Circuit Court for Baltimore City
Case No. 118241008

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 798

September Term, 2019

DION DIXON

v.

STATE OF MARYLAND

Kehoe,
Wells,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, J.

Filed: November 5, 2021

*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.

A jury sitting in the Circuit Court for Baltimore City found appellant, Dion Dixon, guilty of second-degree murder and wearing or carrying a dangerous weapon with the intent to injure. The court sentenced Dixon to forty years' imprisonment for second-degree murder and a consecutive three-year term for the weapon charge. Dixon appealed, raising a single question for review: whether the circuit court erred in denying his motion to suppress a statement he had given to police detectives shortly after his arrest. Finding no error, we affirm.

BACKGROUND

The Crimes

At approximately 5:30 in the morning of August 7, 2018, Baltimore City police responded to a report of an assault in northwest Baltimore. There, they found Randolph Cockrell, in an alley, suffering from a fatal head injury. He had been beaten savagely in the head with a brick, and several of the crime scene photographs taken by evidence technicians depicted apparent brain matter on the ground next to Cockrell's body. Cockrell's Maryland identification card was found in his right pocket.

Several witnesses, including Dixon's then-girlfriend, Tajee Williams, and her mother, Lekisha Jacobs, placed him near the crime scene at the time of the killing. Based on their statements, police developed Dixon as a suspect. In the afternoon of the same day, he was arrested by Baltimore City Police officers.

The Suppression Hearing

Dixon was transported to the Homicide Division in downtown Baltimore for interrogation. After waiting for four hours in an interrogation room, Detective Jill

Beauregard of the Baltimore City Police Department questioned Dixon. The video recording of the interrogation was entered into the record at the suppression hearing.[1] Another officer, Detective Mordechai Singer, was also present.

Dixon received *Miranda* warnings before Detective Beauregard asked him any substantive questions. After ascertaining that Dixon could "read and write the English language," she had Dixon write his name, as well as the date, time, and location of the interview, on the waiver form. She then asked Dixon to read aloud each advisement, one at a time, and asked Dixon whether he understood each one. He responded affirmatively each time and placed his initials on the waiver form alongside each enumerated right. He then signed the waiver form, indicating that he had "been advised of and [understood]" his rights, that he was "freely and voluntarily" waiving his rights, and that he "agree[d] to talk with the police without having an attorney present."

Several times during the interrogation, Dixon expressed his desire to leave so that he could be with his daughter. Once, in response, Detective Beauregard replied, "So before I can get you back home, I need to talk about a couple of things alright. So, in order to do that, so what we do with everybody that's comes down here." Another time, when Dixon asked, "can y'all get this done so I can go head home," Detective Beauregard replied, "Yeah, yeah we got to get this done first." Regularly during the interrogation, the

[1] A redacted version of that video recording subsequently was admitted into evidence at trial and broadcast to the jury.

detectives offered Dixon water and cigarettes, and near its conclusion approximately two hours later, food.

Ultimately, after Detective Beauregard confronted Dixon with evidence of the brutal assault on Cockrell, Dixon made a series of inculpatory statements. Among other things, Dixon admitted that he and Cockrell "did get in an altercation;" that he "punched him a couple times and he fell;" that he hit Cockrell "in the face with [his] fist;" and that he "stomped him" "at least five times." Dixon denied attacking Cockrell with anything other than his hands and feet and insisted that, after he dragged Cockrell into the alley and left, Cockrell was still alive.

Dixon testified at the suppression hearing. Among other things, he claimed that on the day of the crime he had been drinking heavily and had taken Percocet and heroin. As a consequence, he asserted that he had no recollection of what had happened. He further contended that he "thought [he] had to talk to" Detective Beauregard and that he had no choice in the matter.

During argument, defense counsel contended that Dixon's *Miranda* waiver was not voluntary and knowing, and that his statement was involuntary. The motions court concluded otherwise:

> Well, addressing the two issues raised by the Defense, I will find that, in fact, he did knowingly and voluntarily waive his Miranda rights.
>
> I do find, first off, he was arrested, I believe, around 1:30, 1:45 in the afternoon. He was left to sit, but I think, in the grand scheme of things, I don't think there was some excessive length of delay between the time he was arrested and the time he was actually questioned, and that was about a little before 6:00.

At that time -- I've watched the -- the tape, clear -- appeared to me he was sober. He seemed to speak clearly. He seemed to respond appropriately to the police officers' questions.

