how many square feet

- 1 was that apartment?
 2 **A. Sir, I don't know. Jill would know -- have a better**
 3 **estimation than I.**
 4 Q. One bedroom?
 5 **A. Yes.**
 6 Q. How big is the bedroom, approximately?
 7 **A. A ballpark, 7 to 800 square feet.**
 8 Q. That's pretty good. That's good.
 9 **A. I'll ballpark it because I live in a one bedroom.**
 10 Q. You live in a one bedroom now?
 11 **A. Yes, currently.**
 12 Q. Same kind of a layout as that one?
 13 **A. Not really.**
 14 Q. But one bedroom?
 15 **A. One bedroom.**
 16 Q. One living area?
 17 **A. Yes.**
 18 Q. Kitchen, or kitchenette they call it?
 19 **A. Yes, sir.**
 20 Q. Probably a little utility room?
 21 **A. Yes, sir. Yes, sir.**
 22 Q. Did you go into the bedroom?
 23 **A. Yes. Yes, I did.**
 24 Q. Was there a closet in the bedroom?
 25 **A. Yeah. I believe there was a closet in the**

- 1 **bedroom -- well, there was the washer/dryer in the hallway**
 2 **leading to the bedroom. The bathroom was off to the side.**
 3 Q. Okay. Was there anything unusual about the
 4 apartment; that it was extremely cluttered or looked like it
 5 was being used for storage, a lot of boxes laying around, or
 6 did it just look like a normal apartment?
 7 **A. When you say "normal," are we talking clean?**
 8 Q. Yeah, clean and uncluttered.
 9 **A. In my opinion, it was messy.**
 10 Q. Okay. I mean, were you stepping over things to get
 11 in?
 12 **A. Not really.**
 13 Q. Okay.
 14 **A. No, sir.**
 15 Q. You've probably been in crime scenes or homes where
 16 people are -- you know, you almost have to walk through little
 17 passageways. They've got boxes and boxes. You know what I'm
 18 talking about?
 19 **A. Yes, sir.**
 20 Q. It was nothing like that?
 21 **A. No, sir.**
 22 Q. Your walking about the apartment was not impeded in
 23 any way by debris?
 24 **A. No, other than the clothes on the floor, you know,**
 25 **but no big boxes.**

- 1 Q. Okay. After Mrs. Cantu was in the apartment, did
 2 you and -- you and/or Officer Iliff suggest that you really
 3 needed to be going?
 4 **A. I don't recall exactly the conversation, sir.**
 5 Q. But the leaving of the apartment was prompted by you
 6 and Officer Iliff, though, right?
 7 **A. I would assume. We had no other reason to be inside**
 8 **of that apartment.**
 9 Q. Do you recall Officer Iliff making the statement to
 10 Mrs. Cantu, quote, we're technically not even supposed to be
 11 in here; we need to go?
 12 **A. No. I don't recall that.**
 13 Q. Did you say that?
 14 **A. No. I don't recall saying that at all.**
 15 Q. Do you think technically you were not supposed to be
 16 in there?
 17 **A. No. I think -- I think under the emergency search,**
 18 **after she had voiced her concern -- Mrs. Cantu had voiced her**
 19 **concern, it is our job to ensure there was no victims or no**
 20 **one injured or worse inside that apartment.**
 21 Q. But you have no reason to believe that anybody was
 22 hurt or inside was a victim of any type of foul play in that
 23 apartment, did you?
 24 **A. I had reason to believe that the mother --**
 25 **Mrs. Cantu was concerned. Her son -- she was unable to get**

- 1 **ahold of her son and didn't know where he was. So, yeah, I**
 2 **had reason to believe there may have possibly been something**
 3 **wrong. And, you know, if something would have been wrong that**
 4 **I didn't check, you know, I can just picture -- you know what**
 5 **I'm saying? It would be hard to live with yourself knowing**
 6 **that you could have saved a -- possibly saved a human life if**
 7 **someone was injured in there.**
 8 Q. I'm not taking issue with that at all.
 9 **A. Okay.**
 10 Q. I'm not trying to go there.
 11 Did you verify the identity of Sylvia Cantu?
 12 **A. I know I did ask her her name for the information.**
 13 **I don't know if I -- I don't know if I went ahead and got her**
 14 **ID. I'm not exactly sure if I ID'd her. You know, I had no**
 15 **reason to assume she would lie to me about her identity.**
 16 **Because she was at the scene of the original crime where her**
 17 **nephew had just been murdered, so I assume that she wouldn't.**
 18 Q. Did you -- outside of Sylvia Cantu's statement, did
 19 you have any independent knowledge of the actual residence of
 20 10004 Old Bent Tree?
 21 **A. I'm sorry?**
 22 Q. Outside of Mrs. Cantu's statements --
 23 **A. No. I had no idea that residence was even there**
 24 **without her assistance of her getting me there and showing me**
 25 **exactly where he lived.**

- 1 Q. Okay. What did the homicide detective want from
2 you?
- 3 A. The next morning?
- 4 Q. Yeah, or homicide sergeant, I think you said.
- 5 A. He had called up and asked me -- he had asked me,
6 did you happen to notice if the corvette -- the stolen
7 corvette, he said, did you happen to notice if it was parked
8 inside that complex? I said no, sir, I didn't happen to
9 notice. I had no reason to look for it. And then I informed
10 him -- he questioned me about going inside the apartment, and
11 that's when I informed him --
- 12 Q. Why did he question you about that?
- 13 A. Well, he just said tell me, why you even were there.
14 I refreshed his memory of why I was even there. Then that's
15 when I mentioned the bullet hole, what I believed to be a
16 bullet hole.
- 17 Q. Is that the first time you told anybody that you saw
18 that -- I'm going to call it the perforation?
- 19 A. Okay.
- 20 Q. Is that first time you told anybody about that?
- 21 A. I don't recall if that was exactly the first time.
22 I may have told my sergeant, Sergeant Nonamocker, over the
23 phone that night.
- 24 Q. Okay. You didn't go back to Gibbons, though? You
25 went to 7-Eleven?

- 1 A. Yeah. I don't believe I went back to the initial
2 crime scene because I wasn't needed. The detectives were
3 there, and they were pretty much wrapping up their
4 investigation.
- 5 Q. Okay.
- 6 A. See, you have to understand my job, when we first
7 got there, a lot of family members and friends -- I don't know
8 how they found out. They were all arriving at the same time,
9 trying to get in, and their -- our job as patrol officers --
10 initial responding patrol officers was to secure the crime
11 scene for the physical evidence section and the homicide
12 detectives.
- 13 Q. Who is the sergeant that called you and asked you
14 these questions?
- 15 A. I don't recall his name, but I bet you -- you know,
16 I could probably find out.
- 17 Q. Carney?
- 18 A. I'm sorry?
- 19 Q. A detective named Carney?
- 20 A. It would be a sergeant, not a detective. I'm pretty
21 sure it was a sergeant.
- 22 Q. Laboda; that sound familiar?
- 23 A. I mean, they all sound familiar because they all
24 work in homicide, and I've heard the names before.
- 25 Q. It wasn't Detective Winn, though?

