Circuit Court for Prince George's County
Case No. CT-161358X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 843

September Term, 2019

JAMAL FORD

v.

STATE OF MARYLAND

Reed,
Shaw Geter,
Salmon, James P.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: April 26, 2021

On November 15, 2016, a grand jury assembled in the Circuit Court of Prince George's County indicted Jamal Ford ("Appellant") on charges of murder, use of a firearm in the commission of a felony, use of a firearm in the commission of a crime of violence, motor vehicle theft, possession of a regulated firearm having been convicted of a crime of violence, and possession of a regulated firearm having been convicted of a disqualifying crime. On February 12, 2019, the court below (the Honorable Daneeka Varner Cotton, presiding), denied Appellant's motion to suppress his custodial statement to police, which Appellant contends was the result of an improper inducement under Maryland law. During the voir dire stage of his trial, Appellant objected to the trial court's refusal to propound his proposed questions to the jury regarding the presumption of innocence, proof beyond a reasonable doubt, and his Fifth Amendment right not to testify. Additionally, during jury deliberations, Appellant objected to the trial court's reliance on pattern jury instruction to address a question from the jury asking the legal effect of a signed Miranda waiver on an individual's subsequent confession.

On March 22, 2019, following a five-day jury trial (Judge Cotton, presiding), Appellant was found guilty of murder in the first degree (premeditated and deliberated), use of a handgun in the commission of a felony, and motor vehicle theft. On June 28, 2019, Judge Cotton sentenced Mr. Ford to life for first degree murder, and concurrent sentences of 20 years for use of a handgun in the commission of a felony, and five years for motor vehicle theft. Appellant timely filed a notice of appeal.

On appeal, Appellant raises three issues which we have rephrased for clarity:[1]

I. Did the trial court err in refusing to propound Appellant's proposed voir dire questions regarding the presumption of innocence, proof beyond a reasonable doubt, and his Fifth Amendment right not to testify?

II. Did the trial court err in in declining to suppress Appellant's custodial statement to police upon the finding that Appellant's custodial statement was not the result of an improper inducement under Maryland common law?

III. Did the trial judge err in relying on pattern instructions which explained the effect of a defendant being advised of his rights, but not the effect of a defendant signing an advice of rights form, on the voluntariness of a subsequent confession?

Finding that the trial court erred in refusing to propound Appellant's proposed voir dire questions, we vacate Appellant's conviction and remand for further proceedings consistent

[1] Appellant posed the following questions for appellate review:

I. Whether, under *Kazadi v. State*, 467 Md. 1 (2020), the trial court erroneously refused to ask Mr. Ford's requested jury voir dire on fundamental principles, including the presumption of innocence, the State's burden of proof, and Mr. Ford's right not to testify?

II. Whether the trial court erroneously found, pretrial, that the State obtained Mr. Ford's confession during his custodial interrogation in compliance with Maryland common law?

III. Whether the trial court erroneously refused to answer a jury question directly, "can you still be coerced into a confession after signing the Miranda document?", where the question revealed jury confusion about Maryland law governing the central issue in the case, namely, the voluntariness of Mr. Ford's confession?

with this opinion. We also address the remaining issues to provide guidance for the remanded proceedings below.

FACTUAL & PROCEDURAL BACKGROUND

The Investigation

Cleve Monnity ("Decedent") was murdered on July 30, 2016. Decedent died from multiple gunshots to his right back, right chest, and back side of his right arm. That night, around 10:41 pm, a passerby discovered Decedent's body lying on a secluded stretch of road in the middle of Everest Drive in Bowie, Maryland. Upon arriving at the scene, Police recovered Decedent's cell phone among other personal effects. The following day, police recovered Decedent's vehicle parked in a residential neighborhood approximately a mile away from the scene. The vehicle had two bullet defects in the driver's window and a small defect on the inside of the driver's door.

During the investigation into Decedent's murder, police examined Decedent's phone and observed the most recent call came from a phone number belonging to Mr. Jamal Ford ("Appellant"). On the morning of July 31, 2016, Detective Ebaugh, who was then leading the investigation for the Prince George's County Police Department's Homicide Division, called Appellant's phone number and briefly spoke with Appellant. Using Appellant's phone number, Detective Ebaugh obtained Appellant's cell-site location information from his wireless carrier. Additionally, Detective Ebaugh secured GPS location data from Appellant's ankle bracelet – which Appellant was wearing on July 30, 2016 as a condition of his probation for an unrelated offense.

Following months of investigation, police secured a search warrant[2] for Appellant's home in Washington D.C., which included an arrest warrant for Appellant. October 3, 2016, police executed the search warrant and found Appellant in his home, along with his girlfriend and two children. Pursuant to the search of the residence, police recovered, among other effects, a .380 caliber semi-automatic pistol from a fake dictionary lockbox under Appellant's bed. Police arrested Appellant for the murder of Decedent and transported Appellant to the Metropolitan Police Department for interrogation. Additionally, police brought in Appellant's girlfriend for questioning after finding a safe place for the children to stay in the interim.

