

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2462
September Term, 2016

DIARE CALDWELL

v.

STATE OF MARYLAND

Woodward, C.J., **
Meredith,
Davis, Arrie W., ***
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: January 30, 2019

**Woodward, C.J., participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a specially assigned member of this Court.

***Davis, Arrie W., J., did not participate in the adoption of this opinion. See, Md. Code, Courts and Judicial Proceedings Article, § 1-403(b)

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

After a rendezvous for a planned sale of narcotics led to the fatal shooting of the putative buyer, Diare Caldwell, appellant, was indicted in the Circuit Court for Prince George’s County and charged with first degree and second degree murder, armed robbery, conspiracy with Darin Moore to commit armed robbery, and use of a handgun in commission of a felony and/or crime of violence. Caldwell was tried by a jury and convicted of first degree felony murder and use of a handgun, but acquitted of armed robbery and conspiracy to commit armed robbery.¹ Caldwell was sentenced to life imprisonment for felony murder, with all but 30 years suspended, and a concurrent 20 years, with all but 13 years suspended, for use of a handgun, to be followed by 5 years of supervised probation. Caldwell timely appealed and presents the following questions for our review:

1. Did the court err in denying Appellant’s motion to suppress an induced statement?
2. Did the court improperly limit defense counsel’s cross-examination of Detective Talley?
3. Did the trial court err in admitting an impermissible out-of-court statement?

Because we conclude, with respect to the third question, that it was not harmless error to admit hearsay evidence, we will reverse the judgments and remand for a new trial.

¹ The State nol prossed the second-degree murder charge at the end of its case-in-chief.

BACKGROUND

Motion Hearing

On November 5, 2015, Edson Keister, the victim in this case, was fatally shot in the 1400 block of Southern Avenue in Prince George's County. Five days later, on November 10, 2015, sometime between 5:00 and 6:00 a.m., a search warrant was executed at Caldwell's residence in Prince George's County. When the search warrant was executed, Darin Moore was also an occupant of Caldwell's residence. According to Detective Maurice Talley, of the Homicide Unit for the Prince George's County Police, Caldwell agreed to accompany police to the police station for questioning. Caldwell was not handcuffed and no one spoke to him about the shooting during the transport. When he arrived at the station, at around 8:53 a.m., Caldwell was placed in an interview room, where he waited by himself, apparently sleeping at times, until approximately 12:05 p.m., when Detective Talley and Detective Bellino entered the room to interview him.²

After some preliminary discussions concerning Caldwell's name and address, at around 12:19 p.m., Caldwell was advised of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). According to Detective Talley, Caldwell appeared to understand these rights as they were read to him, did not appear to be under the influence of drugs or alcohol at the time, and agreed to speak to the two detectives. Detective Talley testified that neither he nor Detective Bellino, nor any other police officer who had contact with Caldwell that day,

² Detective Bellino's first name does not appear in the record. A video recording of the interview was admitted into evidence at the motion hearing and is included with the record on appeal.

made any promises or threats, or otherwise coerced him into agreeing to waive his rights in order to speak to the police. Caldwell also did not request assistance from a lawyer when he spoke with the two detectives (until after he was told he was going to be charged with murder approximately eleven hours after the interview began). Caldwell did not request to leave at any point, never complained about any illness, never became combative with the detectives, and never indicated that he wanted to stop talking with the detectives (until he eventually requested an attorney).

The detectives initially spoke with Caldwell from 12:19 p.m. until approximately 1:08 p.m. At one point, Caldwell was shown a photograph of the victim, and Caldwell denied knowing him. Thereafter, the detectives left Caldwell alone in the interview room, and went to speak with Lashay Kennedy and Caldwell's fellow suspect Darin Moore.

At approximately 8:12 p.m., the detectives returned to the interview room, and Caldwell was further questioned by the detectives. It was during this portion of the interview that Caldwell alleges the detectives made improper inducements that rendered his statements involuntary. Detective Talley agreed with defense counsel that Detective Bellino lied to Caldwell about what Moore had told them during the break in Caldwell's interview. With respect to what transpired during the interview, the motion judge agreed with the State that the best evidence of the statements made by Caldwell and the detectives would come from the video recording of the interview.³

³ A transcript of the interview is part of the record on appeal.

During the first session of the interview, Caldwell indicated he was 22 years old, went to school until 11th grade, lived with his girlfriend and five-month-old son, and was not under the influence of drugs or alcohol. Caldwell was also read his *Miranda* rights and agreed that he understood those rights.

Caldwell acknowledged that he had known Moore as “Darin” since middle school and that Darin was a “close friend” who would help him out whenever he needed him. He also confirmed that he had heard about the shooting in his neighborhood -- *i.e.*, the shooting in question -- after he woke that morning.

Caldwell claimed that he did not then have a phone because it had been lost, and that he was currently using his girlfriend’s phone. When he was first shown a photo of the shooting victim, Caldwell told the police he did not know the man.

Detective Bellino then told Caldwell that witnesses had said they saw Caldwell outside at 3:00 a.m. when the shooting occurred. Caldwell replied “[t]hey couldn’t identify me because I was in the house asleep.” When the detectives told Caldwell that they knew the phone in question was in Caldwell’s possession and it would show contacts between Caldwell and the victim, Caldwell maintained that he had lost his phone.

The detective told Caldwell to be truthful, and said that they did not care if Caldwell and the victim were dealing marijuana at the time in question. Detective Bellino continued:

And I know that you were out there that night. That’s true. Now, if some dude came up out there and freaking broke bad and something came up and your guilt [sic] and you’re scared, then put it out there, bro, straight up put it out there but to sit here and lie while we know that’s not the truth man – all I’m asking from you is the truth and what you’re saying right now ain’t it and any jury of your peers in this county in any country [sic] would look at these facts that he’s looked at, that I looked at and know it ain’t matching up,

bro, and it's a lie. And, in fact, just the mere fact that you don't know him, you know that ain't true, bro. That's not the truth. And you got more in you. You got more truth than that. . . . I know you didn't do this. All right? But you're going to have to come correct. . . . You can't lay down for what somebody else did, bro, and I know I don't expect you to but I got to hear some truth out of you man, straight up, bro, some truth. . . . However you want to carry it, man, but you know and I know that you [⁶]don't know^[7] him, that's not true. That ain't true, man. That's not true.

Caldwell then provided an extensive description of what had happened on the night of the shooting as part of this colloquy with Detective Bellino:

DETECTIVE: I mean, here's what I'm worried about with it. All right. If you were out there and then you just happened to see a bystander or witness, then that's something like you got to clear up now, right? But if you set the dude up, right, to get smoked, that's a whole 'nother story. Okay? How are we supposed to interpret the situation when we got witness after witness -- I mean, you know that there's also more witnesses than just witnesses inside. You know, there's other people on the ground standing right there looking at you, you know that, right? Right. You got to think about this, man. Maybe you were a little drunk that night --

MR. CALDWELL: No.

DETECTIVE: -- but you know there was other people there, like on the -- on -- like on foot on -- foots on the ground while you're standing on the corner of the building or the foot path? There was -- there were two that looked you straight in the face, you know what I'm saying, and that -- and that's why I'm saying I'm going to give you the benefit of the doubt that you just were a witness out there and something broke bad. Maybe you were running. Maybe you were selling a nickel, dime bag of weed but it didn't happen because somebody came up. I don't know but that don't make you a killer, right? But see what I'm saying, I don't know main man, I don't know this guy, I never see him in my life, no, no, no, what's that going to make me and other people who are just looking at situations objectively like well, where's the truth at, what are they going to think? A setup, right? Maybe you just want to buy -- sell him a nickel, dime of weed and somebody came up and you're scared. Okay. Well, **then clear the air, bro. You know what I'm saying? I don't understand where the harm in that is. There ain't no harm in that, I think. So why is it that you don't want to tell the truth?**

MR. CALDWELL: Tell the truth about what though? That's what I'm saying.

DETECTIVE: Okay. About here we start thinking about buying a nickel, dime bag of weed. **You met him over there by the foot path and then something broke bad. That's the truth, man, or at least part of it.** I understand that you're kind of worried and confused and scared probably right now. All right? But the reality is hey, look, **to sit here and say things that are not factual, you're digging the deeper -- the hole deeper and deeper and deeper.** You know what I'm saying? All right. Look --

MR. CALDWELL: **I was there, right,** but I wasn't scared of him because I ain't do nothing like because I was just in the impression -- I was -- I wouldn't even have been where you all came and got me this morning. I wouldn't even have been there for real. **Like I say, look, I was there. I went to go meet the dude.** Like when I was going to meet him and I (indiscernible) going to meet him, I'm walking to the car, somebody was walking up. By the time they even got to walk up, I ran. Like because I ain't know (indiscernible) on our block and the little bitch that was right there that's a friend of ours, she was right there, she seen it too and I already -- I ran right before he ran. The dude even walked up. Well, then he didn't do anything, like she ran her way and I ran my way. Yeah, I was there.

DETECTIVE: Okay. That wasn't so hard.

MR. CALDWELL: I didn't change my number. The last time I -- I ain't have no reason to change my number. **I did lose the phone though.** I lost the phone.

DETECTIVE-2: What you (indiscernible)?

MR. CALDWELL: Great. Huh-uh.

DETECTIVE: Okay. So -- and what? **How long you been dealing with him?**

MR. CALDWELL: I know him for a little minute now, **probably like a good three, four months.**

DETECTIVE: Okay. And just basically --

MR. CALDWELL: **Now look, the apartment, like he told me about to come over there real quick to holler at me, boom, and like I --**

we left. So I try not to say (indiscernible) say yeah. So when he got there, he said I'm here. I said all right, I'll walk out to you now. **When I got out there, I say hey, you called my phone line. He was like there's somebody standing outside all black. I'm like who, where at.** He looked -- whoever he was with, the female, whoever he was with, she say -- you all says she knows she (indiscernible) on herself. I'm like where. He like they're standing right over the club, see right there between the cars. **He's like you know who that is. I'm like no. So then he like you don't know who that is? I'm like no.** He like what they got on? I was like it like a female but like she got a hood on her head but they're standing on the phone, they're on the phone right there. **He was like all right. Bye.** Come on, I'm trying like hell to go back in the house. Like in the midst of him walking over there, she told Charlie, whoever he was with, to come on and she walked over there with him so he's walking up. I'm still standing right there (indiscernible) of mine. I'm standing right there by the village (phonetic). She walking up. At the time, he walking up. The dude that he was talking about that was in the -- that was on the phone, they was walking up behind, like by the time he walked up, before he was about to do what he was about to do, I'm like hold on because I don't know who this is walking back. The little bitch heard me say that too, like **by the time of this, I seen and I ran.** Like she ran, we both ran. She started screaming. I said oh shit and ran. Like I was so scared, I ain't going to lie, (indiscernible) 2009, **I'm like whoa, somebody just trying to rob him.** She ain't give me no attention though. When she went to sleep and she woke up this morning, she was like -- she called on the phone. She was like where she cut my phone on. It's like why, why and then I don't know, somebody trying to rob me, mo, like what I -- last thing to do is I was trying to (indiscernible) and somebody, I think he got hit, like don't want to mess with that. Yeah, but I ain't been in no situation like that. Yeah, turn my phone off or cut the phone off.

