Circuit Court for St. Mary's County
Case No.: C-18-CR-22-000089

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 573

September Term, 2023

JAMAR MOSS

v.

STATE OF MARYLAND

Berger,
Leahy,
Ripken,

JJ.

Opinion by Leahy, J.

Filed: July 23, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

A jury in the Circuit Court for St. Mary's County convicted Jamar Moss, ("Appellant"), of first-degree rape. On appeal, Appellant presents only one question for our review: "Did the trial court err in admitting Appellant's statements to police?" For the reasons discussed below, we hold that the trial court did not err. As such, we affirm the judgment.

BACKGROUND

Midday on November 8, 2021, L.B.[1] was in her apartment waiting for a friend to arrive when Appellant, someone she knew through mutual friends, but was not expecting, walked in. After seeing Appellant, L.B. walked into her bedroom to put slippers on. Appellant followed her into her bedroom, grabbed her, covered her mouth and nose, and had sexual intercourse with her. L.B. testified that after Appellant "had his way" with her, he urinated on her. The interaction was captured on a hidden security camera located in L.B.'s bedroom.[2]

Afterwards, L.B. tried to make Appellant believe that she was not going to call the police, and when she got close enough to her door, she "took a run for it" upstairs to a neighbor's apartment. Appellant fled. L.B. called 911 and was transported to the hospital. While at the hospital, L.B. accessed footage from her bedroom video camera on her phone and showed it to a police officer.

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[1] We refer to the victim by her initials. Md. Rule 8-125.

[2] As L.B. explained at trial, she installed the security camera because, "I'm a single petite woman, and I live alone on the ground floor apartment, and not the best neighborhood, [sic] and for my own safety."

Later that evening, police spotted Appellant in front of a liquor store and placed him under arrest. Officers noticed that Appellant's pupils appeared dilated and that his skin was warm to the touch, and they suspected that he may be under the influence of drugs. After Appellant appeared to lose consciousness and suffer a seizure, officers administered Narcan[3] and called an ambulance. Officers searched Appellant and located what they believed to be a crack pipe.

Appellant was taken to the hospital. Early the next morning, two Maryland State Troopers, Trooper Jackson and Trooper Davis, visited Appellant in the hospital. Trooper Jackson read Appellant his *Miranda*[4] rights and asked him to sign a *Miranda* waiver form. Following an exchange with Troopers Jackson and Davis (set out below), Appellant signed and dated the waiver form. He told the troopers that drug dealers had threated to kill his family if he did not rape and murder L.B., and that L.B. purportedly allowed him to rape her because drug dealers had also threatened her. He also admitted to smoking PCP and crack before going to L.B.'s apartment, and again prior to his arrest. Appellant was later charged with several offenses, including first-degree rape and attempted first-degree murder.

On September 1, 2022, the circuit court held a hearing on various pre-trial motions, including Appellant's motion to suppress his interview with police. Defense counsel argued that Appellant's statements were involuntary under the totality of the circumstances

[3] Narcan, or naloxone, is a drug "designed to reverse the effects of an opioid overdose." *Noble v. State*, 238 Md. App. 153, 157 n.1 (2018).

[4] *Miranda v. Arizona*, 384 U.S. 436 (1966).

and improperly induced under *Hillard v. State*, 286 Md. 145 (1979) and its progeny. Neither the State nor the defense called any witnesses, but the State played an audio recording of Appellant's statement. The following portions of the recorded statement are relevant to Appellant's motion to suppress, and the assertion made by Trooper Davis that Appellant claimed overwhelmed his voluntary statement is highlighted:

> TROOPER JACKSON: Senior Trooper Jackson with the Maryland State Police, Criminal Enforcement Division. Today's date is November 8 -- oh, sorry. It is now November 9th, 2021. And the time is currently 24:22 hours. We're in the emergency room, Examination Room No. 3. Sir, can you state your name for me? Full name and your date of birth.
>
> THE DEFENDANT: 4/23/81.
>
> TROOPER JACKSON: 4/23 of '81. And your full name is?
>
> THE DEFENDANT: Jamar Daron Moss.
>
> TROOPER JACKSON: I'm sorry? A little louder.
>
> THE DEFENDANT: Jamar Daron Moss.
>
> TROOPER JACKSON: Okay. Mr. Moss, all right. I'm going to read you something here. Okay? And then we'll -- you were asking me some questions. We'll get down to it. Okay? You are now being questioned as to any information you may have pertaining to an official police investigation. Therefore, you are advised of the following rights: You have the right to remain silent. Anything you say or write may be used against you in a court of law. You have the right to talk to a lawyer before answering any questions and to have a lawyer present at any time before and/or during questioning. If you now want the assistance of a lawyer but cannot afford to hire one, you will not be asked any more questions at this time, and you may request the Court to appoint a lawyer for you without charge. If you agree to answer questions, you may stop at any time and request the assistance of a lawyer and no further questions will be asked of you. Okay? It says, I have read or have had read to me this explanation of my rights. I need a signature, so we are going to have to pop at least one hand loose. Which -- which one do you write with, your right or left?

