UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1726

September Term, 2013

KENYON TRAVIS WALLER

v.

STATE OF MARYLAND

Krauser, C.J.,
Zarnoch,
Reed,

JJ.

Opinion by Reed, J.

Filed: July 10, 2015

Following a five-day trial in the Circuit Court for Baltimore County concluding on August 23, 2013, appellant, Kenyon Travis Waller, was convicted by the jury of second-degree rape in violation of Md. Code (2002, 2012 Repl. Vol.) § 3-304(a) of the Criminal Law Article ("C.L."), kidnapping in violation of C.L. § 3-502(a), and robbery in violation of C.L. § 3-402(a). Appellant was sentenced to consecutive sentences totaling 65 years of imprisonment. Appellant filed a timely appeal, and raised the following questions for our review:[1]

1. Did references to the "Career Criminal Apprehension Unit" relating to the investigation of the case constitute other crimes evidence?

2. Did the trial court err in admitting a redacted version of an interrogation transcript?

[1] Appellant presented the following questions:

1. Was it error to allow other crimes evidence, where a highly-experienced prosecutor and a veteran detective disclosed that the "Career Criminal Apprehension Unit" took over the part of the investigation of this case that led to the recovery of the victim's cell phone from Appellant?

2. Was it error to allow into evidence references to incriminating statements allegedly obtained from the separately tried and non-testifying codefendant?

3. Was it a discovery violation to allow any testimony about photographic enlargements of the fingerprint evidence, where the State had denied that such photographs existed?

4. Was it error to find that the statement made by Appellant during custodial interrogation was voluntary?

3. Did the trial court err in finding the State fulfilled its discovery obligations?

4. Did the trial court err in denying appellant's motion to suppress the statements made during custodial interrogation?

For the following reasons, we answer all questions in the negative, and affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On October 1, 2012, the seventeen-year-old victim was on her way home after school in Baltimore County. She was walking to the bus stop when a gold SUV pulled up beside her, and an individual grabbed her and forced her into the car. The victim testified that there were two men in the vehicle. The victim later identified appellant as the gunman. Appellant had a gun pointed at the victim, threatened her and told her not to look at him. The victim testified that the driver, William Campbell, stated that she was "pretty" and "cute." Campbell pulled into an alley, and took the victim's backpack. As Campbell rummaged through her belongings, appellant started touching the victim's neck and the necklace she had on. Appellant aggressively told the victim "[y]ou already know what the f___ time it is" and to get in the backseat of the vehicle. The victim climbed to the backseat, and appellant told her to undress while she faced the opposite direction, while appellant still had the gun pointed at her. Appellant then raped the victim. The victim was then told to put her clothes back on and to return to the front seat.

Campbell then gave the victim two choices, she could either run to the woods to the right of them, or they could drop her off on I-695. The victim did not respond, and

Campbell began driving. They pulled into an apartment complex, and Campbell told the victim to walk into the first complex and walk downstairs. He told her not to move until she heard the car pull off. Appellant followed the victim as she walked down the stairs of the apartment complex. Once again, appellant told victim not to move until she heard the car pull off. Campbell took the victim's cellphone, identification card, bus pass, wallet, school ID card, Medicare card, and $49. He threatened to find and kill her if she told anyone what happened.

The victim made it to Edmonson West Side High School in Baltimore City and was met by police officer, Tiffany Wiggins. Because the sexual assault occurred in Baltimore County, the victim was taken to the Baltimore County Precinct by police officer, Tia Bynum and Detective James Bonsall. Together, they interviewed the victim. The victim explained what happened and provided a description of appellant, Campbell, and the vehicle. A nurse examined the victim, and confirmed that she found "an area of abrasion or friction . . . typically from penetration." The nurse also testified that the "type of abrasion is simply evidence of friction, forceful penetration, some sort of penetration, rubbing on that area."

