Circuit Court for Frederick County
Case No. C-10-CR-20-000235

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 412

September Term, 2022

---

ALEXANDER DE JESUS ARGUETA

v.

STATE OF MARYLAND

---

Nazarian,
Arthur,
Friedman,

JJ.

---

Opinion by Nazarian, J.

---

Filed: June 14, 2023

* 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.

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

Alexander Argueta was charged with several counts of sexual abuse of a minor and second-degree rape of C.[1] He moved to suppress statements he made in a recorded phone call with B, his wife and C's mother, on the grounds that his statements were involuntary and induced improperly by law enforcement. The Circuit Court for Frederick County denied the motion.

Mr. Argueta pleaded not guilty to the charges and the parties proceeded on an agreed statement of facts. The court found him guilty of one count of sexual abuse of a minor and one count of second-degree rape. On appeal, Mr. Argueta challenges the circuit court's denial of his motion to suppress statements he made in the recorded phone call. We agree with Mr. Argueta, reverse the judgment of the circuit court, and remand for further proceedings.

## I. BACKGROUND

On February 4, 2020, the Frederick County Child Advocacy Center conducted a forensic interview of C to investigate concerning behaviors C exhibited at school. After the interview, employees of Child Protective Services contacted C's mother, B, and informed her that C had disclosed incidents in which Mr. Argueta touched C inappropriately. B then participated in a controlled call with Mr. Argueta that law enforcement officers facilitated. Mr. Argueta moved to suppress incriminating statements that he made during the controlled call and alleged that his statements were induced improperly by law enforcement, rendering

[1] We have replaced the names of individuals other than Mr. Argueta with randomized initials to protect their privacy.

them involuntary. The court held a two-day hearing to address the motion: on April 28, 2021, the court heard testimony, and on August 26, 2021, counsel presented arguments.

### A. Evidentiary Hearing on April 8, 2021.

B, Mr. Argueta, and the law enforcement officers involved with conducting the recorded call testified at the suppression hearing. B testified that on February 5, 2020, she and C were taken to a police station to conduct a controlled call between B and Mr. Argueta. B signed a form memorializing her consent to record the call. B testified that Corporal Amanda Ward told her that "[t]he goal of the call was to make [Mr. Argueta] sweat and try to get him to admit to anything." Before calling Mr. Argueta, B engaged in a practice phone call with Senior Trooper Darren Burleson to test the sound quality of the phone call and the recording. Corporal Ward and Master Trooper Matthew Crouse were present during both the practice call and the actual call.

B was directed to call Mr. Argueta on her personal phone, turn on her speakerphone, and set her phone near a police recording device. Once the call began, B testified that Corporal Ward took notes and wrote down questions on a notepad for her to ask Mr. Argueta. During the call, B explained that Corporal Ward would tap her notepad when she wanted B to repeat her written questions and statements to Mr. Argueta. Corporal Ward testified that the questions B asked Mr. Argueta were a mixture of Corporal Ward's silently mouthed statements and written questions,[2] and B's own questions and comments.

---

[2] Corporal Ward testified that she didn't save her notes after she wrote the police report, and her notes aren't part of the record.

Mr. Argueta contended that three statements B made during the controlled call constituted improper inducements and elicited an involuntary confession. The defense played portions of the recorded call during the suppression hearing. In the first statement, which occurred towards the beginning of the call, B offered to get Mr. Argueta help if he were honest and told the truth:

> Mr. Argueta: Has [C] said anything to you?
>
> [B]: She says a lot of stuff, but none of it really makes sense.
>
> Mr. Argueta: You know I love you.
>
> [B]: *I love you too, but if this did happen we can get you help, Hon. But you have to be honest and tell me the truth.* Did you touch her?
>
> Mr. Argueta: No.

(Emphasis added.)

In the next two statements, which B made about sixteen minutes later, she again told Mr. Argueta that she couldn't help him unless he was honest and told the truth about touching C:

> Mr. Argueta: I did not touch our daughter. What do you want me to say, Honey?
>
> [B]: *I can't help any part of this situation if you can't be honest with me.*
>
> Mr. Argueta: I don't know.
>
> [B]: You don't know what?
>
> Mr. Argueta: Where are you?
>
> [B]: Does that matter?
>
> Mr. Argueta: Yes. I want to see you.
>
> [B]: And I still have to go get the kids, so what's the point of coming home? *I can't help you if you aren't honest with me.*
>
> Mr. Argueta: It was one time.

