Circuit Court for Baltimore City
Case Nos. 118155013, 118155014,
118155015, & 118155016

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 938

September Term, 2019

SHAWN LITTLE

v.

STATE OF MARYLAND

Berger,
Arthur,
Beachley,

JJ.

Opinion by Arthur, J.

Filed: September 23, 2021

A jury in the Circuit Court for Baltimore City convicted appellant Shawn Little of one count of second-degree murder and three counts of attempted second-degree murder. The court sentenced Little to a term of 40 years' imprisonment for the conviction of second-degree murder and three concurrent terms of 30 years' imprisonment for the remaining convictions.

This is the second time that Little's appeal has come before this Court. He presents two questions:

1. Did the trial court err by failing to disclose juror communications to the defense?

2. Did the trial court err by denying [Little's] motion to suppress?

In an earlier decision, we remanded the case to the Circuit Court for Baltimore City, without affirmance or reversal, for additional factfinding about whether the parties were aware or became aware of the substance of a communication between a juror and the trial judge. *Little v. State*, No. 938, Sept. Term, 2019, 2020 WL 7776155 (Dec. 30, 2020). On remand, the circuit court found that Little and his counsel were not informed of the communication.

In view of that finding, we must reverse the convictions, because the court committed prejudicial error in failing to disclose a juror's communication that "pertains to the action," within the meaning of Md. Rule 4-326(d). *See, e.g.*, *State v. Harris*, 428 Md. 700, 720 (2012); *accord Gupta v. State*, 452 Md. 103, 123 (2017). For guidance on remand, we address the second question and hold that the court did not err in denying the motion to suppress.

BACKGROUND

On May 5, 2018, Darren Meredith and three friends were sitting in a parked car listening to music. Meredith saw a white car pull up and park behind his. Several men got out of the white car and approached Meredith's car. One of the men, armed with a rifle, fired into Meredith's car, killing one of the young men inside and wounding Meredith and the others. Little was later identified as one of the men who had gotten out of the white car just before the shooting. He was arrested and charged in the shooting.

In an interview with the police after his arrest, Little admitted that he was at the scene of the shooting, but denied that he knew that anyone would be shot. The court denied Little's motion to suppress the statement.

After a four-day trial, a jury convicted Little of one count of second-degree murder and three counts of attempted second-degree murder.

We shall supply additional facts as they become relevant.

DISCUSSION

I.

On the first day of trial, Monday, April 8, 2019, the trial court informed the prospective jurors that the trial would last until "close of business on Friday." The court asked: "Is there any member of the jury panel that has an absolutely compelling reason which makes it impossible for you to serve as a juror on this case for that amount of time?" Several prospective jurors responded in the affirmative, and many of them were struck for cause.

A jury was selected from the remaining prospective jurors. Of the jurors who were selected, none appear to have responded affirmatively to the court's question regarding whether they had a compelling reason that would make it impossible for them to serve as a juror until the close of business on Friday.

After the jurors had been selected, the trial court excused them for the day and instructed them to return the following morning. The attorneys and the defendant remained in the courtroom in anticipation of a hearing on a motion in limine.

According to an audio-visual recording of the trial, a female juror approached the bench at 12:54 p.m., while the attorneys and the defendant remained at the trial tables. The transcript reflects that the following colloquy ensued:

THE COURT: You have a question?

UNIDENTIFIED JUROR: Yeah, I would like –

THE COURT: Sure.

UNIDENTIFIED JUROR: (Indiscernible – 12:54:23).

THE COURT: When?

UNIDENTIFIED JUROR: On Friday.

THE COURT: Okay. We should be out of here by then. That's my hope.

UNIDENTIFIED JUROR: (Indiscernible – 12:54:29).

THE COURT: Okay. So you're leaving taking a train or –

UNIDENTIFIED JUROR: Yeah, we're taking a train.

THE COURT: What time's your train for?

UNIDENTIFIED JUROR: 11:00.

> THE COURT: Okay. All right. Thank you. Remind me on Friday. Let's see where we are, but remind me Friday, okay?

Nothing in the trial record indicates that the court informed counsel of what the juror had said or otherwise discussed the juror's statements with them.

