

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1975

SEPTEMBER TERM, 2014

JESSE LEE SHORTER, SR.

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Arthur,
Kenney, James A. III (Retired,
Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: December 15, 2015

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

Following a court trial in the Circuit Court for Talbot County, Jesse Lee Shorter, Sr., the appellant, was convicted of theft of property valued between \$10,000 and \$100,000. Shorter, who was sentenced to fifteen years with all but ten years suspended, plus probation and restitution, contends that “the trial court err[ed] in finding that [his] confession was voluntary and not the product of threats and police overreaching.” We disagree and shall affirm the judgment.

FACTS AND PROCEEDINGS

The State presented evidence, including two confessions, that Shorter acted as a lookout while his accomplice stole property from the residence of James Allendorf and his fiancée. Shorter’s defense was that his confessions were coerced by the police, who used leading questions to supply him information about the theft then threatened his mother and pregnant girlfriend.¹

On May 4, 2013, Allendorf and his fiancée left their locked home on Greenfield Avenue in Trappe, for a week-long vacation. On May 11, they returned to find the sliding door in the back of their house open about three inches and a trail of leaves inside the home.

Upstairs, Allendorf’s lockbox-style safe was missing from the cabinet where it had been secured. The safe contained between \$1,000 and \$3,000 in cash, as well as jewelry and a bag of loose diamonds that Allendorf had accumulated when he was a pawnbroker.

¹ We note that although Shorter described her as his “girlfriend” at trial, in his taped statement, Shorter referred to her as his “fiancée.”

The value of the items stolen from the safe was approximately \$43,000, with the diamonds accounting for \$17,000 of that total. Also missing, from a night stand next to where the safe was, were a Smith and Wesson .38 caliber stainless steel pistol and an antique double-barreled Derringer .22.

On May 11, 2013, Trooper First Class Eric Wyer of the Maryland State Police responded to the report of a burglary at Allendorf’s residence. On May 14, the trooper received a telephone call from Trappe Police Department Chief George Ball, who advised that on May 9, while he and other members of a drug task force were executing a warrant at the residence next door to Allendorf’s home, he had seen Shorter and another man walking toward them. When the two men saw police, they “turned around and walked the other way.”

That evening, TFC Wyer and Chief Ball separately interviewed Shorter and Joshua Bramble McDorman,² at the residence where Shorter lived with his mother, sister, son, pregnant girlfriend, and her two young children. Chief Ball advised Shorter, whom he had known for years, that they were investigating two recent burglaries in Trappe.

TFC Wyer testified that he interviewed Shorter outside, in the side yard, while Chief Ball stayed in his vehicle with Bramble. The trooper gave Shorter his *Miranda* warnings, after which he agreed to talk. TFC Wyer told Shorter about the missing

² Although TFC Wyer identified Shorter’s companion as “Joshua Bramble McDorman,” Shorter and his mother referred to him as “Joshua Bramble.” We shall refer to him as “Bramble.”

property. During an approximately ten-minute interview, Shorter admitted that he acted as the lookout for Bramble while he removed property from a house on Greenfield Avenue. Bramble gave him “a sack of loose diamonds and . . . \$150 in cash.” TFC Wyer did not threaten Shorter or any of his household members in any way; he specifically denied telling Shorter that Bramble already had identified him or that, if he did not admit guilt, he would arrest his mother and girlfriend. After speaking with both men, TFC Wyer and Chief Ball arrested them.

While waiting for other officers to arrive, Shorter told Chief Ball that he had hidden the diamonds in his bedroom and agreed to a search of that room. Accompanied by Shorter, police officers searched areas of Shorter’s house but found no diamonds. According to Chief Ball, Shorter “was shocked” when no diamonds were found in his bedroom.

After the search, both Shorter and Bramble were transported to the police barrack in Easton. Shorter was again given *Miranda* advisements, and he waived his rights in writing. He again gave an oral confession. The confession was recorded and played at trial.

