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IN THE COURT OF CRIMINAL APPEALS FOR
THE STATE OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
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NOS. 02-21-00174-CR; 02-21-00175-CR; 02-21-00176-CR

ON APPEAL FROM THE COURT OF APPEALS
FOR THE SECOND DISTRICT OF TEXAS AT FT. WORTH

EMANUEL OCHOA

V.

THE STATE OF TEXAS

Cause Nos. CR19-00054; CR19-00056; CR19-00057
In the 235th District Court of
Cooke County, Texas

APPELLANT'S BRIEF ON DISCRETIONARY REVIEW

JEROMIE ONEY
Switzer | Oney Attorneys at Law
P.O. Box 1457
Gainesville, Texas 76241
(940) 665-6300
Fax (940) 665-6301
TSBN 24042248

ATTORNEY FOR APPELLANT

IDENTITY OF JUDGE, PARTIES, AND COUNSEL

Pursuant to Tex. R. App. P. 68.4, the appellant hereby lists all parties to this appeal with the names of all trial and appellate counsel:

Appellant:

Emanuel Ochoa

Jeromie Oney
P.O. Box 1457
Gainesville, Texas 76241
(940) 665-6300

Attorney for appellant at trial and on appeal

Appellee:

The State of Texas

Eric Erlandson
Assistant District Attorney
100 S. Dixon St.
Gainesville, Texas 76240
(940) 668-5466

Attorney for State at trial and on appeal

Trial judge:

Hon. Janelle Haverkamp
Judge, 235th District Court
100 S. Dixon St.
Gainesville, Texas 76241
(940) 668-5401

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TO THE HONORABLE COURT OF CRIMINAL APPEALS:

STATEMENT REGARDING ORAL ARGUMENT

The Court previously granted oral argument.

STATEMENT OF THE CASE

Appellant, Emanuel Ochoa, was charged by indictment with the offense of Aggravated Sexual of a Child Under 6 in Cause Number CR19-00054, alleged to have occurred on February 6, 2018 in Cooke County, Texas. (CR54 at 10).[1] Appellant pled not guilty. The jury found the appellant guilty. The jury sentenced the appellant to 45 years in the Texas Department of Criminal Justice. (CR54 at 254).

Appellant, Emanual Ochoa, was charged by indictment with the offense of Injury to a Child Causing Serious Mental Injury in Cause Number CR19-00056, alleged to have occurred on February 6, 2018 in Cooke County, Texas. (CR56 at 10). Appellant pled not guilty. The jury found the appellant guilty. The jury sentenced the appellant to 55 years in the Texas Department of Criminal Justice. (CR56 at 238).

Appellant, Emanual Ochoa, was charged by indictment with the offense of Aggravated Kidnapping in Cause Number CR19-00057, alleged to have occurred on February 6, 2018 in Cooke County, Texas. (CR57 at 10). Appellant pled not guilty. The jury found the appellant guilty. The jury sentenced the appellant to 20 years in the Texas Department of Criminal Justice. (CR57 at 237).

[1] Citations to the record are as follows: clerk's record (CR [Cause Number] at [page number]); supplemental clerk's record (SCR at page number; reporter's record, ([Roman numeral volume number] RR at [page number]); supplemental reporter's record, ([Roman numeral volume number] SRR at [page number]); exhibits, (SX or DX [exhibit number]).

The Second Court of Appeals affirmed the convictions in each case on July 20, 2023. The appellant petitioned this Court for review on November 28, 2023. This Court granted review on its own motion on February 7, 2024.

QUESTIONS PRESENTED FOR REVIEW

1. **Whether the Ranger made a positive promise to Appellant under *Garcia v. State,* 919 S.W.2d 370 (Tex. Crim. App. 1994), when he said that "there's no reason on this deal why you shouldn't be adjudicated as a juvenile. And what that means is they're going to get you help. You're not going off to prison or anything horrible like that.**

2. **Whether the "positive promise" standard of *Garcia* applies to juveniles?**

3. **Whether the totality of the circumstances in this case rendered Appellant's statement involuntary?**

STATEMENT OF FACTS

M.G. went missing from her home in Pioneer Valley, Texas on February 6, 2018. (VI RR at 12). She was located at a trailer next door to her home and appeared to be in shock and dehydrated. (V RR at 89). The appellant resided in M.G.'s home at the time she went missing. (VI RR at 16). Law enforcement made the decision to interview the appellant and Jeremiah Jacques, another individual living in the home. After interviewing Jacques, they did not believe him to be a suspect. (VI RR at 97).

The appellant was transported to the Sheriff's Office by investigators for the Cooke County Sheriff's Office. The appellant's mother was also present when the appellant was transported. (VI RR at 135).

Texas Ranger James Holland ("Holland") conducted the interview of the appellant.[2] Holland initially made contact with the appellant in the lobby of the Sheriff's Office. Holland's testimony was appellant was free to leave at that point. (III RR at 44). Holland spoke with the appellant's mother prior to interviewing the appellant. (III RR at 44). He advised them he wanted to speak with them and get their version of what occurred. Holland stated when he interviewed the appellant he was not in custody, not in handcuffs, and was advised he could leave whenever he

[2] All references to the statement of the appellant in this brief refer to State's Exhibit PT 1, which contains both the interview of the appellant and the admonishment by Johnson.

wanted. (III RR at 46). Holland did not ask the appellant if he wanted his mother present until well into the interview, after the magistration. (III RR at 56).