He was -- the police officers, if he wanted something to drink, if he wanted a cigarette, if he wanted food, they were responsive. He was uncuffed.

The other officers, where there were two officers there, seemed to engage in relatively -- I mean, I think it may have gotten a little bit heated at certain times, but I think it was a relatively cordial exchange between the parties, or at least civil. I just don't see anything that was coercive in that particular environment.

I would note for the record, you know, I did have an opportunity to observe Mr. Dixon, and I would find him incredible, as noted by the State, and I think it's pretty obvious Mr. Dixon understands -- he can tell you exactly what liquor he had, what -- what opiates he had, what other narcotics he had, when he had them, what he did in the morning when he got to his Ms. -- I think it's Williams. Is it Tajee Williams?

[THE STATE]: Yes, Your Honor.

THE COURT: All right. Got to her house. What he did with the clothes, where they went. And then all of a sudden after that he doesn't have any memory of it.

But, again, the tape is the tape. It seems to me he was -- very much understood what was going on and responded appropriately.

As to whether or not the statement itself was knowing and voluntary, I believe there were a number of issues or potential sort of promises or inducements or other things. I mean, I'm going to follow, then, the standard protocol or test under [Hillard]. First off (inaudible) whether a court was to determine whether a reasonable person in the position of the accused defendant would be moved to make an inculpatory statement upon hearing the officer's declaration.

I guess that -- that he thought he could go home, or he would go home if he gave a statement. I don't -- just don't find that that was a reasonable conclusion by the Defendant, nor do I find that he relied on these alleged promises or inducements. And for that reason, in looking at the totality of the circumstances, I will also find that the statement itself was voluntary.

So for those reasons, I'll deny the Motion to Suppress.

The Trial[2]

Several weeks after the murder, an indictment was returned, by the Grand Jury for Baltimore City, charging Dixon with murder in the first degree and wearing and carrying a dangerous weapon openly with the intent to injure. A seven-day trial on those charges took place the following May in the Circuit Court for Baltimore City.

At that trial, a redacted version of Dixon's statement was introduced into evidence, and the recording was broadcast to the jury. In addition, Ms. Williams testified that, on the morning of the murder, she observed Dixon asleep on her mother's porch and that his "whole body was full of blood." Dixon's bloody clothes subsequently were recovered by police and tested for DNA, along with clothes and physical evidence recovered from Cockrell. Dixon's DNA was detected, along with Cockrell's, on several of those items. A series of gruesome photographs taken by crime scene technicians, depicting the victim's body and the surrounding scene (several of which showed parts of the victim's brain lying on the ground), were introduced into evidence.

Dixon testified on his own behalf and acknowledged that he had "got[ten] into an altercation" with Cockrell, that he "had hit him," and that he had "dragged him off" his

[2] This is a greatly condensed summary of what occurred at trial because Dixon does not allege any error during that proceeding, apart from what he claims is the erroneous introduction of his statement. *See*, *e.g.*, *Teixeira v. State*, 213 Md. 664, 666-67 (2013) (setting forth the underlying facts in "summary fashion" because "for the most part they do not bear on the issues we are asked to consider") (citation and quotation omitted) (cleaned up). It suffices to say that the evidence was more than sufficient to establish Dixon's guilt.

aunt's porch, claiming that Cockrell (who used a walker and a motorized wheelchair to move around) had "swung" first. He further claimed that he had been drinking and using hard drugs since the night before the murder and had little recollection of the following morning.

The jury acquitted Dixon of first-degree murder but found him guilty of second-degree murder as well as the weapon charge. The court imposed a 40-year term of imprisonment for second-degree murder and a consecutive term of three years for the weapon offense. Dixon then noted this timely appeal.

DISCUSSION

Standard of Review

In reviewing a circuit court's denial of a motion to suppress evidence, "we confine ourselves to what occurred at the suppression hearing." *Lee v. State*, 418 Md. 136, 148 (2011). We accept the motions court's factual findings unless clearly erroneous, but we make "our own independent constitutional appraisal, by reviewing the relevant law and applying it to the facts and circumstances of this case." *Id.* at 148-49 (quoting *State v. Luckett*, 413 Md. 360, 375 n.3 (2010)) (cleaned up). *Accord Madrid v. State*, 474 Md. 273, 309 (2021).

