Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00058-CR

David Alexander **ZUNIGA**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 226th Judicial District Court, Bexar County, Texas
Trial Court No. 2016CR4390B
Honorable Sid L. Harle, Judge Presiding

Opinion by: Rebeca C. Martinez, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Rebeca C. Martinez, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: February 20, 2019

AFFIRMED

David Alexander Zuniga was convicted by a jury of murder. The sole issue presented on appeal is whether the trial court erred in denying Zuniga's pre-trial motion to suppress. We affirm the trial court's judgment.

BACKGROUND

Zuniga was charged with murdering Jesse Richards on or about December 20, 2015. Zuniga filed a motion to suppress arguing statements he made to law enforcement were illegally obtained.

At the beginning of the hearing on Zuniga's motion, the trial court stated it had already reviewed the recording of Zuniga's interview. Daniel Aragon, a caseworker with the Texas Department of Family and Protective Services, was the first witness called to testify at the hearing. Aragon testified he assisted in transporting Zuniga to a placement in Houston, Texas in the summer of 2015 and was later assigned Zuniga's case file. Aragon testified Zuniga ran away from two or three placements while Aragon was his caseworker and was "back and forth to San Antonio."

On March 21, 2016, Aragon transported Zuniga for placement at the Gulf Coast Trade School (the "School"). Prior to being placed at the School, Zuniga was being detained in the Bexar County Juvenile Detention facility after running away from a placement. Aragon testified the School is a facility where individuals can learn a trade like auto technology and obtain a GED or high school diploma. Aragon stated the School is not locked down but is an open environment in the middle of a national forest. The School does not have security guards, and the students live in cabin dormitories. Aragon testified Zuniga was not being placed at the School because of any criminal matter but because he did not have a home after his mother's parental rights were terminated.

Aragon testified he flew with Zuniga to Houston and then drove a rental car to the School. While they were boarding the flight to Houston, Zuniga showed Aragon a social media feed about Zuniga's brother, Daniel, being arrested. While on the flight, Aragon further reviewed the news report and asked Zuniga some questions about it when they arrived in Houston. Zuniga told Aragon he was in the area and knew his brother planned to rob somebody for rent money. Zuniga also told Aragon he tried to talk his brother out of committing the robbery. Upon returning to San Antonio, Aragon notified his supervisor about the information he obtained from Zuniga and then contacted Detective Ruben Perez on March 23, 2016.

Detective Perez was assigned to investigate Richards's murder. Richards died after being shot at a VIA bus stop on about December 20, 2015. Detective Perez obtained video from VIA that established Richards's arrival time at the bus stop. Detective Perez also obtained video from a restaurant showing two individuals walking in the area who were later identified as Zuniga and Daniel Torres. Detective Perez subsequently interviewed Juan Torres. Juan, Daniel, and Zuniga were brothers. Juan told Detective Perez that Daniel shot Richards and Zuniga was with Daniel at the time of the murder. On February 22, 2016, Detective Perez met with Daniel and discussed the murder with him.

On March 23, 2016, Aragon contacted Detective Perez and told him Zuniga was with Daniel when the shooting occurred. Detective Perez contacted the School and set up an appointment to interview Zuniga. During the investigation, Detective Perez learned Zuniga's date of birth was June 29, 1990. Detective Perez testified Zuniga was seventeen on the date of Richards's murder, and on March 28, 2016, the date Detective Perez interviewed Zuniga.[1]

When Detective Perez and Detective Rachel Barnes arrived at the School, they were escorted to a small conference room in the information center. They were both wearing civilian clothes. Detective Perez testified Zuniga was not the focus of their investigation when they arrived to interview him. Detective Perez stated he believed Zuniga was present at the murder but did not think he was the shooter. Zuniga was not handcuffed or escorted to the room by a guard. Zuniga consented to closing the door to the conference room. Detective Perez testified he would have allowed Zuniga to leave the room if he wanted and advised Zuniga of that fact. Detective Perez also testified he told Zuniga he was not going to take him to jail that day. A copy of the recorded

[1] Zuniga also provided his date of birth during his interview. Because Zuniga was seventeen on the date of the murder and on the date he was questioned, the provisions in the Texas Family Code detailing procedures that must be followed in taking the statement of a child are not applicable. *Ramos v. State*, 961 S.W.2d 637, 638-39 (Tex. App.—San Antonio 1998, no pet.).

interview was admitted into evidence, and the trial court reiterated that it had previously reviewed the recording. Detective Perez testified Zuniga was not arrested after the interview, and the detectives returned to San Antonio.

On cross-examination, Detective Perez testified he was surprised when Zuniga stated he was the shooter, and Zuniga was asked to repeat his story because the detectives wanted to clarify that the story was accurate. Detective Perez stated the detectives thought Zuniga might be covering for his brother Daniel.

The recorded interview lasts approximately one hour and twenty minutes. Throughout the interview, Zuniga freely offered information in long, descriptive narratives. After Zuniga stated he shot Richards, Detective Perez questioned Zuniga about being the shooter because it was inconsistent with Juan's identification of Daniel as the shooter. Zuniga insisted he was the shooter and identified other people he had told about the murder and about him being the shooter. Zuniga then continued to repeat the same story throughout the interview and freely responded to questions offering long, descriptive answers.

At the conclusion of the hearing, the trial court denied the motion to suppress. A jury subsequently found Zuniga guilty of murder and assessed his punishment at life imprisonment. On appeal, Zuniga challenges the trial court's denial of his motion to suppress, asserting he was in custody when he was interviewed and was not given his *Miranda* warnings.

