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ARKANSAS COURT OF APPEALS

DIVISION II
No. CR-11-788

	Opinion Delivered June 26, 2013
GLEN ERIC NELSON, JR. APPELLANT	APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT [NO. CR-2010-489]
V.	HONORABLE STEPHEN TABOR, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellant was found guilty by a jury of murder in the second degree. He was sentenced to thirty years' imprisonment and fined $15,000. Because the jury found that he employed a firearm to commit the murder, appellant was also sentenced to serve a consecutive term of fifteen years' imprisonment. On appeal, he argues that the trial court erred in refusing to suppress his confession and test results obtained from his clothing because probable cause was lacking for his arrest; in failing to find that his confession was involuntary; and in refusing to admit the favorable results of a voice-stress test. We affirm.

We first address appellant's contention that the trial court erred in denying his motion to suppress evidence as fruit of the poisonous tree obtained by an unlawful arrest. In reviewing the denial of a motion to suppress evidence, we conduct a de novo review based on the totality of the circumstances, reviewing findings of historical facts for clear error and

determining whether those facts give rise to reasonable suspicion or probable cause. *Davis v. State*, 351 Ark. 406, 94 S.W.3d 892 (2003). In doing so, we defer to the superior opportunity of the circuit judge to evaluate the credibility of witnesses who testify at the suppression hearing and give due weight to inferences drawn by the trial court. *Pickering v. State*, 2012 Ark. 280, ___ S.W.3d ___. A finding is clearly erroneous when the appellate court, after review of the entire evidence, is left with the definite and firm conviction that a mistake has been made. *Id*.

Viewed in light of this standard, the record shows that police officer Kelly Colton arrived to investigate a shooting at appellant's apartment complex soon after 2:00 a.m. The victim, who was then still alive, was in apartment 35; appellant lived upstairs in apartment 34. Emergency Medical Services arrived to transport the victim. Appellant appeared in the apartment breezeway about fifteen minutes after Officer Colton arrived. Appellant told Colton that he was friends with the victim. Appellant further stated that he had been upstairs in apartment 34 and heard a shot but had not seen anything. Appellant was cooperative, and Officer Colton asked him and other persons in the immediate vicinity to remain until a detective arrived.

Eight to ten people were at the scene when Detective Boyd arrived to interview potential witnesses at 2:20 a.m. Numerous people were present, but they were spread out in breezeways, apartments, and in the parking lot. It was an emotional scene, with many people upset and crying. Detective Boyd first identified the people that he would need to speak to and asked them to wait. He first interviewed two people sitting outside of their apartment

so that they could be finished and tend to their child who was with them. Ten to fifteen minutes after Detective Boyd arrived at the scene, appellant approached Boyd and asked if the detective needed to speak to him. Having been informed by Officer Colton that the victim had been in appellant's apartment prior to the shooting, Detective Boyd told appellant that he did need to speak to him and would do so in just a few minutes. However, appellant continued to interrupt the ongoing interview, finally saying, "F★★k this, I'm going to sleep." Although he was again told that he needed to stay because this was an important matter and that he would be interviewed shortly, appellant began to climb the staircase to his apartment, two stairs at a time. The officer followed, but attempts to dissuade appellant were fruitless, and he was arrested on charges of obstructing governmental operations.

A person commits the offense of obstructing governmental operations if he knowingly obstructs, impairs, or hinders the performance of any governmental function. Ark. Code Ann. § 5-54-102(a)(1) (Supp. 2011). Here, the interview of witnesses at the scene of a shooting was unquestionably a legitimate governmental function, and appellant's disruption of these interviews three times in a matter of moments provided probable cause for his arrest on this charge. Although appellant argues that he was in fact detained soon after 2:00 a.m. when Officer Colton asked him to remain until a detective arrived, we think that appellant's compliance with this request was voluntary and that no seizure occurred until Detective Boyd told appellant at approximately 2:30 a.m. that he would need to speak with appellant before he left. *Flanagan v. State*, 368 Ark. 143, 243 S.W.3d 866 (2006). However, this was not an unlawful seizure: Rule 3.5 of the Arkansas Rules of Criminal Procedure permits a law

enforcement officer to detain, for a reasonable time up to fifteen minutes, a person found at the scene of a felony who is reasonably believed to be a witness in order to obtain any information that the person may have regarding the offense. Appellant had previously volunteered that he heard the shot, and, by the time that Detective Boyd directed appellant to remain until questioned, it was known that the victim had been in appellant's apartment immediately before the shooting. Under the circumstances presented here, we hold that appellant was not illegally detained or arrested and that the trial court, therefore, did not err in denying appellant's motion to suppress on those grounds. *See Flanagan*, *supra*.

