Circuit Court for Baltimore City
Case No. 119274007

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 915

September Term, 2020

ANTONIO ATKINS

v.

STATE OF MARYLAND

Wells, C.J.,
Graeff,
Zic,

JJ.

Opinion by Graeff, J.

Filed: June 2, 2022

On October 7, 2020, Antonio Atkins, appellant, entered a conditional guilty plea in the Circuit Court for Baltimore City to charges of unlawful possession of a regulated firearm and unlawful possession of ammunition. The court sentenced appellant to ten years on the firearm conviction, suspending all but five years, to be served without the possibility of parole, and one year, concurrent, on the ammunition conviction.

On appeal, appellant presents one question for this Court's review, which we have rephrased slightly, as follows:

> Did the trial court err by denying appellant's motion to suppress his statement to the police during the search of appellant's girlfriend's house?

For the reasons set forth below, we shall answer that question in the negative and affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On September 5, 2019, officers from the Baltimore City Police Department executed a search and seizure warrant at 1717 Lamont Avenue, a townhouse leased by Nekema Strong,[1] appellant's girlfriend and the mother of his two daughters. Appellant was at the townhouse, along with a four-man maintenance crew that was making repairs. Ms. Strong and the children were not home.

Detective Kent Sowers knocked on the door of the townhouse and yelled: "Police. Search Warrant." Another officer then broke down the door. Once inside, the officers

[1] Multiple spellings of Ms. Strong's first name appear in the record. We use the spelling appellant uses in his brief in this Court.

observed appellant and the maintenance crew supervisor coming downstairs with their hands in the air. Both were detained and handcuffed. The other three maintenance crew members were located upstairs in the bathroom and were taken downstairs to the living room.

Inside the kitchen area of the townhouse, an officer searched appellant and recovered six gel caps of suspected cocaine from his pocket. Appellant and the maintenance crew supervisor were taken to the living room while the search continued.

Detective Sowers and a second officer spoke to appellant and the four other men in the living room. The second officer told the men that Detective Sowers would be advising them of their *Miranda*[2] rights, but that did not mean that they were under arrest. He explained that, "[i]f during the course of our search . . . we find something, you could be placed under arrest." Detective Sowers then introduced himself, advised the detainees that they would receive a copy of the sealed search warrant, and gave the *Miranda* warnings. Each man affirmed verbally that they understood those rights.

One of the officers asked: "Who lives here and who's on the lease?" Appellant replied: "I live here." He subsequently stated that he "stay[ed] from time to time with [his] girl." Detective Sowers then asked if there was anything illegal in the house, other than the controlled dangerous substances recovered from appellant's pocket. Detective Sowers clarified: "That's drugs, guns, large sums of money." Appellant replied: "No."

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

When Detective Sowers began to say that he wanted to explain things, appellant interjected: "Can I speak to you in person?" Detective Sowers replied:

> Yeah. Let me explain this to you right now, real quick, okay? because you're saying you live here; she lives here; she's on the lease. Okay? The property discovered on you is on your person. If that's all that's on the property, that's in here, then you'll be arrested. Okay? If anything else is found in the house, I can bring up charges against your – you said it's your girlfriend or your wife or baby's mother? Okay? Does that make sense? Okay.
>
> You want to what, step aside to speak or what did you want to do?

Detective Sowers left the living room for a couple of minutes and then brought appellant into the kitchen area. Once in the kitchen, appellant told Detective Sowers that there was a gun in the bedroom closet upstairs and marijuana in the dresser in the same room.

Meanwhile, Officer Timothy Romeo and another officer were upstairs searching the bedroom. The other officer located the gun in the closet at approximately the same time that appellant told Detective Sowers about it. When Detective Sowers went upstairs to locate the gun, he learned that it already had been found.

After Detective Sowers placed appellant under arrest, he told appellant that he appreciated appellant being honest with them. Appellant replied: "I appreciate you giving me the option."

Appellant subsequently moved to suppress his statement to Detective Sowers that there was a gun in the bedroom closet. He argued that the statement was involuntary and

inadmissible because it was induced by Detective Sowers' improper statement that appellant's girlfriend would be charged if any illegal items were found in the townhouse.

The court held a hearing on the motion on October 6 and 7, 2020. Officer Romeo and Detective Sowers testified consistent with the above facts. Detective Sowers further testified that it was his usual practice to inform persons present at a residence during a search that, if illegal items were recovered in a "common area," everybody could be charged.

