Circuit Court for Caroline County
Case Nos. C-05-CR-20-000050 & C-05-CR-20-000121

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 443 & 444

September Term, 2021

MICHAEL JOHN GRIFFITH

v.

STATE OF MARYLAND

Reed,
Ripken,
Sharer, J. Frederick
(Senior Judge, specially assigned)

JJ.

Opinion by Ripken, J.

Filed: March 22, 2022

Appellant, Michael Griffith ("Griffith"), was brought in for police questioning in December 2019 in response to allegations against him of sexual assaults on minor children. During a two-hour interrogation, Griffith made incriminating statements confessing to those allegations. He was charged with two counts of second-degree rape, one count of sex abuse of a minor child, and related charges. Griffith filed a motion to suppress the statements as involuntarily made, which the Circuit Court for Caroline County denied.

After proceeding to trial on an agreed-upon statement of facts, the circuit court found Griffith guilty of one count of child sex abuse and two counts of second-degree rape. For the second-degree rape charges, the court sentenced Griffith to two twenty-year sentences with ten years suspended for each of those counts to be served concurrent to each other. For the child sex abuse charge, the court sentenced Griffith to twenty-five years incarceration, concurrent with the first two sentences. Griffith now appeals to this Court asserting that his convictions must be overturned because they were based on an involuntary confession elicited from improper police inducements and promises. For the following reasons, we shall affirm the convictions of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND[1]

On December 16th, 2019, Ridgely Police Officers were contacted by the Department of Social Services in regard to reports of sexual assaults disclosed by two

[1] In this section we recite facts included in the agreed statement of facts pertaining to Griffith's convictions. However, only those facts presented to the suppression court at the suppression hearing are considered in our appellate review. *See Lee v. State*, 418 Md. 136, 148 (2011) ("In undertaking our review of the suppression court's ruling, we confine ourselves to what occurred at the suppression hearing.").

minor children, A.B., born in April 2008, and B.B., born in September 2009.[2] A.B. and B.B., sisters, disclosed on December 13, 2019 during a therapy session that their mother's boyfriend, Griffith, had been sexually assaulting them since the fall of 2019. They further stated that the abuse was occurring when Griffith babysat and when he was alone in rooms with them. The girls recited the most recent incident in detail, which took place on December 7, 2019, at their grandmother's house located in Federalsburg, Caroline County. Based on these disclosures, the therapist referred the matter to the Department of Social Services, and cases were opened and assigned to Child Protective Services ("CPS") Investigator, Sarah Lepore.

Lepore conducted forensic interviews of A.B. and B.B., as well as their oldest sister, C.B., born in May 2007. The girls each stated that on December 7, 2019, Griffith was babysitting them while their mother, grandmother, and a friend were playing Bingo. He took the girls to the Federalsburg house to check on their dog. While there, all three girls went upstairs to a room and, shortly after, Griffith entered that room and closed the door. Griffith asked the minor children if they wanted to have sex and proceeded to take off his pants and lay on the bed. Griffith had the two youngest children, A.B. and B.B., take their pants off as well, and Griffith ordered them to get on top of him and rub their private parts against his penis. Griffith also had them put their mouths on Griffith's penis and Griffith ejaculated. Griffith had "sex cards" depicting different sexual positions, which he used to

[2] For the protection of the minor children, we will refrain from using their names and will instead use initials A.B., B.B., and C.B. that have been chosen at random. Neither their first names nor their surnames begin with these letters.

direct the girls to different positions. During the interview with Ms. Lepore, the girls were each able to draw in detail some of the sexual positions depicted on those cards.

The girls further stated that on other occasions, Griffith would come into their mother's house, located in Ridgely, Maryland, to supervise them. On some occasions when the mother was absent, Griffith would enter the girls' rooms and have them perform fellatio on him. A.B. stated that he taught her about "the tip of his penis," and "made her suck his penis" by "grabbing her head and putting her mouth on his penis." She was able to draw a picture of his penis during the interview. B.B. gave a similar account of this assault.

Officer Eckrich with the Ridgely police department testified at the suppression hearing that following the forensic interviews with the three minor children and after being notified by CPS, Ridgely police received a call from the minor children's mother stating that Griffith was parked in front of her house and she was frightened. Officers arrived at the mother's house, located in close proximity to the police station, and found Griffith sitting in his car parked in front of the house. The officers requested Griffith accompany them to the nearby police station for questioning, which he agreed to do. Griffith rode in the front passenger seat of the unmarked police vehicle. At no point was he placed in handcuffs or told he was under arrest.

After arriving at the police station, Griffith was placed in a conference room, which was not locked from the inside, but required a code to get into from the outside. Two officers, Officer Eckrich and Detective Scheurholz,[3] interviewed Griffith. They began by

[3] At the time of the motions hearing, Detective Scheurholz had been promoted to Lieutenant.

reading Griffith his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). Having been so advised, Griffith waived his rights and agreed to speak with the officers. Throughout the interview, the police officers urged Griffith to be honest with them stating that they had already spoken with the victims so they "already know the answer to a lot of questions." The relevant conversations on appeal are as follows:

> [OFFICER ECKRICH:] [H]onesty goes a long way with [Detective Scheurholz] and I. All right? . . . If you're sitting here and you're honest with us, that's only going to help you out. If you lie, you're going to be, dig yourself in a much deeper hole.
>
> ***
>
> [DETECTIVE SCHEURHOLZ:] . . . I know that you're probably (unintelligible) what's this, you know, it, it's, every little detail is to help us and help you. Help this whole situation.
>
> ***
>
> [OFFICER ECKRICH:] [S]o there's a little bit of a problem with their story and your story in that it differs on the second time you went [] [upstairs]. Okay? You went into the room and they were in their mom's room and you shut the door. All right. And that's why we're sitting here today. So, this is where you got to, you've got to start being honest.
>
> [GRIFFITH:] I'm being 100% honest.
>
> [OFFICER ECKRICH:] You've got to start being honest with yourself.
>
> [DETECTIVE SCHEURHOLZ:] I think you're nervous. I think you're scared. I think you know why you're here right now.
>
> [OFFICER ECKRICH:] You [] inappropriately touch[ed] [those] girls.
>
> [GRIFFITH:] Never did it.
>
> [DETECTIVE SCHEURHOLZ:] The allegations are disturbing and that's why you're sitting here today.

> [OFFICER ECKRICH:] And you know what? I talked to you about honesty. Okay? And what, I know there's two sides to every story, but the fact that you're withholding details and they tell a story like they lived through it[.]

The officers continued to question Griffith about the inconsistencies in his story and encouraged him to be honest. Griffith maintained that he did not inappropriately touch the girls.

> [DETECTIVE SCHEURHOLZ:] [H]onesty goes a long way with us . . . [W]e wouldn't be bringing this stuff up if we didn't already have (unintelligible).
>
> [OFFICER ECKRICH:] And not, not just with us, the State's Attorney and the Courts.
>
> [DETECTIVE SCHEURHOLZ:] Everybody.
>
> [OFFICER ECKRICH:] And you go in there and you deny stuff and we're going to build a case against you, which we are, believe me. We've already started. And you, you look like a guy that doesn't care. That don't look good, look to the State's Attorney and it doesn't look good to the Judge.
>
> [GRIFFITH:] I do care.
>
> [OFFICER ECKRICH:] That's not, that's not going to look good to a jury. So, what happened?
>
> [DETECTIVE SCHEURHOLZ:] It's admitting to mistakes.
>
> [OFFICER ECKRICH:] And we believe that this was a one-time mistake. We all know, we don't know exactly what happened. We only have their side of it, but when you went up into that room the second time and they were in [mother's] room, something happened to the point where they thought it went too far.
>
> [GRIFFITH:] I didn't do anything.

The officers continued questioning Griffith about the specific allegations, including whether he ever "pull[ed] out [his] penis in front of the girls," which Griffith maintained

he did not. The officers questioned how "these girls could have seen your penis," and reminded Griffith that "[they] know the answers." Griffith stated that they could have gone through pictures on his phone, but he did not expose himself to the girls. The questioning continued:

> [OFFICER ECKRICH:] We don't want to sit here and think that you're a pedophile . . . but something definitely happened at that house in Federalsburg. All right? Look, we're that, we're past the no. Now we're going to get into what exactly happened and is it as bad as those girls say it is.
>
> [GRIFFITH:] Nothing really happened there.

The officers reiterated that what happened was "a mistake" and "something that can be corrected" and that the incident "might not be as bad as the girls were telling [Lepore]." Griffith continued stating that nothing happened, and he was telling the truth. The officers responded:

> [DETECTIVE SCHEURHOLZ:] You are not telling the truth. I wish you were cause I want to be able to tell the State's Attorney and the Judge that he's so honest. He does care . . . He does care and he does, everything[sic] makes a mistake. I make a mistake, he makes a mistake, you make a mistake. (Unintelligible) I don't care who you are. Nobody's perfect.
>
> [GRIFFITH:] No one's perfect.
>
> [DETECTIVE SCHEURHOLZ:] So, listen, if something did happen that's a mistake, but I would, we could go to the State's Attorney, go to the Judge and say look, he does care. He was honest. He did make a mistake. We all make mistakes.

Griffith again stated that he was being honest and that he did not do anything. The officers continued questioning him about specific facts pertaining to the incident and Griffith denied those accusations. The officers repeated that what happened was a mistake

and that Griffith needed to be honest. They stated that they were "not talking about a murder here," and that "we can correct a mistake. You just got to own up to the mistake." Griffith stated that he was not scared, and again denied the accusations.

The officers then began questioning Griffith about "sex cards" and whether he shared those cards with the girls. He denied doing so. The officers questioned how the girls knew about the different positions depicted on the cards and the color of Griffith's underwear. During these discussions, Griffith began talking about the sources of stress in his life including his parents, as well as the officers' mentioning his fiancé, and the approaching holidays. The officers stated:

> [OFFICER ECKRICH:] We are the first ones that are going to get you help. Okay? But . . .
>
> [DETECTIVE SCHEURHOLZ:] We cannot get you help if you can't . . .
>
> [GRIFFITH:] (inaudible).
>
> [OFFICER ECKRICH:] Well, at best we need to hear exactly what happened and there's all kinds of help out there.
>
> ***
>
> [DETECTIVE SCHEURHOLZ:] All kinds. And I am willing and myself and (unintelligible) are willing to help you get your help, but the first help that you need is to sit here and tell us the whole thing.
>
> [GRIFFITH:] (unintelligible).
>
> [OFFICER ECKRICH:] No, we're, we're not talking about debt.
>
> [GRIFFITH:] Well, that's the only stress I got.
>
> [OFFICER ECKRICH:] We, we can go down road A, which is we charge you. Take you before a Commissioner, you get help, you go before a Judge and you look like, basically you look like a piece of shit (unintelligible). Or we, okay. Okay, a pedophile is someone who keeps doing it, keeps doing it,

> keeps doing it and you know why they don't stop. Listen, you know why they don't stop? Cause they don't get caught. All right, but we're talking over years time here. This we know hasn't been happening for years. This may be a one-time thing. We don't know, okay? But, we know that one time something definitely happened.