- 1 A. I don't believe it was, sir, no. I don't believe
2 so.
- 3 Q. He's not a sergeant?
- 4 A. No. He's a detective.
- 5 Q. Carralo?
- 6 A. Sir, you could probably read all the names -- I
7 apologize. You could read them all down on the list, and I
8 still am going to tell you I don't recall exactly who it was.
- 9 Q. Is there any way you could find out?
- 10 A. Yes, probably. But, unfortunately, the Rule has
11 been invoked, so I can't -- do you see what I'm saying? I'm
12 in a dilemma.
- 13 Q. You're not allowed to talk about your testimony,
14 but you can go find out that. That won't violate anybody's
15 rule?
- 16 A. I'm making an assumption that he's sitting in that
17 room -- that the sergeant that's sitting in the room, but I
18 can't say with 100 percent surety. I'm sorry.
- 19 Q. What specifically did he say about -- you said he
20 asked you why were you even in there?
- 21 A. I'm sorry?
- 22 Q. You testified that the sergeant asked you on the
23 phone the next day, why were you even in there?
- 24 A. Understand, like the detective, it's his role to
25 do -- work the actual case. I was just informing him why I

- 1 was in there, or -- I don't know if he asked me, or if I had
2 told him, but I just basically refreshed his memory and told
3 him what I saw. And told him about this report, this
4 miscellaneous incident report.
- 5 Q. You guys, both of y'all work for the same police
6 department, right?
- 7 A. Both of whom?
- 8 Q. You and this sergeant that called you the next day?
- 9 A. Yes.
- 10 Q. Do you find it odd that he would question you?
- 11 A. It depends. If he's working the case, or if he has
12 something he would want to be in the know, he would want to
13 know all the particulars --
- 14 Q. I agree 100 percent, but I assume that he would have
15 to have been a patrol officer once, right?
- 16 A. Yes, sir.
- 17 Q. If he's a sergeant --
- 18 A. I would assume he would, yes.
- 19 Q. -- he's got a lot of time behind him and experience?
- 20 A. Yes, sir.
- 21 Q. Did you find it odd that a sergeant would ask you,
22 why were you even in there? That's not asking you about the
23 facts of what went on in. That's questioning your initial
24 entry into that apartment?
- 25 A. Okay. No, I don't find that odd.

1 Q. Why?

2 A. As a detective it's your job, basically, to know all
3 of the facts. Now, I have no detective experience. I'm
4 assuming as a detective, it's your job to know the ins and
5 outs and everything of what's going on with that case, which
6 would make sense to me.

7 Q. Right.

8 A. The same thing -- you know, as a defense attorney it
9 would be your job to find out, you know, all the facts.

10 Q. Amen. Okay.

11 A. So, no, I don't find that odd at all.

12 Q. I mean, at the Gibbons scene -- the Gibbons Drive
13 scene nobody walked up to you and said, hey, Junger, why are
14 you even here? Do you see what I'm getting at.

15 I understand what you're saying when you say a
16 detective needs to gather all the facts, but it doesn't strike
17 you odd that he's asking you why you're even in there?

18 A. He may not have known.

19 Q. Why would he be calling you then?

20 A. I'm assuming that -- no, I -- I really have no -- I
21 can only speculate.

22 Q. Okay.

23 A. I can only speculate.

24 Q. Please do.

25 A. I'm sorry?

1 MS. FALCO: Then I'm going to object to
2 speculation.

3 THE COURT: Sustained.

4 Q. BY MR. GOELLER: Okay. Did he -- was he referring
5 to the statement that you handed me earlier, the sergeant that
6 called you the next day?

7 A. I think his main call was for -- to question me
8 about the Corvette, the main purpose of the call.

9 Q. Okay. Is there any mention of the -- what you
10 thought might have been a bullet hole in the wall in that
11 report that you handed me earlier?

12 A. No, sir, because it didn't have any relevance with
13 the -- you know, possible victims inside of an apartment.

14 Q. Okay. I agree.

15 Moreover, you weren't even sure it's a bullet hole?

16 A. Correct.

17 Q. Okay. Did you assist any other officers in the
18 preparation of any search warrants or arrest warrants for
19 Mr. Cantu?

20 A. I believe a search warrant. I don't exactly recall
21 if it was a search warrant or arrest warrant. The detective
22 I -- I'm sorry. The person I spoke with that morning, Sunday
23 morning, called me at home. Understand that he had basically
24 woke me up. That's why I don't remember his name.

25 Well, anyway, he asked me to call him later on that

1 afternoon and tell him -- you know, give him a description of
2 that location so they can get some type of warrant, and I
3 believe it was for a search warrant, but I don't recall
4 exactly what the warrant was for.

5 Q. Do you know, is this the same gentleman that called
6 you the next day you've been referring to, the sergeant?

7 A. Yeah. I don't recall exactly who I spoke with, but
8 I did assist someone up there and describe, you know,
9 basically the address, what it looked like, what color brick,
10 the door.

11 Q. Did they ask you -- did this person -- detective or
12 sergeant, whatever, did they ask you what you saw in there
13 that they could put in a warrant, or the affidavit for the
14 warrant?

15 A. If they didn't ask, I told them, you know --

16 Q. What exactly did you tell them?

17 A. I don't recall exactly what I told them. Understand
18 this was in November and we're talking --

19 Q. I got you. I don't mean exactly, but what did you
20 tell them?

21 A. That we didn't find anyone inside, mom checked --
22 you know, I told them mom checked -- pretty much everything
23 that went on. And that as I was walking out I saw the hole
24 that I believe to be -- that perforation, that you call it, I
25 believed to be a bullet hole.

1 Q. Okay.

2 MR. GOELLER: Just a second, Judge.
3 (Brief pause in proceedings.)

4 Q. BY MR. GOELLER: Have you written down anything,
5 other than the two pages that you showed me? Those two pages,
6 by the way, that you showed me, that's generated by a computer
7 in communications, right?

8 A. No. The number is -- this 864-384J --

9 Q. Yeah.

10 A. -- that's generated by communications. The actual
11 report I prepared from my computer inside my squad car.

12 Q. Okay. You're actually --

13 A. Typing, yes, sir.

14 Q. -- pounding out in the field and it's blowing
15 somewhere, and it's going to print it out somewhere else?

16 A. Yes, sir. It gets saved in records, correct.

17 Q. Okay. Have you been asked to give a chronology of
18 events or prepare any other documents for this trial?

19 A. No, sir.

20 Q. Okay. Okay, sir.

21 Did you have any conversation with the apartment
22 manager about changing of the locks, or the locks being
23 changed or anything like that, Officer Junger?

24 A. I don't believe I did.

25 Q. Did the apartment manager volunteer that they had

1 changed the locks or anything like that?
 2 **A. I don't recall exactly the conversation.**
 3 Q. Okay.
 4 **A. Her involvement was really short. I know she was**
 5 **just getting ready to go out.**
 6 Q. Did you notice anything usual attached to the front
 7 of the refrigerator by magnets or stickies, or something like
 8 that?
 9 **A. No, sir. Understand, sir, I was in there looking**
 10 **for someone, say, 5 foot 9, like an average man's size. You**
 11 **know, I wasn't looking for something hanging on a --**
 12 Q. I got you. Would you say that 7, 800 square foot
 13 apartment -- and I know it's not exact; I'm not asking you for
 14 square foot -- but that would fit inside the confines of this
 15 courtroom?
 16 **A. Depend on how it was laid out.**
 17 Q. Pretty much. What's your best guesstimate from the
 18 judge up there to the clock in the back?
 19 **A. I'd say -- let's say it went straight back to the**
 20 **clock from the judge, basically say this (indicating).**
 21 Q. 40, 45 feet?
 22 **A. Oh, how many feet?**
 23 Q. Yeah.
 24 **A. Oh, I've never been good at estimating feet. I**
 25 **really have no idea. I'm not good at judging feet. Throw a**

1 **A. No.**
 2 Q. The only thing you were looking for were bodies?
 3 **A. Correct. The only reason that I even saw this**
 4 **bullet hole is it was so close to the door. I'm left handed.**
 5 Q. And how far up the wall was that bullet hole in
 6 comparison to you?
 7 **A. A little -- about eye level, or a little below eye**
 8 **level. But it was very close to eye level where if you're**
 9 **looking towards the door, it's kind of hard to miss.**
 10 Q. In fact, when you went into that apartment did you
 11 even think that Ivan Cantu was a suspect to that homicide?
 12 **A. No.**
 13 Q. You had no idea?
 14 **A. Not at all.**
 15 Q. Other than here's a concerned mom worried about this
 16 guy and here's his apartment?
 17 **A. Right. Understand, all I initially did was**
 18 **responded to the crime scene. I secured the crime scene, and**
 19 **I had no idea what was occurring as far as the detectives and**
 20 **the physical evidence. Basically, I didn't speak with them at**
 21 **all, other when they asked, you know, what's your name and**
 22 **badge number in case -- you know, like for fingerprint**
 23 **purposes or identities for who was at the crime scene. But I**
 24 **had, you know, no idea as to what was occurring with the**
 25 **investigation.**

1 **number out there, I'll tell you if I agree with it or not.**
 2 THE WITNESS: I apologize, Your Honor.
 3 THE COURT: That's all right.
 4 Q. 36 feet approx.
 5 **A. Okay.**
 6 Q. You wouldn't have a real strong disagreement with
 7 that, would you?
 8 **A. No, sir.**
 9 Q. And from that side of the courtroom to this nice
 10 gentleman over here in the uniform, 28 feet from here to
 11 there?
 12 **A. Okay. See, I'd say roughly 20 feet.**
 13 Q. Okay. okay. All right, sir.
 14 Officer Junger, thank you. I gave you back all your
 15 reports, right?
 16 **A. Yes, sir**
 17 MR. GOELLER: Thank you, sir. Pass the
 18 witness.
 19 **RE-CROSS-EXAMINATION**
 20 BY MS. FALCO:
 21 Q. Just briefly. Officer Junger. When you went into
 22 that apartment, you were not looking for any incriminating
 23 evidence, were you?
 24 **A. No.**
 25 Q. You weren't looking for any evidence of a crime?

