

IN THE 409th JUDICIAL DISTRICT COURT

EL PASO COUNTY, TEXAS

2014 OCT 30 AM 9:05

STATE OF TEXAS

v.

DANIEL VILLEGAS

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No. 940D09328

BY _____
DEPUTY

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON DEFENDANT'S MOTION TO SUPPRESS**

On October 15 and 16, 2014, the Court heard Defendant's Motion to Suppress in this case. The Court heard testimony at the hearing, and admitted into evidence certain testimony from previous proceedings in this case and the proceedings on Defendant's application for writ of habeas corpus.

Based on the evidence presented and the Court's evaluation of the weight of the evidence and credibility of the witnesses, the Court enters these findings of fact and conclusions of law.

FINDINGS OF FACT

1. Shortly after 10:00 p.m., on April 21, 1993, Detective Alfonso Marquez and Detective Earl Arbogast of the El Paso Police Department entered the home of Daniel Villegas, with an arrest warrant obtained approximately forty minutes earlier for Marcos Gonzalez. Gonzalez, an adult, was placed under arrest and read his rights. (Tr. 10/15/14, p. 111-12; WH, 9/15/11, 28, 31; WH, Pet. Ex. 46; 1994 SH, 130, 227).¹
2. As the detectives were leaving, Daniel Villegas asked them why they were arresting Gonzalez. After learning the identity of Villegas, Detective Marquez placed him under warrantless arrest and read him the same rights. (WH, 9/15/11, 28, 31; WH, Pet. Ex. 46; 1994 SH, 130, 227).
3. Daniel Villegas was sixteen years old at the time.
4. The detectives knew that Villegas was a juvenile when they picked him up at his home. (Tr. 10/15/14, p. 61).

¹ Herein, "Tr." refers to the transcript of this October 2014 suppression hearing. At the hearing, the Court admitted into evidence transcripts of previous proceedings in the case: "WH" refers to the transcript of the writ hearing. "T1" refers to Daniel Villegas's first trial in December 1994. "T2" refers to Daniel Villegas's second trial in August 1995. "1994 SH" refers to the pre-trial suppression hearing in December 1994.

5. Detective Marquez did not have Villegas sign a Miranda warning card at his home. (Tr. 10/15/14, p. 120; WH, 6/21/11, 25, 27; WH, 9/8/11, 161-65).
6. Juvenile Investigative Services is a "juvenile processing office" pursuant to Texas Family Code section 52.05(a). (Tr. 10/15/14, p. 182).
7. Detective Arbogast was not aware of the requirement to take a juvenile in custody to Juvenile Investigate Services without undue delay. (Tr. 10/15/14, p. 132).
8. Upon taking him into custody, Detectives Marquez and Arbogast did not take Villegas directly, and without unnecessary delay, to a juvenile procession office or detention office or facility designated by the juvenile court
9. Villegas and Gonzalez were placed in different police cars. Both police cars then drove past the home of Fernando Lujan, who is known by the nickname "Droopy." The officers specifically pointed this house out to Villegas. (WH, 9/15/11, 29-30; 1994 SH, 12/1/94, 158).
10. While in the car, officers asked Villegas if he knew someone named "Snoopy," and Villegas said he did not. (WH, 9/15/11, 30).
11. Both of the police cars then drove to Northpark Mall. While Villegas and Gonzalez stayed in the police cars, the officers met and spoke to each other. (WH 9/15/11,31; 1994 SH 12/1/94, 152, 223).
12. After this meeting, both Gonzalez and Villegas were driven directly to the El Paso Police Headquarters. During this drive, Villegas repeatedly informed Detective Marquez that he was a juvenile. Detective Marquez accused Villegas of lying about his age. (WH, 9/15/11, 31, 33; 1994 SH, 12/1/94, 224-25).
13. At the police station, Detective Marquez threatened Villegas, telling him that he was "going down for the murders," and "We know you did these shootings and we are taking your ass to jail." (WH, 9/15/11, 31-32).
14. About 10-15 minutes after arriving at Police Headquarters, Detective Marquez confirmed that Villegas was, in fact, just sixteen years old. At that point, Detective Marquez told Villegas he was a "lucky punk" and transported him to Juvenile Investigative Services. (WH, 9/15/11, 31, 33; 1994 SH, 12/1/94, 224-25).
15. Detective Ortega testified at the suppression hearing that he was called out to Juvenile Investigative Services at 11:00 p.m. (Tr. 10/15/14, p. 165-66). However, he testified at the first trial that he actually arrived at Juvenile Investigative Services at 11:00 p.m. (Tr. 10/15/14, p. 201; T1 p. 377). He wrote at 11:00 p.m. that Villegas had already given a verbal statement implicating himself. (Tr. 10/15/14, p. 193-94; WH, Pet. Ex. 8).