On the following morning, the jurors returned to court, and the proceedings continued with opening argument. Two days later, the parties rested. The jury retired to begin its deliberations at approximately 4:16 p.m. on Thursday afternoon.

Shortly after the deliberations began, the court decided to excuse the jurors for the day. At that time, Little was in a holding cell. Rather than make the jurors wait until the sheriff could bring Little back to the courtroom, the court excused the prosecutor and defense counsel before the jurors returned.

When the jurors returned, the court instructed them that deliberations would continue the next day. The following colloquy ensued:

> A JUROR: What time did you say, I'm sorry?
>
> THE COURT: 9:00 a.m.
>
> A JUROR: 9:00.
>
> THE COURT: Okay. Is that – I mean, this is your show at this point.
>
> A JUROR: That's fine.
>
> THE COURT: I mean, is 9 o'clock okay for people?
>
> A JUROR: That's fine.
>
> A JUROR: Yeah.
>
> A JUROR: I think the earlier the better.

THE COURT: I'm sure you want to get your weekend started.

A JUROR: It's fair.

THE COURT: So –

A JUROR: And I have to be gone by 4:00 tomorrow. I think I told you that.

THE COURT: Oh, right, right, right. I remember you told me that.

On the following morning, the jury returned to court and continued its deliberations.

During the deliberations, the jury submitted a total of 18 notes. One note, which was not shared with the parties, was time-stamped 1:26 p.m. on Friday, April 12, 2019, the last day of trial. It reads as follows:

> I have a 4:43 p.m. train. May I please be out of the juror room by 3:30 p.m. to give us time to collect our belongings, be escorted out, etc. . . . ? I am taking my 6 yr. old daughter to NYC for her birthday and have had this planned for months. Thank you! Juror #8.

(Ellipsis in original.)

At 2:57 p.m., the jury returned its verdict of guilty on the charges of second-degree murder and attempted second-degree murder. The court dismissed the jurors at 3:07 p.m.

Little noted a timely appeal. As part of his appeal, Little obtained approval to supplement the record to include affidavits from his trial attorney and the trial judge. Both affidavits concern the communications that the judge had with the jury during the trial.

In pertinent part, the trial judge's affidavit stated:

2. During the course of the trial there were 17 jury notes.[1]

3. One note "Note 17" dated 4/12/19 stated, "I have a 4:43PM train. May I please be out of the juror room by 3:30PM to give us time to collect our belongings, be escorted out, etc….? I am taking my 6 yr. old daughter to NYC for her birthday and have had this planned for months. Thank you! Juror #8."

4. Based on the record, this note was not addressed in open court and did not include signatures from the attorneys.

5. My recollection is that during jury selection the juror who wrote this note notified the Court and the attorneys that if selected she would need to leave early on Friday 4/12/19 for a pre-planned trip.

6. The Court and the attorneys agreed that we can accommodate her if chosen.

7. This juror was chosen.

8. At 1:26PM on 4/12/19 the juror wrote Note #17 to remind the Court of her need to leave early that day for her trip.

9. The attorneys in the case were already aware that Court was ending early that day to accommodate the juror. This accommodation had been calculated into the trial schedule at the beginning of the trial.

10. The note did not include any facts that the attorneys were not previously made aware of on the record.

Defense counsel's affidavit stated, in pertinent part:

3. I received a letter from Samuel Feder, Assistant Public Defender, who is representing Mr. Little on appeal. Enclosed with the letter was a copy of a jury note from Mr. Little's trial. The note is marked Note 17 and dated 4/12/19. In the letter, Mr. Feder asked me, the trial prosecutor, and the trial judge if we recalled the note.

4. To the best of my knowledge and recollection, I was not shown the jury note enclosed with Mr. Feder's letter, nor provided an opportunity to

[1] Actually, there were 18 notes, but the eighteenth simply announces that the jury had reached a verdict.

review the note with Mr. Little or to weigh in on the court's response to the juror's question.

5. To the best of my knowledge and recollection, I was not informed of any other communications from Juror #8 except for what appears in the April 8th trial transcript of *voir dire* and jury selection. That includes that I was not informed of any communications indicating that Juror #8 intended to leave before the close of business on April 12.

