MEMORANDUM OPINION
Do Not Publish-TEX. R. APP. P. 47.2(b).
Court of Appeals of Texas,
Houston (14th Dist.).
Marcus Paul LAREDO, Appellant
v.
The STATE of Texas, Appellee.
No. 14-05-00855-CR.
Feb. 13, 2007.

On Appeal from the 232nd District Court, Harris County, Texas, Trial Court Cause No. 1028547.
Leora. Kahn, for Marcus Paul Laredo.
William J. Delmore, III, for The State of Texas.

Panel consists of Justices FOWLER, FROST, and GUZMAN.

MEMORANDUM OPINION

WANDA McKEE FOWLER, Justice.
*1 Appellant Marcus Paul Laredo was found guilty by a jury of aggravated robbery. The jury assessed punishment, enhanced by one previous felony conviction, at thirty years' confinement in the Texas Department of Criminal Justice, Institutional Division. In nine issues, appellant contends the evidence is legally and factually insufficient to show that he used or exhibited a firearm in the commission of the offense, and the trial court erred in admitting appellant's custodial statement to police in violation of federal and state constitutional rights and state statutes. We affirm.

Factual Background

On April 13, 2003, Abdul Bawanie was working at a K.T. Foods convenience store in Harris County when he was robbed at gunpoint by two men who entered the store demanding money. Both men were dressed in black and wore black masks over their faces. One wore a black t-shirt with the word “police” emblazoned on it. The man in the “police” t-shirt carried a shotgun and the other man carried an “iron-like” weapon.

The men ordered Bawanie to lie down on the floor and, as they pushed him down, one of the men struck him with the butt of the shotgun. The men then demanded that Bawanie

open the cash register. After taking the money in the register, one of the men searched for and found beneath the counter a cigar box containing more money. The men left with between six and seven hundred dollars. During the robbery, Bawanie feared for his life.

The robbery remained unsolved for over a year when, in September 2004, Evelia Roman

called the police to reveal appellant's participation in the robbery. Roman, a dancer at a nightclub, spoke to Officer Chappell in the robbery division of the Houston Police Department. She directed Officer Chappell to the convenience store and told him that during the robbery appellant wore a black shirt with “police” written on it. Roman admitted to Officer Chappell that she was providing this information because she was angry and upset with appellant because he left her for another woman.[FN1] Eventually, Roman also admitted that she drove one of the cars used in the robbery and used a walkie-talkie to communicate with appellant and the other masked man inside the store. At some point later, Roman was arrested for her participation in the crime, and she pleaded guilty to aggravated robbery of the K.T. Foods store.

FN1. Roman had three children, and appellant was the father of the youngest child. They had lived together for two or three years.

On September 23, 2004, Officer Chappell and Officer Rodriguez, another officer from the robbery division of the Houston Police Department, learned appellant's whereabouts and, when appellant appeared, he was arrested.[FN2] Appellant consented to a search of the car he was driving, and inside the police found two walkie-talkies, a police scanner, and a book of frequencies for the scanner. The next day, Officer Rodriguez and another officer interviewed appellant. Appellant agreed to waive his rights and give a videotaped statement.

FN2. Officer Rodriguez testified that, at the time of appellant's arrest, it was believed he was involved in the possible kidnaping of Roman and her children, who were missing. Appellant had agreed to meet with another officer to review text messages from Roman on his cell phone at a specific time and location. Consequently, when appellant arrived at the location, several officers converged on appellant with guns drawn. Later, the police determined that Roman voluntarily left the area with her children, and appellant was not involved in any kidnaping.

At appellant's trial, the jury was shown a videotape from the convenience store's security camera that filmed the robbery. Roman identified appellant as the robber wearing the black “police” t-shirt who struck Bawanie. Although their faces were covered, appellant and his accomplices could be seen using walkie-talkies to communicate with each other. At one point, Roman informed appellant by walkie-talkie that someone was entering the store. Roman admitted at trial that she was acting as a lookout and that it was her voice heard on the videotape. She also acknowledged they had a gun, and a shotgun can be seen on the videotape. Additionally, the videotape reveals one of the robbers referring to the other as “Marcus” during the robbery.

