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ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR09-1188

	Opinion Delivered SEPTEMBER 15, 2010
DAVID WAYNE FUSON APPELLANT	APPEAL FROM THE CRAWFORD COUNTY CIRCUIT COURT [NO. CR-08-274-2]
V.	HONORABLE MICHAEL MEDLOCK, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

M. MICHAEL KINARD, Judge

David Wayne Fuson appeals from his conviction on a charge of computer child pornography. On appeal, appellant argues that the trial court erred by denying his motions to suppress a confession he made to police as well as evidence that was seized from his vehicle. We affirm.

On June 13, 2008, the State filed a criminal information charging appellant with one count of computer child pornography. On November 3, 2008, appellant filed a motion to suppress a custodial statement he made to the police as well as certain evidence that was seized from his home.[1] On February 6, 2009, the trial court held a hearing on appellant's motion to suppress.

[1]The evidence seized from appellant's vehicle was not listed in the motion to suppress.

At the suppression hearing, Detective Ken Howard with the Crawford County Sheriff's Department testified that he interviewed appellant after appellant was arrested. He denied promising appellant anything during the interview. Detective Howard also testified that appellant did not give any indication that he did not understand what was occurring during the interview. Detective Howard testified that he stated to appellant at the beginning of the interview that they "need[ed] to get this cleared up tonight." Detective Howard indicated that the statement was not meant to be a false promise of leniency. Detective Howard identified a document that he indicated was a voluntary statement written by appellant in which appellant stated that he communicated with someone online whom he believed was a fourteen-year-old female and that he came to Van Buren to have sex with that person. According to Detective Howard, appellant wrote and signed the statement in his presence. In an order entered February 17, 2009, the trial court denied appellant's motion to suppress his custodial statement and granted his motion to suppress items seized from his home following a search by police incidental to a search warrant.

Immediately prior to trial, appellant made a motion to suppress evidence recovered by police following a search of his truck, which included a sack containing condoms and personal lubricant. Appellant's motion was denied by the trial court. Following the trial, the jury returned a verdict of guilty on the charge of computer child pornography. In a judgment and commitment order entered on April 20, 2009, the trial court sentenced appellant to sixty months' imprisonment in the Arkansas Department of Correction, with an additional 180

months' suspended imposition of sentence. Appellant filed a timely notice of appeal on May 18, 2009.

Appellant's first point on appeal is that the trial court erred in denying his motion to suppress his custodial statement. 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. *Wedgeworth v. State*, 374 Ark. 373, 288 S.W.3d 234 (2008). We review the trial court's findings of fact for clear error, and the ultimate question of whether the confession was voluntary is subject to a de novo determination. *Id.*

Appellant argues that Detective Howard made false promises that prompted his confession. If a police officer makes a false promise which misleads a prisoner, and the prisoner gives a confession because of that false promise, then the confession has not been voluntarily, knowingly, and intelligently made. *Goodwin v. State*, 373 Ark. 53, 281 S.W.3d 258 (2008). If the officer has made an unambiguous false promise of leniency, then any resulting statement is involuntary. *See Clark v. State*, 374 Ark. 292, 287 S.W.3d 567 (2008). If, however, the officer's statement is ambiguous and it is difficult to determine whether there was a false promise of leniency, the court must examine the defendant's vulnerability, utilizing the following factors: 1) the age, education, and intelligence of the accused; 2) how long it took to obtain the statement; 3) the defendant's experience, if any, with the criminal-justice system; and 4) the delay between the *Miranda* warnings and the confession. *Brown v. State*, 354 Ark. 30, 117 S.W.3d 598 (2003).

Appellant argues that Detective Howard's statement at the beginning of the interview that they "need[ed] to clear this up" and his statement at the conclusion of the interview that "it [would] look good on" appellant that he told the truth during the interview constituted false promises by Detective Howard of leniency. An examination of the record before us reveals no unambiguous promise by Detective Howard during the interview. Therefore, we examine the factors set forth in *Brown v. State*, *supra*, which we must consider when it is not clear from an officer's statement whether there has been a promise of leniency.

The evidence at the suppression hearing revealed that appellant was a high-school graduate who was in his mid-thirties at the time of the interview. In addition, the entire interview took no more than ten minutes and appellant was given his *Miranda* warnings at the beginning of the interview. Although there is no evidence that appellant had any prior dealings with the criminal-justice system, Detective Howard testified that appellant gave no indication of being unaware of what was happening during the interview. None of the statements made by Detective Howard can reasonably be interpreted as false promises that induced appellant to make a confession.

In addition, the object of the rule is not to exclude a true confession, but rather to avoid the possibility of a confession of guilt from one who is innocent. *Williams v. State*, 363 Ark. 395, 214 S.W.3d 829 (2005). The only indication by appellant that his confession was untrue was his testimony at trial that he went to the house to get to know the girl, but did not plan on having sex with her. Appellant contradicted this testimony by stating at other

times during his testimony that he was being honest when he indicated he planned on having sex with a fourteen-year-old girl. Appellant failed to make a sufficient showing that his confession was not true. We hold that the trial court properly denied appellant's motion to suppress his custodial statement.

Appellant's second point on appeal is that the trial court erred by denying his motion to suppress evidence that was seized from his vehicle by the police. An appellate court conducts a de novo review of a denial of a motion to suppress evidence based on a totality of the circumstances, reviewing findings of historical facts for clear error and determining whether those facts give rise to reasonable suspicion or probable cause, giving due weight to inferences drawn by the trial court. *Davis v. State*, 351 Ark. 406, 94 S.W.3d 892 (2003); *Weatherford v. State*, 93 Ark. App. 30, 216 S.W.3d 150 (2005).

Officer Patti Bonewell with the Crawford County Sheriff's Department testified that she searched appellant's truck as a result of his arrest and also for inventory purposes. If, at the time of the arrest, the accused is in a vehicle or in the immediate vicinity of a vehicle of which he is in apparent control, and if the circumstances of the arrest justify a reasonable belief on the part of the arresting officer that the vehicle contains things which are connected with the offense for which the arrest is made, the arresting officer may search the vehicle for such things and seize any things subject to seizure and discovered in the course of the search. Ark. R. Crim. P. 12.3(a) (2010). Although appellant was not in the vehicle when he was arrested, he parked the truck across the street from the address provided by the officer posing

as a minor female and was arrested when he walked onto the front porch of the residence. This is sufficient for him to be considered "in the vicinity" of the vehicle. Additionally, Officer Bonewell testified that her experience taught her that persons arrested for the same crime as appellant usually carried items connected to the offense in their vehicle, giving her a reasonable suspicion that there would be evidence in the vehicle connecting the arrested person to the crime. The search of appellant's truck was proper under Arkansas Rule of Criminal Procedure 12.3(a).

Even if the search of appellant's truck had not been proper under Arkansas Rule of Criminal Procedure 12.3(a), the evidence seized would still be admissible under the inevitable-discovery doctrine. Arkansas Rule of Criminal Procedure 12.6(b) states that a vehicle impounded in consequence of an arrest, or retained in official custody for other good cause may be searched at such times and to such extent as is reasonably necessary for safekeeping of the vehicle and its contents. Because appellant was taken into custody at a time during which his vehicle was parked on a public street, the police impounded the vehicle and were permitted to inventory the contents for safekeeping. During the inventory process, the police would have inevitably discovered the items from the vehicle that were admitted into evidence at the trial. We hold that the trial court properly denied appellant's motion to suppress the evidence seized from his truck.

Affirmed.

ROBBINS and BROWN, JJ., agree.