Circuit Court for Montgomery County
Case No. C-15-CR-22-000602

UNREPORTED *

IN THE APPELLATE COURT

OF MARYLAND

No. 2116

September Term, 2022

ABRAHAM JACOB DOUGLAS

v.

STATE OF MARYLAND

Leahy,
Beachley,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: October 29, 2024

* This is an unreported opinion. The 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 young man was shot in the back at close range while he was hanging out with a larger group of people socializing in the parking lot of an apartment complex, located at 7600 Maple Avenue in Takoma Park, in the early evening of April 22, 2022. He was pronounced dead less than an hour later at MedStar Washington Hospital Center. Eyewitnesses did not see the actual shooting, which occurred between parked cars, but described a man, wearing something like "a ski mask" that covered his whole face, walk or run by the victim at the time of the shooting. The evidence established that at least two shots were fired.

After responding to the scene, police officers began receiving "additional calls" about a "possible suspect" in an apartment building on nearby Kennebec Avenue "bleeding from the leg[.]" The officers who responded to Kennebec Avenue saw a man in the doorway of one of the apartment buildings, who retreated back into the building when he saw the officers. Officers then discovered that the man had locked himself inside an unoccupied unit in the basement of the building. After locating a key to that unit, the officers entered a bedroom and found the appellant, Abraham Jacob Douglas ("Douglas"), lying on the bed and bleeding from his left leg. The officers placed Douglas in handcuffs, dressed the wound on his left leg, and called an ambulance. Following his release from the hospital around 2:00 a.m., officers transported Douglas to the Takoma Park police station where he was interviewed by Detective Charles Earle.

Douglas was later indicted by a grand jury in Montgomery County for the murder of twenty-three-year-old Ahmadou Bamba Gueye ("Gueye"), and related charges. On

December 14, 2022, following a four-day trial in the Circuit Court for Montgomery County, the jury convicted Douglas of first-degree murder, use of a firearm in the commission of a felony, and third-degree burglary. The trial court later sentenced Douglas to life imprisonment without eligibility for parole on the murder conviction.[1]

Prior to trial, Douglas moved to suppress the entirety of his interview with Det. Earle on the grounds that his statements were involuntary, and that Det. Earle had violated his *Miranda*[2] right to remain silent by interrogating him. The suppression court found "the entire statement to be voluntary[,]" and declined to suppress Douglas's statements on *Miranda* grounds. Three of Douglas's statements, as well as the trial court's failure to ask a proposed *voir dire* question, are the subjects of this appeal – as reflected in Douglas's questions presented, which we slightly rephrase as follows:[3]

I. Did the circuit court err in denying Douglas's motion to suppress with respect to statements he made after he invoked his right to remain silent under *Miranda*?

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[1] The court also imposed a sentence of twenty years for use of a firearm, to be served consecutively with the life sentence; and five years for third-degree burglary, to be served consecutively with the firearm charge.

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

[3] Douglas presents the following questions in his brief:

1. "When a defendant during a custodial interrogation unequivocally invoked his right to remain silent by writing "NO" to the question, "Do you want to talk to us at this time?" in the "Advice of Rights Form," did the detective's follow-up question violate *Miranda v. Arizona*, 384 U.S. 436 (1966) and compel an involuntary response?"
2. "Whether the trial court erred in failing to ask the question during *voir dire*, '[I]s there any member of the panel likely to give more weight to the arguments and statements of the State's attorney?'"

(Alteration supplied by Appellant's brief).

II. Did the circuit court err in failing to ask the question during *voir dire*, "is there any member of the panel likely to give more weight to the arguments and statements of the State's attorney?"

We find no reversible error in the circuit court's decision to admit the first three statements Douglas made after he invoked his right to remain silent. We hold that Douglas's statements were not admitted in violation of *Miranda*, nor were they involuntary under Maryland common law, the Due Process Clause of the United States Constitution, and Article 22 of the Maryland Declaration of Rights. We also hold that the circuit court did not abuse its discretion when it declined to give the defense's proposed *voir dire* question. Accordingly, we affirm.

BACKGROUND

A. The Fatal Shooting

In the early evening of April 22, 2022, Ahmadou Gueye was socializing with friends in the parking lot of the apartments located at 7600 Maple Avenue in Takoma Park. Witnesses later testified that around 5:45 p.m. two gunshots were fired, seconds apart, and without warning. Several witnesses said they saw a young man wearing a mask that covered his entire face walk or run by Gueye at the time the shots were fired.

A police dispatcher for the Takoma Park Police Department was in his apartment, which overlooks the parking lot at 7600 Maple Avenue, when he heard the gunshots through his open window. He looked outside and saw "people running various directions." He also saw "a male lying on the ground on his back" in the parking lot, and another person

in a white shirt limping toward a restaurant on Sherman Avenue. The dispatcher called the police to report the gunshots immediately after observing the scene from his window. Although the shooting occurred in a location that was not covered by the apartment's surveillance cameras, police obtained surveillance footage from different vantage points that showed a person, wearing a white shirt, exit a vehicle in the parking lot at 7600 Maple, run toward where Gueye had been standing, and subsequently run away.

Officers from the Takoma Park Police Department who responded to the scene of the shooting began rendering aid to Gueye, whom they found lying on the ground, and called for an ambulance. As the paramedics arrived, the officers received additional calls about "a possible suspect running around the neighborhood." Officer Hogan Samels left 7600 Maple Avenue to respond to a call about "an individual bleeding from the leg" at 610 Kennebec Avenue, approximately half a mile away. After arriving at 610 Kennebec, officers saw a man exiting the doorway of the apartment building who matched the description in the call. Upon making eye contact with the officers, the man "retreated back into the building," but officers later saw him again in various locations at 610 and 612 Kennebec, the building next door.[4] Eventually, the officers "zeroed in" on a basement apartment unit in 612 Kennebec, where they believed the man was located. With the resident's assistance, the officers located a key to that unit and found the appellant,

[4] The apartments located at 610 and 612 Kennebec are in separate buildings connected by a laundry room, therefore it was possible to travel from 610 Kennebec to 612 Kennebec without going outside.

Abraham Jacob Douglas ("Douglas"), locked inside the unit's bedroom, bleeding from his left thigh. The police officers placed Douglas in handcuffs and attended to his wound while they waited for an ambulance to transport him to the hospital. Police then searched the bedroom and discovered a black mask and a shell casing on the ground, a bloody white shirt on the bed, and gun magazines, bullets, and a handgun hidden beneath the mattress.

Douglas received treatment at Suburban Hospital for a gunshot wound and was discharged a few hours later into police custody. Tragically, Gueye ultimately died from a single gunshot through his back.

Douglas was indicted by a grand jury on June 9, 2022 and charged with murder, use of a firearm in commission of a felony crime, and third-degree burglary. After proceedings began in the Circuit Court for Montgomery County, Douglas pleaded not guilty. On September 20, 2022, Douglas moved to suppress his interview with Det. Earle on the grounds that his statements were involuntary, and that Det. Earle violated *Miranda* by continuing to interrogate Douglas after he invoked his right to remain silent.

B. The Interview

In the early morning hours of April 23, 2022, Detective Charles Earle interviewed Douglas in an 8 x 10-foot booking area. After routine inquiries into Douglas's identity and whether he had taken medication at the hospital for his gunshot wound, Det. Earle said he was interested in hearing Douglas's side of the story "on how [he] got shot." He remarked that he had initially thought of Douglas as "a victim" because he had been shot, and told him "had you not went into that apartment, a hundred percent victim, a hundred percent."

Douglas responded that he entered the apartment "looking for anything" that "could cover the wound, help me out[.]"

Det. Earle interrupted Douglas and cautioned that he needed to advise him of his *Miranda* rights. He asked Douglas, "you can read and write, right?" Douglas affirmed, nodded, and added, "[b]ut I'm not writing no statement." Det. Earle reassured him, "I'm not asking you for a statement; but I want to read your rights to you and you're not, so you understand these, and if you want to stop, you can[.]" He then read the Advice of Rights form aloud,[5] which included the *Miranda* warnings, and placed the Form in front of Douglas, saying:

> [A]nd if you could initial here, here, here, and here, here and here, saying I read to you; and if you can answer yes or no, however you want to do, if you want to chat with me; and then if you would just sign here so I can get your side of the story what happened tonight.

The Form concluded with the written question, "Do you want to talk to us at this time?"

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[5] The Advice of Miranda Rights form contained the following advisements:

1. You have the right now and at any time to remain silent.
2. Anything you say may be used against you.
3. You have the right to a lawyer before and during questioning.
4. If you cannot afford to hire a lawyer, one will be appointed for you.
5. (*Note: #5 will only be used for an arrestee who will be charged as an adult.*) You have the right to be taken promptly before District Court Commissioner who is judicial officer not connected with the police. A Commissioner will inform you of each offense you are charged with and the penalties for each offense; provide you with a written copy of the charges against you; advise you of your right to counsel; make a pre-trial custody determination; and advise you whether you have right to a preliminary hearing before a judge at later time.
6. Do you understand what I have just said? Answer _________
7. Do you want to talk to us at this time? Answer ________

and provided a line Douglas could write his answer on. Douglas, his hands still handcuffed, wrote "NO" in capital letters on that line. Immediately thereupon, the following exchange occurred:

> [Det. Earle:] All right. You don't want to talk to me?
> [Douglas]: [No audible response].[6]
>
> [Det. Earle]: Okay.
> [Douglas]: Other than I was just afraid and I ran in the apartment trying to look for clothes and stuff.
>
> [Det. Earle]: Bro, if you want, if you want to talk to me, I want to hear that; but I --
> [Douglas]: But it's like, it doesn't matter anyways, brown, black and--[7]
>
> [Det. Earle]: Whoa, whoa, whoa, bro –
> [Douglas]: -- I'm just – like I was just walking through. I got fucking, I don't know what happened, bro. I don't know what happened. I don't even fucking remember what happened.

Det. Earle responded to Douglas and stated:

> Well, I would like to talk to you, but if you're, you, you kind of wrote no there, like you don't want to talk to me at this time; but you're talking to me. So, if you want to talk to me, you write yes, or you say you understand these and you can talk to me until you don't want to talk to me.

Douglas did not respond, but Det. Earle continued to talk to Douglas and said, "[y]ou got a bullet in you. Something happened." He then proceeded to give a speech about his experience as a detective in Baltimore City. **Id. at 11-12.** Det. Earle stated that he was

[6] Douglas did not respond, but the video recording of the interview shows him shaking his head "no."

[7] As Douglas points out in his brief, the transcript produced for the recording of the interview incorrectly transcribed this statement. On the recording, the statement he made sounds more like: "But it's like, it doesn't matter anyways, **bruh I'm Black**."

giving Douglas "an opportunity to tell [his] side of the story" because Douglas would not "want somebody else to paint a picture for [him] or, or box [him] into a corner[.]"

Det. Earle later asked Douglas, "[d]o you understand these series of rights I read to you[,]" to which Douglas said "[y]es." Det. Earle remarked that Douglas must "want to talk then because you're talking[,]" but told Douglas "when you want to stop, you can stop because I read you your rights; you say you understood them." Douglas said he was scared the police were going to "off [him]" with their "ARs[,]" after which Det. Earle asked more pointed questions and gave his theory of why and from whom Douglas was running. Then, as Douglas was in the middle of a lengthy explanation of why he feared the police were trying to kill him, Det. Earle asked Douglas if it would be "cool" if he asked Douglas a few things. Douglas shook his head "No" and said, "I don't even want to speak on certain stuff to [sic] that might . . . incriminate me in any type of way[.]" Rather than stop the interview at that point, Det. Earle allowed the discussion to continue, and throughout the course of it, asked Douglas "What happened[?]" In total, the interview lasted more than three hours.

