In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-10-00020-CR

JOSE ISREAL GARCIA a/k/a JOSE ISREAL GARCIA-TICAS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 284th District Court
Montgomery County, Texas
Trial Cause No. 09-05-04995 CR

MEMORANDUM OPINION

Jose Isreal Garcia a/k/a Jose Isreal Garcia-Ticas pled guilty to murder; following a sentencing hearing, a jury assessed his punishment at life in prison. Garcia contends the trial court erred during the punishment phase of the trial by failing to suppress a recording of Garcia's confession. Although we have determined that a portion of the videotape was not admissible, we conclude the trial court's error was not harmful. As a result, we affirm the judgment.

Background

Garcia and Sabrina Silva lived together in Montgomery County. Silva, the victim, died on February 23, 2009, from "[m]ultiple blunt and sharp force injuries[.]" Garcia took Silva to a hospital in Houston in his truck, arriving there at approximately 1:00 a.m. Garcia testified that he was intoxicated at the time he drove Silva to the hospital. After Silva had been pronounced dead, Houston Police Department officers placed Garcia in the back of an HPD police car, where Garcia slept until daylight. At dawn, HPD officers placed Garcia in the back of another HPD police car, where he remained until Detective Paul Hahs of the Montgomery County Sherriff's office arrived.

When Detective Hahs first encountered Garcia, he found him sleeping in the back of an unmarked HPD police car. Detective Hahs asked Garcia if he could question him in Montgomery County "to try to help him find out who had done this to [Silva]." Garcia agreed to go with Detective Hahs. According to Detective Hahs, Garcia could have chosen not to go with him, because at that point, Garcia was free to leave. Garcia rode in the front seat of Detective Hahs' car, he was not in handcuffs, and they stopped to get breakfast.

While Detective Hahs was at the hospital, another officer arranged to have Garcia's truck towed to Montgomery County's impound yard. At 10:50 a.m., on the morning of February 23, Detective Hahs began to interview Garcia in an interview room inside the East Montgomery County Detective's Annex, which is located in New Caney.

Although the door to the interview room was closed during the majority of Garcia's interview, the door was not locked. At various points during the interview, Detective Hahs left the room by opening the unlocked door. Approximately fifty-four minutes after the interview began, Garcia stated that he and Silva had a fight, that he snapped, that he thought he hit Silva with the legs of a chair, and that afterwards, he could not remember anything. At that point, Detective Hahs told Garcia that remembering what happened would allow him to get this off his chest; Garcia responded that he had not meant to do anything to her. Detective Hahs then asked Garcia to tell him what he found when he came home that had caused him to become so upset, and Detective Hahs suggested that it appeared Silva had been hit with a tire tool from Garcia's truck. Garcia denied having used a tire tool, but then Detective Hahs suggested that marks on Silva's body indicated that the legs from a chair had possibly been used during the fight. Detective Hahs then decided to read Garcia his *Miranda*[1] rights. In summary, the inculpatory statements that Garcia made during the interview indicating his involvement in Silva's death occurred over the course of several minutes before Detective Hahs decided to read Garcia the warnings required by Article 38.22, section 3 of the Texas Code of Criminal Procedure. Tex. Code Crim. Proc. Ann. art. 38.22, § 3(a)(2) (West 2005).

After being read his rights, Garcia did not invoke his right to an attorney, and he continued to answer Detective Hahs' questions. During the remaining portion of the interview, Garcia again explained that he and Silva had been arguing, that in the course

[1]*Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

of the argument he hit Silva with the legs of a chair, and he admitted that he had killed Silva.

Subsequently, the State indicted Garcia for Silva's murder. On the morning the guilt-innocence phase of the trial was to begin, Garcia filed a motion to suppress his videotaped interview with Detective Hahs. After conducting a suppression hearing and reviewing the videotape, the trial court ruled, stating:

> I'm going to find that the statement made was voluntarily made by the defendant, that there was, the interrogation began as noncustodial, the defendant was not under arrest at the time that the videotape was made at the beginning of it. There were no acts by law enforcement that were coercive in nature. The defendant was not deprived of his freedom in any significant way. The defendant did not ask to leave or refuse to talk to the officers at any point during the DVD; and that in fact, it appears from all indications that the defendant was free to leave until the point on the DVD where he is placed under arrest.