*2 The jury also saw appellant's videotaped statement, which the court admitted after conducting a *Jackson v. Denno*[FN3] hearing and overruling appellant's objection that the statement was involuntarily given. In the statement, appellant confessed to planning and participating in the K.T. Foods robbery. He also admitted Roman's involvement in the robbery. He explained how he used a police scanner and walkie-talkies to ensure that the robbery was successful. Appellant denied entering the store or carrying the shotgun, although he described the shotgun by brand as a Mossberg. Appellant named his

accomplices as Roman, George Gomez, and Raul, whose last name he did not know. Appellant stated that Raul picked the location because he knew that the store kept cash in a cigar box under the counter. Appellant described Bawanie as "a skinny, old, withered man" who "looked like no problem" for them. He also admitted receiving about $200 from the robbery after dividing the proceeds. [FN4]

FN3. *Jackson v. Denno,* 378 U.S. 368, 392-93 (1964) (establishing that when an accused contests the admission of his statement as involuntary, due process requires that the trial court hold a hearing outside the presence of the jury to determine its admissibility); *see also* TEX.CODE CRIM. PROC. art. 38.22, § 6. We will address the details of the hearing in our discussion of appellant's issues concerning the trial court's alleged error in admitting the statement.

FN4. In the guilt/innocence phase, the jury saw only that part of appellant's statement in which he described the KT Foods robbery. Later, in the punishment phase, the jury saw other parts of the statement in which appellant described participating in additional robberies.

The jury found appellant guilty of aggravated robbery. Following the punishment trial, the jury found the allegations of the enhancement paragraph true and assessed appellant's punishment at thirty years in the Texas Department of Criminal Justice, Institutional Division. The trial court sentenced appellant accordingly. This appeal followed.

I. The Evidence is Legally and Factually Sufficient to Show Appellant Used or Exhibited a Firearm in the Commission of the Charged Offense.

In his first and second issues, appellant contends the evidence is legally and factually insufficient to show that he used or exhibited a firearm in the commission of the charged offense.

A. Legal Sufficiency

1. *Standard of Review*

Evidence is legally insufficient if, when viewed in a light most favorable to the verdict, a rational jury could not have found each element of the offense beyond a reasonable doubt. *Jackson v. Virginia,* 443 U.S. 307, 319 (1979); *Jones v. State,* 944 S.W.2d 642, 647 (Tex.Crim.App.1996). The jury is the exclusive judge of the credibility of witnesses and of the weight to be given testimony, and it is also the exclusive province of the jury to reconcile conflicts in the evidence. *Jones,* 944 S.W.2d at 647. Thus, when performing a legal-sufficiency review, we may not re-evaluate the weight and credibility of the evidence and substitute our judgment for that of the fact finder. *Dewberry v. State,* 4 S.W.3d 735, 740 (Tex.Crim.App.1999). We must resolve any inconsistencies in the testimony in favor of the verdict. *Curry v. State,* 30 S.W.3d 394, 406

(Tex.Crim.App.2000).

2. *Application of Law to Facts*

Appellant was charged with aggravated robbery of the complainant by committing robbery and using and exhibiting a deadly weapon in the course of the offense. *See* TEX. PENAL CODE §§ 29.02, 29 .03. Appellant contends the evidence is legally insufficient because (1) the complainant, Bawanie, could not identify appellant as the person in the store carrying a firearm, (2) Roman's accomplice testimony was not credible because she accused appellant of being one of the robbers even though she denied being in the store, and her motives were suspect because she was "a woman scorned," (3) appellant, in his statement, denied ever entering the store, and (4) there were no firearms found in the search of the car appellant was driving and no fingerprint evidence linking him to any of the items recovered from the car, which was not his.