C. Motion to Suppress

On June 13, 2022, Douglas filed an omnibus motion to suppress, among other things, all "statements admissions, and confessions" that were obtained by the State in violation of the common law and Douglas's constitutional rights. He then filed a supplemental motion to suppress on September 20, 2022, in which he clarified his argument that the entire custodial interrogation on April 23, 2022, should be suppressed as "the product of an improper inducement for [him] to speak freely[,]" and because the

officer's persuasions "grievously undermined the contemporaneous recitation of the *Miranda* warnings[.]" Douglas stated that the interrogation occurred in the early morning hours just after he had been released from the hospital, in a "small, cinderblock interview room[.]" Douglas contended that he had refused to provide a statement, but the detective unlawfully persisted, employing various strategies to elicit statements from him.

Douglas argued that the circumstances in his case were similar to those in *Logan v. State*, 164 Md. App. 1 (2005), where the detective, while advising the defendant of his *Miranda* rights, made statements like, "I won't use any of the information to harm you. No one out here is going to harm you or your family. You and I are talking. Believe me I will not allow anything to happen to you; okay?" (quoting *Logan*, 164 Md. App. at 14) (emphasis removed by Appellant's Supplemental Motion). Douglas argued that these statements were similar to Det. Earle's statement that Douglas was "100% a victim[.]" Douglas contended that the detective misled him to believe that he was only giving the *Miranda* warnings because Douglas ran into the apartment and that nothing Douglas said could incriminate him in the shooting. Douglas further argued that "[f]or the same reason," his statements were "the product of an improper inducement, and therefore, not voluntary."

The State filed an opposition in which it emphasized that Douglas interrupted the detective "four separate times" before the *Miranda* warnings could be read. According to the State, when Douglas wrote that he was unwilling to talk, the detective merely sought confirmation by asking, "[a]lright, you don't want to talk to me?" and then stating "OK"

when he saw Douglas shake his head. The State pointed out that when Det. Earle "began to take back the paper [Douglas] reinitiated conversation."

The State also argued that the detective did not improperly promise Douglas that he would not face legal consequences for the shooting, explaining that Det. Earle "made clear to [Douglas]" that going into the apartment "could mean consciousness of guilt for something [Douglas] had already done." The State pointed to Det. Earle's statement to Douglas that, had he not gone into the apartment, he would have been "100% [a] victim[;]" however, because Douglas fled into the apartment "it kinda changes things a little bit."

The State urged that Douglas did not rely "on any police statement" because he "did not make any confession at all" and "st[uck] with the same story he gave [Det. Earle] right from the beginning: that he was walking along, got shot, and did not know or remember what happened[,]" stating that it is "abundantly clear" that Douglas did not rely on any implied promise.

The State conceded that Douglas invoked his right to silence when he stated he "d[idn't] even want to speak about things that might incriminate me in any type of way" and that any statements made afterwards were inadmissible. However, the State argued that the statements made *prior* to this invocation should be admissible in its case-in-chief, and that the entirety of the interview be admissible for cross-examination if Douglas testified.

Detective Earle's Testimony

On November 4, 2022, Det. Earle appeared before the suppression court to give

testimony.[8] He explained that during the interview on April 23, 2022, at the Takoma Park Police Department, Douglas, clad in hospital clothing with a blanket over his head, appeared to be chilly. He attested, however, that the room's temperature was maintained at a "comfortable" level, "somewhere in between" 72- and 78-degrees Fahrenheit. He also said that he had not threatened Douglas "whatsoever" and described the interview as a "very cordial conversation[.]" Det. Earle informed the court that he read the Advice of Rights Form verbatim to Douglas, going line-by-line, and verified that Douglas understood the content and was proficient in English.

Det. Earle testified that Douglas interrupted him "three to four different times" before he could read the form, prompting him to try to "stop[]" Douglas from commenting so that he could finish reading him the *Miranda* rights.[9] Det. Earle explained that he "went to clarify" whether Douglas wished to talk after Douglas wrote "NO" on the Advice of Rights form because Det. Earle had already attempted "to stop him from talking" several times, so he "wanted to confirm" that Douglas had not "made an error."

Det. Earle also clarified that he used the phrase "a hundred percent a victim" only in the context of a hypothetical in which Douglas "had . . . not broke[n] into the

[8] Due to scheduling issues, Det. Earle testified on a date prior to the scheduled suppression hearing.

[9] During the hearing, the entirety of the recorded custodial interrogation was entered into evidence as State's Exhibit 7 and watched by the judge. State's Exhibit 7 showed Douglas interrupting Det. Earle, and Det. Earle, pointing to the Advice of Rights Form, asked "Do you understand the things I said to you? Yes or no." Douglas responded "Yes" to Det. Earle's question.

apartment[.]" He said the actual entry into the apartment "changed the dynamics[,]" as he was certain that Douglas would "be charged with the burglary of that apartment." Det. Earle communicated to Douglas his belief that by running away when police officers saw him at the apartment building on Kennebec Avenue, Douglas was either "running from somebody to escape from them" or Douglas was "running from the police . . . to get away from the police." Det. Earle explained that "had [Douglas] not broken into an apartment" he would have merely regarded Douglas as "a victim of a shooting."

Suppression Hearing

On the first day of the suppression hearing on November 28, 2022, the parties generally recycled the arguments they had presented on motion. The State conceded that the statements made by Douglas after he stated he "d[idn't] even want to speak about things that might incriminate me in any type of way[,]" were not admissible under *Miranda*, but argued that all of Douglas's statements prior to that point were admissible because only then did Douglas "make[] it clear that he d[id] not wish to talk and incriminate himself." The State also contended that the detective did not "minimize[] Miranda" or imply that Douglas was "100 percent a victim" and that he could not face legal consequences. The statement was not an impermissible inducement or promise of leniency, the State argued, because Det. Earle "actually makes it very clear to [Douglas] that he believes it's a possibility he's running from the police because he's afraid of getting in trouble."

Defense counsel countered that the detective's statement "you're 100 percent a victim[,]" contradicted the *Miranda* advice, "anything you say can and will be used against

you[.]" According to defense counsel, Det. Earle conveyed to him that "these *Miranda* rights only apply for going into that apartment," which both impaired the "validity of the *Miranda* rights" and the "voluntariness of the whole statement."

The State highlighted that under *Winder v. State*, 362 Md. 275 (2001), Douglas's statements were not involuntary because they were not made in reliance on anything the detective said. "When you watch" the video and understand the context, the State argued, "it's very clear . . . that the defendant is making . . . his own decisions as to what to say, and how to say it. To the point that, at one point in the interview, he even says that question I'm not going to answer, because that could incriminate me."

The trial judge further explored the arguments and cases cited by the State and defense counsel, and decided to reconvene the hearing after considering the parties arguments, including the cases cited, and reviewing the video, State's Exhibit 7.

Several days later, on December 1, 2022, the court recalled the case. After hearing further argument from counsel, the court delivered a comprehensive ruling. At the outset, the court found that Det. Earle's statements regarding Douglas being "100 percent a victim except [for] going into an apartment" did not vitiate the *Miranda* warnings. Concerning Douglas's invocation of his right to remain silent, the judge stated:

> He signed off on the form, but he does invoke his right to remain silent. I find that that was an unambiguous and unequivocal request to remain silent. Not just by him shaking his head. Even beforehand he said, I'm not going to write anything. Just check the box. The detective even said, you don't want to talk to me? And he shakes his head no.
>
> And then defendant starts making a statement and saying, I wasn't even there. I don't remember what happened. I was just walking through,

> and I don't F'ing remember what happened. It was around 11:10.
>
> The detective properly, like in *Lovelace* [*v. State*, 214 Md. App. 512 (2013)], says hold up. Woah. If you want to talk to me, I will talk to you, but you just said here you don't. And that part I think Detective Earle is completely in line with *Lovelace* in saying I've got to stop.
>
> And I find the statements made right then – there's no[] allegation about anything before *Miranda* being improper that I was asked to rule on that I know of, and his volunteered statements that the defendant made immediately after *Miranda* are clearly just blurts by him made after advice of rights. Not the result of any questioning whatsoever. Just read advice of rights and clarified that he did not want to talk to him. And then, when he does start trying to talk to him, the detective properly tries to say, hold on. You signed this form. I can't talk to you.

In sum, the court determined that the three statements Douglas made immediately after he wrote "NO" on the Advice of Rights Form "were voluntary after *Miranda* and also that they were blurted without questioning." The court next determined, however, that "[t]he problem is Detective Earle doesn't just stop . . . [at] now do you want to talk to me or not because I can't talk to you. You're giving me mis[-]directions, and I think that would be completely proper to do that by stop talking about the case[.]" The court reviewed portions of Det. Earle's subsequent "speech" and found that it was "not scrupulously honoring a right to remain silent."

Finally, although the court decided to suppress any statements made by Douglas after the three blurts under *Miranda*, the court determined Douglas's "entire statement to be voluntary[,]" explaining that Det. Earle did not make "threats or promises to help him,

[or] any inducements in any way.”[10]

D. Trial

Voir Dire

The parties proceeded to trial and appeared before the court on December 9, 2022, to select a jury. Douglas proposed the following *voir dire* question to the court:

> [I]s there any member of the panel likely to give more weight to the arguments and statements of the State’s attorney[?]

The court declined to include this question, reasoning that “the subject matter [was] generally covered” elsewhere, specifically referring to how the empaneled jury would be instructed that the attorneys’ arguments did not constitute evidence. The court expressed its view: “I think that a jury instruction at the end concerning statements, arguments of counsel, opening and closing, I don’t know that this is necessarily something for *voir dire*.” When the court asked for any objections, Douglas raised his objection for the record, stating, “I’ll just respectfully note my objections to not asking the question . . . is any member of the panel likely to give more weight to the argument of the State’s Attorneys.” The court duly acknowledged and overruled the objection based on the reasons previously articulated.

[10] As mentioned above, the suppression court suppressed all statements made by Douglas after the three that are challenged in this appeal, on the grounds that Det. Earle’s subsequent “long speech” constituted “inducements in order to begin a conversation” in violation of *Miranda*. We need not address this part of the suppression court’s ruling, as only the admissibility of the three statements challenged by Douglas is at issue in this appeal.

Jury Trial

The State presented 17 witnesses and numerous exhibits during the proceedings on December 12, 13, and 14, 2022.

Norberto Garcia, Jr., who lived at 7600 Maple Avenue, testified that around 5:45 p.m. on April 22, 2022, he was leaving the parking lot in his car when another car blocked him in. He saw a young man wearing a mask that covered his entire face, except for his eyes, exit this car and run "off to the side." He said that the young man was also wearing a "purse-type bag" over his shoulder. Garcia then heard a "loud noise" and turned to see the same young man "running towards the other exit of the parking lot" in the direction of Ritchie Avenue. However, he "couldn't see what actually caused the noise" and "wasn't too sure what it was" because he had music on in his car. Garcia did not stay to investigate the source of the loud noise because he was running late to pick up his girlfriend. The State showed Garcia a surveillance video of the parking lot, admitted at trial as State's Exhibit 3, on which Garcia identified the individual in the mask exiting the car that had blocked him in.

At the time of the shooting, Armani Keys, a police dispatcher for the Takoma Park Police Department, was in his apartment at 7520 Maple Avenue, which overlooks the parking lot. As previously noted, Keys testified that he was in his bedroom when he heard "two gunshots" through his open window. He looked outside saw "people running various directions," "a male lying on the ground on his back" in the parking lot, and another person in a white shirt limping toward a restaurant on Sherman Avenue. The State played

surveillance footage of the parking lot taken before the shooting for Keys, and he identified this same person in a white shirt walking, and then "starting to run" towards where he had later seen the person lying on the ground.

Officer Keith Johnson of the Takoma Park Police Department had been on patrol at the time of the shooting, and drove to 7600 Maple Avenue after receiving a call that shots had been fired. Off. Johnson was then joined by Officer Hogan Samels, also of the Takoma Park Police Department. Both officers "began rendering aid" to Gueye, who was lying on his back in the parking lot. Off. Johnson stated that when he removed a satchel bag from Gueye, a small white handgun fell out.