Subsequently, during the punishment phase of the trial, the trial court expressly overruled Garcia's objection to the videotape. The jury then watched Garcia's entire videotaped statement.

Standard of Review

We review a 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). As a general rule, a trial court's findings of historical fact supported by the record, as well as mixed questions of law and fact that turn on an evaluation of credibility and demeanor, are given "almost total deference[.]" *Id.* at 89. A de novo

standard is applied to a 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 the finding is supported by the record. *See Herrera v. State*, 241 S.W.3d 520, 527 (Tex. Crim. App. 2007); *State v. Kelly*, 204 S.W.3d 808, 818-19 (Tex. 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 from a motion to suppress if the ruling is reasonably supported by the record, and the ruling is correct under any theory of law applicable to the case. *State v. Dixon*, 206 S.W.3d 587, 590 (Tex. Crim. App. 2006).

The initial burden of proving that a statement was the product of a "'custodial interrogation'" is placed on the defendant. *See Herrera*, 241 S.W.3d at 526. A trial court's determination of whether a statement was the product of a custodial interrogation "presents a 'mixed question of law and fact.'" *Id*. (quoting *Thompson v. Keohane*, 516 U.S. 99, 112-13, 116 S.Ct. 457, 133 L.Ed.2d 383 (1995)). Where the historical facts that were determined by the trial court turn on questions of credibility and demeanor of witnesses, we afford the trial court's determination almost total deference. *Id*. at 526-27. With respect to the circumstances indicating whether the accused has been placed in custody, the Court of Criminal Appeals notes the following situations which may constitute custody for purposes of *Miranda* and article 38.22:

> (1) The suspect is physically deprived of his freedom of action in any significant way;

> (2) A law enforcement officer tells the suspect he is not free to leave;
> (3) Law enforcement officers create a situation that would lead a reasonable person to believe that his freedom of movement has been significantly restricted; and
> (4) There is probable cause to arrest the suspect, and law enforcement officers do not tell the suspect he is free to leave.

Gardner v. State, 306 S.W.3d 274, 294 (Tex. Crim. App. 2009); *see also Dowthitt v. State*, 931 S.W.2d 244, 255 (Tex. Crim. App. 1996); Tex. Code Crim. Proc. Ann. art. 38.22 § 2 (West 2005). The fourth category applies only when the officer's knowledge of probable cause is communicated to the suspect or by the suspect to the officer; even then, custody is established only "'if the manifestation of probable cause, combined with other circumstances, would lead a reasonable person to believe that he is under restraint to the degree associated with an arrest.'" *Gardner*, 306 S.W.3d at 294 n.48 (quoting *Dowthitt*, 931 S.W.2d at 255).

Analysis

In his sole issue, Garcia asserts the trial court erred by failing to suppress the statement he gave to Detective Hahs. Garcia argues that he was "in custody" from the point the Houston Police Department handcuffed him and placed him in one of their police cars until being later arrested by Detective Hahs. He further argues that during the interview, Hahs asked questions that were "likely to elicit an incriminating response[.]" Prior to having been subjected to a custodial interrogation, Garcia asserts that he was

entitled to be given *Miranda* warnings.[2] Further, because Detective Hahs did not warn Garcia of his *Miranda* rights when his custodial interrogation began, Garcia contends that the information he gave before receiving his *Miranda* warnings taints the confession that he later gave after receiving the warnings. *See Missouri v. Seibert*, 542 U.S. 600, 613, 124 S.Ct. 2601, 159 L.Ed.2d 643 (2004) ("By any objective measure, . . . it is likely that . . . withholding warnings until after interrogation succeeds in eliciting a confession, the warnings will be ineffective in preparing the suspect for successive interrogation, close in time and similar in content.").

In response, the State argues that *Miranda* does not require the suppression of an unwarned custodial statement offered during the punishment phase of trial.[3] Second, the

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[2]*Miranda* warnings include a statement regarding the right to remain silent, that any statement made may be used as evidence, that you have the right to have an attorney present during questioning, and if you are unable to hire an attorney, you have the right to have an attorney appointed if you cannot afford one. *Miranda*, 384 U.S. at 444. These warnings largely overlap with those required by the Texas Code of Criminal Procedure, Article 38.22, section 2(a), except that section 2(a) includes an additional warning that the accused "has the right to terminate the interview at any time[.]" Tex. Code Crim. Proc. Ann. art. 38.22, § 2(a) (West 2005).