16. Detective Ortega was informed by 11:00 p.m. that Villegas had given an inculpatory statement, and that he wanted to give a written statement. (WH, Pet. Ex. 3). Detective Ortega testified that Detective Marquez gave him this information. (Tr. 10/15/14, p. 205-06, 211). Detective Ortega specifically testified that Daniel Villegas had given his oral statement to a detective before Judge Horkowitz read him his rights at 12:53 a.m. (Tr. 10/15/14 p. 204).
17. Detective Arbogast testified at the suppression hearing that he does not recall Daniel Villegas being read his Miranda rights at all. (Tr. 10/15/14, p. 80). Detective Arbogast testified at the writ hearing that he was not present when Daniel was given his Miranda warnings. (Tr. 10/15/14, p. 125).
18. Villegas signed a juvenile Miranda warning card at 11:15 p.m. (WH, 6/2 1/11, 206-07; WH, Pet. Ex. 3, 4; T1, 12/8/94, 378).
19. It is the practice of the El Paso police officers to have suspects sign Miranda warning cards at the same time they received their Miranda warnings. (Tr. 10/15/14, p. 111).
20. Detective Arbogast recognized that the documents indicate that Daniel Villegas had given a statement implicating himself by 11:00 PM, before receiving his Miranda warnings. (Tr. 10/15/14, p. 124-25).
21. Detective Arbogast recognized that if Villegas had already given a verbal statement implicating himself at 11:00 PM, but did not sign the Miranda warning card until 11:15 PM, "that is a problem." (Tr. 10/15/14, p. 116).
22. Detective Marquez and Detective Arbogast arrived with Villegas at the Juvenile Investigative Services office at approximately 11:30 p.m. (Tr. 10/15/14, p. 107).
23. Detective Marquez recorded the wrong date upon recording Daniel Villegas's arrival at Juvenile Investigative Services. (Tr. 10/15/14, p. 127).
24. At Juvenile Investigative Services, Villegas was placed in a room and handcuffed to a chair by Detective Marquez. (1994 SH, 227; WH, 6/21/11, 42-43; WH, 9/15/11 1, 33-35; WH, Pet. Ex. 5).
25. Detective Ortega testified that he arrived at Juvenile Investigative Services between 11:45pm and 12:00 pm, and he gave Villegas his Miranda rights. (Tr. 10/15/14, p. 166, 168).
26. According to Detective Ortega, Villegas signed another juvenile Miranda warning card in front of him after he arrived at the office. (Tr. 10/15/14, p. 191; WH, 6/2 1/11, 206-07; WH, Pet. Ex. 3, 4; T1, 12/8/94, 378).
27. Detective Ortega testified that this juvenile Miranda warning card is missing. It is the first and only Miranda warning card to go missing. (Tr. 10/15/14, p. 192, 194).