Off. Samels left the scene to respond to a call about "an individual bleeding" in one of the apartment units at 610 Kennebec Avenue, approximately half a mile away from the Maple Avenue location. He then received another call that "the individual might be running through the unit," which "definitely raised [his] suspicion" and "change[d] the way in which [he was] responding." He approached 610 Kennebec with his service weapon drawn and saw Douglas in the doorway "coming out of the door." Off. Samels attempted to communicate with Douglas, but Douglas "retreated back into the building."

The court played footage from Off. Samels's bodycam for the jury, which showed Off. Samels and other police officers "surround[ing] the building." Off. Samels explained that the officers had begun to suspect that Douglas was "potentially connected to what happened" in the parking lot at 7600 Maple Avenue after seeing Douglas attempt to exit 610 Kennebec and 612 Kennebec several times. Officers eventually got "eyes on the floor

plan" of the building, and "zeroed in on which apartment" Douglas was likely in. The officers then contacted the resident of that unit, who confirmed that she had not permitted anyone else to be present in her apartment. Off. Samels knocked on the door of the apartment and identified himself as an officer of the Takoma Park Police Department, but received no response. After repeated knocking, the officers located a key and obtained the resident's permission to enter the apartment.

The officers entered the apartment and approached another locked door, which Off. Samels "strongly suspected" was a bedroom. The officers heard Douglas say from inside the locked room, "I'm not armed, I'm not armed." Acting Sergeant Thomas Sims, also of the Takoma Park Police Department, later testified that Douglas also said, "I've been hit, I'm hit too." Bodycam footage played during Sgt. Sims's testimony showed Douglas saying, "[d]on't shoot me," and officers reassuring Douglas that he would not be harmed as long as he did not "do anything to make [them] respond." The bodycam footage then showed the officers entering the bedroom, instructing Douglas to roll towards them, and placing Douglas in handcuffs. Off. Samels testified that when the officers entered the bedroom, they saw Douglas lying on his back on a bed. According to Off. Samels, Douglas moved his hand "[o]ver the side of the bed and possibly under the bed," before he was placed in handcuffs. Once Douglas was "secured," the officers "conducted a cursory pat down for weapons," and Off. Samels began to treat a large wound on his left thigh.

After an ambulance transported Douglas to the hospital, Lieutenant Joseph Butler of the Takoma Park Police Department investigated the crime scenes at both 7600 Maple

and 612 Kennebec. At trial, Lt. Butler identified photographs he had taken in the parking lot at 7600 Maple that showed a spent cartridge case and bullet lying next to a silver Toyota, as well as a gold vehicle "that had a bullet wound [sic] in the front passenger window." Lt. Butler also identified the shell casing, bullet, and a gun found at the scene, and the State entered these items into evidence. The State then had Lt. Butler identify photographs that he had taken in the apartment at 612 Kennebec where Douglas had been arrested. Lt. Butler identified several items in these photographs at trial, including a black mask and a shell casing found on the floor of the bedroom. He also identified a handgun, two gun magazines, and bullets discovered under the mattress pad of one of the beds, and a purse and bloody shirt found on top of one of the beds.[11]

Jan Rivera, the resident of the apartment, testified that she did not keep guns, ammunition, or gun magazines in her apartment. She examined several of the same photographs as Lt. Butler, and stated that the shell casing, gun, gun magazine, bullets, bloody shirt[12] and purse discovered after Douglas's arrest were not hers.

On the second day of trial, defense counsel renewed their objection to the court's

[11] Lt. Butler identified each item as it was introduced into evidence, as well as on the photographs taken at the scene, with the exception of the purse, which was not introduced into evidence, but was identified on the photograph admitted as State's Exhibit 62.

[12] Lt. Butler testified that the bloody shirt looked like a shirt "that would belong to a little girl" because it "had like little bears or something on the front of it." However, the photograph of the shirt admitted as State's Exhibit 54 depicts a long-sleeved shirt large enough for an adult man. Rivera testified that State's Exhibit 54 "appears to have clothing that is not ours."

ruling on their motion to suppress Douglas's interview with Det. Earle. Over the renewed objection, the court permitted the State to introduce into evidence a video recording of the portion of Douglas's interview with Det. Earle where he made the three statements challenged in this appeal.[13] The video was played before the jury while the State asked Det Earle questions about the interview. Det. Earle also reviewed surveillance footage of the parking lot at 7600 Maple Avenue, and identified Douglas as a person in a "white shirt" running out of the parking lot and up the street.

Gregory Klees, a forensic firearms examiner for the Bureau of Alcohol, Tobacco, Firearms & Explosives ("ATF"), testified as an expert witness about the consistency of marks made on the spent shell casings found at 612 Kennebec and the fired bullet found at 7600 Maple, with the gun found under the mattress at 612 Kennebec. Klees testified that using his methodology, he determined that the spent casings and fired bullet could not have been fired by the gun found in the parking lot at 7600 Maple. However, Klees also testified that he "test fired" the gun found at 612 Kennebec using "comparable" ammunition to the spent casings and fired bullet, and determined that the markings made by the test fires were "the same" as the markings on the spent casings. Klees stated that it was a "practical

[13] The State removed the portion of the video in which Douglas wrote "NO" on the Advice of Rights form and Det. Earle said "All right. You don't want to talk to me? Okay." The State told the trial judge that it did this "so that we are not commenting on post-arrest silence."

certainty" that the gun found at 612 Kennebec had fired the spent casings.[14]

Dr. Constance DiAngelo, who, at the time of the incident, was an assistant medical examiner in the Office of the Chief Medical Examiner in Washington D.C., testified that she performed an autopsy on Gueye on April 23, 2022. Dr. DiAngelo stated that Gueye died from a gunshot wound to his back, and that based on an entry wound on Gueye's lower right back and an exit wound on his left chest, the gun was fired from behind Gueye, within two inches of his body.

The State rested after Dr. DiAngelo's testimony, and Douglas moved for judgment of acquittal on all charges. The court denied Douglas's motion in its entirety. The defense published surveillance footage taken from the perspective of a restaurant on Sherman Avenue it had earlier introduced, and then rested. At the conclusion of the four-day trial, the jury rendered a verdict, finding Douglas guilty of first-degree murder, use of a firearm in the commission of a felony, and third-degree burglary.

DISCUSSION

I.

Suppression of Douglas's Statements to Det. Earle

The appeal concerns the suppression court's decision not to suppress the following three statements, which were made by Douglas after he invoked his *Miranda* right to

[14] Klees also compared test fired bullets from the gun found at 612 Kennebec to the bullet found at 7600 Maple and found that the "rifling" marks on the bullets matched. Klees stated that the bullet found at 7600 Maple also "could have been fired from any other gun with similar rifling," but not from the gun found at 7600 Maple.

remain silent:

> (1) "Other than I was just afraid and I ran in the apartment trying to look for clothes and stuff."[15]
>
> (2) "But it's like, it doesn't matter anyways, brown, black, and--"
>
> (3) "I'm just – like I was just walking through. I got fucking, I don't know what happened, bro. I don't know what happened. I don't even fucking remember what happened."

The parties do not dispute that Douglas was in custody, or that he unequivocally invoked his *Miranda* right to remain silent when he wrote "NO" on the Advice of Rights Form. The central issues before us are first, whether Douglas's statements immediately following his invocation of his *Miranda* right to remain silent were in response to impermissible interrogation by Det. Earle; and second, whether Douglas's statements were rendered involuntary by Det. Earle's conduct during the interview.

A. Parties' Contentions

Douglas contends that the suppression court erred in denying his motion to suppress because Det. Earle "chose not to accept" his unequivocal assertion of the *Miranda* right to remain silent. According to Douglas, *Miranda* draws a hard line in the sand, prohibiting any further questioning by an interrogating officer after a suspect unequivocally invokes his right to remain silent. In support of this argument, Douglas cites language in *Miranda* instructing that "[i]f the individual indicates in any manner, at any time prior to or during

[15] The transcript on which we rely is a transcript of State's Exhibit 7, the video recording of the interview, because the trial transcript recorded much of the interview as "(Unintelligible)."

questioning, that he wishes to remain silent, the interrogation must cease." (emphasis removed) (quoting Miranda, 384 U.S. at 473). In Douglas's view, Det. Earle asked an "improper, second-guessing question" in violation of Miranda when he said "All right. You don't want to talk to me?" Douglas argues that a "reasonable police officer would understand that questioning the unequivocal assertion of the right to remain silent is the functional equivalent of interrogation."

Douglas further argues that Det. Earle's violation of his *Miranda* right to remain silent and use of "coercive techniques" such as "improper assurances before *Miranda*" combined to render his statements involuntary. According to Douglas, "[c]ourts recognize that interrogation techniques that may not otherwise be coercive can quickly become coercive when coupled with violations of a defendant's *Miranda* rights or deceptions about a defendant's rights." He cites to *Collazo v. Estelle*, in which the Ninth Circuit concluded that a police officer's "failure to comply with *Miranda*" during an interrogation "aggravated [the] coercive tactics" he used. 940 F.2d 411, 418 (9th Cir. 1991). The Ninth Circuit then held that the officer's "overreaching behavior violated not only *Miranda*, but also the general [c]onstitutional prohibition against coercive interrogation practices likely to result in involuntary responses." *Id.* at 419. Douglas maintains that Det. Earle "minimized" the *Miranda* warnings through "improper assurances," including statements like "[h]ad you not went in that apartment, [you would be] a hundred percent [a] victim, a hundred percent" and "[y]ou got shot, bro[,] I'm here for you, you know?" (emphasis removed). Douglas argues that Det. Earle's "coercive techniques and deliberate stepping

on Mr. Douglas' invocation of his right to silence *before* and *after* the *Miranda* advisement are decisive factors indicating that Mr. Douglas' statements after *Miranda* . . . were neither voluntary nor spontaneous blurt outs." Therefore, Douglas maintains, the circuit court erred when it determined that his statements were voluntary.

Finally, Douglas argues that the admission of his statements was prejudicial, because they "tended to negate the inferences that [his] counsel asked the jury to draw in closing that were consistent with his innocence." Specifically, Douglas contends that his statement, "I ran in the apartment trying to look for clothes and stuff," constituted an admission to the charge of third-degree burglary.

The State counters that the suppression court properly admitted the three statements challenged by Douglas because he "reinitiated" the exchange with Det. Earle. The State emphasizes that Douglas "interrupted Detective Earle so frequently that the detective struggled to even spell out Douglas's *Miranda* rights" and that the suppression court "likened [Douglas's] comments to a blurt." The State asserts that though "police must end the custodial interrogation" once a defendant invokes *Miranda*, the interrogation can continue if the defendant "clearly indicates that he wishes to resume talking, by reinitiating conversations with police about the events at issue." (citing *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981). The State posits that Douglas "reinitiated the conversation immediately" after he wrote "NO" on the Advice of Rights Form.

The State acknowledges that Det. Earle "confirmed aloud" that Douglas was invoking his *Miranda* right to remain silent, but argues that Douglas's subsequent

statements were "spontaneously volunteered." The State characterizes Douglas's statements as "unforeseeable responses" and argues that Det. Earle "did nothing to prompt" them. Rather, the State contends, Det. Earle "tried to ensure . . . that [Douglas] understood the protections afforded him under *Miranda*." Accordingly, the State argues that Douglas's statements were "[a]t the very least . . . admissible as an unexpected blurt."

Because Douglas's incriminating statements were "akin to a blurt[,]" the State says, an "analysis" into whether the statements were involuntary "does not apply." Nonetheless, under the totality of the circumstances, the State maintains that the statements were voluntary. More specifically, the State asserts that the detective's conduct was not coercive because, among other things, the detective "intimated only the truth[,]" Douglas did not indicate any "discomfort with the interrogation process," and "the interview was cordial."