Griffith again denied the accusations. The officers again told him that they know the accusations were true, to which Griffith responded: "How?" The officers informed him that the minor children were interviewed by a forensic investigator and it was determined that they were telling the truth. The officers stated: "You did something dumb. Okay? Now, the question is [] are you truly a pedophile that's going to go until you get caught or are you someone that did something stupid one time and you, and you need the help that we can get you?" Griffith denied the allegations.

The officers also stated that they have additional evidence, and stated that "we haven't even told you probably 80% of what we do know. The cards and all that stuff, that's just a small amount of what we do know." Griffith responded: "Well, I'd like to know (unintelligible)," and the following colloquy ensued:

> [OFFICER ECKRICH:] I don't know any other way to tell but we're, we're past you denying it. You shouldn't even deny it any more. We know you did something. Now, the question is [] did you do exactly what those girls said you did?
>
> [DETECTIVE SCHEURHOLZ:] What, what if there was a video in that room that day?
>
> [GRIFFITH:] Where would it be?
>
> [DETECTIVE SCHEURHOLZ:] I'm just asking what if there was a video in that room that day.
>
> [GRIFFITH:] Nothing happened.

***

> [DETECTIVE SCHEURHOLZ:] So, if there was a video, for example (unintelligible), it would show nothing . . . If there was a camcorder in that room that day . . . that would show you taking your clothes off.
>
> [OFFICER ECKRICH:] You had two of the girls sit on top of you. How do you know, now we're starting to give you a little bit more. Now you know that we know what we're talking about. All right? That we're not just making it up.
>
> [GRIFFITH:] I would never do that.
>
> ***
>
> [DETECTIVE SCHEURHOLZ:] But listen (unintelligible) and listen. If there was a camcorder in that room that day it would show you taking your clothes off as well as two of the girls. Am I right or wrong? I know the truth. Am I right or wrong, Mr. Griffith?
>
> [GRIFFITH]: It was a mistake.

Griffith went on to give a detailed statement in response to the officers' questions pertaining to the sexual assaults at the Federalsburg house. Throughout his statement, the officers again urged him to be honest and reminded him that they already knew the answers. Griffith also drew a picture illustrating the assault. Additionally, Griffith gave details about a separate sexual assault that he committed at the Ridgely house.

The interview lasted approximately two hours and concluded shortly after Griffith confessed to committing sexual assault at both the Federalsburg house and the Ridgley house. Griffith also provided, at the suggestion of a police officer, a written apology to the three minor victims as well as to their mother. After the interview, Griffith was arrested and charged relating to the sexual assaults, which included two counts of second-degree rape and one count of sexual abuse of a minor.

Prior to trial, Griffith moved to suppress the recorded interview as well as his written apology. He argued that those statements were involuntary as they were obtained based on his reliance on improper police inducements and promises made by the interviewing officers. At the suppression hearing, the circuit court listened to the full recorded interview. The court also received testimony from Officer Eckrich. Griffith did not testify at the suppression hearing.

In defense counsel's argument during the hearing on the suppression motion, he stressed that Griffith's incriminating statements and apology letter should be excluded as the products of improper police inducement. In response, the State stressed the circumstances of the interrogation including that Griffith was in plain clothes, was not handcuffed or patted down, was in an unlocked room, and was informed that, pursuant to *Miranda v. Arizona*, he was free to stop the questioning at any time. The State further argued that the officers never promised Griffith a specific deal, and Griffith did not rely on any promises. The State noted that during the interview, Griffith stated he was not afraid to speak with the police, and after the interview, Griffith did not ask about any deal with the State's Attorney. Further, Griffith did not begin to incriminate himself until one of the officers informed Griffith of some of the evidence they had that incriminated him. Therefore, according to the State, Griffith's confession was voluntary.

The court denied Griffith's motion to suppress in a written order. It summarized the two-prong test used to determine if a confession is involuntary under Maryland law, fashioned from *Hillard v. State*, 286 Md. 145 (1979) and more clearly articulated in *Winder v. State*, 362 Md. 275 (2001). That test provides that for a statement to be involuntary, the

police officers must 1) promise or imply to a suspect that he will be given special consideration from a prosecuting authority in exchange for a suspect's confession; and 2) the suspect makes a confession in apparent reliance on that statement.

As to the first prong, the court found that the detectives did not make "any express promises of leniency or non-prosecution," did not "imply Griffith would receive a lesser charge if he confessed," and did not "imply a promise of non-prosecution." The court stated that although the detectives "toed the line of improper statements," they did not cross that line. The court further found the reasoning of *Smith v. State*, 220 Md. App. 256 (2014) applicable, quoting: "standing between them and the other side was the impenetrable reality that any reasonable layperson would recognize as ludicrous the chance of charges being dropped or lesser charges being filed in exchange for a confession to a patently perverse proposition." In Griffith's case, the court found "the ludicrous proposition [was] that three minor females ages 11, 12 and 13 [at the time of the sexual abuse], could consent to sexual acts with a thirty-year-old man."

