

Circuit Court for Montgomery County
Case No. 137105-C

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1831

September Term, 2021

JOSE PINEDA-DURAN

v.

STATE OF MARYLAND

Reed,
Friedman,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by McDonald, J.

Filed: February 3, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022, while this appeal was pending.

This is an unreported opinion. Under Maryland Rule 1-104, it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court, either as precedent within the rule of stare decisis or as persuasive authority.

In February 2020, Appellant Jose Pineda-Duran was indicted in the Circuit Court for Montgomery County on charges of first-degree rape and first-degree assault. At trial, the jury found Mr. Pineda-Duran guilty of the lesser-included charge of second-degree assault and not guilty of rape or of first-degree assault.

Part of the evidence introduced against Mr. Pineda-Duran at trial consisted of a recorded, post-arrest police interview of Mr. Pineda-Duran during which he made certain inculpatory admissions. Prior to trial, his counsel moved to suppress those statements on the ground that Mr. Pineda-Duran had made them involuntarily and that their introduction into evidence was contrary to the Maryland common law. The trial judge denied that motion. Mr. Pineda-Duran now appeals his conviction, arguing that the trial judge erred in denying his motion to suppress.

We hold that the Circuit Court did not err. As explained below, the record supports that court's determination that Mr. Pineda-Duran's statements were voluntary under the applicable Maryland common law.

I

Background

In assessing whether a trial court properly denied a motion to suppress a defendant's post-arrest statements to police on the ground that they were made involuntarily, an appellate court is to look to the evidence submitted at the hearing on that motion. Accordingly, we primarily recount the evidence provided at the motion hearing in the Circuit Court and summarize other matters in the record and elicited at trial only for context.

A. *Altercation, Arrest, and Interrogation*

On the night of Saturday, February 1, 2020, Montgomery County police officers responded to a report of domestic violence at a house in Rockville. There, a resident of the house, whom we shall refer to as “Ms. R,” told them that Mr. Pineda-Duran, another resident of the house and her then-boyfriend, had raped her and stabbed her with a broken beer bottle after they had argued over a cellphone. The police arrested Mr. Pineda-Duran and took him to the police station, where he was advised of his *Miranda* rights in Spanish and then questioned during the early morning hours of February 2.

The interrogation of Mr. Pineda-Duran, who spoke only in Spanish, was conducted by the lead detective, who spoke only in English, and another officer, who sometimes acted as a Spanish interpreter for the lead detective and sometimes questioned Mr. Pineda-Duran independently.¹ The interrogation can be divided into four phases: (1) a lengthy initial phase, during which Mr. Pineda-Duran was questioned primarily by the lead detective with the assistance of the other officer; (2) a briefer second phase when the detective left the room and the other officer conversed with Mr. Pineda-Duran in Spanish; (3) a third brief phase, when the detective rejoined them in the interview room; and, (4) after a pause during

¹ The interview, which was conducted in both English and Spanish, was recorded electronically. The video and audio recording was provided to the Circuit Court, along with a transcript that included an English translation of the Spanish portions of the interview, in connection with the motion hearing. A somewhat redacted version of the recording was introduced into evidence and played at trial, again with a written transcript. The excerpts quoted in the text of this opinion are from the English portion of the transcript of Mr. Pineda-Duran’s police interview provided to the Circuit Court in connection with the hearing on his motion to suppress.

which the detective and a forensics officer gathered samples from Mr. Pineda-Duran, a final phase, when the detective again left the room and Mr. Pineda-Duran and the other officer again conversed alone in Spanish. During that fourth phase, Mr. Pineda-Duran admitted that Ms. R had not consented to have sex with him on Saturday night and that he regretted what he did. Those are the statements that he later sought to suppress in the Circuit Court. Because the voluntariness of a confession is assessed in light of the totality of the circumstances, all four phases of the interrogation are relevant to that issue. *See Hill v. State*, 418 Md. 62, 75 (2011).

