

## Article 38.22

You are instructed that a statement of an accused may be used in evidence against him if it appears that the same was freely and voluntarily made without compulsion or persuasion.

No oral statement of an accused made as a result of custodial interrogation shall be admissible against the accused in a criminal proceeding unless:

(1) An electronic recording, which may include audio, motion picture, videotape, or other visual recording, is made of the statement;

(2) Prior to the statement but during the recording the accused is given the following warning:

(a) he has the right to remain silent and not make any statement at all and that any statement he makes may be used against him at his trial;

(b) any statement he makes may be used as evidence against him in court;

(c) he has the right to have a lawyer present to advise him prior to and during any questioning;

(d) if he is unable to employ a lawyer, he has the right to have a lawyer appointed to advise him prior to and during any questioning;

(e) he has the right to terminate the interview at any time; and

(f) the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning;

(3) the recording device was capable of making an accurate recording, the operator was competent, and the recording is accurate, has not been altered, and reflects that the accused was advised before the interrogation that the interrogation would be recorded; and

(4) all voices on the recording that are material are identified.

So in this case, if you find from the evidence, or if you have a reasonable doubt thereof, that prior to the time the defendant gave the alleged oral statement or oral confession to (NAME), if he did give it, the said (NAME) did not warn the

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defendant in the respects outlined above, or as to any one of such requirements, then you will wholly disregard the alleged oral confession and not consider it for any purpose nor any evidence obtained as a result thereof; if, however, you find beyond a reasonable doubt that the aforementioned warning was given the defendant prior to his having made such oral statement, if he did make it, still, before you may consider such oral statement as evidence in this case, you must find from the evidence beyond a reasonable doubt that prior to and during such oral statement, if any, the defendant knowingly, intelligently and voluntarily waived the rights hereinabove set out in the said warning, and unless you so find, or if you have a reasonable doubt thereof, you will not consider the oral statement or oral confession for any purpose whatsoever or any evidence obtained as a result of same.