28. The Court does not find credible the testimony of Detective Ortega that he gave Villegas his Miranda warnings because this Miranda card cannot be produced by the State of Texas. The testimony regarding this matter is also suspect as this is the first time in over twenty years, the initial motion to suppress, two jury trials, and a Section 11.07 writ hearing, that Detective Ortega testified under oath at this second motion to suppress hearing, that this Miranda warning card is missing.
29. Villegas was questioned by Detective Marquez while at Juvenile Investigative Services, and Villegas testified to the following:
 - a. Villegas remained handcuffed to a chair while he was questioned for approximately one hour.
 - b. Detective Marquez repeatedly accused Villegas of committing the Electric Street shooting, telling him that Rodney Williams had implicated him.
 - c. Detective Marquez threatened Villegas that if he did not confess, he would be put in county jail to be "raped and fucked by a bunch of fat faggots."
 - d. Detective Marquez also threatened to "kick his ass" and to take him to the desert and beat him if he did not admit to the shooting.
 - e. When Villegas maintained his innocence, Detective Marquez slapped him. Villegas had never been interrogated before and was "terrified out of his mind." (WH, 9/15/11, 35-36; T1, 12/12/94, 813-18).
30. Villegas was next handcuffed and walked over to the Juvenile Probation Department, where Officer Mario Aguilera documented his intake at 12:26 a.m. and wrote that Villegas had agreed to give a confession. (WH, 6/21/11, 212; SM, 11/30/04, 20; WH, Pet. Ex. 6).
31. At some unknown time before between 12:26 and 12:53 a.m., Detective Marquez took Daniel Villegas back to Juvenile Investigative Services. It was Detective Marquez's responsibility to sign Daniel Villegas in when he returned and record the time, but he failed to do so.
32. Villegas was next taken before Magistrate Carl Horkowitz, who was required to warn him of his rights prior to any interrogation.
33. Prior to this meeting with Magistrate Horkowitz, Villegas testified that Detective Marquez warned Villegas that if he did not agree to give a statement, he would beat him and put him in jail. Specifically, Villegas testified that Detective Marquez threatened: "You are going to tell the judge that you are going to make a statement and if you don't you already know what I am going to do to you, motherfucker. I am going to take you to the desert and beat your ass." (WH, 6/21/11, 56-57; WH, 9/15/11, 39).

34. At 12:53 a.m., Villegas told Magistrate Horkowitz that he would give a statement, but testified that he did so only because he was "mentally paralyzed" by Detective Marquez's continual threats. (WH 9/15/11, 38-39).
35. Villegas was then driven back to Juvenile Investigative Services. There is no documented evidence, once again, that Detective Marquez signed Daniel Villegas in and recorded the time of his arrival. (Tr. 10/15/14 p. 142-43).
36. Villegas testified that he was then driven back to Juvenile Investigative Services, where he was handcuffed and questioned once again by Detective Marquez. After being told by Det. Marquez that Williams had already implicated him, Villegas testified he told Detective Marquez the following while Detective Marquez typed the statement: On the night of the murder, Villegas and Williams were at the Village Green Apartments, when they were approached by a group of black males with a gun. Williams alone left with the black males, telling Villegas that he was going to do "something crazy." Williams returned later and told Villegas that he had killed Lazo and England. (WH, 9/15/11, 40).
37. Villegas testified that after he finished this statement, Detective Marquez then took the paper from the typewriter, crumpled it up, and slapped Villegas. Detective Marquez then threatened Villegas that he would pull the switch on the electric chair himself if Villegas did not confess to being the shooter. (WH, 9/15/11, 40-41).
38. Detective Marquez then waived Williams' statement at Villegas and told him that Williams had named "Snoopy" and Marcos Gonzalez as accomplices. Villegas told Detective Marquez that he did not know anyone named "Snoopy," although he did know someone nicknamed "Droopy." (WH, 9/15/11, 44).
39. Detective Marquez then left the room, but returned shortly thereafter to tell Villegas that Marcos Gonzalez had also implicated Villegas as the shooter. (WH, 9/15/11, 46).
40. While Detective Marquez was interrogating Daniel Villegas, Detective Graves was simultaneously interrogating Marcos Gonzalez. Marcos Gonzalez gave a first statement. Detective Graves and Detective Marquez communicated with each other about the statements. After Detective Graves consulted with Detective Marquez about the information provided by Daniel Villegas, Detective Graves confronted Marcos Gonzalez with this information. Marcos Gonzalez then changed his statement to conform to the information that Detective Marquez gave Detective Graves.
41. Villegas testified that Detective Marquez's physical and psychological coercion, including threats of incarceration and physical harm, left Villegas "mentally drained" and "exhausted" to such an extent that he finally agreed to falsely implicate himself as the shooter. (WH, 9/15/11, 44-45, 49).
42. Daniel Villegas agreed to sign a one-page statement prepared by Detective Marquez. (WH, St. Ex. 1).

