NUMBER 13-19-00349-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

PAUL DAVID ROBBINS, **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

On appeal from the 156th District Court of Live Oak County, Texas.

MEMORANDUM OPINION

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

Appellant Paul David Robbins pleaded guilty to aggravated sexual assault and was sentenced to fifteen years' imprisonment. *See* TEX. PENAL CODE ANN. § 22.021(a)(2)(B). By two issues, Robbins argues the trial court erred in denying his motion to suppress his oral statements because: (1) his confession was not given freely and voluntarily in violation of Texas Code of Criminal Procedure Article 38.21; and (2) each element of the

Fisher test was established at the motion to suppress hearing. *See Fisher v. State*, 379 S.W.2d 900 (Tex. Crim. App. 1964). We affirm.[1]

I. BACKGROUND

Sixteen-year-old I.H.[2] made an outcry alleging that Robbins sexually assaulted her multiple times beginning when she was nine years old. According to I.H., Robbins would touch her breasts with his penis and hand, and he would get into bed with her to rub his penis on her vagina although there was no penetration. When she was in seventh grade, he made her "jack him off" in the car while they were parked at a convenience store on her way to a school dance. I.H. turned over a series of recordings she had made of Robbins wherein Robbins stated he intended to fulfill his sexual desires with her by having intercourse with her on her seventeenth birthday—only eight days away.

At the motion to suppress hearing, Investigator Daniel Lee Caddell with the Live Oak County Sheriff's Office testified that on April 4, 2017, he called Robbins and his wife and requested they come to the Sheriff's Office to be interviewed regarding a sexual assault investigation involving I.H. The couple agreed. Once the couple arrived, Investigator Caddell walked Robbins to the interview room and interviewed him first. According to Investigator Caddell, Robbins never indicated he wanted to leave, he was never placed in handcuffs, and he was never under arrest.

The State played Robbins's interview with Investigator Caddell for the trial court. Investigator Caddell testified that Robbins initially denied the allegations against him, stating that he may have said some things to I.H., but he was just joking. During the

[1] The State did not file a brief to assist us in the resolution of this matter.

[2] We use initials to protect the minor's identity. *See* TEX. R. APP. P. 9.8. I.H. was Robbins's wife's great-niece and lived with the couple.

interview, Investigator Caddell played an audio recording I.H. made containing statements Robbins purportedly made to I.H. In the recording, Robbins made numerous sexual remarks to I.H., including the following: he would "love her naked or clothed"; he loves her so much he wants her all to himself; he wanted to love her "to the bone. [He] is bad to the bone"; he would be in heaven if he could love her; he wanted to make love to her all night long and fulfill his fantasy with her with a vibrator; he wanted to get married with the justice of peace for $35 because he was not really her uncle; he wanted them to climax together after they made beautiful love together; he wanted to lick her from head to toe and make "nasty love" together.

After hearing the recordings, Robbins stated that I.H. was mad at him because he made her stop seeing a boy that she had been close to, and ever since then I.H. had been rude to him. Investigator Caddell then made the following comments: "[t]here [are] a lot more recordings on here like that," and "I know you don't want me to play this for your wife." Robbins subsequently admitted it was his voice on the recording and that he may have masturbated in front of her a couple of times, but he did not remember her touching his penis. He also admitted to the allegations against him, but he stated he did not remember how many times they occurred. Six days later, Investigator Caddell obtained a warrant for Robbins's arrest, and he was charged with continuous sexual assault of a child. *See id*. § 22.02.

At the close of the evidence at the hearing on the motion to suppress, the trial court determined that Robbins was not in custody when he admitted to the allegations against him and that his statement was freely and voluntarily made. The trial court made the following findings of fact and conclusions of law:

- Robbins willingly presented himself for an interview on April 4, 2017;
- Robbins was not under arrest, in custody, or deprived of his freedom on April 4, 2017;
- Investigator Caddell confronted Robbins with several audio recordings allegedly made by I.H.;
- Robbins admitted it was his voice on the recording;
- Robbins left the Sherriff's Office following the interview;
- Investigator Caddell promised Robbins he would not play the recordings for his wife if he identified himself as being on the audio recording;
- Such a promise was not of such a character to influence Robbins to speak untruthfully and would not make Robbins admit to crime he did not commit;
- Such a promise did not substantially benefit Robbins and was barely to his detriment;
- Article 38.22 of the Texas Code of Criminal Procedure did not apply and *Miranda* warnings were not required; and
- Robbins's statements would be admissible at trial.

After the trial court denied his motion to suppress, Robbins pleaded guilty to the lesser included charge of aggravated sexual assault of a child. *See id*. § 22.021(a)(2)(B). The trial court sentenced him to fifteen years' imprisonment. This appeal followed. *See* TEX. CODE CRIM. PROC. ANN. art. 44.02 (providing that a defendant must have the trial court's permission to appeal if he has pleaded guilty to a charge, "except on those matters which have been raised by written motion filed prior to trial.").

