Circuit Court for Montgomery County
Case No.132861C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 2459 and 835

September Term, 2018

JESUS A. PONCE-FLORES

v.

STATE OF MARYLAND

Kehoe,
Friedman,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: December 17, 2019

On October 17, 2017, Joshua Duarte, on behalf of his employer, the Washington Metropolitan Area Transit Authority ("WMATA"), inspected an abandoned home owned by his employer. The house was located at 807 University Blvd., Silver Spring, Maryland. While on the second floor of that house, two men approached Mr. Duarte. One of the men wore a Halloween mask and pointed a gun at him. Mr. Duarte turned around and fled the premises and then immediately reported the incident to the Montgomery County police.

In connection with the aforementioned incident, a Montgomery County grand jury returned an indictment charging Jesus A. Ponce-Flores, appellant, with five crimes: assault in the first-degree (Count One); conspiracy to commit assault in the first-degree (Count Two); participating in felony gang activity (Count Three); conspiring to participate in criminal gang activity (Count Four); and third-degree burglary (Count Five).

Appellant was interviewed by a Montgomery County police detective on the date Mr. Duarte was assaulted. In the course of that interview, appellant admitted to having pointed a weapon at the victim while in the house located at 807 University Blvd. His version of events was that he had been sleeping in the home when the WMATA inspector startled him, so he raised the gun (instinctively) to protect himself.

Appellant filed a motion to suppress the statement he made to the police. After an evidentiary hearing, that motion was denied.

On July 12, 2018, appellant entered a not guilty plea to Count Three of the indictment but proceeded on an agreed statement of facts. As a part of the plea discussions, the parties agreed that appellant, if he was found guilty, would retain his right to challenge on appeal the circuit court's earlier denial of his motion to suppress the statement that he

gave to the police. After hearing the agreed statement of facts, the court found appellant guilty as to Count Three. The State then *nolle prossed* the remaining four counts. Appellant was sentenced to 10 years' incarceration.

In this appeal, appellant contends that the circuit court erred in denying his motion to suppress the statement he made to the police. He advances two reasons. First, although appellant was given and waived his *Miranda* rights (*Miranda v. Arizona*, 384 U.S. 436 (1966)), he claims that statements made to him by the police during interrogation subverted those rights. That subversion, according to appellant, vitiated his *Miranda* waiver. Secondly, appellant contends, for reasons that will be spelled out *infra*, that the statement he gave to the police was involuntary under the due process clause of the United States Constitution and Article 22 of the Maryland Declaration of Rights.[1]

I.

BACKGROUND FACTS[2]

On September 2, 2017, Christopher Guerra was murdered. Because of what they had been told by informants, Montgomery County police had reason to believe that appellant and David Lagunes-Bolanos were fighting with the victim and that during the

[1] The briefs filed in this case indicate that there are two appeals, i.e., Nos. 835 and 2459, September Term, 2018. Number 835 was an appeal from an interlocutory order that counsel for appellant has decided not to pursue. Therefore, in our mandate, we shall dismiss appeal Number 835.

[2] The facts set forth in Part I of this opinion, are those developed at the suppression hearing held in the Circuit Court for Montgomery County on May 17-18, 2018. Neither party disputes any of those facts.

fight Mr. Guerra was stabbed 80 times. Mr. Guerra died from those stab wounds. Although appellant was a person that the police wanted to question in regard to the murder, the police, for strategic reasons, did not want to question him immediately.

On October 16, 2017, Montgomery County Police Detective Jason Craver[3] was working in a covert capacity in an unmarked police vehicle in the area of University Blvd. and Carroll Avenue in Silver Spring, Maryland. On that date, he observed appellant riding a bicycle in the area of Quebec Terrace, an area known for drug activity. Appellant was wearing a "Jason-style" Halloween mask that was pulled up so that his face was showing. After the detective saw appellant speaking with several individuals, he then saw him leave the area and go into an abandoned house located at 807 University Blvd. in Silver Spring ("the abandoned house").