Finally, the State claims that "admission of the statements was harmless" because other evidence in the case "made plain that Douglas *had*, in fact, committed a third-degree burglary." The State argued that aside from Douglas's statement "that he ran in the apartment looking for clothes," his three statements "were at best nonsensical and could not, as a practical matter, have affected the verdict."

The State also chronicled the "overwhelming evidence" against Douglas, from other sources, that he was the man in the mask who shot Gueye. The State points to eyewitness testimony from Nasir Hackett and Norberto Garcia that they had seen a masked man run through the parking lot after hearing a "shot" or a "loud noise"; surveillance footage of Douglas getting out of a car and running over to where the victim, Gueye, was standing;

and testimony from Officer Samels that Douglas repeatedly retreated from officers responding to reports of "someone bleeding from the leg in one of the apartments at 610 Kennebec."

The State also highlights that when police announced themselves outside the apartment at 612 Kennebec where they located Douglas, he stated that he had been "hit *too*," suggesting "that he knew that someone else (i.e., Gueye) had been shot first." Additionally, a search of the bedroom in which Douglas was found revealed a handgun underneath the mattress, which the State's ballistics expert testified "likely fired" bullets found in the parking lot where Gueye was killed. The police also found bullets, gun magazines, a spent shell casing, a black ski mask, and a bloody white shirt in the apartment. The State argues that this evidence "established that the same person who fled the scene fired one shot in addition to the one that killed Gueye," and that Douglas, who was hiding from police in an apartment at 612 Kennebec, suffering from a gunshot wound to the leg, was that person.

Douglas, in riposte, says the State's harmless error argument focuses on the inferences the State asked the jury to draw during closing arguments. Douglas highlights "the absence of direct, percipient evidence" identifying him as the person who shot Gueye. As his statements to Det. Earle "demonstrated a consciousness of guilt," Douglas argues their admission "effectively countered the defense statements and arguments accounting for the circumstances of the case in a manner consistent with innocence" and "made it much more likely" that the jury would agree with the State's arguments and proposed

inferences.

B. Standard of Review

"When reviewing the denial of a motion to suppress, we review the record of the suppression hearing, not the record of the trial." *Savoy v. State*, 218 Md. App. 130, 139 (2014) (citing *Byndloss v. State*, 391 Md. 462, 477 (2006)). "The validity of a suppression ruling is a mixed question of law and fact." *Richardson v. State*, 481 Md. 423, 444 (2022) (citation omitted). When we review a suppression court's ruling, we consider "only the facts and information contained in the record of the suppression hearing." *Longshore v. State*, 399 Md. 486, 498 (2007) (citations omitted). We "view the evidence and inferences that may be reasonably drawn therefrom in a light most favorable to the prevailing party on the motion," *Lee v. State*, 418 Md. 136, 148 (2011) (quotation omitted), and afford "great deference" to the finder-of-fact "with respect to the determination and weighing of first-level findings of fact[.]" *Brewer v. State*, 220 Md. App. 89, 99 (2014) (citation omitted). Indeed, we will refrain from disturbing the suppression court's factual determinations unless they are clearly erroneous. *Id.* (citation omitted). However, "[w]here a party complains that the trial judge's action abridged a constitutional right," this Court's review of issues of law is *de novo*. *Savage v. State*, 455 Md. 138, 157 (2017) (citations omitted).

In this case, Douglas alleges that his constitutional rights were violated—specifically, his constitutional right to remain silent under *Miranda* and the Fifth and Fourteenth Amendments to the U.S. Constitution – "as a result of the trial judge's

discretionary decision to allow" the statements in. *Reynolds v. State*, 461 Md. 159, 175 (2018). We will thus conduct "[o]ur own appraisal of [Douglas's] constitutional arguments and review the trial judge's admissibility determinations for an abuse of discretion." *Id.* at 175-76. Whether a statement was taken in violation of *Miranda* is a legal determination that we review *de novo*. *Madrid v. State*, 474 Md. 273, 309 (2021).

"The trial court's determination regarding whether a confession was made voluntarily is a mixed question of law and fact." *Moore v. State*¸ 422 Md. 516, 528 (2011) (quoting *Winder v. State*, 362 Md. 275, 310-11 (2001)). "An appellate court reviews without deference a trial court's ultimate determination as to whether a confession was voluntary." *Madrid v. State*, 474 Md. 273, 309 (2021).

C. Legal Framework and Analysis

In Maryland, the introduction of a confession as evidence against an accused at trial is admissible only after it is determined that the confession was "(1) 'voluntary under Maryland non-constitutional law, (2) voluntary under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article 22 of the Maryland Declaration of Rights, and (3) elicited in conformance with the mandates of *Miranda*[.]'" *Costley v. State*, 175 Md. App. 90, 106 (2007) (quoting *Winder v. State*, 362 Md. 275, 305-06 (2001)).

1. *Miranda* and Its Progeny

In the landmark decision *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court established that statements obtained from a defendant during

custodial interrogation are inadmissible at trial unless the defendant has knowingly and voluntarily waived his rights under the Fifth Amendment, including the right to remain silent. The Fifth Amendment shields a defendant from being "compelled in any criminal case to be a witness against himself[.]" U.S. CONST. amend. V. The *Miranda* warnings serve to "ensur[e] that [the] suspect knows that he may choose not to talk to law enforcement officers, to talk only with counsel present, or to discontinue talking at any time." *Colorado v. Spring*, 479 U.S. 564, 574 (1987). Specifically, the requirements under *Miranda* are that the police must warn a suspect that:

> he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.

Miranda, 384 U.S. at 444.

The Supreme Court in *Miranda* emphasized that there is "an intimate connection between the privilege against self-incrimination and police custodial questioning." *Miranda*, 384 U.S. at 458. The Supreme Court explained that "if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent," and that "such a warning is an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere." *Id.* at 467-68. The Court indicated that it would "not pause to inquire" or "speculat[e]" whether a defendant was already aware of this right. *Id.* at 468-69. Furthermore, the Court held that an "explanation that anything said can and will be used against the individual in court" is required to "make the individual more acutely aware . . . that he is not in the presence of

persons acting solely in his interest." *Id.* at 469. If a suspect sufficiently "indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease." *Id.* at 474 (footnote omitted).

Once the defendant unambiguously invokes the *Miranda* right to remain silent, "interrogation must cease." *Miranda*, 384 U.S. at 474. In *Rhode Island v. Innis*, 446 U.S. 291 (1980), the Supreme Court provided further clarification on which methods of questioning constitute "interrogation" for the purpose of *Miranda*. In *Innis*, the defendant was arrested and later indicted for the kidnapping, robbery, and murder of a taxicab driver with a sawed-off shotgun. *Id.* at 294-95. The defendant was advised of his *Miranda* rights, and "stated that he understood these rights and wanted to speak with a lawyer." *Id.* at 294. The defendant was then placed in the back seat of a squad car for transport to a police station. *Id.* at 294. During the drive, the two officers in the front seats began conversing with each other, and one of the officers noted that there was a "school for handicapped children . . . located nearby . . . and God forbid one of them [] find a weapon" and hurt themselves. *Id.* at 294-95. The defendant then interrupted the conversation and offered to show police officers where the missing shotgun was located. *Id.* at 295.

In determining whether the defendant was improperly interrogated, the Court saw fit to clarify that the definition of interrogation includes both "express questioning" and "its functional equivalent." *Id.* at 301-02. The Court explained that the "functional equivalent" of interrogation encompasses any practices "that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Id.* at 301. While

the Court emphasized that this concept "focuses primarily upon the perceptions of the suspect," it emphasized that "the definition of interrogation can extend only to words or actions on the part of police officers that they *should have known* were likely to elicit an incriminating response." *Id.* at 301-02. Applying this definition, the Supreme Court observed that as the police officers' conversation in *Innis* consisted of "no more than a few off hand remarks[,]"the officers could not have known that their conversation would elicit an incriminating response. *Id.* at 303.

The Supreme Court of Maryland has likewise emphasized that the test of whether interrogation has occurred is "whether the words and actions of the officer were reasonably likely to elicit incriminating responses" from the suspect, *Drury v. State*, 368 Md. 331, 335-36 (2002) (quoting *Innis*, 446 U.S. at 300), and that whether statements by police officers constitute interrogation is "usually fact-dependent." *Phillips v. State*, 425 Md. 210, 218 (2012). Furthermore, as the interrogation encompasses only practices that police officers "*should have known* were likely to elicit an incriminating response," *Innis*, 446 U.S. at 302, the subjective "intent of the police is not irrelevant[.]" *Blake v. State*, 381 Md. 218, 233-34 (2004).

In *Phillips*, the Supreme Court of Maryland explored the interplay of the subjective intent of the police and objective perspective of a suspect more directly. During an interview, the detective told the suspect that he "couldn't speak to him regarding this case[,]" and "if he decided he wanted to talk and he wanted to tell the story to me that he could do that" if he "reaffirm[ed] that he didn't want counsel[.]" *Phillips*, 425 Md. at 215.

In concluding that these statements were impermissible interrogation, the Court considered both their effect on an objective listener and the apparent intent of the officer in making them:

> The message conveyed when the police, having first established a rapport with a suspect who has been arrested and may be facing imminent incarceration, tell the suspect that they want to hear his or her side of the story is that the police are trying to be fair and that dialogue may be helpful to the suspect. That, of course, is rarely the case in fact, but the objective, and sometimes the reality, is that the suspect will believe it to be so and will respond accordingly.

Id. at 223. The Court clarified that it did not "condemn the police for using legitimate tactics," including seeking out a suspect's "side of the story," but cautioned that officers must ensure the suspect has first received the *Miranda* warnings and "validly waived the right to remain silent and the right to consult with an attorney." *Id.* at 224.

Reinitiating Interrogation

Even where the *Miranda* right to remain silent has been invoked by a suspect, interrogation may sometimes be "reinitiated." In *Michigan v. Mosley*, 423 U.S. 96 (1975), the Supreme Court addressed circumstances under which police may re-initiate interrogations after suspects invoke their right to remain silent. The Court held that "the admissibility of statements obtained after the person in custody has decided to remain silent depends under *Miranda* on whether his 'right to cut off questioning' was 'scrupulously honored.'" *Id.* at 104 (footnote omitted). In concluding that the defendant's rights had been scrupulously honored, the *Mosley* Court observed that the police ceased their first interrogation of the defendant immediately upon assertion of the right, and only re-initiated

after the passage of time. Furthermore, the second interrogation focused on a different topic, was conducted by a different officer, and took place at a different location. *Id.* at 104-05.

Interrogation may also be re-initiated by a suspect. In *Lovelace v. State*, we examined a situation in which Mr. Lovelace, the suspect, "continued to speak" after invoking his *Miranda* right to remain silent. 214 Md. App. 512, 519 (2013). Lovelace was arrested in connection with the death of Alan Zurita, who, along with another man, Jackson, had been a passenger in a car Lovelace was driving. *Id.* at 516-18. After Zurita got into a fight with Jackson and shot him, Lovelace stopped the car on the shoulder of the road, where Jackson shot and killed Zurita. *Id.* Lovelace then drove Jackson to the hospital and left him there.