DETECTIVE: It ain't that hard, man. Okay? So you're going down that road.

MR. CALDWELL: I told my baby mother the same story I'm telling you all right now, like somebody really tried to rob him, like the way it looked, they're like -- I thought they was trying to set me up. The whole time it was a random dude like you -- like they -- like you all said, it could have been anybody, somebody that had been following him or anything. I didn't know who it was. I always meet him. Ain't nothing happen like that before. I always meet him.

DETECTIVE: And so he called you. How many -- he called you what, how many times that night?

MR. CALDWELL: Think he called me three times or twice.

DETECTIVE: Twice?

MR. CALDWELL: Then I stayed on the phone with him. When I was on the phone with him, I was like yeah, he was telling me who's the dude -- like there's a dude standing outside in the middle of the cars.

DETECTIVE: So the way he's telling you that there's somebody outside.

MR. CALDWELL: Yeah, the lady was in the car when he was in the car because before he walked off the -- down in the truck, they was sitting in the car on the phone with him. He was on the phone for like one minute.

DETECTIVE: So -- and he -- so then he calls you when he gets there?

MR. CALDWELL: He calls me when he gets there when --

DETECTIVE: And you're talking and you see him in his car and you're talking?

MR. CALDWELL: Yeah.

DETECTIVE: And he sees somebody else there?

MR. CALDWELL: He said he see somebody in the middle of the car standing near the car and I'm like where at. He's like over there, you understand? I'm like yeah, I see somebody over there, they're on the phone. He like (indiscernible) do. I'm like I don't know, I can't tell, they got their hood on, looked like maybe a female or something though. So (indiscernible) that. I'm like I just come on though, I have to go back and go by my house. So he walk over there. The little bitch there he was with, I'm sorry, she like come on. So she walked over there. By the time he get right there by me, the little bitch walk over there. When they all get over there, the dude started walking now So I just ran, like someone -- soon as they started walking up, he just like -- he like this, standing like this, walking up towards me.

DETECTIVE: Okay. So I'm --

MR. CALDWELL: You're him. He's just walking up towards me.
You --

DETECTIVE: Okay.

MR. CALDWELL: Like you a little bit farther back a little bit still
because you're trying to see who the dude is.

DETECTIVE: Where the dude at at this point?

MR. CALDWELL: Like he's by their truck still. Like he got in the
middle of their truck. Like he's standing -- I'm standing right here, you're
the girl, you're right there. He's walking up. As he's walking up, I'm talking
to them and then boom, (indiscernible). Like what's up, what you
(indiscernible) so he tell them -- they're like come on, like boom, she walking
up. So in the midst of that, the dude -- when they all get right, then the dude
started walking over there. Like when he started walking over there, usually
when somebody's walking up, we thought they'd walk right past so me and
him both go like this -- I'm standing right there and he like standing over
there when just left over the pass of time. Nobody let -- he never walked
past. Like he walked right past the girl and whatever, like suppose he --
suppose the dude's there, like whatever he say, he say something like this,
like I already knew it was somebody -- I already knew it wasn't me that did
that, right? Somebody's trying to (indiscernible). So I ran. The girl ran back
that way and I ran up there.

DETECTIVE: All right.

MR. CALDWELL: So I forgot.

DETECTIVE: Do you remember him saying something to you like
who's that?

MR. CALDWELL: Yeah, and I said I don't know. I said you sure
you don't know? He's like man, I don't know. The girl said who's that. The
girl said --

DETECTIVE: Who's that?

MR. CALDWELL: I'm asking you. I say the girl said who's that and
then he's like I don't know. He said who's that and he said I don't know. I
mean, you can go to jail. Nobody knew who it was. I mean, nobody really
knew who it was.

DETECTIVE: Okay. And do you remember him saying give up the shit, give that shit up?

MR. CALDWELL: Who?

DETECTIVE: The dude that was come up to rob him.

MR. CALDWELL: I didn't -- man, I ran already. I ain't --

DETECTIVE: You didn't hear the man don't make me shoot you?

MR. CALDWELL: No, I ain't hear none of that. Like I rely like -- I be a robbery for it. I know how that feeling feels. I'm not trying to get (indiscernible). Like I didn't know what type of plans nobody was on. I ran. **I ran for my life. Like it's just like you see somebody pull out a gun, you going to run too.**

DETECTIVE: Okay. So you didn't hear him say man, oh man, you shoot you?

MR. CALDWELL: I ain't hear none of that shit. Like I was already gone, dude, but I ain't even look back to see what was going on. Like I was already gone.

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DETECTIVE: Right. Believe me, I can guarantee you I -- you ain't never getting charged distribution on me, period, dot, the end. Okay?

* * *

DETECTIVE: Okay. So when you met previous before this, what was that about? What'd he --

MR. CALDWELL: All I know is he got a dipper or some type of something.

DETECTIVE: Where'd he get that from?

MR. CALDWELL: He never get a chance to do nothing.

DETECTIVE: No, come on, man, previously -- the previous time.

MR. CALDWELL: Are you talking about the last time he came in?

DETECTIVE: Uh-huh.

MR. CALDWELL: He gave me -- he owed me some money (indiscernible).

DETECTIVE: (Indiscernible)?

MR. CALDWELL: Gave me like \$25.

DETECTIVE: Okay. That's all he owed you? That was the previous time?

MR. CALDWELL: Yeah.

DETECTIVE: Okay. Before this time?

MR. CALDWELL: Yeah.

DETECTIVE: Okay. And that time he owed you 75 so he squared you off. He took care of you then?

MR. CALDWELL: Yeah.

DETECTIVE: Okay. Did he purchase on that time too?

MR. CALDWELL: No, he just came to give me my money. We were just talking. We were like -- every time he come, it'd be cool. It don't be no we're about to hurry up and -- like it would be cool in talking to him. Like it ain't no just we're about to do this and roll out. Like we'd talk.

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DETECTIVE: So at what point do you -- as soon as that happens, what point did you start running? Like when the dude comes up around, what did you hear? **How did you know it was a robbery?**

MR. CALDWELL: I ran when I seen the men come out. **Like when I seen the dudes were like this pulling the gun out, I ran** and the little fat girl started screaming.

* * *

DETECTIVE: Okay. So -- and then what did this other guy -- what does the gun look like and what hand did he use?

MR. CALDWELL: I didn't -- I just seen the gun come out. I didn't want to see none of that shit. I -- what I knew what he was going to do to me, he could have shot me too. I ain't going to sit there and look and see the gun type or whoever it looked like. I ran for my life.

DETECTIVE: I mean, was it a black semi-automatic or revolver? Is it shiny? What --

MR. CALDWELL: I don't know, sir, I ain't -- I can't tell you that, I wasn't -- I'm just saying oh, when I seen -- when I seen the dude walking up the sidewalk and he had to walk all the way up and I seen him like stepping toward the building or whipping the dog out, I ran, and the other lady ran. I don't know where she ran. Looked like she was running back towards her truck. I don't know, I ran already. I didn't get to see that there.

DETECTIVE: Where did you go?

MR. CALDWELL: Ran home.

DETECTIVE: What happened when you got home?

MR. CALDWELL: Nothing. I ran home.

DETECTIVE: And told your girl we got robbed or something like that, right?

MR. CALDWELL: Yeah, told her -- yeah, I told her we got robbed.

DETECTIVE: We got robbed. And what did she say about robbed, what had happened?

MR. CALDWELL: She didn't pay me no mind. She was asleep by then. She was really like asleep. Like she thought she was done when she told me, like when I -- when she woke up that morning, she didn't even say much. She called me when she got to work.

DETECTIVE: And what'd you tell her?

MR. CALDWELL: I was like boo, we almost got robbed last night but the dude that I was going to go hard at, I think he got shot.

DETECTIVE: And what'd she say?

MR. CALDWELL: Like she said I think I heard -- she's probably dead or something because there's some tape in all the trucks and all that out there and I'm like man and when she told me that, that's when I cut my phone off. Like then I like --

DETECTIVE: Why you cut it off?

MR. CALDWELL: Because I was scared.

* * *

MR. CALDWELL: And I didn't stand by nobody -- no way. I went straight in the house. Like I was already gone before I even heard a shot. Like I was gone already. That's what I'm telling you, I was already gone. Like if the big girl was right there and she'll tell you all that -- she'll tell you that, like I was already gone. **Like as soon as I see him pull out the gun, I ran.** Like I didn't know what the fuck the n[*****] was about to do. I ran already. **That's what I'm telling you all, like that's my story right there, like I ran, like that's the real live story right there but I ain't got nothing to hide or nothing no more.**

DETECTIVE: Say no more. Tell me which way the shooter ran.

MR. CALDWELL: I didn't -- I was gone already, sir. I didn't see none of that. I was already gone. Like you see why I did that. My house is not that far from right there. I ran already. Like I ran. I ain't see or sit there to see where he ran, what kind of gun it was or nothing. I just knew the n[*****] had all black and when he did what he did, I ran.

DETECTIVE: Okay. This particular meeting, how much was the sale supposed to be for?

MR. CALDWELL: It was going to be like \$700.

(Emphasis added.)

At this point, the detectives took an approximately six-hour break in the interview, purportedly to go speak to other witnesses. Detective Bellino began the next interview session with Caldwell by stating: “It’s about time to get to the real truth of what happened.” He informed Caldwell that the police had spoken with other witnesses and knew that Moore was present at the time of the shooting. Caldwell stated that “I done told you the truth though, man.” Although Moore had actually given the detectives no information, Detective Bellino told Caldwell that “your man,” referring to Moore, “done told us that he was out there” and that the victim showed up to rob them. Bellino then indicated that Moore tried to get the gun away from the victim and the gun “accidentally goes off.” Bellino stated: “As far as I’m concerned, that’s a different kind of situation.” Bellino asked why, under that scenario, Caldwell would not say Moore was with him. Bellino continued:

DETECTIVE: He, Darin. Darin left up [sic] to help you. That’s exactly what he told us happened –

[CALDWELL]: (Indiscernible)

DETECTIVE: -- that dude pulled a gun out, tried to rob you and that he stepped up to help you. Are you telling me that he’s lying to us? I don’t think that -- I don’t think that’s a lie at all. That’s exactly what you told your girl when you said we took -- when you woke her up. She told us, she said he tried to rob us. We almost got robbed. That’s what she said. That’s what you said and that’s exactly what you’re talking about. You’re not -- that’s the thing I don’t get now. Like I’m basically almost concerned that maybe you - - like you’re more involved than what we’re thinking because from what he’s saying, he’s basically just stepped up to try to help you and an accident happened. Okay? That’s exactly what your girlfriend said. That’s exactly what you told us. Okay? I don’t understand why you’re not trying to just be honest about that part of it. Is it because you’re scared? You were just scared about the whole situation in general? I mean, listen, this is a -- I can understand that. This is a scary life situation. All right? Probably a once in a lifetime situation for you. All right? And I can understand being here and being like man, I don’t know what the hell to do, man, my old phone, these

dudes trying to figure out, I mean, like what do you want me to do, man. I trying to sell him a nickel, dime bag of wee[d], trying to figure out, I mean, my man tried to help and it just -- you didn't do it, No. 1. No. 2, he's acknowledged he did it and to justify an explainable situation completely.