Detective Bonsall testified that the Career Criminal Apprehension Unit began tracking the victim's phone. This unit can locate cell phones by pinging a cell phone, in which a "cell phone company [] allows . . . use of their data" on an "Internet web-based page," which can be accessed by the police to locate the phone. A ping was received from the victim's cell phone indicating that the phone was located near the 7-Eleven store in Mondawmin Mall. Detectives Bonsall and Stacy Steiner reviewed the 7-Eleven store's

surveillance tape and saw the vehicle that the victim had described earlier. Detective Michael West had a partial tag number, and later obtained a full tag number. The owner of the vehicle was Keiona Byrd. Michael Campbell came up as a known associate, because he was driving the same vehicle when it was previously stopped for a traffic violation. Detective West and another detective went to Keiona Byrd's address and later saw the gold SUV matching the victim's description pull up in front of the home. Campbell was then arrested.

Campbell had recently used an address of 1903 North Ellamont Street. Police officers were also sent to that location. Appellant was apprehended and arrested at this location. The victim's cell phone was found beneath a vehicle that Appellant was standing next to.

The victim identified appellant in a line up. Shortly after the lineup, the victim was on the computer when she noticed that she had draft emails in her Gmail account. When she opened them, they contained photos of appellant. Appellant's fingerprints were found on a "Global Vocabulary Sheet" that was inside the victim's book bag. A BB gun was recovered from Campbell's home. The jury convicted appellant of rape in the second degree, kidnapping, and robbery, and he was sentenced to consecutive sentences totaling 65 years of imprisonment. This timely appeal followed.

We shall include additional facts as necessary to our discussion.

DISCUSSION

I. REFERENCES TO THE CAREER CRIMINAL APPREHENSION UNIT

A. Parties' Contentions

Appellant contends that Detective Bonsall's references to the "Career Criminal Apprehension Unit" was gratuitous and totally unnecessary, and thus unfairly prejudiced him. He also argues that the admission of such references is not harmless because the jury was not able to reach a verdict until the afternoon of the second day of deliberations.

The State counters that because appellant objected only to one of Detective Bonsall's references to the "Career Criminal Apprehension Unit," his objection is waived. The State also argues that there was no testimony relating to any of appellant's previous bad acts, but rather only related to locating the victim's cellphone. We agree with the State's arguments.

B. Analysis

Maryland Rule 4-323(a) provides, "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." It also provides that "[a]t the request of a party or on its own initiative, the court may grant a continuing objection to a line of questions by an opposing party. For purposes of review by the trial court or on appeal, the continuing objection is effective only as to questions clearly within its scope."

Here, Detective Bonsall referred to the unit in charge of locating victim's cell phone as the "Career Criminal Apprehension Unit" a total of seven times. But appellant's counsel

objected only once.[2] Appellant's counsel objected only to the very first reference to the name of the unit.[3] Furthermore, at a later point in the proceeding, appellant's own counsel referred to the same unit as the "Career Apprehension Program Unit".[4]

Because appellant's counsel failed to timely object to the references to the "Career Apprehension Unit" at subsequent points in the proceedings, and also failed to request a continuing objection, his objection is waived. *See e.g., Ridgeway v. State*, 140 Md. App. 49, 66 (2001), *aff'd*, 369 Md. 165 (2002) ("A challenge to the trial court's decision to admit testimony is not preserved unless an objection is made each time that a question eliciting

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[2]

> [STATE]: Can you advise the ladies and gentlemen what investigative step you took upon learning that her phone was taken?
>
> [DETECTIVE]: Well, with her phone being taken, the Career Criminal Apprehension Unit generally will take over that part of the investigation. What they try to do is they will try --
>
> [APPELLANT'S COUNSEL]: Objection.
>
> THE COURT: Overruled. You may answer.

[3] Appellant's attorney should have objected to the subsequent references to the "Career Criminal Apprehension Unit," as such reference is similar to the term, "repeat offender unit," which is inappropriate. Nonetheless, as we shall explain later, under the circumstances of the present case, the references to the "Career Criminal Apprehension Unit" was harmless.

[4]

> [Appellant's Counsel]: Sergeant McCadden is in the Career Apprehension Program Unit as well?
>
> [Detective]: Yes ma'am.

that testimony is posed."); *Wimbish v. State*, 201 Md. App. 239, 261 (2011), *cert. denied*, 424 Md. 293 (2012) (holding appellant's objection to testimony was waived when he failed to object to subsequent statements and failed to request a continuing objection) (citations omitted)); *Snyder v. State*, 104 Md. App. 533, 556-57 (1995) (holding objection was waived when the "[a]ppellant's trial counsel objected to some of the[] questions [at issue], but not to all of them").