Parties' Contentions

Dixon contends that his statement was inadmissible on multiple grounds: he maintains that his *Miranda*[3] waiver was invalid; that his interrogation continued after he

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

had invoked his right to silence, in violation of *Miranda* as well as *Edwards v. Arizona*, 451 U.S. 477 (1981); and that his statement was involuntary under both constitutional provisions as well as Maryland common law.

The State counters that Dixon's *Miranda* waiver was valid, that his claimed violation of *Edwards* was not raised below and is therefore unpreserved, and that his statement was voluntary under both constitutional provisions and the common law. We address each of these contentions in turn.

Analysis

Validity of *Miranda* Waiver

"No person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend V. The Fifth Amendment applies to the states by virtue of the Fourteenth Amendment. *Maryland v. Shatzer*, 559 U.S. 98, 103 (2010). "In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Court adopted a set of prophylactic measures to protect a suspect's Fifth Amendment right from the 'inherently compelling pressures' of custodial interrogation."[4] *Id.* (quoting *Miranda*, 384 U.S. at 467).

Those prophylactic measures comprise the now-familiar *Miranda* advisements. Thus, "police officers must warn a suspect prior to questioning that he has a right to remain silent, and a right to the presence of an attorney." *Id.* at 103-04 (citing *Miranda*, 384 U.S.

[4] We note that "before a defendant can claim the benefit of *Miranda* warnings, the defendant must establish two things: (1) custody; and (2) interrogation." *State v. Thomas*, 202 Md. App. 545, 565 (2011) (citation omitted), *aff'd*, 429 Md. 246 (2012). Given that Dixon was arrested and then transported to the Homicide Division for interrogation, there is no dispute in this case that both conditions were satisfied.

at 444). If, after the advisements are given, the suspect invokes his right to remain silent, "the interrogation must cease." *Id.* at 104 (citing *Miranda*, 384 U.S. at 473-74). If the suspect requests an attorney, "the interrogation must cease until an attorney is present." *Id.* (citing *Miranda*, 384 U.S. at 474).

These rights, however, may be waived. *Id.* An accused's waiver of his *Miranda* rights must be voluntary and knowing. *Berghuis v. Thompkins*, 560 U.S. 370, 382-83 (2010); *Shatzer*, 559 U.S. at 104 (observing that such a waiver is subject to the stringent standard for waiver of constitutional rights articulated in *Johnson v. Zerbst*, 304 U.S. 458 (1938)[5]). For a *Miranda* waiver to be voluntary, it must be "the product of a free and deliberate choice rather than intimidation, coercion, or deception." *Moran v. Burbine*, 475 U.S. 412, 421 (1986). For a *Miranda* waiver to be knowing, it must be "made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it." *Id.* The State must establish both prongs of this test by a preponderance of the evidence. *Thompkins*, 560 U.S. at 384 (citing *Colorado v. Connelly*, 479 U.S. 157, 168 (1986)).

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[5] Although *Shatzer* explained that a *Miranda* waiver must be "knowing, intelligent, and voluntary," 559 U.S. at 104, it need not be express. *See Thompkins*, 560 U.S. at 385 (noting that Miranda "does not impose a formalistic waiver procedure that a suspect must follow to relinquish those rights" and that "*Miranda* rights can therefore be waived through means less formal than a typical waiver on the record in a courtroom"); *North Carolina v. Butler*, 441 U.S. 369, 373 (1979) (explaining that, although an express waiver "is usually strong proof of the validity of that waiver," in "at least some cases waiver can be clearly inferred from the actions and words of the person interrogated").

"Only if the totality of the circumstances surrounding the interrogation reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived." *Madrid*, 474 Md. at 310 (quoting *Gonzalez v. State*, 429 Md. 632, 652 (2012) (citations and quotations omitted)). In assessing the totality of the circumstances surrounding a purported *Miranda* waiver, a reviewing court must consider the defendant's "age, experience, education, background, intelligence, and whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights." *Gonzalez*, 429 Md. at 652 (quoting *Fare v. Michael C.*, 442 U.S. 707, 725 (1979)).[6]

"To prove that a suspect waived the *Miranda* rights voluntarily and knowingly, the State ordinarily presents evidence at a motions hearing that:

> (1) the officer carefully informed the suspect of each and every one of the required warnings;
> (2) the suspect was then asked if he understood these rights;
> (3) the suspect indicated that he did so understand; and,
> (4) he was willing to answer the officer's questions."