The next morning, Detective Craver learned that a WMATA worker, while walking through the abandoned house, had been approached by two men, one of whom held a gun and wore a mask. Detective Craver entered the home at 807 University Blvd. and noticed graffiti from the MS-13 gang on the walls. The detective, along with other Montgomery County police officers, set up surveillance of the abandoned house. At some point that same day, four men were seen entering the house. As police officers entered the house, the four men were able to exit but were all apprehended shortly thereafter. Appellant was not one of the men seen leaving the building, but David Lagunes-Bolanos ("Lagunes-

[3] In appellant's brief, the detective is referred to as "Jason Kraver," but in the transcript of the suppression hearing, and in a police report prepared by another officer, the detective's last name is spelled "Craver."

Bolanos") was one of the four that were caught. Lagunes-Bolanos was later identified by Mr. Duarte as being present during his confrontation with the masked person who pointed a gun at him.

On October 17, 2017, Detective Dimitry Ruvin, of the Montgomery County Police Department, was notified that four men had been apprehended behind the abandoned house and that one of them was Lagunes-Bolanos, who, along with appellant, was a suspect in the murder of Christopher Guerra. The detective immediately interviewed Lagunes-Bolanos concerning that murder.

After the detective interrogated Lagunes-Bolanos, he thought that appellant would probably get word of that interrogation. In Detective Ruvin's words "the cat was out of the bag" so he decided to interrogate appellant as soon as he was arrested.

Later that day, October 17, 2017, Detective Craver spotted appellant in the area of Piney Branch Road and University Blvd. in Silver Spring. As police officers approached him, appellant fled. He was nevertheless apprehended shortly thereafter and transported to a police station for questioning. Near the place where appellant was arrested was a discarded jacket and a silver BB gun. Appellant later admitted that both items belonged to him.

On the evening of October 17, 2017, Detective Ruvin, assisted by Detective Herrera[4], interviewed appellant, who was not fluent in English. Detective Herrera, although she asked appellant a few unimportant questions, mainly served as an interpreter.

[4] Detective Herrera's first name is not divulged in the transcript.

At the beginning of the interview, appellant was advised of his *Miranda* rights, and waived those rights both orally and in writing. He told the police that he was nineteen years old and was a native of Honduras and had immigrated to the United States in 2014.

During the first part of the interview, Detective Ruvin asked appellant whether he had been in the abandoned house located at 807 University Blvd. on October 16, 2017. Appellant answered in the negative. Detective Ruvin then told appellant that the police had been following him "for probably a month" and that they knew where he had been on October 16 and 17, 2017. The detective continued that the police had watched him go into the abandoned house and had pictures of him doing so. The detective then inquired as to why appellant would lie about having been in the house. After appellant asked to be shown the pictures of him entering the house, Detective Ruvin complained that appellant was reacting "with an attitude" even though he, the detective, was only "trying to calm [him] down and try to talk to [him] to see if [he was] telling us the truth" inasmuch as the police already knew that appellant had been in the abandoned house. Detective Ruvin characterized appellant's presence at the abandoned home as "a stupid little thing" that he could be truthful about.

Next, Detective Ruvin asked a series of questions and received several responses that, according to appellant, are important because the words used by Detective Ruvin showed that the *Miranda* warnings appellant received had been vitiated:

> [Detective Ruvin]: Why do you think we didn't arrest you when you went inside the house?
>
> [Appellant]: Because I'm not committing a serious crime now.

[Translator]: He said "because I wasn't ah doing a, a, a bad crime."

[Detective Ruvin]: Exactly 'cause we don't care about the house //[5] O.K. because nobody lives there.

[Translator]: Because he doesn't care //.

[Detective Ruvin]: I was checking just to see if you're honest.

[Appellant]: O.K. so . . .

[Detective Ruvin]: That's it.