The Interrogation

After transporting Appellant to the Metropolitan Police Department for interrogation, Detective Ebaugh initiated interrogation of Appellant. Detective Ebaugh began the interrogation by stating: "I . . . want to answer some of [Appellant's] questions . . . but before we do that, we need to go through some formalities." Next, Detective Ebaugh confirmed that the children taken from Appellant's home were his children, and assured Appellant that they were safely being cared for by a neighbor while the police questioned Appellant's girlfriend. The following exchange ensued:

> [Appellant]: Why did y'all talk to her, she has nothing to do…She doesn't know what I have [in my home]. The vest you found, all that. What else did you find?

[2] The warrant was issued by a judge in Washington D.C., the target location of the search warrant. Given the multiple jurisdictions involved the warrant, the warrant was executed jointly by the Prince George's County Police Dept. and the Metropolitan Police for the District of Columbia.

> [Detective]: I'd like to tell you what we found but we have to get through the advice of rights form…I have to read you your Miranda rights.
>
> [Appellant]: I know my rights, let's get this over with.

Detective Ebaugh proceeded to read Appellant his advice of rights form and received Appellant's acknowledgement of each through initialing, and a final signature. Detective Ebaugh then explained that Appellant was arrested for the suspected murder of Decedent. Thereafter, Appellant attempted to elicit information about the evidence against him from Detective Ebaugh:

> [Appellant]: What are the facts, what have y'all found so far?
>
> [Detective]: Well for one you are wearing [the ankle monitor] right now, that's a big one.
>
> [Appellant]: I know. That's neither here nor there. I'm listening.
>
> [Detective]: And we got cell phones, we got Facebook instant messenger. . . . We're taking [your girlfriend] back to the station.
>
> [Appellant]: Why?
>
> [Detective]: We're going to talk to her about some things that were said back and forth.
>
> [Appellant]: She has nothing to do with nothing.
>
> [Detective]: Ok.
>
> [Appellant]: If that's the case I will take responsibility. If that's the . . . tree you want to bark up. Leave her out of it.
>
> [Detective]: I'll respect that. I'll do that. You need to go ahead and explain to me why I shouldn't talk to her.
> …
> [Appellant]: Because this . . . got nothing to do with her. Like I said, I know what you're here for.

> [Detective]: So what happened?
>
> [Appellant]: You just put 2 and 2 together sir. So what did you find in my house?
>
> [Detective]: We did find the murder weapon.
>
> [Appellant]: I know you did.
>
> [Detective]: Was that the weapon used?
>
> [Appellant]: Mmhmm (while nodding head)
>
> [Detective]: Okay well thank you for being honest.
>
> [Appellant]: You got my girl. It's because you have my girl. If you didn't have my girl I wouldn't say this [expletive]. But you got my girl and my [expletive] kids. All that taking her to the station for what? What station is she at?

Detective Ebaugh proceeded to explain that jurisdictional rule which required the police to take Appellant to the Metropolitan Police Station rather than the interrogating officer's police station where Appellant's girlfriend was being held. Thereafter the following exchange ensued:

> [Detective]: So unfortunately, I can't take you there. So if you're going to work with me, and I appreciate you being honest about the weapon. I'll shoot my officer a text right now and tell him to take her back.
>
> [Appellant]: Yes please.
> …
> [Appellant]: And if it's possible, do you think I could talk with her?
>
> [Detective]: At some point, yes.
>
> [Appellant]: Because the way this is looking it doesn't look like I'm getting up out of here.
>
> [Detective]: So what happened? What lead to this? What led [*sic*] to the murder?

Subsequently, Appellant proceeded to confess to – and explain the machinations behind – the murder of Decedent.

Pre-trial, Appellant sought to suppress his custodial statement to police, arguing that it was the result of an improper inducement under Maryland common law. The court began by providing the following rule applicable to its decision:

> The Court must consider the Defendant's motion to suppress [a] statement relative to voluntariness as [he] allege[s] the Defendant was improperly induced to confess. The Defense argues that the police improperly induced the Defendant to confess with an implied promise not to involve [Appellant's girlfriend], the mother of the Defendant's two children. The State has the burden of showing by preponderance of the evidence the Defendant's confession and/or inculpatory statement was not made in reliance on a promise or inducement by the police.
>
> Under Maryland law, if an accused is told or it's implied that making a statement will be to his advantage and that he'll be given help, some special consideration, and he makes a remark in reliance on that inducement[,] those statements must be considered to have been involuntar[il]y made and thus inadmissible. The test is an objective one, measured in the perspective of a layperson in the defendant's situation. The court must examine the particular facts and circumstances surrounding the confession to determine whether the defendant made the confession in relying o[n] the inducement.

The court then concluded that the statement was voluntary under Maryland law, providing the following reasoning:

> [T]he Court has viewed the video tape in great detail and it is clear and persuasive that the Defendant initiated much of the communication. The video demonstrates the Defendant was in control of the conversation throughout his interaction with the police, even at times attempting to gain information from the police about the case, their knowledge and facts.
>
> There's nothing in the video demonstrating to this Court that Detective Ebaugh gave any direct or implied threat, inducement or promise. The Court finds that the mere fact the police indicated that they would or could or may be speaking to the Defendant's girlfriend not to be an inducement.