In that recording, TFC Wyer advised Shorter that he and Chief Ball were investigating a burglary on Greenfield Avenue and another break-in that occurred elsewhere in Trappe a few days later. Shorter stated that he and Bramble had walked by Allendorf’s house the night before the break-in. The next evening, Shorter stood by the road and acted as a “watch out” while Bramble went into the house and took things,

including the safe. Bramble used his “puffy jacket” to carry the items to his sister’s car. Shorter confirmed that among the stolen items were a bag of loose diamonds, other pieces of distinctive jewelry, and “two handguns.” Bramble gave Shorter a “bag of diamonds and some cash”—a “wad” totaling \$150—for his help. Shorter went home and put the diamonds in his room; he spent the \$150 on “cigarettes and alcohol.” Bramble was the only other person who knew where Shorter put the diamonds. Shorter did not know what Bramble did with the other items he took from the Allendorf residence. Shorter also admitted acting as Bramble’s lookout for another break-in a few days later, at a residence located on “Rumsey Avenue.”

During the 28-minute recorded interview, Shorter was asked whether he was talking to TFC Wyer and Chief Ball “voluntarily” and whether he had been “threatened.” Although he did not audibly respond, he signed and initialed the *Miranda* advisement and waiver form indicating that his statements were voluntary, that he was not coerced, and that he had not been threatened. He confirmed that he previously had confessed, while TFC Wyer had interviewed him at his house, and that he had consented to the search of his residence. At no time during the recorded interview did either police officer raise his voice, make any promises, demand that Shorter answer questions, or mention Shorter’s family. Although many of the later questions were “leading,” in that they supplied information, Shorter’s confession to being Bramble’s lookout occurred at the outset of the interview, as soon as TFC Wyer asked him to tell them what happened.

Shorter testified in his own defense. At the time of trial, he was 33 years old, with a fifth grade education. He had some trouble with reading comprehension. He lived with his mother, Rebecca Shorter, his sister, his girlfriend, and her two daughters, as well as his son on weekends.

At the time of the Allendorf theft, Bramble, who is a “brother” of Shorter’s girlfriend, had been staying on their living room couch for about a week. Shorter and Bramble, neither of whom had a job, walked together around Trappe for exercise. One day, they were on Greenfield Avenue when they saw six or seven police cruisers, which caused them to turn around and walk away in order to avoid getting involved in whatever police were doing there.

On May 14, 2013, Shorter’s mother called while he and Bramble were out, to say that the police wanted to talk to them. When Chief Ball and TFC Wyer arrived around 5:00 p.m., Shorter learned they were investigating separate break-ins on Greenfield Avenue and Rumsey Avenue. Shorter and Bramble went outside to talk with the officers. Shorter knew Chief Ball but had never met TFC Wyer, who did the questioning.

Shorter testified that TFC Wyer took him to the side of the house and kept saying, “you know you did it,” and “we got you on . . . the camera.” TFC Wyer did not give him his *Miranda* rights. Although Shorter insisted he did not know what break-ins the trooper was talking about, TFC Wyer told Shorter that Bramble had told him “everything,” including that Bramble said he gave him a bag of loose diamonds and some cash for being a lookout. The trooper listed things that were missing from the house, including a

bag of diamonds, and said that Bramble had told him the loose diamonds were under Shorter's mattress. TFC Wyer also stated there were "a couple of firearms" missing.

According to Shorter, TFC Wyer told him that, if he "didn't admit it[,] that he was going to lock [his] mother and [his] girlfriend up[.]" Shorter was afraid that, if his mother and girlfriend were arrested, there would be no one to take care of the children, who would be taken by Social Services. After TFC Wyer repeatedly accused him and demanded that he confess, Shorter finally "admitted to it because he kept on threatening" him.

Shorter then consented to a search of his house because he had nothing to hide. As expected, nothing was found in his bedroom or living room. Despite demands that he reveal where the diamonds were, Shorter said he did not know anything about them.

At the police barrack, Shorter was questioned again about the missing diamonds and handguns, and shown a photo of the missing .38 mm weapon. Feeling threatened, frustrated, and scared, Shorter again just "admitted to it" even though he did not have any bag of diamonds and knew nothing about the missing jewelry or guns. He agreed with TFC Wyer because he was afraid for his family, even stating that he had not been coerced or threatened with anything. Based on the trooper's prior statement that "a couple firearms" were missing, he just "guessed" that two had been taken. He said he received \$150, not because it was true, but because he "just got tired of getting pressured about it" as TFC Wyer kept saying, "I know you did it. I know you did it. We got you on camera."

Rebecca Shorter, the appellant's mother, corroborated her son's claims that he was threatened by TFC Wyer. She testified that Chief Ball telephoned on May 14, 2013, asking for her son, who was not home. When Chief Ball and TFC Wyer came to her house around 5:00 p.m., she, her son, his girlfriend, her children, his son, and Bramble were present.