[Appellant]: [I]t's true I've been in the house, why lie to you. There are times I don't have I mean, I feel bad I don't have to, I mean I don't wanna go home, I go sleep on the street, or I'm there relaxed, not hurting anyone, you know.

[Detective Ruvin]: That's fine, thank you for being honest.

[Appellant]: // you're welcome, sir.[6]

After the above colloquy, appellant was next asked: "[w]hy do you think we've been pursuing you?" Appellant replied that he didn't know. He was then asked for the first time about the murder of Christopher Guerra. The first question was: "have you heard of . . . [a] kid name[d] Christopher getting killed?" Appellant said that he did not know Christopher and as far as he knew, none of his friends knew him either. Appellant then

[5] In the transcript, two slash marks (//) meant that people were talking "over one another."

[6] In the dialogue quoted above, we have omitted what the translator said to either Detective Ruvin or appellant, when what the translator said was substantively the same as what had been said by either Detective Ruvin or appellant.

conceded that he may have heard about the murder, but didn't know because "so many people who die in Langley Park I don't know."[7]

After being shown a picture of Christopher Guerra, appellant stated that he had never seen him before. Detective Ruvin then told appellant that people were saying that he (appellant), was participating in a fight with the decedent when the latter was killed. The detective, thereafter, made literally scores of attempts to get appellant to admit that he was present when the murder occurred, but appellant always denied being present. Throughout the questioning, appellant also consistently said that he didn't know the murder victim and didn't "know what [Detective Ruvin was] talking to me about."

While still questioning appellant about the murder, Detective Ruvin made statements that appellant contends constituted a threat, that he would tell the court that he was guilty if he did not admit to being present at the scene of Guerra's murder. The colloquy, upon which appellant relies, reads as follows:

> [Detective Ruvin]: So, people that are there that describe the whole thing saying that you were there. Do you know what I'm saying? So we don't need this, we just trying to figure out is he a good person, or is he a bad person.
>
> [Appellant]: O.K.
>
> [Detective Ruvin]: Right now, if we leave and . . . we think you're lying, when later when it goes to court and we have to talk to people and they're gonna be like, well what do you think [of] this guy, could he did it? Yeah probably 'cause he, he didn't even say he was there. Why wouldn't he if everybody else says I'm there, it's O.K. No one's gonna be jumping up and down like oh man, he said he was there, he said he was there. If it's a fight and we're watching a fight, if me and her [the interpreter] are watching you

[7] Langley Park is located off University Blvd. in Prince George's County, but is close to the area of Silver Spring where 807 University Blvd. is located.

> fight this guy and then you stab that guy, we're just watching, we just, I mean we just witnesses.
>
> [Appellant]: O.K.
>
> [Detective Ruvin]: We're just watching // but if you talk to us and I'll be like, I wasn't there //[.]

After Detective Ruvin made the statements just quoted, the detective made several additional efforts to persuade appellant that he should at least say that he was present at the scene of the murder. Appellant resisted all such efforts and reiterated that he was not at the scene of the murder but stated that if he had been at the scene, he would tell the detective.

Much later in the interview, appellant, for the first time, was asked about whether he pointed a gun at the man that was inspecting, on behalf of WMATA, the house located at 807 University Blvd.[8] The first question Detective Ruvin asked appellant about that crime was: "Why did you threaten him with that fake gun?" Appellant replied that he didn't remember. After being reminded that the incident had occurred that very day, appellant admitted that he had the weapon in the house that very morning and that he pointed it at the WMATA inspector because he thought that the man intended to rob him because he (appellant) was sleeping. Appellant maintained that he was just "defend[ing]"

[8] The first question that appellant was asked regarding the incident where he pointed a gun at the WMATA inspector, occurred at page 62 of an 86-page transcript. The last question in regard to that incident was at page 65. Thereafter, Detective Ruvin went back to questioning appellant about the murder of Christopher Guerra, but appellant continued to say that he was not present when it occurred, and he did not know anything about the murder.

himself and that the man, at whom he had pointed the gun, took off running. Appellant was also asked by the detective why he wore a mask, but that question was never answered.