Lovelace filed a motion to suppress the statements he made during two interviews with police at the State police barracks under *Miranda*. *Id.* at 520. During the first interview, the police read Lovelace an "Advice of Miranda Rights" form, and Lovelace signed the form acknowledging that he had been read his rights. *Id.* at 521-22. According to the police, "[t]he next thing that occurred was [Lovelace] asked if the guy died." *Id*. at 522. The police told Lovelace someone had died, and Lovelace invoked his *Miranda* right to remain silent. *Id.* However, as the police began writing "[d]eclined to be interviewed" on the *Miranda* form, Lovelace "made the comment that all he did was take somebody to the hospital." *Id.* At the suppression hearing, one of the police officers was asked whether he had initiated interrogation prior to that comment:

> [PROSECUTOR]: **What, if anything, did you do to initiate conversation?**
>
> [WITNESS]: **Nothing. I was writing the "Declined to be interviewed," when [appellant] made the comment that all he did was take somebody to the hospital. And myself and Corporal Batchell explained to him, you know, "We can talk to you but, you know, we'll listen to you as long as you want to talk with us, but we can't do that until you waived your Miranda Rights if you want to talk to us or have any further conversation, because we can't violate those rights.**
>
> [PROSECUTOR]: **What did you do at that point?**
>
> [WITNESS]: **At that point, [appellant] indicated that, in fact, he did want to speak to us. I took another Miranda form and again, went through his Miranda Rights with him again.**

Id. at 522-23. After being read his *Miranda* rights a second time, Lovelace signed a waiver and proceeded to tell the police that he had found Jackson on the side of a building "bleeding and gagging and sweating" and then drove him to an emergency room and left. *Id.* Approximately two and a half hours later, the officer interviewed Lovelace again "in the same room as the first interview." *Id.* The officers did not re-advise Lovelace of his *Miranda* rights, but "remind[ed] [him] that, in fact, his *Miranda* [r]ights . . . were still in effect." *Id.* (internal quotes removed).

On appeal, Lovelace argued that the statements from both interviews should be suppressed under *Mosley* because there was "never a break in communication" between the police and Lovelace during the first interview, and the police failed to stop the interview to allow the passage of time prior to re-advising Lovelace and resume questioning. *Id.* at 521. We determined that "*Mosley* d[id] not govern the admissibility" of the statements Lovelace made during the second interview, as "it was [Lovelace] himself who reinitiated

the conversation with the police after he invoked his right to remain silent." *Id.* at 534. We further observed that there was "no evidence that [Lovelace] was coerced into reinitiating conversation with the police officers," as Lovelace "continued to speak nonstop" after invoking his *Miranda* right to remain silent. *Id.* at 540. Accordingly, we held that admission of the statements "did not violate [Lovelace's] Fifth Amendment right to remain silent under *Miranda*." *Id.* at 534; *see also Braboy v. State*, 130 Md. App. 220, 232 (defendant "reinitiated the conversation with [] subsequent inquiries" concerning subject of interrogation).

Volunteered Statements and "Blurts"

Incriminating statements that are "blurted out or volunteered," need not reinitiate interrogation to be admissible, even if a suspect has already invoked the *Miranda* right to remain silent. In *Miranda*, the Supreme Court declared that "[v]olunteered statements of any kind are not barred by the Fifth Amendment." 384 U.S. at 478. In other words, *Miranda* does not prohibit the admission of statements that a suspect makes "freely and voluntarily" in the absence of "compelling influences." We recognized this exception to *Miranda* shortly after it was decided, holding that a suspect who "blurted out or volunteered" incriminating statements while the *Miranda* warnings were being read to him could not claim *Miranda* protection, as he did not make those statements as "the result of questioning initiated by law enforcement officers." *Richardson v. State*, 6 Md. App. 448, 452 (citation omitted).

After the Supreme Court clarified the definition of interrogation in *Innis*, we considered *Costley v. State*, in which the defendant sought to suppress statements he made to a police officer while the officer transported him to a detention center following his arrest. 175 Md. App. 90, 97 (2007). The police officer asked the suspect for his social security number to fill out a police detention log, to which the suspect responded, "I'm not telling you shit." *Id.* at 97-98. The officer then said, "That's good, I wouldn't cooperate either . . . you have the upper hand here." *Id.* at 98. The suspect retorted that the officer had the upper hand, and the officer agreed. *Id.* The suspect then made unprompted incriminating statements. *Id.*

We ruled that "there was nothing in [the officer's] conversation that should have made the officer aware that his questions would likely elicit an incriminating response." *Id.* at 107. We further reasoned that "the officer's comments might have been unwise, but . . . [they] were not questions and did not relate to the crime." *Id.* Though we concluded that the suspect's statement, "I'm not telling you shit," was not sufficient to invoke the *Miranda* right to remain silent, we stated in dicta that a contrary result "would not render the statements [the suspect] made" when he was interrogated almost two hours later inadmissible, relying on the Supreme Court's holding in *Mosley* that "a defendant's invocation of his right to remain silent does not preclude later questioning for an indefinite period." *Id.* (citing *Mosley*, 423 U.S. at 102-03).

Costley concerned statements made by an officer that "were not questions." *Id.* But "a routine, general question not designed to elicit any information about the specific

criminal offense" is likewise not interrogation. *Fenner v. State*, 381 Md. 1, 15 (2004) (asking defendant during bail hearing "if there was anything he would like to tell about himself" is not interrogation). An officer's statements may even exceed the bounds of "routine, general question[s]" without constituting interrogation. *Id.* In *Smith v. State*, 414 Md. 357 (2010), the Maryland Supreme Court reviewed the admissibility of a suspect's confession to possession of crack cocaine. Police officers had executed a search warrant at the suspect's residence. *Id.* at 361. Prior to searching the premises, the officers detained all the occupants of the residence, including the suspect. *Id.* The officers then conducted a search of the residence and discovered what appeared to be crack cocaine hidden in various locations. *Id.* at 362. The officer leading the investigation presented a plastic bag of suspected crack cocaine to the detained occupants and said, "I am going to arrest everyone here." *Id.* at 362-63. "Almost instantaneously" after the officer announced his intention to arrest all the occupants, the suspect stated that the drugs were all his. *Id.* at 363. The Court held that the suspect's confession was admissible under *Miranda*, reasoning that "not every question posed to a suspect in custody . . . constitutes interrogation." *Id.* at 366.

Analysis

Returning to the case before us on appeal, we recognize that before Douglas "can claim the benefit of *Miranda*[,]" he "must establish two things: (1) custody; and (2) interrogation." *State v. Thomas*, 202 Md. App. 545, 565 (2011) (citation omitted), *aff'd*, 429 Md. 246 (2012). The parties agree that Douglas was in custody, but

disagree over whether Det. Earle's statement, "All right. You don't want to talk to me? Okay," constituted interrogation, such that Douglas's *Miranda* rights were violated by the introduction of his subsequent statements at trial. We hold that Det. Earle's statement did not constitute impermissible interrogation, as Det. Earle did not have "reason to know that his conduct was reasonably likely to elicit an incriminating response." *Drury v. State*, 368 Md. 331, 341 (2002). We agree with the circuit court that Douglas's three statements were "volunteered statements" that were "[n]ot the result of any questioning whatsoever." Therefore, we hold that the admission of Douglas's statements at trial did not violate his *Miranda* rights.

The parties do not dispute that Douglas unambiguously invoked his *Miranda* right to remain silent when he wrote "NO" in capital letters on the Advice of Rights Form. Douglas wrote "NO" in response to the question, "Do you want to talk to us at this time?" after Det. Earle read Douglas his *Miranda* rights and Douglas confirmed that he understood them. Douglas therefore "indicat[ed] . . . prior to or during questioning" that he intended to remain silent with respect to any questioning. *Miranda*, 384 U.S. at 474. Det. Earle was therefore obligated to cease any interrogation after Douglas wrote "NO" on the Advice of Rights Form. *Latimer*, 49 Md. App. at 591 ("once the right to silence has been expressed the police must at that time cease their interrogation"). We find that Det. Earle complied with this obligation, as his statement, "All right. You don't want to talk to me? Okay," did not constitute "express questioning or its functional equivalent." *Innis*, 446 U.S. at 300-01.

As Douglas points out in his brief, the statements he challenges were, in a sense, "a direct response" to Det. Earle's statement, "you don't want to talk to me?" This is evident from the nature of the interaction that occurred after Det. Earle's statement; Douglas shook his head "no," and then began the first challenged statement with "[o]ther than." It bears emphasizing that the beginning of this statement was not truly made "unilaterally and unprompted," if only to clarify that a suspect's statements need not be either of those things in order to fall outside the realm of *Miranda* protection. (emphasis added). *Miranda* does not protect a suspect's response to a question that does not constitute interrogation under *Innis*, because in the absence of "express questioning or its functional equivalent," any incriminating statement the suspect makes is necessarily a "[v]olunteered statement."

This conclusion flows naturally from the language of the *Miranda* decision itself. After establishing the requirement that the *Miranda* warnings be read prior to custodial interrogation, the Supreme Court clarified:

> In dealing with statements obtained through interrogation, we do not purport to find all confessions inadmissible. Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence. **The fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police without the benefit of warnings and counsel, but whether he can be interrogated**.

Miranda, 384 U.S. at 478 (emphasis added). As mentioned above, *Miranda* does not prohibit the admission of statements that a suspect makes "freely and voluntarily" in the absence of "compelling influences." *Id.* Despite the frequent characterization of volunteered statements as "blurts," nothing in the *Miranda* decision itself or its progeny

suggests that a statement must be entirely unprompted to be excluded. Even a direct response to a statement by an officer is admissible under *Miranda* so long as the officer's statement is not, from the perspective of an objective person in the suspect's shoes, "reasonably likely to elicit an incriminating response." *Drury*, 368 Md. at 341. As our Supreme Court held in *Smith v. State*, "not every question posed to a suspect in custody" is interrogation. 414 Md. at 366. *Cf. Schmidt v. State*, 60 Md. App. 86, 99 (1984) ("it is generally agreed that *Miranda* does not apply to . . . the routine questions asked of all arrestees while being processed").

We agree with the circuit court that Det. Earle's statement, "All right. You don't want to talk to me? Okay," was not interrogation. By its terms, this statement invited nothing more than simple confirmation, which Douglas initially provided by shaking his head "no." It clearly did *not*, from the perspective of an objective person in Douglas's shoes, invite further statements that placed Douglas near the scene of a homicide fleeing from the police in fear. When a suspect makes a statement in response to a question that plainly does not invite the disclosure of incriminating information, he does not make that statement as "the result of questioning initiated by law enforcement officers." *Richardson v. State*, 6 Md. App. 448, 452 (citation omitted). Rather, his response constitutes the sort of "[v]olunteered statement" that the Supreme Court deemed admissible in *Miranda*. 384 U.S. at 478.

In *Tindle v. United States*, 778 A.2d 1077 (D.C. 2001), the Court of Appeals for the District of Columbia addressed similar statements made by a detective immediately after a

defendant invoked the right to remain silent under *Miranda*. In *Tindle*, the defendant was arrested following an altercation in which he stabbed another person. *See id.* at 1079-80. Prior to interrogation, the detective advised the defendant of his *Miranda* rights and, as in the instant case, presented him with an Advice of Rights waiver form. *Id.* at 1080. In response to the question "[d]o you want to make a statement at this time without a lawyer," the defendant initially marked "no." *Id.* (internal quotes omitted). The detective then "told him if you answer that no, I can't talk to you any more," and further "said[,] take some time to think about whether you want to answer." *Id.* (internal quotes omitted). After a brief pause, the defendant then changed the response on the form to "yes." *Id.*

The court held that the defendant had unequivocally invoked his *Miranda* right to counsel, and that the detective's subsequent statements had violated this right and rendered the defendant's confession inadmissible. *See id.* at 1083-84. In so holding, the court determined that the defendant changed his answer on the waiver form in response to post-invocation interrogation "at the instance of the authorities." *Id.* at 1083 (quoting *Edwards v. Arizona*, 451 U.S. 477, 486-87) (internal quotes omitted). The court did not explicitly analyze whether the detective's statements were "reasonably likely to elicit an incriminating response."[16] *Drury*, 368 Md. at 341. Nevertheless, comparison of the fact

[16] This analysis may have been omitted because the government *conceded* that the detective's statements "violated the *Edwards* rule" against interrogation after the invocation of the *Miranda* right to counsel. *Tindle*, 778 A.2d at 1083 (internal quotes omitted).

pattern in *Tindle* to the instant case illustrates the line between benign confirmatory questions and impermissible interrogation under that standard.