1 MS. FALCO: Pass the witness.
 2 **FURTHER REDIRECT EXAMINATION**
 3 BY MR. GOELLER:
 4 Q. Officer Junger, when I first called you as a
 5 witness, didn't you call it a crime scene search?
 6 **A. I'm sorry?**
 7 Q. An emergency crime scene.
 8 **A. Emergency search.**
 9 Q. And then you said I was looking for a possible crime
 10 scene.
 11 **A. For example, if a victim was in there or a victim**
 12 **had been in there, say, murdered, and there were, say, blood**
 13 **stains on the carpet. That would be a possible crime scene**
 14 **where, yes, he was, in fact -- Ivan Cantu was, in fact, a**
 15 **victim.**
 16 Q. Okay.
 17 **A. If I did, that's basically what I was referring to.**
 18 Q. Okay.
 19 **A. Like signs that an offense had occurred and he was,**
 20 **say, the innocent victim.**
 21 Q. But you'd be in there -- your intent to go in there
 22 was to look for signs of an offense?
 23 **A. No. My intentions were to go in there to insure**
 24 **that Ivan or his girlfriend were okay. Mom hadn't been able**
 25 **to get ahold of him, so we really didn't know if mom -- or if**

1 Ivan was possibly deceased inside, or living and injured and
 2 unable to call 911. So we were going to insure -- basically
 3 for his safety. And as a police officer, it's my job to make
 4 sure that if he is alive it's my job to give him assistance,
 5 you know.

6 MR. GOELLER: That's all I have, sir.

7 MS. FALCO: No further questions, Your Honor.

8 THE COURT: All right. You may step down.

9 We're in recess here until 3:00.

10 MS. FALCO: Your Honor, may this witness be
 11 released?

12 MR. GOELLER: Yeah.

13 THE COURT: You're finally excused.

14 (Recess taken.)

15 (On the record at 3:41 p.m.)

16 THE COURT: This is Cause Number 380-80047.

17 Let the record reflect the Defendant and his attorney are
 18 present, and the State is present. And did somebody have
 19 something to put on the record?

20 MR. SCHULTZ: Yes, Judge, I think two things.
 21 One, I think by agreement we've released all the witnesses now
 22 for the rest of -- for this hearing, and we kind of did that
 23 before you came in. They're gone, but we're all okay with
 24 that.

25 Here's what I understand our agreement is, and I'll

1 object to that stuff at any time. I mean, you might not have
 2 a separate hearing, but it's always objectionable if it's a
 3 Constitutional violation. And we're trying to save time and
 4 even if -- what I'm saying is, if we went on the arrest issue,
 5 if you go with us on that, we've probably got something we
 6 can't get into evidence just because of the nature of it, so
 7 we're wasting everybody's time from the State's point of view.
 8 Win or lose we don't get anything from it that we can see.

9 And so I think that's our agreement, and we simply
 10 agree to not offer any of the statements resulting from --
 11 from the arrest. And like I say, the jail stuff we're talking
 12 about, either the statements or the mail, they don't go to law
 13 enforcement, anyway. But I don't want to box myself in by
 14 somehow saying if the arrest was bad, then all the letters
 15 he's written in the jail house are inadmissible, or is some
 16 kind of fruit or anything like that. But that's what I
 17 understand our agreement to be.

18 MR. GOELLER: Yes, sir. We obviously want to
 19 reserve our right. That's a great example. Anything that we
 20 believe may have stemmed from an illegal arrest, such as
 21 anything the Government's gained as a result of him being in
 22 custody, we want to reserve that right down the road to
 23 contest. But with that said, Mr. Schultz has dictated the
 24 agreement accurately to the Court.

25 THE COURT: All right. That's great. So, do

1 just kind of give you a little background. We're still
 2 dealing with the issue of an attack on the validity on the
 3 arrest of the accused, and rather than litigate that issue
 4 which, quite candidly, would be difficult and we might well
 5 lose it anyway, because we recognize a part of that problem,
 6 we believe the only thing that's the result of that arrest
 7 that could be fruit of that arrest is an oral statement made
 8 by the Defendant, which actually isn't in a culpatory nature,
 9 anyway. And so what I believe we -- both sides have agreed is
 10 that we will agree not to offer any statements by the
 11 Defendant to law enforcement at any -- that were ever given
 12 subsequent to his arrest on some Dallas or some misdemeanor
 13 assault warrant.

14 One of the things I didn't contemplate until just
 15 this moment is there are probably a lot of jail house
 16 statements that have been made since his confinement in the
 17 Collin County Jail, and I'm not including that as -- as part
 18 of it, because I think there's a subsequent warrant that might
 19 be attenuates. We'll have to deal with that somewhere way
 20 down the line anyway I think we're going to have to deal with.
 21 And I understand with talking with Mr. Goeller that their main
 22 concern, that's fine, but they don't want to somehow something
 23 emerge later on, and they've limited their objections on the
 24 arrest issue to the statement of the accused only. And I
 25 think we're all in understanding they can -- I think he can

1 we have any more testimony to put on today then at all?

2 MR. GOELLER: No, Judge. I think -- with that
 3 agreement, I think we are probably ready to argue the validity
 4 of the search warrant.

5 THE COURT: All right. Let's see, and I
 6 suppose we've said you had the burden, I suppose. So I
 7 suppose you go first.

8 MR. GOELLER: Okay.

9 THE COURT: All right.

10 MR. GOELLER: Your Honor, in -- introduced for
 11 purpose of the record, I believe, is State's Exhibits 1 and 2,
 12 and those are the affidavits for search warrant; one being
 13 executed on November 7th, or being signed and presented to the
 14 magistrate on November 7th of the year 2000. And the second
 15 one being really the same thing, except that it was done for
 16 purposes of re-entry to, apparently, extract evidence out of a
 17 wall, as I recall.

18 For the record, Your Honor, and the Court, we
 19 believe that this affidavit wholly fails to present probable
 20 cause, and, therefore, we object to the fruits of the search
 21 on both occasions under 38.23 of the Texas Code of Criminal
 22 Procedure, under Article 1, Section 9 of the Texas
 23 Constitution, and Fourth Amendment, Sixth Amendment and
 24 Fourteenth Amendment of the United States Constitution as an
 25 illegal search and seizure.

1 I think what we have here, Your Honor, is a search
2 prior to a search. There is evidence that on November -- I
3 lost track of my days -- November 4th at approximately
4 sometime at eight in the evening, officers from the Dallas
5 Police Department, the testimony is, gained entry to Mr.
6 Cantu's apartment. They've testified that that was at the
7 request of Mrs. Sylvia Cantu. But in any event, we believe
8 that initial entry was illegal.

9 At least -- well, two of the officers, Detective
10 Winn and Officer Junger, both testified that it was a small,
11 one-bedroom apartment. Officer Junger testified that he spent
12 five to ten minutes in that apartment doing what was called a
13 "safety check," in the terms of one officer, and "emergency
14 check" and "emergency search" in Officer Junger's words. I
15 asked both those officers that apartment would fit within the
16 confines of this courtroom. And there's testimony before this
17 Court that this courtroom is approximately 40 by 20 feet. One
18 officer said he wouldn't have a problem with being --
19 estimating the square footage of that apartment between 7 and
20 800 square feet.