> [B]: One time what?
>
> Mr. Argueta: One time I accidently touched her there and she knew it was on accident.
>
> * * *
>
> [B]: Tell me everything.

(Emphasis added.)

Mr. Argueta testified during the motions hearing that he was aware that B was at the sheriff's office during the call and that he interpreted B's statements offering him help as offers of help from "herself and whoever the officer was with her at the time." Mr. Argueta expressed concern that CPS would take their child away "if CPS and the sheriff's department didn't get a certain result," and that he was willing to "say and do what [B] needed [him] to do to help make it as easy as possible." Mr. Argueta testified that he wouldn't have admitted to any wrongdoing had B "not uttered or stated the word help."

**B. August 26, 2021, Motions Hearing.**

The defense argued that Mr. Argueta's admission was involuntary and must be suppressed. Mr. Argueta contended that during the controlled call, B was acting as an agent of law enforcement when she offered to help him in exchange for the truth, and that he only made an admission because B offered to help him. Accordingly, Mr. Argueta argued, B's statements during the controlled call offering help to Mr. Argueta were improper inducements that rendered his admission involuntary.

The State responded that B was not acting as an agent of law enforcement because most of the statements B made during the call were her own statements rather than statements the officers asked B to repeat. The State argued as well that Mr. Argueta

couldn't have believed that B was offering help with any criminal investigation based on "the nature of th[e] conversation" and that it was clear that B's offers of help related to mending her marriage with Mr. Argueta. For these reasons, the State contended, Mr. Argueta's confession was voluntary and not induced improperly.

On September 2, 2021, the circuit court issued a written order denying Mr. Argueta's motion to suppress.

### C. Plea and Sentencing Hearing.

On April 20, 2022, the court held a plea and sentencing hearing, and Mr. Argueta pleaded not guilty to sexual abuse of a minor and second-degree rape based on an agreed statement of facts. The statement of facts included statements C made during the forensic interview and that Mr. Argueta made during the controlled call with B.

The court found the facts sufficient to convict Mr. Argueta of one count of sexual abuse of a minor and one count of second-degree rape. For second-degree rape, the court sentenced Mr. Argueta to twenty years with all but fifteen years suspended, and for sexual abuse of a minor, the court sentenced him to twenty-five years all of which were suspended, to run consecutively to his sentence for second-degree rape. Mr. Argueta also was required to register as a Tier 3 sex offender for life and was prohibited from having any contact with minor children, including C, while on probation. Mr. Argueta filed a timely appeal of the court's denial of his motion to suppress. We discuss additional facts as necessary below.

## II. DISCUSSION

Mr. Argueta raises one issue on appeal:[3] whether the circuit court erred in denying his motion to suppress incriminating statements that he made during the controlled call with B. Whether a confession is voluntary is a mixed question of law and fact that this Court reviews *de novo*. *Winder v. State*, 362 Md. 275, 310–11 (2001). Our review of the court's ruling on Mr. Argueta's motion to suppress "is limited to the record of the suppression hearing." *Id.* at 311. "'[W]e view the evidence and inferences that may be reasonably drawn therefrom in a light most favorable to the prevailing party on the motion,'" in this case, the State. *Brown v. State*, 452 Md. 196, 208 (2017) (*quoting Lee v. State*, 418 Md. 136, 148 (2011)). And we defer to the trial court's factual findings unless they are clearly erroneous. *Id*. (*citing* Md. Rule 8-131(c)).

### A. Mr. Argueta's Admission Was Involuntary.

Mr. Argueta contends that some of B's statements during the controlled call constituted improper inducements because B was acting as an agent of the police. He argues that he made inculpatory statements in reliance on these improper inducements, that they rendered his statements involuntary, and therefore that we must reverse his convictions. The State responds that B did not induce Mr. Argueta's confession improperly,

[3] Mr. Argueta phrased the Question Presented in his brief as: "Did the lower court err in denying [Mr. Argueta's] motion to suppress?"

The State phrased the Question Presented in its brief as: "Was [Mr.] Argueta's confession voluntary under Maryland common law?"

but that even if she did, Mr. Argueta didn't confess in reliance on B's inducements. For the reasons that follow, we agree with Mr. Argueta.

A confession is admissible if it is "'(1) voluntary under Maryland non-constitutional law, (2) voluntary under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article 22 of the Maryland Declaration of Rights, and (3) elicited in conformance with the mandates of *Miranda*.'" *Ball v. State*, 347 Md. 156, 173–74 (1997) (cleaned up) (*quoting Hoey v. State,* 311 Md. 437, 480 (1988)). Mr. Argueta does not challenge the voluntariness of his statements under the Due Process Clause of the Fourteenth Amendment, Article 22 of the Maryland Declaration of Rights, or under *Miranda*, so we address only the voluntariness of his confession under Maryland non-constitutional law.

