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IN THE
COURT OF APPEALS OF INDIANA

JAMES W. BAKER, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 07A01-0812-CR-559
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BROWN CIRCUIT COURT
The Honorable Judith A. Stewart, Judge
Cause No. 07C01-0806-FC-242

June 4, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant James W. Baker, Jr. appeals his conviction for Burglary, as a Class C felony,[1] contending that the trial court erred in admitting his statements made to police. We affirm.

Facts and Procedural History

On Thursday June 5, 2008, Morris Johnson, along with Blair Cormier and Baker, drove down in Johnson's 1996 green Blazer from Indianapolis to Brown County to visit Johnson's daughter. On the way, the group stopped at Hills O'Brown Property Management so that Baker could inquire whether there were any cabins available to rent. Baker was told by the attendant at Hills O'Brown to come back in the morning and she could check on the availability of cabins for the next evening. As the journey continued, Cormier and Baker got into a heated argument, and Johnson and Cormier finally asked Baker to get out of the car. Baker exited the car on State Road 46, near Nashville, Indiana.

At approximately 10 p.m. that evening, Indiana State Trooper Chris Griggs encountered Baker walking on State Road 46, just east of Hills O'Brown. Trooper Griggs stopped his squad car to offer his assistance. However, Baker continued walking and looking forward. In response to Trooper Griggs's questions of whether Baker was okay or needed anything, Baker said that he was just looking for a pay phone. Trooper Griggs told Baker of the nearest pay phones, both miles away, and offered the use of his cell phone. Baker

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[1] Ind. Code § 35-43-2-1.

declined all offers and continued walking. Baker told Trooper Griggs that he had an argument with his friends and that they had kicked him out of the vehicle.

Cormier arrived home in Indianapolis from the trip to Brown County between midnight and 3 a.m. Between 2 and 3 a.m. that morning, Baker called Cormier for a ride home from a campground in Brown County. Cormier started driving to pick up Baker, but received a traffic ticket at approximately 5 a.m. on State Road 135 South. After receiving the ticket, Cormier realized he was running out of gas and decided to return to Indianapolis. He arrived home around 6 a.m. and went to sleep. Later that morning, Cormier awoke to Baker knocking on his door. Cormier let him in and they both went to sleep with Baker sleeping on the couch.

That morning a break-in was reported by Hills O'Brown. Burglaries were also reported by Big River Tackle and Timber and Rick's Auto Sales, both Brown County establishments. On June 18, 2008, the State charged Baker with three counts of Burglary, as Class C felonies. After a jury trial, Baker was found guilty for the count of Burglary as to the Hills O'Brown charge but not guilty of the remaining charges. The trial court sentenced Baker to six years imprisonment at the Indiana Department of Correction. Additional facts will be provided as needed.

Baker now appeals.

Discussion and Decision

Baker contends that the trial court erred by admitting statements, which he describes as a confession, that he made to police. While we question whether any of Baker's

statements to police constitute a confession of criminal activity, we analyze the facts and actions taken by police based on the manner in which the issue is couched. We review this issue as whether the trial court abused its discretion in admitting the statements as evidence. Hendricks v. State, 897 N.E.2d 1208, 1211 (Ind. Ct. App. 2008). A trial court has broad discretion in determining the admissibility of evidence and we reverse such a decision only upon an abuse of that discretion, which occurs when the ruling is clearly against the logic and effect of the facts and circumstances. Id. "When considering the admissibility of a confession on appeal, we will uphold the finding of the trial court if there is substantial evidence of probative value to support it." Id. at 1214 (quoting Giles v. State, 760 N.E.2d 248, 249 (Ind. Ct. App. 2002)).