> Further, the Court has considered his statement in consideration of the totality of all of the circumstances and in consideration from the perspective of a layperson in the Defendant's situation in determining that the officer did not promise or imply any inducement. Further, if this Court were to have found an inducement, which I have not, the Court would have found there had been no reliance on said inducement had one even been made. Thus, that there w[as] no inducement, no reliance, the Court finds the motion to suppress must be denied and it is.

Accordingly, the trial court declined to suppress Appellant's custodial statement to police, and the case proceeded to trial.

The Trial Below

Subsequently, during the voir dire stage of Appellant's trial, Appellant requested the trial judge ask the following questions to potential jurors:

> #24. In our judicial system, the Defendant enters this court-room innocent and remains innocent until the prosecution has proven beyond a reasonable doubt that the defendant is guilty. Does everyone agree that the State must convince you beyond a reasonable doubt to find the defendant guilty? Does everyone agree that, if the State fails to satisfy its burden, you must find the Defendant not guilty?
>
> #29. The Fifth Amendment of the United States Constitution provides that the defendant need not testify, need not offer any evidence, and may, in fact, stand silent, since he is presumed innocent. Does anyone here feel that the defendant should testify or present evidence on his behalf before you could find him not guilty?
>
> #30. Is there anyone who thinks that the defendant should be required to prove his innocence?
>
> #31. Is there any member of the prospective jury panel who does not understand that your collective verdict must be based solely on the evidence that is admitted in this trial?

The trial judge declined to propound Appellant's questions to the jury, and Appellant noted his objection at the close of voir dire:

[Trial Judge]: Is the State satisfied with the voir dire?

[State]: Yes.

[Trial Judge]: Is the Defense satisfied?

[Appellant]: Your Honor, I'm just reviewing my notes here. . . . Your Honor, we request No. 24.

[Trial Judge]: I think that's addressed in the jury instructions. They've already indicate to the Court, pursuant to the question, none of them would have difficulty in following the Court's instructions as to the law, and the Court provides very specific instructions as to that, and I don't think it's proper for me to again ask them that without them knowing the instruction, so that question is denied.

[Appellant]: Your Honor, I would ask for No. 30 . . . Twenty-nine and 30.

[Trial Judge]: Point to it and show me.

[Appellant]: Twenty-nine and 30 go hand in hand, Your Honor. Twenty-nine is a question about Fifth Amendment privilege, and 30 is the –

[Trial Judge]: I think the Court's ruling as to 29 and 30 are similar to my previous one, in that it asks – the question is the Defendant is not required to prove his innocence, and indicates that everyone understand he has the right not to testify, and that he's presumed innocent. It says he need not testify and need not offer any evidence. The Court has already asked the jury panel if any of them would have difficulty in adhering and following the Court's instructions as to the law. These issues are specifically addressed in the Court's instruction as to the law, and I don't believe it's proper to ask them this question at this juncture. The request is denied.

[Appellant]: I appreciate the Court's comment on it. I would just note that we're trying to ferret out bias.

[Trial Judge]: I understand. For the reasons given, your request is denied.

[Appellant]: Your Honor, also 31.

[Trial Judge]: Again, I believe that that's properly addressed in the jury instructions.

. . . .

[Trial Judge]: Other than those objections, satisfied?

[Appellant]: I have no further requests.

Thereafter, following strikes for cause and preemptory challenges, the jury was seated and the following ensued:

[Trial Judge]: So is the State satisfied?

[State]: The State is satisfied.

[Trial Judge]: Defense satisfied?

[Appellant]: No further requests, Your Honor.

The jury was sworn, and the case proceeded to trial.

During deliberation at the close of evidence, the jury asked the following of the trial judge: "Can you still be coerced into a confession after signing this Miranda document?" In response, the trial judge declined to directly answer the question in the affirmative, instead referring the jury to a portion of the pattern jury instructions[3] which explained that

[3] The trial judge directed the jury to the portion of the pattern instructions which read as follows:

> In deciding whether the statement was voluntary, consider all of the surrounding circumstances including: One, the conversations, if any, between the police and the Defendant; *two*, *whether the Defendant was advised of his rights*; three, the length of time the Defendant was questioned; four, who was present; five, the mental and physical condition of the Defendant; six, whether the Defendant was subject[ed] to force or threat of force by the police; seven, the age, background, experience, education, character and intelligence of the Defendant; eight, whether the Defendant was taken before a District Court Commissioner without unnecessary delay following arrest, and, if not, whether this affected the voluntariness of his

advising a suspect of his rights is one factor to consider when determining the voluntariness of a custodial statement to police. Following deliberation of the jury, Appellant was found guilty of first-degree murder, use of a handgun in the commission of a felony, and motor vehicle theft.

DISCUSSION

On Appeal, Appellant contends: (1) the trial judge erred in refusing to propound his proposed voir dire questions regarding the presumption of innocence, proof beyond a reasonable doubt, and his Fifth Amendment right not to testify; (2) the trial judge erred by declining to suppress Appellant's custodial statement to police on the grounds that the statement was a result of an improper inducement under Maryland common law, and thus, not voluntary; and (3) the trial judge erred in relying on pattern instructions which explained the effect of a defendant being advised of rights, but not the effect of a defendant signing an advice of rights form, on the voluntariness of a subsequent confession.

I. Trial Judge's Refusal to Propound Requested Voir Dire Questions regarding the presumption of innocence, proof beyond a reasonable doubt, and Appellant's Fifth Amendment right not to testify.