Confessions or other significantly incriminating remarks are considered involuntary, and may not be used against an accused, unless those statements are "'free of any coercive barnacles.'" *Winder*, 362 Md. at 307 (*quoting Hillard v. State*, 286 Md. 145, 150 (1979)). To determine whether a confession was voluntary, we look generally to "the totality of circumstances affecting the interrogation and confession." *Id*. But if "an accused alleges he was told that confessing would be to his advantage," we apply the test articulated in *Hillard*, under which "[t]he State shoulders the burden of establishing, by a preponderance of the evidence, that the suspect's confession or inculpatory statement was not made in reliance on a promise or inducement made by a police officer or agent of the police." *Id.* at 310 (*citing Hillard*, 286 Md. at 151).

*1. B was acting as an agent of the State.*

We consider *first* whether B, a private citizen, was acting as an agent of the State during the recorded call and could induce an involuntary confession from Mr. Argueta. Usually, "a confession is involuntary if it is the product of an improper threat, promise, or inducement by the police." *Lee*, 418 Md. at 158. But a private citizen can be an agent of the State and implicate an accused's right against making an involuntary confession if they are "'working under the direction of, or in concert with, law enforcement officers.'" *Butler v. State*, 255 Md. App. 477, 490 (2022) (*quoting Paige v. State*, 226 Md. App. 93, 112 (2015)).

Mr. Argueta argues, and the State seems to concede, that B was acting as an agent of the State. The record indicates that B asked Mr. Argueta certain questions "at the direction of law enforcement officers," either because Corporal Ward mouthed them to B or wrote them down on the notepad for B to repeat. *Id.* at 493. Additionally, officers were able to record the call between B and Mr. Argueta without the consent of Mr. Argueta only under a statutory exception to the Maryland Wiretap Act, which required B to be acting "at the prior direction and under the supervision of an investigative or law enforcement officer." Md. Code (1973, 2020 Repl. Vol.), § 10-402(c)(2)(ii) of the Courts and Judicial Proceedings Article ("CJ").[4] There can be no reasonable dispute, then, that B was acting as an agent of the State during the recorded call.

[4] The Maryland Wiretap Act states, in relevant part:

Continued . . .

*2. The* Hillard *Test.*

*Second*, we turn to whether B's statements constituted improper inducements and rendered Mr. Argueta's confession inadmissible. Maryland follows the common law rule set forth in *Hillard v. State* that promises of leniency or offers of help that induce a confession render the confession involuntary and inadmissible. 286 Md. at 153. The Supreme Court of Maryland (at the time named the Court of Appeals of Maryland)[5] has articulated the rule in *Hillard* as a two-prong test, which requires an inculpatory statement to be suppressed if the agent promises special consideration or assistance in exchange for

---

> (ii) It is lawful under this subtitle for an investigative or law enforcement officer acting in a criminal investigation or any other person acting at the prior direction and under the supervision of an investigative or law enforcement officer to intercept a wire, oral, or electronic communication in order to provide evidence:
>
> 1. Of the commission of:
>
> * * *
>
> C. Rape;
> D. A sexual offense in the first or second degree; [or]
>
> * * *
>
> R. Sexual abuse of a minor under § 3-602 of the Criminal Law Article[.]

CJ § 10-402(c)(2)(ii)(C)–(D), (R).

[5] At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . . .").

the confession and the defendant relies on it:

> Under [the *Hillard*] test, an inculpatory statement is involuntary and must be suppressed if:
>
> > (1) any officer or agent of the police force promises or implies to a 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.

*Hill v. State*, 418 Md. 62, 76 (2011) (*citing Hillard*, 286 Md. at 153). If the court finds that a confession was made in reliance on an improper inducement, the confession is involuntary and may not be used to prosecute the accused. *Knight v. State*, 381 Md. 517, 534 (2004).

The first prong of the *Hillard* test requires the court to determine whether the officer or agent of the police "made a threat, promise, or inducement." *Winder*, 362 Md. at 311. The State argues that B's statements were mere exhortations to tell the truth and that none of B's statements indicated that Mr. Argueta would be released from investigation or prosecution if he confessed to wrongdoing. Mr. Argueta counters that it's reasonable for someone in his position to infer from B's offers of help in exchange for honesty that B "would either recommend to the police that criminal charges not be pursued or decline to participate in any prosecution, thus lessening the likelihood of a successful criminal prosecution." We agree with Mr. Argueta.