Detective Bellino asserted that the police knew Moore was at the scene, but “[t]he real question is why is he there, right?” The detective speculated that Moore was there because “[y]ou're his man.” Detective Bellino continued speculating that, when the attempted robbery commenced, Moore “stepped up and within a friggin' -- and an accident happened, man. So why it that he's being honest and you're in here not? Is it because you just thought this was a bad situation? I mean, was it an accident like he said?” Caldwell replied, “I don't know. I didn't see if it -- anything was an accident or none of that.”

Detective Bellino then stated the following, which is the primary focus of Caldwell's claim that he was induced to make an inculpatory statement by Detective Bellino's implication that he would not be charged with a crime if he agreed with the scenario described by the detective:

DETECTIVE: I mean, to be honest, I need you to help corroborate him into the whole accident but we need – I mean, that's what I need more than anything else. In order for me to be able to basically explain that listen, this dude came up here, tried to rob -- I mean, do -- let me ask you this. Dude's walking down the street corner. Okay? **Some guy pulls a gun on you and says give it up and you grab that gun**, look, man, no hell, no hell, you ain't robbing me today or I ain't dying like this, I got a five-year-old son. I got a baby -- I got a girl. I've been with her for what, six years, seven years, since high school. I ain't dying. I got a mom who cares about me **and you shove with this dude over the gun. Okay? And the gun goes off and this dude dies. Do you think that the police are going to charge you?**

[CALDWELL]: No.

DETECTIVE: *No, we're not. Okay? That's the scenario that he's given us.* Okay? I don't understand why he's being honest and you're not.

[CALDWELL]: I've been honest.

(Emphasis added.)

Detective Bellino continued his interrogation, and stated that, after looking at Moore's phone records, the police knew Moore was on the scene:

And we can prove that. So not only am I talked to you about something that he's acknowledged, I'm talking to you about something that's proven by phone records. Okay? That he's there on -- he's here on time this night. **So either you called this guy to buy drugs, he just happened to step in to help you out and something broke bad or you called him there to set him up to rob him and murder him.** Know what I'm saying? Which one would we rather believe? **We rather believe that you were just trying to sell to him and he tried to rob you and he stepped up or we rather believe that -- because we know from your -- looking at your cell pods [sic] and his cell phone, you guys are both there.** Would you rather believe the latter half, that you set this guy up to have him robbed and murdered? You know what I'm saying? It's completely -- **both these situations we know are explainable within the facts, the fact that you talked to him that night, the fact that the cell sites put you there, the fact that you had a relationship with him, all that we know is true.** You know, you've -- we've explained all that part. **The real question is which version is it.** Okay?

(Emphasis added.)

Detective Bellino then told Caldwell that the version they allegedly heard from Moore was "a justified situation, you know, an accident where a dude tried to rob you -- okay -- which is explainable under the law," but that Caldwell was "on this side saying that didn't happen at all[.]" Considering that the victim's family was telling the police that Caldwell "called him out there to freaking have him smoked by your man," the detective indicated that Caldwell's version of events -- claiming that Moore was not with him -- did not "make any sense." Detective Bellino continued:

I don't understand why you want to keep with a lie that he hasn't kept with. You understand what I'm saying? You're sticking to a lie that he already done broke and that's the problem part of this whole situation is that he's provided an explanation. Okay? We're obviously going to evaluate it. To be honest with you, it seems legit but I have to have somebody else to corroborate it. Okay? You think big girl's going to corroborate it? No. All right? Slick Willy ain't going to corroborate it. The real question is are you going to corroborate it, are you going to corroborate him.

I mean, you're at a crossroads, man. Okay? You're at a crossroads in life right now and **you ain't do this.**

[CALDWELL]: Right.

DETECTIVE: **You ain't in trouble for that gun.** That gun didn't accidentally go off in your hand. Okay? You didn't bring that gun there nor did he. So you're right here at this crossroad. You ain't really had not much to do with this whole situation except some guy tried to rob you that night and he – his knowledge it was a bad situation but you had nothing to lose. **You didn't bring the gun there. You were a victim of a robbery or about to be a victim of a robbery.** You didn't struggle for the gun. The gun didn't accidentally go off in your hand. The fact that you're not being honest about that part of it makes me concerned, man. Can you see where I'm looking at it from? I'm starting to get concerned about where you're at, man, when I got him saying my man's going to back me up. He'll tell you -- he's -- no, no, no, he'll back me up. Ask Glenn. **It's exactly what he told us, man. That's why we come back in here to you.**

(Emphasis added.)

Detective Bellino then compared Caldwell's current version to being on the sidelines of a game, stating, "You're just on the sidelines. You're on the sidelines watching the game, bro. **You were outside this whole situation,**" and "[a]ll we need is a replay."

(Emphasis added.)

The detective then conveyed to Caldwell that he thought that he was of good character, *i.e.*, a "decent man," who, up to this point, had only minor offenses for possession

of marijuana and a theft between \$1,000 and \$10,000 on his record.⁴ Referring to the fact that possession of small amounts of marijuana had recently been decriminalized, Detective Bellino told Caldwell that “every marijuana charge will be wiped off your record because it’s not in the laws anymore and anything (indiscernible) your theft charge can be expunged.”⁵

The detective continued:

You know, but, like I said, you’re in this crossroad right here. All right? And you got to decide which side you’re on and I know you’re kind of torn and I kind of understand it but your reality is I don’t because you’ve already been honest. So only person who has anything to fear in this whole situation, really, is him and he’s already said kid, I was there, you’re right. My cell phone say I was there, I’m there. Yeah, you’re right, I was there. I was there with him that night. Yeah, but it ain’t go down like that, bro. It did not go down like that. Okay? And he’s telling me something that’s completely consistent with what we know -- okay -- with what we’ve heard from other witnesses, that’s consistent with what all -- what other people who are in the area are saying. It’s consistent what you’re saying, links in completely with everything he’s saying, what you’re saying, with what your girl is saying. It’s just explaining a bad situation and, **like I said, accidents happen but you -- you’re like the missing link here who all you have to do is basically say I wasn’t trying to get into this whole story** but yeah, I mean, it was a mistake.

I mean, are you a friend to him or are you a foe?

[CALDWELL]: I’m a friend.

⁴ According to Caldwell’s pre-sentence investigation, Caldwell had two prior adult convictions for possession of marijuana and a theft between \$1,000 and \$10,000 charge, which latter offense was nol prossed a few months before the instant offense.

⁵ Caldwell has not alleged that these statements by Detective Bellino amounted to an improper inducement. *Cf. Harper v. State*, 162 Md. App. 55, 79 (2005) (holding that a statement by a police officer indicating he would recommend the suspect receive drug treatment in prison was “unconnected to any promise of leniency in prosecution or sentencing, or to advocate for such leniency, is not in and of itself an improper promise of a benefit or special advantage”).

DETECTIVE: Okay. So if **he's saying this whole situation was an accident then he didn't mean to happen** -- okay -- and that when we confronted him, obviously, and talked to him and showed him his cell phone records and put him on the scene, you know, he didn't remember initially, didn't remember he was there and so and so and so and all that. We showed him his cell phone records. We showed him the towers, everything. **He acknowledged I was there, the fact that he fled, the fact that he left the area**, you know, all that. He acknowledged he was there. It's just it didn't happen the way that the people that we were suspicious of said it happened. There are two sides. He's telling his side of the story. Are you going to back him up or are you going to keep sticking with this fairytale?

(Emphasis added.)

Caldwell then acknowledged that the version he had been telling up to that point was incomplete, and agreed that Moore was with him. Caldwell maintained that the victim pulled a gun out and pointed it at him and Moore. He further maintained that he thought he was being robbed, that he ran at the sight of the gun and that he did not see the shooting. He heard four gunshots as he was running away. He explained that he had had Moore come along because he was concerned that something bad might happen if he met with the buyer alone:

Yeah, I always bring somebody with me when I'm -- like if I'm about to do something like that. Like there's some -- take something -- like a situation like that, somebody tries some shit like that, like I always have him with me anyway.

Toward the conclusion of the interview, Caldwell was apparently shown a map and asked some questions about where the robbery and shooting happened. Then, at approximately 11:39 p.m., the following ensued:

[CALDWELL]: So when will I be able to leave?

[DETECTIVE TALLEY]: You're going to get charged with murder.

[CALDWELL]: Why am I being charged for murder for?

[DETECTIVE TALLEY]: Because of the investigation. Okay?

[DETECTIVE BELLINO]: I mean, here's the thing, man. We can prove, we know you set him up. We know you called him. We know you guys were there. We know he's with you, your best friend's with you and your best friend smoked, killed the dude. All right? And here -- this is the raw truth. All right? The facts clearly show his story about the guy struggling with him, we don't have anything to corroborate that at all -- okay -- and we don't believe that story. We got other witnesses inside the apartment corroborate, and independent female was saying what happened. All right. This dude curbed out. He's a robbery boy, he's stick-up boy. I don't know if he was dipping or if he was on a dipper that night. He curbed out and **he did something but wow, that I know that you didn't intend to do. I believe you just wanted to get your money back** and you had the dude roll up out there and not come around that way . . .

(Emphasis added.)

Caldwell was then charged with the murder of Edson Keister, and he was taken to a court commissioner for further processing.

After Detective Talley testified at the suppression hearing, defense counsel argued that Caldwell was improperly induced to confess by the officers' fabricated story regarding what they were told by his co-defendant, Moore. Defense counsel contended that Caldwell was told that if he agreed with this fictional account by Moore, "there's no problem because Mr. Moore allegedly was just coming to the aid of Mr. Caldwell when Mr. Caldwell was being robbed." The court then heard from the State, and watched portions of the video recording of the interview.

Following this, defense counsel added that "the clincher" for his argument occurred at 20:26:16 on the video tape, when Detective Bellino told Caldwell: "Do you think the

police are going to charge you? . . . No, we're not." Counsel argued that "[t]hey wanted him to agree with the version that they made up for the co-defendant," and that Bellino's statement "you think the police are going to charge you? . . . no, we're not . . . [was] an inducement which is unconstitutional and kills any voluntariness" regarding Caldwell's statement.

The State responded that this portion of the interview was not an inducement but had to be read in context with the hypothetical situation posed by Detective Bellino immediately before the alleged inducing statement. The State maintained that the detective had presented a hypothetical to Caldwell during the interview, and was not talking about whether or not Caldwell would be charged in this case. The State continued:

At no time did Detective Bellino say, if you agree that there was a struggle out there and your man had to shoot him and it was an accident, you are going to walk out of here today. We are not going to charge you. You are not guilty of those charges. He says nothing like that.

After hearing further argument from both parties, the court denied the motion to suppress. The court first found that Caldwell was properly advised of, and waived, his *Miranda* rights. With respect to the voluntariness of Caldwell's statement, the court ruled as follows:

On the issue of voluntariness, again that is also based on the totality of the circumstances.