[3]The State relies on several federal cases that have held that *Miranda* does not apply to evidence introduced during the sentencing phase of a proceeding. *See United States v. Nichols*, 438 F.3d 437, 442 (4th Cir. 2006); *Del Vecchio v. Ill. Dep't of Corr.*, 31 F.3d 1363, 1388 (7th Cir. 1994). Nevertheless, relying on Article 38.22 of the Texas Code of Criminal Procedure, the Court of Criminal Appeals has held it to be error, during the punishment phase of a trial, to admit a statement obtained from the accused without the benefit of the warnings that are required by Article 38.22, section 2. *See Woods v. State*, 152 S.W.3d 105, 115-18 (Tex. Crim. App. 2004) (finding trial court erred by admitting unwarned statement during the punishment phase of a criminal proceeding). The *Miranda* warnings are similar to the warnings that are required by Texas statute. The State's brief does not address why the statutory warnings required by Article 38.22 do not

State asserts that no warnings were required when the interview commenced, because Garcia, at that point, was not in custody. Finally, the State argues that the admission of Garcia's statement to Detective Hahs, even if admitted in error, was harmless.

In this case, the threshold issue is whether Garcia was "in custody" prior to the point that Detective Hahs gave Garcia the statutory warnings required by Article 38.22, section 3 of the Texas Code of Criminal Procedure. The meaning of "'custody,'" for purposes of Article 38.22, is consistent with the meaning of "'custody'" for purposes of *Miranda*. *Herrera*, 241 S.W.3d at 526 (citing *Wicker v. State*, 740 S.W.2d 779, 785 (Tex. Crim. App. 1987)).

Garcia maintains that he was taken into custody by the Houston Police because he had been held against his will for several hours in an HPD police car before he was picked up for questioning by Detective Hahs. While there is no question that Detective Hahs found Garcia in an HPD police car, the reason he was there, and whether he was being held there against his will, are issues the trial court was required to resolve based on a record that the parties failed to thoroughly develop.

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apply under the circumstances of this case, and the State fails to mention that Garcia's motion to suppress was based, in part, on Article 38.22, and also fails to note that Garcia's trial attorney asked the trial court to suppress the statement under Article 38.22. While Garcia's appellate attorney does not specifically cite to Article 38.22 in his argument, the mistake appears to be an oversight because that provision was relied upon by Garcia's trial attorney. In light of the similarities between *Miranda* warnings and the statutory warnings required by Article 38.22, and the fact that Garcia's trial attorney relied in part on the statutory warning requirement, we do not construe Garcia's appellate attorney's failure to mention Article 38.22 as a waiver of Garcia's statutory claim that the trial court erred in admitting his unwarned statement.

With respect to the circumstances showing that Detective Hahs found Garcia in an unmarked HPD police car, Garcia explained during the suppression hearing that he was intoxicated upon his arrival at the hospital. Moreover, Garcia had very little recollection of what he told the nurses upon arriving at the hospital. According to Garcia, "As soon as the doctor told me that she was deceased, my mind just quit working. I just, I just -- I just don't remember anything." Garcia testified that what happened after he was not allowed to see Silva's body was all a blur "[t]ill the morning time came around." However, in relating how he felt that morning, Garcia indicated that he was still "real sick[,]" and that he was still not paying attention to anything anyone said. Garcia further testified that at that time he was "in [his] own zone."

Additionally, the record is not clear regarding whether Garcia was handcuffed when he was in the HPD police car. Although Garcia testified he was cuffed when placed in the car and that his handcuffs were removed when he got in Detective Hahs' car, Detective Hahs contradicted that claim, stating: "Q. Was [Garcia] in handcuffs when you first saw him? A. Not that I recall." Finally, the HPD officers involved with the decision to place Garcia in the HPD cars did not testify.

Given the "almost total deference" allowed trial courts in resolving mixed questions of law and fact, and with the advantage of being able to observe Detective Hahs and consider the inflection he used when responding to the question about whether he found Garcia in handcuffs, the trial court could have reasonably concluded that Garcia

was not cuffed, despite Garcia's testimony to the contrary. *See Guzman*, 955 S.W.2d at 89.