Unlike the detective in *Tindle*, Det. Earle did not encourage Douglas to "take some time" to think about his decision to invoke the *Miranda* right to remain silent. *Tindle*, 778 A.2d at 1080. Instead, as the circuit court observed, Det. Earle attempted to *prevent* Douglas from continuing to speak right after he invoked his right. ("The detective properly, like in *Lovelace* [*v. State*, 214 Md. App. 512 (2013)], says hold up. Woah. If you want to talk to me, I will talk to you, but you just said here you don't."). Although some of the language used by the detective in *Tindle* is similar to that used by Det. Earle, the detective in *Tindle* took a critical step into the zone of impermissible interrogation when he explicitly encouraged the defendant to rethink his decision to invoke his *Miranda* rights. It was precisely this step that rendered the detective's statements "reasonably likely to elicit an incriminating response." *Drury*, 368 Md. at 341.

Here, because Det. Earle's question did not invite Douglas to reconsider his invocation of the *Miranda* right to remain silent, it was not "reasonably likely to elicit an incriminating response." *Id.* We are not persuaded that Det. Earle should have known that his statements would likely evoke an incriminating response from Douglas. Det. Earle merely confirmed Douglas's desire to remain silent, and he "cannot be held accountable for the unforeseeable result" of Douglas volunteering information pertinent to the case afterwards. *Innis*, 446 U.S. at 301-02. Accordingly, Douglas's responses to that question

were not the product of interrogation, but rather constituted "[v]olunteered statements" that fall outside the scope of *Miranda* protection. *Miranda*, 384 U.S. at 478.

Douglas's statements are similar to the uninvited statement by the defendant Lovelace, immediately after invoking his *Miranda* right to remain silent, that "all he did was take someone to the hospital." *Lovelace v. State*, 214 Md. App. 512, 522 (2013). However, although Douglas's three statements were similarly uninvited, they did not operate to "reinitiate[] communication with the police" as in *Lovelace*, *id.* at 538, and therefore, the suppression court correctly suppressed Douglas's subsequent statements under *Miranda*. In *Lovelace*, the police officers interviewing Lovelace explained that he would need to waive his *Miranda* rights before they could continue speaking, and Lovelace "indicated that, in fact, he did want to speak" with them. *Id.* at 523. Similarly, Douglas "continued to speak" to Det. Earle immediately after invoking his *Miranda* right to remain silent, making statements about why he went into the apartment at 612 Kennebec without Det. Earle interrogating him. And like the police officers in *Lovelace*, Det. Earle quickly stopped Douglas from speaking further, and reminded Douglas that he had invoked his *Miranda* right to remain silent.

However, unlike the police officers in *Lovelace*, Det. Earle did not then give Douglas an opportunity to "indicate[] that, in fact, he did want to speak" to Det. Earle. *Id.* Instead, he immediately launched into what the suppression court called a "long speech" about his work as a police detective. During this "long speech," Det. Earle repeatedly encouraged Douglas to speak with him, telling Douglas several times that he shouldn't let

people "paint a picture for" him or "box [him] into a corner." These statements were "reasonably likely to elicit an incriminating response." *Drury*, 368 Md. at 341. In other words, here, Det. Earle started interrogating Douglas before Douglas could have reinitiated interrogation, and never obtained Douglas's waiver of his *Miranda* rights.

We recognize that the line between impermissible interrogation and benign confirmatory statements is often narrow, and that the analysis of whether a police officer's statement constitutes interrogation is "usually fact-dependent." *Phillips v. State*, 425 Md. 210, 218 (2012). In such narrow cases, the "intent of the police is not irrelevant," *Blake v. State*, 381 Md. 218, 233 (2004), and may supplement our core inquiry into "the perceptions of the suspect." *Innis*, 446 U.S. at 301. The suppression court concluded that Det. Earle did not "act[] with a purpose of getting [Douglas] to talk," *Blake*, 381 Md. at 233, in the moments before Douglas made the statements challenged in this appeal, reasoning that Douglas instead "clearly just blurt[ed]" those statements without "any questioning whatsoever." The recording of the interview, and the tone in which Det. Earle made the statements, "All right. You don't want to talk to me? Okay," supports this conclusion. The absence of any threatening or intimidating tone also reinforces our conclusion that, from the perspective of an objective person in Douglas's shoes, Det. Earle's statement was not "reasonably likely to elicit an incriminating response" from Douglas. *Drury*, 368 Md. at 341.

The overarching purpose of providing *Miranda* warnings prior to interrogation is to prevent "government officials from using the coercive nature of confinement to extract

confessions that would not be given in an unrestrained environment," *Arizona v. Mauro*, 481 U.S. 520, 529-30 (1987), through the use of "express questioning or its functional equivalent." *Innis*, 446 U.S. at 300-01. The Supreme Court recognized in *Miranda* that "without proper safeguards[,] the process of in-custody interrogation . . . contains inherently compelling pressures[,]" and that a suspect cannot freely confess under such conditions without being advised of their rights to silence and counsel. *Miranda*, 384 U.S. at 467. Yet the Supreme Court also made clear that "without any compelling influences," a suspect may confess "freely and voluntarily." *Id.* at 478. As we find that the compelling influence of interrogation was absent here, we conclude that the admission of Douglas's statements did not violate *Miranda*.

2. Voluntariness

Even if the admission of a statement would not violate *Miranda*, the statement may nevertheless be inadmissible as involuntarily made. Under Maryland law, "[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." *Madrid v. State*, 474 Md. 273, 317 (2021) (citing *Hill v. State*, 418 Md. 62, 75 (2011)). The circuit court found that the entirety of Douglas's interview with Det. Earle was voluntary. We review this determination *de novo*, *Winder v. State*, 362 Md. 275, 310-11, and conclude that Douglas's statements were voluntary.

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

Under both the Due Process Clause and Article 22, the relevant test of voluntariness is whether the person making a statement has had "his will . . . overborne and his capacity for self-determination critically impaired." *Culombe v. Connecticut*, 367 U.S. 568, 602 (1961); *see Lee v. State*, 418 Md. 136, 158-59 (holding that constitutional voluntariness is evaluated the same under both Fourteenth Amendment and Article 22). This "overborne will test" assesses the voluntariness of a statement based on "the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation." *Schneckcloth v. Bustamonte*, 412 U.S. 218, 226 (1973). Whereas our analysis of voluntariness under Maryland common law focuses squarely on whether an improper inducement was made by law enforcement, "an improper promise is just one of many factors under the due process analysis[.]" *Zadeh v. State*, 258 Md. App. 547, 616 (2023). Nevertheless, "coercive police activity is a necessary predicate to the 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 (1986).

In *Hof v. State*, 337 Md. 581 (1995), the Supreme Court of Maryland laid out several factors for courts to consider in determining whether a defendant's will has been overborne based on the totality of the circumstances, including:

> 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.

Id. at 596-97 (citations omitted). Though applying the totality of the circumstances test often requires weighing multiple factors, the Supreme Court of Maryland has also identified certain conduct that will automatically render a confession involuntary. For instance, the Court has said that it "will not tolerate any attempt to mislead a suspect about the full scope of the rights afforded by *Miranda*." *State v. Luckett*, 413 Md. 360, 383 n. 6 (2010). In *Luckett*, the Supreme Court of Maryland concluded that a suspect's statements were involuntary where the officer interrogating him falsely stated that "the right to counsel applied only to discussion of the specifics of the case." *Id.* at 383. The Court determined that in making such a "flatly incorrect advisement[][,]" the interrogating officer "rendered the advisements constitutionally infirm." *Id.*

By contrast, the Supreme Court of Maryland has held that deception about the facts pertinent to a suspect's arrest, absent "an overbearing inducement," is a "valid weapon of the police arsenal." *Ball v. State*, 347 Md. 156, 179 (1997) (quoting *Rowe v. State*, 41 Md. App. 641, 645 (1979)). In *Ball*, a suspect was presented with two different written accounts of a murder he was accused of committing – one that described the victim as "brutally killed," and another that described her as "accidentally killed." *Id.* at 168-69. The accounts also included descriptions of the suspect, with the former describing him as "a cold blooded killer" and the latter as a person who "has had a tough life" and "loves his son." *Id.* After reading these hypothetical accounts of the victim's death, the suspect confessed to killing her. *Id.* at 172. In concluding that the presentation of these hypothetical accounts of events did not overbear the suspect's will, the Court emphasized that "police officers are not

permitted to employ coercive tactics in order to compel an individual to confess, but they are permitted to 'trick' the suspect into making an inculpatory statement." *Id.* at 179 (citation omitted).

In analyzing whether Douglas's will was overborne under the totality of the circumstances, we first dispense with Douglas's argument that Det. Earle "deliberately ignore[ed] [Douglas's] assertion of the right to silence[.]" As discussed already, we are persuaded that Det. Earle did *not* ignore Douglas's invocation of the *Miranda* right to remain silent, and that Douglas's statements were not admitted in violation of *Miranda*. Therefore, even accepting Douglas's argument that "*Miranda* violations weigh heavily in the totality-of-the-circumstances analysis," Douglas has failed to establish that a *Miranda* violation occurred before he made the three statements that he challenges on appeal.

Douglas also argues that Det. Earle "coached him on what to say" with respect to why he ran from police officers responding to the scene of Gueye's death, pointing to one of Det. Earle's statements:

> "Now I'm sure you're going to be able to explain that to me and I want to hear that. You were scared, whatever, I know."

To the extent that this statement constituted "coaching," there is no indication that it rose to the level of coercion. Rather, Det. Earle merely suggested a hypothetical account of why Douglas ran from the police. Det. Earle's hypothetical is similar to the interrogating officer's suggestion to a murder suspect, in *Ball v. State*, that the suspect may have "accidentally killed" the victim. 347 Md. 156, 168-69 (1997). Here, as in *Ball*, we are persuaded that at worst, Det. Earle may have engaged in trickery to convince Douglas to

speak with him – a tactic the Supreme Court of Maryland has recognized as a "valid weapon of the police arsenal." *Id.* at 179 (citation omitted). Such trickery would not render Douglas's subsequent statements involuntary.

Finally, we find Douglas's contention that Det. Earle "minimized the *Miranda* warnings" similarly unconvincing. In support of this argument, Douglas points to the following statement made by Det. Earle:

> "So, I want to hear what you have to say, but because right now you're in like [sic] in our custody because you were in somebody's apartment that doesn't know you, I'd have to advise you of your rights to talk to you because you were in that apartment, if you're following my lead; but, you know, you got shot."

Rather than minimize the purpose of the *Miranda* warnings, this statement announces the legal obligations of an interrogating officer under *Miranda*. Det. Earle informed Douglas that he was in the custody of the police, and that Douglas therefore had to be advised of his *Miranda* rights before any interrogation could occur. Unlike in *Luckett*, Det. Earle did not "mislead" Douglas "about the full scope of the rights afforded by *Miranda*" by making a "flatly incorrect advisement[]." 413 Md. at 383 n. 6, 383. At most, Det. Earle feigned collegiality in order to encourage Douglas to waive his *Miranda* rights. As with Det. Earle's suggestion that Douglas may have been "scared" when he ran from the police, that is precisely the sort of deception that our Supreme Court has regarded as a "valid weapon of the police arsenal." *Ball*, 347 Md. at 179.

Douglas does not allege that any of the other coercive factors laid out in *Hof v. State* were present here. *See* 337 Md. 581, 596-97 (1995) (enumerating factors for court to

consider in determining whether defendant's will was overborne). Accordingly, we find that his statements were "voluntary under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article 22 of the Maryland Declaration of Rights." *Costley v. State*, 175 Md. App. 90, 106 (2007) (quoting *Winder v. State*, 362 Md. 275, 305-06 (2001)).

Voluntariness Under Maryland Common Law

In defending against a motion to suppress statements, the State must prove not only that the challenged statements were voluntary under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article 22 of the Maryland Declaration of Rights, but also that they were voluntary under Maryland common law. *Costley v. State*, 175 Md. App. 90, 105-06 (2007).