THE DEFENDANT: Left.

TROOPER JACKSON: Left hand? Okay. Can we take that left cuff off there so he can sign?

THE DEFENDANT: Signature for what?

TROOPER JACKSON: So just saying that I read that to you. It says, I have read or have had read to me this explanation of my rights.

THE DEFENDANT: So what am I getting charged with?

TROOPER JACKSON: What happened today, okay, is what's going on.

THE DEFENDANT: What happened? What happened?

TROOPER JACKSON: You're getting charged with -- you have a warrant out for your arrest for first-degree rape and first-degree assault. Now, it's my understanding that something is going on here that led you to go down to [L.B.'s] apartment. All right? So I'm here to get your side of the story and figure out what's going on.

THE DEFENDANT: Where is that?

TROOPER JACKSON: Huh?

THE DEFENDANT: What apartment?

TROOPER JACKSON: You know where she lives.

THE DEFENDANT: What apartment? (Indiscernible)

TROOPER JACKSON: I need you to sign right there, please.

THE DEFENDANT: I ain't signing nothing until you tell me what the hell –

TROOPER JACKSON: I told you what I'm – it says. It says, I have read or had read to me this explanation of my rights. Do you understand your rights as I've explained them to you? Why are you taking that off?

THE DEFENDANT: I don't know. I need to – I need to go somewhere safe with my kids.

> TROOPER JACKSON: Okay. So if you're not going to do that, we're going to have to put you back in the cuffs.
>
> THE DEFENDANT: (Indiscernible at 10:54:22 a.m.) And I need to – yeah. You need to take me somewhere safe with my kids, man, before it's too late.
>
> TROOPER JACKSON: And I don't understand what you're talking about, so explain it to me. Okay? I just need your signature there.
>
> TROOPER DAVIS: **And he just wants to know, like, if you really are concerned about your kids, now is your time because he'll – they'll do something for you.**
>
> TROOPER JACKSON: Below that says, I fully understand each of these rights, and I am willing to answer questions without consulting a lawyer or having a lawyer present at this time. My decision to answer questions is entirely free and voluntary, and I have not been promised anything, nor have I been threatened or intimidated in any manner.
>
> If you wish to speak with me, I need your signature there as well. Can you date [it] for me too? 11/8/21. Okay. And again here.
>
> All right. So explain to me what's going on. What do you know about your kids? Why are they in danger?

The State argued that, under the totality of the circumstances, Appellant's confession was made voluntarily, and that Trooper Davis's statement did not "overwhelm [Appellant's] voluntariness[.]"

The court denied Appellant's motion and found that his statement was made voluntarily and not "in any apparent reliance on the police officer's [] statement." Specifically, the court determined that:

> The statement that is made prior to the waiver of *Miranda* specifically was made in reference to his children and, [t]hey could do something for you. But, again, it doesn't say what that is or what was meant by that statement.
>
> The second prong [of the *Hillard* test] is that the suspect makes a confession in apparent reliance on the police officer's statement. And here's where the [c]ourt finds that the fact that the officer read the second half of

> the *Miranda* rights form to Mr. Moss after this statement was made, I fully understand each of these rights, and I am willing to answer questions without consulting a lawyer or having a lawyer present at this time. My decision to answer questions is entirely free and voluntary, and I have not been promised anything, nor have I been threatened or intimidated in any manner.
>
> The [c]ourt believes that Mr. Moss was advised of that after this statement was made. And the [c]ourt does not believe that the statement Mr. Moss made to the police after the *Miranda* form was filled out was in any apparent reliance on the police officer's first statement.
>
> I think that if [Appellant] had concerns or thought that he was only giving a statement in reliance on what the police officer said, he certainly would have questioned, as he did the first half, Why am I – like, What are you going to give for me in exchange for me doing this? And he never does say that, ever, not in the entire 37 minutes. Even at the end, he does not bring up, Wait a second. You promised to do something for me. What are you doing?
>
> There's no evidence in the audio recording that [Appellant] relied on any promise from the police officer. And, in fact, I think the evidence is contrary to that, that he signed the form, acknowledging that he was giving a statement without relying on any promises or inducements from the police.