This prong of the *Hillard* test is an objective one, which means that the court must determine whether a reasonable person in the position of the accused would make

incriminating statements in response to a promise made by an officer or their agent. *Brown v. State*, 252 Md. App. 197, 237 (2021). However, an officer's or his agent's "mere admonition to the suspect to speak the truth does not render a statement involuntary." *Ball*, 347 Md. at 175 (1997). A threat, promise, or inducement may be "'express or implied.'" *Brown*, 252 Md. App. at 237 (*quoting Williams v. State*, 445 Md. 452, 478 (2015)).

Promises or inducements commonly take the form of police officers or agents of the State offering to drop or lower charges, speak to the prosecutor, or offer "help" in exchange for an inculpatory statement. *See Hillard*, 286 Md. at 153 (officer promising to tell the prosecutor that the accused was cooperative and truthful in exchange for accused's admission was an improper inducement); *Winder*, 362 Md. at 314 (an officer's statement promising protection and to "let the State's Attorney's Office know that [the accused] need[s] help" were improper inducements and rendered his confession involuntary); *Jones v. State*, 48 Md. App. 726, 734–35 (1981) (officer improperly induced admission from accused "when he told the [accused] that if he wanted 'some help we would have to get the truth'"). The "help" or implied assistance must come from someone who, from the perspective of a reasonable person in the defendant's position, could reasonably provide the "help." *See Hill*, 418 Md. at 78 (finding that the first prong of the *Hillard* test is met if the accused reasonably inferred "that he could gain the advantage of non-prosecution or some other form of assistance" from the officer's statement).

B, acting as an agent of the police, made statements to Mr. Argueta that constituted improper inducements. At three different points during the recorded call—and Mr. Argueta

knew the police were there—B offered "help" to Mr. Argueta in exchange for a confession to sexual misconduct with C. In the first instance B said, "I love you too, but if this did happen *we* can get you help, Hon. But you have to be honest and tell me the truth. Did you touch her?" (Emphasis added.) In the second instance, B stated, "I can't help any part of this situation if you can't be honest with me." In the third instance, B's statement even suggests that Mr. Argueta wouldn't receive help *unless* he told the truth when she reiterated that "I can't help you if you aren't honest with me." A reasonable layperson in the position of Mr. Argueta readily could have inferred from these statements and, more specifically, B's use of the pronoun "we" when she offered Mr. Argueta help in the presence of the police in the room, that he would be offered some form of assistance in exchange for an admission.

The State argues that B's statements to Mr. Argueta were mere exhortations to tell the truth rather than improper inducements. The State most relies on *Brown v. State*, where the defendant was arrested for sexual offenses committed against his girlfriend's children. 252 Md. App. at 203–08. Two police officers interviewed Mr. Brown, and during their interview, they made statements that Mr. Brown alleged were improper inducements, including: "(1) 'We want to help you out,' and (2) 'Regardless of what you tell us you're walking out that door without us.'" *Id.* at 235. Mr. Brown made incriminating remarks in response. *Id.* at 226. Despite these statements from the officers, we concluded that the detectives didn't promise Mr. Brown any special consideration or form of assistance in exchange for his admission. *Id.* at 238–39. Rather, we found that the officers' remarks were

"mere exhortations . . . to tell the truth [which] do not render any subsequent incriminating statements involuntary . . . ." *Id.* at 239–40 (*citing Winder*, 362 Md. at 311).

The State overstates *Brown*'s force here. In *Brown*, the officers suggested generally that they wanted to "help [Mr. Brown] out," but here, the offer for "help" was conditioned on Mr. Argueta telling B the truth. The conditional nature of B's offer for "help" changes the meaning of the word "help" in context—it demonstrates that these offers of help were meant to induce Mr. Argueta into confessing rather than extending a gratuitous helping hand. And an officer or agent of the police who offers help in exchange for an admission has induced the accused improperly. *See Jones*, 48 Md. App. at 734–35.