43. Daniel Villegas' signed statement contains false and factually impossible evidence when compared to the physical evidence and testimony. (Tr. 10/15/14, p. 142-50; WH, 9/8/11, 130-33, 153-54, 195, 205-06, 212-15; WH, 9/15/11, 59; WH, St. Ex. 1, Pet. Ex. 24, 26, 29, 51, 56, 61; T2, 8/24/95, 167-68).
44. Detective Arbogast testified that he is not aware of any evidence corroborating any part of Daniel Villegas's statement. (Tr. 10/15/14, p. 152).
45. Detective Marquez finished typing the statement at 2:26 a.m. on April 22, 1993. Villegas was then taken back to Magistrate Horkowitz, where, after being given Miranda warnings, he signed the statement at 2:40 a.m. (WH, St. Ex. 1).
46. Detective Arbogast is unable to explain what the detectives did with Daniel Villegas for the two-hour span between when he signed his statement, and 4:20 a.m. when he was taken to the Juvenile Probation Department. (Tr. 10/15/14, p. 144).
47. As soon as he was away from Detective Márquez, Daniel Villegas recanted his statement to Monica Sotelo, a juvenile probation officer. Officer Sotelo noted that Villegas was shaking and looked scared. He informed Officer Sotelo that "he didn't do it," and that he was not in the area where the crime occurred that night. He told her that he only confessed because "the cops kept harassing him." He told her that he was "tired and [he] wanted to go back to sleep, so [he] told them what they wanted to hear." (Tr. St. Ex. 1; WH, Pet. Ex. 42).
48. At the 2014 suppression hearing, Officer Sotelo testified that she did not recall Daniel Villegas specifically, but was testifying based on her review of her notes. She testified that if Daniel Villegas had informed her of the specific details of Detective Marquez's threats, she would have put those details in her notes. However, she admitted that she did not ask Daniel Villegas those specific questions. Officer Sotelo further testified that Villegas barely realized at the time that the confessions and statements made him out to be the shooter. She reaffirmed that Daniel Villegas appeared scared, and reported to her that he was not guilty, that he was being harassed, that he was being threatened, and that he was only confessed because he was being harassed and was tired and wanted to go to sleep, so he told them what they wanted to hear. (Tr. 10/15/14, 24, 31-32, 36-39).
49. Priciliano Villegas, Daniel Villegas' adopted father, testified that Daniel Villegas has a learning disability, reads poorly, and dropped out of school in seventh grade. He described Villegas as impressionable, easy to trick, someone who thought more like a child than an adult, and tells people what they want to hear. He also testified that Daniel Villegas was "hyper" and prone to boasting. (T1, 12/9/94, 647-49, 651-52, 655).
50. Patricia Cate, who is the aunt of Villegas and had known him his whole life, testified that he was prone to boasting and exaggeration. (T1, 12/9/94, 701, 704-06).

51. Dr. Angel Marcelo Rodriguez-Chevres, a forensic psychiatrist who conducted a court-ordered psychiatric evaluation of Villegas, testified that Villegas likely had a learning disability, attention deficit disorder, emotional problems, and possible mild mental retardation, all of which could make him impulsive and a poor decision-maker. Dr. Rodriguez-Chevres also testified that there is a "strong possibility" that these traits could make Villegas easily influenced by a police interrogation. (T1, 12/12/94, 742-50; WH, Pet. Ex. 72).
52. Jesus Lechuga, who was the bond officer for Villegas prior to trial and the individual to whom Villegas reported for 12-18 months testified that Villegas was a very poor reader with very poor comprehension; indeed, Villegas did not understand that a "home" was the same thing as a "house." (WH, 6/22/11, 167, 169-71).
53. Alberto Renteria, who was a detention officer at the Juvenile Probation Department in 1993 when Villegas was in custody testified that Villegas was a "very slow thinker" and had a very difficult time understanding Renteria's instructions. (WH, 6/22/11, 122).
54. On April 12, 1993, Jesse Hernandez, a surviving victim, was brought back to the police station by Detective Marquez for further questioning, where Hernandez testified that the following occurred: (WH, 6/22/11, 54-55).
 - a. Detective Marquez asked Hernandez to write out a description of the events leading up to and including the Electric Street shootings. While Hernandez was writing, Marquez took the statement, told him to "just cut the bullshit," and threw the statement back at Hernandez.
 - b. Detective Marquez accused Hernandez of killing his friends and lied to him by telling Hernandez that Juan Medina had already implicated him.
 - c. Detective Marquez threatened Hernandez that if he didn't confess, he would go to jail and get the death penalty.
 - d. Hernandez did not confess to the crime. However, he testified that he was close to confessing to the killing of his friends based on Detective Marquez's interrogation.
55. On April 15, 1993, based on a tip, Detective Marquez participated in the arrest, transport from New Mexico to El Paso, and subsequent questioning of fifteen-year-old Michael Johnston. Michael Johnston testified as follows:
 - a. Detectives Marquez and Graves interrogated Michael Johnston for eight hours from 7:00 p.m. on April 15 until 3:00 a.m. on April 16, 1993.
 - b. Johnston was handcuffed during the entire eight hours and was unaccompanied by his parents.

