

# ARKANSAS COURT OF APPEALS

DIVISION III  
No. CACR09-341

JESUS TAPIA

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** February 11, 2010

APPEAL FROM THE SEVIER  
COUNTY CIRCUIT COURT  
[NO. CR-08-22-2]

HONORABLE CHARLES A.  
YEARGAN, JUDGE

AFFIRMED

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## JOSEPHINE LINKER HART, Judge

Jesus Tapia was found guilty in a Sevier County jury trial of rape and kidnapping. He received consecutive sentences totaling fifty years in the Arkansas Department of Correction. On appeal, he challenges the sufficiency of the evidence and the denial of his motion to suppress. We affirm.

We first summarily dispose of Tapia’s challenge to the sufficiency of the evidence. For his directed-verdict motion, Tapia stated, “The State failed to prove all the elements of the charges against him.” It is well settled that such a general directed-verdict motion fails to comport with the requirement of Rule 33.1 of the Arkansas Rules of Criminal Procedure that the directed-verdict motion state the “specific grounds therefor.” *Carey v. State*, 365 Ark. 379, 230 S.W.3d 553 (2006).

We then turn to Tapia’s argument that the trial court erred in denying his motion to

suppress his custodial statement. In reviewing the denial of a motion to suppress a custodial statement, this court looks to see if the confession was the product of free and deliberate choice rather than intimidation, coercion, or deception. *Decay v. State*, 2009 Ark. 566, 352 S.W.3d 319 (2009). When we review a circuit court's ruling on the voluntariness of a confession, we make an independent determination based on the totality of the circumstances. *Id.* We will reverse the circuit court only if its decision was clearly against the preponderance of the evidence. *Id.*

The relevant factors in determining whether a confession was involuntary are age, education, and the intelligence of the accused, as well as the lack of advice as to his constitutional rights, the length of detention, the repeated and prolonged nature of questioning, and the use of mental or physical punishment. *Pilcher v. State*, 355 Ark. 369, 136 S.W.3d 766 (2003). Additionally, in considering the totality of the circumstances we consider the statements made by the interrogating officer and the vulnerability of the defendant. *Hood v. State*, 329 Ark. 21, 947 S.W.2d 328 (1997).

At the suppression hearing, Officer Omar Cervantes of the Sevier County Sheriff Department testified that after he assisted in the arrest of Tapia on February 24, 2008, he gave him his *Miranda* warnings. He stated that he spoke to Tapia mostly in Spanish, but also spoke “some” in English, and that Tapia understood his rights. Officer Cervantes subsequently assisted Lt. Scott Simmons in questioning Tapia. Lt. Simmons asked the questions in English, Tapia responded in Spanish, and Officer Cervantes translated the answers into English. When

Lt. Simmons asked Tapia if he would write down his statement, Tapia told him that he could speak and understand English, but had trouble writing English and requested that Officer Cervantes write it out for him. According to Officer Cervantes, Tapia was able to read the written statement, and he approved and signed it. Officer Cervantes stated that he had no direct knowledge of a second statement that Tapia gave to Lt. Simmons. However, regarding the first statement, Officer Cervantes stated that neither Tapia nor his family was threatened in any way.

Officer Cervantes further testified that the statement was given at 10:56 a.m., at the police station in DeQueen, that he and Lt. Simmons were wearing their service weapons, and that Tapia was not handcuffed at the time. Thirty-six minutes elapsed from the time Tapia was given his *Miranda* warnings to the time he signed his statement. No recording of the interview and statement was made. He stated that they neither threatened Tapia, nor promised that they would “go easy on him” if he told them what they wanted to hear. The statement reflected that Tapia’s date of birth was September 19, 1989.

Lt. Scott Simmons of the DeQueen Police Department testified that Tapia appeared to understand both English and Spanish. He denied making any promises to persuade Tapia to make his statement, or making any threats to him or members of his family if he failed to give a statement or tell the truth. Lt. Simmons told Tapia that he needed the statement because they were investigating an alleged rape.

Regarding the second statement, which was taken two days later, on February 26,

2008, Lt. Simmons stated that he again gave Tapia *Miranda* warnings, which he appeared to understand. The warnings were given at 1:15 in the afternoon. Prior to giving the February 26 statement, Tapia had been incarcerated in the Sevier County Jail, but Lt. Simmons claimed he had no contact with Tapia between the formal interviews. Lt. Simmons denied making any threats or promises to secure the statement. All of the conversations that he had with Tapia that day were in English. He stated that he believed it was unnecessary to ask for Officer Cervantes's assistance because Tapia could speak and understand English. He claimed he was told by Tapia that he could read and speak English well, but had trouble writing it. For that reason, he wrote out the statement for Tapia. After Tapia reviewed the statement, he noted some mistakes, which Tapia initialed. He then signed the statement. The trial court denied Tapia's suppression motion.

In asserting that the trial court erred in denying his motion to suppress, Tapia makes a number of observations. He notes that he made two statements, the first admitting to sexual activity between him and the victim, but claiming it was consensual, and the second admitting to "forcible sex." The first statement was made in the presence of a Spanish-speaking officer while the second statement was not. Both statements were written by detectives, allegedly because he had trouble writing in English, but the second statement was written without the assistance of an interpreter. Finally, he notes that the second statement was made after he had been in custody for two days and had been informed that he was being charged with rape. He claims this latter fact was significant because he no longer had any incentive to maintain

the truth, or demand that his constitutional protections were honored. He also asserts that he is an illegal alien who has little or no knowledge of our criminal-justice system. We find no merit to his argument.

In our totality-of-the-circumstances analysis, we note that Tapia was a young adult of unspecified education. However, he was conversant in both Spanish and English, which is indicative of at least average intelligence. Tapia was *Mirandized* shortly before he gave each of his statements. The length of each interview was relatively short, and although he had been incarcerated for two days, he was not subjected to questioning. There is absolutely no evidence that Tapia was subjected to any mental or physical punishment, or that either Officer Cervantes or Lt. Simmons made any threats or promises to induce him to make the statements. While it is true that the statements were given while Tapia was under arrest and while the interviewers were armed with their service weapons, we do not believe that these facts equate to unconstitutional coercion. Although Tapia's status as an illegal alien, relatively young age, and apparent lack of prior experience with the criminal-justice system are factors that affect his "vulnerability," we do not believe that these facts are of such a magnitude that the trial court erred in refusing to suppress the two statements. Finally, we see no merit to Tapia's contention that when he gave the second statement, he had been charged with rape and no longer had any incentive to maintain the truth or demand that his constitutional protections were honored. We believe this is completely counterintuitive. Logic suggests that when an individual has been formally charged with a crime, he has an even greater

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incentive to insist that his constitutional protections be invoked.

Affirmed.

KINARD and HENRY, JJ., agree.