

THE CANTU CASE: DEATH AND DOUBT

Did Texas execute an innocent man?

Eyewitness says he felt influenced by police to ID the teen as the killer

By LISE OLSEN Copyright 2005, Houston Chronicle

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Texas executed its fifth teenage offender at 22 minutes after midnight on Aug. 24, 1993, after his last request for bubble gum had been refused and his final claim of innocence had been forever silenced.

Ruben Cantu, 17 at the time of his crime, had no previous convictions, but a San Antonio prosecutor had branded him a violent thief, gang member and murderer who ruthlessly shot one victim nine times with a rifle before emptying at least nine more rounds into the only eyewitness — a man who barely survived to testify.

Four days after a Bexar County jury delivered its verdict, Cantu wrote this letter to the residents of San Antonio: "My name is Ruben M. Cantu and I am only 18 years old. I got to the 9th grade and I have been framed in a capital murder case."

A dozen years after his execution, a Houston Chronicle investigation suggests that Cantu, a former special-ed student who grew up in a tough neighborhood on the south side of San Antonio, was likely telling the truth.

Cantu's long-silent co-defendant, David Garza, just 15 when the two boys allegedly committed a murder-robbery together, has signed a sworn affidavit saying he allowed his friend to be falsely accused, though Cantu wasn't with him the night of the killing.

And the lone eyewitness, the man who survived the shooting, has recanted. He told the Chronicle he's sure that the person who shot him was not Cantu, but he felt pressured by police to identify the boy as the killer. Juan Moreno, an illegal immigrant at the time of the shooting, said his damning in-court identification was based on his fear of authorities and police interest in Cantu.

Cantu "was innocent. It was a case of an innocent person being killed," Moreno said.

These men, whose lives are united by nothing more than a single act of violence on Nov. 8, 1984, both claim that Texas executed the wrong man. Both believe they could have saved Cantu if they had had the courage to tell the truth before he died at 26.

Second thoughts

Presented with these statements, as well as information from hundreds of pages of court and police documents gathered by the Chronicle that cast doubt on the case, key players in Cantu's death — including the judge, prosecutor, head juror and defense attorney — now acknowledge that his conviction seems to have been built on omissions and lies.

"We did the best we could with the information we had, but with a little extra work, a little extra effort, maybe we'd have gotten the right information," said Miriam Ward, forewoman of the jury that convicted Cantu. "The bottom line is, an innocent person was put to death for it. We all have our finger in that."

Sam Millsap Jr., the former Bexar County district attorney who made the decision to charge Cantu with capital murder, says he never should have sought the death penalty in a case based on the testimony of an eyewitness who identified Cantu only after police officers showed him Cantu's photo three separate times.

"It's so questionable. There are so many places where it could break down," said Millsap, now in private practice. "We have a system that permits people to be convicted based on evidence that could be wrong because it's mistaken or because it's corrupt."

No physical evidence

The Chronicle found other problems with Cantu's case as well. Police reports have unexplained omissions and irregularities. Witnesses who could have provided an alibi for Cantu that night were never interviewed. And no physical evidence — not even a fingerprint or a bullet — tied Cantu to the crime.

Worse, some think Cantu's arrest was instigated by police officers because Cantu shot and wounded an off-duty officer during an unrelated bar fight. That case against Cantu was dropped in part because officers overreacted and apparently tainted the evidence, according to records and interviews.

During eight years on death row, Cantu repeatedly insisted he was innocent of murder. In 1987, he wrote to the Board of Pardons and Paroles, saying: "I was tried and convicted on bogus evidence."

But on the day he finally was strapped to a gurney and readied for a lethal injection, Cantu said nothing as his attorney watched him die through a special one-way viewing window.

Outside the prison gates, his mother, Aurelia Cantu, held a candle in a small crowd of protesters: "He's resting now, he's free. But he should not have been here in the first place."

That night, in another Texas prison, his old friend and convicted accomplice, Garza, listened to news reports of the execution on a radio in his cell and wept for things left unsaid.

"Part of me died when he died," Garza said in an interview with the Chronicle. "You've got a 17-year-old who went to his grave for something he did not do. Texas murdered an innocent person."

That same day, at his small home on a street near the railroad tracks in east San Antonio, the surviving eyewitness got a phone call telling him that the man he had accused would soon die. But Moreno, a still-scarred robbery victim who barely survived the 1984 attack, felt no relief. Just unsettling guilt.