Holland described the initial portion of the interview as "fine" and said the appellant was "low key" and "seemed excited" to speak with him. Eventually Holland came to believe the appellant was more involved in what occurred. This belief came from the appellant referring to the victim from the start as a "trouble maker" and talking about the bad things she had done. Holland also believed the appellant made a "Freudian slip" in saying he hoped the victim was not raped. (III RR at 48). During the pre-warned portion of the interview Holland advised the appellant he felt like the appellant made a mistake. It was at that point in the interview Holland felt like the appellant was something more than a witness. (III RR at 58). Holland's testimony was that at no point prior to the appellant being magistrated he would have been comfortable arresting him. The appellant was magistrated at the suggestion of another law enforcement officer. (III RR at 49). While Holland was waiting on the magistrate to arrive, he went back into the interview room with the appellant. At that time, he told the appellant he could help the appellant and he was bringing in someone to "help with that process." (III RR at 67). Holland further advised the appellant he would use the power of the Texas Rangers to help him. (III RR at 68).

Holland said he never made any promises that if the appellant did something for him that he would return the favor. Holland, however, did mention several times during the interview that he would help the appellant. Holland stated that he meant he would help the appellant psychologically so he would not do this again. (III RR at 52). Holland did tell the appellant there was no reason this should not be a juvenile adjudication. (III RR at 53). Also, Holland advised the appellant it was his job to help people who make mistakes and that the victim was talking and the appellant should tell Holland what happened or he could not help him. (III RR at 60, 61). After the magistration, Holland advised the appellant he had spoken with his mother and he believed that he could help him. (III RR at 68). He further advised at that point because the appellant was a juvenile, there should be no reason he should be adjudicated as a juvenile.

There were times during Holland's conversation with the appellant, prior to the magistration, where the appellant pulled his hoodie up over his head. Holland believed this to be an "act" and that the appellant was not closing himself off because he did not want to speak to him. (III R at 62). During the initial part of the interview, Holland was in the interview room with the appellant, the door was closed and Holland sat in front of the appellant in a chair. During the times appellant would put hoodie over his head and bend down, Holland would get closer to the appellant. (III

RR at 63). At different times Holland placed his hands on appellant's knees and shoulder. (III RR at 63).

Judge Carrol Johnson ("Johnson") the judge for Justice Court Precinct 2 in Cooke County, conducted the magistration on the appellant.[3] The magistration was the first time Johnson interacted with the appellant. (III RR at 9). The appellant's mother was present for the magistration, but no other individuals. (III RR at 10).

Johnson used a form designated to make sure an individual who is being advised of his rights understands those rights and requests an affirmative or negative answer to whether those rights are understood. (III RR at 11). Johnson testified he is required to give each of the rights "similar to *Miranda.*" Johnson advised the appellant of his right to an attorney, that if he could not afford an attorney, he could have one appointed to him, his right to remain silent and not make any statements and all, and that any statements he made may be used as evidence against him. (State's Exhibit PT 1). Johnson did not believe that either the appellant or his mother expressed any concerns about whether they understood the rights. The appellant signed the form acknowledging he had been read his rights and that he understood them. (III RR at 16).

Johnson testified that, to his knowledge, the appellant had not been charged with any offense and was only being questioned as a witness. (III RR at 20-21).

[3] The appellant was 14 at the time of the interview and magistrated pursuant to *Tex. Fam. Code* § 51.095.

Johnson further testified that, while the appellant had not been charged with any offense, he would make a distinction between someone who was being interviewed as a witness versus someone suspected of a crime. (III RR at 25-26). Johnson advised the appellant he was only there as a witness. (III RR at 26).

Johnson agreed that in advising the appellant of his rights he went beyond simply reading or advising the appellant of each specific right, but that he explained what each right meant in his mind. Johnson provided the further explanation of the rights because he was dealing with a 14-year-old boy and he was trying to make him "comfortable." (III RR at 28). When Johnson advised the appellant that anything he said could later be used against him, Johnson's clarification was that any statement he gave, the appellant may be asked to talk about or verify later. (III RR at 31). In advising the appellant about his right to an attorney, Johnson clarified by explaining to the appellant that "where that really comes in" is when you are charged with a crime and you have to go to court and need an attorney and you cannot afford one, they will appoint an attorney for you. Johnson further reiterated that point to the appellant by comparing to his own court and explaining that if someone in his court feels uncomfortable without an attorney, he will stop the proceeding immediately so they can get an attorney. (III RR at 32).

SUMMARY OF THE ARGUMENT

Summary of Question 1:

This court established, in *Garcia v. State*, the "positive promise" standard for the admissibility of statements by suspects. This standard holds that a promise made by law enforcement may render a confession involuntary if it was positive, made, or sanctioned by someone with apparent authority, was of some benefit to the defendant and was of such a character as would likely cause a person to speak untruthfully. Because the statement by the Ranger satisfied each prong of the *Garcia* standard, the Ranger made a positive promise to the appellant when he told him "there's no reason on this deal why you shouldn't be adjudicated as a juvenile. And what that means is they're going to get you help. You're not going off to prrison or anything horrible like that." The statement was therefore involuntary and should have been suppressed.

Summary of Question 2:

It has regularly been held that juveniles are entitled to greater protections than their similarly situated adult counterparts. In line with these greater protections, this court should decline to apply the "positive promise" standard of *Garcia* to juveniles.