"An assertion of Miranda rights must be clear and unequivocal, and in determining whether a person has asserted his or her rights, the defendant's statements are considered as a whole." Clark v. State, 808 N.E.2d 1183, 1190 (Ind. 2004). "A person must do more than express a reluctance to talk to invoke his right to remain silent." Id. "Where an individual has invoked his right to remain silent, . . . there is not a *per se* rule prohibiting the authorities from ever initiating a discussion or further questioning the individual on the subject." Moore v. State, 498 N.E.2d 1, 9 (Ind. 1986). However, the State must show that if the defendant expressed his right to remain silent that the authorities "scrupulously honored" that expression by ceasing their interrogation at that time. Id.

After Baker was arrested at Cormier's residence, State Trooper Michael Morris read Baker and Cormier their Miranda rights. Baker said to Trooper Morris that he "didn't do

anything," "you can't prove anything," and "I'm not going to talk to you." Tr. at 405 and 417. At that point, Trooper Morris spoke with Cormier about the events of the prior evening.

Approximately ten minutes after the suspects had been taken into custody, Trooper Griggs arrived on the scene and informed Baker and Cormier that he needed to talk with them about the incidents in Brown County. Baker said that he had not been in Brown County the night before. However, after Trooper Griggs pointed out that he had encountered Baker on State Road 37 previous night, Baker did not say much. Shortly thereafter, Trooper Griggs left the scene and drove to Johnson's residence, brought Johnson back to the scene at Cormier's residence. Trooper Griggs then searched the green Blazer based on Johnson's consent.

Before transporting Baker to the Brown County jail, Trooper Griggs read Baker his Miranda rights. During the ride, Baker told Trooper Griggs that he had been in Brown County the night before and had slept on a park bench in Brown County State Park before getting a ride home from Cormier. Baker argues on appeal that his statement to Trooper Morris that Baker was not going to talk to Trooper Morris was an assertion of his right to remain silent, preventing both Trooper Morris and Trooper Griggs from interviewing him. The facts are that Trooper Morris ceased questioning Baker upon Baker's statement that he did not want to talk to the trooper. Therefore, only Trooper Grigg's questioning of Baker is at issue.

In Pilarski v. State, our Supreme Court held that the trial court did not abuse its discretion in admitting statements made by the defendant when ninety minutes had passed

since his alleged assertion of his right to remain silent and police again informed defendant of his Miranda rights. 635 N.E.2d 166, 170 (Ind. 1994). Once Pilarski was arrested and police read the Miranda warnings, Pilarski informed the police that he "did not want to talk to them." Id. At that point, the officers did not ask any more questions. However, approximately ninety minutes later, Pilarski was again informed of his rights, signed a waiver, and provided a statement. Id.

Here, Trooper Morris ceased further questioning when Baker indicated that he did not want to talk to him. Shortly thereafter, Trooper Griggs approached Baker and Cormier and told them that he "needed to talk to both of them here in a little bit, once we got everything situated inside the house about incidents that happened in Brown County the night before." Tr. 419. Baker replied that he was not in Brown County the night before. Id. Trooper Griggs then explained that he was the officer Baker encountered the night before. At that point, Baker did not "say a whole lot after that."

Although the record is unclear as to the specific, a distinct amount of time elapsed between Baker's encounter with Trooper Morris, his initial encounter with Trooper Griggs and when Trooper Griggs read the Miranda rights to Baker before transporting him to jail. Once he was informed of his right to remain silent for the second time, Baker failed to make any statements indicating that he desired to remain silent. We therefore conclude that the trial court did not abuse its discretion in admitting the statements Baker made after being read his rights for the second time after the elapse of time.

However, this still leaves Baker's statement during his initial encounter with Trooper

Griggs that occurred only ten minutes after Baker indicated that he did not want to talk with Trooper Morris. While the admission of this statement may have been error, such admission of evidence is subject to harmless error analysis. See Hendricks, 897 N.E.2d at 1215; Ind. Trial Rule 61. Baker does not explain how his statement denying his presence in Brown County on the night in question affected his substantial rights. Thus, if there was error in admission of Baker's statement, it was harmless.

Affirmed.

DARDEN, J., and ROBB, J., concur.