After the Chronicle showed her new statements about the Cantu case, jury forewoman Ward, who still lives in the suburbs of San Antonio, said she also is disturbed by her part in his fate: "When the pieces come together in the wrong way, disaster happens. That's not the way our legal system is supposed to work. Ruben Cantu deserved better."

Tough part of town

Almost painfully quiet, Cantu grew up as an eager-to-please kid who often watched TV until well after midnight and sucked his thumb far longer than other children.

His mother had married a man 24 years her senior when she was only 13. Ruben was the fourth of five children born to Aurelia and Fidencio "Fred" Cantu.

Aurelia raised her boys and a daughter mostly alone while her husband worked long hours as a maintenance man at Market Square, a popular tourist attraction. By the time Ruben turned 14, his mother left her husband and moved 30 miles away to Floresville, a sleepy, mostly Mexican-American town of 5,000 near her parents' rancho.

His mother asked Ruben to come along, but he chose to stay with his father in his tiny trailer park on Briggs Street in the ragged southern fringe of the city, a place where drug dealers, smugglers, fences and thieves lived and worked in houses pockmarked with bullet holes. But while his father worked, often long hours into the night, Cantu was skipping school and learning different lessons on the street.

Bad reputation

Cantu's south San Antonio neighborhood was controlled by the so-called Grey Eagles, the tough kids who roamed it and relentlessly guarded its boundaries. Though small for his age and slow in school, Cantu became one of the leaders. He began sampling the drugs readily available through neighborhood dealers and stole cars for joy rides.

By the time he turned 15, he was recruited into an auto-theft ring. Sometimes he disappeared for days, driving hot cars and pickups to the border and coming back with \$2,000 or \$3,000 in cash. Surrounded by grinding poverty, Cantu could spend all he wanted on video games, movies and drugs.

He learned quickly to avoid the San Antonio police, a force that in some of its darkest days in the 1980s was plagued by scandals related to drug-dealing officers and vigilantes who took justice into their own hands.

Cantu grew up believing that no police officer could be trusted. Already a quiet child, he quickly mastered the neighborhood code of silence: You never ratted on anyone — no matter the cost to yourself. Cantu practiced this art to an extreme. His silence, even in a neighborhood known for its secrets, remains a local legend.

Neighborhood officers knew and disliked Cantu, and they had arrested his older brothers on drug and theft charges. But they had never successfully pinned a crime on Cantu.

It was against this backdrop of mutual suspicion that Cantu soon emerged as a leading suspect after a violent murder and robbery occurred on Briggs Street on Nov. 8, 1984.

That night, Juan Moreno, a skinny, hard-working teenager fresh from a Mexican rancho in Zacatecas, was camping out in a house almost directly across the street from Cantu's trailer.

Moreno and his friend, Pedro Gomez, had eaten dinner and gone to sleep inside the virtually empty brick house they were helping to build for Moreno's brother and his wife. They were guarding it because burglars recently had stolen a water heater.

Inside the shell of a house, there was a pair of mattresses on the floor in the front room. The only water was stored in empty beer cans. The only light came from the bare 75-watt bulb of a single lamp powered by an extension cord connected to a neighbor's outlet. Both men, Moreno, 19, and Gomez, 25, worked construction and were paid in cash. That night, they slept in their clothes with wallets containing a total of about \$1,000.

Suddenly, both awoke to the lone light being switched on by a pair of Latino teenagers; the older of the two carried a .22-caliber rifle. They demanded money, and Gomez, the father of three little girls back in Mexico, handed over his wallet with \$600 inside. Then he turned over the mattress, and reached toward a .38-caliber revolver hidden in rags.

The older teen opened fire, shooting nine times at Gomez, who fell facedown on the floor. Then the teen turned his weapon on Moreno and fired again and again. When Moreno blacked out, the pair fled. Near death, Moreno managed to stumble outside for help.

At 11:58 p.m., a police officer found Moreno bleeding on the seat of a pickup in front of the house. His wallet and his money were untouched. But Moreno could barely speak. The description he gave of his attackers fit almost all of the male teens in the neighborhood: two Mexican-Americans who he thought lived nearby.

Meeting with Moreno

Homicide Detective James Herring, an officer with 15 years on the force, had only that vague description to work with when he was assigned the case. And Herring, who knew no Spanish, needed others to help him speak with Moreno, a Mexican national who had been in the U.S. less than a year.

Herring first attempted to speak to Moreno at Wilford Hall Hospital on Lackland Air Force Base the day after the murder.