21 I would submit to this court that 5 to 10 minutes in
22 that small apartment is not a courtesy check or a safety check
23 or a welfare check, Your Honor. There was a search. I
24 believe it's a reasonable deduction from the evidence that
25 there was a search that took place prior to this warrant.

1 It's interesting in Detective Winn's affidavit. He's
2 very specific. He's looking for a 380 caliber handgun, 380
3 ammunition, clothing containing human blood, spent 380
4 projectile lodged inside the interior wall of the apartment;
5 Rolex watch "To Rico, with love, Carol; man's black leather
6 wallet containing 100 dollars cash and assorted papers and
7 identifications of paragraph 2 in State's Exhibit 1.

8 Detective Winn, I counted at least 4 times said I
9 had no probable cause. I had no facts to believe that these
10 items were in that apartment. I wanted this search warrant to
11 get into that apartment to see if I could find some probable
12 cause. And, Your Honor, I don't -- I think it is so illogical
13 to say I had no suspects in mind. I had no probable cause and
14 hard facts to arrest Ivan Cantu for the murders of anybody. I
15 had no other suspects in mind, yet I want to get into an
16 apartment of Mr. Cantu to look for evidence. It just doesn't
17 make sense, Judge. You can't come in on one hand and say,
18 I've got no probable cause. I've got no facts. He didn't do
19 anything, but I sure want to get in his apartment and find
20 some stuff. This was an exploratory search. He had nothing.

21 If you look at this affidavit, Your Honor, there can
22 be absolutely nothing in here that could lead a reasonable and
23 detached magistrate, even if he's 80 years old, to believe
24 that those items would be found in that apartment. The
25 officer himself told you. I listed those things in paragraph

1 number 2 because they were missing from the home. In my
2 training and experience as a homicide detective, there may be
3 clothes with blood spatter on them. He also told you it was
4 just as likely they were not.

5 I had no probable cause or facts to believe the
6 weapon was located in his apartment. He specifically says a
7 spent 380 projectile lodged inside the interior wall of the
8 apartment. He also told you I had no probable cause, no facts
9 to believe I would find that in there. I had another officer
10 who told me he thought he may have seen a bullet hole, and the
11 court heard enough testimony on that to -- certainly no more
12 probable than not. And if the Court looks at those
13 photographs that were admitted, I think it's 5 and 6 or 3 and
14 4, the photographs of the bullet holes, the Court can look at
15 those and determine that it's no more probable that that is a
16 bullet hole than just some other type of hole caused by some
17 object into the wall of that apartment.

18 What we have in this affidavit for a search warrant
19 is an attempt by a homicide detective, who has nothing, who
20 has no suspects, who has no probable cause to make an arrest,
21 to get into the apartment of Mr. Cantu solely because in this
22 affidavit apparently he lives near there. There's a car in
23 the parking lot, and that's -- I can't find anything else in
24 this affidavit that would lead him to believe that he had
25 enough probable cause to get a search warrant. And again, I

1 I know it's -- I keep going back to the same thing, but if he
2 has no other suspects and he has no probable cause to suspect
3 he killed anybody, how on earth could he get a search warrant
4 to search his apartment? It doesn't make any logical sense at
5 all.

6 I would cite to the Court the Court of Criminal
7 Appeals case -- I know the Court has heard of this -- the
8 Massey case, an affidavit in support of a search warrant must
9 allege substantial facts establishing probable cause to
10 believe the items in question would be found at the identified
11 place. If he said it once, he said it eight times, Judge. I
12 had no probable cause or facts to believe they were in the
13 apartment. I wanted to get in there to see if I could find
14 anything. They were reported missing at the Gibbons Drive and
15 in homicides these things might be found with the perpetrator.

16 So again, I'd object, Your Honor, under Article 9 of
17 the Texas Constitution, and specifically Article 38.23 of the
18 Texas Code of Criminal Procedure, which states "No evidence
19 obtained by an officer or other person in violation of any
20 provision of the Constitution and laws of the State of Texas,
21 or of the Constitution and laws of the United States shall be
22 admitted in evidence against the accused of a trial of any
23 criminal case."

24 I would still submit that the State has not rebutted
25 the fact that this evidentiary search warrant was signed by an

1 authorized, legal officer of the United States -- I mean, of
2 the State of Texas and County of Dallas and City of Dallas.
3 I'd ask the Court to not allow that evidence in on that
4 alone.

5 So what do we have here, Judge? Three searches.
6 Search one -- and the Court is allowed to make reasonable
7 inferences and conclusions from the evidence it hears. I'm
8 just in there looking for bodies or a person. How long,
9 Officer Junger, were you in this 7 to 800 square foot
10 apartment before Mrs. Cantu came in? Five to ten minutes?

11 Judge, first, I thought I was going to take up the
12 Court's time, if you would allow me to sit here for five
13 minutes, and I'd ask the Court to think about going through a
14 7 or 800 square foot apartment for five minutes. I might
15 drive the point home further, but I won't take the Court's
16 time, but we're talking a one bedroom, one living area, a
17 kitchenette and maybe a laundry room to find a body, a live
18 person, five to ten minutes. That's a search? That has got
19 to be a search; yet, in his statement he says no evidence of a
20 crime found. Doesn't put the bullet hole in his statement.
21 Seems like they're trying to piece this together and try to
22 justify how it went down.

23 Then now all of a sudden, you've got search two.
24 Well, funny it's coming after Officer Junger has been in there
25 ten minutes, and then another five to ten minutes while

1 is just a mystery to me. There's no probable cause. And
2 again, I know I'm repeating myself, Judge. But I ask the
3 Court to recall how many times I asked him, you swore that
4 there is a suspected place and premises where these items
5 constituting evidence of a crime are. I said, oh, no, Judge.
6 That's boilerplate. We just fill in the blanks. The way our
7 computer is set up, when you come to the colon, you type in
8 what you want.

9 Isn't it interesting that he testifies he had no
10 idea they were in there -- no probable cause or hard facts to
11 believe they were in there, but he'd like to get in there and
12 see if they're in there. And if you look at the return, lo
13 and behold; keys, clothing, bullets. Wasn't that odd, Judge.
14 Isn't that funny?

15 Based on that -- based on Detective Winn's testimony
16 alone, the Court should conclude that this is an illegal
17 search and seizure, and I'm asking the Court to exclude all
18 the fruits of that illegal search; the first search, the
19 second search and the third search. I think the second and
20 third search, I understand the logic and we don't want to rip
21 into structural integrity of this building. But I think the
22 second and the third search are really one and the same. I
23 think if the Court excluded the evidence on the second one,
24 logically we would be excluding the evidence under the third
25 one. But I'll rest at this point, Judge.

1 Mrs. Cantu is in there.

2 And then we have the third search. The products of
3 the second search that they seek are really coming from the
4 first, and they're all tied and they're all illegal, Judge.

5 I think it's a reasonable deduction from the
6 evidence that Detective Winn knew what was in there perhaps.
7 It's a reasonable deduction from the evidence that Junger and
8 his partner searched that apartment and reported back to
9 Detective Winn, then could simply list them out in this
10 affidavit, and that's exactly what you have, Judge. You've
11 got detective -- or excuse me -- Officer Junger telling you,
12 I'm not sure. I don't think I went back to the Gibbons Drive
13 after that. Now, that does seem odd, doesn't it, if he thinks
14 he saw a bullet hole and is not going to go back and report
15 that? I think I went to a 7-Eleven.

16 But the next morning a sergeant is calling me, and
17 he's asking me what I was doing in there in the first place.
18 I find that bizarre, Your Honor. I think Junger said he had
19 11 -- 7 or 11 years on the force. So you've got a homicide
20 detective asking him -- or sergeant. I can't remember
21 whether it was a homicide detective. Sergeant asked him, what
22 were you doing in there in the first place? They know they
23 got trouble. There's big trouble.