*3 However, in this case, the charge authorized the jury to find appellant guilty as either a principal or a party to the offense. *See* TEX. PENAL CODE §§ 7.01, 7.02(a)(2). As a party to the offense, the jury could have concluded that appellant was the robber who displayed the "iron-like" weapon or that he was outside acting as a lookout. In either scenario, appellant would still be guilty as a party to using or exhibiting a deadly weapon. *See Rabbani v. State,* 847 S.W.2d 555, 558 (Tex.Crim.App.1992) ("The principle is well-established that when the jury returns a general verdict and the evidence is sufficient to support a guilty finding under any of the allegations submitted, the verdict will be upheld."). In determining whether a defendant participated as a party, the jury may look to events that occurred before, during, or after the offense, and may rely on acts showing an understanding and common design. *Ransom v. State,* 920 S.W.2d 288, 302 (Tex.Crim.App.1997) (op. on reh'g).

In his statement, appellant admitted to planning the offense, providing the walkie-talkies used, and listening to the police scanner to alert the other participants to any police activity during the robbery. He also admitted knowing that one of the participants would have a shotgun during the robbery, and he admitted receiving proceeds from the robbery. Moreover, appellant linked himself to the walkie-talkies and other items found in the car when he discussed using these items to carry out the robbery. These admissions are legally sufficient to support his conviction as a party to the offense.

Additionally, Bawanie testified that one of the robbers carried a shotgun, and the shotgun can be seen in the videotape. Roman testified that it was appellant who held the shotgun, who struck Bawanie, and who was referred to as "Marcus" by the other person on the videotape. Roman's credibility was for the jury to determine, and they could have accepted her testimony as truthful.

Thus, the testimony of Bawanie and Roman, corroborated by appellant's confession and the surveillance video, was sufficient for any rational trier of fact to find the essential elements of the offense beyond a reasonable doubt. *See Jackson,* 443 U.S. at 319. We

therefore overrule appellant's first issue.

B. Factual Sufficiency

1. *Standard of Review*

When conducting a factual-sufficiency review, we view all of the evidence in a neutral light. *See* *Cain v. State,* 958 S.W.2d 404, 408 (Tex.Crim.App.1997); *Clewis v. State,* 922 S.W.2d 126, 134 (Tex.Crim.App.1996). We may set the verdict aside if: (1) the evidence is so weak that the verdict is clearly wrong and manifestly unjust; or (2) the verdict is against the great weight and preponderance of the evidence. *Watson v. State,* 204 S.W.3d 404, 414-15 (Tex.Crim.App.2006) (citing *Johnson v. State,* 23 S.W.3d 1, 11 (Tex.Crim.App.2000)). However, while we may disagree with the jury's conclusions, we must exercise appropriate deference to avoid substituting our judgment for that of the jury, particularly in matters of credibility. *Drichas v. State,* 175 S.W.3d 795, 799 (Tex.Crim.App.2005); *see also* *Watson,* 204 S.W.3d at 414 (stating that a court should not reverse a verdict it disagrees with, unless it represents a manifest injustice even though supported by legally sufficient evidence). Finally, we must discuss the evidence that, according to appellant, most undermines the jury's verdict. *Sims v. State,* 99 S.W.3d 600, 603 (Tex.Crim.App.2003).

2. *Application of Law to Facts*

*4 In this issue, appellant's primary focus is on Roman's testimony against him, which he asserts is unreliable and not worthy of belief. First, appellant contends Roman, who was awaiting sentencing for her role in the K.T. Foods robbery, “shaded” her testimony to gain an advantage from the State at her own sentencing. However, Roman testified at appellant's trial that she was not promised anything in exchange for her testimony against appellant, and there is no evidence to the contrary.

Next, appellant contends that Roman identified appellant as one of the robbers because he had left her for another woman and she was very upset about that and wanted to punish him. Appellant also contends that it is incredible that Roman could not identify the other robber seen in the videotape or that she could not recall other details about the day of the robbery. Without Roman's testimony, appellant contends, the evidence cannot support the verdict because Bawanie could not identify appellant as one of the robbers, and appellant admitted acting as a lookout only. Further, appellant points out, the policed failed to recover any fingerprints from the items found in the car appellant was driving, and the car was ultimately found to be registered to someone else. Appellant urges that the proof of appellant's guilt is so obviously weak as to undermine confidence in the jury's verdict, citing *Johnson,* 23 S .W.3d at 11, and *Zuniga v. State,* 144 S.W.3d 477, 481 (Tex.Crim.App.2004), *overruled in part by* *Watson v. State,* 204 S .W.3d 404 (Tex.Crim.App.2006).