First Phase – Mr. Pineda-Duran denies assaulting or raping Ms. R

In the first phase, the lead detective questioned Mr. Pineda-Duran while the other officer interpreted. The detective told Mr. Pineda-Duran that Ms. R had been hospitalized with cuts and other injuries that were recent and that the police already knew that Mr. Pineda-Duran had caused those injuries by raping her and cutting her with a broken beer bottle. Initially, Mr. Pineda-Duran insisted that although he had had consensual sex with Ms. R on the preceding night – that is, Friday night – he had not had sex with her Saturday evening and that she had cut herself by slipping on a broken beer bottle. Referring to Ms. R as his wife, he stated that they had had a fight over his cellphone and that he had not hurt her.

Second Phase – Mr. Pineda-Duran admits to consensual sex with Ms. R

During the second phase of the interview, the lead detective left the other officer alone with Mr. Pineda-Duran. During their conversation, which was conducted solely in Spanish, the officer challenged Mr. Pineda-Duran on his version of events, telling Mr.

Pineda-Duran that Mr. Pineda-Duran had problems because he had changed his story twice about the fight over the cellphone. The officer said that he was telling Mr. Pineda-Duran this because “[t]hey don’t understand our culture,” and “we are different.” The officer then asked Mr. Pineda-Duran to tell him what happened “from beginning to end.” Mr. Pineda-Duran gave a detailed account of struggling with Ms. R over his cellphone and again stated that he and Ms. R had not had sex on Saturday. The officer responded that Mr. Pineda-Duran’s story was problematic because the police had evidence that Ms. R had suffered injuries from sex with him that night. The officer suggested that Mr. Pineda-Duran should admit to having sex that night because, the officer stated, a man would not be jailed for inadvertently injuring his wife during consensual sex. Further, the officer stated, if Mr. Pineda-Duran continued denying sexual relations on Saturday night, “we’re going to assume that you raped her” and Mr. Pineda-Duran would “look like a liar.”

Mr. Pineda-Duran then stated that Ms. R was his partner, not his wife. The officer responded: “So then you had sex today last night yes or no. I need you to help me. I try to help you, you’re not helping me.” Mr. Pineda-Duran answered: “Yes then.” The officer then said, “OK, well, it’s OK, that’s what I want to know! Don’t be stupid ... don’t let them put you in jail for a stupid thing.” The officer again told Mr. Pineda-Duran that he did not want Mr. Pineda-Duran to go to jail for “something stupid” and asked about the sequence of events. Mr. Pineda-Duran stated that “I didn’t grab her by force.” The officer told Mr. Pineda-Duran that the detective had “the notebook for everything” and that “I want you not to get in trouble for a stupid thing. But you need to tell the truth.” The officer then left Mr. Pineda-Duran by himself in the interview room.

Third Phase – Mr. Pineda-Duran again denies any use of force against Ms. R

The lead detective returned to the interview room and questioned Mr. Pineda-Duran, again with the assistance of the Spanish-speaking officer. Mr. Pineda-Duran again stated that he did not “grab [Ms. R] “by force” and that he “wasn’t forcing her,” “[hadn’t] hit her,” and “didn’t beat her.” He stated that he had had consensual sex with Ms. R at about 5:30 p.m. on Saturday and went to sleep, that she took his cellphone, and that she then ran into the bathroom and locked the door. The questioning paused when a forensics officer arrived to gather physical evidence from Mr. Pineda-Duran.

Fourth Phase – Mr. Pineda-Duran admits to grabbing Ms. R by force

The fourth phase began when the forensics officer and the detective left the room and Mr. Pineda-Duran was again left alone with the officer. The officer addressed Mr. Pineda-Duran in Spanish, translated in the transcript as follows:

Look, well, we are waiting for them to come back. Right? To [U/I]² with the evidence, all that, paperwork, all that. While [U/I] that, I am going to tell you that they are taking you to jail for rape. I am going to, don't interrupt me. [U/I] It's not about, about, about tricking you anymore or anything. I am going to explain to you. You understand? Between, from man to man.