Summary of Question 3:

The totality of the circumstances regarding a statement given by a juvenile must be considered in determining whether the statement is voluntary. The actions of the Ranger, combined with having been misadvised by the magistrate, rendered the appellants statement involuntary.

FIRST QUESTION FOR REVIEW

Whether the Ranger made a positive promise to Appellant under *Garcia v. State,* 919 S.W.2d 370 (Tex. Crim. App. 1994), when he said that "there's no reason on this deal why you shouldn't be adjudicated as a juvenile. And what that means is they're going to get you help. You're not going off to prison or anything horrible like that."

ARGUMENTS AND AUTHORITIES

1. Standard of Review

The due process clause of the Fourteenth Amendment and *Miranda*[4] preclude the admission of an involuntary statement. *Oursbourn v. State,* 259 S.W.3d 159, 169 (Tex. Crim. App. 2008). Texas law also provides protection against the admission of involuntary statements. *See Tex. Fam. Code* § 51.095; *Tex. Code Crim. Proc.* art. 38.22.

An appellate court reviews a trial court's decision to admit or exclude evidence under an abuse of discretion standard. *Green v. State,* 934 S.W.2d 92, 101-102 (Tex. Crim. App. 1996). A reviewing court should not reverse such a ruling that is in the "zone of reasonable disagreement." *Id.* at 102.

2. Garcia v. State

In *Garcia v. State,* the appellant alleged his statement given to law enforcement was involuntary because he was improperly induced to confess by promises of leniency made by the police. *Garcia v. State,* 919 S.W.2d 370, 388 (Tex. Crim. App. 1994). This court held that a promise made by law enforcement may render a confession involuntary if it was positive, made, or sanctioned by someone with apparent authority, was of some benefit to the defendant and was of such a character as would likely cause a person to speak

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

untruthfully. *Id.* see also *Freeman v. State,* 723 S.W.2d 727 (Tex. Crim. App. 1986); *Jacobs v. State,* 787 S.W.2d 387 (Tex. Crim. App. 1990). To determine if the promise of a benefit was likely to influence an appellant to speak untruthfully, an appellate court must look to whether the circumstances of the promise made the defendant "inclined to admit a crime he didn't commit." *Id.* citing *Sossamon v. State,* 816 S.W.2d 340, 345 (Tex. Crim. App. 1991).

If this court holds the "positive promise" standard of *Garcia* applies to juveniles,[5] the Ranger's statement to the appellant, "there's no reason on this deal why you shouldn't be adjudicated as a juvenile. And what that means is they're going to get you help. You're not going off to prison or anything horrible like that," would constitute a positive promise under that standard.

a. The statement was positive

To meet the requirement under *Garcia* that the statement be "positive," the statement must not be equivocal.[6] *Id. See Washington v. State,* 582 S.W.2d 122, 124 (Tex.Crim.App.1979). The statement made by the Ranger must be looked at in its totality. By themselves, the statements "there's no reason on this deal why you shouldn't be adjudicated as a juvenile" and "what that means is they're going to get you help," could be viewed as equivocal, or a prediction about future events. A prediction about future events is not the same as a promise. *Medrano v. State,* 579 S.W.3d 499, 504 (Tex.App.- San

[5] *See* this brief, Question 2.

[6] Equivocal is defined as "having two or more possible meanings," or "not easily or definitively understood." "Equivocal." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/equivocal. Accessed 7 Mar. 2024.

Antonio 2019). Also, general "non-specific offers to help a defendant" and such general offers or general statements how a confession might result in more lenient treatment will not render a confession invalid. *Drake v. State,* 123 S.W.3d 596, 603 (Tex.App.—Houston [14th Dist.] 2003).

However, the subsequent phrase in the statement, "You're not going off to prison or anything horrible like that," is not equivocal, but definitive. The Ranger told the appellant "you're not going off to prison." See *Washington,* 582 S.W.2d at 124. Any ambiguity in the first two statements was resolved by the final, definitive statement that the appellant would not go to prison. There is no the possibility the statement "you're not going off to prison" has two or more possible meanings or not easily or definitively understood. *Id.*

The court below ended its analysis with the first element of *Garcia* because it found the Ranger "did not make an unqualified promise to [the appellant]." *Ochoa v. State*, 675 S.W.3d 793, 810 (Tex.App.-Ft. Worth 2023). The court's analysis focused on the first two sentences of the statement, without directly addressing the statement "you're not going off to prison." *Id.* It is this statement that the court below failed to address which makes the full statement an affirmative promise. In focusing on the statement to appellant that there is no reason he should not be adjudicated as a juvenile, the court below did express concerns with the Ranger's statement, however they concluded the statements did not constitute a "positive promise." *Id.*

b. The statement was made or sanctioned by someone with apparent authority

For a promise to render a statement involuntary, it must be made or sanctioned by