Andrew Jezic, et al., *Maryland Law of Confessions*, § 11:2, at 539 (2020-2021 ed.).

In this case, we note that Dixon was 19 years old at the time of the interview and, although not a high school graduate, had been through the 11th grade and could read and write the English language. As for his capacity to understand the proceedings, Dixon

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[6] In *Madrid*, the Court listed the same factors except for the final one, substituting for it the defendant's "conduct" without further explanation or application of this factor. *Madrid*, 474 Md. at 310.

conveyed to Detective Beauregard that he was sober at the time of the interview, and the motions court found that he was (which is not a clearly erroneous finding).

Detective Beauregard methodically reviewed with Dixon each of the rights he was agreeing to waive, and after Dixon read each right aloud, he stated that he understood what it meant, placing his initials next to each right listed on the waiver form. At the conclusion of that exercise, he signed a statement indicating that he was waiving his *Miranda* rights and that he agreed to speak with the police.

Under the totality of the circumstances, we conclude that Dixon's *Miranda* waiver was both voluntary and knowing.[7]

Whether Interrogation Continued After Dixon Had Invoked His Right to Silence

At no time during the suppression hearing did Dixon claim that interrogation continued after he had invoked his right to silence. Thus, the motions court made no ruling in that regard. It is therefore forfeited, and we shall not address it.[8] Md. Rule 8-131(a)

[7] In passing, we note that Dixon's complaint that Detective Beauregard "did not tell him that he was, in fact, under arrest and why he was arrested and in custody" is unavailing. Dixon presumably already knew he was under arrest because he would have been told so when he initially was arrested, and in any event, he does not claim an illegal arrest. Nor was Detective Beauregard under any obligation to inform Dixon why he had been arrested to establish the knowledge element of his *Miranda* waiver. *See*, *e.g.*, *Porter v. State*, 230 Md. App. 288, 336-39 (2016) (rejecting Porter's claim that her Miranda waiver was not knowing because a detective falsely told her she was not under arrest), *rev'd on other grounds*, 455 Md. 220 (2017).

[8] In passing, we note that this claim appears to lack merit. Dixon's purported attempt to invoke his right to silence during the interview occurred during this exchange with Detective Beauregard:

(continued)

(providing that "[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court").

Voluntariness

"A trial court may not admit a confession made during a custodial interrogation that is involuntary under the common law of Maryland, the Due Process Clause, or Article 22."

> Mr. Dixon: Cause I know, oh my god, hold on, hold on, hold on, hold on, hold on, now hold on, so where is this from then? So where is it from then? How are you going to tell me what I did? I have anger problems, I caught an attitude last night period.
>
> Det. Beauregard: Okay.
>
> Mr. Dixon: I caught an attitude last night.
>
> Det. Beauregard: Alright with who?
>
> Mr. Dixon: **I don't want to talk about that, I don't want to talk about it, I don't want to talk about it.**
>
> Det. Beauregard: Why, why is that?
>
> Mr. Dixon: Y'all trying to put this shit on me, yo like you know I didn't do anything to nobody, I didn't hurt anybody y'all trying to put this on me are you serious.
>
> Det. Beauregard: No, because we have evidence.

(Emphasis added.)

In context, Dixon's statement that he "[didn't] want to talk about that" was, as the State points out (Appellee's Brief at 12-13), ambiguous and not a clear invocation of his right to remain silent because it did not convey to a reasonable police officer a desire to end the interrogation. *See*, *e.g.*, *Williams v. State*, 445 Md. 452, 476-77 (2015) (holding that defendant's statement, "I don't want to say nothing. I don't know" was an ambiguous invocation of the right to remain silent).

Madrid, 474 Md. at 317 (citing *Brown v. State*, 452 Md. 196, 209-10 (2017)). "Where a defendant moves to suppress a confession on the ground that it was involuntary, the State has the burden to prove by a preponderance of the evidence that the confession was voluntary." *Id.* (citing *Hill v. State*, 418 Md. 62, 75 (2011)).

1. Common Law Voluntariness

A confession is involuntary under Maryland common law if "it is the product of an improper threat, promise, or inducement by the police." *Hill*, 418 Md. at 158. Thus, "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 and therefore inadmissible." *Williams v. State*, 445 Md. 452, 478 (2015) (quoting *Hillard v. State*, 286 Md. 145, 153 (1979)).