The trial court had only the circumstances described by Garcia to explain why Detective Hahs found Garcia in the HPD police car after he arrived at the hospital on February 23. Nevertheless, Garcia never testified that any Houston police officer advised him that he had been placed under arrest. Additionally, the trial was not required to accept Garcia's testimony, as there was evidence that contradicted his account. For example, Garcia testified at the suppression hearing that at the beginning of his interview, he told Detective Hahs he wanted a lawyer. According to Garcia, Detective Hahs told him that he did not need a lawyer. During his testimony, Detective Hahs denied that Garcia had asked for an attorney. The video, which appears to contain Garcia's entire interview with Detective Hahs, corroborates Detective Hahs' testimony that Garcia did not ask for an attorney.

Detective Hahs' version of events allowed the trial court to reject Garcia's testimony that he had been handcuffed. According to Detective Hahs, he asked Garcia to accompany him to Montgomery County to be interviewed, and Garcia agreed to go with him. Detective Hahs testified that at that point, Garcia was free to leave and that Garcia did not have to go with him. Detective Hahs testified that before Garcia's interview occurred, he had no evidence to justify Garcia's arrest. There is no dispute that Detective Hahs stopped and bought Garcia's breakfast on the trip from Houston. From the video, it

appears that Garcia was allowed to eat and drink during the interview. The interview occurred in a room with a door that was closed but not locked, and Garcia sat closest to the door. During the interview, Garcia and the detective were the only two people in the room. While Detective Hahs testified at the suppression hearing that Garcia was free to leave the interview room, the video reveals that Detective Hahs never expressly told Garcia he was free to go.

On this record, the trial court could have determined that Garcia failed to prove that he had been taken into custody by the Houston police. Giving deference to the trial court as the finder of historical fact, the trial court could have determined that Garcia was allowed to use the police car for a safe place to sleep during a period of time that he appeared to be out of touch and intoxicated. The trial court was also free to reject Garcia's testimony that he had been handcuffed while in the car.

In light of the "almost total deference" we are required to give the trial court, we must also defer to the trial court's implicit determination that Detective Hahs was a credible witness, and that Garcia was not credible. *See Guzman*, 955 S.W.2d at 89. In that light, we conclude that the record allowed the trial court to conclude that Garcia was not in custody when the interview began.

Nevertheless, during its course, a noncustodial interview of a witness may become a custodial interrogation of a suspect. *See Dowthitt*, 931 S.W.2d at 257. In *Dowthitt*, the Court of Criminal Appeals held that "custody" began immediately after Dowthitt's

admission because it established probable cause to arrest Dowthitt and a "reasonable person [in Dowthitt's position] would have realized the incriminating nature of the admission." *Id*. at 257; *see Ruth v. State*, 645 S.W.2d 432, 436 (Tex. Crim. App. 1979) (suspect was in custody from the moment he admitted to the shooting and any subsequent statements were governed by *Miranda*).

In this case, after approximately fifty-four minutes of being interviewed, Garcia admitted that when he came home he and Silva had argued—a version of the events in direct contrast to his earlier statement that he came home to find Silva beaten and lying on the floor. Garcia also indicated that he thought he hit Silva with a chair. Importantly, information sustaining probable cause for Garcia's arrest was related to Detective Hahs by Garcia after Garcia indicated there had been an argument, but before Detective Hahs read the statutory warnings that are required by Article 38.22. After Garcia initially related that he had "snapped," Detective Hahs said the "hardest thing to say is the first words, and that is you know you hurt [Silva]." At that point, based on Garcia's statements tending to show that he had been involved in Silva's murder, Detective Hahs statement about the difficulty in admitting involvement reveals that Detective Hahs suspected that Garcia was responsible for Silva's murder. In light of Garcia's admission that he hit Silva with a chair, Detective Hahs had probable cause to arrest Garcia. *See Dowthitt*, 931 S.W.2d at 255.