Appellant testified that, just before the police executed the warrant, Ms. Strong had come home from work and taken their daughters to a nearby store. He expected them to return home at any moment. He tried to tell the police officers that Ms. Strong and his daughters would be home soon because he "didn't want them to come in unexpectedly and be startled." He suggested that this was why he asked Detective Sowers if he could speak to him privately.

When Detective Sowers told him that Ms. Strong could be charged if anything illegal were to be found at the townhouse, appellant was "caught off guard" and became "extremely worried." This was not his "first rodeo" with these police officers, who he alleged had threatened him and planted evidence in other cases in the past. He said that the only reason he made a statement about the gun in the closet was because "Detective Sowers threatened to lock [his] girlfriend up."

On cross-examination, appellant acknowledged that, when given the chance to speak to Detective Sowers privately, he did not tell the detective that Ms. Strong and

appellant's daughters would be returning home soon. He agreed that Detective Sowers did not promise *not* to charge Ms. Strong if appellant provided information about illegal items in the townhouse or state that Ms. Strong would be charged if appellant did not provide information to the police.

The State argued that, under the totality of circumstances, appellant's statement to Detective Sowers was freely and voluntarily made, emphasizing that the officer did not promise any special treatment or advantage if appellant cooperated or made a statement. Moreover, because appellant already had asked to speak to Detective Sowers privately before the alleged improper inducement was made, the court could infer that appellant was planning to provide the information about the gun, particularly because appellant did not share any other information with Detective Sowers when they spoke privately.

Defense counsel argued that threats to incarcerate family members have been specifically recognized as the type of inducement that can render a defendant's statement involuntary. He maintained that the timing of appellant's admission immediately following Detective Sowers' statement that he could charge Ms. Strong if contraband was found supplied strong evidence that appellant made the statement in reliance on the improper inducement.

The court denied the motion to suppress. It found that, during the execution of the search warrant, the exchanges between the police and appellant were "cordial," and there were "no physical threats, or intimation of a physical threat made to anyone." With regard to Detective Sowers' statement that he could "seek charges" against Ms. Strong if

contraband was found, this was an accurate representation of the "state of the investigation" and was not "hyperbol[ic]" or threatening. Accordingly, the statement did not amount to an improper inducement, and given this, the court did not consider whether appellant relied upon the statement.

DISCUSSION

Appellant contends that the circuit court erred in denying his motion to suppress his statement because it was involuntary under Maryland common law. The State disagrees, arguing that the court properly denied the motion to suppress.

"Our review of a circuit court's denial of a motion to suppress evidence is 'limited to the record developed at the suppression hearing.'" *Pacheco v. State*, 465 Md. 311, 319 (2019) (quoting *Moats v. State*, 455 Md. 682, 694 (2017)). We examine the record "'in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress.'" *Norman v. State*, 452 Md. 373, 386 (2017) (quoting *Varriale v. State*, 444 Md. 400, 410 (2015)). We accept the circuit court's factual findings unless they are clearly erroneous. *Grant v. State*, 449 Md. 1, 15 (2016). "We give no deference, however, to the question of whether, based on the facts, the trial court's decision was in accordance with the law." *Seal v. State*, 447 Md. 64, 70 (2016).

Under Maryland common law, "[o]nly voluntary confessions are admissible as evidence." *Knight v. State*, 381 Md. 517, 531 (2004). "[A] confession is involuntary if it is the product of certain improper threats, promises, or inducements by the police." *Lee v. State*, 418 Md. 136, 161 (2011). If a suspect is told expressly or impliedly that making

an inculpatory statement will be to their advantage, in that they will be given help or some special consideration, and if they make a statement in reliance on that inducement, the statement will be "considered to have been involuntarily made and therefore inadmissible." *Williams v. State*, 445 Md. 452, 478 (2015) (quoting *Hillard v. State*, 286 Md. 145, 153 (1979)).

"If the defense files a proper pre-trial suppression motion [asserting that an inculpatory statement was involuntary], the State bears the burden to prove, by a preponderance of the evidence, that 'the inculpatory statement was freely and voluntarily made and thus was the product of neither a promise nor a threat.'" *Knight*, 381 Md. at 532 (quoting *Winder v. State*, 362 Md. 275, 306 (2001)). In assessing if a statement is involuntary because of an improper inducement, the Court of Appeals has adopted a two-step test. *Id*. at 533. First, the court determines whether a law enforcement officer has "promised or implied" that the suspect "would be given special consideration from a prosecuting authority or some other form of assistance in exchange for the confession." *Id*. at 533-34. "Second, if the court determines that such a promise was explicitly or implicitly made, it decides whether the suspect's confession was made in apparent reliance on the promise." *Id*. at 534 (citing *Winder*, 362 Md. at 309).