As to the second prong, reliance, the court found that the failure of Griffith to testify at the suppression hearing meant that the court had no direct evidence of Griffith's reliance on the police officers' statements to cast doubt on the State's evidence. Weighing the totality of the circumstances, the court found there was no indirect evidence of reliance. Therefore, the court found Griffith's statement was voluntary.

Griffith proceeded to trial on an agreed-upon set of facts, but he maintained his objection to the admission of statements made during the police interview as well as the apology letter. The court accepted into evidence, over Griffith's objections, his signed

Miranda statement waiving his rights, the video and audio recording from the police interview, the officers' handwritten notes and the drawing made during that interview by Griffith depicting the Federalsburg assault, the apology letter written by Griffith to the victims, and the sex cards that were found in Griffith's truck in the execution of a search warrant.

The court found Griffith guilty of one count of second-degree rape of A.B., and one count of second-degree rape of B.B., both of which occurred in the Federalsburg house on December 7, 2019. The court also found Griffith guilty of sex abuse of B.B., which occurred at the Ridgely house sometime before December 2019.[4] On the two second-degree rape charges, the court sentenced Griffith to two concurrent twenty-year sentences with ten years suspended in each sentence. On the child sex abuse charge, the court sentenced Griffith to twenty-five-years concurrent with the first two sentences.

Griffith noted his timely appeal to this Court. Additional facts will be included as they become relevant.

ISSUE PRESENTED

Griffith presents one issue for our review: "Did the court err in denying [Griffith's] motion to suppress his confession and apology letter as the product of improper inducements and promises and hence involuntary and inadmissible?"

As we shall explain, we hold that the officers' statements did not constitute improper

[4] The court also found Griffith guilty of violating a protective order, for which he was sentenced to one year incarceration concurrent with the other sentences. That conviction is not contested on appeal.

inducements or promises, nor did Griffith rely on any of the statements he argues were improper in making his confessions. Because we hold that Griffith's confessions were voluntary, and therefore admissible, we shall affirm.

STANDARD OF REVIEW

In determining whether a suppression court's ruling on the voluntariness of a confession is correct, this Court recently described the standard of review as follows:

> The circuit court's determination from a suppression hearing that a statement is voluntary is a mixed question of law and fact that we review *de novo*. In undertaking our review of the suppression court's ruling, we confine ourselves to what occurred at the suppression hearing. We view the evidence and inferences that may be reasonably drawn therefrom in a light most favorable to the prevailing party on the motion, here, the State. We defer to the motions court's factual findings and uphold them unless they are shown to be clearly erroneous. We, however, make our own independent constitutional appraisal, by reviewing the relevant law and applying it to the facts and circumstances of this case.

Brown v. State, No. 1103, Sept. Term 2019, slip op. at 35–36 (Md. Ct. Spec. App. September 2, 2021) (internal quotation marks omitted) (citations omitted).

DISCUSSION

A confession is admissible only if it is voluntary under Maryland common law, is 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 is elicited in conformity with *Miranda v. Arizona*, 384 U.S. 436 (1966). *Winder v. State*, 362 Md. 275, 305–06 (2001). When voluntariness is properly challenged in a suppression motion, the State "carries the burden of showing affirmatively that the inculpatory statement was freely

and voluntarily made" by a preponderance of the evidence. *Id.* at 306 (internal quotation marks omitted) (quoting *Hillard v. State*, 286 Md. 145, 151 (1979).

Griffith argues that, under Maryland common law as well as Maryland and United States constitutional principles,[5] his confession and apology letter were involuntary and should have been excluded as such.[6] We address each claim in turn.

I. GRIFFITH'S CONFESSION WAS VOLUNTARY UNDER MARYLAND COMMON LAW.

"Maryland law requires that no confession or other significantly incriminating remark allegedly made by an accused [can] be used as evidence against him, unless it first be shown to be free of any coercive barnacles that may have attached by improper means to prevent the expression from being voluntary." *Winder*, 362 Md. at 307–08 (internal quotations marks omitted) (quoting *Hillard*, 286 Md. at 150). In assessing voluntariness, we "traditionally examined the totality of the circumstances affecting the interrogation and confession." *Smith v. State*, 220 Md. App. 256, 273 (2014) (internal quotation marks omitted) (quoting *Hill v. State*, 418 Md. 62, 75 (2011)). However, "a confession that is preceded or accompanied by threats or a promise of advantage will be held involuntary, *notwithstanding any other factors that may suggest voluntariness*, unless the State can

[5] Griffith does not allege that his confession was in violation of *Miranda* principles, therefore we do not address that issue.

[6] Unless otherwise stated, references to Griffith's confession and incriminatory statements include his apology letter. *See Winder v. State*, 362 Md. 275, 295 fn. 14 (2001). In addition, we note that Griffith does not specify precisely which statements he alleges are improper, but rather, seems to view the statements collectively.

establish that such threats or promises in no way induced the confession." *Id.* at 273–74 (alteration and emphasis in original).