Even if preserved, we would find that appellant's argument that references to the "Career Criminal Apprehension Unit" constitutes other crimes evidence is without merit. Under Rule Md. Rule 5-404, "[e]vidence of other crimes, wrongs, or acts including delinquent acts . . . is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident." "Prior bad acts evidence refers to activity or conduct which although not necessarily criminal, after taking into consideration the facts of the particular case, is evidence that tends to reflect adversely on or impugns a person's character." *Snyder v. State*, 210 Md. App. 370, 393 (2013), *cert. denied*, 432 Md. 470 (2013) (citation omitted).

Here, Detective Bonsall's testimony did not indicate that appellant was involved in other bad acts or crimes. Rather, his testimony provided that because the crime at issue involved a phone being taken, the "Career Criminal Apprehension Unit" "generally will take over that part of the investigation." His testimony referring to the "Career Criminal Apprehension Unit" related only to that unit's involvement in tracking and locating the

victim's phone. *See Somers v. State*, 156 Md. App. 279, 313-14 (2004), *cert. denied*, 382 Md. 347 (2004) (holding trooper's testimony that he had previously heard defendant's "name in connection with other cases . . . does not necessarily mean cases against [defendant]; the testimony just as well could mean that [defendant] was a witness, a victim, or otherwise peripherally involved in other cases, without having been accused or found guilty of any crime").

II. CO-DEFENDANT'S STATEMENT

A. Parties' Contentions

Appellant, citing *Bruton v. United States*, 391 U.S. 123 (1968), and *Gray v. Maryland*, 523 U.S. 185 (1998), argues that the admission of the statements from the co-defendant, Campbell, in the interrogation transcript violated appellant's rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution. Appellant also contends that the circuit court erred because the statements constituted hearsay under the implied assertion doctrine.

The State counters that no statement from the co-defendant was admitted, and thus there was no *Bruton* problem. We agree. The State also counters that appellant waived his argument that the statements were impermissible implied assertions, and therefore hearsay, because this issue was not raised below.

B. Analysis

During trial, appellant's counsel requested the redaction of the following statements from the transcript of appellant's interrogation:

DET. STEINER: Okay. Your uh . . . *your friend Nick is here and he already talked to us.*

[APPELLANT]: Uh-hum.

DET. STEINER: *And he told us exactly what happened today and um what you guys did today. Where you went . . .*

[APPELLANT]: Huh?

DET. STEINER: *Where you went. Who you hung out with and everything else.*

[APPELLANT]: Uh-hum.

DET. STEINER: *And he starts telling me stuff that you're doing.*

[APPELLANT]: So what I'm doing?

DET. STEINER: *And trying to make himself look better. Now*

. . . .

[APPELLANT]: Trying to make what?

DET.STEINER: *Trying to make himself look better.*

DET. STEINER: You can't tell me you don't know what I'm talking about . . .

[APPELLANT]: Alright but you . . . that's what . . .

DET. STEINER: *I know exactly . . . you know exactly what I'm talking about.*

(Emphasis Added). Appellant's counsel's request was based on the grounds that she would not be able to cross-examine co-defendant, Campbell, because he was not testifying, and because it was "completely irrelevant" as to appellant's guilt or innocence. The circuit

court denied the redaction request, because it found that there was nothing substantive in the colloquy and no "necessary implication that Mr. Campbell might have said or might not have said certain things . . . ."

In *Bruton*, the Supreme Court held that Bruton's co-defendant's oral confession, that he and Bruton committed the armed robbery, was a "powerfully incriminating extrajudicial statement[]," and insulation from cross-examination, violated the Confrontation Clause. 391 U.S. at 135-36. Similarly in *Gray*, the co-defendant's confession directly implicated another defendant in the commission of the murder. The transcript of the confession was redacted, in which the nonconfessing defendant's name was removed, and replaced with the word "deleted" or a blank space. 523 U.S. at 192. The court reasoned that "[r]edactions that simply replace a name with an obvious blank space or a word such as 'deleted' or a symbol or other similarly obvious indications of alteration, however, leave statements that, considered as a class, so closely resemble Bruton's unredacted statements that, in our view, the law must require the same result." *Id.* at 192.