- c. Detective Marquez accused Johnston of shooting Lazo and England and lied to him that Johnston's friend had implicated him.
 - d. Detective Marquez threatened Johnston with the electric chair if he did not confess, promising to pull the switch himself.
 - e. Detective Marquez further threatened to take Johnston to jail where he would be molested and raped if he did not confess, but he promised to let Johnston off easy if he did confess.
 - f. Johnston confessed to shooting Armando Lazo and Robert England.
 - g. Johnston was never charged with this offense. Detective Marquez later admitted that Johnston's confession was false. (T1, 12/8/94, 312, 317; T1, 12/9/94, 596, 598-99; WH, 9/8/11, 41; WH, 9/9/11, 4-7; WH, Pet. Ex. 49).
56. On April 21, 1993, the El Paso Police Department contacted Patricia Cate, telling her they needed to speak to her seventeen-year-old son David Rangel regarding a telephone harassment complaint that had been filed against him and threatening her with obstruction of justice if she did not cooperate. David Rangel is Daniel Villegas' cousin. Rangel was subsequently picked up by investigating detectives and questioned at the police station by Detectives Marquez and Lozano. David Rangel testified as follows:
- a. David Rangel was never questioned about a telephone harassment complaint. The sole topic discussed was the shooting on Electric Street.
 - b. Detective Marquez accused Rangel of committing the murders and lied to him that others had already implicated him in the shooting.
 - c. Detective Marquez threatened Rangel with life in prison if he did not confess and warned him that he was a "pretty white boy with green eyes" who could expect to be "fucked" in prison.
 - d. Rangel wrote a statement documenting this phone call with Villegas and Gonzalez, wherein he noted that Villegas had admitting shooting at the victims with a sawed-off shotgun.
 - e. Detective Marquez, after reading the statement, threw it in the garbage and told Rangel it was "not correct" that Villegas used a shotgun.
 - f. Detective Marquez ordered Rangel to sign another statement that purported to document the phone conversation but that did not mention the type of gun used. Marquez threatened that if Rangel did not sign the new statement, he would be charged with the crime and would not be released. Rangel signed the statement, explaining that he was willing to sign "pretty much what was in front of" him as he was "just [wanting] to get out of there." (T1, 12/8/94, 146; T1, 12/9/94, 696;

WH, 6/22/11, 113, 118-36).

