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⌘ Vol. 23, No. 1 - January 5, 2015

**Case Name:** [Jose Vasquez v. The State of Texas](#)

- OFFENSE: Capital Murder - Life Sentence
- COUNTY: Harris
- C/A CASE No. 14-12-00096-CR
- DATE OF OPINION: December 23, 2014
- DISPOSITION: Conviction Reversed OPINION: [Jamison, J.](#)
- TRIAL COURT: 228th D/C
- LAWYERS: [Mark Kratovil](#) (Defense); [Eric Kugler](#) (State)

**Ed Note:** (Procedural History) On original submission, the Court of Appeals held the trial court erred in admitting Appellant's videotaped confession and such error was harmful. It reversed appellant's conviction, and remanded the case to the trial court. [Vasquez v. State](#), 397 S.W.3d 850 (Tex.App. - Houston [14th] 2013)(see ⌘, [Vol. 21, No. 14](#); 04/08/2013). The Court of Criminal Appeals granted the State's petition for review, vacated the Court of Appeals' judgment, and remanded the case to our court with instructions to remand the case to the trial court for findings of fact and conclusions of law. [Vasquez v. State](#), 411 S.W.3d 918 (Tex.Cr.App. 2013)(see ⌘, [Vol. 21, No. 43](#); 10/28/2013).

(Background Facts) On April 16, 2010, Appellant was arrested pursuant to a warrant and charged with two counts of capital murder. Officers chased, apprehended, and handcuffed Appellant at a gas station, placed him in a squad car, and transported him to the police station for questioning. Officers placed Appellant in an interview room, where he remained for nearly eight hours while being interrogated by three or four investigating officers. The officer who last questioned Appellant ultimately obtained a confession that was not captured on videotape. Soon thereafter, the officer asked permission to videotape Appellant's confession. Appellant complied with the request and repeated his confession. Appellant filed a written pretrial motion to suppress his confession on grounds that he was not given [Miranda](#) warnings and he did not validly waive his rights before he confessed. Appellant subsequently filed another pretrial motion to suppress his oral statements on the sole ground that using the oral statements at trial would be prohibited by Article 38.22 § 3.3), C.Cr.P. The trial court carried the motions with trial and held a hearing outside the presence of the jury to determine the admissibility of the statements.

¶ 43 Confessions & Self-Incrimination / Warnings (Procedures Used by Interrogating Officer): On remand, the trial court entered findings of fact and conclusions of law to the effect that, the officers did not employ a two-step interrogation technique in a deliberate, calculated way to undermine the defendant's Miranda warnings, and that officers took curative measures before the second confession. Appellant again argues the trial court erroneously admitted the videotaped confession because it was obtained by an improper two-step “question first, warn later” interrogation technique. He relies on Missouri v. Seibert, 542 U.S. 600 (2003) (Kennedy, J., concurring); and Carter v. State, 309 S.W.3d 31 (Tex.Cr.App. 2010)(see ¶, Vol. 18, No. 12; 04/01/2010).

**Holding:** No evidence was presented that curative measures were taken in this case. Thus, we conclude on this record the State did not meet its burden to present evidence that the officers did not employ a two-step interrogation technique in a deliberate, calculated way to undermine appellant's Miranda warnings or that the officers took curative measures to alleviate the purported failure to give such warnings before the original confession was obtained. Accordingly, the trial court's findings that the officers did not employ a two-step interrogation technique in a deliberate, calculated way to undermine Appellant's Miranda warnings and that officers took curative measures are not supported by the record and are clearly erroneous. The trial court erred in admitting Appellant's videotaped statement. (Harm Analysis) No evidence was presented that appellant was the shooter other than Appellant's videotaped confession. Although some evidence of Appellant's guilt corroborates his confession, we cannot say there is no reasonable likelihood that the State's use of Appellant's statement materially affected the jury's deliberations. \*\*\* We reverse the judgment of the trial court and remand for a new trial.

**Concurring / Dissenting Opinions:** Chief Justice Frost dissented, arguing that, because Appellant did not timely raise his complaint regarding the violation of his Miranda rights, “it does not provide a basis for reversing the trial court's judgment.”