Hillard's two-prong test dictates that an inculpatory statement is involuntary 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 v. State, 418 Md. 136, 161 (2011); *Hillard*, 286 Md. at 153 ("if an accused is told, or it is implied, that making an inculpatory statement will be to his advantage, in that he will be given help or some special consideration, and he makes remarks in reliance on that inducement, his declaration will be considered to have been involuntarily made[.]") Both prongs must be satisfied before a confession is deemed to be involuntary. *Winder*, 362 Md. at 310. Therefore, first, courts examine whether the officers made an improper promise or inducement. *Winder*, 362 Md. at 309. Then, if a court finds that an improper inducement was made, the court turns to the second prong and examines whether the suspect made a confession in apparent reliance on the statement. *Id.*

A. The Officers' Statements Did Not Constitute Improper Inducements or Promises.

Griffith argues that the officers' repeated statements urging Griffith to be honest and admit to a "mistake," coupled with their statements about getting Griffith "help," were improper under the first *Hillard* prong. Similarly, he argues that the officers' promise to "help him avoid being labeled a pedophile," and promise to speak to the State's Attorney and judge on his behalf constituted improper inducements.

To satisfy the first *Hillard* prong, an officer must have promised or implied that the defendant will be given special consideration from prosecuting authority, or some other form of assistance in exchange for the suspect's confession. *Winder*, 362 Md. at 308–09. This inquiry is objective. *Id*. The suppression court must consider whether "a reasonable person in the position of the accused would be moved to make an inculpatory statement upon hearing the officer's declaration." *Hill v. State*, 418 Md. 62, 76 (2011). In other words, "[t]he suspect's subjective belief that he or she will be advantaged in some way by confessing is irrelevant. The [] court instead determines whether the interrogating officers or an agent of the police made a threat, promise, or inducement." *Knight*, 381 Md. 517, 534 (2004).

Exhortations to tell the truth and appeals to the suspect's inner conscience are not improper inducements. *Harper v. State*, 162 Md. App. 55, 75 (2005); *Brown*, slip op. at 41. However, an entreaty to tell the truth coupled with a promise for specific help may constitute an improper inducement under the first prong of *Hillard*, where that promise is connected to an offer of leniency in prosecution or sentencing. *Harper*, 162 Md. App. at 77. On one hand, statements such as "we want to help you out," "[t]ell us the truth. That will help you," and "You're not in trouble with us" were held to be not sufficiently connected to offers of leniency to constitute improper inducements. *Brown*, slip op. at 40–41. By way of contrast, statements such as "if you are telling me the truth . . . I will go to bat for you," *Hillard*, 286 Md. at 153, and "it would be better for him to tell the truth, and have no more trouble about it," *Biscoe v. State*, 67 Md. 6, 7 (1887), were improper

inducements, as the offers of help would be understood by a reasonable person to be help in the context of prosecution.

Our opinion in *Brown v. State*, further illustrates the line between proper and improper inducements. In *Brown*, the defendant challenged the suppression court's denial of his motion to suppress his confession to sexual assault that he made during an interview. Slip op. at 36–37. According to Brown, his statements were involuntary as the product of improper promises made by the officers. *Id.* at 37. During the interview, the officers made certain comments to Brown including: "we want to help you," "you're not in trouble with us," and "[r]egardless of what you tell us you're walking out that door without us." *Id.* at 36. Throughout the interview, the officers also alluded to Brown not being the "bad guy," remarking that "[s]ome kids do lie," and "maybe [the victim] put you in a bad spot and now she's turning this around and making you look like the bad person[.]" *Id*. Officers reiterated to Brown: "We're not taking you to jail if you tell us that you bent her over and raped her." *Id.* at 29.

On appeal, this Court summarized the officers' statements as falling under two categories of statements: those pertaining to "help," and those pertaining to Brown not being under arrest or not being in trouble. *Id.* at 39–40. This Court concluded that in either category, the statements did not constitute improper promises or inducements under the first *Hillard* prong because there was no "express or implied promise[] to [Brown] that he would be given 'special consideration from a prosecuting authority or some other form of assistance in exchange for [his] confession.'" *Id.* at 40 (third alteration in original). Regarding those statements pertaining to "help," we distinguished *Winder*, where there

were specific offers to call the State's Attorney. *Id.* We reasoned that the general statements referencing "help" did not constitute "an apparent means to garner leniency from the state prosecutors and the trial court" as they were "nothing like an enticement that if you tell us something incriminating we will go to bat for you with a prosecutor. We will reduce the charges. We will see that you get bond. We will go to the authorities and tell them you were cooperative." *Id.* at 40–41. When taken in context, the detectives' statements were contemporaneous with encouraging Brown to tell the truth and "help himself out." *Id.* at 41.

Regarding the statements that the detectives would not arrest Brown, this Court found that those too did not run afoul the first *Hillard* prong. We reasoned that no reasonable person in Brown's position would have believed that admitting to multiple incidents of sexual abuse of a minor would result in no prosecution. *Id.* at 41–42. Any chance of no prosecution was further disproved by the officers' comments during the interrogation that an investigation had already begun and would continue, as well as Brown's own testimony at the suppression hearing acknowledging that he would go to jail if he admitted to the assault. *Id.* This Court affirmed Brown's convictions, holding that his incriminatory statements were voluntary. *Id.* at 42–43.