57. The State of Texas did not call Detective Marquez to testify at the suppression hearing.
58. The previous testimony of Detective Marquez, which was admitted into evidence at the suppression hearing, is not credible. This Court reaches this finding based on the corroborating evidence presented that supports the claim that Detective Marquez had a pattern and practice of using illegal and coercive interrogation tactics both in this investigation and others, such as:
 - a. Detective Marquez's testimony that Villegas had not been questioned prior to the 12:26 a.m. intake at the juvenile probation department is contradicted by the intake log stating that he had already agreed to "give a confession" by this time. (WH, Pet. Ex. 6).
 - b. Detective Marquez's testimony that Villegas had not been questioned prior to the 12:26 a.m. at the juvenile probation department is contradicted by Detective Ortega's testimony that he had been informed by another detective by 11:00 pm. that Villegas had given an inculpatory statement, and that he wanted to give a written statement. Detective Ortega testified at the suppression hearing that Detective Marquez gave him this information. (WH, Pet. Ex. 3; Tr. 10/15/14, p. 211).
 - c. Testimony from other law enforcement officers contradicted Detective Marquez's testimony:
 - i. Denying that he stopped at Northpark Mall or going to Police Headquarters,
 - ii. That he ordered other detectives to retrieve what may have been a tape exculpatory to Villegas, and
 - iii. That he never communicated with Detective Graves while they were in the midst of the interrogations of Villegas and Gonzalez.
 - d. Testimony from Detective Marquez during the writ hearing that on a previous occasion, he wore a "smock" commonly worn by medical personnel, during the interrogation of a criminal suspect. He further testified that the smock was not used for deception purposes. This Court finds no conceivable way that the wearing of a smock commonly worn by medical personnel, was not intended to deceive an accused into believing that he was talking to medical personnel and not law enforcement.
59. Michael Gibson and Bruce Weathers, both practicing attorneys in El Paso, testified that Detective Marquez has a reputation for untruthfulness. Gibson, a former First Assistant Chief Felony Prosecutor and Director of the Organized Crime Unit in El Paso, actually

twice presented a perjury indictment to the grand jury against Marquez. (T1, 12/9/1994, 550-80; T1, 12/12/1994, 786).

60. Michael Johnston, as well as his mother Barbara Hoover, testified that Detective Marquez used illegal interrogation tactics leading to Johnston's own false confession to the Electric Street murders. (TI, 12/ 9/1994, 587, 589).
61. Detective Marquez himself was recalled and testified that he had been the subject of a number of Internal Affairs investigations. He also testified that there have been roughly thirty citizen complaints against him as of 1994. (T1, 12/9/94, 678-80)
62. Daniel Villegas testified to the threats made to him by Detective Marquez during the interrogation, and the other surrounding circumstances of his interrogation. (TI, 12/12/94, 813-23).
63. Detective Marquez testified in the second trial of Daniel Villegas that he could get a confession at any point if "he really wanted to." (WH, 9/8/11, 122-23).
64. For all of these reasons, the Court finds that Detective Marquez's prior testimony in connection with this matter is not credible, and gives Detective Marquez's testimony little to no weight.
65. The State called Detectives Arbogast, Ortega, and Graves to testify at the 2014 suppression hearing.
66. Each of the detectives called to testify at the suppression hearing has testified that there were times when Daniel Villegas was with Detective Marquez and out of their presence. Specifically,
 - a. Detective Arbogast was not present with Detective Marquez the entire time he was with Daniel Villegas. (Tr. 10/15/14, p. 106).
 - b. Detective Arbogast was not with Detective Marquez and Daniel Villegas when Villegas's statement was taken. (Tr. 10/15/14, p. 72).
 - c. Detective Arbogast was not with Detective Marquez and Daniel Villegas for approximately an hour after he arrived at Juvenile Investigative Services, and did not know what happened during that period of time. (Tr. 10/15/14, p. 107-08, 126-27).
 - d. Detective Arbogast did not know what Detective Marquez did outside of his presnce. (Tr. 10/15/14, p. 106, 127, 163).
 - e. Detective Arbogast testified that he could not say whether it was true that Detective Marquez threatened or beat Daniel Villegas, told him he was going to be raped, or threatened to take Villegas to the county jail and pull the switch

himself. (Tr. 10/15/14, p. 107).