The Ball case, *Ball v. State*, found that it was not a promise when the police stated it would be better if he told the truth. It was not found a promise when stated much better off if he told the story.

The Court finds that there was no issue of lack of sleep. The defendant had his feet up and slept throughout the tape. I don't find that there was any

psychological force. He was given bathroom breaks, food, water, an offer of snacks.

The Court notes, as counsel for the defendant stated, that at 20:26 hours and 16 seconds, the detective stated that do you think if such and such happened, would this person be charged?

The Court agrees that he was posing a hypothetical. There was no promise. There was not even a showing of reliance on the hypothetical. **I find there was no promise nor any reliance on the promise or reliance on that hypothetical situation. So even if there was a promise, the Court would have to find that there was some reliance. I don't find there was a promise. I find there was a hypothetical situation and there was no reliance on that hypothetical situation.**

I don't find that the defendant made an inculpatory statement based on reliance of a promise or an inducement. In fact, he didn't make an inculpatory statement. He said it was, I guess, self-defense, is what he was saying in so many words.

I find that the waiver was voluntary based on the totality of the circumstances. **I find that the statement made by the defendant, based on the totality of the circumstances, was freely, voluntarily, knowingly and intelligently given under the circumstances.**

The motion to suppress is denied. However, after the point where the defendant mentioned a lawyer, it will be suppressed from that point on.^[6]

Trial

The evidence presented at trial showed the following. During the early morning hours of November 5, 2015, the murder victim in this case, Edson Keister, called his girlfriend, Tiffany Hines, to come pick him up and take him to meet with a friend. According to Hines, Keister wanted to purchase "dippers." She explained that a dipper is "a cigarette dipped into PCP." Hines met Keister at his house in Bowie and drove him to

⁶ During argument, the State conceded that Caldwell requested a lawyer after Caldwell was informed he was charged, at around 23:47:48 on the videotape.

the Forest Hills apartment complex, located near Oxon Hill, the same location where Keister had purchased drugs on approximately three or four prior occasions.

When they arrived, at around 3:00 a.m., Hines parked in the parking lot next to another vehicle and Keister got out. Hines testified that the driver of the other vehicle was a woman named “Charmise,” who the jury would later learn was Charmise Ford. Hines had seen Ford during the earlier drug transactions.

After Keister got out of Hines’s car, he made a phone call from his cellphone. Moments later, Ford got out of her car, and Hines watched the two of them meet near the back of her car. The two then walked over to some nearby dumpsters, and Hines then lost sight of them.

Shortly thereafter, Hines heard four gunshots. Hines pulled out of her parking spot at the sound, and then saw Keister lying on the ground, with someone standing over top of him, holding a gun. That person reached down and went into Keister’s pants pocket. She then saw the man holding the gun run away from the scene.

Hines got out of her car and went to Keister. She tried to help him up, but he stated that he could not move. Police and paramedics responded to the scene of the shooting and transported Keister to a hospital, where he died from his injuries.

Charmise Ford testified that, on the day in question, November 5, 2015, she spoke by phone with Keister, a friend she had known for over twenty years, at around 1:00 a.m. Keister asked Ford to meet him at the apartment complex in question to test the quality of the PCP he was going to purchase. Ford confirmed that she met Keister and another woman

at the apartment complex, and that they got out of their respective cars and started walking toward the dumpsters.

As Ford walked behind Keister, they passed an African-American “light skinned” man standing in between two sport utility vehicles that were parked in the area. That man, who was dressed in black, followed Keister as Keister walked toward a second man who was standing nearby. At trial, Ford identified Caldwell as that second man. She also testified that she had seen Caldwell on an earlier occasion when she was with Keister to buy PCP from Caldwell.

When Ford and Keister approached Caldwell, Keister asked Caldwell if he knew the other man that was following him, and Caldwell replied that he did not know the man. At that point, Ford said, the other man approached them and said to Keister words to the effect of “you know what time it is” and “give the shit up.” According to Ford, this man then pulled out a big, black handgun, that looked like a “police gun.” Keister responded by asking “What?” And the armed man replied, “don’t make me shoot you.” Ford then pushed Keister and yelled “run.” As she did so, she saw the man with the gun grab Keister by the collar of his jacket. Ford got down between some cars, and then heard four gunshots. When she looked back toward Keister, she saw the light skinned man “standing over top of [Keister] shooting him.”

Ford testified that she got a good look at the shooter’s face. Shown a photograph of Moore during trial, Ford testified that “[t]his is the guy that shot my friend.” Detective Talley would later testify that the photograph Ford had picked out was a photograph of

Darin Moore, and that Moore matched the description of the shooter provided earlier by Ford.

Five days after the shooting, on November 10, 2015, between 5:30 and 6:00 a.m., police executed a search warrant at Caldwell's apartment, located a short walk from the crime scene. Caldwell was in the living room, as was Caldwell's friend Darin Moore. Caldwell was searched and then transported to the police station for an interview. Shortly after 12:05 p.m., he waived his *Miranda* rights and agreed to speak with Detective Talley and Detective Bellino.

Although neither the video recording nor the transcript of Caldwell's interview was admitted into evidence at trial, the jury heard testimony about Caldwell's statements.⁷ Over a continuing objection, Detective Talley testified at trial that Caldwell initially stated that he did not know anything about the homicide in this case. Detective Talley then told Caldwell that he "knew a little bit more about the homicide," and that Caldwell "knows a little bit more than what he [was] telling me." Although Caldwell had initially indicated he did not know the victim, he acknowledged that he knew him from prior drug transactions. Caldwell also admitted he was present during the shooting. According to Talley, Caldwell "said he was there. He was there to sell the victim some marijuana; and he left after the shooting." Caldwell indicated the transaction was going to be for the sale of \$700 worth of marijuana.

⁷ Detective Bellino did not testify at trial.

Detective Talley testified that Caldwell further stated that the victim was with a woman, and that, during the transaction, another man “approached and he heard shots and he ran.” Caldwell stated that he did not know this other man.

Detective Talley and Detective Bellino then left Caldwell in the interview room and conducted additional interviews of Caldwell’s girlfriend, as well as Darin Moore. Subsequently, the detectives returned to the interview room and told Caldwell that they had spoken to Moore and that “Moore put himself on the scene.” They also informed Caldwell that Ford, who was present during the shooting, had made an identification in this case. Detective Talley testified that Caldwell eventually told them this version of what happened:

That he went to the location with Mr. Moore. He normally takes muscle to the location when he goes to do those deals. He normally takes somebody with him and that he wasn’t sure of the tussle part with the gun but, again, he puts Mr. Moore there with him.^[8]

And, Detective Talley explained, Caldwell maintained that Keister brought a gun with him to the deal, and that there was a “tussle” involving the gun between Keister and

⁸ This appears to be a paraphrase of the statement actually made by Caldwell during the interview. As quoted above, Caldwell said:

Yeah, I always bring somebody with me when I’m -- like if I’m about to do something like that. Like there’s some -- take something -- like a situation like that, somebody tries some shit like that, like I always have him with me anyway.

The term “muscle” appears to be Detective Talley’s word.

Moore. As a result, Keister was shot and killed. After Caldwell gave this version of events, he was charged with the murder.

On cross-examination, Detective Talley confirmed that the interview with Caldwell at the police station was video-recorded. Talley agreed that, during the interview, Caldwell never indicated that he planned to rob or kill Keister, or to do so with anyone else, and Caldwell maintained that the purpose of the meeting between Caldwell and Keister was simply to consummate a drug deal.

Detective Talley confirmed that, during a break in the interview with Caldwell, he went with Detective Bellino to talk to Caldwell's co-defendant, Moore. Despite the fact that Moore did not provide a statement, and did not admit any involvement in the crime, the detectives lied to Caldwell about what they learned from Moore.

Other evidence before the jury included information about Caldwell's cell phone records, and the records themselves. According to Detective Talley, Caldwell admitted that he called the victim on the day of the murder. And the phone records for the Caldwell's cell phone reflected two incoming phone calls from the victim's phone at approximately 2:27 a.m. and 2:58 a.m., just minutes prior to the homicide.

In addition, Detective Talley testified, over objection, that, during the investigation, he had learned Moore's phone number, and that phone number appeared twice in the records for Caldwell's cell phone at around the time of the murder, with one call occurring at 1:14:38 a.m. and the other taking place at around 3:06:12 a.m.

There was also forensic evidence admitted at trial. A vial of a suspected controlled dangerous substance was recovered from Caldwell's residence. Ammunition, including

Winchester .40 caliber shells, was also recovered at that location. Similar .40 caliber shell casings, although made by Smith & Wesson, as well as two projectile bullets, were collected from the crime scene. A firearms expert testified that all of the shell casings and the two bullets came from the same unknown firearm. No firearm was recovered in this case.

We shall include additional detail in the following discussion.

DISCUSSION

I.

Caldwell contends the court erred in denying his motion to suppress his statement on the ground that it was involuntary. The State responds that the motion court properly denied the motion to suppress.

In reviewing the motion court's decision on a motion to suppress, we are limited to the facts developed at the suppression hearing, *Hill v. State*, 418 Md. 62, 67 n.1 (2011), and we view the evidence in the light most favorable to the party prevailing on the motion. *Robinson v. State*, 419 Md. 602, 611-12 (2011); *accord Gonzalez v. State*, 429 Md. 632, 647 (2012). We review the motion court's factual findings for clear error, but we make our own independent constitutional appraisal, "reviewing the relevant law and applying it to the facts and circumstances of this case." *State v. Luckett*, 413 Md. 360, 375 n.3 (2010); *accord Moore v. State*, 422 Md. 516, 528 (2011). The issue of whether a confession is voluntary presents a mixed question of law and fact, subject to *de novo* review, with deference given to the suppression court's factual findings. *Winder v. State*, 362 Md. 275,

310-11 (2001).⁹

Confessions that are “the result of police conduct that overbears the will of the suspect and induces the suspect to confess” are prohibited. *Lee v. State*, 418 Md. 136, 159 (2011) (citing *Arizona v. Fulminante*, 499 U.S. 279, 288 (1991)); *see also Schneckloth v. Bustamonte*, 412 U.S. 218, 225-26 (1973) (explaining that the test asks: “Is the confession the product of an essentially free and unconstrained choice by its maker?” (citation omitted)). Under Maryland common law, there is a two-part test to assess voluntariness:

Under that test, an inculpatory statement is involuntary under Maryland common law if (1) any officer or agent of the police promises or implies to the suspect that he will be given special consideration from a prosecuting authority or some other form of assistance in exchange for the suspect’s confession, *and* (2) the suspect makes a confession in apparent reliance on the police officer’s explicit or implicit inducement.

Lee, 418 Md. at 161 (citing *Hillard v. State*, 286 Md. 145, 153 (1979); *emphasis added*).

The first part of the test is objective, and applies to both express and implied inducements:

[W]hen determining whether a police officer’s conduct satisfies the first prong, the court must determine whether a reasonable person in the position of the accused would be moved to make an inculpatory statement upon hearing the officer’s declaration; an accused’s subjective belief that he will receive a benefit in exchange for a confession carries no weight under this prong.