The parties agreed that each of the communications involved Juror No. 8. The parties also agreed that the communications "pertained to the action" within the meaning of Md. Rule 4-326(d), so that the court had a duty to disclose them to counsel. *See*, *e.g.*, *State v. Harris*, 428 Md. 700, 720 (2012); *accord Gupta v. State*, 452 Md. 103, 123 (2017). And the parties agreed that the court did not disclose the second and third communications.

The parties disagreed, however, about whether the attorneys knew of the first of the three communications from the juror. In view of that disagreement, the State argued that the record was insufficient for this Court to determine whether the failure to disclose the second and third communications was harmless. In the State's view, if defense counsel already knew that the juror had to leave early on the afternoon of Friday, April 12, 2019, it didn't matter that the court failed to disclose the subsequent communications in which the juror simply reminded the trial judge about when she needed to leave.

The State argued that we should remand the case to the circuit court for additional factfinding, to ascertain whether defense counsel was aware or became aware of the first communication. We agreed with the State. *Little v. State*, No. 938, Sept. Term 2019, 2020 WL 7776155 (Dec. 30, 2020).

On remand, the circuit court convened a hearing before a respected retired judge from the Circuit Court for Baltimore County. At the hearing, the judge heard from the trial judge and from counsel. After considering the evidence gathered at the hearing, the judge found: (1) that the trial judge did not tell counsel for the parties about the relevant communication with the juror; (2) that defense counsel learned of the communication from Little's appellate counsel, while the case was on appeal; (3) that the prosecutor did not learn of the communication until after the jury had returned its verdict; and (4) that the parties did not know of the juror's scheduling conflict at any time before the conclusion of the trial.

In view of these findings, the State agrees that the trial court erred in failing to disclose the communication, that the error is not harmless, and that the case must be remanded for a new trial. We agree.

The communication "pertained to the action," because it affected the juror's ability to continue deliberating. *See State v. Harris*, 428 Md. at 716; *accord Gupta v. State*, 452 Md. at 121; *Grade v. State*, 431 Md. 85, 100 (2013). Indeed, the communication was "especially relevant," because the juror suggested that "'her ability to continue [was] dependent upon a speedy conclusion of the trial.'" *Gupta v. State*, 452 Md. at 121-22 (quoting *Harris v. State*, 428 Md. at 716). Therefore, the court had a duty to disclose the communication to counsel. Md. Rule 4-326(d). The court erred in failing to disclose the communication.

The error might have been harmless if the parties learned of the communication "at a time when the court still had options before it regarding how to resolve the

situation," if defense counsel had "multiple opportunities to provide input on how to address the situation," and if the court took action only "after considering and rejecting those proposals on the record." *Gupta v. State*, 452 Md. at 127. Obviously, that is not the case here, where it is undisputed that the parties did not know of the juror's scheduling conflict at any time before the conclusion of the trial. Consequently, we must reverse the convictions and remand the case for a new trial.

II.

On May 11, 2018, three days after the shooting, the police interviewed Little. During the interview, which was recorded, Little made several inculpatory statements. Little moved to suppress his statements, arguing that they were the product of improper inducements by the interrogating officer.

At a suppression hearing, Baltimore City Police Detective Brian Lewis testified that he and another officer, Detective Niedermeier, interviewed Little on the day in question. A transcript of the interview was admitted into evidence and reviewed by the suppression court.

At the beginning of the interview, Detective Lewis asked Little if he remembered what he did on the day of the shooting. Little responded that he "just stayed in the house." Later, Little stated that he "heard about somebody getting shot" that day. Little admitted that he knew one Eric Jackson. Detective Niedermeier told Little that the police had Jackson's car and that it had been used in the shooting. Detective Niedermeier then told Little that he was under arrest for murder. Little denied any involvement in the murder.

Shortly thereafter, Detective Lewis asked Little if he "knew anything" about the shooting. Little responded: "So, y'all gonna let me go if I tell y'all?" Detective Lewis answered, "No," and reiterated that Little was being held pursuant to the arrest warrant. Little then disclosed that he knew "who killed the man."