Appellant's claim of factual insufficiency rests largely upon Roman's credibility. However, we must employ appropriate deference so that we do not substitute our judgment for that of the fact finder. *See* *Drichas,* 175 S.W.3d at 799. We are not free to reverse a jury's decision simply because we may disagree with the result. *See* *Cain,* 958 S.W.2d at 407.

Most recently, the Court of Criminal Appeals overruled in part *Zuniga,* one of the cases on which appellant relies, to the extent it could be interpreted to read that an appellate court's fact jurisdiction includes the ability to overturn a jury verdict and remand for a new trial when the greater weight and preponderance of the evidence actually favors conviction. *See* *Watson,* 204 S.W .3d at 417.[FN5] As the *Watson* court instructs, "it is not enough that the appellate court harbor a subjective level of reasonable doubt to overturn a conviction that is founded on legally sufficient evidence." *Id.* Further, an appellate judge "cannot conclude that a conviction is 'clearly wrong' or 'manifestly unjust' simply because, on the quantum of evidence admitted, he would have voted to acquit had he been on the jury," nor can he "declare that a conflict in the evidence justifies a new trial simply because he disagrees with the jury's resolution of that conflict." *Id.* Instead, the appellate court must first be able to say, with some objective basis in the record, that the great weight and preponderance of the evidence contradicts the jury's verdict before it is justified in exercising its appellate fact jurisdiction to order a new trial. *Id.*

FN5. The language in *Zuniga* the *Watson* court expressly disavows is the following: "This standard acknowledges that evidence of guilt can 'preponderate' in favor of conviction but still be insufficient to prove the elements of the crime beyond a reasonable doubt. Stated another way, evidence supporting guilt can 'outweigh' the contrary proof and still be factually insufficient under a beyond-a-reasonable-doubt standard." *Watson,* 204 S.W.3d at 416 (citing *Zuniga,* 144 S.W.3d at 485).

*5 With the Court's instruction in mind, we turn to the evidence presented at trial. Roman was an accomplice witness. The trial court instructed the jury that it could not convict appellant upon her testimony unless the jury first believed that (1) Roman's testimony was true and that it showed appellant was guilty as charged in the indictment, and (2) there was other evidence outside of Roman's testimony tending to connect appellant with the offense committed. [FN6] The surveillance videotape corroborated Roman's identification of appellant as one of the participants in the robbery, because one of the robbers can be heard referring to the other as "Marcus." Roman testified that she used a walkie-talkie to communicate with the robbers, and on the videotape the robbers can be seen communicating with walkie-talkies. Roman also knew about the black "police" t-shirt that can be seen on the videotape.

FN6. The relevant paragraph of the charge read as follows:

The witness, Evelia Roman, is an accomplice, if an offense was committed, and you cannot convict the defendant upon her testimony unless you first believe that the testimony of Evelia Roman is true and that it shows the defendant is guilty as charged in the indictment; and even then you cannot convict the defendant unless you further believe that there is other evidence in the case, outside of the testimony of Evelia Roman tending

to connect the defendant with the offense committed, if you find that an offense was committed, and the corroboration is not sufficient if it merely shows the commission of the offense, but it must tend to connect the defendant with its commission, and then from all of the evidence you must believe beyond a reasonable doubt that the defendant is guilty of the offense charged against him.

Additionally, appellant, in his statement, acknowledges Roman's role in the robbery. And although appellant denied being in the store during the robbery, he admitted to planning and participating in the robbery. Thus, the surveillance videotape and appellant's own statement sufficiently corroborated Roman's testimony for the jury to conclude she was truthful and appellant participated in the robbery.