The matter proceeded to a jury trial, where Appellant was found guilty of first-degree rape and not guilty of attempted first-degree murder. The court imposed a life sentence. This timely appeal followed.

STANDARD OF REVIEW

The Supreme Court of Maryland recently clarified the applicable standard of review in *Madrid v. State*:

> In *Thomas v. State*, 429 Md. 246, 259, 55 A.3d 680, 688 (2012), this Court set forth the standard of review of a trial court's ruling on a motion to suppress as follows:
>
> > Our review of a grant or denial of a motion to suppress is limited to the record of the suppression hearing. The first-level factual findings of the suppression court and the court's conclusions regarding the

> credibility of 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. We undertake our own independent constitutional appraisal of the record by reviewing the law and applying it to the facts of the present case.
>
> (Cleaned up). An appellate court reviews without deference a trial court's ultimate determination as to whether a confession was voluntary and reviews for clear error the trial court's underlying findings of fact. *See George v. State*, 386 Md. 600, 610-11, 873 A.2d 1171, 1177 (2005).

Madrid v. State, 474 Md. 273, 309 (2021).

DISCUSSION

Appellant asserts that his confession was involuntarily made and thus improperly admitted at trial for two reasons. First, he asserts that it was made in reliance on an improper inducement from police—specifically, on "the officer's statement that they would 'do something for [him.]'" Second, he asserts that the totality of the circumstances supports his position that his confession was involuntarily made, highlighting facts such as that he was handcuffed, in an emergency room, that there were at least two officers present, and that he was possibly still under the influence of drugs taken earlier that day.

The State responds that Appellant's confession was not triggered by an improper promise or inducement and that the officer's statement that he would do something for Appellant was "specifically related to making sure the children were safe[.]" Further, the State asserts that the totality of the circumstances—including that there were no threats or inducements, that Appellant received *Miranda* warnings before speaking, and that Appellant coherently engaged with officers—indicate that Appellant's confession was voluntarily made.

A. Voluntariness Under Maryland Common Law

"A trial court may not admit a confession made during a custodial interrogation that is involuntary under the common law of Maryland, the Due Process Clause, or Article 22 [of the Maryland Declaration of Rights]." *Madrid*, 474 Md. at 317 (citing *Brown v. State*, 452 Md. 196, 209-10 (2017)). Accordingly, "[w]here a defendant moves to suppress a confession on the ground that it was involuntary, the State has the burden to prove by a preponderance of the evidence that the confession was voluntary." *Id*. (citing *Hill v. State*, 418 Md. 62, 75 (2011)).

Under Maryland non-constitutional common law, "[a] confession is voluntary if it is 'freely and voluntarily made' and the defendant making the confession 'knew and understood what he [or she] was saying' at the time he or she said it." *Knight v. State*, 381 Md. 517, 531-32 (2004) (alteration in original) (quoting *Hoey v. State*, 311 Md. 473, 480-81 (1988)). By contrast, "a statement is involuntary *per se* specifically 'where it is the product of an improper threat, promise, or inducement by the police.'" *Zadeh v. State*, 258 Md. App. 547, 613 (2023) (quoting *Madrid*, 474 Md. at 317) (further quotation marks and citation omitted), *reconsideration denied* (Aug. 31, 2023). As we explained in *Zadeh*, "[o]verlying that more specific formulation—which constitutes a *per se* rule . . . the voluntariness of a statement is examined under 'the totality of the circumstances[.]'" *Id.* at 614 (quoting *Smith v. State*, 220 Md. App. 256, 273 (2014) (further citation omitted).[5]

[5] Appellant's brief, as concerns Maryland non-constitutional law, focuses on the elements of the *per se* rule and does not stray into any additional, overlying considerations under the totality of the circumstances. Accordingly, we follow suit here.

The assessment to determine whether a statement was the product of an improper inducement was initially delineated in *Hillard*. *See Winder*, 362 Md. at 309. That inquiry involves a "two-part test to determine the voluntariness of a custodial confession in circumstances where a defendant alleges that the police induced his or her confession by making improper promises." *Id.* More specifically, a statement is involuntarily made under Maryland common law if:

> (1) any officer or agent of the police promises or implies to the suspect that he [or she] 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.

Lee v. State, 418 Md. 136, 161 (2011) (citing *Hillard*, 286 Md. at 153).