Unlike *Bruton* or *Gray*, in the present case, Detective Steiner's statements that Campbell talked to them and said who they hung out with and what they did on the day in question does not implicate appellant in a crime. There was no admission of a confession by Campbell directly implicating appellant as his accomplice, and thus there was no *Bruton* violation. The statements were not incriminating on its face. *See Richardson v. Marsh*, 481 U.S. 200, 201 (1987) (holding there was no *Bruton* violation where "[co-defendant's] confession was not incriminating on its face, but became so only when linked with evidence introduced later at trial").

Appellant also takes issue with the admission of the following statement during interrogation:

> DET. STEINER: You're just not being truthful.
>
> [APPELLANT]: I am I told you what happened man. I told you everything that's on there . . . I'm telling you what's happening. I didn't . . . ain't nothing happen. I found shorty's [the victim's] phone it was in the back of the car where when I got my hoodie and that's it.
>
> DET. TOMAS: *How come everyone else is saying something else happened but you're the only one who said nothing happened? That makes no dag on sense.*
>
> [APPELLANT]: Well . . . well what are saying [sic] happened?
>
> DET. TOMAS: I already told you what. The girl's saying that you forced her to have sex.

(Emphasis added). The circuit denied the request.

Appellant argues that under the implied assertion doctrine, the statement that "your friend Nick" had "already talked to us" and that "everyone else is saying something else" were plainly inadmissible. But appellant failed to preserve this issue, as it was not raised during trial. Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]"). "[W]hen specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal." *Klauenberg v. State*, 355 Md. 528, 541 (1999) (citations omitted) (holding "[b]ecause [defendant] clarified the nature of his objection as to the broadness of the question and not as to the content, namely, that testimony about [defendant]'s conduct

during the civil trial was bad acts evidence, [defendant] failed to preserve this issue for review."). Applying the same rationale to appellant's claim of error that the statements in the interrogation transcript was inadmissible hearsay, this argument was waived. Rather, appellant specifically sought to exclude the statements on the grounds that it violated *Bruton* and was irrelevant. Thus, we will not address this argument for the first time on appeal.[5]

III. DISCOVERY VIOLATION

A. Parties' Contentions

Appellant contends that the State misled him in failing to reveal the existence of photographs of the latent prints requested by the defense. Appellant claims he was prejudiced because such evidence was admitted on the last full day of trial, and he was

[5] Even if preserved, such statements did not amount to hearsay. Under Maryland Rule 5-801(c), "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Because the term "assertion" is not defined in Rule 5-801, courts must examine the declaration's literal contents as well as "the implications or inferences contained within or drawn from an utterance." *See Stoddard v. State*, 389 Md. 681, 689-90 (2005). Detective Tomas's statement that co-defendant, "Nick", talked to the police is not a statement by "Nick" offered to prove the truth of the matter asserted. Other than a conclusory statement, appellant does not point out how Detective Tomas's statement constituted an implied assertion. The police are merely indicating that they had spoken with "Nick" and that he had talked about what they did and who they hung out with, but there was no out of court statement made. The second statement at issue that "everyone else is saying something else happened" is not hearsay, as there is no explicit or implied assertion. That statement is followed by Detective Tomas's statement that the victim accused appellant of sexual assault, a crime he was charged with and ultimately convicted of. Furthermore, had the trial court erroneously admitted any implied assertion, we would find that error harmless beyond a reasonable doubt based on the evidence in this case. *See id.* at 712 ("To be harmless, we must be convinced beyond a reasonable doubt that the error in no way influenced the verdict.")

surprised by the existence of such photographs, after being told such photographs were not taken. Appellant claims that the defense prepared its closing argument heavily based upon the non-existence of such photographs.

The State counters that the circuit court properly ruled that there was no discovery violation. The State argues that appellant was provided notice that the photographs existed and was provided an opportunity to inspect and copy the original fingerprint.

B. Analysis

During trial, a forensic analyst testified to processing fingerprints from a sheet of paper entitled "Global Vocabulary," found in the victim's backpack. She also testified that she photographed, enhanced, printed "and then submitted [the print] to the Latent Print Unit for consideration." At a bench conference requested by appellant's counsel, appellant objected to the admission of the photographs on the grounds that she had never received the photographs of the evidence and was told by the State that such photos did not exist. Appellant's counsel argued that she requested photographs of the fingerprints in July 2012. The State's response to that request was that the fingerprint examiner would "not photograph the latents but will allow your expert to scan them." The State explained that the fingerprint examiner provided that response. The State also explained that appellant's counsel was allowed to examine any physical evidence, but no efforts were made to do so.