II. MOTION TO SUPPRESS

By his first issue, Robbins asserts the trial court erred in denying his motion to suppress because the State failed to prove his statements to Investigator Caddell were

given freely and voluntarily pursuant to Article 38.21 of the Texas Code of Criminal Procedure.

A. Standard of Review

We review a trial court's ruling on a motion to suppress evidence under a bifurcated standard. *Ro v. State*, 399 S.W.3d 147, 150 (Tex. Crim. App. 2013). First, we afford almost total deference to the trial court's findings of historical fact as well as mixed questions of law and fact that turn on an evaluation of credibility and demeanor. *Abney v. State,* 394 S.W.3d 542, 547 (Tex. Crim. App. 2013); *Hauer*, 466 S.W.3d at 890. The trial court is the sole judge of a witness's credibility and the weight given to the witness's testimony. *Ex parte Moore*, 395 S.W.3d 152, 158 (Tex. Crim. App. 2013).

Where, as here, the trial court makes express findings of fact, we view the evidence in the light most favorable to the ruling and determine whether the evidence supports the factual findings. *Valtierra v. State*, 310 S.W.3d 442, 447 (Tex. Crim. App. 2010). Unless the trial court abused its discretion by making a finding not supported by the record, we defer to the trial court's fact findings and do not disturb those findings on appeal. *State v. Rodriguez*, 521 S.W.3d 1, 8 (Tex. Crim. App. 2017). We review de novo the trial court's application of the law to the facts. *Valtierra*, 310 S.W.3d at 447. We sustain the trial court's ruling if it is reasonably supported by the record and is correct on any theory of law applicable to the case. *Id*. at 447–48.

B. Voluntariness

"The question of 'voluntariness' applies only to statements made in response to custodial interrogation: 'Nothing in [the Texas Code of Criminal Procedure] precludes the admission . . . of a statement that does not stem from custodial interrogation.'" *Wolfe v.*

State, 917 S.W.2d 270, 282 (Tex. Crim. App. 1996). Accordingly, "[i]f an accused is not in custody when he makes a statement, then the question of voluntariness does not arise." *Id*. As explained by the Texas Court of Criminal Appeals, the defendant bears the burden of proving the statement was the product of custodial interrogation:

> The mere filing of a motion to suppress does not thrust a burden on the State to show compliance with *Miranda* . . . warnings unless and until the defendant proves that the statements he wishes to exclude were the product of custodial interrogation. Thus, the State has no burden at all unless 'the record as a whole clearly establishe[s]' that the defendant's statement was the product of custodial interrogation by an agent for law enforcement. It is the defendant's initial burden to establish those facts on the record.

Herrera v. State, 241 S.W.3d 520, 526 (Tex. Crim. App. 2007). Robbins bases his Article 38.21 appellate argument on the assumption that he was subjected to custodial interrogation at the time of his confession. In the context of article 38.22, section 3, the question of voluntariness applies only to statements made in response to custodial interrogation. *See* TEX. CODE CRIM. PROC. ANN. art. 38.22 § 5 ("Nothing in this article precludes the admission . . . of a statement that does not stem from custodial interrogation."). To prevail on appeal, Robbins must first show that his confession was the product of a custodial interrogation. Therefore, we first determine whether Robbins was subjected to custodial interrogation when he provided his statement. *See Wolfe*, 917 S.W.2d at 282.

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). There are at least four general situations which may constitute custody: (1) when the suspect is physically deprived of his freedom of action in any significant way, (2) when a law enforcement

officer tells the suspect that he cannot leave, (3) when 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) under certain circumstances when there is probable cause to arrest and law enforcement does not tell the suspect that he is free to leave. *Dowthitt v. State*, 931 S.W.2d 244, 255 (Tex. Crim. App. 1996). Concerning the first through third situations, "the restriction upon freedom of movement must amount to the degree associated with an arrest as opposed to an investigative detention." *Id*. "[S]ituation four does not automatically establish custody; rather, custody is established if the [officer's] 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." *Id*. The determination of custody is determined "on an ad hoc basis" after considering all the objective circumstances. *Id*.

Here, there is no evidence that Robbins was physically deprived of his freedom in any way. Robbins was not handcuffed and maintained freedom of movement. During the interview, Investigator Caddell stated that Robbins never indicated he wanted to leave, and Robbins made no requests to leave the room for any reason. After Robbins's interview, he exited the interview room and waited in the lobby while his wife was interviewed next. Following his wife's interview and even after Robbins made all his incriminating statements, Robbins and his wife left in their vehicle without hindrance. *See Dowthitt*, 931 S.W.2d at 255. A warrant for his arrest was not procured until six days later.

