

SUPREME COURT OF ARKANSAS

No. CR 12-304

ALONZO WATSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 15, 2012

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR-10-3785]

HONORABLE HERBERT THOMAS
WRIGHT, JR., JUDGE

AFFIRMED.

COURTNEY HUDSON GOODSON, Associate Justice

Appellant Alonzo Watson appeals an order of the Pulaski County Circuit Court convicting him of capital murder and sentencing him to life imprisonment without parole. For reversal, appellant argues that the circuit court erred in denying his motion to suppress his statements given to police after invoking his right to counsel. We have jurisdiction pursuant to Arkansas Supreme Court Rule 1-2(a)(2) (2012). We affirm the circuit court's ruling.

Because appellant does not challenge the sufficiency of the evidence, we provide a brief recitation of the facts. On September 2, 2010, appellant, victim Daniel Harris, and the victim's brother, O'Taravious Harris, spent the evening drinking alcohol and playing pool. According to O'Taravious Harris, appellant and the victim left the victim's house at approximately 2:00 a.m. on September 3, 2010. Sara Whipple, the victim's girlfriend, testified that appellant appeared at her house at 3:00 a.m. with blood and scratches on his arm and

blood on his clothes. Appellant returned to her home the next day and stated that he wanted to burn his clothes and that he was worried that “his DNA was on stuff.”

Sergeant Mark Humphries, who testified at trial, stated that the victim’s body was located in a deserted area behind a warehouse building in Jacksonville. The officer testified that the victim was lying on his back, with his genitals exposed, and had suffered multiple injuries to his face and head area. Sergeant Humphries noticed a large quantity of blood and collected a large “chunk of concrete,” which was located by the victim’s left side. A worker who discovered the body called 911, and emergency personnel later arrived at the scene.

On September 3, 2010, in the early afternoon, appellant and his mother went to the police station where Detective Richard Betterton and Detective Cassie Blackerby interviewed appellant. In his statement, appellant recounted a story to police about how he and the victim, whom he described as his “homeboy,” were confronted by two other men, and the four individuals were involved in an altercation. Appellant gave a second statement to police on September 15, 2010, which the State agreed not to use against appellant.

Subsequently, the State filed amended felony informations charging appellant with one count of capital murder with a habitual-offender provision. Prior to trial, appellant filed a motion to suppress his September 3, 2010 statement, asserting that it was taken in violation of his right to counsel. On December 15, 2011, the circuit court conducted a suppression hearing where Detective Blackerby testified, and the State played a video of appellant’s interview. At the conclusion of the suppression hearing, defense counsel argued that appellant had requested counsel and, as a result, the statement should be suppressed. The State responded that appellant was not in custody, that he had not been arrested at that point,

and that *Miranda* rights did not apply. The circuit court agreed that appellant did not make a custodial statement and denied appellant's motion to suppress the statement.

On January 10, 2012, appellant stood trial where numerous witnesses testified for the State. Of those witnesses, three witnesses testified that appellant confessed to the murder. Other witnesses testified that the victim had been beaten with a heavy rock, causing multiple wounds, fractures, and bleeding to the face and neck. After the State's case-in-chief, the circuit court denied appellant's motion for directed verdict. Sergeant Humphries and Detective Blackerby, who had taken appellant's statement prior to trial, testified for the defense. Appellant's statements were never admitted into evidence during Detective Blackerby's testimony or during the rest of the trial. At the close of the evidence, defense counsel again moved for directed verdict, which the court denied. After deliberations, the jury convicted appellant of capital murder and sentenced him to life imprisonment without parole. On January 18, 2012, the circuit court entered its order, and appellant timely filed his notice of appeal. From the order, appellant now brings his appeal.

For the sole point on appeal, appellant argues that the circuit court erred in denying his motion to suppress his statement to police. Specifically, appellant contends that his statement should be suppressed because he invoked his Fifth Amendment right to counsel during his interview with police. The State responds that, because the statement that appellant gave to the police was not introduced at trial, he cannot demonstrate prejudice from the denial of his suppression motion.

In reviewing a circuit court's refusal to suppress a confession, we make an independent determination based upon the totality of the circumstances. *Grillot v. State*, 353 Ark. 294, 309,

107 S.W.3d 136, 144 (2003). The ruling will be reversed only if it is clearly against the preponderance of the evidence. *Giles v. State*, 261 Ark. 413, 549 S.W.2d 479 (1977).

Prejudice is not presumed, and this court will not reverse absent a showing of prejudice. *Ferguson v. State*, 343 Ark. 159, 33 S.W.3d 115 (2000). When an appellant's statement was not used at trial, he cannot demonstrate prejudice. *Hayes v. State*, 274 Ark. 440, 625 S.W.2d 498 (1981). In *Hayes*, appellant argued that the court erred in finding that a statement was given voluntarily. However, because the statements were not introduced at trial, the court stated, "We fail to perceive nor has appellant demonstrated how he was prejudiced by the non-use of these statements." *Id.* at 447, 625 S.W.2d at 502.

Given this precedent, appellant's argument fails because his statement was never introduced into evidence at trial. Detective Blackerby, who testified for the defense, stated that she investigated the case, located the vehicle, and contacted family members. She further stated that she interviewed appellant and gave testimony concerning his outward appearance. On cross-examination, Blackerby testified that when she spoke with appellant, he was considered a witness at that point in the investigation, as he was the last person seen with the victim. On redirect examination, she testified that she did not observe any cuts or scratches on appellant. At no time during Detective Blackerby's testimony was appellant's statement admitted into evidence. Therefore, we hold that, because appellant's statement was not used at trial, he cannot demonstrate prejudice. *Hayes, supra*. Absent a showing of prejudice, we will not reverse. *Caldwell v. State*, 295 Ark. 149, 747 S.W.2d 99 (1988). Accordingly, we affirm the circuit court's denial of appellant's motion to suppress his statement.

Pursuant to Arkansas Supreme Court Rule 4-3(i) (2012), the record has been reviewed

for all objections, motions, and requests made by either party that were decided adversely to appellant, and we found no prejudicial error.

Affirmed.

James Law Firm, by: *George “Birc” Morledge, IV*, for appellant.

Dustin McDaniel, Att’y Gen., by: *David R. Raupp*, Sr. Ass’t Att’y Gen., for appellee.