Appellant did not testify at the suppression hearing. At the conclusion of the hearing, appellant's counsel argued that statements made by Detective Ruvin had vitiated appellant's prior *Miranda* waiver. Counsel also argued that Detective Ruvin had made an improper threat that induced appellant's admission that he pointed a "fake" gun at Mr. Duarte. According to appellant, that admission of guilt was made involuntarily.

II.

THE RULING OF THE SUPPRESSION HEARING JUDGE

In denying appellant's motion to suppress, the judge first found that appellant was given, and "clearly understood" his *Miranda* rights. The court also found that appellant, with knowledge of the rights he was giving up, waived those rights by agreeing to talk with detectives Ruvin and Herrera.

The judge then discussed, in detail, appellant's two main contentions. He rejected appellant's contention that the *Miranda* rights that were read to him were later undermined when Detective Ruvin told appellant that he did not care about appellant being in the abandoned house. The judge stressed that the detective did not tell appellant that the police did not care about the assault (pointing a gun at Mr. Duarte) which, in the judge's view, was far different than telling appellant that he did not care about his having entered the abandoned house.

In his oral opinion, the judge distinguished the facts in the case at hand with those in *Logan v. State*, 164 Md. App. 1, 27 (2005), a case relied upon by appellant. In *Logan*,

the police told the defendant, *inter alia*, that the only way his statement would hurt him is if he did not tell the truth. *Id*. The *Logan* Court held that giving the aforementioned assurance vitiated the defendant's *Miranda* waiver. *Id*. at 48.

The judge also rejected appellant's argument that the statement was not voluntary. The court pointed out that to find involuntariness, a two-step process must be utilized. The first step is for the Court to determine whether there was a promise or a threat made. If so, the judge, using an objective standard, must decide whether the suspect relied upon any threat or promise. The judge, citing *Ashford v. State*, 147 Md. App. 1 (2002), found that there was no direct evidence of involuntariness and no evidence, whatsoever, as to what effect, if any, the statements that were made by Detective Ruvin had on appellant. The judge concluded by saying that, under Maryland common law, or "federal due process law," there was no evidence sufficient to show that the statement made by appellant was involuntary.

III.

STANDARD OF REVIEW

In its brief, the State accurately sets forth the standard of review that is here applicable:

> In reviewing the denial of a motion to suppress evidence, this Court views the evidence and the reasonable inferences from that evidence in the light most favorable to the State. *Lee v. State*, 418 Md. 136, 148 (2011). This Court also defers to the trial court's fact findings unless clearly erroneous. *Id*. The ultimate constitutional question – here, whether a statement by the police vitiated [appellant's] *Miranda* waiver and/or otherwise rendered [appellant's] statement involuntary – are reviewed *de novo* by applying the law to the facts developed at the suppression hearing. *State v. Tolbert*, 381

Md. 539, 557, *cert denied*, 543 U.S. 852 (2004); *Matthews v. State*, 106 Md. App. 725, 738 (1995).

IV.

DISCUSSION

A.

Did any statement by the police made during the interrogation of appellant, undermine or vitiate the *Miranda* warnings that appellant received?

Appellant is accurate when he points out that there are numerous cases decided by Maryland appellate courts, and cases from many other jurisdictions, that stand for the proposition that even though a defendant waives his or her *Miranda* rights, that waiver is not effective when an interrogating police officer makes a statement, or statements, that undermines those rights. *See, e.g., Lee v. State*, 418 Md. 136, 151 (2011) ("after proper warnings and a knowing, intelligent, and voluntary waiver, the interrogator may not say or do something during the ensuing interrogation that subverts those warnings and thereby vitiates the suspect's earlier waiver by rendering it unknowing, involuntary, or both."). If the interrogator does anything to subvert the *Miranda* warnings, any later statement the suspect makes during the interrogation must be suppressed. *Id*. at 151-52.