Hill v. State, 418 Md. 62, 76 (2011).

The “promise or offer” must be “within the substance of the officer’s eliciting statement.” *Winder v. State*, 362 Md. 275, 311 (2001). “Although a defendant need not

⁹ This standard of review precludes us from considering the testimony subsequently given by Detective Talley at trial.

point to an express *quid pro quo*, “[a] mere exhortation to tell the truth is not enough to make a statement involuntary.” *Id.* (quoting *Reynolds v. State*, 327 Md. 494, 507 (1992)). But “ ‘[a]n entreaty’ by an interrogating officer to a suspect to ‘tell the truth, coupled with a promise that there would be benefits to the suspect . . . can render the statement involuntary.’” *Buck v. State*, 181 Md. App. 585, 635 (2008) (quoting *Reynolds*, 327 Md. at 507-08).

If there was an improper inducement, then the court moves to the second step of the analysis. “[T]o determine whether a suspect relied upon an offer of help from an interrogating authority in making a confession we examine the particular facts and circumstances surrounding the confession.” *Winder*, 362 Md. at 312. Unless the accused relied upon the officer’s improper inducement, the statement is admissible. *Id.* at 311-12. It is the State’s burden to prove, 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.

Furthermore:

Courts that are asked to determine at a suppression hearing whether a confession was made voluntarily must examine the totality of the circumstances affecting the interrogation and the confession. A non-exhaustive list of factors to consider in that analysis includes 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.

Hill, 418 Md. at 75 (internal citation omitted).

Ultimately, it is the State’s burden to “establish the voluntariness of the statement by a preponderance of the evidence.” *Winder*, 362 Md. at 306 (quoting *Hillard*, 286 Md. at 151).

Caldwell recognizes that, although the police lied to him about Moore’s statement, “the use of trickery to encourage a suspect to confess is not inherently unlawful.” *Whittington v. State*, 147 Md. App. 496, 520 (2002) (citing *Frazier v. Cupp*, 394 U.S. 731, 739 (1969)), *cert. denied*, 373 Md. 408, *cert. denied*, 540 U.S. 851 (2003); *see also Lee*, 418 Md. at 159 (“Lying to the suspect about the strength of the evidence against the defendant and showing false sympathy for the suspect, for example, do not rise to the level of the type of police coercion that is viewed as overbearing the will of the suspect.”) (citations omitted); Jezic et al., *Maryland Law of Confessions*, § 3:16 at 117-18 (2016-17 edition) (hereinafter “*Maryland Law of Confessions*”) (“Maryland appellate courts apply the constitutional due process test of whether the defendant’s will was overborne by the deception under the totality of the circumstances”) (emphasis omitted).

Caldwell’s primary argument is that he was induced to make a statement by both express and implied promises that it would be to his “advantage if he adopted the detective’s version of events, and that he would be a murder suspect if he refused.” Caldwell relies on comments the detective made to him, appearing in approximately 17 pages of the transcribed interview. Contending that the overall tenor of Detective Bellino’s comments amounted to improper inducements, Caldwell also specifically directs our attention (as he had also directed the attention of the motion judge) to the detective’s hypothetical scenario about a robbery victim who attempts to disarm the robber and accidentally shoots him, as to which the detective stated: “Do you think that the police are going to charge you? . . . No, we’re not.” Neither party has cited, nor has our research revealed, a case addressing the use of a hypothetical as an interrogation technique similar

to the manner in which Detective Bellino did in this case. But other cases have analyzed whether particular statements during interrogations were improper inducements.

In *Williams v. State*, 445 Md. 452 (2015), Williams was interviewed by police in connection with a shooting death in College Park. *Williams*, 445 Md. at 456. After his rights were read to him, Williams replied, “I don’t want to say nothing. I don’t know, . . .” *Id.* at 459. But the police and Williams continued to discuss the case, with the police, at various points, distinguishing between an intended killing, which might be the case if Williams “premeditatively went in there with your gun and gunned this guy down,” and an unintentional killing, where it was just “a robbery gone bad.” *Id.* at 460. During the interview, the lead detective informed Williams, in part, as follows:

There are two different charges here. There is a pre-meditated going in, blasting somebody away, taking their stuff and roll. That’s a bad charge. We go by his story, the fact that you went in there, he had no intentions on killing this dude. None. Stuff got out of hand, the dude wouldn’t talk, wouldn’t putting up what he was saying [sic]. The dude is a big dude. You’re kind of a slim dude, and he wanted to fight. He wanted to see whether or not you had balls enough to pull the trigger. Came after you, you gave a warning shot. He still wouldn’t listen to what you were saying, and then bam, all hell broke loose. Glass breaking, whole nine. That’s a different charge, okay? All I’m saying is, I would not, if I were you, I would not want us to leave here thinking that you walked in that house, popped this dude, premeditated, walked in there, I’m going to kill this cat, take everything in the house, and roll out. *You may never see outside again if you let us leave here thinking that.*

Williams, 445 Md. at 461 (emphasis added).

After the detective then told Williams he had already been charged in the case, Williams stated: “You all tell me I’m already being charged with that shit. No matter what you all find out, they’re going to smoke my boots anyway.” *Id.* at 462. The detective

disagreed, and Williams confessed to the shooting, providing details and confirming he was the shooter. *Id.* at 462-64.

The Court of Appeals concluded that Williams did not unambiguously invoke his right to remain silent, and addressed the voluntariness of Williams's confession. *Id.* at 478-83. The Court summarized Williams's argument as follows:

Williams asserts that his confession was involuntary because the detectives implied Williams "might see outside again if he confessed to a robbery gone bad instead of a premeditated murder." Williams alleges that the detectives led him to believe that "a robbery gone bad was not a 'bad charge,' that a deal might be offered if he confessed to a robbery gone bad, and that his boots might not be smoked if he confessed to a robbery gone bad."

Id. at 478.

In upholding the trial court's denial of the motion to suppress, the majority of the Court stated that "presentment of two different ways of characterizing the situation is not an inducement." *Id.* at 481. Moreover, the Court concluded that the lead detective "was merely advising Caldwell of the *possible* legal consequences of a verdict of first degree premeditated murder at Caldwell's future trial." *Id.* The Court of Appeals also held that, even if Williams was improperly promised a benefit, his knowledge that he had already been charged indicated that he did not rely on that inducement. *Id.* at 479, 482.

The *Williams* Court relied in part on *Ball v. State*, 347 Md. 156 (1997). In *Ball*, nineteen-year-old Debra Anne Goodwich was found dead after being shot seven times in her parents' residence in Baltimore County. *Id.* at 167. A preliminary investigation of the crime led to the arrest of Wallace Ball in Knoxville, Tennessee. After waiving *Miranda* rights, Ball was interviewed by Baltimore County Police Detective Carroll Bollinger. *Id.*

at 168. Detective Bollinger presented Ball with two documents with alternative versions of the crime. One document indicated that Ball was “a cold-blooded killer” who killed Goodwich for fun; the second document indicated that Ball accidentally killed Goodwich because he was afraid she could identify him. *Ball*, 347 Md. at 168-69. When Ball asked Detective Bollinger the meaning of the two documents, the detective “explained to [Ball] that they were two different ways of characterizing him.” *Id.* at 169.

After Ball orally confessed to the crime, *id.* at 168, 170, Detective Bollinger asked him if he would like to make a written confession. *Id.* at 171. Caldwell initially resisted. *Id.* at 172. At that point, Detective Bollinger said to Ball:

[W]hen this comes to trial, when this all comes to trial if you don’t put it on paper then it is going to be me up on the stand telling the jury what occurred. It is going to be through you to me to the jury [I]t is much better if you told the story, not that it would get distorted through me to the jury, that it is your words, not mine. . . .

Id.

Shortly thereafter, Ball supplied a written confession and was ultimately prosecuted on the basis of it. *Id.* On appeal, Ball first asserted that Bollinger’s assurance, that it would be “much better if you told the story,” rendered Ball’s written confession involuntary. The Court of Appeals disagreed, stating:

Notwithstanding the prohibition against the inducement of confessions by improper promises or other forms of coercion, it has been held that an officer’s mere admonition to the suspect to speak the truth does not render a statement involuntary. The following exhortations by interrogating officers, for example, all have been held to be proper: “I want you to tell me the truth”; “the truth would hurt no one”; “get it off [your] chest”; and there’s “no sense in lying.”

The issue is whether Detective Bollinger’s statement that it would be “better” for Appellant to tell the story in his own words falls within the former category of improper inducement. The context in which this suggestion was made clearly indicates that it does not. Detective Bollinger

was not suggesting to Appellant that the police or any other State official would confer any special benefit or advantage on Appellant in exchange for a written confession. Rather, the message that Detective Bollinger was trying to convey when he stated that it would be “better” for Appellant was simply that a written confession would provide Appellant an opportunity to explain his criminal behavior in his own words. To the extent that this opportunity constituted a “benefit” to Appellant, it did not rise to the level of an improper inducement.

Id. at 175-76 (citations omitted).

Ball also challenged the interrogation technique Detective Bollinger used in presenting two contrasting documents that purported to provide two different characterizations of Ball’s actions. The Court rejected Ball’s claim that this amounted to psychological coercion, stating:

There is no indication that Appellant’s will was overborne by the use of this interrogation method. Nor does the record support Appellant’s assertion that the police took advantage of Appellant’s ignorance that the two different scenarios both amounted to first degree murder. Detective Bollinger testified that after Appellant read the two documents, he asked “what do they do for me.” Appellant apparently recognized, therefore, that under either scenario he would be admitting to the murder of Debra Goodwich. We find no merit in Appellant’s contention that this interrogation technique rendered his subsequent statements involuntary.

Ball, 347 Md. at 180.

The State further directs our attention to *Smith v. State*, 220 Md. App. 256 (2014), *cert. denied*, 442 Md. 196 (2015). There, the accused was arrested for engaging in anal intercourse with a four-year-old. *Id.* at 261-62. During a police interview, detectives told Smith that a polygraph confirmed that he engaged in intercourse with a child, and if he denied it, they would move forward with the case and presume that Smith used force to compel the minor to have intercourse. *Id.* at 264-65. One of the detectives stated that “this is your opportunity, if it was not force, then you need to tell us, because what happens is

you walk out of here, we're going with the force." *Id.* at 264. The detective then stated that the police frequently heard victims say "I was raped and I was forced," adding that "you're going to get in trouble for that. If it was consensual, that's a whole different story." *Id.* After Smith denied using force, the detective stated: "Okay. Tell me what the consensual part of it was and we can roll out of this. If it's consensual, then tell us it's consensual." Smith then confessed to having anal intercourse with the minor, asserting that it was her idea. *Id.* at 265.