Mrs. Shorter went outside when the officers asked her son and Bramble to go outside. She heard TFC Wyer advise her son of his *Miranda* rights, then heard her son say he understood those rights and had nothing to hide. When TFC Wyer took her son to the side of the house, she went into the house and stood by a window where she could hear their conversation. The trooper kept asking her son about the house on Greenfield Avenue and about a second house, and the appellant kept telling him that he did not know what he was talking about. TFC Wyer asked Shorter if he had diamonds, jewelry, and paperwork, and Shorter repeatedly told him he did not. According to Mrs. Shorter, TFC Wyer kept telling her son, "You might as well admit that you did. We have you on surveillance. We have your fingerprints." She heard her son insist that he did not do it.

At some point, Mrs. Shorter heard TFC Wyer tell her son that he could arrest his mother if they found anything in the house and arrest his girlfriend based on a recent pawn she made, even though Mrs. Shorter knew it had just been a Playstation. After that threat, Shorter said "he had done it." At that point, Mrs. Shorter walked away and did not hear any more.

The police came back inside with Shorter and searched his room and the living area. During the search, Mrs. Shorter, Shorter’s pregnant girlfriend, and the three children (ages four, six, and eight) were forced to remain outside for hours, until it started raining about 10:30 p.m. Eventually, the police announced that they had found nothing.

TFC Wyer testified that he did not threaten to arrest Shorter’s family members. He did not tell Shorter that the missing firearms were two handguns, until after Shorter identified them as such. Although Shorter initially denied any knowledge of the break-ins, the trooper “told him the importance of the firearms being stolen,” in that “[t]hey had sentimental value” to Allendorf and they were the kind of “stuff on the streets what kills people like me out here[.]” At that point, Shorter “gave admission of his own free will.”

We shall add facts in our discussion of the issue raised by the appellant.

DISCUSSION

From the outset of the trial, Shorter challenged the voluntariness of his confessions, claiming that TFC Wyer’s threats to arrest his mother and girlfriend prompted him to falsely state that he had acted as a lookout for Bramble. “[T]he burden of proving the admissibility of a challenged confession is always on the State.” *Smith v. State*, 186 Md. App. 498, 519 (2009), *aff’d*, 414 Md. 357 (2010). “[U]nder Maryland criminal law, independent of any federal constitutional requirement, if an accused is told, or it is implied, that making an inculpatory statement will be to his advantage . . . and he makes remarks in reliance, . . . his declaration will be considered to have been involuntarily made and therefore inadmissible.” *Hilliard v. State*, 286 Md. 145, 153

(1979). “[T]his necessarily includes a promise not to harm (physically or emotionally) a near relative with whom the defendant naturally has a close bond of affection.” *Stokes v. State*, 289 Md. 155, 160 (1980). Thus, a police officer’s promise not to prosecute the accused’s spouse if he makes an inculpatory statement renders an ensuing confession involuntary and inadmissible. *See, e.g., id.* at 162 (holding officer’s promise not to arrest the defendant’s wife if he revealed location of heroin rendered defendant’s inculpatory statement involuntary). The trial court made a factual finding that TFC Wyer did not threaten to arrest Shorter’s mother and girlfriend. In this Court, Shorter challenges that finding, arguing that “the trial court was simply wrong in finding that [his] admission[s] were . . . not the product of police threats.”

In reviewing a trial court’s determination that a confession was voluntarily given, “[t]he 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.” *State v. Tolbert*, 381 Md. 539, 548 (2004); *see also Hill v. State*, 418 Md. 62, 77 (2011); *Prioleau v. State*, 411 Md. 629, 638 (2009); *Wengert v. State*, 364 Md. 76, 84 (2001). We review voluntariness evidence in the light most favorable to the State, as the prevailing party on this issue. *See Rush v. State*, 403 Md. 68, 83 (2008).

The factual dispute here is on the threshold question of “whether the police . . . made a threat, promise, or inducement.” *Winder v. State*, 362 Md. 275, 311 (2001). The trial court listened to the testimony and determined that TFC Wyer did not make any

threat to arrest the appellant’s mother and girlfriend. We must accept that factual finding if there is evidence to support it. *Tolbert*, 381 Md. at 548.