Turning back to the instant case, and grouping the statements similarly to those made in *Brown*, we first address those statements regarding help. Officer Eckrich said: "honesty goes a long way with [Detective Scheurholz] and I . . . . If you're sitting here and you're honest with us, that's only going to help you out. If you lie, you're going to be, dig[ging] yourself in a much deeper hole." He also stated: "We are the first ones that are going to get you help . . . . [A]t best we need to hear exactly what happened and there's all

kind of help out there . . . . I am . . . willing to help you get your help, but the first help that you need is to sit here and tell us the whole thing." As in *Brown*, the officers here provided no express or implied promise of special consideration in exchange for a confession. The officers do not specify what kind of help they are referring; although, upon an apparent inquiry from Griffith, they clarify that they are not referring to help with debt. Rather, the general mentions of "help" were presented in the context of encouraging Griffith to be honest about the incidents. At no time did the officers offer to "help" with respect to achieving leniency in the judicial system.

Griffith argues that the promises of help were in reference to psychological help, and were thus improper.[7] We disagree. It is not clear that the officers' mentions of "help" were in reference to psychological help. They merely stated that it would "help" for Griffith to be honest, and that there were "all kinds" of help, but did not otherwise elaborate. These general comments regarding "help" cannot reasonably be understood as implied offers of help with leniency in prosecution or sentencing.[8]

[7] Griffith argues that *Winder* "squarely recognized [that] promise of psychiatric or psychological help in exchange for a confession qualifies as improper inducement." We understand the holding in *Winder* differently. As we shall explain more in depth, *Winder* held that a suspect's confession was involuntary based on a number of circumstances surrounding custodial interrogation.

[8] We briefly note that even if the statements were in reference to psychological help, they had no connection to Griffith's prosecution or later sentencing. *See Harper*, 162 Md. App. at 79 ("[M]ere evidence of an offer by an interrogating officer to recommend to prosecuting or prison authorities that a suspect receive drug treatment, while in prison, 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."); *Compare Facon v. State*, 144 Md. App. 1, 25 (2002), *rev'd on other grounds*, 375 Md. 435 (2003) (holding that an officer's statement that he would recommend drug

We next turn to the officers' statements regarding prosecution. Griffith first argues that the officers' statements that they "didn't want to call [him] a pedophile," and that the incident was "a mistake" are reasonably understood as promises to avoid him being labeled as a pedophile, which necessarily implies leniency in prosecution or non-prosecution. We disagree. The officers' statements do not amount to promises to avoid Griffith's labeling as a pedophile, but were rather encouragements for Griffith to characterize his acts as "a one-time mistake" as opposed to habitual offenses that are characteristic of pedophiles. *Williams v. State*, 445 Md. 452, 481 (2015) ("[P]resentment of two different ways of characterizing the situation is not an inducement."); *Smith*, 220 Md. App. at 280 ("[E]ncouraging 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."). Moreover, much like *Brown*, the officers also informed Griffith that they were investigating him, building a case against him, that he was alleged to have inappropriately touched minor girls, and that they already had all the facts. Such statements could not reasonably have been understood as implying leniency.

Griffith next argues that the officers' statements that they "want to go before the State's Attorney and judge and say, he's so honest, he does care, it was a mistake," are reasonably understood as promises of leniency. According to Griffith, he was offered a benefit for his confession, and it was not unreasonable for him to believe that he would in

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treatment to the prosecutor did not constitute an improper promise), *with Johnson v. State*, 348 Md. 337, 348, 350 (1998) (recognizing an officer's statement that a suspect can avoid prison time by being committed to a mental health hospital for treatment was improper inducement).

fact receive that benefit if he confessed. The State responds that no reasonable person would understand the officers' references to the State's Attorney and the judge to be promises of special consideration in exchange for a confession. We conclude that such statements do not constitute improper inducements based on the reasoning in *Knight v. State*, 381 Md. 517 (2004).

In *Knight*, the Court of Appeals held that officers' statements that the state prosecutor would be made aware of cooperation did not constitute improper inducements because the officers "had no discretion regarding such matters." 381 Md. at 535. Officers "bear a professional duty to inform the prosecutor truthfully of the circumstances surrounding the investigation of a case so that the prosecutor is not surprised at trial." *Id.* One such circumstance is the conduct of the defendant during a custodial interrogation. *Id.* The Court reasoned that "[b]ecause police officers always have a duty to relate truthfully to the prosecutor the events that occur during custodial interrogation, a promise to the suspect that the interrogator truthfully would inform the prosecutor that the suspect either did or did not cooperate is not a promise of special advantage." *Id.* at 535–36.

So too here, the officers had no discretion in informing the prosecuting authorities about the circumstances of the interrogation, including Griffith's truthfulness. The officers' statements that they would inform the State's Attorney of Griffith's candor were not contingent on whether he was or was not truthful; rather, the officers were under a duty to inform the State's Attorney about the interrogation regardless of Griffith's cooperation. *Knight*, 381 Md. at 536 (noting that the officer's communication with the State's Attorney "would occur regardless of [the defendant's] conduct—the only difference being the

content of [the officer's] report to the prosecutor."). In this regard, Griffith was treated no differently than any other suspect, and the officers' statements did not constitute promises to exercise advocacy on his behalf or otherwise give special consideration. The circuit court did not err in concluding that the officers' statements were not improper inducements or promises.[9]