On appeal, Smith argued that the detective's statements constituted an improper inducement, and he relied on those statements in making the confession. *Id.* at 271. We noted that the detectives "never actually said [Smith] would be charged with a lesser offense if the sex was consensual, and they never offered [Smith] assistance if he confessed." In any event, we stated:

Even if [Smith] actually believed that the detectives' statements meant that by confessing to consensual sexual conduct, a lesser charge would be filed against him, we note that encouraging a suspect to adopt a version of the facts that might mitigate the punishment for the crime he committed is not in itself an improper inducement under Maryland law. [*Williams v. State*, 212 Md. App. 396, 338 (2013), *aff'd*, 445 Md. 452 (2015)]. Moreover, in the instant case, the detectives did not actually tell [Smith] that a lesser charge may be filed against him by saying the sex was consensual. We are not called upon to evaluate what [Smith] might have believed the detectives meant, but what a reasonable layperson would have understood the detectives' words to mean. *Lee*,[] 418 Md. at 156. Indeed, "[a]n accused's subjective belief that he will receive a benefit in exchange for a confession carries no weight under [prong one of the *Hillard* test.]" *Hill*, 418 Md. at 76.

Id. at 280-81 (emphasis added).

In contrast to these cases, Caldwell points to cases in which the courts have found improper inducements. For example, in *Winder*, *supra*, the Court of Appeals noted that the interrogating officers represented that they could "help" the accused by finding

psychological assistance, by advocating for leniency with the prosecutor and the court, and by protecting him from vigilantes if he confessed to the murders he was suspected of committing. *Winder*, 362 Md. at 314-318. The Court explained these were improper inducements:

[T]he interrogating officers' statements and conduct go far beyond that in any of our prior cases where improper inducements were recognized. During the twelve hour interrogation, the officers repeated many times that they would help Appellant. They offered him an apparent means to garner leniency from the state prosecutors and the trial court and protection from an angry mob. The only thing Appellant had to do in return for these meaningful inducements was confess to a triple murder. The first prong of the *Hillard* test has been satisfied.

Winder, 362 Md. at 317-18. See *Hill*, 418 Md. at 78 (concluding that an interrogating officer's remark to a suspected child sex offender that the victim and the victim's mother "did not want to see him get into trouble, but they only wanted an apology" was an improper inducement); *Knight v. State*, 381 Md. 517, 536-37 (2004) (holding that an officer's remark that, "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," was an improper inducement because it was "clearly a promise to exercise advocacy on [petitioner's] behalf to convince the prosecutor to exercise discretion in [petitioner's] favor"); *Hillard*, 286 Md. at 153 (holding that interrogating officer's statement, "[I]f you are telling me the truth . . . I will go to bat for you [with the prosecutor by telling the prosecutor] that you have cooperated[,] . . . you have told me the truth, and I believe you were not knowledgeable as far as the murder was concerned" was an improper inducement); *Streams v. State*, 238 Md. 278, 281 (1965) (holding that statement by interrogating officer that "it would be better for [you] if [you] made a statement because if [you] did they would try to get [you] put on probation" was an improper promise); *Finke v. State*, 56 Md. App. 450, 486 (1983)

(concluding that detective's statement, "I'm going to let you go on home or let you go, and I'm going to go to your uncle and tell him you killed your aunt and just can't remember" was an improper inducement).

But, even if we assume *arguendo* that Detective Bellino's assertion that the man in his hypothetical would not be charged was an improper inducement for Caldwell to admit being involved in an accidental shooting of an armed robber, the suppression court was not persuaded that Caldwell *relied* on the alleged improper inducement. Caldwell did not testify at the suppression hearing, and this Court stated in *Ashford v. State*, 147 Md. 1, 56, *cert. denied*, 372 Md. 430 (2002), that "the failure of a defendant to testify almost forecloses any chance of prevailing" on a suppression motion based on an alleged absence of voluntariness. *Id.* "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." *Id.* See also *Gorge v. State*, 386 Md. 600, 622 (2005) ("Moreover, Mr. Gorge did not testify at the suppression hearing and state anything to the contrary. In this case, there was no direct evidence of involuntariness and we cannot say that the trial court erred by finding that the State met its burden of proving the statement was freely and voluntarily given."); *Maryland Law of Confessions, supra*, § 3:4 at 87 ("The defendant's testimony about the effect of the promise could make the difference in a case where the record, by itself, does not appear to support a finding of causation between the promise and the subsequent statement.").

Similarly, in *Uzzle v. State*, 152 Md. App. 548, 576, *cert. denied*, 378 Md. 619 (2003), we observed:

On the issue of voluntariness, a defendant's subjective state of mind is, after all, the ultimate issue. It is the defendant who knows that state of mind better than anyone else. The defendant who fails to testify as to his state of mind, when he could readily do so without any risk of incriminating himself, self-evidently thereby weakens his position. He asks the courts to speculate in his favor, but he declines to give them the testimonial assistance that only he could give. Such a course of conduct realistically invites an inference in the opposite direction.

See Lee, 418 Md. at 160 (“We cannot help but note, nonetheless, that Petitioner did not testify at the suppression hearing. Therefore, we do not have even his word that Detective’s Schrott’s improper comment overbore his will and produced his confession.”); *Hof v. State*, 337 Md. 581, 619 (1995) (“The critical focus in an involuntariness inquiry is the defendant’s state of mind. Whether the defendant’s incriminating statement was made voluntarily or involuntarily must depend upon that defendant’s mental state at the time the statement was made.”).

Here, we have no testimony that Caldwell relied on the comment made by Detective Bellino at the conclusion of his hypothetical description of an accidental shooting. Caldwell did not testify at either the motion hearing or trial, and the primary circumstantial evidence of reliance Caldwell points to is the question he asked at the end of the interview, after he was told he was being charged, “[w]hy am I being charged for murder for?”

Moreover, our reading of the interview differs from that of Caldwell. In his reply brief, Caldwell asserts that he confessed to the police that he was present but was a victim of the robbery after the alleged inducements. But, as we have noted in the above-quoted excerpts of the interview, Caldwell admitted both that he was at the scene of the shooting *and* that he and Moore were close friends *before* the alleged inducements. Similarly, he had already confirmed that he knew the victim from prior drug transactions. He further

acknowledged that he was outside with the victim, purportedly to sell him approximately \$700 worth of marijuana, before someone tried to rob them. And, even before Detective Bellino stated that the man in the hypothetical would not be charged, Caldwell had asserted that he ran from the scene before a shot was fired.

After the break, when the improper inducements were alleged to have occurred, Caldwell finally agreed that he brought Moore with him to the transaction. But, even though he referred to Moore after the alleged inducement as “my man,” and said “I always bring somebody with me when . . . I’m about to do something like that,” he still maintained that the victim (*i.e.*, Keister) was the one who first pulled out a gun and pointed it at him and Moore, prompting Caldwell to run away.

The only information that was significantly different between Caldwell’s pre- and post-induced statements was Caldwell’s concession that Moore came to the drug deal with him, and the victim (rather than an unknown person in black) was the person who had pointed a gun at him and Moore. And Caldwell never claimed that he saw Moore try to disarm Keister. Caldwell was aware that the police knew there were other witnesses who saw Moore, and could well have altered this aspect of his version because he believed the detectives’ assertion that Moore had already admitted being present (which was a deceptive statement, but not an improper inducement). Indeed, the police knew that Moore was physically present with Caldwell in Caldwell’s residence when the police executed the search warrant five days after the shooting. Because the motion judge could have found from the evidence that there were more compelling reasons for Caldwell to alter his story, we cannot say that the suppression court was clearly erroneous in finding that Caldwell was not relying on any improper inducements by Detective Bellino when Caldwell conceded that Moore was with him at the time of the shooting.

Given that the essential admissions in Caldwell's description of the incident remained the same after the alleged inducements, we are not persuaded that the motion court committed clear error in finding that Caldwell did not rely on Detective Bellino's inducements to his detriment. *See Knight*, 381 Md. at 537-38 (although a promise to the petitioner that police officer would "see what the State's Attorney can do for you, with your case, with your charges" was improper, where it came after the petitioner's first statement, which was identical to the statement given after the inducement, petitioner's statement was untainted by the inducement). And Caldwell never actually confessed or admitted to the charges on which he was tried. *See Stewart v. State*, 232 Md. 318, 324 (1963) ("The less incriminating the admission, the less the likelihood that it was obtained by coercion or inducement."); *Uzzle*, 152 Md. App. 548, 578 (2003) ("In a multi-factored analysis, the fact that the appellant never confessed to murder is a factor."). We conclude that the court properly denied the motion to suppress because, under the totality of the circumstances, Caldwell's statement was not involuntary.

II.

Caldwell asserts that the court abused its discretion in limiting his cross-examination of Detective Talley concerning the above-mentioned interrogation. The State responds that the court properly exercised its discretion because the sole specific question that was asked by defense counsel (and ruled objectionable) mischaracterized statements made during the Caldwell's interview and therefore assumed facts not in evidence.

During Detective Talley's direct examination, Talley testified that he and Detective Bellino told Caldwell that they had spoken to Moore and that Moore "put himself on the scene." Defense counsel objected and, at a bench conference, the following ensued:

[DEFENSE COUNSEL]: Now we're getting into the statement they're saying -- the officer is saying --

THE COURT: You mean the hearsay?

[DEFENSE COUNSEL]: He's getting impressions that Mr. Moore said things that Mr. Moore never said. We know that from the motion to suppress evidence, that he lied as to what Mr. Moore said because Mr. Moore didn't tell him --

THE COURT: But, that's not what he actually told him though. You can cross-examine him and say you told him that, right, but it wasn't true. You never talked to him about it. He did tell him that. He did tell him that.

[DEFENSE COUNSEL]: I just note my objection, Your Honor.

THE COURT: Noted. Overruled.

Thereafter, during cross-examination, defense counsel asked Detective Talley whether, when Detective Bellino questioned Caldwell after the break (and after supposedly questioning Moore), Bellino "was directing a version at Mr. Caldwell that he said he got from Mr. Moore as to what happened[?]" The State objected on the grounds of hearsay, and defense counsel responded that he was not offering any out-of-court statement for its truth. Instead, the question was "meant to show they used an alleged statement to give a statement to Mr. Caldwell." After the State suggested counsel could "just add that without getting hearsay eliciting what Mr. Bellino said Mr. Moore said," the court sustained the objection, stating "[y]ou're going through another person. You can ask them."

When cross-examination resumed, Detective Talley then agreed with defense counsel that, as of the time the detectives were interrogating Caldwell, Moore had not provided any statement to the police. Detective Talley confirmed that "Mr. Moore didn't tell me anything about him being there or being involved in this crime."

Defense counsel then asked Detective Talley if he and Detective Bellino told Caldwell that Moore had admitted his involvement. The State objected, and the court sustained that objection because “you’re saying you and Bellino went in. You and Bellino did this[.]” The court explained that counsel needed to talk “about what this witness did. You can call Detective Bellino if you want to.” Defense counsel then rephrased his question as follows:

Q. Detective Talley, in your presence Mr. Caldwell was told a lie about what Mr. Moore had said in his interview; isn’t that correct?

A. Yes.

Cross-examination continued, and defense counsel asked the question that is the basis of Caldwell’s second argument on appeal, as follows:

Q. Okay. But, **do you remember Detective Bellino telling Mr. Caldwell --**

[PROSECUTOR]: Objection.

THE COURT: Let him get the question out first.

[BY DEFENSE COUNSEL]:

Q. -- **telling Mr. Caldwell that if he agreed with Detective Bellino’s version of what happened that he would not be charged?**

[PROSECUTOR]: **Objection.**

THE COURT: You can come forward.