"The first prong of the *Hillard* test involves 'an objective' inquiry that does not depend on 'a suspect's subjective belief that he or she will be advantaged in some way by confessing[.]'" *Madrid*, 474 Md. at 328 (alteration in original) (quoting *Winder*, 362 Md. at 311). Instead, "the court must determine whether a reasonable person in the position of the accused would be moved to make an inculpatory statement upon hearing the officer's declaration[.]" *Hill*, 418 Md. at 76 (citation omitted). The second *Hillard* prong "triggers a causation analysis to determine whether there was a nexus between the promise or inducement and the accused's confession." *Winder*, 362 Md. at 311. "Both prongs must be satisfied before a confession is deemed to be involuntary" under Maryland common law. *Id*. at 310.

Turning to the merits of this case, the specific statement Appellant challenges is the following:

> TROOPER DAVIS: And he just wants to know, like, if you really are concerned about your kids, now is your time because he'll – they'll do something for you.

Specifically, Appellant asserts that the statement that the officer would "do something for [him]" was an improper inducement—even though there "was no explicit *quid pro quo* or explanation of exactly what 'do something' meant"—because it "implied that if Appellant talked, the officers would help him get out so he could be with his children." Appellant asserts that he signed the waiver form after Trooper Davis made the statement, and that "[t]his timing demonstrates that Appellant made the decision to speak to the officers in reliance on the statement that they would help him get to his children."

The State disputes Appellant's interpretation and contends that "to the extent that there was any promise, it related to [Appellant's] purported concern for his children's safety" and that Appellant's "claim that the statement implied he would be released to be with his children reads far too much into [the officer's] comment."

We hold that Appellant's confession was not involuntary under Maryland non-constitutional law because, even if we assume, *arguendo*, that Trooper Davis's statement constituted an improper promise under the first prong of the *Hillard* analysis, there is no indication in the record that the confession was made "in apparent reliance" on that promise. *Lee*, 418 Md. at 161 (citing *Hillard*, 286 Md. at 153). As the circuit court observed, had Appellant believed that his statement would be in exchange for something, he "certainly would have questioned, as he did the first half [of Trooper Jackson reading his *Miranda* rights], Why am I – like What are you going to give for me in exchange for me doing this?" But, "he never does that . . . [e]ven at the end, he does not bring up, Wait

a second. You promised to do something for me." We too, find this fact, taken together with the fact that Appellant signed the waiver only *after* Trooper Jackson read the second half of the *Miranda* rights form—stating that Appellant's decision to sign the form was "entirely free and voluntary[,]"—to be persuasive evidence that Appellant did not rely on any purportedly improper promise.

Because it is clear that, even if there *had* been an improper promise,[6] Appellant did not *rely* on that promise, we conclude that the trial court correctly determined that Appellant failed to demonstrate that his confession was involuntary under Maryland common law.

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[6] Although the trial court did not decide the matter on the first *Hillard* prong, we note here that it is a much closer call whether Trooper Davis's statement operated as an inducement than Appellant suggests. We agree with the State that Appellant's "claim that the statement implied he would be released to be with his children reads far too much into [the officer's] comment." The record reflects that Appellant stated his children were in danger and that they needed to go somewhere safe "before it's too late." And, the record reflects that, at the beginning of the interview, after Appellant signed the waiver, Trooper Jackson asked Appellant: "All right. So explain to me what's going on. What do you know about your kids? Why are they in danger?"

We are not persuaded by Appellant's attempt to similize Trooper Davis's statement to the offending statement by police in *Knight v. State*, 381 Md. 517, 537 (2004). The officer in that case told Knight that: "if down the line, after this case comes to an end, we'll see what the State's Attorney can do for you, with your case, with your charges[.]" *Id.* The Supreme Court of Maryland determined that the statement was an improper inducement because it was "clearly a promise to exercise advocacy on Knight's behalf to convince the prosecutor to exercise discretion in Knight's favor." *Id*. Here, there was never any mention of the prosecutor or "see[ing] what" could be done "with [Appellant's] charges." Instead, as defense counsel acknowledged at the suppression hearing, "[t]he officer doesn't explicitly say the State's attorney or someone's going to help [appellant] out here." Thus, the facts in *Knight* are readily distinguishable from those presently before us.

B. Voluntariness Under the Federal Due Process Clause and Article 22 of the Maryland Declaration of Rights

Appellant contends that the totality of the circumstances also indicate that his confession was involuntary under the Due Process Clause and Article 22 of the Maryland Declaration of Rights. We disagree.