When Detective Lewis asked Little who committed the murder, Little stated: "I'm getting locked up, bro. Like, I ain't do nothing, bro. . . . I didn't kill him." Little added: "I'm getting locked up. I gotta daughter and all that, bro." When Detective Lewis asked Little if he was "there," Little stated: "I was there, but I didn't know they was gonna kill nobody, though."

At that point, the following colloquy ensued:

> DETECTIVE LEWIS: Okay. Tell me – tell me (inaudible) – tell me about it. Because, I'm gonna tell you this, *if that's the case, I have to talk to the State's Attorney's Office, the prosecutors, and say, "Hey, look, we gotta talk about some things* –
>
> (Simultaneous speaking)
>
> LITTLE: But, I'm still getting locked up –
>
> DETECTIVE LEWIS: -- before we move forward."
>
> LITTLE: -- though, bro. I didn't do nothing. I didn't know they was gonna go pull that.
>
> DETECTIVE LEWIS: Okay. Tell me about what happened.

(Emphasis added.)

Little told the detective that "Bradlo," a.k.a. Bradley Mitchell, had killed the victim. Little reiterated that he did not know "they was gonna go kill that man" and said

that he "should've just stayed out the car." He asserted: "I'm not going to jail for nothing I didn't do and I got a daughter. I'm not going to jail for that."

Shortly thereafter, the following colloquy ensued:

> DETECTIVE LEWIS: Listen to what I'm telling you right now, Shawn, okay, 'cause *it's gonna save your life*. Listen to what I'm about to tell you 'cause it's – trust me, as sure as I'm sitting here, *what you're about to tell me is going to save your life* and you're gonna be a father to your daughter. You are doing the right thing right now. Okay? You are absolutely doing the right things. It doesn't get any more serious than this. And you're absolutely right, you should not go to jail for no murder that you didn't do.
>
> (Simultaneous speaking)
>
> LITTLE: Bradlo (inaudible) –
>
> DETECTIVE LEWIS: You are doing the right thing.
>
> LITTLE: -- (inaudible) –
>
> DETECTIVE LEWIS: Give it all. Come on.

(Emphasis added.)

Following that colloquy, Little disclosed additional details about his role in the shooting. Little stated that he, Jackson, and Mitchell had approached the victim's car "just to see who it was," but that Mitchell decided "to shoot the car up for nothing." Little claimed to have mistakenly believed that the occupants in the victim's car were the same persons who had been "riding around with masks on" in that neighborhood. Little initially said that he had been in the backseat of Jackson's car before the shooting and that he was the last one out of the car. Little later changed his story and admitted that he

had been in the front passenger seat; Mitchell, who was in the backseat, got out after Little did.

At one point while Mitchell was making these statements, another officer came into the interview room and showed Little a photographic array. The officer asked Little if he had been threatened or forced to "pick anybody out in these photos." Little responded in the negative and added: "But I'm still getting jail for that thing, though." At another point, after providing details about the shooting to Detective Niedermeier, Little stated that he was "trying to tell [the police] everything so [he] won't be in it." Detective Niedermeier responded: "Well, that's not a call we can make." Later, after Detective Niedermeier told Little to "relax" and that he was "all right," Little stated: "I'm not okay. I'm still going the fuck to jail for something I ain't fucking do. . . . I'm going to jail." Shortly thereafter, Little again stated: "I know I'm still going to jail."

At the conclusion of the suppression hearing, defense counsel argued that Detective Lewis made improper inducements when he said that he would "talk" to the State's Attorney and that Little's statement would "save" his life. Defense counsel argued that Little's statements following those inducements were therefore involuntary and should be excluded.

The suppression court denied Little's motion. The court reasoned that the officers had made no improper inducements, because they had not promised anything in exchange for the information and they had always made it clear that Little was under arrest and would not be released. Even if the officer had made improper inducements, the court

reasoned that Little had not relied on them, because he repeatedly reiterated that he was going to jail even after the alleged inducements.