A. Parties' Contentions

Appellant first contends that the trial court committed reversible error when it refused to propound his proposed voir dire questions regarding the presumption of

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> statement; nine, any other circumstances surrounding the taking of the statement.

(Emphasis Added).

innocence, proof beyond a reasonable doubt, and his Fifth Amendment right not to testify. Appellant cites *Kazadi v. State*, a recent case in which the Court of Appeals held that: "on request, a trial court must ask whether any prospective jurors are unwilling or unable to comply with the jury instructions on the fundamental principles of presumption of innocence, the State's burden of proof, and the defendant's right not to testify." 467 Md. 1 at 9, 223 A.3d 554 at 582 (2020). Appellant also notes that the holding of *Kazadi* is applicable to "any… cases… pending on direct appeal" when *Kazadi* was decided, so long as the "relevant question has been preserved for appellate review." *Id*. at 47. Appellant contends that he properly preserved the issue for appeal when he objected to the trial judge's refusal to propound his proposed questions prior to the close of voir dire. Accordingly, Appellant argues that the holding in *Kazadi* clearly dictates that the trial judge's refusal to ask the proposed questions constitutes reversible error, warranting a new trial.

In response, the State argues that the issue was not properly preserved because Appellant waived his objection to the un-propounded questions when he accepted the jury as empaneled. Specifically, the State contends that Appellant's statement "[n]o further requests" – in response to the trial judge asking both parties whether the panel of jurors was acceptable – effectively waived his earlier objection during voir dire. The State concedes that such a decision would be inconsistent with our holding in *Marquardt v. State*. 164 Md. App. 292 (2005) (holding that "accepting the jury that is ultimately selected after the circuit court has refused to propound requested vor dire questions does not constitute acquiescence to the previous adverse ruling."). However, the State suggests that because

Marqaurdt's ultimate holding[4] on the issue of mandatory voir dire questions is now inconsistent with *Kazadi*, this court should reconsider *Marqaurdt*'s holding relating to the preservation of such appeals.

B. Standard of Review

"The manner of conducting voir dire and the scope of inquiry in determining the eligibility of jurors is left to the sound discretion of the [trial] judge." *Washington v. State*, 425 Md. 306 (2010) (*Citing Curtin v. State*, 393 Md. 593 at 603, 903 A.2d 922 at 928 (2006); *Whittemore v. State*, 151 Md. 309 at 315, 134 A. 322 at 323 (1926); *and* Maryland Rule 4–312(d)). Accordingly, we examine a trial court's refusal to propound Appellant's proposed questions during voir dire for abuse of discretion.

C. Analysis

As an initial matter, we address the State's contention that Appellant waived his right to appeal the trial court's exclusion of his proposed voir dire questions when he subsequently accepted the jury as empaneled. We disagree. In *Marquardt* this court held that "accepting the jury that is ultimately selected after the circuit court has refused to propound requested voir dire questions does not constitute acquiescence to the previous adverse ruling." 164 Md. App. 292, 143. Moreover, *Marquardt*'s holding is consistent with the general preservation requirements of Rule 4-323(c), which states: "[f]or purposes of review…on appeal of any…ruling or order, it is sufficient that a party, at the time the

[4] In Marquardt, this court ultimately held that a trial court did not abuse its discretion when it declined to propound questions related to the State's burden of proof, and proof beyond a reasonable doubt.

ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court."

Regardless, the State urges that *Marquardt*'s preservation holding[5] should be overruled in light of the Court of Appeals' decision in *Kazadi*. 467 Md. 1 at 9 (that "on request, a trial court must ask whether any prospective jurors are unwilling or unable to comply with the jury instructions on the fundamental principles of presumption of innocence, the State's burden of proof, and the defendant's right not to testify."). Namely, the State argues that "[a]s the burden on the trial court increases to ensure that every step is taken at the appropriate time to ensure that the defendant's constitutional rights are respected and he receives a fair trial, so too should the defendant's burden to consistently assert his rights." Notably, the State does not provide any caselaw as a basis for this theory, nor any inkling that the Court of Appeals intended to disturb Maryland's caselaw for preservation of voir dire objections. The Court of Appeals "is not in the habit of overruling cases without stating that it intends to do so." *Moore v. State*, 412 Md. 635, 657 (2010). Accordingly, we find no compelling reason to revisit *Marquardt*'s holding relating to the preservation of challenges to un-propounded voir dire questions.

Simply put, Appellant met all the requirements to challenge the trial court's refusal to propound his proposed voir dire questions. During voir dire, Appellant objected to the exclusion of the proposed questions. At this point, Appellant had already sufficiently

[5] Referring to *Marquardt*'s holding that "accepting the jury that is ultimately selected after the circuit court has refused to propound requested voir dire questions does not constitute acquiescence to the previous adverse ruling." 164 Md. App. 292.

preserved his objection for appellate review. Then, following strikes for cause and preemptory challenges, Appellant responded "no further requests" to the trial court's question "[i]s the defense satisfied?" While not necessary, this was yet another indication that Appellant did not relinquish his objection to the excluded voir dire questions. Thus, having established that Appellant properly preserved the issue for review, we turn to the effect of *Kazadi* on the present appeal.