someone with apparent authority. *Garcia,* 919 S.W.2d at 388. Law enforcement officers have been held to be persons in such a position of authority. *Hardesty v. State*, 667 S.W.2d 130, 134; fn. 8 (Tex. Crim. App. 1984) referencing *Walker v. State,* 626 S.W.2d 777 (Tex. Crim. App. 1982); *Pitts v. State,* 614 S.W.2d 142 (Tex. Crim. App. 1981); *Fisher v. State,* 379 S.W.2d 900 (Tex. Crim. App. 1964); *Ethridge v. State,* 133 Tex.Cr.R. 287, 110 110 S.W.2d 576 (1937); *Searcy v. State,* 28 Tex.App. 513, 13 S.W. 782 (1890). The Ranger, as a law enforcement officer, is a person with apparent authority. *Id.* The Ranger's apparent authority in the present case, however, goes beyond just his general status as a law enforcement officer. The Ranger went to significant lengths to impress upon the juvenile appellant not only the importance of the Texas Rangers in general, but his special position within the Texas Rangers. The Ranger also specifically advised the appellant he would use "the power of the Texas Rangers" to help him. To emphasize the point, the Ranger advised the appellant the Governor had asked him to be there on that date. The Ranger was purposely trying to impress upon the juvenile appellant the extent of his authority.

Also, a significant factor contributing to the apparent authority of the Ranger was the presence of the Judge, who had been brought by law enforcement to admonish the appellant of his rights pursuant to *Tex. Fam. Code* § 51.095. During the portion of the interview prior to the appellant being advised of his rights, the Ranger advised the appellant he wanted to "help" him. When the Ranger learned other law enforcement officers had requested the Judge be brought in to provide the warnings to the appellant, the Ranger went back to the interview room, apparently for the sole purpose of telling the appellant he had brought in the Judge in order to "help" the appellant. It was the Rangers intent to lead the

appellant to believe the Judge was there to assist in whatever "help" the Ranger supposedly wanted to provide, and that he had the apparent authority to do so.

Garcia does not require the individual making the promise to have actual authority to make the promise, only that the promise be *made or sanctioned by someone with apparent authority*. *Garcia*, 919 S.W.2d at 388 (emphasis added). The Ranger's actions in emphasizing his importance, and the way he emphasized his importance, to the appellant gave the Ranger apparent authority to make or sanction the promise. *Id.* This is especially true given the Ranger advised the appellant the Judge was there to also "help" the appellant—it appeared as if the Judge had sanctioned the promise.

The court below rejected that the Ranger had apparent authority to make or sanction the promise, stating that the Ranger informed the appellant that it was the people in the district attorney's office who would decide how to proceed with the case. *Ochoa,* 675 S.W.3d at 811. This conclusion, however fails to address whether the Ranger had apparent authority to make or sanction the promise at that time. The time the Ranger spent offering to "help" the appellant, and demonstrating to the appellant his importance and the lengths of his authority was disproportionally greater than the time he spent advising the appellant the district attorney's office would make the decision. Even considering that the Ranger told the appellant about the district attorney's office, the totality of the circumstances shows the ranger had *apparent* authority to make the promise at that time, especially considering the appellant's status as a juvenile. *Garcia,* 919 S.W.2d at 388; *Darden v. State,* 629 S.W.2d 46, 51 (Tex. Crim. App. 1982) (holding that the admissibility of a juvenile's statement should be viewed under the totality of the circumstances).

c. The promise was of some benefit to the appellant

Under *Garcia,* a promise renders a statement involuntary only if the promise would be of some benefit to the appellant. *Garcia*, 919 S.W.2d at 388. The promise in the present case clearly would be of some benefit to the appellant: the promise that he was not going to prison. *Sossamon,* 816 S.W.2d at 345.

d. The promise was of such a character as would likely cause a person to speak untruthfully

Lastly, *Garcia* requires that for a promise to render a statement involuntary, it must be of such a character as would likely cause a person to speak untruthfully. *Garcia*, 919 S.W.2d at 388. To reach the conclusion that a promise is of such a character as would likely cause a person to speak untruthfully, an appellate court must look to whether the circumstances of the promise made the defendant "inclined to admit a crime he had not committed. *Sossamon,* 816 S.W.2d at 345 citing *Fisher,* 379 S.W.2d at 902.

The promise in the present case is of such a character as would likely cause a person to speak untruthfully, or inclined to admit a crime he had not committed. *Id.* The appellant had observed the victim to be seriously injured. He had been brought to the sheriff's office for an interview, supposedly only as a witness to what had occurred. Despite being advised by both the Ranger and the Judge that he was only there as a witness, during the course of the interview, the Ranger implied to the appellant that he believed him to be guilty of something, telling the appellant he believed he had "made a mistake," or done something for which he needed "help." It was clear the Ranger suspected the appellant of being guilty of what was likely to be a serious offense and he repeatedly conveyed those suspicions to

the appellant. Facing those accusations and being told he should be tried as a juvenile and that he was not going to prison is exactly the circumstance that would make someone "inclined to admit to a crime he had not committed." *Id.*

3. Application of the "positive promise" standard to juveniles

If this court holds the "positive promise" standard of *Garica* applies to juveniles, it should still apply the standard set forth in *Garcia* while considering the appellant's age at the time of the interview. When determining whether a person is in custody for purposes having to be advised as to their rights under *Miranda,* courts have held that when the person involved is a juvenile, a court should consider his age as part of the analysis of the "reasonable person" standard in deciding whether there was restraint of movement associated with a formal arrest. *In re J.A.B.,* 281 S.W.3d 62, 65 (Tex.App.-El Paso 2008); *In Re V.P.,* 55 S.W.3d 25, 31 (Tex.App-Austin 2001). This court should apply the same standard when analyzing whether there is "positive promise" under *Garcia* in a case involving a juvenile. *Id.*

Considering the appellant's age at the time of the interview, and the factors discussed above, the Ranger's statement "there's no reason on this deal why you shouldn't be adjudicated as a juvenile. And what that means is they're going to get you help. You're not going off to person or anything horrible like that" was a positive promise under the standard set forth by this court in *Garcia* and the admission of his statement was a violation of the appellant's due process rights. *Garcia,* 919 S.W.2d at 388. The court below erred in concluding otherwise.