We also reject appellant's claim that the evidence is insufficient because the complainant was unable to identify him. If other evidence shows that a defendant was the perpetrator of a criminal offense, the complainant's failure to positively identify the defendant in court does not make the verdict improper. *Conyers v. State,* 864 S.W.2d 739, 740 (Tex.App.-Houston [14th Dist.] 1993, pet. ref'd). Finally, appellant's claim that "no credible evidence" links appellant to the walkie-talkies and other items found in the vehicle he was driving is belied by appellant's own statement, in which he discusses using the items in carrying out the robbery.

Viewing the evidence in a neutral light, it was not so weak that the verdict is clearly wrong and manifestly unjust. Moreover, we cannot say that the great weight and preponderance of the evidence contradicts the jury's verdict. *See Watson,* 204 S.W.3d at 417. We therefore overrule appellant's second issue.

II. The Trial Court Did Not Err by Admitting Appellant's Custodial Statement

In issues three through nine, appellant contends the trial court erred in denying his motion to suppress his custodial statement because the statement was given involuntarily. Appellant argues the statement was involuntary because it was coerced and because the police officers made false promises of leniency.

Although appellant claims, in separate issues, that admitting the statement violates the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Article I, sections 10 and 19 of the Texas Constitution, and articles 38.21, 38.22, and 38.23 of the Texas Code of Criminal Procedure, appellant does not separately brief each issue. Instead, appellant briefs the issue generally under a single section of his brief. Therefore, we will address appellant's constitutional and statutory claims in the same way as necessary to resolve the question of the trial court's alleged error. *See Heitman v. State,* 815 S.W.2d 681, 690-91 n. 23 (Tex.Crim.App.1991) (treating state and federal constitutions as providing the same protections when appellant does not argue that they should be interpreted differently).

A. Applicable Law and Standard of Review

1. *Applicable Law*

*6 A statement may be deemed involuntary in three circumstances: (1) noncompliance with article 38.22 of the Texas Code of Criminal Procedure; (2) noncompliance with the dictates of *Miranda v. Arizona,* 384 U.S. 436 (1966); or (3) a violation of due process or due course of law because the statement was not freely given (e.g., coercion, improper influences, incompetence). *Wolfe v. State,* 917 S.W.2d 270, 282 (1996). Here, appellant urges only the third circumstance.

The burden of proof at the suppression hearing is on the prosecution. *Alvarado v. State,* 912 S.W.2d 199, 211 (Tex.Crim.App.1995). It must prove by a preponderance of the evidence that the defendant gave his statement voluntarily. *Id.* Under federal due process, a statement is involuntary if the defendant was offered inducements of such a nature or coerced to such a degree that the inducements or coercion-not his own free will-produced the statement. *See id.* Under Texas law, article 38.21 of the Code of Criminal Procedure requires that the statement be "freely and voluntarily made without compulsion or persuasion." TEX.CODE CRIM. PROC. art. 38.21. Article 38.23 states, in part, "[n]o evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case." TEX.CODE CRIM. PROC. art. 38.23(a). In determining the question of voluntariness, a court should consider the totality of circumstances under which the statement was obtained. *Creager v. State,* 952 S.W.2d 852, 855 (Tex.Crim.App.1997). The ultimate question is whether the appellant's will was overborne. *Id.* at 856.

For a promise to render a confession invalid under Texas law, the promise must be positive, made or sanctioned by someone in authority, and of such an influential nature that it would cause a defendant to speak untruthfully. *See Martinez v. State,* 127 S.W.3d 792, 794 (Tex.Crim.App.2004): *Herrera v. State,* 194 S.W.3d 656, 659-60 (Tex.App.-Houston [14th Dist.] 2006, pet. ref'd). The truth or falsity of a confession is irrelevant to a voluntariness determination under both federal constitutional law and state law. *Martinez,* 127 S.W.3d at 794-95; *Herrera,* 194 S.W.3d at 660.

