NUMBER 13-19-00164-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

EDWARD LOPEZ VASQUEZ, Appellant,

v.

THE STATE OF TEXAS, Appellee.

On appeal from the 216th District Court of Kerr County, Texas.

MEMORANDUM OPINION

Before Justices Benavides, Perkes, and Tijerina
Memorandum Opinion by Justice Benavides

By two issues, appellant Edward Lopez Vasquez appeals his conviction for indecency with a child by contact, a second-degree felony, enhanced by a prior conviction. *See* TEX. PENAL CODE ANN. §§ 21.11, 12.42. Vasquez alleges that the trial court erred by denying his motion to suppress because (1) his statement was involuntary due to the coercive nature of his interrogation and (2) his statement was inadmissible

because the interrogation was custodial in nature and he was not read his statutory warnings. We affirm.

I. BACKGROUND[1]

Vasquez was indicted for indecency with a child by contact. *See id*. His indictment contained an enhancement paragraph due to a prior aggravated sexual assault conviction, which if convicted of the underlying offense and the enhancement was found to be true, made the punishment life imprisonment without parole. *See id*. §§ 12.42, 22.021. Prior to trial, Vasquez filed a motion to suppress the statement he made to Investigator Carl Arredondo with the Kerr County Sheriff's Office.

At a hearing on Vasquez's motion to suppress, the State submitted the videotaped statement Vasquez made to Investigator Arredondo at the Uvalde County Sheriff's Office, as well as the incident report. Vasquez lived in the Uvalde area and the investigator who oversaw the sex offender registration in the county requested that Vasquez come in for a compliance check. Following the compliance check, Investigator Arredondo, who had traveled to Uvalde, requested to meet with Vasquez on an unrelated matter, to which Vasquez agreed.

At the beginning of the videotaped interview, Investigator Arredondo told Vasquez that he was not under arrest. Vasquez discussed his prior conviction for aggravated sexual assault, telling Investigator Arredondo that he was sentenced to ten years' imprisonment for that offense. *See id*. § 22.021. As the interview continued, Vasquez and

[1] This case is before this Court on transfer from the Fourth Court of Appeals in San Antonio pursuant to a docket equalization order issued by the Supreme Court of Texas. *See* TEX. GOV'T CODE ANN. § 73.001.

Investigator Arredondo spoke about how often Vasquez visited his sister in the Kerrville area. Vasquez explained that he would mainly go to visit and attend medical appointments but often saw his extended family and their children while he was there. Vasquez admitted that he did not tell other people about his prior offense.

Investigator Arredondo told Vasquez that a four-year-old female relative made an outcry of abuse against him. Investigator Arredondo stated that Vasquez should "tell him" what occurred and "accept responsibility" for his actions. Vasquez admitted that he touched the young child's vagina, but there was no penetration and he never took her underwear off. Investigator Arredondo told Vasquez that they were "almost done" with the interview and afterwards Vasquez could leave.

The men continued speaking about the incident and Vasquez admitted he did not get aroused when touching the child but was thinking of an older girlfriend when he did it. Vasquez stated that he "felt bad" for what had happened and "broke" his family's trust. He explained that his sister asked him about the incident in March or April and they had not spoken since. Investigator Arredondo asked Vasquez what he thought should happen and Vasquez replied that he wanted to speak to his family and apologize. Vasquez stated that he felt it was "too much to ask for forgiveness" but he did not want them to hate him. Investigator Arredondo told Vasquez he did not know what was going to happen next and that he needed to speak to the child's parents. Vasquez was released to return home.

The trial court denied Vasquez's motion to suppress and the video interview was played before the jury. Vasquez was convicted, the enhancement paragraph in the indictment was found to be true, and Vasquez was sentenced to life imprisonment without

parole in the Texas Department of Criminal Justice—Institutional Division. *See id*. § 12.42(c)(4). This appeal followed.