The judgment of the court below should be reversed.

SECOND QUESTION FOR REVIEW

Whether the "positive promise" standard of *Garcia* applies to juveniles.

ARGUMENTS AND AUTHORITIES

This Court has never addressed whether the "positive promise" standard of *Garcia* applies to juveniles. See *Garcia v. State,* 919 S.W.2d at 388. The court below applied the "positive promise" standard to the juvenile appellant in the present case, however without specifically addressing whether the standard *should* be applied to juveniles. *Ochoa,* 675 S.W.3d at 811. In reaching its conclusion the Ranger did not make an "unqualified promise" to the appellant, the court cited several cases that have applied the *Garcia* standard to the admission of statements. *Id. See Martinez v. State,* 127 S.W.3d 792, 794 (Tex. Crim. App. 2004); *Coleman v. State,* 440 S.W.3d 218, 224 (Tex.App.-Houston [14th Dist.] 2013); *Wayne v. State,* 756 S.W.2d 724, 730, 734 (Tex. Crim. App. 1988); *Medrano,* 579 S.W.3d at 504; *Mason v. State,* 116 S.W.3d 248, 260 (Tex.App.-Houston [14th Dist.] 2003); *Drake,* 123 S.W.3d at 603; *Alvarez v. State,* 649 S.W.2d 613, 620 (Tex. Crim. App. 1982); *Vasquez v. State,* No. 13-19-00164-CR, 2020 WL 5053221 at *3 (Tex. App.-Corpus Christi-Edinburg July 9, 2020) (mem. op., not designated for publication). None of these cases cited by the court involved juveniles, however.

The "positive promise" standard of *Garcia* has rarely been applied to a case involving a juvenile. Like the court below, the court in *Matter of R.G.,* applied, without specifically deciding, that the "positive promise" standard of *Garcia* applied where a juvenile argued for the suppression of his statement where the officer told the juvenile he

would get less time if he gave a statement. *Matter of R.G.*, No. 14-95-00584-CV, 1997 WL 379151 at *4 (Tex. App.-Houston [14th Dist.] July 10, 1997) (mem. op., not designated for publication). Like the court below, the court in *Matter of R.G.*, in support of its upholding of the admission of the juvenile's statement, cited to cases which did not involve juveniles. *Id. See Dykes v. State*, 657 S.W.2d 796 (Tex. Crim. App. 1983); *Muniz v. State*, 851 S.W.2d 238, 254 (Tex. Crim. App. 1993).

Because of the extra protections consistently applied to juveniles, by courts and by the legislature, this court should decline to extend the "positive promise" standard of *Garcia* to juveniles.

a. The United States Supreme Court and juveniles

The idea that juveniles should be provided greater protections under the law originated with the United States Supreme Court. *In re L.M.*, 993 S.W.2d 276, 287 (Tex.App.-Austin 1999). The Supreme Court has acknowledged that juveniles are uniquely situated as compared to their adult counterparts, holding a juvenile cannot be judged by the more exacting standards of maturity. *Haley v. State of Ohio*, 332 U.S. 596, 599, 68 S.Ct. 302, 92 L.Ed. 224 (1948).

Further, the Supreme Court, in holding that the right against self-incrimination applies to juveniles to the same extent as adults, has added an extra caution when incriminating statements made by a juvenile are offered into evidence. *In re Gault*, 387 U.S. 1, 55, 87 S.Ct. 1428, 1458, 18 L.Ed.2d 527 (1967). If counsel is not present when the juvenile makes a statement, "[T]he greatest care must be taken to assure that the admission

was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, right, or despair. *Id.*

b. The Legislature and the Texas Family Code

As a response to the Supreme Court's position on the protection of juveniles, the legislature has provided juveniles protections greater than those offered to their adult counterparts. In 1973, the Texas Legislature enacted Title III of the Texas Family Code to assure juveniles a fair hearing in which their constitutional and statutory rights are recognized and enforced. *In re L.M.*, 993 S.W.2d at 287 citing *Lovell v. State,* 525 S.W.2d 511, 513 (Tex. Crim. App.1975); *Tex. Fam. Code* § 51.01. Aware of *Gault*, as well as the admonition in *Haley* that admissions and confessions made by a juvenile require careful inquiry and special caution, the legislature enacted Title III to determine and protect the best interest of the juvenile, assure that the juvenile's constitutional and statutory rights are recognized and enforced, and permit waiver of the juvenile's rights only under certain prescribed conditions. *Id.* referencing *In re R.E.J.*, 511 S.W.2d 347 (Tex.Civ.App.-Houston [1st Dist.] 1974).