After hearing arguments from counsel, the circuit court initially ruled that "the State had an obligation to disclose the existence of the photographs of the latent prints . . . ." As

a result, the circuit court excluded the photographs of the latent prints and "any opinion based on an examination of the fingerprints that were photographed."

The State requested a re-argument of the ruling and the court heard additional argument and reviewed several evidentiary submissions.

The report from the Evidence Processing Unit provided that latent fingerprints were taken from various items including the "Global Vocabulary Sheet" and that the evidence was photographed. Appellant's counsel was provided with a photo of the original "Global Vocabulary Sheet" containing the original latent prints. Furthermore, the State did not use the forensic analyst's photos or introduce them into evidence during trial, but rather allowed the forensic analyst to discuss what she examined and to render her opinion.

After a recess and review of the evidence, the court ruled that there had been no discovery violation:

> Having considered all of this in light of Rule -- the dictates of Rule 4-263 and gotten some more background information with regard to the facts that we're talking about here, I am going the change my ruling and allow the evidence. Under the circumstances, -- the way that this was originally presented, I believed that the fact that we were talking about one or more photographs of what's now been marked as Defendant's Exhibit Number 2, had had more discovery significance than I now believe that it has.
>
> I believe that what we're talking about here is more in the nature of something that while it was photographed, it was akin to being photocopied. And that based on the content of the November 7, 2012 report, the existence of a[n] organic seminal document that contained latent fingerprints was adequately disclosed to the Defense by virtue of disclosure of the 11-7-2012 report. The fact that that document existed was sufficient to have triggered on the part of the -- of the Defense, had they

> -- had the Defense wished to do so, to act in such a way as to scan or photocopy or photograph itself that document.
>
> I don't think there was any effort, nor do I think there was intentional or non-intentional, there was never an effort to deny the existence of the organic document or mislead the Defense as to the fact that it does not exist when in fact it did exist.
>
> So therefore, while I originally -- when the matter was argued with the jury here, I -- I attributed more significance to the fact that we were talking about a photograph of an organic document. I now recognize that what we're talking about is more akin to just another iteration of an organic document, the existence of which was disclosed to the Defense adequately, and I just don't think that there was a discovery violation under the circumstances.

The circuit court also noted that the defense "underst[ood] that the State would be eliciting an opinion from the expert that one of [appellant]'s fingerprints was found on this document." Appellant's counsel argued that she was not aware of the enhanced photographs taken by the forensic analyst. However, the State countered this was the report which stated two fingerprint matches were confirmed from enhanced latents.

Md. Rule 4-263 provides:

> **(d) Disclosure by the State's Attorney.**
>
> (9) *Evidence for Use at Trial.* The opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3(a), recordings, photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial;
>
> . . . .
>
> (n) Sanctions. If at any time during the proceedings the court finds that a party has failed to comply with this Rule or an order issued pursuant to this Rule, the court may order that party to permit the discovery of the matters not previously disclosed,

> strike the testimony to which the undisclosed matter relates, grant a reasonable continuance, prohibit the party from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances. The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness's testimony, disqualification is within the discretion of the court.

Thus, it is within the trial court's discretion to impose sanctions if the Rule is violated. "The Rule, on its face, does not require the court to take any action; it merely authorizes the court to act. Therefore, the presiding judge has the discretion to select an appropriate sanction, but also has the discretion to decide whether any sanction is at all necessary." *Thomas v. State*, 397 Md. 557, 570-71 (2007) (citation omitted).

As the circuit court explained, appellant's defense counsel had no reason not to expect the State to introduce testimony from the forensic analyst relating to the fingerprints matches. Appellant's defense counsel was provided with a report that stated all evidence was photographed and latent prints were recovered from the "Global Vocabulary Sheet" and other items in evidence. Appellant's defense counsel was also provided with the original copy of the sheet containing the original fingerprints. Accordingly, the circuit court correctly found that there was no discovery violation. *See Moore v. State*, 71 Md. App. 317, 339 (1987), *cert. denied*, 311 Md. 719 (1988) (holding that the trial court did not abuse its discretion in limiting the sanction it imposed for a discovery "because the defense knew from discovery that the State intended to rely on fingerprint evidence".)