II. MOTION TO SUPPRESS

By his two issues, which we have reorganized, Vasquez argues because his statement was made during a custodial interrogation, it was a violation not to read him his statutory warnings and the statement was involuntary because of the coercive atmosphere of the interview.

A. Standard of Review

A bifurcated standard applies when we review a trial court's ruling on a motion to suppress. *Lerma v State*, 543 S.W.3d 184, 189–90 (Tex. Crim. App. 2018); *Medrano v. State*, 579 S.W.3d 499, 502 (Tex. App.—San Antonio 2019, pet. ref'd). The trial court is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given to their testimony. *Medrano*, 579 S.W.3d at 502. An appellate court affords almost total deference [to] the trial judge's rulings on questions of historical fact and on application of law to fact questions that turn upon credibility and demeanor, and it reviews de novo the trial court's rulings on application of law to fact questions that do not turn upon credibility and demeanor. *Alford v. State*, 358 S.W.3d 647, 652 (Tex. Crim. App. 2012); *Medrano*, 579 S.W.3d at 502.

B. Vasquez was Not in Custody

The Fifth Amendment to the United States Constitution commands that no person "shall be compelled in any criminal case to be a witness against himself[.]" U.S. CONST. amend V, XIV. Custodial interrogation is "questioning initiated by law enforcement officers

after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). The Texas Court of Criminal Appeals has outlined at least four general situations which may constitute custody. *Xu v. State*, 100 S.W.3d 408, 413 (Tex. App.—San Antonio 2002, pet ref'd).

It is clear that an interrogation is not custodial when a person voluntarily arrives at the police station, undergoes an interview, and leaves—regardless of whether the person is informed that he is not under arrest. *See Dowthitt v. State*, 931 S.W.2d 244, 255 (Tex. Crim. App. 1996). Similarly, an interrogation is not custodial when a suspect arrives at the station "voluntarily at a time of his choosing, [is] allowed to step outside the building and go unaccompanied to his car during the interviews [that lasted several hours], and [is] allowed to leave unhindered after the statements [are] taken." *Id*. The factors we must consider in determining when custody attaches include whether the suspect arrived at the place of interrogation voluntarily, the length of the interrogation, whether the suspect's requests to see relatives and friends are refused, and the degree of control exercises over the suspect. *Xu*, 100 S.W.3d at 413. Additionally, we must look at whether the "pivotal admission established custody." *Id*. (quoting *Dowthitt*, 931 S.W.2d at 256).

Here, Vasquez was asked to accompany Investigator Arredondo to an interview room regarding an unrelated matter to the sex offender compliance check, which he agreed to. Prior to that, Vasquez had been asked to come to the sheriff's office, which he did. After discussing his past offenses and his sex offender registration, Investigator Arredondo addressed the outcry made by Vasquez's child relative. Although Investigator Arredondo asked Vasquez to tell the truth and not allow the child to think she was being

called a liar, he never raised his voice, threatened Vasquez in any way, refused to allow him to leave or speak to family members, told Vasquez at the beginning of the interview he was not under arrest, and allowed Vasquez to leave at the end of the interview. *See id*; *see also Gravlin v. State*, No. 04-12-00531-CR, 2013 WL 5652959, at *2 (Tex. App.—San Antonio Oct. 16, 2013, pet. ref'd) (mem. op., not designated for publication) (holding that *Miranda* warnings were not required where officer told appellant "you've got to come clean and tell me the entire truth" and the appellant understood he was able to leave the police station); *Galvan v. State*, No. 01-99-00153-CR, 2000 WL 892862, at *4 (Tex. App.—Houston [1st Dist.] July 6, 2000, pet. ref'd) (mem. op., not designated for publication) (observing officer's statement that he'd "let [appellant] go in a minute" did not constitute a custodial limitation). Additionally, the interview was not excessively long, food and water were not withheld from Vasquez, and Vasquez was not in an intense emotional state. *See Xu*, 100 S.W.3d at 413. Therefore, we hold Vasquez was not in custody when he made his statement and the lack of his statutory warnings did not render the statement inadmissible. *See Dowthitt*, 931 S.W.2d at 255; *Xu*, 100 S.W.3d at 413. The trial court did not err in denying his motion to suppress on this ground. We overrule Vasquez's second issue.