Among the other constitutional and statutory rights of juveniles Title III was designed to protect, it specifically includes a statute governing the admission of statements by juveniles, which offers greater protection than that of the adult counterpart. The admission into evidence of a statement made to law enforcement by an adult is governed by Article 38.22 of the Texas Code of Criminal Procedure. Article 38.22 requires the person being interviewed be advised of his right to remain silent, that any statement he makes may be used against him at his trial, that he has the right to a lawyer present prior

to or during any questioning and that if he cannot afford an attorney, one will be provided to him, and that he has the right to terminate the interview at any point. *Tex. Code Crim. Proc.* Art. 38.22 § 2(a). Article 38.22 allows that the accused may receive the warnings from the person to whom the statement is made. *Id.* Texas Family Code 51.095 covers the admissibility of a statement of a child. 51.095 requires the juvenile be advised of largely the same rights as an adult under 38.22, but the juvenile has the added protection of the requirement he be advised of the rights in the presence of a magistrate with no law enforcement officer or prosecuting attorney present. *Tex. Fam. Code* § 51.095(a)(B)(i).

Greater protections provided to juveniles under Title III are not limited to the admission of statements. Unlike their adult counterparts, even after a finding of guilt, a child cannot be sentenced or detained unless the court further finds that he is need of rehabilitation or that the protection of the public or the child requires such. If the court does not so find, it must immediately release the child. *Lane v. State*, 767 S.W.2d 789, 794-95 (Tex. Crim. App. 1989); *Tex. Fam. Code* 54.04(c).

Other states have also recognized the necessity of providing greater protections to juveniles in creating standards for admission of statements they give to law enforcement. *In re L.M.*, 993 S.W.2d at 288. These states consider "whether a reasonable person in child's position—that is, a child of similar age, knowledge and experience, placed in a similar environment—would have felt required to stay and answer all of [the officer's] questions." *Id.* citing *State ex. Rel. Juvenile Dep't of Multnomah County v. Loredo*, 125 Or.App. 390, 865 P.2d 1312, 1315 (1993); *see also State v. D.R.*, 84 Wash.App. 832, 930

P.2d 350, 353 (1997); *State ex. Rel. Juvenile Dep't of Lane County v. Killitz,* 59 Or.App. 720, 651 P.2d 1382, 1383-84 (1982).

c. Texas Courts

Since the passage of Title III, Texas courts have upheld the legislature's recognition that juveniles deserve extra protection and provided safeguards for juveniles, including the protection against self-incrimination, unless the juvenile waives that right in accordance with the terms of the statute. *In re L.M.*, 993 S.W.2d at 287. *See Petree v. State,* 778 S.W.2d 507, 515 (Tex.App.-Dallas 1989). Courts have regularly concluded that the Legislature obviously provided a safeguard for children, including with regards to statements provided to law enforcement. *Lovell,* 525 S.W.2d at 514 citing *In re S.E.B.*, 514 S.W.2d 948 (Tex.Civ.App.—El Paso 1974); *In re V.R.S.*, 512 S.W.2d 948 (Tex.Civ.App.-El Paso 1974).

Likewise, courts in Texas have acknowledged that juveniles are uniquely situated. *Matter of R.G.,* 1997 WL 379151 at *fn 5 (citing the United States Supreme Court holding that an "extra caution" is necessary when incriminating statements made by a juvenile are offered into evidence). See also *In re J.A.B.*, 281 S.W.3d at 65; *In Re V.P.*, 55 S.W.3d at 31 (both holding that, in determining whether someone is in custody, when the person involved is a juvenile, a court should consider his age as part of the circumstances in deciding whether there was an arrest or restraint of movement associated with a formal arrest). Courts consistently recognize juveniles should be given special protections, in various aspects, under the law.

d. Positive promise test of *Garcia* as applied to juveniles

Keeping with the history in law of providing greater protections to juveniles, this court should decline to extend the "positive promise" standard of *Garcia* to juveniles.[7] Courts applying the "positive promise" standard necessarily end up parsing words and dissecting whether statements of law enforcement are "general promises of help" or "predictions of future events" or an actual positive promise. *Medrano,* 579 S.W.3d at 504; *Drake,* 123 S.W.3d at 603. While an adult suspect can appreciate the distinction between these "promise" and "not a promise" concepts, a child is much more likely to hear a general promise of help or a prediction of a future event and determine they are being offered something specific in exchange for their statement. "No matter how sophisticated" the child, police interrogation of a juvenile "suspect cannot be compared" to an adult. *Matter of J.J.*, 651 S.W.3d 385, 391 (Tex.App.-Houston [1st Dist.] 2022) citing *Gallegos v. Colorado*, 370 U.S. 49, 54, 82 S.Ct. 1209, 8 L.Ed. 325 (1962). Because juveniles are "easy victims of the law," they are not to be "judged by the more exacting standards of maturity." *Haley,* 322 U.S. at 599. Application of the "positive promise" standard of *Garcia* to juveniles holds juveniles to a more exacting standard of maturity and makes them an easy victim of the law.

[7] If this court holds that the "positive promise standard" of *Garcia* does not apply to juveniles, it need not necessarily create a new standard to apply to juveniles. Whether the statement of a juvenile is voluntary can still be analyzed under the "totality of the circumstances" under *Darden* even without application of the standard in *Garcia. See Darden,* 629 S.W.2d at 51.

THIRD QUESTION FOR REVIEW

Whether the totality of the circumstances in this case rendered appellant's statement involuntary?

ARGUMENTS AND AUTHORITIES

1. Standard of Review

The due process clause of the Fourteenth Amendment and *Miranda* preclude the admission of an involuntary statement. *Oursbourn,* 259 S.W.3d at 169. Texas law also provides protection against the admission of involuntary statements. *See Tex. Fam. Code* § 51.095; *Tex. Code Crim. Proc.* art. 38.22.

