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**IN THE  
COURT OF APPEALS OF INDIANA**

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ALBERT GENE WOODARD,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 71A05-0606-CR-323

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APPEAL FROM THE ST. JOSEPH SUPERIOR COURT  
The Honorable John M. Marnocha, Judge  
Cause No. 71D02-0411-FA-109

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**December 19, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Albert Gene Woodard appeals his convictions for four counts of class A felony child molesting and one count of class A felony attempted child molesting. We affirm.

## **Issue**

We restate the issue as to whether the trial court abused its discretion in admitting Woodard's statement to the police and letters written by Woodard.

## **Facts and Procedural History**

The facts most favorable to the verdict are as follows. Woodard is a male, twenty-one years of age or older, and the two victims, T.B. and T.W., are stepsisters, both under the age of fourteen. T.B. is Woodard's live-in stepdaughter, while T.W. is his natural-born daughter who stayed at his house on the weekends.

When T.B. was in fourth grade, her class had a good touch/bad touch lesson. On a piece of paper, she wrote, "My stepdad likes to have sex with me for some reason. What can I do, please help me." Tr. at 311. School personnel contacted Child Protective Services, and an investigation began. At trial, T.B. stated that Woodard had touched her vagina with his mouth, hands, and penis; put his penis inside of her mouth and something white came out of his penis; and tried to put his penis inside of her vagina, but would stop when she said "ouch." *Id.* at 272-74. At trial, T.B. also stated that she also saw Woodard put his mouth on T.W.'s vagina, put his penis in T.W.'s mouth, and try to put his penis in T.W.'s vagina. *Id.* at 277-78. After Child Protective Services removed the children from Woodard's home, a nurse examined both children at a local hospital. T.W. was diagnosed with and treated for gardnerella, a sexually transmitted disease.

An officer was assigned to investigate a report of sexual abuse involving T.B. and T.W. After the officer located Woodard, Woodard said that he was willing to make a statement. Subsequently, Woodard was taken to the South Bend Police Department and advised of his rights. After signing a waiver of rights, Woodard admitted the allegations during a tape-recorded interview. Woodard also wrote three apology letters to his wife, T.B., and T.W.

On November 15, 2004, Woodard was charged with six counts of class A felony child molesting for alleged incidents occurring between January 1, 2004, and November 12, 2004. On September 21, 2005, Woodard filed a motion to suppress. He argued that the taped confession and letters were inadmissible because, despite his requests, he was denied access to an attorney. At the suppression hearing, Woodard testified that he requested an attorney just before the interview took place and was told that he “wouldn’t need one, unless [he] was going to be arrested.” *Id.* at 41. The interviewing officer, however, testified that Woodard “never mentioned an attorney, period.” *Id.* at 21. The trial court denied Woodard’s motion to suppress, finding that there was a voluntary and knowing waiver and that the defendant did not assert his right to a lawyer. *Id.* at 47-48.

On February 1, 2006, a jury found Woodard guilty on four counts of child molesting and one count of attempted child molesting. Woodard now appeals.

### **Discussion and Decision**

Woodard contends that the trial court erred in denying his motion to suppress the confession and the letters and in subsequently admitting them at trial over his objection. His principal claim is that the police ignored his request for an attorney prior to the interview and

thereby violated his Fifth Amendment right to be free from self-incrimination. If a defendant asks for an attorney during custodial interrogation, it is the duty of the officer to cease questioning until counsel arrives, as any subsequent statements or confessions are inadmissible at trial. *See Conner v. State*, 580 N.E.2d 214, 219 (Ind. 1991).

The issue before us is whether the trial court abused its discretion in admitting the evidence at trial over Woodard's objection. *See Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. *Id.* In overruling Woodard's objection, the court relied on the decision it made at the suppression hearing. We examine the evidence most favorable to that ruling and neither judge the credibility of witnesses nor reweigh the evidence. *See Wright v. State*, 766 N.E.2d 1223, 1229 (Ind. Ct. App. 2002). We will not second-guess the trial court's determination of the credibility of the police officer, who stated that Woodard did not request an attorney. We therefore find that the trial court did not abuse its discretion in admitting Woodard's statement and letters and affirm his convictions.

Affirmed.

BAKER, J., and VAIDIK, J., concur