Furthermore, even if the State violated Rule 4-263, appellant failed to demonstrate that he suffered from the delay in receiving the information. *See Thomas*, 397 Md. at 574

(holding that defense counsel's argument that he was prejudiced by the delay in receiving evidence, because "the State's case was primarily a circumstantial evidence case[,] . . . . [that the evidence] contributed to the jury's guilty verdict, and was therefore not harmless error. . . . is not the type of prejudice contemplated by the prejudice requirement for a Rule 4-263 sanction".)

"Under Rule 4-263, a defendant is prejudiced only when he is unduly surprised and lacks adequate opportunity to prepare a defense, or when the violation substantially influences the jury. The prejudice that is contemplated is the harm resulting from the nondisclosure." *Id.* (citation omitted). Here, there was no surprise to the defense, because as we explained appellant's defense counsel was aware that the latent fingerprints existed and that the State would elicit testimony from an expert that appellant's fingerprint matched the one found on the paper.

We also hold that even if there was a discovery violation, and we were to hold the expert's testimony should have been excluded, the admission of the testimony was harmless error beyond a reasonable doubt. The victim identified appellant in a line-up, appellant had saved a photo of himself in the victim's phone, the victim's cell phone was tracked to appellant, and the victim also made an in-court identification of appellant. Thus, the testimony from the expert merely substantiated her identifications. *See Moore*, 71 Md. App. at 339 (holding "[e]ven if we were to say the expert's testimony should have been excluded, the introduction of the results was harmless beyond a reasonable doubt[,]

[because] . . . . [t]he fingerprint match merely substantiated her identifications" (citation omitted)).

IV. STATEMENT MADE DURING INTERROGATION

A. Parties' Contentions

Appellant argues that the circuit court erred in denying his motion to suppress his statement made during custodial interrogation. He argues that his statement was not voluntary under federal law, because the circumstances of the interrogation was coercive. Specifically, he points out that he had only a tenth grade education, was in a small isolated room, permitted only one bathroom break, handcuffed and ankle chained to a metal bar for thirteen hours. He also argues that the statement was involuntary under *Hillard v. State*, 286 Md. 145, 153 (1979), because the questioning detective improperly induced him by implying that he would be given special consideration in exchange for a statement.

The State counters that appellant's statement was voluntary, because as the circuit court found, "there's no suggestion whatsoever that [appellant] suffered from some misunderstanding as to the context of what was happening, whether he didn't understand any specific questions or general." The State also argues that appellant fails to present any circumstances that distinguish his interrogation from any other routine interrogation. Finally, the State counters that there was no improper inducement because the first prong of the *Hillard* test had not been met, as there was no promise or commitment from the detective to help appellant in exchange for a statement. The State also argued that even if

the detective's statement constituted improper inducements, appellant did not rely on the purported inducement, and thus failed to satisfy the second prong under *Hillard*.

B. Standard of Review

As explained in *State v. Tolbert*, 381 Md. 539 (2004), *cert. denied*, 543 U.S. 852 (2004):

> The trial court's assessment as to whether a confession was voluntary is a mixed question of law and fact. This Court undertakes a *de novo* review of the trial judge's ultimate determination on the issue of voluntariness and looks to the record of the suppression hearing.

Id. at 557 (citations omitted). "The first-level factual findings of the suppression court and the court's conclusions regarding the credibility of the testimony must be accepted by this Court unless clearly erroneous. The evidence is to be viewed in the light most favorable to the prevailing party." *Id.* at 548 (citations omitted). "[W]e will undertake our own independent constitutional appraisal of the record by reviewing the law and applying it to the facts of the present case." *White v. State*, 374 Md. 232, 249 (2003), *cert. denied*, 540 U.S. 904 (2003) (citation omitted).

C. Analysis

i. Constitutional law

The Court of Appeals explained:

> when the State intends to use a confession or admission given by the defendant to the police during custodial interrogation, the prosecution must, upon proper challenge, establish by a preponderance of the evidence that the statement satisfies the mandates of *Miranda v. Arizona*, [384 U.S. 436 (1966)] and, that the statement is voluntary. The test for voluntariness is

> whether, under the totality of all of the attendant circumstances, the statement was given freely and voluntarily.