The officer then stated:

What is hurting you right now, is that you lied to the police. When someone lies to the police, they go to the jury that nothing that you say is true because you lied one time, and another, and another, and another, and another time. This is going to court. And if they have you testify, they are going to say, “no man, but this guy lied the whole interrogation.” Because everything that [U/I] is recorded. There are

² According to the legend on the transcript, “U/I” denotes unintelligible speech.

cameras in, everywhere here.... And they are going to see that you are lying.

...

Look, what I want you to understand is this. Imagine, let's say that they are going to give you a, a, a jury trial, right? I mean that they are going to take you to trial. [U/I] let's say, twelve people, [U/I] your testimony to testimony and the jury is going to see who they believe more. And the one they believe more is the one that wins. You cannot dispute the evidence because there are doctors, but special doctors with special training that are going to testify. There are photos, X rays, topographies, they have done everything to her, and she is being treated for the internal injuries that she has. Those internal injuries happen in just one [U/I] And that's when you force someone to have sex.

...

And the only thing that is going to save you, because you are going to jail. I already told you, you are going to jail, going for rape. The only thing that's going to save you right now, is for the jury that's going to understand you, because we recorded you, like all the others we have done, they see that you regret what you did. Because the rapist who is not remorseful is dangerous. The one who is remorseful, they see that he is a human being that made a mistake.

...

I'm telling you you're going to jail. That you're going to jail, look, even if you clean the, the blood it does not come off. ... They have all her internal evidence.

...

I am telling you, what is going to save you right now, is the truth. The evidence is not going to lie. You raped her, uh, you grabbed her by force, without a doubt. 100%, the evidence is 100% that you grabbed her by force. What I told you at the beginning, like I told you. Imagine that you are a, a juror from the twelve people. ... Let's say that on that jury there are six, seven men. Or let's say that there are six women, seven men. Every man, at least one time the woman has told them no. ... But, what, if you were a juror like this, "damn, yes, it is true that she didn't want to, she didn't want to but at least he was remorseful." The police took him to apologize, to tell him to apologize, the man was remorseful then.

Soon thereafter, the officer asked Mr. Pineda-Duran to admit that he had raped Ms. R:

So, we know that you grabbed her by force. The only thing that is going to save you right now is to tell the truth so that the jury sees that you regret grabbing her by force. Did you grab her by force? Yes or no?

When Mr. Pineda Duran did not answer that question with a “yes” or “no,” the officer continued:

OK. It's legal as long as, do you understand? But we know because of her internal injuries that it was by force. Now, as police officers we don't know, because we are not doctors. The forensic report is the one that says that. We know 100% that you grabbed her by force. We have the evidence and that is why you are going to jail, for first degree rape which is the most serious charge there is. The only thing that is going to save you is, when you [U/I] I don't know if you watch TV or, or [U/I] that have shows with trials. When the defendant, the defendant stands up and says, “I'm sorry, I'm sorry, I'm sorry. I did this, I'm sorry.” They are remorseful. The jury says, “a man, the wife is a woman, she wanted to, she didn't want to, but he is not a rapist. It's just that she, she didn't want to [U/I].” But since you are lying, they are going to charge you as a rapist who rapes just to rape. And that's how they are going to look at you at the house, at the, in court like a rapist who rapes to hurt someone, not like a man who had it up and wanted to have sex with his wife. And that is going to fuck you up. You are going to jail for the most serious case there is, first degree rape. The next higher case is murder. In other words, you are going to jail, you are 100% going and you are going to spend a good while. And you are not going to be able to defend yourself because you didn't tell the truth. You have to be remorseful right now, so that they see that you were remorseful at that moment, and that you are not a rapist that rapes to hurt somebody, but that you had the urge, she said no. ... Let me [U/I] Because if you were a rapist, I wouldn't be with you. ... I know that you are not a rapist that rapes to hurt somebody.

