

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-09-00200-CR**

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**JAMES CARL STALLINGS, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 410th District Court  
Montgomery County, Texas  
Trial Cause No. 08-09-08943 CR**

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**MEMORANDUM OPINION**

A jury convicted James Carl Stallings of capital murder. In four issues, Stallings contends that the trial court erred by not suppressing a videotape containing his confession. We affirm the trial court's judgment.

**Background**

Gregory Willkomm allowed Stallings to live in a trailer that he owned. On September 27, 2007, Willkomm went to the trailer to mow his grass. Stallings spoke to Willkomm outside and then went inside to join three others who were in the trailer. When Willkomm finished mowing, he entered the trailer and Kasey Kantak, who along with

Joshua Berryhill was in the front of the trailer, told Willkomm that Stallings wanted to talk to him in the back bedroom. Joshua Tarrant and Stallings were waiting in the bedroom. Stallings later told police that Tarrant shot Willkomm. Willkomm was killed by a bullet wound to the back of his neck that severed his upper spine.

After Willkomm had been killed, Stallings and Kantak wrapped Willkomm's body in plastic and a blanket and placed it into Willkomm's truck. Stallings and Kantak dumped Willkomm's body in Harris County and then set it on fire. Stallings, Kantak, Berryhill, and Tarrant were later arrested on charges of capital murder.

Following Stallings's arrest, and while being transported to the sheriff's office, Stallings was advised of his Fifth Amendment rights. After arriving at the station, Detective Bivens again advised Stallings of his rights, and Stallings agreed to speak with Detective Bivens. The admonishments given by Detective Bivens were videotaped. Stallings also placed his initials next to each admonishment on a "Voluntary Statement" form.

For approximately forty-five minutes, Detective Bivens interviewed Stallings. At the same time, but in another room, Detective Wood interviewed Kantak. Kantak was also advised of her rights before her interview. During Kantak's interview, Kantak requested permission to meet with Stallings to attempt to get him to tell the truth. The two detectives discussed Kantak's request, and then brought Stallings into the room where Kantak was being interviewed. At that point, the detectives conducted a joint

interview of Stallings and Kantak. During the joint interview, Stallings confessed that he was in the room with Willkomm when he was killed. Stallings moved to suppress the statements that he made during the joint interview.

During the motion to suppress hearing, Detective Bivens and Detective Wood testified that the joint interview was a continuation of Stallings's individual interview. Stallings was placed in the room for the joint interview approximately five minutes after Kantak requested to speak with Stallings. Detective Bivens and Detective Wood acknowledged that Kantak assisted them in obtaining information from Stallings. Both detectives also asserted that Kantak requested that Stallings tell the truth.

At the conclusion of the suppression hearing, the trial court denied Stallings's request to suppress his videotaped statements that had been obtained during the joint interview. In orally pronounced findings of fact and conclusions of law contained within the appellate record, the trial court concluded that even if it were to assume that Kantak was an agent of the State,<sup>1</sup> the joint interview had been a continuation of Stallings's individual interview. Consequently, the trial court concluded that additional article 38.22 section 2 warnings were not required. *See* TEX. CODE CRIM. PROC. ANN. art. 38.22 § 2 (Vernon 2005); *see also Parr v. State*, 658 S.W.2d 620, 623 (Tex. Crim. App. 1983) (holding that a trial court sufficiently complies with article 38.22 section 6 when the trial

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<sup>1</sup>While the trial court assumed that Kantak was acting as an agent for purposes of its findings, it specifically stated that it was not concluding that Kantak was in fact the State's agent. For purposes of this appeal, we too assume without deciding that Kantak was acting as an agent for the State.

court dictates its finding of fact and conclusions of law and those findings are transcribed and made a part of the record without objection); *see also* *Murphy v. State*, 112 S.W.3d 592, 601-02 (Tex. Crim. App. 2003). The trial court also concluded that Stallings's statements were voluntarily made and that they were made under voluntary conditions.

In four issues, Stallings argues that the trial court erred by denying his motion to suppress. Issues one and four argue that, pursuant to *Miranda*<sup>2</sup> and article 38.22, the State was required to admonish Stallings of his Fifth Amendment rights again before conducting the joint interview. Issues two and three assert that because Kantak acted as "an agent of the State," the statements that Stallings gave during the joint interview were involuntary.

#### Standard of Review

We review the trial court's ruling on a motion to suppress evidence for abuse of discretion, using a bifurcated standard. *See Guzman v. State*, 955 S.W.2d 85, 88-89 (Tex. Crim. App. 1997). We give "almost total deference" to the trial court's findings of historical facts that are supported by the record and to mixed questions of law and fact that turn on an evaluation of credibility and demeanor. *Id.* at 89. We review de novo the trial court's determination of the law and its application of law to the facts that do not turn upon an evaluation of credibility and demeanor. *Id.* If a trial court has not made a finding on a relevant fact, we imply the finding that supports the trial court's ruling, so long as it finds some support in the record. *State v. Kelly*, 204 S.W.3d 808, 818-19 (Tex.