In *Hill v. State*, the Supreme Court of Maryland clarified that a confession is involuntary under Maryland common law when it is "the result of an improper inducement by law enforcement." 418 Md. 62, 76 (2011). The Court recognized that common law voluntariness is assessed under a two-pronged inquiry, which was first established in *Hillard v. State*, 286 Md. 145 (1979). *Hill*, 418 Md. at 76. In *Hillard*, the Supreme Court articulated the first prong of this test as whether the "accused [was] told, or it [was] implied, that . . . he [would] be given help or some special consideration" in exchange for "an inculpatory statement." 286 Md. at 153. The *Hill* court clarified that this first prong calls for an "objective analysis" asking "whether a reasonable person in the position of the

accused would be moved to make an inculpatory statement upon hearing the officer's declaration[.]" 418 Md. at 76.

If the court determines that an improper inducement was made, it then looks for "a causal nexus between the inducement and the statement" made by the defendant. *Id.* at 77 (quoting *Knight v. State*, 381 Md. 517, 534 (2004)). Any statement that is "the product of an improper threat, promise, or inducement by the police" is "involuntary *per se*[.]" *Zadeh v. State*, 258 Md. App. 547, 613 (2023) (citation omitted). The court must conduct "a causation analysis" focused on "the particular facts and circumstances surrounding the confession" under the second prong of the *Hillard* test. *Winder*, 362 Md. at 312. The State bears the burden of "demonstrating that the improper promises failed to induce [the defendant's] admissions." *Hillard*, 286 Md. at 153.

Douglas does not make an argument that his statements were involuntary under the *Hillard* test, though he argues that Det. Earle made improper "assurances" and "promise[s]" during the interview on April 23, 2022. Douglas does not argue that there was a "nexus" between these assurances and promises and his subsequent statements, and we fail to discern any such nexus. Douglas also asserts that Det. Earle's "*Miranda* violations weigh heavily in the totality-of-the-circumstances analysis applicable to common law . . . voluntariness."

Maryland law has long recognized improper inducement where there are "promises by the interrogating officers either to exercise their discretion or to convince the prosecutor to exercise discretion to provide some special advantage to the suspect." *Knight*, 381 Md.

at 536. In *Knight*, the Supreme Court of Maryland held that an interrogating officer's statement that the defendant's confession would be "helpful" was not "an improper inducement." *Id.* at 536-37. However, the Court found that once the officer told the defendant, "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," the officer crossed the line into improper inducement. *Id.* at 537. Improper inducement has also been found where an interrogating officer attempts to elicit a confession by invoking the wishes of a victim's family members. *See Hill v. State*, 418 Md. 62, 78 (2011) (detective stating the victim's family "did not want to see [the defendant] get into any trouble, but they only wanted an apology" was an improper inducement). Implied inducements by interrogating officers can render a confession involuntary to the same extent as express statements. *See id.* at 76 ("The threat, promise, or inducement can be considered improper regardless whether it is express or implied.").

The transcript of the interview leading to the *Miranda* advisement in this case does not reveal any statement made by Det. Earle that "implied, that . . . [Douglas would] be given help or some special consideration" in exchange for a confession. *Hillard*, 286 Md. at 153. The first "assur[ance]" Douglas points to is Det. Earle's statement, "[h]ad you not went [sic] in that apartment, a hundred percent victim, a hundred percent." **App. Br. at 26 (emphasis removed).** To the extent that this assured Douglas of anything, it was that his actions in the past, if different, could have prevented him ending up in police custody in the first place. It clearly does *not* promise that by saying something *now*, Douglas might

secure "help or some special consideration" from the police. *Id.* A reasonable person in Douglas's position would not be "moved to make an inculpatory statement" in response. *Zadeh*, 258 Md. App. at 614 (citation omitted). Furthermore, if Douglas did actually infer some sort of assurance of leniency from this statement, this "subjective belief that he will receive a benefit in exchange for a confession" would bear no weight in our determination of whether an improper threat, promise, or inducement was made. *Hill v. State*, 418 Md. 62, 76 (2011).

Likewise, we find no assurance of special consideration or assistance in Det. Earle's statements:

> "I want to know what happened. You got shot, bro. I'm here for you, you know?"

Though Det. Earle's statement clearly encouraged Douglas to speak with him, it did not constitute a "promise[] . . . to exercise [] discretion or to convince the prosecutor to exercise discretion to provide some special advantage" to Douglas. *Knight*, 381 Md. at 536. In telling Douglas "I'm here for you," Det. Earle did not reference any discretionary authority he may have possessed, nor did he indicate that a confession would be met with leniency or preferential treatment. Rather, Det. Earle's statement was an open-ended invitation to Douglas to discuss the events that led to his arrest.

As Douglas does not demonstrate that Det. Earle made an "improper threat, promise, or inducement," any voluntariness challenge Douglas might have made under the *Hillard* framework would have failed on the first prong. *Williams*, 445 Md. at 478-79. Therefore, we do not discuss the second prong of the *Hillard* test. *See Madrid v. State*, 474 Md. 273,

329 (2021) (holding that where "the first prong of the *Hillard* test is not satisfied, we need not address the second prong[.]").

In summary, we conclude that Douglas's statements were "(1) 'voluntary under Maryland non-constitutional law, (2) voluntary under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article 22 of the Maryland Declaration of Rights, and (3) elicited in conformance with the mandates of *Miranda*[.]'" *Costley v. State*, 175 Md. App. 90, 106 (2007) (quoting *Winder v. State*, 362 Md. 275, 305-06 (2001)). We thus find no reversible error in the circuit court's legal conclusions, and hold that the circuit court did not abuse its discretion in denying Douglas's motion to suppress with respect to the three statements challenged in this appeal.

II.

Voir Dire

A. Parties' Contentions

Douglas argues that the circuit court abused its discretion when it refused to ask the requested *voir dire* question:

> [I]s there any member of the panel likely to give more weight to the arguments and statements of the State's attorney[?]

According to Douglas, this decision "prejudiced the defense" because "the inferences the prosecutor and defense asked the jury to draw from the largely undisputed evidence would decide the case." Douglas cites to *Pearson v. State*, 437 Md. 350 (2014), to emphasize the times when a court must pose a *voir dire* question to the jury. Under *Pearson*, *voir dire* questions must be asked:

> if and only if the *voir dire* question is "reasonably likely to reveal [specific] cause for disqualification[.]" *Moore v. State*, 412 Md. 635, 663, 989 A.2d 1150, 1166 (2010) (citation omitted). There are two categories of specific cause for disqualification: (1) a statute disqualifies a prospective juror; or (2) a "collateral matter [is] reasonably liable to have undue influence over" a prospective juror. *Washington* [*v. State*, 425 Md. 306,] 313, 40 A.3d at 1021 (citation omitted). The latter category is comprised of "biases directly related to the crime, the witnesses, or the defendant[.]" *Id.* at 313, 40 A.3d at 1021 (citation omitted).

Pearson, 437 Md. at 357 (first through third and fifth alterations in original).

In the case before us, Douglas argues that the proposed *voir dire* question would have elucidated grounds for juror disqualification. Douglas draws analogies to questions related to jurors affording more weight to the testimony of police officers than to civilian witnesses, including *Bowie v. State*, 324 Md. 1 (1991), in which our Supreme Court held that the trial court erred in refusing to include the following question in *voir dire*: "Would any of you tend to view the testimony of witnesses called by the Defense with more skepticism than witnesses called by the State, merely because they were called by the Defense?" *Id.* at 6-7, 11.

As in *Bowie*, Douglas argues that the circuit court erred in not asking his proposed *voir dire* question. According to Douglas, the circuit court "miss[ed] the point" in reasoning that "the argument of counsel is not evidence." Douglas reasons that if a juror gives more weight to the prosecutor's arguments, then "that juror will automatically view the evidence and inferences they may draw [differently] based on which side is arguing." In Douglas's view, *voir dire* questions are meant to broadly "eliminat[e] jurors who favor one party over the other for reasons unrelated to the case". Accordingly, Douglas argues

that jurors who are "partial" with respect to which attorney is arguing "must be identified and removed for cause."

The State counters that the circuit court properly exercised its discretion in declining to pose the *voir dire* question: "Is there any member of the panel likely to give more weight to the arguments and statements of the State's attorney?" The State emphasizes that a trial court is required to ask a requested *voir dire* question "only if it is focused on issues particular to the defendant's case and on biases directly related to the crime, the witnesses, or the defendant." According to the State, the proposed *voir dire* question related did not "meet these requirements" and, therefore, the question "is not—and should not be—mandatory."

Furthermore, the State argues that it is "well settled that the trial court has broad discretion in the conduct of voir dire[.]" (quoting *Dingle v. State*, 361 Md. 1, 13 (2000)) (alteration supplied by State's brief). According to the State, it is within the court's discretion to conduct the *voir dire* process "only as much as is necessary to establish that jurors meet minimum qualifications for service and to uncover disqualifying bias." (quoting *Boyd v. State*, 341 Md. 431, 433 (1996), *overruled on other grounds* in *Owens v. State*, 399 Md. 388 (2007) (emphasis removed by State's brief).

There are "very limited areas of inquiry that are mandatory, upon request" and even these subject areas, the State argues, do not require "a specific form of question [or] procedure[.]" (quoting *Dingle v. State*, 361 Md. 1, 35 (2000) (Raker, J., dissenting)). Citing a series of precedential case law, the State asserts that the mandatory subject areas

include: "bias against the defendant's race, ethnicity, or cultural heritage; religious bias, if relevant; in capital cases, the ability to convict based upon circumstantial evidence; [and] bias for or against police[.]"

The area of inquiry here – namely, the weight prospective jurors assign to a prosecutor's arguments – does not fall within the mandatory categories, the State says. The State points out that in *Stewart v. State*, 399 Md. 146 (2007), our Supreme Court addressed a similar proposed *voir dire* question: "Would any member of the jury panel be inclined to give more weight and consideration to the arguments of the assistant state's attorney than to those of the defense counsel, merely because he or she is employed as an assistant state's attorney?" (quoting *Stewart*, 399 Md. at 153). In *Stewart*, the Court determined that this question was not required because "[a]rguments of counsel are not evidence"; trial courts "ordinarily instruct[] the jury to that effect"; and the question "d[id] not involve the juror's role as factfinder." *Stewart*, 399 Md. at 165-66. The State also argues that as Douglas's proposed question is not probative of "biases directly related to the crime, the witnesses, or the defendant," it was not "reasonably likely to reveal specific cause for disqualification." (quoting *Pearson*, 437 Md. at 357).

In response, Douglas argues that we should "reject the State's argument that *Stewart* remains good law." Douglas views the rationale in *Stewart* as "grounded in the belief that other jury instructions prevent the need for *voir dire*" concerning juror bias related to "the crime, the witnesses, or the defendant." *Id.* Under the *Pearson* test, Douglas argues that such bias would now be "disqualifying." *Id.* at 14. Douglas emphasizes that this case is

"a circumstantial evidence case," in which "the jury is deciding inferences instead of resolving credibility disputes." *Id.* at 12. Accordingly, partiality towards "a prosecutor regarding inferences to draw" would constitute "a mental state that could give rise to a specific cause for disqualification." *Id.* at 13 (quoting *Pearson*, 437 Md. at 367).

B. Standard of Review

"An appellate court reviews for abuse of discretion a trial court's decision as to whether to ask a *voir dire* question." *Pearson*, 437 Md. at 356 (citation omitted). In reviewing the circuit court's exercise of discretion during the *voir dire*, the standard is "whether the questions posed and the procedures employed have created a reasonable assurance that prejudice would be discovered if present." *White v. State*, 374 Md. 232, 242 (2003). The circuit court's conclusions whether to include or not include a proposed *voir dire* question are entitled to substantial deference, unless the conclusions arose out of a *voir dire* that was "cursory, rushed, and unduly limited[,]" in which case "less deference" is afforded. *White*, 374 Md. at 241.