The officer then asked Mr. Pineda Duran again: “But last night, today in the evening, whatever, you grabbed her by force. Yes or no?” Mr. Pineda Duran answered “Yes.”

The officer continued the questioning: “Tell me how you grabbed her by force. And that's not to deceive you, nothing. You are already going to jail 100%. First degree rape. This is your defense so they can see that you are not a rapist that rapes just to hurt

somebody but, that you had it up and she said no.” Mr. Pineda Duran began to relate his version of the events and again stated that he had not “grab[bed] [Ms. R] by force” and had not ripped off her clothes.

The officer responded that “we have evidence. She has internal injuries. You grabbed her by force. Nobody can, nobody can deny that. ... Look at the camera and say, because ... they see it in the trial. Be remorseful and tell them that you are sorry, and tell them that, what you did to her and why.”

Mr. Pineda-Duran then stated: “Yes, I do regret everything I did.” The officer asked, “But what, what are you remorseful for?” Mr. Pineda-Duran answered, “For grabbing her by force.” He stated that “I regret everything. If I offended her or anything,” and that he was apologizing to her “[f]or all the harm I did to her.”

When the officer asked “how many times did she say no?” Mr. Pineda-Duran responded “like two.” He further stated that he could not account for her cut, as he did not hit her with the beer bottle and that he did not know how she had injuries on her back.

B. Charges and Motion to Suppress

Charges

At the conclusion of the interview, Mr. Pineda-Duran was held on charges of first-degree rape and first-degree assault. He was later indicted on those same charges by the grand jury on February 27, 2020.

Motion to Suppress Statements

Before trial, defense counsel moved to suppress Mr. Pineda-Duran’s statements during the interview. In the motion, defense counsel argued that the statements had been

made involuntarily in response to psychological pressure exerted by the officer’s statement that Mr. Pineda-Duran could save himself only by expressing remorse so that the jury could see that he was “not a rapist.” Noting specifically that Mr. Pineda-Duran had repeatedly denied forcing Ms. R to have sex, counsel sought suppression of Mr. Pineda-Duran’s eventual admission that Ms. R had “told him no two times, and that he regretted grabbing her by force.”

Motion Hearing and Circuit Court Ruling

The Circuit Court conducted a hearing on the motion to suppress on December 4, 2020. Prior to the hearing, the Circuit Court reviewed the video of the interrogation of Mr. Pineda-Duran and the related transcript, which were admitted as defense exhibits. The State also submitted the Spanish-language *Miranda* warning and waiver form that Mr. Pineda-Duran had signed prior to the interview.

Neither Mr. Pineda-Duran nor any other witness testified at the hearing. After hearing legal argument, the Circuit Court ruled from the bench. In that ruling, the court assessed whether “there was any form of psychological coercion.” In doing so, the court applied various factors that bear on the voluntariness of a confession under Maryland common law. Some of those factors concern a defendant’s individual circumstances; others relate to the conduct of the police.

First, the Circuit Court addressed factors bearing on the defendant’s circumstances, such as Mr. Pineda-Duran’s age, physical state, lack of experience in the criminal justice system, and level of education. As to those, the court found that Mr. Pineda-Duran was not a juvenile, had not been deprived of food or drink, showed no sign of being mentally

ill, disabled, or on drugs, and, although he did not have a high school education, had indicated by signing the Spanish language version of the *Miranda* form that he was able to understand the circumstances.