Kazadi's mandate is clear: "[o]n request, during voir dire, a trial court must ask whether any prospective jurors are unwilling or unable to comply with the jury instructions on the presumption of innocence, the burden of proof, and the defendant's right not to testify." *Id*. at 48. Appellant's proposed questions #24, #29, and #30 specifically relate to the fundamental issues of the presumption of innocence, the burden of proof, and the defendant's right not to testify contemplated in *Kazadi*. However, as to Appellant's proposed question #31, we are not convinced that the question falls within the strict confines of *Kazadi*'s mandate; and find #24, #29, and #30 to be more appropriately "aimed at uncovering a juror's inability or unwillingness to honor [the] fundamental rights" at issue on *Kazadi*. *See Id*. at 46 ("we do not disturb case law as to voir dire questions concerning jury instructions other than those on the presumption of innocence, the burden of proof, and the right not to testify").

"Maryland law has made clear that if a question is directed to a specific cause for disqualification then the question must be asked and failure to do so is an abuse of discretion." *Moore v. State*, 412 Md. 635, 654, 989 A.2d 1150 (2010). Here, the proposed questions were directed at specific biases which would give cause for disqualification.

Accordingly, the trial judge abused her discretion when she refused to propound Appellant's proposed voir dire questions #24, #29, and #30. However, we do not find that the trial judge abused her discretion in declining to propound Appellant's proposed question #31 regarding evidence admitted at trial.

We hold that Appellant's conviction be vacated and remanded for a new trial, where Appellant's proposed voir dire questions regarding the presumption of innocence and burden of proof may be presented to the jury venire. Although our analysis could end here, we address Appellant's additional challenges to guide those proceedings on remand.

II. Motion to Suppress Appellant's Custodial Statement to Police.

A. Parties' Contentions

Appellant next contends that his custodial statement to police was obtained through an improper inducement by police, and thus, involuntary under Maryland law. Appellant's counsel conceded during the hearing on the motion that no improper inducement occurred prior to Appellant signing the Miranda statement. Accordingly, Appellant does not argue that he was induced in any way to waive his right to remain silent. Instead, Appellant argues that after waiving his right to remain silent, his subsequent confession was coerced as a result of an improper inducement under Maryland common law. Specifically, Appellant asserts that the police "improperly induced [Appellant] to confess with an implied promise not to harm [Appellant's girlfriend]." Additionally, Appellant contends that the trial court erroneously applied an "unqualified totality of the circumstances test that did not account for the conclusive presumption" of involuntariness under Maryland

common law. (Internal quotes omitted). Thus, Appellant asserts that the trial court committed reversible error in failing to suppress the confession for lack of voluntariness.

In response, the State contends that police never implied any threat or harm to Appellant's girlfriend. The State points out that Appellant's girlfriend was never actually detained, and that police implied only that she was being interviewed. Moreover, the State suggests that Appellant may have chosen to speak to police because he was anxious about his girlfriend being interviewed by police. Additionally, the State notes that the trial court articulated the proper standard under Maryland common law. Thus, the State contends that the trial court applied the appropriate standard and did not abuse its discretion in finding that Appellant's statement to police was voluntary.

B. Standard of Review

"The trial court's determination regarding whether a confession was made voluntarily is a mixed question of law and fact." *Winder v. State*, 362 Md. 275 at 310–11, 765 A.2d 97 at 116 (2001). Accordingly, "[a]n appellate court undertakes a *de novo* review of the trial judge's ultimate determination on the issue of voluntariness." *Knight v. State*, 381 Md. 517 at 535, 850 A.2d 1179 at 1189 (2004) (*Citing Winder*, 362 Md. at 310–11, 765 A.2d at 116). However, we do not look to the trial record for additional information, nor do we engage in *de novo* fact finding. *Knight*, 381 Md. 517 at 535 (*Citing Cartnail v. State*, 359 Md. 272, 282, 753 A.2d 519, 525 (2000)). Thus, our review of the Circuit Court's denial of Appellant's motion to suppress his custodial statement is limited to the record of the suppression hearing. *Knight*, 381 Md. 517 at 535. Because the State was the prevailing party on the motion "we consider the facts as found by the trial court, and the

reasonable inferences from those facts, in the light most favorable to the State." *Cartnail*, 359 Md. at 282.

C. Analysis

Under Maryland common law, "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 at 478, 128 A.3d 30 at 45 (2015) (*Quoting Hillard v. Stat*e, 286 Md. 145 at 153, 406 A.2d 415 at 420 (1979)). In *Hillard*, the Court of Appeals articulated the two-pronged test applicable to voluntariness under Maryland criminal law:

> [A]n 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.

286 Md. at 153. In subsequent cases, the Court of Appeals has expanded on the proper application of *Hillard*'s two-pronged test (internal citation omitted):

> The first prong of the Hillard test is an objective one. In other words, when determining whether a police officer's conduct satisfies the first prong, the court must determine whether a reasonable person in the position of the accused would be moved to make an inculpatory statement upon hearing the officer's declaration; an accused's subjective belief that he will receive a benefit in exchange for a confession carries no weight under this prong. Ultimately, the court must determine whether the interrogating officers or an agent of the police made a threat, promise, or inducement. The threat, promise, or inducement can be considered improper regardless whether it is express or implied.