An appellate court reviews a trial court's decision to admit or exclude evidence under an abuse of discretion standard. *Green,* 934 S.W.2d at 101-102. A reviewing court should not reverse such a ruling that is in the "zone of reasonable disagreement." *Id.* at 102.

2. Admissibility of the appellant's statement based on the totality of the circumstances

The Supreme Court has acknowledged that juveniles are uniquely situated as compared to their adult counterparts, holding a juvenile cannot be judged by the more exacting standards of maturity. *Haley,* 332 U.S. at 599. Further, the Supreme Court in holding that the right against self-incrimination applies to juveniles to the same extent as adults, has added an extra caution when incriminating statements made by a juvenile are offered into evidence. *In re Gault,* 387 U.S. 1, 55, 87 S.Ct. 1428, 1458, 18 L.Ed.2d 527 (1967). If counsel is not present when the juvenile makes a statement, "[T]he greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was

not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, right, or despair. *Id.*

In judging whether a juvenile's confession is voluntary, a court must look at the totality of the circumstances. *Darden,* 629 S.W.2d at 51. Proof of proper warnings preceding the subsequent statement, and the juvenile's apparent willingness, under the totality of the circumstances, to waive his rights following the warnings will fulfill the State's burden to show voluntariness. *Griffin v. State,* 765 S.W.2d 422, 430 (Tex. Crim. App. 1989).

Even if this Court were to find that no one aspect of the appellant's statement resulted in the statement being involuntary, the appellant's statement was involuntary under the totality of the circumstances. *Darden,* 629 S.W.2d at 51.

a. The magistration

The admission of statements made by a juvenile are governed by Texas Family Code § 51.095, which incorporates the warnings require by *Miranda.* See *Miranda,* at 479. See also *Tex. Fam. Code* § 51.095. Section 51.095 requires that, before making a statement, a child be advised he has the right to remain silent and not make any statements at all, and that any statement the child makes may be used as evidence against the child, the child has the right to have an attorney present to advise the child either prior to or during the questioning, if the child is unable to employ an attorney, one would be appointed, and that the child has the right to terminate the interview at any time. *Tex. Fam. Code* § 51.095(a)(1)(A).

Johnson was brought to the Cooke County Sheriff's Office for the purpose of providing the §51.095 admonishments to the appellant. In the process of providing the admonishments to the appellant, Johnson attempted to provide "explanations" of the admonishments as well, and these "explanations" included conflicting and incorrect information. These missteps by the magistrate should weigh heavily against the appellant's statement being voluntary. *See Diaz v. State,* 61 S.W.3d 525, 528 (Tex.App.-San Antonio 2001). From the outset, Johnson advised the appellant he was only a witness in the case, when he was actually a suspect.[8] But beyond that, Johnson provided the appellant with incorrect information regarding the warnings themselves.

Johnson correctly advised the appellant that any statement he made could later be used against him. *Tex. Fam. Code* § 51.095(a)(1)(A). In explaining that right, however Johnson downplayed the possible impact of any statement the appellant made later being used against him by telling him that it meant that he might be asked to "talk about it later" or "verify it later." While this explanation likely stemmed from Johnson being incorrectly advised the appellant was there as a witness, there is a significant difference between telling someone their statement can later be used to convict them of a crime, and then explaining the right by telling them they might just have to "explain" or "verify" their statement later.

[8] As the court below correctly noted, there is not a separate set of warnings for a person interviewed as a witness rather than a suspect. *Ochoa*, 675 S.W.3d at 809. However, being incorrectly advised that you are there as a witness, as opposed to a suspect, would change how someone perceives the § 51.095 warnings and their willingness to waive those warnings. While the incorrect characterization itself does not necessarily make the statement involuntary, it is a relevant factor in considering the totality of the circumstances, especially considering the information was provided to the appellant by a judge.

The explanation downplayed the significance of the effect of someone giving a statement to law enforcement.

Johnson also advised the appellant of his right to have an attorney present to advise him prior or during the questioning. *Id.* In "explaining" this right to the appellant, Johnson advised the appellant this right "really" comes into play if you are charged with any kind of crime and you are going to court then the court will appoint you an attorney. Johnson further emphasized this point by analogizing the appellant's situation with a situation in Johnson's court where, when he observes, during a court proceeding, someone needing an attorney, he will stop the court proceeding and allow them to obtain counsel. That clarification is in direct opposition to the actual right—the right to have counsel *prior to or during any questioning*. *Id* (emphasis added). In effect, Johnson advised the appellant that he has the right to an attorney, but that he does not *need* one until he goes to court. This is obviously incorrect.