- f. Detective Arbogast testified that he was not aware of all of the tactics Detective Marquez used to try to get witnesses to give statements, such as wearing a medical smock. (Tr. 10/15/14, p. 162).
 - g. Detective Ortega testified that he did not recall whether he arrived at Juvenile Investigative Services before or after Detective Marquez and Daniel Villegas. (Tr. 10/15/14, p. 167-68).
 - h. Detective Ortega testified that he does not know what was going on with Villegas before he arrived at Juvenile Investigative Services. (Tr. 10/15/14, p. 204-05).
 - i. Detective Ortega also testified that he did not know what was going on while Villegas was at Juvenile Investigative Services for the hour between 11:30 and 12:26. (Tr. 10/15/14, p. 204-05).
 - h. Detective Ortega testified that he may have taken a bathroom break while Detective Marquez was interrogating Daniel Villegas. (Tr. 10/15/14, p. 176).
 - i. Detective Ortega likewise testified only that Detective Marquez's acts towards Daniel Villegas did not occur in his presence, not that they did not occur. (Tr. 10/15/14, p. 190). He testified that he did not know what occurred between Detective Marquez and Daniel Villegas when he was not around. (Tr. 10/15/14, p. 206).
 - j. Detective Graves interrogated Marcos Gonzalez separately in a different location while Detective Marquez was interrogating Daniel Villegas. (Tr. 10/15/14, p. 243-44).
67. The detectives who testified at the suppression hearing also admitted to not recalling the details of this particular investigation:
- a. Detective Arbogast admitted that there were a lot of details he couldn't remember. (Tr. 10/15/14, p. 105).
 - b. Detective Arbogast does not remember the conversation held by the officers during the stop at Northpark mall. (Tr. 10/15/14, p. 131-32).
 - c. Detective Arbogast does not remember much of what happened during the two-hour span between leaving Judge Horkowitz and the arrival at Juvenile Probation Department. (Tr. 10/15/14, p. 144).
 - d. Detective Arbogast admitted that his memory doesn't usually get better with time (Tr. 10/15/14, p. 107).

- e. Detective Ortega testified that he did not recall whether he arrived at Juvenile Investigative Services before or after Detective Marquez and Daniel Villegas. (Tr. 10/15/14, p. 167-68).
 - f. Detective Ortega testified that he does not have independent recollection of what occurred in this investigation. (Tr. 10/15/14, p. 198).
 - g. Detective Ortega also testified that his own memory has not gotten better with time. (Tr. 10/15/14, p. 198).
 - h. Detective Graves testified that he does not recall what was said during the stop at Northpark mall. (Tr. 10/15/14, p. 230).
 - i. Detective Graves testified that he does not recall which detective he was communicating with while he was interrogating Marcos Gonzalez. (Tr. 10/15/14, p. 243). However, in the first trial he remembered that it was Detective Marquez. (T1, p. 494).
 - j. Detective Graves testified that he does not recall the meaning of the annotations on complaint affidavits prepared on the computer system used in 1993. (Tr. 10/15/14, p. 251).
 - k. Detective Graves testified that he does not recall whether he went to the magistrate to obtain the warrant for Marcos Gonzalez. (Tr. 10/15/14, p. 253).
 - l. Detective Graves testified that he has "worked a lot of murders in my career and it is hard to remember every single detail from every single one." (Tr. 10/15/14, p. 253).
68. The testimony of the detectives at the suppression hearing contradicted their previous statements and the testimony of the other detectives in several respects:
- a. Detective Arbogast first testified at the suppression hearing that he arrived at Villegas's home at 10:45; but when he previously spoke with Villegas's counsel, he did not have independent recollection of the time and not recall whether it was 10:00 or 10:45; and he subsequently conceded that he did not actually recall what time they arrived. (Tr. 10/15/14, p. 60, 107, 115).
 - b. Detective Arbogast first testified at the suppression hearing that the detectives did not take Villegas to the police station before taking him to Juvenile Investigative Services; but he previously stated that he did not remember. (Tr. 10/15/14, p. 66, 86, 121-22).
 - c. Detective Arbogast has testified inconsistently regarding whether he was with Detective Marquez on the way back to Juvenile Investigative Services after appearing before Judge Horkowitz. (Tr. 10/15/14, p. 128-30; WH 6/21/11, 56).