A good example of an action by an interrogating police officer that would vitiate *Miranda* warnings was provided in *Lee*, where the interrogating officer said to a suspect that the conversation they were having was "between you and me[.]" *Id*. at 156. Another example is when the interrogating police officer indicates that the conversation is "off-the-record." *See State v. Pillar*, 820 A.2d 1, 12 (N.J. Super. Ct. App. Div. 2003). Other examples are when an officer tells a suspect that any statement he or she makes is

"confidential" (*Spence v. State*, 642 S.E.2d 856, 857-58 (Ga. 2007)), the statement is "between us" (*Leger v. Commonwealth*., 400 S.W.3d 745, 749 (Ky. 2013)), or that giving a statement will not "hurt" the suspect (*Hart v. Attorney General of the State of Florida, Secretary for the Department of Corrections*, 323 F.3d 884, 894 (Fed. Cir. 2003)).

Appellant argues:

> After his consistent denials, [that he had been in the abandoned house] the officers then changed tactics and sought to minimize the importance of the incident in the house by telling him, *inter alia*, "we don't care about the house . . . because nobody lives there." Purportedly focusing on the more serious allegations in the homicide case, the officers convinced Appellant that his speech with respect to the less serious crime would not hurt him. Immediately thereafter, Appellant admitted to being in the house. The officers' comments characterizing the crime as unimportant subverted the earlier *Miranda* warnings and rendered his earlier waiver involuntary. The officers' attempts to minimize the importance of Appellant's presence in the house affirmatively undermined the warning's intended effect, i.e., "to make the individual more acutely aware that he is faced with a phase of the adversary system - - that he is not in the presence of persons acting solely in his interest." *Miranda*, 384 U.S. at 469. Far from conveying to Appellant that he was faced "with a phase of the adversary system," officers created the false impression that an admission to being present at the scene of the crime, the abandoned house, was entirely unimportant and would not be used against him because they did not care about it.

(References to record and footnote omitted, emphasis added.)

The central flaw in the above argument is that Detective Ruvin did not tell appellant that the police did not care about "the incident in the house." We therefore disagree with appellant's argument that the police "convinced [a]ppellant that his speech with respect to the less serious crime (the assault that occurred when appellant pointed a gun at Mr. Duarte) would not hurt him." When the "we don't care" statement was made, no mention of the incident where someone had pointed a gun at Mr. Duarte had been made. In context, the

less serious crime Detective Ruvin was talking about was trespass – a crime about which the detective plainly did not care. Additionally, appellant made it clear that he understood that trespass was the crime about which the detective didn't care. *See* colloquy at page 6, *supra*, *viz.*: "[I]t's true I've been in the house, why lie to you . . . . I'm there relaxed, not hurting anyone[.]"

We also disagree with appellant's "scene of the crime" argument that we have emphasized above. The scene of the criminal assault was in the upstairs of the abandoned house. As already mentioned, when Detective Ruvin made the "we don't care" statement, he was referring to appellant having been in the abandoned building that day – not being present when Mr. Duarte was assaulted. The subject of the assault did not come up until 62 pages in, in the transcript of appellant's statement. No words that the detective spoke could reasonably be interpreted as meaning that the police "did not care" about appellant pointing a weapon at Mr. Duarte.

If appellant had been charged with trespass for having entered the abandoned house, appellant might have a valid argument that his *Miranda* rights were vitiated insofar as his admission that he had been in the abandoned house. We say this because it could be plausibly argued that he was led to believe any statement he made about entering the building would not be used against him. But this was not the charge at issue as shown by the agreed statement of facts that the prosecutor put on the record, viz.:

* * *

> [Appellant] was interviewed. He admitted to showing the weapon to the victim. Stated it was a fake gun. His version of events was that he had been sleeping in the home.