The State contends as well that B never made any improper inducements because she never stated explicitly that the investigation into Mr. Argueta would cease if he confessed or that Mr. Argueta could avoid prosecution. But this argument fails for two reasons. *First*, B wasn't required to suggest directly that Mr. Argueta would receive help in the criminal investigation for her statements to be considered improper inducements. It's sufficient if her promise or inducement is implied. *Brown*, 252 Md. App. at 237. And in this case, Mr. Argueta was aware that B was making the call at the police station and could reasonably have concluded that B was working with the police and in a position to offer him assistance in relation to the investigation in exchange for an admission. *Second*, the argument exaggerates the standard under the first prong of *Hillard*. Mr. Argueta didn't need to prove that B's statements suggest that any investigation into Mr. Argueta would cease or charges would be dropped. B's statements needed only to suggest that Mr. Argueta

would receive some sort of help or consideration if he admitted to any wrongdoing, a standard that B's statements met easily. Therefore, B's offers of help satisfy the first prong of *Hillard* and we continue our analysis to the second prong.

The second prong of the *Hillard* test requires a court "to determine whether there was a nexus between the promise or inducement and the accused's confession." *Winder*, 362 Md. at 311. The State contends that B's offers of help were related to her marriage with Mr. Argueta and that his confession was motivated by his desire to save his marriage and see his wife. But Mr. Argueta argues that he made incriminating statements immediately after B stated, "I can't help you if you aren't honest with me," a statement that he reasonably understood as an offer of help related to the investigation and, therefore, relied on in making an admission.

In determining whether a nexus exists between the inducement and the admission, "we examine the particular facts and circumstances surrounding the confession." *Id.* at 312. And "[i]f a suspect did not rely on an interrogator's comments, . . . the statement is admissible regardless of whether the interrogator had articulated an improper inducement." *Reynolds v. State*, 327 Md. 494, 509 (1992). But it's not Mr. Argueta's burden to prove that he relied on the improper inducement when he confessed—it's the State's burden to prove by a preponderance of the evidence that the accused's incriminating statement "was not made in reliance on a promise or inducement made by a police officer or agent of the police." *Winder*, 362 Md. at 310.

Courts pay particular attention to the temporal proximity between the inducement and the inculpatory statement, whether there are any "intervening factors" that could have caused the accused to confess, and the accused's testimony at the suppression hearing. *Hill*, 418 Md. at 77 (citations omitted). When the accused confesses several days after inducements are made and in a different location, there isn't a sufficient nexus between the inducement and the admission. *See Johnson v. State*, 348 Md. 337, 351–52 (1998). On the other hand, when an individual makes inculpatory statements to law enforcement "on the heels of the detective's offering the inducement," those statements were induced improperly and had to be suppressed. *Hill*, 418 Md. at 82.

Mr. Argueta's statements satisfy the second prong of *Hillard* because the State failed to prove that Mr. Argueta's statements were not made in reliance on B's improper inducement. Mr. Argueta testified during the suppression hearing that he was aware that B was making the phone call from the police station, that he understood the offers of help to be from law enforcement, and that he made admissions in reliance on his understanding that he would receive assistance. Moreover, Mr. Argueta only made inculpatory statements directly after B offered him help. Mr. Argueta admitted that "[i]t was one time" only after B stated that "I can't help you if you aren't honest with me," a causal nexus between B's proffer of help and the inculpatory statement. Outside of a few seconds or brief conversational pauses, there were no intervening or attenuating circumstances between B's inducement and Mr. Argueta's admission. The fact that B, who was at the police station, and Mr. Argueta, who was at his home, were in different locations during the call doesn't

affect our analysis since the call occurred electronically, and it made no difference that they were in different locations since they were still contemporaneously communicating with each other.

Although the State argues that Mr. Argueta's admission was motivated by his desire to save his marriage, the State didn't and couldn't prove that the statements were elicited closely enough in time to suggest that Mr. Argueta confessed in reliance on B's statements about their marriage. And although B made several statements about working on her marriage with Mr. Argueta throughout the call, the State couldn't prove on this record that Mr. Argueta's admission was not made in reliance on B's improper inducements and instead represented an effort to save their marriage. Accordingly, the State failed to meet its burden of proving by a preponderance of the evidence that Mr. Argueta didn't rely on B's improper inducements when he confessed, and Mr. Argueta satisfied the second prong of the *Hillard* test.

Because both prongs of the *Hillard* test are met, B's statements during the controlled call induced Mr. Argueta to make an involuntary confession that should have been suppressed. The law doesn't allow officers to circumvent the procedures put in place to protect the accused by using a family member to induce a confession. We reverse the court's denial of Mr. Argueta's motion to suppress and his convictions for sexual abuse of a minor and second-degree rape of C, and remand for further proceedings.

**JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY REVERSED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. FREDERICK COUNTY TO PAY COSTS.**