24 And then we get this affidavit, and I would submit
25 to the Court that how this Dallas magistrate signed this thing

1 THE COURT: All right.

2 MS. FALCO: Your Honor, first of all, it's the
3 State's position that the defendant never proved up standing
4 in this case. That's their initial burden. Their initial
5 burden is to prove that they have standing to even complain
6 about the search of Amy Boettcher's apartment. All the
7 evidence shows is that Amy Boettcher was the lessee. She was
8 the only name on the lease. She is the one who was able to
9 change the locks. She was the one that was able to control
10 who went in and out of the apartment. That's the evidence
11 that you heard.

12 You heard no evidence that the Defendant had any
13 expectation of privacy in that apartment, or any relation he
14 had to that apartment would be a reasonable -- that society
15 would observe as a reasonable expectation of privacy, just
16 being the boyfriend of Amy Boettcher, who was the lessee of
17 the apartment. I don't think they proved their standing to
18 complain, and I don't think that we should have to further
19 prove that the search was warranted based on the fact they
20 never proved standing.

21 But just agreeing -- assuming that the standing was
22 not proved, we'll move on to the search warrants, whether or
23 not they were valid. First of all, you have the first search
24 warrant, and the first search warrant was based on a number of
25 facts that Detective Winn used to show probable cause. And

1 first of all, when we're talking about probable cause for a
 2 search warrant is there a fair probability that the items will
 3 be found at that location. It's not whether or not there's
 4 sufficient evidence to arrest the Defendant. It's not
 5 probable cause for an arrest. It's just probable cause for a
 6 search, and there are a number of cases that set out the
 7 standard. Massachusetts versus Upton; United States Supreme
 8 Court case, 466 U.S. 727. The standard on determining whether
 9 or not there's probable cause is looking at the totality of
 10 the circumstances. And that's what you look at, at the
 11 totality of the circumstances for determining probable cause
 12 for the issuance of a search warrant.

13 And in looking at that -- looking at the totality of
 14 the circumstances, what Detective Winn had in front of him at
 15 the time he executed that search warrant, first of all, he had
 16 the fact that the Defendant was related to the victim; that
 17 they were cousins and he knew that. Secondly, he knew that
 18 the -- there was no forced entry into that home, and he
 19 testified that in his seven years of experience as a homicide
 20 detective, when there's no forced entry into the home, all of
 21 the homicides he saw had been somebody that knew the victim.

22 Thirdly, you have the Defendant's mother, Sylvia
 23 Cantu, who's very worried about her son's absence. The
 24 victim, his cousin, has been killed and she can't get ahold of
 25 her son, the Defendant.

1 Fourthly, you have the fact there's not just a car
 2 parked by the Defendant's apartment. It's the car of the
 3 victim. It's the Corvette that's missing from the crime
 4 scene, and it's parked outside the Defendant's apartment.

5 Fifthly, Detective Winn had heard the story that the
 6 Defendant gave to Carlos Gonzalez putting him in the Corvette,
 7 saying why he had the Corvette, that he was in possession of
 8 the Corvette, and that the Corvette was parked outside of his
 9 apartment, which was a gated community. That gives him
 10 knowledge of the material, or the matter at hand, and
 11 knowledge of missing items from the victim from the crime
 12 scene's house. That adds to the probability that there would
 13 be more evidence of the crime found inside the Defendant's
 14 apartment.

15 You also have the bullet hole -- the bullet hole
 16 inside the Defendant's apartment. And as far as that goes --
 17 as far as whether or not that was an illegal search, as
 18 Mr. Goeller claims, the officer went in there solely for the
 19 reason of determining whether or not the Defendant was dead or
 20 alive, solely as an emergency search, as he called it, and
 21 only at the insistence of Mrs. Cantu.

22 The community caretaker function of the police was
 23 set out in *Katy versus Dombrosky*, United States Supreme Court,
 24 413, U.S. 433. And in that case and other cases that follow
 25 that, it says, "Both the Supreme Court and the Court of

1 Criminal Appeals have recognized that police, because of their
 2 sizable function to protect or preserve life, or prevent
 3 serious injury, may make a warrantless entry into a home when
 4 they reasonably believe that a person within is in need of
 5 immediate aid."

6 And it also quotes *Minzy versus Arizona*. Clearly
 7 the police, as part of their function, if somebody is
 8 distressed, if there might be a possibility someone is in need
 9 of their help, they can make that warrantless entry into the
 10 home. And in *Herber versus State*, which is the Court of
 11 Appeals, Fifth District for Dallas, the court applied or
 12 extended the community caretaking function to a home saying
 13 that the community caretaker function can take you into a
 14 home. You can do a warrantless entry into a home if you
 15 reasonably believe that a person is within immediate -- within
 16 need of immediate aid.

17 It goes on to say that, "Texas lower appellate
 18 courts have little hesitation in embracing the community
 19 caretaker function and characterize it as a body embodying the
 20 societal desire that police provide assistance to citizens in
 21 need."

22 Mrs. Cantu was in need that night. She was
 23 frantic. She couldn't find her son. She tried on numerous
 24 occasions to call him. They tried calling him and knocking on
 25 his door at that time. Then went in purely for the sole

1 reason to determine if he was dead or alive. The officer
 2 walked in, saw no bodies, and on his way out he saw the bullet
 3 hole.

4 And there was nothing -- no evidence gained or
 5 seized as a result of that search, as Mr. Goeller called it.
 6 That's not when they obtained any evidence. He didn't observe
 7 any evidence. He wasn't looking for any evidence. He stated
 8 at that time he didn't even know Mr. Cantu was a suspect. All
 9 he knew is he had a worried mother concerned about her son,
 10 and the only reason he noticed a bullet hole is because it's
 11 eye level by the front door, and he noticed it on the way out
 12 the door. There were no items seized as a result of that
 13 entry.

14 Additionally you have, as well as them being
 15 related, you have the fact that they're business partners.
 16 You have the fact that this was a homicide. Detective Winn
 17 knew it was a homicide by a gunshot. He found 380 shotgun
 18 shells. He knew there was a gun involved, and there was a gun
 19 not found at the crime scene, and when he received the
 20 information on Officer Junger's entry into the Defendant's
 21 home of the bullet hole, that bullet hole, associated with the
 22 homicide regarding the gun, additionally adds to the probable
 23 cause to go into the house; that there's a probability that
 24 there will be more evidence of the crime inside that
 25 apartment.

1 If you look at the totality of the circumstances,
 2 you look at all of those circumstances taken together, that's
 3 sufficient to show the officer had probable cause in entering
 4 the home. Furthermore, case law regarding probable cause to
 5 search; United States versus Fentreska. the court held, "The
 6 term probable cause means less than evidence which was
 7 justified condemnation." The court held that the affidavit in
 8 this case, if read in the common sense way rather than
 9 technically, showed ample facts to establish probable cause
 10 and allow the issue of the warrant.

11 It's not a technical standard. It's not a standard
 12 that you have to meet all these things. It's totality of the
 13 circumstances looked at in a common sense evaluation.

14 Again, United States versus Woolery, the court says
 15 in looking at probable cause for a search warrant, "In dealing
 16 with probable cause, the court deals with probabilities.
 17 These are not technical considerations, but rather factual and
 18 practical ones of everyday life on which reasonable and
 19 prudent persons, not legal technicians act. A showing of
 20 probable cause requires far less evidence than that sufficient
 21 to support a conviction."

22 When Mr. Goeller goes on about there's not facts to
 23 show Mr. Cantu committed the offense, that's not what we're
 24 talking about. We're talking about is there a probability
 25 that evidence of the crime can be found in that apartment.

1 purpose that an officer goes to say get a search warrant. A
 2 magistrate has looked at it and agreed that there is probably
 3 cause, and, therefore, there should be great deference given
 4 to these probable cause search warrants and evidentiary search
 5 warrants.

6 And with regard to Mr. Goeller's argument as far as
 7 that when they went on the emergency search to look to see
 8 whether or not Mr. Cantu was in there, whether or not he was
 9 dead or alive, Mr. Goeller makes the argument, well, they were
 10 in there five or ten minutes. That's ridiculous. Obviously,
 11 they were looking for evidence. The officer told you they
 12 weren't in there looking for evidence. It doesn't matter how
 13 long they were in there. They were just looking for a body.
 14 They didn't find a body, and they didn't seize any evidence.
 15 They didn't find any evidence, and nothing resulted from that
 16 search, other than on his way out the door -- doesn't matter
 17 how long he was in there, because even if he was in there for
 18 two seconds, on his way out the door, that's when he sees the
 19 bullet hole. Nothing else was obtained from that entry into
 20 the home; therefore, there's nothing wrong with that entry.