Next, appellant argues that the trial court erred in finding that his custodial confession was voluntarily given. Custodial statements are presumed involuntary, and the State must prove by a preponderance of the evidence that the statement was given voluntarily and was knowingly and intelligently made. *Williams v. State*, 338 Ark. 97, 991 S.W.2d 565 (1999). Whether a confession or statement is an act of free will is determined on the facts of each case applying the following four factors: (1) the giving of *Miranda* warnings, (2) the temporal proximity of the arrest and confession, (3) the presence of intervening circumstances, and (4) the purpose and flagrancy of the official misconduct. *Friend v. State*, 315 Ark. 143, 865 S.W.2d 275 (1993) (citing *Wong Sun v. United States*, 371 U.S. 471 (1963), and *Brown v. Illinois*, 422 U.S. 590 (1975)). On appeal, we review a trial court's refusal to suppress a confession by making an independent determination based on the totality of the circumstances. *Grillot v. State*, 353 Ark. 294, 107 S.W.3d 136 (2003). The trial court's ruling will be reversed only if it is clearly against the preponderance of the evidence. *Id*.

Here, appellant was jailed in the early morning hours of April 30, 2010, and was interviewed by detectives later that afternoon. He was given *Miranda* warnings, did not request an attorney, and did not implicate himself in the shooting. Appellant was interviewed by the same detectives a second time on May 4; he was again given *Miranda* warnings, did not request an attorney, and did not implicate himself in the shooting. The official misconduct during these interviews consisted of failing to return appellant to his cell on several occasions when he plainly intended to stop the questioning and of vague suggestions that it would benefit appellant to tell his story to the detectives. Nevertheless, appellant made no incriminating statements during either the April 30 or May 4 interview; instead, while in his cell on May 5, appellant told a jail deputy that he wanted to speak to the detectives again. He did so, was again Mirandized, and gave a statement admitting that he shot the victim. Given that six days elapsed between appellant's arrest and his confession; that he was not continuously in the company of police officers from his arrest to his confession; that he was afforded counsel and had been visited by friends and family members; that appellant himself initiated the contact with the detectives that culminated in his confession; and that, in the course of his confession, appellant acknowledged that he knew that the detectives had no influence on the charges to be brought or the penalty to be imposed, we think that appellant's confession was sufficiently attenuated from the relatively minor misconduct that the trial court did not clearly err in finding that appellant's confession was voluntarily given. *See Brewer v. State*, 271 Ark. 810, 611 S.W.2d 179 (1981).

Finally, appellant argues that the trial court erred in refusing to admit into evidence the results of a favorable voice-stress test. The decision to admit or exclude evidence is within the sound discretion of the trial court, and we will not reverse a trial court's decision on the admission of evidence absent a manifest abuse of discretion. *Rollins v. State*, 362 Ark. 279, 208 S.W.3d 215 (2005). We find no such abuse. Pursuant to Ark. Code Ann. § 12-12-704 (Repl. 2009), the results of such psychological stress evaluations "shall be inadmissible in all courts in this state." The only exception to this rule occurs when both parties stipulate to the admissibility of the psychological-stress test results in writing. *See Rollins*, *supra* (citing *Foster v. State*, 285 Ark. 363, 687 S.W.2d 829 (1985)). In the absence of such a stipulation, the trial court properly refused to admit the test results into evidence.

Affirmed.

WYNNE and GRUBER, JJ., agree.

Taylor & Taylor Law Firm, P.A., by: *Andrew M. Taylor*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Rachel H. Kemp*, Ass't Att'y Gen., for appellee.