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⚖ Vol. 19, No. 13, April 4, 2011

Case Name: **Genovevo Salinas v. The State of Texas**

- OFFENSE: Murder
- COUNTY: Harris
- C/A CASE No. 14-09-0395-CR
- DATE OF OPINION: March 17, 2011
- DISPOSITION: Conviction Affirmed OPINION: [Brown, J.](#)
- TRIAL COURT: 230th D/C; Hon. Belinda Hill
- LAWYERS: [Neal Davis](#) (Defense); [Carol Cameron](#) (State)

⚖ **124 Right to Counsel / Ineffective Assistance of Counsel (Failure to Object to Improper Testimony)**: Appellant complains that his trial counsel failed to object when a State's witness (Sergeant Elliott) opined that Appellant was "deceptive and lying." Appellant argues this testimony was an inadmissible opinion of his truthfulness, and that trial counsel's failure to object prejudiced his defense.

Holding: Presuming without deciding that counsel's failure to object to this testimony would satisfy the first prong of **Strickland**, Appellant's ineffective-assistance claim still fails because the second **Strickland** prong is not satisfied. [Appellant] has not shown a reasonable probability that, but for counsel's presumptively deficient performance, the result of the trial would have been different.

⚖ **42 Confessions & Self-Incrimination / Right to Remain Silent (Pre-Arrest Silence)**: Sergeant Elliott testified that Appellant remained silent when asked if ballistics testing on the shotgun his father surrendered to police would match the shell casings found at the murder scene. According to Elliott, Appellant showed "signs of deception" when he failed to respond: looking down at the floor, shuffling his feet, biting his bottom lip, clenching his hands in his lap, and tightening up. Elliott further testified that Appellant answered every question but this one during the nearly hour-long interview. Defense counsel objected to the testimony on the grounds that Appellant had invoked his Fifth Amendment privilege against self-incrimination by remaining silent. The trial court overruled the objection.

Holding: [Appellant] does not argue he was in custody during the interview, and Sergeant Elliott testified [Appellant] was never handcuffed and was free to leave. [Appellant]'s interview is therefore properly categorized as a voluntary encounter with police. **Miranda** warnings, therefore, were neither issued nor required. There was no government compulsion in the pre-arrest, pre-**Miranda** questioning in which [Appellant] voluntarily participated for almost an hour. Accordingly, the Fifth Amendment privilege against self-incrimination was not triggered and did not prevent the State from offering [Appellant]'s failure to answer the question at issue.