21 There's nothing unlawful about that entry. There's nothing to
 22 be suppressed from that entry, because regardless of the
 23 amount of time, they were in there looking through that
 24 apartment. He saw that bullet hole on his way out the door.

25 Based on all of the facts that you have in front of

1 Based on all the evidence you have in front of you, the
 2 totality of the evidence, there is definitely sufficient
 3 evidence, based on that warrant, to get in the house.

4 Furthermore, with regard to the second search
 5 warrant, the warrant used to retrieve the bullet out of the
 6 wall. Obviously, you heard that they were not able to get the
 7 bullet out on the first warrant without causing structural
 8 damage to the house; therefore, requiring a second search
 9 warrant. And not only did they use all the totality of the
 10 circumstances they had from the initial search warrant, but
 11 once they went in on the initial search, found evidence of the
 12 crime. They went back on the second search to retrieve the
 13 bullet.

14 And, furthermore, with regard to the second search
 15 warrant, you also have the argument that it was consensual.
 16 You heard Detective Winn say, by that point he had talked to
 17 Amy Boettcher. She knew they were going back in the
 18 apartment, and she coordinated her going back into that
 19 apartment with them. She wanted them to be with her to go in
 20 that apartment. She allowed them to go in the apartment
 21 knowing they were going to conduct a search. So, therefore,
 22 that second search was consensual.

23 And when you're looking at these search warrants,
 24 there's to be deference given to the magistrate. There's
 25 deference to be given the search warrants because that is the

1 you, first of all, they did not prove standing; therefore, we
 2 should never even move on to the issue of probable cause in
 3 the search warrant. They did not prove standing, assuming
 4 even that they did, the search warrants are valid. They're
 5 facially valid. They've been proven to be valid, and they've
 6 not rebutted that presumption or validity, and I ask that you
 7 deny the Motion to Suppress.

8 THE COURT: Do you have a final word?

9 MR. GOELLER: If I could ask leave of court,
 10 Mr. High would like to complete it.

11 THE COURT: All right.

12 MR. HIGH: Thank you Judge.

13 Please the Court, if I could have a copy of the Katy
 14 case. It's been since law school probably since I read it.

15 All right, Judge, I haven't had an opportunity to
 16 read the cases to reply as thoroughly --

17 THE COURT: I've read all of them. They were
 18 cited by both sides yesterday, so I've read them all.

19 MR. HIGH: From what I can tell, the Katy case
 20 involves search of a vehicle, so it's somewhat
 21 distinguishable. It's a murder case that the weapon was found
 22 in the vehicle. I don't know that that really applies to what
 23 we're talking about here in the apartment.

24 This case they're addressing here. Herber versus
 25 Courts of Appeals of Texas. Fifth District cited at 2000 Texas

1 Appeals, Lexus 53.76 involves an apartment complex where a
 2 party is going on. And the sentence right before, McNeery,
 3 835 S.W. 2d at 107 says, "While a variety of circumstances may
 4 cause a warrantless entry by police into a home to be
 5 reasonable, the situations where this occurs usually include
 6 factors pointing to some danger to the officer or victims;
 7 1.) an increased likelihood of apprehending a suspect; 2.)
 8 where the possible destruction of evidence."

9 Now, I don't believe any of those situations apply
 10 in our situation, the community caretaking exception. I don't
 11 believe that we have a situation where we have danger to an
 12 officer, unless he's created it himself or a victim. We don't
 13 know of a victim later that evening in that apartment. We
 14 don't know of an increased likelihood of apprehending a
 15 suspect because we think the suspected, or at least in Winn's
 16 mind, was in Arkansas at the time or the possible destruction
 17 of evidence.

18 We don't have any idea -- we don't even hear any
 19 noise inside the apartment. So, I don't believe the community
 20 caretaking exception applies. Now, what I'd like to point out
 21 and I'd like to make it clear what we're arguing here, what
 22 we're arguing is that the police saw an opportunity to go in
 23 to this man's apartment when his mother wanted to go check on
 24 him and try to find out where he was, they seized that
 25 opportunity and followed her over to that apartment, and

1 obtained a key and went into his apartment and looked around.

2 Now, five to ten minutes is an awfully long time in
 3 a 700 square foot apartment. To go in and look for a live
 4 body, or even a dead body, you can get that done in a minute
 5 to minute and a half. It's a reasonable deduction from the
 6 evidence that they used that opportunity to walk around inside
 7 their suspects's house, and they found some things and then
 8 they went and talked and recited what they found to Detective
 9 Winn.

10 I'd like to point out a sentence in -- on page 3 of
 11 the affidavit for search warrant. It's in the first
 12 paragraph -- not the first, full paragraph, but the first
 13 paragraph on the top of page 3. It says -- and I'll give the
 14 Court a little introduction. It says, "Junger noticed just
 15 inside the doorway what appeared to be a bullet hole in the
 16 wall. He asked Mrs. Cantu if her son owned a firearm, to
 17 which she replied she didn't think so. Officer Junger and
 18 Mr. Cantu left and secured the apartment." Here's the
 19 sentence, "Officer Junger personally told the affiant what he
 20 observed at Cantu's -- Mr. Cantu's apartment." I think
 21 there's a whole lot more to that sentence than written in this
 22 affidavit. I would suggest to the Court.

23 MR. SCHULTZ: Your Honor, I'm going to object
 24 to him, first of all, going beyond the four corners of the
 25 search warrant. And, secondly, arguing outside the evidence.

1 There's no evidence, other evidence, that he observed anything
 2 other than a bullet hole. I'd object that that being an
 3 unreasonable inference from the evidence.

4 THE COURT: Overruled.

5 MR. HIGH: Judge, they write these affidavits,
 6 and they put in there -- I'm not there and you're not there.
 7 We don't get a chance to draft them. They draft them, and
 8 they chose the words that they put in here. He chose to say
 9 that Junger personally told him what he observed at Mr.
 10 Cantu's apartment.

11 Now, it's our position that after five to ten
 12 minutes walking around inside the apartment, he's going to
 13 tell him what he found. It's our position that he had a first
 14 preview -- he had a preview of what evidence could be obtained
 15 in that apartment. Then he went and he said, Detective, guess
 16 what I found in the apartment? I found clothing, I found a
 17 Rolex watch. I found a diamond ring. I found things that
 18 will implicate your suspect. I found car keys. Guess what
 19 you need to put in your search warrant affidavit? Put those
 20 things in your affidavit because when the judge gives you the
 21 warrant you can go in, they'll be there.

22 And I think it's awfully curious on page 1 of the
 23 search warrant affidavit that he's detailed boom, boom, boom,
 24 boom the items that he was going to find in the apartment.
 25 How did he know? How could he have known that those items

1 would have been in Mr. Cantu's apartment unless somebody told
 2 him? That's our position.

3 It's a logical argument. It's reasonable based on
 4 the evidence, and it's unfair. If the courts say that you
 5 have to have a warrant to search somebody's apartment, then do
 6 you get a preview? Can you go in there and walk around and do
 7 all the searching you want to and later come back and get the
 8 warrant.

9 It would be our position -- what would have been the
 10 right way to do this? He could have walked around and looked
 11 for a body. If he was suspicious at that point, he should
 12 have secured the apartment right then and there, and they
 13 could have gotten the warrant and come back within an hour,
 14 two hours, however long it took. But, no, he took his ten
 15 minutes, and then he went over and talked with Junger. It's
 16 patently unfair.

17 Also, I want to point out in that same paragraph
 18 they didn't know at the time Junger is walking around inside
 19 the apartment, he didn't know about the Corvette, because if
 20 you look further it says, at approximately 3 a.m. on November
 21 the 5th, the next day, in the wee hours of the morning, after
 22 midnight 1, 2, 3 in the morning, they see that Corvette
 23 sitting out there. It says at 3:00, November the 5th, Dallas
 24 Police Officer Russell Sanchez, Badge Number 7096 recovered
 25 Complainant Mosqueda's 2001 Chevy Corvette in the parking lot

1 of Pear Ridge Apartments.