B. Griffith Did Not Rely on the Officers' Statements in Making His Confession.

Even if we were to conclude that the officers' statements were improper inducements, we nonetheless are satisfied that the State met its burden to prove that Griffith did not rely on those statements in making his confession. The second prong of the *Hillard* test is a subjective inquiry, and examines whether "the suspect makes a confession in apparent reliance on the police officer's explicit or implicit inducement." *Lee*, 418 Md. at

[9] Griffith also argues that the circuit court's reliance on *Smith v. State*, 220 Md. App. 256 (2014), was misplaced. There, the defendant was arrested for sexual assault of a four-year-old and made incriminating statements during interrogation. *Id.* at 261. At a later suppression hearing, he argued that a number of statements made by the officers constituted implications of leniency in prosecution. *Id.* Such statements included suggesting that if a sexual assault was consensual, "that's a whole different story." *Id.* at 276. This Court rejected this argument holding that "any reasonable layperson would recognize as ludicrous the chance of charges being dropped or lesser charges being filed in exchange for a confession to a patently perverse proposition—a four-year-old consenting to sexual conduct." *Id.* at 279.

Though Griffith characterizes the officers' statements in *Smith* as lies about consent being a valid defense, this Court characterized such statements as encouragements to "adopt a version of the facts that might mitigate the punishment," *id.* at 280, which mirror a number of the statements that Griffith contends were improper in his case. And, as in *Smith*, no reasonable person would believe that by adopting a mitigating version of sexual assaults with minor victims, it would result in leniency in prosecution or sentencing. We do not see *Smith* as distinguishable.

161. Apparent reliance "triggers a causation analysis" where we look to whether there was "a nexus between the promise or inducement and the accused's confession." *Winder*, 362 Md. at 311. The court must examine "particular facts and circumstances surrounding the confession." *Id.* at 312. Importantly, "the failure of a defendant to testify almost forecloses any chance of prevailing on a suppression motion based on an alleged absence of voluntariness." *Smith*, 220 Md. App. at 281, fn. 11 (internal quotation marks omitted) (quoting *Ashford v. State*, 147 Md. App. 1, 56 (2002)). "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.*

Griffith did not testify at the suppression hearing, and thus did not provide direct evidence of his reliance on any statement to cast doubt on the evidence presented by the State. Griffith posits that, despite his lack of testimony at the suppression hearing, the circuit court should have nonetheless found his confessions involuntary as the Court of Appeals did in *Winder*. Griffith is correct that in *Winder*, the defendant's lack of testimony as to direct reliance did not preclude the Court from holding his confessions to be involuntary.

There, Winder was brought in for questioning following a house fire that resulted in the death of three individuals. *Id.* at 283–84. The interrogation lasted twelve hours, at least four officers questioned Winder at a time, and Winder was prevented from leaving during the questioning. *Id.* at 284, 294. Additionally, officers repeatedly told Winder, among other statements, that they would speak with the prosecuting authorities because "judges listen to [the officers]," and that there was an angry mob outside waiting to "do

bad things" to Winder, and the officers could only protect him if he confessed. *Id.* at 290–94. Winder eventually confessed to the fire and the murders. *Id.* Winder filed a motion to suppress his confessions, and at the suppression hearing Winder did not testify. *Id.* at 295. Testimony was presented by the interrogating officers, which included reading from the interrogation transcript. *Id.* Officers also testified that "at many points during the interrogation, [Winder] was shaking, crying, and his heart was observed beating through his shirt." *Id.* The court denied his suppression motion, and Winder was convicted of all counts. *Id.* at 296, 303.

On appeal, the Court of Appeals applied the *Hillard* two-prong test. It held that the first prong was satisfied because, "without question, the police officers involved in the interrogation of [Winder] made several promises and offers of help[.]" *Id.* at 313. Turning to the second prong, the Court held that the State did not meet its burden to prove Winder did not rely on the inducements. *Id.* at 318. The Court examined the behavior and manner of Winder during interrogation, the timing of the confession, the presence of intervening factors, and the egregiousness of the officers' conduct. *Id.* at 318–20. The State argued that Winder's behavior during the interview suggested that the statements made no impression, as Winder appeared "smug," "cold," and "hard." *Id.* The Court rejected this argument, stating "we cannot comprehend how the State legitimately could characterize [Winder] as a calm, collected individual during the interrogation," *id.* at 318, because, based on the officers' testimony at the suppression hearing, it was "abundantly clear" that Winder was not calm, cool, or smug, *id.* at 319. The Court noted that both during and after the

interrogation, the officers commented that Winder was shaking, his jaw was quivering, his heart was beating through his jacket, and he had a nervous twitch in his neck. *Id.*

The Court also looked at the timing of the actual confession as "critical," noting the closeness in time between the officers' more flagrant promises to "save" Winder from the people waiting to get vengeance if he confessed and the actual confession. *Id.* at 319–20. Additionally, there were no intervening factors that may have attenuated the improper inducements such as "attenuation in time or circumstance, [] change of environment, and [] interruptive change of the interrogation team." *Id.* at 320.

Finally, the Court looked at the egregiousness of the officers' conduct. *Id.* The court noted the officers' lengthy monologues throughout the twelve-hour interrogation that "abandoned all pretense of questioning," *id.* at 293, the repeated promises to protect Winder both from prosecution and an angry mob seeking vengeance, *id.* at 317, and the other tactics that "disregarded interrogation guidelines in [a] quest to gain a confession," *id.* at 320. The Court found the State failed to meet its burden to show no reliance by Winder. *Id.* at 321.

