



TIBA TEXAS INDEPENDENT BAR ASSOCIATION

Post Office Box 783
Austin, Texas 78767
Tel. 512-354-7823
Fax: 512-532-6282



Web Site: www.texindbar.org

⚖ Vol. 20, No. 17, April 30, 2012

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

- OFFENSE: Murder COUNTY: Harris
- COURT OF APPEALS: Houston [14th]
- C/A CITATION: Unavailable
- C/A RESULT: Conviction Affirmed
- CCA. CASE No. PD-0570-11 DATE OF OPINION: April 25, 2012
- DISPOSITION: Court of Appeals Affirmed
- OPINION: [Womack, J.](#) VOTE: 7-1
- TRIAL COURT: 230th D/C; Hon. Belinda Hill
- LAWYERS: [Neal Davis](#) (Defense); [Carol Cameron](#) (State)

Ed Note: (Background Facts) Police officers discovered two homicide victims, and, after an investigation led to Appellant, he voluntarily accompanied officers to the police station for questioning. For approximately one hour, Appellant answered every question asked. Then, when asked whether shotgun shells found at the crime scene would match a shotgun found at his home, Appellant remained silent, and, according to the interrogating officer, demonstrated signs of deception. A ballistics analysis later matched the shotgun with the casings left at the murder scene. Subsequent investigation led police to a witness who stated that Appellant had admitted murdering the victims. After Appellant was charged with murder, he evaded arrest for nearly 15 years before finally being captured. At Appellant's trial, the State sought to introduce evidence of his silence when he was questioned about the shotgun shells in the interview with the police. Appellant's trial counsel objected to the State's introduction of this evidence, arguing that Appellant could "invoke the Fifth Amendment privilege whether he was in custody or not." The trial court overruled the objection and allowed the evidence to be introduced.

⚖ **42 Confessions & Self-Incrimination / Right to Remain Silent (Pre-Arrest Silence):** On appeal, Appellant argued that admission of the confession violated his rights under the Fifth Amendment. Finding that there was no government compulsion "in the pre-arrest, pre-Miranda questioning in which [Appellant] voluntarily participated for almost an hour," the Court of Appeals held that "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 . . .," and affirmed the conviction (see ⚖, [Vol. 19, No. 13](#); 04/04/2011).

Holding: The State does not violate a defendant's Fifth Amendment rights, however, by cross-examining a defendant as to post-arrest, pre-Miranda silence when a defendant chooses to testify. Furthermore, the Supreme Court has held that prearrest, pre-Miranda silence can be used to impeach a defendant who testifies.

Concurring / Dissenting Opinions: Judge Johnson dissented without note. Judge Meyers did not participate.