> If the suppression court finds that the law enforcement officer improperly induced the accused, then the second prong of the Hillard test requires the court to determine whether the accused relied on that inducement in making the statement he or she seeks to suppress. Specifically, the court must examine whether there exists a causal nexus between the inducement and the statement[.]

Williams, 445 Md. 452 at 478-79 (*Quoting Hill v. State*, 418 Md. 62 at 76–77, 12 A.3d 1193 at 1201 (2011)) (internal citations and quotations omitted).

Appellant cites several Maryland cases where an improper inducement was found based on an officer's promise, implied or explicit, that confessing would help the suspect in the subsequent prosecution. *See Hillard*, 286 Md. at 148 (Detective's statement to suspect that he would "go to bat" for him and speak to the State's Attorney's office held to be an improper inducement.); *see also Knight*, 381 Md. 517 (Officer's promise that "if down the line, after this case comes to an end, we'll see what the State's Attorney can do for you, with your case, with your charges," held to be an unlawful inducement); *In re Lucas F.*, 68 Md. App. 97 (1986) (Detective's statement telling defendant to tell the truth so there would be "no problem later" held to be unlawful inducement); *Streams v. State*, 238 Md. 278, 282-83 (1965) (Officer's promise to give defendant official help in getting probation if defendant confessed held to be improper inducement). However, the case *sub judice* does not involve any improper promise to interfere or assist in any way with Appellant's later prosecution.

Additionally, Appellant cites two cases which, as in the case *sub judice*, involved an officer's promise not to harm someone with a close relationship to the accused if the accused confessed to a crime. In *Stokes v. State*, narcotics officers executed a search

warrant on Stokes' home, which he shared with his wife and several others. 289 Md. 155 (1980). During a subsequent interrogation of Stokes, a narcotics officer stated that "if [Stokes] would produce the narcotics, his wife would not be arrested." *Id*. at 157. The Court of Appeals held that the officer's statement was an improper inducement which Stokes relied upon. *Id*. at 166. However, we do not find the inducement in *Stokes* to be sufficiently analogous to the alleged inducement at issue here. *Stokes* involved an explicit threat to arrest a suspect's wife if the suspect did not provide incriminating evidence against himself. 289 Md. 155. Here, there is no express threat to harm Appellant's girlfriend in any way. Instead, the officer in the present case merely mentioned that Appellant's wife was being questioned by police.

Appellant also cites *Bellamy v. State*, in which a robbery suspect was apprehended along with his fiancé at the time of the robbery in question. 50 Md. App. 65, 435 A.2d 821 (1981). Thereafter, the suspect told the interrogating officer "he would tell [police] everything if [the police] would get his girlfriend off." *Id*. at 68. The officer responded "I will see what I can do. I will talk to the State's Attorney." *Id*. at 68-69. This court held that the officer's promise was an unlawful inducement under Maryland law. *Bellamy*, 50 Md. App. 65. We do not find the inducement in *Bellamy* to be sufficiently similar to the alleged inducement in the present case. In *Bellamy*, the officer made an express promise to speak to the State's Attorney in exchange for the suspect's confession. *Id*. The present case did not involve any offer to interfere in the prosecution of Appellant's girlfriend. In fact, Detective Ebaugh never stated or implied that Appellant's girlfriend would be subject to prosecution.

The Court of Appeals in *Winder* provided helpful guidance in assessing whether an officer crosses the threshold to an unlawful inducement:

> Police officers, charged with investigating crimes and bringing perpetrators to justice, are permitted to use a certain amount of subterfuge, when questioning an individual about his or her suspected involvement in a crime. The conduct of an interview or interrogation of a suspect, however, has boundaries. While we permit the police to make appeals to the inner conscience of a suspect and use some amount of deception in an effort to obtain a suspect's confession, when the police cross over the line and coerce confessions by using improper threats, promises, inducements, or psychological pressures, they risk loss of the fruits of their efforts.

362 Md. 275 at 305 (internal quotations and citations omitted).

When viewed in the light most favorable to the State, Detective Ebaugh's statements to Appellant, regarding Appellant's girlfriend, all seemed to indicate that Appellant's girlfriend was being questioned for evidentiary purposes. None of Detective Ebaugh's statements to Appellant implied that Appellant's girlfriend would be charged, or that she was even a suspect targeted by the investigation. Instead, Detective Ebaugh's Statement's appeared to be aimed at demonstrating to Appellant one of the means[6] by which the police could ascertain the truth of what happened, i.e. what Appellant was doing the night of Decedent's murder. This seems to be exactly the minimal sort of subterfuge police are permitted to employ when questioning the suspect of a crime.

[6] During the interrogation of Appellant, Detective Ebaugh mentioned that Appellant's girlfriend was being questioned by police directly in response to Appellant's question: "What are the facts? What have y'all found so far?" Detective Ebaugh responded by mentioning Appellant's ankle bracelet, Appellant's cell phone records, Facebook messenger data, and the fact that Appellant's girlfriend was being questioned. In this context, the interviewing of Appellant's girlfriend seems to clearly be grouped with other evidence which may implicate Appellant for Decedent's murder.