Next, with regard to factors bearing on the conduct of the police, the court noted that Mr. Pineda-Duran had not testified as to his own “mental dynamics.” The court observed that there was no physical coercion, the interrogation room was not intimidating, and the atmosphere in the room did not suggest other forms of intimidation. Finally, addressing the factor of “whether there was an improper inducement or improper promise made by the police” the court found, “[i]n fact, there was none.” The court explained:

... It was repeated over and over again that you’re being charged with rape. I think, at one point, the officer says, a hundred percent that you’re going to jail. There was never anything represented that anything this defendant could say was going to, in fact, preclude going to jail or somehow represent a reduction in possible sentence. There really was no discussion about that. It was really more discussion about how he would appear to a jury.

The court found:

... [B]ased upon the representations of counsel through their motions and my review of the transcript and the tape, it would be difficult, if next to impossible, to determine that, and it would be mere speculation on my part, to determine that the defendant somehow believed that while being told that he would be saved by being remorseful, that that would somehow be a get-out-of-jail-free card or that there would be a significant lessening of sentence or penalty.

The court further noted that, “even if he did, the Court would have to determine whether or not that was reasonable under the circumstances, but that’s not anything I can do in the context of this record, and so, I am not going to speculate as to that.” The court stated that

it “[did] not find that there was psychological coercion or police misconduct” and that it did “find that the statement was, in fact, voluntary”

C. Trial and Sentencing

At trial, the prosecution introduced Mr. Pineda-Duran’s statements into evidence, over a defense objection, in the form of a transcript and video recording of the interrogation, both redacted in ways not material here. The lead detective testified as to his observations of the condition of Ms. R on the evening of the incident and his later interview of Mr. Pineda-Duran. He conceded that some of the assertions he made to Mr. Pineda-Duran during the interview concerning the results of forensic tests were not true as the evidence had not yet been tested. The State also presented the testimony of Ms. R as to her version of events, as well as testimony from two other residents of the house where she and Mr. Pineda-Duran lived, who corroborated Ms. R’s version of events to the extent that there had been a physical altercation over a cellphone. A forensic nurse who examined Ms. R on the evening of the incident testified as to that examination, including her observation of a laceration on Ms. R’s buttock. A police forensic analyst testified that swabs of Mr. Pineda-Duran yielded DNA matching Ms. R, but swabs of Ms. R did not yield DNA matching Mr. Pineda-Duran.

The defense presented the testimony of Ms. R’s mother, who opined that her daughter was not a truthful person. Mr. Pineda-Duran elected not to testify on his own behalf.

In its instructions to the jury, the Circuit Court stated that the jurors should consider the statements made by Mr. Pineda-Duran during the recorded police interview only if they

found, beyond a reasonable doubt, that he had made them voluntarily; the court further advised the jurors as to the factors they should consider.³ In closing arguments, the State made only passing reference to the interrogation of Mr. Pineda-Duran and did not mention his ultimate admission that Ms. R had said “no” twice; defense counsel noted that Mr. Pineda-Duran had emphatically denied raping Ms. R during most of the interview and emphasized that the officers had misled him as to the evidence against him in their questioning.

As noted above, the jury found Mr. Pineda-Duran guilty of second-degree assault and not guilty of rape in either the first or second degree or of assault in the first degree.⁴

On January 11, 2022, the Circuit Court sentenced Mr. Pineda-Duran to time served and did not impose a period of probation.⁵

³ The court’s instruction tracked a pattern jury instruction developed by the State bar association. *See* MSBA, Maryland Criminal Pattern Jury Instructions, MPJI-Cr 3:18 (2d ed. 2012 & 2021 Repl.).

⁴ As is typically the case, the jury did not indicate in its verdict whether it found that Mr. Pineda-Duran’s admissions were voluntary beyond a reasonable doubt and whether it had in fact considered them in rendering its verdict. One may speculate that it did not, given that it acquitted him of the rape and more serious assault charges. Nonetheless, one would also have to speculate to assume that the introduction of the recorded interview had no effect on the jury’s guilty verdict as to second-degree assault. And, of course, any claim that an error had no effect on a verdict must be established beyond a reasonable doubt. *Taylor v. State*, 473 Md. 205, 235 (2021). Accordingly, we shall address the issue raised by Mr. Pineda-Duran concerning the trial court’s denial of his motion to suppress.