(Emphasis added.)

At the ensuing bench conference, the State argued as follows:

[PROSECUTOR]: **Your Honor, that is a complete mischaracterization of what Bellino said.**^[10] It is hearsay, but also it is very prejudicial. It is highly prejudicial for [Defense Counsel] to again make that same argument. He made that same argument after listening to it in open court in motions. **That is not what Bellino said to him.** That was in regards to a hypothetical and it was not in reference to this case. So, I would ask that the question be stricken from the record. That's a mischaracterization.

THE COURT: What is your recollection that he said?

[DEFENSE COUNSEL]: Well, Your Honor, I'm trying to find my exact notes. But, at 2025 or thereabouts Detective Bellino said I need you to help corroborate him, meaning Darin Moore, that at 2026 and 16 seconds he says ["do you think the police are going to charge you? No, we're not.["]

I think that it's the jury's duty and you made your decision by a preponderance of the evidence as to admissibility of the statement. But, it is the jury's decision whether to believe that it was voluntarily given beyond a reasonable doubt and as part of their job. They need to hear about the inducements that were made.

¹⁰ The portion of the interview defense counsel was alluding to in his question to Detective Talley was, as quoted above, as follows:

[Let] me ask you this. Dude's walking down the street corner. Okay? **Some guy pulls a gun on you and says give it up and you grab that gun,** look, man, no hell, no hell, you ain't robbing me today or I ain't dying like this, I got a five-year-old son. I got a baby -- I got a girl. I've been with her for what, six years, seven years, since high school. I ain't dying. I got a mom who cares about me **and you shove with this dude over the gun. Okay? And the gun goes off and this dude dies. Do you think that the police are going to charge you?**

[CALDWELL]: No.

DETECTIVE: **No, we're not. Okay? That's the scenario that he's given us.** Okay? I don't understand why he's being honest and you're not.

[CALDWELL]: I've been honest.

(Emphasis added.)

(continued)

(Emphasis added.)

The court sustained the objection, initially stating the question called for hearsay. But then, after further colloquy with counsel, the court ruled that the question mischaracterized what Detective Bellino had said during the interview.¹¹

The court asked defense counsel if Caldwell was going to testify. After counsel stated that he did not know, the prosecutor responded that any evidence that Caldwell was induced during the interview had to come from somewhere other than defense counsel's questions. Defense counsel then argued "[t]here's a whole list of things that the jury is to consider" relative to the voluntariness of the Caldwell's statement. After listing a number of relevant factors for consideration, counsel continued:

[DEFENSE COUNSEL]: . . . I didn't get the whole instruction there, but inducements are mentioned also. He [the detective] makes a promise that

¹¹ The State does not argue on appeal that the question was objectionable on the basis of the rule against hearsay. The State concedes that the court erred in ruling that the question called for hearsay, acknowledging that the statement was not being offered for its truth. In support, both parties recognize our prior holding in *Ashford v. State*, 147 Md. App. 1 (2002). There, a police sergeant testified that Ashford initially denied any involvement in the felony-murder and handgun offenses for which he was on trial. *Ashford*, 147 Md. App. at 7, 58. The sergeant then testified, over a hearsay objection, that when he said that Ashford's wife "already told us that [he] was involved with this," Ashford "admitted to his involvement." *Id.* at 58-59. This Court affirmed, holding that the trial court did not err in admitting the police sergeant's testimony about what Ashford's wife told him, because "[t]he assertion by the wife was offered to show not the truth of the thing asserted, but simply to show that the appellant heard that assertion and reacted to it. The assertion in question was not hearsay[.]" *Id.* at 77. Likewise in this case, the question asking Detective Talley, "[D]o you remember Detective Bellino telling Mr. Caldwell . . . that if he agreed with Detective Bellino's version of what happened that he would not be charged?" was not being offered for its truth, *i.e.*, that Caldwell would not be charged, but instead, was asked because it concerned the voluntariness of Caldwell's response. Therefore, the question did not call for hearsay.

if he [Caldwell] agrees with Mr. Moore's alleged statement, then he's not going to be charged.

THE COURT: Detective Talley made it?

[DEFENSE COUNSEL]: Detective Talley [was] sitting right there. Bellino did all of the talking that Talley's testified to. Bellino was the talker and Talley was just sort of sitting there for the most part.

THE COURT: How come you didn't call Detective Bellino?

[DEFENSE COUNSEL]: Excuse me?

THE COURT: How come you didn't call Detective Bellino?

[DEFENSE COUNSEL]: It's not my case yet.

THE COURT: I know, but I'm saying you're trying to get in his testimony through this witness.

[DEFENSE COUNSEL]: Well, I'm thinking that the State is not going to call Bellino; and I haven't seen him in four days. They're trying to work a way so that they'll get pieces of it in without showing the whole picture. If that's the way they want to play it, that's fine. But, I think that fairness requires that I be able to – and due process requires I be able to ask Talley about things that he was present for the whole time that he says were on the videotape. I would prefer to just cross-examine him rather than play the video. But, I believe I can introduce the video through Talley. I'm sure he's seen it. I'm sure he can say that it's a fair and accurate representation of what happened in that room for all those hours.

[PROSECUTOR]: What this witness can't say was the statement was made to induce this defendant to make a statement. That has to come from Bellino. Number two, **[Defense Counsel] is mischaracterizing that statement.** That statement, like you said, asking if that happened to you, then the police would not charge you for something like that. That was immediately preceding that. It is not a 40-minute type of thing. It is a few minutes type of thing when Detective Bellino gives the hypothetical that this defendant was robbed and shot somebody and defense is self-defense.

THE COURT: **I agree** that it was only a hypothetical and that **you're mischaracterizing the question.** So, I am going to sustain and strike the question.

(Emphasis added.)

Defense counsel made no further effort to pursue this line of inquiry with Detective Talley, either on cross- or re-cross examination. But, on appeal, Caldwell argues that the trial court improperly restricted his ability to cross-examine Detective Talley about improper inducements that were made prior to Caldwell making an inculpatory statement.

A criminal defendant's right to confront the witnesses against him is guaranteed by the Confrontation Clause of the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights. *Pantazes v. State*, 376 Md. 661, 680 (2003); *Marshall v. State*, 346 Md. 186, 192 (1997); *Smallwood v. State*, 320 Md. 300, 306 (1990). One of the most effective means of attacking the credibility of a witness is cross-examination. *Pantazes*, 376 Md. at 680. Through cross-examination, a defendant is able to impeach the credibility of a witness and to establish a witness's possible biases, prejudices, motives to testify falsely, or ulterior motives pertaining to the outcome of the trial. *Marshall*, 346 Md. at 192. Furthermore:

[A]lthough the scope of cross-examination is generally limited to the subjects raised on direct examination, within that limit a defendant should be free to cross-examine in order to elucidate, modify, explain, contradict, or rebut testimony given in chief. It is also proper to cross-examine as to facts or circumstances inconsistent with testimony, and to bring out the relevant remainder or whole of any conversation, transaction, or statement brought out on direct questioning. Finally, . . . one should be allowed to cross-examine in order to determine the reasons for acts or statements referred to on direct examination.

Smallwood, 320 Md. at 307 (internal citations omitted).

However, the constitutional right of a defendant to cross-examination is not unlimited, but rather is subject to the trial judge's discretion. *Pantazes*, 376 Md. at 680; *Marshall*, 346 Md. at 192. The trial judge must exercise discretion to "establish reasonable limits on cross-examination based on concerns about . . . harassment, prejudice, confusion of the issues, the witness's safety, or interrogation that is repetitive or only marginally relevant." *Pantazes*, 376 Md. at 680. Such discretion is "exercised by balancing 'the probative value of an inquiry against the unfair prejudice that might inure to the witness. Otherwise, the inquiry can reduce itself to a discussion of collateral matters which will obscure the issue and lead to the fact finder's confusion.'" *Pantazes*, 376 Md. at 681 (quoting *State v. Cox*, 298 Md. 173, 178 (1983)).

Although the scope of cross-examination is within the trial court's discretion, the trial court is bound to avoid violating the defendant's right to confront witnesses. *Marshall*, 346 Md. at 193. Determination of "whether there has been an abuse of discretion *depends on the particular circumstances of each individual case.*" *Pantazes*, 376 Md. at 681 (emphasis added); see *Ebb v. State*, 341 Md. 578, 587-88 (1996). And, "[a]n abuse of discretion occurs 'where no reasonable person would take the view adopted by the [trial] court,' or when the court acts 'without reference to any guiding rules or principles.'" *Brass Metal Prods. v. E-J Enters.*, 189 Md. App. 310, 364 (2009) (quoting *King v. State*, 407 Md. 682, 697 (2009)). We will not disturb the exercise of that discretion in the absence of clear abuse:

[O]ur sole function on appellate review is to determine whether the trial judge imposed limitations upon cross-examination that inhibited the ability of the defendant to receive a fair trial. Consistent with that discretion, we note,

however, that the trial judge, and not this Court, is in the best position to determine whether the introduction of certain impeachment evidence would enmesh the trial in confusing or collateral issues.

Merzbacher v. State, 346 Md. 391, 413-14 (1997) (citations omitted).

Here, the trial court sustained the State's objection to a question posed on cross-examination, ruling that defense counsel's question mischaracterized this portion of the interview concerning the hypothetical scenario presented. The State suggests that the question, as asked, did not accurately characterize Detective Bellino's interview. The Court of Appeals has classified these types of questions as argumentative, observing:

Wigmore states that "[a] question which assumes a fact that may be in controversy . . . may become improper on cross-examination, because it may by implication put into the mouth of an unwilling witness, a statement which he never intended to make, and thus incorrectly attribute to him testimony which is not his." 3 Wigmore, Evidence § 780, at 171 (Chadbourn rev. ed.1970). McCormick writes that one danger of the argumentative question is that "the answer is likely to be misleading. Oftentimes, the question will be so separate from the assumption that if the witness answers the question without mentioning the assumption, it is impossible to ascertain whether the assumption was ignored or affirmed." McCormick on Evidence § 7, at 22-23 (4th ed.1992).

Clermont v. State, 348 Md. 419, 431-32 (1998).

As the above-quoted excerpts of Detective Bellino's interrogation make plain, there was never any express promise during the interview that police would not charge Caldwell for Keister's death if Caldwell simply said he was like the person who was the robbery victim in Detective Bellino's hypothetical. The question asked by defense counsel did not accurately quote, and therefore did mischaracterize, what Detective Bellino had said during the interview. Therefore, the court did not err in sustaining the State's objection to that question. In his brief, Caldwell did not identify any other ruling by the trial court that he

contends improperly limited defense counsel's cross-examination of Detective Talley.

III.

Caldwell avers that the court erred in admitting Detective Talley's testimony as to Moore's cell phone number because it constituted hearsay and violated his right of confrontation under *Crawford v. Washington*, 541 U.S. 36 (2004).