Tolbert, 381 Md. at 548 (citations omitted).

The Supreme Court has explained that the test for voluntariness of a confession is whether it was "the product of an essentially free and unconstrained choice or whether the defendant's will was 'overborne' by coercive police conduct. Under the federal test, even if there was a promise or inducement, there must be a causal connection between the promise or inducement and the statement." *Id.* at 558 (citations and internal quotation marks omitted).

After reviewing the record of the suppression hearing, we agree with the trial court that under the totality of the circumstances, the statements were made voluntary under both federal and state constitutional law. *Colorado v. Connelly*, 479 U.S. 157, 167 (1986) ("Absent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law."); *Gorge v. State*, 386 Md. 600, 621 (2005) (citations and internal quotation marks omitted) ("We look to all elements of the interrogation, including the manner in which it was conducted, the number of officers present, and the age, education, and experience of the defendant." (citations and internal quotation marks omitted)).

Here, appellant read and understood his Miranda rights, as reflected in the interrogation transcript. When asked if he wanted to continue the interview, he answered in the affirmative. Although the interrogation was a total of thirteen hours, there is no direct evidence of involuntariness or inability to comprehend what was happening, as he

continued to answer questions, and did not ask for an attorney. *Marr v. State*, 134 Md. App. 152, 165 (2000), *cert. denied*, 362 Md. 623 (2001) (holding interrogation tactics lasting fourteen hours "were not overbearing" where "the longest period of uninterrupted questioning last[ed] only about an hour[;] Officers gave appellant food, drink, and cigars[;] Officers also acceded to each request appellant made to be left alone or use the bathroom[;] Appellant was never in any apparent discomfort.") *See also Wittington v. State*, 147 Md. App. 496, 526 (2002), *cert. denied*, 373 Md. 408 (2003), *cert. denied*, 540 U.S. 851 (2003).

As the circuit court noted, the detectives talked to appellant civilly. Appellant did not request that the interview cease. He was provided with water and a restroom break. Accordingly, the record does not show that appellant's will was overborne by any coercive police conduct.

i. State nonconstitutional law

The statement must also be voluntary under Maryland nonconstituonal law. Under Maryland nonconstitutional law:

> a confession is involuntary if it is the product of certain improper threats, promises, or inducements by the police. *See [State v.] Knight*, 381 Md. [517,] [] 532, 850 A.2d [1179,] [] 1187–88 [(alteration added)]. The test for common law voluntariness was set forth in *Hillard v. State*, 286 Md. 145, 406 A.2d 415 (1979). Under that test, an inculpatory statement is involuntary under Maryland common law if (1) any officer or agent of the police promises or implies to the suspect that he will be given special consideration from a prosecuting authority or some other form of assistance in exchange for the suspect's confession, and (2) the suspect makes a confession in apparent reliance on the police officer's explicit or implicit inducement. *Id.* at 153, 406 A.2d at 420. "Both prongs [of the *Hillard* test] must be satisfied before a confession is deemed to be involuntary." *Winder v. State*, 362 Md. 275, 310, 765 A.2d

> 97, 116 (2001) [(alteration in original)]. The sort of promise or inducement to which the *Hillard* test applies, however, has been limited to leniency before, during, or after trial. *See Hill v. State,* 418 Md. 62, 75–77, 12 A.3d 1193, 1201 (2011) (collecting cases).

Lee v. State, 418 Md. 136, 161 (2011).

Appellant argues the following statement made by Detective Tomas amounted to an improper inducement:

> *What I'm trying to see what the extent of your involvement is and what we can try to give.* We can get these guns off the street that goes a long way for us for safety reasons you know what I'm saying? I'm worried about other people getting these guns particularly if there's kids in the house if you have it at the house and that sorta thing you know what I mean?

This statement does not meet the first prong of the *Hillard* test, as it is not a promise to appellant that he will be given special consideration from the prosecutor, or that he would be provided any other form of assistance in exchange for a confession. Furthermore, appellant did not make a confession or inculpatory statements in reliance of the purported inducement. To the contrary, appellant denied any involvement in the crimes at issue, and also denied owning a gun. Accordingly, we affirm the judgments of the circuit court.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.