In *Martinez v. State*, the Texas Court of Criminal Appeals determined that the suspect's statement was inadmissible where the police used a "deliberate two-step strategy" to avoid *Miranda's* requirements when no curative measures were taken before the suspect, having given inculpatory information, gave additional incriminatory statements after receiving his *Miranda* warning during police questioning. 272 S.W.3d 615, 626-27 (Tex. Crim. App. 2008). Examples of curative measures the *Martinez* Court gave include:

> (1) a substantial break in time and circumstances between the unwarned statement and the *Miranda* warning [ ]; (2) explaining to the defendant that the unwarned statements, taken while in custody, are likely inadmissible [ ]; (3) informing the suspect that, although he previously gave incriminating information, he is not obligated to repeat it [ ]; (4) the interrogating officers refrain from referring to the unwarned statement unless the defendant refers to it first [ ]; or (5) if the defendant does refer to the pre-*Miranda* statement, the interrogating officer states that the defendant is not obligated to discuss the content of the first statement [ ].

Id. at 626-27 (footnote omitted) (citing these examples that were noted in various parts of the plurality and concurring portions of the United States Supreme Court opinion in *Seibert*, 542 U.S. 600). Here, Detective Hahs did not apply any curative measures after Garcia informed him that he had argued with Silva and he believed he hit her with a chair.

We conclude that the trial court, as the finder of historical fact, did not err in admitting Garcia's videotape up to the point that Garcia stated that he came home, argued with Silva, and that he had hit her with the legs of a chair. At that point, under the

circumstances of this record, the interrogation became a custodial interrogation, and Garcia was entitled to receive the warnings required by Article 38.22 of the Texas Code of Criminal Procedure. Because Garcia was not given these warnings after he admitted to arguing with Silva, and because Detective Hahs employed no curative measures to assure that Garcia's later statements were voluntarily made, the *Miranda* warnings that Detective Hahs provided were not sufficient to cure the failure to provide warnings when the interrogation became custodial. *See id.*

We conclude the trial court erred in admitting the videotape from the point that Garcia told Detective Hahs that he and Silva had argued and he hit her with the legs of a chair. With respect to the portion of videotaped statement admitted after that point, we sustain Garcia's issue.

Harm Analysis

A statement admitted in violation of a suspect's rights to receive a warning requires reversal unless the reviewing court determines that the failure to suppress the statement did not contribute to the jury's verdict. *See* Tex. R. App. P. 44.2(a); *Jones v. State*, 119 S.W.3d 766, 777 (Tex. Crim. App. 2003). In *Jones*, similar to the case before us, the court's focus was on the impact the statement had during the punishment phase of the case. *See id.* An inadmissible statement, introduced during the punishment phase of a criminal trial, does not concern the issue of whether the defendant committed the crime. *See id*. Instead, we must assess the probable weight that a juror would place upon the

inadmissible portions of the statement, as those portions relate to the issue of the defendant's punishment. *See id*. at 778.

Since Garcia received a life sentence, to assess the weight that the inadmissible portions of Garcia's statement may have played in the length of his sentence, we assess the State's independent proof that established circumstances leading jurors to conclude that Garcia's crime merited the sentence he received. Seventeen witnesses testified for the State during the punishment phase of the proceeding, and three witnesses testified for the defense. For instance, through Dr. Kathryn Haden-Pinneri, a forensic pathologist, the State established that Silva had been beaten "over a fairly lengthy period of time, probably hours." Autopsy photos depicting Silva's injuries were admitted into evidence, as well as the autopsy report. Dr. Haden-Pinneri testified that Silva suffered a very long and painful death. The State's evidence includes photographs tending to show that Silva's beating had occurred in the living room and hallway of the trailer-house where she lived. A nurse, Connie Runnels, testified that after Garcia came to the hospital and told her that Silva was having a seizure in the truck, she went outside and saw Silva lying on the floorboard of Garcia's truck. Runnels thought that Silva was dead. According to Runnels, Garcia never asked her if he could see Silva. Jamie Fontenot, a nurse who assisted in removing Silva from Garcia's truck, testified that Silva "was bruised from head to toe. Black eyes. Cuts everywhere. Just bruising I've never seen before, ever in my experience, my five years . . . . Just one of the worst things I've ever seen." Detective Hahs testified

that the crime scene was "the second bloodiest scene I've ever seen." Leslie McCauley, a crime scene investigator employed by the Montgomery County Sherriff's Office, testified that in her six and one half years of experience investigating crime scenes, this scene "was the bloodiest crime scene that I have been to. There was blood present in nearly every room in the trailer except for the two bedrooms on either end. And there was a significant amount of blood, probably, like I said, the most blood that I have ever seen at a crime scene." McCauley testified that in her opinion spindles from the broken bar stools had been used as weapons. McCauley also identified knives in the home that had Silva's blood on them, and she concluded that multiple weapons had been used during the altercation to inflict Silva's injuries. During her cross-examination, McCauley testified that the beating was an extremely savage and brutal one.