2. *Standard of Review*

We review a trial court's ruling on a motion to suppress evidence under an abuse of discretion standard. *See Villarreal v. State,* 935 S.W.2d 134, 138 (Tex.Crim.App.1996). At a suppression hearing, the trial court is the sole fact-finder and may choose to believe or disbelieve any or all of the witnesses' testimony. *Alvarado v. State,* 853 S.W.2d 17, 23 (Tex.Crim.App.1993). We give almost total deference to the trial court's determination of historical facts when supported by the record, particularly if the findings turn on witness credibility and demeanor. *State v. Ross,* 32 S.W .3d 853, 856 (Tex.Crim.App.2000); *Carmouche v. State,* 10 S.W.3d 323, 327 (Tex.Crim.App.2000); *Guzman v. State,* 955 S.W.2d 85, 89 (Tex.Crim.App.1997). The same deference is accorded to determinations

of mixed questions of law and fact if their resolution depends upon witness credibility and demeanor. *Ross,* 32 S.W.3d at 856. Issues that present purely legal questions are considered under a de novo standard. *Id.* We will sustain the trial court's ruling if it is reasonably supported by the record and is correct on any theory of law applicable to the case. *Villarreal,* 935 S.W.2d at 138.

*7 Appellant contends that, because his statement was videotaped, we must review the trial court's ruling de novo, citing *Mayes v. State,* 8 S.W.3d 354, 358 (Tex.App.-Amarillo 1999, no pet.), and *Douglas v. State,* No. 09-00-00484-CR, 2002 WL 538859, at *1-5 (Tex.App.-Beaumont, April 10, 2002, no pet.). Recently, we cited these cases with approval in *Herrera v. State. See* 194 S.W.3d at 658. In *Herrera,* we held that when we have a videotaped confession and an uncontroverted version of events, we review the trial court's ruling on an application of law to facts de novo. *Id.* at 658 (noting there was no controversy about the statements made by the police on the tape).

However, we find this case distinguishable from *Herrera* in two respects. Unlike *Herrera,* the alleged promises of leniency here do not appear on the videotape, and appellant testified at trial concerning his alleged impairment and the coercion controverting trial testimony of the officers who conducted the interview. Thus, this case does not present only a videotaped statement and an "uncontroverted version of events" for our review. In addition to the videotape, the trial court considered other evidence that was controverted and involved an evaluation of witness credibility and demeanor. For these reasons, we reject appellant's argument that we must review the trial court's ruling de novo.

B. Application of Law to Facts

After the hearing on appellant's motion to suppress, the trial court entered findings and conclusions that include the following: (1) no one threatened appellant or made him any promises to get him to confess, (2) no one coerced him to give a statement, (3) he was provided with food and water while in the city jail, and (4) he understood his rights and voluntarily agreed to waive them and give a statement. Accordingly, the trial court determined the statement was admissible. However, appellant contends he was intoxicated during the interview and was denied food, water, and sleep before it .[FN7] He also contends an unidentified officer or officers made false promises that his cooperation would help them close cases and he "would not be held accountable for [his] actions." We address these contentions below.

FN7. Appellant also mentions that he had "limited language skills." However, appellant makes no argument relating to this assertion and we find no support for it on the videotaped statement; therefore, we do not address it.

Appellant was arrested September 23, 2004 at about 4:00 p.m., and he gave his statement the following day around 1:00 p.m. At the hearing on the motion to suppress, appellant testified that he had not slept for over twenty-four hours before the interview. He also testified that before going to meet with the officers, he was intoxicated from codeine

cough syrup, Zanex, and hydroponic marijuana, and he remained intoxicated during the interview almost twenty-four hours later. He had not eaten before meeting with the officers, and he was not offered food or water while in detention. He was also unable to sleep because of the jail conditions and so was sleep-deprived. He explained that he decided to go ahead and give his statement so that he would be "taken care of," which to him meant "being [g]iven a cup of water, [and] treated like a human ." According to appellant, he eventually received a soft drink after he agreed to give his statement. Appellant also testified that he gave his statement because unidentified officers implied or told him that his cooperation would "help close some cases" and then he "would not be held accountable for [his] actions." He denied that he gave his statement voluntarily.