"Our review of a circuit court's denial of a motion to suppress evidence is 'limited to the record developed at the suppression hearing.'" *Pacheco v. State*, 465 Md. 311, 319 (2019) (quoting *Moats v. State*, 455 Md. 682, 694 (2017)). "[W]e view the evidence presented at the [suppression] hearing, along with any reasonable inferences drawable therefrom, in a light most favorable to the prevailing party." *Davis v. State*, 426 Md. 211, 219 (2012). Moreover, "[w]e extend great deference to the findings of the hearing court with respect to first-level findings of fact and the credibility of witnesses unless it is shown that the court's findings are clearly erroneous." *Daniels v. State*, 172 Md. App. 75, 87 (2006). "We give no deference, however, to the question of whether, based on the facts, the trial court's decision was in accordance with the law." *Seal v. State*, 447 Md. 64, 70 (2016).

As a matter of Maryland common law, "[o]nly voluntary confessions are admissible as evidence[.]" *Knight v. State*, 381 Md. 517, 531 (2004). "[A] confession is involuntary if it is the product of certain improper threats, promises, or inducements by the police." *Lee v. State*, 418 Md. 136, 161 (2011). Thus, if suspects are told, or if it is implied, that making an inculpatory statement will be to their advantage, in that they will be given help or some special consideration, and if they make a statement in reliance on that inducement, the statement 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)). In *Knight v. State*, 381 Md. at 536 n.14, the Court of

Appeals compiled the inducements that Maryland appellate courts have found to be improper:

- "I can make you a promise, okay? I can help you. I could try to protect you." *Winder v. State*, 362 Md. 275, 289 (2001).
- "[P]roduce the narcotics, [and your] wife [will] not be arrested." *Stokes v. State*, 289 Md. 155, 157 (1980).
- "[I]f you are telling me the truth . . . I will go to bat for you." *Hillard v. State*, 286 Md. 145, 153 (1979).
- "[I]t would be better for [you] if [you] made a statement because if [you] did they would try to get [you] put on probation." *Streams v. State*, 238 Md. 278, 281 (1965).

When a criminal defendant claims that a confession was involuntary because of a promise made by the interrogating officers, the State must present evidence in order to refute that claim. *Knight v. State*, 381 Md. at 532. "If the defense files a proper pre-trial suppression motion, the State bears the burden to prove, by a preponderance of the evidence, that 'the inculpatory statement was freely and voluntarily made and thus was the product of neither a promise nor a threat.'" *Id.* (quoting *Winder v. State*, 362 Md. at 306).

The Court of Appeals has established a two-prong test for determining whether a statement has been rendered involuntary because of an improper inducement. First, the court determines whether a law enforcement officer has "promised or implied" that the suspect "would be given special consideration from a prosecuting authority or some other form of assistance in exchange for the confession." *Id.* at 533-34. "Second, if the court

determines that such a promise was explicitly or implicitly made, it decides whether the suspect's confession was made in apparent reliance on the promise." *Id.* at 534.

"To resolve whether the 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.'" *Smith v. State*, 220 Md. App. 256, 274 (2014) (quoting *Hill v. State*, 418 Md. 62, 76 (2011)). That determination is an objective one; the accused's subjective belief is irrelevant. *Id.*

"If the court finds that an improper inducement was made, then the court turns to the second prong, which is whether 'the suspect makes a confession in apparent reliance on the police officer's explicit or implicit inducement.'" *Smith v. State*, 220 Md. App. at 275 (quoting *Lee v. State*, 418 Md. at 161). "This prong 'triggers a causation analysis to determine whether there was a nexus between the promise or inducement and the accused's confession.'" *Id.* (quoting *Winder v. State*, 362 Md. 275, 311 (2001)). "For example, the temporal relationship between the improper threat, promise, or inducement and the confession may convince the trial court to draw an inference as to whether the confession came as a result of improper statements by interrogating authorities." *Knight v. State*, 381 Md. at 534.

"'Both prongs must be satisfied before a confession is deemed to be involuntary.'" *Smith v. State*, 220 Md. App. at 275-76 (quoting *Winder v. State*, 362 Md. at 310).

Turning back to this case, we hold that neither of the comments at issue constituted an improper inducement.

