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ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR10-359

	Opinion Delivered November 17, 2010
JOE K. MOORE APPELLANT	APPEAL FROM THE MILLER COUNTY CIRCUIT COURT [NO. CR-2009-276-2]
V.	HONORABLE KELVIN WYRICK, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN MAUZY PITTMAN, Judge

A jury found appellant guilty of aggravated robbery and sentenced him to fifty years' imprisonment. He argues on appeal that the trial court erred by refusing to suppress a custodial statement made by him after his arrest for public intoxication at the scene of the robbery. We affirm.

A statement made while an accused is in custody is presumptively involuntary, and the burden is on the State to prove, by a preponderance of the evidence, that a custodial statement was given voluntarily and was knowingly and intelligently made. *Jones v. State*, 344 Ark. 682, 42 S.W.3d 536 (2001). In order to determine whether a waiver of *Miranda* rights is voluntary, this court looks to see if the confession was the product of free and deliberate choice rather than intimidation, coercion, or deception. *Id.* In reviewing a trial court's ruling on the voluntariness of a confession, we make an independent determination based upon the totality

of the circumstances, reviewing the trial court's findings of fact for clear error, the ultimate question of whether the confession was voluntary being subject to an independent, de novo determination by this court. *Clark v. State*, 374 Ark. 292, 287 S.W.3d 567 (2008). The standard of review for the particular issue to be decided in this case has been stated as follows:

> 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. While this court will make a closer examination of the appellant's mental state, we still leave the factual question to the trial court on whether the accused had sufficient capacity to waive his rights. 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. We have also stated that it is significant in making a finding of voluntariness that the accused answered questions without indications of physical or mental disabilities, that the accused remembered a number of other details about the interrogation even though he could not remember waiving his rights, and that a statement was given in a short period of time after his rights had been read to him.

Jones v. State, 344 Ark. 682, 688–89, 42 S.W.3d 536, 541 (2001) (internal citations omitted).

Our independent review of the record reveals that Officer Les Moody, an eighteen-year veteran of the Texarkana Police Department, responded to the scene of a robbery at Max's Arcade on April 2, 2009. After Officer Moody left the arcade, other officers on the scene took appellant into custody for public intoxication. Appellant was later that day brought to the criminal investigation division. No interview was attempted at that time because appellant was intoxicated. Approximately twenty-four hours later, Officer Moody

interviewed appellant. Officer Moody read appellant his *Miranda* rights paragraph-by-paragraph from a written form. Appellant orally confirmed that he understood each paragraph and initialed each paragraph on the form. On the face of the document, appellant denied that he was under the influence of alcohol or drugs and stated that he had a ninth-grade education. Officer Moody testified that appellant did not appear to be intoxicated or impaired, that he did not appear to be confused, and that he did not ask for any further explanation concerning his rights. Appellant evinced no confusion and appeared to understand when he was advised of his right to request an attorney, he signed his name in the section of the form indicating that he waived his right to have an attorney present, and he thereafter gave an incriminating statement. Only Officer Moody and appellant were present in the interview room during this procedure; Officer Moody was unarmed and made no threats or promises to appellant. On cross-examination, Officer Moody acknowledged that appellant gave him an incorrect date of birth during the interview.

Appellant argues on appeal that the fact that he gave an incorrect date of birth during the interview proves that he was unable, because of lack of education or possible intoxication, to understand the waiver of rights that he executed before making that statement. We do not agree. It is possible, as the State suggests, that appellant was simply lying about his date of birth in an attempt to conceal his prior criminal history, including convictions for aggravated robbery and theft of property. Based on our review of the totality of the circumstances, we hold that the trial court did not clearly err in finding that appellant knowingly and

intelligently waived his *Miranda* rights.

Affirmed.

GLADWIN and KINARD, JJ., agree.