*8 Officers Rodriguez and Chappell testified that appellant did not appear intoxicated at the time of his arrest. Officer Chappell said that appellant did not smell of marijuana. Officer Rodriguez testified that he was previously a Houston Police Department jailer, and the jail provides prisoners with three meals a day, and appellant should have received at least two meals before his interview. He also stated that there were bunk beds available for sleeping. Officer Rodriguez testified that appellant recalled the offenses they discussed with clarity and did not seem sleepy or intoxicated. Officer Rodriguez denied telling appellant that if he cooperated he would get food and water, and he further testified that he gave appellant an opportunity to drink water. He also testified that appellant seemed intelligent and appeared to understand his rights when he waived them before discussing the details of the offense.

Appellant complains that he was in custody for almost twenty-four hours before he gave his statement, and he did not willingly continue his questioning. However, the length of time appellant was in custody before he gave his statement was not coercive. *See* *Cox v. State*, 644 S.W.2d 26, 28-9 (Tex.App.-Houston [14th Dist.] 1982, pet. ref'd) (holding that eight hours of questioning over two days was not coercive). In addition, the videotape shows that appellant was twice asked during the interview whether he was coerced, promised, or threatened to make his statement, and he answered "no" both times.

Even if we assume that appellant was intoxicated on codeine syrup, Zanex, and hydroponic marijuana for almost twenty-four hours when he was interviewed, that fact alone is not sufficient to render his confession involuntary. *See* *Garcia v. State*, 919 S.W.2d 370, 387 (Tex.Crim.App.1994) (op. on reh'g); *see also* *Alvarado v. State*, 912 S.W.2d 199, 211-12 (Tex.Crim.App.1995) (upholding admission of statement by defendant who claimed to be intoxicated at the time he made the statement in response to custodial interrogation). Instead, the question becomes whether the defendant's intoxication rendered him incapable of making an independent, informed decision to confess. *Jones v. State*, 944 S.W.2d 642, 651 (Tex.Crim.App.1996). Appellant suggests that intoxication coupled with sleep deprivation and lack of food and water may render a suspect incapable of making an independent informed decision to confess. However, the only evidence to support this suggestion is appellant's testimony, which is contradicted by that of the officers.

Appellant also contends that he gave his statement because unidentified officers promised

him leniency in exchange for his statement. However, no other record evidence supports this assertion, and no such promise appears on the videotape of appellant's statement. As noted above, the videotape of his statement shows that appellant twice denied he was promised anything in exchange for his statement. Moreover, Officer Rodriguez testified he did not make any promises to appellant. Finally, appellant's own testimony is unclear as to what, if any, promises police made. He testified, "my cooperation would help close some cases and then I would not be held accountable for actions *or something of that sort* that I was-that my information would be of help to them." This assertion is vague at best, and does not amount to a positive promise by someone with apparent authority that would likely induce a false confession. *See* *Herrera*, 194 S.W.3d at 660 (holding that officer's statement, "[w]e can talk to the D.A ., get you an offer, if you can help us [,]" did not amount to a promise of leniency).

*9 Having reviewed the evidence, we hold that appellant cannot demonstrate an abuse of discretion. The trial court was the sole judge of the credibility of the witnesses, and chose to believe the videotape and the State's witnesses and to disbelieve appellant. *See* *Masterson v. State*, 155 S.W.3d 167, 171 (Tex.Crim.App.2005) (stating that "the trial court has discretion to disbelieve testimony even if it is not controverted. The trial court did in fact discount appellant's testimony and was within its discretion to do so."). Moreover, we cannot say that appellant's will was actually overborne or that any alleged promise would likely lead to a false confession. Therefore, we overrule appellant's issues three through nine.

Conclusion

We overrule appellant's issues and affirm the trial court's judgment.

Tex.App.-Houston [14 Dist.],2007.
Laredo v. State
Not Reported in S.W.3d, 2007 WL 445288 (Tex.App.-Hous. (14 Dist.))