But Moreno remained in critical condition on a breathing machine — unable to talk and unable to write because of massive internal injuries. Eventually, he lost a lung, a kidney and part of his stomach.

In another visit six days after the murder, Moreno "could barely talk," Herring wrote in his report. But Moreno gave Herring a few more details on his attackers: two Latin-American males, one 13 or 14 and the other 19. He said he had seen the younger teen around the neighborhood. It wasn't much.

Then a neighborhood beat officer passed along a rumor from the halls of South San Antonio High School, where Cantu was in ninth grade. A shop teacher reported that three kids had been involved in the robbery and murder of Gomez and that students were saying Cantu had done the killing.

Based on that information, Herring and a Spanish-speaking detective returned to Moreno on Dec. 16, 1984. This time, Herring showed Moreno photographs of five Hispanic men, including Cantu.

Moreno, who still trembled from his injuries and showed emotion that the officers interpreted as fear, did not identify Cantu as his attacker. Police records show that Herring made no more reports on the case. Near the end of the year, he received a promotion and transferred out of homicide.

The Gomez murder case appeared closed.

That all changed on March 1, 1985.

After midnight, Cantu was shooting 35-cent pool games at the Scabaroo Lounge, a fluorescent-lit local hangout about a mile from his father's home.

An off-duty police officer who was a stranger to Cantu was playing at another table with a cousin. Officer Joe De La Luz wore two guns under his civilian clothes, according to records.

Cantu also was armed. Both had been drinking, based on court testimony and interviews.

De La Luz later claimed under oath that Cantu shot him four times in a completely unprovoked attack. "I remember a person standing in front of me firing an unknown caliber weapon at me," De La Luz said.

Cantu claimed they argued over the pool game and he fired only after De La Luz showed him a gun in his waistband and threatened him.

Cantu never denied to his friends and his family that he shot De La Luz, though he told them he learned only afterward that De La Luz was a policeman.

Yet Cantu never was convicted of shooting the officer, despite a bar full of witnesses and his own admissions. "There was an overreaction, and some of the evidence may have been tainted. It could not be prosecuted," said former homicide Sgt. Bill Ewell, who oversaw the investigation. Defense attorneys claimed that police illegally searched Cantu's home the night of the shooting.

But Ewell was a friend of De La Luz, the injured officer, and said the attack prompted him to reopen the unsolved Briggs Street murder case in which the only surviving eyewitness had previously failed to identify Cantu. Cantu "shot an officer who worked with me," Ewell told the Chronicle. "It was difficult to get (the witness) to make the identification. We weren't able to get him for the police shooting, but we were able to get him for the murder."

Another visit

For two months, Moreno, recovering at his brother's home, had received no visits or calls from San Antonio police. But on March 2, 1985, Ewell sent a seasoned bilingual homicide detective to show Cantu's photo to Moreno for the second time. In the kitchen of his brother's house, Moreno still did not identify Cantu, though at some point he learned that Cantu had shot a police officer, Santos "Sam" Balleza, the now-retired detective who interviewed Moreno that day, told the Chronicle he doubted that Moreno could have made a reliable identification: It had been dark, he had been afraid for his life, and he had previously declined to identify the same suspect. "It was real tricky to show the same person a photo array more than once," he said. "It would look like you were pressuring them." But the next day, Ewell consulted with De La Luz and then sent out a different bilingual detective to show Cantu's photo to Moreno for the third time. This time, the detective, Edward Quintanilla, brought Moreno, an illegal immigrant, back to the police station and again showed him Cantu's photo along with four other mug shots. The officer's report indicates that this time Moreno picked out Cantu, then signed and dated the back of the photo. But the photo submitted into evidence at trial was not dated on the back, according to a trial transcript. Nor does Moreno recall that anyone translated for him a statement in English that identifies Cantu as his attacker and bears his signature.

Was he pressured?

Quintanilla, the detective who questioned Moreno on March 3 and obtained the identification, could not be reached for comment. A San Antonio police spokesman said department policy does not allow officers to discuss old closed cases. Balleza, who worked with Quintanilla in homicide, called the longtime officer a straight shooter. Both he and Quintanilla later testified that they thought Moreno had been afraid to identify Cantu. At the time, Ewell was a seasoned senior officer who had recently been promoted to lead the homicide division. Ewell, who is now retired from the department, told the Chronicle, "I'm confident the right people were prosecuted." Moreno said he felt compelled to do what the officers wanted, even though he knew it was wrong. "The police were sure it was (Cantu) because he had hurt a police officer," Moreno said in a recent interview. "They told me they were certain it was him, and that's why I testified. ... That was bad to blame someone that was not there."