2 Well, they didn't know about that Corvette when they
3 went in the first time. When Junger went in the first time,
4 he didn't know about that Corvette. Neither did Winn. It
5 wasn't until after he came out, had this conversation with
6 Winn, they got real interested in that apartment all the
7 sudden, they send some squad cars, and they find this
8 Corvette. Hey, we've got something now. I know what's in the
9 apartment. I've got the Corvette right outside. It's going
10 to be a whole lot easier now for me to draft this affidavit
11 and convince the judge to give me a warrant. My case is
12 done. Real easy. Real easy when you get a first look.

13 With respect to standing, I don't think -- I don't
14 think there's any question. I don't even think there's any
15 question on -- with respect to Detective Winn because he gives
16 you what you need. In paragraph 3 of page 1 of the affidavit
17 he said, "The suspected place and premises are in charge of
18 and controlled by Ivan Abner Cantu." Well, it's sworn
19 testimony by a police officer, by your securing -- searching
20 officer that Ivan Cantu lived there, and he had charge of the
21 premises. How can they argue standing their own officer says
22 he's got it.

23 Well, I know I beat a dead horse, but I want the
24 Court to understand at least our position is that the first
25 search really took place with Junger. The second search took

1 place with respect to the search warrant with respect to
2 Detective Winn, and the third search took place with the
3 bullet hole. Accordingly, we believe we've shown good grounds
4 why the Court should grant our Motion to Suppress this
5 evidence acquired by this unlawful and unfair search.

6 THE COURT: Thank you, Mr. High. All right.

7 As I said, the Court has read all the cases that
8 were cited by both sides, and I'll find the Defendant does
9 have standing to question the search here. I'll also find
10 that the police were justified in entering the apartment with
11 Mrs. Cantu, and that their entry was made at the urging of
12 Mrs. Cantu and that that entry comes from the community care
13 exception.

14 The Court will also find that the subsequent
15 searches of the apartment were made with ample probable cause.
16 and accordingly the Motion to Suppress is denied. All right.

17 MR. GOELLER: Judge, would the Court be in a
18 position some time in the near future to make written findings
19 of fact and conclusions of law?

20 MR. SCHULTZ: We'd object to that. There's no
21 requirement or even wisdom in doing that. Frankly, you can
22 make your ruling based solely upon all evidence presented to
23 you. The only requirement for findings of fact relate to
24 confession-type findings because there's a specific statute on
25 it. I guess you're going to do what you're going to do, but I

1 can't see why you'd want to make findings of facts based on
2 they're really not required. It just creates appellate
3 problems that are unnecessary under the law. There's no
4 reason to make it.

5 It's not civil rules where they have a right to
6 findings of facts. Obviously, what they want is for you to
7 make some findings of fact, and then maybe find one that they
8 can convince somebody you're wrong on. You don't have to do
9 that because any basis in the evidence will support your
10 ruling.

11 THE COURT: Let me tell you, I said what I did
12 with referring to denying the Motion to Suppress because I did
13 want to be clear why I was doing what I was doing, and that's
14 as far as I'll go.

15 MR. GOELLER: Yes, sir.

16 THE COURT: All right. What else do we have?

17 MR. HIGH: Excuse me, Judge, is our request
18 denied?

19 THE COURT: Yes.

20 MR. HIGH: Thank you, Judge.

21 MR. GOELLER: Your Honor, there are probably
22 three motions that I'd ask the Court to take up at this time.
23 One of them we probably have an agreement. I put those in
24 front of one of the Court's file.

25 THE COURT: The Motion in Limine?

1 MR. GOELLER: Yes, sir. If I could address the
2 Motion for Equal Access to Background Information.

3 THE COURT: I've got that in front of me.
4 Motion for Equal Access.

5 MR. GOELLER: Yes, Your Honor.

6 THE COURT: All right.

7 MR. GOELLER: The gist of my motion is the
8 State has access to TCIC/NCIC information that they would
9 routinely run on all prospective jurors. We've reached an
10 agreement -- that on the day of -- and correct me if I'm
11 wrong, Jami, Gail or Bill -- on the day of that individual
12 juror coming before the Court, the State will share with me
13 any negative information that they've gained from the access
14 of the state criminal history and the federal criminal history
15 data banks.

16 MS. FALCO: That's correct. Your Honor.

17 MR. GOELLER: So with that I'd ask the Court to
18 grant that motion, with that understanding in mind.

19 THE COURT: I'll approve the agreements of the
20 parties.

21 MR. GOELLER: Thank you, Judge.

22 Judge. the next motion that I filed was a Motion in
23 Limine. character of complainants and the victims impact
24 testimony. I'm sure the Court is familiar with the Booth case
25 and the South Carolina case. Gathers, and the Moseley case.

1 Judge, I filed this motion because I think Moseley is wrong.
 2 I think the Court of Criminal Appeals was just flat wrong in
 3 1998 on Moseley.

4 Victim-related evidence, Your Honor, is irrelevant
 5 to any of the special issues that are in 37.07 (1) in the Code
 6 of Criminal Procedures. And as such, under our capital
 7 punishment scheme, Your Honor, with no burden of proof really
 8 on mitigation and no review of mitigation verdicts without any
 9 burdens or quantum drafted into the codes, I think the
 10 admission of this evidence violates my client's Eighth
 11 Amendment Constitutional rights. And I'd ask for the Court to
 12 declare that victim impact testimony and character evidence
 13 testimony -- or character of the complainant/victim's
 14 testimony not be allowed in the trial of this case.

15 And the two cases that I cited on the first page of
 16 that motion, Judge, Supreme Court has held that "Evidence
 17 which emphasize the personal qualities of the victim, the
 18 emotional impact of the crime on the family of the victim and
 19 the family members' opinions and characteristics of the crime
 20 was irrelevant to the capital sentencing decision and created
 21 constitution and acceptable risk that the jury would impose
 22 the death penalty in an arbitrary and capricious manner."
 23 And, granted, that's a 1987 case out of the U.S. Supreme
 24 Court.

25 In the Gathers case, which is a 1989 Supreme Court

1 case, the Supreme Court agreed that "The trial court committed
 2 reversible error in placing before the jury personal
 3 characteristics of the victim which were irrelevant to the
 4 circumstances of the crime," and (inaudible) case and so
 5 forth.

6 But anyhow, I'd ask the Court to grant that motion.
 7 I think allowing -- if we look at the special issues that
 8 we'll deal with in this case, Your Honor, probability of
 9 future acts of criminal violence and personal morale
 10 culpability, the facts, circumstances of the crime, what does
 11 victim impact -- character of the victim really have to do
 12 with those special issues? I think the potential there is
 13 that a jury would look at those special issues and assign to
 14 those special issues characteristics which is not -- that are
 15 not delineated in 37.07 (1). I think that the potential for
 16 undue harm and prejudice against an accused greatly outweighs
 17 any potential factor, or any probative value. And again, my
 18 argument, I guess, is kind of circular because there is no
 19 probative value in victim character impact on those special
 20 issues.

21 There is a mechanism, Your Honor, where the
 22 victim -- victim impact testimony can come in after a verdict
 23 or the victims can come in and dictate into the record their
 24 feelings, whatever the verdict may be, and I think that's why
 25 we have that mechanism. But, again, I'd ask the Court to

1 limit that type of evidence because it's not relevant to the
 2 special issues. Thank you, Your Honor.

3 THE COURT: All right.

4 MS. FALCO: Your Honor, even though Mr. Goeller
 5 may disagree that Moseley is wrong, it is the law. And
 6 specifically Moseley versus State sets out that the victim
 7 impact and victim character evidence is admissible at the
 8 punishment stage in rebuttal to mitigation evidence. And
 9 specifically it's rebuttal to mitigation evidence because the
 10 mitigation question asks, "After considering all the evidence
 11 sufficient mitigating circumstances exist to warrant a life
 12 sentence." And Moseley stands for the proposition that
 13 victim impact testimony is part of all the evidence they're to
 14 take into consideration.