- d. Detective Ortega has testified inconsistently about the time he arrived at Juvenile Investigative Services. (Tr. 10/15/14, p. 192-93, 200-01).
- e. Detective Ortega changed his original testimony. He first testified unequivocally that he knew the defendant had given a statement implicating himself because Detective Marquez told him. (Tr. 10/15/14, p. 211). When the State suggested that he was assuming that, he testified that he was assuming. (Tr. 10/15/14, p. 211). He admitted that he changed his answer under oath within a matter of minutes. (Tr. 10/15/14, p. 216).
- f. Detective Ortega testified that, to the best of his recollection, he was called out at 11:00 pm to help with the confession process, and arrived at Juvenile Investigative Services between 11:45 pm and 12:00 am, and that he was not with Detective Marquez prior to the time he arrived at Juvenile Investigative Services. (Tr. 10/15/14, p. 165-66, 181). He specifically testified that he did not assist Detective Marquez with the arrest of Daniel Villegas at his home. (Tr. 10/15/14, p. 202-03). However, Detective Graves testimony contradicts Detective Ortega as he testified that Detective Ortega was at Daniel Villegas's home at the time of the arrest. (Tr. 10/15/14, p. 229).

CONCLUSIONS OF LAW

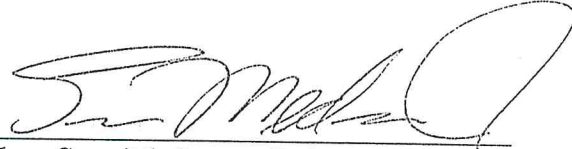
1. At the relevant date, Texas Family Code § 52.02 stated as follows:
 - (a) A person taking a child into custody, without unnecessary delay and without first taking the child to any place other than a juvenile processing office designated under Section 52.025 of this code, shall do one of the following:
 - (1) release the child to a parent, guardian, custodian of the child, or other responsible adult upon that person's promise to bring the child before the juvenile court as requested by the court;
 - (2) bring the child before the office or official designated by the juvenile court if there is probable cause to believe that the child engaged in delinquent conduct or conduct indicating a need for supervision;
 - (3) bring the child to a detention facility designated by the juvenile court;
 - (4) bring the child to a medical facility if the child is believed to suffer from a serious physical condition or illness that requires prompt treatment; or
 - (5) dispose of the case under Section 52.03 of this code.

Act of May 26, 1991, 72nd Leg., R.S., ch. 495, § 1, Tex. Gen. Laws 1738. *See also Le v. State*, 993 S.W.2d 650, 655 (Tex.Crim.App. 1999) (explaining that this version of the statute was in effect at the time of the statements at issue).

2. The Texas Family Code restricts the actions of law enforcement officers while a juvenile is in custody. TEX.FAM.CODE § 52.02.
3. If a juvenile's statement is illegally obtained under any of the applicable provisions of the Texas Family Code, the statement is inadmissible against him in a criminal trial, following transfer for criminal proceedings treating him as an adult. *Le v. State*, 993 S.W.2d 650, 656 (Tex.Crim.App. 1999).
4. Based on the Court's findings of facts stated above and the Court's evaluation of the weight of the evidence presented and the credibility of the witnesses, the State has not carried its burden to prove that the statements of Daniel Villegas on April 21 and 22, 1993, were voluntary.
5. Based on the Court's findings of facts stated above and the Court's evaluation of the weight of the evidence presented and the credibility of the witnesses, the State has not carried its burden to prove that Daniel Villegas knowingly, intelligently and voluntarily waived his rights not to make a statement prior to and during the making of any statements he gave on April 21 and 22, 1993.

12. The statements of Daniel Villegas taken on April 21 and 22, 1993 must be suppressed for the following reasons:
- a. The State of Texas has failed to meet its burden to show that the statement was voluntary;
 - b. The State of Texas has failed to meet its burden to show that Daniel Villegas knowingly, intelligently, and voluntarily waived his right to not make a statement;
 - c. El Paso Police Detective Al Marquez obtained Daniel Villegas' statement in violation of his constitutional rights to Due Process, guaranteed under the United States Constitution and the Texas Constitution and Texas Family Code §52.02.; and
 - d. The Court finds that the testimony of El Paso Police Detectives Al Marquez and Carlos Ortega were not credible to the issues of voluntariness of the Accused statement and compliance with the United States Constitution, the Texas Constitution and Texas Family Code §52.02.
13. IT IS SO ORDERED, ADJUDGED, AND DECREED by this Court that any and all statements made by Daniel Villegas on April 21 and 22, 1993, are hereby SUPPRESSED, and shall not be admitted into evidence at the trial of this matter.

SIGNED THIS 3rd day of November, 2014.



Hon. Sam Medrano, Judge
409th Judicial District Court