Emotional testimony

Bruce Baxter, the prosecutor who handled Gomez's murder case, said he could believe that Moreno lied under the circumstances. However, Baxter, now an attorney in Washington state, said he privately interviewed Moreno before the trial in 1985 to try to determine whether he had made the ID just to please police. At the time, Baxter said he believed Moreno was sincere. Baxter's entire case depended on it because there were no confessions, no murder weapon and no fingerprints for him to use against Cantu. Garza, the 15-year-old arrested as Cantu's accomplice, had refused to implicate Cantu even to help himself. What Baxter had was a one-witness case against a teenager. But Baxter also knew, just as the defense attorneys feared, that the word of Moreno, then a 19-year-old who had been badly injured, could sway a jury. In both a pretrial hearing and during the trial, Moreno testified over and over that Cantu had shot him and killed his friend. "Do you see in the courtroom the man who poked you with the rifle and woke you up?" "Yes." "And where is that person?" "That is Ruben Cantu." "Who shot you?" "Ruben." His emotional testimony in Spanish about how he watched his friend get killed and nearly died himself was the key evidence presented against Cantu during the guilt phase of the July 1985 trial.

'I have been framed'

Defense attorney Andrew Carruthers, an experienced lawyer though he had never before handled a death case, tried to discredit the identification without attacking Moreno, who was a sympathetic witness. "I'm not saying Juan Moreno is lying; I'm saying that he did not get a good look at who shot him. He didn't get a good look at them, and the police tried to substitute their opinion for his," argued Carruthers, now a Bexar County magistrate. But it was Moreno's damning words that resonated with jurors. They found Cantu guilty. Then in the punishment phase of the trial, prosecutors presented another star witness — De La Luz, the officer shot by Cantu three months after the Gomez murder. Without that bar shooting, prosecutors would have been left to try to argue for death based on street rumors about Cantu's gang activities and a pending marijuana-possession charge. But De La Luz testified that Cantu had shot him without provocation. It was all that the jurors really needed to convince them that Cantu, though still a teenager, was so dangerous that he should be put to death. Cantu's attorneys did not want him to testify, and so Cantu, as had been his custom nearly all of his life, sat silently before his accusers. He wept only after prosecutors asked the jury to sentence him to die. Days later, he wrote the letter that he addressed to the "Citizens of San Antonio." "I have been framed in a capital murder case. I was framed because I shot an off-duty police officer named Joe De La Luz." For years, defense attorneys who handled Cantu's appeals attacked the reliability of Moreno's identification, insisting that police inappropriately influenced him. On the first round of appeals, even the Texas Court of Criminal Appeals ruled that the identification process was improperly suggestive, though the court upheld the in-trial identification and did not overturn Cantu's conviction. "In the abstract the process of showing Juan several arrays on different occasions, all containing the appellant's photograph is a suggestive procedure. Such procedure tends to highlight a particular defendant since the witness sees the same face repeatedly. Such recurrence of one particular face might suggest to the witness that the police think the defendant is the culprit," a February 1987 opinion read. But none of the defense attorneys who represented Cantu during his appeals ever attempted to find Moreno, who they assumed had returned to Mexico.

Still feeling pain

Moreno had moved on — but only to another neighborhood in San Antonio.

In two decades, his life has morphed from that of a traumatized newly arrived Mexican teenager into that of an independent Texas contractor, husband and father of a teenager of his own. Moreno now insists a Hispanic teen with very curly hair shot him. Police never showed him a photo of that man, he said. Moreno said police never threatened him but influenced him in subtle ways.

In his heart, though, he always knew what he was doing was "bad," he said. His wife, Anabel, who met and married him years after the attack, said that when she asked about his scars, he always told her that the wrong man had been sent to death row.

Moreno did not know Cantu or his family before the time of the murder trial in 1985. In the years after the attack, Moreno said, he has had no contact with them or anyone connected with the case. He said he thinks that someone from Cantu's family tried to telephone him around the time of the 1993 execution, but he was not at home.

Moreno says he has nothing to gain by talking about the attack. The horror of the night that he watched his friend Gomez die facedown in a pool of blood has not left him. He still feels pain from his own injuries. Despite that, he said, he is no longer afraid to speak because he wants people to know the truth about Cantu.

"I'm sure it wasn't him," Moreno said. "It was a case where the wrong person was executed."

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