For example, in *Jones v. State*, 229 Md. 165, 171 (1962), the defendant claimed that a police threat to prosecute his pregnant common law wife rendered his murder confession involuntary. The police officers involved denied making such a threat. *Id.* at 171–72. Resolving the conflicting testimony against the defendant, the trial court found that the police did not threaten prosecution. *Id.* at 172. The trial “court was obliged to decide preliminarily, on the conflicting evidence presented, whether there was sufficient proof of a threat . . . to make the confession involuntary and therefore inadmissible.” *Id.* The Court of Appeals held that the trial court’s finding was not clearly erroneous, given the evidence that the defendant confessed before seeing his wife. *Id.*

Here, as in *Jones*, the trial court was presented with a classic “swearing contest,” requiring it to decide whether to believe TFC Wyer or the appellant and his mother. At trial, TFC Wyer described his encounters with Shorter at his home and at the police barrack, specifically denying that he had threatened to arrest Shorter’s mother or girlfriend. The appellant and his mother, both testifying for the defense, contradicted TFC Wyer’s account of the interrogations.

The trial judge explained why he “chose to believe the officer” and found the appellant’s testimony to be a “not a very convincing performance”:

I find that the confession that your client [Shorter] made was voluntary and I thin[k] that there’s no way to reconcile the statements that your client made and his mother made in the court today with the officer. I chose to believe the officer. He doesn’t have, there’s no demonstrated reason why

[TFC] Wyer would, as your client put it, railroad him. There's no evidence that they even knew each other. They didn't have any prior dealings. The officer is just there to do his job, on the other hand. And obviously the Defendant has the greatest interest in the outcome. The greatest motive of anybody not to present a truthful account and his mother is not an unbiased witness. Therefore I chose to believe the police officer. I think his confession was voluntary.

I think the corroborating evidence of that is the recording itself. It was played in evidence and the Defendant . . . acknowledges that's his voice on the tape. . . . He admits that's his voice and he quite clearly said on the tape that he had been advised of his *Miranda* warnings twice. Once on, at the scene when he gave a verbal statement and a second time at the barracks when gave us a recorded statement and he said in response to the officer's questions that his decision to waive his Fifth Amendment privilege was voluntary and that he understood his rights.

I don't know what else the police can do to document that they have properly advised somebody other than to record his own words in which he acknowledges that. And for him to come into court today and say, oh well, I was really compelled to say those things because I was threatened is simply not credible to me.

Moreover, the Defendant, although it's true that much of the statement he gave to the police was in the form of simple admissions to leading questions when asked about whether firearms were taken during the burglary, your client's the one that supplied the description . . . that these were two handguns. And when I asked him how he knew there were two handguns he said he guessed. That he didn't really know.

And I recognize that when you tried to rehabilitate him and asked him in a leading fashion whether maybe he had heard that from the police officer, he tried to rehabilitate himself by saying it wasn't a guess. So he didn't give you the same answer he gave me which is not a very convincing performance, needless to say.

(Paragraph breaks added.)

Shorter now posits that the trial court mistakenly chose to believe TFC Wyer because it “wrongly considered” that the trooper “had no interest in railroading” him and

was “only doing his job.” In the appellant’s view, “the investigating officer had a real interest in obtaining a confession to the crime he was charged with investigating.” Moreover, “the trial court completely failed to take into consideration [the appellant’s] virtual lack of education, having attended school only through the fifth grade” and being “so handicapped that he could not complete his GED or even obtain a driver’s license.”

“Of course, the credibility of the witnesses was a matter for the trial court, as fact finder, not the appellate court, to resolve.” *State v. Raines*, 326 Md. 582, 590 (1992). Here, the court did not commit clear error in finding that there was “no demonstrated reason why TFC Wyer would . . . railroad” Shorter by making threats against his family, whereas Shorter and his mother had an obvious motive to lie about what the trooper said. The trial court simply was not persuaded that the trooper’s duty to investigate constituted a reason to threaten Shorter and then lie about it under oath. Furthermore, the court was entitled to treat, as corroborating factors, that the recording showed that Shorter was Mirandized immediately before both confessions and that he knew there were two stolen handguns before TFC Wyer told him so. As the trial judge pointed out, Shorter’s trial testimony that he just “guessed” there were two handguns, further diminished his credibility.

Because the trial court’s reasons for rejecting testimony by the defense witnesses and crediting the State’s witness are supported by the evidentiary record, the court did not commit clear error in resolving this credibility conflict against the appellant.

**CONVICTION AFFIRMED. COSTS
TO BE PAID BY APPELLANT.**