Maryland's courts utilize a single test to determine whether a confession was involuntary under the Due Process Clause[7] and Article 22 of the Maryland Declaration of Rights. *Zadeh*, 258 Md. App. at 615 n.22 ("In *Lee v. State*, the Supreme Court of Maryland declared that the same 'overborne will' test is applied to determine voluntariness under Article 22 of the Maryland Declaration of Rights" and the Due Process Clause). We explained that:

> The federal due process analysis . . . was described by the United States Supreme Court as,
>
> > . . . an inquiry that examines 'whether a defendant's will was overborne' by the circumstances surrounding the giving of a confession. [*Schneckloth v. Bustamonte*, 412 U.S. 218, 226, 93 S. Ct. 2041, 36 L. Ed.2d 854 (1973)]. The due process test takes into consideration "the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation." [*Id.*] The determination "depends upon a weighing of the circumstances of pressure against the power of resistance of the person confessing." *Stein v. New York*, 346 U.S. 156, 185, 73 S. Ct. 1077, 97 L. Ed. 1522 (1953).
>
> *Dickerson v. United States*, 530 U.S. 428, 434, 120 S. Ct. 2326, 147 L. Ed. 2d 405 (2000) (some citations omitted). In contrast to the common law analysis, an improper promise is just one of many factors under the due process analysis concerning whether a defendant's will was overborne. Ultimately, however, "coercive police activity is a necessary predicate to the

[7] The "federal due process analysis" is "also referred to as 'constitutional voluntariness' or the 'overborne will test[.]'" *Zadeh*, 258 Md. App. at 615.

> finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment." *Colorado v. Connelly*, 479 U.S. 157, 167, 107 S. Ct. 515, 93 L. Ed.2d 473 (1986).

Id. at 615-16 (alterations in original). In undertaking this analysis, we ask: "Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he [or she] has willed to confess, it may be used against him [or her]. If it is not, if his [or her] will has been overborne and his [or her] capacity for self-determination critically impaired, the use of his [or her] confession offends due process." *Schneckloth v. Bustamonte*, 412 U.S. 218, 225 (1973) (quotation omitted).

As the Supreme Court of Maryland explained in *Madrid*:

> The "totality of the circumstances" includes a number of factors, *e.g.* where the interrogation was conducted; its length; who was present; how it was conducted; its content; whether the defendant was given Miranda warnings; the mental and physical condition of the defendant; the age, background, experience, education, character, and intelligence of the defendant; when the defendant was taken before a court commissioner following arrest[;] and whether the defendant was physically mistreated, physically intimidated[,] or psychologically pressured.

Madrid, 474 Md. at 321 (alterations supplied by *Madrid*) (quoting *Hof v. State*, 337 Md. 581, 596-97 (1995)). Additionally, as stated by the *Hof* Court:

> A defendant's will can be overborne and, hence, his or her confession rendered inadmissible, as a result of the use of drugs. Although being under the influence of narcotics does not automatically render a confession involuntary, it is certainly a factor to be considered along with all the other applicable circumstances.

Hof, 337 Md. at 597 (citations omitted). *See also United States v. Abu Ali*, 528 F.3d 210, 232 (4th Cir. 2008) ("The factors we consider include: 'the youth of the accused, [their] lack of education, or [their] low intelligence, the lack of any advice to the accused of [their]

constitutional rights, the length of detention, the repeated and prolonged nature of the questioning, and the use of physical punishment such as the deprivation of food or sleep.'" (quoting *Schneckloth*, 412 U.S. at 226)).

Here, under the totality of the circumstances, we hold that Appellant's confession was not the product of an overborne will. As the circuit court correctly found, despite Appellant's admitted drug use the day prior,[8] his "speech does not sound slurred" and "his responses are coherent[.]" The circuit court correctly observed that during Appellant's interview with police, that:

> He's engaging in conversation with the police officers. He is asking questions, and he is answering questions. And there is nothing from the audio that the [c]ourt finds that the -- that he is under the influence of any medication to the point where he does not understand what he is doing.

We agree that these findings are supported by the record, and these are precisely the kind of "first-level factual findings of the suppression court . . . regarding the credibility of testimony [that] must be accepted by this Court unless clearly erroneous." *Thomas v. State*, 429 Md. 246, 259 (2012) (quotation omitted).

Additionally, we note that Appellant was advised of his *Miranda* rights before making any incriminating statements to police, that he was not threatened, that his interview with police was less than forty minutes long, that there is no allegation he was berated by repeated interrogation, that he signed and dated the *Miranda* waiver form, and as discussed *supra*, that his confession was not improperly induced by the police under

[8] The judge noted that, according to Appellant, he "used PCP and crack cocaine prior to the crime occurring" and "used it shortly before he came to the ER."

Maryland common law. These considerations each support the conclusion that Appellant's confession was voluntarily made. The fact that the interrogation took place at a hospital with two officers present, or that Appellant was handcuffed, does not, without more, render Appellant's confession involuntary.

For the above reasons, we affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.