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<sup>2</sup>*Miranda v. Arizona*, 384 U.S. 436, 444-45, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

Crim. App. 2006); *see also Moran v. State*, 213 S.W.3d 917, 922 (Tex. Crim. App. 2007). We will uphold the trial court's ruling if it is reasonably supported by the record and is correct under any theory of law applicable to the case. *State v. Dixon*, 206 S.W.3d 587, 590 (Tex. Crim. App. 2006).

### Constitutional and Statutory Warnings

A defendant's oral statements made during a custodial interrogation are admissible in a criminal proceeding if: (1) an electronic recording, which includes a videotape, is made of the statement; (2) before the statement, but during the recording, the defendant is given the warnings required by article 38.22, section 2(a) of the Texas Code of Criminal Procedure; and (3) the defendant knowingly, intelligently, and voluntarily waives the rights conveyed by the warning. TEX. CODE CRIM. PROC. ANN. art. 38.22 §§ 2(a), 3(a); *see also Miranda v. Arizona*, 384 U.S. 436, 444-45, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

There is no dispute that Detective Bivens complied with article 38.22 when he began Stallings's individual interview. In this case, the question we must decide is whether the joint interview conducted after Stallings was taken into Kantak's room required additional admonishments to be given under either article 38.22 or the Constitution. Whether a subsequent interview constitutes a continuation of an earlier interview, and thus a single interview, has been addressed on several occasions by the Texas Court of Criminal Appeals. *See Bible v. State*, 162 S.W.3d 234 (Tex. Crim. App.

2005); *Jones v. State*, 119 S.W.3d 766 (Tex. Crim. App. 2003); *Ex parte Bagley*, 509 S.W.2d 332 (Tex. Crim. App. 1974); *see also Dunn v. State*, 721 S.W.2d 325, 338 (Tex. Crim. App. 1986) (holding “rewarning is not required where the interrogation is only a continuation about the same offense”), *abrogated on other grounds by Creager v. State*, 952 S.W.2d 852, 856 (Tex. Crim. App. 1997).

Here, it is uncontested that at the onset of Stallings’s individual interview, Detective Bivens gave Stallings his constitutional warnings and satisfied article 38.22. Although Stallings was not reminded of these warnings when the joint interview began, only a matter of minutes passed between Stallings’s individual and joint interviews. Additionally, both interviews concerned Willkomm’s murder. Finally, although Detective Wood and Kantak participated with Detective Bivens in questioning Stallings during the joint interview, Detective Bivens was present throughout all of Stallings’s interviews.

Under the circumstances, we conclude the trial court did not abuse its discretion in finding that the joint interview was a continuation of Stallings’s initial individual interview. *See Bible*, 162 S.W.3d at 241-42. Because the joint interview was merely a continuation of Stallings’s initial interview, we conclude that “there was not such a ‘break’ in the interrogation proceeding as to require the giving of new warnings.” *Franks v. State*, 712 S.W.2d 858, 861 (Tex. App.–Houston [1st Dist.] 1986, pet. ref’d); *see also Burruss v. State*, 20 S.W.3d 179, 183-84 (Tex. App.–Texarkana 2000, pet. ref’d);

*Flemming v. State*, 949 S.W.2d 876, 879-80 (Tex. App.–Houston [14th Dist.] 1997, no pet.); *LaSalle v. State*, 923 S.W.2d 819, 824-25 (Tex. App.–Amarillo 1996, pet. ref'd).

We conclude that under the circumstances, neither the Fifth Amendment nor article 38.22 of the Texas Code of Criminal Procedure required the State to give Stallings additional admonishments before continuing with the joint interview. We overrule Stallings's first and fourth issues.

#### Voluntariness of Statement

To be admissible, an accused's statement must be "freely and voluntarily made without compulsion or persuasion[.]" TEX. CODE CRIM. PROC. ANN. art. 38.21 (Vernon 2005). "Voluntariness is decided by considering the totality of the circumstances under which the statement was obtained." *Creager v. State*, 952 S.W.2d at 855. For purposes of due process, a statement is involuntary "only if there was official, coercive conduct of such a nature that any statement obtained thereby was unlikely to have been the product of an essentially free and unconstrained choice by its maker." *Alvarado v. State*, 912 S.W.2d 199, 211 (Tex. Crim. App. 1995); *see also State v. Terrazas*, 4 S.W.3d 720, 723 (Tex. Crim. App. 1999).

During the joint interview, Kantak related details of the crime and told Stallings that she had told Detective Wood of her role in Willkomm's murder and that it was now his turn to explain his role. Both Detective Bivens and Detective Wood requested that

Stallings tell them the truth. Stallings was not threatened, nor was he promised anything in exchange for his statements.

We conclude that the record supports the trial court's ruling that Stallings's statements made during the joint interview were voluntary. *See* TEX. CODE CRIM. PROC. ANN. art. 38.21; *Kelly*, 204 S.W.3d at 818; *Creager*, 952 S.W.2d at 855; *Alvarado*, 912 S.W.2d at 211. Consequently, we overrule Stallings's second and third issues.

#### Conclusion

The trial court did not err in admitting Stallings's statements that he made during the joint interview with Kantak. We affirm the trial court's judgment.

AFFIRMED.

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HOLLIS HORTON  
Justice

Submitted on April 26, 2010  
Opinion Delivered June 9, 2010  
Do Not Publish

Before Gaultney, Kreger, and Horton, JJ.