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ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR10-1333

	Opinion Delivered October 12, 2011
JAMES RAY THOMPSON APPELLANT	APPEAL FROM THE MILLER COUNTY CIRCUIT COURT [NO. CR-2010-97]
V.	HONORABLE KIRK JOHNSON, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN MAUZY PITTMAN, Judge

After a jury trial, appellant was convicted of two counts of rape and was sentenced to two ten-year terms of imprisonment to be served consecutively. On appeal, he argues that the trial court erred in denying his motion to suppress his recorded statement to Detective Les Moody of the Texarkana Police Department, and that the trial court abused its discretion by disregarding the jury's recommendation that his terms of imprisonment be served concurrently, rather than consecutively. We find no error, and we affirm.

In his pretrial statement, appellant admitted that he raped the victim. Appellant argues that his statement should have been suppressed because, at the time he gave it, he was too intoxicated to knowingly, intelligently, and voluntarily waive his constitutional rights. In ruling on the voluntariness of a confession, we review the trial court's findings of fact for clear error, then make an independent determination based on the totality of the circumstances in deciding the ultimate legal question of whether the confession was voluntary. *Clark v. State*, 374 Ark. 292, 287 S.W.3d 567 (2008). When an appellant claims that his confession was

rendered involuntary because of his drug or alcohol consumption, the level of his comprehension is a factual matter to be resolved by the trial court. The test of voluntariness of one who claims intoxication at the time of waiving his rights and making a statement is whether the individual was of sufficient mental capacity to know what he was saying—capable of realizing the meaning of his statement—and that he was not suffering from any hallucinations or delusions. *Grillot v. State*, 353 Ark. 294, 107 S.W.3d 136 (2003). Based on our review of the totality of the circumstances, we hold that appellant was not so intoxicated as to render his statement involuntary.

The interview resulting in appellant's statement was conducted on February 1, 2010, at 2:00 p.m. Although appellant stated that he had smoked two "blunts" of marijuana sixteen hours earlier, he told Detective Moody that he was no longer under the influence of marijuana at the time of the interview. Appellant was given a detailed explanation of his *Miranda* rights, and he asked lucid and relevant questions about them, affirmed that he understood them, and stated that he wanted to proceed with the interview without an attorney. The entire interview lasted approximately forty-five minutes. Appellant was initially untruthful about his activities and frequently changed his narrative when caught telling lies. Approximately twenty minutes into the interview, appellant decided to "tell the truth" and began to cry, expressing shame, remorse, and fear of the consequences of his actions. Appellant composed himself and admitted that the victim initially laughed at his advances and consented to have sex with him only because he had threatened her with a gun. At the suppression hearing, the tape of appellant's statement was played, and the detectives involved in the interrogation both opined that appellant was not intoxicated and that his statement was coherent, responsive, and voluntary. Appellant did not testify at the hearing.

In its ruling from the bench, the trial court expressly found the testimony of the detectives to be credible and noted that, while appellant did become emotional at one point during the interview, he did not appear to be hysterical or incapable of giving coherent responses to questions at that point. Based on our independent review of the totality of the circumstances, we hold that appellant's statement was voluntary.

Appellant also argues that the trial court erred in rejecting the jury's recommendation for concurrent sentences because the judge appeared to have taken notice of matters not in evidence regarding his criminal history. A criminal defendant has no right to a suspended sentence or to have his sentences run concurrently; these matters are within the sound discretion of the trial court. *Cody v. State*, 2010 Ark. App. 542. Although it is true that judicial notice may not be taken of the record in a separate case, *Smith v. State*, 307 Ark. 223, 818 S.W.2d 945 (1991), appellant has failed to demonstrate that the trial court did so in the present case. In imposing consecutive sentences, the trial judge said, essentially, that appellant was a sexual predator who had been stalking the victim for some time. The judge stated that he was therefore rejecting the jury's recommendation and ordering that the sentences be served consecutively. However, the trial court's remarks mentioned nothing that had not been admitted in evidence at trial or that was not reasonably to be inferred from that evidence. Appellant has failed to demonstrate error on this point.

Affirmed.

HART and ROBBINS, JJ., agree.

Digby Law Firm, by: *Bobby R. Digby II*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Nicana C. Sherman*, Ass't Att'y Gen., for appellee.