C. Statement was Not Coerced

"A confession may be involuntary under the Due Process Clause only when there is police overreaching." *Oursbourn v. State*, 259 S.W.3d 159, 169 (Tex. Crim. App. 2008). In order for a confession to be involuntary, the officer's overreaching must rise to a level where the defendant's will was "overborne and his capacity for self-determination critically

impaired." *Contreras v. State*, 312 S.W.3d 566, 574 (Tex. Crim. App. 2010) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 225–26 (1973)). The police misconduct must be casually related to the defendant's statements; absent such, there is no due process deprivation by a state actor, and no due process violation. *Medrano*, 579 S.W.3d at 502. Due-process claims of involuntariness are thus "an objective assessment of police behavior," not an assessment of the defendant's state of mind at the time of the statement. *Id*.

Determining whether a confession was voluntarily given must be analyzed by examining the totality of the circumstances. *Delao v. State*, 235 S.W.3d 235, 239 (Tex. Crim. App. 2007). A confession is "involuntary for the purposes of federal due process, 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 Medrano*, 579 S.W.3d at 503.

Vasquez claims the promise of being "forgiven" was overly coercive as to render his confession involuntary. To "render a confession invalid . . . the promise must be positive, made or sanctioned by someone in authority, and of such an influential nature that it would cause a defendant to speak untruthfully." *Martinez v. State*, 127 S.W.3d 792, 794 (Tex. Crim. App. 2004). We analyze whether Vasquez's confession was involuntary under the four-prong test in *Martinez*:

1. Whether the promise was of some benefit to the accused;
2. Whether the promise was positive;

3. Whether the promise was made or sanctioned by someone in authority;

4. The promise was of such an influential nature that it would cause the defendant to speak untruthfully.

Id. Throughout the interview, Investigator Arredondo and Vasquez spoke of forgiveness. Investigator Arredondo made statements such as "tell me that this little girl is not a liar," "explain to me how she knows these things," and "I can help you, like I said if you ask for forgiveness, people will give it to you and they will get you help." Vasquez argues that Investigator Arredondo's statements "can only be taken to mean that if [Vasquez] comes clean, he would not face repercussions with the case." However, none of Investigator Arredondo's statements suggested that Vasquez would not face repercussions for his actions. To the contrary, towards the end of the interview, Investigator Arredondo told Vasquez that he did not know what was going to happen and that he had to go meet with the child's family again. The statements Investigator Arredondo made to Vasquez during the interview did not amount to a "promise" that would have caused Vasquez's free will to be overrun. *See Alvarado*, 912 S.W.2d at 211; *see also Medrano*, 579 S.W.3d at 503.

Looking at the totality of the circumstances and the statements made by Investigator Arredondo, Vasquez was not coerced into making his statements because he thought he would not be prosecuted in the future. *See Delao*, 235 S.W.3d at 239. Investigator Arredondo did not make "promises" to Vasquez that were so influential that Vasquez would be inclined to speak untruthfully. *See Martinez*, 127 S.W.3d at 794. Vasquez was told at the start of his interview that he was not under arrest and was allowed to return to his home on his own volition at the conclusion of the interview. Nothing was

overly coercive that would have caused Vasquez to make an untrue statement. The trial court did not err in denying the motion to suppress on this issue. We overrule Vasquez's first issue.

III. CONCLUSION

We affirm the trial court's judgment.

GINA M. BENAVIDES,
Justice

Do not publish.
TEX. R. APP. P. 47.2 (b).

Delivered and filed the
9th day of July, 2020.