⁵ Mr. Pineda-Duran had spent almost two years in custody from the time of his arrest to his sentencing.

II

Discussion

In this appeal, Mr. Pineda-Duran contends that his inculpatory admissions were involuntary under Maryland common law. Under that law, “a confession is involuntary if it is the product of an improper threat, promise, or inducement by the police.” *Lee v. State*, 418 Md. 136, 158 (2011).⁶ Neither Mr. Pineda-Duran nor the record suggests that the police threatened him, so the issue further boils down to whether his statements were the product of an improper promise or inducement. The State responds that the police neither induced Mr. Pineda-Duran to confess nor made an improper promise to him and that the Circuit Court properly denied the motion to suppress.

A. *Standard of Review*

In reviewing a circuit court’s decision on a motion to suppress a defendant’s post-arrest statement, an appellate court is to look to the facts developed at the suppression hearing. *Hill*, 418 Md. at 67 n.1. The evidence presented at that hearing is to be viewed in the light most favorable to the party prevailing on the motion. *Id.* at 77. The issue of whether a confession is voluntary presents a mixed question of law and fact, subject to *de novo* review. However, the Circuit Court’s findings of fact are to be given “credit.” *Id.*

⁶ The State and federal constitutions also require that a defendant’s confession be voluntary in order to be admitted at trial. The courts sometimes analyze the issue of voluntariness for constitutional purposes separately from voluntariness under the common law, although the concepts clearly overlap. *See, e.g., Lee*, 418 Md. at 158-61. Commentators have suggested that the common law standard is more favorable to defendants. *See Andrew V. Jezic, et al., Maryland Law of Confessions (2017) §2:2.*

Thus, “[a]n appellate court reviews without deference a trial court’s ultimate determination as to whether a confession was voluntary and reviews for clear error the trial court’s underlying findings of fact.” *Madrid v. State*, 474 Md. 273, 309 (2021).

B. *Improper Promise or Inducement*

When a defendant moves to suppress a confession under the Maryland common law on the ground that the confession was the product of an improper promise or inducement, the State bears the burden at the motion hearing of both coming forward with evidence to refute the defendant’s claim and proving, by a preponderance of the evidence,⁷ that the defendant confessed voluntarily. *Hill*, 418 Md. at 75. The trial court is to “examine the totality of the circumstances affecting the interrogation and the confession,” including factors such as “the length of interrogation, the manner in which it was conducted, the number of police officers present throughout the interrogation, and the age, education, and experience of the suspect.” *Id.* (internal quotation marks and citations omitted). An additional factor is whether the confession was “preceded or accompanied by threats or a promise of advantage.” *Id.* (internal quotation marks and citations omitted). If so, that factor becomes “transcendent and decisive,” such that the confession “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.” *Id.* (internal quotation marks and citations omitted).

⁷ If the court denies the motion to suppress, the State may introduce evidence of the confession at trial, but must establish voluntariness to the jury’s satisfaction beyond a reasonable doubt if the issue is generated. *Winder v. State*, 362 Md. 275, 306 (2001).

The Supreme Court of Maryland, known until recently as the Court of Appeals, has established a two-part test for determining whether an inculpatory statement was induced by an improper threat or promise. *Hillard v. State*, 286 Md. 145, 153 (1979); *see also Lee*, 418 Md. at 161 (applying the *Hillard* test). Under the *Hillard* test, a confession is deemed to have been improperly induced when (1) an officer or agent of the police has promised or implied to the suspect that the suspect will be given special consideration from a prosecuting authority or some other form of assistance in exchange for the suspect's confession, and (2) the suspect has made the confession in apparent reliance on that explicit or implicit inducement. *Lee*, 418 Md. at 161. Both prongs must be met for a confession to be deemed involuntary under the *Hillard* test. *Id.*