C. Legal Framework

Voir dire questioning plays a crucial role in safeguarding a defendant's Sixth Amendment right to a fair and impartial jury. The Supreme Court of Maryland has observed that "[v]oir dire is critical to assure that the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights guarantees to a fair and impartial jury trial will be honored." *Stewart v. State*, 399 Md. 146, 158 (2007), *abrogated on other grounds by Kazadi v. State*, 467 Md. 1 (2020) (citations omitted). The *voir dire*

process adheres to Maryland Rule 4-312, which provides in pertinent part:

> (e) **Examination and Challenges for Cause. –**
> (1) **Examination. –** The trial judge may permit the parties to conduct an examination of qualified jurors or may conduct the examination after considering questions proposed by the parties. If the judge conducts the examination, the judge may permit the parties to supplement the examination by further inquiry or may submit to the jurors additional questions proposed by the parties. The jurors' responses to any examination shall be under oath. On request of any party, the judge shall direct the clerk to call the roll of the array and to request each qualified juror to stand and be identified when called.

Md. R. 4-312(e)(1). Maryland has adopted a "limited voir dire" approach, under which *voir dire* serves only the specific purpose of ensuring "a fair and impartial jury" by identifying specific causes for disqualification. *Pearson*, 437 Md. at 356; *Shifflett v. State*, 80 Md. App. 151, 156 (1989), *aff'd*, 319 Md. 275 (1990) ("[T]he purpose of the *voir dire* examination [is] to develop information from which it may be ascertained whether a prospective juror should be disqualified for cause[.]") (emphasis added) (citation omitted). Therefore, a trial judge need only ask a *voir dire* question proposed by a party if the question is "reasonably likely to reveal specific cause for disqualification." *Pearson*, 437 Md. at 357 (citation omitted). Potential juror disqualifications can stem from: (1) statutory disqualification or (2) involvement in "any collateral matter reasonably liable to have undue influence" over the juror. *Washington*, 425 Md. at 313 (citation omitted). The Supreme Court of Maryland held in *Washington* that the second category consists of "biases directly related to the crime, the witnesses, or the defendant." *Id.*

In *Dingle v. State*, our Supreme Court recognized the "well[-]settled" principle "that the trial court has broad discretion in the conduct of *voir dire*, most especially with regard

to the scope and form of the questions propounded[.]" *Dingle*, 361 Md. at 13 (emphasis added) (citation omitted). However, this discretion is not boundless. A trial judge abuses their discretion when they refuse to ask a question that is "reasonably likely to reveal specific cause for disqualification." *Pearson*, 437 Md. at 357 (citation omitted). Our Supreme Court has never issued a definitive list of all the questions that meet the test, instead holding that "any question that is relevant to *the facts or circumstances* presented in a case which assists the trial judge in uncovering bias can, must, be asked." *Moore*, 412 Md. at 662 (emphasis added).

Of course, many proposed *voir dire* questions will *not* be relevant to the facts and circumstances of a particular case. In *Stewart*, defense counsel proposed the *voir dire* question: "Would any member of the jury panel be inclined to give more weight and consideration to the arguments of the assistant state's attorney than to those of defense counsel, merely because he or she is employed as an assistant state's attorney?" *Stewart*, 399 Md. at 153. The Supreme Court of Maryland held that this question, "[w]hile seemingly similar to the mandatory question regarding whether a potential juror would give greater weight to the testimony of a *witness* due to his or her official status," did not "involve the juror's role as factfinder." *Id.* at 165 (emphasis added). The Court reasoned that evaluating the arguments of counsel "does not involve judging the credibility of a witness as the factfinder in the case[,]" because "[a]rguments of counsel are not evidence, and the court ordinarily instructs the jury to that effect." *Id.* at 166. Accordingly, the Court determined that "[i]t was not prejudicial error to fail to propound this question." *Id.* at 166.

The Court's holding in *Stewart* is consistent with its later holding in *Washington*, that "collateral matter[s] reasonably liable to have undue influence" over the jury consist of "biases directly related to the *crime*, the *witnesses*, or the *defendant*." *Washington*, 425 Md. at 313 (citation omitted) (emphasis added). A bias towards the arguments made by one party's attorneys does not fall within these categories. By contrast, bias towards *witnesses* on the basis of their occupation, which the Court in *Langley* held was a mandatory area of inquiry, is "bias[] directly related to . . . the witnesses." *Id.*; *see Langley*, 281 Md. at 349 (holding that where testimony of police officer against defendant is central to State's evidence, prejudicial error to exclude *voir dire* question whether jurors are inclined to give more or less weight to officer's testimony because of officer's occupation).

More recently, the Supreme Court of Maryland decided *Kazadi*, which overruled longstanding precedent, first established in *Twining v. State*, 234 Md. 97 (1964), that had treated asking "whether any prospective jurors would not honor" three fundamental principles – burden of proof, presumption of innocence, and the right not to testify – as not mandatory upon request during *voir dire*. *Kazadi*, 467 Md. at 36. The Supreme Court of Maryland observed that the holding in *Twining* rested on an assumption that it was unnecessary to ask this question, because "jurors are willing and able to follow jury instructions on the presumption of innocence and the burden of proof." *Id.* at 36-37. The *Kazadi* Court cited social science research, conducted after the *Twining* decision, demonstrating that many jurors are actually "unable or unwilling to follow jury instructions" on these fundamental principles. *Id.* Accordingly, the Court held that "*voir*

dire questions concerning the three long-standing fundamental principles at issue meet the criteria for *voir dire* questions that trial courts must ask on request." *Id.* at 44.

The *Kazadi* decision had the knock-on effect of abrogating a number of cases that had followed the central holding of *Twining*, insofar as they regarded as non-mandatory *voir dire* questions concerning three core areas: the jury's understanding of and adherence to the presumption of innocence, the burden of proof, and the right of a defendant not to testify as mandatory upon request. The *Kazadi* Court was careful to clarify that its decision did "not disturb case law as to *voir dire* questions concerning jury instructions other than those on the presumption of innocence, the burden of proof, and the right not to testify." *Id.* at 46. Furthermore, the Court situated questions concerning these three principles within the existing framework for juror disqualifications, as questions likely to reveal involvement in "a collateral matter [] reasonably liable to have undue influence over a prospective juror." *Id.* at 45 (quoting *Collins v. State*, 463 Md. 372, 376-77) (internal quotes omitted). Specifically, the Court viewed questions concerning these principles as "directly related to the crime, the witnesses, or the defendant," as the principles "relate[] to the defendant." *Id.* (quoting *Collins*, 463 Md. at 377).

D. Analysis

Douglas contends that the circuit court abused its discretion by refusing to present Douglas's proposed *voir dire* question regarding potential bias in favor of, or against, arguments made by the prosecutor. The circuit court has broad discretion in conducting *voir dire* and can decline questions that fall outside the mandatory areas of inquiry.

Accordingly, as we find that the proposed instruction in this case did not concern a mandatory area of inquiry, we conclude that the circuit court did not abuse its discretion in refusing to present it. Our conclusion is compelled by the Supreme Court of Maryland's holding in *Stewart*, which concerned a proposed instruction nearly identical to the one challenged in this case.

Douglas's argument that *Stewart* is no longer good law lacks merit. The Supreme Court of Maryland made clear that its decision in *Kazadi* abrogated cases following *Twining v. State*, including *Stewart*, only with respect to their holdings that questions concerning jurors' willingness to abide by the burden of proof, presumption of innocence, and the right not to testify are not mandatory upon request during *voir dire*. *Kazadi*, 467 Md. at 36. The holding in *Stewart* that concerns us here was undisturbed by the Court's decision in *Kazadi*. In *Stewart*, the Court held that the following question was not mandatory upon request during *voir dire*:

> Would any member of the jury panel be inclined to give more weight and consideration to the arguments of the assistant state's attorney than to those of defense counsel, merely because he or she is employed as an assistant state's attorney?

399 Md. at 153. This question does not concern jurors' willingness to follow instructions on the burden of proof, presumption of innocence, or the defendant's right not to testify. *Kazadi* therefore did not add it to the pantheon of questions that must be asked of the jury upon request during *voir dire*. *Kazadi*, 467 Md. at 46 (limiting scope of decision to "questions concerning jury instructions . . . on the presumption of innocence, the burden of proof, and the right not to testify."). The Court only discussed research on jurors'

willingness to follow instructions with respect to these three principles and did not conclude that jurors are incapable of following jury instructions more generally. Douglas does not cite any authority demonstrating jurors' inability or unwillingness to understand that "[a]rguments of counsel are not evidence," *Stewart*, 399 Md. at 56, and accordingly we agree with the *Stewart* Court that jury instructions are sufficient to guard against the misuse of these arguments. *See id.* (observing that "the court ordinarily instructs the jury" that counsel arguments are not evidence).

Furthermore, we fail to see how a question concerning the arguments of counsel would reveal "biases directly related to the crime, the witnesses, or the defendant." *Pearson*, 437 Md. at 357. The question in *Stewart* asked whether jurors were "inclined to give more weight and consideration to the arguments of the assistant state's attorney . . . *merely because he or she is employed as an assistant state's attorney*," not because of the nature of the crime prosecuted, the witnesses called, or the person prosecuted. *Stewart*, 399 Md. at 153 (emphasis added). Douglas's proposed question, whether there "is [] any member of the panel likely to give more weight to the arguments and statements of the State's attorney," fares no better. It does not inquire about the crime, witnesses, or defendant – rather, it asks whether any juror has *any* reason for preferring the arguments of the prosecutor.

Accordingly, we hold that Douglas's proposed question did not concern a mandatory area of inquiry. Moreover, we conclude that the questions that *were* asked during *voir dire* sufficiently "created a reasonable assurance that prejudice would be

discovered if present." *White*, 374 Md. at 242. The circuit court asked the prospective jurors whether they knew the State prosecutors. The court also asked whether the prospective jurors or their family members had been employed by the State's Attorney's Office or other law enforcement agency, and whether "anyone [would] be more or less likely to believe the testimony of a witness simply because of the witness' occupation[;] [f]or example, a witness who is a police officer." Finally, the court asked about the exact principles that *Kazadi* found mandatory upon request – presumption of innocence, burden of proof, and the right not to testify. *See Kazadi*, 467 Md. at 46.

Additionally, after the jury was empaneled, but prior to the parties' opening statements, the court instructed the jury:

> You're going to hear opening statements in a little bit. One thing is, I'm going to give you -- when I give you the law at the very end of this case will be [sic] that opening statements and closing arguments are not evidence. Opening statements are what the attorneys think the evidence will be. And closing arguments are them interpreting what they think the facts are, from their interpretation, along with the law that I have already read to you. How that coincides with their theory of the case.

Later in the proceedings, following the close of all the evidence but before closing arguments, the circuit court instructed:

> Opening statements and closing arguments of lawyers are not evidence. They're intended only to help you to understand the evidence and to apply the law. Therefore, if your memory of the evidence differs from anything the lawyers or I may say, you must rely on your own memory of the evidence.

The court's instructions to the jury clarified the role of the parties' arguments and were sufficient to prevent jurors from misusing those arguments in reaching a conclusion. Together with the questions actually asked during *voir dire*, we are convinced that the

court's instructions "fairly covered" any bias that may have impacted the jurors' assessment of the evidence presented. *Stewart*, 399 Md. at 160. Furthermore, there is no indication that *voir dire* was otherwise "cursory, rushed, and unduly limited," so the circuit court is entitled to substantial deference. *White*, 374 Md. at 241. Therefore, based on our analysis, the circuit court did not abuse its discretion in refusing to present Douglas's requested question during *voir dire*.

For these reasons, we hold that the circuit court did not abuse its discretion when it declined to give the defense's proposed *voir dire* question. Accordingly, we affirm.

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