Moreover, none of Detective Ebaugh's statements to Appellant implied any potential harm or otherwise would come to Appellant's girlfriend. Rather, the more apparent implication, as a layperson would observe, was that the police would be able to figure out what happened notwithstanding Appellant's confession or cooperation. Indeed, Detective Ebaugh's later statement to Appellant – "if you're going to work with me…I'll shoot my other officer a text right now and tell him to take [Appellant's girlfriend] back" – evinces a clear implication that Appellant's girlfriend was taken in for questioning only for the purpose of gaining information. Namely, the fact that the interrogating officer was willing to forgo interviewing Appellant's girlfriend would lead a reasonable layperson to conclude that Appellant's girlfriend was not a suspect in the murder investigation, but instead a source of information. Appellant's subjective belief plays no part in the analysis. We do not find the prospect of merely interviewing Appellant's girlfriend to be the kind of threat that rises to the level of an unlawful inducement. As such, we do not address the second prong of the *Hillard* analysis.

The alleged inducement is more akin to an accommodation employed by police to ferret out the truth. The trial court forwarded the proper test for voluntariness under Maryland common law, and we agree with her legal conclusion as to the voluntariness of Appellant's custodial statement to police.

III. Trial Judge's Reliance on Pattern Jury Instructions in Responding to Jury's Question Asking the Effect of a Signed Miranda Waiver on a Subsequent Confession.

A. Parties' Contentions

Appellant's final contention is that the trial court abused its discretion when it failed to directly advise the jury on the issue of whether a defendant can be coerced into a confession despite having already signed an advice of rights form. Namely, Appellant argues that the trial court was required to answer the jury's question directly because the question evidenced confusion from the jury on a central issue to the case. Accordingly, Appellant asserts that the trial court's reliance on the pattern jury instructions failed to clarify the jury's confusion on an issue central to the case and constituted reversible error.

In response, the State argues that the pattern jury instructions sufficiently answered the jury's question. Moreover, the State contends that the fact that the jury did not seek further clarification on the issue supports the conclusion that the trial court's reference to the relevant portion of the jury instructions effectively addressed the jury's confusion. Thus, the State asserts that the trial judge did not abuse her discretion by relying on the pattern jury instructions in response to the jury's inquiry.

B. Standard of Review

The decision of a trial court to give supplemental instructions "is within the sound discretion of the trial judge and will not be disturbed on appeal, absent a clear abuse of discretion." *State v. Bircher*, 446 Md. 458 at 463, 132 A.3d 292 at 295 (2016) (*Quoting Sidbury v. State*, 414 Md. 180, 186, 994 A.2d 948, 951 (2010)). Accordingly, we review the trial court's decision not to provide supplemental instructions for abuse of discretion.

C. Analysis

During deliberations, the jury asked the trial judge "[c]an you still be coerced into a confession after signing this Miranda document?" The Miranda document at issue was a

standard advice of rights form which advises the reader of their rights, including Miranda rights, and includes a signature block to confirm that the reader has been advised of those rights. Notably, the form included the question: "[h]ave you been promised anything, have you been offered any kind of reward or benefit, or have you been threatened in any way in order to get you to make this statement?"

Following the jury's question, counsel for both parties weighed in on how the court should respond. The State contended that the pattern jury instructions sufficiently addressed the jury's question. Therefore, the State proposed that the trial court decline to supplement the pattern instructions. Conversely, Appellant contended that the pattern instructions did not directly answer the jury's question; and proposed that the trial court simply respond to the question in the affirmative.

In response to the jury's question, the trial court declined to supplement the pattern jury instructions, and instead directed the jury to the portion of the instructions that read:

> In deciding whether the statement was voluntary, consider all of the surrounding circumstances including: One, the conversations, if any, between the police and the Defendant; *two*, *whether the Defendant was advised of his rights*; three, the length of time the Defendant was questioned; four, who was present; five, the mental and physical condition of the Defendant; six, whether the Defendant was subject to force or threat of force by the police; seven, the age, background, experience, education, character and intelligence of the Defendant; eight, whether the Defendant was taken before a District Court Commissioner without unnecessary delay following arrest, and, if not, whether this affected the voluntariness of his statement; nine, any other circumstances surrounding the taking of the statement.

[Emphasis added]. On appeal, Appellant's main contention is that the jury instructions were not clear on the effect of *signing* an advice of rights form prior to a subsequent confession. Rather, the jury instructions described the effect of a defendant being "*advised*

of his rights." Appellant urges that the voluntariness of his confession was a central issue to the case. Accordingly, Appellant contends that the trial judge's response "misdirected [the jury] with the pattern instruction that generated the confusion as an initial matter."