> He was sleeping in the home and was startled by [the victim]. So he raised it instinctively to protect himself.
>
> As mentioned earlier, the police documents the amount of graffiti. There would have been . . . expert[s] . . . that would have testified in their opinion that the graffiti in the home was that of MS-13. That there was also shrines built to a Saint that they refer to as Santa Muerte throughout the home.
>
> And that in their opinion this type of home is referred to as a destroyer home which is in all essence a club house for the gang and that this crime was motivated by a gang goal to protect their territory. And that both defendant, Mr. Ponce[-Flores] and his co-defendant [Lagunes-Bolanos] were active, validated gang members according to the Montgomery County Police Department. And the State would have argued that this crime was committed for the benefit of the gang, specifically MS-13, which is a recognized gang in Montgomery County.

(Emphasis added.)

In regard to his contention that Detective Ruvin undermined what was said when appellant's *Miranda* rights were read to him, appellant makes one additional contention, *viz*.:

> What is clear in this case is that when Appellant denied any knowledge or involvement in either of the cases that were the subject of the interrogation, the officers employed the tactic of trivializing the seriousness and gravity of one case in order to elicit an admission on the more serious case. But in doing so, they crossed over the line into the sort of deception that deprives a defendant "of the knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them." *Moran v. Burbine*, 475 U.S. [412] at 424 [(1986)]. Appellant's decision to speak following the officer's affirmative minimization of the gravity of an admission was not made with full awareness and comprehension of all the information *Miranda* requires. All of his statements thereafter concerning the house and the events that transpired within were therefore inadmissible because they were not given in compliance with *Miranda*.

The above contention has the same flaw that infected appellant's first argument. The "cases that were the subject of the interrogation" were: the assault (pointing a weapon at Mr. Duarte) and the murder of Christopher Guerra. As earlier mentioned, at the point that the "we don't care" statement was made, appellant had not even been asked about the assault case. Much later when he was asked about the assault, he did not deny involvement. While Detective Ruvin may have trivialized the seriousness or gravity of the crimes of trespass, he never trivialized the seriousness or gravity of the crime of assaulting Mr. Duarte with a weapon.

Moreover, as the motion's judge found, what Detective Ruvin said in regard to the crime of trespass, simply was not even deceptive. Appellant, therefore was not deprived "of the knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them."

B.

Common Law Voluntariness

Appellant contends that the statement made to the police in regard to the assault on Mr. Duarte was induced by an improper promise made by Detective Ruvin. According to appellant, his statement was involuntary under both the due process clause of the United States Constitution and under Article 22 of the Maryland Declaration of Rights. In support of his position, appellant sets forth, accurately, the applicable law, *viz.*:

> [T]he test for determining voluntariness under the Due Process Clause and Article 22 of the Maryland Declaration of Rights is whether, under the totality of the circumstances, the statement was given freely and voluntarily. *Lodowski v. State*, 307 Md. 233, 254, 513 A.2d 299 (1986). "[T]he constitutional inquiry is not whether the conduct of [the authorities] was