STANDARD OF REVIEW

Statements made by a suspect during a custodial interrogation are inadmissible unless certain warnings were given to the suspect before he made those statements. *Miranda v. Arizona*, 384 U.S. 436, 444-45 (1966). In deciding whether a person is in custody for purposes of applying *Miranda*, "[a]n appellate court both (1) conducts a factual review in examining the circumstances surrounding the interrogation, and (2) makes an ultimate legal determination whether a reasonable

person would not have felt at liberty to leave." *State v. Saenz*, 411 S.W.3d 488, 493 (Tex. Crim. App. 2013) (citing *Thompson v. Keohane*, 516 U.S. 99, 112-13 (1995)). Although we generally review a trial court's ruling on a motion to suppress under a bifurcated standard of review, "'[w]hen the posture of a case does not present issues of pure fact, or of mixed questions of law and fact that turn on credibility or demeanor, and presents only questions of the validity of the trial court's 'legal rulings'—[including a *Miranda* custody determination]—an appellate court's review is *de novo*.'" *Id*. (quoting *State v. Ortiz*, 382 S.W.3d 367, 372 (Tex. Crim. App. 2012)).

DISCUSSION

"A person is in 'custody' only if, under the circumstances, a reasonable person would believe that his freedom of movement was restrained to the degree associated with a formal arrest." *Hines v. State*, 383 S.W.3d 615, 621 (Tex. App.—San Antonio 2012, pet. ref'd) (internal quotation omitted). "The court of criminal appeals has recognized four situations that may constitute custody: (1) when a suspect is physically deprived of his freedom of action in any significant way; (2) when a police officer tells a suspect he cannot leave; (3) when a police officer creates a situation that would lead a reasonable person to believe his freedom of movement has been significantly restricted; and (4) when there is probable cause to arrest and a police officer does not tell a suspect he is free to leave." *Id*. A defendant has the burden to establish he was in custody before the State bears the burden to show compliance with *Miranda*. *Id*.

Zuniga's brief focuses on the fourth situation, asserting probable cause existed to arrest him as soon as he confessed to shooting Richards approximately five minutes into the interview. Zuniga contends that the remainder of the recorded interview was inadmissible because he was not *Mirandized* after the confession. In support of his contention, Zuniga primarily relies on this court's opinion in *Xu v. State*, 100 S.W.3d 408 (Tex. App.—San Antonio 2002, pet. ref'd), and its

reference to a "pivotal admission" for purposes of determining whether a defendant is in custody. Zuniga, however, reads our decision in *Xu* too narrowly.

Although a suspect may implicate himself in an offense, this alone does not trigger custody. *Hodson v. State*, 350 S.W.3d 169, 174 (Tex. App.—San Antonio 2011, pet. ref'd). Even when a suspect's "pivotal admission" is a manifestation of probable cause, such a manifestation is not sufficient to establish the suspect is in custody "unless the manifestation of probable cause combined with other circumstances of the interview . . . would lead a reasonable person to believe that he is under restraint to the degree associated with an arrest." *Saenz*, 411 S.W.3d at 496 (internal quotation omitted). As this court has noted, in addition to considering a suspect's "pivotal admission," this court must also consider: (1) whether the suspect voluntarily arrived at the place of interrogation; (2) the length of the interrogation; (3) whether the suspect was forbidden from seeing family or friends; and (4) how much control was exercised over the suspect. *Hodson*, 350 S.W.3d at 174 (noting suspect was held to be in custody in *Dowthitt v. State*, 931 S.W.2d 244, 254 (Tex. Crim. App. 1996), after suspect made an admission because the court "found other factors indicating police control over the defendant, such as an interrogation lasting over twelve hours, the defendant being escorted to and from the restroom, police officers ignoring his requests to see his wife and ignoring his complaints of exhaustion, and the defendant being denied food"); *see also Xu*, 100 S.W.3d at 414-15 (holding defendant was subject of custodial interrogation following pivotal admission where defendant was in a stressed, distraught emotional state over the death of his wife who was the victim; was born and raised in China and spoke little English; had been at the police station for five hours during which he was not told he was free to leave, was not allowed to speak with his friend, and was provided only one bottle of water and one restroom break; the admission occurred shortly after officers confronted the defendant with evidence that his wife was strangled and told him they did not believe his story).

In this case, Zuniga voluntarily arrived at the conference room at the School where he was questioned. When the interview began, the detectives knew Zuniga was present at the scene of the murder, but also knew Juan identified Daniel as the shooter. The interview lasted only one hour and twenty minutes. Zuniga had the option to leave the door to the conference room open. Zuniga voluntarily provided information to the detectives in long, descriptive narratives, many times without any prompting questions. Although Zuniga admitted he was the shooter five minutes into the interview, the detectives questioned his story based on Juan's statement. Approximately eighteen minutes into the interview, Zuniga was reminded he could end the interview at any time. After the reminder, Zuniga continued repeating his story to the detectives in long narratives. Having reviewed all the applicable factors, we hold no circumstances were present that would lead a reasonable person to believe he was under arrest other than Zuniga's admission to being the shooter. Because the admission alone is insufficient to establish custody independent of any other circumstances, *see Saenz*, 411 S.W.3d at 496; *Hodson*, 350 S.W.3d at 174, the trial court correctly concluded Zuniga was not in custody when he made his statements. Accordingly, the trial court properly denied Zuniga's motion to suppress.

CONCLUSION

The trial court's judgment is affirmed.

Rebeca C. Martinez, Justice

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