

Not Reported in S.W.3d, 2008 WL 2514415 (Tex.App.-Hous. (14 Dist.))

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MEMORANDUM OPINION
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Court of Appeals of Texas,
Houston (14th Dist.).
Joel Rodriguez BRIONES, Appellant
v.
The STATE of Texas, Appellee.
No. 14-07-00289-CR.
June 19, 2008.

On Appeal from the 400th District Court, Fort Bend County, Texas, Trial Court Cause No. 43425.

[J. Sidney Crowley](#), for Joel Rodriguez Briones.

[John Harrity III](#), for The State of Texas.

Panel consists of Chief Justice [HEDGES](#), Justice [BOYCE](#), and Senior Justice [PRICE](#).^{FN*}

^{FN*} Senior Justice Frank C. Price sitting by assignment.

MEMORANDUM OPINION

[ADELE HEDGES](#), Chief Justice.

*1 Appellant, Joel Rodriguez Briones, appeals from his conviction for aggravated sexual assault. A jury convicted him and assessed punishment at life in prison. In a single issue, appellant contends that the trial court erred in determining that appellant's confession was voluntarily given. We affirm.

Background

Prior to trial, the court held a hearing on the voluntariness and admissibility of appellant's videotaped confession. At this hearing, a transcript of the interview during

which appellant made incriminating statements to Lieutenant Sonny Colunga of the Fort Bend County Sheriff's Department was admitted into evidence.^{FN1} The transcript demonstrates that Colunga administered a polygraph examination to appellant, during which appellant denied involvement in any sexual assaults. Colunga then informed appellant that he had failed the test and told appellant that he (Colunga) could just leave and report that appellant had failed. Colunga then said “[b]ut there's always reasons for a person doing what they do.” Colunga additionally told appellant: “I'm going to help you to get out of here, I'm going to help you with the detective.... [W]ith the truth, everything will come out right.... [A]t one point in your life, you need to trust someone.... I'm giving you my word as a man.... You need to speak with me and tell me everything, and we'll solve all of this.” A short time thereafter, Colunga added: “I will call the detective, call her here. You and I will talk to her and we'll explain to her why.... You have a disease.... But we need to help you.” Upon further questioning by Colunga, appellant admitted that he had raped several women in a particular apartment complex. Throughout the interview, Colunga consistently reminded appellant of the need to be truthful.

^{FN1}. The videotaped interview was conducted largely in Spanish, and the transcript contains an English translation of the interview.

Appellant took the stand at the hearing and testified inconsistently. During direct examination by his own counsel, appellant stated that (1) Colunga promised to help him, (2) he (appellant) thought Colunga would help him go free, and (3) that is why he confessed. On cross-examination, appellant admitted that when Colunga made the alleged promises, appellant already knew that he had assaulted three women. When asked whether he actually thought Colunga would let him go if he confessed to rape, appellant replied: “Of course not.” Appellant further acknowledged that he understood Colunga was not going to let him go if appellant told him about the rape. Appellant said that he “felt more relaxed and free” once he made the statements to Colunga. Appellant said that Colunga “promised me, you know, like-like psychological help or so, sort of.” The following exchange then occurred:

Q. [H]e never promised you that he would help you not have to do as much time on your criminal cases, did he? That's nowhere in there. He never said that.

A. No.

Q. He never promised you that you would go free?

A. No, he only told me that he will help me out.

*2 Still later, appellant testified that the only reason he confessed was because he thought Colunga would let him out of jail if he told the truth. He also said that he thought Colunga might help him get fewer years in jail, but he acknowledged Colunga never said he would talk to the district attorney's office for appellant or get any of the charges dismissed. Lastly, when asked whether Colunga offered appellant anything specific for talking to him, appellant replied “[o]nly help.” In denying the motion to suppress the confession, the trial court stated: “[T]he promise is not of such a positive nature that it

would be influential to the point that it would cause the Defendant to speak untruthfully, and, therefore, I'm going to find that the statement was given voluntarily....”