15 Furthermore, this theory was endorsed again in a
 16 recent Texas Court of Criminal Appeals decision delivered
 17 December 12th of 2000, Jackson versus State, in which they
 18 said "Victim impact and character evidence of which the
 19 defendant is aware at the time of the offense is necessarily
 20 relevant to the defendant's future dangerousness and moral
 21 culpability." So, it would go to the first special issue, and
 22 especially in this situation where we have a defendant who
 23 killed his own family member. I think that that would have
 24 impact on his future dangerousness as set out by Jackson.

25 Furthermore, Moseley stated that this evidence is

1 admissible and it's relevant because victim evidence humanizes
 2 the victim. Furthermore, there's several cases that state
 3 what evidence is admissible in a capital murder trial in the
 4 punishment phase where it talks about survivors' testimony
 5 about injuries and aftermath of crime, and decedent's family
 6 members' testimony about the impact of crime. That's Ford
 7 versus State, Texas Court of Criminal Appeals.

8 In Griffith versus State, Texas Court of Criminal
 9 Appeals, 1998; brother's testimony on impact of sister's death
 10 on him and how it accelerated the death of his
 11 father was admissible.

12 In McDuff versus State, Texas Court of Criminal
 13 Appeals, 1997. Sister's testimony about her fear after the
 14 offense is admissible in capital murder punishment trial. And
 15 based on the Court of Criminal Appeals continuing endorsement
 16 of victim impact testimony during the punishment phase clearly
 17 shows it is relevant, and it is probative to the two issues
 18 that the jury must answer in determining whether or not to
 19 give the defendant a death sentence or a life sentence, and
 20 because of that -- because that is the state of the law we'd
 21 ask that it be admitted.

22 THE COURT: Do you have anything else,
 23 Mr. Goeller, on your Motion in Limine?

24 MR. GOELLER: I just think they're wrong,
 25 Judge, and I don't mean that in a trifle way. But I really

1 think that kind of evidence in a capital sentencing scheme
 2 just brings about an unacceptable risk that the special issues
 3 would be answered. You know what it does, Judge, what it
 4 really does is places a value on the deceased and that ought
 5 to dictate whether somebody lives or dies, and that's why I
 6 think it's unconstitutional to allow that evidence. If you
 7 had a homeless person that had no family, and there would be
 8 none of this evidence but -- there would be none of this
 9 evidence that -- good character or the victim impact -- may
 10 not have anybody that comes in the courtroom versus -- what
 11 you do is you put jurors in the position of sizing up and
 12 placing a value on the life of the deceased, not focusing,
 13 as all the Supreme Court cases have said since Furman, on the
 14 defendant, and that's my problem with it. It -- it doesn't
 15 focus -- it takes the focus away from the defendant, and if
 16 the issues really become do we kill him because he killed a
 17 banker, a college grad, a doctor, a scientist, or do we kill
 18 him because he killed some homeless person or nobody with any
 19 family? And for that reason I think it's unconstitutional.

20 It's taking those special issues and just really
 21 negating them. It's saying how good a person died. Good
 22 person? Oh, we need to kill you. Grifter, homeless,
 23 prostitute, aw, who cares? We're probably going to give the
 24 death penalty. That's the logic I'm thinking. That's why I
 25 think they're wrong, Judge. But the Court certainly

1 understands my position, and I'd ask the Court to grant my
 2 motion.

3 THE COURT: All right. I'll deny the Motion in
 4 Limine.

5 MR. GOELLER: Finally, Judge, I think the last
 6 motion for the day is I filed a Motion to Quash the Indictment
 7 and declare the Texas death penalty statute and the laws
 8 unconstitutional. I won't read, and I know the Court
 9 certainly does not want me to read this motion, but if the
 10 Court would note and let the record reflect my motion is 18
 11 pages long. I've listed 21 separate paragraphs as to why I
 12 think the Court ought to quash both these indictments, and for
 13 this District Court to declare our Texas death penalty
 14 statutes and laws unconstitutional. And I'd ask the Court to
 15 grant the motion on each and every ground, or any grounds.

16 THE COURT: All right. Anything from the
 17 State?

18 MS. FALCO: Your Honor, clearly, taking into
 19 consideration all the hundreds of cases and the legal
 20 precedent that established the death penalty as
 21 constitutional, and that is the state of the law at this time,
 22 and we'd ask that the Motion to Quash be denied.

23 THE COURT: Well, I tell you what, it's 18
 24 pages long, and I haven't had a chance to look at it, so I'll
 25 take it under advisement.

1 MR. GOELLER: Yes, Your Honor.

2 THE COURT: Is there anything else from either
 3 side?

4 MR. GOELLER: Judge, can I call my client for a
 5 very limited purpose about a juror tomorrow?

6 THE COURT: I tell you what, do you want me to
 7 swear him in?

8 MR. GOELLER: He can sit right there.

9 THE COURT: Raise your right hand, please, and
 10 just remain seated.

11 (Witness sworn by the court.)

12 THE COURT: Put your hand down. Go ahead.

13 Whereby,

14 IVAN ABNER CANTU,
 15 a witness called by the Defense, sworn to testify to the
 16 truth, testified under oath as follows:

17 DIRECT EXAMINATION

18 BY MR. GOELLER:

19 Q. Sir, state your full name.

20 A. **Ivan Abner Cantu.**

21 Q. Mr. Cantu, we've discussed the situation involving
 22 the prospective juror in this case by the name of French who
 23 has written the Court a letter and has expressed concerns
 24 about sitting as a juror in this case due to -- I don't know
 25 how to say this -- reproductive issues between him and his

1 spouse and talked about in the letter emotional problems and
 2 money problems and time problems.

3 We would have the option to have that juror brought
 4 in tomorrow at 3:00 and question him further, or we can agree
 5 with the State to go ahead and excuse that juror considering
 6 the circumstances. Do you -- it's my understanding you agree
 7 to excuse that juror?

8 A. **Absolutely.**

9 Q. Okay, all right.

10 MR. GOELLER: That's all I have, Judge.

11 THE COURT: All right. Say, I will tell you
 12 this, we've got -- I don't know of any other people who have
 13 asked to be excused, but if there are any they'll be showing
 14 up at 9:00 in the morning. And so I guess we need to have
 15 everybody here at 9, including the Defendant in civilian
 16 clothes, and not that anybody who we might interview tomorrow
 17 would have any cause to even look at the Defendant, but I
 18 think it would be a good idea. So, we need to be here at 9 to
 19 do that, if there is anybody else who shows up asking to be
 20 excused.

21 MR. GOELLER: Okay.

22 THE COURT: So, do we have any other matters
 23 before the Court at this time?

24 MS. FALCO: No, Your Honor, other than that we
 25 join Mr. Goeller's agreement on excusing the juror that was

1 set for the hearing tomorrow at 3 p.m.
2 THE COURT: Then, I tell you what, what I'll do
3 then if -- certainly that's fine with me. So I'll just see if
4 I can call Mr. French, because he was scheduled to show up at
5 3, right?

6 MS. FALCO: That's correct.

7 THE COURT: We'll see if we can get ahold of
8 him and tell him not to come in.

9 And I tell you what, I would like to talk to the
10 attorneys in chambers for just a minute if I could after we
11 break, and I don't need but five or ten minutes. But if you
12 can give me five or ten minutes, then we're in recess on this
13 matter until I suppose Tuesday morning -- until tomorrow
14 morning. All right, sir.

15 (End of Volume 4.)
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1 REPORTER'S CERTIFICATE
2 THE STATE OF TEXAS *

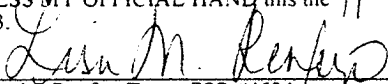
3 COUNTY OF COLLIN *
4

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

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

17 I further certify that the total cost for the
18 preparation of this Reporter's Record is contained in Volume
19 53 and was paid by Collin County.
20

21 WITNESS MY OFFICIAL HAND this the 14th day of
22 January, 2003.

23 
24 Lisa M. Renfro, Texas CSR #4534
25 Official Court Reporter, 380th District Court
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