The cumulative effect of the mistakes made by Johnson's in advising the appellant of his rights under the Texas Family Code significantly contributed the involuntariness of the appellant's statement. *Diaz,* 61 S.W.3d 525 at 528. These missteps painted a picture to the juvenile defendant he was just there as a witness, any statement would not be that big a deal because he would just need to "verify" it later, and consequently he would not need an attorney until he was charged and went to court.[9] While the exact warnings given

[9] This was all after the Ranger advised the appellant that he was bringing in Johnson to "help" the appellant. The Ranger advising the appellant that Johnson was there to "help" him would skew the appellant's perception of why Johnson was actually there, and skew his perception of the admonishments.

the appellant were written on a piece of paper and read to the appellant, a child of 14 is more likely to listen to the "explanation" by the judge than the warnings themselves.[10]

b. The Ranger

When you combine the actions of the Ranger with the previously discussed inaccuracies in the explanations of the § 51.095 rights by the magistrate, the combined effect is that the appellant's statement was involuntary. *Darden*, 629 S.W.2d at 51. If the circumstances indicated the appellant was threatened, coerced, promised something in exchange for his confession, or if he was incapable of understanding his rights and warnings, the trial court must exclude his confession as involuntary. *Id.*

In conducting the interview of the appellant, the Ranger created an environment for the appellant to make him feel as if he had no option other than to provide a statement to the Ranger. During the interview, the Ranger was in the interview room with the appellant with the door closed. The Ranger was armed and sitting in a chair in front of the appellant, who was in the corner. During the instances when the appellant would put his shirt over is head as if he did not want to talk, the Ranger would get closer to the appellant and lift his head up. At times the Ranger would place his hands on the appellant's knees and shoulder. *See In re J.A.B.*, 281 S.W.3d at 65.

As was discussed previously, the statements by the Ranger, including the statement that the appellant was "not going off to prison or anything horrible like that," amounted to

[10] The court below, while expressing concern with some of Johnson's statements, ultimately held that because the appellant was also correctly advised, the additional language did not make the appellant's decision to confess one that was not freely given. *Ochoa*, 675 S.W.3d at 810. The court did not specifically factor the appellant's status as a juvenile into its analysis, however. *Id.*

a promise under *Garcia* which rendered the appellants statement involuntary. *Garcia,* 919 S.W.2d at 388.[11] Even if this Court were to find the Ranger's statements not to be a positive promise under *Garcia*, the statements by the Ranger would still be relevant to the totality of the circumstances rendering the appellant's statement involuntary. In addition to the Ranger's statement that there was no reason the appellant should not be adjudicated as a juvenile, the Ranger advised the appellant several times of his intention to "help" the appellant. Again, this was after the Ranger went to great lengths to emphasize the importance of the Texas Rangers, and exaggerate the importance of his role with the Texas Rangers and with the present case. The Ranger further emphasized his so-called desire to "help" the appellant by advising the appellant that the reason he was bringing the judge there was to also "help" the appellant.[12]

Law enforcement officers are allowed to use deception while interviewing a suspect or to illicit a confession. *Cameron v. State,* 630 S.W.3d 579, 593-94 (Tex.App-San Antonio 2021). However, the extent to which the juvenile appellant in the present case was coerced, manipulated, misadvised, and lied to rendered the statement involuntary and its admission violated the appellant's due process rights. The circumstances of the appellant's statement show that he was coerced and promised he would not to go prison in exchange for his statement. *Darden,* 629 S.W.2d at 51. Further, the magistrates misadvising the appellant of his §51.095 calls into serious question whether the appellant

[11] See also, this brief Question 1.

[12] The Ranger's misuse of the role of the magistrate to manipulate the appellant should weigh heavily in favor the statement being involuntary in the "totality of the circumstances analysis. The entire purpose of *Tex. Fam. Code* § 51.095(a)(B)(i) is to allow magistration of a juvenile free from the coercion of law enforcement. *See Tex. Fam. Code* § 51.095(a)(B)(i).

understood those rights and warnings. *Id.* Under the totality of the circumstances, when the Ranger's actions with the appellant are considered with the magistrate's mistakes, the appellant's statement is rendered involuntary and should have been excluded. *Id.*

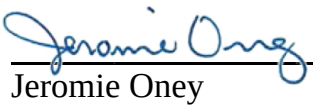
The judgment of the court below should be reversed.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Appellant prays that the Court reverse the court of appeals and enter a judgment of acquittal. Appellant prays for any such further relief to which he may be entitled.

Respectfully submitted,

Switzer | Oney Attorneys at Law, PLLC



Jeromie Oney
P.O. Box 1457
Gainesville, Texas 76241
(940) 665-6300
FAX (940) 665-6301
TSBN 24042248

ATTORNEY FOR APPELLANT

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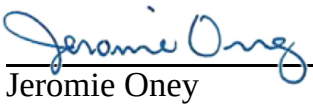
This petition complies with the word limitations in Texas Rule of Appellate Procedure 9.4(i)(2). In reliance on the word count of the computer program used to prepare this brief, the undersigned attorney certifies that this brief contains 7,285 words, exclusive of the sections of the brief exempted by Rule 9.4(i)(1).



Jeromie Oney

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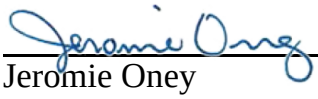
I do hereby certify that on the 8th day of March, 2024 a copy of the Appellant's Brief on Discretionary Review was served to:

Eric Erlandson
Assistant District Attorney
eric.erlandson@co.cooke.tx.us

Stacey M. Soule
State Prosecuting Attorney
information@spa.texas.gov



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Bar No. 24042248
jeromie.oney@thesolawfirm.com
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Name	BarNumber	Email	TimestampSubmitted	Status
Eric Erlandson	24077351	eric.erlandson@co.cooke.tx.us	3/8/2024 4:19:53 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Stacey Soule		information@spa.texas.gov	3/8/2024 4:19:53 PM	SENT