In contrast, in the portions of the video that we have determined were improperly admitted, Garcia did not relate significant details regarding the beating he administered to Silva. Further, there was independent evidence that the chair spindles had been used as weapons during the beating. Based on the evidence that was otherwise properly admitted before it, the jury was not forced to rely on any of Garcia's inadmissible statements to evaluate the circumstances relevant to their punishment decision. The independent evidence established that Garcia was the aggressor, that he had used multiple weapons, and that the beating Silva suffered was brutal.

The jury also heard testimony about Garcia's propensity for abusive behavior toward others, including women, which likely influenced the length of his sentence. Lizeth Garcia-Ticas, Garcia's wife[4], testified that in 2001, Garcia hit her in the mouth with his fist. Lizeth also related that at some point before 2000, Garcia kicked her in the back, and in January 2005, during an argument, Garcia choked her with one hand while trying to remove her clothes with the other. When asked to explain what she meant when she told Garcia that she did not like people like him, Lizeth explained that she did not like people "[t]hat hit women." The State also introduced judgments that reflect Garcia was convicted in 2001 of battery and in 1999 on a misdemeanor charge of evading arrest. The portions of the videotaped statement that we have determined to have been improperly admitted do not relate to Garcia's prior criminal record or his history of violence toward women. Thus, the jury heard evidence, independent from the inadmissible portions of the videotape, from which it could have reasonably determined that Garcia's conduct represented an escalation consistent with his past patterns of conduct.

In summary, the jury knew of Garcia's involvement in the murder based on his plea of guilty and through sources unrelated to the inadmissible portions of his videotaped statement. The brutal nature of Silva's beating was well established through other witnesses and evidence. The jury learned about Garcia's propensity to violent behavior, including violence toward women, through sources outside the inadmissible

[4]Garcia and Lizeth were married in 2001, separated in 2005, and never divorced.

portions of the videotaped statement. Additionally, the inadmissible portions of the statement are replete with Garcia's apparent remorse over the events that led to Silva's death, which favored him, given the testimony from witnesses who had seen him at the hospital and who testified that Garcia did not show any remorse. Further, the inadmissible portions of the statement are beneficial in some ways to Garcia, because his complete statement contains his explanation of why he had "snapped." Garcia's full explanation was relevant and beneficial to Garcia's own claim in which he asserted that he had caused Silva's death under the immediate influence of sudden passion.

We are also allowed to consider the extent to which the inadmissible portions of the videotape were emphasized by the State. *Jones*, 119 S.W.3d at 781. In closing argument, the first prosecutor emphasized the brutality of the crime and never referred directly to Garcia's statement. Also in closing, the second prosecutor mentioned the evidence regarding Garcia's prior history of abusiveness as showing Garcia to be a violent and aggressive person. The second prosecutor then focused on the brutality of Silva's beating, concluding that Garcia was an evil person who should be given a life sentence. We conclude that neither prosecutor emphasized any specific inadmissible statement made by Garcia in final argument.

In light of the quality and quantity of the other admissible evidence which supports the jury's finding, we conclude the jury did not place any particular weight upon the inadmissible portions of Garcia's videotaped statement when deliberating on his

punishment. *Id*. at 782. Beyond a reasonable doubt, we conclude that the erroneous admission of portions of Garcia's videotaped statement did not materially contribute to the jury's assessment of Garcia's life sentence. Had the inadmissible portions of Garcia's statement not been admitted, we are also confident that there is no reasonable likelihood that the jury might have answered the sudden passion issue in the affirmative. Given the evidence and circumstances in Garcia's case, the admission, during the punishment stage, of Garcia's entire videotaped statement was harmless beyond a reasonable doubt.

Conclusion

The trial court erred by admitting the portion of the videotape after Garcia's interview with Detective Hahs became a custodial interview. However, the error was harmless. Garcia's sole point of error is overruled, and the trial court's judgment is affirmed.

AFFIRMED.

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HOLLIS HORTON
Justice

Submitted on November 10, 2010
Opinion Delivered February 2, 2011
Do Not Publish

Before McKeithen, C.J., Gaultney and Horton, JJ.