

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR09-692

LATHON JORDANA

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 27, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR2007-413]

HONORABLE HERBERT WRIGHT,
JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

Appellant, Lathon Jordana, entered a guilty plea to the crime of first-degree murder, conditioned upon an appeal of the circuit court’s denial of his motion to suppress a statement he gave to the police. He asserts that the circuit court erred in denying the motion, as the statement was involuntary and coerced. We affirm the circuit court.

Appellant was initially arrested for the battery of his stepdaughter, Dionne Phillips, who was almost two.¹ During appellant’s forty-five-minute audiotaped interview with a Little Rock police detective, appellant admitted that earlier that day he had whipped the child with the power cord of a cell-phone charger. At the suppression hearing, the State presented the testimony of the detective who interviewed appellant.

¹Phillips later died, and appellant was charged with capital murder.

The detective testified on direct examination that he read appellant his *Miranda* rights and a waiver of those rights and that appellant signed both the rights and waiver forms. He determined that appellant had thirteen years of education, could read and write, and was twenty years old. The detective stated that appellant agreed to give a statement and that he neither threatened, coerced, used physical force, nor made any promises to appellant for the purpose of obtaining a statement from appellant. Further, the detective testified that appellant did not ask for an attorney or ask to end the questioning. The detective also stated that twenty-one minutes elapsed before the recording began.

On cross-examination, the detective did not recall whether appellant asked to call his mother, but the detective stated that he would not dispute the assertion. The detective further testified that appellant never asked for an attorney. He agreed that appellant was concerned about his stepdaughter's condition and was upset, and that appellant mentioned that he wanted to check on his stepdaughter. In response, the detective told appellant that he would keep him updated as they were going through the interview. The detective denied that he said he would take appellant to the hospital once he gave a statement or that he said appellant did not need a lawyer. Also, the detective denied that appellant asked a number of times if he could go see his stepdaughter. The detective described the room in which the interview was conducted as a six-by-six-foot room with concrete walls. He also testified that during the twenty minutes before the recording, appellant was reading over the rights form. The detective further stated that appellant asked some questions about how his stepdaughter was

doing, and he told appellant that he did not know because she was still at the hospital being treated.

Appellant raises three separate but similar points. First, appellant argues that his statement was involuntary and coerced, asserting that the detective's testimony indicates that appellant was distraught and concerned about his stepdaughter's health. Appellant contends that the detective "enticed" him by telling him he would provide updates about his stepdaughter's health. In a second point, appellant asserts that the statement was involuntary, noting that the audiotape was not immediately turned on, that appellant asked several times to check on his stepdaughter, and that the detective said that he would keep appellant updated during the interview. He also asserts that he was emotionally unstable and concludes that the detective's statement coupled with appellant's emotional state rendered his statement involuntary. In a third point, appellant contends that the statement was coerced. Appellant asserts that he had no family in Little Rock and was continually denied the opportunity to call his mother. He further observes that the interview room was only large enough to seat two people. He again notes that his concern was his stepdaughter's health and that he was denied information and was told he would be updated during the interview. He argues that the statement was coerced given that he was distraught, isolated in Little Rock, and denied information about his stepdaughter while being interrogated. He asserts that he was coerced into making the statement in hopes that he would be able to speak with someone familiar and learn the status of his stepdaughter.

In reviewing a circuit court's ruling on the voluntariness of a confession, the appellate court makes an independent determination based upon the totality of the circumstances. *Standridge v. State*, 357 Ark. 105, 161 S.W.3d 815 (2004). While a custodial statement is presumed involuntary, this court looks to see if the confession was the product of free and deliberate choice rather than intimidation, coercion, or deception. *Id.* Further, there must be an essential link between coercive activity of the State and a resulting confession by a defendant. *Id.*

In sum, appellant asserts that his statement was involuntary and coerced because he was distraught; because he was denied the opportunity to speak to his mother, who was the only person he could "contact for comfort and advice"; and because he continued to inquire about his stepdaughter but was told that he would be updated during the interview. Appellant was twenty years old and educated, was advised of his constitutional rights, was interviewed for approximately one hour, and was not physically threatened. These factors indicate that the confession was not involuntary or coerced. *See id.*

Moreover, there are no essential links between the detective's conduct and appellant's statement. While appellant was upset and concerned about his stepdaughter's health, this does not establish that the State's conduct resulted in appellant's statement and that it was therefore involuntary or coerced. Furthermore, there was no testimony that appellant confessed because he was not allowed to speak to his mother—the detective never testified that appellant was denied an opportunity to speak to his mother. And there was no testimony that appellant

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confessed because he sought and was denied information about his stepdaughter—the detective never testified that he withheld information about the victim and would provide appellant information contingent upon appellant giving a statement.

Under the totality of the circumstances, *see id.*, we cannot say that the circuit court erred in denying appellant's motion to suppress, and we affirm appellant's conviction.

Affirmed.

KINARD and HENRY, JJ., agree.