Turning back to the instant case, we are satisfied that the court did not err in finding that the State met its burden to prove voluntariness, as there is no indirect evidence of reliance by Griffith. First, in considering the timing of Griffith's inculpatory statements, Griffith's admissions did not come close in time to those statements he contends were improper. To be sure, the officers questioned Griffith for two hours, and throughout the entirety of the questioning they urged Griffith to be honest, a number of times they mentioned the prospect of "help," and discussed informing the State's Attorney and judge

about Griffith's honesty. The comments regarding the State's Attorney occurred approximately 48 minutes into the interrogation, and comments that the officers wanted to "help" occurred approximately 57 minutes into the interview. At all times following these comments Griffith maintained his innocence. Rather, his confessions came shortly after the officers' informed him that they had more information than they were telling him, and almost immediately after one officer posed a hypothetical regarding a camcorder in the room.[10] Further, in considering the entire interview, Griffith's other inculpatory admissions followed officers informing him of the factual support they had to indicate he was lying. For example, Griffith consistently denied going upstairs on the day of the Federalsburg incident despite the officers' urging that he was not being honest. Once the officers informed Griffith that the girls stated during the forensic interviews he had gone upstairs, he admitted that he had done so. Such a pattern demonstrates he did not rely on any alleged promise.

As to the other factors—behavior and manner of Griffith, presence of intervening factors, and egregiousness of officers' conduct—Officer Eckrich testified at the motions hearing that Griffith was asked to come to the police station less than one minute away, that Griffith rode in the front seat of an unmarked police vehicle, that he was placed in a conference room with two officers and was not locked in that room or otherwise prevented

[10] The State argued at the initial motions hearing that that there was no indication of reliance on the officers' statements because it was not until the detectives began telling Griffith the information and evidence that they knew about his case that "he started to crumble." The State also argued that the fact that Griffith never followed up about the officers speaking to a State's Attorney or Judge on his behalf is indicative of a lack of reliance on those statements.

from leaving, and that at no point was Griffith placed in handcuffs. The interview lasted two hours and was uninterrupted. A recording of the entire interview was played for the judge at the motions hearing. In its written order denying Griffith's suppression motion, the court noted that Griffith appeared "calm, coherent, and awake," and found that that "[u]pon review of the recorded interview, the Court is not persuaded that the defendant was improperly induced into making a confession." We perceive no error in that conclusion. Under both prongs of the *Hillard* test, we hold that the circuit court did not err in finding the State met its burden to prove voluntariness.

II. GRIFFITH'S CONFESSION WAS VOLUNTARY UNDER MARYLAND AND UNITED STATES CONSTITUTIONAL PRINCIPLES.

Griffith last contends that, pursuant to Maryland Declaration of Rights Article 22 and the Due Process Clause of the Fourteenth Amendment to the United States Constitution,[11] his confession should be rendered involuntary and inadmissible. For substantially similar reasons as stated above, we hold that the court did not err in finding his confession was voluntary.

The test for voluntariness under federal and state constitutional law "prohibits confessions that are the result of police conduct that overbears the will of the suspect and induces the suspect to confess." *Lee*, 418 Md. at 159; *Colorado v. Connelly*, 479 U.S. 157, 167 (1986). However, not every deceptive practice will render a confession involuntary;

[11] The Court of Appeals has held that "the due process protections inherent in Article 22 are construed *in pari materia* with those afforded by the Fourteenth Amendment, so what we say about the latter controls, for both the federal and state constitutional arguments[.]" *Lee v. State*, 418 Md. 136, 158–59 (2011) (citation omitted).

"instead, the federal constitution requires only that courts consider promises, threats, or inducements as part of the totality of the circumstances that courts must look at to determine voluntariness." *Reynolds v. State*, 327 Md. 494, 505 (1992). In terms of the interrogation, courts consider factors such as its duration and location, the number of officers present, whether the defendant was given Miranda warnings, the mental and physical state of the defendant during the interrogation, and the content of the interrogation. *Hof v. State*, 337 Md. 581, 596–97 (1995). Courts also consider factors pertaining to the accused including the age, background, experience, education, character, and intelligence of the defendant. *Id.* at 597.

As we have stated, Griffith agreed to go to the police station, located a few hundred feet from where the police officers initially encountered him, and rode in the front seat of the unmarked police vehicle. He was placed in an unlocked conference room and was not handcuffed or restrained at any time. Two officers interrogated him, and prior to interrogating him, the officers read Griffith his Miranda rights, which he agreed to waive. The officers explained that Griffith was able to stop questioning at any time. The trial court found that Griffith appeared calm, coherent, and awake throughout the interrogation. And, as we have explained, the content of the interrogation did not include improper inducements or promises, nor was it characteristic of overbearing a defendant's will such as through physical intimidation, psychological pressure, or mistreatment. *See Hof*, 337 Md. at 597 (discussing mistreatment, pressure, and intimidation as factors to consider for voluntariness). Finally, we note that Griffith was twenty-nine years old at the time of arrest,

had obtained a high school diploma, and had minimal involvement in the criminal justice system.

For similar reasons discussed in the *Hillard* analysis, the totality of the circumstances does not suggest that Griffith's statement was involuntary under state or federal constitutional principles. We hold that the circuit court did not err in admitting Griffith's incriminating statements.

JUDGMENTS OF THE CIRCUIT COURT FOR CAROLINE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.