Analysis

In a single issue, appellant contends that the trial court erred in determining that appellant's confession was given voluntarily. More specifically, appellant argues that the confession resulted from positive promises of assistance made by Lt. Colunga. [Article 38.21 of the Texas Code of Criminal Procedure](#) provides that an accused's statement may be used against him “if it appears that the same was freely and voluntarily made without compulsion or persuasion.” [Tex.Code Crim. Proc. art. 38.21](#). The Court of Criminal Appeals has held that for a promise to render a confession invalid under [Article 38.21](#), the promise must be (1) positive, (2) made or sanctioned by someone in authority, and (3) of such an influential nature that it would cause a defendant to speak untruthfully. [Martinez v. State, 127 S.W.3d 792, 794 \(Tex.Crim.App.2004\)](#). The actual truth or falsity of a confession is irrelevant to a voluntariness determination. *Id.*

We generally review a trial court's decision to grant or deny a motion to suppress under an abuse of discretion standard. [Villarreal v. State, 935 S.W.2d 134, 138 \(Tex.Crim.App.1996\)](#). At a suppression hearing, the trial court is the exclusive trier of fact and judge of the credibility of the witnesses. [Mason v. State, 116 S.W.3d 248, 256 \(Tex.App.-Houston \[14th Dist.\] 2003, pet. ref'd\)](#). An appellate court affords almost total deference to a trial court's determination of historical facts supported by the record, especially when the trial court's findings are based on an evaluation of credibility and demeanor. [Guzman v. State, 955 S.W.2d 85, 89 \(Tex.Crim.App.1997\)](#). The appellate court affords the same amount of deference to a trial court's ruling on “application of law to fact questions,” also known as “mixed questions of law and fact,” if the resolution of those questions turns on an evaluation of credibility and demeanor. *Id.* The court reviews de novo those questions not turning on credibility and demeanor. *Id.* When a confession and alleged inducements are videotaped, we review the trial court's ruling on an application of law to facts de novo. [Herrera v. State, 194 S.W.3d 656, 658 \(Tex.App.-Houston \[14th Dist.\] 2006, pet. ref'd\)](#).

*3 Appellant contends that Colunga made direct or implied promises of a benefit likely to influence a defendant to speak untruthfully. He emphasizes Colunga's statements: “I'm going to help you to get out of here, I'm going to help you with the detective.... [W]ith the truth, everything will come out right....” These generalized statements of help and comment on the power of truth, however, do not constitute the kind of “if-then ... deal, bargain, agreement, exchange, or contingency” that is of such a nature to cause a suspect to speak untruthfully. [Chambers v. State, 866 S.W.2d 9, 20-21 \(Tex.Crim.App.1993\)](#) (citing [Freeman v. State, 723 S.W.2d 727, 731 \(Tex.Crim.App.1986\)](#)).

In support of his argument, appellant relies primarily on [Tovar v. State, 708 S.W.2d 25 \(Tex.App.-Corpus Christi 1986, no pet.\)](#). In *Tovar*, the court of appeals reversed a trial court's denial of a motion to suppress, finding that the promise made was of such a nature as to improperly influence the defendant to confess. *Id.* at 28-29. Specifically, the

interrogating officer suggested that the defendant's pregnant wife would not be charged with marijuana possession if the defendant confessed the marijuana in question belonged to him. *Id.* at 28. As discussed above, the alleged promise at issue in the present case does rise to the specificity level of the “if-then” bargain struck in *Tovar*.

Appellant further points to Colunga's statement that appellant had “a disease” and needed help as promising psychological treatment rather than incarceration. Again, this general statement of personal opinion does not rise to the level of an if-then bargain so as to improperly influence a suspect to speak untruthfully. See [Chambers, 866 S.W.2d at 20-21](#); [Freeman, 723 S.W.2d at 731](#). Because we find appellant's arguments without merit, we overrule his sole issue.

We affirm the trial court's judgment.

Tex.App.-Houston [14 Dist.],2008.

Briones v. State

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