Regarding the first prong, the court must determine whether a reasonable person in the defendant's position would be moved to make an inculpatory statement upon hearing the officer's declaration. *Hill*, 418 Md. at 76. That is an objective test; it requires the court to determine whether the interrogating officer or an agent of the police made a threat, promise, or inducement. *Knight v. State*, 381 Md. 517, 534 (2004). A defendant's subjective belief that a confession will yield a benefit is "irrelevant" to that determination. *Id.* A defendant "need not point to an express *quid pro quo*," but the "promise or offer" must lie "within the substance of the officer's eliciting statement"; a "mere exhortation to tell the truth" does not suffice. *Winder v. State*, 362 Md. 275, 311 (2001) (internal quotation marks and citation omitted). However, when an entreaty to tell the truth is "coupled with a promise that there would be benefits to the suspect" an inculpatory statement may be rendered involuntary. *Reynolds v. State*, 327 Md. 494, 507-08 (1992).

The case law provides useful examples of when an interrogator’s statement to a suspect is, or is not, an improper inducement or promise of a “benefit” under the first prong. Examples of improper inducements have included a promise to the suspect that the victim and victim’s family “wanted an apology” and did not want the suspect to “get into trouble,” *Hill*, 381 Md. at 76; a promise to “see what the State’s Attorney can do for you with your case, with your charges” after the case came to an end, *Knight*, 381 Md. at 537; a statement that one of the officers knew “how to work the court system” and a promise that “I can help you, I could try to protect you,” *Winder*, 362 Md. at 314-15; a promise that if the suspect was telling the truth, “I will go to bat for you,” *Hillard*, 286 Md. at 153; and a promise that if the defendant made a statement, the officers would try to have him placed on probation, but would otherwise “throw the book” at him, *Streams v. State*, 238 Md. 278, 281 (1965).

Examples of an interrogator’s statements found not to have improperly induced a confession include the interrogator’s remarks about the possibility that the suspect might be in danger from gangs, without any promise of protection, *Madrid*, 474 Md. at 328; a statement to the suspect that “what we don’t want you to do is have us leaving here thinking that you went [into the victim’s house] specifically to kill somebody [T]hat’s different ... than a robbery gone bad,” *Williams v. State*, 445 Md. 452, 481 (2015); a promise to tell the prosecutor how the interrogation went and that “the suspect’s cooperation would be helpful,” *Knight*, 381 Md. at 522, 536-37; and a display by the police to the suspect of two alternative descriptions of the crime, one portraying the homicide as a “brutal[]” killing by “a cold-blooded killer” and the other as an “accidental[]” killing by someone “trying to

support his family,” *Ball v. State*, 347 Md. 156, 168-69, 180 (1997) (capitalization omitted).

If the court finds that the police communicated an improper inducement or promise to the suspect, the court then proceeds to the second prong – whether the improper communication caused the suspect to confess in reliance on it. *Winder*, 362 Md. at 311. In making that determination, the court “examine[s] the particular facts and circumstances surrounding the confession.” *Id.* at 312. The State bears the burden of proving, by a preponderance of the evidence, that the accused did not make the statement in reliance on the improper inducement. *Hill*, 418 Md. at 77.

C. *Application to this Case*

In ruling on Mr. Pineda-Duran’s motion to suppress the admissions he made during the final phase of his interrogation, the Circuit Court focused on whether the officer’s statements to Mr. Pineda-Duran during that phase of the interrogation conveyed an improper promise or inducement under the first prong of *Hillard*.⁸ Noting that “it was repeated over and over again” that Mr. Pineda-Duran was “being charged with rape,” the Circuit Court found that it would be “difficult, if next to impossible” to determine that “the