> shocking, but whether [the accused's] confession was free and voluntary, viz., whether it was extracted by any sort of threats, or violence, or obtained by any direct or implied promises, however slight, or by the exertion of any improper influence . . . ." *Id*. (citations omitted). Although similar to the test for assessing traditional voluntariness, the analysis employed when determining whether a statement was elicited voluntarily under Maryland common law contains certain key differences. Under Maryland common law, "a confession that is preceded or accompanied by threats or a promise of advantage will be held involuntary, notwithstanding any other factors that may suggest voluntariness, unless the State can establish that such threats or promises in no way induced the confession." *Williams v. State*, 375 Md. 404, 429, 825 A.2d 1078 (2003). In Maryland, the court conducts a "*de novo* review of trial judge's ultimate determination on the issue of voluntariness," *Winder v. State*, 362 Md. at 310, since it is considered "a mixed question of law and fact."
>
> "[U]nder Maryland criminal law, independent of any federal constitutional requirement, if an accused is told, *or it is implied*, that making an inculpatory statement will be to his advantage, in that he will be given help or some special consideration, and he makes remarks in reliance on that inducement, his declaration will be considered to have been involuntarily made and therefore inadmissible." *Hillard v. State*, 286 Md. 145, 406 A.2d 415 (1979) (emphasis added); *See also Hill v. State*, 418 Md. 62, 12 A.3d 1193 (2011). The first component of the *Hillard* test is an objective one, under which, "a singular statement communicated to the suspect may be sufficient to qualify as an inappropriate offer of help held out to the suspect." *Winder v. State*, 362 Md. 275, 317, 765 A.2d 97 (2001). The second component requires the court to "examine the particular facts and circumstances surrounding the confession" to determine whether the defendant made the confession in reliance on the statement. *Id*. at 312.

In support of his assertion that his statement to the police was involuntary, appellant points to the following statement that Detective Ruvin made to appellant during interrogation:

> [Detective Ruvin]: Right now, if we leave and, and we think you're lying, when later when it goes to court and we have to talk to people and they're

> gonna be like, well what do you think this guy, could he did it? Yeah probably; cause he, he didn't even say he was there.[9]

According to appellant, "any reasonable person in [a]ppellant's position could infer that the officers were threatening to tell the court that he was guilty if he did not make a statement[.]"

Detective Ruvin did not threaten appellant as to what he would tell the court if he did not make a statement. At that stage of the interrogation, appellant had already made a statement, which was that he did not commit the murder and didn't know anything about it. Although Detective Ruvin's statement is somewhat ambiguous, it could be plausibly interpreted as meaning that Detective Ruvin would make an adverse statement about appellant's guilt to the court if appellant did not admit that he was at the scene of the murder. But it is clear that the aforementioned threat did not make appellant's statement to the police involuntary. First, appellant never admitted that he was at the scene of the murder and it is crystal clear from reading the transcript that the threat as to what the detectives would tell the court if appellant failed to admit that "he was there" concerned the murder – not the assault on Mr. Duarte. Second, and equally important, by the time Detective Ruvin made the implied threat, appellant had already admitted that he had been in the abandoned house. In summary, Detective Ruvin never said directly, or intimated in

[9] See pages 7-8 *supra*, for a more complete review as to what Detective Ruvin said to appellant about what the detectives were going to tell people if the matter went to court. The statements at issue were among scores of statements made by Detective Ruvin in an attempt to get appellant to at least admit that he was a witness to the Christopher Guerra murder.

any way, that he would tell the judge, or anyone else in the judicial system, that appellant was probably guilty if he did not admit to pointing a gun at Mr. Duarte.

Another contention appellant makes in support of his involuntariness claim is that Detective Ruvin implied "that he could make a statement regarding the crimes in the abandoned house with impunity." As already discussed, nothing the detective said implied any such thing.

Lastly, in regard to the issue of voluntariness, what was said in *Uzzle v. State*, 152 Md. App. 548, 571-72 (2003) (citation omitted), is relevant:

> [w]hen the issue is voluntariness, the failure of a defendant to testify almost forecloses any chance of prevailing. The voluntariness of a defendant's response to possible pressures, on the other hand, is very subjective. Only the defendant can truly tell us what was going on in the defendant's mind. Without such testimony, there is usually no direct evidence of involuntariness.

Appellant never testified at the suppression hearing and the evidence produced at the suppression hearing is bereft of any indication, whatsoever, that the statement that appellant made in regard to the assault on Mr. Duarte was induced by any threat or promise or was involuntary for any other reason.

APPEAL NO. 835 DISMISSED; JUDGMENT IN APPEAL NO. 2459 AFFIRMED; COSTS TO BE PAID BY APPELLANT.