Regarding the second factor, Investigator Caddell testified that he never told Robbins that Robbins was not free to leave. Instead, the evidence provides that Robbins and his wife arrived voluntarily when they agreed to provide a statement regarding the

sexual assault investigation of I.H. *See Xu v. State*, 100 S.W.3d 408, 413 (Tex. App.—San Antonio 2002, pet ref'd) ("[A]n interrogation is not custodial when a person voluntarily accompanies the police to the station, undergoes a thirty-minute interview, and leaves—regardless of whether the person is informed that he is not under arrest."). Investigator Caddell further stated that Robbins was not charged with any crime at that point.

Additionally, nothing in the investigator's actions created a situation that would lead a reasonable person to believe his freedom of movement was restricted. Robbins was not searched upon his arrival at the police department. *See Wilson v. State*, 442 S.W.3d 779, 784 (Tex. App.—Fort Worth 2014, pet. ref'd). When Robbins and his wife arrived at the lobby, Investigator Caddell spoke to them for a few minutes before he walked Robbins back to his office to begin the interview. Investigator Caddell was the only law enforcement officer present during the questioning. *See Wolfe*, 917 S.W.2d at 282 ("Stationhouse questioning does not, in and of itself, constitute custody."). Moreover, Robbins was not denied food, water, or the use of restroom facilities. *See Wilson*, 442 S.W.3d at 785. As Robbins voluntarily submitted to police questioning with the understanding that he was free to leave when the interview was completed, no reasonable person would have believed that his freedom of movement was restrained to the degree associated with a formal arrest in light of these particular facts. *See Dowthitt*, 931 S.W.2d at 255. In fact, Robbins admitted that he "was not under arrest, not under indictment, not charged with anything, unaware if he would be charged with anything."

After consideration of the above factors, we conclude that the interrogation was noncustodial, and the record supports the trial court's findings. *See Colvin v. State*, 467 S.W.3d 647, 658–59 (Tex. App.—Texarkana 2015, pet. ref'd). Because Robbins was not

under arrest, in custody, or deprived of his freedom on April 4, 2017, when Investigator Caddell asked him to meet investigators at the Sheriff's Office, the question of voluntariness does not arise. *See id.* at 657. We overrule Robbins's first issue.

C. Federal Constitutional Claims

Next, Robbins argues his confession is inadmissible because it was improperly induced by a promise not to tell his wife about the audio recordings. We construe this argument as a violation of due process under the Fourteenth Amendment of the United State Constitution and article I, section 19 of the Texas Constitution. *See generally* U.S. CONST. amend. XIV; TEX. CONST. art. I, § 19.

"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). An 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). "Coercive police misconduct must be causally related to the defendant's statements; absent such, there is no due process deprivation by a state actor, and no due process violation." *Oursbourn*, 259 S.W.3d. at 170. 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.* at 171.

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). 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); *see also Fisher v. State*, 379 S.W.2d 900, 902 (Tex. Crim. App. 1964) (holding confession may only be used when "freely and voluntarily made without having been induced by the expectation of any promised benefit.").

According to Robbins, Investigator Caddell's statement, "I know that you don't want me to play this for your wife," and insistence that Robbins "come clean with [him]" was of such a character that would likely make him speak untruthfully. We disagree. Here, I.H. outcried that Robbins had a history of sexually assaulting her. Consequently, Investigator Caddell requested to interview Robbins and his wife regarding the sexual allegations against Robbins. Thus, Robbins knew both he and his wife would be interviewed, and his wife would be aware of the specific allegations against him. During the interview, Investigator Caddell implored Robbins to get things off his chest, to be honest with him, to "come clean" with him, and to tell him the truth. He testified that his goal to was get Robbins to state the truth.[3] Therefore, Robbins did not confess to the offense due to Investigator Caddell's statement about his wife. The record shows that Robbins confessed when Investigator Caddell asked him why he did it. Robbins responded that he did not know, that he felt really bad, and that it should not have happened. Investigator Caddell did not tell Robbins that his wife would not be made aware of his confession. To

[3] The State argued that Investigator Caddell's beseechment was a matter of practicality; if Robbins would not identify his voice on the recording, Investigator Caddell would have no choice but to have his wife identify her husband's voice.

the contrary, Investigator Caddell immediately informed Robbins's wife of Robbins's confession.

Robbins admitted that he "was not under arrest, not under indictment, not charged with anything, unaware if he would be charged with anything" during the interview, and he expressed remorse for his actions at the conclusion of the interview. Based on these facts, Investigator Caddell's statement did not cause Robbins to confess to continually sexually assaulting his niece in exchange for his wife not to hear his voice on an audio recording. *See Martinez*, 127 S.W.3d at 794. Looking at the totality of the circumstances and the statements made by Investigator Caddell, we conclude that Robbins was not coerced into making his statement. *See Delao*, 235 S.W.3d at 239. We overrule Robbins's second issue.

III. CONCLUSION

We affirm the judgment of the trial court.

JAIME TIJERINA
Justice

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

Delivered and filed the
13th day of August, 2020.