In determining if an improper inducement was made, the court must consider "'whether a reasonable person in the position of the accused would be moved to make an inculpatory statement upon hearing the officer's declaration.'" *Smith v. State*, 220 Md. App. 256, 274 (2014), *cert. denied*, 442 Md. 196 (2015) (quoting *Hill v. State*, 418 Md.

62, 76 (2011)). The defendant's subjective belief is not relevant to this objective inquiry. *Id*.

Appellant contends that the circuit court erred by determining that Detective Sowers did not make an improper promise. He relies primarily upon the Court of Appeals' decision in *Stokes v. State*, 289 Md. 155 (1980), and this Court's decision in *Bellamy v. State*, 50 Md. App. 65 (1981).

In *Stokes*, the Court of Appeals held that a statement by a police officer to the defendant during the execution of a search and seizure warrant "that if he would produce the narcotics, his wife would not be arrested" was an improper inducement, making the defendant's inculpatory statement directing the police to the location of drugs involuntary and, thus, inadmissible. *Id*. at 157, 162. The Court reasoned that a promise not to arrest a relative of the accused "redounds to the benefit or desire of the defendant" because of the "close bond of affection." *Id*. at 160.

In *Bellamy*, this Court held that a law enforcement officer's statements to a defendant that if the defendant cooperated, the officer would "see what [he] can do" to help the defendant's girlfriend and would "talk to the State's Attorney" were improper inducements, rendering the defendant's confession involuntary. 50 Md. App. at 68, 77-78. The officer's statement "clearly produced the expectation of benefit" if the defendant inculpated himself. *Id*. at 78.

Here, in contrast to *Stokes* and *Bellamy*, where the police offered a *quid pro quo*, Detective Sowers merely made an accurate statement about what could happen if

contraband was discovered in the townhouse leased by Ms. Strong. He did not promise or threaten any action if appellant did or did not cooperate.

The circuit court properly noted that the present case is more analogous to this Court's decision in *Pringle v. State*, 141 Md. App. 292, 298 (2001), *rev'd*, 370 Md. 525 (2002), *rev'd*, 540 U.S. 366 (2003), where the police found five baggies of cocaine from inside an armrest in the back seat during a traffic stop. The officer asked all three men who owned the drugs and money and advised them that, "unless he knew who possessed the drugs, '[they] [were] all going to get arrested.'" *Id.* at 298-99. None of the men admitted ownership and all three were arrested. *Id*. at 299. A few hours later, Pringle confessed that the drugs belonged to him and the other occupants of the car did not know about the drugs. *Id*.

This Court held that the confession was voluntary under Maryland non-constitutional law because the officer's statement "that all three suspects were going to be arrested for possession . . . flowed naturally from the attendant circumstances of finding three suspects within the proximity of the illegal drugs." *Id*. at 308-09. There was no express promise or threat, and therefore, the statement was voluntary regardless of Pringle's subjective belief that he could protect his friends by confessing. *Id*.

Similarly, here, we conclude that Detective Sowers' statement to appellant, that if contraband were found in the townhouse, the leaseholder, i.e., Ms. Strong, could be charged, was not an improper inducement. The statement was consistent with the law and "flowed naturally from the attendant circumstances[.]" *Id.* at 308. Had contraband

been found in the house, the police could have pursued charges against Ms. Strong or appellant, depending upon its location and other evidence linking appellant to that location or the nature of the contraband.

Detective Sowers did not promise appellant that his cooperation could prevent Ms. Strong's arrest or that she would be arrested if any contraband was located. Rather, he stated that charges potentially could be brought against Ms. Strong if contraband was found in the townhouse she leased. This statement was accurate and truthful and did not amount to an improper promise to take an action to benefit appellant or a threat to incarcerate Ms. Strong if appellant did not confess. Appellant's subjective belief that he could protect Ms. Strong by confessing is not relevant to this inquiry. Accordingly, the circuit court properly concluded that there was no improper inducement and correctly denied the motion to suppress.

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