During redirect examination, Detective Talley was asked by the prosecutor if he remembered Moore's cell phone number. Defense counsel objected, and initially argued that the question was both outside the scope of cross-examination and was leading. The State acknowledged that Detective Talley had not mentioned the phone number during cross-examination, but pointed out that defense counsel had elicited the fact that Moore told police he was not present at the crime scene and did not know the victim.¹² After defense counsel argued that he did not open the door to testimony about Moore's cell phone number, the court sustained his objection.

Despite this ruling, the State persisted, and defense counsel supplemented his objection by arguing that the detective's testimony about Moore's cell phone number would be hearsay, adding: "They are putting in evidence what Mr. Moore said. Mr. Moore can't be cross-examined by this defendant." The court noted that there were two objections before it: (1) that the phone number was hearsay; and, (2) that the testimony was outside the scope of cross-examination.

¹² The State was apparently referring to Detective Talley's testimony on cross-examination: "Mr. Moore didn't tell me anything about him being there or being involved in this crime."

The State responded to the hearsay objection by arguing that this testimony was admissible under the co-conspirator exception. *See* Maryland Rule 5-803(a)(5). The court asked the State what it was trying to prove, and the State explained: “That Mr. Moore gave a cell phone number, and that that cell phone number is reflected on Mr. Caldwell’s cell phone records[.]” Although the court stated, “I accept the hearsay exception,” after hearing further argument from counsel, the court again sustained defense counsel’s objection.

Detective Talley’s redirect examination then resumed, and sixteen pages of trial transcript later, the prosecutor renewed her effort to have Detective Talley provide Moore’s cell phone number:

BY [PROSECUTOR]:

Q Detective Talley, based on your investigation, did you learn the cell phone number of Mr. Moore?

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

Q Did you learn the cell phone number of Mr. Moore?

[DEFENSE COUNSEL]: Objection.

THE WITNESS: Yes.

BY [PROSECUTOR]:

Q Okay. What was that cell phone number?

[DEFENSE COUNSEL]: Objection.

THE COURT: Sustained:

[PROSECUTOR]: Your Honor, may we approach?

(Counsel approached the bench, and the following ensued:)

* * *

THE COURT: Where did the telephone number come from?

[PROSECUTOR]: From Mr. Moore himself.

[DEFENSE COUNSEL]: It is hearsay.

[PROSECUTOR]: It is not hearsay. It is a co-defendant's statement that came from Mr. Moore himself to the detectives.

THE COURT: Okay. So, you're saying for purposes of the redirect, for purposes of the -- you're not saying -- let me get it straight. You had the direct. You had the cross-examination, and then the redirect. So, you're not saying for the purposes of the redirect, you're saying, as I stated before, it's as if you're recalling him?

[PROSECUTOR]: Yes.

THE COURT: I'll allow it.

[DEFENSE COUNSEL]: Your Honor, it is still hearsay.

THE COURT: You got the co-defendant exception.

[DEFENSE COUNSEL]: Your Honor, they haven't shown the conspiracy yet. They've got somebody making some type of photo identification. We haven't been able to cross-examine anybody on how the photo ID was done. They're just unloading everything they can about Mr. Moore on Mr. Caldwell. That's not right. It is hearsay. **It's still hearsay unless it's a statement that's made – if Mr. Moore says something to make the conspiracy become a reality**, then those types of statements are used, but just what's his phone number --

THE COURT: I'm getting ready to cut it off right here. This testimony I'm allowing as [sic] they're calling him back as a second witness. Just in the interest of time, I'm going to have him go off the stand, recall his name in the hallway, have him come back in and sworn again to testify. I am allowing him to ask this. This is not redirect. This is to call the witness back and they want to continue to ask a few more questions. Please wrap it up soon. Sustained. [sic]

(Counsel returned to the trial tables, and the following ensued:)

THE COURT: I'm overruling on the objection.

BY [PROSECUTOR]:

Q Detective Talley, you previously stated that pursuant to your investigation you got Mr. Moore's cell phone number?

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

THE WITNESS: Yes.

BY [PROSECUTOR]:

Q Okay. What is that cell phone number?

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

THE WITNESS: I don't know it by heart, but if I look at my notes I wrote it down.

BY [PROSECUTOR]:

Q The number is in your notes?

A Yes.

Q Would that refresh your recollection?

A Yes, it would.

* * *

Q Showing you what's been marked as State's Exhibit 61 for identification purposes. Take a look at that and tell me if it refreshes your recollection as to what Mr. Moore's cell phone number was at the time.

A Yes, it does.

Q What is it?

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

THE WITNESS: I would have to see it.

THE COURT: That can only be to refresh your recollection.

BY [PROSECUTOR]:

Q Look at it and memorize it and tell me if it refreshes your recollection.

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

THE WITNESS: Okay.

BY [PROSECUTOR]:

Q All right. What is Mr. Moore's cell phone number?

A (240) 581-0787.

(Emphasis added.)

Detective Talley was then shown Caldwell's cell phone records. Over objection, Detective Talley testified that Moore's cell phone number was listed in the records associated with the cell phone used by Caldwell around the time of the murder. In fact, Moore's phone number appeared twice in the records for Caldwell's cell phone at around the time of the murder, with one occurring at 1:14:38 a.m. and the other taking place at around 3:06:12 a.m.

We first address the State’s preservation claim with respect to the Caldwell’s assertion that the detective’s testimony violated Caldwell’s rights under *Crawford*. Defense counsel at trial never asserted that admission of Moore’s phone numbers denied him his constitutional right to confrontation or violated *Crawford, supra*. Counsel did, at one point state: “Mr. Moore can’t be cross-examined by this defendant.” But, in our view, that comment, which supported Caldwell’s hearsay argument, was not enough to alert the trial judge to a constitutional argument based on the confrontation clause, and the *Crawford* claim was not properly preserved. *See King v. State*, 434 Md. 472, 479 (2013) (“Initially it is well-established that Maryland’s appellate courts ordinarily will not consider ‘any issue ‘unless it plainly appears by the record to have been raised in or decided by the trial court.’””) (quoting Md. Rule 8-131(a)); *Stewart-Bey v. State*, 218 Md. App. 101, 127 (2014) (limiting appellate review to the ground assigned in the objection during trial); *Collins v. State*, 164 Md. App. 582, 606-07 (2005) (“[A]ppellant was required to make an objection premised on a federal constitutional claim based on the absence of confrontation.”). *Cf. Cox v. State*, 194 Md. App. 629, 646 (2010) (“Defense counsel argued that admission of Mr. Johnson’s statements through Mr. West’s testimony would be ‘in complete violation of the confrontation clause’ because he could ‘only cross examine Mr. West regarding the nature of these statements but not the declarant.’”), *aff’d*, 421 Md. 630 (2011).

However, Caldwell’s hearsay objection was well preserved, and is properly before us. Defense counsel challenged the State’s assertion that Moore’s phone number was admissible under the co-conspirator exception. Counsel argued “they haven’t shown the

conspiracy yet,” and there was never any indication that this statement was something that Moore had said “to make the conspiracy become a reality.” *See Starr v. State*, 405 Md. 293, 304 (2008) (“[A]n appellant/petitioner is entitled to present the appellate court with ‘a more detailed version of the [argument] advanced’” at trial).

Rule 5-803(a)(5) provides:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(a) Statement by party-opponent. A statement that is offered against a party and is:

* * *

(5) A statement by a coconspirator of the party ***during the course and in furtherance of the conspiracy.***

(Emphasis added.)

Although Detective Talley’s testimony was vague as to the source who provided Moore’s cell phone number, the foundation question asked by the prosecutor led the detective to confirm that the number became known by him “based on your investigation,” and the prosecutor had expressly represented to the court that the source of the cell phone number was a statement Moore himself made to the detectives. There is no dispute that the detective’s investigation did not begin until *after* the object of the alleged conspiracy between Caldwell and Moore had been completed (or abandoned). In the absence of additional foundational testimony to support an inference that the detective learned the phone number as a consequence of a statement made by Moore “during the course and in furtherance of the conspiracy,” the coconspirator exception in Rule 5-803(a)(5) did not

support admission of the statement. *See* 6A LYNN MCLAIN, MARYLAND EVIDENCE § 801(5):1.d, at 404 (3d ed. 2013, 2018 supp.) (“Statements made after the dissolution of the conspiracy, as a result of completion of its object, or by its failure . . . are neither [statements made] during nor in furtherance of the conspiracy and will not fall within the hearsay exception.”) (footnote omitted).¹³

As the Court of Appeals made plain in *Bernadyn v. State*, 390 Md. 1, 8 (2005):

Hearsay, under our rules, must be excluded as evidence at trial, unless it falls within an exception to the hearsay rule excluding such evidence or is “permitted by applicable constitutional provisions or statutes.” Md. Rule 5-802. Thus, a circuit court has no discretion to admit hearsay in the absence of a provision providing for its admissibility.

Because the State had pointed to no other applicable exception to the hearsay rule, the court erred in failing (ultimately) to sustain Caldwell’s objection to Detective Talley’s testimony by which the State proved Moore’s cell phone number. Caldwell urges us to hold that this was reversible error because the prosecutor utilized this testimony (and there was no other similar testimony) to identify entries on Caldwell’s phone records showing contemporaneous phone calls between Moore and Caldwell.

The State contends, nevertheless, that any error in permitting Detective Talley to establish Moore’s phone number was harmless error at most. The State argues in its brief:

Caldwell argues that it was not harmless because Moore’s phone number was used to identify calls between Caldwell and Moore in Caldwell’s phone records around the time of the shooting. But there was no shortage of evidence connecting Moore to Caldwell. Most damningly, when officers

¹³ Professor McLain’s supplement cites *State v. Payne*, 440 Md. 680, 710-13 (2014), and *McClurkin v. State*, 222 Md. App. 461, 484 (2015), as cases holding that the exception did not apply to statements made after the object of the conspiracy had been discontinued. *See also State v. Rivenbark*, 411 Md. 147, 158 (1987).

executed a search warrant at Caldwell's residence, Moore was in Caldwell's living room on the couch. (T3. 31-34). Although that fact alone did not tie Moore to Caldwell at the particular time of the shooting, Moore was positively identified as the shooter by Charmise Ford, Keister's friend who witnessed the shooting, in identifications made both out-of-court and on the witness stand. (T2. 53; T3. 135). And, of course, Caldwell's own statement (which was properly admitted as discussed in Part I of this Agreement) placed Moore at the scene and implicated him as the shooter.

In sum, the admission of Moore's phone number through Detective Talley's testimony does not warrant reversal.

(Footnote and cites to record omitted.)

Although we agree with the State that other evidence of a close relationship between Caldwell and Moore was extensive, we are unable to declare a belief beyond a reasonable doubt that the additional evidence of phone calls between the two men within minutes of the early morning shooting had no influence on the verdict of the jurors in this case. *See Devincenz v. State*, 460 Md. 518, 560-61 (2018); *Dionas v. State*, 435 Md. 97, 109 (2013); *Dorsey v. State*, 276 Md. 638, 659 (1976). We must reverse the judgments of the circuit court and remand the case for a new trial.

**JUDGMENTS REVERSED. CASE
REMANDED TO THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY FOR A
NEW TRIAL.**

**COSTS TO BE PAID BY PRINCE
GEORGE'S COUNTY.**