In general, when responding to questions posed by jurors a trial judge must "respond in a way that clarifies its confusion, such that the judge's response is not ambiguous or misleading. *Bircher*, 446 Md. 458 at 464. Moreover, a trial judge's response to jurors must correctly state the law and be applicable under the facts of the case. *Id*. at 463 (*Quoting Brogden v. State*, 384 Md. 631 (2005)). At the same time, a trial judge must also take care to "avoid answering jury questions in a way that improperly comments on the evidence and invades the province of the jury to decide the case." *Id.* at 465. Likewise, "too much commentary on the evidence can cross the line into being inappropriate." *Appraicio*, 431 Md. 42 at 53. A trial judge has broad discretion in instructing jurors on points of law. *See* Maryland Rule 4–325(a) ("The court shall give instructions to the jury at the conclusion of all the evidence and before closing arguments and *may* supplement them at a later time when appropriate.") (emphasis added). Notwithstanding, a trial judge may abuse her discretion by failing to properly respond to a question from a deliberating jury that indicates it is confused about a legal issue central to the case. *State v. Baby*, 404 Md. 220 (2008)

We note as an initial matter that the voluntariness of Appellant's confession was certainly a central issue to the case. Thus, the outcome of this issue turns on whether the trial judge in the present case properly responded the jury question at issue. Appellant likens this case to *Lovell v.* State, 347 Md. 623 (1997) and *State v. Baby*, 404 Md. 220.

In *Lovell*, a jury hearing a statutory rape case asked the trial judge whether there was "any further definition for [the term youthful age] or guidance the court [could] give the jury, relative to [the] term." *Lovell*, 347 Md. at 654. Crucially, the term "youthful age" was a mitigating factor for the crime of statutory rape. *Id.* The trial judge, simply responded "no." On appeal the Court of Appeals held that the trial court "abused its discretion by not responding to the jury's request for a supplemental instruction." *Id*. at 660. The Court of Appeals reasoned that "the absence of any response by the court to the jury's relevant inquiry created a real risk that the factors bearing on life experience and maturity, which are part of the concept of youthful age, were not considered at all." *Id.* However, the reasoning in *Lovell* is inapplicable to the present case. In *Lovell*, the court provided no response. Conversely, in this case the trial court directed the jury to the proper portion of the jury instructions which addressed the question in its proper context. Moreover, the reasoning behind Lovell is plainly not applicable in this case. In fact, in the present case, the trial court's response may have mitigated the risk that the factors bearing on voluntariness, including advice of rights, were properly considered.

In *Baby*, a jury hearing a first-degree rape case repeatedly inquired as to the effect of withdrawing consent during vaginal intercourse. 404 Md. 220. However, the trial court, notwithstanding the jury's persistence, referred the jury to a portion of the pattern jury instructions which included the definition of consent. *Id*. at 262. However, the portion of the instruction was silent on the issue of withdrawal of consent. Thus, on appeal, the Court of Appeals held that the trial court's response was not enough to alleviate the jury's confusion on an issue that was central to the case. *Id.* We do not find *Baby*'s holding to

be applicable here. In *Baby*, the jury displayed its confusion on the issue of withdrawing consent by repeatedly asking the court for clarification on the issue. Conversely, in the present case, the jury made only one inquiry regarding the effect of a signed waiver. Moreover, in *Baby*, the jury instructions on consent were entirely silent on the issue posed by the jury. However, in Appellant's case, the issue of advising of rights was contained in the instructions referenced by the court.

Notwithstanding, Appellant urges that the trial court failed to clear up the distinction between the effect of *signing* an advice of rights form and simply being advised of rights. Appellant asserts that the instructions were the cause of the confusion, and thus, could not be used to clear up the confusion. We disagree. By directing the jury to the voluntariness factors portion of the pattern instructions and explaining that the instructions fully addressed the question, the trial court signaled that the signing of an advice of rights form has the same legal effect as advising the defendant of his rights. Moreover, the trial court was also pointing the jury to the portion which explained that a defendant being advised of their rights is only one factor in the voluntariness analysis. Thus, the trial court was directing the jury to assign the proper weight to the Appellant's signing of the advice of rights form prior to his confession.

When addressing a jury question which touches on fact and law "instructions as to facts and inferences of fact are normally not required…because an instruction regarding particular evidence may have the effect of overemphasizing just one of the many proper inferences that a jury may draw." *Appraicio*, 431 Md. at 53 (*Quoting Patterson v. State*, 356 Md. 677, 684, 741 A.2d 1119 (1999); *and Davis v. State*, 333 Md. 27, 52, 633 A.2d

867 (1993)). Had the court simply responded "yes," as Appellant requested, the jury may have interpreted that response to mean that the signing of an advice of rights form has little or no bearing on the issue of voluntariness.

We cannot say that the trial court's refusal to respond in the affirmative was an abuse of discretion. The trial judge was in the most appropriate position to gauge the jury's understanding of the legal issues in the case. An instruction to consider all the surrounding circumstances of the confession seems to necessarily answer the question of whether one factor – i.e. the signing of a Miranda waiver – is dispositive of the issue. Accordingly, we hold that the trial court did not abuse its discretion by directing the jury to a portion of the pattern instructions that implicitly answered the jury's question.

CONCLUSION

Accordingly, we hold: (1) the trial court committed reversable error in refusing to propound Appellant's proposed voir dire questions regarding the presumption of innocence, proof beyond a reasonable doubt, and his Fifth Amendment right not to testify;[7] (2) the trial court properly allowed Appellant's custodial statement as evidence at trial; and (3) the trial court acted within its discretion when it referred the jury to a portion of the jury instructions explaining the effect of a defendant being advised of rights, but not the effect of a defendant signing an advice of rights form, on the voluntariness of a subsequent confession.

[7] Referring to Appellant's proposed questions #24, # 29, and #30.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED. CASE REMANDED TO THAT COURT FOR A NEW TRIAL. COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.