The first comment came after Little had admitted that he was present during the shooting and that he "didn't know they was gonna kill nobody." Detective Lewis followed that statement by saying that, if the statement were true, he needed "to talk to the State's Attorney's Office" and tell the prosecutor that they needed "to talk about some things before we move forward."

We are persuaded that no reasonable person in Little's position would have construed that comment to imply that making an inculpatory statement would be to Little's advantage, *i.e.*, that Little would be given help or some special consideration in exchange for his statement. Detective Lewis did not offer any help to Little; he merely stated that he would speak with the prosecutor about Little's role in the crime, which he has a duty to do. *See Knight v. State*, 381 Md. at 536 (stating that "[p]olice 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[]").

At no point did Detective Lewis suggest that he would exercise his discretion on Little's behalf or that he would attempt to convince the prosecutor to do the same. *See id.* (noting that "statements that have been held to be improper inducements have involved promises by the interrogating officers either to exercise their discretion or to convince the prosecutor to exercise discretion to provide some special advantage to the suspect"). To the contrary, both Detective Lewis and Detective Niedermeier made it clear that Little would not be released from custody and that they had no control over Little's prosecution. Because Detective Lewis did not offer Little any special advantage, his comment was not an improper inducement. *Id.*

As for the second comment, in which Detective Lewis told Little that his statements would "save [his] life" and enable him to "be a father to [his] daughter," we are likewise persuaded that no reasonable person in Little's position would have construed it to imply that Little would receive some help or special consideration in exchange for his statement. Before the detective made the comment, Little repeatedly stressed that he did not want to go to jail for something he did not do. After Little remarked that he had a daughter, Detective Lewis simply encouraged him to "do the right thing" and make a statement, which Little did. "'[A]n appeal to the inner psychological pressure of conscience to tell the truth does not constitute coercion in the legal sense[.]'" *Williams v. State*, 445 Md. at 480 (quoting *Ball v. State*, 347 Md. 156, 179 (1997).

Little likens Detective Lewis's comments to those in *Jones v. State*, 48 Md. App. 726 (1981), and *Lubinski v. State*, 180 Md. 1 (1941). His reliance on those cases is misplaced. In *Jones*, 48 Md. App. at 734-35, this Court reversed the defendant's conviction because the interrogating officer told the defendant "that if he wanted 'some help we would have to get the truth.'" In *Lubinski*, 180 Md. at 4, the Court of Appeals stated, in dicta, that if there was no dispute about whether the officer told the defendant that it would "help [him] a lot" to make a statement, the trial court should not have admitted the confession. Here, by contrast, the detective offered no "help." Moreover, Little clearly understood that giving a statement would not result in his freedom.

Assuming, *arguendo*, that one or both of Detective Lewis's comments were improper inducements, we are persuaded that none of Little's subsequent statements were made in apparent reliance on the inducements.

At the outset, Detective Lewis specifically told Little that the police would not let him go if he talked; yet Little proceeded to talk anyway, telling the detectives that he knew "who killed the man." Before Detective Lewis uttered either of the alleged inducements, Little had already admitted that he was present during the shooting and had already recognized that he was "getting locked up." *See Williams v. State*, 445 Md. at 482 (holding that the defendant did not rely on the improper inducement where, before the inducement, the defendant made a statement reflecting his "understanding that he would be subject to severe sanctions, no matter what he said"). When the detective made the first comment, Little began talking – stating that he was "still getting locked up" – before the detective could even finish. By the time Detective Lewis made his second comment, Little had already admitted that he had been in the car with Mitchell and that Mitchell was the shooter.

Little did disclose additional details about his role in the shooting after each of Detective Lewis's comments. But, as previously noted, nothing in the record suggests that Detective Lewis's comments caused Little to disclose those additional details. That conclusion is supported by the lack of evidence suggesting any offer of "help" by Detective Lewis, as well as Little's repeated assertions that he knew he would be going to jail regardless of what he said.

In sum, we hold that Detective Lewis's comments were not improper inducements and that, even if they were, Little did not rely on the comments in making the statements at issue. Accordingly, the suppression court did not err in denying Little's motion to suppress.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY MAYOR AND CITY COUNCIL OF BALTIMORE.

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

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0938s19cn.pdf