⁸ As noted earlier, in considering the totality of the circumstances, the Circuit Court also addressed factors that bore on Mr. Pineda-Duran’s characteristics, such as his age, education, ability to understand the questions asked of him and his situation, demeanor during the interrogation, and physical condition, and on the setting in which the interrogation was conducted, such as the length of the interrogation, demeanor of the interrogators, and size of the room. The facts on those subjects were undisputed, and the Circuit Court did not find that any of those circumstances supported a conclusion that Mr. Pineda-Duran’s admissions were involuntary. Mr. Pineda-Duran has not asserted any error as to those findings.

defendant somehow believed that while being told that he would be saved by being remorseful, that that would somehow be a get-out-of-jail-free card or that there would be a significant lessening of sentence or penalty.” The Circuit Court thus determined that the officer’s statements could not be interpreted as an improper offer of assistance in exchange for a confession by Mr. Pineda-Duran. Disputing that conclusion, Mr. Pineda-Duran contends that, in the fourth phase of the interrogation, the officer offered him a reduction in charges in return for a confession by telling him, “since you are lying, they are going to charge you as a rapist who rapes just to rape.”

In light of the totality of the circumstances – the entire context in which the officer used the word “charge” – Mr. Pineda-Duran’s argument is unpersuasive. That context includes the earlier phases of the interrogation as well as the statements surrounding the words on which Mr. Pineda-Duran relies. Earlier, in the second phase of the interview, the officer had taken the approach of telling Mr. Pineda-Duran that consensual sex was not a crime and that Mr. Pineda-Duran should stop denying that he had had sex with Ms. R that evening so as not to get into trouble “for a stupid thing.” Whether or not that series of statements could be viewed as an inducement, they did not induce Mr. Pineda-Duran to confess to rape; instead, Mr. Pineda-Duran responded to that approach, during that phase and the third phase of questioning, by saying that he had had consensual sex with Ms. R late in the afternoon that Saturday, before the cellphone fight. Then, at the outset of the fourth phase, the officer reversed course by making clear that the charges in fact would not be reduced: “[T]hey are taking you to jail for rape,” “[w]e know 100% that you grabbed her by force,” and “that is why you are going to jail, for first-degree rape, which is the most

serious charge there is.” The officer also began to tell Mr. Pineda-Duran how a jury might perceive him. “The jury says, ‘a man, the wife is a woman, she wanted to, she didn't want to, but he is not a rapist. It's just that she, she didn't want to [U/I].’” Only then did the officer use the word “charge”: “But since you are lying, they are going to charge you as a rapist who rapes just to rape. And that's how they are going to look at you at the house, at the, in court”

Viewed in context, the officer’s words did not offer leniency or another type of benefit that would amount to an improper inducement under the Maryland common law. The officer had made clear that such a benefit was not forthcoming, and, as noted in the examples cited in Part II.B of this opinion above, an interrogator’s suggestion to a suspect to choose between alternative characterizations of the events is not improper. *See Williams*, 445 Md. at 481 (“[P]resentment of two different ways of characterizing the situation is not an inducement.”).

The Circuit Court thus did not clearly err when it found that the officer’s statements could not be construed as an offer to reduce Mr. Pineda-Duran’s charges or to provide other assistance from the prosecution. Further, given that finding, the Circuit Court did not commit an error of law when it concluded that the officer’s statements did not meet the first prong of the *Hillard* test.

There is no need to reach the second prong of the *Hillard* test – whether Mr. Pineda-Duran relied on the officer’s statements in making his admissions – because both prongs must be met. *See, e.g., Madrid*, 474 Md. at 329 (remarking that, in the absence of an improper inducement on which the suspect could have relied, the Court could not reach the

second prong even if it had been so inclined); *Brown v. State*, 252 Md. App. 197, 241 (2021) (not reaching the second prong after concluding that the first prong had not been met).

In sum, the Circuit Court’s findings of fact were not clearly erroneous, and it applied the applicable common law correctly.

III

Conclusion

We hold that the Circuit Court did not err when it denied Mr. Pineda-Duran’s motion to suppress the admissions he made during his post-arrest interview.

**JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**