According to Dixon, Detective Beauregard improperly promised him that he could go home if he made a statement. Moreover, he claims that he made that statement in reliance on that improper promise.

We are not persuaded. For one thing, it was Dixon, not any of the detectives, who initiated each of the exchanges involving his purported desire to be allowed to go home and see his daughter. In our view, Detective Beauregard made no promises when, in response to Dixon's repeated entreaties to be allowed to go home and see his daughter, Detective Beauregard replied that first, they had to complete the interrogation. We agree with the motions court that a reasonable person in Dixon's position would not have been

"moved to make an inculpatory statement upon hearing" Detective Beauregard's two cursory declarations.

Nor was there any evidence that Dixon relied on Detective Beauregard's purported improper promises in making his inculpatory statements. Rather, it was only when Detective Beauregard confronted him with the evidence of his involvement in the crimes that he acknowledged his culpability. We conclude that there was neither an improper promise or inducement, nor was there reliance. We therefore hold that Dixon's statement was admissible under Maryland common law.[9]

2. Constitutional Voluntariness

At no time during the suppression hearing did Dixon raise a claim of constitutional involuntariness, nor did the motions court address that issue. Ordinarily, we would decline to consider such an unpreserved claim, Md. Rule 8-131(a), but the State does not claim non-preservation in its brief, and both parties have briefed the issue. Under these circumstances, we shall exercise our discretion to consider this claim briefly.

The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution incorporates the Self-Incrimination Clause of the Fifth Amendment, which is therefore applicable against the states. *Madrid*, 474 Md. at 319-20 (citation omitted). As a

[9] In passing, we note that the facts in this case bear little resemblance to those in the cases Dixon cites, in which Maryland appellate courts have found improper inducements. In *Hillard*, for example, a police detective told the suspect that he would "go to bat" for him if he made a statement. 286 Md. at 148. In *Streams v. State*, 238 Md. 278, 281 (1965), a police officer told the suspect that "it would be better for him if he made a statement because if he did, they would try to get him put on probation." Here, Detective Beauregard promised Dixon nothing.

consequence, "a confession made during a custodial interrogation must be voluntary to be admissible." *Id.* at 320 (citation omitted). The same rule applies under Article 22 of the Maryland Declaration of Rights (the counterpart to the Fifth Amendment). *Id.* (citation omitted).

A confession is involuntary under federal and Maryland constitutional law if it is "the result of police conduct that overbears the will of the suspect and induces the suspect to confess." *Lee*, 418 Md. at 159 (citations omitted). "Not every deceptive practice by the police meets this standard." *Id.* (citation omitted). For example, neither "[l]ying to the suspect about the strength of the evidence" against him nor "showing false sympathy" for him "rise[s] to the level of the type of police coercion that is viewed as overbearing the will of the suspect," and it is only in a "rare and extreme case" where a court will conclude that a suspect confessed involuntarily. *Id.* (citation omitted).

We assess constitutional voluntariness under the totality of the circumstances. *Madrid*, 474 Md. at 320 (citation omitted). Among the "non-exhaustive list of factors we consider are the length of the 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." *State v. Tolbert*, 381 Md. 539, 559 (2004) (quoting *Winder v. State*, 362 Md. 275, 307 (2001)).

After Dixon was arrested and transported to the Homicide Division, he was placed in an interrogation room, without constraints, and waited approximately four hours until the interrogation began. There were two police officers present during that interrogation. It was conducted, as the motions court found, in a "civil" manner; during the interrogation,

police officers from time to time offered him water and cigarettes, and near its conclusion, they provided him a dinner of a cheeseburger and French fries. Dixon was, at the time of the interrogation, 19 years old, with an 11th grade education, and could read and write English. There was nothing to suggest that the police engaged in coercive tactics or that Dixon's will was overborne. We conclude that his statement was voluntary under constitutional law.

To summarize, Dixon's *Miranda* waiver was valid, and his statement was voluntary under both Maryland common law as well as federal and Maryland constitutional law. Therefore, it was properly admitted into evidence against him.[10] Accordingly, we affirm the judgments of the circuit court.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS ASSESSED TO APPELLANT.

[10] Because there was no error in admitting Dixon's statement, we decline to consider the State's harmless error argument.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0798s19cn.pdf